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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 33

[Docket No. 93–ANE–14; No. 33–ANE–01]

Special Conditions; Soloy Corporation, Soloy Dual Pac Engine (Formally Soloy Dual Pac, Inc.)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Soloy Corporation, Soloy Dual Pac engine (formally Soloy Dual Pac Inc.). This engine will have a novel design feature associated with its configuration. The Soloy Dual Pac engine is a propulsion system in which two Pratt & Whitney Canada (PWC) Model PT6 turbine engines are combined through a common gearbox to drive a single output propeller shaft. The Soloy Dual Pac engine is intended to provide a degree of continuous operation following the failure of one of the PWC Model PT6 engines. The applicable regulations do not contain adequate or appropriate safety standards for such a configuration. These special conditions contain the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that established by the airworthiness standards of part 33 of the Federal Aviation Regulations (FAR).

EFFECTIVE DATES: March 21, 1997.

FOR FURTHER INFORMATION CONTACT: Kathrine Rask, Seattle Aircraft Certification Office, Propulsion Branch, ANM–140S, FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055–4056, Telephone (206) 227–1547; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Background

General

On November 9, 1990, Soloy Corporation applied for a supplemental type certificate for the Soloy Dual Pac engine. The Soloy Dual Pac engine is a propulsion concept in which two PWC Model PT6 engines, currently approved under Type Certificate No. E4EA, drive a single propeller shaft through a combining gearbox. The Soloy Dual Pac engine incorporates redundant freewheeling, drive, governing, and lubricating systems. A system of one-way clutches both prevents the propeller shaft from driving the engine input shafts and allows either engine to drive the propeller should the other engine fail. The supplemental type certificate for the Soloy Dual Pac engine is to be based on the type certificate of the PWC Model PT6 engine. On February 4, 1994, the FAA published a notice of proposed special conditions (59 FR 5356) for "Soloy Dual Pac, Inc., Soloy Dual Pac Engine", requesting public comments. Since that publication, the name has changed from Soloy Dual Pac, Inc., to Soloy Corporation.

Safety Analysis

The certification basis of the PWC Model PT6 engine was established before the introduction of § 33.75 of the Federal Aviation Regulation (FAR) (Safety Analysis). Section 33.75 addresses four types of engine failure conditions which are particularly hazardous to the safety of the aircraft. The objective of § 33.75 is to require an analysis to be performed at the engine level which establishes that any probable single or multiple failure, or any probable improper operation will not cause the engine to catch fire, burst, generate loads greater than the ultimate loads for the engine mount, or lose the capability to shut down. Consequently, it is considered appropriate to add a safety analysis requirement to the Soloy Dual Pac engine program.

Also, one objective of the Soloy Dual Pac engine is to provide continued operation after the failure of one PWC Model PT6 engine. While the safety analysis regulations of § 33.75 are more extensive than those of the PWC Model PT6 engine certification basis, they still do not address this special "continue to run" objective.

Therefore, in light of the above, it was proposed that a safety analysis requirement, modeled after § 33.75 and expanded to address continued operation after a single engine failure, be included in the Soloy Dual Pac engine certification basis.

Uncontained Engine Failure

It is assumed that the Soloy Dual Pac engine is intended for use in an aircraft and will be part of an aircraft certification program in the future. Minimizing the hazards to the aircraft from uncontained engine debris will be a very important requirement in any such certification program. In addition, for a design such as the Dual Pac, many design features intended to minimize such hazards would be determined at the engine design stage. Therefore, this issue must be addressed initially during the Soloy Dual Pac engine certification program, and may also be addressed during the aircraft installation certification program.

As stated above, one objective of a Soloy Dual Pac engine-equipped aircraft could be continued safe flight and landing after the failure of one PWC Model PT6 engine. In order for the Soloy Dual Pac engine to achieve this objective, it must continue to produce adequate and controllable torque after such a failure. Service experience, however, shows that uncontained engine failures can result in high velocity fragment penetration of, among other things, other engines. This could render the other engine inoperative as well. In the case of the Soloy Dual Pac engine, such an event could end all torque production. Therefore, the Soloy Dual Pac engine must demonstrate that the two PWC Model PT6 engines should be protected from each other in order to minimize the hazards associated with this event.

Gearbox Design, Functioning, and Endurance Testing

Power transmission systems, such as gearboxes, have not been specifically addressed by engine certification regulations. Previously, engines incorporating gearboxes, such as fan reduction gearing or accessory gearboxes, have been evaluated during the course of engine block tests and other engine certification activities. Transmissions such as those used in

rotorcraft, however, have been addressed in rotor drive criteria contained in rotorcraft certification regulations. Since the Soloy Dual Pac engine propulsion drive system is part of the engine, the changes to part 23 of the FAR, which were published as a notice of proposed rulemaking (NPRM), "Small Airplane Airworthiness Review Program Notice No. 3," in the **Federal Register** on October 3, 1990 (55 FR 40598); and § 33.87 of the FAR (amended through Amendment 33–5), will be used as a basis for special conditions intended to establish standards to address the design, function, and endurance testing of the gearbox. Section 33.87 regulations have been included in order to establish a comprehensive standards to address the turbine interface with the gearbox.

Type Certification Basis

Under the provisions of § 21.101 of the FAR, Soloy Corporation, must show that the Soloy Dual Pac engine meets the applicable provisions of the regulations incorporated by reference in Type Certificate No. E4EA, or the requirements of the applicable regulations in effect on the date of the application. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate No. E4EA are as follows:

(a) FAR § 21.29, Issue of Type Certificate: Import Products.

(b) Civil Air Regulations (CAR) part 10, Certification and Approval of Import Aircraft and Related Products, dated March 28, 1955.

(c) FAR part 33, Airworthiness Standards: Aircraft Engines, effective February 1, 1965, as amended by Amendments 33–1 through 33–5 inclusive.

If the regulations incorporated by reference do not provide adequate standards with respect to the change, the applicant must comply with the regulations in effect on the date of application for the change that the FAA finds necessary to provide a level of safety equal to that established by the regulations incorporated by reference. Due to the potential applications of the Soloy Dual Pac engine, the FAA has determined that it must also be shown to comply with part 33 of the FAR, effective February 1, 1965, as amended by Amendment 33–1 through 33–5 inclusive, plus the following sections:

(a) Section 33.7, Amendment 33–12, Engine ratings and operating limitations.

(b) Section 33.67, Amendment 33–10, Fuel system.

(c) Section 33.68, Amendment 33–10, Induction system icing.

(d) Section 33.96, Amendment 33–11, Engine test in auxiliary power unit mode.

(e) Section 21.115(a), Applicable requirements.

In addition, compliance must be shown with part 34 of the FAR (Fuel Venting and Exhaust Emission Requirements for Turbine Engine Powered Airplanes); these special conditions contained herein on safety analysis, gearbox design, functioning, and endurance testing, and uncontained engine failure; as well as any applicable equivalent safety findings and any applicable exemptions.

The Administrator finds that the applicable airworthiness regulations in part 33, as amended, do not contain adequate or appropriate safety standards for the Soloy Dual Pac engine because of its novel or unusual design feature. Therefore, the Administrator prescribes special conditions under the provision of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice and opportunity for comment, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Discussion of Comments

Interested persons have been afforded the opportunity to participate in the making of these special conditions. One comment were received supporting the additional safety standards for the Soloy Dual Pac engine in the notice of proposed special conditions as published.

The FAA has gained a better technical understanding of the Soloy Dual Pac engine design since the notice of proposed special conditions were published in the **Federal Register**.

One of the critical systems of the Soloy Dual Pac engine is the single propeller. Paragraph(c)(1)(iv) was developed to ensure that a loss of oil pressure to the propeller governing system or the propeller shaft lubrication would not result in imminent loss of propeller speed or control. The zero oil pressure test as published in the notice of proposed special conditions does not adequately address these concerns. The blade pitch control system of the Soloy Dual Pac engine propeller installation is expected to contain a fail safe setting that is not equivalent to the 100 percent output speed required in the notice of proposed special conditions. When the propeller governor looses oil pressure, it will automatically revert to a predetermined mechanical limit, a so called "get home" pitch and speed. In addition, the 15 minute requirement (the notice of proposed special conditions stated "15 seconds," however this was a typographical error) is not adequate for the type of aircraft installations where the Soloy Dual Pac is expected to be used. These airplanes, operating under part 121 of the FAR, will be allowed to operate over routes that contain a point up to one hour flying time from an adequate airport. The test of less than one hour of continued safe operation would not fulfill the intent of the paragraph (c)(1)(iv). The FAA has determined that paragraph (c)(1)(iv) as proposed, which set forth requirements for a zero oil pressure test of the gearbox, does not address the intent of this paragraph and therefore it is modified in these final special conditions. The revised test requirements in the final special conditions address more accurately the airplane failure scenario intended to be evaluated. However, the demonstrated torque and rotational speed must be included in the instruction manual for installing and operating the engine required in § 33.5 of the FAR.

Conclusion

This action affects only certain novel or unusual design features on one model engine configuration. It is not a rule of general applicability, and affects only the manufacturer who applied to the FAA for approval of these features on the engine.

List of Subjects in 14 CFR Part 33

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for part 33 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40113, 44701, 44702, 44704

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Soloy Corporation, Soloy Dual Pac engine:

(a) *Safety Analysis.*

It must be shown by analysis that any probable malfunction, or any probable single or multiple failure, or any probable improper operation of the Soloy Dual Pac engine will not cause the Soloy Dual Pac engine to—

(1) Catch fire;

(2) Burst (release hazardous fragments through the engine case);

(3) Generate loads greater than those ultimate loads specified in § 33.23(a);

(4) Lose the capability of being shut down; or

(5) Lose the capability of providing controllable 50 percent of rated power.

(b) *Uncontained Engine Failure.*

Design precautions must be taken to minimize the damage to one PWC PT6 engine, in the event of uncontained engine failure of the other PWC Model PT6 engine, in order for the unfailed engine to be capable of continued torque production after such a failure.

(c) *Gearbox Design, Functioning, and Endurance Testing.*

(1) *Propulsion Drive System Design.* Propulsion drive systems, as defined in paragraph (c)(1)(i), must meet the requirements as set forth in paragraphs (c) (1) through (6).

(i) The propulsion drive system includes all parts necessary to transmit power from the engines to the propeller shaft. This includes couplings, universal joints, drive shafts, supporting bearings for shafts, brake assemblies, clutches, gearboxes, transmissions, any attached accessory pads or drives, and any cooling fans that are attached to, or mounted on, the propulsion drive system.

(ii) Each propulsion drive system, powered by more than one engine, must be arranged so that the propeller shaft and its control will continue to be powered by the remaining engine(s) if any engine fails.

(iii) Each multiengined propulsion drive system must incorporate a device to automatically disengage any engine from the propeller shaft, if that engine fails.

(iv) The oil for components of the propulsion drive system that require continuous lubrication must be sufficiently independent of the lubrication systems of the engine(s) to ensure operation with any engine inoperative. The propulsion drive system must be able to continue safe operation, although not necessarily without damage, at a torque and rotational speed prescribed by the applicant which is determined to be the most critical of the anticipated flight conditions. The drive system shall operate at this condition for at least one hour after perception by the flight crew of the lubrication system failure or loss of lubricant. The demonstrated torque and rotational speed must be included in the instructional manual for installing and operating the engine required in § 33.5 of the Federal Aviation Regulations (FAR).

(v) Torque limiting means must be provided on all accessory drives that are located on the propulsion drive system, in order to prevent the torque limits established for those drives from being exceeded.

(vi) There must be means to provide continued propulsion system control and operation, following the failure of an engine to transmission drive shaft.

(vii) In addition to the propulsion drive system complying with the requirements of paragraph (c)(1)(iii), the propulsion drive system, powered by more than one engine, must be designed so that torque to the propeller shaft is not interrupted after failure of any engine or element in the propeller shaft drive system; and examined in detail to determine all components and their failure modes that would be vital to continued control and operation of the propulsion drive system.

(viii) For each component and its failure modes identified by this examination, it must be shown by appropriate test that such a failure is not likely to occur in the system component's service life established by these tests; or that the system is designed so continued control and operation can be accomplished after occurrence of the failure.

(2) *Propulsion Drive System Limitations.* The propulsion drive system limitations must be established so that they do not exceed the corresponding limits approved for the engine, propeller shaft, and drive system components.

(i) For the Soloy Dual Pac engine, takeoff power must be limited by—

(A) The powerplant maximum rotational speed for takeoff power, and the maximum rotational propeller shaft speed may not be greater than the values determined by the propulsion drive system type design, or the maximum value shown during type tests.

(B) The time limit for the use of power, gas temperature, and speed corresponding to the limitations established in paragraph (i) of this section.

(C) The powerplant maximum allowable gas temperature at maximum allowable power or torque for each engine, considering the power input limitations of the transmission with all engines operating; and

(D) The powerplant maximum allowable gas temperature at maximum allowable or torque of each engine, considering the power input limitations of the transmission with one engine inoperative.

(ii) For the Soloy Dual Pac engine, continuous power must be limited by—

(A) The powerplant maximum rotational speed for continuous power. The maximum rotational propeller shaft speed may not be greater than the values determined by the propulsion drive system type design maximum value shown during type tests.

(B) The powerplant maximum allowable gas temperature of continuous power and the maximum allowable power or torque for each engine, considering the power input limitations of the transmission with both engines operating; and

(C) Powerplant maximum allowable gas temperature at maximum allowable power or torque of each engine, considering the power input limitations of the transmission with one engine inoperative.

(3) *Propulsion Drive System Instruments.* Connections for the following instruments must be provided for any gearbox or transmission:

(i) An oil pressure warning device for each pressure-lubricated gearbox to indicate when the oil pressure falls below a safe value;

(ii) A low oil quantity warning indicator for each gear box, if lubricant is self-contained;

(iii) An oil temperature warning device to indicate unsafe oil temperatures in each gearbox;

(iv) A tachometer for each propeller shaft;

(v) A torquemeter for each transmission driving a propeller shaft; and

(vi) A chip detecting and indicating system for each gearbox.

(4) *Propulsion Drive System Endurance Tests.* Each part tested, as prescribed in this section, must be in a serviceable condition at the end of the tests. No intervening disassembly that might affect these results may be conducted.

(i) *Endurance tests; general.* The propulsion system, as defined in paragraph (c)(1) must be tested as prescribed in paragraphs (c)(4)(ii) through (c)(4)(ix), for at least 200 hours plus the time required to meet paragraph (c)(4)(ix). For the 200-hour portion, these tests must be conducted as follows:

(A) Twenty each, ten-hour test cycles consisting of the test times and procedures in paragraphs (c)(4)(ii) through (c)(4)(viii); and

(B) The test torque must be determined by actual powerplant limitations.

(ii) *Endurance tests; takeoff torque run.* The takeoff torque run endurance test must be conducted as follows:

(A) The takeoff torque run must consist of a one-hour run on the engine(s) at the torque corresponding to takeoff power, but with the engine power setting alternately cycled every

five minutes to as low an engine idle speed as practicable.

(B) Deceleration and acceleration of the engines and/or of individual engines and drive system must be performed at the maximum rate. (This corresponds to a one-second power setting change from idle to takeoff setting, and one second from takeoff setting to idle.)

(C) The time duration of all engines at takeoff power setting must total one hour and does not include the time required to go from takeoff to idle and back to take off speed.

(iii) *Endurance tests; maximum continuous run.* Three hours of continuous operation, at the torque corresponding to maximum continuous power and speed, must be conducted.

(iv) *Endurance tests; 90 percent of maximum continuous run.* One hour of continuous operation, at the torque corresponding to 90 percent of maximum continuous power, must be conducted at maximum continuous rotational propeller shaft speed.

(v) *Endurance tests; 80 percent of maximum continuous run.* One hour of continuous operation, at the torque corresponding to 80 percent of maximum power, must be conducted at the minimum rotational propeller shaft speed intended for this power.

(vi) *Endurance tests; 60 percent of maximum continuous run.* Two hours of continuous operation, at the torque corresponding to 60 percent of maximum continuous power, must be conducted at the minimum rotational propeller shaft speed intended for this power.

(vii) *Endurance tests; engine malfunctioning run.* It must be determined whether malfunctioning of components, such as the engine fuel or ignition systems, or unequal engine power can cause dynamic conditions detrimental to the drive system. If so, a suitable number of hours of operation must be accomplished under those conditions, one hour of which must be included in each cycle, and the remaining hours of which must be accomplished at the end of 20 cycles. This testing is to be equally divided between the following four conditions: (1) engine #1 "ON"/engine #2 "IDLE"; (2) engine #1"ON"/engine #2 "OFF"; (3) engine #1 "IDLE"/engine #2 "ON"; (4) engine #1 "OFF"/engine #2 "ON". If no detrimental conditions results, an additional hour of operation in compliance with paragraph (ii) of this section must be conducted.

(viii) *Endurance tests; overspeed run.* One hour of continuous operation must be conducted at the torque corresponding to maximum continuous power, and at 110 percent of rated maximum continuous rotational propeller shaft speed. if the overspeed is limited to less than 110 percent of maximum continuous speed by the speed and torque limiting devices, the speed used must be the highest speed allowable, assuming that speed and torque limiting devices, if any, function properly.

(ix) *Endurance tests; one-engine-out application.* A total of 160 full differential power applications must be made at takeoff torque and RPM. If, during these tests, it is found that a critical dynamic condition exists, an investigative assessment to determine the cause shall be performed throughout the torque/speed range. In each of the 160 engine power setting cycles (160 per engine drive branch) a full differential power application must be performed. In each cycle, the transition from clutch engagement to disengagement must occur at the critical condition for clutch and shaft wear.

(5) *Additional Propulsion Drive System Tests.* Additional dynamic, endurance, and operational test and vibratory investigations must be performed to determine that the drive mechanism is safe. The following additional tests and conditions apply:

(i) If the torque output of all engines to the transmission can exceed the highest engine or transmission torque limit, the following tests must be conducted. Under conditions associated with all engines operating, apply 200 cycles to the drive system for 10 seconds each of a torque that is at least equal to the lesser of—

(A) The maximum torque used in complying with paragraph (4)(ii) plus 10 percent; or

(B) The maximum torque attainable under normal operating conditions, assuming that any torque limiting devices function properly.

(ii) With each engine alternately inoperative, apply to the remaining transmission inputs the maximum transient torque attainable under normal operating condition, assuming that any torque limiting devices function properly. Each transmission input must be tested at this maximum torque for at least 15 minutes.

(iii) After completion of the 200 hour endurance test and without intervening major disassembly, the drive system must be subjected to 50 overspeed runs, each 30±3 seconds in duration, at a speed of at least 120 percent of maximum continuous speed, or other maximum overspeed that is likely to occur, plus a margin of speed approved by the Administrator for that overspeed condition. These runs must be conducted as follows:

(A) Overspeed runs must be alternated with stabilizing runs from 1 to 5 minutes duration, each 60 to 80 percent of maximum continuous speed.

(B) Acceleration and deceleration must be accomplished in a period no longer than 10 seconds, and the time for changing speeds may not be deducted from the specified time for the overspeed runs.

(iv) Each part tested, as prescribed in this section, must be in serviceable condition at the end of the tests. No intervening disassembly that might affect test results may be conducted.

(v) If drive shaft couplings are used and shaft misalignment or deflections are probable, loads must be determined in establishing the installation limits affecting misalignment. These loads must be combined to show adequate fatigue life.

(vi) The vibration test specified in § 33.83 must be applied to engine-furnished components of the propulsion drive system. The test must include the gear case and each component in the combining gear box whose failure due to vibration could cause unsafe operation of the engine.

(6) *Propulsion Drive System Shafting Critical Speed.* The critical speeds of any shafting must be determined by test, except that analytical methods may be used if reliable methods of analysis are available for the particular design.

(i) If any critical speed lies within, or close to, the operating ranges for idling and power on conditions, the stresses occurring at that speed must be within design limits. This must be shown by tests.

(ii) If analytical methods are used and show that no critical speed lies within the permissible operating ranges, the margins between the calculated critical speeds and the limits of the allowable operating ranges must be adequate to allow for possible variations between the computed and actual values.

Issued in Burlington, Massachusetts, on February 7, 1997.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 97–4067 Filed 2–18–97; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 96–NM–97–AD; Amendment 39–9917; AD 97–03–12]

RIN 2120–AA64

Airworthiness Directives; Jetstream Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects information in an existing airworthiness directive (AD), applicable to certain Jetstream Model 4101 airplanes, that requires a one-time inspection for damage caused by arcing and overheating of the electrical ground posts ("earth posts") and ground cables for the direct current (DC) power generation and propeller de-icing systems of the left and right engines; and repair and replacement, if necessary. This action corrects the AD number assigned to that AD.

DATES: Effective March 14, 1997.

The incorporation by reference of certain publications listed in the regulations was previously approved by the Director of the **Federal Register** as of March 14, 1997 (62 FR 5743, February 7, 1997).

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: On January 29, 1997, the FAA issued AD 97–03–12, amendment 39–9917 (62 FR 5743, February 7, 1997), which is applicable to certain Jetstream Model 4101 airplanes. That AD requires a one-time inspection for damage caused by arcing and overheating of the electrical ground posts ("earth posts") and ground cables for the direct current (DC) power generation and propeller de-icing systems of the left and right engines; and repair and replacement, if necessary. That action was prompted by reports indicating that earth posts on some airplanes had failed due to overheating. The actions specified by that AD are intended to prevent potential consequences of overheating, such as failure of the DC power generation and propeller de-icing systems.

Since the issuance of that AD, the FAA has become aware of the fact that the document that was published in the **Federal Register** contained the incorrect AD number that had been assigned to that action. The published version indicated an AD number of 96–03–12. However, the correct AD number is 97–03–12.

Action is taken herein to correct the AD number to 97–03–12 and to correctly add the AD as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The effective date of the rule remains March 14, 1997.

Since no other part of the regulatory information has been changed, the final rule is not being republished.

§ 39.13 [Corrected]

On page 5743, in the issue of February 7, 1997, in the second column, the heading that identifies the pertinent agency numbers is corrected to read as follows:

* * * * *

[Docket No. 96-NM–97–AD; Amendment 39–9917, AD 97–03–12]

* * * * *

On page 5744, in the issue of February 7, 1997, in the first column, the introductory text that specifies pertinent agency numbers and the airplane manufacturer is corrected to read as follows:

* * * * *

97–03–12 Jetstream Aircraft Limited: Amendment 39–9917. Docket 96–NM–97–AD.

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Issued in Renton, Washington, on February 11, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–3964 Filed 2–18–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–CE–45–AD; Amendment 39–9938; AD 97–04–13]

RIN 2120–AA64

Airworthiness Directives; Mitsubishi Heavy Industries, Ltd., MU–2B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Mitsubishi Heavy Industries, Ltd., (Mitsubishi) MU–2B series airplanes. This AD requires removing the vent check valve assembly from the bulkhead between the fuel tanks. This AD results from an incident where both engines on an affected airplane failed near the end of a flight because of lack of fuel to the engines. The incident is attributed to the fuel filler caps on the top of the wings not sealing correctly. The actions specified by this AD are intended to prevent the inability of both engines to utilize the entire fuel supply because of the outboard fuel not transferring to the center tank, which could result in an uncommanded engine shutdown.

DATES: Effective April 16, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 16, 1997.

ADDRESSES: Service information that applies to this AD may be obtained from Mitsubishi Heavy Industries, Ltd., Nagoya Aerospace Systems, 10, Oyecho, Minato-Ku, Nagoya, Japan. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 96–CE–45–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Eric M. Smith, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5260; facsimile (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Mitsubishi MU–2B series airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 30, 1996 (61 FR 53939). The NPRM proposed to require removing the vent check valve assembly from the bulkhead between the fuel tanks. Accomplishment of the proposed action as specified in the NPRM would be in accordance with Mitsubishi MU–2 Service Bulletin No. 130A, dated July 19, 1971.

The NPRM is the result of an incident where both engines on an affected airplane failed near the end of a flight because of lack of fuel to the engines. The incident is attributed to the fuel filler caps on the top of the wings not sealing correctly.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Compliance Time of This AD

The compliance time for this AD is presented in calendar time instead of hours time-in-service. The fuel filler cap may not seal properly regardless of whether the airplane is in operation. For this reason, the FAA has determined that a calendar time for compliance is the most desirable.

Cost Impact

The FAA estimates that 14 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 3 workhours (average: 4 workhours for seven airplanes and 2 workhours for seven airplanes) per airplane to accomplish the required action, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,520.

The above figure is based on the presumption that no owner/operator of the affected airplanes has accomplished the required vent check valve assembly removal. The FAA is aware that seven of the affected airplanes are already in compliance with this AD. With this information in mind, the cost impact upon U.S. operators/owners is reduced by $1,260 from $2,520 to$1,260.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a"significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

97–04–13 Mitsubishi Heavy Industries, Ltd.: Amendment 39–9938; Docket No. 96–CE–45–AD.

Applicability: Models MU–2B, MU–2B–10, MU–2B–15, MU–2B–20, and MU–2B–30 airplanes (serial numbers 004 through 035, 037, 038, 101 through 230, 502 through 525, and 527 through 547), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 60 calendar days after the effective date of this AD, unless already accomplished.

To prevent the inability of both engines to utilize the entire fuel supply because of the outboard fuel not transferring to the center tank, which could result in an uncommanded engine shutdown, accomplish the following:

(a) Remove the vent check valve assembly in accordance with the instructions in Mitsubishi MU–2 Service Bulletin No. 130A, dated July 19, 1971.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, California 90712. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) The removal required by this AD shall be done in accordance with Mitsubishi MU–2 Service Bulletin No. 130A, dated July 19, 1971. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Mitsubishi Heavy Industries, Ltd., Nagoya Aerospace Systems, 10, Oyecho, Minato-Ku, Nagoya, Japan . Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment (39–9938) becomes effective on April 16, 1997. Issued in Kansas City, Missouri, on February 11, 1997.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–3960 Filed 2–18–97; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–NM–234–AD; Amendment 39–9929; AD 97–04–05]

RIN 2120–AA64

Airworthiness Directives; Jetstream Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Jetstream Model 4101 airplanes. This action requires a one-time inspection of the airplane records to determine the modification status of the elevator trim servo, and, if necessary, inspections to determine the serial number of the servo, and repetitive inspections for looseness or movement of the motor housing of the servo. This action also requires replacement of certain elevator trim servos with a serviceable assembly. This amendment is prompted by reports of the motor housing separating from the elevator trim servo and the consequent release of certain component parts, due to inadequate locking of screws that were installed during assembly of the servos. The actions specified in this AD are intended to prevent the motor housing of the elevator trim servo from separating and releasing component parts that could lodge in and jam the elevator controls, and result in reduced pitch control of the airplane.

DATES: Effective March 6, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 6, 1997.

Comments for inclusion in the Rules Docket must be received on or before April 21, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–234–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Jetstream Model 4101 airplanes The CAA advises that it has received reports indicating that separation of the motor housing from the elevator trim servo and consequent release of motor gearbox components has occurred on a Jetstream Model 4101 airplane. Investigation revealed that certain elevator trim servo units manufactured by Honeywell were assembled using screws with inadequate locking capability. Certain of these screws fasten the servo motor inner gear casing to the mounting flange and some screws fasten the motor cap/sleeve to the inner gear casing. The inadequate locking of those screws caused the separation of the motor housing from the servo unit, and resulted in the release of the motor gearbox components. Those released components could lodge in the elevator controls and result in an elevator jam. This condition, if not corrected, could result in reduced control of the primary pitch control of the airplane.

Explanation of Relevant Service Information

Jetstream has issued Alert Service Bulletin J41–A22–008, Revision 1, dated November 21, 1996, which describes the following procedures:

1. A one-time inspection of the airplane records or a visual inspection of the servo to determine if the elevator trim servo is at Modification B standard or greater.

2. For those airplanes on which the elevator trim servo is not at Modification B or greater, the alert service bulletin describes procedures for an inspection of the airplane records or a visual inspection of the elevator trim servo to determine the serial number of the elevator trim servo, procedures for repetitive visual and tactile inspections of the motor housing of the elevator trim servo to determine if the motor housing is loose or moves, and repair of replacement of the elevator trim servo with a serviceable servo, if necessary. Replacement of the servo with a serviceable assembly would eliminate the need for repetitive inspections of the motor housing. The alert service bulletin also describes procedures for replacement of certain servos specified in the alert service bulletin with a servo at Modification B or later standard.

The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent the motor housing of the elevator trim servo from separating from the servo assembly and releasing component parts that could lodge in and jam the elevator control, and result in reduced pitch control of the airplane. This AD requires the following:

1. A one-time inspection of the airplane records or a visual inspection of the servo to determine if the elevator trim servo is at Modification B standard or greater.

2. For those airplanes on which the elevator trim servo is not at Modification B standard or greater, an inspection of the airplane records to determine the serial number of the elevator trim servo, repetitive visual and tactile inspections of the motor housing of the elevator trim servo to determine if the motor housing is loose or moves, and replacement of the elevator trim servo with a serviceable servo, as necessary.

3. Replacement of certain elevator trim servos with a serviceable assembly.

The actions are required to be accomplished in accordance with the alert service bulletin described previously.

Determine of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD

action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–234–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–04–05 Jetstream: Amendment 39–9929. Docket 96–NM–234–AD.

Applicability: Model 4101 airplanes having serial numbers 41004 through 41090 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of the motor housing of the elevator trim servo from the servo body that would allow detachment of component parts that could lodge in and jam the elevator control, and result in reduced control of the primary pitch of the airplane; accomplish the following:

Note 2: Accomplishment of actions required by this AD in accordance with Jetstream Alert Service Bulletin J41–A22–008, dated July 18, 1996, is *not* considered acceptable for compliance with the applicable action specified in this AD.

(a) Within 14 days after the effective date of this AD: Perform either an inspection of the airplane records or a visual inspection of the elevator trim servo, to determine if the elevator trim servo is at Modification B standard or greater, in accordance with Jetstream Alert Service Bulletin J41–A22–008, Revision 1, dated November 21, 1996.

(b) If the inspection required by paragraph (a) of this AD reveals that the elevator trim servo is at Modification B standard or greater: No further action is required by this AD.

(c) If the inspection required by paragraph (a) of this AD reveals that the elevator trim servo is not at Modification B standard or greater: Prior to further flight, perform either an inspection of the airplane records or a visual inspection of the elevator trim servo, to determine if the serial number of the elevator trim servo is specified in paragraph 1.M.(4)(b) of Jetstream Alert Service Bulletin J41–A22–008, Revision 1, dated November 21, 1996; and, regardless of the serial number, perform both a visual inspection and a tactile inspection of the motor housing of the elevator trim servo to determine if the motor housing is loose or moves, in accordance with the alert service bulletin.

(1) If the motor housing does not move and is not loose, and the elevator trim servo does not have a serial number that is specified in paragraph 1.M(4)(b) of the alert service bulletin: No further action is required by this AD.

(2) If the motor housing does not move and is not loose, but the elevator trim servo has a serial number that is specified in paragraph 1.M(4)(b) of the alert service bulletin: Repeat the visual and tactile inspections of the elevator trim servo thereafter at intervals not to exceed 50 hours time-in-service, until the requirements of paragraph (d) of this AD are accomplished.

(3) If the motor housing moves or is loose, regardless of serial number: Prior to further flight, accomplish the requirements of either paragraph (c)(3)(i) or (c)(3)(ii) of this AD:

(i) Secure the elevator trim servo and deactivate the autopilot system, in accordance with Part 3 of the Accomplishment Instructions of the alert service bulletin. Thereafter, repeat the visual and tactile inspections at intervals not to exceed 50 hours time-in-service, until the requirements of paragraph (d) of this AD are accomplished. Or

(ii) Replace the elevator trim servo with an "acceptable replacement" servo, as defined by the "Note" in Paragraph 2., Accomplishment Instructions, of Jetstream Alert Service Bulletin J41–A22–008, Revision 1, dated November 21, 1996. Accomplish the replacement in accordance with Part 4 of the Accomplishment Instructions of the alert service bulletin. Accomplishment of this replacement constitutes terminating action for the repetitive inspections required by this AD.

(d) For airplanes subject to paragraph (c)(2) or (c)(3)(i) of this AD: Within 90 days after the effective date of this AD, replace the elevator trim servo with an "acceptable replacement" servo, as defined by the "Note" in Paragraph 2., Accomplishment Instructions, of Jetstream Alert Service Bulletin J41–A22–008, Revision 1, dated November 21, 1996. Accomplish the replacement in accordance with Part 4 of the Accomplishment Instructions of the alert service bulletin. Accomplishment of this replacement constitutes terminating action for the repetitive inspections required by this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The actions shall be done in accordance with Jetstream Alert Service Bulletin J41–A22–008, Revision 1, dated November 21, 1996, which contains the specificed list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1–10, 15	1	November 21,1996.
11–14, 16, 17.	(1)	July 18, 1996.

[1] Original.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(h) This amendment becomes effective on March 6, 1997.

Issued in Renton, Washington, on February 6, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–3535 Filed 2–18–97; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 96–ANE–42; Amendment 39–9912; AD 97–03–06]

RIN 2120–AA64

Airworthiness Directives; Auxiliary Power International Corporation Model APS3200 Auxiliary Power Units

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Auxiliary Power International Corporation (APIC) Model APS3200 Auxiliary Power Units (APUs). This action requires replacement of the existing Electronic Control Box (ECB), incorporating its On Board Replaceable Module (OBRM) programmed with originally approved software version 2.0.2 or 3.2 with improved software version 4.1, or replacement of the existing OBRM of the ECB programmed with version 2.0.2 or version 3.2 with a new OBRM programmed with software version 4.1. This amendment is prompted by reports of continued fuel flow to the APU after the APU was commanded to shutdown, resulting in internal APU fires. The actions specified in this AD are intended to prevent internal APU fires due to ECB malfunction, which, if left unnoticed by flight or ground crews, could result in damage to the aircraft.

DATES: Effective March 6, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 6, 1997.

Comments for inclusion in the Rules Docket must be received on or before April 21, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96-ANE–42, 12 New England Executive Park, Burlington, MA 01803-5299.

The service information referenced in this AD may be obtained from Auxiliary Power International Corporation (APIC), 4450 Ruffin Rd., P.O. Box 85757, San Diego, CA 92193-9090; telephone (619) 627–6501, fax (619) 627-6502. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Guy Dalla Riva, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (310) 627–5248; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has received reports of four Auxiliary Power Units (APU) internal fires after shutdown of Auxiliary Power International Corporation (APIC) Model APS3200 APUs. The investigations revealed two possible causes of these fires: first, in three of the events, a software deficiency in the Electronic Control Box (ECB) allowed the APU fuel shut-off valve to remain open; second, in one unconfirmed event, possible fuel system contamination could have kept the valve from closing completely. This AD addresses the ECB software deficiency only. It does not address valve malfunction caused by fuel system contamination.

These ECB malfunctions may result in an internal fire within the APU, in the APU plenum, air intake, and possibly in the tail of the aircraft. This condition, if not corrected, could result in an internal APU fire due to ECB malfunction, which, if left unnoticed by flight or ground crews, could result in damage to the aircraft.

The FAA has reviewed and approved the technical contents of APIC Service Bulletin (SB) No. 4500001–49–52, dated October 1, 1996, that describes procedures for replacement of the existing On Board Replaceable Module (OBRM) of the ECB incorporating the software versions 2.0.2 or 3.2 with a new OBRM programmed with software version 4.1. This software also commands closing of the aircraft APU firewall fuel shut-off valve in addition to the APU fuel shut-off valve during APU shutdowns.

Since an unsafe condition has been identified that is likely to exist or develop on other APUs of the same type design, this AD is being issued to prevent an APU fire due to ECB malfunction, which could result in damage to the aircraft. This AD requires replacement of the existing APU ECB (incorporating the originally approved software versions 2.0.2 or 3.2) with improved software version. 4.1, or installation of an OBRM programmed with software version 4.1 in the ECB prior to 30 days after the effective date of this AD. This calendar end-date is based on parts availability. The actions are required to be accomplished in accordance with the SB described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD

action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96-ANE-42." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97-03-06 Auxiliary Power International Corporation: Amendment 39-9912. Docket 96-ANE-42.

Applicability: Auxiliary Power International Corporation (APIC) Model APS3200 Auxiliary Power Units (APUs), Assembly Part Number (P/N) 4500000, incorporating Electronic Control Box (ECB), P/N 4500003E, with software version 2.0.2, and ECB, P/N 4500003F, with software version 3.2. These APUs are installed on but not limited to Airbus Industrie A319, A320, and A321 series aircraft.

Note 1: This airworthiness directive (AD) applies to each APU identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For APUs that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent an APU fire due to ECB malfunction, which could result in damage to the aircraft, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish either of the following in accordance with APIC Service Bulletin (SB) No. 4500001-49-52, dated October 11, 1996:

(1) Replace the existing ECB On Board Replaceable Module (OBRM) incorporating the originally approved software versions 2.0.2 or 3.2 with an ECB OBRM incorporating new software version 4.1; or

(2) Install an OBRM in the ECB that is programmed to software version 4.1.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(d) The actions required by this AD shall be done in accordance with the following APIC SB:

Document No.	Pages	Revision	Date
4500001-49-52	1-6	Original	Oct. 1, 1996.

Total pages: 6.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from APIC, 4450 Ruffin Rd., P.O. Box 85757, San Diego, CA 92193-9090; telephone (619) 627-6501, fax (619) 627-6502. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on March 6, 1997.

Issued in Burlington, Massachusetts, on January 23, 1997.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 97-4014 Filed 2-14-97; 9:54 am]

BILLING CODE 4910-13-U

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14 CFR Part 71

[Airspace Docket No. 96-AGL-26]

Modification of Class E Airspace; Pinckneyville, IL, Pinckneyville-Du Quoin Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Pinckneyville, IL. A Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway 18 and a GPS SIAP to Runway 36 have been developed for Pinckneyville-Du Quoin Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument

conditions from other aircraft operating in visual weather conditions.

EFFECTIVE DATE: 0901 UTC, May 22, 1997.

FOR FURTHER INFORMATION CONTACT: John A. Clayborn, Air Traffic Division, Operations Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, December 16, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E airspace at Pinckneyville, IL (61 FR 65994). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies Class E airspace at Pinckneyville, IL to accommodate aircraft executing the GPS Runway 18 SIAP and the GPS Runway 36 SIAP at Pinckneyville-Du Quoin Airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL IL E5 Pinckneyville, IL [Revised]

Pinckneyville-Du Quoin Airport, IL
(lat. 37°58'40" N, long. 89°21'38" W)
Pinckneyville NDB
(lat. 37°58'30" N long. 89°21'47" W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Pinckneyville-Du Quoin Airport and within 2.6 miles each side of the Pinckneyville NDB 002° bearing extending from the 6.4-mile radius to 7.4 miles north of the airport, excluding that airspace within the Marion/Williamson Regional Airport, IL, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on February 5, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97-4074 Filed 2-18-97; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 96-AGL-25]

Modification of Class E Airspace; Big Rapids, MI, Roben-Hood Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Big Rapids, MI. A Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway 27 has been developed for Roben-Hood Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

EFFECTIVE DATE: 0901 UTC, May 22, 1997.

FOR FURTHER INFORMATION CONTACT: John A. Clayborn, Air Traffic Division, Operations Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, December 16, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E airspace at Big Rapids, MI (61 FR 65995). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR

part 71) modifies Class E airspace at Big Rapids, MI to accommodate aircraft executing the GPS Runway 27 SIAP at Roben-Hood Airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MI E5 Big Rapids, MI [Revised]

Roben-Hood Airport, MI
(lat. 43°43'21" N, long 85°30'15" W)
White Cloud VORTAC
(lat. 43°34'30" N, long. 85°42'58" W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Roben-Hood Airport, and within 4.4 miles each side of the White Cloud VOR 048° radial extending from the 6.7-mile radius to the VOR, and within 2.0 miles each side of the 095° bearing from the airport extending from the 6.7-mile radius to 9.4 miles east of the airport.

* * * * *

Issued in Des Plaines, Illinois on February 5, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–4075 Filed 2–18–97; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–AGL–23]

Establishment of Class E Airspace; Rolla, ND, Rolla Municipal Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Rolla, ND. A Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway 32 has been developed for Rolla Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

EFFECTIVE DATE: 0901 UTC, May 22, 1997.

FOR FURTHER INFORMATION CONTACT: John A. Clayborn, Air Traffic Division, Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, December 16, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Rolla, ND (61 FR 65994). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at Rolla, ND to accommodate aircraft executing the GPS Runway 32 SIAP at Rolla Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace

Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL ND E5 Rolla, ND [New]

Rolla Municipal Airport, ND
(lat. 48°53'04" N, long. 99°37'13"W)
Devils Lake VOR/DME
(lat. 48°06'48" N, long. 98°54'29" W)

That airspace extending upward from 700 feet above the surface within a 7.3—mile radius of the Rolla Municipal Airport, excluding that airspace north of lat. 49°00'00" N, and that airspace extending upward from 1,200 feet above the surface within an area bounded on the north by lat. 49°00'00" N, on the east by long 99°00'00" W, on the southeast by the 22-mile arc of the Devils Lake VOR/DME, on the south by V–430, on the southwest by the Rugby Class E airspace, and on the west by long. 99°49'00" W.

* * * * *

Issued in Des Plaines, Illinois on February 5, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–4072 Filed 2–18–97; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–AGL–20]

Establishment of Class E Airspace; Carrington, ND, Carrington Municipal Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Carrington, ND. A Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway 31 has been developed for Carrington Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

EFFECTIVE DATE: 0901 UTC, May 22, 1997.

FOR FURTHER INFORMATION CONTACT: John A. Clayborn, Air Traffic Division, Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Friday, November 29, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Carrington, ND (61 FR 60657). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E. airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at Carrington, ND to accommodate aircraft executing the GPS Runway 31 SIAP at Carrington Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL ND E5 Carrington, ND [New]

Carrington Municipal Airport, ND
(lat. 47°27'03" N, long. 99°09'09" W)
Devils Lake VOR/DME
(lat. 48°06'48" N, long. 98°54'29" W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Carrington Municipal Airport and that airspace extending upward from 1,200 feet above the surface bounded on the north by the 22-mile arc south of the Devils Lake VOR/DME, on the east by V–170, on the south by V–55, on the west by Long. 99°30'00" W, and on the northwest by V–169.

* * * * *

Issued in Des Plaines, Illinois on February 5, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–4071 Filed 2–18–97; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–AGL–22]

Establishment of Class E Airspace; New Lisbon, WI, Mauston-New Lisbon Union Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at New Lisbon, WI. A Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway 32 has been developed for Mauston-New Lisbon Union Airport.

Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

EFFECTIVE DATE: 0901 UTC, May 22, 1997.

FOR FURTHER INFORMATION CONTACT: John A. Clayborn, Air Traffic Division, Operational Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Friday, November 29, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at New Lisbon (61 FR 60655). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at New Lisbon, WI to accommodate aircraft executing the GPS Runway 32 SIAP at Mauston-New Lisbon Union Airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL WI E5 New Lisbon, WI [New]

Mauston-New Lisbon Union Airport
(lat. 43°50'17" N, long. 90°08'13" W)

That airspace extending upward from 700 feet above the surface within a 8.8-mile radius of Mauston-New Lisbon Union Airport, excluding that airspace which overlies the Necedah, WI, Class E airspace and the Camp Douglas, WI, Class D and E airspace areas, during the specific dated and times class D airspace is effective.

* * * * *

Issued in Des Plaines, Illinois on February 5, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–4070 Filed 2–18–97; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–AGL–21]

Modification of Class E Airspace; Monticello, IN, White County Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Monticello, IN. A Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway 18 and a GPS SIAP to Runway 36 have been developed for White County Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

EFFECTIVE DATE: 0901 UTC, May 22, 1997.

FOR FURTHER INFORMATION CONTACT: John A. Clayborn, Air Traffic Division, Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Friday, November 29, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E airspace at Monticello, IN (61 FR 60656). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies Class E airspace at Monticello, IN to accommodate aircraft executing the GPS Runway 18 SIAP and the GPS Runway 36 SIAP at White County Airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The Authority citation for 14 part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL IN E5 Monticello, IN [Revised]

White County Airport, IN
(Lat. 40°42'32" N, long. 86°46'00" W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of White County Airport and within 2.7 miles each side of the 185° bearing from the airport extending from the 6.4-mile radius to 7.4 miles south of the airport.

* * * * *

Issued in Des Plaines, Illinois on February 5, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–4069 Filed 2–18–97; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 73

[Airspace Docket No. 96–AGL–16]

RIN 2120–AA66

Amendment to Time of Designation for Restricted Area R–4305, Lake Superior, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends the time of designation for Restricted Area 4305 (R–4305), Lake Superior, MN, by reducing the requirement for the issuance of a Notice to Airmen (NOTAM) from 12 hours in advance to 4 hours in advance of activation of the airspace. The U.S. Air Force requested this amendment to permit greater flexibility in scheduling R–4305.

EFFECTIVE DATE: 0901 UTC, May 22, 1997.

FOR FURTHER INFORMATION CONTACT: Steve Brown, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On November 5, 1996, the FAA proposed to amend Title 14 of the Code of Federal Regulations part 73 (14 CFR part 73) to amend the time of designation for R–4305 from the current "Intermittent by NOTAM, 12 hours in advance," to "Intermittent by NOTAM, 2 hours in advance." (61 FR 56927). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. However, the FAA determined that 2 hours advance notice did not allow enough time for the NOTAM to be processed and still have adequate lead time for airspace users to become aware of the activation prior to their flights. Therefore, the time of designation will now read: "Intermittent by NOTAM, 4 hours in advance." The FAA's Great Lakes Region coordinated this change with the regional U.S. Air Force representative and, on January 27, 1997, the U.S. Air Force formally accepted the modification to their proposal. Except for editorial changes and the time of designation change from "Intermittent by NOTAM, 2 hours in advance" to "Intermittent by NOTAM, 4 hours in advance," this amendment is the same as that proposed in the notice. Section 73.43 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8D dated July 11, 1996.

The Rule

This amendment to part 73 of the Federal Aviation Regulations (14 CFR part 73) amends the time of designation for R–4305 from the current "Intermittent by NOTAM, 12 hours in advance," to "Intermittent by NOTAM, 4 hours in advance." The current 12-hour in advance NOTAM requirement does not permit the using agency sufficient flexibility to efficiently accomplish its mission in the event of maintenance or weather delays, or other operational factors. This action will not alter the existing boundaries, altitudes, or designated purpose of R–4305.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This action will not affect the existing boundaries, altitudes, or activities conducted in R–4305. There will be no change from current operations and no new air traffic procedures will be necessary as a result of this rule. Therefore, the FAA has determined that this action is not subject to environmental assessments and procedures in accordance with FAA Order 1050.1D, "Policies and Procedures for Considering Environmental Impacts."

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 73.43 [Amended]

R–4305 Lake Superior, MN [Amended]

By removing "Time of Designation. Intermittent by NOTAM, 12 hours in advance," and substituting "Time of designation. Intermittent by NOTAM, 4 hours in advance."

Issued in Washington, DC, on February 7, 1997.

Jeff Griffith,

Program Director for Air Traffic Airspace Management.

[FR Doc. 97–4068 Filed 2–18–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1008

RIN 0991–AA85

Medicare and State Health Care Programs: Fraud and Abuse; Issuance of Advisory Opinions by the OIG

AGENCY: Office of Inspector General (OIG), HHS

ACTION: Interim final rule with comment period.

SUMMARY: In accordance with section 205 of the Health Insurance Portability and Accountability Act of 1996, this final rule establishes a new part 1008 in 42 CFR chapter V to address the new OIG advisory opinion process. Specifically, these regulations set forth the specific procedures by which the Office of Inspector General, in consultation with the Department of Justice, will issue advisory opinions to outside parties regarding the interpretation and applicability of certain statutes relating to the Medicare and State health care programs.

DATES: Effective Date: This rule is effective on February 21, 1997.

Comment Period: To assure consideration, public comments must be delivered to the first address provided under **ADDRESSES** by no later than 5 p.m. on April 21, 1997. Comments will be available for public inspection March 5, 1997 at the second address provided under **ADDRESSES** on Monday through Friday of each week from 8:00 a.m. to 4:30 p.m., (202) 619–0089.

ADDRESSES: Please mail or deliver your written comments to the following address: Office of Inspector General, Department of Health and Human Services, Attention: OIG–10–IFC, Room 5246, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code OIG–10–IFC.

FOR FURTHER INFORMATION CONTACT: Joel Schaer, (202) 619–0089, OIG Regulations Officer.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Medicare Anti-Kickback Statute

Section 1128B(b) of the Social Security Act (42 U.S.C. 1320a–7b(b)) provides criminal penalties for individuals or entities that knowingly and willfully offer, pay, solicit or receive remuneration in order to induce business reimbursed under the Medicare or State health care programs. The offense is classified as a felony, and is punishable by fines of up to $25,000 and imprisonment for up to 5 years.

This provision is quite broad. The types of remuneration covered specifically include kickbacks, bribes, and rebates, whether made directly or indirectly, overtly or covertly, or in cash or in kind. In addition, prohibited conduct includes not only remuneration intended to induce referrals of patients, but remuneration intended to induce the purchasing, leasing, ordering, or arranging for any good, facility, service, or item paid for by Medicare or State health care programs.

Since the statute on its face is so broad, concern has been expressed for many years that some relatively innocuous commercial arrangements are technically covered by the statute and are, therefore, subject to criminal prosecution.

B. Safe Harbors and Fraud Alerts

As a response to the above concern, the Medicare and Medicaid Patient and Program Protection Act of 1987, Public Law 100–93, specifically required the development and promulgation of regulations, the so-called "safe harbor" provisions, designed to specify various payment and business practices which, although potentially capable of inducing referrals of business under the Medicare and State health care programs, would not be treated as criminal offenses under the anti-kickback statute (section 1128B(b) of the Social Security Act; 42 U.S.C. 1320b(b)) and would not serve as a basis for a program exclusion under section 1128(b)(7) of the Social Security Act; 42 U.S.C. 1320a–7(b)(7).

The OIG safe harbor provisions have been developed to permit individuals and entities to freely engage in business practices and arrangements that encourage competition, innovation and economy. Health care providers and others may voluntarily seek to comply with these provisions so that they have the assurance that their business practices are not subject to any enforcement action under the anti-kickback statute or program exclusion authority. The 13 final safe harbor provisions, which specify practices which are expressly made legal, are codified at 42 CFR 1001.952.

In addition, the OIG has also periodically issued Special Fraud Alerts to give continuing guidance to health care providers with respect to practices the OIG regards as unlawful. Eight individual Special Fraud Alerts were published in the **Federal Register** on December 19, 1994 (59 FR 65372), August 10, 1995 (60 FR 40847) and June 17, 1996 (61 FR 30623). Thus, for many years the OIG has been publishing substantial guidance indicating what practices are lawful and what practices the OIG considers unlawful under the anti-kickback statute.

C. Advisory Opinions: Section 205 of Public Law 104–191

The Health Insurance Portability and Accountability Act of 1996, Public Law 104–191, effective August 21, 1996, now requires the Department to provide additional formal guidance regarding the application of the anti-kickback statute and the safe harbor provisions, as well as other OIG health care fraud and abuse sanctions. Among the provisions set forth in section 205 of Public Law 104–191 is the requirement that the Department, in consultation with the Department of Justice (DoJ), issue written advisory opinions to particular parties with regard to: (1) What constitutes prohibited remuneration under the anti-kickback statute; (2) whether an arrangement or proposed arrangement satisfies the criteria in section 1128B(b)(3) of the Social Security Act, or established by regulation, for activities which do not result in prohibited remuneration; (3) what constitutes an inducement to reduce or limit services under section 1128A(b) of the Act to Medicare or Medicaid program beneficiaries [1]; and (4) whether an activity or proposed activity constitutes grounds for the imposition of civil or criminal sanctions under sections 1128, 1128A or 1128B of the Act. Thus, advisory opinions will be issued with regard to the provisions authorizing the Department to exclude individuals and entities from participation in Medicare and the State health care programs. Section 1128 of the Act authorizes exclusion in a wide variety of circumstances, for example, conviction of health care related offenses, State licensure action, and submission of claims in excess of usual charges or for services which fail to meet professionally recognized standards of health care. Similarly, the civil money penalty provisions of section 1128A of the Act authorize penalties and exclusion for a variety of acts, for example, presentation of a Medicare or Medicaid claim that is false or fraudulent, and hospital payments to physicians to induce the physician to reduce or limit care to any Medicare or Medicaid beneficiary under the physician's direct care. The Department will also provide advisory opinions regarding the criminal provisions of section 1128B of the Act which includes the anti-kickback statute.

(On December 31, 1996, the OIG, in accordance with section 205 of HIPAA, published a notice in the **Federal Register** (61 FR 69060) that solicited proposals and recommendations for developing new and modifying existing safe harbor provisions under the Medicare and State health care programs' anti-kickback statute, as well as for developing new OIG Special Fraud Alerts. We specifically indicated in that notice our intention of publishing separate rulemaking addressing the procedures and process for accepting and issuing advisory opinions and soliciting public comments and recommendations in this area.)

In accordance with the statute, requests for advisory opinions must be accepted for agency review on or after February 21, 1997. While the President's fiscal year 1998 budget submission proposes a repeal of section 205, the OIG and the Department are proceeding to implement these statutory obligations in accordance with existing law.

[1] Public Law 104–191 cited this provision as section 1128B(b) of the Act. We believe the correct reference is section 1128A(b).

D. Waiver of Proposed Rulemaking

In developing and publishing these regulations as an interim final rule, the Secretary has determined that for good cause it is both impracticable and contrary to public interest to first issue these regulations in proposed rulemaking form. We believe that the statutory requirement that final regulations addressing the advisory opinion process be in effect no later than February 17, 1997, makes it impracticable to develop such procedures with the necessary inter-governmental collaboration and initial public comment usually required in such rulemaking by the statutory deadline.

In addition, we believe that it is imperative that we have in place specific procedures by February 21, 1997, to address the receipt and processing of advisory opinion requests. It would be against the public interest to proceed to receive and process advisory opinions without setting forth procedural guidance. However, we believe that the 60-day period for public comments being set forth in this interim final rule will serve to protect the public's interest in this rulemaking process by allowing for an opportunity for additional input and recommendations, without unduly delaying the intent of these regulations. We will respond to all appropriate and relevant public comments received during the 60-day comment period, and make any necessary revisions to these regulations through a revised final rule to be issued, if possible, within 9 months of the close of the comment period. Accordingly, we believe this interim final rule approach will achieve the dual purpose of issuing a rulemaking consistent with statutory time frames while soliciting and benefiting from the public comment process.

II. Provisions of the Interim Final Rule

Anti-kickback Statute Advisory Opinions: "Case specific" Safe Harbors

These interim final regulations establish a new 42 CFR part 1008 that is designed to establish procedures for advisory opinions that will provide the public with meaningful advice regarding the anti-kickback and other OIG sanction statutes regarding specific factual situations. With respect to the anti-kickback statute, these procedures contemplate particularized or "case specific" safe harbors. In establishing the regulatory safe harbors in § 1001.952, the OIG first considered the full scope of factual circumstances potentially subject to the anti-kickback statute, that is, generally all types of arrangements that could potentially involve an intentional payment of remuneration to induce the referral of Medicare business. Next, we proceeded to "limit the reach of the statute somewhat by permitting certain non-abusive arrangements, while encouraging beneficial or innocuous arrangements." (56 FR 35952, July 29, 1991). Thus we sought to specify particular safe harbors that, despite the potentially unlawful intent, would protect non-abusive relationships. To accomplish this objective, each safe harbor contains limitations and controls that provide adequate assurance that the programs will not be abused. The actual intent of the parties is entirely irrelevant to this analysis. The OIG has designed 13 final safe harbors that describe practices that are sheltered from liability, even though unlawful intent may be present, and is continuing to finalize 8 additional safe harbor provisions.

The OIG views the advisory opinion process with a means of analysis similar to the safe harbor provisions, with one major exception. Where the safe harbors describe generalized, hypothetical arrangements which are protected, we view an advisory opinion as a means of relating the anti-kickback statute to the particular facts of a specific arrangement. There are likely to be factors that make some specific arrangements appropriate for a favorable advisory opinion, even in subject matter areas where a generalized safe harbor may be impractical. Thus, we believe that particularized or "case specific" safe harbor treatment is appropriate where the specific arrangement contains limitations, requirements or controls that give adequate assurance that Federal health care programs can not be abused.

These regulations are designed to avoid the potential pitfalls of advisory opinions on intent-based statutes, such as the anti-kickback statute. First, it is not practical for the agency to make an independent determination of the subjective intent of the parties based only upon written materials submitted by the requestor. While requestors are required to submit a complete written description of the transaction, along with copies of the documents that establish the arrangements in question, these materials do not afford a satisfactory basis upon which to make a reliable determination of subjective intent. In anti-kickback cases, the intent issue is whether one purpose of the remuneration in question is intended to induce the referral of Federal program business. In anti-kickback cases under investigation, the determination of this

issue requires substantial independent investigation of all facts and circumstances surrounding the transaction, usually including extensive interviews. It is most unlikely that written materials prepared by the requestor could encompass all the information necessary to enable the OIG to make a reliable determination of the subjective intent of the parties.

The second potential pitfall is that advisory opinions are capable of being misused by persons *not* a party to the transaction in question in order to inappropriately escape liability. While the safe harbors are intended to create exemptions that apply generally, advisory opinions are intended to address the facts of a particular arrangement. A third party may implement an arrangement that appears similar to the arrangement described in the advisory opinion, but the third party may introduce additional factors that may make a difference in the outcome of an advisory opinion. Thus, advisory opinions are binding upon and may legally be relied upon only by the requestor(s).

We believe that these regulations provide for meaningful guidance to the public on the statutes for which advisory opinions are authorized, while avoiding the potential pitfalls described above.

As set forth, these interim final regulations have been developed primarily to address: (1) The procedures to be followed by a party applying for advisory opinions; (2) the procedures to be followed by the OIG in responding to these requests; (3) the time frames under which the OIG will receive and respond to requests for advisory opinions; (4) the type and amount of fees to be charged to the party requesting an advisory opinion; and (5) the manner in which the general public will be informed of the issuance of any advisory opinions by the OIG.

These regulations do not address the substance or the content of advisory opinions by the OIG.

Responsibilities of Outside Parties Seeking Advisory Opinions

Any individual or entity may submit a request for an advisory opinion. However, since we anticipate that most requests will apply to health care business arrangements, for purposes of this discussion, we will generally use the term "arrangement" to refer to the factual circumstances under which an advisory opinion is requested, even though we realize that some requests will involve facts that are not related to a business arrangement.

As indicated above, the advisory opinion process is designed to provide authoritative guidance to participants in particular arrangements. Therefore, the regulations indicate that the arrangement in question must either be in existence at the time of the request for an advisory opinion, or with respect to prospective arrangements, there must be a good faith intention to enter into the described arrangement in the near future. (With respect to prospective conduct, we are stating that the requestor can declare the intention to enter into the arrangement contingent on the receipt of a favorable advisory opinion.)

We do not believe that it is appropriate to provide advisory opinions to persons not involved in the arrangement in question. For example, we believe that a description of a competitor's arrangement is not the proper subject of an OIG advisory opinion since the participants to the particular transaction would not be involved in the request. A party to an actual arrangement—either existing or about to be entered into—is in a position to provide full and complete information regarding the facts in question. By contrast, third parties are not in a position to provide a reliable statement as to the facts of a particular arrangement in which the third party is not a participant. In addition, it is unclear who would be bound by an advisory opinion on an arrangement not involving the requestor.

Similarly, we do not believe it is appropriate to provide advisory opinions on hypothetical or generalized arrangements for several reasons. First, the anti-kickback statute and the other OIG sanction statutes impose liability with respect to acts by specific people in particular factual circumstances, i.e., the context in which prosecutive decisions are made. Anti-kickback cases are almost never alike in all material respects. In addition, especially with intent-based statutes like the anti-kickback statute, it is often not possible to determine that a particular general practice is invariably good or bad. An arrangement may be legal under the anti-kickback statute with respect to one party, but not with respect to a second party. Such differing results can be a function of the different intentions of the two parties, or a function of the introduction by a party of additional factors that would make a material difference in the resulting opinion. We believe it would not be possible for an advisory opinion reliably to identify all the possible hypothetical factors that might lead to different results.

Moreover, the OIG already has in place a process for offering guidance on the application of the OIG's legal authorities to hypothetical or generalized factual circumstances—the safe harbor provisions and Special Fraud Alerts. As indicated above, the OIG has promulgated 13 final safe harbor provisions in § 1001.952, and has proposed several others specifying generalized payment practices that will not be subject to sanction under the Medicare and Medicaid anti-kickback statute. Members of the public may also now under section 1128D(a) of the Act submit proposals for additional safe harbor regulations to the OIG. Further, in accordance with section 1128D(c) of the Act, if a member of the public is aware of a practice that may be suspect or of particular concern under Medicare or a State health care program, they may request the OIG to issue a Special Fraud Alert regarding the practice.

Requestors who are not individuals are required to disclose certain ownership and control information, so that the appropriate checks can be made to ensure that the matter which is the subject of the advisory opinion request is not under current investigation.

Initiating the Process for an Advisory Opinion

To initiate the advisory opinion process, we are indicating in part 1008 that the requestor must submit a written request for an advisory opinion. The request must clearly and thoroughly present a complete description of the facts for which an advisory opinion is being requested. To the extent that the subject matter of the request is the requestor's potential liability under one sanction authority, we believe the request should provide a complete description of the facts addressing the elements of that authority. Under these interim final regulations, if the request asks the OIG to advise on whether an arrangement is subject to sanction under more than one legal authority, we believe the submission should include a complete description of the facts regarding the different sanction authorities in those statutes. To the extent that the necessary information is provided in a clear and orderly manner, the OIG will be better able to process the request.

The regulations are requiring any submission to include copies of all relevant documents, such as contracts, leases, employment agreements and court documents, as well as descriptions of any other understandings that may affect the documents. In addition, the submission should include a narrative description of the arrangement. As indicated in § 1008.36, in making the request, the identities (including names and addresses) of the requestor and all other actual and potential parties, to the extent known to the requestor to the arrangement that is the subject of the request to the advisory opinion must be included. In addition, the requestor must identify a designated contact person who will be available to communicate with the OIG.

We are requesting comments on the certification process being adopted. Under these regulations at this point we are requiring two certifications to be made in a request for an advisory opinion. The certifications must be signed by the individual (if an individual requestor), the Chief Executive Officer, or comparable officer of the company (if a corporate requestor), or the managing partner (if a partnership is the requestor). The responsible individual must certify that all of the information provided is true and correct, and constitutes a complete description of the facts regarding which an advisory opinion is sought, to the best of the knowledge of the requestor. Where the request relates to prospective conduct, the regulations state that the request must also include a certification that the requestor intends in good faith to enter into the arrangement described in the request. This certification may be made contingent upon receipt of a favorable advisory opinion.

Under these interim final regulations, while all submissions should include the above information, because of the wide variety of activities upon which the OIG must issue advisory opinions, we cannot detail at this point all of the information a requestor must provide. We are requesting public comment and input on the type of information to be provided by the requesting party and will address this point further in any revised final rulemaking. In the interim, prior to submitting a request for an advisory opinion, the requestor is advised to contact the OIG to inquire about the information needed by the OIG to process a request of the type the requestor intends to submit. Inquiries should be made in writing and sent to the Office of Inspector General, Office of Counsel to the Inspector General, Industry Guidance Branch, Room 5246 Cohen Building, 330 Independence Avenue, S.W., Washington, D.C. 20201. (Any changes to this address regarding inquiries will be posted on the OIG home page at http://www.sba.gov/ignet/internal/hhs/hhs.html.) The OIG may, depending on the subject matter of the inquiry, provide the requestor with preliminary questions designated to elicit the factual information necessary to facilitate an OIG response to the request. These questions should be (but are not required to be) answered in the request for an advisory opinion.

If the information needed by the OIG is in the preliminary submission, we will be better able to render a prompt, concise and appropriate advisory opinion. We welcome comments on this approach.

Fees Charged to Requesting Parties

Section 1128D(b)(5)(B)(ii) of the Act requires that requestors be charged a fee equal to the costs incurred by the Department in responding to the request. The fee must be paid into the general fund of the U.S. Treasury.

Section 1008.31 of these regulations indicates that the actual costs of responding to requests for advisory opinions will factor in the salary, benefits and overhead costs of attorneys and others who will work on analyzing requests and writing advisory opinions from requesting parties. In light of the breadth of subject matter and possible range of complexities for advisory opinion requests, we do not believe it is possible to calculate or accurately estimate the actual cost of providing an advisory opinion in advance. Indeed, we believe that the statute requires us to calculate the actual costs incurred during the processing of a specific request and charge the requestor for that amount. As set forth in these regulations, at the conclusion of the advisory opinion process, when either the opinion has been issued or the request has been withdrawn, the requestor is responsible for paying the U.S. Treasury an amount equal to the costs incurred by the Government in responding to the request.

Although we cannot reliably project the processing costs in advance, we can make broad estimates that may be of use to prospective requestors. We estimate that the actual cost of processing requests, including salaries, benefits and overhead, will be near $100 per hour. We must include the time of staff attorneys, supervisors and support staff, as well as others who are consulted on various issues. The processing time will vary according to the complexity of the request and the quality of the submission. Simple requests, for example, regarding whether a certain court action is a conviction for the purposes of exclusion in accordance with section 1128 of the Act may take approximately 3 hours to analyze and produce a written opinion. On the other hand, requests involving the application of the anti-kickback statute to large, multiple party, intricate business deals may take in excess of 40 hours or more to fully analyze and produce a written advisory opinion.

We believe that it is reasonable to expect that requests for an advisory opinion will cost at least $250 in initial processing. Every request for an advisory opinion will take time to read and analyze for the OIG to ensure that it has an accurate understanding of all material facts submitted. Following that initial analysis, the OIG is required to consult with the DoJ and write the actual advisory opinion. By its very nature, most of this work will need to be done by the OIG staff attorneys. Accordingly, the regulations are providing for a non-refundable payment of $250 that is to accompany the request for an advisory opinion. Once we have gained experience in the time and staff resources involved in this process, a clearer estimate may need to be made and a re-calculation set forth.

Because we do not believe that we can accurately estimate our costs in advance for a particular request, we are attempting to accommodate requestors who may want to limit the costs of receiving an advisory opinion. The regulations provide that a requestor may designate a "triggering dollar amount" in their request for an advisory opinion. If the OIG calculates that the cost of processing the request has reached, or is likely to exceed, that triggering amount, the OIG will stop processing the request and promptly notify the requestor. The requestor may then decide to either authorize continued processing or withdraw the request for an advisory opinion. While the OIG intends to be able to more accurately reflect such costs in advance as experience is gained, this triggering mechanism approach should ensure that requestors do not pay costs far in excess of what they expect to incur by their request.

Section 1008.39 of the regulations specifically indicates that while a requestor may withdraw a request for an advisory opinion at any time, he or she will be responsible for any costs incurred in processing the request prior to its withdrawal.

When the advisory opinion has been completed as discussed below, or the request has been withdrawn, the OIG will calculate the total costs incurred in processing the request after taking into account any previous payments, such as the initial $250 fee, associated with the request, and the OIG will then notify the requestor of the amount owed. Once the requestor has paid the full amount owed for the cost of processing the request as required by statute, the OIG will release the advisory opinion to the requestor.

While the OIG believes the above approach for payment and release will

be sufficient for the vast majority of requests for advisory opinions, an additional procedure will be necessary in those cases where the request requires expert advice on non-legal matters. The OIG is particularly concerned about requests for advisory opinions requiring review by medical experts. For example, section 1128(b)(6)(B) of the Act authorizes the OIG to exclude any individual or entity who has furnished services to patients "substantially in excess of the needs of such patients or of a quality which fails to meet professionally recognized standards of health care." In order to determine whether a given factual scenario would form the basis for a sanction under this authority, as stated in § 1008.33 of these regulations, the OIG may make a determination that extensive medical as well as legal analysis is required, and that the medical analysis should be referred to a Peer Review Organization or other entity capable of providing and issuing medical reviews.

Because of the time and expense of such expert reviews, we believe that a request that requires such outside consultation should be treated differently from a standard request involving the application of the governing law to a given set of facts. When the OIG determines that an expert non-legal opinion is required, we will obtain an estimate for the costs of such an opinion and provide the requestor with that estimate. The requestor may then decide whether to pay the estimated cost of the expert review or withdraw the request. If the requestor pays the estimated cost, the OIG will promptly refer the matter to the expert for such review. Once the OIG receives the medical or other review from the outside expert, the advisory opinion process will continue with the OIG applying the expert evaluation to the legal question(s) at issue.

Responsibilities of the OIG in Reviewing the Advisory Opinion Requests

Subpart E of part 1008 discusses the obligations and responsibilities of the OIG in answering requests for advisory opinions. As set forth in these regulations, once the OIG receives a request for an advisory opinion, we will promptly examine it to determine if it appears to contain sufficient information to form the basis for an informed advisory opinion. Generally speaking, the request must contain responses to the preliminary questions posed by the OIG, as discussed above. If the request does not appear sufficient, we will promptly notify the requestor what additional information is required. Conversely, if the request appears to be sufficient, we will accept the request. In all cases, we will either request additional information or accept the request within 10 working days after receiving the request. If we have requested additional information and the requestor resubmits the advisory opinion request, we will assess within 10 working days the resubmission to determine whether it can be accepted or whether we still need further information. At the point when the OIG accepts the request, we will notify the requestor by U.S. mail of the date of acceptance.

We believe that this approach allows the OIG a reasonable amount of time to identify requests that do not contain information sufficient for the OIG to process the request. While we are limiting the time period of this initial assessment to ensure that facially complete requests are promptly processed, we are soliciting public comment on the appropriateness of this method of screening requests for advisory opinions prior to their acceptance.

Notwithstanding the acceptance of a request, the OIG reserves the right to later determine that it needs additional information. If we decide such additional information is necessary, we will notify the requestor in the same manner as we did prior to acceptance. The time period between when we notify the requestor about the additional information we need and when we receive the requested information will not be counted in considering the time for issuance of an opinion.

Because of the fact-intensive inquiry that will be necessary to render most advisory opinions, the OIG anticipates that there may be a need to request additional information from many requestors. In responding, the requestor should provide the OIG with the necessary information and accompany that submission with a certification from the same individual (or one in the same position) who certified the original request for an advisory opinion.

As required by section 1128D(b)(5)(B) of the Act and set forth in § 1008.43, the OIG will issue an advisory opinion within 60 days after the request for the opinion is accepted. Once the OIG receives a request for an opinion that appears to meet the submission criteria, the request for an opinion will be promptly accepted and the 60-day time period for issuance of an opinion will commence. The OIG will send the advisory opinion to the requestor by regular U.S. mail at the conclusion of the 60-day time period and once all required fees have been paid.

We believe that under certain circumstances the running of the 60-day time limit for issuing an opinion should be tolled. The tolling periods will only reflect time when the OIG cannot work on analyzing the request. If the OIG notifies the requestor that the costs have reached, or are likely to exceed, the triggering amount designated by that requestor, the OIG will stop processing the request until the requestor instructs the OIG to continue. Similarly, if the OIG notifies a requestor of the need for, and estimated cost of, an outside expert opinion on a non-legal issue, the regulations state that the OIG will stop processing the request until the requestor pays the estimated cost and the outside expert provides its opinion. Likewise, in those instances when the OIG requests additional information from the requestor that the OIG believes is necessary to issue the advisory opinion, the OIG will stop processing the opinion until the additional information is provided. The time that elapses during these periods when the OIG is not processing the request will not be counted as part of the 60-day period.

The time period for issuing an advisory opinion does not include the time after the OIG notifies the requestor that the advisory opinion is completed and the requestor must pay the full balance due for the cost of the opinion.

While the OIG intends to issue advisory opinions within 60 days of the receipt of the request, we do not believe that the 60-day time period should include delays in the processing of the request that are not within the control of the OIG. With the exception of the delay while waiting for a needed outside expert opinion, all of the possible tolling events are under the exclusive control of the requestor, and as such, since for what we believe will be the vast majority of advisory opinion requests, the 60-day period will only be tolled for those periods during which the requestor has not paid a required fee or has not provided information necessary to the processing of the request.

As required by section 1128D(b)(1) of the Act, the OIG will consult with DoJ when responding to requests for advisory opinions, and will issue an advisory opinion to the requestor after considering the complete description of all facts provided to it by the requestor. The opinion will restate the material facts known to the OIG and discuss the OIG's analysis and conclusion regarding the legal question(s) to be applied to the facts presented.

Dissemination of Advisory Opinions

Section 1128D(b)(5)(A)(v) requires these regulations to describe the manner in which advisory opinions will be made available to the public. As set forth in subpart E of these regulations, once the OIG issues an advisory opinion to a requestor, the OIG will promptly make a copy of that opinion available for public inspection at the OIG headquarters and the DHHS/OIG web site. We also anticipate that advisory opinions will likely be made widely available to interested members of the public through commercial publishers and trade groups. Public comments and additional suggestions regarding the dissemination of advisory opinions to the public will be welcomed.

Documents submitted to the OIG related to requested advisory opinions, and internal government documents related to such opinions, will be available to the extent authorized by the Freedom of Information Act (FOIA) (5 U.S.C. 552). To the extent that a requestor provides information it believes is not subject to disclosure under FOIA, such as items that the requestor believes are trade secrets or privileged and confidential commercial or financial information, the requestor should identify such information in the manner described in 45 CFR 5.65 (c) and (d). The requestor's assertions about the nature of information, however, are not controlling.

In addition, although a document may be exempt from disclosure under FOIA, facts reflected on that document may become part of the advisory opinion that will be provided to the public. The material facts of the arrangement in question will be described in the body of each advisory opinion, all of which will be fully available to the public.

Rescission of an Advisory Opinion

Section 1008.45 of the regulations addresses the rescission of an advisory opinion by the OIG. The regulations reserve the right of the OIG to rescind an advisory opinion after its issuance in limited circumstances, such as when the OIG learns after the issuance of the opinion that the arrangement in question may lead to fraud and abuse. In such an instance, the OIG will notify the requestor of the rescission and make such notice available to the same extent as an advisory opinion. Unless the OIG establishes that the requestor failed to provide material information in its submissions to the OIG, the requestor would not be subject to OIG sanction for actions it took prior to the notice of rescission if the requestor acted in good faith reliance on the advisory opinion. We are specifically soliciting comments on whether this approach reasonably balances the Government's need to ensure that advisory opinions are legally correct and the requestor's interest in finality.

Scope and Effect of Advisory Opinions

Subpart F of part 1008 of these regulations addresses the scope and effect of advisory opinions. An advisory opinion issued under this process is legally binding on the Department (including the OIG) and the requestor, but only with respect to the specific conduct of the particular requestor. In other words, in accordance with section 1128D(b)(4)(A) of the Act with respect to the issuance of advisory opinions, the Department is not legally bound with respect to the conduct of third parties, even if the conduct of that party appears similar to the requestor. We believe that no third parties are bound nor may they rely on an advisory opinion since each advisory opinion will apply legal standards to a set of facts involving certain known persons who provide specific statements about key factual issues. A third party may implement a look-alike arrangement with *additional* characteristics that would lead to an unfavorable opinion. Therefore, by their very nature, advisory opinions, unlike the safe harbor regulations, cannot be applied generally.

We believe the receipt of an advisory opinion regarding a certain arrangement does not totally prevent the Government from commencing an action against a party to the arrangement where, for example, a requestor failed to disclose a material fact. In any such action under sections 1128, 1128A or 1128B of the Act, an individual or entity who has requested and received an advisory opinion from the OIG regarding the arrangement in question may seek to introduce the advisory opinion into evidence in the proceeding. We believe that the court must then determine whether the requestor of the advisory opinion was justified in relying on the opinion. This determination must be made by examining all relevant circumstances, including whether the requestor fully and accurately described the arrangement in its submissions to the OIG.

III. Regulatory Impact Analysis

Executive Order 12866

The Office of Management and Budget (OMB) has reviewed this interim final rule in accordance with the provisions of Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rulemaking is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, safety, distributive, and equity effects).

As indicated in section II of this preamble, this rule deals primarily with the procedural issues involved in the receipt, review and response to requests for advisory opinions by the OIG. It sets up the procedures as required by Public Law 104–191, for obtaining an advisory opinion on whether or not certain activities violate designated fraud and abuse authorities. This rule does not address the substance of the anti-kickback or other sanction statutes. It does not address the substance or content of advisory opinions which may be issued in the future. To the extent that advisory opinions affect the behavior of health care providers, that effect is the product of the substantive content of the sanction statutes themselves, and the substantive content of the advisory opinions which will be issued on a case-by-case basis in the future. The effect of advisory opinions on health care providers is not a function of the process for requesting an advisory opinion.

In addition, the extent to which advisory opinions will result in alteration of future business practices, if any, is impossible to analyze without experience. It would be completely speculative to try to divine to what degree business deals may or may not occur as a result of the substance of advisory opinions issued in the future.

Moreover, we have no way of knowing in advance what the volume of requests for advisory opinions will be. However, we estimate that we will receive approximately 500 requests per year that will generally require between 3 and 40 hours each to process. Accordingly, it would likely cost in the range of $150,000 to $2,000,000 per year to issue advisory opinions.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), if a rule has a significant economic effect on a substantial number of small businesses the Secretary must specifically consider the effects of a rule on small business entities and analyze regulatory options that could lessen the impact of the rule. As stated above, this rule does not address the substance of the fraud and abuse statutes or the substance of advisory opinions which may be issued in the future. It describes the *process* by which an individual or entity may receive an opinion as to the application of these statutes to particular business

practices. The aggregate economic impact of this rulemaking on small business entities should, therefore, be minimal.

There will, however, be costs involved in filing requests for opinions by OIG. Those costs will vary depending on the complexity of the request. Compared to the costs of seeking private legal advice, it would appear that fees charged for the OIG's review would not be substantial. Furthermore, the requirement that applicants pay cost-based fees for advisory opinions is not a product of this rulemaking: It is prescribed by statute that such fees be paid by those requesting advisory opinions. This rule merely lays out the procedures for such costs to be paid. Thus, we have concluded, and the Secretary certifies, that this final rule will not have a significant economic impact on a substantial number of small business entities, and that a regulatory flexibility analysis is not required for this rulemaking.

IV. Paperwork Reduction Act

In order to provide appropriate advisory opinions, the OIG will need certain information from the parties who request advisory opinions. Sections 1008.18, 1008.36(b) and 1008.37 through 1008.40 of this interim final rule contain information collection requirements that require approval by OMB. We are required to solicit public comments under section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. Specifically, comments are invited on (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

We are seeking emergency OMB approval for the collection of information contained in this rule. In a separate **Federal Register** notice, containing a 60-day public comment period, we will solicit public comment on these requirements, thereby initiating the normal Paperwork Reduction Act clearance.

Title: OIG Advisory Opinion Procedure.

Summary of the collection of information: Section 205 of Public Law 104–191 requires the Department to provide advisory opinions to the public regarding several categories of subject matter. The Department must opine on requestor's potential liability under sections 1128, 1128A, and 1128B of the Act. These regulations provide the procedures under which members of the public may request advisory opinions from the OIG. Because all requests for advisory opinions are purely voluntary, respondents will only be required to provide information regarding facts about which they have decided to request an opinion from the OIG.

In order to ensure a useful advisory opinion process, the OIG must receive information sufficient to determine whether the arrangement in question is subject to sanction. The information provided by the requestor will be applied by the OIG to the legal question posed in the request for an advisory opinion. In general, we are requiring a complete description of all facts relevant to the inquiry, including all related documents.

The general requirements in this rulemaking may be supplemented by voluntary preliminary questions we have developed that correspond with each sanction authority in sections 1128, 1128A, and 1128B of the Act as appropriate. These more specific information collection requirements are being made available for public review and comment by a separate **Federal Register** notice. The preliminary questions will be designed to elicit the specific information that will enable the OIG to provide the most accurate and timely opinion possible. For example, if a request is made for an advisory opinion on whether a given arrangement will violate the anti-kickback statute, one question may relate specifically to how much remuneration is paid to various parties to the arrangement. Although requestors will be under no obligation to answer the preliminary questions, we believe that the questions will provide requestors with valuable guidance about what information we will need to answer their inquiry. A request for an advisory opinion that includes complete answers to the preliminary questions corresponding to the issue(s) raised by the requestor should contain most, if not all, of the information that we will require to issue an advisory opinion. Even though we believe that the questions will aid requestors, the answering of these questions is purely voluntary in nature and we will process advisory opinion requests regardless of whether the preliminary questions are answered.

The following discussion relates the aggregate effect of the collections of information included in the text of this interim final rule and in the preliminary questions.

Respondents: The "respondents" for the collection of information described in these regulations will be self-selected individuals and entities that choose to submit requests for advisory opinions to the OIG. We anticipate that the respondents will include health care providers of many types, from sole practitioner physicians to large diversified publicly-traded corporations.

Estimated number of respondents: 500. Most individuals and entities that provide medical services that may be paid for by Medicare, Medicaid or Federal health care programs could potentially have questions regarding one of the subject matters about which the OIG will issue advisory opinions. In reality, we believe that the number of requestors will be a small fraction of such providers.

Over the past several years, the Inspector General Division of the Office of the General Counsel has answered telephone inquiries from individuals and entities seeking *informal* guidance with respect to the Medicare and State health care programs' anti-kickback statute and other sanction authorities. Many of the inquiries related to authorities outside the scope of the advisory opinion process, that is, the self-referral provisions of section 1877 of the Act. Furthermore, we believe that most of the inquiries have been of a nature that the caller would be unlikely to request a written advisory opinion on the subject matter. Many inquiries related to relatively simple matters that could be researched by private counsel at relatively minor expense. Nevertheless, the rate of these telephone inquiries may form a starting point for estimating the number of advisory opinion requests. We estimate that we received an average of 6 telephone inquiries per day over the past several years. Of these, we believe that an average of two per day could potentially have been the subject of an advisory opinion. Using that history as a rough guide, we estimate an annual number of 500 requests. Obviously, the actual number of requests could be larger since, for the first time, formal written opinions are available. Conversely, the numbers could be smaller for a combination of many unquantifiable reasons, such as the desire not to subject an arrangement to official scrutiny.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: We believe that the burden of preparing requests for advisory opinions will vary widely because of differences in size and complexity of the business transaction in question. We estimate that the average burden for each submitted request for an advisory opinion will be in the range of 2 to 40 hours. We further believe that the burden for most requests will be closer to the lower end of the range, with an average burden of 10 hours per respondent. Total burden for this proposed information collection is estimated to be 5000 hours.

We are requiring requests for advisory opinions to involve existing conduct, or conduct in which the requestor intends to engage. We anticipate that most requests will involve business arrangements into which the requesting party intends to enter. Because the facts will relate to business plans, the requesting party will have collected and analyzed all or almost all of the information we will need to collect to review the request. Therefore, in order to request an advisory opinion, the requestor will most likely simply need to compile already collected information for our examination. In some cases, however, the requestor may need to expend a more significant amount of time in preparing a submission related to a complex arrangement involving a large number of parties.

In addition to the hour burden discussed above, some respondents may incur additional costs related to the purchase of outside professional services, such as attorneys or consultants. We believe that the cost burden related to such outside assistance will vary from zero to 40 hours per submission. The outside assistance cost burden estimate is based on an estimate of 10 hours per request at $200 per hour. Thus, the cost burden for these outside functions is estimated at $1,000,000.

Comments on this information collection should be sent to both:

Cynthia Agens Bauer, OS Reports Clearance Officer, ASMB Budget Office, Room 503–H, Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201, FAX: (202) 690–6352

Allison Herron Eydt, OIG Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20053, FAX: (202) 395–6974.

Comments on these paperwork reduction requirements may be submitted to the above-cited individuals within two days following the **Federal Register** publication of this interim final rule.

List of Subjects in 42 CFR Part 1008

Administrative practice and procedures, Fraud, Grant programs—health, Health facilities, Health professions, Medicaid, Medicare, Penalties.

Accordingly, 42 CFR chapter V, subchapter B is amended by adding a new part 1008 as set forth below:

TITLE 42—PUBLIC HEALTH

CHAPTER V—OFFICE OF INSPECTOR GENERAL—HEALTH CARE, DEPARTMENT OF HEALTH AND HUMAN SERVICES

PART 1008—ADVISORY OPINIONS BY THE OIG

Subpart A—General Provisions

Sec.
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1008.3 Effective period.
1008.5 Matters subject to advisory opinions.

Subpart B—Preliminary Obligations and Responsibilities of the Requesting Party

1008.11 Who may submit a request.
1008.15 Facts subject to advisory opinions.
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Subpart C—Advisory Opinion Fees

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1008.33 Expert opinions from outside sources.

Subpart D—Submission of a Formal Request for an Advisory Opinion

1008.36 Submission of a request.
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Subpart E—Obligations and Responsibilities of the OIG

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Subpart F—Scope and Effect of OIG Advisory Opinions

1008.51 Exclusivity of OIG advisory opinions.
1008.53 Affected parties.
1008.55 Admissibility of evidence.
1008.59 Range of the advisory opinion.

Authority: 42 U.S.C. 1320a-7d(b).

Subpart A—General Provisions

§ 1008.1 Basis and purpose.

(a) This part contains the specific procedures for the submission of requests by an individual or entity for advisory opinions to, and the issuance of advisory opinions by, the OIG, in consultation with the Department of Justice (DoJ), in accordance with section 1128D(b) of the Social Security Act (Act), 42 U.S.C. 1320a-7d(b). The OIG will issue such advisory opinions based on actual or proposed factual circumstances submitted by the requesting individual or entity.

(b) An individual or entity may request an advisory opinion from the OIG regarding on any of 5 specific subject matters described in § 1008.5 of this part.

(c) The requesting party must provide a complete description of the facts as set forth in subpart B of this part, and pay the costs to the OIG of processing the request for an advisory opinion as set forth in subpart C of this part.

(d) Nothing in this part limits the investigatory or prosecutorial authority of the OIG, DoJ or any other agency of the Government.

§ 1008.3 Effective period.

The provisions in this part are applicable to requests for advisory opinions submitted on or after February 21, 1997, and before August 21, 2000, and to any requests submitted during any other time period for which the OIG is required by law to issue advisory opinions.

§ 1008.5 Matters subject to advisory opinions.

(a) An individual or entity may request an advisory opinion from the OIG regarding—

(1) What constitutes prohibited remuneration within the meaning of section 1128B(b) of the Act;

(2) Whether an arrangement, or proposed arrangement, satisfies the criteria set forth in section 1128B(b)(3) of the Act for activities that do not result in prohibited remuneration;

(3) Whether an arrangement, or proposed arrangement, satisfies the criteria set forth in § 1001.952 of this chapter for activities that do not result in prohibited remuneration;

(4) What constitutes an inducement to reduce or limit services under section 1128A(b) of the Act to Medicare or Medicaid program beneficiaries; and

(5) Whether any activity, or proposed activity, constitutes grounds for the imposition of a sanction under sections 1128, 1128A or 1128B of the Act.

(b) *Exceptions.* The OIG will not address through the advisory opinion process—

(1) What the fair market value will be, or what the fair market value was paid or received, for any goods, services or property; and

(2) Whether an individual is a bona fide employee within the requirements of section 3121(d)(2) of the Internal Revenue Code of 1986.

Subpart B—Preliminary Obligations and Responsibilities of the Requesting Party

§ 1008.11 Who may submit a request.

Any individual or entity may submit a request to the OIG for an advisory opinion regarding an existing arrangement or one which the requestor in good faith specifically plans to undertake. The requestor must be a party to the arrangement, or proposed arrangement, that is the subject of the request.

§ 1008.15 Facts subject to advisory opinions.

(a) The OIG will consider requests from a requesting party for advisory opinions regarding the application of specific facts to the subject matters set forth in § 1008.5(a) of this part. The facts must relate to an existing arrangement, or one which the requestor in good faith plans to undertake. The plans may be contingent upon receiving a favorable advisory opinion. The advisory opinion request should contain a complete description of the arrangement that the requestor is undertaking, or plans to undertake.

(b) Requests presenting a general question of interpretation, posing a hypothetical situation, or regarding the activities of third parties do not qualify as advisory opinion requests.

(c) An advisory opinion request will not be accepted when—

(1) The request is not related to a named individual or entity;

(2) The same, or substantially the same, course of action is under investigation, or is or has been the subject of a proceeding involving the Department of Health and Human Services or another governmental agency; or

(3) An informed opinion cannot be made, or could be made only after extensive investigation, clinical study, testing or collateral inquiry.

§ 1008.18 Preliminary questions suggested for the requesting party.

(a) The OIG may establish and maintain a set of questions corresponding to the categories of opinion subject matter as set forth in § 1008.5(a) of this part as appropriate. The questions will be designed to elicit specific information relevant to the advisory opinion being sought; however, answering the questions is voluntary.

(b) Questions the OIG suggests the requestor to address may be obtained from the OIG. Requests should be made in writing, specify the subject matter and be sent to the headquarter offices of the OIG.

(c) When submitting a request for an advisory opinion, a requestor may answer the questions corresponding to the subject matter for which the opinion is requested. The extent to which any of the questions is not fully answered may effect the content of the advisory opinion.

Subpart C—Advisory Opinion Fees

§ 1008.31 OIG fees for the cost of advisory opinions.

(a) *Responsibility for fees.* The requestor is responsible for paying a fee equal to the costs incurred by the Department in responding to the request for an advisory opinion.

(b) *Initial payment.* A request for an advisory opinion must be accompanied by a check or money order payable to the Treasury of the United States for $250. This initial payment is non-refundable.

(c) *Calculation of costs.* Prior to the issuance of the advisory opinion, the OIG will calculate the costs to be incurred by the Department in responding to the request. The calculation will include the costs of salaries and benefits payable to attorneys and others who have worked on the request in question, as well as administrative and supervisory support for such persons. The OIG has the exclusive authority to determine the cost of responding to a request for an advisory opinion and such determination is not reviewable or waivable.

(d) *Agreement to pay all costs.* (1) By submitting the request for an advisory opinion, the requestor agrees, except as indicated in paragraph (d)(3) of this section, to pay all costs incurred by the OIG in responding to the request for an advisory opinion.

(2) In its request for an advisory opinion, the requestor may designate a triggering dollar amount. If the OIG estimates that the costs of processing the advisory opinion request have reached or are likely to exceed the designated triggering dollar amount, the OIG will notify the requestor.

(3) If the OIG notifies the requestor that the estimated cost of processing the request has reached or is likely to exceed the triggering dollar amount, the OIG will stop processing the request until such time as the requestor makes a written request for the OIG to continue processing the request. Any delay in the processing of the request for an advisory opinion attributable to these procedures will toll the time for issuance of an advisory opinion until the requestor asks the OIG to continue working on the request.

(4) If the requestor chooses not to pay for completion of an advisory opinion, or withdraws the request, the requestor is still obligated to pay for all costs incurred and identified by the OIG attributable to processing the request for an advisory opinion up to that point.

(5) If the costs incurred by the OIG in responding to the request are greater than the amount paid by the requestor, the OIG will, prior to the issuance of the advisory opinion, notify the requestor of any additional amount due. The OIG will not issue an advisory opinion until the full amount owed by the requestor has been paid. Once the requestor has paid the OIG the total amount due for the costs of processing the request, the OIG will issue the advisory opinion. The time period for issuing advisory opinions will be tolled from the time the OIG notifies the requestor of the amount owed until the time full payment is received.

(e) *Fees for outside experts.* (1) In addition to the fees identified in this section, the requestor also must pay any required fees for expert opinions, if any, from outside sources, as described in § 1008.33.

(2) The time period for issuing an advisory opinion will be tolled from the time that the OIG notifies the requestor of the need for an outside expert opinion until the time the OIG receives the necessary expert opinion.

§ 1008.33 Expert opinions from outside sources.

(a) The OIG may request expert advice from qualified sources on non-legal issues if necessary to respond to the advisory opinion request. For example, the OIG may require the use of appropriate medical reviewers, such as peer review organizations, to obtain medical opinions on specific issues.

(b) If the OIG determines that it is necessary to obtain expert advice to issue a requested advisory opinion, the OIG will notify the requestor of that fact and provide the identity of the appropriate expert and an estimate of the costs of the expert advice. As indicated in § 1008.31(e), the requestor must pay the estimated cost of the expert advice.

(c) Once payment is made for the cost of the expert advice, the OIG will arrange for a prompt expert review of the issue or issues in question.

Subpart D—Submission of a Formal Request for an Advisory Opinion

§ 1008.36 Submission of a request.

(a) A request for a formal advisory opinion must be submitted in writing. An original and 2 copies of the request should be addressed to the headquarter offices of the OIG.

(b) Each request for an advisory opinion must include—

(1) The identities, including the names and addresses, of the requestor and of all other actual and potential parties, to the extent known to the requestor to the arrangement that is the subject of the request for an advisory opinion;

(2) The name, title, address, and daytime telephone number of a contact person who will be available to discuss the request for an advisory opinion with the OIG on behalf of the requestor;

(3) A declaration of the subject category or categories as described in § 1008.5 of this part for which the advisory opinion is requested;

(4) A complete and specific description of all relevant information bearing on the arrangement for which an advisory opinion is requested and on the circumstances of the conduct,[1] including—

(i) Background information,

(ii) Complete copies of all operative documents, and

(iii) Detailed statements of all collateral or oral understandings, if any;

(5) All Medicare and Medicaid provider numbers used by all parties to the arrangement;

(6) Signed certifications by the requestor, as described in § 1008.37 of this part; and

(7) A check or money order payable to the Treasury of the United States in the amount of $250, as discussed in § 1008.31(b) of this part.

§ 1008.37 Disclosure of ownership and related information.

Each individual or entity requesting an advisory opinion will supply full and complete information as to the identity of each entity owned or controlled by the indivudual, and of each person with an ownership or control interest in the entity, as defined in section 1124(a)(1) of the Social Security Act (42 U.S.C. 1320a–3(a)(1)) and part 420 of this chapter.

§ 1008.38 Signed certifications by the requestor.

(a) Every request must include the following signed certification: "With knowledge of the penalties for false statements provided by 18 U.S.C. 1001 and with knowledge that this request for an advisory opinion is being submitted to the Department of Health and Human Services, I certify that all of the information provided is true and correct, and constitutes a complete description of the facts regarding which an advisory opinion is sought, to the best of my knowledge and belief."

(b) If the advisory opinion relates to a proposed arrangement, the request must also include the following signed certification: "The arrangement described in this request for an advisory opinion is one that [the requestor] in good faith plans to undertake." This statement may be made contingent on a favorable OIG advisory opinion, in which case, the phrase "if the OIG issues a favorable advisory opinion" should be added to the certification.

(c) The certification(s) will be signed by—

(1) The requestor, if the requestor is an individual;

(2) The chief executive officer, or comparable officer, of the requestor, if the requestor is a corporation; or

(3) The managing partner of the requestor, if the requestor is a partnership.

§ 1008.39 Additional information.

(a) If the request for an advisory opinion does not contain all of the information required by § 1008.36 of this part, or the OIG believes it needs more information prior to rendering an advisory opinion, the OIG may, at any time, request whatever additional information or documents it deems necessary. The time period for the issuance of an advisory opinion will be tolled from the time the OIG requests the additional information from the requestor until such time as the OIG determines that it has received the requested information.

(b) The OIG may request additional information before or after the request for an advisory opinion has been accepted.

(c) Additional information should be provided in writing, signed by the same person who signed the initial request and certified by this person to be a true, correct and complete disclosure of the requested information in a manner equivalent to that described in § 1008.37 of this part.

(d) In connection with any request for an advisory opinion, the OIG or DoJ may conduct whatever independent investigation they believe appropriate.

§ 1008.40 Withdrawal.

The requestor of an advisory opinion may withdraw the request prior to the issuance of a formal advisory opinion by the OIG. The withdrawal must be written and must be submitted to the same address as the submitted request, as indicated in §§ 1008.18(b) and 1008.36(a) of this part. Regardless of whether the request is withdrawn, the requestor must pay the costs expended by the OIG in processing the opinion, as discussed in § 1008.31(d) of this part. The OIG reserves the right to retain any request for an advisory opinion, documents and information submitted to it under these procedures, and to use them for any governmental purposes.

Subpart E—Obligations and Responsibilities of the OIG

§ 1008.41 OIG acceptance of the request.

(a) Upon receipt of a request for an advisory opinion, the OIG will promptly make an initial determination of whether the submission includes all of the information the OIG will require to process the request.

(b) Within 10 working days of receipt of the request, the OIG will—

(1) Formally accept the request for an advisory opinion,

(2) Notify the requestor of what additional information is needed, or

(3) Decline to formally accept the request.

(c) If the requestor provides the additional information requested, or otherwise resubmits the request, the OIG will process the resubmission in accordance with paragraphs (a) and (b) of this section as if it was an initial request for an advisory opinion.

(d) Upon acceptance of the request, the OIG will notify the requestor by regular U.S. mail of the date that the request for the advisory opinion was formally accepted.

(e) The 60-day period for issuance of an advisory opinion set forth in § 1008.43(c) of this part will not commence until the OIG has formally accepted the request for an advisory opinion.

§ 1008.43 Issuance of a formal advisory opinion.

(a) An advisory opinion will be considered issued, once payment is received, when it is dated, numbered, and signed by an authorized official of the OIG.

(b) An advisory opinion will contain a description of the material facts known to the OIG with regard to the arrangement for which an advisory opinion has been requested. The advisory opinion will state the OIG's opinion regarding the subject matter of the request based on the facts provided and known to the OIG.

(c)(1) The OIG will issue an advisory opinion, in accordance with the provisions of this part, within 60 days after the request for an advisory opinion has been formally accepted;

[1] The requestor is under an affirmative obligation to make full and true disclosure with respect to the facts regarding the advisory opinion being requested.

(2) If the 60th day falls on a Saturday, Sunday, or Federal holiday, the time period will end at the close of the business day next following the weekend or holiday;

(3) The 60 day period will be tolled from the time the OIG—

(i) Notifies the requestor that the costs have reached or are likely to exceed the triggering amount until the time when the OIG receives written notice from the requestor to continue processing the request;

(ii) Requests additional information from the requestor until the time the OIG receives the requested information;

(iii) Notifies the requestor of the full amount due until the time the OIG receives payment of the full amount owed; and

(iv) Notifies the requestor of the need for expert advice until the time the OIG receives the expert advice.

(d) After the OIG has notified the requestor of the full amount owed and the OIG has received full payment of that amount, the OIG will issue the advisory opinion and promptly mail it to the requestor by regular first class U.S. mail.

§ 1008.45 Rescission.

Any advice given by the OIG is without prejudice to the right of the OIG to reconsider the questions involved and, where the public interest requires, to rescind or revoke the action. Notice of such rescission or revocation will be given to the requestor so that the individual or entity may discontinue the course of action taken in accordance with the OIG advisory opinion. The OIG will not proceed against the requestor with respect to any action taken in good faith reliance upon the OIG advice under this part, where all the relevant facts were fully, completely and accurately presented to the OIG, and where such action was promptly discontinued upon notification of rescission or revocation of the OIG approval.

§ 1008.47 Disclosure.

(a) Advisory opinions issued and released in accordance with the provisions set forth in this part will be available to the public.

(b) Promptly after the issuance and release of an advisory opinion to the requestor, a copy of the advisory opinion will be available for public inspection between the hours of 10:00 a.m. and 3:00 p.m. on normal business days at the headquarter offices of the OIG and on the DHHS/OIG web site.

(c) Any pre-decisional document, or part of such pre-decisional document, that is prepared in the OIG, DoJ or any other Department or agency of the United States in connection with an advisory opinion request under the procedures set forth in this part will be exempt from disclosure under 5 U.S.C. 552, and will not be made publicly available.

(d) Documents submitted by the requestor to the OIG in connection with a request for an advisory opinion will be available to the public to the extent authorized by 5 U.S.C. 552, through procedures set forth in 45 CFR part 5.

(e) Nothing in this section will limit the OIG's right, in its discretion, to issue a press release or otherwise publicly disclose the identity of the requesting party or parties, and the nature of the action taken by the OIG upon the request.

Subpart F—Scope and Effect of OIG Advisory Opinions

§ 1008.51 Exclusivity of OIG advisory opinions.

The only method for obtaining a binding advisory opinion regarding any of the subject matters set forth in § 1008.5(a) is through the procedures described in this part. No binding advisory opinion, oral or written, has or may be issued by the OIG regarding the specific matters set forth in § 1008.5(a) except through written opinions issued in accordance with this part.

§ 1008.53 Affected parties.

An advisory opinion issued by the OIG will have no application to any individual or entity that does not join in the request for the opinion. No individual or entity other than the requestor(s) may rely on an advisory opinion.

§ 1008.55 Admissibility of evidence.

(a) The failure of a party to seek an advisory opinion may not be introduced into evidence to prove that the party intended to violate the provisions of sections 1128, 1128A or 1128B of the Act.

(b) An advisory opinion not issued to a person may not be introduced into evidence to prove that person did not intend to violate the provisions of sections 1128, 1128A or 1128B of the Act.

§ 1008.59 Range of the advisory opinion.

(a) An advisory opinion will state only the OIG's opinion regarding the subject matter of the request. If the arrangement for which an advisory opinion is requested is subject to approval or regulation by any other agency, such advisory opinion will not be taken to indicate the OIG's views on the legal or factual issues that may be raised before that agency.

(b) An advisory opinion issued under this part will not bind or obligate any agency other than the Department. It will not affect the requestor's, or anyone else's, obligations to any other agency, or under any statutory or regulatory provision other than that which is the specific subject matter of the advisory opinion.

Dated: December 26, 1996.

June Gibbs Brown,

Inspector General, Department of Health and Human Services.

Approved: January 28, 1997.

Donna E. Shalala,

Secretary.

[FR Doc. 97–4086 Filed 2–18–97; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 199

[CGD 94–069]

RIN 2115–AB72

Lifesaving Equipment

AGENCY: Coast Guard, DOT.

ACTION: Interim rule, partial suspension; request for comments.

SUMMARY: On May 20, 1996 the Coast Guard published an interim rule revising the lifesaving equipment regulations for U.S. inspected vessels. The interim rule included provisions for vessels not on international routes to comply with certain new requirements by October 1, 1997 and October 1, 2001. The Coast Guard has received comments concerning the regulatory analysis for the interim rule which may lead to changes to the lifesaving requirements in the final rule. To prevent any economic expenditures based on the interim rule which might not be necessary under the final rule, the Coast Guard is suspending the implementation requirements for certain provisions in the interim rule. The Coast Guard requests comments on the economic impacts of the lifesaving requirements covered by the partial suspension.

DATES: The suspension of § 199.10(i)(1)(i), (ii) and (iii) is effective February 19, 1997. Comments must be received on or before April 21, 1997.

ADDRESSES: Mail comments to the Executive Secretary, Marine Safety Council (G–LRA) [CGD 84–069], U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001 or deliver them to room 3406 at the same address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number if (202) 267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Markle, Chief, Lifesaving and Fire Safety Standards Division (G–MSE–4), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, telephone (202) 267–1444, fax (202) 267–1069, E-mail "rmarkle@comdt.uscg.mil." Normal office hours are between 8 a.m. and 5 p.m.

SUPPLEMENTARY INFORMATION:

Regulatory History

The regulatory history for this rulemaking is set out in the preamble of the interim rule entitled Lifesaving Equipment (61 FR 25272; May 20, 1996).

Reason for Partial Suspension

After publication of the interim rule, the Coast Guard received comments, particularly from the passenger vessel industry, expressing concerns about the new lifesaving requirements for vessels not on international voyages. Passenger vessel industry comments stated that requirements to carry additional lifesaving equipment could not be justified in view of the excellent safety record of these vessels. The comments also questioned the validity of the regulatory analysis supporting these requirements.

The Coast Guard understands that owners of some vessels affected by the new lifesaving requirements may be planning purchases of equipment or changes in manning to meet the October 1, 1997, implementation date and may even be planning modifications to meet the October 1, 2001, implementation date. The review of comments and reassessment of the regulatory evaluation will probably justify some changes in the final rule. To prevent any economic expenditures in reliance on the interim rule which may prove unnecessary upon publication of the final rule, the Coast Guard is suspending the implementation provisions in §§ 199.10(i)(1) (i) through (iii) until issuance of the final rule. Since the suspended provisions apply only to requirements which were new at the interim rule stage, this partial suspension will effectively leave existing vessels operating in accordance with their existing Certificate of Inspections until the final rule and its implementation schedule are published.

The Coast Guard also received comments questioning the application of lifesaving requirements to passenger vessels built after October 1, 1996. The Coast Guard is also reassessing lifesaving requirements for these new vessels which will be operated on other than international voyages. If you are presently building a new vessel or considering lifesaving equipment requirements for new construction, you are encouraged to contact your local Officer in Charge of Marine Inspection for an appropriate exemption under 46 CFR 199.20(d). You are also encouraged to comment on the application of lifesaving equipment requirements to newly constructed vessels operating on other than international voyages. The Coast Guard will consider all comments received during the comment period. It may change 46 CFR 199.10 based on the comments.

Small Business Compliance Guidance

In accordance with § 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, the Coast Guard wants to provide small entities with assistance in understanding this rule so they can better evaluate its effects on them and participate in the rulemaking process.

If you are a small business affected by this rule and have questions concerning its provisions or options for compliance, please contact your local Officer in Charge, Marine Inspection, for assistance.

Request for Comments

The Coast Guard encourages interested persons to submit specific comments limited to the requirements in 46 CFR 199.10 as they apply to new and existing passenger vessels on other than international voyages. Persons submitting comments should include their names and addresses, identify this rulemaking [CGD 84–069] and the specific section of the interim rule to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes. The Coast Guard plans no additional public meetings.

Regulatory Process Considerations

Although the interim rule is not a significant regulatory action under section 3(f) of Executive Order 12866, due to its nature, it was reviewed by the Office of Management and Budget (OMB) under that order. This action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and 1996 amendments (enacted as Chapter 8 of Title 5, U.S.C.). This interim rule will have no effect on the environment and it is categorically excluded from further environmental documentation in accordance with section 2.B.2.34(e) of the NEPA Implementing Procedures, COMDTINST M16475.1B. If you are a small business affected by the interim rule or this partial suspension, you are encouraged to submit comments to the docket concerning the economic impact of these actions. The final rule will address any economic impacts, including impacts on small businesses, if any.

List of Subjects in 46 CFR Part 199

Cargo vessels, Incorporation by reference, Marine safety, Oil and gas exploration, Passenger vessels, Reporting and recordkeeping requirements, Vessels.

For the reasons set out in the preamble, the Coast Guard is amending 46 CFR part 199 as follows:

PART 199—LIFESAVING SYSTEMS FOR CERTAIN INSPECTED VESSELS

1. The authority citation for part 199 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 46 CFR 1.46.

§ 199.10 [Amended]

2. In § 199.10 paragraphs (i)(1) (i) through (iii) are suspended.

Dated: February 12, 1997.

J. C. Card,

Rear Admiral, U.S. Coast Guard Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 97–3998 Filed 2–18–97; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[General Docket Nos. 89–573 and 90–7; DA 96–2066]

Addressing Amendments for the 821–824/866–869 MHz Bands as Submitted by the Regional Planning Committees of the Washington, DC and Philadelphia, PA Metropolitan Areas

SUMMARY: This action addresses amendments for the 821–824/866–869 MHz bands as submitted by the regional planning committees of the Washington, DC Metropolitan Area ("Region 20") and the Philadelphia, PA Metropolitan Area ("Region 28"). Such action is required by procedures established by the Commission for the development of regional plans under the Public Safety National Plan (National Plan) for the public safety radio services. The National Plan was developed to ensure that channels allocated in the 821–824/866–869 MHz bands were used effectively and efficiently for important public safety functions such as crime control, fire fighting, and emergency medical services. This decision furthers the Commission's goal of promoting efficient and effective public safety communications. The effect of the action conditionally accepts the Region 20 amendment to modify its respective regional plan subject to the finding of additional information and to return the Region 28 amendment for further coordination with adjacent regions as provided by the National Plan.

FOR FURTHER INFORMATION CONTACT: William Cross of the Commission's Wireless Telecommunications Bureau at (202) 418–0680 or wcross@fcc.gov (Internet).

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, DA 96–2066, adopted and released December 9, 1996. The complete text may be purchased from the Commission's copy contractor, ITS, Inc., 2100 M Street NW., Suite 140, Washington, DC 20037, telephone (202) 857–3800. The unofficial text of this Order is available on the Internet at: http://www.fcc.gov/Bureaus/Wireless/Orders/da962066.txt. This Order is also available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, D C 20554.

SUMMARY OF THE ORDER:

1. This Order addresses amendments submitted by the regional planning committees of the Washington, DC Metropolitan Area ("Region 20") and the Philadelphia, PA Metropolitan Area ("Region 28"). In separate amendments, each committee proposes to modify their respective regional plans for the 821–824/866–869 MHz bands as provided by the Public Safety National Plan ("National Plan"). See Report and Order, 3 FCC Rcd 905; 53 FR 1022 (January 15, 1988).

2. Oppositions have been filed against both amendments. Both amendments concern the manner in which public safety spectrum governed by the National Plan is allocated among adjacent regions to meet the mobile communications requirements of public safety and special emergency entities.

3. In reviewing Region 20, the Commission noted that there are three elements of the Region 20 amendment that cause concern: (1) The lack of coordination with adjacent regions, (2) the licensing of stations prior to plan approval, and (3) a channel designation to an individual. Although the Commission has clearly stated that inter-regional coordination is mandatory, the lack of consensus between the parties appears to have inhibited the expansion of public safety telecommunications in these bands for these critical metropolitan areas. Region 20 points out that a review of the record affirms that the channel assignments cited by Region 28 and other parties as potential problems all pertain to channels contained in plans previously approved by the Commission. The Commission also found that the channels under consideration at this time have already been licensed by the Commission.

4. For these reasons, Region 20's amendment is accepted subject to the following conditions: (a) A detailed statement that establishes satisfactory inter-regional coordination procedures (See paragraph 11 of *Order*)—to be filed with Acting Secretary of the Commission and with copies to the Private Wireless Division of the Commission's Wireless Telecommuncations Bureau by March 30, 1997; (b) a list denoting the current status of construction and operation of stations licensed on the new channels set forth in the Region 20 amendment (See paragraph 15 of *Order*)—to be similarly filed by January 30, 1997; and (c) a change from "MCT Medical Services" to an appropriate channel designation (See paragraph 18 of *Order*)—to be similarly filed by January 30, 1997.

5. Regarding Region 28, the Commission found that Region 28 had not coordinated its amendment in advance as required; and has not yet obtained concurrence from the adjacent regions. Consequently, Region 28's amendment is returned for further coordination so that discussions can commence between the interested parties.

List of Subjects in 47 CFR Part 90

Public safety, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–4028 Filed 2–18–97; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register

Vol. 62, No. 33

Wednesday, February 19, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 213

[Regulation M; Docket No. R–0961]

Consumer Leasing

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed official staff interpretation.

SUMMARY: The Board is publishing for comment a second proposal revising the official staff commentary to Regulation M which implements the Consumer Leasing Act. The act requires lessors to provide uniform cost and other disclosures about consumer lease transactions. Regulation M was revised in September 1996 under the Board's Regulatory Planning and Review program which calls for the periodic review of Board regulations. The commentary applies and interprets the requirements of Regulation M. A proposal to revise the commentary was published in September 1995. This proposal includes material that was published for comment in September 1995, incorporates guidance on the final rule issued in September 1996, and addresses certain questions raised following public review of the final rule.

DATES: Comments must be received by March 13, 1997.

ADDRESSES: Comments should refer to Docket No. R–0961, and may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. They may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. weekdays, and to the security control room at all other times. The mail room and the security control room are accessible from the courtyard entrance on 20th Street, NW. (between Constitution Avenue and C Street). Comments will be available for inspection and copying by members of the public in the Freedom of Information Office, Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in Section 261.8 of the Board's rules regarding the availability of information.

FOR FURTHER INFORMATION CONTACT: Kyung H. Cho-Miller or Obrea Otey Poindexter, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–2412 or 452–3667. For users of Telecommunications Devices for the Deaf (TDD) only, contact Dorothea Thompson, at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Consumer Leasing Act (CLA), 15 U.S.C. 1667–1667e, was enacted into law in 1976 as an amendment to the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.* The CLA is implemented by the Board's Regulation M (12 CFR part 213). An official staff commentary (Supplement I–CL–1 to 12 CFR part 213) provides guidance to lessors in applying the regulation to specific transactions. The CLA requires lessors to provide consumers with uniform cost and other disclosures about consumer lease transactions. The act generally applies to consumer leases of personal property in which the contractual obligation does not exceed $25,000 and has a term of more than four months. An automobile lease is the most common type of consumer lease covered by the act.

In September 1996, the Board approved a final rule revising Regulation M, after a review of the regulation and consumer leasing generally. The review was conducted under the Board's Regulatory Planning and Review Program which calls for the periodic review of Board regulations with four goals in mind: To clarify and simplify regulatory language; to determine whether regulatory amendments are needed to address technological and other developments; to reduce undue regulatory burden on the industry; and to delete obsolete provisions.

The Board began the review of Regulation M in November 1993, with the publication of an advance notice of proposed rulemaking (58 FR 61035, November 19, 1993). In September 1995, the Board published a proposal revising the regulation and the staff commentary (60 FR 48752, September 20, 1995; comment period extended, 60 FR 62349 December 6, 1995). The proposal contained substantive revisions to the regulation, including new disclosure requirements.

The September 1996 final rule includes new disclosures to supplement the act's requirements (61 FR 52246, October 7, 1996). The major changes primarily affect motor-vehicle leasing. They include a mathematical progression on how scheduled payments are derived (using figures such as the gross capitalized cost of a lease, the vehicle's residual value, the amount of depreciation, and the rent charge) and a warning statement about charges for terminating a lease early. General changes in the format of the disclosures require that certain lease disclosures be segregated from other information. A lessor is not required to disclose the cost of a lease expressed as a percentage rate; however, if a rate is disclosed or advertised, a special notice must accompany the rate stating that it may not measure the overall cost of financing the lease. Further, a rate in an advertisement cannot be more prominent than any other Regulation M disclosure.

The final rule also implements amendments to the CLA contained in the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325, 108 Stat. 2160), allowing a toll-free number or a print advertisement to substitute for certain lease disclosures in radio commercials (which was expanded in the final rule to television commercials) and makes other changes to the advertising rules. The CLA's advertising rules were amended and streamlined on September 30, 1996 when the Congress enacted the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Pub. L. 104–208, 110 Stat. 3009). The Board issued a proposal to implement those changes. (62 FR 62, January 2, 1997.)

The Board is now publishing an updated proposal to the commentary. This proposal includes material that was published for comment in September 1995, incorporates guidance on the September 1996 final rule, and addresses certain questions raised following public review of the final rule. It is contemplated that the proposed revisions to the Regulation M commentary will be adopted in final form in April 1997.

II. Discussion of Proposed Revisions

The following discussion covers the proposed revisions to the Regulation M commentary section-by-section. Most of the discussion focuses on new comments and significant revisions to existing comments.

Introduction

Current comments I–3, I–4, and I–6 would be deleted as obsolete or unnecessary. Comments I–1, I–2, and I–5 would be redesignated accordingly.

Section 213.1—Authority, Scope, Purpose, and Enforcement

Current	Proposed
1–1	1–1.
1–2	Deleted as unnecessary (see Appendix C).

Section 213.2—Definitions

2(a) Definitions

Current	Proposed
2(a)(2)–1 ..	2(b)–1 and –2; including text from former § 213.2(a)(2).
2(a)(2)–2 ..	2(b)–3. 2(d)–1 new.
2(a)(4)–1 ..	2(h)–1; includes text from former § 213.2(a)(4).
2(a)(4)–2 ..	2(h)–4.
2(a)(4)–3 ..	2(h)–2.
2(a)(6)–1 ..	2(e)–1.
2(a)(6)–2 ..	2(e)–2. 2(e)–3 new.
2(a)(6)–3 ..	2(e)–6.
2(a)(6)–4 ..	2(e)–4. 2(e)–5 new; includes text from former § 213.2(a)(3).
2(a)(6)–5 ..	2(e)–8.
2(a)(6)–6 ..	2(e)–7. 2(f)–1 new.
2(a)(7)–1 ..	2(g)–1.
2(a)(8)–1 ..	2(h)–3.
2(a)(9)–1 ..	2(j)–1.
2(a)(12)–1	2(l)–1.
2(a)(14)–1 and –2.	2(m)–1 and –2.
2(a)(14)–3 and –4.	2(m)–3.
2(a)(14)–5	2(m)–4.
2(a)(14)–6	4(l)–2.
2(a)(15)–1	2(o)–2.
2(a)(15)–2	2(o)–1; includes text from former § 213.2(a)(15).
2(a)(15)–3	2(o)–3.
2(a)(17)–1 through –5.	Deleted as unnecessary.
2(a)(18)–1 through –3.	Deleted as unnecessary.
2(b)–1	Deleted as unnecessary.
2(b)–2	4(b)–1.

2(b) Advertisement

Comment 2(b)–1, current comment 2(a)(2)–1, would be revised to include examples of advertisements formerly in § 213.2(a)(2) and to indicate that the term "advertisement" includes electronic messages.

2(d) Closed-end Lease

Proposed comment 2(d)–1 provides general guidance on the definition of a closed-end lease.

2(e) Consumer Lease

Comment 2(e)–2, current comment 2(a)(6)–2, would be revised to clarify that leases with penalties for not continuing beyond an initial four months are covered under the regulation.

Proposed comment 2(e)–3 provides guidance on the total contractual obligation for purposes of determining whether a lease is covered under the regulation, and indicates that the total contractual obligation may be different from the total of payments disclosed under § 213.4(e).

Proposed comment 2(e)–5 incorporates former § 213.2(a)(3), the statutory definition of agricultural purpose in section 103(s) of the TILA.

Comment 2(e)–7, current comment 2(a)(6)–6, would be revised to add another example of a lease deemed incidental to a service. The narrow list of exceptions is exhaustive, rather than illustrative. Questions have arisen about Regulation M coverage of cellular phones leased in conjunction with obtaining cellular service. Cellular service providers typically offer customers the opportunity to lease or purchase cellular telephones when subscribing for cellular service. The leasing of a cellular telephone is not incidental to obtaining cellular service and is, thus, covered under the regulation.

2(f) Gross Capitalized Cost

Proposed comment 2(f)–1 provides guidance on what type of fees are included or excluded from the gross capitalized cost disclosure in § 213.4(f)(1).

2(h) Lessor

Comment 2(h)–1, current comment 2(a)(4)–1, would be revised to include the definition of the phrase "arrange for leasing of personal property" in former § 213.2(a)(4).

2(m) Realized Value

Comment 2(m)–3 provides guidance on what is included or what may be excluded from the realized value, combining current comments 2(a)(14)–3 and –4. The second and third sentences of current comment 2(a)(14)–4 are deleted as unnecessary.

2(o) Security Interest and Security

Comment 2(o)–1, current comment 2(a)(15)–2, would be revised to include examples of a security interest formerly in § 213.2(a)(15).

Questions have arisen about whether interest on a security deposit meets the definition of a security interest for purposes of this regulation and thus required to be disclosed. Such interest is required to be disclosed if it is considered a security interest under state or other applicable law.

Section 213.3—General Disclosure Requirements

3(a) General Requirements

Current	Proposed
4(a)–1	3(a)–1.
4(a)–2	Moved to § 213.3(f).
4(a)–3	3(a)(1)–1.
4(a)–4	3(a)–4.
4(a)–5	Deleted as unnecessary.
4(a)(1)–1 ..	3(a)–2 and –3.
4(a)(1)–2 ..	Deleted as unnecessary.
4(a)(2)–1 ..	4(b)–1.
4(a)(2)–2 ..	3(a)(1)–2. 3(a)(1)–3 new.
4(a)(2)–3 ..	3(a)(1)–4.
4(a)(2)–4 ..	Deleted as unnecessary.
4(a)(2)–5 ..	3(a)(1)–5. 3(a)(2)–1 through –3 new.
4(a)(4)–1 ..	Deleted as unnecessary, see revised § 213.3(a)(4).
4(a)(4)–2 ..	Deleted as unnecessary, see revised § 213.3(a)(4).
4(b)–1	3(b)–1.
4(c)–1	3(c)–1.
4(d)–1 through –5.	3(d)(1)–1 through –5.
4(d)–6	Deleted as unnecessary.
4(e)–1 and –2.	3(e)–1 and –2. 3(e)–3 new; text from footnote 1 of former regulation.

3(a) General Requirements

Comment 3(a)–1, current comment 4(a)–1, would be revised to clarify that leasing disclosures must reflect the terms of the legal obligation.

Comment 3(a)–4, current comment 4(a)–4, would be revised to provide guidance on disclosing a prior lease or loan balance added to a lease transaction.

3(a)(1) Form of Disclosures

Proposed comment 3(a)(1)–3 provides guidance on disclosing the lessor's address.

Comment 3(a)(1)–5, current comment 4(a)(2)–5, would be revised to provide additional guidance on ways in which lessors may demonstrate compliance with the requirement that lessees receive disclosures prior to being obligated on the lease transaction.

3(a)(2) Segregation of Certain Disclosures

Proposed comment 3(a)(2)–1 provides general guidance on the location of the segregated disclosures referenced in § 213.3(a)(2).

Proposed comment 3(a)(2)–2 restates the general rule on including additional information among the segregated disclosures referenced in § 213.3(a)(2).

Proposed comment 3(a)(2)–3 provides a cross-reference to the commentary to appendix A which provides guidance on designing lease forms that are substantially similar to the regulation's model forms.

3(b) Additional Information; Nonsegregated Disclosures

Comment 3(b)–1, current comment 4(b)–1, on state law disclosures would be revised by adding clarifying language and by deleting the second sentence.

3(d) Use of Estimates

Comment 3(d)(1)–4, current comment 4(d)–4, would be revised to provide that in disclosing the estimate of the value of leased property at termination a lessor should indicate whether the retail or wholesale value is used. This provision was previously contained in Regulation M in the instructions to the model forms.

3(e) Effect of Subsequent Occurrence

Proposed comment 3(e)-3 incorporates the first sentence of footnote 1 of the former regulation.

Section 213.4—Context of Disclosures

Current	Proposed
	4(a)–1 new.
4(g)–1	Deleted as unnecessary.
4(g)–2	3(a)(1)–3; date requirement moved to § 213.3(a)(1).
4(g)(1)–1 ..	Deleted as unnecessary.
4(g)(2)–1 ..	Deleted as unnecessary.
4(g)(2)–2 ..	4(b)–1 (incorporates current comment 2(b)–2)).
4(g)(2)–3 ..	4(b)–2. 4(b)–3 new (incorporated from the instructions to the model form in former appendix C–2). 4(b)–4 through –6 new.
4(g)(3)–1 ..	Deleted as unnecessary.
4(g)(3)–2 ..	4(c)–1; reference to open-end lease deleted.
4(g)(4)–1 ..	4(n)–1.
4(g)(5)–1 ..	4(d)–1 and –2.
4(g)(5)–2 ..	Deleted as unnecessary; see § 213.3(a)(2). 4(d)–3 new.
4(g)(5)–3 ..	4(d)–4.
4(g)(5)–4 ..	4(d)–5. 4(d)–6 new. 4(e)–1 new. 4(f)–1 new. 4(f)(1)–1 and –2 new. 4(f)(2)–1 new.
	4(f)(8)–1 new.
	4(o)–1 new.
4(g)(6)–1 ..	4(o)–2.
4(g)(6)–2 ..	4(o)–3.
4(g)(7)–1 through –3.	4(p)–1 through –3.
4(g)(8)–1 ..	4(h)–1. 4(h)–2 new.
4(g)(9)–1 ..	4(r)–1.
4(g)(10)–1 through –5.	4(q)–1 through –5.
4(g)(11)–1 through –3.	4(i)–1 through –3.
	4(i)–4 and –5 new.
4(g)(12)–1	4(g)(1)–3; the word "capitalized" is deleted.
4(g)(12)–2	4(g)(1)–4.
4(g)(12)–3	4(g)(1)–1. 4(g)(1)–2 new. 4(j)–1 new.
4(g)(14)–1 through –3.	4(l)–1 through –3.
	4(m)–1 new.
4(g)(15)–1	4(m)(2)–1.
4(g)(15)–2	deleted. 4(m)(1)–1 new.
4(g)(15)–3	deleted.
4(g)(15)–4	4(m)(2)–2.
4(g)(15)–5	deleted.
4(g)(15)–6	4(m)(2)–3. 4(s)–1 new.

4(a) Description of Property

Proposed comment 4(a)–1 clarifies that the description of leased property cannot be among the segregated disclosures.

4(b) Total Amount Due at Lease Signing

Comment 4(b)–1 would incorporate the first sentence of current comment 2(b)–2 on consummation.

Proposed comment 4(b)–3 incorporates a definition of "capitalized cost reduction" from the instructions in former appendix C–1 of the regulation.

Proposed comment 4(b)–4 provides guidance on negative net trade-in allowances where the amount owed on a prior loan or lease exceeds an agreed-upon trade-in value.

Proposed comment 4(b)–5 clarifies that a rebate would be included in the itemization under this section only when used to reduce an amount due at lease signing.

Proposed comment 4(b)–6 clarifies that where the balance sheet method is required, in motor-vehicle leases, the totals in each column must equal one another.

4(d) Other Charges

Comment 4(d)–1, current comment 4(g)(5)–1, would be revised to provide flexibility in making the "other charges" disclosure.

Proposed comment 4(d)–3 clarifies that third-party charges are not disclosed under § 213.4(d).

Proposed comment 4(d)–6 provides guidance on the disclosure of optional "disposition" fees.

4(e) Total of Payments

Proposed comment 4(e)–1 explains the additional statement in the total of payments disclosure for open-end leases.

4(f) Payment Calculation

Proposed comment 4(f)–1 clarifies that lessors should defer to state or other applicable law in determining whether the leased property is a motor vehicle.

4(f)(1) Gross Capitalized Cost

Proposed comment 4(f)(1)–1 provides guidance on disclosing the agreed upon value of a leased motor vehicle.

Proposed comment 4(f)(1)–2 provides guidance on providing the itemization of the gross capitalized cost.

4(f)(2) Capitalized Cost Reduction

Proposed comment 4(f)(2)–1 provides guidance on the amounts not included in the capitalized cost reduction disclosure.

4(f)(8) Lease Term

Proposed comment 4(f)(8)–1 clarifies the meaning of the phrase "lease term" referenced under § 213.4(f)(8).

4(g) Early Termination

Proposed comment 4(g)–2 provides guidance on disclosing the method used to determine the amount of an early termination charge.

4(h) Maintenance Responsibilities

Proposed comment 4(h)–2 clarifies that lessors may not disclose a description of the method used for calculating excess mileage charges if a specific amount for excess mileage is available.

4(i) Purchase Option

Proposed comment 4(i)–5 provides guidance on disclosing a "fair market value" purchase-option price.

Several commenters on the September 1995 proposal requested clarification on whether lessors are allowed to disclose a purchase-option fee and other fees and taxes applicable to the purchase option separately from the purchase-option price. Comments 4(i)–3 and –4, current comment 4(g)(11)–3, would be revised to allow lessors flexibility in disclosing fees associated with a purchase-option price. Further, with the September 1996

revisions to the disclosure format and since a lessee is not obligated to purchase the leased property, the purchase-option fee and any other fee associated with exercising the purchase option must be disclosed under § 213.4(i) and not § 213.4(d).

4(j) Statement Referencing Nonsegregated Disclosures

Proposed comment 4(j)–1 clarifies that inapplicable information may be deleted from the § 213.4(j) disclosure, which references and alerts consumers to read CLA required disclosures not included among the segregated disclosures.

4(l) Right of Appraisal

Comment 4(l)–2, current comment 4(g)(14)–2, would be revised to provide that a lessor must indicate when an appraisal should be based on the wholesale or retail value. This provision was contained in the former regulation in the instructions to the model forms.

4(m) Liability at End of Lease Term Based on Estimated Value

The regulation reformats this section, former § 213.4(g)(15), for clarity. The commentary has been similarly reformatted.

Proposed comment 4(m)–1 states the intent of section 183(a) of the CLA that lessors must pay the lessees' attorney's fees in all actions brought by lessors under § 213.4(m), even if those actions are decided in favor of the lessor.

4(n) Fees and Taxes

Proposed comment 4(n)–1 provides guidance on what taxes are disclosed under § 213.4(n).

4(o) Insurance

Proposed comment 4(o)–1 provides that § 213.4(o) applies to voluntary and required insurance provided in connection with a lease transaction.

Comment 4(o)–3, current comment 4(g)(6)–2, is revised to provide additional guidance on the disclosure of mechanical breakdown insurance.

4(p) Warranties or Guarantees

Comment 4(p)–1, current comment 4(g)(7)–1, would be revised to provide further guidance on identifying warranties under § 213.4(p), when lessors provide a comprehensive list of warranties to lessees.

4(s) Limitation on Rate Information

Proposed comment 4(s)–1 clarifies that a lease rate may not be included among the segregated disclosures referenced in § 213.3(a)(2).

Section 213.5—Renegotiations, Extensions, and Assumptions

Section 213.5, formerly § 213.4(h), contains the disclosure rules governing leases that are renegotiated, extended, or assumed. Many of the commentary provisions have been moved to the regulation. For example, the definitions of a renegotiation and an extension have been included in the regulation. This change parallels the approach under Regulation Z for refinancings and assumptions, 12 CFR 226.20.

Current	Proposed
4(h)–1	5–1.
4(h)–2	First sentence moved to § 213.5(a); second sentence deleted; third sentence moved to 5–1.
4(h)–3	Moved to § 213.5(d).
4(h)–4	Moved to § 213.5(b).
4(h)–5	5(b)–1. 5(b)–2 new.
4(h)–6	Deleted as unnecessary.
4(h)–7	Moved to § 213.5(d)(6).
4(h)–8	Moved to § 213.5(d)(2).
4(h)–9	Moved to § 213.5(c).

5(b) Extension

Comment 5(b)–1, current comment 4(h)–5, would be revised to clarify that if a consumer lease is extended on a month-to-month basis for more than six months, new disclosures are required at the beginning of the seventh month, and also at the start of each seventh month thereafter. This revision incorporates into the commentary a longstanding interpretation originally issued under leasing provisions that were a part of Regulation Z (Truth in Lending) prior to 1982.

Proposed comment 5(b)–2 also incorporates a longstanding interpretation originally issued under the pre-1982 leasing provisions in Regulation Z that disclosures for a consumer lease, originally covered by the regulation and extended on a month-to-month basis for more than six months, should reflect the month-to-month nature of the transaction.

Section 213.7—Advertising

Current	Proposed
5(a)–1	7(a)–1.
5(a)–2	7(a)–2.
5(b)–1 and 2.	7(c)–1 and 2.
5(c)–1	7(b)–1.
5(c)–2	7(d)(1)–1. 7(d)(2)–1 new.
5(d)–1	Deleted. 7(e)–1 new. 7(f)(1)–1 through –4 new.

The CLA advertising provisions were amended on September 30, 1996 by the Economic Growth and Regulatory Paperwork Reduction Act of 1996. The final rule revising the commentary will reference the revised provisions in the regulation that implement the statutory changes.

7(b) Clear and Conspicuous Standard

Proposed comment 7(b)–1 provides guidance on the clear and conspicuous standard. A comment in the September 1995 proposal which provided that lease disclosures must appear on a television screen for at least five seconds has been deleted. The comment was intended as guidance on the clear and conspicuous standard. It did not provide a safe harbor, as the "five second" rule may be inadequate as a test for determining full compliance with the clear and conspicuous standard.

7(b)(1) Amount Due at Lease Signing

Proposed comment 7(b)(1)–1 clarifies that an itemization of the amount due at lease signing or delivery is not required under § 213.7(b)(1).

Proposed comment 7(b)(1)–2 provides general guidance on the prominence rule in § 213.7(b)(1).

7(b)(2) Advertisement of a Lease Rate

Proposed comment 7(b)(2)–1 provides guidance on the location of the statement that must accompany any percentage rate stated in an advertisement.

7(d) Advertisement of Terms That Require Additional Disclosure

7(d)(2) Additional Terms

Commenters requested clarification on how third-party fees that vary by jurisdiction such as taxes, licenses and registration fees should be reflected in the total amount due at lease signing disclosure under § 213.7(d)(2)(ii). Comment 7(d)(2)–2 provides lessors flexibility in disclosing such fees.

7(e) Alternative Disclosures—Merchandise Tags

Proposed comment 7(e)–1 provides general guidance on disclosing multiple item leases with merchandise tags.

7(f) Alternative Disclosures—Television or Radio Advertisements

7(f)(1) Toll-Free Number or Print Advertisement

Proposed comment 7(f)(1)–1 clarifies that a newspaper circulated nationally may qualify as a publication in general circulation in the community served by the media station.

Proposed comment 7(f)(1)–2 provides guidance on establishing a number for consumers to call for disclosure information.

Proposed comment 7(f)(1)–3 provides guidance on the use of a multi-function toll-free number to provide disclosures.

Proposed comment 7(f)(1)–4 provides general guidance on the statement that must accompany a toll-free number instructing consumers to call the number for details about costs and terms.

Section 213.8 Record Retention

Current	Proposed
6–1	8–1

Section 213.8 of the regulation was formerly § 213.6.

Section 213.9 Relations to State Laws

Section 213.9 of the regulation combines and simplifies former §§ 213.7 and 213.8. The comments to these sections, as well as references in former appendices A and B, have been deleted as unnecessary.

Appendix A Model Forms

Under the final rule, the model forms are moved from appendix C to appendix A. Comment app. A–2 would be deleted as unnecessary. Minor revisions would be made to other comments in this appendix. For example, comment app. A–1 would be revised to indicate that changes to the headings, format, and the content of the segregated disclosures should be minimal. Also the definition of a closed-end lease in comment app. A–3 would be deleted because a definition has been added in the regulation.

III. Form of Comment Letters

Comment letters should refer to Docket No. R–0961 and, when possible, should use a standard courier typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3½ inch or 5¼ inch computer diskettes in any IBM-compatible DOS-based format.

The comment period ends on March 13, 1997. Normally, the Board provides a 60-day comment period, in keeping with the Board's policy statement on rulemaking (44 FR 3957, January 19, 1979). The proposed commentary revisions primarily include interpretations published for comment in September 1995 and guidance included in the supplemental information to the September 1996 final rule. The Board believes that it is desirable to ensure that a commentary takes effect along with the final rule as promptly as possible. Accordingly, the Board is providing an abbreviated comment period.

List of Subjects in 12 CFR Part 213

Advertising, Federal Reserve System, Reporting and recordkeeping requirements, Truth in lending.

For the reasons set forth in the preamble, 12 CFR part 213 is proposed to be amended as follows:

PART 213—CONSUMER LEASING (REGULATION M)

1. The authority citation for part 213 continues to read as follows:

Authority: 15 U.S.C. 1604.

2. Supplement I to Part 213—Official Staff Commentary to Regulation M would be revised to read as follows:

Supplement I to Part 213—Official Staff Commentary to Regulation M

Introduction

1. *Official status.* The commentary in this supplement I is the vehicle by which the Division of Consumer and Community Affairs of the Federal Reserve Board issues official staff interpretations of Regulation M (12 CFR part 213). Good faith compliance with this commentary affords protection from liability under section 130(f) of the Truth in Lending Act (15 U.S.C. 1640f). Section 130(f) protects lessors from civil liability for any act done or omitted in good faith in conformity with any interpretation issued by a duly authorized official or employee of the Federal Reserve System.

2. *Procedures for requesting interpretations.* Under appendix C of Regulation M, anyone may request an official staff interpretation. Interpretations that are adopted will be incorporated in this commentary following publication in the **Federal Register**. No official staff interpretations are expected to be issued other than by means of this commentary.

3. *Comment designations.* Each comment in the commentary is identified by a number and the regulatory section or paragraph that it interprets. The comments are designated with as much specificity as possible according to the particular regulatory provision addressed. For example, some of the comments to § 213.4(f) are further divided by subparagraph, such as comment 4(f)(1)–1 and comment 4(f)(2)–1. In other cases, comments have more general application and are designated, for example, as comment 4(a)–1. This introduction may be cited as comments I—1 through I—3. An appendix may be cited as comment app. A—1.

Section 213.1—Authority, Scope, Purpose, and Enforcement

1. *Foreign applicability.* Regulation M applies to all persons (including branches of foreign banks or leasing companies located in the United States) that offer consumer leases to residents (including resident aliens) of any state as defined in § 213.2(p). The regulation does not apply to a foreign branch of a U.S. bank or to a leasing company leasing to a U.S. citizen residing or visiting abroad or to a foreign national abroad.

Section 213.2—Definitions

2(b) Advertisement.

1. *Coverage.* The term advertisement includes messages inviting, offering, or otherwise generally announcing to prospective customers the availability of consumer leases, whether in visual, oral, print or electronic media. Examples include:

i. Messages in newspapers, magazines, leaflets, catalogs, and fliers.

ii. Messages on radio, television, and public address systems.

iii. Direct mail literature.

iv. Printed material on any interior or exterior sign or display, in any window display, in any point-of-transaction literature or price tag that is delivered or made available to a lessee or prospective lessee in any manner whatsoever.

v. Telephone solicitations.

vi. Messages on the Internet.

2. *Exclusions.* The term does not apply to the following:

i. Direct personal contacts, including follow-up letters, cost estimates for individual lessees, or oral or written communications relating to the negotiation of a specific transaction.

ii. Informational material distributed only to businesses.

iii. Notices required by federal or state law, if the law mandates that specific information be displayed and only the mandated information is included in the notice.

iv. News articles controlled by the news medium.

v. Market research or educational materials that do not solicit business.

3. *Persons covered.* See the commentary to § 213.7(a).

2(d) Closed-end lease.

1. *General.* In closed-end leases, sometimes referred to as "walk-away" leases, the lessee is not responsible for the residual value of the leased property at the end of the lease term.

2(e) Consumer lease.

1. *Primary purposes.* A lessor must determine in each case if the leased property will be used primarily for personal, family, or household purposes. If a question exists as to the primary purpose for a lease, the fact that a lessor gives disclosures is not controlling on the question of whether the transaction was exempt. The primary purpose of a lease is determined before or at consummation and a lessor need not provide Regulation M disclosures where there is a subsequent change in primary usage.

2. *Period of time.* To be a consumer lease, the initial term of the lease must be more than four months. Thus, a lease of personal property for four months, three months or on a month-to-month or week-to-week basis (even though the lease actually extends beyond four months) is not a consumer lease and is not subject to the disclosure

requirements of the regulation. However, a lease that imposes a penalty for not continuing a lease beyond four months is considered to have a term of more than four months. To illustrate:

i. A month-to-month lease with a penalty, such as the forfeiture of a security deposit for terminating before one year, is subject to the regulation.

ii. A three-month lease extended on a month-to-month basis and terminated after one year is not subject to the regulation.

3. *Total contractual obligation.* The total contractual obligation is not necessarily the same as the total of payments disclosed under § 213.4(e). The total contractual obligation includes nonrefundable amounts a lessee is contractually obligated to pay to the lessor. The term excludes:

i. Residual value amounts or purchase-option prices;

ii. Amounts collected by the lessor but paid to a third party, such as taxes, license and registration fees.

4. *Credit sale.* The regulation does not cover a lease that meets the definition of a credit sale in Regulation Z, 12 CFR 226.2(a)(16), which is defined, in part, as "a bailment or lease (unless terminable without penalty at any time by the consumer) under which the consumer:

i. Agrees to pay as compensation for use a sum substantially equivalent to, or in excess of, the total value of the property and services involved; and

ii. Will become (or has the option to become), for no additional consideration or for nominal consideration, the owner of the property upon compliance with the agreement."

5. *Agricultural purpose.* Agricultural purpose means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures those agricultural products, including but not limited to the acquisition of personal property and services used primarily in farming. Agricultural products include horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

6. *Organization.* A consumer lease does not include a lease made to an organization such as a corporation or a government agency or instrumentality. Such a lease is not covered by the regulation even if the leased property is used (by an employee, for example) primarily for personal, family or household purposes, or is guaranteed by or subsequently assigned to a natural person.

7. *Leases of personal property incidental to a service.* The following leases of personal property are deemed incidental to a service and thus are not subject to the regulation:

i. Home entertainment systems requiring the consumer to lease equipment that enables a television to receive the transmitted programming.

ii. Security alarm systems requiring the installation of leased equipment intended to monitor unlawful entries into a home.

iii. Propane gas service where the consumer must lease a propane tank to receive the service.

8. *Safe deposit boxes.* The lease of a safe deposit box is not a consumer lease under § 213.2(e).

2(f) Gross capitalized cost.

1. *Charges paid at lease signing.* The gross capitalized cost figure includes only those fees, charges, and other items, such as a prior unpaid lease balance, that are capitalized or amortized over the lease term. Charges paid at lease signing, such as taxes, are not included in the gross capitalized cost.

2(g) Lessee.

1. *Guarantors.* Guarantors are not lessees for purposes of the regulation.

2(h) Lessor.

1. *Arranger of a lease.* To "arrange" for the lease of personal property means to provide or offer to provide a lease that is or will be extended by another person under a business or other relationship pursuant to which the person arranging the lease (a) receives or will receive a fee, compensation, or other consideration for the service or (b) has knowledge of the lease terms and participates in the preparation of the contract documents required in connection with the lease. To illustrate:

i. An automobile dealer who, pursuant to a business relationship, completes the necessary lease agreement before forwarding it to the leasing company (to whom the obligation is payable on its face) for execution is "arranging" for the lease.

ii. An automobile dealer who, receiving no fee for the service, refers a customer to a leasing company that will prepare all relevant contract documents is not "arranging" for the lease.

2. *Consideration.* The term "other consideration" as used in comment 2(h)-1 refers to an actual payment corresponding to a fee or similar compensation and not to intangible benefits, such as the advantage of increased business, which may flow from the relationship between the parties.

3. *Assignees.* An assignee may be a lessor for purposes of the regulation in circumstances such as those described in *Ford Motor Credit Co.* v. *Cenance*, 452 U.S. 155 (1981). In that case, the U.S. Supreme Court held that an assignee was a creditor for purposes of the pre-1980 Truth in Lending Act and Regulation Z because of its substantial involvement in the credit transaction.

4. *Multiple lessors.* See the commentary to § 213.3(c).

2(j) Organization.

1. *Coverage.* The term organization includes joint ventures and persons operating under a business name.

2(l) Personal property.

1. *Coverage.* Whether property is personal property depends on state or other applicable law. For example, a mobile home or houseboat may be considered personal property in one state but real property in another.

T32(m) Realized value.

1. *General.* Realized value refers to the value of the leased property at early termination or at the end of the lease term. It is not a required disclosure. It may be either the retail or wholesale value. Realized value is relevant only to leases in which the lessee's liability at early termination or at the end of the lease term is the difference between the residual value of the leased property and its realized value.

2. *Options.* Subject to the contract and to state or other applicable law, the lessor may calculate the realized value in determining the lessee's liability at the end of the lease term or at early termination in one of the three ways stated in § 213.2(m). If the lessor sells the property prior to making that determination, the price received for the property is the realized value. If the lessor does not sell the property prior to making that determination, the lessor may choose either the highest offer or the fair market value as the realized value.

3. *Determination of realized value.* Disposition charges are included in determining the realized value but amounts attributable to taxes may be excluded.

4. *Offers.* In determining the highest offer for disposition, the lessor may disregard offers that an offeror has withdrawn or is unable or unwilling to perform.

5. *Lessor's appraisal.* See commentary to § 213.4(l).

2(o) Security interest and security.

1. *Disclosable interests.* For purposes of disclosure, a security interest is an interest taken by the lessor to secure performance of the lessee's obligation. For example, if a bank that is not a lessor makes a loan to a leasing company and takes assignments of consumer leases generated by that company to secure the loan, the bank's security interest in the lessor's receivables is not a security interest for purposes of this regulation.

2. *General coverage.* An interest the lessor may have in leased property must be disclosed only if it is considered a security interest under state or other applicable law. The term includes, but is not limited to, security interests under the Uniform Commercial Code; real property mortgages, deeds of trust and other consensual or confessed liens whether or not recorded; mechanic's, materialman's, artisan's, and other similar liens; vendor's liens in both real and personal property; liens on property arising by operation of law; and any interest in a lease when used to secure payment or performance of an obligation.

3. *Insurance exception.* The lessor's right to insurance proceeds or unearned insurance premiums is not a security interest for purposes of this regulation.

Section 213.3—General Disclosure Requirements

3(a) General requirements.

1. *Basis of disclosures.* Disclosures must reflect the terms of the legal obligation between the parties. For example:

i. In a three-year lease with no penalty for termination after a one-year minimum term, disclosures should be based on the full three-year term of the lease. The one-year minimum term is only relevant to the early termination provisions of §§ 213.4(g)(1), (k) and (l).

2. *Clear and conspicuous standard.* The clear and conspicuous standard requires that disclosures be reasonably understandable. For example, the disclosures must be presented in a way that does not obscure the relationship of the terms to each other. Appendix A of this part contains model forms that meet this standard. In addition, although no minimum typesize is required, the disclosures must be legible, whether typewritten, handwritten, or printed by computer.

3. *Multipurpose disclosure forms.* A lessor may use a multipurpose disclosure form that enables the lessor to designate the specific disclosures applicable to a given transaction, consistent with the requirement that disclosures be clearly and conspicuously provided.

4. *Number of transactions.* Lessors have flexibility in handling lease transactions that may be viewed as multiple transactions. For example:

i. When a lessor leases two items to the same lessee on the same day, the lessor may disclose the leases as either one or two lease transactions.

ii. When a lessor sells insurance or other incidental services in connection with a lease, the lessor may disclose in one of two ways: a single lease transaction or a lease and a credit sale transaction.

iii. When a lessor includes an outstanding lease or loan balance in a lease transaction, the lessor may disclose the prior loan or lease balance as part of a single lease transaction or may disclose it as a separate credit transaction.

3(a)(1) Form of disclosures.

1. *Cross-references.* In making disclosures, lessors may include in the nonsegregated disclosures a cross-reference to items contained among the segregated disclosures rather than repeat the items.

2. *Identification of parties.* While disclosures must be made clearly and conspicuously, lessors are not required to use the word "lessor" and "lessee" to identify the parties to the lease transaction.

3. *Lessor's address.* The lessor need only be identified by name; an address may be provided but is not required.

4. *Multiple lessors and lessees.* In transactions involving multiple lessors and multiple lessees, a single lessor may make all the disclosures to a single lessee as long as the disclosure statement identifies all the lessors and lessees.

5. *Lessee's signature.* The regulation does not require that the lessee sign the disclosure statement, whether disclosures are separately provided or are part of the lease contract. Nevertheless, to ensure that disclosures are given before a lessee becomes obligated on the lease transaction, the lessor may ask the lessee to sign the disclosure statement or an acknowledgement of receipt, may place disclosures that are included in the lease documents above the lessee's signature, or may include instructions alerting a lessee to read the disclosures prior to signing the lease.

3(a)(2) Segregation of certain disclosures.

1. *Location.* The segregated disclosures referred to in § 213.3(a)(2) may be provided on a separate document and the other required disclosures may be provided in the lease contract, so long as all disclosures are given at the same time.

2. *Additional information among segregated disclosures.* The disclosures required to be segregated may contain only the information required or permitted to be included among the segregated disclosures (see comments to § 213.4 for guidance on additional information in the segregated disclosures).

3. *Substantially similar.* See commentary to appendix A of this part.

3(b) Additional information; nonsegregated disclosures.

1. *State law disclosures.* A lessor may include among the nonsegregated disclosures any state law disclosures that are not inconsistent with the act and regulation under § 213.9, as long as they are not used or placed to mislead or confuse or detract from any disclosure required by the regulation in accordance with the standard set forth in § 213.3(b) for additional information.

3(c) Multiple lessors or lessees.

1. *Multiple lessors.* If a single lessor provides disclosures to a lessee on behalf of several lessors, all disclosures for the transaction must be given, even if the lessor making the disclosures would not otherwise have been obligated to make a particular disclosure.

3(d) Use of estimates.

3(d)(1) Standard.

1. *Time of estimated disclosure.* The lessor may use estimates to make disclosures if necessary information is unknown or unavailable at the time the disclosures are made. For example:

i. Section 213.4(n) requires the lessor to disclose the total amount payable by the lessee during the lease term for official and license fees, registration, certificate of title fees, or taxes. If these amounts are subject to increases or decreases over the course of the lease, the lessor may estimate the disclosures based on the rates or charges in effect at the time of the disclosure.

2. *Basis of estimates.* Estimates must be made on the basis of the best information reasonably available at the time disclosures are made. The "reasonably available" standard requires that the lessor, acting in good faith, exercise due diligence in obtaining information. The lessor may rely on the representations of other parties in obtaining information. For example, the lessor might look to the consumer to determine the purpose for which leased property will be used, to insurance companies for the cost of insurance, or to an automobile manufacturer or dealer for the date of delivery.

3. *Residual value of leased property at termination.* When the lessee's liability at the end of the lease term is based on the residual value of the leased property as determined at consummation, the estimate of the residual value must be reasonable and based on the best information reasonably available to the lessor (see § 213.4(m)). A lessor may use a generally accepted trade publication listing estimated current or future market prices for the leased property or may rely on other information, its experience, or reasonable belief if those sources provide the better information. For example:

i. An automobile lessor offering a three-year open-end lease assigns a wholesale value to the vehicle at the end of the lease term. The lessor may disclose as an estimate a wholesale value derived from a generally accepted trade publication listing current wholesale values, if the trade publication is the best information available.

ii. Same facts as above, except that the lessor discloses an estimated value derived by adjusting the residual value quoted in the trade publication because, in its experience, the trade publication values either understate or overstate the prices actually received in local used-vehicle markets. The lessor may adjust estimated values quoted in trade publications based on the lessor's experience or reasonable belief that the values will be understated or overstated.

4. *Retail or wholesale value.* The lessor may choose either a retail or a wholesale value in estimating the value of leased property at termination, provided the choice is consistent with the lessor's general practice or intention when determining the value of the property at the end of the lease term. The lessor should indicate whether the value disclosed is a retail or wholesale value.

5. *Labelling estimates.* Generally, only the disclosure for which the exact information is unknown is labelled as an estimate. Nevertheless, when several disclosures are affected because of the unknown information, the lessor has the option of labelling as an estimate every affected disclosure or only the disclosure primarily affected.

3(e) Effect of subsequent occurrence.

1. *Subsequent occurrences.* Examples of subsequent occurrences include:

i. An agreement between the lessee and lessor to change from a monthly to a weekly payment schedule.

ii. An increase in official fees or taxes.

iii. An increase in insurance premiums or coverage caused by a change in the law.

iv. Late delivery of an automobile caused by a strike.

2. *Redisclosure.* When a disclosure becomes inaccurate because of a subsequent occurrence, the lessor need not make new disclosures unless new disclosures are required under § 213.5.

3. *Lessee's failure to perform.* The lessor does not violate the regulation if a previously given disclosure becomes inaccurate when a lessee fails to perform obligations under the contract and a lessor takes actions that are necessary and proper in such circumstances to protect its interest. For example, the addition of insurance or a security interest by the lessor because the lessee has not performed obligations contracted for in the lease is not a violation of the regulation.

Section 213.4—Content of Disclosures

4(a) Description of property.

1. *Placement of description.* Although the description of leased property may not be included among the segregated disclosures, a

lessor may choose to place the description directly above the segregated disclosures.

4(b) Amount due at lease signing.

1. *Consummation.* When a contractual relationship is created between the lessor and the lessee is a matter to be determined under state or other applicable law.

2. *Fees payable upon delivery.* This paragraph does not apply to fees paid at delivery, when delivery occurs after consummation. For example, if the lessee agrees to pay registration fees, sales taxes, and a delivery charge on the date the automobile is delivered sometime after consummation, none of these charges is an initial payment under § 213.4(b). The registration fees and sales taxes are disclosed under § 213.4(n), and the delivery charge is disclosed as an "other charge" under § 213.4(d).

3. *Capitalized cost reduction.* A capitalized cost reduction is a payment in the nature of a downpayment that reduces the amount of the leased property to be capitalized over the term of the lease. This amount does not include any amounts included in a periodic payment paid at lease signing.

4. *"Negative" equity trade-in allowance.* If an amount owed on a prior lease or loan exceeds an agreed upon trade-in value, the difference is not reflected as a negative trade-in allowance under § 213.4(b). The lessor may disclose the trade-in allowance as zero, not applicable, or leave a blank line.

5. *Rebates.* Only rebates applied toward an amount due at lease signing are required to be disclosed under § 213.4(b).

6. *Balance sheet approach.* In motor vehicle leases, the total for the column labeled "total amount due at lease signing" must equal the total for the column labeled "how the amount due at lease signing will be paid."

4(c) Payment schedule and total amount of periodic payments.

1. *Periodic payments.* The phrase "number, amount, and due dates or periods of payments" requires the disclosure of all payments made periodically, including taxes, maintenance and insurance charges. In addition, the lessor must disclose the total of the periodic payments.

4(d) Other charges.

1. *Coverage.* Section 213.4(d) requires the disclosure of charges that are anticipated by the parties as incident to the normal operation of the lease agreement. If a lessor is unsure whether a particular fee is an "other charge," the lessor may disclose the fee as such without violating § 213.4(d) or the segregation rule under § 213.3(a)(2).

2. *Excluded charges.* This section does not require disclosure of charges that are imposed when the lessee terminates early, fails to abide by, or modifies the terms of the existing lease agreement, such as charges for:

i. Late payment.
ii. Default.
iii. Early termination.
iv. Deferral of payments.
v. Extension of the lease.

3. *Third-party fees and charges.* Third-party fees or charges collected by the lessor on behalf of third parties, such as taxes, are not disclosed under § 213.4(d).

4. *Relationship to other provisions.* The other charges mentioned in this paragraph are charges that are not required to be disclosed under another provision of § 213.4. To illustrate:

i. A delivery charge that is paid after consummation is disclosed as an "other charge." A delivery charge that is paid at consummation, however, is disclosed as part of the amount due at lease signing under § 213.4(b), not as an "other charge."

ii. Occasionally, the price of a mechanical breakdown protection (MBP) contract is disclosed as an "other charge." More often, the price of MBP is reflected in the periodic payment disclosure under § 213.4(c), in which case it is not disclosed as an "other charge." In states where MBP is regarded as insurance, however, the cost should be disclosed in accordance with § 213.4(o), not as an "other charge."

5. *Lessee's liabilities at the end of the lease term.* Liabilities that the lease imposes upon the lessee at the end of the scheduled lease term and that must be disclosed under this section include disposition and "pick-up" charges.

6. *Optional "disposition" charges.* Disposition charges (and similar charges) that are anticipated by the parties as an incident to the normal operation of the lease agreement must be disclosed under § 213.4(d). If under a lease agreement, a lessee may return leased property to various locations, and the lessor charges a disposition fee depending upon the location chosen, under § 213.4(d), the lessor must disclose the highest amount charged. In such circumstances, the lessor may also include a brief explanation of the fee structure in the segregated disclosure. For example, if no fee or a lower fee is imposed for returning a leased vehicle to the originating dealer as opposed to another location, that fact may be disclosed. By contrast, if the terms of the lease treat the leased property returned outside the lessor's service area as a default, that fee is not disclosed as an "other charge," although it may be required to be disclosed under § 213.4(q).

4(e) Total of payments.

1. *Open-end lease.* An additional statement is required under § 213.4(e) for open-end leases because, with some limitations, a lessee is liable for the difference between the residual and realized values of the leased property.

4(f) Payment calculation.

1. *Motor-vehicle lease.* Whether leased property is a motor vehicle is determined by state or other applicable law.

4(f)(1) Gross capitalized cost.

1. *Agreed upon value of the vehicle.* The agreed upon value of a motor vehicle is the amount for the vehicle agreed upon by the lessor and lessee for purposes of the lease. This includes the amount of capitalized items such as charges for vehicle accessories and options, and delivery or destination charges. The lessor may also include taxes and fees for title, license, and registration. Charges for service or maintenance contracts, insurance products, guaranteed automobile protection, or an outstanding balance on a prior lease or loan are not included in the agreed upon value.

2. *Itemization of the gross capitalized cost.* The lessor may choose to provide the itemization of the gross capitalized cost as a matter of course or only on request. In either case, the itemization must be provided at the same time as the other disclosures required by § 213.4. The itemization may not be included among the segregated disclosures.

4(f)(2) Capitalized cost reduction.

1. *Amounts not included.* The capitalized cost reduction does not include periodic payments paid at lease signing.

4(f)(8) Lease term.

1. *Definition.* Under § 213.4(f)(8) the "lease term" refers to the number of periodic payments.

4(g) Early termination.

4(g)(1) Conditions and disclosure of charges.

1. *Reasonableness of charges.* See the commentary to § 213.4(q).

2. *Description of the method.* A full description of the method of determining an early termination charge is required by the regulation. Lessors should attempt to provide consumers with clear and understandable descriptions of their early termination charges. Descriptions that are full, accurate, and not intended to be misleading will comply with the regulation, even if complex. In providing a full description of an early termination method, a lessor may use the name of a generally accepted method of computing the unamortized cost portion (also known as the "adjusted lease balance") of its early termination charges. For example, a lessor may state that the "constant yield" method will be utilized in obtaining the adjusted lease balance, but must specify how that figure, and any other term or figure, is used in computing the total early termination charge imposed upon the consumer. Additionally, if a lessor refers to a named method in this manner, the lessor must provide a written explanation of that method if requested by the consumer. The lessor has the option of providing the explanation as a matter of course in the lease documents or on a separate document.

3. *Default.* When default is also a condition for early termination of a lease, default charges must be disclosed under § 213.4(g)(1). See the commentary to § 213.4(q).

4. *Lessee's liability at early termination.* When the lessee is liable for the difference between the unamortized cost and the realized value at early termination, the amount or the method of determining the amount of the difference must be disclosed under § 213.4(g)(1).

4(h) Maintenance responsibilities.

1. *Standards for wear and use.* No disclosure is required if a lessor does not impose standards for wear and use (such as excess mileage).

2. *Amount or method of determining excess mileage charges.* In a motor vehicle lease, a description of the method for calculating excess mileage charges may not be disclosed if a specific amount for excess mileage has been established.

4(i) Purchase option.

1. *Mandatory disclosure of no purchase option.* Generally the lessor need only make the specific required disclosures that apply to a transaction. In the case of the purchase option disclosure, however, a lessor must disclose affirmatively that the lessee has no option to purchase the leased property when the purchase option is inapplicable.

2. *Existence of purchase option.* Whether a purchase option exists is determined by state or other applicable law. The lessee's right to submit a bid to purchase property at termination of the lease is not an option to purchase under § 213.4(i) if the lessor is not required to accept the lessee's bid and the lessee does not receive preferential treatment.

3. *Purchase-option fee.* A purchase-option fee must be disclosed under § 213.4(i), not § 213.4(d). The fee may be separately itemized or disclosed as part of the purchase-option price.

4. *Official fees and taxes.* The existence of official fees such as those for taxes, licenses, and registration charged in connection with the exercise of a purchase option may be disclosed under § 213.4(i) in several ways. The fees may be disclosed as part of the purchase-option price (with or without a reference to their inclusion in that price) or may be separately disclosed and itemized by category. Alternatively, a lessor may provide a statement such as fees for tags, taxes, and registration are not included in the purchase price.

5. *Purchase-option price.* Lessors must disclose the purchase-option price as a sum certain or a sum certain to be determined at a future date by reference to an independent source. The reference should provide sufficient information so that the lessee will be able to determine the actual price when the option becomes available. Statements of a purchase price as the "negotiated price" or the "fair market value" do not comply with the requirements of § 213.4(i).

4(j) Statement referencing nonsegregated disclosures.

1. *Content.* A lessor may delete inapplicable items from the disclosure. For example, if a lease contract does not include a security interest, that reference may be deleted.

4(l) Right of appraisal.

1. *Disclosure inapplicable.* When the lessee is liable at the end of the lease term or at early termination for unreasonable wear or use, but not for the residual value of the leased property, the lessor need not disclose the lessee's right to an independent appraisal. For example:

i. The automobile lessor may reasonably expect a lessee to return an undented car with four good tires at the end of the lease term. Even though it holds the lessee liable for the difference between a dented car with bald tires and the value of a car in reasonably good repair, the lessor is not required to disclose the lessee's appraisal right.

2. *Lessor's appraisal.* The lessor may obtain an appraisal of the leased property to determine its realized value. Such an appraisal, however, is not the one addressed in section 183(c) of the act, and the lessor still must disclose the lessee's independent right to an appraisal under § 213.4(l). In addition, a lessor must indicate whether the wholesale or retail appraisal value will be used.

3. *Time restriction on appraisal.* The regulation does not specify a time period in which the lessee must exercise the appraisal right. The lessor may require a lessee to obtain the appraisal within a reasonable time after termination of the lease.

4(m) Liability at end of lease term based on residual value.

1. *Open-end leases.* Section 213.4(m) applies only to open-end leases.

2. *Lessor's payment of attorney's fees.* Section 183(a) of the act requires that the lessor pay the lessee's attorney's fees in all actions brought by the lessor under § 213.4(m), whether successful or not.

4(m)(1) Rent and other charges.

1. *General.* This disclosure is intended to represent the cost of financing an open-end lease based on charges and fees that the lessor requires the lessee to pay. Examples of disclosable charges, in addition to the rent charge, include acquisition, disposition, or assignment fees. Charges imposed by a third party whose services are not required by the lessor are not included in the § 213.4(m)(1) disclosure such as official fees and voluntary insurance.

4(m)(2) Excess liability.

1. *Coverage.* The disclosure limiting the lessee's liability for the value of the leased property does not apply at early termination.

2. *Leases with a minimum term.* If a lease has an alternative minimum term, the disclosures governing the liability limitation are not applicable for the minimum term. See the commentary to § 213.3(a).

3. *Charges not subject to rebuttable presumption.* The limitation on liability applies only to liability that is based on the residual value of the property at the end of the lease term. The regulation does not preclude a lessor from recovering other charges from the lessee at the end of the lease term. Examples of such charges include:

i. Disposition charges.
ii. Excess mileage charges.
iii. Late payment and default charges.
iv. Amounts by which the unamortized cost exceeds the residual value that have accrued in simple interest accounting leases because the lessee has not made timely payments.

4(n) Fees and taxes.

1. *Taxes.* If a tax payable by the lessor is passed on to the consumer and is reflected in the lease documentation or a sticker or tag affixed to the leased property, the tax must be disclosed under § 213.4(n). However, a tax payable by the lessor and absorbed as a cost of doing business need not be disclosed.

4(o) Insurance.

1. *Coverage.* A lessor must disclose information on the type and amount of insurance coverage, whether voluntary or required, as well as the cost if the insurance is obtained through the lessor.

2. *Lessor's insurance.* Insurance purchased by the lessor primarily for its own benefit, and absorbed as a business expense and not separately charged to the lessee, need not be disclosed under § 213.4(o) even if it provides an incidental benefit to the lessee.

3. *Mechanical breakdown protection.* Whether mechanical breakdown protection (MBP) purchased in conjunction with a lease should be treated as insurance is determined by state or other applicable law. In states that do not treat MBP as insurance, the lessor need not make § 213.4(o) disclosures. In such cases the lessor may, however, disclose the § 213.4(o) information in accordance with the additional information provision in § 213.3(b). For MBP insurance contracts not capped by a dollar amount, lessors may describe coverage by referring to a limitation by mileage or time period, for example, the mechanical breakdown contract insures parts of the automobile for up to 100,000 miles.

4(p) Warranties or guarantees.

1. *Brief identification.* The statement identifying warranties may be brief and need not describe or list all warranties applicable to specific parts such as for air conditioning, radio, or tires in an automobile. For example, manufacturer's warranties may be identified simply by a reference to the standard manufacturer's warranty. If a lessor provides a comprehensive list of warranties to the lessee, the lessor must indicate which § 213.4(p) warranties apply or, alternatively, which warranties do not apply.

2. *Warranty disclaimers.* Although a disclaimer of warranties is not required by the regulation, the lessor may give a disclaimer as additional information in accordance with § 213.3(b).

3. *State law.* Whether an express warranty or guaranty exists is determined by state or other law.

4(q) Penalties and other charges for delinquency.

1. *Collection costs.* The automatic imposition of collection costs or attorney fees upon default must be disclosed under § 213.4(q). Collection costs or attorney fees that are not imposed automatically, but are contingent upon expenditures in conjunction with a collection proceeding or upon the employment of an attorney to effect collection, need not be disclosed.

2. *Charges for early termination.* When default is a condition for early termination of a lease, default charges must also be disclosed under § 213.4(g)(1). The § 213.4(q) and (g)(1) disclosures may be combined. Examples of combined disclosures are provided in the model lease disclosure forms in appendix A of this part.

3. *Simple-interest leases.* In a simple-interest accounting lease, the additional rent charge that accrues on the lease balance when a periodic payment is made after the due date does not constitute a penalty or other charge for late payment. Similarly, continued accrual of the rent charge after termination of the lease because the lessee fails to return the leased property does not constitute a default charge. In either case, if the additional charge accrues at a rate higher than the normal rent charge, the lessor must disclose the amount of or the method of determining the additional charge under § 213.4(q).

4. *Extension charges.* Extension charges that exceed the rent charge in a simple-interest accounting lease or that are added separately are disclosed under § 213.4(q).

5. *Reasonableness of charges.* Pursuant to section 183(b) of the act, penalties or other charges for delinquency, default, or early termination may be specified in the lease but only in an amount that is reasonable in light of the anticipated or actual harm caused by the delinquency, default, or early termination, the difficulties of proof of loss,

and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy.

4(r) Security interest.

1. *Disclosable security interests.* See § 213.2(o) and accompanying commentary to determine what security interests must be disclosed.

4(s) Limitations on rate information.

1. *Segregated disclosures.* A lease rate may not be included among the segregated disclosures referenced in § 213.3(a)(2).

Section 213.5—Renegotiations, Extensions and Assumptions

1. *Coverage.* Section 213.5 applies only to existing leases that are covered by the regulation. It therefore does not apply to the renegotiation or extension of leases with an initial term of four months or less, because, such leases are not covered by the definition of consumer lease in § 213.2(e). Whether and when a lease is satisfied and replaced by a new lease is determined by state or other applicable law.

5(b) Extensions.

1. *Time of extension disclosures.* If a consumer lease is extended for a specified term greater than six months, new disclosures are required at the time the extension is agreed upon. If the lease is extended on a month-to-month basis and exceeds six months, new disclosures are required at the commencement of the seventh month and at the commencement of each seventh month thereafter. If a consumer lease is extended for several terms, one of which will exceed six months beyond the originally scheduled termination date of the lease, new disclosures are required at the commencement of the term that will exceed six months beyond the originally scheduled termination date.

2. *Content of disclosures for month-to-month extensions.* The disclosures for a lease extended on a month-to-month basis for more than six months should reflect the month-to-month nature of the transaction.

Section 213.7—Advertising

7(a) General rule.

1. *Persons covered.* All "persons" must comply with the advertising provisions in this section, not just those that meet the definition of a lessor in § 213.2(h). Thus, automobile dealers, merchants, and others who are not themselves lessors must comply with the advertising provisions of the regulation if they advertise consumer lease transactions. Pursuant to section 184(b) of the act, however, owners and personnel of the media in which an advertisement appears or through which it is disseminated are not subject to civil liability for violations under section 185(b) of the act.

2. *"Usually and customarily."* Section 213.7(a) does not prohibit the advertising of a single item or the promotion of a new leasing program, but prohibits the advertising of terms that are not and will not be available. Thus, an advertisement may state terms that will be offered for only a limited period or terms that will become available at a future date.

7(b) Clear and conspicuous standard.

1. *Standard.* The disclosures in an advertisement must be reasonably understandable. For example, very fine print in a television advertisement or detailed and very rapidly stated information in a radio advertisement does not meet the clear and conspicuous standard if consumers cannot see and read or comprehend the information required to be disclosed.

7(b)(1) Amount due at lease signing.

1. *Itemization not required.* The regulation requires only a total of amounts due at lease signing or delivery, not an itemization of its component parts. Such an itemization is provided in any transaction-specific disclosures provided under § 213.4.

2. *Prominence rule.* Except for a periodic payment, oral or written references to components of the total due at lease signing or delivery (for example, a reference to a capitalized cost reduction, where permitted) may not be more prominent than the disclosure of the total amount due at lease signing or delivery.

7(b)(2) Advertisement of a lease rate.

1. *Location of statement.* The notice required to accompany a percentage rate stated in an advertisement must be located in close proximity to the rate without any other intervening language or symbols. For example, a lessor may not state a rate with an asterisk and make the disclosure in a different location in the advertisement. In addition, with the exception of the notice required by § 213.4(s), the rate cannot be more prominent than any § 213.4 disclosure stated in the advertisement.

7(c) Catalogs and multi-page advertisements.

1. *General rule.* The multiple-page advertisements referred to in § 213.7(c) are advertisements consisting of a series of numbered pages—for example, a supplement to a newspaper. A mailing comprising several separate flyers or pieces of promotional material in a single envelope is not a single multiple-page advertisement.

2. *Cross-references.* A multiple-page advertisement is a single advertisement (requiring only one set of lease disclosures) if it contains a table, chart, or schedule clearly stating sufficient information for the reader to determine the disclosures required under § 213.7(d)(2) (i) through (vi). If one of the triggering terms listed in § 213.7(d)(1) appears in a catalog or other multiple-page advertisement, the page on which the triggering term is used must clearly refer to the specific page where the table, chart, or schedule begins.

7(d)(1) Triggering terms.

1. *Triggering terms.* When any triggering term appears in a lease advertisement, the additional terms enumerated in § 213.7(d)(2) (i) through (vi) must also appear. An example of one or more typical leases with a statement of all the terms applicable to each may be used. The additional terms must be disclosed even if the triggering term is not stated explicitly, but is readily determinable from the advertisement.

7(d)(2) Additional terms.

1. *Third-party fees that vary by state.* In disclosing the total amount due at lease signing a lessor may:

i. Exclude third-party fees, such as taxes, license, and registration fees and disclose that fact; or

ii. Provide a total that includes third-party fees based on a particular state as long as that fact and that fees may vary by state are disclosed.

7(e) Alternative disclosures—merchandise tags.

1. *Multiple item leases.* Multiple item leases that utilize merchandise tags requiring additional disclosures may use the alternate disclosure rule.

7(f) Alternative disclosures—television or radio advertisements.

7(f)(1) Toll-free number or print advertisement.

1. *Publication in general circulation.* A referral to a written advertisement appearing in a newspaper circulated nationally, for example, USA Today or the Wall Street Journal, may satisfy the general circulation requirement in § 213.7(f)(1)(ii).

2. *Toll-free number, local or collect calls.* In complying with the disclosure requirements of § 213.7(f)(1)(i), a lessor must provide a toll-free number for nonlocal calls made from an area code other than the one used in the lessor's dialing area. Alternatively, a lessor may provide any telephone number that allows a consumer to call for information and reverse the phone charges.

3. *Multi-purpose number.* When calling an advertised toll-free number, if a consumer obtains a recording that provides several dialing options—such as providing directions to the lessor's place of business—the option allowing the consumer to request lease disclosures should be provided early in the telephone message to ensure that the option to request disclosures is not obscured by other information.

4. *Statement accompanying toll free number.* Language must accompany a telephone number indicating that disclosures are available by calling the toll-free number, such as "call 1–800–000–000 for details about costs and terms."

Section 213. 8—Record Retention

1. *Manner of retaining evidence.* A lessor must retain evidence of having performed required actions and of having made required disclosures. Such records may be retained on microfilm, microfiche, or computer, or by any other method designed to reproduce records accurately, as well as paper form. The lessor need retain only enough information to reconstruct the required disclosures or other records.

Appendix A—Model Forms.

1. *Permissible changes.* Although use of the model forms is not required, lessors using them properly will be deemed to be in compliance with the regulation. Generally, lessors may make certain changes in the format or content of the forms and may delete any disclosures that are inapplicable to a transaction without losing the act's protection from liability. For example, the model form based on monthly periodic payments may be modified for single-payment lease transactions or other periodic payments. The content, format, and headings for the segregated disclosures must be substantially similar to those contained in the model forms; therefore, any changes should be minimal. The changes to the model forms should not be so extensive as to affect the substance and the clarity of the disclosures.

2. *Examples of acceptable changes.*

i. Using the first person, instead of the second person, in referring to the lessee.

ii. Using "lessee," "lessor," or names instead of pronouns.

iii. Rearranging the sequence of the nonsegregated disclosures.

iv. Incorporating certain state "plain English" requirements.

v. Deleting inapplicable disclosures by blocking out, filling in "N/A" (not applicable) or "0," crossing out, leaving blanks, checking a box for applicable items, or circling applicable items. (This should permit use of multi-purpose standard forms).

vi. Adding language or symbols to indicate estimates.

vii. Adding numeric or alphabetic designations.

viii. Rearranging the disclosures into vertical columns, except for § 213.4(b) through (e) disclosures.

3. *Model closed-end or net vehicle lease disclosure.* Model A–2 is designed for a closed-end or net vehicle lease. Under the "Early Termination and Default" provision a reference to the lessee's right to an independent appraisal of the leased vehicle under § 213.4(l) is included for those closed-end leases in which the lessee's liability at early termination is based on the vehicle's estimated value.

4. *Model furniture lease disclosures.* Model A–3 is a closed-end lease disclosure statement designed for a typical furniture lease. It does not include a disclosure of the appraisal right at early termination required under § 213.4(l) because few closed-end furniture leases base the lessee's liability at early termination on the estimated value of the leased property. Of course, the disclosure should be added, if it is applicable.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, February 12, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–3955 Filed 2–13–97; 2:20 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–CE–40–AD]

RIN 2120–AA64

Airworthiness Directives; Grob Luft- und Raumfahrt, GmbH; Models G 109 and G 109B Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Grob Luft-und Raumfahrt (Grob) Models G 109 and G 109B sailplanes. The proposed action would require inspecting the landing gear retaining bars and landing gear legs for proper radius, thickness, and cracking, and installing additional supportive parts or replacing the retaining bars and landing legs with parts of improved design. Reports of landing gear failure on certain G 109 and G 109B sailplanes prompted the proposed action. The actions specified by the proposed AD are intended to prevent failure of the landing gear legs and possible loss of the sailplane.

DATES: Comments must be received on or before April 21, 1997.

ADDRESSES: Submit comments on the proposal in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96-CE–40-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Grob Luft-und Raumfahrt, GmbH., D–8939, Mattsies-am Flugplatz, Germany. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. J. Mike Kiesov, Project Officer, Sailplanes, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 96-CE–40-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96-CE–40-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on certain Grob G 109 and G 109B sailplanes. The LBA reports that the landing gear on three of these sailplanes failed during landing. An investigation of these incidents revealed landing gear legs with fatigue cracks and weak retaining bars from an error in the manufacturing process. This condition, if not detected and corrected, could result in landing gear failure and possible loss of the sailplane.

Related Service Information

Grob has issued Service Bulletin TM 817–39, dated January 4, 1994, which specifies procedures for inspecting and modifying or replacing the landing gear retaining bars and the landing gear legs. The landing gear retaining bar should have a minimum radius of 3.0 millimeters (mm) on the chamfer. If the

radius is less than 3.0 mm, the retaining bar would be replaced with an improved retaining bar (part number (P/N) 109–5000.02) and a plastic reinforcing strip (P/N 109–5000.07). If the radius is 3.0 mm or greater, the plastic reinforcing strip would be glued onto the retaining bars.

The landing gear legs that are not marked with "0" (zero) would require inspecting for cracks by the magnetic particle or x-ray method, and if there are any cracks measuring greater than 0.5 mm, the landing gear legs would be replaced with new legs. If there are cracks measuring less than 0.5 mm, the proposed action would require polishing the cracks out, unless polishing would reduce the total leg thickness to less than 13.0 mm. If the leg thickness is less than 13.0 mm, the landing gear leg would be replaced. If there are no cracks in the landing gear legs, or the landing gear leg thickness is greater than 13.0 mm, after polishing, the proposed action would require repetitively inspecting until cracks are found, or until new landing gear legs are installed. Installing the improved landing gear legs and the improved retaining bars would terminate the proposed repetitive inspection.

The LBA classified this service bulletin as mandatory and issued AD 94–004/2 Grob, dated February 3, 1994, in order to ensure the continued airworthiness of these sailplanes in Germany.

FAA's Determination

These sailplane models are manufactured in Germany and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information including the service information referenced above, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Grob G 109 and G 109B sailplanes of the same type design registered in the United States, the proposed AD would require:

(1) Inspecting the retaining bars chamfer for the correct radius, and replacing the bars or reinforcing the bars, as applicable.

(2) Inspecting the landing gear legs that are not marked with "0" (zero) on the front of the legs for fatigue cracks, and if cracks are greater than or less than the tolerance measurement, either replace or repetitively inspect the landing gear legs, as applicable.

(3) Measure the total thickness of the landing gear legs. If they measure less than, greater than or equal to 13.0 mm, continue to inspect or replace legs with new improved legs, as applicable.

(4) Replacing the landing gear legs with parts of improved design would terminate the proposed repetitive inspections.

Cost Impact

The FAA estimates that 63 sailplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 2 workhours per leg per sailplane to accomplish the inspection and modification on the proposed retaining bar action, approximately 9 workhours per leg per sailplane to accomplish the removal, inspection and re-installation, and approximately 6 workhours per leg to accomplish the replacement. The average labor rate is approximately $60 an hour. Parts cost approximately $90 per sailplane for retaining bars and $1800 per sailplane for landing gear legs. The plastic strip for the retaining bar is provided by the manufacturer at no charge. Breaking these costs down by individual action, the estimated total cost for each action would be as follows:

—The proposed inspection and modification of the retaining bars would be $210 ($120/labor + $90/parts) per sailplane or $13,230 for the U.S. fleet.

—The proposed inspection and polishing of the landing gear legs would be $540 per sailplane or $34,020 for the U.S. fleet.

—The proposed replacement of the landing gear legs would be $2,160 ($360/labor + $1,800/parts) per sailplane or $136,080 for the U.S. fleet.

—The cost for the proposed repetitive inspections on the landing gear legs is not included in the above figures.

The manufacturer has informed the FAA that they have dispatched equipment to outfit approximately 30 sailplanes with new retaining bars, reducing the estimated cost impact of the retaining bars from $13,230 to $6,930. The manufacturer has also distributed approximately 3 sets of new landing gear legs, reducing the estimated total cost impact of the landing gear leg replacement from $136,080 to $129,600.

Proposed Compliance Time

The compliance time of the proposed AD is presented in calendar time instead of hours time-in-service (TIS). The FAA has determined that a calendar time compliance is the most desirable method because the unsafe condition of the landing gear legs described by this AD is caused by corrosion. Corrosion initiates as a result of sailplane operation, but can continue to develop regardless of whether the sailplane is in service or in storage. Therefore, to ensure that the above-referenced condition is detected and corrected on all sailplanes within a reasonable period of time without inadvertently grounding any sailplanes, a compliance schedule based upon calendar time instead of hours TIS is required.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Grob Luft-Und Raumfahrt, GMBH. (GROB): Docket No. 96–CE–40–AD.

Applicability: Models G 109 and G 109B sailplanes, all serial numbers, certificated in any category.

Note 1: This AD applies to each sailplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent failure of the landing gear legs and possible loss of the sailplane, accomplish the following:

(a) Within the next 120 calendar days after the effective date of this AD, inspect the retaining bars chamfer on both landing gear legs for a minimum of 3.0 millimeters (mm) radius in accordance with the "Actions" section, paragraph A3 in Grob Service Bulletin (SB) 817–39, dated January 4, 1994.

(1) If the chamfer radius is 3.0 mm or greater, prior to further flight, glue a reinforcing plastic strip (part number (P/N) 109–5000.07) to the retaining bar in accordance with the "Actions" section, paragraph A4 in Grob SB 817–39, dated January 4, 1994.

(2) If the chamfer radius is less than 3.0 mm, prior to further flight, replace with a new improved retaining bar (P/N 109–5000.02), and install the plastic strip (P/N 109–5000.07) in accordance with the "Actions" section, paragraph A5 in Grob SB 817–39, dated January 1994.

(b) For sailplanes not equipped with landing gear legs, P/N 109B–5001.01/1, within the next 2,000 sailplane landings or 1,000 hours TIS after the effective date, whichever occurs first, inspect the landing gear legs for cracks (using the magnetic particle or X-ray analysis method) in accordance with the "Actions" section, paragraph B9 in Grob SB 817–39, dated January 4, 1994.

Note 2: Landing gear legs (P/N 109B–5001.01/1) have a "0" stamped on the front side of the leg for easy identification.

(1) If there are cracks less than or equal to 0.5 mm, prior to further flight, polish the existing legs or replace the legs with P/N 109B–5001.01/1 in accordance with the "Actions" section, paragraph B10 in Grob SB 817–39, dated January 4, 1994.

(2) If the polished landing gear legs measures less than 13.0 mm, prior to further flight, replace the landing gear legs with P/N 1090B–5001.01/1 in accordance with the "Actions" section, paragraph B10 in Grob SB 817–39, dated January 4, 1994.

(3) If no cracks are found, or the cracks are less than 0.5 mm, and the thickness of the landing gear legs is equal to or greater than 13.0 mm, repetitively inspect the landing gear legs for cracks every 1,000 landings or 500 hours TIS, whichever occurs first, in accordance with the "Actions" section, paragraph B12 in Grob SB 817–39, dated January 4, 1994.

(4) If during any of the repetitive inspections, the legs have previously been polished and new cracks are found, prior to further flight, replace the legs with P/N 109B–5001.01/1 in accordance with the "Actions" section, paragraph B12 in Grob SB 817–39, dated January 4, 1994.

(c) Replacement of the landing gear legs with P/N 109B–5000.01/1 terminates the repetitive inspections required by this AD and Grob SB 817–39, dated January 4, 1994.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the sailplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(f) All persons affected by this directive may obtain copies of the documents referred to herein upon request to Grob Luft-und Raumfahrt, GmbH., D–8939, Mattsies-am Flugplatz, Germany or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on February 10, 1997.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–3961 Filed 2–18–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–CE–69–AD]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. (Formerly Piper Aircraft Corporation) PA–31, PA–31P, PA–31T, and PA–42 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: Recently, the Federal Aviation Administration (FAA) issued a notice of proposed rulemaking (NPRM) that applied to The New Piper Aircraft, Inc. (Piper) PA–31, PA–31P, and PA–31T series airplanes. The NPRM would have required incorporating a main landing gear (MLG) inboard door hinge and attachment angle assembly, part number (P/N) 47529–32, as terminating action for the repetitive inspection requirement of Airworthiness Directive (AD) 80–26–05. The Federal Aviation Administration (FAA) has received a comment to the NPRM that specifies fatigue cracking of the P/N 47529–32 MLG inboard door hinge and attachment angle assembly on the affected airplanes. The Federal Aviation Administration (FAA) reviewed manufacturer's service history and service difficulty reports in the FAA database associated with the P/N 47529–32 main landing gear hinge assembly, and has determined that more information and analysis are needed to propose any AD action. The purpose of this ANPRM is to seek comments from interested persons regarding the service history of P/N 47529–32 hinge assemblies. All comments will be evaluated by the FAA and the FAA will research the situation to decide whether additional rulemaking is needed.

DATES: Comments must be received by May 16, 1997.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–69–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Christina Marsh, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7362; facsimile (404) 305–7348.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of any proposed rulemaking actions that may occur as a result of this ANPRM by submitting such written data or views as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before any proposed rulemaking is initiated.

All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this document will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 96–CE–69–AD." The postcard will be date stamped and returned to the commenter.

Availability of ANPRM

Any person may obtain a copy of this ANPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–69–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Piper Models PA–31, PA–31–325, PA–31–350, PA–31P, PA–31T1, and PA–31T airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on December 7, 1995 (60 FR 62774). The action proposed to supersede AD 80–26–05, Amendment 39–3994, with a new AD that would (1) retain the requirement of repetitively inspecting the MLG inboard door hinges and attachment angles for cracks, and replacing any cracked MLG inboard door hinge or attachment angle; and (2) require incorporating a MLG inboard door hinge and attachment angle assembly of improved design (part number 47529–32) or FAA-approved hinges and angles made of steel as terminating action for the repetitive inspection requirement. Accomplishment of the proposed inspections would be in accordance with Piper Service Bulletin (SB) No. 682, dated July 24, 1980.

Explanation of Comments Received

The comment received on the NPRM contained information that the improved hinge assemblies, part number (P/N) 47529–32, are also susceptible to fatigue cracking, and that installing this assembly should not eliminate the need for the repetitive inspections currently required by AD 80–26–05. The commenter states that its airplane fleet has experienced three failures and three incidents related to fatigue cracking of the P/N 47529–32 hinge assemblies.

The FAA conducted a review of the manufacturer's service history and service difficulty reports in the FAA database associated with the P/N 47529–32 main landing gear hinge assembly. Based on a review of this information, including the information received from the commenter, the FAA has determined that more information and analysis are needed before hinge assembly replacements are mandated through an AD as terminating action for the repetitive inspections currently required by AD 80–26–05.

FAA's Determination of the Best Action To Take

With the above information in mind, the FAA is issuing an advance notice of proposed rulemaking (ANPRM) to provide an opportunity for the general public to participate in the decision as to what course of rulemaking the FAA should take. Interested persons are encouraged to provide information that describes what they consider the best action (if any) to be taken regarding the P/N 47529–32 main landing gear hinge assembly. The FAA is especially interested in comments and viewpoints on the following:

1. What is the Model designation of your airplane, serial number, and total hours time-in-service (TIS)?
2. What P/N MLG inboard door hinge assemblies are installed in the airplane?
3. How many hours TIS are on the MLG inboard door hinge assemblies?
4. Have you ever had to replace a P/N 47529–32 MLG inboard door hinge assembly on the airplane? If so, what was the reason and approximately how many hours TIS were on each replaced assembly?

Additional Helpful Information

The following information shows the part numbers (P/N) for MLG inboard door hinge assembles that each Piper PA–31, PA–31P, PA–31T, and PA–42 series airplane was equipped with at manufacture:

Airplanes Equipped With Piper P/N 46653–00 (embossed forging number 46652)

Models PA–31, PA–31–300, and PA–31–325 airplanes, serial numbers 31–2 through 31–8012077;

Model PA–31–350 airplanes, serial numbers 31–5001 through 31–8052168;

Model PA–31P airplanes, serial numbers 31P–3 through 31P–7730012;

PA–31T airplanes, serial numbers 31T–7400002 through 31T–8020076; and

PA–31T1 airplanes, serial numbers 31T–7804001 through 31T–8004040.

Airplanes Equipped With Piper P/N 47529–32 (embossed forging number 46652–2)

Models PA–31, PA–31–300, and PA–31–325 airplanes, serial numbers 31–8012078 through 31–8312019;

Model PA–31–350 airplanes, serial numbers 31–8052169 through 31–8553002;

Model PA–31T airplanes, serial numbers 31T–8020077 through 31T–8120104;

Model PA–31T1 airplanes, serial numbers 31T–8004041 through 31T–8104073, 31T–8104101; 31T–8304001 through 31T–8304003; and 31T–1104004 through 31T–1104017;

Model PA–31T2 airplanes, serial numbers 31T–8166001 through 31T–8166076, and 31T–1166001 through 31T–1166008;

Model PA–31T3 airplanes, serial numbers 31T–8275001 through 31T–8475001, and 31T–5575001;

Model PA–31P–350 airplanes, serial numbers 31P–8414050;

Models PA–42 and PA–42–720 airplanes, serial numbers 42–7800001 through 42–8301002, and 42–5501003 through 42–5501060; and

Model PA–42–1000 airplanes, serial numbers 42–5527001 through 42–5527040.

Issued in Kansas City, Missouri, on February 11, 1997.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–3959 Filed 2–18–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–CE–47–AD]

RIN 2120–AA64

Airworthiness Directives; Air Tractor Incorporated Models AT–301, AT–302, AT–400, AT–400A, AT–401, AT–402, AT–501, and AT–502 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede AD 95–20–06, which currently requires inspecting the front spar attachment lugs and the rear spar for fatigue cracks and modifying the vertical fin if cracks are found. If no cracks are found, continue repetitively inspecting the area until cracks are found; and then incorporate the modification as a terminating action. The proposed action would retain the actions required in AD 95–20–06 for all Air Tractor models that have a 3/16-inch fin front spar fitting. Air Tractor models that are fitted with a 1/4-inch fin front spar fitting would not be required to accomplish this action. This action is prompted by two incident reports involving the failure of the front and rear spar attachment of the vertical fin. The actions specified by this AD are intended to prevent in-flight vertical fin structural failure of the front spar attachments and eventually the rear spar attachment, which, if not detected and corrected, could result in loss of directional control and loss of control of the airplane.

DATES: Comments must be received on or before April 21, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–47–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Air Tractor Incorporated, P. O. Box 485, Olney, Texas 76374. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Bob May, Aerospace Engineer, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone (817) 222–5156; facsimile (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 96–CE–47–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–47–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

It has been brought to the attention of the FAA that AD 95–20–06, which is applicable to Air Tractor Models AT–301, AT–302, AT–400, AT–400A, AT–401, AT–402, AT–501, and AT–502 airplanes, should not have included models that are fitted with 1/4-inch thick fin front spar attach fittings. The current AD requires inspecting for cracks on all of the models referenced above, regardless of whether they have 1/4-inch or 3/16-inch thick front spar attachment fitting, and if no cracks are found, repetitively inspecting at different time intervals. The time interval would depend on the thickness of the fin front spar attach fitting on the airplane. If cracks are found, the current AD requires modifying the front spar attachment. Since publication of AD 95–20–06, further investigation has revealed that the only Air Tractor models developing cracks are the models fitted with a 3/16-inch thick front spar attachment fitting. For this reason, the FAA is proposing to supersede the current AD to change the instructions of the AD.

Relevant Service Information

Air Tractor has issued a revised Service Letter (SL) No. 138, Revised August 7, 1996, which specifies procedures for inspecting, repetitively inspecting, and modifying the Air Tractor Models that have the 3/16-inch thick front spar attach fitting.

FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent in-flight vertical fin structural failure of the front spar attachments and eventually the rear spar attachment, which, if not detected and corrected, could result in loss of directional control and loss of control of the airplane.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Air Tractor Incorporated Models AT–301, AT–302, AT–400, AT–400A, AT–401, AT–402, AT–501, and AT–502 airplanes of the same type design that are fitted with 3/16-inch thick front spar attachment fittings, the proposed AD would supersede AD 95–20–06 with a new AD that would require inspecting the fin front spar attach fitting lugs of models that have 3/16-inch thick fin front spar attach fittings for cracks and if cracks are found, prior to further flight, modifying the front spar attachment lugs. If no cracks are found, the proposed AD would require repetitively inspecting the front spar attachment lugs until cracks are found. Accomplishing the modification would terminate the repetitive inspections.

Cost Impact

The FAA estimates that 24 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 16 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $10 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $970 per airplane and

$23,280 for the U.S. fleet. The FAA has no way of determining how many owners/operators of these affected airplanes have accomplished this action.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 95–20–06, Amendment 39–9384, and by adding a new AD to read as follows:

Air Tractor Incorporated: Docket No. 96–CE–47–AD; Supersedes AD 95–20–06, Amendment 39–9384.

Applicability: The following airplane models and serial numbers that have not accomplished the modification in Snow Engineering Company Report No. 138, dated July 29, 1995, which is referenced in superseded AD 95–20–06, certificated in any category:

Note 1: The modification in Snow Engineering Company Report No. 138, dated July 29, 1995 and AD 95–20–06 required the airplanes to replace 3/16-inch thick fin front spar attach fittings with 1/4-inch thick fin front spar attach fittings.

Models	Serial Nos.
AT–301 and AT–401.	301–0261 through 301–0736, and 401–0662 through 401–0736 that have been converted to turbine powerplants and equipped with the all metal rudder, part number (P/N) 30456–1.
AT–302	All aircraft equipped with the all metal rudder, P/N 30456–1.
AT–400 and AT–400A.	All aircraft equipped with the all metal rudder, P/N 30456–1.
AT–402	402–0694 and 402–0695 through 402–0736.
AT–501	501–0002 through 501–0030 that have been converted to turbine powerplants and equipped with the all metal rudder, P/N 30456–1.
AT–502	502–0002 through 502–0030.

Note 2: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required initially within the next 25 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished, and thereafter as indicated in the body of this AD.

To prevent in-flight vertical fin structural failure of the front spar attachments and eventually the rear spar attachment, which, if not detected and corrected, could result in loss of directional control and loss of control of the airplane, accomplish the following:

(a) Inspect the fin front spar attachment fittings for fatigue cracks in accordance with the INSTRUCTIONS section of the Snow Engineering Report (SER) number (No.) 138, Revised August 7, 1996.

(b) If no cracks are found during the initial inspection, repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 25 hours TIS thereafter in accordance with the INSTRUCTIONS section of the SER No. 138, Revised August 7, 1996.

(c) If cracks are found during any inspections required by this AD, prior to further flight, modify the fin front spar attachment fittings in accordance with the INSTRUCTIONS section of the SER No. 138, Revised August 7, 1996.

(d) Incorporating the modification specified in paragraph (c) of this AD is considered terminating action for the repetitive inspection requirements of this AD.

(e) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Fort Worth Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth Airplane Certification Office. Alternative methods of compliance approved in accordance with AD 95–20–06 are considered approved as alternative methods of compliance for this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth Aircraft Certification Office.

(g) All persons affected by this directive may obtain copies of the document referred to herein upon request to Air Tractor Incorporated, P. O. Box 485, Olney, Texas 76374; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(h) This amendment supersedes AD 95–20–06, Amendment 39–9384. Issued in Kansas City, Missouri, on February 10, 1997.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–3958 Filed 2–18–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–NM–144–AD]

RIN 2120–AA64

Airworthiness Directives; Construcciones Aeronauticas, S.A. (CASA) Model CN–235 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain CASA Model CN–235 series airplanes. This proposal would require disabling the brake control valve of the propeller. This proposal also would require that, prior to restoring propeller brake operation, the propeller brake control unit be replaced with a certain new propeller brake control unit. This proposal is prompted by reports of uncommanded activation of the propeller brake system on in-service airplanes during flight, due to the existing design of the brake control valve. The actions specified by the proposed AD are intended to prevent in-flight uncommanded activation of the propeller brake system, which could result in in-flight shutdown of the engine.

DATES: Comments must be received by March 31, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96-NM-144-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Greg Dunn, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2799; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–144–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–144–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Dirección General de Aviación (DGAC), which is the airworthiness authority for Spain, recently notified the FAA that an unsafe condition may exist on certain CASA Model CN–235, CN–235–100, and CN–235–200 series airplanes. The DGAC advises that it has received reports of uncommanded activation of the propeller brake system on CASA Model CN–235 series airplanes during flight. Investigation revealed that the existing design of the brake control valve of the propeller can cause such a malfunction, including failure of the low pressure warning system during ground operation. This condition, if not corrected, could result in the in-flight shutdown of an engine.

Explanation of Relevant Service Information

CASA has issued Communication COM 235–82, Revision 3, dated January 31, 1995, which describes procedures for disabling the brake control valve of the propeller.

CASA also has issued Service Bulletin SB–235–61–01, dated October 11, 1994, and Service Bulletin SB–235–61–01M, Revision 2, dated January 25, 1996 (for military airplanes). These service bulletins describe procedures for replacement of the propeller brake control unit, having part number (P/N) HP1410100–5 or HP1410100–7, with a new propeller brake control unit, having P/N HP1410100–9. This installation is to be performed prior to restoring propeller brake operation.

The DGAC classified these service bulletins as mandatory and issued Spanish airworthiness directive 01/94 R1, dated July 1995, in order to assure the continued airworthiness of these airplanes in Spain.

FAA's Conclusions

This airplane model is manufactured in Spain and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require, first, disabling the brake control valve of the propeller. Then, prior to restoring propeller brake operation, the proposed AD would require replacement of certain propeller brake control units with certain new propeller brake control units. The actions would be required to be accomplished in accordance with the service bulletins described previously.

Cost Impact

The FAA estimates that 2 CASA Model CN–235 series airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 3 work hours per airplane to accomplish the proposed disabling of the brake control valve, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this proposed action on U.S. operators is estimated to be $360, or $180 per airplane.

It would take approximately 8 work hours per airplane to accomplish the proposed replacement, at an average labor rate of $60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of this proposed action on U.S. operators is estimated to be $960, or $480 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects

on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Construcciones Aeronauticas, S.A., CASA: Docket 96–NM–144–AD.

Applicability: All Model CN–235, CN–235–100, and CN–235–200 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent in-flight uncommanded activation of the propeller brake system, which could result in in-flight shutdown of the engine, accomplish the following:

(a) Within 10 days after the effective date of this AD, disable the brake control valve of the propeller in accordance with Annex 1 of CASA Communication COM 235–82, Revision 3, dated January 31, 1995.

(b) Prior to restoring propeller brake operation, replace the propeller brake control unit having part number (P/N) HP1410100–5 or HP1410100–7, with a new propeller brake control unit having P/N HP1410100–9, in accordance with CASA Service Bulletin SB–235–61–01, dated October 11, 1994; or CASA Service Bulletin SB–235–61–01M, Revision 2 (for military airplanes), dated January 25, 1996; as applicable. Accomplishment of this replacement constitutes terminating action for the requirements of paragraph (a) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 11, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–3966 Filed 2–18–97; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–NM–155–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300, A310, and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Airbus Model A300, A310, and A300–600 series airplanes. This proposal would require performing a ram air turbine (RAT) extension test; removing and disassembling the RAT lever assembly; performing an inspection to detect corrosion of the RAT lever assembly, and replacement with a new assembly, if necessary; and cleaning all the parts of the RAT control shaft and its bearing component parts. This proposal is prompted by reports indicating that the RAT did not extend during ground testing, due to corrosion in the uplock pin/shaft and the needle bearing of the RAT. The actions specified by the proposed AD are intended to detect and correct such corrosion of the RAT, which could result in failure of the RAT to deploy and subsequent loss of emergency hydraulic power to the flight controls in the event that power is lost in both engines.

DATES: Comments must be received by March 31, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–155–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Charles Huber, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2589; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–155–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–155–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Gonorale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on all Airbus Model A300, A310, and A300–600 series airplanes. The DGAC advises that it has received reports indicating that the ram air turbine (RAT) did not extend during ground tests. Investigation revealed that the non-extension of the RAT was due to corrosion of the RAT control shaft and its bearing needles between the uplock unit and the lever connected to the control linkage. Corrosion of the RAT uplock pin/shaft and needle, if not detected and corrected in a timely manner, could result in failure of the RAT to deploy and subsequent loss of emergency hydraulic power to the flight controls in the event that power is lost in both engines.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A300–29–0108 (for Model A300 series airplanes), Service Bulletin A310–29–2076 (for Model A310 series airplanes), and Service Bulletin A300–29–6037 (for Model A300–600 series airplanes), all dated dated April 1, 1996, which describe procedures for the following:

1. Performing a RAT extension test during ground testing;
2. Removing and disassembling the RAT lever assembly (uplock assembly);
3. Performing a visual inspection to detect corrosion of the RAT lever assembly; and
4. Cleaning all the parts of the RAT lever assembly and all its associated parts.

The service bulletins also describe procedures for replacing any corroded parts with new parts. They also describe procedures for cleaning and lubricating corroded parts in lieu of replacement with new parts, in situations where new parts are not readily available.

The DGAC classified these service bulletins as mandatory and issued French airworthiness directive, 95–163–182(B)R2, dated June 5, 1996, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a RAT extension test during ground testing; removal and disassembly of the RAT lever assembly; a visual inspection to detect corrosion of the RAT lever assembly, and replacement of the assembly with new parts, if necessary; and cleaning of the lever assembly and its associated parts. The actions would be required to be accomplished in accordance with the service bulletins described previously.

Differences Between Proposed AD and Referenced Service Bulletins

Operators should note that, although the Airbus service bulletins describe certain cleaning and lubrication procedures of the RAT lever assembly that can be accomplished in lieu of replacement of corroded parts, this proposed AD would not permit those actions as an alternative to replacement. The FAA finds that, to ensure an adequate level of safety for the affected fleet, corroded parts must be replaced prior to further flight. The FAA has determined that, in cases where known unsafe conditions exist and where actions to detect and correct those unsafe conditions can be readily accomplished, those actions must be required.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

The FAA estimates that 80 Airbus Model A300, A310, and A300–600 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 10 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operator. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $48,000, or $600 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this

action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 96–NM–155–AD.

Applicability: All Model A300, A310, and A300–600 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct corrosion of the ram air turbine (RAT) uplock pin/shaft and needle that could result in failure of the RAT to deploy and subsequent loss of emergency hydraulic power to the flight controls in the event that power is lost in both engines, accomplish the following:

(a) Prior to the accumulation of 30 months total time-in-service, or within 3 months after the effective date of this AD, whichever occurs later: Accomplish the requirements of paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this AD in accordance with Airbus Service Bulletin A300–29–0108, dated April 1, 1996 (for Model A300 series airplanes); A310–29–2076, dated April 1, 1996 (for Model A310 series airplanes); A300–29–6037, dated April 1, 1996 (for Model A300–600 series airplanes); as applicable. Thereafter, repeat these actions at intervals not to exceed 30 months.

(1) Perform a RAT extension test on the ground, in accordance with the procedures specified in the Maintenance Manual.

(2) Disassemble and remove the lever assembly of the RAT and perform a visual inspection of the lever assembly to detect corrosion, in accordance with the applicable service bulletin.

(i) If no corrosion is detected: Prior to further flight, clean and lubricate the lever assembly and its associated parts, reinstall the assembly, and perform a retraction/extension/retraction of the RAT, in accordance with the applicable service bulletin.

(ii) If any corrosion is detected in any part of the lever assembly: Prior to further flight, replace the lever assembly with a new part and perform a retraction/extension/retraction of the RAT, in accordance with the applicable service bulletin.

(b) Initial accomplishment of the actions required by paragraph (a) of this AD that have been performed in accordance with Airbus All Operator Telex (AOT) 29–16, Revision 01, dated January 10, 1996, is considered acceptable for compliance with the initial RAT extension test and an initial visual inspection as required by paragraph (a) of this AD. However, the first repetitive inspection, as required by paragraph (a) of this AD, must be performed within 30 months after that RAT extension test and visual inspection were conducted, and repeated thereafter at intervals not to exceed 30 months.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 11, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–3965 Filed 2–18–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–NM–138–AD]

RIN 2120–AA64

Airworthiness Directives; Construcciones Aeronauticas, S.A. (CASA) Model CN–235 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain CASA Model CN–235 series airplanes. This proposal would require replacement of the guide hooks of the cargo doors with new, improved guide hooks. This proposal is prompted by fatigue cracking found in the guide hooks of the cargo door. The actions specified by the proposed AD are intended to prevent such fatigue cracking, which could result in reduced structural integrity of the cargo door and, consequently, lead to rapid decompression of the airplane.

DATES: Comments must be received by March 31, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–138–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Greg Dunn, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2799; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–138–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–138–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for Spain, recently notified the FAA that an unsafe condition may exist on certain CASA CN–235 series airplanes. The DGAC advises that, during full-scale fatigue tests on a Model CN–235 test article, cracking was found in the guide hooks of the cargo door. Such cracking is attributed to fatigue-related stress. Fatigue-related cracking in the guide hooks of the cargo door, if not detected and corrected in a timely manner, could result in reduced structural integrity of the cargo door and, consequently, lead to rapid decompression of the airplane.

Explanation of Relevant Service Information

CASA has issued Service Bulletin SB–235–52–23, Revision 2, dated June 9, 1994, and Service Bulletin SB–235–52–23M, dated March 17, 1994. These service bulletins describe procedures for replacement of the guide hooks of the cargo doors with new, improved guide hooks. The replacement improves the fatigue life of the cargo doors. The DGAC classified these service bulletins as mandatory and issued Spanish airworthiness directive 02/94, dated August 1994, in order to assure the continued airworthiness of these airplanes in Spain.

FAA's Conclusions

This airplane model is manufactured in Spain and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require replacement of the guide hooks of the cargo doors with new, improved guide hooks. The actions would be required to be accomplished in accordance with the applicable service bulletin described previously.

Cost Impact

The FAA estimates that 1 airplane of U.S. registry would be affected by this proposed AD, that it would take approximately 150 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $6,100 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $15,100 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Construcciones Aeronauticas, S.A., CASA: Docket 96–NM–138–AD.

Applicability: Model CN–235 series airplanes, as listed in CASA Service Bulletin SB–235–52–23, Revision 2, dated June 9, 1994, and CASA Service Bulletin SB–235–52–23M, dated March 17, 1994; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue-related cracking in the guide hooks of the cargo door, which could result in reduced structural integrity of the cargo door and, consequently, lead to rapid decompression of the airplane, accomplish the following:

(a) Replace the guide hooks of the cargo doors with new, improved guide hooks, in accordance with CASA Service Bulletin SB–235–52–23, Revision 2, dated June 9, 1994, or CASA Service Bulletin SB–235–52–23M, dated March 17, 1994; at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable.

Note 2: Replacements accomplished prior to the effective date of this AD in accordance with CASA Service Bulletin SB–235–52–23, dated June 16, 1993, or Revision 1, dated April 13, 1994, are considered acceptable for compliance with the requirements of paragraph (a) of this AD.

(1) For airplanes listed in CASA Service Bulletin SB–235–52–23: Replace prior to the accumulation of 17,000 total landings.

(2) For airplanes listed in CASA Service Bulletin SB–235–52–23M: Replace prior to the accumulation of 15,000 total landings.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 11, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–3968 Filed 2–18–97; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–NM–141–AD]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42 and ATR72 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR42 and ATR72 series airplanes. This proposal would require modification of the handle of the passenger/crew door to change the "down-to-open" configuration of the handle to an "up-to-open" configuration. This proposal is prompted by a report indicating that, immediately after takeoff, the passenger/crew door opened and separated from the airplane, due to the inadvertent operation of the door handle. The actions specified by the proposed AD are intended to prevent inadvertent opening of the passenger/crew door during unpressurized flight, or delays in opening the door during an emergency evacuation.

DATES: Comments must be received by March 31, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96-NM-141-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Gary Lium, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1112; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–141–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–141–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that, immediately after takeoff, a passenger/crew door separated from an Aerospatiale Model ATR72 series airplane. Investigation revealed that the door may have separated from the airplane due to inadvertent operation of the door handle. That passenger/crew door had been modified (Aerospatiale Modification 04019) to change the normal closing position ("down-to-lock") to a "down-to-open" configuration. Consequently, the FAA reviewed the operation of the door handle in the "down-to-open" configuration and has determined that the reversed direction of operation of the handle in this configuration may cause confusion during an emergency evacuation. Additionally, the normal "up-to-open" motion of a handle requires that deliberate action be taken to open the passenger/crew door, while the "down-to-open" motion of a door handle could permit inadvertent opening of the door by a person leaning or falling on the handle while the airplane is flying unpressurized. (Normal cabin pressurization during flight will prevent operation of the door handle.)

The "reversed" configuration of the door handle, described above, could result in the inadvertent opening of the passenger/crew door during unpressurized flight, or delays in opening the door during an emergency evacuation.

The configuration and operation of the handle of the passenger/crew door in Aerospatiale Model ATR72 series airplanes are similar in design to those installed on the Aerospatiale Model ATR42 series airplanes; therefore, both of those models may be subject to this same unsafe condition.

Explanation of Relevant Service Information

Aerospatiale has released two Aerospatiale Service Bulletins ATR42–52–0072 and ATR72–52–1040, both dated October 2, 1995, which describe procedures for modifying the "down-to-open" configuration of the handle of the passenger/crew door to an "up-to-open" configuration. If the airplane is flying unpressurized, this modification will prevent inadvertent opening of the door in flight by a person leaning or falling on the handle and, during an emergency evacuation, will eliminate any confusion concerning the direction in which the handle moves to an open position.

U.S. Type Certification of the Airplane

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require modification of the handle of the passenger/crew door to change the "down-to-open" configuration to an "up-to-open" configuration. The actions would be required to be accomplished in accordance with the service bulletins described previously.

Cost Impact

The FAA estimates that 16 Aerospatiale Model ATR42 and ATR72 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 15 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $14,400, or $900 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale: Docket 96–NM–141–AD.

Applicability: Model ATR42 and ATR72 series airplanes on which Aerospatiale Modification 04019 has been accomplished, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent opening of the passenger/crew door during unpressurized flight, or delays in opening the passenger/crew door during an emergency evacuation; accomplish the following:

(a) Within 6 months after the effective date of this AD, modify the handle of the passenger/crew door by changing its configuration to an oup-to-openo configuration in accordance with Aerospatiale Service Bulletin ATR42–52–0072 (for Model ATR42 series airplanes), or ATR72–52–1040 (for Model ATR72 series airplanes), both dated October 2, 1995.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 11, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–3967 Filed 2–18–97; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–NM–96–AD]

RIN 2120–AA64

Airworthiness Directives; Israel Aircraft Industries (IAI), Ltd. Model 1125 Westwind Astra Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness

directive (AD) that is applicable to certain IAI Model 1125 Westwind Astra series airplanes. This proposal would require repetitive inspections to detect loose or damaged rivets that fasten a certain support beam to the frame of the fuselage; and modification of the attachment between the support beam and fuselage by installation of additional fasteners, if necessary. This proposal also would require the eventual accomplishment of this modification on all airplanes, which would terminate the repetitive inspections. This proposal is prompted by reports indicating that the attachment between this beam and the fuselage has become loose on several airplanes. Movement of this beam could restrict the movement of the elevator and rudder controls cab that run through the bellcranks attached to it. The actions specified by the proposed AD are intended to prevent movement of this beam, which could restrict movement of the elevator and rudder controls, and consequently lead to reduced controllability of the airplane.

DATES: Comments must be received by March 31, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–96–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Technical Publications, Astra Jet Corporation, 77 McCullough Drive, Suite 11, New Castle, Delaware 19720. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–96–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–96–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Administration of Israel (CAAI), which is the airworthiness authority for Israel, recently notified the FAA that an unsafe condition may exist on certain IAI Model 1125 Westwind Astra series airplanes. The CAAI advises that it has received reports indicating that rivets fastening the support beam to the fuselage frame at station 452.00 have become loose on several Model 1125 Westwind Astra series airplanes. Should these rivets loosen where the beam attaches to the frame, the beam could move. Because the elevator and rudder controls run through bellcranks that are connected to this beam, movement of this beam could restrict the movement of these controls. This condition, if not corrected, could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

Astra Jet has issued Service Bulletin SB 1125–53–135, dated April 26, 1995, which describes procedures for repetitive visual inspections of the rivets fastening the support beam to the fuselage frame at station 452.00; these inspections are to detect any rivet that is loose or has been damaged by the relative movement of the rivet against the support beam (a "fretted rivet"). This service bulletin also describes procedures for modifying the attachment between the beam and the fuselage by the installation of additional fasteners that will strengthen this attachment. Accomplishment of this modification eliminates the need for repetitive inspections. The CAAI classified this service bulletin as mandatory and issued Israeli airworthiness directive 95–34, dated May 18, 1995, in order to assure the continued airworthiness of these airplanes in Israel.

FAA's Conclusions

This airplane model is manufactured in Israel and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAAI has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAAI, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive visual inspections to detect loose or fretted rivets that fasten the support beam to the fuselage frame at station 452.00. Should any loose or fretted rivet be detected, the proposed AD would require modification of the attachment between the beam and the fuselage by the installation of additional fasteners. Additionally, this proposed AD would require that this modification be installed eventually on all affected airplanes. Accomplishment of this modification also would terminate the requirement for repetitive inspections. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

The FAA estimates that 58 IAI Model 1125 Westwind Astra series airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed visual inspection, and the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $3,480, or $60 per airplane, per inspection.

It would take approximately 8 work hours per airplane to accomplish the proposed terminating modification, and the average labor rate is $60 per work hour. The cost of parts is minimal. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $27,840, or $480 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Israel Aircraft Industries (IAI), Ltd.: Docket 96–NM–96–AD.

Applicability: Model 1125 Westwind Astra series airplanes as listed in IAI Service Bulletin SB 1125–53–135, dated April 26, 1995; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent movement of the support beam attached to the fuselage frame at station 452.00, which could restrict movement of the elevator and rudder controls, and consequently lead to reduced controllability of the airplane, accomplish the following:

(a) Within 50 hours time-in-service after the effective date of this AD, conduct a visual inspection to detect loose or damaged ("fretted") rivets that fasten the support beam to the fuselage frame at station 452.000, in accordance with Part A of IAI Service Bulletin SB 1125–53–135, dated April 26, 1995.

(1) If no loose or fretted rivet is detected, repeat this inspection thereafter at intervals not to exceed 250 hours time-in-service until the modification required by paragraph (b) of this AD is accomplished.

(2) If any loose or fretted rivet is detected, prior to further flight, modify the support beam in accordance with Part B of IAI Service Bulletin SB 1125–53–135, dated April 26, 1995. After this modification is accomplished, no further action is required by paragraphs (a) or (b) of this AD.

(b) Within 500 hours time-in-service after the effective date of this AD, modify the support beam in accordance with Part B of IAI Service Bulletin SB 1125–53–135, dated April 26, 1995. Accomplishment of this modification constitutes terminating action for the repetitive inspections required by paragraph (a)(1) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 11, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–3969 Filed 2–18–97; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–ANE–38]

RIN 2120–AA64

Airworthiness Directives; General Electric Aircraft Engines CF700 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to General Electric Aircraft Engines (GE) CF700 series turbofan engines. This proposal would require replacement of existing fan guards with new, improved fan guards. This proposal is prompted by a report of uncontained fan blades which separated from the engine during an overspeed. The actions specified by the proposed AD are intended to prevent an overspeed of the aft fan disk from resulting in an uncontained engine failure and damage to the aircraft.

DATES: Comments must be received by March 21, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96-ANE–38, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from GE Aircraft Engines, 1000 Western Ave., Lynn, MA 01910; telephone (617) 594–3140, fax (617) 594-4805. This information may be examined at the

FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Dave Keenan, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (617) 238-7139, fax (617) 238-7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to — Docket Number 96-ANE-38." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96-ANE-38, 12 New England Executive Park, Burlington, MA 01803-5299.

Discussion

The Federal Aviation Administration (FAA) received a report of uncontained fan blades on a General Electric Aircraft Engines (GE) CF700 series turbofan engine installed on a Marcel Avions Dassault Falcon 20 aircraft. During takeoff, the aircraft encountered a flock of birds that were ingested into the engine, which removed enough fan blades to unload the aft fan and allow the undamaged core rotor to overspeed the fan disk. This overspeed resulted in the release of fan blades, which penetrated the aircraft fuselage, resulting in an engine and aircraft fire. This condition, if not corrected, would allow an overspeed of the aft fan disk to result in an uncontained engine failure and damage to the aircraft.

The FAA has reviewed and approved the technical contents of GE Service Bulletin (SB) No. (CF700) 72-154, dated December 20, 1996, that describes procedures for replacement of existing fan guards with new, improved fan guards.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require, within two years after the effective date of this AD, replacement of existing fan guards with new, improved fan guards. This calendar end-date was determined based upon parts availability and risk analysis. The actions would be required to be accomplished in accordance with the SB described previously.

There are approximately 826 engines of the affected design in the worldwide fleet. The FAA estimates that 414 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 20 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $50,000 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $21,196,800.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 fm 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

General Electric Aircraft Engines: Docket No. 96-ANE-38.

Applicability: General Electric Aircraft Engines (GE) CF700 series turbofan engines, installed on but not limited to Marcel Avions Dassault Falcon 20, and Sabreliner NA265 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent an overspeed of the aft fan disk fmom resulting in an uncontained engine failure and damage to the aircraft, accomplish the following:

(a) Within 2 years after the effective date of this AD, replace existing fan guards with new, improved fan guards, in accordance with GE Service Bulletin (SB) No. (CF700) 72-154, dated December 20, 1996.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained fmom the Engine Certification Office.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on February 4, 1997.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 97-4013 Filed 2-18-97; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 71

[Airspace Docket No. 97-AGL-6]

Modification of Class E Airspace; Spearfish, SD, Black Hills-Clyde Ice Field

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Spearfish, SD. A Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway 12 has been developed for Black Hills-Clyde Ice Field. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended affect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before April 7, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL-7, Rules Docket No. 97-AGL-6, 2300 East Devon Avenue, Des Plaines, Illinois, 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: John A. Clayborn, Air Traffic Division, Operations Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97-AGL-6." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report sunmarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E airspace at Spearfish, SD; this proposal would provide adequate Class E airspace for operators executing the GPS Runway 12 SIAP at Black Hills-Clyde Ice Field. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[Amended]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designation and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL SD E5 Spearfish, SD [Revised]

Black Hills-Clyde Ice Field, SD
(lat. 44°28′49″N, long. 103°46′37″W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Black Hills-Clyde Ice Field Airport and within 2.1 miles each side of the 305° bearing from the airport extending from the 7-mile radius to 8.3 miles northwest of the airport; and that airspace extending upward from 1,200 feet above the surface within an area bounded by a line beginning at lat. 44°29′22″N, long. 103°56′48″W; to lat. 44°13′37″N, long. 104°14′00″W; to lat. 44°18′41″N, long. 104°23′24″W; to lat. 44°44′11″N, long. 103°57′49″W; to lat. 44°50′13″N, long. 103°28′11″W; to lat. 44°47′27″N, long. 102°57′40″W; to lat. 44°39′31″N, long. 102°56′34″W; to lat. 44°38′27″N, long. 103°12′26″W; to lat. 44°25′29″N, long. 103°38′30″W; then clockwise via the 7-mile radius of the airport to the point of beginning.

* * * * *

Issued in Des Plaines, Illinois on February 5, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–4073 Filed 2–18–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Ch. I

[Docket No. 96N–0364]

RIN 0910–AA20

Regulation of Medical Foods; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to April 28, 1997, the comment period for the advance notice of proposed rulemaking for the regulation of medical foods that published in the **Federal Register** of November 29, 1996. This action is being taken in response to several requests from interested persons for an extension of the comment period on this document.

DATES: Written comments by April 28, 1997.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert J. Moore, Center for Food Safety and Applied Nutrition (HFS–456), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4605.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 29, 1996 (61 FR 60661), FDA published an advance notice of proposed rulemaking for the regulation of medical foods. Interested persons were given until February 27, 1997, to comment on the advance notice of proposed rulemaking.

FDA has received requests for an extension of the comment period from: Manufacturers, a trade organization representing manufacturers of medical foods, and a professional society representing health care providers and research scientists. The interested parties stated in their requests for an extension of the comment period that such an extension would help ensure that the agency receives comprehensive and carefully researched information from experts to consider in response to the notice. After careful consideration of the requests submitted to the agency, FDA has decided to grant an extension of the comment period until April 28, 1997.

Interested persons may, on or before April 28, 1997, submit to the Dockets Management Branch (address above) written comments regarding this advanced notice of proposed rulemaking. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This document is issued under sections 4, 5, and 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); sections 201, 301, 402, 403, 404, 405, 409, 411, 412, 501, 502, 503, 505, and 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 344, 345, 348, 350, 350a, 351, 352, 353, 355, 371); and 21 U.S.C. 360ee(b)(3) (section 5(b)(3) of the Orphan Drug Amendments of 1988, as amended by Pub. L. 100–290).

Dated: February 12, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–4021 Filed 2–18–97; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Part 808

[Docket No. 96N–0249]

RIN 0910–AB03

Exemption From Preemption of State and Local Cigarette and Smokeless Tobacco Requirements; Applications for Exemption Submitted by Various State Governments

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Federal Food, Drug, and Cosmetic Act (the act) preempts State and local device requirements that are different from, or in addition to, Federal requirements under the act. The act also provides that the Food and Drug Administration (FDA) may, by regulation, exempt State and local device requirements from preemption. FDA is responding to applications for exemption submitted by the States of Alabama, Alaska, Utah, and Washington. FDA is proposing to grant exemptions from Federal preemption for certain cigarette and smokeless tobacco requirements in the States of Alabama, Alaska, and Utah. The requirements in the State of Washington are not preempted, and therefore no exemption needs to be granted. Elsewhere in this issue of the Federal Register, FDA is announcing an opportunity for interested persons to request a public hearing on the proposed regulation.

DATES: Written comments by March 21, 1997. FDA proposes that any final rule that may be issued based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Anne M. Kirchner, Office of Policy (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5321.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of August 28, 1996 (61 FR 44396), FDA published a final rule (the tobacco rule) restricting the sale and distribution of nicotine-containing cigarettes and smokeless tobacco in order to protect children and adolescents. The tobacco rule included provisions prohibiting retailers from selling nicotine-containing cigarettes or smokeless tobacco to any person younger than 18 years of age (see § 897.14(a) (21 CFR 897.14(a))) and requiring retailers to verify, by means of photographic identification containing the bearer's date of birth, that no person purchasing cigarettes or smokeless tobacco is younger than 18 years of age (see § 897.14(b)). The age verification requirement applies except where the purchaser is over age 26.

Section 521(a) of the act (21 U.S.C. 360k(a)) provides that,

> [a]fter May 28, 1976, no State or political subdivision of a State may establish or continue in effect, with respect to a device intended for human use, any requirement having the force and effect of law (whether established by statute, ordinance, regulation, or court decision), which is different from, or in addition to, any requirement applicable to such device under any provision of the act and which relates to the device's safety or effectiveness, or to any other matter included in a requirement applicable under the act (§ 808.1(b)(21 CFR 808.1(b))).

Because FDA is regulating cigarettes and smokeless tobacco as nicotine-delivery devices under the act, any State or local cigarette or smokeless tobacco requirement that is different from, or in addition to, the specific requirements for cigarettes and smokeless tobacco established under the tobacco rule is preempted under section 521(a) of the act.

In implementing section 521(a) of the act, FDA has historically interpreted that provision narrowly and found it to have preemptive effect only for those State and local requirements that in fact clearly impose specific requirements with respect to specific devices that are manifestly in addition to analogous Federal requirements. Consistent with this narrow scope of preemption under section 521(a) of the act, a State or local requirement that is narrower in coverage than the Federal requirement is not preempted to the extent that it is similar to the Federal requirement.

Examples of such similar, yet narrower, coverage by State or local requirements include additional statutory elements or defenses in conjunction with minimum age restrictions on sales of cigarettes and smokeless tobacco. For instance, numerous States have statutes that prohibit retailers from "negligently" or "knowingly" selling cigarettes or smokeless tobacco to persons under the age of 18. Other States have fashioned their age prohibition statutes such that retailers can assert as a defense to any penalties that they properly checked and relied upon an identification presented by an underage purchaser.

Such statutes are narrower in scope than the strict liability provision of the tobacco rule because they require proving a retailer's negligence or knowledge in an underage sale. However, because these statutes are similar to the tobacco rule's prohibition of sales to persons under the age of 18, they are not preempted merely because of their narrower coverage. A State or local government clearly could choose to have no statute whatsoever in effect regarding age restrictions. FDA believes it logically follows that a State or local government may enact a statutory level of enforcement that falls somewhere between the level of no enforcement and the level implemented in the tobacco rule.

The narrow preemption in these situations is based on the Supreme Court's recent decision in *Medtronic, Inc.* v. *Lohr*, 116 S. Ct. 2240 (1996). The Court held that common law tort claims that are similar to, but narrower than, FDA requirements are not preempted under section 521 of the act. (See *Lohr*, 116 S. Ct. at 2255.) In so holding, the Court reasoned as follows:

> Nothing in [section 521] denies [a State] the right to provide a traditional damages remedy for violations of common-law duties when those duties parallel federal requirements. Even if it may be necessary as a matter of [State] law to prove that those violations were the result of negligent conduct, or that they created an unreasonable hazard for users of the product, such additional elements of the state-law cause of action would make the state requirements narrower, not broader, than the federal requirement. While such a narrower requirement might be "different from" the federal rules in a literal sense, such a difference would surely provide a strange reason for finding pre-emption of a state rule insofar as it duplicates the federal rule.

Id.

Section 521(b) of the act provides that FDA may, upon application by a State or political subdivision, and by regulation issued after notice and an opportunity for an oral hearing, exempt a State or local device requirement from preemption under such conditions as FDA may prescribe if the requirement is: (1) More stringent than an FDA requirement applicable to the device, or (2) required by compelling local conditions, and compliance with it would not cause the device to be in violation of any applicable requirement under the act.

In the **Federal Register** of November 7, 1996 (61 FR 57685), FDA published a notice (the exemption notice) inviting State and local governments to file applications for exemption from preemption for cigarette and smokeless tobacco requirements. In order to facilitate and expedite review of submitted applications, FDA is considering the applications in two separate groups, which are based on the effective dates for different requirements under the tobacco rule. This proposed rule covers those applications, designated in the exemption notice as Group 1, which are for State and local requirements that are different from, or in addition to, FDA requirements under § 897.14(a) and (b) of the tobacco rule. (See 61 FR 57685 at 57686.) Applications for other State and local requirements pertaining to cigarettes and smokeless tobacco will be considered in another proposed rule which will be published in the future.

II. Descriptions of the Requests for Exemption from Preemption

A. State of Alabama

On October 28, 1996, the State of Alabama applied for exemption from preemption for section 13A–12–3 of the Alabama Code. The provision reads as follows:

> § 13A–12–3. Selling cigarettes to minors.
>
> Any person who sells, barters, exchanges or gives to any minor any cigarettes, cigarette tobacco or cigarette paper, or any substitute for either of them shall, on conviction, be fined not less that $10.00 nor more than $50.00 and may also be imprisoned in the county jail or sentenced to hard labor for the county for not more than 30 days.

Section 26–1–1 of the Alabama Code establishes age 19 as the age of majority.[1] Consequently, section 13A–

[1] The text of section 26–1–1 of the Alabama Code is as follows:

> § 26–1–1. Age of majority designated as 19 years.
>
> (a) Any person in this state, at the arrival at the age of 19 years, shall be relieved of his disabilities of minority and thereafter shall have the same legal rights and abilities as persons over 21 years of age. No law of this state shall discriminate for or against any person between and including the ages of 19 and 21 years solely on the basis of age.
>
> (b) This section shall also apply to any person who arrived at the age of 19 and 20 years before July 22, 1975, but shall not abrogate any defense or abridge any remedy available to him prior to such date.
>
> (c) All laws or parts of laws which read "under the age of 21 years" hereafter shall read "under the age of 19 years." Wherever the words "under the age of 21 years" appear in any law limiting the legal rights and abilities of persons under such age, such

Continued

12–3 of Alabama Code, when interpreted in light of section 26–1–1 of Alabama Code, prohibits, in part, any person from selling, bartering, exchanging, or giving cigarettes, cigarette tobacco or cigarette paper, or any substitute to persons under 19 years of age in Alabama.

The prohibition under section 13A–12–3 of the Alabama Code against selling, bartering, or exchanging tobacco products to anyone under 19 years of age is different from the age restriction contained in the tobacco rule at § 897.14(a), which prohibits sales of cigarettes and smokeless tobacco to anyone under age 18.[2] FDA believes, however, that Alabama's higher minimum age for the sale, barter, and exchange of cigarette and smokeless tobacco will provide increased public health benefits and will not impose a significant burden on retailers. Therefore, to the extent that the age restriction on the sale, barter, and exchange of tobacco products found in section 13A–12–3 of the Alabama Code is preempted, FDA is proposing to grant an exemption from preemption.

In addition, section 13A–12–3 of the Alabama Code prohibits giving cigarettes, cigarette tobacco or cigarette paper, or any substitute to anyone under the age of 19. Because the restriction on distribution of tobacco products found in section 13A–12–3 of the Alabama Code does not prohibit the distribution of free samples of cigarettes and smokeless tobacco to persons over the age of 19, section 13A–12–3 of the Alabama Code is narrower in scope than the complete prohibition against distribution of free samples of cigarettes and smokeless tobacco established in the tobacco rule under § 897.16(d) (21 CFR 897.16(d)).[3] Despite its narrower scope of coverage, this portion of the statute is not preempted because it is similar to the tobacco rule's restrictions on the distribution of free samples of cigarette and smokeless tobacco. FDA notes, however, that the narrower scope of coverage at the State level in Alabama as established under section 13A–12–3 of the Alabama Code in no way narrows or limits the scope of coverage of Federal requirements contained in the tobacco rule.

Finally, to the extent that section 13A–12–3 of the Alabama Code applies to products other than cigarettes or smokeless tobacco, the statute is not preempted by the tobacco rule because the tobacco rule does not establish "specific counterpart regulations" or other specific requirements with respect to products other than cigarettes or smokeless tobacco.

B. State of Alaska

On November 27, 1996, the State of Alaska applied for an exemption from preemption for sections 11.76.100 and 11.76.105 of the Alaska Statutes. The request, in part, concerned Alaska's prohibition against selling, exchanging, or giving cigarettes, cigars, tobacco, or tobacco-containing products to persons under age 19, as well as its prohibition against the possession of cigarettes, cigars, tobacco, or tobacco-containing products by persons under age 19. The relevant provisions of section 11.76.100 of the Alaska Statutes read as follows:

Sec. 11.76.100. Selling or giving tobacco to a minor.

(a) A person commits the offense of selling or giving tobacco to a minor if the person is 19 years of age or older and

(1) negligently sells, exchanges, or gives a cigarette, a cigar, tobacco, or a product containing tobacco to a person under 19 years of age;

* * * * *[4]

(f) The provisions of (a) of this section do not apply to a person who sells or gives tobacco to a minor if the minor is a prisoner at an adult correctional facility.

The prohibition under section 11.76.100(a) of the Alaska Statutes against selling or exchanging tobacco to anyone under 19 years of age is different from the age restriction contained in § 897.14(a), which prohibits sales of cigarettes and smokeless tobacco to anyone under age 18.[5] FDA believes, however, that the Alaska's higher minimum age for the sale and exchange of cigarettes and smokeless tobacco will provide increased public health benefits and will not impose a significant burden on retailers. Therefore, to the extent that the age restriction on the sale and exchange of cigarettes and smokeless tobacco found in section 11.76.100(a) of the Alaska Statutes is preempted, FDA is proposing to grant an exemption from preemption.

Section 11.76.100(a) of the Alaska Statutes also prohibits giving tobacco products to anyone under the age of 19. Because the restriction on distribution of tobacco products found in section 11.76.100(a) of the Alaska Statutes does not prohibit the distribution of free samples of cigarettes and smokeless tobacco to persons over the age of 19, section 11.76.100(a) of the Alaska Statutes is narrower in scope than the complete prohibition against distribution of free samples of cigarettes and smokeless tobacco established under § 897.16(d) of the tobacco rule.[6] Although section 11.76.100(a) of the Alaska Statutes has a narrower scope of coverage than the tobacco rule with regard to distribution of tobacco products, this portion of the statute is not preempted because it is similar to the tobacco rule's restrictions on cigarette and smokeless tobacco distribution. FDA notes, however, that the narrower scope of coverage at the State level in Alaska as established under section 11.76.100(a) of the Alaska Statutes does not narrow or limit the scope of coverage of Federal requirements contained in the tobacco rule.

Because section 11.76.100(a) of the Alaska Statutes prohibits the "negligent" selling or giving of tobacco to a minor, that section is narrower in scope than the strict liability provisions found in the tobacco rule. However, because section 11.76.100(a) of the Alaska Statutes is similar to the tobacco rule's restrictions on cigarette and smokeless tobacco sales and distribution, the statute is not preempted merely because of its narrower coverage. As stated above, the narrower coverage of section 11.76.100(a) of the Alaska Statutes does not narrow or limit the scope of Federal coverage under the tobacco rule.

To the extent that section 11.76.100(a) of the Alaska Statutes applies to products other than cigarettes or smokeless tobacco, the statute is not preempted by the tobacco rule because the tobacco rule does not establish "specific counterpart regulations" or other specific requirements with respect to products other than cigarettes or smokeless tobacco.

Section 11.76.100(f) of the Alaska Statutes is not preempted by section 521 of the act. Section 11.76.100(f) of the Alaska Statutes provides an exception to the State's prohibition of underage sales and distribution of tobacco products. Under this exception a person may "sell[ ] or give[ ] tobacco to a minor if the minor is a prisoner at an adult correctional facility."

This exception is narrower in scope of coverage than the Federal prohibitions found in §§ 897.14(a) and 897.16(d). Clearly, the Alaskan State legislature could have chosen not to enact any prohibitions whatsoever regarding underage sales and distribution of tobacco products. The level of prohibition actually enacted, however, falls between a no-prohibition level and the level of enforcement at the Federal level under the tobacco rule.

Despite the narrower scope of section 11.76.100(f) of the Alaska Statutes, the statute is not preempted because the State's prohibition of underage sales and distribution of tobacco products is similar to the tobacco rule's restrictions on cigarette and smokeless tobacco sales and distribution. However, the narrower coverage of section 11.76.100(f) of the Alaska Statutes does not narrow or limit the scope of Federal coverage under the tobacco rule; thus, for example, the sale of cigarettes or smokeless tobacco to any person under the age of 18, including such a person who is a prisoner at an adult correctional facility, would violate the prohibitions contained in the tobacco rule.

The State of Alaska has also applied for exemption from preemption for section 11.76.105 of the Alaska Statutes. The relevant provisions of section 11.76.105 of the Alaska Statutes read as follows:

Sec. 11.76.105. Possession of tobacco by a minor.

(a) A person under 19 years of age may not knowingly possess a cigarette, a cigar, tobacco, or a product containing tobacco in this state. This subsection does not apply to a person who is a prisoner at an adult correctional facility.

Because FDA has not established any specific counterpart regulation regarding underage possession of tobacco products, section 11.76.105 of the Alaska Statutes is not preempted. Consequently, an exemption from preemption for this section is not necessary.

C. State of Utah

In December 1996, the State of Utah applied for an exemption from preemption for section 76–10–104 of the Utah Code Annotated.[7] The provision reads as follows:

76–10–104. Furnishing cigars, cigarettes, or tobacco to minors—Penalties.

Any person who sells, gives, or furnishes any cigar, cigarette, or tobacco in any form, to any person under 19 years of age, is guilty of a class C misdemeanor on the first offense, a class B misdemeanor on the second offense, and a class A misdemeanor on subsequent offenses.

The age restriction on "sell[ing] * * * any cigar, cigarette, or tobacco in any form, to any person under 19 years of age" that is found in section 76–10–104 of the Utah Code Annotated differs from the requirement in § 897.14(a), which prohibits the sale of cigarettes and smokeless tobacco to anyone under age 18. FDA believes, however, that Utah's higher minimum age for cigarette and smokeless tobacco sales will provide increased public health benefits and will not impose a significant burden on retailers. Therefore, to the extent that the age restriction on sales of cigarettes and smokeless tobacco found in section 76–10–104 of the Utah Code Annotated is preempted, FDA is proposing to grant an exemption from preemption.

Section 76–10–104 of the Utah Code Annotated also prohibits, in part, a person from giving or furnishing cigarettes or smokeless tobacco to persons under age 19. Because this restriction on distribution of tobacco products does not prohibit the distribution of free samples of cigarettes and smokeless tobacco to persons over the age of 19, section 76–10–104 of the Utah Code Annotated is narrower in scope than the complete prohibition against distribution of free samples of cigarettes and smokeless tobacco established under § 897.16(d).[8] Although section 76–10–104 of the Utah Code Annotated has a narrower scope of coverage than the tobacco rule with regard to distribution of tobacco products, this portion of the statute is not preempted because it is similar to the tobacco rule's restrictions on cigarette and smokeless tobacco distribution. FDA notes, however, that the narrower scope of coverage at the State level in Utah as established under section 76–10–104 of the Utah Code Annotated does not narrow or limit the scope of coverage of Federal requirements contained in the tobacco rule.

Finally, to the extent that section 76–10–104 of the Utah Code Annotated applies to products other than cigarettes or smokeless tobacco, the statute is not preempted by the tobacco rule because the tobacco rule does not establish "specific counterpart regulations" or other specific requirements with respect to products other than cigarettes or smokeless tobacco. (See § 808.1(d).)

D. State of Washington

On December 6, 1996, the State of Washington applied for an exemption from preemption for section 26.28.080 of the Revised Code of Washington (RCW) (a State law) and section 314–10–050 of the Washington Administrative Code (WAC) (a State administrative regulation). RCW 26.28.080 contains a prohibition against underage sales and distribution of certain enumerated tobacco products. WAC 314–10–050 contains a similar prohibition, but also establishes a requirement that purchasers of tobacco products provide proof of age, and lists acceptable forms of identification. The relevant provisions read as follows:

RCW 26.28.080 Selling or giving tobacco to minor—Belief of representative capacity, no defense—Penalty.

Every person who sells or gives, or permits to be sold or given to any person under the age of eighteen years any cigar, cigarette, cigarette paper or wrapper, or tobacco in any form is guilty of a gross misdemeanor.

It shall be no defense to a prosecution for a violation of this section that the person acted, or was believed by the defendant to act, as agent or representative of another.

WAC 314–10–050 Sales to persons under 18 years of age

(1) No person may sell or give or in any way provide tobacco products to any person under 18 years of age.

(2) Any person attempting to purchase tobacco products must present identification to show he/she is at least 18 years of age upon the request of any tobacco licensee, employee of a tobacco licensee or

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words shall be construed to mean under the age of 19 years.

(d) Notwithstanding the provisions of subsection (c) of this section, nothing in this section shall be deemed to repeal any provision of Chapter 19 of Title 15 of this Code.

[2] Under § 897.14(a), "[n]o retailer may sell cigarettes or smokeless tobacco to any person younger than 18 years of age." This prohibition on "selling" cigarettes or smokeless tobacco extends to transactions involving "bartering" or "exchanging" these products for other items that ultimately have some value.

[3] Although the focus of this proposed rule is upon requests for exemption from preemption with respect to the requirements of § 897.14(a) (involving retail sales) and § 897.14(b) (involving verification of purchaser's age), section 13A–12–3 of the Alabama Code also contains distribution restrictions that are analogous to those restrictions found in § 897.16(d) (involving free distribution). For reasons of expediency, FDA will address the issue of preemption of section 13A–12–3 of the Alabama Code, in that section's entirety, in this rulemaking.

[4] The remaining portions of section 11.76.100 of the Alaska Statutes for which Alaska seeks exemption from preemption concern vending machine sales. FDA will address the vending machine sales portions of section 11.76.100 of the Alaska Statutes in a future proposed rulemaking.

[5] Under § 897.14(a), "[n]o retailer may sell cigarettes or smokeless tobacco to any person younger than 18 years of age." This prohibition on "selling" cigarettes or smokeless tobacco extends to transactions involving "exchanging" these products for other items that ultimately have some value.

[6] Despite the focus of this proposed rule upon State and local requirements regarding retail sales of cigarettes and smokeless tobacco, and verification of purchaser's age, FDA will also address the issue of preemption of the age restrictions on distribution of tobacco products found in section 11.76.100(a) of the Alaska Statutes.

[7] The original request sought an exemption from preemption for section 76–10–105 of the Utah Code Annotated. That provision states that any person under age 19 who buys, accepts, or has in his possession any cigar, cigarette, or tobacco in any form is guilty of a class C misdemeanor. The provision also discusses the jurisdiction of the juvenile court for such offenses and the authority of a compliance officer to issue citations. However, the request was later amended after FDA noted that this provision in the Utah Code Annotated is not preempted (because there is no specific FDA counterpart regulation concerning underage persons who buy, accept, or possess tobacco products), but that section 76–10–104 might be preempted absent an exemption from preemption.

[8] Despite the focus of this proposed rule upon State and local requirements regarding retail sales of cigarettes and smokeless tobacco as well as verification of purchaser's age, FDA will address the issue of preemption of the age restrictions on distribution of tobacco products found in section 76–10–104 of the Utah Code Annotated.

enforcement officer as defined by RCW 7.8.040.

(3) All identification used to prove age must be officially issued and contain the bearer's age, signature and photograph. The only forms of identification which are acceptable as proof of age for the purchase of tobacco products are:

(a) A liquor control authority card of identification issued by a state of the United States or a province of Canada,

(b) A driver's license, instruction permit or identification card issued by a state of the United States or a province of Canada,

(c) A United States military identification card,

(d) A passport, or

(e) A merchant marine identification card issued by the United States Coast Guard.

RCW 26.28.080 prohibits, in part, a person from giving "to any person under the age of eighteen years any cigar, cigarette, cigarette paper or wrapper, or tobacco in any form." Similarly, WAC 314–10–050(1) prohibits, in part, a person from "giv[ing] or in any way provid[ing] tobacco products to any person under 18 years of age." Because these restrictions on distribution of tobacco products do not prohibit the distribution of free samples of cigarettes and smokeless tobacco to persons over the age of 18, RCW 26.28.080 and WAC 314–10–050(1) are narrower in scope than the complete prohibition against distribution of free samples of cigarettes and smokeless tobacco established under § 897.16(d).[9] Although RCW 26.28.080 and WAC 314–10–050(1) have a narrower scope of coverage than the tobacco rule with regard to distribution of tobacco products, these portions of the statute and the regulation are not preempted because they are similar to the tobacco rule's restrictions on cigarette and smokeless tobacco distribution. FDA notes, however, that the narrower scope of coverage at the State level in Washington as established under RCW 26.28.080 and WAC 314–10–050(1) does not narrow or limit the scope of coverage of Federal requirements contained in the tobacco rule.

To the extent that RCW 26.28.080 and WAC 314–10–050(1) apply to products other than cigarettes or smokeless tobacco, they are not preempted by the tobacco rule because the tobacco rule does not establish "specific counterpart regulations" or other specific requirements with respect to products other than cigarettes or smokeless tobacco. (See § 808.1(d).)

WAC 314–10–050(2) requires any person attempting to purchase tobacco products to present identification to establish the purchaser's age, and WAC 314–10–050(3) specifies requirements for the types of identification that the purchaser must present. FDA has not established any specific counterpart regulation that places an affirmative duty upon the purchaser to present identification as proof of age. Rather, § 897.14(b) requires the retailer to "verify by means of photographic identification * * * that no person purchasing the product is younger than 18 years of age." Because there is no specific counterpart regulation under the act, neither WAC 314–10–050(2) nor WAC 314–10–050(3) is preempted.

In conclusion, RCW 26.28.080 and WAC 314–10–050 are not preempted. Thus, no exemption is necessary for either provision.

E. The Notice of Opportunity for Hearing

FDA's regulation in 21 CFR 808.25(c) provides that, when the agency issues in the **Federal Register** a proposed rule either granting or denying requests for exemption from preemption, the agency will also issue in the **Federal Register** a notice of opportunity for interested persons to request an oral hearing before FDA to present views on the applications and the proposed rule. Elsewhere in this issue of the **Federal Register**, FDA is issuing such a notice.

III. Environmental Impact

The agency has determined under 21 CFR 25.24(e)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, this document has been reviewed by the Office of Management and Budget as a significant regulatory action under Executive Order 12866.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the proposed rule would exempt certain pre-existing statutory or regulatory provisions in Alabama, Alaska, and Utah from preemption, the Commissioner of Food and Drugs certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

Interested persons may, on or before March 21, 1997, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 808

Intergovernmental relations, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 808 be amended as follows:

PART 808—EXEMPTIONS FROM FEDERAL PREEMPTION OF STATE AND LOCAL MEDICAL DEVICE REQUIREMENTS

1. The authority citation for 21 CFR part 808 continues to read as follows:

Authority: Secs. 521, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360k, 371).

2. New § 808.51 is added to subpart C to read as follows:

§ 808.51 Alabama.

To the extent that the age restriction on the sale, barter, and exchange of cigarettes and smokeless tobacco found in Alabama Code, section 13A–12–3, is preempted under section 521(a) of the act, the Food and Drug Administration has exempted it from preemption under section 521(b) of the act.

3. New § 808.52 is added to subpart C to read as follows:

[9] Despite the focus of this proposed rule upon State and local requirements regarding retail sales of cigarettes and smokeless tobacco as well as verification of purchaser's age, FDA will address the issue of preemption of the age restrictions on distribution of tobacco products found in RCW 26.28.080 and WAC 314–10–050(1).

§ 808.52 Alaska.

To the extent that the age restriction on the sale and exchange of cigarettes and smokeless tobacco found in Alaska Statutes, sections 11.76.100(a), is preempted under section 521(a) of the act, the Food and Drug Administration has exempted it from preemption under section 521(b) of the act.

4. New § 808.94 is added to subpart C to read as follows:

§ 808.94 Utah.

To the extent that the age restriction on sales of cigarettes and smokeless tobacco found in the Utah Code Annotated, section 76–10–104, is preempted under section 521(a) of the act, the Food and Drug Administration has exempted it from preemption under section 521(b) of the act.

Dated: February 7, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–4045 Filed 2–13–97; 2:19 pm]

BILLING CODE 4160–01–F

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21 CFR Part 808

[Docket No. 96N–0249]

RIN 0910–AB03

Medical Devices; Opportunity for Oral Hearing on Proposed Action on Applications for Exemption From Preemption From Cigarette and Smokeless Tobacco Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of opportunity for oral hearing.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for interested persons to request an oral hearing on a proposed rule that would grant exemption from Federal preemption for certain cigarette and smokeless tobacco requirements in various States. The proposed rule is published elsewhere in this issue of the **Federal Register**.

DATES: Requests for an oral hearing by March 21, 1997.

ADDRESSES: Written requests to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Anne M. Kirchner, Office of Policy (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5321.

SUPPLEMENTARY INFORMATION: FDA's regulation in § 808.25 (21 CFR 808.25) provides procedures for processing applications for exemption from Federal preemption of State and local requirements applicable to medical devices under section 521 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360k). Section 808.25(c) provides that, when FDA issues in the **Federal Register** a proposed rule either to grant or to deny a request for exemption from preemption, the agency will also issue in the **Federal Register** a notice of opportunity for interested persons to request an oral hearing before FDA to present views on the application and the proposed rule.

Elsewhere in this issue of the **Federal Register**, FDA is issuing a proposed rule responding to the following applications for exemption from preemption:

(1) An application from the State of Alabama for exemption from preemption for section 13A–12–3 of the Alabama Code;

(2) An application from the State of Alaska for exemption from preemption for sections 11.76.100 and 11.76.105 of the Alaska Statutes;

(3) An application from the State of Utah for exemption from preemption for section 76–10–104 of the Utah Code Annotated; and

(4) An application from the State of Washington for exemption from preemption for section 26.28.080 of the Revised Code of Washington and for section 314–10–050 of the Washington Administrative Code.

Therefore, in accordance with § 808.25(c), FDA is announcing an opportunity for interested persons to request an oral hearing on its proposal to grant exemption from Federal preemption for certain State requirements pertaining to cigarettes and smokeless tobacco.

FDA advises that, under § 808.25(d), any request for a hearing is required to be submitted to the Dockets Management Branch (address above) and to include an explanation of why an oral hearing, rather than submission of written comments only, is essential to the presentation of views on the application for exemption from preemption and on the proposed regulation. Further, to ensure expeditious review of requests for an oral hearing and final action on the applications for exemption and on the proposed rule, FDA has limited the period for requesting an oral hearing to 30 days from the date of publication of the proposed rule and this notice in the **Federal Register**.

Under § 808.25(e), if a timely request for a hearing is made, FDA will review the request and will determine whether a hearing should be granted. If FDA determines that an oral hearing should be held, it will announce the time, date, and place of the hearing in a future issue of the **Federal Register**. The procedures that will govern any such oral hearing are those applicable to ■ public hearing under part 15 (21 CFR part 15) of FDA's administrative practices and procedures regulations.

Interested persons may, on or before March 21, 1997, submit to the Dockets Management Branch (address above) written requests for an oral hearing on this matter. Two copies of any requests are to be submitted, except that individuals may submit one copy. Requests are to be identified with the docket number found in brackets in the heading of this document. Received requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under FDA's authority in section 521 of the act and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10).

Dated: February 7, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–4046 Filed 2–13–97; 2:19 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 40

RIN 1076–AA10

Grant Program for Higher Education

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs (BIA) is proposing to amend its regulations on Higher Education Grant Programs to improve the clarity of the regulations and understanding of the public as mandated by Executive Order 12866.

DATES: Comments must be received on or before May 20, 1997.

ADDRESSES: Mail comments to Joann S. Morris, Director, Office of Indian Education Programs, Bureau of Indian Affairs, Department of the Interior, 1849 C St. NW., Mail Stop 3512–MIB, Washington, DC 20240; or, hand deliver them to Room 3512 at the above address. Comments will be available for inspection at this address from 9 a.m. to 4 p.m., Monday through Friday beginning approximately March 5, 1997.

FOR FURTHER INFORMATION CONTACT: Garry R. Martin, Office of Indian Education Programs, Bureau of Indian Affairs at telephone (202) 219–1128.

SUPPLEMENTARY INFORMATION: The authority to issue rules and regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and sections 463 and 465 of the Revised Statutes, 25 U.S.C. 2 and 9.

Publication of the proposed rule by the Department of the Interior (Department) provides the public an opportunity to participate in the rulemaking process. Interested persons may submit written comments regarding the proposed rule to the location identified in the **ADDRESSES** section of this document.

Executive Order 12778

The Department has certified to the Office of Management and Budget (OMB) that the proposed rule meets the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

Executive Order 12866

This proposed rule is not a significant regulatory action under Executive Order 12866.

Regulatory Flexibility Act

This proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Executive Order 12630

The Department has determined that this proposed rule does not have "significant" takings implications. The proposed rule does not pertain to taking of private property interests, nor does it impact private property.

Executive Order 12612

The Department has determined that this proposed rule does not have significant federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights and responsibilities of states.

NEPA Statement

The Department has determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Unfunded Mandates Act of 1995

This proposed rule imposes no unfunded mandates on any governmental or private entity and is in compliance with the provisions of the Unfunded Mandates Act of 1995.

Paperwork Reduction Act of 1995

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of the Interior has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

All information is to be collected annually from each applicant. The annual reporting and record keeping burden for this collection of information is estimated to average 4 hours for each response for 22 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The total annual reporting and record keeping burden for this collection is estimated to be 76 hours.

Organizations and individuals desiring to submit comments on the information collection requirement should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10202, New Executive Office Building, Washington, DC 20503; Attention: Interior Desk Officer.

The Department considers comments by the public on this proposed collection of information in:

Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;

Evaluating the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

Enhancing the quality, usefulness, and clarity of the information to be collected; and

Minimizing the burden of the collection of information on those who are to respond; including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to the OMB is best assured of having full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Bureau of Indian Affairs on the proposed regulations.

Drafting Information: The primary author of this document is Garry R. Martin, Office of Indian Education Programs, Bureau of Indian Affairs, Department of the Interior.

List of Subjects in 25 CFR Part 40

Indians—education, Indians—educational assistance.

For the reasons given in the preamble, Part 40 of Title 25, chapter I of the Code of Federal Regulations is proposed to be revised as set forth below.

PART 40—HIGHER EDUCATION GRANT PROGRAM

Sec.

40.1 What special terms apply?
40.2 What is the purpose of this part?
40.3 Who is eligible for a higher education grant?
40.4 How do I apply for a higher education grant?
40.5 How is my application reviewed?
40.6 How will I be notified if I am awarded a grant?
40.7 How will I receive the grant?
40.8 How long does my financial aid last?
40.9 What happens if I withdraw from school?
40.10 How do I appeal a grant decision?
40.11 What records are kept for the grant program?
40.12 How does a tribe estimate allowable administrative costs?
40.13 May a tribe prioritize its higher education grant program?
40.14 Are there requirements for information collection?

Authority: 25 U.S.C. 2, 9, and 13; Reorganization Plan No. 3 of 1950 (65 Stat. 1262)

§ 40.1 What special terms apply?

Academic year means a period of time in which a full-time student is expected to complete the equivalent of at least two semesters, two trimesters, or three quarters at a institution that measures academic process in credit hours.

Accreditation means the certification of an institution of higher education by a sanctioned national or regional accrediting agency or association recognized by the Secretary of Education.

BIA means the Bureau of Indian Affairs.

Campus-based aid means the Federal financial aid programs (i.e., Supplemental Educational Opportunity Grants (SEOG), College Work-Study (CWS), and Perkins Loan) administered by the financial aid office.

Certificate of Agreement means a written agreement between a grant recipient and the higher education program describing how a recipient pays back grants when the recipient does not meet the requirements in 25 CFR 40.8 and 40.9.

Continuing student means a grant recipient who is currently enrolled in an eligible institution and is maintaining satisfactory progress in his or her course of study according to the institution's standards of satisfactory progress.

Director means the Director, Office of Indian Education Programs, Bureau of Indian Affairs.

Education Line Officer means a Bureau of Indian Affairs official designated as an Agency Superintendent for Education or an Education Program Administrator.

Eligible institution means an institution of higher education that is accredited by a national or regional accrediting agency or is a candidate for accreditation, or is a tribally controlled community college.

Financial aid office means the office of an institution of higher education that has responsibility for institutionally administered financial aid.

Financial aid package means the institution's documents that identify the amounts and types of financial aid awarded by the institution and the amount of unmet need.

Full time student means an enrolled student who is carrying a full time academic work load (other than correspondence course) as determined by the eligible institution.

Higher education grant package means documents required to identify, eligibility for assistance obtainable through federally recognized tribal offices, or BIA offices. This package is available from tribal Higher Education Grant Programs local Office of Indian Education Programs.

Higher Education Office means a Bureau Education Line Office, tribal or tribal organization administering funds appropriated to the Bureau for higher education grants to eligible students.

Indian means a person who is a member of or is at least one-quarter degree Indian blood descendant of a member of an Indian tribe that is eligible for the special programs and services provided by the United States through the Bureau of Indian Affairs to Indians because of their status as Indians.

Indian tribe means any Indian Tribe, Band, Nation, Rancheria, Pueblo, Colony or Community, including any Alaska Native village, that is recognized by the United States Government, through the Secretary of the Interior, for special programs and services provided by the Secretary to Indians because of their status as Indians.

Mitigating circumstances means a circumstance, such as, a student's medical diagnosed condition impairing the ability to continue a course of study documented by his or her physician, or any other undue hardship that significantly hinders a student's academic progress.

Near reservation means those areas or communities next to reservations that are designated by the Assistant Secretary—Indian Affairs upon recommendations of the local BIA Superintendent with input of the affected tribal governing body.

Program plan means an individualized course of study in which the student, in conjunction with the degree granting institution of higher education, outlines the required courses for the desired degree.

Unmet need means the difference between the student's cost of education and the resources available to defray those costs.

You means the grant applicant or potential applicant.

§ 40.2 What is the purpose of this part?

The BIA Grant Program for Higher Education, administered under the authority of the Snyder Act of November 2, 1921 (25 U.S.C. 13), provides financial assistance to eligible Indian students who have unmet financial needs as determined by the eligible institution's Financial Aid Office. All grants made under this part shall be subject to availability of appropriations.

§ 40.3 Who is eligible for a higher education grant?

To be eligible for a higher education grant:

(a) You must be a member of a federally recognized Indian tribe eligible for the programs provided to Indians by the BIA, or be a one-quarter degree blood descendant of such a member;

(b) You must be admitted to an institution of higher education that is accredited by national or regional accrediting agency, is a candidate for accreditation, or is an eligible institution;

(c) You must apply for all available campus-based aid by an established due date; and

(d) You must have unmet need (the difference between the cost of your education and your resources for defraying that cost) as determined by the eligible institution's financial aid office.

§ 40.4 How do I apply for a higher education grant?

(a) You must have the institution's financial aid office prepare and certify an application package for financial aid. The package must include:

(1) A letter of acceptance from your institution (required only if you are a new, transfer, or a previously suspended student);

(2) A completed BIA form for applying for a higher education grant;

(3) A Certificate of Indian Blood (CIB) from your tribe or from the BIA certifying that you are a member of a tribe or have documentation to support a claim to Indian descent by blood quantum;

(4) A high school transcript or General Education Development (GED) high school equivalency certificate;

(5) Grades, transcripts or progress reports from previous term/year of attendance (continuing students); and

(6) A statement agreeing to repay the grant if you fail to enroll, withdraw or are expelled, unless there are mitigating circumstances.

(b) This package must be submitted to the BIA or tribal organization administering the program for your tribe by the due date set by that organization. If your application arrives after the due date, your application will be considered only if funds remain available.

(c) You must submit a separate application for a summer school program.

§ 40.5 How is my application reviewed?

The BIA or tribal organization administering the program for your tribe reviews your application. The BIA or tribal organization will:

(a) Determine your unmet need, using information from your institution's financial aid office;

(b) Approve your eligibility for a grant according to your tribe's priority plan; and

(c) Within availability of funds, fund no more than your unmet need.

§ 40.6 How will I be notified if I am awarded a grant?

The BIA or tribal organization administering the program for your tribe will tell you and your institution's financial aid office in writing of its approval or denial.

§ 40.7 How will I receive the grant?

(a) The BIA or tribal organization administering the program will issue your grant to your institution's financial aid office.

(b) Your institution's financial aid office will distribute the grant money according to its policy on disbursement.

§ 40.8 How long does my financial aid last?

(a) If your undergraduate degree or Certificate program requires four or fewer academic years, you may take extra years to complete the program, but you must finish a degree in no more than five academic years.

(b) If your undergraduate degree or certificate program normally requires more than four academic years, you may take extra years to complete the program, but you must finish a degree in six academic years.

(c) The BIA or tribal organization administering the program may waive the time limits for hardship caused by special circumstances.

(d) To remain eligible for continued funding, you must submit a grade report or transcript for each term to the BIA or tribal organization administering the program.

§ 40.9 What happens if I withdraw from school?

(a) You will be required to pay back any portion of the grant you receive if you, without mitigating circumstances, fail to enroll, withdraw or are expelled before the completion of a term.

(b) Within ten days of your failure to enroll or withdrawal or expulsion you will be required to submit to the BIA or tribal organization administering the program:

(1) The date of your failure to enroll, withdrawal or expulsion;

(2) A written statement with supporting documentation stating your reasons for a failure to enroll, withdrawal or expulsion including mitigating circumstances; and

(3) A copy of your request to the institution that all remaining grant funds be returned to the BIA.

(c) The Bureau of Indian Affairs or tribal organization administering the program will notify you in writing of arrangements to pay the balance of funds based upon a Certificate of Agreement between you and the organization awarding your grant or grant you a waiver from repayment based upon mitigating circumstances.

§ 40.10 How do I appeal a grant decision?

You may appeal the decisions of any BIA official by following the procedures in 25 CFR part 2, Appeals from Administrative Actions.

§ 40.11 What records are kept for the grant program?

(a) The Higher Education Office will maintain your files, a ledger of all costs, and related records necessary to identify all transactions involving expenditure of funds made available to you under this program. These records:

(1) Identify your award and status;

(2) Demonstrate your eligibility;

(3) Document the amount of your award and the manner in which your unmet need was calculated and met;

(4) Identify whether your enrollment was terminated;

(5) Identify collections based upon Certificates of Agreement; and

(6) Identify waivers from repayment.

(b) By November 1 of each year, the Education Line Officer will submit a Higher Education Grant Program Annual Report for the preceding academic year to the Director of the Office of Indian Education Programs.

§ 40.12 How does a tribe estimate allowable administrative costs?

Tribes and tribal organizations that do not have a negotiated an indirect cost rate with the Federal Government may use no more than 15 percent of available program funds to pay for indirect program costs chargeable to the program.

§ 40.13 May a tribe prioritize its higher education grant program?

Yes.

(a) A tribe operating a higher education program may set program priorities for categories of applicants. These priorities in order to be given effect must be set out in the application materials provided to grant applicants, and attached to the tribe's contract or annual funding agreement. This tribal program priority plan may include a listing of priorities, the reasons and supporting documentation.

(b) If a tribe desires to set a higher academic standard by increasing the minimum grade point average, designate academic hours needed in order to be classified as a full time student, set priorities to first serve students residing near or within the exterior boundaries of the reservation or on trust or restricted lands, the tribe may do so.

§ 40.14 Are there requirements for information collection?

The information collection requirement contained in this part has been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), and assigned clearance number 1076–0106.

Dated: January 28, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–4000 Filed 2–18–97; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 286

[DoD 5400.7–R]

DoD Freedom of Information Act Program Regulation

AGENCY: Department of Defense

ACTION: Proposed rule.

SUMMARY: This proposed revision provides substantive and administrative changes to conform to the requirements of the Electronic Freedom of Information Act Amendments of 1996, 5 U.S.C. 552, as amended by Public Law 104–231. It also provides guidance to the Department of Defense on implementation of this amended law.

DATES: Comments must be received by April 21, 1997.

ADDRESSES: Forward copies to ASD(PA), Room 2C757, 1400 Defense Pentagon, Washington, DC 20301–1400

FOR FURTHER INFORMATION CONTACT: Mr. C. Talbott, 703–697–1171.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that 32 CFR part 286 is not a significant regulatory action. The rule does not:

(1) Have an annual effect to the economy of $100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule implements the Freedom of Information Act (5 U.S.C. 552), a statute concerning the release of Federal Government records, and does not economically impact Federal Government relations with the private sector.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been certified that this part does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 32 CFR Part 286

Freedom of information.

Accordingly, 32 CFR part 286 is proposed to be revised to read as follows:

PART 286—DOD FREEDOM OF INFORMATION ACT PROGRAM REGULATION

Subpart A—General Provisions

Sec.
286.1 Purpose and applicability.
286.2 DoD public information.
286.3 Definitions.
286.4 Policy.

Subpart B—FOIA Reading Rooms

286.7 Requirements.
286.8 Indexes.

Subpart C—Exemptions

286.11 General provisions.
286.12 Exemptions.

Subpart D—For Official Use Only

286.15 General provisions.
286.16 Markings.
286.17 Dissemination and transmission.
286.18 Safeguarding FOUO information.
286.19 Termination, disposal and unauthorized disclosure.

Subpart E—Release and Processing Procedures

286.22 General provisions.
286.23 Initial determinations.
286.24 Appeals.
286.25 Judicial actions.

Subpart F—Fee Schedule

286.28 General provisions.
286.29 Collection of fees and fee rates.
289.30 Collection of fees and fee rates for technical data.

Subpart G—Reports

286.33 Reports control.
286.34 Annual report.

Subpart H—Education and Training

286.37 Responsibility and purpose.
Appendix A to Part 286—Unified Combatant Commands—Processing Procedures for FOIA Appeals
Appendix B to Part 286—Addressing FOIA Requests
Appendix C to Part 286—Other Reason Categories
Appendix D to Part 286—"Record of Freedom of Information (FOI) Processing Cost" (DD Form 2086)
Appendix E to Part 286— "Record of Freedom of Information (FOI) Processing Cost for Technical Data" (DD Form 2086–1)
Appendix F to Part 286— "Annual Report Freedom of Information Act" (DD Form 2564)
Appendix G to Part 286—DoD Freedom of Information Act Program Components

Authority: 5 U.S.C. 552.

Subpart A—General Provisions

§ 286.1 Purpose and applicability.

(a) *Purpose.* This part provides policies and procedures for the Department of Defense (DoD) implementation of the Freedom of Information Act (5 U.S.C. 552, as amended) and DoD Directive 5400.7 [1] and promotes uniformity in the DoD Freedom of Information Act (FOIA) Program.

(b) *Applicability.* This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Unified Combatant Commands, the Inspector General of the Department of Defense (IG DoD), the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components'). This part takes precedence over all DoD Component publications that supplement and implement the DoD FOIA Program. A list of DoD Components is at appendix G to this part.

§ 286.2 DoD public information.

(a) The public has a right to information concerning the activities of its Government. DoD policy is to conduct its activities in an open manner and provide the public with a maximum amount of accurate and timely information concerning its activities, consistent always with the legitimate public and private interests of the American people. A record requested by a member of the public who follows rules established by proper authority in the Department of Defense shall not be withheld unless the record is exempt from mandatory disclosure under the FOIA. As a matter of policy, DoD Components shall make discretionary disclosures of exempt records or information whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption, but this policy does not create any right enforceable in court. In order that the public may have timely information concerning DoD activities, records requested through public information channels by news media representatives that would not be withheld if requested under the FOIA should be released upon request. Prompt responses to requests for information from news media representatives should be encouraged to eliminate the need for these requesters to invoke the provisions of the FOIA and thereby assist in providing timely information to the public. Similarly, requests from other members of the public for information that would not be withheld under the FOIA should continue to be honored through appropriate means without requiring the requester to invoke the FOIA.

(b) Within the Office of the Secretary of Defense, the Chief Information Officer, who is also the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence is responsible for preparing reference material or a guide for requesting records or information from the DoD, subject to the nine exemptions of the FOIA. This part shall also include an index of all major information systems, and a description of major information and record locator systems. DoD FOIA Components shall coordinate with the appropriate office(s) to insure that this function is also accomplished within their department or organization.

(c) DoD Components shall also prepare, in addition to normal FOIA regulations, a handbook for obtaining information from their organization. This handbook should be a short, simple explanation to the public of what the FOIA is designed to do, and how a member of the public can use it to access government records. Each DoD Component should explain the types of records that can be obtained through FOIA requests, why some records cannot, by law, be made available, and how the DoD Component determines whether the record can be released. The handbook should also explain how to make a FOIA request, how long the requester can expect to wait for a reply, and explain the right of appeal. The handbook should supplement other information locator systems, such as the Government Information Locator System (GILS), and explain how a requester can obtain more information about those systems. The handbook should be available on paper and through electronic means, and identify how a requester can access DoD Components" Freedom of Information Act annual reports. Similarly, the DoD Components" Freedom of Information Act annual reports should refer to the handbook and how to obtain it.

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

(d) *Control system.* A request for records that invokes the FOIA shall enter a formal control system designed to ensure accountability and compliance with the FOIA. Any request for DoD records that either explicitly or implicitly cites the FOIA shall be processed under the provisions of this part, unless otherwise required by § 286.4 (m)

§ 286.3 Definitions.

As used in this part, the following terms and meanings shall be applicable:

Administrative appeal. A request by a member of the general public, made under the FOIA, asking the appellate authority of a DoD Component to reverse a decision to: Withhold all or part of a requested record; deny a fee category claim by a requester; deny a request for expedited processing due to demonstrated compelling need under § 286.4 (d) (3); deny a request for waiver or reduction of fees; deny a request to review an initial fee estimate; and confirm that no records were located during the initial search.

Agency record. (1) The products of data compilation, such as all books, papers, maps, and photographs, machine readable materials, inclusive of those in electronic form or format, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law in connection with the transaction of public business and in DoD's possession and control at the time the FOIA request is made.

(2) The following are not included within the definition of the word "record":

(i) Objects or articles, such as structures, furniture, vehicles and equipment, whatever their historical value, or value as evidence.

(ii) Anything that is not a tangible or documentary record, such as an individual's memory or oral communication.

(iii) Personal records of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of an agency employee, and not distributed to other agency employees for their official use.

(iv) Information stored within a computer for which there is no existing computer program for retrieval of the requested information.

(3) A record must exist and be in the possession and control of the Department of Defense at the time of the request to be considered subject to this part and the FOIA. There is no obligation to create, compile, or obtain a record to satisfy an FOIA request. See § 286.4 (g) (2) with respect to creating a record in the electronic environment.

(4) Hard copy or electronic records, which are subject to FOIA requests under 5 U.S.C. 552 (a)(3), and which are available to the public through an established distribution system, or through the **Federal Register**, the National Technical Information Service, or the Internet, normally need not be processed under the provisions of the FOIA. If a request is received for such information, provide the requester with guidance on how to obtain the information. However, if the requester insists that the request be processed under the FOIA, then process the FOIA request. If the information sought is not an agency record pursuant to the FOIA and this part, there is no obligation to process the request under the FOIA, and the requester shall be so notified.

Appellate authority. The Head of the DoD Component or the Component head's designee having jurisdiction for this purpose over the record, or any of the other adverse determinations outlined in definitions "Initial denial authority and Administrative appeal.'

DoD Component. An element of the Department of Defense, as defined in § 286.1 (a) of this section authorized to receive and act independently on FOIA requests (see appendix G to this part). A DoD component has its own initial denial authority (IDA), appellate authority, and legal counsel.

Electronic data. Records and information (including e-mail) which are created, stored, and retrievable by electronic means.

FOIA request. A written request for DoD records, made by any person, including a member of the public (U.S. or foreign citizen), an organization, or a business, but not including a Federal agency or a fugitive from the law, that either explicitly or implicitly invokes the FOIA, DoD Directive 5400.7, this part, or DoD Component supplementing regulations or instructions. Written requests may be received by postal service or other commercial delivery means, by facsimile, or electronically.

Honoring form or format requests. DoD Components shall provide the record in any form or format requested by the requester if the record is readily reproducible in that form or format. DoD Components shall make reasonable efforts to maintain their records in forms or formats that are reproducible. In responding to requests for records, DoD Components shall make reasonable efforts to search for records in electronic form or format, except when such efforts would significantly interfere with the operation of the DoD Components" automated information system. Such determinations shall be made on a case by case basis. See also § 286.4 (g) (2).

Initial denial authority (IDA). An official who has been granted authority by the head of a DoD component to: withhold records requested under the FOIA for one or more of the nine categories of records exempt from mandatory disclosure. IDA's may also deny a fee category claim by a requester; deny a request for expedited processing due to demonstrated compelling need under § 286.4 (c) (3); deny a request for a waiver or reduction of fees; review a fee estimate; and confirm that no records were located in response to a request.

Public interest. The interest in obtaining official information that sheds light on an agency's performance of its statutory duties because the information falls within the statutory purpose of the FOIA to inform citizens about what their government is doing. That statutory purpose, however, is not fostered by disclosure of information about private citizens accumulated in various governmental files that reveals nothing about an agency's or official's own conduct.

§ 286.4 Policy.

(a) *Compliance with the FOIA.* DoD personnel are expected to comply with the FOIA , this part, and DoD FOIA policy in both letter and spirit. This strict adherence is necessary to provide uniformity in the implementation of the DoD FOIA Program and to create conditions that will promote public trust.

(b) *Openness with the public.* The Department of Defense shall conduct its activities in an open manner consistent with the need for security and adherence to other requirements of law and regulation. Records not specifically exempt from disclosure under the Act shall, upon request, be made readily accessible to the public in accordance with rules promulgated by competent authority, whether or not the Act is invoked.

(c) *Avoidance of procedural obstacles.* DoD Components shall ensure that procedural matters do not unnecessarily impede a requester from obtaining DoD records promptly. Components shall provide assistance to requesters to help them understand and comply with procedures established by this part and any supplemental regulations published by the DoD Components.

(d) *Prompt action on requests.* (1) Generally, when a member of the public complies with the procedures established in this part and DoD Component regulations or instructions for obtaining DoD records, the request shall receive prompt attention, and a response determination shall be dispatched within 10 working days (20 working days effective October 2, 1997) unless a significant number of requests precludes a determination within this time period. A response determination is notification to the requester that the records are released, or will be released on a certain date, or the records are denied under the appropriate FOIA exemption, or the records cannot be provided for one or more of the other reasons in paragraph (c) of this section. Interim responses acknowledging receipt of the request are encouraged; however, such responses do not constitute a response determination pursuant to the FOIA.

(2) *Multitrack processing.* When a Component has a significant number of requests which precludes a response determination being made within 10 working days (20 working days effective October 2, 1997), the requests shall be processed in a multitrack processing system, based on the date of receipt, the amount of work and time involved in processing the requests, and whether the request qualifies for expedited processing as described in paragraph (d) (3) of this section. DoD Components may establish as many processing queues as they wish; however, as a minimum, three processing tracks shall be established, all based on a first-in, first-out concept, and rank ordered by the date of receipt of the request. One track shall be a processing queue for simple requests, one track for complex requests, and one track shall be a processing queue for expedited processing as described in paragraph (d) (3) of this section. Simple and complex requests shall be decided by each DoD Component. DoD Components shall provide a requester whose request does not qualify for the fastest queue (except for expedited processing as described in paragraph (d) (3) of this section, an opportunity to limit in writing by hard copy, facsimile, or electronically, the scope of the request in order to qualify for the fastest queue. This multitrack processing system does not obviate components" responsibility to exercise due diligence in processing requests in the most expeditious manner possible.

(3) *Expedited processing.* A separate queue shall be established for requests meeting the test for expedited processing. Expedited processing shall be granted to a requester after the requester requests such and demonstrates a compelling need for the information. Notice of the determination as to whether to grant expedited processing in response to a requester's compelling need shall be provided to the requester within 10 calendar days after receipt of the request in the office which will determine whether to grant expedited access. Once the determination has been made to grant expedited processing, DoD Components shall process the request as soon as practicable. Actions by DoD Components to initially deny or affirm the initial denial on appeal of a request for expedited processing, and failure to respond in a timely manner shall be subject to judicial review

(i) *Compelling need.* The failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.

(ii) It is also the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity. News media requesters would normally qualify; however, other persons must demonstrate that their primary activity involves publishing or otherwise disseminating information to the public, not just a particular segment or group.

(A) *Urgently needed.* The information has a particular value that will be lost if not disseminated quickly. Ordinarily this means a breaking news story of general public interest. However, information of historical interest only, or information sought for litigation or commercial activities would not qualify, nor would a news media publication or broadcast deadline unrelated to the news breaking nature of the information.

(B) *Actual or alleged Federal government activity.* The information concerns some actions taken, contemplated, or alleged by or about the government of the United States, or one of its components or agencies, including the Congress.

(iii) A demonstration of compelling need by a requester shall be made by a statement certified by the requester to be true and correct to the best of their knowledge. This statement must accompany the request in order to be considered and responded to within the 10 calendar days required for decisions on expedited access.

(iv) *Other reason for expedited processing.* Another reason which merits expedited processing by DoD Components is an imminent loss of substantial due process rights. A demonstration of imminent loss of substantial due process rights shall be made by a statement certified by the requester to be true and correct to the best of their knowledge. This statement must accompany the request in order to be considered and responded to within the 10 calendar days required for decisions on expedited access. Once the decision has been made to expedite the request for this reason, the request may be processed in the expedited processing queue behind those requests qualifying for compelling need.

(v) These same procedures also apply to requests for expedited processing of administrative appeals.

(e) *Use of exemptions.* It is DoD policy to make records publicly available, unless the record qualifies for exemption under one or more of the nine exemptions. It is DoD policy that DoD Components shall make discretionary releases whenever possible; however, a discretionary release is normally not appropriate for records clearly exempt under exemptions 1, 3, 4, 6, 7 (F) and 7(C). Exemptions 2, 5, and 7(A)(B)(D) and (E) are discretionary in nature, and DoD Components are encouraged to exercise discretionary releases whenever possible. Exemptions 4, 6 and 7(C) cannot be claimed when the requester is the submitter of the information.

(f) *Public domain.* Nonexempt records released under the authority of this part are considered to be in the public domain. Such records may also be made available in Components' reading rooms in paper form, as well as electronically to facilitate public access. Exempt records released pursuant to the FOIA may be considered to be in the public domain only when their release constitutes a waiver of the FOIA exemption. Disclosure to a properly constituted advisory committee, to Congress, or to other Federal agencies does not waive the exemption. (See § 286.22 (d)). Records disclosed without authorization by the appropriate DoD official ("leaks") do not lose their exempt status. Also, while authority may exist to disclose records to individuals in their official capacity, the provisions of this part apply if the same individual seeks the records in a private or personal capacity.

(g) *Creating a record.* (1) A record must exist and be in the possession and control of the Department of Defense at the time of the search to be considered subject to this part and the FOIA. Unless the originator or submitter of the record has imposed restrictions controlling the dissemination of the record, a DoD Component has control of a record when it has possession of the record and uses it in the conduct of its business. There is no obligation to create, compile, or obtain a record to satisfy an FOIA request. A DoD Component,

however, may compile a new record when so doing would result in a more useful response to the requester, or be less burdensome to the agency than providing existing records, and the requester does not object. Cost of creating or compiling such a record may not be charged to the requester unless the fee for creating the record is equal to or less than the fee which would be charged for providing the existing record. Fee assessments shall be in accordance with subpart F of this part.

(2) With respect to electronic data, the issue of whether records are actually created or merely extracted from an existing data base is not always readily apparent. Consequently, when responding to FOIA requests for electronic data where creation of a record, programming, or particular format are questionable, Components should apply a standard of reasonableness. In other words, if the capability exists to respond to the request, and the effort would be a business as usual approach, then the request should be processed. However, the request need not be processed where the capability to respond does not exist without a significant expenditure of resources, thus not being a normal business as usual approach. As used in this sense, a significant expenditure of resources in both time and manpower, which would cause a significant interference with the operation of the components' automated information system would not be a business as usual approach.

(h) *Description of requested record.* (1) Identification of the record desired is the responsibility of the requester. The requester must provide a description of the desired record, that enables the Government to locate the record with a reasonable amount of effort. When a DoD Component receives a request that does not reasonably describe the requested record, it shall notify the requester of the defect. The defect should be highlighted in a specificity letter, asking the requester to provide the type of information outlined below in paragraph (h)(2) of this section. DoD Components are not obligated to act on the request until the requester responds to the specificity letter. When practicable, DoD Components shall offer assistance to the requester in identifying the records sought and in reformulating the request to reduce the burden on the agency in complying with the Act.

(2) The following guidelines are provided to deal with generalized requests and are based on the principle of reasonable effort. Descriptive information about a record may be divided into two broad categories.

(i) *Category I.* File-related and includes information such as type of record (for example, memorandum), title, index citation, subject area, date the record was created, and originator.

(ii) *Category II.* Event-related and includes the circumstances that resulted in the record being created or the date and circumstances surrounding the event the record covers.

(3) Generally, a record is not reasonably described unless the description contains sufficient Category I information to permit the conduct of an organized, nonrandom search based on the DoD Component's filing arrangements and existing retrieval systems, or unless the record contains sufficient Category II information to permit inference of the Category I elements needed to conduct such a search.

(4) The following guidelines deal with requests for personal records. Ordinarily, when personal identifiers are provided only in connection with a request for records concerning the requester, only records in a Privacy Act system of records, retrievable by personal identifiers need be searched. However, if a DoD Component has reason to believe that records on the requester may exist in a record system other than a Privacy Act system, the DoD Component shall search that system under the provisions of the FOIA. In either case, DoD Components may request a reasonable description of the records desired before searching for such records under the provisions of the FOIA and the Privacy Act (5 U.S.C. 552a). If the record is releasable under the FOIA, the Privacy Act does not bar its disclosure. See paragraph (m) of this section for the relationship between the FOIA and the Privacy Act.

(5) The previous guidelines notwithstanding, the decision of the DoD Component concerning reasonableness of description must be based on knowledge of its files. If the description enables DoD Component personnel to locate the record with reasonable effort, the description is adequate. The fact that a FOIA request is broad or burdensome in its magnitude does not, in and of itself, entitle a DoD Component to deny the request on the ground that it does not reasonably describe the records sought. The key factor is the ability of the DoD Component's staff to reasonably ascertain and locate which records are being requested.

(i) *Referrals.* (1) The DoD FOIA referral policy is based upon the concept of the originator of a record making a release determination on its information. If a DoD Component receives a request for records originated by another DoD Component, it shall contact the DoD Component to determine if it also received the request, and if not, obtain concurrence to refer the request. In either situation, the requester shall be advised of the action taken. While referrals to originators of information result in obtaining the best possible decision on release of the information, the policy does not relieve DoD Components from the responsibility of making a release decision on a record should the requester object to referral of the request and the record. A request received by a DoD Component having no records responsive to a request shall be referred routinely to another DoD Component, if the other DoD Component confirms that it has the requested record, and this belief can be confirmed by the other DoD Component. Prior to notifying a requester of a referral to another DoD Component, the DoD Component receiving the initial request shall consult with the other DoD Component to determine if that DoD Component's association with the material is classified. If the association is classified, the DoD Component receiving the initial request will protect the association and any exempt information without revealing the identity of the protected DoD Component. The protected DoD Component shall be responsible for submitting the justifications required in any litigation. Any DoD Component receiving a request that has been misaddressed shall refer the request to the proper address and advise the requester. DoD Components making referrals of requests or records shall include with the referral, a point of contact by name, a telephone number, and an e-mail address.

(2) Whenever a record or a portion of a record is, after prior consultation, referred to another DoD Component or to a Government agency outside of the Department of Defense for a release determination and direct response, the requester shall be informed of the referral. Referred records shall only be identified to the extent consistent with security requirements.

(3) A DoD Component shall refer for response directly to the requester, a FOIA request for a classified record that it holds to another DoD Component or agency outside the Department of Defense, if the record originated in the other DoD Component or outside agency or if the classification is derivative. In this situation, provide the record and a release recommendation on the record with the referral action.

(4) A DoD Component may refer a request for a record that it originated to another DoD Component or agency when the other DoD Component or agency has a valid interest in the record, or the record was created for the use of the other DoD Component or agency. In such situations, provide the record and a release recommendation on the record with the referral action. An example of such a situation is a request for audit reports prepared by the Defense Contract Audit Agency. These advisory reports are prepared for the use of contracting officers and their release to the audited contractor shall be at the discretion of the contracting officer. Any FOIA request shall be referred to the appropriate DoD Component and the requester shall be notified of the referral. Another example is a record originated by a DoD Component or agency which involves foreign relations, and could affect a DoD Component or organization in a host foreign country. Such a request and any responsive records, may be referred to the affected DoD Component or organization and the Department of State for consultation prior to a final release determination within DoD. See also § 286.22(e).

(5) Within DoD, a DoD Component shall ordinarily refer a FOIA request and a copy of the record it holds, but that was originated by another DoD Component or that contains substantial information obtained from another DoD Component, to that Component for direct response, after direct coordination and obtaining concurrence from the Component. The requester then shall be notified of such referral. DoD Components shall not, in any case, release or deny such records without prior consultation with the other DoD Component, except as provided in § 286.22(e).

(6) DoD Components that receive referred requests shall answer them in accordance with the time limits established by the FOIA, this part, and their multitrack processing queues, based upon the date of initial receipt of the request at the referring component or agency.

(7) Agencies outside the Department of Defense that are subject to the FOIA.

(i) A DoD Component may refer a FOIA request for any record that originated in an agency outside the DoD or that is based on information obtained from an outside agency to the agency for direct response to the requester after coordination with the outside agency, if that agency is subject to FOIA. Otherwise, the DoD Component must respond to the request.

(ii) A DoD Component shall refer to the agency that provided the record any FOIA request for investigative, intelligence, or any other type of records that are on loan to the Department of Defense for a specific purpose, if the records are restricted from further release and so marked. However, if for investigative or intelligence purposes, the outside agency desires anonymity, a DoD Component may only respond directly to the requester after coordination with the outside agency.

(8) DOD Components which receive requests for records of the National Security Council (NSC), the White House, or the White House Military Office (WHMO) shall process the requests. DoD records in which the NSC or White House has a concurrent reviewing interest, and NSC, White House, or WHMO records discovered in DoD Components' files shall be forwarded to the Office of the Assistant Secretary of Defense (Public Affairs)(OASD(PA)), ATTN: Directorate for Freedom of Information and Security Review (DFOISR). The DFOISR shall coordinate with the NSC, White House, or WHMO and return the records to the originating agency after coordination.

(9) To the extent referrals are consistent with the policies expressed by this paragraph, referrals between offices of the same DoD Component are authorized.

(10) On occasion, the Department of Defense receives FOIA requests for General Accounting Office (GAO) records containing DoD information. Even though the GAO is outside the Executive Branch, and not subject to the FOIA, all FOIA requests for GAO documents containing DoD information received either from the public, or on referral from the GAO, will be processed under the provisions of the FOIA.

(j) *Authentication.* Records provided under this part shall be authenticated with an appropriate seal, whenever necessary, to fulfill an official Government or other legal function. This service, however, is in addition to that required under the FOIA and is not included in the FOIA fee schedule. DoD Components may charge for the service at a rate of $5.20 for each authentication.

(k) *Unified Combatant Commands.* The Unified Combatant Commands are placed under the jurisdiction of the OSD, instead of the administering Military Department or the Joint Staff, only for the purpose of administering the DoD FOIA Program. This policy represents an exception to the policies directed in DoD Directive 5100.3;[2] it authorizes and requires the Unified Combatant Commands to process Freedom of Information Act (FOIA) requests in accordance with DoD Directive 5400.7 and this part. The Unified Combatant Commands shall forward directly to the OASD(PA), all correspondence associated with the appeal of an initial denial for records under the provisions of the FOIA. Procedures to effect this administrative requirement are outlined in appendix A to this part.

(l) *Records management.* FOIA records shall be maintained and disposed of in accordance with the National Archives and Records Administration General Records Schedule, and DoD Component records schedules.

(m) *Relationship between the FOIA and the Privacy Act (PA).* Not all requesters are knowledgeable of the appropriate statutory authority to cite when requesting records. In some instances, they may cite neither Act, but will imply one or both Acts. For these reasons, the following guidelines are provided to ensure that requesters receive the greatest amount of access rights under both Acts:

(1) If the record is releasable under the FOIA, the Privacy Act does not bar its disclosure. Unlike the FOIA, the Privacy Act applies only to U.S. citizens and aliens admitted for permanent residence.

(2) Requesters who seek records about themselves contained in a PA system of records and who cite or imply the PA, will have their requests processed under the provisions of both the PA and the FOIA. If the PA system of records is exempt from the provisions of 5 U.S.C. 552a(d)(1), the requester shall be so advised with the appropriate PA exemption, and then further advised that the information was therefore reviewed for release under the FOIA.

(3) Requesters who seek records about themselves which are not contained in a PA system of records and who cite or imply the PA, will have their requests processed under the provisions of the FOIA, since the PA does not apply to these records..

(4) Requesters who seek records about themselves which are contained in a PA system of records and who cite or imply the FOIA or both Acts will have their requests processed under the provisions of both the PA and the FOIA. If the PA system of records is exempt from the provisions of 5 U.S.C. 552a(d)(1) the requester shall be so advised with the appropriate PA exemption, and then further advised that the information was therefore reviewed for release under the FOIA.

(5) Requesters who seek access to agency records that are not part of a PA system of records, and who cite or imply the PA and FOIA, will have their

[2] See footnote 1 to § 286.1(a).

requests processed under the FOIA since the PA does not apply to these records.

(6) Requesters who seek access to agency records and who cite or imply the FOIA, will have their requests processed under the FOIA.

(7) Requesters shall be advised in final responses why their request was processed under a particular Act.

(n) *Non-responsive information in responsive records.* DoD components shall interpret FOIA requests liberally when determining which records are responsive to the requests. DoD Components shall respond to FOIA requests which involve non-responsive information within a responsive record in the following manner:

(1) Negotiate with the requester, and ask if the requester views the information as responsive, and if not, seek the requester's concurrence to deletion of non-responsive information without a FOIA exemption. Reflect this concurrence in the response letter.

(2) Should negotiation fail, if the responsive record is unclassified, release all non-responsive and responsive information. For non-responsive information that is exempt, notify the requester that even if the information were determined responsive, it would likely be exempt under (state appropriate exemption (s)). Advise the requester of the right to request this information under a separate FOIA request. The separate request shall be placed in the same location within the processing queue as the original request.

(3) Should negotiation fail, if the responsive record is classified, release all unclassified responsive and non-responsive information which is not otherwise exempt. If the non-responsive information is exempt, follow the procedures in (m) (2) of this section. The classified, non-responsive information need not be reviewed for declassification at this point. Advise the requester that even if the classified information were determined responsive, it would likely be exempt under 5 U.S.C. 552 (b)(1), and other exemptions if appropriate. Advise the requester of the right to request this information under a separate FOIA request. The separate request shall be placed in the same location within the processing queue as the original request.

Subpart B—FOIA Reading Rooms

§ 286.7 Requirements.

(a) *Reading room.* (1) Implementation of 5 U.S.C. 552 (a)(1) and (a)(2) within the Office of the Secretary of Defense is a records management responsibility within Washington Headquarters Services, Directives and Records Division. Each DoD Component shall provide an appropriate facility or facilities where the public may inspect and copy or have copied the materials described in paragraph (b) of this section. In addition to the materials described in paragraph (b) of this section, DoD Components may elect to place other records in their reading room, and also make them electronically available to the public. DoD Components may share reading room facilities if the public is not unduly inconvenienced. When appropriate, the cost of copying may be imposed on the person requesting the material in accordance with the provisions of subpart F of this part.

(2) The FOIA requires that copies of all records, regardless of form or format, which have been released pursuant to a FOIA request under 5 U.S.C. 552 (a)(3), and which because of the nature of the subject matter, have become or are likely to become the subject of subsequent requests for substantially the same records be made publicly available.

(i) DoD Components shall decide on a case by case basis whether records fall into this category, based on the following factors:

(A) Previous experience of the DoD Component with similar records.

(B) Particular circumstances of the records involved, including their nature and the type of information contained in them.

(C) The identity and number of requesters and whether there is widespread press, historic, or commercial interest in the records.

(ii) This provision is intended for situations where public access in a timely manner is important, and it is not intended to apply where there may be a limited number of requests over a short period of time from a few requesters. DoD Components may remove the records from this access medium when the appropriate officials determine that access is no longer necessary.

(b) *Material availability.* The FOIA requires that "(a) (2)" materials shall be made available in the FOIA reading room for inspection and copying, unless such materials are published and copies are offered for sale. Identifying details that, if revealed, would create a clearly unwarranted invasion of personal privacy may be deleted from "(a) (2)" materials made available for inspection and copying. In every case, justification for the deletion must be fully explained in writing, and the extent of such deletion shall be indicated on the record which is made publicly available, unless such indication would harm an interest protected by an exemption under which the deletion was made. If technically feasible, the extent of the deletion in electronic records or any other form of record shall be indicated at the place in the record where the deletion was made. However, a DoD Component may publish in the **Federal Register** a description of the basis upon which it will delete identifying details of particular types of documents to avoid clearly unwarranted invasions of privacy. In appropriate cases, the DoD Component may refer to this description rather than write a separate justification for each deletion. For "(a)(2)" records created after November 1, 1996, such records shall be made available to the public in hard copy and by computer telecommunications or by other electronic means by November 1, 1997.

" (a) (2)" materials are:

(1) Final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases, as defined in 5 U.S.C. 551, that may be cited, used, or relied upon as precedents in future adjudications.

(2) Statements of policy and interpretations that have been adopted by the agency and are not published in the **Federal Register**.

(3) Administrative staff manuals and instructions, or portions thereof, that establish DoD policy or interpretations of policy that affect a member of the public. This provision does not apply to instructions for employees on tactics and techniques to be used in performing their duties, or to instructions relating only to the internal management of the DoD Component. Examples of manuals and instructions not normally made available are:

(i) Those issued for audit, investigation, and inspection purposes, or those that prescribe operational tactics, standards of performance, or criteria for defense, prosecution, or settlement of cases.

(ii) Operations and maintenance manuals and technical information concerning munitions, equipment, systems, and foreign intelligence operations.

§ 286.8 Indexes.

(a) *"(a) (2)" materials.* (1) Each DoD Component shall maintain in each facility prescribed in § 286.7 (a), an index of materials described in § 286.7 (b), that are issued, adopted, or promulgated, after July 4, 1967. No "(a) (2)" materials issued, promulgated, or adopted after July 4, 1967, that are not indexed and either made available or published may be relied upon, used or cited as precedent against any individual unless such individual has actual and timely notice of the contents of such materials. Such materials issued, promulgated, or adopted before July 4, 1967, need not be indexed, but must be made available upon request if not exempted under this part.

(2) Each DoD Component shall promptly publish quarterly or more frequently, and distribute, by sale or otherwise, copies of each index of "(a) (2)" materials or supplements thereto unless it publishes in the **Federal Register** an order containing a determination that publication is unnecessary and impracticable. A copy of each index or supplement not published shall be provided to a requester at a cost not to exceed the direct cost of duplication as set forth in subpart F of this part.

(3) Each index of "(a)(2)" materials or supplement thereto shall be arranged topically or by descriptive words rather than by case name or numbering system so that members of the public can readily locate material. Case name and numbering arrangements, however, may also be included for DoD Component convenience.

(4) A general index of records referred to in § 286.7(b)(4) shall be made available to the public, both in hard copy and electronically by December 31, 1999.

(b) *Other materials.* (1) Any available index of DoD Component material published in the **Federal Register**, such as material required to be published by section 552(a)(1) of the FOIA, shall be made available in DoD Component FOIA reading rooms, and electronically to the public.

(2) Although not required to be made available in response to FOIA requests or made available in FOIA reading rooms, "(a)(1)" materials shall, when feasible, be made available to the public in FOIA reading rooms for inspection and copying, and by electronic means. Examples of "(a)(1)" materials are: descriptions of an agency's central and field organization, and to the extent they affect the public, rules of procedures, descriptions of forms available, instruction as to the scope and contents of papers, reports, or examinations, and any amendment, revision, or report of the aforementioned.

Subpart C—Exemptions

§ 286.11 General provisions.

Records that meet the exemption criteria of the FOIA may be withheld from public disclosure and need not be published in the **Federal Register**, made available in a library reading room, or provided in response to an FOIA request.

§ 286.12 Exemptions.

The following types of records may be withheld in whole or in part from public disclosure under the FOIA, unless otherwise prescribed by law. A discretionary release (see also § 286.4(e)) to one requester may preclude the withholding of the same record under a FOIA exemption if the record is subsequently requested by someone else. In applying exemptions, the identity of the requester and the purpose for which the record is sought are irrelevant with the exception that an exemption may not be invoked where the particular interest to be protected is the requester's interest.

(a) *Number 1 (5 U.S.C. 552(b)(1)).* Those properly and currently classified in the interest of national defense or foreign policy, as specifically authorized under the criteria established by executive order and implemented by regulations, such as DoD 5200.1–R[3]. Although material is not classified at the time of the FOIA request, a classification review may be undertaken to determine whether the information should be classified. The procedures in DoD 5200.1–R apply. If the information qualifies as exemption 1 information, there is no discretion regarding its release. In addition, this exemption shall be invoked when the following situations are apparent:

(1) The fact of the existence or nonexistence of a record would itself reveal classified information. In this situation, Components shall neither confirm nor deny the existence or nonexistence of the record being requested. A "refusal to confirm or deny" response must be used consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a "no record" response when a record does not exist, and a "refusal to confirm or deny" when a record does exist will itself disclose national security information.

(2) Compilations of items of information which are individually unclassified may be classified if the compiled information reveals additional association or relationship that meets the standard for classification under an existing executive order for classification and DoD 5200.1-R, and is not otherwise revealed in the individual items of information.

(b) *Number 2 (5 U.S.C. 552(b)(2)).* Those related solely to the internal personnel rules and practices of DoD or any of its Components. This exemption is entirely discretionary. This exemption has two profiles, high b2 and low b2. Paragraph (b)(2) of this section, contains a brief discussion on the low b2 profile; however, that discussion is for information purposes only. When only a minimum government interest would be affected (administrative burden), there is a great potential for discretionary disclosure of the information. Consequently, DoD Components shall not invoke the low b2 profile.

(1) Records qualifying under high b2 are those containing or constituting statutes, rules, regulations, orders, manuals, directives, and instructions the release of which would allow circumvention of these records thereby substantially hindering the effective performance of a significant function of the DoD. Examples include:

(i) Those operating rules, guidelines, and manuals for DoD investigators, inspectors, auditors, or examiners that must remain privileged in order for the DoD Component to fulfill a legal requirement.

(ii) Personnel and other administrative matters, such as examination questions and answers used in training courses or in the determination of the qualifications of candidates for employment, entrance on duty, advancement, or promotion.

(iii) Computer software, the release of which would allow circumvention of a statute or DoD rules, regulations, orders, manuals, directives, or instructions. In this situation, the use of the software must be closely examined to ensure a circumvention possibility exists.

(2) Records qualifying under the low b2 profile are those that are trivial and housekeeping in nature for which there is no legitimate public interest or benefit to be gained by release, and it would constitute an administrative burden to process the request in order to disclose the records. Examples include; rules of personnel's use of parking facilities or regulation of lunch hours, statements of policy as to sick leave, and trivial administrative data such as file numbers, mail routing stamps, initials, data processing notations, brief references to previous communications, and other like administrative markings. DoD Components shall not invoke the low b2 profile.

(c) *Number 3 (5 U.S.C. 552(b)(3)).* Those concerning matters that a statute specifically exempts from disclosure by terms that permit no discretion on the issue, or in accordance with criteria established by that statute for withholding or referring to particular types of matters to be withheld. The

[3] See footnote 1 to § 286.1 (a).

Directorate for Freedom of Information and Security Review, Office of the Assistant Secretary of Defense for Public Affairs maintains a list of "(b)(3)" statutes used within DoD, and provides updated lists of these statutes to DoD Components on a periodic basis. A few examples of such statutes are:

(1) *Patent Secrecy, 35 U.S.C. 181–188.* Any records containing information relating to inventions that are the subject of patent applications on which Patent Secrecy Orders have been issued.

(2) Restricted Data and Formerly Restricted Data, 42 U.S.C. 2162.

(3) Communication Intelligence, 18 U.S.C. 798.

(4) Authority to withhold from public disclosure certain technical data, 10 U.S.C. 130 and DoD Directive 5230.25. [4]

(5) *Confidentiality of medical quality assurance records:* Qualified Immunity for Participants, 10 U.S.C. 1102 f.

(6) *Physical protection of special nuclear material:* Limitation on Dissemination of Unclassified Information, 10 U.S.C. 128.

(7) Protection of intelligence sources and methods, 50 U.S.C. 403–3(c)(5).

(8) Protection of Contractor Submitted Proposals, 10 U.S.C. 2305(g).

(9) Procurement Integrity, 41 U.S.C. 423.

(d) Number 4 (5 U.S.C. 552 (b)(4)). Those containing trade secrets or commercial or financial information that a DoD Component receives from a person or organization outside the Government with the understanding that the information or record will be retained on a privileged or confidential basis in accordance with the customary handling of such records. Records within the exemption must contain trade secrets, or commercial or financial records, the disclosure of which is likely to cause substantial harm to the competitive position of the source providing the information; impair the Government's ability to obtain necessary information in the future; or impair some other legitimate government interest. If the information qualifies as exemption 4 information, there is no discretion in its release. Examples include:

(1) Commercial or financial information received in confidence in connection with loans, bids, contracts, or proposals set forth in or incorporated by reference in a contract entered into between the DoD Component and the offeror that submitted the proposal, as well as other information received in confidence or privileged, such as trade secrets, inventions, discoveries, or other proprietary data. See also § 286.23(h)(2).

[4] See footnote 1 to § 286.1 (a).

Additionally, when the provisions of 10 U.S.C. 2305(g), and 41 U.S.C. 423 are met, certain proprietary and source selection information may be withheld under exemption 3.

(2) Statistical data and commercial or financial information concerning contract performance, income, profits, losses, and expenditures, if offered and received in confidence from a contractor or potential contractor.

(3) Personal statements given in the course of inspections, investigations, or audits, when such statements are received in confidence from the individual and retained in confidence because they reveal trade secrets or commercial or financial information normally considered confidential or privileged.

(4) Financial data provided in confidence by private employers in connection with locality wage surveys that are used to fix and adjust pay schedules applicable to the prevailing wage rate of employees within the Department of Defense.

(5) Scientific and manufacturing processes or developments concerning technical or scientific data or other information submitted with an application for a research grant, or with a report while research is in progress.

(6) Technical or scientific data developed by a contractor or subcontractor exclusively at private expense, and technical or scientific data developed in part with Federal funds and in part at private expense, wherein the contractor or subcontractor has retained legitimate proprietary interests in such data in accordance with 10 U.S.C. 2320–2321 and DoD Federal Acquisition Regulation Supplement (DFARS), Chapter 2 of 48 CFR, part 227, subpart 227.71–227.72. Technical data developed exclusively with Federal funds may be withheld under Exemption Number 3 if it meets the criteria of 10 U.S.C. 130 and DoD Directive 5230.25 (see § 286.12(b)(3)(v)).

(7) Computer software which is copyrighted under the Copyright Act of 1976 (17 U.S.C. 106), the disclosure of which would have an adverse impact on the potential market value of a copyrighted work.

(8) Proprietary information submitted strictly on a voluntary basis, absent any exercised authority prescribing criteria for submission. Examples of exercised authorities prescribing criteria for submission are statutes, executive orders, regulations, invitations for bids, requests for proposals, and contracts. Submission of information under these authorities is not voluntary (see also § 286.23(h)(3)).

(e) *Number 5 (5 U.S.C. 552(b)(5)).* Those containing information considered privileged in litigation, primarily under the deliberative process privilege. Except as provided in paragraphs (e)(2) through (e)(5) of this section, internal advice, recommendations, and subjective evaluations, as contrasted with factual matters, that are reflected in deliberative records pertaining to the decision-making process of an agency, whether within or among agencies (as defined in 5 U.S.C. 552(e)), or within or among DoD Components. In order to meet the test of this exemption, the record must be both deliberative in nature, as well as part of a decision-making process. Merely being an internal record is insufficient basis for withholding under this exemption. Also potentially exempted are records pertaining to the attorney-client privilege and the attorney work-product privilege. This exemption is entirely discretionary.

(1) Examples of the deliberative process include:

(i) The non factual portions of staff papers, to include after-action reports, lessons learned, and situation reports containing staff evaluations, advice, opinions, or suggestions.

(ii) Advice, suggestions, or evaluations prepared on behalf of the Department of Defense by individual consultants or by boards, committees, councils, groups, panels, conferences, commissions, task forces, or other similar groups that are formed for the purpose of obtaining advice and recommendations.

(iii) Those non factual portions of evaluations by DoD Component personnel of contractors and their products.

(iv) Information of a speculative, tentative, or evaluative nature or such matters as proposed plans to procure, lease or otherwise acquire and dispose of materials, real estate, facilities or functions, when such information would provide undue or unfair competitive advantage to private personal interests or would impede legitimate government functions.

(v) Trade secret or other confidential research development, or commercial information owned by the Government, where premature release is likely to affect the Government's negotiating position or other commercial interest.

(vi) Records that are exchanged among agency personnel and within and among DoD Components or agencies as part of the preparation for anticipated administrative proceeding by an agency or litigation before any Federal, state, or military court, as well as records that qualify for the attorney-client privilege.

(vii) Those portions of official reports of inspection, reports of the Inspector Generals, audits, investigations, or surveys pertaining to safety, security, or the internal management, administration, or operation of one or more DoD Components, when these records have traditionally been treated by the courts as privileged against disclosure in litigation.

(viii) Planning, programming, and budgetary information which is involved in the defense planning and resource allocation process.

(2) If any such intra or inter-agency record or reasonably segregable portion of such record hypothetically would be made available routinely through the discovery process in the course of litigation with the agency, then it should not be withheld under the FOIA. If, however, the information hypothetically would not be released at all, or would only be made through the discovery process by special order of the court based on agency maintaining its confidentiality, then the record may be withheld. Discovery is the formal process by which litigants obtain information from each other for use in the litigation. Consult with legal counsel to determine whether exemption 5 material would be routinely made available through the discovery process.

(3) Intra or inter-agency memoranda or letters that are factual, or those reasonably segregable portions that are factual, are routinely made available through discovery, and shall be made available to a requester, unless the factual material is otherwise exempt from release, inextricably intertwined with the exempt information, so fragmented as to be uninformative, or so redundant of information already available to the requester as to provide no new substantive information.

(4) A direction or order from a superior to a subordinate, though contained in an internal communication, generally cannot be withheld from a requester if it constitutes policy guidance or a decision, as distinguished from a discussion of preliminary matters or a request for information or advice that would compromise the decision-making process.

(5) An internal communication concerning a decision that subsequently has been made a matter of public record must be made available to a requester when the rationale for the decision is expressly adopted or incorporated by reference in the record containing the decision.

(f) *Number 6 (5 U.S.C. 552 (b)(6)).* Information in personnel and medical files, as well as similar personal information in other files, that, if disclosed to the requester would result in a clearly unwarranted invasion of personal privacy. Release of information about an individual contained in a Privacy Act System of records that would constitute a clearly unwarranted invasion of privacy is prohibited, and could subject the releaser to civil and criminal penalties. If the information qualifies as exemption 6 information, there is no discretion in its release.

(1) Examples of other files containing personal information similar to that contained in personnel and medical files include:

(i) Those compiled to evaluate or adjudicate the suitability of candidates for civilian employment or membership in the Armed Forces, and the eligibility of individuals (civilian, military, or contractor employees) for security clearances, or for access to particularly sensitive classified information.

(ii) Files containing reports, records, and other material pertaining to personnel matters in which administrative action, including disciplinary action, may be taken.

(2) Home addresses are normally not releasable without the consent of the individuals concerned. In addition, DoD military and civilian personnel's names and duty addresses who are assigned to units that are sensitive, routinely deployable, or stationed in foreign territories can constitute a clearly unwarranted invasion of personal privacy.

(i) *Privacy interest.* A privacy interest may exist in personal information even though the information has been disclosed at some place and time. If personal information is not freely available from sources other than the Federal Government, a privacy interest exists in its nondisclosure. The fact that the Federal Government expended funds to prepare, index and maintain records on personal information, and the fact that a requester invokes FOIA to obtain these records indicates the information is not freely available.

(ii) Names and duty addresses published in telephone directories, organizational charts, rosters and similar materials for personnel assigned to units that are sensitive, routinely deployable, or stationed in foreign territories are withholdable under this exemption.

(iii) This exemption shall not be used in an attempt to protect the privacy of a deceased person, but it may be used to protect the privacy of the deceased person's family if disclosure would rekindle grief, anguish, pain, embarrassment, or even disruption of peace of mind of surviving family members. In such situations, balance the surviving family members' privacy against the public's right to know to determine if disclosure is in the public interest. Additionally, the deceased's social security number should be withheld as it used by the next of kin to receive benefits. Disclosures may be made to the immediate next of kin as defined in DoD Directive 5154.24.[5]

(4) Individuals' personnel, medical, or similar file may be withheld from them or their designated legal representative only to the extent consistent with DoD Directive 5400.11.[6]

(5) A clearly unwarranted invasion of the privacy of the persons identified in a personnel, medical or similar record may constitute a basis for deleting those reasonably segregable portions of that record, even when providing it to the subject of the record. When withholding personal information from the subject of the record, first review the Privacy Act and then consult with legal counsel.

(6) This exemption also applies when the fact of the existence or nonexistence of a responsive record would itself reveal personally private information, and the public interest in disclosure is not sufficient to outweigh the privacy interest. In this situation, DoD Components shall neither confirm nor deny the existence or nonexistence of the record being requested. This is a Glomar response, and exemption 6 must be cited in the response. Additionally, in order to insure personal privacy is not violated during referrals, DoD Components shall coordinate with other DoD Components or Federal agencies before referring a record which is exempt under the Glomar concept.

(i) A "refusal to confirm or deny" response must be used consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a "no records" response when a record does not exist and a "refusal to confirm or deny" when a record does exist will itself disclose personally private information.

(ii) Refusal to confirm or deny should not be used when:

(A) The person whose personal privacy is in jeopardy has provided the requester a waiver of his or her privacy rights; or

(B) The person whose personal privacy is in jeopardy is deceased, the agency is aware of that fact, and disclosure would not invade the privacy of the deceased's family. See paragraph (f) (3) of this section.

[5] See footnote 1 to § 286.1 (a).

[6] See footnote 1 to § 286.1 (a).

(g) *Number 7 (5 U.S.C. 552 (b)(7)).* Records or information compiled for law enforcement purposes; i.e., civil, criminal, or military law, including the implementation of executive orders or regulations issued pursuant to law. This exemption may be invoked to prevent disclosure of documents not originally created for, but later gathered for law enforcement purposes. With the exception of parts (C) and (F) of this exemption, this exemption is discretionary. If information qualifies as exemption (7)(C) or (7)(F) information, there is no discretion in its release. This exemption applies, however, only to the extent that production of such law enforcement records or information could result in the following:

(1) Could reasonably be expected to interfere with enforcement proceedings.

(2) Would deprive a person of the right to a fair trial or to an impartial adjudication.

(3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy of a living person, including surviving family members of an individual identified in such a record.

(i) This exemption also applies when the fact of the existence or nonexistence of a responsive record would itself reveal personally private information, and the public interest in disclosure is not sufficient to outweigh the privacy interest. In this situation, Components shall neither confirm nor deny the existence or nonexistence of the record being requested. This is a Glomar response, and exemption 7C must be cited in the response. Additionally, in order to insure personal privacy is not violated during referrals, DoD Components shall coordinate with other DoD Components or Federal agencies before referring a record which is exempt under the Glomar concept.

(ii) A "refusal to confirm or deny" response must be used consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a "no records" response when a record does not exist and a "refusal to confirm or deny" when a record does exist will itself disclose personally private information.

(iii) Refusal to confirm or deny should not be used when:

(A) The person whose personal privacy is in jeopardy has provided the requester with a waiver of his or her privacy rights; or

(B) The person whose personal privacy is in jeopardy is deceased, and the agency is aware of that fact.

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a source within the Department of Defense, a State, local, or foreign agency or authority, or any private institution which furnishes the information on a confidential basis.

(v) Could disclose information furnished from a confidential source and obtained by a criminal law enforcement authority in a criminal investigation or by an agency conducting a lawful national security intelligence investigation.

(vi) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

(vii) Could reasonably be expected to endanger the life or physical safety of any individual.

(4) Examples include:

(i) Statements of witnesses and other material developed during the course of the investigation and all materials prepared in connection with related government litigation or adjudicative proceedings.

(ii) The identity of firms or individuals being investigated for alleged irregularities involving contracting with the Department of Defense when no indictment has been obtained nor any civil action filed against them by the United States.

(iii) Information obtained in confidence, expressed or implied, in the course of a criminal investigation by a criminal law enforcement agency or office within a DoD Component, or a lawful national security intelligence investigation conducted by an authorized agency or office within a DoD Component. National security intelligence investigations include background security investigations and those investigations conducted for the purpose of obtaining affirmative or counterintelligence information.

(5) The right of individual litigants to investigative records currently available by law (such as, the Jencks Act, 18 U.S.C. 3500) is not diminished.

(6) When the subject of an investigative report is the requester of the record and the report is contained in a Privacy Act system of records, it may only be denied to the requester if withholding is both authorized by DoD 5400.11-R[7], and by exemption seven of the FOIA.

(7) *Exclusions.* Excluded from the previously identified exemption, are the below two situations applicable to the Department of Defense. Components considering invoking an exclusion should first consult with the Department of Justice, Office of Information and Privacy.

(i) Whenever a request is made which involves access to records or information compiled for law enforcement purposes, and the investigation or proceeding involves a possible violation of criminal law where there is reason to believe that the subject of the investigation or proceeding is unaware of its pendency, and the disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, Components may, during only such times as that circumstance continues, treat the records or information as not subject to the FOIA. In such situation, the response to the requester will state that no records were found.

(ii) Whenever informant records maintained by a criminal law enforcement organization within a DoD Component under the informant's name or personal identifier are requested by a third party using the informant's name or personal identifier, the Component may treat the records as not subject to the FOIA, unless the informant's status as an informant has been officially confirmed. If it is determined that the records are not subject to exemption 7, the response to the requester will state that no records were found.

(h) *Number 8 (5 U.S.C. 552 (b)(8)).* Those contained in or related to examination, operation or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions.

(i) *Number 9 (5 U.S.C. 552 (b)(9)).* Those containing geological and geophysical information and data (including maps) concerning wells.

[7] See footnote 1 to § 286.1 (a).

Subpart D—For Official Use Only

§ 286.15 General provisions.

(a) *General.* Information that has not been given a security classification pursuant to the criteria of an Executive Order, but which may be withheld from the public for one or more of the reasons cited in FOIA exemptions 2 through 9 shall be considered as being for official use only. No other material shall be considered or marked "For Official Use Only" (FOUO) and FOUO is not authorized as an anemic form of classification to protect national security interests.

(b) *Prior FOUO application.* The prior application of FOUO markings is not a conclusive basis for withholding a record that is requested under the FOIA. When such a record is requested, the information in it shall be evaluated to determine whether, under current circumstances, FOIA exemptions apply in withholding the record or portions of it. If any exemptions apply, it may nonetheless be released when it is determined that no governmental interest will be jeopardized by its release.

(c) *Historical papers.* Records such as notes, working papers, and drafts retained as historical evidence of DoD Component actions enjoy no special status apart from the exemptions under the FOIA.

(d) *Time to mark records.* The marking of records at the time of their creation provides notice of FOUO content and facilitates review when a record is requested under the FOIA. Records requested under the FOIA that do not bear such markings, shall not be assumed to be releasable without examination for the presence of information that requires continued protection and qualifies as exempt from public release.

(e) *Distribution statement.* Information in a technical document that requires a distribution statement pursuant to DoD Directive 5230.24[8] shall bear that statement and may be marked FOUO, as appropriate.

§ 286.16 Markings.

(a) An unclassified document containing FOUO information shall be marked "For Official Use Only" at the bottom on the outside of the front cover (if any), on each page containing FOUO information, and on the outside of the back cover (if any).

(b) Within a classified document, an individual page that contains both FOUO and classified information shall be marked at the top and bottom with the highest security classification of information appearing on the page. Individual paragraphs shall be marked at the appropriate classification level, as well as unclassified or FOUO, as appropriate.

(c) Within a classified document, an individual page that contains FOUO information but no classified information shall be marked "For Official Use Only" at the bottom of the page.

(d) Other records, such as, photographs, films, tapes, or slides, shall be marked "For Official Use Only" or "FOUO" in a manner that ensures that a recipient or viewer is aware of the status of the information therein.

(e) FOUO material transmitted outside the Department of Defense requires application of an expanded marking to explain the significance of the FOUO marking. This may be accomplished by typing or stamping the following statement on the record prior to transfer:

This document contains information EXEMPT FROM MANDATORY DISCLOSURE under the FOIA. Exemptions, apply.

[8] See footnote 1 to § 286.1 (a).

§ 286.17 Dissemination and transmission.

(a) *Release and transmission procedures.* Until FOUO status is terminated, the release and transmission instructions that follow apply:

(1) FOUO information may be disseminated within DoD Components and between officials of DoD Components and DoD contractors, consultants, and grantees to conduct official business for the Department of Defense. Recipients shall be made aware of the status of such information, and transmission shall be by means that preclude unauthorized public disclosure. Transmittal documents shall call attention to the presence of FOUO attachments.

(2) DoD holders of FOUO information are authorized to convey such information to officials in other departments and agencies of the executive and judicial branches to fulfill a government function, except to the extent prohibited by the Privacy Act. Records thus transmitted shall be marked "For Official Use Only", and the recipient shall be advised that the information has been exempted from public disclosure, pursuant to the FOIA, and that special handling instructions do or do not apply.

(3) Release of FOUO information to Members of Congress is governed by DoD Directive 5400.4[9]. Release to the GAO is governed by DoD Directive 7650.1[10]. Records released to the Congress or GAO should be reviewed to determine whether the information warrants FOUO status. If not, prior FOUO markings shall be removed or effaced. If withholding criteria are met, the records shall be marked FOUO and the recipient provided an explanation for such exemption and marking. Alternatively, the recipient may be requested, without marking the record, to protect against its public disclosure for reasons that are explained.

(b) *Transporting FOUO information.* Records containing FOUO information shall be transported in a manner that precludes disclosure of the contents. When not commingled with classified information, FOUO information may be sent via first-class mail or parcel post. Bulky shipments, such as distributions of FOUO Directives or testing materials, that otherwise qualify under postal regulations may be sent by fourth-class mail.

(c) *Electronically and facsimile transmitted messages.* Each part of electrically and facsimile transmitted messages containing FOUO information shall be marked appropriately. Unclassified messages containing FOUO information shall contain the abbreviation "FOUO" before the beginning of the text. Such messages and facsimiles shall be transmitted in accordance with communications security procedures in Allied Communications Publication (ACP–121 [11]) for FOUO information.

§ 286.18 Safeguarding FOUO information.

(a) *During duty hours.* During normal working hours, records determined to be FOUO shall be placed in an out-of-sight location if the work area is accessible to non-government personnel.

(b) *During nonduty hours.* At the close of business, FOUO records shall be stored so as to preclude unauthorized access. Filing such material with other unclassified records in unlocked files or desks, etc., is adequate when normal U.S. Government or government-contractor internal building security is provided during nonduty hours. When such internal security control is not exercised, locked buildings or rooms normally provide adequate after-hours protection. If such protection is not considered adequate, FOUO material shall be stored in locked receptacles such as file cabinets, desks, or bookcases. FOUO records that are subject to the provisions of 50 U.S.C. 402 note shall meet the safeguards outlined for that group of records.

§ 286.19 Termination, disposal and unauthorized disclosure.

(a) *Termination.* The originator or other competent authority, e.g., initial denial and appellate authorities, shall terminate "For Official Use Only" markings or status when circumstances indicate that the information no longer requires protection from public disclosure. When FOUO status is terminated, all known holders shall be notified, to the extent practical. Upon notification, holders shall efface or remove the "For Official Use Only" markings, but records in file or storage need not be retrieved solely for that purpose.

(b) *Disposal.* (1) Nonrecord copies of FOUO materials may be destroyed by tearing each copy into pieces to preclude reconstructing, and placing

[9] See footnote 1 to § 286.1 (a).

[10] See footnote 1 to § 286.1 (a).

[11] Not for general public distribution. Available to Military Components only. Components contact MCEB.

them in regular trash containers. When local circumstances or experience indicates that this destruction method is not sufficiently protective of FOUO information, local authorities may direct other methods but must give due consideration to the additional expense balanced against the degree of sensitivity of the type of FOUO information contained in the records.

(2) Record copies of FOUO documents shall be disposed of in accordance with the disposal standards established under 44 U.S.C. Chapter 33, as implemented by DoD Component instructions concerning records disposal.

(c) *Unauthorized disclosure.* The unauthorized disclosure of FOUO records does not constitute an unauthorized disclosure of DoD information classified for security purposes. Appropriate administrative action shall be taken, however, to fix responsibility for unauthorized disclosure whenever feasible, and appropriate disciplinary action shall be taken against those responsible. Unauthorized disclosure of FOUO information that is protected by the Privacy Act may also result in civil and criminal sanctions against responsible persons. The DoD Component that originated the FOUO information shall be informed of its unauthorized disclosure.

Subpart E—Release and Processing Procedures

§ 286.22 General provisions.

(a) *Public information.* (1) Since the policy of the Department of Defense is to make the maximum amount of information available to the public consistent with its other responsibilities, written requests for a DoD record made under the provisions of 5 U.S.C. 552 (a)(3) of the FOIA may be denied only when:

(i) The record is subject to one or more of the exemptions of the FOIA.

(ii) The record has not been described well enough to enable the DoD Component to locate it with a reasonable amount of effort by an employee familiar with the files.

(iii) The requester has failed to comply with the procedural requirements, including the written agreement to pay or payment of any required fee imposed by the instructions of the DoD Component concerned. When personally identifiable information in a record is requested by the subject of the record or his attorney, notarization of the request, or a statement certifying under the penalty of perjury that their identity is true and correct may be required. Additionally, written consent of the subject of the record is required for disclosure from a Privacy Act System of records, even to the subject's attorney.

(2) Individuals seeking DoD information should address their FOIA requests to one of the addresses listed in Appendix B to this part.

(b) *Requests from private parties.* The provisions of the FOIA are reserved for persons with private interests as opposed to U.S. federal agencies seeking official information. Requests from private persons will be made in writing, and will clearly show all other addressees within the Federal Government to whom the request was also sent. This procedure will reduce processing time requirements, and ensure better inter and intra-agency coordination. DoD Components are under no obligation to establish procedures to receive hand delivered requests; and they should encourage requesters to send requests by mail, facsimile, or by electronic means. Disclosure of records to individuals under the FOIA is considered public release of information, except as provided for in §§ 286.4(f) and 286.12.

(c) *Requests from Government officials.* Requests from officials of State, or local Governments for DoD Component records shall be considered the same as any other requester. Requests from members of Congress not seeking records on behalf of a Congressional Committee, Subcommittee, either House sitting as a whole, or made on behalf of their constituents shall be considered the same as any other requester (See also § 286.4 (f) and paragraph (d) of this section). Requests from officials of foreign governments shall be considered the same as any other requester. Requests from officials of foreign governments that do not invoke the FOIA shall be referred to appropriate foreign disclosure channels and the requester so notified.

(d) *Privileged release to U.S. Government officials.* (1) Records exempt from release to the public under the FOIA may be disclosed in accordance with DoD Component regulations to agencies of the Federal government, whether legislative, executive, or administrative, as follows:

(i) In response to a request of a Committee or Subcommittee of Congress, or to either House sitting as a whole in accordance with DoD Directive 5400.4;

(ii) To other Federal Agencies, both executive and administrative, as determined by the head of a DoD Component or designee;

(iii) In response to an order of a Federal court, DoD Components shall release information along with a description of the restrictions on its release to the public.

(2) DoD Components shall inform officials receiving records under the provisions of this paragraph that those records are exempt from public release under the FOIA. DoD Components also shall advise officials of any special handling instructions. Classified information is subject to the provisions of DoD 5200.1–R, and information contained in Privacy Act systems of records is subject to DoD 5400.11–R.

(e) *Coordination with affected DoD component.* (1) When a DoD Component receives a FOIA request for a record in which an affected DoD organization (including a Unified or Subunified Combatant Command) has a substantial interest in the subject matter, or the DoD Component receives a FOIA request from a foreign government, a foreign citizen, or an individual or entity with a foreign address, the DoD component receiving the request shall provide the request to the affected DoD component.

(2) Upon receiving the request, the affected DoD Component shall review the request for host nation relations, coordinate with Department of State as appropriate, and if necessary, provide a copy of the request to the appropriate foreign disclosure office for review. Upon request by the affected DoD component, the DoD component receiving the initial request shall provide a copy of releasable records to the affected DoD component. The affected DoD component may further release the records to its host nation after coordination with Department of State if release is in the best interest of the United States Government. If the record is released to the host nation government, the affected DoD Component shall notify the DoD Component which initially received the request of the release to the host nation.

(3) Nothing in the previous paragraphs of this section shall impede the processing of the FOIA request initially received by a DoD component.

§ 286.23 Initial determinations.

(a) *Initial denial authority.* (1) Components shall limit the number of IDAs appointed. In designating its IDAs, a DoD Component shall balance the goals of centralization of authority to promote uniform decisions and decentralization to facilitate responding to each request within the time limitations of the FOIA.

(2) The initial determination whether to make a record available upon request may be made by any suitable official designated by the DoD Component in published regulations. The presence of the marking "For Official Use Only" does not relieve the designated official of the responsibility to review the requested record for the purpose of determining whether an exemption under the FOIA is applicable.

(3) The officials designated by DoD Components to make initial determinations should consult with public affairs officers (PAOs) to become familiar with subject matter that is considered to be newsworthy, and advise PAOs of all requests from news media representatives. In addition, the officials should inform PAOs in advance when they intend to withhold or partially withhold a record, if it appears that the withholding action may be challenged in the media.

(b) *Reasons for not releasing a record.* There are seven reasons for not complying with a request for a record under 5 U.S.C. 552(a)(3) of the FOIA:

(1) The request is transferred to another DoD Component, or to another federal agency.

(2) The DoD Component determines through knowledge of its files and reasonable search efforts that it neither controls nor otherwise possesses the requested record.

(3) A record has not been described with sufficient particularity to enable the DoD Component to locate it by conducting a reasonable search.

(4) The requester has failed unreasonably to comply with procedural requirements, including payment of fees, imposed by this part or DoD Component supplementing regulations.

(5) The request is withdrawn by the requester.

(6) The information requested is not a record within the meaning of the FOIA and this part.

(7) The record is denied in whole or in part in accordance with procedures set forth in the FOIA and this part.

(c) *Denial tests.* To deny a requested record that is in the possession and control of a DoD Component, it must be determined that the record is exempt under one or more of the exemptions of the FOIA. An outline of the FOIA's exemptions is contained in subpart C of this part.

(d) *Reasonably segregable portions.* Although portions of some records may be denied, the remaining reasonably segregable portions must be released to the requester when it reasonably can be assumed that a skillful and knowledgeable person could not reconstruct the excised information. The amount of deleted information shall be indicated on the released portion of paper records by use of brackets or darkened areas indicating removal of information. In no case shall the deleted areas be left "white" without the use of brackets to show the bounds of deleted information. In the case of electronic deletion, or deletion in audiovisual or microfiche records, if technically feasible, the amount of redacted information shall be indicated at the place in the record such deletion was made. This may be done by use of brackets, shaded areas, or some other identifiable technique which will clearly show the limits of the deleted information. When a record is denied in whole, the response advising the requester of that determination will specifically state that it is not reasonable to segregate portions of the record for release.

(e) *Response to requester.* (1) Whenever possible, initial determinations to release or deny a record normally shall be made and the decision reported to the requester within 10 working days (20 working days effective October 2, 1997) after receipt of the request by the official designated to respond. When a DoD Component has a significant number of requests which preclude a response determination within the 10 working day period (20 working days effective October 2, 1997), the requester shall be so notified in an interim response, and advised whether their request qualifies for the fast track or slow track within the DoD Components" multitrack processing system. Requesters who do not meet the criteria for fast track processing shall be given the opportunity to limit the scope of their request in order to qualify for fast track processing. See also § 286.4(d) for greater detail on multitrack processing and compelling need meriting expedited processing.

(2) When a decision is made to release a record, a copy should be made available promptly to the requester once he has complied with preliminary procedural requirements.

(3) When a request for a record is denied in whole or in part, the official designated to respond shall inform the requester in writing of the name and title or position of the official who made the determination, and shall explain to the requester the basis for the determination in sufficient detail to permit the requester to make a decision concerning appeal. The requester specifically shall be informed of the exemptions on which the denial is based, inclusive of a brief statement describing what the exemption(s) cover. When the initial denial is based in whole or in part on a security classification, the explanation should include a summary of the applicable Executive Order criteria for classification, as well as an explanation, to the extent reasonably feasible, of how those criteria apply to the particular record in question. The requester shall also be advised of the opportunity and procedures for appealing an unfavorable determination to a higher final authority within the DoD Component.

(4) The final response to the requester should contain information concerning the fee status of the request, consistent with the provisions of subpart F, this part.

(5) The explanation of the substantive basis for a denial shall include specific citation of the statutory exemption applied under provisions of this part, e.g., 5 U.S.C. 552 (b)(1). Merely referring to a classification; to a "For Official Use Only" marking on the requested record; or to this part or a DoD component's regulation does not constitute a proper citation or explanation of the basis for invoking an exemption.

(6) When the time for response becomes an issue, the official responsible for replying shall acknowledge to the requester the date of the receipt of the request.

(7) In denying a request for records, in whole or in part, a DoD Component shall make a reasonable effort to estimate the volume of the records denied and provide this estimate to the requester, unless providing such an estimate would harm an interest protected by an exemption of the FOIA.

(f) *Extension of time.* (1) In unusual circumstances, when additional time is needed to respond to the initial request, the DoD Component shall acknowledge the request in writing within the 10 day period (20 days effective October 2, 1997), describe the circumstances requiring the delay, and indicate the anticipated date for a substantive response that may not exceed 10 additional working days, except as provided in the following:

(2) With respect to a request for which a written notice has extended the time limits by 10 additional working days, and the component determines that it cannot make a response determination within that additional 10 working day period, the requester shall be notified and provided an opportunity to limit the scope of the request so that it may be processed within the extended time limit, or an opportunity to arrange an alternative time frame for processing the request or a modified request. Refusal by the requester to reasonably modify the request or arrange for an alternative time frame shall be considered a factor in determining whether exceptional

circumstances exist with respect to DoD Components' request backlogs. Exceptional circumstances do not include a delay that results from predictable component backlogs, unless the DoD Component demonstrates reasonable progress in reducing its backlog.

(3) Unusual circumstances that may justify delay are:

(i) The need to search for and collect the requested records from other facilities that are separate from the office determined responsible for a release or denial decision on the requested information.

(ii) The need to search for, collect, and examine a voluminous amount of separate and distinct records which are requested in a single request.

(iii) The need for consultation, which shall be conducted with all practicable speed, with other agencies having a substantial interest in the determination of the request, or among two or more DoD Components having a substantial subject-matter interest in the request.

(4) DoD Components may aggregate certain requests by the same requester, or by a group of requesters acting in concert, if the DoD Component reasonably believes that such requests actually constitute a single request, which would otherwise satisfy the unusual circumstances set forth above, and the requests involve clearly related matters. Multiple requests involving unrelated matters shall not be aggregated. If the requests are aggregated under these conditions, the requester or requesters shall be so notified.

(5) In cases where the statutory time limits cannot be met and no informal extension of time has been agreed to, the inability to process any part of the request within the specified time should be explained to the requester with a request that he agree to await a substantive response by an anticipated date. It should be made clear that any such agreement does not prejudice the right of the requester to appeal the initial decision after it is made. DoD Components are reminded that the requester still retains the right to treat this delay as a defacto denial with full administrative remedies.

(6) As an alternative to the taking of formal extensions of time as described previously, the negotiation by the cognizant FOIA coordinating office of informal extensions in time with requesters is encouraged where appropriate.

(g) *Misdirected requests.* Misdirected requests shall be forwarded promptly to the DoD Component or other Federal agency with the responsibility for the records requested. The period allowed for responding to the request misdirected by the requester shall not begin until the request is received by the DoD Component that manages the records requested.

(h) *Records of Non-U.S. Government source.* (1) When a request is received for a record that falls under exemption 4, that was obtained from a non-U.S. Government source, or for a record containing information clearly identified as having been provided by a non-U.S. Government source, the source of the record or information [also known as "the submitter" for matters pertaining to proprietary data under 5 U.S.C. 552) Exemption (b)(4)] [§ 286.12] shall be notified promptly of that request and afforded reasonable time (e.g., 30 calendar days) to present any objections concerning the release, unless it is clear that there can be no valid basis for objection. This practice is required for those FOIA requests for data not deemed clearly exempt from disclosure under Exemption (b)(4). If, for example, the record or information was provided with actual or presumptive knowledge of the non-U.S. Government source and established that it would be made available to the public upon request, there is no obligation to notify the source. Any objections shall be evaluated. The final decision to disclose information claimed to be exempt under Exemption (b)(4) shall be made by an official equivalent in rank to the official who would make the decision to withhold that information under the FOIA. When a substantial issue has been raised, the DoD Component may seek additional information from the source of the information and afford the source and requester reasonable opportunities to present their arguments on the legal and substantive issues involved prior to making an agency determination. When the source advises it will seek a restraining order or take court action to prevent release of the record or information, the requester shall be notified, and action on the request normally shall not be taken until after the outcome of that court action is known. When the requester brings court action to compel disclosure, the submitter shall be promptly notified of this action.

(2) If the submitted information is a proposal in response to a solicitation for a competitive proposal, and the proposal is in the possession and control of DoD, and meets the requirements of 10 U.S.C. 2305(g), the proposal shall not be disclosed, and no submitter notification and subsequent analysis is required. The proposal shall be withheld from public disclosure pursuant to 10 U.S.C. 2305(g) and exemption "(b)(3)" of the FOIA. This statute does not apply to bids, unsolicited proposals, or any proposal that is set forth or incorporated by reference in a contract between a DoD Component and the offeror that submitted the proposal. In such situations, normal submitter notice shall be conducted in accordance with paragraph (h)(1) of this section, except for sealed bids which are opened and read to the public. The term proposal means any proposal, including a technical, management, or cost proposal submitted by an offeror in response to solicitation for a competitive proposal. Submitter notice, and analysis as appropriate, are required for exemption "(b)(4)" matters which are not specifically incorporated in 10 U.S.C. 2305(g).

(3) If the record or information was submitted on a strictly voluntary basis, absent any exercised authority which prescribes criteria for submission, and it is absolutely clear that the record or information would customarily not be released to the public, the submitter need not be notified. Examples of exercised authorities prescribing criteria for submission are statutes, executive orders, regulations, invitations for bids, requests for proposals, and contracts. Records or information submitted under these authorities are not voluntary in nature. When it is not clear whether the information was submitted on a voluntary basis, absent any exercised authority, and whether it would customarily be released to the public by the submitter, notify the submitter and ask that it describe its treatment of the information, and render an objective evaluation. If the decision is made to release the information over the objection of the submitter, notify the submitter and afford the necessary time to allow the submitter to seek a restraining order, or take court action to prevent release of the record or information.

(4) The coordination provisions of this paragraph (h) also apply to any non-U.S. Government record in the possession and control of the Department of Defense from multi-national organizations, such as the North Atlantic Treaty Organization (NATO), United Nations Commands, the North American Aerospace Defense Command (NORAD), the Inter-American Defense Board, or foreign governments. Coordination with foreign governments under the provisions of this paragraph (h) may be made through Department of State, or the specific foreign embassy.

(i) *File of initial denials.* Copies of all initial denials shall be maintained by each DoD Component in a form suitable for rapid retrieval, periodic statistical compilation, and management evaluation. Records denied at the initial stage shall be maintained for a period of six years to meet the statute of limitations requirement.

(j) *Special mail services.* Components are authorized to use registered mail, certified mail, certificates of mailing and return receipts. However, their use should be limited to instances where it appears advisable to establish proof of dispatch or receipt of FOIA correspondence.

(k) *Receipt accounts.* The Treasurer of the United States has established two accounts for FOIA receipts, and all money orders or checks remitting FOIA fees should be made payable to the U.S. Treasurer. These accounts, which are described in the following paragraphs, shall be used for depositing all FOIA receipts, except receipts for industrially funded and non appropriated funded activities. Components are reminded that the below account numbers must be preceded by the appropriate disbursing office two digit prefix. Industrially funded and non appropriated funded activity FOIA receipts shall be deposited to the applicable fund.

(1) *Receipt account 3210 sale of publications and reproductions, Freedom of Information Act.* This account shall be used when depositing funds received from providing existing publications and forms that meet the receipt account series description found in Federal account symbols and titles.

(2) *Receipt account 3210 fees and other charges for services, freedom of information act.* This account is used to deposit search fees, fees for duplicating and reviewing (in the case of commercial requesters) records to satisfy requests that could not be filled with existing publications or forms.

§ 286.24 Appeals

(a) *General.* If the official designated by the DoD Component to make initial determinations on requests for records declines to provide a record because the official considers it exempt under one or more of the exemptions of the FOIA, that decision may be appealed by the requester, in writing, to a designated appellate authority. The appeal should be accompanied by a copy of the letter denying the initial request. Such appeals should contain the basis for disagreement with the initial refusal. Appeal procedures also apply to the disapproval of a fee category claim by a requester, disapproval of a request for waiver or reduction of fees, disputes regarding fee estimates, review on an expedited basis a determination not to grant expedited access to agency records, and for no record determinations when the requester considers such responses adverse in nature. Appeals of Office of the Secretary of Defense and Joint Staff determinations may be sent to the address in paragraph 2.a. of Appendix B to this part. If a request is merely misaddressed, and the receiving DoD Component simply advises the requester of such and refers the request to the appropriate DoD Component, this shall not be considered a no record determination.

(b) *Time of receipt.* An FOIA appeal has been received by a DoD Component when it reaches the office of an appellate authority having jurisdiction. Misdirected appeals should be referred expeditiously to the proper appellate authority.

(c) *Time limits.* (1) The requester shall be advised to file an appeal so that it reaches the appellate authority no later than 60 calendar days after the date of the initial denial letter. At the conclusion of this period, the case may be considered closed; however, such closure does not preclude the requester from filing litigation. In cases where the requester is provided several incremental determinations for a single request, the time for the appeal shall not begin until the requester receives the last such notification. Records which are denied shall be retained for a period of six years to meet the statute of limitations requirement.

(2) Final determinations on appeals normally shall be made within 20 working days after receipt. When a DoD Component has a significant number of appeals precluding a response determination within 20 working days, the appeals shall be processed in a multitrack processing system, based at a minimum, on the three processing tracks established for initial requests. See § 286.4(c). All of the provisions of § 286.4(c) apply also to appeals of initial determinations, to include establishing additional processing queues as needed.

(d) *Delay in responding to an appeal.* (1) If additional time is needed due to the unusual circumstances described in paragraph § 286.24(g), the final decision may be delayed for the number of working days (not to exceed 10), that were not used as additional time for responding to the initial request.

(2) If a determination cannot be made and the requester notified within 20 working days, the appellate authority shall acknowledge to the requester, in writing, the date of receipt of the appeal, the circumstances surrounding the delay, and the anticipated date for substantive response. Requesters shall be advised that, if the delay exceeds the statutory extension provision or is for reasons other than the unusual circumstances identified in § 286.24(g), they may consider their administrative remedies exhausted. They may, however, without prejudicing their right of judicial remedy, await a substantive response. The DoD Component shall continue to process the case expeditiously, whether or not the requester seeks a court order for release of the records, but a copy of any response provided subsequent to filing of a complaint shall be forwarded to the Department of Justice.

(e) *Response to the requester.* (1) When an appellate authority makes a final determination to release all or a portion of records withheld by an IDA a written response and a copy of the records so released should be forwarded promptly to the requester after compliance with any preliminary procedural requirements, such as payment of fees.

(2) Final refusal of an appeal must be made in writing by the appellate authority or by a designated representative. The response, at a minimum, shall include the following:

(i) The basis for the refusal shall be explained to the requester in writing, both with regard to the applicable statutory exemption or exemptions invoked under provisions of the FOIA, and with respect to other appeal matters as set forth in paragraph (a) of this section.

(ii) When the final refusal is based in whole or in part on a security classification, the explanation shall include a determination that the record meets the cited criteria and rationale of the governing Executive Order, and that this determination is based on a declassification review, with the explanation of how that review confirmed the continuing validity of the security classification.

(iii) The final denial shall include the name and title or position of the official responsible for the denial.

(iv) In the case of appeals for denial of records, the response shall advise the requester that the information being denied does not contain meaningful portions that are reasonably segregable.

(v) The response shall advise the requester of the right to judicial review.

(f) *Consultation.* (1) Final refusal involving issues not previously resolved or that the DoD Component knows to be inconsistent with rulings of other DoD Components ordinarily should not be made before consultation with the Office of the General Counsel of the Department of Defense.

(2) Tentative decisions to deny records that raise new or significant legal issues of potential significance to other agencies of the Government shall be provided to the Department of Defense Office of General Counsel (Office of Legal Counsel).

§ 286.25 Judicial actions.

(a) *General.* (1) This section states current legal and procedural rules for the convenience of the reader. The statements of rules do not create rights or remedies not otherwise available, nor do they bind the Department of Defense to particular judicial interpretations or procedures.

(2) A requester may seek an order from a United States District Court to compel release of a record after administrative remedies have been exhausted; i.e., when refused a record by the head of a Component or an appellate designee or when the DoD Component has failed to respond within the time limits prescribed by the FOIA and in this part.

(b) *Jurisdiction.* The requester may bring suit in the United States District Court in the district in which the requester resides or is the requesters place of business, in the district in which the record is located, or in the District of Columbia.

(c) *Burden of proof.* The burden of proof is on the DoD Component to justify its refusal to provide a record. The court shall evaluate the case de novo (anew) and may elect to examine any requested record in camera (in private) to determine whether the denial was justified.

(d) *Actions by the court.* (1) When a DoD Component has failed to make a determination within the statutory time limits but can demonstrate due diligence in exceptional circumstances, the court may retain jurisdiction and allow the Component additional time to complete its review of the records.

(2) If the court determines that the requester's complaint is substantially correct, it may require the United States to pay reasonable attorney fees and other litigation costs.

(3) When the court orders the release of denied records, it may also issue a written finding that the circumstances surrounding the withholding raise questions whether DoD Component personnel acted arbitrarily and capriciously. In these cases, the special counsel of the Merit System Protection Board shall conduct an investigation to determine whether or not disciplinary action is warranted. The DoD Component is obligated to take the action recommended by the special counsel.

(4) The court may punish the responsible official for contempt when a DoD Component fails to comply with the court order to produce records that it determines have been withheld improperly.

(e) *Non-United States Government source information.* A requester may bring suit in a U.S. District Court to compel the release of records obtained from a non government source or records based on information obtained from a non government source. Such source shall be notified promptly of the court action. When the source advises that it is seeking court action to prevent release, the DoD Component shall defer answering or otherwise pleading to the complainant as long as permitted by the Court or until a decision is rendered in the court action of the source, whichever is sooner.

(f) *FOIA litigation.* Personnel responsible for processing FOIA requests at the DoD Component level shall be aware of litigation under the FOIA. Such information will provide management insights into the use of the nine exemptions by Component personnel. Whenever a complaint under the FOIA is filed in a U.S. District Court, the DoD Component named in the complaint shall forward a copy of the complaint by any means to the OASD(PA), ATTN: DFOISR, with an information copy to the General Counsel, Department of Defense, ATTN: Office of Legal Counsel.

Subpart F—Fee Schedule

§ 286.28 General provisions.

(a) *Authorities.* The Freedom of Information Act (5 U.S.C. 552), as amended; by the Freedom of Information Reform Act of 1986; the Paperwork Reduction Act (44 U.S.C. 35); the Privacy Act of 1974 (5 U.S.C. 552a); the Budget and Accounting Act of 1921 (31 U.S.C. 1 et. seq.); the Budget and Accounting Procedures Act (31 U.S.C. 67 et. seq.); the Defense Authorization Act for FY 87, Section 954, (10 U.S.C. 2328), as amended by the Defense Technical Corrections Act of 1987 (10 U.S.C. 101 note).

(b) *Application.* (1) The fees described in this subpart apply to FOIA requests, and conform to the Office of Management and Budget Uniform Freedom of Information Act Fee Schedule and Guidelines. They reflect direct costs for search, review (in the case of commercial requesters); and duplication of documents, collection of which is permitted by the FOIA. They are neither intended to imply that fees must be charged in connection with providing information to the public in the routine course of business, nor are they meant as a substitute for any other schedule of fees, such as DoD Instruction 7230.7 [12], which does not supersede the collection of fees under the FOIA. Nothing in this subpart shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records. A "statute specifically providing for setting the level of fees for particular types of records" (5 U.S.C. 552 (a)(4)(a)(vi)) means any statute that enables a Government Agency such as the Government Printing Office (GPO) or the National Technical Information Service (NTIS), to set and collect fees. Components should ensure that when documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs such as the GPO or NTIS, they inform requesters of the steps necessary to obtain records from those sources.

(2) The term "direct costs" means those expenditures a Component actually makes in searching for, reviewing (in the case of commercial requesters), and duplicating documents to respond to an FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits), and the costs of operating duplicating machinery. These factors have been included in the fee rates prescribed at § 286.29. Not included in direct costs are overhead expenses such as costs of space, heating or lighting the facility in which the records are stored.

(3) The term "search" includes all time spent looking, both manually and electronically for material that is responsive to a request. Search also includes a page-by-page or line-by-line identification (if necessary) of material in the record to determine if it, or portions thereof are responsive to the request. Components should ensure that searches are done in the most efficient and least expensive manner so as to minimize costs for both the Component and the requester. For example, Components should not engage in line-by-line searches when duplicating an entire document known to contain responsive information would prove to be the less expensive and quicker method of complying with the request. Time spent reviewing documents in order to determine whether to apply one or more of the statutory exemptions is not search time, but review time. See paragraph (b) (5) of this section for the definition of review, and paragraph (c)

[12] See footnote 1 to § 286.1 (a).

(5) of this section and § 286.29 (b) (2) for information pertaining to computer searches.

(4) The term "duplication" refers to the process of making a copy of a document in response to an FOIA request. Such copies can take the form of paper copy, microfiche, audiovisual, or machine readable documentation (e.g., magnetic tape or disc), among others. Every effort will be made to ensure that the copy provided is in a form that is reasonably useable, the requester shall be notified that the copy provided is the best available and that the agency's master copy shall be made available for review upon appointment. For duplication of computer tapes and audiovisual, the actual cost, including the operator's time, shall be charged. In practice, if a Component estimates that assessable duplication charges are likely to exceed $25.00, it shall notify the requester of the estimate, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with Component personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(5) The term "review" refers to the process of examining documents located in response to an FOIA request to determine whether one or more of the statutory exemptions permit withholding. It also includes processing the documents for disclosure, such as excising them for release. Review does not include the time spent resolving general legal or policy issues regarding the application of exemptions. It should be noted that charges for commercial requesters may be assessed only for the initial review. Components may not charge for reviews required at the administrative appeal level of an exemption already applied. However, records or portions of records withheld in full under an exemption which is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review would be properly assessable.

(c) *Fee restrictions.* (1) No fees may be charged by any DoD Component if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee. With the exception of requesters seeking documents for a commercial use, Components shall provide the first two hours of search time, and the first one hundred pages of duplication without charge. For example, for a request (other than one from a commercial requester) that involved two hours and ten minutes of search time, and resulted in one hundred and five pages of documents, a Component would determine the cost of only ten minutes of search time, and only five pages of reproduction. If this processing cost was equal to, or less than the cost to the Component for billing the requester and processing the fee collected, no charges would result.

(2) Requesters receiving the first two hours of search and the first one hundred pages of duplication without charge are entitled to such only once per request. Consequently, if a Component, after completing its portion of a request, finds it necessary to refer the request to a subordinate office, another DoD Component, or another Federal Agency to action their portion of the request, the referring Component shall inform the recipient of the referral of the expended amount of search time and duplication cost to date.

(3) The elements to be considered in determining the "cost of collecting a fee" are the administrative costs to the Component of receiving and recording a remittance, and processing the fee for deposit in the Department of Treasury's special account. The cost to the Department of Treasury to handle such remittance is negligible and shall not be considered in Components' determinations.

(4) For the purposes of these restrictions, the word "pages" refers to paper copies of a standard size, which will normally be "8½ x 11" or "11 x 14". Thus, requesters would not be entitled to 100 microfiche or 100 computer disks, for example. A microfiche containing the equivalent of 100 pages or 100 pages of computer printout; however, might meet the terms of the restriction.

(5) In the case of computer searches, the first two free hours will be determined against the salary scale of the individual operating the computer for the purposes of the search. As an example, when the direct costs of the computer central processing unit, input-output devices, and memory capacity equal $24.00 (two hours of equivalent search at the clerical level), amounts of computer costs in excess of that amount are chargeable as computer search time. In the event the direct operating cost of the hardware configuration cannot be determined, computer search shall be based on the salary scale of the operator executing the computer search. See § 286.29 for further details regarding fees for computer searches.

(d) *Fee waivers.* (1) Documents shall be furnished without charge, or at a charge reduced below fees assessed to the categories of requesters in paragraph (e) of this section when the Component determines that waiver or reduction of the fees is in the public interest because furnishing the information is likely to contribute significantly to public understanding of the operations or activities of the Department of Defense and is not primarily in the commercial interest of the requester.

(2) When assessable costs for an FOIA request total $15.00 or less, fees shall be waived automatically for all requesters, regardless of category.

(3) Decisions to waive or reduce fees that exceed the automatic waiver threshold shall be made on a case-by-case basis; consistent with the following factors:

(i) Disclosure of the information "is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government."

(A) *The subject of the request.* Components should analyze whether the subject matter of the request involves issues which will significantly contribute to the public understanding of the operations or activities of the Department of Defense. Requests for records in the possession of the Department of Defense which were originated by non-government organizations and are sought for their intrinsic content, rather than informative value will likely not contribute to public understanding of the operations or activities of the Department of Defense. An example of such records might be press clippings, magazine articles, or records forwarding a person's opinion or concern to a member of the public regarding a DoD activity. Similarly, disclosures of records of considerable age may or may not bear directly on the current activities of the Department of Defense; however, the age of a particular record shall not be the sole criteria for denying relative significance under this factor. It is possible to envisage an informative issue concerning the current activities of the Department of Defense, based upon historical documentation. Requests of this nature must be closely reviewed consistent with the requester's stated purpose for desiring the records and the potential for public understanding of the operations and activities of the Department of Defense.

(B) *The informative value of the information to be disclosed.* This factor requires a close analysis of the substantive contents of a record, or portion of the record, to determine whether disclosure is meaningful, and shall inform the public on the operations or activities of the Department of Defense. While the

subject of a request may contain information which concerns operations or activities of the Department of Defense, it may not always hold great potential for contributing to a meaningful understanding of these operations or activities. An example of such would be a heavily redacted record, the balance of which may contain only random words, fragmented sentences, or paragraph headings. A determination as to whether a record in this situation will contribute to the public understanding of the operations or activities of the Department of Defense must be approached with caution, and carefully weighed against the arguments offered by the requester. Another example is information already known to be in the public domain. Disclosure of duplicative, or nearly identical information already existing in the public domain may add no meaningful new information concerning the operations and activities of the Department of Defense.

(C) *The contribution to an understanding of the subject by the general public likely to result from disclosure.* The key element in determining the applicability of this factor is whether disclosure will inform, or have the potential to inform the public, rather than simply the individual requester or small segment of interested persons. The identity of the requester is essential in this situation in order to determine whether such requester has the capability and intention to disseminate the information to the public. Mere assertions of plans to author a book, researching a particular subject, doing doctoral dissertation work, or indigence are insufficient without demonstrating the capacity to further disclose the information in a manner which will be informative to the general public. Requesters should be asked to describe their qualifications, the nature of their research, the purpose of the requested information, and their intended means of dissemination to the public.

(D) *The significance of the contribution to public understanding.* In applying this factor, Components must differentiate the relative significance or impact of the disclosure against the current level of public knowledge, or understanding which exists before the disclosure. In other words, will disclosure on a current subject of wide public interest be unique in contributing previously unknown facts, thereby enhancing public knowledge, or will it basically duplicate what is already known by the general public. A decision regarding significance requires objective judgment, rather than subjective determination, and must be applied carefully to determine whether disclosure will likely lead to a significant public understanding of the issue. Components shall not make value judgments as to whether the information is important enough to be made public.

(ii) Disclosure of the information "is not primarily in the commercial interest of the requester."

(A) *The existence and magnitude of a commercial interest.* If the request is determined to be of a commercial interest, Components should address the magnitude of that interest to determine if the requester's commercial interest is primary, as opposed to any secondary personal or non-commercial interest. In addition to profit-making organizations, individual persons or other organizations may have a commercial interest in obtaining certain records. Where it is difficult to determine whether the requester is of a commercial nature, Components may draw inference from the requester's identity and circumstances of the request. In such situations, the provisions of paragraph (e) of this section apply. Components are reminded that in order to apply the commercial standards of the FOIA, the requester's commercial benefit must clearly override any personal or non-profit interest.

(B) *The primary interest in disclosure.* Once a requester's commercial interest has been determined, Components should then determine if the disclosure would be primarily in that interest. This requires a balancing test between the commercial interest of the request against any public benefit to be derived as a result of that disclosure. Where the public interest is served above and beyond that of the requester's commercial interest, a waiver or reduction of fees would be appropriate. Conversely, even if a significant public interest exists, and the relative commercial interest of the requester is determined to be greater than the public interest, then a waiver or reduction of fees would be inappropriate. As examples, news media organizations have a commercial interest as business organizations; however, their inherent role of disseminating news to the general public can ordinarily be presumed to be of a primary interest. Therefore, any commercial interest becomes secondary to the primary interest in serving the public. Similarly, scholars writing books or engaged in other forms of academic research, may recognize a commercial benefit, either directly, or indirectly (through the institution they represent); however, normally such pursuits are primarily undertaken for educational purposes, and the application of a fee charge would be inappropriate. Conversely, data brokers or others who merely compile government information for marketing can normally be presumed to have an interest primarily of a commercial nature.

(iii) Components are reminded that the previously mentioned factors and examples are not all inclusive. Each fee decision must be considered on a case-by-case basis and upon the merits of the information provided in each request. When the element of doubt as to whether to charge or waive the fee cannot be clearly resolved, Components should rule in favor of the requester.

(4) In addition, the following additional circumstances describe situations where waiver or reduction of fees are most likely to be warranted:

(i) A record is voluntarily created to preclude an otherwise burdensome effort to provide voluminous amounts of available records, including additional information not requested.

(ii) A previous denial of records is reversed in total, or in part, and the assessable costs are not substantial (e.g. $15.00—$30.00).

(e) *Fee assessment.* (1) Fees may not be used to discourage requesters, and to this end, FOIA fees are limited to standard charges for direct document search, review (in the case of commercial requesters) and duplication.

(2) In order to be as responsive as possible to FOIA requests while minimizing unwarranted costs to the taxpayer, Components shall adhere to the following procedures:

(i) Analyze each request to determine the category of the requester. If the Component determination regarding the category of the requester is different than that claimed by the requester, the Component shall:

(A) Notify the requester to provide additional justification to warrant the category claimed, and that a search for responsive records will not be initiated until agreement has been attained relative to the category of the requester. Absent further category justification from the requester, and within a reasonable period of time (i.e., 30 calendar days), the Component shall render a final category determination, and notify the requester of such determination, to include normal administrative appeal rights of the determination.

(B) Advise the requester that, notwithstanding any appeal, a search for responsive records will not be initiated until the requester indicates a willingness to pay assessable costs

appropriate for the category determined by the Component.

(ii) Requesters should submit a fee declaration appropriate for the below categories.

(A) *Commercial.* Requesters should indicate a willingness to pay all search, review and duplication costs.

(B) *Educational or noncommercial scientific institution or news media.* Requesters should indicate a willingness to pay duplication charges in excess of 100 pages if more than 100 pages of records are desired.

(C) *All others.* Requesters should indicate a willingness to pay assessable search and duplication costs if more than two hours of search effort or 100 pages of records are desired.

(iii) If the previous conditions are not met, then the request need not be processed and the requester shall be so informed.

(iv) In the situations described by paragraphs (e)(2)(i) and (e)(2)(ii) of this section, Components must be prepared to provide an estimate of assessable fees if desired by the requester. While it is recognized that search situations will vary among Components, and that an estimate is often difficult to obtain prior to an actual search, requesters who desire estimates are entitled to such before committing to a willingness to pay. Should Component estimates exceed the actual amount of the estimate or the amount agreed to by the requester, the amount in excess of the estimate or the requester's agreed amount shall not be charged without the requester's agreement.

(v) No DoD Component may require advance payment of any fee; i.e., payment before work is commenced or continued on a request, unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed $250.00. As used in this sense, a timely fashion is 30 calendar days from the date of billing (the fees have been assessed in writing) by the Component.

(vi) Where a Component estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250.00, the Component shall notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payments, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment.

(vii) Where a requester has previously failed to pay a fee charged in a timely fashion (i. e., within 30 calendar days from the date of the billing), the Component may require the requester to pay the full amount owed, plus any applicable interest, or demonstrate that he or she has paid the fee, and to make an advance payment of the full amount of the estimated fee before the Component begins to process a new or pending request from the requester. Interest will be at the rate prescribed in 31 U.S.C. 3717, and confirmed with respective Finance and Accounting Offices.

(viii) After all work is completed on a request, and the documents are ready for release, Components may request payment before forwarding the documents if there is no payment history on the requester, or if the requester has previously failed to pay a fee in a timely fashion (i. e., within 30 calendar days from the date of the billing). In the case of the latter, the provisions of paragraph (e) (2) (vii) of this section. Components may not hold documents ready for release pending payment from requesters with a history of prompt payment.

(ix) When Components act under paragraphs (e) (2) (i) through (vii) of this section, the administrative time limits of the FOIA will begin only after the Component has received a willingness to pay fees and satisfaction as to category determination, or fee payments (if appropriate).

(x) Components may charge for time spent searching for records, even if that search fails to locate records responsive to the request. Components may also charge search and review (in the case of commercial requesters) time if records located are determined to be exempt from disclosure. In practice, if the Component estimates that search charges are likely to exceed $25.00 it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated. Such a notice shall offer the requester the opportunity to confer with Component personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(3) *Commercial requesters.* Fees shall be limited to reasonable standard charges for document search, review and duplication when records are requested for commercial use. Requesters must reasonably describe the records sought (see § 286.4 (h)).

(i) The term "commercial use" request refers to a request from, or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interest of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, Components must determine the use to which a requester will put the documents requested. Moreover, where a Component has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, Components should seek additional clarification before assigning the request to a specific category.

(ii) When Components receive a request for documents for commercial use, they should assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial requesters (unlike other requesters) are not entitled to two hours of free search time, nor 100 free pages of reproduction of documents. Moreover, commercial requesters are not normally entitled to a waiver or reduction of fees based upon an assertion that disclosure would be in the public interest. However, because use is the exclusive determining criteria, it is possible to envision a commercial enterprise making a request that is not for commercial use. It is also possible that a non-profit organization could make a request that is for commercial use. Such situations must be addressed on a case-by-case basis.

(4) *Educational Institution requesters.* Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by an educational institution whose purpose is scholarly research. Requesters must reasonably describe the records sought (see § 286.4 (h)). The term "educational institution" refers to a pre-school, a public or private elementary or secondary school, an institution of graduate high education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research. Fees shall be waived or reduced in the public interest if the criteria of § 286.28 (d).

(5) *Non-commercial scientific institution requesters.* Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by a non-commercial scientific institution whose purpose is scientific research. Requesters must reasonably describe the records sought. The term "non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis as defined in § 286.28(e)(3) and which is operated solely for the purpose of conducting scientific research, the results of which

are not intended to promote any particular product or industry. Fees shall be waived or reduced in the public interest if the criteria of § 286.28 (d) have been met.

(6) Components shall provide documents to requesters in § 286.28(e)(2) and (e)(5) for the cost of duplication alone, excluding charges for the first 100 pages. To be eligible for inclusion in these categories, requesters must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for commercial use, but in furtherance of scholarly (from an educational institution) or scientific (from a non-commercial scientific institution) research.

(7) *Representatives of the news media.* Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by a representative of the news media. Requesters must reasonably describe the records sought (see § 286.4 (h)). Fees shall be waived or reduced if the criteria of § 286.28(d) have been met.

(i) The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not meant to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication though that organization, even through not actually employed by it. A publication contract would be the clearest proof, but Components may also look to the past publication record of a requester in making this determination.

(ii) To be eligible for inclusion in this category, a requester must meet the criteria in § 286.28(e)(7)(i) and his or her request must not be made for commercial use. A request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use. For example, a document request by a newspaper for records relating to the investigation of a defendant in a current criminal trial of public interest could be presumed to be a request from an entity eligible for inclusion in this category, and entitled to records at the cost of reproduction alone (excluding charges for the first 100 pages).

(iii) "Representative of the news media" does not include private libraries, private repositories of Government records, or middlemen, such as information vendors or data brokers.

(8) *All other requesters.* Components shall charge requesters who do not fit into any of the previous categories, fees which recover the full direct cost of searching for and duplicating records, except that the first two hours of search time and the first 100 pages of duplication shall be furnished without charge. Requesters must reasonably describe the records sought (see § 286.4 (h)). Requests from subjects about themselves will continue to be treated under the fee provisions of the Privacy Act of 1974, which permit fees only for duplication. Components are reminded that this category of requester may also be eligible for a waiver or reduction of fees if disclosure of the information is in the public interest as defined under § 286.28(d)(1). (See also § 286.28(e)(2)).

(f) *Aggregating requests.* Except for requests that are for a commercial use, a Component may not charge for the first two hours of search time or for the first 100 pages of reproduction. However, a requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When a Component reasonably believes that a requester or, on rare occasions, a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of avoiding the assessment of fees, the agency may aggregate any such requests and charge accordingly. One element to be considered in determining whether a belief would be reasonable is the time period in which the requests have occurred. For example, it would be reasonable to presume that multiple requests of this type made within a 30 day period had been made to avoid fees. For requests made over a longer period; however, such a presumption becomes harder to sustain and Components should have a solid basis for determining that aggregation is warranted in such cases. Components are cautioned that before aggregating requests from more than one requester, they must have a concrete basis on which to conclude that the requesters are acting in concert and are acting specifically to avoid payment of fees. In no case may Components aggregate multiple requests on unrelated subjects from one requester.

(g) *Effect of the Debt Collection Act of 1982 (5 U.S.C. 5514 note).* The Debt Collection Act of 1982 (5 U.S.C. 5514 note) provides for a minimum annual rate of interest to be charged on overdue debts owed the Federal Government. Components may levy this interest penalty for any fees that remain outstanding 30 calendar days from the date of billing (the first demand notice) to the requester of the amount owed. The interest rate shall be as prescribed in 31 U.S.C. 3717. Components should verify the current interest rate with respective Finance and Accounting Offices. After one demand letter has been sent, and 30 calendar days have lapsed with no payment, Components may submit the debt to respective Finance and Accounting Offices for collection pursuant to the Debt Collection Act of 1982.

(h) *Computation of fees.* The fee schedule in this subpart shall be used to compute the search, review (in the case of commercial requesters) and duplication costs associated with processing a given FOIA request. Costs shall be computed on time actually spent. Neither time-based nor dollar-based minimum charges for search, review and duplication are authorized.

§ 286.29 Collection of fees and fee rates.

(a) *Collection of fees.* Collection of fees will be made at the time of providing the documents to the requester or recipient when the requester specifically states that the costs involved shall be acceptable or acceptable up to a specified limit that covers the anticipated costs. Collection of fees may not be made in advance unless the requester has failed to pay previously assessed fees within 30 calendar days from the date of the billing by the DOD Component, or the Component has determined that the fee will be in excess of $250 (see § 286.28 (e)).

(b) *Search time—(1) Manual search.*

Type	Grade	Hourly rate (dollars)
Clerical	E9/GS8 and below	12
Professional	01–06/GS9-GS15	25
Executive	07/GS16/ES1 and above.	45

(2) *Computer search.* Fee assessments for computer search consists of two parts; individual time (hereafter referred to as human time), and machine time.

(i) *Human time.* Human time is all the time spent by humans performing the necessary tasks to prepare the job for a machine to execute the run command. If execution of a run requires monitoring by a human, that human time may be also assessed as computer search. The terms "programmer/operator" shall not be limited to the traditional programmers or operators. Rather, the terms shall be interpreted in their broadest sense to incorporate any human involved in performing the computer job (e.g. technician, administrative support, operator, programmer, database administrator, or action officer).

(ii) *Machine time.* Machine time involves only direct costs of the Central Processing Unit (CPU), input/output devices, and memory capacity used in the actual computer configuration. Only this CPU rate shall be charged. No other machine related costs shall be charged. In situations were the capability does not exist to calculate CPU time, no machine costs can be passed on to the requester. When CPU calculations are not available, only human time costs shall be assessed to requesters. Should DoD Components lease computers, the services charged by the lessor shall not be passed to the requester under the FOIA.

(c) *Duplication.*

Type	Cost per page (cents)
Pre-Printed material	02.
Office copy	15.
Microfiche	25.
Computer copies (tapes, discs or printouts).	Actual cost of duplicating the tape, disc or printout (includes operator's time and cost of the medium).

(d) *Review time* (in the case of commercial requesters).

Type	Grade	Hourly rate (dollars)
Clerical	E9/GS8 and below.	12
Professional	01–06/GS9-GS15.	25
Executive	07/GS16/ES1 and above.	45

(e) *Audiovisual documentary materials.* Search costs are computed as for any other record. Duplication cost is the actual direct cost of reproducing the material, including the wage of the person doing the work. Audiovisual materials provided to a requester need not be in reproducible format or quality.

(f) *Other records.* Direct search and duplication cost for any record not described above shall be computed in the manner described for audiovisual documentary material.

(g) *Costs for special services.* Complying with requests for special services is at the discretion of the Components. Neither the FOIA, nor its fee structure cover these kinds of services. Therefore, Components may recover the costs of special services requested by the requester after agreement has been obtained in writing from the requester to pay for one or more of the following services:

(1) Certifying that records are true copies.

(2) Sending records by special methods such as express mail, etc.

§ 286.30 Collection of fees and fee rates for technical data.

(a) *Fees for technical data.* (1) Technical data, other than technical data that discloses critical technology with military or space application, if required to be released under the FOIA, shall be released after the person requesting such technical data pays all reasonable costs attributed to search, duplication and review of the records to be released. Technical data, as used in this section, means recorded information, regardless of the form or method of the recording of a scientific or technical nature (including computer software documentation). This term does not include computer software, or data incidental to contract administration, such as financial and/or management information. DoD Components shall retain the amounts received by such a release, and it shall be merged with and available for the same purpose and the same time period as the appropriation from which the costs were incurred in complying with request. All reasonable costs as used in this sense are the full costs to the Federal Government of rendering the service, or fair market value of the service, whichever is higher. Fair market value shall be determined in accordance with commercial rates in the local geographical area. In the absence of a known market value, charges shall be based on recovery of full costs to the Federal Government. The full costs shall include all direct and indirect costs to conduct the search and to duplicate the records responsive to the request. This cost is to be differentiated from the direct costs allowable under § 286.29 for other types of information released under the FOIA.

(2) *Waiver.* Components shall waive the payment of costs required in paragraph (a)(1) of this section which are greater than the costs that would be required for release of this same information under § 286.29 if:

(i) The request is made by a citizen of the United States or a United States corporation, and such citizen or corporation certifies that the technical data requested is required to enable it to submit an offer, or determine whether it is capable of submitting an offer to provide the product to which the technical data relates to the United States or a contractor with the United States. However, Components may require the citizen or corporation to pay a deposit in an amount equal to not more than the cost of complying with the request, which will be refunded upon submission of an offer by the citizen or corporation;

(ii) The release of technical data is requested in order to comply with the terms of an international agreement; or

(iii) The Component determines in accordance with § 286.28(d)(1) that such a waiver is in the interest of the United States.

(b) *Fee rates.*

(1) *Search time.*—(i) *Manual search.*

Type	Grade	Hourly rate (dollars)
Clerical	E9/GS8 and below.	13.25
	(Minimum charge).	8.30

(ii) *Professional and executive* (To be established at actual hourly rate prior to search. A minimum charge will be established at 1/2 hourly rates). Computer search is based on the total cost of the central processing unit, input-output devices, and memory capacity of the actual computer configuration. The wage (based upon the scale in paragraph (a) (3) (I) (A) of this section) for the computer operator and/or programmer determining how to conduct, and subsequently executing the search will be recorded as part of the computer search. See § 286.29 (b) (2) for further details regarding computer search.

(2) *Duplication.*

Type	Cost
Aerial photographs, specifications, permits, charts, blueprints, and other technical documents Engineering data (mircofilm) Aperture cards	$2.50
Silver duplicate negative, per card	.75

Type	Cost
When key punched and verified, per card	.85
Diazo duplicate negative, per card	.65
When key punched and verified, per card	.75
35mm roll film, per frame	.50
16mm roll film, per frame	.45
Paper prints (engineering drawings), each	1.50
Paper reprints of microfilm indices, each	.10

(3) *Review time.*

Type	Grade	Hourly rate (dollars)
Clerical	E9/GS8 and below.	13.25
	(Minimum Charge).	8.30

(4) *Professional and executive* (To be established at actual hourly rate prior to review. A minimum charge will be established at ½ hourly rates).

(5) *Other technical data records.* Charges for any additional services not specifically provided paragraph (c) of this section, consistent with DoD Instruction 7230.7, shall be made by Components at the following rates:

Minimum charge for office copy (up to six images)	$3.50
Each additional image	0.10
Each typewritten page	3.50
Certification and validation with seal, each	5.20
Hand-drawn plots and sketches, each hour or fraction thereof	12.00

Subpart G—Reports

§ 286.33 Reports control.

(a) Each DoD component shall compile Freedom of Information Act statistics on a fiscal year basis beginning October 1, 1997, and report same to DFOISR, OASD(PA) no later than November 30 following the fiscal year's close. In turn, DFOISR, OASD(PA) will produce a consolidated DoD report for submission to the Attorney General.

(b) Existing DoD standards and registered data elements are to be utilized to the greatest extent possible in accordance with the provisions of DoD 8320.1–M,[13] "Data Administration Procedures".

(c) The reporting requirement outlined in this subpart will be assigned Report Control Symbol DD–PA(A)1365.

§ 286.34 Annual report.

Annual report content. DD Form 2564 will be used to submit component input. Instructions for completion follows:

(a) *Item 1.* Initial request determinations.

(1) *Total requests processed.* Enter the total number of initial FOIA requests responded to during the fiscal year.

(2) *Granted in full.* Enter the total number of initial FOIA requests responded to that were granted in full during the fiscal year. (This may include requests granted by your office, yet still requiring action by another office.)

(3) *Denied in part.* Enter the total number of initial FOIA requests responded to and denied in part based on one or more of the nine FOIA exemptions. (Do not report denial of fee waivers.)

(4) *Denied in full.* Enter the total number of initial FOIA requests responded to and denied in full based on one or more of the nine FOIA exemptions. (Do not report denial of fee waivers.)

(5) *"Other reason" responses.* Enter the total number of initial FOIA requests in which you were unable to provide all or part of the requested information based on an "other reason" response. Paragraph (b)(2) of this section explains the six possible "other reasons".

(6) *Total actions.* Enter the total number of FOIA actions taken during the fiscal year. This number will be the sum of paragraphs (a)(2) through (a)(5) of this section.

(b) *Item 2.* (1) *Exemptions invoked on initial request determinations.* Enter the number of times an exemption was claimed for each request that was denied in full or in part. Since more than one exemption may be claimed when responding to a single request, this number will be equal to or greater than the sum of paragraph (a)(3) and (a)(4) of this section.

(2) *"Other reasons" cited on initial determinations.* Identify the "Other Reason" response cited when responding to a FOIA request and enter the number of times each was claimed.

(i) *Transferred request.* Enter the number of times a request was transferred to another DoD component or Federal Agency for action.

(ii) *Lack of records.* Enter the number of times a search of files failed to identify records responsive to subject request and there was no statutory obligation to create a record.

(iii) *Failure of requester to reasonably describe record.* Enter the number of times a FOIA request could not be acted upon since the requester failed to reasonably describe the record(s) being sought.

(iv) *Other failures by requester to comply with published rules and/or directives.* Enter the number of times a requester failed to follow published rules concerning time, place, fees, and procedures.

(v) *Request withdrawn by requester.* Enter the number of times a requester withdrew a request and/or appeal.

(vi) *Not an agency record.* Enter the number of times a requester was provided a response indicating the requested information was not an agency record.

(vii) *Total.* Enter the sum of paragraphs (b) (2) (i) through (b) (2) (vi) of this section. This number will be equal to or greater than the number in paragraph (a) (5) of this section since more than one reason may be claimed for each "other reason" response.

(c) *Item 3.* Appeal determinations.

(1) *Total appeal responses.* Enter the total number of FOIA appeals responded to during the fiscal year.

(2) *Granted in full.* Enter the total number of FOIA appeals responded to and granted in full during the year.

(3) *Denied in part.* Enter the total number of FOIA appeals responded to and denied in part based on one or more of the nine FOIA exemptions.

(4) *Denied in full.* Enter the total number of FOIA appeals responded to and denied in full based on one or more of the nine FOIA exemptions.

(5) *"Other reason"* responses. Enter the total number of FOIA appeals in which you were unable to provide the requested information based on an "other reason" response. Item (b) (2) of this section explains the six possible "other reasons".

(6) *Total actions.* Enter the total number of FOIA appeal actions taken during the fiscal year. This number will be the sum of paragraphs (b) (2) through (b) (5) (vi) of this section.

(d) *Item 4.* (1) *Exemptions invoked on appeal determinations.* Enter the number of times an exemption was claimed for each appeal that was denied in full or in part. Since more than one exemption may be claimed when responding to a single request, this number will be equal to or greater than the sum of paragraphs (c) (3) and (c) (4) of this section.

(2) *"Other reasons" cited on appeal determinations.* Identify the "other reason" response cited when responding to a FOIA appeal and enter the number of times each was claimed. See paragraph (b) (3) of this section for description of "other reasons".

(e) *Item 5. Statutes invoked on initial and appeal determinations.* Identify the number of times you have used a specific statute to support each (b)(3) exemption identified in paragraphs (b) (1) and (d) (1) of this section. List the statutes used to support each "(b) (3)" exemption; the number of instances in which the statute was cited; note whether or not the statute has been upheld in a court hearing; and provide a concise description of the material withheld in each individual case by the statute's use. Ensure you cite specific sections of acts invoked. To qualify as a "(b) (3)" exemption, the statute must contain clear wording that the information covered will not be disclosed. The total number of instances reported above will be equal to or greater than the total number of "(b) (3)" exemptions listed in paragraphs (b) (1) and (d) (1) of this section.

(f) *Item 6.* Number and median age of cases pending as of September 30 of the preceding year.

(1) *Total number of initial requests pending as of September 30, preceding year.* Enter the total number of initial FOIA requests pending (open) as of the day before the current reporting period began (September 30 previous to the reported period, fiscal year).

(2) *Median age of requests pending as of September 30 of the preceding year.* Enter the median age of pending FOIA requests as of the day before the current reporting period began (September 30 previous to the reported period, fiscal year).

(3) *Examples.* (i) Given five cases aged 10, 25, 35, 65, and 100 days from date of receipt as of the previous September 30th. The total requests pending is five (5). The median age (days) of open requests is the middle, not average value, in this set of numbers (10, 25, 35, 65, and 100), 35 (the middle value in the set).

(ii) Given six pending cases, aged 10, 20, 30, 50, 120, and 200 days from date of receipt, as of the previous September 30th. The total requests pending is six (6). The median age (days) of open requests 40 days (the mean (average) of the two middle numbers in the set, in this case the average of middle values 30 and 50).

(g) *Item 7. Number of initial requests received during the fiscal year.* Enter the total number of initial FOIA requests received during the reporting period (fiscal year being reported).

(h) *Item 8. Types of requests processed and median age.* Information is reported for three types of initial requests completed during the reporting period: *simple; complex; and expedited processing.* The following items of information are reported for these requests:

(1) *Total number of initial requests.* Enter the total number of initial requests processed during the reporting period (fiscal year) by type (simple, complex and expedited processing) in the appropriate row on the form.

(2) *Median age (days).* Enter the median number of days required to process each type of case (simple, complex and expedited processing) during the period in the appropriate row on the form.

(3) *Example.* Given seven initial requests, multitrack—Simple completed during the fiscal year, aged 10, 25, 35, 65, 79, 90 and 400 days when completed. The total number of requests completed was seven (7). The median age (days) of completed requests is 65, the middle value in the set.

(i) *Item 9. Fees collected from the public.* Enter the total amount of fees collected from the public during the fiscal year. This includes search, review and reproduction costs only.

(j) *Item 10*—(1) *FOI program costs.*

(i) *Personnel costs.* Paragraphs (j) (1) (i) (A) and (j) (1) (i) (B) of this section are used to capture man-years and salary costs of personnel primarily involved in planning, program management and/or administrative handling of FOIA requests. Determine salaries for military personnel by using the Composite Standard Pay Rates (DoD 7220.9-M).[14] For civilian personnel use Office of Personnel Management salary table and add 16% for benefits. A sample computation is shown:

Grade	Number of personnel	Salary	% of time	Costs
O–5	1	$90,707	10	$9,071
O–1	1	37,545	10	3,755
E–7	1	44,375	50	22,188
Totals	3		70	35,014

(A) *Estimated man-years.* Add the total percentages of time for personnel involved in administering the FOI program and divide by 100. In the example shown above, (10+10+50)/100=.7 man-years.

(B) *Man-year costs.* Total costs associated with salaries of individuals involved in administering FOIA program. In the example shown, the total cost is $35,014.

(C) *Estimated man-hour costs by category.* This section accounts for all other personnel not reported in paragraphs (j)(1)(i)(A) and (j)(1)(i) (B) of this section who are involved in processing FOIA requests. Enter the total hourly cost for each of the five areas described.

(*1*) *Search time.* This includes only those direct costs associated with time spent looking for material that is responsive to a request, including line-by-line identification of material within a document to determine if it is responsive to the request. Searches may be done manually or by computer using existing programming.

(*2*) *Review and excising.* This includes all direct costs incurred during the process of examining documents located in response to a request to determine whether any portion of any document located is permitted to be withheld. It also includes excising documents to prepare them for release. It does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(*3*) *Coordination and approval.* This includes all costs involved in coordinating the release/denial of documents requested under the FOIA.

(*4*) *Correspondence/form preparation.* This includes all costs involved in typing responses, filling out forms, etc., to respond to a FOIA request.

(*5*) *Other activities.* This includes all other processing costs not covered above, such as processing time by the mail room.

(*6*) *Total.* Enter the sum of paragraphs (j)(1)(i)(C)(1) through (j)(1)(i)(C)(5) of this section.

(D) *Overhead.* This is the cost of supervision, space, and administrative support. It is computed as 25% of the sum of paragraphs (j)(1)(i)(B) and (j)(1)(i)(C) of this section.

(E) *Total.* Enter the sum of paragraphs (j)(1)(i)(B), (j)(1)(i)(C), and (j)(1)(i)(D) of this section.

(ii) *Other case-related costs.* Using the fee schedule, enter the total amounts

[13] See footnote 1 to § 286.1 (a).

[14] See footnote 1 to § 286,1 (a).

incurred in each of the areas in the following paragraphs:

(A) *Computer search time.* This includes cost of central processing unit, input/output devices, memory, etc. of the computer system used, as well as the wage of the machine's operator/programmer.

(B) *Office copy reproduction.* This is the cost of reproducing normal documents with office copying equipment.

(C) *Microfiche reproduction.* This is the cost of reproducing records and providing microfiche.

(D) *Printed records.* This is the cost of providing reproduced copies of forms, publications, or reports.

(E) *Computer copy.* This is the actual cost of duplicating magnetic tapes, floppy diskettes, computer printouts, etc.

(F) *Audiovisual materials.* This is the actual cost of duplicating audio or video tapes or like materials, to include the wage of the person doing the work.

(G) *Other.* Report all other costs which are easily identifiable, such as per diem, operation of courier vehicles, training courses, printing (indexes and forms), long distance telephone calls, special mail services, use of indicia, etc.

(H) *Subtotal.* Enter the sum of paragraphs (j)(1)(ii)(A) through (j)(1)(ii)(G) of this section

(I) *Overhead.* This is the cost of supervision, space, and administrative support. It is computed as 25% of paragraph (j) (1) (ii) (H) of this section.

(J) *Total.* Enter the sum of paragraphs (j) (1) (ii) (H) and (j) (1) (i) (I) of this section.

(iii) *Cost of routine requests processed.* This item is optional. Some reporting activities may find it economical to develop an average cost factor for processing repetitive routine requests rather than tracking costs on each request as it is processed. Care should be exercised so that costs are comprehensive to include a 25% overhead, yet are not duplicated elsewhere in the report. Multiply the number of routine requests processed times the cost factor to compute this amount.

(iv) *Total costs.* Enter the sum of paragraphs (j) (1) (i) through (j) (1) (iii) of this section.

(2) *Number of full time staff.* Enter the number of people in your agency that process FOIA actions full time.

(k) *Item 11. Date report prepared.* Enter the date the report was completed and signed by an approving official.

(l) *Item 12. Name, address & phone number of agency.* Enter data for the agency or activity that prepared the report.

(m) *Item 13. Signature, typed name, and title of approving official.* Enter the name and title of the individual approving the report. Approval of the report is indicated by the official's signature.

Subpart H—Education and Training

§ 286.37 Responsibility and purpose.

(a) *Responsibility.* The Head of each DoD Component is responsible for the establishment of educational and training programs on the provisions and requirements of this part. The educational programs should be targeted toward all members of the DoD Component, developing a general understanding and appreciation of the DoD FOIA Program; whereas, the training programs should be focused toward those personnel who are involved in the day-to-day processing of FOI requests, and should provide a thorough understanding of the procedures outlined in this part.

(b) *Purpose.* The purpose of the educational and training programs is to promote a positive attitude among DoD personnel and raise the level of understanding and appreciation of the DoD FOIA Program, thereby improving the interaction with members of the public and improving the public trust in the Department of Defense.

(c) *Scope and principles.* Each Component shall design its FOIA educational and training programs to fit the particular requirements of personnel dependent upon their degree of involvement in the implementation of this part. The program should be designed to accomplish the following objectives:

(1) Familiarize personnel with the requirements of the FOIA and its implementation by this part.

(2) Instruct personnel, who act in FOIA matters, concerning the provisions of this part, advising them of the legal hazards involved and the strict prohibition against arbitrary and capricious withholding of information.

(3) Provide for the procedural and legal guidance and instruction, as may be required, in the discharge of the responsibilities of initial denial and appellate authorities.

(4) Advise personnel of the penalties for noncompliance with the FOIA.

(d) *Implementation.* To ensure uniformity of interpretation, all major educational and training programs concerning the implementation of this part should be coordinated with the Director, Freedom of Information and Security Review, OASD(PA).

(e) *Uniformity of legal interpretation.* In accordance with DoD Directive 5400.7, the General Counsel of the Department of Defense shall ensure uniformity in the legal position and interpretation of the DoD FOIA Program.

Appendix A to Part 286—Unified Combatant commands—Processing Procedures for FOIA Appeals

1. *General*

a. In accordance with DoD Directive 5400.7 [1] and this part, the Unified Combatant Commands are placed under the jurisdiction of the Office of the Secretary of Defense, instead of the administering Military Department, only for the purpose of administering the Freedom of Information Act (FOIA) Program. This policy represents an exception to the policies in DoD Directive 5100.3 [2].

b. The policy change above authorizes and requires the Unified Combatant Commands to process FOIA requests in accordance with DoD Directive 5400.7 and DoD Instruction 5400.10 [3] and to forward directly to the OASD(PA) all correspondence associated with the appeal of an initial denial for information under the provisions of the FOIA.

2. *Responsibilities of Commands*

Unified Combatant Commanders in Chief shall:

a. Designate the officials authorized to deny initial FOI requests for records.

b. Designate an office as the point-of-contact for FOI matters.

c. Refer FOIA cases to the OASD(PA) for review and evaluation when the issues raised are of unusual significance, precedent setting, or otherwise require special attention or guidance.

d. Consult with other OSD and DoD Components that may have a significant interest in the requested record prior to a final determination. Coordination with agencies outside of the Department of Defense, if required, is authorized.

e. Coordinate proposed denials of records with the appropriate Unified Combatant Command's Office of the Staff Judge Advocate.

f. Answer any request for a record within 10 working days of receipt. The requester shall be notified that his request has been granted or denied. In unusual circumstances, such notification may state that additional time, not to exceed 10 working days, is required to make a determination.

g. Provide to the OASD(PA) when the request for a record is denied in whole or in part, a copy of the response to the requester or his representative, and any internal memoranda that provide background information or rationale for the denial.

h. State in the response that the decision to deny the release of the requested information, in whole or in part, may be appealed to the Assistant Secretary of Defense (Public Affairs), the Pentagon, Washington, DC 20301–1400.

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 of section 1.a. of this appendix.

[3] See footnote 1 of section 1.a. of this appendix.

i. Upon request, submit to OASD(PA) a copy of the records that were denied. ASD(PA) shall make such requests when adjudicating appeals.

3. *Fees for FOI requests*

The fees charged for requested records shall be in accordance with subpart F of this part.

4. *Communications*

Excellent communication capabilities currently exist between the OASD(PA) and the Public Affairs Offices of the Unified Combatant Commands. This communication capability shall be used for FOI cases that are time sensitive.

5. *Reporting requirements*

a. The Unified Combatant Commands shall submit to the OASD(PA) an annual report. The instructions for the report are outlined in subpart G of this part.

b. The annual report shall be submitted in duplicate to the OASD(PA) not later than each November 30. This reporting requirement is assigned Report Control Symbol DD–PA(A) 1365.

Appendix B to Part 286—Addressing FOIA Requests

1. General

a. The Department of Defense includes the Office of the Secretary of Defense and the Joint Staff, the Military Departments, the Unified Combatant Commands, the Defense Agencies, and the DoD Field Activities.

b. The Department of Defense does not have a central repository for DoD records. FOIA requests, therefore, should be addressed to the DoD Component that has custody of the record desired. In answering inquiries regarding FOIA requests, DoD personnel shall assist requesters in determining the correct DoD Component to address their requests. If there is uncertainty as to the ownership of the record desired, the requester shall be referred to the DoD Component that is most likely to have the record.

2. Listing of DoD Component Addresses for FOI Requests

a. Office of the Secretary of Defense and the Joint Staff. Send all requests for records from the below listed offices to: Office of the Assistant Secretary of Defense (Public Affairs), ATTN: Directorate for Freedom of Information and Security Review, Room 2C757, 1400 Defense Pentagon, Washington, DC 20301–1400.

(1) Executive Secretariat
(2) Under Secretary of Defense (Policy)
(i) Assistant Secretary of Defense (International Security Affairs)
(ii) Assistant Secretary of Defense (International Security Policy)
(iii) Assistant Secretary of Defense (Special Operations & Low Intensity Conflict)
(iv) Assistant Secretary of Defense (Strategy & Requirements)
(v) Deputy to the Under Secretary of Defense (Policy Support)
(vi) Director of Net Assessment Defense Security Assistance Agency
(viii) Defense Technology Security Administration
(3) Under Secretary of Defense (Acquisition & Technology)
(i) Deputy Under Secretary of Defense (Logistics)
(ii) Deputy Under Secretary of Defense (Advanced Technology)
(iii) Deputy Under Secretary of Defense (Acquisition Reform)
(iv) Deputy Under Secretary of Defense (Environmental Security)
(v) Deputy Under Secretary of Defense (Space)
(vi) Deputy Under Secretary of Defense (International & Commercial Programs)
(vii) Deputy Under Secretary of Defense (Industrial Affairs & Installations)
(viii) Assistant to the Secretary of Defense (Nuclear, Chemical & Biological Defense Programs)
(ix) Director, Defense Research & Engineering
(x) Director, Small & Disadvantaged Business Utilization
(xi) Director, Defense Procurement
(xii) Director, Test Systems Engineering & Evaluation
(xiii) Director, Strategic & Tactical Systems
(xiv) Defense Evaluation Support Activity
(xv) DoD Radiation Experiments Command Center
(xvi) On-Site Inspection Agency
(4) Under Secretary of Defense (Comptroller)
(5) Director Program Analysis and Evaluation
(6) Under Secretary of Defense (Personnel & Readiness)
(i) Assistant Secretary of Defense (Health Affairs)
(ii) Assistant Secretary of Defense (Legislative Affairs)
(iii) Assistant Secretary of Defense (Public Affairs)
(iv) Assistant Secretary of Defense (Command, Control, Communications & Intelligence)
(v) Assistant Secretary of Defense (Reserve Affairs)
(7) General Counsel, Department of Defense
(8) Director, Operational Test and Evaluation
(9) Assistant to the Secretary of Defense (Intelligence Oversight)
(10) Defense Advanced Research Projects Agency
(11) Ballistic Missile Defense Organization
(12) Defense Systems Management College
(13) National Defense University
(14) Armed Forces Staff College
(15) Department of Defense Dependents Schools
(16) Uniformed Services University of the Health Sciences
(17) Armed Forces Radiobiology Research Institute
(18) Washington Headquarters Services

b. Department of the Army. Army records may be requested from those Army officials who are listed in 32 CFR part 518, Appendix B. Send requests to the Freedom of Information and Privacy Acts Office, SAIS–IDP–F/P, Suite 201, 1725 Jefferson Davis Hwy, Arlington, VA 22202–4102, for records of the Headquarters, U.S. Army, or if there is uncertainty as to which Army activity may have the records.

c. Department of the Navy. Navy and Marine Corps records may be requested from any Navy or Marine Corps activity by addressing a letter to the Commanding Officer and clearly indicating that it is an FOI request. Send requests to Chief of Naval Operations, N–09B30, Room 5E521, 2000 Navy, Pentagon, Washington, DC 20350–2000, for records of the Headquarters, Department of the Navy, and to Commandant of the Marine Corps, (ARAD), Headquarters U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–1775, for records of the U.S. Marine Corps, or if there is uncertainty as to which Navy or Marine activities may have the records.

d. Department of the Air Force. Air Force records may be requested from the Commander of any Air Force installation, major command, or separate operating agency (ATTN: FOIA Office). For Air Force records of Headquarters, United States Air Force, or if there is uncertainty as to which Air Force activity may have the records, send requests to OL–P, 11CS/SCSR(FOIA), Room 4A1088C, 1000 Air Force, Pentagon, Washington, DC 20330–1000.

e. Defense Contract Audit Agency (DCAA). DCAA records may be requested from any of its regional offices or from its Headquarters. Requesters should send FOI requests to the Defense Contract Audit Agency, ATTN: CMR, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219, for records of its headquarters or if there is uncertainty as to which DCAA region may have the records sought.

f. Defense Information Systems Agency (DISA). DISA records may be requested from any DISA field activity or from its Headquarters. Requesters should send FOI requests to Defense Information Systems Agency, Regulatory/General Counsel, 701 South Courthouse Road, Arlington, VA 22204–2199.

g. Defense Intelligence Agency (DIA). FOI requests for DIA records may be addressed to Defense Intelligence Agency, ATTN: SVI–1, Washington, DC 20340–5100.

h. Defense Investigative Service (DIS). All FOI requests for DIS records should be sent to the Defense Investigative Service, Office of Information and Public Affairs, 1340 Braddock Place, Alexandria, VA 22314–1651.

i. Defense Logistics Agency (DLA). DLA records may be requested from its headquarters or from any of its field activities. Requesters should send FOI requests to Defense Logistics Agency, ATTN: DLA/CAAV, 8725 John J. Kingman Road, Suite 2533, Alexandria, VA 22060–6221.

j. National Imagery and Mapping Agency (NIMA). FOI requests for NIMA records may be sent to the National Imagery and Mapping Agency, General Counsel for Office of Information & Privacy, Mail Stop A–7, 8613 Lee Highway, Fairfax, VA 22031–2137.

k. Defense Special Weapons Agency (DSWA). FOI requests for DSWA records may be sent to the Defense Special Weapons Agency, Public Affairs Office, Room 113, 6801 Telegraph Road, Alexandria, VA 22310–3398.

l. National Security Agency (NSA). FOI requests for NSA records may be sent to the National Security Agency, FOIA/PA Services,

N5P5, 9800 Savage Road, Suite 6248, Fort George G. Meade, MD 20755–6248.

m. *Office of the Inspector General, Department of Defense (IG, DoD).* FOI requests for IG, DoD records may be sent to the Department of Defense Office of the Inspector General, Chief FOI/PA Office, 400 Army Navy Drive, Room 405, Arlington, VA 22202–2884.

n. *Defense Finance and Accounting Service (DFAS).* DFAS records may be requested from any of its regional offices or from its Headquarters. Requesters should send FOI requests to Defense Finance and Accounting Service, Directorate for External Affairs & Management Support, Crystal Mall 3, Room 416, Arlington, VA 22240–5291, for records of its Headquarters, or if there is uncertainty as to which DFAS region may have the records sought.

o. *National Reconnaissance Office (NRO).* FOI requests for NRO records may be sent to the National Reconnaissance Office, FOIA Officer, 1040 Defense Pentagon, Room 4C1000, Washington, DC 20301–1040.

3. *Other Addresses*

Although the below organizations are OSD and Joint Staff Components for the purposes of the FOIA, requests may be sent directly to the addresses indicated:

a. *Office of Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS).* Director, OCHAMPUS, ATTN: Freedom of Information Officer, Aurora, CO 80045–6900.

b. *Chairman, Armed Services Board of Contract Appeals (ASBCA).* Chairman, Armed Services Board of Contract Appeals, Skyline Six Rm 703, 5109 Leesburg Pike, Falls Church, VA 22041–3208.

c. *U.S. Central Command.* U.S. Central Command/CCJ1/AG, MacDill Air Force Base, FL 33608–7001.

d. *U.S. European Command.* Headquarters, U.S. European Command/ECJ1-AA(FOIA) Unit 30400 Box 1000, APO AE 09128–4209.

e. *U.S. Southern Command.* U.S. Commander-in-Chief, Southern Command, Unit 1110, SCJ1-A, APO AA 34003–0007.

f. *U.S. Pacific Command.* U.S Commander-in-Chief, Pacific Command, USPACOM FOIA Coordinator (J042), Administrative Support Division, Joint Secretariat, Box 28, Camp H. M. Smith, HI 96861–5025.

g. *U.S. Special Operations Command.* U.S. Special Operations Command, Chief, Command Information Management Branch, ATTN: SOJ6-SI, 7701 Tampa Point Blvd., MacDill Air Force Base FL 33621–5323.

h. *U.S. Atlantic Command.* Commander-in-Chief, Atlantic Command, Code J02P, Norfolk, VA 23511–5100.

i. *U.S. Space Command.* Commander-in-Chief, U.S. Space Command, Command Records Manager/FOIA/PA Officer, 150 Vandenberg Street, Suite 1105, Peterson Air Force Base, CO 80914–5400.

j. *U.S. Transportation Command.* U.S. Commander-in-Chief, Transportation Command, ATTN: TCIM-F, 508 Scott Drive, Scott Air Force Base, IL 62225–5357.

k. *U.S. Strategic Command.* U.S. Commander-in-Chief, Strategic Command, Attn: J0734, 901 SAC Blvd., Suite 1E5, Offutt AFB, NE 68113–6073.

4. *National Guard Bureau*

FOI requests for National Guard Bureau records may be sent to the Chief, National Guard Bureau, ATTN: NGB–ADM, Room 2C363, 2500 Army Pentagon, Washington, DC 20310–2500.

5. *Miscellaneous*

If there is uncertainty as to which DoD Component may have the DoD record sought, the requester may address a Freedom of Information request to the Office of the Assistant Secretary of Defense (Public Affairs), Directorate for Freedom of Information and Security Review, Room 2C757, 1400 Defense Pentagon, Washington, DC 20301–1400.

Appendix C to Part 286—Other Reason Categories

1. *Transferred requests*

This category applies when responsibility for making a determination or a decision on categories 2, 3, or 4 of this appendix is shifted from one Component to another, or to another Federal Agency.

2. *Lack of records*

This category covers those situations wherein the requester is advised the DoD Component has no record or has no statutory obligation to create a record.

3. *Failure of requester to reasonably describe record.*

This category is specifically based on section 552(a)(3)(a) of the FOIA.

4. *Other failures by requesters to comply with published rules or directives*

This category is based on section 552(a)(3)(b) of the FOIA and includes instances of failure to follow published rules concerning time, place, fees, and procedures.

5. *Request withdrawn by requester.* This category covers those situations wherein the requester asks an agency to disregard the request (or appeal) or pursues the request outside FOIA channels.

6. *Not an agency record.* This category covers situations where the information requested is not an agency record within the meaning of the FOIA and this part.

BILLING CODE 5000–04–P

Appendix D to Part 286—Record of Freedom of Information (FOI) Processing Cost (DD Form 2086)

RECORD OF FREEDOM OF INFORMATION (FOI) PROCESSING COST

Please read instructions on reverse before completing form.

1. REQUEST NUMBER	2. TYPE OF REQUEST *(X one)* a. INITIAL / b. APPEAL	3. DATE COMPLETED *(YYMMDD)*

	TOTAL HOURS (1)		HOURLY RATE (2)		COST (3)
4. CLERICAL HOURS *(E-9/GS-8 and below)*					
a. SEARCH		X	$12.00	=	*
b. REVIEW/EXCISING		X	$12.00	=	**
c. CORRESPONDENCE AND FORMS PREPARATION		X	$12.00	=	
d. OTHER ACTIVITY		X	$12.00	=	
5. PROFESSIONAL HOURS *(O-1 - O-6/GS-9 - GS-15)*	TOTAL HOURS (1)		HOURLY RATE (2)		COST (3)
a. SEARCH		X	$25.00	=	*
b. REVIEW/EXCISING		X	$25.00	=	**
c. COORDINATION/APPROVAL/DENIAL		X	$25.00	=	
d. OTHER ACTIVITY		X	$25.00	=	
6. EXECUTIVE HOURS *(O-7 - GS-16/ES 1 and above)*	TOTAL HOURS (1)		HOURLY RATE (2)		COST (3)
a. SEARCH		X	$45.00	=	*
b. REVIEW/EXCISING		X	$45.00	=	**
c. COORDINATION/APPROVAL/DENIAL		X	$45.00	=	
7. COMPUTER SEARCH	TOTAL HOURS (1)		HOURLY RATE (2)		COST (3)
a. MACHINE HOURS					*
b. PROGRAMMER/OPERATOR TIME		X		=	
(1) Clerical			$12.00		*
(2) Professional			$25.00		*
8. OFFICE COPY REPRODUCTION	NUMBER (1)		RATE (2)		COST (3)
a. PAGES REPRODUCED		X	.15	=	*
9. MICROFICHE REPRODUCTION	NUMBER (1)		RATE (2)		COST (3)
a. MICROFICHE REPRODUCED		X	.25	=	*
10. PRINTED RECORDS	TOTAL PAGES (1)		RATE (2)		COST (3)
a. FORMS		X	.02	=	*
b. PUBLICATIONS		X	.02	=	*
c. REPORTS		X	.02	=	*
11. COMPUTER COPY	NUMBER (1)		ACTUAL COST (2)		COST (3)
a. TAPE		X		=	*
b. PRINTOUT		X		=	*
12. AUDIOVISUAL MATERIALS	NUMBER (1)		ACTUAL COST (2)		COST (3)
a. MATERIALS REPRODUCED		X		=	*

13. *For FOI Office Use Only*

a. SEARCH FEES PAID		f. TOTAL COLLECTABLE COSTS	
b. REVIEW FEES PAID		g. TOTAL PROCESSING COSTS	
c. COPY FEES PAID		h. TOTAL CHARGED	
d. TOTAL PAID		i. FEES WAIVED/REDUCED *(X one)*	Yes / No
e. DATE PAID *(YYMMDD)*	*		

* *Chargeable to all requesters after application of all waiver criteria.*
** *Chargeable only to commercial requesters.*

DD Form 2086, JUN 89 (EG) *Previous editions are obsolete.* Designed using Perform Pro, WHS/DIOR, Aug 95

INSTRUCTIONS FOR COMPLETING DD FORM 2086

This form is used to record costs associated with the processing of a Freedom of Information request.

1. **REQUEST NUMBER** - First two digits will express Calendar Year followed by dash (-) and Component's request number, i.e., 87-001.

2. **TYPE OF REQUEST** - Mark the appropriate block to indicate initial request or appeal of a denial.

3. **DATE COMPLETED** - Enter year, month and day, i.e., 870621.

4. **CLERICAL HOURS** - For each applicable activity category, enter time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search - Time spent in locating from the files the requested information.

Review/Excising - Time spent in reviewing the document content and determining if the entire document must retain its classification or segments could be excised thereby permitting the remainder of the document to be declassified. In reviews for other than classification, FOI exemptions 2 through 9 should be considered.

Correspondence and Forms Preparation - Time spent in preparing the necessary correspondence and forms to answer the request.

Other Activity - Time spent in activity other than above, such as duplicating documents, hand carrying documents to other locations, restoring files, etc.

- Multiply the time in the total hours column of each category by the hourly rate and enter the cost figures for each category.

5. **PROFESSIONAL HOURS** - For each applicable activity category, enter time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search/Review/Excising, and Other Activity - See explanation above.

Coordination/Approval/Denial - Time spent coordinating the staff action with interested offices or agencies and obtaining the approval for the release or denial of the requested information.

- Multiply the time in the total hours column of each category by the hourly rate and enter the cost figures for each category.

6. **EXECUTIVE HOURS** - For each applicable activity category, enter the time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search/Review/Excising - See explanation above.

Coordination/Approval/Denial - See explanation above.

- Multiply the time in the total hours column of each category by the hourly rate and enter the cost figures for each category.

7. **COMPUTER SEARCH** - Enter exact computer processing value in the total hours column. The salary scale (equating to items 4 and/or 5) for the programmer/operator executing the search will be recorded as part of the computer search cost, and entered in the appropriate block.

- Multiply the total hours by the hourly rates and enter the cost figures. Computer search will be based on direct cost of the Central Processing Unit, input/output devices, and memory capacity of the actual computer configuration used.

8. **OFFICE COPY REPRODUCTION** - Enter the number of pages reproduced.

- Multiply by the rate per copy and enter cost figures.

9. **MICROFICHE REPRODUCTION** - Enter the number of microfiche copies reproduced.

- Multiply by the rate per copy and enter cost figures.

10. **PRINTED RECORDS** - Enter total pages in each category. The categories are:

Forms *(Include any type of printed forms)*

Publications *(Include any type of bound document, such as directives, regulations, studies, etc.)*

Reports *(Include any type of memorandum, staff action paper, etc.)*

- Multiply the total number of pages in each category by the rate per page and enter cost figures.

11. **COMPUTER COPY** - Enter the total number of tapes and/or printouts.

- Multiply by the actual cost per tape or printout and enter cost figures.

12. **AUDIOVISUAL MATERIALS** - Duplication cost is the actual cost of reproducing the material, including the wages of the person doing the work.

13. **FOR FOI OFFICE USE ONLY** -

Search Fees Paid - Enter total search fees paid by the requester.

Review Fees Paid - Enter total review fees paid by the requester.

Copy Fees Paid - Enter the total of copy fees paid by the requester.

Total Paid - Add search fees paid and copy fees paid. Enter total in the total paid block.

Date Paid - Enter year, month, and day, i.e., 871024, the fee payment was received.

Total Collectable Costs - Add the blocks in the cost column marked with an asterisk and enter total in the total collectable cost block. Apply the appropriate waiver for the category of requester prior to inserting the final figure. Further discussion of chargeable fees is contained in Chapter VI of DoD Regulation 5400.7-R.

Total Processing Costs - Add all blocks in the cost column and enter total in the total processing cost block. The total processing cost in most cases will exceed the total collectable cost.

Total Charged - Enter the total amount that the requester was charged, taking into account the fee waiver threshold and fee waiver policy.

Fees Waived/Reduced - Indicate if the cost of processing the request was waived or reduced by placing an "X" in the "Yes" block or the "No" block.

DD Form 2086 Reverse, JUN 89

Appendix E to Part 286—Record of Freedom of Information (FOI) Processing Cost for Technical Data (DD Form 2086–1)

RECORD OF FREEDOM OF INFORMATION *(FOI)* PROCESSING COST FOR TECHNICAL DATA

Please read instructions on reverse before completing form.

1. REQUEST NUMBER	2. TYPE OF REQUEST *(X one)* a. INITIAL ☐ b. APPEAL ☐	3. DATE COMPLETED *(YYMMDD)*

4. CLERICAL HOURS *(E-9/GS-8 and below)*	TOTAL HOURS (1)		HOURLY RATE (2)		COST (3)
a. SEARCH					*
b. REVIEW/EXCISING					*
c. CORRESPONDENCE AND FORMS PREPARATION		X	$13.25	=	*
d. OTHER ACTIVITY					
e. MINIMUM CHARGE			$ 8.30		

5. PROFESSIONAL HOURS *(O-1 - O-6/GS-9 - GS/GM-15)*	TOTAL HOURS (1)		HOURLY RATE (2)		COST (3)
a. SEARCH					*
b. REVIEW/EXCISING					*
c. COORDINATION/APPROVAL/DENIAL		X	ACTUAL HOURLY RATE	=	*
d. OTHER ACTIVITY					
e. MINIMUM CHARGE			1/2 HOURLY RATE		

6. EXECUTIVE HOURS *(O-7/GM-16/ES 1 and above)*	TOTAL HOURS (1)		HOURLY RATE (2)		COST (3)
a. SEARCH					*
b. REVIEW/EXCISING		X	ACTUAL HOURLY RATE	=	*
c. COORDINATION/APPROVAL/DENIAL					
d. MINIMUM CHARGE			1/2 HOURLY RATE		

7. COMPUTER SEARCH	TOTAL HOURS (1)		HOURLY RATE (2)		COST (3)
a. MACHINE HOURS		X		=	*
b. PROGRAMMER/OPERATOR TIME					
- Clerical			$13.25 OR MINIMUM		*
- Professional			ACTUAL OR MINIMUM		*

8. REPRODUCTION	NUMBER (1)		RATE (2)		COST (3)
a. AERIAL PHOTOGRAPHS, SPECIFICATIONS, PERMITS, CHARTS, BLUEPRINTS, AND OTHER TECHNICAL DOCUMENTS			$ 2.50		*
b. ENGINEERING DATA *(Microfilm)*					
- Aperture cards					
-- Silver duplicate negative, per card			.75		*
-- When keypunched and verified, per card		X	.85	=	*
-- Diazo duplicate negative, per card			.65		*
-- When keypunched and verified, per card			.75		*
- 35 mm roll film, per frame			.50		*
- 16 mm roll film, per frame			.45		*
- Paper prints *(engineering drawings)*, each			1.50		* *
- Paper reprints of microfilm indices, each			.10		*
c. AUDIOVISUAL MATERIALS *(Insert actual cost in block (2))*					*
d. OTHER TECHNICAL DATA RECORDS Charges for any additional services not specifically provided above shall be made by components at the following rates:					
- Minimum charge for office copy *(up to six images)*			$ 3.50		*
- Each additional image			.10		*
- Each typewritten page		X	3.50	=	*
- Certification and validation with seal, each			5.20		*
- Hand-drawn plots and sketches, each hour or fraction thereof			12.00		*

* *Chargeable to all requesters.*

9. *For FOI Office Use Only*					
a. SEARCH FEES PAID		d. TOTAL PAID		g. TOTAL PROCESSING COSTS	
b. REVIEW FEES PAID		e. DATE PAID *(YYMMDD)*		h. TOTAL CHARGED	
c. COPY FEES PAID		f. TOTAL COLLECTABLE COSTS		i. FEES WAIVED/ REDUCED *(X one)*	YES ☐ NO ☐

DD Form 2086-1, JUN 89 (EG)

Designed using Perform Pro, WHS/DIOR, Feb 95

INSTRUCTIONS FOR COMPLETING DD FORM 2086-1

This form is used to record costs associated with the processing of a Freedom of Information request for technical data.

1. REQUEST NUMBER - First two digits will express Calendar Year followed by dash (-) and Component's request number, i.e., 87-001.

2. TYPE OF REQUEST - Mark the appropriate block to indicate initial request or appeal of a denial.

3. DATE COMPLETED - Enter year, month and day, i.e., 870621.

4. CLERICAL HOURS - For each applicable activity category, enter time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search - Time spent in locating from the files the requested information.

Review/Excising - Time spent reviewing the document content and determining if the entire document must retain its classification or segments could be excised thereby permitting the remainder of the document to be declassified. In reviews for other than classification, FOI exemptions 2 through 9 should be considered.

Correspondence and Forms Preparation - Time spent in preparing the necessary correspondence and forms to answer the request.

Other Activity - Time spent in activity other than above, such as duplicating documents, hand carrying documents to other locations, restoring files, etc.

- Multiply the time in the total hours column of each category by the hourly rate and enter the cost figures for each category. Both search and review costs are chargeable to the requester.

5. PROFESSIONAL HOURS - For each applicable activity category, enter time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search/Review/Excising, and Other Activity - See explanation above.

Coordination/Approval/Denial - Time spent coordinating the staff action with interested offices or agencies and obtaining the approval for the release or denial of the requested information.

- Multiply the time in the total hours column of each category by the hourly rate and enter the cost figures for each category. Both search and review costs are chargeable to the requester.

6. EXECUTIVE HOURS - For each applicable activity category, enter the time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search/Review/Excising - See explanation above.

Coordination/Approval/Denial - See explanation above.

- Multiply the time in the total hours column in each category by the hourly rate and enter the cost figures for each category. Review costs are chargeable to the requester.

7. COMPUTER SEARCH - Enter exact computer processing value in the total hours column. The salary scale (equating to items 4 and/or 5) for the programmer/operator executing the search will be recorded as part of the computer search cost, and entered in the appropriate block.

- Multiply the total hours by the computer hourly rates and enter the cost figures. Computer search will be based on direct cost only of the Central Processing Unit, input/output devices, and memory capacity of the actual computer configuration used. This amount is fully chargeable to the requester.

8. REPRODUCTION - Enter the number of pages or items reproduced.

- Multiply by the rate per copy and enter cost figures. The entire cost is chargeable to the requester. Reproduction cost for audiovisual material is the actual cost of reproducing the material, including the wage of the person doing the work.

9. FOR FOI OFFICE USE ONLY -

Search Fees Paid - Enter total search fees paid by the requester.

Review Fees Paid - Enter total review fees paid by the requester.

Copy Fees Paid - Enter the total of copy fees paid by the requester.

Total Paid - Add search fees paid and copy fees paid. Enter total in the total paid block.

Date Paid - Enter year, month, and day, i.e., 871024, the fee payment was received.

Total Collectable Costs - Add the blocks in the cost column marked with an asterisk and enter total in the total collectable cost block. Only search, reproduction and printed records are chargeable to the requester. Further discussion of collectable costs is contained in Chapter VI, Section 3, DoD Regulation 5400.7-R.

Total Processing Costs - Add all blocks in the cost column and enter total in the total processing cost block. The total processing cost in most cases will exceed the total collectable cost.

Total Charged - Enter the total amount that the requester was charged, taking into account the fee waiver threshold and fee waiver policy.

Fees Waived/Reduced - Indicate if the cost of processing the request was waived or reduced by placing an "X" in the "YES" block or an "X" in the "NO" block.

DD Form 2086-1 Reverse, JUN 89

Appendix F to Part 286—Annual Report Freedom of Information Act (DD Form 2564)

ANNUAL REPORT
FREEDOM OF INFORMATION ACT

REPORT CONTROL SYMBOL

1. INITIAL REQUEST DETERMINATIONS																							
a. TOTAL REQUESTS	b. GRANTED IN FULL		c. DENIED IN PART		d. DENIED IN FULL		e. "OTHER REASONS"		f. TOTAL ACTIONS														

2a. EXEMPTIONS INVOKED ON INITIAL REQUEST DETERMINATIONS																							
(b) (1)		(b) (2)		(b) (3)		(b) (4)		(b) (5)		(b) (6)		(b) (7)		(b) (8)		(b) (9)		TOTAL					

2b. "OTHER REASONS" CITED ON INITIAL REQUEST DETERMINATIONS																							
1		2		3		4		5		6													

3. APPEAL DETERMINATIONS																							
a. TOTAL REQUESTS	b. GRANTED IN FULL		c. DENIED IN PART		d. DENIED IN FULL		e. "OTHER REASONS"		f. TOTAL ACTIONS														

4a. EXEMPTIONS INVOKED ON APPEAL DETERMINATIONS																							
(b) (1)		(b) (2)		(b) (3)		(b) (4)		(b) (5)		(b) (6)		(b) (7)		(b) (8)		(b) (9)		TOTAL					

4b. "OTHER REASONS" CITED ON APPEAL DETERMINATIONS																							
1		2		3		4		5		6													

5. b (3) STATUTES INVOKED ON INITIAL AND APPEAL DETERMINATIONS *(Continue on plain paper as necessary)*			
(1)(b)(3) STATUTE CLAIMED	NUMBER OF INSTANCES	COURT UPHELD? (Yes or No)	CONCISE DESCRIPTION OF MATERIAL WITHHELD

DD FORM 2564, PREVIOUS EDITION IS OBSOLETE. Designed using Perform Pro, WHS/DIOR

| | | |

number of stations in three years to cover 30 percent of the population or land area, and in five years to cover 50 percent of the population or land area (see 47 CFR 95.833).

2. Maritime Communications Corporation, an IVDS licensee in the Dallas, TX MSA, recently filed a request for waiver of the rule requiring IVDS licensees to use type accepted equipment or alternatively, a waiver of the three year construction requirement for its IVDS system. Bay Interactive Ventures Ltd., and IVDS licensee in the Los Angeles, CA MSA, also filed a request for waiver of the three year construction requirement for its IVDS system. Both licensees cite the pendency of a petition for rule making, RM–8951, the lack of commercially available equipment and the lack of service applications they could deploy over their systems as reasons that we should waive the three year construction benchmark.

3. Interested parties may file comments concerning these waiver requests on or before February 25, 1997. Reply comments are due on or before March 3, 1997. Comments and reply comments should be sent or delivered to: Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, Att'n Private Wireless Division, Wireless Telecommunications Bureau. A copy should also be sent or delivered to: Private Wireless Division, Wireless Telecommunications Bureau, Room 8010, Stop Code 2000–F, Federal Communications Commission, 2025 M Street, N.W., Washington, D.C. 20554. Finally, a copy should be sent or delivered to the Commission's duplicating contractor: International Transcription Services, Inc. (ITS), 2100 M Street, N.W., Suite 140, Washington, D.C. 20037 (telephone number (202) 857–3800). Copies of the filings may be obtained from ITS.

4. A copy is also available for public inspection during regular business hours in the Private Wireless Division, Wireless Telecommunications Bureau, Room 8010, 2025 M Street, N.W., Washington, D.C. 20554.

List of Subjects in 47 CFR 95

Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–4029 Filed 2–18–97; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

48 CFR Part 225

[DFARS Case 97–D300]

Defense Federal Acquisition Regulation Supplement; Ball and Roller Bearings; Waiver

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement 10 U.S.C. 2534(d)(6), which provides that the Secretary of Defense may waive the domestic source restrictions of 10 U.S.C. 2534(a) for a procurement that is for an amount less than the simplified acquisition threshold, when simplified acquisition procedures are being used.

DATE: Comments on the proposed rule should be submitted in writing to the address shown below on or before April 21, 1997, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 97–D300 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

10 U.S.C. 2534(a) limits the procurement of certain items to domestic sources; 10 U.S.C. 2534(g)(1) provides that this limitation does not apply to a contract or subcontract for an amount that does not exceed the simplified acquisition threshold.

10 U.S.C. 2534(d)(6) provides that the Secretary of Defense may waive the limitation in 10 U.S.C. 2534(a) for a procurement that is for an amount less than the simplified acquisition threshold, when simplified acquisition procedures are being used.

This DFARS rule proposes to implement the waiver authority of 10 U.S.C. 2534(d)(6) with regard to the acquisition of ball and roller bearings, because 10 U.S.C. 2534(g)(2), added by Section 806(d) of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104–106), makes the broader exception at 10 U.S.C. 2534(g)(1) inapplicable to ball and roller bearings.

B. Regulatory Flexibility Act

The proposed rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Therefore, an Initial Regulatory Flexibility Analysis has been prepared and is summarized as follows:

The proposed rule is being considered by the agency to implement 10 U.S.C. 2534(d)(6) with regard to the acquisition of ball and roller bearings. 10 U.S.C. 2534(d)(6) provides that the Secretary of Defense may waive the domestic source restrictions of 10 U.S.C. 2534(a) for a procurement that is for an amount less than the simplified acquisition threshold, when simplified acquisition procedures are being used. Because of other statutory provisions that pertain to the acquisition of ball and roller bearings, the waiver authority in this proposed rule may be used only if (1) ball and roller bearings or bearing components are the end items being purchased, and (2) the ball and roller bearings or bearing components are commercial items, or no fiscal year 1996 or 1997 funds are being used. It is estimated that 11 small businesses could be affected by this rule. The rule imposes no new reporting, recordkeeping, or compliance requirements for contractors or offerors; and does not duplicate, overlap, or conflict with any other Federal rules. There are no practical alternatives that will fully implement the provisions of 10 U.S.C. 2534(d)(6).

A copy of the Initial Regulatory Flexibility Analysis has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy of the analysis from the address specified herein. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subpart also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 97–D300 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed rule contains no information collection requirements that require approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Part 225

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 225 is amended as follows:

1. The authority citation for 48 CFR Part 225 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

2. Section 225.7019–3 is amended by redesignating paragraphs (a)(2) and (a)(3) as paragraphs (a)(3) and (a)(4), respectively, and by adding a new paragraph (a)(2) to read as follows:

225.7019–3 Waiver.

(a) * * *

(2) If the acquisition is for an amount less than the simplified acquisition threshold and simplified acquisition procedures are being used.

* * * * *

[FR Doc. 97–4042 Filed 2–18–97; 8:45 am]

BILLING CODE 5000–04–M

Notices

Federal Register
Vol. 62, No. 33
Wednesday, February 19, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation will meet on Friday, February 28, 1997. The meeting will be held on the third floor of the Arsenal (enter through the Cabildo on Jackson Square), 701 Chartres Street, New Orleans, Louisiana, beginning at 8:30 a.m.

The Council was established by the National Historic Preservation Act of 1966 (16 U.S.C. 470) to advise the President and the Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The Council's members are the Architect of the Capitol; the Secretaries of the Interior and Agriculture; the heads of four designated Federal agencies; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; a Native Hawaiian; and eight non-Federal members appointed by the President.

The agenda for the meeting includes the following:

I. Chairman's Welcome
II. Swearing in of New Member
III. Chairman's Report
IV. Report of the Task Force on Regulations
V. Member Involvement in Council Activities
VI. Preservation Policy Issues
VII. Executive Director's Report
VIII. New Business
IX. Adjourn.

Note: The meetings of the Council are open to the public. If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., Room 809, Washington, DC, 202–606–8503, at least seven (7) days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., #809, Washington, DC 20004.

Dated: February 12, 1997.

John M. Fowler,

Acting Executive Director.

[FR Doc. 97–3995 Filed 2–18–97; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Cooperative State Research, Education, and Extension Service's (CSREES) intention to request an extension for and revision to a currently approved information collection in support of the CSREES National Research Initiative Competitive Grants Program (NRICGP).

DATES: Comments on this notice must be received by April 21, 1997 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Sally J. Rockey, Deputy Administrator, Competitive Research Grants and Awards Management, CSREES, USDA, STOP 2240, Washington, DC 20250–2240, (202) 401–1766. E-mail: OEP@reeusda.gov.

SUPPLEMENTARY INFORMATION:

Title: CSREES/National Research Initiative Competitive Grants Program.

OMB Number: 0524–0033.

Expiration Date of Approval: June 30, 1997.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: USDA/CSREES administers the NRICGP, under which competitive, peer-reviewed research grants of a high-priority nature are awarded. This program is authorized pursuant to the authorities contain in section 2(b) of the Act of August 4, 1965, as amended by section 1615 of the Food, Agriculture, Conservation, and Trade Act of 1990 (FACT Act) (7 U.S.C. 450i(b)) (1965 Act, as amended).

Before awards can be made, certain information is required from applicants as part of an overall proposal package. In addition to project summaries, descriptions of the research, literature reviews, curricula vitae of principal investigators, and other, relevant technical aspects of the proposed project, supporting documentation of an administrative and budgetary nature also must be provided. Because of the nature of the competitive, peer-reviewed process, it is important that information from applicants be available in a standardized format to ensure equitable treatment.

Each year, an NRICGP solicitation is issued requesting proposals for various research areas. Applicant submit proposals for these various research areas following the format outlined in the yearly Program Description. These proposals are evaluated by peer review panels and awarded on a competitive basis.

The NRICGP has been using the "Application Kit" (OMB Approval 0525–0022) developed for general CSREES use since the inception of the NRICGP in Fiscal Year 1991. This kit includes the necessary forms and instructions to applicants requesting support under various competitive and noncompetitive funding programs sponsored by CSREES. In 1994, the NRICGP sought and received approval of three forms specific to the needs of the NRICGP, including one form used by CSREES for meeting the compliance requirements of the National Environmental Policy Act of 1969.

Forms CSREES–1232, "Project Summary," CSREES–1233, "Conflict of Interest," and CSREES–1234, "National Environmental Policy Act Exclusions Form" are mainly used for proposal evaluation and administration. While some of the information will be used to respond to inquiries from Congress and other government agencies, the forms are not designed to be statistical surveys or data collection instruments. Their completion by potential recipients is a normal part of the application to Federal agencies which support basic and applied scientific research.

The following information has been collected and will continue to be collected:

CSREES–1232—*Proposal Identification:* Lists the Principal Investigator(s) and their institution(s), the proposal type (distinguishes among funding mechanisms), project title, and key words, along with a project summary which allows for quick screening and assignment of proposals to peer reviewers.

CSREES–1233—*Identification of Conflicts of Interest:* Lists the person(s) who are in conflict of interest with the applicant(s). This has been used when selecting peer review panels to assure objective reviews, and has been revised to specifically cite potential conflicts of interest by category to better meet the requirements set out in 7 CFR 3411.12.

CSREES–1234—*Collection of Environmental Impact Information:* Allows identification of whether or not the proposal fits one of the exclusions listed for compliance with the National Environmental Policy Act (7 CFR part 3407). This information has been and will continue to be used in determinations as to whether or not further action is needed to meet the requirements of this Act.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average one and one-quarter hour per response.

Respondents: Non-profit institutions, individuals, businesses, Federal Government, and State, Local, or Tribal Governments.

Estimated Number of Responses per Respondent: 3,200 for the CSREES–1232 and CSREES–1233; 4,800 for the CSREES–1234.

Estimated Total Annual Burden on Respondents: 4,400 hours, broken down by: 1,600 hours for the CSREES–1232 (one-half hour per 3,200 respondents); 1,600 hours for the CSREES–1233 (one-half hour per 3,200 respondents); and 1,200 hours for the CSREES–1234 (one-quarter hour per 4,800 respondents).

Copies of this information collection can be obtained from Suzanne Plimpton, Policy and Program Liaison Staff, CSREES, (202) 401–1302. E-mail: OEP@reeusda.gov.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Sally J. Rockey, Deputy Administrator, Competitive Research Grants and Awards Management, CSREES, USDA, STOP 2240, Washington, DC. 20250–2240, (202) 401–1766. E-mail: OEP@reeusda.gov.

All responses to this notice will be summarized and included in the request for OMB approval. All comments also will become a matter of public record.

Done at Washington, DC, on this 7th day of February, 1997.

B.H. Robinson,

Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 97–3993 Filed 2–18–97; 8:45 am]

BILLING CODE 3410–22–M

Foreign Agricultural Service

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Foreign Agricultural Service's intention to request an extension for, and a revision to, a currently approved information collection in support of the regulations governing low-tier duty entry of raw-cane sugar into the U.S. domestic market.

DATES: Comments on this notice must be received by April 21, 1997 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Mail or deliver comments to Stephen C. Hammond, Team Leader, Import Policies and Programs Division, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1021, Washington, DC 20250–1021. For further information, contract Mr. Hammond at telephone number (202) 720–1061.

SUPPLEMENTARY INFORMATION:

Title: Certificate of Quota Eligibility

OMB NUMBER: 0551–0014.

Expiration date of approval: April 30, 1997.

Type of request: Extension and revision of a currently approved information collection.

Abstract: The Harmonized Tariff Schedule of the United States (HTS) authorizes the Secretary of Agriculture to establish the quantity of raw cane sugar which may be entered at the low-tier rates of the tariff-rate quota (TRQ). The terms under which Certificates of Quota Eligibility will be issued to foreign countries that have been allocated a share of the TRQ are set forth in 15 C.F.R. Part 2011, Subpart A, allocation of Tariff-rate quota on Imported Sugars, Syrups, and Molasses. The authority for Certificates of Quota Eligibility is additional U.S. note 5(b)(iv) to chapter 17 of the HTS.

The regulations, promulgated by the U.S. Trade Representative, provides for the issuance of Certificates of Quota Eligibility by the Secretary of Agriculture, and in general prohibits sugar subject to the TRQ from being imported into the United States or withdrawn from warehouse for consumption at the low-tier duty rates unless such sugar is accompanied by a Certificate of Quota Eligibility. Certificates of Quota Eligibility are issued to foreign countries by the "Licensing Authority" who is the Team Leader, Import Quota Programs, Import Policies and Programs Division, Foreign Agricultural Service, United States Department of Agriculture, or his or her designee. The issuance of Certificates of Quota Eligibility is in such amounts and at such times as the Secretary determines are appropriate to enable the foreign country to fill its quota allocation for such quota period in a reasonable manner, taking into account traditional shipping patterns, harvesting period, U.S. import requirements, and other relevant factors.

The information required to be collected on the Certificate of Quota Eligibility is used to monitor and control the imports of sugar. Proper completion of the certificate of quota eligibility is mandatory for those foreign governments that are eligible and elect to export raw sugar to the United States under the provisions of the tariff-rate quota.

Estimate of burden: The public reporting burden for these collections vary in direct relation to the number of Certificates of Quota Eligibility issued.

Respondents: Foreign governments.

Estimated number of respondents: 40 per annum.

Estimated number of responses per respondent: 15 per annum.

Estimated total annual burden of respondents: 100 hours.

Copies of this information collection can be obtained from Valerie Countiss, the agency Information Collection Coordinator, at (202) 720–6713.

Request for comments: Send comments regarding (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Stephen C. Hammond, Team Leader, Import Policies and Programs Division, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1021, Washington, DC 20250–1021. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC, February 12, 1997.

August Schumacher, Jr.,

Administrator, Foreign Agricultural Service.

[FR Doc. 97–3994 Filed 2–18–97; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 961121324–7019–03]

RIN 0693–ZA14

Announcement of Availability of Funding for Focused Program Competitions—Advanced Technology Program (ATP)

AGENCY: National Institute of Standards and Technology, Technology Administration, Commerce.

ACTION: Notice.

SUMMARY: The Technology Administration's National Institute of Standards and Technology (NIST) announces the availability of funding for four Focused Program competitions under the Advanced Technology Program (ATP) for fiscal year 1997, targeted on specific technology areas. The four Focused Program competitions being held are: (1) 97–04, Digital Data Storage; (2) 97–05, Technologies for the Integration of Manufacturing Applications (TIMA); (3) 97–06, Component-Based Software (CBS); and (4) 97–07, Tissue Engineering. This notice provides general information for these Focused Program competitions.

DATES: Proposal due dates and other specific instructions will be published in the Commerce Business Daily (CBD) at the time the competitions are announced. Dates, times, and locations of Proposers' Conferences held for interested parties considering applying for funding will also be announced in the CBD.

ADDRESSES: Information on the ATP may be obtained from the following address: National Institute of Standards and Technology, Advanced Technology Program, Administration Building (Bldg. 101), Room A407, Quince Orchard & Clopper Roads, Gaithersburg, MD 20899–0001.

Additionally, information on the ATP is available on the Internet through the World Wide Web (WWW) at http://www.atp.nist.gov.

FOR FURTHER INFORMATION CONTACT: Requests for ATP information, application materials, and/or to have your name added to the ATP mailing list for future mailings may also be made by:

(a) Calling the ATP toll-free "hotline" number at 1–800–ATP-FUND or 1–800–287–3863. You will have the option of hearing recorded messages regarding the status of the ATP or speaking to one of our customer representatives who will take your name and address. if our representatives are all busy when you call, leave a message after the tone. To ensure that the information is entered correctly, please speak distinctly and slowly and spell the words that might cause confusion. Leave your phone number as well as your name and address:

(b) Sending a facsimile (fax) to 301–926–9524 or 301–590–3053; or

(c) Sending electronic mail to atp@nist.gov. Include your name, full mailing address, and phone number.

SUPPLEMENTARY INFORMATION:

Background

The statutory authority for the ATP is Section 5131 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, 15 U.S.C. 278n), as modified by Pub. L. 102–245. The ATP implementing regulations are published at 15 CFR part 295. The Catalog of Federal Domestic Assistance (CFDA) number and program title for the ATP are 11.612, Advanced Technology Program (ATP).

The ATP is a rigorously competitive cost-sharing program designed to assist United States industry/businesses pursue high-risk, enabling technologies with significant commercial/economic potential. The ATP provides multi-year funding to single companies and to industry-led joint ventures to pursue research and development (R&D) projects with high-payoff potential for the nation. The ATP accelerates enabling technologies that, because they are risky, are unlikely to be developed in time to compete in rapidly changing world markets without such a partnership between industry and the Federal government. The ATP challenges industry to take on projects characterized by high technical risk but commensurately high potential payoff to the nation. Proposers must provide credible arguments as to the project feasibility.

The funding instrument used in ATP awards is a "cooperative agreement." Through the cooperative agreement, the ATP fosters a government-industry partnership to accomplish a public purpose of support or stimulation. NIST plans a substantial role in these awards by providing technical assistance and monitoring the technical work and business progress.

Funding Availability

An estimated $15 million in first year funding is available for each of the Focused Program Competitions 97–04, 97–05, and 97–06. An estimated $12 million in first year funding is available for Focused Program Competition 97–07. The ATP reserves the right to utilize for any competition more or less funding than the amounts stated above. The actual number of proposals funded will depend on the quality of the proposals received and the amount of funding requested in the highest ranked proposals. Outyear funding beyond the first year is contingent on the approval of future Congressional appropriations and satisfactory project performance.

Eligibility Requirements, Selection Criteria, and Proposal Review Process

The eligibility requirements, selection criteria, and the proposal review process are discussed in detail in the ATP implementing regulations published at 15 CFR Part 295.

Funding Amounts, Award Period and Cost Sharing (Matching) Requirements

(a) Single companies can receive up to $2 million of ATP funds for up to 3 years. Single companies do not have to provide matching funds, but they are reimbursed for direct costs only. Single companies are responsible for securing funding for all overhead/indirect costs.

(b) Joint ventures can receive a minority share of the total project costs for up to 5 years. Joint ventures must cost-share (matching funds) more than 50 percent of the total project costs (direct plus indirect costs) for each quarter that the ATP funds the project. Subcontractors funded under an ATP cooperative agreement may not contribute towards the matching-fund requirement.

Application Forms and Proposal Preparation Kit

A new November 1996 version of the ATP Proposal Preparation Kit is available upon request from the ATP at the address and phone numbers noted in this notice. Note that the ATP mailed the Kit to all those individuals whose names are currently on the ATP mailing list. The Kit contains proposal cover sheets, other required forms, background material, and instructions for submission of proposals. All proposals must be prepared in accordance with the instructions in the Kit.

Submission of Revised Proposals

An applicant may submit a full proposal that is a revised version of a full proposal submitted to a previous ATP competition. NIST will examine such proposals to determine whether substantial revisions have been made. Where the revisions are determined not to be substantial, NIST reserves the right to score and rank, or where appropriate, to reject, such proposals based on reviews of the previously submitted proposal.

Other Requirements

(a) Federal Policies and Procedures. Recipients and subrecipients are subject to all Federal laws and Federal and Department of Commerce policies, regulations, and procedures applicable to Federal financial assistance awards as identified in the cooperative agreement award.

(b) Past Performance. Unsatisfactory performance under prior Federal awards may result in a proposal not being considered for funding.

(c) Pre-award Activities. If applicants incur any costs prior to an award being made, they do solely at their own risk of not being reimbursed by the Government. Only written authorization from the NIST Grants Officer will obligate NIST to cover pre-award costs.

(d) No Obligation for Future Funding. If a proposal is selected for funding, NIST has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of NIST.

(e) Delinquent Federal Debts. No award of Federal funds shall be made to an applicant or recipient who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, a negotiated repayment schedule is established and at least one payment is received, or other arrangements satisfactory to NIST are made.

(f) Name Check Review. All for-profit and non-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management, honesty, or financial integrity.

(g) Primary Applicant Certification. All primary applicants (including all joint venture participants) must submit a completed form CD–511, "Certifications Regarding Debarment, Suspension, and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanation is hereby provided:

(1) Nonprocurement Debarment and Suspension. Prospective participants, as defined at 15 CFR part 26, section 105 are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

(2) Drug-Free Workplace. Grantees (as defined at 15 CFR part 605) are subject to 15 CFR 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

(3) Anti-Lobbying. Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitations on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and,

(4) Anti-Lobbying Disclosures. Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, Appendix B.

(h) Lower Tier Certification. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying" and Form SF–LLL, "Disclosure of Lobbying Activities." Although the CD–512 is intended for the use of primary recipients and should not be transmitted to NIST, the SF–LLL submitted by any tier recipient or subrecipient should be forwarded in accordance with the instructions contained in the award document.

(i) False Statements. A false statement on any application for funding under ATP may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(j) Intergovernmental Review. The ATP does not involve the mandatory payment of any matching funds from state or local government and does not affect directly any state or local government. Accordingly, the Department of Commerce has determined that Executive Order 12372, "Intergovernmental Review of Federal Programs" is not applicable to this program.

(k) American-Made Equipment and Products. Applicants are hereby notified that they are encouraged, to the greatest extent practicable, to purchase American-made equipment and products with the funding provided under this program in accordance with Congressional intent.

(l) Paperwork Reduction Act. This notice contains collection of information requirements subject to the Paperwork Reduction Act (PRA) which have been approved by the Office of Management and Budget (OMB Control No. 0693–0009). Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control No.

Dated: February 12, 1997.

Elaine Bunten-Mines,

Director, Program Office.

[FR Doc. 97–3996 Filed 2–18–97; 8:45 am]

BILLING CODE 3510–13–M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Application for Designation as Contract Markets for Futures and Options on the New Zealand Dollar

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule change.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) has applied for designation as a contract market for futures and options on the New Zealand Dollar. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purpose of the Commodity Exchange Act.

DATES: Comments must be received on or before March 21, 1997.

ADDRESSES: Interested persons should submit their views and commends to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street, NW Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the CME New Zealand Dollar futures and options contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Stephen Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, 20581, telephone (202) 418–5277. Facsimile number: (202) 418–5527. Electronic mail: ssherrod@cftc.gov.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5100.

Other materials submitted by the CME in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 C.F.R. Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 C.F.R. 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 C.F.R. 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the CME, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on February 12, 1997.

Blake Imel,

Acting Director.

[FR Doc. 97–4003 Filed 2–18–97; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: National Security Agency.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act, the National Security Agency announces a proposal to collect information and seeks public comment on the provisions thereof. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms and information technology.

DATES: Consideration will be given to all comments received by April 21, 1997.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Director, National Security Agency, Attn: COTS Assistance and Evaluation Division (NCAIP Coordinator), 9800 Savage Road STE 6740, Fort George G. Meade, MD 20755–6740.

FOR FURTHER INFORMATION CONTACT: To request additional information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call the NSA Commercial Advice Information Program Coordinator at (410) 859–4458.

Title, Associated Form, and OMB Number: NSA Commercial Advice Information Program, Provider Response Form, Form Number TBD, OMB Number TBD.

Needs and Uses: The information collection requirement is necessary to obtain and record essential contact information and professional qualifications of individuals interested in providing technical advice to trusted computer product vendors or commercial evaluation facilities in support of the NSA Trusted Product Evaluation Program and the Trust Technology Assessment Program. The contact and technical capability information obtained from prospective providers will be published in one or more public venues (e.g., Federal Register, NSA computer systems for Internet World Wide Web and Dockmaster access, handbook or brochure) to provide maximum exposure to vendors and evaluation facilities interested in obtaining advice for commercial providers.

Affected Public: Any individual in the private sector interested in providing technical advice, on a fee-for-service or other paid or unpaid basis, to trusted product vendors or commercial evaluation facilities.

Annual Burden Hours: 25.

Number of Respondents: 100.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The National Security Agency (NSA) plans to implement a commercial advice information program in support of its Trusted Product Evaluation Program (TPEP). The objective of the NSA Commercial Advice Information Program (NCAIP) is to provide a timely source of information to vendors on how to obtain technical advice for

trusted product evaluations from commercial providers. NCAIP is a service that is intended to promote more timely and cost-effective trusted product evaluations by further decentralizing the advice process and offering commercial alternatives to vendors. A commercial advice capability exists today within the private sector and NCAIP intends to facilitate and promote this existing industry. A successful commercial advice information program will result in a cost savings for NSA and will give private industry greater ownership and involvement in trusted product evaluations.

NSA has been evaluating the security features and assurances of commercially produced computer products (e.g., operating systems, networks, network components, and database management systems) against the Trusted Computer System Evaluation Criteria (TCSEC) for over a decade as part of TPEP. TPEP was created to facilitate the widespread availability of commercial off-the-shelf trusted products for use by the U.S. Government, to advance the state of the art in information systems security, and to provide for the transfer of trust technology to private industry.

TPEP is unique in terms of industry and government cooperation. This cooperation places demands on both parties in terms of resource expenditures. Vendors use their own resources to develop trusted products, to establish required engineering processes, and to provide supporting evidence of product development. NSA commits government resources to review and assess product proposals, to provide technical advice during a pre-evaluation phase, to evaluate the resulting vendor products, and to staff a Technical Review Board (TRB) to maintain consistency and quality of evaluations. Upon successful evaluation, the product is awarded a trust rating and placed on a nationally recognized list of evaluated products, the Evaluated Products List (EPL). This partnership has resulted in the successful development of many trusted computer products over the past decade and in a significant transfer of trust technology to the private sector.

TPEP is currently organized into three phases: pre-evaluation, evaluation, and rating maintenance. The *pre-evaluation phase* consists of four principal activities that must be performed in preparation for an evaluation of a trusted product: proposal review, technical assessment, advice, and an intensive preliminary technical review. These activities are conducted to ensure that a product and its associated documentation evidence are ready for evaluation. The *evaluation phase* consists of comprehensive system-level training for the evaluation team, an in-depth analysis of the system design, detailed security testing, presentations before a TRB, and the production of a Final Evaluation Report (FER). The *rating maintenance phase* is a continuation of the original evaluation that provides a mechanism for a vendor to maintain the rating of the product throughout its life-cycle.

The pre-evaluation phase begins with a review of a vendor's proposal to determine if the product has a high probability of meeting the appropriate TCSEC requirements, has the potential for broad market appeal, and is sufficiently mature in its design. As a result of the *proposal review*, a product may become a candidate for evaluation. A candidate product next goes through a *technical assessment*, where the vendor must show that the product design and the supporting documentation (i.e., evaluation evidence) are complete and presented in sufficient detail. The technical assessment can result in a recommendation to: (1) Schedule an *Intensive Preliminary Technical Review* (IPTR), (2) terminate the proposed effort due to technical deficiencies in the product, or (3) seek additional assistance in the form of advice.

The specific activity in the pre-evaluation phase, called *advice*, occurs when a small number of evaluators (the TPEP advice team) are assigned to the vender until the vendor is ready for evaluation. The advice team usually includes at least one-senior evaluator. In the event that NSA resources are unavailable or the proposed product does not meet the established criteria for TPEP advice (i.e., unique or new technology, high priority for DoD, or substantial market impact), the vendor will be asked to seek commercial alternatives. Some of the specific areas covered under the current advice-giving process are the TPEP process, the TCSEC requirements, product design, modeling, design and test documentation, ratings maintenance requirements, implementation questions relative to product design, and user documentation coverage.

Many activities are underway, nationally and internationally, to develop the next generation security evaluation criteria and associated evaluation methodologies (e.g., the Common Criteria and Common Evaluation Methodology). There are also ongoing efforts to develop and implement additional evaluation programs to populate the EPL (e.g., the Trust Technology Assessment Program) that involve greater participation by the private sector. These changes are designed to bring greater efficiencies to the evaluation process by placing more responsibility on vendors to increase their state of readiness in preparation for entering a formal evaluation. There is also interest in exploring ways to reduce government expenditures for evaluations by identifying aspects of the current TPEP process that could be accomplished by the private sector on a fee-for-service basis.

The first activity in which the private sector has been participating is the rendering of technical advice to trusted product vendors. NSA has begun transferring the responsibility for providing pre-evaluation advice to private sector individuals resulting in the need for this commercial advice information program. Commercial advice providers can be used by vendors to participate in a variety of activities such as security analyses, modeling, assessment of a product's ability to meet evaluation criteria requirements, preparation for technical reviews, test development, team training, security mechanism development, and preparation of design and test documentation. Commercial advice providers can also provide information concerning criteria interpretations, ratings maintenance program actions, and the evaluation process, in general. Currently, NSA has no method for providing interested vendors with information about commercial advice providers.

Prospective commercial advice providers will be asked to submit both contact information and information regarding their technical capability to the NCAIP Coordinator. *Contact information* includes provider name, company affiliation (optional), address, telephone number, facsimile number, and electronic mail address. A comment section will provide the opportunity to list any additional information deemed important with respect to *technical capability*. This information may include provider education, training, previous experience and specialized expertise.

Dated: February 12, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–4032 Filed 2–18–97; 8:45 am]

BILLING CODE 5000–04–M

Meeting of the Advisory Committee on High Performance Computing and Communications, Information Technology, and the Next Generation Internet

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for the first meeting of the Advisory Committee on High Performance Computing and Communications, Information Technology, and the Next Generation Internet, and describes the functions of the Committee. The meeting will be open to the public. Notice of this meeting is required under the federal Advisory Committee Act, (Pub. L. 92–463). Notice of this meeting is less than fifteen days prior to the meeting due to an administrative delay.

DATES: February 27–28, 1997.

ADDRESSES: Room 1235 NSF Board Room, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: The Advisory Committee on High Performance Computing and Communications, Information Technology, and the Next Generation Internet was established on February 11, 1997, by Executive Order 13035 and will expire two years from that date. The purpose of the Committee is to provide the National Science and Technology Council, through the Director of the Office of Science and Technology Policy, with advice and information on high performance computing and communications. The Committee members are a well-balanced group of distinguished individuals appointed by the president from various non-Federal sectors.

PROPOSED SCHEDULE AND AGENDA: The Advisory Committee will meet in open session from approximately 8:30 a.m. to noon and 1:00 p.m. to 5:00 p.m. on February 27, 1997, and from approximately 8:30 a.m. to noon on February 28, 1997. This first meeting will focus discussions on necessary historical perspectives; Federal computing, information, and communications R&D investments including the Next Generation Internet Initiative; identifying Government roles in High End Computing and Computation; and formulating approaches for partnering with academia and industry.

FOR FURTHER INFORMATION: Please call the National Coordination Office for Computing, Information, and Communications at (703) 306–4722. Public seating for this meeting is limited, and is available on a first-come, first-served basis.

Dated: February 12, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–4033 Filed 2–18–97; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

Notice of Intent To Prepare an Environmental Impact Statement; Evolved Expendable Launch Vehicle Program

The Department of the Air Force, through Space and Missile Systems Center (SMC/MV), is considering development and deployment of an Evolved Expendable Launch Vehicle (EELV) to meet the U.S. Government's requirements for unmanned space launches. The EELV Program Office at Los Angeles Air Force Base (AFB), California, is managing program activities and intends to study the environmental issues associated with the EELV program. To this end, the Air Force Center for Environmental Excellence (AFCEE) will prepare an environmental impact statement (EIS) for use in the decision-making process.

The EELV would be an unmanned, expendable space launch vehicle evolved from existing systems capable of launching Department of Defense (DOD), National Aeronautics and Space Administration (NASA), other government, and civil satellites, including payloads up to 45,000 pounds. It is intended to meet the requirements of the National Mission Model, both medium and heavy lift, at a lower cost than the present expendable systems. EELV would be DOD's sole source of expendable medium and heavy spacelift transportation to orbit through 2020. EELV would replace current Titan II, Titan IV, Atlas II, and Delta II launch vehicles.

EELV launch activities would occur at Cape Canaveral Air Station (AS), Florida, and Vandenberg AFB, California, from existing space launch complexes that would be modified to meet program requirements.

The EELV program decision to be made is whether EELV should proceed into the Engineering and Manufacturing Development Phase on through Production and Launch Operations. The EIS will examine continuing use of existing launch systems and facilities as alternatives to the continued development of EELV and its associated facilities.

Scoping will be conducted to identify environmental concerns and issues that need to be addressed in the EIS. Two public scoping meetings will be held as part of the process (one each in Cape Canaveral, Florida and Lompoc, California) to determine the environmental issues and concerns that should be addressed. The schedule for the scoping meetings is as follows:

1. Radisson Resort at the Port, 8701 Astronaut Blvd, Cape Canaveral, Florida, March 11, 1997, 7:00—10:00 p.m.

2. Lompoc City Council Chambers, 100 Civic Center Plaza, Lompoc, California, March 13, 1997, 7:00—10:00 p.m.

Public input and comments are solicited concerning the environmental aspects of the proposed program. To assure the Air Force will have sufficient time to fully consider public inputs on issues, written comments should be mailed to ensure receipt no later than April 11, 1997.

Comments concerning the proposed project or the EIS should be addressed to: Jonathan D. Farthing, Chief, Environmental Analysis Division, HQ AFCEE/ECA, 3207 North Road, Brooks Air Force Base, Texas 78235–5363, (210) 536–3668.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 97–4061 Filed 2–18–97; 8:45 am]

BILLING CODE 3910–01–P

AFIT Subcommittee of the Air University Board of Visitors; Notice of Meeting

The Air Force Institute of Technology Subcommittee of the Air University Board of Visitors will hold an open meeting on March 2–4, 1997, with the first business session beginning at 8:30 a.m. in the Commandant's Conference Room, Building 125, Wright-Patterson Air Force Base, Ohio.

The purpose of the meeting is to give the Board an opportunity to review Air Force Institute of Technology's educational programs and to present to the Commandant a report of their findings and recommendations concerning these programs. There are five (5) seats at the meeting available for the public.

For further information on this meeting, contact Ms. Beverly Houtz in the Directorate of Plans and Operations, Air Force Institute of Technology, (513) 255–5760.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 97–3983 Filed 2–18–97; 8:45 am]

BILLING CODE 3910–01–P

Air University Board of Visitors; Notice of Meeting

The Air University Board of Visitors will hold an open meeting on April 13–16, 1997, with the first business session beginning at 8:00 a.m. in the Air University Conference Room at Headquarters Air University, Maxwell Air Force Base, Alabama.

The purpose of the meeting is to give the Board an opportunity to review Air University educational programs and to present to the Commander a report of their findings and recommendations concerning these programs. There are five (5) seats at the meeting available for the public.

For further information on this meeting, contact Dr. Dorothy Reed, Chief of Academic Affairs, Air University Headquarters, Maxwell Air Force Base, Montgomery, Alabama 36112–6335, telephone (334) 953–5159.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 97–3984 Filed 2–18–97; 8:45 am]

BILLING CODE 3910–01–P

Department of the Navy

Notice of Availability of Invention of Licensing; Government Owned Invention

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy. Requests for copies of the patent application cited should be directed to the Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660 and must include the patent application serial number.

Patent Application Serial No. 07/253,106: CAGED POLYNITRAMINE COMPOUND; filed September 30, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Dated: January 22, 1997

D. E. Koenig, Jr.,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 97–4060 Filed 2–18–97; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Director, Information Resources Management Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 21, 1997.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Resources Management Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 12, 1997.

Gloria Parker,

Director, Information Resources Management Group.

Office of Vocational and Adult Education

Type of Review: New.

Title: School-to-Work Progress Measures.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Burden: Responses: 1,025; Burden Hours: 6,800.

Abstract: The Progress Measures Survey focuses on four elements of Title IV, Section 402 of the School-to-Work Opportunities Act: student participation in school-to-work; institutional and employer participation; leveraging of funds; and outcomes. The participation measures are designed to track elaboration of local partnership School-to-Work (STW) systems; the leveraging measures are intended to capture efforts to develop sources of funding that will enable STW to be self-sustaining after sunset of the legislation; and the outcomes measures are indicators of achievement of the Act's primary goals. These data, collected on a regular basis, will provide important evidence of state and local partnership commitments to the legislative mandate.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Annual Report of Children in State Agency and Locally Operated Institutions for Neglected or Delinquent Children.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 52; Burden Hours: 4,130.

Abstract: An annual survey is conducted to collect data on (1) the number of children enrolled in

educational programs of State-operated institutions for neglected or delinquent (N or D) children, community day programs for N or D children, and adult correctional institutions and (2) the October caseload of N or D children in local institutions.

[FR Doc. 97–3970 Filed 2–18–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

SUMMARY: The Energy Information Administration (EIA) is soliciting comments concerning the proposed changes and extensions to Forms EIA–851, "Domestic Uranium Mining Production Report," and EIA–858, "Uranium Industry Annual Survey," for the collection of 1997 data. The Form EIA–254, "Annual Report on Status of Reactor Construction," will be discontinued.

DATES: Written comments must be submitted within 60 days of the publication of this notice. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below of your intention to do so as soon as possible.

ADDRESSES: Send comments to Charles Johnson, Energy Information Administration, EI–531, Forrestal Building, U.S. Department of Energy, Washington, DC 20585, (phone number (202) 426–1178; e-mail address CJOHNSON@EIA.DOE.GOV, and FAX number (202) 426-1280).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Charles Johnson at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. No. 93–275) and the Department of Energy Organization Act (Pub. L. 95–91), the Energy Information Administration is obliged to carry out a central, comprehensive, and unified energy data and information program. As part of this program, EIA collects, evaluates, assembles, analyzes, and disseminates data and information related to energy resource reserves, production, demand, and technology, and related economic and statistical information relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

The Energy Information Administration, as part of its continuing effort to reduce paperwork and respondent burden (required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13)), conducts a presurvey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing reporting forms. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Also, EIA will later seek approval by the Office of Management and Budget (OMB) for the collections under Section 3507(h) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, Title 44, U.S.C. Chapter 35).

The Form EIA–254 (discontinued with this notice) collects data on nuclear power plants planned or under construction, including plant ownership, design capacity, status, cost, and construction schedules and milestone dates.

The Form EIA–851 collects data on uranium production at conventional mills and nonconventional plants (byproduct recovery and in-situ leach plants).

The Form EIA–858 collects data on uranium raw materials activities (Schedule A) and uranium marketing (Schedule B).

Data collected on these forms provide a comprehensive statistical characterization of the domestic nuclear industry in these areas: uranium reserves, potential future requirements for uranium production and enrichment facilities, uranium concentrate production, status of industry's annual activities, and information about industry plans and commitments.

Published data from these surveys are used by Congress, Federal and State agencies, the uranium and electric-utility industries, and the general public. Published data appear in the EIA publications, "Nuclear Power Generation and Fuel Cycle Report," "Uranium Industry Annual," and the "Annual Energy Review.'

II. Current Actions

The EIA–254 will be discontinued for 1997.

There are no changes to the data elements collected on the Form EIA–851; however, a 3-year extension of the approved OMB expiration date (12/31/97) is requested.

The only change to the Form EIA–858 (Schedule A and Schedule B) is the elimination of the certification block on the cover sheet. A request to extend the approval expiration date (12/31/97) for 3 years will also be submitted to OMB.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of responses. Please indicate to which form(s) your comments apply.

General Issues

A. Is the proposed collection of information necessary, taking into account its accuracy, adequacy, and reliability, and the agency's ability to process the information it collects in a useful and timely fashion.

B. What enhancements can EIA make to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can data be submitted in accordance with the due date specified in the instructions?

C. Public reporting burden for these collections are estimated to average: Form EIA–851, 3 hours; and Form EIA–858, 25 hours. Burden includes the total time, effort, or financial resources expended to generate, maintain, retain, or disclose or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

Please comment on (1) the accuracy of our estimate and (2) how the agency could minimize the burden of the collection of information, including the use of automated collection techniques or other forms of information technology.

D. What are the estimated (1) Total dollar amount annualized for capital and start-up costs, and (2) recurring annual dollar amount of operation, maintenance, and purchase of service costs associated with this data collection? The estimates should take into account the costs associated with generating, maintaining, and disclosing or providing the information. Estimates should not include purchases of equipment or services made as part of customary and usual business practices, or the cost of any burden hours for completing the form. EIA estimates that there are no additional costs other than those that the respondent incurs in keeping the information for its own uses.

E. Do you know of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, the data element(s), and the methods of collection.

As a Potential User

A. Can you use data at the levels of detail indicated on the Form EIA–851 and EIA–858?

B. For what purpose would you use the data? Be specific.

C. Are there alternate sources of data and do you use them? If so, what are their deficiencies and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

Issued in Washington, DC, February 12, 1997.

Lynda T. Carlson,

Director, Office of Statistical Standards, Energy Information Administration.

[FR Doc. 97–4017 Filed 2–18–97; 8:45 am]

BILLING CODE 6450–01–P

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Submission for OMB Review; Comment Request.

SUMMARY: The Energy Information Administration (EIA) has submitted the "Residential Energy Consumption Survey" (RECS) (Forms EIA–457A/G) to the Office of Management and Budget (OMB) for clearance under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Notice of this submission was published in the **Federal Register** on January 21, 1997 (62 FR 3031). This notice supplements the earlier notice. Unless additional funding is made available, it will be necessary to delete the Low Income Home Energy Assistance Program (LIHEAP) questions (questions K–1 through K–3). The target sample will also be reduced from 5,800 cases to 5,000. If necessary, this decrease in the target sample will reduce the annual burden by 290 hours from 2,005 to 1,715.

DATES: Comments must be filed on or before February 20, 1997. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Jay Casselberry, Office of Statistical Standards, (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 426–1116, FAX (202) 426–1081, or e-mail at jcasselb@eia.doe.gov.

Statutory Authority: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, DC February 12, 1997.

Lynda T. Carlson,

Director, Office of Statistical Standards, Energy Information Administration.

[FR Doc. 97–4016 Filed 2–18–97; 8:45 am]

BILLING CODE 6450–01–P

Office of Energy Research

Energy Research Financial Assistance Program Notice 97–10; Microbial Genome Program

AGENCY: U.S. Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Health and Environmental Research (OHER) of the Office of Energy Research, U.S. Department of Energy (DOE), hereby announces its interest in receiving applications for grants in support of the Microbial Genome Program (MGP). The MGP focus is on developing and using high-throughput microbial genome sequencing that will provide functional genomic sequence and mapping information on microorganisms: with environmental or energy relevance; of phylogenetic significance; and of potential commercial importance and application. Bioinformatics tools relating to complete genomic sequences are also of importance to the MGP.

DATES: Preapplications referencing Program Notice 97–10 should be received by March 24, 1997. Formal applications in response to this notice should be received by 4:30 p.m., E.D.T., June 9, 1997, to be accepted for merit review and funding in early FY 1998.

ADDRESSES: Preapplications referencing Program Notice 97–10 should be sent to Dr. Marvin E. Frazier, Office of Health and Environmental Research, ER–72, Office of Energy Research, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290; e-mail is acceptable for submitting preapplications using the following address: lana.ahalt@oer.doe.gov. Formal applications referencing Program Notice 97–10 should be forwarded to: U.S. Department of Energy, Office of Energy Research, Grants and Contracts Division, ER–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 97–10. This address must be used when submitting applications by U.S. Postal Service Express Mail or any commercial mail delivery service, or when hand-carried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. Marvin E. Frazier, ER–72, Office of Health and Environmental Research, Office of Energy Research, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone: (301) 903–5468, e-mail: lana.ahalt@oer.doe.gov.

SUPPLEMENTARY INFORMATION: Molecular biological research on industrially important microorganisms and on microorganisms that live in extreme environments (including the deep subsurface, geothermal environments, hypersaline environments, frozen environments, and toxic waste sites) is a developing area of great scientific promise that will impact many DOE missions, other federal agency missions, and U.S. industry. The Microbial Genome Program supports key DOE business areas by providing microbial

DNA sequence information that will further the understanding and application of microbial biology relating to energy production, chemical and materials production, and environmental cleanup. The exploration of microbial genomic sequence diversity is a natural outgrowth of past and current Biological and Environmental Research (BER) Programs, including chromosome mapping and DNA sequencing from the Human Genome Program, structural biology studies utilizing BER-supported facilities and synchrotrons located at DOE laboratories, and molecular microbiological research supported by BER environmental programs. The MGP benefits directly from capabilities at DOE national laboratories, DOE and National Institutes of Health Human Genome Centers, the DOE and NIH Genome Data Base (GDB), and university capabilities, including the DOE-sponsored Subsurface Microbial Culture Collection and the DOE Genome Sequence Data Base (GSDB). The MGP represents a considerable interdisciplinary effort and will contribute to and draw from a wide variety of public and private programs.

Applications are being sought in three complementary areas: genomic sequencing, functional analysis, and bioinformatics. Each application must clearly state which area is being addressed; if an applicant wishes to address more than one area, the application must clearly describe the expected advantages of an integrated approach.

1. Genomic Sequencing.

The DOE intends to continue its support of one or two laboratories that will completely sequence carefully selected microbial genomes. Applicants must demonstrate that they can apply the most recent, high-throughput technology cost-effectively to the production of sequence data and show that they can adequately and efficiently accumulate, store and disseminate those data for future interpretation and application. A commitment to and a plan for making the sequence data publicly available by deposition into an accessible sequence database (GenBank and GSDB) within three months of data acquisition and annotation must be included in the Project Description. Preference will be given to those applicants that demonstrate well developed plans for selecting candidates for DNA sequencing. Candidate microorganisms may include, but are not limited to, bacteria and archaea that mediate or catalyze metabolic events of energy or environmental importance. Strict pathogens or parasites will not be considered. Applicants are encouraged to create process- and cost-effective partnerships that will maximize sequence data production and analysis, data dissemination, and progress towards understanding basic biological mechanisms that can further the development of biotechnology. It is anticipated that one or two major awards will be made to conduct microbial genome sequencing for a total of $3 to 4 million in FY 1998.

Many microorganisms that are closely related by means of phylogenetic measures (e.g., 16S rRNA comparisons) display dramatic differences in phenotypic characteristics. Such differences can be chromosomal in origin, or they can be due to extrachromosomal genetic elements. DOE is interested in technologies that could exploit the completed sequence of one microorganism to efficiently determine the sequence of a related taxon, without resequencing the entire genome of the related organism *de novo*. New technologies up to the proof-of-principle stage are eligible for support, and it is estimated that between two and four awards for a total of $500,000 to $1 million could be available in FY 1998.

2. Functional Analysis

It is presently difficult, and in many instances impossible, to predict biological function from genomic sequence data. Better methods are needed to identify open reading frames and predict their function. This is especially true for environmental isolates and for environmental microorganisms that cannot yet be cultured. Accordingly, applications are requested that will address these and related needs in the area of predicting biological function. It is estimated that between two and four awards for a total of $1 to $2 million could be available for this area in FY 1998.

3. Bioinformatics

It is estimated that by June, 1997, completed genomic sequences of five or six archaea and bacteria (*Mycoplasma genitalium, Methanococcus jannaschii, Methanobacterium thermoautotrophicum, Archaeoglobus fulgidus, Pyrococcus furiosus,* and *Aquifex* sp. strain VF5) will be publicly available, as a direct result of DOE Microbial Genome Program funding. In addition, completed sequences for *Haemophilus influenzae, Saccharomyces cerevisae,* and *Synechocystis* sp. strain PCC6803 are also now publicly available, and by June, 1997, *Escherichia coli, Helicobacter pylori, and Borrelia burgdorferii* genomic sequences should also be publicly available (all funded by other sources). This unprecedented explosion of genetic information, along with the anticipated increase in other genomic sequence data that will occur over the next year, has underscored the need for better approaches and tools for comparing and analyzing this rapidly increasing volume of data. Accordingly, applications are requested that will propose ways in which data from all databases can be accessed, analyzed, compared, updated, verified, and annotated. It is anticipated that between two and four awards for a total of $1 to $2 million could be available for this area in FY 1998.

Potential applicants are strongly encouraged to submit a brief preapplication that consists of two to three pages of narrative describing the research objectives and method of accomplishment. Preapplications will be reviewed relative to the scope and research needs of the BER Microbial Genome Program, as outlined in the summary paragraph and in the **SUPPLEMENTARY INFORMATION**. Principal investigator telephone number, FAX number, and e-mail address are required as part of the preapplication. A response to each preapplication discussing the potential programmatic relevance of a formal application will be communicated to the Principal Investigator within 14 to 21 days of receipt.

It is anticipated that approximately $7 million will be available for all MGP awards, five to ten awards are anticipated, contingent on availability of appropriated funds in FY 1998. Multiple year funding is expected, also contingent on availability of funds and progress of the research. Previous awards have ranged from $200,000 to $2 million per year with terms of one to three years.

Applications will be subjected to formal merit review (peer review) and will be evaluated against the following evaluation criteria which are listed in descending order of importance codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project;
2. Appropriateness of the Proposed Method or Approach;
3. Competency of Applicant's personnel and Adequacy of Proposed Resources;
4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and an agency's programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers will often be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

The Office of Energy Research (ER), as part of its grant regulations, requires at 10 CFR 605.11(b) that a grantee funded by ER and performing research involving recombinant DNA molecules shall comply with the National Institutes of Health "Guidelines for Research Involving Recombinant DNA Molecules" (51 FR 16958, May 7, 1986), or such later guidelines as may be published in the **Federal Register**. The Project Description must be 30 pages or less, exclusive of attachments. It must contain an abstract or project summary, letters of intent from collaborators, and short curriculum vitaes consistent with NIH guidelines.

To provide a consistent format for the submission, review and solicitation of grant applications submitted under this notice, the preparation and submission of grant applications must follow the guidelines given in the Application Guide for the Office of Energy Research Financial Assistance Program 10 CFR Part 605. Access to ER's Financial Assistance Application Guide is possible via the World Wide Web at: http://www.er.doe.gov/production/grants/grants.html.

Other useful web sites include:

MGP Home Page—http://www.er.doe.gov/production/oher/EPR/mig_top.html

GenBank Home Page—http://www.ncbi.nlm.nih.gov/

GSDB Home Page—http://www.ncgr.org/gsdb/

Human Genome Home Page—http://www.ornl.gov/hgmis

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, DC, on February 12, 1997.

John Rodney Clark,

Associate Director for Resource Management, Office of Energy Research.

[FR Doc. 97–4015 Filed 2–18–97; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. CP97–239–000]

ANR Pipeline Company; Notice of Request Under Blanket Authorization

February 12, 1997.

Take notice that on February 10, 1997, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed a request with the Commission in Docket No. CP97–239–000, pursuant to Sections 157.205, and 157.211 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to operate under the provisions of Section 7(c) of the NGA an existing interconnection in Harper County, Oklahoma, that has been constructed pursuant to Section 311 of the Natural Gas Policy Act of 1978 (NGPA) authorized in blanket certificate issued in Docket Nos. CP82–480–000 and CP88–532–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

ANR seeks authorization to operate a previously constructed interconnection (KansOk Interconnection) with the pipeline system of Kansok Partnership (KansOk), constructed in October, 1994. The facilities consist of a hot tap and tie-in assembly located on ANR's existing 20-inch pipeline. The facilities were originally constructed at a cost of approximately $29,000, for which ANR was fully reimbursed by KansOk. ANR delivers natural gas at this interconnection "on behalf of" KansOk for the account of MarGasCo Partnership. The KansOk Interconnection was reported in ANR's 1994 Annual Report of NGPA Section 311 construction in Docket No. CP95–370–000.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Lois D. Cashell,

Secretary.

[FR Doc. 97–3974 Filed 2–18–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–207–001]

Distrigas of Massachusetts Corporation; Notice of Compliance Filing

February 12, 1997.

Take notice that on February 10, 1997, Distrigas of Massachusetts Corporation (DOMAC) tendered for filing in accordance with Order No. 582 compliance tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, as specified in the letter order issued in this proceeding on January 24, 1997.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–3980 Filed 2–18–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–240–000]

East Tennessee Natural Gas Company; Notice of Request Under Blanket Authorization

February 12, 1997.

Take notice that on February 10, 1997, East Tennessee Natural Gas Company (East Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP97–240–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct a new delivery point to provide interruptible natural gas transportation service to the Virginia Gas Distribution Company (Virginia Gas), a local distribution company, under East Tennessee's blanket certificate issued in Docket No. CP82–412–000 pursuant to Section 7 of the Natural Gas Act, all as

more fully set forth in the request that is on file with the Commission and open to public inspection.

East Tennessee proposes to establish a new delivery point on its system at approximate Mile Post 3404–1+0.0 in Russell County, Virginia for deliveries to Virginia Gas of up to 1,000 Dekatherms per day of natural gas on an interruptible basis. East Tennessee states it will install, own and maintain a 2-inch hot tap and electronic measurement equipment. East Tennessee states that Virginia Gas will install, own, operate and maintain approximately 40 feet of two-inch interconnect piping and install, own and maintain the meter facilities. East Tennessee also states that Virginia Gas will provide a meter site adjacent to East Tennessee's existing pipeline right-of-way and will reimburse East Tennessee for the cost of the project which is estimated to be $28,800.

East Tennessee states that the total quantities to be delivered to Virginia Gas after the delivery point is constructed will not exceed previously authorized quantities. East Tennessee also states, that the installation of the proposed delivery point is not prohibited by East Tennessee's tariff, and that East Tennessee has sufficient capacity to accomplish deliveries at the proposed new point without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–3975 Filed 2–18–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–236–000]

National Fuel Gas Supply Corporation; Notice of Application

February 12, 1997.

Take notice that on February 6, 1997, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP97–236–000 an application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations, for authority to abandon certain underground natural gas storage facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

National proposes to abandon an observation well, designated as Well 1557, because it is no longer reliable as a pressure indicator for the field. National further proposes to abandon well line S–1557, a gathering line attached to Well 1557 which serves no other purpose. National estimates the cost of performing the plugging and abandonment of the well and the gathering line to be $20,000.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 5, 1997, file with the Federal Energy Regulatory Commission (888 First Street, NE., Washington, D.C. 20426) a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for National to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–3973 Filed 2–18–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP96–16–003 and RP93–36–017]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

February 12, 1997.

Take notice that on February 7, 1997, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, certain tariff sheets to be effective February 1, 1997.

Natural stated that the purpose of the filing is to comply with the Commission's letter order issued January 29, 1997 in Docket Nos. RP96–16–002 and RP93–36–016 (Letter Order), which approved Natural's "Stipulation and Agreement" filed in these same dockets on September 30, 1996 (Settlement). Natural stated that the tariff sheets submitted reflect the revisions necessary to implement the provisions of the Settlement.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets submitted to become effective February 1, 1997, as requiring by the Settlement and pursuant to the Letter Order.

Natural stated the copies of the filing are being mailed to all parties set out on the official service list in Docket No. RP96–16–002.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with the Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–3979 Filed 2–18–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–248–001]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

February 12, 1997.

Take notice that on February 7, 1997, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, proposed to be effective March 1, 1997:

Fifth Revised Volume No. 1

12 Revised Sheet No. 59
14 Revised Sheet No. 60

On January 31, 1997, Northern filed in Docket No. RP97–248–000 to recover costs relating to take-or-pay, pricing or other contract provisions, and buyout, buydown or reformation costs pursuant to the Commission's Order No. 528. Tariff Sheet Nos. 59 and 60 were inadvertently excluded from the filing. The reason for this filing is to file Sheet Nos. 59 and 60 which had been mistakenly omitted from the January 31, 1997 filing in Docket No. RP97–248–000.

Northern states that copies of this filing were served upon the Company's customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestant a party to the proceedings. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–3981 Filed 2–18–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP85–60–010]

Overthrust Pipeline Company; Notice of Report of Refunds

February 12, 1997.

Take notice that on February 4, 1997, Overthrust Pipeline Company (Overthrust) tendered for filing a refund report. Overthrust states that the report documents refunds of amounts pertaining to and detailing the Deferred Income Tax (DIT) refund payments for the year 1996.

Overthurst states that it is filing the refund report pursuant to a Commission order dated May 21, 1991, "Order Approving Settlement with Modifications" in Docket Nos. RP85–60–000 and –002. Overthrust explains that Article V of the settlement as modified, requires Overthrust to file an annual report 60-days after making the actual DIT refunds.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protests should be filed on or before February 20, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–3977 Filed 2–18–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–221–000]

Texas Gas Transmission Company; Notice of Petition to Amend

February 12, 1997.

Take notice that on January 31, 1997, Texas Gas Transmission Company, (Texas Gas), Post Office Box 20008, Owensboro, Kentucky 42304, filed in Docket No. CP97–221–000, a petition to amend the certificate of public convenience and necessity issued on June 2, 1980 in Docket No. CP80–196, pursuant to Section 7(c) of the Natural Gas Act (NGA), and Part 157 of the Federal Energy Regulatory Commission's (Commission) regulations, to construct and operate facilities at the Midland No. 3 Compressor Station located at the Midland Gas Storage Field in Muhlenberg County, Kentucky, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Gas seeks to increase the horsepower at its Midland No. 3 Compressor Station by uprating the currently installed Cooper Bessemer GMVH–10M engine. Specifically, Texas Gas would increase the maximum horsepower output from 2,250 horsepower to 2,610 horsepower at 40 degrees Fahrenheit and below. Texas Gas avers that the additional horsepower will aid Texas Gas in meeting peak day requirements but will not increase the maximum daily withdrawal capability at the Midland Gas Storage field.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 5, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas Gas to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–3972 Filed 2–18–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG97-11-000]

Texas Gas Transmission Corporation; Notice of Filing

February 12, 1997.

Take notice that on February 3, 1997, Texas Gas Transmission Corporation (Texas Gas) submitted revised standards of conduct to incorporate changes to its list of marketing affiliates. Texas Gas has deleted five companies previously listed as marketing affiliates, whose operations have either been merged with another marketing affiliate or whose business involving the taking of title to gas has been transferred to another marketing affiliate.

Texas Gas states that it has served copies of its revised standards of conduct upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before February 27, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97-3976 Filed 2-18-97; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP97-249-000]

Viking Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

February 12, 1997.

Take notice that on February 7, 1997, Viking Gas Transmission Company (Viking), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets listed on Appendix A to the filing to be effective April 1, 1997.

Viking states that the revised tariff sheets reflect conforming changes to Viking's tariff to permit Viking to charge negotiated rates for its transportation services in accordance with the Commission's Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines, Statement of Policy, 74 FERC ¶ 61,076 (Docket No, RM95-6-000) (January 31, 1996).

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97-3982 Filed 2-18-97; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP95-136-005]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

February 12, 1997.

Take notice that on February 7, 1997, Williams Natural Gas Company (WNG) tendered for filing its FERC Gas Tariff, Second Revised Volume No. 1, Eleventh Revised sheet No. 6 and Nineteenth Revised Sheet No. 6A. The proposed effective date of these tariff sheets is March 1, 1997.

On November 27, 1997, WNG filed a Stipulation and Agreement (Agreement) in Docket No. RP95-136, which, among other things, partially resolves WNG's cost of service, overall throughout level and mix of throughput for Docket No. RP95-136 rate period commencing August 1, 1995. Article IV of the Agreement provides that, in order to implement the settlement rates as early as practical, WNG will file to request Commission authority to place the settlement rates in effect and to make refunds down to the settlement rates as of the first day of the first month following at least 30 days after the Agreement is certified to the Commission (i.e. to be effective March 1, 1997). WNG also agreed to include as part of such filing a request to make effective as of the same date "ITS revenue credits" as provided in Article V, Section B of the Agreement. Consistent with, and subject to, Articles IV and VII of the Agreement, the instant filing proposes to implement, subject to certain conditions, the settlement rates effective March 1, 1997.

WNG states that a copy of its filing was served on all participants listed on the Commission's official service list in this docket, as well as on all jurisdictional customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants Parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97-3978 Filed 2-18-97; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP96-153-000]

Southern Natural Gas Company; Notice of Environmental Site Visit for the Proposed North Alabama Pipeline Project

February 12, 1997.

On February 19, 1997, the Office of Pipeline Regulation (OPR) staff will conduct a helicopter overflight of the North Alabama Pipeline Project facilities and alternatives for the proposed facilities.

One seat in the helicopter will be made available for those who have intervened in opposition to the project. OPR invites a designated representative of those intervenors to accompany time. To do so, correspondence should be filed with the Secretary of the Commission identifying the name, address, and telephone number of the designated representative no later than 1:00 pm on Friday, February 14, 1997. A copy of the filing should be FAXed to the OPR Director's office at (202) 208-0193.

Warren C. Edmunds,

Acting Director, Office of Pipeline Regulation.

[FR Doc. 97-4034 Filed 2-18-97; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP97-222-000, et al.]

Columbia Gulf Transmission Company, et al.; Natural Gas Certificate Filings

February 10, 1996.

Take notice that the following filings have been made with the Commission:

1. Columbia Gulf Transmission Company

[Docket No. CP97-222-000]

Take notice that on January 31, 1997, Columbia Gulf Transmission Company (Columbia Gulf), 2603 Augusta, STE 125, P.O. Box 683, Houston, Texas 77001-0683, filed in Docket No. CP97-222-000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate a new point of delivery in Wilson County, Tennessee, under Columbia Gulf's blanket certificate issued in Docket No. CP83-496-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Columbia Gulf proposes to construct and operate a new point of delivery for providing firm transportation service to City of Lebanon. Columbia Gulf states that the estimated quantities of natural gas to be delivered is 4,000 Dth/day and 500,000 Dth/annually and will be utilized for the City of Lebanon's system supply. Columbia Gulf estimates construction costs to be $239,000.

Columbia Gulf states that this new proposal is not prohibited by its existing tariff, that it has sufficient capacity to accomplish deliveries without detriment or disadvantage to other customers, that its existing peak day obligations and annual deliveries to its other customers will not be impacted, and that the total volumes delivered will not exceed the total volumes authorized prior to this request.

Comment date: March 27, 1997, in accordance with Standard Paragraph G at the end of this notice.

2. Northern Natural Gas Company

[Docket No. CP97-228-000]

Take notice that on February 4, 1997, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP97-228-000 an abbreviated application pursuant to Section 7(b) of the Natural Gas Act and Sections 157.7 and 157.18 of the Commission's Regulations to abandon as non-jurisdictional facilities, by sale to American Gathering L.P. (American Gathering), certain pipeline facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Northern seeks Commission approval to abandon approximately 16 miles of pipeline ranging in diameter from 6 to 20 inches, including appurtenant facilities, extending from a point in Section 145, Block B2, NO RR Survey, Gray County, Texas to the suction side of the McConnell Compressor Station in Section 44, Block 4, I&GN RR Survey, Carson County, Texas.

According to Northern, these facilities were originally constructed for the purpose of attaching gas supplies which Northern had purchased for its merchant sales obligation. Northern states that these facilities are no longer necessary for Northern to transport gas for its merchant function due to the industry changes mandated by Order No. 636.

Northern will sell the facilities, which have a book value of $2,814, to American Gathering for $150,000, and will record a credit to Account 4211 of $147,186.

Comment date: March 3, 1997, in accordance with Standard Paragraph F at the end of this notice.

3. CNG Transmission Corporation

[Docket No. CP97-230-000]

Take notice that on February 4, 1997, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301 filed, in Docket No. CP97-230-000, an application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations for permission and approval to abandon .45 miles of 2-inch pipeline, known as Line H-21754, located in Adkin District, McDowell County, West Virginia by sale to Classic Oil & Gas Resources (Classic), and that the line be operated as a non-jurisdictional gathering line by Classic, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CNG states that Line H-21754 consists of 2-inch gathering line that connects production owned by CNG, also being sold to Classic, to CNG's gathering system. CNG describes Line H-21754 as typical of gathering with a pressure of approximately 195 psig, and says that the line is currently listed as gathering in CNG's Revised Volume 1A of its FERC Gas Tariff. CNG states there are no other producers who have production located on this line other than Classic. CNG explains that CNG and Classic have agreed that CNG will sell Line H-21754 to Classic for $10.00. Further, CNG says that since the pipeline does not comprise an operating unit, no gain or loss is recognized on the transaction. CNG states no transportation contracts will be terminated by this sale to Classic. CNG says the delivery point for the gas entering CNG's system will move downstream from the current delivery point.

Comment date: March 3, 1997, in accordance with Standard Paragraph F at the end of this notice.

4. South Georgia Natural Gas Company

[Docket No. CP97-233-000]

Take notice that on February 6, 1997, South Georgia Natural Gas Company (South Georgia), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP97-233-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a second delivery point, including measurement and appurtenant facilities, for service to its existing customer, Florida Power Corporation (Florida Power), under South Georgia's blanket certificate issued in Docket No. CP82-548-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

South Georgia proposes to construct and operate a meter station consisting of one 4-inch turbine meter and other appurtenant facilities in order to provide transportation service to Florida Power at a new delivery point (Florida Power #2) so that Florida Power, in turn, may utilize additional requirements of natural gas at its Suwannee Generating Plant. The application states that South Georgia proposes to locate the Florida Power #2 delivery point at or near Mile Post 100.324 on its 10-inch Main Line in Suwannee County, Florida. South Georgia states that Florida Power will own the measurement facilities and South Georgia will construct and operate them at Florida Power's expense. South Georgia states that it will own the interconnecting facilities and SCADA equipment. South Georgia estimates the cost of the construction and installation of the facilities to be

approximately $317,150. South Georgia also states that Florida Power will construct, own and operate as part of its generating plant facilities approximately 1000 feet of 8-inch-diameter pipeline extending from the outlet of the meter station to Florida Power's combustion turbine building.

South Georgia estimates the annual volumes to be delivered to the proposed Florida Power #2 delivery point to be 350,000 Mcf, which is equivalent to an estimated daily average of 959 Mcf. South Georgia states that the maximum delivery volumes are expected to be 9,720 Mcf per day. South Georgia further states that it will provide the transportation service to the proposed Florida Power #2 delivery point under its Rate Schedule IT, and that installation of the proposed facilities will have no adverse effect on its ability to provide its firm requirements.

Comment date: March 27, 1997, in accordance with Standard Paragraph G at the end of this notice.

5. Koch Gateway Pipeline Company

[Docket No. CP97–234–000]

Take notice that on February 6, 1997, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP97–234–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate delivery point facilities in St. Charles Parish, Louisiana to implement an interruptible transportation service of up to 4,000 million Btu per day under Rate Schedule ITS for Occidental Chemical Corporation (Oxy), under the blanket certificate issued in Docket No. CP82–430–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Koch Gateway states that the proposed facilities consist of a 4-inch tap, 4-inch meter station and 670 feet of 4-inch pipeline, with the tap located on its lateral line 300–22. Koch Gateway states that the proposed facilities would allow it to provide Oxy's peak day and average day requirements of 4,000 million Btu and 2,500 million Btu, respectively. Koch Gateway estimates a facility cost of $130,000, which would be reimbursed by Oxy.

Koch Gateway states that the interruptible transportation service to be rendered through the delivery point facilities would be performed using existing capacity on its system and would have no effect on its peak day and annual deliveries. It is also stated that its tariff does not prohibit the proposed installation of facilities.

Comment date: March 27, 1997, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4035 Filed 2–18–97; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30394A; FRL–5578–4]

Ciba-Geigy Corporation; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications to register the pesticide products Able Biological Insecticide and Technical CGA- 269941, containing active an ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Michael Mendelsohn, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. CS51B6, Westfield Building North Tower, 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8715; e-mail: mendelsohn.mike@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document and the Fact Sheet are available from the EPA Public Access gopher (gopher.epa.gov) at the Environmental Sub-Set entry for this document under "Rules and Regulations."

EPA issued a notice, published in the **Federal Register** of November 1, 1995 (60 FR 55574; FRL–4979–7), which announced that Ciba-Geigy Corporation, Ciba Crop Protection, Greensboro, NC 27419, had submitted applications to register the products Able Biological Insecticide and Technical CGA-269941 (File Symbols 100–TTA and 100–TTL), containing the active ingredient *Bacillus thuringiensis* var. *kurstaki* strain M-200 at 6.0 and 12.0 percent respectively, an active ingredient not included in any previously registered products.

The applications were approved on November 15, 1996, for an end-use and a technical product as listed below:

1. Able Biological Insecticide (EPA Reg. No. 100–776) for control of lepidopteran insect of tree fruits, terrestrial small fruits and vegetables, tree nuts, alfalfa, herbs, cranberries, corn, cotton, and soybeans.

2. Technical CGA-269941 (EPA Reg. No. 100–775) for formulating into end-use products for control of lepidopterus insect pests of tree fruits, terrestrial small fruits and vegetables, tree nuts, herbs, spices, cranberries, alfalfa, corn, peanuts, cotton, and soybeans.

The Agency has considered all required data on risks associated with the proposed use of *Bacillus thuringiensis* var. *kurstaki* strain M-200, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health safety determinations which show that use of *Bacillus thuringiensis* var. *kurstaki* strain M-200 when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

More detailed information on these registrations is contained in an EPA Pesticide Fact Sheet on *Bacillus thuringiensis* var. *kurstaki* strain M-200.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Regulatory Action Leader. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: February 5, 1997.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 97–3929 Filed 2–18–97; 8:45 am]

BILLING CODE 6560–50–F

[PF–703; FRL–5585–6]

Ciba-Geigy Corporation; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of tolerances for residues of difenoconazole in or on raw agricultural commodities of barley. This notice includes a summary of the petition that was prepared by the petitioner, Ciba-Geigy Corporation.

DATES: Comments, identified by the docket control number [PF–703], must be received on or before March 21, 1997.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Crystal Mall #2, Room 1132, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically be sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number [PF–703]. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit II. of this document.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Room 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail, Cynthia Giles-Parker, Product Manager (PM 22), Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, Room 229, 1921 Jefferson Davis Highway, Arlington, VA, 703–305–5540, e-mail: giles-parker.cynthia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition (PP–6F4748)) from Ciba-Geigy Corporation, 410 Swing Rd., Greensboro, NC 27401, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of the fungicide, difenoconazole, in or on the raw agricultural commodities barely forage, hay, and straw at 0.05 parts per million (ppm) and barley grain at 0.01 ppm.

EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

As required by section 408(d) of the FFDCA, as recently amended by the Food Quality Protection Act (FQPA) Pub. L. 104-170, Ciba-Geigy Corporation (Ciba-Geigy) included in the petition a summary of the petition and authorization for the summary to be published in the **Federal Register** in a notice of receipt of the petition. The summary represents the views of Ciba-Geigy. EPA is in the process of evaluating the petition. As required by section 408(d)(3) of the FFDCA, EPA is

including the summary as a part of this notice of filing. EPA has made minor edits to the summary for the purpose of clarity.

I. Petition Summary

The analytical method AG–575B (MRID 42806504) was used to determine residues of difenoconazole in or on barley matrices. This method is proposed as the regulatory enforcement method for barley. It is a revised version of AG–575A that incorporates specificity data and methodology for megabore column gas chromatography. The procedures in AG–575A remain unaltered in the revised method, AG–575B. Procedural recoveries on barley substrates, fortified prior to extraction at levels ranging from 0.01 ppm to 5.0 ppm, ranged from 70% to 125% using AG–575B.

One-year freezer storage stability was demonstrated in lettuce, soybeans, and wheat forage. A 2-year stability study including wheat forage, grain, and straw is now in progress.

A. Chemical Uses

Difenoconazole is the active ingredient in dividend® 3FS, a fungicide that offers broad-spectrum control of several seed, soil borne, and foliar pathogens of wheat. In the current petition, dividend is being developed as a seed treatment for barley and triticale. It is highly active at rates of 0.5 to 1.0 fl. oz. of 3FS formulation/100 lb of seed (0.0125 to 0.025 lb active ingredient (ai)/100 lb seed). In barley, dividend controls barley stripe, general seed rots, fusarium seed scab, and covered smut. Dividend also partially controls take-all, common root rot, fusarium root rot, and fusarium crown rot. Dividend controls general seed rots of triticale.

B. Difenoconazole Safety

1. Ciba-Geigy has submitted over 20 toxicity studies in support of tolerances for difenoconazole. Difenoconazole has a low order of acute toxicity, minimal irritation potential, and no sensitization potential. There was no evidence of genotoxicity, and it is not fetotoxic, embryolethal, or teratogenic. It is not a reproductive toxin. The main target organ of toxicity was the liver in the species tested. There was an increase in liver tumors only in mice, and only, according to the EPA's Carcinogenicity Peer Review Committee (CPRC), at doses considered excessively high for carcinogenicity testing. EPA has concluded that for the purpose of risk characterization, the margin of exposure (MOE) approach (threshold model) should be used for quantification of human risk. MOEs are extremely high for the U.S. population and all population subgroups for both chronic effects and acute toxicity.

2. The following mammalian toxicity studies were conducted and submitted in support of tolerances for difenoconazole. No observed effect levels (NOELs) are consistent with those published in the **Federal Register** of August 24, 1994 (59 FR 43490, FRL–4906–2).

i. A rat acute oral study with an LD_{50} of 1,453 milligram/kilogram (mg/kg).

ii. A rabbit acute dermal study with an LD_{50} of >2,010 mg/kg.

iii. A rat acute inhalation study with an LC_{50} of >3.285 milligram/liter (mg/L).

iv. A primary eye irritation study in the rabbit which showed slight irritation.

v. A primary dermal irritation study in the rabbit which showed slight irritation.

vi. A dermal sensitization study in the guinea pig which showed no irritation.

vii. A 13-week rat feeding study identified liver as a target organ and had a NOEL of 20 ppm.

viii. A 13-week mouse feeding study identified liver as a target organ and had a NOEL of 20 ppm.

ix. A 26-week dog feeding study identified liver and eye as target organs and had a NOEL of 100 ppm.

x. A 21-day dermal study in rabbits had a NOEL of 10 mg/mg/day based on decreased body weight gain at 100 and 1,000 mg/kg/day.

xi. A 24-month feeding study in rats had a NOEL of 20 ppm based on liver toxicity at 500 and 2,500 ppm. There was no evidence of an oncogenic response.

3. An 18-month mouse feeding study had an overall NOEL of 30 ppm based on decreased body weight gain and liver toxicity at 300 ppm. There was an increase in liver tumors only at dose levels that exceeded the maximum tolerated dose (MTD). The oncogenic NOEL was 300 ppm.

4. A 12-month feeding study in dogs had a NOEL of 100 ppm based on decreased food consumption and increased alkaline phosphatase levels at 500 ppm.

5. An oral teratology study in rats had a maternal NOEL of 16 mg/kg/day based on excess salivation, decreased body weight gain, and food consumption. The developmental NOEL of 85 mg/kg/day was based on effects seen secondary to maternal toxicity including slightly reduced fetal body weight and minor changes in skeletal ossification.

6. An oral teratology study in rabbits had a maternal NOEL of 25 mg/kg/day based on decreased body weight gain, death, and abortion.

7. The developmental NOEL of 25 mg/kg/day was based on effects seen secondary to maternal toxicity including slight increase in post-implantation loss and resorptions and decreased fetal weight.

8. A two-generation reproduction study in rats had a parental and reproductive NOEL of 25 ppm based on significantly reduced female body weight gain, and reductions in male pup weights at 21 days.

9. There was no evidence of the induction of point mutations in an Ames test.

10. There was no evidence of mutagenic effects in a mouse lymphomatest.

11. There was no evidence of mutagenic effects in a nucleus anomaly test with Chinese hamsters.

12. There was no evidence of induction of DNA damage in a rat hepatocyte DNA repair test.

13. There was no evidence of induction of DNA damage in a human fibroblast DNA repair test.

C. Threshold Effects

1. *Chronic effects.* Based on the data from chronic studies in rats, mice, and dogs, the reference dose (RfD) for difenoconazole is 0.01 mg/kg/day published in the **Federal Register** of August 24, 1994 (59 FR 43490). The RfD for difenoconazole is based on the chronic study in rats with a threshold NOEL of 1 mg/kg/day and an uncertainty factor of 100.

2. *Acute toxicity.* i. EPA has concluded that the dietary acute MOE for developmental toxicity was 25,000 for high exposure in the females 13+ subgroup. The agency is generally not concerned unless the MOE is below 100 for substances whose acute NOEL is based on animal studies.

ii. Ciba-Geigy concurs, and has also considered that since the percentage of the RfD utilized in the chronic exposure analysis for all population subgroups is less than 10, it is highly unlikely that any acute dietary exposure scenario would utilize a significant percentage of the RfD.

iii. Since MOEs of 100 or more are considered satisfactory, there is no concern for acute dietary exposure for the U.S. population, for various population subgroups, or for either gender.

D. Non-Threshold Effects

1. The Health Effects Division, CPRC evaluated the weight of the evidence on difenoconazole with reference to its carcinogenic potential. The CPRC concluded that difenoconazole should be classified a Group C carcinogen, and for the purpose of risk characterization the MOE approach should be used for quantification of human risk.

2. In the 18-month study with CD-1 mice, there was a statistically significant increase in hepatocellular adenomas, carcinomas, and combined adenomas/carcinomas in both sexes, but only at dose levels which were considered excessively high for carcinogenicity testing. This is considered very weak evidence of carcinogenic potential. Additionally, there was no evidence of carcinogenicity in either sex of CD rat after 24 months, and there was no evidence of genotoxicity. Therefore, a threshold model should be used for estimating risk. The CPRC determined that a NOEL of 4.7 mg/kg/day, based on endpoints related to hepatic tumor development, should be used for calculating MOEs. The calculated margin of exposure, using worst case assumptions, was 9,958 for the U.S. population.

E. Aggregate Exposure

1. When the potential dietary exposure to difenoconazole is calculated, the theoretical maximum residue concentration (TMRC) of 0.00041 mg/kg/day utilizes 4% of the RfD for the overall U.S. population. For the most exposed population subgroups, children and non-nursing infants, the TMRC is 0.000946 mg/kg/day, utilizing 9% of the RfD published in the **Federal Register** of August 24, 1994 (59 FR 43490).

2. Ciba-Geigy has conducted another exposure analysis using additional crops and similar conservative assumptions. In this analysis, oats, barley, and bananas (pending import tolerance) were included in addition to wheat. Tolerances or proposed tolerances were 0.1 ppm each for wheat, oats, and barley, and 0.2 ppm for bananas. Tolerances were 0.01 ppm for milk and 0.05 ppm for all other commodities: beef, goat, horse, rabbit, sheep, pork, turkey, eggs, chicken, and other poultry. Very conservative assumptions were used to estimate residues (i.e. 100% of all wheat, oats, barley, and imported bananas used for human consumption or forage was treated and all raw agricultural commodities contained tolerance level residues). These estimates result in a extreme overestimate of human dietary exposure. Calculated TMRC values from these assumptions utilize 4.7% of the RfD for the U.S. population and 12.51% of the RfD for non-nursing infants.

3. Other potential sources of exposure of the general population to residues of pesticides are drinking water and non-occupational sources. Difenoconazole is currently used as a seed treatment and residues are, therefore, incorporated into the soil at very low rates (0.0125 to 0.025 lb ai/100 lb of seed). The likelihood of contamination of surface water from run-off is essentially negligible. In addition, parent and aged leaching, soil absorption/desorption, and radiolabeled pipe studies indicated that difenoconazole has a low potential to leach in the soil and it would not be expected to reach aquatic environments. For these reasons and because of the low-use rate, exposures to residues in ground water are not anticipated.

4. Non-occupational exposure for difenoconazole has not been estimated since the current registration is limited to seed treatment. Therefore, the potential for non-occupational exposure to the general population is insignificant.

5. Ciba-Geigy has considered the potential for cumulative effects of difenoconazole and other substances of common mechanism of toxicity. Ciba-Geigy has concluded that consideration of a common mechanism of toxicity in aggregate exposure assessment is not appropriate at this time. Ciba-Geigy has no information to indicate that the toxic effects (generalized liver toxicity) seen at high doses of difenoconazole would be cumulative with those of any other compound. Thus, Ciba-Geigy is considering only the potential risk of difenoconazole from dietary exposure in its aggregate and cumulative exposure assessment.

F. Determination of Safety for U.S. Population

1. Using the very conservative exposure assumptions described in Unit I.E. of this document, and based on the completeness of the toxicity data base for difenoconazole, Ciba-Geigy calculates that aggregate exposure to difenoconazole utilizes <5% of the RfD for the U.S. population based on chronic toxicity endpoints (NOEL = 1 mg/kg/day). When using the carcinogenic NOEL of 4.7 mg/kg/day and the MOE approach recommended by the CPRC, approximately 1% of the RfD is utilized.

2. If more realistic assumptions were used to estimate anticipated residues and appropriate market share, this percentage would be considerably lower, and would be significantly lower than 100%, even for the highest exposed population subgroup. EPA generally has no concern for exposures below 100% of the RfD. Therefore, Ciba-Geigy concludes that there is reasonable certainty that no harm will result from daily aggregate exposure to residues of difenoconazole over a lifetime.

G. Determination of Safety for Infants and Children

Developmental toxicity and two-generation toxicity studies were evaluated to determine if there is a special concern for the safety of infants and children from exposure to residues of difenoconazole. There was no evidence of embryotoxicity or teratogenicity, and no effects on reproductive parameters, including number of live births, birth weights, and post-natal development, at dose levels which did not cause significant maternal toxicity. In addition, there were no effects in young post-weaning animals that were not seen in adult animals in the two-generation reproduction study. Therefore, Ciba-Geigy concludes that it is inappropriate to assume that infants and children are more sensitive than the general population to effects from exposure to residues of difenoconazole.

H. Estrogenic Effects

1. Developmental toxicity studies in rats and rabbits and a two-generation reproduction study in rats gave no specific indication that difenoconazole may have effects on the endocrine system with regard to development or reproduction. Furthermore, histologic investigations were conducted on endocrine organs (thyroid, adrenal, and pituitary, as well as endocrine sex organs) from long-term studies in dogs, rats, and mice. There was no indication that the endocrine system was targeted by difenoconazole, even when animals were treated with maximally tolerated doses over the majority of their lifetime.

2. Difenoconazole has not been found in raw agricultural commodities at the limit of quantitation (LOQ). Based on the available toxicity information and the lack of detected residues, it is concluded that difenoconazole has no potential to interfere with the endocrine system, and there is no risk of endocrine disruption in humans.

I. Chemical Residues

1. The nature of the residue is adequately understood in plants and animals. The metabolism of difenoconazole has been studied in wheat, tomatoes, potatoes, and grapes. The metabolic pathway was the same in these four separate and distinct crops. There are no Codex maximum residue levels established for residues of difenoconazole in barley. Ciba-Geigy has submitted a practical analytical method for detecting and measuring levels of difenoconazole in or on food with a LOQ that allows monitoring of food with residues at or above the levels

set in the proposed tolerances. EPA will provide information on this method to the Food and Drug Administration (FDA). The method is available to anyone who is interested in pesticide residue enforcement from EPA's Field Operations Division, Office of Pesticide Programs.

2. Nine-barley trials were conducted in eight states. Fifty-four one-time treated grain, hay, and straw samples (fed commodities) were analyzed. In addition, eighteen one-time treated forage samples were analyzed. Residues of difenoconazole in barley grown from seed treated with difenoconazole were below the LOQ in forage, hay, and straw (<0.05 ppm), and grain (<0.01 ppm). The feeding of difenoconazole-treated barley products to beef or dairy cattle will not require an increase in existing beef tissue or milk tolerances. Similarly, the feeding of difenoconazole-treated barley grain to poultry will not require increasing existing established poultry tissue and egg tolerances.

J. Environmental Fate

Since the Agency classifies seed treatment uses as "indoor," the only environmental fate data requirement is hydrolysis. Difenoconazole is hydrolytically stable in solution at 25 °C at pH 5, 7, or 9.

II. Public Record

EPA invites interested persons to submit comments on this notice of filing. Comments must bear a notification indicating the docket control number [PF–703].

A record has been established for this notice under docket control number [PF–703] including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing.

The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this notice.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 4, 1997.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–3930 Filed 2–18–97; 8:45 am]

BILLING CODE 6560–50–F

[PF–699; FRL–5585–5]

Zeneca Ag Products; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing.

SUMMARY: This notice announces the filing of a pesticide petition proposing the establishment of a regulation for residues of lambda-cyhalothrin and its epimer in or on rice. The names for lambda-cyhalothrin and its epimer are as follows: lambda-cyhalothrin, a 1:1 mixture of *(S)*-alpha-cyano-3-phenoxybenzyl-*(Z)*-(1R,3R)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate and *(R)*-alpha-cyano-3-phenoxybenzyl-*(Z)*-(1S,3S)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate. Epimer of lambda-cyhalothrin, a 1:1 mixture of *(S)*-alpha-cyano-3-phenoxybenzyl-*(Z)*(1S,3S)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate and *(R)*-alpha-cyano-3-phenoxybenzyl-*(Z)*-(1R,3R)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate. The summary was prepared by the petitioner, Zeneca Ag Products.

DATES: Comments, identified by the docket control number [PF–699], must be received on or before March 21, 1997.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Crystal Mall #2, Room 1132, 1921 Jefferson Davis Highway, Arlington VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number [PF–699]. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit II. of this document.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Room 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail, George LaRocca, Product Manager, (PM 13), Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, 703-305-6100, e-mail: larocca.george@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition (PP–6F4769) from Zeneca Ag Products, 1800 Concord Pike, P.O. Box 15458, Wilmington, DE 19850-5458. The petition proposes, pursuant to section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish tolerances for residues of the insecticide lambda-cyhalothrin in or on the raw agricultural commodities rice grain at 1.0 parts per million (ppm), rice straw at 1.75 ppm, and in or on the processed commodity rice hulls at 5.0 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition. EPA has determined the proposed analytical method is gas liquid chromatography with an electron capture detector. As required by section 408(d) of the FFDCA, as recently amended by the Food Quality Protection Act (FQPA) Pub. L. 104-170, Zeneca Ag Products (Zeneca) included in the petition a summary of the petition and authorization for the summary to be published in the **Federal Register** in a notice of receipt of the petition. The summary represents the views of Zeneca; EPA as mentioned above, is in the process of evaluating the petition. As required by section 408(d)(3) of the FFDCA, EPA is including the summary as a part of this notice of filing. EPA may have made edits to the summary for the purpose of clarity.

I. Petiton Summary

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of lambda-cyhalothrin has been studied in cotton, soybean, cabbage, and wheat plants. The studies show that the metabolism generally follows that of other pyrethroid insecticides. The ester linkage is cleaved to form cyclopropanecarboxylic acids and the corresponding phenoxybenzyl alcohol. Overall the studies show that unchanged lambda-cyhalothrin is the principal constituent of the residue on edible portions of these crops.

2. *Analytical method.* An adequate analytical method (gas liquid chromatography with an electron capture detector) is available for enforcement purposes.

3. *Magnitude of residues.* Sixteen field trials were carried out on rice during 1995 in the United States. The trials were conducted in the states of Arkansas, Louisiana, Missouri, Mississippi, Texas, and California. These states account for 100% of the production acres of rice in the United States. The number and geographical distribution of the trials agrees with the recommendation given in the "EPA Residue Chemistry Guidance" (1994). In these trials, the maximum combined residues of lambda-cyhalothrin and epimer were 0.88 ppm in or on rice grain and 1.62 ppm in or on rice straw. In addition, a single field trial was conducted during 1995 in the States of Mississippi and Arkansas for the purpose of determining if lambda-cyhalothrin residues in rice, concentrate in or on processed rice fractions. Data from these trials demonstrated that residues of lambda-cyhalothrin may concentrate up to 6.1 times in or on rice hulls but do not concentrate in rice bran or polished rice.

B. Toxicological Profile

The following toxicity studies have been conducted to support the request for a regulation for residues of lambda-cyhalothrin in or on rice.

1. *Acute toxicity.* Acute toxicity studies with the technical grade of the active ingredient lambda-cyahothrin: oral LD_{50} in the rat of 79 milligram/kilogram (mg/kg) (males) and 56 mg/kg (females), dermal LD_{50} in the rat of 632 mg/kg (males) and 696 mg/kg females, primary eye irritation study showed mild irritation, and primary dermal irritation study showed no irritation.

2. *Genotoxicity.* The following genotoxicity tests were all negative: a gene mutation assay (Ames), a mouse micronucleus assay, an *in vitro* cytogenetics assay, and a gene mutation study in mouse lymphoma cells.

3. *Reproductive and developmental toxicity.* i. A three-generation reproduction study in rats fed diets containing 0, 10, 30, and 100 ppm with no developmental toxicity observed at 100 ppm, the highest dose tested. The maternal no observed effect level (NOEL) and lowest observed effect level (LOEL) for the study are established at 30 (1.5 mg/kg/day) and 100 ppm (5 mg/kg/day), respectively, based upon decreased parental body weight gain. The reproductive NOEL and LOEL are established at 30 (1.5 mg/kg/day) and 100 ppm (5 mg/kg/day), respectively, based on decreased pup weight gain during weaning.

ii. A developmental toxicity study in rats given gavage doses of 0, 5, 10, and 15 mg/kg/day with no developmental toxicity observed under the conditions of the study. The developmental NOEL is greater than 15 mg/kg/day, the highest dose tested. The maternal NOEL and LOEL are established at 10 and 15 mg/kg/day, respectively, based on reduced body weight gain.

iii. A developmental toxicity study in rabbits given gavage doses of 0, 3, 10, and 30 mg/kg/day with no developmental toxicity observed under the conditions of the study. The maternal NOEL and LOEL are established at 10 and 30 mg/kg/day, respectively, based on decreased body weight gain. The developmental NOEL is greater than 30 mg/kg/day, the highest dose tested.

4. *Subchronic toxicity.* i. A 90-day feeding study in rats fed doses of 0, 10, 50, and 250 ppm with a NOEL of 50 ppm and a LOEL of 250 ppm based on body weight gain reduction.

ii. A 21-day study in rabbits exposed dermally to doses of 0, 10, 100, and 1,000 mg/kg/day, 6 hours/day, 5 days/week with a systemic NOEL >1,000 mg/kg/kg. There were no clinical signs of systemic toxicity at any dose level tested.

5. *Chronic toxicity.* i. A 12-month feeding study in dogs fed dose (by capsule) levels of 0, 0.1, 0.5, and 3.5 mg/kg/day with a NOEL of 0.1 mg/kg/day. The LOEL for this study is established at 0.5 mg/kg/day based upon clinical signs of neurotoxicity.

ii. A 24-month chronic feeding/carcinogenicity study with rats fed diets containing 0, 10, 50, and 250 ppm. The NOEL was established at 50 ppm and LOEL at 250 ppm based on reduced body weight gain. There were no carcinogenic effects observed under the conditions of the study.

iii. A carcinogenicity study in mice fed dose levels of 0, 20, 100, or 500 ppm (0, 3, 15, or 75 mg/kg/day) in the diet for 2 years. A systemic NOEL was established at 100 ppm and systemic LOEL at 500 ppm based on decreased body weight gain in males throughout the study at 500 ppm. The Agency has classified lambda-cyhalothrin as a Group D carcinogen (not classifiable due to an equivocal finding in this study). Zeneca concludes that no treatment-related carcinogenic effects were observed under the conditions of the study.

6. *Animal metabolism.* Metabolism studies in rats demonstrated that distribution patterns and excretion rates in multiple oral dose studies are similar to single-dose studies. There is an accumulation of unchanged compound in fat upon chronic administration with slow elimination. Otherwise, lambda-cyhalothrin was rapidly metabolized and excreted. The metabolism of lambda-cyhalothrin in livestock has been studied in the goat, chicken, and cow. Unchanged lambda-cyhalothrin is the major residue component of toxicological concern in meat and milk.

7. *Metabolite toxicology.* The Agency has previously determined that the metabolites of lambda-cyhalothrin are not of toxicological concern and need not be included in the tolerance expression. Given this determination, Zeneca concludes that there is no need to discuss metabolite toxicity.

C. Aggregate Exposure

1. *Dietary exposure*— i. *Food.* For the purposes of assessing the potential dietary exposure for all existing and pending tolerances for lambda-cyhalothrin, Zeneca has utilized available information on anticipated residues and percent crop treated. For all existing and pending tolerances the anticipated residue contribution (ARC) is estimated at 0.0002682 mg/kg/body weight (bwt)/day.

ii. *Drinking water.* Laboratory and field data have demonstrated that lambda-cyhalothrin and its degradates are immobile in soil and will not leach into groundwater. Other data show that lambda-cyhalothrin is virtually insoluble in water and extremely lipophilic. As a result, Zeneca concludes that residues reaching surface waters from field runoff will quickly adsorb to sediment particles and be partitioned from the water column. Zeneca concludes that together these data indicate that residues are not expected in drinking water.

2. *Non-dietary exposure.* Other potential sources of exposure are from non-occupational sources such as structural pest control and ornamental plant and lawn use of lambda-cyhalothrin. Zeneca has no data upon which to estimate exposure from these uses. However, given the extremely low vapor pressure of lambda-cyhalothrin (1.5×10^{-9} millimeters (mm) of mercury (Hg)) and the low use rates, it is anticipated that inhalation and dermal exposure from these uses Zeneca concludes will be insignificant.

D. Cumulative Effects

At this time, Zeneca cannot make a determination based on available and reliable information that lambda-cyhalothrin and other substances that may have a common mechanism of toxicity would have cumulative effects. Thus, Zeneca concludes that for purposes of this tolerance it is appropriate only to consider the potential risks of lambda-cyhalothrin in an aggregate exposure assessment.

E. Safety Determination

The acceptable reference dose (RfD) based on a NOEL of 0.1 mg/kg/bwt/day from the chronic dog study and a safety factor of 100 is 0.001 mg/kg/bwt/day. A chronic dietary exposure/risk assessment has been performed for lambda-cyhalothrin using the above RfD. Available information on anticipated residues and percent crop treated was incorporated into the analysis to estimate the ARC. The ARC is generally considered a more realistic estimate than an estimate based on tolerance level residues.

1. *U.S. population.* The ARC from established tolerances and the current and pending actions are estimated to be 0.0002682 mg/kg/bwt/day and utilize 26.82% of the RfD for the U.S. population.

2. *Infants and children.* The ARC for children, aged 1 to 6 years old, and non-nursing infants (subgroups most highly exposed) utilizes 57% and 65% of the RfD, respectively. Generally speaking, the Agency has no cause for concern if ARC for all published and proposed tolerances is less than the RfD.

F. International Tolerances

There are no Codex maximum residue levels (MRL) established for residues of lambda-cyhalothrin in or on rice.

II. Public Record

EPA invites interested persons to submit comments on this notice of filing. Comments must bear a notification indicating the docket control number [PF–699].

A record has been established for this notice under docket control number [PF–699] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing.

The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this notice.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 6, 1997.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–3932 Filed 2–18–97; 8:45 am]

BILLING CODE 6560–50–F

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Meeting of the President's Committee of Advisors on Science and Technology

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for a meeting of the President's Committee of Advisors on Science and Technology (PCAST), and describes the functions of the Committee. Notice of this meeting is required under the Federal Advisory Committee Act.

DATES AND PLACE: March 6–7, 1997. The White House Conference Center, Truman Room, Third Floor, 726 Jackson Place, N.W., Washington, D.C. 20500.

TYPE OF MEETING: Open.

PROPOSED SCHEDULE AND AGENDA: The PCAST will meet in an open session during the afternoon of Thursday, March 6, 1997, at approximately 1:30 p.m. The meeting will focus on concluding the Educational Technologies report, the FY98 budget briefings, and the kickoff of the 1997 PCAST Studies. This session will end at approximately 5:30 p.m.

The Committee will reconvene in open session on Friday, March 7, 1997, at approximately 9:30 a.m., for a general discussion among Committee members and other Executive Office staff about current activities of the Office of Science and Technology Policy (OSTP) and the National Science and Technology Council (NSTC).

FOR FURTHER INFORMATION: For information regarding time, place, and agenda, please call Jeanie Hall at (202) 456–6100 prior to 3:00 p.m. on Wednesday, March 5, 1997. Other questions may be directed to Angela Phillips Diaz, Executive Secretary for PCAST, or Andrea Razzaghi at (202) 456–6100. Please note that public seating for this meeting is limited, and is available on a first-come, first-served basis.

SUPPLEMENTARY INFORMATION: The President's Committee of Advisors on Science and Technology was established on November 23, 1993, by Executive Order 12882, as amended, and continued through September 30, 1997, by Executive Order 12974. The purpose of PCAST is to advise the President on matters of national importance that have significant science and technology content, and to assist the President's National Science and Technology Council in securing private sector participation in its activities. The Committee members are distinguished individuals appointed by the President from non-Federal sectors. The PCAST is co-chaired by John H. Gibbons, Assistant to the President for Science and Technology, and by John Young, former President and CEO of Hewlett-Packard Company.

Barbara Ann Ferguson,

Assistant Director for Budget and Administration, Office of Science and Technology Policy.

Dated: February 13, 1997.

[FR Doc. 97–4087 Filed 2–13–97; 4:58 pm]

BILLING CODE 3170–01–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting; Farm Credit Administration Board; Special Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on February 20, 1997, from 10:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session
A. *Approval of Minutes*
B. *New Business Regulation*
—General Financing Agreement [12 CFR Parts 614 and 627] (Proposed)

Dated: February 13, 1997.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 97–4191 Filed 2–14–97; 2:04 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to OMB for Emergency Review and Approval

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not diplay a valid control number. Comments are requested concerning (a) whether the proposed collection is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated information techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 26, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., NW, Washington, DC 20554 or via internet to dconway@fcc.gov and Timothy Fain, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503, (202) 395–3561 or via internet at fain—t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217or via internet to dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0343.

Title: Section 25.140 - Qualifications of Satellite Space Station Licensees.

Form No.: N/A.

Type of Review: Provision to existing collection.

Respondents: Not-for-profit institutions; Business or other for-profit; Small businesses and organizations.

Number of Respondents: 25.

Estimated time per response: 100 hours.

Total Annual Burden: 2500 hours.

Estimated Cost per Respondent: Based on the assumption that applicants will hire outside counsel at an approximate cost of $150 per hour, it is estimated that the cost per submission will be $150,000.00.

Needs and Uses The collections of information contained in Part 25 are used by Commission staff in carrying out its duties as set forth in Section 308 and 309 of the Communications Act of 1934, as amended, 47 U.S.C. Section 308 and 309, to determine the technical, legal and other qualifications of an applicant to operate a satellite space station. The one-step financial showings, including amendments to pending applications filed under this policy, will be used by the Commission to determine whether applicants are qualified to construct, launch and operate satellite space station facilities in order to provide timely service to the public. The information collected is used to determine whether the public interest, convenience and necessity will be served, in accordance with Section 309 of the Communications Act of 1934, as amended, 47 U.S.C. 309.

OMB Approval Number: 3060–0108.

Title: Emergency Alert System Activation Report.

Form No.: Form 201.

Type of Review: Revision to existing collection.

Respondents: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 13,000 with an estimated 1,300 annual responses.

Estimated time per response: 2 minutes.

Total Annual Burden: 42 hours.

Estimated Cost per Respondent: 0 costs.

Needs and Uses: The information is needed to maintain accurate records and documentation of broadcast stations and cable systems in compliance with FCC rules, locat Emergency Alert System (EAS) equipment failures, and to enhance and encourage participation in the national, state and local EAS.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 97–4030 Filed 2–18–97; 8:45 am]
BILLING CODE 6712–01–F

Sunshine Act Meeting: FCC To Hold Open Commission Meeting Thursday, February 20, 1997

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, February 20, 1997, which is scheduled to commence at 9:30 am in Room 856, at 1919 M Street, N.W., Washington, D.C.

Item No., Bureau, and Subject

1—Wireless Telecommunications—Title: Amendment of Part 1 of the Commission's Rules—Competitive Bidding Proceeding. Summary: The Commission will consider clarifications and procedural changes to the general auction rules based on its experience conducting auctions. It will also propose changes to the general competitive bidding rules that are intended to simplify and eliminate unnecessary rules wherever possible.

2—Wireless Telecommunications—Title: Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Radio Services (PR Docket No. 92–235). Summary: The Commission will consider the consolidation of the private land mobile radio services below 800 MHz.

3—Wireless Telecommunications—Title: Amendment of the Commission's Rules Regarding Multiple Address Systems and Implementation of Section 309(j) of the Communications Act—Competitive Bidding (PR Docket No. 93–253). Summary: The Commission will consider proposing new service, licensing, and competitive bidding rules for spectrum allocated to Multiple Address Systems in the Fixed Microwave Services.

4—Wireless Telecommunications—Title: Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems (WT Docket No. 96–18) and Implementation of Section 309(j) of the Communications Act—Competitive Bidding (PP Docket No. 93–253). Summary: The Commission will consider action concerning geographic area licensing of common carrier paging and 929 MHz private carrier paging, and competitive bidding procedures for auctioning geographic area paging licenses.

5—Wireless Telecommunications—Title: Amendment of Part 90 of the Commission's Rules To Provide for the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service (PR Docket No. 89–552, RM–8506); Implementation of Sections 3(n) and 332 of the Communications Act—Regulatory Treatment of Mobile Services (GN Docket No. 93–252) and Implementation of Section 309(j) of the Communications Act—Competitive Bidding, 220–222 MHz (PP Docket No. 93–253). Summary: The Commission will consider action concerning the future operation and licensing of the 220–222 MHz band.

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Public Affairs, telephone number (202) 418–0500.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800 or fax (202) 857–3805 and 857–3184. These copies are available in paper format and alternative media which includes, large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its—inc@ix.netcom.com. Their Internet address is http://www.itsi.com.

This meeting can be viewed over George Mason University's Capitol Connection. For information on this service call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at <http://www.fcc.gov/realaudio/≤. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770; and from Conference Call • USA (available only outside the Washington, D.C. metropolitan area), telephone 1–800–962–0044. Audio and video tapes of this meeting can be obtained from the Office of Public Affairs, Television Staff, telephone (202) 418–0460, or TTY (202) 418–1398; fax numbers (202) 418–2809 or (202) 418–7286.

Federal Communications Commission.
Shirley S. Suggs,
Chief, Publications Branch.
[FR Doc. 97–4160 Filed 2–14–97; 12:12 pm]
BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

East West North South Forwarding, Inc., 2315 N.W. 107 Avenue, 1M57, Box 25, Miami, FL 33172. Officer: Ashok Kitchloo, President

Central Export Services, 1020 15th Street, #24, Modesto, CA 95354, Michael W. Birch, Sole Proprietor

Dated: February 13, 1997.
Joseph C. Polking,
Secretary.
[FR Doc. 97–4012 Filed 2–18–97; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, February 24, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 14, 1997.
Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 97–4229 Filed 2–14–97; 3:45 pm]
BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Delegations of Authority; Public Law 80–566, 62 Stat. 281, 40 U.S.C. 486(d) and 40 U.S.C. 318a and 318b

Notice is hereby given that pursuant to the authority granted to me by the Acting Administrator of General Services, signed on December 9, 1996, I hereby delegate to you the following authority.

1. *Delegation:* In accordance with section 205 (d) and (e) of the Federal Property and Administrative Service Act of 1949, as amended, the Administrator of General Services hereby delegates and authorizes successive redelegation of the authority identified herein.

2. *Authorities Delegated:* Authorities relating to the protection of Federal property vested in the Administrator of General Services by the Act of June 1, 1948, Public Law 80–566, 62 Stat. 281, 40 U.S.C. 486 (d), 40 USC 318a and 318b and the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 377 are hereby delegated to the Director, National Institutes of Health (NIH) for the protection of the property and persons at NIH, National Cancer Institute's (NCI) facilities in Frederick Cancer Research and Development Center ("NCI parcel") located in Frederick, MD.

3. *Responsibilities and Limitations:*

A. The NIH Director or designated officials shall take steps to issue regulations and to authorize successive redelegations of authority to protect persons and property identified in this delegation. This may be accomplished through the establishment of rules and regulations governing conduct on the affected property and execution of agreements with other Federal, State, or Local authorities.

B. This delegated authority is limited to the properties identified in paragraph 2.

4. *Disputes:* Except as otherwise provided in this delegation, any dispute concerning a matter of act arising under this delegation which is not disposed of by mutual agreement shall be decided by the Administrator of General Services. The decision of the Administrator on such matters shall be final.

5. Termination and Modifications: Any of all authority delegated may be terminated by the Administrator of General Services or the Attorney General upon 120 days notice, if it is determined that such action is in the best interest of the Government.

6. *Evaluation:* Effectiveness of the delegation of protection activities will be evaluated on a continuing basis. This evaluation may include random on-site inspections and by meeting with HHS officials. HHS will be given at least 30 days to submit comments for incorporation in the final evaluation report. HHS is encouraged to conduct periodic assessments of its protection program and provide an information copy to the General Services Administration.

7. *Termination:* Any or all authority delegated may be terminated by the Administrator of General Services or the Secretary of HHS upon 120 days notice if determined that such action is in the best interest of the Government.

8. *Term of Delegations:* The delegation is effective immediately.

Dated: January 28, 1997.
Donna E. Shalala,
Secretary of the Department of Health and Human Services.
[FR Doc. 97–4037 Filed 2–18–97; 8:45 am]
BILLING CODE 4140–01–M

Office of the Secretary

Delegation of Authority; Patents and Inventions

Notice is hereby given that I have delegated to Heads of the Public Health Service Operating Divisions all authorities to administer and make decisions regarding the invention and patent program of their respective Operating Divisions and the authority to make determinations of rights in inventions and patents in which the Department has an interest, except as specified below.

Restrictions

1. The Secretary retains authority to submit reports to Congress.

2. This delegation excludes those authorities under the Stevenson-Wydler Technology Innovation Act of 1980, as amended by the Federal Technology Transfer Act of 1986 and the National Technology Transfer and Advancement Act of 1995, which are governed by a separate delegation.

Redelegation

All authorities other than the authority under 35 U.S.C. 203 (March-in Rights) may be redelegated.

Prior Delegations

The prior delegations of authority, to the PHS Agency Heads (retitled Heads of Operating Divisions), derived from authority given to the Assistant Secretary for Health (ASH) in 45 CFR Part 6. Those regulations were recently rescinded because they were obsolete (61 FR 54743 (October 22, 1996)). In addition, the delegation of authority from the ASH to the then-PHS Agency Heads dated July 15, 1988, which was amended by a memorandum dated July 24, 1991 from the ASH to the Director, National Institutes of Health is hereby superseded. Prior redelegations by the PHS Agency Heads under that authority shall remain in effect unless modified by PHS Operating Division Heads.

Ratification

All actions taken by the Heads of PHS Operating Divisions or their subordinates from October 22, 1996 to the effective date of this delegation that would have been authorized under 45 CFR 6.2 and delegations thereunder are hereby ratified.

Effective Date

Effective upon signature.

Dated: January 31, 1997.
Donna E. Shalala,
Secretary of the Department of Health and Human Services.
[FR Doc. 97–4038 Filed 2–18–97; 8:45 am]
BILLING CODE 4150–04–M

Centers for Disease Control and Prevention

[INFO–97–04]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance

of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Wilma Johnson, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. The Tri-State Mining District: Lead Exposure and Immunotoxic Effects Study—New—The proposed study evaluates associations between immune system dysfunction/damage and exposure to lead among children in the Tri-State Mining District. This district encompasses several contaminated areas including three Superfund sites: The Oronogo-Duenweg Mining Belt site in Jasper County, Missouri; the Cherokee County Site in Kansas; and the Tar Creek, Ottawa County Site in Oklahoma.

The proposed study consists of two repeated in-person interviews and biological testing for blood lead and immune function among participants of the ongoing lead screening programs in the Tri-State Mining district. Approximately 50 children identified as having blood lead <10 micrograms per decilitre and 50 children with blood lead levels <5 micrograms per decilitre will constitute the study and comparison groups respectively. Blood specimens will be obtained to measure lead, complete blood count, EP, ZPP, antibody titers, and the CDC/ATSDR recommended immune panel. A second blood drawn a month later will examine intra-personal immune tests stability and will help evaluate the relationship between immune results and recent illness. Parents will be interviewed using a children's health questionnaire that solicits information on demographics, the medical history of each child and the occurrences of recent illness. Statistical analyses will compare health outcome measures (symptoms, illness, change in immune parameters) to blood lead levels. Other than their time, there will be no cost to the respondents. The length of clearance requested is 3 years.

Respondents	Number of respondents	Number of reponses/ respondent	Average burden/response (in hrs)	Total burden (in hrs.)
Child Health Questionnaire	100	2	0.5	100
Total				100

Dated: February 12, 1997.

Wilma G. Johnson,

Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–4006 Filed 2–18–97; 8:45 am]

BILLING CODE 4163–18–P

[30DAY–30]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Office on (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

The following requests have been submitted for review since the last publication date on February 11, 1997.

Proposed Project

The Second Longitudinal Study of Aging (LSOA II)—(0920–0219)—New—The Second Longitudinal Study of Aging is a second generation, longitudinal survey of a nationally representative sample of civilian, non-institutionalized persons 70 years of age and older. Participation is voluntary, and individually identified data are confidential. It will replicate portions of the first Longitudinal Study of Aging (LSOA), particularly the causes and consequences of changes in functional status. LSOA II is also designed to monitor the impact of changes in Medicare, Medicaid, and managed care on the health status of the elderly and their patterns of health care utilization. Both LSOAs are joint projects of the National Center for Health Statistics (NCHS) and the National Institute on Aging (NIA).

The Supplement on Aging (SOA), part of the 1984 National Health Interview Survey (NHIS), established a baseline on 7,527 persons who were then aged 70 and older. The first LSOA reinterviewed them in 1986, 1988 and 1990. Data from the SOA and LSOA have been widely used for research and policy analysis relevant to the older population.

Approximately 10,000 persons aged 70 and over were interviewed for the 1994 National Health Interview Survey's second Supplement on Aging (SOA II) between October of 1994 and March of 1996. LSOA II will reinterview the SOA II sample three times: In 1997, 1999, and 2001. As in the first LSOA, these reinterviews will be conducted using computer assisted telephone interviewing (CATI). Beyond that, LSOA II will use methodological and conceptual developments of the past decade.

LSOA II will contain modules on scientifically important and policy-relevant domains, including: (1) Assistance with activities of daily living, (2) chronic conditions and impairments, (3) family structure, relationships, and living arrangements, (4) health opinions and behaviors, (5) use of health, personal care and social services, (6) use of assistive devices and technologies, (7) health insurance, (8) housing and long-term care, (9) social activity, (10) employment history, (11) transportation, and (12) cognition. This new data will result in publication of new national health statistics on the elderly and the release of public use micro data files. The total annual burden is 8,099.

Respondents	Number of respondents	Number of responses/ Respondent	Avg. burden/ response (in hrs.)
Sample Adult	10,037	1	.806

Dated: February 12, 1997.

Wilma G. Johnson,

Acting Associate Director for Policy Planning And Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–4007 Filed 2–18–97; 8:45 am]

BILLING CODE 4163–18–P

[30DAY–29]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Office on (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

The following requests have been submitted for review since the last publication date on February 11, 1997.

Proposed Project

1. Feasibility Study of a State and Local Area Integrated Telephone Survey—New—This is a request to conduct a feasibility study in five States of an integrated survey to collect broad State-based health and health-related data using two existing and ongoing data collection systems, the National Immunization Survey (NIS) and the National Health Interview Survey (NHIS) (0920–0214). The purpose of this project is to demonstrate the potential for using random-digit-dialing (RDD) methods to sample households for Computer Assisted Telephone Interviews (CATI) to produce quick turnaround State-level estimates on issues such as health status, access to care, health insurance coverage, and utilization of services for monitoring and tracking changes in the health care system. As health care markets respond to new incentives and States gain increasing responsibility for administering health and welfare programs, State level data are being recognized as increasingly important to the public health and health policy community. While considerable population-based data are available at the national level, there is a variable amount at the State level.

The proposed strategy of building on two established systems provides several advantages. It is less costly than establishing a new system; the proposed questions have been thoroughly tested; and implementation can occur rapidly. In the NIS, interviews are conducted on a random sample of telephone households to produce vaccination coverage estimates for children 19 to 35 months of age for all 50 states, the District of Columbia, and 27 urban areas. The NIS CATI system offers a mechanism for rapid data collection and for expansion to establish a more broad based system to monitor and track changes in health status, the health care system, and welfare reform at the State level. In addition, since the design for the NIS requires screening 20 households to identify a single household with an age eligible child, a potential cost effective opportunity exists to make use of the large probability sample of telephone numbers for other emerging health care issues. The NHIS is a continuous general purpose national health survey in which face-to-face interviews are conducted to measure health characteristics of the U.S. civilian noninstitutionalized population. Use of an abbreviated set of questions from the NHIS for the proposed integrated telephone survey will allow for standardization of the questionnaire across States and will allow comparisons with national data. In addition, the quality of the estimates developed from the telephone survey can be improved with adjustments for nontelephone households using information from the NHIS on telephone and nontelephone households.

The long term strategy is to build an integrated and coordinated data collection mechanism that can be both standardized for State and national comparisons and customized for State-specific needs. The total annual burden is 17,000 reflecting an average of the two years assuming coverage of 5 areas in 1997 and 78 areas in 1998.

Respondents	No. of respondents	No. of responses/respondent	Average burden/response (in hrs.)	Total burden (in hrs.)
1997				
Noninstitutionalized household population in 5 States	5,500	1	0.33	1,833
1998				
Noninstitutionalized household population in 50 States or substate areas	55,000	1	0.33	18,333
Noninstitutionalized household population in 28 substate areas	31,000	1	0.33	10,333

Dated: February 10, 1997.

Wilma G. Johnson,

Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–4008 Filed 2–18–97; 8:45 am]

BILLING CODE 4163–18–P

[Announcement Number 723]

Grants for Intimate Partner Violence Prevention Research Notice of Availability of Funds for Fiscal Year 1997

Introduction

The Centers for Disease Control and Prevention (CDC) announces applications are being accepted for Intimate Partner Violence Prevention Research Grants for fiscal year (FY) 1997. The CDC is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Violent and Abusive Behavior. (To order a copy of Healthy People 2000, see the section Where to Obtain Additional Information.)

Authority

This program is authorized under Sections 301, 391, 392, 393 and 394 of the Public Health Service Act, as amended (42 U.S.C. 241, 280b, 280b–1, 280b–1a, and 280b–3). Program regulations are set forth in Title 42 CFR, Part 52.

Eligible Applicants

Eligible applicants include all non-profit and for-profit organizations. Thus State and local health departments, State and local governmental agencies, universities, colleges, research institutions, and other public and private organizations, including small, minority and/or woman-owned businesses are eligible for these research grants. Current holders of CDC injury control research projects are eligible to apply.

Smoke-Free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, child care, health care, and early childhood development services are provided to children.

Availability of Funds

Approximately $750,000 is expected to be available to fund 3–4 injury research grants in the area of intimate partner violence. The specific program priorities for these funding opportunities are outlined with examples in this announcement under the section, "Programmatic Priorities." It is expected that the awards will begin on or about September 1, 1997, and will be made for a 12-month budget period within a project period of up to three years. Funding may not exceed $250,000 per year (including both direct and indirect costs). Grant applications that request more than the $250,000 per year cap will be returned to the investigator as non-responsive. Funding availability may vary and is subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress demonstrated by investigators at work-in-progress monitoring workshops, the achievement of workplan milestones reflected in the continuation application, and the availability of Federal funds. In addition, continuation awards will be eligible for increased funding to offset inflationary costs depending upon the availability of funds.

Use of Funds: Prohibition on Use of CDC Funds for Certain Gun Control Activities. The Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1997 specifies that: None of the funds made available for injury prevention and control at the Centers for Disease Control and Prevention may be used to advocate or promote gun control.

Anti-Lobbying Act requirements prohibit lobbying Congress with appropriated Federal monies. Specifically, this Act prohibits the use of Federal funds for direct or indirect communications intended or designed to influence a Member of Congress with regard to specific Federal legislation. This prohibition includes the funding and assistance of public grassroots campaigns intended or designed to influence Members of Congress with regard to specific legislation or appropriation by Congress.

In addition to the restrictions in the Anti-Lobbying Act, CDC interprets the new language in the CDC's 1997 Appropriations Act to mean that CDC's funds may not be spent on political action or other activities designed to affect the passage of specific Federal, State, or local legislation intended to restrict or control the purchase or use of firearms.

Background and Definitions

A. Background

Intimate partner violence is a major public health problem. Although men are at much greater risk of fatal injury due to interpersonal violence, women are at much higher risk of nonfatal injuries due to intimate partner violence. National surveys estimate that approximately 2 million women each year are battered by an intimate partner, and crime data from the Federal Bureau of Investigation (FBI) record about 1,500 murders of women by husbands or boyfriends each year. The Bureau of Justice Statistics reports that women sustained about 3.8 million assaults and 500,000 rapes a year in 1992 and 1993: More than 75 percent of these violent acts were committed by an intimate, a husband, ex-husband, boyfriend, or ex-boyfriend. Studies estimate that between 13 and 25 percent of all U.S. women will experience rape in their lifetimes.

These numbers are thought to be underestimates of the actual number of American women assaulted by intimate male partners.

The total extent and severity of violence-related nonfatal injuries is unknown, but an increasing portion of the nation's health care and rehabilitation systems' resources are devoted to attending to victims of violence. Intimate partner violence (including rape, physical battering, and psychological abuse) are associated with a host of both short-and long-term problems, including physical injury and illness, psychological symptoms, and death. The consequences extend far beyond the individual female victims, affecting their children, families, friends, and society as well.

Opportunities to understand and prevent intimate partner violence-related injuries and reduce their effects are available. Maximizing these opportunities for prevention requires a broad approach, incorporating many disciplines that heretofore have not been an integral part of public health efforts. Many of these opportunities and research priorities are discussed in Injury Control in the 1990s: A National Plan for Action. Atlanta: Centers for Disease Control and Prevention, 1993 and Healthy People 2000. Additional background information can be found in the following suggested readings: Understanding Violence Against Women, Violence and the Public's Health, Understanding and Preventing Violence, and Violence in America: A Public Health Approach. (To receive information on these reports see the section Where To Obtain Additional Information);

B. Definitions

1. *Injury:* Injury is generally defined as physical damage to an individual that occurs over a short period of time as a result of acute exposure to one of the forms of physical energy in the environment or to chemical agents or the acute lack of oxygen.

2. *Intimate Partner Violence* is defined as threatened or actual use of physical or sexual violence or psychological/emotional abuse perpetrated on a woman by a partner or ex-partner that either results or has the potential to result in injury or death. Types of behavior that fit within this definition are commonly referred to as domestic violence, sexual assault, spouse abuse, date rape, partner abuse, women battering, and acquaintance rape. Public health approaches violence as a health issue and consequently, uses injuries, both fatal and nonfatal, psychological and physical, to quantify the impact of violence. Our primary interest is in preventing violence against adolescent and adult women that occurs in the context of intimate relationships.

3. *Intimate partner violence prevention research projects* are defined as research designed to:

a. Elucidate the chain of causation—the etiology and mechanisms—of injuries related to intimate partner violence; or

b. Yield results directly applicable to identifying interventions to prevent injuries and deaths due to intimate partner violence; or

c. Evaluate the effect of policies, programs, or interventions for intimate partner violence on morbidity, mortality, disability, and costs.

Purpose

The purposes of this program are to:

A. Build the scientific base for the prevention of injuries and deaths due to intimate partner violence as delineated in Injury Control in the 1990s: A National Plan for Action. Atlanta: Centers for Disease Control and Prevention, 1993 and Healthy People 2000.

B. Identify effective strategies to prevent intimate partner violence-related injuries.

C. Expand the development and evaluation of current and new intervention methods and strategies for the primary prevention of intimate partner violence-related injuries.

D. Encourage professionals from a wide spectrum of disciplines such as medicine, health care, public health, criminology and criminal justice, and behavioral and social sciences, to undertake research to prevent and control injuries from intimate partner violence.

E. Encourage the training of pre-doctoral minority investigators to work in the area of violence research.

Program Requirements

The following are applicant requirements:

A. A principal investigator who has conducted research, published the findings, and has specific authority and responsibility to carry out the proposed project.

B. Demonstrated experience in conducting, evaluating, and publishing injury control research on the applicant's project team.

C. Effective and well-defined working relationships within the performing organization and with outside entities which will ensure implementation of the proposed activities.

D. Ability to carry out intimate partner violence prevention research as previously defined under Background and Definitions, (B.3.a-c).

E. Overall match between the applicant's proposed theme and research objectives, and the program priorities as described under the heading, "Programmatic Priorities."

Note: Grant funds will not be made available to support the provision of direct care services.

Eligible applicants may enter into contracts, including consortia agreements (as set forth in the PHS Grants Policy Statement) as necessary to meet the requirements of the program and strengthen the overall application.

Programmatic Priorities

Applicants must propose research that (1) enhances understanding of social, economic, and environmental factors that may be associated with intimate partner violence, and (2) determines the effectiveness of prevention/intervention programs for perpetrators of intimate partner violence.

Enhance understanding of societal level factors within a specific targeted community that may be associated with intimate partner violence and the costs of such violence.

- Conduct research to determine which societal level factors (e.g., crowding, socioeconomic status (SES), norms about intimate partner violence, levels of general violence, number of liquor stores in the community, etc.) contribute to perpetration of intimate partner violence.
- Conduct studies to determine direct and indirect costs of intimate partner violence (such as days absent from work or school, quality of life, numbers of visits to mental health and medical care providers, number of miscarriages, mental and physical disabilities, impact on child witnesses, etc.)

Determine the effectiveness of prevention/intervention programs for (potential or actual) perpetrators of intimate partner violence.

- Develop and evaluate innovative or alternative approaches or settings for identifying and providing interventions and/or deterrents for perpetrators of intimate partner violence.
- Identify the components of effective batterer interventions.
- Evaluate the effectiveness of programs targeting children and young adolescents that teach and foster healthy interpersonal relationships as primary prevention of future perpetration of intimate partner violence.

Reporting Requirements

An original and two copies of the financial status and progress reports are due 90 days after the end of each budget period. A brief (2–3 page) summary of the study findings and a final financial status report is due 90 days after the end of the project period.

Application Content

Applications for injury control research grants should include:

A. The project's focus that justifies the research need and describes the scientific basis for the research, the expected outcome, and the relevance of the findings to reduce injury morbidity, mortality, disability and economic losses. This focus should be based on recommendations in Injury Control in the 1990s: A National Plan for Action. Atlanta: Centers for Disease Control and Prevention, 1993 and Healthy People 2000 and should seek creative approaches that will contribute to a national program for injury control.

B. Specific, measurable, and time-framed objectives.

C. A detailed plan describing the methods, by which the objectives will be achieved, including their sequence. A comprehensive evaluation plan is an essential component of the application.

D. A description of the role and responsibilities of the project's principal investigator.

E. A description of all the project staff regardless of their funding source. It should include their title, qualifications, experience, percentage of time each will devote to the project, as well as that portion of their salary to be paid by the grant.

F. A description of the role, duties, and responsibilities of the project's pre-

doctoral minority investigator(s) (a minimum of 15% of each pre-doctoral minority investigator's time should be reflected in the project's budget).

G. A description of those activities related to, but not proposed to be supported by the grant.

H. A description of the involvement of other entities, (e.g., proposed study sites), that will relate to the proposed project, if applicable. It should include commitments of support and a clear statement of their roles.

I. A detailed first year budget for the project with future annual projections, if relevant.

J. Applicants must identify in a cover letter one of the topics previously outlined under the heading Programmatic Priorities upon which their project is focused.

K. An explanation of how the research findings will lead to feasible, cost-effective injury interventions.

An applicant organization has the option of having specific salary and fringe benefit amounts for individuals omitted from the copies of the application which are made available to outside reviewing groups. To exercise this option: on the original and five copies of the application, the applicant must use asterisks to indicate those individuals for whom salaries and fringe benefits are not shown; the subtotals must still be shown. In addition, the applicant must submit an additional copy of page four of Form PHS–398, completed in full, with the asterisks replaced by the salaries and fringe benefits. This budget page will be reserved for internal staff use only.

Evaluation Criteria

Upon receipt, applications will be screened by CDC staff for completeness and responsiveness as outlined under the previous heading, Program Requirements (A-E). Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration. Applications which are complete and responsive may be subjected to a preliminary evaluation (triage) by a peer review group to determine if the application is of sufficient technical and scientific merit to warrant a full review by the Injury Research Grants Review Committee (IRGRC); the CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated by a dual review process. Awards will be made based on priority scores assigned to applications by the IRGRC, programmatic priorities and needs determined by a secondary review committee (the Advisory Committee for Injury Prevention and Control), and the availability of funds.

A. The first review following the preliminary review (triage) will be a peer review to be conducted on all competitive applications. Factors to be considered will include:

1. The specific aims of the research project, i.e., the broad long-term objectives, the intended accomplishment of the specific research proposal, and the hypothesis to be tested.

2. The background of the proposal, i.e., the basis for the present proposal, the critical evaluation of existing knowledge, and specific identification of the injury control knowledge gaps which the proposal is intended to fill.

3. The significance and originality from a scientific or technical standpoint of the specific aims of the proposed research, including the adequacy of the theoretical and conceptual framework for the research.

4. For competitive renewal applications, the progress made during the prior project period. For new applications, (optional) the progress of preliminary studies pertinent to the application.

5. The adequacy of the proposed research design, approaches, and methodology to carry out the research, including quality assurance procedures, plan for data management, and statistical analysis plans, plans for inclusion of minorities and both sexes.

6. The extent to which the evaluation plan will allow for the measurement of progress toward the achievement of the stated objectives.

7. Qualifications, adequacy, and appropriateness of personnel to accomplish the proposed activities, including pre-doctoral minority investigator(s).

8. The degree of commitment and cooperation of other interested parties (as evidenced by letters detailing the nature and extent of the involvement).

9. The reasonableness of the proposed budget to the proposed research and demonstration program.

10. Adequacy of existing and proposed facilities and resources.

11. An explanation of how the research findings will lead to feasible, cost-effective injury interventions.

B. The second review will be conducted by the Advisory Committee for Injury Prevention and Control. The factors to be considered will include:

1. The results of the peer review.

2. The significance of the proposed activities in relation to the objectives outlined under the section, "Programmatic Priorities.'

3. National needs.

4. Overall distribution among:

• the major disciplines of violence-related injury prevention: social and behavioral science, biomechanics, and epidemiology;

• populations addressed (e.g., batterers, adolescents, racial and ethnic minorities, the elderly, children, urban, rural).

5. Budgetary considerations (e.g., preference may be given to applicants who submit proposals requesting funding for research projects of one to two years duration).

6. Additional consideration will be given to those applicants who provide evidence of an injury research training program for pre-doctoral minority investigators.

C. Continued Funding

Continuation awards within the project period will be made on the basis of the availability of funds and the following criteria:

1. The accomplishments reflected in the progress report of the continuation application indicate that the applicant is meeting previously stated objectives or milestones contained in the project's annual workplan and satisfactory progress has been demonstrated through monitoring presentations or work-in-progress workshops;

2. The objectives for the new budget period are realistic, specific, and measurable;

3. The methods described will clearly lead to achievement of these objectives;

4. The evaluation plan will allow management to monitor whether the methods are effective; and

5. The budget request is clearly explained, adequately justified, reasonable and consistent with the intended use of grant funds.

Executive Order 12372 Review

Applications are not subject to the review requirements of Executive Order 12372.

Public Health System Reporting Requirement

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.136.

Other Requirements

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and forms provided in the application kit.

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by this grant program will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Women and Minority Inclusion Policy

It is the policy of the CDC to ensure that women and racial and ethnic groups will be included in CDC supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian, Alaskan Native, Asian, Pacific Islander, Black and Hispanic. Applicants shall ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is inappropriate or not feasible, this situation must be explained as part of the application.

In conducting the review of applications for scientific merit, review groups will evaluate proposed plans for inclusion of minorities and both sexes as part of the scientific assessment and assigned score. This policy does not apply to research studies when the investigator cannot control the race, ethnicity and/or sex of subjects. Further guidance to this policy is contained in the **Federal Register**, Vol. 60, No. 179, Friday, September 15, 1995, pages 47947–47951.

Application Submission and Deadlines

A. Preapplication Letter of Intent

Although not a prerequisite of application, a non-binding letter of intent-to-apply is requested from potential applicants. The letter should be submitted to the Grants Management Specialist (whose address is reflected in section B, "Applications"). It should be postmarked no later than March 20, 1997. The letter should identify the announcement number, name the principal investigator, and specify the priority area of study the proposal addresses as outlined under the section Programmatic Priorities. The letter of intent does not influence review or funding decisions, but it will enable CDC to plan the review more efficiently, and will ensure that each applicant receives timely and relevant information prior to application submission.

B. Applications

Applicants should use Form PHS–398 (OMB No. 0925–0001 Revised 5/95) and adhere to the ERRATA Instruction Sheet for Form PHS–398 contained in the Grant Application Kit. Please submit an original and five copies, on or before April 22, 1997, to: Lisa G. Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305, telephone (404) 842–6796.

C. Deadlines

1. Applications shall be considered as meeting a deadline if they are either:

A. Received at the above address on or before the deadline date, or

B. Sent on or before the deadline date to the above address, and received in time for the review process. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailings.

2. Applications which do not meet the criteria above are considered late applications and will be returned to the applicant.

Where to Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and telephone number and will need to refer to Announcement 723. You will receive a complete program description, information on application procedures, and application forms. Business management technical information may be obtained from Lisa Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E–13, Atlanta, GA 30305, telephone (404) 842–6796 or internet: <lgt1.cdc.gov≤.

Programmatic technical assistance may be obtained from Ted Jones, Project Officer, Extramural Research Grants Branch, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), Mailstop K–58, 4770 Buford Highway, NE., Atlanta, Georgia 30341–3724, telephone (770) 488–4824, internet: <tmj1.cdc.gov≤.

This and other CDC announcements are also available through the CDC homepage on the Internet. The address for the CDC homepage is <http://www.cdc.gov≤.

CDC will not send application kits by facsimile or express mail.

Please refer to Announcement Number 723 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325, telephone (202) 512–1800.

Copies of Injury Control in the 1990s: A National Plan for Action. Atlanta: Centers for Disease Control and Prevention, 1993 and A Framework for Assessing the Effectiveness of Disease and Injury Prevention, (CDC, Morbidity and Mortality Weekly Report, March 27, 1992, Volume 41, Number RR–3, pages 5–11) may be obtained by calling (770) 488–4265.

Information for obtaining the suggested readings, Understanding Violence Against Women, Violence and the Public's Health, Understanding and Preventing Violence, and Violence in America: A Public Health Approach, is included on a separate sheet with the application kit.

Dated: February 11, 1997.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–4010 Filed 2–18–97; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

[Docket No. 93F–0195]

Fish and Fishery Products Hazards and Controls Guide; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the

availability of the first edition of the "Fish and Fishery Products Hazards and Controls Guide" (the guide). FDA has prepared the guide as, among other things, an adjunct to the regulations it issued on the safe and sanitary processing and importing of fish and fishery products using Hazard Analysis and Critical Control Point (HACCP) methodology.

DATES: Submit written comments on the guide by May 20, 1997. Comments received after that date will be considered for subsequent editions.

ADDRESSES: Submit written requests for single copies of the guide to the Office of Seafood (HFS–400), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3133. The guide may also be obtained from FDA district offices (contact Donald Kraemer (address below) for FDA district office addresses). Send two self-addressed adhesive labels to assist those offices in processing your requests. Copies of the guide on diskette (in WordPerfect 6.0) may be ordered for $30.00 each, plus handling, from the National Technical Information Service (NTIS), U.S. Department of Commerce, by calling 703–487–4650 and requesting PB96–503180. Paper copies may be ordered for $30.00 each, plus handling, by requesting PB 96–207337. The diskette and paper copies may be ordered as a set for $50.00, plus handling, by requesting PB96–207329. Payment may be made by charge card (American Express, VISA, or Mastercard), check, money order, or other billing arrangements made with NTIS. Rush orders may be placed by calling 800–553–NTIS. Persons with access to the Internet may obtain the guide via the World Wide Web at FDA's web site (http://www.fda.gov) by selecting "Foods" and then selecting "HACCP." Alternately, it may be accessed directly at http://www.cfsan.fda.gov/~lrd/haccpsub.html.

The guide is also being issued as a companion document to the "HACCP: Hazard Analysis Critical Control Point Training Curriculum" (the training document), which was developed by the Seafood HACCP Alliance for Training and Education (the Alliance). The Alliance is an organization of Federal and State regulators, including FDA, academia, and food industry trade associations. FDA encourages processors of fish and fishery products to use the two documents together in the development of their HACCP systems. Copies of the training document and the guide may be obtained from North Carolina Sea Grant, North Carolina State University, P.O. Box 8605, Raleigh, NC 27695, 919–515–2454. The cost for both of these documents is $35.00, payable by check or money order to "N.C. Sea Grant." Submit written comments on the guide to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. The guide and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Donald W. Kraemer, Center for Food Safety and Applied Nutrition (HFS–400), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3160.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 18, 1995 (60 FR 65096), FDA published a final rule entitled "Procedures for the Safe and Sanitary Processing and Importing of Fish and Fishery Products," which requires that HACCP principles be applied in the commercial processing of fish and fishery products for distribution in interstate commerce. HACCP involves: (1) The identification of food safety hazards that are reasonably likely to occur in a particular product; (2) the selection of the appropriate control measures to reduce the risk of occurrence of these hazards; and (3) the preparation of a HACCP plan that sets out how these measures will be applied.

To aid processors in responding to the new requirements and in developing their HACCP plans, FDA has developed the guide. The controls and practices provided in the guide are, for the most part, recommendations and guidance to the fish and fishery products industry. The guide provides information that will likely result in a HACCP plan that is acceptable to FDA under ordinary circumstances. However, the guide is in no way a binding set of requirements. Processors may choose to use other control measures, provided that they provide an equivalent degree of assurance that the product will be safe. Nor is the guide a substitute for the performance of a hazard analysis by a processor of fish or fishery products, as required by FDA's regulations. A hazard analysis is an assessment of what, if any, food safety hazards are reasonably likely to occur in a product being produced by a specific processor, and whether those hazards can be controlled by that processor. While the guide contains FDA's best advice for most ordinary circumstances, it does not cover every situation. For example, hazards not covered by the guide may be relevant to certain products in certain circumstances. In particular, processors should be alert to new or emerging problems (e.g., the occurrence of natural toxins in fish not previously associated with that toxin).

In the **Federal Register** of March 18, 1994 (59 FR 12949), FDA published a notice of availability of a draft version of the guide (the draft guide) and requested comments on it. The agency has carefully reviewed the comments it received. Based on these comments, FDA has made significant changes in the format and content of the guide. Given the magnitude of the changes, FDA believes that additional comment by the public would be useful.

A number of comments stated that, while the draft guide provided useful information on fish and fishery products hazards and controls, it did not adequately explain how to develop a HACCP plan on the basis of this information.

In response to these comments, the agency has revised the guide to provide a step-by-step procedure for the preparation of a HACCP plan. The agency has tried to provide information that will help the processor answer questions that are likely to arise during this process.

To further facilitate HACCP plan development, the guide provides samples of key portions of HACCP plans for each of the categories of hazards that are discussed. The guide also contains a fill-in-the-blank HACCP plan and a blank hazard analysis worksheet that may be used by processors.

Many comments stressed that the draft guide unnecessarily restricted their flexibility in developing hazard control strategies that were uniquely tailored to their operations. It did so, they contended, by limiting its advice to only one or a few control strategies per hazard even though other strategies may also exist, depending upon the circumstances.

It was never the intent of the guide to limit a processor's flexibility to only the control strategies provided in the guide. The agency could not realistically provide advice on every valid control strategy that might be available under every circumstance. Nonetheless, the guide is intended to be as inclusive as is reasonably possible about known control strategies. Therefore, FDA has revised the guide to provide more control strategy examples than were provided in the draft guide. For example, the guide includes recommended maximum exposure times for temperature-sensitive fishery products for a variety of exposure temperatures and target pathogens, rather than one "rule-of-thumb" maximum exposure time, as was the case in the draft guide.

The agency recognizes, however, that the inclusion of more control strategies greatly lengthens the guide and could make it more difficult for the smaller, less sophisticated processor to use. FDA specifically invites comment on whether this will in fact be the case and on whether the agency should attempt to develop an abbreviated version of the guide for those who might benefit from it.

The guide includes tables of potential food safety hazards that may be associated with the hundreds of species of fish (vertebrate and invertebrate), as well as the numerous product forms (e.g., breaded, cooked, raw), that are commercially marketed in the United States. These tables are designed to aid the processor in the performance of the hazard analysis.

A separate chapter is devoted to each category of hazard (e.g., parasites, natural toxins, pathogen growth, metal fragments). Each chapter includes the steps necessary to complete the hazard analysis and, ultimately, the HACCP plan for that hazard. These steps include: (1) Understanding the potential hazard; (2) determining whether the potential hazard is significant and must therefore be controlled; (3) identifying the critical control points, where the hazard can best be controlled; (4) setting the critical limits, to which the operation must be held at the critical control points; (5) establishing the monitoring procedures, to ensure that the critical limits are consistently being met; (6) establishing corrective action procedures for when the critical limit is not met; (7) establishing a recordkeeping system to document the performance of the monitoring, corrective action, and verification procedures; and (8) establishing verification procedures.

There are two areas that were addressed in the draft guide but are not included in the first edition because they are the subject of policy reevaluation by FDA. The agency will update the guide in these areas when the policy reevaluation is complete.

The first of these areas involves the chemical methyl mercury. A number of comments objected to the testing regimen that the draft guide recommended for the control of the methyl mercury hazard in certain species of fish. The agency's recommendation was based on the 1.0 part per million action level for methyl mercury. While FDA has not changed this action level, the agency is reevaluating its policy in light of significant new data on the health effects of methyl mercury from consumption of fish that have become available since the action level was developed.

One other area in which the guidance contained in the guide is incomplete is the hazard of pathogens in raw fish and fishery products that are intended to be cooked by the consumer or end user. FDA policy identifies pathogens in such products as adulterants under the Federal Food, Drug, and Cosmetic Act. FDA is still evaluating what would constitute an appropriate hazard analysis, and what would constitute the appropriate HACCP controls for these products. The agency welcomes comment on this subject.

FDA expects that its reevaluation of the methyl mercury action level and its pathogen policy will be completed before the effective date of the regulations. When the reevaluation is completed, FDA will, among other things, update the guide by including advice on how to assess the significance of these potential hazards, and what controls, if any, are necessary to ensure the safety of fish.

The guide, which provides advice on how to prepare a HACCP plan when a plan is required by 21 CFR part 123, should be used until superseded by a subsequent edition. Although this guidance does not create or confer any rights, for or on any person, and does not operate to bind FDA, it does represent the agency's best thinking on how to prepare a HACCP plan for the processing of fish and fishery products.

Interested persons may, on or before May 20, 1997, submit to the Dockets Management Branch (address above) written comments on the guide for consideration in the preparation of the second edition of the guide. Comments received after that date will be considered for subsequent editions. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guide and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 11, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–4022 Filed 2–18–97; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[Document Identifier: HCFA–1514]

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of currently approved collection; *Title of Information Collection:* Hospital Request for Certification in the Medicare/Medicaid Program; *Form No.:* HCFA–1514; *Use:* Section 1861 of the Social Security Act and 42 CFR part 482 requires hospitals to be certified to participate in the Medicare/Medicaid program. As part of the certification process, providers must complete form HCFA–1514. This certification form is a facility identification and screening form used to initiate the certification process and to determine if the provider has sufficient personnel to participate in the Medicare/Medicaid program. *Frequency:* Annually; *Affected Public:* State, Local or Tribal Gov't.; *Number of Respondents:* 2,500; *Total Annual Responses:* 2,500; *Total Annual Hours:* 625.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov/regs/prdact95.htm, or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer

designated at the following address: HCFA, Office of Financial and Human Resources, Management Analysis and Planning Staff, Attention: John Rudolph, Room C2–25–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: February 10, 1997.

Edwin J. Glatzel,

Director, Management Analysis and Planning Staff, Office of Financial and Human Resources.

[FR Doc. 97–3985 Filed 2–18–97; 8:45 am]

BILLING CODE 4120–03–M

Public Health Service

Title: FNB Workshop on Folate, Vitamin B–12, and Choline

AGENCY: Office of Disease Prevention and Health Promotion, HHS.

ACTION: Food and Nutrition Board Workshop on Folate, B–12, and Choline; notice of meeting and request for information.

SUMMARY: The Food and Nutrition Board (FNB), Institute of Medicine, National Academy of Sciences, under the auspices of the Standing Committee on the Scientific Evaluation of Dietary Reference Intakes, will hold an open workshop to address the nutrients folate, vitamin B–12, and choline.

DATES: The open meeting will be held from 12:30 until 5:30 p.m. E.S.T. on March 3, 1997, and from 8 a.m. until 12:30 p.m. E.S.T. on March 4, 1997, at the Jefferson Auditorium, U.S. Department of Agriculture South Building, 14th and Independence Avenue, S.W., Washington, D.C. The meeting is open to the public.

FOR FURTHER INFORMATION, CONTACT: Diane Johnson, Program Assistant, Food and Nutrition Board, 2101 Constitution Avenue, NW., Washington, D.C. 20418, (202) 334–1312, or send an e-mail to FNB@NAS.EDU.

SUPPLEMENTARY INFORMATION: Speakers have been invited to present evidence bearing on requirements and adverse effects, if any, of high levels of intake of folate, vitamin B–12, and choline. Information presented will be considered by the committee in its development of Dietary Reference Intakes for these nutrients. Interested individuals and organizations are encouraged to provide written scientific information for the committee's use. Those wishing to be considered for a brief oral presentation should submit an abstract with references to FNB, 2101 Constitution Ave., NW, Washington, DC 20418, by February 24, 1997. The study for which this meeting is being held is supported by the Department of Health and Human Services (Office of Disease Prevention and Health Promotion, Office of Public Health and Science; the Division of Nutrition and Physical Activity, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention; and the Office of Dietary Supplements, National Institutes of Health).

The meeting is open to the public; however seating is limited. If you will require a sign language interpreter, please call Diane Johnson (202) 334–1312 by 4:30 p.m. E.S.T. on February 21, 1997.

Dated: February 6, 1997.

Claude Earl Fox,

Deputy Assistant Secretary for Health (Disease Prevention and Health Promotion), Department of Health and Human Services.

[FR Doc. 97–4040 Filed 2–18–97; 8:45 am]

BILLING CODE 4160–17–M

Office of Public Health and Science; Notice of Partnership Initiative

Pursuant to Title XVII of the Public Health Service Act, notice is hereby given that the Office of Disease Prevention and Health Promotion, Office of Public Health and Science, is seeking partnerships with non-Federal organizations to promote, distribute and encourage the implementation of "Put Prevention into Practice." "Put Prevention into Practice" is a system-based approach to implementing the recommendations of the United States Preventive Services Task Force, targeting patients, clinicians, and medical offices. The goal is to increase the impact of "Put Prevention into Practice" by forming partnerships with private sector organizations. These cooperative efforts are intended to bring the resources of several partners to bear on the implementation of clinical preventive services guidelines and on the efforts to increase the delivery of appropriate clinical preventive services, efforts that are too complex for any one organization to handle alone. Organizations with particular experience, expertise or interest in the development, marketing and distribution of prevention-related materials to the general public, professional organizations and managed care organizations will be well-aligned with current and planned initiatives of "Put Prevention into Practice" activities.

Note: Partnerships between ODPHP and outside organizations will be formalized through Memorandum of Agreements and will not involve grants or contracts.

Date of Effectiveness: February 19, 1997.

For more information, please contact Rika Maeshiro, M.D., M.P.H., Senior Clinical Affairs Advisor, Office of Disease Prevention and Health Promotion, Office of Public Health and Science, at 202–690–7943.

Dated: February 10, 1997.

Claude Earl Fox,

Deputy Assistant Secretary for Health (Disease Prevention and Health Promotion).

[FR Doc. 97–4039 Filed 2–18–97; 8:45 am]

BILLING CODE 4160–17–M

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Drug Testing Advisory Board of the Center for Substance Abuse Prevention in April 1997.

The Drug Testing Advisory Board (DTAB) is having a 3-day scientific meeting to discuss drug testing alternative specimens and technologies as they apply to workplace drug testing programs. The entire meeting is open to the public; however, attendance by the public will be limited to space available. The first two days will consist of presentations on the principles and criteria of workplace drug testing program requirements and industry representatives discussing alternative specimens/technologies (urine, hair, saliva, sweat, and non-instrument based on-site tests). The presentations will be focused on the following areas for each alternative specimen/technology: specimen collection and chain of custody, initial test reagents and procedures, confirmatory test procedures, internal quality control program, reporting test results, interpreting test results, and an external quality assurance program. On the third day, the DTAB will review the presentations, identify areas of concern, and make recommendations concerning those specimens/technologies for workplace drug testing.

Interested persons may present information or views, orally or in writing, on these issues pending before the Board. Those desiring to make formal presentations should notify the contact person before March 7. A coordinator for each alternative specimen/technology will select the presenters. The presenters who will discuss the underlying principles and criteria for each major topic are required to submit their presentations in writing at least four weeks before the meeting. These will be shared with all presenters at least 3 weeks before the meeting. The presenters describing how each type of specimen and/or technology satisfies, or does not satisfy, the requirements (each presentation is limited to 15 minutes) are required to submit their presentations in written form at least two weeks before the meeting. These will be shared with all presenters.

An agenda for this meeting and a roster of board members may be obtained from: Ms. Giselle Hersh, Division of Workplace Programs, Room 13A–54, 5600 Fishers Lane, Rockville, MD 20857, Telephone: (301) 443–6014.

Substantive program information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Drug Testing Advisory Board.

Meeting Date: April 28–30, 1997.

Place: DoubleTree Hotel, 1750 Rockville Pike, Rockville, Maryland 20852.

Open: April 28–30, 1997, 8:30 a.m.–5:00 p.m.

Contact: Donna M. Bush, Ph.D.; Executive Secretary, Telephone: (301) 443–6014 and FAX: (301) 443–3031.

Dated: February 12, 1997.

Jeri Lipov,

Committee Management Officer, SAMHSA.

[FR Doc. 97–3956 Filed 2–18–97; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4170–N–04]

Notice of Native American Housing Assistance and Self-Determination Act of 1996 Implementation Meetings

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of implementation meetings for the Native American Housing Assistance and Self-Determination Act of 1996.

SUMMARY: This notice announces preliminary meetings sponsored by HUD to develop the regulations necessary to carry out the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (Pub. L. 104–330, approved October 26, 1996).

DATES: The meetings will be held on February 25, 26, 27, and 28, 1997.

ADDRESSES: The meetings will be held at the National Office of Native American Programs, Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO.

FOR FURTHER INFORMATION CONTACT: Dominic Nessi, Deputy Assistant Secretary for Native American Programs, Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO; telephone (303) 675–1600 (voice) or 1–800–877–8339 (TTY for speech or hearing impaired individuals). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: HUD will hold a series of meetings on February 25, 26, 27, and 28, 1997 in the National Office of its Office of Native American Programs to discuss the regulatory implementation of NAHASDA. The meetings to be held on these dates will be preliminary meetings to develop the regulations necessary to carry out NAHASDA.

On January 27, 1997 (62 FR 3976), HUD published a notice announcing the requirements necessary to provide for the transition from the provision of assistance for Indian tribes and Indian housing authorities under the United States Housing Act of 1937 and other related provisions of law to the block grant provision of assistance provided under NAHASDA. The January 27, 1997 notice also provided notice of the negotiated rulemaking process for the development of regulations necessary to implement the new block grant program.

Dated: February 13, 1997.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

[FR Doc. 97–4135 Filed 2–18–97; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces that the Information Collection Request for the Housing Assistance Application requires renewal. The proposed information collection requirement, with no appreciable changes, described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. 3506(c)(2)(A). The Bureau is soliciting public comments on the subject proposal.

DATES: Written comments must be submitted on or before April 21, 1997.

ADDRESSES: Interested parties are invited to submit written comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to June Henkel, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, NW, MS–4603–MIB, Washington, D.C. 20240.

All written comments will be available for public inspection in Room 4603 of the Main Interior Building, 1849 C Street, NW, Washington, D.C. from 9:00 a.m. until 3:00 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instructions should be directed to June Henkel, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, NW, MS–4603, Washington, D.C. 20240, and 202/208–3667. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Abstract

The information collection is needed to establish whether an applicant is eligible to receive services under the Housing Improvement Program (HIP) and to establish the priority order in which eligible applicants may receive services under the program.

II. Method of Collection

The housing regulations at 25 CFR Part 256 contain the program eligibility and selection criteria (§ 256.6, .7) which prospective applicants seeking program services must demonstrate that they meet. Information collected from applicants under these regulations provides eligibility and selection data used by the local servicing housing office to establish whether an applicant is eligible to receive services under the program and in what priority order the applicants are eligible to receive services. The local servicing housing office may be a tribal housing office under a Public Law 93–638, Indian Self-Determination contract or a Self-Governance annual funding agreement, or the Bureau of Indian Affairs. Additionally, the data is used by the Assistant Secretary—Indian Affairs to establish whether a request for waiver of a specific housing regulation is in the best interest of the applicant and the Federal government.

III. Data

(1) Title of the Collection of Information: Department of the Interior, Bureau of Indian Affairs, Housing Assistance Application.

OMB Number: 1076–0084.

Expiration Date: February 28, 1997.

Type of Review: Renewal of a currently approved information collection.

(2) Summary of the Collection of Information: The collection of information provides pertinent data concerning an applicant's eligibility to receive services under the Housing Improvement Program and includes:

A. Applicant Information including: Name, Current Address, Telephone Number, Date of Birth, Social Security Number, Tribe, Roll Number, Marital Status, Name of Spouse, Date of Birth (of spouse), Social Security Number (of spouse), Tribe (of spouse), and Roll Number (of spouse).

B. Family Information including: Name, Date of Birth, Social Security Number, Relationship to Applicant, and Tribe/Roll Number.

C. Income Information including: Earned and Unearned Income.

D. Housing Information including: Location of the house to be repaired, constructed or purchased; Description of housing assistance for which applying; Knowledge of receipt of prior Housing Improvement Program assistance, amount, to whom and when; Ownership or rental; Availability of electricity and name of electric company; Type of sewer system; Water source; Number of bedrooms; Size of house; and, Bathroom facilities.

E. Land Information including: land owner; legal status of land; or, type of interest in land.

F. General Information including: Prior receipt of services under the Housing Improvement Program and description of such; Ownership of other housing and description of such, Identification of Housing and Urban Development (HUD) funded house and current status of project; Identification of other sources of housing assistance for which the applicant has applied and been denied assistance if applying for a new housing unit or purchase of an existing standard unit; and, advisement and description of any severe health problem, handicap or permanent disability.

G. Applicant Certification including: Signature of Applicant and Date, and Signature of Spouse and Date.

(3) Description of the need for the information and proposed use of the information: Submission of this information is required in order to receive services under the Housing Improvement Program. The information is collected to determine applicant eligibility for services and applicant priority order to receive services under the program.

(4) Description of likely respondents, including the estimated number of likely respondents, and proposed frequency of response to the collection of information: Description of likely respondents: Individual members of Indian tribes who are living on or near a tribally, or by law, defined service area.

Estimated number of respondents: 3,500.

Proposed frequency of response: Annually or less frequently, depending on length of waiting list, funding availability and dynamics of service population.

(5) Estimate of total annual reporting and record keeping burden that will result from the collection of information:

Estimated time per application: The reporting burden for this application is estimated to average ½ hour per response, including the time for reviewing the instructions, gathering and maintaining the data, and completing and reviewing the form.

Estimated total Annual Burden Hours: 1750 hours.

Estimated total Record Keeping Burden: 1300 hours.

Estimated Annual Record Keeping Costs: $52,000 (1300 hours×$40.00 per hour).

IV. Request for Comments

The Department of the Interior invites comment on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) the accuracy of the agencies" estimate of the burden (including hours and cost) of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) ways to enhance the quality, utility, and clarity of the information to be collected; and,

(d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget control number.

Dated: February 11, 1997.

Ada E. Deer,

Assistant Secretary, Indian Affairs.

[FR Doc. 97–4001 Filed 2–18–97; 8:45 am]

BILLING CODE 4310–02–P

Bureau of Indian Affairs, Interior.

Proposed Agency Information Collection Activities; Comment Request

ACTION: Notice.

SUMMARY: This notice announces that the Information Collection Request for the Payment for Appointed Counsel in Involuntary Indian Child Custody Proceedings in State Courts, codified at 25 CFR § 23.13, requires renewal. Before submitting a request for reinstatement, without change, of a previously approved collection for which approval has expired, to the Office of Management and Budget (OMB), the Department of the Interior is soliciting public comments on this information collection as required by the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. 3506(c)(2)(A).

DATES: Written comments must be submitted on or before April 21, 1997.

ADDRESSES: Direct all written comments to Betty Tippeconnie, Bureau of Indian Affairs (Bureau), Department of the Interior, 1849 C Street, NW, MS–4603 MB, Washington, D.C. 20240.

All written comments will be available for public inspection in Room 4603 of the Main Interior Building, 1849 C Street, NW, Washington, D.C. from 9:00 a.m. until 3:00 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Betty Tippeconnie, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, NW, MS–4603 MB, Washington, D.C. 20240, and 202/208–2721. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Abstract

A state court that appoints counsel for an indigent Indian parent or Indian custodian in an involuntary Indian child custody proceeding in a state court for which appointment of counsel is not authorized by state law shall send written notice to the Bureau. The cognizant Bureau Area Director, using this information, can certify if the client in the notice is eligible to have his counsel compensated by the Bureau in accordance with the Indian Child Welfare Act, Public Law 95–608.

II. Method of Collection

The following information is collected in a notice from state courts in order to certify payment of appointed counsel in involuntary Indian child custody proceedings. The information collected and the reasons for the collection are listed below:

Information Collected	Reason for Collection
(a) Name, address and telephone number of attorney appointed;	(a) To identify attorney appointed as counsel/and method of contact;
(b) Name and address of client for whom counsel is appointed;	(b) To identify indigent party in an Indian child custody proceeding for whom counsel is appointed;
(c) Applicant's relationship to child;	(c) To determine if the person is eligible for payment of attorney fees as specified in P.L. 95–608;
(d) Name of Indian child's tribe;	(d) To determine if the child is a member of a federally recognized tribe and is covered by the Indian Child Welfare Act (ICWA);
(e) Copy of petition or complaint;	(e) To determine if this custody proceeding is covered by the ICWA;
(f) Certification by the court that state law does not provide for appointment of counsel in such proceedings;	(f) To determine if other state laws provide for such appointment of counsel and to prevent duplication of effort;
(g) Certification by the court that the Indian client is indigent;	(g) To determine if the client has resources to pay for counsel;
(h) The amount of payments due counsel utilizing the same procedures used to determine expenses in juvenile delinquency proceedings;	(h) To determine if the amount of payment due appointed counsel is based on state court standards in juvenile delinquency proceedings;
(I) Approved vouchers with court certification that the amount requested is reasonable considering the work and the criteria used for determining fees and expenses for juvenile delinquency proceedings.	(I) To determine the amount of payment considered reasonable in accordance with state standards for a particular case.

Proposed use of the information: The information collected will be used by the respective Bureau Area Director to determine: (a) If an individual Indian involved in an Indian child custody proceeding is eligible for payment of appointed counsel's attorney fees, (b) If any state statutes provide for coverage of attorney fees under these circumstances, (c) The state standards for payment of attorney fees in juvenile delinquency proceedings, (d) The name of the attorney, and his actual voucher certified by the court for the work completed on a preapproved case. This information is required for payment of appointed counsel as authorized by Public Law 95–608.

III. Data

(1) Title of the Collection of Information: Department of the Interior, Bureau of Indian Affairs, Payment for Appointed Counsel in Involuntary Indian Child Custody Proceedings in State Courts.

OMB Number: 1076–0111.

Expiration Date: February 28, 1997.

Type of Review: Reinstatement of a previously approved information collection for which approval has expired.

Affected Entities: State Courts and individual Indians eligible for payment of attorney fees pursuant to 25 CFR 23.13.

Estimated number of respondents: 4.

Proposed frequency of response: 1.

(2) Estimate of total annual reporting and record keeping burden that will result from the collection of this information: 12 hours.

Reporting: 2 hours/response × 4 respondents = 8 hours.

Recordkeeping: 1 hour/response × 4 respondents = 4 hours.

Estimated Total Annual Burden Hours = 12 hours

Estimated Annual Costs: $540.00 (12 hours x $45.00 per hour).

(3) Description of the need for the information and proposed use of the information: Submission of this information is required in order to receive payment for appointed counsel under 25 CFR 23.13. The information is collected to determine applicant eligibility for services.

IV. Request for Comments

The Department of the Interior invites comment on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agencies' estimate of the burden (including hours and cost) of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

An agency may not conduct or sponsor, and a person is not required to

respond to a collection of information unless it displays a currently valid Office of Management and Budget control number.

Dated: February 11, 1997.

Ada E. Deer,

Assistant Secretary, Indian Affairs.

[FR Doc. 97–4002 Filed 2–18–97; 8:45 am]

BILLING CODE 4310–02–P

Office of the Secretary

[DD 1230R01 (P)]

American Indian Sacred Sites Consultation Meetings

AGENCY: Office of the Assistant Secretary for Indian Affairs, Office of the Secretary of Interior.

ACTION: Notice of federal-tribal government-to-government consultation on Executive Order No. 13007—Indian Sacred Sites.

SUMMARY: The Department of the Interior hereby gives notice of three, two-day federal-tribal consultation sessions on the implementation of President Clinton's Executive Order No. 13007—Indian Sacred Sites. The Executive Order calls for the development of policies and procedures to protect Indian sacred sites on federal lands and to assure American Indians and Alaska Natives access to the sites. The Departments of Justice, Energy and Agriculture have accepted Interior's invitation to participate in the consultation sessions, as well. Tribal leaders or representatives are invited to attend one of the three sessions.

A discussion group format along with opening and closing plenary sessions will be used to ensure that each tribal representative has the opportunity to speak and engage in open dialogue with federal representatives. Discussion topics will include: Protecting the Physical Integrity of Indian Sacred Sites; Concerns with regard to Confidentiality of Indian Sacred Sites; Effecting Accommodation; Dispute Resolution; and Meaningful Government-to-Government Coordination, among others.

Any tribe unable to participate in the sessions is encourage to send written comments on the implementation of the Executive Order and the topics listed above no later than April 11, 1997. All written comments will be given equal consideration in the preparation of implementing policies and procedures.

DATES AND LOCATIONS: Portland Consultation Session will be held on March 12–13, 1997 at the Red Lion Jentzen Beach Hotel, 909 N. Hayden Drive, Portland, Oregon.

Denver Consultation Session will be held on March 19–20 at the Red Lion Hotel-Denver, 3203 Quebec Street, Denver, Colorado.

Washington, D.C. Consultation Session will be held on April 3–4, 1997 at the U.S. Geological Survey Headquarter Office, 12201 Sunrise Valley Drive, Reston, Virginia.

FOR FURTHER INFORMATION CONTACT: Elizabeth Homer, Department of the Interior, Office of American Indian Trust, 1849 "C" Street, N.W., Washington, D.C., 20240 telephone (202) 208–3338.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–4036 Filed 2–18–97; 8:45 am]

BILLING CODE 4310–02–P

Bureau of Land Management

[NV–930–07–1430–01; N–61069]

Notice of Realty Action, Direct Sale of Public Land, Humboldt Co., Nevada

ACTION: Notice of Realty Action, Direct Sale of Public Land, Humboldt County, Nevada.

SUMMARY: The following described land has been found suitable for direct sale under Sections 203 and 209 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1713 and 1719), at not less than fair market value:

Mount Diablo Meridian, Nevada

T. 36 N., R. 37 E., Sec. 32, all,
Containing approximately 640 acres.

The above described lands are hereby classified for disposal in accordance with Executive Order 6910 and the Act of June 28, 1934, as amended. The lands are not required for federal purposes. Disposal is consistent with the Bureau's planning for this area and would be in the public's interest. The land is being offered by direct sale to Winnemucca Farms. It has been determined that the subject parcel contains no known mineral values. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests having no known value. The applicant will be required to pay a $50.00 non-refundable filing fee for conveyance of the said mineral interests. The land will not be offered for sale until at least 60 days after publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ken Detweiler, Realty Specialist, Bureau of Land Management, 5100 E. Winnemucca Blvd., Winnemucca, NV 89445, (702) 623–1500.

SUPPLEMENTARY INFORMATION: The public lands are being offered to Winnemucca Farms for agricultural purposes. They plan to irrigate the parcel of land with process water from their potato processing facility located near Winnemucca. The above described land is hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statutes, for 270 days from the date of publication of this notice, or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

A Patent, When Issued, Will Contain the Following Reservation to the United States:

A right-of-way thereon for ditches or canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

And Will be Subject to:

1. Those rights for railroad purposes granted to Union Pacific Railroad by Right-of-way CC–04692.

2. Those rights for a fiber-optic communication line granted to U.S. Sprint by Right-of-way N–42787.

3. Those rights for a powerline granted to Sierra Pacific Power Company by Right-of-way N–43040.

4. Those rights for a communication line granted to Nevada Bell by Right-of-way N–51360.

5. Those rights for an access road granted to Cyanco by Right-of-way N–51585.

6. An easement 30 feet in width along the north, east, west, and south boundaries of the section, for road and public utility purposes to insure continued ingress and egress to adjacent lands.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Winnemucca District Office, Bureau of Land Management, 5100 E. Winnemucca Blvd., Winnemucca, NV 89445. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Dated: February 5, 1997.

Ron Wenker,

District Manager.

[FR Doc. 97–3986 Filed 2–18–97; 8:45 am]

BILLING CODE 4310–HC–P

National Park Service

60-day Notice of Intention to Request Clearance of Information Collection; Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service, Great Sand Dunes National Monument.

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3507) and 5 CFR Part 1320, Reporting and Recordkeeping Requirements, the National Park Service invites public comments on a proposed information request (ICR). Comments are invited on: (1) The need for the information including whether the information has practical utility; (2) the accuracy of the reporting burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection on respondents, including use of automated collection techniques or other forms of information technology.

The Primary Purpose of the Proposed ICR: The information collection survey will be conducted to obtain information about visitor use within the monument. Results of this survey will be used by the National Park Service to create the Great Sand Dunes National Monument General Management Plan. In order to estimate the test time, four people were asked to take the survey. The average time taken to complete the survey was four minutes.

DATES: Public comments on the proposed ICR will be accepted on or before April 21, 1997.

ADDRESSES: Send comments to Wenonah E. Skye, Outdoor Recreation Planner, IMFA–RM–S, National Park Service, 12795 W. Alameda Parkway, Post Office Box 25287, Denver, Colorado 80225–0287.

All responses to this notice will be summarized and included in the requests for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. Copies of the proposed ICR requirements and draft survey can be obtained from Wenonah E. Skye, Outdoor Recreation Planner, IMFA–RM–S, National Park Service, 12795 W. Alameda Parkeay, P.O. Box 25287, Denver, Colorado 80225–0287.

FOR FURTHER INFORMATION CONTACT: Wenonah E. Skye, 303–969–2834.

SUPPLEMENTARY INFORMATION:

Title: Visitor Survey, Great Sand Dunes National Monument.
Form: None.
OMB Number: To be requested.
Expiration date: To be requested.
Type of request: Visitor survey.
Description of need: For collecting visitor use information for the Great Sand Dunes National Monument general management plan during 1997.
Description of respondents: Individuals who visit the monument.
Estimated annual reporting burden: 20 burden hours.
Estimated average burden hours per response: 4 minutes.
Estimated average number of respondents: 120.
Estimated frequency of response: Once.

Dated: February 12, 1997

Terry N. Tesar,

Information Collection Clearance Officer, Accountability and Audits Team.

[FR Doc. 97–4041 Filed 2–18–97; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Ace Galvanizing, Inc., et al.*, Civil Action No 97–152C, was lodged on January 30, 1997, with the United States District Court for the Western District of Washington. The Consent Decree requires each defendant to compensate the trustees for natural resource damages at the Site, the State of Washington Department of Ecology, the Tulalip Tribes of Washington, the National Oceanic and Atmospheric Administration of the United States Department of Commerce, and the United States Department of Interior, for natural resource damages at the Site that have resulted from the release of hazardous substances at the Site. Under the Consent Decree, 185 *de minimis* waste contributors will pay a total of $741,546.00 for natural resource damages.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and National Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Ace Galvanizing, Inc., et al.*, DOJ Ref. #90–11–3–1412a.

The proposed consent decree nay be examined at the office of the United States Attorney, 1010 Fifth Avenue, Seattle, WA 98104; the Region 10 Office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, WA 98104, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $5.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–3987 Filed 2–18–97; 8:45 am]

BILLING CODE 4410–15–M

Notice of Lodging of Consent Decree Pursuant to the Resource Conservation and Recovery Act, the Clean Water Act, the Clean Air Act, and the Emergency Planning and Community Right-To-Know Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed partial consent decree in *United States* versus *The Sherwin-Williams Company*, Civil Action No. 93–C–4267, was lodged with the United States District Court for the Northern District of Illinois on February 6, 1997. This proposed consent decree would resolve the United States' civil claims against The Sherwin-Williams Company under Subchapter III of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. 6921 *et seq.*; the Clean Water Act, as amended, 33 U.S.c. 1251 *et seq.*; the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.*; Subchapter IX of RCRA, 42 U.S.C. 6991 *et seq.*; and the Emergency Planning and Community Right to Know Act, 42 U.S.C. 11001 *et seq.* Under the terms of the proposed consent decree, Sherwin-Williams will pay a civil penalty of $4.7 million, perform supplemental environmental projects that will cost the company a total of $1.1 million, undertake a corrective action to investigate and remediate contamination to the soil and groundwater at and emanating from the

company's Chicago facility, and perform other injunctive relief.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* versus *The Sherwin-Williams Company*, Civil Action No. 93–C–4267, and the Department of Justice Reference No. 90–5–2–1–1829.

The proposed consent decree may be examined at the Office of the United States Attorney, Northern District of Illinois, Everett McKinley Dirksen Building, Room 1200, 219 South Dearborn Street, Chicago, Illinois 60604; the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $32.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–3988 Filed 2–18–97; 8:45 am]

BILLING CODE 4410–15–M

INTERNATIONAL BOUNDARY AND WATER COMMISSION

Availability of Draft Environmental Assessment

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

ACTION: Notice of availability of Draft Environmental Assessment.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Final Regulations (40 CFR parts 1500 through 1508); and the Operational Procedures of the United States Section, International Boundary and Water Commission, United States and Mexico (USIBWC), for Implementing Section 102 of NEPA, published in the **Federal Register** September 2, 1981 (46FR 44083–44094); the USIBWC hereby gives notice that a Draft Environmental Assessment (DEA) prepared by TransTexas Gas Corporation (TransTexas), Houston, Texas, to address the potential adverse environmental impacts of placement of a natural gas well pad and associated works within the Falcon Dam and Reservoir Project, Zapata County, Texas, is available for review and comment. The DEA addresses the proposed action for the USIBWC to issue a land use permit to TransTexas to construct a drill pad for the purpose of drilling natural gas wells on an island located on USIBWC real property within the international Falcon Reservoir.

ADDRESSES: Mr. Yusuf E. Farran, Division Engineer, Environmental Management Division, United States Section, International Boundary and Water Commission, United States and Mexico, 4171 North Mesa Street, C–310, El Paso, Texas 79902–1441. Telephone: 915/534–6704.

SUPPLEMENTARY INFORMATION: In January, 1996, TransTexas Gas Corporation (TransTexas) requested the United States Section, International Boundary and Water Commission, United States and Mexico (USIBWC), to grant them permission to construct a drill pad site above the 307-foot mean sea level elevation on an island located within USIBWC real property below the 307-foot elevation traverse (the United States property line also called the "307-foot traverse") within the international Falcon Reservoir for the purpose of drilling eight natural gas wells. The construction of the well pad at the location referred to as Porcion 18 within the reservoir is desirable, due mainly to technical constraints associated with current directional drilling, to enable the full development of private and public gas reserves in the western portion of TransTexas' gas lease area. The gas lease area is situated entirely under Falcon Reservoir with very limited land available to reach the required bottom hole locations.

The USIBWC began coordination with the United States Bureau of Land Management (BLM), the federal authorizing agency which would approve an application by TransTexas for a permit to drill for federal reserves within the reservior. BLM indicated it would not approve the application for permit to drill until the USIBWC determined whether it would waive the stipulation that prohibits oil and natural gas development at that site. Both agencies agreed that due to a lack of both funding resources and human resources for an agency produced document and an immediate need by TransTexas to gain access to private and public reserves within the reservoir, a third party environmental analysis would be acceptable for determination of the significance of the impacts of the federal action of the USIBWC granting exceptions to its policy of prohibiting any mineral exploration or development within its property at Falcon Reservoir. A programmatic environmental assessment that addresses the USIBWC's granting exceptions to its policy of prohibiting any mineral exploration or development within its property at Falcon Reservoir is being processed under separate notice in the **Federal Register**. Although this site specific environmental assessment is prepared and processed simultaneously with the Draft Programmatic Environmental Assessment for potential oil and natural gas development below the 307-foot traverse property line at Falcon Reservoir but above the 307-foot mean sea level elevation, no final action will be taken on this site specific document until the PEA is complete and final action is declared on it.

Proposed Action

The action proposed is for the USIBWC to issue a land use permit to TransTexas to construct a drill pad site on an island above the 307-foot mean sea level elevation located on USIBWC real property below the 307-foot traverse property line within Falcon Reservoir for the purpose of drilling eight natural gas wells. This would be the first time for the USIBWC to grant an exception to its policy of prohibiting oil and gas development upon USIBWC real property under Falcon Reservoir and is dependent upon the outcome of the PEA.

Alternatives Considered

Two alternatives were considered in the Draft Environmental Assessment (DEA):

The Proposed Action Alternative is for the USIBWC to issue a land use permit to TransTexas to construct a drill pad site on an island above the 307-foot mean sea level elevation located on USIBWC real property below the 307-foot traverse property line within Falcon Reservoir. The USIBWC would issue the land use permit if it makes the determination to allow exceptions to its policy of prohibiting oil and natural gas development upon USIBWC real property under the reservoir and if BLM approves the application for permit to drill for public reserves located within the reservoir. The USIBWC land use permit takes into consideration that such works do not interfere with the operation and maintenance of the Falcon Dam and Reservoir Project. No final action will be taken on this site specific document until the Programmatic Environmental Assessment is complete and final action is declared on it.

The No Action Alternative is for the USIBWC to not issue a land use permit to TransTexas to construct a drill pad and associated works on an island on USIBWC real property at Porcion 18 at Falcon Reservoir. BLM would only be able to approve an application for permit to drill from a site above the 307-foot traverse property line; hence outside the reservoir. TransTexas would need to consider use of alternative means to recover private and public natural gas reserves within the reservoir. The no action alternative would result in no development below the 307-foot traverse for private and public reserves in the western portion of TransTexas' lease area; avoidance of any potential impacts associated with the proposed action; the loss of tax and royalty revenues to the local, state and federal governments; the loss of royalty revenues to mineral owners; and the loss of an otherwise recoverable clean energy source.

Environmental Assessment

The USIBWC has coordinated with BLM, the agency responsible for permitting Federal reserves within the reservoir, and TransTexas in the development of the Draft Environmental Assessment (DEA). The DEA is tiered from the PEA and describes the historical and existing development of oil and natural gas in the general vicinity (but above the 307-foot traverse property line) of the reservoir and the planned oil and natural gas activities within or adjacent to the Porcion 18 site. It analyzes the specific impacts expected from natural gas development in the foreseeable future and the cumulative environmental impacts of natural gas development upon USIBWC real property at Falcon Reservoir. The Draft EA discusses mitigation measures to avoid impacts to and minimize degradation of environmental resources within and adjacent to the reservoir. The USIBWC approved the completed DEA from TransTexas for proposed natural gas development at Porcion 18, and it is currently available for review and comment.

Finding of the Environmental Assessment

Final action on this site specific DEA will not be taken until the Programmatic Environmental Assessment is complete and final action is declared on it. The DEA indicates that the proposed action for the USIBWC to issue a land use permit for natural gas development within the USIBWC real property at Porcion 18 at Falcon Reservoir does not constitute a major federal action which would cause a significant local, regional, or national adverse impact on the environment based on the following facts:

1. Construction, drilling and production activities at the Porcion 18 swell pad site will have no significant adverse impacts on air quality. Standard construction practices to control fugitive dust shall be used, and emissions will be minimized through properly maintained equipment.

2. The slight impacts from construction, drilling and production activities associated with noise at the Porcion 18 well pad site are fully mitigable through vegetative buffer zones, equipment noise suppressors, and avoidance of critical wildlife use periods.

3. Negligible impacts to geologic and water resources are mitigable through the use of erosion and sediment control measures and devices, secondary containment measures, best management practices during all phases of development at the Porcion 18 well pad site, and use of site specific spill prevention control and countermeasure plans.

4. Biological resources shall be protected from impacts by total avoidance of clearing within the heavy brush corridor adjacent to Porcion 18, reptile exclusion fences around the drill pad location, and an interior least tern monitoring plan coordinated by the appropriate federal and state conservation agencies. Based on site surveys, federally listed species are not likely to be adversely affected by the proposed action provided these mitigation measures are followed.

5. Impacts to cultural resources shall be mitigated through avoidance of sites determined to be eligible for the National Register of Historic Places and implementation of a Memorandum of Agreement for mitigating impacts if avoidance is not viable. These measures shall be completed prior to BLM approval of the application for permit to drill, USIBWC issuance of a land use permit, and any development at the Porcion 18 drill site. Additionally, construction activity shall be monitored by a qualified archaeologist with full authority to terminate construction if cultural resources are likely to be impacted at the site.

6. Negligible impacts associated with land use and transportation will not require additional mitigation.

7. Negligible impacts associated with visual resources are mitigabie through properly placed night lighting, painting of the facility to blend with the surrounding terrain and vegetation, and alignment of the access road and utility corridor to limit the view of the facility from the shoreline.

Availability

The DEA is available for public review at the USIBWC Falcon Dam Field Office, Falcon Road, Falcon Heights, Texas 78545; and it has also been distributed to Federal, State, and local agencies and organizations that have been consulted and coordinated with in the preparation of the DEA. A limited number of copies are available to fill single copy requests at the above address. The USIBWC will not take final action on this DEA until the Draft Programmatic Environmental Assessment is complete and final action is declared on it.

Dated: February 10, 1997.

Randall A. McMains,

Attorney.

[FR Doc. 97–4009 Filed 2–18–97; 8:45 am]

BILLING CODE 4710–03–M

Finding of No Significant Impact

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Based on a Draft Programmatic Environmental Assessment (PEA) prepared by TransTexas Gas Corporation (TransTexas), Houston, Texas, to address the potential adverse environmental impacts of oil and natural gas development within the Falcon Dam and Reservoir Project, Starr and Zapata counties, Texas; the United States Section, international Boundary and Water Commission, United States and Mexico (USIBWC), finds that the proposed action to grant exceptions to the USIBWC policy of prohibiting development within the reservoir is not a major federal action that would have a significant adverse effect on the quality of the human environment. Therefore, pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Final Regulations (40 CFR Parts 1500 through 1508); and the USIBWC's Operational Procedures for Implementing Section 102 of NEPA, published in the **Federal Register** September 2, 1981 (46FR

gives notice that an environmental impact statement will not be prepared for the proposed action.

ADDRESSES: Mr. Yusuf E. Farran, Division Engineer, Environmental Management Division, United States Section, International Boundary and Water Commission, United States and Mexico, 4171 North Mesa Street, C–310, El Paso, Texas 79902–1441. Telephone: 915/534–6704.

SUPPLEMENTARY INFORMATION: In January, 1996, TransTexas Gas Corporation (TransTexas) requested the United States Section, International Boundary and Water Commission, United States and Mexico (USIBWC), to grant them permission to install a drill pad site above the 307-foot mean sea level elevation on an island located within USIBWC real property below the 307-foot elevation traverse (the United States property line also called the "307-foot traverse") within the international Falcon Reservoir for the purpose of drilling eight natural gas wells. The construction of the drill pad on an island within the reservoir is desirable, due mainly to technical constraints associated with current directional drilling, to enable the full development of private and public gas reserves in the western portion of TransTexas' lease area. The gas lease area is situated entirely under Falcon Reservoir with very limited land available to reach the required bottom hole locations.

The USIBWC began coordination with the United States Bureau of Land Management (BLM), the federal authorizing agency which would approve an application by TransTexas for a permit to drill for federal reserves within the reservoir. BLM indicated it would not approve the application for permit to drill until the USIBWC determined whether it would waive the stipulation that prohibits oil and natural gas development at the site below the 307-foot traverse. Both agencies agreed that due to a lack of both funding resources and human resources for an agency produced document and an immediate need by TransTexas to gain access to private and public reserves within the reservoir, a third party environmental analysis would be acceptable for determination of the significance of the impacts of the federal action of the USIBWC granting exceptions to its policy of prohibiting any mineral exploration or development within its property at Falcon Reservoir. The USIBWC approved a scope of work submitted by TransTexas and requested it to develop, to the satisfaction of the USIBWC, a programmatic environmental assessment that addresses the USIBWC's granting exceptions to its policy of prohibiting any mineral exploration or development upon USIBWC real property within Falcon Reservoir.

Proposed Action

The action proposed is for the USIBWC to grant exceptions on a case-by-case basis to its policy of prohibiting oil and gas development upon USIBWC real property under Falcon Reservoir. Stipulation Number 1 is found in the special stipulations attached to and made a part of all BLM oil and gas leases for the Falcon Dam and Reservoir Project, and it reads as follows:

> The lessee understands and agrees that a negative easement is imposed in and upon said land to prohibit the drilling or deepening of any well for the purpose of producing oil and/or gas and other minerals provided, however, that exploration and development of oil and/or gas and other minerals under said land will be permitted by directional drilling from locations off the said land and above the 307-foot elevation traverse.

The proposed action would alter USIBWC policy so that limited exceptions may be granted in appropriate cases, allowing some oil and gas exploration and development on USIBWC real property located below the 307-foot traverse property line at Falcon Reservoir but above the 307-foot mean sea level elevation.

Alternatives Considered

Two alternatives were considered in the Draft Programmatic Environmental Assessment (PEA):

The Proposed Action Alternative is for the USIBWC to grant exceptions to its policy of prohibiting oil and natural gas development upon USIBWC real property under Falcon Reservoir on a case-by-case basis. If the USIBWC makes the determination to allow exceptions to this prohibition, BLM could then approve applications for permits to drill for oil and gas reserves located within the reservoir. Separate environmental assessments would then be prepared by project proponents tiered from this PEA to address the specific impacts of drilling for oil and natural gas at specific locations within the reservoir, and the USIBWC would consider issuing land use permits to ensure that such works do not interfere with the operation and maintenance of the Falcon Dam and Reservoir Project. A site specific environmental assessment prepared by TransTexas that addresses the impacts of natural gas development upon USIBWC real property under Falcon Reservoir is concurrently being processed under separate notice in the **Federal Register**. Although the site specific document is prepared and processed simultaneously with this Draft Programmatic Environmental Assessment for potential oil and natural gas development on USIBWC real property located below the 307-foot traverse property line at Falcon Reservoir, no final action will be taken on the site specific document until the PEA is complete and final action is declared on it.

The No Action Alternative is for the USIBWC to not grant any exceptions to its policy of prohibiting oil and natural gas development upon USIBWC real property under Falcon Reservoir. BLM would only be able to approve applications for permits to drill from sites above the 307-foot traverse property line; hence outside the reservoir. Project proponents would need to consider use of alternative means to recover private and public natural gas reserves within the reservoir. Since no oil and natural gas development would be done within the Falcon Reservoir, the USIBWC would not issue land use permits to project proponents. The no action alternative would result in no development below the 307-foot traverse for private and public reserves in the reservoir; avoidance of any potential impacts associated with the proposed action; the loss of tax and royalty revenues to the local, state and federal governments; the loss of royalty revenues to mineral owners; and the loss of an otherwise recoverable clean energy source.

Programmatic Environmental Assessment

The USIBWC has coordinated with BLM, the agency responsible for permitting federal reserves within the reservoir, and TransTexas in the development of the Draft Programmatic Environmental Assessment (PEA). The PEA describes the historical and existing development of oil and natural gas in the general vicinity (but above the 307-foot traverse property line) of the reservoir area and the planned oil and natural gas activities within or adjacent to potential drill sites on the United States side of the international reservoir in the reasonably foreseeable future. It analyzes the general impacts expected from such development in the foreseeable future and the cumulative environmental impacts of oil and natural gas development within Falcon Reservoir. The Draft PEA discusses mitigation measures to minimize degradation of environmental resources within and adjacent to the reservoir.

The PEA is envisioned to serve as a baseline environmental document from which other drilling proponents and permit applicants will be able to tier site specific environmental assessments for similar activities within the reservoir area. The USIBWC reviewed and approved the completed Draft PEA from TransTexas for proposed oil and gas development within the reservoir, and it is currently available for review and comment.

Finding of the Programmatic Environmental Assessment

The PEA finds that the proposed action for the USIBWC to grant exceptions to its policy of prohibiting oil and natural gas development upon USIBWC real property below the 307-foot traverse property line at Falcon Reservoir but above the 307-foot mean sea level elevation does not constitute a major federal action which would cause a significant local, regional, or national adverse impact on the environment based on the following facts:

1. Construction, drilling and production activities at potential well pad sites will have no significant adverse impacts on air quality. Standard construction practices to control fugitive dust would be utilized.

2. The slight impacts from construction, drilling and production activities associated with noise at potential well pad sites are fully mitigable through vegetative buffer zones, equipment noise suppressors, and avoidance of critical wildlife use periods.

3. Negligible impacts to geologic and water resources are mitigable through the use of erosion and sediment control measures and devices, secondary containment measures, best management practices during all phases of site development, and use of site specific spill prevention control and countermeasure plans.

4. Biological resources will be protected from impacts by total avoidance of clearing within heavy brush corridors, animal exclusion fences around drill pad locations, site specific surveys for threatened and endangered plants and animals, and monitoring plans coordinated by the appropriate federal and state conservation agencies.

5. Impacts to cultural resources can be mitigated through avoidance of sites determined to be eligible for the National Register of Historic Places and if avoidance is not viable, implementation of a Memorandum of Agreement for mitigating impacts will be necessary prior to BLM approval of applications for permits to drill, USIBWC issuance of land use permits, and any development at potential drill sites.

6. Negligible impacts associated with land use and transportation will not require additional mitigation.

7. Negligible impacts associated with visual resources are mitigable through properly placed night lighting, unobtrusive painting of facilities, and alignment of access road and utility corridors for limited views of individual project facilities.

On the basis of the TransTexas Draft PEA, the USIBWC has determined that an environmental impact statement is not required for the USIBWC to grant exceptions to its policy of prohibiting oil and natural gas development upon USIBWC real property under Falcon Reservoir and hereby provides notice of a finding of no significant impact (FONSI). An environmental impact statement will not be prepared unless additional information which may affect this decision is brought to our attention within thirty (30) days of the date of this Notice. Copies of the Draft PEA are available for public review at the USIBWC Falcon Dam Field Office, Falcon Road, Falcon Heights, Texas 78545, and have been distributed to Federal, State, and local agencies and organizations that have been consulted and coordinated within the preparation of the PEA. A limited number of copies are available to fill single copy requests at the above address.

Dated: February 10, 1997.

Randall A. McMains,

Attorney.

[FR Doc. 97–4018 Filed 2–18–97; 8:45 am]

BILLING CODE 4710–03–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–362]

Southern California Edison Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–15, issued to Southern California Edison Company (the licensee), for operation of the San Onofre Nuclear Generating Station (SONGS), Unit No. 3 located in San Diego County, California.

The proposed amendment would defer implementation of Surveillance Requirement (SR) 3.1.5.4 of Technical Specification 3.1.5, "CEA Alignment" until no later than the next SONGS Unit 3 refueling outage (currently scheduled to begin on April 12, 1997).

The exigent circumstances for this amendment request exist due to the recent discovery of the inappropriate crediting of previous test results to this post-Technical Specification Improvement Program SR.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change would defer the implementation of Surveillance Requirement (SR) 3.1.5.4 of Technical Specification (TS) 3.1.5 until the Unit 3, Cycle 9 refueling outage.

Operation of the facility would remain unchanged as a result of the proposed changes and no assumptions or results of any accident analyses are affected. Based on testing, operating experience, and the inherent reliability of the system, Edison concludes the Reed Switch Position Transmitters have demonstrated their capability to perform their specified safety function and are operable. Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change would defer the implementation of Surveillance Requirement (SR) SR 3.1.5.4 of Technical Specification (TS) 3.1.5 until the Unit 3, Cycle 9 refueling outage.

Operation of the facility would remain unchanged as a result of the proposed change. The Reed Switch Position Transmitters cannot initiate an accident.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change would defer the implementation of Surveillance Requirement (SR) SR 3.1.5.4 of Technical Specification (TS) 3.1.5 until the Unit 3, Cycle 9 refueling outage. The Reed Switch Position Transmitters are concluded to be able to perform their safety function and are operable. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, MD, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 21, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room located at the Main Library, University of California, P.O. Box 19557, Irvine, CA 92713. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing.

The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may

be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248-5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to William H. Bateman, Director, Project Directorate IV–2: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to T.E. Oubre, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, CA 91770, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 7, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room, located at the Main Library, University of California, P.O. Box 19557, Irvine, CA 92713.

Dated at Rockville, Maryland, this 12th day of February 1997.

For the Nuclear Regulatory Commission.

Mel B. Fields,

Project Manager, Project Directorate IV–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–4055 Filed 2–18–97; 8:45 am]

BILLING CODE 7590–01–P

The Lobbying Disclosure Act of 1995: Covered Officials

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: The Nuclear Regulatory Commission (NRC) is adding to its list of "covered officials", for purposes of the Lobbying Disclosure Act of 1995, the NRC's Chief Information Officer.

SUPPLEMENTARY INFORMATION:

Background

In late 1995, President Clinton signed into law the Lobbying Disclosure Act of 1995 (the "Act"), which requires some individuals and entities who lobby "covered" Federal officials to register with Congress and to file semiannual reports describing their lobbying activities.

For purposes of the Act, the NRC had determined that "covered" officials at the NRC were limited to Members of the Commission and their personal staffs, the Inspector General, the Executive Director for Operations, the General Counsel, and the Directors of the Offices of Nuclear Reactor Regulation, Nuclear Material Safety and Safeguards and Nuclear Regulatory Research. See **Federal Register** of February 1, 1996 (61 FR 3737).

As a result of the enactment of the Information Technology Management Reform Act of 1996, the position of Chief Information Officer (CIO) was created for 22 named executive-branch agencies, including the NRC. The NRC has determined that the NRC's CIO is a "covered" official for purposes of the Act. Therefore, the NRC is adding the NRC's CIO to its list of "covered officials".

FOR FURTHER INFORMATION CONTACT: Pamela Urban, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001, telephone (301) 415–1619.

Dated at Rockville, Maryland, this 11th day of February, 1997.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 97–4057 Filed 2–18–97; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on March 5, 1997, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and matters the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, March 5, 1997—2:00 p.m. until 4:00 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. It may also discuss the qualifications of candidates for appointment to the ACRS. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Date: February 12, 1997.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 97–4056 Filed 2–18–97; 8:45 am]

BILLING CODE 7590–01–P

Sunshine Act Meeting

DATE: Weeks of February 17, 24, March 3, and 10, 1997.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of February 17

Tuesday, February 18

1:00 p.m.
Briefing on BPR Project on Redesigned Materials Licensing Process (Public Meeting)
(Contact: Don Cool, 301–415–7197)
2:30 p.m.
Briefing on Analysis of Quantifying Plant Watch List Indicators (Arthur Andersen Study) (Public Meeting)
(Contact: Rick Barrett, 301–415–7482)
4:00 p.m.
Discussion of Interagency Issues (Closed—Ex. 9)

Wednesday, February 19

2:00 p.m.
Briefing on Millstone and Marine Yankee Lessons Learned (Public Meeting)
(Contact: Steve Stein, 301–415–1296)
3:30 p.m.
Affirmation Session (Public Meeting) (if needed)

Thursday, February 20

2:00 p.m.
Briefing on EEO Program (Public Meeting)
(Contact: Ed Tucker, 301–415–7382)

Week of February 24—Tentative

Wednesday, February 26

11:30 a.m.
Affirmation Session (Public Meeting) (if needed)

Week of March 3—Tentative

There are no meetings scheduled for the Week of March 3.

Week of March 10—Tentative

Monday, March 10—Tentative

2:30 p.m.
Briefing on Implementation of Maintenance Rule, Revised Regulatory Guide, and Consequences (Public Meeting)

Thrusday, March 13—Tentative

11:30 p.m.
Affirmation Session (Public Meeting) (if needed)

The schedule for Commission Meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

* * * * *

ADDITIONAL INFORMATION:

By a vote of 5–0 on February 11, the Commission determined pursuant to U.S.C. 552b(e) and 10 CFR Sec. 9.107(a) of the Commission's rules that "Meeting with Republic of Korea National Assembly Delegation (Closed—Ex. 9)" be held on February 11, and on less than one week's notice to the public.

By a vote of 4–0 on February 13, the Commission determined pursuant to U.S.C. 552b(e) and 10 CFR Sec. 9.107(a) of the Commission's rules that "Affirmation of Louisiana Energy Services (Claiborne Enrichment Center); Atomic Safety and Licensing Board Partial Initial Decision (Resolving Contentions J.4, K, and Q), LBP–96–25" be held on February 13, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh.@nrc.gov or dkw@nrc.gov.

* * * * *

Dated: February 14, 1997.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 97–4218 Filed 2–14–97; 2:05 pm]

BILLING CODE 7590–01–M

PRESIDENTIAL ADVISORY COMMITTEE ON GULF WAR VETERANS' ILLNESSES

Meeting

AGENCY: Presidential Advisory Committee on Gulf War Veterans' Illnesses.

ACTION: Notice of open meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act, this notice is hereby given to announce an open meeting of the Presidential Advisory Committee on Gulf War Veterans' Illnesses.

DATES: March 18, 1997, 8:30 a.m.-3:30 p.m.

PLACE: Wyndham Hotel, 215 W. South Temple, Salt Lake City, UT 84101.

SUPPLEMENTARY INFORMATION: The President established the Presidential Advisory Committee on Gulf War Veterans' Illnesses by Executive Order 12961, May 26, 1995, and extended its tenure by Executive Order 13034, January 30, 1997. The purpose of this committee is to review and provide recommendations on the government's investigation of possible chemical and biological weapons exposure incidents during the Gulf War and on implementation of the Committee's prior recommendations. The committee reports to the President through the Secretary of Defense, and Secretary of Health and Human Services, and the Secretary of Veterans Affairs. The committee members have expertise relevant to the functions of the committee and are appointed by the President from non-Federal sectors.

Tentative Agenda

Tuesday, March 18, 1997

8:30 a.m. Call to order and opening remarks
8:35 a.m. Committee and staff discussion of charge
8:50 a.m. Public comment
10:00 a.m. Break
10:15 a.m. Committee and staff discussion: Implementation plan for Final Report recommendations
10:30 a.m. Briefings: Overview of ongoing and new DOD activities
11:10 a.m. Briefings: Status of DOD's chemical and biological warfare agent case investigations
11:50 a.m. Briefings: Activities related to Khamisiyah
12:30 p.m. Lunch
1:30 p.m. Briefings: Activities related to Khamisiyah (cont.)
3:15 p.m. Committee and staff discussion: Next steps
3:30 p.m. Meeting adjourned

A final agenda will be available at the meeting.

Public Participation

The meeting is open to the public. Members of the public who wish to make oral statements should contact the Advisory Committee at the address or telephone number listed below at least five business days prior to the meeting. Reasonable provisions will be made to include on the agenda presentations from individuals who have not yet had an opportunity to address the Advisory Committee. Priority will be given to Gulf War veterans whose accounts of firsthand experience with chemical and biological warfare agent detections previously have not been conveyed to the Committee. The Advisory Committee Chair is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. People who wish to file written statements with the Advisory Committee may do so at any time.

FOR FURTHER INFORMATION CONTACT: Michael E. Kowalok, Presidential Advisory Committee on Gulf War Veterans' Illnesses, 1411 K Street, NW., suite 1000, Washington, DC 20005, Telephone: (202) 761–0066, Fax: (202) 761–0310.

Dated: February 13, 1997.

C.A. Bock,

Federal Register Liaison Officer, Presidential Advisory Committee on Gulf War Veterans' Illnesses.

[FR Doc. 97–4043 Filed 2–18–97; 8:45 am]

BILLING CODE 3610–76–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Rel. No. 22507; 812–10334]

WEBS Index Fund, Inc., et al; Notice of Application

February 12, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption Under the Investment Company Act of 1940 ("Act").

APPLICANTS: WEBS Index Fund, Inc. (the "Fund")[1] and Barclays Global Fund Advisors (the "Adviser")[2].

RELEVANT ACT SECTIONS: Order requested under section 17(d) of the Act and rule 17d–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order that would permit the series of the fund to pool some or all of their uninvested cash balances and the cash collateral they receive in connection with securities lending activities ("Cash Collateral") in one or more joint accounts ("Joint Accounts") that invest in certain short-term high quality debt securities ("Short-Term Investments")

FILING DATES: The application was filed on September 13, 1996, and amended on December 27, 1996. Applicants have agreed to file an additional amendment during the notice period, the substance of which is incorporated herein.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 10, 1997 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: WEBS Index Fund, Inc., c/o PFPC, Inc., 400 Bellevue Parkway, Wilmington, Delaware 19809; BZW Barclays Global Fund Advisors, 45 Fremont Street, San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Counsel, at (202) 942–0583, or Mary Kay Ferch, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representatives

1. The Fund, a Maryland corporation, is an open-end management investment company that currently offers seventeen series (the "Series").[3] The Adviser provides investment advisory services for all of the Series.

2. The investment objective of each of the Series is to provide investment results that correspond generally to the aggregate price and yield performance of publicly traded securities in particular markets, as represented by foreign equity securities indexes compiled by Morgan Stanley Capital International (each, an "MSCI Index"). Each Series seeks to remain fully invested in a pool of equity securities the performance of which approximates that of the relevant MSCI Index. In addition, each Series may lend its portfolio securities to approved brokers, dealers, and other financial institutions. The Custodian serves as the lending agent of the Fund and, in that capacity, will share with the respective Series any net income earned on invested Cash Collateral in the proportion agreed between the Custodian and the Series from time to time.[4]

3. Subject to guidelines adopted by the board of directors of the Fund (the "Board") and such additional limits as may be established by the Adviser, each Series may invest uncommitted cash balances and Cash Collateral temporarily in the following Short-Term Investments: (a) Obligations of the U.S. Government and its agencies and instrumentalities; (b) commercial paper rated Prime-1 by Moody's Investors Services, Inc. or A–1 by Standard & Poor's Corporation ("Commercial Paper"); (c) bank certificates of deposit and bankers' acceptances; (d) repurchase agreements collateralized by the foregoing securities;[5] (e) participation interests in such securities; and (f) shares of unaffiliated money market funds (subject to applicable limits under the Act). The maximum possible maturity of each type of Short-Term Investment (other than shares of money market funds) will be 397 calendar days.

4. Applicants believe that the separate purchase of Short-Term Investments by each Series could result in certain inefficiencies, a limitation on the return that the Series could otherwise achieve, and increased costs. Accordingly, applicants propose to deposit the Series' available cash balances in Joint Accounts and to invest the daily balance of the Joint Accounts in Short-Term Investments. Applicants also propose to deposit the Series' Cash Collateral in a separate Joint Account for investment in Short-Term Investments selected by the Adviser. The sole purpose of these Joint Accounts would be to provide a convenient means of aggregating what otherwise would be daily transactions for some or all of the Series to manage their daily account balances.

5. The Adviser will not participate monetarily in the Joint Accounts, nor will it receive an additional fee for the administration of the Accounts. The Adviser will be responsible for directing the investment of funds held by the Joint Accounts, establishing accounting and control procedures, operating the Joint Accounts in accordance with established procedures, and ensuring the fair treatment of each Series. The

[1] The Fund changed its name from foreign Fund, Inc. on January 2, 1997.

[2] The Adviser changed its name from BZW Barclays Global Fund Advisors on October 15, 1996.

[3] Shares of the Series ("World Equity Benchmark Shares" or "WEBS") are issued only in large aggregations of WEBS known as "Creation Units." WEBS are neither offered nor redeemed by the Series in less than Creation Unit aggregations, but WEBS may be bought or sold in smaller aggregations in the secondary market on the American Stock Exchange, were WEBS are listed and traded. Additional Series are expected to be added from time to time, and would be subject to the requested order.

[4] The Custodian is not an affiliated person of either the Fund or the Adviser.

[5] The Series will engage in hold-in-custody repurchase agreements (*i.e.*, repurchase agreements where the counterpart or one of its affiliated persons may have possession of, or control over, the collateral subject to the agreement) only when cash is received very late in the business day and otherwise would be unavailable for investment.

Adviser will manage investments made with the proceeds of the Joint Accounts in essentially the same manner as if it had made such investments on an individual basis for each Series.

6. All purchases through the Joint Accounts will be subject to the same systems and standards for acquiring investments as are applicable to the individual Series. In addition, all purchases through the Joint Accounts will comply with all present and future SEC staff positions relating to the investment of cash collateral received in connection with securities lending activities.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d-1 thereunder prohibit an affiliated person of a registered investment company, or an affiliated person of such a person, from participating as a principal in any joint enterprise or arrangement in which such investment company is a participant. Each Series may be deemed an affiliated person of each other Series under the definition set forth in section 2(a)(3) of the Act. Each Series, by participating in the proposed Joint Accounts, and the Adviser, by managing the proposed Joint Accounts, could be deemed to be joint participants in a transaction within the meaning of section 17(d) of the Act. In addition, the proposed Joint Accounts could be deemed to be joint arrangements within the meaning of rule 17d-1.

2. Applicants assert that the proposed method of operating the Joint Accounts would not result in any conflicts of interest among any of the Series, or between a Series and the Adviser. Each Series would participate in the Joint Accounts on the same basis as every other Series that participates therein and in conformity with its investment objective and fundamental policies and restrictions. Applicants also have determined that the operation of the Joint Accounts would be free of any inherent bias favoring one Series over another and should eliminate bias due to size or lack thereof in any Short-Term Investment transaction, and that the anticipated benefits flowing to each Series would fall within an acceptable range of fairness.

3. Applicants argue that, although the Adviser and the Custodian would gain some benefit through administrative convenience and some possible reduction in clerical costs, the primary beneficiaries would be the Series and their shareholders, because the Joint Accounts would provide a more efficient and productive way of administering their daily investment transactions. Specifically, applicants believe that the proposed Joint Accounts would have the following benefits for the Series: (a) The Series collectively would save fees and expenses by reducing the number of transactions relative to the number of transactions in which they would engage individually; (b) the Series may earn a higher rate of return on Short-Term Investments through the Joint Accounts relative to the returns they could earn individually; (c) the Series may realize certain administrative efficiencies and a reduction of the potential for errors by reducing the number of trade tickets and cash wires that must be processed by the sellers of Short-Term Investments, the Custodian, and the Adviser's trading departments; (d) by participating in larger repurchase agreements, the Series may benefit from an institution's willingness to increase the amount covered by such agreement near the end of the day; and (e) the Series may be able to investment in a greater variety of instruments and thereby obtain more favorable yield as market conditions change.

4. For the reasons set forth above, applicants believe that granting the requested order would be consistent with the provisions, policies, and purposes of the Act, and that the Series' participation in the proposed Joint Accounts would not be on a basis different from or less advantageous than that of any other participant therein. Accordingly, applicants submit that the proposed transactions meet the criteria for issuance of an order under section 17(d) and rule 17d–1 thereunder.

Applicants' Conditions

Applicants agree that any order issued by the SEC will be subject to the following conditions:

1. The Joint Accounts will be established on behalf of the Series with the Custodian as one or more separate cash accounts into which the Series may deposit daily all or a portion of their uninvested cash balances and Cash Collateral. The Joint Accounts will not be distinguishable from any other accounts maintained by a Series with the Custodian except that monies from the various Series will be deposited in the Joint Accounts on a commingled basis. The Joint Accounts will not have any separate existence with indicia of a separate legal entity. The sole function of the Joint Accounts will be to provide a convenient and productive way of aggregating individual transactions that would otherwise require daily management and investment by each Series of its uninvested cash balances and Cash Collateral.

2. Cash and Cash Collateral in the Joint Accounts will be invested in one or more of the following Short-Term Investments, as determined by the Adviser: (a) Obligations of the U.S. Government and its agencies and instrumentalities; (b) Commercial Paper; (c) bank certificates of deposit and bankers' acceptances; (d) repurchase agreements "collateralized fully" (as that tern is defined in rule 2a–7 under the Act) by the foregoing securities; (e) participation interests in such securities; and (f) shares of money market funds that are not affiliated persons of applicants (subject to applicable limits under the Act).

3. All assets held in the Joint Accounts will be valued on an amortized cost basis to the extent permitted by applicable SEC releases, rules, or orders.

4. In order to ensure that there will be no opportunity for one Series to use any part of the balance of the Joint Accounts credited to another Series, no Series will be allowed to create a negative balance in any of the Joint Accounts for any reason, although each Series will be permitted to draw down its *pro rata* share of the entire balance at any time. Each Series' decision to invest through the Joint Accounts will be solely at the option of the Series and the Adviser, and no Series will be obligated to invest through, or to maintain any minimum balance in, any of the Joint Accounts. In addition, each Series will retain the sole rights of ownership over any of its assets invested in the Joint Accounts, including interest payable on such assets.

5. Each Series will participate in the income earned or accrued in each Joint Account in which it is invested, including all investments held by such Joint Account, on the basis of the percentage of the total amount in such Joint Account on any day represented by its share of such Joint Account.

6. The Adviser will (a) administer, manage and invest, or cause any investment of, the uninvested cash balances, and (b) direct, supervise, and monitor the investment of Cash Collateral, in the Joint Accounts in accordance with and as part of its duties under the existing or any future investment advisory contracts with the Fund, and will not collect any additional or separate fee for the administration of the Joint Accounts.

7. The administration of the Joint Accounts will be within the fidelity bond coverage required by section 17(g) of the Act and rule 17g–1 thereunder.

8. The Board will adopt procedures pursuant to which the Joint Accounts will operate, which will be reasonable designed to provide that the requirements of the application will be met. In addition, the Board will evaluate each Joint Account arrangement annually and will authorize continued participation in such Joint Account only if it determines that there is a reasonable likelihood that such continued participation will benefit each Series and its shareholders.

9. Each Series' investment in a Joint Account will be documented daily on the books of the Series and the books of the Custodian.

10. Short-Term Investments held in a Joint Account generally will not be sold prior to maturity unless: (a) The Adviser believes that the investment no longer presents minimal credit risks; (b) the investment no longer satisfies the investment criteria of the Series because of a credit downgrading or otherwise; or (c) in the case of a repurchase agreement, the counterparty defaults. The Adviser may, however, sell any Short-Term Investment (or any fractional portion thereof) on behalf of some or all Series prior to maturity of the investment if the cost of such transactions will be borne soley by the selling Series, and the transaction will not adversely affect the other Series. Each Series will be deemed to have consented to such sale and partition of the investments in the Joint Account.

11. Short-Term Investments held through a Joint Account with a remaining maturity of more than seven days will be considered illiquid and subject to the restriction that the Series may not invest more than 15% (or such other percentage as set forth by the SEC from time to time) of its assets in illiquid securities, if the Series cannot sell its fractional interest in the investment in such Joint Account pursuant to the requirements described in the preceding condition.

12. All joint repurchase transactions will be effected in accordance with Investment Company Act Release No. 13005 (February 2, 1983) and with other existing and future positions taken by the SEC or its staff by rule, interpretive release, no-action letter, any release adopting any new rule, or any release adopting any amendments to any existing rule.

13. Any investment made through a Joint Account will satisfy the investment policies or criteria of all Series participating in that investment.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4047 Filed 2–18–97; 8:45 am]

BILLING CODE 8010–01–M

Sunshine Act; Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [62 FR 6288, February 11, 1997].

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: February 11, 1997.

CHANGE IN THE MEETING: Deletion/ Rescheduling.

The following item, scheduled for consideration on Friday, February 14, 1997, has been rescheduled for consideration on Tuesday, February 18, 1997, following the open meeting, at 10:00 a.m.:

Regulatory matter bearing enforcement implications.

Commissioner Wallman, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: February 14, 1997.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–4242 Filed 2–14–97; 3:46 pm]

BILLING CODE 8010–01–M

[Release No. 34–38266; File No. SR–Amex–97–08]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the American Stock Exchange, Inc. Relating to a Pilot Program for Execution of Odd-Lot Orders

February 11, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 10, 1997, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend for three months its existing pilot program under Amex Rule 205 requiring execution of odd-lot market orders at the prevailing Amex quote with no differential charge.[2]

The text of the proposed rule change is available for the Office of the Secretary, the Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission previously approved, on a pilot basis extending to February 10, 1997, amendments to Amex Rule 205 to require execution of odd-lot market orders at the Amex quote with no odd-lot differential charged.[3] The procedures were not initially approved by the Commission in 1989[4] and were most recently extended in December 1996.[5]

[1] 15 U.S.C. 78s(b)(1).

[2] The Exchange seeks accelerated approval of the proposed rule change in order to allow the pilot program, which expires on February 10, 1997, to continue with interruption.

[3] Securities Exchange Act Release No. 38024 (Dec. 6, 1996), 61 FR 65623 (approving File No. SR–Amex–96–47).

[4] Securities Exchange Act Release No. 26445 (Jan. 10, 1989), 54 FR 2248 (approving File No. SR–Amex–88–23).

[5] Securities Exchange Act Release No. 38024 (Dec. 6, 1996), 61 FR 65623 (approving File No. SR–Amex–96–47). Prior to that release, the Commission had extended this pilot program thirteen times. *See* Securities Exchange Act Release Nos. 37462 (July 19, 1996), 61 FR 39170 (approving File No. SR–Amex–96–25); 36821 (Feb. 8, 1996), 61 FR 6050 (approving File No. SR–Amex–96–06); 35344 (Feb. 8, 1995), 60 FR 8430 (approving File No. SR–Amex–95–03); 34949 (Nov. 8, 1994), 59 FR 58863 (approving File No. SR–Amex–94–47); 34496 (Aug.

Continued

In approving prior extensions to the Exchange's odd-lot pilot program, the Commission has expressed interest in the feasibility of the Exchange utilizing the Intermarket Trading System ("ITS") best bid or offer, rather than the Amex bid or offer, for purposes of the Exchange's odd-lot pricing system. In File No. SR–Amex–95-03, requesting a further extension of the pilot program, the Exchange stated that it had determined to proceed with systems modifications to provide for execution of odd-lot market orders at the ITS best bid or offer.[6]

The Commission has approved amendments to Amex Rule 205 to accommodate the prospective modifications to the Exchange's odd-lot pricing system.[7] Specifically, amended Amex Rule 205 would provide that odd-lot market orders to buy or sell would be filled at the "adjusted ITS offer" or "adjusted ITS bid," respectively, which would be defined in Amex Rule 205, Commentary .04, as the lowest offer and highest bid disseminated by the Amex or by another ITS participant market.[8] Where quotation information is not available (*e.g.*, when quotation collection of dissemination facilities are inoperable) odd-lot market orders would be executed at the prevailing Amex bid or offer, or at a price deemed appropriate under prevailing market conditions. These procedures also will apply to odd-lot limit orders that were immediately executable based on the Amex quote at the time the order is received at the trading post or through Post Execution Reporting ("PER") system.

As the Exchange noted in SR–Amex–95–24, it will implement these amendments upon completion of the necessary systems enhancements by the Exchange and the Securities Information Automation Corporation ("SIAC"). Upon implementation of the amended rule, the Exchange will notify the Commission, as well as Exchange members and member organizations. In order to provide the additional time necessary to implement these systems enhancements, the Exchange proposes to extend the existing pilot program procedures under Amex Rule 205 for three months.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[9] of the Act in general and furthers the objectives of Section 6(b)(5)[10] and Section 11A(a)(1)[11] in particular in that it is designed to facilitate the economically efficient execution of odd-lot transactions and to improve the execution of customers' orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Also, copies of such filing will be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–97–08 and should be submitted by March 12, 1997.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the Exchange's proposal to extend its pilot program concerning the execution of odd-lot orders through May 12, 1997, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes the proposal is consistent with Section 6(b)(5) and Section 11A(a)(1) of the Act[12] because the Exchange's proposed pricing procedures are designed to facilitate transactions in odd-lot orders, to help ensure the economically efficient execution of these transactions, and, in general, to protect investors and the public interest. The Commission further believes the revised procedures should provide investors with more timely executions of their odd-lot orders and should produce execution prices that more accurately reflect market conditions than would otherwise be the case under the pre-pilot pricing procedures.[13]

Nevertheless, the Commission is concerned that the Exchange has been unable to implement the new odd-lot pricing procedures as planned. Under the current pilot pricing procedures, which only use the Amex quote in establishing the execution price, some odd-lot orders may not be receiving the best available price.[14] Therefore, the Commission expects the Exchange to complete the systems modifications upon which implementation of the new odd-lot pricing procedures depend before the May 12, 1997 deadline.[15] To ensure that the Commission is adequately informed of the Exchange's progress towards such completion, the Commission again requests that the Exchange provide the Commission with a status report regarding this project on the first day of every month until the necessary system modifications are completed. Finally, upon completion of the systems modifications, the Exchange should give advance notice to the Commission of the date when the new odd-lot pricing procedures are to be implemented.[16]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. This will permit the pilot program to continue on an uninterrupted basis while the Amex works to implement the new procedures. In addition, the procedures the Exchange proposes to continue using are identical to the procedures that were published previously in the **Federal Register** for the full comment period and were approved by the Commission.[17]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–Amex–97–08) is approved on a pilot basis for a three-month period ending on May 12, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4051 Filed 2–18–97; 8:45 am]

BILLING CODE 8010–01–M

8, 1994), 59 FR 41807 (approving File No. SR–Amex–94–28); 33584 (Feb. 7, 1994), 59 FR 6983 (Approving File No. SR–Amex–93–45); 32726 (Aug. 9, 1993), 58 FR 43394 (approving File No. SR–Amex–93–24); 31828 (Feb. 5, 1993), 59 FR 8434 (approving File No. SR–Amex–93–06); 30305 (Jan. 20, 1992), 57 FR 4653 (approving File No. SR–Amex–92–04); 29922 (Nov. 8, 1991), 56 FR 58409 (approving File No. SR–Amex–91–30); 29186 (May 19, 1991), 56 FR 22488 (approving File No. SR–Amex–91–09); 28758 (Jan. 10, 1991), 56 FR 1656 (approving File No. SR–Amex–90–39; and 27590 (Jan. 5, 1990), 55 FR 1123 (approving File No. SR–Amex–89–31).

[6] *See* Securities Exchange Act Release No. 35344 (Feb. 8, 1995), 60 FR 8430 (approving File No. SR–Amex–95–03).

[7] *See* Securities Exchange Act Release No. 36181 (Sept. 1, 1995), 60 FR 47194 (approving File No. SR–Amex–95–24).

[8] In order to protect against the inclusion of incorrect or stale quotations when determining the highest bid and lowest offer, Amex Rule 205, Commentary .04, contains seven criteria that must be met before a quotation in a stock from another ITS market center will be considered. If the ITS quotation fails to meet one of the specified criteria, the best bid or offer disseminated by the Exchange will be used. *See* Securities Exchange Act Release No. 36181 (Sept. 1, 1995), 60 FR 47194 (approving File No. SR–Amex–95–24).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78k–1(a)(1).

[12] 15 U.S.C. 78f(b)(5) and 78K–1(a)(1).

[13] Prior to the 1989 pilot program, odd-lot market orders were routed to a specialist and held in accumulation in the PER system or by the specialist until a round-lot execution in that security took place on the Exchange. Subsequent to the round-lot execution, the odd-lot order received the same price as the last Exchange round-lot transaction, plus or minus an odd-lot dealer differential. *See* Securities Exchange Act Release No. 26445 (Jan. 10, 1989), 54 FR 2248 (approving File No. SR–Amex–88–23).

[14] *See* Securities Exchange Act Release No. 35344 (Feb. 8, 1995), 60 FR 8430 (noting that the Exchange's current pricing formula does not include quotations from other markets).

[15] As noted above, the new procedures provide for odd-lot market orders to be filled at the "adjusted ITS best bid or offer."

[16] The Commission expects the Amex to implement the new odd-lot pricing procedures no later than the May 12, 1997 expiration of this pilot extension.

[17] See Securities Exchange Act Release No. 35344 (Feb. 8, 1995), 60 FR 8430; Securities Exchange Act Release No. 36821 (Feb. 8, 1996), 61 FR 6050; Securities Exchange Act Release No. 37462 (July 19, 1996), 61 FR 39170; and Securities Exchange Act Release No. 38024 (Dec. 6, 1996), 61 FR 65623 (approving File No. SR–Amex–96–47).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 C.F.R. 200.30–3(a)(12).

[Release No. 34–38274; International Series Release No. 1051; File No. SR–CBOE–97–04]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Adoption of Foreign Examination Modules

February 12, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] notice is hereby given that on January 24, 1997, the Chicago Board Options Exchange, Incorporated ("CBOE or Exchange") filed with Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The CBOE has designated this proposal as a noncontroversial rule change pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e)(6) of Rule 19b–4. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to adopt certain foreign examination modules for the United Kingdom ("U.K."), Canada and Japan, which would reduce duplicative qualification standards. The exams were developed by the New York Stock Exchange ("NYSE") and currently are in use by the NYSE and National Association of Securities Dealers ("NASD"). Exchange Rule 9.3 has certain requirements for registered representatives, one of which is passing various tests. The Exchange previously has recognized the requirement that all registered representative pass the Series 7 examination. The CBOE now is expanding the types of exams that may satisfy the Series 7 requirement.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to adopt foreign examination modules for the U.K., Canada and Japan. Exchange Rule 9.3 has certain requirements for registered representatives, one of which is passing various tests. The Exchange previously has recognized the requirement that all registered representatives pass the Series 7 examination. The CBOE now is expanding the types of exams that may satisfy the Series 7 requirement.

These foreign examination modules allow persons in good standing with the securities regulators of their respective countries to qualify as general securities registered representatives (Series 7 registrants) by successfully completing certain modified general securities representative examinations which have been developed by the NYSE.[2]

The purpose of the proposal is to reduce duplicative qualification standards that foreign registered representatives from the U.K., Canada and Japan encounter to qualify as a U.S. general securities registered representative, the equivalent of the Series 7 registration. A person who qualifies through one of these examinations may perform all of the functions permitted of a person who holds a Series 7 registration, with the exception of selling municipal securities. The examination modules for the U.K. (Series 17), Canada (Series 37/38) and Japan (Series 47) currently are in use by the NYSE and NASD.[3] At the present time, the CBOE has no rule which allows CBOE registration of a person who has passed the Series 17, Series 37/38 or series 47 versions of the modified general securities representative examinations.

The CBOE wishes to give U.K., Canadian, and Japanese registered representatives the same advantage they have at the NYSE and NASD by eliminating duplicative examinations. the CBOE believes that these examinations will benefit both the Exchange and the foreign representative affected by the proposal.

The Series 17 version, the Limited Registered Representative Examination,

[1] 15 U.S.C. 78s(b)(1).

[2] *See* Securities Exchange Act Release No. 27967 (May 1, 1990), 55 FR 19131 (May 8, 1990) (approving File No. SR–NYSE–89–22, Series 17); Securities Exchange Act Release No. 36629, International Series Release No. 909 (Dec. 21, 1995), 60 FR 67385, *corrected*, Securities Exchange Act Release No. 36629A, International Series Release No. 909A (Jan. 4, 1996), 61 FR 744 (Jan. 10, 1996) (approving File No. SR–NYSE–95–29, Series 37 and Series 38); Securities Exchange Act Release No. 36708, International Series Release No. 915 (Jan. 11, 1996), 61 FR 1808 (Jan. 23, 1996) (approving File No. SR–NYSE–95–36, Series 47).

[3] *See* Securities Exchange Act Release No. 27967 (May 1, 1990), 55 FR 19131 (May 8, 1990) (approving File No. SR–NYSE–89–22, Series 17); Securities Exchange Act Release No. 36629, International Series Release No. 909 (Dec. 21, 1995), 60 FR 67385, *corrected*, Securities Exchange Act Release No. 36629A, International Series Release No.909A (Jan 4, 1996), 61 FR 744 (Jan. 10, 1996) (approving File No. SR–NYSE–95–29, Series 37 and Series 38); Securities Exchange Act Release No. 36708, International Series Release No. 915 (Jan. 11, 1996), 61 FR 1808 (Jan 23, 1996) (approving File No. SR–NYSE–95–36, Series 47); *see also* Securities Exchange Act Release No. 36825 (Feb. 9, 1996), 61 FR 6052 (approving File No. SR–NASD–96–04, Series 37 and 38); Securities Exchange Act Release No. 37112 (April 12, 1996), 61 FR 17339 (approving File No. SR–NASD–96–13).

is for U.K. registrants who have successfully completed the basic exam of the U.K. and who are in good standing with The Securities Association ("TSA").[4] Essentially, the modified Series 7 Examination deletes those substantive sections of the Standard Series 7 which overlap with the TSA examination. The Series 17 is a ninety (90) question examination dealing with U.S. securities laws, regulations, sales practices and special products drawn from the standard Series 7 Examination.

The Series 37 version is for Canadian registrants who have successfully completed the basic core module of the Canadian Securities Institute program. the Series 38 version is for Canadian registrants who, in addition to having successfully completed the basic core module of the Canadian Securities Institute program, have also successfully completed the Canadian option and futures program. Both the Series 37 and 38 share topics and test questions with the parent Series 7 program but cover only subject matter that is not covered, or not covered in sufficient detail, on the Canadian qualification examination. The Series 37 has 90 questions and is 150 minutes in duration, while the Series 38, an abbreviated version of the series 37, has only 45 questions and is 75 minutes in duration. Forty-five questions pertaining to options from the series 37 were omitted from the Series 38.

To become registered with the Exchange, qualified Japanese registered representatives in good standing with the Japanese securities authorities would be required to obtain a passing score on the Series 37. As a subset of the Series 7, this 160 question and 240 minute long module is designed to test a Japanese registered representative's knowledge of U.S. securities law, markets investment products, and sales practices.

The statutory basis for these foreign examination modules lies in Section 6(c)(3)(B) of the Act. Under that section, it is the Exchange's responsibility to prescribe standards of training, experience, and competence for persons associated with Exchange members and member organizations. Pursuant to this statutory obligation, the Exchange has adopted examinations that are administered to establish that persons associated with Exchange members and member organizations have attained specified levels of competence and knowledge.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) does not become operative for thirty days from January 24, 1997, the date on which it was filed, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of this Act[5] and Rule 19b–4(e)(6)[6] thereunder. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the file number in the caption above and should be submitted by March 12, 1997.

For the Commission by the Division of market Regulation pursuant to the delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4048 Filed 2–18–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38271; File No. SR–DTC–96–23]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Relating to Revision of Fees

February 11, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 31, 1996, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change revises the fees charged to users who are not DTC participants for automated reports listing the positions of DTC participants in an issue.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

[4] TSA is a U.K. self-regulatory organization which regulates members of the U.K. exchanges and broker-dealer firms, and has rule making authority granted to it by the Securities and Investment Board.

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(e)(6).

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to revise the fees charged to users who are not DTC participants for automated reports listing the positions of DTC participants in an issue. The automated reports include the Weekly Report Series, which shows the daily closing balances during the week for each participant having a security credited to its DTC account; the Monthly Report Series, which shows the closing balance on the last business day of the month for each participant having a security credited to its DTC account; the Dividend Record Date Series, a quarterly report which shows the closing balance for each participant having a security credited to its DTC account; on a dividend record date; and the Special Request, which is available for any business day and shows each participant's closing balance in the issue on that day. DTC offers these reports to third parties (*e.g.*, trustees, issuers, attorneys representing issuers, and other attorneys when required by valid legal process) who are not participants at DTC. The revised fees for the automated reports became effective on January 1, 1997.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(D) of the Act[3] and the rules and regulations thereunder because it provides for the equitable allocation of reasonable dues, fees, and other charges among users of DTC's services.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in the furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments on the proposed rule change were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)[4] of the Act and pursuant to Rule 19b–4(e)(2)[5] promulgated thereunder in that the proposed rule change establishes or changes a due, fee, or other charge imposed by DTC. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–96–23 and should be submitted by March 12, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4052 Filed 2–18–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38278; File No. SR–DTC–96–25]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to an Amendment to DTC's By-Laws

February 11, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 31, 1996, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends DTC's by-laws to authorize DTC's Board of Directors to modify its internal management structure.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend DTC's by-laws to authorize DTC's Board of Directors to modify its internal management structure. In particular, DTC proposes to amend Article III of its by-laws to authorize DTC's Board of Directors to designate any one or more of DTC's Vice Presidents as Senior Vice President. This is in addition to the Board of Directors' current authority to designate any one or more of DTC's Vice Presidents as Executive Vice President or Senior Executive Vice President and to designate a Senior Executive Vice President as DTC's Chief Operating Officer.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[3] and the rules and regulations thereunder because it makes administrative changes to DTC's by-laws so that they coincide with DTC's new internal management structure.

[3] 15 U.S.C. 78q–1.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(e)(2).

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] 15 U.S.C. 78q–1.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have an impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments on the proposed rule change were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)[4] of the Act and pursuant to Rule 19b–4(e)(3)[5] promulgated thereunder in that the proposed rule change is concerned solely with the administration of DTC. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–96–25 and should be submitted by March 12, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4053 Filed 2–18–97; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78s(b)(3)(A)(iii).

[5] 17 CFR 240.19b–4(e)(3).

[6] 17 CFR 200.30–3(a)(12).

[Release No. 34–38267; File No. SR–NYSE–96–33]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Execution of Odd-Lot Orders

February 11, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 25, 1996, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of an amendment to Exchange Rule 124 with respect to the manner in which odd-lot market orders are priced for execution when quotation information in a stock is not available.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, odd-lot market orders are executed in the odd-lot system against the specialist in that stock at a price based on the "best pricing quote." This is either the NYSE quote or the best quote from another ITS market center. (A buy odd-lot market order is executed at the offer price, and a sell odd-lot market order is executed at the bid price.) However, in situations where the quote for a stock does not qualify as a valid quote, either because it is designated as a non-firm quote, or it fails a system validation check because it exceeds certain parameters, the current procedure prices odd-lot executions using the last sale price in the round lot market.[2] The Exchange believes, however, that this may not reflect the current market for the stock, since the quote condition (*i.e.* either non-firm or a gapped quote) suggests strongly that the market is likely to move away from that last price. In these situations, the Exchange believes the current procedure may disadvantage customers or the specialist.

The NYSE proposes that, when odd-lot market orders are entered in a situation where a quote is not available, designated non-firm, or where the spread in a quote or the difference between the quote and the last round lot sale exceeds odd-lot system validation guidelines,[3] that the next sale or next valid quote on the NYSE be used to price odd-lot market orders, rather than the last sale price. If the next quote is not firm, the next sale would be used to execute quote priced market orders. The Exchange believes this would provide more appropriate pricing of odd-lot orders as it would reflect actual round-lot market prices at the time the odd-lot orders are executed. The Exchange further believes investors and specialists would benefit from this increased pricing accuracy.

2. Statutory Basis

The Exchange believes the proposed rule change is designed to provide more efficient executions of standard off-lot market orders. In addition, the Exchange believes implementation of the proposed pricing procedures is consistent with the provisions of Section 6(b) (5) of the Act which, among other things, requires that an exchange have rules that are designed to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.[4]

[1] 15 U.S.C. 78s(b)(1).

[2] See NYSE Rule 124.60 (detailing the circumstances when the ITS best bid or offer will not be utilized).

[3] These uncodified guidelines currently provide for the following valid spread ranges:

Common stock: for prices less than or equal to $50, the valid spread is 1 point; for prices between $50 1/64 and $100, the valid spread is 1 3/4 points; for prices greater than $100, the valid spread is 2 1/2 points.

Preferred stock: for prices less than or equal to $50, the valid spread is 2 points; for prices between 50 1/64 and 100, the valid spread is 2 1/4 points; for prices greater than $100, the valid spread is 2 1/2 points.

Spread between quote and last sale must not exceed: prices less than or equal to $10, the valid spread is 3/8 point; prices between 10 1/8 and $25, the valid spread is 1/2 point; prices between 25 1/8 and $40, the valid spread is 5/8 point; prices greater than $40, the valid spread is 2 1/2 points.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Also, copies of such filing will be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–96–33 and should be submitted by March 12, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4050 Filed 2–18–97; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78f(b)(5).

[5] 17 C.F.R. 200.30–3(a) (12).

[Release No. 34–38273; File No. SR–PSE–96–45]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Thereto by the Pacific Stock Exchange Incorporated Relating to the Exchange's Lead Market Maker Options Book Pilot Program

February 12, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder[2] notice is hereby given that on December 10, 1996, the Pacific Stock Exchange Incorporated ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Exchange filed an amendment to the proposed rule change on February 4, 1997.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE is proposing to modify its Lead Market Maker ("LMM") Book Pilot Program under which PSE LMMs may assume operational responsibility for the options public limit order book ("Book") in certain option issues. The Exchange is proposing to expand the scope of the program to allow for more LMMs to participate, and to allow a greater number of option issues to be eligible under the Program.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examine at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On October 11, 1996, the Commission approved and Exchange proposal to adopt a one-year pilot program under which some LMMs are permitted to manage the Book function in certain designated issues.[4] Under the pilot, the approved LMMs manage the Book function, take responsibility for trading disputes and errors, set rates for Book execution, and pay the Exchange a fee for systems and services.[5] The program allows LMMs to have greater control over their operations on the Exchange floor by allowing them, among other things, to set their own rates for execution services provided to customers.

Under the pilot as approved by the Commission, the program is limited to no more than three LMMs and no more than forty option symbols in total,[6]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The PSE filed an amendment ("Amendment No. 1") clarifying the maximum number of Lead Market Makers and options symbols that would participate in the expanded Lead Market Maker Book Pilot Program. See Letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PSE, to Janet Russell-Hunter, Special Counsel, Office of Market Supervision, Division of Market Regulation, Commission, dated February 3, 1997.

[4] See Securities Exchange Act Release No. 37810 (October 11, 1996), 61 FR 54481 ("Pilot Approval Order").

[5] More specifically, under the rule changes approved by the Commission, LMMs may perform all functions of the Order Book Official ("OBO") in designated issues pursuant to rules 6.51 through 6.59. In that regard, the Exchange will allow the LMM to utilize Exchange personnel to assist the LMM in performing the OBO function, and the Exchange will charge the LMM a reasonable fee for such use of Exchange personnel. If the program is made permanent, LMMs would be responsible for hiring and maintaining their own employees, but the Exchange would provide employees to assist LMMs when necessary due to market conditions. In all cases, however, employees working in the Book operation will be subject to all rules, policies, and procedures established by the Exchange. With regard to their duties as market makers, LMMs would be required to perform all obligations provided in Rules 6.35 through 6.40 and 6.82.

[6] Each option issue typically has only one symbol associated with it, unless LEAPs are traded on that issue, in which case there usually would be two additional symbols related to the issue, or unless a contract adjustment is necessary due, for example,

Continued

during a one-year pilot phase. However, the Exchange is now proposing a modest expansion of the pilot program to allow for up to nine LMMs and up to 150 options symbols.[7]

The LMMs who participate during the pilot phase are selected by the Options Floor Trading Committee based on certain designated factors.[8] Approved LMMs must maintain "minimum net capital," as provided in Rule 15c3–1 under the Act,[9] and also must maintain a cash or liquid asset position of at least $500,000, plus $25,000 for each issue over five issues for which they perform the function of an OBO. Only multiply-traded option issues are eligible during the pilot phase.

The Exchange believes that the proposal is consistent with Section 6(b) of the Act, in general, and Section 6(b)(5), in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

to a merger or stock split, in which case one additional symbol usually would be added.

[7] Amendment No. 1, *supra* note 3.

[8] See Pilot Approval Order, *supra* note 4.

[9] 17 CFR 240.15c3–1.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–PSE–96–45 and should be submitted by March 12, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4049 Filed 2–18–97; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted on or before April 21, 1997.

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, S.W., Suite 5000, Washington, D.C. 20416. Phone Number: 202–205–6629.

SUPPLEMENTARY INFORMATION:

Title: "Supplemental Guaranty Agreement, Preferred Lenders Program".

Type of Request: Extension of a Currently Approved Collections.

[10] 17 CFR 200.30–3(a)(12)

Form No.: SBA Form 1347.

Description of Respondents: SBA Preferred Lenders.

Annual Responses: 200.

Annual Burden: 300.

Comments: Send all comments regarding this information collection to Michael J. Dowd, Director, Office of Loan Programs, Small Business Administration, 409 3rd Street, S.W., Suite 8300 Washington, D.C. 20416. Phone No.: 202–205–6570.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Title: "Semiannual Report on Representatives and Compensation Paid for Services in Connection with Obtaining Federal Contracts".

Type of Request: Extension of Currently Approved Collections.

Form No.: SBA Form 1790.

Description of Respondents: 8(a) Program Participants.

Annual Responses: 9,000.

Annual Burden: 9,000.

Comments: Send all comments regarding this information collection to William Fisher, Deputy Associate Administrator, Minority Enterprise Development, Small Business Administration, 409 3rd Street, S.W., Suite 7150 Washington, D.C. 20416. Phone No. 202–205–6412.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Dated: February 12, 1997.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 97–4023 Filed 2–18–97; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2924; Amendment #2]

Idaho; Declaration of Disaster Loan Area

In accordance with a notice from the Federal Emergency Management Agency, dated January 31, 1997, the above-numbered Declaration is hereby amended to establish the incident period for this disaster as beginning on November 16, 1996 and continuing through January 3, 1997.

All other information remains the same, i.e., the termination date for filing applications for physical damage is March 5, 1997, and for loans for economic injury the deadline is October 6, 1997.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: February 10, 1997.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 97–4025 Filed 2–18–97; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster Loan Area #2930]

Wisconsin (And Contiguous Counties in Illinois); Declaration of Disaster Loan Area

Green County and the contiguous counties of Dane, Iowa, Lafayette, and Rock in Wisconsin, and Stephenson and Winnebago Counties in Illinois constitute a disaster area as a result of damages caused by severe storms and flooding which occurred on July 17 and 18, 1996. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on April 11, 1997 and for economic injury until the close of business on November 10, 1997 at the address listed below:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308

or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE	7.625
HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE	3.875
BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE	8.000
BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000
OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE	7.125
For Economic Injury:	
BUSINESSES AND SMALL AGRICULTURAL CO-OPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000

The numbers assigned to this disaster for physical damage are 293006 for Wisconsin and 293106 for Illinois. For economic injury the numbers are 937600 for Wisconsin and 937700 for Illinois.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: February 10, 1997.

Philip Lader,

Administrator.

[FR Doc. 97–4024 Filed 2–18–97; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Lambert-St. Louis International Airport, St. Louis, Missouri; FAA Approval of Noise Compatibility Program

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces it findings on the Noise Compatibility Program (NCP) update submitted by the city of St. Louis Airport Authority (STLAA) under the provisions of Title I of the Aviation Safety and Noise Abatement Act (ASNA) of 1979 (Pub. L. 96–193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On July 15, 1996, the FAA determined that the Noise Exposure Maps (NEM) submitted by STLAA under part 150 were in compliance with applicable requirements. On January 10, 1997, the Associate Administrator for Airports approved the Lambert-St. Louis International Airport Noise Compatibility Program. All measures in the NCP are approved with the exception of a portion of one measure related to height hazard zoning, which is not within the purview of part 150, and another measure which is a flight procedure that does not have to be acted on within the 180-day formal review period. An FAA determination on this flight procedure is anticipated within about 30 days.

EFFECTIVE DATE: The effective date of the FAA's approval of the Lambert-St. Louis International Airport Noise Compatibility Program is January 10, 1997.

FOR FURTHER INFORMATION CONTACT: Moira D. Keane, ACE–615B, Federal Aviation Administration, Airports Division, 601 E. 12th St., Kansas City, Missouri 64106. Telephone No. (816) 426–4731. Documents reflecting this FAA action may be obtained from the same individual.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the Noise Compatibility Program for the Lambert-St. Louis International Airport, effective January 10, 1997.

Under Section 104(a) the Aviation Safety and Noise Abatement Act (ASNA) of 1979, an airport operator who has previously submitted a Noise Exposure Map submit to the FAA a Noise Compatibility Program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the Noise Exposure Maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with FAR part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Aviation Safety and Noise Abatement Act of 1979, and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government;

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable Airspace and Air Traffic Control Systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport Noise Compatibility Program are delineated in FAR part 150, Section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing

action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Regional Office in Kansas City, Missouri.

In May 1996, the STLAA submitted to the FAA the Noise Exposure Maps, descriptions, and other documentation produced during the Noise Compatibility Planning study. The Lambert-St. Louis International Airport Noise Exposure Maps were determined by FAA to be in compliance with applicable requirements on July 15, 1996. Notice of this determination was published in the **Federal Register** on July 31, 1996.

The Lambert-St. Louis International Airport study contains a proposed update to its Noise Compatibility Program comprised of actions designed for phased implementation by airport management from the date of study completion to beyond the year 2002. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in Section 104(b) of the Act. The FAA began its review of the program on July 15, 1996, and was required by a provision in the Act to approve or disapprove the program within 180 days. Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained numerous proposed actions for noise abatement and mitigation on and off the airport, which were contained in the technical report entitled "FAR Part 150 Noise Compatibility Program Update." The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program, therefore, was approved by the Associate Administrator effective January 10, 1997.

Outright approval was granted for all measures in the NCP, with the exception of a portion of one measure related to height hazard zoning, which is not within the purview of part 150, and another measure which is a flight procedure that does not have to be acted on within the 180-day formal review period. An FAA determination on this flight procedure is anticipated within about 30 days.

Some of the approved noise abatement measures include: continued informal noise abatement procedures and implementation of additional enhanced noise control procedures; completion of ongoing acquisition of homes in Kinloch, East Kinloch, Southeast and Southwest Berkley, Ramona Hills, Bridgeton, Bridgeton Terrace, McNulty Manor, and Robertson; development of a sound insulation and sales (transaction) assistance program; and an automated aircraft monitoring system to assist the Airport in tracking the progress of the noise control procedures.

These determinations are set forth in detail in a Record of Approval endorsed by the Associate Administrator on January 10, 1997. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the Lambert-St Louis Airport Planning and Development Office, 4610 N. Lindbergh, Bridgeton, Missouri. Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Kansas City, Missouri, on February 5, 1997.

George A. Hendon,

Manager, Airports Division.

[FR Doc. 97–4066 Filed 2–18–97; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–97–9]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition document number involved and must be received on or before March 11, 1997.

ADDRESSES: Send comments to any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. , 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@mail.hq.faa.gov.

The petition, any comments received, and a copy of any final disposition are filed with the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Fred Haynes (202) 267–3939 or Angela Anderson (202) 267–9681 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on February 12, 1997.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 010NM
Petitioner: Boeing Commercial Airplane Group
Sections of the FAR Affected: 14 CFR 25.809(f)
Description of Relief Sought: To provide an increased level of safety by permitting the use of an inertia reel for each of the seven crew-member occupants in addition to an escape rope at the crew entry door of the 757–200PF airplanes. A separate inertia reel and harness will be provided for each of the seven crew-member occupants.

Docket No.: 137CE
Petitioner: Air Tractor, Inc.
Sections of the FAR Affected: 14 CFR 23.3
Description of Relief Sought: To permit the AT–10, a freight carrying aircraft, to exceed the 12,500 pound limitation for a normal category aircraft.

Docket No.: 28774
Petitioner: Mid-East Jet, Inc.
Sections of the FAR Affected: 14 CFR 61.67(c)(2)(iii)(B)(4)(ii) and (d)(2)(i)(B), 61.68(d)(2)(ii)(C)(2) and (e)(2)(i)(B), and 61.158(d)(1)
Description of Relief Sought: To allow Mid East Jet, Inc. to use Federal Aviation Administration (FAA)-approved Boeing Company (Boeing) simulators for 100 percent of its pilot training, testing, and checking while using Boeing's approved 14 CFR part 121 flight training program.

Dispositions of Petitions

Docket No.: 20583
Petitioner: Tenneco, Inc.
Sections of the FAR Affected: 14 CFR 61.57 (c)(3) and (d)(2), and 61.58(e)
Description of Relief Sought/ Disposition: To permit pilots employed by Tenneco, Inc. to complete their entire 24-month pilot-in-command (PIC) check in an FAA-approved flight simulator.
Grant, January 28, 1997, Exemption No. 6572

Docket No.: 25052
Petitioner: Taquan Air Service, Inc.
Sections of the FAR Affected: 14 CFR 135.203(a)(1)
Description of Relief Sought Disposition: To permit Ketchikan Air Service, Inc., TEMSCO Helicopters, Inc./TEMSCO Airlines, Taquan Air Service, Inc., and Misty Fjords Air and Outfitting, conducting operations under part 135, to operate seaplanes inside the Ketchikan, Alaska, Class E airspace under Special Visual flight Rules (SVFR) below 500 feet above the surface.
Grant, January 24, 1997, Exemption No. 4760E

Docket No.: 25731
Petitioner: Experimental Aircraft Association
Sections of the FAR Affected: 14 CFR 45.25 and 45.29
Description of Relief Sought/ Disposition: To allow members of the Experimental Aircraft Association and members of the Confederate Air Force to operate their historic military aircraft with 2-inch high nationality and registration marks located beneath the aircraft's horizontal stabilizer.
Grant, December 11, 1996, Exemption No. 5019D

Docket No.: 26340
Petitioner: Delta Air Lines, Inc.
Sections of the FAR Affected: 14 CFR 121.433(c)(1)(iii), 121.440(a), and 121.441(a)(1) and (b)(1); appendix F to part 121; and Special Federal Aviation Regulation (SFAR) No. 58, paragraph 6(b)(3)(ii)(A)
Description of Relief Sought/ Disposition: To allow Delta Air Lines, Inc. to combine recurrent flight and ground training and proficiency checks for its crewmembers in a single annual training and proficiency evaluation session, and to meet the line check requirements through an alternative line check program.
Grant, January 27, 1997, Exemption No. 5271E

Docket No.: 26559
Petitioner: Helicopter Association International
Sections of the FAR Affected: 14 CFR 43.3(a)
Description of Relief Sought/ Disposition: To permit properly trained pilots employed by member operators of Helicopter Association International and the Association of Air Medical Services to remove and reinstall liquid oxygen containers in their aircraft after receiving appropriate training by a properly certified airframe mechanic.
Grant, December 26, 1996, Exemption No. 6002A

Docket No.: 26732
Petitioner: Air Transport Association of America
Sections of the FAR Affected: 14 CFR 121.652 (a) and (c)
Description of Relief Sought/ Disposition: To allow Air Transport Association of America (ATA)—member airlines and other similarly situated part 121 operators to permit a pilot-in-command (PIC) conducting operations under part 121 to perform an instrument approach procedure to the weather minima prescribed by this exemption during the first 100 hours of service as a PIC, in the type airplane he or she is operating, using an alternative means approved by the Administrator to satisfy the requirements.
Grant, January 27, 1997, Exemption No. 5549C

Docket No.: 27852
Petitioner: Higher Power Aviation, Inc.
Sections of the FAR Affected: 14 CFR 61.55(b)(3); 61.56(h) (1), (2), and (3); 61.57(c)(3) and (d)(2), 61.58(e); 61.64(e)(3); 61.65 (e)(2), and (g) (1) and (3); 61.67 (c)(4) and (d)(2); 61.158(d)(1); 61.191(d); and 61.197(e)
Description of Relief Sought/ Disposition: To permit the petitioner to use Federal Aviation Administration (FAA)—approved simulators to meet certain flight experience requirements.
Grant, January 29, 1997, Exemption No. 5986A

Docket No.: 27867
Petitioner: Department of the Navy
Sections of the FAR Affected: 14 CFR 91.209 (a) and (b)
Description of Relief Sought/ Disposition: To permit the Navy, specifically the United States Marine Corps, to conduct helicopter night-vision flight device training operations without lighted aircraft position lights.
Grant, January 24, 1997, Exemption No. 5978B

Docket No.: 27933
Petitioner: Emery Worldwide Airlines
Sections of the FAR Affected: 14 CFR 121.433(c)(1)(iii), 121.441 (a)(1) and (b)(1), and appendix F to part 121
Description of Relief Sought/ Disposition: To allow the petitioner to combine recurrent flight and ground training and proficiency checks for its flight crewmembers in a single annual training and proficiency evaluation program.
Grant, January 31, 1997, Exemption No. 6000A

Docket No.: 28599
Petitioner: James C. Fisher
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought/ Disposition: To allow the petitioner to act as pilot in command under 14 CFR part 121 after his 60th birthday.
Denial, January 27, 1997, Exemption No. 6574

Docket No.: 28723
Petitioner: Ryan International Airlines, Inc.
Sections of the FAR Affected: 14 CFR 91.203 (a) and (b)
Description of Relief Sought/ Disposition: To permit the petitioner to operate temporarily its U.S.-registered aircraft following the incidental loss or mutilation of that aircraft's airworthiness certificate or registration certificate, or both.
Grant, January 24, 1997, Exemption No. 6571

Docket No.: 28749
Petitioner: GTA Air, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To allow the petitioner to operate aircraft under part 135 without a TSO–C112 (Mode S) transponder installed.
Grant, January 27, 1997, Exemption No. 6573

Docket No.: 27885
Petitioner: Trans World Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.433(c)(1)(iii), 121.441 (a)(1) and (b)(1), and appendix F to part 14 CFR part 121
Description of Relief Sought/ Disposition: To allow the petitioner to combine recurrent flight and ground training and proficiency checks for its

flight crewmembers in a single annual training and proficiency evaluation program.

Grant, January 31, 1997, Exemption No. 6012A

[FR Doc. 97–4064 Filed 2–18–97; 8:45 am]

BILLING CODE 4910–13–M

Maritime Administration

[Docket No. M–028]

Application of Foreign Underwriters to Write Marine Hull Insurance

The Maritime Administration (MARAD) has received an application under 46 CFR part 249 from HIH Casualty and General Insurance Limited, an Australia based underwriter, to write marine hull insurance on subsidized and Title XI program vessels.

In accordance with 46 CFR 249.7(b), interested persons are hereby afforded an opportunity to bring to MARAD's attention any discriminatory laws or practices relating to the placement of marine hull insurance which may exist in the applicant's country of domicile.

Responses to this notice must be sent to the Secretary, Maritime Administration, Room 7300, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20509, and must be received by close of business on Wednesday, March 5, 1997.

Dated: February 13, 1997.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 97–4062 Filed 2–18–97; 8:45 am]

BILLING CODE 4910–81–P

National Highway Traffic Safety Administration

[Docket No. 96–133, Notice 01]

Development of Improved Driver Interview Procedures for Police Use at Checkpoints

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice and Request for Comments on Data Collection.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) plays a key role in the national effort to reduce alcohol related traffic injuries and deaths. One way the enforcement community has tried to combat this problem is by conducting sobriety checkpoints; however, there is evidence that many of the impaired drivers passing through these checkpoints are not detected by police. One component of this study is the observation by researchers of customary police interviewing practices at sobriety checkpoints. Behaviors and cues of interviewed drivers will be linked to their breath alcohol levels to develop more effective screening procedures. Breath samples will be obtained only from drivers who volunteer to participate in this study. Current data on the best ways to improve driver interviews by police at checkpoints do not exist. NHTSA invites the general public and other Federal agencies to comment the proposed data collection as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATE: Written comments must be submitted on or before April 21, 1997.

ADDRESSES: Direct all written comments to NHTSA, Docket Section, Room 5111, Docket #96–133, Notice 01, 400 7th Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Marvin M. Levy, Ph.D., Contracting Officer's Technical Representative, Office of Research and Traffic Records (NTS–31), Washington, DC 20590, Phone Number (202) 366–5597.

SUPPLEMENTARY INFORMATION:

I. Abstract

Alcohol related traffic fatalities rose to 17,274 in 1995, 41 percent of all traffic fatalities for the year. NHTSA is committed to the development of effective programs to reduce the number of deaths and injuries related to alcohol-impaired driving. Among the law enforcement activities aimed at reducing drunk driving, sobriety checkpoints can act both as a specific deterrent, by apprehending impaired drivers passing through the checkpoint, and a general deterrent, by encouraging motorists not to drive after drinking. The success of sobriety checkpoints as a deterrent depends to a large extent on the perception of drivers that they will be caught if they have been drinking. However, past research suggests that many impaired drivers are not being detected by police at checkpoints. If drivers conclude that they may not be detected, then the effectiveness of this enforcement approach may decline. There is some evidence that police interview procedures can be improved, for impaired drivers who are stopped and still seated in their vehicle, when police use a procedure employing eye gaze nystagmus. Other cues or combination of cues may also result in improved detection rates.

The objective of this study is to develop and test an improved set of checkpoint interview procedures that police may use to detect more effectively drivers who are at illegal blood alcohol concentrations [BACs].

II. Method of Data Collection

Data will be collected voluntarily at two separate sites in cooperating police jurisdictions during regularly scheduled checkpoint operations. To examine the effectiveness of cues and procedures that officers can use to detect drivers at illegal BACs, researchers will accompany officers while they are conducting routine driver interviews. Researchers will observe what the police do, by listening to the kinds of questions they ask and what motorists say in response to police inquiries, and how the drivers behave. Also, drivers will be observed for visual and other cues or signs indicative of alcohol consumption. For those drivers who have been permitted to proceed, a researcher, located downstream of the inteviewing officer, will ask the driver to consent to blow into a device that measures the driver's breath alcohol. Each motorist will be assured of confidentiality. No identifiers, such as names, addresses, or license plate numbers, will be obtained regardless of whether or not the motorist agrees to cooperate. Also, no information about the results from breath alcohol testing will be provided to the police. No survey questions will be asked of drivers. The researchers will be using portable non-evidentiary quality "screening devices" to measure BAC. In the event that a driver who may be at an illegal BAC is identified, he or she will be informed of the BAC findings and provided with suggested remedies such as having a sober passenger drive, or taking a cab provided by the researchers.

III. Use of the Findings

The findings from researcher observations of checkpoint operations will help determine whether further development of an improved battery of police interview procedures is warranted. If the results are positive, a field test will be conducted as part of this study to determine whether the new procedures are an improvement over those customarily used by police to detect drivers at illegal BACs. Should the findings from the field test be successful, a police training package, containing the improved procedures, will be developed and disseminated to police agencies.

Improved interview procedures will help police officers at checkpoints make more accurate decisions regarding which drivers should or should not be detained for further sobriety testing. This should increase the efficiency of checkpoint operations. Such improvements should also heighten the public's perception of being apprehended for drunk driving at sobriety checkpoints.

IV. Data

OMB Number: None.
Form Number: None.
Type of Review: Regular Submission.
Affected Public: Drivers who are stopped at two sobriety checkpoint operations in one community and who are asked to voluntarily provide an alcohol breath sample.
Estimated Number of Respondents: 1,500 drivers.
Estimated Time per Respondent: One minute per respondent.
Estimated Total Annual Burden: 25 hours.
Estimated Cost per Respondent: $33.75.

V. Request for Comments

Comments are invited on: (a) The need for the proposed collection and the uses of the data to meet the objectives of the study; (b) the information that should be obtained from observations of the drivers and officers; (c) ways to enhance the quality, utility and clarity of the information collected;

(d) the accuracy of the burden estimate, and (e) ways to minimize the burden of the collection of the information an the respondents.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection. Copies of all comments will be placed in Docket 96–133, Notice 1, in the NHTSA Docket Section in Room 5109, 400 Seventh Street SW Washington D.C. 20590 and will become a matter of public record.

James H. Hedlund,

Associate Administrator for Traffic Safety Programs.

[FR Doc. 97–4059 Filed 2–18–97; 8:45 am]

BILLING CODE 4910–59–P

Discretionary Cooperative Agreements to Support the Air Bag Safety Campaign

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Announcement of discretionary cooperative agreements to support the Air Bag Safety Campaign.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces the availability of FY 1997 discretionary cooperative agreements to support the Air Bag Safety Campaign. The goal of this campaign is to inform the public about how to maximize the lifesaving capabilities of air bags while minimizing the risks and to increase the proper use of safety belts and child safety seats. NHTSA solicits applications from national nonprofit organizations, having regional, state or local chapters, for projects under this program.

DATES: Applications must be received on or before March 21, 1997.

ADDRESSES: Applications must be submitted to the National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD–30), ATTN: Georgeanne Moses, 400 7th Street, S.W., Room 5301, Washington, D.C. 20590. All applications submitted must include a reference to NHTSA Cooperative Agreement Program No. DTNH–97–H–05090, and identify the priority program area which the application is submitted. Interested applicants are advised that no separate application package exists beyond the contents of this announcement.

FOR FURTHER INFORMATION CONTACT: General administrative questions may be directed to Mark Kromer, Office of Contracts and Procurement, at (202) 366–9571. Programmatic questions relating to this cooperative agreement program should be directed to Ms. Cheryl Neverman, National Outreach Division, NHTSA, Room 5130 (NTS–22), 400 7th Street, S.W., Washington, D.C., 20590 (202) 366–2696.

SUPPLEMENTARY INFORMATION:

Background

Air bags, when combined with the use of a lap and shoulder belt, offer the most effective combination of protection to adults. More than 1700 lives have been saved by air bags since the mid-1980's. As of July 1996, about 56 million passenger cars and light trucks were equipped with air bags. In five years, more than 50 percent of the U.S. light vehicle fleet, 125 million vehicles, will have air bags. Beginning with model year 1998 for passenger cars and model year 1999 for light trucks, new vehicles will be required to have driver and passenger side air bags and safety belts. As vehicle fleets are being manufactured and sold with both driver and passenger side air bags, concerns have arisen about the dangers of air bags, particularly to children age 12 and under. Some infants, children and small stature adults have been injured or killed in traffic crashes by deploying air bags. In almost all cases to date, the occupants who died were unrestrained, incorrectly restrained, or positioned too close to the air bag. Since many people do not understand how air bags work, they fail to fully appreciate the threat air bags may pose to some passengers.

Out of concern for the public's safety and the need to educate the public about the lifesaving benefits of air bags, a public and private partnership of automotive manufacturers, insurance companies, occupant restraint manufacturers, government agencies, health professionals, and child health and safety organizations was created to lead a national campaign—the Air Bag Safety Campaign. The privately funded Air Bag Safety Campaign, started in June 1996, is a two-year intensive education campaign whose goal is to inform the public about how to maximize the lifesaving capabilities of air bags, while minimizing the risks and to increase the proper use of safety belts and child safety seats. The campaign takes a three-pronged approach in conveying its messages to the American public:

1. Public Education: Development of an intense media campaign to get the "safety belt/air bag/kids-in-back" message out to the public. The group urges people to convey to their friends and neighbors the importance that children ride in proper places and with proper restraints in vehicles.

2. Legislation: The campaign supports states in upgrading safety belt and child safety seat laws in order to increase safety restraint use nationwide. Currently, 11 states have "primary" enforcement laws, that allow police to stop and ticket motorists who fail to wear safety belts. Belt use in these states is much higher than in "secondary" law states where police must ticket a motorist for another violation before issuing a safety belt citation.

3. Enforcement: The campaign supports high visibility enforcement of safety belt and child safety seat laws. This type of enforcement has proven very effective in increasing safety restraint use and reducing crash-related injuries and fatalities.

The campaign is basing its activities, in part, on experience over the past decade. This experience has shown that a combination of intensive public education, well-written legislation, and high visibility, statewide enforcement of laws will result in an immediate and substantial increase in public awareness and occupant protection use. Increased safety belt and correct child safety seat use will significantly reduce the number of children and adults who are injured during air bag deployments.

Current issues and concerns for the Air Bag Safety Campaign can be summarized as follows:

—Approximately 67% of motorists currently use safety belts. From 1982 through 1994, an estimated 65,290 lives were saved by safety belts and more than 1.5 million moderate to critical injuries were prevented. If all passenger vehicle occupants over age 4 had worn safety belts, an additional 9,500 lives could have been saved in 1994. NHTSA's Fatal Accident Reporting System (FARS) data indicate that 40% of the children under age 5 who died in fatal motor vehicle crashes were unrestrained.

—During pre-crash braking, an unrestrained occupant may be thrown against the dashboard or steering wheel in the immediate proximity of an air bag. Air bags inflate in less than 1/25th of a second—faster than a blink of an eye. The air bag's blast of energy can severely injure or kill small children and drivers who are too close to the air bag during inflation.

—Although vehicle and child safety seat manufacturers warn against placing a rear-facing child safety seat on the front seat of a vehicle with a passenger side air bag, at least 9 children have been killed as a result of deploying air bags.

—As of January, 1997, NHTSA has identified 35 crashes where the deployment of the passenger side air bag resulted in fatal head or neck injuries to a child. Of these deaths, 9 were infants in rear-facing child seats. At the time of these crashes, almost all the other fatally-injured children were unrestrained or improperly restrained.

—Safety belts and child safety seats have proven to be very effective at reducing fatalities and serious injuries as a result of motor vehicle crashes. Research has shown that when correctly used, child safety seats can reduce fatalities among children less than 5 years of age by 71 percent. As a result, child safety seats are one of the most effective automotive safety innovations ever developed. This message must be communicated to the American public.

Since 1981, NHTSA has worked with opinion leaders, such as physicians, nurses, law enforcement officers, educators, employers and civic groups, who have motivated people through interpersonal contacts. One of the most effective means of educating the public about the lifesaving benefits of occupant protection has been through groups that have strong national, State and local affiliates (i.e., the American Academy of Pediatrics, the Emergency Nurses Association of the PTA). Implementation of statewide programs, including education about the importance of occupant protection in crash survival and support for enforcement of safety belt and child safety seat use laws, relies heavily on the outreach efforts of organizations like these.

Objectives

To help achieve the goals set by the Air Bag Safety Campaign, NHTSA seeks to establish cooperative efforts between NHTSA and qualified national organizations to educate their members and their customers on the issues related to air bag safety and proper safety belt and safety seat use. Despite the apparently high rate of child safety seat use, many of these seats are being misused and underused. Use of child safety seats drops off dramatically after age one. Due to incorrect use and nonuse, child safety seats are not saving as many lives and preventing as many injuries as they should. The objectives of this cooperative agreement program are to gain further child injury/fatality reductions by increasing overall use of child passenger protection systems, increasing correct use of child safety seats, alerting the public to the risk of unbuckled or incorrectly buckled occupants (especially children) caused by deploying air bags and enhancing enforcement of child passenger safety laws. The goal is not to duplicate the efforts of the Air Bag Safety Campaign, but to give national organizations an opportunity to participate in short-term activities to support efforts at the national level. Specific objectives for this cooperative agreement program will complement two of the Campaign's approaches: Public Education and Legislation.

1. Public education approach: The Air Bag Safety Campaign will create a national focus on education and enforcement. The campaign will build and coordinate partnerships with law enforcement, government agencies, health and safety organizations, corporations and community groups. The intense, ongoing activity of the campaign will peak each year with a focused effort to educate and mobilize the nation. Outreach activities by public safety officials would include safety checkpoints in every state in the Spring of each year. Sate and local law enforcement agencies, with the support of governors, mayors and communities, will conduct these safety checkpoints—not to give tickets in most cases, but to give drivers the information they need to keep themselves and their families safe within their motor vehicles. Other ongoing activities—announcements in schools and churches, tray liners in fast food restaurants, materials in physicians' offices, corporate outreach to employees and customers will complement this public safety education and enforcement effort. A strategy of the public education approach is to get as much media coverage as possible. Involving key elected officials when conducting major events and activities will get the media to cover the issue and provide the information to a greater number of people.

2. Legislation approach: The campaign's network of businesses, corporations, associations, churches, law enforcement, schools, and children's advocacy groups will support state and local efforts to upgrade occupant protection laws and provide for primary enforcement of safety belt laws. Other upgrades could include closing gaps in child protection laws and providing for driver license demerit points and higher fines. Nine states have been identified by the Legislative Coordinating Council of the Air Bag Safety Campaign for funding campaigns to upgrade their occupant protection laws. The Council proposes funding for 9 priority states: Arizona, Illinois, Indiana, Maryland, Michigan, Missouri, New Jersey, Ohio and Oklahoma. The specific approach will be decided on a state-by-state basis. The level of assistance, where and how it is applied, leadership responsibility, and the structure of the state coalitions will be designed to fit specific state conditions.

Specific Agreement Objective: The applicant shall choose to conduct a project complementing either or both of the approaches. The applicant shall draw on the above ideas and develop a proposal to extent the campaign to its members and to its members' customers. A proposal including a legislative project shall describe the planned approach in the 9 targeted states and any other states, and identify strategies to achieve the legislative proposal.

NHTSA Involvement

The National Highway Traffic Safety Administration (NHTSA), Office of Communications and Outreach, National Organization's Division (NOD), will be involved in all activities undertaken as part of the cooperative agreement program and will:

1. Provide a Contracting Officer's Technical Representative (COTR) to participate in the planning and management of the cooperative agreement and to coordinate activities between the organizations and the NOD and TSP;

2. Provide information and technical assistance from government sources, within available resources and as determined appropriate by the COTR;

3. Provide liaison to the Air Bag Safety Campaign and with other government and private agencies as appropriate; and

4. Stimulate the exchange of ideas and information among cooperative agreement recipients through periodic meetings.

Period of Support

Cooperative agreements may be awarded for a period of (1) year. The application for the funding period (12 months) should address what is proposed and can be accomplished during that period.

Anticipated funding level for six FY 1997 projects will be $40,000 each, totaling $240,000. Federal funds should be viewed as seed money to assist organizations in the development of traffic safety initiatives. Monies allocated for cooperative agreements are not intended to cover all of the costs that will be incurred in the process of completing the projects. Applicants should demonstrate a commitment of financial or in-kind resources to support the proposed projects.

Eligibility Requirements

In order to be eligible to participate in this cooperative agreement program, a national nonprofit organization must meet the following requirements:

—have an established membership structure with regional, state or local chapters throughout the country having a mechanism for disseminating and coordinating project efforts at the local level.

—have in place a schedule of regular/National/regional or state conferences or conventions, and one or more communication mechanisms that can be used for motivating members and other constituents to become involved in occupant protection at the State and local levels.

Application Procedure

Each applicant must submit one original and two copies of their application package to: NHTSA, Office of Contracts and Procurement (NAD–30), ATTN: Georgeanne Moses, 400 7th Street, S.W., Room 5301, Washington, D.C. 20590. Applications are due no later than 30 days after the appearance of this announcement in the **Federal Register**. Only complete application packages received by the due date shall be considered. Submission of four additional copies will expedite processing, but is not required. Applications must be typed on one side of the page only. Applications must include a reference to NHTSA Cooperative Agreement Program No. DTNH22–97–H–05090. The Applicant shall specifically identify any information in the application for which confidentiality is requested, in accordance with the procedures of 49 CFR Part 512, Confidential Business Information.

Application Contents

The application package must be submitted with OMB Standard Form 424 (Rev. 4–88, including 424A and 425B), Application for Federal Assistance, with the required information filled in and the certified assurances included. While the Form 424–A deals with budget information, and section B identifies Budget Categories, the available space does not permit a level of detail which is sufficient to provide for a meaningful evaluation of the proposed costs. A supplemental sheet should be provided which presents a detailed breakdown of the proposed costs, as well as any costs which the applicant proposes to contribute in support of this effort. Also included shall be a program narrative statement which addresses the following:

1. A description of the project to be pursued which addresses:
   a. A summary describing the organizational membership, customers and purpose;
   b. an explanation demonstrating the need for assistance;
   c. the goals, objectives, and the anticipated results and benefits of the project (supporting documentation from concerned interests other than the applicant can be used.)
   d. the method or methods that will be used;
   e. identify the kinds of data to be collected and maintained, and discusses the criteria to be used to evaluate the results.
   e. any relevant data based on planning studies should be included or footnoted.
   f. describe any unusual features, such as design or technological innovations, reductions in cost or time, or extraordinary social/community involvement;

2. Provide quantitative projections of the accomplishments to be achieved, if possible, or list the activities in chronological order to show the schedule or accomplishments and their target dates.

3. The proposed program director and other key personnel identified for participation in the proposed project effort, including a description of their qualifications, the nature of their contribution, and their respective organizational responsibilities.

4. A description of the applicant's previous experience or on-going program(s) that is (are) related to this proposed program effort.

5. A detailed breakdown of the proposed costs, as well as any costs which the applicant proposes to contribute in support of this effort.

6. A statement of any technical assistance which the applicant may require of NHTSA in order to successfully complete the proposed project.

Review Process and Criteria

Initially, all applications will be reviewed to confirm that they contain all of the information required by the Applications Contents section of this notice.

Each complete application from an eligible recipient will then be evaluated by a Technical Evaluation Committee. The applications will be evaluated and ranked using the following criteria:

1. Technical Approach to Achieving Project Objectives

The reasonableness, completeness, clarity and feasibility of the proposer's approach to achieving the objectives of this demonstration and evaluation project. This involves a comprehensive understanding of the issues associated with child occupant protection, such as proper safety belt and child safety seat use, and the lifesaving capabilities of air bags, a detailing of project objectives, and an identification and selection of potential obstacles, problems and critical political issues related to successful completion of the project. The applicant's understanding of the purpose and unique problems represented by the Campaign objectives of this cooperative agreement program as evidenced in the description of its proposed project planning, implementation, and evaluation effort. The technical of the proposed effort, including the feasibility of the approach, practicality, planned methodology, anticipate results. The likelihood that the proposed effort will make a significant contribution to the number of people made aware of the lifesaving benefits of automatic crash protection and increase the number of people properly using safety belts and child safety seats.

2. Qualifications of Project Personnel and Facilities

The adequacy of the qualifications and experience of the professional team, the various disciplines represented, and the relative level of effort proposed for

professional, technical, contractual, and support staff. The expertise, both general and project related, education level, and availability of key project professional and technical personnel as evidenced by resumes and descriptions of past experience provided. Demonstrated evidence of specialized qualifications including knowledge of the proper use of safety belts and child safety seats. Key personnel include the project director, statistician, programmer, research assistants, and consultants. The adequacy of the facilities, equipment, and other resources identified to accomplish the proposed effort.

3. Project Planning and Scheduling

The completeness and realism of the proposer's plan for accomplishing the demonstration and evaluation within the guidelines and timeframe established in the notice. Another reasonable timeframe may be acceptable to the Government, but it must be justified. Realistic project components or milestones should be in evidence in the schedule.

4. Conformance with Methodological and Funding Guidelines

The demonstration of ability and intent to meet the basic guidelines and restrictions detailed in the notice in the conduct of the project. If certain guidelines cannot be met, reasonable justifications are given. Financial merit will be estimated by the cost to be borne by NHTSA and the in-kind contribution provided by the applicant as compared to the anticipated benefits.

Terms and Conditions of Award

1. Prior to award, the recipient must comply with the certification requirements of 49 CFR Part 29—Department of Transportation Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)

2. During the effective period of the cooperative agreement(s) awarded as a result of this notice, the agreement(s) shall be subject to NHTSA's General Provisions for Assistance Agreements; the cost principles of OMB Circular A–122, or FAR 31.2, as applicable to the recipient, and the requirements of 49 CFR Part 29. Each agreement with a non-profit organization or an educational institution shall also be subject to the general administrative requirements of 49 CFR Part 19.

Reporting Requirements

1. The recipient shall submit quarterly reports documenting project efforts to date, suitable for public dissemination, within 15 days after the end of each quarter, and a final report summarizing the project effort by completion of the project. An original and three copies of each of these reports shall be submitted to the COTR.

2. The recipient may be requested to conduct an oral presentation of project activities for the COTR and other interested NHTSA personnel. For planning purposes, assume that these presentations will be conducted at the NHTSA Office of Communications and Outreach, Washington, D.C. An original and three copies of briefing materials shall be submitted to the COTR.

Dated: February 13, 1997.

James H. Hedlund,

Associate Administrator for Traffic Safety Programs.

[FR Doc. 97–4063 Filed 2–18–97; 8:45 am]

BILLING CODE 4910–59–M

Surface Transportation Board

[STB Docket No. AB–167 (Sub-No. 1176X)]

Consolidated Rail Corporation; Abandonment Exemption; in Wicomico County, MD

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board exempts from the requirements of 49 U.S.C. 10903 the abandonment by Consolidated Rail Corporation (Conrail) of: (1) The portion of its Mardella Industrial Track extending from milepost 40.80± to the junction with Conrail's Delmarva Secondary at milepost 42.00±, near Salisbury, MD; and (2) its Mill Street Industrial Track extending from the connection with the Mardella Industrial Track at milepost 0.00± to milepost 0.60±, near Salisbury, subject to standard labor protective conditions.

DATES: The exemption will be effective March 21, 1997 unless stayed or a statement of intent to file an offer of financial assistance (OFA) is filed. Statements of intent to file an OFA under 49 CFR 1152.27(b)(2) must be filed by March 3, 1997; petitions to stay must be filed by March 6, 1997; requests for a public use condition under 49 CFR 1152.28 and requests for a notice of interim trail use/rail banking under 49 CFR 1152.29 must be filed by March 11, 1997; and petitions to reopen must be filed by March 17, 1997.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Docket No. AB–167 (Sub-No. 1176X) must be filed with: Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423; a copy of all pleadings must be served on petitioner's representative: John J. Paylor, Associate General Counsel, Consolidated Rail Corporation, 2001 Market St.—16A, Philadelphia, PA 19101–1416.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., 1201 Constitution Avenue, N.W., Room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: February 10, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–4058 Filed 2–18–97; 8:45 am]

BILLING CODE 4915–00–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determinations

Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Rodin and Michelangelo" (See list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at The Philadelphia Museum of Art from on or about March 30, 1997, through June 22, 1997, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

[1] A copy of this list may be obtained by contacting Ms. Neila Sheahan, Assistant General Counsel, at 202/619–5030, and the address in Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: February 13, 1997.

Les Jin,

General Counsel.

[FR Doc. 97–4065 Filed 2–18–97; 8:45 am]

BILLING CODE 8230–01–M

Wednesday
February 19, 1997

Federal Register

Part II

Environmental Protection Agency

40 CFR Part 268

Land Disposal Restrictions: Correction of Tables; Treatment Standards for Hazardous Waste and Universal Treatment Standards; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

[EPA #530–296–002; FRL–5681–4]

RIN 2050–AD38

Land Disposal Restrictions: Correction of Tables; Treatment Standards for Hazardous Wastes and Universal Treatment Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Technical amendment of final rule.

SUMMARY: On April 8, 1996, EPA published Land Disposal Restrictions Phase III; Final Rule and Partial Withdrawal and Amendment of Final Rule, including the complete tables "Treatment Standards for Hazardous Wastes" at § 268.40, and "Universal Treatment Standards" at § 268.48. The Agency is today publishing updated and corrected versions of these two tables, incorporating all revisions to the treatment standards promulgated since the Phase III Final Rule. The updated tables also incorporate additional technical corrections which the Agency is making today, including the removal of treatment standards for the 25 waste codes whose listings were vacated by the November 1, 1996 court decision, *Dithiocarbamate Task Force* v. *Environmental Protection Agency* (DTC Court Case), *F.3d (D.C.Cir. November 1, 1996)*. These corrected tables will eliminate confusion as to what levels of treatment must be achieved by the regulated community as they comply with the LDR requirements.

EFFECTIVE DATE: This rule is effective on February 19, 1997.

ADDRESSES: Supporting materials are available for viewing in the RCRA information Center (RIC), located at Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA. The Docket Identification Number is F–96–PH3F–FFFFF. The RCRA Docket is open from 9 a.m. to 4 p.m. Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory document at no cost. Additional copies cost $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline at (800) 424–9346 (toll free) or (703) 920–9810 in the Washington, DC metropolitan area. For information on this document contact Shaun McGarvey (5302W), Office of Solid Waste, 401 M Street, S.W., Washington, DC 20460, (703) 308–8603.

SUPPLEMENTARY INFORMATION:

I. Reasons and Basis for Today's Amendment

The Agency has received comments from the regulated community and State agencies pointing out mistakes in the "Treatment Standards for Hazardous Wastes" table at 40 CFR 268.40 and the "Universal Treatment Standards" table at 40 CFR 268.48, published in the April 8, 1996 Land Disposal Restrictions (LDR) Phase III Final Rule (61 FR 15566) that were not addressed by Phase III: Technical correction of final rule (June 28, 1996, 61 FR 33680). Today's amendment addresses these comments, makes further technical corrections where necessary, and incorporates all revisions and corrections made since the Phase III Final Rule into complete and updated versions of these tables.

Today's amendment corrects all the errors that are considered appropriate for correction without notice and comment. The Agency is aware of certain other issues or problems that may be addressed at a later time, with notice and comment as appropriate. An example is that the rules currently specify that compliance with LDR standards is be measured using "grab samples" (see 40 CFR 268.40, the table "Treatment Standards for Hazardous Wastes", footnote 5). We note that some data used to develop standards for some of the constituents required for K061 were derived from composite samples from high temperature metal recovery (HTMR) facilities, and it would not be appropriate to require HTMR facilities to comply with the standards for those constituents using grab samples. We plan to correct this problem in the near future.

II. Incorporating Revisions Since the LDR Phase III Final Rule

The updated versions of the tables, "Treatment Standards for Hazardous Wastes" and "Universal Treatment Standards" incorporate the following revisions and corrections which have been promulgated since the Phase III Final Rule, the last time the complete tables were published in the **Federal Register**.

A. Partial Withdrawal of Phase III: April 8, 1996

The revisions of the standards for characteristic waste codes D001–D003 and D018–D043 that were promulgated in the Partial Withdrawal were superceded by the Phase III Technical Correction. Therefore, the treatment standards for these waste codes as they appeared in the Partial Withdrawal do not appear in today's updated tables.

B. Phase III Technical Correction: June 28, 1996

This rule implemented the following changes to the "Treatment Standards for Hazardous Wastes" table at § 268.40:

- Removal of entries for codes which were considered for listing at one time but were never finalized: K140, P187, P193, P195, P200, U360–U363, U368–U371, U374, U380, U388, U397–U399, U405, U406, U408.
- Correct revision of standards for the following waste codes: D001, D002, D012–D043, F006, F007, F010, K008, K108, and P093.

Please note that revisions to the "Treatment Standards for Hazardous Wastes" table for the following waste codes were either partially incorrect or were superceded by the Carbamate Emergency Rule or the vacature of the hazardous waste listing due to the DTC Court Decision: D003, F037, F039, K006, K062, K108, K156–K161, P196, P202, P205, U277–U278, U365–U366, U375–U379, U381–U387, U389–U396, U400–U404, U407, U409–U411.

Also note that although footnotes 8 and 9 were added to the treatment standard table by the June 28 Technical correction, the position of footnote 9 in the table and the text of footnote 8 are being modified by today's rule, as described further below.

This rule also implemented the following changes to the "Universal Treatment Standards" table at § 268.48:

- Revision of standards for the following constituents: A2213, Butylate, EPTC, Molinate, Pebulate, Prosulfocarb, Triallate, and Vernolate. Note that the UTS standard for Cycloate was also revised, but this constituent was later removed from the UTS list due to the DTC Court Decision.

C. Emergency Revision of Carbamate Standards: August 26, 1996

This rule implemented the following changes to the "Treatment Standards for Hazardous Wastes" table at § 268.40:

- Revision of all carbamate waste codes except K156.

Please note that the treatment standard for K156 and the second date specified by footnote 10 in the Emergency Revision included errors which are corrected in today's rule.

The Emergency Revision also promulgated the following change to the "Universal Treatment Standards" table at § 268.48:

- Addition of footnote 6 to the Universal Treatment Standard table for all carbamate constituents added to the UTS table by the Phase III rule.

III. New Technical Corrections to Treatment Standards for Hazardous Wastes and Universal Treatment Standards

The Agency is today promulgating the following technical corrections to the "Treatment Standards for Hazardous Wastes" table at § 268.40:

- On November 1, 1996, the DTC Court Decision vacated the listing of the following 25 waste codes: K160, U277, U365–U366, U375–U379, U381–U386, U390–U393, U396, U400–U403, U407. Therefore, since these wastes are no longer listed as hazardous, they are not subject to LDR prohibitions (assuming they do not exhibit a characteristic; if they do exhibit a characteristic, they would be covered under the prohibition for that characteristic). For this reason, EPA is removing the treatment standards for these waste codes from the treatment standard table.
- The text of footnote 9, "These wastes, when rendered nonhazardous and then subsequently injected in a Class I SDWA well are not subject to treatment standards," applies to all subcategories of wastes codes D001–D003 (except for radioactive high level D002), and D012–D043. Therefore, the position of all citations of footnote 9 in the table are being moved from the columns containing the treatment standards for wastewaters and nonwastewaters to the "Waste Code" column of the table. The text of footnote 8 is also being simplified to apply only to wastes managed in CWA or CWA-equivalent systems. Footnote 9 applies to all wastes for which footnote 8 applies; thus, it is no longer necessary for footnote 8 to apply to wastes managed in Class I SDWA wells.
- The standards for D003 now correctly reflect the preamble language from the Phase III final rule (61 FR at 15568–15569), which states that the requirement to meet § 268.48 standards does not apply to the reactive sulfides, unexploded ordnance, and reactive cyanides subcategories.
- For F037, the Phase III Technical Correction mistakenly reported the standard for Acenaphthene in nonwastewaters as 3.4 mg/l. This standard is now being corrected to read "NA".
- For F039, the Phase III Technical Correction mistakenly reported the standard for Acenaphthylene in nonwastewasters as "NA". This standard is now being corrected to read "3.4 mg/l".
- For K006, the Phase III Technical Correction mistakenly reported the standard for Lead in nonwastewaters from the "hydrated" subcategory as "3.7 mg/l TCLP". This standard is now being corrected to read "NA".
- For K062, the Phase III Technical Correction mistakenly reported the standard for Nickel in nonwastewaters as "5.0 mg/l TCLP". This standard is now being corrected to read "NA".
- For K088, the Phase III Final Rule mistakenly omitted footnote 7 from the entries for "Cyanide (Total)" and "Cyanide (Amenable)" in the common name column. Footnote 7 is now being added to these entries.
- For U003, the alternate standard for Acetronitrile in nonwastewaters is now being corrected to read "38 mg/l".
- For U190, the additional language "(measured as Phthalic acid or Terephthalic acid)" is being added to the common name for Phthalic acid with CAS number 85–44–9.
- For F027 and F028, all numerical treatment standards for these codes in the Phase III Final Rule were incorrect. The standards for all constituents are now being corrected to the concentrations that appeared in the Phase II Final Rule.
- For U027, the treatment standard for bis(2-Chloroisopropyl)ether in wastewaters is being corrected to read "0.055 mg/l".
- For K156, the treatment standard for Acetonitrile (CAS 78–05–8) in nonwastewaters has been corrected to read "38 mg/l".
- Footnote 10 to the treatment standard table is today being corrected to read as follows: "Between August 26, 1996, and August 26, 1997, the treatment standard for this waste may be satisfied by either meeting the constituent concentrations in this table or by treating the waste by the specified technologies: combustion, as defined by the technology code CMBST at § 268.42 Table 1 of this Part, for nonwastewaters; and, biodegradation as defined by the technology code BIODG, carbon adsorption as defined by the technology code CARBN, chemical oxidation as defined by the technology code CHOXD, or combustion as defined as technology code CMBST at § 268.42 Table 1 of this Part, for wastewaters." This change corrects a minor discrepancy as to the dates during which the alternative treatment standards for carbamate wastes remain in effect.

The Agency is today promulgating the following technical corrections to the "Universal Treatment Standards" table at § 268.48:

- Cycloate and 3-Iodo-2-propynyl n-butylcarbamate were only regulated constituents for waste codes U386 and U375, respectively. Since the listing of these two waste codes were vacated by the DTC court decision, the Agency is today removing these constituents from the Universal Treatment Standards table.

IV. Rationale for Immediate Effective Date

Today's amendment does not create any new regulatory requirements; rather, it restates and clarifies requirements already in effect by correcting a number of errors in the April 8, 1996 final rule and withdrawal notice, the June 28, 1996 technical correction, and the August 26, 1996 emergency revision of the carbamate standards. For these reasons, EPA finds that good cause exists under section 3010(b)(3) of RCRA, 42 U.S.C. 9903(b)(3), to provide for an immediate effective date. See generally 61 FR at 15662. For the same reasons, EPA finds that there is good cause under 5 U.S.C. 553(b)(3) to promulgate today's corrections in final form and that there is good cause under 5 U.S.C. 553(b)(3) to waive the requirement that regulations be published at least 30 days before they become effective.

V. Analysis Under Executive Order 12866, the Unfunded Mandates Reform Act of 1995, the Regulatory Flexibility Act, and the Paperwork Reduction Act

Under Executive Order 12866, this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose annual costs of $100 million or more, will not significantly or uniquely affect small governments, and is not a significant federal intergovernmental mandate. The Agency thus has no obligations under sections 202, 203, 204 and 205 of the Unfunded Mandates Reform. Moreover, since this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to section 603 or 604 of the Regulatory Flexibility Act.

VI. Submission to Congress and the General Accounting Office

Because there is good cause to forego notice-and-comment procedures, the rule also may take effect upon promulgation without prior submission of the rule to the Congress. 5 U.S.C. section 808. EPA will thereafter submit the rule to Congress, as required by 5 U.S.C. 801(a).

List of Subjects in 40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

Dated: January 13, 1997.

Elliott Laws,

Assistant Administrator, Office of Solid Waste and Emergency Response.

For the reasons set forth in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 268—LAND DISPOSAL RESTRICTIONS

1. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

Subpart D—Treatment Standards

2. Section 268.40 is amended by revising the table "Treatment Standards for Hazardous Wastes" to read as follows:

§ 268.40 Applicability of treatment standards.

* * * * *

BILLING CODE 6560-50-P

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable

WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
D001[9]	Ignitable Characteristic Wastes, except for the §261.21(a)(1) High TOC Subcategory.	NA	NA	DEACT and meet §268.48 standards[6]; or RORGS; or CMBST	DEACT and meet §268.48 standards[6]; or RORGS; or CMBST
	High TOC Ignitable Characteristic Liquids Subcategory based on 40 CFR 261.21(a)(1) - Greater than or equal to 10% total organic carbon. (Note: This subcategory consists of nonwastewaters only.)	NA	NA	NA	RORGS; or CMBST
D002[9]	Corrosive Characteristic Wastes.	NA	NA	DEACT and meet §268.48 standards[6]	DEACT and meet §268.48 standards[6]
D002, D004, D005, D006, D007, D008, D009, D010, D011	Radioactive high level wastes generated during the reprocessing of fuel rods. (Note: This subcategory consists of nonwastewaters only.)	Corrosivity (pH)	NA	NA	HLVIT
		Arsenic	7440-38-2	NA	HLVIT
		Barium	7440-39-3	NA	HLVIT
		Cadmium	7440-43-9	NA	HLVIT
		Chromium (Total)	7440-47-3	NA	HLVIT
		Lead	7439-92-1	NA	HLVIT
		Mercury	7439-97-6	NA	HLVIT
		Selenium	7782-49-2	NA	HLVIT
		Silver	7440-22-4	NA	HLVIT
D003[9]	Reactive Sulfides Subcategory based on 261.23(a)(5).	NA	NA	DEACT	DEACT
	Explosives Subcategory based on 261.23(a)(6), (7), and (8).	NA	NA	DEACT and meet §268.48 standards[6]	DEACT and meet §268.48 standards[6]

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
	Unexploded ordnance and other explosive devices which have been the subject of an emergency response.	NA	NA	DEACT	DEACT
	Other Reactives Subcategory based on 261.23(a)(1).	NA	NA	DEACT and meet §268.48 standards[8]	DEACT and meet §268.48 standards[8]
	Water Reactive Subcategory based on 261.23(a)(2), (3), and (4). (Note: This subcategory consists of nonwastewaters only.)	NA	NA	NA	DEACT and meet §268.48 standards[8]
	Reactive Cyanides Subcategory based on 261.23(a)(5).	Cyanides (Total)[7]	57-12-5	Reserved	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
D004	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for arsenic based on the extraction procedure (EP) in SW846 Method 1310.	Arsenic	7440-38-2	5.0	5.0 mg/l EP
		Arsenic; alternate[6] standard for nonwastewaters only.	7440-38-2	NA	5.0 mg/l TCLP
D005	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for barium based on the extraction procedure (EP) in SW846 Method 1310.	Barium	7440-39-3	100	100 mg/l TCLP
D006	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for cadmium based on the extraction procedure (EP) in SW846 Method 1310.	Cadmium	7440-43-9	1.0	1.0 mg/l TCLP
	Cadmium Containing Batteries Subcategory. (Note: This subcategory consists of nonwastewaters only.)	Cadmium	7440-43-9	NA	RTHRM
D007	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for chromium based on the extraction procedure (EP) in SW846 Method 1310.	Chromium (Total)	7440-47-3	5.0	5.0 mg/l TCLP
D008	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for lead based on the extraction procedure (EP) in SW846 Method 1310.	Lead	7439-92-1	5.0	5.0 mg/l EP

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
		Lead; alternate[6] standard for nonwastewaters only	7439-92-1	NA	5.0 mg/l TCLP
	Lead Acid Batteries Subcategory (Note: This standard only applies to lead acid batteries that are identified as RCRA hazardous wastes and that are not excluded elsewhere from regulation under the land disposal restrictions of 40 CFR 268 or exempted under other EPA regulations (see 40 CFR 266.80). This subcategory consists of nonwastewaters only.)	Lead	7439-92-1	NA	RLEAD
	Radioactive Lead Solids Subcategory (Note: these lead solids include, but are not limited to, all forms of lead shielding and other elemental forms of lead. These lead solids do not include treatment residuals such as hydroxide sludges, other wastewater treatment residuals, or incinerator ashes that can undergo conventional pozzolanic stabilization, nor do they include organo-lead materials that can be incinerated and stabilized as ash. This subcategory consists of nonwastewaters only.)	Lead	7439-92-1	NA	MACRO
D009	Nonwastewaters that exhibit, or are expected to exhibit, the characteristic of toxicity for mercury based on the extraction procedure (EP) in SW846 Method 1310; and contain greater than or equal to 260 mg/kg total mercury that also contain organics and are not incinerator residues. (High Mercury-Organic Subcategory)	Mercury	7439-97-6	NA	IMERC; OR RMERC

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
	Nonwastewaters that exhibit, or are expected to exhibit, the characteristic of toxicity for mercury based on the extraction procedure (EP) in SW846 Method 1310; and contain greater than or equal to 260 mg/kg total mercury that are inorganic, including incinerator residues and residues from RMERC. (High Mercury-Inorganic Subcategory)	Mercury	7439-97-6	NA	RMERC
	Nonwastewaters that exhibit, or are expected to exhibit, the characteristic of toxicity for mercury based on the extraction procedure (EP) in SW846 Method 1310; and contain less than 260 mg/kg total mercury. (Low Mercury Subcategory)	Mercury	7439-97-6	NA	0.20 mg/l TCLP
	All D009 wastewaters.	Mercury	7439-97-6	0.20	NA
	Elemental mercury contaminated with radioactive materials. (Note: This subcategory consists of nonwastewaters only.)	Mercury	7439-97-6	NA	AMLGM
	Hydraulic oil contaminated with Mercury Radioactive Materials Subcategory. (Note: This subcategory consists of nonwastewaters only.)	Mercury	7439-97-6	NA	IMERC
D010	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for selenium based on the extraction procedure (EP) in SW846 Method 1310.	Selenium	7782-49-2	1.0	5.7 mg/l TCLP
D011	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for silver based on the extraction procedure (EP) in SW846 Method 1310.	Silver	7440-22-4	5.0	5.0 mg/l TCLP
D012[9]	Wastes that are TC for Endrin based on the TCLP in SW846 Method 1311.	Endrin	72-20-8	BIODG; or CMBST	0.13 and meet §268.48 standards[6]
		Endrin aldehyde	7421-93-4	BIODG; or CMBST	0.13 and meet §268.48 standards[6]

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
D013[9]	Wastes that are TC for Lindane based on the TCLP in SW846 Method 1311.	alpha-BHC	319-84-6	CARBN; or CMBST	0.066 and meet §268.48 standards[6]
		beta-BHC	319-85-7	CARBN; or CMBST	0.066 and meet §268.48 standards[6]
		delta-BHC	319-86-8	CARBN; or CMBST	0.066 and meet §268.48 standards[6]
		gamma-BHC (Lindane)	58-89-9	CARBN; or CMBST	0.066 and meet §268.48 standards[6]
D014[9]	Wastes that are TC for Methoxychlor based on the TCLP in SW846 Method 1311.	Methoxychlor	72-43-5	WETOX or CMBST	0.18 and meet §268.48 standards[6]
D015[9]	Wastes that are TC for Toxaphene based on the TCLP in SW846 Method 1311.	Toxaphene	8001-35-2	BIODG or CMBST	2.6 and meet §268.48 standards[6]
D016[9]	Wastes that are TC for 2,4-D (2,4-Dichlorophenoxyacetic acid) based on the TCLP in SW846 Method 1311.	2,4-D (2,4-Dichlorophenoxyacetic acid)	94-75-7	CHOXD, BIODG, or CMBST	10 and meet §268.48 standards[6]
D017[9]	Wastes that are TC for 2,4,5-TP (Silvex) based on the TCLP in SW846 Method 1311.	2,4,5-TP (Silvex)	93-72-1	CHOXD or CMBST	7.9 and meet §268.48 standards[6]
D018[9]	Wastes that are TC for Benzene based on the TCLP in SW846 Method 1311.	Benzene	71-43-2	0.14 and meet §268.48 standards[6]	10 and meet §268.48 standards[6]
D019[9]	Wastes that are TC for Carbon tetrachloride based on the TCLP in SW846 Method 1311.	Carbon tetrachloride	56-23-5	0.057 and meet §268.48 standards[6]	6.0 and meet §268.48 standards[6]

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
D020 [9]	Wastes that are TC for Chlordane based on the TCLP in SW846 Method 1311.	Chlordane (alpha and gamma isomers)	57-74-9	0.0033 and meet §268.48 standards[6]	0.26 and meet §268.48 standards[6]
D021 [9]	Wastes that are TC for Chlorobenzene based on the TCLP in SW846 Method 1311.	Chlorobenzene	108-90-7	0.057 and meet §268.48 standards[6]	6.0 and meet §268.48 standards[6]
D022 [9]	Wastes that are TC for Chloroform based on the TCLP in SW846 Method 1311.	Chloroform	67-66-3	0.046 and meet §268.48 standards[6]	6.0 and meet §268.48 standards[6]
D023 [9]	Wastes that are TC for o-Cresol based on the TCLP in SW846 Method 1311.	o-Cresol	95-48-7	0.11 and meet §268.48 standards[6]	5.6 and meet §268.48 standards[6]
D024 [9]	Wastes that are TC for m-Cresol based on the TCLP in SW846 Method 1311.	m-Cresol (difficult to distinguish from p-cresol)	108-39-4	0.77 and meet §268.48 standards[6]	5.6 and meet §268.48 standards[6]
D025 [9]	Wastes that are TC for p-Cresol based on the TCLP in SW846 Method 1311.	p-Cresol (difficult to distinguish from m-cresol)	106-44-5	0.77 and meet §268.48 standards[6]	5.6 and meet §268.48 standards[6]
D026 [9]	Wastes that are TC for Cresols (Total) based on the TCLP in SW846 Method 1311.	Cresol-mixed isomers (Cresylic acid)(sum of o-, m-, and p-cresol concentrations)	1319-77-3	0.88 and meet §268.48 standards[6]	11.2 and meet §268.48 standards[6]
D027 [9]	Wastes that are TC for p-Dichlorobenzene based on the TCLP in SW846 Method 1311.	p-Dichlorobenzene (1,4-Dichlorobenzene)	106-46-7	0.090 and meet §268.48 standards[6]	6.0 and meet §268.48 standards[6]
D028 [9]	Wastes that are TC for 1,2-Dichloroethane based on the TCLP in SW846 Method 1311.	1,2-Dichloroethane	107-06-2	0.21 and meet §268.48 standards[6]	6.0 and meet §268.48 standards[6]
D029 [9]	Wastes that are TC for 1,1-Dichloroethylene based on the TCLP in SW846 Method 1311.	1,1-Dichloroethylene	75-35-4	0.025 and meet §268.48 standards[6]	6.0 and meet §268.48 standards[6]

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
D030 [9]	Wastes that are TC for 2,4-Dinitrotoluene based on the TCLP in SW846 Method 1311.	2,4-Dinitrotoluene	121-14-2	0.32 and meet §268.48 standards[6]	140 and meet §268.48 standards[6]
D031 [9]	Wastes that are TC for Heptachlor based on the TCLP in SW846 Method 1311.	Heptachlor	76-44-8	0.0012 and meet §268.48 standards[6]	0.066 and meet §268.48 standards[6]
		Heptachlor epoxide	1024-57-3	0.016 and meet §268.48 standards[6]	0.066 and meet §268.48 standards[6]
D032 [9]	Wastes that are TC for Hexachlorobenzene based on the TCLP in SW846 Method 1311.	Hexachlorobenzene	118-74-1	0.055 and meet §268.48 standards[6]	10 and meet §268.48 standards[6]
D033 [9]	Wastes that are TC for Hexachlorobutadiene based on the TCLP in SW846 Method 1311.	Hexachlorobutadiene	87-68-3	0.055 and meet §268.48 standards[6]	5.6 and meet §268.48 standards[6]
D034 [9]	Wastes that are TC for Hexachloroethane based on the TCLP in SW846 Method 1311.	Hexachloroethane	67-72-1	0.055 and meet §268.48 standards[6]	30 and meet §268.48 standards[6]
D035 [9]	Wastes that are TC for Methyl ethyl ketone based on the TCLP in SW846 Method 1311.	Methyl ethyl ketone	78-93-3	0.28 and meet §268.48 standards[6]	36 and meet §268.48 standards[6]
D036 [9]	Wastes that are TC for Nitrobenzene based on the TCLP in SW846 Method 1311.	Nitrobenzene	98-95-3	0.068 and meet §268.48 standards[6]	14 and meet §268.48 standards[6]
D037 [9]	Wastes that are TC for Pentachlorophenol based on the TCLP in SW846 Method 1311.	Pentachlorophenol	87-86-5	0.089 and meet §268.48 standards[6]	7.4 and meet §268.48 standards[6]

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WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
D038 [9]	Wastes that are TC for Pyridine based on the TCLP in SW846 Method 1311.	Pyridine	110-86-1	0.014 and meet §268.48 standards[6]	16 and meet §268.48 standards[6]
D039 [9]	Wastes that are TC for Tetrachloroethylene based on the TCLP in SW846 Method 1311.	Tetrachloroethylene	127-18-4	0.056 and meet §268.48 standards[6]	6.0 and meet §268.48 standards[6]
D040 [9]	Wastes that are TC for Trichloroethylene based on the TCLP in SW846 Method 1311.	Trichloroethylene	79-01-6	0.054 and meet §268.48 standards[6]	6.0 and meet §268.48 standards[6]
D041 [9]	Wastes that are TC for 2,4,5-Trichlorophenol based on the TCLP in SW846 Method 1311.	2,4,5-Trichlorophenol	95-95-4	0.18 and meet §268.48 standards[6]	7.4 and meet §268.48 standards[6]
D042 [9]	Wastes that are TC for 2,4,6-Trichlorophenol based on the TCLP in SW846 Method 1311.	2,4,6-Trichlorophenol	88-06-2	0.035 and meet §268.48 standards[6]	7.4 and meet §268.48 standards[6]
D043 [9]	Wastes that are TC for Vinyl chloride based on the TCLP in SW846 Method 1311.	Vinyl chloride	75-01-4	0.27 and meet §268.48 standards[6]	6.0 and meet §268.48 standards[6]

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		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
F001, F002, F003, F004, & F005	F001, F002, F003, F004 and/or F005 solvent wastes that contain any combination of one or more of the following spent solvents: acetone, benzene, n-butyl alcohol, carbon disulfide, carbon tetrachloride, chlorinated fluorocarbons, chlorobenzene, o-cresol, m-cresol, p-cresol, cyclohexanone, o-dichlorobenzene, 2-ethoxyethanol, ethyl acetate, ethyl benzene, ethyl ether, isobutyl alcohol, methanol, methylene chloride, methyl ethyl ketone, methyl isobutyl ketone, nitrobenzene, 2-nitropropane, pyridine, tetrachloroethylene, toluene, 1,1,1-trichloroethane, 1,1,2-trichloroethane, 1,1,2-trichloro-1,2,2-trifluoroethane, trichloroethylene, trichloromonofluoromethane, and/or xylenes [except as specifically noted in other subcategories]. See further details of these listings in § 261.31	Acetone	67-64-1	0.28	160
		Benzene	71-43-2	0.14	10
		n-Butyl alcohol	71-36-3	5.6	2.6
		Carbon disulfide	75-15-0	3.8	NA
		Carbon tetrachloride	56-23-5	0.057	6.0
		Chlorobenzene	108-90-7	0.057	6.0
		o-Cresol	95-48-7	0.11	5.6
		m-Cresol (difficult to distinguish from p-cresol)	108-39-4	0.77	5.6
		p-Cresol (difficult to distinguish from m-cresol)	106-44-5	0.77	5.6
		Cresol-mixed isomers (Cresylic acid) (sum of o-, m-, and p-cresol concentrations)	1319-77-3	0.88	11.2
		Cyclohexanone	108-94-1	0.36	NA
		o-Dichlorobenzene	95-50-1	0.088	6.0
		Ethyl acetate	141-78-6	0.34	33
		Ethyl benzene	100-41-4	0.057	10
		Ethyl ether	60-29-7	0.12	160
		Isobutyl alcohol	78-83-1	5.6	170
		Methanol	67-56-1	5.6	NA

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		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
		Methylene chloride	75-9-2	0.089	30
		Methyl ethyl ketone	78-93-3	0.28	36
		Methyl isobutyl ketone	108-10-1	0.14	33
		Nitrobenzene	98-95-3	0.068	14
		Pyridine	110-86-1	0.014	16
		Tetrachloroethylene	127-18-4	0.056	6.0
		Toluene	108-88-3	0.080	10
		1,1,1-Trichloroethane	71-55-6	0.054	6.0
		1,1,2-Trichloroethane	79-00-5	0.054	6.0
		1,1,2-Trichloro-1,2,2-trifluoroethane	76-13-1	0.057	30
		Trichloroethylene	79-01-6	0.054	6.0
		Trichloromonofluoromethane	75-69-4	0.020	30
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
	F003 and/or F005 solvent wastes that contain any combination of one or more of the following three solvents as the only listed F001-5 solvents: carbon disulfide, cyclohexanone, and/or methanol. (formerly 268.41(c))	Carbon disulfide	75-15-0	3.8	4.8 mg/l TCLP
		Cyclohexanone	108-94-1	0.36	0.75 mg/l TCLP
		Methanol	67-56-1	5.6	0.75 mg/l TCLP
	F005 solvent waste containing 2-Nitropropane as the only listed F001-5 solvent.	2-Nitropropane	79-46-9	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
	F005 solvent waste containing 2-Ethoxyethanol as the only listed F001-5 solvent.	2-Ethoxyethanol	110-80-5	BIODG; or CMBST	CMBST

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		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
F006	Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.	Cadmium	7440-43-9	0.69	0.19 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
		Silver	7440-22-4	NA	0.30 mg/l TCLP
F007	Spent cyanide plating bath solutions from electroplating operations.	Cadmium	7440-43-9	NA	0.19 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
		Silver	7440-22-4	NA	0.30 mg/l TCLP
F008	Plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process.	Cadmium	7440-43-9	NA	0.19 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
		Silver	7440-22-4	NA	0.30 mg/l TCLP

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WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
F009	Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process.	Cadmium	7440-43-9	NA	0.19 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
		Silver	7440-22-4	NA	0.30 mg/l TCLP
F010	Quenching bath residues from oil baths from metal heat treating operations where cyanides are used in the process.	Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	NA
F011	Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations.	Cadmium	7440-43-9	NA	0.19 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
		Silver	7440-22-4	NA	0.30 mg/l TCLP
F012	Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process.	Cadmium	7440-43-9	NA	0.19 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
		Lead	7439-92-1	0.69	0.37 mg/l TCLP

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		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
		Silver	7440-22-4	NA	0.30 mg/l TCLP
F019	Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process.	Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
F020, F021, F022, F023, F026	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of: (1) tri- or tetrachlorophenol, or of intermediates used to produce their pesticide derivatives, excluding wastes from the production of Hexachlorophene from highly purified 2,4,5-trichlorophenol (F020); (2) pentachlorophenol, or of intermediates used to produce its derivatives (i.e., F021); (3) tetra-, penta-, or hexachlorobenzenes under alkaline conditions (i.e., F022); and from the production of materials on equipment previously used for the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of: (1) tri- or tetrachlorophenols, excluding wastes from equipment used only for the production of Hexachlorophene from highly purified 2,4,5-trichlorophenol (F023); (2) tetra-, penta-, or hexachlorobenzenes under alkaline conditions (i.e., F026).	HxCDDs (All Hexachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		HxCDFs (All Hexachlorodibenzofurans)	NA	0.000063	0.001
		PeCDDs (All Pentachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		PeCDFs (All Pentachlorodibenzofurans)	NA	0.000035	0.001
		Pentachlorophenol	87-86-5	0.089	7.4
		TCDDs (All Tetrachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		TCDFs (All Tetrachlorodibenzofurans)	NA	0.000063	0.001
		2,4,5-Trichlorophenol	95-95-4	0.18	7.4
		2,4,6-Trichlorophenol	88-06-2	0.035	7.4
		2,3,4,6-Tetrachlorophenol	58-90-2	0.030	7.4

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		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
F024	Process wastes, including but not limited to, distillation residues, heavy ends, tars, and reactor clean-out wastes, from the production of certain chlorinated aliphatic hydrocarbons by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. (This listing does not include wastewaters, wastewater treatment sludges, spent catalysts, and wastes listed in §261.31 or §261.32.).	All F024 wastes	NA	CMBST	CMBST
		2-Chloro-1,3-butadiene	126-99-8	0.057	0.28
		3-Chloropropylene	107-05-1	0.036	30
		1,1-Dichloroethane	75-34-3	0.059	6.0
		1,2-Dichloroethane	107-06-2	0.21	6.0
		1,2-Dichloropropane	78-87-5	0.85	18
		cis-1,3-Dichloropropylene	10061-01-5	0.036	18
		trans-1,3-Dichloropropylene	10061-02-6	0.036	18
		bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28
		Hexachloroethane	67-72-1	0.055	30
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
F025	Condensed light ends from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. F025 - Light Ends Subcategory	Carbon tetrachloride	56-23-5	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		1,2-Dichloroethane	107-06-2	0.21	6.0
		1,1-Dichloroethylene	75-35-4	0.025	6.0
		Methylene chloride	75-9-2	0.089	30
		1,1,2-Trichloroethane	79-00-5	0.054	6.0
		Trichloroethylene	79-01-6	0.054	6.0
		Vinyl chloride	75-01-4	0.27	6.0

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		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
	Spent filters and filter aids, and spent desiccant wastes from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. F025 - Spent Filters/Aids and Desiccants Subcategory	Carbon tetrachloride	56-23-5	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		Hexachlorobenzene	118-74-1	0.055	10
		Hexachlorobutadiene	87-68-3	0.055	5.6
		Hexachloroethane	67-72-1	0.055	30
		Methylene chloride	75-9-2	0.089	30
		1,1,2-Trichloroethane	79-00-5	0.054	6.0
		Trichloroethylene	79-01-6	0.054	6.0
		Vinyl chloride	75-01-4	0.27	6.0
F027	Discarded unused formulations containing tri-, tetra-, or pentachlorophenol or discarded unused formulations containing compounds derived from these chlorophenols. (This listing does not include formulations containing hexachlorophene synthesized from prepurified 2,4,5-trichlorophenol as the sole component.).	HxCDDs (All Hexachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		HxCDFs (All Hexachlorodibenzofurans)	NA	0.000063	0.001
		PeCDDs (All Pentachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		PeCDFs (All Pentachlorodibenzofurans)	NA	0.000035	0.001
		Pentachlorophenol	87-86-5	0.089	7.4
		TCDDs (All Tetrachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		TCDFs (All Tetrachlorodibenzofurans)	NA	0.000063	0.001

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
		2,4,5-Trichlorophenol	95-95-4	0.18	7.4
		2,4,6-Trichlorophenol	88-06-2	0.035	7.4
		2,3,4,6-Tetrachlorophenol	58-90-2	0.030	7.4
F028	Residues resulting from the incineration or thermal treatment of soil contaminated with EPA Hazardous Wastes Nos. F020, F021, F023, F026, and F027.	HxCDDs (All Hexachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		HxCDFs (All Hexachlorodibenzofurans)	NA	0.000063	0.001
		PeCDDs (All Pentachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		PeCDFs (All Pentachlorodibenzofurans)	NA	0.000035	0.001
		Pentachlorophenol	87-86-5	0.089	7.4
		TCDDs (All Tetrachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		TCDFs (All Tetrachlorodibenzofurans)	NA	0.000063	0.001
		2,4,5-Trichlorophenol	95-95-4	0.18	7.4
		2,4,6-Trichlorophenol	88-06-2	0.035	7.4
		2,3,4,6-Tetrachlorophenol	58-90-2	0.030	7.4

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
F037	Petroleum refinery primary oil/water/solids separation sludge-Any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in: oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units receiving dry weather flow. Sludge generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges generated in aggressive biological treatment units as defined in §261.31(b)(2) (including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and K051 wastes are not included in this listing.	Acenaphthene	83-32-9	0.059	NA
		Anthracene	120-12-7	0.059	3.4
		Benzene	71-43-2	0.14	10
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-32-8	0.061	3.4
		bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28
		Chrysene	218-01-9	0.059	3.4
		Di-n-butyl phthalate	84-74-2	0.057	28
		Ethylbenzene	100-41-4	0.057	10
		Fluorene	86-73-7	0.059	NA
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Pyrene	129-00-0	0.067	8.2
		Toluene	108-88-3	0.080	10
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Lead	7439-92-1	0.69	NA
		Nickel	7440-02-0	NA	5.0 mg/l TCLP

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
F038	Petroleum refinery secondary (emulsified) oil/water/solids separation sludge and/or float generated from the physical and/or chemical separation of oil/water/solids in process wastewaters and oily cooling wastewaters from petroleum refineries. Such wastes include, but are not limited to, all sludges and floats generated in: induced air floatation (IAF) units, tanks and impoundments, and all sludges generated in DAF units. Sludges generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges and floats generated in aggressive biological treatment units as defined in §261.31(b)(2) (including sludges and floats generated in one or more additional units after wastewaters have been treated in aggressive biological units) and F037, K048, and K051 are not included in this listing.	Benzene	71-43-2	0.14	10
		Benzo(a)pyrene	50-32-8	0.061	3.4
		bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28
		Chrysene	218-01-9	0.059	3.4
		Di-n-butyl phthalate	84-74-2	0.057	28
		Ethylbenzene	100-41-4	0.057	10
		Fluorene	86-73-7	0.059	NA
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Pyrene	129-00-0	0.067	8.2
		Toluene	108-88-3	0.080	10
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Lead	7439-92-1	0.69	NA
		Nickel	7440-02-0	NA	5.0 mg/l TCLP

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
F039	Leachate (liquids that have percolated through land disposed wastes) resulting from the disposal of more than one restricted waste classified as hazardous under subpart D of this part. (Leachate resulting from the disposal of one or more of the following EPA Hazardous Wastes and no other Hazardous Wastes retains its EPA Hazardous Waste Number(s): F020, F021, F022, F026, F027, and/or F028.).	Acenaphthylene	208-96-8	0.059	3.4
		Acenaphthene	83-32-9	0.059	3.4
		Acetone	67-64-1	0.28	160
		Acetonitrile	75-05-8	5.6	NA
		Acetophenone	96-86-2	0.010	9.7
		2-Acetylaminofluorene	53-96-3	0.059	140
		Acrolein	107-02-8	0.29	NA
		Acrylonitrile	107-13-1	0.24	84
		Aldrin	309-00-2	0.021	0.066
		4-Aminobiphenyl	92-67-1	0.13	NA
		Aniline	62-53-3	0.81	14
		Anthracene	120-12-7	0.059	3.4
		Aramite	140-57-8	0.36	NA
		alpha-BHC	319-84-6	0.00014	0.066
		beta-BHC	319-85-7	0.00014	0.066
		delta-BHC	319-86-8	0.023	0.066
		gamma-BHC	58-89-9	0.0017	0.066
		Benzene	71-43-2	0.14	10
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8
		Benzo(g,h,i)perylene	191-24-2	0.0055	1.8
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Bromodichloromethane	75-27-4	0.35	15
		Methyl bromide (Bromomethane)	74-83-9	0.11	15
		4-Bromophenyl phenyl ether	101-55-3	0.055	15
		n-Butyl alcohol	71-36-3	5.6	2.6
		Butyl benzyl phthalate	85-68-7	0.017	28
		2-sec-Butyl-4,6-dinitrophenol (Dinoseb)	88-85-7	0.066	2.5
		Carbon disulfide	75-15-0	3.8	NA
		Carbon tetrachloride	56-23-5	0.057	6.0
		Chlordane (alpha and gamma isomers)	57-74-9	0.0033	0.26
		p-Chloroaniline	106-47-8	0.46	16
		Chlorobenzene	108-90-7	0.057	6.0
		Chlorobenzilate	510-15-6	0.10	NA
		2-Chloro-1,3-butadiene	126-99-8	0.057	NA
		Chlorodibromomethane	124-48-1	0.057	15
		Chloroethane	75-00-3	0.27	6.0
		bis(2-Chloroethoxy)methane	111-91-1	0.036	7.2

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
		bis(2-Chloroethyl)ether	111-44-4	0.033	6.0
		Chloroform	67-66-3	0.046	6.0
		bis(2-Chloroisopropyl)ether	39638-32-9	0.055	7.2
		p-Chloro-m-cresol	59-50-7	0.018	14
		Chloromethane (Methyl chloride)	74-87-3	0.19	30
		2-Chloronaphthalene	91-58-7	0.055	5.6
		2-Chlorophenol	95-57-8	0.044	5.7
		3-Chloropropylene	107-05-1	0.036	30
		Chrysene	218-01-9	0.059	3.4
		o-Cresol	95-48-7	0.11	5.6
		m-Cresol (difficult to distinguish from p-cresol)	108-39-4	0.77	5.6
		p-Cresol (difficult to distinguish from m-cresol)	106-44-5	0.77	5.6
		Cyclohexanone	108-94-1	0.36	NA
		1,2-Dibromo-3-chloropropane	96-12-8	0.11	15
		Ethylene dibromide (1,2-Dibromoethane)	106-93-4	0.028	15
		Dibromomethane	74-95-3	0.11	15
		2,4-D (2,4-Dichlorophenoxyacetic acid)	94-75-7	0.72	10

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
		o,p'-DDD	53-19-0	0.023	0.087
		p,p'-DDD	72-54-8	0.023	0.087
		o,p'-DDE	3424-82-6	0.031	0.087
		p,p'-DDE	72-55-9	0.031	0.087
		o,p'-DDT	789-02-6	0.0039	0.087
		p,p'-DDT	50-29-3	0.0039	0.087
		Dibenz(a,h)anthracene	53-70-3	0.055	8.2
		Dibenz(a,e)pyrene	192-65-4	0.061	NA
		m-Dichlorobenzene	541-73-1	0.036	6.0
		o-Dichlorobenzene	95-50-1	0.088	6.0
		p-Dichlorobenzene	106-46-7	0.090	6.0
		Dichlorodifluoromethane	75-71-8	0.23	7.2
		1,1-Dichloroethane	75-34-3	0.059	6.0
		1,2-Dichloroethane	107-06-2	0.21	6.0
		1,1-Dichloroethylene	75-35-4	0.025	6.0
		trans-1,2-Dichloroethylene	156-60-5	0.054	30
		2,4-Dichlorophenol	120-83-2	0.044	14
		2,6-Dichlorophenol	87-65-0	0.044	14
		1,2-Dichloropropane	78-87-5	0.85	18
		cis-1,3-Dichloropropylene	10061-01-5	0.036	18

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
		trans-1,3-Dichloropropylene	10061-02-6	0.036	18
		Dieldrin	60-57-1	0.017	0.13
		Diethyl phthalate	84-66-2	0.20	28
		2-4-Dimethyl phenol	105-67-9	0.036	14
		Dimethyl phthalate	131-11-3	0.047	28
		Di-n-butyl phthalate	84-74-2	0.057	28
		1,4-Dinitrobenzene	100-25-4	0.32	2.3
		4,6-Dinitro-o-cresol	534-52-1	0.28	160
		2,4-Dinitrophenol	51-28-5	0.12	160
		2,4-Dinitrotoluene	121-14-2	0.32	140
		2,6-Dinitrotoluene	606-20-2	0.55	28
		Di-n-octyl phthalate	117-84-0	0.017	28
		Di-n-propylnitrosamine	621-64-7	0.40	14
		1,4-Dioxane	123-91-1	12.0	170
		Diphenylamine (difficult to distinguish from diphenylnitrosamine)	122-39-4	0.92	NA
		Diphenylnitrosamine (difficult to distinguish from diphenylamine)	86-30-6	0.92	NA
		1,2-Diphenylhydrazine	122-66-7	0.087	NA
		Disulfoton	298-04-4	0.017	6.2
		Endosulfan I	939-98-8	0.023	0.066

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WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
		Endosulfan II	33213-6-5	0.029	0.13
		Endosulfan sulfate	1031-07-8	0.029	0.13
		Endrin	72-20-8	0.0028	0.13
		Endrin aldehyde	7421-93-4	0.025	0.13
		Ethyl acetate	141-78-6	0.34	33
		Ethyl cyanide (Propanenitrile)	107-12-0	0.24	360
		Ethyl benzene	100-41-4	0.057	10
		Ethyl ether	60-29-7	0.12	160
		bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28
		Ethyl methacrylate	97-63-2	0.14	160
		Ethylene oxide	75-21-8	0.12	NA
		Famphur	52-85-7	0.017	15
		Fluoranthene	206-44-0	0.068	3.4
		Fluorene	86-73-7	0.059	3.4
		Heptachlor	76-44-8	0.0012	0.066
		Heptachlor epoxide	1024-57-3	0.016	0.066
		Hexachlorobenzene	118-74-1	0.055	10
		Hexachlorobutadiene	87-68-3	0.055	5.6
		Hexachlorocyclopentadiene	77-47-4	0.057	2.4
		HxCDDs (All Hexachlorodibenzo-p-dioxins)	NA	0.000063	0.001

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
		HxCDFs (All Hexachlorodibenzofurans)	NA	0.000063	0.001
		Hexachloroethane	67-72-1	0.055	30
		Hexachloropropylene	1888-71-7	0.035	30
		Indeno (1,2,3-c,d) pyrene	193-39-5	0.0055	3.4
		Iodomethane	74-88-4	0.19	65
		Isobutyl alcohol	78-83-1	5.6	170
		Isodrin	465-73-6	0.021	0.066
		Isosafrole	120-58-1	0.081	2.6
		Kepone	143-50-8	0.0011	0.13
		Methacrylonitrile	126-98-7	0.24	84
		Methanol	67-56-1	5.6	NA
		Methapyrilene	91-80-5	0.081	1.5
		Methoxychlor	72-43-5	0.25	0.18
		3-Methylcholanthrene	56-49-5	0.0055	15
		4,4-Methylene bis(2-chloroaniline)	101-14-4	0.50	30
		Methylene chloride	75-09-2	0.089	30
		Methyl ethyl ketone	78-93-3	0.28	36
		Methyl isobutyl ketone	108-10-1	0.14	33
		Methyl methacrylate	80-62-6	0.14	160
		Methyl methansulfonate	66-27-3	0.018	NA

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
		Methyl parathion	298-00-0	0.014	4.6
		Naphthalene	91-20-3	0.059	5.6
		2-Naphthylamine	91-59-8	0.52	NA
		p-Nitroaniline	100-01-6	0.028	28
		Nitrobenzene	98-95-3	0.068	14
		5-Nitro-o-toluidine	99-55-8	0.32	28
		p-Nitrophenol	100-02-7	0.12	29
		N-Nitrosodiethylamine	55-18-5	0.40	28
		N-Nitrosodimethylamine	62-75-9	0.40	NA
		N-Nitroso-di-n-butylamine	924-16-3	0.40	17
		N-Nitrosomethylethylamine	10595-95-6	0.40	2.3
		N-Nitrosomorpholine	59-89-2	0.40	2.3
		N-Nitrosopiperidine	100-75-4	0.013	35
		N-Nitrosopyrrolidine	930-55-2	0.013	35
		Parathion	56-38-2	0.014	4.6
		Total PCBs (sum of all PCB isomers, or all Aroclors)	1336-36-3	0.10	10
		Pentachlorobenzene	608-93-5	0.055	10
		PeCDDs (All Pentachlorodibenzo-p-dioxins)	NA	0.000063	0.001

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
		PeCDFs (All Pentachlorodibenzofurans)	NA	0.000035	0.001
		Pentachloronitrobenzene	82-68-8	0.055	4.8
		Pentachlorophenol	87-86-5	0.089	7.4
		Phenacetin	62-44-2	0.081	16
		Phenanthrene	85-01-8	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Phorate	298-02-2	0.021	4.6
		Phthalic anhydride	85-44-9	0.055	NA
		Pronamide	23950-58-5	0.093	1.5
		Pyrene	129-00-0	0.067	8.2
		Pyridine	110-86-1	0.014	16
		Safrole	94-59-7	0.081	22
		Silvex (2,4,5-TP)	93-72-1	0.72	7.9
		2,4,5-T	93-76-5	0.72	7.9
		1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	14
		TCDDs (All Tetrachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		TCDFs (All Tetrachlorodibenzofurans)	NA	0.000063	0.001
		1,1,1,2-Tetrachloroethane	630-20-6	0.057	6.0
		1,1,2,2-Tetrachloroethane	79-34-6	0.057	6.0

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
		Tetrachloroethylene	127-18-4	0.056	6.0
		2,3,4,6-Tetrachlorophenol	58-90-2	0.030	7.4
		Toluene	108-88-3	0.080	10
		Toxaphene	8001-35-2	0.0095	2.6
		Bromoform (Tribromomethane)	75-25-2	0.63	15
		1,2,4-Trichlorobenzene	120-82-1	0.055	19
		1,1,1-Trichloroethane	71-55-6	0.054	6.0
		1,1,2-Trichloroethane	79-00-5	0.054	6.0
		Trichloroethylene	79-01-6	0.054	6.0
		Trichloromonofluoromethane	75-69-4	0.020	30
		2,4,5-Trichlorophenol	95-95-4	0.18	7.4
		2,4,6-Trichlorophenol	88-06-2	0.035	7.4
		1,2,3-Trichloropropane	96-18-4	0.85	30
		1,1,2-Trichloro-1,2,2-trifluoroethane	76-13-1	0.057	30
		tris(2,3-Dibromopropyl) phosphate	126-72-7	0.11	NA
		Vinyl chloride	75-01-4	0.27	6.0
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Antimony	7440-36-0	1.9	2.1 mg/l TCLP
		Arsenic	7440-38-2	1.4	5.0 mg/l TCLP

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
		Barium	7440-39-3	1.2	7.6 mg/l TCLP
		Beryllium	7440-41-7	0.82	NA
		Cadmium	7440-43-9	0.69	0.19 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	NA
		Fluoride	16964-48-8	35	NA
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Mercury	7439-97-6	0.15	0.025 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
		Selenium	7782-49-2	0.82	0.16 mg/l TCLP
		Silver	7440-22-4	0.43	0.30 mg/l TCLP
		Sulfide	8496-25-8	14	NA
		Thallium	7440-28-0	1.4	NA
		Vanadium	7440-62-2	4.3	NA
K001	Bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol.	Naphthalene	91-20-3	0.059	5.6
		Pentachlorophenol	87-86-5	0.089	7.4
		Phenanthrene	85-01-8	0.059	5.6
		Pyrene	129-00-0	0.067	8.2
		Toluene	108-88-3	0.080	10

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
K002	Wastewater treatment sludge from the production of chrome yellow and orange pigments.	Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
K003	Wastewater treatment sludge from the production of molybdate orange pigments.	Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
K004	Wastewater treatment sludge from the production of zinc yellow pigments.	Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
K005	Wastewater treatment sludge from the production of chrome green pigments.	Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
K006	Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous).	Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
	Wastewater treatment sludge from the production of chrome oxide green pigments (hydrated).	Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	NA
K007	Wastewater treatment sludge from the production of iron blue pigments.	Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
K008	Oven residue from the production of chrome oxide green pigments.	Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP

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WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
K009	Distillation bottoms from the production of acetaldehyde from ethylene.	Chloroform	67-66-3	0.046	6.0
K010	Distillation side cuts from the production of acetaldehyde from ethylene.	Chloroform	67-66-3	0.046	6.0
K011	Bottom stream from the wastewater stripper in the production of acrylonitrile.	Acetonitrile	75-05-8	5.6	38
		Acrylonitrile	107-13-1	0.24	84
		Acrylamide	79-06-1	19	23
		Benzene	71-43-2	0.14	10
		Cyanide (Total)	57-12-5	1.2	590
K013	Bottom stream from the acetonitrile column in the production of acrylonitrile.	Acetonitrile	75-05-8	5.6	38
		Acrylonitrile	107-13-1	0.24	84
		Acrylamide	79-06-1	19	23
		Benzene	71-43-2	0.14	10
		Cyanide (Total)	57-12-5	1.2	590
K014	Bottoms from the acetonitrile purification column in the production of acrylonitrile.	Acetonitrile	75-05-8	5.6	38
		Acrylonitrile	107-13-1	0.24	84
		Acrylamide	79-06-1	19	23
		Benzene	71-43-2	0.14	10
		Cyanide (Total)	57-12-5	1.2	590
K015	Still bottoms from the distillation of benzyl chloride.	Anthracene	120-12-7	0.059	3.4
		Benzal chloride	98-87-3	0.055	6.0

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		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8
		Phenanthrene	85-01-8	0.059	5.6
		Toluene	108-88-3	0.080	10
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
K016	Heavy ends or distillation residues from the production of carbon tetrachloride.	Hexachlorobenzene	118-74-1	0.055	10
		Hexachlorobutadiene	87-68-3	0.055	5.6
		Hexachlorocyclopentadiene	77-47-4	0.057	2.4
		Hexachloroethane	67-72-1	0.055	30
		Tetrachloroethylene	127-18-4	0.056	6.0
K017	Heavy ends (still bottoms) from the purification column in the production of epichlorohydrin.	bis(2-Chloroethyl)ether	111-44-4	0.033	6.0
		1,2-Dichloropropane	78-87-5	0.85	18
		1,2,3-Trichloropropane	96-18-4	0.85	30
K018	Heavy ends from the fractionation column in ethyl chloride production.	Chloroethane	75-00-3	0.27	6.0
		Chloromethane	74-87-3	0.19	NA
		1,1-Dichloroethane	75-34-3	0.059	6.0
		1,2-Dichloroethane	107-06-2	0.21	6.0
		Hexachlorobenzene	118-74-1	0.055	10

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WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
		Hexachlorobutadiene	87-68-3	0.055	5.6
		Hexachloroethane	67-72-1	0.055	30
		Pentachloroethane	76-01-7	NA	6.0
		1,1,1-Trichloroethane	71-55-6	0.054	6.0
K019	Heavy ends from the distillation of ethylene dichloride in ethylene dichloride production.	bis(2-Chloroethyl)ether	111-44-4	0.033	6.0
		Chlorobenzene	108-90-7	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		p-Dichlorobenzene	106-46-7	0.090	NA
		1,2-Dichloroethane	107-06-2	0.21	6.0
		Fluorene	86-73-7	0.059	NA
		Hexachloroethane	67-72-1	0.055	30
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	NA
		Tetrachloroethylene	127-18-4	0.056	6.0
		1,2,4-Trichlorobenzene	120-82-1	0.055	19
		1,1,1-Trichloroethane	71-55-6	0.054	6.0
K020	Heavy ends from the distillation of vinyl chloride in vinyl chloride monomer production.	1,2-Dichloroethane	107-06-2	0.21	6.0
		1,1,2,2-Tetrachloroethane	79-34-6	0.057	6.0
		Tetrachloroethylene	127-18-4	0.056	6.0
K021	Aqueous spent antimony catalyst waste from fluoromethanes production.	Carbon tetrachloride	56-23-5	0.057	6.0

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		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
		Chloroform	67-66-3	0.046	6.0
		Antimony	7440-36-0	1.9	2.1 mg/l TCLP
K022	Distillation bottom tars from the production of phenol/acetone from cumene.	Toluene	108-88-3	0.080	10
		Acetophenone	96-86-2	0.010	9.7
		Diphenylamine (difficult to distinguish from diphenylnitrosamine)	122-39-4	0.92	13
		Diphenylnitrosamine (difficult to distinguish from diphenylamine)	86-30-6	0.92	13
		Phenol	108-95-2	0.039	6.2
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
K023	Distillation light ends from the production of phthalic anhydride from naphthalene.	Phthalic anhydride (measured as Phthalic acid or Terephthalic acid)	100-21-0	0.055	28
		Phthalic anhydride (measured as Phthalic acid or Terephthalic acid)	85-44-9	0.055	28
K024	Distillation bottoms from the production of phthalic anhydride from naphthalene.	Phthalic anhydride (measured as Phthalic acid or Terephthalic acid)	100-21-0	0.055	28
		Phthalic anhydride (measured as Phthalic acid or Terephthalic acid)	85-44-9	0.055	28
K025	Distillation bottoms from the production of nitrobenzene by the nitration of benzene.	NA	NA	LLEXT fb SSTRP fb CARBN; or CMBST	CMBST

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		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
K026	Stripping still tails from the production of methyl ethyl pyridines.	NA	NA	CMBST	CMBST
K027	Centrifuge and distillation residues from toluene diisocyanate production.	NA	NA	CARBN; or CMBST	CMBST
K028	Spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane.	1,1-Dichloroethane	75-34-3	0.059	6.0
		trans-1,2-Dichloroethylene	156-60-5	0.054	30
		Hexachlorobutadiene	87-68-3	0.055	5.6
		Hexachloroethane	67-72-1	0.055	30
		Pentachloroethane	76-01-7	NA	6.0
		1,1,1,2-Tetrachloroethane	630-20-6	0.057	6.0
		1,1,2,2-Tetrachloroethane	79-34-6	0.057	6.0
		Tetrachloroethylene	127-18-4	0.056	6.0
		1,1,1-Trichloroethane	71-55-6	0.054	6.0
		1,1,2-Trichloroethane	79-00-5	0.054	6.0
		Cadmium	7440-43-9	0.69	NA
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
K029	Waste from the product steam stripper in the production of 1,1,1-trichloroethane.	Chloroform	67-66-3	0.046	6.0
		1,2-Dichloroethane	107-06-2	0.21	6.0
		1,1-Dichloroethylene	75-35-4	0.025	6.0
		1,1,1-Trichloroethane	71-55-6	0.054	6.0

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		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
		Vinyl chloride	75-01-4	0.27	6.0
K030	Column bodies or heavy ends from the combined production of trichloroethylene and perchloroethylene.	o-Dichlorobenzene	95-50-1	0.088	NA
		p-Dichlorobenzene	106-46-7	0.090	NA
		Hexachlorobutadiene	87-68-3	0.055	5.6
		Hexachloroethane	67-72-1	0.055	30
		Hexachloropropylene	1888-71-7	NA	30
		Pentachlorobenzene	608-93-5	NA	10
		Pentachloroethane	76-01-7	NA	6.0
		1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	14
		Tetrachloroethylene	127-18-4	0.056	6.0
		1,2,4-Trichlorobenzene	120-82-1	0.055	19
K031	By-product salts generated in the production of MSMA and cacodylic acid.	Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
K032	Wastewater treatment sludge from the production of chlordane.	Hexachlorocyclopentadiene	77-47-4	0.057	2.4
		Chlordane (alpha and gamma isomers)	57-74-9	0.0033	0.26
		Heptachlor	76-44-8	0.0012	0.066
		Heptachlor epoxide	1024-57-3	0.016	0.066
K033	Wastewater and scrub water from the chlorination of cyclopentadiene in the production of chlordane.	Hexachlorocyclopentadiene	77-47-4	0.057	2.4
K034	Filter solids from the filtration of hexachlorocyclopentadiene in the production of chlordane.	Hexachlorocyclopentadiene	77-47-4	0.057	2.4

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		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
K035	Wastewater treatment sludges generated in the production of creosote.	Acenaphthene	83-32-9	NA	3.4
		Anthracene	120-12-7	NA	3.4
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Chrysene	218-01-9	0.059	3.4
		o-Cresol	95-48-7	0.11	5.6
		m-Cresol (difficult to distinguish from p-cresol)	108-39-4	0.77	5.6
		p-Cresol (difficult to distinguish from m-cresol)	106-44-5	0.77	5.6
		Dibenz(a,h)anthracene	53-70-3	NA	8.2
		Fluoranthene	206-44-0	0.068	3.4
		Fluorene	86-73-7	NA	3.4
		Indeno(1,2,3-cd)pyrene	193-39-5	NA	3.4
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Pyrene	129-00-0	0.067	8.2
K036	Still bottoms from toluene reclamation distillation in the production of disulfoton.	Disulfoton	298-04-4	0.017	6.2
K037	Wastewater treatment sludges from the production of disulfoton.	Disulfoton	298-04-4	0.017	6.2
		Toluene	108-88-3	0.080	10

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		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
K038	Wastewater from the washing and stripping of phorate production.	Phorate	298-02-2	0.021	4.6
K039	Filter cake from the filtration of diethylphosphorodithioic acid in the production of phorate.	NA	NA	CARBN; or CMBST	CMBST
K040	Wastewater treatment sludge from the production of phorate.	Phorate	298-02-2	0.021	4.6
K041	Wastewater treatment sludge from the production of toxaphene.	Toxaphene	8001-35-2	0.0095	2.6
K042	Heavy ends or distillation residues from the distillation of tetrachlorobenzene in the production of 2,4,5-T.	o-Dichlorobenzene	95-50-1	0.088	6.0
		p-Dichlorobenzene	106-46-7	0.090	6.0
		Pentachlorobenzene	608-93-5	0.055	10
		1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	14
		1,2,4-Trichlorobenzene	120-82-1	0.055	19
K043	2,6-Dichlorophenol waste from the production of 2,4-D.	2,4-Dichlorophenol	120-83-2	0.044	14
		2,6-Dichlorophenol	187-65-0	0.044	14
		2,4,5-Trichlorophenol	95-95-4	0.18	7.4
		2,4,6-Trichlorophenol	88-06-2	0.035	7.4
		2,3,4,6-Tetrachlorophenol	58-90-2	0.030	7.4
		Pentachlorophenol	87-86-5	0.089	7.4
		Tetrachloroethylene	127-18-4	0.056	6.0
		HxCDDs (All Hexachlorodibenzo-p-dioxins)	NA	0.000063	0.001

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		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
		HxCDFs (All Hexachlorodibenzofurans)	NA	0.000063	0.001
		PeCDDs (All Pentachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		PeCDFs (All Pentachlorodibenzofurans)	NA	0.000035	0.001
		TCDDs (All Tetrachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		TCDFs (All Tetrachlorodibenzofurans)	NA	0.000063	0.001
K044	Wastewater treatment sludges from the manufacturing and processing of explosives.	NA	NA	DEACT	DEACT
K045	Spent carbon from the treatment of wastewater containing explosives.	NA	NA	DEACT	DEACT
K046	Wastewater treatment sludges from the manufacturing, formulation and loading of lead-based initiating compounds.	Lead	7439-92-1	0.69	0.37 mg/l TCLP
K047	Pink/red water form TNT operations	NA	NA	DEACT	DEACT
K048	Dissolved air flotation (DAF) float from the petroleum refining industry.	Benzene	71-43-2	0.14	10
		Benzo(a)pyrene	50-32-8	0.061	3.4
		bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28
		Chrysene	218-01-9	0.059	3.4
		Di-n-butyl phthalate	84-74-2	0.057	28
		Ethylbenzene	100-41-4	0.057	10

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		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
		Fluorene	86-73-7	0.059	NA
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Pyrene	129-00-0	0.067	8.2
		Toluene	108-88-33	0.080	10
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Lead	7439-92-1	0.69	NA
		Nickel	7440-02-0	NA	5.0 mg/l TCLP
K049	Slop oil emulsion solids from the petroleum refining industry.	Anthracene	120-12-7	0.059	3.4
		Benzene	71-43-2	0.14	10
		Benzo(a)pyrene	50-32-8	0.061	3.4
		bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28
		Carbon disulfide	75-15-0	3.8	NA
		Chrysene	2218-01-9	0.059	3.4
		2,4-Dimethylphenol	105-67-9	0.036	NA
		Ethylbenzene	100-41-4	0.057	10
		Naphthalene	91-20-3	0.059	5.6

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
		Phenanthrene	85-01-8	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Pyrene	129-00-0	0.067	8.2
		Toluene	108-88-3	0.080	10
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Cyanides (Total)[7]	57-12-5	1.2	590
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	NA
		Nickel	7440-02-0	NA	5.0 mg/l TCLP
K050	Heat exchanger bundle cleaning sludge from the petroleum refining industry.	Benzo(a)pyrene	50-32-8	0.061	3.4
		Phenol	108-95-2	0.039	6.2
		Cyanides (Total)[7]	57-12-5	1.2	590
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	NA
		Nickel	7440-02-0	NA	5.0 mg/l TCLP
K051	API separator sludge from the petroleum refining industry.	Acenaphthene	83-32-9	0.059	NA
		Anthracene	120-12-7	0.059	3.4
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzene	71-43-2	0.14	10
		Benzo(a)pyrene	50-32-8	0.061	3.4

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
		bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28
		Chrysene	2218-01-9	0.059	3.4
		Di-n-butyl phthalate	105-67-9	0.057	28
		Ethylbenzene	100-41-4	0.057	10
		Fluorene	86-73-7	0.059	NA
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Pyrene	129-00-0	0.067	8.2
		Toluene	108-88-3	0.08	10
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Cyanides (Total)[7]	57-12-5	1.2	590
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	NA
		Nickel	7440-02-0	NA	5.0 mg/l TCLP
K052	Tank bottoms (leaded) from the petroleum refining industry.	Benzene	71-43-2	0.14	10
		Benzo(a)pyrene	50-32-8	0.061	3.4
		o-Cresol	95-48-7	0.11	5.6
		m-Cresol (difficult to distinguish from p-cresol)	108-39-4	0.77	5.6

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
		p-Cresol (difficult to distinguish from m-cresol)	106-44-5	0.77	5.6
		2,4-Dimethylphenol	105-67-9	0.036	NA
		Ethylbenzene	100-41-4	0.057	10
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Toluene	108-88-3	0.08	10
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Lead	7439-92-1	0.69	NA
		Nickel	7440-02-0	NA	5.0 mg/l TCLP
K060	Ammonia still lime sludge from coking operations.	Benzene	71-43-2	0.14	10
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Naphthalene	91-20-3	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Cyanides (Total)[7]	57-12-5	1.2	590
K061	Emission control dust/sludge from the primary production of steel in electric furnaces.	Antimony	7440-36-0	NA	2.1 mg/l TCLP
		Arsenic	7440-38-2	NA	5.0 mg/l TCLP

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
		Barium	7440-39-3	NA	7.6 mg/l TCLP
		Beryllium	7440-41-7	NA	0.014 mg/l TCLP
		Cadmium	7440-43-9	0.69	0.19 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Mercury	7439-97-6	NA	0.025 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
		Selenium	7782-49-2	NA	0.16 mg/l TCLP
		Silver	7440-22-4	NA	0.30 mg/l TCLP
		Thallium	7440-28-0	NA	0.078 mg/l TCLP
		Zinc	7440-66-6	NA	5.3 mg/l TCLP
K062	Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332).	Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Nickel	7440-02-0	3.98	NA
K069	Emission control dust/sludge from secondary lead smelting. - Calcium Sulfate (Low Lead) Subcategory	Cadmium	7440-43-9	0.69	0.19 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
	Emission control dust/sludge from secondary lead smelting. - Non-Calcium Sulfate (High Lead) Subcategory	NA	NA	NA	RLEAD
K071	K071 (Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used.) nonwastewaters that are residues from RMERC.	Mercury	7439-97-6	NA	0.20 mg/l TCLP

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WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
	K071 (Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used.) nonwastewaters that are not residues from RMERC.	Mercury	7439-97-6	NA	0.025 mg/l TCLP
	All K071 wastewaters.	Mercury	7439-97-6	0.15	NA
K073	Chlorinated hydrocarbon waste from the purification step of the diaphragm cell process using graphite anodes in chlorine production.	Carbon tetrachloride	56-23-5	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		Hexachloroethane	67-72-1	0.055	30
		Tetrachloroethylene	127-18-4	0.056	6.0
		1,1,1-Trichloroethane	71-55-6	0.054	6.0
K083	Distillation bottoms from aniline production.	Aniline	62-53-3	0.81	14
		Benzene	71-43-2	0.14	10
		Cyclohexanone	108-94-1	0.36	NA
		Diphenylamine (difficult to distinguish from diphenylnitrosamine)	122-39-4	0.92	13
		Diphenylnitrosamine (difficult to distinguish from diphenylamine)	86-30-6	0.92	13
		Nitrobenzene	98-95-3	0.068	14
		Phenol	108-95-2	0.039	6.2
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
K084	Wastewater treatment sludges generated during the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.	Arsenic	7440-38-2	1.4	5.0 mg/l TCLP

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
K085	Distillation or fractionation column bottoms from the production of chlorobenzenes.	Benzene	71-43-2	0.14	10
		Chlorobenzene	108-90-7	0.057	6.0
		m-Dichlorobenzene	541-73-1	0.036	6.0
		o-Dichlorobenzene	95-50-1	0.088	6.0
		p-Dichlorobenzene	106-46-7	0.090	6.0
		Hexachlorobenzene	118-74-1	0.055	10
		Total PCBs (sum of all PCB isomers, or all Aroclors)	1336-36-3	0.10	10
		Pentachlorobenzene	608-93-5	0.055	10
		1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	14
		1,2,4-Trichlorobenzene	120-82-1	0.055	19
K086	Solvent wastes and sludges, caustic washes and sludges, or water washes and sludges from cleaning tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead.	Acetone	67-64-1	0.28	160
		Acetophenone	96-86-2	0.010	9.7
		bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28
		n-Butyl alcohol	71-36-3	5.6	2.6
		Butylbenzyl phthalate	85-68-7	0.017	28
		Cyclohexanone	108-94-1	0.36	NA
		o-Dichlorobenzene	95-50-1	0.088	6.0
		Diethyl phthalate	84-66-2	0.20	28
		Dimethyl phthalate	131-11-3	0.047	28
		Di-n-butyl phthalate	84-74-2	0.057	28

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WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
		Di-n-octyl phthalate	117-84-0	0.017	28
		Ethyl acetate	141-78-6	0.34	33
		Ethylbenzene	100-41-4	0.057	10
		Methanol	67-56-1	5.6	NA
		Methyl ethyl ketone	78-93-3	0.28	36
		Methyl isobutyl ketone	108-10-1	0.14	33
		Methylene chloride	75-09-2	0.089	30
		Naphthalene	91-20-3	0.059	5.6
		Nitrobenzene	98-95-3	0.068	14
		Toluene	108-88-3	0.080	10
		1,1,1-Trichloroethane	71-55-6	0.054	6.0
		Trichloroethylene	79-01-6	0.054	6.0
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
K087	Decanter tank tar sludge from coking operations.	Acenaphthylene	208-96-8	0.059	3.4
		Benzene	71-43-2	0.14	10
		Chrysene	218-01-9	0.059	3.4
		Fluoranthene	206-44-0	0.068	3.4

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
		Indeno(1,2,3-cd)pyrene	193-39-5	0.0055	3.4
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		Toluene	108-88-3	0.080	10
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
K088	Spent potliners from primary aluminum reduction.	Acenaphthene	83-32-9	0.059	3.4
		Anthracene	120-12-7	0.059	3.4
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Benzo(b)fluoranthene	205-99-2	0.11	6.8
		Benzo(k)fluoranthene	207-08-9	0.11	6.8
		Benzo(g,h,i)perylene	191-24-2	0.0055	1.8
		Chrysene	218-01-9	0.059	3.4
		Dibenz(a,h)anthracene	53-70-3	0.055	8.2
		Fluoranthene	206-44-0	0.068	3.4
		Indeno(1,2,3,-c,d)pyrene	193-39-5	0.0055	3.4
		Phenanthrene	85-01-8	0.059	5.6
		Pyrene	129-00-0	0.067	8.2
		Antimony	7440-36-0	1.9	2.1 mg/l TCLP

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
		Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
		Barium	7440-39-3	1.2	7.6 mg/l TCLP
		Beryllium	7440-41-7	0.82	0.014 mg/l TCLP
		Cadmium	7440-43-9	0.69	0.19 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Mercury	7439-97-6	0.15	0.025 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
		Selenium	7782-49-2	0.82	0.16 mg/l TCLP
		Silver	7440-22-4	0.43	0.30 mg/l TCLP
		Cyanide (Total)[7]	57-12-5	1.2	590
		Cyanide (Amenable)[7]	57-12-5	0.86	30
		Fluoride	16984-48-8	35	48 mg/l TCLP
K093	Distillation light ends from the production of phthalic anhydride from ortho-xylene.	Phthalic anhydride (measured as Phthalic acid or Terephthalic acid)	100-21-0	0.055	28
		Phthalic anhydride (measured as Phthalic acid or Terephthalic acid)	85-44-9	0.055	28
K094	Distillation bottoms from the production of phthalic anhydride from ortho-xylene.	Phthalic anhydride (measured as Phthalic acid or Terephthalic acid)	100-21-0	0.055	28

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
		Phthalic anhydride (measured as Phthalic acid or Terephthalic acid)	85-44-9	0.055	28
K095	Distillation bottoms from the production of 1,1,1-trichloroethane.	Hexachloroethane	67-72-1	0.055	30
		Pentachloroethane	76-01-7	0.055	6.0
		1,1,1,2-Tetrachloroethane	630-20-6	0.057	6.0
		1,1,2,2-Tetrachloroethane	79-34-6	0.057	6.0
		Tetrachloroethylene	127-18-4	0.056	6.0
		1,1,2-Trichloroethane	79-00-5	0.054	6.0
		Trichloroethylene	79-01-6	0.054	6.0
K096	Heavy ends from the heavy ends column from the production of 1,1,1-trichloroethane.	m-Dichlorobenzene	541-73-1	0.036	6.0
		Pentachloroethane	76-01-7	0.055	6.0
		1,1,1,2-Tetrachloroethane	630-20-6	0.057	6.0
		1,1,2,2-Tetrachloroethane	79-34-6	0.057	6.0
		Tetrachloroethylene	127-18-4	0.056	6.0
		1,2,4-Trichlorobenzene	120-82-1	0.055	19
		1,1,2-Trichloroethane	79-00-5	0.054	6.0
		Trichloroethylene	79-01-6	0.054	6.0
K097	Vacuum stripper discharge from the chlordane chlorinator in the production of chlordane.	Chlordane (alpha and gamma isomers)	57-74-9	0.0033	0.26
		Heptachlor	76-44-8	0.0012	0.066
		Heptachlor epoxide	1024-57-3	0.016	0.066
		Hexachlorocyclopentadiene	77-47-4	0.057	2.4

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
K098	Untreated process wastewater from the production of toxaphene.	Toxaphene	8001-35-2	0.0095	2.6
K099	Untreated wastewater from the production of 2,4-D.	2,4-Dichlorophenoxyacetic acid	94-75-7	0.72	10
		HxCDDs (All Hexachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		HxCDFs (All Hexachlorodibenzofurans)	NA	0.000063	0.001
		PeCDDs (All Pentachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		PeCDFs (All Pentachlorodibenzofurans)	NA	0.000035	0.001
		TCDDs (All Tetrachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		TCDFs (All Tetrachlorodibenzofurans)	NA	0.000063	0.001
K100	Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting.	Cadmium	7440-43-9	0.69	0.19 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
K101	Distillation tar residues from the distillation of aniline-based compounds in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.	o-Nitroaniline	88-74-4	0.27	14
		Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
		Cadmium	7440-43-9	0.69	NA
		Lead	7439-92-1	0.69	NA

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
		Mercury	7439-97-6	0.15	NA
K102	Residue from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.	o-Nitrophenol	88-75-5	0.028	13
		Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
		Cadmium	7440-43-9	0.69	NA
		Lead	7439-92-1	0.69	NA
		Mercury	7439-97-6	0.15	NA
K103	Process residues from aniline extraction from the production of aniline.	Aniline	62-53-3	0.81	14
		Benzene	71-43-2	0.14	10
		2,4-Dinitrophenol	51-28-5	0.12	160
		Nitrobenzene	98-95-3	0.068	14
		Phenol	108-95-2	0.039	6.2
K104	Combined wastewater streams generated from nitrobenzene/ aniline production.	Aniline	62-53-3	0.81	14
		Benzene	71-43-2	0.14	10
		2,4-Dinitrophenol	51-28-5	0.12	160
		Nitrobenzene	98-95-3	0.068	14
		Phenol	108-95-2	0.039	6.2
		Cyanides (Total)[7]	57-12-5	1.2	590
K105	Separated aqueous stream from the reactor product washing step in the production of chlorobenzenes.	Benzene	71-43-2	0.14	10
		Chlorobenzene	108-90-7	0.057	6.0
		2-Chlorophenol	95-57-8	0.044	5.7
		o-Dichlorobenzene	95-50-1	0.088	6.0

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
		p-Dichlorobenzene	106-46-7	0.090	6.0
		Phenol	108-95-2	0.039	6.2
		2,4,5-Trichlorophenol	95-95-4	0.18	7.4
		2,4,6-Trichlorophenol	88-06-2	0.035	7.4
K106	K106 (wastewater treatment sludge from the mercury cell process in chlorine production) nonwastewaters that contain greater than or equal to 260 mg/kg total mercury.	Mercury	7439-97-6	NA	RMERC
	K106 (wastewater treatment sludge from the mercury cell process in chlorine production) nonwastewaters that contain less than 260 mg/kg total mercury that are residues from RMERC.	Mercury	7439-97-6	NA	0.20 mg/l TCLP
	Other K106 nonwastewaters that contain less than 260 mg/kg total mercury and are not residues from RMERC.	Mercury	7439-97-6	NA	0.025 mg/l TCLP
	All K106 wastewaters.	Mercury	7439-97-6	0.15	NA
K107	Column bottoms from product separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.	NA	NA	CMBST; or CHOXD fb CARBN; or BIODG fb CARBN	CMBST
K108	Condensed column overheads from product separation and condensed reactor vent gases from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.	NA	NA	CMBST; or CHOXD fb CARBN; or BIODG fb CARBN	CMBST
K109	Spent filter cartridges from product purification from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.	NA	NA	CMBST; or CHOXD fb CARBN; or BIODG fb CARBN	CMBST

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WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
K110	Condensed column overheads from intermediate separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.	NA	NA	CMBST; or CHOXD fb CARBN; or BIODG fb CARBN	CMBST
K111	Product washwaters from the production of dinitrotoluene via nitration of toluene	2,4-Dinitrotoluene	121-1-2	0.32	140
		2,6-Dinitrotoluene	606-20-2	0.55	28
K112	Reaction by-product water from the drying column in the production of toluenediamine via hydrogenation of dinitrotoluene.	NA	NA	CMBST; or CHOXD fb CARBN; or BIODG fb CARBN	CMBST
K113	Condensed liquid light ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.	NA	NA	CARBN; OR CMBST	CMBST
K114	Vicinals from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotolune.	NA	NA	CARBN; or CMBST	CMBST
K115	Heavy ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.	Nickel	7440-02-0	3.98	5.0 mg/l TCLP
		NA	NA	CARBN; or CMBST	CMBST
K116	Organic condensate from the solvent recovery column in the production of toluene diisocyanate via phosgenation of toluenediamine.	NA	NA	CARBN; or CMBST	CMBST
K117	Wastewater from the reactor vent gas scrubber in the production of ethylene dibromide via bromination of ethene.	Methyl bromide (Bromomethane)	74-83-9	0.11	15
		Chloroform	67-66-3	0.046	6.0
		Ethylene dibromide (1,2-Dibromoethane)	106-93-4	0.028	15
K118	Spent absorbent solids from purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene.	Methyl bromide (Bromomethane)	74-83-9	0.11	15

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WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
		Chloroform	67-66-3	0.046	6.0
		Ethylene dibromide (1,2-Dibromoethane)	106-93-4	0.028	15
K123	Process wastewater (including supernates, filtrates, and washwaters) from the production of ethylenebisdithiocarbamic acid and its salts.	NA	NA	CMBST; or CHOXD fb (BIODG or CARBN)	CMBST
K124	Reactor vent scrubber water from the production of ethylenebisdithiocarbamic acid and its salts.	NA	NA	CMBST; or CHOXD fb (BIODG or CARBN)	CMBST
K125	Filtration, evaporation, and centrifugation solids from the production of ethylenebisdithiocarbamic acid and its salts.	NA	NA	CMBST; or CHOXD fb (BIODG or CARBN)	CMBST
K126	Baghouse dust and floor sweepings in milling and packaging operations from the production or formulation of ethylenebisdithiocarbamic acid and its salts.	NA	NA	CMBST; or CHOXD fb (BIODG or CARBN)	CMBST
K131	Wastewater from the reactor and spent sulfuric acid from the acid dryer from the production of methyl bromide.	Methyl bromide (Bromomethane)	74-83-9	0.11	15
K132	Spent absorbent and wastewater separator solids from the production of methyl bromide.	Methyl bromide (Bromomethane)	74-83-9	0.11	15
K136	Still bottoms from the purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene.	Methyl bromide (Bromomethane)	74-83-9	0.11	15
		Chloroform	67-66-3	0.046	6.0
		Ethylene dibromide (1,2-Dibromoethane)	106-93-4	0.028	15

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WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
K141	Process residues from the recovery of coal tar, including, but not limited to, collecting sump residues from the production of coke or the recovery of coke by-products produced from coal. This listing does not include K087 (decanter tank tar sludge from coking operations).	Benzene	71-43-2	0.14	10
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-2-8	0.061	3.4
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8
		Chrysene	218-01-9	0.059	3.4
		Dibenz(a,h)anthracene	53-70-3	0.055	8.2
		Indeno(1,2,3-cd)pyrene	193-39-5	0.0055	3.4
K142	Tar storage tank residues from the production of coke from coal or from the recovery of coke by-products produced from coal.	Benzene	71-43-2	0.14	10
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8
		Chrysene	218-01-9	0.059	3.4
		Dibenz(a,h)anthracene	53-70-3	0.055	8.2
		Indeno(1,2,3-cd)pyrene	193-39-5	0.0055	3.4

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WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
K143	Process residues from the recovery of light oil, including, but not limited to, those generated in stills, decanters, and wash oil recovery units from the recovery of coke by-products produced from coal.	Benzene	71-43-2	0.14	10
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8
		Benzo(k)flouranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8
		Chrysene	218-01-9	0.059	3.4
K144	Wastewater sump residues from light oil refining, including, but not limited to, intercepting or contamination sump sludges from the recovery of coke by-products produced from coal.	Benzene	71-43-2	0.14	10
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8
		Chrysene	218-01-9	0.059	3.4
		Dibenz(a,h)anthracene	53-70-3	0.055	8.2
K145	Residues from naphthalene collection and recovery operations from the recovery of coke by-products produced from coal.	Benzene	71-43-2	0.14	10
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Chrysene	218-01-9	0.059	3.4

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WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
		Dibenz(a,h)anthracene	53-70-3	0.055	8.2
		Naphthalene	91-20-3	0.059	5.6
K147	Tar storage tank residues from coal tar refining.	Benzene	71-43-2	0.14	10
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8
		Chrysene	218-01-9	0.059	3.4
		Dibenz(a,h)anthracene	53-70-3	0.055	8.2
		Indeno(1,2,3-cd)pyrene	193-39-5	0.0055	3.4
K148	Residues from coal tar distillation, including, but not limited to, still bottoms.	Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8
		Chrysene	218-01-9	0.059	3.4
		Dibenz(a,h)anthracene	53-70-3	0.055	8.2
		Indeno(1,2,3-cd)pyrene	193-39-5	0.0055	3.4

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WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
K149	Distillation bottoms from the production of alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups. (This waste does not include still bottoms from the distillations of benzyl chloride.)	Chlorobenzene	108-90-7	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		Chloromethane	74-87-3	0.19	30
		p-Dichlorobenzene	106-46-7	0.090	6.0
		Hexachlorobenzene	118-74-1	0.055	10
		Pentachlorobenzene	608-93-5	0.055	10
		1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	14
		Toluene	108-88-3	0.080	10
K150	Organic residuals, excluding spent carbon adsorbent, from the spent chlorine gas and hydrochloric acid recovery processes associated with the production of alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups.	Carbon tetrachloride	56-23-5	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		Chloromethane	74-87-3	0.19	30
		p-Dichlorobenzene	106-46-7	0.090	6.0
		Hexachlorobenzene	118-74-1	0.055	10
		Pentachlorobenzene	608-93-5	0.055	10
		1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	14
		1,1,2,2-Tetrachloroethane	79-34-5	0.057	6.0
		Tetrachloroethylene	127-18-4	0.056	6.0
		1,2,4-Trichlorobenzene	120-82-1	0.055	19

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		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
K151	Wastewater treatment sludges, excluding neutralization and biological sludges, generated during the treatment of wastewaters from the production of alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups.	Benzene	71-43-2	0.14	10
		Carbon tetrachloride	56-23-5	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		Hexachlorobenzene	118-74-1	0.055	10
		Pentachlorobenzene	608-93-5	0.055	10
		1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	14
		Tetrachloroethylene	127-18-4	0.056	6.0
		Toluene	108-88-3	0.080	10
K156	Organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes. [10]	Acetonitrile	75-05-8	5.6	38
		Acetophenone	96-86-2	0.010	9.7
		Aniline	62-53-3	0.81	14
		Benomyl	17804-35-2	0.056	1.4
		Benzene	71-43-2	0.14	10
		Carbaryl	63-25-2	0.006	0.14
		Carbenzadim	10605-21-7	0.056	1.4
		Carbofuran	1563-66-2	0.006	0.14
		Carbosulfan	55285-14-8	0.028	1.4
		Chlorobenzene	108-90-7	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		o-Dichlorobenzene	95-50-1	0.088	6.0

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WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
		Methomyl	16752-77-5	0.028	0.14
		Methylene chloride	75-09-2	0.089	30
		Methyl ethyl ketone	78-93-3	0.28	36
		Naphthalene	91-20-3	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Pyridine	110-86-1	0.014	16
		Toluene	108-88-3	0.080	10
		Triethylamine	121-44-8	0.081	1.5
K157	Wastewaters (including scrubber waters, condenser waters, washwaters, and separation waters) from the production of carbamates and carbamoyl oximes. [10]	Carbon tetrachloride	56-23-5	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		Chloromethane	74-87-3	0.19	30
		Methomyl	16752-77-5	0.028	0.14
		Methylene chloride	75-09-2	0.089	30
		Methyl ethyl ketone	78-93-3	0.28	36
		o-Phenylenediamine	95-54-5	0.056	5.6
		Pyridine	110-86-1	0.014	16
		Triethylamine	121-44-8	0.081	1.5
K158	Bag house dusts and filter/separation solids from the production of carbamates and carbamoyl oximes. [10]	Benomyl	17804-35-2	0.056	1.4
		Benzene	71-43-2	0.14	10

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		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
		Carbenzadim	10605-21-7	0.056	1.4
		Carbofuran	1563-66-2	0.006	0.14
		Carbosulfan	55285-14-8	0.028	1.4
		Chloroform	67-66-3	0.046	6.0
		Methylene chloride	75-09-2	0.089	30
		Phenol	108-95-2	0.039	6.2
K159	Organics from the treatment of thiocarbamate wastes. [10]	Benzene	71-43-2	0.14	10
		Butylate	2008-41-5	0.042	1.4
		EPTC (Eptam)	759-94-4	0.042	1.4
		Molinate	2212-67-1	0.042	1.4
		Pebulate	1114-71-2	0.042	1.4
		Vernolate	1929-77-7	0.042	1.4
K161	Purification solids (including filtration, evaporation, and centrifugation solids), baghouse dust and floor sweepings from the production of dithiocarbamate acids and their salts. [10]	Antimony	7440-36-0	1.9	2.1 mg/l TCLP
		Arsenic	7440-38-2	1.9	5.0 mg/l TCLP
		Carbon disulfide	75-15-0	3.8	4.8 mg/l TCLP
		Dithiocarbamates (total)	NA	0.028	28
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
		Selenium	7782-49-2	0.82	0.16 mg/l TCLP
P001	Warfarin, & salts, when present at concentrations greater than 0.3%	Warfarin	81-81-2	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST

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		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
P002	1-Acetyl-2-thiourea	1-Acetyl-2-thiourea	591-08-2	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P003	Acrolein	Acrolein	107-02-8	0.29	CMBST
P004	Aldrin	Aldrin	309-00-2	0.021	0.066
P005	Allyl alcohol	Allyl alcohol	107-18-6	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P006	Aluminum phosphide	Aluminum phosphide	20859-73-8	CHOXD; CHRED; or CMBST	CHOXD; CHRED; or CMBST
P007	5-Aminomethyl 3-isoxazolol	5-Aminomethyl 3-isoxazolol	2763-96-4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P008	4-Aminopyridine	4-Aminopyridine	504-24-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P009	Ammonium picrate	Ammonium picrate	131-74-8	CHOXD; CHRED; CARBN; BIODG; or CMBST	CHOXD; CHRED; or CMBST
P010	Arsenic acid	Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
P011	Arsenic pentoxide	Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
P012	Arsenic trioxide	Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
P013	Barium cyanide	Barium	7440-39-3	NA	7.6 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
P014	Thiophenol (Benzene thiol)	Thiophenol (Benzene thiol)	108-98-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P015	Beryllium dust	Beryllium	7440-41-7	RMETL; or RTHRM	RMETL; or RTHRM

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WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
P016	Dichloromethyl ether (Bis(chloromethyl)ether)	Dichloromethyl ether	542-88-1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P017	Bromoacetone	Bromoacetone	598-31-2	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P018	Brucine	Brucine	357-57-3	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P020	2-sec-Butyl-4,6-dinitrophenol (Dinoseb)	2-sec-Butyl-4,6-dinitrophenol (Dinoseb)	88-85-7	0.066	2.5
P021	Calcium cyanide	Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
P022	Carbon disulfide	Carbon disulfide	75-15-0	3.8	CMBST
		Carbon disulfide; alternate[6] standard for nonwastewaters only	75-15-0	NA	4.8 mg/l TCLP
P023	Chloroacetaldehyde	Chloroacetaldehyde	107-20-0	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P024	p-Chloroaniline	p-Chloroaniline	106-47-8	0.46	16
P026	1-(o-Chlorophenyl)thiourea	1-(o-Chlorophenyl)thiourea	5344-82-1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P027	3-Chloropropionitrile	3-Chloropropionitrile	542-76-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P028	Benzyl chloride	Benzyl chloride	100-44-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P029	Copper cyanide	Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
P030	Cyanides (soluble salts and complexes)	Cyanides (Total)[7]	57-12-5	1.2	590

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
		Cyanides (Amenable)[7]	57-12-5	0.86	30
P031	Cyanogen	Cyanogen	460-19-5	CHOXD; WETOX; or CMBST	CHOXD; WETOX; or CMBST
P033	Cyanogen chloride	Cyanogen chloride	506-77-4	CHOXD; WETOX; or CMBST	CHOXD; WETOX; or CMBST
P034	2-Cyclohexyl-4,6-dinitrophenol	2-Cyclohexyl-4,6-dinitrophenol	131-89-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P036	Dichlorophenylarsine	Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
P037	Dieldrin	Dieldrin	60-57-1	0.017	0.13
P038	Diethylarsine	Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
P039	Disulfoton	Disulfoton	298-04-4	0.017	6.2
P040	0,0-Diethyl O-pyrazinyl phosphorothioate	0,0-Diethyl O-pyrazinyl phosphorothioate	297-97-2	CARBN; or CMBST	CMBST
P041	Diethyl-p-nitrophenyl phosphate	Diethyl-p-nitrophenyl phosphate	311-45-5	CARBN; or CMBST	CMBST
P042	Epinephrine	Epinephrine	51-43-4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P043	Diisopropylfluorophosphate (DFP)	Diisopropylfluorophosphate (DFP)	55-91-4	CARBN; or CMBST	CMBST
P044	Dimethoate	Dimethoate	60-51-5	CARBN; or CMBST	CMBST
P045	Thiofanox	Thiofanox	39196-18-4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P046	alpha, alpha-Dimethylphenethylamine	alpha, alpha-Dimethylphenethylamine	122-09-8	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P047	4,6-Dinitro-o-cresol	4,6-Dinitro-o-cresol	543-52-1	0.28	160

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
	4,6-Dinitro-o-cresol salts	NA	NA	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P048	2,4-Dinitrophenol	2,4-Dinitrophenol	51-28-5	0.12	160
P049	Dithiobiuret	Dithiobiuret	541-53-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P050	Endosulfan	Endosulfan I	939-98-8	0.023	0.066
		Endosulfan II	33213-6-5	0.029	0.13
		Endosulfan sulfate	1031-07-8	0.029	0.13
P051	Endrin	Endrin	72-20-8	0.0028	0.13
		Endrin aldehyde	7421-93-4	0.025	0.13
P054	Aziridine	Aziridine	151-56-4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P056	Fluorine	Fluoride (measured in wastewaters only)	16964-48-8	35	ADGAS fb NEUTR
P057	Fluoroacetamide	Fluoroacetamide	640-19-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P058	Fluoroacetic acid, sodium salt	Fluoroacetic acid, sodium salt	62-74-8	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P059	Heptachlor	Heptachlor	76-44-8	0.0012	0.066
		Heptachlor epoxide	1024-57-3	0.016	0.066
P060	Isodrin	Isodrin	465-73-6	0.021	0.066
P062	Hexaethyl tetraphosphate	Hexaethyl tetraphosphate	757-58-4	CARBN; or CMBST	CMBST
P063	Hydrogen cyanide	Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
P064	Isocyanic acid, ethyl ester	Isocyanic acid, ethyl ester	624-83-9	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P065	Mercury fulminate nonwastewaters, regardless of their total mercury content, that are not incinerator residues or are not residues from RMERC.	Mercury	7439-97-6	NA	IMERC
	Mercury fulminate nonwastewaters that are either incinerator residues or are residues from RMERC; and contain greater than or equal to 260 mg/kg total mercury.	Mercury	7339-97-6	NA	RMERC
	Mercury fulminate nonwastewaters that are residues from RMERC and contain less than 260 mg/kg total mercury.	Mercury	7439-97-6	NA	0.20 mg/l TCLP
	Mercury fulminate nonwastewaters that are incinerator residues and contain less than 260 mg/kg total mercury.	Mercury	7439-97-6	NA	0.025 mg/l TCLP
	All mercury fulminate wastewaters.	Mercury	7439-97-6	0.15	NA
P066	Methomyl	Methomyl	16752-77-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P067	2-Methyl-aziridine	2-Methyl-aziridine	75-55-8	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P068	Methyl hydrazine	Methyl hydrazine	60-34-4	CHOXD; CHRED; CARBN; BIODG; or CMBST	CHOXD; CHRED; or CMBST
P069	2-Methyllactonitrile	2-Methyllactonitrile	75-86-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P070	Aldicarb	Aldicarb	116-06-3	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P071	Methyl parathion	Methyl parathion	298-00-0	0.014	4.6

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
P072	1-Naphthyl-2-thiourea	1-Naphthyl-2-thiourea	86-88-4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P073	Nickel carbonyl	Nickel	7440-02-0	3.98	5.0 mg/l TCLP
P074	Nickel cyanide	Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
P075	Nicotine and salts	Nicotine and salts	54-11-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P076	Nitric oxide	Nitric oxide	10102-43-9	ADGAS	ADGAS
P077	p-Nitroaniline	p-Nitroaniline	100-01-6	0.028	28
P078	Nitrogen dioxide	Nitrogen dioxide	10102-44-0	ADGAS	ADGAS
P081	Nitroglycerin	Nitroglycerin	55-63-0	CHOXD; CHRED; CARBN; BIODG; or CMBST	CHOXD; CHRED; or CMBST
P082	N-Nitrosodimethylamine	N-Nitrosodimethylamine	62-75-9	0.40	2.3
P084	N-Nitrosomethylvinylamine	N-Nitrosomethylvinylamine	4549-40-0	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P085	Octamethylpyrophosphoramide	Octamethylpyrophosphoramide	152-16-9	CARBN; or CMBST	CMBST
P087	Osmium tetroxide	Osmium tetroxide	20816-12-0	RMETL; or RTHRM	RMETL; or RTHRM
P088	Endothall	Endothall	145-73-3	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P089	Parathion	Parathion	56-38-2	0.014	4.6

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concantration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
P092	Phenyl mercuric acetate nonwastewaters, regardless of their total mercury content, that are not incinerator residues or are not residues from RMERC.	Mercury	7439-97-6	NA	IMERC; or RMERC
	Phenyl mercuric acetate nonwastewaters that are either incinerator residues or are residues from RMERC; and still contain greater than or equal to 260 mg/kg total mercury.	Mercury	7439-97-6	NA	RMERC
	Phenyl mercuric acetate nonwastewaters that are residues from RMERC and contain less than 260 mg/kg total mercury.	Mercury	7439-97-6	NA	0.20 mg/l TCLP
	Phenyl mercuric acetate nonwastewaters that are incinerator residues and contain less than 260 mg/kg total mercury.	Mercury	7439-97-6	NA	0.025 mg/l TCLP
	All phenyl mercuric acetate wastewaters.	Mercury	7439-97-6	0.15	NA
P093	Phenylthiourea	Phenylthiourea	103-85-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P094	Phorate	Phorate	298-02-2	0.021	4.6
P095	Phosgene	Phosgene	75-44-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P096	Phosphine	Phosphine	7803-51-2	CHOXD; CHRED; or CMBST	CHOXD; CHRED; or CMBST
P097	Famphur	Famphur	52-85-7	0.017	15
P098	Potassium cyanide.	Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
P099	Potassium silver cyanide	Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
		Silver	7440-22-4	0.43	0.30 mg/l TCLP
P101	Ethyl cyanide (Propanenitrile)	Ethyl cyanide (Propanenitrile)	107-12-0	0.24	360
P102	Propargyl alcohol	Propargyl alcohol	107-19-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P103	Selenourea	Selenium	7782-49-2	0.82	0.16 mg/l TCLP
P104	Silver cyanide	Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
		Silver	7440-22-4	0.43	0.30 mg/l TCLP
P105	Sodium azide	Sodium azide	26628-22-8	CHOXD; CHRED; CARBN; BIODG; or CMBST	CHOXD; CHRED; or CMBST
P106	Sodium cyanide	Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
P108	Strychnine and salts	Strychnine and salts	57-24-9	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P109	Tetraethyldithiopyrophosphate	Tetraethyldithiopyrophosphate	3689-24-5	CARBN; or CMBST	CMBST
P110	Tetraethyl lead	Lead	7439-92-1	0.69	0.37 mg/l TCLP
P111	Tetraethylpyrophosphate	Tetraethylpyrophosphate	107-49-3	CARBN; or CMBST	CMBST
P112	Tetranitromethane	Tetranitromethane	509-14-8	CHOXD; CHRED; CARBN; BIODG; or CMBST	CHOXD; CHRED; or CMBST
P113	Thallic oxide	Thallium (measured in wastewaters only)	7440-28-0	1.4	RTHRM; or STABL
P114	Thallium selenite	Selenium	7782-49-2	0.82	0.16 mg/l TCLP

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WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
P115	Thallium (I) sulfate	Thallium (measured in wastewaters only)	7440-28-0	1.4	RTHRM; or STABL
P116	Thiosemicarbazide	Thiosemicarbazide	79-19-6	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P118	Trichloromethanethiol	Trichloromethanethiol	75-70-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P119	Ammonium vanadate	Vanadium (measured in wastewaters only)	7440-62-2	4.3	STABL
P120	Vanadium pentoxide	Vanadium (measured in wastewaters only)	7440-62-2	4.3	STABL
P121	Zinc cyanide	Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
P122	Zinc phosphide Zn_3P_2, when present at concentrations greater than 10%	Zinc Phosphide	1314-84-7	CHOXD; CHRED; or CMBST	CHOXD; CHRED; or CMBST
P123	Toxaphene	Toxaphene	8001-35-2	0.0095	2.6
P127	Carbofuran [10]	Carbofuran	1563-66-2	0.006	0.14
P128	Mexacarbate [10]	Mexacarbate	315-18-4	0.056	1.4
P185	Tirpate [10]	Tirpate	26419-73-8	0.056	0.28
P188	Physostigmine salicylate [10]	Physostigmine salicylate	57-64-7	0.056	1.4
P189	Carbosulfan [10]	Carbosulfan	55285-14-8	0.028	1.4
P190	Metolcarb [10]	Metolcarb	1129-41-5	0.056	1.4
P191	Dimetilan [10]	Dimetilan	644-64-4	0.056	1.4
P192	Isolan [10]	Isolan	119-38-0	0.056	1.4

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
P194	Oxamyl [10]	Oxamyl	23135-22-0	0.056	0.28
P196	Manganese dimethyldithiocarbamate [10]	Dithiocarbamates (total)	NA	0.028	28
P197	Formparanate [10]	Formparanate	17702-57-7	0.056	1.4
P198	Formetanate hydrochloride [10]	Formetanate hydrochloride	23422-53-9	0.056	1.4
P199	Methiocarb [10]	Methiocarb	2032-65-7	0.056	1.4
P201	Promecarb [10]	Promecarb	2631-37-0	0.056	1.4
P202	m-Cumenyl methylcarbamate [10]	m-Cumenyl methylcarbamate	64-00-6	0.056	1.4
P203	Aldicarb sulfone [10]	Aldicarb sulfone	1646-88-4	0.056	0.28
P204	Physostigmine [10]	Physostigmine	57-47-6	0.056	1.4
P205	Ziram [10]	Dithiocarbamates (total)	NA	0.028	28
U001	Acetaldehyde	Acetaldehyde	75-07-0	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U002	Acetone	Acetone	67-64-1	0.28	160
U003	Acetonitrile	Acetonitrile	75-05-8	5.6	CMBST
		Acetonitrile; alternate[6] standard for nonwastewaters only	75-05-8	NA	38
U004	Acetophenone	Acetophenone	98-86-2	0.010	9.7
U005	2-Acetylaminofluorene	2-Acetylaminofluorene	53-96-3	0.059	140
U006	Acetyl chloride	Acetyl Chloride	75-36-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
U007	Acrylamide	Acrylamide	79-06-1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U008	Acrylic acid	Acrylic acid	79-10-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U009	Acrylonitrile	Acrylonitrile	107-13-1	0.24	84
U010	Mitomycin C	Mitomycin C	50-07-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U011	Amitrole	Amitrole	61-82-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U012	Aniline	Aniline	62-53-3	0.81	14
U014	Auramine	Auramine	492-80-8	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U015	Azaserine	Azaserine	115-02-6	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U016	Benz(c)acridine	Benz(c)acridine	225-51-4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U017	Benzal chloride	Benzal chloride	98-87-3	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U018	Benz(a)anthracene	Benz(a)anthracene	56-55-3	0.059	3.4
U019	Benzene	Benzene	71-43-2	0.14	10
U020	Benzenesulfonyl chloride	Benzenesulfonyl chloride	98-09-9	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U021	Benzidine	Benzidine	92-87-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U022	Benzo(a)pyrene	Benzo(a)pyrene	50-32-8	0.061	3.4

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WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
U023	Benzotrichloride	Benzotrichloride	98-07-7	CHOXD; CHRED; CARBN; BIODG; or CMBST	CHOXD; CHRED; or CMBST
U024	bis(2-Chloroethoxy)methane	bis(2-Chloroethoxy)methane	111-91-1	0.036	7.2
U025	bis(2-Chloroethyl)ether	bis(2-Chloroethyl)ether	111-44-4	0.033	6.0
U026	Chlornaphazine	Chlornaphazine	494-03-1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U027	bis(2-Chloroisopropyl)ether	bis(2-Chloroisopropyl)ether	39638-32-9	0.055	7.2
U028	bis(2-Ethylhexyl) phthalate	bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28
U029	Methyl bromide (Bromomethane)	Methyl bromide (Bromomethane)	74-83-9	0.11	15
U030	4-Bromophenyl phenyl ether	4-Bromophenyl phenyl ether	101-55-3	0.055	15
U031	n-Butyl alcohol	n-Butyl alcohol	71-36-3	5.6	2.6
U032	Calcium chromate	Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
U033	Carbon oxyfluoride	Carbon oxyfluoride	353-50-4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U034	Trichloroacetaldehyde (Chloral)	Trichloroacetaldehyde (Chloral)	75-87-6	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U035	Chlorambucil	Chlorambucil	305-03-3	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U036	Chlordane	Chlordane (alpha and gamma isomers)	57-74-9	0.0033	0.26
U037	Chlorobenzene	Chlorobenzene	108-90-7	0.057	6.0
U038	Chlorobenzilate	Chlorobenzilate	510-15-6	0.10	CMBST

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
U039	p-Chloro-m-cresol	p-Chloro-m-cresol	59-50-7	0.018	14
U041	Epichlorohydrin (1-Chloro-2,3-epoxypropane)	Epichlorohydrin (1-Chloro-2,3-epoxypropane)	106-89-8	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U042	2-Chloroethyl vinyl ether	2-Chloroethyl vinyl ether	110-75-8	0.062	CMBST
U043	Vinyl chloride	Vinyl chloride	75-01-4	0.27	6.0
U044	Chloroform	Chloroform	67-66-3	0.046	6.0
U045	Chloromethane (Methyl chloride)	Chloromethane (Methyl chloride)	74-87-3	0.19	30
U046	Chloromethyl methyl ether	Chloromethyl methyl ether	107-30-2	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U047	2-Chloronaphthalene	2-Chloronaphthalene	91-58-7	0.055	5.6
U048	2-Chlorophenol	2-Chlorophenol	95-57-8	0.044	5.7
U049	4-Chloro-o-toluidine hydrochloride	4-Chloro-o-toluidine hydrochloride	3165-93-3	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U050	Chrysene	Chrysene	218-01-9	0.059	3.4
U051	Creosote	Naphthalene	91-20-3	0.059	5.6
		Pentachlorophenol	87-86-5	0.089	7.4
		Phenanthrene	85-01-8	0.059	5.6
		Pyrene	129-00-0	0.067	8.2
		Toluene	108-88-3	0.080	10
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Lead	7439-92-1	0.69	0.37 mg/l TCLP

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
U052	Cresols (Cresylic acid)	o-Cresol	95-48-7	0.11	5.6
		m-Cresol (difficult to distinguish from p-cresol)	108-39-4	0.77	5.6
		p-Cresol (difficult to distinguish from m-cresol)	106-44-5	0.77	5.6
		Cresol-mixed isomers (Cresylic acid) (sum of o-, m-, and p-cresol concentrations)	1319-77-3	0.88	11.2
U053	Crotonaldehyde	Crotonaldehyde	4170-30-3	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U055	Cumene	Cumene	98-82-8	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U056	Cyclohexane	Cyclohexane	110-82-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U057	Cyclohexanone	Cyclohexanone	108-94-1	0.36	CMBST
		Cyclohexanone; alternate[6] standard for nonwastewaters only	108-94-1	NA	0.75 mg/l TCLP
U058	Cyclophosphamide	Cyclophosphamide	50-18-0	CARBN; or CMBST	CMBST
U059	Daunomycin	Daunomycin	20830-81-3	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U060	DDD	o,p'-DDD	53-19-0	0.023	0.087
		p,p'-DDD	72-54-8	0.023	0.087
U061	DDT	o-p'-DDT	789-02-6	0.0039	0.087

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
		p,p'-DDT	50-29-3	0.0039	0.087
		o,p'-DDD	53-19-0	0.023	0.087
		p,p'-DDD	72-54-8	0.023	0.087
		o,p'-DDE	3424-82-6	0.031	0.087
		p,p'-DDE	72-55-9	0.031	0.087
U062	Diallate	Diallate	2303-16-4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U063	Dibenz(a,h)anthracene	Dibenz(a,h)anthracene	53-70-3	0.055	8.2
U064	Dibenz(a,i)pyrene	Dibenz(a,i)pyrene	189-55-9	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U066	1,2-Dibromo-3-chloropropane	1,2-Dibromo-3-chloropropane	96-12-8	0.11	15
U067	Ethylene dibromide (1,2-Dibromoethane)	Ethylene dibromide (1,2-Dibromoethane)	106-93-4	0.028	15
U068	Dibromomethane	Dibromomethane	74-95-3	0.11	15
U069	Di-n-butyl phthalate	Di-n-butyl phthalate	84-74-2	0.057	28
U070	o-Dichlorobenzene	o-Dichlorobenzene	95-50-1	0.088	6.0
U071	m-Dichlorobenzene	m-Dichlorobenzene	541-73-1	0.036	6.0
U072	p-Dichlorobenzene	p-Dichlorobenzene	106-46-7	0.090	6.0
U073	3,3'-Dichlorobenzidine	3,3'-Dichlorobenzidine	91-94-1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U074	1,4-Dichloro-2-butene	cis-1,4-Dichloro-2-butene	1476-11-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
		trans-1,4-Dichloro-2-butene	764-41-0	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
U075	Dichlorodifluoromethane	Dichlorodifluoromethane	75-71-8	0.23	7.2
U076	1,1-Dichloroethane	1,1-Dichloroethane	75-34-3	0.059	6.0
U077	1,2-Dichloroethane	1,2-Dichloroethane	107-06-2	0.21	6.0
U078	1,1-Dichloroethylene	1,1-Dichloroethylene	75-35-4	0.025	6.0
U079	1,2-Dichloroethylene	trans-1,2-Dichloroethylene	156-60-5	0.054	30
U080	Methylene chloride	Methylene chloride	75-09-2	0.089	30
U081	2,4-Dichlorophenol	2,4-Dichlorophenol	120-83-2	0.044	14
U082	2,6-Dichlorophenol	2,6-Dichlorophenol	87-65-0	0.044	14
U083	1,2-Dichloropropane	1,2-Dichloropropane	78-87-5	0.85	18
U084	1,3-Dichloropropylene	cis-1,3-Dichloropropylene	10061-01-5	0.036	18
		trans-1,3-Dichloropropylene	10061-02-6	0.036	18
U085	1,2:3,4-Diepoxybutane	1,2:3,4-Diepoxybutane	1464-53-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U086	N,N'-Diethylhydrazine	N,N'-Diethylhydrazine	1615-80-1	CHOXD; CHRED; CARBN; BIODG; or CMBST	CHOXD; CHRED; or CMBST
U087	O,O-Diethyl S-methyldithiophosphate	O,O-Diethyl S-methyldithiophosphate	3288-58-2	CARBN; or CMBST	CMBST
U088	Diethyl phthalate	Diethyl phthalate	84-66-2	0.20	28
U089	Diethyl stilbestrol	Diethyl stilbestrol	56-53-1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U090	Dihydrosafrole	Dihydrosafrole	94-58-6	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST

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WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
U091	3,3'-Dimethoxybenzidine	3,3'-Dimethoxybenzidine	119-90-4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U092	Dimethylamine	Dimethylamine	124-40-3	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U093	p-Dimethylaminoazobenzene	p-Dimethylaminoazobenzene	60-11-7	0.13	CMBST
U094	7,12-Dimethylbenz(a)anthracene	7,12-Dimethylbenz(a)anthracene	57-97-6	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U095	3,3'-Dimethylbenzidine	3,3'-Dimethylbenzidine	119-93-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U096	alpha, alpha-Dimethyl benzyl hydroperoxide	alpha, alpha-Dimethyl benzyl hydroperoxide	80-15-9	CHOXD; CHRED; CARBN; BIODG; or CMBST	CHOXD; CHRED; or CMBST
U097	Dimethylcarbamoyl chloride	Dimethylcarbamoyl chloride	79-44-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U098	1,1-Dimethylhydrazine	1,1-Dimethylhydrazine	57-14-7	CHOXD; CHRED; CARBN; BIODG; or CMBST	CHOXD; CHRED; or CMBST
U099	1,2-Dimethylhydrazine	1,2-Dimethylhydrazine	540-73-8	CHOXD; CHRED; CARBN; BIODG; or CMBST	CHOXD; CHRED; or CMBST
U101	2,4-Dimethylphenol	2,4-Dimethylphenol	105-67-9	0.036	14
U102	Dimethyl phthalate	Dimethyl phthalate	131-11-3	0.047	28
U103	Dimethyl sulfate	Dimethyl sulfate	77-78-1	CHOXD; CHRED; CARBN; BIODG; or CMBST	CHOXD; CHRED; or CMBST
U105	2,4-Dinitrotoluene	2,4-Dinitrotoluene	121-14-2	0.32	140
U106	2,6-Dinitrotoluene	2,6-Dinitrotoluene	606-20-2	0.55	28

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
U107	Di-n-octyl phthalate	Di-n-octyl phthalate	117-84-0	0.017	28
U108	1,4-Dioxane	1,4-Dioxane	123-91-1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
		1,4-Dioxane; alternate[6] standard for nonwastewaters only	123-91-1	NA	170
U109	1,2-Diphenylhydrazine	1,2-Diphenylhydrazine	122-66-7	CHOXD; CHRED; CARBN; BIODG; or CMBST	CHOXD; CHRED; or CMBST
		1,2-Diphenylhydrazine; alternate[6] standard for wastewaters only	122-66-7	0.087	NA
U110	Dipropylamine	Dipropylamine	142-84-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U111	Di-n-propylnitrosamine	Di-n-propylnitrosamine	621-64-7	0.40	14
U112	Ethyl acetate	Ethyl acetate	141-78-6	0.34	33
U113	Ethyl acrylate	Ethyl acrylate	140-88-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U114	Ethylenebisdithiocarbamic acid salts and esters	Ethylenebisdithiocarbamic acid	111-54-6	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U115	Ethylene oxide	Ethylene oxide	75-21-8	(WETOX or CHOXD) fb CARBN; or CMBST	CHOXD; or CMBST
		Ethylene oxide; alternate[6] standard for wastewaters only	75-21-8	0.12	NA
U116	Ethylene thiourea	Ethylene thiourea	96-45-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
U117	Ethyl ether	Ethyl ether	60-29-7	0.12	160
U118	Ethyl methacrylate	Ethyl methacrylate	97-63-2	0.14	160
U119	Ethyl methane sulfonate	Ethyl methane sulfonate	62-50-0	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U120	Fluoranthene	Fluoranthene	206-44-0	0.068	3.4
U121	Trichloromonofluoromethane	Trichloromonofluoromethane	75-69-4	0.020	30
U122	Formaldehyde	Formaldehyde	50-00-0	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U123	Formic acid	Formic acid	64-18-6	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U124	Furan	Furan	110-00-9	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U125	Furfural	Furfural	98-01-1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U126	Glycidylaldehyde	Glycidylaldehyde	765-34-4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U127	Hexachlorobenzene	Hexachlorobenzene	118-74-1	0.055	10
U128	Hexachlorobutadiene	Hexachlorobutadiene	87-68-3	0.055	5.6
U129	Lindane	alpha-BHC	319-84-6	0.00014	0.066
		beta-BHC	319-85-7	0.00014	0.066
		delta-BHC	319-86-8	0.023	0.066
		gamma-BHC (Lindane)	58-89-9	0.0017	0.066
U130	Hexachlorocyclopentadiene	Hexachlorocyclopentadiene	77-47-4	0.057	2.4
U131	Hexachloroethane	Hexachloroethane	67-72-1	0.055	30

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WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
U132	Hexachlorophene	Hexachlorophene	70-30-4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U133	Hydrazine	Hydrazine	302-01-2	CHOXD; CHRED; CARBN; BIODG; or CMBST	CHOXD; CHRED; or CMBST
U134	Hydrogen fluoride	Fluoride (measured in wastewaters only)	16964-48-8	35	ADGAS fb NEUTR; or NEUTR
U135	Hydrogen Sulfide	Hydrogen Sulfide	7783-06-4	CHOXD; CHRED, or CMBST	CHOXD; CHRED; or CMBST.
U136	Cacodylic acid	Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
U137	Indeno(1,2,3-c,d)pyrene	Indeno(1,2,3-c,d)pyrene	193-39-5	0.0055	3.4
U138	Iodomethane	Iodomethane	74-88-4	0.19	65
U140	Isobutyl alcohol	Isobutyl alcohol	78-83-1	5.6	170
U141	Isosafrole	Isosafrole	120-58-1	0.081	2.6
U142	Kepone	Kepone	143-50-8	0.0011	0.13
U143	Lasiocarpine	Lasiocarpine	303-34-4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U144	Lead acetate	Lead	7439-92-1	0.69	0.37 mg/l TCLP
U145	Lead phosphate	Lead	7439-92-1	0.69	0.37 mg/l TCLP
U146	Lead subacetate	Lead	7439-92-1	0.69	0.37 mg/l TCLP
U147	Maleic anhydride	Maleic anhydride	108-31-6	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U148	Maleic hydrazide	Maleic hydrazide	123-33-1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
U149	Malononitrile	Malononitrile	109-77-3	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U150	Melphalan	Melphalan	148-82-3	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U151	U151 (mercury) nonwastewaters that contain greater than or equal to 260 mg/kg total mercury.	Mercury	7439-97-6	NA	RMERC
	U151 (mercury) nonwastewaters that contain less than 260 mg/kg total mercury and that are residues from RMERC only.	Mercury	7439-97-6	NA	0.20 mg/l TCLP
	U151 (mercury) nonwastewaters that contain less than 260 mg/kg total mercury and that are not residues from RMERC.	Mercury	7439-97-6	NA	0.025 mg/l TCLP
	All U151 (mercury) wastewaters.	Mercury	7439-97-6	0.15	NA
	Elemental Mercury Contaminated with Radioactive Materials	Mercury	7439-97-6	NA	AMLGM
U152	Methacrylonitrile	Methacrylonitrile	126-98-7	0.24	84
U153	Methanethiol	Methanethiol	74-93-1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U154	Methanol	Methanol	67-56-1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
		Methanol; alternate[6] set of standards for both wastewaters and nonwastewaters	67-56-1	5.6	0.75 mg/l TCLP
U155	Methapyrilene	Methapyrilene	91-80-5	0.081	1.5
U156	Methyl chlorocarbonate	Methyl chlorocarbonate	79-22-1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST

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WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
U157	3-Methylcholanthrene	3-Methylcholanthrene	56-49-5	0.0055	15
U158	4,4'-Methylene bis(2-chloroaniline)	4,4'-Methylene bis(2-chloroaniline)	101-14-4	0.50	30
U159	Methyl ethyl ketone	Methyl ethyl ketone	78-93-3	0.28	36
U160	Methyl ethyl ketone peroxide	Methyl ethyl ketone peroxide	1338-23-4	CHOXD; CHRED; CARBN; BIODG; or CMBST	CHOXD; CHRED; or CMBST
U161	Methyl isobutyl ketone	Methyl isobutyl ketone	108-10-1	0.14	33
U162	Methyl methacrylate	Methyl methacrylate	80-62-6	0.14	160
U163	N-Methyl N'-nitro N-nitrosoguanidine	N-Methyl N'-nitro N-nitrosoguanidine	70-25-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U164	Methylthiouracil	Methylthiouracil	56-04-2	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U165	Naphthalene	Naphthalene	91-20-3	0.059	5.6
U166	1,4-Naphthoquinone	1,4-Naphthoquinone	130-15-4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U167	1-Naphthylamine	1-Naphthylamine	134-32-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U168	2-Naphthylamine	2-Naphthylamine	91-59-8	0.52	CMBST
U169	Nitrobenzene	Nitrobenzene	98-95-3	0.068	14
U170	p-Nitrophenol	p-Nitrophenol	100-02-7	0.12	29
U171	2-Nitropropane	2-Nitropropane	79-46-9	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U172	N-Nitrosodi-n-butylamine	N-Nitrosodi-n-butylamine	924-16-3	0.40	17

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WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
U173	N-Nitrosodiethanolamine	N-Nitrosodiethanolamine	1116-54-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U174	N-Nitrosodiethylamine	N-Nitrosodiethylamine	55-18-5	0.40	28
U176	N-Nitroso-N-ethylurea	N-Nitroso-N-ethylurea	759-73-9	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U177	N-Nitroso-N-methylurea	N-Nitroso-N-methylurea	684-93-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U178	N-Nitroso-N-methylurethane	N-Nitroso-N-methylurethane	615-53-2	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U179	N-Nitrosopiperidine	N-Nitrosopiperidine	100-75-4	0.013	35
U180	N-Nitrosopyrrolidine	N-Nitrosopyrrolidine	930-55-2	0.013	35
U181	5-Nitro-o-toluidine	5-Nitro-o-toluidine	99-55-8	0.32	28
U182	Paraldehyde	Paraldehyde	123-63-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U183	Pentachlorobenzene	Pentachlorobenzene	608-93-5	0.055	10
U184	Pentachloroethane	Pentachloroethane	76-01-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
		Pentachloroethane; alternate[6] standards for both wastewaters and nonwastewaters	76-01-7	0.055	6.0
U185	Pentachloronitrobenzene	Pentachloronitrobenzene	82-68-8	0.055	4.8
U186	1,3-Pentadiene	1,3-Pentadiene	504-60-9	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U187	Phenacetin	Phenacetin	62-44-2	0.081	16
U188	Phenol	Phenol	108-95-2	0.039	6.2

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
U189	Phosphorus sulfide	Phosphorus sulfide	1314-80-3	CHOXD; CHRED; or CMBST	CHOXD; CHRED; or CMBST
U190	Phthalic anhydride (measured as Phthalic acid or Terephthalic acid	Phthalic anhydride (measured as Phthalic acid or Terephthalic acid)	100-21-0	0.055	28
		Phthalic anhydride (measured as Phthalic acid or Terephthalic acid)	85-44-9	0.055	28
U191	2-Picoline	2-Picoline	109-06-8	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U192	Pronamide	Pronamide	23950-58-5	0.093	1.5
U193	1,3-Propane sultone	1,3-Propane sultone	1120-71-4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U194	n-Propylamine	n-Propylamine	107-10-8	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U196	Pyridine	Pyridine	110-86-1	0.014	16
U197	p-Benzoquinone	p-Benzoquinone	106-51-4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U200	Reserpine	Reserpine	50-55-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U201	Resorcinol	Resorcinol	108-46-3	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U202	Saccharin and salts	Saccharin	81-07-2	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U203	Safrole	Safrole	94-59-7	0.081	22
U204	Selenium dioxide	Selenium	7782-49-2	0.82	0.16 mg/l TCLP

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
U205	Selenium sulfide	Selenium	7782-49-2	0.82	0.16 mg/l TCLP
U206	Streptozotocin	Streptozotocin	18883-66-4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U207	1,2,4,5-Tetrachlorobenzene	1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	14
U208	1,1,1,2-Tetrachloroethane	1,1,1,2-Tetrachloroethane	630-20-6	0.057	6.0
U209	1,1,2,2-Tetrachloroethane	1,1,2,2-Tetrachloroethane	79-34-5	0.057	6.0
U210	Tetrachloroethylene	Tetrachloroethylene	127-18-4	0.056	6.0
U211	Carbon tetrachloride	Carbon tetrachloride	56-23-5	0.057	6.0
U213	Tetrahydrofuran	Tetrahydrofuran	109-99-9	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U214	Thallium (I) acetate	Thallium (measured in wastewaters only)	7440-28-0	1.4	RTHRM; or STABL
U215	Thallium (I) carbonate	Thallium (measured in wastewaters only)	7440-28-0	1.4	RTHRM; or STABL
U216	Thallium (I) chloride	Thallium (measured in wastewaters only)	7440-28-0	1.4	RTHRM; or STABL
U217	Thallium (I) nitrate	Thallium (measured in wastewaters only)	7440-28-0	1.4	RTHRM; or STABL
U218	Thioacetamide	Thioacetamide	62-55-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U219	Thiourea	Thiourea	62-56-6	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U220	Toluene	Toluene	108-88-3	0.080	10
U221	Toluenediamine	Toluenediamine	25376-45-8	CARBN; or CMBST	CMBST

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
U222	o-Toluidine hydrochloride	o-Toluidine hydrochloride	636-21-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U223	Toluene diisocyanate	Toluene diisocyanate	26471-52-5	CARBN; or CMBST	CMBST
U225	Bromoform (Tribromomethane)	Bromoform (Tribromomethane)	75-25-2	0.63	15
U226	1,1,1-Trichloroethane	1,1,1-Trichloroethane	71-55-6	0.054	6.0
U227	1,1,2-Trichloroethane	1,1,2-Trichloroethane	79-00-5	0.054	6.0
U228	Trichloroethylene	Trichloroethylene	79-01-6	0.054	6.0
U234	1,3,5-Trinitrobenzene	1,3,5-Trinitrobenzene	99-35-4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U235	tris-(2,3-Dibromopropyl)-phosphate	tris-(2,3-Dibromopropyl)-phosphate	126-72-7	0.11	0.10
U236	Trypan Blue	Trypan Blue	72-57-1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U237	Uracil mustard	Uracil mustard	66-75-1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U238	Urethane (Ethyl carbamate)	Urethane (Ethyl carbamate)	51-79-6	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U239	Xylenes	Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
U240	2,4-D (2,4-Dichlorophenoxyacetic acid)	2,4-D (2,4-Dichlorophenoxyacetic acid)	94-75-7	0.72	10
	2,4-D (2,4-Dichlorophenoxyacetic acid) salts and esters		NA	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U243	Hexachloropropylene	Hexachloropropylene	1888-71-7	0.035	30

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
U244	Thiram	Thiram	137-26-8	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U246	Cyanogen bromide	Cyanogen bromide	506-68-3	CHOXD; WETOX; or CMBST	CHOXD; WETOX; or CMBST
U247	Methoxychlor	Methoxychlor	72-43-5	0.25	0.18
U248	Warfarin, & salts, when present at concentrations of 0.3% or less	Warfarin	81-81-2	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U249	Zinc phosphide, Zn_3P_2, when present at concentrations of 10% or less	Zinc Phosphide	1314-84-7	CHOXD; CHRED; or CMBST	CHOXD; CHRED; or CMBST
U271	Benomyl [10]	Benomyl	17804-35-2	0.056	1.4
U278	Bendiocarb [10]	Bendiocarb	22781-23-3	0.056	1.4
U279	Carbaryl [10]	Carbaryl	63-25-2	0.006	0.14
U280	Barban [10]	Barban	101-27-9	0.056	1.4
U328	o-Toluidine	o-Toluidine	95-53-4	CMBST; or CHOXD fb (BIODG or CARBN); or BIODG fb CARBN.	CMBST
U353	p-Toluidine	p-Toluidine	106-49-0	CMBST; or CHOXD fb (BIODG or CARBN); or BIODG fb CARBN	CMBST
U359	2-Ethoxyethanol	2-Ethoxyethanol	110-80-5	CMBST; or CHOXD fb (BIODG or CARBN); or BIODG fb CARBN	CMBST
U364	Bendiocarb phenol [10]	Bendiocarb phenol	22961-82-6	0.056	1.4
U367	Carbofuran phenol [10]	Carbofuran phenol	1563-38-8	0.056	1.4

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable

WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[6] unless noted as "mg/l TCLP"; or Technology Code[4]
U372	Carbendazim [10]	Carbendazim	10605-21-7	0.056	1.4
U373	Propham [10]	Propham	122-42-9	0.056	1.4
U387	Prosulfocarb [10]	Prosulfocarb	52888-80-9	0.042	1.4
U389	Triallate [10]	Triallate	2303-17-5	0.042	1.4
U394	A2213 [10]	A2213	30558-43-1	0.042	1.4
U395	Diethylene glycol, dicarbamate [10]	Diethylene glycol, dicarbamate	5952-26-1	0.056	1.4
U404	Triethylamine [10]	Triethylamine	101-44-8	0.081	1.5
U409	Thiophanate-methyl [10]	Thiophanate-methyl	23564-05-8	0.056	1.4
U410	Thiodicarb [10]	Thiodicarb	59669-26-0	0.019	1.4
U411	Propoxur [10]	Propoxur	114-26-1	0.056	1.4

FOOTNOTES TO TREATMENT STANDARDS TABLE 268.40:

1 The waste descriptions provided in this table do not replace waste descriptions in 40 CFR part 261. Descriptions of Treatment/Regulatory Subcategories are provided, as needed, to distinguish between applicability of different standards.

2 CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with its salts and/or esters, the CAS number is given for the parent compound only.

3 Concentration standards for wastewaters are expressed in mg/l and are based on analysis of composite samples.

4 All treatment standards expressed as a Technology Code or combination of Technology Codes are explained in detail in §268.42 Table 1 - Technology Codes and Descriptions of Technology-Based Standards.

5 Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of 40 CFR part 264, subpart O, or part 265, subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in §268.40(d). All concentration standards for nonwastewaters are based on analysis of grab samples.

6 Where an alternate treatment standard or set of alternate standards has been indicated, a facility may comply with this alternate standard, but only for the Treatment/Regulatory Subcategory or physical form (i.e., wastewater and/or nonwastewater) specified for that alternate standard.

7 Both Cyanides (Total) and Cyanides (Amenable) for nonwastewaters are to be analyzed using Method 9010 or 9012, found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11, with a sample size of 10 grams and a distillation time of one hour and 15 minutes.

8 These wastes, when rendered nonhazardous and then subsequently managed in CWA, or CWA-equivalent systems are not subject to treatment standards. (See §268.1(c)(3)and (4)).

9 These wastes, when rendered nonhazardous and then subsequently injected in a Class I SDWA well are not subject to treatment standards. (See 40 CFR 148.1(d)).

10 Between August 26, 1996, and August 26, 1997, the treatment standard for this waste may satisfied by either meeting the constituent concentrations in this table or by treating the waste by the specified technologies: combustion, as defined by the technolgy code CMBST at §268.42 Table 1 of this part, for nonwastewaters; and, biodegradation as definded by the technolgy code BIODG, carbon adsorption as defined by the technology code CARBN, chemical oxidation as defined by the technology code CHOXD, or combustion as defined as technolgy code CMBST at §268.42 Table 1 of this part, for wastewaters.

BILLING CODE 6560-50-C

3. In § 268.48, the table "Universal Treatment Standards" in paragraph (a) is revised to read as follows:

§ 268.48 Universal treatment standards.

(a) * * *

UNIVERSAL TREATMENT STANDARDS

[Note: NA means not applicable.]

Regulated constituent common name	CAS [1] number	Wastewater standard: Concentration in mg/l [2]	Nonwastewater standard: Concentration in mg/kg [3] unless noted as "mg/l TCLP"
I. Organic Constituents:			
A2213 [6]	30558–43–1	0.042	1.4
Acenaphthylene	208–96–8	0.059	3.4
Acenaphthene	83–32–9	0.059	3.4
Acetone	67–64–1	0.28	160
Acetonitrile	75–05–8	5.6	38
Acetophenone	96–86–2	0.010	9.7
2-Acetylaminofluorene	53–96–3	0.059	140
Acrolein	107–02–8	0.29	NA
Acrylamide	79–06–1	19	23
Acrylonitrile	107–13–1	0.24	84
Aldicarb sulfone [6]	1646–88–4	0.056	0.28
Aldrin	309–00–2	0.021	0.066
4-Aminobiphenyl	92–67–1	0.13	NA
Aniline	62–53–3	0.81	14
Anthracene	120–12–7	0.059	3.4
Aramite	140–57–8	0.36	NA
alpha-BHC	319–84–6	0.00014	0.066
beta-BHC	319–85–7	0.00014	0.066
delta-BHC	319–86–8	0.023	0.066
gamma-BHC	58–89–9	0.0017	0.066
Barban [6]	101–27–9	0.056	1.4
Bendiocarb [6]	22781–23–3	0.056	1.4
Bendiocarb phenol [6]	22961–82–6	0.056	1.4
Benomyl [6]	17804–35–2	0.056	1.4
Benzene	71–43–2	0.14	10
Benz(a)anthracene	56–55–3	0.059	3.4
Benzal chloride	98–87–3	0.055	6.0
Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205–99–2	0.11	6.8
Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluor-anthene)	207–08–9	0.11	6.8
Benzo(g,h,i)perylene	191–24–2	0.0055	1.8
Benzo(a)pyrene	50–32–8	0.061	3.4
Bromodichloromethane	75–27–4	0.35	15
Bromomethane/Methyl bromide	74–83–9	0.11	15
4-Bromophenyl phenyl ether	101–55–3	0.055	15
n-Butyl alcohol	71–36–3	5.6	2.6
Butylate [6]	2008–41–5	0.042	1.4
Butyl benzyl phthalate	85–68–7	0.017	28
2-sec-Butyl-4,6-dinitrophenol/Dinoseb	88–85–7	0.066	2.5
Carbaryl [6]	63–25–2	0.006	0.14
Carbenzadim [6]	10605–21–7	0.056	1.4
Carbofuran [6]	1563–66–2	0.006	0.14
Carbofuran phenol [6]	1563–38–8	0.056	1.4
Carbon disulfide	75–15–0	3.8	4.8 mg/l TCLP
Carbon tetrachloride	56–23–5	0.057	6.0
Carbosulfan [6]	55285–14–8	0.028	1.4
Chlordane (alpha and gamma isomers)	57–74–9	0.0033	0.26
p-Chloroaniline	106–47–8	0.46	16
Chlorobenzene	108–90–7	0.057	6.0
Chlorobenzilate	510–15–6	0.10	NA
2-Chloro-1,3-butadiene	126–99–8	0.057	0.28
Chlorodibromomethane	124–48–1	0.057	15
Chloroethane	75–00–3	0.27	6.0
bis(2-Chloroethoxy)methane	111–91–1	0.036	7.2
bis(2-Chloroethyl)ether	111–44–4	0.033	6.0
Chloroform	67–66–3	0.046	6.0
bis(2-Chloroisopropyl)ether	39638–32–9	0.055	7.2
p-Chloro-m-cresol	59–50–7	0.018	14
2-Chloroethyl vinyl ether	110–75–8	0.062	NA
Chloromethane/Methyl chloride	74–87–3	0.19	30
2-Chloronaphthalene	91–58–7	0.055	5.6

UNIVERSAL TREATMENT STANDARDS—Continued

[Note: NA means not applicable.]

Regulated constituent common name	CAS [1] number	Wastewater standard: Concentration in mg/l [2]	Nonwastewater standard: Concentration in mg/kg [3] unless noted as "mg/l TCLP"
2-Chlorophenol	95–57–8	0.044	5.7
3-Chloropropylene	107–05–1	0.036	30
Chrysene	218–01–9	0.059	3.4
o-Cresol	95–48–7	0.11	5.6
m-Cresol (difficult to distinguish from p-cresol)	108–39–4	0.77	5.6
p-Cresol (difficult to distinguish from m-cresol)	106–44–5	0.77	5.6
m-Cumenyl methylcarbamate [6]	64–00–6	0.056	1.4
Cyclohexanone	108–94–1	0.36	0.75 mg/l TCLP
o,p'-DDD	53–19–0	0.023	0.087
p,p'-DDD	72–54–8	0.023	0.087
o,p'-DDE	3424–82–6	0.031	0.087
p,p'-DDE	72–55–9	0.031	0.087
o,p'-DDT	789–02–6	0.0039	0.087
p,p'-DDT	50–29–3	0.0039	0.087
Dibenz(a,h)anthracene	53–70–3	0.055	8.2
Dibenz(a,e)pyrene	192–65–4	0.061	NA
1,2-Dibromo-3-chloropropane	96–12–8	0.11	15
1,2-Dibromoethane/Ethylene dibromide	106–93–4	0.028	15
Dibromomethane	74–95–3	0.11	15
m-Dichlorobenzene	541–73–1	0.036	6.0
o-Dichlorobenzene	95–50–1	0.088	6.0
p-Dichlorobenzene	106–46–7	0.090	6.0
Dichlorodifluoromethane	75–71–8	0.23	7.2
1,1-Dichloroethane	75–34–3	0.059	6.0
1,2-Dichloroethane	107–06–2	0.21	6.0
1,1-Dichloroethylene	75–35–4	0.025	6.0
trans-1,2-Dichloroethylene	156–60–5	0.054	30
2,4-Dichlorophenol	120–83–2	0.044	14
2,6-Dichlorophenol	87–65–0	0.044	14
2,4-Dichlorophenoxyacetic acid/2,4-D	94–75–7	0.72	10
1,2-Dichloropropane	78–87–5	0.85	18
cis-1,3-Dichloropropylene	10061–01–5	0.036	18
trans-1,3-Dichloropropylene	10061–02–6	0.036	18
Dieldrin	60–57–1	0.017	0.13
Diethylene glycol, dicarbamate [6]	5952–26–1	0.056	1.4
Diethyl phthalate	84–66–2	0.20	28
p-Dimethylaminoazobenzene	60–11–7	0.13	NA
2–4-Dimethyl phenol	105–67–9	0.036	14
Dimethyl phthalate	131–11–3	0.047	28
Dimetilan [6]	644–64–4	0.056	1.4
Di-n-butyl phthalate	84–74–2	0.057	28
1,4-Dinitrobenzene	100–25–4	0.32	2.3
4,6-Dinitro-o-cresol	534–52–1	0.28	160
2,4-Dinitrophenol	51–28–5	0.12	160
2,4-Dinitrotoluene	121–14–2	0.32	140
2,6-Dinitrotoluene	606–20–2	0.55	28
Di-n-octyl phthalate	117–84–0	0.017	28
Di-n-propylnitrosamine	621–64–7	0.40	14
1,4-Dioxane	123–91–1	12.0	170
Diphenylamine (difficult to distinguish from diphenylnitrosamine)	122–39–4	0.92	13
Diphenylnitrosamine (difficult to distinguish from diphenylamine)	86–30–6	0.92	13
1,2-Diphenylhydrazine	122–66–7	0.087	NA
Disulfoton	298–04–4	0.017	6.2
Dithiocarbamates (total) [6]	137–30–4	0.028	28
Endosulfan I	959–98–8	0.023	0.066
Endosulfan II	33213–65–9	0.029	0.13
Endosulfan sulfate	1031–07–8	0.029	0.13
Endrin	72–20–8	0.0028	0.13
Endrin aldehyde	7421–93–4	0.025	0.13
EPTC [6]	759–94–4	0.042	1.4
Ethyl acetate	141–78–6	0.34	33
Ethyl benzene	100–41–4	0.057	10
Ethyl cyanide/Propanenitrile	107–12–0	0.24	360
Ethyl ether	60–29–7	0.12	160
bis(2-Ethylhexyl) phthalate	117–81–7	0.28	28

UNIVERSAL TREATMENT STANDARDS—Continued

[Note: NA means not applicable.]

Regulated constituent common name	CAS[1] number	Wastewater standard	Nonwastewater standard
		Concentration in mg/l[2]	Concentration in mg/kg[3] unless noted as "mg/l TCLP"
Ethyl methacrylate	97–63–2	0.14	160
Ethylene oxide	75–21–8	0.12	NA
Famphur	52–85–7	0.017	15
Fluoranthene	206–44–0	0.068	3.4
Fluorene	86–73–7	0.059	3.4
Formetanate hydrochloride[6]	23422–53–9	0.056	1.4
Formparanate[6]	17702–57–7	0.056	1.4
Heptachlor	76–44–8	0.0012	0.066
Heptachlor epoxide	1024–57–3	0.016	0.066
Hexachlorobenzene	118–74–1	0.055	10
Hexachlorobutadiene	87–68–3	0.055	5.6
Hexachlorocyclopentadiene	77–47–4	0.057	2.4
HxCDDs (All Hexachlorodibenzo-p-dioxins)	NA	0.000063	0.001
HxCDFs (All Hexachlorodibenzo-furans)	NA	0.000063	0.001
Hexachloroethane	67–72–1	0.055	30
Hexachloropropylene	1888–71–7	0.035	30
Indeno (1,2,3-c,d) pyrene	193–39–5	0.0055	3.4
Iodomethane	74–88–4	0.19	65
Isobutyl alcohol	78–83–1	5.6	170
Isodrin	465–73–6	0.021	0.066
Isolan[6]	119–38–0	0.056	1.4
Isosafrole	120–58–1	0.081	2.6
Kepone	143–50–0	0.0011	0.13
Methacrylonitrile	126–98–7	0.24	84
Methanol	67–56–1	5.6	0.75 mg/l TCLP
Methapyrilene	91–80–5	0.081	1.5
Methiocarb[6]	2032–65–7	0.056	1.4
Methomyl[6]	16752–77–5	0.028	0.14
Methoxychlor	72–43–5	0.25	0.18
3-Methylcholanthrene	56–49–5	0.0055	15
4,4-Methylene bis(2-chloroaniline)	101–14–4	0.50	30
Methylene chloride	75–09–2	0.089	30
Methyl ethyl ketone	78–93–3	0.28	36
Methyl isobutyl ketone	108–10–1	0.14	33
Methyl methacrylate	80–62–6	0.14	160
Methyl methansulfonate	66–27–3	0.018	NA
Methyl parathion	298–00–0	0.014	4.6
Metolcarb[6]	1129–41–5	0.056	1.4
Mexacarbate[6]	315–18–4	0.056	1.4
Molinate[6]	2212–67–1	0.042	1.4
Naphthalene	91–20–3	0.059	5.6
2-Naphthylamine	91–59–8	0.52	NA
o-Nitroaniline	88–74–4	0.27	14
p-Nitroaniline	100–01–6	0.028	28
Nitrobenzene	98–95–3	0.068	14
5-Nitro-o-toluidine	99–55–8	0.32	28
o-Nitrophenol	88–75–5	0.028	13
p-Nitrophenol	100–02–7	0.12	29
N-Nitrosodiethylamine	55–18–5	0.40	28
N-Nitrosodimethylamine	62–75–9	0.40	2.3
N-Nitroso-di-n-butylamine	924–16–3	0.40	17
N-Nitrosomethylethylamine	10595–95–6	0.40	2.3
N-Nitrosomorpholine	59–89–2	0.40	2.3
N-Nitrosopiperidine	100–75–4	0.013	35
N-Nitrosopyrrolidine	930–55–2	0.013	35
Oxamyl[6]	23135–22–0	0.056	0.28
Parathion	56–38–2	0.014	4.6
Total PCBs (sum of all PCB isomers, or all Aroclors)	1336–36–3	0.10	10
Pebulate[6]	1114–71–2	0.042	1.4
Pentachlorobenzene	608–93–5	0.055	10
PeCDDs (All Pentachlorodibenzo-p-dioxins)	NA	0.000063	0.001
PeCDFs (All Pentachlorodibenzo-furans)	NA	0.000035	0.001
Pentachloroethane	76–01–7	0.055	6.0
Pentachloronitrobenzene	82–68–8	0.055	4.8
Pentachlorophenol	87–86–5	0.089	7.4

UNIVERSAL TREATMENT STANDARDS—Continued

[Note: NA means not applicable.]

Regulated constituent common name	CAS[1] number	Wastewater standard	Nonwastewater standard
		Concentration in mg/l[2]	Concentration in mg/kg[3] unless noted as "mg/l TCLP"
Phenacetin	62–44–2	0.081	16
Phenanthrene	85–01–8	0.059	5.6
Phenol	108–95–2	0.039	6.2
o-Phenylenediamine[6]	95–54–5	0.056	5.6
Phorate	298–02–2	0.021	4.6
Phthalic acid	100–21–0	0.055	28
Phthalic anhydride	85–44–9	0.055	28
Physostigmine[6]	57–47–6	0.056	1.4
Physostigmine salicylate[6]	57–64–7	0.056	1.4
Promecarb[6]	2631–37–0	0.056	1.4
Pronamide	23950–58–5	0.093	1.5
Propham[6]	122–42–9	0.056	1.4
Propoxur[6]	114–26–1	0.056	1.4
Prosulfocarb[6]	52888–80–9	0.042	1.4
Pyrene	129–00–0	0.067	8.2
Pyridine	110–86–1	0.014	16
Safrole	94–59–7	0.081	22
Silvex/2,4,5-TP	93–72–1	0.72	7.9
1,2,4,5-Tetrachlorobenzene	95–94–3	0.055	14
TCDDs (All Tetrachlorodi-benzo-p-dioxins)	NA	0.000063	0.001
TCDFs (All Tetrachlorodibenzofurans)	NA	0.000063	0.001
1,1,1,2-Tetrachloroethane	630–20–6	0.057	6.0
1,1,2,2-Tetrachloroethane	79–34–5	0.057	6.0
Tetrachloroethylene	127–18–4	0.056	6.0
2,3,4,6-Tetrachlorophenol	58–90–2	0.030	7.4
Thiodicarb[6]	59669–26–0	0.019	1.4
Thiophanate-methyl[6]	23564–05–8	0.056	1.4
Tirpate[6]	26419–73–8	0.056	0.28
Toluene	108–88–3	0.080	10
Toxaphene	8001–35–2	0.0095	2.6
Triallate[6]	2303–17–5	0.042	1.4
Tribromomethane/Bromoform	75–25–2	0.63	15
1,2,4-Trichlorobenzene	120–82–1	0.055	19
1,1,1-Trichloroethane	71–55–6	0.054	6.0
1,1,2-Trichloroethane	79–00–5	0.054	6.0
Trichloroethylene	79–01–6	0.054	6.0
Trichloromonofluoromethane	75–69–4	0.020	30
2,4,5-Trichlorophenol	95–95–4	0.18	7.4
2,4,6-Trichlorophenol	88–06–2	0.035	7.4
2,4,5-Trichlorophenoxyacetic acid/2,4,5-T	93–76–5	0.72	7.9
1,2,3-Trichloropropane	96–18–4	0.85	30
1,1,2-Trichloro-1,2,2-trifluoroethane	76–13–1	0.057	30
Triethylamine[8]	101–44–8	0.081	1.5
tris-(2,3-Dibromopropyl) phosphate	126–72–7	0.11	0.10
Vernolate[6]	1929–77–7	0.042	1.4
Vinyl chloride	75–01–4	0.27	6.0
Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330–20–7	0.32	30
II. Inorganic Constituents:			
Antimony	7440–36–0	1.9	2.1 mg/l TCLP
Arsenic	7440–38–2	1.4	5.0 mg/l TCLP
Barium	7440–39–3	1.2	7.6 mg/l TCLP
Beryllium	7440–41–7	0.82	0.014 mg/l TCLP
Cadmium	7440–43–9	0.69	0.19 mg/l TCLP
Chromium (Total)	7440–47–3	2.77	0.86 mg/l TCLP
Cyanides (Total)[4]	57–12–5	1.2	590
Cyanides (Amenable)[4]	57–12–5	0.86	30
Fluoride[5]	16984–48–8	35	NA
Lead	7439–92–1	0.69	0.37 mg/l TCLP
Mercury—Nonwastewater from Retort	7439–97–6	NA	0.20 mg/l TCLP
Mercury—All Others	7439–97–6	0.15	0.025 mg/l TCLP
Nickel	7440–02–0	3.98	5.0 mg/l TCLP
Selenium	7782–49–2	0.82	0.16 mg/l TCLP
Silver	7440–22–4	0.43	0.30 mg/l TCLP

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UNIVERSAL TREATMENT STANDARDS—Continued

[Note: NA means not applicable.]

Regulated constituent common name	CAS [1] number	Wastewater standard	Nonwastewater standard
		Concentration in mg/l [2]	Concentration in mg/kg [3] unless noted as "mg/l TCLP"
Sulfide	18496–25–8	14	NA
Thallium	7440–28–0	1.4	0.078 mg/l TCLP
Vanadium [5]	7440–62–2	4.3	0.23 mg/l TCLP
Zinc [5]	7440–66–6	2.61	5.3 mg/l TCLP

Footnotes to Universal Treatment Standards Table:

[1] CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with it's salts and/or esters, the CAS number is given for the parent compound only.44.

[2] Concentration standards for wastewaters are expressed in mg/l and are based on analysis of composite samples.

[3] Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of 40 CFR part 264, subpart O, or 40 CFR part 265, subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in §268.40(d). All concentration standards for nonwastewaters are based on analysis of grab samples.

[4] Both Cyanides (Total) and Cyanides (Amenable) for nonwastewaters are to be analyzed using Method 9010 or 9012, found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW–846, as incorporated by reference in 40 CFR 260.11, with a sample size of 10 grams and a distillation time of one hour and 15 minutes.

[5] These constituents are not "underlying hazardous constituents" in characteristic wastes, according to the definition at §268.2(i).

[6] Between August 26, 1996, and August 26, 1997, these constituents are not "underlying hazardous constituents" as defined at §268.2(i).

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February 19, 1997

Part III

Department of Agriculture

Farm Service Agency
Commodity Credit Corporation

7 CFR Parts 704 and 1410
Conservation Reserve Program—Long-Term Policy; Final Rule

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Commodity Credit Corporation

7 CFR Parts 704 and 1410

RIN 0560–AE95

Conservation Reserve Program—Long-Term Policy

AGENCY: Farm Service Agency and Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Conservation Reserve Program (CRP) regulations to: Revise the terms and conditions for enrolling acreage in the CRP; update other program eligibility requirements; consolidate and reorganize all existing CRP regulations into one regulation; and eliminate unnecessary provisions. This action is being taken to cost-effectively target the CRP to more environmentally sensitive acreage. This action is also part of the National Performance Review Initiative to eliminate unnecessary regulations and improve those that remain in force.

EFFECTIVE DATE: This regulation is effective February 12, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl Zavodny, 202–720–7333, or via E-mail at webmaster@wdc.fsa.usda.gov or on the FSA home page at http://www.fsa.usda.gov/.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be Economically Significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Benefit/Cost Analysis

To comply with Executive Order 12866, USDA prepared a benefit/cost analysis for the final rule. It analyzes the economic, environmental, and budgetary impacts of three alternative CRP enrollment scenarios. The first scenario assumes the maximum permitted enrollment level, 36.4 million acres. The second scenario assumes an enrollment level of 28.0 million acres. This level corresponds to the enrollment scenario included in the FY 1997 President's Budget Baseline that was published prior to enactment of the 1996 Act. The final scenario presents estimates of the enrollment situation that would occur if enrollment authority for new acreage had not been provided in amendments to the Food Security Act of 1985 (the 1985 Act) by the 1996 Act and no existing contracts are extended. Under this scenario, the expiration of existing contracts would result in an estimated decline in enrollment to 1.7 million acres by 2002.

Establishment of long-term vegetative cover on cropland reduces soil erosion and the quantity of soil and other agricultural pollutants that may reach water bodies and impair water uses. Proper CRP cover practices in certain areas of the Northern Plains and Mountain regions are extremely important to waterfowl and grassland bird species, both of which have experienced significant reductions in numbers until recent years. Enrollment of environmentally sensitive areas such as flood-prone and riparian acres benefits wildlife and water quality by providing cover for protection, moderation of the temperatures of streams and other water bodies, food sources for wildlife, and protection of waterbodies from sediment, pesticide, and nutrient pollution. Environmental benefits are also enhanced by enrollment of wetlands and associated uplands, and enrollment of habitats important to threatened and endangered species.

Comprehensive measures of the value of the environmental benefits obtained from enrolling environmentally sensitive acreage do not currently exist. Estimates reported in the literature for acreage currently enrolled in the program are mostly based on indirect measures or secondary sources. Such estimates could be used to provide rough approximations of the potential value of the benefits to be realized from the alternative enrollment level scenarios, but must be discussed with a great deal of caution and qualification. Some of the environmental benefits that have been estimated and applied to the CRP enrollment scenarios include: soil productivity ($150 million annually for the 28.0-million-acre scenario and $195 million annually for the 36.4-million-acre scenario), improved water quality ($350 million and $455 million, respectively), and increased consumptive and non-consumptive uses of wildlife ($1.5 billion and $2.0 billion, respectively). The sum of these 3 categories, which would only be a partial accounting of the environmental benefits, is $2.0 billion per year and $2.7 billion per year, for the 28.0-million-acre and 36.4-million-acre scenarios, respectively.

Enrollment of 28.0 million acres and 36.4 million acres is expected to increase annual net farm income from production of feedgrains, wheat, cotton, and soybeans, CRP payments, and production flexibility contract payments by about $5.8 billion and $7.6 billion, respectively, compared with the no CRP continuation scenario. The increased net farm income results from higher commodity prices, reduced production expenses, and higher CRP rental payments to participants. Compared with the no continuation scenario, corn, wheat, and soybean prices each average about 9 percent, 8 percent, and 11 percent higher, respectively under the 28.0-million-acre scenario, and about 12 percent, 15 percent, and 13 percent higher under the 36.4-million-acre scenario.

Average annual CRP outlays under the 28.0-million-acre and 36.4-million-acre options average about $1.1 billion and $1.2 billion, respectively, higher than under the no continuation scenario.

Because enrollment in CRP reduces planted acreage and commodity production and increases commodity prices, projected annual expenditures for feedgrains, wheat, cotton, and soybeans are estimated to be $3.7 billion and $4.9 billion higher with enrollment at the 28.0-million-acre and 36.4-million-acre levels, respectively, relative to the no continuation scenario for domestic purchasers. For foreign purchasers, average annual expenditures are $1.9 billion and $2.6 billion higher. Thus, impacts on commodity expenditures for all purchasers is about $5.6 billion and $7.5 billion annually. Consequently, the net economic costs of a 28.0-million-acre and a 36.4-million-acre program, compared with no continuation are $0.9 billion and $1.5 billion per year, respectively. The net economic cost is the sum of the impacts of the positive change to society in farm income, the negative impact to society of the increased expense for taxpayers from the CRP outlays, and the negative impact of the increased expenditures for a smaller quantity of commodities.

Comparison of the rough approximations of environmental benefits derived from the estimates for currently enrolled acreage, with the economic cost estimates derived from the analysis of projected enrollment under the 1996 Act provisions, results in total estimated annual benefits to society that exceed costs by $1.1 billion and $1.2 billion, respectively, for the 28.0-million-acre and 36.4-million-acre scenarios. The uncertainty of the magnitude of errors of the environmental benefits estimates, and to a lesser extent those of the economic costs estimates, makes evaluation of this preliminary comparison difficult. Making the comparison even more difficult is the incompleteness of the environmental estimates (e.g., values of

increased wetland conservation, endangered species habitat, trees and open spaces, and reduced nutrients and pesticides in the environment). If the environmental estimates were more complete, it is likely that the estimated net impacts to society of maintaining enrollment of both 28.0 million and 36.4 million acres would be higher, and the difference in benefits between the 28.0-million-acre option and the 36.4-million-acre option would be greater.

Risk Assessment

A risk assessment and related benefit-cost analysis are required to accompany proposed major rules, as defined under section 304 of Public Law (P.L.) 103–354. Because agricultural producers needed to know long-term objectives of the CRP as soon as possible in order to formulate production plans for 1997 and because completion of the regulatory analysis required by section 304 of Public Law 103–354 to accompany a proposed regulation was not practicable in the time available, the Director, Office of Risk Assessment and Cost-Benefit Analysis (ORACBA), concluded that it was appropriate to extend the time allowed for completion of the required analyses. A general time line for conducting the required analyses developed by the Director, ORACBA, and the FSA involves a two-phase approach.

Phase 1. Available upon request are (a) an environmental assessment, and (b) an environmental risk assessment, (c) an outline of a benefit/cost analysis of mitigation measures, (d) a comparison of the relative risks managed by CRP and by other programs in the Department which address similar risks resulting from comparable activities, and (e) a plan for monitoring the risk reduction expected to occur as a result of the CRP in accordance with Public Law 104–127. Evaluation and monitoring would allow completion of a meaningful cost-benefit analysis of the current and potential enrollment practices compared to measured environmental benefits.

Phase 2. One year after the final rule is promulgated, the benefit-cost analysis of mitigation measures will be completed. This benefit-cost analysis will address the costs associated with implementation and compliance with the regulation and the qualitative and quantitative benefits of the regulation.

Initially, the principal focus of the CRP was to address the excessive erosion problems of highly erodible cropland. However, the development and widespread adoption of improved tillage systems have significantly increased producers' ability to control erosion on much of U.S. cropland at levels that do not cause substantial environmental degradation. Consequently, the focus of the program has been broadened to include those situations where long-term conversion of cropland to non-cropping uses is required to solve significant agriculture-related environmental problems.

The purposes of the risk assessment are to (1) identify and characterize the major production activities occurring on U.S. cropland that create stresses on the elements of the natural environment that CRP must protect under its legislative mandate, (2) identify the stresses that are created by these activities, (3) describe the adverse relationships between the stresses and the affected elements of the environment, and (4) estimate the amount of the adverse impacts.

Specific resource concerns or values to be protected that are defined in the 1985 Act include (1) soil erosion (including cropland productivity), (2) ground water and surface water quality, (3) habitat for wildlife (including threatened and endangered species), (4) wetland functions and values, and (5) compliance with Federal and State environmental laws including air quality.

The major agricultural cropping practices connected to the environmental risks include (1) disturbance of soil and land, (2) application of irrigation water, (3) application of pesticides, and (4) application of nutrients. Enrollment of cropland in CRP largely eliminates these activities as well as the stresses and adverse impacts.

The objective of the CRP risk assessment is to provide information that can assist program managers in developing guidelines, requirements, and policies that will lead to enrollment of acreage that addresses the most severe resource situations in the most cost-effective manner.

From the information reviewed, it is clear (and well recognized) that crop production activities can sometimes have adverse impacts on one or more elements of the natural resource base. The significance and severity of these impacts can vary significantly among geographic areas.

For example, soil and land disturbance can create excessive erosion that lead to reductions in the quality and productivity of soils, creates sediment that pollutes water bodies and destroys wetland, and becomes airborne and creates human health and safety problems. Land disturbance, especially land conversion to intensive row cropping uses (or conversions of wetlands) can also degrade important wildlife habitats.

Productivity losses resulting from soil erosion will likely average about 1 percent over the next 100 years for all U.S. cropland if erosion continues at the levels occurring in 1992. However, potential productivity losses are much greater for different commodities in different areas, e.g., more than 3 percent for corn and soybeans in the Lake States, and 2.3 percent for cotton in the Southern Plains.

Projected levels of sediment loadings from cropland total about 350 million tons per year, nearly 30 percent of total annual sheet and rill erosion. About two-fifths of the sedimentation occurs in the Corn Belt, but the Northern Plains and Appalachian regions also have significant sedimentation problems. Wind erosion resulting from cropping practices are projected to be about 940 million tons per year in the United States. Most occurs in the Great Plains, Mountain, and northern portions of the Pacific region. Airborne dust particulate matter problems are most significant in the Columbia Plateau area of southeast Washington State and the southern high plains region of Texas and New Mexico.

Conversion of grasslands and wetlands to cropping uses has contributed to a significant decline in habitat for many grassland and wetland bird and animal species, particularly in portions of the Corn Belt and Northern and Southern Plains regions. CRP can be useful in reducing threats to species population declines and in maintaining stable populations of wildlife.

Other significant problems include the contamination of surface and ground water supplies by nutrients (primarily nitrogen and phosphorous) and pesticides. Nutrient (fertilizer) use and runoff appear to be highest in the Corn Belt and Northern Plains regions, areas along the Mississippi River, and the eastern Coastal Plain.

Pesticide use is highest in the Corn Belt and the Northern Plains, while pesticide runoff potential is greatest in the Corn Belt, the southern portion of the Lake States, and along the Mississippi River in the Delta region. Areas with potential problems of pesticides leaching into ground water area are primarily located in the Southeast region, portions of the Corn Belt, and along the Mississippi River in the Delta region.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule because CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a

notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental assessment that this rule does not have a significant adverse impact on the environmental, historical, social or economic resources of the Nation. Therefore, it has been determined that these actions will not require an Environmental Impact Statement.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, CCC generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires CCC to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Federal Domestic Assistance Program

The title and number of the Federal Domestic Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies, are the Conservation Program–10.069.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule has been determined to be major under the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). It has been determined that, pursuant to section 808 of SBREFA, it is impracticable, unnecessary, and contrary to the public interest to delay the effective date of this rule. Making this final rule effective immediately will permit CCC to conduct a general sign-up period for the program in advance of this spring's planting season. Delay of the sign-up period beyond that time would unduly limit the supply of land available for enrollment in the CRP by not allowing for enrollment and planning in sufficient time for new contracts to be in effect on October 1 and thereby inhibit the ability of the program to achieve the important public benefits which were the purpose of the recent amendments to the CRP and the other provisions of the 1996 Act dealing with conservation. Accordingly, this rule is effective upon publication in the **Federal Register**.

Paperwork Reduction Act

Information collections contained in this rule have been previously cleared by OMB under 0560–0125.

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule are not retroactive and preempt State and local laws to the extent such laws are inconsistent with the provisions of this rule. Before any action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded program participants at 7 CFR parts 11, 624, and 780 must be exhausted.

Background

The purpose of CRP is to cost-effectively assist owners and operators in conserving and improving soil, water, and wildlife resources by converting highly erodible and other environmentally sensitive acreage normally devoted to the production of agricultural commodities to a long-term resource-conserving cover. CRP participants enroll contracts for periods from 10- to 15-years in exchange for annual rental payments and cost-share assistance for installing certain conservation practices. Applicants submit offers in such a manner as the Secretary prescribes.

The CRP is authorized by the 1985 Act. The Code of Federal Regulations (CFR) has contained two parts for the CRP: 7 CFR part 704 has contained provisions regarding the CRP acreage enrolled from 1986 through 1990 and 7 CFR part 1410 has contained provisions regarding the CRP acreage enrolled since 1991 under the amendments to the 1985 Act made by the Food, Agriculture, Conservation, and Trade Act of 1990.

An interim rule was published on August 27, 1996 (61 FR 43943), implementing provisions of the 1996 Act amendments.

The 1996 Act amended the 1985 Act to provide for extension of enrollment authority for up to 36.4 million acres at any one time through 2002 and a desire to improve the program, prompted development of a proposed rule which was published on September 23, 1996 (61 FR 49697), that sought comment on long-term CRP policies. The comment period ended November 7, 1996.

Proposed Rule Summary

Among other proposals, with respect to land eligibility, CCC proposed to change, in § 1410.6, the existing CRP land eligibility criteria to include, as eligible lands, wetlands and their appropriate associated acreage, as determined by CCC, certain acreage enrolled in the Water Bank Program (WBP) administered by the Natural Resource Conservation Service (NRCS), and certain cropland associated to noncropped wetlands, as determined appropriate by CCC. Wetlands are intrinsically valuable natural resources that provide important benefits to people and the environment. Wetlands improve water quality, reduce flood and storm damage, help control soil erosion, and provide important fish and wildlife habitat. Certain wetlands provide particularly important filtering functions because of their location between land and water. It was proposed for WBP land that certain WBP acreage, to the extent it otherwise meets statutory CRP criteria, would be eligible to be enrolled in the CRP during the final year of the WBP agreement.

Also, the 1985 Act authorized the watershed areas of the Chesapeake Bay Region, the Great Lakes Region, the Long Island Sound Region, and other areas of special environmental sensitivity to be designated as conservation priority areas for a period of 5 years, subject to redesignation. A number of these areas are approaching the expiration of their initial designation. The 1996 Act further amended the provisions regarding conservation priority areas under Environmental Conservation Acreage Reserve Program. The proposed rule set out proposed amendments to § 1410.8 to reflect the new provisions.

Further, CCC proposed to generally restrict the total cropland in a State that could be designated as a conservation priority area to no more than 10 percent. The rule proposed certain procedures for priority designations.

With respect to wetland enrollment, CCC proposed allowing additional incentives for such enrollments.

CCC also proposed to offer enhanced financial incentives, to obtain enrollments of filter strips, riparian buffers, field windbreaks, grass waterways, and acreage located in wellhead protection areas designated by the applicable State Agency or the Environmental Protection Agency (EPA).

The 1985 Act generally provided that no commercial use can be made of the enrolled CRP acreage but permits haying or grazing during droughts or similar emergencies. CCC also sought comment generally on haying and grazing of CRP land.

CCC noted that as a result of provisions in the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriation Act, 1997 (the 1997 Appropriations Act), contract extensions would not be available in Fiscal Year (FY) 1997 and proposed that acreage already enrolled in the CRP could be offered for re-enrollment based on the same criteria applicable to other offers.

With respect to the unilateral early contract termination provisions for certain acreage authorized by the 1996 Act amendments, CCC proposed to expand the list of acreage not eligible for early termination to include: (1) All wetlands, not just those enrolled under signup 8 and 9 criteria; (2) land subject to frequent flooding, as determined by CCC; (3) EPA-designated wellhead protection areas; and (4) any wetland buffers that may be required according to the conservation plan to protect the functions and values of wetland acreage.

The proposed rule also proposed that the CRP would be carried out by CCC through the Farm Service Agency (FSA) using State and county FSA offices and that CCC intended to rank, competitively, all offers based on the environmental benefits index taking into account the Government cost of the contract except for those contracts the acceptance of which are known to provide especially high environmental benefits.

CCC proposed to use a system that considers, for indexing purposes, soil erosion, water quality, wildlife habitat, and cost while also considering other technical factors such as, but not limited to, recommendations of State technical committee, conservation priority areas, permanent wildlife habitat, tree plantings, wetlands functions and values, and conservation compliance requirements.

Additionally, there were four issues for which CCC sought comment but which were not the subject of proposed amendment to existing regulations: (1) Whether and in what manner CRP acreage could be devoted to the production of biomass crops and whether such use would be consistent with the policy and provisions of the 1985 Act; (2) periodic nonemergency haying or grazing of CRP acreage; (3) the relationship of priority designations for the CRP, Wetlands Reserve Program (WRP), and Environmental Quality Incentives Program (EQIP); and (4) the methodology of making priority designations. Further, the proposed rule, by consolidating parts 704 and 1410, set out the entirety of the program regulations for review and comment in preparing the program for future enrollments.

Summary of Comments

CCC received 3,467 comments concerning the proposed rule. Entities responding included individuals, State governments, local governments, State farm organizations, national conservation organizations, national farm and commodity organizations, and Members of Congress. Comments came from all States except Delaware, Maine, Nevada, and West Virginia, and comments came from the District of Columbia and Canada.

In addition to the comments received in Washington, D.C., USDA conducted public listening forums in each State where comments on the CRP proposed rule were made for inclusion in the administrative record. These comments were included in the development of this final rule.

Changes in this final rule from the proposed rule of September 23, 1996, are based upon CCC's experience in implementing CRP since 1986 and on consideration of the comments received. Numerous minor editorial and other changes have been made in the text and order of the regulations for clarity and to facilitate the application of the regulations.

General Comments

Many comments were not directed to the proposed rule itself, but to related matters such as the enrollment level of the program, program development, and geographical distribution of the enrolled acreage. There were other comments which were not germane to CRP, were vague, or were not submitted timely; those comments were not considered.

There were 487 comments supporting the implementation of the CRP and citing the individual or collective conservation, environmental, or other benefits of the program obtained as a result of CRP. These benefits included reduced soil erosion, improved air quality, enhanced wildlife habitat, surface and ground water conservation, commodity price and supply stabilization, and enhanced personal and community economies.

One comment suggested that any program changes should be made gradually rather than immediately as indicated in the proposed rule. If the proposed rule had proposed dramatic changes or shifts in policy, such a suggestion would have merit. However, since 1987, when the use of an Erodibility Index (EI) was initiated, CRP has evolved to a more environmentally-sensitive program. The proposed rule has merely continued these prior incremental changes and the changes set forth in the proposed rule are not as dramatic in nature as prior amendments.

Three comments suggested that no funding shifts occur between CRP and other farm programs. As a result of the 1996 Act, CRP is now funded through CCC's borrowing authority and implementation of the CRP will not affect CCC's ability to carry out other programs.

One comment suggested that more field personnel are needed to inspect and monitor producers who are receiving Government subsidies. FSA has a thorough compliance program which includes the annual review of contract compliance on a statistically significant sample.

Three comments suggested that the deadline for comments be extended and eight comments recommended timely approval of the final rule or no delays in signup. The comment deadline will not be extended due to the need to finalize this rule in a timely manner as set out above. Four comments suggested that the current program be extended for another year to fully assess the environmental and economic costs of the proposed rule. However, as indicated in the Program Changes section of the proposed rule, Congressional provisions contained in the 1997 Appropriations Act effectively precluded the extension of any CRP contract expiring in FY 1997. CCC is very concerned that to delay action further could disrupt the farming and ranching community where planning is already underway for the upcoming cropping season. CCC intends to conduct a signup as soon as possible to alleviate any planning difficulties.

Four comments opposed the CRP because they suggested it was paid for by taxes, hurts new farmers, benefits foreign countries, or because of its

economic impact. Twenty comments suggested that the need to subsidize the agricultural community has passed and that the land with expiring CRP contracts should be returned to production. Several comments opposed unspecified program changes. Congress has, in the 1996 Act, reauthorized the CRP, and the CRP continues to provide environmental benefits as was outlined in the proposed rule.

One comment opposed the CRP being used as the all-purpose conservation program. CRP is operated in compliance with the 1985 Act. Another comment suggested that stricter regulations be implemented for people who have contracts for real estate investment purposes. The CRP regulations are designed to in fact assure the maximum benefit to the public for money spent in the program. The proposed regulations accomplish that function.

One comment suggested that deed restrictions may be placed subsequent to enrollment to maintain desirable environmental benefits. Post-contract deed restrictions are not prohibited by the 1985 Act.

Another comment suggested that the cost of returning CRP acreage to production would be a hardship. However, there are no CRP requirements as to the use of acreage after a CRP contract has matured.

One comment suggested that the proposed rule was too complex without offering any suggestions to simplify the final rule. CCC has endeavored to limit this rulemaking to ensure that it does not overreach its legislated authority in implementing the program while informing the public of CRP goals and policies. The final rule has been reviewed extensively for simplification wherever possible.

One comment suggested that CCC follow National Environmental Policy Act (NEPA) requirements regarding the impacts of the proposed rule. The proposed rule indicated that an environmental assessment had been completed with a finding that the proposed rule did not have a significant adverse impact on the environmental, historical, or social resources of the Nation, as required by NEPA.

Another comment suggested that the proposed rule imposes an unfunded mandate on conservation districts. While conservation districts perform a vital function in the development and implementation of CRP, the regulations for the CRP impose no mandates on anyone. The decision of a conservation districts to assist in CRP enrollments is purely voluntary.

Program Development

Seven comments opposed a perceived shift in emphasis from soil erosion to improvement of water quality. One comment supported a perceived change in CRP's emphasis from protecting individual's farms to protecting the "public water." Three comments supported the expanded eligibility requirements and asked that erosion control remains a priority objective of the CRP. The water quality provisions under CRP are not new. Eligibility was expanded beginning in 1988 to include filter strips. In 1989, eligibility criteria was expanded to include cropped wetlands and areas subject to scour erosion.

Another comment suggested that CRP could be used to tie programs together and that there should be cooperation between local, State, and Federal Governments to provide innovative opportunities in ways that maximize private participation and flexible utilization for perennial crops, biomass production, or other creative initiatives. CCC continues to be responsive to initiatives that can be demonstrated to cost-effectively develop new uses and technologies consistent with the 1985 Act.

Two comments suggested pilot programs to implement provisions of the proposed rule. However, the 1985 Act provides no authority to conduct pilot programs.

Enrollment Level

Fifty-nine comments supported a program level of 36.4 million acres. Four comments opposed the projected decline of the CRP to 28.1 million acres by 2002, which was an estimate contained in the cost-benefit assessment section of the proposed rule. Another comment suggested any references to downsizing CRP be removed from the rule. However, neither the proposed nor final rules contain any reference to an authorized level. CCC intends to enroll up to 36.4 million acres by accepting the acreage that maximizes environmental benefits but must be able to adjust to changing circumstances.

One comment indicated that idling 36.4 million acres is not prudent but offered no concrete suggestions. Another comment suggested that the program be terminated over a three year period by terminating contracts now or agreeing to accept reduced rental payments with greater haying and grazing privileges. However, this is not consistent with the 1996 Act amendments. CCC will carefully consider the amount of acreage to enroll by maximizing environmental benefits and cost.

Two comments suggested that sufficient acreage remain available for enrollment for conservation priority areas or practices. CCC intends to continue its continuous signup of certain highly beneficial environmental practices.

Geographic Distribution

Five comments suggested that the enrollment distribution among States and regions of the country should not change. One comment was in favor of a geographical balance. However, CCC intends to enroll the most environmentally sensitive acreage to obtain the greatest nationwide benefit.

Other Issues

Fifty-seven comments generally favored the production of biomass crops on CRP. Fifty comments were generally opposed and of those, 29 comments were opposed because of potential harm to wildlife. CCC has adopted the policy outlined in the Conference Report accompanying the 1996 Act, which indicated that biomass production be considered an acceptable cover crop practice "provided that no harvesting is allowed until after the contract is completed or terminated." In addition, the 1985 Act generally prohibits the commercial use of CRP acreage.

With respect to the periodic nonemergency haying or grazing of CRP acreage, three hundred and twenty-five comments were received. While the majority of respondents favored periodic nonemergency haying and grazing, there was a lack of consensus regarding how the process should be implemented. A number of comments were in support of some form of haying and grazing and a smaller number opposed the provision.

One comment suggested a forage reserve program with haying in blocks and not strips to preserve habitat. Another comment suggested a grass bank so that one producer could rest native grass by grazing CRP owned by another person. Three comments recommended that CRP contract holders be limited as to any profit earned from hay produced on CRP acreage.

In view of the divergence of opinions expressed by respondents on how the provision should be implemented, CCC will seek legislative amendments to modify the existing provisions relating to haying and grazing of CRP acreage and obtain specific authority for periodic managed haying and grazing. However, existing provisions of the 1985 Act generally prohibit the non-emergency haying or grazing of CRP acreage.

With respect to issues concerning implementation of the conservation priority area authority applicable to CRP, EQIP, and WRP and the manner in which to consider redesignation of soon-to-expire conservation priority area designations, respectively, these issues are addressed in the discussion of § 1410.8.

§ 1410.1 Administration.

Four comments supported the inclusion of specific reference to the U.S. Forest Service and State forestry agencies for consultation on tree planting practices. However, three of the comments suggest making consultation with the Forest Service or State forestry agencies a requirement rather than an option. This recommendation will not be adopted because there are areas in the country where these services are not available.

Eighteen comments suggested that § 1410.1 be amended to provide that: "CCC may consult with the U.S. Fish and Wildlife Service (FWS) or the State wildlife agency for assistance as is determined by CCC to be necessary for developing and implementing conservation plans and practices in a manner to optimize benefits to wildlife habitat." Several comments specifically stated that wildlife agencies should also be consulted on tree planting practices in addition to consultation with forestry agencies. Two comments suggest that FSA should take every opportunity to work with wildlife professionals to ensure that the USDA-mandated wildlife benefits of this new CRP are incorporated into contracts whenever possible. The FWS and State wildlife agencies are represented on State Technical Committees and the FWS is a member of a national multi-agency team established to provide recommendations to the Secretary on CRP policy. The Department also consulted with various wildlife agencies when formulating CRP policies. CCC and FWS will work together on as needed basis. Therefore, this suggestion was adopted.

There were several comments supporting the State and county FSA committees as the proper authorities to implement CRP including bid ranking, rulemaking, eligibility criteria, ranking plans and contract approval. CCC has delegated substantial authority to State committees which, acting upon recommendations from the State Technical Committees (see 7 CFR part 610) chaired by NRCS, assist in CRP operations within a State. Field level representatives of FSA and NRCS also participated in the development of issues prior to the preparation of the final rule.

One comment suggested that the rule should be amended to clearly identify the role of the State Technical Committees. The role of the State Technical Committees is defined in 7 CFR part 610.

One comment suggested that the local NRCS field office, along with local conservation districts, should have the ability to accept applications and approve contracts. Conservation districts are not federal agencies and, therefore, cannot obligate federal funds. During continuous signup, both NRCS and FSA have the ability to take requests for enrolling acreage in CRP. In order to maintain the fiscal integrity and consistency of the program, however, only one agency, FSA, will be responsible for approving contracts on behalf of CCC.

Five comments suggested that State ranking plans be reviewed by NRCS and FSA national offices to ensure all objectives of the program are met. The national offices of NRCS and FSA, acting on behalf of CCC, will review all proposed State ranking plans.

One comment suggested that rules for developing and applying an approved State ranking plan should be clear and available to those who will be affected by them and also suggests that offers in States with ranking plans should not be subject to ranking according to the national ranking plan. Another comment stated that national ranking was not desirable and that contracts should be approved at the local level. All State ranking plans will be public information and provided to interested applicants when requested. The national ranking process will only be used to determine the number of acres allocated to a State when State ranking plans are used. All offers will then be ranked according to the State plan. CRP contracts will be all approved in local FSA offices.

There were a number of comments suggesting that drainage districts be afforded special authority to approve or deny a producer's request or otherwise limit a request for enrollment to protect the mission of the drainage district. There is no authority for a district to control program benefits. However, they are free to make their concerns about particular practices known.

One comment suggested that contract approval be delegated to the local office level and implied that national ranking for acceptability is not desirable. CRP contracts are approved locally. The national office does not approve contracts. State FSA Committees, based on recommendations from State Technical Committees, determine whether a State or national ranking process is implemented. In States that use a national ranking plan, the national office uses an objective ranking process. In States that use a State ranking plan, the ranking process is used to determine the number of acres accepted in that State. In all cases, the CCC is attempting to achieve the maximum benefit for the nation as a whole.

§ 1410.2 Definitions.

Some commenters suggested that "permanent wildlife habitat" and "wildlife corridor" were used interchangeably in the rule. The permanent wildlife habitat was amended to make clear that it includes wildlife corridors.

One comment suggested the definition of permanent wildlife habitat is not adequate because it does not take into consideration fish habitat. As "wildlife" can include both terrestrial and aquatic species, this recommendation has not been adopted.

Three comments opposed the definition of "predominately highly erodible field" with no suggested change provided. Twelve comments suggested that because the definition of highly erodible land is land that has an erosion rate greater than "T," it appears to penalize landowners who are doing a good job by preventing them from enrolling, while rewarding those who are doing a poor job of soil conservation. Another comment opposed the defining of highly erodible land as "erosion rate greater than T." Two comments suggested that the NRCS definition for "predominantly highly erodible" be set to use a predominance percentage of 33⅓ if this definition is going to be used to determine CRP program eligibility. Another comment suggests changing the definition for "predominantly highly erodible field" by replacing "66⅔ percent of the land" with "75 percent of the land." One comment suggested that in the definition of "predominantly highly erodible field" the special allowance for the participants who agree to plant trees be expanded to include, also, those who will plant native grasses or create shallow water area for wildlife. Three comments suggested changing the fourth sentence defining HEL to read "having an erodibility index equal to or greater than 8 for both wind and water erosion and an erosion rate greater than T." One comment suggested adding "or a combination of both" in the definition of highly erodible land after the word "erosion." One comment suggested replacing the word "and" with "or" in subparagraph (4)(i) in the definition of highly erodible land. One comment

suggested the definition of soil loss tolerance was inconsistent with the definition in the current highly erodible land regulations. The land eligibility provisions have been revised to be consistent with those published in 7 CFR part 12. Those standards are known and there is no need for an inconsistency for CRP eligibility determinations. Therefore, those lands basically eligible for CRP will include acreage which is subject to the conservation compliance provisions of 7 CFR part 12. Differences in erosion can be accounted for by ranking.

Two comments suggested that the definition of conservation district be amended to use the more generic reference "State or territorial conservation district law, or tribal law." Another comment suggests the definition of conservation district include the term natural resources district. The definition in the proposed rule already included these terms and is consistent with the definition of conservation district in other USDA programs.

One comment suggested adding a definition for "conservation priority area." This recommendation was adopted.

Six comments suggested that for purposes of this rule a shelterbelt renovation be included in the definition of "field windbreak, shelterbelt and living snow fence." However, there is no need to modify the definition. Any windbreak, shelterbelt, or living snow fence that is no longer functioning properly for the intended purpose is eligible to be enhanced or restored.

Four comments suggested the creation and definition of "State wildlife priority areas" that could also be determined eligible as conservation priority areas and that these areas should be designated in consultation with State NRCS technical committee and state wildlife agency. The definition of conservation priority areas is sufficiently flexible to include this recommendation.

One comment suggested changing the definition of agricultural commodity in the CRP rule to the definition used in other 1996 Act programs. The term "agricultural commodity" is defined for CRP purposes by the 1985 Act.

Two comments suggested the definition of agricultural commodity be clarified to take into consideration tillage under crop residue management practices. The 1985 Act's definition is sufficiently flexible to consider tillage operations under crop residue management practices.

One comment suggested that the definition of "agricultural commodity" should treat crops produced by so-called "no-till" practices in the same manner as crops produced normally. This recommendation will not be adopted as it is unnecessary. So called "no-till" crops, as the term is normally used, do involve sufficient tilling for these purposes.

One comment suggested USDA add tall prairie grass windbreaks in the definition of "windbreaks." This recommendation will not be adopted because there is no assurance that the longevity of the practice can be assured.

Several comments were received regarding definitions of "cropped wetlands." One comment suggested adding a new definition of "cropped wetland" to mean "any wetland farmed under natural conditions, any wetland designated a farmed wetland, or any restorable areas designated as prior converted cropland according to part 12 of this title." Another comment suggested defining "cropped wetland" to mean "any wetland, farmed wetland or restored prior-converted wetland within a field that has been annually planted or considered planted to an agricultural commodity in two of the 5 most recent crop years." A third comment recommended adding language to the "cropped wetland" definition to include wetlands farmed under natural conditions, without manipulation. To provide for consistently with 7 CFR part 12, new definitions have been to the CRP rules for "cropped wetlands," "farmed wetlands" and "wetlands farmed under natural conditions." Those definitions draw on part 12.

One comment suggested adding a new definition for "vegetative cover" to mean native grasses or favorable introduced warm-season grasses, preferably multiple species and including some species of annual vegetation in planting mixtures. It is not appropriate to restrict vegetative cover as suggested. However, additional consideration may be awarded in the bidding process for more desirable covers.

One comment suggested that "reducing water erosion" needs to be added to the purposes included in the definition for "field windbreak, shelterbelt, and living snowfence." The proposal is inconsistent with the windbreak standards and specifications and could cause rill and/or ephemeral gully erosion if a grassed waterway filter strip, or some other practice is not established along side of the windbreak.

Four comments suggested defining the term "environmental benefits index" to include the factors which comprise the ranking process. The recommendation was adopted.

One comment suggested the definition of a conservation plan should clearly indicate that the definition only applies to the CRP or, alternatively, that the requirement for vegetative cover should be modified. The definition has been modified to read "Conservation plan means a record of the participant's decisions, and supporting information, for treatment of a unit of land or water, and includes a schedule of operations, activities, and estimated expenditures needed to solve identified natural resource problems by devoting eligible land to permanent vegetative cover, trees, water, or other comparable measures."

One comment suggested the exception for land in terraces that are no longer capable of being cropped be removed from the definition of "cropland." The purpose of CRP is to cost-effectively assist owners and operators in conserving and improving soil, water, and wildlife resources by converting highly erodible and other environmentally sensitive acreage normally devoted to the production of agricultural commodities to a long-term, resource-conserving cover. Acreage that is no longer capable of being cropped has already been removed from crop production. Therefore, this suggestion is not being adopted.

One comment suggested the definition of a "field" is inconsistent with the 1985 Act. No basis was provided, or found, for the suggestion. Therefore, the recommendation was not adopted.

One comment suggested the term "vegetation" be defined and include woody vegetation in the definition. Vegetation is included in the final rule definition of "permanent vegetative cover" as "perennial stands of approved combinations of certain grasses, legumes, forbs, and shrubs with a lifespan of 10 or more years, or trees."

Eight comments suggested changing the 3.0 acre minimum requirement in determining a manageable unit. On review, the manageable unit provision was determined to be unnecessary and removed.

§ 1410.3 General description.

One comment suggested CRP regulations should target environmentally sensitive acreage while returning quality land back to production. This rule has been published consistent with CCC's goals to retarget CRP to more environmentally sensitive acreage. This includes a minimum erodibility index level to help ensure that CRP does not remove from

production land that is not environmentally sensitive. It is a goal of CCC to only retire land from agricultural production where the benefits to the Nation are greater from enrollment than in keeping land in continued agricultural production.

§ 1410.4 Maximum county acreage.

Some commenters suggested that there should be no exceptions to the 25 percent of a county's cropland enrollment prohibition and suggested setting an administrative limit of generally between 10 percent to 15 percent as a maximum. Section 1243(b)(1) of the 1985 Act provides that "The Secretary shall not enroll more than 25 percent of the cropland in any county in the programs administered under the conservation reserve and wetlands reserve programs. . . ." Accordingly, the reduction of the limitation would be inconsistent with the 1985 Act and would unduly limit CCC's options. As to any exceptions, CCC has heretofore not approved a recommendation for an exception unless NRCS, conservation districts, the Extension Service, and the Forest Service (FS) have made a favorable recommendation and only after local producers, agricultural-related businesses, and others were polled.

Regarding county and State acreage limitations, some suggested that a limitation should be implemented on land that can be placed in CRP by counties and States. Each State should have a minimum and maximum number of acres allotted to be maintained and the regulatory limits on total designated acreage should be flexible where there are direct and serious considerations for protecting sources for drinking water. Arbitrarily establishing limits for enrollment by State inhibits CCC from maximizing environmental benefits achieved per federal dollar expended.

§ 1410.5 Eligible person.

One comment suggested the term "calendar" be removed because the requirement is for one year not one calendar year. Another comment suggested the one year requirement be removed. Two comments suggested that the land ownership time requirement be eliminated if the goal of the program is erosion control and water quality. One comment concerned producers who assume CRP contracts who may not have owned the land to meet the necessary 1-year ownership requirement prior to the next CRP signup. After careful review, the term "calendar year" has been removed and replaced with the term "12 months." The ownership eligibility requirement is a 1985 Act requirement and cannot be administratively eliminated. The proposed and final rule do not preclude those producers who succeeded to existing contracts within 12 months of the next CRP signup period from reoffering such acreage.

One comment supported reducing the land ownership requirement from three years to one year. This change is consistent with the 1996 Act amendments to the 1985 Act.

One comment suggested adding "and grazing land" following all references to cropland in § 1410.5. The term "cropland" has been replaced with the term "eligible land" now that certain marginal pasture land has been made eligible for CRP.

One comment suggested that if a landowner receives government money for their CRP land, the landowner should fit some sort of definition of a farmer. The 1985 Act does not restrict participation in the program to "farmers." Eligible producers include owners and operators of eligible land; therefore, this suggestion will not be adopted.

§ 1410.6 Land Eligibility.

Cropping History Requirement

Nine comments suggested changes to the cropping eligibility requirement such as allowing flexibility to consider crop rotations or only requiring that acreage be planted or considered planted in two of the last ten crop years. Ten comments suggested that the cropping eligibility requirement be waived under emergency situations or for certain practices, such as filter strips and riparian buffers, or for certain land, such as land that has the potential to create erosion concerns, land subject to long term flooding, and land already devoted to waterways. The CRP is a voluntary program with the purpose of cost-effectively assisting eligible owners and operators in conserving and improving soil, water, and wildlife resources by converting highly erodible land and other environmentally sensitive acreage normally devoted to the production of agricultural commodities to an approved long-term resource-conserving cover. The current cropping history requirement is necessary to obtain and maintain the purpose of the CRP consistent with the 1985 Act which, except for very limited situations dealing with marginal pasture lands, limits CRP eligibility to "cropland." Therefore, these suggestions will not be adopted.

One comment supported the current cropland eligibility base period.

One comment suggested that land coming out of CRP should not automatically be eligible to re-enroll. Two comments suggest that land known to be going out of agricultural production should not be allowed to be offered for CRP. These suggestions have not produced a rule change as the relative value of offers is taken into account in the ranking process and there is no automatic eligibility for old CRP lands.

Two comments suggested that information be released to clarify whether land under CRP contract during the cropping eligibility base period would be considered as meeting the cropping eligibility requirements. Current CRP land may be offered for re-enrollment if its meets the new eligibility criteria. The Deputy Administrator of FSA may develop further refinements on this issue as needed to deal with delays in re-enrollment.

Erodibility Index

Several hundred comments were received regarding the provisions relating to the EI of 8. There was little agreement among respondents regarding the appropriate minimum eligibility standard.

Fourteen comments supported maintaining the EI enrollment eligibility level of 8 to make more acres of productive land available for farmers. One comment supported using a weighted average EI for eligibility.

Seventy-six comments generally opposed the erodibility criteria and suggest that land with an EI of less than 8 be eligible to be enrolled in the CRP. Some comments suggested eligibility levels ranging from 5 to 7 as an alternative. Four comments suggested that the EI of greater than 8 level be used as a guideline while allowing flexibility to enroll land with an EI of less than 8 when environmental or economic benefits justify such a decision. Eight comments suggest using the same EI level to determine both HEL compliance and CRP eligibility.

Sixty-four comments supported the concept of targeting only environmentally sensitive land and placing more productive land in production. Of the 64 comments, 39 comments suggested that an EI eligibility level of 15 or greater be established.

Thirty comments suggested giving more consideration to increasing land terrain as a qualifying factor. The concern is that previously eligible land does not qualify and is highly erodible from snow melt, rain, and wind.

The erodibility index will be retained in the final rule including the present minimum value of 8. At this level, a majority of the lands that have a serious erosion problem without adequate erosion protection will be basically eligible for enrollment in the program. Further, it is a natural break point consistent with HEL determinations under the conservation compliance provisions in 7 CFR part 12. Specifically, acreage that is considered HEL under the regulations at part 12 will be basically eligible to be offered for CRP. Acreage within a field that has been redefined will have to meet the weighted average EI of 8 criteria. In order to implement the program in a reasonable manner, some cut-off value which is consistent with the program's purpose must be used. The breakpoint value of 8 or greater has been determined to be the level which is most consistent with these purposes.

Water Bank Program

Four comments suggested that eligibility criteria be expanded to include lands no longer enrolled in the WBP or that were never enrolled in the WBP if the land is type 3 through 7 wetlands which are not naturally occurring. That is, if eligibility criteria are met, allow the land to be enrolled regardless of WBP status or relationship. Neither the proposed nor final rule precludes the enrollment of eligible acreage not previously enrolled in the WBP.

One comment suggested including an associated wetland buffer with any WBP contract acreage converted to the CRP. Neither the proposed nor the final rule preclude the enrollment of eligible acreage as wetland buffers. In addition, a substantial portion of acreage enrolled in the WBP included associated buffer acres.

Four comments suggested adding type 4 wetlands to the WBP acreage eligible to be converted to the CRP. Neither the proposed nor the final rule preclude WBP acreage which is type 4 wetlands that are normally artificially flooded from eligibility for the CRP. Such wetlands that are not normally artificially flooded should not be enrolled in the CRP because such enrollments would tend to defeat the purpose of the program because such lands are naturally permanently under water, which is not consistent with the eligibility criteria and purposes of the CRP.

Three comments suggested that artificially flooded WBP wetlands and wetlands with a history of cropping before WBP should be eligible for conversion to the CRP. Two comments suggested that eligibility for conversion from the WBP to the CRP apply to "managed wetlands where water is intentionally applied to increase and/or enhance wetland functions and values and are classified as types 3 through 7 wetlands." Neither the proposed nor the final rule preclude types 3 through 7 wetlands that are normally artificially flooded from eligibility.

Three comments supported the eligibility of WBP acres for CRP. One comment suggests not limiting WBP acreage eligibility to just the final WBP year. The Department has determined that to enroll acreage that is currently enrolled in a land retirement program is not a cost-effective use of the CRP and defeats the purpose of the program. Accordingly, the suggestion is not adopted.

Cropped Wetlands

One comment suggested that allowing farmed wetlands into the CRP will lessen the incentive for farmers to enroll wetlands into long-term or permanent easements in the WRP. The CRP final rule allows the enrollment of cropped wetlands and appropriate associated upland acreage to restore and protect wetland functions and values without unduly competing with existing programs like WRP. The 1997 Appropriations Act limited fiscal year 1997 WRP enrollment to 130,000 acres. Permitting the enrollment of cropped wetlands in CRP allows CCC to obtain significant wildlife habitat, water quality, erosion control, and flood control benefits. The proposed rule inadvertently listed "farmed wetlands" as eligible for enrollment. Beyond "farmed wetlands," cropped wetlands also includes "wetlands farmed under natural conditions.'

Forty-four comments suggested that uplands associated with cropped wetlands be included as eligible land. Several comments provided suggested language for eligible land under the cropped wetlands provision: "Acreage designated a farmed wetland or a wetland farmed under natural conditions by NRCS according to part 12 of this title, together with the appropriate amount of associated upland, as determined by the State Technical Committee to be necessary to protect the wetland and meet wildlife habitat needs." Most of these comments suggest a ratio of six upland acres per wetland acre or six upland acres per wetland basin; however, one of these comments suggested the upland acres should be kept to a minimum to balance the needs of the landowner. The final rule has been amended to provide that cropped wetlands and appropriate associated cropland will be basically eligible for CRP. In addition, appropriate associated cropland with noncropped wetlands will also be basically eligible to be enrolled providing the acreage meets other cropland eligibility requirements. The NRCS will determine the associated acreage that is necessary to maintain the viability of the wetland area not to exceed a 6 acre of cropland to 1 acre of wetland ratio.

Sixty comments suggested including wetlands as eligible land for the CRP. The purpose of the CRP is to cost-effectively assist eligible owners and operators in conserving and improving soil, water, and wildlife resources by converting highly erodible land and other environmentally sensitive acreage normally devoted to the production of agricultural commodities to an approved long term resource conserving cover. The Department has determined that to enroll such acreage is not a cost effective use of the CRP and is not consistent with the purpose of the program. Accordingly, the suggestion is not adopted.

One comment opposed provisions making all cropped wetlands eligible for CRP. Cropped wetlands are a vital natural resource which provide significant environmental benefits. Therefore, this suggestion was not adopted.

Two comments suggested that the "type 1–20" wetland classification system be replaced with the Department of Interior's *Classification of Wetlands and Deepwater Habitats of the United States*. For example, "type 3 through 7" land would be reclassified as "semipermanently flooded, permanently flooded, scrub, shrub, and wooded wetlands." The WBP authorizing legislation, however, bases WBP eligibility on the old classification system and that system should, therefore, for consistency and ease of administration, continue to be the standard used in this rule for types 3 through 7 wetlands. One comment suggested that FSA be assigned responsibility for delineating wetlands. Neither the proposed nor the final rule delineates wetlands or changes any wetland classifications. The final rule allows cropped wetlands, as determined by the NRCS, to be basically eligible for enrollment in the CRP. Accordingly, these suggestions are not adopted.

One comment suggested that opportunities for wetland conservation and restoration should remain available through both the WRP and the CRP. Neither the proposed nor the final rule restrict the opportunity for producers to enroll in the WRP.

One comment supported eligibility of wetlands but suggested that the need for regulatory reform not be replaced by what should only be an option similar to mitigation. It does not appear that permitting cropped wetlands to be enrolled in the CRP impacts any options available to producers regarding mitigation.

Air Quality

Four comments suggested that air quality be considered adequately for eligibility and evaluation. Two comments suggested that the purpose of the CRP be expanded to include air quality for lands contributing to an EPA designated PM<10 non-attainment area and went on to suggest that lands contributing to the air quality problem in such an area should be automatically eligible for the CRP. A factor has been added to the ranking process to evaluate air quality improvements from reducing airborne dust and particulate from cropland wind erosion. In addition, State FSA Committees have the authority to request conservation priority areas to target wind erosion concerns.

Wind Erosion

One hundred thirty four comments suggested that failing to adequately consider wind erosion as an eligibility or evaluation factor would unfairly exclude too many erodible acres from CRP eligibility. Several of the 134 comments suggested combining wind and water erosion when calculating the EI of a field. The EI measures soil erosion caused by both wind as well as water. The EI of a field is established based on the higher of the two indexes. Wind erosion receives equal weighting with water erosion in determining eligibility for enrollment in CRP. Furthermore NRCS has indicated that the EI values for wind erosion and water erosion should not be combined. While wind and water erosion may occur on the same field, both erosion types do not necessarily occur on the same acre nor do both types of erosion occur at the same time of the year. Thus, whatever is the most prevalent type of erosion, either wind or water, will be used to establish the EI value. Accordingly, these suggestions are not adopted.

Scour Erosion

One comment suggested that scour erosion eligibility criteria be flexible to allow scoured areas not adjacent to the water body to be eligible. One comment suggested that lands eligible under the scour erosion provisions of § 1410.6(c) should be planted to an appropriate tree species or mixed species of trees. Neither the proposed nor the final rule require land to be adjacent to a waterbody to meet the requirements of the scour erosion eligibility criteria. The proposed and final rule requires that cropland approved for enrollment under the scour erosion criteria to be planted to an appropriate tree species unless NRCS or FS certify that the site is not suitable for trees.

Wildlife

One comment suggested wildlife benefits not be an eligibility consideration for enrollment in the program. Five comments suggested that wildlife habitat should not be a sole criteria for CRP eligibility. Seventy comments suggested that a wildlife exemption or wildlife criteria be developed for determining eligibility. One comment suggested that a natural heritage eligibility criterion be developed for wildlife habitat.

Wildlife habitat will be positively benefitted from the inclusion of cropped wetlands, certain WBP acreage, special practices offered in the continuous signup provisions such as riparian buffers, and potentially through State and national conservation priority areas. Therefore, these suggestions will not be adopted.

One comment suggested that any permanent vegetative cover be acceptable wildlife cover as determined by the State wildlife agency in consultation with the State Technical Committee. It is the applicant's decision as to which practice and acreage to offer for enrollment. Certain practices requested by applicants are not intended for wildlife or do not provide wildlife benefits. Therefore, this recommendation is not being adopted.

Filter Strips and Riparian Buffers

Several comments were received regarding the size of filter strips and riparian buffers and the eligibility of such practices on certain land. Four comments suggested that a minimum width for filter strips be established. Four comments suggested 33 feet instead of 66 feet as was printed in a previous Agency directive. Nine comments suggested that the State FSA Committee or other local officials should be responsible for determining the size of filter strips and riparian buffers. One comment suggested filter strips and riparian buffers need to be clearly defined so farmers will have a quick snapshot of what these terms mean.

The size requirement of filter strips and riparian buffers is not incorporated as part of the CRP proposed or final rule. Previous versions of 7 CFR part 1410 included minimum and maximum size requirements for filter strips. The Conference Report accompanying the 1996 Act provided that the Managers intend for the Secretary, to the extent practicable, to consider local conditions when determining minimum required widths for vegetative strips in CRP. Complaints were received from the public that the regulation was not flexible enough to meet the needs of intended CRP sites in all States. Therefore, determinations on size requirements will continue to be made at the local level utilizing the NRCS office Field Office Technical Guide (FOTG).

Two comments suggested making riparian buffers on marginal pasture land eligible for CRP. Two comments suggested allowing filter strips and riparian buffers along dry streams, swales, sod waterways, and riparian buffer areas around feedlots. Ten comments suggested allowing filter strips along intermittent streams and drainage ditches, and making field end rows and headlands eligible for filter strips during continuous signup. Riparian buffers on eligible marginal pasture land may be offered for enrollment in the CRP but only for planting to trees, as is provided for in the 1985 Act. Filter strips and riparian buffers along dry streams, swales, feedlots and waterways do not obtain the benefits, goals, and objectives of such practices and is not consistent with the 1985 Act. Neither the proposed nor the final rule preclude filter strips adjacent to seasonal streams and drainage ditches.

Wellhead Protection Areas

Several comments suggested expanding or changing which agency's designation of wellhead protection areas will be used to determine CRP eligibility. After careful review, the final rule has been amended to provide that "wellhead protection areas" will mean those approved by appropriate State agencies or the EPA.

One comment suggested that wellhead protection provisions support local communities, but do nothing for rural areas. Wellhead protection areas may be designated in areas served by rural water lines and enrollment of surrounding land in the CRP can provide substantial water quality benefits.

One comment supported the inclusion of wellhead protection areas as environmentally sensitive lands eligible for the CRP.

Trees

One comment suggested that established pine stands on CRP land be renewed and remain in the CRP program to prevent conversion of the land back to crop production. Four comments suggested that CRP contracts planted to loblolly or slash pine should not be re-enrolled because of projected high retention rates, economic returns, and limited wildlife benefits. Any acreage currently in the CRP, is considered to be capable of being planted. Any untimely tree destruction could be accounted for in the ranking process. That process may also take other relevant factors into account.

Enrolling Existing Contracts

Sixty-six comments opposed the land eligibility requirements because land currently enrolled in the CRP may not be eligible to be re-enrolled. Several comments suggested allowing at least 50 percent of all land currently enrolled in the CRP to be re-enrolled regardless of the eligibility requirements. Several other comments suggested allowing at least 50 percent of all land enrolled in the CRP to be re-enrolled if wildlife benefits will be enhanced. As indicated in the proposed rule, the 1997 Appropriations Act effectively precludes the extension of any CRP contract in FY 1997. The eligibility criteria is designed to assure maximum achievement of the program's goals.

One comment supported the requirement for re-enrolled bids to compete with new bids.

Other Issues

One comment suggested no restrictive eligibility criteria be used to determine enrollment in the CRP. While this recommendation allows all acreage to compete based on the ranking process, it unnecessarily increases workload to a point that it may become unmanageable. Accordingly, this suggestion will not be adopted.

Six comments suggested that whole farm enrollment not be allowed. The 1985 Act does not direct that we deny enrollment of otherwise eligible acreage based on the size of the field and adding such a requirement would unduly limit CCC's options. Therefore, this suggestion will not be adopted.

Two comments suggested that land subject to flooding during one year out of ten years be eligible for the CRP even if there is no evidence of scour erosion. There are other Federal programs available to address these concerns. The CRP is not a flood risk reduction program. The final rule does not preclude such land from enrollment if it meets one of the land eligibility criteria.

Two comments suggested that a new eligibility criterion for "Lands adjacent to existing CRP land, wildlife management areas, national wildlife refuges and other natural areas." Eligibility for such land is not necessary and may not be a cost-effective use of the CRP; however, CCC recognizes the benefits of such contiguity and such land will be appropriately considered under the ranking process. Therefore, these suggestions will not be adopted.

One comment suggested changing § 1410.6(h)(4) to include "emergency priority areas" as eligible areas along with designated conservation priority areas. The commenter was not clear as to what was intended as "emergency priority areas;" therefore, this comment will not be adopted.

One comment suggested clarifying the text of § 1410.6 by creating three lists that clearly define (1) all provisions which must be met if land is to be eligible, (2) exceptions under which those lands not meeting those provisions will still be eligible, and (3) conditions under which no lands will be eligible. Another comment suggests that the practices listed under § 1410.6(b) and § 1410.6(h)(5) be the same and include all those practices listed in § 1410.6(b). The final rule amends § 1410.6 to clarify these provisions.

Two comments suggested that wildlife habitat, riparian buffer, and contour grass strips be added to the list of special practices for which eligibility for otherwise eligible land is prescribed in § 1410.6(h)(5). Both the proposed and final rule provide eligibility for otherwise eligible land determined suitable for such practices. However, § 1410.6 has been amended for clarity.

Two comments suggested that references to acreage protected by easements or mortgage restrictions be removed or clarified. One comment suggested permanent conservation easements for either the entire farm or those portions being retired from cropping. These recommendations will not be adopted because there does not appear to be a substantial program benefit from enrolling limited lands, there is no authority in the 1985 Act to require conservation easements on new CRP contracts, and such easements could discourage enrollment and raise costs. On review, in addition, the provision appears to be sufficiently clear.

One comment suggested that language in § 1410.6(d)(1) be changed regarding the provision for the ineligibility of land where the water quality objectives can be obtained in another program if the CRP eligibility determination to be was unduly delayed. This has been accomplished by inserting the words "in a reasonable and timely fashion" after the word "obtained" in the regulation.

One comment suggested not allowing early termination if the intent is to re-offer the same land at a higher rental rate. The 1985 Act does not restrict early termination to only those persons who intend not to re-offer the acreage. The 1985 Act provides that such acreage may be re-offered during a subsequent signup period. Therefore, this suggestion will not be adopted. It should be further noted that the early termination provisions only apply to contracts initially enrolled prior to January 1, 1995. Accordingly, all contracts enrolled after that time regardless of whether the acreage was under an earlier contract will not contain the unilateral early termination authority.

One comment suggested that highly erodible land that can be farmed should be left in crop production, especially where technology has been improved to control erosion. The CRP is a voluntary program with the objective of cost-effectively assisting eligible owners and operators in conserving and improving soil, water, and wildlife resources by converting highly erodible land and other environmentally sensitive acreage normally devoted to the production of agricultural commodities to an approved long term resource conserving cover. The CRP can be used to assist owners and operators to meet conservation compliance requirements and improve farming practices. To exclude highly erodible land that can be farmed from the program would limit CCC's ability to assist such land owners and operators and remove a valuable tool used to conserve the nations" resources. However, CCC will endeavor to not enroll land which is better put to agricultural production. Accordingly, this suggestion is not adopted.

Two comments suggested that flooded pasture land and acres currently under water which has been cropped in the past should be eligible to enroll into CRP. Enrolling acreage not capable of being cropped is not cost-effective and tends to defeat the purpose of the program.

§ 1410.7 Duration of contracts.

Several comments suggested the Department should consider a shorter contract period for contracts that have already been extended or should allow contracts to be extended rather than be re-offered for enrollment or allowed to exit CRP in an orderly fashion. The 1985 Act provides that contracts can be no

less than 10 nor more than 15 years. Further, the 1997 Appropriations Act effectively precluded the extension of existing contracts in FY 1997.

Several comments suggested establishing varying years of duration of contracts between 10 and 15 years for various reasons, such as to lessen the effects of returning vast acres to crop production; for wellhead protection areas; tree planting; in return for contracting with Federal, State or local government to lengthen the term of the contract or for a permanent easement; or when landowners voluntarily commit to maintain the conservation measures for several years following contract expiration. In accordance with the requirements of the 1985 Act, the final rule provides that contracts devoted to hardwood trees, shelterbelts, windbreaks, or wildlife corridors may be for the length specified by the producer, so long as the contract is not less than 10, and not more than 15, years in length. Otherwise, however, the contracts will be 10 years to preserve CCC's flexibility and reduce CCC's financial exposure.

§ 1410.8 Conservation priority areas.

One hundred ten comments were received recommending a specific area be identified as a conservation priority area. One comment supported the cropped wetland exemption but stated that for the Prairie Pothole region a wildlife exemption should be established to reaffirm the longstanding, successful relationship CRP has developed between sportsmen and farms. Another comment suggested the local conservation district be the lead agency responsible for nominating conservation priority areas in a State. The following have been designated as national conservation priority areas: Chesapeake Bay, Long Island Sound, Great Lakes region, and the Prairie Pothole region. Recommendations for State-designated conservation priority areas may be submitted by State FSA Committees based on recommendations from State Technical Committees to the Deputy Administrator for Farm Programs, FSA (Deputy Administrator). Land located within a designated CRP conservation priority area is eligible to be offered for enrollment, although the acreage still must compete with all other offers for actual enrollment.

Seventy-five comments were received regarding the proposed 10 percent cropland limitation per State. Several comments suggested that the limitation was too low or should be otherwise adjusted such as allowing designation of an additional 10 percent for a wildlife conservation priority area or allowing State FSA Committees to exceed the 10-percent limit to meet Federal clear air standards. Other comments supported the limitation, or suggested it was too high or was arbitrary. After reviewing the public comments, CCC has determined to maintain the 10-percent limitation. Providing a limitation ensures the strength of the priority area concept by allowing designation of only the highest priority needs within a State. States will designate the purpose of the priority area as enhancing either water quality, wildlife habitat, or other environmental concerns. The 10-percent limitation could be exceeded for extraordinary circumstances, if approved by the Deputy Administrator. All recommendations for State-designated conservation priority areas will be reviewed by a national interagency team to ensure that the purpose is clearly defined and to ensure consistency among States and with the intent of the program.

Several comments suggested that a conservation priority area may need to be designated exclusively for wildlife or wildlife habitat plantings or should be used to protect lands from wind and water erosion, while others suggested that a priority area should not be established based on wildlife habitat alone. Several emphasized major watersheds for conservation priority areas especially where drinking water is impacted, and a few comments suggested that Soil and Water Conservation Districts or the State Technical Committee be given the authority to designate conservation priority areas. A few comments suggested priority areas be based on improving water quality and wildlife habitat that cannot be achieved through other programs or suggested that State wildlife agencies be allowed to designate conservation priority areas for wildlife. Several comments suggested that designation of conservation priority areas be allowed for the mitigation of natural resource emergencies or to give priority to those contracts already established. State FSA committees, based on their review of the recommendations of the State Technical Committee, will have the opportunity to recommend designation of conservation priority areas based on actual adverse impacts of agricultural activities on water quality, wildlife habitat, or other environmental concerns. Recommendations will be required to define the conservation and environmental objectives and analyze how CRP can cost-effectively address such objectives. The scarcity of a habitat or wildlife species is a key factor in establishing a wildlife habitat-based conservation priority area so the CRP can be effective as a means to avoid wildlife species population declines and preserve rare or disappearing habitat. The CRP is not an emergency program; other USDA programs exist to address emergencies affecting natural resources. Giving priority to contracts already established would decrease the Department's ability to achieve its goal of cost-effectively enrolling the most environmentally sensitive acreage.

Some comments suggested conservation priority areas should provide preference to but not automatic eligibility of lands offered within an area, or that location within a conservation priority area should become a part of an environmental benefits index for ranking rather than eligibility. Other comments suggested allowing a certain type of land to be considered as a conservation priority area rather than a specific geographic area. One suggested land type was center pivot corners. Another comment suggested geographically balancing the conservation priority areas, targeting areas with diverse conservation needs. Other respondents suggested that USDA should guard against conservation priority areas enrolling land which would not normally qualify under other criteria, or opposed establishment of conservation priority areas due to unspecified adverse impacts. One comment suggested the review of accomplishments within designated conservation priority areas at the time of redesignation.

Land located within a CRP conservation priority area is eligible to be offered for enrollment, although the acreage still must compete with all other offers for actual enrollment. Location within a conservation priority area will be considered in the ranking process. State FSA committees have the authority, based on recommendations from State Technical Committees, to recommend a conservation priority area based upon a specific, identifiable land quality provided the priority area still serves the purpose of water quality, air quality, or wildlife habitat concerns and the State can provide a map indicating the location of the priority area. State FSA committees in all 50 States are eligible to submit recommendations for conservation priority areas. All existing CRP conservation priority areas have expired or have been withdrawn. State FSA committees must submit new recommendations for any conservation priority area to be effective. Each recommendation must include an evaluation and monitoring plan before the priority area can be approved.

Several comments addressed the issue of utilizing the same conservation priority areas for the CRP, WRP, and EQIP. Some stated that the conservation priority areas should be cross-referenced or coordinated so that benefits from multiple programs could apply; for example, CRP could be used in a WRP priority area to stop erosion from filling in a protected or restored wetland. One comment suggested including EQIP State-designated conservation priority areas for CRP. Another suggested that conservation priority areas should be implemented by receiving a percentage of the funding, with the remainder of the funds going to general disbursement. Others suggested it would be unwise to closely link the conservation priority areas for the different programs and that all three programs should have conservation priority areas. A respondent suggested, for example, that EQIP conservation priority areas will likely result in very little incentive for tree planting, but that the CRP has valuable tree planting incentives. Some comments suggested that it would not be possible to put CRP conservation priority areas in tandem with the other programs because EQIP and WRP are locally based and it is hard to set priorities at the national level, and that conservation priority areas set, for example, for the WRP should be used only for WRP, with the goal of permanent restoration of diverse wetland functions and values. One comment suggested that the implementation of conservation priority area authority should be limited to noninvasive technical assistance from USDA, and several comments suggested that the State or State FSA committee should establish conservation priority areas, not the Federal government.

State FSA committees, based on the recommendation of State Technical Committees, recommend conservation priority areas based on State specific environmental needs and objectives. The Deputy Administrator reviews State recommendations and makes approvals that are consistent with the goals and objectives of the CRP. Land located within a CRP conservation priority area is eligible to be offered for enrollment, although the acreage still must compete with all other offers for actual enrollment. CRP funding is not determined based upon location inside or outside of a priority area but upon actual enrollment. Further, the CRP is available for all eligible acreage, including that located within WRP or EQIP conservation priority areas. State FSA committees, based on recommendations from State Technical Committees, may submit EQIP conservation priority areas as CRP conservation priority areas. The recommendation, however, must meet the requirements established for CRP, such as the 10-percent cropland limitation.

The Department agrees that the purposes of the CRP, WRP, and EQIP differ, but believes that the determination of conservation priority areas may be coordinated in the future.

§ 1410.9 Alley-cropping.

One comment suggested that alley-cropping not be limited to contracts requiring the planting of hardwood trees. That limit is consistent with the 1985 Act.

§ 1410.10 Conversion to trees.

Several comments suggested that the special provisions for converting CRP land to hardwood trees and for allowing three years, with certain limits and in certain cases, to plant the trees be extended to softwood trees. The limitation with respect to hardwood trees in both cases is statutory. Also it was suggested that site-specific selection of tree species for tree planting purposes be made by professional foresters. Such consultation can be obtained if needed.

Two comments suggested that the requirement to reduce the cost-share payment by the amount of the original cost-share payment be eliminated and a bonus equal to 25 percent of the cost of establishing these new covers be provided. The comments cannot be adopted. The 1985 Act provides that the Secretary will not incur any additional expense for the acres converted, including the expense involved in the original establishment of the vegetative cover, that would result in cost share for costs in excess of the costs that would have been subject to cost share for the new practice had that practice been the original practice.

Three respondents commented on the requirement that for conversions made under this section, the CRP participant must agree to also agree to participate in the Forest Stewardship Program. One supports the requirement while another suggests elimination and a third suggests that participants only be encouraged to participate when converting to trees. The required participation in the Forest Stewardship Program is statutory.

A few comments suggested that riparian corridors containing hardwood trees be added to the list of special to which the conversion provisions apply, and that the Deputy Administrator offer 15-year contracts on all CRP lands to be planted to hardwoods. Areas devoted to hardwood trees or which can be considered as wildlife corridors are already eligible under the proposed rule. Also, the rule provided that contracts for hardwood tree plantings could be for 10- to 15-years at the producer's discretion. Requiring that the producer always take a 15-year contract does not appear to be necessary or cost-effective.

One comment suggested that trees be harvested on acres that were converted to such plantings. The 1985 Act prohibits the harvesting of the trees during the contract period and prohibits any commercial use of trees on land that is subject to a CRP contract unless it is expressly permitted in the contract. Participants are, however, allowed to conduct pruning, thinning, stand improvement, or other activities consistent with customary forestry practices on land that is planted to trees. The landowner may harvest the trees only after the contract expires.

§ 1410.11 Restoration of wetlands.

Comments generally supported the restoration of eligible wetlands in the CRP but discouraged competition with the WRP. Comments varied on the administrative mechanism used to accomplish restoration. Two comments suggested that wetlands enrolled in CRP be required to be restored with no mention of incentives or additional compensation. Several comments related to incentives offered to landowners. One comment suggested a 25-percent bonus be added to the annual payment rate and two others support unspecified additions. Other incentives to be implemented should accomplish this objective at much lower cost to the program.

Two comments suggested that wetlands enrolled in CRP, regardless of initial enrollment date, either be restored with a 25-percent cost-share incentive or be transferred to WRP. The date restriction in the regulation is required by the 1985 Act. One comment suggested that the highest quality wetlands, regardless of size, be directed to the WRP for long-term protection. However, program requirements differ between CRP and WRP, making transfer an issue for landowner consideration. Inclusion of bonus points in the criteria are supported in two comments as a method of encouraging restoration.

One comment recommended limiting CRP enrollment to only wetlands so that land coming out would be available for production. The 1985 Act as it relates to CRP is directed at highly erodible lands, as well as other sensitive lands, and a limitation to wetland enrollment would, accordingly, not be appropriate. Another comment suggested that land coming out of CRP contract should reflect the land use prior to enrollment, including wetlands. Once a contract expires, the participant is under no further obligation to abide by any terms or conditions of the CRP contract except as may be required to meet conservation compliance or wetland conservation provisions of 7 CFR part 12 to obtain benefits for certain other USDA programs. Such a change, in addition, would be cost-effective even if undertaken for a limited time.

One comment suggested that drained lands be eligible for CRP without requiring that ditches be plugged or tile broken. Although CCC will provide financial incentives to restore wetlands and additional consideration is provided in the ranking process for acceptance into the program, wetland restoration will only occur by voluntary agreement. Accordingly, this suggestion has not been adopted.

§ 1410.20 Obligations of participant.

Four comments suggested the reduction of allotments and quotas for tobacco and peanuts interferes with the economic soundness of the family farm and is too harsh on tobacco and peanut quota holders because they no longer have the ability to reduce their crop acreage bases. The respondents suggested that tobacco and peanut allotments and quotas be exempt from reduction. This recommendation is not adopted because the reduction is required by the 1985 Act. Crop acreage bases, for other crops which had deficiency programs, ceased being used after enactment of the 1996 Act.

The majority of comments on this section dealt with weed control. Two comments suggested that weed control should be mandatory. One of the two comments suggested that those not complying should be penalized only on those acres affected, not the entire contract acres and not to exceed one year's payment. The other comment suggests that NRCS and FSA accept and seek information and assistance from landowners or the general public without creating a contract compliance issue. CRP participants are required to maintain the acreage according to the conservation plan of operation developed by NRCS. Participants who do not comply with the plan are assessed payment reductions or the applicable contract acreage is terminated. Noxious weeds must be controlled in accordance with local laws on all contracts at all times. It is not necessary to file a complaint to have CRP acreage checked for compliance with the plan.

Eleven comments suggested weed control should be targeted only to those weeds officially listed as "noxious weeds" by the applicable State. Three comments suggest that the requirement for general control of weeds be eliminated. CRP practices are installed to meet a particular environmental or conservation objective. Plants that impede that particular objective must be controlled. CCC believes that it is important to control weeds that are detrimental to the purpose of the selected cover. Therefore, this recommendation will not be adopted. However, CCC will work with CRP participants to preserve the environmental benefits including, where appropriate, spot mowing and other spot treatments.

§ 1410.21 Obligations of the Commodity Credit Corporation.

One comment suggested that the meaning of "subject to the availability of funds" is unclear, given that rental payments will be made under the authority of the CCC. CCC is now authorized to use its borrowing authority to fund the CRP. However, it is necessary to maintain this language since CCC funds will not be earmarked in advance.

Nineteen comments were received in support of the incidental gleaning of certain CRP acreage and one comment was in opposition. Incidental grazing associated with gleaning of crop residues is authorized by the 1985 Act and can provide a worthwhile additional incentive for participants without a significant effect on other parties; such gleaning is limited both by the regulations and the conservation plan.

One comment suggested that should funds cease to be available, land enrolled in CRP would be freed from the contract obligations without causing default on the part of the landowner, and that the landowner would be provided at least 12 months' notice of USDA's termination. Another comment suggested that CRP contracts must be considered legally binding on both the landowner and the CCC and rental payments should be made to landowners in a timely manner as provided in the contract. Since inception, all CRP rental payments have been made, subject to statutory constraints. That should continue to be the case.

Two respondents suggested that any bases being protected should not be released because it would only reduce farm program payments. This recommendation will not be adopted. Once the CRP contract expires there is no authority to protect allotments or quotas in accordance with the 1985 Act. The eligibility of current holders of CRP contracts to participate in the production flexibility contracts authorized by the 1996 Act is statutory. However, CRP acreage that is reenrolled will be considered to be under a new contract and will lose any "base" protection for production flexibility contracts that otherwise applied since such bases were terminated by the 1996 Act. If a farm with tobacco quotas or allotments or peanut quotas is enrolled in the CRP, such allotments and quotas must be reduced but will be restored in accordance with the statutory provisions in effect when the CRP contract is terminated.

Two comments suggest the quota for peanuts or tobacco on land being enrolled in CRP should not be reduced. This recommendation will not be adopted because the reduction is required by 1985 Act.

§ 1410.22 Conservation plan.

One comment suggested wildlife habitat creation be included as a requirement in the conservation plan. Another comment suggested that FSA and NRCS, in conjunction with wildlife managers, work to ensure that partial field practices also provide habitat benefits for wildlife. This recommendation will not be adopted. It would be inappropriate to require wildlife provisions if the purpose of the practice is not wildlife.

One comment suggested that the local weed control representatives be requested to participate in developing a plan for evaluating noxious weed control on contracts requesting extension and for assuring adequate noxious weed control on active contracts. Participants are required to control noxious and other weeds to protect the cover and the conservation plan will include any control techniques. CCC relies on local weed officials to enforce State laws regarding the existence of any noxious weeds on CRP acreage.

Three comments opposed the requirement that landowners control all weeds, insects, and pests because some weeds being controlled in most cases offer the highest wildlife values and places unnecessary constraints on program participants. This requirement applies only when the approved cover has been damaged by the existence of weeds, insects, or pests.

One comment suggested that contracts allow for spot mowing and spot treatment of weeds. Procedure will

encourage this provision where technically appropriate. However, disturbance of the cover will not be permitted during the primary nesting period.

Five comments supported NRCS supervision to create firebreaks with light tillage on CRP land and would like the issue addressed in the regulations. This recommendation will not be adopted. However, firebreaks are allowed on CRP acreage when required by State and local units of government to include barren firebreaks where erosion is not a hazard and documented in the conservation plan.

One comment suggested that in order to create and enhance wildlife habitat, pine plantations and fescue monocultures should be eligible for reenrollment only if they are improved substantially for wildlife through habitat diversification. This recommendation will not be adopted as the indexing system will allow for taking those factors into account, along with others, to maximize achievement of the program's objectives. However, improving cover for the benefit of wildlife will enhance the likelihood of acceptance in the program.

Regarding native plant species, five comments suggested that native plant species be required for cover plantings. Two comments suggested the use of seeds on CRP land represent the type of vegetative communities native to that area. Three comments suggested that a stronger emphasis be placed on diversifying cover plantings on CRP contracts to include native species where applicable. One comment suggested that the regulations should provide, generally, that land cover should use vegetation native to the region and include as diverse a mixture as is environmentally valuable and cost effective. Two comments suggested that eligible practices should state a clear preference for establishing native species of grasses, legumes, shrubs, and trees and to the extent practicable, landowners should be encouraged to plant locally derived plant materials. Two comments suggested that the regulations require the use of native warm season grasses on lands enrolled CRP where grassland is the desired cover type.

The CRP has multiple purposes and it is a voluntary program. A producer selects the practices most desirable for his or her farming operation. If the producer's objective requires an introduced species, it would be inappropriate and inefficient for CCC to require that a native species be used.

One respondent suggested that § 1410.22(b) should be amended to replace "or" with "and" when listing the purposes of the practices to be included in the conservation plan. Conservation plans are drafted according to the primary purpose of the practice. To modify such a plan to include all objectives may unnecessarily compromise the environmental benefits to be obtained.

One comment suggested the choice of the species to be planted should be an option of the landowner and professional forester as determined by both to be best suitable for the site and the owner objectives. Flexibility on this issue reflects current CCC policy. However, species will be considered when evaluating offers.

One comment suggested the local NRCS offices have the flexibility to develop grass roots maintenance plans that would achieve the overall CRP objectives, which would include determining stocking rates and time of implementation based on local conditions, climate and topography. The conservation plan is written to include appropriate maintenance provisions. Therefore, this recommendation will not be adopted.

Eight comments suggested that the conservation plan should allow landowners to irrigate crops from water cover located on the CRP acres with an appropriate reduction in the rental rate. Generally, acreage accepted with water as an approved cover was done so for water quality and wildlife purposes. To drain such acreage for crop production could adversely impact the land directly counter to the purposes for which the acreage was accepted. Further, such activities could be destructive to the cover and do not appear to be needed or cost-effective.

One comment suggested that the conservation plan should allow appropriate maintenance of permanent cover and should not have required management of anything other than CRP contract acreage unless the producer requests a more comprehensive plan. The CRP conservation plan does make allowance for the appropriate maintenance for only the cover.

One comment opposed eliminating the minimum widths for the strip practices and suggests, in all cases, the area of the strips should be computer based on the average width, not the minimum. Other comments suggested a minimum width. The Conference Report accompanying the 1996 Act suggested that, to the extent practicable, that local conditions should be considered when determining minimum required widths for vegetative strips in CRP. Further, complaints were received from the public that previous regulations were not flexible to meet the needs of intended CRP sites in all States. Accordingly, it has been determined that decisions on these size requirements will be made at the local level.

One comment suggested that the conservation plan should take into account any abnormal weather patterns and should the cover fail through no fault of the contract holder, NRCS should work with the producer in order to assure that the cover is replaced in the most cost-efficient manner. It is unclear how a technician can develop a plan for abnormal weather patterns. However, NRCS will work closely with a participant in such circumstances. Similarly, USDA will work with landowners so that all options for land use and Federal and State assistance are known.

One comment suggested that NRCS cooperate with producers who put land back into production and organizations or agencies cooperating in the funding of the program must diligently respect private property rights. The Conference Report accompanying the 1996 Act suggested that lands exiting the CRP under the early termination provisions of the 1985 Act not be held to a higher conservation compliance standard than similar cropland in the area. NRCS will work with a landowner in providing technical assistance on potential conservation compliance problems and to provide an appropriate conservation plan.

Several comments suggested that silvaculture thinning from 8 to 10 years of age and subsequently every 3 to 5 years thereafter until final harvest be allowed with a reduced payment during the years of commercial activity. The final rule has been amended in § 1410.21 to provide for normal forestry maintenance activities consistent with the 1985 Act.

One comment suggested that filter strips and riparian buffers should be allowed to be contracted anywhere determined necessary, not just along permanent streams and that minimum widths for all the strip practices not be eliminated with ephemeral waterways allowed to flow through the middle of the strip. This recommendation did not reflect the 1985 Act limitations on eligible land such as the enrollment of cropland and marginal pasture lands. Accordingly, this comment can not been adopted.

One comment suggested prioritizing between filter strips and riparian buffers when there is an adjacent water course involved. The filter strip and riparian buffer standards provides the needed flexibility for NRCS to make these

eligibility determinations. Accordingly, this comment has not been adopted.

One comment suggested that fields should not be considered a qualified established stand unless a majority of the specified and drilled grasses are present and flourishing. This is already a requirement for practice certification.

One comment suggested that the conservation plan should allow for the addition of structures, grassed waterways, terraces, and settlement ponds on land enrolled in CRP which will be returning to production. CRP's purposes do not include preparing land for a return to production. Therefore, this recommendation has not been adopted.

Two comments suggest the terms, conditions, and requirements of CRP maintenance contracts be made known to farmers prior to commitment. The required maintenance provisions are included in the conservation plan and are reviewed and discussed with CRP participants by NRCS prior to contract approval.

§ 1410.23 Eligible practices.

One comment supported sound conservation practices such as filter strips, waterways, headlands, and riparian buffers but did not support an annual payment from CCC to maintain them. CCC provides a nominal additional rental rate incentive, up to $5 per acre as part of the maximum rental rate calculation, to ensure that participants are willing to enroll land for those practices and then properly maintain them. Actual cost-share rates are set in accordance with the 1985 Act. CCC will continue to set rental rates in a way that reflects true costs and which achieve the intended environmental goals of the program. These additional incentives, because of the special nature of the contracts, are needed and warranted. Offering a lesser amount, however, enhance the ranking of the offer.

One comment suggested riparian criteria include flooded and scour areas rather than be set in terms of the number of feet from the water course. The current rule and this final rule already provide for establishing such criteria in either manner.

Three comments suggested that eligible practices include naturally occurring grasses and other covers. The rule allows for such action by CCC so no change was made from the proposed rule.

Two comments suggested that tree planting should be a priority in areas subject to scour erosion and also in riparian areas. Tree planting is a requirement in scour erosion areas. § 1410.6 provides that cropland approved for enrollment under scour erosion criteria must be planted to an appropriate tree species or mix thereof according to the FOTG, unless NRCS, in consultation with FS, determines that tree planting is not appropriate. Trees or shrubs are required for the riparian buffer practice.

One comment suggested that riparian corridors containing hardwood trees should be added to the eligible practices. The final rule has been amended to remove references to specific eligible practices.

One comment suggested that FSA, NRCS, and wildlife managers should strive to ensure whole field practices are considered. This is not precluded under the final rule.

One comment suggested the State FSA committee include the implementation of practices which will benefit successful native field habitats. The final rule allows such a priority if deemed appropriate in particular cases.

Three comments suggested that the regulations allow the use of native vegetation/natural succession on lands enrolled in CRP and cost-share periodic maintenance, for example, by light discing. Cost-share payments are made as authorized in the 1985 Act and incentives may be included in rental payments to reflect special burdens. Such incentives will be added as needed. Acreage with covers already established are permitted to be enrolled provided all other eligibility criteria are met.

One comment suggested that for lands planted to trees there be a maximum of 436 trees per acre, a minimum of 30 foot unplanted buffer of natural vegetation or wildlife plantings along the edge of fields, a minimum of 10 percent of the former agricultural field maintained in wildlife openings (includes acreage in unplanted buffer), and cost-share on seeding of up to 25 percent of the field with perennial or reseeding legumes (when site conditions are appropriate). This recommendation will not be adopted. These are specific practice requirements that are more appropriate for the FOTG.

Five comments supported a new practice for wildlife habitat. Two comments suggested forest trees be an acceptable permanent vegetative cover. There is no need to create a new practice. CRP already has two practices for wildlife habitat. Both hardwood and softwood trees are acceptable covers.

Two comments stated that the proposed rule does not adequately address prairie wildlife protection. The final rule continues the provisions for establishing grassland cover that has benefitted prairie wildlife species and resulted in habitat that has assisted in the population recovery of water fowl and other migratory bird species in the Great Plains States.

Two comments suggested the wildlife water cover restrictions placed in the 1985 Act should not apply to this section. This recommendation can not be adopted due to the provisions of the 1985 Act.

One comment suggested that annually planted wind strips be an eligible practice. The purpose of CRP is to cost-effectively assist owners and operators in conserving and improving soil, water, and wildlife resources by converting highly erodible and other environmentally sensitive acreage normally devoted to the production of agricultural commodities to a long-term resource conserving cover. Therefore, this recommendation will not be adopted.

§ 1410.30 Signup.

The comments received suggested including agricultural drainage wells, field border strips, center pivot circle corners, grassed terraces, linear grass strips, shrub plantings arranged in irregular blocks, and land currently enrolled in WBP. The practices eligible for continuous signup may be implemented on field borders and center pivot corners if such land is determined eligible and suitable for the intended practice. As to the other suggestions, their adoption would not be cost-effective uses of the CRP. The land and practices eligible for continuous signup generally provide benefits to large areas when compared to the acreage on which the practice is implemented.

One comment suggested all lands USDA intends to be eligible for the continuous enrollment process should be listed in the regulations. Specific practice eligibility determinations will not be included in the regulations so as to provide the needed flexibility to be able to modify the available practices to respond to agricultural, environmental, and economical changes. Therefore, this suggestion is not being adopted.

Twenty-seven comments supported the new continuous signup implemented in 1996.

Several comments were received regarding the CRP enrollment period. Two comments suggest the State FSA committee establish the enrollment period and one comment suggests a constant annual enrollment period be established through 2002. The CRP acreage limitation is a national limitation allowing CCC the discretionary authority to determine the

maximum acreage level up to 36.4 million acres. The desired maximum acreage limit determines when enrollment periods are announced considering the number of acres currently enrolled and the schedule for acres exiting the program. The maximum acreage level at any time can be dependent upon market conditions, farm financial conditions, and national and local environmental concerns that must be evaluated nationally, with other factors. A rigid schedule would unduly limit CCC's options and would not allow adjustments to changed circumstances.

One comment suggested participants be allowed to choose any year to be the effective year of the contract. To allow producers to pick any effective year for the contract prevents from CCC maintaining current acreage levels. However, producers, who enroll acreage under the continuous signup provisions, choose when to enroll acreage and are permitted to defer the effective date of the contract for up to six months.

Several comments suggested the strip practices, "contour grass strips" and "wildlife corridors" be made eligible for immediate enrollment under the continuous signup provisions. Like the permanent wildlife habitat practice, wildlife corridors are eligible for the continuous sign-up when located in wellhead protection areas. Contour grass strips are eligible. The rule, however, will continue to allow complete flexibility for CCC on determining which practices are chosen for continuous signup.

One comment suggested there should be no discrimination against smaller acre bids when they provide big benefits. CCC recognizes the value of certain practices which generally enroll small acres in providing significant benefits by allowing otherwise eligible offers for these practices to be enrolled without further evaluation.

§ 1410.31 Acceptability of offers.

General

Four comments suggested that the ranking structure was one of few Federal programs that "helps our citizens and wildlife." Two comments suggested that expiring contracts not be allowed any advantage in subsequent enrollment. Each offer will be evaluated on its own merits. Existing CRP offers that will use current covers will have reduced costs and would have, in that sense, some advantage.

Another comment suggested that the bidding process should be replaced with a set amount of $25.00 to $35.00 per acre. The report accompanying the 1997 Appropriations Act reaffirmed previous Congressional direction that CRP rates should not exceed the prevailing rental rates for comparable land in the local area. Establishing arbitrary values would be inconsistent with this directive.

Four comments requested an opportunity to review and comment on the ranking process. The ranking process, as set forth in the proposed rule, was developed by an interagency task force consisting of several USDA Agencies, the Environmental Protection Agency, and the U.S. Fish and Wildlife Service. The ranking process, moreover, is not a rigid schedule but may be adjusted depending on the progress of the enrollments, or changed priorities. Interested parties have been, and may continue, to make their views on priorities known.

Another comment suggested that more of the matters now set forth in technical manuals should be incorporated into the proposed rule. This is not a CRP rule issue. Section 343 of the 1996 Act requires that any future revisions to NRCS technical guides be made available for public notice and comment.

Process

Nine comments suggested that producers currently enrolled in the CRP should not be required to rebid if their land qualifies for enrollment. The comment was not clear on the basis on why existing acreage should be considered differently from acreage seeking enrollment for the first time. Requiring all expiring CRP acreage to be rebid will allow CCC to treat all eligible owners and operators on the same basis. Accordingly, this recommendation will not be accepted.

Fourteen comments suggested that clear guidelines for acceptance be published in advance to make the approval process observable and more predictable. CCC intends to continue its efforts ensuring that the public is fully informed and will make available programmatic information prior to enrollment. CCC also intends an element of competition between bids to increase the cost-effectiveness of the program.

Five comments suggested the conservation priority areas be taken out of the eligibility criteria and placed in the ranking process. The conservation priority areas allow acreage that does not meet the regular eligibility criteria but that meets some other identified environmental need to be offered for the program but to ensure maximum environmental benefits the offered acreage will compete with other acreage being offered. The ranking process contains credit for being located in a conservation priority area to account for the cumulative environmental benefit that accrues within the CPA.

One comment supported the use of a ranking process that does not favor one habitat or environmental factor. However, the commenter also suggested some kind of additional consideration be given for a number of categories of acreage predominantly related to current CRP contracts. The ranking process contains credit for acreage where the appropriate cover is already established. Other comments suggested that additional credit be given for State and federal endangered, threatened, or candidate species. This comment was adopted.

One comment opposes the proposed rule's emphasis on tree plantings. However, the 1985 Act establishes, as a goal, not less than one-eighth of the land enrolled during 1991 through 2002 being established to trees and other specified covers. The ranking process will contain criteria that will encourage tree planting and other practices that have long-term retention after the contract expires.

One comment suggested the rule concentrate more on water quality than air quality. The overlapping nature of the natural resource factors yields multiple benefits that can rarely be accorded to one factor. For example, substantial air quality benefits have been obtained in the Great Plains States for land which was enrolled under earlier soil erosion criteria. The commenter also suggested the EI of 8 will overlook land that yields substantial benefits while it may have an EI of less than 8. The standard used to define highly erodible land provides a rational break for enrollment. Land with an EI of less than 8 which provides identified environmental benefits may be eligible under the conservation priority area authorized under § 1410.8. The ranking process will contain criteria that includes both water and air quality along with other factors. Lands with an EI less than 8 that contribute to air quality problems could be recommended as a conservation priority area.

Three comments suggested that land offered within national and State conservation priority areas should receive consideration in the ranking process. This comment was adopted.

Ranking Plans

One comment suggested the bid against each other process be eliminated and that the local FSA offices have the control of the selection of suitable CRP land. This recommendation did not alternatively describe how the maximum environmental benefits could be obtained under the recommended scenario and will not be adopted.

A number of comments suggested that FSA work with State and local resource professionals. State FSA committees, in consultation with State Technical Committees will be afforded an opportunity prior to signup to develop a State ranking plan consistent with stated broad natural resource goals. Members of the State Technical Committees include Federal and State resource professionals and others.

One commenter suggested that the State Technical Committee, not CCC, should establish ranking factors, conservation priority areas, and priority purposes. However, the statutory mandate for State Technical Committees limits its authority to recommendations.

Natural Resource Factors

There were a number of comments suggesting that land under contract should be afforded some special status. Provided an appropriate cover is established, the ranking process will make an allowance because of the reduced establishment cost. However, it would be inappropriate and unduly complex to establish separate types of acreage to be evaluated for enrollment.

Another comment suggested that the natural resource factors should be feasible for all geographical regions. Enhancement of wildlife habitat, water quality, and air quality; reduction of erosion, and benefits from establishing longer term practices are goals applicable throughout the country. The ranking process incorporates all of these natural resource factors.

Other comments suggested that priority be given to acres that are within several miles of lakes, rivers, marshes, woody areas, greatest acreage of wetlands, to large blocks of land, and to upland acreage near wetlands. The ranking process will consider similar factors. The ranking process will consider areas within proximity of protected acreage. CRP in proximity to lakes, rivers, and marshes will also be considered.

Two comments suggested the ranking process needs to give better recognition and greater benefits to restoration of native vegetation or prairies and to mixed species of trees. The ranking process will take into account these comments.

One comment suggested that the playa basins be given a high ranking. Restoration of wetlands or land adjacent to playa basins will be considered in the ranking process.

One comment suggests that CRP eligibility should be designed to fit into all agricultural ecosystems and not be based solely on erosion index factors or designated conservation priority areas. The ranking process is designed to be a broad natural resource based formula to assist CCC in ranking offers.

Seventeen comments suggested that the final rule should include language that recognizes wildlife habitat as a co-objective of CRP and lands should be ranked based on wildlife objectives. § 1410.3 lists wildlife habitat as one of the objectives of CRP.

Comments relating to specific factors follow.

Wildlife Habitat Benefits

Eleven comments suggested that the final rule exclude wildlife habitat benefits from being considered as a separate criteria. Since CRP can prevent decline of wildlife populations thus avoiding the listing of a species under the Endangered Species Act and enhancing the recovery of an already listed species, CCC considers wildlife an appropriate factor. Other comments suggested that additional emphasis be placed on the enrollment of wildlife habitat benefits including higher priority, larger tracts, or requiring wildlife improvements. Vast improvements in the recovery of various wildlife have been attributed to CRP and will continue to be an integral part of CRP's purpose with reduction of soil erosion and improvement in water quality. CRP provides significant environmental and economic benefits through the enhancement of wildlife habitat.

Other comments suggested that consideration be given to large contiguous blocks of land. The relative size of acreage offered for CRP is considered during the ranking process. In general, for most terrestrial and bird species, large blocks of land are more valuable for wildlife.

Water Quality Benefits

One comment recommended the ranking process incorporate water conservation benefits. To the extent that improved water quality includes the conservation of water resources, this recommendation was adopted. It is otherwise unclear how an assurance can be obtained that the conserved water would not be devoted to other uses.

Two comments suggest that "drinking water quality" should be specifically mentioned as one of the factors for prioritizing offers. "Drinking water quality" is an inherent subset of the water quality factor.

Reduced Erosion

One comment suggested that soil erosion be changed to soil loss. The commenter did not make clear the basis upon which the comment was offered. Accordingly, the comment was not adopted.

Another comment suggested that enrollment priority be given to land that cannot be farmed under a conservation plan without using alternative conservation systems. There is a direct connection between the amount of credit awarded under the ranking process and the EI of the acreage offered which is consistent with the suggestion.

Likely Long-Term Benefits

Two comments recommended the elimination of tree planting and one of those comments recommended creating a prairie restoration practice and the establishment of native grasses will continue to be permitted in CRP.

Another comment suggested that grassland establishment rather than tree planting be a priority. The 1985 Act, however, establishes tree planting as a goal of the program. Accordingly, this recommendation will not be adopted.

Another comment suggested there was a "penalty" for the Great Plains associated with tree planting. However, there was no "penalty" or other reduction applicable to the Great Plains or any other geographic area proposed except that, of course, the cost of tree planting can differ in different regions and those costs must be taken into account.

Air Quality Benefits

Two comments suggested that wind erosion should be considered more heavily. A new natural resource factor for air quality was added to reflect the benefits from reduced wind erosion.

Cost Factor

A number of comments suggested a cost bonus factor that takes into account the reduced expenditures necessary on lands already in CRP with established cover. This comment was adopted.

One comment suggested not considering the rental rates in the next CRP signup. However, rental rates are key to the cost-effectiveness of the program. Therefore, this suggestion can not be adopted.

Five comments suggested that the renewal of present contracts should be considered first for re-enrollment because there would not be any cost-share expense for seeding. Because the goal of the CRP is to achieve specified conservation benefits, CCC does not believe it appropriate to consider a differentiation in classes of acreage.

However, the ranking process will consider whether the appropriate cover has been established.

§ 1410.32 CRP contract.

There were six comments that suggested the CRP contract not be binding, be revocable before contract approval at producer election, be subject to drainage district concurrence, or not have terms to require the refund of payments or interest upon termination. All of these suggested actions would diminish the value of the contract, would be contrary to 1985 Act, and, accordingly, have not been adopted.

Another comment suggested that the "Super Sod Buster" provisions be eliminated from contracts enrolled since 1991 because it is not consistent with earlier enrolled contracts. This provision and limit are required by the 1985 Act.

Nine comments suggested that various contract lengths be considered, including those with five-year increments starting at ten years as a minimum and going to at least 20 or 25-years. However, 1985 Act establishes the time period as 10 to 15-years. Accordingly, this suggestion was not adopted.

One comment suggested that extensions of existing CRP contracts should be allowed for wildlife benefits if the owner should choose this option. However, as indicated in the proposed rule, Congressional directives contained in the 1997 Appropriations Act effectively precluded the extension of any CRP contracts in FY 1997. Accordingly, this suggestion was not adopted.

One comment suggested more specific guidance regarding when production of an agricultural commodity on CRP land would be authorized. CCC is committed to the release of acreage under CRP contract only in severe circumstances, and consistent with 1985 Act. As such, it would not be appropriate to speculate as to what set of consequences would trigger the release of acreage for agricultural production.

Early Termination

Eleven comments supported the early termination provisions including those practices that are ineligible for early termination. Of those, one comment recommended a reduction in the minimum average width required to remain in CRP near a permanent water body. However, that reduction may not be environmentally appropriate in all areas of the country.

One comment suggested that filter strips may not need to be as wide as presently required. This recommendation was adopted. The appropriate width of a filter strip will be determined by referring to the applicable FOTG.

Eleven comments suggested an expansion of the early-termination list of ineligible acres to include other grass or forested areas in reducing erosion, areas of high wildlife value, areas likely to have an impact on drinking water, or within 100 feet or adjacent to any temporary, semi-permanent or permanent stream, wetland, or other water body. However, early termination was authorized by the 1996 Act amendments to the 1985 Act. It is likely that the recommendations, taken collectively, would result in substantial acreage made ineligible for early termination, which is not consistent with the purpose of the early termination provision as authorized by the 1985 Act.

Two comments were not supportive of either the early termination proposal generally or the exemption of certain practices. However, the allowance, its limits, and the exemption of the particular practices mentioned, are all statutory.

§ 1410.33 Contract modifications.

The majority of comments received on this section pertained to contract extensions. However, the 1997 Appropriations Act effectively precluded the extension of any CRP contract in FY 1997.

One comment suggested using the expiration date of the original contract as the starting point for ten-year re-enrollments. Contracts for acreage accepted for new enrollment would not begin until the original contract expired.

Another comment suggested that CRP contracts should not be terminated when grain prices are high. The CRP still provides a reserve and CCC must maintain all of its options. Further, before any contract termination, CCC will carefully review the environmental impacts and net benefits.

§ 1410.34 Extended program protection.

Four comments suggested an extension of the existing program preservation agreement for five to ten years. The final rule reflects, consistent with the 1985 Act, that program preservation agreements will initially be effective for 5 years with an option to renew every five years. As indicated earlier, however, the importance of this provision has been changed by the change in the nature of commodity programs.

§ 1410.40 Cost-share payments.

Comments relating to cost-share payments generally involved suggestions on increasing or limiting rates, liberalizing applicability, or clarifying terminology. Four comments suggested modifying § 1410.40(g) in order to limit federal cost-share rates, in combination, to 50 percent. This comment is not adopted since except for special cases identified in the rule, the 1985 Act limits the program cost share to 50 percent. One comment suggested increasing cost-share rates for native grass establishment. Eight comments supported additional cost-sharing for wildlife habitat restoration, maintenance of plantings for wildlife corridors, eligible practices such as shallow water areas for wildlife and permanent wildlife habitat, and restoration of wetland hydrology. The 50 percent limit, as indicated, is statutory. As for rental rates, those rates can be adjusted as needed, consistent with statutory law.

Several comments suggested liberalized eligibility. Two comments suggested adding riparian buffers consisting mainly of woody plantings to the list for cost sharing of maintenance for two to four years. CCC provides a nominal amount in the annual rental payment for maintenance requirements associated with the conservation plan. Two comments suggested allowing cost-share to increase species diversity of cover plantings. Eight comments supported cost-share for replacing or restoring practices as needed to achieve adequate wildlife habitat. Cost-share for diversifying cover previously established and for replacing covers that do not become established is generally authorized. One comment suggested cost-share for fencing and water impoundment on CRP acres. This provision is available for certain practices. One comment suggested providing cost-share for prescribed burning in young longleaf pine plantings. Habitat disturbance such as fire is often an important part of the maintenance of healthy biological systems. By statute, cost-share is not available on maintenance of existing practices except in very limited cases. However, rental incentives are used as needed to encourage enrollment of these activities. One comment suggested that language should be added that State wildlife agencies and other nonprofit conservation organizations should be eligible for cost-share assistance not to exceed 100 percent of the cost. Another comment suggested that CRP land should not be excluded from the benefits of other Federal cost-share programs. These comments raise the same statutory issue and have not been adopted.

One comment suggested allowing a three-year establishment period for softwood plantings and 50-percent cost-share for hardwood planting. A three-year establishment period for softwood planting is not necessary because the planting effectiveness for such trees is generally greater than for hardwood species. The three year allowance for hardwood trees is established by the 1985 Act and the cost-share rates are set in accordance with that Act. Another comment suggested that maintenance on tree projects should be kept to the minimum needed to establish the trees. Forest management plans stipulate maintenance needs and are not addressed by the proposed rule. One comment suggested that a maintenance allowance be included in the law to eradicate noxious weeds and that payment reductions for noncompliance should stay in the State to pay for weed control. No provisions exist in the 1985 Act for payments to States for control of noxious weeds or for specific payments for weed control in general. Rental rates, however, will provide incentives for farmers to comply with all CRP provisions.

One comment requested clarification between cost-share payments and rental incentives. A cost-share payment is required by the 1985 Act to assist participants in establishing all eligible conservation practices, and is based on actual costs at a specific site. Rental incentives are designed to encourage particular enrollments and do not, as such, involve a percentage share of particular costs incurred. With a rental incentive, any special costs will be strictly the burden of the participant.

§ 1410.41 Levels and rates for cost-share payments.

Comments on cost-share levels and rates generally recommended either limiting or increasing practice eligibility or rates made available to producers. Two comments suggest a $3,500 limit on the total cost-share available to any landowner and another suggests limiting cost-share to 50 percent regardless of the source of the cost. Rate suggestions included one comment that recommended increasing cost-share assistance to 75 percent for limited resource producers and one that recommended a 50 percent incentive payment be paid to cover all costs of wetland restoration. The 50 percent cost-share rate is statutory and the suggested $3,500 limit would unduly limit participation in the program. However, participants may receive additional funding through State or private organizations. Five comments supported the use of cost-share assistance to encourage restoration. In addition to eligible wetlands, restoration activities on other lands may also be included by CCC after carefully reviewing all environmental factors and cost.

§ 1410.42 Annual rental payments.

Ninety-seven respondents supported the proposal to base the schedule of rates that FSA will pay for different soil types within a county on the local average dryland cash rental estimate or similar concept. Of those, 12 comments suggested using a crop share or the cash equivalent rather than cash rent. Six other comments suggested basing the rental payments on the market value or sale price of the ground. One respondent stated rates in counties influenced by urban areas should be higher and another comment urged that rates be lowered so that ground will return to production.

Ninety-four respondents indicated opposition to the manner in which CRP rental rates were proposed to be established. Of those, 36 suggested that because the more erodible and fragile type soils will have a lower rental rate, they may be less likely to be bid into CRP or more likely to be removed by the producer than more productive soils. Three of the comments simply stated that the new price structure would be devastating or would not work but offered no basis for the comments or suggestion for improvements. CCC will not be constrained to using only a dryland basis in order in establishing maximum payment rates to meet program and environmental goals and requirements.

Fifty-two respondents urged that rental rates remain at the current contract rate. A few urged the same rate for five years or to use the current CRP contract rates unless the cash rental equivalent were higher. Forty-six respondents recommended that current CRP rental rates simply be reduced with suggested amounts ranging from 60 to 90 percent reduction. A few also suggested reducing payments for participants who used cover for haying and grazing or to thin tree plantings.

Several comments suggested using other methods for setting the rental payments such as using either the average county cash rental rate or the average CRP annual rental payment from signups one through 13; using a simple, valid formula for each county developed by the Economic Research Service; setting rates equivalent to the WBP rates; setting a single minimum rental rate for all soils in the State of North Dakota; using the estimated CCC program payment yield; reducing existing contract rates by 10 percent per year until optimum levels are reached; or using a five-year rolling average of an unspecified calculation. Several respondents suggested that rates be increased to provide for taxes and inflation or to take into consideration CCC production flexibility contracts, and two comments recommended local conservation districts have a role in estimating payment rates. Twenty-one respondents urged that rental payments be set at a fair rate that is high enough to keep ground in the CRP, but made no comment regarding the efficacy of the proposed method. One comment suggested that rates provide for calculations to reflect fair market values in riparian areas.

As indicated previously, the report accompanying the 1997 Appropriations Act reaffirmed previous Congressional direction that CRP contract rates should not exceed the prevailing rental rates for comparable land in the local area. Various methodologies for determining CRP payment rates equivalent to the prevailing local rental rates were reviewed by an interagency workgroup and the determination was made that the local average cash rental rate as determined by the county FSA committees, adjusted for the relative productivity of the soil, would provide the most accurate and uniform methodology. Instructions to county FSA committees for establishing the payment rates provided that in areas where share rents are most common they use the cash equivalent of share rents. Instructions further provided for taking into consideration, where necessary, hydric soils whose productivity is impacted by the presence or absence of drainage systems. The county average cash rental rate, or equivalent, as established by county FSA committees would inherently reflect distance to market and other conditions affecting rental rates in the county. The county FSA committees received recommendations from local teams.

Participants who are approved to hay and graze established long-term vegetative cover under emergency conditions in accordance with an approved conservation plan are subject to a reduction of their CRP annual payment. Similar provisions will be implemented for participants that conduct normal forestry maintenance in accordance with an approved conservation plan.

A few comments addressed the soil rental rate methodology. One

respondent recommended that a single predominant soil type be used per participant rather than multiple soil types in a field. Three comments suggested that rates on similar soil types should be the same from State to State, and another recommended that the same rates be used in a county for all producers having the same soil type. One respondent suggested allowing different soil rental rates for the same soil within the same county based on different distances to markets and other conditions. Another comment recommended adding a premium based on the erodibility index of the soil. A few comments suggested that prices be set to save the time and expense of bidding.

CRP operating procedure provides that up to three predominant soils in a field be used in determining the soil rental rate. This approach is designed to help ensure the equivalent treatment of fields having more than one soil type. Interested applicants may make offers to enroll acreage in the CRP during an announced signup period. The offers will compete for enrollment. The maximum amount that CCC will pay for an offer is determined and made known to the applicant at the time of application. Although the same soil type may occur in more than one county or State, other market factors may the soil rental rate to differ. Soil rental rates for the same soil type within the same county, however, are expected to be consistent.

Forty-one comments suggested financial incentives be provided for various purposes. The majority of comments encouraged financial incentives to promote installation of various practices considered of high environmental value. Two comments suggested the State Technical Committee should have flexibility to establish practice and incentives of the greatest value in their State. One comment strongly opposed incentives.

Based on the comments received, CCC has determined to continue to offer incentives through an increased annual rental payment for certain practices of high environmental value, including but not limited to field windbreaks, grassed waterways, filter strips, riparian buffers, and acreage located with an approved EPA wellhead protection area. Incentives and practices available will continue to be determined at the national level; eligibility and technical suitability of the appropriate practice will continue to be determined for each offer at the local level.

Several comments were received regarding other aspects of the annual rental payments. Eight comments suggested that the $50,000 payment limitation is too strict. Seven comments urged that interest be paid if payments are more than 30 days past due. Other respondents suggested that CRP payments be considered rental income for tax purposes, that the three entity rule, used in applying the payment limit, be eliminated, and that the lifetime payment limitation may limit the amount of targeted land in previous signups. Two comments recommended providing compensation to participants for practice maintenance, and one respondent suggested dividing payments for land sold at public auction according to State law.

Section 1234(f) of the 1985 Act requires the $50,000 payment limitation. CCC has implemented the provisions of the limitation consistent with the implementation of other CCC programs with similar payment limitation requirements. Provided the participant has otherwise met all requirements for payment, if the CRP payment is not issued to the participant within 30 days after the date county FSA offices receive notification to make annual rental payments, the participant may be eligible to receive interest in accordance with existing procedures. Program payments issued are reported to the Internal Revenue Service; determination of the treatment of income for tax purposes is the responsibility of the participant. Regarding the lifetime original contract limitation of $50,000, this provision would not allow farmers who had transferred land with CRP contracts to acquire new contracts if the total of the old and new payments would exceed $50,000 per year even though the farmer would currently only be receiving the new payments of under $50,000 per year. This provision was designed to avoid circumvention of the three-year ownership rule. CCC has removed this provision from the final rule because the three-year ownership rule has been modified by the 1985 Act to be a one-year ownership rule. The maintenance suggestion has been addressed earlier. For land sold at auction, CRP payments, if due, will be divided in accordance with current rules so as to allow for uniform practice. CCC payment are not subject to the requirements imposed by State law.

§ 1410.50 State enhancement program.

Seven comments supported the conservation reserve enhancement program including a detailed proposal outlining minimum requirements for eligibility. State Governments may develop conservation reserve enhancement program proposals and submit to their respective State FSA office. An ideal use of such proposals would be to address Endangered Species Act concerns; however, proposals addressing conservation and environmental objectives of the State and nation will also be considered.

Two comments suggested that the waiver of the $50,000 payment limitation be applied to private and nonprofit conservation organizations in addition to a State, a political subdivision, or agency thereof. The 1985 Act limits the waiver of the $50,000 payment limitation only for States, a political subdivision, or agency. Therefore, this recommendation can not be adopted.

One comment suggested that efforts be made to protect environmentally sensitive lands in States that are able to provide additional funds to secure longer term or permanent easements. The final rule does not preclude such a program.

One comment suggested that CCC work with States to provide cost-share assistance with respect to conservation efforts such as the control of noxious weeds on CRP land. Control of noxious weeds is already required as a condition for enrollment in CRP. Maintenance costs are the responsibility of the participant. There is no authority for the suggested additional payments.

§ 1410.51 Transfer of land.

Four comments were received concerning this section. Two comments suggested the same provisions in this section for lands acquired by Federal agencies also be applied when a State or local agency or private organization acquires a property or interest in CRP acreage with the intent of keeping it in a conservation use. Another comment suggested that consideration should be given to maintaining a contract for environmentally sensitive land even though the ownership may be transferred.

Any State or local agency or private organization participating in CRP would be subject to the provisions in this section. The special provisions for acquisitions by Federal agencies reflect that other Federal agencies cannot be contract participants and have a special opportunity for cooperation with the operating agency. With respect to the other comments, the CRP contract is an agreement with the owner or operator and does not attach any restrictions to property titles. Accordingly, once ownership transfers the new owner is not obligated to the terms and conditions of the contract unless the new owner decides to become a participant as a successor in interest.

One comment suggested that maximum flexibility be allowed for Federal, State, or local agencies or private organizations or individuals to purchase lands enrolled in CRP if it is likely that the land will remain in a cover similar to that established under the CRP. It is unclear how this comment relates to the proposed rule. Landowners who enroll acreage in CRP maintain their ownership interest. The decision to transfer ownership remains with the landowner. Particular proposals for enhancing the program through agreements with other agencies can be handled as they arise.

§ 1410.52 Violations.

Four comments were received regarding violation provisions. Three comments suggested that an explicit provision for relief in the case of a good-faith violation, similar to the HEL good-faith provisions, is appropriate. The comments also suggested the loss of all payments should only apply to those found using a scheme or device. Another comment suggests violations should result in more severe penalties to promote active annual control of all weeds.

This section conforms with the provisions of the 1985 Act. CCC may, in its discretion, reduce a demand for a refund to the extent CCC determines that such relief would be appropriate and will not deter the accomplishment of the goals of the program.

§ 1410.56 Division of program payments and provisions relating to tenants and sharecroppers.

Four comments supported and 11 comments opposed the landlord/tenant provisions of the proposed rule. Of those supporting the provisions, three suggested that landowners be allowed to discharge the tenant on land with expiring CRP contract acres being rebid into the program. Of those opposing the provisions, four suggested that the removal of tenants from the CRP contract would adversely impact the local economy and one expressed concern about the lack of protection for tenants, particularly with absentee landowners. Another comment expressed concern about the operator receiving a share of the payment. None of the recommendations were adopted except with respect to the issue of tenants on farms with existing CRP contracts re-bid into the program. Tenants are required to be on new CRP contracts if the tenant has an interest in the acreage being offered for enrollment. For land which is subject of a re-bid, the tenant must also be expected to have an interest when the new contract is begun. If at some time during the life of the contract the tenant fails to maintain tenancy, under applicable State laws, the tenant can be removed from such contract. These rules attempt to strike a balance between the interests of landlords and tenants by protecting active tenants but not unnecessarily extending that protection to two full CRP periods when the relationship between the landlord and tenant has effectively ended. The new rules encourage landlords and tenants to have a firm understanding of their relationship with respect to each other with respect to the CRP for the full CRP period and allow greater flexibility in handling these situations by allowing a greater opportunity for taking the facts of a particular case into account.

One comment suggested the relationship and share of payments may be somewhat different for re-enrolled land. The comment suggests the issue be addressed very carefully and clarified in the final rule. Re-enrolled CRP acreage will be subject to a new contract. If the interest of the participants in the farming operation has changed their share of the payment on the new contract would, presumably, be different than on the expiring contract.

§ 1410.60 Scheme or device.

One comment suggested the proposed wording was too harsh and suggested that if a prima facie case can be made then payments should be made if the issue is not fully resolved by the administrative appeals process and, in emergencies, the funds should be held in escrow. The terms of the rule are intended to ensure that the integrity of the program is maintained and that language is needed. Given the severity of the prior instances involving schemes or devices to defeat the objectives of the program, CCC believes that the remedy provided for in the rule is appropriate. Holding funds in escrow is not needed and would be administratively burdensome. Therefore, this recommendation was not adopted.

§ 1410.61 Filing of false claims.

The proposed rule provided that when a false claim is filed the CRP contract may be terminated. One comment suggested a requirement that the contract be terminated. However, to do so could unnecessarily restrict CCC's options in handling special cases. Therefore, this recommendation was not adopted.

§ 1410.62 Miscellaneous.

Several comments were received regarding: requiring CRP acreage to meet conservation compliance requirements before being used for crop production; demonstration or research project areas; cropland classification with crop acreage bases remaining intact; providing incentives for contour strips to reduce wind erosion; and special mitigation provisions for emergency natural resource problems or wetland banking. The final rule has not been revised to require that CRP acreage meet conservation compliance requirements before being used for crop production. There is no statutory authority to enforce such a provision. CRP acreage meets the conservation compliance requirements while it is under contract providing the conservation plan is being followed. In addition, no substantive revisions were made regarding demonstration or research projects because paragraph (g) of this section authorizes the approval of such projects. Further, the 1996 Act eliminated crop acreage bases; therefore, for new contracts, there are no bases to preserve. However, cropland status will continue to be maintained through the CRP contract period. The final rule did not need to be revised to incorporate incentives for contour strips because § 1410.42 already allows for incentives for various practices. However, the final rule has been revised, in paragraph (h) of this section, to provide for wetland mitigation banking.

One comment suggested that in paragraph (f), with respect to cropland status, the following be inserted after the word "classification": "except as provided in § 1410.34." It is unnecessary to add this language because acreage subject to the provisions in § 1410.34 is still governed by the terms and conditions of the contract including the cropland classification provision.

Four comments recommended practices for land coming out of CRP. CRP practices provide for long term resource conservation or protection. Land coming out of the CRP will be subject to the provisions of 7 CFR part 12. Requiring more would be contrary to the temporary term of the CRP contract and would not be cost-effective. USDA will continue its information efforts about options available under USDA and other programs regarding conserving uses.

One comment suggested that field visits be required for all CRP land that is reoffered in future signups before the acreage is accepted. This recommendation has not been adopted due to the cost-prohibitive nature of the volume of work associated with enrolling up to 24 million acres.

§ 1410.63 Permissive uses.

Thirteen comments were received for this section. Of those, one comment suggested that participants be allowed to do anything with CRP acres as long as erosion is controlled. Another suggested producers be allowed to harvest grass seed on CRP acres. These recommendations were not adopted. According to the 1985 Act, producers must agree that there will be no haying or grazing of the CRP acreage and that there be no use of the CRP acreage for commercial purposes, except under specified conditions. There are additional, but limited, allowances for the production of trees on CRP acreage. In addition, the purposes of CRP include more than just soil erosion. To only focus on one purpose may unnecessarily damage wildlife, water quality, or other important natural resource goals. Further, there is no authority to use the CRP for producers seeking an opportunity to farm.

One comment suggested the rule should encourage the injection of animal waste on CRP acres without prior approval from the county committee. This recommendation will not be adopted. County FSA committees have the responsibility to ensure that the integrity of CCC programs is maintained. The injection of animal waste could cause significant environmental damage. To ensure the objectives of the CRP are met, county FSA committees will continue monitoring activities on CRP acreage.

One comment suggested contract holders be required to participate financially if block spraying programs are implemented. The 1985 Act provides no authority to implement this suggestion. Participants are required to follow a conservation plan of operation that includes maintenance provisions for the length of the contract period. Those who fail to comply with the plan are subject to payment reductions or termination of the contract. Therefore, the final rule has not been revised to adopt this recommendation.

Several comments suggested that landowners should allow the public open access to enrolled acres for hunting. Another comment suggested hunters be required to purchase a wildlife stamp. The funds received from the sale would be used to enroll additional acreage in the program. The CRP is a contractual relationship between CCC and producers. The 1985 Act does not provide any authority for requiring public hunting on CRP acreage.

One comment suggested allowing burning as a permissive use. Burning is currently permitted in areas where NRCS determines the practice is normal, customary, needed, and in compliance with all applicable environmental rules for the CRP acreage.

Substantive Changes Compared to the Proposed Rule

Substantive changes compared to the proposed rule include:

§ 1410.2 Definitions.

The proposed rule defined Highly Erodible Land (HEL) as certain acreage enrolled in CRP before January 1, 1995, which is classified by NRCS as:

(1) Being predominantly Land Capability Classes II, III, IV, and V with:

(i) An average annual erosion rate of at least 2T or;

(ii) A serious gully erosion problem as determined by the Deputy Administrator;

(2) Being predominantly Land Capability Classes VI, VII, or VIII;

(3) If trees are to be planted under the conservation plan, eroding at the rate of at least 2T; or

(4) Having:

(i) An erodibility index equal to or greater than 8 for either wind or water erosion; and

(ii) An erosion rate greater than T.

The proposed rule defined predominantly highly erodible field as:

(1) a field in which at least 66⅔ percent of the land in such field is highly erodible; or

(2) a field on which the participant agrees to plant trees, as determined necessary by the Deputy Administrator to achieve overall program goals, which is at least 33⅓ percent highly erodible land.

The definitions of HEL and predominantly highly erodible field were amended in the final rule to be consistent with the definitions found in 7 CFR part 12. The Department determined to use, to the extent practicable, the same criteria for the CRP as is used for conservation compliance when determining if acreage is HEL and if a field is predominately highly erodible. Except for redefined fields, in order to avoid abuse, the change will allow land that is subject to conservation compliance to be basically eligible for the CRP and will provide consistency between the two programs.

§ 1410.6 Eligible land.

§ 1410.6 was rewritten for the final rule to provide clearer, more concise provisions regarding land eligibility for the CRP. In addition, the final rule amended § 1410.6 by:

(1) removing the minimum acreage for a manageable unit requirement. Such requirements were better determined at the local level by approved local technical authorities based on the actual site;

(2) adding marginal pasture land that is suitable for use as a riparian buffer so long as it is planted to trees, as determined by NRCS. CRP could cost-effectively provide substantial water quality, erosion, wildlife, and other environmental benefits by enrolling such acreage.

(3) changing the manner in which the EI is calculated, except for redefined fields, to be consistent with the conservation compliance provisions found in 7 CFR part 12. The proposed rule required an EI of 8 or greater, calculated by using the weighted average of the EI's of Soil Map Units within a field, to determine if land was basically eligible for enrollment in the CRP. The final rule uses the same EI value of 8 or greater to determine if land is basically eligible for enrollment in the CRP; however, the EI is calculated according to the conservation compliance provisions in 7 CFR part 12 if the field has not been redefined. The change will allow most land that is subject to conservation compliance to be basically eligible for the CRP and will provide consistency between the two programs. For redefined fields, the EI of 8 will continue to be calculated by using the weighted average of the EI's of Soil Map Units within the field;

(4) generally making acreage associated with noncropped wetlands, as determined by the Deputy Administrator, eligible for enrollment in the CRP if such acreage meets the cropping requirements. Such acreage provides high environmental benefits, such as erosion control, wetland protection, wildlife habitat, and water quality, and can be a cost-effective use of the CRP;

(5) changing the term "farmed wetlands" to "cropped wetlands." The proposed rule inadvertently listed "farmed wetlands" as eligible for enrollment in the CRP. The final rule has been amended to correct this oversight.

(6) making eligible field margins which are incidental to the planting of crops as determined appropriate by the Deputy Administrator.

§ 1410.31 Acceptability of offers.

The final rule amended § 1410.31 to add "air quality" as a possible factor that may be included in the evaluation of contract offers. Air quality was not included in the proposed rule. The CRP has proven to be an efficient tool in improving the air quality throughout the nation by reducing the amount of air pollution caused by blowing dust from cropland production. Accordingly, it has been determined that air quality is an appropriate factor to be used in the evaluation of contract offers.

§ 1410.41 Levels and rates for cost-share payments.

The final rule amends § 1410.41 to add language clarifying that participants may not receive or retain CRP cost-share assistance if other Federal cost-share assistance is provided for such acreage under any other provision of law. The 1985 Act prohibits participants from receiving or retaining CRP cost-share assistance in such instances. However, other non-Federal cost-share assistance may be available.

§ 1410.42 Annual rental payments.

The proposed rule provided that CCC may reject any and all offers received from applicants who had previously entered into CRP contracts with CCC if the total annual rental payments due under such prior contracts (excluding contracts entered into in accordance with the provisions of § 1410.51 plus the total annual rental payments called for in the offer) exceed $50,000. This applied regardless of the current level of payments received by the participants. The final rule amends § 1410.42 to remove this provision. CCC determined that changes in the 1985 Act made this provision unnecessary. It is important to note this is does not affect the $50,000 annual payment limitation for all current payments provided for in the 1985 Act and as explained earlier.

List of Subjects in 7 CFR Parts 704 and 1410

Administrative practices and procedures, Base protection, Conservation plan, Contracts, Environmental indicators, Natural resources, and Technical assistance.

Accordingly, 7 CFR part 704 is removed and part 1410 is revised as follows:

PART 704—[REMOVED]

1. Part 704 is removed.

2. Part 1410 is revised to read as follows:

PART 1410—CONSERVATION RESERVE PROGRAM

Sec.

1410.1 Administration.
1410.2 Definitions.
1410.3 General description.
1410.4 Maximum county average.
1410.5 Eligible persons.
1410.6 Eligible land.
1410.7 Duration of contracts.
1410.8 Conservation priority areas.
1410.9 Alley-cropping.
1410.10 Conversion to trees.
1410.11 Restoration of wetlands.
1410.12–1410.19 [Reserved].
1410.20 Obligations of participant.
1410.21 Obligations of the Commodity Credit Corporation.
1410.22 Conservation plan.
1410.23 Eligible practices.
1410.24–1410.29 [Reserved].
1410.30 Signup.
1410.31 Acceptability of offers.
1410.32 CRP contract.
1410.33 Contract modifications.
1410.34 Extended program protection.
1410.35–1410.39 [Reserved].
1410.40 Cost-share payments.
1410.41 Levels and rates for cost-share payments.
1410.42 Annual rental payments.
1410.43 Method of payment.
1410.44–1410.49 [Reserved].
1410.50 State enhancement program.
1410.51 Transfer of land.
1410.52 Violations.
1410.53 Executed CRP contract not in conformity with regulations.
1410.54 Performance based upon advice or action of the Department.
1410.55 Access to land under contract.
1410.56 Division of program payments and provisions relating to tenants and sharecroppers.
1410.57 Payments not subject to claims.
1410.58 Assignments.
1410.59 Appeals.
1410.60 Scheme or device.
1410.61 Filing of false claims.
1410.62 Miscellaneous.
1410.63 Permissive uses.
1410.64 Paperwork Reduction Act assigned numbers.

Authority: 15 U.S.C. 714b and 714c; 16 U.S.C. 3801–3847.

§ 1410.1 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Executive Vice President, Commodity Credit Corporation (CCC), and the Administrator, Farm Service Agency (FSA), through the Deputy Administrator. In the field, the regulations in this part will be administered by the State and county FSA committees ("State committees" and "county committees," respectively).

(b) State executive directors, county executive directors, and State and county committees do not have the authority to modify or waive any of the provisions in this part unless specifically authorized by the Deputy Administrator.

(c) The State committee may take any action authorized or required by this part to be taken by the county committee which has not been taken by such committee, such as:

(1) Correct or require a county committee to correct any action taken by such county committee which is not in accordance with this part; or

(2) Require a county committee to withhold taking any action which is not in accordance with this part.

(d) No delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, the Administrator, FSA, or a designee, or the Deputy Administrator from determining any question arising under this part or from reversing or modifying any determination made by a State or county committee.

(e) Data furnished by the applicants will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, the failure to provide data could result in program benefits being withheld or denied.

(f) Notwithstanding other provisions of the preceding paragraphs of this section, the EI, suitability of land for permanent vegetative or water cover, factors for determining the likelihood of improved water quality and adequacy of the planned practice to achieve desired objectives shall be determined by the Natural Resource Conservation Service (NRCS) or any other non-USDA source approved by NRCS, in accordance with the Field Office Technical Guide of NRCS or other guidelines deemed appropriate by the NRCS, except that no such determination by NRCS shall compel CCC to execute a contract which CCC does not believe will serve the purposes of the program established by this part.

(g) State committees, with NRCS, may develop a State evaluation process to rank acreage based on State-specific goals and objectives where such an evaluation process would further the goals of CRP. Such State committees may choose between developing a State ranking system or using the national ranking system. States' ranking processes shall be developed based on recommendations from State Technical Committees, follow national guidelines, and be approved by the Deputy Administrator.

(h) CCC may consult with the Forest Service (FS), a State forestry agency, or other organization for such assistance as is determined by CCC to be necessary for developing and implementing conservation plans which include tree planting as the appropriate practice or as a component of a practice.

(i) CCC may consult with the Cooperative State Research, Education, and Extension Service to coordinate a related information and education program as deemed appropriate to implement the Conservation Reserve Program (CRP).

(j) CCC may consult with the U.S. Fish and Wildlife Service (FWS) or State wildlife agencies for such assistance as

is determined necessary by CCC to implement the CRP.

(k) The regulations governing the CRP as of February 11, 1997, shall continue to be applicable to contracts in effect as of that date. The regulations set forth in this part as of February 12, 1997, shall be applicable to contracts executed on or after that date.

§ 1410.2 Definitions.

The following definitions shall be applicable to this part:

Agricultural commodity means any crop planted and produced by annual tilling of the soil or on an annual basis by one-trip planters or sugar cane planted or produced in a State or alfalfa and other multi year grasses and legumes in rotation as approved by the Secretary. For purposes of determining crop history, as relevant to eligibility to enroll land in the program, land shall be considered planted to an agricultural commodity during a crop year if, as determined by CCC, an action of the Secretary prevented land from being planted to the commodity during the crop year.

Alley-cropping means the practice of planting rows of trees surrounded by a strip of vegetative cover, alternated with wider strips of agricultural commodities planted in accordance with a conservation plan approved by the local conservation district and CCC.

Allotment means an acreage for a commodity allocated to a farm in accordance with the Agricultural Adjustment Act of 1938, as amended.

Alternative perennials means woody species of plants grown on certain CRP acres, including, but not limited to shrubs, bushes, and vines.

Annual rental payment means, unless the context indicates otherwise, the annual payment specified in the CRP contract which, subject to the availability of funds, is made to a participant to compensate such participant for placing eligible land in the CRP.

Applicant means a person who submits an offer to CCC to enter into a CRP contract.

Arid area means acreage located west of the 100th meridian that receives less than 25 inches of average annual precipitation.

Bid or offer means, unless the context indicates otherwise, if required by CCC, the per-acre rental payment requested by the owner or operator in such owner's or operator's request to participate in the CRP.

Conservation district means a political subdivision of a State, Native American Tribe, or territory, organized pursuant to the State or territorial soil conservation district law, or Tribal law. The subdivision may be a conservation district, soil conservation district, soil and water conservation district, resource conservation district, natural resource district, land conservation committee, or similar legally constituted body.

Conservation plan means a record of the participant's decisions, and supporting information, for treatment of a unit of land or water, and includes a schedule of operations, activities, and estimated expenditures needed to solve identified natural resource problems by devoting eligible land to permanent vegetative cover, trees, water, or other comparable measures.

Conservation priority area means areas so designated by the Deputy Administrator with actual and adverse water quality or habitat impacts related to agricultural production activities or to assist agricultural producers to comply with Federal and State environmental laws and to meet other conservation needs, such as for air quality, as determined by the Deputy Administrator.

Contour grass strip means a vegetation area that follows the contour of the land, the width of which is determined using the appropriate FOTG and which is so designated by a conservation plan developed under this part.

Contract period means the term of the contract which shall be not less than 10, nor more than 15, years.

Cost-share payment means the payment made by CCC to assist program participants in establishing the practices required in a contract.

Cropland means land defined as cropland in accordance with the provisions of part 718 of this title, except for land in terraces that are no longer capable of being cropped.

Cropped wetlands means farmed wetlands and wetlands farmed under natural conditions.

Deputy Administrator means the Deputy Administrator for Farm Programs, FSA, or a designee.

Environmental Quality Incentives Program (EQIP) means the program authorized by the Food Security Act of 1985, as amended, in which eligible persons enter into contracts with CCC to address threats to soil, water, and related natural resources and for other purposes.

Erodibility index (EI) means the factor, as calculated by NRCS, used to determine the inherent erodibility of a soil by dividing the potential average annual rate of erosion without management for each soil by the predetermined T value for the soil.

Farmed wetlands means land defined as farmed wetlands in accordance with the provisions of part 12 of this title.

Federally owned land means land owned by the Federal Government or any department, instrumentality, bureau, or agency thereof, or any corporation whose stock is wholly owned by the Federal Government.

Field means a part of a farm which is separated from the balance of the farm by permanent boundaries such as fences, roads, permanent waterways, woodlands, other similar features, or croplines, as determined by CCC.

Field Office Technical Guide (FOTG) means the official NRCS guidelines, criteria, and standards for planning and applying conservation treatments and conservation management systems. It contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared.

Field windbreak, shelterbelt, and living snowfence mean a vegetative barrier with a linear configuration composed of trees, shrubs, or other vegetation, as determined by CCC, which are designated as such practices in a conservation plan and which are planted for the purpose of reducing wind erosion, snow control, wildlife habitat, and energy conservation.

Filter strip means a strip or area of vegetation the purpose of which is to remove nutrients, sediment, organic matter, pesticides, and other pollutants from surface runoff and subsurface flow by deposition, absorption, plant uptake, and other processes, thereby reducing pollution and protecting surface water and subsurface water quality and of a width determined appropriate for the purpose by the applicable FOTG.

Highly erodible land (HEL) means that land determined to be HEL in accordance with the provisions of part 12 of this title.

Landlord means a person who rents or leases acreage to another person.

Local FSA office means the FSA office serving the area in which the FSA records are located for the farm or ranch.

Operator means a person who is in general control of the farming operation on the farm, as determined by CCC.

Owner means a person or entity who is determined by FSA to have sufficient legal ownership of the land, including a person who is buying the acreage under a purchase agreement; each spouse in a community property State; each spouse when spouses own property jointly and a person who has life-estate in a property.

Participant means an owner or operator or tenant who has entered into a contract.

Payment period means the 10- to 15-year contract period for which the participant receives an annual rental payment.

Permanent vegetative cover means perennial stands of approved combinations of certain grasses, legumes, forbs, and shrubs with a life span of 10 or more years, or trees.

Permanent wildlife habitat means a permanent vegetative cover with the specific purpose of providing habitat, food, or cover for wildlife and protecting other environmental concerns.

Practice means a conservation, wildlife habitat, or water quality measure with appropriate operations and management as agreed to in the conservation plan to accomplish the desired program objectives according to CRP and NRCS standards and specifications as a part of a conservation management system.

Predominantly highly erodible field means that land defined has a predominantly highly field in accordance with the provisions of part 12 of this title.

Quota means the pounds of tobacco or peanuts or other commodity allocated to a farm for commodity support purposes or control pursuant to the terms of the Agricultural Adjustment Act of 1938, as amended.

Riparian buffer means a strip or area of vegetation of a width determined appropriate by the applicable FOTG the purpose of which is to remove nutrients, sediment, organic matter, pesticides, and other pollutants from surface runoff and subsurface flow by deposition, absorption, plant uptake, and other processes, thereby reducing pollution and protecting surface water and subsurface water quality which are also intended to provide shade to reduce water temperature for improved habitat for aquatic organisms and supply large woody debris for aquatic organisms and habitat for wildlife.

Soil loss tolerance (T) means the maximum average annual erosion rate specified in the FOTG that will not adversely impact the long term productivity of the soil.

State Technical Committee means that committee established pursuant to 16 U.S.C. 3861 to provide information, analysis, and recommendations to the U.S. Department of Agriculture.

State water quality priority areas means any area so designated by the State committee and NRCS, in consultation with the State Technical Committee where agricultural nonpoint source pollutants or agricultural point source pollutants contribute or create the potential for failure to meet applicable water quality standards or the goals and requirements of Federal or State water quality laws. These areas may include areas designated under section 319 of the Federal Water Pollution Control Act (33 U.S.C. 1329) as water quality protection areas, sole source aquifers or other designated areas that result from agricultural nonpoint sources of pollution. Acreage in these areas may be determined eligible as conservation priority areas.

Technical assistance means the assistance provided in connection with the CRP to owners or operators by NRCS, FS, or another source as approved by the NRCS or FS, as appropriate, in classifying cropland, developing conservation plans, determining the eligibility of land, and implementing and certifying practices, and forestry issues.

Water bank program (WBP) means the program authorized by the Water Bank Act of 1970, as amended, in which eligible persons enter into 10-year agreements to preserve, restore, and improve wetlands.

Water cover means flooding of land by water either to develop or restore shallow water areas for wildlife or wetlands, or as a result of a natural disaster.

Wellhead protection area means the area designated by the appropriate State agency with an Environmental Protection Agency approved Wellhead Protection Program for water being drawn for public use, as defined for public use by the Safe Drinking Water Act, as amended.

Wetland means land defined as wetland in accordance with provisions of part 12 of this title.

Wetlands farmed under natural conditions means land defined as wetlands farmed under natural conditions in accordance with provisions of part 12 of this title.

Wetlands Reserve Program (WRP) means the program authorized by the Food Security Act of 1985, as amended, in which eligible persons enter into long-term agreements to restore and protect wetlands.

§ 1410.3 General description.

(a) Under the CRP, CCC will enter into contracts with eligible participants to convert eligible land to a conserving use for a period of time of not less than 10 nor more than 15 years in return for financial and technical assistance.

(b) A conservation plan for eligible acreage must be obtained by a participant which must be approved by the conservation district in which the lands are located unless the conservation district declines to review the plan in which case NRCS may take such further action as is needed to account for lack of such review.

(c) The objectives of the CRP are to cost-effectively reduce water and wind erosion, protect the Nation's long-term capability to produce food and fiber, reduce sedimentation, improve water quality, create and enhance wildlife habitat, and other objectives including encouraging more permanent conservation practices and tree planting.

(d) Except as otherwise provided, a participant may, in addition to any payment under this part, receive cost-share assistance, rental or easement payments, or tax benefits from a State, subdivision of such State, or a private organization in return for enrolling lands in CRP. However, a participant may not receive or retain CRP cost-share assistance if other Federal cost-share assistance is provided for such acreage under any other provision of law, as determined by the Deputy Administrator. Further, under no circumstances may the cost-share payments received under this part, or otherwise, exceed the cost of the practice, as determined by CCC.

§ 1410.4 Maximum county acreage.

The maximum acreage which may be placed in the CRP and the WRP may not exceed 25 percent of the total cropland in the county of which no more than 10 percent of the cropland in the county may be subject, in the aggregate, to a CRP or WRP easement, unless CCC determines that such action would not adversely affect the local economy of the county. This restriction on participation shall be in addition to any other restriction imposed by law.

§ 1410.5 Eligible persons.

(a) In order to be eligible to enter into a CRP contract in accordance with this part, a person must be an owner, operator, or tenant of eligible land and:

(1) If an operator of eligible land, seeking to participate without the owner, must have operated such land for at least 12 months prior to the close of the applicable signup period and must provide satisfactory evidence that such operator will be in control of such eligible land for the full term of the CRP contract period;

(2) If an owner of eligible land, must have owned such land for at least 12 months prior to the close of the applicable signup period, unless:

(i) The new owner acquired such land by will or succession as a result of the death of the previous owner;

(ii) The only ownership change in the 12 month period occurred due to foreclosure on the land and the owner of the land, immediately before the foreclosure, exercises a timely right of redemption from the mortgage holder in accordance with State law;

(iii) As determined by the Deputy Administrator, the circumstances of the acquisition are such that present adequate assurance that the new owner of such eligible land did not acquire such land for the purpose of placing it in the CRP; or

(3) If a tenant, the tenant is a participant with an eligible owner or operator.

(b) Notwithstanding paragraph (a) of this section, under continuous signup provisions authorized by § 1410.30, an otherwise eligible person must have owned or operated, as appropriate, the eligible land for at least 12 months prior to submission of an offer.

§ 1410.6 Eligible land.

(a) In order to be eligible to be placed in the CRP, land:

(1) Must be cropland that:

(i) Has been annually planted or considered planted to an agricultural commodity in 2 of the 5 most recent crop years, as determined by the Deputy Administrator, provided further that field margins which are incidental to the planting of crops may also be considered qualifying cropland to the extent determined appropriate by the Deputy Administrator; and

(ii) Is physically and legally capable of being planted in a normal manner to an agricultural commodity, as determined by the Deputy Administrator.

(2) Must be marginal pasture land, as determined by the Deputy Administrator, that:

(i) Is enrolled or has recently been enrolled in the WBP provided:

(A) The acreage is in the final year of the WBP agreement or, if not in the final year of the WBP agreement and only for enrollments in the CRP for FY 1997, is acreage for which the WBP agreement expired on December 31, 1996, where the land would be considered in compliance if such agreement was still in effect, as determined by the Deputy Administrator;

(B) The acreage is not classified as naturally occurring type 3 through 7 wetlands, as determined by the Deputy Administrator regardless of whether the acreage is or is not protected by a Federal agency easement or mortgage restriction (types 3 through 7 wetlands that are normally artificially flooded shall not be precluded from eligibility), and;

(C) Enrollment in CRP would enhance the environmental benefits of the site, as determined by Deputy Administrator; or

(ii) Is determined to be suitable for use as a riparian buffer. A field or portion of a field of marginal pasture land may be considered to be suitable for use as a riparian buffer only if, as determined by NRCS, it:

(A) Is located adjacent to permanent stream corridors excluding corridors that are considered gullies or sod waterways; and

(B) Is capable, when permanent grass, forbs, shrubs or trees are grown, of substantially reducing sediment that otherwise would be delivered to the adjacent stream or waterbody; or

(3) Must be acreage currently enrolled in the CRP provided the scheduled expiration date of the current CRP contract is to occur before the available effective date of a new CRP contract, as determined by the Deputy Administrator, provided the acreage is otherwise eligible according to this part, as determined by the Deputy Administrator.

(b) Any land qualifying under the provisions of paragraph (a)(1) must also, to be eligible for a contract:

(1) Be a field or portion of a field determined to be suitable for use as a permanent wildlife habitat, filter strip, riparian buffer, contour grass strip, grass waterway, field windbreak, shelterbelt, living snowfence, other uses as may be determined by the Deputy Administrator, vegetation on salinity producing areas, including any applicable recharge area, or any area determined eligible for CRP based on wetland or wellhead protection area criteria to be eligible to be placed in the CRP. A field or portion of a field may be considered to be suitable for use as a filter strip or riparian buffer only if it, as determined by NRCS:

(i) Is located adjacent to a stream, other waterbody of a permanent nature (such as a lake, pond, or sinkhole), or wetland excluding such areas as gullies or sod waterways; and

(ii) Is capable, when permanent grass, forbs, shrubs or trees are grown, of substantially reducing sediment that otherwise would be delivered to the adjacent stream or waterbody; or

(2) (i) Be a field which has evidence of scour erosion caused by out-of-bank flows of water, as determined by NRCS. In addition such land must:

(A) Be expected to flood a minimum of once every 10 years; and

(B) Have evidence of scour erosion as a result of such flooding.

(ii) To the extent practicable, be the actual affected cropland areas of a field; however, the entire cropland area of an eligible field may be enrolled if:

(A) The size of the field is 9 acres or less; or

(B) More than one third of the cropland in the field is land which lies between the water source and the inland limit of the scour erosion.

(iii) If the full field is not eligible for enrollment under this paragraph (b)(2), be that portion of the cropland between the waterbody and the inland limit of the scour erosion together with, as determined by the Deputy Administrator, additional areas which would otherwise be unmanageable and would be isolated by the eligible areas.

(iv) Be planted to an appropriate tree species according to the FOTG, unless tree planting is determined to be inappropriate by NRCS, in consultation with Forest Service, in which case the eligible cropland shall be devoted to another acceptable permanent vegetative cover in accordance with the FOTG; or

(3) Be contributing to the degradation of water quality or posing an on-site or off-site environmental threat to water quality if such land remains in production so long as water quality objectives, with respect to such land, cannot be obtained under other Federal programs, including but not limited to EQIP authorized under part 1466 of this chapter; or

(4) Be devoted to certain covers, as determined by the Deputy Administrator, which are established and maintained according to the FOTG provided such acreage is not required to be maintained as such under any life-span obligations, as determined by the Deputy Administrator; or

(5) Be non-irrigated or irrigated cropland which produces or serves as the recharge area, as determined by the Deputy Administrator, for saline seeps, or acreage which is functionally related to such saline seeps, or where a rising water table contributes to increased levels of salinity at or near the ground surface; or

(6) Be considered HEL according to conservation compliance provisions under part 12 of this chapter; or

(7) For redefined fields, have an EI of greater than or equal to 8, calculated by using the weighted average of the EI's of soil map units within the field; or

(8) Be within a public wellhead protection area or in an approved Hydrologic Unit Area; or

(9) Be within a designated conservation priority area; or

(10) Be designated as a cropped wetland and appropriate associated acreage, as determined by the Deputy Administrator; or

(11) Be cropland which, as determined by the Deputy Administrator, is associated with noncropped wetlands and would provide significant environmental benefits; or

(c) Notwithstanding paragraphs (a) and (b) of this section, land shall be ineligible for enrollment if, as determined by the Deputy Administrator, land is:

(1) Federally owned land unless the applicant has a lease for the contract period;

(2) Land on which the use of the land is restricted through deed or other restriction prior to enrollment in CRP prohibiting the production of agricultural commodities except for eligible land under paragraph (a)(2) of this section; or

(3) Land already enrolled in the CRP unless the scheduled expiration date of the current contract is to occur before the available effective date of a new CRP contract, as determined by the Deputy Administrator.

§ 1410.7 Duration of contracts.

(a) Except as provided in paragraph (b) of this section, contracts under this part shall be for a term of 10 years.

(b) In the case of land devoted to riparian buffers, filter strips, restoration of wetlands, hardwood trees, shelterbelts, windbreaks, wildlife corridors, or other practices deemed appropriate by CCC under the original terms of a contract subject to this part or for land devoted to eligible practices under a contract modified under § 1410.10, the participant may specify the duration of the contract provided that such contracts must be at least 10 years and no more than a total of 15 years in length.

(c) All contracts shall expire on September 30 of the appropriate year.

§ 1410.8 Conservation priority areas.

(a) CCC may designate National conservation priority areas according to paragraph (c) of this section.

(b) State FSA committees, in consultation with NRCS and State Technical Committees, may submit a recommendation to the Deputy Administrator within guidelines established by the Deputy Administrator for designation of conservation priority areas. Such recommendations should contain clearly defined conservation and environmental objectives and analysis of how CRP can cost-effectively address such objectives. The purpose of the conservation priority area designation is to enhance the CRP by better addressing conservation and environmental issues in a planned and coordinated manner within a State. Generally, the total acreage of conservation priority areas, in aggregate, shall not total more than 10 percent of the cropland in a State unless there are identified and documented extraordinary environmental needs, as determined by Deputy Administrator.

(c) A region shall be eligible for designation as a priority area only if the region has actual significant adverse water quality or wildlife habitat impacts related to activities of agricultural production or if the designation helps agricultural producers to comply with Federal and State environmental laws.

(d) Conservation priority area designations shall expire after 5 years unless redesignated, except they may be withdrawn:

(1) Upon application by the appropriate State water quality agency; or

(2) By the Deputy Administrator.

(e) In those areas designated as conservation priority areas, under this section, special emphasis will be placed on identified environmental concerns. These concerns may include water quality, such as assisting agricultural producers to comply with nonpoint source pollution requirements, air quality, or wildlife habitat (especially for currently listed threatened and endangered species or to prevent other species from becoming threatened and endangered), as determined by the Deputy Administrator.

§ 1410.9 Alley-cropping.

(a) Alley-cropping on CRP land may be permitted by CCC if:

(1) The land is planted to, or converted to, hardwood trees in accordance with § 1410.10;

(2) Agricultural commodities are planted in accordance with a prior, site-specific and NRCS approved conservation plan in close proximity to such hardwood trees; and

(3) The owner and operator of such land agree to implement appropriate conservation measures on such land.

(b) CCC may solicit bids for alley-cropping permission for CRP land. Annual rental payments for the term of any contract modified under this section shall be reduced by at least 50 percent of the original amount of the total rental payment in the original contract and, in the case of any contract modified to change from another cover crop, the total annual rental payments over the term of any such contract may not exceed the total annual rental payments specified in the original contract.

(c) The actual reduction in rental payment will be determined by CCC, based upon criteria, such as percentage of the total acreage that will be available for cropping and projected returns to the producer from such cropping.

(d) The area available for cropping will be chosen according to the FOTG and will be farmed in accordance with an approved conservation plan so as to minimize erosion and degradation of water quality during those years when the areas are devoted to an agricultural commodity.

§ 1410.10 Conversion to trees.

An owner or operator who has entered into a contract prior to November 28, 1990, may elect to convert areas of highly erodible cropland, subject to such contract, which is devoted to permanent vegetative cover, from such cover to hardwood trees (including alley cropping and riparian buffers limited to hardwood trees where permitted by CCC), windbreaks, shelterbelts, or wildlife corridors.

(a) With respect to any contract modified under this section, the participant may elect to extend such contract in accordance with the provisions of § 1410.7(b).

(b) With respect to any contract modified under this section in which such areas are converted to windbreaks, shelterbelts, or wildlife corridors, the owner of such land must agree to maintain such plantings for a time period established by the Deputy Administrator.

(c) CCC shall, as it determines appropriate, pay up to 50 percent of the eligible cost of establishing new conservation measures authorized under this section, except that the total cost-share paid with respect to such contract, including cost-share assistance paid when the original cover was established, may not exceed the amount by which CCC would have paid had such land been originally devoted to such new conservation measures.

(d) With respect to any contract modified under this section, the participant must participate in the Forest Stewardship Program (16 U.S.C. 2103a).

§ 1410.11 Restoration of wetlands.

(a) An owner or operator who entered into a CRP contract on land that is suitable for restoration to wetlands or that was restored to wetlands while under such contract, may, if approved by CCC, subject to any restrictions as may be imposed by law, apply to transfer such eligible acres subject to such contract that are devoted to an approved cover from the CRP to the WRP. Transferred acreage shall be terminated from the CRP effective the

day a WRP easement is filed. Participants will receive a prorated CRP annual payment for that part of the year the acreage was enrolled in the CRP according to § 1410.42. Refunds of cost-share payments or any applicable incentive payments need not be required unless specified by the Deputy Administrator.

(b) An owner or operator who has enrolled acreage in the CRP may, as determined and approved by CCC, restore suitable acres to wetlands with cost-share assistance provided that Federal cost-share assistance has not been previously provided specifically for wetland restoration on the proposed restoration site. In addition to the cost-share limitation in § 1410.41 of this part, an additional one time financial incentive may be provided to encourage restoration of the hydrology of the site.

§ 1410.12—§ 1410.19 [Reserved]

§ 1410.20 Obligations of participant.

(a) All participants subject to a CRP contract must agree to:

(1) Carry out the terms and conditions of such CRP contract;

(2) Implement the conservation plan, which is part of such contract, in accordance with the schedule of dates included in such conservation plan unless the Deputy Administrator determines that the participant cannot fully implement the conservation plan for reasons beyond the participant's control and CCC agrees to a modified plan;

(3) Establish temporary vegetative cover when required by the conservation plan or, as determined by the Deputy Administrator, if the permanent vegetative cover cannot be timely established;

(4)(i) A reduction in the aggregate total quotas and acreage allotments for the contract period for each farm which contains land subject to such CRP contract by an amount based upon the ratio between the acres in the CRP contract and the total cropland acreage on such farm. Quotas and acreage allotments reduced during the contract period shall be returned at the end of the contract period in the same amounts as would apply had the land not been enrolled in the CRP unless CCC approves, in accordance with the provisions of § 1410.34, an extension of such protection; and

(ii) reduce production flexibility contract acres enrolled under part 1412 of this chapter or CRP acres enrolled under this part so that the total of such acres does not exceed the total cropland on the farm;

(5) Not produce an agricultural commodity on highly erodible land, in a county which has not met or exceeded the acreage limitation under § 1410.4, which was acquired on or after November 28, 1990, unless such land, as determined by CCC, has a history in the most recent five-year period of producing an agricultural commodity other than forage crops;

(6) Comply with all requirements of part 12 of this title;

(7) Not allow grazing, harvesting, or other commercial use of any crop from the cropland subject to such contract except for those periods of time approved in accordance with instructions issued by the Deputy Administrator;

(8) Establish and maintain the required vegetative or water cover and the required practices on the land subject to such contract and take other actions that may be required by CCC to achieve the desired environmental benefits and to maintain the productive capability of the soil throughout the CRP contract period;

(9) Comply with noxious weed laws of the applicable State or local jurisdiction on such land;

(10) Control on land subject to such contract all weeds, insects, pests and other undesirable species to the extent necessary to ensure that the establishment and maintenance of the approved cover is adequately protected and to provide such maintenance as necessary, or may be specified in the CRP conservation plan, to avoid an adverse impact on surrounding land, taking into consideration water quality, wildlife, and other needs, as determined by the Deputy Administrator; and

(11) Be jointly and severally responsible, if the participant has a share of the payment greater than zero, with the other contract participants for compliance with such contract and the provisions of this part and for any refunds or payment adjustments which may be required for violations of any of the terms and conditions of the CRP contract and provisions of this part.

§ 1410.21 Obligations of the Commodity Credit Corporation.

CCC shall, subject to the availability of funds:

(a) Share the cost with participants of establishing eligible practices specified in the conservation plan at the levels and rates of cost-sharing determined in accordance with the provisions of this part;

(b) Pay to the participant for a period of years not in excess of the contract period an annual rental payment in such amounts as may be specified in the CRP contract;

(c) Provide such technical assistance as may be necessary to assist the participant in carrying out the CRP contract; and

(d) Permit grazing on CRP land to the extent determined appropriate by the Deputy Administrator where the grazing is incidental to the gleaning of crop residues on fields where the contracted land is located. Such incidental gleaning shall be limited to the 7-month period in which grazing of conservation use acreage was previously allowed, as determined by CCC, in a State under the provisions of the Agricultural Act of 1949, as amended, or after the producer harvests the grain crop of the surrounding field. Further, CCC may provide approval of the incidental grazing of the CRP, but only in exchange for an applicable reduction in the annual rental payment, as determined appropriate by the Deputy Administrator.

(e) Provide approval of normal forestry maintenance such as pruning, thinning, and timber stand improvement on lands converted to forestry use only in accordance with a conservation plan in exchange for an applicable reduction in the annual rental payment as determined appropriate by the Deputy Administrator.

§ 1410.22 Conservation plan.

(a) The applicant shall develop and submit a conservation plan which is acceptable to NRCS and is approved by the conservation district for the land to be entered in the CRP. If the conservation district declines to review the conservation plan, such approval by the conservation district may be waived.

(b) The practices included in the conservation plan and agreed to by the participant must cost-effectively reduce erosion necessary to maintain the productive capability of the soil, improve water quality, protect wildlife or wetlands, protect a public well head, or achieve other environmental benefits as applicable.

(c) If applicable, a tree planting plan shall be developed and included in the conservation plan. Such tree planting plan may allow up to 3 years to complete plantings if 10 or more acres of hardwood trees are to be established.

(d) If applicable, the conservation plan shall address the goals included in the conservation priority designation authorized under § 1410.8 of this part.

(e) All conservation plans and revisions of such plans shall be subject to the approval of CCC and NRCS.

§ 1410.23 Eligible practices.

(a) Eligible practices are those practices specified in the conservation plan that meet all standards needed to cost-effectively:

(1) Establish permanent vegetative or water cover, including introduced or native species of grasses and legumes, forest trees, and permanent wildlife habitat;

(2) Meet other environmental benefits, as applicable, for the contract period; and

(3) Accomplish other purposes of the program.

(b) Water cover is eligible cover for purposes of paragraph (a) of this section only if approved by the Deputy Administrator for purposes such as the enhancement of wildlife or the improvement of water quality. Such water cover shall not include ponds for the purpose of watering livestock, irrigating crops, or raising for commercial purposes.

§ 1410.24–§ 1410.29 [Reserved]

§ 1410.30 Signup.

Offers for contracts shall be submitted only during signup periods as announced periodically by the Deputy Administrator, except that CCC may hold a continuous signup for land to be devoted to particular uses, as CCC deems desirable.

§ 1410.31 Acceptability of offers.

(a) Except as provided in paragraph (c) of this section, producers may submit bids for the amounts they are willing to accept as rental payments to enroll their acreage in the CRP. The bids shall, to the extent practicable, be evaluated on a competitive basis in which the bids selected will be those where the greatest environmental benefits relative to cost are generated, provided the bid is not in excess of the maximum acceptable payment rate established for the for the area offered by or for the Deputy Administrator.

(b) In evaluating contract offers, different factors, as determined by CCC, may be considered from time to time for priority purposes to accomplish the goals of the program. Such factors may include, but are not limited to:

(1) Soil erosion;

(2) Water quality (both surface and ground water);

(3) Wildlife benefits;

(4) Conservation priority area designations;

(5) Soil productivity;

(6) Conservation compliance considerations;

(7) Likelihood that enrolled land will remain in conserving uses beyond the contract period, which may be indicated by, for example, tree planting, permanent wildlife habitat, or commitments by a participant to a State or other entity to extend the conservation plan;

(8) Air quality; and

(9) Cost of enrolling acreage in the program.

(c) Acreage determined eligible for continuous signup, as provided in § 1410.30, shall be automatically accepted in the program if the:

(1) Land is eligible in accordance with the applicable provisions of § 1410.6, as determined by the Deputy Administrator;

(2) Applicant is eligible in accordance with the provisions of § 1410.5; and

(3) Applicant accepts either the maximum payment rate CCC is willing to offer to enroll the acreage in the program or a lesser rate.

§ 1410.32 CRP contract.

(a) In order to enroll land in the CRP, the participant must enter into a contract with CCC.

(b) The CRP contract will be comprised of:

(1) The terms and conditions for participation in the CRP;

(2) The conservation plan; and

(3) Any other materials or agreements determined necessary by CCC.

(c)(1) In order to enter into a CRP contract, the applicant must submit an offer to participate as provided in § 1410.30;

(2) An offer to enroll land in the CRP shall be irrevocable for such period as is determined and announced by CCC. The applicant shall be liable to CCC for liquidated damages if the applicant revokes an offer during the period in which the offer is irrevocable as determined by the Deputy Administrator. CCC may waive payment of such liquidated damages if CCC determines that the assessment of such damages, in a particular case, is not in the best interest of CCC and the program.

(d) The CRP contract must, within the dates established by CCC, be signed by:

(1) The applicant; and

(2) The owners of the cropland to be placed in the CRP, if applicable.

(e) The Deputy Administrator is authorized to approve CRP contracts on behalf of CCC.

(f) CRP contracts may be terminated by CCC before the full term of the contract has expired if:

(1) The owner loses control of or transfers all or part of the acreage under contract and the new owner does not wish to continue the contract;

(2) The participant voluntarily requests in writing to terminate the contract and obtains the approval of CCC according to terms and conditions as determined by CCC;

(3) The participant is not in compliance with the terms and conditions of the contract;

(4) Acreage is enrolled in another State, Federal or local conservation program;

(5) The CRP practice fails after a certain time period, as determined by the Deputy Administrator, and the county committee determines the cost of restoring the practice outweighs the benefits received from the restoration;

(6) The CRP contract was approved based on erroneous eligibility determinations; or

(7) It is determined by CCC that such a release is needed in the public interest.

(g)(1) Contracts for land enrolled in CRP before January 1, 1995, which have been in effect for at least 5 years may be unilaterally terminated by all CRP participants on a contract except for contract acreage:

(i) Located within a width determined appropriate by the applicable FOTG of a perennial stream or other permanent waterbody to reduce pollution and to protect surface and subsurface water quality;

(ii) On which a CRP easement is filed;

(iii) That is considered to be a wetland by NRCS;

(iv) Located within a wellhead protection area;

(v) That is subject to frequent flooding, as determined by the Deputy Administrator;

(vi) That may be required to serve as a wetland buffer according to the FOTG to protect the functions and values of a wetland; or

(vii) On which there exist one or more of the following practices, installed or developed as a result of participation in the CRP or as otherwise required by the conservation plan:

(A) Grass waterways;

(B) Filter strips;

(C) Shallow water areas for wildlife;

(D) Bottom land timber established on wetlands;

(E) Field windbreaks; and

(F) Shelterbelts.

(2) With respect to terminations under this paragraph:

(i) Any land for which an early termination is sought must have an EI of 15 or less;

(ii) The termination shall become effective 60 days from the date the participant submits notification to CCC of the participant's desire to terminate the contract;

(iii) Acreage terminated under this provision is eligible to be re-offered for

CRP during future signup periods, provided that the acreage otherwise meets the current eligibility criteria; and

(iv) Participants shall be required to meet conservation compliance requirements of part 12 of this title to the extent applicable to other land.

(h) Except as allowed and approved by CCC where the new owner of land enrolled in CRP is a Federal agency that agrees to abide by the terms and conditions of the terminated contract, the participant in a contract that has been terminated must refund all or part of the payments made with respect to the contract plus interest thereon, as determined by CCC, and shall pay liquidated damages as provided for in the contract. CCC, in its discretion, may permit the amount to be repaid to be reduced to the extent that such a reduction will not impair the purposes of the program. Further, a refund of an annual rental and cost-share payment need not be required from a participant who is otherwise in full compliance with the CRP contract when the land is purchased by or for the United States, as determined by CCC.

§ 1410.33 Contract modifications.

(a) By mutual agreement between CCC and the participant, a CRP contract may be modified in order to:

(1) Decrease acreage in the CRP;

(2) Permit the production of an agricultural commodity under extraordinary circumstances during a crop year on all or part of the land subject to the CRP contract as determined by the Deputy Administrator;

(3) Facilitate the practical administration of the CRP; or

(4) Accomplish the goals and objectives of the CRP, as determined by the Deputy Administrator.

(b) CCC may modify CRP contracts to add, delete, or substitute practices when:

(1) The installed practice failed to adequately provide for the desired environmental benefit through no fault of the participant; or

(2) The installed measure deteriorated because of conditions beyond the control of the participant; and

(3) Another practice will achieve at least the same level of environmental benefit.

(c) Offers to extend contracts may be made available to the extent otherwise allowed by law.

(d) CCC may terminate a CRP contract if the participant agrees to such termination and CCC determines such termination to be in the public interest.

§ 1410.34 Extended program protection.

(a) In the final year of the contract, participants may, subject to the terms and conditions announced by CCC request to extend the preservation of quota and acreage allotment history for 5 years (and, if announced by CCC, in successive 5-year increments). Such approval may be given by CCC only if the participant agrees to continue for that period, but without payment, to abide by the terms and conditions which applied to the relevant contract relating to the conservation of the property for the term in which payments were to be made.

(b) Where such an extension is approved, no additional cost-share, annual rental, or other payment shall be made.

(c) Haying and grazing of the acreage subject to such an extension may be permitted during the extension period, except during any consecutive 5-month period between April 1 and October 31 of any year as established by the State committee. In the event of a natural disaster, CCC may permit unlimited haying and grazing of such acreage.

(d) In the event of a violation of any CRP contract extended under this section, CCC may reduce or terminate, retroactively, prospectively, or both, the amount of quota, and acreage allotment history otherwise preserved under the extended contract.

§ 1410.35–§ 1410.39 [Reserved]

§ 1410.40 Cost-share payments.

(a) Cost-share payments shall be made available upon a determination by CCC that an eligible practice, or an identifiable unit thereof, has been established in compliance with the appropriate standards and specifications.

(b) Except as otherwise provided for in this part, cost-share payments may be made under the CRP only for the cost-effective establishment or installation of an eligible practice.

(c) Except as provided in paragraph (d) of this section, cost-share payments shall not be made to the same owner or operator on the same acreage for any eligible practices which have been previously established, or for which such owner or operator has received cost-share assistance from any Federal agency.

(d) Except as provided for under § 1410.10(c), cost-share payments may be authorized for the replacement or restoration of practices for which cost-share assistance has been previously allowed under the CRP, only if:

(1) Replacement or restoration of the practice is needed to achieve adequate erosion control, enhanced water quality, wildlife habitat, or increased protection of public wellheads; and

(2) The failure of the original practice was due to reasons beyond the control of the participant.

(e) The cost-share payment made to a participant shall not exceed the participant's actual contribution to the cost of establishing the practice and the amount of the cost-share may not be an amount which, when added to assistance from other sources, exceeds the cost of the practices.

(f) CCC shall not make cost-share payments with respect to a CRP contract if any other Federal cost-share assistance has been, or is being, made with respect to the establishment of the cover crop on land subject to such contract.

§ 1410.41 Levels and rates for cost-share payments.

(a) As determined by the Deputy Administrator, CCC shall not pay more than 50 percent of the actual or average cost of establishing eligible practices specified in the conservation plan, except that CCC may allow cost-share payments for maintenance costs to the extent required by § 1410.40 and CCC may determine the period and amount of such cost-share payments.

(b) The average cost of performing a practice may be determined by CCC based on recommendations from the State Technical Committee. Such cost may be the average cost in a State, a county, or a part of a State or county, as determined by the Deputy Administrator.

(c) A one-time financial incentive, may be offered to participants who restore the hydrology of eligible wetlands in accordance with the provisions of § 1410.11(b) or other lands as determined by the Deputy Administrator; such incentives will not be greater than 25 percent of the cost of restoring such wetlands or other lands, as determined by CCC.

(d) Except as otherwise provided, a participant may, in addition to any payment under this part, receive cost-share assistance, rental payments, or tax benefits from a State, subdivision of such State, or a private organization in return for enrolling lands in CRP. However, as provided under § 1410.40(f) of this part, a participant may not receive or retain CRP cost-share assistance if other Federal cost-share assistance is provided for such acreage, as determined by the Deputy Administrator. Further, under no circumstances may the cost-share payments received under this part, or otherwise, exceed the cost of the practice, as determined by CCC.

§ 1410.42 Annual rental payments.

(a) Subject to the availability of funds, annual rental payments shall be made in such amount and in accordance with such time schedule as may be agreed upon and specified in the CRP contract.

(b) The annual rental payment shall be divided among the participants on a single contract in the manner agreed upon in such contract.

(c) The maximum amount of rental payments which a person may receive under the CRP for any fiscal year shall not exceed $50,000. The regulations set forth at part 1400 of this chapter shall be applicable in making eligibility and "person" determinations as they apply to payment limitations under this part.

(d) In the case of a contract succession, annual rental payments shall be divided between the predecessor and the successor participants as agreed to among the participants and approved by CCC. If there is no agreement among the participants, annual rental payments shall be divided in such manner deemed appropriate by the Deputy Administrator and such distribution may be based on the actual days of ownership of the property.

(e) CCC shall, when appropriate, prepare a schedule for each county that shows the maximum soil rental rate CCC may pay which may be supplemented to reflect special contract requirements. As determined by the Deputy Administrator, such schedule will be calculated based on the relative productivity of soils within the county using NRCS data and local FSA average cash rental estimates. The schedule will be posted in the local FSA office. As determined by the Deputy Administrator, the schedule shall indicate, when appropriate, that:

(1) Contracts offered by producers who request rental payments greater than the schedule for their soil(s) will be rejected;

(2) Offers of contracts that are expected to provide especially high environmental benefits, as determined by the Deputy Administrator, may be accepted without further evaluation when the requested rental rate is less than or equal to the corresponding soil schedule; and

(3) Otherwise qualifying offers shall be ranked competitively based on factors established under § 1410.31 of this part in order to provide the most cost-effective environmental benefits, as determined by the Deputy Administrator.

(f) Additional financial incentives may be provided to producers offering contracts expected to provide especially high environmental benefits through an increased annual rental payment or incentive payment as determined by the Deputy Administrator.

§ 1410.43 Method of payment.

Except as provided in § 1410.50, payments made by CCC under this part may be made in cash or other methods of payment in accordance with part 1401 of this chapter, unless otherwise specified by CCC.

§ 1410.44–§ 1410.49 [Reserved]

§ 1410.50 State enhancement program.

(a) For contracts to which a State, political subdivision, or agency thereof has succeeded in connection with an approved conservation reserve enhancement program, payments shall be made in the form of cash only. The provisions that limit the amount of payments per year that a person may receive under this part shall not be applicable to payments received by such State, political subdivision, or agency thereof in connection with agreements entered into under such enhancement programs carried out by such State, political subdivision, or agency thereof which has been approved for that purpose by CCC.

(b) CCC may enter into other agreements in accordance with terms deemed appropriate by CCC, with States to use the CRP to cost-effectively further specific conservation and environmental objectives of that State and the nation.

§ 1410.51 Transfer of land.

(a)(1) If a new owner or operator purchases or obtains the right and interest in, or right to occupancy of, the land subject to a CRP contract, as determined by the Deputy Administrator, such new owner or operator, upon the approval of CCC, may become a participant to a new CRP contract with CCC with respect to such transferred land.

(2) With respect to the transferred land, if the new owner or operator becomes a successor to the existing CRP contract, the new owner or operator shall assume all obligations under the CRP contract of the previous participant.

(3) If the new owner or operator becomes a successor to a CRP contract with CCC, then, except as otherwise determined appropriate by the Deputy Administrator:

(i) Cost-share payments shall be made to the participant, past or present, who established the practice; and

(ii) Annual rental payments to be paid during the fiscal year when the land was transferred shall be divided between the new participant and the previous participant in the manner specified in § 1410.42.

(b) If a participant transfers all or part of the right and interest in, or right to occupancy of, land subject to a CRP contract and the new owner or operator does not become a successor to such contract within 60 days of such transfer, such contract shall be terminated with respect to the affected portion of such land and the original participant:

(1) Must forfeit all rights to any future payments with respect to such acreage;

(2) Shall comply with the provisions of § 1410.32(h); and

(3) Refund all previous payments received under the contract by the participant or prior participants, plus interest, except as otherwise specified by the Deputy Administrator.

(c) Federal agencies acquiring property, by foreclosure or otherwise, that contains CRP contract acreage cannot be a party to the contract by succession. However, through an addendum to the CRP contract, if the current operator of the property is one of the participants on such contract, such operator may, as permitted by CCC, continue to receive payments provided for in such contract so long as:

(1) The property is maintained in accordance with the terms of the contract;

(2) Such operator continues to be the operator of the property; and

(3) Ownership of the property remains with such federal agency.

§ 1410.52 Violations.

(a)(1) If a participant fails to carry out the terms and conditions of a CRP contract, CCC may terminate the CRP contract.

(2) If the CRP contract is terminated by CCC in accordance with this paragraph:

(i) The participant shall forfeit all rights to further payments under such contract and refund all payments previously received together with interest; and

(ii) Pay liquidated damages to CCC in such amount as specified in such contract.

(b) If the Deputy Administrator determines such failure does not warrant termination of such contract, the Deputy Administrator may authorize relief as the Deputy Administrator deems appropriate.

(c) CCC may reduce a demand for a refund under this section to the extent CCC determines that such relief would be appropriate and will not deter the

accomplishment of the goals of the program.

§ 1410.53 Executed CRP contract not in conformity with regulations.

If, after a CRP contract is approved by CCC, it is discovered that such CRP contract is not in conformity with the provisions of this part, the provisions of the regulations shall prevail.

§ 1410.54 Performance based upon advice or action of the Department.

The provisions of § 718.8 of this title relating to performance based upon the action or advice of a representative of the Department shall be applicable to this part.

§ 1410.55 Access to land under contract.

(a) Any representative of the Department, or designee thereof, shall be provided by the applicant or participant as the case may be, with access to land which is:

(1) The subject of an application for a contract under this part; or

(2) Under contract or otherwise subject to this part.

(b) With respect to such land identified in paragraph (a) of this section, the participant or applicant shall provide such representatives with access to examine records with respect to such land for the purpose of determining land classification and erosion rates and for the purpose of determining whether there is compliance with the terms and conditions of the CRP contract.

§ 1410.56 Division of program payments and provisions relating to tenants and sharecroppers.

(a) Payments received under this part shall be divided in the manner specified in the applicable contract or agreement and CCC shall ensure that producers who would have an interest in acreage being offered receive treatment which CCC deems to be equitable, as determined by the Deputy Administrator. CCC may refuse to enter into a contract when there is a disagreement among persons seeking enrollment as to a person's eligibility to participate in the contract as a tenant and there is insufficient evidence to indicate whether the person seeking participation as a tenant does or does not have an interest in the acreage offered for enrollment in the CRP.

(b) CCC may remove an operator or tenant from a CRP contract when the operator or tenant:

(1) Requests, in writing to be removed from the CRP contract;

(2) Files for bankruptcy and the trustee or debtor in possession fails to affirm the contract, to the extent permitted by the provisions of applicable bankruptcy laws;

(3) Dies during the contract period and the Administrator of the estate fails to succeed to the contract within a period of time determined by the Deputy Administrator; or

(4) Is the subject of an order of a court of competent jurisdiction requiring the removal from the CRP contract of the operator or tenant and such order is received by FSA, as determined by the Deputy Administrator.

(c) In addition to the provisions in paragraph (b) of this section, tenants shall maintain their tenancy throughout the contract period in order to remain on a contract. Tenants who fail to maintain tenancy on the acreage under contract, including failure to comply with provisions under applicable State law, may be removed from a contract by CCC. CCC shall assume the tenancy is being maintained unless notified otherwise by a CRP participant specified in the applicable contract.

§ 1410.57 Payments not subject to claims.

Subject to part 1403 of this chapter, any cost-share or annual payment or portion thereof due any person under this part shall be allowed without regard to questions of title under State law, and without regard to any claim or lien in favor of any creditor, except agencies of the United States Government.

§ 1410.58 Assignments.

Any participant who may be entitled to any cash payment under this program may assign the right to receive such cash payments, in whole or in part, as provided in part 1404 of this chapter.

§ 1410.59 Appeals.

(a) Except as provided in paragraph (b) of this section, a participant or person seeking participation may appeal or request reconsideration of an adverse determination rendered with regard to such participation in accordance with the administrative appeal regulations at parts 11 and 780 of this title.

(b) Determinations by NRCS concerning land classification, erosion rates, water quality ratings or other technical determinations may be appealed in accordance with procedures established under part 614 of this title or otherwise established by NRCS.

§ 1410.60 Scheme or device.

(a) If it is determined by CCC that a person has employed a scheme or device to defeat the purposes of this part, any part of any program payment otherwise due or paid such person during the applicable period may be required to be refunded with interest thereon as determined appropriate by CCC.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving any other person of cost-share assistance or annual rental payments, or obtaining a payment that otherwise would not be payable.

(c) A new owner or operator or tenant of land subject to this part who succeeds to the responsibilities under this part shall report in writing to CCC any interest of any kind in the land subject to this part that is retained by a previous participant. Such interest shall include a present, future, or conditional interest, reversionary interest, or any option, future or present, with respect to such land, and any interest of any lender in such land where the lender has, will, or can obtain, a right of occupancy to such land or an interest in the equity in such land other than an interest in the appreciation in the value of such land occurring after the loan was made. Failure to fully disclose such interest shall be considered a scheme or device under this section.

§ 1410.61 Filing of false claims.

If it is determined by CCC that any participant has knowingly supplied false information or has knowingly filed a false claim, such participant shall be ineligible for payments under this part with respect to the program year in which the false information or claim was filed and the contract may be terminated in which case a full refund of all prior payments may be demanded. False information or false claims include, but are not limited to, claims for payment for practices which do not meet the specifications of the applicable conservation plan. Any amounts paid under these circumstances shall be refunded, together with interest as determined by CCC, and any amounts otherwise due such participant shall be withheld. The remedies provided for in this section shall be in addition to any and all other remedies, criminal and/or civil that may apply.

§ 1410.62 Miscellaneous.

(a) Except as otherwise provided in this part, in the case of death, incompetency, or disappearance of any participant, any payment due under this part shall be paid to the participant's successor in accordance with the provisions of part 707 of this title.

(b) Unless otherwise specified in this part, payments under this part shall be subject to the requirements of part 12 of this title concerning highly-erodible land and wetland conservation and payments that otherwise could be made under this part may be withheld to the extent provided for in part 12 of this title.

(c) Any remedies permitted CCC under this part shall be in addition to any other remedy, including, but not limited to criminal remedies, or actions for damages in favor of CCC, or the United States, as may be permitted by law; provided further the Deputy Administrator may add to the contract such additional terms as needed to enforce these regulations which shall be binding on the parties and may be enforced to the same degree as provisions of these regulations.

(d) Absent a scheme or device to defeat the purpose of the program, when an owner loses control of CRP acreage due to foreclosure and the new owner chooses not to continue the contract in accordance with § 1410.51, refunds shall not be required from any participant on the contract to the extent that the Deputy Administrator determines that forgiving such repayment is appropriate in order to provide fair and equitable treatment.

(e) Crop insurance purchase requirements in part 1405 of this chapter apply to contracts executed in accordance with this part.

(f) Land enrolled in CRP shall be classified as cropland for the time period enrolled in CRP and, after the time period of enrollment, may be removed from such classification upon a determination by the county committee that such land no longer meets the conditions identified in part 718 of this title.

(g) Research projects may be submitted by the State committee and authorized by the Deputy Administrator to further the purposes of CRP. The research projects must include objectives that are consistent with this part, provide economic and environmental information not adversely affect local agricultural markets, and be conducted and monitored by a bona fide research entity.

(h) CCC may enter into other agreements, as approved by the Deputy Administrator, to use the CRP to meet authorized wetland mitigation banking pilot projects.

§ 1410.63 Permissive uses.

Unless otherwise specified by the Deputy Administrator, no crops of any kind may be planted or harvested from designated CRP acreage during the contract period.

§ 1410.64 Paperwork Reduction Act assigned numbers.

The Office of Management and Budget has approved the information collection requirements contained in these regulations under provisions 44 U.S.C. Chapter 35 and OMB number 0560–0125 has been assigned.

Signed at Washington, DC, on February 11, 1997.

Grant Buntrock,

Administrator, Farm Service Agency, and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 97–3861 Filed 2–12–97; 10:37am]

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Part IV

Department of Transportation

Research and Special Programs Administration

49 CFR Part 171

Hazardous Materials: Cargo Tank Motor Vehicles in Liquefied Compressed Gas Service; Interim Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 171

[Docket No. RSPA–97–2133 (HM–225)]

RIN 2137–AC97

Hazardous Materials: Cargo Tank Motor Vehicles in Liquefied Compressed Gas Service; Interim Final Rule

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Emergency Interim final rule and announcement of a public meeting.

SUMMARY: In this interim final rule, RSPA is amending the Hazardous Materials Regulations (HMR) to specify the conditions under which certain cargo tank motor vehicles may continue to be used on an interim basis, even if they are equipped with emergency discharge control systems which may not function as required by the regulations under all operating conditions. This rule addresses specification MC 330, MC 331, and certain non-specification cargo tank motor vehicles which are used to deliver propane and other liquefied compressed gases. It responds to a recently discovered safety deficiency which may affect many of these cargo tank motor vehicles. The intended effect of this action is to ensure, on an interim basis, an acceptable level of safety for delivery of liquefied compressed gases while a permanent solution to the problem is developed and implemented.

During the term of this interim rule, RSPA is seeking comments and data on the costs and effectiveness of alternative means of achieving a level of safety for the long term comparable to that provided by its long-standing regulation. At the same time, the Agency is also seeking comments on the costs and benefits of the interim measures adopted in this rule.

A public meeting is scheduled for March 20, 1997, to receive comments and recommendations in regard to the measures adopted in this interim final rule and to solicit recommendations for a permanent solution. Additionally, two workshops have been scheduled for March 4–5, 1997 and April 8–9, 1997. All interested persons, including trade organizations, cargo tank producers, individual wholesale and retail entities involved in the distribution of liquefied compressed gases and representatives of public protection organizations, are encouraged to participate.

DATES: Effective date: This interim final rule is effective February 19, 1997 through August 15, 1997.

Comment date: Comments must be received by April 21, 1997.

Public meeting: A public meeting will be held on Wednesday, March 20, 1997, from 9:00 a.m. to 5:00 p.m. in Washington, D.C.

Workshops: Workshops will be held on—March 4–5, 1997, and April 8–9, 1997, 9:00 a.m. to 5:00 p.m. in Washington, D.C.

Oral presentations: Any person wishing to present an oral statement at the public meeting should notify Jennifer Karim by telephone or in writing, on or before March 12, 1997.

ADDRESSES: Written comments: Address comments to the Dockets Office, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW, Washington, D.C. 20590–0001. Comments should identify the docket number and be submitted in two copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed, stamped postcard. The Dockets Office is located on the Plaza Level of the Nassif Building at the Department of Transportation at the above address. Public dockets may be reviewed there between the hours of 10:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Public meeting: The public meeting will be held at the Federal Aviation Administration (FAA) Auditorium, 800 Independence Avenue, SW, Washington, D.C. 20591.

Workshops: (1) March 4–5, 1997, U.S. Department of Transportation (Room 6244, Nassif Building), 400 Seventh Street, SW, Washington, D.C. 20590; (2) April 8–9, 1997, U.S. Department of Transportation (Room 6200, Nassif Building), 400 Seventh Street, SW, Washington, D.C. 20590.

Oral presentations: Submit written text of oral statement to Jennifer Karim, U.S. Department of Transportation, Room 8100, 400 Seventh Street, S.W., Washington, D.C. 20590. Five copies of written text of oral statements should be presented to RSPA staff immediately prior to the oral presentation.

FOR FURTHER INFORMATION CONTACT: Ronald Kirkpatrick, Office of Hazardous Materials Technology, Research and Special Programs Administration, telephone (202) 366–4545, or Stephen Keppler, Office of Motor Carrier Safety and Technology, Safety and Hazardous Materials Division, Federal Highway Administration, telephone (202) 366–2978, U.S. Department of Transportation, 400 Seventh Street, SW, telephones 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

On September 8, 1996, more than 35,000 gallons of propane were released during a delivery at a bulk storage facility in Sanford, North Carolina. During the unloading of a specification MC 331 cargo tank motor vehicle into two 30,000-gallon storage tanks, the discharge hose from the cargo tank separated at its hose coupling at the storage tank inlet connection. Most of the cargo tank's 9,800 gallons and more than 30,000 gallons from the storage tanks were released during this incident. If this large quantity of propane had reached an ignition source, 125 people (workers, residents and emergency responders) could have been killed.

The hazards associated with transportation of liquefied petroleum gas have been demonstrated repeatedly on U.S. highways. In fact, propane releases are the second leading cause of death in hazardous materials transportation. Between 1990 and 1991, five reported deaths and 695 injuries resulted from propane incidents in highway transportation. For example, when liquid propane is released into the atmosphere, it quickly vaporizes into its normal non-pressurized gaseous form. This happens very rapidly, and in the process, the propane combines readily with air to form fuel-air mixtures which are ignitable over a range of 2.2 to 9.5 percent by volume. If an ignition source is present in the vicinity of such highly flammable mixtures, the vapor cloud ignites and burns very rapidly (characterized by some experts as "explosively"). This has occurred a number of times over the years, and even though the incidents described below were not caused by spills during lading transfer, they illustrate the grave consequences of a large propane release when ignition occurs:

- On July 25, 1962 in Berlin, NY, an MC 330 bulk transport ruptured releasing about 6,900 gallons of liquid propane. Ignition occurred. Ten persons were killed, and 17 others were injured. Property damage included total destruction of 18 buildings and 11 vehicles.
- On March 9, 1972 near Lynchburg, VA, an MC 331 bulk transport overturned and slid into a rock embankment. The impact ruptured the tank's shell releasing about 4,000 gallons of liquid propane. Ignition occurred. Two persons were killed and five others were injured. Property damage included a farmhouse, outbuildings and about 12 acres of woodland.

- On April 29, 1975, near Eagle Pass, Texas, an MC–330 bulk transport struck a concrete headwall and ruptured releasing more than 8,000 gallons of liquefied petroleum gas. The ensuing fire and explosion killed 16 persons, injured 51, and destroyed 51 vehicles.
- On February 22, 1973, 23 tank cars derailed in Waverly, Tennessee. During wreck-clearing operations, a 30,000-gallon tank car containing liquefied petroleum gas ruptured. The ensuing fire and explosion killed 16 persons, injured 43, and caused $1.8 million in property damage.
- On December 23, 1988, in Memphis, Tennessee, an MC–330 bulk transport struck a bridge abutment and ruptured releasing 9388 gallons of liquefied petroleum gas. The ensuing fire and explosion killed eight persons and injured eight.
- On July 27, 1994, in White Plains, New York, an MC–331 bulk transport struck a column of an overpass and ruptured, releasing 9,200 gallons of propane. Ignition occurred. The driver was killed, 23 people were injured, and an area within a radius of approximately 400 feet was engulfed in fire.

In the Sanford incident, the driver became aware of the system failure when the hose began to violently oscillate while releasing liquid propane. He immediately shut down the engine, stopping the discharge pump, but he could not access the remote closure control to close the internal stop valve. The excess flow feature of the emergency discharge control system did not function, and propane continued to be released from the system. Additionally, the back flow check valve on the storage tank system did not function and propane was released from the storage tanks. In light of the large quantity of propane released, this incident could have resulted in a catastrophic loss of life and extensive property damage if the gas had reached an ignition source. Fortunately, there was no fire.

Based on the preliminary information from the Sanford incident, RSPA published an advisory notice in the **Federal Register** on December 13, 1996 (61 FR 65480). This notice alerted persons involved in the design, manufacture, assembly, maintenance or transportation of hazardous materials in MC 330 and MC 331 cargo tank motor vehicles of this problem with the excess flow feature of the emergency discharge control systems and reminded them that these tanks and their components must conform to the Hazardous Materials Regulations (49 CFR Parts 171–180; HMR). Since that time, RSPA has received applications for emergency exemptions from both the National Propane Gas Association (NPGA) and the Mississippi Tank Company that indicate the problem is more extensive than originally believed. Additionally, The Fertilizer Institute (TFI) and National Tank Truck Carriers, Inc. (NTTC) have submitted applications to become party to these exemptions. In support of its exemption application the Mississippi Tank Company, a manufacturer of specification MC 331 cargo tank motor vehicles, has provided preliminary information that there is reason to suspect the problem may be common to nearly all cargo tank motor vehicles used in liquefied compressed gas service within the United States. This problem may exist also in the non-specification cargo tanks authorized in § 173.315(k). Both applications for exemption are reprinted in their entirety and discussed in detail below.

II. National Propane Gas Association Application for Emergency Exemption

The body of NPGA's application for exemption is reproduced as follows (numbers in brackets have been added for ease of reference in the following discussion):

[1] The National Propane Gas Association (NPGA), acting as an agent for its members, presents here an application for a DOT Exemption to the Hazardous Materials Regulations (HMR) to permit the continued operation of certain cargo tank motor vehicles in propane service pending development and installation of equipment intended to overcome an operational difficulty identified recently. The Association also requests that this application be handled as an emergency exemption under the procedures outlined in 49 CFR 107.113. Upon issuance of this emergency exemption, NPGA will submit a second request to convert the emergency exemption to a conventional exemption.

[2] NPGA is the national trade association of the LP-gas (principally propane) industry with a membership of about 3,500 companies, including 37 affiliated state and regional associations, representing members in all 50 states. Although the single largest group of NPGA members are retail marketers of propane gas, the membership also includes propane producers, transporters and wholesalers, as well as manufacturers and distributors of associated equipment, containers and appliances. Propane gas is used in over 18 million installations nationwide for home and commercial heating and cooking, in agriculture, in industrial processing, and as a clean air alternative engine fuel for both over-the-road vehicles and industrial lift trucks.

[3] On September 8, 1996, a cargo tank motor vehicle, of the type in the industry known as a highway transport—a large cargo tank semi-trailer pulled by a highway truck tractor—was unloading a cargo of propane into permanent storage tanks at a propane marketing facility in Sanford, North Carolina. Shortly after the transfer operation began, the transfer hose separated from the transfer connection at its juncture with the plant piping and began discharging liquid propane to the atmosphere. The vehicle driver heard sounds unusual for a transfer operation and shut off the vehicle engine. According to the report of the Federal Highway Administration inspector, the driver was not able to get to the remote controls to close the internal stop flow valve. The driver then ran to an adjacent residential area to warn residents to immediately evacuate the area. As will be discussed later in this letter, the excess flow protection in the cargo tank did not activate and the entire propane cargo was discharged to the atmosphere.

[4] Likewise, emergency flow protection in the plant piping did not activate automatically as designed and intended. As a result, the entire contents of the storage facility—something in excess of 35,000 gallons of propane—was also discharged to the atmosphere. While the emergency flow control system on the transport is subject to the HMR, the storage tank system is subject to regulations of the State of North Carolina. Investigation of that segment of the incident is being handled as a separate matter. The purpose of this letter is to discuss the transport system, applicable regulations and what can be done to prevent such an incident from recurring.

[5] Mr. Samuel E. McTier, NPGA President, has appointed a special task force to work directly under the NPGA Executive Committee to determine the extent and nature of the underlying causes of this incident. The task force was directed to study this incident and develop two plans of action: First, how to provide for continued safe operation of existing propane cargo tanks while necessary changes are developed and put into place [including those cargo tanks to be built during this transition period], and second, how to correct safety and operational problems for the long term through changes to the MC–331 specification, if necessary, and to industry recommended safety and operating practices to preclude such an incident from happening again. This task force first met December 12–13, 1996 in Atlanta, Georgia. The enclosed recommendations and accompanying comments are based on their deliberations.

[6] NPGA understands that Mississippi Tank Company has already submitted an application for an emergency exemption and supports the technical discussions in that application as a succinct presentation of the overall problem. In the time that has passed since that application was filed with DOT, however, additional information has become available. As a consequence, while much of the Mississippi Tank information has been incorporated into this application, there are certain significant differences between the NPGA application and the Mississippi tank document.

[7] It is important to recognize that the situation described in the Mississippi Tank application is not unique to that company. Rather, that situation can reasonably be expected to occur with propane transports from other assemblers.

[8] In the smaller propane cargo tank motor vehicles (typically smaller than 3,500 gallons water capacity, called bobtails), the cargo tank is mounted directly on the vehicle chassis. These vehicles have a somewhat different piping arrangement than that used on transports. Consequently, on preliminary review, bobtails do not appear to have the same operating characteristics as transports. As a result, the first priority of this NPGA special task force has been directed at the transports; once the situation with the transports has been brought under control for the short term, the task force will immediately make similar investigations and studies of the bobtail vehicles.

[9] NPGA is gravely concerned about the underlying causes of the North Carolina incident and is committed to identifying and implementing appropriate changes to industry recommended safety and operating practices and to the HMR requirements to preclude such an incident occurring again.

[10] The propane industry transports between 7 and 10 billion gallons annually in these highway transports; that same volume is transported again in these local delivery bobtail tank trucks. In the past 10 years, there has not been a similar reported incident during the unloading of a transport. According to DOT's information, some 8 or 10 events have occurred unloading bobtails. That incident rate works out to be less than one per year.

[11] The propane industry is committed to prompt correction of any problems or concerns that are identified with DOT by this special task force as part of our continuing desire and goal to continue that safety record. We also believe that the current incident experience record is testimony to the validity and effectiveness of the safety and operating systems presently in use for transportation of propane, both in the Hazardous Materials Regulations and in industry safety and operating practices.

The Difficulty

[12] 49 CFR 178.337–11(a)(1)(i) requires each internal self-closing stop valve and excess flow valve to automatically close if any of its attachments are sheared off or if any attached hose or piping is separated. 49 CFR 178.337–11(a)(1)(v) expands on the requirements for properly sizing excess flow valves regarding branching or other restrictions and the addition of additional smaller capacity excess flow valves, where required.

[13] Mississippi Tank Company recently conducted tests in an effort to determine why the excess flow feature of the internal valve in the transport cargo tank outlet flange in the Sanford, North Carolina incident did not function as intended by the MC–331 specification requirements. The Mississippi Tank tests clearly show that the internal stop flow valves available for use with flange mounted pumps will not always close automatically under conditions simulating the situation where the hoses or piping might be sheared off or separated from the pump. Mississippi Tank has also determined that there are no such internal valves presently available that will provide the protection required by §§ 178.337–11 (a)(1)(i) and (a)(1)(v).

[14] Principal among the conclusions reached from the Mississippi Tank tests is that the internal valve equipped with the 400 gpm spring (which operates the excess flow feature to provide automatic closure) would close dependably with tank pressures as low as 65 psig but that the excess flow feature would not operate at tank pressures lower than 65 psig.

Rather than repeat the discussion of the test results in the Mississippi Tank application, in the interests of brevity, we refer you to that application.

Solutions to the Situation—Long Term

[15] From the Mississippi Tank tests and from discussions with the manufacturers of the cargo tank pumps and the internal valves, NPGA has concluded that the second and third sentences of § 178.337–11(a)(1)(v) are self-conflicting and mutually exclusive. Based on present technology and equipment, it simply is not possible to comply with *both* provisions.

[16] When this provision was reworded in the HM–183 amendments, industry review of the new provisions indicated that there would be no problem in complying with the requirement. The revised wording was accepted at face value merely as a rewording of the provisions that existed at that time in the MC–331 specification prior to the amendments. At the time, all of the vehicle assemblers believed that their individual practices for compliance with the specification requirements were appropriate and adequate to the need. However, the studies and discussions undertaken as a consequence of this North Carolina incident have demonstrated, and have been confirmed by the Mississippi Tank tests, that there is a basic conflict in the provisions contained in these two sentences in § 178.337–11(a)(1)(v).

[17] It is now clear that excess flow protection, whether when incorporated into the discharge internal valve or as an in-line device, will not function under all climatic conditions nor under other low flow rate conditions. In recognition of the preliminary conclusion that excess flow devices will not always operate as intended or desired, the NPGA special task force has concluded that new control and operating systems must be developed to provide the desired level of reliability and emergency flow control during unloading operations. Devising these new systems is the next priority for the special task force appointed by President McTier.

[18] The task force will also review control systems and operating procedures for loading operations to be sure that the desired level of emergency flow control will also be available in that operation as well. The loading operations aspect of this project, has been assigned a second level of priority, since there have not been any reported incidents during those operations.

[19] The special task force already has identified several possible alternatives for emergency flow control during transport unloading for consideration as permanent changes to industry recommended safety and operation practices or for adoption as regulatory provisions. These possible solutions include:

- A pneumatic deadman device interlocked with the internal stop flow valve and the tank truck brakes, possibly combined with a lanyard for remote activation. Possibly applicable to bobtails as well.

Note: The term "deadman" is used to identify a system that must be in place and operable in order for the unloading system to operate. If the shut-down mechanism of the system is activated for any reason, the unloading operation is discontinued and the internal stop flow valve closes.

- A mechanical deadman device, possibly combined with a lanyard for remote activation. Possibly applicable to bobtails as well.
- A differential valve downstream of the pump. If the engine is shut down, the set-pressure differential is detected and stops the flow of propane. This system would only protect piping downstream of the differential valve. Applicable to bobtails as well.

[20] Amendment of § 173.33 will also be needed to apply this improved level of safety on a permanent basis to the continued operation of existing MC–330 and MC–331 propane tank trucks and the non-specification cargo tanks operated under § 173.315(k).

[21] The special task force will also study provisions for allowance of the physical and chemical properties of the lading in designing the emergency flow protection system required by the MC–331 specification. Such provisions are not presently a directly-mentioned provision in the specification. The preliminary analyses conducted by the special NPGA task force indicate that such considerations are of primary importance. As an example, while NPGA has every confidence in the results of the excess flow valve capacity tests conducted by Mississippi Tank Company, which used water under pneumatic tank pressure as the test medium, we also now know that those tests only approximate the performance of the same equipment when handling propane in a general manner. Sufficient data and other information is not presently available to satisfactorily model the performance of that equipment in water flow to satisfactorily predict the manner in which the same equipment would perform when handling propane, or any other liquefied compressed gas, for that matter.

Solutions to the Situation—Short Term

[22] Responding to the long term need for a new control system is the ultimate goal for the NPGA special task force. Part of that mission includes presentation of appropriate recommendations to DOT for further consideration and adoption as amendments to the MC–331 specification for new construction and to § 173.33 to provide for the continued operation of existing cargo tanks.

[23] However, the immediate problem is how to provide for the continued operation of (1) existing MC–330 and MC–331 cargo tank motor vehicles in propane service, (2) the non-specification vehicles authorized under § 173.315(k) of the HMR, and (3) any new vehicles built in the interim period pending formal amendment of the HMR. Also, provisions must be made in this continued operation aspect for the annual leakage test and external inspection and for the five-year requalification requirements of the HMR for these vehicles.

[24] As an agent for the members of the Association, NPGA now submits an application for a DOT Exemption. For reasons set forth below, NPGA also recommends that this application be handled under the provisions for emergency exemptions (Ref: § 107.113). Following DOT's approval of such an exemption, NPGA will promptly submit an application to convert that emergency exemption to a conventional exemption. Such a combination of Exemptions would provide two things:

(1) authorization for the continued operation of existing cargo tank motor vehicles in propane service in the interim to the adoption of appropriate regulatory provisions to correct these technical and operational difficulties and (2) for the conditional operation (including annual tests and inspections and the five-year requalification) of any cargo tank motor vehicles built under the present regulations pending adoption of said amendments. Given the exceptional safety record discussed earlier for both transports and bobtails, NPGA believes that the following provisions for the proposed Exemption will continue this safety record while the relevant changes to industry safety and operating practices and any changes to the Hazardous Materials Regulations are developed and put into place.

[25] NPGA is not advocating removal of §§ 178.337–11(a)(1)(i) and (a)(1)(v) at the present time. Rather, we believe that further information is needed as to the nature and extent of changes to be considered for the MC–331 specification before any proposed changes are considered for the Hazardous Materials Regulations.

[26] NPGA recognizes the importance of prompt and expedient action in developing recommended changes to industry safety and operating practices and provisions of the Hazardous Materials Regulations to improve present the respective provisions for emergency flow control. To that end, NPGA will present a time plan with respective completion points for identification, development, testing and implementation of retrofits and the presentation of proposed changes to the Hazardous Materials Regulations to DOT by February 17, 1997. Furthermore, NPGA representatives will be in frequent contact with RSPA/Office of Hazardous Materials Safety and FHWA/Office of Motor Carrier Safety staff in a liaison capacity regarding the deliberation so this NPGA special task force and will present formal quarterly progress reports at appropriate liaison meetings.

[27] *Provisions of the Exemption:*

1. Compliance with applicable provisions of the Hazardous Materials Regulations, with the exception of §§ 173.315(n), 178.337–11(a)(1)(i) and (a)(1)(v).

2. NPGA will contact all of its members operating or assembling propane cargo tank motor vehicles and will work with industry trade press and other resources to reach affected non-member companies. The purpose of this outreach effort will be to bring the North Carolina incident and related, identified concerns to the attention of companies operating or assembling propane cargo tank motor vehicles.

3. Transfer hose used under the terms of the exemption (1) will be inspected before continued use, with particular attention to the condition and suitability of the hose end couplings for service and (2) otherwise comply with applicable provisions of NFPA 58, 1995 edition. New transfer hose assemblies will be tested as required by § 180.407(h)(1)(ii) before the hose assembly is placed in service.

NFPA 58, 1995 edition designates NFPA 58 *Storage and Handling of Liquefied Petroleum Gases*, published by the National Fire Protection Association, Quincy, Massachusetts. In its capacity as an American National Standard, NFPA 58 has been used as the basis of regulation by virtually all of the 50 states. A copy of the 1995 edition (the current edition) is enclosed for your information and consideration.

4. The vehicle driver will be continually in attendance and control of the loading and unloading operations.

5. Drivers will be advised of the events leading to the December 8, 1996 incident at Sanford, North Carolina and trained against the potential of that incident occurring again. Such training will include the inspection of delivery hose and connections to be used for the transfer operation to determine, among other things, that the hose is suitable for continued service and that the hose-end fittings and related connections to plant piping and tank truck valves are suitable for service. Driver training as required by §§ 172.702 and 172.704 will include recognition of the potential severity of equipment failure or malfunction during product transfer and appropriate actions to be taken should such an event occur. Records of this training will be included in records required by § 172.704(d). During the term of this exemption, a statement signed by the driver acknowledging such training and operating instructions will be filed by the employer in the files required by § 172.704.

6. The proposed exemption would apply to two types of vehicles: (1) The continued operation of those cargo tanks already in service—MC–330 and MC–331 cargo tank motor vehicles in propane service and non-specification propane cargo tanks authorized for continued operation under the provisions of § 173.315(k) and (2) the entrance into service of new or remounted vehicles that will be built or assembled in the interim period to the adoption of formal regulatory provisions providing new approaches to emergency flow control as an alternative to excess flow valves.

7. The proposed Exemption will authorize continued assembler and design certification of new MC–331 cargo tank motor vehicles and required annual inspection and 5-year requalification certifications that the subject vehicle complies with the Hazardous Materials Regulations, with the exception of §§ 173.315(n) and 178.337–11(a)(1)(i) and (a)(1)(v).

Treatment as an Emergency Exemption

[28] In recognition of the provisions of HMR/§ 107.113(a), a copy of this request for Emergency Exemption is being filed concurrently with the Chief, Hazardous Materials and Safety Division, Office of Safety and Technology, Federal Highway Administration, U.S. Department of Transportation, Washington, D.C. 20590–0001.

[29] The propane industry is in the midst of the winter heating season. Over 80 percent of the 7–9 billion gallons of propane referenced at the beginning of this letter is used as a residential heating fuel in rural locations where natural gas service is not available. Virtually all of these cargo tank motor vehicles—highway transports and bobtails alike—are needed to provide timely and adequate delivery of this heating fuel. In addition to residential heating fuel, the industry also provides heating fuel to dairy barns, chicken and hog brooders, peak shaving for natural gas utilities. In addition, propane is also widely used as an alternative engine fuel.

[30] There is another aspect of the need for expedient action in the approval and implementation of this exemption—financial impact on the propane marketers, propane producers, common carriers, vehicle assemblers and equipment manufacturers.

- *propane marketers*—Unless they are able to deliver fuel, these companies literally will not be able to continue in business. Of our 3,500 member companies, some 3,200 are small, independent businesses operating about 3,400 bulk plants (local retail facilities). There are another 3,400 bulk plants operated by 17 multistate marketer companies. Our members sell over 85% of the propane used as a residential heating fuel. Once the propane has been delivered to a bulk plant by a highway transport, it is transported *again* by bobtail cargo tank vehicles to the ultimate consumer.
- *propane producers*—Propane heating fuel has two sources: a co-product of natural gas production and a by-product of crude petroleum cracking and refining operations.
- *common carriers*—Over 90 percent of the propane used as a heating fuel is transported first by pipeline and then by highway transport to the local propane bulk plant. While some propane marketers have their own fleet of transport tank trucks, many of these companies rely on motor common carriers to deliver their propane supply. While many of these carriers carry other materials as well (hazardous as well as non-hazardous), for many carriers, propane transportation is a very significant part of their business.
- *vehicle assemblers*—For some of the vehicle assemblers, propane cargo tank motor vehicles (especially bobtails) are a very major part of their business. The companies building propane highway transports typically produce semi-trailer cargo tank motor vehicles for the transportation of other hazardous materials as well.
- *equipment manufacturers*—The manufacturers of pumps, valves, hose and the other equipment from which a tank truck is assembled obviously service other industries than just propane; at the same time, supplying the propane industry has become a rather significant part of their business.

[31] The ability to be able to operate propane bobtails and highway transports has

so many impacts and is so pervasive as be almost incalculable from an economic impact viewpoint. On the one hand, we believe the extremely large volume of propane handled annually (9,000,000,000 gallons) by transport and then a second time by the bobtails in local deliveries and the demonstrated safety record over the history of the industry is clear testimony to the commitment of this industry to safety and employee training. On the other hand, we are committed to correction of the provisions of § 178.337–11 regarding emergency flow control to address the problems that have been identified in the subject incident.

[32] The NPGA special task force believes it can identify alternative emergency flow control systems in the very near future. While several systems are already under study, no preferences have been established, nor do we know currently what present or new equipment will be necessary to implement any changes. Also, we want to be reasonably sure that these "new" systems will indeed operate as intended to provide the desired level of safety and operation control under emergency conditions, thus, actual service tests will be conducted before widespread installation is undertaken.

[33] Consequently, there is an extreme and vital need to keep the present cargo tank motor vehicles in service, albeit under closer scrutiny and control than has previously been the case, until these retrofit devices and systems can be developed and placed into operation.

[34] For many years, the propane industry has demonstrated its dedication to safety and compliance with standards and regulations. Issuance of this exemption will in no way reduce the safe transportation of propane. On the contrary, identification of the hazard illustrated by the Sanford, North Carolina incident will prompt utmost caution during the period of the proposed Exemption.

Conclusion

[35] Therefore, NPGA believes that a true emergency exists for handling this Exemption request in an expedited manner and thus pledges that this exemption will be continued in use no longer than absolutely necessary during the retrofit of any propane cargo tanks requiring the authorization for operation, recertification or requalification provided by the Exemption.

III. Mississippi Tank Company Application for Exemption

The body of the Mississippi Tank Company application for exemption is reproduced as follows:

The purpose of this letter is to make application for an emergency exemption of the Hazardous Materials Regulations stated above. We urgently need an expedited response to our request and offer the information required by part 107.3 as follows:

1. CFR 178.337–11Ali requires that each internal self-closing stop valve and excess flow valve must automatically close if any of its attachments are sheared off or if any attached hose or piping is separated. Paragraph 178.337–11(a)(1)(v) expands on requirements for properly sizing excess flow valves while considering branching or other restrictions and, the addition of additional smaller capacity excess flow valves, where required.

We learned during recent evaluation and testing of internal self closing stop-valves on cargo tank trailers that the flange mounted internal valves available for use with pumps will not automatically close under conditions simulating the situation where the hoses or piping might be sheared off or separated from the pump. Upon further research and consideration, it has become apparent that there are no internal valves available that will provide protection as required by the above paragraphs.

Some considerations of the complex series of problems that are facing us considering these requirements are listed as follows:

A. The most commonly used internal self-closing stop valve is a Fisher C404–M32–600 flanged internal valve whose 600 at the end of the model number indicates the flow rating of 600 GPM (propane). Testing at our facility under simulated conditions using air pressure and water indicates that this internal valve with this 600 GPM spring will not close with tank pressures up to 125 psig. Other flow rates available (which is determined by the type of internal spring that is furnished in the internal valve) are 340 GPM, 400 GPM, 800 GPM and 1000 GPM. Both the 340 GPM and 400 GPM springs were tested to determine their behavior, with most of the testing performed using the 400 GPM springs.

It was determined that the internal valve with the 400 GPM spring would close dependably with pressures down to 65 psig but not at all at lower pressures. This testing was performed while allowing the pump to "free-wheel", which would allow the pump to pass more product than if it were not allowed to free-wheel. Obviously, a pump shaft held stationary would prevent the pump from allowing as much product to pass, thereby preventing the sufficient flow of product through the pump and discharge piping to trigger the self-closing mechanism of the internal valve.

B. Internal valves (which are excess flow valves when open) have springs with manufacturing tolerances of—20%/+10%, thereby allowing a broad range of performance in a given flow-rated internal valve. Example: a 400 GPM spring can allow a flow between 320 GPM to 440 GPM.

In order to insure proper operation of a pumping system on cargo tanks, various sources in the industry have indicated that internal valve flow rating have been sized with a minimum flow rating of 1.5 times the discharge capacity of the pump. This would indicate that under the greatest flow conditions that the piping system and pump can offer, the self-closing criteria for the internal valve would have been exceeded by a minimum of 50%.

D. Flow rates through internal valves, and the associated piping, is mostly determined by the internal pressure that exists in the cargo tank. The greater the pressure, the more flow rate you will have through a given piping system and the lower the pressure, the lower flow rate through that same piping system. As an example, a cargo tank that was in dedicated propane service might have internal valves and excess flow valves that work dependably at pressures of 125 psig or higher in warm temperatures but as the temperature gets colder, for instance 20 °F, a tank pressure of only about 41 psig would be present and it is predictable that the internal valves and excess flow valves would no longer close due to the reduced flow associated with lower pressures in the tank. This problem becomes worse if a tank designed to carry products with vapor pressures approaching 250 psig is hauling low vapor pressure products, such as butanes, whose vapor pressures at warm temperatures are very low and at very cold temperatures can be practically nothing, insuring that the internal valves would not function at these low pressures.

E. It appears obvious that if you size an internal valve to be used with a pump that has a sufficiently low rating to insure that the internal valve would automatically close in the event of the separation of the discharge piping or hoses, the internal valve would never remain open during the pumping operation. After further study, it appears that due to the consistent volumetric displacement of a pump, the internal valve would never close if it were sized to allow the pump to dependably unload a product.

F. Consideration was given to the use of a lesser flow rate excess flow valve at the pump discharge connection, but it was determined after considerable deliberation that an excess flow valve that was sized so as to allow the pump to discharge product dependably might never close in the event the piping or hoses became separated, as the flow rating must be sufficient to allow pumping without causing the internal valve to close. If separation occurred, the pump would still be turning at the same RPMs, thereby producing roughly the same amount of flow rate as it was while the piping was still connected. Again it becomes apparent that the downstream excess protection appears not to be a viable solution either.

G. One internal valve manufacturer offers internal valves that open and close using pump differential pressure, but due to the nature of the way the pump must create differential pressure to allow the internal valve to stay open, it has been determined during discussions with the internal valve manufacturer that this internal valve might not close in all conditions as it should.

2. The problem meeting this requirement applies to all compressed gas cargo tanks of the MC331 classification (and possibly the MC338 classification) that utilize internal self-closing stop valves and excess flow valves in conjunction with pumps and in some cases simply in conjunction with discharge piping. This problem is not specific to any one class of product and would include all products that require the use of these type cargo tanks.

3. Using the internal valves presently available, our company has been producing between 40–200 cargo tanks a year for more than 35 years. Our company has no knowledge of any problems or safety related issues resulting from the use of these valves. Although all the cargo tanks in operation today apparently do not comply with the above requirements, the compressed gas industry does not appear to have a record of major problems in this area.

If an emergency exemption were granted to allow the continued use and certification of these cargo tanks, a warning statement and/or special operating instructions could be a new requirement as part of the conditions allowing for the exemption. This would provide for increased safety compared to what is presently available.

4. We feel that a special exemption is required for duration of 18–24 months minimum to allow all of the assemblers, equipment manufacturers and owners to help work out a solution to this problem. Equipment manufacturers advise that it takes a minimum of 12–15 months to design, test and make available new designs of valving. If it is determined that this will be part of the solution, the addition of "dead-man" type devices that cause the internal valves to close when the operator is not present may be incorporated as part of the solution as well.

We urgently request that you act upon our application for an emergency exemption for the reasons explained above. This exemption is needed to allow the continued use of existing equipment and to allow badly needed new equipment to continue to be made available to the industry.

Your expedited response on a priority basis is appreciated in advance.

IV. RSPA'S and FHWA's Review

From the four emergency exemption applications, discussion with the applicants, information developed from the Federal Highway Administration (FHWA) investigation of the Sanford incident, the regulatory history related to these issues and knowledge of the liquefied compressed gas industry, RSPA and FHWA have developed the following information and opinions related to the situation associated with the failure of the excess flow feature with the emergency discharge control system on cargo tanks used to transport liquefied compressed gases.

Emergency discharge control systems on cargo tanks used to transport liquefied gases provide two basic safety features. First, an excess flow feature is designed to automatically stop the flow of gas when piping, fittings or hoses rupture or separate. The second feature is a remotely controlled internal self-closing stop valve designed to stop the flow of product from a cargo tank. Cargo tanks having capacities over 3500 gallons must have remote means of automatic closure, both mechanical and thermal, of the internal self-closing stop valve; the remote operators must be installed at the ends of the tank in at least two, diagonally opposite locations. Cargo tanks of 3500 gallons capacity or less must have at least one remote means of closure, which may be mechanical, installed on the end of the cargo tank farther away from the loading/unloading connection area. The HMR require the excess flow feature to function in the event of a complete failure (separation) of any attached hoses or piping. The HMR do not require the excess flow feature to function in response to leaks or partial failure of a pipe, fitting or hose. Manual activation of the self-closing valve is the primary safety feature for pipe, fitting or hose failures during product transfer. RSPA does not agree with the NPGA statement (paragraph 15) that the second and third sentences of § 178.337–11(a)(1)(v) are "self-conflicting and mutually exclusive."

When the equipment and regulations for excess flow features on cargo tanks transporting liquefied gases were first developed, cargo tank motor vehicles were unloaded using internal pressure, by pressurizing them, or by use of pumps installed at unloading facilities. With such unloading systems, an excess flow feature properly designed for a cargo tank and the products the tank is designed to transport would reliably function in the event of a total pipe, fitting, or hose failure. Over time, in response to customer demand, most cargo tank motor vehicles delivering liquefied gases to customer bulk storage facilities have been equipped with pumps to speed product transfer. The tests performed by Mississippi Tank Company following the Sanford incident demonstrated that a pump in the discharge system functions as a product flow regulator that restricts excess flow, thereby preventing functioning of the excess flow feature. Thus, excess flow valves or features will not function when pumps are used in a cargo tank's discharge system. NPGA addresses this issue in its discussion on "Solutions to the Situation-Long Term" (paragraphs 15 through 21).

RSPA and FHWA do not agree with the position of the NPGA task force, expressed in paragraph 8, that transport vehicles should be given first priority in addressing this situation. While the capacity of bobtail cargo tanks is lower than that of transports, far more bobtails are in use and many more local deliveries are made each day than are deliveries to bulk storage facilities. Thus, the risk of an accidental discharge of product is much higher for bobtails than for transports. Because bobtail cargo tank motor vehicles are fitted with pumps and discharge systems very similar to transports, RSPA and FHWA believe that the excess flow features of these smaller vehicles also may not function when a pipe, fitting or hose ruptures or separates. This conclusion is supported by nine instances reported to RSPA over the last ten years of propane releases involving the failure of the excess flow system on bobtails.

As previously stated, RSPA and FHWA believe that manual activation of the internal self-closing stop valve is the primary means of stopping the flow of product from a cargo tank motor vehicle in the event of pipe, fitting or hose failure during transfer operations. The vehicle operator is the individual responsible for the manual activation of the internal stop valve in the event of pipe, fitting or hose failure. Under the present circumstances, where the excess flow feature of the emergency discharge control system may not function, RSPA and FHWA believe that special operator attendance requirements are necessary to ensure that a qualified person will always be in a position to immediately activate the internal stop valve in the event of a release. In addition to the requirements of § 177.834(i), RSPA and FHWA believe that the operator must have an unobstructed view of the cargo delivery lines, and be within an arm's reach of a means for closure of the internal self-closing stop valve or other device that will stop the discharge of product from the cargo tank. Until an automatic flow control system is developed, this may require two operator attendants on a cargo tank motor vehicle or the use of a lanyard, electro-mechanical, or other device or system to remotely stop the flow of product. If a lanyard or other device or system is used, it must meet the performance standard in the regulation ("will immediately stop the discharge of product from the cargo tank"). For example, there must be adequate space for use of, and appropriate tautness in, a lanyard being used to meet this requirement.

A number of other measures can be taken to mitigate the problem experienced in Sanford. Among these are the following:

- Remove pumps and compensate for decreased discharge flow by means of:
  - —enlarging piping, fittings and hose downstream of existing internal valves, retaining their excess flow features.
  - —increase pressure in the vapor space of the cargo tank, e.g., with a nitrogen pad.
- Relocate pumps to the receiving end of the unloading system.
- Transmit readout from storage tank filling instrumentation back to the cargo tank so that operator/attendant can remain in close proximity to internal valve closure devices.
- Increase frequency and thoroughness of maintenance actions; for example, systems for remote closure

of internal valves demand regular inspection, test and adjustment.

It has been reported that the propane release in the Sanford incident was from the hose used for delivery and that the hose was new and had not been pressure tested prior to attachment. Also, it was reported that the hose coupling on the storage tank end had not been firmly attached to the hose by means of the two machine bolts provided for this type coupling.

On large MC 330/331 transport vehicles, hoses typically are not attached to the cargo tank piping during transit, while on small local delivery cargo tanks, hoses typically remain attached to the piping and are under pressure during transit. Technically, hoses attached to piping and under pressure during transit form part of the cargo tank wall as defined in § 178.320(a)(1). This means that they should be tested in accordance with § 180.407(g) at the test pressure required for MC 330/331 cargo tanks in § 180.407(g)(1)(iv), i.e., at 1.5 times either the maximum allowable working pressure (MAWP) or the re-rated pressure, whichever is applicable. However, because of the difficulties that may be encountered at these high pressures, and due to the potential for over-stressing hose reinforcement fibers during such a test, RSPA and FHWA believe the test should be conducted at no less than 80 percent of the design pressure or maximum allowable working pressure (MAWP) marked on the cargo tank. This pressure test requirement includes couplings or other fittings which are part of the assembled hose as used. It must be repeated after any repair or modification of the assembled hose before it is re-used.

Non-specification cargo tanks. Potential difficulties with excess flow protection are not well defined for the group of non-specification cargo tanks which are authorized for transportation of liquefied petroleum gas by § 173.315(k). These cargo tanks were manufactured before January 1, 1981, in conformance with the editions of the ASME Code and NFPA Standard 58 which were in effect at the time of manufacture. They must conform with applicable laws of the states in which they operate; and they must be tested and inspected periodically in accordance with subpart E of part 180, as specified for MC 331 cargo tank motor vehicles.

RSPA and FHWA recognize that the situation described for MC 330 and 331 cargo tanks is no less severe for these non-specification vessels. RSPA and FHWA encourage responsible authorities in every jurisdiction to give special attention to NFPA provisions for vapor and liquid withdrawal requirements for internal valves with integral excess-flow valves or excess-flow protection.

V. RSPA's and FHWA's Evaluation of the Applications for Exemption

As a frame of reference for evaluation of the applications for exemption, the specification requirements for emergency discharge control can be achieved by means of either an internal self-closing stop valve or an excess flow valve. The most important performance standard relevant to this issue is that "Each internal self-closing stop valve and excess flow valve must automatically close if any of its attachments are sheared off or if any attached hoses or piping are separated." [See § 178.337–11(a)(1)(i)]. Provisions of § 178.337–11(a)(1)(v) come into play only if and when excess flow valves are used anywhere in the system.

After evaluating the situation and the NPGA and Mississippi Tank Company emergency exemption applications, RSPA finds that this situation constitutes an emergency with broad applicability to many persons and far reaching safety and economic impacts. RSPA also is not aware of readily available, off-the-shelf equipment that can provide a functioning automatic excess flow feature on cargo tanks without removal of pumps and other restrictions. The applicants propose an outreach effort to inform tank users of the Sanford incident and the safety issues related to product transfer operations and a research and development program to design a system which will provide greater safety in product transfer operations.

During evaluation of the Sanford incident, it has become evident that the level of safety provided by the HMR is not being achieved on equipment currently being produced and certified by manufacturers of these cargo tanks. Specifically, these tanks do not meet the requirement for automatic closure of internal self-closing stop valves and excess flow valves in the event of separation of hoses or piping. The regulatory language is intended to ensure a certain level of safety in these vehicles. However, the level of safety provided by the immediate steps proposed by NPGA is not equivalent to the level of safety provided by § 178.337–11(a)(1)(i). The NPGA proposes requirements regarding driver training, testing and inspection of equipment, and driver attendance during unloading operations (see paragraph 27 of the NPGA application). These proposed requirements are effectively the same as those already set forth in 49 CFR. In the Mississippi Tank application, it was suggested that "a warning statement and/or special operating instructions" could be required, but no details were offered on how that would achieve a level of safety equivalent to that provided by the existing regulatory requirements in § 178.337–11(a)(1)(i). Thus, neither application proposes procedures that would compensate for the absence of excess flow features that function reliably and in a passive manner.

Because the applications do not provide for an equivalent level of safety, as required by § 107.113(f)(2)(ii), of the HMR, they have been denied by the Associate Administrator for Hazardous Materials Safety. Also, the issues addressed in the applications have significant safety and economic implications for a broad range of persons; consequently, RSPA believes the issues are better addressed through the rulemaking process. Thus, RSPA is issuing this interim final rule.

VI. Provisions of the Interim Final Rule

RSPA is publishing this interim final rule to enhance the safety of product transfer operations as they are currently conducted, in most cases, while allowing the continued delivery of liquefied compressed gases (principally propane, other liquefied petroleum gases and anhydrous ammonia). RSPA and FHWA believe that, without the authorization for continued operation provided by this rule, the public, industry, and cargo tank motor vehicle operators and manufacturers would be severely impacted. The liquefied compressed gases authorized for highway transportation under this rule are used for home heating, support of industrial and agricultural operations, and as fertilizer. Because there are no alternative means for distribution of these materials in most areas served by the cargo tank motor vehicles authorized by this rule, RSPA and FHWA believe this rule is necessary to prevent severe shortages of liquefied compressed gases in the areas where they are consumed.

This emergency interim final rule authorizes, under specific conditions, the continued manufacture, assembly, certification, use and recertification of cargo tanks that may not meet the excess flow feature requirements for cargo tanks authorized for the transportation of liquefied compressed gases. This rule is effective through August 15, 1997. This will allow time for implementation of changes to equipment that will automatically shut down product transfer as required in § 178.337–11,

when a pipe or hose ruptures or separates.

In the next several months, RSPA and FHWA will actively pursue technical improvements to product delivery systems, as well as other feasible operational controls, that may be applied to minimize threats to public safety inherent in the transportation of liquefied compressed gases. RSPA has developed an action plan that includes the two public workshops scheduled for March 4–5, and April 8–9, 1997. In addition, working through its Volpe National Transportation System Center, RSPA will examine the availability and feasibility of systems that can achieve the purpose of the regulations; identify facilities where automatic shut-down systems may be safely tested, and seek out other sources of technical expertise in government, industry and academia.

The August 15, 1997 compliance date was chosen in part because it falls between the end of the summer 1997 planting season and the beginning of the winter 1997–1998 heating season. This date gives industry approximately six months to bring cargo tanks into compliance with the current (i.e., pre-IFR) regulatory requirement. Alternatively, industry may be able to demonstrate that regulatory compliance is not feasible, and recommend timetables for achieving compliance or implementing alternative technology to achieve the safety objective of a passive, automatic shut off system for emergency discharge control.

By the expiration of the interim final rule, RSPA and FHWA could announce their intent to strictly enforce the current regulatory requirement, unless the industry convinces us that they are making a good faith effort to develop a properly operating system that meets the requirements of the HMR. Alternatively, depending on the information developed during the comment period, RSPA would implement rulemaking either to modify the current regulatory requirement, providing a different means of passive shut-off, or extending the provisions of the IFR (with modification, if warranted) based on an industry-developed timetable for implementing technological change. The rule addresses the concerns expressed in the exemption applications of the NPGA, Mississippi Tank Company, TFI, and NTTC.

In order to enhance the level of safety during transfer operations using current equipment, the rule specifies special conditions for continued operations. The following provisions are adopted in § 171.5 to provide a set of alternative safety controls for the carriage of liquefied gases in cargo tanks that cannot be demonstrated to conform with existing excess flow feature requirements.

Paragraph (a)(1) specifies use provisions under which MC 330, MC 331 or non-specification cargo tank motor vehicles authorized under § 173.315(k) may be operated and unloaded.

Paragraph (a)(1)(i) prescribes that before transfer from a cargo tank motor vehicle the integrity of components making up the discharge system must be verified. Paragraph (a)(1)(ii) prescribes that prior to using a new or repaired transfer hose or a modified hose assembly, the hose must be pressure tested at no less than 80 percent of the design pressure or maximum allowable working pressure (MAWP) marked on the cargo tank. Paragraph (a)(1)(iii) specifies that a qualified person in attendance of transfer from a cargo tank must have the capability for emergency shut-down. Paragraph (a)(1)(iv) specifies that when there is an unintentional release of lading, the internal self-closing stop valve must be activated and all motive and auxiliary power equipment must be shut down. Paragraph (a)(1)(v) prescribes the development of comprehensive emergency operating procedures for all transfer operations. Paragraph (a)(1)(vi) specifies that each manufacturer, assembler, retester, motor carrier and other hazmat employer must provide training to its hazmat employees so that they can properly perform the new function-specific requirements in this section.

Paragraph (a)(2) prescribes conditions for continued qualification of existing in-service cargo tank motor vehicles.

Paragraph (a)(3) addresses new vehicles, including a special entry on the certification required by § 178.337–18.

Paragraph (b) specifies the marking to be displayed on a cargo tank motor vehicle operating under this section.

Paragraph (c) establishes August 15, 1997, as the expiration date for this temporary regulation.

VII. Request for Comments

To facilitate decisions on the need for this interim final rule as a short term response to an emergency and the potential need for a permanent change in the rule, RSPA requests comments responding to the questions listed below. RSPA also invites comments on any aspect of this rulemaking action not specifically addressed by the questions. RSPA and FHWA encourage interested persons to participate in this rulemaking by submitting written views, data, and information concerning this interim final rule. Commenters are requested to provide a reason or basis for each comment.

Additionally, RSPA and FHWA are seeking information pertaining to research and development related to the issues contained in this rule. This information may be presented at the public meeting.

1. NPGA has suggested the development of a "deadman" or a remote valve actuation system, possibly using a lanyard. Automobiles are commonly equipped with remote transmitter devices that fit on key rings to unlock doors or open trunk lids from 50 feet away. If such a manually activated device were used to close internal self-closing stop valves, would it provide a level of safety equivalent to the requirement for a passive automatic shut-down system required by § 178.337–11(a)(1)(i)?

2. What types of devices can provide the passive automatic shut-down function required by § 178.337–11(a)(1)(i)?

3. What tests are appropriate at the time of manufacture or assembly and at the time of requalification to ensure that the product discharge system will close as required by § 178.337–11(a)(1)(i)?

4. In view of the fact that specification MC 330 and MC 331 cargo tank motor vehicles are authorized for a broad range of hazardous materials, is it possible to design an emergency discharge control system that functions effectively with all liquefied compressed gases under all conditions normal to transportation? If not, should the manufacturer's certification required under § 178.337–18 specify the materials and conditions that are acceptable for carriage in, or unloading of, the cargo tank?

5. Do manufacturers and assemblers of cargo tank motor vehicles provide operational and maintenance instructions to operators on the use of the cargo tank motor vehicles they supply? If so, provide examples of such information to RSPA.

6. Provide any information available on other interstate or intrastate incidents involving the failure of emergency control systems on cargo tanks authorized to transport liquefied compressed gases.

7. Are hoses used to transfer product from large transport cargo tank motor vehicles permanently attached or carried on the vehicles or supplied by the customer at the point of delivery?

8. RSPA is concerned that this problem may highlight a deficiency in the training programs for Design Certifying Engineers and those persons certifying cargo tanks as meeting the

requirements of the HMR. In addition, carrier function-specific training programs also may not be providing sufficient training in the specification requirements for these cargo tanks. What training is provided to those individuals who are responsible for certifying, operating, testing and repairing these cargo tank motor vehicles?

VIII. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is considered a significant regulatory action under section 3(f) of Executive Order 12866 and was reviewed by the Office of Management and Budget. The rule is considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

Because of the emergency nature of this rule, RSPA is not required to prepare a regulatory evaluation. Nevertheless, in an effort to minimize the burden of this rule, RSPA prepared a preliminary regulatory evaluation which is available in the public docket.

Because of the potential safety risk posed by continued transportation of liquefied compressed gases in specification MC 330 and MC 331 cargo tank motor vehicles that do not conform to the performance criteria for emergency discharge controls, RSPA has determined that good cause exists for making this rule effective less than 30 days from its issuance and that prior notice and opportunity to comment is impractical and contrary to public interest.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (Act), as amended, 5 U.S.C. 601–612, directs agencies to consider the potential impact of regulations on small business and other small entities. The Act, however, applies only to rules for which an agency is required to publish a notice of proposed rulemaking pursuant to section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553. See 5 U.S.C. 603(a) and 604(a). Because of the emergency nature of this rule, RSPA is authorized under section 553(b)(B) and section 553 (d)(3) of the APA to forego notice and comment and to issue this rule as an interim final rule with an immediate effective date. Consequently, RSPA is not required under the Act to do a regulatory flexibility analysis in this rulemaking.

Specifically, section 553(b)(B) and section 553(d)(3) of the APA authorize agencies to dispense with certain procedures for rules, including notice and comment, when they find "good cause" to do so. "Good cause" includes a finding that following notice-and-comment procedures would be "impracticable, unnecessary, or contrary to the public interest." Section 553(d)(3) allows an agency, upon a finding of good cause, to make a rule effective immediately. "Good cause" has been held to include situations where immediate action is necessary to reduce or avoid health hazards or other imminent harm to persons or property, or where inaction would lead to serious dislocation in government programs or the marketplace.

Nevertheless, RSPA is concerned with the effect this rule may have on small business. Consequently, in preparing a preliminary regulatory evaluation under Executive Order 12866, RSPA has analyzed, based on information currently available to the agency, the impact of this rule on all affected parties, including small businesses. The preliminary regulatory evaluation is available for review in the public docket. In that preliminary evaluation, RSPA estimates that where an operator of bobtails chooses to comply with the arms-reach attendance requirement by use of a lanyard—as suggested by NPGA in its application for emergency exemption—the average annual cost per operator will be $1,324. In addition, in this interim final rule RSPA is asking commenters to provide information to the agency regarding the economic, safety and other impacts of this rule so that the agency can make any necessary changes to the rule.

A small entity includes a small business, small organization or small governmental jurisdiction. For purposes of this discussion, a small business is deemed to be one which is independently owned and operated and which is not dominant in its field of operation. RSPA believes that the impacts of this rule are primarily addressed to businesses involving the distribution of liquefied petroleum gas and anhydrous ammonia, and to manufacturers and assemblers of cargo tanks used for the distribution of these products. Under the Small Business Administration's size standard definitions (13 CFR Part 121), liquefied petroleum gas distributors with $5 million or less in annual receipts, and manufacturers of truck or bus bodies or truck trailers that employ 500 or less individuals are small businesses. Based on available information, RSPA estimates that at least 90% of the businesses impacted by this rule are small businesses. RSPA further estimates there are at least 6,800 businesses and at least 25,000 cargo tank motor vehicles (7,000 "transports" and 18,000 "bobtails") affected by this rule.

In order for RSPA to determine the potential impacts of this rule on small entities, small businesses affected by this final rule are requested to submit comments addressed to the impacts of this rule and other significant alternatives on small entities. Some of the considerations envisioned in assessing these impacts include the following:

1. Are RSPA's estimates as to number of businesses affected by this rule, and the percentage of these which are small businesses, consistent with industry estimates? Are other estimates available as to the numbers of businesses and small businesses in each sector of business addressed by this rule (i.e., gas distributor, cargo tank manufacturer, cargo tank assembler) and numbers of cargo tank motor vehicles? Are there other business sectors affected? Are some geographic areas affected more than others (please identify)?

2. Are there alternatives to this rule which accomplish RSPA's objectives, while imposing less of an impact on small businesses? What are those alternatives?

3. In what manner could differing compliance or reporting requirements be implemented for small businesses to take into account the resources available to small businesses? In what manner could compliance or reporting requirements be clarified, consolidated or simplified for such small businesses?

4. What are the direct and indirect costs of compliance with the rule, calculated both as absolute costs and as a percentage of revenue of the regulated small business?

5. What are the direct and indirect costs of completing paperwork or recordkeeping requirements, again both as absolute costs and as a percentage of revenue?

6. What is the effect of this rule, if any, on the competitive position of small entities in relation to larger entities?

7. What is the effect of this rule on the small entity's cash flow and liquidity?

8. What is the effect of this rule on the ability of a small entity to remain in the market?

9. What is the availability and cost to the small entity for professional assistance to meet regulatory requirements?

10. Are there any Federal rules that duplicate, overlap or conflict with this rule?

C. Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). The Federal hazardous materials transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This interim final rule addresses covered subject item (5) above and preempts State, local, and Indian tribe requirements not meeting the "substantively the same" standard. Federal hazardous materials transportation law provides at § 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA has determined that the effective date of Federal preemption for these requirements will be May 20, 1997. Thus, RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

D. Paperwork Reduction Act

The information collection and recordkeeping requirements contained in this final rule have been submitted for emergency approval to the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1995. Section 1320.8(d), Title 5, Code of Federal Regulations requires that RSPA provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. RSPA estimates that the total information collection and recordkeeping burden in this interim final rule is 17,575 hours, at a cost of $376,875, for the development and maintenance of the comprehensive emergency operating procedure. These figures are based in RSPA's belief that standardized emergency operating procedures can be developed for use by a majority of industry members, thus reducing substantially the burden hours and cost to individual industry members of compliance with the emergency operating procedures requirement. Requests for a copy of this information collection should be directed to Deborah Boothe, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8102, 400 Seventh Street, SW, Washington, DC 20590–0001. Telephone (202) 366–8553. Written comments should be received by the close of the comment period identified elsewhere in this rulemaking and should be addressed to the Dockets Unit as identified in the Addresses section of this rulemaking. Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it displays a valid OMB control number. RSPA will publish a notice advising interested parties of the OMB control number for this information collection when assigned by OMB.

E. Regulation identifier number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

F. Executive Order 12778

Any interested person may petition RSPA's Administrator for reconsideration of this final rule within 30 days of publication of this rule in the **Federal Register**, in accordance with the procedures set forth at 49 CFR 106.35. Neither the filing of a petition for reconsideration nor any other administrative proceeding is required before the filing of a suit in court for review of this rule.

List of Subjects in 49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 171 is amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for Part 171 is revised to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; Sec. 4, Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Sec. 31001, Pub. L. 104–134, 110 Stat. 1321; 49 CFR 1.45 and 1.53.

2. Section 171.5 is added to read as follows:

§ 171.5 Temporary regulation; liquefied compressed gases in cargo tank motor vehicles.

(a) Section 178.337–11 of this subchapter requires an excess flow feature as a part of the emergency discharge control system installed in a cargo tank motor vehicle used to transport certain liquefied compressed gases. Other regulations in Parts 173 and 180 of this subchapter reference this requirement or similar requirements in effect at the time of manufacture of a cargo tank. Notwithstanding this requirement, a DOT MC 330 or MC 331 specification cargo tank motor vehicle, or a non-specification cargo tank motor vehicle conforming to the requirements of § 173.315(k) of this subchapter, may, without certification and demonstrated performance of the excess flow feature of its emergency discharge control system, be represented for use and used to transport liquefied compressed gases under the following conditions:

(1) *Use.* The cargo tank motor vehicle must otherwise be operated, unloaded and attended in full conformance with all applicable requirements of this subchapter and the following additional requirements:

(i) Before initiating any transfer from the cargo tank motor vehicle, the person performing the function shall verify that each component of the discharge system is of sound quality, is free of leaks, and that connections are secure.

(ii) Prior to commencing transfer using a new or repaired transfer hose or a modified hose assembly, it must be pressure tested at no less than 80 percent of the design pressure or maximum allowable working pressure (MAWP) marked on the cargo tank. This test must include all hose and hose fittings and equipment arranged in the configuration to be employed during transfer operations. A hose or associated equipment that shows signs of leakage, significant bulging, or other defects, is not acceptable for use.

(iii) In addition to attendance requirements in § 177.834(i) of this subchapter, the person who attends the

unloading of a cargo tank motor vehicle must have an unobstructed view of the discharge system and be within arm's reach of a means for closure (emergency shut-down device) of the internal self-closing stop valve or other device that will immediately stop the discharge of product from the cargo tank.

(iv) If there is an unintentional release of lading to the environment during transfer, the qualified person attending the cargo tank shall immediately activate the internal self-closing stop valve and shut down all motive and auxiliary power equipment.

(v) A comprehensive emergency operating procedure must be developed for all transfer operations and hazmat employees who perform unloading functions must be thoroughly trained in its provisions. The emergency operating procedure must be prominently displayed in or on the cargo tank motor vehicle.

(vi) As required by § 172.704 of this subchapter, each manufacturer, assembler, retester, motor carrier and other hazmat employer subject to the requirements of this section shall ensure that its hazmat employees are trained to properly perform these new function-specific requirements including the meaning of the marking specified in paragraph (b) of this section. The hazmat employer shall ensure that a record of the training is created, certified, and maintained as specified in § 172.704(d) of this subchapter.

(2) *Continuing qualification.* An existing in-service cargo tank motor vehicle may continue to be marked and documented as required by Part 180 of this subchapter if the following statement is added to the current inspection report required by § 180.417(b) of this subchapter: "Emergency excess flow control performance not established for this unit."

(3) *New vehicles.* A new (unused) cargo tank motor vehicle manufactured, marked and certified prior to August 16, 1997, may be marked and certified as conforming to specification MC 331 if it otherwise meets all requirements of the specification and the following statement is added to the certification document required by § 178.337–18 of this subchapter: "Emergency excess flow control performance not established for this unit."

(b) *Marking.* The following marking must be displayed on a cargo tank used in or represented for use under this section:

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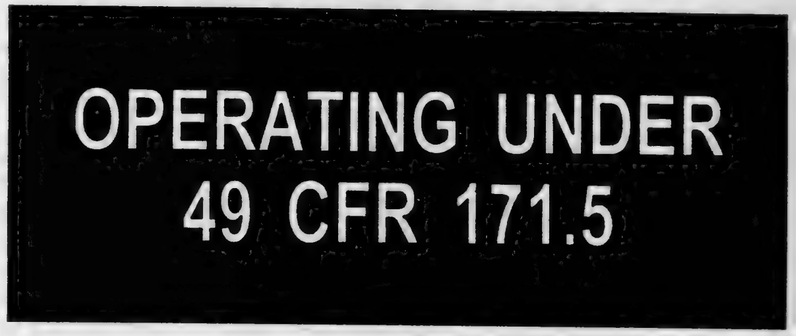

(1) The letters must be white and the background black.

(2) The letters must be at least 1.5cm in height.

(3) The marking must be 6cm x 15cm.

(c) *Expiration date.* This section is effective February 19, 1997 through August 15, 1997.

Issued in Washington, DC on February 13, 1997 under authority delegated in 49 CFR part 1.

D.K. Sharma,

Administrator, Research and Special Programs Administration.

[FR Doc. 97–4116 Filed 2–14–97; 12:09 pm]

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federal register

Wednesday
February 19, 1997

Part V

The President

Executive Order 13036—Establishing an Emergency Board To Investigate a Dispute Between American Airlines and its Employees Represented by the Allied Pilots Association

Federal Register
Vol. 62, No. 33
Wednesday, February 19, 1997

Presidential Documents

Title 3—

The President

Executive Order 13036 of February 15, 1997

Establishing an Emergency Board To Investigate a Dispute Between American Airlines and its Employees Represented by the Allied Pilots Association

WHEREAS, a dispute exists between American Airlines and its employees represented by the Allied Pilots Association; and

WHEREAS, the dispute has not heretofore been adjusted under the provisions of the Railway Labor Act, as amended (45 U.S.C. 151–188) (the "Act"); and

WHEREAS, in the judgment of the National Mediation Board, this dispute threatens substantially to interrupt interstate commerce to a degree that would deprive sections of the country of essential transportation service,

NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States, including sections 10 and 201 of the Act, 45 U.S.C. 160 and 181, it is hereby ordered as follows:

Section 1. *Establishment of Emergency Board ("Board").* There is established, effective February 15, 1997, a Board of three members to be appointed by the President to investigate this dispute. No member shall be pecuniarily or otherwise interested in any organization of airline employees or any air carrier. The Board shall perform its functions subject to the availability of funds.

Sec. 2. *Report.* The Board shall report to the President with respect to the dispute within 30 days of its creation.

Sec. 3. *Maintaining Conditions.* As provided by section 10 of the Act, from the date of the creation of the Board and for 30 days after the Board has submitted its report to the President, no change in the conditions out of which the dispute arose shall be made by the parties to the controversy, except by agreement of the parties.

Sec. 4. *Records Maintenance.* The records and files of the Board are records of the Office of the President and upon the Board's termination shall be maintained in the physical custody of the National Mediation Board.

Sec. 5. *Expiration.* The Board shall terminate upon the submission of the report provided for in sections 2 and 3 of this order.

William J. Clinton

THE WHITE HOUSE,
February 15, 1997.

[FR Doc. 97–4302
Filed 2–18–97; 10:52 am]
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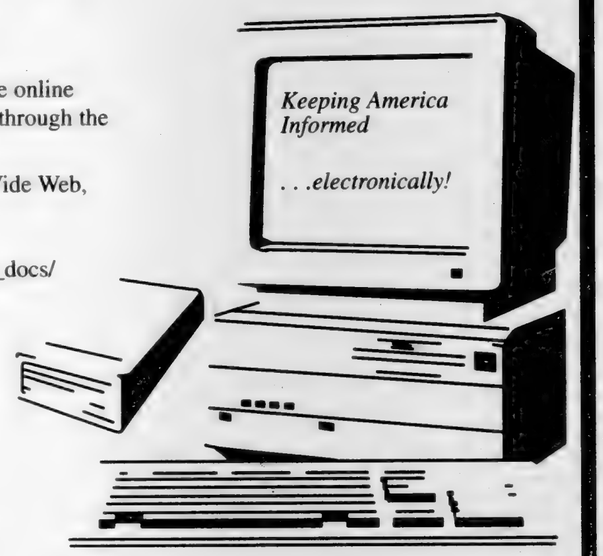

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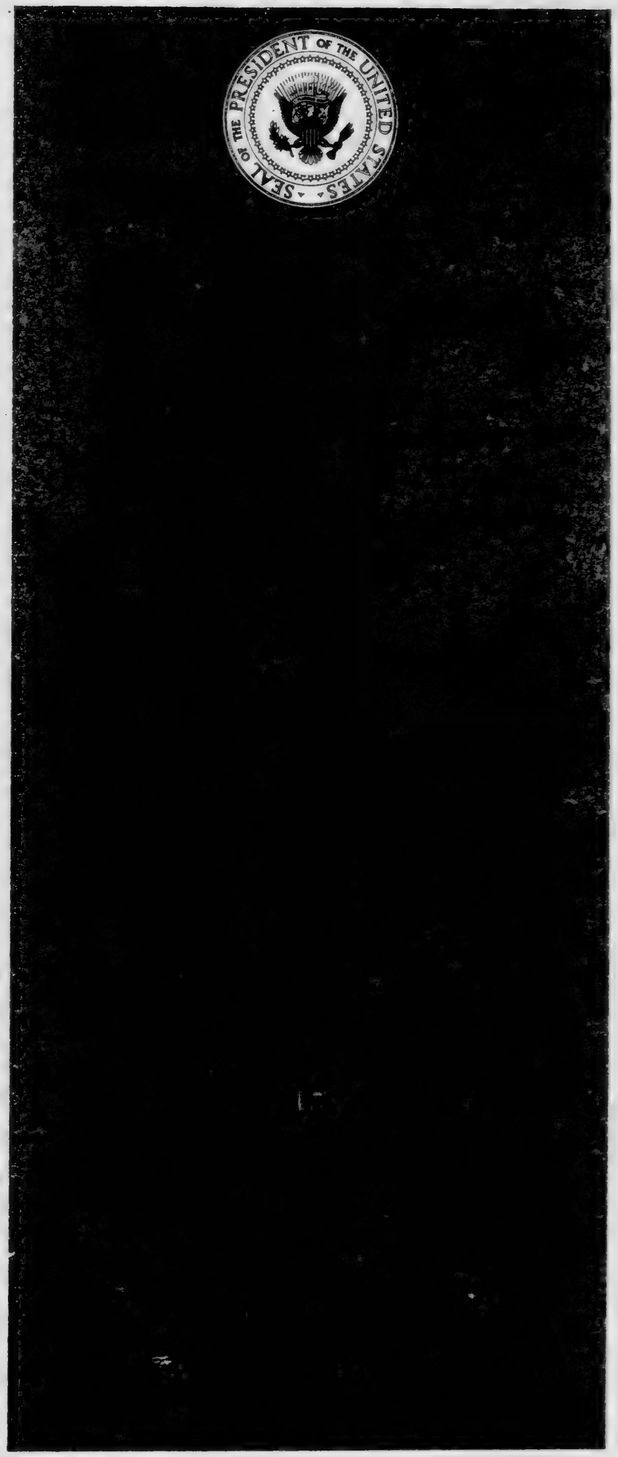

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 905 and 944

[Docket No. FV96–905–4 FIR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; and Import Regulations (Grapefruit); Relaxation of the Minimum Size Requirement for Red Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule changing regulations under the Florida citrus marketing order and grapefruit import regulations. This rule relaxes the minimum size requirement for red seedless grapefruit from 3$^{9}/_{16}$ inches in diameter (size 48) to 3$^{5}/_{16}$ inches in diameter (size 56). The Citrus Administrative Committee (Committee), the agency that locally administers the marketing order for oranges, grapefruit, tangerines, and tangelos grown in Florida, unanimously recommended this change. This change will enable handlers and importers to continue to ship size 56 red seedless grapefruit for the entire 1996–97 season.

EFFECTIVE DATE: March 24, 1997.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, D.C. 20090–6456; telephone: (202) 720–5127, Fax # (202) 720–5698; or William G. Pimental, Marketing Specialist, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883–2276; telephone: (941) 299–4770, Fax # (941) 299–5169. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax # (202) 720–5698.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905 (7 CFR Part 905), as amended, regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the order. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This rule is also issued under section 8e of the Act, which provides that whenever certain specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

The order for Florida citrus provides for the establishment of minimum grade and size requirements. The minimum grade and size requirements are designed to provide fresh markets with fruit of acceptable quality, thereby maintaining consumer confidence for fresh Florida citrus. This helps create buyer confidence and contributes to stable marketing conditions. This is in the interest of producers, packers, and consumers, and is designed to increase returns to Florida citrus growers.

The Committee met October 8, 1996, and unanimously recommended relaxing the red seedless grapefruit minimum size requirement from size 48 (3$^{9}/_{16}$ inches diameter) to size 56 (3$^{5}/_{16}$ inches diameter) for the period November 11, 1996, through November 9, 1997. This relaxation was effectuated by an interim final rule issued on November 27, 1996 (61 FR 64251). Absent this change, the size would have reverted back to size 48 (3$^{9}/_{16}$ inches diameter), on November 11, 1996.

Section 905.52 of the order authorizes the Committee to recommend minimum grade and size regulations to the Secretary. Section 905.306 (7 CFR 905.306) specifies minimum grade and size requirements for different varieties of fresh Florida grapefruit. Such requirements for domestic shipments are specified in Section 905.306 in Table I of paragraph (a), and for export shipments in Table II of paragraph (b). Minimum grade and size requirements for grapefruit imported into the United States are currently in effect under Section 944.106 (7 CFR 944.106), as reinstated on July 26, 1993 (58 FR 39428, July 23, 1993). Export requirements are not changed by this rule.

In making its recommendation, the Committee considered estimated supply and current shipments. According to both the National Agricultural Statistics Service and the Committee, production of red seedless grapefruit is expected to increase in comparison to last year

(1995–96). Both sources estimate an increase in production for this season (1996–97) of about 10 percent to 31.5 million boxes and about 3 percent to 29 million boxes, respectively. The Committee reports that it expects that fresh market demand will be sufficient to permit the shipment of size 56 red seedless grapefruit grown in Florida during the entire 1996–97 season. The Committee believes that markets have been developed for size 56 and that they should continue to supply those markets.

This size relaxation will enable Florida grapefruit shippers to continue shipping size 56 red seedless grapefruit to the domestic market. This rule will have a beneficial impact on producers and handlers, since it will permit Florida grapefruit handlers to make available those sizes of fruit needed to meet consumer needs. This is consistent with current and anticipated demand in those markets for the 1996–97 season, and will provide for the maximization of shipments to fresh market channels.

There are some exemptions to these regulations provided under the order. Handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day. Handlers may also ship unlimited gift packages of up to 2 standard packed cartons of fruit per day, which are individually addressed and not for resale. Fruit shipped for animal feed is also exempt under specific conditions. Fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base is not subject to the handling requirements.

Section 8e of the Act provides that when certain domestically produced commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Since this rule continues a relaxation in the minimum size requirement under the domestic handling regulations, a corresponding change to the import regulations must also be considered.

Minimum grade and size requirements for grapefruit imported into the United States are currently in effect under Section 944.106 (7 CFR 944.106), as reinstated on July 26, 1993 (58 FR 39428, July 23, 1993). This final rule continues a relaxation the minimum size requirements for imported red seedless grapefruit to 3 5/16 inches in diameter (size 56) for the period November 11, 1996, through November 9, 1997, which reflects the relaxation being made under the order for grapefruit grown in Florida. The minimum grade and size requirements for Florida grapefruit are specified in Section 905.306 (7 CFR 905.306) under Marketing Order No. 905.

During the last 5 years (1991–1995) imports to the United States of fresh grapefruit averaged less than 2 percent of total domestic consumption or less than 15,000 tons per year. Based on Departmental data, domestic consumption averaged 766,000 tons per year for that period. The major exporter of grapefruit to the United States was the Bahamas. The Bahamas shipped an average of 95 percent of all grapefruit imports to the United States during that time period. Other exporters of grapefruit to the United States included Mexico, Jamaica, Dominican Republic, Israel, and Thailand.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility. Import regulations issued under the Act are based on those established under Federal marketing orders.

There are approximately 100 handlers of Florida citrus who are subject to regulation under the marketing order, approximately 11,000 producers of citrus in the regulated area, and about 25 grapefruit importers. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. The majority of Florida citrus producers and grapefruit importers may be classified as small entities. The majority of Florida citrus handlers are estimated to be large entities.

Based on Committee shipping data and estimates for 1994–95, approximately 60 percent of all handlers handled 83 percent of Florida fresh domestic and export citrus shipments. The handlers included in this figure shipped 500,000 or more boxes of fresh citrus. The average price for Florida citrus was $7.00 per 4/5 bushel box for all domestic shipments. The actual receipts of these handlers is estimated to be higher as most of these handlers also ship to processing markets, which are not included in Committee data but would contribute to total handler receipts.

Section 905.52 of the order authorizes the establishment of minimum size regulations for Florida citrus, and section 8e of the Act requires that when such regulations are in effect for grapefruit, the same or comparable requirements be applied to imports.

This action continues a relaxation in the minimum size requirement established for Florida and imported red seedless grapefruit from size 48 (3 9/16 inches diameter) to size 56 (3 5/16 inches diameter) for the period November 11, 1996, through November 9, 1997. Absent this change, the size would have reverted back to size 48 (3 9/16 inches diameter), on November 11, 1996.

This rule is expected to have a positive impact on growers, handlers and importers, as it will permit the shipment of smaller size grapefruit, allowing the industry to meet market needs. There is a small established market for size 56 red seedless grapefruit and elimination of all shipments of this size would cause a hardship on the industry. The relaxed minimum size requirement will be applied to both small and large handlers and importers in the same way.

Based on shipment data from the Committee, total fresh Florida citrus shipments for interstate and export markets averaged 65,935 million 4/5 bushel boxes during the last 5 seasons (1991–1995). During this period, size 56 red seedless grapefruit comprised approximately 3 to 5 percent of total fresh shipments, or 2 to 3 million 4/5 bushel boxes. The average price for the last 5 seasons ranged from $5.54 to $5.68 per 4/5 bushel box for size 56 red seedless grapefruit. Thus, potential revenue from the sale of this fruit would range from $11 million to $17 million.

This relaxation is consistent with current and anticipated market demand for the 1996–97 season, and will provide for the maximization of shipments to fresh market channels. The benefits of this rule are not expected to be disproportionately greater or less for small handlers, growers or importers than for larger entities.

The Committee discussed an alternative to this change, which was to not relax the minimum size requirement. This alternative would have prevented the industry from shipping fruit to current viable markets. While only a small amount of the crop is expected to be affected by relaxing the minimum size, the Committee believes that this relaxation will benefit producers and handlers with smaller fruit this season. Thus, the Committee unanimously recommended this action.

This rule relaxes size requirements under the order and the grapefruit import regulations. Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large Florida citrus handlers or grapefruit importers. As with all Federal marketing order programs and companion import regulations, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. In addition to minimum size requirements, Florida and imported grapefruit is required to meet minimum grade requirements that are based on the U.S. Standards for Grades of Florida Grapefruit (7 CFR 51.750 through 51.784) which are issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627). Additionally, the Department of Citrus for the State of Florida regulates citrus through the Citrus Fruit Laws, Chapter 601, Florida Citrus Code of 1949.

The Committee's meeting was widely publicized throughout the Florida citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the October 8, 1996, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. The Committee itself is composed of 18 members, of which 9 are producers, 8 are handlers and 1 is a public member. The majority of Committee members represent small entities.

The interim final rule was issued on November 27, 1996, and published in the **Federal Register** (61 FR 64251, December 4, 1996), with an effective date of November 11, 1996. That rule amended §§ 905.306 and 944.106 of the rules and regulations in effect. That rule provided a 30-day comment period which ended January 3, 1997. No comments were received.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this final rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other available information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (61 FR 64251, December 4, 1996) will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth above, 7 CFR parts 905 and 944 are amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

PART 944—FRUITS; IMPORT REGULATIONS

Accordingly, the interim final rule amending 7 CFR parts 905 and 944 which was published at 61 FR 64251 on December 4, 1996, is adopted as a final rule without change.

Dated: February 13, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–4113 Filed 2–19–97; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 966

[Docket No. FV96–966–2 FIR]

Tomatoes Grown in Florida; Partial Exemption From the Handling Regulation for Single Layer and Two Layer Place Packed Tomatoes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule providing an exemption to the pack and container requirements currently prescribed under the Florida tomato marketing order. The marketing order regulates the handling of tomatoes grown in Florida and is administered locally by the Florida Tomato Committee (Committee). This rule exempts shipments of single layer and two layer place packed tomatoes from the container net weight requirements under the marketing order. This rule facilitates the movement of single layer and two layer place packed tomatoes and should improve returns to producers of Florida tomatoes.

EFFECTIVE DATE: March 24, 1997.

FOR FURTHER INFORMATION CONTACT: Aleck Jonas, Marketing Specialist, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883–2276; telephone: (941) 299–4770, or FAX: (941) 299–5169; or Mark Slupek, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 205–2830, or FAX: (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax # (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 125 and Order No. 966 (7 CFR part 966), both as amended, regulating the handling of tomatoes grown in Florida, hereinafter referred to as the order. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department of Agriculture is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS)

has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 75 handlers of tomatoes who are subject to regulation under the order and approximately 90 producers of tomatoes in the regulated area. Small agricultural service firms, which include handlers, are defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. The majority of handlers and producers of Florida tomatoes may be classified as small entities.

This rule finalizes an exemption for shipments of single layer and two layer place packed tomatoes from container net weight requirements currently specified under the order. Place packing requires a certain number of tomatoes to fill a container, making it difficult to meet established weight requirements. Tomatoes are packed in one or two layers, which some industry members believe is superior to the bulk container pack. Place packing is labor intensive, with most of the packing being done by hand, but it allows handlers to ship higher colored, more mature tomatoes. Place packed tomatoes, which are shipped from many domestic and foreign growing areas, currently maintain a strong market share.

This exemption is the same as granted for specialty packed red ripe tomatoes and yellow meated tomatoes. This exemption appears to be the most viable alternative to present requirements because it facilitates the use of place packing in Florida, and provides handlers an additional shipping option. Also, while we lack sufficient information necessary to quantify these benefits at this time, we believe that this exemption will be beneficial to the industry. After the industry operates under the relaxed requirements for a time, additional information will be available. Because the exemption and the packing techniques required affect both small and large handlers equally, both will benefit proportionally from the exemption. Therefore, the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

The interim final rule was issued on October 29, 1996, and published in the **Federal Register** (61 FR 55729, October 29, 1996), with an effective date of October 30, 1996. That rule amended § 966.323 of the rules and regulations in effect under the order. That rule provided a 30-day comment period which ended November 29, 1996. No comments were received.

Under the Florida tomato marketing order, tomatoes produced in the production area and shipped to fresh market channels are required to meet certain handling requirements. These requirements include minimum grade, size, and pack and container specifications.

This final rule revises § 966.323 paragraph (d) of the rules and regulations to make single layer and two layer place packed tomatoes exempt from the current net weight requirements. This exemption is the same as granted for specialty packed red ripe tomatoes and yellow meated tomatoes. The exemption is from net weight only. The tomatoes are still subject to all other provisions of the handling regulation, including established grade, size, pack, and inspection requirements. The Committee met September 5, 1996, and unanimously recommended this change.

Section 966.52 of the Florida tomato marketing order provides authority for the modification, suspension, and termination of regulations. Section 966.323(a)(3)(i) of the order's rules and regulations defines the net weight container requirements. These requirements specify that all tomatoes be packed in containers of 10, 20, and 25 pound designated net weights. The net weight cannot be less than the designated weight or exceed the designated weight by more than two pounds.

Most tomatoes from Florida are shipped at the mature green stage, and are packed in volume fill containers. When volume fill containers are packed, the tomatoes are placed by hand or machine into the container until the required net weight is reached. This procedure, by design, works well when packing to meet a specified weight.

In contrast, it is very difficult to pack to a specified weight when place packing in a single layer or two layer pack. Place packing a container requires a fixed number of tomatoes to fill the container. In place packing, the tomatoes are packed in layers, with the fill determined by the size of the tomato, dimensions of the container, and the way the tomatoes are positioned in the box. To facilitate this type of pack, most handlers use plastic cells, cardboard partitions, or trays to position the tomatoes. The majority of place packed tomatoes are sold by count per container rather than by weight.

Throughout the harvesting season, the weight of equal size tomatoes may vary dramatically. When tomatoes are place packed into a container, the handler cannot add extra tomatoes if the container's net weight is light. Because the tomatoes are packed in layers, when a layer is complete there are no spaces for adding additional tomatoes. Similarly, when the tomatoes are heavy, the handler cannot remove a tomato to meet a maximum weight requirement. Buyers expect a full pack with no spaces, and a missing tomato could result in a loose pack which could allow shifting or bruising during transport.

The Committee made this recommendation to overcome this problem and allow the industry to develop this market. This change allows the industry to place pack single layer and two layer packs exempt from the current net weight requirements. However, all other packs must continue to meet the requirements.

Single layer and two layer place packed tomatoes are common in today's markets. Many tomato growing areas within the United States utilize them, as do most shippers of Mexican tomatoes. Buyer demand for this type of container is well established. Tomatoes packed in single layer and two layer containers have a strong market share. Some Committee members stated that this pack provides a superior presentation of the tomatoes when compared to the bulk net weight container. Committee members believe that Florida tomato shippers can compete well in this market.

Another advantage of the place pack is that a more mature tomato can be shipped if desired. The Committee expressed interest in beginning to ship a higher colored, more mature tomato. Volume packing such a tomato could cause bruising or other damage. Place packing in single layer or two layer packs would prevent damage and help a mature tomato arrive at market in good condition.

The Committee is focusing on ways to continue to be competitive, develop new markets, and increase grower returns. The Committee believes this change will provide the industry with more flexibility and additional marketing opportunities.

Section 8(e) of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for certain commodities under a domestic marketing order, including tomatoes, imports of that commodity must meet the same or comparable requirements. Since the Act does not authorize the imposition of pack or container requirements on imports, even when such requirements are in effect under a domestic marketing order, no change is necessary in the tomato import regulations as a result of this action.

After consideration of all relevant material presented, the information and recommendations submitted by the Committee, and other available information, it is found that finalizing, without change, the interim final rule as published in the **Federal Register** (61 FR 55729, October 29, 1996) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

For the reasons set forth in the preamble, 7 CFR part 966 is amended as follows:

PART 966—TOMATOES GROWN IN FLORIDA

Accordingly, the interim final rule amending 7 CFR part 966 which was published at 61 FR 55729 on October 29, 1996, is adopted as a final rule without change.

Dated: February 12, 1997.

Robert C. Kenney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–4110 Filed 2–19–97; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 979

[Docket No. FV97–979–1 IFR]

Melons Grown in South Texas; Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule establishes an assessment rate for the South Texas Melon Committee (Committee) under Marketing Order No. 979 for the 1996–97 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of melons grown in South Texas. Authorization to assess Texas melon handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

DATES: Effective on October 1, 1996. Comments received by March 24, 1997, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, Marketing Specialist, McAllen Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 East Hackberry, McAllen, TX 78501, telephone 210–682–2833, FAX 210–682–5942, or Martha Sue Clark, Program Assistant, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone 202–720–9918; FAX 202–720–5698. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone 202–720–2491; FAX 202–720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 156 and Order No. 979, both as amended (7 CFR part 979), regulating the handling of melons grown in South Texas, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, South Texas melon handlers are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable melons beginning October 1, 1996, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 32 producers of South Texas melons in the production area and approximately 24 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000 and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of South Texas melon producers and handlers may be classified as small entities.

The melon marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of South Texas melons. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting.

Thus, all directly affected persons have an opportunity to participate and provide input.

The Committee, in a telephone vote on September 25, 1996, unanimously recommended 1996–97 administrative expenses of $100,000 for personnel, office and the travel portion of the compliance budget. These expenses were approved by the Department in October 1996. The assessment rate and funding for the research projects and the road guard station maintenance portion of the compliance budget were to be recommended at a later Committee meeting.

The Committee subsequently met on December 17, 1996, and unanimously recommended 1996–97 expenditures of $308,000 and an assessment rate of $0.07 per carton of melons. In comparison, last year's budgeted expenditures were $395,159. The assessment rate of $0.07 is the same as last year's established rate. Major expenditures recommended by the Committee for the 1996–97 fiscal period include $84,500 for personnel and administrative expenses, $115,500 for compliance, $64,000 for a melon disease management program, $33,125 for breeding and variety development, and $10,875 for melon variety evaluation. Budgeted expenses for these items in 1995–96 were $95,544, $139,500, $86,716, $32,674, and $10,875, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of South Texas melons. Melon shipments for the year are estimated at 3,870,000 cartons, which should provide $270,900 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budget expenses. Funds in the reserve will be kept within the maximum permitted by the order.

While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1996–97 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1996–97 fiscal period began on October 1, 1996, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable melons handled during such fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 959

Marketing agreements, Melons, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 979 is amended as follows:

PART 979—MELONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 979 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new subpart titled "Assessment Rates" consisting of a new § 979.219 and a new subpart heading titled "Handling Regulations" are added immediately preceding § 979.304, to read as follows:

Note: This section will appear in the Code of Federal Regulations.

Subpart—Assessment Rates

§ 979.219 Assessment rate.

On and after October 1, 1996, an assessment rate of $0.07 per carton is established for South Texas melons.

Dated: February 13, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–4112 Filed 2–19–97; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 987

[Docket No. FV–96–987–3 FR]

Domestic Dates Produced or Packed in Riverside County, California; Temporary Relaxation of Size Requirements for Deglet Noor Dates

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the size requirements currently prescribed for the Deglet Noor variety of dates under the California date marketing order. The marketing order regulates the handling of domestic dates produced or packed in Riverside County, California, and is administered locally by the California Date Administrative Committee (committee). This rule will increase the current tolerance for individual, whole Deglet Noor dates weighing less than 6.5 grams (the prescribed minimum) from 10 to 15 percent and will be in effect through October 31, 1997. The relaxation is necessary because dates from the 1996–97 crop are smaller in size and weight than normal. The decrease in size and weight is due to extremely high temperatures experienced last spring in the production area. This relaxation was recommended by the committee to make a larger quantity of the 1996–97 crop available for sale domestically and in Canada and is expected to benefit producers, handlers, and consumers.

EFFECTIVE DATE: This final rule becomes effective February 21, 1997.

FOR FURTHER INFORMATION CONTACT: Maureen Pello, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (209) 487–5901, Fax # (209) 487–5906; or Valerie L. Emmer, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2536-S, P.O. Box 96456, Washington, DC 20090–6456: telephone: (202) 205–2829, Fax # (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456: telephone (202) 720–2491; Fax # (202) 720–5698.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 987 (7 CFR part 987), both as amended, regulating the handling of domestic dates produced or packed in Riverside County, California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

This final rule revises the size requirements currently prescribed for the Deglet Noor variety of dates under the California date marketing order. This rule will increase the current tolerance for individual, whole Deglet Noor dates weighing less than 6.5 grams (the prescribed minimum) from 10 to 15 percent. The rule will be in effect through October 31, 1997, and was recommended by the committee.

Section 987.39 of the date marketing order provides authority for the establishment of minimum quality requirements for varieties of California dates to be handled in designated outlets. Section 987.40 of the order also provides authority for the committee to recommend to the Secretary additional grade or size requirements for any variety of dates to be handled in any designated outlet when it deems advisable. Pursuant to § 987.12, there are four designated outlet categories for California dates—"DAC" dates, "dates for further processing" (FP dates), "export" dates, and "product" dates.

Section 987.112a of the order's administrative rules prescribes grade, size, and container requirements for each of the four outlet categories of dates. Paragraph (b)(2) of that section prescribes such requirements for DAC dates. DAC dates are marketable whole or pitted dates that are inspected and certified as meeting the grade, size, container, and applicable identification requirements for handling in the United States and Canada. Currently, DAC dates must meet the requirements for U.S. Grade B, as specified in the U.S. Standards for Grades of Dates (Standards) issued by the Department. In addition, with respect to whole dates of the Deglet Noor variety, the individual dates in a sample from a lot must weigh at least 6.5 grams, with a tolerance of 10 percent per lot for dates weighing less than 6.5 grams.

Paragraph (c)(2) of § 987.112a provides similar requirements for FP dates. FP dates are marketable whole dates acquired by one handler from another handler that are certified as meeting the same grade and size requirements as for DAC dates, with the exception of moisture requirements and applicable identification requirements. Currently, FP dates must also meet the requirements for U.S. Grade B as specified in the Standards, except for moisture.

Section 987.112a also specifies requirements for the remaining two outlet categories of dates—export and product. Except for some minor differences stated in the section, export and product dates must meet the requirements for U.S. Grade C as specified in the Standards.

At its meeting on October 31, 1996, the committee recommended increasing the current tolerance for individual, whole Deglet Noor dates weighing less than 6.5 grams from 10 to 15 percent to be handled in the DAC and FP outlet categories. The committee also recommended that this relaxation be in effect through October 31, 1997. This will allow the rule to be in effect for the remainder of the 1996–97 season, which ends on September 30, plus an additional month. By the end of October 1997, as prescribed under the order, the committee is required to meet and review its marketing policy for the next season. Five committee members voted for this change, three voted against, and one abstained.

In its deliberations, the committee commented that the average fruit size for the 1996–97 crop is expected to be much smaller this season than in recent years, primarily due to the hot, dry spring. Increasing the tolerance from 10 to 15 percent for dates weighing less than 6.5 grams should allow a greater quantity of Deglet Noor dates which are of good quality but weigh less than 6.5 grams to meet the requirements for DAC and FP dates. Currently, the industry average of the number of dates packed per pound is 60. The additional five percent tolerance for undersize dates will allow handlers to include approximately two additional smaller dates per pound. Thus, more of the crop would be utilized as whole dates domestically and in Canada. The committee estimates total 1996–97 marketable date shipments at 33.5 million pounds. Of that amount, Deglet Noor shipments are estimated at approximately 32.4 million pounds, with about 15 million pounds likely to meet the current requirements for DAC and FP dates. According to the committee, increasing the tolerance from 10 to 15 percent should allow about three to five percent more Deglet Noor dates to meet the DAC and FP requirements, or between 450,000 and 750,000 pounds. Making more Deglet Noor dates of satisfactory quality available for sale domestically and in Canada should provide for maximum utilization of the 1996–97 crop, thereby benefiting producers, handlers, and consumers.

The three committee members who opposed the recommendation believe

that the overall quality of dates packed will be decreased if smaller fruit is allowed to meet the requirements for DAC and FP dates. However, other committee members commented that the smaller size dates will still have to meet all of the other characteristics DAC and FP dates must already meet. Thus, consumers should continue to receive good quality whole dates with only a slight increase in the number of smaller size dates. In addition, the majority of committee members believe that this change will only affect about three to five percent of the Deglet Noor shipments that are expected to meet DAC and FP requirements.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 15 handlers of California dates who are subject to regulation under the marketing order and approximately 135 date producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000.

Last year, as a percentage, about 75 percent of the handlers shipped under 4 million pounds of dates and 25 percent shipped over 4 million. Using an average f.o.b. price of $1.12 per pound, about 75 percent of date handlers could be considered small businesses under SBA's definition and about 25 percent of the handlers could be considered large businesses. The majority of handlers and producers of California dates may be classified as small entities.

This final rule revises the size requirements currently prescribed for the Deglet Noor variety of dates under § 987.112a of the California date marketing order. Deglet Noor dates from the 1996–97 crop are smaller in size and weight than normal, due to extremely high temperatures experienced last spring in the production area. The committee recommended increasing the current tolerance for individual, whole Deglet Noor dates weighing less than 6.5 grams (the prescribed minimum) from 10 to 15 percent, to make a larger quantity of the 1996–97 crop available for sale domestically and in Canada, thereby benefitting producers, handlers, and consumers. This rule will be in effect through October 31, 1997.

At the meeting, the committee discussed the impact of this change on handlers and producers in terms of cost. Handlers and producers receive higher returns for dates that meet DAC and FP requirements. As previously mentioned, dates sold as DAC or FP must meet the requirements for U.S. Grade B dates (with the exception of moisture for FP dates) as specified in the Standards and dates sold in other outlet categories such as product and export must meet requirements specified for U.S. Grade C dates. According to industry members, handlers receive about $.50 per pound more for U.S. Grade B dates than U.S. Grade C, and growers receive about $.30 more per pound more for U.S. Grade B dates.

In addition, as previously mentioned, 1996–97 marketable Deglet Noor shipments are estimated to be approximately 32.4 million pounds, of which about 15 million pounds should meet DAC and FP requirements. If, as the committee anticipates, increasing the tolerance for smaller size fruit will impact about three to five percent of the crop, this change should allow between about 450,000 and 750,000 pounds more Deglet Noor dates to be sold as DAC and FP dates. With a net increase to handlers and producers of about $.50 per pound and $.30 per pound, respectively, for U.S. Grade B dates, this change could mean an increase in total net returns of $225,000–$375,000 for all handlers and $135,000–$225,000 for all producers. The benefits for this rule are not expected to be disproportionately greater or less for small handlers or producers than for larger entities.

The committee discussed alternatives to this change, including not increasing the tolerance at all, as well as increasing the tolerance by 10 percent rather than five percent. While only a small amount of the crop is expected to be affected by increasing the tolerance, the committee believes that an increase should benefit producers and handlers with smaller fruit this season. The committee considered increasing the tolerance from 10 to 20 percent but believed that this could put too much smaller size fruit on the market. In addition, committee members commented that the tolerance was increased by five percent during the 1992–93 season and in prior seasons because of similar problems of an abundance of small size fruit due to hot temperatures, and that the five percent increase was satisfactory. Thus, the majority of committee members agreed that the tolerance for the size of Deglet Noor dates should be increased from 10 to 15 percent through October 31, 1997.

This final rule will relax size requirements under the date marketing order. Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large date handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

As noted in the initial regulatory flexibility analysis, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule. However, as previously stated, DAC and FP dates must meet the requirements for U.S. Grade B, as specified in the U.S. Standards for Grades of Dates (7 CFR 52.1001 through 52.1011) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627). Standards issued under the Agricultural Marketing Agreement Act of 1946 are voluntary. Further, the public comments received concerning the proposal did not address the initial regulatory flexibility analysis.

In addition, the committee's meeting was widely publicized throughout the date industry and all interested persons were invited to attend the meeting and participate in committee deliberations on all issues. Like all committee meetings, the October 31, 1996, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. The committee itself is composed of nine members, of which six are handlers/producers and three are producers only, the majority of whom are small entities.

A proposed rule concerning this action was issued by the Department on December 2, 1996, put on public display at the Office of the Federal Register on December 5, 1996, and published in the **Federal Register** on Friday, December 6, 1996 (61 FR 64638). Copies of the rule were made available to industry members on December 5, 1996, at a meeting of the California Date Commission (Commission), a State organization that conducts promotional activities for the date industry. Many of the committee members also sit on the Commission. Copies of the rule were also mailed or sent via facsimile to all committee members and date handlers.

Finally, the rule was made available through the Internet by the Office of the Federal Register.

A 15-day comment period was provided to allow interested persons to respond to the proposal. Fifteen days was deemed appropriate because a rule finalizing the action would need to be in place as soon as possible since handlers are already shipping dates from the 1996–97 crop.

Two comments were received during the comment period in response to the proposal. The commenters, both representing the same producer operation, opposed the proposed relaxation. The points made by the commenters were thoroughly discussed prior to the committee vote.

The commenters disagreed with the statement in the proposed rule that the relaxation would benefit both producers and handlers. They claimed that the increased returns to the handlers would not be passed down to the producers. While this may differ between and among individual handlers and producers, it is the Department's understanding that growers are paid for their dates by handlers either on a weight basis (so much money per pound of dates delivered) or on a packout basis (so much money per pound of U.S. Grade B or U.S. Grade C dates). Committee members indicated at the meeting that, when growers are paid based on packout, such growers receive about $.30 more per pound for U.S. Grade B dates than U.S. Grade C dates. As previously mentioned, the committee anticipates that increasing the tolerance for smaller size fruit will allow more dates to meet U.S. Grade B and be sold as DAC and FP dates and thus, will benefit handlers and producers in the industry.

The commenters also contend that the proposed relaxation will lower industry quality standards at a time when the industry should be striving for higher standards. However, as discussed by the committee and specified in the proposed rule, the 5 percent increase in the number of smaller size dates should result in an average of only 2 additional smaller sized dates in each package of approximately 60 dates. The majority of the committee members felt such a relaxation would not significantly affect the overall quality of each date package.

One commenter claimed that the estimate of 450,000 to 750,000 pounds of additional dates made available by the proposed rule is not accurate because the industry's carryin inventory was 14 million pounds. While the total inventory is, indeed, estimated at 14.7 million pounds, the inventory of DAC dates—those dates affected by the relaxation—is only 5.7 million pounds, which is less than normal. The committee's estimate of an additional 450,000 to 750,000 pounds of DAC dates is accurate.

The commenter also suggested that smaller dates would not necessarily come only from the 1996 crop. The commenter stated that the rule's expiration date of October 31, 1997, overlaps the 1997 crop harvest. The commenter contends that smaller dates from the 1997 crop could be packed with the 1996 crop. However, harvest usually begins in mid to late October and only a small amount of dates are harvested and processed before the end of the month. Also, it is common industry practice to store dates for up to 10 months prior to processing, packaging and shipment. Therefore, the October 1997 time period would allow stored 1996 crop dates to be used.

The commenter also claimed that the relaxation is a short term solution and questioned whether other commodities lower quality standards because of adverse weather conditions. Such action has been recommended by other marketing order committees and approved by the Secretary for some commodities. Such recommendations have helped marketing order industries to fully utilize available production when harvests are diminished by adverse weather or other disasters.

Accordingly, no changes will be made to the rule as proposed, based on the comments received.

After consideration of all relevant matter presented, including the information and recommendation submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because handlers are already shipping dates from the 1996–97 crop and handlers want to take advantage of the relaxation as soon as possible. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 15-day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 987

Dates, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 987 is amended as follows:

1. The authority citation for 7 CFR part 987 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

§ 987.112a [Amended]

2. In § 987.112a, paragraphs (b)(2) and (c)(2), the words "December 29, 1992, and ending October 31, 1993," are removed and the words "February 21, 1997, and ending October 31, 1997," are added in their place.

Dated: February 14, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–4335 Filed 2–18–97; 2:02 pm]

BILLING CODE 3410–02–P

Rural Utilities Service

7 CFR Part 1710

RIN 0572–AB30

Pre-Loan Procedures for Electric Loans

AGENCY: Rural Utilities Service, USDA.

ACTION: Direct final rule.

SUMMARY: The Rural Utilities Service (RUS) is issuing a minor amendment to its pre-loan procedures that will clarify that use of a conventional utility indenture as a security instrument for loans to power supply borrowers is permissible. This amendment will give these borrowers and RUS the flexibility to address the complex issues surrounding power supply loans in the rapidly changing electric industry. The rule will also enhance loan security and, by conforming more closely to private lending practice, allow easier access to private sector financing.

In the proposed rules section of this **Federal Register**, RUS is proposing approval of and soliciting comments on this action. If adverse comments are received on this action, RUS will withdraw this final rule prior to its effective date and address the comments recieved in response to this action in a final rule on the related proposed rule, which is published in the proposed rules section of this **Federal Register**. A second public comment period will not be held. Parties interested in commenting on this action should do so at this time.

DATES: This rule will become effective on April 7, 1997, unless we receive written adverse comments or notice of intent to submit adverse comments on or before March 24, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Submit any adverse comments or notice of intent to submit adverse comments to F. Lamont Heppe, Jr., Director, Program Support and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, Room 2230–S, 1400 Independence Avenue, SW., STOP 1522, Washington, DC 20250–1522. RUS requires, in hard copy, a signed original and 3 copies of all comments (7 CFR 1700.30(e)). Comments will be available for public inspection during regular business hours at Room 4034, South Building, U.S. Department of Agriculture, Washington, DC 20250 between 8:00 a.m. and 4:00 p.m. (7 CFR part 1.27(b)).

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Director, Program Support and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, Room 2230–S, 1400 Independence Avenue, SW., STOP 1522, Washington, DC 20250–1522. Telephone: 202–720–0736. FAX: 202–720–4120. E-mail: fheppe@rus.usda.gov.

SUPPLEMENTARY INFORMATION: This regulatory action has been determined to be not significant for the purposes of Executive Order 12866, Regulatory Planning and Review, and, therefore has not been reviewed by the Office of Management and Budget (OMB). The Administrator of RUS has determined that a rule relating to the RUS electric loan program is not a rule as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) for which RUS published a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b), or any other law. Therefore, the Regulatory Flexibility Act does not apply to this action. The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment. This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A Notice of Final Rule titled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts RUS electric loans and loan guarantees from coverage under this Order. This rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in Sec. 3. of the Executive Order.

The program described by this rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850 Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325.

Information Collection and Recordkeeping Requirements

The recordkeeping and reporting burdens contained in this rule were approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) under control number 0572–0032.

Background

RUS recognizes that power supply borrowers (also known as generation and transmission borrowers or "G&T's") generally have a far more complex corporate structure and face more complex financing issues than distribution borrowers. In order to meet the financing needs of these borrowers more efficiently, RUS is amending its regulations to specifically allow the use of a conventional utility indenture in lieu of a mortgage as security instruments for loans to these borrowers.

Although current RUS regulations do not preclude the use of trust indentures as security instruments for RUS loans, the Agency believes that it would be useful to clarify how RUS regulations in 7 CFR Chapter XVII will be reconciled with any conflicting provisions contained in conventional utility indentures and related loan contracts which the Agency may accept in lieu of typical RUS mortgages and mortgages as loan instruments. The Agency anticipates that otherwise some of the provisions in such indentures and loan contracts might conflict with provisions in this chapter that were developed to implement or interpret the traditional standard forms of RUS loan instruments which were designed for use under different circumstances.

On July 18, 1995, at 60 FR 36882, and December 29, 1995, at 60 FR 67396, RUS substantially revised the forms of loan instruments it uses in making loans to electric distribution borrowers. Because of the differing situations of power supply borrowers, RUS did not attempt to prescribe corresponding forms of those new documents for power supply borrowers. Nevertheless, RUS recognizes that many of the reasons underlying the modernization effort apply to its power supply borrowers. Thus, RUS believes that the option of using trust indentures represents a balanced approach to increasing borrowers' access to private capital markets and reducing RUS operational controls while simultaneously enhancing RUS loan security by appropriately adapting to the changing cooperative electric industry.

RUS is willing to consider the use of an indenture when RUS and the power supply borrower mutually agree that it is appropriate. The terms of each indenture and related loan agreement will be negotiated on a case by case basis to best meet the needs of the individual borrower and the Government as the electric industry undergoes a period of drastic change. RUS believes that ultimately this approach will enhance loan security by addressing the individual circumstances of each borrower; will allow RUS greater flexibility in dealing with the more complex structures of most power supply borrowers; and will allow these borrowers easier access to private sources of credit, thus reducing their dependence on RUS financing. RUS recognizes that this approach may conflict from time to time with some provisions of 7 CFR Chapter XVII. This regulation provides that the terms of any indenture or associated loan contract control in such circumstances.

RUS is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in the proposed rules section of this **Federal Register** publication, RUS is proposing to amend 7 CFR part 1710 should adverse or critical comments be filed.

If RUS receives such comments, RUS will publish a subsequent document that will withdraw this direct final rule before the effective date. All public comments received will be addressed in a subsequent final rule based on the proposed rule. RUS will not institue a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

List of Subjects in 7 CFR Part 1710

Electric power, Electric utilities, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

For the reasons set out in the preamble, and under the authority of 7 U.S.C. 901 *et seq.*, RUS amends 7 CFR Part 1710 as follows:

PART 1710—GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

1. The authority citation for part 1710 continues to read as follows:

Authority: 7 U.S.C. 901–950(b); Pub. L. 99–591, 100 Stat. 3341; Pub. L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

2. Section 1710.113 is amended by redesignating the existing paragraph (c) as paragraph (c)(1) and adding a new paragraph (c)(2) to read as follows:

§ 1710.113 Loan security.

* * * * *

(c)(1) * * *

(2) The Administrator, at his or her discretion, may approve the use of an indenture patterned after those indentures commonly used by utilities engaged in private market financing, in lieu of a mortgage as the security instrument for loans to power supply borrowers. The use of an indenture will be by mutual agreement of the borrower and the Administrator. The terms of each indenture and related loan agreement will be negotiated on a case by case basis to best meet the needs of the individual borrower and the Government. The provisions of the indenture and loan contract shall control, notwithstanding any provisions of 7 CFR Chapter XVII which may be in conflict therewith.

* * * * *

Dated: February 10, 1997.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 97–3990 Filed 2–19–97; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–24–AD; Amendment 39–9933; AD 97–04–09]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42–300 and ATR42–320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR42–300 and ATR42–320 series airplanes. This action requires repetitive ultrasonic inspections to detect fatigue cracks of the lower lugs of the barrel of the main landing gear (MLG); and replacement of cracked lower lugs with new or serviceable ones and a follow-on inspection. This amendment is prompted by reports indicating that, due to fatigue cracking in the lower lugs of the barrel, the MLG collapsed. The actions specified in this AD are intended to detect and correct such fatigue cracking, which could lead to the collapse of the MLG.

DATES: Effective March 7, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 7, 1997.

Comments for inclusion in the Rules Docket must be received on or before April 21, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–24–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gary Lium, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1112; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Aerospatiale Model ATR42–300 and ATR42–320 series airplanes. The DGAC advises that it has received reports indicating that the main landing gear (MLG) collapsed on two airplanes; one incident occurred during taxi and the other during landing roll. Investigation revealed that, following normal overhaul or repair procedures, moisture may enter the joint between the fixed barrel and the shock absorbing portion of the trailing arm of the MLG. Such moisture could result in corrosion and consequent fatigue cracking in the lower lugs of the barrel of the MLG, which is the main attachment point for the joint.

Fatigue cracking in the lower lugs of the barrel of the MLG, if not detected and corrected in a timely manner, could lead to the collapse of the MLG.

Explanation of Relevant Service Information

Messier-Dowty has issued Service Bulletin No. 631–32–132, dated January 21, 1997, which describes procedures for performing repetitive ultrasonic inspections to detect fatigue cracks of the barrel lower lugs of MLG. The service bulletin also describes procedures for replacement of cracked barrel lower lugs with new or serviceable ones and a follow-on inspection. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 96–294(B), dated January 15, 1997, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to detect and correct fatigue cracking in the lower lugs of the barrel, which could result in collapse of the MLG. This AD requires repetitive ultrasonic inspections to detect fatigue cracks of the lower lugs of the barrel of MLG. This AD also requires replacement of cracked lower lugs with new or serviceable ones and a follow-on inspection. The actions are required to be accomplished in accordance with the service bulletin described previously.

Interim Action

The FAA is considering further rulemaking action to supersede this AD to require modification of the lower lugs of the barrel of the MLG, which will constitute terminating action for the repetitive inspections required by this AD action. However, the planned compliance time for these actions is sufficiently long so that prior notice and time for public comment will be practicable.

In addition, the FAA is continuing to investigate whether the existing design of the lower lugs of the barrel makes overhauls or repairs difficult to accomplish correctly. Preliminary investigation results indicate that, following an improperly overhauled or repaired lower lug of the barrel, moisture could enter the joint between the fixed barrel and the shock absorbing portion of the trailing arm of the MLG. Such moisture could result in corrosion and consequent fatigue cracking in the lower lugs of the barrel, which may lead to the collapse of the MLG. Once final action is identified, the FAA may consider additional rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–24–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–04–09 Aerospatiale: Amendment 39–9933. Docket 97–NM–24–AD.

Applicability: Model ATR42–300 and ATR42–320 series airplanes, on which the lower lugs of the barrel of the main landing gear (MLG) have been overhauled or repaired, certificated in any category.

Note 1: This AD does not affect new barrel assemblies that have never been overhauled or repaired.

Note 2: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking in the lower lugs of the barrel and consequent collapse of the MLG, accomplish the following:

(a) Prior to the accumulation of 2 years time-in-service since last overhaul or repair of the barrel lower lugs of the MLG, or within 60 days after the effective date of this AD, whichever occurs later, perform an ultrasonic inspection to detect fatigue cracks of the lower lugs of the barrel of the MLG, in accordance with Messier-Dowty Service Bulletin 631–32–132, dated January 21, 1997.

(1) If no echo is detected or the echo is less than 20%, repeat the ultrasonic inspection thereafter at intervals not to exceed 700 landings.

(2) If any echo is greater than or equal to 20%, prior to further flight, replace the barrel assembly with a new or serviceable barrel assembly, in accordance with the service bulletin. After replacement, prior to the accumulation of 2 years time-in-service on that replacement part, accomplish the actions specified in paragraph (a) of this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspections and replacement shall be done in accordance with Messier-Dowty Service Bulletin 631–32–132, dated January 21, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on March 7, 1997.

Issued in Renton, Washington, on February 10, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–3843 Filed 2–19–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 97–CE–06–AD; Amendment 39–9937; AD 97–04–02]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company (Formerly Beech Aircraft Corporation) Models 1900, 1900C, and 1900D Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 97–04–02, which was sent previously to known U.S. owners and operators of certain Raytheon Aircraft Company (Raytheon) Models 1900, 1900C, and 1900D airplanes (formerly referred to as Beech Models 1900, 1900C, and 1900D airplanes). This AD requires installing new exterior operating instruction placards for the airstair door, cargo door, and emergency exits, as applicable. This AD results from an accident involving a Raytheon Model 1900C airplane that collided with another airplane while completing its landing roll. The ensuing fire destroyed both airplanes. The actions specified by this AD are intended to assure complete instructions are visible for opening the airstair door, cargo door, or emergency exits, which, if not visible or understandable, could result in the inability to open the airstair door, cargo door, or emergency exits during an emergency situation.

DATES: Effective March 10, 1997, to all persons except those to whom it was made immediately effective by priority letter AD 97–04–02, issued February 4, 1997, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 10, 1997.

Comments for inclusion in the Rules Docket must be received on or before April 25, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 97–CE–06–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from the Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085. This information may also be examined at the Rules Docket at the address above, or at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Potter, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4124; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

On February 4, the FAA issued priority letter AD 97–04–02, which applies to the following Raytheon Aircraft Company (formerly Beech Aircraft Corporation) airplanes:

Model	Serial No.
1900	UA–2 and UA–3.
1900C	UB–1 through UB–74, and UC–1 through UC–174.
1900C (C–12J)	UD–1 through UD–6.
1900D	UE–1 through UE–268.

That AD resulted from an accident involving a Raytheon Aircraft Company (Raytheon) Model 1900C airplane (formerly referred to as Beech Model 1900C) that collided with another airplane while completing its landing roll. The ensuing fire destroyed both airplanes.

Investigation following the accident indicates that all occupants of the Raytheon Model 1900C survived the impact of the collision. The emergency crew was not able to open the forward (main boarding) airstair door, and all occupants of the airplane died of smoke inhalation. The airstair door is unlocked and opened from the outside by depressing a release button while simultaneously rotating the door handle downward. The FAA believes that the instructions for opening the main boarding door of the Raytheon Model 1900C airplane were either not visible or not easily understandable.

Inspection of another Raytheon Model 1900C airplane revealed incomplete instructions for opening the airstair door. Specifically, these instructions consisted of a small placard with black letters 2/10-inch high on a white background, located aft and slightly lower than the door handle with the following information: "PUSH BUTTON AND TURN HANDLE TO OPEN." The button was neither outlined nor highly visible, and the instructions did not include the requirement of depressing the button while simultaneously rotating the handle and they did not indicate which direction to move the handle.

Discussion of the Applicable Service Information

The FAA has reviewed and approved Raytheon Aircraft Mandatory Service Bulletin No. 2741, Issued: February, 1997. This service bulletin specifies installing (1) new exterior operating instruction placards for the airstair door and cargo door for Raytheon Models 1900 and 1900C airplanes; and (2) new exterior operating instruction placards for the airstair door, cargo door, and emergency exits for Raytheon Model 1900D airplanes. The placards and procedures for installing the placards are included with the following kits:

Raytheon Part Number (P/N) 114–5050–3, Exterior Marking Placard Kit, for Model 1900 airplanes, serial numbers UA–2 and UA–3.

Raytheon P/N 114–5050–1, Exterior Marking Placard Kit, for Model 1900C, serial numbers UB–1 through UB–74, and UC–1 through UC–174; and Model 1900C (C–12J) airplanes, serial numbers UD–1 through UD–6.

Raytheon P/N 129–5030–1, Exterior Marking Placard Kit, for Model 1900D airplanes, serial numbers UE–1 through UE–268.

The FAA's Determination and Explanation of the AD

Since an unsafe condition has been identified that is likely to exist or develop in other Raytheon Models 1900, 1900C, and 1900D airplanes of the same type design, the FAA issued priority letter AD 97–04–02 to assure complete instructions are visible for opening the airstair door, cargo door, or emergency exits, which, if not visible or understandable, could result in the inability to open the airstair door, cargo door, or emergency exits during an emergency situation. The AD requires installing new exterior operating instruction placards for the airstair door, cargo door, and emergency exits, as

applicable. The placards and instructions to accomplish the instructions are included with the kits previously referenced.

Compliance Time of This AD

The compliance time of this AD is presented in calendar time (20 days). The FAA has determined that calendar time is appropriate because incorporating the placard is not related to airplane flight hours and needs to be incorporated on all airplanes within a reasonable period of time. This compliance time of 20 days was selected to ensure that the action is accomplished within a reasonable amount of time without negatively impacting the operations of the Raytheon Models 1900, 1900C, and 1900D airplane fleet.

Determination of the Effective Date of the AD

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual lettters issued on February 4, 1997, to known U.S. operators of certain Raytheon Models 1900, 1900C, and 1900D airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective as to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–CE–06–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

97–04–02 Raytheon Aircraft Company (formerly Beech Aircraft Corporation): Amendment 39–9937; Docket No. 97–CE–06–AD.

Applicability: The following model and serial number airplanes, certificated in any category:

Model	Serial No.
1900	UA–2 and UA–3.
1900C	UB–1 through UB–74, and UC–1 through UC–174.
1900C (C–12J)	UD–1 through UD–6.
1900D	UE–1 through UE–268.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 20 days after the effective date of this AD, unless already accomplished, except to those operators receiving this action by priority letter issued February 4, 1997, which made these actions effective immediately upon receipt.

To assure complete instructions are visible for opening the airstair door, cargo door, or emergency exits, which, if not visible or understandable, could result in the inability to open the airstair door, cargo door, or emergency exits during an emergency situation, accomplish the following:

(a) Install new exterior operating instruction placards for the airstair door and cargo door of Raytheon Models 1900 and 1900C airplanes; and the new exterior operating instruction placards for the airstair door, cargo door, and emergency exits of Raytheon Model 1900D airplanes. The placards and procedures for installing the placards are included with the following kits, as referenced in Raytheon Aircraft Mandatory Service Bulletin No. 2741, Issued: February, 1997:

(1) Raytheon Part Number (P/N) 114–5050–3, Exterior Marking Placard Kit, for Model 1900 airplanes, serial numbers UA–2 and UA–3;

(2) Raytheon P/N 114–5050–1, Exterior Marking Placard Kit, for Model 1900C airplanes, serial numbers UB–1 through UB–74, and UC–1 through UC–174; and Model 1900C (C–12J), serial numbers UD–1 through UD–6; or

(3) Raytheon P/N 129–5030–1, Exterior Marking Placard Kit, for Model 1900D airplanes, serial numbers UE–1 through UE–268.

Note 2: Raytheon Aircraft Mandatory Service Bulletin No. 2741, Issued: February, 1997, references the above kits and contains other information relating to this subject.

(b) Overlapping the registration numbers through proper installation of the placards is permissible as specified in section 45.21, paragraph (b), of the Federal Aviation Regulations (14 CFR 45.21(b)). If this requirement cannot be met, obtain an alternative method of compliance using the instructions in paragraph (c) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Airworthiness Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(d) The installations required by this AD shall be done in accordance with the instructions to the following kits, as referenced in Raytheon Aircraft Mandatory Service Bulletin No. 2741, Issued: February, 1997:

—Raytheon Part Number (P/N) 114–5050–3, Exterior Marking Placard Kit, for Model 1900 airplanes, serial numbers UA–2 and UA–3;

—Raytheon P/N 114–5050–1, Exterior Marking Placard Kit, for Model 1900C airplanes, serial numbers UB–1 through UB–74, and UC–1 through UC–174; and Model 1900C (C–12J), serial numbers UD–1 through UD–6; and

—Raytheon P/N 129–5030–1, Exterior Marking Placard Kit, for Model 1900D airplanes, serial numbers UE–1 through UE–268.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Raytheon Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(e) This amendment (39–9937) becomes effective on March 10, 1997, to all persons except those persons to whom it was made immediately effective by priority letter AD 97–04–02, issued February 4, 1997, which contained the requirements of this amendment.

Issued in Kansas City, Missouri, on February 11, 1997.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–3957 Filed 2–19–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 97–NM–27–AD; Amendment 39–9940; AD 97–04–15]

RIN 2120–AA64

Airworthiness Directives; Pacific Scientific Company, HTL/Kin-Tech Division, Fire Extinguisher Bottle Cartridges

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Pacific Scientific Company, HTL/Kin-Tech Division, fire extinguisher bottle cartridges (squibs), which may be installed on various transport category airplanes. This action requires a one-time inspection of the electrical receptacle of these fire extinguisher bottle cartridges and their mating connectors to detect the presence of aluminum foil in the area of the pins of the cartridges and the connectors, and removal of any aluminum foil that is present. This amendment is prompted by a report of failure of a fire extinguisher bottle cartridge to discharge as a result of the presence of aluminum foil in the cartridge, which caused electrical shorting of the pins. The actions specified in this AD are intended to prevent such shorting, which could result in failure of the fire extinguisher bottle to discharge when commanded.

DATES: Effective March 7, 1997.

Comments for inclusion in the Rules Docket must be received on or before April 21, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–27–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5245; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: The FAA received a report indicating that a Pacific Scientific Company, HTL/Kin-Tech Division, fire extinguisher bottle cartridge (squib) failed to discharge when commanded. Investigation revealed that aluminum foil was present in the cartridge, which caused electrical shorting of the pins. Aluminum foil is used to shunt the electrical pins of the cartridge for shipping purposes. The aluminum foil had not been removed properly prior to installation of the fire extinguisher bottle cartridge. Further investigation revealed that the electrical shorting condition existed on six other installed cartridges.

The affected cartridges are Pacific Scientific Company, HTL/Kin-Tech Division, fire extinguisher bottle cartridges having part numbers 13083–10 and 13083–25.

Electrical shorting of the pins in the fire extinguisher bottle cartridges, if not corrected, could result in failure of the fire extinguisher bottle to discharge when commanded.

FAA's Determination

The FAA has determined that, in order to ensure that the fire extinguisher bottle will discharge when commanded, Pacific Scientific Company, HTL/Kin-Tech Division, fire extinguisher bottle cartridges having part numbers 13083–10 and 13083–25 must be inspected to ensure that any aluminum foil is removed from the fire extinguisher bottle cartridges installed on the affected airplanes.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other components of the same type design installed on transport category airplanes, this AD is being issued to prevent electrical shorting of the pins of the fire extinguisher bottle cartridge, which could result in failure of the fire extinguisher bottle to discharge when commanded. This AD requires a one-time visual inspection of the electrical receptacle of certain Pacific Scientific Company, HTL/Kin-Tech Division, fire extinguisher bottle cartridges and their mating connectors to detect the presence of aluminum foil in the area of the pins of the cartridges and the connectors, and removal of any aluminum foil that is present.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and

opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: Comments to Docket Number 97–NM–27–AD. The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–04–15 Pacific Scientific Company, HTL/KIN-Tech Division: Amendment 39–9940. Docket 97–NM–27–AD.

Applicability: Fire extinguisher bottle cartridges (squibs) having part numbers (P/N) 13083–10 and –25; as installed in, but not limited to, the following airplane models, certificated in any category:

de Havilland Model DHC–7 series airplanes;

de Havilland Model DHC–8–100 and –300 series airplanes;

General Dynamics Convair Model 340, 440, and C–131 (military) series airplanes modified in accordance with Supplemental Type Certificate SA41100;

Lockheed Model 382 series airplanes; and Sabreliner Model 60, 65, and 75A series airplanes.

Note 1: This AD applies to Pacific Scientific Company, HTL/Kin-Tech Division, fire extinguisher bottle cartridges having P/N's 13083–10 and –25, as installed on any airplane, regardless of whether the airplane has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent electrical shorting of the pins of the fire extinguisher bottle cartridge, which could result in failure of the fire extinguisher bottle to discharge when commanded, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the following:

(1) Pull the applicable circuit breakers and disconnect the electrical connector from any Pacific Scientific Company, HTL/Kin-Tech Division, fire extinguisher bottle cartridge (squib) having P/N 13083–10 or 13083–25. CAUTION: Prior to removing the electrical connector from the fire extinguisher bottle cartridge, ensure that the technician is grounded properly. Cartridges are electrostatic discharge (ESD) sensitive.

(2) Perform a one-time visual inspection of the electrical receptacle of the cartridge and its mating connector to detect the presence of aluminum foil in the area of the pins of the cartridge and the connector. The aluminum foil may have the appearance of solder. Remove any aluminum foil that is present.

(3) Reinstall the electrical connector, and reset the applicable circuit breakers.

Note 2: Inspections and removal of foil accomplished prior to the effective date of this AD in accordance with Pacific Scientific Service Letter 97–018.BC, dated January 21, 1997, are considered acceptable for compliance with the requirements of this AD.

(b) As of the effective date of this AD, no person shall install on any airplane a Pacific Scientific Company, HTL/Kin-Tech Division, fire extinguisher bottle cartridge having P/N 13083–10 or 13083–25, unless the cartridge has been inspected in accordance with paragraph (a)(2) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on March 7, 1997.

Issued in Renton, Washington, on February 12, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–4102 Filed 2–19–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–ANE–37; Amendment 39–9732; AD 96–18–08]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney PW2000 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 96–18–08 applicable to Pratt & Whitney PW2000 series turbofan engines that was published in the **Federal Register** on September 30, 1996 (61 FR 50984). A superfluous phrase was added to the compliance section and is incorrect. This document deletes that phrase. In all other respects, the original document remains the same.

EFFECTIVE DATE: February 20, 1997.

FOR FURTHER INFORMATION CONTACT: John Fisher, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7149, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A final rule airworthiness directive applicable to Pratt & Whitney PW2000 series turbofan engines, was published in the **Federal Register** on September 30, 1996 (61 FR 50984). The following correction is needed:

§ 39.13 [Corrected]

On page 50986, in the third column, in the Compliance Section of AD 96–18–08, in paragraph (n)(3), beginning in the second line, "prior to exceeding 20,000 TPC, accomplish the following:" is corrected to read "prior to exceeding 20,000 TPC.".

Issued in Burlington, MA, on February 5, 1997.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 97–4142 Filed 2–19–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–ANE–37; Amendment 39–9874; AD 97–01–03]

RIN 2120–AA64

Airworthiness Directives; Textron Lycoming Reciprocating Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 97–01–03 applicable to certain Textron Lycoming reciprocating engines that was published in the **Federal Register** on January 3, 1997 (62 FR 307). Paragraph (g) in the compliance section was misdesignated as paragraph(f). This document redesignates that paragraph. In all other respects, the original document remains the same.

EFFECTIVE DATE: February 20, 1997.

FOR FURTHER INFORMATION CONTACT: Franco Pieri and Pat Perrotta, Aerospace Engineer, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 10 Fifth St., Valley Stream, NY 11581; telephone (516) 256-7526 and (516) 256–7534, fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A final rule airworthiness directive applicable to certain Textron Lycoming reciprocating engines, was published in the **Federal Register** on January 3, 1997 (62 FR 307). The following correction is needed:

§ 39.13 [Corrected]

On page 309, in the first column, in the Compliance Section, the second paragraph "(f)" is redesignated to read paragraph "(g)".

Issued in Burlington, MA, on February 5, 1997.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 97–4143 Filed 2–19–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 93–AWA–13]

RIN 2120–AA66

Modification of Los Angeles (LAX) Class B Airspace Area; CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule published in the **Federal Register** on December 19, 1996 (61 FR 66902), Airspace Docket No. 93–AWA–13. This rule modified the Los Angeles (LAX) Class B airspace area. In the final rule, the airspace designation as Area G inadvertently contained two errors. This action corrects those errors.

EFFECTIVE DATE: 0901 UTC July 17, 1997.

FOR FURTHER INFORMATION CONTACT:

William C. Nelson, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION: **Federal Register** Document 96–32109, Airspace Docket No. 93–AWA–13, published on December 19, 1996 (96 FR 66902), modified the LAX Class B airspace area. However, in the rule the description for Area G inadvertently described the portion of the area after Imperial Hwy/Pacific Ocean with incorrect coordinates. This action corrects the coordinates after Imperial Hwy/Pacific Ocean by replacing them with the correct coordinates. Additionally, the airspace designation contained a descriptive boundary line defined by coordinates that should not have been included in the legal description. This action corrects the description of Area G by removing those coordinates.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the airspace designation for Area G, for the Class B airspace area as published in the **Federal Register** on December 19, 1996, (61 FR 66906; **Federal Register** Document 96–32109, Column 3) is corrected as follows:

§ 71.71 [Corrected]

Area G. That airspace extending upward from 5,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at lat. 33°55′51″ N, long. 118°26′05″ W (Imperial Hwy/Pacific Ocean); to lat. 33°55′48″ N, long. 118°13′54″ W; to lat. 33°53′35″ N, long. 118°10′55″ W (Dominguez High School); to lat. 33°54′10″ N, long. 118°01′49″ W; to lat. 33°47′00″ N, long 118°03′17″ W (Seal Beach VORTAC/Los Alamitos Armed Forces Reserve Center); to lat. 33°46′28″ N, long. 118°11′54″ W (Long Beach VA Hospital); to lat. 33°45′34″ N, long. 118°27′01″ W (LIMBO Intersection); to the point of beginning.

* * * * *

Issued in Washington, DC, on January 30, 1997.

William J. Marx,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 97-3236 Filed 2-19-97; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 96-ASW-29]

Revocation of Class D Airspace; Blytheville, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action revokes the Class D airspace at Blytheville, AR. The decommissioning of the Blytheville, Arkansas International Airport control tower removes the need for Class D airspace extending upward from the surface to, but not including, 2,800 feet Mean Sea Level (MSL) within a 4.6-mile radius of the airport. This action is intended to revoke the unnecessary Class D airspace.

DATES: *Effective date:* 0901 UTC, March 7, 1997.

Comment date: Comments must be received on or before April 21, 1997.

ADDRESSES: Send comments on the rule in triplicate to Manager, Operations Branch, Air Traffic Division, Federal Aviation Administration Southwest Region, Docket No. 96-ASW-29, Fort Worth, TX 76193-0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Operations Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone 817-222-5593.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is a final rule, which involves the revocation of Class D airspace at Blytheville, AR, and was not preceded by notice and public procedure, comments are invited on the rule. However, after the review of any comments and, if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to extend the effective date or to amend the regulation.

Interested parties are invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required.

Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) revokes the Class D airspace, providing controlled airspace for terminal instrument operations, located at Blytheville, Arkansas International Airport, AR. The current Class D airspace was supported by a control tower, which was decommissioned following the closure of Eaker Air Force Base, subsequently renamed Blytheville, Arkansas International Airport.

Since this action merely involves the revocation of Class D airspace as a result of closing the airport control tower, notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Since there will no longer be a control tower at Blytheville, Arkansas International Airport, the Class D airspace must be removed to avoid confusion on the part of the pilots flying in the vicinity of the airport, and to promote the safe and efficient handling of air traffic in the area. Therefore, I find that notice and public procedure under 5 U.S.C. 553 are unnecessary and good cause exists for making this amendment effective in less than thirty days.

The FAA has determined that this regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, *Airspace Designations and Reporting Points*, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 5000 Class D airspace areas designated for an airport.

* * * * *

ASW AR D Blytheville, AR [Removed]

* * * * *

Issued in Fort Worth, TX, on February 12, 1997.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 97-4211 Filed 2-19-97; 8:45 am]

BILLING CODE 4913-13-M

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14 CFR Part 71

[Airspace Docket No. 97-ASW-01]

Removal of Class D Airspace; Shreveport Downtown Airport, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action removes the Class D airspace at Shreveport Downtown Airport, LA. The air traffic control tower at Shreveport Downtown Airport closed on December 31, 1995, and no longer provides services to aircraft operating at this airport. This action is intended to remove the controlled airspace for aircraft operating in the vicinity of Shreveport Downtown Airport, LA.

DATES: Effective date: 0901 UTC, April 21, 1997.

Comment date: Comments must be received on or before April 7, 1997.

ADDRESSES: Send comments on the rule in triplicate to Manager, Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 97-ASW-01, Fort Worth, TX 76193-0530. The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Operations Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone 817-222-5593.

SUPPLEMENTARY INFORMATION: This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) removes the Class D airspace, providing controlled airspace for airport operations, located at Shreveport Downtown Airport, LA. The closing of the air traffic control tower allows removal of the Class D airspace previously required to provide adequate controlled airspace for aircraft operating in the vicinity of the airport. This removal will avoid confusion on the part of the pilots flying near the airport, and promote the safe and efficient handling of air traffic in the area. This action will remove the Class D airspace at Shreveport Downtown Airport, LA. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9D. dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR § 71.1. The Class D airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Additionally, removal of this Class D airspace will result in less restrictive airspace and reclassifying airspace to a less restrictive classification usually results in less adverse comments. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97-ASW-01." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact; positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:.

PART 71—[AMENDED]

1. The authority citation for 14 CFR 71 continues to read as follows:

Authority: 49 U.S.C. app. 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, *Airspace Designations and Reporting Points*, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 5000 Class D airspace designated for an airport.

* * * * *

ASW LA D Shreveport Downtown Airport, LA [Removed]

* * * * *

Issued in Fort Worth, TX, on February 12, 1997.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 97–4210 Filed 2–19–97; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–ASW–05]

Establishment of Class E Airspace; Sonora, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes the Class E airspace extending upward from 700 feet above ground level (AGL) at Canyon Ranch Airport, Sonora, TX. The development of a Very High Frequency Omnidirectional Range (VOR)/Distance Measuring Equipment (DME) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 32 at Canyon Ranch Airport has made this action necessary. This action is intended to provide adequate Class E airspace to contain instrument flight rule (IFR) operations for aircraft executing the VOR/DME SIAP to RWY 32 at Canyon Ranch Airport, Sonora, TX.

EFFECTIVE DATE: 0901 UTC, May 22, 1997.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Operations Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION:

History

On June 19, 1996, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Canyon Ranch Airport, Sonora, TX, was published in the **Federal Register** (61 FR 31066). A VOR/DME SIAP to RWY 32 developed for Canyon Ranch Airport, Sonora, TX, requires the establishment of Class E airspace at this airport. The proposal was to establish the controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. However, the proposal was published with an incorrect coordinate for the location of the Canyon Ranch Airport, Sonora, TX. The correct coordinates for the airport should have been (Lat. 30°16′09″ N, long. 100°27′03″ W). The description of the Class E airspace in this rule has been revised to reflect this change. The FAA has determined that this change will not increase the scope of this rule. Therefore, except for the non-substantive, editorial changes to correct the airport coordinates, the rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace areas extending upward from 700 feet or more AGL are published in Paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes the Class E airspace located at Canyon Ranch Airport, Sonora, TX, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the VOR/DME SIAP to RWY 32.

The FAA has determined that this regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, *Airspace Designations and Reporting Points*, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW TX E5 Sonora Canyon Ranch, TX [New]

Sonora, Canyon Ranch Airport, TX
(Lat. 30°16′09″ N., long. 100°27′03″ W.)
Rocksprings VOR
(Lat. 30°00′53″ N., long. 100°17′59″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Canyon Ranch Airport, and within 1.8 miles each side of the 333° bearing from the Rocksprings VOR extending from the 6.6-mile radius to 7.6 miles southeast of the airport, excluding that airspace which overlies the Rocksprings Four Square Ranch Airport Class E area.

* * * * *

Issued in Fort Worth, TX, on February 12, 1997.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 97–4209 Filed 2–19–97; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Parts 91, 119, 12[illegible] and 135

[Docket No. 28577, Special Federal Aviation Regulation (SFAR) No. 78]

RIN 2120–AG11

Special Flight Rules in the Vicinity of the Rocky Mountain National Park; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final rule published in the **Federal Register** (62 FR 1192) on January 8, 1997. The final rule establishes temporary Special Federal Aviation Regulations (SFAR) at Rocky Mountain National Park (RMNP) to preserve the natural enjoyment of visitors to RMNP by preventing any potential adverse noise impact from aircraft-based sightseeing overflights.

EFFECTIVE DATE: February 11, 1997.

FOR FURTHER INFORMATION CONTACT: Neil Saunders (202–267–8783).

Correction of Publication

In the rule document (FR Doc. 97–435) on page 1192 in the issue of Wednesday, January 8, 1997, Amendment numbers were inserted incorrectly in the docket line of the heading. Please make the following corrections: On page 1192, column 1, in the heading, the docket line in brackets is corrected to read as set forth above.

Issued in Washington, DC on February 11, 1997.

Donald P. Byrne,

Assistant Chief Counsel.

[FR Doc. 97–4210 Filed 2–19–97; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Alternative Method of Compliance With the Written Record Requirements

AGENCY: Commodity Futures Trading Commission.

ACTION: Advisory; alternative method of compliance.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is issuing advice concerning compliance with the "written" record requirements of Commission Regulation 1.35 (17 CFR 1.35) for customer orders which are prepared and transmitted to and reported from exchange trading pits by electronic order-routing systems and for customer orders prepared by electronic off-floor order management systems (referred to collectively as "electronic order-routing systems"). The "written" record requirements of Commission Regulation 1.35(a–1)(1), (a–1)(2)(i), (a–1)(4), and/or (d) will be deemed satisfied, subject to the terms and conditions set forth in this Advisory, to the extent that such a system generates electronic rather than "written" records. The electronic record of a customer order generated through an electronic order-routing system must include any modification made to the order, including any change or correction, as well as the time the modification is recorded in the system. The system also must maintain an accurate record of when and by whom records are accessed or modified. In addition, such a system must capture all order-related times required under these Commission Regulation 1.35 subsections to the highest level of precision achievable by the operating system. In this regard, such a captured time must be accurate at least to the second. The time captured must not use a clock that can be modified by the person entering the order. All electronic records of customer orders created by an electronic order-routing system must be maintained in accordance with the record retention requirements of Commission Regulation 1.31.

FOR FURTHER INFORMATION CONTACT: Kimberly A. Browning, Attorney/Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone: (202) 418–5490.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission is hereby issuing guidance concerning alternative compliance with the "written" record requirements of certain Commission Regulation 1.35 subsections which call for the preparation of "written" records of customer orders. Specifically, Regulation 1.35(a–1)(1) requires that a futures commission merchant ("FCM") and introducing broker ("IB"), immediately upon receiving a customer's or option customer's order, prepare a written record of such order, including the account identification, order number, and a timestamp indicating the date and time, to the nearest minute, the order is received.[1] Similarly, Regulation 1.35(a–1)(2)(i) provides that each member of a contract market who receives a customer order on an exchange floor that is not in the form of a written record immediately upon receipt of such order prepare and timestamp a written record of the order.[2] For all such orders, Regulation 1.35(a–1)(4) requires an exit timestamp indicating the date and time of the report of execution.[3] Regulation 1.35(d) provides that a contract market member who executes a trade must prepare a trading card or other record showing the fill information for the customer purchase or sale order.[4]

The Commission is issuing this Advisory to facilitate further the implementation and use of electronic order-routing systems, including both proprietary and exchange systems, in U.S. futures markets. This action constitutes the latest in a series of steps taken by the Commission to encourage the futures industry to realize the business and regulatory benefits of such systems. Recently, to advance the public dialogue on improving the efficiency of exchange and proprietary order-routing systems and to discuss potential practicability issues related to audit trail standards,[5] the Commission convened a public Roundtable in Chicago, Illinois on October 16, 1996. At that forum, market users, financial market experts,

[1] Commission Regulation 1.35(a–1)(1) states that:

Each futures commission merchant and each introducing broker receiving a customer's or option customer's order shall immediately upon receipt thereof prepare a written record of such order, including the account identification and order number, and shall record thereon, by time-stamp or other timing device, the date and time to the nearest minute, the order is received, and in addition, for [an] option customer's order, the time, to the nearest minute, the order is transmitted for execution.

[2] Commission Regulation 1.35(a–1)(2)(i) states that:

Each member of a contract market who on the floor of such contract market receives a customer's or option customer's order which in not in the form of a written record including the account identification, order number, and the date and time, to the nearest minute, such order was transmitted or received on the floor of such contract market, shall immediately upon receipt thereof prepare a written record of such order in non-erasable ink, including the account identification and order number and shall record thereon, by time-stamp or other timing device, the date and time, to the nearest minute, the order is received.

[3] Commission Regulation 1.35(a–1)(4) states that:

Each member of a contract market reporting the execution from the floor of the contract market of a customer's or option customer's order or the order of another member of such contract market received in accordance with paragraphs (a–1)(2)(i) * * * of this section, shall record on a written record of such order, including the account identification and order number, by time-stamp or other timing device, the date and time to the nearest minute such report of execution is made. Each member of a contract market shall submit the written records of customer orders or orders from other contract market members to contract market personnel or to the clearing member responsible for the collection of orders prepared pursuant to this paragraph as required by contract market rules adopted in accordance with paragraph (j)(1) of this section. The execution price and other information reported on such order tickets must be written in non-erasable ink.

[4] Commission Regulation 1.35(d) states, among other things, that:

Each member of a contract market who, in the place provided by the contract market for the meeting of persons similarly engaged, executes purchases or sales of any commodity for future delivery or commodity option on or subject to the rules of such contract market, shall prepare regularly and promptly a trading card or other record showing such purchases and sales. Such trading card or record shall show the member's name, name of the clearing member, transaction date, time, quantity, and, as applicable, underlying commodity, contract for future delivery or physical, price or premium, delivery month or expiration date, whether the transaction involved a put or a call and strike price. Such trading cards or other record shall also clearly identify the opposite floor broker or floor trader with whom the transaction was executed, and the opposite clearing member.

[5] Section 5a(b)(3) of the Futures Trading Practices Act of 1992 ("FTPA") sets forth various heightened audit trail requirements which are subject to a "practicability" standard.

exchange officials and academics met to discuss the trade automation issues currently before the futures industry. Discussion at the Roundtable demonstrated the significance of the development and implementation of exchange and proprietary electronic order-routing systems to the continuing competitiveness of the U.S. exchanges and their member firms.[6] Previously, in February and March 1996, the Commission received automation briefings by the Chicago Mercantile Exchange ("CME"), New York Mercantile Exchange, Coffee, Sugar & Cocoa Exchange, Inc., Chicago Board of Trade, and the Futures Industry Association. The Commission issued a public summary of these proceedings on May 10, 1996, entitled the "Market Automation Briefings-Commission Summary."

The Commission has recognized the important business benefits that can result from electronic order routing systems.[7] The Commission also has emphasized that the FTPA "does not mandate that its enhanced audit trail requirements be met through electronic means."[8] Nevertheless, the Commission believes that "the effective use of technology [will ultimately] * * * provide safer, more efficient, well-supervised markets."[9]

II. Staff No-Action Positions Previously Taken Regarding Electronic Order-Routing Systems

To date, the Commission's Division of Trading and Markets ("Division"), in consultation with the Commission's Office of Information Resources Management ("OIRM"), has issued four no-action letters relating to electronic order-routing systems. Each of the no-action letters provided that the use of a specified electronic order-routing system was not inconsistent with the "written" record preparation requirements of Commission Regulation 1.35. Two letters addressed systems which involved transmission of orders to and from a trading pit. One of those letters dealt with a firm proprietary system[10] and the other an exchange system.[11] The two other letters involved firm proprietary electronic off-floor order management systems.[12] Essentially, those systems provide for the electronic generation, modification, and maintenance of a firm's "office" orders, that is, both discretionary and non-discretionary orders required to be prepared pursuant to Commission Regulation 1.35(a–1)(1).

In assessing both the Timber Hill System[13] and the TOPS–CUBS Program,[14] Division and OIRM staff found both systems are used to generate, in electronic form, all of the customer order information required by Commission Regulation 1.35. In this regard, both the Timber Hill System and the TOPS–CUBS Program capture all modifications made to a customer order, including changes and/or cancellations, as well as the times of such modifications to the nearest second. Moreover, in those cases where an order is filled partially, both the Timber Hill System and the TOPS–CUBS Program reflect the actual quantity that has been executed and timestamp the report of the partial execution to the nearest second. Commission staff also found that both the Timber Hill System and the TOPS–CUBS Program record the necessary Regulation 1.35 times for receipt of customer orders and report of execution times from the trading pit and do so more precisely than is required under the one minute standard in Regulation 1.35.

With respect to the storage of customer order data, both the Timber Hill System[15] and the TOPS–CUBS Program[16] maintain Commission Regulation 1.35 order information[17] for the statutorily required five-year time period, as provided under Regulation 1.31.[18] The staff found that both systems

[6] The Commission shortly will be issuing a public summary of the Roundtable proceedings.

[7] *See* the Commission's "Report on Audit Trail Status and Re-Test" dated August 12, 1996 at p. 42.

[8] *See* the Commission's November 1994 "Report to Congress on Futures Exchange Audit Trails" at p. 62.

[9] *See* the Commission's May 10, 1996 "Market Automation Briefings-Commission Summary" at p. 3.

[10] On July 8, 1996, the Division issued a letter to CME that permitted the CME to allow one of its clearing member firms, Timber Hill, LLC ("Timber Hill") to use, on a permanent basis, a handheld trading device and system ("Timber Hill System") to receive customer orders in and report executions from the equity quadrant of the CME, described *infra*. By letter dated August 25, 1995, the Division originally permitted the CME to use the Timber Hill System for a 90-day pilot program. Extensions of that pilot program were subsequently granted by the Division.

[11] On June 14, 1996, the Division issued a letter that allowed a six-month pilot program to be implemented at CME under which certain CME member firms and floor broker groups are allowed to route customer orders for the front month of the CME's Eurodollar futures contract through the CME's electronic order-routing system, the "Trade Order Processing System" ("TOPS"), to the CME's order receipt system, the "Universal Broker Station" ("CUBS") ("TOPS–CUBS Program"), described *infra*. By letter dated December 13, 1996, Division staff permitted CME to extend the TOPS–CUBS Program to June 13, 1997.

[12] On July 21, 1994, the Division issued a letter to Goldman, Sachs & Co. ("Goldman Sachs") permitting it to implement its automated order preparation and record keeping system, Automated Order Routing and Trade Accounting ("AORTA"). The AORTA system is described *infra*.

On September 12, 1996, the Division issued a similar letter to Morgan Stanley & Co. ("Morgan Stanley") permitting it to implement its automated Order Management System ("OMS"), described *infra*.

[13] In summary, under the Timber Hill System, a customer enters his order(s) electronically through a customer workstation(s) located on his premises. That order then is transmitted via the Timber Hill Network to a basestation located on the CME trading floor in a booth in proximity to the CME's Standard & Poors 500 and NASDAQ 100 futures and options pits. Upon receipt of the order by the floor basestation, the basestation broadcasts it to a wireless handheld device held by a Timber Hill floor broker located in the trading pit for execution. Upon execution (partial or complete), the order's fill information, as input into the handheld device by the floor broker, is transmitted from the handheld unit back to the basestation. The basestation then transmits the fill confirmation information back to the customer at his workstation via the Timber Hill System.

[14] In summary, TOPS is an electronic order entry, routing and fill reporting system. Under the TOPS–CUBS Program, orders for the Eurodollar futures contract are transmitted through TOPS, which includes terminals located off the trading floor, to CUBS computer terminals and associated software designed for use by a broker and/or a broker's clerk while at or in the trading pit. The CUBS system is a wired broker workstation that sits on a pedestal in the pit. It receives orders routed by TOPS and performs electronic order deck management.

[15] The Timber Hill System basestation maintains an on-line file of all customer orders transmitted through it, including order-related timestamps. CME receives this file from the basestation via a serial port feed (cable) on a real-time basis. Upon receipt of the basestation data, CME maintains it in machine-readable form and will keep it for the required five-year time period as provided under Commission Regulation 1.31, described *infra*.

Timber Hill also provides data for all customer orders executed through the Timber Hill system to the CME's clearing system via the on-line system which all CME member firms use to submit trade data to the CME's clearing system, the TREX Record. In addition, customer trade data are stored on the hard drives of customer workstations. On a daily basis, Timber Hill backs up to magnetic tape all customer trade data generated through the basestation, the main/"host" computer and the customer workstations. Within one week of being generated, such data are placed on an optical disc(s). Twice a month, duplicate optical disks are deposited in a vault located off-site.

[16] Customer order data generated by trading activity occurring under the TOPS–CUBS Program are stored in two separate databases, a TOPS database and a CUBS database. This storage is conducted in accordance with the CME's routine security and disaster prevention procedures. As a preliminary matter, data in both databases is "backed-up" every evening onto a series of disk drives on the CME's mainframe computer, where it is stored for 30 days. Subsequently, CME stores the data from both databases in its archives on cartridge tape in a secure location.

[17] Commission Regulation 1.35(a) requires, among other things that each FCM, IB and member of a contract market must "keep full, complete, and systematic records, together with all pertinent data and memoranda, of all transactions relating to its business dealing in commodity futures, commodity options, and cash commodities." Regulation 1.35(a) further provides that such records, which include all orders (filled, unfilled, or cancelled) and trading cards are to be maintained in accordance with the requirements of Regulation 1.31.

[18] Commission Regulation 1.31 requires, among other things, that:

All books and records required to be kept by the [Commodity Exchange] Act or [Commission] regulations shall be kept for a period of five years from the date thereof and shall be readily accessible during the first [two] years of the [five] year period. All such books and records shall be open to inspection by any representative of the Commission or the U.S. Department of Justice [("DOJ")].

were not inconsistent with that regulation, which permits data generated in electronic form to be maintained in optical media and in other forms. In addition, all Regulation 1.35 order information stored in connection with the Timber Hill System and the TOPS–CUBS Program, as described above, is made available, in a timely manner, for access by the Commission upon request in hard copy or machine readable form.

With respect to the TOPS–CUBS Program, Commission staff noted that the Program's ability to record electronically and automatically required Regulation 1.35 customer order information, including order-related times, enhances the preparation of customer data in terms of accuracy and detection of changes and should provide regulatory benefits.[19] The Timber Hill System provides similar benefits.

As previously noted, the two other staff no-action letters relate to electronic office order management systems. Those systems involve the electronic generation, maintenance and retention of office orders related to exchange trading. In general, the systems are intended to increase the efficiency with which these firms manage their order books, including through increased integration with other firm and customer activities. To date, both the Goldman Sachs AORTA system and the Morgan Stanley OMS system do not involve electronic transmission of orders to and from the exchange floor.[20] Nonetheless, these systems involve issues similar to those relating to the Timber Hill System and the TOPS–CUBS Program, but within the confines of their more limited operational scope.

In assessing the AORTA and OMS systems, Division and OIRM staff found that both systems record, in electronic form, all of the customer order information required by Commission Regulation 1.35 for office orders.[21] In addition, both systems were found to capture the time of order entry, the time of the transmission of a customer order to the floor, and the time that a sales person enters order fill (partial or complete) information into his system.[22] Both AORTA and OMS record any change to the customer order information, including the identity of the sales person making any change and the time of such change.

With respect to data storage, both AORTA and OMS were found to satisfy the record retention requirements of Commission Regulation 1.31.[23] Moreover, both of those systems were found to provide regulatory benefits in that they enhance the standards for office order preparation as provided under Commission regulation 1.35.

III. Discussion

The Commission believes that it is appropriate to take into account and to facilitate automation developments that are occurring with respect to exchange-related trading. The Commission also believes that it is preferable to do so through the issuance of this Advisory rather than through the case-by case approach taken by staff in response to the aforementioned proposals for electronic order-routing systems. This Advisory will enable new order routing systems to come on line without the necessity of first seeking a no-action position regarding the "written" record requirements of Commission Regulation 1.35. As a result, the important business and regulatory benefits these systems can provide will be fostered.

For an electronic order-routing system to be covered by this Advisory, it must satisfy the standards discussed below.[24] Those standards are consistent with the terms of the staff no-action positions previously taken regarding such systems and take cognizance of such systems' enhanced operational capabilities.

To the extent that an electronic order-routing system captures information required under Commission Regulation 1.35(a–1)(1), (2)(i), (4), and/or (d), and provided such system satisfies the standards set forth below, a "written" record need not be prepared. To the extent that a system is intended to satisfy one or more of those provisions, then the system must include all information that otherwise would be required to be in written form. Moreover, insofar as a system is used to comply with any one or more of the foregoing sections, it must include all information required by that section(s).[25]

The electronic record of a customer order generated by an electronic order-routing system must include any and all modifications made thereto. The record must include any changes and/or cancellations. All order-related times required under Commission Regulation 1.35, as well as the times for all modifications, are to be captured to the highest level of precision achievable by the operating system. In this regard, the Commission's experience is that these systems have the capability, at a minimum, to capture times to the second. Therefore, the Commission is requiring that such times must be accurate at least to the second. In addition, the times captured must not use a clock that can be modified by the person entering the order.

These systems also need to conform to the Commission's record keeping requirements as provided in Commission Regulation 1.31 for computer-generated records. Pursuant to that rule, computer-generated records can be substituted for a hard copy report when produced and maintained on optical disk in conformity with 1.31(d), microfilm, or microfiche. A computer-generated record used in lieu of a hard copy must be transferred to one of these three permitted non-erasable media "as soon as is feasible."[26] In addition, "appropriate safeguards" must be in place to protect any such records temporarily stored in erasable form so as

[19] *See* the Division's June 14, 1996 letter to Stephen Szarmack of the CME regarding the CME's request for no-action relief for the six-month pilot TOPS–CUBS Program at p. 13.

[20] For reasons unrelated to applicable regulatory requirements, the implementation of both of these systems has been delayed.

[21] In summary, the AORTA and OMS systems operate as follows: sales personnel prepare a computerized office order "ticket," instead of a paper ticket, immediately upon receipt of a customer order and enter all of the customer order information currently required under Regulation 1.35. Both systems record, automatically, the precise time to the nearest second at which an order was entered. Upon order entry, sales personnel then send orders to the floors by telephone and indicate by keystroke that the order has been transmitted. Both systems automatically record a second time indicating when the order was transmitted to the floor. Fill information, including the report of execution time, is transmitted back from the floor to sales personnel, who enter that information into their system.

[22] This exceeds the requirements of Commission Regulation 1.35(a)(a–1)(i), which calls for the time a customer order was received and, for options, also the time the order is transmitted for execution.

[23] AORTA stores all records of customer orders on optical disk. Records produced and retained by AORTA are available for production to the Commission or the DOJ in hard copy, on diskette, or on CD–ROM.

All records of customer orders generated on OMS are stored on Morgan Stanley's Sybase Relational Database Management System ("Sybase"). Morgan Stanley supplements storage of data on Sybase with a hard copy/microfiche regime under which all transaction-related information is reproduced from Sybase on a daily basis and kept either in hard copy or microfiche for five years.

[24] If an order-routing system did not satisfy any of the standards set forth herein, then the operator of the system would still be able to request an individual no-action position as appropriate.

[25] In particular, the Commission notes that it is critical for such systems to satisfy the account identification requirements of Regulation 1.35.

[26] *See* the Commission's Regulation 1.31 final rulemaking, which allows production of computer-generated records on optical disk to be immediately substituted for hard copy reports for purposes of record storage. 58 FR 27458 (May 10, 1993) at 27460. The Commission also notes that it may be necessary to amend Regulation 1.31 to account for further technological developments.

to prohibit unauthorized access to the records and to provide for a record of the identity of the persons who access such records and of any modifications made.[27] In addition, assurance must be provided that a computer-generated record will be made readily available in machine-readable media or hard copy to the Commission or DOJ upon request. Moreover, records stored on "machine readable media must use a format and coding structure" specified in such a request by the Commission or DOJ.[28]

The Commission recognizes that the development of electronic order-routing systems continues to be in flux. The Commission intends to continue to monitor that process with a view toward providing further guidance by advisory or rule in the future. Among other things, the Commission will evaluate the manner in which electronic order-routing systems may interface with other audit trail recordkeeping practices in place at an exchange.

IV. Conclusion

To the extent that a customer order is prepared and transmitted to and reported from an exchange trading pit by an electronic order-routing system, or a customer order is prepared by an electronic off-floor order management system, and the standards set forth below are satisfied, then the "written" record requirements of Commission Regulation 1.35(a–1)(1), (a–1)(2)(i), (a–1)(4), and/or (d) will be deemed satisfied by the electronic record generated by the system. Specifically, such electronic records must:

(1) Include the customer order information required under Commission Regulation 1.35.(a–1)(1), (2)(i), (a–1)(4) and/or 1.35(d);

(2) Include any modification, including any change and/or cancellation, that is made to an order and indicate the time the modification is recorded in the system;

(3) Record all Commission-required and other order-related times, including order entry and exit times, and the time of any modification made to a customer order, including any change and/or cancellation, to the highest level of precision achievable by the operating system, but at least to the second. The times captured must not use a clock that can be modified by the person entering the order;

(4) Be kept in hard copy and/or allowable hard copy substitution media, as provided under Commission Regulation 1.31. The stored records shall be open to inspection by the Commission or DOJ as required under Commission Regulation 1.31 and be made readily available to the Commission or DOJ in machine-readable media or hard copy upon request. Records stored on machine-readable media must use a format and coding structure specified in the Commission request. To the extent that records temporarily are stored in erasable form, appropriate security measures must be implemented by the system operator to prohibit any unauthorized access to the records and to maintain an accurate record of when and by whom records are accessed or modified.

Issued in Washington, DC on February 12, 1997.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–4004 Filed 2–19–97; 8:45 am]

BILLING CODE 6351–01–P

[27] Id.

[28] Id. at 27465.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 173

[Docket No. 96F–0184]

Secondary Direct Food Additives Permitted in Food for Human Consumption; Sulphopropyl Cellulose

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for a change in the level of reactants for sulphopropyl cellulose ion-exchange resin for the recovery and purification of proteins for food use. This action is in response to a petition filed by Life Technologies, Inc.

DATES: Effective February 19, 1997; written objections and requests for a hearing by March 21, 1997.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3071.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of July 3, 1996 (61 FR 34852), FDA announced that a food additive petition (FAP 6A4500) had been filed by Life Technologies, Inc., 8400 Helgerman Ct., Gaithersburg MD 20874. The petition proposed to amend the food additive regulations in § 173.25 (21 CFR 173.25) to provide for a change in the level of the reactants for sulphopropyl cellulose ion-exchange resin for the recovery and purification of proteins for food use. The amendment proposed that the amount of epichlorohydrin plus propylene oxide employed does not exceed 250 percent by weight of the starting quantity of cellulose. The current regulation provides that the amount of epichlorohydrin plus propylene oxide employed does not exceed 61 percent by weight of the starting quantity of cellulose.

In the **Federal Register** of April 22, 1991 (56 FR 16266), FDA published a final rule that amended the regulation under § 173.25 to provide for the use of the ion-exchange resin and the starting materials used to manufacture the additive. The amendment to the regulation was based upon the information provided in FAP 6A3905. In the final rule of April 22, 1991, the agency stated that while the ion-exchange resin has not been shown to cause cancer, it may contain small amounts of the starting materials epichlorohydrin (ECH) and propylene oxide (PO) as byproducts of its production. Because the chemicals ECH and PO have been shown to cause cancer in test animals, the agency conducted a quantitative risk assessment procedure to calculate the risk from the use of ECH and PO. Based on the results of the risk assessment, the agency concluded in the final rule of April 22, 1991, that there was a reasonable certainty of no harm from exposure to ECH and PO that might result from the proposed use of the additive.

Recently, the agency was advised that the levels of the starting materials for the resin, ECH and PO, that are listed under § 173.25(a)(20) need to be amended. The petitioner discovered that the information in FAP 6A3905 that was used to calculate the levels of ECH and PO in the listings for the regulation contained errors that led to an underestimation of the actual levels of ECH and PO used in the production of the resin. A new petition (FAP 6A4500) was submitted to correct the regulation by listing the actual ratios of the starting materials ECH and PO that are currently being used in the manufacture of the ion-exchange resin.

The agency has reviewed the information in both petitions 6A3905 and 6A4500, and it has determined that the levels of ECH and PO set out in current § 173.25(a)(20) are in error because those levels do not reflect the levels presently used by industry to manufacture the resin. The information in the present petition establishes that the manufacturing process and the resin composition do not differ from the process and resin composition evaluated in the original petition. Because the composition of the resin is unchanged, the exposure to the residues of ECH and PO remains unchanged. Therefore, the agency concludes that the agency's safety evaluation conducted for the original petition (FAP 6A3905) supports the safety of the amendment to § 173.25 proposed by FAP 6A4500. Accordingly, the agency concludes that a recalculation of a risk assessment performed for the original petition (FAP 6A3905) is not necessary to support this action.

Thus, FDA has evaluated the data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive is safe; (2) the additive will achieve its intended technical effect; and that therefore, (3) the regulations in § 173.25 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has determined under 21 CFR 25.24(a)(9) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Any person who will be adversely affected by this regulation may at any time on or before March 21, 1997, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 173

Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 173 is amended as follows:

PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 173 continues to read as follows:

Authority: Secs. 201, 402, 409 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348).

2. Section 173.25 is amended by revising paragraph (a)(20) to read as follows:

§ 173.25 Ion-exchange resins.

* * * * *

(a) * * *

(20) Regenerated cellulose, cross-linked and alkylated with epichlorohydrin and propylene oxide, then sulfonated whereby the amount of epichlorohydrin plus propylene oxide employed does not exceed 250 percent by weight of the starting quantity of cellulose.

* * * * *

Dated: February 11, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–4082 Filed 2–19–97; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300453; FRL–5588–1]

RIN 2070–AB78

Zinc Phosphide; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of phosphine resulting from the use of the rodenticide zinc phosphide in or on the raw agricultural commodities timothy (seed, forage, hay), alfalfa (forage, hay), and clover (forage, hay) in connection with EPA's granting of an emergency exemption to the state of Washington under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of zinc phosphide on timothy or timothy-alfalfa, clover stands. This regulation establishes maximum permissible levels for residues of phosphine in these foods pursuant to section 408(l)(6) of the Federal Food, Drug and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerances will expire on April 15, 1998.

DATES: This regulation is effective February 20, 1997. The entries in the table expire on April 15, 1998. Objections and requests for hearings must be received by EPA on or before April 21, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300453], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Room M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300453], must also be submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to: Crystal Mall #2, Room 1132, 1921 Jefferson Davis Highway, Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300453]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, 703-308-8326, e-mail: pemberton.libby@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for residues of the phosphine resulting from the use of the rodenticide zinc phosphide in or on timothy (seed, forage, hay), alfalfa (forage, hay), and clover (forage, hay) at 0.1 part per million (ppm). These tolerances will expire and be revoked automatically without further action by EPA on April 15, 1998.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104-170) was signed into law August 3, 1996. FQPA amends both the FFDCA, 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996, FRL–5572–9).

New FFDCA section 408(b)(2)(A)(i) allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." FFCDA section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water, but does not include occupational exposure. FFDCA section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

FFDCA section 408(l)(6) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. FFDCA section 408(l)(6) also requires EPA to promulgate regulations by August 3, 1997, governing the establishment of tolerances and exemptions under FFDCA section 408(l)(6) and requires that the regulations be consistent with FFDCA section 408(b)(2) and (c)(2) and FIFRA section 18.

FFDCA section 408(l)(6) allows EPA to establish tolerances or exemptions from the requirement for a tolerance, in connection with EPA's granting of FIFRA section 18 emergency exemptions, without providing notice or a period for public comment. Thus, consistent with the need to act expeditiously on requests for emergency exemptions under FIFRA, EPA can establish such tolerances or exemptions under the authority of FFDCA section 408(e) and (l)(6) without notice and comment rulemaking.

In establishing section 18-related tolerances and exemptions during this interim period before EPA issues the FFDCA section 408(l)(6) procedural regulation and before EPA makes its broad policy decisions concerning the interpretation and implementation of the new FFDCA section 408, EPA does not intend to set precedents for the application of FFDCA section 408 and the new safety standard to other tolerances and exemptions. Rather, these early section 18 tolerance and exemption decisions will be made on a case-by-case basis and will not bind EPA as it proceeds with further rulemaking and policy development. EPA intends to act on section 18-related tolerances and exemptions that clearly qualify under the new law.

II. Emergency Exemptions for Zinc Phosphide on Timothy and Timothy-alfalfa/clover and FFDCA Tolerances

EPA has authorized use under FIFRA section 18 of zinc phosphide on timothy and timothy-alfalfa/clover for control of the vole complex. A potential population of 500 voles per acre would mean significant economic loss during 1997. The currently available methods of control, including the use of zinc phosphide bait boxes and flood irrigation, are inadequate and impractical.

As part of its assessment of this specific exemption, EPA assessed the potential risks presented by residues of phosphine on timothy (seed, forage, hay), alfalfa (forage, hay), and clover (forage, hay). In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerances under FFDCA section 408(l)(6) would clearly be consistent with the new safety standard and with FIFRA section 18. These tolerances for residues of phosphine will permit the marketing of timothy and timothy-alfalfa/clover treated in accordance with the provisions of the FIFRA section 18-emergency exemptions. Consistent with the need to move quickly on this emergency exemption and in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment under FFDCA section 408(e) as provided in FFDCA section 408(l)(6). Although these tolerances will expire and be revoked automatically without further action by EPA on April 15, 1998, under FFDCA section 408(l)(5), residues of phosphine not in excess of the amount specified in these tolerances remaining in or on timothy (seed, forage, hay), alfalfa (forage, hay), and clover (forage, hay) after that date will not be unlawful, provided the pesticide is applied during the term of, and in accordance with all the conditions of, the emergency exemptions. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

EPA has not made any decisions about whether zinc phosphide meets the requirements for registration under FIFRA section 3 for use on timothy and timothy-alfalfa/clover or whether permanent tolerances for zinc phosphide for timothy (seed, forage, hay), alfalfa (forage, hay), and clover (forage, hay) would be appropriate. This action by EPA does not serve as a basis for registration of zinc phosphide by a State for special local needs under FIFRA section 24(c). Nor does this action serve as the basis for any States other than Washington to use this product on these crops under FIFRA section 18 without following all provisions of FIFRA section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for zinc phosphide, contact the Agency's Registration Division at the address in "ADDRESSES" at the beginning of this document.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. For many of these studies, a dose response relationship can be determined, by using a dose that causes adverse effects (threshold effects) and a dose that causes no observed effect levels (NOELs).

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the reference dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a "safety factor") of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100% or less of the RfD) is generally considered acceptable by EPA.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low-dose extrapolations or margin of exposure (MOE) calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, and other non-occupational exposures, such as where residues leach into groundwater or surface water that is consumed as drinking water. Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The theoretical maximum residue contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. The TMRC is a "worst case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. Zinc phosphide is already registered by EPA for outdoor residential lawn, nursery, right-of-way, recreational area, and other non-food uses, as well as several food use registrations. Phosphine is a highly reactive gas that reacts with raw agricultural commodities to form bound phosphate residues. The Agency stated in a registration standard for zinc phosphide (June 23, 1982) that a tolerance of 0.1 ppm for phosphine resulting from the use of zinc phosphide would be allowable for raw agricultural commodities, provided the bound phosphate residues can be fully characterized. At the time the registration standard was issued, the Agency identified 70% of the bound phosphate residues in treated commodities as consisting of oxyphosphorus acids, which are considered toxicologically insignificant at the levels found in treated commodities. Data have since been submitted which demonstrate that the remaining 30% of residues consists of oxidation products of phosphine (oxyphosphorus acids and/or their salts), which are also considered toxicologically insignificant at the levels found in treated commodities. EPA believes it has sufficient data to assess the hazards of zinc phosphide and to make a determination on aggregate exposure, consistent with FFDCA section 408(b)(2), for the time-limited tolerances for residues of phosphine resulting from the use of zinc phosphide in or on timothy (seed, forage, hay), alfalfa (forage, hay), and clover (forage, hay) at 0.1 part per million (ppm). EPA's assessment of the dietary exposures and risks associated with establishing these tolerances follows.

A. Toxicological Profile

1. *Chronic toxicity.* Based on the available chronic toxicity data, EPA's Office of Pesticide Programs (OPP) has established the RfD for zinc phosphide at 0.0003 milligram(mg)/kilogram(kg)/day. The RfD was established based on an lowest effect level (LEL) of 3.48 mg/kg/day from an open literature 90-day rat feeding study. Effects observed at the LEL were decreased food consumption and body weight. An uncertainty factor of 10,000 was used due to data gaps and the absence of a NOEL in the study. The Agency has recently reviewed a 90-day gavage study in rats which had a NOEL

of 0.1 mg/kg/day and a LEL of 1.0 mg/kg/day. The LEL of 1.0 mg/kg/day was based on increased mortality and kidney nephrosis in male rats.

2. *Acute toxicity.* No toxicology studies were identified by OPP which demonstrated the need for an acute dietary risk assessment.

3. *Short-term, non-dietary inhalation and dermal toxicity.* Since 10% zinc phosphide tracking powder has been classified in Toxicity Category IV (LC_{50} > 19.6 mg/liter (L)), inhalation exposure resulting from this FIFRA section 18 action is not considered toxicologically significant. For short-term and intermediate dermal MOE calculations, EPA's Health Effects Division (HED), OPP recommended use of the adjusted acute dermal LD_{50} NOEL of 1,000 mg/kg from the acute dermal toxicity study in rabbits. In the absence of other dermal toxicity data, the acute NOEL dose of 1,000 mg/kg was divided by a 100-fold uncertainty factor to approximate a 3-month dermal NOEL for worker dermal exposure. The 3-month dermal NOEL is 10 mg/kg/day. At the LEL of 2,000 mg/kg in the rabbit dermal LD_{50} study, the animals lost weight, but no mortalities were observed up to 5,000 mg/kg highest dose tested (HDT). Actual risk from dermal exposure is likely to be significantly less, since zinc phosphide reacts with water and stomach acid to produce the toxic gas phosphine from oral, but not dermal, exposure.

4. *Carcinogenicity.* Zinc phosphide has not been reviewed for carcinogenicity. OPP has waived carcinogenicity data requirements for zinc phosphide on the basis that exposures to zinc phosphide are controlled to prevent exposures to humans. Applications to crop areas are such that the zinc phosphide will dissipate.

B. Aggregate Exposure

1. Tolerances are already established for residues of the phosphine resulting from the use of zinc phosphide on several raw agricultural commodities (40 CFR 180.284 (a) and (b)). There is no reasonable expectation of secondary residues in meat, milk, poultry, or eggs (40 CFR 180.6(a)(3)). Any residues of zinc phosphide ingested by livestock would be metabolized to naturally occurring phosphorous compounds. No human food items are derived from timothy grown for seed or mixed stands of timothy-alfalfa/clover produced for hay. Therefore, humans will receive no additional dietary exposure to phosphine as a result of establishment of this tolerance.

2. For the purpose of assessing chronic dietary exposure from zinc phosphide, EPA assumed tolerance level residues and 100% of crop treated for the proposed and existing food uses of zinc phosphide. These conservative assumptions result in over estimation of human dietary exposures.

3. Other potential sources of exposure of the general population to residues of pesticides are residues in drinking water and exposure from non-occupational sources. There is no information on zinc phosphide (phosphine) residues in ground water and runoff in the EPA's Environmental Fate and Effects Division (EFED) One-Liner Data Base. There is no established maximum concentration level (MCL) for residues of zinc phosphide (phosphine) in drinking water. No drinking water health advisory levels have been established for zinc phosphide (phosphine). There is no entry for zinc phosphide (phosphine) in the "Pesticides in Groundwater Database" (EPA 734-12-92-001, September 1992). Based on the available studies used in EPA's assessment of environmental risk, EPA does not anticipate exposure to residues of zinc phosphide (phosphine) in drinking water.

4. There are residential uses of zinc phosphide and EPA acknowledges that there may be short-, intermediate-, and long-term non-occupational, non-dietary exposure scenarios. OPP has identified a toxicity endpoint for an intermediate-term residential risk assessment. However, no acceptable reliable dermal exposure data to assess these potential risks are available at this time. Given the time-limited nature of this request, the need to make emergency exemption decisions quickly, and the significant scientific uncertainty at this time about how to aggregate non-occupational exposure with dietary exposure, the Agency will make its safety determination for these tolerances based on those factors which it can reasonably integrate into a risk assessment.

5. At this time, the Agency has not made a determination that zinc phosphide and other substances that may have a common mode of toxicity would have cumulative effects. Given the time-limited nature of this request, the need to make emergency exemption decisions quickly, and the significant scientific uncertainty at this time about how to define common mode of toxicity, the Agency will make its safety determination for these tolerances based on those factors which can reasonably integrate into a risk assessment. For purposes of these tolerances only, the Agency is considering only the potential risks of zinc phosphide in its aggregate exposure.

C. Safety Determinations For U.S. Population

No human food items are derived from timothy grown for seed or mixed stands of timothy-alfalfa/clover produced for hay. Taking into account the completeness and reliability of the toxicity data, EPA has concluded that dietary exposure to zinc phosphide from published tolerances (including recently published time-limited tolerances for potatoes and sugar beets) will utilize 27.5% of the RfD for the U.S. population. EPA does not anticipate chronic exposure to residues of zinc phosphide (phosphine) in drinking water.

D. Determination of Safety for Infants and Children

1. There were no developmental findings in rats up to a maternally toxic dose of 4.0 mg/kg/day zinc phosphide nor in mice at 4.0 mg/kg/day HDT. A comparison of the NOEL of 0.1 mg/kg/day in the recent 90-day rat gavage study and the NOELs for developmental toxicity in rats and mice (4.0 mg/kg/day) provides a 40-fold difference, which demonstrates that there are no special prenatal sensitivities for infants and children. OPP has waived teratogenicity in the rabbit and the two-generation reproduction study in the rat data requirements for zinc phosphide on the basis that exposures to zinc phosphide are controlled to prevent exposures to humans. Applications to crop areas are such that the zinc phosphide will dissipate. Since there are no reproduction studies with zinc phosphide, the post-natal potential for effects from zinc phosphide in infants and children cannot be fully evaluated. However, the above information, together with the uncertainty factor of 10,000 utilized to calculate the RfD for zinc phosphide, is considered adequate protection for infants and children with respect to prenatal and postnatal development against dietary exposure to zinc phosphide residues, and therefore, EPA has determined that an additional 10-fold safety factor is not appropriate.

2. EPA has concluded that the percent of the RfD that will be utilized by chronic dietary exposure to residues of zinc phosphide ranges from 6.8% for nursing infants (<1 year old) up to 59.9% for children 1 to 6 years old. However, this calculation assumes tolerance level residues for all commodities and is therefore an over estimate of dietary risk. Refinement of the dietary risk assessment by using anticipated residue data would reduce dietary exposure. As mentioned before, EPA does not expect chronic exposure from drinking water.

V. Other Considerations

The metabolism of zinc phosphide in plants and animals is adequately understood for the purposes of these tolerances. The residue of concern is unreacted zinc phosphide, measured as phosphine, that may be present. Adequate methods for purposes of data collection and enforcement of tolerances for zinc phosphide residues as phosphine gas are available. Methods for determining zinc phosphide residues of phosphine gas are described in PAM, Vol. II, as Method A. There are no Codex tolerances for timothy (seed, forage, hay), alfalfa (forage, hay), and clover (forage, hay).

VI. Conclusion

EPA concludes that there is a reasonable certainty of no harm to consumers, including infants and children, from aggregate exposure to zinc phosphide based on the following considerations. First, approval of these tolerances results in no additional exposure to consumers. Second, EPA has used a 10,000-fold safety factor in assessing the risk estimate posed by zinc phosphide. Third, this pesticide is being used to address an emergency situation and EPA, therefore, must make a quick decision. Fourth, because these tolerances are for an emergency situation, extended use under these tolerances are not authorized. Therefore, tolerances in connection with the FIFRA section 18 emergency exemptions are established for residues of phosphine resulting from the use of zinc phosphide in timothy (seed, forage, hay), alfalfa (forage, hay), and clover (forage, hay) at 0.1 part per million (ppm). These tolerances will expire and be automatically revoked without further action by EPA on April 15, 1998.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new FFDCA section 408(e) and (l)(6) as was provided in the old FFDCA section 408 and section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by April 21, 1997, file written objections to any aspect of this regulation (including the automatic revocation provision) and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given in "ADDRESSES" at the beginning of this document (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Record

A record has been established for this rulemaking under docket control number [OPP–300453]. A public version of this record, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

The official record for this rulemaking, as well as the public version, as described above, is kept in paper form. Accordingly, in the event there are objections and hearing requests, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record.

The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this rule.

IX. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and, since this action does not impose any information collection requirements as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, it is not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104–121, 110 Stat. 847), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 6, 1997.

Peter Caulkins,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In §180.284, paragraph (c) is amended by revising the introductory text and adding in alphabetical order new entries to the table to read as follows:

§ 180.284 Zinc phosphide, tolerances for residues.

* * * * *

(c) Time-limited tolerances are established for residues of phosphine resulting from the use of the rodenticide zinc phosphide in connection with use of the pesticide under FIFRA section 18 emergency exemptions granted by EPA. The tolerances are specified in the following table. The tolerances expire on the date specified in the table.

Commodity	Parts per million	Expiration/ Revocation Date
Alfalfa (forage)	0.1	April 15, 1998
Alfalfa (hay)	0.1	April 15, 1998
Clover (forage)	0.1	April 15, 1998
Clover (hay)	0.1	April 15, 1998
•	•	•
Timothy (forage)	0.1	April 15, 1998
Timothy (hay)	0.1	April 15, 1998
Timothy (seed)	0.1	April 15, 1998

[FR Doc. 97–3931 Filed 2–19–97; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 261

[SW–FRL–5690–6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Amendment

AGENCY: Environmental Protection Agency.

ACTION: Final rule; amendment.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is amending 40 CFR part 261, appendix IX to reflect changes in ownership and name for United Technologies Automotive, Inc., Jeffersonville, Indiana. Today's amendment documents these changes.

EFFECTIVE DATE: February 20, 1997.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424–9346 or at (703) 412–9810. For technical information contact Ms. Judy Kleiman, Waste Management Branch (DRP–8J), Waste, Pesticides and Toxics Division, U.S. Environmental Protection Agency, 77 W. Jackson Blvd, Chicago, IL 60604, (312) 886–1482.

SUPPLEMENTARY INFORMATION: In this document EPA is amending appendix IX to part 261 to reflect changes in the ownership and name for United Technologies Automotive. The petition process under §§ 260.20 and 260.22 allows facilities to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste. Based on waste specific information provided by the petitioner, EPA granted an exclusion to United Technologies Automotive on April 29, 1986, for F019 wastes at its Jeffersonville, Indiana, facility (51 FR 15888). On November 20, 1995, Region 5 received notice that ownership of the United Technologies Automotive facility in Jeffersonville, Indiana, was transferred to Profile Extrusion Company. On November 14, 1996, Region 5 received notice that ownership of Profile Extrusion Company was transferred to Alumnitec, Inc.

In this notification Alumnitec noted that no changes had been made in the management of the F019 waste excluded by the Agency, and that all conditions of the exclusion will continue to be met. Today's notice documents this change by updating Appendix IX to incorporate this change in name.

This change to 40 CFR Part 261, Appendix IX will be effective February 20, 1997. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. As described above, Alumnitec will continue to meet all conditions of United Technologies Automotive's exclusion. Therefore, a six-month delay in the effective date is not necessary in this case. This provides a basis for making this amendment effective immediately upon publication under the Administrative Procedures Act, pursuant to 5 U.S.C. 5531(d).

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Dated: January 21, 1997.

Jo Lynn Traub,

Acting Regional Administrator, Region 5.

For the reasons set out in the preamble, 40 CFR part 261 is to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y) and 6938.

2. 40 CFR Part 261, Appendix IX, Table 1, is amended by removing the entry for "United Technologies Automotive, Inc." and by adding in alphabetical order the entry for "Alumnitec, Inc." to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
•	•	•
Alumnitec, Inc. (formerly Profile Extrusion Co., formerly United Technologies Automotive, Inc.).	Jeffersonville, IN	Dewatered wastewater treatment sludge (EPA Hazardous Waste No. F019) generated from the chemical conversion of aluminum after April 29, 1986.
•	•	•

[FR Doc. 97–4121 Filed 2–19–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 100

RIN 0906–AA36

National Vaccine Injury Compensation Program: Revisions and Additions to the Vaccine Injury Table—II

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Final rule.

SUMMARY: The Secretary has made findings as to certain illnesses and conditions that can reasonably be determined in some circumstances to be caused or significantly aggravated by certain vaccines. Based on these findings, the Secretary is amending, by final rule, the existing regulations governing the National Vaccine Injury Compensation Program (VICP) by revising the Vaccine Injury Table (Table) as authorized under section 313 of the National Childhood Vaccine Injury Act of 1986 and section 2114 (c) and (e) of the Public Health Service Act (the Act).

The VICP provides a system of no-fault compensation for certain individuals who have been injured by specific childhood vaccines. The Vaccine Injury Table included in the Act establishes presumptions about causation of certain illnesses and conditions, which are used by the Court to adjudicate petitions.

EFFECTIVE DATE: This regulation is effective March 24, 1997.

FOR FURTHER INFORMATION CONTACT: Geoffrey Evans, M.D., Chief Medical Officer, Division of Vaccine Injury Compensation, Bureau of Health Professions, (301) 443–4198, or David Benor, Senior Attorney, Office of the General Counsel (301) 443–2006.

SUPPLEMENTARY INFORMATION:

Introduction and Procedural History

On November 8, 1995, the Assistant Secretary for Health, with the approval of the Secretary of Health and Human Services (the Secretary), published in the **Federal Register** (60 FR 56289) A Notice of Proposed Rulemaking (NPRM) to amend the Vaccine Injury Table (the Table) and to revise the Qualifications and Aids to Interpretation of the Table (Qualifications and Aids). The NPRM was issued pursuant to section 2114(c) of the Act, which authorizes the Secretary to promulgate regulations to modify the Table, and section 2114(e), which directed the Secretary to add to the Table, by rulemaking, coverage of additional vaccines which are recommended by the Centers for Disease Control and Prevention for routine administration to children.

As stated in the preamble to the NPRM, under section 313 of the Act, Congress mandated that the Secretary review the scientific literature and other relevant information to determine whether, based upon the available evidence, a causal relationship exists between certain adverse events examined and exposure to vaccines against diphtheria, measles, mumps, poliomyelitis, and tetanus. The review was broadened to include the vaccines against hepatitis B, and Hemophilus influenzae type b (Hib). The Secretary entered into a contract with the Institute of Medicine (IOM), as recommended by Congress, to perform this review. The IOM issued its findings in a report entitled *Adverse Events Associated with Childhood Vaccines; Evidence Bearing on Causality.* (Institute of Medicine, K.R. Stratton, C.J. Howe, R.B. Johnson, Eds., 1994.) Upon consideration of the IOM report, consultations with the Advisory Committee on Childhood Vaccines (ACCV), and the National Vaccine Advisory Committee (NVAC), and review of other relevant scientific information, the Secretary published the proposed changes to the Table and the Qualifications and Aids.

There was a 6-month comment period after publication. The Secretary received three written comments in response to the NPRM. A public hearing was scheduled for February 29, 1996, as announced in the **Federal Register** on February 5, 1996 (61 FR 4249), but no individual or organization appeared to testify.

One of the commenters, an association representing pediatricians, extended its full support for the proposed additions and revisions to the Table.

A second comment was submitted by a manufacturer of several childhood vaccines. The manufacturer's comment was that the proposed revisions to the Table did not definitively state how the proposed revisions would affect persons who have pending civil actions against vaccine manufacturers or administrators when the revisions to the Table become effective. The manufacturer suggested that language should be added to the rule which affirmatively gives plaintiffs in the tort system the ability to file a claim, within 2 years after the effective date of the revision or before judgment, if the injury or death allegedly attributable to the vaccine occurred no more than 8 years before the effective date of the revision. Section 2116(b) of the Act provides a 2-year period after the effective date of a revision to the Table for a petition to be filed based on the revision. The injury or death alleged to be related to the vaccine must have occurred no more than 8 years before the date of the revision. However, section 2111(a)(5)(B) of the Act states that "[i]f a plaintiff has pending a civil action for damages for a vaccine-related injury or death, such person may not file a petition under the subsection (b) (of the Act) for such injury or death." reading these provisions together, it appears that if a plaintiff in such a case dismisses the civil action and files a Program petition within the applicable time limit, the petition may proceed. (If the civil action led to an award of damages or a settlement, section 2111(a)(7) of the Act would prohibit the filing of the petition.) In the light of these statutory provisions, we believe that the issue raised by the commenter is adequately addressed.

The final comment was from a group representing vaccine-injured persons and their families. The group had comments in several areas. The Secretary has carefully considered these comments and responds to them below. The first assertion of the group was that two independent IOM committees concluded that the scientific evidence favors a causal relationship between oral polio vaccine and tetanus vaccine and Guillain-Barre Syndrome (GBS). The commenter questions why, given this information, the Secretary is proposing to remove GBS from the Table. First, it is worth noting that this condition has never been included in the Table. Moreover, the preamble to the NPRM explained in detail the Department's reasons for proposing not to extend the Table's coverage to this condition. (60 FR 56292–3 and 56296–7.) The commenter's reference to the IOM committee's report does not provide a sufficient basis to reverse the Department's analysis, given that this analysis fully considered the IOM committee's report, as well as other relevant data.

The commenter's second concern asked for an explanation of why anaphylaxis is the only Table injury for hepatitis B vaccine when the IOM review stated that no scientific studies have been conducted to determine if there is a causal relationship between hepatitis B and arthritis, Sudden Infant Death Syndrome (SIDS), GBS, myoptic (sic: optic) neuritis, multiple sclerosis, transverse myelitis or other central

demyelinating disease. Similarly, the group questions why there is no Table injury for Hemophilus influenzae type b (Hib) vaccine when no scientific studies have been done to determine whether there is a causal connection between the Hib vaccine and transverse myelitis, GBS, thrombocytopenia, anaphylaxis and SIDS. The Secretary is charged with revising the Table where such revisions are in keeping with scientific evidence. The goal is to have the Table and Qualifications and Aids reflect current scientific knowledge on the relationship between certain adverse events and covered vaccines. Where that scientific research concerning the relationship between a disorder and a vaccine is incomplete or nonexistent, the Secretary believes it would be inappropriate and inconsistent with her statutory responsibility to revise the Table to establish a presumption that a relationship exists.

The group also commented upon the ability of the Vaccine Adverse Events Reporting System (VAERS) to capture adequately the frequency and severity of vaccine reactions. VAERS is a passive reporting system for events that are temporally related to vaccine administration. *See* section 2125 of the Act. VAERS is not, however, a matter within the scope of this rulemaking.

Finally, the group states that no vaccine should be added to the Table until credible scientific studies have been conducted to determine which chronic health problems are being caused by new vaccines. Under section 2114(e) of the Act, the Secretary is required to revise the Table to include vaccines recommended to the Secretary by the Centers for Disease Control and Prevention (CDC), for routine administration to children. If the scientific evidence is insufficient to establish that an illness or condition is associated with such a vaccine, then it is appropriate to include the vaccine on the Table without establishing that such illness or condition is presumed to be caused by the vaccine. The addition of vaccines to the Table allows individuals alleging injury by such vaccines to file petitions for compensation and to prevail on the basis of the Act's "causation in fact" standard. *See* section 2111(c)(1)(C)(ii)(I) of the Act. Such petitioners benefit from participating in the Program in that they need not show negligence or some other standard of liability, as would be required in a civil action. Should the Department learn that these new vaccines have associated illnesses or conditions, rulemaking will be initiated to amend the Table.

Other Information

The Act provides that a revision to the Table based on the addition of vaccines under section 2114(e) of the Act shall take effect upon the effective date of a tax enacted to provide funds for compensation for injuries from vaccines that are added to the Table. *See* section 13632(a)(3) of the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66 enacted August 10, 1993. The tax for the hepatitis B, the Hib and the varicella vaccines has not been enacted yet; accordingly, claimants alleging an injury or death as a result of a hepatitis B, Hib, or varicella vaccination will not have a cause of action against the Secretary until the tax is enacted and become effective. *See* § 100.3(c)(2). However, the other changes to the Qualifications and Aids to Interpretation of the Table and the addition of certain illnesses, disabilities or conditions to the Table, e.g., brachial neuritis as a Table injury for DPT, will become effective on March 24, 1997. *See* § 100.3(c)(1). Thus, there will be some delay between the time the final rule becomes effective and the time the hepatitis B, Hib, and varicella vaccines provide a cause of action for petitioners. As soon as the tax becomes effective, a petitioner may file a claim for an injury or death allegedly caused by these vaccines. The Clerk of the U.S. Court of Federal Claims will determine how a filing will be processed when a petitioner files a claim for hepatitis B, Hib, or varicella injuries before the tax becomes effective.

Hemophilus Influenzae Type B (Hib) Vaccine

As noted in the preamble to the NPRM (p. 56297), unconjugated Hib polysaccharide vaccine (PRP) was found to be associated with early onset invasive Hib disease. As discussed elsewhere in this preamble, the option to file a petition for an injury associated with vaccines now being added to the Table is limited to cases based on vaccine-related injuries or deaths that occurred within the 8-year period before the effective date of the addition. As almost all cases of early onset invasive Hib disease which are vaccine-related will be associated with vaccines given before December 1987 (when the Hib conjugate vaccine took the place of the PRP vaccine for routine administration), the result of this 8-year limitation means that the likely cases of this vaccine-associated condition will not be able to file for compensation under the Program, absent a change to the statute. Nevertheless, we are retaining this as a Table injury in case the vaccine has been administered within the 8-year period or is administered in the future.

Varicella Vaccine

As provided in the NPRM, the Table includes any new vaccine recommended by the CDC for routine administration to children. Since the publication of the NPRM, CDC has recommended the varicella vaccine for routine administration to children and, consistent with the Secretary's obligations under section 2114(e), the varicella vaccine has been added to the Table as item XI. No adverse reactions for the varicella vaccine are being added to the table, as there is no evidence of any serious illness or condition related to this vaccine. However, should the Department become aware of any adverse events associated with the varicella vaccine, rulemaking will be initiated to revise the Table accordingly.

Technical Amendments

In the Notice of Proposed Rulemaking published in the **Federal Register** on November 8, 1995, items I.C, II.C., III.C., IV.B, and V.C. of the Table read: "[a]ny sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed." These items are being revised to read: "[a]any acute complication or sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed." The additional language does not represent a change in the available Table injuries; rather, the language is added to provide internal consistency within the Table. In addition, because the varicella vaccine has been added to the Table as item XI, former item XI designated in the NPRM is now renumbered as item XII in the final rule. Further, we have revised the format of the Table to make it more readable.

Finally, as we indicated in the preamble to the 1995 regulation, we did not intend that hospitalization be viewed as an absolute requirement to establish an acute encephalopathy, but rather as an indicator of the severity of the acute event. (See the qualifications and aids to interpretation at § 100.3 (b)(2)(i)). To allay concerns in this regard, we have made this explicit in the regulation itself by adding the following parenthetical phrase at the end of the sentence in paragraph (i): "whether or not a hospitalization occurred".

Guidelines

As noted in the NPRM, section 313 requires that the Secretary establish guidelines based on the results of the 313 report "respecting the administration" of the vaccines that were reviewed, which guidelines shall include:

"(i) The circumstances under which any such vaccine should not be administered,

"(ii) The circumstances under which administration of any such vaccine should be delayed beyond its usual time of administration, and

"(iii) The groups, categories, or characteristics of potential recipients of such vaccine who may be at significantly higher risk of major adverse reactions to such vaccine than the general population of potential recipients."

We have examined the recommendations of the Advisory Committee on Immunization Practices (ACIP) of the CDC, as set forth in the Morbidity and Mortality Weekly Reports Recommendations and Reports, dated September 6, 1996 entitled, "Update: Vaccine Side Effects, Adverse Reactions, Contraindications and Precautions." Members of the public may obtain copies of the report by writing to MS Publications, C.S.P.O. Box 9120, Waltham, MA 02254, telephone 1–800–843–6356, 617–893–3800 (Massachusetts). The cost of the publication is $4.00. It may be obtained without charge through use of the World-Wide Web (WWW). The address is "http://www.cdc.gov/epo/mmwr/mmwr__rr.html." We find that the ACIP recommendations are consistent with the findings that the Department made as part of section 313 NPRM and this final rule, and that they satisfy the statutory requirements for guidelines. Accordingly, we proposed that the ACIP recommendations will constitute the guidelines called for by section 313.

Section 313 calls for consultation with the ACCV and notice and opportunity for public hearing with respect to these guidelines. The ACIP recommendations were submitted to the ACCV at its meeting of June 6–7, 1996. We will also offer the opportunity for public comment on the use of the ACIP recommendations as the section 313 guidelines at a hearing which we anticipate will be scheduled in conjunction with a future ACCV meeting. A separate notice will be published in the **Federal Register** to invite public comment at that hearing. After consideration of any comments which we receive, we will publish a notice about the final adoption of these guidelines.

Future revisions of the ACIP recommendations will also be effective for 313 purposes and a notice to that effect will accompany the publication of the ACIP recommendations in the MMWR.

Economic Impact

The Secretary certifies that this final rule will not have a significant impact on a substantial number of small businesses, because it will have only small effects, and those primarily on individuals. The effects will be primarily on the ability of certain individuals to obtain compensation without having a burden of proving causation in fact. Attorneys who represent such individuals will be affected only to the extent that they may have a harder or easier burden of proof with respect to the petitions filed. However, under section 2115(e) of the Act, in almost all cases, attorneys' reasonable fees and costs are reimbursed from the Vaccine Injury Compensation Trust Fund.

Executive Order 12866 requires that all regulations reflect consideration of alternatives, of costs, of benefits, of incentives, of equity, and of available information. Regulations must meet certain standards, such as avoiding unnecessary burden. Regulations which are "significant" because of cost, adverse effects on the economy, inconsistency with other agency actions, effects on the budget, or novel legal or policy issues, require special analysis.

As stated above, this final rule would modify the Vaccine Injury Table based on legal authority, and under that authority the Court will award such fees and costs as appropriate under the law. As such, the regulation would have little direct effect on the economy or on Federal or State expenditures. For the same reasons, the Secretary has also determined that this is not a "significant" rule under Executive Order 12866.

Effect of the New Rule

The final rule will have an effect for individuals who were not eligible to file petitions based on the earlier versions of the Vaccine Injury Table, but who may be eligible to file petitions based on the revised Table. The Act permits such individuals to file a petition for such compensation not later than 2 years after the effective date of the revision if the injury or death occurred not more than 8 years before the effective date of the revision of the Table. *See* 42 U.S.C. 300aa–16(b). As part of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66), Congress amended this section to permit individuals to file claims within this 2-year period, even if they had already filed a claim involving a particular vaccine, but only if the Table revision will "significantly increase the likelihood of obtaining compensation." *See* Pub. L. 103–66, sec. 13632(a)(1). For example, this amendment would permit an individual whose claim alleging MMR vaccine-related thrombocytopenic purpura had been dismissed by the Claims Court to file a new claim for the same vaccine-related injury, if the individual can show that the addition of thrombocytopenic purpura to the Table as a MMR vaccine-related condition has significantly increased the likelihood of obtaining compensation.

Possible Effect on Other Legislation

This rule will not have an effect on the Vaccine for Children Program, implemented by the CDC under section 1928 of the Social Security Act, as enacted by section 13631 of Pub. L. 103–66. This section provides for the establishment of a program to distribute free vaccines to all vaccine-eligible children, as defined by this section. The rule modifies the existing Vaccine Injury Table, a mechanism by which compensation is awarded to individuals who have been found to have suffered from vaccine-related injuries. Because the two authorities are not related, the publication of this rule should not have any impact on the Vaccines for Children Program.

Paperwork Reduction Act of 1980

This final rule has no information collection requirements.

List of Subjects in 42 CFR Part 100

Biologics, Health insurance, and Immunization.

Dated: September 23, 1996.

Ciro V. Sumaya,

Administrator, Health Resources and Services Administration.

Approved: November 22, 1996.

Donna E. Shalala,

Secretary.

Accordingly, 42 CFR part 100 is amended as set forth below.

PART 100—VACCINE INJURY COMPENSATION

1. The authority citation for part 100 is revised to read as follows:

Authority: Sec. 215 of the Public Health Service Act (42 U.S.C. 216); sec. 2115 of the PHS Act, 100 Stat. 3767, as revised (42 U.S.C. 300aa–15); § 100.3, Vaccine Injury Table, issued under secs. 312 and 313 of Pub. L. 99–660, 100 Stat. 3779—3782 (42 U.S.C. 300aa–

1 note) and sec. 2114(c) and (e) of the PHS Act, 100 Stat. 3766 and 107 Stat. 645 (42 U.S.C. 300aa–14(c) and (e)).

2. Section 100.3 is amended by revising the Vaccine Injury Table in paragraph (a); by republishing the introductory text in paragraph (b); by revising paragraph (b)(2)(i); by revising paragraph (b)(6); by adding paragraphs (b)(7), (b)(8), (b)(9), (b)(10), and (b)(11); and by revising paragraph (c) to read as follows:

§ 100.3 Vaccine injury table.

(a) * * *

VACCINE INJURY TABLE

Vaccine	Illness, disability, injury or condition covered	Time period for first symptom or manifestation of onset or of significant aggravation after vaccine administration
I. Vaccines containing tetanus toxoid (e.g., DTaP, DTP, DT, Td, or TT).	A. Anaphylaxis or anaphylactic shock	4 hours.
	B. Brachial Neuritis	2–28 days.
	C. Any acute complication or sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed.	Not applicable.
II. Vaccines containing whole cell pertussis bacteria, extracted or partial cell pertussis bacteria, or specific pertussis antigen(s) (e.g., DTP, DTaP, P, DTP–Hib).	A. Anaphylaxis or anaphylactic shock	4 hours.
	B. Encephalopathy (or encephalitis)	72 hours.
	C. Any acute complication or sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed.	Not applicable.
III. Measles, mumps, and rubella vaccine or any of its components (e.g., MMR, MR, M, R).	A. Anaphylaxis or anaphylactic shock	4 hours.
	B. Encephalopathy (or encephalitis)	5–15 days (not less than 5 days and not more than 15 days).
	C. Any acute complication or sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed.	Not applicable.
IV. Vaccines containing rubella virus (e.g., MMR, MR, R).	A. Chronic arthritis	7–42 days.
	B. Any acute complication or sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed.	Not applicable.
V. Vaccines containing measles virus (e.g., MMR, MR, M).	A. Thrombocytopenic purpura	7–30 days.
	B. Vaccine-Strain Measles Viral Infection in an immunodeficient recipient.	6 months.
	C. Any acute complication or sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed.	Not applicable.
VI. Vaccines containing polio live virus (OPV)	A. Paralytic Polio	
	—in a non-immunodeficient recipient	30 days.
	—in an immunodeficient recipient	6 months.
	—in a vaccine associated community case	Not applicable.
	B. Vaccine-Strain Polio Viral Infection	
	—in a non-immunodeficient recipient	30 days.
	—in an immunodeficient recipient	6 months.
	—in a vaccine associated community case	Not applicable.
	C. Any acute complication or sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed.	Not applicable.
VII. Vaccines containing polio inactivated virus (e.g., IPV).	A. Anaphylaxis or anaphylactic shock	4 hours
	B. Any acute complication or sequela (including death of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed..	Not applicable.
VIII. Hepatitis B. vaccines	A. Anaphylaxis or anaphylactic shock	4 hours.

VACCINE INJURY TABLE—Continued

Vaccine	Illness, disability, injury or condition covered	Time period for first symptom or manifestation of onset or of significant aggravation after vaccine administration
	B. Any acute complication or sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed.	Not applicable.
IX. Hemophilus influenzae type b polysaccharide vaccines (unconjugated, PRP vaccines).	A. Early-onset Hib disease	7 days.
	B. Any acute complication or sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed.	Not applicable.
X. Hemophilus influenzae type b polysaccharide conjugate vaccines.	No Condition Specified	Not applicable.
XI. Varicella vaccine	No Condition Specified	Not applicable.
XII. Any new vaccine recommended by the Centers for Disease Control and Prevention for routine administration to children, after publication by the Secretary of a notice of coverage.	No Condition Specified	Not applicable.

(b) *Qualifications and aids to interpretation.* The following qualifications and aids to interpretation shall apply to the Vaccine Injury Table to paragraph (a) of this section:

* * * * *

(2) * * *

(i) An acute encephalopathy is one that is sufficiently severe so as to require hospitalization (whether or not hospitalization occurred).

* * * * *

(6) *Chronic Arthritis.* (i) For purposes of paragraph (a) of this section, chronic arthritis may be found in a person with no history in the 3 years prior to vaccination of arthropathy (joint disease) on the basis of:

(A) Medical documentation, recorded within 30 days after the onset, of objective signs of acute arthritis (joint swelling) that occurred between 7 and 42 days after a rubella vaccination;

(B) Medical documentation (recorded within 3 years after the onset of acute arthritis) of the persistence of objective signs of intermittent or continuous arthritis for more than 6 months following vaccination; and

(C) Medical documentation of an antibody response to the rubella virus.

(ii) For purposes of paragraph (a) of this section, the following shall not be considered as chronic arthritis: Musculoskeletal disorders such as diffuse connective tissue diseases (including but not limited to rheumatoid arthritis, juvenile rheumatoid arthritis, systemic lupus erythematosus, systemic sclerosis, mixed connective tissue disease, polymyositis/determatomyositis, fibromyalgia, necrotizing vascultitis and vasculopathies and Sjogren's Syndrome), degenerative joint disease, infectious agents other than rubella (whether by direct invasion or as an immune reaction) metabolic and endocrine diseases, trauma, neoplasms, neuropathic disorders, bone and cartilage disorders and arthritis associated with ankylosing spondylitis, psoriasis, inflammatory bowel disease, Reiter's syndrome, or blood disorders.

(iii) Arthralgia (joint pain) or stiffness without joint swelling shall not be viewed as chronic arthritis for purposes of paragraph (a) of this section.

(7) *Brachial neuritis.* (i) This term is defined as dysfunction limited to the upper extremity nerve plexus (i.e., its trunks, divisions, or cords) without involvement of other peripheral (e.g., nerve roots or a single peripheral nerve) or central (e.g., spinal cord) nervous system structures. A deep, steady, often severe aching pain in the shoulder and upper arm usually heralds onset of the condition. The pain is followed in days or weeks by weakness and atrophy in upper extremity muscle groups. Sensory loss may accompany the motor deficits, but is generally a less notable clinical feature. The neuritis, or plexopathy, may be present on the same side as or the opposite side of the injection; it is sometimes bilateral, affecting both upper extremities.

(ii) Weakness is required before the diagnosis can be made. Motor, sensory, and reflex findings on physical examination and the results of nerve conduction and electromyographic studies must be consistent in confirming that dysfunction is attributable to the brachial plexus. The condition should thereby be distinguishable from conditions that may give rise to dysfunction of nerve roots (i.e., radiculopathies) and peripheral nerves (i.e., including multiple monoeuropathies), as well as other peripheral and central nervous system structures (e.g., cranial neuropathies and myelopathies).

(8) *Thrombocytopenic purpura.* This term is defined by a serum platelet count less than 50,000/mm^3. Thrombocytopenic purpura does not include cases of thrombocytopenia associated with other causes such as hypersplenism, autoimmune disorders (including alloantibodies from previous transfusions) myelodysplasias, lymphoproliferative disorders, congenital thrombocytopenia or hemolytic uremic syndrome. This does not include cases of immune (formerly called idiopathic) thrombocytopenic purpura (ITP) that are mediated, for example, by viral or fungal infections, toxins or drugs. Thrombocytopenic purpura does not include cases of thrombocytopenia associated with disseminated intravascular coagulation, as observed with bacterial and viral infections. Viral infections include, for example, those infections secondary to Epstein Barr virus, cytomegalovirus, hepatitis A and B, rhinovirus, human immunodeficiency virus (HIV), adenovirus, and dengue virus. An antecedent viral infection may be demonstrated by clinical signs and symptoms and need not be confirmed by culture or serologic testing. Bone marrow examination, if performed, must reveal a normal or an increased number of megakaryocytes in an otherwise normal marrow.

(9) *Vaccine-strain measles viral infection.* This term is defined as a disease caused by the vaccine-strain that should be determined by vaccine-specific monoclonal antibody or polymerase chain reaction tests.

(10) *Vaccine-strain polio viral infection.* This term is defined as a disease caused by poliovirus that is isolated from the affected tissue and should be determined to be the vaccine-strain by oligonucleotide or polymerase chain reaction. Isolation of poliovirus from the stoll is not sufficient to establish a tissue specific infection or disease caused by vaccine-strain poliovirus.

(11) *Early-onset Hib disease.* This term is defined as invasive bacterial illness associated with the presence of Hib organism on culture of normally sterile body fluids or tissue, or clinical findings consistent with the diagnosis of epiglottitis. Hib pneumonia qualifies as invasive Hib disease when radiographic findings consistent with the diagnosis of pneumonitis are accompanied by a blood culture positive for the Hib organism. Otitis media, in the absence of the above findings, does not qualify as invasive bacterial disease. A child is considered to have suffered this injury only if the vaccine was the first Hib immunization received by the child.

(c) *Effective date provisions.* (1) Except as provided in paragraph (c)(2) of this section, the revised Table of Injuries set forth in paragraph (a) of this section and the Qualifications and Aids to Interpretation set forth in paragraph (b) of this section apply to petitions for compensation under the Program filed with the United States Court of Federal Claims on or after March 24, 1997. Petitions for compensation filed before such date shall be governed by section 2114(a) and (b) of the Public Health Service Act as in effect on January 1, 1995, or by § 100.3 as in effect on March 10, 1995 (see 60 FR 7678, *et seq.*, February 8, 1995), as applicable.

(2) The inclusion of hepatitis B, Hib, and varicella vaccines and other new vaccines (Items VIII, IX, X, XI and XII of the Table) will be effective on the effective date of a tax enacted to provide funds for compensation paid with respect to such vaccines. A notice will be published in the **Federal Register** to announce the effective date of such a tax.

[FR Doc. 97–4088 Filed 2–19–97; 8:45 am]

BILLING CODE 4160–15–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[CC Docket No. 96–152; FCC 97–35]

Implementation of the Telecommunications Act of 1996: Telemessaging, Electronic Publishing, and Alarm Monitoring Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; Clarification and interpretation.

SUMMARY: The First Report and Order (Order), released February 7, 1997, implements the non-accounting requirements prescribed by Congress in sections 260 and 274 of the Telecommunications Act of 1996 (the Act), which respectively govern the provision of telemessaging and electronic publishing services. The Order promotes the pro-competitive and deregulatory objectives of the Act.

EFFECTIVE DATE: March 24, 1997. The information collections in this Order will not become effective until at least May 1, 1997.

FOR FURTHER INFORMATION CONTACT: Lisa Sockett, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580. For additional information concerning the information collections contained in this Order contact Dorothy Conway at (202) 418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order adopted February 6, 1997, and released February 7, 1997. The full text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M St., NW., Room 239, Washington, DC. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common Carrier/Orders/fcc9735.wp, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M St., NW., Suite 140, Washington, DC 20037.

This Order contains new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act, the Order contains a Final Regulatory Flexibility Certification which is set forth in the Order. A brief description of the certification follows.

The Commission certifies, pursuant to 5 U.S.C. 605(b), that the clarification and interpretation adopted in this Order will not have a significant economic impact on a substantial number of "small entities," as this term is defined in 5 U.S.C. 601(6). The Commission therefore is not required to prepare a final regulatory flexibility analysis of the clarification and interpretation adopted in this Order. This certification and a statement of its factual basis are set forth in the Order, as required by 5 U.S.C. 605(b).

Paperwork Reduction Act

This Order contains either a new or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collections contained in this Order, as required by the Paperwork Reduction Act of 1995, Public Law No. 104–12. Written comments by the public on the information collections are due March 24, 1997. OMB notification of action is due April 21, 1997. Comments should address: (a) Whether the new or modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–0738

Title: Implementation of the Telecommunications Act of 1996: Telemessaging, Electronic Publishing, and Alarm Monitoring Services, CC Docket No. 96–152.

Form No.: N/A.

Type of Review: Revision.

Respondents: Business or other for profit.

Public reporting burden for the collection of information is estimated as follows:

Information collection	Number of respondents (approx.)	Annual hour burden per response	Total annual burden
Third-party disclosure requirement: To the extent a BOC refers a customer to a separated affiliate, electronic publishing joint venture or affiliate during the normal course of its telemarketing operations, it must refer that customer to all unaffiliated electronic publishers requesting the referral service. In particular, the BOC must provide the customer the names of all unaffiliated electronic publishers requesting the referral service, as well as affiliated electronic publishers, in random order.	7 BOCs	1,200 to 30,000 calls per BOC per year × 1/60th hour per response = 120 to 3,000 hours.	7 × 120 to 3,000 = 840 to 21,000 burden hours.

Total Annual Burden: 3,000 burden hours.

Estimated Costs Per Respondent: $0.

Needs and Uses: The attached item imposes a third-party disclosure requirement on BOCs in order to implement the nondiscrimination requirement of section 274(c)(2)(A) of the Act.

Synopsis of First Report and Order

I. Introduction

1. In February 1996, the "Telecommunications Act of 1996" became law. The intent of the 1996 Act is "to provide for a pro-competitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."

2. On July 18, 1996, the Commission released a Notice of Proposed Rulemaking, 61 FR 39385 (July 29, 1996), ("*NPRM*") regarding implementation of sections 260, 274, and 275 of the Communications Act addressing telemessaging, electronic publishing, and alarm monitoring services, respectively. This Order implements the non-accounting requirements of sections 260 and 274. We address in separate proceedings the alarm monitoring provisions of section 275 and the enforcement issues related to sections 260, 274, and 275. In addition, the accounting safeguards required to implement sections 271 through 276 and section 260 are addressed in a separate proceeding.

3. The 1996 Act opens local markets to competing providers by imposing new interconnection, unbundling, and resale obligations on existing providers of local exchange services. In enacting sections 260 and 274, Congress recognized that the local exchange market will not be fully competitive immediately. Congress therefore imposed requirements applicable to local exchange carriers' (LECs') provision of telemessaging services in section 260, and a series of requirements applicable to Bell Operating Companies' (BOCs') provision of electronic publishing services in section 274. Collectively, these requirements are designed to prevent, or facilitate the detection of, improper cost allocation, discrimination, or other anticompetitive conduct.

4. Section 260 permits incumbent LECs (including BOCs) to provide telemessaging service subject to certain nondiscrimination safeguards. Section 274 allows a BOC to provide electronic publishing service disseminated by means of its basic telephone service only through a "separated affiliate" or an "electronic publishing joint venture" that meets the separation, joint marketing, and nondiscrimination requirements in that section. BOCs that were offering electronic publishing services at the time the 1996 Act was enacted must comply with section 274 by February 8, 1997. As noted in part VII, *infra*, the requirements of this *Order* will become effective 30 days after publication of a summary in the **Federal Register**. In addition, the collection of information contained in this *Order* is contingent upon approval by the Office of Management and Budget (OMB). Accordingly, we do not anticipate taking any enforcement action based on these requirements until they become effective. The requirements under section 274 expire on February 8, 2000.

5. In this proceeding, our goal is to implement the non-accounting requirements in sections 260 and 274 in a manner that is consistent with the fundamental goal of the 1996 Act—to open all telecommunications markets to robust competition. By fostering competition in these markets, we seek to produce maximum benefits for consumers of telemessaging and electronic publishing services.

II. Scope of the Commission's Authority

A. Electronic Publishing

1. Background

6. In the *NPRM*, we sought comment on the extent to which section 274 grants the Commission authority over the intrastate provision of electronic publishing services. We noted that section 274(b)(4) specifically refers to "such regulations as may be prescribed by the Commission or a State commission" for the valuation of BOC assets. We therefore tentatively concluded that the Commission may not have exclusive jurisdiction over all aspects of intrastate services provided pursuant to section 274.

7. In addition, apart from any intrastate jurisdiction conferred by section 274 itself, we sought comment on the extent to which the Commission may have the authority to preempt inconsistent state regulations with respect to matters addressed by section 274.

2. Comments

(Parties that filed comments and replies are listed in the Attachment below.)

8. AT&T contends that section 274 covers both interstate and intrastate provision of electronic publishing services, and that this section confers on the Commission general jurisdiction over the provision of intrastate electronic publishing services. In support of its position, AT&T points to several sections that, in its view, refer to Commission authority over intrastate electronic publishing, including: (1) Section 274(e), which authorizes the Commission to hear complaints for violations of section 274; (2) section 274(f), which requires all separated BOC affiliates engaged in electronic publishing to file reports with the Commission; and (3) section 274(c)(2)(C), which grants the Commission the authority to determine whether the BOCs may be authorized to have a greater financial control of a joint venture with small, local electronic publishers. AT&T further maintains that the reference to valuation of BOC assets by state commissions in section 274(b)(4) does not restrict the Commission's general regulatory authority to establish rules, but merely indicates that, if a state commission has its own accounting rules, those rules

should be applied to the extent they are not inconsistent with the Commission's rules.

9. NAA contends that, because section 274 is silent with respect to whether it covers interstate or intrastate, and interLATA or intraLATA electronic publishing, and because electronic publishing services are not regulated telecommunications services, the Commission's authority under section 274 is limited to enforcing BOC compliance with the section's requirements that BOCs operate through a separated affiliate or electronic publishing joint venture and make various filings and reports. NAA further asserts that the Commission has authority to adjudicate complaints and requests for cease and desist orders with respect to violations of section 274, whether interstate or intrastate, but that states are not precluded from also enforcing this law. NAA also contends that states should be allowed to continue to use their cost allocation procedures for intrastate purposes.

10. A number of BOCs and state commissions, on the other hand, argue that section 274 does not give the Commission authority over intrastate electronic publishing services. Some of these commenters argue that section 274 covers such intrastate services, but that this section does not divest the states of their authority over intrastate services under section 2(b) of the Communications Act. These latter commenters argue that section 274 contains new requirements that state commissions will implement in their traditional role of regulating intrastate electronic publishing services.

11. These BOCs and state commissions also argue that section 2(b) of the Communications Act and section 601(c) of the 1996 Act bar the Commission from exercising authority under section 274 with respect to intrastate electronic publishing services absent an express grant of authority from Congress. PacTel and Ameritech contend that such a grant of authority is provided in section 274 in limited circumstances, including receiving BOC filings, prescribing regulations to value BOC asset transfers, and acting on complaints and applications for cease-and-desist orders. The California Commission argues that, although section 274(e) clearly supports our jurisdiction over complaints alleging violations of section 274, that section does not preclude states from trying to resolve disputes prior to the filing of a complaint or lawsuit in the federal arena. BellSouth disputes even this limited grant of authority over intrastate electronic publishing services, arguing that section 274(e) does not give the Commission either explicit or implicit statutory jurisdiction over intrastate electronic publishing services.

12. Several BOCs and state commissions claim that the Commission may preempt state regulations and exercise jurisdiction over intrastate electronic publishing only to the extent that such services are inseparably mixed interstate-intrastate communications, pursuant to the standard set forth in *Louisiana PSC*. The New York and California Commissions further argue that the Commission currently has no basis to make the showing necessary to preempt state regulation of intrastate electronic publishing.

13. AT&T and MCI contend that the Commission retains the authority to preempt state regulatory requirements relating to electronic publishing that are inconsistent with its policies and rules. AT&T further argues that, because the interstate and intrastate aspects of electronic publishing cannot be separated, the Commission's jurisdiction over interstate electronic publishing services extends to such intrastate services as well.

3. Discussion

14. As discussed above, in the *NPRM*, we tentatively concluded that the Commission may not have exclusive jurisdiction over all aspects of intrastate services provided pursuant to section 274, based on the language of section 274(b)(4). This section provides that BOCs and their separated affiliates or electronic publishing joint ventures must "value any assets that are transferred * * * and record any transactions by which such assets are transferred, in accordance with such regulations as may be prescribed by the Commission or a State commission to prevent improper cross subsidies." After examining the language of the statute and the comments filed in this proceeding, we conclude, for the reasons set forth below, that the Commission's authority under section 274 applies to the provision of intrastate as well as interstate electronic publishing services. We conclude, therefore, that while states may impose regulations with respect to BOC provision of electronic publishing services, those regulations must not be inconsistent with section 274 and the Commission's rules thereunder. We emphasize, however, that the scope of the Commission's authority under section 274 extends only to matters covered by that section.

15. Thus, we agree with AT&T and Bell Atlantic that section 274 applies not only to the provision of interstate electronic publishing services, but also to such services when they are provided on an intrastate basis. The language in section 274 expressly demonstrates that Congress intended this section to reach intrastate electronic publishing services. For example, section 274(c)(2)(C) expressly limits the permissible participation of a BOC or affiliate in electronic publishing joint ventures to an interest of 50 percent or less, but also provides that, "[i]n the case of joint ventures with small, local electronic publishers, the Commission for good cause shown may authorize [a BOC] or affiliate to have a larger equity interest." Notwithstanding the local nature of small, local electronic publishers, which suggests that they provide intrastate services, this section confers authority on the Commission to determine whether BOCs may have a greater interest in electronic publishing joint ventures with such electronic publishers.

16. In addition, section 274 requires that a BOC or BOC affiliate engage in the provision of electronic publishing services disseminated by means of that BOC or its affiliate's "basic telephone service" only through a "separated affiliate" or an electronic publishing joint venture." The statute defines "basic telephone service" to mean "any wireline telephone exchange service, or wireline telephone exchange service facility * * *." The term "telephone exchange service," as defined in section 3(47), is a primarily intrastate service. As we noted in the *Accounting Safeguards Order* (62 FR 2918 (January 21, 1997)), these references to primarily intrastate services clearly indicate that the scope of section 274 encompasses intrastate matters.

17. We further conclude that, given the jurisdiction granted by section 274, the Commission also has jurisdiction under the Communications Act to establish rules applicable to intrastate electronic publishing services. Sections 4(i), 201(b), and 303(r) of the Act authorize the Commission to adopt any rules it deems necessary or appropriate in order to carry out its responsibilities under the Act, so long as those rules are not otherwise inconsistent with the Act. Nothing in section 274 bars the Commission from clarifying and implementing the requirements of section 274. Moreover, courts repeatedly have held that the Commission's general rulemaking authority is "expansive" rather than limited. In addition, it is well-established that an agency has the authority to adopt rules to administer congressionally mandated requirements.

18. Our conclusion that the Commission has jurisdiction under the Communications Act to establish rules applicable to the full scope of section 274, including intrastate electronic publishing services, is particularly appropriate where, as here, the Commission is authorized to adjudicate complaints alleging violations of section 274. Section 274(e) provides a private right of action to any person claiming that an act or practice of a BOC, affiliate, or separated affiliate has violated any requirement of section 274. Under section 274(e)(1), such person may file a complaint with the Commission or bring suit in a U.S. District Court as provided in section 207. In addition to damages, section 274(e)(2) permits an aggrieved person to apply to the Commission for a cease-and-desist order or to a U.S. District Court for an injunction or an order compelling compliance. We find that it serves the public interest for us to clarify in advance the section 274 requirements imposed on the BOCs that parties may ask us to enforce later. Such clarification of the requirements will reduce uncertainty, aid BOCs and their affiliates in complying with the requirements of section 274, and facilitate the prompt resolution of compliance disputes that may be presented in complaint proceedings.

19. We reject the argument that section 2(b) of the Communications Act requires the conclusion that section 274, and the Commission's authority thereunder, apply only to the provision of interstate electronic publishing services. As demonstrated, for example, by section 274(c)(2)(C)'s grant of authority to the Commission to alter the maximum interest that a BOC may hold in electronic publishing joint ventures with small, local electronic publishers, Congress gave the Commission intrastate jurisdiction without amending section 2(b). Thus, we find that, in enacting section 274 after section 2(b), and squarely addressing therein the issues before us by using the statutory language discussed above, Congress intended for section 274 to take precedence over any contrary implications based on section 2(b).

20. We similarly are not persuaded that section 601(c) of the 1996 Act evinces an intent by Congress to preserve states' authority over intrastate matters arising under section 274. Section 601(c) of the 1996 Act provides that the Act and its amendments "shall not be construed to modify, impair, or supersede Federal, State, or local law unless expressly so provided in such Act or amendments." As discussed above, we conclude that section 274 expressly modifies federal law, and the Commission's statutory authority thereunder, to reach intrastate electronic publishing services.

B. Telemessaging

1. Background

21. In the *NPRM*, we sought comment on the extent to which section 260 grants the Commission statutory authority over the intrastate provision of telemessaging services. We stated that telemessaging is an information service that, when provided by a BOC or its affiliate on an interLATA basis, is subject to the requirements of section 272 in addition to the requirements of section 260. We also noted that, in the *Non-Accounting Safeguards NPRM* (61 FR 39397 (July 29, 1996)), we tentatively concluded that the Commission's authority under sections 271 and 272 applies to interstate and intrastate interLATA information services provided by BOCs or their affiliates. Further, we pointed out that section 260 applies not only to BOCs and their affiliates, but also to all incumbent LECs. Finally, apart from any intrastate jurisdiction conferred by section 260 itself, we sought comment in the *NPRM* on the extent to which the Commission may have the authority to preempt inconsistent state regulations with respect to matters addressed by section 260.

2. Comments

22. AT&T, ATSI, and Voice-Tel contend that section 260, and the Commission's authority thereunder, apply to all telemessaging services provided by incumbent LECs, including interstate and intrastate, as well as interLATA and intraLATA, telemessaging services. ATSI contends that any attempt to limit the applicability of section 260 would deny providers of telemessaging a remedy against anticompetitive practices that Congress intended to provide them. AT&T further contends that section 260 is an independent grant of authority to the Commission and is not restricted in any way by sections 271 and 272. Rather, AT&T contends that sections 271 and 272 complement section 260 by imposing additional requirements on the BOCs.

23. Some BOCs and state commissions, on the other hand, argue that section 2(b) of the Communications Act and section 601(c) of the 1996 Act bar the Commission from exercising authority under section 260 with respect to any intrastate telemessaging services absent an express grant of authority from Congress. Some of these commenters contend that nothing in section 260 gives the Commission authority over any intrastate telemessaging services. Ameritech argues that section 260 grants the Commission limited jurisdiction over both interLATA and intraLATA telemessaging services, but only to the extent necessary to adjudicate complaints by other telemessaging providers that an incumbent LEC has improperly subsidized its telemessaging services or discriminated against other telemessaging services in violation of section 260. BellSouth argues that, although sections 271 and 272 give the Commission limited reach over intrastate interLATA telemessaging services, such jurisdiction is not comprehensive and does not reach intrastate intraLATA telemessaging services.

24. Several BOCs and state commissions claim that the Commission may preempt state regulations and exercise jurisdiction over intrastate telemessaging services only subject to the *Louisiana PSC* exception for inseparably mixed interstate-intrastate communications. The New York Commission and BellSouth further argue that the Commission currently has no basis to make the showing necessary to preempt state regulation of intrastate telemessaging services.

25. AT&T, MCI, and Voice-Tel contend that the Commission has authority to preempt state regulatory requirements relating to telemessaging services that are inconsistent with its policies and rules. Voice-Tel and AT&T further argue that, because the interstate and intrastate aspects of telemessaging services cannot be separated, the Commission's jurisdiction over interstate telemessaging services extends to such intrastate services as well.

26. Cincinnati Bell argues that the Commission should preempt state regulations that restrict the ability of small and mid-sized incumbent LECs to provide telemessaging services on an integrated basis.

3. Discussion

27. For the reasons set forth below, we conclude that section 260, and the Commission's authority thereunder, apply to the provision of intrastate as well as interstate telemessaging services. Consequently, we find that section 2(b) of the Communications Act does not bar the Commission from establishing regulations to clarify and implement the requirements of section 260 that apply to intrastate services. We conclude, therefore, that the rules we may establish to implement section 260 are binding on the states, and that the states may not impose regulations with respect

to incumbent LEC provision of telemessaging services that are inconsistent with section 260 and the Commission's rules thereunder.

28. In the *Non-Accounting Safeguards Order* (62 FR 2927 (January 21, 1997)), we concluded that telemessaging is an information service that, when provided by a BOC or its affiliate on an interLATA basis, is subject to the requirements of section 272. We further concluded that section 272 applies to both intrastate and interstate interLATA information services. We have therefore already concluded that the Commission has jurisdiction over certain aspects of intrastate telemessaging services.

29. Section 260 not only imposes additional obligations on BOCs to prevent unlawful subsidization, and discrimination in favor, of its telemessaging service, but also extends its requirements beyond BOCs and their affiliates to all incumbent LECs. We conclude that section 260 applies to the provision of all telemessaging services by incumbent LECs, whether interstate or intrastate, and for BOCs, whether interLATA or intraLATA. This conclusion is supported by the terms of the statute. Specifically, section 260 prohibits an incumbent LEC from, among other things, subsidizing its telemessaging service from its "telephone exchange service or its exchange access." "Telephone exchange service," as defined in section 3(47), is a primarily intrastate service. As we noted in the *Accounting Safeguards Order*, this reference to a primarily intrastate service clearly indicates that the scope of section 260 encompasses intrastate matters.

30. We reject BellSouth's argument that section 260 does not apply to intrastate intraLATA services. As discussed below, section 260, unlike section 272, does not make a distinction between interLATA and intraLATA services. Moreover, the terms in section 260 encompass both interLATA and intraLATA services.

31. We further conclude that, given the jurisdiction granted by section 260, the Commission also has jurisdiction under the Communications Act to establish rules applicable to intrastate telemessaging services. As noted above, sections 4(i), 201(b), and 303(r) of the Act authorize the Commission to adopt any rules it deems necessary or appropriate to carry out its responsibilities under the Act, so long as those rules are not otherwise inconsistent with the Act. Nothing in section 260 bars the Commission from clarifying and implementing the requirements of this section.

32. Our conclusion that the Commission has jurisdiction to establish rules applicable to intrastate telemessaging services is particularly appropriate where, as here, the Commission exercises an adjudicatory function. Section 260(b) requires that the Commission establish expedited procedures for the receipt and review of complaints alleging violations of the nondiscrimination provisions in section 260(a), or regulations adopted pursuant thereto, that result in "material financial harm" to a provider of telemessaging service. As in our discussion of section 274 above, we find that it serves the public interest for us to clarify in advance the section 260 requirements that are imposed on incumbent LECs and that parties may ask us to enforce later. Such clarifications will reduce uncertainty, aid incumbent LECs in complying with the requirements of section 260, and facilitate the prompt resolution of compliance disputes that may be presented in complaint proceedings.

33. We reject the argument that section 2(b) of the Communications Act requires the conclusion that section 260, and the Commission's authority thereunder, apply only to the provision of interstate telemessaging services. Rather, as discussed above with respect to electronic publishing under section 274, we find that, in enacting section 260 after section 2(b), and squarely addressing therein the issues before us, Congress intended for section 260 to take precedence over any contrary implications based on section 2(b).

34. We similarly are not persuaded that section 601(c) of the 1996 Act evinces an intent by Congress to preserve states' authority over intrastate matters arising under section 260. Section 601(c) of the 1996 Act provides that the Act and its amendments "shall not be construed to modify, impair, or supersede Federal, State, or local law unless expressly so provided in such Act or amendments." As discussed above, we conclude that section 260 expressly modifies federal law, so that both federal law, and the Commission's authority thereunder, apply to both interstate and intrastate provision of telemessaging services.

C. Constitutional Issues

35. BellSouth and U S WEST raise constitutional concerns with respect to our implementation of sections 260 and 274. BellSouth contends that the Commission must be "circumspect" in its construction of sections 260 and 274 because both the separate affiliate requirement of section 272 that we proposed applying to BOCs' interLATA telemessaging services and the separated affiliate requirement of section 274 "impose impermissible prior restraints on BOCs' speech activities," in violation of the First Amendment. Further, it maintains that sections 260 and 274, as well as other sections of the Act, are unconstitutional "bills of attainder" to the extent they single out BOCs by name and impose restrictions on them alone. Recognizing that we have no discretion to ignore Congress' mandate to apply sections 260 and 274, BellSouth urges us to construe these sections, and others, narrowly. U S WEST concurs with BellSouth and urges the Commission not to adopt any structural rules beyond the express terms of the statute.

36. NAA, in reply, dismisses BellSouth's constitutional arguments. It rejects as frivolous the argument that the electronic publishing safeguards are an unconstitutional prior restraint on BOCs' speech activities. It further states that the separated affiliate requirement (1) is a "reasonable approach to detecting and preventing cross-subsidy and discrimination that does not unnecessarily burden the BOCs' right to speak;" (2) does not violate the First Amendment because it expires four years after enactment of the Act and serves important government interests; and (3) is not a bill of attainder because BOCs are only singled out for "temporary, narrowly-focused, economic regulation."

37. Although decisions about the constitutionality of congressional enactments are generally outside the jurisdiction of administrative agencies, we have an obligation under Supreme Court precedent to construe a statute "where fairly possible to avoid substantial constitutional questions" and not to "impute to Congress an intent to pass legislation that is inconsistent with the Constitution as construed by the [Supreme Court]." As BellSouth concedes, we have no discretion to ignore Congress' mandate respecting these sections or any other sections of the Act. Nevertheless, we find BellSouth's argument to be without merit.

38. With respect to section 274, we reject the argument that requiring BOCs to provide electronic publishing services through a separated affiliate violates the First Amendment. BellSouth bases its argument on an assertion that, as "content-related" services, electronic publishing services are commercial speech entitled to First Amendment protection. We conclude that, to the extent that BOC provision of electronic publishing services constitutes speech for First Amendment purposes, the section 274 separated affiliate requirement neither prohibits the BOCs from providing such services, nor places any restrictions on the content of the information the BOCs may provide. Instead, the section 274 separated affiliate requirement is a content-neutral restriction on the manner in which BOCs may provide electronic publishing services that are disseminated by means of a BOC's basic telephone service. These restrictions address the important governmental interest of protecting against improper cost allocation and discrimination by the BOCs, and they do so in a narrowly-tailored, content-neutral manner. Thus, we conclude that the separated affiliate requirement imposed by section 274 on BOC provision of electronic publishing services does not violate the First Amendment.

39. Similarly, we reject BellSouth and U S WEST's argument that section 274 is an unconstitutional "bill of attainder" because the statute singles out BOCs by name and imposes restrictions on them alone. We conclude that section 274 is not an unconstitutional bill of attainder simply because it applies only to the BOCs. Rather, judicial precedent teaches that, in determining whether a statute amounts to an unlawful bill of attainder, we must consider whether the statute "further[s] nonpunitive legislative purposes," and whether Congress evinced an intent to punish. As noted above, the section 274 restrictions on BOC provision of electronic publishing services are temporary requirements aimed at protecting against improper cost allocation and discrimination by the BOCs. Moreover, we find no evidence, and BellSouth and US WEST have offered none, that would support a finding that Congress enacted section 274 to punish the BOCs. In fact, in enacting the 1996 Act, Congress freed BOCs from the terms of an antitrust consent decree. Thus, we conclude that the section 274 restrictions imposed on BOCs do not violate the Bill of Attainder Clause.

40. With respect to section 260, BellSouth raises constitutional issues in this proceeding regarding the tentative conclusion in the *Non-Accounting Safeguards NPRM* that, under section 272, BOCs must provide interLATA telemessaging services through a separate affiliate. We find no merit in BellSouth's arguments for the same reasons discussed above and in the *Non-Accounting Safeguards Order*.

III. BOC Provision of Electronic Publishing—Section 274

A. Definition of Electronic Publishing

1. Electronic Publishing Services Under Section 274(h)

a. Background

41. Section 274(h)(1) defines "electronic publishing" as: the dissemination, provision, publication, or sale to an unaffiliated entity or person, of any one or more of the following: news (including sports); entertainment (other than interactive games); business, financial, legal, consumer, or credit materials; editorials, columns, or features; advertising; photos or images; archival or research material; legal notices or public records; scientific, educational, instructional, technical, professional, trade, or other literary materials; or other like or similar information.

Section 274(h)(2) also lists specific services that are excluded from the definition of electronic publishing. These excepted services include, among other things, common carrier provision of telecommunications service, information access service, information gateway service, voice storage and retrieval, electronic mail, certain data and transaction processing services, electronic billing or advertising of a BOC's regulated telecommunications services, language translation or data format conversion, "white pages" directory assistance, caller identification services, repair and provisioning databases, credit card and billing validation for telephone company operations, E 911 and other emergency assistance databases, and video programming and full motion video entertainment on demand.

42. In the *NPRM*, we sought comment on how to distinguish the services that are properly included in the definition of electronic publishing in section 274(h)(1) from those services that are excluded under 274(h)(2). We asked parties to identify any enhanced services that BOCs currently provide that appear to meet the definition of an electronic publishing service under section 274. To the extent it is unclear whether a particular service, or a particular group of services, is encompassed by the statutory definition of electronic publishing, we invited parties to identify the basis for the ambiguity and to make recommendations on how the service, or services, should be classified. For example, we cited the *Non-Accounting Safeguards NPRM*, which sought comment on whether we should classify as "electronic publishing" services those services for which the carrier "controls, or has a financial interest in, the content of the information transmitted by the service."

43. In addition, we observed in the *NPRM* that, although electronic publishing is specifically included in the definition of information services, BOC provision of electronic publishing is explicitly exempted from the separate affiliate and nondiscrimination requirements of section 272 that apply to BOC provision of interLATA information services. We noted that, in contrast to section 272, which applies only to BOC provision of interLATA information services, section 274 does not distinguish between the intraLATA and interLATA provision of electronic publishing services. We sought comment, therefore, on whether section 274 applies to BOC provision of both intraLATA and interLATA electronic publishing services.

b. Comments

44. NAA asserts that the definition of electronic publishing in section 274(h) is clear and detailed; therefore, it contends, there is no need to anticipate ambiguous services at this time. Other commenters agree that the definition of electronic publishing in section 274(h)(1) is clear, but suggest that Commission clarification of some of the exceptions to electronic publishing in section 274(h)(2) would be appropriate. For example, several parties ask us to clarify that the "gateway" exception in section 274(h)(2)(C) includes access to a home page that electronically links selected Internet sites or other home pages. Similarly, they contend that introductory information regarding an Internet service provider's services and electronic linkage to these services should also be included in the "gateway" exception. In addition, they contend that software browsers should be considered "navigational systems," which are also excluded from the definition of electronic publishing under section 274(h)(2)(C). AT&T notes, however, that, even where particular BOC services are exempt from the requirements of section 274, the separate affiliate requirements of section 272 may still apply.

45. Some commenters also ask us to clarify that BOC transmission of information that falls within the definition of electronic publishing under section 274(h)(1) does not make the BOC's transmission of such information subject to the requirements of section 274 unless the BOC has control of, or a financial interest in, the content of the information transmitted. Those situations where a BOC merely

provides access to another entity's content, they argue, should not be considered electronic publishing.

c. Discussion

46. We find, as the commenters indicate, that electronic publishing services may include services provided through the Internet or through proprietary data networks. We also find that, although the definition of electronic publishing in section 274(h) is quite detailed, clarification of the "gateway" exception of section 274(h)(2)(C) is appropriate. Section 274(h)(2)(C) provides that electronic publishing shall not include:

The transmission of information as part of a gateway to an information service that does not involve the generation or alteration of the content of information, including data transmission, address translation, protocol conversion, billing management, introductory information content, and navigational systems that enable users to access electronic publishing services, which do not affect the presentation of such electronic publishing services to users.

We conclude, consistent with the comments on this issue, that a BOC's provision of access to introductory World Wide Web home pages, other types of introductory information, and software (such as browsers) does not constitute the provision of electronic publishing services under section 274(h)(2)(C). We find that, as long as a BOC merely provides access to a home page, or an initial screen that does not include any of the enumerated content types in section 274(h)(1), it is engaged in the provision of "gateway" services that section 274(h)(2)(C) excludes from the definition of electronic publishing services. Further, the statute expressly excludes "introductory information content" from the definition of electronic publishing services. Similarly, we find that end user software products, such as World Wide Web browsers, to the extent they enable users "to access electronic publishing services" and do not themselves incorporate the content types listed in section 274(h)(1), constitute "navigational systems" that are excepted from the definition of electronic publishing. Further, we conclude that hypertext "links," and other pointers, from any gateway or navigational system to electronic publishing content are similarly "navigational" systems and thus are not electronic publishing services under section 274(h)(1).

47. Moreover, we find that, to the extent BOCs engage in activities that are excluded from the definition of electronic publishing under section 274(h), they are not subject to the joint marketing restrictions of section 274(c) with respect to those activities. We find, however, that certain activities that are excluded from the definition of electronic publishing may still be information services subject to the separate affiliate, nondiscrimination, and joint marketing requirements of section 272. For example, although "gateway" services, as discussed above, are generally excluded from the definition of electronic publishing services, in the *Non-Accounting Safeguards Order* we found that certain BOC-provided Internet access services may be interLATA information services subject to the requirements of section 272.

48. As to services that are neither expressly included nor excluded from the definition of electronic publishing, or services whose proper classification may be otherwise ambiguous, it would be speculative for us to determine at this time whether such services are electronic publishing services. Rather, we find that the appropriate classification of an ambiguous service will necessarily involve a fact-specific analysis that is best performed on a case-by-case basis. Moreover, we decline to adopt NAA's proposal that we rely solely on whether such service involves "the generation or alteration of the content of information." Although we recognize that Congress used this language in describing several exceptions to the definition of electronic publishing, we do not find this fact to be dispositive in itself. There is no indication in section 274 or its legislative history that Congress intended the "generation or alteration" language to be the controlling factor in determining the nature of ambiguous services. We may, nevertheless, take it into consideration in any determination we make concerning the classification of an ambiguous service.

49. As to the electronic publishing services described in section 274(h)(1), we conclude, for the reasons discussed below, that a BOC must control, or have a financial interest in, the content of information transmitted over its basic telephone service in order to be subject to the requirements of section 274. We therefore agree with those parties that argue that a BOC is not subject to section 274 requirements merely because it provides the transmission component of an electronic publishing service offered by an unaffiliated entity to end users. We find support for our conclusion in two of the exceptions to the definition of electronic publishing—section 274(h)(2)(B), which excepts from the definition of electronic publishing "[t]he transmission of information as a common carrier," and section 274(h)(2)(M), which excludes "[a]ny other network service of a type that is like or similar to these network services and that does not involve the generation or alteration of the content of information." We note further that this "control or financial interest" test is consistent with the definition of electronic publishing in the Modification of Final Judgment (MFJ). The MFJ, among other things, prohibited AT&T from engaging in electronic publishing over its own transmission facilities. It defined "electronic publishing" as the "provision of any information which AT&T or its affiliates has, or has caused to be, originated, authored, compiled, collected, or edited, *or in which it has a direct or indirect financial or proprietary interest*, and which is disseminated to an unaffiliated person through some electronic means." See *United States* v. *Western Electric*, 552 F. Supp. 131, 180–81 (D.D.C. 1982) (emphasis added), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983). As discussed below, however, because we received very few comments on the exact meaning of "control" and "financial interest," we are seeking additional comment on this issue in a *Further Notice of Proposed Rulemaking* ("*FNPRM*").

50. Finally, we conclude that section 274 applies to a BOC's provision of both intraLATA and interLATA electronic publishing services. Nothing in the statute or its legislative history suggests that Congress intended to distinguish between intraLATA and interLATA electronic publishing services. We therefore agree with those commenters that argue that, if Congress had intended to distinguish between intraLATA and interLATA electronic publishing as it did in describing information services subject to section 272, it would have done so.

2. Dissemination by Means of "Basic Telephone Service"

a. Background

51. Section 274 prescribes the terms under which a BOC may offer electronic publishing. Section 274(a) states that no BOC or BOC affiliate "may engage in the provision of electronic publishing that is disseminated by means of such [BOC's] or any of its affiliates' basic telephone service, except that nothing in this section shall prohibit a separated affiliate or electronic publishing joint venture operated in accordance with this section from engaging in the provision of electronic publishing." In the *NPRM*, we tentatively concluded that a BOC or BOC affiliate may engage in the provision of electronic publishing services disseminated by means of a BOC or its affiliate's basic telephone service only through a "separated affiliate" or an "electronic publishing joint venture."

b. Comments

52. No commenters disagree with our tentative conclusion that a BOC or BOC affiliate may engage in the provision of electronic publishing services disseminated by means of a BOC or its affiliate's basic telephone service only through a "separated affiliate" or an "electronic publishing joint venture." The majority of BOCs point out, however, that electronic publishing *not* disseminated via the basic telephone service of a BOC or its affiliate is not subject to the requirements of section 274. For example, PacTel maintains that a BOC or its affiliate may engage in the provision of electronic publishing service disseminated by means of telephone exchange service or facilities provided by a competitive wireline telephone service provider without having to create a separated affiliate or electronic publishing joint venture under section 274(a).

53. Similarly, Ameritech asserts, and SBC agrees, that if a BOC only provides exchange access, and not basic telephone service, it is not subject to section 274 requirements. For example, Ameritech contends that, if a BOC originates or terminates a toll call disseminating electronic publishing information, the BOC is providing "exchange access," not exchange service. In response, AT&T asserts that "basic telephone service" under section 274 extends to any electronic publishing disseminated by means of either the BOC or its affiliate's local exchange service or local exchange facilities. This definition, AT&T argues, would include the exchange access service of a BOC or its affiliate.

c. Discussion

54. We affirm our tentative conclusion that, pursuant to the plain language of section 274(a), a BOC or BOC affiliate may engage in the provision of electronic publishing services disseminated by means of a BOC or its affiliate's basic telephone service only through a "separated affiliate" or an "electronic publishing joint venture." Moreover, in reading section 274(a) together with the definition of "basic telephone service" in section 274(i)(2), we conclude that a BOC or BOC affiliate is not required to provide electronic publishing services through a separated affiliate or electronic publishing joint venture if it disseminates its electronic publishing via the basic telephone service of a competing wireline local exchange carrier or commercial mobile radio service provider. We find that dissemination via the basic telephone service of competing, unaffiliated providers significantly reduces the ability of the BOC to allocate costs improperly and to discriminate in favor of its affiliate. We therefore decline to apply the requirement that a BOC provide electronic publishing services through a separated affiliate or electronic publishing joint venture where Congress did not. We also conclude that, with respect to electronic publishing services provided through the Internet, "dissemination" means the transmission of information via a BOC or its affiliate's basic telephone service to the Internet, rather than the transmission of information to the end user. Thus, a BOC that is providing Internet access services to end users, and nothing more, is not engaged in the provision of electronic publishing pursuant to section 274.

55. We reject Ameritech's assertion, however, that a BOC's dissemination of electronic publishing services through its exchange access service is exempt from the requirements of section 274. Pursuant to section 274(a), BOCs that provide electronic publishing services disseminated via their own "basic telephone service" must do so through a separated affiliate or electronic publishing joint venture. Section 274(i)(2) defines "basic telephone service" as "any wireline telephone exchange service, or *wireline telephone exchange service facility*, provided by a [BOC] in a telephone exchange area." We find that, when a BOC provides exchange access service, it uses its telephone exchange service facilities. Indeed, "exchange access" is defined in section 153(16) as "the offering of access to telephone exchange services *or facilities* for the purpose of the origination or termination of telephone toll services." Since the definition of "basic telephone service" in section 274(i)(2) encompasses both the telephone exchange service and the exchange service *facility*, the use of exchange access service, which in turn uses the BOC's telephone exchange service facilities, for the dissemination of electronic publishing falls within this definition and must be provided in accordance with the requirements of section 274. This conclusion is appropriate as a matter of policy, too, since the BOCs' near-monopoly over exchange access service as well as local exchange service gives them an incentive to allocate costs improperly and discriminate against unaffiliated electronic publishing entities.

56. We conclude therefore that, to be engaged in the provision of electronic publishing services subject to section 274, the BOC must disseminate the information via its basic telephone service (as defined by 274(i)(2)) and have control of, or a financial interest in, the content of the information being provided. Similarly, we also conclude that control of, or a financial interest in, the content of the information alone, without BOC dissemination of information, is not electronic publishing under section 274.

57. We note that, to the extent a BOC disseminates electronic publishing services through the facilities of a competing wireline local exchange carrier, or commercial mobile service provider, and thus is not required to provide such services through a separated affiliate or electronic publishing joint venture, it may still be subject to the joint marketing prohibition of section 274(c)(1)(B). As discussed below, this section contemplates situations in which a BOC affiliate is involved in the provision of services that are "related to" the provision of electronic publishing, but does not provide electronic publishing services disseminated by means of a BOC or its affiliate's basic telephone service.

B. "Separated Affiliate" and "Electronic Publishing Joint Venture" Requirements of Section 274

1. The "Operated Independently" Requirement of Section 274(b)

a. Background

58. Section 274(b) states that a separated affiliate or electronic publishing joint venture established to provide electronic publishing services pursuant to section 274(a) shall be "operated independently" from the BOC. Subsections 274(b) (1)–(9) then list nine structural separation and transactional requirements that apply to the separated affiliate or electronic publishing joint venture. In the *NPRM* we addressed only the structural separation requirements of section 274(b) and only those requirements are addressed herein. Subsections 274(b) (1), (3), (4), (8), and (9) are transactional requirements that are addressed in the *Accounting Safeguards Order*. We observed in the NPRM that the structural separation requirements of section 274(b) do not refer, in all

instances, to both separated affiliates and electronic publishing joint ventures. We, therefore, sought comment on whether Congress intended the phrase "operated independently" to have a different meaning for separated affiliates and for electronic publishing joint ventures. We also sought comment in the *NPRM* on whether the Commission should adopt additional regulatory requirements to ensure compliance with the "operated independently" requirement of section 274(b).

b. Comments

59. Several commenters argue that Congress intended the phrase "operated independently" to have the same meaning for separated affiliates and electronic joint publishing ventures when subsections 274(b) (1)–(9) refer to both separated affiliates and electronic publishing joint ventures. They note, however, that some of the requirements of section 274(b) do not apply to electronic publishing joint ventures. Where the statutory language does not refer to both separated affiliates and electronic publishing joint ventures, these commenters maintain that the phrase "operated independently" should not be read to render all the requirements in subsections (b)(1)–(9) applicable to both separated affiliates and electronic publishing joint ventures; they contend, for example, that sections 274(b)(5) and 274(b)(7) are inapplicable to electronic publishing joint ventures since those subsections refer only to separated affiliates. Other commenters argue that the language "operated independently" compels us to apply all of the section 274(b) requirements to separated affiliates and electronic publishing joint ventures.

60. As to the issue of whether we should adopt regulatory requirements to ensure compliance with the "operated independently" requirement of section 274(b), BOCs and several trade associations argue that the structural and transactional safeguards of section 274 are clear, self-executing and comprehensive. They assert that Congress could have expressly provided for additional requirements had it deemed them necessary to ensure the operational independence of BOCs from their separated affiliates and electronic publishing joint ventures. They further assert that the phrase "operated independently" is not a separate substantive restriction, as their competitors maintain, but that subsections 274(b) (1)–(9) reflect Congress' determination of the requirements necessary to achieve operational independence. Several of these commenters observe that this position is consistent with the Commission's interpretation of the same language in *Computer II* and the cellular separation rules, where "operate independently" is not given an independent meaning. Finally, several commenters assert that Congress did not grant the Commission authority to adopt additional regulations in section 274(b).

61. Other commenters contend that the inclusion of the phrase "operated independently," in addition to the requirements in subsection 274(b) (1)–(9), supports the conclusion that we are authorized to and should adopt additional regulations to ensure compliance with section 274(b). They maintain that the "operated independently" language is a separate substantive requirement from those restrictions in subsections 274(b) (1)–(9). These commenters urge us to read the "operated independently" language as authorizing us to adopt additional rules such as those adopted in *Computer II*. Specifically, they urge us to adopt regulations precluding the separated affiliated or joint venture from: (1) Leasing or sharing physical space collocated with regulated transmission facilities used to provide basic service; (2) sharing computer facilities with the local exchange carrier; (3) developing software jointly with the regulated entity; and (4) marketing any other equipment or services to any affiliate. Time Warner further proposes that we adopt regulations precluding the separated affiliate or electronic publishing joint venture from constructing, owning or operating its own transmission facilities, thereby requiring the separated affiliate or joint venture to purchase its capacity from the regulated carrier under tariff and ensuring "that local exchange monopoly power is not leveraged into the provision of electronic publishing."

c. Discussion

62. We conclude that the "operated independently" requirement of section 274(b) obligates a separated affiliate to comply with all the requirements of subsections 274(b) (1)–(9). We further conclude that an electronic publishing joint venture, to comply with the "operated independently" requirement of section 274(b), need only satisfy the requirements of subsections 274(b) (1)–(4), (6), and (8)–(9), since subsections 274(b)(5) and 274(b)(7) specifically refer to separated affiliates and not to electronic publishing joint ventures. We discuss more fully below the structural separation requirements of section 274(b), *i.e.*, subsections 274(b) (2), and (5)–(7). As noted above, the transactional requirements of section 274(b), *i.e.*, subsections 274(b) (1), (3), (4), (8), and (9), are discussed in the *Accounting Safeguards Order*.

63. We reject the arguments made by certain commenters that the phrase "operated independently" is a separate substantive restriction that requires us to apply subsections 274(b) (1)–(9) to both separated affiliates and electronic publishing joint ventures even where the statute refers only to a separated affiliate. We see no reason for Congress to have expressly referred in section 274(b)(5) and section 274(b)(7) to separated affiliates if the restrictions in those subsections were intended to apply to both separated affiliates and electronic publishing joint ventures.

64. We also reject the similar argument that the phrase "operated independently" is a separate substantive restriction authorizing us to adopt additional restrictions beyond those in subsections 274(b) (1)–(9). There is no evidence in the statute or its legislative history that Congress intended the restrictions in section 274(b) merely to be a list of minimum requirements that need to be supplemented by additional rules to be imposed on separated affiliates or electronic publishing joint ventures. We find, therefore, that the "operated independently" requirement in section 274(b) is satisfied if a BOC and its separated affiliate or electronic publishing joint venture comply with the applicable restrictions in subsections 274(b) (1)–(9), as noted above. While we decline to adopt additional restrictions beyond those in subsections 274(b) (1)–(9), we reject the argument that Congress did not grant the Commission the authority to do so.

65. This interpretation of the "operated independently" requirement in section 274(b) is not inconsistent with our determination in the *Non-Accounting Safeguards Order* that the section 272(b)(1) "operate independently" provision imposes requirements beyond those contained in subsections 272(b)(2)–(5). The "operated independently" requirement in section 274(b) is followed by nine substantive restrictions that we read as the criteria to be satisfied to ensure operational independence between a BOC and its electronic publishing entity created pursuant to section 274(a). In contrast, the "operate independently" provision in section 272 appears in subsection 272(b)(1), which is one of five separate substantive requirements in section 272(b).

2. Section 274(b)(2)

a. Background

66. Section 274(b)(2) provides that a separated affiliate or electronic publishing joint venture and the BOC with which it is affiliated shall "not incur debt in a manner that would permit a creditor of the separated affiliate or joint venture upon default to have recourse to the assets of the [BOC]." We sought comment in the *NPRM* on the types of activities a BOC, a separated affiliate, or an electronic publishing joint venture are precluded from engaging in under section 274(b)(2). We tentatively concluded that a BOC may not cosign a contract, or any other instrument, with a separated affiliate or an electronic publishing joint venture by which it would incur debt in violation of section 274(b)(2). We also sought comment on: whether this subsection affects a separated affiliate differently than an electronic publishing joint venture because of their different corporate relationships to the BOC, and whether we should establish specific requirements regarding the types of activities contemplated by section 274(b)(2).

b. Comments

67. A number of commenters generally agree with our tentative conclusion that section 274(b)(2) prohibits a BOC from cosigning with a separated affiliate or an electronic publishing joint venture a contract, or any other instrument, that allows a creditor, upon default, to have recourse to the assets of the BOC. AT&T and MCI maintain that we should also interpret section 274(b)(2) to prohibit a BOC's parent holding company from co-signing a debt of a separated affiliate or electronic publishing joint venture. The BOCs, in reply, assert that interpreting section 274(b)(2) to preclude a BOC's parent company from cosigning a contract or any other instrument with a BOC's separated affiliate or electronic publishing joint venture is neither supported by the statutory language nor public policy. They further state that there is no need for additional regulations to effectuate section 274(b)(2).

c. Discussion

68. As stated in the *NPRM*, we find that the intent of section 274(b)(2) is to protect BOC local exchange and exchange access service subscribers from bearing the cost of default by BOC affiliates. We adopt our tentative conclusion that section 274(b)(2) prohibits a BOC from cosigning with a separated affiliate or an electronic publishing joint venture a contract, or any other instrument, that would incur debt in a manner that grants the creditor recourse, upon default, against the assets of a BOC. Consistent with this conclusion, we further conclude that a BOC's parent is precluded from cosigning a contract or other instrument for a BOC's separated affiliate or electronic publishing joint venture, if the effect is to provide its creditor with recourse, upon default, to a BOC's assets. We reject, however, the arguments urging us to extend the restrictions in section 274(b)(2) to preclude a BOC's section 274 separated affiliate or electronic publishing joint venture from incurring debt in a manner that would permit a creditor, upon default, to have recourse to the assets of a BOC's parent holding company, provided that this recourse does not effectively result in recourse to the assets of the BOC. The text of the statute does not support the proposed restriction. Moreover, it would leave section 274 separated affiliates and electronic publishing joint ventures at a disadvantage as compared with other electronic publishing companies that are permitted to rely upon the credit of their parent corporations.

69. We decline to apply this section differently as to separated affiliates and electronic publishing joint ventures. No arguments were advanced supporting the need for different treatment with respect to these alternate vehicles for providing electronic publishing services, and we see no evidence at this time indicating that this subsection affects these entities differently. In this regard we agree with SBC that "no useful purpose would be served by * * * speculating as to whether the subsection might affect a separated affiliate differently than a joint venture," and that we should proceed on a case-by-case basis, rather than adopt a "one size fits all" rule.

70. We reject AT&T's proposal that we require contracts or other instruments through which a separated affiliate or electronic publishing joint venture obtains credit to provide expressly that the creditor has no recourse either to the assets of a BOC or to the assets of the parent holding company of a BOC. As stated above, we do not read section 274(b)(2) to preclude a creditor of a separated affiliate or electronic publishing joint venture from having recourse, upon default, to the assets of a BOC parent holding company. Further, given the clarity of section 274(b)(2), we see no need to adopt a rule at this time requiring contracts through which a separated affiliate or electronic publishing joint venture obtains credit to provide expressly that the creditor has no recourse to the assets of a BOC. BOCs, nevertheless, may include such a provision in their contracts, if they so choose.

3. Section 274(b)(5) and Shared Services

a. Background

71. Section 274(b)(5) provides that a separated affiliate and a BOC shall "(A) have no officers, directors, and employees in common after the effective date of this section; and (B) own no property in common." We tentatively concluded in the *NPRM* that, since this subsection does not specifically refer to electronic publishing joint ventures, BOCs are not precluded from sharing officers, directors, and employees with an electronic publishing joint venture. We also tentatively concluded in the *NPRM* that section 274(b)(5) does not preclude a BOC from owning property in common with an electronic publishing joint venture.

72. We also sought comment on the extent of the separation between a BOC and a separated affiliate required by section 274(b)(5)(A). We noted, for example, "that section 274(c)(2) permits joint marketing activities between a BOC and either a separated affiliate or electronic publishing joint venture under certain conditions." With respect to a BOC and a separated affiliate, we sought comment on "whether, to the extent that they are engaged in permissible joint marketing activities, the separated affiliate may share marketing personnel with the BOC." We further sought comment on "how BOCs may engage in joint marketing activities with a separated affiliate pursuant to section 274(c)(2)(A) if they cannot share marketing personnel."

73. We invited comment on the types of property encompassed by the phrase "property in common." We tentatively concluded that section 274(b)(5)(B) prohibits a BOC and its separated affiliate from jointly owning goods, facilities, and physical space. We also tentatively concluded that it prohibits the joint ownership of telecommunications transmission and switching facilities, one of the separation requirements we adopted for independent LECs in the *Competitive Carrier Fifth Report and Order* (49 FR 34824 (September 4, 1984)). Finally, we sought comment on whether the section 274(b)(5) prohibition on joint ownership of property between a BOC and its separated affiliate also precludes a BOC and a separated affiliate from sharing the use of property owned by one entity or the other and from jointly leasing any property.

b. Comments

74. *Applicability of Section 274(b)(5) to Electronic Publishing Joint Ventures.* The BOCs and NAA agree with our tentative conclusion that section 274(b)(5) does not preclude a BOC from having officers, directors, or employees in common with an electronic publishing joint venture. These parties also agree with our tentative conclusion that this section does not bar a BOC from owning property in common with its electronic publishing joint venture. Other commenters disagree with our tentative conclusions. MCI and Time Warner maintain that section 274(b)(5) should apply to both separated affiliates and electronic publishing joint ventures and that interpreting this section to apply only to BOCs and their separated affiliates would undermine what they consider to be the separate substantive "operate independently" requirement of section 274(b). AT&T recognizes that section 274(b)(5), on its face, does not prohibit a BOC from sharing common personnel or owning property in common with an electronic publishing joint venture, but argues that we have authority to proscribe such sharing arrangements or ownership under section 274(b)(5), if necessary to ensure compliance with the "operated independently" language.

75. *Extent of the Separation Required Between a BOC and a Separated Affiliate.* Several BOCs state that section 274(b)(5)(A) should not be interpreted to act as a limitation upon the permissible joint marketing activities in section 274(c)(2). They contend that it is not necessary for a BOC and its separated affiliate to have employees in common to engage in the joint marketing activities permitted by section 274(c)(2). According to these commenters, employees of one entity may perform inbound telemarketing or referral services permitted under section 274(c)(2)(A) and (B) for the other entity.

76. SBC argues that a BOC and a separated affiliate, to the extent they engage in permissible joint marketing activities, should be allowed to employ individuals in common. Specifically, it states that "where there is a conflict between the authority conferred by [s]ection 274(c)(2) and the general operational independence requirements of Section 274(b), the former, more specific provisions should control."

77. AT&T states that section 274(b)(5) "prohibit[s] BOC personnel from participating in the operation, planning, marketing or other activities of the separated affiliate, and vice versa * * *." MCI states that a BOC should only be allowed to provide telemarketing services pursuant to nondiscriminatory, publicly disclosed contracts.

78. "*Property in Common.*" No commenters oppose and some commenters agree with our tentative conclusion that section 274(b)(5)(B) prohibits a BOC and its separated affiliate from jointly owning goods, facilities, and physical space. They further agree that this section prohibits the joint ownership of telecommunications transmission and switching facilities.

79. *Shared Use or Joint Leasing of Property.* The BOCs argue that section 274(b)(5)(B) does not prohibit a BOC and its separated affiliate from sharing the use of property owned by one of the entities, or from jointly leasing property. They maintain that section 274(b)(5)(B) pertains only to ownership of property. Several BOCs note that potential concerns arising from shared use of property are addressed by the requirements of section 274(b)(3). AT&T and Time Warner, on the other hand, urge us to interpret section 274(b)(5)(B) to prohibit a BOC and its separated affiliate both from sharing property owned by one of the entities and from jointly leasing property. MCI does not address whether this section permits joint leasing of property. It states, however, that joint use of property would invite the improper allocation of costs against which the separated affiliate requirement is intended to protect. MCI and Time Warner specifically contend that a separated affiliate should not be permitted to collocate its equipment with BOC local exchange and exchange access equipment or to share computer facilities.

80. *Sharing of Services.* NYNEX and Ameritech argue that neither the Act nor its legislative history can be read to prohibit a BOC and its separated affiliate from utilizing the administrative and corporate governance functions provided by their parent holding company. AT&T argues that we should prohibit, pursuant to section 274(b)(5), a BOC from establishing a second affiliate to perform services or own property for both the BOC and its separated affiliate. MCI, in reply to the BOCs' comments, states that we should preclude the sharing of in-house functions, either by having one entity perform such functions for the other or by having another affiliate, or the parent, perform them for both a BOC and its separated affiliate.

81. *Other Activities.* AT&T argues that we "should prohibit the BOCs from using any compensation system that directly or indirectly bases the compensation of BOC officers, directors, or other employees on the performance of the affiliate, or vice versa." The BOCs generally reply that there is no statutory basis for such a requirement, which would effectively preclude BOCs from offering stock options, other forms of deferred compensation, and bonuses which are commonly used in industry and frequently are based, in part, upon the performance of entities within a corporate family.

c. Discussion

82. *Applicability of Section 274(b)(5) to Electronic Publishing Joint Ventures.* We adopt our tentative conclusion that section 274(b)(5)(A) does not preclude a BOC from having officers, directors, and employees in common with an electronic publishing joint venture. We also adopt our tentative conclusion that section 274(b)(5)(B) does not preclude a BOC from owning property in common with an electronic publishing joint venture. Congress expressly limited the scope of these restrictions to a BOC's separated affiliate. Moreover, we find no basis in this record for extending these restrictions to a BOC's electronic publishing joint venture. This determination is consistent with our finding above that the phrase "operated independently" in section 274(b) is not a separate substantive restriction and, therefore, does not provide a basis for making section 274(b)(5) applicable to electronic publishing joint ventures.

83. *Extent of the Separation Required Between a BOC and a Separated Affiliate.* We find that section 274(b)(5)'s provision barring a BOC and its separated affiliate from having "officers, directors, and employees in common" does not limit the permissible joint activities set forth in section 274(c)(2). As certain commenters note, it is not necessary for a BOC and its separated affiliate to have employees in common to engage in the joint activities permitted under section 274(c)(2). For this reason, we reject those comments urging us to read section 274(c)(2) as allowing a BOC and its separated affiliate to have personnel in common for the purpose of engaging in permissible joint activities. Such an exception to the prohibition in section 274(b)(5) is not necessary to give effect to sections 274(b)(5) and 274(c)(2) and is not supported by the statutory language. While our interpretation of the interplay between section 274(b)(5) and section 274(c)(2) may result in some reduced efficiency in engaging in the joint activities permitted under section 274(c)(2), we are not convinced that it will be substantial enough to warrant our reading into section 274(b)(5) an exception where none exists in the statutory language.

84. "*Property in Common.*" We adopt our tentative conclusion that section 274(b)(5) prohibits a BOC and its separated affiliate from jointly owning goods, facilities, and physical space, including telecommunications transmission and switching facilities. The prohibition against joint ownership of goods, facilities and physical space is clear on the face of the statute. Moreover, none of the commenters disagree with this tentative conclusion.

85. *Shared Use or Joint Leasing of Property.* We agree with the BOCs that the statutory prohibition in section 274(b)(5) does not preclude a BOC and its separated affiliate from either sharing the use of property owned by either a BOC or its separated affiliate or jointly leasing property. For example, we find that section 274(b)(5) permits a separated affiliate to collocate its equipment in end offices or on other property owned or controlled by the BOC, as long as such collocation agreements satisfy section 274(b)(3). We also find that this section permits a BOC and its separated affiliate to contract with each other for the use of joint transmission and switching equipment, again subject to the requirements of section 274(b)(3). Those commenters arguing for an expanded interpretation of "own" to include a prohibition against shared use of property and joint leasing of property offer no statutory support for their position. We are unwilling to assume that Congress intended the prohibition against ownership of property in section 274(b)(5) to include leaseholds and the shared use of property owned by either a BOC or its separated affiliate. Further, we find that allowing shared use of property and joint leases between a BOC and its separated affiliate enables the BOC to take advantage of economies of scale and scope. Concerns about anticompetitive behavior can be addressed through the transactional requirements of section 274(b)(3), the nondiscrimination requirements of section 274(d), and the Commission's affiliate transaction rules.

86. *Sharing of Services.* The prohibition in section 274(b)(5)(A) against a BOC and its separated affiliate having "officers, directors, and employees in common" is worded slightly differently from the requirement in section 272(b)(3) that a BOC and its separate affiliate have "separate officers, directors, and employees." We interpret, however, these two provisions to have the same substantive meaning. Both sections 272 and 274 preclude the same person from serving simultaneously as an officer, director, or employee of both a BOC and its section 272 or 274 affiliate, respectively. Thus, an individual may not be on the payroll of both entities. Based on the record before us, we decline to read section 274(b)(5)(A) to prohibit a BOC and its separated affiliate from utilizing the administrative and corporate governance functions provided by their parent holding company or another BOC affiliate. Section 274 does not address whether the parent company of a BOC and its separated affiliate or another BOC affiliate is permitted to perform functions for both a BOC and its separated affiliate. There is no basis in the record for concluding that administrative and corporate governance functions provided to a BOC and its separated affiliate by a parent company or another BOC affiliate would result in the BOC and its separated affiliate violating section 274(b)(5)(A)'s prohibition on having "officers, directors, and employees in common." Further, a parent company that performs services for both a BOC and its section 274 separated affiliate must fully document and properly apportion the costs incurred in furnishing such services.

87. *Other Activities.* We reject AT&T's request that we interpret section 274(b)(5)(A) to prohibit compensation schemes that base the level of remuneration of BOC officers, directors, and employees on the performance of the section 274 separated affiliate, or vice versa. We find that tying the compensation of an employee of a section 274 separated affiliate to the performance, for example, of the BOC's parent holding company and all of its enterprises as a whole, including the performance of the BOC, does not make that individual an employee of the BOC for purposes of section 274(b)(5)(A). Nor does such a compensation arrangement for a BOC employee make that individual an employee of the section 274 separated affiliate. Further, we agree with those commenters stating that such a scheme would effectively preclude BOCs from offering stock options, other forms of deferred compensation, and bonuses, which are commonly used in industry and frequently are based, in part, upon the performance of entities within a corporate family. Indeed, as PacTel notes, "[i]t is common for corporations to have compensation systems that base a portion of compensation, especially for officers and directors, on the performance of the corporation as a whole. This is consistent with the fiduciary duty of corporate officers and directors * * * ."

4. Section 274(b)(6)

a. Background

88. Section 274(b)(6) states that a separated affiliate or electronic publishing joint venture and the BOC with which it is affiliated shall "not use for the marketing of any product or service of the separated affiliate or joint venture, the name, trademarks, or service marks of an existing [BOC] except for names, trademarks, or service marks that are owned by the entity that owns or controls the [BOC]." We tentatively concluded that this provision is sufficiently precise as to make unnecessary the adoption of implementing regulations.

b. Comments

89. Time Warner asks us to clarify that the prohibition in section 274(b)(6) prevents a BOC from sharing a name, trademark, or service mark with the Regional Bell Holding Company ("RBOC"). It argues that the exception in section 274(b)(6) permitting the separated affiliate or electronic publishing joint venture to use the name, trademark, or service mark of the RBOC would "vitiate the general prohibition against cross-labeling if the BOC affiliates or joint ventures were permitted to use names, trademarks, or service marks that are shared by an operating company and the [RBOC]."

90. The BOCs and YPPA, in reply, state that Time Warner's suggestion is unsupported by the statutory language and would eliminate the express statutory exception Congress created in section 274(b)(6).

c. Discussion

91. We adopt our tentative conclusion that section 274(b)(6) does not require the adoption of implementing regulations. We find that Time Warner's suggestion is contradicted by the statutory language and legislative history that expressly allow a separated affiliate or electronic publishing joint venture to use "the names, trademarks, or service marks that are owned by the entity that owns or controls the [BOC]." We agree with BellSouth that the adoption of Time Warner's suggestion "would require the Commission to assume that Congress was unaware that four of the seven [RBOCs] share their names with their BOC subsidiaries." We decline to make this assumption.

5. Section 274(b)(7)

a. Background

92. Section 274(b)(7) states that a BOC is not permitted "(A) to perform hiring or training of personnel on behalf of a separated affiliate; (B) to perform the purchasing, installation, or maintenance of equipment on behalf of a separated affiliate, except for telephone service that it provides under tariff or contract subject to the provisions of this section; or (C) to perform research and development on behalf of a separated affiliate." Since this subsection does not specifically refer to electronic publishing joint ventures, we tentatively concluded that BOCs are permitted to perform these functions on behalf of an electronic publishing joint venture. In addition, we sought comment on whether, "[t]o the extent that a BOC and a separated affiliate are engaged in permissible joint marketing activities," a BOC may perform the hiring or training of marketing personnel on behalf of its separated affiliate under section 274(b)(7)(A). We also sought comment on the type of "equipment" encompassed by section 274(b)(7)(B). We asked, for example, whether a BOC providing telephone service to a separated affiliate under tariff or contract subject to the requirements of section 274 is permitted under section 274(b)(7)(B) to purchase, install, and maintain transmission equipment for the separated affiliate.

93. With respect to section 274(b)(7)(C), we asked whether there are any circumstances under which a BOC may share its research and development with its separated affiliate. Specifically, we sought comment on whether this provision simply limits a BOC's ability to perform research and development for the sole and exclusive use of a separated affiliate, or whether it requires a BOC to refrain from performing any research and development that may be potentially useful to a separated affiliate. We also asked about other ways in which this provision may limit a BOC's ability to perform research and development for the separated affiliate.

b. Comments

94. *Applicability of Section 274(b)(7) to Electronic Publishing Joint Ventures.* The BOCs and NAA agree with our tentative conclusion that BOCs are permitted to perform the functions in section 274(b)(7) on behalf of an electronic publishing joint venture. Time Warner and AT&T disagree with our tentative conclusion. They maintain, consistent with their argument respecting section 274(b)(5), that section 274(b)(7) should apply to both a separated affiliate and an electronic publishing joint venture. They state that this interpretation is necessary to give effect to what they consider a separate substantive requirement that a BOC be "operated independently" from its electronic publishing joint venture.

95. *Relationship Between Section 274(b)(7)(A) and Section 274(c)(2).* Several commenters argue that there is no exception in section 274(b)(7) for permissible joint marketing activities in section 274(c)(2) and, therefore, we should not permit a BOC, when engaged in permissible joint marketing with its separated affiliate, to perform the hiring or training of marketing personnel on behalf of the separated affiliate. SBC, however, argues that we should allow a BOC to hire and train marketing personnel to carry out the permissible joint marketing activities in section 274(c)(2). It states that this approach is not anticompetitive because teaming or other business arrangements entered into by a BOC pursuant to section 274(c)(2)(B) must be conducted on a nondiscriminatory basis.

96. *The Type of "Equipment" Encompassed by Section 274(b)(7)(B).* The majority of commenters agree that section 274(b)(7)(B) permits a BOC to purchase, install, and maintain transmission equipment for its separated affiliate if the BOC is providing telephone service to the separated affiliate under tariff or contract. Bell Atlantic urges us to differentiate between "provision of a *service* that uses equipment owned by the BOC, an arrangement specifically permitted under this subsection, from the purchasing, installation, and maintenance of *equipment* 'on behalf of' the affiliate, which is barred." The distinction, according to Bell Atlantic, is that in the latter situation, the equipment would be owned by the separated affiliate. U S WEST similarly states that this section prohibits a BOC from providing any depreciable equipment to be used by its separated affiliate in conducting the affiliate's business, but that it does not prohibit a BOC from providing services to its section 274 affiliate operation. Several other BOCs argue that the provision of telephone services includes purchasing, installation, or maintenance of transmission equipment, and any other equipment necessary or incidental to providing such service. They note that section 274(b)(3) ensures that there are ample safeguards that such transactions are conducted at arm's length. Other commenters state only that section 274(b)(7)(B) requires BOCs to provide telephone service pursuant to section 274(d). Time Warner specifically urges us to require BOCs to provide unaffiliated electronic publishers with the same access to wireline telephone exchange services that they provide to their in-region separated affiliate or electronic publishing joint venture.

97. *Limitations on Research and Development.* The BOCs, NAA, and USTA generally argue that section 274(b)(7)(C) only limits their ability to perform research and development for the sole and exclusive use of the separated affiliate. They contend that it would be against public policy to restrict BOCs from performing research and development simply because the results might, at some later date, be applied to electronic publishing. Time Warner argues that the statutory language of section 274(b)(7)(C) should lead us to prohibit BOCs, under any circumstances, from sharing any research and development work or results with their in-region electronic publishing affiliates. It further states that we should adopt the *Computer II* rules that preclude specific research and development by the regulated entity on behalf of the competitive affiliate. AT&T, in reply to the BOCs' comments, states only that we "should reject the BOCs' attempts to circumvent the prohibition in [s]ection 274(b)(7)(C) against BOC research and development on behalf of a separated affiliate through hypertechnical constructions."

c. Discussion

98. *Applicability of Section 274(b)(7) to Electronic Publishing Joint Ventures.* We adopt our tentative conclusion that section 274(b)(7) does not preclude a BOC from performing the activities in section 274(b)(7) on behalf of an electronic publishing joint venture. The reasons supporting this determination are the same as those supporting our determination that section 274(b)(5) is inapplicable to electronic publishing joint ventures.

99. *Relationship Between Section 274(b)(7)(A) and Section 274(c)(2).* We agree with those commenters asserting that the restrictions in section 274(b)(7)(A) on a BOC performing the hiring or training of personnel on behalf of a separated affiliate apply even when the BOC is engaged in permissible joint activities pursuant to section 274(c)(2). Reading an exception into section 274(b)(7)(A) for the joint activities permitted under section 274(c)(2) is neither supported by the statutory language, nor necessary to give effect to that section and section 274(c)(2). Thus, a BOC may not perform the hiring or training of personnel on behalf of its separated affiliate, even though it may

be engaged in permissible joint activities under section 274(c)(2), such as providing inbound telemarketing services or engaging in nondiscriminatory teaming or business arrangements, as discussed below.

100. *The Type of "Equipment" Encompassed by Section 274(b)(7)(B).* We find that section 274(b)(7)(B) prohibits a BOC from purchasing, installing, or maintaining equipment on behalf of its separated affiliate, except for the telephone service that it provides under tariff or contract. We agree with the position of several commenters that the provision of telephone service includes purchasing, installing, and maintaining equipment necessary or incidental to providing such service. As long as the equipment providing the telephone service is owned by a BOC, and not its separated affiliate, such activities are permissible under this section. We note, as some commenters suggest, that, even when engaging in permissible activities under section 274(b)(7), BOCs remain subject to the nondiscrimination requirements in section 274(d).

101. *Limitations on Research and Development.* We conclude that the prohibition in section 274(b)(7)(C) on a BOC performing research and development "on behalf of" its separated affiliate precludes a BOC, at a minimum, from performing research and development for the sole and exclusive use of the separated affiliate. We also find that it precludes a BOC from performing research and development for the use or benefit of its section 274 separated affiliate together with other affiliates. We further conclude, however, that the prohibition in section 274(b)(7)(C) on a BOC performing research and development "on behalf of" its separated affiliate, as interpreted herein, does not limit a BOC's ability to perform research and development simply because the results might, at a future date, be applied to electronic publishing. We agree with those commenters arguing that such an interpretation "would not serve the public's continued desire for new and different communications solutions" and would be "antithetical to the public interest and national policy under Section 7 of the Communications Act." We also find that it would be impractical for a BOC to anticipate all potential uses of research and development activities it might undertake. We recognize that these principles may not address all of the possible scenarios that may arise. Such determinations are fact specific and will need to be made on a case-by-case basis.

102. Further, we disagree with Time Warner that prohibiting a BOC from sharing any research and development work or results with its separated affiliate is supported by the statutory language. Time Warner and AT&T fail to offer any persuasive statutory or policy arguments in support of their position.

6. Comparison with "Separate Affiliate" Requirement of Section 272

a. Background

103. We sought comment in the *NPRM* on the interrelationship between the requirements for a "separate affiliate" in section 272(b) and the requirements for a "separated affiliate" and "electronic publishing joint venture" in section 274(b). To the extent that certain BOCs currently are providing all of their information services on an integrated basis, we sought comment on what modifications these BOCs would have to make to their current provision of service in order to provide electronic publishing services in compliance with the separated affiliate or electronic publishing joint venture requirements of section 274.

104. We also sought comment on whether a BOC may provide electronic publishing services through the same entity or affiliate through which it provides in-region interLATA telecommunications services, manufacturing activities, and interLATA information services. In addition, we sought comment on whether a BOC providing any or all of its section 272 services and its section 274 electronic publishing services through the same entity would have to comply with the requirements of section 272, section 274, or both.

b. Comments

105. There were few comments on the interrelationship between the requirements in sections 272(b) and 274(b). Ameritech states that the requirements of section 272(b) are a subset of those found in section 274(b), but that section 274(b) imposes additional requirements beyond those in section 272(b). It notes that another principal difference between the separation requirements of the two sections is that a section 272 separate affiliate may own or be owned by a BOC as long as the separation requirements of that section are satisfied; however, a section 274 separated affiliate may not own or be owned by the BOC entity. NYNEX states that sections 272 and 274 deal with considerably different affiliate activities and should be construed to be independent of each other. PacTel states that, to the extent there are similarities in the requirements specified in sections 272(b) and 274(b), those requirements should be interpreted consistently.

106. AT&T also notes that several of the requirements in the two sections overlap, but, like Ameritech states, that section 274(b) imposes additional requirements having no counterpart in section 272(b). AT&T further asserts that all interLATA electronic publishing services should be subject to the requirements of section 272, and that section 274 merely supplements the requirements of section 272. In reply, Bell Atlantic and YPPA state that a section 274 separated affiliate need not also comply with section 272, even if the electronic publishing services are interLATA. They maintain that Congress, in enacting section 272(a)(2)(C), expressly exempted interLATA electronic publishing services from the requirements of section 272.

107. All of the commenters agree that a BOC may provide electronic publishing services through the same entity or affiliate through which it provides section 272 services. They disagree, however, on whether an affiliate providing both section 272 and section 274 services must comply with all of the requirements of both sections. AT&T, MCI and Time Warner state that a BOC offering electronic publishing services and section 272 services through the same affiliate must comply with all of the requirements of sections 272 and 274, *i.e.*, the structural separation and transactional requirements, as well as the joint marketing and nondiscrimination provisions of both sections.

108. The BOCs and YPPA disagree with the other commenters. They argue that a BOC providing electronic publishing services through the same entity or affiliate through which it provides section 272 services must comply with the separation requirements in both sections 272(b) and 274(b) on a service-by-service basis. Specifically, they maintain that the entity providing both section 272 services and electronic publishing services must comply only with the requirements of each section relevant to the particular service (*i.e.*, a section 272 service or electronic publishing services) being provided. They further argue that a BOC need only comply with the joint marketing and nondiscrimination restrictions of sections 272 and 274 on a service-by-service basis.

109. There is some disagreement among the BOCs as to those requirements in section 274(b) that they deem applicable when providing

section 272 and section 274 services through the same entity. Several BOCs assert that the separation requirements unique to either section 272 or section 274 would apply only to those services specified in their respective sections, *e.g.*, because section 272 does not prohibit the hiring and training of personnel, section 274(b)(7)(A) would only apply with respect to the entity's electronic publishing activities. U S WEST categorizes those requirements that the entity must comply with in sections 272(b) and 274(b) as structural separation requirements, arguing that compliance with the "transactional" requirements of either section is necessitated on a service-by-service basis. It categorizes section 274(b)(7)(A) as an example of a transactional requirement. YPPA, too, distinguishes between the structural separation requirements and the affiliate transaction requirements of sections 272(b) and 274(b), arguing that the latter need only be complied with on a service-by-service basis. It cites sections 272(b)(5) and 274(b)(3) as examples of affiliate transaction requirements that need only be complied with on a service-by-service basis.

c. Discussion

110. We conclude that a BOC may provide electronic publishing services and section 272 services through the same entity or affiliate. Nothing in the Act or its legislative history suggests otherwise. We further conclude that the BOC or the entity providing both section 272 and section 274 services, as applicable, must comply with the requirements of both these sections, including: (1) all of the requirements of section 272(b) and section 274(b); (2) all applicable requirements of section 272(g) and section 274(c); and (3) all applicable requirements of section 272(c) and section 274(d). To the extent there is a conflict between the provisions of sections 272 and 274, the BOC or the entity providing both section 272 and 274 services, as applicable, must comply with the more stringent requirement of either section. These conclusions are discussed more fully below. We specifically reject AT&T's contention that electronic publishing services are subject to the section 272 separate affiliate requirements, pursuant to section 272(a)(2)(B), which imposes a separate affiliate requirement on interLATA telecommunications services. Electronic publishing services are included within the statutory definition of information services in section 153(20). They are specifically excluded, however, from the section 272 separate affiliate requirement pursuant to section 272(a)(2)(C).

111. *Section 272(b) and Section 274(b) Requirements.* We agree with those commenters asserting that a BOC providing electronic publishing services through the same entity or affiliate through which it provides section 272 services must comply with all of the requirements of both section 272(b) and section 274(b). Allowing the BOCs to comply with the requirements of sections 272(b) and 274(b) on a service-by-service basis is likely to lead to *ad hoc* determinations as to those requirements in both sections 272(b) and 274(b) with which the entity must comply.

112. We find that allowing the entity performing section 272 and section 274 services to determine how to comply with the section 272(b) and section 274(b) requirements creates the potential for administrative and enforcement problems. As a practical matter, however, requiring the entity providing both section 272 and section 274 services to comply with all the requirements of sections 272(b) and 274(b) will not be substantially more onerous than requiring the entity to comply with only those provisions of one section or the other. We determined in the *Non-Accounting Safeguards Order* that the "operate independently" requirement of section 272(b)(1) imposes requirements beyond those listed in subsections 272(b)(2)–(5). We therefore adopted additional requirements in our rules to implement section 272(b) to ensure operational independence between a BOC and its section 272 affiliate; several of these are parallel to provisions in section 274(b). Thus, BOCs providing section 272 and section 274 services are already required to comply with many of the same requirements; and to the extent these services are combined the complications of complying with both sections 272(b) and 274(b) will be few.

113. *Joint Marketing and Nondiscrimination Provisions in Sections 272 and 274.* As noted above, while a BOC may provide both section 272 services and electronic publishing services through the same entity, it must comply with the applicable joint marketing and nondiscrimination provisions in both sections 272 and 274. With respect to the joint marketing provisions, if a BOC chooses to provide section 272 services together with its electronic publishing services, it must comply with the joint marketing restrictions of section 274(c)(1)(A) and section 272(g). Section 274(c)(1)(A) precludes the BOC from carrying out any "promotion, marketing, sales, or advertising for or in conjunction with a separated affiliate." An entity established by a BOC to provide section 272 services and electronic publishing services is a section 274 "separated affiliate" for purposes of section 274(c)(1)(A), as it will be a "corporation * * * that engages in the provision of electronic publishing services." The BOC, therefore, must comply with all the section 274 joint marketing provisions pertaining to its "separated affiliate." In addition, since the entity is also providing section 272 services, the joint marketing provisions in section 272(g) would apply as well.

114. The statutory language in sections 272(c) and 274(d) also requires that a BOC providing both section 272 services and electronic publishing services together in one entity comply with the nondiscrimination provisions in both sections 272 and 274. To the extent that a BOC under "common ownership or control with a separated affiliate or electronic publishing joint venture" provides "network access and interconnections for basic telephone service to electronic publishers," it must do so subject to the nondiscrimination requirements in section 274(d). In addition, section 272(c) imposes certain nondiscrimination safeguards on a BOC's dealings with an affiliate providing section 272 services. The nondiscrimination safeguards of section 272(c) thus pertain to the BOC's dealings with an entity or affiliate providing both section 272 services and electronic publishing services.

115. In sum, we find that a BOC may provide both section 272 and section 274 services through the same entity, but in doing so, must comply with the applicable joint marketing and nondiscrimination requirements in each of those sections. We find that the express statutory language in each of those sections compels this result. As noted above, to the extent there is a conflict between the provisions of sections 272 and 274, the BOC or the entity providing both section 272 and 274 services, as applicable, must comply with the more stringent requirement of either section. For example, if a BOC is permitted to engage in a joint marketing activity under section 272(g), but that activity is barred under section 274(c)(1)(A), the latter provision would preclude the BOC from engaging in that activity.

C. Joint Marketing

1. Restrictions on Joint Marketing Activities—Section 274(c)(1)

a. Scope of Section 274(c)(1)(B)

(1) Background

116. Section 274(c)(1) of the Act establishes several restrictions on joint marketing activities in which a BOC may engage with either a "separated affiliate" or an "affiliate." In particular, section 274(c)(1)(A) provides that "a [BOC] shall not carry out any promotion, marketing, sales, or advertising for or in conjunction with a separated affiliate." Section 274(c)(1)(B) states that "a [BOC] shall not carry out any promotion, marketing, sales, or advertising for or in conjunction with an affiliate that is related to the provision of electronic publishing."

117. In the *NPRM*, we observed that the clause "that is related to the provision of electronic publishing" in section 274(c)(1)(B) may be interpreted to modify either the "promotion, marketing, sales, or advertising" activities that are circumscribed by that section, or the word "affiliate." We also noted that the definition of "affiliate" in section 274 expressly excludes a "separated affiliate." We therefore sought comment on the proper interpretation of section 274(c)(1)(B).

(2) Comments

118. Several commenters argue that section 274(c)(1)(B) of the Act should be interpreted to prohibit a BOC from carrying out joint marketing activities for or in conjunction with an affiliate if the *activities* of the BOC relate to the provision of electronic publishing. In particular, BellSouth argues that section 274(c)(1)(B) is intended to address situations in which a BOC affiliate offers electronic publishing services or services related to electronic publishing, and non-electronic publishing services, *i.e.*, an affiliate that provides print directory services as well as electronic publishing services. BellSouth contends that, by omitting the word "separated" in subsection (c)(1)(B), Congress clarified that some activities of a BOC affiliate that is engaged in the provision of electronic publishing services may be unrelated to electronic publishing. According to BellSouth, a BOC therefore may engage in joint marketing activities with its directory affiliate so long as such activities "relate to the traditional directory products of the directory affiliate rather than any electronic directory products." SBC argues that section 274(c)(1)(B) does not apply if a BOC performs services for an affiliate that are unrelated to the provision of electronic publishing.

119. U S WEST, in contrast, argues that the phrase "that is related to the provision of electronic publishing" modifies "affiliate" because such an interpretation provides BOCs with greater flexibility in organizing their businesses and is consistent with congressional intent. For example, U S WEST contends that, if we adopt this interpretation, a BOC choosing to provide electronic publishing services through a section 272 affiliate would be subject to the joint marketing provisions of section 274(c)(1)(B), rather than section 272.

(3) Discussion

120. We conclude that the phrase "that is related to the provision of electronic publishing" modifies the "promotion, marketing, sales, or advertising" activities that are circumscribed by section 274(c)(1)(B). As such, we interpret section 274(c)(1)(B) of the Act to prohibit a BOC from carrying out any promotion, marketing, sales or advertising activities with an affiliate, if such activities "relate to" the provision of electronic publishing. As an initial matter, we find that the joint marketing prohibition in section 274(c)(1)(B) is intended to address situations that are not otherwise covered by section 274(c)(1)(A). Consequently, we conclude that section 274(c)(1)(B) contemplates situations in which a BOC affiliate is involved in the provision of services that are in some manner "related to" the provision of electronic publishing, but does not provide electronic publishing services disseminated by means of a BOC's or any of its affiliates' basic telephone service. Because a BOC or BOC affiliate may engage in the provision of electronic publishing that is disseminated by means of such BOC's or any of its affiliates' basic telephone service only through a separated affiliate or an electronic publishing joint venture, a BOC "affiliate" that falls under section 274(c)(2)(B) of the Act, by definition, must not engage in such provision of electronic publishing. A BOC affiliate that provides electronic publishing services by means of its basic telephone service would constitute a "separated affiliate" subject to the joint marketing restriction in section 274(c)(1)(A).

121. Consequently, section 274(c)(2)(B) addresses situations in which a BOC may have, for example, an affiliated holding company that, in turn, holds an ownership interest in a separated affiliate. Such a BOC would be precluded from carrying out any promotion, marketing, sales or advertising activities for or in conjunction with that affiliated holding company if and to the extent that such activities are "related to the provision of electronic publishing." A BOC, however, would not be prohibited from engaging in marketing activities with the affiliated holding company that are unrelated to the provision of electronic publishing. This interpretation of section 274(c)(1)(B) effectively would prevent the BOCs from indirectly promoting, marketing, selling, or advertising the electronic publishing services of a separated affiliate.

122. We reject U S WEST's contention that section 274(c)(1)(B) prohibits a BOC from carrying out marketing activities for or with an *affiliate* that is related to the provision of electronic publishing. Given the definition of "separated affiliate," which contemplates the provision of electronic publishing services by such entity, it is difficult to conceive of an affiliate "related to the provision of electronic publishing" that would not otherwise constitute a separated affiliate, and thus be subject to the joint marketing restriction in section 274(c)(1)(A). We also reject BellSouth's contention that section 274(c)(1)(B) of the Act is intended to address situations in which a BOC provides electronic publishing and non-electronic publishing services through one affiliate. As noted above, a BOC affiliate that provides electronic publishing services through the BOCs' or any of its affiliates' basic telephone service would constitute a "separated affiliate" that would be subject to the joint marketing prohibition in section 274(c)(1)(A).

b. Scope of Section 274(c)(1)(A)

(1) Background

123. We sought comment in the *NPRM* on whether a BOC can carry out both section 272 and section 274 activities through one entity or affiliate, and, if so, whether the affiliate would have to comply with the requirements of section 272, section 274, or both. We conclude in this *Order* that a BOC may provide both section 272 and section 274 services through the same affiliate. In so doing, however, a BOC must comply with the structural and transactional requirements of both sections 272(b) and 274(b). We also conclude that a BOC providing section 272 and section 274 services through the same affiliate must comply with the applicable joint marketing provisions and nondiscrimination provisions of both those sections.

124. Some parties raised the issue of whether and to what extent the joint marketing restrictions of section 274 apply in cases where a BOC provides through the same affiliate electronic publishing services and non-electronic publishing services, *i.e.*, print directory services, that do not fall under section 272 of the Act. Because BOCs currently may be providing electronic publishing and such non-electronic publishing services through one affiliate, or may wish to provide such services through one entity in the future, we address that issue in this *Order*.

(2) Comments

125. U S WEST and BellSouth argue that, if a BOC provides electronic publishing services and non-electronic publishing services, such as print directory services, through the same affiliate, the joint marketing restrictions of section 274 would apply *only* to the electronic publishing activities of the affiliate. U S WEST argues, *inter alia*, that Congress, in adopting the prohibitions in section 274(c)(1) of the Act, intended to circumscribe, for a limited time, joint marketing activities between a BOC and its section 274 separated affiliate because such affiliate would use the BOC's basic telephone service to disseminate its electronic publishing services. U S WEST argues that the section 274 joint marketing prohibitions thus were intended to restrict the BOCs' ability to "leverage those basic services to favor its electronic publishing services which use [such] services." U S WEST maintains therefore that, absent a connection between a publishing activity and the BOC's network operations, there is no indication that Congress meant to impede commercial speech activities engaged in by a BOC corporate enterprise.

(3) Discussion

126. We conclude that, while a BOC may provide through the same affiliate both electronic publishing services and non-electronic publishing services, such as print directory services, which do not fall under section 272 of the Act, it must comply with the joint marketing requirements of section 274. The plain language of section 274(c)(1)(A) states that "a [BOC] shall not carry out any promotion, marketing, sales, or advertising for or in conjunction with a *separated affiliate*." Section 274(c)(1)(A), therefore, precludes a BOC from engaging in certain activities with a separated affiliate as a corporate entity, even in connection with non-electronic publishing services.

127. While our interpretation could provide a disincentive for BOCs to offer electronic publishing and non-electronic publishing services through the same affiliate, as U S WEST points out, the unambiguous statutory language requires this interpretation. We thus conclude that section 274(c)(1)(A) prohibits marketing and sales-related activities carried out by a BOC for or in conjunction with a separated affiliate, irrespective of whether such affiliate provides both electronic publishing services and non-electronic publishing services, such as print directory services, that do not fall under section 272 of the Act.

c. Activities Prohibited under Section 274(c)(1)

(1) Background

128. In the *NPRM*, we observed that the activities proscribed by section 274(c)(1) include the "promotion, marketing, sales, or advertising" by a BOC for or with an affiliate. We tentatively concluded that such activities "encompass prohibitions on advertising the availability of local exchange or other BOC services together with the BOC's electronic publishing services, making those services available from a single source and providing bundling discounts for the purchase of both electronic publishing and local exchange services." We sought comment on that tentative conclusion and on whether any other types of prohibitions were contemplated.

(2) Comments

129. Ameritech, AT&T and NAA generally agree with our tentative conclusion regarding the types of activities that are prohibited under sections 274(c)(1)(A) and (B) of the Act. Ameritech also argues, however, that the only prohibited marketing activities are those that "involve the BOC and the electronic publishing affiliate working together," and therefore nothing precludes unilateral marketing, promotion, or sales activities by either the BOC or its separated affiliate. In addition, Ameritech contends that bundling discounts may be offered in all cases of permissible joint marketing activities. According to Ameritech, "while the BOC requires regulatory authority to discount regulated services, the electronic publisher is free to set its unregulated price—and any promotional discounts—as it sees fit." AT&T disputes Ameritech's contention that section 274(c)(1) of the Act permits a BOC to market the electronic publishing services of its separated affiliate so long as it does not "coordinate" its promotional activities with such affiliate.

130. U S WEST generally agrees that the activities prohibited under sections 274(c)(1)(A) and (B) of the Act include making local exchange or other BOC services available together with electronic publishing services, but states that this prohibition is subject to the inbound telemarketing exception in section 274(c)(2)(A) of the Act. PacTel argues that a separated affiliate, electronic publishing joint venture, teaming or other business entity is not precluded from purchasing the telecommunications services of a BOC and then advertising such services with electronic publishing services, making the services available from a single entity, and providing bundled discounts.

131. A number of parties contend that sections 274(c)(1)(A) and (B) of the Act prohibit only the BOCs from carrying out certain joint marketing activities, and that the provisions should not be interpreted to restrict the joint marketing activities that may be carried out by either a "separated affiliate" under section 274(c)(1)(A), or an "affiliate" under section 274(c)(1)(B). SBC specifically argues that the statute should not be interpreted to impose any restrictions on a separated affiliate's ability "to market and sell services or products of the BOC, or those of any other affiliate or an unrelated party." Bell Atlantic similarly contends that an affiliate is not prohibited under the statute "from marketing the BOC's services and products or acting as a single point of contact for the customer."

132. NYNEX and YPPA argue that permitting a separated affiliate to market jointly its electronic publishing services with BOC telecommunications services would allow customers to realize the benefits of one-stop shopping. In addition, NYNEX and PacTel maintain that imposing marketing restrictions on a BOC separated affiliate that do not also apply to such affiliate's competitors would place the separated affiliate at a competitive disadvantage. A number of parties also contend that nothing in the Act prohibits a BOC affiliate from carrying out joint marketing activities as an agent for either or both the BOC and the separated affiliate.

133. Conversely, AT&T and Time Warner argue that the marketing prohibitions in section 274(c)(1) should not be construed to apply only to the marketing activities of the BOC. According to AT&T, allowing a separated affiliate to market jointly its electronic publishing services with BOC telecommunications services would allow the BOC to "move its entire marketing department into the separated affiliate" in violation of the statutory prohibition against a BOC carrying out any marketing in conjunction with a separated affiliate. Time Warner similarly states that interpreting section 274(c)(1) to apply only to the BOCs would allow the BOCs to circumvent the joint marketing restrictions of section 274.

(3) Discussion

134. As an initial matter, we conclude that the prohibitions in section 274(c)(1) apply only to activities carried out by a BOC. Sections 274(c)(1)(A) and (B) of the Act only proscribe BOC activities. We also find that neither a separated affiliate under section 274(c)(1)(A), nor an affiliate under section 274(c)(1)(B), is prohibited from marketing its services together with BOC telecommunications services, so long as such marketing activity is performed unilaterally by the separated affiliate or affiliate, respectively. Thus, a separated affiliate or affiliate is permitted under sections 274(c)(1)(A) and (B) to market its electronic publishing services with basic telephone service purchased from the BOC. We conclude that this type of marketing, in which a separated affiliate or affiliate unilaterally markets BOC local exchange service as an input to its electronic publishing services, is not prohibited under sections 274(c)(1)(A) or (B). We specify that marketing by the separated affiliate or affiliate must be unilateral not because section 274(c)(1) directly imposes any marketing restrictions on such entities, but, as a practical matter, because section 274(c)(1) bars a BOC from carrying out "marketing . . . for or in conjunction with" such separated affiliates or affiliates.

135. We reject AT&T's and Time Warner's contention that permitting a separated affiliate to market BOC telecommunications services would allow a BOC to circumvent the restrictions of section 274. As noted above, section 274(c)(1), by its terms, applies only to activities carried out by a BOC. While AT&T's and Time Warner's arguments pertain only to a "separated affiliate," we have no basis for concluding that Congress intended to apply the restrictions in sections 274(c)(1)(A) and (B) to either separated affiliates or affiliates, respectively. Moreover, based on the plain language of sections 274(c)(1)(A) and (B), which prohibits a BOC from carrying out any "promotion, marketing, sales, or advertising for or *in conjunction with*" a separated affiliate or affiliate, a BOC would be precluded from, for example, "moving its entire marketing department into the separated affiliate" in order to circumvent the section 274(c)(1) restrictions.

136. Based on the above analysis, we also find that a BOC affiliate may carry out "promotion, marketing, sales, or advertising" activities as an agent for either a "separated affiliate" under section 274(c)(1)(A), or another "affiliate" under section 274(c)(1)(B). Because neither a separated affiliate nor an affiliate is subject to the restrictions in sections 274(c)(1)(A) and (B) of the Act, a BOC affiliate that acts as an agent for such separated affiliate or affiliate also is not subject to those restrictions. As in the case of a separated affiliate or affiliate, however, the scope of the agent's activities may be limited, as a practical matter, by the legal bar on a BOC carrying out promotion, marketing, sales or advertising activities "for or in conjunction with" such affiliates. We conclude, however, that because section 274(c)(1)(A) applies to activities carried out by BOCs, a BOC affiliate is prohibited from acting as an agent for the BOC in performing marketing and sales-related activities under that section, contrary to arguments raised by some parties. We also note that, under the definition of "Bell operating company" in section 274(i)(10), a BOC includes "any entity or corporation that is owned or controlled by" such BOC. As such, the section 274(c)(1) joint marketing prohibitions applicable to BOCs also would apply to entities that are owned or controlled by a BOC, such as an entity that acts as an agent for a BOC.

137. We also conclude, based on their language, that sections 274(c)(1)(A) and (B) of the Act prohibit a BOC or BOC agent from advertising local exchange or other BOC services together with electronic publishing services, making those services available from a single point of contact and providing bundling discounts for the purchase of both electronic publishing and local exchange services, except as permitted under section 274(c)(2) of the Act. Since section 274 only proscribes BOC activities, however, we conclude, consistent with our discussion above, that these activities may be carried out by a separated affiliate or affiliate, subject only to the practical limitation that a BOC may not participate owing to the legal bar on its ability to carry out promotion, marketing, sales or advertising activities "for or in conjunction with" a separated affiliate or an affiliate.

138. In our *Non-Accounting Safeguards Order* implementing sections 271 and 272 of the Act, we recognized that "bundling" contemplates the offering of BOC resold local exchange services and interLATA services as a package under an integrated pricing schedule. As a result, we concluded that the concept of "bundling" includes "providing a discount if a customer purchases both interLATA services and BOC resold local services, conditioning the purchase of one type of service on the purchase of the other, and offering both interLATA services and BOC resold local services as a single combined product."

139. Based on the definition of "bundling" in our *Non-Accounting Safeguards Order*, we conclude that "bundling" refers to the offering by a BOC or BOC agent of BOC local exchange and electronic publishing services as a package under an integrated pricing schedule. This restriction flows not only from section 274(c)(1), but from the fact that a BOC is forbidden by section 274(a) to engage in the provision of electronic publishing disseminated by means of its basic telephone service except through a separated affiliate or an electronic publishing joint venture. By providing such bundled services, the BOC or its agent would be engaged in the provision of electronic publishing in contravention of section 274(a). We further find, consistent with the *Non-Accounting Safeguards Order*, that sections 274(c)(1)(A) and (B) of the Act prohibit a BOC or BOC agent from providing customer discounts for the purchase of local exchange and electronic publishing services, conditioning the purchase of one type of service on the other, or offering both electronic publishing and local exchange services as one product. Moreover, we conclude, based on the explicit language of section 274(c)(1), that sections 274(c)(1)(A) and (B) of the Act prohibit a BOC or BOC agent not only from offering for sale both local exchange and electronic publishing services, but also from advertising those services in a single advertisement, and from selling both services through a single point of contact, *e.g.*, a single sales agent, except as permitted under section 274(c)(2). We find that Congress intended to proscribe those activities in adopting sections 274(c)(1)(A) and (B) of the Act.

d. Interplay Between Section 274 Joint Marketing Provisions and Other Provisions of the Act

(1) Background

140. In the *NPRM*, we sought comment on whether and to what extent

the joint marketing provisions in section 272(g) and the customer proprietary network information (CPNI) provisions in section 222 of the Act affect implementation of section 274.

(2) Comments

141. NYNEX argues that, because the marketing provisions in sections 272 and 274 of the Act apply to different services, the restrictions in section 274 should not be applied to the services and facilities provided under section 272. PacTel maintains that sections 272(g) and 222 of the Act do not affect implementation of section 274. U S WEST maintains that, based on implied consent gleaned from either the business relationship or customer notification, CPNI may be used by the BOC in marketing a separated affiliate's electronic publishing offerings. U S WEST also contends that, under section 222(d)(3) of the Act, a BOC could use CPNI on an inbound telemarketing call for both telecommunications and electronic publishing services of the BOC and third parties, provided the customer consented to such use on the call.

(3) Discussion

142. As discussed above, we conclude that, while a BOC may provide through the same affiliate both section 272 and section 274 services, it must comply with the applicable joint marketing restrictions of both those sections. We decline to address arguments raised in this proceeding regarding the interplay between section 274 and section 222 of the Act, relating to privacy of customer information. The Commission has pending a proceeding to implement section 222 of the Act. Until the completion of that proceeding, we defer any decision on the extent, if any, that section 222 of the Act affects implementation of section 274. As noted in the *CPNI NPRM* (61 FR 26483 (May 28, 1996)), the CPNI requirements the Commission previously established in the *Computer II* and *Computer III* proceedings remain in effect pending the outcome of the CPNI proceeding, to the extent that they do not conflict with section 222 of the Act.

2. Permissible Joint Activities—Section 274(c)(2)

a. Joint Telemarketing—Section 274(c)(2)(A)

(1) Background

143. As we observed in the *NPRM*, section 274(c)(2) of the Act permits three types of joint activities between a BOC and a separated affiliate, electronic publishing joint venture, affiliate, or unaffiliated electronic publisher under specified conditions. Under section 274(c)(2)(A) of the Act, a BOC may provide "inbound telemarketing or referral services related to the provision of electronic publishing for a separated affiliate, electronic publishing joint venture, affiliate or unaffiliated electronic publisher: *[p]rovided*, [t]hat if such services are provided to a separated affiliate, electronic publishing joint venture, or affiliate, such services shall be made available to all electronic publishers on request, on nondiscriminatory terms."

144. We stated in the *NPRM* that the statute is silent as to the specific obligations section 274(c)(2)(A) imposes on a BOC. We noted that the term "inbound telemarketing" is defined in section 274(i)(7) as "the marketing of property, goods, or services by telephone to a customer or potential customer who initiated the call." The term "referral services," however, is not defined in the statute. As we discussed in the *NPRM*, the Joint Explanatory Statement states that the Conference Committee adopted the provisions of the House bill relating to electronic publishing, with some modifications relating to sunset of the section 274 requirements and use of BOC trademarks by separated affiliates and electronic publishing joint ventures. The provision of the House bill relating to electronic publishing joint ventures was identical to the provision ultimately adopted by the Conference Committee.

145. The Committee Report accompanying H.R. 1555 states that:

> Subsection (c)(2)(A) permits a BOC to provide inbound telemarketing or referral services related to the provision of electronic publishing, if the BOC provides the same service on the same terms and conditions, and prices to non-affiliates as to its affiliates. The term 'inbound telemarketing or referral services' is defined . . . to mean 'the marketing of property, goods, or services by telephone to a customer or potential customer who initiated the call.' Thus, a BOC may refer a customer who seeks information on an electronic publishing service to its affiliate, but must make sure that the referral service is available to unaffiliated providers. No outbound telemarketing or similar activity, under which the call is initiated by the BOC or its affiliate or someone on its behalf, is permitted.

In the *NPRM*, we sought comment on whether the conditions imposed on inbound telemarketing discussed in the House Report should be adopted, and whether we should adopt any regulations pertaining to outbound telemarketing.

(2) Comments

146. AT&T argues that we should adopt the conditions on inbound telemarketing discussed in the House Report, *i.e.*, that a BOC may offer inbound telemarketing services to its affiliate only if it makes those services available to unaffiliated providers of electronic publishing services on the same terms, conditions and prices. In addition, it contends that a BOC should be prohibited from engaging in outbound telemarketing, consistent with the House Report. AT&T argues that section 274(c)(2)(A) should not be construed as an "open-ended authorization for the BOCs to market the electronic publishing services of their separated affiliates" because such an interpretation would result in the exception swallowing the rule. While NAA agrees that we should adopt the conditions on inbound telemarketing discussed in the House Report, it also argues that a BOC may provide outbound telemarketing services to an electronic publishing joint venture under section 274(c)(2)(C).

147. Conversely, the BOCs generally contend that they are permitted to engage in a broader range of marketing activities under section 274(c)(2)(A). In particular, Ameritech argues that section 274(c)(2)(A) expressly authorizes a BOC to handle all aspects of the electronic publisher's sales process while on an inbound telephone call. NYNEX similarly maintains that section 274(c)(2)(A) does not restrict in any way the inbound telemarketing services that a BOC may provide to a separated affiliate, electronic publishing joint venture or affiliate, except to require the BOC to make such services available to all electronic publishers "on request, on nondiscriminatory terms." In addition, SBC argues that section 274(c)(2)(A) allows a BOC not only to refer a customer who requests information regarding an electronic publishing service to its affiliate, but also permits a BOC to market electronic publishing services to customers who inquire about them. SBC also argues that section 274(c)(2)(A) "allow[s] a separated affiliate or a BOC to advertise a BOC call-in number to which potential customers might choose to initiate a call." BellSouth argues that section 274(c)(2)(A) of the Act is clear on its face, and therefore "no further elucidation" of that section is necessary.

148. PacTel argues that section 274(c)(2)(A)'s requirement that inbound telemarketing or referral services "be made available to all electronic publishers on request, on nondiscriminatory terms" means that the terms of the service must be generally available to all *similarly situated* electronic publishers. U S WEST argues that the requirement should be construed to apply only to services that are of "like kind." PacTel contends that section 274(c)(2)(A), like section 202(a) of the Act, allows reasonable discrimination. Conversely, Time Warner argues that nothing in the Act indicates that Congress intended to limit the provision of inbound telemarketing or referral services required by section 274(c)(2)(A) to competing electronic publishers offering services "comparable" to those offered by a BOC separated affiliate.

(3) Discussion

149. We conclude that a BOC may, pursuant to section 274(c)(2)(A), both provide "referral services" and "market" property, goods, or services related to the provision of electronic publishing by telephone to a customer or potential customer who initiated the call. This is consistent with the plain language of the statute, including the definition of "inbound telemarketing" in section 274(i)(7), and with the legislative history interpreting section 274(c)(2)(A). We also conclude, however, consistent with the clear language of the statute and with the House Report, that, to the extent a BOC provides inbound telemarketing or referral services for a separated affiliate, electronic publishing joint venture, or affiliate, it must make available "such services . . . to all electronic publishers on request, on nondiscriminatory terms." Consistent with the legislative history, this means that the BOC must offer "the same service on the same terms and conditions, and prices to non-affiliates as to its affiliates."

150. A BOC may choose to provide inbound telemarketing or referral services either pursuant to a contractual arrangement or during the normal course of its inbound telemarketing operations. To the extent a BOC chooses either or both of these approaches in providing inbound telemarketing or referral services to a separated affiliate, electronic publishing joint venture or affiliate, we conclude, based on the nondiscrimination proviso in section 274(c)(2)(A), that it must make available the same approach to unaffiliated electronic publishers.

151. With regard to inbound telemarketing or referral services provided by a BOC to its separated affiliate, electronic publishing joint venture, or affiliate pursuant to a contractual arrangement, we find that the BOC must make available the same terms, conditions, and prices for such services to unaffiliated electronic publishers, except to the extent legitimate price differentials may exist. For example, such price differentials may reflect differences in cost, or may reflect the fact that an unaffiliated electronic publisher has requested superior or less favorable treatment in exchange for paying a higher or lower price to the BOC. As we stated in the *First Interconnection Order* (61 FR 45476 (August 29, 1996)), where costs differ, rate differences that accurately reflect those differences are not unlawfully discriminatory. We similarly conclude that price differences, "when based upon legitimate variations in costs, are permissible under the 1996 Act when justified." PacTel's argument that the "nondiscriminatory" requirement in section 274(c)(2)(A) means that the terms of the service must be generally available to all "similarly situated" electronic publishers, therefore, has merit to the extent that price differences among electronic publishers reflect legitimate differences in cost.

152. The statute requires that, to the extent a BOC markets property, goods or services related to the provision of electronic publishing to a customer, or refers a customer to a separated affiliate, electronic publishing joint venture or affiliate during the normal course of its telemarketing operations, it must provide such marketing or referral services to all unaffiliated electronic publishers requesting such services, on nondiscriminatory terms. Thus, to the extent that a BOC provides referral service if a customer has not initially independently requested a specific referral to the BOC affiliate, a BOC must provide the names of all such unaffiliated electronic publishers, as well as its own affiliated electronic publishers, in random order, to the customer. A similar standard may also be appropriate for particular inbound telemarketing activities. We find that our interpretation is consistent with the intent of section 274(c)(2)(A) to ensure that a BOC providing inbound telemarketing or referral services to a separated affiliate provides such services on a nondiscriminatory basis to all unaffiliated electronic publishers.

153. We reject U S WEST's argument that imposing such a requirement on the BOCs with respect to referral services would be overly burdensome. We note, for example, that BOCs currently are subject to similar requirements in cases where a new local exchange customer of the BOC requests information regarding interexchange service. In such cases, BOCs are required, *inter alia*, to provide customers with the names and, if requested, the telephone numbers of carriers offering interexchange services. As part of this requirement, a BOC must ensure that the names of the interexchange carriers are provided in random order.

154. We disagree with U S WEST's contention that a BOC's obligation to provide inbound telemarketing or referral services under section 274(c)(2)(A) applies only with respect to services that are "comparable" to those of its separated affiliate. We conclude that a BOC's obligation under section 274(c)(2)(A) to make available inbound telemarketing and referral services on a nondiscriminatory basis requires that a BOC make available to unaffiliated electronic publishers the same services it provides to an affiliated electronic publisher, regardless of whether the unaffiliated electronic publishers offer services that are "comparable" to those of the BOC. Nothing in the statute or its legislative history indicates that a BOC must make available inbound telemarketing and referral services only to electronic publishing entities providing services "comparable" to those of the BOC's affiliate. To the extent that a BOC's agreement with its affiliated electronic publisher is limited to certain types of marketing or referral services, however, the BOC is then only obligated to make the same types of marketing or referral services available to unaffiliated electronic publishers.

155. With respect to AT&T's concern that interpreting section 274(c)(2)(A) to allow BOCs to "market" the electronic publishing services of their separated affiliates would circumvent the joint marketing prohibitions in section 274(c)(1), we find that the unambiguous statutory definition of "inbound telemarketing" in section 274(i)(7), and the fact that the general prohibition in section 274(c)(1) applies "except as provided in paragraph (2) [274(c)(2)]," requires this interpretation. We note that the statutory language allows BOCs to provide such marketing services only on nondiscriminatory terms, as discussed above. In addition, while our interpretation of the nondiscrimination requirement may serve as a disincentive for certain BOCs to market the services of an affiliated electronic publisher on an inbound call, we find that the statutory language compels this interpretation.

156. Finally, we conclude that section 274(c)(2)(A) prohibits outbound telemarketing or similar activities in which a call is initiated by a BOC, its affiliate, or someone on its behalf. Because section 274(c)(2)(A), by its terms, applies only to "inbound telemarketing" or referral services

related to the provision of electronic publishing, we believe that Congress did not intend to permit BOCs to engage in outbound telemarketing activities in adopting section 274(c)(2)(A). To the extent that the statutory language leaves any ambiguity on this question, the House Report supports our interpretation that a BOC is prohibited under section 274(c)(2)(A) from engaging in outbound telemarketing. We also believe that allowing a BOC to engage in outbound telemarketing activities to promote the electronic publishing services of its separated affiliate would eviscerate the general prohibition on BOC joint marketing activities in section 274(c)(1)(A) of the Act.

b. Teaming Arrangements—Section 274(c)(2)(B)

(1) Background

157. In the *NPRM*, we observed that, in addition to certain joint telemarketing activities, a BOC is permitted to engage in "teaming" or "business arrangements" to provide electronic publishing services under certain conditions pursuant to section 274(c)(2)(B). Section 274(c)(2)(B) specifically states that a "[BOC] may engage in nondiscriminatory teaming or business arrangements to engage in electronic publishing with any separated affiliate or with any other electronic publisher if (i) the [BOC] only provides facilities, services, and basic telephone service information as authorized by this section, and (ii) the [BOC] does not own such teaming or business arrangement."

158. We sought comment in the *NPRM* on what types of arrangements are encompassed by the terms "teaming" or "business arrangements," and on the significance of section 274(c)(2)(B)'s placement under the "Joint Marketing" provisions in section 274(c). We also sought comment on what regulations, if any, are necessary to ensure that the arrangements in which BOCs engage pursuant to section 274(c)(2)(B) are "nondiscriminatory," and on how the provision of "basic telephone service information" under that section relates to the requirements in section 222 for access to and use of CPNI.

(2) Comments

159. Ameritech, NAA, NYNEX, and PacTel generally argue that the terms "teaming" or "business arrangements" in section 274(c)(2)(B) contemplate a broad range of permissible activities. Ameritech argues that, so long as all the conditions under section 274(c)(2)(B) are met and the requirements of section 274 are otherwise satisfied, a BOC should be free to enter into a teaming or business arrangement with a separated affiliate or electronic publishing joint venture to jointly market electronic publishing services. NYNEX contends that teaming arrangements provide another form of "one-stop shopping" for consumers and present minimal risk of anticompetitive behavior. PacTel argues that the language of section 274(c)(2)(B) is so broad that it includes any activity other than the provision of electronic publishing itself, including promotion, marketing, sales and advertising activities. SBC argues that section 274(c)(2)(B) should be interpreted to permit a BOC and its separated affiliate jointly to promote, market, sell, and advertise their respective services pursuant to *any* form of business arrangement.

160. Bell Atlantic argues that the term "teaming or business arrangements" as used in section 274(c)(2)(B) encompasses myriad arrangements which include, but are not limited to, marketing proposals in which a BOC and an electronic publisher each prepares its portion of a joint bid to a customer. BellSouth contends that a teaming or business arrangement is more substantial than a coordinated joint marketing or sales campaign or joint bid preparation arrangement, given the statute's reference to BOC ownership in section 274(c)(2)(B). YPPA argues that teaming arrangements, which it asserts were permissible under the MFJ, are any arrangements whereby "two businesses act independently to provide related products or services, but coordinate their activities so that the customer obtains a 'complete' package of the desired products or services." According to YPPA, "teaming" may include joint sales activities (including joint planning for sales calls), through advertising, premise visits or telemarketing."

161. Conversely, Time Warner argues that section 274(c)(2)(B) permits a BOC to engage in a non-BOC owned teaming or business arrangement to provide its electronic publishing affiliate with the necessary facilities and telephone service for electronic publishing, provided that such facilities and services are offered on a nondiscriminatory basis pursuant to tariffed rates and conditions.

162. Bell Atlantic argues that, by placing section 274(c)(2)(B) under the "Joint Marketing" provisions in section 274(c), Congress intended to clarify that "teaming or business arrangements" are not to be considered joint marketing activities. PacTel argues that "teaming arrangements" are included under the heading of "Joint Marketing" because such arrangements are one of the three categories of exceptions listed under that heading.

163. PacTel argues that the nondiscrimination requirement for teaming and other business arrangements relates to how a BOC provides facilities, services and basic telephone service information to electronic publishers, not to a BOC's choice of teaming partners. Even if the nondiscrimination requirement were interpreted to apply to a BOC's choice of teaming partners, PacTel argues, a BOC nevertheless would retain discretion to team only with electronic publishers that met its reasonable standards. BellSouth similarly contends that the nondiscrimination obligation of section 274(c)(2)(B) precludes a BOC from giving preference to the teaming or business arrangement in the conduct of its regulated common carrier activities, but does not impose on the BOC an obligation to invest in a particular entity. SBC argues that the nondiscrimination requirement in section 274(c)(2)(B) "provide[s] evenhandedness in the BOCs' provision of marketing and other services to [unaffiliated] electronic publishers." YPPA argues that the nondiscrimination requirement means that a teaming arrangement between a BOC and its separated affiliate "cannot be markedly different" from teaming arrangements made available to other electronic publishers.

164. NAA argues that, if a BOC uses its CPNI to provide "basic telephone service information" as part of a teaming arrangement, it is subject to the privacy requirements in section 222 for access to and use of the CPNI. PacTel states that section 274(c)(2)(B) allows a BOC to use CPNI as part of a teaming arrangement, consistent with section 222 of the Act. PacTel therefore argues that "BOCs can use CPNI with the type of telecommunications service from which the information was derived, and with customer authorization can use it with any service." PacTel maintains that, to the extent that "basic telephone service information" is also CPNI, section 222 of the Act and any implementing regulations the Commission adopts govern the use of such information. To the extent such information is not CPNI, but network information, PacTel argues that a BOC is required to share such information with all electronic publishers with which the BOC teams. SBC argues that, where information qualifies as both "basic telephone service information" under section 274(i)(3) as well as CPNI under section 222(f)(1), the terms of section 274 should prevail over the general terms in section 222 of the Act. SBC points out that section 274 of the Act contains no "approval" requirement as a precondition for using, disclosing, or accessing basic telephone service information. As such, SBC argues, a BOC should be permitted to use such information without first obtaining approval under section 222(c)(1) when engaged in permissible teaming or business arrangements.

(3) Discussion

165. We decline at this time to adopt specific regulations clarifying the types of arrangements that are contemplated by the terms "teaming or business arrangements" in section 274(c)(2)(B) of the Act. We conclude that those terms, which are not defined in the statute, may encompass a broad range of permissible marketing activities because section 274(c)(2)(B) imposes no explicit marketing limitations. At the same time, however, this provision contains no language that operates to remove business or teaming arrangements from the scope of the prohibitions in section 274(c)(1). We thus find that Congress, in including the general terms "teaming or business arrangements" in section 274(c)(2)(B), did not intend to limit or expand the types of marketing activities in which BOCs could engage under that section other than those specifically restricted or authorized elsewhere in section 274 (*e.g.*, in section 274(c)(1)).

166. Under section 274(c)(2)(B), therefore, a BOC providing telecommunications services and the electronic publishing provider with which it teams are limited to marketing their respective services. This interpretation is supported by the plain language of section 274(c)(2)(B), which generally provides that a BOC may engage in teaming or business arrangements if such BOC "only provides facilities, services, and basic telephone service information as authorized by [section 274]." Under this interpretation, a BOC is permitted to market only the facilities, services and basic telephone service information that section 274(c)(2)(B) permits the BOC to provide. This interpretation also is supported by a comparison of the text in section 274(c)(2)(B) with the text of sections 274(c)(2)(A) and (C), relating to inbound telemarketing and electronic publishing joint ventures, respectively. Unlike section 274(c)(2)(C), section 274(c)(2)(B) does not specifically permit the authorized entity to engage in joint marketing activities otherwise prohibited to the BOC by section 274(c)(1), *i.e.*, promotion, marketing, sales, and advertising activities. In addition, unlike section 274(c)(2)(A), section 274(c)(2)(B) contains no language that explicitly addresses marketing. We therefore conclude that a BOC participating in a teaming arrangement may not market the electronic publishing services of an electronic publishing provider with which it teams. In addition, the restrictions specifically set forth in section 274(c)(2)(B) would apply, *i.e.*, that such BOC only provide facilities, services and basic telephone service information as authorized by section 274, that the BOC not "own" the teaming or business arrangement, and that the teaming arrangement be "nondiscriminatory."

167. As noted above, a few commenters provide examples of the types of activities they believe are permissible under section 274(c)(2)(B) as a "teaming or business arrangement." Bell Atlantic, for example, contends that such arrangements include, but are not limited to, marketing proposals in which a BOC and an electronic publisher each prepares its portion of a joint bid to a customer. In addition, YPPA argues that a teaming arrangement is any arrangement whereby "two businesses act independently to provide related products or services, but coordinate their activities so that the customer obtains a 'complete' package of the desired products or services." YPPA states, for example, that a BOC may engage in a teaming arrangement with a separated affiliate whereby the BOC provides a customer with regulated telephone service and the separated affiliate provides the same customer with electronic publishing services. We conclude that nothing in the statute prohibits a BOC from engaging in the types of activities proposed by these commenters, so long as all of the requirements of section 274, including section 274(c)(2)(B), are satisfied. To the extent issues arise in the future as to whether certain other activities are permissible under section 274(c)(2)(B) as "teaming or business arrangements," we intend to address those issues on a case-by-case basis.

168. We also conclude that section 274(c)(2)(B)'s requirement that a BOC only engage in teaming or business arrangements that are "nondiscriminatory" means that a BOC may provide to the teaming arrangement the necessary facilities, services and basic telephone service information for electronic publishing, provided that such facilities, services and information are offered on a nondiscriminatory basis both to other teaming arrangements and to unaffiliated electronic publishers. Under this interpretation, for example, a BOC would be prohibited from favoring a teaming arrangement with a separated affiliate over an arrangement with an unaffiliated electronic publishing provider in the provision of the BOC's facilities, services and basic telephone service information under section 274(c)(2)(B). We agree with PacTel and BellSouth that section 274(c)(2)(B) of the Act does not require a BOC to participate in a teaming arrangement with, or to invest in, an electronic publishing provider. Given that a "teaming arrangement" under section 274(c)(2)(B) contemplates that a BOC may hold less than a 10 percent interest in such arrangement, we believe that Congress did not intend to compel a BOC to acquire such an interest in other arrangements simply because the BOC has chosen to participate in a teaming arrangement with an electronic publisher of its choice. In addition, we find that such an interpretation would provide a disincentive for BOCs to engage in teaming arrangements in contravention of the plain language of section 274(c)(2)(B) and the pro-competitive goals of the 1996 Act.

169. We defer to our pending CPNI proceeding the question of whether the term "basic telephone service information" as defined in section 274(i)(3) of the Act includes CPNI as defined in section 222 of the Act. Based on the definition of "basic telephone service information" in section 274(i)(3), however, we conclude that the term includes network information of the BOC. We also defer to our CPNI proceeding the issue of whether section 222 requires a BOC engaged in permissible marketing activities under section 274(c)(2) to obtain customer approval before using, disclosing, or permitting access to CPNI. In particular, we defer to that proceeding the issue of whether or to what extent section 274(c)(2)(B) of the Act imposes any obligations on BOCs that use, disclose, or permit access to CPNI pursuant to a teaming arrangement. As noted above, however, the CPNI requirements the Commission previously established in the *Computer II* and *Computer III* proceedings remain in effect, pending the outcome of the CPNI proceeding, to the extent that they do not conflict with section 222 of the Act. Because we conclude that "basic telephone service information" under section 274(i)(3) includes network information, BOCs that provide network information as part of a teaming arrangement are required to provide such information to other teaming arrangements on a

nondiscriminatory basis pursuant to section 274(c)(2)(B).

c. Electronic Publishing Joint Ventures—Section 274(c)(2)(C)

(1) Permissible Level of BOC Ownership Interest in Electronic Publishing Joint Venture and Waiver for "Good Cause"

(a) Background

170. Section 274(c)(2)(C) of the Act expressly permits a BOC or affiliate to "participate on a nonexclusive basis in electronic publishing joint ventures with entities that are not a [BOC], affiliate, or separated affiliate to provide electronic publishing services." The BOC or affiliate, however, may not hold more than a 50 percent direct or indirect equity interest (or the equivalent thereof) or the right to more than 50 percent of the voting control over the joint venture. In addition, officers and employees of a BOC or affiliate participating in an electronic publishing joint venture may hold no greater than 50 percent of the voting control over the joint venture. The House Report clarifies that this restriction prohibits officers and employees of a BOC from "*collectively* having more than 50 percent of the voting control of the venture." In the *NPRM*, we tentatively concluded that a BOC is deemed to "own" an electronic publishing joint venture "if it holds greater than a 10 percent but not more than a 50 percent direct or indirect equity interest in the venture, or has the right to greater than 10 percent but not more than 50 percent of the venture's gross revenues." We sought comment on that tentative conclusion.

171. Section 274(c)(2)(C) also provides that, "[i]n the case of joint ventures with small, local electronic publishers, the Commission for good cause shown may authorize [a BOC] or affiliate to have a larger equity interest, revenue share, or voting control but not to exceed 80 percent." As we observed in the *NPRM*, although the term "small, local electronic publisher" is not defined in the statute, the House Report indicates that the term was intended to apply to publishers serving communities of fewer than 50,000 persons. We sought comment in the *NPRM* on how we should determine the service area of a "small, local electronic publisher" for the purpose of applying the 80 percent threshold. In addition, we sought comment on whether it would be consistent with congressional intent to adopt additional standards for determining which electronic publishers are subject to the 80 percent threshold, and, if so, what such standards should be. We also sought comment on how we should define "local" under section 274(c)(2)(C).

172. With regard to section 274(c)(2)(C)'s provision allowing waiver of the 50 percent equity interest and revenue share limitation in the case of joint ventures with small, local electronic publishers for "good cause shown," we sought comment on the "good cause" showing that is required under that provision, and whether any additional regulations are necessary to implement the provision.

(b) Comments

173. The Joint Parties agree that a minimum 10 percent equity interest or gross revenue share by a BOC is sufficient to constitute ownership of an electronic publishing joint venture. NAA states that a BOC must "own" an electronic publishing joint venture, which means it must hold greater than a 10 percent direct or indirect equity interest in the venture, or have the right to greater than 10 percent of the venture's gross revenues. NAA also points out that, except for joint ventures with small, local electronic publishers, a BOC is limited to a minority stake in the electronic publishing joint venture. NAA argues that we should not adopt any standards at this time for determining what constitutes a "small, local electronic publisher" under section 274(c)(2)(C), but instead should address the issue in the context of specific waiver applications. NAA maintains that, in such cases, the "good cause" showing that is required under section 274(c)(2)(C) would be satisfied by demonstrating that greater participation by the BOC "is needed to enable the [electronic publishing] service to be provided to the public."

(c) Discussion

174. We conclude that a BOC may hold greater than a 10 percent but not more than a 50 percent direct or indirect equity interest in an electronic publishing joint venture under section 274(c)(2)(C) of the Act, or may have the right to greater than 10 percent but not more than 50 percent of the venture's gross revenues. Therefore, while a BOC may "own" an electronic publishing joint venture, it is limited to a 50 percent stake in such venture. Our interpretation is consistent with the definition of "electronic publishing joint venture" in section 274(i)(5) of the Act, which contemplates a degree of ownership by a BOC or affiliate, the definition of "own" in section 274(i)(8), and with the plain language of section 274(c)(2)(C), which restricts a BOC's ownership or revenue share interest in an electronic publishing joint venture to 50 percent.

175. We decline at this time to adopt any standards for determining which entities constitute "small, local electronic publishers" for the purpose of applying the 80 percent threshold in section 274(c)(2)(C) of the Act. While the House Report indicates that the term was intended to apply to publishers serving communities of fewer than 50,000 persons, it is difficult from a practical standpoint to define the service area of such publishers, given that electronic publishing services, by definition, contemplate the dissemination of information to the general public. Moreover, the term "small" may be defined based on a variety of standards, including the size of the community served, the gross revenues of the electronic publishing entity, or other factors. Given the difficulties with establishing standards at this time for determining what constitutes a "small, local electronic publisher" under section 274(c)(2)(C), we conclude that it is best to clarify this phrase on a case-by-case basis.

176. With regard to the "good cause" showing that is required for a BOC to hold a greater interest in an electronic publishing joint venture with a small, local electronic publisher under section 274(c)(2)(C) of the Act, one factor we may consider in determining whether a BOC has satisfied this standard is whether increased investment by the BOC is necessary to enable the joint venture to provide electronic publishing services. In adopting section 274(c)(2)(C), we believe that Congress intended, *inter alia*, to encourage market participation by small, local electronic publishing entities in the provision of electronic publishing services by allowing a BOC to hold a greater ownership interest in electronic publishing joint ventures with such entities. We emphasize, however, that this is only one factor we may consider in determining whether a BOC satisfies the "good cause" standard under section 274(c)(2)(C), and that other circumstances may exist that militate for or against a finding of "good cause." We thus conclude that the issue of what constitutes "good cause" under section 274(c)(2)(C) should be addressed on a case-by-case basis in the context of fact-specific waiver applications.

(2) BOC Participation on a "Nonexclusive" Basis

(a) Background

177. In the *NPRM*, we also sought comment on what regulations, if any, are necessary to ensure that a BOC participates in an electronic publishing joint venture on a "nonexclusive" basis. We noted that this provision appears to prohibit arrangements whereby a BOC participates in an electronic publishing joint venture with an electronic publishing entity to the exclusion of all other such entities. We also sought comment on whether the provision prohibits contracts between a BOC and an electronic publisher whereby the electronic publisher is committed to purchase basic transmission services necessary to provide electronic publishing exclusively from such BOC, or whether the provision contemplates other types of prohibitions.

(b) Comments

178. BellSouth, NAA, and NYNEX argue that the "nonexclusive" requirement in section 274(c)(2)(C) precludes a BOC from entering into an electronic publishing joint venture with one entity to the exclusion of all others. PacTel similarly states that a BOC and its affiliate are prohibited under the provision from entering into an agreement that either prohibits other parties from participating in the joint venture or precludes the BOC or its affiliate from participating in other electronic publishing joint ventures with other parties. BellSouth states, however, that a BOC is not obligated to participate in more than one electronic publishing joint venture. BellSouth and NAA also argue that the provision does not preclude a BOC from insisting, as a condition of its participation in the electronic publishing joint venture, that the joint venture purchase basic transmission services exclusively from the BOC in order to provide electronic publishing services. NAA and PacTel contend that the provision does not require an electronic publishing joint venture to be open to all, nor does it prelude a BOC from exercising its business judgment regarding its joint venture partners.

(c) Discussion

179. We conclude that the section 274(c)(2)(C) requirement that a BOC or affiliate participate in an electronic publishing joint venture on a "nonexclusive" basis prohibits a BOC or affiliate from entering into an agreement with its joint venture partner that precludes either entity from participating in other such ventures with other parties. The "nonexclusive" requirement in section 274(c)(2)(C) protects against the potential that a BOC could place competing local exchange providers at a competitive disadvantage by preventing its joint venture partners from aligning with such providers in other electronic publishing joint ventures. We note, however, that while section 274(c)(2)(C) of the Act proscribes these types of exclusive arrangements, it does not prevent a BOC from agreeing with its joint venture partner to exclude other parties from that particular venture. In addition, we find that section 274(c)(2)(C) does not require that an electronic publishing joint venture be open to any and all potential venture participants, nor does it preclude a BOC from exercising its business judgment regarding its joint venture partners. As noted above, because an "electronic publishing joint venture" as defined in section 274(i)(5) of the Act, contemplates some degree of BOC ownership, a BOC should be allowed to retain discretion regarding its joint venture partners. Requiring a BOC to take an ownership interest in a joint venture in which it was not free to select its partner would discourage BOCs from participating in such ventures and restrict competition in the provision of electronic publishing services.

180. We also find that the "nonexclusive" requirement in section 274(c)(2)(C) of the Act does not require a BOC or BOC affiliate to participate in more than one electronic publishing joint venture. As BellSouth points out, such an interpretation could be viewed as precluding a BOC from consummating an electronic publishing joint venture arrangement with its joint venture partner until the BOC had located and negotiated with another partner with whom to establish a joint venture. A BOC thus may refuse to participate in a second electronic publishing joint venture that is proposed to it after it has entered into an electronic publishing joint venture with another unaffiliated entity. Given that Congress, in adopting section 274 of the Act, sought to promote competition in the provision of electronic publishing services by allowing BOCs to provide such services subject to certain safeguards, we conclude that section 274(c)(2)(C) was not intended to require a BOC to participate in more than one electronic publishing joint venture. Such a requirement could restrict competitive entry into the provision of electronic publishing services by hampering BOC participation in electronic publishing joint ventures.

181. We also conclude that section 274(c)(2)(C) does not preclude a BOC from requiring an electronic publishing joint venture to purchase basic transmission services exclusively from the BOC as a condition of the BOC's participation in the joint venture. The express language of section 274(a) of the Act contemplates the provision by an electronic publishing joint venture of electronic publishing services that are disseminated by means of the BOC or BOC affiliate's basic telephone service. Moreover, nothing in section 274(a) indicates that Congress intended to prohibit a BOC participating in an electronic publishing joint venture from requiring that the joint venture purchase basic telephone service exclusively from the BOC.

(3) Interplay Between Section 274(c)(1)(B) and Section 274(c)(2)(C)

(a) Background

182. We noted in the *NPRM* that the joint marketing prohibitions in section 274(c)(1) of the Act appear not to apply to an electronic publishing joint venture. We also sought comment on the extent to which section 274(c)(2)(C), which allows a BOC to participate in electronic publishing joint ventures under certain conditions, permits a BOC to market jointly with an electronic publishing joint venture in light of other provisions in section 274 that prohibit certain marketing activities. We noted, for example, that section 274(b)(6) prohibits an electronic publishing joint venture from using the "name, trademark, or service marks of an existing [BOC]" for the marketing of any product or service, while section 274(c)(2)(A) permits a BOC to provide inbound telemarketing services for, among other things, an electronic publishing joint venture, but only under certain conditions. In addition, we sought comment in the *NPRM* on the distinction, if any, between the term "carry out" in sections 274(c)(1)(A) and (B), which set forth the general marketing prohibitions on BOCs, and the term "provide" in section 274(c)(2)(C).

(b) Comments

183. A number of commenters argue that section 274(c)(2)(C) is an exception to the general joint marketing prohibitions in section 274(c)(1) of the Act and thus permits a BOC to provide promotion, marketing, sales and advertising services to an electronic publishing joint venture. SBC argues that, because section 274(c)(2)(C) authorizes a BOC participating in an electronic publishing joint venture to "provide promotion, marketing, sales, or advertising *personnel and services*," the venture itself may be staffed by BOC marketing and sales personnel. Ameritech argues that joint marketing activities otherwise prohibited under section 274(c)(1) are permitted to the extent they come under one of the three

categories of permissible joint marketing activities in section 274(c)(2) of the Act. NAA argues that section 274(c)(2)(C) permits a BOC to market jointly with an electronic publishing joint venture subject to the restrictions in section 274(b)(6) on use of names and trademarks. In addition, NAA contends that the use of the terms "carry out" in section 274(c)(1) and "provide" in section 274(c)(2)(C) was not intended to limit the services a BOC may perform for an electronic publishing joint venture.

184. Conversely, Time Warner argues that a BOC is prohibited from jointly marketing its local exchange services with the electronic publishing services of an electronic publishing joint venture, and vice versa. According to Time Warner, if a joint venture were permitted to jointly market its electronic publishing services with the BOC's local exchange services, "the ability to leverage the BOC's local exchange monopoly into the electronic publishing market would remain."

185. Bell Atlantic contends that sections 274(b)(6) and (c)(2)(A) of the Act do not affect the right of a BOC to provide marketing services for an electronic publishing joint venture. According to Bell Atlantic, the statute prohibits the joint venture, not the BOC, from using the BOC's name, trademark or service marks. To the extent the BOC is providing services to the joint venture, Bell Atlantic argues, it is free to use its own name, trademark and service marks. Bell Atlantic also maintains that it is subject to the conditions on inbound telemarketing in section 274(c)(2)(A) of the Act to the extent it performs inbound telemarketing activities for a joint venture.

(c) Discussion

186. We conclude that section 274(c)(2)(C) provides an exception to the general joint marketing prohibitions imposed on BOCs in section 274(c)(1) of the Act. As some commenters point out, the introductory clause in section 274(c)(1) of the Act indicates that subsections (c)(1)(A) and (B) prohibit BOCs from carrying out certain types of joint marketing activities "[e]xcept as provided in [section 274(c)(2)]." Therefore, while section 274(c)(1)(B) of the Act might otherwise be interpreted to prohibit a BOC from carrying out joint marketing activities with an electronic publishing joint venture, section 274(c)(2)(C) provides a clear exception that allows a BOC to engage in such activities. In particular, section 274(c)(2)(C) of the Act expressly permits a BOC participating in an electronic publishing joint venture to provide "promotion, marketing, sales or advertising personnel and services" to such joint venture.

187. Given the plain language of section 274(c)(2)(C), which allows a BOC participating in an electronic publishing joint venture to provide "promotion, marketing, sales or advertising *personnel* and services" to such joint venture, we agree with SBC that an electronic publishing joint venture may be staffed by BOC marketing and sales personnel. Moreover, we agree with NAA that use of the terms "carry out" in section 274(c)(1) and "provide" in section 274(c)(2)(C) was not intended to limit the services a BOC may perform for an electronic publishing joint venture. To the contrary, based on the more specific language of the statute, which allows BOC provision of marketing *personnel* as well as services, we conclude that section 274(c)(2)(C) contemplates a broader range of BOC marketing activities than those proscribed in section 274(c)(1) of the Act.

188. We also conclude that section 274(c)(2)(C) does not override the general prohibition in section 274(b)(6) of the Act on the use of "name, trademarks, or service marks of an existing [BOC]" by an electronic publishing joint venture and a BOC for the marketing of any product or service of the joint venture. Nothing in section 274 of the Act indicates that Congress intended section 274(c)(2)(C) to provide an exception to the broad restriction in section 274(b)(6) on the use of an existing BOC's name, trademarks and service marks. As such, to the extent a BOC engages in marketing activities permissible under section 274(c)(2)(C) of the Act, it must still comply with section 274(b)(6), as well as all other applicable provisions in section 274. For example, we agree with Bell Atlantic that a BOC is subject to the conditions in section 274(c)(2)(A) of the Act to the extent it performs inbound telemarketing activities for an electronic publishing joint venture.

D. Nondiscrimination Safeguards

1. Background

189. Section 274(d) requires a BOC "under common ownership or control with a separated affiliate or electronic publishing joint venture [to] provide network access and interconnections for basic telephone service to electronic publishers at just and reasonable rates that are tariffed (so long as rates for such services are subject to regulation) and that are not higher on a per-unit basis than those charged for such services to any other electronic publisher or any separated affiliate engaged in electronic publishing." Prior to the Act, electronic publishing services were regulated as enhanced services and were subject to the nondiscrimination requirements established under the Commission's *Computer II* and *Computer III* regimes. Under *Computer III* and *Open Network Architecture*, BOCs have been permitted to provide enhanced services on an integrated basis. Moreover, BOCs have been required to provide at tariffed rates nondiscriminatory interconnection to unbundled network elements used to provide enhanced services.

190. We concluded in the *NPRM* that the *Computer III/ONA* requirements should continue to apply to the extent that such requirements are not inconsistent with the Act. We sought comment on whether the requirements of *Computer III/ONA* are consistent with the nondiscrimination requirements of section 274(d). To the extent that commenters argue that the *Computer III/ONA* requirements are inconsistent, we sought comment on whether and to what extent regulations are necessary to implement section 274(d).

191. We also tentatively concluded in the *NPRM* that section 274(d) prohibits BOCs under common ownership or control with a separated affiliate or electronic publishing joint venture from providing volume discounts, term discounts, or other preferential rates for basic telephone service to electronic publishers. In reaching this tentative conclusion, we reasoned that any such discount would be unlawful because section 274(d) prohibits BOCs from providing basic telephone services to some electronic publishers at rates that are "higher on a per-unit basis" than rates charged to other electronic publishers. We also tentatively concluded that section 274(d) does not require BOCs to file tariffs for services that no longer are subject to tariff regulation. Finally, we sought comment on the meaning of the requirement that access and interconnection be provided to electronic publishers "at just and reasonable rates that are tariffed (so long as rates for such services are subject to regulation)."

2. Comments

192. The parties generally agree that the language of section 274(d) is sufficiently clear and that there is no need for the Commission to adopt additional rules to implement this provision of the statute. If the Commission nonetheless adopts rules to implement section 274(d), Cincinnati Bell would exempt "any LEC with less than 2% of the nation's access lines." MCI contends that the BOCs, in complying with section 274(d), must provide competitors with "functional equality or service of equal quality relative to the services the BOCs provide their affiliates."

193. In addition, the commenters generally agree that the *Computer III/ONA* nondiscrimination requirements are consistent with section 274(d), but they disagree on whether we should continue to apply these requirements to BOC intraLATA electronic publishing services. Some of the BOCs argue that application of the *Computer III/ONA* requirements is unnecessary because section 274 imposes a separate affiliate requirement on BOCs that is similar to the structural separation requirements of *Computer II*. Ameritech supports elimination of the *Computer III/ONA* requirements, claiming that they "were, and are, simply a solution in search of a problem." Other commenters, in contrast, support retaining the *Computer III/ONA* requirements. Time Warner argues that, although the *Computer III/ONA* requirements "have not been useful to enhanced service providers," these requirements will be more effective if combined with the structural separation and nondiscrimination requirements of section 274. MCI and AT&T observe that there is no evidence that Congress intended to displace the *Computer III/ONA* requirements for electronic publishing services, although MCI states that the requirements are "inadequate to prevent discrimination."

194. With regard to preferential rates, AT&T and Time Warner agree with our tentative conclusion that section 274(d) prohibits BOCs under common ownership or control with a separated affiliate or electronic publishing joint venture from providing volume and term discounts for network access and interconnections for basic telephone service to electronic publishers. They contend that, because the rates charged to one electronic publisher must not be higher on a "per-unit basis" than the rates charged to other electronic publishers, the statute requires uniform rates for such services. A number of BOCs, on the other hand, argue that volume and term discounts are permitted so long as the BOC offers the same discount to other electronic publishers on the same terms and conditions.

195. PacTel also argues that Congress did not define the term "units" for purposes of calculating per-unit rates. PacTel notes that it provides transport in units such as DS0, DS1, and DS3, which are priced differently based on its cost savings. PacTel further asserts that a group of minutes of use, when sold together as a block, could constitute a unit, which presumably would cost less than buying the minutes of use individually. It thus asserts that BOCs may continue to create reasonable units or groups of services, and must only offer such units to all electronic publishers at the same price.

196. Time Warner also argues that the requirement that rates be just and reasonable and nondiscriminatory should apply independently of any decision to reduce or eliminate tariff filing requirements. In order to enforce this requirement in the event of detariffing, Time Warner contends that the Commission should require BOCs to file with the Commission, and furnish to any electronic publisher upon request, a list of rates charged to electronic publishers. Several BOCs, on the other hand, argue that filing a rate list is unnecessary because, under section 274(b)(3)(B), if a particular service is not subject to tariffing requirements, the transaction must be reduced to writing and made publicly available. Moreover, some commenters note that, since section 274(d) does not require BOCs to file tariffs for services that are no longer subject to tariff filing requirements, a separate rate list requirement would be both inconsistent with the statute and overly regulatory.

197. PacTel and YPPA further argue that, once the rates for basic telephone service are no longer subject to regulation, section 274(d) is no longer applicable. These commenters contend that the Commission detariffs services when it determines that competition will keep rates just and reasonable, and therefore that the market, rather than tariff filings or other regulatory requirements, will ensure that rates are just and reasonable.

3. Discussion

198. We decline to adopt rules to implement section 274(d), based on the record before us; we will reconsider this decision if circumstances warrant. We find that the language of section 274(d) is sufficiently clear to ensure that BOCs provide unaffiliated electronic publishers with network access and interconnections for basic telephone service that are equal in quality, and at nondiscriminatory terms, relative to those it provides to electronic publishers affiliated with the BOC. We reject MCI's contention, however, that section 274(d) is a guarantee of functional equivalence for unaffiliated electronic publishers. We find that neither the statute nor its legislative history supports such an interpretation.

199. We also conclude that the *Computer III/ONA* requirements are consistent with the requirements of section 274(d). The parties have not indicated that there is any inconsistency between the nondiscrimination requirements of *Computer III/ONA* and section 274(d). Section 274(d), moreover, does not repeal or otherwise affect the *Computer III/ONA* requirements.

200. We recognize, however, that section 274(b) imposes certain structural separation requirements on BOC provision of electronic publishing services. Under our current regulatory regime, a BOC must comply fully with the *Computer II* separate subsidiary requirements in providing an information service to be relieved of the obligation to file a Comparably Efficient Interconnection (CEI) plan to provide that service on an integrated basis pursuant to *Computer III*. The record in this proceeding, however, is insufficient to support a finding, as NYNEX proposes, that BOC electronic publishing services that are offered through a section 274 separated affiliate satisfy all the relevant requirements of *Computer II*. Instead, we will consider this issue, as well as issues raised regarding the revision or elimination of the *Computer III/ONA* requirements, in the context of the *Computer III Further Remand* proceeding. We conclude, therefore, that *Computer II*, *Computer III*, and *ONA* requirements continue to govern the BOCs' provision of intraLATA electronic publishing services. We also note that the nondiscrimination requirements of section 274(d) apply to the BOCs' provision of both intraLATA and interLATA electronic publishing services.

201. We further conclude that section 274(d) prohibits preferential rates, including volume or term discounts. This section expressly requires that a BOC under common ownership or control with a separated affiliate or electronic publishing joint venture must provide other electronic publishers network access and interconnections for basic telephone service at rates "that are not higher on a per-unit basis than those charged for such services" to its own affiliates or other competing electronic publishers. We conclude from the plain language of the statute that Congress intended that BOCs under common ownership or control with a separated affiliate or electronic publishing joint venture must charge electronic publishers a uniform per-unit rate for a service. We find further support for this interpretation in a floor statement that Congressman Hyde made regarding the

purpose of the amendment that contained the "not higher on a per-unit basis" language:

> In the development of the manager's amendment to be offered by Chairman Bliley, the Judiciary Committee has worked closely with the Commerce Committee to improve H.R. 1555 in areas that are of particular concern to, and under the jurisdiction of the Judiciary Committee. * * * Under the manager's amendment, *the Bell companies will be required to provide services to small electronic publishers at the same per-unit prices that they give to larger publishers.* This will allow the small newspapers and other electronic publishers to bring the information superhighway to rural areas that might otherwise be passed by.

141 Cong. Rec. H8292–93 (daily ed. Aug. 2, 1995) (statement of Rep. Hyde, Chairman of the House Committee on the Judiciary) (emphasis added)

202. We conclude, however, that section 274(d) only prohibits discounts for network access and interconnections for basic telephone service used in the provision of electronic publishing services. Thus, under this section, BOCs may offer discounts for the provision of such services to an electronic publisher for use in any of its other non-electronic publishing activities. Otherwise, an entity that engages in electronic publishing as well as other activities would be prohibited from obtaining a volume discount or term discount for any basic telephone service it purchases for any of its activities, whether or not related to its electronic publishing services. There is no indication that Congress intended to prohibit such discounts for an electronic publisher's non-electronic publishing activities, thereby putting such electronic publisher at a competitive disadvantage vis-a-vis its non-electronic publishing competitors.

203. Moreover, we find that section 274(d) does not require a BOC under common ownership or control with a separated affiliate or electronic publishing joint venture to charge electronic publishers the same per-unit price for different services, particularly when those services use different facilities and impose different costs on the BOCs. Ignoring such cost disparities for providing different services would remove the incentive to use the most efficient service and could increase costs for all electronic publishers as well as hamper competition in the electronic publishing market.

204. We agree with PacTel that the statute does not define the term "units," for purposes of calculating per-unit rates. BOCs, therefore, may charge a flat rate or, in the alternative, a rate based on usage for a service, each of which would have a different base unit. We reject, however, PacTel's argument that a group of minutes of use, for example, could constitute a unit, unless such a group of minutes is both the smallest unit of minutes offered to electronic publishers and accommodates the needs of small electronic publishers. In this manner, such a group of minutes would neither constitute a volume discount nor disadvantage small electronic publishers.

205. We also adopt our tentative conclusion that section 274(d) does not require BOCs to file tariffs for services that are not subject to rate regulation. Section 274(d) is clear that BOCs subject to the requirements in this section file tariffs for services only "so long as rates for such services are subject to regulation." No commenter disagrees with this conclusion.

206. In addition, we reject the argument that, because competition will be sufficient to ensure that a detariffed service's rates are just and reasonable, section 274(d) is inapplicable to such services. We find that the "just and reasonable" and "per-unit" requirements in section 274(d) are independent of the requirement that rates be tariffed "so long as rates for such services are subject to regulation." Thus, the section 274(d) nondiscrimination requirements will continue to apply, regardless of whether the service is tariffed or no longer subject to regulation, until the sunset date of this provision in February, 2000.

207. We decline at this time to address Time Warner's argument that the Commission should require BOCs to file rates for network access and interconnections for basic telephone service provided to electronic publishers even after elimination of tariff filing requirements. We note that BOCs currently are required to file state and federal tariffs for ONA services, which are the tariffed services generally used by enhanced service providers, such as electronic publishers, to provide their services to customers. The Commission will determine whether additional filing or regulatory requirements are necessary if and when a service that is currently subject to tariff filing requirements is detariffed. Further, several BOCs stated that section 274(b)(3)(B) eliminates the need for additional regulatory requirements because under that section, if a particular service is not subject to tariffing requirements, the transaction between a BOC and its separated affiliate or joint venture must be pursuant to a written contract that is publicly available. As discussed below, we are issuing a *Further NPRM* in this proceeding to seek additional comments on the meaning of section 274(b)(3)(B).

IV. Telemessaging

A. Application of Sections 260 and 272 to BOC InterLATA Telemessaging Services

1. Background

208. We stated in our *NPRM* that section 260 sets forth various requirements for the provision of telemessaging service by LECs subject to the requirements of section 251(c), *i.e.*, incumbent LECs. The Commission's current rules permit BOCs to provide telemessaging services on an integrated basis, subject to the *Computer III/ONA* requirements. Other LECs have been permitted to provide telemessaging services subject only to the requirements of sections 201 and 202, which apply to all common carriers, including the BOCs. The *NPRM* also recognized that section 260 does not distinguish between intraLATA and interLATA provision of telemessaging services. We therefore sought comment on whether section 260 applies to BOC provision of telemessaging services, both on an intraLATA and interLATA basis. We also noted that, in the *Non-Accounting Safeguards NPRM*, we tentatively concluded that telemessaging is an information service subject to the separate affiliate and nondiscrimination requirements of section 272 and, therefore, we tentatively concluded that BOC provision of interLATA telemessaging services is subject to the requirements of section 272 in addition to the requirements of section 260. We sought comment on whether, if we decided not to adopt this tentative conclusion, BOCs providing telemessaging services on either an intraLATA or interLATA basis would be subject only to the requirements of section 260.

2. Comments

209. Commenters generally agree that section 260 applies to all incumbent LEC provision of telemessaging, both on an intraLATA and interLATA basis. Commenters disagree, however, on whether BOC provision of interLATA telemessaging services is subject to both sections 272 and 260. MCI, U S WEST, and Voice-Tel state that BOC provision of interLATA services is subject to both sections 272 and 260, because telemessaging service is an "information service" and thus falls within the terms of section 272(a)(2)(C). BellSouth and PacTel agree with this point, but argue that Congress, in enacting a separate provision for telemessaging services, did not intend BOC provision of interLATA telemessaging services to be subject to the requirements of section 272.

3. Discussion

210. We conclude that section 260 applies to all incumbent LEC provision of telemessaging services, both on an intraLATA and interLATA basis. We find that neither the statute nor its legislative history evinces an intent by Congress to distinguish between BOCs and other LECs, or between intraLATA and interLATA services. Moreover, because we concluded in the Commission's *Non-Accounting Safeguards Order* that telemessaging service is an "information service," BOC provision of telemessaging service on an interLATA basis is subject to the requirements of section 272 in addition to the requirements of section 260.

B. Definition of "Telemessaging Service"

1. Background

211. Section 260(c) defines "telemessaging service" as "voice mail and voice storage and retrieval services, any live operator services used to record, transcribe, or relay messages (other than telecommunications relay services), and any ancillary services offered in combination with these services." We sought comment in the *NPRM* on whether rules are necessary to clarify any ambiguities in this definition. We also sought comment on the types of services contemplated by the term "ancillary services."

2. Comments

212. None of the commenters identifies any ambiguities in the definition of "telemessaging service" in section 260(c). Some commenters state generally that the language of section 260 is clear and that no rules are needed to implement this provision. ATSI states that "ancillary services" are "all value-added services in addition to those primary [telemessaging] services, offered by telemessagers to the communications customer." ATSI lists specific examples, but recommends against establishing a comprehensive list of primary or ancillary telemessaging services, since new services are created as technology and consumer demands change.

3. Discussion

213. We conclude that the definition of "telemessaging service" in section 260(c) is sufficiently clear and therefore decline to establish an exclusive list of "telemessaging services" or "ancillary services." We note that BellSouth asks us to clarify that live operator services do not fall within the Commission's definition of "enhanced" services, because they do not employ "computer processing applications." *See* BellSouth at 26. We concluded in the *Non-Accounting Safeguards Order* that live operator services "are an example of one area in which the 'information service' definition is broader than that of 'enhanced services.'" *Non-Accounting Safeguards Order* at ¶§ 145 n.342. We will determine whether any individual service is a "telemessaging service" or "ancillary service" as necessary on a case-by-case basis. We note that BellSouth asks us to clarify that live operator services do not fall within the Commission's definition of "enhanced" services, because they do not employ "computer processing applications." *See* BellSouth at 26. We concluded in the *Non-Accounting Safeguards Order* that live operator services "are an example of one area in which the 'information service' definition is broader than that of 'enhanced services.'"

C. Nondiscrimination Requirements

1. Section 260(a)(2) and Sections 201 and 202

a. Background

214. Section 260(a)(2) provides that an incumbent LEC "shall not prefer or discriminate in favor of its telemessaging service operations in its provision of telecommunications services." We sought comment in the *NPRM* on the extent to which section 260(a)(2) imposes greater obligations on LECs providing telemessaging services than currently exist under sections 201 and 202 of the Act.

b. Comments

215. Some commenters assert that section 260(a)(2) imposes greater obligations on LECs providing telemessaging services than currently exist under sections 201 and 202 of the Act, based on the broad, unqualified language in section 260(a)(2). Some of the BOCs, however, disagree, asserting that section 260(a)(2) merely duplicates the requirements of sections 201 and 202 for incumbent LEC provision of telemessaging services. Voice-Tel contends that, in complying with section 260(a)(2), "it is not sufficient for the interconnections offered to be comparable if the result is that the competitor is put at any disadvantage."

c. Discussion

216. As noted above, section 260(a)(2) states that an incumbent LEC "shall not prefer or discriminate in favor of its telemessaging service operations in its provision of telecommunications services." Section 202(a), in contrast, prohibits "any unjust or unreasonable discrimination * * *, or * * * any undue or unreasonable preference or advantage" by common carriers providing interstate communications services. Because the section 260(a)(2) nondiscrimination bar, unlike that of section 202(a), is not qualified by the terms "unjust and unreasonable," we conclude that Congress did not intend section 260(a)(2) to be synonymous with the nondiscrimination standard in section 202(a), but intended a more stringent standard. This conclusion is consistent with our interpretation of similar language in sections 251(c)(2) and 272(c)(1). We therefore reject claims that section 260(a)(2) merely duplicates the nondiscrimination bar of section 202(a) for the provision of telemessaging services by incumbent LECs.

217. We also conclude that section 260(a)(2) is not a guarantee of functional equivalence for unaffiliated telemessaging providers, as Voice-Tel contends. We find that neither the statute nor its legislative history supports such an interpretation. We note that the Joint Explanatory Statement states only that section 260(a)(2) prohibits incumbent LECs "from discriminating against nonaffiliated entities with respect to the terms and conditions of any network services they provide to their own telemessaging operations." To the extent that competitors require different telecommunications services than the LEC provides to its own telemessaging operations, we note that other nondiscrimination requirements in the Act and analogous state nondiscrimination laws may apply to such requests. In addition, the Commission's *ONA* rules require the BOCs and GTE to unbundle network services useful to enhanced service providers.

2. Section 260(a)(2) and *Computer III/ONA* Requirements

a. Background

218. We concluded in the *NPRM* that the nondiscrimination requirements of *Computer III/ONA* should continue to apply to the extent they are not inconsistent with section 260(a)(2). We sought comment on whether the nondiscrimination provisions of *Computer III/ONA* are consistent with section 260(a)(2), and whether these provisions should be applied only to the BOCs or to all incumbent LECs to fulfill the requirements of section 260(a)(2).

b. Comments

219. Most commenters agree that the *Computer III/ONA* nondiscrimination requirements are consistent with section 260(a)(2) and assert that these requirements should continue to apply to BOC intraLATA telemessaging services. MCI and AT&T observe that there is no evidence that Congress intended to displace the *Computer III/ONA* requirements for telemessaging services. Similarly, ATSI asserts that "[s]ection 260 is not limited by existing rules or other provisions of the Act." The commenters disagree, however, on whether the current scope of the *Computer III/ONA* requirements should be extended to include all incumbent LECs, not just the BOCs. Cincinnati Bell asserts that the *Computer III/ONA* requirements should not be extended beyond their current scope, while PacTel and U S WEST argue that they should be extended to include all incumbent LECs. AT&T would extend the *Computer III/ONA* requirements to all incumbent LECs "possess[ing] substantial market power as a result of [their] bottleneck control over local exchange facilities in a significant service area (*e.g.*, SNET, GTE, and other Tier I LECs)," while USTA would exempt small and mid-sized LECs from these requirements.

220. Several commenters argue that the *Computer III/ONA* requirements should be revised or eliminated. Although MCI supports continued application of the *Computer III/ONA* requirements, it states that they "are inadequate to prevent access discrimination." Ameritech supports elimination of the *Computer III/ONA* requirements, claiming that they "were, and are, simply a solution in search of a problem." Bell Atlantic argues that the *Computer III/ONA* rules are unnecessary, given that price caps and sections 202(a) and 251 "fully protect against discrimination."

c. Discussion

221. We conclude that the *Computer III/ONA* requirements are consistent with the requirements of section 260(a)(2). We affirm our conclusion, therefore, that *Computer III/ONA* requirements continue to govern the BOCs' provision of intraLATA telemessaging services. In addition, we note that the Commission's *Computer II* requirements also continue to govern BOC provision of intraLATA information services, including telemessaging. We also note that the nondiscrimination requirements of section 260(a)(2) apply to the BOCs' provision of both intraLATA and interLATA telemessaging services, as well as other incumbent LECs' provision of telemessaging services. The parties have not indicated that there is any inconsistency between the nondiscrimination requirements of *Computer III/ONA* and section 260(a)(2). Section 260(a)(2), moreover, does not repeal or otherwise affect the *Computer III/ONA* requirements. We will consider in the Commission's *Computer III Further Remand* proceeding whether the *Computer III/ONA* requirements need to be revised or eliminated. For the same reason, we also decline to extend the *Computer III/ONA* requirements to entities other than BOCs, as recommended by some commenters.

3. Section 260(a)(2) and Adoption of Rules

a. Background

222. We sought comment in the *NPRM* on whether and what types of specific regulations may be necessary to implement section 260(a)(2).

b. Comments

223. The BOCs argue that the language of section 260(a)(2) is sufficiently clear and thus there is no need for the Commission to adopt rules to implement this provision. ATSI and Voice-Tel, on the other hand, argue that the Commission should adopt rules to implement section 260(a)(2). Voice-Tel states that Commission rules will ensure that complaints of discrimination are treated consistently and will help the Commission administer the Act efficiently. SBC argues that any rules adopted by the Commission must apply to all incumbent LECs, while Cincinnati Bell would exempt any LEC with less than two percent of the nation's access lines.

224. Voice-Tel argues that the "broad language" of the nondiscrimination requirement in section 260(a)(2) "makes *any* discrimination in pricing or other behavior unlawful," including the marketing of voice messaging services. Some BOCs, on the other hand, argue that the scope of section 260(a)(2) is limited to the provision of "telecommunications services," which, as defined in section 3(46) of the Act, does not include marketing-related activities.

225. Voice-Tel also would require all incumbent LECs to establish a separate affiliate to provide telemessaging services, in order to ensure that incumbent LECs comply with section 260(a)(2). Voice-Tel claims that nothing in the Act prevents the Commission from imposing this measure. The BOCs argue, in contrast, that, if Congress had intended to establish a separate affiliate requirement, it would have expressly said so, as it did for certain information services in section 272 and for electronic publishing services in section 274.

c. Discussion

226. We conclude that no rules are necessary to implement section 260(a)(2), based on the record before us; we will reconsider this decision if circumstances warrant. We therefore decline to adopt the specific rules proposed by certain commenters.

227. In particular, we decline to impose a separate affiliate requirement on all incumbent LECs providing telemessaging services. We find that the safeguards expressly established by Congress in section 260 are sufficient to guard against discriminatory behavior by incumbent LECs in favor of their own telemessaging operations. In addition, we find it significant that Congress limited the separate affiliate requirement in section 272 to BOC provision of interLATA information services (including interLATA telemessaging services), interLATA telecommunications services, and manufacturing, and in section 274 to BOC provision of electronic publishing services.

228. Further, we conclude that the scope of section 260(a)(2) is limited, by its terms, to the provision of "telecommunications services," which, as defined in section 3(46) of the Act, does not include marketing-related activities. Accordingly, we reject Voice-Tel's argument that marketing is included within the scope of 260(a)(2).

V. Final Regulatory Flexibility Certification

229. The Commission certified in the *NPRM* that the conclusions it proposed to adopt would not have a significant economic impact on a substantial number of small entities because the proposed conclusions did not pertain to small entities. No comments were submitted in response to the Commission's request for comment on its certification. For the reasons stated below, we certify that the conclusions adopted herein will not have a significant economic impact on a substantial number of small entities. This certification conforms to the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

230. The RFA provides that the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. The Small Business Act defines a "small business concern" as one that is independently owned and operated; is not dominant in its field of operation; and meets any additional criteria established by the Small Business Administration (SBA). SBA has not developed a definition of "small incumbent LECs." The closest applicable definition under SBA rules is for Standard Industrial Classification (SIC) code 4813 (Telephone Communications, Except Radiotelephone). The SBA has prescribed the size standard for a "small business concern" under SIC code 4813 as 1,500 or fewer employees.

231. The conclusions we adopt in this *Order* to implement section 274 apply only to the BOCs which, because they are large corporations that are dominant in their field of operation and have more than 1,500 employees, do not fall within the SBA's definition for a "small business concern." The conclusions we adopt pursuant to section 260, however, apply to all incumbent LECs. Some of these incumbent LECs may have fewer than 1,500 employees and thus meet the SBA's size standard to be considered "small." Because such incumbent LECs, however, are either dominant in their field of operations or are not independently owned and operated, consistent with our prior practice, they are excluded from the definition of "small entity" and "small business concerns." Accordingly, our use of the terms "small entities" and "small businesses" does not encompass small incumbent LECs. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will consider small incumbent LECs within this analysis and use the term "small incumbent LECs" to refer to any incumbent LECs that arguably might be defined by SBA as "small business concerns."

232. With respect to section 260, the most reliable source of information regarding the number of LECs nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS). According to our most recent data, 1,347 companies reported that they were engaged in the provision of local exchange services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,347 small incumbent LECs that may be affected by the conclusions adopted in this *Order*.

233. The Commission adopts the conclusions in this *Order* to ensure the prompt implementation of sections 260 and 274 of the Act. Section 260 permits incumbent LECs, including the BOCs, to provide telemessaging service subject to certain nondiscrimination safeguards. We certify that although there may be a substantial number of small incumbent LECs affected by the conclusions adopted in this *Order* to implement section 260, these conclusions will not have a significant economic impact on those affected small incumbent LECs.

234. We decline to elaborate on the definition of "telemessaging service" prescribed by Congress or to establish a list of services that fall within section 260(c), for the reasons set forth in Part IV.B. Because we take no action pursuant to section 260(c) in this *Order*, there will be no significant economic impact on a substantial number of small entities.

235. Our conclusion that section 260(a)(2) imposes a more stringent standard for determining whether discrimination is unlawful than that which already exists under sections 201 and 202 and applies to all incumbent LECs will not have a significant economic impact on small incumbent LECs. Incumbent LECs, including small incumbent LECs, are subject to other nondiscrimination requirements in the Act and state law and therefore already are required to respond to complaints of discriminatory behavior or limit their participation in discriminatory activities. We therefore find that the impact on incumbent LECs, including small incumbent LECs, of the more stringent standard of section 260(a)(2) will most likely be minimal.

236. Our decision not to extend the *Computer III/ONA* nondiscrimination requirements to all incumbent LECs, as well as our decision not to adopt rules implementing the nondiscrimination requirement of section 260(a)(2), as noted in Section IV.C, will prevent any significant economic impact on incumbent LECs, particularly small incumbent LECs. Thus, although their conduct will be subject to the requirements of section 260, small incumbent LECs will be spared the regulatory burdens and economic impact of complying with additional rules.

237. Section 274 of the Act allows BOCs to provide electronic publishing service disseminated by means of its basic telephone service only through a "separated affiliate" or an "electronic publishing joint venture" that meets the separation, joint marketing, and nondiscrimination requirements prescribed by that section. BOCs that were offering electronic publishing services at the time the 1996 Act was enacted have until February 8, 1997, to meet those requirements, which expire on February 8, 2000. Because section 274 applies only to BOCs, which, as noted above, do not fall within the SBA's definition for a "small business concern," the conclusions we adopt in this *Order* implementing this section have no significant economic impact on a substantial number of small entities.

238. The Commission shall send a copy of this certification, along with this *Order*, in a report to Congress pursuant to the SBREFA, 5 U.S.C. 801(a)(1)(A). A copy of this certification will also be provided to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**.

VI. Final Paperwork Reduction Analysis

239. As required by the Paperwork Reduction Act of 1995, Public Law 104–13, the *NPRM* invited the general public and the OMB to comment on proposed changes to the Commission's information collection requirements contained in the *NPRM*. Specifically, the Commission proposed to extend various reporting requirements, which apply to the BOCs under *Computer III*, to all incumbent LECs pursuant to section 260(a)(2). OMB approved all of the proposed changes to the Commission's information collection requirements in accordance with the Paperwork Reduction Act. In approving the proposed changes, OMB "encourage[d] the [Commission] to investigate the potential for sunsetting these requirements as competition and other factors allow."

240. In this *Order*, the Commission adopts none of the changes to our information collection requirements proposed in the *NPRM*. We therefore need not address the OMB's comment, although we note that our decision is consistent with the OMB's recommendation.

241. We conclude, however, that to the extent a BOC refers a customer to a separated affiliate, electronic publishing joint venture or affiliate during the normal course of its telemarketing operations, the BOC must refer that customer to all unaffiliated electronic publishers requesting the referral service, on nondiscriminatory terms. As part of this requirement, BOCs must provide the names of all such unaffiliated electronic publishers, as well as its own affiliated electronic

publishers, in random order, to the customer. Implementation of this requirement is subject to OMB approval as prescribed by the Paperwork Reduction Act.

VII. Ordering Clauses

242. Accordingly, *It is ordered* that pursuant to sections 1, 2, 4, 201, 202, 260, 274 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154, 201, 202, 260, 274, and 303(r), the Report and Order is Adopted, and the clarification and interpretation contained herein will become effective March 24, 1997. The collection of information contained within is contingent upon approval by the OMB.

243. *It is further ordered* that the Secretary shall send a copy of this Report and Order, including the final regulatory flexibility certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Note: This Attachment will not appear in the Code of Federal Regulations.

Attachment—List of Commenters in CC Docket No. 96–152

Alarm Detection Systems, Inc.
Alarm Industry Communications Committee
Alert Holding Group, Inc.
Ameritech
Association of Directory Publishers (ADP)
Association of Telemessaging Services International (ATSI)
AT&T Corporation (AT&T)
Atlas Security Service, Inc.
Bell Atlantic Telephone Companies (Bell Atlantic)
BellSouth Corporation (BellSouth)
Checkpoint Ltd.
Cincinnati Bell Telephone (Cincinnati Bell)
Commercial Instruments & Alarm Systems, Inc.
Commonwealth Security Systems, Inc.
ElectroSecurity Corporation
Entergy Technology Holding Company
George Alarm Company, Inc.
Information Industry Association (IIA)
Joint Parties (Bell Atlantic and Newspaper Association of America)
MCI Telecommunications Corporation (MCI)
Merchant's Alarm Systems
Midwest Alarm
Morse Signal Devices
National Security Service
New York State Department of Public Service (New York Commission)
Newspaper Association of America (NAA)
NYNEX Corporation (NYNEX)
Pacific Telesis Group (PacTel)
Peak Alarm
People of the State of California/California PUC (California Commission)
Per Mar Security Services
Post Alarm Systems
Rodriguez, Francisco
Safe Systems
Safeguard Alarms, Inc.
SBC Communications, Inc. (SBC)
SDA Security Systems, Inc.
Security Systems by Hammond, Inc.
Sentry Alarm Systems of America, Inc.
Sentry Protective Systems
Smith Alarm Systems
Superior Monitoring Service, Inc.
SVI Systems, Inc.
Time Warner Cable (Time Warner)
United States Telephone Association (USTA)
U S West, Inc. (U S WEST)
Valley Burglar & Fire Alarm Co., Inc.
Vector Security
Voice-Tel
Wayne Alarm Systems
Yellow Pages Publishers Association (YPPA)

[FR Doc. 97–4020 Filed 2–19–97; 8:45 am]
BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 62, No. 34
Thursday, February 20, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1710

RIN 0572–AB30

Pre-Loan Procedures for Electric Loans

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS) is proposing a minor amendment to its pre-loan procedures that will clarify that use of a conventional utility indenture as a security instrument for loans to power supply borrowers is permissible. This amendment will give these borrowers and RUS the flexibility to address the complex issues surrounding power supply loans in the rapidly changing electric industry. The rule will also enhance loan security and, by conforming more closely to private lending practice, allow easier access to private sector financing.

In the final rules section of this **Federal Register**, RUS is publishing this action as a direct final rule without prior proposal because RUS views this as a noncontroversial action and anticipates no adverse comments. If no adverse comments are received in response to the direct final rule, no further action will be taken on this proposed rule and the action will become effective at the time specified in the direct final rule. If RUS receives adverse comments, a document will be published withdrawing the effective date of the direct final rule and all public comments received will be addressed in a subsequent final rule based on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed action must be received March 24, 1997.

ADDRESSES: Written comments should be sent to F. Lamont Heppe, Jr., Director, Program Support and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, Room 2230–S, 1400 Independence Avenue, SW., STOP 1522, Washington, DC 20250–1522. RUS requires, in hard copy, a signed original and 3 copies of all comments (7 CFR 1700.30(e)). Comments will be available for public inspection during regular business hours at Room 4034, South Building, U.S. Department of Agriculture, Washington, DC 20250 between 8:00 a.m. and 4:00 p.m. (7 CFR part 1.27(b)).

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Director, Program Support and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, Room 2230–S, 1400 Independence Avenue, SW., STOP 1522, Washington, DC 20250–1522. Telephone: 202–720–0736. FAX: 202–720–4120. E-mail: fheppe@rus.usda.gov.

SUPPLEMENTARY INFORMATION: See the Supplementary Information provided in the direct final rule located in the final rules section of this **Federal Register** for the applicable supplementary information on this action.

Authority: 7 U.S.C. 901 *et seq.*

Dated: February 10, 1997.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 97–3991 Filed 2–19–97; 8:45 am]
BILLING CODE 3410–15–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

RIN 3150–AF53

Changes to Nuclear Power Plant Security Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to revise its regulations to delete certain security requirements associated with an internal threat. This action follows reconsideration by the NRC of nuclear power plant physical security requirements to identify those requirements that are marginal to safety, redundant, or no longer effective. This action would reduce the regulatory burden on licensees without compromising physical protection against radiological sabotage required for public health and safety.

DATES: Submit comments by May 6, 1997. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Comments may be sent to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Docketing and Service Branch.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

For information on submitting comments electronically, see the discussion under Electronic Access in the Supplementary Information Section.

Certain documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. These same documents may also be viewed and downloaded electronically via the Electronic Bulletin Board established by NRC for this rulemaking as discussed under Electronic Access in the Supplementary Information Section.

FOR FURTHER INFORMATION CONTACT: Dr. Sandra Frattali, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6261, e-mail sdf@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

In a memorandum dated September 3, 1991 (COMFR–91–005), the Commission requested the NRC staff to re-examine the security requirements associated with an internal threat to nuclear power plants that are contained in 10 CFR Part 73, "Physical Protection of Plants and Materials." The NRC staff completed its re-examination and recommended some changes in 10 CFR Part 73 to the Commission (SECY–92–272, August 4, 1992). In a Staff Requirements Memorandum dated November 5, 1992, the Commission directed the NRC staff to work with the Nuclear Management and Resources Council (NUMARC) now known as the Nuclear Energy Institute (NEI). Following three public meetings with NUMARC, the NRC staff recommended to the Commission (SECY–93–326, December 2, 1993) additional changes to

Part 73 that would provide significant relief to licensees without compromising the physical security of the plants. In a Staff Requirements Memorandum dated February 18, 1994, the Commission directed the NRC staff to proceed with a rulemaking.

Discussion

Seven areas in Part 73 were identified as candidates for modification through rulemaking. One of the recommended changes, relating to access of personnel and materials into reactor containments during periods of high traffic, has been addressed by a separate rulemaking. This recommended change was adopted in a final rule published on September 7, 1995 (60 FR 46497). Six other changes originally considered for this rulemaking were the subject of Generic Letter 96–02 issued February 13, 1996. This generic letter identified certain areas in which licensees might choose to revise their physical security plans without having to wait for issuance of the rule plan. One of these (discussed in detail later), an option to leave vital area doors unlocked provided certain compensatory measures are taken, has been reconsidered in light of recent tampering events. Consequently, that change is not being proposed in this rulemaking.

The five remaining changes being addressed in this proposed rulemaking are as follows:

1. Search requirements for on-duty guards, § 73.55(d)(1);
2. Requirements for vehicle escort, § 73.55(d)(4);
3. Control of contractor employee badges, § 73.55(d)(5);
4. Maintenance of access lists for each vital area, § 73.55(d)(7)(i)(A); and
5. Key controls for vital areas, § 73.55(d)(8).

1. Search Requirements for On-duty Guards (§ 73.55(d)(1)).

Under current regulations, armed security guards who leave the protected area as part of their duties must be searched for firearms, explosives, and incendiary devices upon re-entry into the protected area. Requiring a guard to go through an explosives detector or searching packages carried by the guard protects against the introduction of contraband. Because an armed guard carries a weapon on site, passage of the guard through the metal detector, the principal purpose of which is to detect firearms, serves little purpose. The guard has to either remove the weapon while passing through the detector or be subject to a hand search. Either approach makes little sense for the guard who is authorized to carry a weapon on site. Further, removing and handling the guard's weapon could present a personnel safety risk.

This proposed rule would allow armed security guards who are on duty and have exited the protected area on official business to reenter the protected area without being searched for firearms (by a metal detector). Unarmed guards and watchpersons would continue to meet all search requirements. All guards would continue to be searched for explosives and incendiary devices because they are not permitted to carry these devices into the plant.

2. Requirements for Vehicle Escort (§ 73.55(d)(4)).

The present requirement for a searched, licensee-owned vehicle within the protected area to be escorted by a member of the security organization even when the driver is badged for unescorted access, does not contribute significantly to the security of the plant. Under the current regulations, all vehicles must be searched prior to entry into the protected area except under emergency conditions. Further, all vehicles must be escorted by a member of the security organization upon entry into the protected area except for "designated licensee vehicles." Designated licensee vehicles are those vehicles that are limited in their use to onsite plant functions and remain in the protected area except for operational, maintenance, repair, security, and emergency purposes. Under this requirement, those licensee-owned vehicles that are not "designated licensee vehicles" must be escorted at all times while in the protected area even when they are driven by personnel with unescorted access.

This proposed rule would eliminate the requirement for escort of licensee-owned vehicles entering the protected area for work-related purposes provided that these vehicles are driven by licensee employees who have unescorted access. (This amendment would still preclude periodic entry of a delivery truck without an escort.) This change would provide burden relief to licensees without significantly increasing the level of risk to the plant.

3. Control of Contractor Employee Badges (§ 73.55(d)(5)).

Contractor employees with unescorted access are required to return their badges when leaving the protected area. Current regulatory practice allows licensee employees to leave the protected area with their badges if adequate safeguards are in place to ensure that the security of the badge is not jeopardized. Because contractors and licensees are subject to the same programs required for unescorted access, there is no reason to employ more stringent badge control requirements for contractor employees.

This proposed rule would allow contractor employees to take their badges offsite under the same conditions that apply to licensee employees.

4. Maintenance of Access Lists for Each Vital Area (§ 73.55(d)(7)(i)(A)).

Maintaining separate access lists for each vital area and reapproval of these lists on a monthly basis is of marginal value. At many sites, persons granted access to one vital area also have access to most or all vital areas. Therefore, licensees presently derive little additional benefit from maintaining discrete lists of individuals allowed access to each separate vital area in the facility. Also, licensee managers or supervisors are required to update the access lists at least once every 31 days to add or delete individuals from these lists when appropriate. There is also a requirement to reapprove the list every 31 days. However, reapproval of all individuals on the lists at least every 31 days, to validate that the lists have been maintained in an accurate manner is unnecessarily burdensome.

This rulemaking would replace separate access authorization lists for each vital area of the facility by a single listing of all persons who have access to any vital area.

The proposed rulemaking would also change the requirement that the list must be reapproved at least once every 31 days to quarterly. The reapproval consists of a review to ensure that the list is current and that only those individuals requiring routine access to a vital area are included. Because of the requirement for a manager or supervisor to update the list at least every 31 days, conducting this comprehensive reapproval every 31 days is of marginal value. Comments from the public are requested on the question of the benefits of separating the update and reapproval requirements.

5. Key Controls for Vital Areas (§ 73.55(d)(8)).

Under current regulations, licensees change or rotate all keys, locks, combinations, and related access control devices at least once every twelve months. Because the rule also requires that these be changed whenever there is a possibility of their being compromised, requiring change at least every 12 months has been determined by the NRC to be only marginal to security.

This proposed rule would remove the requirement for change every 12 months while retaining the requirement for changing for cause, when an access control device has been compromised or there is a suspicion that it may be compromised.

Locking of Vital Areas

As noted earlier, Generic Letter 96–02, described, among other things, conditions under which licensees could leave vital areas unlocked. Specifically, to leave a vital area unlocked, the licensee would have had to ensure that the area is equipped with an alarmed access control system that will alarm on unauthorized entry; ensure that the doors to the area can be locked remotely; continue to maintain a record of personnel access; to examine for explosives, with equipment specifically designed for that purpose, all hand-carried packages entering any protected area within which there is an unlocked vital area; and to demonstrate a capability to protect against an external adversary.[1] This change was considered for inclusion in this rulemaking but as a result of recent events, it has been rejected. If vital areas are unlocked but alarmed, the response to an entry by an unauthorized individual could require a considerable time and level of effort to assure that important equipment was not damaged. Maintaining VA doors locked limits the number of people who have access to the area and ensures that personnel who enter are identified.

In July and August of this year, tampering events were discovered within vital areas of a reactor. The first search missed significant tampering with safety-related switches. If vital areas are unlocked but alarmed, an entry by an unauthorized individual, deliberate or inadvertent, could require a considerable level of effort to assure that important equipment was not damaged. It is also uncertain that such alarms would always initiate the level of response needed to evaluate the safety systems within the impacted vital area. In addition, most safety equipment is automatic and rapid access to vital areas is generally not required. Thus, this option of leaving a vital area unlocked is no longer being considered.

[1] Generic Letter 96–02 (February 13, 1996) identified those areas in which licensees might choose to revise their security plans without having to wait for the issuance of the rule changes. One change would have provided the option of not locking the doors to a vital area provided that the security of the plant would not be compromised.

Electronic Access

Comments may be submitted electronically, in either ASCII text or WordPerfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board (BBS) on FedWorld. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet. Background documents on the rulemaking are also available, as practical, for downloading and viewing on the bulletin board.

If using a personal computer and modem, the NRC rulemaking subsystem on FedWorld can be accessed directly by dialing the toll free number (800) 303–9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT–100 terminal emulation, the NRC rulemaking subsystem can then be accessed by selecting the "Rules Menu" option from the "NRC Main Menu." Users will find the "FedWorld Online User's Guides" particularly helpful. Many NRC subsystems and data bases also have a "Help/Information Center" option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct dial phone number for the main FedWorld BBS, (703) 321–3339, or by using Telnet via Internet: fedworld.gov. If using (703) 321–3339 to contact FedWorld, the NRC subsystem will be accessed from the main FedWorld menu by selecting the "Regulatory, Government Administration and State Systems," then selecting "Regulatory Information Mall." At that point, a menu will be displayed that has an option "U.S. Nuclear Regulatory Commission" that will take you to the NRC Online main menu. The NRC Online area also can be accessed directly by typing "/go nrc" at a FedWorld command line. If you access NRC from FedWorld's main menu, you may return to FedWorld by selecting the "Return to FedWorld" option from the NRC Online Main Menu. However, if you access NRC at FedWorld by using NRC's toll-free number, you will have full access to all NRC systems but you will not have access to the main FedWorld system.

If you contact FedWorld using Telnet, you will see the NRC area and menus, including the Rules Menu. Although you will be able to download documents and leave messages, you will not be able to write comments or upload files (comments). If you contact FedWorld using FTP, all files can be accessed and downloaded but uploads are not allowed; all you will see is a list of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is available. There is a 15-minute time limit for FTP access.

Although FedWorld also can be accessed through the World Wide Web, like FTP, that mode only provides access for downloading files and does not display the NRC Rules Menu.

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, NRC, Washington, DC 20555–0001, telephone (301) 415–5780; e-mail AXD3@nrc.gov.

Environmental Impact: Categorical Exclusion

The Commission has determined that this proposed rule is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(3)(i). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

Because the rule will reduce existing information collection requirements, the public burden for this collection of information is expected to be decreased by 102 hours per licensee. This reduction includes the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The NRC is seeking public comment on the potential impact of the collection of information contained in the proposed rule and on the following issues:

1. Is the proposed collection of information necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Is the estimate of burden accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the collection of information be minimized, including the use of automated collection techniques?

Send comments on any aspect of this proposed collection of information, including suggestions for further reducing the burden, to the Information

and Records Management Branch (T–6 F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail at BJS1@NRC.GOV; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0002), Office of Management and Budget, Washington, DC 20503.

Comments to OMB on the collections of information or on the above issues should be submitted by March 24, 1997. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Regulatory Analysis

A discussion of each of the five changes proposed in this rule is provided in the supplementary information section. The costs and benefits for each of the changes proposed in this rulemaking are as follows:

1. Search Requirements for On-duty Guards (§ 73.55(d)(1)).

The regulatory burden on licensees would be reduced by eliminating unnecessary weapon searches of guards who are already allowed to carry a weapon, which would result in better utilization of licensee resources. There would be no reduction in plant security because the potential for reduction in security personnel hours does not impact the total size of the security force. Further, the potential safety risk to personnel caused by removing and handling a guard's weapon would be eliminated.

2. Requirements for Vehicle Escort (73.55(d)(4)).

The regulatory burden on licensees would be reduced by requiring fewer vehicle escorts which would allow personnel to be utilized more effectively. Resources could be redirected to areas in which they would be more cost effective. The decrease in security would be marginal because unescorted access would be restricted to vehicles owned by the licensee and driven by licensee employees with unescorted access.

Assuming the number of entries by licensee-owned vehicles driven by personnel having unescorted access is 10-per-day per-site, the average time needed for escort is 3 hours, and the cost per hour for security personnel is $30 (loaded), a rough estimate of the potential savings per site per year is about $330,000 (10 escorts/day/site × 365 days/year × 3 hrs/escort × $30/hr). With 75 sites, the savings to the industry per year would be approximately $24,000,000.

3. Control of Contractor Employee Badges (§ 73.55(d)(5)).

The regulatory burden on licensees would be reduced by more effective use of security personnel, who would no longer be needed to handle badges for contractor personnel who have unescorted access. There would be no reduction in plant security because adequate safeguards would be in place to ensure that the security of the badge is not jeopardized.

Assuming that one security person per working day (8 hours) is relieved from the duties of controlling contractor employees badges and that the cost per hour for security personnel is $30 (loaded), a rough estimate of the potential savings per site per year is about $88,000 (8 hours/day ×365 days/year ×$30 hr). With 75 sites, the savings to the industry per year would be approximately $6,600,000.

4. Maintenance of Access Lists for Each Vital Area (§ 73.55(d)(7)(i)(A)).

The regulatory burden on licensees would be reduced because licensees would have to keep only one access list for all vital areas and reapprove it quarterly, rather than keep individual access lists for each vital area that must be reapproved monthly.

Assuming that the time to reapprove each of the individual lists is 1 hour per month, that a combined list would take 1.5 hours per month, that the average number of vital areas per site is 10, and that the cost of a clerk including overhead is $30 per hour (loaded), a rough estimate of the potential savings per site per year is about $3,420 [(1×10 vital areas/month ×12 months/yr—1.5 ×1 combined vital area/quarter ×4 quarters/yr) ×$30/hr]. With 75 sites, the savings to the industry per year would be approximately $256,500.

5. Key Controls for Vital Areas (§ 73.55(d)(8)).

The regulatory burden on the licensees would be reduced because fewer resources would be needed to maintain the system.

Assuming that of the approximately 60 locks per year, half of them had been changed for cause, leaving 30 locks unchanged which would take a locksmith one day to change at a cost(including overhead) of $45 per hour. A rough estimate of the potential savings per site per year is about $360 (8 hrs/year ×$45/hr). With 75 sites, the savings to the industry per year would be approximately $27,000.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act as amended, 5 U.S.C. 605(b), the Commission certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect only licensees authorized to operate nuclear power reactors. These licensees do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act, or the Small Business Size Standards set out in regulations issued by the Small Business Administration Act, 13 CFR Part 121.

Backfit Analysis

The Commission has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed amendment because this amendment would not impose new requirements on existing 10 CFR Part 50 licensees. The proposed changes to physical security are voluntary and should the licensee decide to implement this amendment, will be a reduction in burden to the licensee. Therefore, a backfit analysis has not been prepared for this amendment.

List of Subjects in 10 CFR Part 73

Criminal penalties, Hazardous materials transportation, Export, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR Part 73.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245 sec. 1701, 106 Stat. 2951, 2952 (42 U.S.C. 5841, 5844, 2297f).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

2. Section 73.55 is amended by revising paragraphs (d)(1), (d)(4), (d)(5), (d)(7)(i)(A), and (d)(8) to read as follows:

§ 73.55 Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage.

* * * * *

(d) * * *

(1) The licensee shall control all points of personnel and vehicle access into a protected area. Identification and search of all individuals unless otherwise provided herein must be made and authorization must be checked at these points. The search function for detection of firearms, explosives, and incendiary devices must be accomplished through the use of both firearms and explosive detection equipment capable of detecting those devices. The licensee shall subject all persons except bona fide Federal, State, and local law enforcement personnel on official duty to these equipment searches upon entry into a protected area. Armed security guards who are on duty and have exited the protected area on official business may reenter the protected area without being searched for firearms.

* * * * *

(4) All vehicles, except under emergency conditions, must be searched for items which could be used for sabotage purposes prior to entry into the protected area. Vehicle areas to be searched must include the cab, engine compartment, undercarriage, and cargo area. All vehicles, except as indicated in this paragraph, requiring entry into the protected area must be escorted by a member of the security organization while within the protected area and, to the extent practicable, must be off loaded in the protected area at a specific designated materials receiving area that is not adjacent to a vital area. Escort is not required for designated licensee vehicles or licensee-owned vehicles entering the protected area and driven by licensee employees having unescorted access.

(5) A numbered picture badge identification system must be used for all individuals who are authorized access to protected areas without escort. Badges must be displayed by all individuals while inside the protected area. An individual not employed by the licensee but who requires frequent and extended access to protected and vital areas may be authorized access to such areas without escort provided that he or she displays a licensee-issued picture badge upon entrance into the protected area which indicates:

(i) Non-employee—no escort required;

(ii) Areas to which access is authorized; and

(iii) The period for which access has been authorized.

* * * * *

(7) * * *

(i) * * *

(A) Establish a current authorization access list for all vital areas. The access list must be updated by the cognizant licensee manager or supervisor at least once every 31 days and must be reapproved at least quarterly. The licensee shall include on the access list only individuals whose specific duties require access to vital areas during nonemergency conditions.

* * * * *

(d)(8) All keys, locks, combinations, and related access control devices used to control access to protected areas and vital areas must be controlled to reduce the probability of compromise. Whenever there is evidence or suspicion that any key, lock, combination, or related access control devices may have been compromised, it must be changed or rotated. The licensee shall issue keys, locks, combinations and other access control devices to protected areas and vital areas only to persons granted unescorted facility access. Whenever an individual's unescorted access is revoked due to his or her lack of trustworthiness, reliability, or inadequate work performance, keys, locks, combinations, and related access control devices to which that person had access must be changed or rotated.

* * * * *

Dated at Rockville, Maryland, this 14th day of February, 1997.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 97–4219 Filed 2–19–97; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 360

RIN 3064–AB92

Resolution and Receivership Rules

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: As part of the FDIC's systematic review of its regulations and written policies under section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRIA) the FDIC is proposing to amend its regulation addressing "least cost resolutions" to correct a typographical error. The provisions of the regulation relating to the security interests of Federal Home Loan Banks (Banks) in FDIC-administered receiverships, is being removed because of its limited applicability and the federal statutory protections provided to the Banks make it unnecessary to continue to address the issues contained therein by regulation. To the extent specific issues arise regarding the Banks' extensions of credit or security interests in FDIC-administered receiverships, they can be addressed on a case by case basis within the existing statutory structure.

DATES: Comments must be submitted on or before April 21, 1997.

ADDRESSES: Send written comments to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C., 20429. Comments may be hand-delivered to Room F–400, 1776 F Street, N.W. 20429, on business days between 8:30 a.m. and 4:30 p.m.; sent by facsimile: (202) 898–3838; or by Internet: Comments@fdic.gov. Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, N.W., Washington, D.C. 20429, between 9:00 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Mitchell Glassman, Deputy Director, Division of Resolutions and Receiverships, (202) 898–6525; Rodney D. Ray, Counsel, Legal Division, (202) 898–3556; Catherine A. Ribnick, Counsel, Legal Division, (202) 736–0117, Federal Deposit Insurance Corporation, Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

Background

As part of the FDIC's review of its regulations pursuant to section 303 of CDRIA, the FDIC reviewed its receivership regulations to assure that there was a need for their continued existence. If it was determined that a regulation should be retained, it also was reviewed for accuracy and clarity. As part of the review process, the FDIC determined that § 360.1 should be retained but amended to correct a typographical error. It was determined that § 360.2 should be removed because the regulation is of limited applicability and addresses only the concerns of a discrete and limited group of secured creditors, whose interests are already

addressed by federal statutes. Additionally, the regulation was the product of an increasing number of liquidating receiverships precipitated by the nation's thrift crisis, which has since subsided, making it unnecessary to continue to address the issues contained therein by regulation.

I. Section 360.1 Least-Cost Resolution

Section 13(c)(4)(E)(i) of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1823(c)(4)(E)(i)) generally prohibits the FDIC, after August 31, 1994, from taking any action directly or indirectly, with respect to a depository institution which would have the effect of increasing losses to any deposit insurance fund by protecting the institution's uninsured depositors or other creditors. Section 360.1 was promulgated in compliance with the statutory mandate, contained in section 13(c)(4)(E)(ii) of the FDI Act (12 U.S.C. 1823(c)(4)(E)(ii)), that the FDIC issue regulations implementing clause (i) not later than January 1, 1994. Because the regulation was issued pursuant to statute, it is being retained.

Upon review, however, an erroneous statutory citation was discovered in § 360.1(b) and the regulation is being amended to change the reference from "12 U.S.C. 13(c)(4)(A)" to "12 U.S.C. 1823(c)(4)(A)".

II. Section 360.2 Federal Home Loan Banks as Secured Creditors

Section 360.2 was originally promulgated by the Federal Home Loan Bank Board (FHLBB) on April 27, 1989.[1] At the time, the FHLBB recognized that the incidence of liquidating receivership (liquidating receivership or liquidating receiverships) insurance actions was increasing. Against this background, the FHLBB determined that the regulation was needed, among other reasons, to set forth expressly the Banks' rights regarding collateral securing Federal Home Loan Bank (Bank) advances in situations where a receiver was appointed, not to effect a purchase and assumption agreement, but to liquidate the institution's assets over time, accompanied by a Federal Savings and Loan Insurance Corporation (FSLIC) deposit insurance payment of the deposit accounts.[2] The regulation was subsequently transferred to the FDIC, pursuant to section 402(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) Pub. L. 101–73, 103 Stat. 183 (1989), when the FHLBB and FSLIC were abolished. Since its transfer on August 9, 1989, the regulation has remained unchanged.

The section implements and amplifies upon the priority accorded to the Banks' security interests in section 306(d) of the Competitive Equality Banking Act of 1987, Pub. L. 100–86, 101 Stat. 552 (CEBA) (1988) (section 10(e), footnote 1, of the Federal Home Loan Bank Act (FHLB Act) (12 U.S.C. 1430(e), footnote 1).[3] Section 360.2(a) requires the receiver to recognize the priority of any security interest held by a Bank for a loan to a member or its affiliate, when the member is placed in receivership.[4] The remaining paragraphs, (b) through (e), address issues related to the Banks' security interests and collateral, which were not addressed in CEBA.

In addition to the priority accorded the Banks' security interests by CEBA, other federal statutory provisions were enacted subsequent to promulgation of the regulation which provide the Banks' extensions of credit and security interests additional receivership protections. For example, an amendment contained in section 212(a) of FIRREA excepted the Banks' extensions of credit or security interests from FIRREA's detailed provisions addressing contracts entered into before a receiver's or conservator's appointment.[5] Additionally, section 141(b) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) excepted the Banks' extensions of credit or security interests from section 11(d)(5) (12 U.S.C. 1821(d)(5)) of the receivership claims process.[6]

Based upon a review of the section and its history, it appears that the section is of limited applicability because the FHLBB intended for it to address issues related solely to the Banks' security interests in liquidating receiverships. Since the regulation was promulgated, Congress also has conferred significantly more benefits upon the Banks than are enjoyed by most other secured creditors in FDIC-administered receiverships. Finally, the section was the product of an increasing number of institutions being placed in liquidating receiverships in the late 1980's, when the nation was confronted with a crisis in the thrift industry, which has since subsided. Therefore, the Board of Directors has determined that there is insufficient justification for the section's continued existence and that the matters addressed therein can be adequately addressed on a case by case basis within the existing statutory structure. Although the regulation is being removed as part of the CDRIA process, however, the FDIC intends to continue to assist the Banks with the resolution of specific issues regarding their extensions of credit or security interests, on a case by case basis, as the need arises.

Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 et. seq.) are contained in this notice. Consequently, no information has been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

The Board of Directors certifies that the proposed rule does not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The Board of Directors action is being taken to correct a statutory citation in an existing regulation and to remove a section of the regulation addressing certain aspects of secured claims held by Banks in FDIC-administered receiverships. The Banks are not within the Regulatory Flexibility Act's definition of "small entities". Accordingly, the Act's requirements regarding an initial and final regulatory flexibility analysis are inapplicable.

List of Subjects in 12 CFR Part 360

Savings associations.

For the reasons set out in the preamble, part 360 of chapter III of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 360—RESOLUTION AND RECEIVERSHIP RULES

1. The authority citation for part 360 continues to read as follows:

Authority: 12 U.S.C. 1821(d)(11), 1821(e)(8)(D)(i), 1823(c)(4); Sec. 401(h), Pub. L. 101–73, 103 Stat. 357.

2. Section 360.1 is amended by revising paragraph (b) to read as follows:

§ 360.1 Least-cost resolution.

* * * * *

(b) Purchase and assumption transactions. Subject to the requirement of section 13(c)(4)(A) of the FDI Act (12 U.S.C. 1823(c)(4)(A)), paragraph (a) of this section shall not be construed as prohibiting the FDIC from allowing any person who acquires any assets or assumes any liabilities of any insured depository institution, for which the FDIC has been appointed conservator or receiver, to acquire uninsured deposit liabilities of such institution as long as the applicable insurance fund does not incur any loss with respect to such uninsured deposit liabilities in an amount greater than the loss which would have been incurred with respect to such liabilities if the institution had been liquidated.

§ 360.2 [Removed and reserved]

3. Section 360.2 is removed and reserved.

By order of the Board of Directors.

Dated at Washington, D.C., this 4th day of February, 1997.

Federal Deposit Insurance Corporation

Jerry L. Langley,

Executive Secretary.

[FR Doc. 97–4019 Filed 2–19–97; 8:45 am]

BILLING CODE 6714–01–P

[1] The regulation was originally designated 12 CFR 569c.8–1.

[2] See 54 FR 19155 (May 4, 1989).

[3] Section 10(e), footnote 1, provides: Notwithstanding any other provision of law, any security interest granted to a Federal Home Loan Bank by any member of any Federal Home Loan Bank or any affiliate of any such member shall be entitled to priority over the claims and rights of any party (including any receiver, conservator, trustee, or similar party having rights of a lien creditor) other than claims and rights that

(1) Would be entitled to priority under otherwise applicable law; and

(2) Are held by actual bona fide purchasers for value or by actual parties that were secured by actual perfected security interests.

[4] The paragraph essentially tracks section 306(d) of CEBA but adds "whether such security interest is in specifically designated assets or a blanket interest in all assets or categories of assets".

[5] Section 212(a) of FIRREA amended section 11(c) through (j) of the FDI Act (12 U.S.C. 1821(c)–(j)). In the process, it added section 11(e)(13) (12 U.S.C. 1821(e)(13)) to the FDI Act, which states:

No provision of this subsection shall apply with respect to:

(A) Any extension of credit from any Federal home loan bank or Federal Reserve bank to any insured depository institution; or

(B) Any security interest in the assets of the institution securing any such extension of credit.

[6] Section 141(b) of FDICIA amended section 11(d)(5)(D) (12 U.S.C. 1821(d)(5)(D)) of the FDI Act to add section 11(d)(5)(D)(iii) (12 U.S.C. 1821(d)(5)(D)(iii)), which states:

No provision of this paragraph shall apply with respect to:

(I) Any extension of credit from any Federal home loan bank or Federal Reserve bank to any institution described in paragraph (3)(A); or

(II) Any security interest in the assets of the institution securing any such extension of credit.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–106–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A320 series airplanes. This proposal would require an initial inspection of fastener holes on certain outer frames of the fuselage to detect fatigue cracking, and modification of this area by cold expanding these holes and installing oversized fasteners. This proposal is prompted by a report from the manufacturer indicating that, during full-scale fatigue testing of the test article, fatigue cracking was detected in the area where the center fuselage joins the wing. The actions specified by the proposed AD are intended to prevent fatigue cracking and consequent reduced structural integrity of this area, which could lead to rapid depressurization of the fuselage.

DATES: Comments must be received by March 31, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–106–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW, Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–106–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–106–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A320 series airplanes. The DGAC advises that it has received a report from the manufacturer indicating that fatigue cracks were detected during full-scale fatigue testing of the test article after 90,001 simulated flights. These cracks were found in fastener holes in the flange caps of outer right frame 40 and outer left frame 41, adjacent to Stringer 23; this is the area where the center fuselage joins the wing. This condition, if not prevented, consequently could reduce the structural integrity of this area, and lead to rapid decompression of the fuselage.

Explanation of Related and Relevant Service Information

Airbus has issued Service Bulletin A320–53–1026, dated August 5, 1994, which describes procedures for conducting repetitive eddy current rotating probe inspections of fastener holes on certain outer frames of the fuselage to detect fatigue cracking and repair, if necessary. These holes are located on the forward and aft faces of the flange caps on outer left and right frames 37 through 41, adjacent to Stringer 23; this is the area where the center fuselage joins the wing.

Airbus also has issued Service Bulletin A320–53–1025, Revision 1, dated November 24, 1994, which describes procedures for conducting an initial eddy current rotation probe inspection of these fastener holes to detect fatigue cracking, and for modification of this area by cold expanding certain holes and installing oversized fasteners. This modification, which would improve the resistance of this area to fatigue cracking, would eliminate the need for repetitive eddy current inspections of this area.

The DGAC classified Airbus Service Bulletin A320–53–1026 as mandatory and issued French airworthiness directive (CN) 95–101–69(B), dated May 24, 1995, in order to assure the continued airworthiness of these airplanes in France. The DGAC classified Airbus Service Bulletin A320–53–1025 as "recommended," but indicated in CN 95–101–69(B) that accomplishment of this service bulletin would terminate the repetitive eddy current inspections required by that C/N.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require an initial eddy current rotation probe inspection to detect fatigue cracking in certain fastener holes in the area where the center fuselage joins the wing, and a modification to improve the resistance of this area to fatigue cracking. The modification entails the cold expansion of certain fastener holes and the installation of oversized fasteners in these holes. The actions would be required to be accomplished in accordance with the Airbus service bulletins described previously.

Differences Between the Proposed Rule and the French CN

Under the FAA's proposed AD, operators would be required to modify the area where the center fuselage joins the wing by cold expanding certain fastener holes and installing oversized fasteners in these holes. The DGAC has not mandated this modification, but instead, has mandated repetitive inspections of the area.

The adequacy of inspections needed to maintain the safety of the transport airplane fleet, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has caused the FAA to place less emphasis on repetitive inspections, and more emphasis on design improvements and material replacement. Thus, the FAA has decided to require, whenever practicable, modifications necessary to remove the source of the problem addressed. The modification requirement of this proposed AD is in consonance with that decision.

Cost Impact

The FAA estimates that 24 Airbus Model A320 series airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 25 work hours per airplane to accomplish the proposed actions, at an average labor rate of $60 per work hour. Required parts would cost approximately $557 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $49,368, or $2,057 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 96–NM–106–AD.

Applicability: Model A320 series airplanes as listed in Airbus Service Bulletin A320–53–1026, dated August 5, 1994; on which modifications 21281P1495 and 21680P1818 have not been installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking in the area where the center fuselage joins the wing, which could reduce the structural integrity of this area and consequently result in rapid decompression of the fuselage, accomplish the following:

(a) Prior to the accumulation of 16,000 total landings, or within 6 months after the effective date of this AD, whichever occurs later, perform an eddy current rotating probe inspection to detect fatigue cracking in the fastener holes of the outer frame flanges of left and right fuselage frames 37 through 41, adjacent to Stringer 23, in accordance with Airbus Service Bulletin A320–53–1026, dated August 5, 1994.

Note 2: Prior to the effective date of this AD, accomplishment of any modification in accordance with Airbus Service Bulletin A320–53–1025, dated August 5, 1994, is considered acceptable for compliance with the modification requirements of paragraphs (b), (c)(1)(i), (c)(2) and (d) of this AD.

(b) If the inspection required by paragraph (a) of this AD detects no cracking in any hole: Prior to the accumulation of 6,000 landings after this inspection, modify each hole in accordance with Paragraph 2.B.(5) of Airbus Service Bulletin A320–53–1025, Revision 1, dated November 24, 1994. Thereafter, no further action is required by this AD.

(c) If the inspection required by paragraph (a) of this AD detects any cracking in no more than one hole per frame cap, accomplish the requirements of paragraph (c) (1) and (c)(2) of this AD:

(1) Prior to further flight, repair this cracked hole and conduct another rotating probe inspection of this hole to detect cracking, in accordance with Paragraph 2.B.(6) of Airbus Service Bulletin A320–53–1025, Revision 1, dated November 24, 1994.

(i) If no cracking of this repaired hole is detected: Prior to further flight, modify this hole in accordance with Paragraph 2.B.(6)(c) of this service bulletin. Thereafter, no further action with regard to this hole is required by this AD.

(ii) If any cracking of this repaired hole is detected: Prior to further flight, repair this hole in a manner approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Thereafter, no further action with regard to this hole is required by this AD.

(2) Prior to the accumulation of 6,000 landings after the inspection required by paragraph (a) of this AD; modify all other holes in accordance with Paragraph 2.B.(5) of Airbus Service Bulletin A320–53–1025, Revision 1, dated November 24, 1994. Thereafter, no further action is required by this AD with respect to these holes.

(d) If the inspection required by paragraph (a) of this AD detects any cracking in more than one hole per frame cap, or if this inspection detects any cracking in any frame: Prior to further flight, repair the discrepant area in a manner approved by the Manager, Standardization Branch, ANM–113; and modify all other holes in accordance with Paragraph 2.B.(5) of Airbus Service Bulletin A320–53–1025, Revision 1, dated November 24, 1994. Thereafter, no further action is required by this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 12, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–4101 Filed 2–19–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–222–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking that proposed a new airworthiness directive (AD), applicable to all Boeing Model 727 series airplanes. That action would have required inspections to detect loose attach fitting bolts of the door actuator of the main landing gear (MLG), inspections to determine whether serrations are fully mated, and various follow-on corrective actions. It also would have provided operators the option of terminating all of the requirements of the AD either by replacing the aluminum rib fitting with a new steel rib fitting, or by modifying the rib fitting assembly and performing various follow-on actions. The requirements of that proposed AD were intended to prevent an airplane from landing with one MLG partially extended. Since the issuance of the NPRM, the Federal Aviation Administration (FAA) has issued separate rulemaking to require these same actions. Accordingly, the proposed rule is withdrawn.

FOR FURTHER INFORMATION CONTACT: Walter Sippel, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227–2774; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add a new airworthiness directive (AD), applicable to all Boeing Model 727 series airplanes, was published in the **Federal Register** as a Notice of Proposed Rulemaking (NPRM) on April 1, 1996 (61 FR 14269). The NPRM would have revised AD 93–01–14, amendment 39–8468 (58 FR 5574, January 22, 1993). It would have continued to require the actions that were originally mandated by AD 93–01–14, including: inspections to detect loose attach fitting bolts of the door actuator of the main landing gear (MLG), inspections to determine whether serrations are fully mated, and various follow-on corrective actions. The NPRM would have added the option of terminating all of the requirements of the AD either by replacing the aluminum rib fitting with a new steel rib fitting, or by modifying the rib fitting assembly and performing various follow-on actions.

That action was originally prompted by reports of loose attach fitting bolts of the door actuator of the MLG. The requirements of the proposed AD were intended to prevent an airplane from landing with one MLG partially extended.

Actions that Occurred Since the NPRM Was Issued

Since the issuance of that NPRM, the FAA has issued AD 97–02–09, amendment 39–9894 (62 FR 3988, January 28, 1997), which supersedes both AD 93–01–14 as well as AD 90–02–19 [amendment 39–6433 (55 FR 601, January 8, 1990)]. It requires:

1. Repetitive eddy current or dye penetrant inspections to detect cracking of an expanded area of the actuator rib fitting.

2. Inspections to detect loose attach fitting bolts of the door actuator,

3. Inspections to determine whether fitting serrations are fully mated,

4. and various follow-on corrective actions.

It also provides an optional terminating action for the inspections, which consists of replacing the aluminum rib fitting with a new steel rib fitting.

That AD was prompted by a report of a fractured rib fitting that had been reworked previously in accordance with one of the existing AD's. The actions specified by AD 97–02–09 are intended to prevent damage to the airplane caused by a failure of the landing gear to extend due to a fractured rib fitting.

FAA's Conclusions

Because AD 97–02–09 now incorporates, as part of its required actions, the same actions that were proposed in Docket 95–NM–222–AD, the FAA finds that the previously proposed

action is no longer necessary. Accordingly, the NPRM is hereby withdrawn.

Withdrawal of this NPRM constitutes only such action, and does not preclude the agency from issuing another notice in the future, nor does it commit the agency to any course of action in the future.

Regulatory Impact

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore, is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 95–NM–222–AD, published in the **Federal Register** on April 1, 1996 (61 FR 14269), is withdrawn.

Issued in Renton, Washington, on February 12, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–4100 Filed 2–19–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–ANE–24]

RIN 2120–AA64

Airworthiness Directives; AlliedSignal Inc. and Rajay Inc. Oil Scavenge Pumps

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to AlliedSignal Inc. oil scavenge pumps, Part Numbers (P/Ns) 101633–01 and –02 and Rajay Inc. oil scavenge pumps, P/Ns 1025–1 and –2. This proposal would require initial and repetitive inspections of the oil scavenge pump for the security of the snap ring installation, snap ring and washer wear, and shaft groove wear, and replacement, if necessary, with serviceable parts. This proposal is prompted by reports of severe wear on the end plate of the oil scavenge pump. The actions specified by the proposed AD are intended to prevent oil scavenge pump snap ring failure causing severe wear on the pump end plate, which could result in loss of engine oil and subsequent engine shutdown.

DATES: Comments must be received by April 21, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, *Attention:* Rules Docket No. 96–ANE–24, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@dot.faa.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Richard Simonson, Aerospace Engineer, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW, Renton, WA 98055–4056; telephone (206) 227–2597, fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–ANE–24." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–ANE–24, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) has received reports of severe wear on the pump end plate of AlliedSignal Inc. oil scavenge pumps, Part Numbers (P/Ns) 101633–01 and –02 and Rajay Inc. oil scavenge pumps, P/Ns 1025–1 and –2. The investigation revealed that the pump end plate failure was caused by failure of the snap ring that locates the pump rotor along the longitudinal axis of the pump. Further investigation revealed an incident where the pump end plate was worn completely through, resulting in loss of engine oil and subsequent engine shutdown. This condition, if not corrected, could result in oil scavenge pump snap ring failure causing severe wear on the pump end plate, which could result in loss of engine oil and subsequent engine shutdown.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require initial and repetitive inspections of the oil scavenge pump for security of the snap ring installation, snap ring and washer wear, and shaft groove wear, and replacement, if necessary, with serviceable parts. The FAA has determined that changes in pump design may warrant future rulemaking.

The FAA estimates that 3,000 pumps installed on aircraft of U.S. registry would be affected by this proposed AD. The FAA estimates that it would take approximately 4 work hours per oil scavenge pump to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts, if the scavenge pump requires replacement, would cost approximately $1,000 per oil scavenge pump. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $3,720,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Allied Signal Inc. and Rajay Inc.: Docket No. 96–ANE–24.

Applicability: AlliedSignal Inc. oil scavenge pumps, Part Numbers (P/Ns) 101633–01 and –02 and Rajay oil scavenge pumps, P/Ns 1025–1 or –2, installed on Teledyne Continental Motors IO–470 and TSIO–520 series, and Textron Lycoming O-360, IO–360, and IO–540 series reciprocating engines. These engines are installed on but not limited to reciprocating engine powered aircraft manufactured by Aerostar Aircraft Corporation, Cessna, Curtiss-Wright Corporation (Travel Air), Helio Enterprises, Inc., The New Piper Aircraft Corporation, Revo Inc. (Lake), and Twin Commander.

Note 1: This airworthiness directive (AD) applies to each oil scavenge pump identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For oil scavenge pumps that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent oil scavenge pump snap ring failure causing severe wear on the pump end plate, which could result in loss of engine oil and subsequent engine shutdown, accomplish the following:

(a) Within 25 hours time in service (TIS) after the effective date of this AD, inspect oil scavenge pumps in accordance with the following instructions or Aerostar Aircraft Corporation Service Bulletin (SB) No. SB600–131, dated June 14, 1996.

(1) Remove the oil scavenge pump and inspect for security of the snap ring installation.

(2) Remove the snap ring and washer between the snap ring and bearing, and inspect the snap ring and washer for wear, consisting of thinning or bevelling at the inside diameter. If any wear visible to the naked eye is detected, replace with a serviceable snap ring and washer prior to further flight.

(3) Inspect the shaft groove for round wear on the spline side of the groove. If any wear visible to the naked eye is detected, replace with a serviceable shaft prior to further flight.

(4) If the snap ring is not in the shaft groove, disassemble the entire scavenge pump and inspect for internal damage prior to further flight. If any internal damage is found, replace the oil scavenge pump with a serviceable oil scavenge pump prior to further flight.

(b) Thereafter, at each 100-hour and annual inspection, perform repetitive inspections, and, if necessary, replace with serviceable parts, in accordance with paragraph (a) of this AD.

(c) Accomplishment of the procedures described in Aerostar Aircraft Corporation Service Bulletin No. SB600–131, dated June 14, 1996, constitutes an acceptable alternative method of compliance for the actions required by this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Seattle Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Seattle Aircraft Certification Office.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on February 4, 1997.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 97–4144 Filed 2–19–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–NM–190–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model DH 125–1A, –3A, and –400A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Raytheon Model DH 125–1A, –3A, and –400A series airplanes. This proposal would require a one-time inspection to detect scoring of the upper fuselage skin around the periphery of the cockpit canopy blister interface, and repair, if necessary. This proposal is prompted by reports indicating that scoring of the upper fuselage skin had been detected in that area. The actions specified by the proposed AD are intended to detect and correct scoring of the upper fuselage skin around the periphery of the cockpit canopy blister interface, which could result in reduced structural integrity of the fuselage, and consequent cabin depressurization.

DATES: Comments must be received by March 31, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–190–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Raytheon Aircraft Company, Commercial Service Department, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Larry Engler, Aerospace Engineer, Airframe Branch, ACE–120W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4122; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–190–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–190–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that scoring of the upper fuselage skin around the periphery of the cockpit canopy blister interface has occurred on Raytheon Model DH 125–1A, –3A, and –400A series airplanes. Investigation revealed that the scoring was due to the use of sharp instruments to remove excess sealant during the four-year inspection cycle of the fuselage skin under the canopy blister. Use of sharp instruments to remove excess sealant is contrary to the instructions contained in Chapter 20 of the Airplane Maintenance Manual (AMM). Scoring of the upper fuselage skin around the periphery of the cockpit canopy blister interface, if not corrected, could result in reduced structural integrity of the fuselage skin, and consequent cabin depressurization.

Explanation of Relevant Service Information

The FAA has reviewed and approved Raytheon Service Bulletin SB.53–93, dated May 16, 1996, which describes procedures for a one-time detailed visual inspection to detect scoring of the upper fuselage skin around the periphery of the cockpit canopy blister interface. The service bulletin also describes repair procedures for scoring that is within the specified limits.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require a one-time detailed visual inspection to detect scoring of the upper fuselage skin around the periphery of the cockpit canopy blister interface, and repair, if necessary. The visual inspection and repair of scoring that is within certain limits would be required to be accomplished in accordance with the service bulletin described previously. Repair of scoring that is outside certain limits would be required to be accomplished in accordance with a method approved by the FAA.

Cost Impact

There are approximately 200 Model DH 125–1A, –3A, and –400A series airplanes of the affected design in the worldwide fleet. The FAA estimates that 115 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $27,600, or $240 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Raytheon Aircraft Company (Formerly Beech, Raytheon Corporate Jets, British Aerospace, Hawker Siddeley, et al.): Docket 96–NM–190–AD.

Applicability: All Model DH 125–1A, –3A, and –400 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Note 2: Raytheon Model DH 125–1B, –3B, and –400B series airplanes are similar in design to the airplanes that are subject to the requirements of this AD and, therefore, also may be subject to the unsafe condition addressed by this AD. However, as of the effective date of this AD, those models are not type certificated for operation in the United States. Airworthiness authorities of countries in which the Model DH 125–1B, –3B, and –400B series airplanes are approved for operation should consider adopting corrective action, applicable to those models, that is similar to the corrective action required by this AD.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct scoring of the upper fuselage skin around the periphery of the cockpit canopy blister interface, which could result in reduced structural integrity of the fuselage skin, and consequent cabin depressurization; accomplish the following:

(a) Within 90 days after the effective date of this AD, perform a one-time detailed visual inspection to detect scoring of the upper fuselage skin around the periphery of the cockpit canopy blister interface, in accordance with Raytheon Service Bulletin SB.53–93, dated May 16, 1996.

(b) If no scoring is detected during the inspection required by paragraph (a) of this AD, no further action is required by this AD.

(c) If any scoring is detected during the inspection required by paragraph (a) of this AD, prior to further flight, determine the maximum location and details of each score, including the edge distance and material thickness, in accordance with Service Bulletin SB.53–93, dated May 16, 1996.

(1) If any scoring is found that is within the limits specified in the service bulletin, prior to further flight, repair in accordance with the service bulletin.

(2) If any scoring is found that is outside the limits specified in the service bulletin, prior to further flight, repair in accordance with a method approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 13, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–4197 Filed 2–19–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 95–ACE–17]

Proposed Alteration of Class E Airspace at Muscatine, IA

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Proposed rule, withdrawal.

SUMMARY: This action withdraws the Notice of Proposed Rulemaking (NPRM) which proposed to change the Class E airspace area at Muscatine, IA. The NPRM is being withdrawn due to the delay in the installation of the Port City Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME).

DATES: The proposed rule is withdrawn February 20, 1997.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Operations Branch, ACE–530C, Federal Aviation Administration, 601 E. 12th St., Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

The Proposed Rule

On December 20, 1995 (60 FR 65601), a Notice of Proposed Rulemaking was published in the **Federal Register** to change the Class E airspace at Muscatine, IA. The delay in obtaining the necessary equipment has resulted in delaying the installation and commissioning of the VOR/DME until late 1997 or early 1998.

Conclusion

In consideration of the aforementioned delay in installation and commissioning of the Port City VOR/DME, action is being taken to withdraw the proposed amendment of the Class E airspace area at Muscatine, IA. If necessary, a new NPRM will be prepared at a later date.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

Withdrawal of Proposed Rule

Accordingly, pursuant to the authority delegated to me, Airspace Docket No. 95–ACE–17, as published in the **Federal Register** on December 20, 1995 (60 FR 65601), is hereby withdrawn.

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

Issued in Kansas City, MO, on January 27, 1997.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 97–3747 Filed 2–19–97; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–ASW–21]

Proposed Revision of Class E Airspace; Silver City, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Class E airspace extending upward from 700 feet above ground level (AGL) at Silver City, NM. A new Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 26 at Silver City-Grant County Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS SIAP to RWY 26 at Silver City, NM.

DATES: Comments must be received on or before April 21, 1997.

ADDRESSES: Send comments on the proposal in triplicate to Manager, Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 96–ASW–21, Forth Worth, TX 76193–0530. The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Forth Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 1601 Meacham Boulevard, Forth Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Forth Worth, TX 76193–0530; telephone (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.
Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES**. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 96–ASW–21." The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Forth Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Forth Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace, controlled airspace extending upward from 700 feet AGL, at Silver City, NM. A new GPS SIAP to RWY 26 at Silver City-Grant County Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS SIAP to Rwy 26 at Silver City-Grant County Airport, Silver City, NM.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9C, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposed to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O.; 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, *Airspace Designations and Reporting Points*, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW NM E5 Silver City, NM [Revised]

Silver City-Grant County Airport, NM
(lat. 32°38'11"N., long. 108°09'23"W.)
Silver City Localizer
(lat. 32°37'57"N., long. 108°09'59"W.)
Cozey LOM
(lat. 32°37'55"N., long. 108°03'48"W.)
Silver City VORTAC
(lat. 32°38'16"N., long. 108°09'40"W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Silver City-Grant County Airport and within 2.2 miles south and 7 miles north of the Silver City Localizer east course extending from the 6.8-mile radius to 14.4 miles east of the airport and within 1.9 miles each side of the 107° bearing from the Cozey LOM extending from the 6.8-mile radius to 8.2 miles southeast of the airport and within 8 miles west and 4 miles east of the 141° radial of the Silver City VORTAC extending from the 6.8-mile radius to 19.7 miles southeast of the airport.

* * * * *

Issued in Forth Worth, TX on February 12, 1997.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 97–4217 Filed 2–19–97; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–ASW–22]

Proposed Revision of Class E Airspace; Perry, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Class E airspace extending upward from 700 feet above ground level (AGL) at Perry, OK. A new Global Positioning System (GPS) Standard Instrument Approach procedure (SIAP) to Runway (RWY) 17 at Perry Municipal Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS SIAP to RWY 17 at Perry Municipal Airport, Perry, OK.

DATES: Comments must be received on or before April 21, 1997.

ADDRESSES: Send comments on the proposal in triplicate to Manager, Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 96–ASW–22, Fort Worth, TX 76193–0530. The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT:

Donald J. Day, Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Work, TX 76193–0530; telephone: (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.
Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES**. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 96–ASW–22." The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace, controlled airspace extending upward from 700 feet AGL, at Perry, OK. A new GPS SIAP to RWY 17 at Perry Municipal Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS SIAP to RWY 17 at Perry Municipal Airport, Perry, OK.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9C, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, *Airspace Designations and Reporting Points*, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW OK E5 Perry, OK [Revised]

Perry Municipal Airport, OK
(lat. 36°23'08" N., long. 97°16'38" W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Perry Municipal Airport and within 2 miles each side of the 359° bearing from the airport extending from the 6.5-mile radius to 10.5 miles north of the airport.

* * * * * * *

Issued in Fort Worth, TX on February 12, 1997.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 97–4216 Filed 2–19–97; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–ASW–23]

Proposed Revision of Class E Airspace; Socorro, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Class E airspace extending upward from 700 feet above ground level (AGL) at Socorro, NM. A new Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 33 at Socorro Municipal Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS SIAP to RWY 33 at Socorro Municipal Airport, Socorro, NM.

DATES: Comments must be received on or before April 21, 1997.

ADDRESSES: Send comments on the proposal in triplicate to Manager, Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 96–ASW–23, Fort Worth, TX 76193–0530. The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530; telephone: (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES**. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace docket No. 96–ASW–23." The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace, controlled airspace extending upward from 700 feet AGL, at Socorro, NM. A new GPS SIAP to RWY 33 at Socorro Municipal Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS SIAP to RWY 33 at Socorro Municipal Airport, Socorro, NM.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9C, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, *Airspace Designations and Reporting Points*, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW NM E5 Socorro, NM [Revised]

Socorro Municipal Airport, NM
(lat. 34°01'19" N., long. 106°54'10" W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Socorro Municipal Airport and within 1.4 miles each side of the 164° bearing from the airport extending from the 6.7-mile radius to 7.1 miles south of the airport excluding that airspace west of long. 107°00'02".

* * * * *

Issued in Fort Worth, TX, on February 12, 1997.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 97–4215 Filed 2–19–97; 8:45 am]

BILLING CODE 4913–13–M

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14 CFR Part 71

[Airspace Docket No. 96–ASW–24]

Proposed Revision of Class E Airspace; Jasper, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Class E airspace extending upward from 700 feet above ground level (AGL) at Jasper, TX. A new Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 18 at Jasper County-Bell Field has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS SIAP to RWY 18 at Jasper County-Bell Field, Jasper, TX.

DATES: Comments must be received on or before April 21, 1997.

ADDRESSES: Send comments on the proposal in triplicate to Manager, Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 96–ASW–24, Fort Worth, TX 76193–0530. The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193-0530; telephone (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES**. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 96–ASW–24." The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace, controlled airspace extending upward from 700 feet AGL, at Jasper, TX. A new GPS SIAP to RWY 18 at Jasper County-Bell Field has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS SIAP to RWY 18 at Jasper County-Bell Field, Jasper, TX.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, *Airspace Designations and Reporting Points*, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW TX E5 Jasper, TX [Revised]

Jasper, Jasper County-Bell Field, TX
(lat. 30°53'29" N., long. 94°02'02" W.)
Jasper RBN
(lat. 30°57'17" N., long. 94°02'01" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Jasper County-Bell Field and within 2.6 miles each side of the 001° bearing from the Jasper RBN extending from the 6.4-mile radius to 10.9 miles north of the airport.

* * * * *

Issued in Forth Worth, TX on February 12, 1997.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 97–4214 Filed 2–19–97; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–ASW–25]

Proposed Revision of Class E Airspace; Brinkley, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Class E airspace extending upward

from 700 feet above ground level (AGL) at Brinkley, AR. A new Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at Frank Federer Memorial Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS–A SIAP at Frank Federer Memorial Airport, Brinkley, AR.

DATES: Comments must be received on or before April 21, 1997.

ADDRESSES: Send comments on the proposal in triplicate to Manager, Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 96–ASW–25, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530; telephone: (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES**. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 96–ASW–25." The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace, controlled airspace extending upward from 700 feet AGL, at Brinkley, AR. A new GPS–A SIAP at Frank Federer Memorial Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS–A SIAP at Frank Federer Memorial Airport, Brinkley, AR.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, *Airspace Designations and Reporting Points*, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW AR E5 Brinkley, AR [Revised]

Brinkley, Frank Federer Memorial Airport, AR
(lat. 34°52'49" N., long. 91°10'35" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Frank Federer Memorial Airport and within 2.5 miles each side of the 011° bearing from the airport extending from the 6.4-mile radius to 7.3 miles north of the airport.

* * * * *

Issued in Fort Worth, TX on February 12, 1997.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 97–4213 Filed 2–19–97; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–ASW–26]

Proposed Revision of Class E Airspace; Longview, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Class E airspace extending upward from 700 feet above ground level (AGL) at Longview, TX. A new VHF Omnidirectional Range (VOR) or Tactical Air Navigation (TACAN) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 13 at Gregg County Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the VOR or TACAN SIAP to RWY 13 at Gregg County Airport, Longview, TX.

DATES: Comments must be received on or before April 21, 1997.

ADDRESSES: Send comments on the proposal in triplicate to Manager, Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 96–ASW–26, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530; telephone: (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES**. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 96–ASW–26." The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace, controlled airspace extending upward from 700 feet AGL, at Longview, TX. A new VOR or TACAN SIAP to RWY 13 at Gregg County Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the VOR or TACAN SIAP to RWY 13 at Gregg County Airport, Longview, TX.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, *Airspace Designations and Reporting Points*, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW TX E5 Longview, TX [Revised]

Longview, Gregg County Airport, TX
(lat. 32°23'05" N., long. 94°42'42" W.)
Gregg County VORTAC
(lat. 32°25'04" N., long. 94°45'11" W.)

That airspace extending upward from 700 feet above the surface within a 7.1-mile radius of Gregg County Airport and within 1.5 miles each side of the 133° radial of the Gregg County Airport extending from the 7.1-mile radius to 10.9 miles southeast of the airport and within 3.1 miles each side of the 305° radial of the Gregg County VORTAC

extending from the 7.1-mile radius to 10.3 miles northwest of the airport.

* * * * *

Issued in Fort Worth, TX on February 12, 1997.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 97–4212 Filed 2–19–97; 8:45 am]

BILLING CODE 4913–13–M

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14 CFR Part 71

[Airspace Docket No. 96–ASW–27]

Proposed Revision of Class E Airspace; Athens, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Class E airspace extending upward from 700 feet above ground level (AGL) at Athens, TX. A new Nondirectional Radio Beacon (NDB) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 35 at Athens Municipal Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the NDB SIAP to RWY 35 at Athens Municipal Airport, Athens, TX.

DATES: Comments must be received on or before April 21, 1997.

ADDRESSES: Send comments on the proposal in triplicate to Manager, Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 96–AWS–27, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530; telephone: (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES**. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 96–ASW–27." The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Forth Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace, controlled airspace extending upward from 700 feet AGL, at Athens, TX. A new NDB SIAP to RWY 35 at Athens Municipal Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the NDB SIAP to RWY 35 at Athens Municipal Airport, Athens, TX.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is no minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E. O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation, Administration Order 7400.9D, *Airspace Designations and Reporting Points*, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW TX E5 Athens, TX [Revised]

Athens Municipal Airport, TX

(lat. 32°09′50″N., long. 95°49′42″W.)

Athens, Lochridge Ranch Airport, TX

(lat. 31°59′22″N., long. 95°57′04″W.)

Crossroads RBN

(lat. 32°03′49″N., long. 95°57′27″W.)

Athens NDB

(lat. 32°09′34″N., long. 95°49′49″W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Athens Municipal Airport and within 2.5 miles each side of the 177° bearing of the Athens NDB extending from the 6.5-mile radius to 7.3 miles south of the Athens Municipal Airport and within a 6.5-mile radius of Lochridge Ranch Airport and within 4 miles each side of the 356° bearing of the Crossroads RBN extending from the 6.5-mile radius to 9.2 miles north of the RBN.

* * * * *

Issued in Forth Worth, TX on February 12, 1997.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 97–4208 Filed 2–19–97; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 97-AAL-1]

RIN: 2120-AA66

Proposed Modification and Renaming of En Route Domestic Airspace; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would modify the Browerville/Barter Island En Route Domestic Airspace Area by removing that portion of the area protected by controlled airspace known as Federal Airway 438 (V–438). This action would redefine the remaining Browerville/Barter Island, AK, En Route Domestic Airspace Area and rename Browerville/Barter Island, AK, to Barter Island, AK.

DATES: Comments must be received on or before March 31, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AAL–500, Docket No. 97–AAL–1, Federal Aviation Administration, 222 West 7th Avenue, #14, Anchorage, AL 99533. The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Bil Nelson, Airspace and Rules Division, ATA–400 Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–AAL–1." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, Attention: Airspace and Rules Division, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's, Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is proposing to amend Title 14 of the Code of Federal Regulations part 71 (14 CFR part 71) by modifying the Browerville/Barter Island, AK, En Route Domestic Airspace Area. This action would remove that portion of the area protected by controlled airspace known as V–438. En Route domestic airspace areas are used for en route navigation requiring en route air traffic control services outside of controlled airspace. This action would redefine the remaining area and rename Browerville/Barter Island, AK, to Barter Island, AK. En route domestic airspace areas are published in paragraph 6006 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The en route domestic airspace area listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace

Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6006—Domestic En Route Airspace Areas

* * * * *

Barter Island, AK [Revised]

From the Put River, AK, NDB 12 AGL to Barter Island, AK, NDB.

* * * * *

Issued in Washington, DC, on February 5 1997.

Jeff Griffith,

Program Director for Air Traffic, Airspace Management.

[FR Doc. 97–4206 Filed 2–19–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

RIN 1076–AD14

25 CFR Part 290

Tribal Revenue Allocation Plans

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed Rule; Extension of Comment Period.

SUMMARY: This notice extends the comment period for the proposed rule, which would establish procedures for submission, review, and approval of tribal plans for distributing revenues from gaming activities.

DATES: Comments must be received on or before March 24, 1997.

ADDRESSES: Mail comments to George Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, 1849 C Street NW, MS 2070–MIB, Washington, DC 20240. Comments may be hand-delivered to the same address from 9:00 a.m. to 4:00 p.m. Monday through Friday or sent by facsimile to 202–273–3153.

FOR FURTHER INFORMATION CONTACT: Nancy Pierskalla, Management Analyst, Indian Gaming Management Staff, at 202–219–4068.

SUPPLEMENTARY INFORMATION: On Friday, June 7, 1996, the Bureau of Indian Affairs published a proposed rule, 61 FR 29044, concerning Tribal Revenue Allocation Plans. The deadline for receipt of comments was August 6, 1996. Six comments were received after August 6, 1996. Several of these comments raise substantive issues that may result in modification of the proposed rule. The comment period is reopened to allow consideration of the comments received after August 6, 1996, and additional comments received on or before the March 7, 1997.

Dated: February 12, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–4077 Filed 2–19–97; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 5 and 7

[Notice No. 846; Ref. Notice No. 844]

RIN 1512–AB50

Use of Distilled Spirits Terms in Labeling and Advertising of Malt Beverages; Use of the Term "Margarita" in Labeling Distilled Spirits

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of Petition; reopening of comment period.

SUMMARY: This notice reopens the comment period for Notice No. 844, a Notice of Petition published in the **Federal Register** on November 7, 1996. ATF has received a request to extend the comment period in order to provide sufficient time for all interested parties to respond to the issues raised in the notice.

DATES: Written comments must be received by March 7, 1997.

ADDRESSES: Send written comments to: Chief, Wine, Bear, and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221; Attention: Notice No. 844. Comments not exceeding three pages may be submitted by facsimile transmission to (202) 927–8602.

FOR FURTHER INFORMATION CONTACT: Charles N. Bacon, Wine, Beer, and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226; telephone (202) 927–8230.

SUPPLEMENTARY INFORMATION:

Background

On November 7, 1996, ATF published a Notice of Petition in the **Federal Register** at 61 FR 57597 which outlined the proposals made in a petition submitted by Heublein, Inc. Heublein's petition seeks changes in regulations relating to the labeling and advertising of malt beverages which would prohibit the use of "Pina Colada," "Daiquiri," "Margarita," and similar terms in the labeling of malt beverage products. Heublein's petition also seeks to amend regulations relating to the labeling and advertising of distilled spirits to prohibit the term "Margarita" from being used in the labeling of any product unless that product is made with Tequila.

The comment period for Notice No. 844 was scheduled to close on February 5, 1997. Prior to the close of the Comment Period, ATF received a request from the National Association of Beverage Importers, Inc. (NABI), a trade association representing importers of alcoholic beverages, to extend the comment period for 30 days. In requesting the extended comment period, NABI stated that the petition had raised considerable controversy within the industry, and that its members required additional time to reach a position on the issues raised by the petition.

In consideration of this request, ATF finds that a reopening of the comment period is warranted. Thus, the comment period is being reopened for a period of 30 additional days until March 7, 1997.

Disclosure

Copies of Heublein's petition and written comments received in response to the petition and to Notice No. 844 will be available for public inspection during normal business hours at: ATF Reading Room, Disclosure Branch, Room 6300, 650 Massachusetts Avenue NW, Washington, DC.

Drafting Information

The author of this notice is Charles N. Bacon, Wine, Beer, and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Trade practices.

27 CFR Part 7

Advertising, Beer , Consumer protection, Customs duties and inspection, Imports, and Labeling.

Authority

This notice is issued under the authority of 27 U.S.C. 205.

Signed: February 13, 1997.

Director.

John W. Magaw,

[FR Doc. 97–4289 Filed 2–19–97; 8:45 am]

BILLING CODE 4810–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 50, 51, 53, and 58

[AD–FRL–5692–1]

National Ambient Air Quality Standards for Ozone and Particulate Matter, Proposed Decision; Requirements for Designation of Reference and Equivalent Methods for $PM_{2.5}$ and Ambient Air Quality Surveillance for Particulate Matter, Proposed Decision; Interim Implementation Policy on New or Revised Ozone and Particulate Matter National Ambient Air Quality Standards, Proposed Policy; and Implementation of New or Revised Ozone and PM NAAQS and Regional Haze Regulations, Advanced Notice of Proposed Rulemaking

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of public comment period and announcement of availability of additional reports.

SUMMARY: The EPA is announcing the extension of the public comment period on the proposed revisions to the national ambient air quality standards (NAAQS) for ozone (O_3) (61 FR 65716) and particulate matter (PM) (61 FR 65638), and proposed requirements for designation of reference and equivalent methods for $PM_{2.5}$ and ambient air quality surveillance for PM (61 FR 65780), all of which were published on December 13, 1996. The period of time for submitting written statements for the public hearing record for these proposals is also being extended. This document also extends the public comment period for the proposed interim implementation policy on new or revised O_3 and PM NAAQS (61 FR 65752), and the advance notice of proposed rulemaking (ANPR) for implementation of new or revised O_3 and PM NAAQS and regional haze regulations (61 FR 65764), published on December 13, 1996.

DATES: Written comments must be received on or before March 12, 1997. Written statements for inclusion in the public hearing record must be received on or before March 12, 1997.

ADDRESSES: Submit comments in duplicate if possible on the proposed actions to: Office of Air and Radiation Docket and Information Center (6102), Attention: U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. In addition, please add the appropriate docket number as follows: Proposed PM NAAQS, A–95–54; proposed O_3 NAAQS, A–95–58; proposed requirements for designation of reference and equivalent methods for $PM_{2.5}$ and ambient air quality surveillance for PM, A–96–51; and interim implementation policy on new or revised O_3 and PM NAAQS and the ANPR for implementation of new or revised O_3 and PM NAAQS and regional haze regulations, A–95–38. The dockets may be inspected at the above address between 8:00 a.m. and 5:30 p.m. on weekdays, and a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Part 50 notice on O_3 NAAQS—Dr. David McKee, Air Quality Strategies and Standards Division (MD–15), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–5288.

Part 50 document on PM NAAQS—Ms. Patricia Koman, same address, telephone (919) 541–5170.

Part 51 document on interim implementation policy on new or revised O_3 and PM NAAQS and the ANPR for implementation of new or revised O_3 and PM NAAQS and regional haze regulations—Ms. Sharon Reinders, same address, telephone (919) 541–5284.

Parts 53 and 58 documents on requirements for designation of reference and equivalent methods for $PM_{2.5}$ and ambient air quality surveillance for PM—Mr. Neil Frank, Monitoring and Quality Assurance Group (MD–14), Emissions, Monitoring, and Analysis Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–5560.

SUPPLEMENTARY INFORMATION: On February 10, 1997, the court order entered in *American Lung Association* v. *Browner*, CIV–93–643–TUC–ACM (D. Ariz., October 6, 1994), as modified, was further modified (1) by changing the date specified for the close of the public comment period in the review of the PM NAAQS to March 12, 1997, and (2) by changing the date for publication of a final decision to July 19, 1997.

In the order making these modifications, the Court stated that no further extensions will be granted. Because of the importance of progressing the O_3 and PM NAAQS reviews on the same schedule, EPA is making corresponding changes to the schedule for the O_3 NAAQS review and associated requirements for designation of reference and equivalent methods for monitoring $PM_{2.5}$ and ambient air quality surveillance for PM. In response to requests from the public, EPA is also extending the public comment period on the proposal of the interim implementation policy of new or revised O_3 and PM NAAQS and the advance notice of proposed rulemaking on the implementation of new or revised O_3 and PM NAAQS and regional haze regulations. Thus, EPA is extending the public comment period on the 40 CFR parts 50, 51, 53, and 58 proposals from February 18, 1997, to March 12, 1997.

Availability of Related Information

EPA has placed supplemental reports analyzing human exposure and health risk associated with the proposed and several alternative O_3 standards and estimating health risks associated with the proposed and alternative PM standards into the O_3 and PM dockets, respectively. The three documents are: (1) January 1997 supplement to "Estimation of Ozone Exposures Experienced by Outdoor Children in Nine Urban Areas Using a Probabilistic Version of NEM (April 1996)," (2) A Probabilistic Assessment of Health Risks Associated with Short-term Exposure to Tropospheric Ozone: A Supplement, January 1997, and (3) December 1996 supplement to "A Particulate Matter Risk Assessment for Philadelphia and Los Angeles (Revised, November 1996)."

These supplemental reports are also available to the public through the Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network (TTN) Bulletin Board System (BBS) in the Clean Air Act Amendments area, under Title I, Policy/Guidance Documents. To access the bulletin board, a modem and communications software are necessary. To dial up, set your communications software to 8 data bits, no parity and one stop bit. Dial (919) 541–5742 and follow the on-screen instructions to register for access. After registering, proceed to choice "<T> Gateway to TTN Technical Areas", then choose "<E> CAAA BBS." From the main menu, choose "<1> Title I: Attain/Maint of NAAQS," then "<P> Policy Guidance Documents." To access these documents through the World Wide Web, click on "TTN BBS Web," then proceed to the Gateway to TTN Technical areas, as above. If assistance is needed in

accessing the system, call the help desk at (919) 541–5384 in Research Triangle Park, NC.

Dated: February 13, 1997.

Richard Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 97–4330 Filed 2–18–97; 1:50 pm]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[CC Docket No. 96–152, FCC 97–35]

Implementation of the Telecommunications Act of 1996: Telemessaging, Electronic Publishing, and Alarm Monitoring Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Further Notice of Proposed Rulemaking (FNPRM), released February 7, 1977, seeks comment on the meaning of certain terms in section 274 of the Telecommunications Act of 1996, (Act), which governs Bell Operating Companies' provision of electronic publishing services. The intent of the FNPRM is to compile a record in sufficient detail for us to determine the meaning of those terms in this context.

DATES: Comments are due on or before April 4, 1997 and reply comments are due on or before April 25, 1997. Written comments by the public on the proposed and/or modified information collections are due April 4, 1997 and reply comments must be submitted no later than April 25, 1997. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before April 21, 1997.

ADDRESSES: Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D. C. 20554, with a copy to Janice Myles of the Common Carrier Bureau, 1919 M Street, N.W., Room 544, Washington, D. C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D. C. 20037. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, 1919 M Street, N.W., Room 234, Washington, D. C. 20554, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 725—17th Street, N.W.,10236 NEOB, Washington, D. C. 20503 or via the Internet to fain_t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Lisa Sockett, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580. For additional information concerning the information collections contained in this FNPRM contact Dorothy Conway at 202–418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's FNPRM adopted February 6, 1997 and released February 7, 1997 (FCC 97–35). This FNPRM contains proposed or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. The OMB, the general public, and other Federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding. The full text of this FNPRM is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M St., Room 239, N.W., Washington, D. C. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common Carrier/Orders/fcc9735.wp, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M St., N.W., Suite 140, Washington, D. C. 20037.

Paperwork Reduction Act: This FNPRM contains either a proposed or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collections contained in this FNPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this FNPRM; OMB notification of action is due April 21, 1997. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: None.

Title: Section 274(b)(3)(B)—Written Contracts Filed with the Commission and Made Publicly Available (CC Docket No. 96–152, FNPRM).

Form No.: N/A.

Type of Review: New collection.

Information Collection	No. of respondents (approx.)	Estimated time per response	Total annual burden
Written contracts filed with the Commission	7	¼ hour per contract	3—150 hours per respondent (21—1050 hours total).
Written contracts made publicly available	7	¾ hour per contract	9—450 hours per respondent (63—3150 hours total).

Total Annual Burden: 21—3,150 hours for all respondents.

Respondents: Businesses or other for profit.

Estimated costs per respondent: $0.

Needs and Uses: The Commission proposes the information collections to implement section 274(b)(3)(B) of the Act. The information may be used by the Commission, unaffiliated electronic publishing providers competing with electronic publishing providers affiliated with the BOC, and any other member of the public interested in monitoring the BOCs' compliance with the Act.

Synopsis of Further Notice of Proposed Rulemaking

I. Further Notice of Proposed Rulemaking

A. Meaning of "Control" and "Financial Interest"

1. We concluded above, in Part III.A, that a BOC engaged in the provision of electronic publishing is subject to section 274 only to the extent that it controls, or has a financial interest in, the content of the information being disseminated over its basic telephone services. The record compiled in this proceeding, however, does not provide sufficient detail for us to determine the meaning of "control" and "financial interest" in this context. By clarifying these terms, we believe we will be in a better position to determine when, and under what circumstances, a BOC's participation in a service constitutes BOC provision of electronic publishing service subject to the requirements of section 274.

i. Meaning of "Control"

2. The term "control" in section 274(i)(4) is defined according to regulations promulgated by the Securities and Exchange Commission implementing the Securities Exchange Act of 1934. As defined thereunder, the term "control" means "the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise." We tentatively conclude that this definition, which defines the term "control" in a corporate context, is inappropriate for determining the meaning of "control" in the present context, *i.e.*, when a BOC has "control" of the content of information transmitted via its basic telephone service. We therefore seek comment on how we should determine whether a BOC has "control" of the content of the information being disseminated under section 274.

3. For example, we seek comment on whether an ownership interest is required for a BOC to have "control" of the content of the information. If so, we seek comment on the percentage of ownership interest necessary for the BOC to be deemed to be in "control" of the content of the information. Alternatively, we seek comment on whether "control" should be broadly interpreted to include the ability of a BOC, when acting as a gateway provider, to limit the types of information to which its gateway connects. NYNEX suggests that this ability does not imply the type of "control" over the underlying information being transmitted and, therefore, does not constitute electronic publishing. We seek comment on this interpretation.

ii. Meaning of "Financial Interest"

4. We also seek comment on the meaning of the term "financial interest." We tentatively conclude that a BOC has a "financial interest" in the content of the information when the BOC owns the information or has a direct or indirect equity interest in the information being disseminated via its basic telephone services. We seek comment on this tentative conclusion. We also seek comment on other forms of BOC participation that should be considered indicia of "financial interest." For example, NYNEX maintains that a "financial interest" in the content of the information should not be interpreted to include receipt of compensation by a BOC for managing and presenting the content of unaffiliated entities as part of its gateway services. Alternatively, PacTel contends that a "financial interest" must be a legally protected property interest." We seek comment on these interpretations.

5. In addition, we seek comment on whether we should establish a *de minimis* exception to the financial interest requirement once financial interest has been established. For example, if a BOC has a financial interest in only one percent of the content of the information, should it be required to provide the electronic publishing service through a "separated affiliate" or "electronic publishing joint venture"? If not, should the BOC be required to do so if it has a financial interest of ten percent? We seek comment on the percentage of financial interest in an electronic publishing service, as defined in section 274(h), that makes a BOC subject to the requirements of section 274.

B. Meaning of "Transaction" in Section 274(b)(3) and the Requirements of Section 274(b)(3)(B)

6. Section 274(b)(3) provides that a separated affiliate or electronic publishing joint venture established pursuant to section 274(a) and the BOC with which it is affiliated shall "carry out transactions (A) in a manner consistent with such independence, (B) pursuant to written contracts or tariffs that are filed with the Commission and made publicly available, and (C) in a manner that is auditable in accordance with generally accepted accounting standards." We note that the clause in section 274(b)(3)(B), "pursuant to written contracts or tariffs that are filed with the Commission," can be read to require the filing of both contracts and tariffs with the Commission, or only the filing of tariffs. In addition, the phrase "and made publicly available," could refer only to "tariffs" or also to "written contracts." Although the *Accounting Safeguards NPRM* (61 FR 40161 (August 1, 1996)) sought comment on section 274(b)(3), no commenters in that proceeding specifically addressed these issues regarding section 274(b)(3)(B).

7. "*Filed with the Commission.*" We seek comment on whether BOCs should be required under section 274(b)(3)(B) to file both written contracts and tariffs on Commission premises. We note that, pursuant to existing practice, BOCs are already required to file tariffs with the Commission. We also note that section 211 of the Communications Act imposes a general requirement on common carriers to "file with the Commission" copies of "contracts, agreements, or arrangements with other carriers, or with common carriers not subject to the provisions of [the Communications Act]" relating to communications traffic. Our rules implementing this section, however, require only that certain carriers file certain types of contracts with the Commission." As to the remaining contracts within the scope of section 211, carriers are permitted to comply with section 211 by keeping the contracts on their premises such that they are "readily accessible to Commission staff and members of the public upon reasonable request." We invite parties to comment on whether we can and should adopt these procedures to implement the statutory language in section 274(b)(3)(B).

8. "*Made Publicly Available.*" We tentatively conclude that section 274(b)(3)(B) requires that both written contracts and tariffs be made "publicly available." As noted above, BOCs are already required to make their tariffs and certain written contracts with other carriers publicly available by filing them with the Commission and make others contracts accessible upon reasonable request. We find that interpreting this section to require all contracts, as well as tariffs, to be made "publicly available," is necessary to ensure that BOCs are complying with the nondiscrimination and accounting safeguards of the Act and to enable competitors to detect discrimination and potential improper cost allocations by the BOCs. We seek comment on this tentative conclusion.

9. Assuming that section 274(b)(3)(B) does not require BOCs to file all their written contracts with separated affiliates or electronic publishing joint ventures on Commission premises, we

seek comment on the means by which a BOC and its separated affiliate or electronic publishing joint venture must make their contracts "publicly available" pursuant to section 274(b)(3)(B). In interpreting a similar requirement in section 272(b)(5), which requires that BOCs and their section 272 affiliates reduce their transactions to writing and make them available for public inspection, we found that a BOC must make information "available for public inspection" pursuant to that section by making it available at its corporate headquarters and not the RBOC corporate headquarters or the corporate headquarters of the BOC's holding company. We stated that this information must include a certification statement identical to the certification statement currently required to be included with all Automated Reporting and Management Information System ("ARMIS") reports. We also concluded that detailed written descriptions of transactions between BOCs and their section 272 affiliates must be made available to the public on the Internet within ten days of the transaction. We therefore seek comment on whether, for written contracts within section 274(b)(3)(B) that we decide need not be filed on Commission premises, we should interpret the "publicly available" requirement of this section in the same manner as we interpreted the "available for public inspection" requirement in section 272(b)(5). Commenters disagreeing with this approach should explain why, and propose alternative approaches.

10. *Meaning of "Transaction."* We also seek comment on what constitutes a "transaction" for purposes of section 274(b)(3). We note that, for purposes of section 272(b)(5), we concluded that only once the BOC and its affiliate have agreed upon the terms and conditions for telephone exchange and exchange access does the agreement constitute a "transaction." We also found that an agreement between a BOC and its affiliate for the provision of unbundled elements and facilities pursuant to explicit terms and conditions also constitutes a "transaction." We seek comment here on whether we should adopt similar conclusions in the context of section 274(b)(3). We note, however, that section 274(d) requires BOCs to provide "network access and interconnections for basic telephone service to electronic publishers at just and reasonable rates that are tariffed (so long as rates for such services are subject to rate regulation)." We therefore tentatively conclude that, although section 274(b)(3)(B) provides that transactions must be carried out pursuant to "written contracts or tariffs," the specific transactions described in section 274(d) may only be carried out pursuant to tariff (so long as such services are subject to rate regulation). We seek comment on this tentative conclusion.

C. Procedural Matters

i. Ex Parte Presentations

This *FNPRM* is a non-restricted notice-and-comment rulemaking proceeding. *Ex parte* presentations are permitted, in accordance with the Commission's rules, provided that they are disclosed as required.

ii. Regulatory Flexibility Certification

12. Section 603 of the Regulatory Flexibility Act, (RFA) as amended, requires an initial regulatory flexibility analysis in notice and comment rulemaking proceedings, unless we certify that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." A "small entity" is an entity that is independently owned and operated; is not dominant in its field of operation; and meets any additional criteria established by the Small Business Administration (SBA). SBA regulations define small telecommunications entities in SIC code 4813 (Telephone Companies Except Radio Telephone) as entities with fewer than 1,500 employees. This proceeding pertains to the BOCs which, because they are dominant in their field of operation and have more than 1,500 employees, do not qualify as small entities under the RFA. We also note that none of the BOCs is a small entity because each BOC is an affiliate of a Regional Holding Company (RHC), and all of the BOCs or their RHCs have more than 1,500 employees. We therefore certify, pursuant to section 605(b) of the RFA, that the tentative conclusions, if adopted, will not have a significant economic impact on a substantial number of small entities. The Secretary shall send a copy of this *FNPRM*, including this certification and statement, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this certification will also be published in the **Federal Register**.

iii. Initial Paperwork Reduction Act of 1995 Analysis

13. This *FNPRM* contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the OMB to take this opportunity to comment on the information collections contained in this *FNPRM*, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this *FNPRM*; OMB comments are due 60 days from the date of publication of this *FNPRM* in the **Federal Register**. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

iv. Comment Filing Procedures

14. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before April 4, 1997, and reply comments on or before April 25, 1997. To file formally in this proceeding, you must file an original and six copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original and eleven copies. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C., 20554, with a copy to Janice Myles of the Common Carrier Bureau, 1919 M Street, N.W., Room 544, Washington, D.C., 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C., 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C., 20554.

15. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with Section 1.49 and all other applicable sections of the Commission's Rules. *See* 47 CFR 1.49. However, we require here that a summary be included with all comments and reply comments, regardless of length. This summary may be paginated separately from the rest of the pleading (*e.g.*, as "i, ii"). We also direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission. Parties may not file more than a total of ten (10) pages of *ex parte* submissions, excluding cover letters. This 10 page limit does not include: (1) written *ex parte* filings made solely to disclose an oral *ex parte* contact; (2) written material submitted at the time of an oral presentation to Commission staff that provides a brief outline of the presentation; or (3) written materials filed in response to direct requests from Commission staff. *Ex parte* filings in excess of this limit will not be considered as part of the record in this proceeding.

16. Parties are also asked to submit comments and reply comments on diskette. Such diskette submissions would be in addition to, and not a substitute for, the formal filing requirements addressed above. Parties submitting diskettes should submit them to Janice Myles of the Common Carrier Bureau, 1919 M Street, N.W., Room 544, Washington, D.C., 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible form using MS DOS 5.0 and WordPerfect 5.1 software. The diskette should be submitted in "read only" mode. The diskette should be clearly labelled with the party's name, proceeding, type of pleading (comment or reply comments) and date of submission. The diskette should be accompanied by a cover letter.

17. Written comments by the public on the proposed and/or modified information collections are due April 4, 1997, and reply comments must be submitted not later than April 25, 1997. Written comments must be submitted by the OMB on the proposed and/or modified information collections on or before 60 days after date of publication in the **Federal Register**. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C., 20554, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, D.C., 20503 or via the Internet to fain__t@al.eop.gov.

II. Ordering Clauses

18. It is ordered that pursuant to sections 1, 2, 4, 201, 202, 274 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154, 201, 202, 274, and 303(r), the further notice of proposed rulemaking is adopted.

19. It is further ordered that the Secretary shall send a copy of the further notice of proposed rulemaking, including the regulatory flexibility certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–4027 Filed 2–19–97; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 62, No. 34
Thursday, February 20, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 14, 1997.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 *and* to Department Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6204 or (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Asian Long Horned Beetle.

OMB Control Number: 0579—New.

Summary: Compliance agreements appeal letters, certificates, inspections, limited permits, container markings, and 48-hour notices will be needed to allow regulated articles to move interstate from quarantined areas in New York.

Need and Use of the Information: The information is needed to control and monitor the movement of the Asian long horned beetle. The regulations quarantine certain areas within the State of New York.

Description of Respondents: Farms: Farms; Individuals or households; Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 225.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 132.

Emergency processing of this submission has been requested by February 14, 1997.

Office of the Secretary

Title: Customer Survey Activities.

OMB Control Number: 0505–0020.

Summary: Executive Order 12862 requires Federal Departments to establish and implement customer service standards. This "Generic Clearance" encompasses all information collection activities within USDA that will be conducted in order to satisfy the requirements of the Executive Order.

Need and Use of the Information: The results obtained from the various customer satisfaction surveys will be disseminated to key policy and management officials, USDA employees, stakeholders, the Congress and the public. The data will be used in a variety of ways to improve customer service.

Description of Respondents: Farms; Individuals or households; Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 50,000.

Donald Hulcher,

Deputy Departmental Clearance Officer.

[FR Doc. 97–4166 Filed 2–19–97; 8:45 am]

BILLING CODE 3410–01–M

Agricultural Marketing Service

[Docket No. PY–96–002]

Tentative Voluntary Poultry Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice; extension of test-market period.

SUMMARY: On February 15, 1996, the Agricultural Marketing Service (AMS) published a notice in the **Federal Register** (61 FR 5975) announcing a one-year test-market period for USDA grade identified cooked, boneless-skinless poultry products without added ingredients, based on tentative grade standards. AMS is extending the test-market period beyond its scheduled end, February 15, 1997, until it makes a final determination about the tentative standards.

FOR FURTHER INFORMATION CONTACT: Rex A. Barnes, Chief, Grading Branch, Poultry Division, 202–720–3271.

SUPPLEMENTARY INFORMATION: On February 15, 1996, the Agricultural Marketing Service (AMS) published a notice in the **Federal Register** (61 FR 5975) announcing a one-year test-market period for USDA grade identified cooked, boneless-skinless poultry products without added ingredients, based on tentative grade standards. The test-market period is scheduled to end February 15, 1997, after which AMS will evaluate the test results. If AMS decides to amend the current poultry grade standards, a proposal with a comment period will be published in the **Federal Register**.

AMS is currently evaluating the test-market results of two other sets of tentative grade standards for ready-to-cook products to determine if changes should be made to the standards. Those test-markets were for boneless-skinless poultry legs and drumsticks (60 FR 16428) and boneless-skinless poultry products without added ingredients (60 FR 30830), for which tentative standards were published in the **Federal Register** on March 30, 1995, and June 12, 1995, respectively. AMS has determined that it is appropriate to extend the test-market period for cooked products until a final determination is made regarding changes to the standards for both ready-to-cook and cooked products. This will also allow additional time for the industry to utilize the tentative standards for cooked, boneless-skinless products.

Dated: February 13, 1997.

Lon Hatamiya,

Administrator.

[FR Doc. 97–4111 Filed 2–19–97; 8:45 am]

BILLING CODE 3410–02–P

Food Safety and Inspection Service

[Docket No. 97–003N]

President's National Food Safety Initiative

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture's (USDA) Food Safety and Inspection Service (FSIS) and Research, Education, and Economics; The Department of Health and Human Services' Food and Drug Administration (FDA) and Centers for Disease Control; and the Environmental Protection Agency (EPA) will convene a public meeting to discuss the "President's National Food Safety Initiative." At this meeting, participants will be briefed on the purpose of the President's initiative and on the agenda for a second public meeting to be held in April. The goal of the April meeting will be to discuss and develop, for the President, comprehensive recommendations for reducing, to the greatest extent possible, the annual incidence of foodborne illness by enhancing the safety of the Nation's food supply.

DATES: The meeting will be held from 9:00 a.m. until 1:00 p.m. on March 5, 1997.

ADDRESSES: The meeting will be held at the Jefferson Auditorium, 1400 Independence Ave, SW, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: To register for the meeting, contact Lisa Parks at (202) 501–7138, FAX (202) 501–7642, or E-mail usdafsis/s=confer@mhs.attmail.com. For questions about the meeting or to obtain copies of a draft report, contact Mr. Charles Danner, FSIS at (202) 501–7138 or Ms. Caren Carson, FDA at (202) 205–5140. Copies of the draft report also are available from the following: FSIS at http://www.usda.gov/fsis or FDA at http://vm.cfsan.fda.gov/list.html.

SUPPLEMENTARY INFORMATION: On January 25, 1997, the President directed the Secretaries of USDA and HHS and the Administrator of the EPA to work with consumers, producers, industry, States, universities, and the public to identify ways to further improve the safety of our food supply through government and private sector action, including public private partnerships, and make recommendations to the President. The President requested that the recommendations identify steps to further improve surveillance, inspection, research, risk assessment, education, and coordination among local, State, and Federal health authorities.

To carry out the President's initiative, two public meetings will be held. At the first meeting, government officials will discuss the current thinking on the President's six areas of concern. They also will discuss the agenda and goal of the meeting to be held in April.

At the April meeting, participants will be asked to identify problems and provide recommendations related to the President's six areas of concern. A second **Federal Register** notice will be published that provides additional information about the time, location, and focus of the April meeting.

Done at Washington, DC, on: February 13, 1997.

Thomas J. Billy,

Administrator.

[FR Doc. 97–4124 Filed 2–14–97; 9:54 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF COMMERCE

FOREIGN-TRADE ZONES BOARD

[Docket 6–97]

Foreign-Trade Zone 182—Fort Wayne, Indiana Area Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Fort Wayne, Indiana, grantee of Foreign-Trade Zone 182, requesting authority to expand its zone in the Fort Wayne, Indiana area. The Fort Wayne International Airport is a Customs user fee airport facility designated by the U.S. Customs Service. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on February 5, 1997.

FTZ 182 was approved on December 23, 1991 (Board Order 549, 57 F.R. 1450, 1/14/92). The general-purpose zone currently consists of three sites: *Site 1* (16,000 sq. ft.)—public warehouse at 315 East Wallace Street, Fort Wayne; *Site 2* (17,500 sq. ft.)—public warehouse at 2122 Bremer Road, Fort Wayne; and, *Site 3* (50 acres)—Air Trade Center at the Fort Wayne International Airport, Fort Wayne.

The applicant is now requesting authority to expand Site 3 to include the entire Air Trade Center and to add an additional site to its zone project. *Site 3* at the Air Trade Center, adjacent to the Fort Wayne International Airport would be expanded to cover 443 acres; and, proposed *Site 4* would cover 41 acres on 3 contiguous parcels at 1515 Riverfork Drive West, approximately 20 miles from the Fort Wayne International Airport, Huntington. Stride Rite Children's Group, Inc. (a subsidiary of Stride Rite Corporation), will be leasing one of the parcels for its warehousing needs. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is April 21, 1997. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to May 6, 1997).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Huntington Chamber of Commerce, 305 Warren Street, Huntington, IN 46750

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Washington, DC 20230

Dated: February 10, 1997.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–4220 Filed 2–19–97; 8:45 am]

BILLING CODE 3510–DS–P

Foreign-Trade Zones Board

[Order No. 868]

Expansion of Foreign-Trade Zone 27 Boston, MA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the Massachusetts Port Authority, grantee of Foreign-Trade Zone 27, for authority to expand its general-purpose zone in Boston, Massachusetts, was filed by the Board on April 23, 1996 (FTZ Docket 33–96, 61 FR 19259, 5/1/96); and,

Whereas, notice inviting public comment was given in **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 27 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 10th day of February 1997.

Robert S. LaRussa,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 97–4221 Filed 2–19–97; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 870]

Expansion of Foreign-Trade Zone 40 Cleveland, OH, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the Cleveland-Cuyahoga County Port Authority, grantee of Foreign-Trade Zone No. 40, for authority to expand its general-purpose zone at sites in the Cleveland, Ohio, area, within the Cleveland Customs port of entry, was filed by the Foreign-Trade Zones (FTZ) Board on March 12, 1996 (Docket 21–96, 61 FR 12060, 3/25/96);

Whereas, notice inviting public comment was given in the **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board has found that the requirements of the Act and the regulations would be satisfied, and that the proposal would be in the public interest provided approval is subject to a 2,000-acre activation limit;

Now, therefore, the Board hereby orders:

The grantee is authorized to expand its zone as requested in the application, subject to the Act and the Board's regulations, including Section 400.28, and subject to a 2,000-acre activation limit.

Signed at Washington, DC, this 10th day of February 1997.

Robert S. LaRussa,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 97–4222 Filed 2–19–97; 8:45 am]

BILLING CODE 3510–DS–P

[Docket 3–97]

Foreign-Trade Zone 206—Medford-Jackson County, OR Area; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board by Jackson County, Oregon, grantee of Foreign-Trade Zone 206, requesting authority to expand its zone in the Medford-Jackson County, Oregon area. The Medford-Jackson County Airport has been designated a Customs user fee port facility by the U.S. Customs Service. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on January 15, 1997.

FTZ 206 was approved on January 11, 1995 (Board Order 719, 60 FR 5165, 1/26/95). The general-purpose zone currently consists of six sites (528 acres) in the Cities of Medford, White City and Eagle Point (Jackson County): *Site 1* (95 acres)—3650 Biddle Road, Medford; *Site 2* (38 acres)—King Business Center, Lear Way, Cardinal Avenue and Commerce Drive, Medford; *Site 3* (54 acres)—North Medford Business Center, Bulcrest Drive, Gruman Drive and Kingsley Drive, Medford; *Site 4* (215 acres)—North Medford Business Center, Avenue H and 11th Street, White City (Jackson County); *Site 5* (23.33 acres)—Light Valley site, 10440 South Fork Little Butte Creek Road, Eagle Point (Jackson County); and, *Site 6* (103 acres)—KOGAP Business Center, 2080 South Pacific Highway, Medford.

The applicant is now requesting authority to expand the general-purpose zone to include one additional site in Jackson County and five sites in adjoining Josephine County: *Site 7* (112 acres)—Lake Creek Agribusiness Center, adjacent to Highway 140, Eagle Point (Jackson County); *Site 8* (47 acres, 6 parcels)—within the 77-acre North Valley Industrial Park, near Interstate 5, Grants Pass (Josephine County), 25 miles north of the Medford-Jackson County Airport; *Site 9* (19 acres, 4 parcels)—within the 213-acre Grants Pass Parkway Development Zone, Grants Pass (Josephine County); *Site 10* (20 acres)—within the 152-acre Illinois River Valley Airport, 125 Ringuette Street, Grants Pass (Josephine County); *Site 11* (10 acres)—within the 319-acre Grants Pass Airport, Grants Pass (Josephine County); and, *Site 12* (4 acres)—Highway 199 Industrial Park, Highway 199, Cave Junction (Josephine County). All of the sites will be operated by the Ore-Cal Trade Corporation, except for Site 7 which will be managed by its operator. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is April 21, 1997. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to May 6, 1997).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

County Administrator's Office, Jackson County, Oregon, 10 S. Oakdale, Medford, OR 97501.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue NW., Washington, DC 20230.

Dated: January 22, 1997.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–4225 Filed 2–19–97; 8:45 am]

BILLING CODE 3510–DS–P

[Docket 58–95]

Foreign-Trade Zone 35; Philadelphia, PA; Amended Application for Subzone; Tosco Corporation (Oil Refinery Complex); Delaware County, PA

Notice is hereby given that the application of the Philadelphia Regional Port Authority, grantee of FTZ 35, requesting special-purpose subzone status for the oil refinery complex of Tosco Corporation (Tosco), in Delaware County, PA (Doc. 58–95, 60 FR 53164, 10/12/95) has been amended to reflect certain changes to the refinery's operations subsequent to its purchase by Tosco from BP Exploration & Oil Inc.

Upon taking over the refinery on February 2, 1996, Tosco requested that the processing of the pending subzone application be put on hold until further notice. Tosco now has requested that the processing of the application, as amended, be resumed. It plans to restart refinery operations on May 1, 1997.

The refinery (185,000 barrels per day, 360 employees) will be used to produce fuels and petrochemical feedstocks. Fuels produced include gasoline, jet fuel, distillates, residual fuels, and naphthas. Petrochemical feedstocks and refinery by-products may include methane, ethane, butane, propane, toluene, benzene, xylene, petroleum coke, asphalt and carbon black. LPG (liquified petroleum gas) recovery facilities and two 15,000 barrel tanks have been added enabling all the LPG produced in the refinery to be recovered and sold.

The application remains otherwise unchanged.

The comment period is reopened until March 24, 1997.

Copies of the application and the amendment are available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, Suite 1501, 615 Chestnut St., Philadelphia, PA 19106.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue NW., Washington, DC 20230.

Dated: February 13, 1997.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–4223 Filed 2–19–97; 8:45 am]

BILLING CODE 3510–DS–P

[Docket 4–97]

Foreign-Trade Zone 84—Houston, Texas Area Application for Expansion of Subzone 84L California Microwave—Microwave Network Systems, Inc.; Stafford, Texas

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Houston Authority, grantee of FTZ 84, requesting authority to relocate Subzone 84L, authorized for California Microwave—Microwave Network Systems, Inc. (microwave telecommunications products), to a larger facility in Stafford, Texas, within the Houston Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on January 22, 1997.

Subzone 84L was approved on 12/28/94 (Board Order 722, 60 FR 2377, 1/9/95) for the microwave radio/telecommunications products manufacturing facility (3.5 acres, 240 persons) of Microwave Networks, Inc. (MNI), located in Harris County, Texas. Approval was subject to the restriction requiring that the company elect privileged foreign status on foreign components admitted to the subzone. MNI was acquired in 1996 by California Microwave, Inc. and now operates under the name of California Microwave—Microwave Network Systems, Inc. (CMMNS).

The zone grantee is now requesting authority on behalf of CMMNS to relocate the subzone from the currently authorized manufacturing plant to a larger manufacturing facility (16 acres, 355 employees), located at 4000 Greenbriar Drive in Stafford, Texas. The application includes a request for an expanded level of manufacturing authority but the scope of the products made under FTZ procedures will not change (microwave radios for use in cellular and other telecommunications networks). FTZ authority would remain subject to the restrictions approved in Board Order 722.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is April 21, 1997. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to May 6, 1997).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce Export Assistance Center, 500 Dallas, Suite 1160, Houston, Texas 77002

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW, Washington, DC 20230

Dated: January 30, 1997.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–4224 Filed 2–19–97; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

Application for Designation of a Fair

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 21, 1997

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230. Phone number: (202) 482–3272.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to: Linda Harbaugh, ITA's Tourism Industries, Room 1860, 1400 Constitution Ave, NW, Washington, DC 20230; phone: (202) 482–4601, and fax: (202) 482–2887.

SUPPLEMENTARY INFORMATION:

I. Abstract

The International Trade Administration's, Tourism Industries office offers trade fair guidance and assistance to trade fair organizers, trade fair operators, and other travel and trade oriented groups. These fairs open doors to promising travel markets around the world. These trade fairs provide an

opportunity for showcasing quality exhibits and products from around the world. The "Application for Designation of a Fair" is a questionnaire that is prepared and signed by an organizer to begin the certification process. It asks the fair organizer to provide details as to the date, place, and sponsor of the fair, as well as license, permit, and corporate backers, and countries participating. To apply for the U.S. Department of Commerce sponsorship, the fair organizer must have all of the components of the application in order. Then, with the approval, the organizer is able to bring in their products in accordance with Customs laws. Articles which may be brought in, include, but are not limited to, actual exhibit items, pamphlets, brochures, and explanatory material in reasonable quantities relating to the foreign exhibits at a fair, and material for use in constructing, installing, or maintaining foreign exhibits at a fair.

II. Method of Collection

The request is sent to the Department of Commerce, Tourism Industries, to the Trade Fair Chairperson in written form.

III. Data

OMB Number: New Collection—no number assigned.
Form Number: Not applicable.
Type of Review: Regular submission of a collection in use without OMB approval.
Affected Public: Business or other for-profit organizations.
Estimated Number of Respondents: 200.
Estimated Time Per Response: 30 minutes.
Estimated Total Annual Burden Hours: 100 hours.
Estimated Total Annual Cost: No start up costs are involved. It is estimated to cost respondents a total $1,515.00 to comply.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 13, 1997.

Linda Engelmeier,

Department Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–4169 Filed 2–19–97; 8:45 am]

BILLING CODE 3510–DR–P

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of Partially Closed Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Visiting Committee on Advanced Technology, National Institute of Standards and Technology (NIST), will meet Tuesday, March 11, 1997 from 8:30 a.m. to 5:15 p.m. The Visiting Committee on Advanced Technology is composed of fifteen members appointed by the Director of NIST who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include an update on NIST programs; report on NIST facilities program, report on Advanced Technology Program (ATP) and the ATP Focused Program: Materials Processing for Heavy Manufacturing, presentation on mobile robots, discussion of the Institute budget, and a NIST laboratory tour. The discussion on the Institute budget scheduled to begin at 4:30 p.m. and end at 5:15 p.m., on March 11, 1997, will be closed.

DATES: The meeting will convene March 11, 1997, at 8:30 a.m. and will adjourn at 5:15 p.m. on March 11, 1997.

ADDRESSES: The meeting will be held in the Employees Lounge (seating capacity 80, includes 38 participants), Administration Building, at NIST, Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: Chris E. Kuyatt, Visiting Committee Executive Director, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone number (301) 975–6090.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 23, 1997, that portions of the meeting of the Visiting Committee on Advanced Technology which involve discussion of proposed funding of the Manufacturing Extension Partnership and the Advanced Technology Program may be closed in accordance with 5 U.S.C. 552b(c)(9)(B), because those portions of the meetings will divulge matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency actions; and that portions of meetings which involve discussion of the staffing issues of management and other positions at NIST may be closed in accordance with 5 U.S.C. 552b(c)(6), because divulging information discussed in those portions of the meetings is likely to reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasions of personal privacy.

Dated: February 13, 1997.

Elaine Bunten-Mines,

Director, Program Office.

[FR Doc. 97–4148 Filed 2–19–97; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

Northwest Region Logbook Family of Forms

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 21, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to William L. Robinson, NMFS, 7600 Sand Point Way NE, Seattle WA 98112, 206–526–6140.

SUPPLEMENTARY INFORMATION:

I. Abstract

Data collections dealing with Federal reporting requirements for processing vessels affect participants in the groundfish fishery off Washington, Oregon, and California (WOC). The data collections involve: (1) vessel reports; (2) catch or receipt reports and logbooks; and (3) transfer/offloading reports and logbooks. The data collections apply to groundfish processing vessels over 125'(38.5 meters) in length and catcher vessels delivering to them.

Vessel reports indicate when a vessel has started and stopped operations, and is needed to ensure catch/receipt reports have been received, for observer deployment, and for monitoring the fishery.

Logbooks are the basis for reports submitted to NMFS. The logbooks for processing vessels are used to keep daily and cumulative totals of the catch (or fish received from a catcher vessel), species, disposition, and numbers and species of prohibited species (salmon, halibut, Dungeness crab). Reports of species and amounts caught are submitted on a weekly or daily basis, depending on the duration of the season. Logbooks also are kept by fishing vessels to record specific haul or set information. Logbooks also are used to record transfers or offloading of fish or fish products which facilitates enforcement.

II. Method of Collection

These are written data collections that are prepared and submitted by the vessel owner or operator to the National Marine Fisheries Service, Northwest Regional Office, by mail, fax, electronic mail, or in person.

III. Data

OMB Number: 0648–0271
Form Number: None
Type of Review: Regular Submission
Affected Public: This data collection involves owners and operators of vessels that fish for or process groundfish in ocean waters 0–200 nautical miles offshore Washington, Oregon, and California.
Estimated Number of Respondents: Fewer than 100 vessels are expected to be affected.
Estimated Time Per Response: This is variable depending on the action taken. The expected daily average for vessel reports is about 1.25 minutes; for entering information in catch/receipt logbooks is 13–26 minutes; for weekly reports of fish caught or received is 4.3 minutes per day; for transfer logs is 0.5 minutes.
Estimated Total Annual Burden Hours: The public is expected to spend less than 1,803 total hours complying with these data collections.
Estimated Total Annual Cost to Public: The direct cost to the public is estimated to be less than $10,000 annually to the fleet, averaging about $100 per vessel. These estimates do not include time spent preparing submissions.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 13, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–4170 Filed 2–19–97; 8:45 am]

BILLING CODE 3510–22–P

National Oceanic and Atmospheric Administration

[I.D. 021197B]

Caribbean Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Caribbean Fishery Management Council (Council) and its Administrative Committee, the Scientific and Statistical Committee (SSC), the Advisory Panel (AP) and the Habitat Advisory Panel (HAP) will hold meetings.

DATES: The meetings will be held on March 18-20, 1997.

ADDRESSES: All meetings will be held at the Marriott's Frenchman's Reef Beach Resort, St. Thomas, U.S. Virgin Islands.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918-2577; telephone: (787) 766-5926.

SUPPLEMENTARY INFORMATION: The Council will hold its 91st regular public meeting to discuss the Third Amendment to the Reeffish Fishery Management Plan (FMP) and the First Amendment to the Coral FMP, among other topics.

The Administrative Committee will meet on Tuesday, March 18, 1997, from 10:00 a.m. to 5:00 p.m., to discuss administrative matters regarding Council operation.

The Council will convene on Wednesday, March 19, 1997, from 9:00 a.m. to 5:00 p.m. through Thursday, March 20, 1997, from 9:00 a.m. to noon, approximately.

The SSC, AP and HAP will meet on March 19, 1997, from 1:00 p.m. to 3:00 p.m., to discuss the presentation of Dr. Downs and provide their comments to the Council.

The meetings are open to the public, and will be conducted in English. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

There will be simultaneous translation (English-Spanish) at the AP meeting only, from 10:00 a.m. to 3:00 p.m., on March 19, 1997.

Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or requests for sign language interpretation and/or other auxiliary aids please contact Mr. Miguel A. Rolón at the Council (see **FOR FURTHER INFORMATION CONTACT**) at least 5 days prior to the meeting date.

Dated: February 13, 1997.

Gary C. Matlock

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–4156 Filed 2–19–97; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Malaysia

February 13, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: February 20, 1997.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6712. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for certain categories are being reduced for carryforward applied in 1996.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 58041, published on November 12, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 13, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 4, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Malaysia and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on February 20, 1997, you are directed to reduce the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Twelve-month limit [1]
336/636	421,491 dozen.
338/339	1,044,973 dozen.
347/348	442,861 dozen.
638/639	433,722 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.97–4168 Filed 2–19–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Update of Petition for Exemption From the Dual Trading Prohibition in Affected Contract Markets

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of update of petition for exemption from the prohibition on dual trading in affected contract markets.

SUMMARY: Chicago Board of Trade ("CBT" or "Exchange") has submitted an update of its October 25, 1993 petition for exemption from the prohibition against dual trading in thirteen contract markets. The Exchange had re-submitted a corrected petition on December 2, 1993 and also submitted March 25, 1994, May 13, 1994 and August 2, 1994 supplements to add three more affected markets. Upon CBT's request, the Commission informed the Exchange that it could submit updated audit trail data by March 31, 1997. Copies of the entire file, including any future submissions, will be available to the public upon request, except to the extent the Exchange has requested confidential treatment.

ADDRESSES: Copies of the file are available from the Office of the Secretariat, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581. Reference should be made to the CBT dual trading exemption petition file.

FOR FURTHER INFORMATION CONTACT: Rachel Berdansky, Staff Attorney, or Andrew Baer, Staff Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581; telephone: (202) 418–5490.

SUPPLEMENTARY INFORMATION: Pursuant to Section 4j(a)(3) of the Commodity Exchange Act and Regulation 155.5 thereunder, a board of trade may submit a petition to the Commodity Futures Trading Commission ("Commission") to exempt any of its affected contract markets (markets with an average daily volume of over 8,000 contracts traded for four consecutive quarters) from the prohibition against dual trading. Regulation 155.5(d)(6) authorizes the Director of the Division of Trading and Markets to publish notice of each exemption petition deemed complete under Regulation 155.5(d) and to make the petition available to the public as required by Section 4j(a)(5) of the Act.

CBT originally submitted a petition for dual trading exemption on October 25, 1993. After the Commission requested additional information, the Exchange submitted a corrected petition on December 2, 1993. That petition was made available to the public by a notice of availability published in the **Federal Register** on December 22, 1993. Thereafter, the Exchange submitted March 25, 1994 and May 13, 1994 supplements plus an August 2, 1994 report.

Pursuant to a request from the Commission, CBT submitted a dual trading exemption petition update dated January 17, 1997 for its contract markets in wheat, corn, soybeans, soybean meal, soybean oil, U.S. Treasury Bonds, 10-Year Treasury Notes, and 5-Year Treasury Notes futures contracts and its options on soybeans, corn, U.S. Treasury Bond futures, 5-Year Treasury Notes and 10-Year Treasury Notes futures contracts. Upon CBT's request, the Commission informed the Exchange that it could submit updated audit trail data by March 31, 1997.

Copies of the file containing all these materials and any future submissions, except to the extent the Exchange has requested confidential treatment in accordance with 17 CFR 145.9, are available for inspection at the Commission's Office of the Secretariat, 1155 21st Street, NW, Washington, DC 20581, and may be obtained by mail at that address or by telephone at (202) 418–5100.

Petition materials subject to CBT's request for confidential treatment may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the above address in accordance with 17 CFR 145.7 and 145.8.

The CBT timely submitted its original petition before October 26, 1993, the effective date of the dual trading prohibition. Therefore, application of the prohibition against the contract markets covered by the petition has been suspended in accordance with Commission Regulation 155.5(d)(5) and will remain suspended until the petition is acted upon.

Issued in Washington, DC, on February 12, 1997.

Jean A. Webb,

Secretary.

[FR Doc. 97–4165 Filed 2–19–97; 8:45 am]

BILLING CODE 6351–01–M

Chicago Mercantile Exchange Update of Petition for Exemption From the Dual Trading Prohibition in Affected Contract Markets

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of update of petition for exemption from the prohibition on dual trading in affected contract markets.

SUMMARY: Chicago Mercantile Exchange ("CME" or "Exchange") has submitted an update of its October 22, 1993 petition for exemption from the prohibition against dual trading in eight contract markets. The Exchange had re-submitted a corrected petition on December 2, 1993. Upon CME's request, the Commission informed the Exchange that it could submit updated audit trail data by March 31, 1997. Copies of the entire file, including any future submissions, will be available to the public upon request, except to the extent the Exchange has requested confidential treatment.

ADDRESSES: Copies of the file are available from the Office of the Secretariat, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581. Reference should be made to the CME dual trading exemption petition file.

FOR FURTHER INFORMATION CONTACT: Shauna Turnbull, Special Counsel, or Evan Davis, Staff Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581; telephone: (202) 418–5490.

SUPPLEMENTARY INFORMATION: Pursuant to Section 4j(a)(3) of the Commodity Exchange Act and Regulation 155.5 thereunder, a board of trade may submit a petition to the Commodity Futures Trading Commission ("Commission") to exempt any of its affected contract markets (markets with an average daily volume of over 8,000 contracts traded for four consecutive quarters) from the prohibition against dual trading. Regulation 155.5(d)(6) authorizes the Director of the Division of Trading and Markets to publish notice of each exemption petition deemed complete under Regulation 155.5(d) and to make the petition available to the public as required by Section 4j(a)(5) of the Act.

CME originally submitted a petition for dual trading exemption on October 22, 1993. After the Commission requested additional information, the Exchange submitted a corrected petition on December 2, 1993. That petition was made available to the public by a notice of availability published in the Federal Register on December 22, 1993.

Pursuant to a request from the Commission, CME submitted a dual trading exemption petition update dated January 21, 1997 for its contract markets in Deutsche Mark, Eurodollar, Japanese Yen, Live Cattle, Standard & Poor's 500, and Swiss Franc futures contracts, and options on Eurodollar and Standard & Poor's 500 futures contracts. Upon CME's request, the Commission informed the Exchange that it could submit updated audit trail data by March 31, 1997.

Copies of the file containing all these materials and any future submissions, except to the extent the Exchange has requested confidential treatment in accordance with 17 CFR 145.9, are available for inspection at the Commission's Office of the Secretariat, 1155 21st Street, NW, Washington, DC 20581, and may be obtained by mail at that address or by telephone at (202) 418–5100.

Petition materials subject to CME's request for confidential treatment may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the above address in accordance with 17 CFR 145.7 and 145.8.

The CME timely submitted its original petition before October 26, 1993, the effective date of the dual trading prohibition. Therefore, application of the prohibition against the contract markets covered by the petition has been suspended in accordance with Commission Regulation 155.5(d)(5) and will remain suspended until the petition is acted upon.

Issued in Washington, DC, on February 12, 1997.

Jean A. Webb,

Secretary.

[FR Doc. 97–4164 Filed 2–19–97; 8:45 am]

BILLING CODE 6351–01–M

New York Cotton Exchange Petition for Exemption From the Dual Trading Prohibition in an Affected Contract Market

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of petition for exemption from the prohibition on dual trading in an affected contract market.

SUMMARY: New York Cotton Exchange ("NYCE" or "Exchange") submitted a petition for exemption from the prohibition against dual trading in one contract market on September 28, 1995. The Exchange submitted a supplement to its original petition, which the Commission received on November 21, 1995. The Commission has initiated an audit trail test. NYCE will be given an opportunity to update its petition. Copies of the entire file, including the eventual results of the audit trail test and any future submissions, will be available to the public upon request, except to the extent the Exchange has requested confidential treatment.

ADDRESSES: Copies of the file containing all these materials, the eventual retest results and any future submissions are available from the Office of the Secretariat, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581. Reference should be made to the NYCE dual trading exemption petition file.

FOR FURTHER INFORMATION CONTACT: Duane Andresen, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW,

Washington, DC 20581; telephone: (202) 418–5490.

SUPPLEMENTARY INFORMATION: Pursuant to Section 4j(a)(3) of the Commodity Exchange Act and Regulation 155.5 thereunder, a board of trade may submit a petition to the Commodity Futures Trading Commission ("Commission") to exempt any of its affected contract markets (markets with an average daily volume of over 8,000 contracts traded for four consecutive quarters) from the prohibition against dual trading. Regulation 155.5(d)(6) authorizes the Director of the Division of Trading and Markets to publish notice of each exemption petition deemed complete under Regulation 155.5(d) and to make the petition available to the public as required by Section 4j(a)(5) of the Act.

NYCE originally submitted a petition for dual trading exemption for its Cotton 2 futures contract on September 28, 1995, within 30 days after the contract market became an affected market. After the Commission requested additional information, the Exchange submitted a supplement on November 21, 1995.

The Commission is currently testing the Exchange's audit trail system to determine its accuracy. In conjunction with this test, the Exchange will be given an opportunity to update its petition.

Copies of the file and any future updates, except to the extent the Exchange has requested confidential treatment in accordance with 17 CFR 145.9, are available for inspection at the Commission's Office of the Secretariat, 1155 21st Street, NW, Washington, DC 20581, and may be obtained by mail at that address or by telephone at (202) 418–5100.

Petition materials subject to NYCE's request for confidential treatment may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the above address in accordance with 17 CFR 145.7 and 145.8.

Application of the prohibition against the contract market covered by the petition has been suspended in accordance with Commission Regulation 155.5(d)(5) and will remain suspended until the petition is acted upon.

Issued in Washington, DC, on February 12, 1997.

Jean A. Webb,

Secretary.

[FR Doc. 97–4162 Filed 2–19–97; 8:45 am]

BILLING CODE 6351–01–M

The Comex Division of the New York Mercantile Exchange's Update of Petition for Exemption From the Dual Trading Prohibition in Affected Contract Markets

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of update of petition for exemption from the prohibition on dual trading in affected contract markets.

SUMMARY: The Comex Division of the New York Mercantile Exchange ("Comex" or "Exchange") has submitted an update of its October 21, 1993 petition for exemption from the prohibition against dual trading in two contract markets (which was submitted by its predecessor Commodity Exchange, Inc). The Exchange had resubmitted a corrected petition on November 30, 1993 and also submitted a supplement on January 5, 1994. Copies of the entire file are available to the public upon request, except to the extent the Exchange has requested confidential treatment.

ADDRESSES: Copies of the file are available from the Office of the Secretariat, Commodity Futures Trading Commission, 1155 21st Street NW, Washington, DC 20581. Reference should be made to the Comex dual trading exemption petition file.

FOR FURTHER INFORMATION CONTACT: Duane Andresen, Special Counsel, or Evan Davis, Staff Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street NW, Washington, DC 20581; telephone: (202) 418–5490.

SUPPLEMENTARY INFORMATION: Pursuant to Section 4j(a)(3) of the Commodity Exchange Act and Regulation 155.5 thereunder, a board of trade may submit a petition to the Commodity Futures Trading Commission ("Commission") to exempt any of its affected contract markets (markets with an average daily volume of over 8,000 contracts traded for four consecutive quarters) from the prohibition against dual trading. Regulation 155.5(d)(6) authorizes the Director of the Division of Trading and Markets to publish notice of each exemption petition deemed complete under Regulation 155.5(d) and to make the petition available to the public as required by Section 4j(a)(5) of the Act.

Comex originally submitted a petition for dual trading exemption on October 21, 1993. After the Commission requested additional information, the Exchange submitted a corrected petition on November 30, 1993. That petition was made available to the public by a notice of availability published in the **Federal Register** on December 22, 1993. Thereafter, Comex submitted a January 5, 1994 supplement. Pursuant to a request from the Commission, Comex submitted a dual trading exemption petition update dated January 17, 1997 for its contract markets in gold and silver futures contracts.

Copies of the file containing all these materials, except to the extent the Exchange has requested confidential treatment in accordance with 17 CFR 145.9, are available for inspection at the Commission's Office of the Secretariat, 1155 21st Street NW., Washington, DC 20581, and may be obtained by mail at that address or by telephone at (202) 418–5100.

Petition materials subject to Comex's request for confidential treatment may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the above address in accordance with 17 CFR 145.7 and 145.8.

Comex timely submitted its original petition before October 26, 1993, the effective date of the dual trading prohibition. Therefore, application of the prohibition against the contract markets covered by the petition has been suspended in accordance with Commission Regulation 155.5(d)(5) and will remain suspended until the petition is acted upon.

Issued in Washington, DC, on February 12, 1997.

Jean A. Webb,

Secretary.

[FR Doc. 97–4163 Filed 2–19–97; 8:45 am]

BILLING CODE 6351–01–M

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, March 7, 1997.

PLACE: 1155 21st St., N.W., Washington, D.C. 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–4382 Filed 2–18–97; 3:56 pm]

BILLING CODE 6351–01–M

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, March 14, 1997.

PLACE: 1155 21st St., N.W., Washington, D.C. 9th Fl. Conference Room.

STATUS: closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–4383 Filed 2–18–97; 3:56 pm]

BILLING CODE 6351–01–M

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, March 21, 1997.

PLACE: 1155 21st St., N.W., Washington, D.C. 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–4384 Filed 2–18–97; 3:56 pm]

BILLING CODE 6351–01–M

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, March 28, 1997.

PLACE: 1155 21st St., N.W., Washington, D.C. 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–4385 Filed 2–18–97; 3:56 pm]

BILLING CODE 6351–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

AmeriCorps: State, National, Indian Tribes, and U.S. Territories Programs

AGENCY: Corporation for National and Community Service.

ACTION: Notice of Availability of Funds for New and Renewal Grants, Notice of Availability of 1997 Application Guidelines, and Responses to Public Comments.

SUMMARY: The Corporation for National and Community Service (Corporation) announces the availability of funds for new and renewal AmeriCorps program grants in the approximate amounts of: (1) $162 million for AmeriCorps State program grants (CFDA # 94.003); (2) $40 million for AmeriCorps National program grants (CFDA # 94.004); and (3) $5 million for AmeriCorps Indian Tribes and U.S. Territories program grants (CFDA # 94.004). The application forms and guidelines for completing these applications are contained in the (1) "1997 AmeriCorps Guidelines and Instructions for State Commissions", (2) the "AmeriCorps National 1997 Application Guidelines", and (3) the "1997 AmeriCorps Application Guidelines for Indian Tribes and U.S. Territories" respectively.

The second section of this notice addresses comments submitted in response to the Corporation notice published in the **Federal Register** on August 6, 1996, which described proposed changes to Corporation grant-making guidelines, policies, and priorities for 1997, and invited comments with regard to its AmeriCorps State, National, Indian Tribes, and U.S. Territories programs. The changes proposed for the Fiscal Year 1997 grant cycle were non-regulatory in nature. In response to this notice, the Corporation received comments from eleven organizations.

DATES: All AmeriCorps State program applications must be received by 3:30 p.m. (E.S.T.), April 15, 1997. Although AmeriCorps State program applications must be received at the Corporation by that date, applicants seeking AmeriCorps funds from State Commissions should contact their respective State Commissions since individual State Commissions set their own deadlines. Applicants for new AmeriCorps National grants must be received by 3:30 p.m. (E.S.T.), April 1, 1997. Notice regarding the renewal application deadline for AmeriCorps National grants will be provided to existing grantees at a later date. All AmeriCorps Indian Tribe and U.S. Territory applications must be received by 3:30 p.m. (E.S.T.), April 15, 1997.

ADDRESSES: All applications should be submitted to the Corporation for National Service, 1201 New York Avenue, NW, Box AS (for AmeriCorps States), Box ACD (for AmeriCorps National), Box ITT (for AmeriCorps Indian Tribes and U.S. Territories), Washington, D.C. 20525. Facsimiles will not be accepted.

FOR FURTHER INFORMATION CONTACT: Questions about the AmeriCorps State application process should be directed to the State Commission offices. Copies of the "AmeriCorps National 1997 Application Guidelines" and "1997 AmeriCorps Application Guidelines for Indian Tribes and U.S. Territories" should be requested by calling (202) 606–5000, extension 260. If potential applicants have questions about the AmeriCorps National and AmeriCorps Indian Tribes and U.S. Territories application guidelines or the application process, they should contact the Corporation for National Service, AmeriCorps Direct, 1201 New York Avenue, NW, Washington, D.C. 20525. Phone: (202) 606–5000, extension 125. Organizations interested in applying for the AmeriCorps National program funds may participate in conference calls on February 27, 1997, and March 7, 1997, during which Corporation staff will provide technical assistance to potential applicants. Both calls will commence at 10 AM and end at 12 PM (E.S.T.). To register for these calls, please contact Baqiya Adam at (202) 606–5000, extension 549. The Corporation staff will also conduct conference calls to provide technical assistance to potential applicants seeking AmeriCorps Indian Tribes and U.S. Territories program funds on March 3, 1997, and March 10, 1997. All calls will commence at 2 pm (E.S.T.). To register for these calls, please contact Rosa Harrison at (202)–606–5000, extension 433.

SUPPLEMENTARY INFORMATION: The Corporation's requirements for AmeriCorps programs are set forth in the Corporation's authorizing statute (42 U.S.C. section 12501 *et seq.*), its implementing regulations (45 CFR Part 2500 et seq.), and grant application guidelines. In addition to being thoroughly familiar with the statute and its implementing regulations,

prospective applicants should read the application carefully because, in some cases, more specific information is provided there.

I. AmeriCorps Program Fund Availability

AmeriCorps engages thousands of Americans on a full and part-time basis to help communities address their toughest challenges while earning support for college, graduate school, or job training.

A. AmeriCorps State

Approximately $74.5 million in program funds are available for new and renewal grants to States under State allotments, and approximately $87.5 million in program funds are available to States for new and renewal grants on a competitive basis.

The Corporation is committed to supporting only high-quality AmeriCorps programs, and State allotments are not entitlements.

(1) Eligible applicants.

States, the District of Columbia, and Puerto Rico, through a Corporation-approved State Commission or Alternative Administrative Entity (AAE), are eligible to submit a State application to the Corporation for funds available through the AmeriCorps State program.

(2) Estimated amount and quantity of awards.

The following chart details the amount of funding for which each State may apply. The chart also lists the number of new program applications that each State may submit for funding on a competitive basis.

State	Formula allotment	Number of allowable competitive submissions
Alabama	$1,142,224	8
Alaska	450,000	5
Arizona	1,132,813	8
Arkansas	667,066	7
California	8,483,903	29
Colorado	1,006,221	8
Connecticut	879,476	7
Delaware	450,000	5
District of Columbia	450,000	5
Florida	3,804,449	16
Georgia	1,933,942	10
Hawaii	450,000	5
Idaho	450,000	6
Illinois	3,177,168	14
Indiana	1,558,639	9
Iowa	763,213	7
Kansas	688,970	7
Kentucky	1,036,739	8
Louisiana	1,166,221	8
Maine	450,000	6
Maryland	1,354,248	9
Massachusetts	1,631,174	9
Michigan	2,564,671	12
Minnesota	1,237,987	8
Mississippi	724,399	7
Missouri	1,429,739	9
Montana	450,000	6
Nebraska	450,000	6
Nevada	450,000	6
New Hampshire	450,000	6
New Jersey	2,133,870	11
New Mexico	452,648	6
New York	4,870,809	19
North Carolina	1,932,399	11
North Dakota	450,000	0
Ohio	2,994,693	13
Oklahoma	880,289	7
Oregon	843,467	7
Pennsylvania	3,242,136	14
Puerto Rico (1995)	1,008,515	8
Rhode Island	450,000	6
South Carolina	986,535	8
South Dakota	450,000	0
Tennessee	1,411,618	9
Texas	5,028,705	19
Utah	524,090	6
Vermont	450,000	5
Virginia	1,777,493	10
Washington	1,458,588	9
West Virginia	490,984	6
Wisconsin	1,375,850	9
Wyoming	450,000	5
Total	74,545,951	446

B. AmeriCorps National

Approximately $40 million is available for new and renewal grants through the AmeriCorps National program competition.

(1) Eligible applicants.

National nonprofit organizations, Indian Tribes, public or private nonprofit organizations (including labor organizations), subdivisions of states, and institutions of higher education are eligible to apply for AmeriCorps National program funds. For the purpose of this grant process, a national nonprofit organization is any nonprofit organization whose mission, membership, activities, or constituencies are national in scope. However, an organization described in Section 501(c)(4) of the Internal Revenue Code of 1986, 26 U.S.C. 501(c)(4), that engages in lobbying activities is not eligible to apply, serve as a host site for Member placements, or act in any type of supervisory role in the program.

Eligible applicants that propose programs in more than one State are encouraged to seek funding directly from the Corporation. These applicants may operate programs directly or provide subgrants to local chapters or affiliates. The Corporation strongly encourages applicants that propose programs in a single State to apply to that State's Commission on National and Community Service.

(2) Estimated amount and quantity of awards.

The Corporation expects to make fewer than forty (40) awards for new AmeriCorps National operating programs in Fiscal Year 1997 grant cycle. The grant size will vary by circumstance, need, and program model. The Corporation anticipates that it will not be able to fund AmeriCorps National programs at the same level as it has in the past because of a congressionally-imposed cap and a lack of available carryover funds. For this reason, grantees that have previously received AmeriCorps funding should consider significantly reducing the amount of requested support.

C. AmeriCorps Indian Tribes and U.S. Territories

Approximately $2.5 million is available for new and renewal AmeriCorps Indian Tribe program grants, and approximately $2.5 million is available for new and renewal AmeriCorps U.S. Territories program grants under a population-based formula.

(1) Eligible applicants.

Eligible applicants include Indian Tribes and U.S. Territories. For the purposes of this grant program an Indian Tribe is an: (a) Indian Tribe, band, nation, or other organized group or community, including any Native village, as defined in 43 U.S.C. section 1602(c), whether organized traditionally or pursuant to the Act of June 18, 1934 (commonly known as the "Indian Reorganization Act," 26 U.S.C. section 1461 *et seq.*); (b) any Regional Corporation or Village Corporation, as defined in 43 U.S.C. section 1602 (g) or (j), respectively, that is recognized as eligible for the special programs and services provided by the United States under Federal law to Indians because of their status as Indians; and (c) any tribal organization controlled, sanctioned, or chartered by an entity described in (a) or (b) of this paragraph. For the purposes of this grant program, U.S. Territories are (a) American Samoa, (b) the Commonwealth of the Northern Mariana Islands, (c) Guam, and (d) the U.S. Virgin Islands.

(2) Estimated amount and quantity of awards.

Eligible applicants may apply for operating funds to establish AmeriCorps programs. The Corporation expects to make fewer than ten (10) AmeriCorps Indian Tribe program grants, and fewer than ten (10) AmeriCorps U.S. Territories program grants. The average award under each program will be under $300,000.

II. Education Awards

On September 4, 1996, the Corporation published a *Notice of availability of education awards* that describes the AmeriCorps Education Award program. Applicants for AmeriCorps State, National, and Tribes and U.S. Territories program grants are advised that instead of applying through the AmeriCorps Education Award program, they may include in their AmeriCorps State, National, or Tribes and U.S. Territories applications a request for positions for participants who receive only education awards from the Corporation. AmeriCorps State, National, or Indian Tribes and U.S. Territories programs that include these positions are subject to all of the requirements that apply to AmeriCorps State, National, or Indian Tribes and U.S. Territories programs.

III. Professional Corps

The Corporation particularly invites applications for professional corps programs. A professional corps program is defined in 42 U.S.C. section 12572(a)(8). These programs must be sponsored by public or private nonprofit employers who agree to pay 100 percent of AmeriCorps Members' salaries and benefits (excluding the national service education award which is provided by the Corporation). Members' salaries may exceed the maximum living allowance in other national service programs.

IV. 16-Year-Old AmeriCorps Participants

In general, an individual must be at least 17 years of age at the time he or she begins the term of service in order to be eligible for receipt of an education award. However, certain 16-year-olds may enroll as AmeriCorps participants. Applicants who have an interest in enrolling 16-year-olds are advised that the participant must be an "out of school youth" as defined in 42 U.S.C. section 12511(16) and serve in one of two types of youth corps programs described in the authorizing statute. (See 42 U.S.C. section 12572(a)(2) and (a)(9)).

V. Responses to Public Comments on Proposed Changes to Corporation Grant Making Guidelines

A. Renewals, Re-competition and New Applications 1997 Issue Area Priorities

The Corporation received one comment requesting that specific language be added to permit existing or former operating sites of AmeriCorps National grantees to apply for new grant funds through State Commissions while continuing their contractual relationship for training and technical assistance with the AmeriCorps National grantee organization. The Corporation decided not to add the language because any grantee or subgrantee can currently contract with any other national, State or local organization for technical assistance. Therefore, we do not need to specifically state this for operating sites or subgrantees of AmeriCorps National grantees only.

B. 1997 Priorities

The Corporation received several comments on the Corporation's new FY97 focus on children and youth within the four issue areas of educational, public safety, environmental and other human needs. The comments were divided equally between those favoring the new priorities and those suggesting that the priorities needed some clarification and should not be focused so narrowly. The Corporation has decided to maintain its focus on children and youth for the 1997 priorities. However, clarifying language was added to recognize that some high quality programs have different expertise and would dilute their effectiveness if they redesign their programs to focus on children and youth. Those programs are encouraged to apply if they are high quality programs and can demonstrate compelling needs. Applicants who received funding from the Corporation for the first time in 1995 or 1996 are considered renewals and therefore, may continue to address areas covered by the 1995 or 1996 priorities and need not change their focus to meet the Corporation's new priority focus on children and youth.

C. Summer Programs

The Corporation received several comments requesting some clarification on summer programs and a recommendation that the applicants be encouraged to apply for summer programs that are operated as components of AmeriCorps programs, rather than as free-standing programs. The Corporation added clarifying language to this section of the grant application guidelines indicating that the Corporation encourages, but does not require, applicants to operate summer programs as a component of their year-round AmeriCorps programs and to ensure that a summer component is consistent with the overall mission of the applying organization and its AmeriCorps programs.

D. State Coordination with AmeriCorps National Applicants

The Corporation received four comments about the grant application guideline language related to coordination between State Commissions and AmeriCorps National applicants. The comments were equally divided between concurrence with the language and requests for changes. Based on the comments received, the Corporation decided not to change the requirements for coordination and to continue such requirements. Additional language was added to the grant application guidelines describing the Corporation's expectations of AmeriCorps National applicants and of State Commissions with regard to better coordination between the two.

E. Issue Area Specialization

The Corporation received three comments suggesting that limiting programs to one issue area may restrict their ability to raise match funds and fulfill program objectives. The Corporation's experience is that when programs try to meet many needs at once, it is more difficult to demonstrate impact and fulfill program objectives. Therefore, the Corporation will continue to encourage programs to focus their efforts on one issue area. The grant application guidelines do recognize that certain types of programs (e.g., volunteer generator models or programs operating in rural areas) may not be able to focus on singles issues. Programmatic needs or designs that lead an applicant to focus on multi-issues will be taken into consideration during the grant application review and selection processes.

F. Program Focus and Service Ethic

Several responders suggested that language in the grant application guidelines which indicates that the Corporation will not fund programs whose primary focus is job training should be softened. However, given the requirements in the National and Community Service Act of 1990, as amended, and its implementing regulations, the emphasis on imparting the service ethic and providing service to communities is appropriate. The Corporation did change the word "primary" to "major" to clarify the Corporation's intent to continue to support programs that do assist participants in job development activities, so long as it is not the major focus of the program.

G. Living Allowance

Four responders recommended that the Corporation continue its current

flexibility concerning the amount of living allowances provided to AmeriCorps members. This recommendation suggests a misunderstanding of the Corporation's intent. The current language does not require programs to pay the lowest living allowance. It only encourages it. The Corporation has emphasized this in the final grant application guidelines, but continues to encourage programs to offer the minimum statutorily permitted living allowances—not more than the average annual subsistence allowance provided to VISTAs.

H. Corporation Cost per Member

All responders addressed this issue in their recommendations. Some indicated that lowering the allowable cost per Member would have a negative impact on program quality and the Corporation should take varying local conditions and program designs into account and allow for some flexibility. Others felt the reduction in Member costs is within reason, but wanted some clarification concerning what was included in the calculation.

The Corporation cannot increase the limit on the Corporation share of the cost per Member, but it does provide flexibility to applicants by allowing them to meet the target as an average across all programs within the application rather than as an absolute number for each program. For example, a single State must meet the Corporation's required maximum cost per member as its average cost per member in that State. In addition, the Corporation only limits the cost per member of the Corporation share. Programs are free to have a higher cost per member so long as it comes from a funding source other than the Corporation. The Corporation also delineated in the grant application guidelines all items included in the calculation of cost per Member.

I. Timelines

Only one responder requested that the deadlines for grant applications be extended. Other responders expressed appreciation that the Corporation is providing more time between grant application deadlines and actual program start-up. One responder asked that the grant application deadlines remain the same, but that the Corporation make final decisions at least two months before programs are expected to begin.

The Corporation cannot change the grant application deadlines and still meet a reasonable timeline for final decisions. Therefore, the grant application deadlines will remain as published in the **Federal Register** and reflected in this notice. Currently, the Corporation does notify potential grantees of decisions at least two months before programs are expected to begin. However, the actual grant award letters may not reach the grantee two months ahead of start dates.

J. Application Evaluation and Selection of New Programs

The Corporation received several comments concerning the "ability to monitor" section of the review criteria. Several felt that the Corporation needed to reexamine its assessment that individual placements are "hard to monitor" and suggested that the "ability to monitor" criterion be dropped from the application review criteria. In addition, one responder recommended that the Corporation base its peer review criteria on results rather than systems.

The Corporation considered these comments and their bases and decided not to eliminate the "ability to monitor" criterion, and to add language in the grant application guidelines asking applicants with individual placements to describe what they will do to ensure that they would be able to monitor their sites effectively despite their geographically-dispersed locations.

The Corporation has not changed its overall review criteria because those criteria do place a heavy emphasis on results. Currently, the Corporation's review criteria base 65 percent of the evaluation on results related to getting things done, strengthening communities and developing Members, and the ability of the program to evaluate those results.

K. Miscellaneous

The Corporation also received other comments requesting some clarification on how the selection criteria will be applied and whether or not organizations that have already received funding will be eligible to apply. Additional language was added to indicate that organizations that have already received three years of funding from the Corporation are eligible to apply but will be competed as new applicants rather than renewal applicants. The Corporation also added language that distinguishes the Corporation's request for individual programs to focus on fewer priority areas from the Corporation's need to ensure that we select programs that meet priorities in all four issue areas within the overall group of selected programs. The language states that, while we encourage individual programs to focus on an issue area, the Corporation will ensure that it has diversity among priorities across the programs that it funds.

Dated: February 14, 1997.

Barry W. Stevens,

Acting General Counsel, Corporation for National and Community Service.

[FR Doc. 97–4192 Filed 2–19–97; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Army

Army Education Advisory Committee

AGENCY: U.S. Army War College.

ACTION: Notice of Meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following committee meeting:

Name of Committee: U.S. Army War College Subcommittee of the Army Education Advisory Committee.

Date of Meeting: April 7, 8, and 9, 1997.

Place: Root Hall, U.S. Army War College, Carlisle Barracks, Pennsylvania.

Time: 8:30 A.M.–5:00 P.M.

Proposed Agenda: Receive information briefings, view facilities, observe classes, conduct discussions with faculty and students, and provide guidance concerning accreditation and areas for improvement.

FOR FURTHER INFORMATION CONTACT: Colonel Terry J. Young, Box 118, U.S. Army War College, Carlisle Barracks, PA 17013 or phone (717) 245–3907.

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee after receiving advance approval for participation. To request advance approval or obtain further information, contact Colonel Terry J. Young at the above address or phone number.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–4171 Filed 2–19–97; 8:45 am]

BILLING CODE 3710–08–M

CGSC Advisory Committee

AGENCY: U.S. Army Command and General Staff College.

ACTION: Notice of meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following committee meeting:

Name of Meeting: U.S. Army Command and General Staff College (CGSC) Advisory Committee.

Dates of Meeting: 30 April—2 May 1997.

Place: Bell Hall, Room 113, Fort Leavenworth, Kansas 66027–1352.

Time: 1700–2200, 30 April 1997; 0730–2100, 1 May 1997; 0730–2100, 2 May 1997.

Proposed Agenda:

1700–2200, 30 April: Review of CGSC educational program.
0730–2100, 1 May: Continuation of review.
0730–1030, 2 May: Continuation of review.
1030–1130, 2 May: Executive Session.
1300–1400, 2 May: Report of Commandant.

FOR FURTHER INFORMATION CONTACT: Philip J. Brookes, USACGSC Advisory Committee, One Reynolds Ave., Bell Hall, Room 123, Fort Leavenworth, Kansas 66027–1352; Phone (913) 684–2741.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is for the Advisory Committee to examine the entire range of college operations and, where appropriate, to provide advice and recommendations to the College Commandant and faculty.

The meeting will be open to the public to the extent that space limitations of the meeting location permit. Because of these limitations, interested parties are requested to reserve space by contacting the Committee's Executive Secretary: Philip J. Brookes at the above address or phone number.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–4173 Filed 2–19–97; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for Cherry Creek Dam Safety Evaluation Denver, Colorado

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: Cherry Creek Dam was constructed in the 1940's by the Corps of Engineers primarily to provide flood control for the City of Denver. Although the project became operational in 1950, the facility was operated without a permanent pool until 1958. The State of Colorado, through its Department of Parks and Outdoor Recreation, operates the project as Cherry Creek State Park. A 1993 reconnaissance-level report by the Corps revealed that the dam does not meet the level of safety currently required for such a project when located upstream from a major metropolitan area. The proposed action is to provide increased flood storage capacity, an increase in emergency spillway capacity, or a combination of the two, so as to bring the project up to current dam safety guidelines/requirements.

In accordance with the National Environmental Policy Act of 1969 and implementing regulations, an environmental impact statement will be prepared to analyze the impacts of the proposed action and alternatives. Public scoping meetings have been scheduled to solicit comments regarding the scope of the environmental studies.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and Environmental Impact Statement should be directed to: Ms. Candace M. Thomas, Chief, Environmental Analysis Branch,U.S. Army Corps of Engineers, 215 North 17th Street, Omaha, Nebraska 68102–4978; telephone (402) 221–4598, FAX (402) 221–4886.

SUPPLEMENTARY INFORMATION: A selected plan has yet to be defined. A number of possible alternatives were identified in the 1993 report; it is planned to refine the number of alternatives in the current study. The alternatives most likely to be studied in detail in the EIS are as follows:

- No Federal Action.
- A dam rise.
- A supplemental spillway.
- A combination of dam raise and addition of a supplemental spillway.
- Supplemental upstream storage.
- Other, partial solutions such as closing the existing spillway and/or changes to the existing outlet works capacity.

An afternoon public open house and evening scoping meeting have been scheduled for March 4, 1997 at 2:00 p.m. and 7:00 p.m. respectively at the Holiday Inn Denver Southwest, 3200 South Parker Road, Aurora, Colorado. The purpose of these meetings is to solicit input on issues, alternatives to be evaluated, and potential environmental effects. Written comments will also be solicited.

Potential significant environmental issues include possible impacts to threatened and endangered species, wetlands, upstream areas of special biological significance, and social and economic impacts to upstream and downstream residences and businesses.

Other applicable and pertinent environmental review and consultation requirements will be undertaken simultaneously with the NEPA process, including requirements of the Endangered Species Act, Fish and Wildlife Coordination Act, National Historic Preservation Act, Clear Water Act, Clear Air Act, and others.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–4172 Filed 2–19–97; 8:45 am]

BILLING CODE 3710–62–M

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, February 26, 1997. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 2:00 p.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

An informal conference among the Commissioners and staff will be held at 11:00 a.m. at the same location and will include a presentation on the Christina River Basin point and nonpoint study; a demonstration on the New Castle County GIS program; discussion of proposed amendments to the Southeastern Pennsylvania Ground Water Protected Area Regulations and a review of Basin States' policies on discharges to intermittent streams.

In addition to the subjects listed below which are scheduled for public hearing at the business meeting, the Commission will also address the following matters: Minutes of the January 22, 1997 business meeting; announcements; General Counsel's report; report on Basin hydrologic conditions, a resolution concerning funding in connection with the Christina Basin study and public dialogue.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact:

1. New York State Department of Environmental Conservation (NYSDEC) D–77–20 CP (Revision No. 3). An application to add the schedule of experimental augmented conservation releases for Cannonsville Reservoir to the current experimental augmented conservation release program of the Pepacton and Neversink Reservoirs. Along with the Cannonsville Reservoir program, the applicant requests an

extension of the existing experimental augmented conservation release program for Pepacton and Neversink Reservoirs for a three year period. New release valves at the Cannonsville Reservoir allow a more flexible release schedule and make it feasible to reserve additional storage for thermal stress release when needed. The Neversink Reservoir is located in Sullivan County and the Cannonsville and Pepacton Reservoirs are located in Delaware County, all in New York State.

2. *Merrill Creek Owners Group (MCOG) D–77–110 CP (Amendment No. 10).* An application for inclusion of PECO Energy Company's Fairless Hills Generating Station (a 72 megawatt combustion turbine facility formerly owned by U.S. Steel and approved for operation by PECO via Docket No. D–96–63 on January 22, 1997) as a Designated Unit to Table A (Revised) of the Merrill Creek Reservoir project. This action will allow releases from the reservoir to make up consumptive water use of the plant during drought-periods. MCOG expects the Fairless Hills Generating Station to have maximum monthly consumptive water uses of 385,000 gallons per day (gpd) during winter, 124,000 gpd during summer, and 324,000 gpd during spring and fall. The plant is located at the existing U.S. Steel Fairless Hills plant site in Falls Township, Bucks County, Pennsylvania.

3. *Pennsylvania-American Water Company D–85–86 CP RENEWAL 2.* An application for the renewal of a ground water withdrawal project, previously approved under the ownership of Pocono Farms East Water Company, to supply up to 4.68 million gallons (mg)/30 days of water to the applicant's Whispering Glen and Hickory Glen systems from Well Nos. 2E, 3E and 4E. Commission approval on April 24, 1991 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 4.68 mg/30 days. The project is located in Coolbaugh Township, Monroe County, Pennsylvania.

4. *Crystal Water Supply Company, Inc. D–86–22 CP RENEWAL 2.* An application for the renewal of a ground water withdrawal project to supply up to 11.23 mg/30 days of water to the applicant's distribution system from Well Nos. A, B and 1. Commission approval on December 11, 1991 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 11.23 mg/30 days. The project is located in the Town of Thompson, Sullivan County, New York.

5. *Lake Wynonah Municipal Authority D–91–20 CP RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to 12 mg/30 days of water to the applicant's distribution system from Well Nos. 1, 2, 3 and 6. Commission approval on August 14, 1991 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 12 mg/30 days. The project is located in South Manheim and Wayne Townships, Schuylkill County, Pennsylvania.

6. *City of Coatesville Authority D–96–16 CP.* An application to amend the City of Coatesville Authority (CCA) Docket by extension of the time for compliance with Docket DECISION II.e. which requires the CCA to submit an Operating Plan for conjunctive use of its West Branch Brandywine Creek withdrawal with its multiple-source water supply system including the Rock Run and Hibernia (renamed Chambers Lake) Reservoirs. The project withdrawal is located in West Caln Township, Chester County, Pennsylvania.

7. *Borough of West Grove D–96–26 CP.* An application to replace the withdrawal of water from Well Nos. 1 and 6 in the applicant's water supply system which has been contaminated by leakage of gasoline from an underground storage tank. The applicant requests that the withdrawal from replacement Well No. 4 (Harmony Road) be limited to 4.5 mg/30 days, and that the total withdrawal from all wells remain limited to 10.8 mg/30 days. The project is located in West Grove Borough, Chester County, Pennsylvania.

8. *Paunnacussing Founders, Inc. D–96–42.* An application for approval of a ground water withdrawal project to supply up to 6.0 mg/30 days of water to the applicant's Look-A-Way Golf Club from new Well Nos. 2 and 3, and to limit the withdrawal from all wells to 6.0 mg/30 days. The project is located in Buckingham Township, Bucks County in the Southeastern Pennsylvania Ground Water Protected Area.

9. *Fox Valley Community Services, Inc. D–96–60.* A project to modify and rerate the applicant's existing sewage treatment plant (STP) from 0.056 million gallons/day (mgd) to 0.074 mgd. The STP will continue to provide secondary biological treatment via the extended aeration activated sludge process; after modification to equalize flow (and other minor modifications), the STP will be able to increase its capacity to 0.074 mgd. The STP will continue to serve the Fox Valley residential development in Concord Township, Delaware County, Pennsylvania. The project is located in Concord Township just south of U.S. Route 1 and north of the West Branch Chester Creek to which it will continue to discharge.

10. *Simpson Paper Company D–97–3.* An application for approval of an existing combined ground water and surface water withdrawal project to supply up to 60 mg/30 days of water to the applicant's paper mill from existing Well Nos. 1 and 2 and Bubbling Springs, and to limit the withdrawal from the wells to 42 mg/30 days, and from Bubbling Springs to 60 mg/30 days. The project withdrawals are located in Whitemarsh Township, Montgomery County in the Southeastern Pennsylvania Ground Water Protected Area. Bubbling Springs is situated on Spring Mill Run, a tributary of the Schuylkill River.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Dated: February 10, 1997.

Susan M. Weisman,

Secretary.

[FR Doc. 97–4093 Filed 2–19–97; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada Test Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada Test Site.

DATES: Wednesday, March 5, 1997: 5:30 p.m.—9:00 p.m.

ADDRESSES: Community College of Southern Nevada (Cheyenne Avenue Campus), High Desert Conference and Training Center, Room 1422, 3200 East Cheyenne Avenue, North Las Vegas, Nevada 89030–4296, 702–651–4294.

FOR FURTHER INFORMATION CONTACT: Kevin Rohrer, U.S. Department of Energy, Office of Environmental Management, P.O. Box 98518, Las Vegas, Nevada 89193–8513, phone: 702–295–0197.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

February Agenda

5:30 pm Call to Order
5:40 pm Presentations
7:00 pm Public Comment/Questions
7:30 pm Break
7:45 pm Review Action Items
8:00 pm Approve Meeting Minutes
8:10 pm Committee Reports
8:45 pm Public Comment
9:00 pm Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kevin Rohrer, at the telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Kevin Rohrer at the address listed above.

Issued at Washington, DC on February 14, 1996.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 97–4147 Filed 2–19–97; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. MT97–3–000]

El Paso Natural Gas Company; Notice of Tariff Filing

February 13, 1997.

Take notice that on February 3, 1997, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, Fourth Revised Sheet No. 357, to become effective March 5, 1997.

El Paso states that the tendered tariff sheet revises the identification of marketing affiliates to state that affiliate contract information is provided on El Paso's Electronic Bulletin Board.

El Paso states that copies of the filing have been served upon all interstate pipeline system transportation customers of El Paso and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–4128 Filed 2–19–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG96–13–004]

K N Interstate Gas Transmission Company; Notice of Filing

February 13, 1997.

Take notice that on February 7, K N Interstate Gas Transmission Company (KNI) submitted a response to the Commission's December 24, 1996 order.[1]

KNI states that copies of this filing have been mailed to all parties on the official service list compiled by the Secretary in this proceeding. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before February 28, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

[1] 77 FERC ¶61,309 (1996).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–4129 Filed 2–19–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–320–007]

Koch Gateway Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

February 13, 1997.

Take notice that on February 10, 1997, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheet, to be effective February 5, 1997:

Substitute Second Revised Sheet No. 29

Koch states that the above-mentioned tariff sheet is being filed to correct an administrative error on Second Revised Sheet No. 29 filed in Docket No. RP96–320 on February 5, 1997.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's regulations. All such protest must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–4127 Filed 2–19–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–250–000]

NorAm Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

February 13, 1997.

Take notice that on February 10, 1997, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets, to be effective May 1, 1997:

Second Revised Sheet No. 170
Original Sheet No. 170A
Second Revised Sheet No. 280
Original Sheet No. 280A
First Revised Sheet No. 282
Original Sheet No. 282A
Original Sheet No. 360

Original Sheet No. 361
Original Sheet No. 361A
Original Sheet No. 362

NGT states that the filing revises the capacity release provisions of NGT's FERC Gas Tariff to provide for a Form of Master Capacity Release Service Agreement (MCRSA) and Addendum to be executed by replacement Shippers. Currently, a replacement Shipper must execute a Service Agreement under the appropriate Rate Schedule for each individual release.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–4133 Filed 2–19–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–237–000]

Panhandle Eastern Pipeline Company and Southwest Gas Storage Company; Notice of Application

February 13, 1997.

Take notice that on February 7, 1997, Panhandle Eastern Pipe Line Company (Panhandle) and Southwest Gas Storage Company (Southwest), both located at P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP97–237–000 an application, pursuant to Sections 7(b) and (c) of the Natural Gas Act, authorizing (1) Panhandle to abandon its Howell (Michigan), Waverly Illinois), and North Hopeton (Oklahoma) storage fields, including all cushion gas and appurtenant facilities, along with the cushion gas supplied by Panhandle to Southwest's Borchers North (Kansas) Storage Field, by transfer to Southwest; (2) Panhandle to abandon the lease of cushion gas to Southwest under Rate Schedule LS–1; (3) Southwest to acquire and operate all of Panhandle's storage field assets; and (4) Southwest to abandon storage service provided to Panhandle under Rate Schedule S–1, all as more fully set forth in the application, which is on file with the Commission and open for public inspection.

It is indicated that Southwest is a wholly-owned subsidiary of Panhandle. It is also indicated that Panhandle will transfer the assets at net book value. Also, it is stated that Southwest would provide 35 Bcf of storage service to Panhandle under Rate Schedule FSS in Panhandle's field zone from the North Hopeton and Borchers North Storage Fields. It is indicated that Southwest would also provide 21.4 Bcf of storage service to Panhandle in Panhandle's market zone from the Waverly and Howell Storage fields. Panhandle states that it would in turn continue to provide unbundled, open-access storage and transportation to its customers using storage capacity provided by Southwest and third parties.

Southwest states that the existing injection and withdrawal profiles in its tariff are based on the performance of its single storage field, Borchers North Storage Field. It is indicated that, with the addition of the three storage fields, Southwest must modify the injection and withdrawal profiles by combining the Borchers North and North Hopeton areas as the West Area Storage Facilities and the Waverly and Howell storage fields as the East Area Storage Facilities. Southwest also proposes to modify its Rate Schedule FSS to reflect the addition of the East Area Storage facilities and a new delivery point for West Area Storage Facilities and to make minor modifications to Rate Schedules FSS and ISS. Southwest also proposes to institute a fuel tracker mechanism within Rate Schedules FSS and ISS to allow Southwest to track projected fuel requirements against actual fuel usage from the combined storage fields, with bi-annual adjustments to the fuel reimbursement rate at April 1 and November 1 of each year to coincide with the beginning of the injection and withdrawal periods, respectively.

It is stated that the Commission's approval of the abandonment and certificate authorization would permit Panhandle to further streamline its business operations in conjunction with the industry's restructuring under Order No. 636 and allow all of Panhandle's storage facilities to be owned by a single, non-jurisdictional company.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 6, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Panhandle or Southwest to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–4126 Filed 2–19–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–185–002]

Panhandle Eastern Pipe Line Company; Notice of Compliance Filing

February 13, 1997.

Take notice that on February 10, 1997, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A attached to the filing, proposed to be effective January 9, 1997. Panhandle asserts that the purpose of this filing is to comply with the Commission's order issued January 9, 1997 in docket No. RP97–185–000, 78 FERC ¶ 61,011 (1997).

Panhandle states that this compliance filing (1) deletes the indemnification clause in the exhibits to the negotiated rate service agreements and (2) clarifies that the provision allowing agreed-to billing adjustments of payment obligations and the crediting mechanism for releasing shippers with negotiated rates does not permit Panhandle to negotiate terms and conditions of service.

Panhandle states that copies of this filing are being served on all affected customers, applicable state regulatory agencies and all parties to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–4131 Filed 2–19–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–346–002]

Southern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

February 13, 1997.

Take notice that on February 10, 1997, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, (Tariff) the following tariff sheets to become effective February 23, 1997:

First Substitute Third Revised Sheet No. 140
First Substitute First Revised Sheet No. 140a
First Substitute Second Revised Sheet No. 141
Fourth Revised Sheet No. 142

Southern also proposed to withdraw Second Revised Sheet No. 139a submitted in its August 23, 1996 filing in the instant proceeding.

Southern states that its filing is in compliance with the Commission's January 30, 1997 order approving changes to its cashout procedure and directing Southern to file revised tariff sheets consistent with its order.

Southern states that copies of the filing will be served upon all parties designated on the official service list compiled by the Secretary in these proceedings.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 first Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR Section 385.211). All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–4130 Filed 2–19–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–7–29–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

February 13, 1997.

Take notice that on February 7, 1997, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1 which tariff sheets are enumerated in Appendix A attached to the filing.

Transco states that the purpose of the instant filing is to track rate changes attributable to storage service purchased from Texas Eastern Transmission Corporation (TETCO) under its Rate Schedule X–28 the costs of which are included in the rates and charges payable under Transco's Rate Schedule S–2 and transportation services purchased from Texas Gas Transmission Corporation (Texas Gas) under its Rate Schedule FT, the costs of which are included in the rates and charges payable under Transco's Rate Schedule FT–NT. The tracking filing is being made pursuant to Section 26 of the General Terms and Conditions of Transco's Volume No. 1 Tariff and Section 4 of Transco's Rate Schedule FT–NT.

Transco states that included in Appendices B and C attached to the filing are explanations of the rate changes and details regarding the computation of the revised Rate Schedule S–2 and FT–NT rates.

Transco states that copies of the filing are being mailed to each of its S–2 and FT–NT customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–4134 Filed 2–19–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–186–002]

Trunkline Gas Company; Notice of Compliance Filing

February 13, 1997.

Take notice that on February 10, 1997, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A attached to the filing, proposed to be effective January 9, 1997. Trunkline asserts that the purpose of this filing is to comply with the Commission's order issued January 9, 1997 in Docket No. RP97–186–000, 78 FERC ¶ 61,012 (1997).

Trunkline states that this compliance filing (1) deletes the indemnification clause in the exhibits to the negotiated rate service agreements; (2) modifies Section 11.2(b) of the General Terms and Conditions to recognize that rollover rights apply to negotiated rates that "equal or" exceed the maximum rate; and (3) clarifies that the provision allowing agreed-to billing adjustments of payment obligations and the crediting mechanism for releasing shippers with negotiated rates does not permit Trunkline to negotiate terms and conditions of service.

Trunkline states that copies of this filing are being served on all affected customers, applicable state regulatory agencies and all parties to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission,

888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97– 4132 Filed 2–19–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER97–1422–000, et al.]

PECO Energy Company, et al; Electric Rate and Corporate Regulation Filings

February 11, 1997.

Take notice that the following filings have been made with the Commission:

1. PECO Energy Company

[Docket No. ER97–1422–000]

Take notice that on January 23, 1997, PECO Energy Company (PECO) filed a Service Agreement dated January 14, 1997 with Plum Street Energy Marketing, Inc. (PLUM STREET) under PECO's FERC Electric Tariff Original Volume No. 5 (Tariff). The Service Agreement adds PLUM STREET as a customer under the Tariff.

PECO requests an effective date of January 14, 1997, for the Service Agreement.

PECO states that copies of this filing have been supplied to PLUM STREET and to the Pennsylvania Public Utility Commission.

Comment date: February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. PECO Energy Company

[Docket No. ER97–1423–000]

Take notice that on January 23, 1997, PECO Energy Company (PECO) filed a Service Agreement dated January 14, 1997 with Southern Energy Trading & Marketing, Inc. (SET&M) under PECO's FERC Electric Tariff Original Volume No. 5 (Tariff). The Service Agreement adds SET&M as a customer under the Tariff.

PECO requests an effective date of January 14, 1997, for the Service Agreement.

PECO states that copies of this filing have been supplied to SET&M and to the Pennsylvania Public Utility Commission.

Comment date: February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. PECO Energy Company

[Docket No. ER97–1424–000]

Take notice that on January 23, 1997, PECO Energy Company (PECO) filed a Service Agreement dated January 15, 1997 with Duke/Louis Dreyfus L.L.C. (DUKE/DREYFUS) under PECO's FERC Electric Tariff Original Volume No. 5 (Tariff). The Service Agreement adds DUKE/DREYFUS as a customer under the Tariff.

PECO requests an effective date of January 15, 1997, for the Service Agreement.

PECO states that copies of this filing have been supplied to DUKE/DREYFUS and to the Pennsylvania Public Utility Commission.

Comment date: February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Interstate Power Company

[Docket No. ER97–1425–000]

Take notice that on January 23, 1997, Interstate Power Company (IPW), tendered for filing a Transmission Service Agreement between IPW and Sonat Power Marketing, L.P. (Sonat). Under the Transmission Service Agreement, IPW will provide non-firm point-to-point transmission service to Sonat.

Comment date: February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. American Electric Power Service Corporation

[Docket No. ER97–1427–000]

Take notice that on January 24, 1997, the American Electric Power Service Corporation (AEPSC), tendered for filing executed service agreements with numerous parties, under the AEP Companies' Point-to-Point Transmission Service Tariffs. The Transmission Tariff has been designated as FERC Electric Tariff Original Volume No. 4, effective July 9, 1996. AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service billed on and after December 30, 1996.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Cinergy Services, Inc.

[Docket No. ER97–1429–000]

Take notice that on January 24, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Non-Firm Power Sales Standard Tariff (the Tariff) entered into between Cinergy and Southern Indiana Gas and Electric Company.

Cinergy and Southern Indiana Gas and Electric Company are requesting an effective date of January 27, 1997.

Comment date: February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. UtiliCorp United Inc.

[Docket No. ER97–1430–000]

Take notice that on January 24, 1997, UtiliCorp United Inc. (UtiliCorp), filed service agreements with Kansas City Power and Light Company for service under its non-firm point-to-point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. PEC Energy Marketing, Inc.

[Docket No. ER97–1431–000]

Take notice that on January 24, 1997, PEC Energy Marketing, Inc. (PEC), tendered for filing, pursuant to Rule 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective at the earliest possible time, but no later than 60 days from the date of its filing.

PEC intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where PEC sells electric energy, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party. As outlined in the petition, PEC is an affiliate of General Public Utilities Corporation, a public utility holding company and the parent company of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company.

Comment date: February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. DePere Energy Marketing, Inc.

[Docket No. ER97–1432–000]

Take notice that on January 24, 1997, DePere Energy Marketing, Inc. (DePere), tendered for filing, pursuant to Rule 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective at the earliest possible time, but no later than 60 days from the date of its filing.

DePere intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where DePere sells electric energy, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party. As outlined in the petition, DePere is an affiliate of General Public Utilities Corporation, a public utility holding company and the parent company of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company.

Comment date: February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Louisville Gas and Electric Company

[Docket No. ER97–1434–000]

Take notice that on January 24, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing executed Non-Firm Point-to-Point Transmission Service Agreements between LG&E and Commonwealth Edison Company and between LG&E and Michigan Public Power under LG&E's Open Access Transmission Tariff. LG&E originally filed these agreements unexecuted in Docket No. ER97–1126–000.

Comment date: February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Duke Power Company

[Docket No. ER97–1435–000]

Take notice that on January 30, 1997, Duke Power Company (Duke), tendered for filing Schedule MR quarterly transaction summaries for service under Duke's FERC Electric Tariff, Original Volume No. 3 for the quarter ended December 31, 1996.

Comment date: February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Southern Company Services, Inc.

[Docket No. ER97–1436–000]

Take notice that on January 30, 1997, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern Companies) filed a service agreement for additional native load transmission service between SCS, as agent for Southern Companies, and Southern Wholesale Energy, a department of SCS, as agent for Southern Companies, under Southern Companies Open Access Transmission Tariff.

Comment date: February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Southern Company Services, Inc.

[Docket No. ER97–1437–000]

Take notice that on January 30, 1997, Southern Company Services, Inc., acting on behalf of Gulf Power Company filed a Service Agreement by and among itself, as agent for Gulf Power Company, and Florida Public Utilities Company, pursuant to which Gulf Power Company will make wholesale power sales to Florida Public Utilities Company for a term in excess of one (1) year.

Comment date: February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Cinergy Services, Inc.

[Docket No. ER97–1438–000]

Take notice that on January 29, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Indiana Municipal Power Agency.

Cinergy and Indiana Municipal Power Agency are requesting an effective date of January 16, 1997.

Comment date: February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. American Electric Power Service Corporation

[Docket No. ER97–1439–000]

Take notice that on January 29, 1997, the American Electric Power Service Corporation (AEPSC), tendered for filing executed service agreements with numerous parties, under the AEP Companies' Point-to-Point Transmission Service Tariffs. The Transmission Tariff has been designated as FERC Electric Tariff Original volume No. 4, effective July 9, 1996. AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service billed on and after January 1, 1997.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Southern Company Services, Inc.

[Docket No. ER97–1440–000]

Take notice that on January 30, 1997, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (collectively referred to as "Southern Companies"), submitted a report of short-term transactions that occurred under the Market-Based Rate Power Sales Tariff (FERC Electric Tariff, Original Volume No. 4) during the period October 1, 1996 through December 31, 1996.

Comment date: February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Puget Sound Power & Light Company

[Docket No. ER97–1441–000]

Take notice that on January 30, 1997, Puget Sound Power & Light Company tendered for filing a Residential Exchange Termination Agreement. A copy of the filing was served upon the Bonneville Power Administration.

Puget states that the Termination Agreement terminates a Residential Purchase and Sale Agreement between Puget and Bonneville.

Comment date: February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Yadkin, Inc.

[Docket No. ER97–1442–000]

Take notice that on January 30, 1997, Yadkin, Inc., tendered for filing a summary of activity for the quarter ending December 31, 1996.

Comment date: February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Northeast Utilities Service Company

[Docket No. ER97–1443–000]

Take notice that on January 29, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with Consolidated Edison of New York, under the NU System Companies' Sale for Resale, Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to Consolidated Edison of New York.

NUSCO requests that the Service Agreement become effective January 1, 1997.

Comment date: February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Southern Indiana Gas and Electric Company

[Docket No. ER97–1444–000]

Take notice that on January 29, 1997, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing summary information on transactions that occurred during the period October 1, 1996 through December 31, 1996, pursuant to its Market Based Rate Sales Tariff accepted by the Commission in Docket No. ER96–2734–000.

Comment date: February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. The Dayton Power and Light Company

[Docket No. ER97–1445–000]

Take notice that on January 25, 1997, The Dayton Power and Light Company (Dayton), submitted service agreements establishing Southern Indiana Gas & Electric Company as a customer under the terms of Dayton's Market-Based Sales Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of this filing were served upon Southern Indiana Gas & Electric Company and the Public Utilities Commission of Ohio.

Comment date: February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Ohio Valley Electric Corporation, Indiana-Kentucky Electric Corporation

[Docket No. ER97–1446–000]

Take notice that on January 29, 1997, Ohio Valley Electric Corporation (including its wholly-owned subsidiary, Indiana-Kentucky Electric Corporation (OVEC)), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission service, dated January 27, 1997 (the Service Agreement) between Enron Power Marketing, Inc. (EPMI) and OVEC. OVEC proposes an effective date of January 27, 1997 and requests waiver of the Commission's notice requirement to allow the requested effective date. The Service Agreement provides for non-firm transmission service by OVEC to EPMI.

In its filing, OVEC states that the rates and charges included in the Service Agreement are the rates and charges set forth in OVEC's Order No. 888 compliance filing (Docket No. OA96–190–000).

A copy of this filing was served upon EPMI.

Comment date: February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Great Bay Power Corporation

[Docket No. ER97–1433–000]

Take notice that on January 28, 1997, Great Bay Power Corporation (Great Bay), tendered for filing a service agreement between Central Vermont Public Service Corporation and Great Bay for service under Great Bay's revised Tariff for Short Term Sales. This Tariff was accepted for filing by the Commission on May 17, 1996, in Docket No. ER96–726–000. The revised form of service agreement is proposed to be effective January 23, 1997.

Comment date: February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4123 Filed 2–19–97; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 2438–007 New York]

Seneca Falls Power Corporation; Notice of Availability of Final Environmental Assessment

February 13, 1997.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Hydropower Licensing has reviewed the application for license for the Waterloo and Seneca Falls Hydroelectric Project, located in Seneca, Yates, Schuyler, and Ontario Counties, New York, and has prepared a Final Environmental Assessment (FEA) for the project. In the FEA, the Commission's staff has analyzed the potential environmental impacts of relicensing the existing project and has concluded that approval of the project, with appropriate environmental protection measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the FEA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–4158 Filed 2–19–97; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 1984–056–Wisconsin; Project No. 11162–002]

Wisconsin River Power Co. & Wisconsin Power & Light Co.; Notice of Intent to Conduct Public Scoping Meetings and Site Visits

February 13, 1997.

The Federal Energy Regulatory Commission (FERC or the Commission) will hold public and agency scoping meetings on March 4, 6, and 7, 1997, for the preparation of an Environmental Assessment (EA) under the National Environmental Policy Act (NEPA) for the proposed relicensing of the Petenwell/Castle Rock Project No. 1984–056, and the issuance of an original license for the Prairie du Sac Project No. 11162–002. The two projects are located on the lower Wisconsin River in Dane, Sauk, Columbia, Adams, Juneau, and Wood Counties, Wisconsin.

In the December 31, 1996, **Federal Register**, the Commission published a notice of its intent to prepare an EA for the above listed projects.

Scoping Meetings

FERC staff will conduct two public scoping meetings and one agency scoping meeting. The public scoping meetings are primarily for public input while the agency scoping meeting will focus on resource agency and non-governmental organization (NGO) concerns. All interested individuals, organizations, and agencies are invited to attend one or all of the meetings, and assist the staff in identifying the scope of the environmental issues that should be analyzed in the EA. The times and locations of these meetings are as follows:

Public Scoping Meeting 1, Tuesday March 4, 1997, 7:00 p.m. to 10:00 p.m., Prairie du Sac Village Hall, 280 Washington Street, Prairie du Sac, WI 53578

Public Scoping Meeting 2, Thursday March 6, 1997, 7:00 p.m. to 10:00 p.m., Adams-Columbia Electric Cooperative, 401 E. Lake Street, Friendship, WI

Agency Scoping Meeting, Friday March 7, 1997, 8:30 a.m., Holiday Inn, 655 Frontage Road—Exit 87, Wisconsin Dells, WI 53965

To help focus discussions, a preliminary scoping document (Scoping Document 1) outlining subject areas to be addressed at the meeting will be distributed by mail to the parties on the FERC mailing list for each project. Copies of Scoping Document 1 will also be available at the scoping meetings.

Site Visits

Site visits will be held at the two projects; anyone with questions regarding the site visits should contact the appropriate contact person below. All participants must furnish their own transportation. The date and time of the site visits are as follows:

Date/Time	Project/Dev.	Contact
Monday March 3, 1997, 2:00 p.m.	Prairie du Sac	Linda Hinseth, WPLCo, (608) 252–3341.
Tuesday March 4, 1997, 8:30 a.m.	Prairie du Sac	Linda Hinseth, WPLCo, (608) 252–3341.
Wednesday March 5, 1997, 8:30 a.m.	Castle Rock Development	Dick Hilliker, WRPCo, (715) 422–3722.
Thursday March 6, 1997, 8:30 a.m.	Petenwell Development	Dick Hilliker, WRPCo, (715) 422–3722.

The location of the site visits will be as follows:

Project/Dev.	Location
Prairie du Sac	Wisconsin Power and Light Co. Prairie du Sac Dam Site Directions: From STH 78, turn east on Dam Road, continue east to project site.
Castle Rock	Castle Rock Development Dam Site Wisconsin River Power Co. Directions: From CTH Z, travel west on Edgewood Dr. to dam access road, continue west to project site.
Petenwell	Petenwell Development Dam Site Wisconsin River Power Co. Directions: From STH 21, travel north on 18th Ave., to dam access road, continue north to project site.

Objectives

At the scoping meetings, the staff will: (1) summarize the environmental issues tentatively identified for analysis in the planned EA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the relative depth of analysis for issues to be addressed in the EA; and (5) identify resource issues that are of lesser importance, and, therefore, do not require detailed analysis.

Procedures

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the projects under consideration. Individuals presenting statements at the meetings will be asked to sign in before the meeting starts and to clearly identify themselves for the record. Speaking time for attendees at the evening meetings will be determined before the meeting, based on the number of persons wishing to speak and the approximate amount of time available for the session. All speakers will be provided at least 5 minutes to present their views.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying the issues to be addressed in the EA.

Persons choosing not to speak at the meetings, but who have views on the issues, may submit written statements for inclusion in the public record at the meeting. In addition, written scoping comments may be field with the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426. All such filings should conform with the requirements outlined in detail in Scoping Document 1.

For further information, please contact Frank Karwoski of (202) 219–2782.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–4125 Filed 2–19–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5691–4]

Request for Comments: Implementation of the Oil Pollution Act Facility Response Plan Requirements; Agency Information Collection Activities up for Renewal (OMB Control Number: 2050–0135)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before April 21, 1997.

ADDRESSES: Oil Program Center, 401 M Street SW (5203G), Washington, DC 20460. Materials relevant to this ICR may be inspected by visiting Public Docket No. SPCC–5, located at 1235 Jefferson Davis Highway (ground floor), Arlington, Virginia. The docket is available for inspection between 9:00 a.m. and 4:00 p.m. Monday through Friday, excluding Federal holidays. Appointments are necessary and can be made by calling (703) 603–9232. A reasonable fee may be charged for copying docket material.

FOR FURTHER INFORMATION CONTACT: Bobbie Lively-Diebold, (703) 356–8774. Facsimile number: (703) 603–9116. Electronic address:

lively.barbara@epamail.epa.gov. Note that questions, but not comments, will be accepted electronically.

SUPPLEMENTARY INFORMATION:

Affected Entities

The Oil Pollution Prevention regulation (40 CFR Part 112) applies only to non-transportation-related fixed facilities that could reasonably be expected to discharge oil into or upon the navigable waters of the U.S. or adjoining shorelines, and that have: (1) a total underground buried storage capacity of more than 42,000 gallons; or (2) a total aboveground oil storage capacity of more than 1,320 gallons, or an aboveground oil storage capacity of more than 660 gallons in a single container. All such facilities are required to conduct an initial screening to determine whether they are required to develop a facility response plan in accordance with the regulation.

Only those facilities that could cause "substantial harm" to the environment must prepare and submit a response plan. A facility is screened as "substantial harm" if one or both of the following criteria are met:

(1) The facility has a total oil storage capacity greater than or equal to 42,000 gallons and transfers oil of any kind over water to or from vessels; or

(2) The facility's total oil storage capacity is greater than or equal to one million gallons, and any of the following is true:

- The facility is located at a distance such that an oil discharge from the facility could shut down a public drinking water intake; or
- The facility is located at a distance such that an oil discharge from the facility could cause injury to fish and wildlife and sensitive environments, as described in Appendices I, II, and III of the Department of Commerce (DOC) Guidance for Facility and Vessel Response Plans; or
- At least one tank at the facility does not have adequate secondary containment; or
- The facility has had a reportable oil spill greater than or equal to 10,000 gallons within the last five years.

In addition, the Regional Administrator (RA) has the authority to require any facility subject to the Oil Pollution Prevention regulation to prepare a response plan.

The specific private industry sectors subject to this action include but are not limited to: (1) Petroleum Bulk Stations and Terminals (SIC 517); (2) Oil and Gas Extraction (SIC 13); (3) Trucking and Warehousing (SIC 42); (4) Electrical Utility (SIC 49); (5) Commercial/Institutional Building (SIC 651); (6) Fuel Oil Dealers (SIC 598); and (7) Miscellaneous Manufacturing (SIC 20–39).

Title

Implementation of the Oil Pollution Act Facility Response Plan Requirements, OMB Control Number: 2050–0135. EPA Control Number: 1630.03. Expiration Date: July 31, 1997.

Abstract

The authority for EPA's response plan requirements is derived from Section 311 of the Clean Water Act as amended by the Oil Pollution Act of 1990 (OPA). EPA's regulation, which is codified at 40 CFR 112.20, requires that owners and operators of facilities that could cause "substantial harm" to the environment by discharging oil into navigable water bodies or adjoining shorelines prepare plans for responding, to the maximum extent practicable, to a worst case discharge of oil, to a substantial threat of such a discharge, and, as appropriate, to discharges smaller than worst case discharges.

Each facility response plan is submitted to EPA. The Agency, in turn, reviews and approves plans from facilities identified as having the potential to cause "significant and substantial harm" to the environment from oil discharges. Other low-risk, regulated facilities that are not required to prepare facility response plans are required to document their determination that they do not meet the "substantial harm" criteria.

Facility response plans enhance EPA's ability to protect navigable waters and sensitive environments when oil discharges occur and reduce the cost of spills to the regulated community and society. Response plans reduce such costs by ensuring that discharges are controlled and cleaned up swiftly and efficiently. Facilities that are prepared to respond to incidents are more likely to contain the spread of a spill before it reaches navigable waters and to mitigate the effects of a spill on the environment. In an emergency, On-Scene Coordinators, local emergency response officials such as fire chiefs, and outside oil spill response contractors may consult a facility's response plan.

None of the information to be gathered for this collection is believed to be confidential. The specific activities and reasons for the information collection are described below.

Initial Screening and Certification

Only those facilities regulated under the Oil Pollution Prevention regulation that could cause "substantial harm" to the environment must prepare and submit response plans. Owners or operators of all facilities subject to the Oil Pollution Prevention regulation must familiarize themselves with the rule to determine whether their facility meets the "substantial harm" criteria. Under § 112.20(e), facilities that do not meet the "substantial harm" criteria must document this determination by completing the "Certification of Substantial Harm Determination Form," provided in Appendix C of the regulation.

Response Plan Development

Under § 112.20(a), facilities that meet the "substantial harm" criteria must prepare and submit to EPA a response plan. Preparation of a response plan involves several tasks conducted by the facility's technical staff and/or hired contractors. Facility personnel must use background information such as the location, quantities, and types of material stored and a geographic description of the site (maps, schematic diagrams, latitude and longitude) available from the facility's Spill Prevention, Control, and Countermeasure Plan required by 40 CFR Part 112). The response plan also must include a discussion of detection and notification procedures at the facility as well as a list of response equipment. A facility must designate a qualified individual to serve as the facility response coordinator who will have full authority to implement and terminate response actions. Roles and responsibilities of other members of the response team (both company responders and outside parties) also must be clearly established. A facility may wish to enter into an arrangement with an outside response contractor. If so, that response contractor's role must be clearly defined.

To develop a response plan, the facility performs a hazard analysis, which involves identifying potential hazards based on facility background information, determines the vulnerability of the surrounding area given the hazard, and assesses the risk of a release. The results of the hazard analysis are used to develop spill scenarios. For one scenario, the facility calculates the volume of a worst case discharge and develops an effective response to such a discharge. All aspects of an effective response must be included in the response plan, including containment, countermeasure, and mitigation procedures for different types of incidents, and the provision for proper cleanup and disposal of contaminated material.

Response Plan Maintenance

Under § 112.20(g), facilities must periodically review their response plans to ensure consistency with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) and Area Contingency Plans (ACPs). Consequently, owners or operators who have prepared response plans must review relevant portions of the NCP and the applicable ACPs annually and update their facility response plan as appropriate.

Regulated facilities also are required to perform periodic drills and exercises in order to test the effectiveness of their response plan. Under § 112.20(h)(8), facility response plans must include information about facility self-inspection, drills/exercises, and response training, including descriptions of training and drill/exercise programs and documentation of tank inspections, equipment inspections, response training meetings, response training sessions, and drills/exercises. Consequently, facility response plans may be revised based on evaluations of the facility drills and exercises.

In addition, under § 112.20(d)(1), the owner or operator of a facility determined to have the potential to cause "significant and substantial harm" to the environment must resubmit revised portions of their response plan after each material change. Material changes include changes in the amount or location of oil storage, changes in spill prevention equipment and capabilities, and other changes that affect the potential for a discharge to cause "significant and substantial harm" to the environment.

Recordkeeping

Facilities subject to the Oil Pollution Prevention regulation, which determine that the response planning requirements under 40 CFR 112.20 do not apply to their facility, must certify and maintain a record of this determination. Facilities that are subject to the response planning requirements at 40 CFR 112.20 are required to maintain the response plan at the facility. The determination of applicability and the preparation of a response plan are one-time activities. Facilities with response plans also are required to maintain updates to the plan to reflect material changes to the facility and to log activities such as discharge prevention meetings, response training, and drills and exercises.

Purpose of Data Collection

The primary user of the facility response plan will be the facility. Facility-specific response plans will help facility owners and operators develop a response organization or identify the necessary resources to adequately respond to an oil spill in a timely manner. Successful plans will be scenario-based and developed by the preparation of risk analyses of the areas in question; identification of several scenarios that require different levels of response; development of strategies to respond to each scenario; and identification and provision of resources necessary to respond to each scenario. If implemented effectively, the plans will reduce the impact and severity of oil spills and may prevent spills due to the identification of risks at the facility.

EPA reviews and approves response plans for those facilities whose discharges may cause "significant and substantial harm" to the environment in order to ensure that facilities believed to pose the highest risk have adequate resources and procedures in place to respond to a spill. EPA conducts two type of reviews for response plans submitted by "significant and substantial harm" facilities. First, EPA performs initial reviews of response plans submitted by "significant and substantial harm" facilities that are: newly-constructed (i.e., come into existence after the effective date of the regulation); existing facilities that become subject to the response plan requirements as the result of a change in operations (after the effective date of the regulation); and facilities newly-designated by the Regional Administrator as "significant and substantial harm." Second, EPA is required to periodically review the response plans of "significant and substantial harm" facilities that already have submitted a response plan to the Agency, provided that the period between plan reviews does not exceed five years. The Agency will require amendments to any response plan that does not meet the requirements.

EPA also will use the facility-specific information provided in the response plans to continue to update ACPs as required by the OPA. Certain plan information, such as provisions for adequate response capability to respond to a worst case discharge, will help EPA and other government agencies to better understand the distribution and capacity of the response contractor industry and more appropriately allocate government resources to complement existing private-sector capacity.

Regional, State and local response authorities also will benefit from information contained in facility response plans. Area Committees, which are established under OPA section 4202(a), may make use of the facility response plans in the preparation and update of ACPs. Local Emergency Planning Committees (LEPCs) under the direction of the State Emergency Planning Committee (SERC) also can use facility-specific information to help develop local contingency plans required under SARA Title III Community Right-to-Know provisions. Once information contained in the response plans is made available, local and Regional response authorities will better understand the potential hazards and response capabilities in their area, thus reducing risk to the community.

Burden Statement

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide the information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems to collect, validate, and verify information, process and maintain information, and disclose and provide information; adjust methods to comply with any new requirements and instructions; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

This notice provides the Agency's estimated burden to facilities to perform the required actions under 40 CFR 112.20. The burden to regulated facilities is estimated in terms of the time (hours) spent by facility and other personnel to review the rule, conduct an initial screening to determine if plan preparation is required and, if necessary, prepare and maintain facility response plans. The Agency developed the burden hours estimates for facilities based on consultations with facility engineers familiar with Oil Pollution Prevention compliance and with EPA Regional staff involved directly with the implementation of the program. The burden hours calculated for each action are taken from the current ICR and EPA anticipates using these burden hour estimates in the ICR renewal. The Agency is soliciting public comment on these burden estimates.

In calculating the burden on all facilities subject to the response plan requirements, EPA uses a model-facility approach to characterize the diverse nature of regulated facilities. For purposes of this ICR, facilities are categorized according to size and type of facility operations. EPA's size categories are based on the oil storage capacity

categories provided in the Agency's "Spill Prevention, Control, and Countermeasure Facilities Study" (January 1991), which are defined as follows: (1) Small facility—total aboveground storage capacity greater than 1,320 gallons (or 660 gallons in a single tank) but less than or equal to 42,000 gallons; (2) Medium facility—total aboveground or underground storage capacities greater than 42,000 gallons but less than or equal to one million gallons; and (3) Large facility—total storage capacity greater than one million gallons. The current ICR also classifies facilities into three additional categories based on how oil is used at the facility: consumption of oil as a raw material or end-use product (storage/consumption); marketing and distribution of oil as a wholesale or retail good (storage/distribution); or pumping oil from the ground as part of exploration or production activities (production).

Exhibit 1 provides EPA's estimate of burden hours for facilities to read the regulation, make a determination of whether the response planning requirements apply to their facility, and complete the certification form as necessary. This is a one time event for a facility regulated by the Oil Pollution Prevention regulation.

EXHIBIT 1—BURDEN HOURS TO READ RULE, MAKE DETERMINATION, AND COMPLETE CERTIFICATION

Size category of facility	Hours required			
	Management	Technical	Clerical	Total
Small	0.25	0	0	0.25
Medium	1	0	0.5	1.5
Large	2	4	0.5	6.5

Most regulated facilities already have made this one-time determination. The burden hour estimates include facility personnel in the following labor categories: management, technical, and clerical.

Exhibits 2 and 3 provide the Agency's estimate of the burden hours required to prepare a response plan for medium and large facilities, respectively. Given the screening criteria for "substantial harm," the number of small facilities expected to be required to prepare a facility response plan is assumed to be negligible. Preparation of a response plan is a one-time event for a facility that meets the "substantial harm" screening criteria. The burden described in Exhibits 2 and 3 would apply to facilities who have not previously submitted response plans because they are new or recently identified by the RA as being "substantial harm" or "significant and substantial harm" facilities. The burden hour estimates include facility personnel and consultants in the following labor categories: Management, technical, clerical, foreman, and labor.

Exhibit 4 provides the Agency's estimate of the burden hours required to maintain a response plan (i.e., subsequent year burdens following initial year plan preparation burden) for medium and large facilities. The estimates in Exhibit 4 apply to existing facilites with response plans. The burden hour estimates include facility personnel and consultants in the following labor categories: Management, technical, clerical, foreman, and labor.

EXHIBIT 2—ESTIMATED FIRST-YEAR BURDEN HOURS FOR FACILITIES REQUIRED TO PREPARE FACILITY RESPONSE PLANS: MEDIUM FACILITIES

	Model Facility Category					
	Storage/Consumption		Storage/Distribution		Production	
	Rule familiarization	Facility response plan	Rule familiarization	Facility response plan	Rule familiarization	Facility response plan
Facility Personnel Burden (Hours)						
Management	3.0	16.75	6.0	20.25	3.0	15.75
Technical	6.0	34.5	3.0	39.5	6.0	33.5
Clerical	1.0	7.0	1.0	7.0	1.0	6.0
Foreman	0.0	10.0	0.0	10.0	0.0	10.0
Labor	0.0	16.0	0.0	16.0	0.0	16.0
Contractor Personnel Burden (Hours)						
Management	N/A	13.5	N/A	14.5	N/A	7.5
Technical	N/A	48.0	N/A	53.0	N/A	40.0
Clerical	N/A	9.5	N/A	10.5	N/A	6.5
Unit Burden Subtotal (Hours)	10	155.25	10	170.75	10	135.25
Total Unit Burden	165.25 hours		180.75 hours		145.25 hours	

N/A—Not Applicable.
Recordkeeping—The regulation does not include significant recordkeeping requirements. However, it can be assumed that the clerical labor indicated in this exhibit involves recordkeeping-related activities.

EXHIBIT 3—ESTIMATED FIRST-YEAR BURDEN HOURS FOR FACILITIES REQUIRED TO PREPARE FACILITY RESPONSE PLANS: LARGE FACILITIES

	Model facility category			
	Storage/Consumption		Storage/Distribution	
	Rule familiarization	Facility response plan	Rule familiarization	Facility response plan
Facility Personnel Burden (Hours)				
Management	4.0	30.5	4.0	35.5
Technical	8.0	54.25	8.0	63.25
Clerical	1.0	12.0	1.0	12.0
Foreman	0.0	22.0	0.0	22.0
Labor	0.0	64.0	0.0	64.0
Contractor Personnel Burden (Hours)				
Management	N/A	23.25	N/A	25.25
Technical	N/A	102.0	N/A	128.0
Clerical	N/A	20.0	N/A	21.0
Unit Burden Subtotal (Hours)	13.0	328.0	13.0	371.0
Total Unit Burden	341 hours		384 hours	

N/A—Not Applicable.
Recordkeeping—The regulation does not include significant recordkeeping requirements. However, it can be assumed that the clerical labor indicated in this exhibit involves recordkeeping-related activities.

EXHIBIT 4—ESTIMATED BURDEN HOURS FOR MAINTAINING FACILITY RESPONSE PLANS

	Medium facilities			Large facilities	
	Storage/ consumption	Storage/ distribution	Production	Storage/ consumption	Storage/ distribution
Facility Personnel Burden (Hours)					
Management	7.5	7.5	7.5	9.0	9.0
Technical	18.5	19.5	18.5	21.0	22.0
Clerical	2.0	2.0	2.0	2.0	2.0
Foreman	10.0	10.0	10.0	22.0	22.0
Labor	16.0	16.0	16.0	64.0	64.0
Contractor Personnel Burden (Hours)					
Management	0.0	0.0	0.0	6.0	8.0
Technical	0.0	0.0	0.0	24.0	36.0
Clerical	0.0	0.0	0.0	6.0	8.0
Total Unit Burden (Hours)	54.0	55.0	54.0	154.0	171.0

N/A—Not Applicable.
Recordkeeping—The regulation does not include significant recordkeeping requirements. However, it can be assumed that the clerical labor indicated in this exhibit involves recordkeeping-related activities.

In estimating the total burden of the information collection on the regulated community in the renewal ICR, EPA will calculate the per facility (unit) burden for each model facility category by multiplying the estimated burden hours by the wage rates established for each labor category. EPA then will multiply the unit burden estimates for each model facility category by the total number of affected facilities in that category. The total burden of the information collection on the regulated community will be the sum of the total burden estimates for each model facility category for screening and certification, response plan development, and response plan maintenance activities. Screening and certification and the development of response plans are expected only for new facilities or facilities identified by the RA as being either a "substantial harm" or "significant and substantial harm" facility. The bulk of facilities required to prepare plans in accordance with 40 CFR 112.20 will be faced only with response plan maintenance activities for the three-year approval period for this ICR renewal.

The hourly rates used in the current ICR, adjusted to 1993 dollars using the Employment Cost Index (ECI), are: $53.49 for management, $36.66 for technical, and $16.72 for clerical labor. The hourly rates for foremen and laborers are based on average wage rates in the construction industry. The rates, which include direct salary and fringe benefits (calculated at 40 percent of direct salary) but do not include any overhead costs are: $30.82 for foreman and $20.55 for laborer. The consultant hourly rates, in 1993 dollars, are: $105.06 for management, $72.00 technical, and $32.85 for clerical labor. In the renewal ICR, EPA will update the labor wage rates for the different labor categories to reflect the Federal government's most current wage rate figures.

EPA also will estimate the number of new facilities subject to the Oil Pollution Prevention regulation that must determine whether the response planning requirements apply to their facilities. Similarly, the Agency will estimate the number of new facilities subject to the requirements that must prepare a response plan. EPA will use these estimates and information on the number of existing facilities that already have submitted response plans to calculate the total burden to the regulated community for maintaining response plans.

EPA anticipates in the renewal ICR that the total burden attributable to the regulation at 40 CFR 112.20 will decrease in part because the Agency believes the current ICR overestimated the number of facilities subject to the response planning requirements at the time the regulation was first promulgated. EPA will adjust the ICR estimates to reflect more accurate information obtained by the Agency during the implementation of the response plan requirements.

The Agency anticipates that the burden on the regulated community for the three-year period 1997–2000 will be less than the burden for the three-year period 1994–1997, because the majority of facilities subject to the Oil Pollution Prevention regulation currently maintain either a certification form or a response plan. As a result, only those facilities previously not subject to the regulation (i.e., facilities that are new, that implement a change in design, such as an increase in oil storage capacity, or that are identified by the RA as a "substantial harm" facility) will be required to either complete the certification form or develop a response plan in the upcoming three-year ICR approval period. For such "newly-regulated facilities," the burden attributable to 40 CFR 112.20 may also be lessened because the number of states that require response plans similar to that required under the OPA has increased and because some new facilities may submit a response plan prepared in the Integrated Contingency Plan format. EPA currently is analyzing state requirements to determine the degree of overlap with the response planning requirements under the Oil Pollution Prevention regulation.

As part of the Agency's efforts to reduce the overall paperwork burden on regulated facilities, EPA would like to solicit comments on how the Agency could best reduce the total paperwork burden hours for this rule while maintaining an effective level of environmental protection. EPA also would like to solicit public comments to: (i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submission of responses.

No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed at 40 CFR Part 9. Send comments regarding these matters, or any other aspects of the information collection, including suggestions for reducing the burden, to the address listed above under **ADDRESSES** near the top of this Notice.

Dated: February 13, 1997.

Stephen D. Luftig,

Director, Office of Emergency and Remedial Response.

[FR Doc. 97–4122 Filed 2–19–97; 8:45 am]

BILLING CODE 6560–60–P

[FRL–5690–8]

Agency Information Collection Activities Under OMB Review; Standards of Performance for New Stationary Sources; Automobile and Light Duty Truck Surface Coating Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3507(a)(1)(D), this notice announces that the Information Collection Request (ICR) for Standards of Performance for New Stationary Sources—Automobile and Light Duty Truck Surface Coating Operations—Subpart MM) described below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 24, 1997.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1064.08.

SUPPLEMENTARY INFORMATION:

Title: Standards of Performance for Automobile and Light Duty Truck Surface Coating Operations (Subpart MM) OMB Control No. 2060–0034; EPA ICR No. 1064.08). This is a request for reinstatement, with change, or a previously approved collection for which approval has expired.

Abstract: The Administrator has judged that VOC emissions from automobile and light duty truck surface coating operations cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Owners/operators of automobile and light duty truck surface coating operations must notify EPA of construction, modification, startups, shut downs, date and results of initial performance test. Monitoring requirements specific to automobile and light duty truck surface coating operations consist of monitoring both VOC emissions and incineration temperatures.

In order to ensure compliance with the standards promulgated to protect public health, adequate reporting and recordkeeping is necessary. In the absence of such information enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on September 29, 1995.

Response to Comments: The American Automobile Manufacturers Association (AAMA) and the Association of International Automobile Manufacturers (AIAM) jointly filed comments in response to Information Collection Request (ICR) for Standards of Performance for New Stationary Sources—Automobile and Light Duty Truck Surface Coating Operations—Subpart MM). The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

A meeting was held on Wednesday, January 8, 1997 at 2:00 p.m. to discuss the comments of the AAMA and AIAM. At the meeting AIAM represented both organizations.

The majority of comments fell into one of two categories. The first category of comments related to requirements that were the result of other regulations as opposed to requirements specific to the Subpart MM New Source Performance Standard (NSPS). For example, completing an application for Title V is not covered by this ICR because it is not required by Subpart MM. This ICR pertains only to Subpart MM and not other regulations that apply to the auto manufacturing industry.

The second category of comments related to activities undertaken by the industry but not required by the regulation. Comments regarding performance audits, and conducting surveys and studies are examples of activities potentially performed by the industry but they are not required by Subpart MM and therefore not accounted for in the ICR.

As a result of the comments regarding the labor costs, EPA recalculated the tables using the updated labor rates provided by Department of Commerce, Bureau of Labor Statistics January 1996 Employment and Earnings Table.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 14.1 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: 45.

Estimated Number of Respondents: 45.

Frequency of Response: 4.

Estimated Number of Responses: 180.

Estimated Total Annual Hour Burden: 2,540.3 hours.

Estimated Total Annualized Cost Burden: $65,250.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1064.08 and OMB Control No. 2060–0034 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2136), 401 M Street, SW., Washington, DC 20460
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

Dated: February 12, 1997.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 97–4117 Filed 2–19–97; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5690–7]

Agency Information Collection Activities Under OMB Review; Standards of Performance for Flexible Vinyl and Urethane Coating and Printing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) for New Source Performance Standards for Flexible Vinyl and Urethane Coating and Printing described below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 24, 1997.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1175.05.

SUPPLEMENTARY INFORMATION:

Title: NSPS for Flexible Vinyl and Urethane Coating and Printing (OMB Control No. 2060–0073 expiration date 4/30/97; EPA ICR No.1175.05). This is a request for extension of a currently approved collection.

Abstract: The EPA is charged under Section 111 of the Clean Air Act, as amended, to establish standards of performance for new stationary sources that reflect:

* * * application of the best technological system of continuous emissions reduction which (taking into consideration the cost * * * and energy requirements) the Administrator determines has been adequately demonstrated [Section 111(a)(1)].

In addition, Section 114(a) requires that any owner or operator subject to any Subpart to establish and maintain records, make reports, install, use and maintain monitoring equipment or methods as required, and provide other information as EPA may deem necessary.

In the Administrator's judgment, VOC emissions from flexible vinyl and urethane coating and printing industry cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, the New Source Performance Standards (NSPS) were promulgated for this source category. The NSPS for the Flexible Vinyl and Urethane Coating and Printing Industry were proposed on January 18, 1983, and promulgated on June 29, 1984. These standards apply to each rotogravure printing line used to print or coat flexible vinyl or urethane products, and for which construction, modification or reconstruction commenced after the date of proposal. Volatile organic compounds (VOCs) are the pollutants regulated under this Subpart. The standards restrict the use of inks to those with a weighted average VOC content of less than 1.0 kilogram VOC per kilogram of ink solids, unless the source can otherwise reduce emissions to the atmosphere by 85 percent.

The information requested as part of this rule include one-time-only notifications; records about the initial performance test, changes in the operation of the facility, and exceedences of parameters; and semiannual reports of those exceedances.

Notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. The reviewing authority may then inspect the source to check if the pollution control devices are properly installed and operated and the standard is being met. Performance test reports are needed as these are the Agency's record of a source's initial capability to comply with the emission standard, and note the operating conditions (temperature of exhaust gases, VOC concentrations, and temperature across the catalytic bed) under which compliance was achieved. The semiannual reports are used for problem identification, as a check on source operation and maintenance, and for compliance determinations.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 08/30/96 (61 FR 45959).

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 36.75 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency.

Respondents/Affected Entities: Each applicable (modified, etc.) rotogravure printing line printing/coating flexible vinyl or urethane products plant.

Estimated Number of Respondents: 7.

Frequency of Response: 2/per facility/per year.

Estimated Total Annual Hour Burden: 514.5 hours.

Estimated Total Annualized Cost Burden: $21,012.65.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No.1175.05 and OMB Control No. 2060–0073 in any correspondence. Send to the following addresses:

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460.

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: February 12, 1997.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 97–4118 Filed 2–19–97; 8:45 am]

BILLING CODE 6560–50–P

[OPP–30422A; FRL–5587–9]

Stine Microbial Products; Approval of a Pesticide Product Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application to register the pesticide product Blue Circle Liquid Biological Fungicide, containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Denise Greenway, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. CS51B6, Westfield Building North Tower, 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8263; e-mail: greenway.denise@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document and the Fact Sheet are available from the EPA home page at the Environmental Sub-Set entry for this document under "Regulations" (http://www.epa.gov/fedrgstr/).

EPA issued a notice, published in the **Federal Register** of October 9, 1996 (61 FR 52944; FRL–5397–1), which announced that Stine Microbial Products, 2225 Laredo Trail, Adel, IA 50003, had submitted an application to register the product Blue Circle Liquid Biological Fungicide (File Symbol 63950–A), containing the active ingredient *Burkholderia cepacia* type Wisconsin isolate J82 at 0.6 percent, an active ingredient not included in any previously registered product. The active ingredient concentration was subsequently corrected from 0.6 to 2 percent.

The application was approved on December 24, 1996, as Blue Circle Liquid Biological Fungicide (EPA Registration Number 63950–6), for application to food and nonfood plant and seedling roots.

The Agency has considered all required data on risks associated with the proposed use of *Burkholderia cepacia* type Wisconsin isolate J82, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of *Burkholderia cepacia* type Wisconsin isolate J82 when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

More detailed information on this registration is contained in an EPA Pesticide Fact Sheet on *Burkholderia cepacia* type Wisconsin isolate J82.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703-305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: February 4, 1997.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 97–4194 Filed 2–19–97; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30429; FRL–5588–2]

Certain Companies; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by March 24, 1997.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30429] and the file symbols) to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will be accepted on disks in Wordperfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–30429]. No "Confidential Business Information" (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submission can be found below in this document.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Biopesticides and Pollution Prevention Division (7501W), Attn: (Regulatory Action Leader named in each registration), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person: Contact the Action Leader named in each registration at the following office location, telephone number, and e-mail address.

Regulatory Action Leader	Office location/telephone number	Address
Anne Leslie,	Rm. CS15-W46, (703–308–8727); e-mail: leslie.anne@epamail.epa.gov.	Environmental Protection Agency Westfield Building North Tower, 2800 Crystal Drive Arlington, VA 22202
Sheryl Reilly,	Rm. CS15-W29, (703–308–8265); e-mail: reilly.sheryl@epamail.epa.gov.	-Do-

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 67702–L. Applicant: W. Neudorff GmbH KG, Postfach 1209, An der Muhle 3, D-31860 Emmerthal, Germany. Product name: NEU 1161I. Insecticide. Active ingredients: Canola oil 89.5% and pyrethrins 0.5%. Proposed classification/Use: None. For use on growing crops, house plants, ornamentals, and shade trees and the control of fleas and ticks on pets. (S. Reilly)

2. File Symbol: 67702–A. Applicant: W. Neudorff GmbH KG. Product name: NEU 1161I RTU. Insecticide. Active ingredients: Canola oil 1% and pyrethrins 0.01%. Proposed classification/Use: None. For use on growing crops, house plants, ornamentals, and shade trees and the control of fleas and ticks on pets. (S. Reilly)

3. File Symbol: 67702–U. Applicant: W. Neudorff GmbH KG. Product name: NEU 1160I Vegetable Oil Spray. Insecticide. Active ingredient: Canola oil 96%. Proposed classification/Use: None. For use to control adelgids, aphids, cankerworms, caterpillars, fungus gnats, spider mites, and a variety of other insects on growing crops, house plants, ornamentals, and shade trees. (S. Reilly)

4. File Symbol: 53689–R. Applicant: Great Lakes IPM, Inc., 10220 Church Road NE, Vestaburg, MI 48891. Product name: Rose Chafer Floral Lure. Insect attractant. Active ingredients: Alpha-ionone 45.5% percent and hexanoic acid at 49.0%. Proposed classification/Use: None. For use as an insect attractant to control both male and female Rose Chafer Beetles from attacking a variety of tree fruits, small fruits, ornamental shrubs, flowers, and vegetables. (A. Leslie)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

A record has been established for this notice under docket number [OPP–30429] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in

"ADDRESSES" at the beginning of this document.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division at the address provided from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. It is suggested that persons interested in reviewing the application file, telephone this office at (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: February 6, 1997.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 97–4195 Filed 2–19–97; 8:45 am]

BILLING CODE 6560–50–F

[PF–714; FRL–5589–4]

Abbott Laboratories; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing.

SUMMARY: This notice announces the filing of a pesticide petition proposing regulations establishing tolerances for residues of the biochemical pesticide aminoethoxyvinylglycine in or on apples and pears. This notice includes a summary of the petition that was prepared by the petitioner, Abbott Laboratories.

DATES: Comments, identified by the docket control number [PF–714], must be received on or before March 24, 1997.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov or by submitting disks. Electronic comments must be submitted either in ASCII format (avoiding the use of special characters and any form of encryption) or in WordPerfect in 5.1 file format. All comments and data in electronic form must be identified by docket control number [PF–714]. Electronic comments on this notice may be filed online at many Federal Depository Libraries. The official record for this rulemaking, as well as the public version described above, will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record, which will also include all comments submitted directly in writing.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. No CBI should be submitted through e-mail. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

FOR FURTHER INFORMATION CONTACT: Denise Greenway, Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7501W), Environmental Protection Agency, Washington, DC 20460, Office location, telephone number, and e-mail address: Crystal Station I, 2800 Crystal Dr., Arlington, VA 22202. (703) 308–8263; e-mail: greenway.denise@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition (PP–6F4632) from Abbott Laboratories, 1401 Sheridan Road, North Chicago, IL 60064–4000. The petition proposes, pursuant to section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a, to amend 40 CFR part 180 to establish tolerances for residues of the biochemical pesticide aminoethoxyvinylglycine (AVG) in or on apples and pears at 0.08 part per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition. The proposed analytical method is high pressure liquid chromatography (HPLC).

As required by section 408(d) of the FFDCA, as recently amended by the Food Quality Protection Act (FQPA) (Pub. L. 104–170), Abbott Laboratories included in the petition a summary of the petition and authorization for the summary to be published in the **Federal Register** in a notice of receipt of the petition. The summary represents the views of Abbott Laboratories; EPA, as mentioned above, is in the process of evaluating the petition. As required by section 408(d)(3), EPA is including the summary as a part of this notice of filing. EPA may have made minor edits to the summary for the purpose of clarity.

I. Abbott Laboratories' Petition Summary

A. Residue Chemistry

1. *Plant metabolism.* AVG signifies the active ingredient *L*-alpha-(2-aminoethoxyvinyl)glycine hydrochloride in its pure form. An alternative nomenclature for AVG is [*S*]-trans-2-amino-4-[2-aminoethoxy]-3-butanoic acid hydrochloride. *N*-acetyl AVG is the primary metabolite of AVG in apples.

2. *Analytical method.* Abbott Laboratories has determined that residues of AVG are not expected in/on apples and pears at detectable levels when orchards are treated at the label use rate and pre-harvest interval. The Limit of Quantitation (LOQ) is 0.075 ppm and the Limit of Detection (LOD) is 0.03 ppm by HPLC analysis. There is no concentrating of residues in the processed commodities (*i.e.*, apple juice or wet apple pomace).

3. *Magnitude of the residue.* In the magnitude of the residue study in apples, the maximum residue at day 0 following treatment at the label use rate was 0.131 ppm. By day 21, there were no quantifiable residues present. The exposure assessments (below) indicate that there will be large margins of exposure (MOEs) from aggregate exposure to AVG. The proposed HPLC method used is deemed adequate by Abbott Laboratories to measure residues and the company argues that no additional analytical method for detecting and measuring residue levels is needed.

B. Toxicological Profile

1. *Acute toxicity.* The acute mammalian toxicological data considered in this proposed tolerance for AVG include: an acute oral toxicity study in rats, an acute dermal toxicity study in rabbits, an acute inhalation toxicity study in rats, a primary eye irritation study in rabbits, a dermal irritation study in rabbits, and a dermal sensitization study in guinea pigs.

The results of these studies indicate that AVG has an acute oral LD_{50} of 6,400 milligrams active ingredient per kilogram of body weight (mg a.i./kg bwt) in rats, an acute dermal LD_{50} greater than 2,000 mg a.i./kg bwt in rabbits, an acute inhalation LD_{50} of 1,130 mg/m^3 in rats, causes slight eye and dermal irritation in rabbits, and is not a dermal sensitizer in guinea pigs.

2. *Genotoxicity.* Abbott Laboratories concludes that AVG was not mutagenic in an Ames *Salmonella* gene mutation assay with or without metabolic activation. The company maintains that there was no mutagenic activity associated with AVG in cultures of mouse lymphoma cells (L5178Y tk ±) with or without metabolic activation. In a rat bone marrow cell micronucleus test *in vivo*, Abbott Laboratories reports that there was no indication that AVG was genotoxic.

3. *Developmental toxicity.* In a developmental toxicity study in rats by oral gavage, a no observable effect level (NOEL) of 1.77 mg a.i./kg bwt/day was determined for both developmental and maternal toxicity.

4. *Subchronic toxicity.* A Reference Dose (RfD) of 0.002 mg a.i./kg bwt/day was derived from a 90–day feeding study in rats in which there was decreased food consumption, body weight and food efficiency (body-weight gain/food consumption), and fatty changes in kidney and liver at dosage levels of 9 mg a.i./kg bwt/day or higher. The NOEL in this study was 2.2 mg a.i./kg bwt/day.

In a 21–day dermal toxicity study in rats, the NOEL was greater than 1,000 mg a.i./kg/day.

In a 28–day dietary immunotoxicity study in rats with a NOEL of 5 mg a.i./kg/day, decreases in several immune response parameters are considered secondary to the decreased food consumption, body weight, and food efficiency in the treated rats.

5. *Reproductive toxicity; chronic toxicity; animal metabolism; metabolite toxicity.* AVG is classified as a biochemical due to its proposed use pattern, its low use rate, and its natural occurrence. Due to the nature of this biochemical pesticide, the requirements for reproductive and chronic toxicity studies as well as animal metabolism and metabolite toxicity have not been triggered in the Tier Toxicity Testing approach.

C. Aggregate Exposure

Dietary exposure—food and drinking water/non-dietary exposure. Expected dietary exposures from residues of AVG would occur through apples, pears, and processed apples and pears. Spray drift may lead to exposure to residues in drinking water. There are no proposed home and garden uses for AVG. AVG is used in a commercial floral preservative. There is no exposure to infants and children through this floral preservative. The only potential exposure from this floral preservative would be dermal exposure.

For estimations of maximum anticipated residues, non-detectable residues were assigned a value one half of the LOD. For the two instances in which residues were detectable on one of the replicates, the full LOD was used. The maximum anticipated residues of AVG were calculated to be 0.018 ppm in the apple raw agricultural commodity.

The processed commodities examined were apple juice and wet apple pomace. Processing factors were calculated from apples without washing prior to processing to provide the highest possible estimate of anticipated residues in the juice and pomace. The mean apple juice processing factor was determined to be 0.8; for wet apple pomace the processing factor was 0.9.

A chronic dietary exposure analysis was conducted for AVG using the anticipated residues in apples for both apples and pears. Residues were rarely detected in field trials conducted at the maximum rate and minimum interval between application and harvest. The anticipated residue of 0.018 ppm represents about half of the LOD.

Low residues are expected in wet apple pomace, so finite residues of AVG are not expected in meat and milk; therefore, these foods were not included in the exposure analysis.

Tap water, non-tap water, and water in commercially prepared food were also included in the analysis. Residue levels in water were assumed to be 0.0012 ppm. This was based upon calculations for airblast application of AVG onto late season trees. It is estimated that a negligible amount of the applied dose could drift into nearby drinking water sources. The following table summarizes the results from the chronic aggregate exposure analysis based upon anticipated residues for the overall U.S. population and the five most highly exposed population subgroups. The exposure estimate was compared against the RfD of 0.002 mg a.i./kg bwt/day:

Population subgroup	Exposure mg a.i./kg bwt	Percent of RfD
U.S. Population	0.000055	2.5
All Infants	0.000206	10.3
Non-nursing Infants < 1 yr.	0.000258	12.9
Children 1–6 yrs	0.000099	5.0
Children 7–12 yrs	0.000077	3.8
Females 13–50 yrs	0.000040	2.0

As seen in the above table, even for the most highly exposed population subgroup, less than 13% of the RfD was used.

Chronic aggregate exposure to AVG also was estimated using proposed tolerance-level residues. Exposure was estimated using the same consumption data that were used for the anticipated residue exposure calculation.

The following table summarizes results of the chronic exposure analyses using proposed tolerances for the overall U.S. population and the five most highly exposed population subgroups.

Population subgroup	Exposure mg a.i./kg bwt	Percent of RfD
U.S. Population	0.000111	5.6
All Infants	0.000538	26.9
Non-nursing Infants < 1 yr.	0.000638	31.9
Children 1–6 yrs	0.000324	16.2
Children 7–12 yrs	0.000173	8.7
Females 13+/nursing	0.000133	6.7

An examination of the summary table demonstrates that chronic aggregate exposure represents no more than 32% of the chronic RfD for any population subgroup. These calculations were performed assuming that 100% of the apple and pear crops in the United States would contain AVG residues at tolerance levels. Assuming that 100% of all apple products consumed would contain tolerance-level residues is the worst-case scenario and yields a gross overestimate of dietary exposure.

An acute exposure analysis based upon anticipated residues was conducted using EPA's Tier 2 method with anticipated residues. For blended commodities (*e.g.*, apple juice and pear nectar), the mean anticipated residue level was used. For single serving commodities (*e.g.*, raw apples and pears), the LOQ of 0.075 ppm was used as a worst-case estimate of high end exposure because AVG residues were not quantifiable in the few samples in which residues were detected.

A separate exposure analysis was conducted for infants because baby foods are blended commodities. For these analyses, only raw forms of apples and pears were assumed to be consumed as single servings containing the high-end residue value of 0.075

ppm. All prepared and processed foods were assumed to be blended foods containing the mean anticipated residue of 0.018 ppm. The following table summarizes the exposure analysis at the 95th percentile:

Population subgroup	Exposure mg a.i./kg bwt	MOE
U.S. Population	0.000276	6,510
All Infants	0.000598	3,009
Non-nursing Infants < 1 yr.	0.000551	3,269
Children 1–6 yrs	0.000756	2,381
Children 7–12 yrs	0.000448	4,022
Females 13–50 yrs	0.000198	9,091

The MOE of the most highly exposed population subgroup, children 1 to 6 years old, is more than 23–fold higher than a level considered to provide adequate protection.

The acute exposure summary (below) in which proposed tolerance-level residues were used shows that estimated exposures provide adequate MOEs, even at the 95th percentile of exposure. In this analysis, acute exposure was calculated for the entire population rather than for consumers only, a procedure recommended by the EPA in their proposed method for acute dietary risk assessment.

Population subgroup	Exposure mg a.i./kg bwt	MOE
U.S. Population	0.000406	4,432
All Infants	0.002188	823
Non-nursing Infants < 1 yr.	0.002191	822
Children 1–6 yrs	0.001384	1,301
Children 7–12 yrs	0.000663	2,845
Females 13–50 yrs	0.000245	7,336

The most highly exposed population subgroup, non-nursing infants, has an estimated MOE of 822, greater than 8–fold higher than a level considered to provide adequate protection.

D. Cumulative Effects

AVG is a structurally unique biochemical pesticide and is a naturally occurring L-α-amino acid. Its proposed mode of action for mammalian toxicity is the inhibition of the enzyme cystathionase. Other agents which inhibit this enzyme include naturally occurring amino acids such as alanine, cysteine, glutamic acid, and homoserine. Given the expected exposure, Abbott Laboratories maintains that inhibition of this enzyme would not occur at levels that would pose a human health risk.

E. Endocrine Effects

Abbott Laboratories reports that there have been no indications of treatment-related effects from AVG to suggest that the pesticide may have an endocrine disruption activity.

F. Safety Determination

1. *U.S. population.* AVG is a naturally occurring amino acid. Based upon expected residues in apples, pears, and water, Abbott Laboratories concludes that there is a reasonable certainty of no harm resulting from aggregate exposure of AVG to the general population.

2. *Infants and children.* The effects demonstrated in the developmental and immune toxicity studies are considered secondary to the adverse effects upon body weight gain, food consumption and food efficiency in the treated rats. These data indicate to Abbott Laboratories that AVG is not a developmental or immunological toxicant, and that infants and children are not sensitive subpopulations. The company concludes that there is a reasonable certainty that no harm will result from aggregate exposure of AVG to infants and children.

G. International Tolerances

There are no Codex maximum residue levels established for residues of AVG on apples or pears.

Therefore, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, Abbott Laboratories concludes that there is a reasonable certainty that no harm will result from aggregate exposure to residues of AVG, including all anticipated dietary exposure and all other non-occupational exposures.

II. Public Record

EPA invites interested persons to submit comments on this notice of filing. Comments must bear a notation indicating the docket control number [PF–714].

A record has been established for this notice under docket control number [PF–714] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above, will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping.

Authority: 21 U.S.C. 346a.

Dated: February 10, 1997.

Janet L. Anderson,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 97–4114 Filed 2–19–97; 8:45 am]

BILLING CODE 6560–50–F

[PF-709; FRL–5588–5]

Good Bugs, Inc.; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of a temporary exemption from the requirement of the tolerance for residues of Burkholderia (pseudomonas) cepacia strain AMMD in or on American ginseng, carrots, peas, potatoes, snap beans, supersweet and sweet corn, tomatoes, and turf in California, Florida, Illinois, Minnesota, Missouri, Ohio, Washington, and Wisconsin for the 1997-1999 growing seasons. The summary of the petition was prepared by the petitioner, Good Bugs, Inc.

DATES: Comments, identified by the docket control number [PF-709], must be received on or before March 24, 1997.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Crystal Mall #2, Room 1132, 1921 Jefferson Davis Highway, Arlington, VA. Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by docket control number [PF-709]. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit II. of this document.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Room 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Teung F. Chin c/o (PM 90), Regulatory Action Leader, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 5th Floor, Crystal Station #1, 2800 Crystal Drive, Arlington, VA, 703-308-1259, e-mail: chin.teung@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition [PP–7G4796] from Good Bugs, Inc., P.O. Box 939, New Glarus, WI 53574, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a temporary exemption from the requirement of a tolerance for residues of the microbial pesticide, Burkholderia (pseudomonas) cepacia strain AMMD in or on the raw agricultural commodities American ginseng, carrots, peas, potatoes, snap beans, supersweet and sweet corn, tomatoes, and turf. Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Good Bugs Inc. has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by Good Bugs Inc. and EPA has not fully evaluated the merits of the petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary was not clear that it reflected the conclusion of the petitioner and not necessarily EPA.

I. Petition Summary

A. Proposed Use Practices

1. Foliar applications of Burkholderia (pseudomonas) cepacia strain AMMD for potatoes, carrots, tomatoes, and turf will be at the rate of 4 oz/acre/application, 20 applications per acre per year. In Wisconsin, 20 acres of potatoes will be treated in 1997, 100 acres in 1998, and 500 acres in 1999; 5 acres of carrots will be treated in 1997, 10 acres in 1998, and 10 acres in 1999; 10 acres of turf will be treated in 1997, 100 acres in 1998, and 100 acres in 1999. In Minnesota, 20 acres of turf will be treated in 1997, 100 acres in 1998, and 100 acres in 1999. In California, 10 acres of carrots will be treated in 1998 and 10 acres in 1999; 100 acres of potatoes will be treated in 1998 and 100 acres in 1999; 100 acres of tomatoes will be treated in 1998 and 100 acres in 1999. In Ohio, 5 acres of tomatoes will be treated in 1997, 20 acres in 1998, and 20 acres in 1999; 5 acres of turf will be treated in 1997, 100 acres in 1998, and 100 acres in 1999. In Florida, 10 acres of potato will be treated in 1997, 100 acres in 1998, and 100 in 199; 5 acres of tomatoes will be treated in 1997, 100 acres in 1998, and 100 in 1999; 5 acres of turf will be treated in 1997, 100 acres in 1998, and 100 acres in 1999. In Missouri, 5 acres of turf will be treated in 1997, 100 acres in 1998, and 500 acres in 1999. For foliar applications on American ginseng, 4 oz/acre/application, 12 applications/acre/year will be applied in Wisconsin on 4,000 acres in 1997, 1998, and 1999.

2. For seed treatment of peas and sweet corn, the rate of application is 3 oz. per 100 lbs of seed, for snap beans 2 oz. per 100 lbs of seed and for supersweet corn, 4.5 oz. per 100 lbs of seed. In Wisconsin, 5 acres of peas will be treated in 1997, 50 acres in 1998, and 200 acres in 1999; 5 acres of snap beans will be treated in 1997, 50 acres in 1998, and 200 acres in 1999; 5 acres of sweet corn will be treated in 1997, 50 acres in 1998, and 200 acres in 1999; 5 acres of supersweet corn will be treated in 1997, 50 acres in 1998, and 200 acres in 1999. In Minnesota, 5 acres of peas will be treated in 1997, 50 in 1998, and 200 in 1999; 5 acres of snap beans will be treated in 1997, 50 acres in 1998, and 200 in 1999; 5 acres of sweet corn will be treated in 1997, 50 acres in 1998, and 200 acres in 1999; 5 acres of supersweet corn will be treated in 1997, 50 acres in 1998, and 200 acres in 1999. In Illinois, 5 acres of peas will be treated in 1997, 50 acres in 1998, and 200 acres in 199 9; 5 acres of sweet corn will be treated in 1997, 50 acres in 1998, and 200 acres in 1999; 5 acres of supersweet corn will be treated in 1997, 50 acres in 1998, and 200 acres in 1999. In Washington, 5 acres of peas will be treated in 1997, 50 acres in 1998, and 200 acres in 1999.

B. Product Identity/Chemistry

1. Burkholderia (pseudomonas) cepacia strain AMMD was originally isolated from the rhizosphere of a pea plant. The cells of this strain are gram negative, aerobic, rod shaped and produce poly-beta-hydroxybutyrate granules intracellularly. Colonies are convex and white, but eventually become crenulated on nutrient broth yeast extract agar plates. Two colony morphologies, smooth and rough are present. Fluorescent pigments are not produced on King's Medium B. The species Burkholderia (pseudomonas) cepacia was first identified using gas chromatography fatty acid (GC-FAME) analysis.

2. Burkholderia (pseudomonas) cepacia strain AMMD residues are not anticipated at the time of harvest by Good Bugs, Inc. Treatment of aerial plant parts and seeds are the only uses for this proposed microbial pesticide. Residues from seed treatments are not expected as the bacteria does not grow systemically in the plant. The above ground parts of potatoes, American ginseng, and carrots are not eaten. Based on conducted studies, Good Bugs, Inc. believes that strain AMMD does not survive well in the phyllosphere. Populations were no longer detectable 4 days after spray application to snap bean leaves and flowers. An enforcement method for residues is not needed to protect human health.

3. Good Bugs, Inc. believes that an analytical method for detecting and measuring the levels of this microbial pesticide residue is not needed to protect human health due to lack of signficant exposure.

C. Mammalian Toxicological Profile

Good Bugs, Inc. believes that acute oral limit toxicity testing of Burkholderia (pseudomonas) cepacia strain AMMD showed no evidence of toxicity or pathogenicity in rats dosed

once by oral gavage with strain AMMD. Normal weight gains were observed in all test animals during the observation period. No lesions were observed in any test animal. A waiver for genotoxicity, reproductive and developmental toxicity, subchronic toxicity, and chronic toxicity is requested. This testing is not generally required for microbial pesticides and the lack of toxicity along with the lack of exposure does not warrant such testing.

D. Aggregate Exposure

1. *Dietary exposure.* The species Burkholderia (pseudomonas) cepacia is a common inhabitant of soils, plant surfaces, and fresh water. Good Bugs, Inc. believes that use of this microbial pesticide as outlined is not expected to increase dietary exposure via food or water consumption. Transfer of the microbial pesticide to drinking water is unlikely due to the low survivability of the organism in the environment. Any low levels of oral exposure that may occur would not be harmful due to the lack of mammalian toxicity.

2. *Non-dietary exposure of Burkholderia (pseudomonas) cepacia strain AMMD.* Good Bugs, Inc. believes that treatment of turf as outlined in the experimental plan will be on limited acreage and, due to the low survivability of the organism, exposure will be minimal.

3. *Worker exposure via dermal exposure or inhalation.* Good Bugs, Inc. believes that worker exposure will be minimized by the label requirements of long-sleeved shirt, long pants, gloves, and the wearing of a respirator.

E. Cumulative Exposure

Biological control agents of this type generally work by outcompeting the disease organisms, therefore, not having a toxic mode of action that can be shared. However, other exposure can occur since another strain of Burkholderia (pseudomonas) cepacia is already registered with the Agency. Good Bugs, Inc. believes that since the Agency has registered this other strain and granted an exemption from tolerance, this added exposure does not present a hazard to human health in and of itself and thus does not add to cumulative exposure.

F. Safety Determination

1. Good Bugs, Inc. believes the safety of the U.S. population and that of infants and children will not be adversely affected by the use of Burkholderia (pseudomonas) cepacia strain AMMD. Strain AMMD was originally isolated from the rhizosphere of a pea and strains of Burkholderia (pseudomonas) cepacia are widely distributed in nature and are readily isolated from soil, fresh water, and plant roots and leaves. Strain AMMD does not survive well in the phyllosphere and cannot be detected after 4 days.

2. Some strains of Burkholderia (pseudomonas) cepacia are infectious to individuals with cystic fibrosis or compromised immune systems. Some strains of Burkholderia (pseudomonas) cepacia can also cause skin infection of feet known as swamp rot. In addition, this bacterium has been isolated from nosocomial sources such as contaminated indwelling medical devices and antiseptic solutions. Good Bugs, Inc. believes that because of the importance of these clinical strains, it is critical that Burkholderia (pseudomonas) cepacia strain AMMD is distinguished from other strains. Two recent studies have determined that plant associated strains are distinct from clinical isolates. Molecular phyllogenetic studies based on deoxyribonucleic acid (DNA)-DNA and DNA-ribosomal ribonucleic acid (RNA) hybridization of 150 isolates have identified 4 genomovars of Burkholderia (pseudomonas) cepacia. All cystic fibrosis isolates cluster in genomovar III; while environmental isolates (including phytopathogenic type strain) belong to genomovar I.

G. Existing Tolerances

1. A tolerance exemption for Burkholderia (pseudomonas) cepacia, Wisconsin isolate/strain M36 (a.k.a. Blue Circle Inoculant), was granted in 1992 by EPA.

2. It is not known if any international tolerance exemptions exist.

II. Public Record

Interested persons are invited to submit comments on the this notice of filing. Comments must bear a notation indicating the docket control number, [PF-709].

A record has been established for this notice under docket control number [PF-709] including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this notice.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 6, 1997.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 97–4115 Filed 2–19–97; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Revised Policy Statement on "Interagency Coordination of Formal Corrective Action by the Federal Bank Regulatory Agencies"

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Notice of revised policy statement.

SUMMARY: The Task Force on Supervision, acting under delegated authority from the Federal Financial Institutions Examination Council (FFIEC), has revised the policy statement on "Interagency Coordination of Formal Corrective Action by the Federal Bank Regulatory Agencies" dated December 18, 1979, and is recommending that the FFIEC member agencies adopt and implement the updated policy statement. The revised policy statement entitled "Interagency Notification and Coordination of Enforcement Actions by the Federal Bank Regulatory Authorities" appears below.

DATES: Effective immediately.

FOR FURTHER INFORMATION CONTACT:

FDIC: Daniel E. Austin, (202/898–6774) Review Examiner, Special Situations & Applications Section, Division of Supervision, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.

FRB: Nancy Oakes, (202/452–2743), Senior Attorney, Enforcement Section, Division of Banking Supervision & Regulation, Board of Governors of the Federal Reserve System, 20th & C Streets, NW, Washington, DC 20551.

OCC: Carolyn Amundson, (202/874–5371), Senior Attorney, Enforcement & Compliance Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

OTS: Scott Albinson, (202/906–7984), Special Assistant to the Executive Director for Supervision, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

The text of the Revised Policy Statement follows:

Revised Policy

Any federal banking regulatory agency that proposes to take a formal enforcement action against any federally regulated financial institution or any institution-affiliated party shall notify in writing the other federal banking regulatory agencies and, where appropriate, a state supervisory authority prior to or at the initiation of such action. For the purposes of interagency notification, an enforcement action is initiated when the appropriate responsible agency official, or group of officials, determines that formal enforcement action should be taken. All notifications to other federal banking regulatory agencies shall be made to a designated contact person or persons as specified by each agency.

When there is an affiliation or other inter-institutional relationship, any federal banking regulatory agency that proposes to take an informal enforcement action against any federally regulated financial institution or institution-affiliated party shall notify in writing the other appropriate federal banking regulatory agencies and, where appropriate, a state supervisory authority prior to or at the initiation of such action.

In the event that complementary action (e.g., action involving a bank and its parent holding company, or a U.S. branch or agency and a foreign bank) is considered appropriate by two or more federal banking regulatory agencies, the preparation, processing, presentation, service, and follow-up of the enforcement action shall be coordinated by the agencies directly involved.

The purpose of these procedures is to encourage notification to appropriate federal and state bank regulatory authorities at the earliest practicable date. These procedures are not intended to preclude or forestall any federal banking regulatory agency from initiating an enforcement action alone and on a timely basis against an institution or institution-affiliated party for which it has primary supervisory jurisdiction.

Dated: February 13, 1997.

Joe M. Cleaver,

Executive Secretary/Federal Financial Institutions Examination Council.

[FR Doc. 97–4085 Filed 2–19–97; 8:45 am]

BILLING CODE OCC: 4810–33–P (25%); FRB: 6210–01–P (25%); FDIC: 6714–01–P (25%); OTS: 6720–01–P (25%)

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 14, 1997.

A. Federal Reserve Bank of New York (Christopher J. McCurdy, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. The Bank of New York Company, Inc., New York, New York; to acquire 9.9 percent of the voting shares of State Street Boston Corporation, Boston, Massachusetts, and thereby indirectly acquire State Street Bank and Trust Company, Boston, Massachusetts.

In connection with this application, Applicant also has applied to acquire State Street Boston Securities Services Corp., Boston, Massachusetts, and thereby indirectly acquire Investors Fiduciary Trust Company, Kansas City, Missouri, and thereby engage in performing functions or activities that may be performed by a trust company, pursuant to § 225.25(b)(3) of the Board's Regulation Y; State Street Global Advisors, Inc., Dover, Delaware, and thereby indirectly acquire State Street Global Advisors, United Kingdom Limited, London, England, State Street Unit Trust Management Limited, London, England, and Boston Esquiserve, L.P., Canton, Massachusetts, and thereby engage in acting as an investment or financial advisor, pursuant to §§ 226.25(b)(4)(ii) and (b)(4)(iii) of the Board's Regulation Y; Boston Financial Data Services, North Quincy, Massachusetts, and thereby indirectly acquire National Financial Data Services, Kansas City, Missouri, CFDS Limited, Toronto, Ontario, Canada, CFDS Investors Services Limited, Toronto, Ontario, Canada, European Financial Data Services, Luxembourg, Princeton Financial Systems, Princeton, New Jersey, Bridge Financial Systems, Inc., St. Louis, Missouri, and Dunai Financial Services PTY Limited, Melbourne, Australia, and thereby engage in data processing activities, pursuant to § 225.25(b)(7) of the Board's Regulation Y. These activities will be conducted worldwide.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. 1st United Bancorp, Boca Raton, Florida; to acquire 100 percent of the voting shares of Island National Bank and Trust Company, Palm Beach, Florida.

C. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. TCF Financial Corporation, Minneapolis Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of TCF National Bank Minnesota, Minneapolis, Minnesota, a *de novo* bank; TCF National Bank Illinois, Chicago, Illinois, a *de novo* bank; TCF National Bank

Wisconsin, Milwaukee Wisconsin, a *de novo* bank; Great Lakes National Bank Michigan, Ann Arbor, Michigan, a *de novo* bank; Great Lakes National Bank Ohio, Hamilton, Ohio, a *de novo* bank; TCF Colorado Corporation, Englewood, Colorado, a bank holding company; by acquiring TCF National Bank Colorado, Englewood, Colorado, a *de novo* bank.

In connection with this application, Applicant also has applied to acquire TCF Securities, Inc., St. Paul, Minnesota, and thereby engage in offering securities brokerage services involving mutual funds shares and related investment advisory activities, pursuant to §§ 225.25 (b)(4) and (b)(15) of the Board's Regulation Y.

In addition to this application, TCF Colorado Corporation, Englewood, Colorado, also has applied to become a bank holding company by acquiring 100 percent of the voting shares of TCF National Bank Colorado, Englewood, Colorado, a *de novo* bank.

D. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. ANB Bancshares, Inc., Gonzales, Texas, and ANB Nevada Group, Inc., Carson City, Nevada; to become bank holding companies by acquiring 100 percent of the voting shares of American National Bank, Gonzales, Texas.

Board of Governors of the Federal Reserve System, February 13, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–4154 Filed 2-19-97; 8:45 am]

BILLING CODE 6210-01-F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 17, 1997.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. NationsBank Corporation, Charlotte, North Carolina, and NB Holdings Corporation, Charlotte, North Carolina; to retain 7.98 percent of the voting shares of Calvin B. Taylor Bankshares, Inc., Berlin, Maryland, and thereby indirectly retain Calvin B. Taylor Banking Company of Berlin, Maryland, Berlin, Maryland.

In connection with this application, Applicants have also applied to retain 13.03 percent of the votings shares of First Perry Bancorp, Inc., Pinckneyville, Illinois, and thereby indirectly retain First National Bank in Pinckneyville, Pinckneyville, Illinois.

In addition to this application, Applicants have also applied to retain 15.43 percent of the voting shares of The First National Bank in Falfurrias, Falfurrias, Texas.

In addition to this application, Applicants have also applied to retain 15.52 percent of the voting shares of First National Security Company, De Queen, Arkansas, and thereby indirectly retain Bank of Ashdown, NA, Ashdown, Arkansas; First National Bank of Howard County, Dierks, Arkansas; Citizens National Bank, Nashville, Arkansas; Bank of Waldron, Waldron, Arkansas; American State Bank, Broken Bow, Oklahoma; and First National Bank of De Queen, De Queen, Arkansas.

In addition to this application, Applicants have also applied to retain 15.52 percent of the voting shares of First National Security Company, De Queen, Arkansas, and therby indirectly retain First National Bancshares of Hempstead County, Inc., Hope, Arkansas; First National Bank of Hope, Hope, Arkansas; Bank of Blevins, Blevins, Arkansas; and First National Bank of Lewisville, Lewisville, Arkansas. NationsBank has applied to retain all of these shares held in its fiduciary capacity.

Board of Governors of the Federal Reserve System, February 14, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–4183 Filed 2-19-97; 8:45 am]

BILLING CODE 6210-01-F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 5, 1997.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Crestar Financial Corporation, Richmond, Virginia; to engage *de novo* through its subsidiary, Crestar Securities Corporation, Richmond, Virginia, in underwriting and dealing in certain bank-ineligible securities. *See Citicorp 73 Fed. Res. Bull. 473 (1987) and Chemical 73 Fed. Res. Bull. 731 (1987)*; in acting as agent in the private placement of all types of securities. *See Bankers Trust 75 Fed. Res. Bull. 829 (1989) and J.P. Morgan 76 Fed. Res. Bull. 26 (1990)*; and in buying and selling all types of securities on the order of customers as riskless principal. *See 82 Fed. Res. Bull. 759 (1996)*.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. HPK Financial Corporation, Chicago, Illinois; to acquire Mortgage Service America, Inc., Lombard, Illinois, and thereby engage in making and servicing loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 13, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–4155 Filed 2-19-97; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[File No. 952–3029]

Splitfire, Inc.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposal Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the Northbrook, Illinois-based spark-plug marketer from making deceptive claims about the fuel economy, emissions, horsepower, or cost savings gained from using its "split electrode" spark plugs and from misrepresenting the results of tests, studies, or research and of testimonials. The complaint accompanying the consent agreement alleges that Splitfire made false or unsubstantiated economy, efficiency, and improved performance claims for its spark plugs.

DATES: Comments must be received on or before April 21, 1997.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Laura Fremont, Federal Trade Commission, San Francisco Regional Office, 901 Market Street, Suite 570, San Francisco, CA 94103 (415) 356–5270.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Pace (for February 11, 1997), on the World Wide Web, at "http://www.ftc.gov/os/actions/htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has provisionally accepted an agreement to a proposed consent order from respondent SplitFire, Inc., an Illinois corporation that markets automotive products.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should make final the agreement's proposed order, or withdraw from the agreement and take other appropriate action.

This matter concerns the advertising of SplitFire's "SplitFire" spark plug, which has one v-shaped, or "split" electrode. The Commission's complaint charges that SplitFire's advertising represented, without a reasonable basis, that use of SplitFire Spark Plugs results in significantly better fuel economy, significantly greater horsepower, and significantly lower emissions than use of either conventional (non split-electrode) spark plugs of platinum-tipped spark plugs. The Commission's complaint also charges that respondent represented, without a reasonable basis, that use of SplitFire Spark Plugs will result in significant cost savings over use of either conventional or platinum-tipped spark plugs.

In addition, the complaint alleges that the company lacked a reasonable basis for its claim that 70% of SplitFire Spark Plugs users achieve a gas mileage increase of from 1 to 6 more miles per gallon. Further, the complaint alleges as false SplitFire's claim that these figures were based on competent and reliable studies or surveys.

Lastly, the Commission's complaint charges that respondent represented, without a reasonable basis, that the testimonials or endorsements from consumers appearing in advertisements and promotional materials for its spark plugs reflect the typical or ordinary experience of members of the public who use SplitFire Spark Plugs.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondent from engaging in similar acts and practices in the future.

Part I of the proposed order prohibits SplitFire, Inc., from representing, without competent and reliable scientific evidence, the effect of any motor vehicle product on a vehicle's fuel economy, emissions, or horsepower. Part I also prohibits the company from representing, without competent and reliable scientific evidence, the comparative or absolute cost savings that any motor vehicle product will contribute to or achieve. Part II of the proposed order prohibits respondent, when advertising any motor vehicle product, from misrepresenting the existence, contents, validity, results, conclusions or interpretations of any test, study, or research.

Part III of the proposed order addresses claims made through endorsements or testimonials. Under Part III, respondent may make such representations if respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representations; or respondent must disclose either what the generally expected results would be for users of the advertised product, or the limited applicability of the endorser's experience to what consumers may generally expect to achieve. The proposed order's treatment of testimonial claims is in accordance with the Commission's "Guides Concerning Use of Endorsements and Testimonials in Advertising," 16 C.F.R. 255.2(a).

Part IV of the proposed order requires respondent to possess adequate substantiation for any representation regarding the performance, benefits, or efficacy of any motor vehicle product.

The proposed order also requires respondent to maintain advertising materials and materials relied upon to substantiate claims covered by the order; to provide a copy of the consent agreement to certain personnel in the company; to notify the Commission of any change in the corporate structure that might affect compliance with the order; and to file one or more reports detailing compliance with the order.

Under Part IX, the order terminates 20 years from the date of issuance, except under certain specified conditions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 97–4145 Filed 2–19–97; 8:45 am]

BILLING CODE 6750–01–M

[File No. 962–3118]

Zale Corporation; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violation of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the Irving, Texas-based jewelry retailer to disclose, clearly and prominently, the nature of the pearl jewelry it sells and would mandate that company stores display consumer information about the definition of natural, cultured, imitation pearls. The complaint accompanying the consent agreement alleges that Zale deceptively advertised its "Ocean Treasures" line of limitation pearl jewelry as composed of cultured pearls.

DATES: Comments must be received on or before April 21, 1997.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Jeffrey Klurfeld, Federal Trade Commission, San Francisco Regional Office, 901 Market Street, Suite 570, San Francisco, CA 94103. (415) 356–5275.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for February 10, 1997), on the world Wide Web, at "http://www.ftc.gov/os/actions/htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from Zale Corporation, (hereinafter "Zale"). Zale is the largest retailer of fine jewelry products in the United States.

The proposed consent order has been placed on the public record for sixty (60) days for the reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and any comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

The proposed complaint alleges violations of Section 5 of the Federal Trade Commission Act. This matter focused on Zale's advertisements for the "Ocean Treasures" line of imitation pearl jewelry. The advertisements depicted Ocean Treasures earrings, necklaces, rings and pendants, and described them as follows: "Ocean Treasures Fine Jewelry. Created by nature, enhanced by man." The advertisements also included the following statement: "Zales. The Diamond, semi-precious and pearl store." The proposed complaint alleges that, through these depictions and statements, Zale violated Section 5 of the Federal Trade Commission Act by falsely claiming that the Ocean Treasures line of jewelry is composed of cultured pearls.

The Federal Trade Commission recently revised its Guides for the Jewelry, Precious Metals, and Pewter Industries, 16 C.F.R. Part 23, 61 F.R. 27212 (May 30, 1996) (the "Jewelry Guides"). The previous version of the Guides as well as the revised Guides address various advertising practices in the jewelry industry, including those employed by Zale. See, e.g., § 23.2 (*Misleading Illustrations*); § 23.20 (*Misuse of terms such as "cultured pearl," "seed pearl," "Oriental pearl," "natura," "kultured," "real," "gem," "synthetic," and regional designations*); § 23.19 (*Misuse of the word "pearl"*); and § 23.18 (*Definitions of various pearls*). These industry guides are administrative interpretations of laws administered by the Commission for the guidance of the public in conducting its affairs in conformity with legal requirements. While the Guides are referenced in the complaint, they do not create a separate cause of action.

Part I of the proposed order would require that Zale not represent that imitation pearls are cultured pearls. Part II would prevent Zale from representing that imitation pearl jewelry is or contains one or more pearls unless Zale designates the jewelry as "artificial," "imitation," "simulated," or by some other word or phrase of like meaning. Part III would prevent Zale from representing that cultured pearl jewelry is or contains one or more pearls unless Zale designates the jewelry as "cultured" or "cultivated," or by some other word or phrase of like meaning. Part IV would prohibit the company from misrepresenting the composition or origin of any jewelry product composed partially or entirely of natural pearls, cultured pearls, or imitation pearls.

Part V of the proposed order would require Zale, for a period of three years, to make available, at each of its stores that sells natural, cultured or imitation pearls, a brief fact sheet entitled "Your Guide to Pearls." This fact sheet briefly defines the differences among the three general categories of pearls.

The proposed order also would require Zale to maintain materials related to its advertising of pearl, cultured pearl, and imitation pearl jewelry. The proposed order would also require Zale to provide a copy of the consent agreement to all employees or representatives with duties affecting compliance with the terms of the order; to notify the Commission of any changes in corporate structure that might affect compliance with the order; and to file one or more reports detailing compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 97–4146 Filed 2–19–97; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary; Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made a final finding of scientific misconduct in the following case:

James B. Boone, Jr., Ph.D., University of Missouri-Columbia: Based upon an investigation conducted by the University of Missouri-Columbia, information obtained by the Office of Research Integrity (ORI) during its oversight review, and Dr. Boone's own admission, ORI found that Dr. Boone, former Research Assistant Professor, Department of Veterinary Biomedical Sciences at the University of Missouri-Columbia, engaged in scientific misconduct by fabricating and falsifying data in biomedical research supported by a grant from the National Heart, Lung, and Blood Institute (NHLBI), National Institutes of Health (NIH).

Specifically, Dr. Boone fabricated the weights of individual, isolated muscles that, in fact, had not been separated by dissection, and falsely presented unrelated gamma counter results as having been obtained from the same individual muscles. He presented these data to his laboratory director as the results from two experiments that Dr. Boone admitted he did not complete. Dr. Boone committed additional falsifications in conducting research, including presenting: (1) A computer spread sheet that used the above described sets of the fabricated primary data of muscle weights and the falsified gamma counter results to generate false computations of blood flow in separate muscles; (2) A computer spread sheet for the statistical computations of the data from the two sets of fabricated and falsified reduced data; and (3) A histogram derived from the falsified reduced data that showed significant differences in some of the fabricated experimental measurements on individual muscles.

Dr. Boone has accepted the ORI finding and has entered into a Voluntary Exclusion Agreement with ORI in which he has voluntarily agreed, for the three (3) year period beginning February 10, 1997:

(1) To exclude himself from serving in any advisory capacity to the Public Health Service (PHS), including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant; and

(2) That any institution that submits an application for PHS support for a research project on which the respondent's participation is proposed or which uses the respondent in any capacity on PHS supported research must concurrently submit a plan for supervision of his duties. The supervisory plan must be designed to ensure the scientific integrity of the respondent's research contribution. The institution must submit a copy of the supervisory plan to ORI.

No scientific publications were required to be corrected as part of this Agreement.

FOR FURTHER INFORMATION CONTACT: Acting Director, Division of Research Investigations Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,

Acting Director, Office of Research Integrity.

[FR Doc. 97–4081 Filed 2–19–97; 8:45 am]

BILLING CODE 4160–17–P

Centers for Disease Control and Prevention

State Childhood Lead Poisoning Prevention Grantees Meeting

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

NAME: Meeting of State Childhood Lead Poisoning Prevention Grantees.

TIMES AND DATES: 12 p.m.–4:10 p.m., February 24, 1997. 8:30 a.m.–5:30 p.m., February 25, 1997. 8 a.m.–5:10 p.m., February 26, 1997. 8:30 a.m.–11:40 a.m., February 27, 1997.

PLACE: Holiday Inn Select-Atlanta-Decatur Hotel and Conference Plaza, 130 Clairemont Avenue, Decatur, Georgia 30030, telephone 404/371–0204.

STATUS: Open to the public, limited only by space available. The meeting room accommodates approximately 80 people.

PURPOSE: This meeting will provide a forum for childhood lead poisoning prevention coordinators and data administrators to review program progress and discuss prevention issues and concerns. Persons wishing to make written or oral comments at the meeting should notify the contact person listed below, in writing or by phone, no later than close of business February 21, 1997.

Requests to make oral comments should contain the name, address, telephone number, and organizational affiliation of the presenter. Depending on the time available and the number of requests to make oral comments, it may be necessary to limit the time of each presenter.

MATTERS TO BE DISCUSSED: Topics to be discussed at this meeting include CDC's proposed revised screening guidelines, establishment of a data system to implement screening guidance, and data recommendations. There will be information presented regarding computer programming and how it relates to data analysis and using data to make decisions. Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Claudette Grant, Lead Poisoning Prevention Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, M/S F42, Atlanta, Georgia 30341, telephone 770/488–7330, fax 770/488–7335.

Dated: February 13, 1997.

Joseph E. Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–4139 Filed 2–19–97; 8:45 am]

BILLING CODE 4163–18–P

Administration for Children and Families

Office of Planning, Research and Evaluation; Statement of Organization, Functions, and Delegations of Authority

This Notice amends Part K, Chapter K of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (DHHS), Administration for Children and Families (ACF) as follows: Chapter KM, The Office of Planning, Research and Evaluation (OPRE) (60 FR 56606) as last amended, November 9, 1995. This reorganization will establish the Division of Data Collection and Analysis within the Office of Planning, Research and Evaluation.

Amend Chapter KM as follows:

1. Delete KM.00 Mission in its entirety and replace with the following:

KM.00 Mission. The Office of Planning, Research and Evaluation (OPRE) is the principal advisor to the Deputy Assistant Secretary for Policy

and External Affairs and the Assistant Secretary for Children and Families on improving the effectiveness and efficiency of programs designed to make measurable improvements in the economic and social well-being of children and families.

The Office provides guidance, analysis, technical assistance, and oversight to ACF programs and across programs in the agency on: strategic planning aimed at measurable results; performance measurement; research and evaluation methodologies; demonstration testing and model development; statistical, policy and program analysis; synthesis and dissemination of research and demonstration findings; and application of emerging technologies to improve the effectiveness of programs and service delivery. The Office also is responsible for the collection, compilation, analysis, and dissemination of data.

The Office oversees and manages the section 1110 and section 1115 social service research programs, including: priority setting and analysis; processing waivers for welfare reform demonstrations; managing and coordinating major cross-cutting, leading-edge studies and special initiatives; collaborating with states, communities, foundations, professional organizations and others to promote the development of children, family focused services, parental responsibility, employment, and economic independence; and providing coordination and leadership in implementing the Government Performance and Results Act (GPRA).

2. Delete KM.10 Organization in its entirety and replace with the following:

KM.10 Organization. The Office of Planning, Research and Evaluation is headed by a Director who reports to the Deputy Assistant Secretary for Policy and External Affairs. The Office is organized as follows:

- Office of the Director (KMA)
- Division of Economic Independence (KMB)
- Division of Child and Family Development (KMC)
- Division of Data Collection and Analysis (KMD)

3. Delete KM.20 Functions in its entirety and replace with the following:

KM.20 Functions. A. The Office of the Director provides direction and executive leadership to OPRE in administering its responsibilities. It serves as principal advisor to the Deputy Assistant Secretary for Policy and External Affairs and the Assistant Secretary for Children and Families on all matters pertaining to: improving the effectiveness and efficiency of ACF programs; strategic planning; performance measurement; program and policy evaluation; research and demonstrations; state and local innovations and progress; collection, analysis, and dissemination of data; and public/private partnership initiatives of concern to the Assistant Secretary for Children and Families. It represents the Deputy Assistant Secretary for Policy and External Affairs and the Assistant Secretary for Children and Families at various planning, research, evaluation and data collection and analysis forums and carries out special Departmental and Administration initiatives.

B. The Division of Economic Independence, in cooperation with ACF income support programs and others, works with Federal counterparts, states, community agencies, and the private sector to understand and overcome barriers to economic independence; promote parental responsibility; and assist in improving the effectiveness of programs that further economic independence.

The Division provides guidance, analysis, technical assistance and oversight in ACF on: strategic planning and performance measurement for economic independence; statistical, policy and program analysis; surveys, research, and evaluation methodologies; demonstration testing and model development; synthesis and dissemination of research and demonstration findings; and application of emerging technologies to programs which promote employment, parental responsibility, and economic independence.

The Division analyzes, processes and coordinates Federal review and decision-making for all section 1115 state welfare reform waiver demonstration requests; develops policy-relevant priorities; conducts, manages and coordinates major cross-program, leading-edge research, demonstrations, and evaluation studies; manages and conducts statistical, policy and program analyses on trends in employment, child support payments, and other income supports; and works in partnership with states, communities, and the private sector to promote employment, parental responsibility, and family economic independence.

C. The Division of Child and Family Development, in cooperation with ACF programs and others, works with Federal counterparts, states, community agencies, and the private sector to: improve the effectiveness and efficiency of programs; assure the protection of children and other vulnerable populations; strengthen and promote family stability; and foster sound growth and development of children and their families.

The Division provides guidance, analysis, technical assistance and oversight in ACF on: Strategic planning and performance measurement for child and family development; statistical, policy and program analysis; surveys, research and evaluation methodologies; demonstration testing and model development; synthesis and dissemination of research and demonstration findings; and application of emerging technologies to improve the effectiveness of programs and service delivery.

The Division: Manages the section 1110 social service research budget; develops policy-relevant priorities; conducts, manages and coordinates major cross-program, leading-edge research, demonstration, and evaluation studies; manages and conducts statistical, policy and program analyses on social trends and behaviors which impact child and family well-being; and works in partnership with states, local communities, and the private sector to promote the well-being of children and families.

D. The Division of Data Collection and Analysis is responsible for all aspects of the collection, compilation, analysis, and dissemination of data on selected ACF programs.

The Division develops regulations to implement data collection requirements; designs, develops, implements, and maintains systems for the collection and analysis of data including: Participation rate information, recipient characteristics, administrative data, State expenditures on families, work activities of non-custodial parents, transitional services, and data used in the assessment of State performance.

The Division provides leadership in and coordinates with other ACF and HHS offices and external organizations in the dissemination and use of these data for policy and research purposes. The Division also develops and maintains statistical protocols and manuals for data collection purposes and provides technical assistance in the use of these materials.

Dated: February 13, 1997.

Laurence J. Love,

Deputy Assistant Secretary for Program Operations.

[FR Doc. 97–4182 Filed 2–19–97; 8:45 am]

BILLING CODE 4184–01–P

Food and Drug Administration

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETINGS: The following advisory committee meetings are announced:

Anti-Infective Drugs Advisory Committee

Date, time, and place. March 5, 1997, 8:30 a.m., Bethesda Ramada, Embassy Ballroom, 8400 Wisconsin Ave., Bethesda, MD, and March 6 and 7, 1997, 8:30 a.m., Holiday Inn—Bethesda, Versailles Ballrooms I and III, 8210 Wisconsin Ave., Bethesda, MD. The hotels are in close proximity and have parking available. In addition, there is a public parking garage nearby at 8216 Woodmont Ave.

Type of meeting and contact person. Open public hearing, March 5, 1997, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; open committee discussion, March 6, 1997, 8:30 a.m. to 5 p.m.; open committee discussion, March 7, 1997, 8:30 a.m. to 2 p.m.; Ermona B. McGoodwin or Danyiel D'Antonio, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Anti-Infective Drugs Advisory Committee, code 12530. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of infectious diseases and disorders.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before February 28, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On the morning of March 5, 1997, the committee will discuss supplemental new drug application (NDA) 50–679/S002 Maxipime® for Injection (cefepime hydrochloride, Bristol-Myers Squibb), in the treatment of febrile episodes in neutropenic patients. In the afternoon of March 5, 1997, and on March 6 and 7, 1997, the committee will discuss the draft guidance document entitled "Evaluating Clinical Studies of Antimicrobials in the Division of Anti-Infective Drug Products," which is currently in the *Draft-Not for Implementation* stage. Copies of this draft guidance document can be obtained 2 weeks before the meeting from the Drug Information Branch, Division of Communications Management (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573, FAX: 301–827–4577. An electronic version of this draft guidance document will be available 2 weeks before the meeting via the World Wide Web. To access the draft guidance document on the Internet, connect to CDER's home page at http://www.fda.gov/cder/guidance.htm.

FDA regrets that it was unable to publish this notice 15 days prior to the March 5, 6, and 7, 1997, Anti-Infective Drugs Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Anti-Infective Drugs Advisory Committee were available at this time, the Commissioner concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Science Board to the Food and Drug Administration

Date, time, and place. March 13, 1997, 9 a.m. to 3 p.m., Sheraton National Hotel, North Ballroom, 900 South Orme St. (Columbia Pike and Washington Blvd.), Arlington, VA.

Type of meeting and contact person. Open committee discussion, 9 a.m. to 11 a.m.; open public hearing, 11 a.m. to 12 m., unless public participation does not last that long; open committee discussion, 12 m. to 3 p.m.; Susan A. Homire, Office of Science (HF–33), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3340, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Science Board to the Food and Drug Administration, code 12603. Please call the hotline for information concerning any possible changes.

General function of the board. The board shall provide advice primarily to the agency's Senior Science Advisor and, as needed, to the Commissioner and other appropriate officials on specific complex and technical issues as well as emerging issues within the scientific community in industry and academia. Additionally, the board will provide advice to the agency on keeping pace with technical and scientific evolutions in the fields of regulatory science; on formulating an appropriate research agenda; and on upgrading its scientific and research facilities to keep pace with these changes. It will also provide the means for critical review of agency sponsored intramural and extramural scientific research programs.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the board. Those desiring to make formal presentations should notify the contact person before March 3, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, and the names and addresses of proposed participants. Each presenter will be limited in time and not all requests to speak may be accommodated. All written statements submitted in a timely fashion will be provided to the board.

Open board discussion. The Science Board Subcommittee on Toxicology, which has been established to address

issues related to toxicological testing methods, will provide an update on its activities. The Science Board Subcommittee on FDA Research will present a report to the board on a strategy for optimizing the quality and mission relevance of agency research programs.

Vaccines and Related Biological Products Advisory Committee

Date, time, and place. March 14, 1997, 12:30 p.m., National Institutes of Health, Bldg. 29, conference room 121, 8800 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. This meeting will be held by a telephone conference call. A speaker telephone will be provided in the conference room to allow public participation in the meeting. Open committee discussion, 12:30 p.m. to 2 p.m.; open public hearing, 2 p.m. to 3 p.m., unless public participation does not last that long; Nancy T. Cherry or Denise A. Royster, Center for Biologics Evaluation and Research (HFM–21), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Vaccines and Related Biological Products Advisory Committee, code 12388. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of vaccines intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person by March 1, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss the influenza virus vaccine's formulation for 1997 and 1998.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of the meeting(s) shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (a)(2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: February 12, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–4305 Filed 2–18–97; 11:00 am]

BILLING CODE 4160–01–F

[Docket No. 97N–0042]

Review of the Adverse Event Reporting System for Postmarketing Surveillance; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting to provide the pharmaceutical industry and other interested persons with information on the plans, progress, and technical specifications developed under the reengineering of the Center for Drug Evaluation and Research's (CDER's) postmarketing surveillance program. The primary focus of the meeting will be the electronic submission of adverse drug reaction (ADR) reports under the new adverse event reporting system (AERS), which is currently under development as a major component of the reengineering effort.

DATES: The public meeting will be held on Monday, March 17, 1997, from 9:30 a.m. to 5 p.m. There is no registration fee for the meeting. Because space is limited, interested persons are encouraged to register by March 7, 1997.

ADDRESSES: The public meeting will held at the DoubleTree Hotel, 1750 Rockville Pike, Rockville, MD 20852. Persons interested in attending should fax their registration to Robert Nelson at 301–480–2825. The facsimile should include the participant's name and title; organization name, if any; address; and telephone and fax numbers.

Three weeks prior to the public meeting, a copy of the meeting agenda will be available through CDER's Fax-on-Demand, 301–827–0577 or 800–342–2722, under the index "AERS Public Meeting," document No. 0510. Information about the meeting will be available via Internet using the World Wide Web (WWW). To connect to the CDER home page, type http://www.fda.gov/cder and go to the "What's Happening" section. Also available on the CDER home page is a link to the new AERS home page, which contains a brief summary of the materials that will be discussed at the meeting. Information distributed at the public meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, approximately 10 business days after the meeting at a cost of 10 cents per page.

The agenda will be placed on display, under the docket number found in brackets in the heading of this document, at the Dockets Management Branch (HFA–305), 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert C. Nelson, Food and Drug Administration, Center for Drug Evaluation and Research (HFD–700), 5600 Fishers Lane, Rockville, MD 20857, 301–827–3206.

SUPPLEMENTARY INFORMATION: The primary purpose of FDA's postmarketing surveillance program is to identify potentially serious drug safety problems, focusing especially on newly marketed drugs. Although premarket testing discloses a general safety profile of a new drug's comparatively common adverse effects, the larger and more diverse patient populations exposed to the marketed drug provides, for the first time, the opportunity to collect information on rare, latent, and long-term effects. Reports are obtained from a variety of sources, including patients, treating physicians, foreign regulatory agencies, and clinical investigators. Over 75 percent of the ADR reports that FDA receives are routed from health care practitioners through pharmaceutical companies. The remainder of the reports come directly to FDA through the agency's MedWatch program.

FDA's computerized spontaneous reporting system (SRS) contains 1.4 million ADR reports for human drugs and therapeutic biologics. FDA plans to replace SRS with AERS by September 1997. All SRS historical data will be migrated to AERS. AERS will enable FDA to receive reports from pharmaceutical companies by electronic submission, transmitted data base to data base through standardized pathways. The technical specifications of the AERS computerized system will be described at the public meeting and made available to participants, especially as they relate to the electronic submission of expedited and periodic ADR reports.

FDA has participated in the development of several guidelines by the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH) that relate to the submission of ADR reports under the AERS system: "Clinical Safety Data Management: Definitions and Standards for Expedited Reporting" (E2A); "Clinical Safety Data Management: Data Elements for Transmission of Individual Case Safety Reports" (E2B); and "Clinical Safety Data Management: Periodic Safety Update Reports for Marketed Drugs" (E2C). In addition, two other guidelines are currently under development by ICH: "Medical Terminology (MEDDRA)" (M1) and "Electronic Standards for the Transfer of Regulatory Information (ESTRI)" (M2).

At the public meeting, FDA will explain how it intends to incorporate these recommended standards into the requirements for the electronic submission of ADR reports under AERS. The meeting will include a general discussion of CDER's plans to propose revisions to its postmarketing ADR reporting regulations. The goals of this rulemaking are to implement the recommendations in the ICH guidelines and to enhance the quality of ADR reports received by the agency. The agency hopes to familiarize the pharmaceutical industry with the procedures for the electronic submission of ADR reports under AERS so that they are prepared to comply with any revised regulations that may issue as a result of the rulemaking initiative.

Additional information on the technical specifications of the AERS system will be placed on display, as they are available in final form, at the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 13, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–4161 Filed 2–19–97; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[Form # HCFA–P–15A]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services (DHSS), has submitted to the Office of Management and Budget (OMB) the following request for Emergency review. We are requesting an emergency review because the collection of this information is needed prior to the expiration of the normal time limits under OMB's regulations at 5 CFR, Part 1320, thus causing the disruption of this collection of information, which is essential to the agency's mission of ensuring that beneficiary needs are evaluated and implemented, to the extent possible, in a cost-effective manner. The Agency cannot reasonably comply with the normal clearance procedures because public harm is likely to result if normal clearance procedures are followed. Without this information, HCFA would not be able to properly determine the services needed by beneficiaries or the most cost efficient manner to meet beneficiary needs, possibly resulting in the denial of beneficiary warranted services and a loss of program dollars.

HCFA is requesting that OMB provide a 24-hour review and a 180-day approval. During this 180-day period HCFA will pursue OMB clearance of this collection as stipulated by 5 CFR 1320.5.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Current Beneficiary Survey (MCBS) Round 18; *Form No.:* HCFA–P–15A; *Use:* The MCBS is a continuous, multipurpose survey of a nationally representative sample of aged and disabled persons for Medicare. The survey provides a comprehensive source of information on beneficiary characteristics, needs, and satisfaction with Medicare-related activities. The proposed MCBS revisions will focus on the evaluation of beneficiary informational needs. This information will enable HCFA to better coordinate and integrate its current communication objectives effectively and efficiently; *Frequency:* On occasion; *Affected Public:* Individuals and households; *Number of Respondents:* 16,000; *Total Annual Responses:* 16,000; *Total Annual Hours:* 16,000.

To request copies of the proposed paperwork collections referenced above, call the Reports Clearance Office on (410) 786–1325. Written comments and recommendations for the proposed information collections should be faxed to OMB at (202) 395–6974, or sent within 48 hours of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: February 18, 1997.

Edwin J. Glatzel,

Director, Management Analysis and Planning Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 97–4337 Filed 2–19–97; 8:45 am]

BILLING CODE 4120–03–P

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel (SEP) meeting:

Name of SEP: Alendronate.
Date: February 18, 1997.
Time: 3:00 p.m. - adjournment.
Place: NIAMS Review Branch, 45 Natcher Building, Bethesda, Maryland 20892.
Contact Person: Melvin H. Gottlieb, Ph.D., Natcher Building, 45 Center Drive, Rm 5AS–25U, Bethesda, Maryland 20892–6500, Telephone: 301–594–4952.
Purpose/Agenda: To evaluate and review an individual contract proposal. The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussion of this proposal could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposal, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. [93.846, Project Grants in Arthritis, Musculoskeletal and Skin Diseases Research], National Institutes of Health, HHS)

Dated: February 13, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–4260 Filed 2–14–97; 4:34 pm]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.
Committee Name: National Institute of Mental Health Special Emphasis Panel.
Date: February 20, 1997.
Time: 8 a.m.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Rehana A. Chowdhury, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301–443–6470.

Committee Name: National Institute of Mental Health Special Emphasis Panel.
Date: March 6, 1997.
Time: 2 p.m.
Place: Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.
Contact Person: Lawrence E. Chaitkin, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301–443–4843.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: February 13, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–4261 Filed 2–14–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4200–N–25]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: April 21, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Shelia E. Jones, Department of Housing & Urban Development, 451—7th Street, SW, Room 7230, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Donner Buchet (202) 708–2290 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35 as amended).

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Designation of 20 Community Development Corporations for authority to offer tax credits for contributions.
OMB Control Number, if applicable:
Description of the need for the information and proposed use: To assess progress of designated CDCs in accomplishing the program and activities for which they received designation.
Agency form numbers, if applicable:
Members of affected public: Staff of the 20 community development corporations (CDCs).

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

20 CDCs × 5 hours = maximum of 100 hours by respondents annually.

Status of the proposed information collection: 7 years of reporting remaining for 20 CDCs.

Authority: Sections 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: February 12, 1997.

Howard B. Glaser,

Acting Assistant Secretary for Community Planning and Development.

[FR Doc. 97–4136 Filed 2–19–97; 8:45 am]

BILLING CODE 4210–29–M

[Docket No. FR–4200–N–26]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: April 21, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Josie D. Harrison, Reports Liaison Office, Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451—7th Street, SW, Room 5124, Washington, D.C. 20410–5000.

FOR FURTHER INFORMATION CONTACT: Cheryl Kent (202) 708–2333, Extension 348 or (202) 708–1734 (TTY) (these are not toll-free numbers) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, permitting electronic submission of responses.

OMB Control Number: 25290034.
Description of the need for the information and proposed use:

The information is needed to ensure that HUD's recipients comply with the Section 504 reporting requirements at:

- 24 CFR 8.21(c)(4) and 24 CFR 8.24 (d)—Transition Plans. Recipients must develop transition plans setting forth the steps necessary to complete structural changes that would make their programs and activities accessible to persons with disabilities;
- 24 CFR 8.51—Self Evaluation. Recipients must evaluate their current policies and practices to determine whether, in whole or in part, they do not or may not meet the requirements of Section 504;
- 24 CFR 8.25(c)—Needs Assessment and Transition Plan. Public/Indian housing authorities must assess the needs of current tenants and applicants on waiting lists for accessible units and assess the extent to which such needs have not been met or cannot reasonably be met. PHAs must develop transition plans setting forth steps necessary to complete structural changes, revealed by the needs assessment, to make their programs and activities accessible to persons with disabilities.

Agency Form Numbers: None.
Members of Affected Public: All recipients of Federal financial assistance from this Department, including public and private non-profit organizations and qualified persons with disabilities.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response. On an annual basis, 200 respondents (HUD recipients) will submit two (2) report(s) to HUD. It is estimated that four (4) hours per annual reporting period will be required of a recipient to prepare either of the reporting requirements for a total of 1600.

- Status of the proposed information collection: Revision of a currently approved collection to reflect the collection of information from HUD recipients only.

Authority: Section 3506 of the Paperwork Reduction Act of 1995 44 U.S.C., as amended. Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 12, 1997.

Susan M. Forward,

Deputy Assistant Secretary for Enforcement and Investigations.

[FR Doc. 97–4137 Filed 2–19–97; 8:45 am]

BILLING CODE 4210–28–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Recovery Plan for the Florida Salt Marsh Vole (Microtus Pennsylvanicus Dukecampbelli), for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Florida salt marsh vole (*Microtus pennsylvanicus dukecampbelli*), a federally endangered rodent that is known from only one site in Waccasassa Bay, near Cedar Key, Levy County, Florida. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before April 21, 1997 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor, Jacksonville Field Office, Fish and Wildlife Service, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216 (Telephone: 904–232–2580, FAX 904–232–2404). Written comments and materials regarding the plan should be addressed to the Field Supervisor, at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Linda Finger at the above address (Telephone: 904–232–2580 ext. 107).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened plants and animals to the point where they are secure self-sustaining members

of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting species, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice, and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will take these comments into account in the course of implementing approved recovery plans.

The Florida salt marsh vole inhabits one known coastal marsh site in Levy County, Florida. The vole is limited by two factors, an extremely restricted range encompassing only one known population, and the threat of losing this population to a storm event or population fluctuations.

The immediate goal of this recovery plan is to prevent extinction of the salt marsh vole by protecting the existing population. The actions needed to recover this species are: (1) Protect existing population, (2) conduct surveys to locate additional populations, and (3) conduct life history studies.

Public Comments Solicited

The Service solicits written comments on the recovery plan. All comments received by the date specified above will be considered prior to the approval of the plans.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

David Hankla,

Field Supervisor.

[FR Doc. 97–4094 Filed 2–19–97; 8:45 am]

BILLING CODE 4310–55–P

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for Obyan Beach Resort Associates, Saipan, Commonwealth of the Northern Mariana Islands (Commonwealth)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that Obyan Beach Resort Associates has applied to the U.S. Fish and Wildlife Service for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. The application has been assigned permit number PRT–824821. The proposed permit would authorize the incidental take of nightingale reed-warblers (*Acrocephalus luscinia*), federally listed as endangered, and/or nightingale reed-warbler habitat during the construction of a proposed 36-hole golf course and resort. The Micronesian megapode (*Megapodius laperouse*) also occurs on site but is not expected to be impacted by this project. Green sea turtles (*Chelonia mydas*) may nest at a beach near the project site, but outside of the project boundaries, and are not expected to be impacted by this project. The permit would be in effect for 50 years.

The U.S. Fish and Wildlife Service also announces the availability of an Environmental Assessment for the incidental take permit application, which includes the proposed Habitat Conservation Plan fully describing the proposed project and mitigation, and the accompanying Implementing Agreement. This notice is provided pursuant to section 10(a) of the Endangered Species Act and National Environmental Policy Act regulations (40 CFR 1506.6). All comments, including names and addresses, received will become part of the official administrative record and may be made available to the public.

DATES: Written comments on the permit application, Environmental Assessment and Implementing Agreement should be received on or before March 24, 1997.

ADDRESSES: Comments regarding the application or adequacy of the Environmental Assessment and Implementing Agreement should be addressed to the U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., Room 3108, P.O. Box 50088, Honolulu, HI 96850. Please refer to permit number PRT–824821 when submitting comments. Individuals wishing to obtain review copies of the application, Environmental Assessment, or Implementing Agreement should immediately contact the above office. Documents also will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Brooks Harper, Ms. Karen Evans or Dr. Annie Marshall, Pacific Islands Office, 808–541–3441.

SUPPLEMENTARY INFORMATION: Section 9 of the Endangered Species Act prohibits the "taking" of a species listed as threatened or endangered. However, the U.S. Fish and Wildlife Service, under limited circumstances, may issue permits to take listed species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened species are promulgated in 50 CFR 17.32; regulations governing permits for endangered species are promulgated in 50 CFR 17.22.

Background

Obyan Beach Resort Associates propose to construct a 36-hole golf course and resort on the southeastern part of Saipan, Commonwealth of the Northern Mariana Islands. Obyan Beach Resort Associates seeks coverage for impacts to 814 acres that contain nightingale reed-warbler habitat. To compensate for project impacts, Obyan Beach Resort Associates will: (1) Minimize on-site impacts and maintain habitat on site for 10 pairs of nightingale reed-warblers, and (2) work with the local Commonwealth government to establish the Saipan Wildlife Mitigation Bank, that will consist of 3 conservation sites located north of the project site. The mitigation sites provide suitable habitat for nightingale reed-warbler (tangantangan forest and mixed tangantangan/grassland mosaic). Obyan Beach Resort Associates will work with the Commonwealth government to ensure that the mitigation bank is secure through the promulgation of regulations and will provide funding for long-term management of the mitigation sites. Other measures are specified in the Habitat Conservation Plan to minimize potential for take during construction activities.

The Environmental Assessment considers the environmental consequences of three alternatives. Alternative 3, the proposed action, consists of the issuance of an incidental take permit and implementation of the Habitat Conservation Plan and its Implementing Agreement. This alternative is preferred because: (1) It satisfies the purpose and needs of the U.S. Fish and Wildlife Service and Obyan Beach Resort Associates; (2) impacts are minimized during construction, and (3) incidental take is mitigated by the establishment of a wildlife mitigation bank and other measures specified in the Habitat Conservation Plan. This mitigation bank would be established in perpetuity for the protection of the endangered nightingale reed-warbler and other wildlife species. Alternative 2 entails developing the project as originally permitted by the local government. The impacts to nightingale reed-warblers on site would be greater under this alternative and a wildlife mitigation bank would not be established. Under Alternative 1, the no action alternative, the U.S. Fish and Wildlife Service would not issue an incidental take permit. The area leased would then be likely to revert back to the Commonwealth government. None of the existing nightingale reed-warblers would be lost, at least immediately. After the land reverted back to the Commonwealth, it would then be available for other uses. These uses could have greater impacts to nightingale reed-warblers as a result of subdivision and the subsequent habitat fragmentation. Under the no action alternative, the mitigation sites would not be preserved as a wildlife mitigation bank.

This notice is provided pursuant to section 10(a) of the Endangered Species Act and the National Environmental Policy Act of 1969 regulations (40 CFR 1506.6). The U.S. Fish and Wildlife Service will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of the National Environmental Policy Act regulations and section 10(a) of the Endangered Species Act. If it is determined that the requirements are met, a permit will be issued for the incidental take of the listed species. The final permit decision will be made no sooner than 30 days from the date of this notice.

Dated: February 12, 1997.

Thomas J. Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 97–4141 Filed 2–19–97; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Land Management

[WY–985–0222–66]

Cave Gulch-Bullfrog-Waltman Natural Gas Development Project in Natrona County, Wyoming; Availability of the Draft Environmental Impact Statement (DEIS)

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Cave Gulch-Bullfrog-Waltman Natural Gas Development Project Draft Environmental Impact Statement (DEIS) which analyzes the environmental consequences of the oil and gas operators proposal to continue to drill wells on their leased acreages within the Cave Gulch-Bullfrog-Waltman oil and gas project area. This development area is located in Natrona County and generally located within Townships 36 and 37 North; Ranges 86 and 87 West, 6th Principal Meridian. The area is accessed by U.S. Highway 20/26 west of Casper, Wyoming; and, north of Waltman, Wyoming via county road 104. Access to the interior of the Cave Gulch-Bullfrog-Waltman project area is provided by a road system developed to service prior and on-going drilling and production activities.

DATES: Comments on the DEIS will be accepted for 45 days following the date the Environmental Protection Agency publishes their Notice of Availability in the **Federal Register**. The EPA notice is expected on or about February 14, 1997. In addition, a public meeting will be held Tuesday, March 11, 1997. The meeting will be located at the University of Wyoming, Natrona County Cooperative Extension Building, 2011 Fairgrounds Road, Casper, Wyoming. The meeting will be in two parts beginning with an open house from 3 p.m.–5 p.m. followed by a public meeting from 7 p.m.–9 p.m. Comments on the DEIS will be entertained during the open house and the public meeting.

ADDRESSES: Comments on the DEIS should be sent to Ms. Kate Padilla, Team Leader for the Cave Gulch-Bullfrog-Waltman Natural Gas Development Project EIS, Bureau of Land Management, Casper District Office, 1701 East "E" Street, Casper, Wyoming 82601.

SUPPLEMENTARY INFORMATION: The DEIS analyzes a proposed action, two (2) development alternatives, and the no action alternative. The proposal presented by the operators is to continue to drill additional wells on their leased acreage within this natural gas development area. The current oil and gas operators are Chevron U.S.A., Barrett Resources Corporation, Prima Oil & Gas Company, Goldmark Engineering, Inc., W.A. Moncrief, Jr., Marathon Oil Company, and John P. Lockridge, Inc. The land ownership pattern of the Cave Gulch-Bullfrog-Waltman project area is 66 percent Private, 29 percent Federal (BLM), and 5 percent State of Wyoming. The mineral ownership is as follows, 20 percent Private, 77 percent Federal (BLM), and 3 percent State of Wyoming.

Over the next 10 years, the operators propose to drill up to 160 additional wells where approximately 40 wells are currently active to obtain maximum recovery of natural gas from existing Federal, State, and private oil and gas leases. The area was divided into four segments by the operators to allow for better definition of the Proposed Action with regard to well spacing and density, based on BLM's February 1996, preliminary geologic report. The two development alternatives analyze wells based on areas defined in the BLM's June 1996, final geologic report.

The DEIS describes the physical, biological, cultural, historic, and socio-economic resources in and surrounding the project area. The focus of the impact analysis was based upon resource issues and concerns identified during public scoping. Potential impacts of concern from development were primarily concerned with raptor breeding and nesting, sensitive soils, and economics.

Dated: February 5, 1997.

Alan L. Kesterke,

Associate State Director.

[FR Doc. 97–4097 Filed 2–19–97; 8:45 am]

BILLING CODE 4310–22–P

[UT–056–1430–01–24–1A]

Mountain Valley Management Framework Plan; Piute Co., UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to amend plan.

SUMMARY: This Notice of Intent is to advise the public that the Bureau of Land Management (BLM) intends to consider a proposal which would require amending an existing planning document.

DATES: The comment period for this proposed plan amendment will commence with publication of this notice. Comments must be submitted within the thirty day period commencing with the publication of this notice.

FOR FURTHER INFORMATION CONTACT: Dave Henderson, Sevier River Resource Area Manager, 150 East 900 North, Richfield, Utah 84701. Existing

planning documents and information are available at the above address or telephone (801) 896–1500. Comments on the proposed plan amendment should be sent to the above address.

SUPPLEMENTARY INFORMATION: The BLM is proposing to amend the Mountain Valley Management Framework Plan which includes public lands in Piute County, Utah. The purpose of the amendment would be to identify certain lands as suitable for direct sale pursuant to Section 203 of the Federal Land Policy and Management Act of 1976. The lands identified for direct sale comprise 560 acres described as follows: T. 29 S., R. 3 W., Section 28, SW¼NE¼, E½NW¼, SW¼NW¼, N½SW¼, SE¼SW¼, SE¼ and Section 33, N½NE¼ and Section 34, SW¼SW¼, Salt Lake Meridian, Utah.

The existing plan does not identify these lands for disposal. However, because of the resource values and public values and objectives involved, the public interest may well be served by sale of these lands. An environmental assessment will be prepared by an interdisciplinary team to analyze the impacts of this proposal and alternatives.

Dated: February 7, 1997.

G. William Lamb,

State Director.

[FR Doc. 97–4138 Filed 2–19–97; 8:45 am]

BILLING CODE 4310–DQ–P–M

[OR–958–0777–63; GP6–0278; OR–51891]

Public Land Order No. 7246; Withdrawal for Edson Creek Park; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 44.48 acres of public land from surface entry and mining for a period of 20 years for the Bureau of Land Management to protect the recreation site known as Edson Creek Park. The land will be opened to mineral leasing.

EFFECTIVE DATE: February 20, 1997.

FOR FURTHER INFORMATION CONTACT: Betty McCarthy, BLM Oregon/ Washington State Office, PO Box 2965, Portland, Oregon 97208–2965, 503–952–6155.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect the Edson Creek Park:

Willamette Meridian

T. 32 S., R. 14 W.,
Sec. 6, that portion of the S½, commonly called Tax Lot 32–14–06–501, as more particularly described as follows: Beginning at a point which is north 16°30′ east 479.0 ft. from the witness corner for the southwest closing corner of Sec. 6; Thence east 488.3 ft.; Thence south 9°45′ east 73.1 ft.; Thence south 59°31′ east 115.9 ft.; Thence north 78°11′ east 128.9 ft.; Thence north 68°11′ east 94.0 ft.; Thence north 72°40′ east 85.5 ft.; Thence north 66°01′ east 111.0 ft.; Thence north 58°27′ east 80.0 ft.; Thence north 67°08′ east 229.8 ft.; Thence north 24°38′ east 106.7 ft.; Thence north 43°55′ east 110.9 ft.; Thence north 57°46′ east 304.5 ft.; Thence north 5°04′ west 50.6 ft.; Thence north 36°55′ west 126.2 ft.; Thence north 59°18′ east 155.3 ft.; Thence south 39°47′ east 416.7 ft.; Thence south 86°19′ east 258.2 ft.; Thence north 83°22′ east 109.9 ft.; Thence north 83°40′ east 281.1 ft.; Thence north 19°01′ east 777.6 ft.; Thence north 67°42′ east 166.3 ft.; Thence north 42°53′ east 363.3 ft.; Thence north 441.7 ft.; Thence south 11°02′ west 73.0 ft.; Thence south 52°03′ west 234.6 ft.; Thence west 167.0 ft.; Thence south 43°41′ west 211.0 ft.; Thence south 65°42′ west 194.0 ft.; Thence south 88°12′ west 350.0 ft.; Thence south 60°29′ west 258.9 ft.; Thence south 51°16′ east 51.8 ft.; Thence south 2°26′ west 212.9 ft.; Thence south 9°19′ east 92.4 ft.; Thence south 59°29′ west 158.0 ft.; Thence north 67°06′ west 321.8 ft.; Thence south 73°23′ west 411.2 ft.; Thence south 42°36′ west 215.2 ft.; Thence south 34°54′ west 671.0 ft.; Thence north 88°52′ west 216.1 ft.; Thence north 68°55′ west 67.8 ft.; Thence north 35°39′ west 428.4 ft.; Thence south 16°30′ west 612.6 ft. to point of beginning.

The area described contains approximately 44.48 acres in Curry County.

2. At 8:30 a.m. on March 24, 1997, the land will be opened to operation of the mineral leasing laws and the Geothermal Steam Act, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

3. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

4. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: February 4, 1997.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–4095 Filed 2–19–97; 8:45 am]

BILLING CODE 4310–33–P

[OR–958–0777–54; GP6–0214; OR–19015, OR–19121]

Public Land Order No. 7245; Revocation of Secretarial Order Dated November 14, 1917, and Executive Order Dated May 4, 1918; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes in their entirety a Secretarial order and an Executive order which withdrew 174.72 acres of public lands for the Bureau of Land Management's Waterpower Designation No. 15 and Powersite Reserve No. 686. The lands are no longer needed for the purposes for which they were withdrawn. This action will open 170.22 acres to surface entry, which have been and will remain open to mining. The 4.50-acre balance remains closed to surface entry and mining due to another existing withdrawal. All of the lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: March 24, 1997.

FOR FURTHER INFORMATION CONTACT: Betty McCarthy, BLM Oregon/ Washington State Office, PO Box 2965, Portland, Oregon 97208–2965, 503–952–6155.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. The Secretarial Order dated November 14, 1917, which established Waterpower Designation No. 15, and the Executive Order dated May 4, 1918, which established Powersite Reserve No. 686, are hereby revoked in their entirety:

Willamette Meridian

Oregon and California Railroad Grant Lands
(a) Waterpower Designation No. 15
T. 22 S., R. 5 W.,
Sec. 33, SW¼NE¼ and E½NW¼, all land lying within 50 feet of centerline of transmission line.
T. 35 S., R. 5 W.,

Sec. 29, W½SW¼, all land lying within 50 feet of centerline of transmission line.
T. 3 S., R. 3 E.,
Sec. 29, lot 4, all land lying within 50 feet of centerline of transmission line.
T. 2 S., R. 4 E.,
Sec. 1, that portion of Tract 37 within the NE¼NW¼.
(b) Powersite Reserve No. 686 and Waterpower Designation No. 15
T. 41 S., R. 4 E.,
Sec. 3, lot 3, SE¼NW¼, NE¼SW¼, and NW¼SE¼.

The areas described in (a) and (b) above aggregate approximately 174.72 acres in Clackamas, Douglas, Jackson, and Josephine Counties.

2. The following described land is within the boundary of Power Project No. 477 and will remain closed to the operation of the public land laws, including the mining laws:

T. 2 S., R. 4 E.,
Sec. 1, that portion of Tract 37 within the NE¼NW¼.

The area described contains approximately 4.50 acres.

3. At 8:30 a.m. on March 24, 1997, the lands described in paragraph 1, except as provided in paragraph 3, will be opened to such forms of disposition as may by law be made of Revested Oregon and California Railroad Grant Lands, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on March 24, 1997, shall be considered as simultaneously filed at that time.

4. The State of Oregon has waived its preference right for public highway rights-of-way or material sites as provided by the Federal Power Act of June 10, 1920, 16 U.S.C. 818 (1988).

Dated: February 4, 1997.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–4096 Filed 2–19–97; 8:45 am]

BILLING CODE 4310–33–P

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension and revision of a currently approved information collection.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, MMS invites the public and other Federal agencies to comment on a proposal to extend and revise the currently approved collection of information discussed below. The Paperwork Reduction Act of 1995 (PRA) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number.

DATES: Submit written comments by April 21, 1997.

ADDRESSES: Direct all written comments to Rules Processing, Minerals Management Service, Mail Stop 4700, 381 Elden Street, Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing, Minerals Management Service, telephone (703) 787–1600.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 250, Subpart O, Training of Lessee and Contractor Employees Engaged in Oil and Gas and Suphur Operations in the Outer Continental Shelf (OCS).

Abstract: The OCS Lands Act (OCSLA) and its Amendments of 1978 give the Secretary of the Interior the responsibility to preserve, protect, and develop oil and gas resources in the OCS consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resource development with protection of human, marine, and coastal environments; ensure the public a fair and equitable return on resources of the OCS; and preserve and maintain free enterprise competition. Section 1332(6) of the OCSLA states that "operations in the outer Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health."

To do this, MMS has issued regulations governing OCS oil and gas and sulphur lease operations The rules governing training of lessee and contractor personnel operating in the OCS are prescribed in 30 CFR Part 250, Subpart O. The MMS needs the information collected under subpart O to ensure that lessee and contractor personnel are properly trained in the use of equipment and procedures in drilling, well completion/workover, well servicing, and production operations. Trained workers are necessary to avoid hazards inherent in these operations. The MMS uses the information to ensure that personnel receive the minimum training necessary for safety of operations and protection of the environment. We also use the information to evaluate training programs for technical accuracy and to verify that they incorporate appropriate instruction and testing activities.

The MMS just recently revised the subpart O regulations and published a final rule on February 5, 1997 (62 FR 5320). The effective date of the final rule is March 7, 1997. The amended regulations simplify the training options and provide flexibility to use alternative training methods. The rule was rewritten in "plain English." The revision made no significant changes to the information collection requirements. During the proposed rulemaking process, only one comment was received with respect to the information collection aspects of the rule. The commenter(s) contended that schools should not need to continue maintaining training records for 5 years because of the new training period. The MMS disagreed and kept the 5-year retention period in the regulations in order to have the maximum time to review records under the statute of limitations.

Proprietary or confidential information will be protected according to the Freedom of Information Act and 30 CFR 250.18, Data and information to be made available to the public. Personal information will be protected according to the Privacy Act. The collection does not include items of a sensitive nature. The requirement to response is mandatory.

Description of Respondents: Federal OCS oil and gas and sulphur lessees and training organizations.

Frequency: On occasion.

Estimated Number of Respondents: 130 lessees and 54 training organizations.

Estimated Annual Burden: 3,947 burden hours. Based on $35 per hour, the cost to respondents is $138,145.

Estimated Other Annual Costs to Respondents: MMS has identified no other cost burdens on respondents for providing this information.

OMB Number: 1010–0078.

Comments: The MMS will summarize written responses to this notice and address them in its submission for OMB approval. All comments will become a matter of public record. We will also consult with a representative sample of respondents. The estimates shown above are those currently approved by OMB for this collection of information.

As a result of the consultations and comments we receive, we will make any necessary adjustments for our submission to OMB. In calculating the burden, MMS assumes that respondents perform many of the requirements and maintain records in the normal course of their activities. MMS considers these to be usual and customary. Commenters are invited to provide information if they disagree with this assumption and they should tell us what the burden hours and costs imposed by this collection of information are.

(1) The MMS specifically solicits comments on the following questions:

(a) Is the proposed collection of information necessary for the proper performance of MMS's functions, and will it be useful?

(b) Are the estimates of the burden hours of the proposed collection reasonable?

(c) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(d) Is there a way to minimize the information collection burden on those who are to respond, including through the use of appropriate automated electronic; mechanical, or other forms of information technology?

(2) In addition, the PRA requires agencies to estimate the total annual cost burden to respondents or recordkeepers resulting from the collection of information. The MMS needs your comments on this item. Your response should split the cost estimate into two components:

(a) Total capital and startup cost component and

(b) Annual operation, maintenance, and purchase of service component.

Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (1) Before October 1, 1995; (2) to comply with requirements not associated with the information collection; (3) for reasons other than to provide information or keep records for the Government; or (4) as part of customary and usual business or private practices.

Bureau Clearance Officer: Caole A. deWitt, (703) 787–1242.

Dated: February 13, 1997.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 97–4193 Filed 2–19–97; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

AGENCY: National Park Service, Interior.

ACTION: Publication of certain concession policies and procedures.

SUMMARY: The National Park Service (NPS) authorizes private businesses known as concessioners to provide necessary and appropriate visitor facilities and services in areas of the National Park System. NPS is undertaking a review of its policies and procedures concerning concession management activities. Certain policy and procedural changes have been published for comment previously. Pending completion of a full review, NPS is publishing the remainder of its staff manual (NPS–48) dealing with the administration of concession authorizations for comment. Although not required by law to seek public comment on these policies and procedures, NPS will consider all comments received in a timely manner.

COMMENT DUE DATE: March 24, 1997.

ADDRESSES: Comments should be addressed to Robert Yearout, Program Manager, Concessions Program, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127.

FOR FURTHER INFORMATION CONTACT: Copies of those sections of NPS–48 which have not been published for comment previously may be obtained by contacting Wendelin Mann, Concessions Program, National Park Service (202) 565–1219.

SUPPLEMENTARY INFORMATION: The following sections of NPS–48 have been published for comment previously and are not included under this notice:

1. NPS Franchise Fee Determination System: Published for comment in the **Federal Register** on August 7, 1985; final notice published in the **Federal Register** on December 31, 1996.

2. Sample Prospectus and Related Guidelines: Rescinded Chapters 6, 7, 8 and 11 of NPS–48. Published for comment in the **Federal Register** on March 17, 1994; final notice published in the **Federal Register** on February 22, 1995.

3. Revision of Commercial Use License Program to Incidental Business Permit Program: Rescinded Chapter 13 of NPS–48. Adopted and published for comment in the **Federal Register** on August 7, 1995; no further changes were made.

Dated: February 13, 1997.

Robert K. Yearout,

Acting Associate Director, Park Operations and Education.

[FR Doc. 97–4180 Filed 2–19–97; 8:45 am]

BILLING CODE 4810–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 8, 1997.

Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by March 7, 1997.

Carol D. Shull,

Keeper of the National Register.

ARKANSAS

Logan County

Logan County Courthouse, Southern Judicial District, Jct. of 4th and N. Broadway Sts., SE corner, Booneville, 97000207

COLORADO

Douglas County

Lamb Spring, (Prehistoric Paleo-Indian Cultures of the Colorado Plains MPS) Address Restricted, Littleton vicinity, 97000208

FLORIDA

Hernando County,

May—Stringer House, 601 Museum Crt., Brooksville, 97000210

Indian River County

Pueblo Arcade, 2044 14th St., Vero Beach, 97000211

Manatee County

Whitfield Estates Lantana Avenue Historic District, (Whitfield Estates Subdivison MPS) 332—336 Lantana Ave., Sarasota vicinity, 97000209

IOWA

Buchanan County

Fisher—Plane Commercial Building, 119 and 121 1st St., E., Independence, 97000212

Fuhrman, Mathias C. and Eva B. Crowell, Farm, 1780 185th St., Independence vicinity, 97000213

MISSISSIPPI

Hinds County

Cain Hall (Raymond and Vicinity MRA) Hinds Community College, approximately .75 mi. W of jct. of MS 18 and MS 467, Raymond, 97000214

Marshall County

Jonesboro, Lake City & Eastern Railroad Depot (Historic Railroad Depots of Arkansas MPS) Jct. of S. Dewey and Baltimore Sts., NW corner, Manila, 97000206

NEVADA

Storey County

King House, 26—28 S. Howard St., Virginia City, 97000216

Piper's Opera House, 1, 3, and 5 N. B St., Virginia City, 97000217

Silver Terrace Cemeteries, E St., northern terminus, Virginia City, 97000215

NEW YORK

Kings County

Green—Wood Cemetery, Jct. of 5th Ave. and 25th St., Brooklyn, 97000228

NORTH CAROLINA

Wake County

Leslie—Alford—Mims House (Wake County MPS) 100 Avent Ferry Rd., Holly Springs, 97000218

PENNSYLVANIA

Bedford County

Grand View Point Hotel (Lincoln Highway Heritage Corridor Historic Resources: Franklin to Westmoreland Counties MPS) US 30, 17 mi. W of Bedford, Juniata Twnshp., Bedford vicinity, 97000219

TENNESSEE

Knox County

Asbury Methodist Episcopal Church, South (Knoxville and Knox County MPS) 2820 Asbury Rd., Knoxville vicinity, 97000222

First Baptist Church (Knoxville and Knox County MPS) 510 Main Ave., Knoxville, 97000223

Fourth and Gill Historic District (Boundary Decrease), 803, 807, 815, 820, 816, 812, 808, 804, 800 N. 4th St., Knoxville, 97000220

Shelby County

South Main Street Historic District (Boundary Increase), 663 S. Main St., Memphis, 97000224

Tipton County

East Main Street Historic District, Address Restricted, Hartsville vicinity, 97000221

UTAH

Cache County

Olson, Erick Lehi and Ingrid Larsen, House, 490 East 600 South, River Heights, 97000225

Summit County

Grix, John, Cabin, .25 mi W of UT 150, approximately 20 mi. NE of Kamas, Kamas vicinity, 97000226

WYOMING

Crook County

Ranch A, Off Riflepit Rd., approximately 3 mi. E of US 14—I–90, Ranch A National Fish Genetics Laboratory, Beulah vicinity, 97000227

[FR Doc. 97–4079 Filed 2–19–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Bureau of Justice Statistics; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; 1997 Sample Survey of Law Enforcement Agencies.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until April 21, 1997.

We request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the metho9dology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to Dr. Brian A. Reaves at the address listed below. If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact, Dr. Brian A. Reaves, Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice, Room 303, 633 Indiana Avenue, NW., Washington, DC 20531. Additionally, comments may be submitted to the Department of Justice, Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, Washington, Center, 1001 G Street, NW., Washington, DC 20530.

Overview of this information collection:

(1) Type of Information Collection: New Collection.

(2) Title of the Form/Collection: 1997 Sample Survey of Law Enforcement Agencies.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection. Form: CJ–44, CJ–44A. Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: State, local or tribal government. Other: None. These forms will be used to collect administrative and management statistics from a nationally representative sample of State and local law enforcement agencies in the United States in order to provide basic information on their workload and resources.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 3,400 respondents at 1.27 hours per response. This includes 2 hours per response for 925 respondents to Form CJ–44 and 1 Hour per response for 2,475 respondents to Form CJ–44A.

(6) An estimate of the total public burden (in hours) associated with the collection: 4,325 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: February 13, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–4105 Filed 2–19–97; 8:45 am]

BILLING CODE 4410–18–M

Office of Juvenile Justice and Delinquency Prevention; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Emergency Review; State Input for the 1996 Report to Congress on Title V Community Prevention Grants.

The Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention (OJDDP) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtained comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by February 21, 1997. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information and Regulatory Affairs, Attention: Ms. Victoria Wassmer, 202–395–5871, Department of Justice Desk Officer, Washington, DC, 20530.

During the first 60 days of this same period a regular review of this information collection is also being undertaken. Comments are encouraged and will be accepted until April 21, 1997. The agency requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) enhance the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to Eric Peterson at the address listed below. If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Eric Peterson (202–616–3644), Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Department of Justice, 633 Indiana Avenue, NW, Washington, DC 20531.

Overview of this information collection:

(1) Type of Information Collection: New collection.

(2) Title of the Form/Collection: State Input for the 1996 Report to Congress on Title V Community Prevention Grants.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection. Form: None. Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: State and local units of government. Other: None. The information collected with this form will allow OJJDP to report to Congress on the status of Title V program implementation, grant activity in the past fiscal year, and promising local delinquency prevention programs.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 57 respondents at 1 hour per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 57 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: February 13, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

FR Doc. 97–4106 Filed 2–19–97; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection; Work Opportunity Tax Credit Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of the Work Opportunity Tax Credit Reporting Requirements.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before April 21, 1997. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarification of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological, e.g., permitting submissions of responses.

ADDRESSES: Carmen Ortize, U.S. Employment Service, Employment and Training Administration, U.S. Department of Labor, Room N–4470, 200 Constitution Avenue, NW., Washington, DC 20210, 202–219–5185 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Employment and Training Administration (ETA) has oversight responsibilities for the Work Opportunity Tax Credit (WOTC) under the Small Business Jobs Protection Act of 1996 (Pub. L. 104–188). Data collected on the WOTC will be collected by the State Employment Security Agencies and provided to the U.S. Employment Service, Division of Planning and Operations, Washington, DC, through the appropriate Department of Labor regional office. The data will be use, primarily, to supplement IRS Form 8850, help expedite the processing of, either, employer requests for Certification generated through IRS Form 8850 or issuance of Conditional Certifications (CCs) and processing of employer requests for Certifications as a result of individuals' bearing SESAs or participating agencies' generated CCs, help streamline SESAs verification mandated activities, aid and expedite the preparation of the quarterly reports.

II. Current Actions

This is a request for OMB approval of an extension of an existing collection of information previously approved by OMB. The extension will allow the Department to continue these data collections and to provide a significant source of information for the Secretary's Annual Report to Congress on the WOTC Program. The data recorded through the use of these forms will also help in the preparation of an annual report to the Committee on Ways and Means of the U.S. House of Representatives.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Work Opportunity Tax Credit (WOTC).

OMB Number: 1205–0371.

Agency Number: ETA 9057–9059, 9061–9063, and 9065.

Affected Public: State, Local or Tribal Government.

Cite/Reference	Total respondents	Frequency	Total responses	Average time per response	Burden
ETA 9057	52	Quarterly	208	8 hours	1,664
ETA 9058	52	Quarterly	208	8 hours	1,664
ETA 9059	52	Quarterly	208	8 hours	1,664
ETA 9061–9063 & 9065	7,800	As needed	7,800	20 min. ea.	2,600
Record keeping	52	Annually	52	997	51,844
Totals			9,048		59,436

Total Burden Cost (capital/startup): <complete as applicable,

Total Burden Cost (capital/startup): 0

Total Burden Cost (operating/maintaining): 0

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: February 12, 1997.

John R. Beverly,

Director, U.S. Employment Service.

[FR Doc. 97–4089 Filed 2–19–97; 8:45 am]

BILLING CODE 4510–30–M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for

consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I:

None

Volume II:

None

Volume III:

Florida
FL970017 (Feb. 14, 1997)
Georgia
GA970039 (Feb. 14, 1997)
GA970053 (Feb. 14, 1997)
GA970065 (Feb. 14, 1997)
GA970088 (Feb. 14, 1997)
GA970089 (Feb. 14, 1997)
GA970093 (Feb. 14, 1997)
GA970094 (Feb. 14, 1997)
Kentucky
KY960004 (Feb. 14, 1997)
KY960026 (Feb. 14, 1997)
KY970027 (Feb. 14, 1997)
KY970028 (Feb. 14, 1997)
KY970029 (Feb. 14, 1997)

Volume IV:

Indiana
IN970006 (Feb. 14, 1997)
Michigan
MI970001 (Feb. 14, 1997)
MI970002 (Feb. 14, 1997)
MI970003 (Feb. 14, 1997)
MI970004 (Feb. 14, 1997)
MI970005 (Feb. 14, 1997)
MI970007 (Feb. 14, 1997)
MI970012 (Feb. 14, 1997)
MI970018 (Feb. 14, 1997)
MI970023 (Feb. 14, 1997)
MI970030 (Feb. 14, 1997)
MI970031 (Feb. 14, 1997)
MI970046 (Feb. 14, 1997)
MI970047 (Feb. 14, 1997)
MI970049 (Feb. 14, 1997)
MI970062 (Feb. 14, 1997)
MI970063 (Feb. 14, 1997)
MI970064 (Feb. 14, 1997)
Ohio
OH970001 (Feb. 14, 1997)
OH970002 (Feb. 14, 1997)
OH970003 (Feb. 14, 1997)
OH970012 (Feb. 14, 1997)
OH970014 (Feb. 14, 1997)
OH970017 (Feb. 14, 1997)
OH970018 (Feb. 14, 1997)
OH970026 (Feb. 14, 1997)
OH970028 (Feb. 14, 1997)
OH970029 (Feb. 14, 1997)
OH970034 (Feb. 14, 1997)
OH970035 (Feb. 14, 1997)

Volume V:

Kansas
KS970006 (Feb. 14, 1997)
KS970007 (Feb. 14, 1997)
KS970008 (Feb. 14, 1997)
KS970012 (Feb. 14, 1997)
KS970013 (Feb. 14, 1997)
KS970018 (Feb. 14, 1997)
KS970019 (Feb. 14, 1997)
KS970020 (Feb. 14, 1997)
KS970021 (Feb. 14, 1997)
KS970022 (Feb. 14, 1997)
KS970023 (Feb. 14, 1997)
KS970026 (Feb. 14, 1997)

Volume VI:

Idaho
ID970004 (Feb. 14, 1997)
ID970014 (Feb. 14, 1997)
Oregon
OR970001 (Feb. 14, 1997)
OR970004 (Feb. 14, 1997)
Washington
WA970001 (Feb. 14, 1997)
WA970002 (Feb. 14, 1997)
WA970003 (Feb. 14, 1997)
WA970007 (Feb. 14, 1997)
WA970011 (Feb. 14, 1997)
WA970013 (Feb. 14, 1997)

Volume VII:

California
CA970002 (Feb. 14, 1997)
CA970028 (Feb. 14, 1997)
CA970031 (Feb. 14, 1997)
CA970032 (Feb. 14, 1997)
CA970033 (Feb. 14, 1997)
CA970034 (Feb. 14, 1997)
CA970035 (Feb. 14, 1997)
CA970036 (Feb. 14, 1997)
CA970037 (Feb. 14, 1997)
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CA970043 (Feb. 14, 1997)
CA970044 (Feb. 14, 1997)
CA970045 (Feb. 14, 1997)
CA970046 (Feb. 14, 1997)
CA970047 (Feb. 14, 1997)
CA970048 (Feb. 14, 1997)
CA970049 (Feb. 14, 1997)
CA970052 (Feb. 14, 1997)
CA970053 (Feb. 14, 1997)
CA970055 (Feb. 14, 1997)
CA970056 (Feb. 14, 1997)
CA970057 (Feb. 14, 1997)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determination Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC This 14th day of February 1997.

Margaret J. Washington,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 97–4190 Filed 2–19–97; 8:45 am]

BILLING CODE 1510–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel for Active Tectonics; Notice of Meeting

In accordance with the Federal Advisory Commission Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel for Active Tectonics (1756).

Date: March 10, 1997.

Time: 8:00 a.m. to 6:00 p.m.

Place: Room 730, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Robert P. Wintsch, Program Director, Tectonics Program, Division of Earth Sciences, Room 785, National Science Foundation, Arlington, VA 22230, (703) 306–1552.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate earth sciences as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 13, 1997.

Linda Allen-Benton,

Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.

[FR Doc. 97–4153 Filed 2–19–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Computer and Computation Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Computer and Computation Research (1192).

Date: March 10, 1997.

Time: 8:30 a.m.–5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA, 22230 Room: 1150.

Type of meeting: Closed.

Contact person(s): Frank D. Anger, Program Director, Software Engineering and Language Program, CISE/CCR, Room 1145, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

Telephone: (703) 306–1911.

Purpose of meeting: To provide advice and recommendations for the Software Engineering and Language Program (SEL) by reviewing a group of approximately 12 proposals responding to an initiative in Evolutionary Development of Complex Software for that program.

Agenda: Review and evaluate SEL proposals as a part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

Dated: February 13, 1997.

Linda Allen-Benton,

Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.

[FR Doc. 97–4150 Filed 2–19–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Electrical and Communications Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

NAME: Special Emphasis Panel in Electrical and Communications System (1196).

DATE AND TIME: March 10, 1997; 8:30 a.m. to 5:00 p.m.

PLACE: Room 330, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

TYPE OF MEETING: Closed.

CONTACT PERSON: Dr. Virginia Ayres, Program Director, Physical Foundations of Enabling Technologies Division of Electrical and Communications Systems, NSF, 4201 Wilson Boulevard, Room 675, Arlington, VA 22230. Telephone: (703) 306–1339.

PURPOSE: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

AGENDA: To review and evaluate research proposals as part of the selection process for awards.

REASON FOR CLOSING: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552b.(c)(4) and (6) of the Government in the Sunshine Act.

Dated: February 13, 1997.

Linda Allen-Benton,

Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.

[FR Doc. 97–4152 Filed 2–19–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Electrical and Communications Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Electrical and Communications Systems (1196).

Date and Time: March 10 & 11, 1997; 8:30 AM–5:00 PM.

Place: Room 680 on 3/10 & 11, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Persons: Dr. Rajinder Khosla, Program Director, Physical Foundations of Enabling Technologies (PFET), Division of Electrical and Communications Systems, National Science Foundation, 4201 Wilson Blvd., Room 675, Arlington, VA 22230. Telephone: (703) 306–1339.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate **PFET regular research ** proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 13, 1997.

Linda Allen-Benton,

Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.

[FR Doc. 97–4151 Filed 2–19–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Mathematical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name and Committee Code: Special Emphasis in Mathematical Sciences (1204).

Date and Time: March 10–12, 1997; 8:00 a.m. until 5:00 p.m.

Place: Room 1020, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of meeting: Closed.

Contact Person: Dr. Joe W. Jenkins, Program Director, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1879.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals concerning the Operator Algebra/Operator Theory (OA/OT) Program, as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: February 13, 1997.

Linda Allen-Benton,

Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.

[FR Doc. 97–4149 Filed 2–19–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Reporting Statistics—Airlines

AGENCY: National Transportation Safety Board.

ACTION: Notice of statistical reporting changes.

SUMMARY: On January 7, 1997, the NTSB adopted a system for classifying airline accidents by their severity. This system is a minor revision of a proposal published in the **Federal Register** on December 5, 1996. An improved classification system providing more meaningful measures of the level of safety of airline transportation was required by the FAA Reauthorization Act of 1996. This notice describes changes in the adopted version from the proposed classification system and additional accident parameters, many focusing on passenger injuries. The NTSB will remain open to suggestions for improving the content and format of its statistics.

DATES: The NTSB adopted the new classification system on January 7, 1997.

ADDRESSES: Comments and suggestions may be submitted to: Analysis and Data Division (RE–50), ATTN: Airline Statistics, National Transportation Safety Board, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594–2000.

FOR FURTHER INFORMATION CONTACT: Stan Smith (202) 314–6550.

SUPPLEMENTARY INFORMATION: The Safety Board retained its proposed four-category system but re-designated the second category "Serious" rather than "Severe." A cautionary note was added to the list of accidents in which one or more passengers received fatal injuries. That note reads:

> The NTSB wishes to make clear to all users of the following list of accidents that the information it contains cannot, by itself, be used to compare the safety either of operators or of aircraft types. Airlines that have operated the greatest number of flights and flight hours could be expected to have suffered the greatest number of fatal-to-passenger accidents (assuming that such accidents are random events, and not the result of some systematic deficiency). Similarly, the most used aircraft types would tend to be involved in such accidents more than lesser used types. The NTSB also cautions the user to bear in mind when attempting to compare today's airline system to prior years that airline activity (and hence exposure to risk) has risen by almost 100% from the first year depicted to the last.

Issued in Washington, DC on this 13th day of February, 1997.

Jim Hall,

Chairman.

[FR Doc. 97–4159 Filed 2–19–97; 8:45 am]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–454, STN 50–455, STN 50–456 and STN 50–457]

Commonwealth Edison Company; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–37, NPF–66, NPF–72, and NPF–77 issued to Commonwealth Edison for operation of the Byron Station, Units 1 and 2, located in Ogle County, Illinois and Braidwood Station, Units 1 and 2, located in Will County, Illinois.

The proposed amendments would relocate certain cycle-specific parameter limits from the Technical Specifications to the Operating Limits Report (ORL).

Before issuance of the proposed license amendments, the Commission will have made findings as required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendments requested involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specification changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The relocation of the cycle-specific core operating limits from the Technical Specifications has no influence or impact on the probability or consequences of any accident previously evaluated. The Technical Specifications will continue to require operation within the analyzed core operating limits and the appropriate actions will be taken if the limits are exceeded. The cycle specific limits within the OLR will be implemented and controlled by plant procedures. Any needed revisions of the limit values in the OLR will be performed based on NRC approved methodology as delineated in TS 6.9.1.9. Each accident analysis addressed in the Byron and Braidwood Updated Final Safety Analysis Report (UFSAR) will be examined with respect to changes in cycle dependent parameters. These parameters are obtained from the application of NRC approved reload design methodologies, to ensure that the transient evaluation of new reloads are bounded by previously accepted analysis. This examination, which will be performed under the requirements of 10 CFR 50.59 process, ensures that future reloads will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The relocation of the cycle specific variables has no influence or impact, nor does it contribute in any way to the probability or consequences of any new or different kind of accident. No safety related equipment, safety function or plant operations will be altered as a result of this proposed change. The cycle specific variables are calculated using NRC approved methods and submitted to the NRC for their review to allow the Staff to continue to trend the values of these limits. The Technical Specifications will continue to require operation within the analyzed core operating limits and appropriate actions will be taken, when, or if, the limits are exceeded.

Therefore, the proposed changes do not in any way create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety for the following reasons:

The margin of safety is not affected by the relocation of cycle specific core operating limits from the Technical Specifications. The margin of safety presently provided by current Technical Specifications remains unchanged. Appropriate measures exist to control the values of these cycle specific limits. The proposed amendment continues to require operation within the core limits as obtained from the NRC approved reload design and safety analysis methodologies. Appropriate actions are required to be taken, when, or if, these limits are exceeded.

The development of the limits for future reloads will continue to conform to those methods described in the NRC approved documentation. In addition, each future reload will involve a 10 CFR 50.59 safety review to assure that operation of the Byron and Braidwood units within the cycle specific limits will not involve a reduction in the margin of safety as defined in the basis for any Technical Specification.

Therefore, the proposed changes do not impact operation of the plant in a manner that involves a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments requested involve no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 24, 1997, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at: for Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendments requested involve no significant hazards consideration, the Commission may issue the amendments and make them immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendments requested involve a significant hazards consideration, any hearing held would take place before the issuance of any amendments.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by

a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Robert A. Capra: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated December 21, 1995, as supplemented on October 24, 1996, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms located at: for Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Dated at Rockville, Maryland, this 13th day of February 1997.

For the Nuclear Regulatory Commission.

George F. Dick, Jr.,

Project Manager, Project Directorate III-2, Division of Reactor Projects—III/IV Office of Nuclear Reactor Regulation.

[FR Doc. 97-4177 Filed 2-19-97; 8:45 am]

BILLING CODE 7590-01-P

[Docket No. 50-348]

Southern Nuclear Operating Company, Inc. Alabama Power Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Southern Nuclear Operating Company, Inc. (Southern Nuclear), to withdraw its August 23, 1996, application for proposed amendment to Facility Operating License No. NPF-2 for the Farley Nuclear Plant, Unit 1, located in Houston County, Alabama.

The proposed amendment would have revised the technical specifications by modifying the installation method for previously licensed steam generator tube elevated tubesheet laser welded sleeves in Farley Nuclear Plant, Unit 1.

The Commission had previously issued a Notice of Consideration of Issuance of Amendments published in the **Federal Register** on September 11, 1996 (61 FR 47982). However, by letter dated February 7, 1997, Southern Nuclear withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated August 23, 1996, and the licensee's letter dated February 7, 1997, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Houston-Love Memorial Library, 212 W. Burdeshaw Street, P.O. Box 1369, Dothan, Alabama.

Dated at Rockville, Md., this 13th day of February 1997.

For the Nuclear Regulatory Commission.

Jacob I. Zimmerman,

Project Manager, Project Directorate II-2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97-4176 Filed 2-19-97; 8:45 am]

BILLING CODE 7590-01-P

Proposed Generic Communication; Assurance of Sufficient Net Positive Suction Head for Emergency Core Cooling and Containment Heat Removal Pumps (M96537)

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to issue a generic letter that will request addressees to submit the analysis and pertinent assumptions used to determine the net positive suction head (NPSH) available for emergency core cooling (including core spray and decay heat removal) and containment heat removal pumps. This information will enable the NRC to determine if the NPSH analyses for reactor facilities are consistent with their respective current licensing basis. The NRC is seeking comment from interested parties regarding both the technical and regulatory aspects of the proposed generic letter presented under the Supplementary Information heading.

The proposed generic letter has been endorsed by the Committee to Review Generic Requirements (CRGR). The relevant information that was sent to the CRGR will be placed in the NRC Public Document Room. The NRC will consider comments received from interested parties in the final evaluation of the proposed generic letter. The NRC's final evaluation will include a review of the technical position and, as appropriate, an analysis of the value/impact on licensees. Should this generic letter be issued by the NRC, it will become available for public inspection in the NRC Public Document Room.

DATES: Comment period expires March 24, 1997. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSEES: Submit written comments to Chief, Rules Review and Directives Branch, U.S. Nuclear Regulatory Commission, Mail Stop T-6D-69, Washington, DC 20555-0001. Written comments may also be delivered to 11545 Rockville Pike, Rockville, Maryland, from 7:30 am to 4:15 pm, Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, N.W., (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Howard (Jack) Dawson, (301) 415-3138.

SUPPLEMENTARY INFORMATION:

NRC GENERIC LETTER 97-XX: ASSURANCE OF SUFFICIENT NET POSITIVE SUCTION HEAD FOR EMERGENCY CORE COOLING AND CONTAINMENT HEAT REMOVAL PUMPS

Addressees

All holders of operating licenses for nuclear power plants, except those who have certified to a permanent cessation of operations.

Purpose

The U.S. Nuclear Regulatory Commission (NRC) is issuing this generic letter (GL) to request that addressees submit the analysis and pertinent assumptions used to determine the net positive suction head (NPSH) available for emergency core cooling (including core spray and decay heat removal) and containment heat removal pumps. This information will enable the NRC to determine if the NPSH analyses for reactor facilities are consistent with their respective current licensing basis.

Background

As a result of recent NRC inspection activities, licensee notifications, and licensee event reports, a safety-significant issue has been identified that has generic implications and warrants action by the NRC to ensure that the issue has been adequately addressed and resolved. The issue is that the NPSH available for emergency core cooling system (ECCS) (including core spray and decay heat removal) and containment heat removal pumps may not be adequate under all design-basis accident scenarios. In some cases, this may be a result of changes in plant configuration, operating procedures, environmental conditions or other operating parameters that have taken place over the life of the plant.

In other cases, the licensing analysis may not bound all postulated events for a sufficient time, or assumptions used in the analysis may be non-conservative or inconsistent with those assumptions and methodologies traditionally considered acceptable by the staff. For example, some licensees have recently discovered that they must take credit for containment overpressure to meet ECCS (including core spray and decay heat removal) and containment heat removal pump NPSH requirements. In the examples the NRC staff is familiar with, the need for crediting this overpressure in ECCS analyses has arisen due to changes in plant configuration and operating conditions which have occurred over the life of the plant, and/or errors in prior NPSH calculations. The overpressure being credited by licensees may be inconsistent with the licensing basis of the plant.

The current NPSH analyses (including any corresponding containment pressure analysis) may not be available to the staff in docketed material (e.g., final safety analysis reports) because some licensees have changed their analyses. Consequently, this generic letter requests that addressees submit the analyses and pertinent assumptions used to determine the NPSH available for emergency core cooling (including core spray and decay heat removal) and containment heat removal pumps. This generic letter applies only to ECCS (including core spray and decay heat removal) and containment heat removal pumps that take suction from the containment sump or suppression pool following a loss-of-coolant accident (LOCA) or secondary line break.

New NPSH analyses are not required or requested to respond to this information request. However, new NPSH analyses may be warranted if an addressee determines that a facility is not in compliance with the Commission's rules and regulations. In such cases, the affected addressees are expected to take corrective action, as appropriate, in accordance with the requirements stated in 10 CFR part 50, appendix B, to restore their facility to compliance.

The following is a sample of the NRC staff's recent findings concerning the NPSH issues addressed by this generic letter:

Haddam Neck

In 1986 and 1995, the licensee identified conditions where the NPSH available for the residual heat removal (RHR) pumps may be insufficient when the pumps are operating in the emergency core cooling mode. In 1986, the licensee determined that the only extant NPSH analysis, which was performed in 1979 as part of the Systematic Evaluation Program, did not properly account for hydraulic losses in suction piping, and as a result, erroneously indicated that containment overpressure was not needed to satisfy NPSH requirements for the pumps in the recirculation mode of operation. A new analysis showed that credit had to be taken for 6 psi of containment overpressure. In another reanalysis conducted in 1995 for increased service water temperature, the licensee found that additional containment overpressure, which constituted a significant fraction of the peak calculated containment accident pressure, was necessary to meet NPSH requirements for the same pumps. On August 30, 1996, the licensee reported in Licensee Event Report (LER) 96-016 that calculations recently performed to determine the NPSH available for the residual heat removal pumps may have been in error for the alternate, short-term recirculation flow path, due to insufficient containment overpressure for a period of pump operation. The licensee attributed this event to the failure to fully analyze the containment pressure and sump temperature responses under design-basis accident conditions.

Maine Yankee

During an inspection conducted in July and August 1996, to determine if Maine Yankee was in conformance with its design and licensing bases, an NRC Independent Safety Assessment Team (ISAT) identified potential weaknesses in the licensee's containment spray pump NPSH analysis. These potential weaknesses included concerns regarding the validity of the containment sump temperature analysis, incorrect calculation of bounding pump suction head losses, and use of a hot fluid correction factor to reduce NPSH requirements. The licensee's calculation of record, performed in 1995 and which does not include the hot fluid correction factor, indicates a condition in which the available NPSH for the containment spray pumps would be below the required NPSH for the first 5 minutes after pump suction is switched from the refueling water storage tank to the recirculation sump. This analysis was performed for a power level of 2700 thermal megawatts (MWt). When the hot fluid correction factor was used, the NPSH available could only be shown to be slightly greater than the NPSH required for the same 5-minute period. For the remainder of the transient, the NPSH available to the containment spray pumps was shown to exceed the amount required.

The basis for the licensee's contention that the containment spray pumps were operable is that recent pump tests showed that the pumps could operate for a 15-minute period with NPSH below the required value without damage to the hydraulic performance or mechanical integrity of the pumps. The licensee performed another analysis for a power level of 2440 MWt which showed that adequate NPSH margin would exist for the containment spray pumps in the recirculation mode of operation. This analysis did not include use of the hot fluid correction factor. The ISAT concluded that it was appropriate to consider the containment spray pumps operable at a power level of 2440 MWt. Maine Yankee is currently prohibited by the NRC from operation above 2440 MWt. The NRC staff is currently reviewing the licensee's analysis and assumptions in greater detail.

Pilgrim

The NRC staff's safety evaluation for licensing of the Pilgrim plant, and documents referenced by the evaluation, indicate that containment overpressure was not necessary to satisfy RHR and core spray pump NPSH requirements. When a plant modification was made in 1984, the licensee's safety analysis of the modification stated that the NPSH available was determined assuming (1) maximum debris loading conditions on the sump strainers for the residual heat removal and core spray pumps and (2) no credit for containment over-pressure. On April 14, 1994, in its response to NRC Bulletin 93-02, "Debris Plugging of Emergency Core Cooling Suction Strainers" (March 23, 1993), the

licensee stated that the NPSH available to the residual heat removal and core spray pumps was analyzed assuming no overpressure condition in the torus.

However, in an analysis conducted by the licensee in 1996 in support of a strainer modification, credit is needed and taken for containment over-pressure. At the time of this analysis, the licensee also indicated that the assumption of no overpressure in the torus, stated in its response to Bulletin 93–02, was incorrect. While the issue of whether or not credit for over-pressure is part of Pilgrim's original licensing basis is currently under staff review, the potential exists that other licensees have made modifications to their plants that may be inconsistent with their licensing basis and could reduce the NPSH available to ECCS and core spray pumps.

Crystal River, Unit 3

As part of the NRC's Integrated Performance Assessment of Crystal River, Unit 3, conducted in July 1996, an NRC inspection team reviewed the licensee's calculation which established the minimum required post-LOCA reactor building water level for ensuring adequate NPSH available for the reactor building spray pumps. When the team compared this level with the minimum predicted level, they found that for one of the pumps, there was only a slight difference between the water level available and the water level required to ensure adequate NPSH during the post-accident recirculation phase of pump operation.

The team found that the licensee used non-conservative assumptions in calculating the available NPSH for the spray pump. For example, uncertainty in data regarding the required NPSH was not accounted for, a correction factor to reduce the NPSH required was used in the calculation without considering the effects of non-condensable gases in the pumped fluid, and uncertainties associated with the hydraulic resistance of check valves in the spray lines were not fully accounted for. Conservative assumptions that were included in the calculation were those detailed in Regulatory Guide (RG) 1.1, "Net Positive Suction Head for Emergency Core Cooling and Containment Heat Removal System Pumps," dated November 2, 1970 (originally Safety Guide 1), regarding the use of maximum reactor building fluid temperature and no credit for containment overpressure.

The team concluded that the cavitation-free operation of building spray pump 1B during the recirculation phase of operation is questionable due to the non-conservative assumptions used in the NPSH calculation. However, the team also concluded that this issue did not constitute an immediate safety concern since the licensee's calculations conservatively assumed no credit for containment overpressure and use of maximum expected reactor building water temperature. As a result of the teams findings, the NRC staff is reviewing the issue of adequate NPSH for the reactor building spray pumps at Crystal River, Unit 3, in greater detail.

Related Generic Communications

On October 22, 1996, the staff issued Information Notice (IN) 96–55, "Inadequate Net Positive Suction Head of Emergency Core Cooling and Containment Heat Removal Pumps Under Design Basis Accident Conditions," to alert addressees to recent discoveries by licensees that there may be scenarios for which the NPSH available for emergency core cooling system and containment heat removal pumps may not be sufficient. Earlier INs describing similar events include IN 87–63, "Inadequate Net Positive Suction Head in Low Pressure Safety Systems," dated December 9, 1987, and IN 88–74, "Potentially Inadequate Performance of ECCS in PWRs During Recirculation Operation Following a LOCA," issued on September 4, 1988.

Discussion

It is important that the emergency core cooling (including core spray and decay heat removal) and containment spray system pumps have adequate NPSH available for all design-basis LOCAs to ensure that the systems can reliably perform their intended functions under accident conditions. Inadequate NPSH could cause voiding in the pumped fluid, resulting in pump cavitation. While some ECCS (including core spray and decay heat removal) and containment heat removal pumps can operate for relatively short periods of time while cavitating, prolonged operation under cavitation conditions for any pump can cause vapor binding, resulting in reduced pump performance and potential common-mode failure of the pumps. Common-mode failure would result in the inability of the emergency core cooling system to provide adequate long-term core cooling and/or the inability of the containment spray system to maintain the containment pressure and temperature below design limits.

This generic letter addresses situations in which the NPSH available for ECCS (including core spray and decay heat removal) and containment heat removal pumps may be inadequate as a result of changing plant conditions, and/or errors and non-conservative assumptions in NPSH calculations. In some cases, NPSH reanalyses conducted to support plant modifications may result in a substantial reduction of margin in NPSH available or a change in the original design basis of the plant. In particular, recent examples have indicated that containment overpressure has been credited by licensees to satisfy NPSH requirements in response to changing plant conditions and errors in prior NPSH calculations.

NRC Regulatory Guide 1.1 establishes the regulatory position that emergency core cooling and containment heat removal systems should be designed so that adequate NPSH is provided to system pumps assuming maximum expected temperatures of pumped fluids and no increase in containment pressure from that present before any postulated loss-of-coolant accidents. Standard Review Plan (SRP) 6.2.2, "Containment Heat Removal Systems" (NUREG–0800, Revision 3, July 1981) clarifies RG 1.1 by stating that the NPSH analysis should be based on the assumption that the containment pressure equals the vapor pressure of the sump water, to ensure that credit is not taken for containment pressurization during the transient. As part of licensing and Systematic Evaluation Plan reviews, the NRC staff has, in the past, selectively allowed limited credit for a containment pressure that is above the vapor pressure of the sump fluid (i.e., an overpressure) to satisfy NPSH requirements on a case-by-case basis.

Requested Information

Addressees are requested to review, for each of their reactor facilities, the *current* analyses that are used to determine the available NPSH for the emergency core cooling (including core spray and decay heat removal) and containment heat removal pumps which, at any time following a design-basis accident, take suction from the containment sump or the suppression pool. No new NPSH analysis is requested or required. Based on this review, within 60 days from the date of this generic letter, addressees are requested to provide the information outlined below for each of their facilities; to the extent practical, the use of a tabular format is acceptable in presenting the information.

(1) Provide the NPSH analysis and assumptions for each pump, and, in particular,

(a) Specify, as a function of time, the required NPSH and the available NPSH,

(b) Identify the postulated pipe breaks that were analyzed if a spectrum of primary and secondary system pipe break sizes and locations was considered in the NPSH analysis,

(c) Specify the emergency core cooling (including core spray and decay heat removal) and containment heat removal system configurations (and associated flow rates) that were considered in the NPSH analysis for each pump; identify and justify which configurations were not analyzed,

(d) Specify if the *current* licensing-basis NPSH analysis is different from the original licensing-basis analysis, and

(e) Specify any quality assurance procedures and engineering program controls in place when the current NPSH analysis was performed.

(2) For each pump, specify whether or not containment overpressure, i.e., containment pressure above the vapor pressure of the sump (or suppression pool) fluid, was credited in the calculation of available NPSH. Specify the amount of overpressure needed, and the *minimum* overpressure available. Indicate if the overpressure was determined from the containment pressure at a single point in time, or if the containment pressure profile over an extended period of time was considered. If an extended period of time was considered, state how long and give the rationale for choosing this time period; if only a single point in time was considered, state the point in time and give the rationale for selecting this point in time.

(3) When containment overpressure is credited in the calculation of available NPSH, specify the containment atmosphere heat removal assumptions that were used in the containment response analysis to determine the *minimum* containment overpressure available, and in particular,

(a) Identify the heat transfer correlations that were used, and specify whether or not multipliers were used, to calculate the transfer of energy to the heat sinks in the containment,

(b) Specify how many trains of containment spray were assumed to be operating, and whether a minimum, maximum, or intermediate value of spray flow was assumed,

(c) Specify how the service water temperatures for the heat exchangers that remove energy from the containment atmosphere were chosen for the NPSH analysis, and specify any special assumptions made concerning heat transfer across the heat exchangers (e.g., effect of fouling on heat transfer),

(d) Specify the total number of containment fan coolers at the plant, and specify how many fan coolers were assumed to be operating.

Required Response

Within 30 days from the date of this generic letter, each addressee is required to submit a written response indicating (a) whether or not the requested information will be submitted, and (b) whether or not the requested information will be submitted within the requested time period. Addressees who choose not to submit the requested information, or are unable to satisfy the requested completion date, must describe in their response an alternative course of action that is proposed to be taken, including the basis for the acceptability of the proposed alternative course of action.

New NPSH analyses are not required or requested to respond to this information request. However, new NPSH analyses may be warranted if an addressee determines that a facility is not in compliance with the Commission's rules and regulations. In such cases, the affected addressees are expected to take corrective action, as appropriate, in accordance with the requirements stated in 10 CFR part 50, appendix B, to restore their facility to compliance.

NRC staff will review the responses to this generic letter and if concerns are identified, affected addressees will be notified.

Address the required written response to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555–0001, under oath or affirmation under the provisions of section 182a, Atomic Energy Act of 1954, as amended, and 10 CFR 50.54(f).

Backfit Discussion

This generic letter only requests information from addressees under the provisions of section 182a of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.54(f). The information requested will enable the staff to determine whether addressees' NPSH analyses for the emergency core cooling (including the core spray and decay heat removal) and containment heat removal system pumps comply and conform with the current licensing basis for their respective facilities, including the licensing safety analyses and the principle design criteria which require and/or commit that safety-related components and systems be provided to mitigate the consequences of design-basis accidents.

With respect to the principle design criteria for nuclear power reactor facilities, which establish minimum requirements for structures, systems, and components important to safety, General Design Criterion (GDC) 35 of appendix A to Title 10 of the Code of Federal Regulations (10 CFR part 50, appendix A) specifies that there be a system to provide abundant emergency core cooling. Furthermore, 10 CFR 50.46, which addresses the acceptance criteria for emergency core cooling systems for light water nuclear power reactors, requires, in part, that the emergency core cooling system be able to provide long-term cooling following any loss-of-coolant accident. The potential for the loss of adequate NPSH for emergency core cooling system pumps, and the cavitation that would result, raises the concern that the emergency core cooling system would not be capable of providing core cooling over the duration of postulated accident conditions as required by GDC 35 and 10 CFR 50.46.

Similarly, GDC 38 of appendix A to 10 CFR part 50 specifies that there be a system to rapidly remove heat from the reactor containment in order to reduce the containment pressure and temperature following any loss-of-coolant accident, and GDC 16 of appendix A to 10 CFR part 50 specifies that reactor containment and associated systems be provided to assure that the containment design conditions important to safety are not exceeded for the duration of the accident conditions. The potential for the loss of adequate NPSH in containment spray pumps, and the cavitation that would result, raises the concern that containment spray would not be capable of lowering and maintaining the containment pressure and temperature below design values as required by GDC 38 and GDC 16.

Considering the safety significance of removing heat from the containment atmosphere and cooling the reactor core following a design-basis accident, the requested information is needed to verify addressee compliance with licensing basis commitments regarding the performance of emergency core cooling (including core spray and decay heat removal) system and containment heat removal system pumps. The evaluation required by 10 CFR 50.54(f) to justify this information request is included in the preceding discussion.

Dated at Rockville, Md., this 11th day of February 1997.

For the Nuclear Regulatory Commission.

Thomas T. Martin,

Director, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 97–4175 Filed 2–19–97; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards; Meeting

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on March 6–8, 1997, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Thursday, January 23, 1997 (62 FR 3539).

Thursday, March 6, 1997

8:30 a.m.–8:45 a.m.: Opening Remarks by the ACRS Chairman

(Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting and comment briefly regarding items of current interest. During this session, the Committee will discuss priorities for preparation of ACRS reports.

8:45 a.m.–10:30 a.m.: Capability of RELAP5/MOD 3 Code to Assess the AP600 Design

(Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the capability of the RELAP5/MOD 3 code to assess the adequacy of the AP600 passive plant design.

The Committee may hear presentations by representatives of the Westinghouse Electric Corporation, as appropriate.

Note: A portion of this session may be closed to discuss Westinghouse proprietary information.

10:45 a.m.–12:15 p.m.: AP600 Test Data from ROSA and Oregon State University (OSU)–APEX Test Facilities

(Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the issues associated with the release of test data from ROSA and OSU–APEX test facilities to the public.

The Committee may hear presentations by representatives of the Westinghouse Electric Corporation, as appropriate.

Note: A portion of this session may be closed to discuss Westinghouse proprietary information and matters the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action.

1:15 p.m.–2:45 p.m.: Arthur Andersen Report, "Recommendations to Improve the Senior Management Meeting Process"

(Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the results of the Arthur Andersen study that was performed to evaluate the Senior NRC Management Meeting Process for assessing the performance of operating nuclear plants.

Representatives of the nuclear industry will participate, as appropriate.

3:00 p.m.–4:30 p.m.: Risk-Informed, Performance-Based Regulation and Related Matters

(Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed Standard Review Plan (SRP) Sections, Regulatory Guides, and other matters associated with the risk-informed, performance-based regulation.

Representatives of the nuclear industry will participate, as appropriate.

4:45 p.m.–7:15 p.m.: Preparation of ACRS Reports

(Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting.

Friday, March 7, 1997

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman

(Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:35 a.m.–9:45 a.m.: Independent Safety Assessment of the Main Yankee Atomic Power Station

(Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the results of independent safety assessment of the Main Yankee Atomic Power Station.

Representatives of the nuclear industry will participate, as appropriate.

9:45 a.m.–12:30 p.m.: National Academy of Sciences/National Research Council (NAS/NRC) Phase 2 Study Report

(Open)—The Committee will hear presentations by and hold discussions with the Chairman of the NAS/NRC Committee regarding the results of the NAS/NRC Phase 2 Study on the digital instrumentation and control systems.

Other member(s) of the NAS/NRC Committee, representatives of the NRC staff and nuclear industry will participate, as appropriate.

1:30 p.m.–2:30 p.m.: Department of Energy's (DOE's) Tritium Production Program

(Open)—The Committee will hear presentations by and hold discussions with representatives of DOE regarding DOE's tritium production program.

Representatives of the NRC staff will participate, as appropriate.

2:30 p.m.–3:00 p.m.: Future ACRS Activities

(Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings.

3:00 p.m.–3:15 p.m.: Reconciliation of ACRS Comments and Recommendations

(Open)—The Committee will discuss responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports. The EDO responses are expected to be provided to the ACRS prior to the meeting

3:30 p.m.–7:15 p.m.: Preparation of ACRS Reports

(Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting.

Saturday, March 8, 1997

8:30 a.m.–9:00 a.m.: Report of the Planning and Procedures Subcommittee

(Open/Closed)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business and organizational and personnel matters relating to the ACRS.

Note: A portion of this session may be closed to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of this Advisory Committee, and matters the release of which would constitute a clearly unwarranted invasion of personal privacy.

9:00 a.m.–1:00 p.m.: Preparation of ACRS Reports

(Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting.

1:00 p.m.–2:00 p.m.: Strategic Planning

(Open)—The Committee will continue its discussion of items of significant importance to NRC, including rebaselining of the Committee activities for FY 1997.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 1, 1996 (61 FR 51310). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during the open portions of the meeting, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Mr. Sam Duraiswamy, Chief, Nuclear Reactors Branch, at least five days before the meeting, if possible, so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Chief of the Nuclear Reactors Branch prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Chief of the Nuclear Reactors Branch if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) P.L. 92–463, I have determined that it is necessary to close portions of this meeting noted above to discuss proprietary information per 5 U.S.C. 552b(c)(4), information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action per 5 U.S.C. 552b(c)(9)(B), matters that relate solely to the internal personnel rules and practices of this Advisory Committee per 5 U.S.C. 552b(c)(2), and to discuss matters the release of which would constitute a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Sam Duraiswamy, Chief, Nuclear Reactors Branch (telephone 301/415–7364), between 7:30 a.m. and 4:15 p.m. EST.

ACRS meeting notices, meeting transcripts, and letter reports are now available on FedWorld from the "NRC MAIN MENU." Direct Dial Access number to FedWorld is (800) 303–9672 or ftp.fedworld. These documents and the meeting agenda are also available for downloading or reviewing on the internet at http://www.nrc.gov/ACRSACNW.

Dated: February 13, 1997.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 97–4174 Filed 2–19–97; 8:45 am]

BILLING CODE 7590–01–P

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a proposed revision of a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide is a proposed Revision 3 to Regulatory Guide 1.134, and it is temporarily identified as DG–1068, "Medical Evaluation of Licensed Personnel at Nuclear Power Plants." The guide will be in Division 1, "Power Reactors." This regulatory guide is being revised to endorse an updated ANSI/ANS–3.4–1996, "Medical Certification and Monitoring of Personnel Requiring Operator Licenses for Nuclear Power Plants," which describes methods acceptable to the NRC staff for determining the medical qualifications of applicants for initial or renewal operator or senior operator licenses for nuclear power plants and for notifying the NRC of an operator's incapacitating disability or illness.

The draft guide has not received complete staff review and does not represent an official NRC staff position.

Public comments are being solicited on the guide. Comments should be accompanied by supporting data. Written comments may be submitted to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by March 17, 1997.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Comments may be submitted electronically, in either ASCII text or Wordperfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board on FedWorld. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet.

If using a personal computer and modem, the NRC subsystem on FedWorld can be accessed directly by dialing the toll free number: 1–800–303–9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT–100 terminal emulation, the NRC NUREGs and RegGuides for Comment subsystem can then be accessed by selecting the "Rules Menu" option from the "NRC Main Menu." For further information about options available for NRC at FedWorld, consult the "Help/Information Center" from the "NRC Main Menu." Users will find the "FedWorld Online User's Guides" particularly helpful. Many NRC subsystems and data bases also have a "Help/Information Center" option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct dial phone number for the main FedWorld BBS, 703–321–3339, or by using Telnet via Internet, fedworld.gov. If using 703–321–3339 to contact FedWorld, the NRC subsystem will be accessed from the main FedWorld menu by selecting the "Regulatory, Government Administration and State Systems," then selecting "Regulatory Information Mall." At that point, a menu will be displayed that has an option "U.S. Nuclear Regulatory Commission" that will take you to the NRC Online main menu. The NRC Online area also can be accessed directly by typing "/go nrc" at a FedWorld command line. If you access NRC from FedWorld's main menu, you may return to FedWorld by selecting the "Return to FedWorld" option from the NRC Online Main Menu. However, if you access NRC at FedWorld by using NRC's toll-free number, you will have full access to all NRC systems but you will not have access to the main FedWorld system.

If you contact FedWorld using Telnet, you will see the NRC area and menus, including the Rules menu. Although you will be able to download documents and leave messages, you will not be able to write comments or upload files (comments). If you contact FedWorld using FTP, all files can be accessed and downloaded but uploads are not allowed; all you will see is a list

of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is included. There is a 15-minute time limit for FTP access.

Although FedWorld can be accessed through the World Wide Web, like FTP that mode only provides access for downloading files and does not display the NRC Rules menu.

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–5780; e-mail AXD3@nrc.gov. For more information on this draft regulatory guide, contact D. McCain at the NRC, telephone (301) 415–1021; e-mail DLM2@nrc.gov.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Distribution and Mail Services Section; or by fax at (301) 415–2260. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a)).

Dated at Rockville, Maryland, this 7th day of February 1997.

For the Nuclear Regulatory Commission.

Bill M. Morris,

Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 97–4178 Filed 2–19–97; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22508; File No. 811–3414]

Sun Growth Variable Annuity Fund, Inc.

February 12, 1997.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 ("1940 Act").

Applicant: Sun Growth Variable Annuity Fund, Inc. ("Applicant").

Relevant 1940 Act Section: Order requested under Section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company as defined by the 1940 Act.

Filing Date: The application was filed on December 31, 1996.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving Applicant with a copy of the request, in person or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 10, 1997, and should be accompanied by proof of service on Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requestor's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o Bonnie S. Angus, Sun Life Assurance Company of Canada (U.S.), 50 Milk Street, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Michael Koffler, Staff Attorney, or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products (Division of Investment Management), at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the SEC.

Applicant's Representation

1. Applicant is an open-end, diversified management company organized as a Delaware corporation. On March 12, 1982, Applicant filed with the Commission a notification of registration as an investment company on Form N–8A, and a registration statement under Section 8(b) of the 1940 Act and under the Securities Act of 1933 (File No. 2–76478) registering an indefinite amount of securities. The registration statement was declared effective April 22, 1982, and public offering of Applicant's securities began on April 30, 1982.

2. Shares of Applicant are the underlying investment of two separate accounts of Sun Life Assurance Company of Canada (U.S.) ("Sun Life of Canada (U.S.)"), which are registered as unit investment trusts: Sun Life of Canada (U.S.) Variable Account A and Sun Life of Canada (U.S.) Variable Account B. These variable accounts are the sole shareholders of Applicant.

3. Applicant is a small fund with continuing net redemptions. Applicant's board of directors believes it was in the best interest of its stockholders to merge Applicant into a larger fund, to obtain economies of scale with respect to fees and expenses.

4. On December 18, 1996, pursuant to an Agreement and Plan of Reorganization dated October 1, 1996, between Applicant and MFS/Sun Life Series Trust (the "Series Trust"), Applicant exchanged all of its assets for shares of the Money Market Series of the Series Trust. Applicant subsequently dissolved and distributed all the Money Market Series shares on a pro rata basis to each stockholder of Applicant. These transactions have been approved by Applicant's board of directors and by Applicant's stockholders.

5. All expenses incurred in connection with these transactions will be borne by Sun Life of Canada (U.S.).

6. Applicant has no assets and no security holders.

7. Applicant has no debts or other liabilities outstanding.

8. Applicant is not a party to any litigation or administrative proceeding, and is not now engaged, nor does it intend to engage, in any business activities other than those necessary for winding up its affairs.

9. Within the last 18 months, Applicant has not transferred any of its assets to a separate trust.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4092 Filed 2–19–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38268; File No. SR–CBOE–97–02]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Chicago Board Options Exchange, Incorporated, Relating to the Use of Proprietary Brokerage Order Routing Terminals on the Floor of the Exchange

February 11, 1997.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 21, 1997, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend from the Standard & Poor's 500 index ("SPX options") to the trading crowd in options on the Standard & Poor's 100 index ("OEX options") its existing policy adopted pursuant to Exchange Rule 6.23 whereby members are permitted to establish, maintain and use proprietary hand-held, brokerage order routing terminals and related systems ("Terminals") in the trading crowd with the written approval of the Exchange upon submission of an "Application & Agreement for Brokerage/Order Routing Terminals in Trading Crowds" ("Application Agreement"). At present, members may apply to use Terminals only in the trading crowd in SPX options. The Exchange proposes to make changes to the Application Agreement reflecting its use to apply for Terminals in the OEX crowd as well as the SPX crowd. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basic for, the proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend to floor brokers in the OEX trading crowd the Exchange's policy pursuant to which members have the right to use proprietary, wireless, hand-held terminals for the electronic routing of firm and customer orders directly to brokers in the crowd ("Terminals"). The Exchange's general policy concerning the use of Terminals in the SPX trading crowd was recently approved by the Commission.[3] Pursuant to this policy, members may use Terminals in the SPX trading crowd only with the written approval of the Exchange after submission of the Exchange's Application Agreement.

In its filing originally proposing the adoption of a policy pertaining to the use of Terminals on the trading floor, the Exchange stated that it would initially limit the use of Terminals to the SPX options trading crowd. To date only one member firm has applied and been approved to use Terminals in that crowd. The Exchange now proposes to extend the availability of Terminals to one additional trading crowd on the floor, the OEX crowd, in response to a request from the same member firm that has been approved to use Terminals in the SPX crowd. The Exchange notes that the use of Terminals in the OEX crowd would be subject to exactly the same terms and conditions that apply in the SPX crowd, including the use of the same form of Application and Agreement that was recently approved.[4]

The Exchange originally proposed to limit Terminals to the SPX crowd for an initial evaluation period because the one firm proposing to use Terminals made its proposal with respect to SPX options only, and because the Exchange believed it should have some experience with its Terminals policy before extending the policy beyond the SPX Options trading crowd. Now that the same firm has expressed a desire to use Terminal in the OEX crowd as well as the SPX crowd, the Exchange believes that having Terminals in both crowds will provide a better evaluation of the Exchange's Terminals policy than if Terminals are limited to the SPX crowd only. Because OEX options represent a more retail-oriented product than the largely institutional SPX options, the Exchange believes that the availability of Terminals in both crowds will better enable the Exchange to evaluate how Terminals may be used for both retail and institutional orders, which in turn will be relevant to deciding when and under what conditions to propose an extension of the Terminal policy on a floor-wide basis.

[3] See Securities Exchange Act Release No. 38054 (Dec. 16, 1996), 61 FR 67365 (Dec. 20, 1996) ("Release No. 38054").

[4] In particular, the applicant must agree that its terminal will be used to receive brokerage orders only, and that it will not be used to perform a market making function. *id.*

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act[5] in general, and furthers the objectives of sections 6(b)(1)[6] and 6(b)(5)[7] of the Act in particular, in that the proposal is designed to improve communications to and from the Exchange's OEX trading crowd in a manner that gives the Exchange necessary monitoring tools and that is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, perfect the mechanisms of a free and open market, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any inappropriate burden on competition. To the contrary, the Exchange believes that the proposed rule change will promote competition among brokers by encouraging the development and use of new systems designed to facilitate the execution of customer orders, while at the same time preserving the benefits of the auction market for all customers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received with respect to the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(1).

[7] 15 U.S.C. 78f(b)(5).

Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–97–02 and should be submitted by March 13, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4091 Filed 2–19–97; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Notice of Proposed Change in Magnetic Media Specifications for Submitters Who File Corrected Wage Reports Using Magnetic Media or Electronic Filing

SUMMARY: Notice is hereby given that SSA has developed new Magnetic Media Reporting and Electronic Filing Specifications (MMREF–2) for submitters who file corrected wage reports to SSA, using magnetic tape, diskette, cartridge or electronic filing. The new MMREF–2 will consist of a single record format to be used to report domestic or territorial correction reports using magnetic media and electronic filing.

We would like to receive any comments the public may offer on the MMREF–2. An educational seminar on the MMREF–2 is scheduled to be held at the SSA headquarters in Baltimore February 24, 1997, 9 a.m. to 12 p.m. To receive a draft copy of the MMREF–2 and/or to attend the educational seminar contact the addressee below.

DATES: Comments must be received by March 14, 1997 on the MMREF–2.

ADDRESSES: To receive a draft and/or to be part of the seminar, contact Ed Bulson, Social Security Administration, Room 3–B–15 Operations Building, Baltimore, Maryland 21235 or fax him at (410) 966–4159.

FOR FURTHER INFORMATION CONTACT: Mark Ruley, Financial Management Analyst, Office of Finance, Assessment and Management, Social Security Administration, 451 Altmeyer Building, Baltimore, Maryland 21235, (410) 965–0371.

Dated: February 12, 1997.

Richard Harron,

Tax Forms Coordinator.

[FR Doc. 97–4080 Filed 2–19–97; 8:45 am]

BILLING CODE 4190–29–P

Final Report of the Representative Payment Advisory Committee

AGENCY: Social Security Administration (SSA).

ACTION: Notice of availability of final report.

SUMMARY: The Social Security Administration (SSA) is making available the final report of the Representative Payment Advisory Committee.

ADDRESSES: Copies of the final report are available, free of charge, and may be requested by writing to: SSA, Representative Payment Advisory Committee Staff, 3–M–1 Operations Building, 6401 Security Blvd., Baltimore, MD 21235. You may also request a copy of the report by calling: (410) 966–4688. The report is also available for viewing on SSA's Home Page of the Internet at http://www.ssa.gov.

Written comments may be sent: by mail—SSA, Representative Payment Advisory Committee Staff, 3–M–1 Operations Building, 6401 Security Blvd., Baltimore, MD 21235; or by telefax—(410) 966–0980; via Internet—adcom@ssa.gov.

DATES: If you would like to submit comments, they should be postmarked on or before May 21, 1997.

FOR FURTHER INFORMATION CONTACT: SSA, Representative Payment Advisory Committee Staff, 3–M–1 Operations Building, 6401 Security Blvd., Baltimore, MD 21235; telephone—(410) 966–4688.

SUPPLEMENTARY INFORMATION: The Representative Payment Advisory Committee was chartered in July 1995 to undertake a comprehensive examination of SSA representative payment policy in five broad areas: (1) Beneficiary incapability; (2) payee selection; (3) payee recruitment and support; (4) standards for payee selection; (5) payee accountability and oversight. The Committee was established to take a fresh look at SSA's representative payment program to ensure that it continues to protect our nation's most vulnerable citizens.

The Committee heard public testimony in Washington, D.C., Chicago, IL, San Francisco, CA and Atlanta, GA. The Committee also held deliberative meetings in Baltimore, MD in April, June, and September 1996. We announced these meetings in the **Federal Register**. The public was also invited to comment directly to the Committee during the period July 1995 to September 1996. The Committee submitted its final report to SSA on November 7, 1996.

After the close of the public comment period, SSA may consider all comments received in developing initiatives to improve the representative payment program.

Dated: February 12, 1997.

Georgina Harding,

Staff Director, Representative Payment Advisory Committee.

[FR Doc. 97–4078 Filed 2–19–97; 8:45 am]

BILLING CODE 4190–29–P

STATE DEPARTMENT

Overseas Security Advisory Council Meeting; Closed

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on Thursday, February 27, at the Registry Resort & Spa, Fort Lauderdale, Florida. Pursuant to Section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c) (1) and (4), it has been determined the meeting will be closed to the public. Matters relative to classified national security information as well as privileged commercial information will be discussed. The agenda calls for the discussion of classified and corporate proprietary/security information as well as private sector physical and procedural security policies and protective programs at sensitive U.S. Government and private sector locations overseas.

For more information contact Marsha Thurman, Overseas Security Advisory Council, Department of State, Washington, D.C. 20522–1003, phone: 202–663–0869.

Dated: February 13, 1997.

William D. Clarke,

Acting Director of the Diplomatic Security Service.

[FR Doc. 97–4284 Filed 2–18–97; 10:39 am]

BILLING CODE 4710–24–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

WTO Dispute Settlement Proceeding Regarding Hungary's Export Subsidies on Agricultural Products (Docket No. WTO/D–14)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: Pursuant to section 127(b)(1) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)), the Office of the United States Trade Representative (USTR) is providing notice that the United States has requested the establishment of a dispute settlement panel under the Agreement Establishing the World Trade Organization (WTO), to examine Hungary's export subsidies on agricultural products. More specifically, the United States alleges that Hungary's export subsidies are inconsistent with the obligations of the WTO Agreement on Agriculture, including, but not limited to, Article 3.3, Article 8 and Article 9.2. USTR also invites written comments from the public concerning the issues raised in the dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before March 17, 1997, to be assured of timely consideration by USTR in preparing its first written submission to the panel.

ADDRESSES: Comments may be submitted to Ileana Falticeni, Office of Monitoring and Enforcement, Room 501, Attn: Hungary Export Subsidies Dispute, Office of the U.S. Trade Representative, 600 17th Street, N.W., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: William D. Hunter, Attorney, (202) 395–3582, or Marilyn Moore, Senior Economist, (202) 395–6127.

SUPPLEMENTARY INFORMATION: On January 9, 1997, the United States requested establishment of a WTO dispute settlement panel to examine whether Hungary's export subsidies on agricultural products are inconsistent with the obligations of the WTO Agreement on Agriculture. Argentina, Australia and New Zealand also requested the establishment of a panel. The WTO Dispute Settlement Body (DSB) considered the U.S. request at its meeting on January 22, 1997. Under the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes, the DSB must establish a panel at the next DSB meeting where a panel request is on the agenda, unless the DSB determines by consensus otherwise. The next scheduled DSB meeting will be held on February 25, 1997. Under normal circumstances, the panel, which will hold its meetings in Geneva, Switzerland, would be expected to issue a report detailing its findings and recommendations within six to nine months after it is established.

Major Issues Raised by the United States and Legal Basis of Complaint

In Hungary's Schedule annexed to the Marrakesh Protocol to the General Agreements on Tariffs and Trade 1994 (Schedule), Hungary provided an exclusive list of the agricultural products or groups of products that would be eligible for particular categories of export subsidies. Hungary's Schedule also specified the maximum level of expenditure for such subsidies that may be allocated or incurred for each year with respect to each agricultural product or group of products, and the maximum quantity of each agricultural product or group of products for which such subsidies could be granted each year. In 1995, Hungary provided export subsidies on agricultural products that are not specified in its Schedule. In addition, in the case of agricultural products that are specified in its Schedule, Hungary provided export subsidies in excess of its specified budgetary outlay and quantity commitment levels. Both sets of circumstances continued in 1996.

Hungary's export subsidies appear to be inconsistent with Hungary's obligations to limit its export subsidies under the Agreement on Agriculture, including, but not limited to, Article 3.3, Article 8, and Article 9.2.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments must be in English and provided in fifteen copies. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page of each copy.

A person requesting that information or advice contained in a comment submitted by that person, other than business confidential information, be treated as confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2))—

(1) Must so designate that information or advice;

(2) must clearly mark the material as "SUBMITTED IN CONFIDENCE" in a contrasting color ink at the top of each page of each copy; and

(3) is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508. The public file will include a listing of any comments received by USTR from the public with respect to the proceeding; the U.S. submissions to the panel in the proceeding; the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the dispute settlement panel and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/D–14 ("U.S.–Hungary Export Subsidies")), may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

A. Jane Bradley,

Assistant U.S. Trade Representative for Monitoring and Enforcement.

[FR Doc. 97–4181 Filed 2–19–97; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program; Tallahassee Regional Airport, Tallahassee, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the City of Tallahassee, Florida, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and non-Federal responsibilities in Senate Report No. 96–52 (1980). On June 25, 1996, the FAA determined that

the noise exposure maps submitted by the City of Tallahassee, Florida, under Part 150 were in compliance with applicable requirements. On December 20, 1996, the Administrator approved the Tallahassee Regional Airport noise compatibility program. Thirteen (13) of fifteen (15) recommendations of the program were approved in full. Two recommendations were partially approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the Tallahassee Regional Airport noise compatibility program is December 20, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Tommy J. Pickering, P.E., Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822–5024, (407) 812–6331, Extension 29. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Tallahassee Regional Airport, effective December 20, 1996.

Under Section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measure should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 of the Act, and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical users, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, Section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Orlando, Florida.

The City of Tallahassee, Florida, submitted to the FAA on June 4, 1996, updated noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from January 3, 1994 through May 30, 1996. The Tallahassee Regional Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on June 25, 1996. Notice of this determination was published in the **Federal Register**.

The Tallahassee Regional Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 2001. It was requested that FAA evaluate and approve this material as a noise compatibility program as described in Section 104(b) of the Act. The FAA began its review of the program on June 25, 1996, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained fifteen (15) proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective December 20, 1996.

Outright approval was granted for thirteen (13) of the fifteen (15) specific program measures. Two (2) measures were partially approved. The approval action was for the following program measures:

OPERATIONAL CONTROLS

Operational control number	Description	NCP pages
1	Balance the air carrier and military jet departure activity on Runways 27 and 36 (approximately 40 percent of the departure activity on each runway) to reduce noise exposure north of the airport. Departure activity on other runways should remain the same as the current conditions. This measure recommends a modification of Air Traffic Control procedures to increase the use of Runway 27 departures of air carrier and military jet activity to approximately 40 percent and to reduce departure of these aircraft to approximately 40 percent on Runways 36. For military jet departures, approximately 40 percent of these represent touch and go activity and would need to remain on Runway 36. The remaining military jet activity would be assigned to the same as the proposed air carrier activity. Other aircraft runway utilization would remain the same as the current condition. This would reduce noise exposure on sensitive areas north of the Airport and reduce the number of impacts within their 65 DNL contour by 53 people. FAA Action: Approved as a voluntary measure.	Pgs. 35–36; p. 12; and Table 14.
2	This measure recommends the implementation of a "close-in" departure procedure for Runways 36 and 09 and a "distant" departure for Runway 18 based on Advisory Circular 91–53A. This will increase aircraft altitude over noise sensitive areas south of the Airport and reduce noise levels in residential areas north and east of the Airport. FAA Action: Approved as a voluntary measure.	Pgs. 36–37; Table 14; and AC 91–53.
3	This measure recommends that when precision approach Global Positioning System (GPS) technology becomes available, a GPS should be installed and alternative approach procedures to Runway 27 should be reviewed to determine if approach track modifications are warranted. This will provide for future flexibility in reducing arrival noise to areas east of the Airport. FAA Action: Approved in part. FAA approves the review of alternative approach procedures to Runway 27 to determine if approach track modifications are warranted for noise benefits when precision approach GPS technology becomes available. The airport operator may submit supplemental information, including the noise benefits, upon completion of its review and may request approval under Part 150 of specified approach procedures to be used. However, the installation of a GPS under Part 150 is disapproved. The primary benefits of a GPS would be related to a development upgrade rather than noise benefits. This does not prevent the installation of a GPS outside of Part 150.	Pg. 37 and Table 14.
4	This measure supports the Federal legislation for the phase-out of Stage 2 aircraft by the year 2000. The phase-out of Stage 2 aircraft will reduce the impact of aircraft noise on areas surrounding the Airport. FAA Action: Approved as an expression of airport operator support for the Federal transition sechedule.	Pg. 37 and Table 14.

LAND USE MEASURES

Land use control number	Description	NCP pages
1	This measure recommends that current zoning for the City of Tallahassee and Leon County be amended to implement noise overlay zoning to supplement the underlying zoning categories. Overlay Zone 1 should be associated with the 60 DNL contour and Zone 2 should be associated with the 65 DNL contour using identifiable features to define the limits. Generally, residential uses, churches, hospitals and schools would be excluded from the 65 DNL contour and consideration would be given to precluding the location of additional mobile homes from the 60 DNL contour and above. This could preclude the potential for future incompatible development in areas subject to overflight and noise exposure. FAA Action: Approved.	Pg. 42–43; Exhibit 12; and Tables 13 & 15.
2	It is recommended that current zoning for the City of Tallahassee and Leon County be changed to designate land north of the Airport, east of Sand Road, West of Capitol Circle S.W., and south of S.R. 20 for future compatible forms of commercial and industrial development; and to designate land north of S.R. 20, west of Capitol Circle S.W., south of Gum Road and east of a north-south line situated approximately 3,600 feet west of Capitol Circle S.W. for low density residential development. This would preclude the potential for future incompatible development in areas subject to overflight and noise exposure. FAA Action: Approved in part. The portion of this recommendation related to any new residential development, regardless of density, does not meet Part 150 approval criteria to prevent the introduction of noncompatible land uses and is disapproved. This disapproval for purposes of Part 150 is not intended to discourage planning efforts to reduce the potential for future noncompatible land uses.	Pgs. 43–44; Exhibits 11 and 13; and Tables 13 & 15.
3	It is recommended that existing building codes for the City of Tallahassee and Leon County be amended to require soundproofing in new residential and noise sensitive institutional land uses (churches, hospitals, etc.) that may occur within the composite current and future 65 DNL noise contours. This addresses noise impacts which may occur on new noise sensitive uses in undeveloped areas. The application of these standards should only impact vested residential lots or parcels available for development, and only if the acquisition program proposed is not implemented. FAA Action: Approved. Sound attenuation consistent with Part 150 Table 1 will make these structures compatible. The FAA believes that the prevention of additional residential land uses within the DNL 65dB contour is highly preferred over allowing such uses even at lower densities and combined with sound attenuation. The airport operator and local land use jurisdiction are urged to pursue all possible avenues to discourage new residential development within these levels of noise exposure.	Pgs. 44–45 and Tables 13 & 15.
4	It is recommended that the City of Tallahassee and Leon County amend the current Tallahassee-Leon County Comprehensive Plan to incorporate the recommendations of the updated FAR part 150 Noise Compatibility Study into the provisions of their planning document. This would identify noise and land use compatibility areas within the aircraft noise impact areas. FAA Action: Approved.	Pgs. 47–48 and Tables 13 & 15.

LAND USE MEASURES—Continued

Land use control number	Description	NCP pages
5	It is recommended that procedures be implemented to factor noise compatibility considerations into the project review process of local planning commissions, Boards of Adjustment and staff review of land development proposals. This measure would include the development of specific checklist items relating to issues of noise compatibility and a map showing the area where noise compatibility issues are critical. FAA Action: Approved.	Pg. 48 and Tables 13 & 15.
6	It is recommended that the Broadmoor Estates Mobile Home Park be considered for voluntary fee simple acquisition and the present occupants be relocated to other compatible locations not impacted by aircraft related noise. This would remove approximately 210 residences (incompatible land uses) from high noise contour areas. FAA Action: Approved.	Pgs. 50–51; Exhibit 13; and Tables 13 & 15.
7	It is recommended that a voluntary purchase program be implemented for the acquisition of all 52 existing single-family residential units in The Cascades, depending upon the extent of neighborhood disruption, and 17 existing predominantly mobile homes located near the eastern terminus of Sullivan Road. This would remove these residences from high noise contour areas. FAA Action: Approved as a voluntary measure.	Pgs. 49–52; Exhibit 13; and Tables 13 & 15.
8	Acquisition is recommended for three parcels of undeveloped land located almost entirely within the 65dB contour: west of Capitol Circle S.W., south of Jackson Bluff Road, and north of Lake Cascade that has the potential for residential development. This will provide positive control over land use within high noise contour areas or land available for potential residential development. FAA Action: Approved. This measure is subject to a determination at the time of implementation that the purchase is necessary to prevent new noncompatible development because noncompatible development on the vacant land is highly likely and local land use controls will not prevent such development.	Pgs 52–53; Exhibit 13; and Tables 13 & 15.
9	It is recommended that as a final option, owners of noise impacted property who either opt not to participate in the voluntary purchase program, or whose dwellings are not technologically or financially feasible to undergo soundproofing will be offered the opportunity to sell an avigation easement to the airport. The avigation easement purchase offer will be made only after the completion of the voluntary purchase program and the residential soundproofing program is completed. This will provide protection to the airport from litigation and will provide notification to future residents of noise exposure. FAA Action: Approved.	Pgs. 53–54; Exhibit 13; and Tables 13 & 15.
10	It is recommended that soundproofing should be offered as an option to owners of permanent residential structures located within the DNL 65dB voluntary purchase areas, if in doing so, it is both technologically feasible and cost efficient. The soundproofing option would not commence until completion of the voluntary acquisition program. Mobile homes would not be eligible. This would address impacts on existing residences and result in notification of future residents of noise impacts. In exchange for the soundproofing, the residents will be required to dedicate an easement and nonsuite covenant to the airport. FAA Action: Approved.	Pgs. 54–55; Exhibit 13; and Tables 13 & 15.
11	It is recommended that the City of Tallahassee and Leon County should continue practicing environmental land use controls during their development review process. This supports the prohibition of residential land use within noise impacted portions of the study area. FAA Action: Approved.	Pg. 46 and Tables 13 & 15.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on December 20, 1996. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative office of the City of Tallahassee, Florida.

Issued in Orlando, Florida on February 4, 1997.

Charles E. Blair,

Manager, Orlando Airports District Office.

[FR Doc. 97–4204 Filed 2–19–97; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent to Rule on Application to Impose and Use the Revenue from a Passenger Facility Charge (PFC) at La Crosse Municipal Airport, La Crosse, Wisconsin

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at La Crosse Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before March 24, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Eldon L. Steele, Airport Manager of the La Crosse Municipal Airport at the following address: La Crosse Municipal Airport, 2850 Airport Road, La Crosse, WI 54603.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of La Crosse under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Sandra E. DePottey, Program Manager, Minneapolis Airports District Office, 6020 28th Avenue South, room 102, Minneapolis, MN 55450, 612–713–4363. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at La Crosse Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On February 5, 1997, the FAA determined that the application to impose and use the revenue from a PFC submitted by City of La Crosse was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 22, 1997.

The following is a brief overview of the application.

PFC application number: 97–03–00–LSE.

Level of the proposed PFC: $3.00.

Proposed charge effective date: June 1, 1997.

Proposed charge expiration date: August 1, 1998.

Total estimated PFC revenue: $315,000.

Brief description of proposed project(s): Acquire snow removal equipment (two snow plow trucks); Pavement evaluation and management system study; Airport Layout Plan update; PFC administration.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: no request to exclude carriers.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of La Crosse.

Issued in Des Plaines, IL, on February 12, 1997.

Benito De Leon,

Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 97–4207 Filed 2–19–97; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

Discretionary Cooperative Agreements to Support the Demonstration and Evaluation of Innovative Alcohol-Impaired Driving Projects

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Announcement of discretionary cooperative agreement program to support the demonstration and evaluation of Innovative Alcohol-Impaired Driving Projects.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces a discretionary cooperative agreement program to demonstrate and evaluate innovative projects aimed at reducing alcohol-impaired fatalities.

The goal of NHTSA's Impaired Driving program is to reduce alcohol-related fatalities to 11,000 by the year 2005. While progress has been made in reducing alcohol-related fatalities in the last ten years, more innovative programs with potential to achieve dramatic declines in alcohol-impaired driving fatalities are needed to reach this national goal. This cooperative agreement program is to support the development of innovative projects or new approaches that have potential to substantially reduce alcohol-related fatalities, injuries and crashes.

NHTSA anticipates funding several innovative demonstration projects for a period of two years under this announcement.

This notice solicits pre-applications from public and private, non-profit and for-profit organizations, state and local governments and their agencies. Interested applicants must submit a pre-application package as further described in the Pre-Application Procedures section of this notice. The pre-applications will be evaluated to identify those that warrant further development. Only selected pre-applicants will be invited to submit a full application.

DATES: Pre-applications must be received at the office designated below on or before 3:00 pm April 1, 1997.

ADDRESSES: Pre-applications must be submitted to the National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD–30), ATTN: Rose Watson, 400 7th Street, S.W., Room 5301, Washington, D.C. 20590. All applications submitted must include a reference to NHTSA Cooperative Agreement Program No. DTNH22–97–H–05072.

FOR FURTHER INFORMATION CONTACT: General administrative questions may be directed to Rose Watson, Office of Contracts and Procurement at (202–366–9557). Programmatic questions relating to this cooperative agreement program should be directed to Valerie Gompf, Impaired Driving Division, NHTSA, 400 7th Street, SW (NTS–11), Washington, DC 20590 by e-mail at vgompf@nhtsa.dot.gov or by phone (202–366–2702). Interested applicants are advised that no separate pre-application package exists beyond the contents of this announcement.

SUPPLEMENTARY INFORMATION:

Background

The goal of NHTSA's Impaired Driving program is to reduce alcohol-related fatalities to 11,000 by the year 2005. Progress has been made in reducing alcohol-related fatalities in the last ten years. The proportion of traffic fatalities involving alcohol has dropped to 41 percent in 1995, from 52 percent in 1985. The 17,274 alcohol-related fatalities in 1995 (41 percent of total traffic fatalities for the year) represent a 24 percent reduction from the 22,720 alcohol-related fatalities reported in 1985 (52 percent of the total).

From 1985 to 1995 intoxication rates decreased for drivers of all age groups involved in fatal crashes, with the youngest and oldest drivers experiencing the largest decreases. For drivers 65 and older, intoxication rates dropped from 7.6 percent in 1985 to 5.0 percent in 1985 (a decline of 34 percent); for drivers 16 to 20 years of age, intoxication rates dropped by 47 percent (from 23.9 percent in 1985 to 12.7 percent in 1995).

The highest intoxication rates in fatal crashes in 1995 were recorded for drivers 21–24 years old (27.8 percent), followed by ages 25–34 (26.8 percent and 35–44 (22.8 percent). These three age groups have also shown the smallest reductions since 1985 (21.3 percent, 17.3 percent and 6.0 percent, respectively.

Safety belts were used by only about 17.5 percent of the fatally injured intoxicated drivers (blood alcohol concentration (BAC) of 0.10 g/dl or greater), compared to 29.1 percent of fatally injured impaired drivers (BAC between 0.01 g/dl and 0.09 g/dl) and 44.6 percent of fatally injured sober drivers (no alcohol).

Innovations in enforcement, alternative sanctions, public education, alcohol screening and treatment, prevention, technology and the passage of tougher legislation have all contributed to this decline. While it is clear that the nation has made progress in reducing alcohol-related fatalities, more needs to be done in order to continue making significant gains. It will take new ideas, creative approaches, innovative programs, new partners, and new or improved technologies to significantly lower the number of alcohol-related deaths. The national goal will not be met without expanding beyond the current state-of-the-art in these areas.

Partners in Progress

To explore how to achieve this national goal, NHTSA convened a group of over 100 people for the Partners in Progress meeting in February 1995. The group developed over 100 strategies to address the goal. In January 1996, NHTSA convened an Implementation Group to develop an action plan to make quantum leaps toward this goal. The Implementation Group met several times over the course of a year and drafted an "Impaired Driving Guide for Action," which included the following seven countermeasure areas:

(1) public education;

(2) individual responsibility;

(3) legislation;
(4) enforcement/adjudication;
(5) technology;
(6) health care and medical community; and
(7) business/employers.

This innovative cooperative agreement program will be based on the seven areas identified in the Partners in Progress An Impaired Driving Guide for Action. The information contained in this notice from the Partners in Progress is still in draft form. The final document is expected to be printed in June of 1997.

Purpose

The purpose of this cooperative agreement program is to encourage innovation in solving the impaired driving problem by funding projects that apply original or creative methods or technologies; or that use existing methods or technologies in original or creative ways. The objective is to identify creative or novel approaches/technologies with the greatest potential to reduce alcohol involved crashes, fatalities and injuries.

Project Eligibility

Applications may be submitted by public and private, non-profit and for-profit organizations, and state and local governments and their agencies or a consortium of the these groups above. Thus, universities, colleges, research institutions, hospitals, other public and private (non- or not-for-profit) organizations, and State and local governments are eligible to apply. Interested applicants are advised that no fee or profit will be allowed under this cooperative agreement program.

Eligible projects will also be limited to those that fall within the seven categories of the draft Partners in Progress: Impaired Driving Guide for Action outlined below:

(1) Public Education—Create public concern and outrage by developing and implementing a comprehensive national and/or local public information and education campaign that promotes health norms and reawakens the public awareness of the scope, impact and cost of the impaired driving problem, and develops public support for legislative and enforcement efforts.

1.1 Recreate public concern and outrage about senseless deaths and injuries caused by impaired driving.

1.2 Develop campaigns and messages with appeal to high-risk target populations, e.g. 21–34 year olds, high BAC offenders and under age 21.

1.3 Improve the balance of media messages related to alcohol-impaired driving. Three specific actions are recommended for achieving a more appropriate balance in media messages.

a. Increase the relevance and reach of pro-health and safety messages through increased availability and public service announcements, counter-advertising and media literacy;

b. Decrease the advertising and promotional messages that glamorize or trivialize drinking and driving; and

c. Enlist the expertise of the alcohol and advertising industries in reaching high risk populations, especially those age 21–34 and underage youth with pro-health and safety messages.

(2) Individual Responsibility—Promote a social norm where individuals do not drive while impaired and actively intervene to prevent behaviors by others that contribute to driving while impaired.

2.1 Develop and implement community programs that train all citizens to follow a prescribed set of behaviors:

a. Serve as appropriate role models especially regarding their drinking and driving behavior.

b. Intervene in the behavior of others when they are likely to drive while impaired.

c. Assist alcohol dependent individuals to seek and participate in treatment and recovery.

d. Exhibit appropriate social hosting practices.

e. Patronize establishments that exhibit responsible serving practices.

f. Support and comply with laws regulating the purchase, possession, consumption of or provision of alcohol to underage persons as well as underage persons falsifying identification in order to purchase.

g. Educate family, friends and co-workers about the dangers of drinking and driving.

h. Intensify the social contract: "Do you mind if I drive after drinking?"

I. Participate in the development of alternative activity programs for youth that:

1. Encourage parents and others to be role models for children.

2. Encourage children to query their parents, "If you're drinking, who's driving?"

3. Incorporate impaired driving and other traffic safety messages into school curricula.

4. Support alcohol-free parties for youth celebrations.

j. Show support for the enactment and enforcement of policies, laws, and ordinances that:

1. Strengthen the prevention and deterrence of impaired driving.

2. Provide for accessible/affordable treatment for alcohol dependent persons.

3. Promote designated drivers and the use of other alternative transportation.

(3) Legislation—Promote passage of effective legislation and sustain existing effective laws such as Minimum Drinking Age 21, Administrative License Revocation, Zero Tolerance for Youth and .08 illegal per se for adults. Encourage adoption and evaluation of promising legislation such as graduated licensing for youth and vehicle sanctions for repeat offenders.

3.1 Support, promote strengthen, and pass legislation that reflects the public sentiment. The majority of the nation's citizens believe that alcohol impaired driving is socially unacceptable. Listed below are legislative initiatives that should be addressed in each state.

a. Administrative License Revocation (Laws which automatically and immediately suspend or revoke licenses of drivers who operate a vehicle with a blood alcohol level at or above the state's defined legal limit.)

b. Safety Belts and Child Car Seats (Laws that make non-use of safety belts by drivers and passengers a traffic offense, thus allowing police to stop and ticket any occupant not wearing a safety belt or using a proper child restraint).

c. Comprehensive Screening and Multi-tiered Treatment Programs (Laws requiring all drivers convicted of DWI/DUI undergo an alcohol assessment program to determine if they have an alcohol abuse problem and require appropriate sanction and treatment.)

d. .08 BAC Per Se (Laws lowering the illegal blood alcohol concentration to .08 BAC per se for all drivers over the age of 21.)

e. Vehicle Confiscation, Immobilization, Impoundment (Laws requiring that convicted repeat DUI/DWI offenders lose their vehicle or use of their vehicle for a prescribed period of time or have devices placed on the vehicle that would prevent the driver from driving if they had consumed any alcohol.)

f. Valid Drivers License Required for Vehicle Purchase or Registration (Laws that prevent persons without a valid drivers license from purchasing or registering a vehicle.)

g. Zero Tolerance (Laws that prevent drivers under the age of 21 to operate a vehicle with any measurable amount of alcohol in their system.)

h. Graduated Licensing (Laws that require new drivers to demonstrate responsible driving behavior during restricted hours of operation over an extended period of time before obtaining full license privilege.)

i. 21 Minimum Drinking Age (Laws that make it illegal for persons under 21 to purchase, attempt to purchase, use false identification to purchase, possess and/or consume alcoholic beverages. These laws also prohibit an adult from purchasing alcohol for a minor or selling to a minor.)

j. Enhanced Penalties for Higher BACs (Laws that provide more severe penalties for drivers with very high blood alcohol levels.)

k. Dram Shop Laws (Laws that provide criminal and administrative penalties for serving and selling alcohol to intoxicated or underage patrons.)

l. Immunity for Hospital BAC Reporting (Laws that grant immunity to hospitals that conduct and report BAC tests of drivers in case of death or serious injury.)

(4) Enforcement/Adjudication—Implement uniform, visible and highly publicized traffic safety and alcohol regulatory enforcement efforts throughout the nation and ensure effective and consistent prosecution and adjudication of offenders to guarantee that impaired driving is treated as a serious crime.

4.1 Hold law enforcement administrators accountable for impaired driving deaths and injuries in their jurisdictions.

4.2 Train, support and motivate law enforcement officers, prosecutors and judges to consistently enforce all laws pertaining to DWI/DUI and alcohol regulatory control.

4.3 Publicize the fact that traffic enforcement not only reduces fatalities and injuries, but also crime in general.

4.4 Improve the quality and accessibility of traffic records related to alcohol traffic offenses: arrests, convictions, sanctions, compliance with judicial directives and outcomes.

4.5 Enforce laws pertaining to legal sale, purchase and provision of alcohol to underage and intoxicated persons.

4.6 Increase the efficiency of the arrest process to reduce the time and paperwork requirements associated with DUI arrests.

4.7 Increase the availability and use of creative alternative sentences for DUI offenders such as: community service, electronic monitoring, ignition interlocks, and intensive probation.

(5) Technology—Identify and apply technological solutions to the impaired driving problem that affect the roadway, the vehicle and the driver.

5.1 Establish a strong safety presence to influence the development and application of safety technologies within the Intelligent Transportation Systems (ITS) and highway construction communities.

5.2 Develop/use innovative technological devices to support the detection, arrest, prosecution, sentencing and monitoring of impaired drivers.

(6) Health and Medical—Encourage the health care and medical community to address alcohol use and impaired driving in patient consultations. Involve health care providers as champions for public education efforts and advocates for policy changes.

6.1 Advocate for health care policies that provide for adequate coverage for assessment, intervention, and treatment of alcohol problems.

6.2 Show concern and take action about potential impaired driving by patients as an integral part of preventive medicine. This action should include:

a. Questions about drinking, impaired driving and occupant protection in patient interviews.

b. Information about drinking, impaired driving and occupant protection in written and verbal patient education.

c. Aggressive assessment and referral for alcohol problems.

6.3 Involve health care professionals as advocates for prevention, legislation and enforcement initiatives in the areas of impaired driving and occupant protection.

6.4 Strengthen training for health care professionals in issues related to alcohol and impaired driving. This training should occur both initially in medical school and in continuing medical education programs.

(7) Business and Employers—Convince/inspire businesses and employers to implement policies as well as engage in responsible hospitality practices whenever alcoholic beverages are sold or served. Encourage businesses to support community activities related to reducing the human and economic costs of traffic crashes.

7.1 Develop and implement impaired driving policies, programs and enforcement actions by businesses and employers that influence employee and customer behaviors:

a. Employee assistance programs.

b. Policies regarding on-the-job drinking and impaired driving.

c. Education to employees and customers regarding responsible hosting/party planning.

7.2 Increase participation of businesses and employers in addressing traffic safety issues within their communities.

7.3 Adopt responsible hospitality practices by those licensed to sell alcoholic beverages including: strict age identification, staff training, promotion of alternative beverages, availability of food and control of intoxication.

7.4 Patronize responsible establishments or adopt responsible hospitality practices when hosting events for employees, clients, or business associates.

Additional Resources

The following is a list of resources for information on highway safety programs on impaired driving.

(1) Compendium of Traffic Safety Research Projects, DOT HS 808 379 April 1996. This is an annotated bibliography of NHTSA's behavioral research over the last 10 years, and includes alcohol-impaired driving research. This is available on NHTSA's world wide web home page (http://www.nhtsa.dot.gov:80/people/injury/research/COMPEND.HTM).

(2) Traffic Safety Digest. This is a quarterly publication of NHTSA which contains innovative traffic safety projects that have been or are currently being conducted in states and communities. This is available on NHTSA's world wide web home page (http://www.nhtsa.dot.gov:80/people/outreach/safedige).

(3) Each state has a Governor's Highway Safety Office that can provide information on state legislation, programs and activities related to impaired driving.

Pre-application Procedures

Each applicant must submit one original and two copies of the pre-application package to: NHTSA, Office of Contracts and Procurement (NAD–30), ATTN: Rose Watson, 400 7th Street, SW., Room 5301, Washington, DC 20590. An additional three copies will facilitate the review process, but are not required. Pre-Applications shall be limited to the completed Cover Page of the Application for Federal Assistant (standard form 424—revised 4–88); a 4-page project description; and a 1-page staffing and budget summary. The cover page form 424 can be found in Appendix A. In block 11 of the cover page form 424, the applicant should also state which of the seven Partners in Progress areas the project addresses. The pre-application may be single spaced, must be typed on one side of the page only, and must include a reference to NHTSA Cooperative Agreement No. DTNH22–97–H–05072. Please note applicants interested in submitting more than one innovative project must prepare a separate pre-application package for each project.

Only complete packages received on or before 3:00 p.m., April 1, 1997 will be considered.

Project Review Procedures and Criteria

Upon receipt of the pre-applications, they will be screened to ensure that they

meet the eligibility requirements. Pre-applications meeting the requirements will be reviewed by a panel using the criteria outlined below. In preparing the pre-application package, applicants should organize the package to follow the outline provided by the review criteria.

Pre-application Review Criteria

The project package must concisely address the following review criteria:

1. Description of what the organization proposes to accomplish which:

(a) clearly identifies the one area for consideration (must be one of the seven areas outlined from Partners in Progress); states the goals and objectives of the project; and explains the innovative and creative features of the project being demonstrated. If building on an old idea, what are the innovative or new approaches that make this project different from what has been tied in the past?

(b) clearly articulates the project's potential to make a significant contribution to national efforts to achieve the 2005 impaired driving fatality goal. A rationale for the estimated impact must be included. (45 percent)

2. Briefly outline a specific, sound, and feasible work plan, including the plan to evaluate the effectiveness of the proposed project in reducing impaired driving fatalities. This outline should identify the specific tasks required to accomplish the goals and objectives of the project. The feasibility of the project will be evaluated in light of resources, realism, and ability to achieve the desired outcome. (25 percent)

3. Description of the project's adaptability to other jurisdictions at a reasonable cost. (15 percent)

4. Briefly outline the project's staffing and budget. Include staffing titles and a 1-2 sentence description of the position duties. The budget should segregate project demonstration costs from project evaluation costs and for each of these activities should identify costs by *direct labor* with a break down of costs by proposed staffing; *direct materials/equipment* with a break down of major cost items; *total travel* costs with an explanation of the relationship to the project; *evaluation* costs; and *overhead*. Clearly identify any financial or in-kind commitment of resources by the applicant organization or other supporting organizations to support the project. (15 percent)

Those applicants whose pre-application are not selected will be informed in writing. Those applicants whose pre-applications are selected for further development will also be notified in writing and a date for submitting full applications will be set. Upon receipt of the full application proposal by NHTSA, they will be reviewed by panel members who were involved in the review of the pre-applications using the following criteria.

Full Application Criteria

The following criteria will be used to evaluate the full application:

(1) Innovation (30 percent). The description clearly identifies the one area for consideration (must be one of the seven areas outlined from Partners in Progress), and explains the innovative and creative features of the project. If building on an old idea, what are the innovative or new approaches that make this project different from what has been tried in the past? The applicant has thought through some of the barriers to developing and implementing this new idea. The innovative project involves new non-traditional highway safety partners. The project is adaptable to other jurisdictions at a reasonable cost. The project idea will be publicly supported and/or is suitable for public participation.

(2) Goals, Objectives and Workplan (30 percent). The applicant's goals are clearly articulated and the objectives are time-phased, specific, measurable, and achievable. The workplan will achieve an outcome-oriented result that will reduce impaired driving fatalities and injuries. The workplan addresses what the applicant proposes to develop and implement; how this will be accomplished; and includes the major tasks/milestones necessary to complete the project. This involves identification and solution of potential technical problems and critical issues related to successful completion of the project. The work plan will be evaluated with respect to its feasibility, realism, and ability to achieve the desired outcomes.

(3) Evaluation Plan (20 percent). The evaluation plan clearly articulates the project's potential to make a significant contribution to national efforts to achieve the 2005 impaired driving fatality goal. A rationale for the estimated impact is included. The applicant describes the proposed evaluation design and the methods for measuring the outcomes of the proposed interventions (countermeasures). The evaluation plan will measure the effectiveness of the innovative program idea. The applicant provides sufficient evidence of community cooperation and commitment, if needed. There are sufficient data sources identified and access is ensured from appropriate owners or collectors of the data to: identify/create and test appropriate instruments; and collect and appropriately analyze quantitative and qualitative data for measuring the effectiveness of the innovative project.

(4) Project Management and Staffing (20 percent). The proposed staff are clearly described, appropriately assigned, and have adequate skills and experiences. The applicant has the capacity and facilities to design, implement, and evaluate the proposed project, The applicant provided details regarding the level of effort and allocation of time of each staff position. The applicant furnished an organizational chart and resumes of each proposed staff. The resumes demonstrate an appropriate staffing mix, experience and technical skills for the successful completion of project objectives. Sufficient staff with the evaluation expertise have been allocated to carry out the submitted evaluation plan. The applicant's staffing plan is reasonable for accomplishing the objectives of the project within the established time frame. The financial budget is sufficiently detailed to allow NHTSA to determine that the estimated costs are reasonable and necessary to perform the proposed effort. Financial or in-kind commitment of resources by the applicant organization or other supporting organizations to support the project has been clearly identified.

Availability of Funds and Period of Support

Contingent on the availability of funds and satisfactory performance, cooperative agreements will be awarded for a project period of two years. A total of $1.6 million in cooperative agreements is anticipated to be awarded. It is anticipated that individual award amounts, based upon demonstrated need, may range between $200,000 and $400,000. This stated range does not establish a minimum or maximum funding levels.

Ideally, one cooperative agreement would be awarded in each of the seven areas, but NHTSA reserves the right to award to applicants whose proposals have the greatest potential regardless of program area. Thus more than one cooperative agreement could be awarded in each area and some areas may have no projects funded.

In each project, some portion of the funding requested must be dedicated to evaluation activities. Given the amount of funds available for this effort, applicants are strongly encouraged to seek other funding opportunities to supplement the federal funds.

Preference will be given to applicants with cost-sharing proposals.

NHTSA Involvement

NHTSA will be involved in all activities undertaken as part of the cooperative-agreement program and will:

1. Provide a Contracting Officer's Technical Representative (COTR) to participate in the planning and management of this Cooperative Agreement and to coordinate activities between the Grantee and NHTSA.

2. Provide information and technical assistance from government sources within available resources and as determined appropriate by the COTR.

3. Serve as a liaison between NHTSA Headquarters, Regional Offices and others (Federal, state and local) interested in innovative alcohol grant program and the activities of the grantee as appropriate.

4. Stimulate the transfer of information among cooperative agreement recipients and others engaged in innovative alcohol program activities.

Special Award Selection Factors

While not a requirement of this announcement, applicants are strongly urged to seek funds from other federal, State, local and private sources to augment those available under this announcement. For those applications that are evaluated as meritorious for consideration for award, preference may be given to those that have proposed cost-sharing strategies and/or have other proposed funding sources in addition to those in this announcement.

Terms and Conditions of Award

1. Prior to award, each grantee must comply with the certification requirements of 49 CFR part 20, Department of Transportation New Restrictions on Lobbying, and 49 CFR part 29, Department of Transportation government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for Drug Free Workplace (Grants).

2. Reporting Requirements and Deliverables:

A. Quarterly Progress Reports should include a summary of the previous quarter's activities and accomplishments, as well as the proposed activities for the upcoming quarter. Any decisions and actions required in the upcoming quarter should be included in the report. The grantee shall supply the progress report to the Contracting Officer's Technical Representative (COTR) every ninety (90) days following date of award.

B. Program Implementation and Evaluation Plan: The grantee shall submit a revised program implementation and evaluation plan, incorporating comments received from the NHTSA COTR, no more than 1 month after award of this agreement. The NHTSA COTR will review and comment, if necessary.

C. Draft Final Report: The grantee shall prepare a Draft Final Report that includes a description of the innovative project, partners, intervention strategies, program implementation, evaluation methodology and findings from the program evaluation. In terms of information transfer, it is important to know what worked and did not work, under what circumstances, and what can be done to avoid potential problems in future projects. The grantee shall submit the Draft Final Report to the COTR 60 days prior to the end of the performance period. The COTR will review the draft report and provide comments to the grantee within 30 days of receipt of the document.

D. Final Report: The grantee shall revise the Draft Final Report to reflect the COTR's comments. The revised final report shall be delivered to the COTR 15 days before the end of the performance period. The grantee shall supply the COTR:

—A camera ready version of the document as printed.
—A copy, on appropriate media (diskette, Syquest disk, etc.), of the document in the original program format that was used for the printing process.
—Some documents require several different original program languages (e.g., PageMaker was the program for the general layout and design and PowerPoint was used for charts and yet another was used for photographs, etc.). Each of these component parts should be available on disk, properly labeled with the program format and the file names. For example PowerPoint files should be clearly identified by both a descriptive name and file name (e.g., 1994 Fatalities—chart1.ppt.)
—A complete version of the assembled document in portable document format (PDF) for placement of the report on the world wide web (WWW). This will be a file usually created with the Adobe Exchange program of the complete assembled document in the PDF format that will actually be placed on the WWW. The document would be completely assembled with all colors, charts, side bars, photographs, and graphics. This can be delivered to NHTSA on a standard 1.44 floppy diskette (for small documents) or on any appropriate archival media (for larger documents) such as an CD ROM, TR-1 Mini cartridge, Syquest disk, etc.
—Four additional hard copies of the final document

E. A Briefing to NHTSA and a presentation to at least one national meeting (e.g., Lifesavers * * *).

F. Preparation and submission of a paper for publication in a professional journal.

Items (E) and (F) above will be submitted to NHTSA initially in draft format and will be circulated for review and comment to NHTSA and others, as appropriate.

3. During the effective performance period of cooperative agreements awarded as a result of this announcement, the agreement as applicable to the grantee, shall be subject to the National Highway Traffic Safety Administration's General Provisions for Assistance Agreements, dated July 1995.

Issued on: February 14, 1997.

James Hedlund,

Associate Administrator for Traffic Safety Programs.

BILLING CODE 4910-59-M

Appendix A—Application for Federal Assistance Cover Page, Standard Form 424 (rev 4–88).

APPENDIX A — OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify): _____

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐☐ • ☐☐☐
TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____
b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable — Standard Form 424 (REV 4-88) Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BILLING CODE 4910–59–C

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise and existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
—"New" means a new assistance award.
—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project, if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications use a separate sheet to provide a summary description of this project.
12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

[FR Doc. 97–4203 Filed 2–19–97; 8:45 am]

BILLING CODE 4910–59–M

Surface Transportation Board

[STB Docket No. AB–55 (Sub-No. 536X)]

CSX Transportation, Inc.—Abandonment Exemption—in Vigo County, IN

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: The Board, pursuant to 49 U.S.C. 10502, exempts CSX Transportation, Inc. (CSXT), from the prior approval requirements of 49 U.S.C. 10903 to permit CSXT to abandon a 2.6-mile portion of its Chicago Service Lane, CE&D Subdivision, known at the Saxton Branch, between milepost ZY–0.00, at Dewey, IN (near Terre Haute), and milepost ZY–2.6, at the end of the track, in Vigo County, IN, subject to an environmental condition and standard employee protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on March 24, 1997. Formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2) must be filed by March 3, 1997, petitions to stay must be filed by March 7, 1997, requests for a public use condition conforming to 49 CFR 1152.28(a)(2) must be filed by March 12, 1997, and petitions to reopen must be filed by March 17, 1997.

ADDRESSES: Send pleadings, referring to STB Docket No. AB–55 (Sub-No. 536X) to: (1) Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423; and (2) Charles M. Rosenberger, 500 Water Street—J150, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC News & Data, Inc., Room 2229, 1201 Constitution Avenue, N.W., Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: February 13, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–4179 Filed 2–19–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Financial Management Service

Privacy Act of 1974; Computer Matching Program

AGENCY: Financial Management Service, Treasury.

ACTION: Notice.

SUMMARY: Pursuant to 5 U.S.C. 552a, the Privacy Act of 1974, as amended, and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs dated June 19, 1989, notice is hereby given of the conduct of a Financial Management Service (FMS) matching activity.

EFFECTIVE DATE: March 24, 1997.

ADDRESS: Comments or inquiries may be submitted to the Debt Management Services, Financial Management Service, 401 14th Street, SW, Room 151, Washington, DC 20227.

FOR FURTHER INFORMATION CONTACT: Gerry Isenberg, Financial Program Specialist, Debt Management Services, (202) 874–6660.

SUPPLEMENTARY INFORMATION: FMS is the central disbursing source for the Federal Government and currently receives recurring and non-recurring payment certification records from departments and agencies of the Government. FMS has a "system of records" (as defined in the Privacy Act of 1974) for nonrecurring payments entitled "Payment Records for Other than Regular Recurring Benefit Payments" identified as Treasury/FMS .016.

FMS is also the lead agency in the Federal Government for debt collection, and collects non-tax debts owed to the Federal Government. FMS has a "system of records" for debt collection

entitled "Debt Collection Operations System" identified as Treasury/FMS .014.

The Debt Collection Improvement Act of 1996 ("DCIA") amended the administrative offset statute, 31 U.S.C. 3716, by statutorily providing for centralized administrative offset by disbursing officials of the United States. This statutory provision takes advantage of FMS' role as the primary disbursing agency for the Federal Government. This match of records contained in the two systems of records identified above is intended to help implement disbursing official offset within the Department of the Treasury. As a match of two Treasury systems of records, the intended match may be an internal match which is not subject to the requirements of the Computer Matching and Privacy Protection Act of 1988 (see 5 U.S.C. 552a(a)(8)(B)(v)(II)). The preparation of this Notice and any other documents which would be required for a matching program is intended to assure compliance with the Computer Matching and Privacy Protection Act of 1988, if judicial interpretation would deem this computerized comparison a "matching program." This notice should not be construed as a determination or admission by the agency that this match is a "matching program."

The DCIA provides authority for Treasury to waive subsections (o) and (p) of 5 U.S.C. 552a (relating to computer matching agreements, and post-offset notification and verification) upon written certification by the head of a State or an executive, judicial, or legislative agency seeking to collect the claim that the requirements of subsection (a) of 31 U.S.C. 3716 have been met. Such waiver will be in effect prior to the commencement of the computer matching program. Interested parties may obtain documents concerning the waiver from the contact listed above.

NAME OF SOURCE AGENCY:

Financial Management Service

NAME OF RECIPIENT AGENCY:

Financial Management Service

BEGINNING AND COMPLETION DATES:

This program of computer matches will commence not earlier than the thirtieth day after this notice appears in the **Federal Register**. The matching activity will continue indefinitely.

PURPOSE:

The purpose of this program of computer matches is to identify payments made to individuals who owe delinquent debts to the Federal Government, and to offset such payments where appropriate to satisfy those debts.

AUTHORITY:

Authority for this program of computer matches is granted under 31 U.S.C. 3716.

CATEGORIES OF INDIVIDUALS COVERED:

Individuals receiving payments, which are not recurring benefit payments, from the Federal Government which are disbursed by the Financial Management Service; and individuals who are indebted to the United States and whose debts may be collected by offset in accordance with 31 U.S.C. 3716.

CATEGORIES OF RECORDS COVERED:

Included in this program of computer matches is information concerning the debtor contained in the Debt Collection Operations System (Treasury/FMS .014) including name, taxpayer identification number, the amount of the indebtedness, the name and address of the agency who is principally responsible for collecting the debt, and the name, phone number and address of an agency contact. Information contained in Payment Records for Other than Regular Recurring Benefit Payments (Treasury/FMS .016) which shall be included in this program of computer matches shall include name, taxpayer identification number, mailing address, and the amount of payment.

Dated: February 10, 1997.

Alex Rodriguez,

Deputy Assistant Secretary (Administration).

[FR Doc. 97–4107 Filed 2–19–97; 8:45 am]

BILLING CODE: 4810–35–F

Internal Revenue Service

Proposed Collection; Comment Request for Form 2688

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2688, Application for Additional Extension of Time to File U.S. Individual Income Tax Return.

DATES: Written comments should be received on or before April 21, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Additional Extension of Time to File U.S. Individual Income Tax Return.

OMB Number: 1545–0066.

Form Number: 2688.

Abstract: Internal Revenue Code section 6081 permits the Service to grant a reasonable extension of time to file a return. Form 2688 allows individuals who need additional time to file their U.S. income tax return to request an extension of time to file after the automatic 4-month extension period ends.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,453,000.

Estimated Time Per Respondent: 37 min.

Estimated Total Annual Burden Hours: 900,860.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 13, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–4185 Filed 2–19–97; 8:45 am]

BILLING CODE 4830–01–U

Proposed Collection; Comment Request for Form 8453–P

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8453–P, U.S. Partnership Declaration and Signature for Electronic and Magnetic Media Filing.

DATES: Written comments should be received on or before April 21, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: U.S. Partnership Declaration and Signature for Electronic and Magnetic Media Filing.

OMB Number: 1545–0970.

Form Number: 8453–P.

Abstract: This form is used to secure the general partners' signature and declaration in conjunction with the electronic or magnetic media filing of a partnership return (Form 1065). Form 8453–P, together with the electronic or magnetic media transmission, will comprise the partnership's return.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 49 min.

Estimated Total Annual Burden Hours: 405.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 11, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–4186 Filed 2–19–97; 8:45 am]

BILLING CODE 4830–01–U

Proposed Collection; Comment Request for Form 8453–F

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8453–F, U.S. Estate or Trust Income Tax Declaration and Signature for Electronic and Magnetic Media Filing.

DATES: Written comments should be received on or before April 21, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: U.S. Estate or Trust Income Tax Declaration and Signature for Electronic and Magnetic Media Filing

OMB Number: 1545–0967.

Form Number: 8453–F.

Abstract: This form is used to secure taxpayer signatures and declarations in conjunction with electronic or magnetic media filing of trust and fiduciary income tax returns. Form 8453–F, together with the electronic or magnetic media transmission, will comprise the taxpayer's income tax return (Form 1041).

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 49 min.

Estimated Total Annual Burden Hours: 810.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information

displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 13, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–4187 Filed 2–19–97; 8:45 am]

BILLING CODE 4830–01–U

[FI–46–93]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, FI–46–93 (TD 8555), Hedging Transactions (§ 1.1221–2).

DATES: Written comments should be received on or before April 21, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, Room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Hedging Transactions.

OMB Number: 1545–1403.

Regulation Project Number: FI–46–93.

Abstract: This regulation clarifies the character of gain or loss from the sale or exchange of property that is part of a business hedge. A taxpayer must identify the hedging transaction on its books and records before the close of the day on which the taxpayer enters into it and must also identify the item, items, or aggregate risk being hedged. The information will be used to verify that a taxpayer is properly reporting its business hedging transactions.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 110,000.

Estimated Time Per Respondent: 52 minutes.

Estimated Total Annual Burden Hours: 95,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 14, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–4188 Filed 2–19–97; 8:45 am]

BILLING CODE 4830–01–U

[INTL–372–88; INTL–401–88]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

Currently, the IRS is soliciting comments concerning existing final regulations, INTL–372–88 (TD 8632), Section 482 Cost Sharing Regulations (§ 1.482–7); INTL–401–88 (TD 8552), Intercompany Transfer Pricing Regulations Under Section 482 (§§ 1.482–1, 1.482–4).

DATES: Written comments should be received on or before April 21, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: (INTL–372–88) Section 482 Cost Sharing Regulations; (INTL–401–88) Intercompany Transfer Pricing Regulations Under 482.

OMB Number: 1545–1364.

Regulation Project Number: INTL–372–88; INTL–401–88.

Abstract: The information collections in INTL–372–88 are necessary to determine whether an entity is an eligible participant of a qualified cost sharing arrangement and whether each eligible participant is sharing the costs and benefits of intangible development on an arm's length basis. INTL–401–88 relates to the pricing of transfers of tangible property, intangible property, or services between related parties to ensure that taxpayers clearly reflect income and to prevent the avoidance of taxes with respect to such transactions.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 7 hours, 51 minutes.

Estimated Total Annual Burden Hours: 7,850.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 13, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–4189 Filed 2–19–97; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES INFORMATION AGENCY

Fulbright Teacher Exchange Program Orientation

ACTION: Notice—Request for Proposals.

The Office of Academic Programs of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. Public and private non-profit organizations, with a minimum of four years of experience in successfully administering orientation programs, and meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to develop and administer August 1997 orientation activities in Washington DC. for approximately 500 foreign and U.S. teachers and dependents participating in the Fulbright Teacher Exchange Program. The activities prepare participants in the program to teach in the educational system of another country. The programming specifically strives: (a) To provide the U.S. teachers with opportunities to meet face to face with their foreign exchange partners to discuss the details of their individual exchange assignments; (b) to provide participants with an understanding of the educational systems in which they will be teaching; and (c) to provide teachers with practical guidance on living in their countries of destination, with particular references to cross-cultural differences.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and other countries of the world." (The funding authority for the program cited above is provided through the Fulbright-Hays Act.)

Programs and projects must conform with Agency requirements and guildlines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

ANNOUNCEMENT TITLE AND NUMBER: All communications with USIA concerning this announcement should refer to the above title and reference number E/ASX–97–02.

DEADLINE FOR PROPOSALS: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on *Thursday, April 3, 1997.* Faxed documents will not be accepted, nor will documents postmarked April 3, 1997, but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline. Grants should begin on or above May 15, 1997 and run through April 30, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Ilo-Mai Harding, Teacher Exchange Branch, E/ASX, room 349, 301 4th Street, SW., Washington, DC 20547, telephone: (202) 619–4556, fax: (202) 401–1433, Internet: IHARDING@USIA.GOV to request a Solicitation Package containing more detailed award criteria, required application forms, and standard guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

TO DOWNLOAD A SOLICITATION PACKAGE VIA INTERNET: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov or from the Internet Gopher at gopher://gopher.usia.gov. Under the heading "International Exchanges/Training," select "Request for Proposals (RFPs)." Please read "About the Following RFPs" before downloading.

Please specify USIA Program Officer Ilo-Mai Harding on all inquiries and correspondences. Interested applicants should read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

SUBMISSIONS: Applicants must follow all instructions given in the Solicitation Package. The original and 10 copies of the application should be sent to: U.S. Information Agency, Ref.: E/ASX–02, Office of Grants Management, E/XE, Room 326, 301 4th Street, SW., Washington, DC, 20547.

Diversity Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-

economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal.

SUPPLEMENTARY INFORMATION:

Overview: August Orientation Workshop

Approximately 500 U.S. and foreign exchange teachers and their dependents from approximately 25 countries will attend an orientation workshop in Washington, DC, from August 4 to 8. Names and numbers of participants will be provided in May/June after completion of the educator matching process. (There will be approximately 135 U.S. teachers, 165 foreign teachers and 200 family members.)

Participating countries arrange for non-U.S. teachers to arrive at the U.S. orientation site. Flights carrying non-U.S. teachers and their families should arrive on August 4, 1997 in the Washington, DC area. Arrangements should be made by the recipient institution for the U.S. teachers and their families to arrive at the orientation on August 5, which is a rest day by foreign teachers. (The recipient institution must require U.S. teachers to make their own travel arrangements to the orientation site, on a reimbursable basis). The workshop itself will take place August 6–7. Departure will be scheduled for August 8.

Purpose: The purpose of the August orientation workshop is to provide U.S. and foreign teachers and their spouses and dependents with a wide range of briefings and discussions to assist them in preparing to function effectively in host schools and communities here and abroad. Partners meet face to face and share important information about their workplace and other particulars concerning their individual exchanges. The workshop should focus on the teachers' need to understand education in the host country, the professional and personal aspects of the exchange, and the many aspects of adjustment to living abroad, including cross-cultural orientation. The workshop should also address the anticipated needs and concerns of spouses and children so that they are able to optimally benefit from the exchange year abroad.

Agenda: An equivalent of one day should be set aside for the U.S. teachers and their families, as well as exchange partners and their families, to discuss their individual exchanges one-on-one.

Sessions for foreign teachers and spouses should include:

(1) Overview of the U.S. education system, highlighting contemporary issues affecting U.S. education;

(2) In-depth briefings on administrative procedures and instructional practices of the U.S. education system, by subject and level;

(3) Briefings, with information and materials, on techniques of teaching modern foreign languages and English as a second language for the foreign teachers assigned such classes in the United States;

(4) Information and materials on living in different regions of the United States, including educational practices, local laws, customs and culture;

(5) Discussion about cultural and ethnic diversity within the U.S. and cross-cultural issues relative to living and working here;

(6) Presentations by a wide variety of individuals who represent diverse backgrounds and life experiences;

(7) Administrative matters.

Sessions for U.S. teachers and spouses should include:

(1) In-depth discussions by country, and in some cases by level, on education in participating countries, as appropriate;

(2) Briefing, with information and materials, on techniques of teaching English as a foreign language and other relevant subjects for U.S. teachers assigned such classes abroad;

(3) Tips on living abroad, by country;

(4) Discussion about cross-cultural issues relative to living and working abroad;

(5) Administrative matters.

Additional Activities

In developing the program agenda, cooperating institution may wish to provide additional activities designed to strengthen teachers' and dependents' abilities to function in a foreign setting. Time constraints should be considered. Sessions must not interfere with the counterpart (one-on-one) discussions between partners. Possibilities might include sessions on cross-cultural communication and understanding, and visits to embassies, consulates, and cultural gatherings. It may also be possible to schedule sessions on August 6 when all foreign teachers are present and most U.S. teachers will have arrived by the afternoon.

Speakers

Cooperating institution is to identity and invite speakers and panelists to cover all sessions, but must demonstrate its ability and willingness to draw on its own resources to identify such individuals, as well as other resources beyond the organization. This includes universities in the area, consulting groups, embassy personnel or other experts. Speakers may include USIA specialists, staff from foreign counterpart agencies, university faculty, international and intercultural specialists, foreign consular and embassy officials, recent former exchange teachers, foreign teachers currently on exchange in the United States, and others. USIA must approve speaker/panelist selections. During the sessions set aside for administrative matters, USIA staff will specifically designate Agency specialists and staff from foreign counterpart agencies to serve as resource people and speakers. The cooperating institution may also be asked to call on these people to assist with other orientation sessions.

Services

In addition to developing the agenda and securing speakers, the cooperating institution will provide the following services in consultation with USIA program officers:

(1) Arrange economical on-site housing preferably in University dormitories for teachers and their dependents; dependents will range from infants to adults. (USIA program officers will provide specific information as to the numbers, sex and age of orientation participants);

(2) Arrange for on-site housing, as needed, for U.S. Government personnel, selected panelists, speakers, and staff of USIA's foreign counterpart agencies;

(3) Arrange for three meals per day on-site for participants;

(4) Arrange on-site day care and educational and recreational activities for spouses and children during time when exchange teachers are in sessions; arrange supervised care for children six months to eighteen years to permit teachers and their spouses to attend jointly scheduled activities; (in order to cut costs, child care should not be provided during optional activities and all meals);

(5) Reimburse U.S. teachers for one-way transportation, (air/bus/train/car/airport transfer), on an as-needed basis, from their homes to the orientation; the Agency estimates these costs will average $250 per teacher; (if a round trip super saver is less expensive than an economy one-way fare, the teacher may be reimbursed the former);

(6) Reimburse selected speakers, panelists and others for travel costs and pay honoraria, where required, up to $300;

(7) Arrange for transportation for U.S. and foreign teachers, spouses and dependents to any activities or programming off-site;

(8) Arrange for transportation for:

(a) Foreign teachers (and their baggage) arriving on group or individual flights to the orientation site on the designated official arrival day and up to three days before this date;

(b) All U.S. and foreign teachers and resources (and their baggage) departing from the orientation site to major metro-area plane, bus or rail departure points on the designated official departure day only;

(9) Prepare name tags for all orientation participants, using a color-coded badge system designating exchange teachers by country as well as speakers, university personnel, and USIA staff;

(10) Prepare signs/posters to guide participants to their on-site destinations.

Reports

The institution will be expected to design and distribute an evaluation for the August orientation to be completed by the teachers. Such a form will cover program content, including meeting sessions, as well as logistical arrangements such as housing, food, and general meeting facilities. The form will be cleared by USIA prior to its use. Participants' evaluations should be tabulated and sent to USIA no later than four weeks after the orientation. The institution should also provide the Agency with a substantive written analysis of the orientation, with recommendations for improving future orientations (no later than ten weeks after the orientation). The Agency reserves the right to conduct an independent evaluation of the program. The institution is also required to provide a breakdown of actual cost figures for the orientation no later than ten weeks after the completion of the orientation.

Special note: The cooperating institution will survey the literature of appropriate subject fields to determine materials of greatest potential value to teachers. If approved by USIA, recipient institution will purchase materials (up to $30 per teacher). The institution will also compile other materials as directed by USIA. These may include materials on U.S. education, including current trends and initiatives, materials on education in selected foreign countries, materials on cross-cultural adjustment and understanding, materials that provide guidance on living abroad, and other materials which the institution and USIA staff consider useful. The institution will provide these materials to U.S. and foreign exchange teachers at the orientation.

Note: USIA may also request that cooperating institution arrange additional orientation and/or training, or workshop briefings for program participants and administrators, resource people, and organizers during the award period. Cooperating institution may also be asked to provide programming and other services to USIA including, but not limited to, peer committee chairpersons workshops, predeparture orientation activities, foreign and U.S. teacher debriefings, materials purchase and distribution, and the development of new program information, including materials and videos.

Proposed Budget: The contracted organization must submit a comprehensive line-item budget based on the specific guidance in the Solicitation Package. There must be a summary budget as well as a break-down reflecting both the administrative budget and the program budget. For better understanding or further clarification, applicants may provide separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding. Administrative costs should be kept low; this will be an important factor in grant competition. Also, the ability to achieve cost-effectiveness within budget guidelines through cost-sharing will enhance competitive proposals.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the program office, as well as other USIA Offices, where appropriate. Proposals may also be reviewed by the Office of the General Counsel. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA Grants Officer. Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program idea: Proposals should exhibit originality, substance, precision, and relevance to Agency mission.

2. Program planning: Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. Ability to achieve program objectives: Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration and program content (orientation sessions, resource materials, and choice of resources).

5. Institutional Capacity: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

6. Institution's Record/Ability: Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

7. Project Evaluation: Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended.

8. Cost-effectiveness: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

9. Cost-sharing: Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the

needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: February 13, 1997.

Dell Pendergrast,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 97–4104 Filed 2–19–97; 8:45 am]

BILLING CODE 8230–01–M

federal register

Thursday
February 20, 1997

Part II

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products; Test Procedures and Certification Requirements for Plumbing Products; and Certification Requirements for Residential Appliances; Proposed Rule

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE–RM/TP–97–600]

RIN 1904–AA71

Energy Conservation Program for Consumer Products: Test Procedures and Certification Requirements for Plumbing Products; and Certification Requirements for Residential Appliances

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rule and public hearing.

SUMMARY: The Energy Policy and Conservation Act, as amended (EPCA), requires the Department of Energy (DOE or the Department) to administer an energy and water conservation program for certain major household appliances and commercial equipment, including certain plumbing products. This proposed rule would codify water conservation standards and test procedures established in EPCA for plumbing products, incorporate by reference water conservation standard and test procedures for faucets and test procedures for showerheads revised by the American Society of Mechanical Engineers/American National Standards Institute (ASME/ANSI), and provide for certification of compliance with plumbing product standards. This proposed rule would also clarify the certification requirements applicable to all residential appliances.

DATES: The Department will accept comments, data, and information regarding the proposed issues of this notice no later than May 6, 1997.

The public hearing will be held on March 31, 1997 in Washington, DC. Requests to speak at the hearing must be received by the Department no later than 4:00 p.m., March 21, 1997. Ten (10) copies of statements to be given at the public hearing must be received by the Department no later than 4:00 p.m., March 21, 1997.

ADDRESSES: Written comments and requests to speak at the public hearing should be labeled "Test Procedures and Requirements for Plumbing Products; and Certification Requirements for Residential Appliances, Docket No. EE–RM/TP–97–600" and submitted or hand-delivered to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Office of Codes and Standards, Mail Stop EE–43, Room 1J–018, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0121. Telephone: (202) 586–7140; Fax: (202) 586–4617.

The hearing will begin at 9:30 a.m., on March 31, 1997, and will be held in Room 1E–245 at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC.

Copies of the transcript of the public hearing and public comments received may be read in the Freedom of Information Reading Room (Room No. 1E–190) at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

The proposed rule would incorporate by reference ASME/ANSI standards (which are documents that contain both test procedures and water usage standards) as follows: American Society of Mechanical Engineers/American National Standards Institute Standard A112.19.6–1990, "Hydraulic Requirements for Water Closets and Urinals;" and American Society of Mechanical Engineers/American National Standards Institute Standard A112.18.1M–1994, "Plumbing Fixture Fittings."

Copies of these standards may be viewed at the Department of Energy's Freedom of Information Reading Room at the address stated above. Copies of the ASME/ANSI Standards may also be obtained by request from the American Society of Mechanical Engineers, 345 East 47th Street, New York, N.Y. 10017, or the American National Standards Institute, 1430 Broadway, New York, N.Y. 10018. For more information concerning public participation in this rulemaking proceeding, see section IV, "Public Comment," of this notice.

FOR FURTHER INFORMATION CONTACT: William W. Hui, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Stop EE–43, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–9145.

Eugene Margolis, U.S. Department of Energy, Office of General Counsel, Mail Stop GC–72, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0103, (202) 586–9507.

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3. Statistical Sampling Plans for Certification Testing
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4. Modifications to Existing Language to include Plumbing Products in the Code of Federal Regulations.
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I. Introduction

A. Authority

Part B of Title III of the Energy Policy and Conservation Act of 1975, Pub. L. 94–163, as amended, (EPCA), by the National Energy Conservation Policy Act of 1978 (NECPA), Pub. L. 95–619, the National Appliance Energy Conservation Act (NAECA) of 1987, Pub. L. 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Pub. L. 100–357, and the Energy Policy Act of 1992 (EPAct), Pub. L. 102–486, created the Energy Conservation Program for Consumer Products other than Automobiles (Program). The products covered under this program include faucets, showerheads, water closets, and urinals—the subjects of today's notice of proposed rulemaking.

This Program consists essentially of three parts: testing, labeling, and energy and water conservation standards. In the case of faucets, showerheads, water closets, and urinals, the test procedures measure water use or estimated annual operating cost of these covered products during a representative average use cycle or period of use, as determined by the Secretary, and shall not be unduly burdensome to conduct. EPCA, § 323(b)(3), 42 U.S.C. § 6293(b)(3).

Effective 180 days after a test procedure applicable to a covered product is prescribed or established, no manufacturer may make a representation with respect to water usage of such products unless such products have been tested in accordance with such test procedures and such representation fairly discloses the results of such testing. EPCA, § 323(c)(2), 42 U.S.C. § 6293(c)(2). However, the 180-day period may be extended for an additional 180 days if the Secretary determines that this requirement would impose an undue burden. EPCA, § 323(c)(3), 42 U.S.C. § 6293(c)(3).

EPCA states that the procedures for testing and measuring the water use of faucets and showerheads, and water closets and urinals shall be ASME/ANSI Standards A112.18.1M–1989, and A112.19.6–1990, respectively, but that if ASME/ANSI revises these requirements, the Secretary shall adopt such revisions if they conform to the basic statutory requirements for test procedures. EPCA, § 323(b)(7) and 323(b)(8), 42 U.S.C. § 6293(b)(7) and § 6293(b)(8).

EPCA prescribes water conservation standards for faucets, showerheads, water closets and urinals. It further provides that if the requirements of ASME/ANSI Standard A112.18.1M–1989 or ASME Standard A112.19.6–1990 are amended to improve the efficiency of water use, the Secretary shall publish a final rule establishing an amended uniform national standard unless the Secretary determines that adoption of such a standard at the level specified is not (i) technologically feasible and economically justified, (ii) consistent with the maintenance of public health and safety; or (iii) consistent with the purposes of this Act. EPCA, § 325(j) and 325(k), 42 U.S.C. § 6295(j) and § 6295(k).

B. Background

EPCA requires that DOE amend the plumbing products test procedures and standards established by statute to conform with revisions to standards by ASME/ANSI if certain requirements are met. The applicable faucet standard and the test procedures for faucets and showerheads, as prescribed by EPCA, were in ASME/ANSI Standard A112.18.1M–1989. On September 15, 1994, ASME/ANSI Standard A112.18.1M—1994 was issued and DOE initiated a review as required.

The Department held a public workshop with representatives from the Plumbing Manufacturers Institute (PMI), its manufacturer members, Federal and state agencies, and water conservation organizations in Washington, DC on June 15, 1995. The following issues were discussed: (a) definitions of "basic model" for faucets, showerheads, water closets, and urinals; (b) statistical sampling plans for certification testing; (c) certification reporting requirements for plumbing products; and (d) whether multiple-user "sprayheads" are considered covered products, and if so, how the faucet standards are to be applied. Subsequently, various attendees at the workshop filed comments. Several comments covered the issue of enforcement which will be addressed in section (II)(B)(8).

Four letters from the industry (W/C Technology Corporation, July 14, 1993; Plumbing Manufacturers Institute, February 7, 1994; and Bradley Corporation, February 9, 1994, and August 12, 1994) concerning issues relating to today's notice (e.g., definition for "electromechanical hydraulic toilet," and multiple-user sprayheads) were submitted to DOE prior to the June 15, 1995, public workshop. The Department will consider these as part of the public comment received.

The Department held a second public meeting in Washington, DC on February 28, 1996, to further discuss the statistical sampling plans that would be used to certify compliance, and new issues concerning: (a) incorporation of the test procedure requirements for faucets and showerheads, and standard for faucets contained in ASME/ANSI Standard A112.18.1M–1994; (b) an effective date to allow manufacturers to test and make initial compliance certification submissions after such requirements are published in a final rule; and (c) a uniform mathematical rounding method and how it is to be used to convert test data into final results for the purpose of determining compliance. Four comments (Eljer Industries (Eljer), Mr. R. Michael Martin, and two from PMI) were received subsequent to the second public meeting.

II. Discussion

A. Statutory Plumbing Requirements

DOE is proposing to codify into the Code of Federal Regulations statutory requirements with respect to plumbing products—including test procedures, water conservation standards, and definitions. EPCA also requires that if specified ASME or ASME/ANSI standards or test procedures are amended, DOE must amend the regulatory requirements to conform with the revisions if certain requirements are met.

Comment is invited on those provisions of the proposed water conservation standards and test procedures that differ from the current statutory standards. Comments on standards or test procedures established by statute will not be considered.

1. Test Procedures

The Department proposes to add the following descriptors as measures of water usage for faucets, showerheads, water closets, and urinals: maximum permissible water use (in gallons and liters per minute or cycle, and gallons and liters per flush), at 10 CFR sections 430.23(s)–430.23(v), respectively. The test procedures for measuring water usage are discussed below.

(a) Faucets and showerheads. EPCA states that test procedures for showerheads and faucets shall be the test procedures specified in ASME A112.18.1M–1989 for such products but if ANSI revises these requirements, the Secretary shall adopt such revisions if they conform to the basic statutory requirements for test procedures. EPCA, § 323(b)(7), 42 U.S.C. § 6293 (b)(7).

The test procedure requirements for faucets and showerheads in ASME/ANSI Standard A112.18.1M–1989 were revised and issued as ASME/ANSI Standard A112.18.1M–1994 on September 15, 1994. These revised test procedures appear to be reasonably designed to produce test results which

measure water use or estimated annual operating cost of a covered product during a representative average use cycle and appear not to be unduly burdensome to conduct. See EPCA, § 323(b)(3), 42 U.S.C. § 6293(b)(3). Therefore, the Department proposes to incorporate by reference, section 6.5, "Flow Capacity Test in ASME/ANSI Standard A112.18.1M–1994, for testing faucets and showerheads at Appendix S of Title 10 CFR Part 430, Subpart B.

(b) Water closets and urinals. EPCA states that the test procedures for water closets and urinals shall be the test procedures specified in ASME A112.19.6–1990 but if ANSI revises these requirements, the Secretary shall adopt such revisions if they conform to the basic statutory requirements for test procedures. EPCA, § 323(b)(8), 42 U.S.C. § 6293(b)(8). The test procedure requirements for water closets and urinals in ASME/ANSI Standard A112.19.6–1990 have not been revised. DOE proposes to incorporate by reference all applicable sections in ASME/ANSI Standard A112.19.6–1990 for testing water closets and urinals at Appendix T of Title 10 CFR Part 430, Subpart B.

The test procedures for testing water closets include section 7.1.2, "Test Apparatus and General Instructions;" and subsections 7.1.2.1, 7.1.2.2, 7.1.2.3, and 7.1.6, "Water Consumption and Hydraulic Characteristics."

The test procedures for urinals include sections 8.2, "Test Apparatus and General Instructions;" and subsections 8.2.1, 8.2.2, 8.2.3, and section 8.5, "Water Consumption."

2. Water Conservation Standards

EPCA prescribed statutory water conservation standards for faucets, showerheads, water closets and urinals and specified that if specified ASME or ASME/ANSI standards are amended to improve the efficiency of water use, the Secretary shall publish a final rule establishing an amended uniform national standard unless the Secretary determines that adoption of such a standard at the level specified is not (i) technologically feasible and economically justified, (ii) consistent with the maintenance of public health and safety; or (iii) consistent with the purposes of this Act. EPCA, § 325(j) and § 325(k), 42 U.S.C. § 6295(j) and § 6295(k).

(a) Faucets. EPCA specifies that after January 1, 1994, it would be unlawful to manufacture lavatory or kitchen faucets, or lavatory or kitchen replacement aerators that exceed 2.5 gallons per minute (gpm); or metering faucets that exceed 0.25 gallons per cycle, when measured at a flowing water pressure of 80 pounds per square inch (psig). EPCA, § 325(j)(2), 42 U.S.C. § 6295(j)(2). On September 15, 1994, the water conservation standard for faucets was amended to 2.2 gpm at 60 psig in ASME/ANSI Standard A112.18.1M–1994.

At the second workshop held on February 28, 1996, the issue of whether to incorporate the revised ASME/ANSI Standard A112.18.1M–1994 was discussed. PMI claimed that all manufacturers are currently designing and manufacturing faucets to be in conformity with this revised standard and therefore, requested that it be incorporated. This position was supported by the workshop participants, including, Mr. R. Michael Martin, the American Water Works Association (AWWA), Delta Faucet Company (Delta), Kohler Company (Kohler), American Standard Inc., and Sloan Valve. Four additional comments submitted following the public meeting reiterated support for incorporation of the 1994 ASME/ANSI standard. (PMI, No. 1 at 1; PMI, No. 2 at 2; Eljer, No. 3 at 1; and R. Michael Martin, No. 4 at 1).

DOE does not believe the revised standard for faucets constitutes an improvement in water efficiency and therefore incorporation of the revised standard would not be necessary. The revised standard (2.2 gpm at 60 psig) is equivalent theoretically to the statutory requirement (2.5 gpm at 80 psig) per Bernoulli's equation of fluid mechanics which states that the ratio of water flow through a fixed orifice at different pressures is equivalent to the square root of the ratio of the pressures.

However, the Department believes that there might be a burden on the industry if DOE does not incorporate the standard for faucets contained in ASME/ANSI Standard A112.18.1M–1994. Comments indicated that industry is presently designing and manufacturing fixture fittings that meet the flow capacity requirements contained in EPCA and in ASME/ANSI Standard A112.18.1M–1994 and the coexistence of both standards would cause confusion in the market place if not brought into conformity. In addition, Mexico and Canada are planning to adopt faucet standards equivalent to those in ASME/ANSI Standard A112.18.1M–1994 so U.S. adoption of that standard would be consistent with the policy of promoting harmonization in North America. Therefore, the Department proposes to incorporate the revised applicable faucet standard in ASME/ANSI Standard A112.18.1M–1994 at 10 CFR § 430.32(o) in today's rulemaking.

(b) Showerheads. EPCA specifies that the maximum water use allowed for any showerhead manufactured after January 1, 1994, is 2.5 gpm when measured at a flowing water pressure of 80 psig. EPCA also requires that such showerheads meet the requirement of ASME/ANSI Standard A112.18.1M–1989, 7.4.3(a). EPCA, § 325(j)(1), 42 U.S.C. § 6295(j)(1). This requirement specifies that if a flow control insert is used as a component part of a showerhead, then it must be manufactured such that a pushing or pulling force of 8 lb or more is required to remove the insert. Note that section 7.4.3(a) in ASME/ANSI Standard A112.18.1M–1989 was redesignated as section 7.4.4(a) in ASME/ANSI Standard A112.18.1M–1994.

The standard for showerheads in ASME/ANSI Standard A112.18.1M–1994 are at the level prescribed in EPCA. The proposed rule would codify this standard, 2.5 gpm at 80 psig, in the Code of Federal Regulations and incorporate by reference, section 7.4.4(a) in ASME/ANSI Standard A112.18.1M–1994 at 10 CFR 430.32(p). Codification of this statutory standard does not invoke the requirements specified in section 325(j)(3) of EPCA, 42 U.S.C. § 6295(j)(3).

(c) Water closets and urinals. EPCA specifies that the maximum water use allowed for gravity tank-type toilets, flushometer tank toilets, and electromechanical hydraulic toilets, is 1.6 gallons per flush (gpf), and for blowout toilets and commercial gravity tank-type 2-piece toilets is 3.5 gpf, if manufactured after January 1, 1994. For commercial gravity tank-type 2-piece, the maximum water use of 3.5 gpf is applicable until January 1, 1997, after which the standard is 1.6 gpf. For flushometer valve toilets, other than blowout toilets, the maximum water use is 1.6 gpf, if manufactured after January 1, 1997. The maximum water use allowed for any urinal manufactured after January 1, 1994, is 1.0 gpf. EPCA, § 325(k)(1) and 325(k)(2), 42 U.S.C. § 6295(k)(1) and § 6295(k)(2).

The standards for water closets and urinals in ASME/ANSI Standard A112.19.6–1990 have not been revised. Accordingly, the proposed rule would codify the statutory water conservation standards for water closets and urinals in 10 CFR §§ 430.32(q) and 430.32(r), respectively.

3. Definitions

EPCA prescribes statutory definitions for terms applicable to the administration of plumbing products.

DOE believes it would be more convenient for the readers if these definitions were incorporated in the Code of Federal Regulations. Therefore, the proposed rule would incorporate the amended statutory definitions for the terms "consumer product," "energy conservation standard," and "estimated annual operating cost" in EPCA, § 321(1), § 321(6) and § 321(7), 42 U.S.C. § 6291(1), § 6291(6) and § 6291(7); and the new statutory definitions for the terms "ANSI," "ASME," "blowout," "faucet," "flushometer tank," "flushometer valve," "low consumption," "showerhead," "urinal," "water closet," and "water use" in EPCA, § 321(31)(A)–§ 321(31)(H), 42 U.S.C. § 6291(31)(A)–§ 6291(31)(H), in 10 CFR § 430.2.

B. Supplementary Plumbing Requirements

The proposed provisions to supplement the statutory requirements to facilitate the monitoring and administration of compliance for plumbing products are discussed below.

1. Metric Equivalents

Section 205b of the Metric Conversion Act, 15 U.S.C. 205b, states that the metric measurement system is the preferred system of weights and measures in the United States. It also requires Federal agencies to use the metric system of measurement in all procurements, grants, and other business-related activities, except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms. These requirements are also expressed in Executive Order 12770 of July 25, 1991. 56 FR 35801 (July 29, 1991).

EPCA specifies that the required labeling for water usage rates of covered plumbing products be expressed in terms of gallons. Metric units are used in the ASME/ANSI Standard A112.18.1M–1994 for testing faucets and showerheads, and are prescribed in ASME/ANSI Standard A112.19.6–1990 for testing water closets and urinals. In addition, they are also required on submissions to the Federal Trade Commission (FTC) concerning labeling.

To maintain consistency in testing with the ASME/ANSI standards, Section 205(b) of the Metric Conversion Act, and Executive Order 12770, the Department proposes to require the submission of metric equivalents on all plumbing products certified with DOE for compliance purposes.

2. Definitions of Basic Model

The Department is proposing to establish definitions of "basic model" for plumbing products. It is common for a single plumbing product manufacturer to make numerous models of faucets, showerheads, water closets, and urinals covered by EPCA and each model is potentially required to be tested. Often, however, several models of faucets, for example, are essentially the same faucet except for refinements that do not significantly affect the water consumption of the faucet. One way to meet EPCA's mandate that test procedures "not be unduly burdensome to conduct," is to establish "basic models" for plumbing products.

"Basic model" is a term generally used by DOE to describe products or items of equipment with performance, design, hydraulic, and functional characteristics that are essentially the same. For plumbing products, the models that exhibit essentially identical hydraulic characteristics would be categorized into a family. Such a family would constitute a "basic model" of that particular covered product and only representative samples within the family need be tested. Components of similar design may be substituted in a basic model without requiring additional compliance certification if the represented measures of water consumption continue to satisfy applicable water usage standards.

(a) Faucets and showerheads. PMI and American Standard Inc. jointly proposed that "basic model" be defined by either (a) the flow control mechanism which is attached or installed within the fixture fitting, or (b) the models that have identical water-passage design features that use the same path of water in the highest-flow mode. (PMI, No. 3, at 1).

R. Michael Martin submitted a comment stating that the proposal by PMI and American Standard Inc. is adequate for faucets but believes additional words are necessary to explain how flow restrictors for showerheads are to be held for testing, because some flow restrictor could be merely a plastic disc with a single hole. (R. Michael Martin, No. 9, at 6).

The Department disagrees with Mr. Martin's comment on the need for additional language for showerheads. A flow control restrictor for showerheads, such as a plastic disc with a single hole, is not considered to be a separately supplied accessory to be tested by itself. Such a flow control mechanism is internally installed as an integral component and tested within an assembled showerhead.[1] Thus, DOE believes it unnecessary to add explanatory language as requested by Mr. Martin.

The Department believes that the "basic model" definition for faucets and showerheads proposed by PMI and American Standard Inc. is practical and promotes the objective in Section 323(b)(3) of EPCA, 42 U.S.C. § 6293(b)(3). Therefore, the Department proposes to amend the existing definition of "basic model" to add language for fixture fittings based on the proposal submitted by PMI and American Standard Inc. in 10 CFR § 430.2.

(b) Water closets and urinals. PMI and American Standard Inc. also jointly proposed that "basic model" for water closets be defined as "those fixtures which have the largest volume of water within the well of the water closet as flushed by one of the following four types: (a) gravity closed-coupled; (b) gravity one-piece; (c) flushometer tank; or (d) flushometer valves and other pressurized flushing device;" and "basic model" for urinals as "those fixtures which have the largest volume of water within the well of the urinal." (PMI, No. 3, at 1–2; American Standard Inc., No. 4, at 1–2).

Two comments raised concern about defining "basic model" based on the largest volume within the well. Mr. Martin stated, "Each different size and shape should be a different basic model." (R. Michael Martin, No. 9, at 6). The National Institute of Standards and Technology (NIST) stated, "Manufacturer design, selection and installation of components for control of refill and/or overflow, can differ and may result in higher consumption, rather than lesser, even for a bowl volume that is not the largest." (NIST, No. 6, at 2).

The Department agrees with the view expressed by Mr. Martin and NIST that the proposed definition of "basic model" for water closets and urinals by PMI and American Standard Inc. are inadequate because they do not ensure that all water closets and urinals of a particular basic model will have less water usage than the unit(s) with the greatest water volume in the well. For instance, the flush mechanism of a small fixture may permit greater water volume in the well than a large fixture of the same design with a different flush mechanism.

Therefore, DOE proposes a definition of "basic model" for water closets and urinals to mean all units of a given type of covered product (or class thereof) that

[1] Telephonic conversations between Bill Hui, Department of Energy, and Shahin Moinian, Moen Incorporated; Sally Remedios, Delta Faucet Company; and Ken Hair, Price Pfister Incorporated; October 19, 1995.

are manufactured by one manufacturer and "which have hydraulic characteristics that are essentially identical, and which do not have any differing physical or functional characteristics that affect water consumption."

3. Statistical Sampling Plans for Certification Testing

The Department is proposing to establish statistical sampling plans for plumbing products in today's notice. In the case of plumbing products, compliance with water usage standards will be assured in part by having each manufacturer certify that its covered products comply with the applicable water usage standard.

In promulgating test procedures applicable to certification, one of the major goals is to provide a statistically valid approach so that there is a high probability that products which have been tested and certified as being in compliance with the applicable usage standards actually comply with those standards. Each DOE test procedure incorporates a sampling plan, and that sampling plan is designed to give reasonable assurance that the true mean performance of the product being manufactured and sold meets or conforms to the DOE water usage standard.

DOE recognizes that units of plumbing products may vary in water usage for a number of valid reasons, including differences in component parts, production and testing. The risk to the public of purchasing a non-complying product, the risk to manufacturers of selling such a product, and the burdens of performing representative testing, are reduced through the application of a statistically meaningful sampling plan and basing the certification decision on the mean water usage performance of the sampled units.

There are several critical elements of a sampling plan. One is the selection of units for testing. Units must be representative of the product, and be selected randomly from a batch or production lot. Sample size is also a critical element of a sampling plan. The result yielded by water usage performance testing of a product, consisting of tests conducted on a sample of units, will be increasingly more reliable as the size of the test sample increases. This, however, increases the testing burden on the manufacturers. Also, when the variability in performance is greater among individually tested units of a product, the reliability of the test results is less. As a result, DOE's test procedures require sampling plans based on a one-sided confidence limit approach. This approach is designed to minimize the manufacturers' testing burden while ensuring accurate determination of compliance within a specified level of confidence.

Such statistical sampling plans are specified in section 430.24. The one-sided confidence limit method places either an upper limit or lower limit on the range or interval in which the true mean performance is likely to be found. This method offers added flexibility by allowing for the testing of fewer units and thereby reducing testing costs than would the testing of a fixed number of units.

The sampling plans utilizing one-sided confidence limits require different statements for the two types of measures of energy consumption. One type of measure includes estimated annual operating cost, energy consumption and other measures of energy consumption for which consumers would favor lower values. The other type of measure includes characteristics such as efficiency, energy factor, and other energy consumption factors for which consumers would favor higher values. In regard to water usage of plumbing products, consumers would favor lower values.

To determine the measure of water usage to be reported to DOE for compliance certification, the one-sided confidence-limit approach requires that the higher value from either (i) the mean of the sample units or (ii) the upper X percent confidence limit of the true mean divided by Y, be selected. The variable X refers to a confidence limit that ranges from 90–99 percent, and the variable Y refers to a divisor that ranges from 1.01–1.10. The confidence limits would be calculated using generally accepted methods found in statistics textbooks, based on the sample mean and sample standard deviation. DOE views the latter calculation as being a one-sided confidence interval using t-statistics, with the divisor constituting a "derating" factor. The derating factor was included to take into account variability in the performance or efficiency of products due to many factors, including manufacturing variability and variations in the material. Furthermore, this format (confidence limits divided by a derating factor) is similar to the format required for other appliance products for which DOE requires testing.

PMI and American Standard Inc. proposed an alternate sampling plan for testing fixture fittings and fixtures based on testing two samples selected at random first, and then eight additional samples if either of the two samples exceeds the maximum water consumption. The average of all eight of the samples shall not exceed the requirements of EPCA. (PMI, No. 3, at 2; American Standard Inc., No. 4, at 2–3).

AWWA, New York State Department of Environmental Conservation (NYSDEC), NIST, and Mr. R. Michael Martin claimed that the results of a sampling plan based on a sample size of two units may not be statistically accurate and therefore opposed the above proposal. (AWWA, No. 2, at 1; NYSDEC, No. 5, at 4; NIST, No. 6, at 2; and R. Michael Martin, No. 9, at 5).

The Department agrees with the views expressed by AWWA, NYSDEC, NIST, and Mr. Martin that the two-unit sampling plan is statistically unreliable. For this reason and to maintain consistency with the existing DOE statistical sampling plans, the Department is proposing to utilize the one-sided confidence limit approach.

(a) Sampling plan for water closets and urinals utilizing one-sided confidence limits. AWWA and NYSDEC supported use of DOE's approach. AWWA stated there exists a "high variability in the manufacture of porcelain toilets and urinals" while NYSDEC stated that "variation of manufacture of vitreous china" warrants recognition. Therefore, they proposed a one-sided confidence limit statistical sampling plan for fixtures at 90%. (AWWA, No. 2, at 1; and NYSDEC, No. 5, at 4).

PMI stated that if DOE's approach of utilizing a one-sided confidence limit is to be used, the industry would support a confidence limit of 90% only if a corresponding divisor of 1.10 is allowed. (PMI, No. 2, at 1). To support its proposal, PMI submitted data indicating that testing at such level (90% at 1.10) would allow manufacturers to certify compliance with no more than four units whereas five units would be required if a more stringent level (90% at 1.05) was imposed instead.

DOE agrees with AWWA and NYSDEC that there is high variability in the manufacturing of virtreous china that would justify a confidence limit at 90%. DOE also agrees with PMI that a divisor lower than 1.10 would cause manufacturers additional expense while providing no additional assurances that the products tested are meeting the requirement of the law. PMI's proposal would minimize manufacturers" test burden while at the same time provide an adequate level of confidence that products certified to be in compliance are actually in compliance with applicable water conservation standards. Therefore, the Department proposes to adopt in a statistical sampling plan for fixtures utilizing one-sided confidence limits based on the following statistical parameter (90% confidence limits with a 1.10 divisor) at 10 CFR §§ 430.24(u) and (v).

(b) Sampling plan for faucets and showerheads utilizing one-sided confidence limits. AWWA and NYSDEC claimed that faucets and showerheads can be manufactured to tighter tolerances than vitreous china and proposed a statistical sampling plan that utilized a higher one-sided confidence limits and corresponding divisor. (AWWA, No. 2, at 1: and NYSDEC, No. 5, at 4).

DOE recognizes that fixture fittings are typically metal-based (e.g., chrome and brass), which means that they can be machined to much greater precision and tolerances, and which in turn, warrants a higher confidence limits and corresponding derating factor as suggested by AWWA. Although DOE agrees that fixture fittings warrant a higher confidence limit and corresponding divisor than vitreous china, the Department believes that a statistical sampling plan at the apex level (99% confidence limits, 1.01 divisor (i.e., ±1 percent tolerance))—the level typically employed for products that demonstrate low manufacturing variability—may result in a testing burden. The Department believes a statistical sampling plan at the following parameter (95% confidence limits, 1.05 divisor (±5 percent tolerance)) may be more appropriate and reasonable for manufacturers to meet. In written comments following the February 28, 1996 public meeting, PMI stated that industry would support this statistical sampling plan for fixture fittings (faucets and showerheads). (PMI, No. 2, at 1). Moreover, Moen Incorporated submitted data indicating that testing at such level would allow it to certify compliance with no more than two units.

Based on the above considerations, the Department proposes to adopt in a statistical sampling plan for fixture fittings utilizing one-sided confidence limits at the following statistical parameter (95% confidence limits with a 1.05 divisor) at 10 CFR §§ 430.24(s) and (t). DOE believes this sampling plan will minimize test burden on manufacturers while at the same time provide an adequate level of confidence that products certified to be in compliance are actually in compliance with applicable water conservation standards.

4. Modifications to Existing Language To Include Plumbing Products in the Code of Federal Regulations

Sections 430.27, 430.31–430.33, 430.40, 430.41, 430.47, 430.49, 430.50, 430.60, 430.61, 430.63, 430.70(a)(1), and 430.73 of Title 10 of the CFR currently do not address the monitoring and administration of plumbing products in the DOE Appliance Standards Program. The Department proposes to amend these sections in the Code of Federal Regulations to extend coverage to plumbing products covered by EPCA.

5. Definition for "Electromechanical Hydraulic Toilet"

EPCA specifies the water conservation standard for "electromechanical hydraulic toilets" at 1.6 gallon per flush. EPCA, § 325(k)(1)(A), 42 U.S.C. § 6295(k)(1)(A). However, the term "electromechanical hydraulic toilets" is undefined. The Department proposes to establish a definition for this term. PMI proposed that "electromechanical hydraulic toilets" be defined as "any water closet that utilizes electrically operated devices, such as, but not limited to, air compressors, pumps, solenoids, motors, or macerators in place of, or, to aid gravity in evacuating waste from the toilet [bowl]." (PMI, No. 15, at 1).

The definition proposed by PMI provides an acceptable description of the term "electromechanical hydraulic toilet." Therefore, the Department proposes to include this definition for "electromechanical hydraulic toilets" in 10 CFR § 430.2.

6. Certification Reporting Requirements for Plumbing Products

(a) Types of information. Section 430.62(a)(2) of Title 10 of CFR currently requires manufacturers of covered residential products to submit, for each basic model, certain types of data and information in their certification reports to the Department. Plumbing products were added as covered products under EPCA, but presently certification requirements do not exist for plumbing products. The Department proposes to establish certification reporting requirements for faucets, showerheads, water closets, and urinals.

PMI proposed to produce a product directory for submission to DOE which would include the following information: (a) product category, (b) model number of product, (c) water use level, (d) name and address of manufacturer, (e) name and phone number of contact at manufacturer, and (f) compliance statement. (PMI, No. 3, at 2).

The Department presently requires similar types of information for certification from manufacturers of residential products and thus believes such types of information from plumbing manufacturers would be reasonable and appropriate. Therefore, DOE proposes to include in proposed 10 CFR § 430.62(a)(4) language requiring that the certification report for each basic model shall include the product type, product class, manufacturer's name, private labeler name(s) if applicable, the manufacturer's model number(s), and the water usage.

(b) Precision level of reported test results. PMI raised an issue at the February 28, 1996, public meeting regarding the level of precision (number of digits after the decimal place) required on final results for certifying compliance and requested that DOE provide such clarification in today's rulemaking.

DOE stated that Sections 325(j) and 325(k) of EPCA, 42 U.S.C. § 6295(j) and § 6295(k), specified maximum standard levels for faucets, showerheads, water closets, and urinals in terms of tenth of a gallon, or in the case of metering faucets, hundredth of a gallon. Thus, the Department believes that those levels should be observed in certifying compliance.

(c) Mathematical rounding procedures. PMI raised a second issue regarding mathematical rounding procedures, and how such procedures are to be used to convert test data into final results for the purpose of determining compliance. PMI stated that the industry subscribes to the rounding rules contained in ASME Guide SI–1, ASME Orientation and Guide for use of SI (metric) units (9th Edition, 1982), and recommended that DOE adopt these rounding rules. NIST raised a concern that the ASME rules would allow a number to be rounded such that it may potentially exceed a fixed statutory standard. (PMI, transcript, at 35; NIST, transcript, at 35–36)

The Department agrees that, based on the concern identified by NIST, it would be inappropriate to adopt the ASME rounding rules as requested to be used to convert test data into final results for the purpose of determining compliance. Instead, DOE proposes the following basic rounding rules: Five and above round up, and less than five, round down. Such rounding rules are to be applied after the final result is calculated.

R. Michael Martin and Kohler supported DOE's view that the basic rounding rules should be used to determine compliance with the EPCA's

water use standards. (R. Michael Martin, transcript, at 40; Kohler, transcript, at 41). PMI stated that the industry would support DOE's proposed mathematical rounding rules. (PMI, No 2, at 1).

The Department believes the proposed basic rounding rules are practical and appropriate because they are consistent with conventional rounding methods. In addition, DOE believes the proposed approach in applying the basic rounding rules is appropriate to ensure that consistency is maintained in converting test data into final results for the purpose of determining compliance.

(d) Effective date for initial compliance certification submissions. Section 430.62(a) states, "Each manufacturer or private labeler before distributing in commerce any basic model of a covered product subject to the applicable energy conservation standard set forth in Subpart C of this part shall certify by means of a statement of compliance and certification report that each basic model meets the requirement of that standard," and section 430.62(b) adds, "all data required by paragraph 430.62(a) of this section shall be submitted on or before the effective date of the applicable energy conservation standard as prescribed in Section 325 of the Act."

The Department's regulations authorize imposition of penalties, consistent with EPCA, for failure to make reports or provide information required to be supplied by the Act or Title 10 CFR Part 430. 10 CFR § 430.61(a)(1) and (b). Any person who knowingly violates the compliance certification requirements may be subject to assessment of a civil penalty of no more than $100 for each violation, and each day of noncompliance shall constitute a separate violation. 10 CFR § 430.61(b).

Such submissions as described are required only after certification reporting requirements are promulgated for a covered product. DOE is proposing certification reporting requirements (see discussion in (a) of this subsection) in today's notice that when promulgated, would subject plumbing products, for which standards became effective January 1, 1994, to the requirements specified in sections 430.62(a)–(b).

American Standard Inc. raised a concern at the public meeting on February 28, 1996, that manufacturers who produce larger inventories have more models to test, that testing of certain products such as water closets are extremely labor-intensive and time-consuming, and therefore it would be unreasonable to expect manufacturers to be able to meet the certification requirements. American Standard Inc. recommended that DOE postpone for one year the effective date for the initial compliance certification submissions, which was also supported by Kohler and PMI . (American Standard Inc., transcript, at 62; Kohler, transcript, at 66; PMI, No. 2, at 2).

DOE agrees with American Standard Inc. that certain manufacturers may be overly burdened by the task of testing to meet the compliance certification requirements once such requirements are promulgated. The Department believes that a delay of the effective date for one year, as recommended by manufacturers, would allow a reasonable amount of time for plumbing manufacturers to complete required testing and submit the initial compliance certification reports. Therefore, the Department would require, in proposed 10 CFR § 430.62(a)(2), the initial certification submissions for plumbing products not later than one year following the publication of a final rule.

7. Faucet Standards on Multiple-User Sprayheads.

A manufacturer asked whether sprayheads are covered products under EPCA. Sprayheads are fixture fittings that are installed in lavatories (known as washfountains or wash sinks) for multiple users. They have multiple orifices that can independently or collectively actuate (by pneumatic hand or foot control, mechanical metering or infrared metering control) and may be considered a type of "faucet" subject to the applicable water conservation standard. EPCA defines the term "faucet" to mean "a lavatory faucet, kitchen faucet, metering faucet, or replacement aerator for a lavatory or kitchen faucet." EPCA, § 321(31)(E), 42 U.S.C. § 6291(31)(E). However, EPCA does not further define lavatory faucets, kitchen faucets, metering faucets, lavatory replacement aerators, and kitchen replacement aerators.

DOE proposes to clarify whether sprayheads are covered product, and if so, how the faucet standards are to apply to "sprayheads."

(a) Sprayheads as covered products. Bradley Corporation (Bradley) recommended that the definition for "faucet" in Section 321(31)(E) of EPCA, 42 U.S.C. § 6291(31)(E), be amended to mean "a lavatory faucet, kitchen faucet, metering faucet, or replacement aerator for a lavatory or kitchen faucet, except that such term does not include multiple-user type fixtures." (Bradley, No.1, at 1–2).

R. Michael Martin stated that the term "faucet" is defined in Section 321(31)(E) of EPCA, 42 U.S.C. § 6291(31)(E), and that the term "lavatory faucet," although not defined in the statute, the regulations, or ASME A112.18.1, is defined in the California regulations as a "plumbing fitting designed to discharge into a lavatory." Mr. Martin also stated that numerous complying sprayhead-installed washfountains are currently listed in the California database. For these reasons, Mr. Martin believes that sprayheads are not exempt, and considers them to be a form of lavatory faucet and therefore a covered product. (R. Michael Martin, No. 9, at 7).

The Department has considered Bradley's recommendation, but does not have the authority to amend the statutory definition for faucet in Section 321(31)(E) of EPCA, 42 U.S.C. § 6291(31)(E). Moreover, DOE agrees with Mr. Martin's view that sprayheads are a form of lavatory faucet and thus can be considered a covered product. DOE believes that any faucet or replacement aerator used in a kitchen or lavatory capacity, or any faucet, when turned on, that gradually shuts itself off after a programmed period (metered), regardless of physical shape or design features, shall constitute a covered "faucet" subject to the water performance requirements of Section 325(j) of EPCA, 42 U.S.C. § 6295(j).

(b) Application of faucet standards to sprayheads with independently-controlled orifices. The Department is proposing that sprayheads be considered a covered product and that they be subject to the applicable faucet standards. Sprayheads with multiple orifices can be independently actuated by manual on/off or metering controls. EPCA prescribes a water use standard at 2.5 gpm at 80 psig for lavatory faucets and 0.25 gallons per cycle at 80 psig for metering faucets. EPCA, § 325(j)(2), 42 U.S.C. § 6295(j)(2). The Department believes that each independent orifice that manually turns on or off constitutes a separate "lavatory faucet" by itself subject to the applicable water usage standard for lavatory faucets. Moreover, DOE believes that each independent orifice of a sprayhead that actuates to deliver a pre-set volume of water before gradually shutting itself off constitute a separate "metering faucet" by itself subject to the applicable water usage standard for metering faucets.

Therefore, DOE proposes to include clarifying language to the lavatory and metering faucet standards, in 10 CFR § 430.32(o), to the effect that each orifice, depending on its mode of actuation, shall not exceed the maximum flow rate for a lavatory or metering faucet.

(c) Application of faucet standards to sprayheads with collectively-controlled orifices. Sprayheads can be also centrally controlled such that all available orifices collectively actuate upon demand. The total water flow of a collectively-actuated sprayhead is dependent on the number of users at the lavatory in which the sprayhead is installed. This number is determined by the number of component lavatories that, based on the capacity criterion of a plumbing code, make up a single lavatory. DOE believes the maximum flow rate of such a sprayhead should be prorated by the number of users or component lavatories.

However, a lavatory may be defined to be equivalent to a different number of component lavatories depending on the following plumbing codes: (a) the Standard Plumbing Code,[2] (b) the Uniform Plumbing Code,[3] (c) the National Standard Plumbing Code,[4] (d) the National Plumbing Code,[5] and (e) the International Plumbing Code.[6]

The 1991 Standard Plumbing Code, Section 916.1, states, "Each 18 inches of wash sink circumference (circular type) shall be equivalent to one lavatory." The 1991 Uniform Plumbing Code, Appendix C (No. 8), states, "Twenty-four (24) lineal inches (609.6 mm) of wash sink or eighteen (18) inches (457.2 mm) of a circular basin, when provided with water outlets for such space, shall be considered equivalent to one (1) lavatory." The 1993 National Standard Plumbing Code, Section 7.18, states, "Each eighteen inch unit of usable length of a rim of a multiple use lavatory shall be considered equivalent to one lavatory as it affects the drainage and water supply piping sizes and fixture usage requirements, provided hot and cold or tempered water is available for each eighteen inch interval." The 1993 National Plumbing Code, Section P.1217.1, and the 1995 International Plumbing Code, Section 417.1, both state, "Every 20 inches (508 mm) of rim space shall be considered as one lavatory."

DOE believes it is necessary to establish a single capacity criterion to be applicable for all lavatories. Based on the considerations of all plumbing codes, the Department believes the capacity criterion defined in Section P.1217.1 of the 1993 National Plumbing Code, and Section 417.1 of the 1995 International Plumbing Code for wash sinks (i.e., every 20 inches (508 mm) of rim space shall be considered as one lavatory) would be more versatile to lavatories of various physical configurations and temperature requirements.

Therefore, DOE proposes to include clarifying language with the lavatory and metering faucet standards, in 10 CFR § 430.32(o), to the effect that: (1) the maximum flow rate of a collectively actuated multiple-orifice sprayhead that manually turns on or off shall be the product of (a) the maximum flow rate for a lavatory faucet and, (b) the number of component lavatories (rim space of the lavatory in inches (millimeters) divided by 20 inches (508 millimeters)) and, (2) the maximum flow rate of a collectively actuated multiple-orifice sprayhead that delivers a pre-set volume of water before gradually shutting itself off shall be the product of (a) the maximum flow rate for a metering faucet and, (b) the number of component lavatories (rim space of the lavatory in inches (millimeters) divided by 20 inches (508 millimeters)).

8. Enforcement

Several commenters raised the issue of enforcement of plumbing products regulations. AWWA recommended that DOE establish: (a) a protocol for verifying industry compliance with EPCA; (b) a non-compliance warning system that gives violators of EPCA an opportunity for corrective actions to avoid enforcement sanctions; and (c) a product certification and listing program to improve EPCA compliance and minimize the need for future enforcement actions against the plumbing industry. (AWWA, No. 8, at 24).

Seattle Water Department requested rules for enforcement of the national standards (particularly for imported products) and penalties for manufacture of non-conforming products. It believes the retail marketplace is currently full of nonconforming plumbing products which is unfair to complying manufacturers while robbing consumers and the nation of much needed long term water and energy savings. (Seattle Water Department, No. 7, at 4).

The Department agrees enforcement of the standards is necessary to ensure compliance of all covered products. The Department currently has an enforcement procedure at sections 430.70–430.75 and Appendix B of Title 10 CFR Part 430, Subpart F which the Department is proposing to amend, where appropriate, to include plumbing products. DOE may use these procedures to assess civil penalties under Section 333 of EPCA, 42 U.S.C. 6303. In actions involving small businesses, DOE will be guided by the small entity enforcement policy it is required to adopt by Section 223 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, Title II, § 223).

DOE believes that its existing enforcement procedures—which encourage industry policing, prescribe enforcement testing, and provide for civil penalties for all covered consumer products (which include imports) that violate the Federal standards—are adequate for deterring would-be violators. The Department believes that it is not necessary for it to adopt a product certification and listing to improve EPCA compliance. PMI is planning to produce a product directory which will list manufacturers and plumbing products conforming to EPCA. Such a product directory, maintained by PMI and supported by industry, would be valuable to assist consumers and others in identifying plumbing products that comply or do not comply with EPCA.

C. Clarification of Certification Reporting Requirements for Residential Appliances

DOE proposes to redesignate, revise existing language, and add new language and paragraphs as necessary in the CFR sections dealing with certification and enforcement requirements for all residential appliances.

The amendments and revisions proposed for Part 430 of Title 10 of the CFR are as follows:

1. Section 430.62(a) is redesignated as 430.62(a)(1), and revised to include the DOE address to be used for compliance certification reporting.

2. Section 430.62(a), "Compliance Certification" is added as a new section heading.

3. Section 430.62(a)(1) is redesignated as 430.62(a)(3).

4. Section 430.62(a)(2) is redesignated as 430.62(a)(4) and revised by:

(a) rearranging, alphabetically, the certification reporting requirements for refrigerators, refrigerator-freezers and freezers, water heaters, room air conditioners, central air conditioners and central air conditioning heat pumps, pool heaters, furnaces, direct heating equipment, general service

[2] Southern Building Codes Congress International, Inc., 900 Montclair Road, Birmingham, AL 35213–1206.

[3] International Association of Plumbing and Mechanical Officials, 20001 Walnut Drive South, Walnut, CA 91789–2825.

[4] National Association of Plumbing-Heating Cooling Contractors, P.O. Box 6808, Falls Church, VA 22046.

[5] Building Officials and Codes Administrators International, Inc., 4051 W. Flossmoor Road, Country Club Hills, IL 60478–5795.

[6] Ibid.

fluorescent lamps and incandescent reflector lamps;

(b) amending the certification report to add, alphabetically, absent reporting requirements for kitchen ranges, ovens and microwave ovens, dishwashers, clothes washers and clothes dryers; and

(c) adding, alphabetically, new certification reporting requirements for faucets, showerheads, water closets, and urinals. [see discussion in section II(B)(6)(a)]

5. A new section, 430.62(a)(2), is added to provide a one-year delay of the effective date for compliance certification by manufacturers of faucets, showerheads, water closets, and urinals. [see discussion in section II(B)(6)(d)]

6. Section 430.62(a)(3) is redesignated as 430.62(a)(5), and referenced paragraph "(a)(2)" within the new section is redesignated as paragraph "(a)(4)."

7. Section 430.62(b), "Initial Reporting Requirements," is deleted.

8. Section 430.62(c), "New Models," is redesignated as 430.62(b), and amended by redesignating the referenced paragraph "(a)(2)" as paragraph "(a)(4)," and adding appropriate language to include plumbing products, and a mailing address to be used for submitting new model information.

9. A new section, 430.62(c), "Discontinued Models," is added to specify the information required to be submitted to DOE when models are discontinued.

10. Section 430.62(d), "Maintenance of Records," is amended by adding appropriate language to include plumbing products.

11. Section 430.62(e), "Third Party Representation," is amended by redesignating the referenced paragraph "(a)" to "(a)(4)", and adding language allowing third party representatives to submit discontinued model information on behalf of an authorizing manufacturer.

12. A new section, 430.62(f), "Amendment of Information," is added to expressly require manufacturers to submit revised compliance certification if any information contained in the prior submission has changed.

13. Section 430.70(a)(3), "Sampling," is amended by adding appropriate language to include plumbing products.

14. Section 430.70(a)(6)(i), "Testing at Manufacturer's Option," is amended by adding appropriate language to include plumbing products.

15. Appendix A to Subpart F, Title 10 CFR Part 430, is amended by adding language to include plumbing products; to identify the third party organization officially acting as representative of the manufacturer; and to include, as an attachment, a uniform format for certification reports on new basic models of a covered products.

16. Appendix B to Subpart F, Title 10 CFR Part 430 is amended to correct typographical errors and add appropriate language to include plumbing products.

The Department believes these proposed amendments and additions are necessary and appropriate and will clarify the certification and enforcement requirements for all residential products.

III. Procedural Requirements

A. Review Under the National Environmental Policy Act of 1969

In this rule, the Department proposes provisions to implement statutorily mandated water conservation standards and test procedures for faucets, showerheads, water closets, and urinals. Implementation of this rule would not result in environmental impacts. The Department has therefore determined that this rule is covered under the Categorical Exclusion found at paragraph A.6 of appendix A to subpart D, 10 CFR Part 1021, which applies to the establishment of procedural rulemakings. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

B. Review Under Executive Order 12866, "Regulatory Planning and Review"

This regulatory action is not a significant regulatory action under Executive Order 12866, "Regulatory Planning and Review," October 4, 1993. Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. § 603, requires the preparation of an initial regulatory flexibility analysis for every rule which by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative impacts.

The Department used the small business size standards published on January 31, 1996 by the Small Business Administration to determine whether any small entities would be required to comply with this proposed rule. 61 FR 3280 (to be codified at 13 CFR part 121). The size standards are listed by Standard Industrial Classification (SIC) code and industry description. Plumbing fixtures (water closets and urinals) manufacturing is listed under the following SIC codes: (1) SIC 3088 (plastic plumbing fixtures), (2) SIC 3261 (vitreous china plumbing fixtures), and (3) SIC 3431 (enameled iron, cast iron, and pressed metal plumbing fixtures). Plumbing fixture fittings (faucets and showerheads) manufacturing is SIC 3432. To be considered a small business, a manufacturer of plastic plumbing fixtures, vitreous china plumbing fixtures, enameled iron, cast iron, and pressed metal plumbing fixtures, or plumbing fixture fittings and its affiliates may employ a maximum of 500, 750, 750, or 500 employees, respectively.

The Department estimates there are approximately 32 domestic firms and 38 foreign firms which manufacture either plastic, vitreous china, or enameled iron, cast iron, and pressed metal plumbing fixtures, or a combination of the three various types of plumbing fixtures. DOE also estimates there are 57 domestic firms and 30 foreign firms which manufacture plumbing fixture fittings covered under EPCA.[7] Some domestic manufacturers of plumbing fixtures also manufacture plumbing fixture fittings. Moreover, many domestic manufacturers of plumbing fixtures and fixture fittings are affiliated with larger U.S. firms. The sizes of plumbing fixtures manufacturing companies and their affiliates in the U.S. range from 50 employees to 54,298 employees, and for plumbing fixture fittings manufacturing companies and their affiliates, they range from 50 employees to 51,300 employees. The Department estimates there are five to seven firms in the United States that both manufacture plumbing fixtures covered by EPCA, and have, together with their affiliates, 750 or fewer employees. DOE estimates that there are approximately 7 firms in the United States that both manufacture plumbing fixture fittings covered by EPCA, and have, together with their affiliates, 500 or fewer employees.

EPCA prescribes water conservation standards for faucets, showerheads, water closets, and urinals. The statutory water conservation standards are incorporated in the proposed rule, although the standards do not depend

[7] *America's Corporate Families and International Affiliates*, Volume I—III, Dun & Bradstreet, Inc., 1996

on rulemaking for their implementation. The Act also requires DOE to prescribe test procedures for measuring water consumption, and it further requires the use of the test procedures in ASME/ANSI Standards A112.18.1M–1989 (for faucets and showerheads) and A112.19.6–1990 (for water closets and urinals). If the water conservation standards or the test procedures for water consumption are amended by ASME and approved by ANSI, DOE is required to amend its standards or test procedures accordingly unless to do so would not meet certain statutory criteria for standards or test procedures. The standard for faucets and test procedures for faucets and showerheads were amended on September 15, 1994 in ASME/ANSI Standard A112.18.1M–1994, and DOE is now proposing to incorporate in the CFR ASME/ANSI Standard A112.18.1M–1994.

DOE believes that complying with the proposed rule (excluding the cost of compliance with the water conservation standards and test procedures directly imposed by EPCA) would not impose significant economic costs on a substantial number of small manufacturers. The test procedure mandated by EPCA (in ASME/ANSI Standard A112.19.6–1990) and that which is proposed to be incorporated by DOE (in ASME/ANSI Standard A112.18.1M–1994) are test procedures already in general use in the industry. Manufacturers contacted by the Department stated that they currently test faucets and showerheads in accordance with ASME/ANSI Standard A112.18.1M–1994, and water closets and urinals in accordance with ASME/ANSI Standard A112.19.6–1990.

The proposed rule has been drafted to minimize the burden of testing for all manufacturers, and DOE has relied heavily on recommendations that have been provided by the plumbing products trade association, their member companies and other water conservation organizations. The proposed statistical sampling procedures are based on statistical sampling procedures established for consumer appliance products at 10 CFR § 430.24, and recommendations submitted by the Plumbing Manufacturers Institute (PMI), American Water Works Association (AWWA), and New York State Department of Environmental Conservation (NYSDEC). The sampling procedures are designed to keep the testing burden on manufacturers as low as possible, while still providing confidence that the test results of units tested can be applied to units of the same basic model. The proposed compliance reporting requirements are based on recommendations from PMI and are consistent with the requirements for consumer appliance products at 10 CFR § 430.62.

DOE recognizes that some manufacturers may not be able to certify compliance immediately following publication of the DOE final rule. Such submissions generally are required before a basic model is allowed to be distributed in commerce. 10 CFR § 430.62(a). The proposed rule eases the burden of compliance for manufacturers of faucets, showerheads, water closets, and urinals, including small manufacturers, by providing that the certification reporting requirements for initial submissions would not take effect until 12 months after the publication of the final rule.

The Department invites public comment on its conclusion that the costs of complying with the proposed rule would neither affect a substantial number of small businesses, nor impose a significant economic impact on such businesses.

D. Review Under Executive Order 12612, "Federalism"

Executive Order 12612, "Federalism," 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effect on States, on the relationship between the National Government and States, or in the distribution of power and responsibilities among various levels of government. If there are substantial effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

The proposed rules published today would not regulate the States. They primarily would affect the manner in which DOE promulgates residential and commercial products, water conservation standards, test procedures, and certification of compliance by manufacturers, prescribed under the Energy Conservation and Policy Act. State regulation in this area is largely preempted by the Energy Policy and Conservation Act. The proposed rules published today would not alter the distribution of authority and responsibility to regulate in this area. Accordingly, DOE has determined that preparation of a federalism assessment is unnecessary.

E. Review Under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights"

It has been determined pursuant to Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 52 FR 8859 (March 18, 1988), that this regulation would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

F. Review Under the Paperwork Reduction Act

Today's Notice of Proposed Rulemaking would revise compliance certification requirements applicable to manufacturers of covered consumer products that were previously approved by the Office of Management and Budget (OMB). These proposed collections of information have been submitted to the Office of Management and Budget for review and approval under the Paper Reduction Act, 44 U.S.C. 3501, et seq.

Appendix A to Subpart F of Part 430, "Compliance Statement," was previously approved by OMB and assigned OMB Control No. 1910–1400. The proposed rule would revise this form to cover certification of plumbing products; facilitate use of the form by third party representatives of covered product manufacturers; and, in an attachment, specify the format of the certification report that manufacturers currently are required to submit to DOE by 10 CFR part 430.62(a)(2). The revisions to appendix A to subpart F will make the compliance certifications more uniform and easier to complete. DOE estimates there will be no additional burden associated with these changes to the certification statement and certification report requirements in Part 430.

The proposed rule would require manufacturers of plumbing products to maintain records concerning their determinations of the water consumption of faucets, showerheads, water closets and urinals. DOE has concluded that this recordkeeping requirement is necessary for implementing and monitoring compliance with the water conservation standards, testing and certification requirements for residential and commercial faucets, showerheads, water closets and urinals mandated by EPCA.

The proposed rule also requires manufacturers to submit initial certification reports for basic models of covered faucets, showerheads, water

closets and urinals within 12 months after the publication of a final rule in the **Federal Register**. The initial certification reports would be a one-time submission stating that the manufacturer has determined by employing actual testing that the basic model of faucet, showerhead, water closet or urinal meets the applicable water conservation standard. After the first year, manufacturers of plumbing products would have to submit a certification report for each new basic model, or to certify compliance with a new or amended standard, before the model would be allowed to be distributed in commerce.

DOE estimates the number of covered manufacturing firms of plumbing fixtures to be approximately 70. DOE estimates the number of hours required to comply with the reporting and recordkeeping requirements in the proposed rule, after the initial year of compliance, to be approximately 4 to 16 hours per year per firm. The total annual reporting and recordkeeping burden on manufacturers of plumbing fixtures to comply with the proposed rule is expected to be from 280 to 1120 hours (70×4 – 16 hours per year). DOE estimates the number of covered manufacturing firms of plumbing fixture fittings to be approximately 87, and the number of hours required to comply with the reporting and recordkeeping requirements in the proposed rule to be approximately 4 to 8 hours per year per firm. The total annual reporting and recordkeeping burden on manufacturers of plumbing fixture fittings to comply with the proposed rule is expected to be from 348 to 696 hours (87×4 – 8 hours per year). These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the collection of information.

The collections of information contained in this proposed rule are considered the least burdensome for meeting the legal requirements and achieving the program objectives of the DOE compliance certification program for faucets, showerheads, water closets and urinals. In estimating the paperwork and recordkeeping burden, DOE considered that many manufacturers already submit this type of information to voluntary plumbing product listing services, such as the International Association of Plumbing & Mechanical Officials' (IAPMO's) Annual Directory of Listed Plumbing Products. These manufacturers should be able to comply with the certification required by the proposed rule without much additional burden.

DOE invites public comments concerning the accuracy of the estimated paperwork reporting burden. Send comments regarding the recordkeeping and reporting burden estimate, or any other aspect of this collection of information, to the Department in accordance with the instructions in the **ADDRESSES** section of today's notice, section IV, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for DOE."

G. Review Under Executive Order 12988, "Civil Justice Reform"

With respect to the review of existing regulations and the promulgation of new regulations, Section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on executive agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by Section 3(a), Section 3(b) of the Executive Order specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provide a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of the Executive Order requires Executive agencies to review regulations in light of applicable standards Section 3(a) and Section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE reviewed today's proposed rulemaking under the standards of Section 3 of the Executive Order and determined that, to the extent permitted by law, they meet the requirements of those standards.

H. Review Under Section 32 of the Federal Energy Administration Act of 1974

Pursuant to Section 301 of the Department of Energy Organization Act (Pub. L. 95–91), the Department of Energy is required to comply with Section 32 of the Federal Energy Authorization Act (FEAA), as amended by Section 9 of the Federal Energy Administration Authorization Act of 1977 (Pub. L. 95–70). Section 32 provides in essence that, where a proposed rule contains or involves use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards.

The rule proposed in this notice adopts one commercial standard, ASME/ANSI Standard A112.19.6–1990, and incorporates another, ASME/ANSI A112.18.1M–1994. In regard to ASME/ANSI Standard A112.19.6–1990, the Act directs adoption of this commercial standard, which provides the procedures required for measuring the water consumption of water closets and urinals. Because Congress has directed the use of the standard, Section 32 of the FEAA has no application to it. In regard to ASME/ANSI Standard A112.18.1M–1994, which provides the procedures required for measuring the water consumption of faucets and showerheads, the Department has evaluated this Standard and is unable to conclude whether it was developed in a manner which fully provides for public participation, comment, and review. However, Congress has, by statute, mandated use of the ASME/ANSI Standard unless specific findings are made.

As required by Section 32(c) of the Federal Energy Administration Act, the Department will consult with the Attorney General and the Chairman of the Federal Trade Commission concerning the impact of this standard on competition, prior to prescribing a final rule.

I. Review Under Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") requires that the Department prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. The budgetary impact statement must include: (i) identification of the Federal law under which the rule is promulgated; (ii) a qualitative and quantitative assessment of anticipated costs and benefits of the Federal mandate and an analysis of the extent to which such costs to state, local, and tribal governments may be paid with Federal financial assistance; (iii) if feasible, estimates of the future compliance costs and of any

disproportionate budgetary effects the mandate has on particular regions, communities, non-Federal units of government, or sectors of the economy; (iv) if feasible, estimates of the effect on the national economy; and (v) a description of the Department's prior consultation with elected representatives of state, local, and tribal governments and a summary and evaluation of the comments and concerns presented.

The Department has determined that the action proposed today does not include a Federal mandate that may result in estimated costs of $100 million or more to state, local or to tribal governments in the aggregate or to the private sector. Therefore, the requirements of Sections 203 and 204 of the Unfunded Mandates Act do not apply to this action.

IV. Public Comment.

A. Written Comment Procedures

Interested persons are invited to participate in the proposed rulemaking by submitting data, comments, or information with respect to the proposed issues set forth in sections (II)(A)(1)(a), (II)(A)(2)(a), (II)(B), and (II)(C) of this notice to the address indicated at the beginning of the notice.

Comments should be identified both on the envelope and on the documents as "Test Procedures and Certification Requirements for Plumbing Products; and Certification Requirements for Residential Appliances, Docket No. EE–RM/TP–97–600." Ten (10) copies are requested to be submitted. In addition, the Department requests that an electronic copy (3½" diskette) of the comments on WordPerfect™ 6.1 be provided. All submittals received by the date specified at the beginning of this notice will be considered by the Department in developing the final rule.

Pursuant to the provisions of Title 10 CFR 1004.11, any person submitting information which he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy of the document and ten (10) copies, if possible, from which the information believed to be confidential has been deleted. The Department of Energy will make its own determination with regard to the confidential status of the information and treat it according to its determination.

Factors of interest to the Department when evaluating requests to treat as confidential information that has been submitted include: (1) a description of the items; (2) an indication as to whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) an indication as to when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

B. Public Hearing

1. Procedures for Submitting Requests to Speak

The time and place of the public hearing are indicated at the beginning of this notice of proposed rulemaking. The Department invites any person who has an interest in today's notice of proposed rulemaking, or who is a representative of a group or class of persons that has an interest in these proposed issues, to make a request for an opportunity to make an oral presentation. Such requests should be directed to the address or telephone number indicated at the beginning of this notice. Requests may be hand delivered to such address between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Requests should be labeled "Test Procedures and Certification Requirements for Plumbing Products; and Certification Requirements for Residential Appliances, Docket No. EE–RM/TP–97–600," both on the document and on the envelope.

The person making the request should briefly describe the interest concerned and state why he or she, either individually or as a representative of a group or class of persons that has such an interest, is an appropriate spokesperson, and give a telephone number where he or she may be contacted.

Each person selected to be heard is requested to submit an advance copy of his or her statement prior to the hearing as indicated at the beginning of this notice. In the event any persons wishing to testify cannot meet this requirement, that person may make alternative arrangements with the Office of Hearings and Dockets in advance by so indicating in the letter requesting to make an oral presentation.

2. Conduct of Hearing

The Department of Energy reserves the right to select the persons to be heard at the hearing, to schedule the respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation is limited to 20 minutes.

A DOE official will be designated to preside at the hearing. The hearing will not be a judicial or an evidentiary-type hearing, but will be conducted in accordance with 5 U.S.C. 553 and Section 336 of the Act. At the conclusion of all initial oral statements at each day of the hearing, each person who has made an oral statement will be given the opportunity to make a rebuttal statement, subject to time limitations. The rebuttal statements will be given in the order in which the initial statements were made. The official conducting the hearing will accept additional comments or questions from those attending, as time permits.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding official.

A transcript of the hearing will be made, and the entire record of this rulemaking, including the transcript, will be retained by the Department of Energy and made available for inspection in the Freedom of Information Reading Room, (Room No: 1E–190), at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–6020, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Any person may purchase a copy of the transcript from the transcribing reporter.

C. Issues Requested for Comment

The Department of Energy is interested in receiving comments and/or data concerning the feasibility, workability and appropriateness of the preceding issues proposed in today's proposed rulemaking. Also, DOE welcomes discussion on improvements or alternatives to these approaches. In particular, the Department is interested in gathering comments on the following:

- Incorporation by reference of the test procedure requirements for faucets and showerheads, and the water conservation standard for faucets, in ASME/ANSI Standard A112.18.1M–1994.
- Requirements to submit metric equivalents.
- Definitions of "basic model" for faucets, showerheads, water closets, and urinals.
- Statistical sampling plan requirements for water closets and urinals utilizing one-sided confidence limits at 90% with a 1.10 divisor, and

for faucets and showerheads, at 95% with a 1.05 divisor.

• Appropriateness of proposed modifications to existing language in the CFR and the adoption of enforcement provisions for plumbing products.

• The definition for "electromechanical hydraulic toilet."

• The types of information, precision of reported results, mathematical rounding procedures and the approach to apply such procedures for certifying compliance.

• The effective date for certification submissions.

• Inclusion of sprayheads as covered products, and application of faucet standards on independently actuating multiple-orifice sprayheads.

• The establishment of a single capacity criterion based on the 1993 National Plumbing and 1995 International Plumbing Code, to be used in defining maximum flow rate of collectively-actuating sprayheads.

• Amendments to the existing certification reporting requirements for all residential appliances.

• The likelihood that today's proposed rule would cause significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act of 1980.

• The information collection and recordkeeping burden on the industry of this proposed rule.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Small businesses.

Issued in Washington, DC, January 22, 1997.

Brian T. Castelli,

Chief of Staff Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, Part 430 of Chapter II of Title 10, Code of Federal Regulations, is proposed to be amended as follows.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for Part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309.

2. Section 430.2 of Subpart A is amended by revising the definitions for "consumer product," and "energy conservation standard," adding new paragraphs (17) through (20) in the definition of "basic model," and adding new definitions for "ANSI," "ASME," "blowout," "electromechanical hydraulic toilet," "estimated annual operating cost," "faucet," "flushometer tank," "flushometer valve," "low consumption," "showerhead," "urinal," "water closet," and "water use" in alphabetical order, to read as follows:

Subpart A—General Provisions

§ 430.2 Definitions.

* * * * *

ANSI means the American National Standards Institute.

ASME means the American Society of Mechanical Engineers.

* * * * *

Basic model * * *

(17) With respect to faucets, which have the identical flow control mechanism attached to or installed within the fixture fittings, or the identical water-passage design features that use the same path of water in the highest-flow mode.

(18) With respect to showerheads, which have the identical flow control mechanism attached to or installed within the fixture fittings, or the identical water-passage design features that use the same path of water in the highest-flow mode.

(19) With respect to water closets, which have hydraulic characteristics that are essentially identical, and which do not have any differing physical or functional characteristics that affect water consumption.

(20) With respect to urinals, which have hydraulic characteristics that are essentially identical, and which do not have any differing physical or functional characteristics that affect water consumption.

* * * * *

Blowout has the meaning given such a term in ASME A112.19.2M–1990. (see § 430.22)

* * * * *

Consumer product means any article (other than an automobile, as defined in Section 501(1) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2001(1)) of a type which in operation consumes, or is designed to consume, energy or, with respect to showerheads, faucets, water closets, and urinals, water; and which, to any significant extent, is distributed in commerce for personal use or consumption by individuals; without regard to whether such article of such type is in fact distributed in commerce for personal use or consumption by an individual, except that such item includes fluorescent lamp ballasts, general service fluorescent lamps, incandescent reflector lamps, showerheads, faucets, water closets, and urinals distributed in commerce for personal or commercial use or consumption.

* * * * *

Electromechanical hydraulic toilet means any water closet that utilizes electrically operated devices, such as, but not limited to, air compressors, pumps, solenoids, motors, or macerators in place of or to aid gravity in evacuating waste from the toilet bowl.

Energy conservation standard means:

(1) A performance standard which prescribes a minimum level of energy efficiency or a maximum quantity of energy use, or, in the case of showerheads, faucets, water closets, and urinals, water use, for a covered product, determined in accordance with test procedures prescribed under Section 323 (42 U.S.C. 6293); or

(2) A design requirement for the products specified in paragraphs (6), (7), (8), (10), (15), (16), (17), and (19) of Section 322(a) (42 U.S.C. 6292(a)); and

(3) includes any other requirements which the Secretary may prescribe under Section 325(r) (42 U.S.C. 6295(r)).

Estimated annual operating cost means the aggregate retail cost of the energy which is likely to be consumed annually, and in the case of showerheads, faucets, water closets, and urinals, the aggregate retail cost of water and wastewater treatment services likely to be incurred annually, in representative use of a consumer product, determined in accordance with Section 323 (42 U.S.C. 6293).

* * * * *

Faucet means a lavatory faucet, kitchen faucet, metering faucet, or replacement aerator for a lavatory or kitchen faucet.

* * * * *

Flushometer tank means a device whose function is defined in flushometer valve, but integrated within an accumulator vessel affixed and adjacent to the fixture inlet so as to cause an effective enlargement of the supply line immediately before the unit.

Flushometer valve means a valve attached to a pressurized water supply pipe and so designed that when actuated, it opens the line for direct flow into the fixture at a rate and quantity to properly operate the fixture, and then gradually closes to provide trap reseal in the fixture in order to avoid water hammer. The pipe to which this device is connected is in itself of sufficient size, that when open, will allow the device to deliver water at a sufficient rate of flow for flushing purposes.

* * * * *

Low consumption has the meaning given such a term in ASME A112.19.2M–1990. (see § 430.22)

* * * * *

Showerhead means any showerhead (including a handheld showerhead), except a safety shower showerhead.

* * * * *

Urinal means a plumbing fixture which receives only liquid body waste and, on demand, conveys the waste through a trap seal into a gravity drainage system. However, this term does not include fixtures designed for installations in prisons.

* * * * *

Water closet means a plumbing fixture that has a water-containing receptor which receives liquid and solid body waste, and upon actuation, conveys the waste through an exposed integral trap seal into a gravity drainage system. However, this term does not include fixtures designed for installation in prisons.

* * * * *

Water use means the quantity of water flowing through a showerhead, faucet, water closet, or urinal at point of use, determined in accordance with test procedures under Section 323 (42 U.S.C. 6293).

* * * * *

3. Section 430.22 of subpart B is amended by adding paragraph (a)(3)(iv) and adding item numbers 13 and 14 to paragraph (a)(4), to read as follows:

Subpart B—Test Procedures

§ 430.22 Reference Sources.

(a) * * *

(3) * * *

(iv) American Society of Mechanical Engineers, 345 East 47th Street, New York, NY 10017.

(4) * * *

13. ASME/ANSI Standard A112.18.1M–1994, "Plumbing Fixture Fittings."

14. ASME/ANSI Standard A112.19.6–1990, "Hydraulic Requirements for Water Closets and Urinals."

* * * * *

4. Section 430.23 of subpart B is amended by revising the section heading and adding new paragraphs (s), (t), (u), and (v), to read as follows:

§ 430.23 Test procedures for measures of energy and water consumption.

* * * * *

(s) *Faucets.* The maximum permissible water use allowed for lavatory faucets, lavatory replacement aerators, kitchen faucets, and kitchen replacement aerators, expressed in gallons and liters per minute (gpm and L/min), shall be measured in accordance to section 2(a) of Appendix S of this subpart. The maximum permissible water use allowed for metering faucets, expressed in gallons and liters per cycle (gal/cycle and L/cycle), shall be measured in accordance to section 2(a) of Appendix S of this subpart.

(t) *Showerheads.* The maximum permissible water use allowed for showerheads, expressed in gallons and liters per minute (gpm and L/min), shall be measured in accordance to section 2(b) of Appendix S of this subpart.

(u) *Water closets.* The maximum permissible water use allowed for water closets, expressed in gallons and liters per flush (gpf and Lpf), shall be measured in accordance to section 3(a) of Appendix T of this subpart.

(v) *Urinals.* The maximum permissible water use allowed for urinals, expressed in gallons and liters per flush (gpf and Lpf), shall be measured in accordance to section 3(b) of Appendix T of this subpart.

5. Section 430.24 of subpart B is amended by adding new paragraphs (s), (t), (u), and (v), to read as follows:

§ 430.24 Units to be tested.

* * * * *

(s) For each basic model of faucet,[1] a sample of sufficient size shall be tested to ensure that any represented value of water consumption of a basic model for which consumers favor lower values shall be no less than the higher of the mean of the sample or the upper 95 percent confidence limit of the true mean divided by 1.05.

(t) For each basic model[1] of showerhead, a sample of sufficient size shall be tested to ensure that any represented value of water consumption of a basic model for which consumers favor lower values shall be no less than the higher of the mean of the sample or the upper 95 percent confidence limit of the true mean divided by 1.05.

(u) For each basic model[1] of water closet, a sample of sufficient size shall be tested to ensure that any represented value of water consumption of a basic model for which consumers favor lower values shall be no less than the higher of the mean of the sample or the upper 90 percent confidence limit of the true mean divided by 1.1.

(v) For each basic model[1] of urinal, a sample of sufficient size shall be tested to ensure that any represented value of water consumption of a basic model for which consumers favor lower values shall be no less than the higher of the mean of the sample or the upper 90 percent confidence limit of the true mean divided by 1.1.

[1] Components of similar design may be substituted without requiring additional testing if the represented measures of energy or water consumption continue to satisfy the applicable sampling provision.

§ 430.27 [Amended]

6. Section 430.27 of subpart B is amended by:

a. Adding the words "or water" between the words "energy" and "consumption" in paragraphs: (a)(1), (b)(1)(iii), and (l) (first sentence); and

b. Revising the existing referenced section "§ 430.22" in paragraph (a)(1) to read as "§ 430.23".

7. Subpart B of Part 430 is amended by adding Appendix S and Appendix T, to read as follows:

Appendix S to Subpart B of Part 430—Uniform Test Method for Measuring the Water Consumption of Faucets and Showerheads

1. *Scope:* This Appendix covers the test requirements used to measure the hydraulic performance of faucets and showerheads.

2. *Flow Capacity Requirements:*

a. Faucets—The test procedures to measure the water flow rate for faucets, expressed in gallons per minute (gpm) and liters per minute (L/min), or gallons per cycle (gal/cycle) and liters per cycle (L/cycle), shall be conducted in accordance with the test requirements specified in section 6.5, Flow Capacity Test, of the ASME/ANSI Standard A112.18.1M–1994. (see § 430.22)

b. Showerheads—The test conditions to measure the water flow rate for showerheads, expressed in gallons per minute (gpm) and liters per minute (L/min), shall be conducted in accordance with the test requirements specified in section 6.5, Flow Capacity Test, of the ASME/ANSI Standard A112.18.1M–1994. (see § 430.22)

Appendix T to Subpart B of Part 430—Uniform Test Method for Measuring the Water Consumption of Water Closets and Urinals

1. *Scope:* This Appendix covers the test requirements used to measure the hydraulic performances of water closets and urinals.

2. *Test Apparatus and General Instructions:*

a. The test apparatus and instructions for testing water closets shall conform to the requirements specified in section 7.1.2, Test Apparatus and General Requirements, subsections 7.1.2.1, 7.1.2.2, and 7.1.2.3 of the ASME/ANSI Standard A112.19.6–1990. (see § 430.22)

b. The test apparatus and instructions for testing urinals shall conform to the requirements specified in section 8.2, Test Apparatus and General Requirements, subsections 8.2.1, 8.2.2, and 8.2.3 of the

ASME/ANSI Standard A112.19.6–1990. (see § 430.22)

3. *Test Measurement:*

a. Water closets—The measurement of the water flush volume for water closets, expressed in gallons per flush (gpf) and liters per flush (Lpf), shall be conducted in accordance with the test requirements specified in section 7.1.6, Water Consumption and Hydraulic Characteristics, of the ASME/ANSI Standard A112.19.6–1990. (see § 430.22)

b. Urinals—The measurement of water flush volume for urinals, expressed in gallons per flush (gpf) and liters per flush (Lpf), shall be conducted in accordance with the test requirements specified in section 8.5, Water Consumption, of the ASME/ANSI Standard A112.19.6–1990. (see § 430.22)

8. The subpart heading for Subpart C is revised to read as follows:

Subpart C—Energy and Water Conservation Standards

9. Section 430.31 is revised to read as follows:

§ 430.31 Purpose and scope.

This subpart contains energy and water conservation standards for classes of covered products that are required to be administered by the Department of Energy pursuant to the Energy Conservation Program for Consumer Products Other Than Automobiles under the Energy Policy and Conservation Act, as amended (42 U.S.C.6291 *et seq.*). Basic models of covered products manufactured before the date on which an amended energy or water conservation standard becomes effective, (or revisions of such models that are manufactured after such date and have the same energy efficiency, energy use or water use characteristics), that comply with the energy or water conservation standard applicable to such covered products on the day before such date shall be deemed to comply with the amended energy or water conservation standard.

10. Section 430.32 of subpart C is amended by revising the section heading, revising the introductory paragraph, and adding paragraphs (o), (p), (q), and (r), to read as follows:

§ 430.32 Energy and water conservation standards and effective dates.

The energy and water conservation standards for the covered product classes are:

* * * * *

(o) *Faucets.* The maximum water use allowed for any of the following faucets manufactured after January 1, 1994, when measured at a flowing water pressure of 60 pounds per square inch (414 kilopascals), shall be as follows:

Faucet type	Maximum flow rate (gpm (L/min)) or (gal/cycle (L/cycle))
Lavatory faucets	2.2 gpm (8.3 L/min).(1)(i)(2)(i)
Lavatory replacement aerators.	2.2 gpm (8.3 L/min).
Kitchen faucets	2.2 gpm (8.3 L/min).
Kitchen replacement aerators.	2.2 gpm (8.3 L/min).
Metering faucets	0.25 gal/cycle (0.95 L/cycle).(1)(ii)(2)(ii)

Note:

(1) Sprayheads with independently-controlled orifices.

(i) The maximum flow rate of each orifice that manually turns on or off shall not exceed the maximum flow rate for a lavatory faucet.

(ii) The maximum flow rate of each orifice that delivers a pre-set volume of water before gradually shutting itself off shall not exceed the maximum flow rate for a metering faucet.

Note:

(2) Sprayheads with collectively-controlled orifices.

(i) The maximum flow rate of a sprayhead that manually turns on or off shall be the product of (a) the maximum flow rate for a lavatory faucet and (b) the number of component lavatories (rim space of the lavatory in inches (millimeters) divided by 20 inches (508 millimeters)).

(ii) The maximum flow rate of a sprayhead that delivers a pre-set volume of water before gradually shutting itself off shall be the product of (a) the maximum flow rate for a metering faucet and (b) the number of component lavatories (rim space of the lavatory in inches (millimeters) divided by 20 inches (508 millimeters)).

(p) *Showerheads.* The maximum water use allowed for any showerheads manufactured after January 1, 1994, shall be 2.5 gallons per minute (9.5 liters per minute) when measured at a flowing pressure of 80 pounds per square inch (552 kilopascals). Any such showerhead shall also meet the requirements of ASME/ANSI Standard A112.18.1M–1994, 7.4.4(a).

(q) *Water closets.* (1) The maximum water use allowed in gallons per flush for any of the following water closets manufactured after January 1, 1994, shall be as follows:

Water closet type	Maximum flush rate (gpf (Lpf))
Gravity tank-type toilets	[1] 1.6 (6.0)
Flushometer tank toilets	1.6 (6.0)
Electromechanical hydraulic toilets	1.6 (6.0)
Blowout toilets	3.5 (13.2)

[1] The maximum water use allowed for any gravity tank-type white two-piece toilet which bears an adhesive label, conspicuous upon installation, with the words "Commercial Use Only" manufactured after January 1, 1994, and before January 1, 1997, shall be 3.5 gallons per flush (13.2 liters per flush).

(2) The maximum water use allowed for flushometer valve toilets, other than blowout toilets, manufactured after January 1, 1997, shall be 1.6 gallons per flush (6.0 liters per flush).

(r) *Urinals.* The maximum water use allowed for any urinals manufactured after January 1, 1994, shall be 1.0 gallons per flush (3.8 liters per flush).

11. Section 430.33 of subpart C is revised to read as follows:

§ 430.33 Preemption of state regulations.

Any state regulation providing for any energy or water conservation standard, or other requirement with respect to the energy efficiency, energy use, or water use of a covered product that is not identical to a Federal standard in effect under this subpart is preempted by that standard, except as provided for in sections 327 (b) and (c) of the Act.

Subpart D—Petitions To Exempt State Regulation From Preemption; Petitions To Withdraw Exemption of State Regulation

12. Section 430.40 of subpart D is revised to read as follow:

§ 430.40 Purpose and scope.

(a) This subpart prescribes the procedures to be followed in connection with petitions requesting a rule that a State regulation prescribing an energy or water conservation standard or other requirement respecting energy efficiency, energy use, or water use of a type (or class) of covered product not be preempted.

(b) This subpart also prescribes the procedures to be followed in connection with petitions to withdraw a rule exempting a State regulation prescribing an energy or water conservation standard or other requirement respecting energy efficiency, energy use, or water use of a type (or class) of covered product.

13. Section 430.41 of subpart D is revised to read as follows:

§ 430.41 Prescriptions of a rule.

(a) *Criteria for exemption from preemption.* Upon petition by a State which has prescribed an energy or water conservation standard or other requirement for a type or class of covered equipment for which a Federal energy or water conservation standard is applicable, the Secretary shall prescribe a rule that such standard not be preempted if he determines that the State has established by a preponderance of evidence that such requirement is needed to meet unusual and compelling State or local energy or water interests. For the purposes of this section, the term "unusual and compelling State or local energy or water interests" means interests which are substantially different in nature or magnitude than those prevailing in the U.S. generally, and are such that when evaluated within the context of the State's energy or water plan and forecast, the costs, benefits, burdens, and reliability of energy or water savings resulting from the State regulation make such regulation preferable or necessary when measured against the costs, benefits, burdens, and reliability of alternative approaches to energy or water savings or production, including reliance on reasonably predictable market-induced improvements in efficiency of all equipment subject to the State regulation. The Secretary may not prescribe such a rule if he finds that interested persons have established, by a preponderance of the evidence, that the State's regulation will significantly burden manufacturing, marketing, distribution, sale or servicing of the covered equipment on a national basis. In determining whether to make such a finding, the Secretary shall evaluate all relevant factors including: the extent to which the State regulation will increase manufacturing or distribution costs of manufacturers, distributors, and others; the extent to which the State regulation will disadvantage smaller manufacturers, distributors, or dealers or lessen competition in the sale of the covered product in the State; the extent to which the State regulation would cause a burden to manufacturers to redesign and produce the covered product type (or class), taking into consideration the extent to which the regulation would result in a reduction in the current models, or in the projected availability of models, that could be shipped on the effective date of the regulation to the State and within the U.S., or in the current or projected sales volume of the covered product type (or class) in the State and the U.S.; and the extent to which the State regulation is likely to contribute significantly to a proliferation of State appliance efficiency requirements and the cumulative impact such requirements would have. The Secretary may not prescribe such a rule if he finds that such a rule will result in the unavailability in the State of any covered product (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the State at the time of the Secretary's finding. The failure of some classes (or types) to meet this criterion shall not affect the Secretary's determination of whether to prescribe a rule for other classes (or types).

(1) *Requirements of petition for exemption from preemption.* A petition from a State for a rule for exemption from preemption shall include the information listed in paragraphs (a)(1)(i) through (a)(1)(vi) of this section. A petition for a rule and correspondence relating to such petition shall be available for public review except for confidential or proprietary information submitted in accordance with the Department of Energy's Freedom of Information Regulations set forth in 10 CFR Part 1004:

(i) The name, address, and telephone number of the petitioner;

(ii) A copy of the State standard for which a rule exempting such standard is sought;

(iii) A copy of the State's energy or water plan and forecast;

(iv) Specification of each type or class of covered product for which a rule exempting a standard is sought;

(v) Other information, if any, believed to be pertinent by the petitioner; and

(vi) Such other information as the Secretary may require.

(2) [Reserved]

(b) *Criteria for exemption from preemption when energy or water emergency conditions exist within State.* Upon petition by a State which has prescribed an energy or water conservation standard or other requirement for a type or class of covered product for which a Federal energy or water conservation standard is applicable, the Secretary may prescribe a rule, effective upon publication in the **Federal Register**, that such State regulation not be preempted if he determines that in addition to meeting the requirements of paragraph (a) of this section the State has established that: an energy or water emergency condition exists within the State that imperils the health, safety, and welfare of its residents because of the inability of the State or utilities within the State to provide adequate quantities of gas, electric energy, or water to its residents at less than prohibitive costs; and cannot be substantially alleviated by the importation of energy or water or the use of interconnection agreements; and the State regulation is necessary to alleviate substantially such condition.

(1) Requirements of petition for exemption from preemption when energy or water emergency conditions exist within a State. A petition from a State for a rule for exemption from preemption when energy or water emergency conditions exist within a State shall include the information listed in paragraphs (a)(1)(i) through (a)(1)(vi) of this section. A petition shall also include the information prescribed in paragraphs (b)(1)(i) through (b)(1)(iv) of this section, and shall be available for public review except for confidential or proprietary information submitted in accordance with the Department of Energy's Freedom of Information Regulations set forth in 10 CFR Part 1004:

(i) A description of the energy or water emergency condition which exists within the State, including causes and impacts.

(ii) A description of emergency response actions taken by the State and utilities within the State to alleviate the emergency condition;

(iii) An analysis of why the emergency condition cannot be alleviated substantially by importation of energy or water or the use of interconnection agreements; and

(iv) An analysis of how the State standard can alleviate substantially such emergency condition.

(2) [Reserved]

(c) *Criteria for withdrawal of a rule exempting a State standard.* Any person subject to a State standard which, by rule, has been exempted from Federal preemption and which prescribes an energy or water conservation standard or other requirement for a type or class of a covered product, when the Federal energy or water conservation standard for such product subsequently is amended, may petition the Secretary requesting that the exemption rule be withdrawn. The Secretary shall consider such petition in accordance with the requirements of paragraph (a) of this section, except that the burden shall be on the petitioner to demonstrate that the exemption rule received by the State should be withdrawn as a result of the amendment to the Federal standard. The Secretary shall withdraw such rule if he determines that the petitioner has shown the rule should be withdrawn.

(1) Requirements of petition to withdraw a rule exempting a State standard. A petition for a rule to withdraw a rule exempting a State standard shall include the information prescribed in paragraphs (c)(1)(i) through (c)(1)(vii) of this section, and shall be available for public review, except for confidential or proprietary information submitted in accordance with the Department of Energy's Freedom of Information Regulations set forth in 10 CFR Part 1004:

(i) The name, address and telephone number of the petitioner;

(ii) A statement of the interest of the petitioner for which a rule withdrawing an exemption is sought;

(iii) A copy of the State standard for which a rule withdrawing an exemption is sought;

(iv) Specification of each type or class of covered product for which a rule withdrawing an exemption is sought;

(v) A discussion of the factors contained in paragraph (a) of this section;

(vi) Such other information, if any, believed to be pertinent by the petitioner; and

(vii) Such other information as the Secretary may require.

(2) [Reserved]

§ 430.47 [Amended]

14. Section 430.47 of subpart D is amended in paragraph (a)(1), by revising the words "energy emergency condition" to read "energy or water emergency condition".

§ 430.49 [Amended]

15. Section 430.49 of subpart D is amended in paragraph (a), by adding the words "or water" after "energy" in the first sentence.

Subpart E—Small Business Exemptions

§ 430.50 [Amended]

16. Section 430.50 of subpart E is amended by adding the words "and water" after "energy" in paragraphs (a) and (b).

Subpart F—Certification and Enforcement

17. Section 430.60 of subpart F is revised to read as follows:

§ 430.60 Purpose and scope.

This subpart sets forth the procedures to be followed for certification and enforcement testing to determine whether a basic model of a covered product complies with the applicable energy or water conservation standard set forth in Subpart C of this part. Energy and water conservation standards include minimum levels of efficiency and maximum levels of consumption (also referred to as performance standards), and prescriptive energy design requirements (also referred to as design standards).

§ 430.61 [Amended]

18. Section 430.61 of subpart F is amended in paragraph (a)(4), by adding the words "or water conservation" after the words "energy efficiency" in the first sentence.

19. Section 430.62 of subpart F is revised as follows:

§ 430.62 Submission of data.

(a) *Compliance certification.* (1) Each manufacturer before distributing in commerce any basic model of a covered product subject to the applicable energy and water conservation standard set forth in Subpart C of this part shall certify by means of a statement of compliance and certification report that each basic model meets the requirements of that standard. Each manufacturer or his representative shall send a compliance certification statement and report, by certified mail, to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Office of Codes and Standards, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0121.

(2) The compliance certification requirements of paragraph (a)(1) of this section shall apply to manufacturers of faucets, showerheads, water closets, and urinals on [one year after publication of the Final Rule].

(3) The compliance statement, in the format set forth in appendix A of this subpart, shall certify that:

(i) The basic model complies with the applicable energy or water conservation standards;

(ii) All required testing, on which certification reports are based, is conducted in conformance with the applicable test requirements prescribed in subpart B of this part, and all test data are reported in accordance with this subpart;

(iii) All information reported in certification reports is true, accurate, and complete; and

(iv) The manufacturer is aware of the penalties associated with violations of the Act and the regulations thereunder, and 18 U.S.C. 1001 which prohibits knowingly making false statements to the Federal Government.

(4) For each basic model of a covered product, a certification report, the format for which is set forth in appendix A of this subpart, shall be submitted to DOE. The certification report shall include the product type, product class (as denoted in § 430.32), manufacturer's name, private labeler name(s), if applicable, the manufacturer's model number(s), and for:

(i) Central air conditioners, the seasonal energy efficiency ratio.

(ii) Central air conditioning heat pumps, the seasonal energy efficiency ratio and heating seasonal performance factor.

(iii) Clothes washers, the energy factor in ft^3/kWh/cycle and capacity in ft^3.

(iv) Clothes dryers, the energy factor in lbs/kWh, capacity in ft^3, and voltage.

(v) Direct heating equipment, the annual fuel utilization efficiency in percent and capacity in Btu/hour.

(vi) Dishwashers, the energy factor in cycles/kWh and exterior width in inches.

(vii) Faucets, for each faucet, the maximum water use in gpm (L/min) rounded to one decimal place or gal/cycle (L/cycle) rounded to two decimal places, or for each flow control mechanism, the maximum water use in gpm (L/min) rounded to one decimal place or gal/cycle (L/cycle) rounded to two decimal places, with a listing of accompanied faucets by manufacturer's model numbers.

(viii) Furnaces, the annual fuel utilization efficiency in percent.

(ix) General service fluorescent lamps, the laboratory's National Voluntary Laboratory Accreditation Program (NVLAP) identification number or other NVLAP-approved accreditation identification, production date codes (and accompanying decoding scheme), the 12-month average lamp efficacy in lumens per watt, lamp wattage, and the 12-month average Color Rendering Index.

(x) Incandescent reflector lamps, the laboratory's National Voluntary Accreditation Program (NVLAP) identification number or other NVLAP-approved accreditation identification, production date codes (and accompanying decoding scheme), the 12-month average lamp efficacy in lumens per watt, and lamp wattage.

(xi) Kitchen ranges, ovens, and microwave ovens, the annual energy use in Btu/hour.

(xii) Pool heaters, the thermal efficiency in percent.

(xiii) Refrigerators, refrigerator-freezers, and freezers, the annual energy use in kWh/yr and total adjusted volume in ft^3.

(xiv) Room air conditioners, the energy efficiency ratio and capacity in Btu/hour.

(xv) Showerheads, the maximum water use in gpm (L/min) rounded to one decimal place, or for each flow control mechanism, the maximum water use in gpm (L/min) rounded to one decimal place with a listing of accompanied showerheads by manufacturer's model numbers.

(xvi) Urinals, the maximum water use in gpf (Lpf) rounded to one decimal place.

(xvii) Water closets, the maximum water use in gpf (Lpf) rounded to one decimal place.

(xviii) Water heaters, the energy factor and rated storage volume in gallons.

(5) Copies of reports to the Federal Trade Commission which include the information in paragraph (a)(4) of this section meet the requirements of this paragraph (a).

(b) *New models.* All information required by paragraph (a)(4) of this section must be submitted for new models prior to or concurrent with any distribution of such models. Any change to a basic model which affects energy or water consumption may constitute the addition of a new basic model subject to the requirements of § 430.61. If such change does not alter compliance with the applicable energy or water conservation standard for the basic model, the new model shall be considered certified and not warrant additional testing. However, all information required by paragraph (a)(4) of this section for the new model must be submitted, by certified mail, to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Office of Codes and Standards, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0121.

(c) *Discontinued models.* A basic model is considered discontinued when its production has ceased. Such models shall be reported, by certified mail, to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Office of Codes and Standards, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0121 within six months of being discontinued. For each basic model, this report shall include: product type, product class, the manufacturer's name, the private labeler name(s), if applicable, and the manufacturer's model number. If the reporting of discontinued models coincides with the submittal of a certification report, such models can be included in the certification report.

(d) *Maintenance of records.* The manufacturer of any covered product subject to any of the energy and water performance standards or procedures prescribed in this part shall establish, maintain, and retain the records of the underlying test data for all certification testing. Such records shall be organized and indexed in a fashion which makes them readily accessible for review by DOE upon request. The records shall include the supporting test data associated with tests performed on any test units to satisfy the requirements of this subpart. The records shall be retained by the manufacturer for a period of two years from the date that production of the applicable model has ceased.

(e) *Third party representation.* A manufacturer may elect to use a third party to submit the certification report to DOE (for example a trade association or other authorized representative). Such certification reports shall include all the information specified in paragraph (a)(4) of this section. The certification report must be submitted with a compliance statement as specified in paragraph (a)(3) of this section. A third party representative may also submit discontinued model information on behalf of an authorizing manufacturer.

(f) *Amendment of information.* If any compliance certification information on a statement or report previously submitted to DOE has changed, the manufacturer or his representative must submit the revised information, by certified mail, to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Office of Codes and Standards, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0121.

§ 430.63 [Amended]

20. Section 430.63 of subpart F is amended in paragraph (a), by adding the words "or water" after "energy," and revising "§ 430.23" to read "§ 430.24".

21. Section 430.70 of subpart F is amended by revising paragraphs (a)(1) introductory text, (a)(3) and (a)(6)(i), to read as follows:

§ 430.70 Enforcement.

(a) *Performance standard—(1) Test notice.* Upon receiving information in writing concerning the energy or water performance of a particular covered product sold by a particular manufacturer or private labeler which indicates that the covered product may not be in compliance with the applicable energy or water performance standard, the Secretary may conduct testing of that covered product under this subpart by means of a test notice addressed to the manufacturer in accordance with the following requirements:

* * * * *

(3) *Sampling.* The determination that a manufacturer's basic model complies with the applicable energy or water performance standard shall be based on the testing conducted in accordance with the statistical sampling procedures set forth in appendix B of this subpart and the test procedures set forth in Subpart B of this part.

* * * * *

(6) *Testing at manufacturer's option.* (i) If a manufacturer's basic model is determined to be in noncompliance with the applicable energy or water performance standard at the conclusion of DOE testing in accordance with the double sampling plan specified in appendix B of this subpart, the manufacturer may request that DOE conduct additional testing of the model according to procedures set forth in appendix B of this subpart.

* * * * *

§ 430.73 [Amended]

22. Section 430.73 of subpart F is amended by adding the words "or water" after "energy" in the introductory paragraph.

23. Appendix A to subpart F of part 430 is revised to read as follows:

Appendix A to Subpart F of Part 430—Compliance Certification

Statement of Compliance With Energy or Water Conservation Standards for Appliances

Product: _____
Manufacturer's Name and Address

_____

_____

This compliance statement and the attached certification report are submitted pursuant to 10 CFR part 430 (Energy or Water Conservation Program for Consumer Products) and Part C of the Energy Policy and Conservation Act (Pub. L. 94–163), and amendments thereto. It is signed by a responsible official of the above named company. The basic models listed in the attached certification report comply with the applicable energy or water conservation standard. All testing on which the attached certification report is based was conducted in conformance with applicable test requirements prescribed in subpart B of 10 CFR part 430. All information reported in the attached certification report is true, accurate, and complete. The company is aware of the penalties associated with violations of the Act and the regulations thereunder, and is also aware of the provisions contained in 18 U.S.C. 1001, which prohibits knowingly making false statement to the Federal Government.

Signature of Company Official: _____
Name: _____
Title: _____
Firm or Organization: _____
Date: _____

Name of Person to Contact for Further Information:
Name: _____
Address: _____
Telephone Number: _____
Facsimile Number: _____

Third Party Representative:
If any part of this Compliance Certification, including the attached certification report, was prepared by a third party organization under the provisions of § 430.62 of 10 CFR 430, provide the following information for the company official who authorized third party representations:
Name: _____
Title: _____
Address: _____
Telephone Number: _____
Facsimile Number: _____

The third party organization officially acting as representative:
Third Party Organization: _____
Name: _____

Address: _____
Telephone Number: _____
Facsimile Number: _____

The third party organization officially acting as representative:

Third Party Organization: _____
Name: _____
Address: _____
Telephone Number: _____
Facsimile Number: _____

Submit Compliance Certification in writing or on a computer diskette, by Certified Mail to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Office of Codes and Standards, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0121.

Certification Report for Basic Models

(Attachment to Statement of Compliance With Energy or Water Conservation Standards for Appliances)

Date: _____
Signature of Company Official or Third Party Representative: _____
Product Type: _____
Product Class: _____
Manufacturer: _____
Private Labeler (if applicable): _____
For New or Amended Models [1]:
For Discontinued Models [2]:

24. Appendix B to Subpart F of Part 430 is revised to read as follows:

Appendix B to Subpart F of Part 430—Sampling Plan for Enoforcement Testing

I. Double Sampling

Step 1. The first sample size (n_1) must be four or more units.

Step 2. Compute the mean ($\bar{x}_1$) of the measured energy or water performance of the n_1 units in the first sample as follows:

$$\bar{x}_1 = \frac{1}{n_1}\left(\sum_{i=1}^{n_1} x_i\right)$$

Where (x_i) is the measured energy efficiency, energy or water consumption of unit i.

Step 3. Compute the standard deviation (s_1) of the measured energy or water performance of the (n_1) units in the first sample as follows:

$$s_1 = \sqrt{\frac{\sum_{i=1}^{n_1}(x_i - \bar{x}_1)^2}{n_1 - 1}}$$

[1] Provide specific product information including, for each basic model, the manufacturer's model numbers and the information required in § 430.62(a)(4)(i)–§ 430.62(a)(4)(xviii).

[2] Provide manufacturer's model number.

Step 4. Compute the standard error ($s_{\bar{x}_1}$) of the measured energy or water performance of the n_1 units in the first sample as follows:

$$s_{\bar{x}_1} = \frac{s_1}{\sqrt{n_1}}$$

Step 5. Compute the upper control limit (UCL_1) and lower control limit (LCL_1) for the mean of the first sample using the applicable DOE energy or water performance standard (EPS) as the desired mean and a probability level of 95 percent (two-tailed test) as follows:

$$LCL_1 = EPS - ts_{\bar{x}_1}$$
$$UCL_1 = EPS + ts_{\bar{x}_1}$$

Where t is a statistic based on a 95 percent two-tailed probability level and a sample size of n_1.

Step 6a. For an Energy Efficiency Standard, compare the mean of the first sample ($\bar{x}_1$) with the upper and lower control limits (UCL_1 and LCL_1) to determine one of the following:

(1) If the mean of the first sample is below the lower control limit, then the basic model is in noncompliance and testing is at an end. (Do not go on to any of the steps below.)

(2) If the mean of the first sample is equal to or greater than the upper control limit, then the basic model is in compliance and testing is at an end. (Do not go on to any of the steps below.)

(3) If the sample mean is equal to or greater than the lower control limit but less than the upper control limit, then no determination of compliance or noncompliance can be made and a second sample size is determined by Step 7(a).

Step 6b. For an Energy or Water Consumption Standard, compare the mean of the first sample ($\bar{x}_1$) with the upper and lower control limits (UCL_1 and LCL_1) to determine one of the following:

(1) If the mean of the first sample is above the upper control limit, then the basic model is in noncompliance and testing is at an end. (Do not go on to any of the steps below.)

(2) If the mean of the first sample is equal to or less than the lower control limit, then the basic model is in compliance and testing is at an end. (Do not go on to any of the steps below.)

(3) If the sample mean is equal to or less than the upper control limit but greater than the lower control limit, then no determination of compliance or noncompliance can be made and a second sample size is determined by Step 7(b).

Step 7a. For an Energy Efficiency Standard, determine the second sample size (n_2) as follows:

$$n_2 = \left(\frac{ts_1}{0.05\ EPS}\right)^2 - n_1$$

Where s_1 and t have the values used in Steps 4 and 5, respectively. The term "0.05 EPS" is the difference between the applicable energy efficiency standard and 95 percent of the standard, where 95 percent of the standard is taken as the lower control limit. This procedure yields a sufficient combined sample size (n_1+n_2) to give an estimated 97.5 percent probability of obtaining a determination of compliance when the true mean efficiency is equal to the applicable standard. Given the solution value of n_2, determine one of the following:

(1) If the value of n_2 is less than or equal to zero and if the mean energy efficiency of the first sample ($\bar{x}_1$) is either equal to or greater than the lower control limit (LCL_1) or equal to or greater than 95 percent of the applicable energy efficiency standard (EES), whichever is greater, i.e., if $n_2 \leq 0$ and ($\bar{x}_1$)≥ max (LCL_1, 0.95 EES), the basic model is in compliance and testing is at an end.

(2) If the value of n_2 is less than or equal to zero and the mean energy efficiency of the first sample ($\bar{x}_1$) is less than the lower control limit (LCL_1) or less than 95 percent of the applicable energy efficiency standard (EES), whichever is greater, i.e., if $n_2 \leq 0$ and ($\bar{x}_1$) < max (LCL_1, 0.95 EES), the basic model is in noncompliance and testing is at an end.

(3) If the value of n_2 is greater than zero, then value of the second sample size is determined to be the smallest integer equal to or greater than the solution value of n_2 for equation (6a). If the value of n_2 so calculated is greater than 20–n_1, set n_2 equal to 20–n.

Step 7(b). For an Energy or Water Consumption Standard, determine the second sample size (n_2) as follows:

$$n_2 = \left(\frac{ts_1}{0.05\ EPS}\right)^2 - n_1$$

Where s_1 and t have the values used in Steps 4 and 5, respectively. The term "0.05 EPS" is the difference between the applicable energy or water consumption standard and 105 percent of the standard, where 105 percent of the standard is taken as the upper control limit. This procedure yields a sufficient combined sample size ($n_1 + n_2$) to give an estimated 97.5 percent probability of obtaining a determination of compliance when the true mean consumption is equal to the applicable standard.

Given the solution value of n_2, determine one of the following:

(1) If the value of n_2 is less than or equal to zero and if the mean energy or water consumption of the first sample ($\bar{x}_1$) is either equal to or less than the upper control limit (UCL_1) or equal to or less than 105 percent of the applicable energy or water performance standard (EPS), whichever is less, i.e., if $n_2 \leq 0$ and ($\bar{x}_1$)≤ min (UCL_1, 1.05 EPS), the basic model is in compliance and testing is at an end.

(2) If the value of n_2 is less than or equal to zero and the mean energy or water consumption of the first sample ($\bar{x}_1$) is greater than the upper control limit (UCL_1) or more than 105 percent of the applicable energy or water performance standard (EPS),

whichever is less, i.e., if $n_2 \leq 0$ and $\bar{x}_1 >$ min (LCL_1, 1.05 EPS), the basic model is in noncompliance and testing is at an end.

(3) If the value of n_2 is greater than zero, then the value of the second sample size is determined to be the smallest integer equal to or greater than the solution value of n_2 for equation (6b). If the value of n_2 so calculated is greater than 20–n_1, set n_2 equal to 20–n_1.

Step 8. Compute the combined mean ($\bar{x}_2$) of the measured energy or water performance of the n_1 and n_2 units of the combined first and second samples as follows:

$$\bar{x}_2 = \frac{1}{n_1 + n_2}\left(\sum_{i=1}^{n_1+n_2} x_i\right)$$

Step 9. Compute the standard error ($s_{\bar{x}_2}$) of the measured energy or water performance of the n_1 and n_2 units in the combined first and second samples as follows:

$$s_{\bar{x}_2} = \frac{s_1}{\sqrt{n_1 + n_2}}$$

Where s_1 is the value obtained in Step 3.

Step 10(a). For an Energy Efficiency Standard, compute the lower control limit (LCL_2) for the mean of the combined first and second samples using the DOE energy efficiency standard (EES) as the desired mean and a one-tailed probability level of 97.5 percent (equivalent to the two-tailed probability level of 95 percent used in Step 5) as follows:

$$LCL_2 = EES - ts_{\bar{x}_2}$$

Where the t-statistic has the value obtained in step 5.

Step 10(b). For an Energy or Water Consumption Standard, compute the upper control limit (UCL_2) for the mean of the combined first and second samples using the DOE energy or water performance standard (EPS) as the desired mean and a one-tailed probability level of 102.5 percent (equivalent to the two-tailed probability level of 95 percent used in Step 5) as follows:

$$UCL_2 = EPS + ts_{\bar{x}_2}$$

Where the t-statistic has the value obtained in Step 5.

Step 11(a). For an Energy Efficiency Standard, compare the combined sample mean ($\bar{x}_2$) to the lower control limit (LCL_2) to find one of the following:

(1) If the mean of the combined sample ($\bar{x}_2$) is less than the lower control limit (LCL_2) or 95 percent of the applicable energy efficiency standard (EES), whichever is greater, i.e., if ($\bar{x}_2$) < max (LCL_2, 0.95 EES), the basic model is in noncompliance and testing is at an end.

(2) If the mean of the combined sample ($\bar{x}_2$) is equal to or greater than the lower control limit (LCL_2) or 95 percent of the applicable energy efficiency standard (EES), whichever is greater, i.e., if ($\bar{x}_2$) ≥ max (LCL_2, 0.95 EES), the basic model is in compliance and testing is at an end.

Step 11(b). For an Energy or Water Consumption Standard, compare the combined sample mean ($\bar{x}_2$) to the upper control limit (UCL_2) to find one of the following:

(1) If the mean of the combined sample ($\bar{x}_2$) is greater than the upper control limit (UCL_2) or 105 percent of the applicable energy or water performance standard (EPS), whichever is less, i.e., if $\bar{x}_2 >$ min (UCL_2, 1.05 EPS), the basic model is in noncompliance and testing is at an end.

(2) If the mean of the combined sample ($\bar{x}_2$) is equal to or less than the upper control limit (UCL_2) or 105 percent of the applicable energy or water performance standard (EPS), whichever is less, i.e., if ($\bar{x}_2$) ≤ min (UCL_2, 1.05 EPS), the basic model is in compliance and testing is at an end.

II. Manufacturer-Option Testing

If a determination of non-compliance is made in Steps 6, 7 or 11, the manufacturer may request that additional testing be conducted, in accordance with the following procedures.

Step A. The manufacturer requests that an additional number, n_3, of units be tested, with n3 chosen such that $n_1+n_2+n_3$ does not exceed 20.

Step B. Compute the mean energy or water performance, standard error, and lower or upper control limit of the new combined sample in accordance with the procedures prescribed in Steps 8, 9, and 10, above.

Step C. Compare the mean performance of the new combined sample to the revised lower or upper control limit to determine one of the following:

a.1. For an Energy Efficiency Standard, if the new combined sample mean is equal to or greater than the lower control limit or 95 percent of the applicable energy efficiency standard, whichever is greater, the basic model is in compliance and testing is at an end.

a.2. For an Energy or Water Consumption Standard, if the new combined sample mean is equal to or less than the upper control limit or 105 percent of the applicable energy or water consumption standard, whichever is less, the basic model is in compliance and testing is at an end.

b.1. For an Energy Efficiency Standard, if the new combined sample mean is less than the lower control limit or 95 percent of the applicable energy efficiency standard, whichever, is greater, and the value of $n_1+n_2+n_3$ is less than 20, the manufacturer may request that additional units be tested. The total of all units tested may not exceed 20. Steps A, B, and C are then repeated.

b.2. For an Energy or Water Consumption Standard, if the new combined sample mean is greater than the upper control limit or 105 percent of the applicable energy or water consumption standard, whichever is less, and the value of $n_1+n_2+n_3$ is less than 20, the manufacturer may request that additional units be tested. The total of all units tested may not exceed 20. Steps A, B, and C are then repeated.

c. Otherwise, the basic model is determined to be in noncompliance.

[FR Doc. 97–3173 Filed 2–19–97; 8:45 am]
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Thursday
February 20, 1997

Part III

Department of Education

The Native Hawaiian Curriculum Development, Teacher Training and Recruitment Program; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.297A]

The Native Hawaiian Curriculum Development, Teacher Training and Recruitment Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1997

Purpose of Program: To award grants to Native Hawaiian educational organizations or educational entities with experience in developing or operating Native Hawaiian programs or programs of instruction conducted in the Native Hawaiian language for (1) the development of curricula to address the needs of Native Hawaiian elementary and secondary students, which may include programs of instruction conducted in the Native Hawaiian language and mathematics and science curricula incorporating the relevant application of Native Hawaiian culture and traditions; (2) preteacher training to ensure that student teachers within the State, particularly those who are likely to be employed in schools with a high concentration of Native Hawaiian students, are prepared to better address the unique needs of Native Hawaiian students within the context of Native Hawaiian culture, language and traditions; (3) inservice teacher training to ensure that teachers, particularly those who are likely to be employed in schools with a high concentration of Native Hawaiian students, are prepared to better address the unique needs of Native Hawaiian students within the context of Native Hawaiian culture, language and traditions; and (4) the development and implementation of teacher recruitment programs.

Eligible Applicants: Native Hawaiian educational organizations or educational entities with experience in developing or operating Native Hawaiian programs or programs of instruction conducted in the Native Hawaiian language.

Deadline for Transmittal of Applications: April 7, 1997.

Deadline for Intergovernmental Review: June 7, 1997.

Available Funds: $500,000.

Estimated Number of Awards: 1.

Estimated Size of Awards: $500,000.

Note: These estimates are projections for the guidance of potential applicants. The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 81, 82, and 85.

Supplementary Information: The Native Hawaiian Curriculum Development, Teacher Training and Recruitment Program supports, among other things, the development of mathematics and science curricula incorporating the relevant application of Native Hawaiian culture and traditions. One field of study that is particularly suited to this program is aquaculture. Aquaculture, the science of the cultivation of marine life, is rooted in Hawaiian culture. A comprehensive aquaculture program would assist Native Hawaiian students in reaching challenging standards in science and mathematics in an intellectually stimulating environment and give them a greater understanding and appreciation of their Native Hawaiian culture.

Invitational Priority: Under 34 CFR 75.105(c)(1), the Secretary invites applications from eligible organizations or entities that would develop and implement a comprehensive aquaculture program that would be conducted in remote or rural areas of the Hawaiian Islands. While the Secretary is particularly interested in applications that meet this priority, these applications will not receive preference over applications that fail to meet the priority.

Selection Criteria: The Secretary will use the following selection criteria in 34 CFR 75.210 to evaluate applications under this competition. The maximum score for all of the selection criteria is 100 points. The maximum score for each criterion is as follows:

(a) *Meeting the purposes of the authorizing statute*—20 points.

(b) *Extent of need for the project*—20 points.

(c) *Plan of operation*—20 points.

(d) *Quality of key personnel*—10 points.

(e) *Budget and cost effectiveness*—10 points.

(f) *Evaluation plan*—15 points.

(g) *Adequacy of resources*—5 points.

For Applications or Information Contact: Beth Baggett, U.S. Department of Education, 600 Independence Avenue, S.W., Portals 4500, Washington, D.C. 20202–6140. Telephone (202) 260–2502. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases); or on the World Wide Web (at http://www.ed.gov/money.html). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 7909.

Dated: February 13, 1997.

Gerald N. Tirozzi,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 97–4184 Filed 2–19–97; 8:45 am]

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federal register

Thursday
February 20, 1997

Part IV

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Child Restraint Systems; Tether Anchorages and Anchorage Systems; Proposed Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 96–095; Notice 3]

RIN 2127–AG50

Federal Motor Vehicle Safety Standards; Child Restraint Systems; Tether Anchorages for Child Restraint Systems; Child Restraint Anchorage System

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking (NPRM); request for comment.

SUMMARY: This document proposes to require that motor vehicles and add-on child restraints be equipped with a means independent of vehicle safety belts for securing the child restraints to vehicle seats. The adoption of the proposal would avoid problems of incompatibility between child restraints and vehicle safety belts and increase the correct installation of child restraints. This proposal would reduce allowable head excursion, which would have the effect of requiring child restraints to be equipped with an upper tether strap, and would require vehicles to have two factory-installed, user-ready anchor points for attaching the tether. It would also require vehicles to have two rear vehicle seating positions equipped with a specialized lower anchorage system, and require child restraints to be equipped with means of attaching to that system.

The proposal for the lower anchorages is based on two of the systems discussed at an October 1996 NHTSA public workshop concerning alternative systems for providing dedicated means for attaching child restraints to vehicle seats. Almost all of the different systems evaluated and discussed at the workshop appeared comparable in terms of demonstrated safety and public acceptance. However, one system appeared to be less expensive and have the advantage of using hardware familiar to consumers. This system is the "uniform child restraint anchorages (UCRA) system," referred to as such by a consortium of manufacturing groups in a June 28, 1996 petition for rulemaking to the agency. The International Standards Organization (ISO) Working Group on child restraint systems recognized in a November 1996 meeting the need for this system to permit improvements in the short term.

The other notable dedicated system is one supported by European members of the ISO Working Group. This alternative, which is completing development, uses a two-prong nonflexible item of hardware on the child restraint to mate with two fixed anchorages at the bottom of the back of the vehicle seat without the use of any belt webbing. Under today's proposal, either of these systems could meet the proposed requirement for a dedicated lower anchorage system, but manufacturers installing the fixed anchorage system would also have to ensure that the system is compatible with the UCRA system, so that UCRA-type child restraints can be used in all vehicles equipped with either anchorage system.

To the extent possible, this proposal also harmonizes with the actions of other regulatory agencies around the world. This proposal seeks to harmonize with Canadian and Australian regulations by requiring an upper tether anchorage and with prospective European regulations by allowing a non-UCRA anchorage system.

This proposal pertains to the compatibility of child restraints with motor vehicle seats, and not that of child restraints with aircraft seats. The Federal Aviation Administration and NHTSA are developing possible requirements and procedures for improving the compatibility of child restraints in aircraft. If the agencies decide that rulemaking is warranted on that issue, such rulemaking will be commenced as a separate action.

DATES: Comments on this notice must be received by the agency no later than May 21, 1997.

ADDRESSES: Comments should refer to the docket number and notice number and be submitted in writing to NHTSA's Docket Section at the following address: Until March 10, 1997: Room 6130, After March 10, 1997: Room 5109, 400 Seventh Street, S.W., Washington, D.C., 20590. Telephone: (202) 366–5267. Docket hours are 9:30 a.m. to 4:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: At NHTSA, for nonlegal issues: Dr. George Mouchahoir, Office of Vehicle Safety Standards (telephone 202–366–4919). For legal issues: Deirdre Fujita, Office of the Chief Counsel (202–366–2992). Both can be reached at the National Highway Traffic Safety Administration, 400 Seventh St., S.W., Washington, D.C., 20590.

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X. Comments

I. Statement of the Problem

The effective use of child restraints is important because of the number of children killed and injured in vehicle accidents. Annually, about 600 children less than five years of age are killed and over 70,000 are injured as occupants in motor vehicle crashes. Data from the National Center for Health Statistics (for 1991) indicates that motor vehicle occupant fatalities were the third leading cause of death for this age group (NCHS, 1993).

While child seats are highly effective in reducing the likelihood of death or serious injury in motor vehicle crashes, the degree of their effectiveness depends on how they are installed. NHTSA estimates that the potential effectiveness of child seats, when correctly used, is 71 percent. However, it is estimated that imperfect securing of children in the child seats and/or of the child seats in vehicles reduce that effectiveness from the potential 71 percent to an actual 59 percent. That is, as a group, child seats (those that were used correctly together with those that were misused) have an actual effectiveness of 59 percent.

Child restraint effectiveness is reduced by limitations imposed by vehicle belt design, and by belt anchorage locations. Child seats are generally designed to attach to a vehicle by means of the vehicle's lap belt system. While child seats provide high levels of safety when correctly attached to a standard vehicle seat assembly with only a lap belt, in most vehicles different types of seat belt systems exist in addition to or in lieu of a lap belt. Among the different types are belt systems with a locking latchplate, a non-locking (sliding) latchplate, a reversible lockable retractor, an emergency-locking retractor, or an automatic seat belt. Some of these belt systems, such as those equipped with a locking retractor, are able to hold a child seat without use of attachment accessories, but a parent must correctly manipulate the system, such as by pulling the belt completely out of the retractor and then feeding excess slack back into it after buckling in the child seat. Some belt systems can be used to secure a child seat only when used with an accessory item that impedes movement of the belt or child seat in a crash, such as a locking clip or supplemental strap. Some belt systems, such as an automatic seat belt, may not be compatible with a child seat at all.

The agency recognizes the difficulty of designing vehicle seat belts to restrain both child restraint systems and a wide range of weights and sizes of individuals. Some vehicle seats have the seat belt anchorage positioned far forward of the vehicle "seat bight" (the intersection of the seat cushion and the seat back). Forward-mounted anchor points may better protect an adult using the vehicle seat belt system by drawing the vehicle belt low across the pelvis where the body can best tolerate the forces in a crash. However, when used with a child seat, the belt anchor is so far forward of the seat bight that the vehicle belts cannot initially provide any resistance to the forward, longitudinal motion of a child seat reacting to a decelerating crash pulse. The child restraint moves forward until it is sufficiently far forward of the belt anchorages that the belt finally can resist the forward, longitudinal motion of the child seat. This forward movement of the child restraint can result in excessive forward movement of the child's head, and a greater likelihood of head impact.

Child restraint effectiveness is also reduced by incorrect securing of children and child restraints due to the complexities of adapting vehicle belts to those purposes and due to failure to follow instructions. To properly install child restraints, devices such as lockable retractors, locking clips, and supplemental belts must be used in many cases. Unfortunately, it appears that many people installing a child seat are either unfamiliar with the use of these devices (which generally are not used or needed except in conjunction with a child restraint), not able to understand or unwilling to read instructions concerning their proper use, or unable to surmise from their design how to use them correctly. People generally are frustrated about the difficulty in installing child seats correctly in vehicle seats. Recent user trials conducted in the U.S.[1] and Canada[2] found that virtually all the people surveyed in the studies expressed high levels of dissatisfaction with conventional means of attaching child restraints in vehicles. NHTSA receives an average of about 50 calls a day to its Consumer Complaint Hotline from people asking for step-by-step guidance in installing their child seats. When an article appears in the media about incompatibility problems between child restraints and vehicle seats, those calls typically increase to over 500 a day. All of these callers express frustration at the difficulty of installing a child seat securely, and all urge NHTSA to make the installation easier. NHTSA understands that child restraint manufacturers also receive a large number of similar calls and asks that commenters verify this.

A four-state study done for NHTSA in 1996 examined people who use child restraint systems and found that approximately 80 percent of the persons made at least one significant error in using the systems. ("Patterns of Misuse of Child Safety Seats," DOT HS 808 440, January 1996.) Observed misuse due to a locking clip being incorrectly used or not used when necessary was 72 percent, and misuse due to the vehicle safety belt incorrectly used with a child seat (unbuckled, disconnected, misrouted, or untightened) or used with a child too small to fit the belts was 17 percent.

[1] "An Evaluation of the Usability of Two Types of Universal Child Restraint Seat Attachment Systems," General Motors Corporation, 1996.

[2] "The ICBC Child Restraint User Trials," Rona Kinetics and Associates Ltd. Report R96–04, prepared for the Insurance Corporation of British Columbia, December 1996.

II. Improved Anchorage System

a. Standardized System

The difficulty with using vehicle safety belts to attach child restraints arises from the fact that those belts are primarily designed to restrain and protect larger and older vehicle occupants. Given the inability to change vehicle belt design and anchorage location because of this purpose, the agency is seeking a means of securing a child restraint that is independent of the safety belt. For a number of years, industry groups and governmental bodies have explored improving the securement of a child seat on a vehicle seat. The child seat and motor vehicle industry is unanimous that the means of attaching child restraints to the vehicle interior should be easier, more efficient and without incompatibility problems. Further, all agree that there should be a universal and independent means of attaching child restraints. That is, there should be means that are either identical or at least compatible, regardless of vehicle make or model, and that are dedicated solely for use in securing child restraints. The importance of universality across vehicle make or model also compels a universal requirement for the anchorage system, and would mitigate against having the system be available on an optional basis.

The concept of a universal and independent anchorage system was embraced by the "Blue Ribbon Panel on Child Restraint and Vehicle Compatibility," which NHTSA Administrator Ricardo Martinez, M.D., formed in February 1995 to improve the use and attachment of child safety seats.[3] In its May 30, 1995 report recommending ways to improve the compatibility between child restraints

[3] The Blue Ribbon Panel included child safety advocates and representatives of the motor vehicle, child safety seat and seat belt industries, including representatives from Ford, Chrysler, General Motors, Mercedes Benz, Volkswagen, BMW, Volvo, Nissan, Toyota, Honda, Century, Gerry, Fisher-Price, Cosco, Evenflo, Kolcraft, Riley Hospital, DANA Foundation, American Academy of Pediatrics, University of Michigan, TRW, and Takata, and advocates Stephanie Tombrello and Annemarie Sheiness.

and vehicle seating positions, the panel recommended that there be an entirely separate anchorage system for child restraint installation, given the complex variables affecting the proper installation of child restraints using existing vehicle safety belts.

While there is universal agreement on the need to improve the ease with which child seats can be properly secured to vehicle seats and concurrence with the merits of a separate anchorage system, there is disagreement on which system is best. It is assumed that a "universal" anchorage system must standardize the means of attachment, so that it and it alone would be required for all affected vehicles, and it alone would be the system with which child seats would be required to be compatible. This is needed to ensure universal compatibility between child seats and vehicles.

b. Competing Concepts

In 1990, the ISO began work on a universal child seat anchorage system ("ISOFIX"). The ISOFIX concept originated as a 4-point rigid system, where four sturdy braces are mounted on the bottom of a child restraint. Each brace has a latch at its end. Two of the latches connect, through holes at the vehicle seat bight, to a metal bar in the seat frame. The other two latches, at the bottom braces, connect to a bar below the vehicle seat cushion. The ISOFIX system is supported by Volvo, as well as others.

Other concepts for universal anchorage systems have developed as alternatives to the 4-point ISO system, many in response to perceived problems with the ISOFIX system, such as ISOFIX being too rigid, too susceptible to false latching, too bulky, unreasonably expensive, and too heavy.

Transport Canada developed the CANFIX system, which consists of two rigid rear anchorages at the seat bight (rather than the four points of ISOFIX), plus an upper tether. This system envisions all vehicles to be equipped with upper tether anchorage locations. CANFIX is supported by Australia, which refers to the system as CAUSFIX. At this time, neither Canada nor Australia requires the CANFIX or CAUSFIX but both are interested in pursuing such a requirement in the near-term. It is noted, however, that Transport Canada has stated that in lieu of rigid lower anchorage points, it could support soft anchorages such as those of the "UCRA" system described below, in addition to an upper tether.

General Motors (GM) helped develop a "uniform child restraint anchorage (UCRA)" system consisting of two lower anchorages near the bight line and an upper tether anchorage. The lower anchorages have small latches that are compatible with easy-to-use buckles (as well as tether hooks) that would be installed on the child seat. The top tether anchorage would have a buckle or tether hook that is compatible with a tether and latch or hook on the child seat.

GM joined with thirteen other vehicle and child restraint manufacturers in petitioning NHTSA to require the UCRA system on vehicles and componentry compatible with the anchor system on child seats. The joint petitioners are: the American Automobile Manufacturers Association (AAMA), which includes General Motors, Chrysler, and Ford; five companies of the Association of International Automobile Manufacturers (AIAM) (Honda, Isuzu, Nissan, Subaru, and Toyota); the Juvenile Products Manufacturer's Association (JPMA), which includes child restraint manufacturers Century, Evenflo, Fisher-Price, Gerry and Kolcraft; and Indiana Mills and Manufacturing, a supplier of belt systems and hardware.

As another alternative to the ISOFIX 4-point rigid system, several European ISO manufacturer members are currently developing a hybrid system. The system consists of two lower anchorage points located in the seat bight and an upper tether anchorage point located behind the vehicle seat back. A child restraint system could be attached to the two lower anchorage points by means of either a buckle (such as the UCRA buckle) or the ISOFIX connector. The object of this option is to achieve worldwide compatibility between the UCRA and ISOFIX types of connectors.

The four systems described above are the four options, known as "Schemes" A through D, that the ISO has been considering for the past year. The four-point rigid anchor system (ISOFIX) is known as Scheme A; the two-point rigid anchor and rigid attachment, plus tether, is Scheme B; the two-point flexible anchor and flexible attachment, plus tether, is Scheme C; and the two-point rigid or semi-rigid anchor and flexible attachment is Scheme D.

Another approach for a universal anchorage system was advanced by Cosco, a child restraint manufacturer. Cosco suggested in a July 1, 1996 petition for rulemaking to NHTSA that vehicle manufacturers alone should be responsible for improving compatibility between child seats and vehicle seats and the ease of installation of child seats. Cosco believed that vehicles should provide a dedicated Type I lap belt for child seats, at or rear of the vehicle seat bight. Cosco calls its system the "Car Seat Only (CSO)" system. Cosco envisions that the CSO system would require no changes in the design and manufacture of child restraints.

III. Public Workshop

The relative merit of each of the systems was discussed at a public workshop NHTSA held on October 16 and 17, 1996 in Washington, D.C. Attending were about 100 persons from the U.S., Canada, Europe, Japan and Australia, representing governments and manufacturers of motor vehicles and child restraints, as well child safety advocates.[4]

NHTSA held this two-day meeting to discuss the various alternatives of universal child restraint anchorage systems that are being considered by the agency, safety advocates, and automotive and child safety organizations, such as the Society of Automotive Engineers (SAE) and the ISO. The five options described above were presented and discussed as to design characteristics, safety performance, public acceptance and economic considerations. The meeting focused on bringing to discussion the characteristics of the various alternatives and not necessarily on reaching a consensus on a system. Participants had the opportunity to experiment with the UCRA and hybrid systems in actual vehicles that were provided by their respective manufacturers.

a. Summary of Presentations

The following discussion summarizes the remarks of each presenter.

1. ISOFIX 4-point Rigid Systems

Thomas Turbell (Sweden), presenting on Scheme A (ISOFIX), reviewed the ISO work of the last six years on the 4-point system. He said that the first ideas on an anchorage system envisioned a fixation point in the vehicle where forward-facing child seats and rear-facing seats could be installed. The ISOFIX type 1 system (two rigid points), the ISOFIX Type 2 system ("DELTAFIX," two rigid points and one point in the front) were compared in an early user trial with the conventional Swedish child restraint system (installation by the seatbelt and by two lower tethers attached to the seat frame). Eighty percent of the users installed the

[4] A transcript of the meeting has been placed in NHTSA Docket No. 96–095, Notice 01, and is available from Neal R. Gross, Court Reporters and Transcribers, 1323 Rhode Island Avenue, N.W., Washington, D.C., 20005 (telephone 202–234–4433).

ISOFIX type 1 system correctly the first time, 60 percent the DELTAFIX, and only 30 percent the conventional system. Eighty-nine percent of the subjects indicated that they wanted the new ISOFIX type 1 system. Ninety percent were willing to pay a 50 percent increase over a normal price of a child seat at that time.

Work on the system continued in subsequent meetings of the ISO group in Stockholm in 1993, and Munich, where a list of features considered essential for the system was developed. For example, "misuse should be almost impossible, the cushion of the car seat should have no influence on the system, and * * * the performance should be better than the present systems." A "UNIFIX" proposed by the UK was later changed to the UNIFIX–2 four-point, and in 1993 in San Antonio, the ISO group decided that this was the system to develop. In 1993, the group had its first draft ISO standard on the system, and in 1994 it had a sixth draft completed.

In London in 1995, the ISO group split the draft standard into three parts because there were problems with certain aspects of it. The Blue Ribbon Panel indicated a positive regard for the ISOFIX system, and the group received a resolution from the European Parliament pushing them to introduce the ISOFIX as soon as possible.

In San Diego in 1995, General Motors presented its ideas on the UCRA and the Blue Ribbon Panel modified its earlier support for ISOFIX. In subsequent meetings in Cologne and London in 1996, GM presented its findings on its user clinic, and the Hybrid system was presented. Since then, a consumer clinic has been conducted on the different ISO schemes and a working group meeting has been held in Albuquerque.

After reviewing the history of the development of the ISOFIX, Mr. Turbell noted concerns to consider. He believed that the anchorage system should be unrestricted by design patents. "[Patents] will probably stop [an internationally] standardized system." He noted a concern about small cars being able to fit anchorage systems in a small rear seat, stating "[W]e can't let the available space in the smallest rear seat decide the size of the child restraints." He also stated his belief that rigid systems might have an advantage over other systems with regard to the ease with which an air bag switch-off device can be incorporated.

2. CANFIX 2-Point Rigid System

France Legault (Transport Canada), presenting Scheme B (CANFIX) (the system is also known as CAUSFIX in Australia), explained that Canada varied from the four-point ISOFIX system because of Canada's high regard for tethers on child seats and tether anchorages in vehicles. Canada requires anchorages in passenger cars, and will soon introduce a regulation extending the requirement to trucks, multipurpose passenger vehicles, and sport utility vehicles.

Ms. Legault stated that CANFIX has one flexible top tether anchored to the body of the vehicle, and two lower rigid points based on the ISOFIX system. CANFIX has the possibility to include improved tether installation with better adjustability, e.g., in a reel or ratchet mechanism. It also has the possibility of a tether interlock, which would prevent the entire system from being installed if one of the points is not attached, and the possibility of an air bag switch-off. She said that before CANFIX was presented to the ISO group in 1995, Canada conducted sled testing and found that performance of the system was slightly improved over a conventional type of child restraint system. In that work, Canada also was able to design and build a device to test anchorages in a vehicle by pulling on them.

Canada's position on a universal child restraint anchorage system is that while it has sponsored the two-point rigid system, Canada is also open to the idea of soft anchors at the bottom "depending on usability and cost. * * *" However, Canada definitely supports a tether. Ms. Legault indicated that Canada will retain its head excursion and chest acceleration criteria, which have the effect of requiring a tether, because of the perceived safety benefits of a tether. Canada will be improving its tether regulation to require factory installation of the actual hardware for the anchorage. Currently, Canada requires only a hole or a threaded hole, and the consumer has to obtain and install the bolt and latchplate.

Canada believes harmonization is an important consideration in developing a universal child restraint anchorage system. Cost is important, and well as useability. Ms. Legault said that a positive engagement feature (e.g., a click or other indication on an engaged attachment) would be important for usability. She is concerned about a "transition period," where new and old vehicles and child seats could be intermixed. New child restraints equipped with components for an anchorage system must be capable of use with older vehicles lacking a system. Ms. Legault said that testing with a CANFIX prototype showed that, in about 85 percent of its vehicles (lacking receptors for the rigid points), the prongs would go in between the seat cushion and seat back, so that the seat belt could still be used to attach the child seat.

Canada is in the process of testing the CANFIX and several conventional restraints to make sure that the tether will provide additional protection, not just when it is properly used but also when it is used with varying amounts of slack. Canada will be testing high-mounted tethers and low-mounted tethers. Early test results show that a tether improves performance in head and chest acceleration and head excursion, even if the tether is loose. A tether also reduces neck forces and moments.

Canada conducted surveys to determine the use rate of tethers. In a 1992 survey of owners of vehicles that provided no tether anchorage, about 25 percent installed the anchorage and used it. Of vehicles that had standard anchorages, tether use doubled. In addition, new data from the Province of Quebec show that its tether use increased from 47 percent to 65 percent after vehicles became equipped with a tether anchor, even when motorists had to take the extra step of installing the tether anchorage hardware.

3. UCRA Soft Anchor System

David Campbell (Century Products), Kazuhiko Miyadara (Toyota), and Jack Havelin (GM), presented Scheme C (UCRA) and the petition for rulemaking on the UCRA. Mr. Campbell stated that the key objectives of its work on a uniform child restraint anchorage system are "to find a single world-wide system, to address the issue of compatibility and misuse, while improving dynamic performance of current restraints." He stated that the system should be independent of the adult seat belt system so that manufacturers can have the flexibility to optimize the performance of the anchorage system for child restraints and allow the adult seat belt system to be optimized for the other occupants in the vehicle. Mr. Campbell stated that child restraint manufacturers believe that the UCRA system is the best system because the buckle and latch plate system is intuitive:

> They are the type of systems that are currently available in vehicles * * *. Secondly, it will minimize misuse. You won't have the routing issues that we have through current child restraints today with the vehicle lap belts because they are attached and you know how to use it.

The UCRA also is designed so that current child restraints can be easily adapted to use it. This could be done by

means of a special belt provided by restraint manufacturers. The belt would have buckles on both ends to use with the UCRA latchplates, and would route through the current belt path used today.

Mr. Campbell said that the manufacturing costs of the UCRA are lower than those for some of the other systems. There also is less added weight. He agreed with most of NHTSA's estimates about the weight increases of the various systems, but believed the UCRA would add only about 1 to 1.6 pounds (lb), rather than NHTSA's estimate of 4.5 lb. He stated that it would take less leadtime to begin implementing a UCRA requirement as opposed to the alternative systems, because the UCRA uses "existing technology—known systems, known belts, known buckles, known latch plates." Expanding on the cost issue, the presenter stated that current child restraints cost and sell at retail between $35.00 and $90.00 in the U.S.:

> Our market price is very sensitive, and one of the objectives we have is to increase the usage rate and not have a negative effect on the current usage rate. Soft anchors are predicted to add something in the order of magnitude of $20.00 to the cost of a child restraint. The Canadian CANFIX, the estimates were about $55.00 at retail, and for the ISOFIX it was $95.00. * * * Car seat loaner programs could be affected by this.

Mr. Campbell also stated that the UCRA systems meets Standard 213's performance criteria without attaching the tether. Tethered, it meets Canada's requirements. He stated that use of the tether does significantly reduce head and knee excursions, but there is some trade off in chest accelerations and HIC values, and the use of the tether in a higher position can help reduce that HIC.

Mr. Miyadara discussed past and current work evaluating usability, safety and cost issues for a two-point rigid system, a two-point soft system and current child restraint systems.

A past study evaluated usability in a customer preference clinic of current, past and future users. No significant difference was found between the two-point hard and the two-point soft system. Safety was assessed in dynamic testing. Some differences in HIC and chest G values were found, but the actual effect that those differences could have on a child occupant were unknown. The presenter expected, though, that safety could be somewhat improved with regard to chest Gs. The presenter said that one of Toyota's biggest concerns with both a two-point rigid and a two-point soft system is with potential "loose fit" of a child restraint on a vehicle anchorage system.

A study of vehicle and child seat cost impacts indicated that a two-point soft system should be much more acceptable to the customer.

Mr. Miyadara discussed current work on addressing the "loose fit" issue. Toyota has been jointly developing a device that could be used with a soft system to avoid the problem of consumers installing a child seat so that its fit is too loose. Toyota is evaluating a strap type device with belt adjuster, strap type with A-lock, lever-type and ratchet type. Toyota believes that it can work out the loose fit issue for a soft system in the near future.

Toyota's future work includes a customer preference clinic on the Schemes A through C systems, and dynamic testing.

Mr. Miyadara concluded by stating that Toyota's goals in joining in the AAMA et al. petition is to achieve international harmonization and provide increased safety to children by eliminating or decreasing misuse and improving crash performance, at a cost acceptable to the consumer. Further, to address the problems of incompatibility as soon as possible, the system should be implemented quickly. Mr. Miyadara said Toyota does not believe there is any reason to select the two-point rigid system over the two-point soft system. He also suggested that NHTSA consider conducting a customer preference clinic of its own.

Mr. Havelin addressed what he believed to be confusion about GM's position on a universal anchorage system. He said that GM supports an internationally harmonized requirement. Mr. Havelin stated that GM believes that an anchorage system should, foremost, increase child restraint use rates (citing the statistic that three out of four of the fatally injured children in the U.S. under the age of five are not using a child restraint), and secondly, reduce the potential for misuse and improve crash protection. GM suggested that NHTSA "establish the template" for international harmonization by issuing an NPRM based on three principles. "First, what does our common customer want, that is, the child seat manufacturer's customer as well as the vehicle manufacturer's customer. We think the results of customer clinics need to be tempered to some degree by sound benefit/cost analysis * * * And finally, that template should be based on valid science. * * * [S]ome [consumer clinics and cost analyses] are better than others and we need to be focused on which ones are valid and which ones are not."

Mr. Havelin said that GM believes consumers prefer the UCRA system because the dual straps on the child seats use familiar anchorage hardware, and provide an intuitive, secure installation. Also, the tether is obvious and provides a secure anchorage. All three of the strap anchors give a positive indication when correctly attached. He said that other reasons the UCRA is preferred is that the child seat would be light and compact, and without any threatening surfaces (e.g., rigid prongs) associated with it. GM believes that the UCRA is within the acceptable cost range for consumers.

The presenter also highlighted other perceived benefits of the UCRA, such as that it need not be tethered to meet Standard 213's performance requirements, can be retrofitted into existing vehicles, incorporates what GM considers to be "fully developed and field-proven hardware, and can be implemented faster than the other attachment systems."

4. European Industry Hybrid System

Klaus Werkmeister (Germany), presenting Scheme D, provided some historical background on the development of a universal child restraint anchorage system. He believed that interest in a worldwide universal system started in the late 1980's to address a high rate of severe accidents where children were killed or injured. Experts determined that the real problem with those accidents was not the severity of the crash, but the considerable misuse rate of child seats due to the wrong adaptation of seat belts.

In preparing for an April 1996 meeting in Cologne of the ISO Working Group of Child Restraint Systems, German vehicle manufacturers met to identify criteria they believed were important for an anchorage system. They developed a list of 12 properties. First, there should be no top tether, due to concerns about its non-use. Second, the system must have two lower symmetrical anchorage points, because unacceptable performance may result from an unsymmetrical configuration. Third, due to the configuration and dimensions of interior vehicle compartments, especially of smaller cars, there must be a 250 mm to 280 mm lateral spacing between the latch points. Fourth, the latch points must have a degree of stability to ensure that excursion limits are not exceeded. Fifth, the child restraint must be able to attach through a one-hand operation, to ensure that the restraint can be easily installed.

Sixth, there must be a means to prevent attaching the child restraint on one side only. Seventh, the user must be able to tension the child restraint with one hand. Eighth, there must be no reduction of seat comfort for adult passengers. Ninth, the locking device that attaches the child seat to the vehicle system must be attached to the child restraint, not the vehicle, to limit overall cost impacts. Tenth, to avoid design restrictions, the locking device need not be required to be a pushpad buckle. Eleventh, to ensure that a child restraint does not have excessive webbing or ratcheting devices, the length of the adjustment system used to tension the system should not exceed 200 mm. Lastly, the dimensions of the latch points on the vehicle should be as specified in Scheme A.

The presenter said that dynamic testing of the four-point rigid and the soft anchor system showed a reduction in safety performance when the systems are not properly tightened. Also, a non-symmetrical configuration resulted in very high head acceleration.

Mr. Werkmeister said that the Scheme D system incorporates ideas from both rigid and soft anchor systems. The system calls for defining a field around the ISOFIX fixture, which might include an area behind the seat bight (where hard anchors could be located), or an area in front of the seat bight (where semi-rigid anchors could be). A connector would be used to attach the child seat to the anchorage on the vehicle. At the option of the child restraint manufacturer, the connector could be attached to a piece of webbing (such as in the UCRA system), or could be built into the child seat (as in the ISOFIX rigid systems). The presenter estimates that the cost of the connector system would be about $12 for the vehicle and $9 to $15 for the child seat.

The presenter expressed concerns about use rates for a top tether, believing that use rates will be far less than Canada's 65 percent. He also discussed concerns about the width between anchorage points and a symmetrical configuration of the child restraint. He emphasized the need for design flexibility in an anchorage system. He believed manufacturers should be provided maximum design flexibility to meet performance requirements and market demands, and believed that Scheme D best provides this.

5. Car Seat Only System

John Reynolds and Carol Dingledy (Cosco), presented the "Car Seat Only (CSO)" system. Mr. Reynolds stated that Cosco looked at three critical issues when evaluating universal anchorage systems. First, Cosco looked at performance and determined that a system must not reduce the safety performance of existing child restraints. Second, Cosco looked at "implementation," or the transition phase between the existing and new systems, the primary problem being the mix of new car seats with old cars, and old car seats with new cars. Third, Cosco looked at how the systems could affect the cost of child restraints, and in turn, overall use rates. Mr. Reynolds stated that after evaluating the systems under these criteria, Cosco decided to develop its CSO system. Cosco believed that because the system is a simple lap belt, it would have the least negative impact in terms of implementation and transition. Further, the CSO system would have the lowest cost to the car seat user, since the cost to the restraint manufacturer is virtually none.

Ms. Dingledy elaborated on Cosco's concerns with implementation time and cost. She said that adopting a system other than the CSO will require considerable research on the part of child seat manufacturers to determine if seats comply. She said that, given the variety of car seats that must be tested (e.g., infant-only, convertible, forward- and rear-facing) and the different types of vehicle seats, just researching a new system prior to rulemaking will take at least many months, if not a year or so. She also indicated that research is needed to determine whether a rigid system might place excessive forces on a child's neck, particularly a young child who has less developed neck muscles. She was also concerned that the actual implementation of competing systems would require long leadtimes to implement (possibly two to five years development time, plus 10 years production time), as well as a great deal of public education. The presenter stated that this is in contrast to the CSO, which can be implemented much more quickly and which requires little education. Ms. Dingledy said that international harmonization of an anchorage system does not appear to be realistic in the near term.

The presenter discussed cost concerns at length. She said that a system that significantly increases the price of car seats will decrease the number of new seats purchased at retail, possibly resulting in (1) more used child seats being purchased or (2) more children being incorrectly restrained in seats they have outgrown or by adult belts when they are too small for the belts. She believes consumers in the U.S. will resist purchasing car seats that retail between $100 and $200, and that even a $20 increase would slash sales dramatically. She indicated that the average price of a convertible restraint is $63, but about one quarter of the car seats purchased cost $50 or less; less than 5 percent cost $100 or more. She believes that perhaps 10 percent of persons purchasing car seats would be unable to purchase a seat if prices increase dramatically. She emphasized a concern about the impacts of cost increases on loaner programs.

Ms. Dingledy estimated that a 10 percent decrease in child seat use rates would result in approximately 40 additional child fatalities annually. She also said that about three million car seats are sold each year to retail stores and loan programs. The presenter cautioned that a 10 percent reduction in the number of seats sold means 300,000 children per year riding without a new car seat, which translates into 1.2 million additional children riding unrestrained.

Ms. Dingledy stated that questions arising about the CSO system concerning the possibility that adults may mistakenly use the CSO belts are unwarranted. She said that an adult would prefer a lap/shoulder belt to a lap only belt due to the superior performance and comfort of a Type II belt. She also said that the CSO belt could be installed at a location that makes it inaccessible for use with an adult, and could be prominently labeled or color contrasted to distinguish it from an adult belt system.

At the conclusion of her remarks, Ms. Dingledy introduced Frank Rumpleton (appearing on behalf of the Juvenile Products Manufacturers Association) ("JPMA"), who presented the views of the North American car seat manufacturers. He said that the number one priority of these manufacturers is to increase the usage and more importantly the proper use of child restraint systems. In addition, they wish to ensure that the changes made to child seats are simple, intuitive and easy for the caregivers to use. They also support worldwide harmonization. Underlying all these priorities, however, is the belief that initiatives must be cost effective, because of a direct correlation between cost and use rates. He said that every dollar of cost at least doubles at the retail shelf. He suggested that the cost of an anchorage system could be better absorbed on the vehicle side than on the child restraint side.

The presenter said that JPMA categorically rejects the four-point ISOFIX system and the two-point CANFIX or CAUSFIX rigid system, because of cost. He said that JPMA supports soft anchor systems, which includes the UCRA, CSO and Scheme D.

JPMA hoped that all parties attending the workshop would focus on the soft systems as a starting point and focus on the similarities and the positive aspects of each of these proposals, to develop a solution that maximizes the potential use of child restraints and minimizes the cost to the ultimate consumer.

b. Clinics

Separate presentations were made on the public acceptance and support of the development of a universal anchorage system. The Insurance Corporation of British Columbia (ICBC) along with Rona Kinetics reported on the findings of its clinic on usability of various alternatives. The study surveyed 76 subjects in Vancouver, Canada representing a cross section of age, sex, and experienced/unexperienced groups. General Motors presented the findings of a February 1996, clinic that was conducted in Troy, Michigan with a sample of about 400 subjects. Toyota also presented a customer preference study on various types of soft and rigid anchor systems that was conducted in Japan on rigid and soft systems. Finally, a study was recently initiated in the UK and a progress report on its findings of an initial small number of subjects surveyed was presented.

Generally, the findings of these clinics were in agreement on two major issues: 1) all subjects surveyed seem to prefer a universal anchorage system over the current child restraints and 2) no significant difference in consumer acceptance was detectable when comparing between a rigid and soft anchorage system.

c. Cost

The participants agreed that the cost of the rigid options is much higher than the soft anchorage system, with *added costs* to the child restraint system of about $100 for the 4-point ISOFIX, $60 for the CANFIX and $20 for the UCRA soft anchorage system. Cosco, whose alternative does not incur additional costs to current child restraints, raised important concerns regarding the potential negative effects of high increases to the retail price of current child restraints. Concerns over families not being able to afford the increase and over loaner programs with fixed budgets for purchasing and providing free child seats to low income families were discussed. The issue of cost increases was in conflict with European countries expectations, according to the attendants from Sweden who indicated that these added costs do not have such implications as expected in the U.S. market.

d. Tether

Other discussions addressed specific issues pertinent to the development of universal child restraint anchorage systems. One major issue that was discussed pertained to the upper tether. A representative from the Insurance Institute for Highway Safety presented an overview of the experiences and possible reasons for non-use of the upper tether in the US during the 1980s. On the other hand, a participant from Australia reported that the use of the upper tether in Australia is about 98%. Transport Canada also reported substantial increases in use of the tether in Canada. These experiences seem to indicate that the high usage of upper tether stems from the fact that the tether anchor points are provided on the vehicle and are visible to and easily accessible for use by consumers. There appeared to be an agreement among participants that a child restraint with an upper tether provides better protection to the child during a crash.

e. Agreement on Differences

In the interactive exchange among attendees during the course of the workshop, several important points relating to development of a universal child seat anchorage system emerged. The following key views were expressed:

- User clinics indicate that consumers are overwhelmingly unhappy with the manner with which current child seats are attached to vehicle seats and wish to see improvement.
- The various systems evaluated in consumer trials (ISOFIX, schemes A through C) do not differ much in terms of safety performance (assuming proper installation) and public acceptance.
- Schemes B, C and D (CANFIX, UCRA and the Hybrid) are virtually variations of the same system, except for the hardware used to connect the child seat to the vehicle. CANFIX has specified a rigid anchor and rigid connectors on the child seat. UCRA specifies a buckle and latchplate system; the buckle would be on a piece of webbing attached to the child restraint and the latchplate would be on a semi-rigid stalk at the vehicle seat bight. The Hybrid system would specify a 6 mm bar (e.g., a D ring) that could connect to a child seat either in front of or behind the vehicle seat bight. The UCRA system differs from the Hybrid system only with regard to the connector piece that fastens the child restraint to the vehicle.
- Purchasers of child restraints in the U.S. are very sensitive to price. Sixty-four percent of the car seats sold in the U.S. sell for less than $60. Consumers in this country are unwilling to pay the $300 it costs on average for a child seat in Sweden.
- The European manufacturers generally still prefer a rigid system, while U.S. manufacturers oppose it. Canada has indicated a willingness to move from a rigid two-point plus tether (Scheme B) to a soft two-point plus tether system.
- Scheme D (the Hybrid system) has potential in accommodating both rigid and soft systems. It would provide the greatest design flexibility, in that it would specify minimum elements of the vehicle anchor (e.g., a 6 mm bar) and a location that could connect to a child seat either in front of or behind the vehicle seat bight. It would provide vehicle manufacturers the option of supporting the anchor rigidly or semi-rigidly. Child restraint manufacturers could choose any means to attach to the anchor. A child seat could have a telescopic or a rigid device, or a soft attachment (piece of webbing), so long as the child seat can attach to the anchor.
- Each system has strengths but also possible weaknesses. Questions were raised about the cost, weight and development time needed for a rigid system, the slack that could be introduced into the belts of a soft system and the suitability of a soft system with fold-over seats, the need for anchors to be visible to consumers in a Hybrid system, the possibility of slack and misrouted belts with the CSO system, and the actual use of a top tether in tethered systems.
- The various systems under consideration are unencumbered by patents of any kind. Britax (a European child restraint manufacturer), when asked about a certain patent application, expressly declared that it holds no patents or applications for patent or other claims that would hinder third parties from making ISOFIX equipped vehicles or child restraints using rigid or semi-rigid anchorages.

f. Future Work

Manufacturers of motor vehicles and child restraints extensively explored the differences between the UCRA and European hybrid systems with an agreement to further develop this option to harmonize between the European vehicle manufacturers and Britax and the US and Japanese child restraint/vehicle manufacturers. These participants expressed that future efforts would be made to elaborate on progress of this development at a November 7 and 8, 1996, ISO Working Group on child safety meeting in Albuquerque, New Mexico and future meetings of the Group.

IV. Subsequent Developments

a. Albuquerque, New Mexico

During the November 7 and 8, 1996 meeting of the ISO Working Group on Child Restraint Systems (ISO/TC 22/SC 12/WG 1), the Group voted on a proposition containing two resolutions on the specifications for the anchorage of a universal child restraint anchorage system. The first resolution recognized the need to allow two anchorage systems: one based on two-prong nonflexible hardware (a system that is under development), and another based on flexible UCRA-type hardware (a system that is available today). A second resolution opposed an upper tether anchor in motor vehicles.

Following the Albuquerque meeting, the Secretariat of the ISO Working Group opposed the proposition—which was intended to advise different governments on how to treat the use of ISOFIX with and without a top tether—on the basis that it goes beyond the mandate of the Working Group. A re-voting of an amended resolution was conducted by correspondence with the delegations of country members, and was due back to the Secretariat on December 6, 1996. The voting on this resolution was to select between: i) specifying a top tether anchorage in vehicles; ii) not specifying the tether; or, iii) either of these options. It was also agreed that two reports—one for the rigid and one for the rigid/semi rigid options—will be prepared by members of the Working Group to describe and specify these systems.

The result of the re-voting was a resolution to produce two draft standards for universal child restraint attachment interfaces. One draft standard would cover an attachment system comprising the UCRA-type attachments on the lower points. The other standard would cover the rigid anchorage system. The standards would not include specifications for an upper tether anchorage. (The results of the re-voting and copies of the rough drafts of the two reports were placed on December 13, 1996 in Docket No. 96–095, Notice 01 for the readers' review.)

b. Additional Information

On November 21, 1996, some of the UCRA petitioners provided the agency with additional information supporting their petition. NHTSA representatives met with representatives from General Motors, Century Products, Indiana Mills and the Lear Corporation, at the request of the latter, to discuss the resolutions of the ISO Working Group meeting in Albuquerque. (A December 13, 1996 memorandum describing this meeting and attaching the handouts is entry number 16 in Docket 96–95, Notice 1.) The petitioners emphasized that the North American child restraint manufacturers strongly favor the UCRA system with an upper tether and have doubts that a determination can be made at this time that the rigid system would be a long term solution. They also presented the findings of an evaluation that Indiana Mills performed in response to a NHTSA call for harmonization during the public workshop. (The agency had requested that hardware manufacturers explore the feasibility of an anchorage system that would accommodate buckles, snap hooks and ISO-type connectors with a flat latch or round link, for consideration at the Albuquerque ISO meeting.) Indiana Mills described the advantages and disadvantages of the various types of hardware and its reasons for supporting the existing technology of a flat latch plate/buckle system. Lear Corporation presented cost data for rigid and soft attachments to various types of vehicle seating systems. It stated that the vehicle added cost data should be considered as a complement to the NHTSA study cost figures. Specifically, it included cost figures on items, such as covers and trim of rigid anchors, that were not included in the costing of the NHTSA study. The data showed that the costs of the soft anchorage system per seat on the vehicle range from about $4 to $10, as compared to about $13 to $30 for the rigid anchorage points system.

c. Petition on Scheme D (Hybrid System)

On December 18, 1996, BMW, Chrysler, Ford, Land Rover, Mercedes-Benz, Volkswagen, and the University of Michigan Child Passenger Protection Research Program, petitioned NHTSA to consider an approach based on Scheme D and modify the suggestions made in the UCRA petition. These petitioners supported a system incorporating two "latch plates" formed of 6 mm diameter elements for the vehicle, "coupled with the alternatives for the [child restraint system], namely, tether hooks or buckles on belts with tilt-lock adjusters for tension release, or the rigid ISOFIX connectors on a sliding element." The petitioners believe that this system will offer vehicle and child restraint manufacturers the greatest design flexibility, and will further international harmonization at an early date.

V. Evaluation of Concepts

During the course of the agency's deliberations on a universal child restraint anchorage system and as a result of the discussions at the October 1996 workshop and other information, the agency has tentatively determined that child seats can be better secured to a vehicle (thereby reducing incompatibility problems and increasing safety) by providing three anchorage points between the restraint and a vehicle seat. One point is at the top center of the restraint (attachment of a child restraint to a vehicle would be accomplished at that point through a top tether), and the other two are at the vehicle seat bight.

a. Top Tether

ISO Schemes B and C (CANFIX/CAUSFIX and UCRA) include provisions for a top tether. Cosco indicated it would support a tether requirement, although the manufacturer is concerned whether tethers will be used in this country. The European systems do not call for tethers.

As a result of the agency's deliberations on this rulemaking,[5] the agency reevaluated its view of a top tether on child restraints. NHTSA currently does not require a tether or a tether anchorage on vehicles. The agency does not prohibit a tether, but generally requires child restraints to meet Standard 213's 30 mph dynamic testing requirements without attaching a tether to reflect the historically low use rate of tethers in this country.

NHTSA tentatively concludes that a top tether should be provided to better secure a child restraint. By restraining the top portion of a child seat, a tether would supplement the vehicle belt system in limiting forward movement of the child restraint in a crash. With less forward movement, head excursion can be reduced.

This document proposes a performance requirement that would have the practical effect of requiring a tether on child seats. A new head excursion requirement for forward-facing seats would be added to limit excursion to 720 mm (28.35 inches) forward of the Z-point on the test seat assembly when a child seat is attached

[5] On November 15, 1996, the American Academy of Pediatrics (AAP) petitioned NHTSA to amend Standard 213 to require child restraint manufacturers to supply tether straps on all child seats and require vehicle manufacturers to provide tether anchors at all rear seating positions. AAP also requested that child restraint manufacturers be required to make tether straps for existing car seats available to consumers by mail order and at retail outlets. NHTSA granted this petition on January 14, 1997.

to the standard seat assembly in accordance with the manufacturer's instructions. To meet this requirement, manufacturers will likely have to provide a top tether, which would be attached in the test for this new requirement. NHTSA believes that the head excursion limit of 720 mm is practicable with a tether because it is the same as the Canadian requirement and because most, if not all, child restraint manufacturers currently produce child restraints for sale in Canada and thus already meet the requirement for those products. The 720 mm requirement would promote harmonization with Canadian requirements. Further, the European child restraint manufacturers believe that a 720 mm limit could be achieved with the rigid anchorage system with two lower anchorages and no upper tether.

Test data strongly support the safety value of a tether. AAMA et al. submitted test results in support of a requirement for a tether anchorage, stating:

> Test results clearly demonstrate that a fastened tether can significantly reduce dummy head excursion measurements which most developers and evaluators use as the primary predicator [sic] of a CRS's performance in field accidents * * *.
>
> An Australian report cites forward-facing CRS test results, indicating that "as well as reducing head excursion, a top tether, with the right high mounted geometry, significantly reduces head acceleration and neck loads in frontal impacts" [footnote excluded] * * *. Recent computer simulations and tests of the recommended UCRA concept suggest that * * * a fastened tether significantly reduces dummy head excursion during high severity frontal impacts.

Computer simulations conducted by petitioners AAMA et al. showed a reduction in force levels experienced by a restrained dummy's head, neck and chest when a tether was used as compared to no tether, and a reduction in head and knee excursions. Actual testing of child restraint systems with and without a tether showed that with the tether attached, there generally were reductions in head injury criterion (HIC) values and chest g's, and in head and knee excursions.

These findings are consistent with NHTSA's limited testing of tethers. In two tests of an Evenflo Scout forward-facing convertible seat with the inboard anchor of the lap belt restraining the child restraint to the test seat assembly positioned four inches forward of the seat bight, the HIC and 3 ms chest acceleration clip were 631 and 59.6 g's respectively. When the child restraint was tethered on its top, these HIC and chest clip measurements were reduced to 503 and 42.2 g's, respectively.

In her comments at the October public workshop, Ms. Legault of Transport Canada reported that on-going testing of tethered, untethered and loosely-tethered restraints indicate improved head acceleration, head excursion and chest acceleration with a tether strap, even when the strap is loose. Additionally, upper neck forces and moments were also improved with a tether. (Transcript of October 17, 1996, pp. 32–34.) (However, Indiana Mills tests showed increased HIC and chest g's for a child seat with a dual strap anchorage with a tether, compared to one without a tether. Comments are requested explaining these increases.)

However, nonuse of the tether has been a problem in the U.S. In an effort to boost use rates, NHTSA once proposed requiring all vehicles under 10,000 lb GVWR to have tether anchorages at all rearmost seating positions, to make it possible for motorists to easily attach the tether straps on their child restraints to the vehicle. 45 FR 81625; December 11, 1980. At the time of the proposal, tether use was about 50 percent. NHTSA terminated rulemaking on this proposal after determining that (a) since the proposal, there was a continual shift toward untethered seats, so that most seats did not need a tether to meet Standard 213's requirements; (b) motor vehicle manufacturers had increasingly been voluntarily providing provisions, such as indentations to identify anchorage points and pre-drilled or threaded holes, in their vehicles to facilitate the attachment of tether straps; and (c) the most effective way to promote child safety would be to amend Standard 213 to require all child restraints to meet Standard 213's requirements without attachment of the tether. July 5, 1985; 50 FR 27632.

Petitioners AAMA et al. believe that a tether will be used. GM's consumer focus group testing indicates a positive response toward a tether, particularly if the tether anchorage is equipped with all the components needed for use with the child restraint. The petitioners state, "Australian field experience shows very high tether use rates are obtainable when *factory installed* tether anchorages are provided." (Emphasis in text.) Indeed, top tether use is reported in excess of 95 percent in Australia, primarily due to requirements for installation of the anchorages and to early and continuous public education on the use of tethers. "Options for a Universal Child Restraint Attachment System," M. Lumley, June 14, 1996, revised October 10, 1996. Petitioners are also encouraged by information from the Canadian Province of Quebec indicating a 65 percent tether use rate in vehicles required to have just a tether anchorage, and not the tether hardware. "This in spite of the fact, that vehicle owners must install the tether anchorage hardware themselves or return to their dealer to have it installed."

In an effort to increase tether use in Canada, Transport Canada is proposing to require vehicles to have a factory-installed, user-ready tether anchorage, with hardware included. Transport Canada believes that tether use will increase if an anchorage equipped with all needed parts for consumer use is provided at the factory. NHTSA tentatively believes that this information from petitioners AAMA et al. and from Transport Canada provides a basis for concluding that tethers would be used if child seats are equipped with a tether and vehicles are equipped with a factory-installed, easy- and ready-to-use tether anchorage. Accordingly, in view of the potential added safety value of a tether, the agency proposes requiring installation of a ready-to-use tether anchorage at the two seating positions that would be required to have the lower anchorages dedicated for attaching a child restraint system. (See *infra*, section VI.c.) For purposes of harmonization, the proposed requirements for the tether anchorages are essentially identical to those proposed by Transport Canada.

However, because NHTSA does not know the extent to which tethers will be used in this country, the agency believes the standard should also retain the present head excursion requirement, which limits excursion to 813 mm (32 inches) without use of a tether strap. Retaining the requirement would ensure a minimum level of safety performance when the tether strap is not used. Further, NHTSA proposes that child restraints dynamically tested on a child restraint anchorage system with UCRA anchorages should be subject to the 813 mm (32 inches) head excursion requirement without attaching the tether. This accords with the AAMA et al. petition, which suggests not attaching the tether. Comments are requested on this issue. Comments are also requested on the potential of using tethers in aircraft.

b. Lower Anchorage Points

Improving the lower anchorage points of a child seat to the vehicle would make it easier for parents to correctly attach a child seat to the vehicle.

NHTSA stated in the **Federal Register** notice announcing the workshop that an anchorage system should accomplish the following:

- Improve the *compatibility* between child restraint systems and vehicle seats and belt systems, thereby decreasing the potential that a child restraint was improperly installed;
- Ensure an adequate level of *protection* during crashes;
- Ensure correct child restraint system use by ensuring that the child restraint systems are *convenient* to install and use;
- Ensure that the child restraint systems and anchorages are *cost effective*; and
- Achieve *international* compatibility of child restraint performance requirements for uniform anchorage points.

In remarking on the various ISO schemes and in other presentations, participants in NHTSA's workshop concurred with and elaborated on these considerations.

1. Improve Compatibility

All of the anchorage systems appear to improve compatibility between child restraint systems and vehicle belt systems. Consumers comparing ISO Schemes A, B and C systems against conventional child restraints indicated that the new methods of attachment are easier than current methods. Cosco's CSO system was not evaluated in these studies, but to the extent that the CSO does not depend on a locking clip or other means to adapt the belt to a child restraint, an improvement over existing belt systems, at least concerning that aspect of design, can be assumed. The CSO belt would still have to be routed correctly through the child restraint. All anchorage systems would improve compatibility between child restraint systems and forward-mounted anchors. Views were expressed at the October 1996 workshop that Schemes A, B and C systems would improve compatibility between child restraints and contoured vehicle seats. A rigid anchor system may suspend the child restraint above the contoured seat, and a UCRA would provide some resistance to the side-to-side motion of a child seat on a humped contoured seat. The CSO might not be as effective on humped seats in limiting side-to-side motion of a child restraint.

2. Safety Performance

ISO Schemes A, B and C systems have performed satisfactorily in dynamic tests. The CSO system has not been tested, but it simulates the standard seat assembly used in Standard 213 compliance tests.

Consumer clinics indicate that ISO Scheme A, B and C systems are comparable in terms of a user's ability to correctly install them. Users are able to install child restraints correctly in those systems. Scheme D and the CSO were not evaluated.

The degree to which an anchorage system will be correctly used outside the context of a clinic is unknown at this time, but design differences between the systems could affect such use. Attendees at the public workshop expressed concern with potential misuse problems that could arise by virtue of the design of each system. A type of misuse that could occur with a rigid system (ISOFIX four-point or CANFIX) is if the user does not fully attach all points of the system. Test data indicate that performance of the child restraint is severely degraded if one or more points are not attached. Some attendees believed that users must be able to see clearly where to insert the child seat connector to the vehicle system, and that a guide of some sort is needed if the attachment point is behind the seat bight. Some believed that an education campaign is needed to teach people how to use the system since a rigid bar anchorage is unfamiliar in this country.

Proponents of the UCRA system believe that the soft anchor system is superior to a rigid system in that the connectors are buckles and latches that are consumer-familiar in design to the seat belt hardware on vehicles. Proponents believe that users will know "intuitively" how to use the connector and will recognize the sound and feel of the click that indicates a positive attachment. Several participants expressed concern about a possible misuse problem arising due to the presence of webbing on the connectors, i.e., that slack in the webbing will negate a tight fit of a child seat on the system. Toyota indicated it is developing a means of addressing this potential problem.

Cosco believes the CSO system "is the most intuitive system suggested because people have been using this type of system for years." NHTSA believes that while users might be familiar with the system, the CSO system poses some of the same problems as the lap belt currently used to attach child restraints. The belt would have to be correctly routed through the child restraint, which is a problem occurring with present seats. Slack in the belt would negate a secure fit of the child seat, so an adjuster of some sort would be needed, and it would have to be positioned on the belt where a user could maneuver around the child seat to tighten the belt. The seat belt would have to be long enough to permit it to be fastened around all types of child restraints, including restraints for children with special needs. A common complaint with current child seats is the difficulty of routing the belts through the system and pulling the belt tight. It appears that the CSO system might not alleviate those problems in all restraints. Further, there is the potential that the CSO belt would be inadvertently used by an adult occupant as a restraint, particularly in a seating position equipped with a lap belt, even if the CSO belt were labeled.

It may be possible to attach child seats with either a rigid anchor (ISOFIX four-point rigid, CANFIX) or a soft anchor (UCRA) system design to a vehicle seat in the same way that current child seats are attached, using the occupant belt system (and meet minimum performance criteria). Thus, it may be possible to use them in a vehicle that lacks an anchorage system. The ability to attach a child seat in a conventional manner, i.e., using the vehicle belt, is an essential feature addressing the use of new child seats with old vehicles, and vice versa (old child seats with new vehicles). Ms. Legault of Transport Canada said that testing with a CANFIX prototype showed that, in about 85 percent of its vehicles (lacking receptors for the rigid points), the prongs could be inserted between the seat cushion and seat back, so the seat belt could still be used to attach the child seat. All child seats with UCRA-designed anchorages can be attached to a vehicle by use of the existing vehicle safety belt, because the UCRA design is based on a simple addition of buckles to current models of child seats. The CSO design would also result in all child seats being able to be attached in a conventional manner. It is unknown whether the four-point ISOFIX seat could be attached with an existing vehicle belt and perform satisfactorily.

The various systems differ in their ability to allow child seats and vehicles to be retrofitted with features of the anchorage system. The ability to retrofit is desirable, since it would increase the number of seats that provide improved protection. Retrofitting seats and vehicles would provide all children the benefits of the improved technology. It does not appear that the four-point ISOFIX or the two-point CANFIX allows for retrofitting either the child restraint or the vehicle. These rigid anchorage systems necessitate an elaborate redesign of existing child seats. The anchorage pins on the vehicle seat would have to be precisely aligned with the prongs on the child seat to ensure that the system performs properly. Alignments of this nature are generally

not believed to be feasible in the aftermarket.

Proponents of the UCRA system state that existing seats can be installed using the UCRA system if the system is supplemented by a special belt with buckles at each end that are compatible with the UCRA latchplates on the vehicle. The belt would be provided to the owner of the old (pre-standard) child seat to route through the existing belt route path on the child seat. Further, proponents of the UCRA system believe that vehicles can be retrofitted with the UCRA system. The CSO system calls for no change in the design of a child seat, so old child seats could be used with a CSO system in a vehicle. Cosco did not indicate whether vehicles can readily be retrofitted with the CSO belt system, although it appears as feasible as retrofitting them with the UCRA system.

3. Consumer Acceptability

Consumer clinics indicate that ISO Scheme A (rigid four-point), B (CANFIX) and C (UCRA) systems are comparable in terms of consumer acceptance. Participants in GM's clinic indicated a preference for UCRA. Scheme D and the CSO were not evaluated in the clinics. Participants in all the clinics indicated a desire to see an improvement in the way child restraints are attached to vehicles. With regard to bulk and added weight to a child restraint, the CSO adds no weight, and the UCRA appears to have an advantage over a rigid system and the CANFIX. The rigid prongs and supporting structure on a rigid system add much more weight than the buckles of a UCRA and also protrude from the child restraint.

4. Costs and Burdens

Cost is an area where the systems differ greatly. The cost of the rigid options is much higher than the soft anchorage system, with added costs to the child restraint system of about $100 for the four-point ISOFIX, $60 for the CANFIX and $14 for the UCRA soft anchorage system. The agency is concerned that the $60 to $100 added costs of the rigid systems could engender public dissatisfaction with child restraints, reduce child restraint use rates and significantly reduce the number of seats available through car seat loaner programs. The CSO system does not incur additional costs to current child restraints.

Schemes A, B and C systems are fairly design restrictive, in specifying the geometry and location of assorted components on the vehicle and child seat. Scheme D (Hybrid) and the CSO specify only the features of the vehicle system, and not of the child seat. Design flexibility allows manufacturers latitude in meeting market demands and developing new technology, yet would be a trade-off in standardization of the anchorage system.

5. Harmonization

Harmonization was one of the major goals of the agency's October 1996 public workshop. NHTSA stressed the importance of international harmonization during the workshop and urged ISO member country member delegates to agree on a unique child restraint anchorage system.

The UCRA system would harmonize with Canada, Australia, New Zealand and Japan in specifying a top tether. With the top tether proposal, the proposed rule would harmonize with Transport Canada's current head excursion threshold and with its planned new regulation proposing to require manufacturers to provide anchors for tethers in motor vehicles. The rigid anchor system is endorsed by European members of the ISO Working Group.

6. Leadtime and Availability

The different systems are at varying stages of development in design concept. Final design of the four-point ISOFIX system and the two-point rigid CANFIX have not been completed, although proponents of those systems believe that completion is imminent. Design of the UCRA system is completed.

The view was expressed at the October 1996 workshop that the leadtime needed to implement a requirement for a rigid system would be much longer than that needed to implement the UCRA system. This is because the UCRA uses "existing technology—known systems, known belts, known buckles, known latch plates" (quoting David Campbell). Cosco argues that its CSO system would be the fastest to implement.

7. Proposed System

The agency has decided to base a proposal for a universal child restraint anchorage system primarily on the UCRA system. The four-point and two-point rigid and the UCRA appear comparable in terms of safety performance and public acceptance, but the UCRA appears to have advantages over the others with respect to its cost impact, near-term availability and ability to address intermix and retrofit issues. Further, the UCRA system has advantages in terms of its usability. The agency believes the familiarity of its components (particularly the crucial connector pieces—buckles and latchplates—that attach a child seat to the vehicle system) is a definite advantage over the other systems. Also, the UCRA system is not as bulky or heavy as the other systems, which increases its usability.

In addition, NHTSA believes that the soft anchor system has a potential for use in restraining child seats in aircraft. The Federal Aviation Administration (FAA) stated in a submission to NHTSA's docket for the October 1996 public workshop on a universal anchor system that "preliminary review and evaluation of the proposed ISOFIX systems under consideration by [NHTSA] suggest that the UCRA concept presents the best solution in the aircraft environment." 96–95–N01–008. FAA is concerned that the rigid prongs of an ISOFIX-type child seat may not be compatible with aircraft seat cushions or suited for narrow aircraft seats.

While NHTSA has decided to propose the UCRA system due to its advantages in cost, usability, potential for use in aircraft, and the fact that it is proven technology available today, the agency is still interested in the possibility of achieving harmonization on a universal anchorage system. To that end, NHTSA is proposing to permit vehicle manufacturers to substitute the two lower rigid points of ISO Scheme D (the Hybrid system) in place of the UCRA anchors, provided that the vehicle is also equipped with adapters that enable the lower rigid points to accommodate UCRA-type child restraint systems.

The European manufacturer members of the ISO Working Group on Child Restraints Systems believe that their countries will require the two rigid anchorage points in the future.[6] Accommodating both hardware systems would be consistent with the agency's goal of solving the problem of incompatibility between child restraints and motor vehicles as expeditiously as possible, while promoting harmonization. The UCRA system, being a well developed and familiar current technology, is currently available. The non-flexible system would be given the opportunity to be developed, tested and evaluated in the market place to prove what its proponents believe to be its superiority as the child restraint anchorage technology of the future.

NHTSA tentatively concludes that the two proposed systems can coexist in the short term. The UCRA system will not hinder any development of the non-flexible hardware system. The proposed rule allows vehicle manufacturers to install a 6 mm pin to attach a child restraint that is equipped with jaw-type non-flexible hardware. The proposed rule would not prevent manufacturers of child restraints from developing a restraint with non-flexible hardware, and would facilitate a transition to future technology. However, in the interest of eradicating incompatibility problems henceforth, child restraints with non-flexible hardware would be required to have components (e.g., buckles), permanently attached to the child restraints, that are compatible with the UCRA anchorages. This proposal considers the UCRA system to be paramount, and a rigid system would be allowed as long as the UCRA system is universal for all vehicles and child restraint systems.

[6] It should be noted that the work thus far by the ISO has been at the Working Group level. Any ISO standard on this matter has still to go to higher committee before it becomes a standard.

c. Discussion of Alternatives

A number of other approaches have been suggested to minimize or eliminate incompatibility between child seats and vehicle seats. This section addresses these alternatives to the approach proposed today.

1. SAE Recommended Practice J1819

In 1994, the Society of Automotive Engineers (SAE) published its Recommended Practice SAE J1819, "Securing Child Restraint Systems in Motor Vehicle Rear Seats," to promote compatibility between child seats and vehicle rear seats and seat belts. J1819 provides voluntary design guidelines to vehicle manufacturers for certain characteristics of rear seats and seat belts, such as seat cushion shape and stiffness, and seat belt anchorage location, belt length, buckle and latchplate size, and lockability. In addition, J1819 provides design guidelines to child seat manufacturers for child seat features that correspond to the vehicle features.

J1819 specifies a "Child Restraint System Accommodation Fixture" to represent a child seat, so that designers of both the vehicle and child seat can evaluate each product for compatibility.

NHTSA tentatively concludes that J1819 alone does not fully solve incompatibility problems. It is a tool for evaluating incompatibility, not a requirement that vehicle seats and child restraints must be compatible.

In the October 1996 workshop, Mr. Howard Willson (who chairs the Children's Restraint Systems Standards Committee of the SAE) stated that J1819 might be amended to add "a test for seat contour." The test would enable vehicle manufacturers to "identify seating positions where it's probable that child restraints will not work well because of seat contour." He also stated

> I doubt that we will agree to simply design our seating positions so that they're all as flat as the seats in a pick-up truck used to be, for example. There is an appeal to a shaped seat, an appeal to the users. (Transcript of October 18, pp. 8–9.)

At the same workshop, Mr. David Campbell said that a child restraint anchorage system—

> should be independent of the adult seat belt system so that manufacturers can have the flexibility to optimize the performance of the anchorage system for child restraints and allow the adult seat belt system to be optimized for the other occupants in the vehicle. (Transcript of October 12, p. 40.)

NHTSA tentatively agrees with this statement. Further, NHTSA recognizes that it is very difficult for a single system to optimize the safety protection for adults of all ranges and child restraints of different types. Nonetheless, the agency requests comments discussing possible design alternatives to a universal child restraint anchorage system.

2. Lockability

In 1993, NHTSA amended its occupant crash protection standard (Standard 208) to adopt a "lockability" requirement effective September 1, 1995. The rule requires vehicle lap belts or the lap belt portion of lap/shoulder belts to be capable of being used to tightly secure child safety seats, without the need to attach a locking clip or any other device to the vehicle's seat belt webbing, retractor or any other part of the vehicle. 58 FR 52922, October 13, 1993. The requirement applies to seating positions other than the driver's position on vehicles with a gross vehicle weight rating of 10,000 pounds or less.

The rule requires the lap belt to be lockable and specifies test procedures demonstrating compliance with the lockability requirement. The rule does not specify how the vehicle belt is to be locked, except to prohibit locking by "inverting, twisting or otherwise deforming" the belt webbing. An example of a permitted means of locking a belt is extending the belt all the way, then feeding in the slack.

NHTSA tentatively concludes that the lockability requirement is insufficient alone in addressing incompatibility problems. While the requirement ostensibly makes a locking clip obsolete, it still depends on the user knowing enough and making the effort to manipulate the belt system. Also, the vehicle belt must be routed correctly through the child restraint, which may not be an easy task in all cases. Further, the lockability requirement does not address incompatibility problems arising from forward-mounted seat belt anchors. Excessive forward movement of a child seat can still occur, even if the feature is engaged and the belt is "locked." Comments are requested on this issue. NHTSA is considering deleting the lockability requirement as unnecessary if requirements for a child restraint anchorage system are adopted. A lockability requirement may not be needed for a seating system with a universal anchorage system since the vehicle's belt would no longer be used for attaching a child restraint. However, lockability might be needed to attach child seats that are not equipped for a universal anchorage system, even if the vehicle seat has such a system.

3. Cosco's CSO system

Cosco's CSO system is appealing in its simplicity and low cost, but the CSO system is essentially no different from the current lap belt means of attaching child restraints to vehicle seats. NHTSA is concerned that the CSO system might not make attaching a child seat significantly easier than it is today. As noted previously, the CSO belt would have to be correctly routed through the child restraint, which manufacturers believe many consumers find difficult to do. In addition, from photographs of the CSO system, it might be difficult to tighten the belt. Consumers have expressed concern about their child seat not being secure on the vehicle seat because of the lateral side-to-side motion of the child restraint that occurs no matter how tightly the lap belt is adjusted. On a contoured, humped, seat, there is even more lateral "play." The CSO system might not be able to address these concerns. Cosco provided no data on these issues assessing the viability of this approach. Another concern relates to the potential that the CSO belt would be inadvertently used by an adult occupant as a restraint, even if the CSO belt were labeled. It is also unknown how consumers will accept the addition of more seat belt systems in the rear seat, in addition to the Type I and II belts already provided in the rear seat. The agency requests data or comment on any research that has been done on the CSO system evaluating its acceptability by consumers, its performance with child restraints, the potential for correct use with child restraints and for misuse by adult passengers. Focus group testing comparing the CSO system to the UCRA and other standardized systems would be especially helpful.

VI. Proposal for New Vehicle Standard

a. Highlights of Proposal

The most significant requirements proposed by this document are highlighted below.

(1) A new safety standard would require all passenger cars and light trucks and vans to be equipped with a child seat anchorage system, defined in the standard, at two rear seating positions. If an air bag cutoff switch is provided that deactivates the air bag for the front passenger position, one system would have to be provided in that position, and another in a rear seating position. If there is no rear seat and no air bag cutoff switch, an anchorage system would be disallowed in the front passenger seat. A built-in child seat may be substituted for one of the systems, but not both, since rear-facing built-in systems are currently unavailable.

(2) The system would consist of two lower anchorages at the vehicle seat bight (the intersection of the seat cushion and the seat back) and a top tether anchorage. The lower anchorages could consist of either UCRA-type latchplates or rigid anchorages (ISO Scheme D), provided that connectors are provided with the Scheme D anchorages that enables a child seat with UCRA buckles to be used with the rigid anchorages. The child restraint system standard (Standard 213) would be amended, in effect, to require child seats to be equipped with a top tether, and with attachment components (e.g., buckles) that are compatible with the UCRA latchplates on the vehicle.

(3) The proposed requirements would specify the construction of the child restraint anchorage system, the location of the anchorages, and the geometry of related components, such as the hardware that attaches to a child seat.

(4) A new safety standard would specify performance and location requirements for the tether anchorages. The standard would apply to all tether anchorages installed in a vehicle, regardless of whether the anchorage is required by a safety standard or voluntarily installed by the manufacturer. The agency tentatively believes that all anchorages should be subject to the proposed performance and location requirements to ensure that any anchorage used in the vehicle performs properly.

(5) To prevent the anchorages from failing in a crash, the vehicle anchorages, including structural components of the assembly, would have to withstand specified loads in a static pull test.

(6) Child restraint systems would be dynamically tested under Standard 213 when attached to the vehicle system. The standard seat assembly specified in the standard to test add-on child seats would be revised to incorporate the upper and lower anchorages of a child restraint anchorage system. It would have both UCRA anchorages (Scheme C) and rigid anchors (Scheme D). A head excursion limit of 813 mm (32 inches) would have to be met without attaching the top tether.

(7) A child seat equipped with features enabling it to be attached to an anchorage system would also have to meet the present 813 mm head excursion requirement of Standard 213 when tested with just a lap belt. This is to ensure a minimum level of safety performance when the child seat is used in a vehicle that does not have an anchorage system.

(8) In addition, each child restraint would have to meet a 720 mm (28 inches) head excursion requirement when tested according to the manufacturer's instructions. A tether provided with the child restraint may be attached in this test.

(9) Instructions for using the anchorage system would have to be provided with each child restraint and in the vehicle owner's manual.

As discussed above, this proposal is based on the premise that a child restraint anchorage system would make child seats compatible with motor vehicles, and thus increase the safety value of restraints. The approach taken by this proposal would be to rectify the vehicle-to-child restraint incompatibility problem along two lines: vehicles would be required to have a child restraint anchorage system with components "ready" to attach a child seat, and child restraints would be required to have components "ready" to attach to the vehicle system. By having a dedicated anchorage system for child restraint systems, manufacturers can optimize the designs of their vehicle belt and child restraint systems to provide higher safety protection to both adults and children.

A potential but seemingly necessary limitation in the proposed compliance tests is that the vehicle system is statically tested by devices that replicate the loads imposed by a child seat, and a child restraint is dynamically tested on a seat assembly simulating a vehicle seat. That is, an actual vehicle anchorage system would not be tested with an actual child restraint, and vice versa. This is to avoid possibly complicating enforcement efforts if an apparent failure arises in a compliance test. If vehicles were tested with actual child seats, and vice versa, and if a vehicle anchorage system, for example, were found to fail the proposed requirements, an issue could arise as to whether the failure was with the vehicle system, or with the child seat attached to the vehicle system. To avoid this complication, the compliance tests must be as controlled as possible to remove unknown influences on the performance of regulated parts.

While the actual vehicle-to-child seat attachment would not be tested, NHTSA believes that the performance obtained in the compliance test will reflect the real-world performance of the anchorage system and the child restraint. This is because the geometry of the belts and latchplates primarily responsible for the vehicle-to-child seat interface would be precisely specified by this proposal. These components would have to be provided on vehicles and child seats precisely as specified in the standards. In turn, these components, in the same geometry as that specified in the standards, would be used in the compliance tests. Thus, the vehicle-to-child seat interface should be adequately tested.

b. Applicability

The requirement for a child restraint anchorage system would apply to passenger cars and trucks and multipurpose passenger vehicles (MPVs) under 10,000 pounds (lb) gross vehicle weight rating (GVWR) (hereafter referred to as "LTVs"), except as noted below.

Petitioners AAMA et al. suggested, with respect to trucks and MPVs, that the requirement be limited to those with a GVWR of 8,500 lb or less and an unloaded vehicle weight of 5,500 lb or less. AAMA stated:

> The GVWR range suggested was incorporated using the identical GVWR range currently required to meet the dynamic performance requirements of FMVSS 208 for occupant protection. The relatively small number of vehicles larger than those within this range, the physical dynamics of these size vehicles and the unexpected use of CRSs [child restraint systems] in them, support maintaining this GVWR range for this proposal.

NHTSA agrees that vehicles with GVWRs of more than 10,000 lb are much less frequently used to carry young children (as compared to vehicles with GVWRs of less than 10,000 lb) and thus should be excluded from a requirement to provide a child restraint anchorage systems. However, child restraint systems could be used in vehicles with a GVWR between 8,500 and 10,000 lb, such as in vehicles used for transportation to child care programs. In the interest of best ensuring that a child restraint anchorage system would be available when needed and to minimize incompatibility problems between child restraints and vehicle seats to the extent possible, NHTSA proposes to apply this rule to trucks, buses and multipurpose passenger vehicles with a GVWR of 10,000 lb or less. Comments are requested on this issue.

AAMA et al. suggested excluding walk-in van-type vehicles and vehicles manufactured to be sold exclusively to the U.S. Postal Service. The agency agrees that these vehicles are unlikely to be used for transporting children in child safety seats. NHTSA made the determination in the rulemaking adopting the lockability requirement, *supra*, that these vehicles are not likely to be used to carry children in child seats. Accordingly, NHTSA proposes to exclude these vehicles from today's proposed vehicle standard.

The AAMA petitioners suggested that the standard should not apply to a vehicle that "the manufacturer designates as not intended for CRS use." The petitioner further suggested that "[v]ehicles not intended for CRS use shall include this information in the vehicle's owner's manual" and on a label in the vehicle. The agency has tentatively decided against this approach. NHTSA does not know, and petitioners did not explain, why manufacturers should be permitted to exclude a vehicle from the proposed requirements, given that such a provision could substantially reduce the number of vehicles that are equipped with an anchorage system. Reducing the universe of vehicles equipped with the anchorage system would eviscerate the "universality" of the system, which could result in many consumers not having an improved means of attaching a child restraint in their vehicle.

c. Seating Positions

This proposal would require the child seat anchorage system (i.e., a top tether anchorage and lower anchorages) in two rear seating positions. NHTSA proposes requiring the system to be placed in a rear seating position because available data indicate that the rear seating positions are the safest positions in which to install a child restraint system. Vehicles that lack a rear seating position capable of fitting a rear-facing child seat would be required to provide a system in the front seat if the vehicle has a cutoff switch that deactivates the air bag installed at the right front passenger position in the vehicle. However, a child restraint anchorage system would also have to be installed in the rear seat of these vehicles, because a rear seat that is too small to fit a rear-facing child restraint can nonetheless probably fit a forward-facing seat. If the vehicle lacks a rear seat and does not have an air bag cutoff switch, an anchorage system would be disallowed in the front passenger seat. A built-in child seat may be substituted for one of the anchorage systems, but not both, since built-in seats currently cannot accommodate a rear-facing restraint.

There was no consensus among the petitioners as to the number of child restraint anchorage systems that should be required and where in the rear they should be. Many believe that the system should be installed at each of the outermost designated seating positions of the second row (and a tether anchorage in the rear lap-belt center position). The Japanese vehicle manufacturers believe that only one rear seat position should be required to have the system. Fisher-Price, a child restraint manufacturer, believes that the rear center seating position is recognized as the safest and that the system should therefore be required there.

NHTSA has tentatively determined that each vehicle with a rear seat should have at least two rear seating positions that can properly hold a child restraint system. The agency is concerned whether there is a need for an anchorage system at more than two seating positions. NHTSA requests information on this issue, such as demographic data on the number of children in child restraints typically transported in a family vehicle. It is noted that nothing in the proposed standard would prohibit a vehicle manufacturer from voluntarily providing child restraint anchorage systems in rear seats at more than the required seating positions, if a purchaser wants additional systems.

This proposal does not specify that both anchorage systems would have to be provided at an outboard position. In some vehicles with large interiors, it may be possible to install one of the required systems in a center seating position.

d. Construction

Requirements are proposed for the construction of the child restraint anchorage system. The system would consist of two child restraint anchorages at the vehicle seat bight and a tether anchorage.

1. Lower anchorages

The proposed rule would permit manufacturers to conform lower anchorages to either option A, consisting of requirements based on the UCRA system (ISO Scheme C), or option B, based on the Hybrid system (Scheme D).

Option A (UCRA System)

For vehicles incorporating the UCRA system, the standard would specify that lower anchorages are located 280 mm apart, measured to the centerline of each latchplate when fully extended in a plane parallel to the vehicle's longitudinal axis. When fully extended, the tip of each latchplate must not extend more than 50 mm forward of the seat bight. The 50 mm value was suggested to ensure accessibility of the lower anchorages. The petitioners and the ISO ad hoc group specified this figure in a November 15, 1996 draft ISO/WD13216–1i report. [7] NHTSA tentatively believes the value is reasonable to ensure that the lower latchplates are not so rearward that they may be buried in the seat bight, yet are not so forward that excessive forward movement of a child seat could result.

The standard would also specify the geometry of related components, such as webbing and latchplates (tongues) of the lower anchorage points. NHTSA is proposing the latchplate geometry that was suggested in the petition by AAMA et al. The agency is proposing to specify the geometry of these components as necessary to ensure the universality of the anchorage system. [8] It negates the likelihood that a used child restraint with particular attachment components would be "handed down" or sold to a person owning a vehicle with an incompatible anchorage system. Further, since a simple, effective way of testing anchorage systems with varying components has not been devised, specifying the geometry is the best means of ensuring that anchorage systems will securely attach a child restraint, and provide an adequate level of child protection.

The lower anchorages would be equipped with specialized latchplates that would attach to buckles on a child seat. The geometry of the components is such that the webbing, buckles and latchplates are similar in design to components found on current adult occupant belt systems. This is to ensure that the components and their operation are familiar to persons installing a child seat. The geometry of the components is such that they are smaller in size than

[7] This figure is consistent with the ISO/WD 13216–1i report that are in the December 13, 1996 submittal to Docket No. 96–095, Notice 1.

[8] While the geometry of the vehicle latchplates would be mandated, child restraint systems would not have designs specified, other than that to have "components permanently attached to the system that securely fasten to the [vehicle's] latchplates" (proposed S5.9(a)). However, the agency anticipates the use of UCRA buckles.

like components on the adult occupant belt systems. This is to reduce the likelihood that the person installing a child restraint might confuse the belts and buckles of the child seat anchorage system with the adult occupant belt systems.

Several participants at the October 1996 workshop expressed concerns or suggestions about aspects of the UCRA's belt systems. Klaus Werkmeister expressed concern that the UCRA system's lower anchorages could be lost in the seat bight of a foldover seat after the seat is flattened to make room for cargo and then reinstalled as a seat. On the other hand, John Gane said that the ICBC clinic had folding rear seats and that these didn't interfere with either the hard or soft anchor systems. Transcript, October 17, 1996, page 228–230. Comments are requested on this issue.

Mr. Gane also suggested that the ICBC clinic indicated that the side straps for the UCRA should be distinguished from the straps comprising the harness for the child. He said that when the straps were not distinguished, "we had a huge failure rate of people to understand how the seat was intended to work." *Id.*, p. 220. (Some clinic participants attached the vehicle anchor belt to the child restraint's internal harness.) ICBC later modified the UCRA child restraint to color code the belts. Comments are requested on whether the straps of the UCRA should be distinguished, and if so, what measures should be required to distinguish them (e.g., color coding and/or labeling).

Howard Willson stated that the webbing-supported anchorages of the UCRA should be required to have a specific stiffness so that users can use one hand to attach the child seat connector to the anchorage. The AAMA et al. petitioners also suggested that the latchplates should not displace rearward more than 25 mm under a 50 N rearward load. Comments are requested on the need for such a requirement, the level at which a requirement should be set, the means of testing a requirement, and limiting side-to-side deflection of the latchplates which may degrade the ability to attach the child seat with just one hand. Comments are also requested on any other performance that should be required of the UCRA system to ensure that it will be effective.

Option B (Scheme D)

For vehicles incorporating the ISO Scheme D system, the standard would specify anchorage dimensional and marking requirements developed in draft by the ISO in "ISO/WD 13216–1i Road Vehicles-Child Restraint Systems-Standardized Universal Attachment to Vehicle (ISOFIX)—Part 1: Dimensions and General Requirements," (November 15, 1996). The rule would require the lower anchorages to be 6 mm diameter transverse horizontal round bars with a minimum effective length of 25 mm. The spacing between the bars would be 280 mm apart, center-to-center. This value is harmonized with ISO to be agreeable with manufacturers of European, Japanese and U.S. motor vehicles. [9] Other specifications for the location of the lower anchorage bars would also be set forth in the standard. The anchorage location zone would be determined using a child restraint apparatus (see Figures 1, 2 and 3 of the proposed standard).

Vehicle manufacturers incorporating the Scheme D system would also be required to provide connectors that would enable the system to be used with a UCRA-type child seat. The connector would have a component on one end that latches onto the 6 mm bar, and a UCRA latchplate on the other for attaching a UCRA child seat to the anchorage system. Comments are requested on the degree to which the geometry of the connector should be specified. A connector would have to be provided for each Scheme D lower anchorage point. NHTSA believes that a connector should be provided to ensure that parents having a UCRA-type child restraint can use the restraint in any vehicle. This aspect of the proposal was not included in the petition from BMW et al. Those petitioners suggested that a connector from a child restraint to the vehicle anchorages should be provided on the child restraint, by the child restraint manufacturer. Comments are requested on this issue.

2. Upper Anchorage

The tether anchorage would be harmonized with Canadian and Australian requirements. Canada is preparing to require vehicles to have a factory-installed, user-ready tether anchorage. While AAMA et al. originally petitioned to require a specialized buckle that would be compatible with a latchplate on a child seat tether, petitioners have indicated a desire to harmonize with Canada and Australia. Thus, a simple anchor (such as a ring) on the vehicle would be sufficient, although a more sophisticated anchor could be provided if it is compatible with the tether hook that today's NPRM proposes to require on child restraints.

e. Performance

The main performance requirement for the anchorage system would specify strength criteria for the lower and upper anchorages and related hardware. In addition, the standard would require the system to meet Standard 209's belt and buckle requirements, such as those relating to abrasion, resistance to light, corrosion resistance and temperature resistance. Comments are requested on whether Standard 213's buckle release requirements (S5.4.3.5) should also be met. Among other things, those requirements specify that a buckle must not release when subjected to a force of less than 40 N, and shall release when a force of not more than 62 N is applied.

The proposed strength criteria are to prevent the anchorages from failing in a crash. The anchorages, including structural components of the assembly, would have to withstand specified loads in a static pull test.

The performance criteria for the lower anchorages would require that, in a static test of the anchorages: (a) no portion of the latchplate for each anchorage shall move more than 125 mm forward of the seat bight when subjected to a forward force of 5,300 N and, (b) there shall be no complete separation of any anchorage component of the assembly (including webbing, straps, latchplates, adjustment and anchorage hardware and retractors).

The static pull test would specify that each lower anchorage is tested to withstand the application of a 5,300 N forward load. In the test, a force of 5,300 N would be applied to each anchorage in the forward direction parallel to the vehicle's longitudinal vertical plane. The force would be applied by means of a belt strap that is of sufficient length to extend not less than 250 mm forward from the vertical plane intersecting the seat bight. The belt would be fitted at one end with hardware for applying the force, and at the other end with hardware for attachment to the anchorage latchplate. The 5,300 N force is attained within 30 seconds, with an onset force rate not exceeding 135,000 N per second, and is maintained at the 5,300 N level for ten seconds. The test procedure and force level were selected to harmonize with the proposed Canadian regulations on the upper tether, as well as with the suggested force level of the UCRA petition. The same test is proposed for the rigid anchor system with the adapter attached to each anchor point.

[9] This figure is consistent with the ISO/WD 13216–1i report that are in the December 13, 1996 submittal to Docket No. 96–095, Notice 1.

A static pull test would also be specified in a new standard [10] for the upper tether anchorage, in accordance with Canada's proposed tether anchorage requirement. The force level and application rate would harmonize with the proposed Canadian regulations on the upper tether. The standard would specify that each structural component of the anchorage shall withstand a force of not less than 5,300 N, and that there shall be no complete separation or failure of any anchorage component. Comments are requested on whether more specificity is needed for these strength requirements, and on whether other performance requirements should be included in the standard.

Each tether anchorage would be tested separately. However, more than one tether anchorage installed on a row of seats would be tested simultaneously.

f. Instructions

The standard would require that instructions about attaching a child restraint to the vehicle anchorage system be provided in the vehicle owner's manual. The instructions would have to indicate the seating positions equipped with a child restraint anchorage system, and include instructions that provide a step-by-step procedure, including diagrams, for properly attaching a child restraint system to a vehicle anchorage system equipped with UCRA-type anchorages. In addition, for a vehicle equipped with a rigid anchorage system, instructions would also have to be provided for properly attaching a child restraint to the rigid system.

VII. Proposal for Amendments to Child Seat Standard

a. Applicability

Standard 213 would be amended to require all child seats, other than belt positioning seats, to be equipped with components that are compatible with the UCRA anchorages on the vehicle system. Belt-positioning seats, which are a type of booster seat designed for older children, are designed to use a vehicle's lap and shoulder (Type II) belt system to restrain the child occupant. Because a vehicle's belt system is not necessarily directly routed around or through a belt-positioning seat to secure it to a vehicle, and because upper torso protection is provided by the shoulder portion of the Type II belt, there does not appear to be any incompatibility between a vehicle seat or its seat belts and belt-positioning seats. Also, because a Type II belt system is placed around the child occupant who is seated on a belt-positioning seat, there would be a minimal amount of forward movement of the child and child seat before forward movement is restrained by the Type II belts.

b. Required Components

Requirements would be established for the components of the child seat that attach to the vehicle system. A child restraint would be permitted to have components that attach to rigid or semi-rigid Scheme D anchorages (Hybrid system), but the restraint must nonetheless have the UCRA attachments permanently attached to it. This would ensure that persons owning any type of child seat can use the restraint in any vehicle (i.e., all vehicles would be able to attach a UCRA-type seat, either attached to a UCRA system, or by way of UCRA connectors to Hybrid anchorages). The agency requests comments on whether child restraints intended to be used with systems that have Hybrid anchorages should be required to provide an adapter, rather than the UCRA components.

By way of reduced allowances on head excursion, each child seat would be required to have a tether that attaches to the vehicle. To minimize the chances of incompatibility between the seat and the vehicle, the standard would specify the exact geometry of the tether hook.

The regulatory text for this proposal does not include a provision that the child seat components attaching to the lower anchorages of the vehicle system have retractors to take up excessive slack in the belts. NHTSA requests comments on whether a retractor is needed or is manual adjustment enough to ensure that the child seat will be snug against the vehicle seat back. Excessive slack in the connecting belts could result in excessive head and knee excursions for the child occupant, and a greater likelihood of head impact.

In the October 1996 workshop, Kazuhiko Miyadara, Jocelyn Pedder of Transport Canada, and others indicated that a soft anchor system should have a means of taking up slack in the belts. Comments are requested on what type of retractor, if any, should be specified for the UCRA.

c. Dynamic Performance

The dynamic test specified in Standard 213 would be used to evaluate the performance of the child seat when attached to the universal vehicle anchorage system. The standard seat assembly specified in the standard to test add-on child seats would be revised to incorporate a child restraint anchorage system meeting the proposed specifications. A child restraint would be attached to the system using the appropriate buckles and other components of the child restraint. Injury criteria and other performance requirements specified in Standard 213 would have to be met when the child seat is attached to the anchorage system.

Forward-facing restraints would be required to meet a head excursion limit of 720 mm (28.35 inches) when tested in accordance with its manufacturer's instructions. To meet this requirement, most manufacturers would likely have to provide a top tether, which would be attached in the test for this new requirement. Restraints would also be required to meet a head excursion limit of 813 mm (32 inches) when the tether is not attached, to ensure that a minimum level of safety is provided in a misuse situation. Each child seat would also have to meet the 720 mm (tethered) and 813 mm (untethered) head excursion limits when attached by a lap belt. This test would be to ensure a minimum level of safety performance when the child seat is used in a vehicle that does not have a UCRA or rigid anchor system.

NHTSA believes that Standard 209's belt and buckle requirements relating to abrasion, resistance to light, corrosion resistance and temperature resistance, should apply to the webbing and hardware installed on a child seat to connect to a vehicle system as required by the existing provisions of S5.4 of Standard 213. The agency tentatively concludes that these belt and buckle requirements of Standard 209 should apply to ensure the safe performance of the belts and associated hardware.

d. Instructions and Labeling

Standard 213 would be amended to require that instructions about attaching a child restraint to the vehicle anchorage system be provided in the printed instructions accompanying each restraint. The instructions would have to provide a step-by-step procedure, including diagrams, for properly attaching a child restraint system to a vehicle anchorage system equipped with UCRA-type anchorages, and if the child restraint is intended for a vehicle equipped with a rigid or Hybrid anchorage system, instructions for properly attaching to such a system. NHTSA also proposes amending Standard 213's labeling requirements, to either add a new provision or amend an existing one such as S5.5.2(g), to instruct owners to secure the child restraint system with either a vehicle

[10] Assuming a final rule on this subject is issued, the requirements set forth in the proposed tether standard could be incorporated into the standard on the child restraint system anchorage system, rather than in a separate standard.

belt or components attaching to a vehicle's child restraint anchorage system.

S5.5.2(j) of Standard 213 would already require a label instructing owners to secure the top tether strap of the child restraint. That section states that in the case of each child restraint system equipped with an anchorage strap, the following must be permanently labeled:

SECURE THE TOP ANCHORAGE STRAP PROVIDED WITH THIS CHILD RESTRAINT AS SPECIFIED IN THE MANUFACTURER'S INSTRUCTIONS.

Comments are requested on what changes, if any, should be made to this labeling requirement to increase the likelihood that parents will attach the top tether strap.

VIII. Proposed Effective Date

In their petition, AAMA et al recommended a schedule for phasing in the suggested requirements, should those requirements be adopted. The petitioners requested different schedules for vehicle manufacturers, child restraint manufacturers, and final-stage vehicle manufacturers and alterers. The latter group of manufacturers are typically small businesses. (See table 2, below.) The schedules suggested by AAMA et al. are based on the assumptions that (a) the attaching system envisioned by the petitioners is adopted, and (b) a final rule is issued by January 1, 1997.

The petitioners suggest that vehicle manufacturers be permitted two alternatives in phasing in complying vehicles, beginning September 1, 1998. Under the first alternative, 10 percent of the vehicles manufactured in the first model year after September 1, 1998, would be required to have the child restraint anchorage system (manufactured on or after September 1, 1998, through August 31, 1999), 30 percent of the vehicles manufactured in the second model year (ending August 31, 2000), 50 percent in the third model year (ending August 31, 2001), and 100 percent in the fourth year (ending August 31, 2002). Under the second alternative, no vehicle need comply with the proposed standard before September 1, 2000, but 75 percent of a manufacturer's vehicles produced on or after September 1, 2000 through August 31, 2001 (model year 2001) would have to comply with the requirements, and 100 percent of its vehicles manufactured on or after September 1, 2001 would have to comply.

The requested schedule for child seat manufacturers also includes two alternatives for phasing in complying child seats, beginning September 1, 1998. The petition refers to child restraints manufactured in a particular "model year," which apparently assumes the September 1 to August 31 cycle traditionally used to designate vehicle model years. Under the first alternative, 5 percent of the child seats manufactured in the first "model year" after September 1, 1998 would be required to have the components enabling the child restraint to attach to the universal vehicle system (model year ending August 31, 1999), 15 percent of the child restraints manufactured in the second model year (ending August 31, 2000), 25 percent in the third model year (ending August 31, 2001), and 100 percent in the fourth year (ending August 31, 2002). Under the second alternative, no child restraint need comply with the proposed amendments to Standard 213 before September 1, 2000, but 50 percent of a manufacturer's restraints produced on or after September 1, 2000 through August 31, 2001 (model year 2001) would have to comply with the requirements, and 100 percent of its child seats manufactured on or after September 1, 2001 would have to comply.

The petitioners provided the following table showing the requested phase-in schedules for vehicle and child seat manufacturers:

PETITIONERS REQUESTED PHASE-IN ALTERNATIVES (PERCENT OF PRODUCTS REQUIRED TO COMPLY)

Model year	Vehicle manufacturers alternative #1 (percent)	Vehicle manufacturers alternative #2	Child seat manufacturers alternative #1 (percent)	Child seat manufacturers alternative #2
1999	10	0	5	0
2000	30	0	15	0
2001	50	75	25	50
2002	100	100	100	100

The requested schedule for final-stage manufacturers and alterers would provide these manufacturers the option of using the phase-in schedule for vehicle manufacturers, described above, or the alternative of having the requirements become mandatory on September 1, 2001 for 100 percent of a manufacturer's vehicles, and not before.

NHTSA has made the following tentative decisions about leadtime. The agency believes that the proposed requirement that vehicles provide a user-ready tether anchorage and that child seats provide a tether can be made effective at a much earlier date than a requirement for the lower anchorages of a child restraint anchorage system. Passenger cars, in particular, generally are already equipped with a tether anchor (Canada has required a tether anchorage in passenger cars since 1989), so it appears that a user-ready anchorage can be provided in the near future. Canada is proposing an effective date of September 1, 1999 for its tether hardware requirement for passenger cars. NHTSA proposes that its tether anchorage requirement for passenger cars be the same as the Canadian proposal.

For LTVs, Canada has also proposed that its tether anchor (hole) requirement be effective September 1, 1999, and its tether hardware requirement effective a year later. In view of these dates and that anchorages (holes) are apparently not as currently available on LTVs as on passenger cars, NHTSA proposes a September 1, 2000 effective date for its tether hardware requirement for LTVs.

With regard to child restraints, restraints manufactured in the U.S. and sold in Canada already are equipped with a tether to meet Canadian requirements. NHTSA believes that most U.S. manufacturers produce child restraints for sale in Canada. NHTSA is considering an effective date of September 1, 1999 for its proposal to effectively require tethers by way of reducing Standard 213's head excursion requirement.

As to a requirement for the lower anchorages, the petitioners did not explain why a phase-in is needed, or why more than four years would be needed to implement the requirement. The agency is determined to remedy the problem of incompatibility of child restraints and motor vehicles as promptly as possible and requests comments on the feasibility of having full implementation (100 percent of affected vehicles) in a shorter period, e.g., two years after the publication of a final rule. GM indicated in the UCRA petition that if allowed, it would begin installing the UCRA system on vehicles before completion of this rulemaking on UCRAs. (NHTSA replied in an August 27, 1996 letter that manufacturers are permitted to voluntarily install the system before completion of a final rule.) Given that the UCRA technology is developed and available, and capable of being installed in today's vehicles, the agency believes the system could be implemented within two years. The same issue arises with regard to the effective date for requiring child restraints to be equipped with buckles and other components compatible with the UCRA system. Comments are requested on why a phase-in is needed, and on whether a shorter compliance date is possible.[11]

NHTSA recognizes that the rigid attachment system may need longer time to implement, especially on vehicles that may need to redesign their vehicle seats and/or floor pans. This was acknowledged by the international safety community in the December 6, 1996 ISO resolution that the rigid system is a hardware alternative that needs some time for development, as compared to the flexible hardware option. (See section IV.a., *supra.*) The agency's proposal would allow the long term rigid anchors solution to coexist with the UCRA approach that is available today. Even though the proposed lead time of 24 months may not be sufficient for the rigid anchorage hardware technology, the proposed rule provides vehicle manufacturers with the option of implementing the rigid system (with connectors) once it is developed, while providing a UCRA-type system in the short term.

IX. Rulemaking Analyses and Notices

a. Executive Order 12866 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has examined the impact of this rulemaking action and determined that it is economically significant within the meaning of Executive Order 12866 and significant within the meaning of the Department of Transportation's regulatory policies and procedures. NHTSA has prepared a Preliminary Economic Assessment (PEA) for this notice which discusses issues relating to the potential costs, benefits and other impacts of this regulatory action.

A copy of this analysis has been placed in the docket for this rulemaking action. Interested persons may obtain copies of this document by writing to the docket section at the address provided at the beginning of this notice.

To briefly summarize the analysis, NHTSA estimates that the cost of a rule requiring the UCRA system would be approximately $160 million. The cost of the rule related to the vehicle would range, per vehicle, from $3.88 (one UCRA in front seat only) to $7.76 (for one UCRA in front seat and one in back seat or two UCRAs in rear seats). NHTSA estimates that 15 million vehicles would be affected: 9 million passenger cars and light trucks with "adequate" rear seats, 3 million vehicles with no rear seat, and 3 million vehicles that can only accommodate a forward-facing child seat in the rear seat (not a rear-facing infant seat). The cost of the rule for vehicles is estimated to be about $105 million. The cost of the UCRA attachments on the child seat is estimated to be about $55 million (3.9 million child restraints (excluding belt-positioning boosters) at $14 per seat).

The benefits of the rule are estimated to be 24 to 32 lives saved per year, and 2,187 to 3,615 injuries prevented.

As discussed in the PEA for this proposal, in view of the cost of the UCRA attachments on a child restraint, estimated to be about $14 per restraint, NHTSA requests information on the price elasticity of child restraints. NHTSA is concerned about the potential effects of this rule on the purchase behavior of consumers. As one participant in the October 1996 workshop pointed out, if consumer demand is sufficiently sensitive to new car seat prices, the resulting changes in car seat usage could partially or totally offset the benefits of the proposed rule. NHTSA has estimated that the proposed rule will raise the price of the average car seat by $14. For a $50 car seat, this represents a 28 percent increase in price. On the other hand, each of the States and the District of Columbia require the use of child restraints in motor vehicles. To what extent, if at all, would an increase in the price of a child restraint lead to a decrease in demand for the product, notwithstanding child restraint use laws mandated by each State? Also, NHTSA and child restraint manufacturers have been inundated with calls from parents asking for help in installing seats correctly. Would this interest in child safety motivate a sufficiently large number of people to pay $14 for changes to a child restraint that would make a restraint easier to install and more secure on a vehicle seat? NHTSA is especially interested in comments from consumers on these questions.

Consumers have essentially four choices: buy a car seat despite the higher price, buy a used seat, seek a giveaway or loaner program, or forego the seat altogether. If a 28 percent price increase were to result in a 10 percent decrease in new sales and thus a corresponding decline in usage (assuming options two and three are not available), then the estimated benefits of the rule (24 to 32 fatalities prevented per year) could be offset by an estimated 24 fatalities from reductions in the number of seats in use. Consumers turning to the used car seat market would receive no benefit from the proposed rule. The offsetting effects would be reduced if there is a corresponding increase in giveaway and loaner programs, but by virtue of the price increase these programs would have to find new or additional funding.

The agency does not know how many programs exist and requests information on this issue. A cost increase could result in fewer seats being purchased by the program for loan or giveaway. On the other hand, persons responsible for some State loaner/giveaway programs informed the agency that if the new seats cost more, they would be able to find the funding to keep up with demand. They also said that the time saved installing child seats in each vehicle and making adjustments would be worth the difference in price.

Unfortunately, NHTSA has not located any data or estimates of the actual sensitivity of new child restraint sales to price changes. For the sake of comparison, a large proportion of consumer goods exhibit greater sensitivity to price than that described in the hypothetical example above, even in the short run. If new child restraint purchases in fact exhibit the same magnitude of price sensitivity as many other consumer goods, the proposed rule could increase rather than reduce the overall risks to the Nation's children.

For these reasons, NHTSA strongly encourages data, analyses, and comment on this issue. The agency also requests comments on ways to mitigate these effects, such as ways to minimize effects on price. For example, the $14 cost increase includes the cost of two buckles that attach to latchplates of the

[11] A phase-in of an amendment to an equipment standard is uncommon. It should be noted that to implement a phase-in requirement, the agency would require manufacturers to provide information on the total annual sales of their seats, so that the agency can determine whether the requisite number of seats complied with the new requirements.

UCRA system on the vehicle. Would costs be reduced if the latchplates were part of the child restraint and the buckles part of the vehicle system? This assumes that the buckle hardware is of higher cost than the latchplates. Should NHTSA conclude that both (1) the combination of expected child restraint price changes and consumer sensitivity to those price changes is sufficiently large and (2) there are no cost-effective ways to mitigate these effects such that the final rule will result in a net increase in child safety, NHTSA would need to reconsider the proposal.

b. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (Public Law 96–354), as amended, requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations and small governmental jurisdictions. Section 603 of the Act requires agencies to prepare and make available for public comment an initial regulatory flexibility analysis (IRFA) describing the impact of proposed rules on small entities. NHTSA has included an IRFA in the PEA for this proposal.

NHTSA tentatively believes that the proposed rule could have a significant impact on a substantial number of small entities. The proposed rule would affect motor vehicle manufacturers, almost all of which would not qualify as small businesses, and portable child restraint manufacturers. NHTSA estimates there to be about 10 manufacturers of portable child restraints, four or five of which could be small businesses.

Business entities are generally defined as small businesses by Standard Industrial Classification (SIC) code, for the purposes of receiving Small Business Administration assistance. One of the criteria for determining size, as stated in 13 CFR 121.601, is the number of employees in the firm. There is no separate SIC code for child restraints, or even a category that they fit into well. However, there are categories that could be appropriate. To qualify as a small business in the Motor Vehicle Parts and Accessories category (SIC 3714), the firm must have fewer than 750 employees. The agency has considered the small business impacts of this proposed rule based on this criterion. On the other hand, to qualify as a small business in the category including manufacturers of baby furniture, the firm must have fewer than 500 employees. Comments are requested on which Standard Industrial Classification code would best represent child restraint manufacturers.

The IRFA discusses the possible impacts on small entities and requests information that would assist NHTSA in further analyzing those impacts. As discussed in the IRFA, the incremental cost increase of $14 to the current price of a child restraint would significantly raise the price of child restraints, which could have a significant economic impact on a substantial number of small businesses. NHTSA does not know the elasticity of demand for child restraints. While child restraint use is mandated by each State, there is significant nonuse of restraints. An increase in the price of a child restraint could lead to a decrease in demand for the product, notwithstanding the restraint use laws.

According to information from Cosco (see summary, above, of NHTSA's October 1996 public workshop), the average purchase price of a convertible car seat today is $63. About 25 percent of the car seats purchased cost $50 or less; less than five percent cost $100 or more. Cosco estimated that at least 10 percent of the people would not be able to purchase a car seat if prices increased significantly.

Comments are requested on the effect that raising child restraint prices by $14 (UCRA attachments) to possibly $100 (hard anchor system) would have on small businesses that manufacture child restraints. Would an across-the-board increase in price reduce small business sales? What is the magnitude of the impact?

As discussed above in section IX.a., a loaner program could have fewer seats available. Assuming that would be the case, NHTSA seeks information on the extent to which the number of seats a program makes available impacts on the organization itself. For example, do proceeds from loaner or giveaway programs (where a nominal fee might be charged) support the not-for-profit organization's activities?

NHTSA tentatively believes that there are no alternatives to the proposal which would accomplish the stated objectives of 49 U.S.C. § 30101 *et seq.* and which would minimize any significant economic impact of the proposed rule on small entities. As discussed above in section V.c., "Discussion of Alternatives," NHTSA considered a number of other approaches to minimize or eliminate incompatibility between child seats and vehicle seats. SAE Recommended Practice J1819, "Securing Child Restraint Systems in Motor Vehicle Rear Seats," does not appear sufficient alone to solve incompatibility problems. It is a tool for evaluating incompatibility, not a requirement that vehicle seats and child restraints must be compatible. Further, it is very difficult for a single system to optimize the safety protection for adults of all ranges and child restraints of different types. The current "lockability" requirement does not appear sufficient alone in addressing incompatibility, because it still depends on the user knowing enough and making the effort to manipulate and correctly route the belt system. Also, the lockability requirement does not address incompatibility problems arising from forward-mounted seat belt anchors. The "Car Seat Only (CSO)" system suggested by Cosco probably would not make attaching a child seat significantly easier than it is today. The CSO belt would have to be correctly routed through the child restraint, which is a problem occurring with present seats, and appears hard to tighten. Also, Cosco provided no information showing that the CSO belt would improve the securement of a child restraint on contoured (especially humped) seats. Another concern relates to the potential for inadvertent use by an adult occupant.

Comments are requested on possible alternatives to the proposal which mitigate any significant economic impact of the proposed rule on small entities, while accomplishing the objectives of 49 U.S.C. § 30101 *et seq.*

c. Executive Order 12612

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and the agency has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

d. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. NHTSA has included an evaluation in the PEA for this proposal. The costs and benefits of the proposal are discussed above and throughout the PEA. (As explained above, the cost would be approximately $105 million for vehicles, and $55 million for child restraints. The benefits would be saving approximately 24 to 32 children's lives per year, and preventing 2,187 to 3,615 injuries. An independent means of attaching child restraints would also enable vehicle manufacturers to optimize the design of vehicle belt systems for adult occupants.)

Participants in a NHTSA public meeting held in March 1995 at the Lifesavers National Conference on Highway Safety Priorities, who typically work in State highway traffic safety agencies, community traffic safety programs and State or local law enforcement agencies, expressed strong support for a requirement for a universal child restraint anchorage system, such as that proposed in this NPRM. Support for a universal child restraint anchorage system, such as that proposed in the NPRM, was also expressed at NHTSA's October 1996 public workshop on various types of anchorage systems. As discussed above in sections V.c. and IX.b., and in the PEA, the agency does not believe that there are feasible alternatives to the proposal, including SAE Recommended Practice J1819, the lockability requirement or Cosco's CSO system.

e. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

f. Executive Order 12778 (Civil Justice Reform)

This proposed rule does not have any retroactive effect. Under section 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

X. Comments on the Proposal

Interested persons are invited to submit comments on the proposal. It is requested, but not required, that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—[AMENDED]

In consideration of the foregoing, NHTSA proposes to amend 49 CFR Part 571 as set forth below.

1. The authority citation for Part 571 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.210a would be added to read as follows:

§ 571.210a Standard No. 210a; Child restraint anchorage system.

S1. *Purpose and scope.* This standard establishes requirements for a system for anchoring child restraint systems to increase the likelihood that child restraints are properly secured in motor vehicles.

S2. *Application.* This standard applies to passenger cars, and to multipurpose passenger vehicles, trucks and buses with a GVWR of 10,000 pounds or less, except walk-in van-type vehicles and vehicles manufactured to be sold exclusively to the U.S. Postal Service.

S3. *Definitions.*

Child restraint anchorage means any component involved in transferring child restraint loads to the vehicle structure, including but not limited to, the attachment hardware on the vehicle structure, webbing and straps attached to the vehicle and hardware attached thereto, the seat frames, seat pedestals, and the vehicle structure itself.

Child restraint anchorage system means a system that is designed for attaching a child restraint to a vehicle at a particular designated seating position and for transferring child restraint loads to the vehicle structure and that consists of—

(1) Two lower child restraint anchorages at the seat bight; and

(2) A tether anchorage for attaching a top tether strap of a child restraint system.

Child restraint apparatus means the fixture depicted in Figures 1, 2 and 3 of this standard which simulates the dimensions of a child restraint, and which is used to determine the space required by the child restraint and the location and access to the lower anchorages.

Seat bight means the intersection of the vertical plane tangent to the forward most point of the seat back and the horizontal plane tangent to the uppermost point of the seat cushion.

Tether anchorage is defined in 49 CFR 571.210b, "Tether anchorages for child restraint systems."

S4. *Requirements.* Each motor vehicle shall meet the requirements in this section when, as specified, tested in accordance with S5 and this paragraph.

S4.1 *Type.*

(a) Except as provided in S4.1(b) through (d) of this section, each vehicle shall be equipped with a child restraint anchorage system for at least two rear designated seating positions.

(b) A vehicle may be equipped with a built-in child restraint system conforming to the requirements of Standard No. 213 (49 CFR 571.213) in lieu of one of the child restraint anchorage systems required by S4.1(a) of this section.

(c) A vehicle that meets the conditions concerning rear seats in either S4.5.4.1(a) or S4.5.4.1(b) of Standard No. 208 (49 CFR 571.208) and

that has an air bag cutoff switch meeting the requirements of S4.5.4 of Standard 208 shall have a child restraint anchorage system installed for a designated seating position in the front seat, and for a position in the rear seat if the vehicle has a rear seat.

(d) A vehicle that has no forward-facing designated seating positions to the rear of the front seating positions and no air bag cutoff switch meeting the requirements of S4.5.4 of Standard 208, shall not have a child restraint anchorage system installed for a designated seating position in the front seat.

S4.2 *Lower anchorages.*

The child restraint anchorage system shall have two lower anchorages and shall conform to either S4.2.1, or S4.2.2 and S4.2.3, at the manufacturer's option.

S4.2.1 *Flexible anchorages.*

S4.2.1.1 *Configuration and Geometry.*

A child restraint anchorage system shall incorporate two lower anchorages with latchplates conforming to the configuration and geometry specified in Figure 4 of this standard.

S4.2.1.2 *Location.*

(a) When fully extended in a plane parallel to the vehicle's longitudinal axis, the centerlines of the two latchplates are 280 mm apart.

(b) When fully extended in a plane parallel to the vehicle's longitudinal axis, the tip of each latchplate must not extend more than 50 mm forward of the seat bight.

S4.2.1.3 *Strength.*

When tested in accordance with S5 of this standard, a child restraint anchorage system shall meet the following requirements:

(a) No portion of the latchplate for each lower anchorage shall pass through a vertical, transverse plane that is 125 mm forward of the seat bight; and

(b) There shall be no complete separation of any anchorage component component (including webbing, straps, hooks and buckles, latchplates, adjustment and attachment hardware and retractors).

S4.2.2 Rigid or semi-rigid anchorages.

S4.2.2.1 Configuration and geometry.

A child seat anchorage system shall incorporate two lower anchorages that are 6 mm diameter transverse horizontal round bars with a minimum length of 25 mm.

S4.2.2.2 Location.

(a) The transverse spacing of the bars shall be 280 mm, center-to-center.

(b) The lower anchorage bars are located with respect to the child restraint apparatus rearward extensions as shown in Figures 2 and 3 of this standard, with the child restraint apparatus placed on the vehicle seat cushion and against the vehicle seat back. Anchorage bars that are rigidly supported are to be 50 mm rearward of the rearmost surface of the fixture, while semi-rigidly supported bars may be located from 50 mm rearward to 10 mm forward of that surface. The center of rigidly supported lower anchorage bars shall be at least 120 mm behind the vehicle seating reference point.

(c) Rigidly supported lower anchorage bars must be in a zone from 10 to 20 mm above the bottom surface of the child restraint apparatus, while semi-rigidly supported bars must be in a zone from 0 to 20 mm above that surface.

S4.2.2.3 Strength.

When tested in accordance with S5 of this standard, a child restraint anchorage shall meet the following requirements:

(a) No portion of any component attaching to the lower anchorage bars shall move forward more than 125 mm.

(b) There shall be no complete separation of any anchorage component.

S4.2.3 Connectors.

Each vehicle equipped with lower anchorages conforming to S4.2.2 of this standard shall be equipped with connectors that permit the attachment of a child restraint that is equipped with components which attach to lower anchorages conforming to S4.2.1. Each connector shall be equipped with a latchplate conforming to the configuration and geometry specified in Figure 4 of this standard. When attached to a lower anchorage, the tip of each latchplate must not extend more than 50 mm forward of the seat bight when the connector is fully extended.

S4.3 Tether anchorage.

The child restraint anchorage system shall incorporate a tether anchorage conforming to 49 CFR 571.210b, "Tether anchorages for child restraint systems."

S4.4 Webbing, buckles and belt adjustment hardware.

S4.4.1 Webbing.

The webbing provided with a child restraint anchorage system shall—

(a) After being subjected to abrasion as specified in S5.1(d) or S5.3(c) of FMVSS No. 209 (49 CFR 571.209), have a breaking strength of not less than 75 percent of the strength of the unabraded webbing when tested in accordance with S5.1(b) of FMVSS 209; and

(b) Meet the requirements of S4.2(e) through (h) of FMVSS No. 209 (49 CFR 571.209).

S4.4.2 Buckles and belt adjustment hardware.

Each belt buckle and item of belt adjustment hardware used in a child restraint anchorage system shall conform to the requirements of S4.3(a) and S4.3(b) of FMVSS No. 209 (49 CFR 571.209).

S4.5 Marking and Guidance.

For lower anchorages conforming to S4.2.2, at least one lower anchorage bar is to be readily visible to the person installing a child restraint. The vehicle seat cushion or seat back shall include markings or features to assist in the correct lateral positioning of the child restraint system as it is moved rearward to engage the lower anchorages.

S4.6 *Instructions.*

The vehicle owner's manual shall:

(a) Indicate the seating positions equipped with a child restraint anchorage system;

(b) Include instructions that provide a step-by-step procedure, including diagrams, for properly attaching a child restraint system to a vehicle anchorage system equipped with lower anchorages conforming to the requirements of S4.2.1 (with or without use of a connector); and,

(c) Include instructions for properly installing a child restraint system in a vehicle anchorage system equipped with lower anchorages conforming to the requirements of S4.2.2, if the vehicle is equipped with such anchorages.

S5 *Test procedures.*

S5.1 *Lower anchorages.*

Test each lower anchorage separately, with or without connectors provided with the vehicle. Apply a force of 5,300 N to each anchorage in the forward horizontal direction parallel to the vehicle's longitudinal axis. Apply the force by means of a belt strap that extends at least 250 mm forward of the seat bight. The belt is fitted at one end with hardware for applying the force, and at the other end with hardware that attaches to an anchorage or connector. Apply force to the belt strap so that the 5,300 N force is attained within 30 seconds, with an onset force rate not exceeding 135,000 N per second, and is maintained at the 5,300 N level for at least 10 seconds.

S5.2 *Tether anchorage.*

Tether anchorages are tested according to the procedures specified in 49 CFR 571.210b, "Tether anchorages for child restraint systems.'

BILLING CODE 4910-59-P

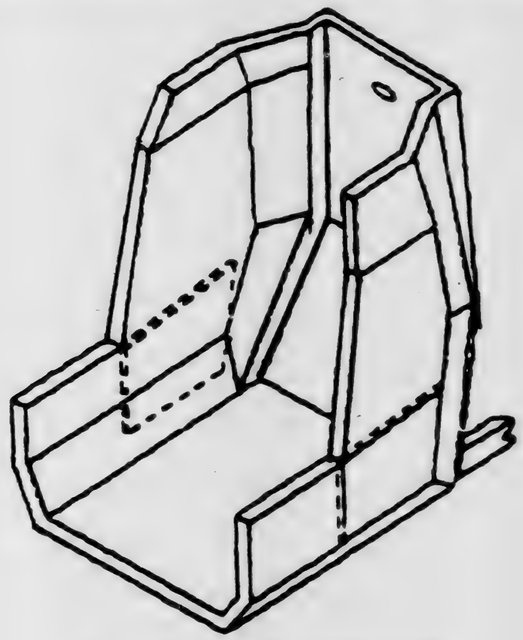

Figure 1—Child Restraint Apparatus-Isometric

Side & back frames removable for installation in vehicle

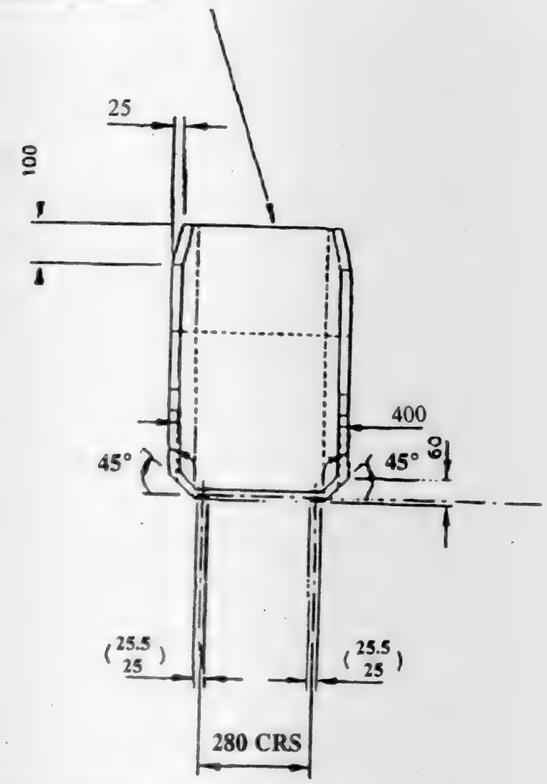

Figure 2a—Child Restraint Apparatus Anchorages Front View

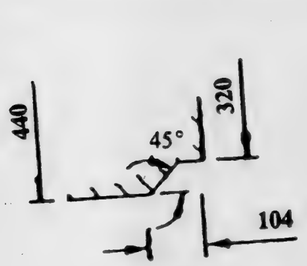

Part Section A-A

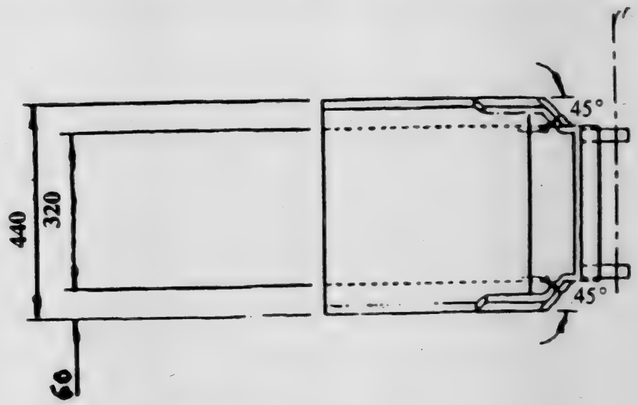

PLAN VIEW

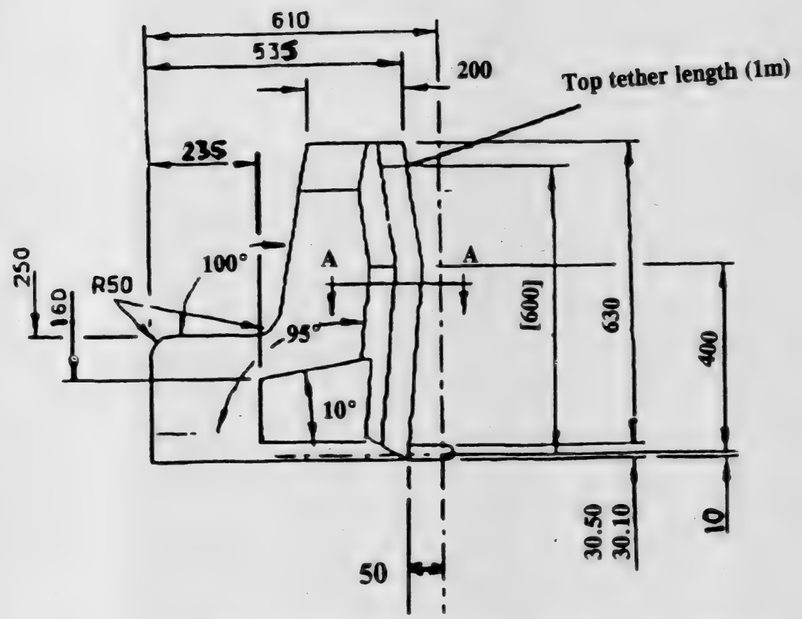

Figure 2b—Child Restraint Apparatus Anchorages Side and Plan View

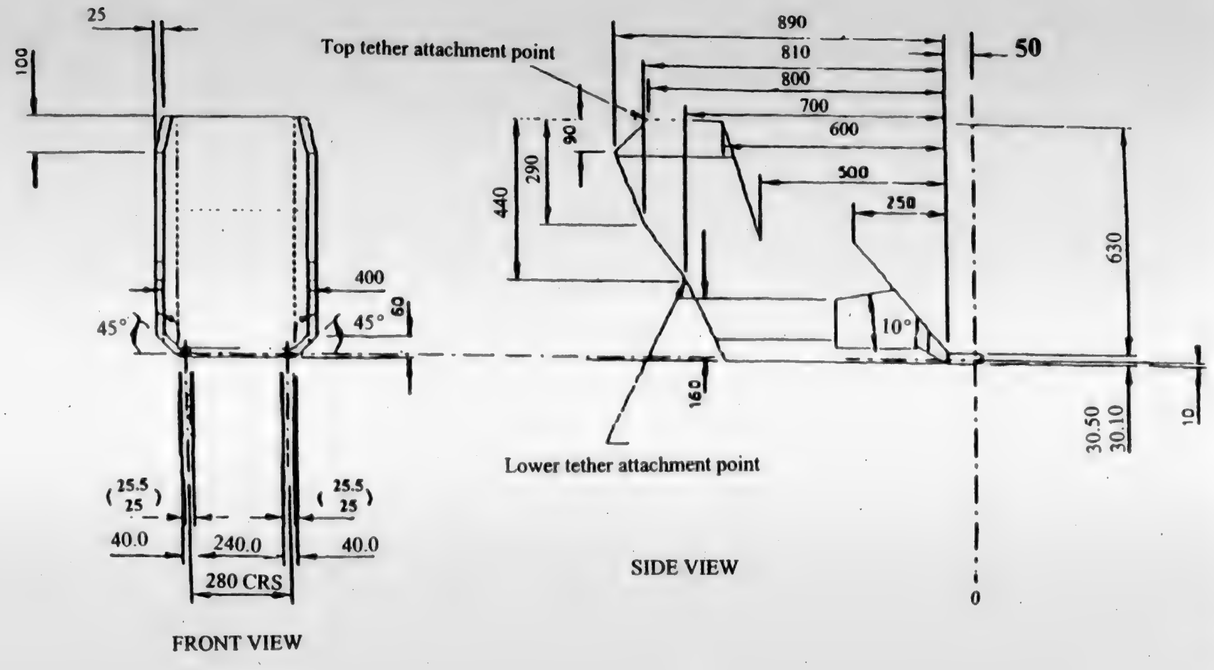

Figure 3a-Child Restraint Apparatus Anchorages
Rear-Facing
Front and Side Views

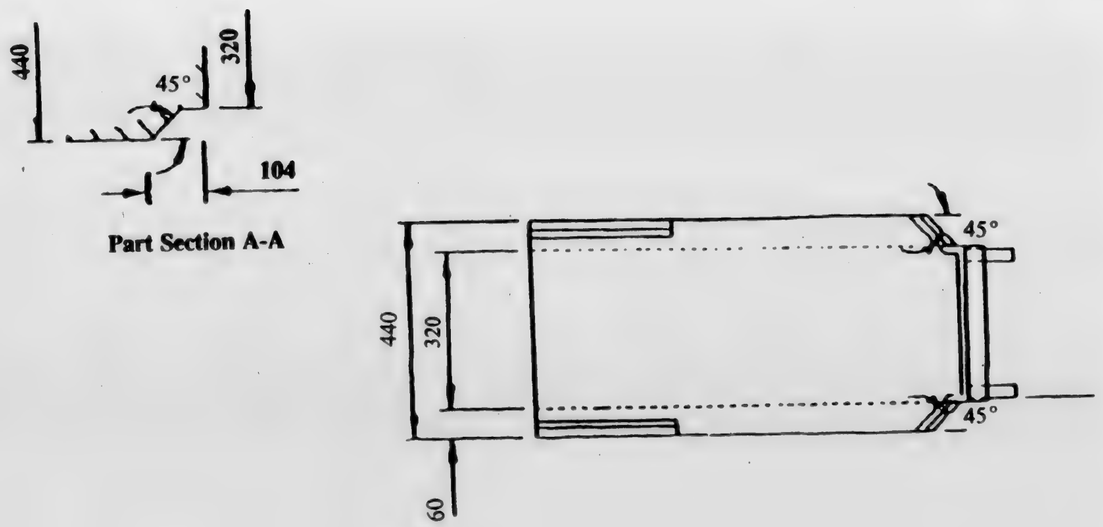

Figure 3b-Child Restraint Apparatus Anchorages
Rear-Facing
Plan View

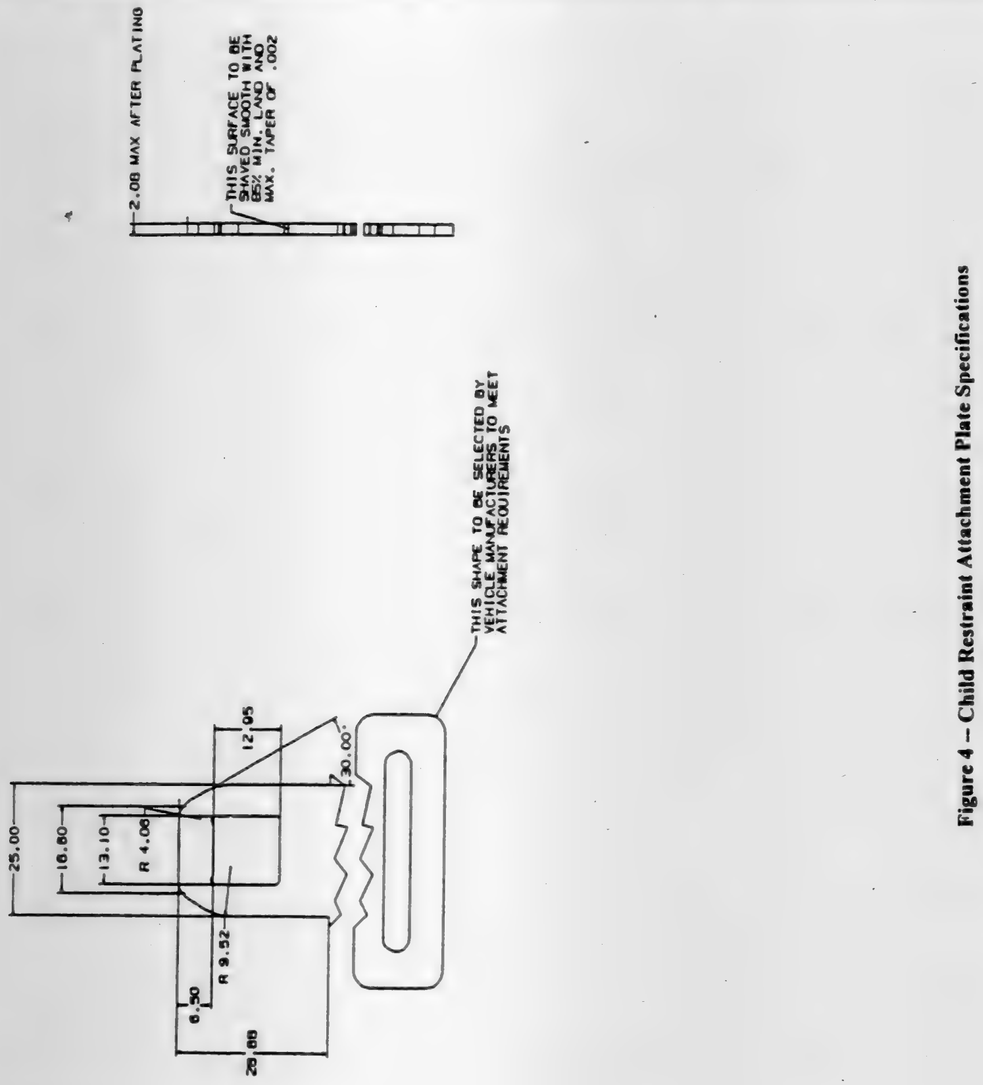

Figure 4 — Child Restraint Attachment Plate Specifications

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3. Section 571.210b would be added to read as follows:

§ 571.210b Standard No. 210b; Tether anchorages for child restraint systems

S1. *Purpose and scope.* This standard establishes requirements for the strength and location of tether anchorages to ensure proper anchoring of child restraint systems.

S2. *Application.* This standard applies to tether anchorages installed in passenger cars manufactured on or after September 1, 1999, and in multipurpose passenger vehicles, trucks and buses manufactured on or after September 1, 2000.

S3. *Definitions.*

Tether anchorage means any component that transfers loads from tether anchorage hardware to the vehicle structure.

Tether anchorage hardware means any component that transfers tether strap loads to a tether anchorage and is designed to accept a tether strap hook.

Tether strap means a device that is fitted with a tether strap hook and secured to the rigid structure of a child restraint system and that transfers the load from that system to the anchorage hardware.

Tether strap hook means a device, illustrated in Figure 11 of Standard No. 213 (49 CFR 571.213), used to attach a tether strap to tether anchorage hardware.

S4. *Requirements.* Each tether anchorage shall meet the requirements of this section.

S4.1 *Configuration.*

S4.1.1 Except as provided by S4.1.2, each tether anchorage shall—

(a) Be equipped with tether anchorage hardware that is easily accessible and that permits the attachment of a tether hook meeting the configuration and geometry specified in Figure 11 of Standard No. 213 (49 CFR 571.213) of this section;

(b) Be located in accordance with S4.2 of this section; and

(c) Be sealed to prevent the entry of exhaust fumes.

S4.2 *Anchorage positioning requirements.*

S4.2.1 *Passenger cars and multipurpose passenger vehicles.* The vertical centerline of each tether anchorage and each tether anchorage hardware component shall be located within the shaded zone shown in Figures 2, 3, 4 and 8 of this standard, with reference to the shoulder reference point of a template described in section 3.1 of SAE Standard J826 (June 1992), where

(a) The H-point of the template is located at the unique Design H-point of the seat, as defined in section 2.2.11.1 of SAE Recommended Practice J1100 (June 1993), at the full rearward and downward position of the seat;

(b) The torso line of the template is at the same angle from the vertical plane as the seat back with the seat adjusted to its full rearward and full downward position and the seat back in its most upright position; and,

(c) The template is positioned in the vertical longitudinal plane that contains the H-point of the template.

S4.2.2 *Trucks and buses.* Subject to S4.3.2.1, the vertical centerline of each tether anchorage and each tether anchorage hardware in a truck or bus shall be located within the shaded zone shown in Figures 5, 6, 7, and 8 of this standard, with reference to the H-point of a template described in section 3.1 of SAE Standard J826 (June 1992), where

(a) The H-point of the template is located at the unique Design H-point of the seat, as defined in section 2.2.11.1 of SAE Recommended Practice J1100 (June 1993), at the full rearward and downward position of the seat;

(b) The torso line of the template is at the same angle from the vertical plane as the seat back with the seat adjusted to its full rearward and full downward position and the seat back in its most upright position; and

(c) The template is positioned in the vertical longitudinal plane that contains the H-point of the template.

S4.3.2.1 The centerline of a tether anchorage in a truck or bus may be located outside the shaded zone referred to in S4.3.2 if a routing device that is of sufficient strength to withstand the loads referred to in S4.4 is installed within that shaded zone.

S4.4 *Strength.*

S4.4.1 If a tether anchorage is installed for only one designated seating position on a seat, the tether anchorage with the tether anchorage hardware installed shall, when tested in accordance with S5, withstand a force of 5,300 N. There shall be no complete separation or failure of any anchorage component.

S4.4.2 If a tether anchorage is installed for more than one designated seating position on a bench seat, each tether anchorage with the tether anchorage hardware installed shall, when tested in accordance with S5, withstand the simultaneous application of a force of 5,300 N to each assembly of tether anchorage and tether anchorage hardware. There shall be no complete separation or failure of any anchorage component.

S5 *Test procedure.*

With the seat adjusted to its full rearward and full downward position and the seat back in its most upright position, attach a belt strap that extends not less than 250 mm forward from the vertical plane intersecting the seat bight (the intersection of the surfaces of the seat cushion and the seat back). The strap is fitted at one end with hardware for applying the force and at the other end with a bracket for attachment to the tether anchorage hardware and passes over the top of the vehicle seat back as shown in Figure 8 of this standard. Apply a force of 5,300 N to each anchorage in the forward horizontal direction parallel to the vehicle's longitudinal axis. The 5,300 N force is attained within 30 seconds, with an onset force rate not exceeding 135,000 N per second, and is maintained at the 5,300 N level for one second.

Figure 1—[Reserved]

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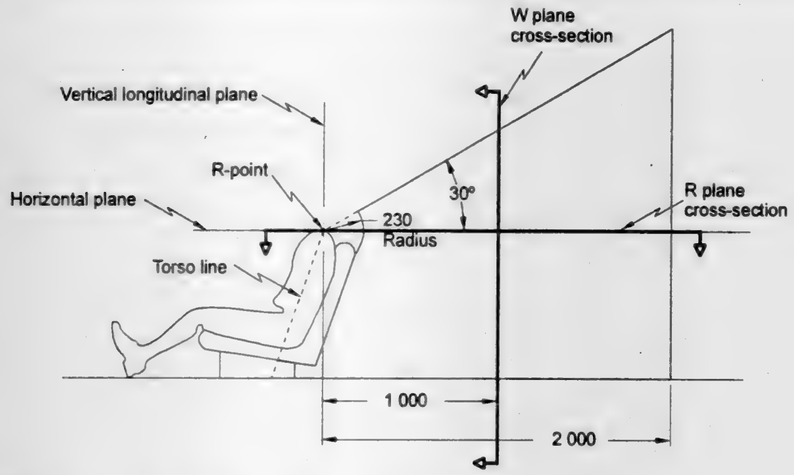

Notes:
Dimensions in mm, except where otherwise indicated
Centreline of tether anchorage to be located within shaded zone
R-point : shoulder reference point
Drawing not to scale

Figure 2—Side View, Tether Anchorage Location for Passenger Cars and Multi-Purpose Passenger Vehicles

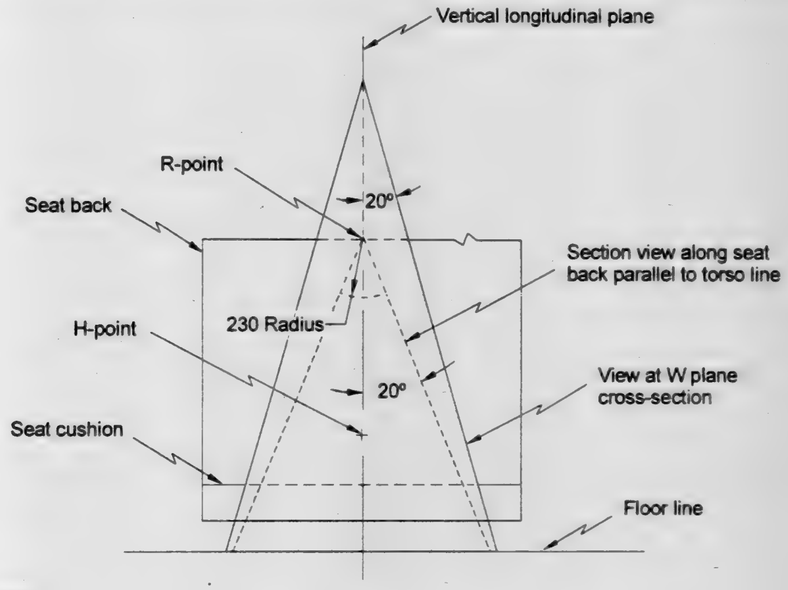

Notes:
Dimensions in mm, except where otherwise indicated
Centreline of tether anchorage to be located within shaded zone
R-point : shoulder reference point
Drawing not to scale

Figure 3—Rear View, Tether Anchorage Location for Passenger Cars and Multi-Purpose Passenger Vehicles

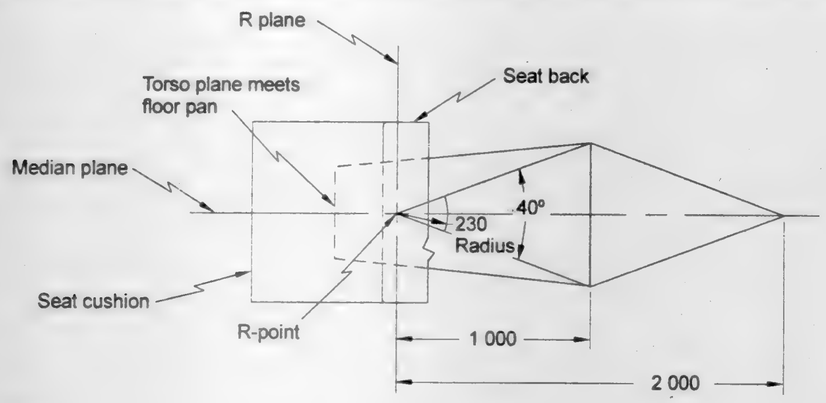

Notes:
Dimensions in mm, except where otherwise indicated
Centreline of tether anchorage to be located within shaded zone
R-point : shoulder reference point
Drawing not to scale

Figure 4—Plan View, (R-Point Level), Tether Anchorage Location for Passenger Cars and Multi-Purpose Passenger Vehicles

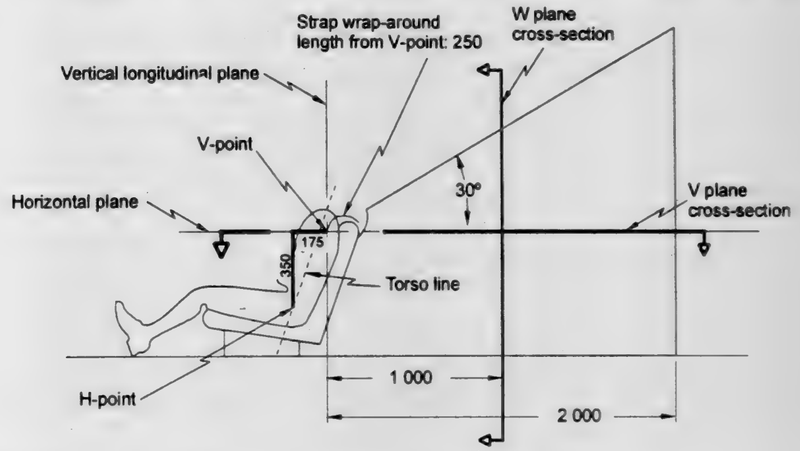

Notes:
Dimensions in mm, except where otherwise indicated
Centreline of tether anchorage to be located within shaded zone
V-point : V-reference point, 350 mm vertically above and 175 mm horizontally back from H-point
Drawing not to scale

Figure 5—Side View, Tether Anchorage Location for Trucks

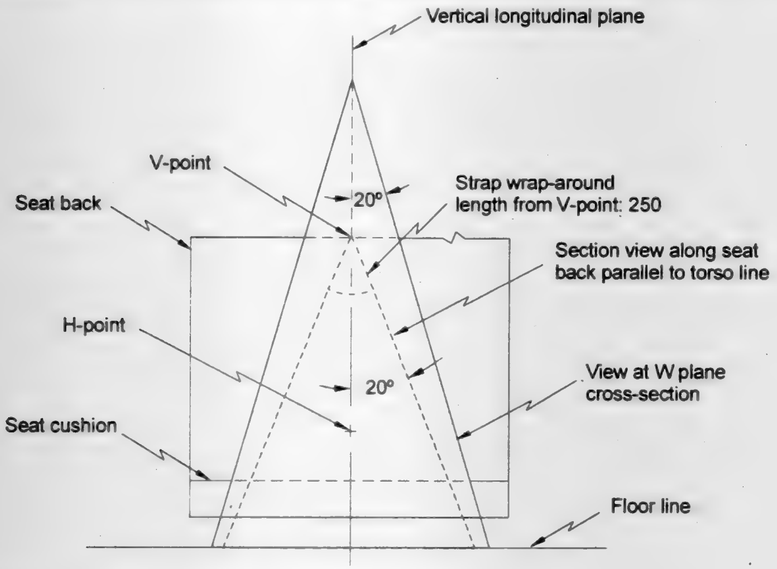

Notes:
Dimensions in mm, except where otherwise indicated
Centreline of tether anchorage to be located within shaded zone
V-point : V-reference point, 350 mm vertically above and 175 mm horizontally back from H-point
Drawing not to scale

Figure 6—Rear View, Tether Anchorage Location for Trucks

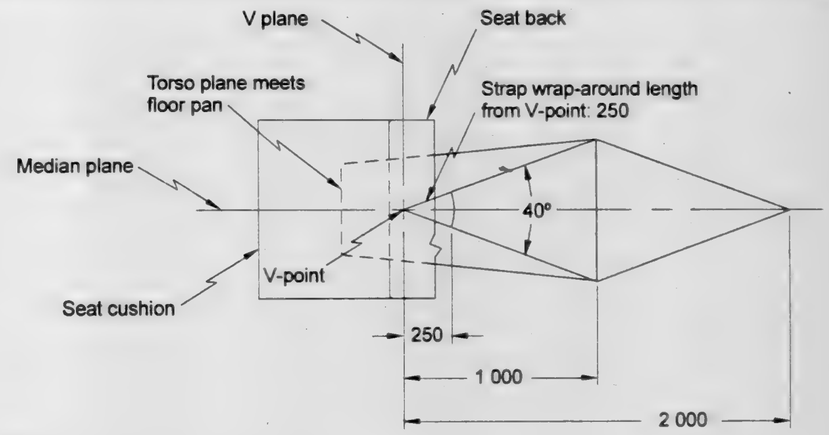

Notes:
Dimensions in mm, except where otherwise indicated
Centreline of tether anchorage to be located within shaded zone
V-point : V-reference point, 350 mm vertically above and 175 mm horizontally back from H-point
Drawing not to scale

Figure 7—Plan View, (V-Point Level), Tether Anchorage Location for Trucks

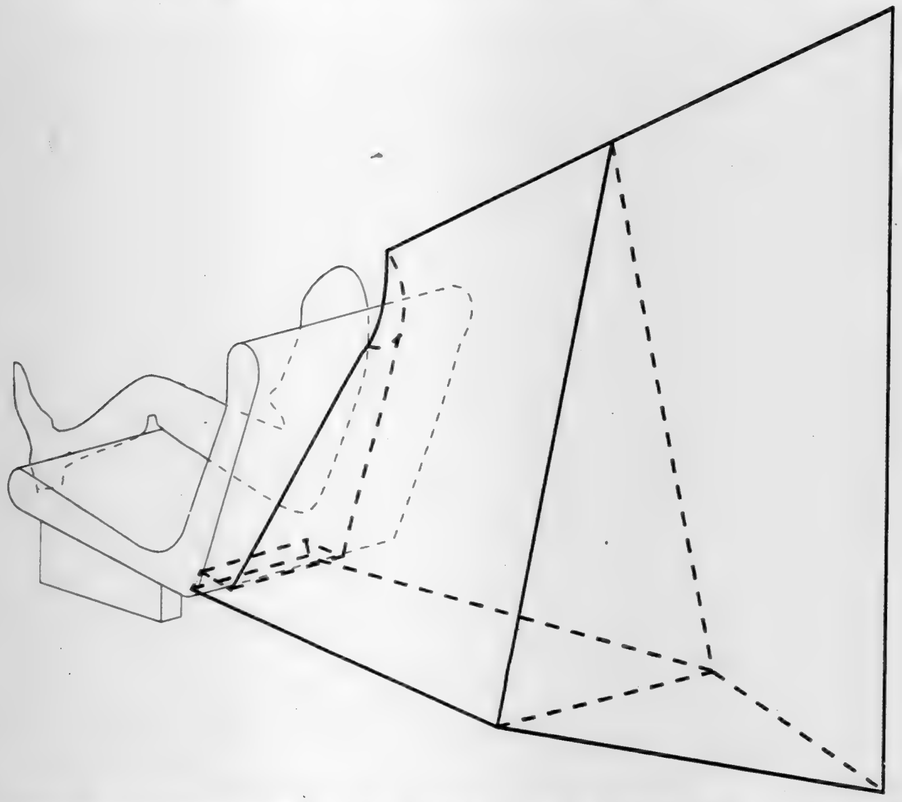

Figure 8—Three-Dimensional Schematic View for Tether Anchorage Location for Passenger Cars, Multi-Purpose Passenger Vehicles and Trucks

4. Section 571.213 would be amended by:

a. adding to S4, in alphabetical order, a definition of "child restraint anchorage system," "tether anchorage hardware," "tether strap," and "tether strap hook";

b. revising S5.1.3, S5.1.3.1, S5.3.1, S5.3.2 and S5.6.1;

c. adding S5.9 and S5.10;

d. revising S6.1.1(a)(1), S6.1.1(c) and S6.1.2(a)(1)(i);

e. adding S6.1.2(d)(1)(iii); and

f. revising Figure 1A and adding figures 11 and 12.

The revised and added paragraphs would read as follows:

§ 571.213 Standard No. 213; Child restraint systems

* * * * *

S4. Definitions.

* * * * *

Child restraint anchorage system is defined in S3 of FMVSS No. 210a (49 CFR 571.210a).

* * * * *

Tether anchorage hardware is defined in S3 of FMVSS No. 210b (49 CFR 571.210b).

Tether strap means a device that is fitted with a tether strap hook and secured to the rigid structure of a child restraint system and that transfers the load from that system to the tether anchorage hardware.

Tether strap hook means a device, illustrated in Figure 11 of this standard, used to attach a tether strap to tether anchorage hardware.

* * * * *

S5.1.3 *Occupant excursion.* When tested in accordance with S6.1 and the requirements specified in this paragraph, each child restraint system shall meet the applicable excursion limit requirements specified in S5.1.3.1 through S5.1.3.3.

S5.1.3.1 *Child restraint systems other than rear-facing ones and car beds.* Each forward-facing child restraint system shall retain the test dummy's torso within the system.

(a) In the case of an add-on child restraint system, no portion of the test dummy's head shall pass through a vertical, transverse plane that is 720 mm forward of point Z on the standard seat assembly, measured along the center SORL (as illustrated in figure 1B of this standard), and neither knee pivot point shall pass through a vertical, transverse plane that is 915 mm forward of point Z on the standard seat assembly, measured along the center SORL, when attached to the seat assembly as described in S6.1.2(a)(1)(i)(*A*)(*1*).

(b) In the case of an add-on child restraint system, no portion of the test dummy's head shall pass through a vertical, transverse plane that is 813 mm forward of point Z on the standard seat assembly, measured along the center SORL (as illustrated in figure 1B of this standard), and neither knee pivot point shall pass through a vertical, transverse plane that is 915 mm forward of point Z on the standard seat assembly, measured along the center SORL, when attached to the seat assembly as described in S6.1.2(a)(1)(i)(*A*)(*2*) or S6.1.2(a)(1)(B).

(c) In the case of a built-in child restraint system, neither knee pivot point shall, at any time during the dynamic test, pass through a vertical, transverse plane that is 305 mm forward of the initial pre-test position of the respective knee pivot point, measured along a horizontal line that passes through the knee pivot point and is parallel to the vertical plane that passes through the vehicle's longitudinal centerline.

* * * * *

S5.3 *Installation.*

S5.3.1 Except for components designed to attach to a child restraint anchorage system, each add-on child restraint system shall have no means designed for attaching the system to a vehicle seat cushion or vehicle seat back and no component (except belts) that is designed to be inserted between the vehicle seat cushion and vehicle seat back.

S5.3.2 (a) When installed on a vehicle seat, each add-on child restraint system, other than a belt-positioning seat, shall be capable of being restrained against forward movement solely by means of:

(1) A Type I seat belt assembly (defined in § 571.209) that meets Standard No. 208 (§ 571.208);

(2) A Type I seat belt assembly plus a tether anchorage; and,

(3) A child restraint anchorage system.

(b) Each belt-positioning seat shall be capable of being restrained against forward movement by means of a Type II seat belt assembly (defined in § 571.209) that meets Standard No. 208 (§ 571.208).

* * * * *

S5.6.1 Add-on child restraint systems.

Each add-on child restraint system shall be accompanied by printed installation instructions in English that provide a step-by-step procedure, including diagrams, for installing the system in motor vehicles, securing the system in the vehicles, positioning a child in the system, and adjusting the system to fit the child. If the child restraint system has components for attaching to a child restraint anchorage system, installation instructions shall be included that provide a step-by-step procedure, including diagrams, for properly attaching a child restraint system to a vehicle anchorage system equipped with lower anchorages conforming to the requirements of S4.2.1 of Standard No. 210a (49 CFR § 571.210a). In addition, if the child restraint is equipped with components that attach to a vehicle anchorage system equipped with lower anchorages conforming to the requirements of S4.2.2 of Standard No. 210a, instructions shall be provided for properly installing a child restraint to such an anchorage system.

* * * * *

S5.9 *Attachment to child restraint anchorage system.*

(a) Each add-on child restraint system, other than a belt-positioning seat, shall have components permanently attached to the system that securely fasten to the latchplates conforming to S4.2.1 of Standard No. 210a (49 CFR § 571.210a) and depicted in Drawing Package ___ (consisting of drawings and a bill of materials) with addendum A, revision dated January 6, 1997, (incorporated by reference; see § 571.5).

(b) In addition to the components required by S5.9(a), each child restraint system intended for use with lower anchorages conforming to S4.2.2 of Standard No. 210a (49 CFR § 571.210a) shall have components of a configuration depicted in Figure 12 of this standard, in a location that enable the child restraint to securely fasten to the anchorages.

S5.10 Each tether strap on a child restraint system must be equipped with a tether strap hook that conforms to the configuration and geometry specified in Figure 11 of this standard.

* * * * *

S6.1.1 *Test conditions.*

(a) Test devices.

(1) The test device for add-on restraint systems is a standard seat assembly consisting of a simulated vehicle bench seat, with three seating positions, which is described in Drawing Package SAS–100–1000 with Addendum A Revised (consisting of drawings and a bill of materials), dated December __, 1996 (incorporated by reference; see § 571.5). The assembly is mounted on a dynamic test platform so that the center SORL of the seat is parallel to the direction of the test platform travel and so that movement between the base of the assembly and the platform is prevented.

* * * * *

(c)(1) Attached to the seat belt anchorage points provided on the standard seat assembly (illustrated in Figures 1A and 1B of this standard) are Type I seat belt assemblies in the case of add-on child restraint systems other than belt-positioning seats, or Type II seat belt assemblies in the case of belt-positioning seats. These seat belt assemblies meet the requirements of Standard No. 209 (§ 571.209) and have webbing with a width of not more than 50 mm, and are attached to the anchorage points without the use of retractors or reels of any kind.

(2) Attached to the standard seat assembly is a child restraint anchorage system conforming to Standard No. 210a (§ 571.210a). The seat assembly is equipped with lower anchorages that conform to S4.2.1 and S4.2.2 of that standard.

* * * * * *

S6.1.2 *Dynamic test procedure.*

(a) Activate the built-in child restraint or attach the add-on child restraint to the seat assembly as follows:

(1)(i) *Test configuration I.*

(*A*) Except for a belt-positioning seat, an add-on child restraint system is installed at the center seating position of the standard seat assembly using either the standard lap belt or the child seat anchorage system—

(*1*) In accordance with the manufacturer's instructions provided with the system pursuant to S5.6.1; or

(*2*) In accordance with the manufacturer's instructions, except that the add-on restraint is secured to the standard vehicle seat using only the standard vehicle lap belt (except a child harness, a backless child restraint system with a top anchorage strap, and a restraint designed for use by physically handicapped children are not subject to this paragraph.

(*B*) A belt-positioning seat is attached to either outboard seating position of the standard seat assembly in accordance with the manufacturer's instructions provided with the system pursuant to S5.6.1 using only the standard vehicle lap and shoulder belt.

* * * * * *

(d) * * *

(1) * * *

(iii) When attaching a child restraint system to the child restraint anchorage system on the standard seat assembly, all belt systems used to attach the restraint to the standard seat assembly are tightened to a tension of not less than 53.5 N and not more than 67 N, as measured by a load cell used on the webbing portion of the belt.

* * * * * *

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Notes:
(1) Lap belt anchor points are symmetrically located with respect to the center SORL

(2) Maximum distance from the seat bight to the end of the buckle is 175 mm

(3) Outboard anchor point located 700 mm from the center SORL

(4) (i) Minimum distance between universal anchor points is 280 mm; maximum distance is 300 mm

(ii) End of latchplate located ≤50 mm forward of seat bight

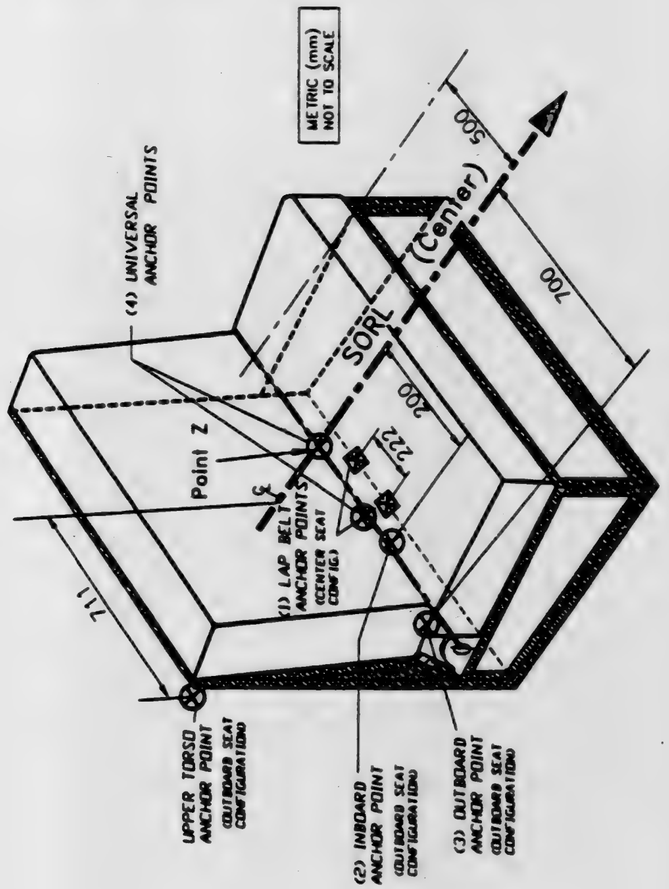

SEAT ORIENTATION REFERENCE LINE AND BELT ANCHORAGE POINTS LOCATIONS ON THE STANDARD SEAT ASSEMBLY
Figure 1A

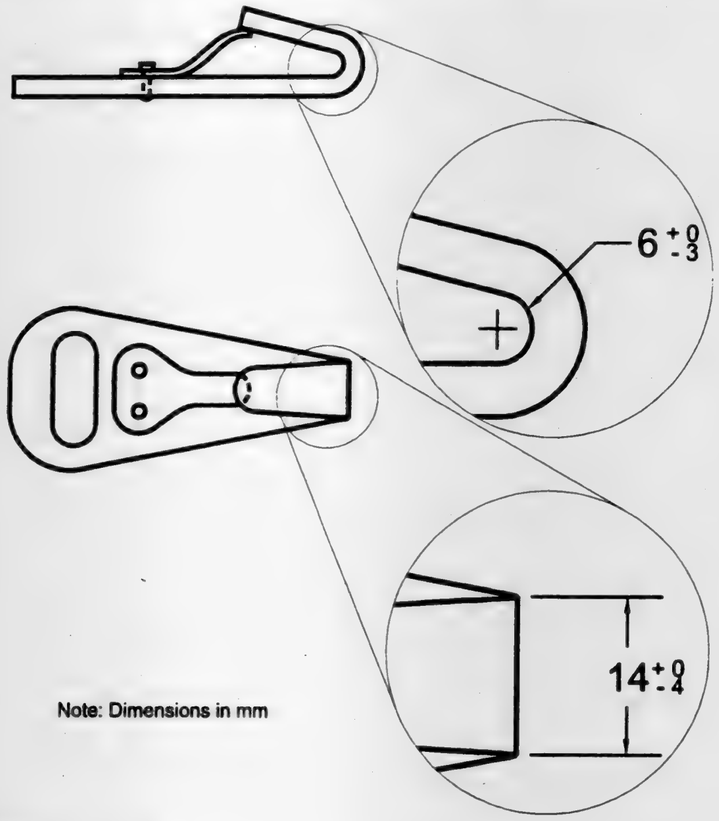

Note: Dimensions in mm

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Dimensions in mm
Drawing not to scale

Figure 11—Tether Strap Hook

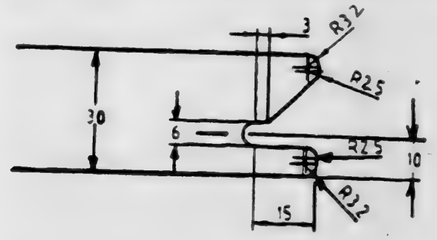

Dimension according
ISO/WD 13216-1D

Figure 12—Rigid Connector-Side View

Issued on February 13, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–4084 Filed 2–18–97; 8:45 am]

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February 20, 1997

Part V

Securities and Exchange Commission

17 CFR Parts 250 and 259

Exemption of Acquisition by Registered Public-Utility Holding Companies of Securities of Nonutility Companies Engaged in Certain Energy-Related and Gas-Related Activities; Exemption of Capital Contributions and Advances to Such Companies; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 250 and 259

[Release No. 35–26667; File No. S7–12–95]

RIN 3235–AG46

Exemption of Acquisition by Registered Public-Utility Holding Companies of Securities of Nonutility Companies Engaged in Certain Energy-Related and Gas-Related Activities; Exemption of Capital Contributions and Advances to Such Companies

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting new rule 58 and conforming amendments to rules 45(b) and 52(b) under the Public Utility Holding Company Act of 1935 ("Holding Company Act" or "Act"). Rule 58 exempts from the requirement of prior Commission approval a direct or indirect acquisition by a registered holding company or its subsidiary of an interest in an "energy-related company," as defined in the rule, subject to certain limitations and reporting requirements; and by a gas registered holding company or its subsidiary of an interest in a "gas-related company," as defined in the rule, subject to certain reporting requirements. The rule and related rule amendments eliminate unnecessary regulatory limitations on investments in certain businesses that are closely related to the core utility business of the registered system while establishing disclosure and reporting requirements that promote the public interest and serve to protect consumers and investors.

EFFECTIVE DATE: March 24, 1997.

FOR FURTHER INFORMATION CONTACT: Bonnie Wilkinson, Assistant Director, Martha Cathey Baker, Senior Special Counsel, Sidney L. Cimmet, Senior Special Counsel, or Robert P. Wason, Chief Financial Analyst, all at (202) 942–0545, Office of Public Utility Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission today is adopting rule 58 and related amendments to rule 45(b) and rule 52(b) (17 CFR 250.45(b) and 250.52(b)) under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a *et seq.*). The Commission issued a release proposing rule 58 and the amendments to the existing rules on June 20, 1995.[1] Subject to certain conditions, rule 58 provides an exemption, pursuant to section 9(c)(3) of the Act, from the requirement of prior Commission approval under sections 9(a)(1) and 10, for acquisitions by registered holding companies and their subsidiaries of securities of companies engaged in activities with which the Commission is familiar as a result of its administrative experience and which are so closely related to the ordinary course of the utility business as not to require case-by-case analysis under sections 9(a)(1) and 10.

Rule 58 exempts from the requirement of prior approval the acquisition by a registered holding company or its subsidiary company of any securities of an energy-related company, subject to certain limitations and reporting requirements. The rule defines an energy-related company as one that derives, or will derive, substantially all of its revenues from one or more activities specifically enumerated in the rule. The exemption provided by the rule will be available only if the aggregate investment by the registered holding company and its subsidiaries in energy-related companies does not exceed the greater of $50 million or 15% of consolidated capitalization.

Rule 58 also exempts from the requirement of prior approval the acquisition by a gas registered holding company or its subsidiary company of any securities of a gas-related company, subject to certain reporting requirements. The rule defines a gas-related company as one that derives, or will derive, substantially all of its revenues from one or more activities permitted under the Gas Related Activities Act of 1990 ("GRAA").

Rule 58 requires a registered holding company that seeks to rely upon the rule to file with this Commission and each state commission having jurisdiction over the retail rates of the registered system operating companies a quarterly report disclosing acquisitions pursuant to the rule and certain other information required by proposed Form U–9C–3. The reporting requirements are intended to enable the Commission and the state and local regulatory authorities to monitor acquisitions pursuant to the rule, including any transactions with rule 58 companies involving the operating companies in registered systems.

The Commission is also adopting amendments to rule 45(b) and rule 52(b), which concern financings by registered system companies, in each case to conform the rules to the limitations of rule 58. Rule 45(b) is amended to qualify the exception that the rule creates to the requirement of Commission approval under section 12(b) and rule 45(a) for capital contributions and open account advances without interest to a subsidiary company. As amended, the exception of rule 45(b) is available if the aggregate amount of such financing transactions on behalf of a subsidiary energy-related company conforms to the limitations of rule 58. Rule 52(b) is similarly amended to qualify the exemption that the rule provides from the requirement of prior Commission approval under sections 6(a) and 7 for securities issued by energy-related subsidiary companies to associate companies.

I. Introduction

This rulemaking arises in the broad context of nonutility diversification by registered gas and electric public-utility holding companies. Section 9(a)(1) of the Holding Company Act requires prior Commission approval under the standards of section 10 for a direct or indirect acquisition by a registered holding company of "any securities" or "any interest in any other business," *i.e.*, any nonutility interest.[2] Section 10(c)(1) precludes approval of an acquisition that would be "detrimental to the carrying out of the provisions of section 11." Section 11, described in the legislative history of the Act as the "very heart" of the Act,[3] requires the Commission to confine the nonutility interests of such companies to those that are "reasonably incidental, or economically necessary or appropriate to the operations of [an] integrated public-utility system."[4] The Commission has interpreted the

[1] Holding Co. Act Release No. 26313 (June 20, 1995), 60 FR 33642 (June 28, 1995) ("Proposing Release").

[2] The Commission has read the latter phrase to encompass any arrangement that entails the acquisition of a substantial interest in a nonutility business undertaking. See, *e.g.*, *Public Service Co. of Oklahoma*, 45 S.E.C. 878, 883–4 (1975).

[3] S. Rep. No. 621, 74th Cong., 1st Sess. (1935) ("Senate Report") at 11.

[4] Section 11(b)(1) of the Act. Section 11(b)(1) further provides that the Commission may so characterize a nonutility interest that it finds to be "necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning of such system. * * *"

The interests of investors and consumers and the public interest are the protected interests under the Holding Company Act. The Commission has interpreted the public interest standard of the Act to extend to the interest in a sound gas and electric utility industry. See *Eastern Utilities Assocs.*, Holding Co. Act Release No. 26232 (Feb. 15, 1995).

provisions of section 11 to reflect a Congressional policy against nonutility activities that bear no operating or functional relationship to the utility operations of the registered system.[5] This interpretation was intended to focus the attention of the registered holding company on the needs of its operating utilities, and thereby protect consumers and investors against the risks that might be associated with unrelated businesses.[6]

Section 9(c)(3) of the Act provides an exemption from the requirements of section 9(a)(1) for the acquisition of "such commercial paper and other securities, within such limitations as the Commission may by rules and regulations or order prescribe as appropriate in the ordinary course of business of a registered holding company or subsidiary company thereof and as not detrimental to the public interest or the interest of investors or consumers." The Commission has previously issued orders under section 9(c)(3) exempting from section 9(a)(1) acquisitions of small amounts of securities of local industrial development corporations, affordable housing projects, and venture capital concerns, among others.[7] The Commission has also adopted rule 40(a)(5) under section 9(c)(3) to exempt such acquisitions from the requirements of section 9(a)(1), provided that an affiliate relationship does not result, and subject to certain annual dollar limitations.[8] The Commission has noted that section 9(c)(3) may not be used to circumvent section 11(b)(1)'s prohibition of the acquisition of an interest in a business unrelated to the core utility business.[9]

As noted in the Proposing Release,[10] registered holding companies have filed numerous applications in recent years seeking authorization to engage in nonutility activities that the companies contend complement, or are natural extensions of, the evolving gas and electric industries. In considering these applications, the Commission has attempted to balance the need for regulatory change due to industry developments with the need for continued protection under the Act of the public interest and the interest of investors and consumers.[11] The concept of a functional relationship has been expanded in some cases, in a manner consistent with the purposes and limitations of the Act, and the Commission has permitted some activities that would benefit the registered system in ways less tangible and direct than those considered and approved in orders of previous years. In some cases the Commission approved as part of this development extensive transactions with nonassociate companies and declined to limit the transactions to the particular service territory of the registered system utilities. To this extent, the Commission implicitly correlated the functional relationship test with changes in the industry.[12]

Congress has enacted a number of important legislative measures to facilitate acquisitions by registered holding companies of interests to which section 11 was perceived to create barriers. In some instances, the legislation treated acquisitions of essentially utility interests as nonutility acquisitions for purposes of the Act, so as to avoid the integration requirements of section 11.[13] In other instances, the legislation permitted essentially nonutility activities that were either closely related to core operations or otherwise deemed appropriate for participation by registered holding companies. An example of recent legislation relates to nonutility activities involved in the supply of natural gas.

In 1990, Congress enacted the Gas Related Activities Act to permit a gas registered holding company to engage in transportation, marketing, storage and other nonutility gas-related activities that are not functionally related to the company's business.[14] The GRAA provides that an acquisition of an interest in a company that engages in certain gas-related activities, including storage, transportation and wholesale sales, is deemed to meet the requirements of section 11(b)(1) of the Act. The GRAA further provides that an acquisition of an interest in a company that engages in other activities relating to the supply of natural gas is deemed to meet the requirements of section 11(b)(1), if the Commission finds that the acquisition is in the interest of consumers of the holding company system and is not detrimental to those consumers or to the proper functioning of the registered system.[15]

In 1992, Congress acted to permit both gas and electric registered holding companies to acquire interests in cogeneration and small power production facilities, wherever located,

[5] See *generally Michigan Consolidated Gas Co.*, 44 S.E.C. 361, 363–66 (1970), *aff'd*, 444 F.2d 913 (D.C. Cir. 1971) (rejecting proposed investment in low income housing projects). See also *CSW Credit, Inc.*, Holding Co. Act Release No. 25995 (Mar. 2, 1994) (rejecting proposed expansion of transactions with nonassociate companies by subsidiary engaged in factoring of utility accounts receivable). By its terms, section 11 applies only to registered holding companies. The Commission has never determined the limits on diversification by exempt holding companies.

[6] Section 11 was intended "simply to provide a mechanism to create conditions under which effective Federal and State regulation will be possible." Senate Report at 11. As an historical matter, the statute led to the refashioning of the structure and the business practices of an entire industry. See, *e.g.*, Joel Seligman, *The Transformation of Wall Street: A History of the Securities and Exchange Commission and Modern Corporate Finance* (rev. ed. 1995).

[7] *See, e.g., Hope Gas, Inc.*, Holding Co. Act Release No. 25739 (Jan. 26, 1993) and *Georgia Power Co.*, Holding Co. Act Release No. 25949 (Dec. 15, 1993) (securities of local venture capital companies); *Georgia Power Co.*, Holding Co. Act Release No. 26220 (Jan. 24, 1995) and *East Ohio Gas Co.*, Holding Co. Act Release No. 25046 (Feb. 27, 1990) (securities of affordable housing partnerships); *Potomac Edison Co.*, Holding Co. Act Release No. 25312 (May 14, 1991) (shares of for-profit economic development corporation).

[8] Under rule 40(a)(5), a holding company or subsidiary may acquire up to $5 million annually of the securities of economic development companies created under special state laws promoting economic development, and up to $1 million annually in local industrial or nonutility enterprises.

[9] Michigan Consolidated Gas Co., 44 S.E.C. at 366.

[10] 60 FR at 33643.

[11] The Commission in some instances imposed percentage, geographic or other limitations upon transactions on behalf of nonassociate companies. These limitations were intended to ensure that the particular nonutility interest would continue to benefit the integrated system primarily and thereby conform to the functional relationship requirement.

[12] The Commission took a more flexible approach to functional relationship in *Southern Co.*, Holding Co. Act Release No. 26211 (Dec. 30, 1994). In that case, Southern proposed to develop a communications system to provide services to both system companies and nonassociates. While only a small additional investment in the system was required to facilitate nonassociate transactions, a majority of the revenues from the system could ultimately be derived from these transactions. The Commission approved the proposal, stating that the relative investment for associate and nonassociate purposes is relevant to a determination of a functional relationship. Alternatively, the Commission found a functional relationship existed because the nonutility interest being acquired (1) would involve the sale or lease of products or skills of some complexity developed by the holding company at considerable expense for the benefit of its utility subsidiaries and not readily available to the rest of the public from other sources; (2) would generally require little or no further investment by the holding company; and (3) would permit the amortization of product development expenses with little or no risk (citing *Jersey Central Power & Light Co.*, Holding Co. Act Release No. 24348 (Mar. 18, 1987), as approved in *CSW Credit, Inc.*, note 5 above).

[13] Under the Public Utility Regulatory Policies Act of 1978 ("PURPA"), 16 U.S.C. 824a–3, and related legislation, a registered holding company can acquire an interest in "qualifying facilities" ("QFs"), as defined in the regulations under PURPA, that are unrelated to its core utility operations. See also the Energy Policy Act of 1992, discussed below.

[14] Pub. L. No. 101–572, 104 Stat. 2810 (Nov. 15, 1990), codified as a note to section 11 of the Act.

[15] *See, e.g., Columbia Gas System*, Holding Co. Act Release No. 25802 (Apr. 22, 1993) (authorizing subsidiary to engage in marketing of natural gas). Section 2(b) of the GRAA requires the Commission to determine whether the proposed activities will benefit both the retail and the wholesale utility customers of the registered system.

and to market and broker electric power through affiliated exempt wholesale generators ("EWGs").[16] In 1992, Congress also enacted legislation to promote the development of alternative powered vehicles as a part of a national energy policy to reduce automobile emissions. The legislation permits gas registered holding companies to engage in activities related to vehicular natural gas, as defined.[17]

As a result of Congressional action, combined with initiatives of the Federal Energy Regulatory Commission ("FERC") and the state and local ratemaking authorities, the pace of change in the gas and electric utility industry is accelerating. Today, the gas industry is largely deregulated and the electric industry is undergoing a similar process.[18] In addition to increasing competition at the wholesale level, retail electric competition is developing more rapidly than anticipated, due to state efforts.[19] Utilities and other suppliers of energy appear poised to compete in retail markets.[20] As a result of these developments, the contemporary gas and electric industries no longer focus solely upon the traditional production and distribution functions of a regulated utility, but are instead evolving toward a broadly based, competitive, energy services business.[21]

As discussed previously, the Commission has sought to respond to developments in the industry by expanding its concept of a functional relationship in a manner consistent with the purposes and limitations of the Act. In several recent filings, the Commission has been requested to reconsider some administrative restrictions employed in the past. In approving these requests, the Commission determined, as required by the Act, that its action would not be detrimental to the interests protected under the Act. The Commission suggested that various considerations, including developments in the industry, the Commission's familiarity with the particular nonutility activities at issue, the absence of significant risks inherent in the particular venture, the specific protections provided for consumers and the absence of objections by the relevant state regulators, made it unnecessary to adhere rigidly to the types of administrative measures discussed above.[22] Further, a 1995 Commission staff report recommended that the Commission replace the use of bright-line limitations with a more flexible standard that would take into account the risks inherent in the particular venture and the specific protections provided for consumers.[23]

Finally, after the issuance of the Proposing Release, Congress enacted legislation amending the Act to permit registered holding companies, without prior Commission approval under sections 9(a)(1) and 10, to participate in a broad range of telecommunications activities through a special purpose subsidiary, an "exempt telecommunications company" ("ETC").[24] Once an entity is certified as an ETC by the Federal Communications Commission, acquisition and retention by a registered holding company of an interest in the entity is exempt from substantive requirements under the Holding Company Act.[25] As a result of this legislation, the provisions of proposed rule 58 concerning telecommunications activities are no longer needed.

The Commission believes that the realities of the contemporary gas and electric industries, and its experience in the administration of sections 9 and 10 of the Act, permit a recognition that certain activities are an integral part of the contemporary utility business, and so may be deemed to be activities "in the ordinary course of business" of a registered holding company within the meaning of section 9(c)(3) of the Act. Rule 58 identifies such activities. The rule is variously subject to qualifications and limitations that are intended to ensure that acquisitions pursuant to the rule are appropriate in the ordinary course of business, as contemplated by section 9(c)(3), are consistent with prior orders under section 9(a)(1) and 10, and are not detrimental to the protected interests.[26]

II. Proposed Rule 58

Rule 58 is intended to facilitate investments by registered holding companies in energy-related and gas-related companies. Acquisitions pursuant to the rule are considered to be "appropriate in the ordinary course of business" within the meaning of section 9(c)(3), and are thus exempt from the requirement of prior Commission approval under sections 9(a)(1) and 10.

The Commission received comment letters from, or on behalf of, eleven registered holding companies, one exempt holding company, one industry trade association, and one local regulatory authority.[27] With the exception of the Council of the City of New Orleans ("New Orleans"), all commenters support adoption of the rule[28] and, in many cases, propose additional changes to expand the rule.[29] New Orleans opposes adoption of the rule,[30] and requests, in the alternative, a more restrictive rule. The comments received on various aspects of the rule are discussed below. The Commission is adopting rule 58 and the conforming amendments to rules 45 and 52 substantially as proposed, but with a number of clarifications.

A. Investments in Energy-Related Companies

Rule 58(a)(1) exempts from the requirement of prior Commission approval under sections 9(a)(1) and 10, pursuant to section 9(c)(3), the acquisition by a registered holding company or its subsidiary company of securities of an "energy-related company;" provided, that aggregate investment (as defined) in such companies does not exceed the greater of 15% of consolidated capitalization or $50 million. Investments made prior to effectiveness of the rule are excluded for purposes of calculating the investment limitations.

The Proposing Release defines an "energy-related company" in terms of the activities in which it may engage. Specifically, as proposed, the rule would define an energy-related company as one that engages in: (1) One or more of various categories of specific activities set forth in the rule, described below, and (2) such other nonutility activities as the Commission may from time to time approve by order upon application under sections 9 and 10, and, so doing, designate as energy-related for purposes of the rule. Rule 58 requires that an energy-related company at all times derive substantially all of its revenues from the activities designated in the rule.

The energy-related activities specified in subsection (b)(1) of the rule as proposed were:

(1) The rendering of energy conservation and demand-side management services;

(2) The development and commercialization of electrotechnologies related to energy conservation, storage and conversion, energy efficiency, waste treatment, greenhouse gas reduction, and similar innovations;

(3) The manufacture, conversion, sale and servicing of electric and compressed natural gas powered vehicles and ownership and operation of related refueling and recharging equipment;

(4) The sale, installation, and servicing of electric and gas appliances for residential, commercial and industrial heating and lighting;

(5) The brokering and marketing of energy commodities, including but not limited to electricity or natural or manufactured gas;

(6) The production, conversion, and distribution of thermal energy products, such as process steam, heat, hot water, chilled water, air conditioning, compressed air and similar products; alternative fuels; and renewable energy resources;

(7) The sale of technical, operational, management, and other similar kinds of services and expertise, developed in the course of utility operations in such areas as power plant and transmission system engineering, development, design and rehabilitation; construction; maintenance and operation; fuel procurement, delivery and management; environmental licensing, testing and remediation; and other similar areas;

(8) The ownership or operation of QFs, and facilities necessary or incidental thereto, including thermal energy utilization facilities purchased or constructed primarily to enable the qualifying facility to satisfy the useful thermal output requirements under PURPA;

(9) The ownership or operation of fuel procurement, transportation, handling and storage facilities, scrubbers, and resource recovery and waste water treatment facilities;

(10) The production, transportation, distribution or storage of all forms of energy other than electricity and natural or manufactured gas;

(11) The development and commercialization of technologies or processes that utilize coal waste by-products as an integral component of such technology or process; and

(12) The ownership, sale, leasing or licensing of the use of telecommunications facilities and equipment (such as fiber optic lines, coaxial cable, or other communications capacity, towers and tower sites and other similar properties).

The rule as proposed also specifically provided a means for the Commission to add additional activities to the definition upon application in the future.

1. Definition of "Energy-Related Company"

a. General. The Commission received a substantial number of comments concerning the definition of "energy-related company." Several commenters assert that the definition should not consist of enumerated categories of specific activities, but should instead be broad and general.[31] Although this approach would offer greater flexibility,

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[16] Energy Policy Act, Pub. L. 102–486, 106 Stat. 2776 (1992). These activities of EWGs are limited primarily to the sale of electric power for resale.

[17] See Articles IV, V and VI, Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat. 2777 (1992) (codified as a note to section 2). These legislative developments are discussed at greater length in the Proposing Release. 60 FR at 33644.

[18] See generally The Regulation of Public-Utility Holding Companies, Report of the Division of Investment Management, Securities and Exchange Commission (June 1995) ("Report"), at 19–22, 26–27 (surveying recent regulatory and other developments in the electric and gas industries). Among other things, the Report notes that following the Energy Policy Act, the FERC has engaged in a series of initiatives to encourage the development of competitive energy markets. Id. at 23. More recently, on April 24, 1996, the FERC adopted Order No. 888, FERC Stats. & Regs. ¶ 31,036, which represents a major step in the effort to increase competition in the generation and transmission segments of the electric industry.

[19] See, e.g., "State Regulators Debate Taking a Stand on National Retail Wheeling Legislation", *Energy Report* (March 4, 1996) (describing state initiatives and possible support for federal legislation establishing retail wheeling). At the state level, for instance, New Hampshire has adopted a pilot program under which each New Hampshire utility must allow customers representing three percent of peak load to have access to alternative suppliers of electricity for two years, beginning on or about May 28, 1996. Order of the New Hampshire Public Utilities Commission on the Retail Competition Pilot Program Establishing Final Guidelines and Requiring Compliance Filings (Order No. 22,033, dated Feb. 28, 1996). Other states, such as Massachusetts, Rhode Island and Illinois, are also implementing or considering programs to promote retail competition.

[20] The Commission has authorized registered holding companies to engage, through nonutility subsidiaries, in the retail marketing of electric power in specific states that have implemented plans and programs for competition in retail electric markets, see, e.g., *Eastern Utilities Assocs.*, Holding Co. Act Release No. 26519 (May 23, 1996) (authorizing retail sales of electric power pursuant to pilot programs in New Hampshire and Massachusetts) and, more recently, has authorized retail marketing of both electric power and natural gas on a nationwide basis, subject to compliance with applicable state law. *SEI Holdings, Inc.*, Holding Co. Act Release No. 26581 (Sept. 26, 1996).

[21] The Commission acknowledged these developments in the Proposing Release, 60 FR at 33643, and, again, in a recent order authorizing a gas registered holding company to acquire an interest in a partnership formed to engage in the wholesale brokering and marketing of natural gas, electricity and other fuels. *Consolidated Natural Gas Co.*, Holding Co. Act Release No. 26512 (Apr. 30, 1996). The order noted the growing competition among various companies, including exempt holding companies, as well as stand-alone utilities and other companies not subject to the Act, to meet increasing customer demand for a full range of energy options.

[22] See, e.g., *Consolidated Natural Gas Co.*, Holding Co. Act Release No. 26512 (approving wholesale marketing and brokering of natural gas, electricity and other fuels, without percentage limitations); *Eastern Utilities Assocs.*, Holding Co. Act Release No. 26232 (removing percentage limitation previously placed upon demand-side management and energy management services business of registered holding company); *Southern Co.*, Holding Co. Act Release No. 26211 (considering, in assessment of a functional relationship, the relative investment for associate and nonassociate companies).

[23] Report at 81–87, 91–92.

[24] Telecommunications Act of 1996, Pub. L. 104–104, 110 Stat. 56 (1996) ("Telecommunications Act"), codified as section 34 of the Act.

[25] The Telecommunications Act does not provide that ETCs themselves are exempt from regulation under the Act. See section 34. However, the law contemplates that the role of the Commission will consist largely of monitoring telecommunications investments of registered holding companies. The Commission is authorized to require reporting of investments in, and activities of, ETCs that are likely to have a material impact on the financial or operational condition of a registered holding company. See section 34(f).

[26] As noted in the Proposing Release, rule 58 is intended largely to encompass investments in companies engaged in activities of the same or substantially similar character as those approved in previous orders of the Commission under sections 9(a)(1) and 10. 60 FR at 33648.

[27] The registered holding companies that submitted comments are Allegheny Power System, Inc. ("Allegheny"), American Electric Power Company, Inc. ("AEP"), Central and South West Corporation ("CSW"), Cinergy Corp. ("Cinergy"), The Columbia Gas System, Inc. ("Columbia"), Consolidated Natural Gas Company ("Consolidated"), Eastern Utilities Associates ("EUA"), Entergy Corporation ("Entergy"), General Public Utilities Corporation ("GPU"), Northeast Utilities ("Northeast") and The Southern Company ("Southern"). The exempt holding company that submitted comments is Wisconsin Energy Corporation ("Wisconsin Energy"), and the industry association is the American Gas Association ("AGA"). The local regulator that submitted comments is the Council of the City of New Orleans. Copies of the comments are available for inspection in File No. S7–12–95 in the Commission's public reference room.

[28] See, e.g., Comments of AEP (the rule would reduce regulatory burdens on registered systems and permit them to compete in the energy industry); and Columbia (the rule eliminates unnecessary and costly regulatory burdens on registered systems). Some commenters also note that, beyond adoption of rule 58, the Commission should provide registered holding companies with the flexibility to engage in utility-related businesses without limitation. See, e.g., Comments of AGA (section 11 should be broadly interpreted to permit gas systems to enter into any business involving production, transmission, dissemination or marketing of any form of consumable energy or any business or operation based on the facilities, resources or expertise from the company's operations); and CSW (restrictions on diversification prevent registered systems from engaging in businesses that would benefit customers and investors and impede efficient evolution of the electric utility industry).

[29] For example, one commenter notes that the rule should generally be more flexible, so as to accommodate changes that may arise as the restructuring of the electric industry continues. Comments of Wisconsin Energy. The Commission notes, however, that various issues, such as those that surround the possible disaggregation of utility assets and horizontal integration of utility functions, are beyond the scope of a rule that is intended to exempt nonutility interests that are commonplace today and closely related to the core utility business. The Commission continues to examine the issues raised by industry restructuring, and will undertake any necessary or appropriate rulemaking or other administrative action in the future.

[30] New Orleans opposes the rule on many grounds. Among other things, New Orleans asserts that the rule constitutes "deregulation of nonutility investment by registered holding companies [that] is unlawful and not in the public interest." It further asserts that the rule does not adequately protect consumers from "diversification risks and failures which are well known and documented in this industry." New Orleans states that only the Commission has the authority to regulate diversification and that it has a "duty to protect consumers" in this area. Comments of New Orleans at 3–4.

[31] Comments of AGA, Columbia and Consolidated. Suggested definitions would include any company engaged in a business based on or developed from the facilities, resources, technology or expertise of the registered system's operations (Comments of AGA and Columbia); and any company engaged in a business involving the production, transmission, dissemination or marketing of any form of consumable energy (Comments of AGA).

the Commission believes that it is not consistent with the requirements of section 9(c)(3) of the Act. As discussed previously, that section provides an exemption only for acquisitions of securities that are made in the ordinary course of business of the registered system and that are not detrimental to the protected interests. Rule 58 is intended to encompass activities with which the Commission is familiar as a result of its administrative experience and that appear to be so closely related to the ordinary course of the contemporary utility business as not to require case-by-case analysis pursuant to sections 9(a)(1) and 10. For this reason, the Commission is retaining enumerated categories in the rule as adopted.

Similarly, the Commission notes that the enumerated categories of specific energy-related activities in rule 58 are exhaustive, rather than illustrative. In order for a direct or indirect acquisition of securities by a registered holding company or its subsidiary to qualify for the exemption provided by the rule, the company in which the interest is acquired must be engaged almost exclusively in the type of activities specified in the rule. A registered holding company will continue to apply to the Commission for prior approval of any acquisitions concerning activities that fall outside the categories identified by the rule as energy-related. Further, as discussed below, to the extent that a company engages in activities in addition to those permitted under rule 58, an application will also be required.

New Orleans suggests that the definition should include a requirement that the permitted activity be functionally related to the system's utility business under sections 10 and 11.[32] Such a requirement is unnecessary for several reasons. First, a finding of a functional relationship is not required in order to qualify for an exemption under section 9(c)(3).[33] Moreover, even though a finding of a functional relationship under section 11(b)(1) is not required in this context, each of the activities permitted under the rule as adopted has in many instances been found, by order upon application under sections 9(a)(1) and 10, to satisfy the statutory requirements, including those of section 11(b)(1).

One commenter objects to the requirement that an energy-related company derive "substantially all" of its revenues from activities designated as "energy-related," and suggests that the rule should instead require that a company derive merely a stated portion, *e.g.*, at least 30%, from such activities.[34] The Commission notes, however, that this measure would permit registered holding companies to make sizeable investments in companies engaged primarily in novel, unspecified nonutility businesses. The Commission believes its authority to create such a broad exemption by rule under section 9(c)(3) is subject to question.[35] The Commission declines, therefore, to adopt this suggestion. Any acquisition of an interest in a nonutility business that does not derive substantially all of its revenues from one or more of the activities set forth in the categories of the rule will continue to require prior Commission approval by order upon application.

New Orleans objects to the proposed provision of the rule creating a procedure for designating additional activities to be energy-related by order upon application under section 10.[36] New Orleans asserts that new activities and investments should be approved only pursuant to rulemaking, so that all parties have an opportunity to evaluate and comment upon the relationship of the new activity to the core utility business and the potential effects on ratepayers.

In proposing this mechanism for updating the rule, the Commission intended that all procedural requirements applicable to agency rulemaking would be observed in connection with the proposed designation by order of additional activities as energy-related for purposes of rule 58, including in particular the requirements related to public notice and opportunity to comment.[37] On reconsideration, however, the Commission has determined that this provision could result in increased administrative burdens for both the registered holding companies seeking approval of new activities and the Commission staff.

If rulemaking is undertaken in the context of consideration of an application for approval of a specific nonutility investment, adherence to required procedures, including an extended comment period for the rulemaking and consideration of all views submitted, could delay approval of the proposed transaction that is the subject of the application. Further, repetitive paperwork in connection with the rulemaking aspects of each such application could consume extensive staff resources. Accordingly, this feature of proposed rule 58 has not been retained.[38] The Commission believes, however, that future expansion of the scope of the rule, to reflect additional nonutility activities found by the Commission to satisfy the standards of the Act, is essential to achieve the rule's intended flexibility. The Commission intends to evaluate periodically the coverage of the rule in light of existing Commission orders under sections 9 and 10 of the Act, and initiate rulemaking proceedings to reflect any appropriate changes.

One commenter suggests that the definition of energy-related company be expanded to include companies that derive substantially all of their revenues from the listed activities, either directly or indirectly.[39] The requested revision would permit a registered holding company system to use one or more intermediate subsidiaries (*i.e.*, "project parents") to invest in energy-related companies, yet retain the benefit of the exemption afforded by the rule.[40] The Commission believes that this suggestion is consistent with the intent of the rule as proposed. Use of an intermediate subsidiary could further insulate the holding company and its other subsidiaries, including utility subsidiaries, from any direct losses that could occur with respect to rule 58 investments. At the same time, this measure would offer greater flexibility in the structuring of these investments.

[32] As discussed above, the Commission has interpreted the provisions of section 11 of the Act, referenced in section 10(c)(1), to reflect a Congressional policy against nonutility activities that bear no operating or functional relationship to the utility operations of the registered system. See generally *Michigan Consolidated Gas Co.*, 44 SEC 361 at 363–65.

[33] The Commission has determined that a transaction need not satisfy the standards of section 11(b)(1) in order to qualify for exemption under section 9(c)(3), but that section 9(c)(3) may not be used to circumvent the requirements of section 11(b)(1) generally. Id. at 366 ("Section 9(c)(3) cannot be employed to evade the proscription of section 11(b)(1) prohibiting the acquisition by a gas utility company of an interest in a business unrelated to its business"); but see *id.* at 369 ("the majority unduly constricts the scope of the section 9(c)(3) exemption when it holds that to be entitled to such exemption a transaction must also meet the standards of section 11(b)(1)") (Commissioner Owens, concurring in part and dissenting in part) and 370 (Commissioner Smith, dissenting).

[34] Comments of CSW.

[35] As noted previously, the Commission has found that section 9(c)(3), under which rule 58 is adopted, may not be used to circumvent the requirements of section 11(b)(1) of the Act.

[36] This mechanism was provided in subsection (b)(1)(xiii) of the proposed rule.

[37] See *e.g.*, the relevant provisions of the Administrative Procedure Act, 5 U.S.C. 553, and the Commission's rules of practice, 17 CFR 201.192.

[38] A similar provision in the definition of "gas-related company" has also been eliminated.

[39] Comments of GPU.

[40] The provisions of the Act that permit use of intermediate holding companies in connection with investment in exempt wholesale generators reflect the same concept. See section 32(a)(1).

Accordingly, the rule, as adopted, is modified to incorporate the concept of indirect investment in energy-related companies through project parents.[41]

The Commission notes, however, that any such intermediate subsidiary, like the underlying energy-related companies, must derive "substantially all" of its revenues from the permitted activities. If the company will engage in other activities, directly or indirectly, prior Commission approval of an investment interest in such company will be required.

b. Categories of energy-related activities. The Proposing Release invited specific comment on whether the proposed rule should include additional kinds or categories of energy-related activities. One commenter suggests that customer financing for other energy-related activities should be a separate category of permitted activity for an energy-related company.[42] The Commission notes that customer financing has been approved in a number of cases involving activities that are designated as energy-related under rule 58, and agrees that it may be an appropriate activity for some energy-related companies. However, this type of activity is better addressed in the context of rule 48, as discussed below. The Commission therefore declines to include customer financing as an energy-related activity under rule 58.

Another commenter suggests that any nonutility business in which the applicable state commission would allow a regulated utility or exempt holding company to engage or invest should be a permitted activity for energy-related companies.[43] That a state commission permits utilities or holding companies that are subject to its jurisdiction to engage in a given nonutility activity can be a strong indication that the activity is appropriate, and, in a given case, it may be persuasive evidence that some of the standards of the Act have been satisfied. However, that a state commission has approved a type of investment does not necessarily mean that it is in the ordinary course of business of a registered holding company or its subsidiary for purposes of section 9(c)(3). The Commission does not believe that rule 58 should incorporate such state determinations as a general matter, without any indication as to the nature of the approved activities or the relevant state law standards. Thus, the Commission will continue to review any such activity on a case-by-case basis, giving due consideration to the views of state regulators toward the activity in question.

As proposed, the rule did not indicate clearly whether an interest in an energy-related company engaging in an enumerated activity could be acquired pursuant to the rule by companies in electric holding company systems, gas holding company systems, or both. As adopted, rule 58(b)(1) has been clarified in this regard to limit the exemption solely to those activities that are considered to be in the ordinary course of the type of utility business in which a particular holding company system is engaged.[44] Any proposal by a registered holding company system to acquire an interest in a company engaged in nonutility activities of a type not exempt under the rule for that type of registered system may be the subject of an application for Commission approval under sections 9(a) and 10.[45]

Many commenters suggest specific changes or additions to the categories of permitted activities set forth in the definition. A number of comments request clarifications and propose additions to the list of activities permitted for an energy related company. Some, but not all, comments and revisions to the categories of permitted activities are discussed below.

(1)Subsection (b)(1)(i): Energy and demand-side management services. This category of activities was defined in the Proposing Release to include the rendering of energy conservation and demand-side management services.[46] The Commission has previously considered and approved by order under sections 9(a)(1) and 10 a broad range of activities relating to the business of energy management and demand-side management, including the following: Energy audits; facility design and process enhancements; construction, maintenance and installation of, and training client personnel to operate, energy conservation equipment; design, implementation, monitoring and evaluation of energy conservation programs; development and review of architectural, structural and engineering drawings for energy efficiencies; design and specification of energy consuming equipment; and general advice on programs.[47] Upon additional consideration, the Commission has concluded that "energy conservation services" may not be broad enough to cover the types of activities intended to be exempted under this category. The term "energy management services" more accurately reflects the scope of the exempted activity.[48] The rule as adopted is revised accordingly. Apart from this clarification, the subsection is adopted as proposed.[49]

Companies in both electric and gas registered systems may acquire interests in companies engaging in the activities specified in this subsection.

(2) Subsection (b)(1)(ii): development and commercialization of electrotechnologies.

As used in the rule, electrotechnologies relate to energy conservation, storage and conversion, energy efficiency, waste treatment, greenhouse gas reduction and similar innovations.[50] The Commission has, on many occasions, approved investments by electric registered system companies in technologies related to the electric utility business.[51] Because the Commission has not yet considered proposals by registered gas system companies to engage in activities related to such technologies, the Commission is not prepared at this time to deem these activities to be appropriate in the ordinary course of the utility business of such systems. Accordingly, the Commission is revising the rule to

[41] This concept is also reflected in the definition of a gas-related company.

[42] Comments of Northeast.

[43] Comments of CSW.

[44] Holding company systems engaged in both the electric and gas utility business will be considered, for purposes of the rule, to be engaged only in one type of utility business, as determined by the type of operations that constitute the holding company's primary utility business.

[45] For example, an electric registered holding company system would be required to file an application and obtain authorization to acquire an interest in a company engaged in ownership and operation of refueling equipment for natural gas-powered vehicles. While acquisition of an interest in such a company could be exempt under rule 58 for a gas registered holding company system, it is not in the case of an electric registered holding company.

[46] No comments were received on this subsection.

[47] See, e.g., *Eastern Utilities Assocs.*, Holding Co. Act Release No. 26232 (Feb. 15, 1995); and *Northeast Utilities*, Holding Co. Act Release No. 25114–A (July 27, 1990).

[48] See, e.g., *New England Electric System*, Holding Co. Act Release No. 22719 (Nov. 19, 1982).

[49] This subsection is intended to encompass all consumer-oriented activities that represent components of a holding company system's demand-side management and integrated-resource planning functions, or that are intended to reduce customer energy costs or lead to efficient use of energy resources by affecting energy consumption. Customer financing is not encompassed by this subsection.

[50] No comments were received on this category of activities.

[51] See, e.g., *American Electric Power Co.*, Holding Co. Act Release No. 25424 (Dec. 11, 1991) (acquisition of an interest in a company that develops, manufactures and markets efficient light bulbs); and *Allegheny Power System, Inc.*, Holding Co. Act Release No. 26085 (July 14, 1994) (investments in technologies related to power conservation and storage, conservation and load management, environmental and waste treatment, and power-related electronic systems and components).

clarify that only electric registered holding companies and their subsidiaries are permitted to acquire companies that engage in the activities in this subsection. The subsection is otherwise adopted as proposed.

(3) Subsection (b)(1)(iii): electric and gas vehicles. As proposed, this subsection included manufacture, conversion, sale and servicing of electric and compressed natural gas powered vehicles, and ownership and operation of related refueling and recharging equipment.[52] The Commission has determined that the subsection should be expanded to include ownership, operation, sale, installation and servicing of refueling, recharging and conversion equipment and facilities relating to electric- and gas-powered vehicles,[53] but should not extend to manufacture of such equipment and facilities or to manufacture, conversion and sale of the vehicles themselves.[54] The Commission has revised the subsection as adopted to make clear its intended scope.

In addition, the Commission believes, based on existing precedent, that it is appropriate to limit the described activities to those appropriate for gas registered system companies and electric registered system companies, respectively. The rule as adopted is revised to reflect this limitation.

(4) Subsection (b)(1)(iv): appliance sales. As proposed, this subsection included the sale, installation and servicing of electric and gas appliances for residential, commercial and industrial heating and lighting. Comments included suggestions that this category extend to leasing[55] and customer financing arrangements;[56] and that the equipment at issue include other energy-consuming devices[57] and equipment used for energy generation, both within and outside the system's service territory.[58]

The Commission finds that it is appropriate to expand the types of equipment addressed by the rule to include other types of energy-consuming devices.[59] Historically, the Commission approved the activities addressed in this subsection to encourage consumption of electricity and gas, to promote competition among fuels and, more recently, to further energy conservation.[60] The rule as adopted has been revised, consistent with these precedents, to include electric and gas appliances, equipment that promotes technologies that use gas or electricity and equipment that enables use of gas or electricity as an alternate fuel. Companies in both electric and gas holding company systems may acquire interests in companies engaging in the activities specified in this subsection.

The Commission declines to adopt the suggestion that the rule exempt sale, installation and servicing of generation equipment. These activities may involve issues of broader concern, which lie outside the ambit of this rulemaking.

(5) Subsection (b)(1)(v): brokering and marketing of energy commodities.

This subsection covers the brokering and marketing of energy commodities, including but not limited to electricity and natural or manufactured gas. One commenter proposes that this subsection should be expanded to cover energy-related commodities and should specify that it covers other combustible fuels in addition to electricity and gas.[61] The Commission does not believe there is a basis to include "energy-related commodities" in this context. However, the subsection is revised in the adopted rule to include other combustible fuels.[62]

As proposed, this subsection did not indicate the markets in which the permitted activities could be carried out. The Commission's existing orders in this area extend primarily to wholesale markets.[63] However, the Commission has authorized retail electric marketing activities in states with established retail wheeling programs,[64] and, more recently, authorized retail marketing activities with respect to both electric power and natural gas, throughout the United States, subject to compliance with applicable state statutes, regulations and orders with respect to such sales.[65] In view of these precedents, and in light of the rapid development of competition in retail markets, as discussed above, this subsection is intended to cover activities in both wholesale and retail markets that are in compliance with applicable law.

This subsection, as proposed, also did not indicate whether a registered holding company could acquire an interest in a company dealing in all energy commodities or only in electric power or natural gas, as appropriate. At the time the Proposing Release was issued, the Commission's previous orders had, for the most part, limited participation in gas marketing and brokering activities to gas holding company systems, and electric marketing and brokering activities to electric holding company systems. Since that time, however, the Commission has considered and approved several proposals by registered holding companies to engage in the brokering and marketing of energy commodities, including but not limited to electricity and natural or manufactured gas.[66] The rule as adopted permits companies in both electric and gas systems to acquire interests in

[52] No comments were received on this subsection.

[53] The Commission has issued orders authorizing broader involvement with respect to such activities than that reflected in the rule as proposed. See, *e.g., Columbia Gas System*, Holding Co. Act Release No. 26295 (May 23, 1995) (authorizing the sale, ownership, operation, installation and servicing of natural gas refueling equipment and sale of equipment and facilities for use in vehicle conversion); and *Consolidated Natural Gas Co.*, Holding Co. Act Release No. 25615 (Aug. 27, 1992) (same).

[54] The Commission has not yet approved these types of activities by order under sections 9(a) and 10.

[55] Comments of Consolidated and Northeast. Because the term "sale," as defined in section 2(a)(23) of the Act, encompasses dispositions by lease, the Commission believes that no change to the subsection is needed.

[56] Comments of Northeast. Northeast also raised the question of customer financing in a broader context, suggesting the addition to the rule of a category concerning the financing of other energy-related activities. The Commission has determined to address this issue in the context of rule 48, as discussed below.

[57] Comments of CSW.

[58] Comments of Northeast.

[59] Prior orders in this area under sections 9(a)(1) and 10 permit the sale, installation, servicing and/or financing of significantly broader categories of equipment than appliances for heating and lighting. See, *e.g., Consolidated Natural Gas Co.*, Holding Co. Act Release No. 26234 (Feb. 23, 1995).

[60] See *e.g., Cities Service Co.*, 15 S.E.C. 962 (1944); *General Public Utilities Corp.*, Holding Co. Act Release No. 15184 (Feb. 9, 1965); and Louisiana Power & Light Co., Holding Co. Act Release No. 25445 (Dec. 26, 1991).

[61] Comments of Consolidated.

[62] Other combustible fuels would include, for example, coal, oil, wood chips, oil shale, isobutane and propane.

[63] See, *e.g., Consolidated Natural Gas Co.*, Holding Co. Act Release No. 26512 (Apr. 30, 1996) (approving wholesale marketing of energy commodities, but reserving jurisdiction over retail marketing activities until such time as state programs permitting such activities are implemented).

[64] See, *e.g., Eastern Utilities Assocs.*, Holding Co. Act Release No. 26519 (May 23, 1996) (participation in retail electric pilot programs in New Hampshire and Massachusetts); and New England Electric System, Holding Co. Act Release No. 26520 (May 23, 1996) (same).

[65] *SEI Holdings, Inc.*, Holding Co. Act Release No. 26581 (Sept. 26, 1996). The Commission noted that industry trends and competitive pressures make it important for registered system companies to be poised to compete in new markets as they are created, and that such participation appears to promote the goals of U.S. energy policy, including increased competition and lower utility rates.

[66] *Consolidated Natural Gas Co.*, Holding Co. Act Release No. 26512 (Apr. 30, 1996); *UNITIL Corp.*, Holding Co. Act Release No. 26527 (May 31, 1996); and *SEI Holdings, Inc.*, Holding Co. Act Release No. 26581 (Sept. 26, 1996). Other companies in both electric and gas holding company systems are also seeking similar authorizations. *See, e.g., National Fuel Resources, Inc.*, File No. 70–8651.

companies engaging in the activities described in this subsection.

One commenter recommends that the Commission revise the subsection to clarify that it concerns both regulated and unregulated activities.[67] Since rule 58 addresses only the acquisition of securities of nonutility companies engaged in specified activities, this comment is not reflected in the rule.

Several commenters suggest that the specified activities should include "risk management activities"[68] and "market hedging tools."[69] The Commission has, in several instances, considered such activities in connection with the brokering and marketing of energy commodities.[70] In each case, the order was conditioned on representations that hedging tools would be used only to minimize risks associated with contracts for purchase or sale of energy commodities and would not be used to engage in speculation. Such activities are a means of limiting the risks associated with marketing of energy commodities and, subject to compliance with the limitations noted above, may be engaged in as part of the activities covered by this subsection.

(6) *Subsection (b)(1)(vi): Thermal energy products.* This subsection addresses the production, conversion and distribution of thermal energy products,[71] alternative fuels and renewable energy resources. The Commission received one comment, suggesting that sale of such products and servicing of thermal energy facilities should be added to the permitted activities.[72] The rule as adopted has been revised to include these suggestions. The rule has also been revised to limit availability of this subsection to electric registered holding company systems.

(7) *Subsection (b)(1)(vii): sale of services and expertise.* This section addresses the sale of technical, operational, management and other kinds of services and expertise developed in the course of utility operations.[73] Commenters offer various requests for expansion of this category.

One registered holding company suggests that the category should also include development, production, marketing and financing of such services and expertise.[74] The Commission notes, however, that the subsection is intended to address services and expertise that exist as a result of system utility operations. The development and production of such services and expertise, solely for the purpose of sale, are outside its scope. In addition, the marketing of such services and expertise is implicit in the concept of sale, and thus need not be specifically mentioned. As discussed below, the Commission believes that customer financing is better addressed in the context of rule 48. The Commission declines to adopt these proposed revisions to the rule.

Two commenters suggest that expertise and services developed in the course of nonutility operations should also be included.[75] While expertise related to some nonutility services may be appropriate for inclusion in the activities covered by the rule, the Commission believes that there is not yet an adequate basis for including them, and will continue to consider proposals on a case-by-case basis.

A registered holding company suggests an expansion of this category to include the sale of excess goods and assets.[76] The Commission declines to adopt this suggestion with respect to sale of utility assets and resources by a nonutility company, primarily because those activities could involve significant consumer protection issues, and could also raise restructuring issues that are beyond the scope of the rule. Some sales of excess nonutility assets and resources may be a legitimate activity for rule 58 companies, but the Commission does not believe that there is, as yet, an adequate basis for inclusion of such activities in the rule. Consideration of these types of activities will continue to be done on a case-by-case basis.

Another registered holding company proposes that this category of the rule be expanded to include the sale of administrative services and equipment related to services and expertise.[77] The Commission notes, however, that administrative services, to the extent they are within the scope of management services, need not be expressly addressed. In addition, as discussed above, sales by a nonutility subsidiary company of equipment used in utility operations, even equipment related to the service being sold, could raise consumer protection issues. Accordingly, the Commission declines to accept these suggestions.

Commenters also suggest that the list of examples of the types of services and expertise covered by this subsection be expanded.[78] As discussed previously, the rule is intended to encompass the types of activities that may be considered to be in the ordinary course of business of a registered holding company. In this regard, the Commission has taken into account its experience in administering sections 9(a)(1) and 10 of the Act. To the extent that the commenters request the inclusion of activities with which the Commission has little or no familiarity, it is appropriate to continue case-by-case review. Accordingly, the Commission declines to modify the adopted rule as these commenters request.

It should also be noted in this regard that only those type of services and expertise that are uniquely utility-related are intended to fall within this category of activity. Activities that are more generic are not intended to be a permitted activity for energy-related companies.[79]

The Commission notes in connection with this subsection that any use by a system nonutility company of personnel or other resources of an associate public-utility company raises issues under section 13 of the Act and rules thereunder[80] relating to pricing of

[67] Comments of CSW. Unregulated activities are stated to be those that are for the benefit of shareholders.

[68] Comments of CSW.

[69] Comments of Cinergy.

[70] *See, e.g., SEI Holdings, Inc.*, Holding Co. Act Release No. 26581 (Sept. 26, 1996); *Consolidated Natural Gas Co.*, Holding Co. Act Release No. 25926 (Nov. 16, 1993); and *Consolidated Natural Gas Co.*, Holding Co. Act Release No. 26512.

[71] Examples given in the rule include process steam, heat, hot water, chilled water, air conditioning, compressed air and similar products.

[72] Comments of GPU.

[73] Examples cited in the proposed rule include power plant and transmission system engineering, development, design and rehabilitation; construction; maintenance and operation; fuel procurement, delivery and management; environmental licensing, testing and remediation; and other similar areas. The activities contemplated by the rule do not extend to any that would render a company a public-utility company under the Act. See section 2(a)(3), (4) and (5).

[74] Comments of Consolidated.

[75] Comments of AGA and Columbia.

[76] Comments of CSW.

[77] Comments of Northeast.

[78] Comments of Consolidated (gas exploration, development, transmission or storage system design); CSW (waste management activities); GPU (consulting and training); Cinergy (revenue security and employee safety); and Northeast (distribution system engineering, development design and rehabilitation, environmental services, and transportation and fleet services).

[79] For instance, expertise in billing and customer service may be developed in the course of utility operations. These types of activities are not, however, uniquely utility-related and, thus, are not encompassed by this subsection.

[80] Section 13 prohibits registered holding companies from entering into or performing any contract for service, construction or the sale of goods with any associate utility or service company, except as may be permitted by rule in special circumstances or in the ordinary course of business. Section 13 also provides that subsidiaries of registered holding companies, in entering into or performing any such contracts, must comply with any limitations imposed by the Commission as necessary or appropriate to insure that such contracts are performed economically and efficiently for the benefit of such associate companies at cost, fairly and equitably allocated

Continued

intrasystem transactions. Persons engaging in these activities and relying upon the exemption provided by the rule are advised to consider these requirements.

Companies in both electric and gas registered systems may acquire interests in companies engaging in the activities specified in this subsection. As adopted, this subsection has been revised only to the extent necessary to eliminate redundant language.

(8) *Subsection (b)(1)(viii): ownership and operation of QFs.* This subsection, as proposed, included ownership or operation of QFs and of facilities necessary or incidental thereto.[81] The Commission received one comment on this provision, proposing that development of QFs also be included in the rule.[82] The Commission has approved project development activities in connection with QFs in a number of cases.[83] Such activities are implicit in the subsection as proposed, and the subsection has been revised to include them specifically.

After careful review of the precedent in this area under sections 9(a)(1) and 10, the Commission has also determined that it is appropriate to make clear that this subsection is intended to include ownership and operation of only the types of incidental facilities that are required in order to meet the requirements of PURPA.[84] Subsection (viii), as adopted, has been revised accordingly.

Companies in both electric and gas registered systems may acquire interests in companies engaging in the activities specified in this subsection.

(9) *Subsection (b)(1)(ix): fuel facilities, scrubbers, and resource recovery and waste water treatment facilities.* As proposed, this subsection included ownership and operation of fuel procurement, transportation, handling and storage facilities, scrubbers, and resource recovery and waste water treatment facilities.[85] One registered holding company suggests that servicing of such facilities should also be permitted.[86] The subsection has been revised expressly to permit such activity.

Another registered holding company suggests that this subsection should be expanded to permit use of excess system assets, such as office equipment and space and excess space in billing envelopes.[87] The Commission believes that this request is more appropriately directed to subsection (b)(1)(vii) and has addressed it in that context.

The Commission orders on which inclusion of these activities is based relate to generation of electricity. As a result, the rule's exemption for the acquisition of a company that engages in activities described in this subsection is available only for companies in electric registered systems.[88]

(10) *Subsection (b)(1)(x): production, transportation, distribution or storage of other forms of energy.* The activities in this subsection concern all forms of energy other than electricity and natural or manufactured gas. Commenting registered holding companies suggest that the permitted activities should also include the sale of these forms of energy,[89] as well as all activities in the supply chain concerning them, including development, exploration, research and testing.[90] The commenters further propose that the subsection specifically include sources of energy.[91]

The Commission has concluded that the activities in this proposed subsection duplicate in many respects the activities included in other subsections of the rule as adopted.[92] Accordingly, this subsection has been eliminated in the final rule.

(11) Subsection (b)(1)(xi): coal waste by-products. This subsection includes development and commercialization of technologies or processes that utilize coal waste by-products as an integral component. Two registered holding companies comment on this subsection and request that it be expanded to include all waste products and by-products of generation of electricity and natural gas production, as well as investments in facilities and equipment used in processes to improve wastes and by-products or convert them into useful goods.[93] The Commission notes that, to date, it has considered only cases involving coal waste products and by-products of electric generation,[94] and this subsection is adopted as proposed.

Only companies in electric holding company systems may acquire an interest in a company engaged in the activities in this subsection.

(12) Subsection (b)(1)(xii): telecommunications facilities. This subsection addresses the ownership, sale, leasing or licensing of the use of telecommunications facilities and equipment. The Commission received numerous comments on the advisability and scope of this part of the rule.[95] In view of the passage in 1996 of the Telecommunications Act, legislation that exempts from the requirement of prior Commission approval the acquisition and retention by a registered holding company of interests in companies engaged in a broad range of telecommunications activities and businesses, these activities are not included in the adopted rule.

2. Limitation on Investment

As noted above, the exemption of rule 58 is available so long as aggregate

among such companies. Rules 85 through 92, adopted under section 13, specify the situations in which such transactions are permitted and generally provide that, with some exceptions, such contracts must be performed at cost.

[81] Such facilities are stated to include thermal energy utilization facilities purchased or constructed primarily to enable the QF to satisfy the useful thermal output requirements under PURPA and regulations thereunder.

[82] Comments of GPU.

[83] *See, e.g., Southern Co.*, Holding Co. Act Release No. 26212 (Dec. 30, 1994); and *Allegheny Power System, Inc.*, Holding Co. Act Release No. 26229 (Feb. 3, 1995).

[84] The Commission has authorized registered holding companies to invest in an 18 acre thermal host greenhouse, *Central and South West Corp.*, Holding Co. Act Release No. 25399 (Nov. 1, 1991), and an integrated carbon dioxide plant steam host, *Central and South West Corp.*, Holding Co. Act Release Nos. 25477 (Feb. 18, 1992) and 25983 (Jan. 31, 1994). In each instance, the Commission found that the incidental facility was necessary to the operation of the QF. The Commission believes that it is appropriate for the subsection of the rule to extend to investments in any type of incidental facility that is needed for a facility to attain QF status.

[85] This subsection is not intended to encompass ownership or operation of any facilities that would cause an energy-related company to become an electric utility company under the Act. See section 2(a)(3).

[86] Comments of GPU.

[87] Comments of Northeast.

[88] Many activities related to procurement, transportation and storage of natural gas for sale are permitted for gas-related companies, as discussed below.

[89] Comments of GPU.

[90] Comments of AGA, CSW and Columbia.

[91] Comments of CSW.

[92] For instance, subsection (v) covers marketing of energy commodities; subsection (vi) covers production and sale of thermal energy products, alternative fuels and renewable energy resources; subsection (ix) covers ownership or operation of fuel procurement, transportation, handling and storage facilities; and subsection (x) covers utilization of certain waste by-products of the generation of electricity. In addition, as discussed below, production of other fuels may be a permitted activity for gas-related companies under some circumstances.

[93] Comments of Allegheny and Southern.

[94] *See Jersey Central Power & Light Co.*, Holding Co. Act Release No. 24373 (April 16, 1987) (investment in company developing a waste coal-fired generating unit); *American Electric Power Co.*, Holding Co. Act Release No. 26014 (March 30, 1994) (acquisition of securities of subsidiary that develops backfill material using fly ash, a coal waste by-product); and *New England Electric System*, Holding Co. Act Release No. 26277 (April 26, 1995) (investment in a venture that installs equipment to separate unburned carbon from coal ash).

[95] Registered holding companies generally commented that this section should be expanded to cover a broader range of telecommunication services and products. Comments of CSW, Entergy and GPU. New Orleans, however, commented that this subsection should be eliminated as not in the public interest due to possible cross-subsidization problems and lack of relationship to the core utility business.

investment by a registered holding company and its subsidiaries in energy-related companies does not exceed the greater of 15% of consolidated capitalization or $50 million. As proposed, investments in such companies made pursuant to Commission order prior to the effective date of the rule would be excluded for purposes of calculating the limitation. In the Proposing Release, the Commission requested specific comment on (1) whether the proposed investment limitation is reasonable under the circumstances; (2) whether a different measure of financial capacity, such as consolidated retained earnings, should be used instead; and (3) whether it is appropriate to exclude prior investments for purposes of the rule.

a. *Need for a limitation.* Some commenters consider an investment limitation to be unnecessary. They note that the types of energy-related businesses specified in the rule are closely related to the utility industry[96] and that competitive markets and the financial condition of any particular registered holding company establish prudent limits on diversification.[97] They state, further, that the Commission can monitor the effects of diversification through its review of holding company financing,[98] and they note that consumers are protected against potential cross-subsidization by various factors, including the at-cost rules under section 13 of the Act,[99] rate regulation and the companies' need to be competitive.[100] Several commenters, however, state that if the Commission determines that a limitation is appropriate, the proposed limitation is reasonable.[101] These commenters consider a more restrictive standard to be unnecessary.[102]

The Commission continues to believe that it is appropriate to limit the aggregate investment of a registered holding company in energy-related companies pursuant to the rule. Section 9(c)(3) by its terms contemplates that the Commission will condition rules thereunder upon such limitations as it may prescribe as appropriate in the ordinary business of a registered holding company or its subsidiary company and not detrimental to the public interest or the interest of investors or consumers. An aggregate limitation upon investments pursuant to the rule is appropriate to ensure that acquisitions of interests in energy-related companies are not so material as to depart from the statutory concept of transactions in the ordinary course of business or to raise the possibility of detriment to the protected interests.[103] The Commission may revisit the need for an investment limitation in rule 58 in the future, after gaining experience with the use and effects of the exemption provided by the rule.

b. *Basis for calculation of the limitation.* New Orleans asserts that either consolidated retained earnings or consolidated equity is preferable to consolidated capitalization as a means to measure shareholder funds that are not needed to meet the registered system's utility service obligations.

The commenting registered holding companies oppose a standard based on consolidated retained earnings. They note that such earnings can vary significantly as a result of factors that do not affect financial health, such as accounting changes and other nonrecurring items.[104] They also assert that consolidated retained earnings are primarily an indicator of ability to raise new capital economically, and, to this extent, lack relevance for the purpose of setting a limitation upon investment under the rule.[105]

The registered holding companies generally support a standard based on consolidated capitalization, because, in their view, it offers flexibility[106] and a meaningful measure of system financial integrity.[107] These commenters explain that a flexible standard is appropriate because the activities encompassed by the exemption of the rule are closely related to the utility business and have been reviewed and approved by order of the Commission.[108]

The Commission recently considered a question of the appropriate basis for an investment limitation in the context of EWGs. Rule 53, adopted under section 32 of the Act, provides a safe harbor for approval of proposals to issue securities related to investments in EWGs.[109] To qualify for the rule's safe harbor, the aggregate investment of the registered holding company system in EWGs and foreign utility companies ("FUCOs") cannot exceed 50% of the system's consolidated retained earnings. In adopting rule 53, the Commission determined that retained earnings was an appropriate standard against which to measure the safe harbor limitation on these exempt investments.

Although the Commission has found a standard based on consolidated retained earnings to be appropriate in the context of rule 53, it does not follow that it is appropriate in the case of investments in energy-related companies. The Commission noted in adopting the safe harbor provisions of rule 53 that investments in EWGs and FUCOs were new activities, and that the potential risks, which could not accurately be predicted, could conceivably be significant. The Commission rejected a test based on consolidated capitalization, because it would not directly reflect the effect of losses in connection with an EWG or FUCO investment. The Commission concluded that the level of retained earnings, which is directly sensitive to losses, was a more appropriate standard against which to measure these investments.[110] In contrast, as discussed previously, investments under rule 58 are deemed to be appropriate within the ordinary course of business of registered systems and consistent with the

[96] Comments of Entergy.

[97] Comments of AGA and Columbia.

[98] Comments of Columbia and Entergy.

[99] Rules 90, 91 and 92 under the Act, 17 CFR 250.90, 250.91 and 250.92.

[100] Comments of AGA.

[101] Comments of Consolidated, GPU and Southern.

[102] Comments of AGA and GPU.

[103] The Commission notes that its jurisdiction over the issuance and sale of securities by a registered holding company and its subsidiaries to finance investments in nonutility companies pursuant to rule 58 will also serve to minimize risk and to enable the Commission to monitor the effects of nonutility activities on the registered system. The Commission has jurisdiction over such financing transactions under sections 6 and 7 of the Act, and must consider certain effects of proposed financings in determining whether the standards of the Act have been satisfied. See the Proposing Release, 60 FR at 33646.

[104] One registered holding company also observes in this regard that a standard based on consolidated retained earnings would create uncertainty in a registered holding company system's planning. Comments of CSW.

[105] Comments of Southern.

[106] Comments of GPU and Northeast.

[107] Comments of Allegheny and Southern.

[108] Comments of CSW.

[109] Section 32 of the Act provides that, in determining whether to approve a proposed issuance of securities related to EWG investments, the Commission may not make certain negative findings under the Act unless the proposed transaction would have a substantial adverse impact on the financial integrity of the registered holding company system. Section 32(h)(3) and (4). Section 32 also directs the Commission to adopt regulations that would set forth "the actions which would be considered to have a substantial adverse impact on the financial integrity of the registered holding company system [and] ensure that the [financing in question] has no adverse impact on any utility subsidiary or its customers, or on the ability of State commissions to protect such subsidiary or customers * * *." Section 32(h)(6). Rule 53 was adopted to effectuate these provisions. If the rule's safe harbor are satisfied, the Commission is precluded from making the negative findings specified in section 32(h)(3) and (4).

[110] The Commission stated that "(b)ecause EWGs and foreign utility companies are still novel entities, there is little experience on which to base predictions concerning their performance * * *. [R]etained earnings would best capture the effect upon a system's financial condition of reverses in EWG and foreign utility company investments." Holding Co. Act Release No. 25886 (Sept. 23, 1993), 58 FR 51488, 51493 (Oct. 1, 1993).

protected interests under the Act. The risks are more predictable and presumably more limited. In rejecting alternative bases for the investment limitation in rule 53, the Commission also noted that consolidated capitalization "relates principally to the capital structure created to fund the holding company system's domestic utilities * * *,"[111] and thus is not a particularly appropriate standard against which to measure investments in EWGs and FUCOs. This is not the case for acquisitions of interests in energy-related companies, whose activities, as previously discussed, are closely related to the core utility business of a registered system. Because total system capitalization is intended to support the system's utility business, the Commission regards it as an appropriate measure of the amount of capital that may be invested in utility-related businesses. In addition, because consolidated capitalization is a more stable base of calculation than retained earnings, the amount of the investment cap would be less subject to fluctuations.

The test in rule 53 was formulated to effectuate the specific protections required by section 32.[112] In contrast, section 9(c)(3), under which rule 58 is adopted, deals with a different type of investment than that covered by section 32, *i.e.*, one appropriate in the "ordinary course of business." Investors and consumers are protected not only through the investment cap for energy-related investments, but also through this limitation.

In view of these considerations, the Commission believes that a consolidated capitalization standard is appropriate for purposes of a limitation on exempt investments under rule 58. The final rule incorporates this standard.

c. Treatment of previous investments. The Commission received a significant number of comments concerning the proposed exclusion of prior investments in energy-related companies, made pursuant to Commission order, from the calculation of aggregate investment for purposes of the limitation of the rule. New Orleans and one registered holding company[113] assert that such prior investments should be included in the calculation.[114] The majority of commenters, however, consider the "grandfathering" of these investments to be appropriate. These commenters note that the investments have been found to satisfy the requirements of the Act.[115] Further, the commenters assert that inclusion of prior investments would penalize those registered holding companies that have successful energy-related programs in place,[116] and also prevent registered holding companies from competing on an equal footing with exempt holding companies and companies not subject to the Act.[117] Finally, the commenters contend that it would be burdensome to require a determination of whether or not various prior investments are energy-related for purposes of rule 58.[118]

Several commenters propose that the limitation should exclude not only investments made pursuant to Commission order prior to the rule, but also previously-authorized investments that have not yet been made as of the date of the rule.[119] One commenter suggests, in addition, that investments that the Commission may authorize by future order should be excluded for purposes of the limitation of rule 58.[120] This commenter also requests the Commission to clarify whether previous investments in energy-related companies pursuant to other exemptions should be excluded from calculation of the investment limit. At issue are investments by registered holding companies in their nonutility subsidiaries pursuant to rules 52 and 45, as recently amended.[121]

The Commission believes that all amounts that have actually been invested in energy-related companies pursuant to Commission order prior to the date of effectiveness of the rule should be excluded from the calculation of aggregate investment under rule 58. The Commission also believes it is appropriate to exclude from the calculation all investments made prior to that date pursuant to available exemptions.[122]

The Commission believes, however, that any investment made after the date of effectiveness of rule 58 should be included for purposes of calculation of the limitation, regardless of whether these investments are made pursuant to prior Commission order or available exemptions.[123] As for the question of whether investments approved by order after the date of effectiveness of rule 58 should be excluded from the calculation, the Commission believes that the issue is best addressed on a case-by-case basis. This approach will enable the Commission to consider the effect of the particular transaction on the registered system.

d. Definition of "aggregate investment". Rule 58, as proposed, defined "aggregate investment" to mean all amounts invested, or committed to be invested, in energy-related companies, for which there is recourse, directly or indirectly, to the registered holding company. The Commission

[111] *Id.*

[112] In discussing the investment limitation, the Commission stated that rule 53 is "intended to protect system financial integrity and so protect utilities and their ratepayers." A "key factor" in this regard is the ability of the holding company, which is a source of capital for its utility subsidiaries, to obtain financing at a reasonable cost. Retained earnings was chosen as the basis of the safe harbor investment limitation, among other things, because they are linked to the cost of capital, and thus provide a "fundamental protection." 58 FR at 51492.

[113] Comments of Allegheny.

[114] New Orleans believes that the total of existing investments and future investments under rule 58 would be so great as to be detrimental to ratepayers. As of December 31, 1995, registered holding companies had invested approximately $1.25 billion in companies that would be energy-related companies within the meaning of rule 58(a). As of that date, such investments represented approximately 1.6% of consolidated capitalization of the registered systems having such investments. On an individual basis, no registered system had more than approximately 5.6% of its consolidated capitalization invested in energy-related companies as of December 31, 1995. The Commission believes that this level of investment does not raise any significant issues of risks to the interests protected by the Act. The Commission also notes that because registered holding companies often make these investments through nonutility subsidiaries, system operating companies and their ratepayers are insulated from exposure to any direct losses that may result from the investments.

[115] Comments of CSW, EUA, GPU and Northeast.

[116] Comments of EUA.

[117] Comments of AGA.

[118] Comments of EUA and GPU.

[119] Comments of AEP, Consolidated, EUA, Entergy and Southern.

[120] Comments of Entergy.

[121] See Holding Co. Act Release No. 26311 (June 20, 1995), 60 FR 33634 (June 28, 1995) (exempting from the requirement of prior Commission approval capital contributions and non-interest bearing open account advances by parent companies to nonutility subsidiaries, and the issuance by nonutility subsidiaries and acquisition by their parents of specified types of securities, the proceeds of which are for use in the subsidiary's existing business).

[122] Under this interpretation, amounts invested by a registered system company in an energy-related company during the period between adoption and effectiveness will be excluded for purposes of calculating aggregate investment; provided, that such investments are used solely to fund activities in which the company has previously been authorized to engage by order of the Commission and that such amounts are not disproportionate to the current operations of such business. Since these additional investments will fund activities that the Commission has previously considered and approved under sections 9(a)(1) and 10 of the Act, the Commission does not believe that their exclusion raises any significant concerns with respect to protection of the interests covered by the Act. Any investments in existing energy-related companies made prior to the effective date of the rule must be reported on Form U–9C–3.

[123] As discussed below, the Commission is adopting amendments to rules 52 and 45 that subject investments in energy-related companies to the same limitations under these rules as are applicable under rule 58. These limits apply to all energy-related companies, regardless of whether the initial investment in such company was made pursuant to order or pursuant to rule 58.

stated that the term was intended to have a meaning similar to that provided by rule 53.[124] The language of the definition, as proposed, did not specifically include amounts invested by subsidiary companies that are without guaranty by, or other recourse to, the parent holding company. Such investments, which are exempt under subsection (a)(1) from the requirement of Commission approval, are intended to be included in calculating the limitation under the rule. The rule as adopted reflects this intent.[125]

In terms of the types of investments encompassed, the scope of the definition of "aggregate investment" in rule 58 is intended to be similar to that of rule 53. The term thus would include amounts actually invested in an energy-related company, as well as amounts committed to be invested under the terms of subscription agreements, or stand-by or other similar capital funding agreements.

B. Investments by Gas Registered Holding Companies in Gas-Related Companies

Rule 58(a)(2) exempts from the requirement of prior Commission approval under sections 9(a)(1) and 10, pursuant to section 9(c)(3), the acquisition by a gas registered holding company or its subsidiary company of securities of a "gas-related company," as defined. Such acquisitions are not subject to any limitation as to amount. A "gas-related company" is defined in the Proposing Release as a company that derives, or will derive, substantially all of its revenues from activities permitted under sections 2(a) and 2(b) of the GRAA and such other nonutility activities as the Commission may, from time to time, by order upon application under sections 9 and 10 and section 2(b) of the GRAA, authorize a gas registered holding company to engage in, and, in so doing, designate as gas-related for purposes of rule 58. The rule contemplates that gas-related companies, like energy-related companies, will derive substantially all of their revenues from the respective activities designated in the rule.

1. Definition of "Gas-Related Company"

Some commenters question whether registered holding companies that have only electric utility operations or that have both electric and gas utility operations should be entitled to invest in gas-related companies on an unlimited basis under the rule.[126] The portion of rule 58 that permits such investments reflects and depends upon findings under the GRAA that certain activities satisfy the requirements of sections 10 and 11 of the Act. The GRAA is available only to companies in systems in which the holding company is registered solely by reason of ownership of voting securities of gas utility companies. As a result, other registered holding company systems are not entitled to the benefits of the GRAA or the related provisions of rule 58. The language of the rule has been clarified to make this explicit.

Several commenters raise an issue concerning the scope of the definition of gas-related company.[127] The definition, as proposed, can be read to include companies that derive substantially all of their revenues from only the activities specified in section 2(a) of GRAA and activities found by the Commission, by order, to satisfy the requirements of section 2(b) of GRAA. This interpretation would not, however, take into account that some activities specifically identified in section 2(b) as being related to the supply of natural gas (*i.e.*, exploration, development, production, marketing and manufacture of natural or manufactured gas) were found by the Commission to be permissible under the standards of the Act prior to the enactment of the GRAA, and are not the subject of a subsequent order under that legislation. Under rule 58 as proposed, a gas holding company system might be required to obtain an order under section 2(b) of GRAA in order for these gas-related activities to be covered by the rule's exemption.

Activities of the type specified in section 2(b) of GRAA were intended to be included in the activities in which gas-related companies may engage, regardless of whether a Commission order approving such activities was issued under GRAA [128] or under sections 9(a) and 10 prior to the enactment of GRAA,[129] or both.[130] In all of these cases, the Commission found that the standards of sections 10 and 11 were satisfied, either through traditional analysis or by means of the assumptions created by GRAA. The rule has been clarified to accomplish this result.

Several commenters also note that other activities associated with the natural gas supply chain, such as exploration and production of associated petroleum, were contemplated to be included in GRAA-permitted activities and should be included in the activities permitted to be engaged in by gas-related companies under rule 58.[131] The Commission agrees that the activities in which a gas-related company may engage under rule 58 should be consistent with those contemplated by GRAA.[132]

The definition, as proposed, contained a provision permitting addition of new activities by order upon application. As discussed above in the context of energy-related companies, this provision has not been included in the rule as adopted.

The definition of a gas-related company has also been revised, as was the definition of an energy-related company, to permit indirect investment through intermediate subsidiaries.

2. Limitation on Investments in Gas-Related Companies

The Commission requested comment on whether a limitation on investments

[124] See Holding Co. Act Release No. 25886 (Sept. 23, 1993), 58 FR 51488 (Oct. 1, 1993). Rule 53(a)(1)(i) (17 CFR 250.53(a)(1)(i)) provides that aggregate investment includes all amounts invested, or committed to be invested, in exempt wholesale generators and foreign utility companies, for which there is recourse, directly or indirectly, to the registered holding company. Among other things, the term includes, but is not limited to, preliminary development expenses that culminate in the acquisition of an exempt wholesale generator or a foreign utility company; and the fair market value of assets acquired by an exempt wholesale generator or a foreign utility company from a system company (other than an exempt wholesale generator or a foreign utility company).

[125] An indirect investment made through an intermediate subsidiary will only be counted once in the calculation of aggregate investment.

[126] Comments of CSW and Cinergy.

[127] Comments of AGA, Columbia and Consolidated.

[128] See, *e.g.*, *Consolidated Natural Gas Co.*, Holding Co. Act Release No. 26363 (Aug. 28, 1995) (sale of propane services); *Columbia Gas System*, Holding Co. Act Release No. 25802 (April 22, 1993) (marketing natural gas to nonaffiliates); *National Fuel Gas Co.*, Holding Co. Act Release No. 25437 (Dec. 20, 1991) (marketing, storage and transportation of natural gas and pricing consultation); *National Fuel Gas Co.*, Holding Co. Act Release No. 25265 (March 5, 1991) (exploration and development of gas supply reserves); *CNG Transmission Corp.*, Holding Co. Act Release No. 25239 (Jan. 9, 1991) (development, construction and operation of natural gas pipelines); and *Consolidated Natural Gas Co.*, Holding Co. Act Release No. 25224 (Dec. 21, 1990) (development of technologies to enhance the supply, transportation and utilization of natural gas).

[129] See, *e.g.*, *National Fuel Gas Co.*, Holding Co. Act Release No. 24381 (May 1, 1987) (drilling and well maintenance and related services); *Consolidated Natural Gas Co.*, Holding Co. Act Release No. 23023 (Aug. 5, 1983) (sale of natural gas byproducts); *National Fuel Gas Co.*, Holding Co. Act Release No. 21903 (Feb. 2, 1981) (construction of underground storage facilities); and *Columbia Gas System*, Holding Co. Act Release No. 13610 (Nov. 27, 1957) (extraction and sale of natural gas byproducts).

[130] See, *e.g.*, *National Fuel Gas Co.*, Holding Co. Act Release Nos. 26181 (Dec. 6, 1994) and 24381 (May 1, 1987) (pipeline construction and maintenance and related services).

[131] Comments of AGA and Columbia.

[132] See, *e.g.*, 136 Cong. Rec. S17586 (Oct. 27, 1990) (Statement of Sen. D'Amato) (production and sale of oil and other petroleum products may constitute "production" for purposes of GRAA, if oil and natural gas are present in the geologic formation underlying a particular well).

in gas-related companies is appropriate. Two commenters state that no such limitation is needed.[133] They note, among other things, that because many activities involved in the gas business are nonutility interests for purposes of the Act, investment in such activities is necessarily significant, and any limitation would limit the usefulness of the rule for gas registered systems.[134] In view of the Congressional intent, evidenced by the GRAA, that gas systems be permitted to engage in certain gas-related activities without restriction as to amount, the Commission has not revised the rule to add a limitation on those activities.[135]

C. Other Conditions to Use of the Rule

The Commission sought comment on whether use of rule 58 should be conditioned on meeting other types of requirements, and the form such conditions should take. Commenters were invited to address the need for additional conditions to use of the rule 58 exemption based on, for example, the financial condition of the registered holding company system, the extent of losses experienced by the system over recent periods and prior bankruptcies of system companies.

The registered holding companies and the American Gas Association uniformly state, for various reasons, that no further conditions to use of rule 58 are needed in order for investors and consumers to be protected from risks.[136] One holding company suggests that, if conditions are imposed, they should be based on current or future facts rather than past circumstances.[137] New Orleans, however, disagrees and suggests that use of the rule be conditioned on a demonstration of financial viability by the holding company. New Orleans also recommends that consumer safeguards in the form of audit authority and access to books and records for ratemaking authorities be added.[138]

For several reasons, the Commission believes that no additional conditions are required in order to protect investors and consumers from the risks of these diversified activities. First, as noted above, the rule addresses activities that the Commission has determined previously to be so closely related to utility operations as to be in the ordinary course of business of a registered holding company and that, in many instances, have been approved in prior orders of the Commission under sections 9(a)(1) and 10. In addition, reasonable limitations on exempt investments in energy-related companies are an important feature of the rule, designed to limit the financial exposure of the registered system. Finally, through the filing of Form U–9C–3 under rule 58(c), both the Commission and interested state regulators will have the opportunity to monitor the nature and scope of each registered holding company system's activities pursuant to rule 58. In view of these safeguards, the Commission is adopting the rule without further condition.

III. Proposed Amendments to Rule 52 and Rule 45

The Proposing Release requested comment on proposed amendments to rules 52 and 45 under the Act, to conform the rules to rule 58.[139] Rule 52(b), as currently in effect, exempts from the requirement of Commission approval under sections 6(a) and 7 of the Act the issue and sale by a nonutility subsidiary of a registered holding company of any common stock, preferred stock, bond, note or other form of indebtedness, subject to certain conditions. Rule 52(d) further exempts from the requirement of prior Commission approval under sections 9(a)(1) and 10 of the Act the acquisition by a registered holding company of any such security, provided that the transaction does not involve the formation of a new subsidiary.[140]

The exemptions under rule 52(b) and 52(d), both as previously in effect and as proposed to be amended, are broader than the exemption in proposed rule 58. Accordingly, the Commission proposed to amend rule 52 to add a limitation on the aggregate amount of securities that may be issued and sold by energy-related companies and acquired by associate companies, consistent with the limitation of rule 58.

Rule 45(b) currently exempts from the requirement of Commission approval under section 12(b) of the Act and rule 45(a) thereunder certain investments in existing subsidiaries by means of cash capital contributions or open account advances. In particular, rule 45(b)(4) exempts without limitation any capital contribution or open account advance without interest to a subsidiary company. Because this provision is inconsistent with the investment limitation in rule 58, the Commission proposed to amend rule 45(b)(4) to conform the aggregate amount of capital contributions and open account advances that may be made to energy-related subsidiary companies to the limitations of rule 58.

Few commenters express any view on the proposed amendments to rules 52 and 45. Two registered holding companies support adoption of the amendments.[141] An exempt holding company opposes the amendments as unnecessary and as potentially limiting the Commission's flexibility under rule 58.[142]

Without the proposed conforming changes, registered holding companies could use rule 58 to make initial acquisitions of securities of energy-related companies, and arguably could use rules 45 and 52 to make additional unlimited acquisitions of securities of such companies, in each instance without Commission approval. To permit this result would render meaningless the limitations of rule 58 on investments in energy-related companies. In addition, a question would arise whether section 9(c)(3), under which rule 58 is promulgated, permits such acquisitions of securities without Commission oversight. The Commission believes that the proposed amendments are necessary in order to carry out the purposes of rule 58. Accordingly, the amendments are adopted in the form proposed.

IV. Other Proposals in Connection With Rule 58

Several commenters propose changes to other rules or Commission orders to conform them to the provisions of rule 58. These proposals are discussed below.

A. Rule 16

As currently in effect, rule 16 under the Act provides that any company and its affiliates will be exempt from all obligations, duties or liabilities imposed by the Act upon subsidiaries or affiliates of a registered holding company, if (1) the company is not a public-utility company, (2) the company engages primarily in certain specified activities related to the supply of natural or manufactured gas, (3) less than 50% of the voting stock of the company is owned by registered holding companies, and (4) the acquisition by a registered holding company of an interest in the company was approved by the Commission upon application.[143] Several commenters suggest that the coverage of the rule 16 exemption be extended to energy-related companies and gas-related companies, as defined in rule 58, and their affiliates.[144]

The Commission believes that a proposal to amend rule 16 to make it consistent with rule 58, and to enhance its usefulness (which is limited at present), should be considered. Such an amendment, however, is beyond the scope of this rulemaking.

B. Existing Limitations on Investments in Energy-Related Companies

In the past, the Commission in some instances incorporated conditions and limitations in certain orders approving energy-related activities, including a requirement that an energy-related company derive at least 50% of its revenues from associate companies or from specified geographic areas.[145] As discussed above, these geographic and other limitations are not included in rule 58 as adopted.[146] One commenter suggests that any 50% limitation in an order approving the acquisition of an interest in a business that would qualify as energy-related under rule 58 should cease to apply by virtue of the rule, without any need for an amended order.[147]

The Commission agrees that, where an order approving the acquisition or retention of a nonutility business by a registered holding company system includes a limitation of the type discussed above, and such limitation would not apply if the interest held by the registered holding company system were acquired under rule 58, the limitation in the order should no longer apply. These conditions are effectively superseded by rule 58, and no further filings and orders are needed to eliminate them.

C. Associate Transactions

Several commenters suggest that transactions between an energy-related company and some or all of its associate companies should be exempt from the requirements of the Act and rules thereunder,[148] including the rules under section 13(b) of the Act. Section 13(b) of the Act generally requires that intrasystem service, sales and construction contracts be performed in accordance with such terms and conditions as the Commission may prescribe, either by rule or order, "as necessary or appropriate in the public interest or for the protection of investors or consumers and to insure that such contracts are performed economically and efficiently for the benefit of such associate companies, at cost, fairly and equitably allocated among such companies." Entergy Corporation suggests that rule 87 under the Act[149] be amended to provide that transactions subject to section 13(b) do not require an order upon application. General Public Utilities Corporation suggests an amendment of rule 90[150] to exclude transactions between an energy-related company and its associates from the at-cost standards. Northeast Utilities suggests that all transactions between an energy-related company and its affiliates should be exempt from the Act.

Section 13(b) authorizes the Commission to exempt conditionally or unconditionally such transactions as it may determine, by rule or order, to be consistent with the protected interests, if such transactions "(1) are with any associate company which does not derive, directly or indirectly, any material part of its income from sources within the United States and which is not a public-utility company operating within the United States, or (2) involve special or unusual circumstances or are not in the ordinary course of business." It does not appear that the Commission has previously considered its authority to grant other exemptions from the requirements of section 13(b).

The commenters' requests are beyond the scope of the proposed rulemaking. In addition, the Commission believes that it would be inappropriate to address the issues raised in the limited context of the activities addressed in rule 58. Nonutility companies in registered holding company systems have, in any event, substantial freedom to engage in transactions with associate nonutility companies under rule 87(b)(1).[151] The Commission declines to accept the commenters' suggestions.

D. Rule 48

One commenter suggests that rule 48 under the Act be amended to permit energy-related companies to engage in customer financing in connection with their energy-related businesses.[152] As noted previously, customer financing in connection with certain energy-related activities has been approved by order in the past. The Commission considered whether customer financing should be included in rule 58, either as a separate energy-related activity or as an aspect of other energy-related activities.[153] However, it appears that an amendment to rule 48 would be the appropriate measure to address this question.[154]

V. Quarterly Reports on Form U–9C–3

The Commission proposed that registered systems provide periodic information with respect to all energy-related and gas-related company subsidiaries on Form U–9C–3, in lieu of the separate rule 24 certificates required under the terms of any outstanding Commission orders.[155] This procedure

Continued

[133] Comments of AGA and Consolidated.

[134] Comments of Consolidated.

[135] See the Proposing Release, 60 FR at 33647.

[136] Comments of Allegheny (the rule's investment limitation protects investors and ratepayers, and the Commission and the states can monitor activities through Form U–9C–3); AEP (the investment limitation and the fact that these activities are conducted separately from utility operations provide protections); AGA (each venture should be viewed on a prospective basis, not on the basis of past experience; adverse developments can be monitored through reports filed with the Commission, the FERC and state regulators); Columbia (a "no bankruptcy" condition is contrary to the policy of the bankruptcy laws, and bankruptcy is irrelevant where the company emerges with an investment grade rating); Consolidated (the Commission can invoke its jurisdiction if problems are perceived); Entergy (the Commission can monitor investments in the context of holding company financing approvals); GPU (the state regulators and the FERC can protect ratepayers from risk); and Southern (the rule addresses all conditions necessary for satisfaction of section 10; no other conditions are needed to protect against cross-subsidization, since rule 58 companies are still subject to the intrasystem transaction provisions of the Act and such transactions must be reported on Form U–9C–3).

[137] Comments of Columbia.

[138] Comments of New Orleans.

[139] See the discussion of the need for these amendments in the Proposing Release. 60 FR at 33646.

[140] The Commission has proposed to amend rule 52 further to expand the types of securities that qualify for the exemption. See Holding Co. Act Release No. 26312 (June 20, 1995), 60 FR 33640 (June 28, 1995).

[141] Comments of Allegheny and Southern.

[142] Comments of Wisconsin Energy.

[143] 17 CFR 250.16.

[144] Comments of Columbia and Consolidated.

[145] For instance, the Commission has conditioned approval of acquisitions of energy services and demand-side management businesses on a requirement that at least 50% of revenues be derived from a specified geographic area, within the system's retail service territory and contiguous areas. See, *e.g., Entergy Corp.*, Holding Co. Act Release No. 25718 (Dec. 28, 1992); and *Northeast Utilities*, Holding Co. Act Release No. 25114 (July 3, 1990). In addition, the registered system was required in some instances to divest its equity interest in the nonutility business within a specified period. See, *e.g., Entergy Corp.*, Holding Co. Act Release No. 25718.

[146] The rule does not incorporate geographic limitations based on the retail service territory of the registered holding company system. However, based on existing precedent and the markets with which the Commission is currently familiar, activities permitted by the rule are limited to the United States. The rule has been modified to make this limitation clear.

[147] Comments of CSW.

[148] Comments of Entergy, GPU and Northeast.

[149] Rule 87 specifies the cases in which subsidiaries of registered holding companies may perform services or construction for or sell goods to associate companies, subject to compliance with the "at cost" rules and certain other conditions.

[150] Rule 90 sets forth the general rule that any transaction involving service, construction or sale of goods between a subsidiary of a registered holding company and an associate company must be performed at cost, as defined, and provides exceptions.

[151] 17 CFR 250.87(b)(1).

[152] Comments of GPU. Rule 48 currently exempts financing in connection with purchases by utility customers of standard electric and gas appliances. 17 CFR 250.48.

[153] See comments of Northeast.

[154] Amendment of rule 48 is beyond the scope of this rulemaking.

[155] See the Proposing Release, 60 FR at 33648. Cinergy suggests that, to the extent that information

was intended to lessen the reporting burden for holding companies, and to make available a single, comprehensive report covering all energy-related and gas-related business activities of a registered holding company for the interested state commissions, with which the report must also be filed.

The Commission requested comment on the form and content of Form U–9C–3. In particular, the Commission sought comment on whether a report should be filed quarterly or on a semiannual or other basis. The Commission also requested comment on whether any special reporting requirements may be needed with respect to the revenues derived from any activities of such companies other than the activities specified in the rule, to ensure that energy-related and gas-related companies derive substantially all of their revenue from such activities, as required by the rule.

Several commenters assert that the form should not be adopted, because Form U5S provides sufficient information to enable regulators to protect consumers [156] and could be modified to require reporting of rule 58 investments in a manner similar to treatment of exempt wholesale generators and foreign utility companies.[157] One commenter suggests that no reporting requirements are needed with respect to investments in gas-related companies, since there are no limits on these investments.[158] Most commenters suggest that changes be made to the form if it is adopted.

With respect to the timing of reporting, one commenter, New Orleans,[159] specifically approves of quarterly filings, on the ground that regulators need quarterly reports in order to monitor activities and institute corrective action. Most industry commenters, however, object to quarterly filings, because the information in the proposed form duplicates other periodic reports, such as that on Form U5S;[160] because annual filings achieve the purpose of assuring compliance with the conditions of the rule;[161] because competitors are not burdened with preparation of the form;[162] because the benefits of quarterly reporting do not justify its costs;[163] and because rule 58 companies should not be required to file more frequently than holding companies and service companies.[164] Many of these commenters believe that annual filings are appropriate,[165] although one favors semiannual reporting,[166] and another proposes that the bulk of the information be filed annually, with quarterly filings used to report any changes during the quarter.[167] One commenter suggests that the form be clarified to indicate that filings are to be made quarterly rather than "continuously." [168] The Commission has concluded that the filing of complete and current financial statements and other information (particularly information on transactions between rule 58 companies and their affiliates) in each quarterly report will facilitate appropriate monitoring of acquisitions pursuant to the rule. The form, as adopted, thus requires quarterly reporting.

Many commenters express concern with the type of reporting required by the proposed form, particularly the required financial statements. The commenters believe that this requirement is burdensome, and unnecessary, because registered systems file consolidating financial statements in their annual reports on Form U5S; [169] because separate financial information would be required even for a company in which only a minor investment is made; [170] because state regulators are interested in nonutility operations as a whole rather than separate components; [171] and because separate financial statements would be required for each subsidiary in cases where investments are structured through several tiers of subsidiaries.[172] The Commission believes that the filing of financial information for each investment under rule 58 is appropriate to enable the Commission and the interested state commissions to monitor activity under the rule. The Commission is, however, modifying certain of the requirements in the form as proposed to deal with certain issues raised by commenters on the proposal.

The purpose of requiring financial statements is to provide information on each significant investment, not to compel holding companies to prepare financial statements for shell companies. As a result, the form, as adopted, permits consolidation of the financial statements of downstream subsidiaries with those of the first-tier energy-related or gas-related company,[173] so long as the first-tier subsidiary owns interests only in companies engaged in one permitted activity.

The Commission also recognizes that the filing of financial statements for companies in which the registered system holds only a small interest may be overly burdensome without offering a significant measure of protection for utility shareholders and consumers. Accordingly, the form, as adopted, requires the filing of financial statements only for companies in which the registered system has at least a 50% equity or other ownership interest. The form provides that, for all other rule 58 companies, the registered holding company will make available to the Commission such financial statements as are available to it.

A number of commenters express concern that the form will result in disclosure of confidential financial and other commercially sensitive information that may damage the holding company's competitive position.[174] The Commission agrees that confidentiality of certain business information is an important concern. As noted in the Proposing Release, however, the form does not require reporting of sensitive information such as identity of customers. Further, applicants may claim confidential treatment pursuant to rule 104 under the Act for some items of information. Thus, commercially sensitive information should have adequate protection.

Other changes in the final form include the following. The filing instructions have been revised to reflect electronic filing under the Commission's EDGAR system.[175] Also, the report for the last period in the reporting company's fiscal year will be due 90 days, rather than 60 days, after the end of the period.[176] Finally, the form has been clarified to require disclosure with respect to all energy-related and gas-related companies in which investments were made during the reporting period.[177] Other specific comments were not adopted, including a suggestion that all items except 5(b) (relating to associate transactions) are unnecessary.[178] In addition, the form has been revised to provide a format for reporting of the required information and to clarify generally the filing instructions.

Commenters believe that no other new reporting requirements are needed to assure that rule 58 companies derive substantially all of their revenues from permitted activities.[179] The Commission has concluded that Form U–9C–3, together with other existing reporting requirements, provides sufficient information for this purpose, and that no additional new requirements are needed.

on securities issuances is reported on Form U–9C–3, reports under rule 52 on Form U–6B–2 reporting the same information should not be required. Such a change may be appropriate, but is beyond the scope of this rulemaking.

[156] Comments of AGA.

[157] Comments of Columbia. See Item 9 of Form U5S, 17 CFR 259.5s.

[158] Comments of Columbia.

[159] Comments of New Orleans.

[160] Comments of AGA and Columbia.

[161] Comments of Entergy.

[162] Comments of Allegheny.

[163] Comments of Southern.

[164] Id.

[165] Comments of Allegheny, AGA, Columbia, Consolidated, Entergy and Southern.

[166] Comments of Cinergy.

[167] Comments of AEP.

[168] Comments of CSW. The rule has been revised to clarify that the filing requirement is not continuous.

[169] Comments of Columbia. Cinergy commented that financial statements should be filed with the form only upon the initial acquisition of securities of an energy-related or gas-related company; thereafter, the consolidating financial statements in Form U5S would provide sufficient updating information.

[170] Comments of Allegheny and Southern.

[171] Comments of Southern.

[172] Comments of Allegheny and Southern.

[173] As discussed previously, indirect investment in energy-related and gas-related companies through intermediate subsidiaries is permitted under the rule as adopted.

[174] Comments of Allegheny, Columbia and Southern.

[175] Comments of Consolidated and Northeast.

[176] Comments of Northeast.

[177] Comments of Cinergy.

[178] Comments of Allegheny. While the reporting of associate transactions is a primary purpose of the form, it is also intended to solicit information through which the staff of the Commission and interested state commissions can monitor compliance with the limitations of the rule, including limitations on the type of activities in which the company in question is engaged.

[179] Comments of AGA (information in Form U5S is adequate for this purpose); CSW (existing proposed reporting requirements could be reduced and still provide this assurance); Consolidated (if further assurance is needed, a statement of compliance could be included in the Form U5S) and Entergy and Northeast (Form U–9C–3 provides sufficient information to put regulators on notice of other activities).

VI. Conclusion

The Commission believes that registered holding company systems should be relieved of the regulatory burden of having to file multiple applications for authority to engage, through acquisitions of securities, in nonutility activities that are closely related to utility operations and that are of the same character or type as those the Commission has allowed in previous cases. Rule 58 is intended to permit investments in energy-related companies and gas-related companies, as defined, without geographic limits based on the registered system's service territory or other restrictions similar to those incorporated in some previous orders. The Commission believes that the limitation of the rule on the aggregate amount that a registered holding company system may invest, directly or indirectly, in energy-related companies should help to assure that the public interest and the interest of investors and consumers will not be adversely affected by acquisitions made pursuant to the rule. In addition, the reporting requirements should enable the Commission and interested state and local regulators to monitor financial and other effects of such transactions.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Chairman of the Commission has certified as follows:

I, Arthur Levitt, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that proposed rule 58 and proposed amendments to rules 45 and 52 under the Public Utility Holding Company Act of 1935, as amended (15 U.S.C. 79 *et seq.*), together concerning the acquisition by a registered holding company and its subsidiaries of securities of certain nonutility companies, without a filing requirement, will not have a significant impact on a substantial number of small businesses. The reason for this certification is that it does not appear that any small businesses would be affected by the proposed rule and rule amendments.

Arthur Levitt, Chairman

Dated: June 19, 1995.

The Commission did not receive any comments with respect to the Chairman's certification.

Costs and Benefits

Rule 58 will substantially decrease regulatory costs for the twelve (12) electric and three (3) gas registered holding companies. In calendar year 1995, 35 applications would not have been filed had the proposed rule 58 and related rule amendments been in place. Estimated savings per application would have been approximately $28,000, including related legal, accounting, and management costs. Thus, for 35 applications filed in calendar year 1995, the aggregate savings would have been approximately $980,000 per year. Moreover, the reduction in Commission staff hours would have been approximately 3,800 hours (approximately 2 staff years). The only cost to the registered holding companies in complying with the rule will be the cost of completing and filing Form U–9C–3 on a quarterly basis. It is estimated that approximately 16 hours will be required to complete each form at an estimated cost of $100 per hour. Assuming 56 form submissions per year, the cost of compliance reporting would approximate $89,600 per year.

Paperwork Reduction Act

The proposed rule and rule amendments are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been submitted to the Office of Management and Budget for approval for use through September 30, 1998.

Statutory Authority

The Commission is adopting rule 58 and amending rules 45 and 52 pursuant to sections 6, 9, 12 and 20 of the Act.

List of Subjects in 17 CFR Parts 250 and 259

Electric utilities, Holding companies, Natural gas, Reporting and recordkeeping requirements, Securities.

Text of Rules

For the reasons set out in the preamble, chapter II, title 17, of the Code of Federal Regulations is amended as follows:

PART 250—GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

1. The authority citation for part 250 continues to read as follows:

Authority: 15 U.S.C. 79c, 79f(b), 79i(c)(3), 79t, unless otherwise noted.

2. Section 250.45 is amended by revising paragraph (b)(4) to read as follows:

§ 250.45 Loans, extensions of credit, donations and capital contributions to associate companies.

* * * * *

(b) *Exceptions.* * * *

(4) Capital contributions or open account advances, without interest, by a company to its subsidiary company; *Provided*, That capital contributions or open account advances to any energy-related company subsidiary, as defined in § 250.58, shall not be exempt hereunder unless, after giving effect thereto, the aggregate investment by a registered holding company or any subsidiary thereof in such company and all other such energy-related company subsidiaries does not exceed the limitation in § 250.58(a)(1).

* * * * *

3. Section 250.52 is amended by revising paragraph (b) to read as follows:

§ 250.52 Exemption of issue and sale of certain securities.

* * * * *

(b) Any subsidiary of a registered holding company which is not a holding company, a public-utility company, an investment company, or a fiscal or financing agency of a holding company, a public-utility company or an investment company shall be exempt from section 6(a) of the Act (15 U.S.C. 79f(a)) and rules thereunder with respect to the issue and sale of any

common stock, preferred stock, bond, note or other form of indebtedness, of which it is the issuer if:

(1) The issue and sale of such security are solely for the purpose of financing the existing business of such subsidiary company; and

(2) The interest rates and maturity dates of any debt security issued to an associate company are designed to parallel the effective cost of capital of that associate company; *Provided*, That any security issued to an associate company by any energy-related company subsidiary, as defined in § 250.58, shall not be exempt hereunder unless, after giving effect thereto, the aggregate investment by a registered holding company or any subsidiary thereof in such subsidiary and all other such energy-related company subsidiaries does not exceed the limitation in § 250.58(a)(1).

* * * * *

4. Section 250.58 is added to read as follows:

§ 250.58 Exemption of investments in certain nonutility companies.

(a) *Exemption from Section 9(a).* Section 9(a) of the Act (15 U.S.C. 79i(a)) shall not apply to:

(1) The acquisition by a registered holding company, or a subsidiary company thereof, of the securities of an energy-related company; *Provided*, That, after giving effect to any such acquisition, the aggregate investment by such registered holding company and subsidiaries in all such companies does not exceed the greater of:

(i) $50 million; or

(ii) 15% of the consolidated capitalization of such registered holding company, as reported in the registered holding company's most recent Annual Report on Form 10–K or Quarterly Report on Form 10–Q (§ 249.308a or § 249.310 of this chapter) filed under the Securities Exchange Act of 1934, as amended (15 U.S.C. 78 *et seq.*); or

(2) The acquisition by a holding company that is registered solely by reason of ownership of voting securities of gas utility companies, or a subsidiary company thereof, of the securities of a gas-related company.

(b) *Definitions.* For purpose of this section:

(1) The term *energy-related company* shall mean any company that, directly or indirectly through one or more affiliates, derives or will derive substantially all of its revenues (exclusive of revenues from temporary investments) from one or more of the following activities within the United States:

(i) The rendering of energy management services and demand-side management services;

(ii) The development and commercialization of electrotechnologies related to energy conservation, storage and conversion, energy efficiency, waste treatment, greenhouse gas reduction, and similar innovations;

(iii) The ownership, operation, sale, installation and servicing of refueling, recharging and conversion equipment and facilities relating to electric and compressed natural gas powered vehicles;

(iv) The sale of electric and gas appliances; equipment to promote new technologies, or new applications for existing technologies, that use gas or electricity; and equipment that enables the use of gas or electricity as an alternate fuel; and the installation and servicing thereof;

(v) The brokering and marketing of energy commodities, including but not limited to electricity, natural or manufactured gas and other combustible fuels;

(vi) The production, conversion, sale and distribution of thermal energy products, such as process steam, heat, hot water, chilled water, air conditioning, compressed air and similar products; alternative fuels; and renewable energy resources; and the servicing of thermal energy facilities;

(vii) The sale of technical, operational, management, and other similar kinds of services and expertise, developed in the course of utility operations in such areas as power plant and transmission system engineering, development, design and rehabilitation; construction; maintenance and operation; fuel procurement, delivery and management; and environmental licensing, testing and remediation;

(viii) The development, ownership or operation of "qualifying facilities," as defined under the Public Utility Regulatory Policies Act of 1978, as amended ("PURPA"), and any integrated thermal, steam host, or other necessary facility constructed, developed or acquired primarily to enable the qualifying facility to satisfy the useful thermal output requirements under PURPA;

(ix) The ownership, operation and servicing of fuel procurement, transportation, handling and storage facilities, scrubbers, and resource recovery and waste water treatment facilities; and

(x) The development and commercialization of technologies or processes that utilize coal waste by-products as an integral component of such technology or process; *Provided*, That any company engaged in the activities specified in paragraphs (b)(1)(ii), (b)(1)(iii) with respect to electric powered vehicles, (b)(1)(vi), (b)(1)(ix) or (b)(1)(x) of this section, shall be an "energy-related company" for purposes of this section only if the securities of such company are acquired, directly or indirectly, by a registered holding company whose public-utility company subsidiaries are primarily electric utility companies; and *Provided further*, That any company engaged in the activities specified in paragraph (b)(1)(iii) of this section with respect to compressed natural gas powered vehicles, shall be an "energy-related company" for purposes of this section only if the securities of such company are acquired, directly or indirectly, by a registered holding company whose public-utility company subsidiaries are primarily gas utility companies.

(2) The term *gas-related company* shall mean any company that, directly or indirectly through one or more affiliates, derives or will derive substantially all of its revenues (exclusive of revenues from temporary investments) from one or more of the following activities within the United States:

(i) Activities permitted under section 2(a) of the Gas-Related Activities Act of 1990, 104 Stat. 2810; and

(ii) Activities specified in section 2(b) of the Gas-Related Activities Act and approved by order of the Commission under sections 9 and 10 of the Act (15 U.S.C. 79i–j).

(3) The term *aggregate investment* shall mean all amounts invested or committed to be invested in energy-related companies, for which there is recourse, directly or indirectly, to the registered holding company or any subsidiary company thereof.

(c) *Report on related business activities.* For each quarter of the fiscal year of the registered holding company in which any acquisition that is exempt under this section is made, and for each such quarter thereafter in which the acquired interest is held, the registered holding company shall file with this Commission and with each state commission having jurisdiction over the retail rates of the public-utility subsidiary companies of such registered holding company a Quarterly Report on Form U–9C–3 (§ 259.208 of this chapter). Such filing shall be made within 60 days following the end of the first three quarters of the fiscal year, and within 90 days after the end of the fourth quarter.

PART 259—FORMS PRESCRIBED UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

5. The authority citation for part 259 continues to read as follows:

Authority: 15 U.S.C. 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q and 79t.

6. Section 259.208 and Form U–9C–3 are added to read as follows:

§ 259.208 Form U–9C–3, for notification of acquisition of securities exempt from section 9(a) pursuant to rule 58 (§ 250.58 of this chapter).

This form shall be filed pursuant to § 250.58(c) as the certificate of notification of an acquisition of securities exempted from the application of section 9(a) of the Act (15 U.S.C. 79a *et seq.*) pursuant to § 250.58.

[**Editorial Note:** The text of Form U–9C–3 appears in the appendix to this document and will not appear in the Code of Federal Regulations.]

Dated: February 14, 1997.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Appendix

Note: This form will not appear in the Code of Federal Regulations.

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM U–9C–3

QUARTERLY REPORT PURSUANT TO RULE 58

(Name of registered holding company)

(Address of principal executive offices)

GENERAL INSTRUCTIONS

A. Use of Form

1. A reporting company, as defined herein, shall file a report on this form within 60 days after the end of each of the first three quarters, and within 90 days after the end of the fourth quarter, of the fiscal year of the registered holding company. The period beginning on the date of effectiveness of rule 58 and ending at the end of the quarter following the quarter in which the rule becomes effective shall constitute the initial period for which any report shall be filed, if applicable.

2. The requirement to provide specific information by means of this form supersedes and replaces any requirement by order of the Commission to provide identical information by means of periodic certificates under rule 24; but does not so supersede and replace any requirement by order to provide information by means of an annual report on Form U–13–60.

3. Information with respect to reporting companies that is required by Form U–13–60 shall be provided exclusively on that form.

4. Notwithstanding the specific requirements of this form, the Commission may informally request such further information as in its opinion, may be necessary or appropriate.

B. Statements of Monetary Amounts and Deficits

1. Amounts included in this form and in related financial statements may be expressed in whole dollars, thousands of dollars or hundred thousands of dollars.

2. Deficits and other similar entries shall be indicated by either brackets or parentheses. An explanation should be provided by footnote.

C. Formal Requirements

This form, including exhibits, shall be filed with the Commission electronically pursuant to Regulation S–T (17 CFR 232.10 *et seq.*). A conformed copy of each such report shall be filed with each state commission having jurisdiction over the retail rates of a public-utility company that is an associate company of a reporting company. Each report shall provide the name and telephone number of the person to whom inquiries concerning the report should be directed.

D. Definitions

As used in this form, the word "reporting company" means an energy-related company or gas-related company, as defined in rule 58(b). All other words and terms have the same meaning as in the Public Utility Holding Company Act of 1935, as amended, and the rules and regulations thereunder.

ITEMS

ITEM 1—ORGANIZATION CHART

Name of reporting company	Energy or gas-related company	Date of organization	State of organization	Percentage of voting securities held	Nature of business

Instructions

1. Complete Item 1 only for the first three calendar quarters of the fiscal year of the registered holding company.

2. Under the caption "Name of Reporting Company," list each energy-related and gas-related company and each system company that directly or indirectly holds securities thereof. Add the designation "(new)" for each reporting company of which securities were acquired during the period, and the designation "(*)" for each inactive company.

3. Under the caption "Percentage of Voting Securities Held," state the aggregate percentage of the outstanding voting securities of the reporting company held directly or indirectly by the registered holding company at the end of the quarter.

4. Provide a narrative description of each reporting company's activities during the reporting period.

ITEM 2—ISSUANCES AND RENEWALS OF SECURITIES AND CAPITAL CONTRIBUTIONS

Company issuing security	Type of security issued	Principal amount of security	Issue or renewal	Cost of capital	Person to whom security was issued	Collateral given with security	Consideration received for each security

Instruction

With respect to a transaction with an associate company, report only the type and principal amount of securities involved.

Company contributing capital	Company receiving capital	Amount of capital contribution

ITEM 3—ASSOCIATE TRANSACTIONS

Part I—Transactions Performed by Reporting Companies on Behalf of Associate Companies

Reporting company rendering services	Associate company receiving services	Types of services rendered	Direct costs charged	Indirect costs charged	Cost of capital	Total amount billed

Part II—Transactions Performed by Associate Companies on Behalf of Reporting Companies

Reporting company rendering services	Associate company receiving services	Types of services rendered	Direct costs charged	Indirect costs charged	Cost of capital	Total amount billed

Instructions

1. This item is used to report the performance during the quarter of contracts among reporting companies and their associate companies, including other reporting companies, for service, sales and construction. A copy of any such contract not filed previously should be provided as an exhibit pursuant to Item 6. B.
2. Parts I and II concern transactions performed by reporting companies on behalf of associate companies, and transactions performed by associate companies on behalf of reporting companies, respectively.

ITEM 4—SUMMARY OF AGGREGATE INVESTMENT

Investments in energy-related companies:			
Total consolidated capitalization as of _____	$xxx,xxx		Line 1.
Total capitalization multiplied by 15% (line 1 multiplied by 0.15)	xxx,xxx		Line 2.
Greater of $50 million or line 2		$xxx,xxx	Line 3.
Total current aggregate investment:			
(categorized by major line of energy-related business)			
Energy-related business category 1	xxx,xxx		
Energy-related business category 2	xxx,xxx		
Etc.	xxx,xxx		
Total current aggregate investment		xxx,xxx	Line 4.
Difference between the greater of $50 million or 15% of capitalization and the total aggregate investment of the registered holding company system (line 3 less line 4).		$xxx,xxx	Line 5.
Investments in gas-related companies:			
Total current aggregate investment:			
(categorized by major line of gas-related business)			
Gas-related business category	xxx,xxx		
Gas-related business category 2	xxx,xxx		
Etc.	xxx,xxx		
Total current aggregate investment		xxx,xxx	

ITEM 5—OTHER INVESTMENTS

Major line of energy-related business	Other investment in last U–9C–3 report	Other investment in this U–9C–3 report	Reason for difference in other investment

Instruction

This item concerns investments in energy-related and gas-related companies that are excluded from the calculation of aggregate investment under rule 58.

ITEM 6—FINANCIAL STATEMENTS AND EXHIBITS

List all financial statements and exhibits filed as a part of this report.

Instructions

A. Financial Statements

1. Financial statements are required for reporting companies in which the registered holding company system has at least a 50% equity or other ownership interest. For all other rule 58 companies, the registered holding company shall make available to the Commission such financial statements as are available to it.
2. For each reporting company, provide a balance sheet as of the end of the quarter and income statements for the three-month and year-to-date periods ending as of the end of the quarter, together with any notes thereto. Financial statements shall be provided only for the first three calendar quarters of the fiscal year of the registered holding company.

3. If a reporting company and each of its subsidiaries engage exclusively in a single category of energy-related or gas-related activity, consolidated financial statements may be filed.
4. Separate financial statements need not be filed for inactive companies or for companies engaged solely in the ownership of interests in energy-related or gas-related companies.

B. Exhibits

1. Copies of contracts required to be provided by Item 3 shall be filed as exhibits.
2. A certificate stating that a copy of the report for the previous quarter has been filed with interested state commissions shall be filed as an exhibit. The certificate shall provide the names and addresses of the state commissions.

SIGNATURE

[Registered Holding Company]

By: _____

(Name)

_____

(Title)

_____

(Date)

[FR Doc. 97–4167 Filed 2–19–97; 8:45 am]

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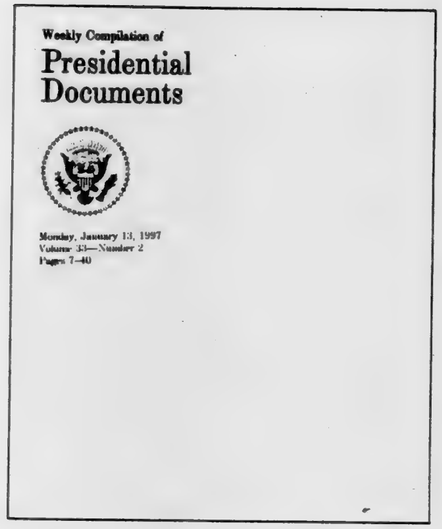

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Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Vol. 62, No. 35
Friday, February 21, 1997

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1710

Temporary Loan Processing Procedures for Insured Electric Loans

AGENCY: Rural Utilities Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: The Rural Utilities Service (RUS) is amending its rule to allow RUS to process loans with a loan period of more than 2 years in two parts when applications substantially exceed available funds. RUS amended its rules in 1995 to lengthen the allowable loan period for insured electric loans from 2 years to 4 years. Since borrowers may now apply for loans to cover construction financing needs for a longer period of time, the average loan has become larger. At the same time, loan authority for FY 1997 is less than for 1996. This situation has produced long delays between the time applications are submitted and the time loans can be approved. RUS believes that this is a temporary situation that will disappear as more and more borrowers get on a longer loan application cycle. The rule is intended to reduce processing delays.

DATES: This rule is effective February 21, 1997. Written comments must be received by RUS or bear a postmark or equivalent not later than May 22, 1997.

ADDRESSES: Submit written comments to Sue Arnold, Financial Analyst, U.S. Department of Agriculture, Rural Utilities Service, Room 4032–S, 1400 Independence Avenue, SW, STOP 1522, Washington, DC 20250–1500. RUS requires, in hard copy, a signed original and 3 copies of all comments (7 CFR 1700.30(e)). Comments will be available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Sue Arnold, Financial Analyst, U.S. Department of Agriculture, Rural Utilities Service, Room 4032–S, 1400 Independence Avenue, SW., STOP 1522, Washington, DC 20250–1522. Telephone: 202–720–0736. FAX: 202–720–4120. E-mail: sarnold@rus.usda.gov.

SUPPLEMENTARY INFORMATION: This regulatory action has been determined to be not significant for the purposes of Executive Order 12866, Regulatory Planning and Review, and, therefore has not been reviewed by the Office of Management and Budget (OMB). The Administrator of RUS has determined that a rule relating to the RUS electric loan program is not a rule as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) for which RUS published a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b), or any other law. Therefore, the Regulatory Flexibility Act does not apply to this rule. The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment. This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A Notice of Final Rule titled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts RUS electric loans and loan guarantees from coverage under this Order. This rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in Sec. 3 of the Executive Order.

The program described by this rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850 Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325.

Information Collection and Recordkeeping Requirements

The recordkeeping and reporting burdens contained in this rule were approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) under control number 0572–0032.

Background

On January 21, 1995, at 60 FR 3726, RUS amended its rules to lengthen the maximum allowable loan period from 2 years to 4 years for most insured loans. The loan period, sometimes referred to as the financing period, means the period of time during which the facilities listed in a loan application will be constructed. The loan period was lengthened in order to reduce administrative costs to borrowers, supplemental lenders, and RUS of submitting and processing multiple applications.

Since borrowers may now apply for loans covering financing needs for a longer period of time, the average loan size has become larger. At the same time, budget authority for FY 1997 is less than for FY 1996. In FY 1996, RUS used all its budget authority for municipal rate loans and hardship rate loans, approving 97 municipal rate loans (a total of $544,616,858) and 23 hardship rate loans ($90,577,664). On September 30, 1996, the end of the FY, RUS had a backlog of 106 applications for municipal rate loans ($709.0 million) and 28 applications for hardship rate loans ($119.9 million). Additional applications have been received during FY 97. Total budget authority for FY 1997 for municipal rate and hardship rate loans is only $455,564,561 and $68,785,578, respectively.

The large difference between loan funds requested for eligible purposes, and loan funds available for lending has caused long delays between the time a loan application is submitted and the time RUS can act on the application. Currently the queue for municipal rate loans is about a year, and the queue for hardship rate loans is approaching 16 months.

In spite of the smaller budget authority, RUS believes that the loan queue will be significantly shortened as more and more borrowers get used to a longer loan application cycle. However, in those years when there is a significant shortfall in available funding, the agency must have the flexibility to manage the limited resources. This interim final rule will give RUS such flexibility, and will

provide borrowers with a degree of financial certainty.

The rule will allow RUS to process applications for loans with a loan period of more than 2 years in two parts during a fiscal year when applications substantially exceed available funds. RUS will notify all electric borrowers in writing before invoking these procedures.

RUS recognizes that the success of the electric program in maintaining high quality electric service at reasonable rates in rural areas depends on the ability of electric borrowers to maintain and improve their electric systems. The temporary procedures in this rule will assist borrowers in the essential task of planning and managing their cash flows.

Concurrent with the publication of this rule, RUS is issuing Bulletin 1710C–1, Temporary Processing Procedures for Insured Electric Loans, a compliance guide to assist borrowers, supplemental lenders, and other interested parties. RUS is mailing the rule and the bulletin to all electric borrowers and to supplemental lenders. RUS believes that the procedures in the bulletin will allow all borrowers to share the limited loan appropriations on a fair and equitable basis.

Because of: (1) The exceptionally large backlog of applications for municipal rate and hardship rate loans, and (2) The urgent need for processing procedures that will allow RUS to advance loan funds during the spring construction season, RUS is putting these procedures into effect immediately for FY 1997. RUS requests comments and suggestions, especially on alternate methods of allocating the limited amount of loan funds.

List of Subjects in 7 CFR Part 1710

Electric power, Electric utilities, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

For the reasons set out in the preamble, and under the authority of 7 U.S.C. 901 *et seq.*, RUS amends 7 CFR Part 1710 as follows:

PART 1710—GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

1. The authority citation for part 1710 continues to read as follows:

Authority: 7 U.S.C. 901–950(b); Pub. L. 99–591, 100 Stat. 3341; Pub. L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

2. Section 1710.106 is amended by revising paragraph (e) to read as follows:

§ 1710.106 Uses of loan funds.

* * * * *

(e)(1) If, in the sole discretion of the Administrator, the amount authorized for lending for municipal rate loans, hardship rate loans, and loan guarantees in a fiscal year is substantially less than the total amount eligible for RUS financing, RUS may limit the size of all loans of that type approved during the fiscal year. Depending on the amount of the shortfall between the amount authorized for lending and the loan application inventory on hand for each type of loan, RUS may either reduce the amount on an equal proportion basis for all applicants for that type of loan based on the amount of funds for which the applicant is eligible, or may shorten the loan period for which funding will be approved to less than the maximum of 4 years. All applications for the same type of loan approved during a fiscal year will be treated in the same manner, except that RUS will not limit funding to any borrower requesting an RUS loan or loan guarantee of $1 million or less.

(2) If RUS limits the amount of loan funds approved for borrowers, the Administrator shall notify all electric borrowers early in the fiscal year of the manner in which funding will be limited. The portion of the loan application that is not funded during that fiscal year may, at the borrower's option, be treated as a second loan application received by RUS at a later date. This date will be determined by RUS in the same manner for all affected loans and will be based on the availability of loan funds. The second loan application shall be considered complete except that the borrower must submit a certification from a duly authorized corporate official stating that funds are still needed for loan purposes specified in the original application and must notify RUS of any changes in its circumstances that materially affects the information contained in the original loan application or the primary support documents. See 7 CFR 1710.401(f).

* * * * *

Dated: February 13, 1997.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 97–4334 Filed 2–20–97; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 139CE, Special Condition 23–ACE–90]

Special Conditions; Beechcraft Model E90 Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to East Coast Aerospace Engineering, 2601 N. Flagler Dr., W. Palm Beach, FL 33407 for a Supplemental Type Certificate (STC) on Beechcraft Model E90 airplane. This airplane will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of electronic displays for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is on publication in the **Federal Register**. Comments must be received on or before March 24, 1997.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. 139CE, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 139CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ervin Dvorak, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–6941.

SUPPLEMENTARY INFORMATION:

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety, and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on these special conditions.

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the rules docket for examination by interested parties, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments, submitted in response to this request, must include a self-addressed and stamped postcard on which the following statement is made: "Comments to Docket No. 139CE." The postcard will be date stamped and returned to the commenter.

Background

On January 2, 1997, East Coast Aerospace Engineering, 2601 N. Flagler Dr., W. Palm Beach, FL 33407 made an application to the FAA for a Supplemental Type Certificate (STC) for the Beechcraft Model E90 airplane. The proposed modification incorporates a novel or unusual design feature, such as digital avionics consisting of an electronic flight instrument system (EFIS), that is vulnerable to HIRF external to the airplane.

Type Certification Basis

The type certification basis for the Beechcraft Model E90 Airplane is given in Type Certification Data Sheet No. 3A20 plus the following: § 23.954 and § 23.959 of Amendment 23–7 to FAR 23 dated February 1, 1965; § 23.1111 of Amendment 23–7 to FAR 23; § 23.1385(c), § 23.1387(a), § 23.1387(e) of Amendment 23–12 to FAR 23 and § 23.1301 of Amendment 23–20; §§ 23.1309, and 23.1321 of Amendment 23–41; § 23.1311 of Amendment 23–49, and § 23.1322 of Amendment 23–43; to FAR 23 and Special Conditions outlined by FAA letters to Beech dated January 21, February 15, and February 27, 1963, and May 5, 1965, and November 8, 1961, and FAA Exemption No. 1554 issued March 31, 1972, from CAR 3.115(a) for Model E90; exemptions, if any; and the special conditions adopted by this rulemaking action.

Discussion

The FAA may issue and amend special conditions, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards, designated according to § 21.101(b), do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations. Special conditions are normally issued according to § 11.49, after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and become a part of the type certification basis in accordance with § 21.101(b)(2)

East Coast Aerospace Engineering plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include electronic systems, which are susceptible to the HIRF environment, that were not envisaged by the existing regulations for this type of airplane.

Protection of Systems from High Intensity Radiated Fields (HIRF): Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

FIELD STRENGTH VOLTS/METER

Frequency	Peak	Average
10–100 KHz	50	50
100–500	60	60
500–2000	70	70
2–30 MHz	200	200
30–70	30	30
70–100	30	30
100–200	150	33
200–400	70	70
400–700	4020	935
700–1000	1700	170
1–2 GHz	5000	990
2–4	6680	840
4–6	6850	310
6–8	3600	670
8–12	3500	1270
12–18	3500	360
18–40	2100	750

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter, peak electrical field strength, from 10 KHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify electrical and/or electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Conclusion

In view of the design features discussed for the Beechcraft Model E90 Airplane, the following special conditions are issued. This action is not a rule of general applicability and affects only those applicants who apply to the FAA for approval of these features on these airplanes.

The substance of these special conditions has been subject to the notice and public comment procedure in several prior rulemaking actions. For example, the Dornier 228–200 (53 FR 14782, April 26, 1988), the Cessna Model 525 (56 FR 49396, September 30, 1991), and the Beech Model 200, A200, and B200 airplanes (57 FR 1220, January 13, 1992). It is unlikely that additional public comment would result in any significant change from those special conditions already issued and commented on. For these reasons, and because a delay would significantly affect the applicant's installation of the system and certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions without notice. Therefore, these special conditions are being made effective upon publication in the **Federal Register**. However, as previously indicated, interested persons are invited to comment on these special conditions if they so desire.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g); 40113, 44701, 44702, and 44704; 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.49

Adoption of Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the modified Beechcraft Model E90 airplane:

1. *Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF).* Each system that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri on February 7, 1997.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–4354 Filed 2–20–97; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 96–NM–32–AD; Amendment 39–9932; AD 97–04–08]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F27 Mark 050, 100, 200, 300, 400, 600, and 700 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F27 Mark 050, 100, 200, 300, 400, 600, and 700 series airplanes, that requires an ultrasonic inspection to determine if certain tubes are installed in the drag stay units of the main landing gear (MLG), and various follow-on actions. This amendment is prompted by a report that, due to fatigue cracking from an improperly machined radius of the inner tube, a drag stay broke, and, consequently, lead to the collapse of the MLG during landing. The actions specified by this AD are intended to prevent such fatigue cracking, which could result in reduced structural integrity or collapse of the MLG.

DATES: Effective March 28, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 28, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, The Netherlands. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth Harder, Aerospace Engineer,Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1721; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker Model F27 Mark 050, 100, 200, 300, 400, 600, and 700 series airplanes was published in the **Federal Register** on October 31, 1996 (61 FR 56170). That action proposed to require an ultrasonic inspection to determine if certain tubes are installed on the DSUs of the MLG, and various follow-on actions.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 10 Model F27 Mark 050, 100, 200, 300, 400, 600, and 700 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $1,200, or $120 per airplane. This cost impact figure is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

There currently are no Fokker Model F27 Mark 050 series airplanes on the U.S. Register that will require the inspection of the DSU. The only airplanes that will require this inspection are currently operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that inclusion of these airplanes in the applicability of this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these airplanes are imported and placed on the U.S. Register in the future.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–04–08 Fokker: Amendment 39–9932. Docket 96–NM–32–AD.

Applicability: Model F27 Mark 050, 100, 200, 300, 400, 600, and 700 series airplanes, equipped with Dowty Aerospace main landing gear (MLG) drag stay units (DSU) having part number (P/N) 200684001, 200261001, or 200485001; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking in drag stay unit of the MLG, which could result in reduced structural integrity or collapse of the MLG, accomplish the following:

(a) Within 60 days after the effective date of this AD, perform an ultrasonic inspection to determine if a tube having part number (P/N) 200485300 with a straight bore, or a tube having P/N 200259300 with a change in section (stepped bore), is installed on the DSU's of the MLG, in accordance with Fokker Service Bulletin F27/32–167, dated November 19, 1993 (for Model F27 Mark 100, 200, 300, 400, 600, and 700 series airplanes), or Fokker Service Bulletin SBF50–32–029, dated February 11, 1994 (for Model F27 Mark 050 series airplanes), as applicable.

Note 2: Fokker Service Bulletin F27/32–167 references Dowty Service Bulletins 23–169B and 32–82W; and Fokker Service Bulletin SBF50–32–029 references Dowty Service Bulletin F50–32–50; as additional sources of service information for procedures to accomplish the actions specified in this AD.

(b) For all airplanes: If any tube having P/N 200485300 with a straight bore is found installed during the inspection required by paragraph (a) of this AD, prior to further flight, reidentify it in accordance with Fokker Service Bulletin F27/32–167, dated November 19, 1993 (for Model F27 Mark 100, 200, 300, 400, 600, and 700 series airplanes); or Fokker Service Bulletin SBF50–32–029, dated February 11, 1994 (for Model F27 Mark 050 series airplanes); as applicable.

(c) For Model F27 Mark 50 series airplanes: If any tube having P/N 200259300 with a change in section (stepped bore) is found installed during the inspection required by paragraph (a) of this AD, prior to further flight, replace the DSU with a new or serviceable DSU having P/N 200684004, in accordance with Fokker Service Bulletin SBF50–32–029, dated February 11, 1994.

(d) For F27 Mark 100, 200, 300, 400, 600, and 700 series airplanes: If any tube having P/N 200259300 with a change in section (stepped bore) is found installed during the inspection required by paragraph (a) of this AD, prior to further flight, re-identify the DSU in accordance with Fokker Service Bulletin F27/32–167, dated November 19, 1993. Following accomplishment of the re-identification, prior to further flight, perform an ultrasonic inspection to detect cracks in the re-identified DSU's, in accordance with that service bulletin.

(1) For airplanes equipped with any DSU re-identified as P/N 200684003, 200261003, or 200485003: If no crack is detected, no further action is required by this AD.

(2) For airplanes equipped with any DSU re-identified as P/N 200684002, 200261002, or 200485002: If no crack is detected, accomplish paragraphs (c)(2)(i) and (c)(2)(ii) of this AD.

(i) Repeat the ultrasonic inspection required by paragraph (d) of this AD thereafter at intervals not to exceed 1,500 flight cycles.

(ii) At the next MLG overhaul, but no later than 12,000 flight cycles after the effective date of this AD, rework and re-identify the DSU again, or replace the DSU with a re-identified DSU, in accordance with the service bulletin. Accomplishment of the rework and re-identification, or replacement constitutes terminating action for the repetitive inspection requirements of this AD.

(3) If any crack signal indication of any DSU tube is greater than or equal to 80 percent, prior to further flight, replace the DSU with a re-identified DSU, in accordance with the service bulletin.

(4) If any crack signal indication of any DSU tube is greater than or equal to 1 percent but less than 80 percent, accomplish paragraphs (d)(4)(i) and (d)(4)(ii) of this AD.

(i) Repeat the ultrasonic inspection required by paragraph (d) of this AD thereafter at intervals not to exceed 1,500 flight cycles.

(ii) At the next MLG overhaul, but no later than 12,000 flight cycles after the effective

date of this AD, replace the DSU with a re-identified DSU, in accordance with the service bulletin. Accomplishment of the replacement constitutes terminating action for the repetitive inspection requirements of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The actions shall be done in accordance with Fokker Service Bulletin F27/32–167, dated November 19, 1993; or Fokker Service Bulletin SBF50–32–029, dated February 11, 1994; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, The Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register,, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on March 28, 1997.

Issued in Renton, Washington, on February 7, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–3695 Filed 2–20–97; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–NM–65–AD; Amendment 39–9931; AD 97–04–07]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300–600 and A310 Series Airplanes Equipped with Pre-Modification 5844D4829 Rudders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Model A300–600 and A310 series airplanes, that currently requires repetitive visual inspections and tap tests of the rudder skin panels to detect disbonding; and repairs, if necessary. That AD was prompted by reports of weakening of the bonding material between the core of the rudder and its inner and outer skin, and cracking of the core. This amendment adds repetitive elasticity laminate checker (ELCH) inspections of the rudder in place of the currently required tap tests. It also requires replacement of the rudder with a modified rudder, which will terminate the repetitive inspections. The actions specified by this AD are intended to detect and prevent disbonding of the rudder, which, if not corrected, could reduce the structural integrity of the rudder, and consequently lead to a reduction in its ability to sustain limit loads.

DATES: Effective March 28, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 28, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 90–12–13, amendment 39–6625 (55 FR 23190, June 7, 1990), which is applicable to certain Airbus Model A300-600 and A310 series airplanes, was published in the **Federal Register** on October 23, 1996 (61 FR 54955). The action proposed to continue to require repetitive visual inspections and tap tests of the rudder skin panels to detect disbonding; and repairs, if necessary. It also proposed to add repetitive elasticity laminate checker (ELCH) inspections of the rudder in place of the currently required tap tests. It also proposed to replacement of the rudder with a modified rudder, which would terminate the repetitive inspections.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

One commenter supports the proposed AD.

Request To Withdraw the Proposal

Two commenters request that the FAA withdraw the proposed action. These commenters point out that a retrofit campaign was completed in 1993 on all affected airplanes that were equipped with the pre-modification 5844 rudders. In effect, that campaign installed the proposed terminating action on all airplanes. In light of this, these commenters contend that the proposed AD is not necessary.

The FAA does not concur with the commenters' request to withdraw this AD action. The FAA has no evidence that all affected airplanes, worldwide, have been modified with the new rudder. This AD will ensure that any affected airplane that is imported and placed on the U.S. Register in the future, or any airplane that is currenly not operating (i.e., is stored) and not equipped with the new rudder, will be inspected and modified in accordance with this AD prior to entering service.

Request To Correct Service Bulletin Information

Two commenters point out an error in paragraph (d) of the proposal concerning the appropriate source of service information relative to the ELCH inspections required on Model A310 series airplanes. The proposal indicates that the service bulletin number is A310–55–2008; however, the correct number is A310–55–2010.

The FAA acknowledges that typographical error in proposed paragraph (d). The correct service bulletin number was discussed in the preamble to the notice and appeared correctly in all other references to it in the proposed AD. Paragraph (d) of the final rule has been revised to reflect the correct service bulletin number as A310–55–2010.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 44 Model A310 and Model A300–600 series airplanes of U.S. registry that will be affected by this proposed AD.

The tap tests that are currently required by AD 90–12–13 take approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the previously required actions on U.S. operators is estimated to be $10,560, or $240 per airplane, per tap test.

The visual inspections that are currently required by AD 90–12–13 (and retained in this new AD) take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these inspections on U.S. operators is estimated to be $2,640, or $60 per airplane, per inspection.

Each ELCH inspection required by this new AD action will take approximately 14 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $36,960, or $840 per airplane, per inspection.

The replacement of the rudder that is required by this new AD action will take approximately 42 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. The required parts will be supplied by the manufacturer at no cost to operators. Based on these figures, the cost impact of this required replacement action on U.S. operators is estimated to be $110,880, or $2,520 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6625 (55 FR 23190, June 7, 1990), and by adding a new airworthiness directive (AD), amendment 39–9931, to read as follows:

97–04–07 Airbus Industrie: Amendment 39–9931. Docket 96–NM–65–AD. Supersedes AD 90–12–13, Amendment 39–6625.

Applicability: Model A300–600 and A310 series airplanes; certificated in any category; equipped with pre-modification 5844D4829 rudders having the following part numbers:

A5547150000000
A5547150000200
A5547150000400
A5547150000600
A5547150000800
A5547150001000
A5547150001200
A5547150001400

Note 1: The pre-modification rudders to which this AD applies were installed at the time of delivery on Model A300–600 and A310 series airplanes specified in the effectivity listings of the Airbus service bulletins that are referenced in this AD. However, such rudders may have been installed after delivery on airplanes other than the ones listed in those service bulletins. Therefore, as specified by the preceding applicability provision, the operator of any Model A300–600 or A310 series airplane equipped with the pre-modified rudder is required to comply with the requirements of this AD.

Note 2: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

Note 3: The requirements of paragraphs (a) and (b) of this AD are restatements of paragraphs A. and B. that appeared in AD 90–12–13, amendment 39–6625. These paragraphs require no additional action by operators who already have initiated the specified actions. (As indicated in both paragraphs, these actions are to continue until the new actions required by this AD are initiated.)

To detect and prevent disbonding which, if not corrected, could reduce the structural integrity of the rudder, and consequently lead to a reduction in its ability to sustain limit loads, accomplish the following:

(a) Visual Inspections (as Required by AD 90–12–13). Within 10 landings after June 20, 1990 (the effective date of AD 90–12–13, amendment 39–6625), perform a visual inspection to detect disbonding of the rudder skin panels, left and right, in accordance with Airbus All Operators' Telex (AOT) 55/90/01, Revision 1, dated April 27, 1990. After the effective date of this AD, perform this inspection in accordance with Airbus Service Bulletin A300–55–6008 (for Airbus Model A300–600 series airplanes), or Airbus Service Bulletin A310–55–2010 (for Airbus Model A310 series airplanes), both dated December 10, 1990, as applicable.

(1) If no defects are found, repeat the visual inspection thereafter at intervals not to exceed 7 days or 50 landings, whichever occurs first, until the requirements of paragraph (c) of this AD are initiated.

(2) If defects are found, prior to further flight, perform a tap test in accordance with paragraph (b) of this AD.

(b) Tap Tests (as Required by AD 90–12–13). Within 300 landings after June 20, 1990, perform a tap test to determine the extent of the damage, in accordance with Airbus AOT 55/90/01, Revision 1, dated April 27, 1990.

(1) If disbonding is less than 100 square cm, repeat the tap test of the affected area every 28 days or 200 landings, whichever occurs first, until the ELCH inspection requirements of paragraph (d) of this AD are initiated. For any signs of additional rudder skin panel disbonding, perform drilling procedures in accordance with paragraph 4.2.2.3. of the AOT; and thereafter repeat the visual inspection of the rudder skin panels

specified in paragraph (a) of this AD, until the ELCH inspection requirements of paragraph (d) of this AD are initiated.

(2) If disbonding is more than 100 square cm, but less than 5,000 square cm, repair in accordance with paragraph 4.2.2.3. of the AOT. Thereafter, repeat the visual inspection of the rudder skin panels in accordance with paragraph (a) of this AD; and perform repetitive tap tests of the repaired areas at the following intervals; until the visual inspection requirements of paragraph (c) of this AD are initiated:

(i) Perform the tap test of the repaired area every 500 landings for disbonding greater than 100 square cm but less than 300 square cm;

(ii) Perform the tap test of the repaired area every 250 landings for disbonding greater than 300 square cm, but less than 1,000 square cm;

(iii) Perform the tap test of the repaired area every 75 landings for disbonding that is greater than 1,000 square cm, but less than 5,000 square cm.

(3) If disbonding is greater than 5,000 square cm, or if a crack is found, prior to further flight, repair in a manner approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(c) New Visual Inspection Requirement. Perform a visual inspection of the complete rudder to detect disbonding and cracking of the rudder skin panels, left and right, in accordance with Airbus Service Bulletin A300–55–6008 (for Airbus Model A300–600 series airplanes), or Airbus Service Bulletin A310–55–2010 (for Airbus Model A310 series airplanes), both dated December 10, 1990, as applicable. Initiation of this inspection constitutes terminating action for the requirements of paragraph (a) and specified portions of paragraph (b) of this AD.

(1) Perform the initial inspection at the *later* of the times specified in paragraph (c)(1)(i) or (c)(1)(ii) of this AD:

(i) Within 7 days or 50 landings after the effective date of this AD, whichever is first; or

(ii) Within 7 days or 50 landings, whichever occurs first after the last visual inspection performed in accordance with AD 90–12–13, amendment 39–6625.

(2) If no disbonding or cracking is detected during this inspection accomplish the actions specified in paragraphs (c)(2)(i) and (c)(2)(ii) of this AD:

(i) Repeat the visual inspection at intervals not to exceed 7 days or 50 landings, whichever occurs first, until the initial ELCH inspection is accomplished in accordance with paragraph (d) of this AD. And

(ii) After the initial ELCH inspection required by paragraph (d) of this AD has been accomplished, repeat these visual inspections thereafter at intervals not to exceed 350 landings, in accordance with the applicable service bulletin.

(3) If any disbonding or cracking is detected, prior to further flight, conduct an ELCH inspection of the suspected area for signs of disbonding, and accomplish follow-on actions in accordance with the Flow Chart, Figure 2, of the applicable service bulletin. If the confirmed extent of disbonding, however, is greater than 400 square cm in Area I, or greater than 800 square cm in Area II, as those areas of the rudder are defined in the applicable service bulletin, prior to further flight, repair and accomplish subsequent inspections in accordance with the requirements of paragraph (d)(3) of this AD.

(d) ELCH Inspections. Within 6 months after the effective date of this AD, conduct an initial elasticity laminate checker (ELCH) inspection of the complete rudder, in accordance with Airbus Service Bulletin A300–55–6008 (for Model A300–600 series airplanes) or Airbus Service Bulletin A310–55–2010 (for Model A310 series airplanes), both dated December 10, 1990, as applicable. Initiation of this inspection constitutes terminating action for the requirements of paragraph (a) and specified portions of paragraph (b) of this AD.

(1) If no disbonding or cracking is detected, repeat the ELCH inspection at intervals not to exceed 2 years or 3,500 landings, whichever occurs first.

(2) If disbonding or cracking is confirmed by ELCH inspection, and the extent of the disbonding is equal to or less than 400 square cm in Area I, or equal to or less than 800 square cm in Area II, as those areas of the rudder are defined in the applicable service bulletin: Prior to further flight, accomplish follow-on actions in accordance with Flow Chart, Figure 2, of the applicable service bulletin.

(3) If disbonding or cracking is confirmed by ELCH inspection, and the extent of the disbonding is greater than 400 square cm in Area I, or greater than 800 square cm in Area II, as those areas of the rudder are defined in the applicable service bulletin: Prior to further flight, accomplish either paragraph (d)(3)(i) or (d)(3)(ii) of this AD:

(i) Repair in a manner approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Thereafter, continue to conduct ELCH inspections in a manner and at intervals approved by the Manager, Standardization Branch, ANM–113.

(ii) Replace the rudder in accordance with Airbus Service Bulletin A300–55–6010 (for Model A300–600 series airplanes) or Airbus Service Bulletin A310–55 2012 (for Model A310 series airplanes), both dated April 18, 1991, as applicable. After this replacement is accomplished, no further actions are required by this AD.

(e) Terminating Action. Within five years after the effective date of this AD, replace the rudder in accordance with Airbus Service Bulletin A300–55–6010 (for Model A300–600 series airplanes) or Airbus Service Bulletin A310–55 2012 (for Model A310 series airplanes), both dated April 18, 1991, as applicable. This replacement constitutes terminating action for the inspection requirements of this AD.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, Standardization Branch, ANM–113.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) The inspections shall be done in accordance with Airbus Service Bulletin A300–55–6008, dated December 10, 1990 (for Model A300–600 series airplanes); and Airbus Service Bulletin A310–55–2010, dated December 10, 1990 (for Model A310 series airplanes). The rudder replacement shall be done in accordance with Airbus Service Bulletin A300–55–6010, dated April 18, 1991 (for Model A300–600 series airplanes); and Airbus Service Bulletin A310–55 2012, dated April 18, 1991 (for Model A310 series airplanes). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on March 28, 1997.

Issued in Renton, Washington, on February 7, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–3694 Filed 2–20–97; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–NM–118–AD; Amendment 39–9930; AD 97–04–06]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dornier Model 328–100 series airplanes, that requires the replacement of certain attachment screws on the leading edges of the left and right wings with longer screws. This amendment is prompted by reports indicating that these screws had become loose. The actions specified by this AD are intended to prevent loosening or loss of the screws, which could lead to loosening or loss of the leading edge of the wing, and consequent reduced controllability of the airplane.

DATES: Effective March 28, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 28, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Connie Beane, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2796; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 series airplanes was published in the **Federal Register** on December 5, 1996 (61 FR 64491). That action proposed to require replacement of the attachment screws at leading edge 1 of the right and left wings with longer attachment screws having P/N NAS7303A5.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 9 Dornier Model 328–100 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required replacements, and that the average labor rate is $60 per work hour. Required parts will be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $1,080, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–04–06 Dornier: Amendment 39–9930. Docket 96–NM–118–AD.

Applicability: Model 328–100 series airplanes having serial numbers 3005 through 3019 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loosening or loss of the attachment screws, which could lead to loosening or loss of the leading edge of the wing, and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 6 weeks after the effective date of this AD, replace the attachment screws for leading edge 1 of the left and right wings with longer attachment screws having part number NAS7303A5, in accordance with Dornier Service Bulletin SB–328–57–058, dated November 23, 1994.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The replacements shall be done in accordance with Dornier Service Bulletin SB–328–57–058, dated November 23, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(e) This amendment becomes effective on March 28, 1997.

Issued in Renton, Washington, on February 7, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–3693 Filed 2–20–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–NM–217–AD; Amendment 39–9934; AD 97–04–10]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–80 Series Airplanes, Model MD–88 Airplanes, and Model MD–90 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all McDonnell Douglas Model DC–9–80 series airplanes, Model MD–88 airplanes, and Model MD–90 airplanes, that currently requires revising the Airplane Flight Manual (AFM) to include limitations and procedures to address situations in which the autopilot or autothrottle fails to disengage. That AD was prompted by incidents in which the flightcrew was unable to disconnect the autopilot or autothrottle function from the engaged position, due to a discrepancy in a microswitch that is associated with the operation of those functions. This amendment requires an inspection of the autopilot and autothrottle engage switches located in the flight guidance control panel, and installation of improved switches. Accomplishment of these actions will terminate the previous requirement for the AFM revision. The actions specified by this AD are intended to ensure that the autopilot and autothrottle disengage when commanded to do so by the flightcrew.

DATES: Effective March 28, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 28, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: J. Kirk Baker, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5345; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 96–12–21, amendment 39–9664 (61 FR 29007, June 7, 1996), which is applicable to all McDonnell Douglas Model DC–9–80 series airplanes, Model MD–88 airplanes, and Model MD–90 airplanes, was published in the **Federal Register** on September 30, 1996 (61 FR 51068). The action proposed to continue to require a revision of the Airplane Flight Manual (AFM) to include limitations and procedures to address situations in which the autopilot or autothrottle fails to disengage; this action was previously required by AD 96–12–21. However, the action also proposed to require an inspection of the autopilot and autothrottle engage switches located in the flight guidance control panel (FGCP), and replacement of the switches with improved switches. Accomplishment of these new actions would constitute terminating action for the previous requirement to revise the AFM.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

Two commenters support the proposed AD.

Request To Extend Compliance Time

Several commenters support the intent of the proposed AD, but request that the compliance time for accomplishing the terminating action be extended from the proposed 120 days to as much as 3 years. These commenters are concerned that not enough replacement switches will be available to support the fleet within the proposed compliance time. One commenter, a U.S. operator, states that it owns 310 FGCP's that would need new switches installed, and its maintenance facilities currently can modify only 5 panels per week; to meet the proposed compliance schedule, this operator would have to employ 2 additional full-time mechanics at a cost of $80,000. One commenter, another a U.S. operator, states that Honeywell (the manufacturer of the switches) has indicated that it will not be able to supply the complete number of needed switches within the 120-day time period; Honeywell suggested that it will need at least 180 days just to produce the switches, and more time will be required for ordering and shipping.

The FAA concurs that the compliance time can be extended. Honeywell has advised the FAA that it has re-evaluated the magnitude of the modification program and finds that it will not have an ample number of parts available to support the proposed 120-day compliance time for modification of the U.S. fleet. Based on the information provided by Honeywell, and in consideration of the number of airplanes that will be affected by the requirement to install the new switches, the FAA has determined that the compliance time can be extended to 12 months. Paragraph (c) of the final rule has been revised accordingly. The FAA finds that safety will not be compromised in the interim, since the currently-required AFM revision will remain in effect during that time.

Request To Revise Cost Impact Information

Several commenters suggest that the cost impact information, which was presented in the preamble to the proposal, was underestimated. One commenter points out that, although the information in the referenced McDonnell Douglas service bulletin may indicate that only 1.5 work hours are required to accomplish the terminating action, that figure only reflects the labor necessary for removal and re-installation of a modified FGCP. It does not include the time that will be required for in-house shop rework of the parts (an additional 2 to 5 work hours) or, for some operators, the time necessary for removing the panels from the airplane, shipping them to Honeywell for modification, and returning them to the operator for installation (estimated to be as much as 270 days).

The FAA concurs that the cost impact figures should be updated. In general, the cost impact information relative to AD actions includes only the direct costs of the specific actions required by the AD. The number of work hours necessary to accomplish the terminating action, specified as 1.5 work hours in the proposal, represented the time necessary to perform only the actions actually required by the AD: inspection, removal, installation, and a functional check. That number was provided to the FAA by the airframe manufacturer, McDonnell Douglas, based on the best data available at that time. A Honeywell service bulletin that is related to the actions required by this AD indicates that 2.0 work hours would be required for modification of the panel. In consideration of this new information, the FAA has revised the cost impact information, below, to indicate that 3.5 work hours will be required to accomplish the terminating action.

The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur "incidental" costs in addition to the "direct" costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs, such as the time required to gain access and close up; planning time; ordering/shipping/delivery time for parts, or the time needed for other administrative actions. Because incidental costs may vary significantly from operator to operator, they are almost impossible to calculate.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 970 Model DC–9–80 series airplanes, Model MD–88 airplanes, and Model MD–90 airplanes of the affected design in the worldwide fleet. The FAA estimates that 512 airplanes of U.S. registry will be affected by this proposed AD.

The AFM revision that was previously required by AD 96–12–21 and retained in this new AD takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $30,720, or $60 per airplane.

The new actions that are required by this new AD will take approximately 3.5 work hours per airplane to accomplish (this figure includes inspection, removal, modification, re-installation, and a functional check), at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no charge to operators. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $107,520, or $210 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9664 (61 FR 29007, June 7, 1996), and by adding a new airworthiness directive (AD), amendment 39–9934, to read as follows:

97–04–10 McDonnell Douglas: Amendment 39–9934. Docket 96–NM–217–AD. Supersedes AD 96–12–21, Amendment 39–9664.

Applicability: Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and Model MD–88 airplanes, as listed in McDonnell Douglas Service Bulletin MD80–22–122, dated August 6, 1996; and Model MD–90 airplanes, as listed in McDonnell Douglas Service Bulletin MD90–22–005, dated August 6, 1996; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure the flight crew's ability to continue to control the airplane manually if the autopilot or autothrottle function fails to disengage, accomplish the following:

(a) Within 14 days after June 24, 1996 (the effective date of AD 96–12–21, amendment 39–9664), revise the Limitations section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

If the autopilot or autothrottle fails to disconnect normally, press and hold the autopilot release button or either autothrottle release button, as appropriate. Refer to the Abnormal Procedures section for procedures if the autopilot or autothrottle fails to disconnect.

(b) Within 14 days after June 24, 1996 (the effective date of AD 96–12–21, amendment 39–9664), revise the Abnormal Procedures section of the FAA-approved AFM to include the following information. This may be accomplished by inserting a copy of this AD in the AFM.

AUTOPILOT:

If the Autopilot (A/P) disconnects when the AUTOPILOT RELEASE button on either control wheel is depressed, *and* re-engages when the AUTOPILOT RELEASE button is released, accomplish the following procedures:

PROCEDURE: Use Autopilot (as desired)

AUTOPILOT RELEASE button ....PRESS AND HOLD

- Hold either yoke (yellow) Autopilot Release button while continuing to fly the aircraft manually. The A/P will remain disengaged while depressing the button.
- When the Autopilot Release button is released, the A/P will engage and all A/P functions should work normally.

TO SILENCE THE AURAL WARNING:

CAWS C/B (P–38).....PULL

- Circuit breaker is located behind the Captain's seat.
- Pulling the C/B will disable the Stall Warning SSRS–1, Landing Gear, Takeoff, Cabin Altitude, Speed Brake aural warnings, in addition to the Autopilot aural warning.

CAUTION:

Do not attempt to overpower the autopilot. When the autopilot is engaged, applying force to the column may allow the alternate trim to reposition the stabilizer. If the force is applied long enough, it will result in an out-of-trim condition."

"AUTOTHROTTLE:

If the Autothrottle (A/T) disconnects when either throttle disconnect button is depressed, *and* re-engages when throttle disconnect button is released, accomplish the following procedures:

PROCEDURE: Use Autothrottle System (as desired)

WHEN A DISCONNECT IS NECESSARY:

AUTOTHROTTLE RELEASE BUTTON PRESS AND HOLD

- Press and hold either button until flashing red A/T annunciation is illuminated. Flashing red light indicates autothrottle is disconnected.
- AUTOTHROTTLE RELEASE BUTTON may then be released.
- The FMA A/T window will annunciate as though the A/T is engaged.
- The flashing red A/T annunciation of the FMA cannot be extinguished with repeated depression of the autothrottle release button.
- If the throttle levers are retarded to the idle stop, the flashing red A/T annunciation will extinguish, and the A/T system will re-engage.
- If the DFGC is selected to the IAS mode and the A/T SPEED mode is selected, the A/T system will re-engage."

(c) Within 12 months after the effective date of this AD, accomplish the inspection and replacement of the autopilot and autothrottle engage switches in the flight guidance control panel (FGCP), in accordance with the paragraphs 3., 3.A., and 3.B. of the Accomplishment Instructions of McDonnell Douglas Service Bulletin MD80–22–122, dated August 6, 1996 (for Model DC–9–80 series airplanes and Model MD–88 airplanes); and McDonnell Douglas Service Bulletin MD90–22–005, dated August 6, 1996 (for Model MD–90 airplanes). Once these actions are completed, the AFM revision required by paragraphs (a) and (b) of this AD may be removed.

Note 2: The McDonnell Douglas service bulletins referenced in this paragraph refer to Honeywell Incorporated Service Bulletin 4034242–22–13 for additional service instructions.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The actions shall be done in accordance with McDonnell Douglas Service Bulletin MD80–22–122, dated August 6, 1996 (for Model DC–9–80 series airplanes and Model MD–88 airplanes); and McDonnell Douglas Service Bulletin MD90–22–005, dated August 6, 1996 (for Model MD–90 airplanes). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on March 28, 1997.

Issued in Renton, Washington, on February 10, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–3844 Filed 2–20–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–ANE–15; Amendment 39–9927; AD 97–04–04]

RIN 2120–AA64

Airworthiness Directives; AlliedSignal Inc. GTCP85 Series Auxiliary Power Units

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to AlliedSignal Inc. (formerly Garrett Auxiliary Power Division) GTCP85 Series auxiliary power units (APUs), that currently requires removing the existing turbine wheel shroud and installing one constructed of Hastelloy "S" material, or installing a containment augmentation ring. This amendment deletes the option of installing a turbine shroud constructed of Hastelloy "S" material. This amendment is prompted by a report of insufficient APU containment capability with the Hastelloy "S" shroud alone installed. The actions specified by this AD are intended to prevent turbine shroud fragments from exiting the APU and puncturing the APU compartment, which could result in reduced fire extinguishing capability in the APU compartment.

DATES: Effective March 24, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 24, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from AlliedSignal Aerospace, Attn: Data Distribution, M/S 64–3/2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2493, fax (602) 365–5577. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA 01803–5299; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (310) 627–5245; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 93–07–13, Amendment 39–8545 (58 FR 21917, April 26, 1993), which is applicable to AlliedSignal Inc. (formerly Garrett Auxiliary Power Division) GTCP85 Series auxiliary power units (APUs), was published in the **Federal Register** on August 12, 1996 (61 FR 41751). That action proposed to require installing an improved containment augmentation ring, Part Number (P/N) 3616426–1, or P/N 3616426–3, which is a redesigned containment augmentation ring to allow installation on certain APUs that cannot accept the −1 containment augmentation ring. The containment augmentation rings, P/Ns 3616426–1 and 3616426-3, improve the containment capability of the APU relative to the earlier containment augmentation ring, P/N 3612249–1, by preventing turbine shroud fragments from passing around the containment augmentation ring. The installation must be accomplished within 24 months after the effective date of this AD, for flight operable APUs, and within 36 months after the effective date of this AD, for APUs that are operable on the ground only. The actions would be required to be accomplished in accordance with AlliedSignal Aerospace Alert Service Bulletin (ASB) No. GTCP85–49–A7189, Revision 2, dated October 8, 1996, AlliedSignal Aerospace ASB No. GTCP85–49–A7189, Revision 1, dated July 19, 1996, or AlliedSignal Aerospace ASB No. GTCP85–49–A7189, Original, dated March 29, 1996; and AlliedSignal Aerospace ASB No. GTCP85–49–A6706, Revision 2, dated November 28, 1994, AlliedSignal Aerospace ASB No. GTCP85–49–A6706, Revision 1, dated November 12, 1993, or Garrett ASB No. GTCP85–49–A6706, Original, dated December 7, 1992.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter states that the AD should apply only to APUs with one-piece cast turbine wheels made of MAR–M–247 material, as only these type turbine wheels have failed in the commenter's experience. The FAA concurs in part. The proposed rule as written applies to APUs with one-piece cast turbine wheels with the listed P/Ns, which are made of MAR–M–247 material, but also Inconel, which have failed as well.

Two commenters state that the AD should add an additional method of compliance by replacing the one-piece cast turbine wheels with two-piece wheels. The FAA does not concur. The proposed AD does not apply to APUs with two-piece turbine wheels.

One commenter (the manufacturer) states that the economic analysis provides figures for the number of APUs in service domestically and worldwide that are too low. The FAA concurs and revised the economic analysis of this final rule accordingly.

One commenter states that the proposed AD should be more clear in stating that compliance is acceptable with either ASB stated in paragraphs (a)(1) and (a)(2) and (b)(1) and (b)(2) of the compliance section. The FAA concurs and has put the "or" between the appropriate paragraphs in bold type to highlight its significance.

Two commenters concur with the AD as proposed.

Since publication of the proposed rule, AlliedSignal Aerospace has issued Revision 2 to ASB No. GTCP85–49–A7189, dated October 8, 1996, which is referenced in this final rule along with Revision 1, dated July 19, 1996, and Original, dated March 29, 1996. These revisions of that ASB are all approved methods of compliance for the appropriate paragraphs of this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 4,100 APUs of the affected design in the worldwide fleet. The FAA estimates that 1,300 APUs installed on aircraft of U.S. registry will be affected by this AD, that it will take no additional work hours if the required actions are accomplished when the APU is already disassembled in the shop. Required parts will cost approximately $1,550 per APU. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,015,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–8545 (52 FR 45163, November 25, 1987) and by adding a new airworthiness directive, Amendment 39–9927, to read as follows:

97–04–04 AlliedSignal Inc.: Amendment 39–9927. Docket 96–ANE–15. Supersedes AD 93–07–13, Amendment 39–8545.

Applicability: AlliedSignal Inc. (formerly Garrett Auxiliary Power Division) GTCP85 series auxiliary power units (APUs), incorporating a one-piece cast turbine wheel, Part Numbers (P/Ns) 968095–X, 3604604–X, 3606982–1, or 3842072–X (where "X" denotes any number). These APUs are installed on but not limited to the following aircraft: British Aerospace BAC 1–11 series; Boeing 707, 727, and 737 series; Lockheed L382 series; and McDonnell Douglas DC–8–70, DC–9, and MD–88 series aircraft.

Note 1: This airworthiness directive (AD) applies to each APU identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For APUs that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent turbine shroud fragments from exiting the APU and puncturing the APU compartment, which could result in reduced fire extinguishing capability in the APU compartment, accomplish the following:

(a) For flight operable APUs, within 24 months after the effective date of this AD, accomplish either of the following:

(1) Install a containment augmentation ring, P/N 3616426–3, in accordance with AlliedSignal Aerospace Alert Service Bulletin (ASB) No. GTCP85–49–A7189, Revision 2, dated October 8, 1996, Revision 1, dated July 19, 1996, or Original, dated March 29, 1996; or

(2) Install a containment augmentation ring, P/N 3616426–1, in accordance with AlliedSignal Aerospace ASB No.GTCP85–49–A6706, Revision 2, dated November 28, 1994, AlliedSignal Aerospace ASB No. GTCP85–49–A6706, Revision 1, dated November 12, 1993, or Garrett ASB No. GTCP85–49–A6706, Original, dated December 7, 1992.

(b) For APUs that are operable on the ground only, within 36 months after the effective date of this AD, accomplish either of the following:

(1) Install a containment augmentation ring, P/N 3616426–3, in accordance with AlliedSignal Aerospace ASB No. GTCP85–

49–A7189, Revision 2, dated October 8, 1996, Revision 1, dated July 19, 1996, or Original, dated March 29, 1996; or

(2) Install a containment augmentation ring, P/N 3616426–1, in accordance with AlliedSignal Aerospace ASB No. GTCP85–49–A6706, Revision 2, dated November 28, 1994, AlliedSignal Aerospace ASB No. GTCP85–49–A6706, Revision 1, dated November 12, 1993, or Garrett ASB No. GTCP85–49–A6706, Original, dated December 7, 1992.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative method of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(e) The actions required by this AD shall be done in accordance with the following ASBs:

Document No.	Pages	Revision	Date
AlliedSignal Aerospace, GTCP85–49–A7189	1–14	2	Oct. 6, 1996.
Total pages: 14.			
AlliedSignal Aerospace, GTCP85–49–A7189	1–12	1	July 19, 1996.
Total pages: 12.			
AlliedSignal Aerospace, GTCP85–49–A7189	1–10	Original	Mar. 29, 1996.
Total pages: 10.			
AlliedSignal Aerospace, GTCP85–49–A6706	1	2	Nov. 28, 1994.
	2, 3	1	Nov. 12, 1993.
	4	2	Nov. 28, 1994.
	5–8	1	Nov. 12, 1993.
	9, 10	2	Nov. 28, 1994.
Total pages: 10.			
AlliedSignal Aerospace GTCP85–49–A6706	1–10	1	Nov. 12, 1993
Total pages: 10.			
Garrett GTCP85–49–A6706	1, 2	Original	Dec. 7, 1992
	4–10	Original	Dec. 7, 1992.
Total pages: 9.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AlliedSignal Aerospace, Attn: Data Distribution, M/S 64–3/2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2493, fax (602) 365–5577. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(f) This amendment becomes effective on March 24, 1997.

Issued in Burlington, Massachusetts, on February 4, 1997.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 97–4098 Filed 2–20–97; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 97–NM–30–AD; Amendment 39–9939; AD 97–04–14]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42–200, –300, and –320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR42–200, –300, and –320 series airplanes. This action requires modification of the electrical wiring of the stick pusher/shaker test function to reinforce system protection. This amendment is prompted by a report of at least one occurrence when the stick pusher self-activated during flight. The actions specified in this AD are intended to prevent inadvertent activation of the stick pusher, which could cause reduced controllability of the airplane, especially during takeoff or landing.

DATES: Effective March 10, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 10, 1997.

Comments for inclusion in the Rules Docket must be received on or before April 22, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–30–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gary Lium, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1112; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Model ATR42–200, –300, and –320 series airplanes. The DGAC advises of at least one occurrence of the inadvertent activation of the stick pusher test function. An electrical fault could be the cause of this anomaly; however, at this time, the exact cause is not known. This condition, if not corrected, could result in self-activation of the stick pusher during flight, which would cause reduced controllability of the airplane, especially during takeoff or landing.

Explanation of Relevant Service Information

Aerospatiale has issued Service Bulletin ATR42–27–0083, dated November 22, 1996, which describes procedures for modifying the electrical wiring for the stick pusher/shaker test function. This modification is identified in the service bulletin as 04700. After modification, a functional test is performed to ensure proper system operation. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive (CN) 96–256–068(B), dated November 6, 1996, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent the stick pusher from self-activating during flight. This AD requires modifying the electrical wiring for the stick pusher/shaker test function. The actions are required to be accomplished in accordance with the service bulletin described previously.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–30–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–04–14 Aerospatiale: Amendment 39–9939. Docket 97–NM–30–AD.

Applicability: Model ATR42–200, –300, and –320 series airplanes; having serial numbers up to and including 414, but excluding serial number 403; and on which Modification 04700 has not been incorporated; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent self-activation of the stick pusher/shaker test function, accomplish the following:

(a) Within 60 days after the effective date of the AD, modify the electrical wiring for the stick pusher/shaker test function by installing Modification 04700 in accordance with Aerospatiale Service Bulletin ATR42–27–0083, dated November 22, 1966. After the modification is completed, prior to further flight, conduct functional testing in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an

appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with Aerospatiale Service Bulletin ATR42–27–0083, dated November 22, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(e) This amendment becomes effective on March 10, 1997.

Issued in Renton, Washington, on February 12, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–4103 Filed 2–20–97; 8:45 am]

BILLING CODE 4910–13–U

Coast Guard

33 CFR Part 100

[CGD07–96–063]

RIN 2115–AE46

Special Local Regulations; Invitational Rowing Regatta, Augusta, GA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing permanent special local regulations for the Augusta Invitational Rowing Regatta. The Augusta Invitational Rowing Regatta will be held annually on Thursday, Friday, Saturday, and Sunday of the third week of March, between the hours of 7 a.m. and 5 p.m. local time. The nature of the event and the closure of the Savannah River creates an extra or unusual hazard on the navigable waters. These regulations are necessary to provide for the safety of life on the navigable waters. These regulations are necessary to provide for the safety of life on the navigable waters during the event.

DATES: March 24, 1997.

ADDRESSES: The docket for this rulemaking is maintained at Commander, U.S. Coast Guard Group, Charleston, 196 Tradd St., Charleston, SC, 29401. Hours are 7:30 a.m. to 3:30 p.m. Monday through Friday except Federal holidays.

FOR FURTHER INFORMATION CONTACT: ENS M.J. Daponte, Project Officer, Coast Guard Group Charleston, SC at (803) 724–7621.

SUPPLEMENTARY INFORMATION:

Regulatory History

On December 6, 1996 the Coast Guard published a notice of proposed rulemaking entitled [CGD07–96–063] in the **Federal Register** (61 FR 64645). The comment period ended on February 4, 1997. The Coast Guard received no comments on the notice of proposed rulemaking. A public hearing was not requested, and no hearing was held.

Background and Purpose

These regulations are needed to provide for the safety of life during the Invitational Rowing Regatta. These regulations are intended to promote safe navigation on the waters off Augusta on the Savannah River during the races by controlling the traffic entering, exiting, and traveling within these waters. The anticipated concentration of spectator and event participant vessels associated with the Rowing Regatta poses a safety concern which is addressed in these special local regulations.

These regulations will not permit the entry or movement of spectator vessels and other non-participating vessel traffic between the U.S. Highway Route 1 (Fifth Street) Bridge at mile marker 199.45 and Eliot's Fish Camp at mile marker 197 from 7 a.m. and 5 p.m. local time, annually on Thursday, Friday, Saturday, and Sunday of the third week of March. These regulations will permit the movement of spectator vessels and other non-participants after the termination of the race each day, and during intervals between scheduled events at the discretion of the Coast Guard Patrol Commander.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of executive order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. The proposed regulations will last for only 10 hours on each day of the event. No public comments were received during the notice of proposed rulemaking comment period.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rulemaking will have a significant economic-impact on a substantial number of small entities. "Small Entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

The Coast Guard expects the economic impact of this regulation to be minimal and certifies under 5 U.S.C. 605(b) that this rulemaking will not have a significant impact on a substantial number of small entities because the limited area regulated and limited duration of the regulation.

Collection of Information

These regulations contain no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and has determined that the rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact on this rulemaking consistent with Section 2.B.2. of Commandant Instruction M16475.1B, (as revised by 59 FR 38654, July 29, 1994). In accordance with that instruction, specifically sections 2.B.4.g. and h., this action has been environmentally assessed (EA completed), and the Coast Guard has concluded that it will not significantly affect the quality of the human environment. An environmental assessment and a finding of no significant impact have been prepared and are available for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Final Regulations

In consideration of the foregoing, the Coast Guard amends Part 100 of Title 33, Code of Federal Regulations, as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46.

2. A new section 100.724 is added to read as follows:

§ 100.724 Annual Augusta Invitational Rowing Regatta; Savannah River, Augusta, GA.

(a) *Definitions. (1) Regualted area.* The regulated area is formed by a line drawn directly across the Savannah River at U.S. Highway 1 (Fifth Street) Bridge at mile marker 199.45 and directly across the Savannah River at Eliot's Fish Camp at mile marker 197. The regulated area includes the width of the Savannah River between these two lines.

(2) *Coast Guard Patrol Commander.* The Coast Guard patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who been designated by the Commander, Coast Guard Group Charleston, SC.

(b) *Special local regulations.* (1) Entry into the regulated area is prohibited to all non-participants.

(2) After the termination of the Invitational Rowing Regatta each day, and during intervals between scheduled events, at the discretion of the Coast Guard Patrol Commander, all vessels may resume normal operations.

(c) *Effective dates.* This section is effective at 7 a.m. and terminates at 5 p.m. local time annually, on Thursday, Friday, Saturday and Sunday of the third weekend of March.

Dated: February 6, 1997.

R.D. Utley,

Captain, U.S. Coast Guard, Commander, Seventh Coast Guard District Acting.

[FR Doc. 97–4358 Filed 9–20–97; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–5690–9]

RIN 2060–AD94

National Emission Standards for Hazardous Air Pollutants: Petroleum Refineries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action expands and clarifies definitions in the "National Emission Standards for Hazardous Air Pollutants: Petroleum Refineries," which was issued as a final rule on August 18, 1995.

DATES: The direct final rule will be effective April 22, 1997 unless significant, adverse comments are received by March 24, 1997. If significant, adverse comments are timely received EPA will publish timely notice in the **Federal Register** withdrawing the final rule.

FOR FURTHER INFORMATION CONTACT: Mr. James Durham, Waste and Chemical Processes Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5672.

SUPPLEMENTARY INFORMATION: If significant adverse comments are timely received on this direct final rule, all such comments will be addressed in a subsequent final rule based on the proposed rule contained in the Proposed Rules Section of this **Federal Register** that is identical to this direct final rule. The Direct Final Rule will be withdrawn. If no significant adverse comments are timely filed on any provision of this direct final rule then the entire direct final rule will become effective 60 days from today's **Federal Register** notice and no further action is contemplated on the parallel proposal published today.

On August 18, 1995 (60 FR 43243), EPA promulgated in the **Federal Register** national emission standards for hazardous air pollutants (NESHAP) for petroleum refineries. These regulations were promulgated as subpart CC of 40 CFR part 63. This document contains additions to definitions which will clarify the applicability of control requirements and provide flexibility for the regulated population.

I. Description of Changes

A. Addition of Annual Average True Vapor Pressure Cut-Off to Definition of a Group 1 Storage Vessel

On July 15, 1994 (59 FR 36130) the EPA proposed national emission standards for hazardous air pollutants for petroleum refineries. In the proposed rule, a Group 1 storage vessel was defined as a vessel with a maximum true vapor pressure above a specified number.

Comments received regarding this definition stated that the storage tank vapor pressure information provided by refineries, on which the true vapor pressure limit for Group 1 storage vessels at existing sources was based, was most likely reflective of annual average, as opposed to maximum true vapor pressures. The EPA agreed with the commenters and increased the maximum true vapor pressure applicability cut-off for storage vessels at an existing source from 8.3 to 10.4 kilopascals to account for the difference between annual average and maximum true vapor pressure. This change was made in the final rule (60 FR 43243).

Additional comments were received after the rule was promulgated stating that a true vapor pressure cut-off based on an annual average temperature would provide flexibility to refiners. Having determined that true vapor pressure cut-offs of 8.3 and 10.4 kilopascals based on annual average and maximum monthly temperature, respectively, provide equivalent emission control, EPA has decided to provide both annual average and maximum true vapor pressure applicability cut-offs for existing storage tanks. Refineries may use either cut-off to determine if an existing storage vessel is subject to the control requirements of the rule. This amendment does not change the stringency of the requirement, or the estimated cost effectiveness of this regulation.

Adding an annual average true vapor pressure applicability cut-off to the Group 1 storage vessel definition necessitates adding a definition for annual average true vapor pressure. A definition for annual average true vapor pressure is included in this direct final rule.

B. Clarification of the Group 1 Storage Vessel HAP Content Applicability Cut-Off

In the promulgated Petroleum Refineries NESHAP, the Group 1 storage

vessel definition does not indicate whether the HAP concentration applicability cut-off refers to the maximum or annual average HAP concentration. By this direct final rule, EPA clarifies that the HAP concentration Group 1 applicability cut-off for both new and existing storage vessels refers to the annual average HAP concentration. HAP concentrations in stored liquids were determined based on information solicited from refineries for use in development of the Petroleum Refineries NESHAP. It is most likely that HAP content information used to determine the HAP concentration cut-offs was provided on an annual basis.

II. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the actions taken by this final rule is available only on the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this action. Under section 307(b)(2) of the CAA, the requirements that are subject to today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

III. Administrative Requirements

A. Paperwork Reduction Act

The information collection requirements of the previously promulgated NESHAP were submitted to and approved by the Office of Management and Budget (OMB). A copy of this Information Collection Request (ICR) document (OMB Control Number 2060–0340) may be obtained from the Information Policy Branch (PY–223Y); U.S. Environmental Protection Agency; 401 M Street, SW; Washington, DC 20460 or by calling (202) 260–2740.

Today's changes to the NESHAP have no impact on the information collection burden estimates made previously. The changes consist of new and revised definitions which clarify applicability of control requirements in the NESHAP. No additional information collection is being required. Consequently, the ICR has not been revised.

B. Executive Order 12866 Review

Under Executive Order 12866 [58 FR 51735, (October 4, 1993)], the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

1. Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

3. Materially alter the budgetary impact of entitlements, grants, user fees, or land programs or the rights and obligations of recipients thereof; or

4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Because today's action clarifies existing control requirements and does not add any additional control, monitoring, recordkeeping, or reporting requirements, this rule was classified "non-significant" under Executive Order 12866 and, therefore was not reviewed by the Office of Management and Budget.

C. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. This direct final rule would not have a significant impact on a substantial number of small entities because it simply clarifies the applicability of control requirements in the Petroleum Refineries NESHAP, does not alter control, monitoring, recordkeeping, or reporting requirements, and does not include any provisions that create a burden for any of the regulated entities.

D. Unfunded Mandates Reform Act

Under the unfunded mandates reform act, EPA must prepare a statement to accompany any rule where the estimated costs to State, local, or Tribal governments, or to the private sector, will be $100 million or more per year. At the time of promulgation, EPA determined that the petroleum refineries NESHAP does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate or to the private sector. This determination is not altered by today's action, the purpose of which is to add clarity and flexibility to existing requirements. Consequently, an unfunded mandates statement has not been prepared.

E. Submission to Congress

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous air pollutants, Petroleum refineries, Reporting and recordkeeping requirements, Storage vessels.

Dated: February 11, 1997.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

For the reasons set out in the preamble, part 63 of title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart CC—National Emission Standards for Hazardous Air Pollutants: Petroleum Refineries

2. Section 63.641 is amended by adding, in alphabetical order, a definition for "annual average true vapor pressure" and revising the definition for "Group 1 storage vessel" to read as follows:

§ 63.641 Definitions.

* * * * *

Annual average true vapor pressure means the equilibrium partial pressure exerted by the stored liquid at the temperature equal to the annual average of the liquid storage temperature for liquids stored above or below the ambient temperature or at the local annual average temperature reported by the National Weather Service for liquids stored at the ambient temperature, as determined:

(1) In accordance with methods specified in § 63.111 of subpart G of this part;

(2) From standard reference texts; or

(3) By any other method approved by the Administrator.

* * * * *

Group 1 storage vessel means a storage vessel at an existing source that has a design capacity greater than or equal to 177 cubic meters and stored-liquid maximum true vapor pressure greater than or equal to 10.4 kilopascals and stored-liquid annual average true vapor pressure greater than or equal to 8.3 kilopascals and annual average HAP liquid concentration greater than 4 percent by weight total organic HAP; a storage vessel at a new source that has a design storage capacity greater than or equal to 151 cubic meters and stored-liquid maximum true vapor pressure greater than or equal to 3.4 kilopascals and annual average HAP liquid concentration greater than 2 percent by weight total organic HAP; or a storage vessel at a new source that has a design storage capacity greater than or equal to 76 cubic meters and less than 151 cubic meters and stored-liquid maximum true vapor pressure greater than or equal to 77 kilopascals and annual average HAP liquid concentration greater than 2 percent by weight total organic HAP.

* * * * *

3. Section 63.646 is amended by revising paragraph (b)(2) to read as follows:

§ 63.646 Storage vessel provisions.

* * * * *

(b) * * *

(2) When an owner or operator and the Administrator do not agree on whether the annual average weight percent organic HAP in the stored liquid is above or below 4 percent for a storage vessel at an existing source or above or below 2 percent for a storage vessel at a new source, Method 18 of 40 CFR part 60, appendix A shall be used.

* * * * *

[FR Doc. 97–4326 Filed 2–20–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 70

[AD–FRL–5689–6]

Clean Air Act Final Interim Approval of Operating Permits Program; Delegation of Section 112 Standards; State of Maine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final interim approval.

SUMMARY: The EPA is promulgating source category-limited interim approval of the Operating Permits Program submitted by the State of Maine for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources. EPA is also proposing elsewhere in this **Federal Register** to add a sixth interim approval issue which would require Maine to remove some of the activities listed as insignificant in the State's rules. See the proposed rulemaking on Maine's Title V program.

EFFECTIVE DATE: March 24, 1997.

ADDRESSES: Copies of the State's submittal and other supporting information used in developing the final interim approval are available for inspection during normal business hours at the following location: Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA.

FOR FURTHER INFORMATION CONTACT: Donald Dahl, (617) 565–4298.

SUPPLEMENTARY INFORMATION:

I. Background

Title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act ("the Act")), and implementing regulations at 40 Code of Federal Regulations (CFR) part 70 require that States develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by the end of an interim program, it must establish and implement a Federal program.

On September 19, 1996, EPA proposed interim approval of the operating permits program for the State of Maine. See 61 FR 49289. The EPA received comments from the Town of Jay on the proposal. In this document EPA is taking final action to promulgate interim approval of the operating permits program for the State of Maine. In addition, EPA is also proposing in this **Federal Register** to add a sixth interim approval issue in response to the comment from the Town of Jay and information submitted by other parties concerned about Jay's comment.

II. Response to Comments

The comments received on EPA's September 19, 1996 proposal to grant interim approval to the Maine Program and EPA's response to those comments are as follows:

Comment: The Town of Jay believes that EPA should require the State of Maine to remove six activities from the State's list of insignificant activities. The six activities are: (1) Paper forming; (2) vacuum system exhaust; (3) liquor clarifier and storage tanks and associated pumping, piping, and handling; (4) stock cleaning and pressurized pulp washing; (5) broke beaters, repulpers, pulp and repulping tanks, stock chests and bulk pulp handling; and (6) sewer manholes, junction boxes, sumps and lift stations associated with wastewater treatment systems.

Response: Based on the Town's comment and other information EPA has received concerning this issue, EPA is proposing in this **Federal Register** to require the State of Maine to remove the six activities listed above from its list of insignificant activities. Please refer to the proposed action elsewhere in this **Federal Register** for a discussion of this issue.

III. Final Action

The EPA is promulgating source category-limited interim approval of the operating permits program submitted by the State of Maine on October 23, 1995. The State must make the changes specified in the proposed rulemaking, under II.B., Proposed Action, in order to be granted full approval. See 61 FR 49292–49293 (September 19, 1996) for a complete discussion of those conditions. In brief they are: (1) Failure to allow for Section 502(b)(10) changes; (2) failure to require processing "Part 70 Minor Change" within 90 days; (3) allowing a change at a facility, defined as "Part 70 Minor Revision," that could increase emissions up to 4 tons per year of a regulated pollutant or 8 tons per year for all regulated pollutants to be processed without EPA or affected state review; (4) allowing a facility, under limited circumstances, to continue to emit up to the previous licensed level for up to 24 months after the license is amended; and (5) allowing an activity that emits between 1 and 4 tons of hazardous air pollutants to be classified as insignificant.

The scope of the State of Maine's Part 70 program approved in this document applies to all Part 70 sources (as defined in the approved program) within the State of Maine, except any sources of air pollution over which an Indian Tribe has jurisdiction. *See, e.g.,* 59 FR 55813, 55815–18 (Nov. 9, 1994). The term "Indian Tribe" is defined under the Act as "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as

Indians." See section 302(r) of the CAA; *see also* 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993). EPA is taking no position in this notice on the question whether any Indian Tribe located in Maine has jurisdiction over sources of air pollution.

This interim approval extends until March 22, 1999. During this interim approval period, the State of Maine is protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a Federal operating permits program in the State of Maine. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of this interim approval, as does the 3-year time period for processing the initial permit applications.

If the State of Maine fails to submit a complete corrective program for full approval by September 21, 1998, EPA will start an 18-month clock for mandatory sanctions. If the State of Maine then fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA will be required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that the State of Maine has corrected the deficiency by submitting a complete corrective program. If, six months after application of the first sanction, the State of Maine still has not submitted a corrective program that EPA has found complete, a second sanction will be required.

If EPA disapproves the State of Maine's complete corrective program, EPA will be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the State of Maine has submitted a revised program and EPA has determined that it corrected the deficiencies that prompted the disapproval. If, six months after EPA applies the first sanction, the State of Maine has not submitted a revised program that EPA has determined corrects the deficiencies, a second sanction is required.

In addition, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period if the State of Maine has not timely submitted a complete corrective program or EPA has disapproved its submitted corrective program. Moreover, if EPA has not granted full approval to the State of Maine program by the expiration of this interim approval, since the expiration would occur after November 15, 1995, EPA would be required to promulgate, administer and enforce a Federal permits program for the State of Maine upon interim approval expiration.

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to Part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. As discussed in the September 19, 1996 proposal to approve Maine's authority to take delegation of section 112 standards, Maine submitted a supplemental letter dated June 24, 1996 addressing the 112(l)(5) requirements for area/minor sources. Therefore, the EPA is also promulgating approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This program for delegations applies to sources covered by the Part 70 program as well as area/minor sources.

IV. Administrative Requirements

A. Docket

Copies of the State's submittal and other information relied upon for the final interim approval, including comments received by the State of Maine and reviewed by EPA on the proposal, are contained in the docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this final interim approval. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 22, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

C. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

D. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

E. Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. Additionally, it will not cost $100 million to operate or comply with this program.

F. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) of the Regulatory Flexibility Act, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, and Reporting and recordkeeping requirements.

Dated: February 5, 1997.

John P. DeVillars,

Regional Administrator, Region I.

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for Part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Appendix A to Part 70 is amended by adding the entry for Maine in alphabetical order to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Maine

(a) Department of Environmental Protection: submitted on October 23, 1995; source category-limited interim approval effective on March 24, 1997; source category-limited interim approval expires March 22, 1999.

(b) [Reserved]

* * * * *

[FR Doc. 97–4327 Filed 2–20–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[OPP–300449; FRL–5583–4]

RIN 2070-AB78

Benoxacor; Time-Limited Tolerances for Residues

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for combined residues of 4-(dichloroacetyl)-3,4-dihydro-3-methyl-2*H*-1,4-benzoxazine (benoxacor) when used as an inert ingredient (safener) in pesticide formulations containing metolachlor in or on raw agricultural commodities for which tolerances have been established for metolachlor. This regulation is being issued in response to a petition for the establishment of a tolerance for residues of benoxacor requested by Ciba-Geigy Corp.

EFFECTIVE DATE: This regulation becomes effective February 14, 1997 and expires on February 14, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP-300449], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP-300449], must also be submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP-300449]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed on-line at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Kerry B. Leifer, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Sixth Floor, Crystal Station #1, 2800 Crystal Drive Jefferson Davis Hwy., Arlington, VA, (703)-308-8811, e-mail: leifer.kerry @epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, at the request of Ciba, Crop Protection, pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), is establishing tolerances for residues of the inert ingredient (safener) 4-(dichloroacetyl)-3,4-dihydro-3-methyl-2*H*-1,4-benzoxazine (benoxacor) at 0.01 part per million (ppm) in or on raw agricultural commodities for which tolerances have been established for metolachlor. These tolerances will expire on February 14, 1998. A notice of filing of a tolerance petition, including the petitioner's summary of the information, data and arguments in support of their petition was published in the **Federal Register** on November 5, 1996 (61 FR 56954).

There were no comments or requests for referral to an advisory committee received in response to the notice of filing.

I. Background and Statutory Authority

A time-limited tolerance was established for benoxacor when used as an inert ingredient (safener) in pesticide formulations containing metolachlor in or on raw agricultural commodities for which tolerances have been established for metolachlor and published in the **Federal Register** on June 30, 1992 (57 FR 29031). The time-limited tolerance expired on December 1, 1996. This time-limited tolerance was established to allow for the submission and Agency review of chronic toxicity/oncogenicity data on benoxacor. The requisite chronic toxicity/oncogenicity studies in the rat and mouse were submitted by the petitioner; however, the Agency's review of the data is not yet complete. In order to allow the for the continued use of benoxacor as a safener in formulations of metolachlor while the EPA continues its review of the submitted oncogenicity data, the petitioner has requested that the time-limited tolerance be extended until such time as the Agency is able to make a definitive determination as to the safety of the tolerance.

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104-170) was signed into law August 3, 1996. FQPA amends both the FFDCA, 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures.

New section 408(b)(2)(A)(i) allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure

through drinking water, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue." Section 408(b)(2)(D) specifies factors EPA is to consider in establishing a tolerance. Section 408(b)(3) requires EPA to determine that there is a practical method for detecting and measuring levels of the pesticide chemical residue in or on food and that the tolerance be set at a level at or above the limit of detection of the designated method. Section 408(b)(4) requires EPA to determine whether a maximum residue level has been established for the pesticide chemical by the Codex Alimentarius Commission. If so, and EPA does not propose to adopt that level, EPA must publish for public comment a notice explaining the reasons for departing from the Codex level. Section 408 governs EPA's establishment of exemptions from the requirement for a tolerance using the same safety standard as section 408(B)(2)(A) and incorporating the provisions of section 408(b)(2)(C) and (D). Section 408(d) allows for the filing of a petition proposing the issuance of a regulation establishing, modifying, or revoking a tolerance or tolerance exemption for a pesticide chemical residue in or on a food.

II. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. For many of these studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the "no observed effects level" or "NOEL").

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a "safety factor") of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100 percent or less of the RfD) is generally considered by EPA to pose a reasonable certainty of no harm.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or margin of exposure calculations based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, and other non-occupational exposures, such as where residues leach into groundwater or surface water that is consumed as drinking water. Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. The TMRC is a "worst case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100 percent of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. A time-limited tolerance was established for benoxacor when used as an inert ingredient (safener) in pesticide formulations containing metolachlor in or on raw agricultural commodities for which tolerances have been established for metolachlor and published in the **Federal Register** on June 30, 1992. The time-limited tolerance expired on December 1, 1996.

EPA has reassessed the toxicology data base for benoxacor including new reproductive, chronic and carcinogenicity studies provided by the petitioner as part of this action to extend the time-limited tolerances for benoxacor. EPA has sufficient data to assess the hazards of benoxacor and to make a determination on aggregate exposure, consistent with section 408(b)(2), for the time-limited tolerances for residues of benoxacor at 0.01 ppm in or on raw agricultural commodities for which tolerances have been established for metolachlor. EPA's assessment of the dietary exposures and risks associated with establishing these tolerances follows.

A. Toxicological Profile

1. *Chronic toxicity.* Based on the available chronic toxicity data, EPA has established the RfD for benoxacor at 0.004 milligrams (mg)/kilogram(kg)/day. This RfD is based on a 2–year feeding study in rats with a NOEL of 0.4 mg/kg/day and an uncertainty factor of 100. The uncertainty factor of 100 was applied to account for inter-species extrapolation (10) and intra-species variability (10). Increased non-neoplastic lesions of the stomach (including epithelial hyperplasia) and liver (including centrilobular enlargement and hepatocyte vacuolation in males) were the effects observed at the lowest effect level (LEL) of 2.0 mg/kg/day.

2. *Acute toxicity.* Based on the available acute toxicity data, EPA has determined that benoxacor does not pose any acute dietary or nondietary risks.

3. *Carcinogenicity.* Based upon findings of a carcinogenic effect in the nonglandular stomach of rats and mice, benoxacor has been referred to the Office of Pesticide Program's Health Effects Division Cancer Peer Review Committee for classification as to its carcinogenicity. It is scheduled for review and classification in February 1997. The Agency has determined that, for the purposes of this time-limited tolerance and until such time as the Peer Review Committee makes a determination regarding the nature of the carcinogenic response and mode of action of benoxacor, a risk assessment of benoxacor utilizing the RfD derived from the chronic toxicity data is appropriate due to the nature of the tumor (forestomach) and the low incidence of tumors at the high dose level of 41 mg/kg/day.

B. Aggregate Exposure

For the purpose of assessing chronic dietary exposure from benoxacor, EPA considered the proposed benoxacor tolerance of 0.01 ppm and the raw agricultural commodities for which tolerances have been established for metolachlor. There are no other established U.S. tolerances for benoxacor, and there are no other registered uses for benoxacor on food or feed crops in the United States. In conducting this exposure assessment, EPA assumed tolerance level residues and 100 percent crop treated, resulting in a large overestimate of dietary exposure and protective of any chronic dietary exposure scenario.

Other potential sources of exposure of the general population to residues of pesticide chemicals are residues in drinking water and exposure from non-occupational sources. There is no established Maximum Concentration Level for residues of benoxacor in drinking water and no health advisory levels for benoxacor in drinking water have been established.

Review of the environmental fate data submitted by the petitioner indicates that benoxacor is mobile and hydrolyzes slowly at low pH's, but rapidly degrades in the soil (half-life of 49 days under aerobic conditions and 70 days anaerobically). Although the Agency does not have available data to perform a drinking water assessment at this time, exposure to residues of benoxacor in drinking water is not expected to result in unacceptable aggregate risk. This conclusion is based on the low application rate, the lack of significant acute oral toxicity, and the low percentage of the RfD occupied by dietary exposure, as well as an assessment of other pesticide chemicals which shows that except for highly mobile, persistent and acutely toxic chemicals, a significant contribution to aggregate risk to drinking water is unlikely.

EPA has evaluated the estimated non-occupational exposure to benoxacor. All metolachlor products to which benoxacor is added as a safener are commercial agricultural products not registered for residential use. The potential for non-occupational exposure to benoxacor by the general population is therefore unlikely except for the potential residues in food crops discussed above.

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance or tolerance exemption, the Agency consider "available information" concerning the cumulative effects of a particular pesticide chemical's residues and "other substances that have a common mechanism of toxicity." While the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide chemical shares a common mechanism of toxicity with any other substances, EPA does not at this time have the capability to fully resolve the scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticide chemicals. The Agency hopes that the results of this pilot process will enable the Agency to apply common mechanism issues to its pesticide risk assessments. At present, however, the Agency does not know how to apply the information in its files concerning common mechanism issues to risk assessments. Therefore, the Agency believes that in most cases there is no "available information" concerning common mechanism that can be applied to tolerance decisions. "Available information" as used in this context includes both the toxicity data, as well as policies and methodologies for conducting cumulative risk assessments. In most cases, although data may be available, policies and methodologies have not been developed to permit their use. When the Agency has determined that a particular pesticide chemical may share a significant common mechanism with other chemicals, a tolerance decision may be affected by common mechanism issues. Conversely, when the Agency has determined that a pesticide chemical does not share a common mechanism of toxicity with other chemicals, the tolerance decision will state this and provide supporting information. Where the Agency cannot determine whether a common mechanism of toxicity is operating because of lack of available information, a tolerance decision will be based upon the best available and useful information for the individual chemical, and a risk assessment will be performed for the individual chemical assuming that no common mechanism of toxicity exists.

In the case of benoxacor, EPA has not yet determined whether to include this chemical in a cumulative risk assessment. This tolerance decision therefore does not take into account common mechanism issues. The Agency will reexamine the tolerances for benoxacor during the tolerance reassessment process or when the time-limited tolerance approaches expiration.

C. Determination of Safety for U.S. Population

1. *Chronic risk.* Based on the completeness and reliability of the toxicity data, EPA has concluded that dietary exposure to benoxacor will utilize 4.8 percent of the RfD for the U.S. population. EPA generally has no concern for exposures below 100 percent of the RfD. Acceptable, reliable data are not available to quantitatively assess risk from drinking water. However, EPA concludes that there is a reasonable certainty that no harm to the U.S. population will result from aggregate exposure to benoxacor residues.

2. *Acute risk.* Due to the minimal acute toxicity of benoxacor, there are no concerns for acute dietary, occupational, and non-occupational exposures to benoxacor.

D. Determination of Safety for Infants and Children

In assessing the potential for additional sensitivity of infants and children to residues of benoxacor, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in rats. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide chemical exposure during prenatal development to one or both parents. Reproductive toxicity studies provide information relating to effects from exposure to a pesticide chemical on the reproductive capability of mating animals and data on systemic toxicity.

Based on current toxicological data requirements, the data base for benoxacor relative to pre- and post-natal toxicity is complete. EPA notes developmental toxicity NOELs of 100 mg/kg/day in rats and 12.5 mg/kg/day in rabbits. Developmental toxicity was observed in rats at 400 mg/kg/day; these effects occurred in the presence of maternal toxicity. In rabbits, developmental alterations were noted at the maternally toxic dose of 62.5 mg/kg/day. The developmental NOELs are more than 250- and 31-fold higher in the rats and rabbits respectively, than the NOEL of 0.4 mg/kg/day from the chronic toxicity/oncogenicity study in rats, which is the basis of the RfD.

In the 2–generation reproductive toxicity study in rats, the reproductive toxicity NOEL of 4.57 mg/kg/day was greater than the parental (systemic) toxicity NOEL (3.55 mg/kg/day in males and 4.51 mg/kg/day in females. The NOEL of 4.57 mg/kg/day for reproductive (pup) toxicity was 11-fold higher than the NOEL of 0.4 mg/kg/day from the chronic toxicity/oncogenicity study in rats,, which is the basis of the RfD. The reproductive (pup) lowest observed effect levels (LOEL) of 64 mg/kg/day (first generation; F1) and 72.25 mg/kg/day (second generation; F2) are based on decreased body weights on lactation day 21. Because these reproductive effects occurred in the presence of parental (systemic) toxicity, these data do not suggest an increased post-natal sensitivity to children and infants (i.e., that infants and children might be more sensitive than adults) to benoxacor exposure.

FFDCA section 408 provides that EPA shall apply an additional uncertainty (safety) factor for infants and children in the case of threshold effects to account for pre- and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of exposure (safety) is appropriate. EPA believes that reliable data support using standard uncertainty factors (usually 100x for combined inter- and intraspecies variability) and not the additional uncertainty factor when EPA has a complete data base and when the severity of the potential effect in infants and children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the traditional uncertainty factors.

Based on current toxicological data requirements the data base for benoxacor relative to pre- and postnatal toxicity is complete. As mentioned above, because both developmental and reproductive effects occurred in the presense of parental (systemic) toxicity, these data do not suggest an increased pre- or postnatal sensitivity of children and infants to benoxacor exposure. Therefore, EPA concludes, upon the basis of reliable data that a 100-fold uncertainty factor is adequate to protect the safety of infants and children and an additional safety factor is not warranted.

1. *Chronic risk.* Based on the TMRC exposure estimates, EPA has concluded that the percentage of the RfD that will be utilized by dietary exposure to residues of benoxacor ranges from 3.3 percent for pregnant females 13+ years old, up to 20 percent for non-nursing infants.

FFDCA section 408 provides that EPA shall apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety is appropriate. Based on current toxicological data requirements, the data base for benoxacor relative to pre- and post-natal toxicity is complete. As mentioned above, because reproductive effects occurred in the presence of parental (systemic) toxicity, these data do not suggest an increased post-natal sensitivity of children and infants to benoxacor exposure, and therefore an additional safety factor was not applied. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to benoxacor residues.

2. *Acute risk.* Due to the minimal acute toxicity of benoxacor, EPA concludes that there is a reasonable certainty of no harm for infants and children resulting from acute dietary or non-occupational exposures to benoxacor.

IV. Other Considerations

The nature of the residue in plants and animals is adequately understood for this tolerance. There are no Codex maximum residue levels established for residues of benoxacor on commodities for which a tolerance for metolachlor exist. Adequate enforcement methodology, GC/NPD, is available to enforce the tolerance expression. An analytical methodology for the determination of benoxacor and its metabolites in plant and animal commodities (Ciba Analytical Method AG536(C)) is available from: By mail, Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Crystal Mall #2, Rm 1128, 1921 Jefferson Davis Hwy., Arlington, VA.

V. Conclusion

Therefore, time-limited tolerances are established for residues of benoxacor when used as an inert ingredient (safener) in pesticide formulations containing metolachlor in or on raw agricultural commodities for which tolerances have been established for metolachlor. These tolerances will expire on February 14, 1998.

VI. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under the new section 408(d) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use its current procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by April 22, 1997, file written objections to any aspect of this regulation (including the automatic revocation provision) and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(I). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requester's contentions on such issues, and a summary of any evidence relied upon by the requester (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requester would, if established, resolve one or more of such issues in favor of the requester, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requester would be adequate to justify the action requested (40 CFR 178.32).

Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VII. Public Docket

A record has been established for this rulemaking under docket number [OPP-300449]. A public version of this record, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. EPA has also established a special record for post-FQPA tolerances which contains documents of general applicability. This record can be found in the same location.

The official record for this rulemaking, as well as the public version, as described above, is kept in paper form. Accordingly, in the event there are objections and hearing requests, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

VIII. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines "a significant regulatory action" as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order. Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

This action does not impose any enforceable duty, or contain any "unfunded mandates" as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because tolerances established on the basis of a petition under section 408(d) of FFDCA do not require issuance of a proposed rule, the regulatory flexibility analysis requirements of the Regulatory Flexibility Act (RFA), 5 U.S.C. 604(a), do not apply. Prior to the recent enactment of the FFDCA, EPA had treated such rulemakings as subject to the RFA; however, the amendments to the FFDCA clarify that no proposal is required for such rulemakings and hence the RFA is inapplicable.

Under 5 U.S.C. 801(a)(1)(A), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(a).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 14, 1997.

Peter Caulkins,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR Chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By revising § 180.460 to read as follows:

§ 180.460 Benoxacor; tolerances for residues.

Tolerances are established for residues of the inert ingredient (safener) benoxacor (4-(dichloroacetyl)-3,4-dihydro-3-methyl-2*H*-1,4-benzoxazine) when used in pesticide formulations containing metolachlor in or on raw agricultural commodities for which tolerances have been established for metolachlor. These tolerances expire on February 14, 1998.

[FR Doc. 97–4495 Filed 2–20–97; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 410 and 415

[BPD–852–CN]

RIN 0938–AH40

Medicare Program; Revisions to Payment Policies and Five-Year Review of and Adjustments to the Relative Value Units Under the Physician Fee Schedule for Calendar Year 1997; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction of final rule with comment period.

SUMMARY: This document corrects technical errors that appeared in the final rule with comment period published in the **Federal Register** on November 22, 1996 entitled "Medicare Program; Revisions to Payment Policies and Five-Year Review of and Adjustments to the Relative Value Units Under the Physician Fee Schedule for Calendar Year 1997."

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Stanley Weintraub, (410) 786–4498.

SUPPLEMENTARY INFORMATION:

Background

In the **Federal Register** Document dated November 22, 1996, there were a number of technical errors. In Addendum B, beginning on page 59595, we inadvertently printed incorrect information for certain codes. The corrections appear in this document under the heading "Correction of Errors."

Correction of Errors

In FR Doc. 96–29558 of November 22, 1996 (61 FR 59490), make the following corrections:

Pages 59595 through 59702, Addendum B

Entries on the pages listed below for the codes listed are corrected as follows: on page 59595, for CPT codes 38230 through 38241; page 59672 for CPT code 90901; page 59693 for HCPCS code A9503; page 59701 for HCPCS codes G0053 and G0084; and page 59702 for HCPCS codes G0089 through G0094 and J0270.

CPT[1] HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Practice expense RVUs	Malpractice RVUs	Total	Global period	Update
38230		R	Bone marrow collection.	4.22	2.78	0.21	7.21	010	N
38231		R	Stem cell collection	1.50	1.37	0.08	2.95	000	N
38240		R	Bone marrow/stem transplant.	2.24	2.08	0.14	4.46	XXX	N
38241		R	Bone marrow/stem transplant.	2.24	2.04	0.13	4.41	XXX	N
90901		A	Biofeedback, any method.	0.41	0.97	0.07	1.45	000	N
A9503		E	Technetium TC 99 medronate.	0.00	0.00	0.00	0.00	XXX	0
G0053		A	Destruction of add'l lesions.	3.05	2.25	0.20	5.50	010	S
G0084		A	Psychotherapy, inpt, with E/M.	1.65	0.35	0.05	2.05	XXX	N
G0089		A	Psychotherapy, inpt, no E/M.	1.33	0.59	0.09	2.01	XXX	N
G0090		A	Psychotherapy, inpt, with E/M.	1.77	0.59	0.09	2.45	XXX	N
G0091		A	Psychotherapy, inpt, no E/M.	2.08	0.59	0.09	2.76	XXX	N
G0092		A	Psychotherapy, inpt, with E/M.	2.41	0.59	0.09	3.09	XXX	N
G0093		A	Psychotherapy, inpt, no E/M.	3.32	0.59	0.09	4.00	XXX	N
G0094		A	Psychotherapy, inpt, with E/M.	3.80	0.59	0.09	4.48	XXX	N
J0270		E	Alprostadil for injection.	0.00	0.00	0.00	0.00	XXX	0

[1] All CPT codes and descriptors copyright 1996 American Medical Association.
[2] Copyright 1994 American Dental Association. All rights reserved.
[3] Indicates RVUs are not used for Medicare payment.

(Sec. 1848 of the Social Security Act (42 U.S.C. 1395w–4))

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: February 12, 1997.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 97–4288 Filed 2–20–97; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 199

[Docket No. PS–152; Amendment 199–14]

RIN 2137–AC95

Reporting of Drug and Alcohol Testing Results

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Confirmation of direct final rule.

SUMMARY: This document confirms the effective date of the direct final rule that amends the Drug and Alcohol Testing Rules to allow the optional reporting of drug and alcohol testing results to RSPA by computer disk.

EFFECTIVE DATE: The direct final rule published on December 12, 1996 at 61 FR 65364 is effective April 11, 1997.

SUPPLEMENTARY INFORMATION:

Background

On December 12, 1996, RSPA published a direct final rule, 61 FR 65364–65365, titled "Reporting of Drug and Alcohol Testing Results." In that publication, RSPA stated that if it did not receive adverse comments by February 10, 1997, it would publish a confirmation notice within 15 days. RSPA received no adverse comments. Therefore, this document confirms that the direct final rule cited above will become effective on April 11, 1997.

FOR FURTHER INFORMATION CONTACT: Marvin Fell, (202) 366–6205, regarding the subject matter of this document, or the Dockets Unit (202) 366–4453, for copies of this document or other information in the docket.

Issued in Washington, DC February 13, 1997.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 97–4202 Filed 2–20–97; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

[I.D. 011696D]

RIN 0648–AH89

Sea Turtle Conservation; Restrictions to Shrimp Trawling Activities; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correction

SUMMARY: This document contains a correction to a final rule that was published on December 19, 1996. This correction specifies the correct longitude of the eastern boundary of the Gulf Shrimp Fishery-Sea Turtle Conservation Area.

EFFECTIVE DATE: March 1, 1997.

FOR FURTHER INFORMATION CONTACT: Charles A. Oravetz, 813–570–5312, or Barbara A. Schroeder, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Need for Correction

On December 19, 1996 (61 FR 66933), NMFS published a final rule that modified the gear requirements for the participants in the shrimp trawl fishery in the southeastern United States to protected threatened and endangered species of sea turtle from incidental capture and mortality in that fishery.

The final rule, among other things, added a definition to 50 CFR 217.12 for the "Gulf Shrimp Fishery-Sea Turtle Conservation Area (Gulf SFSTCA)". The text of that definition, however, contained a typographical error in the longitude specification of a boundary.

Correction of Publication

Accordingly, the publication on December 19, 1996, of the final rule (I.D. 011696D), which was the subject of FR Doc. 96–66933, is corrected as follows:

§ 217.12 [Corrected]

On page 66944, in the second column, in § 217.12 the definition for "Gulf Shrimp Fishery-Sea Turtle Conservation Area (Gulf SFSTCA)" is corrected to read as follows:

Gulf Shrimp Fishery-Sea Turtle Conservation Area (Gulf SFSTCA) means the offshore waters extending to 10 nautical miles (18.5 km) offshore along the coast of the States of Texas and Louisiana from the South Pass of the Mississippi River (west of 89°08.5′ W. long.) to the U.S.-Mexican border.

* * * * *

Dated: February 13, 1997.

Charles Karnella

Acting Director, Office of Operations, Management and Information, National Marine Fisheries Service.

[FR Doc. 97–4262 Filed 2–20–97; 8:45 am]

BILLING CODE 3510–22–F

50 CFR Parts 217 and 222

[Docket No. 960730211–7020–02; I.D. 072296B]

RIN 0648–AJ03

North Atlantic Right Whale Protection; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim final rule; correction.

SUMMARY: This document corrects the preamble to an interim final rule (I.D. 072296B) published in the *Federal Register* of February 13, 1997, regarding North Atlantic Right Whale Protection. This correction clarifies the exceptions to the requirements of the rule.

EFFECTIVE DATE: February 20, 1997.

FOR FURTHER INFORMATION CONTACT: Margot Bohan, NMFS/FPR, 301–713–2322; Doug Beach, NMFS/Northeast Regional Office, 508–281–9254; or Kathy Wang, NMFS/Southeast Regional Office, 813–570–5312.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published, a comma was inadvertently left out of the paragraph describing the exceptions to the requirements of the rule in the SUMMARY. This error changed the meaning of two of the exceptions by appearing to combine them into one exception.

Correction

Accordingly, the publication of the interim final rule FR Doc. 97–3632, that published on February 13, 1997 (62 FR 6729) is corrected as follows:

On page 6729, in the third column, in the eighth line from the end of the SUMMARY, insert a comma after the word "provided."

Dated: February 18, 1997.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97–4348 Filed 2–20–97; 8:45 am]

BILLING CODE 3510–22–F

50 CFR Part 679

[Docket No. 961121323–7027–02; I.D. 111396C]

RIN 0648–AJ05

Fisheries in the Exclusive Economic Zone Off Alaska; Groundfish of the Bering Sea and Aleutian Islands Area; Increase Halibut Quota Share Use Limits in Area 4

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to increase halibut quota share (QS) use limits for halibut QS holders in the Individual Fishing Quota (IFQ) Program in the Bering Sea/Aleutian Islands (BSAI) regulatory areas. This action is necessary to increase individual harvest limits of IFQ halibut in the BSAI and is intended to improve the profits for IFQ halibut fishermen operating in the BSAI.

EFFECTIVE DATE: March 24, 1997.

ADDRESSES: Copies of the final rule and the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) for this action may be obtained from Fisheries Management Division, Attn: Lori Gravel, Alaska Region, NMFS, Room 453, 709 West 9th Street, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: James Hale, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

The fixed gear halibut fishery is managed by the IFQ Program, a limited access system for fixed gear Pacific halibut (*Hippoglossus stenolepis*) and sablefish (*Anoplopoma fimbria*) fisheries in and off Alaska. The North Pacific Fishery Management Council (Council), under authority of the Magnuson-Stevens Fishery Conservation and Management Act and the Northern Pacific Halibut Act of 1982 (Halibut Act), recommended the IFQ Program, which NMFS implemented in 1995. The IFQ Program was designed to reduce excessive fishing capacity, while maintaining the social and economic character of the fixed gear fishery and the Alaskan coastal communities where many of these fishermen are based. To this end, various constraints were placed on QS and IFQ that limit consolidation of QS and ensure that active fishermen, rather than investment speculators, retain harvesting privileges. Use limits on BSAI sablefish QS are written into the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. This action does not effect any change in sablefish QS use limits. Because the halibut fishery is managed by the International Pacific Halibut Commission (IPHC), except for management measures that allocate harvesting privileges among U.S. fishermen, no FMP for halibut exists. The Halibut Act provides NMFS, in consultation with the Council, with authority to implement such allocation measures through a regulatory amendment.

This action increases halibut QS use limit in Area 4 from one-half percent to 1 1/2 percent of the 1996 QS pool and expresses that limit as a set number of QS units: 495,044 halibut QS units. For consistency, regulations at 50 CFR 679.42(f)(1) and (2) also are revised to express halibut use limits for all IFQ regulatory areas as a fixed number of QS units.

More information on this regulatory change may be found in the proposed rule for this action published at 61 FR 63812 on December 2, 1996. NMFS received no comments on this action during the public comment period. One change was made in the action as published in the proposed rule. The number of QS representing the halibut use limit for Areas 2C, 3A, and 3B was incorrect and has been changed to the correct number of QS representing the halibut use limit in these areas.

Classification

This final rule has been determined to be not significant for purposes of E.O. 12866.

A supplemental FRFA has been prepared as part of the RIR, which describes the impact this final rule would have on small entities. Approximately 500 halibut QS holders in regulatory areas 4A–4D would benefit from an increase in the Area 4 QS use limit, either as QS buyers or sellers. Area 4E would not be affected by this action, because all the halibut QS in this area is assigned to the CDQ Program. Under this action, 32 QS holders would be allowed to increase their holdings above the current limit to the new limit. Because blocked QS are limited by block and vessel category restrictions, unblocked QS units are more likely to be transferred. The unblocked halibut QS units in regulatory areas 4A-D equal approximately 2.1 million lb (952 mt) of halibut worth more than $4.6 million in ex-vessel value. This action will have a significant positive impact on a substantial number of small businesses. The action is not likely to lead to a reduction in the gross revenues received by the small business sector of the fleet; rather, it would significantly improve the profitability of operations for fishermen wishing to harvest IFQ halibut in remote areas of the western Aleutian Islands and Bering Sea.

List of Subjects in 50 CFR Part 679

Alaska fisheries, Reporting and recordkeeping requirements.

Dated: February 13, 1997.

C. Karnella,

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 679 is amended as follows:

PART 679—FISHERIES IN THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR Part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*

2. In § 679.42, paragraphs (f)(1) through (f)(3) are revised to read as follows:

§ 679.42 Limitations on use of QS and IFQ.

* * * * *

(f) * * *

(1) *IFQ regulatory area 2C.* 599,799 units of halibut QS.

(2) *IFQ regulatory areas 2C, 3A, and 3B.* 1,502,823 units of halibut QS.

(3) *IFQ regulatory areas 4A, 4B, 4C, 4D, and 4E.* 495,044 units of halibut QS.

* * * * *

[FR Doc. 97–4157 Filed 2–20–97; 8:45 am]

BILLING CODE 3510–22–F

50 CFR Part 679

[Docket No. 961107312–7021–02; I.D. 021397A]

Fisheries of the Exclusive Economic Zone Off Alaska; Interim Closure of Flatfish Fisheries in Statistical Area 516 of the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason adjustment; request for comments.

SUMMARY: NMFS has determined that an interim closure of directed fishing for rock sole, flathead sole, and "other flatfish" by vessels using trawl gear is necessary in Statistical Area 516 of the Bering Sea and Aleutian Islands management area (BSAI). Red king crab bycatch rates are unexpectedly high in certain areas of Bristol Bay and closure of Statistical Area 516 is necessary to prevent the take of an excessive share of the bycatch limitation Zone 1 red king crab bycatch allowance specified for the rock sole/flathead sole/"other flatfish" fishery category.

DATES: 1200 hrs, Alaska local time (A.l.t.), February 14, 1997, until 1200 hrs, A.l.t., March 15, 1997. Comments must be received at the following address no later than 4:30 p.m., A.l.t., March 3, 1997.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn. Lori Gravel, or be delivered to the fourth floor of the Federal Building, 709 West 9th Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands management area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

Regulations at § 679.25(a)(1)(iv) authorize an interim closure of a Statistical Area, or portions thereof, to directed fishing for specified groundfish species. The purpose of these closures is to reduce prohibited species bycatch rates, limit the take of an excessive share of a prohibited species bycatch allowance by vessels fishing in an area, and prevent the attainment of a bycatch allowance before available groundfish quotas are harvested.

This action closes directed fishing for rock sole, flathead sole, and "other flatfish" by vessels using trawl gear in Statistical Area 516 of the BSAI. Statistical Area 516 is defined in Figure 1 of 50 CFR part 679 as the area of the BSAI south of 58°00′ N. lat., north of the Alaska Peninsula, and between 162°00′ and 163°00′ W. long. This closure is effective until March 15, when regulations at § 679.22(a)(2) annually close Reporting Area 516 to fishing with trawl gear from March 15 until June 15.

The red king crab bycatch allowance in bycatch limitation zone 1 for the BSAI trawl rock sole/flathead sole/"other flatfish" fishery category, defined at § 679.21(e)(3)(iv)(B)(2), was established by the Final 1997 Harvest Specifications of BSAI Groundfish as 48,750 animals. The Final 1997 Specifications were filed with the Office of the Federal Register on February 12, 1997, and scheduled for publication in the *Federal Register* on February 18, 1997.

The 1997 fishing season for BSAI groundfish by vessels using trawl gear began January 20, 1997. NMFS observer data indicate vessels participating in the trawl rock sole/flathead sole/"other flatfish" fishery category within Statistical Area 516 at the beginning of the fishing year experienced high bycatch rates of red king crab, taking an estimated 27,000 animals in 3 days. As of February 1, 1997, NMFS estimates that 12,000 red king crab remain in the bycatch allowance of red king crab apportioned to the rock sole/flathead sole/"other flatfish" fishery category. Bycatch rates of red king crab within Statistical Area 516 are estimated at 4.3 crab per metric ton of groundfish. The current fleet of 24 vessels catches an estimated 1,800 mt of groundfish per day. If these flatfish fisheries remain open in Statistical Area 516, NMFS anticipates that fishery effort within Statistical Area 516 will increase as other fisheries close and vessels move into the rock sole/flathead sole/"other flatfish" fishery category. The remaining red king crab bycatch allowance for this fishery category can be taken within 2 days. Bycatch rates of red king crab within the remainder of bycatch limitation zone 1 are estimated at 0.2 crab per metric ton or about 5 percent of the rate within Statistical Area 516. By closing the fishery in Statistical Area 516, a substantially greater amount of rock sole, flathead sole, and "other flatfish" will be caught before the red king crab bycatch allowance is reached.

In accordance with § 679.25(a)(1)(iv) and (a)(2)(ii)(B), the Administrator, Alaska Region, NMFS, has determined that an interim closure of Statistical Area 516 to directed fishing for species in the rock sole/flathead sole/"other flatfish" fishery category by vessels using trawl gear is necessary to prevent the taking of an excessive share of the zone 1 red king crab allowance specified for this fishery category and prevent the premature attainment of that allowance. Without this action opportunity will be foregone to harvest high-valued roe bearing rock sole, as well as flathead sole, and "other flatfish." In accordance with § 679.25(a)(2)(v), the Regional Administrator has determined that this interim closure is based on the best available scientific information.

The Assistant Administrator for Fisheries, NOAA, finds forgood cause that providing prior notice and public comment or delaying the effective date of this action is impracticable and contrary to the public interest. Immediate effectiveness is necessary to prevent loss of opportunity to harvest species in the rock sole/flathead sole/"other flatfish" fishery category. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until March 3, 1997.

Classification

This action is taken under § 679.25 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 13, 1997.

Bruce Morehead

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–4264 Filed 2–14–97; 4:41 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 35
Friday, February 21, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 304, 308, 310, 320, 327, 381, 416, and 417

[Docket No. 93–016–12N]

Publication of Salmonella Testing Data

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Meeting notice.

SUMMARY: The Food Safety and Inspection Service (FSIS) will hold a meeting regarding the publication of *Salmonella* testing data. Participants will discuss methods of making available to the public FSIS-generated testing data on the prevalence of *Salmonella* found on inspected products.

DATES: The meeting will be held on March 6, 1997, from 8:30 a.m. until 11:30 a.m.

ADDRESSES: The meeting will be held in Room 107A, Jamie L. Whitten Federal Building, 12th and Jefferson Dr. SW, Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: To register for the meeting, call (202) 501–7136, FAX (202) 501–7642, or E-mail usdafsis/s=confer@mhs.attmail.com.

SUPPLEMENTARY INFORMATION: On July 25, 1996, FSIS published a final rule, "Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems" (61 FR 38806). The rule established that FSIS will obtain samples from slaughter establishments and establishments producing raw ground product or fresh pork sausage and test those samples for *Salmonella* to ensure that pathogen reduction performance standards are being met. As stated in the rule, the test results will be available to the public.

FSIS is considering making the test results available via the Internet on the FSIS Homepage. FSIS also is interested in receiving public input on other methods for making the test results available. Therefore, the Agency will hold a public meeting regarding the publication of *Salmonella* testing data.

Done at Washington, DC, on: February 18, 1997.

Thomas J. Billy,

Administrator.

[FR Doc. 97–4409 Filed 2–18–97; 4:42 pm]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 135CE, Notice No. 23–ACE–87]

Special Conditions; Sino Swearingen Model SJ30–2 Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Sino Swearingen Aircraft Company Model SJ30–2 airplane. This new airplane will have novel and unusual design features not typically associated with normal, utility, acrobatic, and commuter category airplanes. These design features include a high operating altitude (49,000 feet), engine location, swept wings and stabilizer, performance characteristics, large fuel capacity, and protection for the electronic engine control system, flight, and navigation system from high intensity radiated fields, for which the applicable regulations do not contain adequate or appropriate airworthiness standards. This notice contains the additional airworthiness standards which the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: Comments must be received on or before March 24, 1997.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. 135CE, Room No. 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No 135CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Lowell Foster, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, Room 1544, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking further rulemaking action on this proposal. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 135CE." The postcard will be date stamped and returned to the commenter. The proposals contained in this notice may be changed in light of the comments received. All comments received will be available, both before and after the closing date for comments, in the rules docket for examination by interested parties. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Background

On October 9, 1995, Sino Swearingen Aircraft Company, 1770 Sky Place Boulevard, San Antonio, Texas 78216, made application for normal category type certification of its Model SJ30–2 airplane, a six-to-eight place, all metal, low-wing, T-tail, twin turbofan engine powered airplane with fully enclosed retractable landing gear. The SJ30–2 will have a V_{MO}/M_{MO} of 320 kts/M=.83, and has engines mounted aft on the fuselage.

Type Certification Basis

Type certification basis of the Model SJ30–2 airplane is: 14 CFR Part 23, effective February 1, 1965, through amendment 23–51, effective March 11, 1996; 14 CFR Part 36, effective December 1, 1969, through the amendment effective on the date of type certification; 14 CFR Part 34; exemptions, if any; and any special conditions that may result from this notice.

Discussion

Sino Swearingen plans to incorporate certain novel and unusual design features into the SJ30–2 airplane for which the airworthiness regulations do not contain adequate or appropriate safety standards. These features include engine location, operation up to an altitude of 49,000 feet, and certain performance characteristics necessary for this type of airplane that were not envisioned by the existing regulations.

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with 14 CFR Part 21, § 21.17(a)(1), do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with 14 CFR Part 11, § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and become part of the type certification basis as provided by part 21, § 21.17(a)(2).

Protection of Systems From High Intensity Radiated Fields (HIRF)

The aviation industry uses electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the sensitive solid state components in analog and digital electronics circuits, these systems, if unprotected, are responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the electromagnetic environment has changed from the time when the current requirements were developed. Also, the population of transmitters has increased significantly and they are radiating higher energy levels. There is, however, uncertainty concerning the effectiveness of shielding for HIRF. Additionally, coupling to cockpit installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in aircraft design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the aircraft. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems.

The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph (1) or, as an option to a fixed value using laboratory tests, in paragraph (2), as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment, defined below:

FIELD STRENGTH VOLTS/METER

Frequency	Peak	Average
10–100 KHz	50	50
100–500	60	60
500–2000	70	70
2–30 MHz	200	200
30–70	30	30
70–100	30	30
100–200	150	33
200–400	70	70
400–700	4020	935
700–1000	1700	170
1–2 GHz	5000	990
2–4	6680	840
4–6	6850	310
6–8	3600	670
8–12	3500	1270
12–18	3500	360
18–40	2100	750

or:

(2) The applicant may demonstrate by a laboratory test that the electrical and electronic systems that perform critical functions can withstand a peak electromagnetic field strength of 100 volts per meter (v/m) peak electrical field strength, from 10KHz to 18GHz. When using a laboratory test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant for approval by the FAA to identify electrical and/or electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the aircraft. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their the associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or a combination of these. Service experience alone is not acceptable since such experience in normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Performance

The Sino Swearingen Model SJ30–2 has a main wing with 30 degrees of leading-edge sweepback that employs leading-edge slats and double-slotted Fowler flaps. The airplane has a T-tail with trimmable horizontal stabilizer and 30 degrees of leading-edge sweepback. There are two medium bypass ratio turbofan engines mounted on the aft fuselage.

Previous certification and operational experience with airplanes of like design in the transport category reveal certain unique characteristics compared to conventional aircraft certificated under part 23. These characteristics have caused significant safety problems in the past when pilots attempted takeoffs and landings, particularly with a large variation in temperature and altitude, using procedures and instincts developed with conventional airplanes.

One of the major distinguishing features of a swept-wing design not considered in current part 23 is a characteristically flatter lift curve without a "stall" break near the maximum coefficient of lift, as in a conventional wing. The "stall" separation point may occur at a much higher angle of attack than the point of maximum lift and the angle of attack for maximum lift can be only recognized by

precise test measurements or specific detection systems. This phenomena is not apparent to a pilot accustomed to operating a conventional airplane where increasing angle of attack produces increased lift to the point where the wing stalls. In a swept-wing design, if the pilot does not operate in accordance with established standards developed through a dedicated test program, increasing angle of attack may produce very little lift yet increase drag markedly to the point where flight is impossible. These adverse conditions may be further compounded by the characteristics of turbofan engines, including specified N_1/N_2 rotational speeds, temperature, and pressure limits that make its variation in thrust output with changes in temperature and altitude more complex and difficult to predict. In recognition of these characteristics, Special Civil Air Regulations No. SR–422, and follow-on regulations, established weight-altitude-temperature (WAT) limitations and procedures for scheduling takeoff and landing for turbine powered transport category airplanes, so the pilot could achieve reliable and repeatable results under all expected conditions of operation. This entails specific tests such as minimum unstick speed, V_{MU}, to ensure that rotation and fly-out speeds are correct and that the airplane speed schedule will not allow the airplane to lift off in ground effect and then be unable to accelerate and continue to climb out. In conjunction with the development of takeoff and landing procedures, it was also necessary to establish required climb gradients and data for flight path determination under all approved weights, altitudes, and temperatures. This enables the pilot to determine, before takeoff, that a safe takeoff, departure, and landing at destination can be achieved.

Takeoff

Based upon the knowledge and experience gained with similar high speed, high efficiency, turbojet airplanes with complex high lift devices for takeoff and landing, special conditions are proposed for the performance requirements of takeoff, takeoff speeds, accelerate-stop distance, takeoff path, takeoff distance, takeoff run, and takeoff flight path.

Additionally, procedures for takeoff, accelerate stop, and landing are proposed as those established for operation in service and be executable by pilots of average skill and include reasonably expected time delays.

Climb

To maintain a level of safety that is consistent with the requirements of the proposed special conditions for takeoff, takeoff speeds, takeoff path, takeoff distance, and takeoff run, it is appropriate to propose associate requirements that specify climb gradients, airplane configurations, and consideration of atmospheric conditions that will be encountered. Special conditions are proposed for climb with one engine inoperative, balked landing climb, and general climb conditions.

Landing

Landing distance determined for the same parameters, plus the effects of wind, is consistent with takeoff information for the range of weights, altitudes, and temperatures approved for operation. Further, it is necessary to consider time delays to provide for in-service variation in the activation of deceleration devices, such as spoilers and brakes. Special conditions are also proposed to cover these items.

Trim

Special conditions are issued to maintain a level of safety that is consistent with the use of V_{MO}/M_{MO} and the requirements established for previous part 23 jet airplanes. Current standards in part 23 did not envision this type of airplane and the associated trim considerations.

Demonstration of Static Longitudinal Stability

To maintain a level of safety consistent with the proposed static longitudinal stability requirements, it is necessary to establish corresponding requirements for the demonstration of static longitudinal stability. Current standards in part 23 did not envision this type of airplane and the associated stability considerations proposed. In keeping with the concept of V_{MO}/M_{MO} being a maximum operational speed limit, rather than a limiting speed for the demonstration of satisfactory flight characteristics, it is appropriate to extend the speed for demonstration of longitudinal stability characteristics from the V_{MO}/M_{MO} of 14 CFR part 23 to the maximum speed for stability characteristics, V_{FC}/M_{FC}, for this airplane. A special condition to do this is proposed.

Static Directional and Lateral Stability

In keeping with the concept of V_{MO}/M_{MO} being a maximum operational speed limit, rather than a limiting speed for the demonstration of satisfactory flight characteristics, it is appropriate to extend the speed for demonstration of lateral/directional stability characteristics from the V_{MO}/M_{MO} of part 23 to the maximum speed for stability characteristics, V_{FC}/M_{FC}, for this airplane. A special condition to do this is proposed.

Current transport category regulations have eliminated the independent lateral stability demonstration requirement (picking up the low wing with rudder application). This requirement was originally intended to provide adequate controllability in the event of lateral control system failure. Because the SJ30 flight control system reliability requirement are not to current transport category levels, it is appropriate to retain the prior transport category requirements to retain the independent dihedral effect and skid recovery demonstration requirement.

Stall Characteristics

In order to maintain consistency with the level of safety previously applied to other jet powered small airplanes, it is appropriate to specify the conditions under which level flight, turning flight, and accelerated entry stall characteristics should be demonstrated. Current rules contained in part 23 did not envision this high performance airplane with the associated high thrust-to-weight ratio. Special conditions are required to define stall characteristics demonstrations.

Vibration and Buffeting

The Sino Swearingen Model SJ30–2 will be operated at high altitudes where stall-Mach buffet encounters (small speed margin between stall and transonic flow buffet) are likely to occur, which is not presently addressed in part 23. A special condition is proposed that will require buffet onset tests and the inclusion of information in the Airplane Flight Manual (AFM) to provide guidance to the flightcrew. This information will enable the flightcrew to plan flight operations that will maximize the maneuvering capability during high altitude cruise flight and preclude intentional operations exceeding the boundary of perceptible buffet. Buffeting is considered to be a warning to the pilot that the airplane is approaching an undesirable and eventually dangerous flight regime, that is, stall buffeting, high speed buffeting or maneuvering (load factor) buffeting. In straight flight, therefore, such buffet warning should not occur at any normal operating speed up to the maximum operating limit speed, V_{MO}/M_{MO}.

High Speed Characteristics and Maximum Operating Limit Speed

The Sino Swearingen Model SJ30–2 will be operated at high altitude and high speeds and the proposed operating envelope includes areas in which Mach effects, which have not been considered in part 23, may be significant. The anticipated low drag of the airplane and the proposed operating envelope are representative of the conditions not envisioned by the existing part 23 regulations. These conditions may degrade the ability of the flightcrew to promptly recover from inadvertent excursions beyond maximum operating speeds. The ability to pull a positive load factor is needed to ensure, during recovery from upset, that the airplane speed does not continue to increase to a value where recovery may not be achievable by the average pilot or flightcrew.

Additionally, to allow the aircraft designer to conservatively design to higher speeds than may be operationally required for the airplane, the concept of V_{DF}/M_{DF}, the highest demonstrated flight speed for the type design, is appropriate for this airplane. This permits V_D/M_D the design dive speed, to be higher than the speed actually required to be demonstrated in flight. Accordingly, special conditions are proposed to allow determination of a maximum demonstrated flight speed and to relate the determination of V_{MO}/M_{MO} to the speed V_{DF}/M_{DF}.

Flight Flutter Tests

Flight flutter test special conditions are proposed to V_{DF}/M_{DF} rather than to V_D in keeping with the V_{DF}/M_{DF} concept.

Out-of-Trim Characteristics

High speed airplanes have experienced a number of upset incidents involving out-of-trim conditions. This is particularly true for swept-wing airplanes and airplanes with a trimmable stabilizer. Service experience has shown that out-of-trim conditions can occur in flight for various reasons and that the control and maneuvering characteristics of the airplane may be critical in recovering from upsets. The existing part 23 regulations do not address high speed out-of-trim conditions. Special conditions are proposed that test the out-of-trim flight characteristics by requiring the longitudinal trim control be displaced from the trimmed position by the amount resulting from the three-second movement of the trim system at this normal rate with no aerodynamic load, or the maximum mis-trim that the autopilot can sustain in level flight in the high speed cruise condition, whichever is greater. The proposal would require the maneuvering characteristics, including stick force per g, be explored throughout a specified maneuver load factor speed envelope. The dive recovery characteristics of the aircraft in the out-of-trim condition specified would be investigated to determine that safe recovery can be made from the demonstrated flight dive speed V_{DF}/M_{DF}.

Pressure Vessel Integrity

Damage tolerance methods are proposed to be used to ensure pressure vessel integrity while operating at the higher altitudes instead of the 1/2 bay crack criterion used in some previous special conditions. Crack growth data are used to prescribe an inspection program that should detect cracks before an opening in the pressure vessel would allow rapid depressurization. Initial crack sizes for detection are determined under § 23.573. The cabin altitude after failure must not exceed the cabin altitude/time curve limits shown in Figures 3 and 4.

Flight Control System Integrity

The Sino Swearingen Model SJ30–2 will be operated at high altitude and speeds such that a reduction or loss of pitch, yaw, or roll control capability or response could preclude continued flight and landing within the design limitations of the airplane using normal pilot skill and strength. Consequently, a greater reliability of the fasteners in the flight control system is necessary than previously considered. Removable fasteners whose loss could result in the conditions described above are required to have dual locking devices.

Fuel System Protection During Collapse of Landing Gear

The SJ30–2 maximum fuel weight is 39 percent of the maximum weight. This percentage is typical of the turbofan powered business jet class of airplanes. Part 23 did not envision that the applicable airplane designs would have such a large fraction of maximum weight as fuel. Part 23 does not contain fuel system protection requirements during landing gear collapse, except for § 23.721, which pertains to commuter category airplanes that have a passenger seating configuration of 10 seats or more. In the SJ30–2 design, there is a large fuselage fuel tank and the placement of the engines on the aft fuselage requires that the fuel lines be routed through the fuselage, making the fuel lines more vulnerable to damage, or rupture, if the landing gear collapses. A special condition is proposed based on 14 CFR part 25, § 25.721(a)(1) that is applicable to airplanes having a passenger seating configuration of nine seats, or fewer.

Oxygen System Equipment and Supply

Continuous flow passenger oxygen equipment is certified for use up to 40,000 feet; however, for rapid decompressions above 34,000 feet, reverse diffusion leads to low oxygen partial pressures in the lungs to the extent that a small percentage of passengers may lose useful consciousness at 35,000 feet even with the use of the continuous flow system. To prevent permanent physiological damage, the cabin altitude must not exceed 25,000 feet for more than 2 minutes. The maximum peak cabin altitude of 40,000 feet is consistent with the standards established for previous certification programs. In addition, at high altitudes the other aspects of decompression sickness have a significant detrimental effect on pilot performance (for example, a pilot can be incapacitated by internal expanding gases).

Decompression above the 37,000 foot limit depicted in Figure 4 approaches the physiological limits of the average person; therefore, every effort must be made to provide the pilots with adequate oxygen equipment to withstand these severe decompressions. Reducing the time interval between pressurization failure and the time the pilots receive oxygen will provide a safety margin against being incapacitated and can be accomplished by the use of mask-mounted regulators. The proposed special condition, therefore, would require pressure demand masks with mask-mounted regulators for the flightcrew. This combination of equipment will provide the best practical protection for the failures covered by this special conditions and for improbable failures not covered by the special conditions, provided the cabin altitude is limited.

Airspeed Indicating System

To maintain a level of safety consistent with that applied to previous part 23 jet airplanes, and to be consistent with the establishment of speed schedule performance requirements, it is appropriate to establish applicable requirements for determining and providing airspeed indicating system calibration information. Additionally, it is appropriate to establish special conditions requiring protection of the pitot tube from malfunctions associated with icing conditions. Current standards

in part 23 did not envision this type of airplane and the associated airspeed indicating system requirements. Special conditions are proposed to establish airspeed indicating system calibration and pitot tube ice protection requirements applicable to transport category jet airplanes.

Static Pressure System

To maintain a level of safety consistent with that applied to previous part 23 jet airplanes, and to be consistent with the establishment of speed schedule performance requirements, it is appropriate to establish applicable requirements for providing static pressure system calibration information in the AFM. Since aircraft of this type are frequently equipped with devices to correct the altimeter indication, it is also appropriate to establish requirements to ensure the continued availability of altitude information where such a device malfunctions. Current standards in part 23 did not envision this type of airplane and the associated static pressure requirements.

Minimum Flightcrew

The Sino Swearingen Model SJ30–2 operates at high altitudes and speeds not envisioned in part 23 and must be flown in a precise speed schedule to achieve flight manual takeoff and landing distances. Therefore, it is appropriate to specify workload considerations. Special conditions are proposed to specify the items to be considered in workload determination.

Airplane Flight Manual (AFM) Information

To be consistent with the performance special conditions, it is also necessary to require the maximum takeoff and landing weights, takeoff distances, and associated atmospheric conditions be made available to the pilot in the AFM and that the airplane be operated within its performance capabilities. Special conditions are proposed to add maximum takeoff weights, maximum landing weights, and minimum takeoff distances as limitations in the AFM. Additionally, special conditions are proposed to add takeoff flight path and procedures necessary to achieve the performance in the limitations section as information in the AFM.

Conclusion

In view of the design features discussed for the SJ30–2 Model airplane, the following special conditions are proposed. This action is not a rule of general applicability and affects only the model/series of airplane identified in these final special conditions.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these Special Conditions is as follows:

Authority: 49 U.S.C. 106(g); 40113, and 44701; 14 CFR 21.16 and 101; and 14 CFR 11.28 and 11.29.

The Proposed Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes the following special conditions as part of the type certification basis for the Sino Swearingen Model SJ30–2 airplane:

1. Protection of Electrical and Electronic Systems From High Intensity Radiated Field

Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields external to the airplane.

2. Performance: General

In addition to the requirements of § 23.45, the following apply:

(a) Unless otherwise prescribed, the applicant must select the takeoff, enroute, approach, and landing configurations for the airplane.

(b) The airplane configurations may vary with weight, altitude, and temperature, to the extent that they are compatible with the operating procedures required by paragraph (c) of this special condition.

(c) Unless otherwise prescribed, in determining the accelerate-stop distances, takeoff flight paths, takeoff distances, and landing distances, changes in the airplane's configuration, speed, power, and thrust, must be made in accordance with procedures established by the applicant for operation in service.

(d) Procedures for the execution of balked landings and discontinued approaches associated with the conditions prescribed in special conditions 10(d) and 12 must be established.

(e) The procedures established under paragraphs (c) and (d) of this special condition must:

(1) Be able to be consistently executed in service by crews of average skill;

(2) Use methods or devices that are safe and reliable; and

(3) Include allowance for any time delays, in the execution of the procedures, that may reasonably be expected in service.

3. Takeoff

Instead of complying with § 23.53, the following apply:

(a) In special conditions 4, 5, 6, and 7, the takeoff speeds, the accelerate-stop distance, the takeoff path, the takeoff distance, and takeoff run described must be determined:

(1) At each weight, altitude, and ambient temperature within the operation limits selected by the applicant; and

(2) In the selected configuration for takeoff.

(b) No takeoff made to determine the data required by this section may require exceptional piloting skill or alertness.

(c) The takeoff data must be based on a smooth, dry, hard-surfaced runway.

(d) The takeoff data must include, within the established operational limits of the airplane, the following operational correction factors:

(1) Not more than 50 percent of nominal wind components along the takeoff path opposite to the direction of takeoff, and not less than 150 percent of nominal wind components along the takeoff path in the direction of takeoff.

(2) Effective runway gradients.

4. Takeoff Speeds

Instead of compliance with § 23.51, the following apply:

(a) V_1 must be established in relation to V_{EF}, as follows:

(1) V_{EF} is the calibrated airspeed at which the critical engine is assumed to fail. V_{EF} must be selected by the applicant, but may not be less than V_{MCG} determined under § 23.149(f).

(2) V_1, in terms of calibrated airspeed, is the takeoff decision speed selected by the applicant; however, V_1 may not be less than V_{EF} plus the speed gained with the critical engine inoperative during the time interval between the instant at which the critical engine failed and the instant at which the pilot recognizes and reacts to the engine failure, as indicated by the pilot's application of the first retarding means during the accelerate-stop test.

(b) $V_{2\ min}$, in terms of calibrated airspeed, may not be less than the following:

(1) 1.2 V_{S1}

(2) 1.10 times V_{MC} established under § 23.149.

(c) V_2, in terms of calibrated airspeed, must be selected by the applicant to provide at least the gradient of climb required by special condition 10,

paragraph (b), but may not be less than the following:

(1) $V_{2\ min}$, and

(2) V_R plus the speed increment attained (in accordance with special condition 6(c)(2)) before reaching a height of 35 feet above the takeoff surface.

(d) V_{MU} is the calibrated airspeed at and above which the airplane can safely lift off the ground and continue the takeoff. V_{MU} speeds must be selected by the applicant throughout the range of thrust-to-weight ratios to be certified. These speeds may be established from free-air data if these data are verified by ground takeoff tests.

(e) V_R, in terms of calibrated airspeed, must be selected in accordance with the following conditions of paragraphs (e)(1) through (e)(4) of this special condition:

(1) V_R may not be less than the following:

(i) V_1;

(ii) 105 percent of V_{MC};

(iii) The speed (determined in accordance with special condition 6, paragraph (c)(2)) that allows reaching V_2 before reaching a height of 35 feet above the takeoff surface; or

(iv) A speed that, if the airplane is rotated at its maximum practicable rate, will result in a V_{LOF} of not less than 110 percent of V_{MU} in the all-engines-operating condition and not less than 105 percent of V_{MU} determined at the thrust-to-weight ratio corresponding to the one-engine-inoperative condition.

(2) For any given set of conditions (such as weight, configuration, and temperature), a single value of V_R, obtained in accordance with this special condition, must be used to show compliance with both the one-engine-inoperative and the all-engines-operating takeoff provisions.

(3) It must be shown that the one-engine-inoperative takeoff distance, using a rotation speed of 5 knots less than V_R, established in accordance with paragraphs (e)(1) and (e)(2) of this special condition, does not exceed the corresponding one-engine-inoperative takeoff distance using the established V_R. The takeoff distances must be determined in accordance with special condition 7, paragraph (a)(1).

(4) Reasonably expecting variations in service from the established takeoff procedures for the operation of the airplane (such as over-rotation of the airplane and out-of-trim conditions) may not result in unsafe flight characteristics or in marked increases in the scheduled takeoff distances established in accordance with special condition 7.

(f) V_{LOF} is the calibrated airspeed at which the airplane first becomes airborne.

5. Accelerate-Stop Distance

In the absence of specific accelerate-stop distance requirements, the following apply:

(a) The accelerate-stop distance is the sum of the distances necessary to—

(1) Accelerate the airplane from a standing start to V_{EF} with all engines operating;

(2) Accelerate the airplane from V_{EF} to V_1, assuming that the critical engine fails at VEF; and

(3) Come to a full stop from the point at which V_1 is reached assuming that, in the case of engine failure, the pilot has decided to stop as indicated by application of the first retarding means at the speed V1.

(b) Means other than wheel brakes may be used to determine the accelerate-stop distance if that means—

(1) Is safe and reliable;

(2) Is used so that consistent results can be expected under normal operating conditions; and

(3) Is such that exceptional skill is not required to control the airplane.

(c) The landing gear must remain extended throughout the accelerate-stop distance.

6. Takeoff Path

In the absence of specific takeoff path requirements, the following apply:

(a) The takeoff path extends from a standing start to a point in the takeoff at which the airplane is 1,500 feet above the takeoff surface, or at which the transition from the takeoff to the enroute configuration is completed and a speed is reached at which compliance with special condition 10, paragraph (c), is shown, whichever point is higher. In addition the following apply:

(1) The takeoff path must be based on procedures prescribed in special condition 2.

(2) The airplane must be accelerated on the ground to V_{EF}, at which point the critical engine must be made inoperative and remain inoperative for the rest of the takeoff; and

(3) After reaching V_{EF}, the airplane must be accelerated to V_2.

(b) During the acceleration to speed V_2, the nose gear may be raised off the ground at a speed not less than VR. However, landing gear retraction may not begin until the airplane is airborne.

(c) During the takeoff path determination, in accordance with paragraphs (a) and (b) of this special condition, the following apply:

(1) The slope of the airborne part of the takeoff path must be positive at each point;

(2) The airplane must reach V_2 before it is 35 feet above the takeoff surface and must continue at a speed as close as practical to, but not less than, V_2 until it is 400 feet above the takeoff surface;

(3) At each point along the takeoff path, starting at the point at which the airplane reaches 400 feet above the takeoff surface, the available gradient of climb may not be less than 1.2 percent;

(4) Except for gear retraction, the airplane configuration may not be changed, and no change in power or thrust that requires action by the pilot may be made, until the airplane is 400 feet above the takeoff surface.

(d) The takeoff path must be determined by a continuous demonstrated takeoff or by synthesis from segments. If the takeoff path is determined by the segmental method, the following apply:

(1) The segments must be clearly defined and must be related to the distinct changes in the configuration, speed, and power or thrust;

(2) The weight of the airplane, the configuration, and the power or thrust must be constant throughout each segment and must correspond to the most critical condition prevailing in the segment;

(3) The flight path must be based on the airplane's performance without ground effect; and

(4) The takeoff path data must be checked by continuous demonstrated takeoffs, up to the point at which the airplane is out of ground effect and its speed is stabilized, to ensure that the path is conservative relative to the continuous path.

Note: The airplane is considered to be out of the ground effect when it reaches a height equal to its wing span.

7. Takeoff Distance and Takeoff Run

In the absence of specific takeoff distance and takeoff run requirements, the following apply:

(a) Takeoff distance is the greater of the following:

(1) The horizontal distance along the takeoff path from the start of the takeoff to the point at which the airplane is 35 feet above the takeoff surface, determined under special condition 6; or

(2) 115 percent of the horizontal distance along the takeoff path, with all engines operating, from the start of the takeoff to the point at which the airplane is 35 feet above the takeoff surface, as determined by a procedure consistent with special condition 6.

(b) If the takeoff distance includes a clear way, the takeoff run is the greater of:

(1) The horizontal distance along the takeoff path from the start of the takeoff to a point equidistant between the point at which V_{LOF} is reached and the point at which the airplane is 35 feet above the takeoff surface, as determined under special condition 6; or

(2) 115 percent of the horizontal distance along the takeoff path, with all engines operating, from the start of the takeoff to a point equidistant between the point at which V_{LOF} is reached and the point at which the airplane is 35 feet above the takeoff surface, determined by a procedure consistent with special condition 6.

8. Takeoff Flight Path

In the absence of specific takeoff flight path requirements, the following apply:

(a) The takeoff flight path begins 35 feet above the takeoff surface at the end of the takeoff distance determined in accordance with special condition 7.

(b) The net takeoff flight path data must be determined so that they represent the actual takeoff flight paths (determined in accordance with special condition 6 and with paragraph (a) of this special condition) reduced at each point by a gradient of climb equal to 0.8 percent.

(c) The prescribed reduction in climb gradient may be applied as an equivalent reduction in acceleration along that part of the takeoff flight path at which the airplane is accelerated in level flight.

9. Climb: General

Instead of compliance with § 23.63, the following applies: Compliance with the requirements of special conditions 10 and 12 must be shown at each weight, altitude, and ambient temperature within the operational limits established for the airplane and with the most unfavorable center of gravity for each configuration.

10. Climb: One Engine Inoperative

Instead of compliance with § 23.67, the following apply:

(a) Takeoff; landing gear extended. In the critical takeoff configuration existing along the flight path (between the points at which the airplane reaches V_{LOF} and at which the landing gear is fully retracted) and in the configuration used in special condition 6 without ground effect, unless there is a more critical power operating condition existing later along the flight path before the point at which the landing gear is fully retracted, the steady gradient of climb must be positive at V_{LOF} and with the following:

(1) The critical engine inoperative and the remaining engines at the power or thrust available when retraction of the landing gear begins in accordance with special condition 6, and

(2) The weight equal to the weight existing when retraction of the landing gear begins, determined under special condition 6.

(b) Takeoff; landing gear retracted. In the takeoff configuration existing at the point of the flight path at which the landing gear is fully retracted and in the configuration used in special condition 6, without ground effect, the steady gradient of climb may not be less than 2.4 percent at V_2 and with the following:

(1) The critical engine inoperative, the remaining engines at the takeoff power or thrust available at the time the landing gear is fully retracted, determined under special condition 6 unless there is a more critical power operating condition existing later along the flight path but before the point where the airplane reaches a height of 400 feet above the takeoff surface; and

(2) The weight equal to the weight existing when the airplane's landing gear is fully retracted, determined under special condition 6.

(c) Final takeoff. In the enroute configuration at the end of the takeoff path, determined in accordance with special condition 6, the steady gradient of climb may not be less than 1.2 percent at not less than 1.25 V_S and with the following:

(1) The critical engine inoperative and the remaining engines at the available maximum continuous power or thrust; and

(2) The weight equal to the weight existing at the end of the takeoff path, determined under special condition 6.

(d) Approach. In the approach configuration corresponding to the normal all-engines-operating procedure in which V_S for this configuration does not exceed 110 percent of the V_S for the related landing configuration, the steady gradient of climb may not be less than 2.1 percent with the following:

(1) The critical engine inoperative, the remaining engine at the available in-flight takeoff power or thrust;

(2) The maximum landing weight; and

(3) A climb speed established in connection with normal landing procedures, but not exceeding 1.5 V_S.

11. Landing

Instead of compliance with § 23.75, the following apply:

(a) The horizontal distance necessary to land and to come to a complete stop from a point 50 feet above the landing surface must be determined (for each weight, altitude, temperature, and wind within the operational limits established by the applicant for the airplane), as follows:

(1) The airplane must be in the landing configuration.

(2) A steady approach at a gradient of descent not greater than 5.2 percent (3 degrees), with an airspeed of not less than V_{REF}, determined in accordance with § 23.73(b), must be maintained down to the 50-foot height.

(3) Changes in configuration, power or thrust, and speed, must be made in accordance with the established procedures for service operation.

(4) The landing must be made without excessive vertical acceleration, tendency to bounce, nose over, ground loop, or porpoise.

(5) The landings may not require exceptional piloting skill or alertness.

(6) It must be shown that a safe transition to the balked landing conditions of special condition 12 can be made from the conditions that exist at the 50-foot height.

(b) The landing distance must be determined on a level, smooth, dry, hard-surfaced runway. In addition, the following apply:

(1) The brakes may not be used so as to cause excessive wear of brakes or tires; and

(2) Means other than wheel brakes may be used if that means is as follows:

(i) Is safe and reliable;

(ii) Is used so that consistent results can be expected in service; and

(iii) Is such that exceptional skill is not required to control the airplane.

(c) The landing distance data must include correction factors for not more than 50 percent of the nominal wind components along the landing path opposite to the direction of landing and not less than 150 percent of the nominal wind components along the landing path in the direction of landing.

(d) If any device is used that depends on the operation of any engine, and if the landing distance would be noticeably increased when a landing is made with that engine inoperative, the landing distance must be determined with that engine inoperative unless the use of compensating means will result in a landing distance not more than that with each engine operating.

12. Balked Landing

Instead of compliance with § 23.77, the following apply:

In the landing configuration, the steady gradient of climb may not be less than 3.2 percent with the following:

(a) The engines at the power or thrust that is available eight seconds after initiation of movement of the power or thrust controls from the minimum flight idle to the inflight takeoff position; and

(b) A climb speed of not more than V_{REF} as defined in § 23.73(a).

13. Stall Speed

Instead of compliance with § 23.49, the following apply:

(a) V_S is the calibrated stalling speed, or the minimum steady flight speed, in knots, at which the airplane is controllable, with—

(1) Zero thrust at the stalling speed, or, if the resultant thrust has no appreciable effect on the stalling speed, with engines idling and throttles closed;

(2) The weight used when V_S is being used as a factor to determine compliance with a required performance standard; and

(3) The most unfavorable center of gravity allowable.

(b) The stalling speed V_S is the minimum speed obtained as follows:

(1) Trim the airplane for straight flight at any speed not less than 1.2 V_S or more than 1.4 V_S. At a speed sufficiently above the stall speed to ensure steady conditions, apply the elevator control at a rate so that the airplane speed reduction does not exceed one knot per second.

(2) Meet the flight characteristics provisions of special condition 19.

14. Trim

Instead of compliance with § 23.161, the following apply:

(a) General. Each airplane must meet the trim requirements of this special condition after being trimmed, and without further pressure upon or movement of the primary controls or their corresponding trim controls by the pilot or the automatic pilot.

(b) Lateral and directional trim. The airplane must maintain lateral and directional trim with the most adverse lateral displacement of the center of gravity within the relevant operating limitations during normally expected conditions of operation (including operation at any speed from 1.4 V_{S1} to V_{MO}/M_{MO}.)

(c) Longitudinal trim. The airplane must maintain longitudinal trim during the following:

(1) A climb with maximum continuous power at a speed not more than 1.4 V_{S1}, with the landing gear retracted, and the flaps in the following positions:

(i) Retracted, and

(ii) In the takeoff position.

(2) A power approach with a 3 degree angle of descent, the landing gear extended, and with the following:

(i) The wing flaps retracted and at a speed of 1.4 V_{S1}; and

(ii) The applicable airspeed and flap position used in showing compliance with special condition 11.

(3) Level flight at any speed from 1.4 V_{S1} to V_{MO}/M_{MO} with the landing gear and flaps retracted, and from 1.4 V_{S1} to VLE with the landing gear extended.

(d) Longitudinal, directional, and lateral trim. The airplane must maintain longitudinal, directional, and lateral trim (for the lateral trim, the angle of bank may not exceed five degrees) at 1.4 V_{S1} during climbing flight with the following:

(1) The critical engine inoperative;

(2) The remaining engine at maximum continuous power or thrust; and

(3) The landing gear and flaps retracted.

15. Static Longitudinal Stability

Instead of compliance with § 23.173, the following apply:

Under the conditions specified in special condition 16, the characteristics of the elevator control forces (including friction) must be as follows:

(a) A pull must be required to obtain and maintain speeds below the specified trim speed, and a push must be required to obtain and maintain speeds above the specified trim speed. This must be shown at any speed that can be obtained except speeds higher than the landing gear or wing flap operating limit speeds or V_{FC}/M_{FC}, whichever is appropriate, or lower than the minimum speed for steady unstalled flight.

(b) The airspeed must return to within 10 percent of the original trim speed for the climb, approach, and landing conditions specified in special condition 16, paragraph (a), (c), and (d), and must return to within 7.5 percent of the original trim speed for the cruising condition specified in special condition 16, paragraph (b), when the control force is slowly released from any speed within the range specified in paragraph (a) of this special condition.

(c) The average gradient of the stable slope of the stick force versus speed curve may not be less than 1 pound for each 6 knots.

(d) Within the free return speed range specified in paragraph (b) of this special condition, it is permissible for the airplane, without control forces, to stabilize on speeds above or below the desired trim speeds if exceptional attention on the part of the pilot is not required to return to and maintain the desired trim speed and altitude.

16. Demonstration of Static Longitudinal Stability

Instead of compliance with § 23.175, static longitudinal stability must be shown as follows:

(a) Climb. The stick force curve must have a stable slope at speeds between 85 and 115 percent of the speed at which the airplane—

(1) Is trimmed, with—

(i) Wing flaps retracted;

(ii) Landing gear retracted;

(iii) Maximum takeoff weight; and

(iv) The maximum power or thrust selected by the applicant as an operating limitation for use during climb; and

(2) Is trimmed at the speed for best rate of climb except that the speed need not be less than 1.4 V_{S1}.

(b) Cruise. Static longitudinal stability must be shown in the cruise condition as follows:

(1) With the landing gear retracted at high speed, the stick force curve must have a stable slope at all speeds within a range which is the greater of 15 percent of the trim speed plus the resulting free return speed range, or 50 knots plus the resulting free return speed range, above and below the trim speed (except that the speed range need not include speeds less than 1.4 V_{S1}, nor speeds greater than V_{FC}/M_{FC}, nor speeds that require a stick force of more than 50 pounds), with—

(i) The wing flaps retracted;

(ii) The center of gravity in the most adverse position;

(iii) The most critical weight between the maximum takeoff and maximum landing weights;

(iv) The maximum cruising power selected by the applicant as an operating limitation, except that the power need not exceed that required at V_{MO}/M_{MO}; and

(v) The airplane trimmed for level flight with the power required in paragraph (b)(1)(iv) of this special condition.

(2) With the landing gear retracted at low speed, the stick force curve must have a stable slope at all speeds within a range which is the greater of 15 percent of the trim speed plus the resulting free return speed range, or 50 knots plus the resulting free return speed range, above and below the trim speed (except that the speed range need not include speeds less than 1.4 V_{S1}, nor speeds greater than the minimum speed of the applicable speed range prescribed in paragraph (b)(1), nor speeds that require a stick force of more than 50 pounds), with—

(i) Wing flaps, center of gravity position, and weight as specified in paragraph (b)(1) of this special condition;

(ii) Power required for level flight at a speed equal to $(V_{MO} + 1.4\ V_{S1})/2$; and

(iii) The airplane trimmed for level flight with the power required in paragraph (b)(2)(ii) of this special condition.

(3) With the landing gear extended, the stick force curve must have a stable slope at all speeds within a range which

is the greater of 15 percent of the trim speed plus the resulting free return speed range, or 50 knots plus the resulting free return speed range, above and below the trim speed (except that the speed range need not include speeds less than 1.4 V_{S1}, nor speeds greater than V_{LE}, nor speeds that require a stick force of more than 50 pounds), with—

(i) Wing flap, center of gravity position, and weight as specified in paragraph (b)(1) of this section;

(ii) The maximum cruising power selected by the applicant as an operating limitation, except that the power need not exceed that required for level flight at V_{LE}; and

(iii) The aircraft trimmed for level flight with the power required in paragraph (b)(3)(ii) of this section.

(c) Approach. The stick force curve must have a stable slope at speeds between 1.1 V_{S1} and 1.8 V_{S1}, with—

(1) Wing flaps in the approach position;

(2) Landing gear retracted;

(3) Maximum landing weight; and

(4) The airplane trimmed at 1.4 V_{S1} with enough power to maintain level flight at this speed.

(d) Landing. The stick force curve must have a stable slope, and the stick force may not exceed 80 pounds, at speeds between 1.1 V_{S0} and 1.3 V_{S0} with—

(1) Wing flaps in the landing position;

(2) Landing gear extended;

(3) Maximum landing weight;

(4) Power or thrust off on the engines; and

(5) The airplane trimmed at 1.4 V_{S0} with power or thrust off.

17. Static Directional and Lateral Stability

Instead of compliance with § 23.177, the following apply:

(a) The static directional stability (as shown by the tendency to recover from a skid with the rudder free) must be positive for any landing gear and flap position, and it must be positive for any symmetrical power condition to speeds from 1.2 V_{S1} up to V_{FE}, V_{LE}, or V_{FC}/M_{FC} (as appropriate).

(b) The static lateral stability (as shown by the tendency to raise the low wing in a sideslip with the aileron controls free and for any landing gear position and flap position, and for any symmetrical power conditions) may not be negative at any airspeed (except speeds higher than V_{FE} or V_{LE}, when appropriate) in the following airspeed ranges:

(1) From 1.2 V_{S1} to V_{MO}/M_{MO}.

(2) From V_{MO}/M_{MO} to V_{FC}/M_{FC}, unless the Administrator finds that the divergence is—

(i) Gradual;

(ii) Easily recognizable by the pilot; and

(iii) Easily controllable by the pilot.

(c) In straight, steady, sideslips (unaccelerated forward slips) the aileron and rudder control movement and forces must be substantially proportional to the angle of the sideslip. The factor of proportionality must lie between limits found necessary for safe operation throughout the range of sideslip angles appropriate to the operation of the airplane. At greater angles, up to the angle at which full rudder control is used or when a rudder pedal force of 180 pounds is obtained, the rudder pedal forces may not reverse and increased rudder deflection must produce increased angles of sideslip. Unless the airplane has a yaw indicator, there must be enough bank accompanying sideslipping to clearly indicate any departure from steady unyawed flight.

18. Stall Demonstration

Instead of compliance with § 23.201, the following apply:

(a) Stalls must be shown in straight flight and in 30 degree banked turns with—

(1) Power off; and

(2) The power necessary to maintain level flight at 1.6 V_{S1} (where V_{S1} corresponds to the stalling speed with flaps in the approach position, the landing gear retracted, and maximum landing weight).

(b) In each condition required by paragraph (a) of this section, it must be possible to meet the applicable requirements of special condition 19 with—

(1) Flaps, landing gear, and deceleration devices in any likely combination of positions approved for operation;

(2) Representative weights within the range for which certification is requested;

(3) The most adverse center of gravity for recovery; and

(4) The airplane trimmed for straight flight at the speed prescribed in special condition 13).

(c) The following procedures must be used to show compliance with special condition 19;

(1) Starting at a speed sufficiently above the stalling speed to ensure that a steady rate of speed reduction can be established, apply the longitudinal control so that the speed reduction does not exceed one knot per second until the airplane is stalled.

(2) In addition, for turning flight stalls, apply the longitudinal control to achieve airspeed deceleration rates up to 3 knots per second.

(3) As soon as the airplane is stalled, recover by normal recovery techniques.

(d) The airplane is considered stalled when the behavior of the airplane gives the pilot a clear and distinctive indication of an acceptable nature that the airplane is stalled. Acceptable indications of a stall, occurring either individually or in combination, are—

(1) A nose-down pitch that cannot be readily arrested;

(2) Buffeting, of a magnitude and severity that is a strong and effective deterrent to further speed reduction; or

(3) The pitch control reaches the aft stop and no further increase in pitch attitude occurs when the control is held full aft for a short time before recovery is initiated.

19. Stall Characteristics

Instead of compliance with § 23.203, the following applies:

(a) It must be possible to produce and to correct roll and yaw by unreversed use of the aileron and rudder controls, up to the time the airplane is stalled. No abnormal nose up pitching may occur. The longitudinal control force must be positive up to and throughout the stall. In addition, it must be possible to promptly prevent stalling and to recover from a stall by normal use of the controls.

(b) For level wing stalls, the roll occurring between the stall and the completion of the recovery may not exceed approximately 20 degrees.

(c) For turning flight stalls, the action of the airplane after the stall may not be so violent or extreme as to make it difficult, with normal piloting skill, to effect a prompt recovery and to regain control of the airplane. The maximum bank angle that occurs during the recovery may not exceed—

(1) Approximately 60 degrees in the original direction of the turn, or 30 degrees in the opposite direction, for deceleration rates up to 1 knot per second; and

(2) Approximately 90 degrees in the original direction of the turn, or 60 degrees in the opposite direction, for deceleration rates in excess of 1 knot per second.

20. Stall Warning

Instead of compliance with § 23.207, the following applies:

(a) Stall warning with sufficient margin to prevent inadvertent stalling with the flaps and landing gear in any normal position must be clear and distinctive to the pilot in straight and turning flight.

(b) The warning may be furnished either through the inherent aerodynamic qualities of the airplane or by a device

that will give clearly distinguishable indications under expected conditions of flight. However, a visual stall warning device that requires the attention of the crew within the cockpit is not acceptable by itself. If a warning device is used, it must provide a warning in each of the airplane configurations prescribed in paragraph (a) of this special condition at the speed prescribed in paragraph (c) of this special condition.

(c) The stall warning must begin at a speed exceeding the stalling speed (i.e., the speed at which the airplane stalls or the minimum speed demonstrated, whichever is applicable under the provisions of special condition 18, paragraph (d)) by seven percent or at any lesser margin if the stall warning has enough clarity, duration, distinctiveness, or similar properties.

21. Vibration and Buffeting

Instead of compliance with § 23.251, the following apply:

(a) The airplane must be designed to withstand any vibration and buffeting that might occur in any likely operating condition. This must be shown by calculations, resonance tests, or other tests found necessary by the Administrator.

(b) Each part of the airplane must be shown in flight to be free from excessive vibration, under any appropriate speed and power conditions up to V_{DF}/M_{DF}. The maximum speeds shown must be used in establishing the operating limitations of the airplane in accordance with special condition 36.

(c) Except as provided in paragraph (d) of this special condition, there may be no buffeting condition in normal flight, including configuration changes during cruise, severe enough to interfere with the control of the airplane, to cause excessive fatigue to the flightcrew, or to cause structural damage. Stall warning buffeting within these limits is allowable.

(d) There may be no perceptible buffeting condition in the cruise configuration in straight flight at any speed up to V_{MO}/M_{MO}, except that stall warning buffeting is allowable.

(e) With the airplane in the cruise configuration, the positive maneuvering load factors at which the onset of perceptible buffeting occurs must be determined for the ranges of airspeed or Mach Number, weight, and altitude for which the airplane is to be certified. The envelopes of load factor, speed, altitude, and weight must provide a sufficient range of speeds and load factors for normal operations. Probable inadvertent excursions beyond the boundaries of the buffet onset envelopes may not result in unsafe conditions.

22. High Speed Characteristics

Instead of compliance with § 23.253, the following apply:

(a) Speed increase and recovery characteristics. The following speed increase and recovery characteristics must be met:

(1) Operating conditions and characteristics likely to cause inadvertent speed increases (including upsets in pitch and roll) must be simulated with the airplane trimmed at any likely cruise speed up to V_{MO}/M_{MO}. These conditions and characteristics include gust upsets, inadvertent control movements, low stick force gradient in relation to control friction, passenger movement, leveling off from climb, and descent from mach to airspeed limit altitudes.

(2) Allowing for pilot reaction time after effective inherent or artificial speed warning occurs, it must be shown that the airplane can be recovered to a normal attitude and its speed reduced to V_{MO}/M_{MO} without the following:

(i) Exceptional piloting strength or skill;

(ii) Exceeding V_D/M_D, or V_{DF}/M_{DF}, or the structural limitations; and

(iii) Buffeting that would impair the pilot's ability to read the instruments or control the airplane for recovery.

(3) There may be no control reversal about any axis at any speed up to V_{DF}/M_{DF} with the airplane trimmed at V_{MO}/M_{MO}. Any tendency of the airplane to pitch, roll or yaw must be mild and readily controllable, using normal piloting techniques. When the airplane is trimmed at V_{MO}/M_{MO}, the slope of the elevator control force versus speed curve need not be stable at speeds greater than V_{FC}/M_{FC}, but there must be a push force at all speeds up to V_{DF}/M_{DF} and there must be no sudden or excessive reduction of elevator control force as V_{DF}/M_{DF} is reached.

(b) Maximum speed for stability characteristics. V_{FC}/M_{FC}.. V_{FC}/M_{FC} is the maximum speed at which the requirements of special conditions 15, 16, 17, and § 23.181 must be met with the flaps and landing gear retracted. It may not be less than a speed midway between V_{MO}/M_{MO} and V_{DF}/M_{DF} except that, for altitudes where Mach number is the limiting factor, M_{FC} need not exceed the Mach number at which effective speed warning occurs.

23. Flight Flutter Testing

Instead of the term/speed V_D in § 23.629(b), use V_{DF}/M_{DF}.

24. Out-of-Trim Characteristics

In the absence of specific requirements for out-of-trim characteristics, the Sino Swearingen Model SJ30–2 must comply with the following:

(a) From an initial condition with the airplane trimmed at cruise speeds up to V_{MO}/M_{MO}, the airplane must have satisfactory maneuvering stability and controllability with the degree of out-of-trim in both the airplane nose-up and nose-down directions, which results from the greater of the following:

(1) A three-second movement of the longitudinal trim system at its normal rate for the particular flight condition with no aerodynamic load (or an equivalent degree of trim for airplanes that do not have a power-operated trim system), except as limited by stops in the trim system including those required by § 23.655(b) for adjustable stabilizers; or

(2) The maximum mis-trim that can be sustained by the autopilot while maintaining level flight in the high speed cruising condition.

(b) In the out-of-trim condition specified in paragraph (a) of this special condition, when the normal acceleration is varied from +1 g to the positive and negative values specified in paragraph (c) of this special condition, the following apply:

(1) The stick force versus g curve must have a positive slope at any speed up to and including V_{FC}/M_{FC}; and

(2) At speeds between V_{FC}/M_{FC} and V_{DF}/M_{DF}, the direction of the primary longitudinal control force may not reverse.

(c) Except as provided in paragraph (d) and (e) of this special condition, compliance with the provisions of paragraph (a) of this special condition must be demonstrated in flight over the acceleration range as follows:

(1) -1 g to +2.5 g; or

(2) 0 g to 2.0 g, and extrapolating by an acceptable method to -1 g and +2.5 g.

(d) If the procedure set forth in paragraph (c)(2) of this special condition is used to demonstrate compliance and marginal conditions exist during flight test with regard to reversal of primary longitudinal control force, flight tests must be accomplished from the normal acceleration at which a marginal condition is found to exist to the applicable limit specified in paragraph (b)(1) of this special condition.

(e) During flight tests required by paragraph (a) of this special condition, the limit maneuvering load factors, prescribed in §§ 23.333(b) and 23.337, need not be exceeded. Also, the

maneuvering load factors associated with probable inadvertent excursions beyond the boundaries of the buffet onset envelopes determined under special condition 21, paragraph (e), need not be exceeded. In addition, the entry speeds for flight test demonstrations at normal acceleration values less than 1 g must be limited to the extent necessary to accomplish a recovery without exceeding V_{DF}/M_{DF}.

(f) In the out-of-trim condition specified in paragraph (a) of this special condition, it must be possible from an overspeed condition at V_{DF}/M_{DF} to produce at least 1.5 g for recovery by applying not more than 125 pounds of longitudinal control force using either the primary longitudinal control alone or the primary longitudinal control and the longitudinal trim system. If the longitudinal trim is used to assist in producing the required load factor, it must be shown at V_{DF}/M_{DF} that the longitudinal trim can be actuated in the airplane nose-up direction with the primary surface loaded to correspond to the least of the following airplane nose-up control forces:

(1) The maximum control forces expected in service, as specified in §§ 23.301 and 23.397.

(2) The control force required to produce 1.5 g.

(3) The control force corresponding to buffeting or other phenomena of such intensity that is a strong deterrent to further application of primary longitudinal control force.

25. Pressure Vessel Integrity

(a) The maximum extent of failure and pressure vessel opening that can be demonstrated to comply with special condition 31 (Pressurization) of these special conditions must be determined. It must be demonstrated by crack propagation and damage tolerance analysis supported by testing that a larger opening or a more severe failure than demonstrated will not occur in normal operations.

(b) Inspection schedules and procedures must be established to ensure that cracks and normal fuselage leak rates will not deteriorate to the extent that an unsafe condition could exist during normal operation.

(c) With regard to the fuselage structure design for cabin pressure capability above 45,000 feet, the pressure vessel structure, including doors and windows, must comply with § 23.365(d), using a factor of 1.67 instead of the 1.33 factor prescribed.

26. Fasteners

In addition to the requirements of § 23.607, the following apply to fasteners:

(a) Each removable bolt, screw, nut, pin, or their removable fastener must incorporate two separate locking devices if the following apply:

(1) Its loss could preclude continued flight and landing within the design limitations of the airplane using normal pilot skill and strength, or

(2) Its loss could result in reduction in pitch, yaw, or roll control capability or response below that required by subpart B of this chapter and these special conditions.

(b) The fasteners specified in paragraph (a) of this section and their locking devices may not be adversely affected by the environmental conditions associated with the particular installation.

27. Landing Gear

The main landing gear system must be designed so that if it fails due to overloads during takeoff or landing (assuming the overloads to act in the upward and aft directions), the failure mode is not likely to cause the spillage of enough fuel from any fuel system in the fuselage to constitute a fire hazard.

28. Ventilation

In addition to the requirements of § 23.831(b), the ventilation system must be designed to provide a sufficient amount of uncontaminated air to enable the crewmembers to perform their duties without undue discomfort or fatigue and to provide reasonable passenger comfort during normal operation conditions and in the event of any probable failure of any system on the airplane that would adversely affect the cabin ventilating air. For normal operations, crewmembers and passengers must be provided with at least 10 cubic feet of fresh air per minute per person, or the equivalent in filtered recirculated air, based on the volume and composition at the corresponding cabin pressure altitude of no more than 8,000 feet.

29. Air Conditioning

In addition to the requirements of § 23.831, cabin cooling systems must be designed to meet the following conditions during flight above 15,000 feet MSL:

(a) After any probable failure, the cabin temperature/time history may not exceed the values shown in Figure 1. During this time period, the humidity shall never exceed a level that corresponds to a water vapor pressure of 20mm Hg. Time = 0 minutes when the flightcrew recognizes the failure.

(b) After any improbable failure, the cabin temperature/time history may not exceed the values shown in Figure 2. During this time period, the humidity shall never exceed a level that corresponds to a water vapor pressure of 20mm Hg. Time = 0 minutes when the flightcrew recognizes the failure.

30. Pressurization

In addition to the requirements of § 23.841, the following apply—

(a) The pressurization system—which includes, for this purpose, bleed air, air conditioning, and pressure control systems—must prevent the cabin altitude from exceeding the cabin altitude-time history shown in Figure 3 after each of the following:

(1) Any probable malfunction or failure of the pressurization system. The existence of undetected, latent malfunctions or failures in conjunction with probable failures must be considered.

(2) Any single failure in the pressurization system, combined with the occurrence of a leak produced by a complete loss of a door seal element, or a fuselage leak through an opening having an effective area 2.0 times the effective area that produces the maximum permissible fuselage leak rate approved for normal operation, whichever produces a more severe leak.

(b) The cabin altitude-time history may not exceed that shown in Figure 4 after each of the following:

(1) The maximum pressure vessel opening resulting from an initially detectable crack propagating for a period encompassing four normal inspection intervals. Mid-panel cracks and cracks through skin-stringer and skin-frame combinations must be considered.

(2) The pressure vessel opening or duct failure resulting from probable damage (failure effect) while under maximum operating cabin pressure differential due to a tire burst, engine rotor burst, loss of antennas or stall warning vanes, or any probable equipment failure (bleed air, pressure control, air conditioning, electrical sources(s), etc.) that affects pressurization.

(3) Complete loss of thrust from all engines.

(c) In showing compliance with paragraphs (a) and (b) of this special condition (Pressurization), it may be assumed that an emergency descent is made by approved emergency procedure. A seventeen-second flightcrew recognition and reaction time must be applied between cabin altitude

warning and the initiation of an emergency descent.

Note: For the flight evaluation of the rapid descent, the test article must have the cabin volume representative of what is expected to be normal, such that Sino Swearingen must reduce the total cabin volume by that which would be occupied by the furnishings and total number of people.

31. Airspeed Indicating System

In addition to the requirements of § 23.1323, the following apply:

(a) The airspeed indicating system must be calibrated to determine the system error in flight and during the accelerate-takeoff ground run. The ground run calibration must be determined as follows:

(1) From 0.8 of the minimum value of V_1 to the maximum value of V_2, considering the approved ranges of altitude and weight; and

(2) With the flaps and power settings corresponding to the values determined in the establishment of the takeoff path under special condition 6, assuming that the critical engine fails at the minimum value of V_1.

(b) The information showing the relationship between IAS and CAS, determined in accordance with paragraph (a) of this special condition, must be shown in the Airplane Flight Manual.

32. Static Pressure System

In addition to the requirements of § 23.1325, the following apply:

(a) The altimeter system calibration required by § 23.1325(e) must be shown in the Airplane Flight Manual.

(b) If an altimeter system is fitted with a device that provides corrections to the altimeter indication, the device must be designed and installed in such manner that it can be by-passed when it malfunctions, unless an alternate altimeter system is provided. Each correction device must be fitted with a means for indicating the occurrence of reasonably probable malfunctions, including power failure, to the flightcrew. The indicating means must be effective for any cockpit lighting condition likely to occur.

33. Oxygen Equipment and Supply

(a) In addition to the requirements of § 23.1441(d), the following applies: A quick-donning oxygen mask system with a pressure-demand, mask mounted regulator must be provided for the flightcrew. It must be shown that each quick-donning mask can, with one hand and within 5 seconds, be placed on the face from its ready position, properly secured, sealed, and supplying oxygen upon demand.

(b) In addition to the requirements of § 23.1443, the following applies: A continuous flow oxygen system must be provided for the passengers.

(c) In addition to the requirements of § 23.1445, the following applies: If the flightcrew and passengers share a common source of oxygen, a means to separately reserve the minimum supply required by the flightcrew must be provided.

34. Maximum Operating Limit Speed

Instead of compliance with § 23.1505(c), the following applies: The maximum operating limit speed (V_{MO}/M_{MO} airspeed or Mach number, whichever is critical at a particular altitude) is a speed that may not be deliberately exceeded in any regime of flight (climb, cruise, or descent), unless a higher speed is authorized for flight test or pilot training operations. V_{MO}/M_{MO} must be established so that it is not greater than the design cruising speed, V_C, and so that it is sufficiently below V_D/M_D, or V_{DF}/M_{DF}, to make it highly improbable that the latter speeds will be inadvertently exceeded in operations. The speed margin between V_{MO}/M_{MO} and V_D/M_D, or V_{DF}/M_{DF}, may not be less than that determined under § 23.335(b) or found necessary during the flight tests conducted under special condition 22.

35. Minimum Flightcrew

Instead of compliance with § 23.1523, the following apply:

The minimum flightcrew must be established so that it is sufficient for safe operation considering:

(a) The workload on individual flightcrew members and each flightcrew member workload determination must consider the following:

(1) Flight path control,
(2) Collision avoidance,
(3) Navigation,
(4) Communications,
(5) Operation and monitoring of all essential airplane systems,
(6) Command decisions, and
(7) The accessibility and ease of operation of necessary controls by the appropriate flightcrew member during all normal and emergency operations when at the flightcrew member station.

(b) The accessibility and ease of operation of necessary controls by the appropriate flightcrew member; and

(c) The kinds of operation authorized under § 23.1525.

36. Airplane Flight Manual

Instead of compliance with § 23.1581, the following applies:

(a) Furnishing information. An Airplane Flight Manual must be furnished with each airplane, and it must contain the following:

(1) Information required by special conditions 39, 40, and 41.

(2) Other information that is necessary for safe operation because of design, operating, or handling characteristics.

(3) Any limitation, procedure, or other information established as a condition of compliance with the applicable noise standards of Part 36 of this chapter.

(b) Approved Information. Each part of the manual listed in special conditions 39, 40, and 41, that is appropriate to the airplane, must be furnished, verified, and approved, and must be segregated, identified, and clearly distinguished from each unapproved part of that manual.

(c) Airplane Flight Manual. Each Airplane Flight Manual must include a table of contents if the complexity of the manual indicates a need for it.

(d) Airplane Flight Manual. Each page of the Airplane Flight Manual containing information prescribed in this section must be of a type that is not easily erased, disfigured, or misplaced, and is capable of being inserted in a manual provided by the applicant, or in a folder, or in any other permanent binder.

(e) Airplane Flight Manual. Provision must be made for stowing the Airplane Flight Manual in a suitable fixed container which is readily accessible to the pilot.

(f) Revisions and amendments. Each Airplane Flight Manual (AFM) must contain a means for recording the incorporation of revisions and amendments.

37. Operating Limitations

Instead of the requirements of § 23.1583, the following apply:

(a) Airspeed limitations. The following airspeed limitations and any other airspeed limitations necessary for safe operation must be furnished:

(1) The maximum operating limit speed, V_{MO}/M_{MO}, and a statement that this speed limit may not be deliberately exceeded in any regime of flight (climb, cruise, or descent) unless a higher speed is authorized for flight test or pilot training.

(2) If an airspeed limitation is based upon compressibility effects, a statement to this effect and information as to any symptoms, the probable behavior of the airplane, and the recommended recovery procedures.

(3) The maneuvering speed, V_O, and a statement that full application of rudder and aileron controls, as well as maneuvers that involve angles of attack

near the stall, should be confined to speeds below this value.

(4) The maximum speed for flap extension, V_{FE}, for the takeoff, approach, and landing positions.

(5) The landing gear operating speed or speeds, V_{LO}.

(6) The landing gear extended speed, V_{LE} if greater than V_{LO}, and a statement that this is the maximum speed at which the airplane can be safely flown with the landing gear extended.

(b) Powerplant limitations. The following information must be furnished:

(1) Limitations required by § 23.1521.

(2) Explanation of the limitations, when appropriate.

(3) Information necessary for marking the instruments, required by §§ 23.1549 through 23.1553.

(c) Weight and loading distribution. The weight and extreme forward and aft center of gravity limits required by §§ 23.23 and 23.25 must be furnished in the Airplane Flight Manual. In addition, all of the following information and the information required by § 23.1589 must be presented either in the Airplane Flight Manual or in a separate weight and balance control and loading document, which is incorporated by reference in the Airplane Flight Manual:

(1) The condition of the airplane and the items included in the empty weight, as defined in accordance with § 23.29.

(2) Loading instructions necessary to ensure loading of the airplane within the weight and center of gravity limits, and to maintain the loading within these limits in flight.

(d) Maneuvers. A statement that acrobatic maneuvers, including spins, are not authorized.

(e) Maneuvering flight load factors. The positive maneuvering limit load factors for which the structure is proven, described in terms of accelerations, and a statement that these accelerations limit the angle of bank in turns and limit the severity of pull-up maneuvers must be furnished.

(f) Flightcrew. The number and functions of the minimum flightcrew must be furnished.

(g) Kinds of operation. The kinds of operation (such as VFR, IFR, day, or night) and the meteorological conditions in which the airplane may or may not be used must be furnished. Any installed equipment that affects any operating limitation must be listed and identified as to operational function.

(h) Additional operating limitations must be established as follows:

(1) The maximum takeoff weights must be established as the weights at which compliance is shown with the applicable provisions of part 23 (including the takeoff climb provisions of special condition 10 (a) through (c) for altitudes and ambient temperatures).

(2) The maximum landing weights must be established as the weights at which compliance is shown with the applicable provisions of part 23 (including the approach climb and balked landing climb provisions of special conditions 10(d) and 12 for altitudes and ambient temperatures).

(3) The minimum takeoff distances must be established as the distances at which compliance is shown with the applicable provisions of part 23 (including the provisions of special conditions 5 and 7 for weights, altitudes, temperatures, wind components, and runway gradients).

(4) The extremes for variable factors (such as altitude, temperature, wind, and runway gradients) are those at which compliance with the applicable provision of part 23 and these special conditions is shown.

(i) Maximum operating altitude. The maximum altitude established under § 23.1527 must be furnished.

(j) Maximum passenger seating configuration. The maximum passenger seating configuration must be furnished.

38. Operating Procedures

Instead of the requirements of § 23.1585, the following applies:

(a) Information and instruction regarding the peculiarities of normal operations (including starting and warming the engines, taxiing, operation of wing flaps, slats, landing gear, speed brake, and the automatic pilot) must be furnished, together with recommended procedures for the following:

(1) Engine failure (including minimum speeds, trim, operation of the remaining engine, and operation of flaps);

(2) Restarting turbine engines in flight (including the effects of altitude);

(3) Fire, decompression, and similar emergencies;

(4) Use of ice protection equipment;

(5) Operation in turbulence (including recommended turbulence penetration airspeeds, flight peculiarities, and special control instructions);

(6) The demonstrated crosswind velocity and procedures and information pertinent to operation of the airplane in crosswinds.

(b) Information identifying each operating condition in which the fuel system independence prescribed in § 23.953 is necessary for safety must be furnished, together with instructions for placing the fuel system in a configuration used to show compliance with that section.

(c) For each airplane showing compliance with § 23.1353(g)(2) or (g)(3), the operating procedures for disconnecting the battery from its charging source must be furnished.

(d) If the unusable fuel supply in any tank exceeds 5 percent of the tank capacity, or 1 gallon, whichever is greater, information must be furnished indicating that, when the fuel quantity indicator reads "zero" in level flight, any fuel remaining in the fuel tank cannot be used safely in flight.

(e) Information on the total quantity of usable fuel for each fuel tank must be furnished.

(f) The buffet onset envelopes determined under special condition 21 must be furnished. The buffet onset envelopes presented may reflect the center of gravity at which the airplane is normally loaded during cruise if corrections for the effect of different center of gravity locations are furnished.

39. Performance Information

Instead of the requirements of § 23.1587, the following applies:

(a) Each Airplane Flight Manual must contain information to permit conversion of the indicated temperature to free air temperature if other than a free air temperature indicator is used to comply with the requirements of § 23.1303(d).

(b) Each Airplane Flight Manual must contain the performance information computed under the applicable provisions of this part for the weights, altitudes, temperatures, wind components, and runway gradients, as applicable, within the operational limits of the airplane, and must contain the following:

(1) The conditions under which the performance information was obtained, including the speeds associated with the performance information.

(2) V_S determined in accordance with special condition 13.

(3) The following performance information (determined by extrapolation and computed for the range of weights between the maximum landing and maximum takeoff weights):

(i) Climb in the landing configuration.

(ii) Climb in the approach configuration.

(iii) Landing distance.

(4) Procedures established under special condition 2, paragraph (c), (d), and (e) that are related to the limitations and information required by paragraph (h) of special condition 39 and by this paragraph. These procedures must be in the form of guidance material, including any relevant limitations or information.

(5) An explanation of significant or unusual flight or ground handling characteristics of the airplane.

Issued in Kansas City, Missouri on February 10, 1997.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

BILLING CODE 4910-13-P

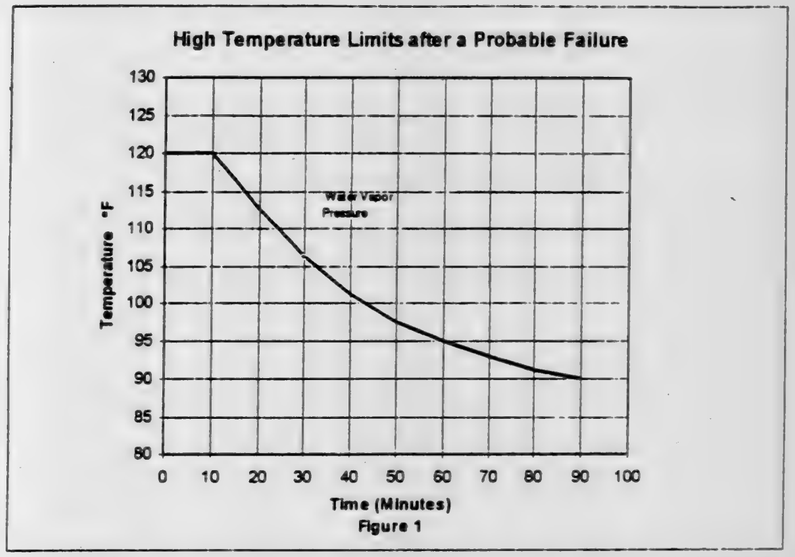

Figure 1

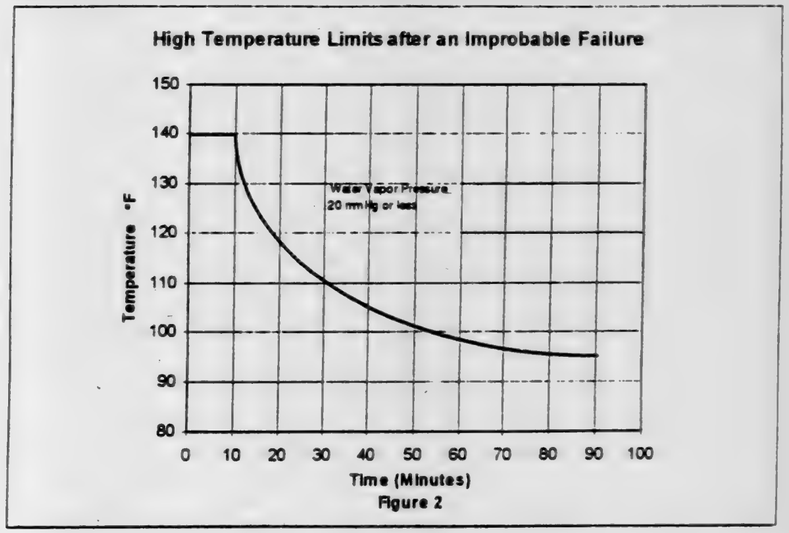

Figure 2

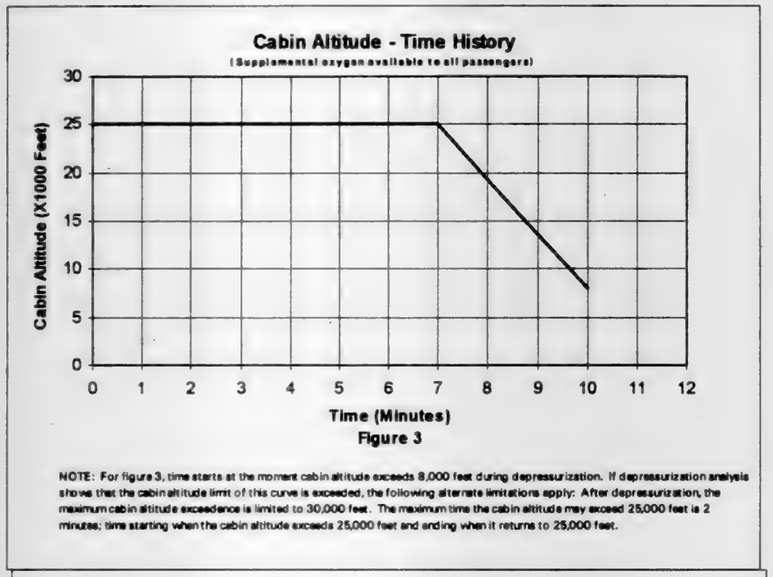

Figure 3

NOTE: For figure 3, time starts at the moment cabin altitude exceeds 8,000 feet during depressurization. If depressurization analysis shows that the cabin altitude limit of this curve is exceeded, the following alternate limitations apply: After depressurization, the maximum cabin altitude exceedence is limited to 30,000 feet. The maximum time the cabin altitude may exceed 25,000 feet is 2 minutes; time starting when the cabin altitude exceeds 25,000 feet and ending when it returns to 25,000 feet.

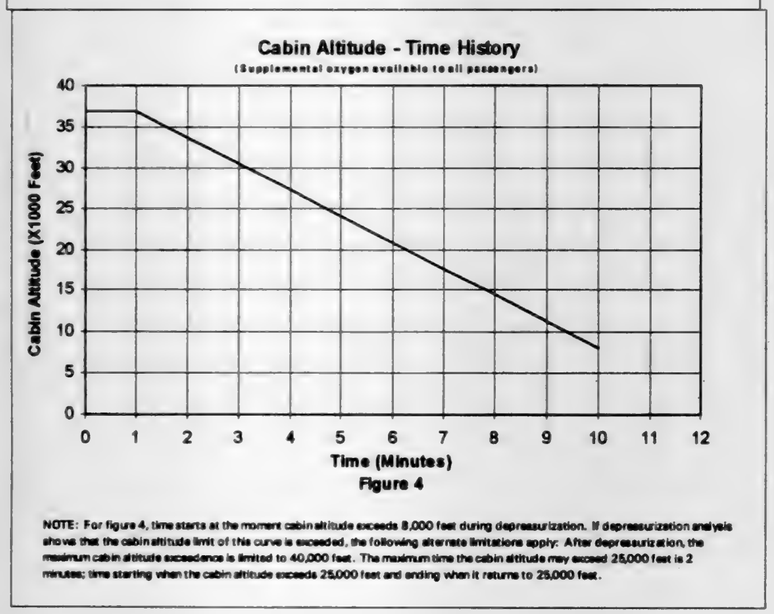

Figure 4

NOTE: For figure 4, time starts at the moment cabin altitude exceeds 8,000 feet during depressurization. If depressurization analysis shows that the cabin altitude limit of this curve is exceeded, the following alternate limitations apply: After depressurization, the maximum cabin altitude exceedance is limited to 40,000 feet. The maximum time the cabin altitude may exceed 25,000 feet is 2 minutes; time starting when the cabin altitude exceeds 25,000 feet and ending when it returns to 25,000 feet.

[FR Doc. 97–4353 Filed 2–20–97; 8:45 am]
BILLING CODE 4310–13–C

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206 and 208

RIN 1010–AC09

Meetings on Proposed Rule—Oil Valuation Establishment; Federal Royalty and Federal Leases Royalty Oil Sales

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of revised meeting dates.

SUMMARY: This notice changes the dates for public meetings in Denver, Colorado, and Houston, Texas, to discuss a proposed rulemaking regarding the valuation of crude oil and royalty oil sales produced from mineral leases on Federal land. The new dates for the Denver and Houston meetings are April 15 and 17, 1997, respectively. The proposal was published in the **Federal Register** on January 24, 1997, (62 FR 3741). Comments on this rule must be submitted to Minerals Management Service (MMS) by April 28, 1997. The purpose of these meetings is to explain the proposed changes to the regulations governing the valuation for royalty purposes of crude oil produced from Federal leases and allow all interested parties to discuss the proposed rulemaking. Interested parties are invited to attend and participate at these meetings.

DATES: Public meetings will be held in Denver, Colorado, on April 15, 1997, from 10 a.m. to 4 p.m. Mountain time; and in Houston, Texas, on April 17, 1997, from 10 a.m. to 4 p.m. Central time.

ADDRESSES: The Denver Meeting will be held in the Veterans Affairs Building, 155 N. Van Gordon St., Lakewood, Colorado 80228, telephone number: (303) 914–5800.

The Houston Meeting will be held in the Houston Compliance Division Office, Minerals Management Service, 4141 North Sam Houston Parkway East, Houston, Texas 77032 telephone number: (281) 987–6802.

If you will be attending a meeting, please contact Mary Kay Reynolds at telephone number: (303) 275–7259 at least 2 days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Publications Staff, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3101, Denver, Colorado 80225–0165, telephone number: (303) 231–3432, fax number (303) 231–3194, e-Mail David __Guzy@smtp.mms.gov.

SUPPLEMENTARY INFORMATION: The meetings will be open to the public without advance registration. Public attendance may be limited to the space available. For building security measures, each person may be required to present a picture identification to gain entry to the meeting.

The meeting will be organized into two sessions:

- MMS presentation of proposed rule, 10 a.m. to 11 a.m.
- Public commenting on proposed rule, 11 a.m. to noon, and 1 p.m. to 4 p.m.

Members of the public may make statements during the meeting and are encouraged to file written statements for consideration.

Dated: February 19, 1997.

Joan Killgore,

Acting Associate Director for Royalty Management.

[FR Doc. 97–4490 Filed 2–19–97; 3:15 pm]
BILLING CODE 4310–MR–M

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[SPATS No. TX–033–FOR]

Texas Regulatory Program and Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Texas regulatory program and abandoned mine land reclamation plan (hereinafter the "Texas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of codification of the Texas Coal Mining Regulations in the Texas Administrative Code at Part 16, Economic Regulation, Chapter 12. The amendment is intended to conform the Texas Coal Mining Regulations to Texas Administrative Code formatting syntax, to correct typographical errors, and to allow for the publication of the rules in the Texas Administrative Code in full text rather than by reference.

DATES: Written comments must be received by 4:00 p.m., c.s.t, March 24, 1997. If requested, a public hearing on the proposed amendment will be held on March 18, 1997. Requests to speak at the hearing must be received by 4:00 p.m., c.s.t. on March 10, 1997.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Ervin J. Barchenger, Acting Director, Tulsa Field Office, at the address listed below.

Copies of the Texas program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

Ervin J. Barchenger, Acting Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma, 74135–6547, Telephone: (918) 581–6430.

Surface Mining and Reclamation Division, Railroad Commission of Texas, 1701 North Congress Avenue, P.O. Box 12967, Austin, Texas, 78711–2967, Telephone: (512) 463–6900.

FOR FURTHER INFORMATION CONTACT: Ervin J. Barchenger, Acting Director, Tulsa Field Office, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program

On February 16, 1980, the Secretary of the Interior conditionally approved the Texas program. General background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the February 27, 1980, **Federal Register** (45 FR 12998). Subsequent actions concerning the Texas program can be found at 30 CFR 943.10, 943.15, and 943.16.

II. Description of the Proposed Amendment

By letter dated January 30, 1997 (Administrative Record No. TX–633), Texas submitted a proposed amendment to its program pursuant to SMCRA. Texas submitted the proposed amendment at its own initiative. Texas proposes to codify the Texas Coal Mining Regulations (TCMR) in the Texas Administrative Code (TAC) at Part 16, Economic Regulation, Chapter 12 in full text rather than by reference.

Specifically, Texas proposes to codify TCMR Parts 700 through 850, pertaining to surface coal mining and reclamation operations, at TAC §§ 12.1 through 12.710. Texas also proposes to codify TCMR §§ 051.800 through 051.817, pertaining to the Texas abandoned mine

land reclamation program, at TAC §§ 12.800 through 12.817. The codification proposal includes conforming Texas' regulations to the Texas Administrative Code formatting syntax, correcting typographical errors, and making other editorial changes.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Texas program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.s.t. on March 10, 1997. The location and time of the hearing will be arranged with those persons requesting the hearing. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 7, 1997.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 97–4340 Filed 2–20–97; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 175

Revitalizing Base Closure Communities and Community Assistance

AGENCY: Department of Defense, Office of the Deputy Under Secretary of Defense (Industrial Affairs and Installations).

ACTION: Proposed rule.

SUMMARY: This part promulgates policies and procedures for implementing section 2837 of the National Defense Authorization Act for FY96 concerning the Federal agency lease back of property transferred to Local Redevelopment Authorities (LRAs) at installations approved for closure or realignment.

DATES: Comments must be received by April 22, 1997.

ADDRESSES: Comments must be forwarded to the Base Closure and Community Reinvestment Office, 400 Army-Navy Drive, Suite 200, Arlington, VA 22202 (email: base—reuseacq.osd.mil).

FOR FURTHER INFORMATION CONTACT: Jennifer Atkin, Base Closure and Community Reinvestment Office, 400 Army-Navy Drive, Suite 200, Arlington, VA 22202, telephone (703) 604–2400.

SUPPLEMENTARY INFORMATION:

Background Information

Large parcels of surplus BRAC property are frequently conveyed to an LRA for use in accordance with the LRA's redevelopment plan. Because Federal users have priority claim on this property, small parcels or even individual buildings within or adjacent to the large parcel may be claimed by a Federal entity. These Federal uses are included as part of the LRA's redevelopment plan and are compatible with the proposed use of the surrounding property. Should the Federal entity depart at some point in the future, however, the property would be disposed of by the General Service Administration in accordance with the Federal Real Property and Administrative Services Act. This subsequent Federal action could disrupt local economic recovery efforts by requiring the community to go through another lengthy Federal real property disposal process, and could result in uses that are incompatible with the community's redevelopment plans.

Congress recognized that this piecemeal approach could be harmful to long-range planning and development opportunities and changed the law to enable more community control over redevelopment while still allowing the Federal government the ability to utilize government property without additional costs. Section 2837 of the National Defense Authorization Act for FY 1996 (Pub. L. 104–106) amends the Defense Base Closure and Realignment Act of 1990 (Pub. L. 101–510, 10 U.S.C. 2687 note) to allow base closure property that is still needed by the Department of Defense or another Federal agency to be transferred to an LRA, provided the LRA leases the property back to the Federal entity. The lease cannot require rental payments.

Applicability

The "leaseback" is a new authority, not a new requirement. Ultimately, the decision whether to transfer property under this authority rests with the military department keeping in mind that the Department of Defense cannot require Federal agencies to give up right of ownership in order for the LRA to take advantage of a leaseback of the property. If a leaseback is requested by the LRA, however, Federal agencies are urged to give full consideration to leasing instead of owning the property.

This authority can be used to transfer property at BRAC 91, 93, and 95 sites. In addition, it can be used to transfer property needed by existing Federal tenants or Federal departments or agencies desiring to locate onto the property. Military Departments can only transfer property and then lease it back if they are acting as an executive agent on behalf of a Defense Agency or if the Secretary of the Military Department certifies that the transaction is in the best interest of the Military Department and consistent with the recommendations of the Base Closure Commission.

Lease Arrangements

If an LRA desires a leaseback of property, it will be the responsibility of the LRA to offer the Federal department or agency lease arrangements that encourage choosing the leaseback option. The goal should be offer terms that afford the Federal department or agency rights as close to those associated with ownership of the property as is practicable. Subject to the requirements outlined in this rule (including a prohibition against charging rental payments), the LRA and Federal entity have significant latitude to negotiate a lease that is beneficial to both parties and are encouraged to be creative in establishing the lease parameters.

Conveyance Process

This rule establishes two options for conveyance of leaseback property to an LRA: (1) Conveyance as part of an Economic Development Conveyance (EDC) using the existing EDC procedures, and (2) conveyance of property not associated with an EDC using procedures established in this rule. In this case, the LRA will be required to show how a leaseback is necessary for the long-term economic redevelopment of the installation property.

Statement of Determination and Certifications

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that this rule is not a significant regulatory action as defined under section 3(f)(1) through 3(f)(4) of Executive Order 12866.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. 601)

It has been determined that this rule will not have a significant economic impact on a substantial number of small entities.

Public Law 104–13, "Paperwork Reduction Act of 1995" (44 U.S.C. Chapter 35)

It has been certified that this rule does not impose any reporting or recordkeeping requirements.

List of Subjects in 32 CFR Part 175

Community development, Government employees, Military personnel, Surplus government property.

Accordingly, 32 CFR part 175 is proposed to be amended to read as follows:

PART 175—[AMENDED]

1. The authority citation for 32 CFR part 175 continues to read as follows:

Authority: 10 U.S.C. 2687 note.

2. Section 175.3 is proposed to be amended by adding a new paragraph (l) to read as follows:

§ 175.3 Definitions.

* * * * *

(l) *Similar use.* A use that is comparable to or essentially the same as the use under the original lease.

* * * * *

3. Sections 175.4, 175.5, and 175.6 are proposed to be revised to read as follows:

§ 175.4 Policy.

It is DoD policy to help communities impacted by base closures and realignments achieve rapid economic recovery through effective reuse of the assets of closing and realigning bases—more quickly, more effectively, and in ways based on local market conditions and locally developed reuse plans. This will be accomplished by quickly ensuring that communities and the Military Departments communicate effectively and work together to accomplish mutual goals of quick property disposal and rapid job generation. This part does not create any rights or remedies and may not be relied upon by any person, organization, or other entity to allege a denial of any rights or remedies other than those provided by Title XXIX of Pub. L. 103–160, Pub. L. 103–421, or Title XXVIII of Pub. L. 104–106.

§ 175.5 Responsibilities.

(a) The Deputy Under Secretary of Defense (Industrial Affairs and Installations), after coordination with the General Counsel of the Department of Defense and other officials as appropriate, may issue guidance

through the publication of a manual or other such document as may be necessary to implement laws, directives and instructions on the retention or disposal of real and personal property at closing or realigning bases.

(b) The Heads of the DoD Components shall ensure compliance with this part and guidance issued by the Assistant Secretary of Defense for Economic Security and the Deputy Under Secretary of Defense (Industrial Affairs and Installations) on revitalizing base closure communities.

§ 175.6 Delegations of authority.

(a) The authority provided by sections 202 and 203 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 483 and 484) for the utilization and disposal of excess and surplus property at closing and realigning bases has been delegated by the Administrator, GSA, to the Secretary of Defense by delegations dated March 1, 1989; October 9, 1990; September 13, 1991; and, September 1, 1995.[1] Authority under these delegations has been previously delegated to the Secretaries of the Military Departments, who may delegate this authority further.

(b) Authorities delegated to the Deputy Under Secretary of Defense (Industrial Affairs and Installations)[2] by § 174.5 are hereby redelegated to the Secretaries of the Military Departments, unless otherwise provided within this part or other DoD directive, instruction, manual, or regulation. These authorities may be delegated further.

4. Section 175.7 is proposed to be amended by revising paragraphs (a)(13)(i), (d)(3)(i), and by adding paragraph (k) to read as follows:

§ 175.7 Procedures.

* * * * *

(a) * * *

(13) * * *

(i) In unusual circumstances, extensions beyond six months can be granted by the Deputy Under Secretary of Defense (Industrial Affairs and Installations).

* * * * *

(d) * * *

(3) * * *

(i) In the event there is no LRA recognized by DoD and/or if a redevelopment plan is not received from the LRA within 15 months from the determination of surplus under paragraph (a)(13) of this section, (unless an extension of time has been granted by the Deputy Under Secretary of Defense (Industrial Affairs and Installations)), the applicable Military Department shall proceed with the disposal of property under applicable property disposal and environmental laws and regulations.

* * * * *

(k) *Leaseback of property at base closure and realignment sites.* (1) 10 U.S.C. 2687 note (BRAC 1990), as added by section 2837 of Pub. L. 104–106, gives the Secretary of Defense the authority to transfer property that is still needed by a Federal Department or Agency to an LRA provided the LRA agrees to lease the property back to the Federal Department or Agency in accordance with all statutory and regulatory guidance. The purpose of this authority, hereinafter referred to as a "leaseback", is to enable the LRA to obtain ownership of the property pursuant to the BRAC process while still ensuring that the Federal need for use of the property is accommodated.

(2) Subject to BRAC 1990 and this part, the decision whether to transfer property pursuant to a leaseback rests with the relevant military department. However, a military department may only transfer property via a leaseback if the Federal entity that needs the property agrees to the leaseback arrangement.

(3) If for any reason property cannot be transferred pursuant to a leaseback (e.g., the relevant Federal Agency prefers ownership, the LRA and the Federal entity cannot agree on terms of the lease, or the military department determines that a leaseback would not be in the Federal interest), such property shall remain in Federal ownership unless and until the relevant landholding entity determines that it is surplus pursuant to the Federal Property Management Regulations.

(4) If a building or structure is proposed for transfer under this authority, that which is leased back to the Federal Department or Agency may be all or a portion of that building or structure.

(5) The leaseback authority may be used at all installations approved for closure or realignment under BRAC 1990.

(6) Transfers under this authority must be to an LRA.

(7) Transfers under this authority may be by lease in furtherance of conveyance or deed. A lease in furtherance of conveyance is appropriate only in those circumstances where deed transfer cannot be accomplished because the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601, et seq.) for such transfer have not been met. The lease in furtherance of conveyance or accompanying contract shall include a provision stating that the LRA agrees to take title to the property when requirements for the transfer have been satisfied.

(8) The leaseback authority can be used to transfer property that is needed either by existing Federal tenants or by Federal Departments or Agencies desiring to locate onto the property after operational closure. The Military Department that is closing or realigning the installation may not transfer property to an LRA under this authority and lease it back unless:

(i) The Military Department is acting in an Executive Agent capacity on behalf of a Defense Agency that certifies that a leaseback is in the interest of that Defense Agency; or,

(ii) The Secretary of the Military Department certifies that a leaseback is in the best interest of the Military Department and that use of the property by the Military Department is consistent with the obligation to close or realign the installation in accordance with the recommendations of the Defense Base Closure and Realignment Commission.

(9) Property eligible for a leaseback is not surplus because it is still needed by a Federal entity. However, notwithstanding that the property is not surplus and that the LRA would not otherwise have to include such property in its redevelopment plan, the LRA should include the proposed leaseback of property in its redevelopment plan, taking into account the planned Federal use of such property.

(10) The terms of the LRA's lease to the Federal entity should afford the Federal Department or Agency rights as close to those associated with ownership of the property as is practicable. The requirements of the General Services Acquisition Regulation (GSAR) (48 CFR part 570) are not applicable to the lease, but provisions in the GSAR may be used to the extent they are consistent with this Part. The terms of the lease are negotiable subject to the following:

(i) The lease shall be for a term of no more than 50 years, but may provide for options for renewal or extension of the term at the request of the Federal Department or Agency concerned. The lease term should be based on the needs of the Federal entity.

(ii) The lease, or any renewals or extensions thereof, shall not require rental payments.

(iii) The lease shall not require the Federal Government to pay the LRA or other local government entity for municipal services including fire and police protection.

(iv) The Federal Department or Agency concerned may be responsible for services such as janitorial, grounds keeping, utilities, capital maintenance, and other services normally provided by a landlord. Acquisition of such services by the Federal Department or Agency is to be accomplished through the use of Federal Acquisition Regulation procedures or otherwise in accordance with applicable statutory and regulatory requirements.

(v) The lease shall include a provision prohibiting the LRA from transferring ownership rights to another entity during the term of the lease, other than one of the political jurisdictions that comprise the LRA, without the written consent of the Federal Department or Agency occupying the leaseback property.

(vi) The lease shall include a provision specifying that if the Federal Department or Agency concerned no longer needs the property before the expiration of the term of the lease, the remainder of the lease term may be satisfied by the same or another Federal Department or Agency using the leased property for a use similar to the use under the lease.

(A) The General Services Administration shall assist with identifying other Federal interest in leasing the property.

(B) Prior to exercising such provision, the Federal Department or Agency shall consult with the LRA concerned, or the elected body with jurisdiction over the property if the LRA no longer exists.

(vii) The terms of the lease shall provide that the Federal Department or Agency may repair, improve, and maintain the property at its expense without the approval of the LRA.

(11) Conveyance to an LRA under this authority shall be in one of the following ways:

(i) Lease back property that is to be conveyed under an Economic Development Conveyance (EDC) shall be conveyed as part of the EDC in accordance with the existing EDC procedures and § 175.7(k)(11)(ii)(B)(*4*). The LRA shall submit the following in addition to the application requirements outlined in § 175.7(e)(5):

(A) A description of the parcel or parcels the LRA proposes to have transferred to it and then to lease back to a Federal Department or Agency;

(B) A written statement signed by an authorized representative of the Federal entity that it agrees to accept a leaseback of the property; and,

(C) A statement explaining why a leaseback is necessary for the long-term economic redevelopment of the installation property.

(ii) Leaseback property not associated with property to be conveyed under an EDC shall be conveyed in accordance with the following procedures:

(A) As soon as possible after the LRA's submission of its redevelopment plan to the DoD and HUD, the LRA shall submit a request for a leaseback to the Military Department. The Military Department may impose additional requirements as necessary, but at a minimum, the request shall contain the following:

(*1*) A description of the parcel or parcels the LRA proposes to have transferred to it and then to lease back to a Federal Department or Agency;

(*2*) A written statement signed by an authorized representative of the Federal entity that it agrees to accept a leaseback of the property; and,

(*3*) A statement explaining why a leaseback is necessary for the long-term economic redevelopment of the installation property.

(B) The transfer may be for consideration at or below the estimated present fair market value. In those instances in which the property is conveyed for consideration below the estimated present fair market value, the Military Department shall prepare a written explanation of why the estimated present fair market value was not obtained.

(*1*) In a rural area, the transfer shall comply with § 175.7(f)(5).

(*2*) Payment may be in cash or in-kind.

(*3*) The Military Department shall determine the estimated present fair market value of the property before transfer under this authority.

(*4*) The exact amount of consideration, or the formula to be used to determine that consideration, as well as the schedule for payment of consideration must be agreed upon in writing before transfer under this authority.

Dated: February 18, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–4333 Filed 2–20–97; 8:45 am]

BILLING CODE 5000–04–M

[1] Available from the Base Closure and Community Reinvestment Office, 400 Army Navy Drive, Suite 200, Arlington, VA 22202, email: "base—reuse@acq.osd.mil"

[2] A Deputy Secretary of Defense memorandum of May 15, 1996, "OUSD (Acquisition and Technology Reorganization" disestablished the office of the Assistant Secretary of Defense for Economic Security and established the office of the Deputy Under Secretary of Defense (Industrial Affairs and Installations). Copies are available from the Base Closure and Community Reinvestment Office, 400 Army Navy Drive, Suite 200, Arlington, VA 22202, email: "base—reuse@acq.osde.mil"

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–97–007]

RIN 2115–AE46

Special Local Regulations for Marine Events; Norfolk Harbor, Elizabeth River, Norfolk, Virginia and Portsmouth, Virginia

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend permanent special local regulations established for marine events held in the Norfolk Harbor, Elizabeth River, between Norfolk and Portsmouth, Virginia by identifying specific annual events for which the regulated area will be in effect. This action is intended to update the regulation in order to enhance the safety of life and property during the events.

DATES: Comments must be received on or before April 22, 1997.

ADDRESSES: Comments may be mailed to Commander (Aosr), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or hand delivered to Room 516 at the same address between 7:30 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398–6204. Comments will become part of this docket and will be available for inspection and copying at the above address.

FOR FURTHER INFORMATION CONTACT: S.L. Phillips, Project Manager, Search and Rescue Branch, at (757) 398-6204.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comment should include their names and addresses, identify this rulemaking (CGD 05–97–007) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgement of receipt of comments should enclose stamped, self-addressed postcards or envelopes. The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the address listed under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

33 CFR 100.501 established special local regulations for marine events held in the Norfolk Harbor, Elizabeth River, between Norfolk and Portsmouth, Virginia. The effect of these regulations is the control of vessel traffic during marine events to enhance the safety of participants, spectators, and transiting vessels. The regulations are implemented at various times, for various events throughout the year by publishing notice in the **Federal Register** and the Fifth Coast Guard District Local Notice to Mariners. This proposal would update the regulations to reflect specific events for which the regulations will be in effect.

Discussion of Proposed Rule

The Coast Guard proposes to amend the special local regulations previously established for this event area by incorporating a table which identifies the specific events during which the regulated area will be in effect. Since this action will not increase the period of time that the channel is restricted and the Coast Guard patrol commander may stop any event to assist transit of vessels through the regulated area, normal marine traffic should not be severely disrupted.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This proposal merely provides additional information to an existing regulation and does not impose any new restrictions on vessel traffic.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small Entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (14 U.S.C. 632). Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b), that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of Information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.b.2.e(34)(h) of Commandant Instruction M16475.1b (as amended, 61 FR 13564; 27 March 1996), this proposal is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR Part 100 as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46.

2. Section 100.501 is amended by revising paragraph (c) and adding Table 1 to read as follows:

§ 100.501 Norfolk Harbor, Elizabeth River, Norfolk, Virginia and Portsmouth, Virginia.

* * * * *

(c) *Effective periods.* This section is effective annually for the duration of each marine event listed in Table 1, or as otherwise specified in the Coast Guard Local Notice to Mariners and a **Federal Register** notice. The Coast Guard Patrol Commander will announce by Broadcast Notice to Mariners the specific time periods during which the regulations will be enforced.

Table 1 of § 100.501

Harborfest

Sponsor: Norfolk Harborfest, Inc.
Date: First Friday, Saturday, and Sunday in June

Great American Picnic

Sponsor: Festevents, Inc.
Date: July 4

Cock Island Race

Sponsor: Ports Events, Inc.
Date: Third Saturday in July

Rendezvous at Zero Mile Marker

Sponsor: Ports Events, Inc.
Date: Third Saturday in August

U.S. Navy Fleet Week Celebration

Sponsor: U.S. Navy
Date: Second Friday in October

Holidays in the City

Sponsor: Festevents, Inc.
Date: Fourth Saturday in November

New Years Eve Fireworks Display

Sponsor: Festevents, Inc.
Date: December 31.

Dated: February 5, 1997.

Kent H. Williams,

Vice Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 97–4359 Filed 2–20–97; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD 05–97–004]

RIN 2115–AE46

Special Local Regulations for Marine Events; Southern Branch, Elizabeth River, Portsmouth, Virginia

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend permanent special local regulations for the Crawford Bay Crew Classic, a marine event held annually in the Southern Branch, Elizabeth River, Portsmouth, Virginia, by changing the dates on which the regulations are in effect. This action is intended to update the regulation in order to enhance the safety of life and property during the event.

DATES: Comments must be received on or before March 24, 1997.

ADDRESSES: Comments may be mailed to Commander (Aosr), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or hand delivered to Room 516 at the same address between 7:30 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398–6204. Comments will become part of this docket and will be available for inspection and copying at the above address.

FOR FURTHER INFORMATION CONTACT: S. L. Phillips, Project Manager, Search and Rescue Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Request for Comments

This Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 05–97–004) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons waiting acknowledgement of receipt of comments should enclose stamped, self-addressed postcards or envelopes. The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the address listed under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Ports Events, Inc., the sponsor of the Crawford Bay Crew Classic, has requested to change the dates of this annual event from the third Friday and Saturday in March to the fourth Friday and Saturday in April to conduct the event in warmer weather conditions. To enhance the safety of participants, spectators, and transiting vessels, special local regulations are necessary to control vessel traffic during the event. This proposal would update the regulations to reflect the new dates of the event.

Discussion of Proposed Rule

The Coast Guard proposes to amend the effective period of special local regulations previously established for this event from the third Friday and Saturday in March to the fourth Friday and Saturday in April to reflect the new event dates. Since this action will not increase the period of time that the channel is restricted and the Coast Guard patrol commander will be allowing vessels to transit whenever a race heat is not being run, commercial traffic should not be severely disrupted.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This proposal merely changes the effective date of an existing regulation and does not impose any new restriction on vessel traffic.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small Entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b), that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of Information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.b.2.e(34)(h) of Commandant Instruction M16475.1b (as amended, 61 FR 13564; 27 March 1996), this proposal is categorically excluded form further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR Part 100 as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46.

2. Section 100.523 is amended by revising paragraph (c) to read as follows:

§ 100.523 Southern Branch, Elizabeth River, Portsmouth, Virginia.

* * * * *

(c) *Effective periods.* This section is effective on the fourth Friday of April and on the fourth Saturday of April, unless otherwise specified in the Coast Guard Local Notice to Mariners and a **Federal Register** notice.

Dated: February 5, 1997.

Kent H. Williams,

Vice Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 97–4357 Filed 2–20–97; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 181

[CGD 92–065]

RIN 2115–AE37

Hull Identification Numbers for Recreational Boats

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to amend its regulations concerning the identification numbers affixed to the hulls of recreational boats, including boats carrying six or fewer passengers for hire. These amendments are necessary to align the present numbering system with the newly-adopted international system. This would facilitate the sale of U.S. products abroad. In addition, the Coast Guard is proposing several minor amendments to its regulations on hull identification numbers.

DATES: Comments must be received on or before May 22, 1997.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 92–065), U.S. Coast Guard Headquarters 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477. Comments on collection-of-information requirements must be mailed also to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

A copy of the material listed in "Incorporation by Reference" of this preamble is available for inspection at room 3104, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Mr. Alston Colihan, Office of Boating Safety, (202) 267–0981.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 92–065) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Regulatory History

On May 6, 1994, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Expanded Hull Identification Number and New Requirements for Certificates of Origin" in the **Federal Register** (59 FR 23651). The Coast Guard received 114 letters commenting on the proposal. No public hearing was requested, and none was held.

On November 9, 1994, a notice announcing a workshop and reopening the comment period for the NPRM was published in the **Federal Register** (59 FR 55823).

Background and Purpose

Under 46 U.S.C. 12501, the Secretary of Transportation is required to establish and maintain a vessel identification system (VIS) for use by law enforcement and other public officials. This authority has been delegated to the Commandant of the Coast Guard (49 CFR 1.46(ss)). The VIS is intended to provide a nationwide pool of information on vessels and vessel owners that will help in identifying and recovering stolen vessels and deterring vessel theft. To aid in the development of a VIS for recreational boats, the Coast Guard proposed to expand the hull identification number required for those boats under 33 CFR part 181 to include certain vessel-specific information and a check digit to make fraudulent alternations more difficult. In addition, the Coast Guard proposed that vessel manufacturers and importers provide a Certificate of Origin (COO) with each vessel produced in, or imported into, the U.S. for the purposes of sale. The COO would ensure that documentation certifying the information and establishing a chain of ownership was available.

Due to extensive opposition to the proposed 19-character HIN and the COO, the comment period was extended from November 9, 1994, to January 9, 1995, and a public workshop was held on December 8, 1994. After review of all comments received, the Coast Guard decided to issue a new proposal that would align the HIN with the recently-adopted standard of the International Organization for Standardization (ISO) and delete the COO.

Discussion of Comments and Changes to the NPRM

The Coast Guard received 114 comments in response to the NPRM from 33 boat manufacturers, 8 boat dealers, 6 insurance companies, 42 State and law-enforcement organizations, and 25 individuals and organizations. In addition, the Coast Guard received oral comments at the December 8, 1994, workshop. These comments and the changes made to the NPRM are summarized as follows.

(a) *Format of hull identification number (proposed § 181.25).* The present regulation in 33 CFR 181.25 requires that a 12-character HIN be affixed in two places on the hull of each new recreational boat made in the U.S. or imported into the U.S. The HIN consists of the manufacturer identification code (three characters), the boat's serial number (five characters), the month and year of certification or manufacture (two characters), and the model year (two characters). The NPRM proposed an expansion of the present HIN to include a two-character prefix to indicate the country of origin and five characters following the HIN to indicate overall length, hull material, means of propulsion, type of boat, and a check digit to help detect fraudulent alterations of the HIN. As a result of the overwhelmingly negative comments received to the NPRM, this supplemental notice of proposed rulemaking (SNPRM) proposes to add only the two-character prefix for country of origin and delete the last five proposed characters. The HIN, as proposed in this notice, is aligned with the format recently adopted by the International Organization for Standardization (ISO).

The HIN format, as proposed in the NPRM, was based on the Vehicle Identification Number (VIN), which has worked well in the automotive industry. Unfortunately, while there are probably fewer than 100 companies manufacturing automobiles worldwide, there are more than 4,500 boat manufacturers in the U.S. alone. Recreational boat manufacturers tend to be small and less likely to have computers. Consequently, spending 15 minutes to manually calculate the check digit alone for a single boat is, for them, an excessive paperwork burden.

Though the present regulations have changed only slightly since they became effective in 1972, the Coast Guard estimates that hundreds of boats still are manufactured annually with incorrect 12-character HIN's. Were the Coast Guard to expand the HIN to 19 characters, including a check digit, the potential for error would significantly increase, making it more difficult to determine whether an error was intentional or not.

The comments also noted a number of practical problems. For example, several comments noted that some boats do not have room to accommodate a longer number in the required location and would have to be redesigned. One noted that an error found in an HIN on the transom of an aluminum boat might require replacement of the entire transom. Still others mentioned problems for law enforcement officers in reviewing documents that repeat the HIN because of the difficulty in reading long numbers, particularly numbers not separated by hyphens or spaces.

Though a number of alternative formats were suggested in the comments, most calling for a 17-character format, the Coast Guard decided that it would propose using the shorter 14-character format consistent with ISO. By using the ISO format, it enables U.S. manufacturers to market their products abroad without having to affix two different sets of numbers on each boat.

One other reason why the Coast Guard proposes removal of the requirement for the five additional HIN characters is because the Office of Management and Budget (OMB), which administers the Paperwork Reduction Act (see the "Collection of Information" section in this preamble), received many negative comments alleging that the additional characters would impose significant paperwork burdens. OMB indicated that it would be taking a very close look at the proposed paperwork requirements in this rulemaking and that more justification for the additional characters, if retained, would be necessary.

As the proposed 14-character HIN is consistent with the internationally-adopted ISO HIN, entities or organizations, such as State, insurance, theft investigation, or law enforcement agencies, that favor an HIN with additional characters to aid in marine investigations and deter boat theft should work with the ISO to change the international standard. In this way, a single, internationally-recognized format can be maintained. In the interim, existing § 181.27 allows manufacturers to place additional characters before or after the HIN.

(b) *Certificate of Origin (Removed).* The requirement for a certificate of origin (COO), as proposed in the NPRM, has been removed. The COO was to be a document identifying the boat and certifying transfer of ownership from its manufacturer to the retail purchaser and so on to subsequent purchasers. It was expected to provide assistance in proving ownership of the boat. Many of the States currently have laws requiring manufacturers to furnish COO's. Considering the costs and information collection burdens associated with the proposed COO requirements and the fact that States are not subject to the Paperwork Reduction Act, the States are in a better position to develop their own uniform Certificate of Origin requirements. The major obstacles to the proposed requirement for a COO are the information-collection burdens, the costs of forms meeting security features recommended by the National Association of State Boating Law Administrators (NASBLA), and the absence of Coast Guard authority to charge manufacturers for expenditures on these forms.

(c) *Applicability (existing § 181.21).* Several comments suggested that the Coast Guard require hull identification numbers for all vessels, including commercial vessels. These suggestions are beyond the scope of this rulemaking, which is limited to recreational boats, including boats carrying six or fewer passengers.

Section 181.21 is also proposed to be amended to remove obsolete and unnecessary provisions without substantive change.

(d) *Definition of model year (proposed § 181.3(f)).* In existing § 181.3(f), "model year" is defined as the period beginning August 1 of any year and ending on July 31 of the following year, with the model year being designated as the year in which the period ends. Several comments stated that this definition is vague and subject to varying interpretation. For example, it is not keyed to a specific date, such as the date of construction, assembly, or importation. Other comments complained that the model year should not be confined to specified dates (i.e., August 1 and July 31) in case they wanted to vary the introduction date of a new model.

The proposed definition has been completely revised to address these concerns.

(e) *Assignment of hull identification number (proposed § 181.24).* This new section is provided for clarity and contains no substantive changes from the existing regulations.

(f) *Display of hull identification number (proposed § 181.29(b)).* One comment stated that the primary HIN location should be revised to make the HIN readable when a boat is in the water. The Coast Guard agrees and proposes amending the paragraph to indicate that the HIN must be affixed where it is readily visible above the waterline.

Two identical hull identification numbers are required to be displayed on each boat hull, a primary HIN on the transom of most boats and a duplicate HIN somewhere on the interior of the boat. The intention is for the primary HIN to be readily visible. Marine police officers routinely attempt to read the HIN on boats during State law enforcement boardings, and many HIN's are not visible because they are affixed to the transom beneath swim platforms or below the waterline. Existing § 181.29 would be amended to show that the primary HIN must be affixed where it is readily visible above the waterline. If, when affixed in accordance with proposed § 181.29(b)(1), the primary HIN is not readily visible, the manufacturer must affix the HIN in accordance with proposed § 181.29(b)(2).

(g) *Display of duplicate hull identification number (proposed § 181.29(d)).* A comment from a law enforcement officer wanted a standard international requirement for placement of the duplicate HIN to ensure that it is accessible without having to disassemble portions of the boat.

While accessibility without requiring disassembly of portions of a boat is desirable, creating this accessibility would defeat the purpose of having a duplicate HIN, that is to help identify boats on which the primary HIN has been removed or altered. Considering the infinite variety of boat designs and configurations, defining such a uniform location would be prohibitively difficult.

(h) *Permanency of hull identification number (proposed § 181.29(e)).* Several comments stated that all vessels should be required to have HIN's affixed in a uniform manner. Another comment stated that the methods used to affix HIN's should be made more durable. According to the comments, manufacturers should be required to stamp or emboss HIN's into the hull instead of allowing glued or pop-riveted HIN plates.

The Coast Guard acknowledges the desirability of uniform permanency requirements for HIN's. However, because boats are constructed from so many different materials, such as canvas, vinyl, wood, aluminum and fiberglass, the variety of materials, prevents the establishment of uniform permanency requirements. As currently written in § 181.29, each HIN must be carved, burned, stamped, embossed, molded, bonded, or otherwise permanently affixed to the boat so that alteration, removal, or replacement would be obvious. If the number is on a separate plate, the plate must be fastened in such a manner that its removal would normally cause some

scarring of or damage to the surrounding hull area.

The words "otherwise permanently affixed" and "so that alteration, removal, or replacement would be obvious" are subject to interpretation. The Coast Guard considers these words to mean that ordinary and reasonable methods must be used to ensure that the HIN will remain intact and legible for the useful life of the boat, and in such a way that would discourage anyone from altering or removing the HIN number.

(i) *Assignment of manufacturer identification code (proposed § 181.31).* One comment stated that the Coast Guard should accept a manufacturer identification code (MIC) issued by an international agency or an organization designated by the European Union (EU). According to the comment, a U.S. importer would then have to submit proof that the MIC displayed on a boat was assigned by the international agency or EU-designated organization.

One reason for requiring manufacturers and importers to obtain an MIC from the Coast Guard is because the Coast Guard has no legal recourse against foreign manufacturers of boats that contain substantial-risk defects or fail to comply with applicable Federal safety standards. The practical effect of requiring U.S. manufacturers and importers of boats built in foreign countries to obtain an MIC from the Coast Guard is to identify the U.S. agent or U.S. subsidiary responsible for notifying owners and correcting defects or non-compliances in accordance with 33 CFR part 179.

The Coast Guard does not believe it would be appropriate to accept manufacturer identification codes issued by other international agencies or EU-designated organizations, until such time as international agreements are in effect which establish the responsibilities and accountability of foreign manufacturers for defective or non-complying boats sold in the United States.

Several comments stated that the Coast Guard should not issue an MIC over the telephone and that applicants for an MIC should be required to submit a completed application with a notarized signature, a copy of a business license or a seller's permit, and photographs of the established place of business. The comments also stated that the regulations should require the Coast Guard or an official designated by the State to inspect the place of business before an MIC is issued.

The Coast Guard has ceased issuing MIC's over the telephone and concurs with the need for some means to ensure that a company which applies for an MIC is, in fact, in the business of manufacturing boats. Some companies that have applied for and received MIC's were not in the business of manufacturing boats, but were engaged in boat theft or insurance fraud. While the Coast Guard does not concur with the comments proposing requirements for photographs of established places of business or notarized signatures, the Coast Guard agrees that a copy of an applicant's State business license or a State seller's permit will help the Coast Guard and the States keep track of company owners and the physical locations of boat manufacturing plants and discourage the use of MIC's for fraudulent purposes. Submission of an applicant's State business license or a seller's permit would also preclude the necessity for a visit to the manufacturer's place of business.

Both State boat registration and titling authorities and the Coast Guard need a means to ensure that a company applying for an MIC is, in fact, in the business of manufacturing boats. Therefore, § 181.31(a) would be amended to require a manufacturer apply for an MIC to include a copy of its State business license or seller's permit to help the Coast Guard keep track of the identities of company officials and the physical locations of its plants and to discourage the use of an MIC for fraudulent purposes.

One weakness in the existing regulations covering the issuance of these codes is that, as currently written, they do not provide for Coast Guard to refuse to issue or revoke an MIC. This has led to companies which applied for and received MIC's, which were not in the business of manufacturing boats, but were engaged in boat theft, insurance fraud or avoided responsibilities for defect notification and recall by filing for bankruptcy and then resuming boat manufacturing under a different MIC. Therefore, proposed § 181.31(d) is added to allow for refusal of an application for an MIC or revocation of an MIC.

(j) *Assignment of hull identification numbers for persons who build or import boats for their own use (proposed § 181.31(c); relocated to proposed § 181.24(b)).* Paragraph (c) of § 181.31 as appearing in the NPRM concerned the assignment of numbers for persons who build or import boats for their own use and not for the purposes of sale. The location of this paragraph was confusing because it was placed in a section describing how manufacturers are to obtain manufacturer identification codes. It now has been relocated, without substantive change, to proposed § 181.24(b), a new section concerning assignment of HIN's.

(k) *Conditions for use of manufacturer identification code (existing § 181.33).* One comment stated that manufacturer name or address changes should be in writing.

Section 181.33(b) currently contains this requirement.

(l) *Removal of HIN (proposed § 181.35).* Several comments recommended that, once the HIN is stamped or embossed, there should be no alteration without the written permission of the Commandant of the Coast Guard. Two other comments supported making the alteration of an HIN a felony nationwide and stated that there should be no alteration without the written permission of the Commandant of the Coast Guard and the issuing authority of the State involved.

While existing § 181.35 prohibits the removal or alteration of an HIN unless authorized by the Commandant, the Coast Guard agrees that the Commandant's permission should be in writing to add to the integrity of the system and proposes to amend the section accordingly. The Coast Guard routinely advises State issuing authorities about the alterations to the HIN's it authorizes and does not believe that requiring a separate State authorization would substantially enhance the integrity of the system.

(m) *Miscellaneous comments.* Several comments suggested the term "length," in reference to the characters indicating length of the boat, be defined. With the withdrawal of the proposal to require five additional characters, one of which would indicate a vessel's length, this comment is no longer relevant to the proposed amendments.

Another comment requested changes in boat documentation procedures. This comment concerns 46 CFR part 67 and is not relevant to the proposed regulations.

One comment suggested that an international law be established requiring that boats be inspected by law enforcement agencies or by State registration authorities each time a title is changed or transferred. This comment is beyond the scope of this rulemaking.

A comment from an insurer of personal watercraft (PWC) stated that all replacement hulls for PWC should have a serialized number permanently affixed to the main lower portion of the hull and that all PWC manufacturers should be required to provide certifications of replacements. The certification, according to the comment, should include the original HIN of the HIN of the PWC, the name and signature of the present owner of the PWC, the name of the facility replacing the PWC hull, and a statement about the destruction and disposal of damaged PWC hulls. The Coast Guard has urged both PWC manufacturers and manufacturers of replacement hulls to verify the destruction and disposal of damaged PWC hulls and to affix the same HIN originally assigned to a PWC. These procedures would ensure that PWC with replacement hulls can be traced through manufacturer warranty and State boat registration and numbering systems and would make it virtually impossible for a damaged PWC hull to be recycled as a usable boat. The Coast Guard recognizes that PWC represent the largest number of boats stolen annually. However, certification regarding replacement, destruction, and disposal of PWC hulls is an issue which is beyond the scope of the present rulemaking. The Coast Guard is considering the problems relating to replacement hulls under a separate initiative.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. An estimated 2,000,000 recreational boats are manufactured or imported annually, each presently required to have the 12-character HIN located in two places on the hull. In addition, about 17,000 boats are built each year by private individuals. This means a total of 4,034,000 HIN's (two per boat) are affixed annually. The estimated average cost for determining and affixing the present 12-character HIN is $.50 per boat. The estimated increase in costs for adding two more characters, as proposed, would be an additional $.10 or less per boat.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and that are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

The proposed regulations would apply to both small and large manufacturers and importers of boats, as well as to private individuals who build or import their boats. Numerous comments were received, primarily from small manufacturers, objecting to the burdens that would be imposed by the use of the proposed 19-character HIN. In response to these comments, the Coast Guard has decided to delete the last five characters from its proposed 19-character HIN and propose only the original 12-character HIN with a two-character prefix for country of origin. This would result in a decrease of five characters while aligning the HIN with international standards. The addition of the two-character prefix would result in only a slight increase in costs ($.10 or less) per boat. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this new proposal, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposal will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposal will economically affect it.

Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) reviews each proposed rule that contains a collection-of-information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection-of-information requirements include reporting, recordkeeping, notification, labeling, and other, similar requirements.

This proposal contains collection-of-information requirements in § § 181.25, 181.29, and 181.31. The following particulars apply:

DOT: 2115.

OMB Control No.: 2115–0573.

Administration: U.S. Coast Guard.

Title: Hull Identification Number for Recreational Boats.

Need for Information: Two characters identifying the country of origin would be required to be added to the presently-required, 12-character HIN. This is necessary to align the HIN format with the newly-established standard of the International Organization for Standardization (ISO) in order to maintain a uniform system and improve access by U.S. manufacturers to international markets.

Proposed Use of Information: To be used by State agencies, local law enforcement agencies, the Coast Guard, and other Federal agencies to identify each recreational boat manufactured domestically or imported.

Estimated Annual Burden: It takes about 10 minutes per boat to determine the characters and affix the presently-required, 12-character HIN. The time required under this proposal to determine the code for the country of origin and add its assigned two letters to the HIN would be negligible.

Respondents: Boat manufacturers and importers (4,500), individuals building their own boats (17,000) and issuing authorities in States and territories of the United States (56).

Forms: The two characters would be added to the two identical HIN's affixed to each recreational boat.

Average Burden Hours per Respondent: Negligible. The two characters that would be added refer to the country of origin, readily available information.

The Coast Guard has submitted the requirements to OMB for review under section 3504(h) of the Paperwork Reduction Act. Persons submitting comments on the requirements should submit their comments to both OMB and to the Coast Guard where indicated under **ADDRESSES.**

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The authority for this rulemaking under 46 U.S.C. 12501 and 12502. Section 12506 authorizes the Coast Guard to delegate to a State its authority to establish and maintain a vessel identification system. Under 33 CFR part 187, States may elect to participate in the VIS program and, in doing so, must use the hull identification numbers assigned under the provisions being addressed in this rulemaking.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under paragraph 2.b.2.e(34) of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. This

proposal concerns labeling of boats for identification and has no environmental consequences. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 181

Incorporation by reference, Labeling, Marine safety, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 181 as follows:

PART 181—MANUFACTURER REQUIREMENTS

1. The authority citation for part 181 is revised to read as follows:

Authority: 46 U.S.C. 4302, 12501, 12502; 49 CFR 1.46.

2. In § 181.3, the definitions of *Date of manufacture* and *Model year* are revised to read as follows:

§ 181.3 Definitions.

* * * * *

Date of manufacture means a date that is no earlier than the date construction or assembly of a boat begins and no later than the date the boat leaves the place of manufacture or assembly or is imported into the United States for the purposes of sale.

* * * * *

Model year means the calendar year (January 1 through December 31) of, or the calendar year following

(1) The boat's date of manufacture; or

(2) If the boat is required to be certified, its date of certification.

* * * * *

3. In § 181.4, paragraph (a) and paragraph (b) introductory text are revised and, in paragraph (b), a new item is added, in alphabetical order, to the list to read as follows:

§ 181.4 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register**; and the material must be available to the public. All approved material is available for inspection at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC, and at the U.S. Coast Guard, Office of Boating Safety (G–OPB), 2100 Second Street SW., Washington, DC 20593–0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are as follows:

International Organization for Standardization (ISO): Maintenance Agency Secretariat, c/o DIN Deutsches Institut fur Normung, Burggrafenstrasse 6, Postfach 1107, D–1000 Berlin 30, Republic of Germany:

ISO 3166–88, Codes for the Representation of Names of Counties—181.25.

* * * * *

4. Section 181.21 is revised to read as follows:

§ 181.21 Purpose and applicability.

This subpart prescribes requirements for identifying boats.

5. Section 181.24 is added to read as follows:

§ 181.24 Assignment of hull identification number.

(a) For a boat under § 181.23(a), the manufacturer or importer shall assign the required hull identification number according to § 181.25.

(b) For a boat under § 181.23(b), the builder or importer shall obtain the required hull identification number from the issuing authority of the State where the boat will be used principally or, if the State does not assign hull identification numbers, from the U.S. Coast Guard Recreational Boating Product Assurance Division, 2100 Second Street SW., Washington, DC 20593–0001.

6. Section 181.25 is revised to read as follows:

§ 181.25 Format of hull identification number.

(a) Each hull identification number required by § 181.23 must consist of the following 14 characters:

(1) The first two characters must be the alphabetic Code from column 2 of ISO 3166–88 indicating the country where the boat was manufactured.

(2) Characters three through five must be a manufacturer identification code assigned under § 181.31.

(3) Characters 6 through 10 must be a serial number assigned by the manufacturer or an issuing authority in English letters (except I, O, and Q), Arabic numerals, or both.

(4) Characters 11 and 12 must indicate the month and year of the date of manufacture, date of importation into the United States, or, if the boat is required to be certified, the date of certification. Character 11 must indicate the month by using the letter "A" for January, "B" for February, and so on until "L" for December. Character 12 must be an Arabic numeral indicting the last digit of the year.

(5) Characters 13 and 14 must indicate the model year using Arabic numerals for the last two numbers of the model year, such as "96" for 1996 and "97" for 1997.

(b) The characters must not be interrupted by slashes, hyphens, or spaces, except for a hyphen of at least 10 millimeters (.375 in.) in length following the first two characters.

7. Section 181.29 is revised to read as follows:

§ 181.29 Display of hull identification number.

(a) Two identical hull identification numbers must be displayed on the hull of each boat.

(b) Except as noted in paragraph (c) of this section, the primary hull identification number must be located as follows:

(1) On boats with transoms, to the starboard outboard side of the transom above the waterline and within two inches of the top of the transom, gunwale, or hull/deck joint, whichever is lowest.

(2) On boats without transoms or on boats on which it would be impractical to locate the number on the transom, to the starboard outboard side of the hull above the waterline, aft, within one foot of the stern and within two inches of the top of the transom, gunwale, or hull/deck joint, whichever is lowest.

(3) On catamarans and pontoon boats that have readily replaceable hulls, to the aft crossbeam, within one foot of the starboard hull attachment.

(4) On other boats with readily replaceable hulls, a boat manufacturer can use alternative locations with the written permission of the U.S. Coast Guard Recreational Boating Product Assurance Division at the address in § 181.24(b).

(c) If the hull identification number would not be readily visible if located as required under paragraph (b)(1) of this section (because of rails, fittings, swim platforms, or other accessories or transoms with reverse sheer), the number must be affixed in accordance with paragraph (b)(2) of this section.

(d) The duplicate hull identification number must be affixed in an unexposed location on the interior of the boat or beneath a fitting or item of hardware.

(e) Each hull identification number must be carved, burned, stamped, embossed, molded, bonded, or otherwise permanently affixed to the boat so that alteration, removal, or replacement would be obvious. If the number is on a separate plate attached by a mechanical means, such as by rivets or bolts, the plate must be attached by some additional means (such as with an epoxy glue) in such a manner that removal of the plate would normally cause some scarring of or damage to the surrounding hull area. A hull identification number must not be attached to parts of the boat that are removable.

(f) The characters of each hull identification number must be no less than one-fourth of an inch in height.

8. Section § 181.31 is revised to read as follows:

§ 181.31 Assignment of manufacturer identification code.

(a) To obtain the manufacturer identification code required by § 181.25(a)(2), each manufacturer, other than an importer, required under § 181.23(a) to identify a boat shall submit a written request to the U.S. Coast Guard Recreational Boating Product Assurance Branch, 2100 Second Street SW., Washington, DC 20593–0001. The request must indicate the manufacturer's name and U.S. address along with the general types and lengths of boats that will be manufactured. The request must also include a copy of the manufacturer's State business license or seller's permit.

(b) To obtain the manufacturer identification code required by § 181.25(a)(2), each importer required under § 181.23(a) to identify a boat shall submit a written request for a manufacturer identification code as required by paragraph (a) of this section. The request must indicate the importer's name and U.S. address along with a list of the manufacturers and their addresses, and the general types and lengths, of boats that will be imported. The request must also include a copy of the importer's State business license or seller's permit.

(c) The Coast Guard has assigned manufacturer identification codes to issuing authorities in the States for the assignment of hull identification numbers to persons who are required to identify boats under § 181.23(b).

(d) The Coast Guard may refuse to issue a manufacturer identification code and may revoke a previously issued code.

9. Section 181.35 is revised to read as follows:

§ 181.35 Removal of hull identification number.

No person may remove or alter a hull identification number without the written permission of the Commandant of the Coast Guard.

Dated: February 14, 1997.

N.T. Saunders,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Operations.

[FR Doc. 97–4360 Filed 2–20–97; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[AD–FRL–5692–2]

RIN 2060–AE66

National Ambient Air Quality Standards for Particulate Matter: Proposed Appendix L Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability of Supplemental Information.

SUMMARY: The purpose of this notice is to inform the public that EPA is considering minor technical changes to the proposed Federal Reference Method (FRM) for $PM_{2.5}$ sampling published on December 13, 1996. The nature of these changes include improvements in the inlet assembly to prevent precipitation inside the inlet and reduce solar heating, and other miscellaneous modifications to provide more reliable sampling capability. There may be unanticipated modifications, which will be described in the docket and elsewhere. A description of these changes will be placed in Docket No. A–95–54 and, when available posted on EPA's Technical Transfer Network/ Bulletin Board System (TTN/BBS). If EPA concludes that it is necessary to evaluate additional changes, these will be placed in the docket at a later date.

FOR FURTHER INFORMATION CONTACT: For questions regarding the FRM, contact Neil H. Frank at (919) 541–5560. For general questions regarding the NAAQS contact Patrica Koman at (919) 431–5170.

SUPPLEMENTARY INFORMATION:

Docket. Docket No. A–95–54, containing supporting information used in developing the aforementioned changes in the FRM hardware and/or method is available for public inspection and copying between 8 a.m. and 5:30 p.m. on weekdays, at the U. S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. A reasonable fee may be charged for copying.

Documents Available Electronically. An electronic version of this action as well as the December 13, 1996 **Federal Register** proposal notice will be available for download from EPA's TTN/BBS. The service is free, except for the cost of a telephone call. Dial (919) 541–5742 for data transfer of up to 14,400 bits per second. This information is available from both the Clean Air Act Amendments (CAAA) technical area and the Ambient Monitoring Technology Information Center (AMTIC) technical area. The TTN is also available via the Internet, TTN 2000 CAAA Internet Web site at www address (http://134.67.104.12/html/caaa/caaa.html#CAAM) and the AMTIC at www address (134.67.104.12/html/amtic/amtic.html#AMOI). For more information on the TTN, contact the systems operator at (919) 541–5384.

Dated: February 14, 1997.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 97–4329 Filed 2–20–97; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 63

[AD–FRL–5691–1]

RIN 2060–AD94

National Emission Standards for Hazardous Air Pollutants: Petroleum Refineries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes to expand and clarify definitions in the "National Emission Standards for Hazardous Air Pollutants: Petroleum Refineries", which was issued as a final rule on August 18, 1995. Because the revisions add and clarify definitions, the EPA does not anticipate receiving adverse comments. Consequently the revisions are also being issued as a direct final rule in the final rules section of this **Federal Register**. If no significant adverse comments are timely received, no further action will be taken with respect to this proposal and the direct final rule will become final on the date provided in that action.

DATES: *Comments.* Comments must be received on or before March 24, 1997 unless a hearing is required by March 10, 1997. If a hearing is requested, written comments must be received by April 22, 1997. If a hearing is held, it will take place on March 24, 1997 beginning at 10 a.m.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket

and Information Center (6102), Attention Docket Number A–93–48 (see docket section below), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The EPA requests that a separate copy also be sent to the contact person listed below.

Public Hearing. If a public hearing is held, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. JoLynn Collins, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–5671.

Docket. Docket No. A–93–48, containing the supporting information for the original national emission standards for hazardous air pollutants (NESHAP) and this action, are available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center (6102), 401 M Street SW, Washington DC 20460, or by calling (202) 260–7548. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. James Durham, Waste and Chemical Processes Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5672.

SUPPLEMENTARY INFORMATION: If no significant, adverse comments are timely received, no further activity is contemplated in relation to this proposed rule, and the direct final rule in the final rules section of this **Federal Register** will automatically go into effect on the date specified in that rule. If significant adverse comments are received the direct final rule will be withdrawn and all public comment received will be addressed in a subsequent final rule based on this proposed rule. Because the EPA will not institute a second comment period on this proposed rule, any parties interested in commenting should do so during this comment period.

For further supplemental information, the detailed rationale, and the rule provisions, see the information provided in the direct final rule in the final rules section of this **Federal Register**.

Executive Order 12866 Review

Under Executive Order 12866 [58 FR 51735, (October 4, 1993)], the EPA must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

1. Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;
2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
3. Materially alter the budgetary impact of entitlements, grants, user fees, or land programs or the rights and obligations of recipients thereof; or
4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Because today's action clarifies existing control requirements and does not add any additional control, monitoring, recordkeeping, or reporting requirements, this rule was classified "non-significant" under Executive Order 12866 and, therefore was not reviewed by OMB.

Regulatory Flexibility

The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that this rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule would not have a significant impact on a substantial number of small entities because it simply clarifies the applicability of control requirements in the Petroleum Refineries NESHAP, does not alter control, monitoring, recordkeeping, or reporting requirements, and does not include any provisions that create a burden for any of the regulated entities. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

Under the Unfunded Mandates Reform Act, the EPA must prepare a statement to accompany any rule where the estimated costs to State, local, or tribal governments, or to the private sector, will be $100 million or more per year. At the time of promulgation, the EPA determined that the petroleum refineries NESHAP does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate or to the private sector. This determination is not altered by today's action, the purpose of which is to add clarity and flexibility to existing requirements. Consequently, an unfunded mandates statement has not been prepared.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous air pollutants, Petroleum refineries, Reporting and recordkeeping requirements, Storage vessels.

Dated: February 11, 1997.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 97–4325 Filed 2–20–97; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 70

[AD–FRL–5689–5]

Clean Air Act Interim Approval of Operating Permits Program; State of Maine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes adding a sixth interim approval condition to its interim approval of the Operating Permits Program submitted by Maine for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources. In today's **Federal Register**, see the final interim approval granting Maine's program, EPA is granting source category-limited interim approval to Maine's Operating Permits Program subject to five conditions listed in that action.

DATES: Comments on this proposed action must be received in writing by March 24, 1997.

ADDRESSES: Comments should be addressed to Donald Dahl, Air Permits, CAP, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203–2211. Copies of the State's submittal and other supporting information used in developing the proposed interim approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 1, One Congress Street, 11th floor, Boston, MA 02203–2211.

FOR FURTHER INFORMATION CONTACT: Donald Dahl, CAP, U.S. Environmental Protection Agency, Region 1, JFK Federal Building, Boston, MA 02203–2211, (617) 565–4298.

I. Background and Purpose

A. Introduction

As required under title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act ("the Act")), EPA has promulgated rules which define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of State operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) part 70. Title V requires States to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that States develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the Part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years.

B. Federal Oversight and Sanctions

If EPA were to finalize this additional condition for interim approval, it would extend for two years following the effective date of final interim approval, which is 30 days from today. During the interim approval period, the State of Maine would be protected from sanctions, and EPA would not be obligated to promulgate, administer and enforce a Federal permits program for the State of Maine. Permits issued under a program with interim approval have full standing with respect to Part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of interim approval, as does the 3-year time period for processing the initial permit applications.[1]

[1] Note that states may require applications to be submitted earlier than required under section 503(c). See Chapter 140, Appendix C.3. of Maine's rules.

Following final interim approval, if the State of Maine failed to submit a complete corrective program for full approval by the date 6 months before expiration of the interim approval, EPA would start an 18-month clock for mandatory sanctions. If the State of Maine then failed to submit a corrective program that EPA found complete before the expiration of that 18-month period, EPA would apply sanctions as required by section 502(d)(2) of the Act, which would remain in effect until EPA determined that the State of Maine had corrected the deficiency by submitting a complete corrective program. If, six months after application of the first sanction, the State of Maine still has not submitted a corrective program that EPA finds complete, a second sanction will be required.

If, following final interim approval, EPA were to disapprove the State of Maine's complete corrective program, EPA would be required under section 502(d)(2) to apply sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the State of Maine had submitted a revised program and EPA had determined that it corrected the deficiencies that prompted the disapproval. If, six months after EPA applies the first sanction, the State of Maine has not submitted a revised program that EPA has determined corrected the deficiencies that prompted disapproval, a second sanction will be required.

Moreover, if EPA has not granted full approval to the State of Maine's program by the expiration of an interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a Federal permits program for the State of Maine upon interim approval expiration.

II. Proposed Action and Implications

A. Analysis of State Submission

This document focuses on adding a sixth condition for granting full approval of Maine's title V operating permits program. Maine's title V program, submitted on October 23, 1995, contained a list of "insignificant activities" that an applicant did not need to address in its application or have the activity listed in its permit unless that activity was subject to an applicable requirement. See 40 CFR 70.5(c). The list contained 156 activities and was developed by consolidating title V programs from several other States. EPA proposed approving this list, 61 FR 49289 (September 19, 1996). In part, EPA based its proposal to approve Maine's insignificant activity list on the fact that Maine's program requires that an activity, if subject to an applicable requirement, must be listed in a facility's application. In addition, EPA was not aware that any of the activities listed had emissions above what EPA considered insignificant.

On October 17, 1996, EPA received a comment from the Town of Jay stating that six of the activities listed in Maine's program had significant emissions. The activities the Town listed in its comments were: (1) Paper forming; (2) vacuum system exhaust; (3) liquor clarifier and storage tanks and associated pumping, piping, and handling; (4) stock cleaning and pressurized pulp washing; (5) broke beaters, repulpers, pulp and repulping tanks, stock chests and bulk pulp handling; and (6) sewer manholes, junction boxes, sumps and lift stations associated with wastewater treatment systems. According to the Town, total emissions from these activities at just one facility exceeds 1000 tons of volatile organic compounds (VOCs) per year. However, EPA also received a letter from an industrial facility claiming the emissions were overstated by the Town, and in fact were less than 100 tons of VOCs per year. The Maine DEP submitted a letter questioning the assumptions Jay made in projecting emission levels from these activities. Jay also submitted a second letter explaining its assumptions. All this correspondence is available in the docket supporting this action.

Based on all data EPA has received to date about the emissions from these activities, EPA concludes that the emissions from all of these activities can approach or exceed major source or major modification thresholds under the Act and therefore are not "insignificant" for the purposes of a title V application, even if there is no applicable requirement for these activities. Therefore, these six items should be removed from the list of insignificant activities. Maine still has flexibility; however, to tailor how much information about these activities a source would need to include in its application because it appears that there are no current applicable requirements for these activities. For example, EPA's "White Paper for Streamlined Development of Part 70 Permit Applications," dated July 10, 1995 suggests a general description of the emissions and emission units would suffice for units subject to no applicable requirements.

B. Proposed Action

The scope of Maine's Part 70 program covers all Part 70 sources within the

state of Maine, except any sources of air pollution over which an Indian Tribe has jurisdiction. *See, e.g.*, 59 FR 55813, 55815–18 (Nov. 9, 1994). The term "Indian Tribe" is defined under the Act as "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." *See* section 302(r) of the CAA; *see also* 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993). EPA is not taking any position in this action on whether any Federally recognized tribe in Maine has jurisdiction over sources of air pollution.

The EPA is proposing to add a sixth condition to Maine's source category-limited interim approval of the operating permits program submitted by Maine on October 24, 1995. If promulgated, the State must make, in addition to the five conditions stated in the final rules section of today's **Federal Register**, the following change in its rule to receive full approval:

1. Maine must remoye the following activities from Appendix B of Chapter 140 of the State's rules: (1) Paper forming; (2)vacuum system exhaust; (3) liquor clarifier and storage tanks and associated pumping, piping, and handling; (4) stock cleaning and pressurized pulp washing; (5) broke beaters, repulpers, pulp and repulping tanks, stock chests and bulk pulp handling; and (6) sewer manholes, junction boxes, sumps and lift stations associated with wastewater treatment systems.

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on this additional proposed interim approval condition. Copies of the State's submittal and other information relied upon for the proposed interim approval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed interim approval. The principal purposes of the docket are:

(1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and

(2) To serve as the administrative record in the event of judicial review. The EPA will consider any comments received by March 24, 1997.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. Additionally, it will not cost $100 million to operate or comply with this program.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 5, 1997.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 97–4328 Filed 2–20–97; 8:45 am]

BILLING CODE 6560–60–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–63, RM–9000]

Radio Broadcasting Services; Greenwood , AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Fred R. Morton, Jr. requesting the allotment of Channel 268A to Greenwood, Arkansas, as its second local FM transmission service. Coordinates used for Channel 268A at Greenwood are 35–12–54 and 94–15–30.

DATES: Comments must be filed on or before April 7, 1997, and reply comments on or before April 22, 1997.

ADDRESSES: Secretary, Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Fred R. Morton, Jr., 5103 North Cherry, Lawton, OK 73505.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–63, adopted February 7, 1997, and released February 14, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–4301 Filed 2–20–97; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 97–66; RM–8997]

Radio Broadcasting Services; Fredonia, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by JoeMyers Productions, Inc., proposing the allotment of Channel 221A at Fredonia, Kentucky, as the community's first local aural transmission service. Channel 221A can be allotted to Fredonia in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.2 kilometers (3.8 miles) northeast to avoid short-spacings to the licensed sites of Station WYNU(FM), Channel 222C, Milan, Tennessee, Station WBKR(FM), Channel 223C, Owensboro, Kentucky, and Station WMJL–FM, Channel 274A, Marion, Kentucky. The coordinates for Channel 221A at Fredonia are North Latitude 37–15–22 and West Longitude 88–01–49.

DATES: Comments must be filed on or before April 7, 1997, and reply comments on or before April 22, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John F. Garziglia, Esq., Pepper & Corazzini, L.L.P., 1776 K Street, NW., Suite 200, Washington, DC 20006 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–66, adopted February 7, 1997, and released February 14, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–4300 Filed 2–20–97; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 97–64; RM–9001]

Radio Broadcasting Services; Lexington, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Atlantis Broadcasting Co., L.L.C., proposing the allotment of Channel 258A at Lexington, Illinois, as the community's first local aural transmission service. Channel 258A can be allotted to Lexington in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.1 kilometers (5.1 miles) southwest to avoid short-spacings to the licensed sites of Station WAJK(FM), Channel 257B1, LaSalle, Illinois, and Station WUSN(FM), Channel 258B, Chicago, Illinois. The coordinates for Channel 258A at Lexington are North Latitude 40–35–15 and West Longitude 88–50–39.

DATES: Comments must be filed on or before April 7, 1997, and reply comments on or before April 22, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: James K. Edmundson, Esq., Gardner, Carton & Douglas, 1301 K Street, NW., Suite 900, East Tower, Washington, DC 20005 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–64, adopted February 7, 1997, and released February 14, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–4299 Filed 2–20–97; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 97–65; RM–9002]

Radio Broadcasting Services; Chewelah, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by LifeTalk Broadcasting Association proposing the allotment of Channel *283C3 at Chewelah, Washington, and its reservation for noncommercial educational use. Channel *283C3 can be

allotted to Chewelah in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.9 kilometers (3.0 miles) north to avoid a short-spacing to the licensed site of Station KEEH(FM), Channel 284A, Spokane, Washington. The coordinates for Channel *283C3 at Chewelah are North Latitude 48–19–17 and West Longitude 117–44–35. Since Chewelah is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been requested.

DATES: Comments must be filed on or before April 7, 1997, and reply comments on or before April 22, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Donald E. Martin, P.C., P.O. Box 19351, Washington, DC 20036 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–65, adopted February 7, 1997, and released February 14, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–4298 Filed 2–20–97; 8:45 am]

BILLING CODE 6712–01–P

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47 CFR Part 73

[MM Docket No. 97–57, RM–9016]

Radio Broadcasting Services; Hope, ND

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Vixon Valley Broadcasting seeking the allotment of Channel 284A to Hope, North Dakota, as the community's first local aural service. Channel 284A can be allotted to Hope in compliance with the Commission's minimum distance separation requirements, without the imposition of a site restriction, at coordinates 47–19–24 NL; 97–43–00 WL. Canadian concurrence in the allotment is required because the community is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before April 7, 1997, and reply comments on or before April 22, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Victor A. Michael, Jr., President, Vixon Valley Broadcasting, c/o Magic City Media, 1912 Capitol Avenue, Suite 300, Cheyenne, WY 82001 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–57, adopted February 7, 1997, and released February 14, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–4297 Filed 2–20–97; 8:45 am]

BILLING CODE 6712–01–P

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47 CFR Part 73

[MM Docket No. 97–62, RM–9008]

Radio Broadcasting Services; Orofino, ID

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Topaz Enterprises, Inc. proposing the allotment of Channel 253A to Orofino, Idaho, an incorporated community, as its second local FM transmission service. Coordinates used for Channel 253A at Orofino are 46–28–48 and 116–15–Q0. As Orofino, Idaho, is located within 320 kilometers (199 miles) of the Canadian border, the Commission must obtain the concurrence of the Canadian government to this proposal.

DATES: Comments must be filed on or before April 7, 1997, and reply comments on or before April 22, 1997.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner and its consultant, as follows: Topaz Enterprises, Inc., Attn: Dale A. Ganske, President, 5546–3 Century Avenue, Middleton, WI 53562 (Petitioner); and Larry G. Fuss, Contemporary Communications, P.O. Box 1787, Cleveland, MS 38732 (Consultant).

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–62, adopted February 7, 1997, and released February 14, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–4296 Filed 2–20–97; 8:45 am]

BILLING CODE 6712–01–P

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47 CFR Part 73

[MM Docket No. 97–59, RM–8976]

Radio Broadcasting Services; Clayton and Jena, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Clayton FM Partnership requesting the substitution of Channel 257A for Channel 300A to Clayton, Louisiana, and modification of Clayton FM's construction permit to reflect the alternate channel. To accommodate the channel change at Clayton, the Commission also proposes the substitution of Channel 274A for Channel 257A at Jena, Louisiana, and the modification of Station KJNA(FM)'s license to specify the alternate Class A channel. Channels 257A and 274A can be allotted to Clayton and Jena, respectively, in compliance with the Commission's minimum distance separation requirements. Channel 257A can be allotted to Clayton at the transmitter site specified Clayton FM's construction permit at coordinates 31–46–05 NL; 91–34–39 WL. Channel 274A can be allotted to Jena at KJNA's licensed transmitter site at 31–41–51 NL; 92–05–43 WL.

DATES: Comments must be filed on or before April 7, 1997, and reply comments on or before April 22, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Vincent J. Curtis, Jr., Fletcher, Heald & Hildreth, P.L.C., 1300 N. 17th Street, 11th Floor, Rosslyn, Virginia 22209 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–59, adopted February 7, 1997, and released February 14, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–4294 Filed 2–20–97; 8:45 am]

BILLING CODE 6712–01–P

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47 CFR Part 73

[MM Docket No. 97–58, RM–8998]

Radio Broadcasting Services; Randolph, UT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Vixon Valley Broadcasting proposing the allotment of Channel 272A to Randolph, Utah, as the community's first local aural transmission service. Channel 272A can be allotted to Randolph in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 272A at Randolph are 41–39–54 and 111–11–12.

DATES: Comments must be filed on or before April 7, 1997, and reply comments on or before April 22, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Victor A Michael Jr., President, Vixon Valley Broadcasting, c/o Magic City Media, 1912 Capitol Avenue, Suite 300, Cheyenne, WY 82001.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–58, adopted February 7, 1997, and released February 14, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–4293 Filed 2–20–97; 8:45 am]

BILLING CODE 6712–01–P

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47 CFR Part 73

[MM Docket No. 97–67; RM–8996]

Radio Broadcasting Services; Freeport, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Highland Broadcasting Company proposing the allotment of Channel 295A at Freeport, Illinois, as the community's third local FM transmission service. Channel 295A can be allotted to Freeport in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.4 kilometers (3.4 miles) north to avoid short-spacings to the licensed sites of Station WSWT(FM), Channel 295B, Peoria, Illinois, and Station WSJY(FM), Channel 297B, Fort Atkinson, Wisconsin. The coordinates for Channel 295A at Freeport are North Latitude 42–19–28 and West Longitude 89–35–13.

DATES: Comments must be filed on or before April 7, 1997, and reply comments on or before April 22, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Henry E. Crawford, Esq., 1150 Connecticut Ave., NW., Suite 900, Washington, DC 20036 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–67, adopted February 7, 1997, and released February 14, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–4292 Filed 2–20–97; 8:45 am]

BILLING CODE 6712–01–P

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47 CFR Part 73

[MM Docket No. 97–60, RM–8982]

Radio Broadcasting Services; Waynesboro and Collinwood, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Ohio Broadcast Associates requesting the reallotment of Channel 235C3 from Waynesboro to Collinwood, Tennessee, as the community's first local aural broadcast service, and the modification of Station WFRQ(FM)'s license to specify Collinwood as its community of license. Channel 235C3 can be allotted to Collinwood in compliance with the Commission's minimum distance separation requirements at the site specified in Station WFRQ(FM)'s license, at coordinates 35–08–16 and 87–49–43.

DATES: Comments must be filed on or before April 7, 1997, and reply comments on or before April 22, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Audrey Malkan, Owner, Ohio Broadcast Associates, 404 Avalon Avenue, Muscle Shoals, Alabama 35662 (petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–60, adopted February 7, 1997, and released February 14, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–4291 Filed 2–20–97; 8:45 am]

BILLING CODE 6712–01–P

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47 CFR Part 73

[MM Docket No. 97–61, RM–9010]

Radio Broadcasting Services; Superior, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Mountain Tower Broadcasting proposing the allotment of Channel 298A to Superior, Montana, as that community's first local broadcast service. The coordinates for Channel 298A are 47–11–30 and 114–53–18. Canadian concurrence will be requested for the allotment of Channel 298A at Superior.

DATES: Comments must be filed on or before April 7, 1997, and reply comments on or before April 22, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Victor A. Michael Jr., President, Mountain Tower Broadcasting, c/o Magic City Media, 1912 Capitol Avenue, Suite 300, Cheyenne, Wyoming 82001.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–61, adopted February 7, 1997, and released February 14, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC. 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–4290 Filed 2–20–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

[Docket No. PS–94; Notice 6]

RIN 2137–AB38

Qualification of Pipeline Personnel

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This document announces the first meeting of an advisory committee to conduct a negotiated rulemaking to develop a proposed rule on qualifications of pipeline employees performing certain safety-related functions on pipelines subject to the pipeline safety regulations. The advisory committee is composed of persons who represent the interests that would be affected by the rule, such as gas pipeline operators, hazardous liquid and carbon dioxide pipeline operators, representatives of state and federal governments, and other interested parties.

DATES: The advisory committee's first meeting will be held from 8:30 am to 5 pm on April 23–24, 1997.

ADDRESSES: The advisory committee meeting will be held in Room 3200–3204 at the U.S. Department of Transportation, Nassif Building, 400 7th Street SW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Eben M. Wyman, (202) 366–0918, regarding the subject matter of this Notice; or the Dockets Unit, (202) 366–4453, for copies of this document or other material in the docket.

SUPPLEMENTARY INFORMATION:

Congressional Mandates

Under sections 106 and 205 of the Pipeline Safety Act of 1992 (Pub. L. No. 102–508; October 24, 1992), 49 U.S.C. 60102, Congress mandated DOT to require that "all individuals responsible for the operation and maintenance of pipeline facilities be tested for qualifications and certified to perform such functions." Section 4 of the Accountable Pipeline Safety and Partnership Act of 1996 (Pub. L. No. 104–304; October 12, 1996), amended that mandate to require that "all individuals who operate and maintain pipeline facilities shall be qualified to operate and maintain the pipeline facilities." The new mandate retains the requirement that "qualifications applicable to an individual who operates and maintains a pipeline facility shall address the ability to recognize and react appropriately to abnormal operating conditions that may indicate a dangerous situation or a condition exceeding design limits. The operator of a pipeline facility shall ensure that employees who operate and maintain the facility are qualified to operate and maintain the pipeline facilities."

Notice of Intent To Form a Negotiated Rulemaking Committee

On July 2, 1996, RSPA issued a Notice of Intent (NOI) (61 FR 34410) to inform the public of RSPA's intent to form a Negotiated Rulemaking Committee to develop a proposed rule on the qualification of pipeline personnel who are engaged in pipeline operations, maintenance, and emergency-response functions. Concurrently with the issuance of the NOI, RSPA issued a Notice (61 FR 34413) withdrawing a previous Notice of Proposed Rulemaking in Docket No. PS–94 titled "Qualification of Pipeline Personnel" (59 FR 39506). The NOI listed interests that could be affected by a qualification rule and tentatively identified various organizations that could represent those interests. The NOI also invited comments on the issues to be negotiated, and invited interested parties to apply for appointment to the committee if they could demonstrate that their interests could not be adequately represented by the proposed committee members.

RSPA received over 20 comments to the NOI, all of which supported the negotiated rulemaking initiative. A few comments focused on the "Key Issues for Negotiation" in the NOI. These commenters requested a more general approach to the pipeline qualification issue, and urged RSPA to avoid involvement with specific pipeline-related functions. Further, a gas trade association said that it would be premature to discuss the "key issues," and suggested a number of basic "guiding principals" for discussions during the negotiation.

RSPA did not intend to limit the Committee's discussion to the "key issues" described in the NOI. RSPA is willing to address the comments to the NOI directly, or allow the representatives of these organizations to bring their concerns to the negotiating table. The meeting's agenda and processes will be left to the Committee's discretion, with the help of the facilitator. These procedural issues will be resolved at this initial meeting.

Members of the RSPA Negotiated Rulemaking Committee

As noted in the NOI, the Federal Mediation and Conciliation Service (FMCS) served as the convener of this negotiated rulemaking, and will be serving as the facilitator for the Negotiated Rulemaking Committee. RSPA representatives met with FMCS on several occasions to discuss the issues that needed to be addressed and the interests that needed to be represented on a negotiated rulemaking committee. FMCS contacted organizations that might be able to represent various interests, reviewed additional applications for representation, and drafted a tentative membership list. Each organization will be allowed one seat at the negotiating table. Subsequently, the following organizations were approved by the Secretary for membership on the Negotiated Rulemaking Committee:

1. American Gas Association (AGA)

The AGA represents a large number of gas distribution and a few transmission companies in the pipeline industry. AGA members consist of both large and small operators.

2. American Petroleum Institute (API)

API represents the interests of the hazardous liquid pipeline companies. API is the major trade association in the petroleum industry.

3. Interstate Natural Gas Association of America (INGAA)

INGAA consists mainly of the larger interstate gas transmission pipelines. INGAA represents the larger interstate gas transmission pipeline companies in the natural gas transportation industry.

4. American Public Gas Association (APGA)

APGA is a trade association of publicly-owned and municipal gas companies. APGA represents the interests of these municipalities, and although these public companies are generally small, they operate a large number of the distribution pipelines in American cities and suburbs.

5. National Propane Gas Association (NPGA)

NPGA consists of many companies that deal with transportation of propane gas. Members of NPGA are usually smaller operators, but the interests of the larger propane transportation companies are also represented.

6. Association of Texas Intrastate Natural Gas Pipelines

This association represents the interests of intrastate natural gas transmission pipelines. The Association's work with industry training organizations may contribute to development of the qualifications rule.

7. Midwest Gas Association (MGA)

MGA is a non-profit organization consisting of over 100 investor-owned utilities, municipal utilities, contractors, and manufacturers. Working with others in the gas pipeline transportation industry, MGA has developed many training programs, including those involving pipeline transportation.

8. National Association of Corrosion Engineers (NACE)

NACE is an organization of corrosion experts. Corrosion is the second most common source of pipeline failures, and NACE works primarily on issues of corrosion and corrosion control systems.

9. National Association of Pipeline Safety Representatives (NAPSR)

NAPSR is an organization of state pipeline safety programs. This organization represents the state pipeline safety program managers, most of whom would incorporate the Federal final rule on operator personnel qualifications into their state's pipeline safety program.

10. National Association of Regulatory Utility Commissioners (NARUC)

NARUC represents the interests of the state utility commissioners, who regulate gas rates and terms of service in most of the fifty states. The qualification rulemaking could have an impact on the costs of gas service incorporated in gas service rates.

11. National Association of Fire Marshals

This is a national organization consisting of state fire officials who have expertise on the issue of qualification for emergency response.

12. International Union of Operating Engineers (IUOE)

This labor organization represents the interests of many pipeline workers. IUOE represents 21,000 gas industry workers.

13. International Brotherhood of Electrical Workers (IBEW)

This labor organization represents a substantial number of pipeline construction and maintenance workers.

14. Office of Pipeline Safety (OPS)

OPS will serve as the representative of RSPA, representing the United States Government on the issue of operator personnel qualifications. The OPS representative will be the Designated Federal Official at the negotiations.

RSPA coordinated with FMCS throughout the convening process to identify and approach an environmental organization to serve on the committee. Although many environmental groups were contacted, none were interested in participating in the negotiation. Government agencies that are environmentally focused also assisted by soliciting participation through their mailing lists or on their Internet page. Some of these groups said that the issue was too narrowly focused to generate their interest or said they did not know enough about the issue to participate.

Environmental groups have had multiple opportunities to express their interest. RSPA solicited applications through the NOI and even named an environmental group as a likely participant. FMCS concluded that a good faith effort was made to include an environmental organization and, due to the lack of interest, suggested that the convening of the committee should proceed with the existing membership.

Conduct of Meeting

The initial meeting will be held from 8:30 am to 5:00 pm over a two-day period, and may conclude early on the second day depending on the progress of the Committee. Although these meetings will be open to the public, the amount of audience participation, if any, will be determined by the Committee.

At the initial meeting of the Committee, considerable explanation and training in the Negotiated Rulemaking process will be provided by FMCS. The Committee will also need to address and reach consensus on many procedural issues, such as the meeting(s) agenda, ground rules for members to follow when addressing the Committee, the procedure for keeping a record or "minutes" of the meeting(s), and a schedule for distribution of minutes for correction and concurrence prior to placing them in the public docket. Most importantly, the committee will need to agree on a timeline for the negotiation and a schedule of committee meetings.

RSPA believes that the negotiated rulemaking process will provide ample opportunity for all affected parties to present their views and to reach a consensus on a pipeline personnel qualifications rule.

Issued in Washington, D.C., on February 14, 1997.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 97–4275 Filed 2–20–97; 8:45 am]

BILLING CODE 4910–06–P

National Highway Traffic Safety Administration

49 CFR Part 541

[Docket No. 96–122; Notice 01]

RIN 2127–AG33

Preliminary Theft Data; Motor Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Publication of preliminary theft data; request for comments.

SUMMARY: This document requests comments on data about passenger motor vehicle thefts that occurred in calendar year (CY) 1995, including theft rates for existing passenger motor vehicle lines manufactured in model year (MY) 1995. The theft data preliminarily indicate that the vehicle theft rate for CY/MY 1995 vehicles (3.61 thefts per thousand vehicles) decreased by 13.4 percent from the theft rate for CY/MY 1994 vehicles (4.17 thefts per thousand vehicles).

Publication of these data fulfills NHTSA's statutory obligation to periodically obtain accurate and timely theft data, and publish the information for review and comment.

DATES: Comments must be submitted on or before April 22, 1997.

ADDRESSES: All comments should refer to the docket number and notice number cited in the heading of this document and be submitted, preferably with ten copies to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are from 9:30 am to 4:00 pm, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Ms. Proctor's telephone number is (202) 366–0846. Her fax number is (202) 493–2739.

SUPPLEMENTARY INFORMATION: NHTSA administers a program for reducing motor vehicle theft. The central feature of this program is the Federal Motor Vehicle Theft Prevention Standard, 49 CFR Part 541. The standard specifies performance requirements for inscribing or affixing vehicle identification numbers (VINs) onto certain major original equipment and replacement parts of high-theft lines of passenger motor vehicles.

The agency is required by 49 U.S.C. 33104(b)(4) to periodically obtain, from the most reliable source, accurate and timely theft data, and publish the data for review and comment. To fulfill the § 33104(b)(4) mandate, this document reports the preliminary theft data for CY 1995, the most recent calendar year for which data are available.

In calculating the 1995 theft rates, NHTSA followed the same procedures it used in calculating the MY 1994 theft rates. (For 1994 theft data calculations, see 61 FR 50069, September 24, 1996). As in all previous reports, NHTSA's data were based on information provided to NHTSA by the National Crime Information Center (NCIC) of the Federal Bureau of Investigation. The NCIC is a governmental system that receives vehicle theft information from nearly 23,000 criminal justice agencies and other law enforcement authorities throughout the United States. The NCIC data also include reported thefts of self-insured and uninsured vehicles, not all of which are reported to other data sources.

The 1995 theft rate for each vehicle line was calculated by dividing the number of reported thefts of MY 1995 vehicles of that line stolen during calendar year 1995, by the total number of vehicles in that line manufactured for MY 1995, as reported to the Environmental Protection Agency.

The preliminary 1995 theft data show a decrease in the vehicle theft rate when compared to the theft rate experienced in CY/MY 1994. The preliminary theft rate for MY 1995 passenger vehicles stolen in calendar year 1995 decreased to 3.61 thefts per thousand vehicles produced, a decrease of 13.4 percent from the rate of 4.17 thefts per thousand vehicles experienced by MY 1994 vehicles in CY 1994. For MY 1995 vehicles, out of a total of 207 vehicle lines, 86 lines had a theft rate higher than 3.5826 per thousand vehicles, the established median theft rate for MYs 1990/1991. (See 59 FR 12400, March 16, 1994). Of the 86 vehicle lines with a theft rate higher than 3.5826, 71 are passenger car lines, 12 are multipurpose passenger vehicle lines, and 3 are light-duty truck lines.

In Table I, NHTSA has tentatively ranked each of the MY 1995 vehicle lines in descending order of theft rate. Public comment is sought on the accuracy of the data, including the data for the production volumes of individual vehicle lines.

Comments must not exceed 15 pages in length (49 CFR Part 553.21). Attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for this document will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments on this document will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available for inspection in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Authority: 49 U.S.C. 33101, 33102 and 33104; delegation of authority at 49 CFR 1.50.

THEFT RATES OF MODEL YEAR 1995 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1995

	Manufacturer	Make/model (line)	Thefts 1995	Production (MFGR'S) 1995	1995 (per 1,000 vehicles produced) theft rate
1	TOYOTA	SUPRA	31	1,542	20.1038
2	MITSUBISHI	DIAMANTE	249	12,947	19.2323
3	CHRYSLER CORP	LEBARON COUPE/CONVERTIBLE	537	35,844	14.9816
4	MITSUBISHI	MONTERO	459	31,643	14.5056
5	CHRYSLER CORP.	DODGE SPIRIT	341	24,557	13.8861
6	TOYOTA	LEXUS GS	100	7,700	12.9870
7	CHRYSLER CORP.	PLYMOUTH ACCLAIM	308	23,761	12.9624
8	HONDA/ACURA	LEGEND	296	22,847	12.9557
9	PORSCHE	911	96	7,487	12.8222
10	HYUNDAI	SCOUPE	101	8,673	11.6453
11	MITSUBISHI	MIRAGE	692	60,209	11.4933
12	MITSUBISHI	EXPO	79	7,347	10.7527
13	BMW	M3	98	9,279	10.5615
14	MITSUBISHI	GALANT/SIGMA	676	80,384	8.4096
15	FORD MOTOR CO.	MUSTANG	1,388	165,831	8.3700
16	NISSAN	300ZX	28	3,624	7.7263
17	FORD MOTOR CO.	F150 PICKUP TRUCK	843	109,770	7.6797
18	NISSAN	ALTIMA	1,245	163,237	7.6269
19	FIAT	F355	4	529	7.5614
20	TOYOTA	LEXUS SC	120	15,915	7.5401
21	NISSAN	INFINITI Q45	64	8,579	7.4601
22	MITSUBISHI	ECLIPSE	435	61,045	7.1259
23	HONDA	PRELUDE	93	13,763	6.7572
24	HONDA/ACURA	2.5TL	3	444	6.7568
25	NISSAN	PATHFINDER	666	104,565	6.3692
26	NISSAN	240SX	157	25,114	6.2515
27	GENERAL MOTORS	OLDSMOBILE CUTLASS CIERA	769	123,593	6.2220
28	GENERAL MOTORS	CHEVROLET CORVETTE	124	19,949	6.2159
29	HYUNDAI	ELANTRA	298	50,215	5.9345
30	HONDA/ACURA	INTEGRA	411	72,753	5.6493
31	TOYOTA	4-RUNNER	565	101,650	5.5583
32	CHRYSLER CORP.	JEEP GRAND CHEROKEE	1,464	263,571	5.5545
33	PORSCHE	968	3	559	5.3667
34	MERCEDES BENZ	140(S–CLASS)	140	26,141	5.3556
35	TOYOTA	TERCEL	494	93,018	5.3108
36	GENERAL MOTORS	BUICK CENTURY	581	110,291	5.2679
37	MITSUBISHI	3000GT	82	15,597	5.2574
38	BMW	3	284	54,625	5.1991
39	MAZDA	626/MX–6	573	110,320	5.1940
40	CHRYSLER CORP.	TOWN & COUNTRY MPV	64	12,365	5.1759
41	GENERAL MOTORS	GEO TRACKER	266	51,400	5.1751
42	HONDA/ACURA	NSX	4	781	5.1216
43	NISSAN	MAXIMA	779	154,596	5.0389
44	TOYOTA	COROLLA/COROLLA SPORT	1,042	211,049	4.9372
45	HYUNDAI	SONATA	161	32,807	4.9075
46	CHRYSLER CORP.	DODGE STEALTH	22	4,497	4.8922
47	TOYOTA	PICKUP TRUCK	218	44,724	4.8743
48	CHRYSLER CORP.	PLYMOUTH NEON	843	173,510	4.8585
49	CHRYSLER CORP.	NEW YORKER/LHS	241	49,779	4.8414
50	CHRYSLER CORP.	JEEP WRANGLER	500	104,244	4.7964
51	CHRYSLER CORP.	EAGLE TALON	164	34,297	4.7818
52	CHRYSLER CORP.	PLYMOUTH VOYAGER/GRAND	782	163,590	4.7802
53	TOYOTA	CAMRY	1,489	314,047	4.7413
54	GENERAL MOTORS	CHEVROLET CORSICA	669	142,074	4.7088
55	MAZDA	MPV WAGON	77	16,379	4.7011
56	GENERAL MOTORS	CHEVROLET BERETTA	333	71,753	4.6409
57	CHRYSLER CORP.	DODGE NEON	943	203,881	4.6252
58	GENERAL MOTORS	PONTIAC TRANS SPORT	198	42,984	4.6064
59	SUZUKI	SIDEKICK	144	31,741	4.5367
60	FORD MOTOR CO.	LINCOLN TOWN CAR	488	107,707	4.5308
61	BMW	5	164	36,329	4.5143
62	CHRYSLER CORP.	DODGE CARAVAN/GRAND	976	217,893	4.4793
63	HYUNDAI	ACCENT	225	51,061	4.4065
64	CHRYSLER CORP.	EAGLE VISION	110	25,140	4.3755
65	FORD MOTOR CO.	ASPIRE	272	62,775	4.3329
66	HONDA	ACCORD	1,411	327,746	4.3052
67	MERCEDES BENZ	129(SL—CLASS)	36	8,380	4.2959
68	MAZDA	323/PROTEGE	352	82,433	4.2701

THEFT RATES OF MODEL YEAR 1995 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1995—Continued

	Manufacturer	Make/model (line)	Thefts 1995	Production (MFGR'S) 1995	1995 (per 1,000 vehicles produced theft rate
69	HONDA	PASSPORT	155	36,620	4.2327
70	GENERAL MOTORS	BUICK SKYLARK	220	52,743	4.1712
71	BMW	8	5	1,230	4.0650
72	CHRYSLER CORP.	INTREPID	611	151,118	4.0432
73	GENERAL MOTORS	CHEVROLET CAMARO	495	122,959	4.0257
74	GENERAL MOTORS	PONTIAC GRAND AM	1,055	262,739	4.0154
75	MAZDA	929	17	4,248	4.0019
76	GENERAL MOTORS	GEO PRIZM	408	103,820	3.9299
77	FORD MOTOR CO.	PROBE	229	58,275	3.9296
78	FORD MOTOR CO.	MERCURY TRACER	249	63,707	3.9085
79	NISSAN	INFINITI J30	77	20,117	3.8276
80	HONDA	CIVIC	1,242	325,199	3.8192
81	GENERAL MOTORS	OLDSMOBILE ACHIEVA	192	51,388	3.7363
82	FORD MOTOR CO.	LINCOLN MARK VIII	75	20,107	3.7300
83	MITSUBISHI	PICKUP TRUCK	37	9,991	3.7033
84	FORD MOTOR CO.	MERCURY SABLE	380	102,624	3.7028
85	CHRYSLER CORP.	DODGE AVENGER	121	33,055	3.6606
86	GENERAL MOTORS	PONTIAC FIREBIRD	187	51,279	3.6467
87	TOYOTA	LEXUS LS	80	22,659	3.5306
88	TOYOTA	CELICA	88	25,391	3.4658
89	ISUZU	PICKUP TRUCK	57	16,493	3.4560
90	FORD MOTOR CO.	MERCURY MYSTIQUE	229	66,690	3.4338
91	FORD MOTOR CO.	THUNDERBIRD	389	114,919	3.3850
92	NISSAN	INFINITI G20	59	17,457	3.3797
93	GENERAL MOTORS	CHEVROLET LUMINA APV	198	58,819	3.3663
94	KIA MOTORS	SEPHIA	68	20,250	3.3580
95	TOYOTA	PASEO	14	4,211	3.3246
96	NISSAN	SENTRA	425	128,110	3.3175
97	TOYOTA	LEXUS ES	128	38,608	3.3154
98	GENERAL MOTORS	GEO METRO	252	76,079	3.3123
99	JAGUAR	XJ6	40	12,195	3.2800
100	CHRYSLER CORP.	SEBRING	67	20,613	3.2504
101	FORD MOTOR CO.	ESCORT	1,186	364,969	3.2496
102	MAZDA	MX–3	28	8,627	3.2456
103	TOYOTA	MR2	1	309	3.2362
104	FORD MOTOR CO.	TAURUS	1,238	396,050	3.1259
105	FORD MOTOR CO.	CONTOUR	546	179,245	3.0461
106	CHRYSLER CORP.	JEEP CHEROKEE	376	123,859	3.0357
107	MAZDA	MILLENIA	134	45,891	2.9200
108	FORD MOTOR CO.	MERCURY COUGAR	170	60,279	2.8202
109	VOLKSWAGEN	GOLF III/GTI	60	21,285	2.8189
110	NISSAN	PICKUP TRUCK	479	173,383	2.7627
111	FORD MOTOR CO.	LINCOLN CONTINENTAL	88	32,816	2.6816
112	CHRYSLER CORP.	DODGE STRATUS	126	48,060	2.6217
113	VOLKSWAGEN	JETTA III	208	79,470	2.6173
114	GENERAL MOTORS	CHEVROLET CAVALIER	398	152,457	2.6106
115	CHRYSLER CORP.	DODGE DAKOTA PICKUP	307	117,873	2.6045
116	CHRYSLER CORP.	EAGLE SUMMIT	30	12,632	2.5791
117	GENERAL MOTORS	PONTIAC GRAND PRIX	341	132,266	2.5781
118	ISUZU	RODEO	231	89,961	2.5678
119	CHRYSLER CORP.	CIRRUS	158	61,913	2.5520
120	GENERAL MOTORS	GMC SAFARI	132	52,479	2.5153
121	GENERAL MOTORS	CHEVROLET CAPRICE	134	55,459	2.4162
122	MAZDA	MX–5 MIATA	47	19,822	2.3711
123	SUBARU	IMPREZA	69	29,916	2.3065
124	GENERAL MOTORS	OLDSMOBILE SILHOUETTE	40	17,347	2.3059
125	GENERAL MOTORS	OLDSMOBILE CUTLASS SUPREME	238	104,586	2.2756
126	SUZUKI	SAMURAI	1	440	2.2727
127	GENERAL MOTORS	CADILLAC DEVILLE/SIXTY SPECIAL	238	105,621	2.2533
128	GENERAL MOTORS	CHEVROLET S–10 PICKUP	530	245,938	2.1550
129	CHRYSLER CORP.	DODGE VIPER	3	1,431	2.0964
130	TOYOTA	TACOMA PICKUP TRUCK	162	79,946	2.0264
131	KIA MOTORS	SPORTAGE	21	10,473	2.0052
132	MAZDA	RX–7	1	501	1.9960
133	GENERAL MOTORS	CHEVROLET ASTRO	308	157,562	1.9548
134	GENERAL MOTORS	PONTIAC BONNEVILLE	179	92,140	1.9427
135	JAGUAR	XJ12	1	520	1.9231

THEFT RATES OF MODEL YEAR 1995 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1995—Continued

	Manufacturer	Make/model (line)	Thefts 1995	Production (MFGR'S) 1995	1995 (per 1,000 vehicles produced theft rate
136	GENERAL MOTORS	OLDSMOBILE CUTLASS CRUISER	17	8,865	1.9177
137	VOLKSWAGEN	PASSAT	30	15,712	1.9094
138	GENERAL MOTORS	CADILLAC ELDORADO	46	24,488	1.8785
139	TOYOTA	T100 PICKUP TRUCK	66	35,352	1.8669
140	GENERAL MOTORS	SATURN SC	111	59,912	1.8527
141	VOLVO	850	108	58,537	1.8450
142	MERCEDES BENZ	124 (E-CLASS)	58	31,583	1.8364
143	GENERAL MOTORS	CHEVROLET BLAZER S–10	405	221,093	1.8318
144	GENERAL MOTORS	PONTIAC SUNFIRE	97	53,129	1.8257
145	GENERAL MOTORS	GMC SONOMA TRUCK	108	59,435	1.8171
146	FORD MOTOR CO.	EXPLORER	468	260,844	1.7942
147	GENERAL MOTORS	SATURN SL	362	208,457	1.7366
148	GENERAL MOTORS	BUICK REGAL	155	90,290	1.7167
149	NISSAN	QUEST	111	65,072	1.7058
150	FORD MOTOR CO.	MERCURY GRAND MARQUIS	161	94,519	1.7034
151	TOYOTA	AVALON	100	60,370	1.6565
152	FORD MOTOR CO.	CROWN VICTORIA	106	64,247	1.6499
153	FORD MOTOR CO.	AEROSTAR	181	109,873	1.6474
154	FORD MOTOR CO.	WINDSTAR	523	321,744	1.6255
155	MERCEDES BENZ	202 (C—CLASS)	55	34,068	1.6144
156	GENERAL MOTORS	GMC JIMMY S–15	112	71,652	1.5631
157	TOYOTA	PREVIA	31	20,905	1.4829
158	JAGUAR	XJS	8	5,441	1.4703
159	GENERAL MOTORS	CHEVROLET LUMINA	477	337,623	1.4128
160	FORD MOTOR CO.	RANGER PICKUP	310	220,493	1.4059
161	SAAB	900	34	24,332	1.3973
162	SUBARU	LEGACY	106	78,271	1.3543
163	JAGUAR	XJR	1	750	1.3333
164	SUZUKI	SWIFT	7	5,330	1.3133
165	ISUZU	TROOPER	31	24,647	1.2578
166	MAZDA	B SERIES PICKUP	37	29,848	1.2396
167	SAAB	9000	9	7,338	1.2265
168	VOLVO	940	15	12,238	1.2257
169	BMW	7	22	17,960	1.2249
170	GENERAL MOTORS	CADILLAC SEVILLE	42	35,789	1.1735
171	GENERAL MOTORS	OLDSMOBILE AURORA	52	45,677	1.1384
172	GENERAL MOTORS	BUICK RIVIERA	45	39,626	1.1356
173	GENERAL MOTORS	CADILLAC FLEETWOOD	16	14,839	1.0782
174	AUDI	CABRIOLET	1	950	1.0526
175	FORD MOTOR CO	MERCURY VILLAGER (MPV)	81	87,745	0.9231
176	GENERAL MOTORS	SATURN SW	16	17,900	0.8939
177	CHRYSLER CORP	CONCORDE	46	51,524	0.8928
178	GENERAL MOTORS	BUICK LESABRE	144	163,726	0.8795
179	GENERAL MOTORS	OLDSMOBILE 88 ROYALE	59	70,346	0.8387
180	SUBARU	SVX	1	1,228	0.8143
181	VOLVO	960	11	14,228	0.7731
182	AUDI	90	3	4,475	0.6704
183	GENERAL MOTORS	BUICK PARK AVENUE	36	60,667	0.5934
184	AUDI	A6	5	8,492	0.5888
185	GENERAL MOTORS	OLDSMOBILE 98/TOURING	13	24,161	0.5381
186	GENERAL MOTORS	BUICK ROADMASTER	15	28,375	0.5286
187	HONDA	ODYSSEY	15	32,065	0.4678
188	SUZUKI	ESTEEM	2	4,466	0.4478
189	GENERAL MOTORS	GMC G15/25/35 VANDURA	4	31,897	0.1254
190	GENERAL MOTORS	CHEVROLET G10/20/30 VAN/SPORTVAN	12	102,383	0.1172
191	AUDI	S6	0	2,377	0.0000
192	FIAT	ALFA ROMEO 164	0	361	0.0000
193	FIAT	FERRARI 348	0	181	0.0000
194	FIAT	FERRARI 456	0	155	0.0000
195	FIAT	FERRARI 512	0	76	0.0000
196	FIAT	FERRARI F50	0	56	0.0000
197	GENERAL MOTORS	BUICK COACHBUILDER	0	98	0.0000
198	GENERAL MOTORS	GMC G15/25/35 RALLY	0	1,650	0.0000
199	LAMBORGHINI	DIABLO	0	285	0.0000
200	LOTUS	ESPIRIT	0	241	0.0000
201	PORSCHE	928	0	77	0.0000
202	ROLLS-ROYCE	BROOKLANDS	0	25	0.0000

THEFT RATES OF MODEL YEAR 1995 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1995—Continued

	Manufacturer	Make/model (line)	Thefts 1995	Production (MFGR'S) 1995	1995 (per 1,000 vehicles produced theft rate
203	ROLLS-ROYCE	CORNICHE/CONTINENTAL	0	105	0.0000
204	ROLLS-ROYCE	SIL SPIRIT/SPUR/MULS	0	132	0.0000
205	ROLLS-ROYCE	TURBO R	0	19	0.0000
206	VOLKSWAGEN	EUROVAN	0	1,814	0.0000
207	VOLVO	LIMOUSINE	0	6	0.0000

Issued on: February 18, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–4356 Filed 2–20–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 021097C]

New England Fishery Management Council; Mid-Atlantic Fishery Management Council; Public hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce

ACTION: Public hearings; request for comments.

SUMMARY: The New England Fishery Management Council and the Mid-Atlantic Fishery Management Council (Councils) will hold public hearings to receive comments on Amendment 9 to the Northeast Multispecies Fishery Management Plan (FMP). The Councils have determined a need for better management of the monkfish resource to stem the long-term decline in stock biomass, average size, and the proportion of mature fish. Management measures to reduce the catch of small monkfish will help resolve the problem, but additional reductions in landings and mortality are needed to stop overfishing. The Councils propose to reduce fishing effort in no more than 7 years through reductions in total allowable landings (TAL). The TAL reductions would be achieved through a combination of days-at-sea (DAS) limits, quotas, trip limits, limited access, size limits, and minimum mesh limits.

DATES: Written comments on Amendment 9 will be accepted through March 14, 1997. Testimony may be presented at the public hearings, which are scheduled to be held from February 24 to March 10, 1997. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: Direct written comments or requests for copies of the public hearing document, draft Amendment 9 document, or the draft Supplemental Environmental Impact Statement to Paul J. Howard, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906; telephone 617/231–0422, or David Keifer, Executive Director, Mid-Atlantic Fishery Management, 300 South New Street, Suite 2115, Dover, DE 19901; telephone 302/674–2331.

The hearings will be held in Maine, New Hampshire, Massachusetts, Rhode Island, New York, New Jersey, Maryland, Virginia, and North Carolina. See **SUPPLEMENTARY INFORMATION** for locations of the hearings and special accommodations.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, 617–231–0422.

SUPPLEMENTARY INFORMATION:

Background

Recent U.S. landings of monkfish have increased dramatically in response to an increase in the market value of the species in combination with the decline in abundance of traditional groundfish species. Most monkfish are taken as bycatch in the Northwest Atlantic groundfish and scallop fisheries, although directed effort is increasing. Directed effort is occurring in both deepwater (100–150 fathoms) by otter trawls and in shoal waters by gillnets and scallop dredges. Interest in fishing for monkfish has been fueled by the valuable liver market and increasing market acceptance of small monkfish tails. This trend is expected to continue, especially as fishermen seek alternatives to the traditional scallop and groundfish fisheries, which are now strictly regulated.

Management Measures by Area

Amendment 9 to the FMP would bring monkfish under Federal management authority throughout the Northeast region (Virginia to Maine). The Councils are proposing two management areas for monkfish, a northern fishery management area (NFMA) and a southern fishery management area (SFMA). The reason for the separation is partly based on the biological characteristics of the resource and partly based on the differences in fisheries in the Gulf of Maine versus areas to the south.

TAL targets have been established for the two fishery management areas and are consistent with the monkfish overfishing definition and the rebuilding strategy adopted by the Councils. Different management measures would apply to vessels fishing in these two management areas.

Limited Access Program

A limited access program for vessels that target and land large volumes of monkfish would be based on historic participation from February 28, 1991, to February 27, 1995 (the monkfish control date). Vessels must comply with the control date guidelines to be eligible for qualification. These limited access vessels could target monkfish under a seasonal quota or under a limited number of DAS, depending on the management measures in the final amendment.

Monkfish Selectivity

Limited access vessels would be required to use at least 10–inch (25.4–cm) square or 12–inch (30.5–cm) diamond mesh to target monkfish. This requirement is necessary to reduce the groundfish bycatch below the 5 percent threshold for a certified fishery as specified by Amendment 7 to the Multispecies FMP.

Amendment 9, which takes into account the effect of large mesh on bycatch, may open the monkfish limited access fishery in some areas. Other areas

may remain closed due to the prevalence of groundfish. This action would also supersede the previous framework adjustments for certain monkfish fisheries (the adjustment allowing vessels to use 8–inch (20.3–cm) mesh to target monkfish south of 40°10′ N. latitude). The Councils, therefore, anticipate that the limited access monkfish fishery could operate with 10–inch (25.4–cm) square and 12–inch (30.5–cm) diamond mesh in many areas, but other monkfish fisheries would require certification by the Regional Administrator according to the regulations established by Amendment 7.

Monkfish mesh selectivity with these large mesh nets is unknown. The body shape of monkfish, however, prevents even large changes in minimum mesh size from substantially improving monkfish selectivity. The proposed management alternatives, therefore, rely more on ceilings for total landings, trip limits and size limits to reduce fishing mortality.

Summary of Management Measures

The Councils prefer alternative 3 because it would not allow multispecies vessels to target monkfish, except under the multispecies DAS program. It also relies less on trip limits to control monkfish bycatch. Alternatives 1 and 4 are non-preferred. Both would meet the biological objectives but they would require lower trip limits to allocate more monkfish for the limited access fishery. This approach could cause increased discarding of monkfish, which would be unavoidable when vessels are fishing for other species.

The Councils considered but rejected Alternative 2 and a no action alternative. Alternative 2 would meet the management objectives for monkfish and allow some targeting of monkfish by vessels in the groundfish and scallop fisheries. It would not, however, prevent intensified fishing effort on monkfish. The no- action alternative would not prevent overfishing, would not meet the management objectives for monkfish, nor would it prevent increased fishing effort.

Management Measures Common to All Alternatives

1. TAL for the NFMA of 3,000 mt beginning on July 1, 1997. Future TALs reflect reductions in expected bycatch, while the limited access TAL allocations would remain constant.

2. TAL for the SFMA of 6,000 mt beginning on July 1, 1997. Future TALs reflect reductions in expected bycatch, while the limited access TAL allocations would remain constant.

3. A limited access program to control the number of vessels targeting monkfish with seasonal monkfish quotas or limits on the number of DAS for each qualifying vessel.

4. Minimum size limits—14 inches (35.6 cm) tail length, or 21 inches (53.3 cm) total length.

5. Landings of monkfish livers—25 percent of the total weight of tails, or 10 percent of the total weight of whole fish.

6. Dealer and vessel permitting requirements.

7. Mandatory reporting of landings and effort for each fishing trip.

8. A framework adjustment procedure to modify area closures, minimum size limits, minimum mesh sizes, liver ratios, bycatch trip limits, and other measures that regulate the limited access fisheries.

Management Alternatives

The three alternatives differ in how bycatch is defined and how directed fishing effort is regulated. The draft Amendment 9 document describes these alternatives in more detail.

Alternative 1 - Non-preferred

a. Trip limits and effort reductions, now in place, to manage the bycatch fisheries. The trip limits are specified by gear type, area, and permit category.

b. Seasonal quotas for limited access vessels.

Alternative 3 - Preferred

a. Unlike the other alternatives, monkfish would become a regulated multispecies and could be targeted by vessels with fleet or individual DAS. Monkfish would be a regulated species of concern, classified like cod, haddock, and yellowtail flounder.

b. Vessels without multispecies permits may qualify for fleet or individual monkfish-only DAS allocations, based on their history targeting and landing monkfish.

c. TALs are targets to be achieved through future adjustments to the management measures via the framework adjustment procedure.

d. Scallopers could land 5,000 lb (2.27 mt) (tail weight) per trip, or 400 lb (0.18 mt) (tail weight) per DAS, whichever is less.

Alternative 4 - Non-preferred

a. Qualifying vessels would be allocated fleet DAS to target monkfish. Multispecies vessels would be unable to target monkfish, unless they qualify based on their history of landing monkfish.

b. Annual DAS amounts would be determined from the monkfish allocation for the limited access fishery.

c. Trip limits for groundfish and scallop fisheries of 175 to 200 lb (0.08 to 0.09 mt) tail weight per DAS would be allowed.

Public Hearings

The dates, time, and locations of the hearings are scheduled as follows:

1. Monday, February 24, 1997, 7 p.m.—Urban Forestry Center, 45 Elwyn Road, Portsmouth, NH, telephone: 603/431–6774.

2. Wednesday, February 26, 1997, 7 p.m.—Sheraton Fontainbleau Hotel, 10100 Coastal Highway, Ocean City, MD, telephone: 410/638–2100.

3. Thursday, February 27, 1997, 7 p.m.—Double Tree Club Hotel, 880 Military Highway, Norfolk, VA, telephone: 757/461–9192.

4. Friday, February 28, 1997, 7 p.m.—Holiday Inn, 1001 Virginia Dare Trail, Nags Head, NC, telephone: 919/441–6333.

5. Saturday, March 1, 1997, 10:30 a.m.—Samoset Resort, 220 Warrenton Street, Rockport, ME, telephone: 207/594–2511.

6. Monday, March 3, 1997, 7 p.m.—Howard Johnson Hotel, 955 Hooper Avenue, Toms River, NJ, telephone: 908/244–1000.

7. Tuesday, March 4, 1997, 7:30 p.m.—Holiday Inn, 3845 Veterans Memorial Highway, Ronkonkoma, NY, telephone: 516/585–9500.

8. Wednesday, March 5, 1997, 7 p.m.—Holiday Inn at the Crossings, 800 Greenwich Avenue, Warwick, RI, telephone: 401/732–6000.

9. Thursday, March 6, 1997, 7 p.m.—Tara Hyannis, West End Circle, Hyannis, MA, telephone: 508/775–7775.

10. Friday, March 7, 1997, 1 p.m.—Sadler Function Hall, Sadler Street Extension, Gloucester, MA, telephone: 508/281–8665.

11. Monday, March 10, 1997, 7 p.m.—Radisson Eastland Hotel, 157 High Street, Portland, ME, telephone: 207/775–5418.

12. Monday, March 17, 1997, 1:30 p.m. to 5:30 p.m.—Seaport Inn, 110 Middle Street, Fairhaven, MA, telephone: 508/997–1281.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 13, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–4265 Filed 2–20–97; 8:45 am]

BILLING CODE 3510–22–F

50 CFR Part 679

[Docket No. 970206022–7022–01; I.D. 012197C]

RIN 0648–AJ35

Fisheries in the Exclusive Economic Zone Off Alaska; Modify Prior Notice of Landing Requirement

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement a regulatory amendment to the Individual Fishing Quota (IFQ) Program for fixed gear Pacific halibut and sablefish fisheries in and off Alaska. This action would redefine the length of time within which a 6–hour prior notice of landing is valid and require that a new prior notice of IFQ landing be submitted to NMFS if the landing originally reported will take place either before or more than 2 hours after the date and time scheduled in the original prior notice of IFQ landing. This action is necessary to reinforce the enforcement rationale underlying the original requirement and improve compliance with IFQ regulations. This action is intended to improve the IFQ Program's ability to manage Pacific halibut and sablefish resources efficiently.

DATES: Comments on the proposed rule and Regulatory Impact Review (RIR) must be received by March 24, 1997.

ADDRESSES: Comments must be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, Room 453, 709 West 9th Street, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802, Attention: Lori J. Gravel. Copies of the RIR for this action may be obtained from the same address.

FOR FURTHER INFORMATION CONTACT: James Hale, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

The fixed gear halibut and sablefish fisheries are managed by the IFQ Program, a limited access system for fixed gear Pacific halibut (*Hippoglossus stenolepis*) and sablefish (*Anoplopoma fimbria*) fisheries in and off Alaska. The North Pacific Fishery Management Council (Council), under authority of the Magnuson-Stevens Fishery Conservation and Management Act and the Northern Pacific Halibut Act of 1982 (Halibut Act), recommended the IFQ Program, which NMFS implemented in 1995. The IFQ Program was designed to reduce excessive fishing capacity, while maintaining the social and economic character of the fixed gear fishery and the Alaskan coastal communities where many of these fishermen are based.

In the implementing rules for the IFQ Program, NMFS requires that a vessel operator wishing to land IFQ species notify NMFS no less than 6 hours prior to the landing and include in this notification the name and location of the registered buyer to whom the fish will be landed and the anticipated date and time of landing (§ 679.5(l)(1)(i)). The intent of this prior-notice regulation is to provide NMFS with advance notice of a pending landing so that NMFS Enforcement personnel may be present to monitor the landing and ensure compliance with program regulations.

After the first 2 years of the IFQ Program, NMFS has found that this regulation does not adequately serve the enforcement function and proposes to revise it to reflect more clearly the intended purpose of the 6–hour prior notice requirement. The current regulations do not require fishermen to make the landing at the time scheduled in the prior-notice report; they are restricted only from making the landing before 6 hours have elapsed since the prior-notice report was submitted. Moreover, the current regulation requires only an "anticipated date and time of landing" and states that the prior-notice report must be given "no fewer than 6 hours before the landing." The prior notice of landing can be waived at the discretion of clearing officers on a case-by-case basis, but NMFS Enforcement can neither enforce an "anticipated date and time" nor currently require fishermen to land at the time reported in the prior-notice report as long as the landing is not made within 6 hours from the time the prior-notice report is submitted. The current regulation prevents efficient use of enforcement resources, because it fails to require that fishermen land IFQ species at the time scheduled in the prior notice (or within a reasonable time thereof) so that enforcement personnel may be present for the landing.

NMFS proposes a regulatory amendment to modify the requirement by defining the length of time within which a 6–hour prior notice is valid. This action would require that fishermen land IFQ species at the time specified in the prior notice or within 2 hours after the specified time. In the event that a vessel does not make the landing within the 2–hour limit on an original prior-notice report, this action would require the vessel operator to submit a new prior-notice report subject to all the requirements of the original report. Note also that a vessel operator wishing to make a landing earlier than the time originally scheduled in a prior-notice report must still have a 6–hour margin of time within which to submit a new 6–hour prior notice of landing.

Also, the current regulations require that the prior-notice report include the name and location of the registered buyer to whom a landing will be made. "Location" may be misinterpreted to mean the business address of the registered buyer rather than, as was intended, the actual location of the landing. This action would clarify that the prior notice report must provide NMFS with the location of the landing.

The prior-notice report is crucial to NMFS Enforcement's ability to monitor IFQ landings. The proposed regulatory change would improve a reporting requirement that is necessary to the integrity of the program as a conservation and management tool.

Classification

This proposed rule contains a collection-of-information requirement subject to the Paperwork Reduction At (PRA). The requirement for a 6–hour prior notice of IFQ landings has been approved by the Office of Management and Budget (OMB) Control Number 0648–0272. Public reporting burden for this collection of information is estimated to average 12 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through use of automated collection techniques or other forms of information technology. Send comments on this or another aspects of the information collection to NMFS (See ADDRESSES) above, and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer).

Not withstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply

with, a collection of information subject to the requirements of the PRA, unless that collection displays a currently valid OMB Control Number.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows.

This change constitutes a minor regulatory amendment needed to reinforce the intended purpose of the 6–hour prior notice of landing. The current regulations do not require, as was intended, fishermen to make the landing at the time scheduled in the Prior Notice; they are restricted only from making the landing before 6 hours have elapsed since the Prior Notice was given. This action would define the length of time within which a 6–hour prior notice is valid and require that fishermen land IFQ species at the time specified in the prior notice or within 2 hours after the specified time.

The estimate of the reporting burden associated with the prior notice of landing is .2 hours and $2.00 per response, as described in the Supporting Statement for Collection of Information submitted for OMB authorization of the IFQ Program (OMB control number 0648–0272). NMFS expects instances when a vessel operator inadvertently miscalculates the expected time of landing and thus needs to submit an additional prior notice to be relatively infrequent. Hence, the economic impact of this rule would not be significant.

Therefore, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR 679

Fisheries, Reporting and recordkeeping requirements.

Dated: February 13, 1997.

Nancy Foster

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*

2. In § 679.5, paragraph (l)(1)(i)(B) is revised and paragraph (l)(1)(i)(D) is added to read as follows:

§ 679.5 Recordkeeping and reporting.

* * * * *

(l) * * *

(1) * * *

(i) * * *

(B) Notification must include: Name of the registered buyer(s) to whom the IFQ halibut or IFQ sablefish will be landed and the location of the landing; vessel identification; estimated weight of the IFQ halibut or IFQ sablefish that will be landed; identification number(s) of the IFQ card(s) that will be used to land the IFQ halibut or IFQ sablefish; and the date and time that the landing will take place.

* * * * *

(D) The operator of any vessel wishing to land IFQ halibut or IFQ sablefish before the date and time reported in the prior notice or later than 2 hours after the date and time reported in the prior notice must submit a new prior notice of IFQ landing in compliance with the provisions set forth in paragraphs (l)(1)(i)(A) through (C) of this section.

* * * * *

[FR Doc. 97–4263 Filed 2–20–97; 8:45 am]

BILLING CODE 3510–22–F

50 CFR Part 697

[I.D. 021197A]

RIN 0648–AH58

Atlantic Weakfish Fisheries; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearings; request for comments.

SUMMARY: NMFS will hold three public hearings to receive comments from fishery participants and other members of the public regarding proposed regulations on the harvest and possession of weakfish in the exclusive economic zone of the Atlantic Ocean from Maine through Florida.

DATES: Written comments on the proposed rule and supporting documents (Draft Supplemental Environmental Impact Statement and Regulatory Impact Review (DSEIS/RIR) must be received on or before March 17, 1997. The public hearings will be held during the month of March. See **SUPPLEMENTARY INFORMATION** for dates and times of the public hearings.

ADDRESSES: Written comments should be sent to Richard H. Schaefer, Chief, Staff Office of Intergovernmental and Recreational Fisheries (Fx2), National Marine Fisheries Service, 8484 Georgia Avenue, Suite 425, Silver Spring, MD 20910. Clearly mark the outside of the envelope "Atlantic Weakfish Comments." The public hearings will be held in New Jersey, Delaware, and North Carolina. See **SUPPLEMENTARY INFORMATION** for the public hearing locations.

FOR FURTHER INFORMATION CONTACT: Thomas Meyer/Paul Perra, 301–427–2014.

SUPPLEMENTARY INFORMATION: The proposed regulations are necessary to be compatible with rules already implemented by the coastal states through the Atlantic States Marine Fisheries Commission's Amendment 3 to the Interstate Fishery Management Plan for Weakfish, and to ensure the rebuilding of the weakfish stock along the east coast of the Atlantic Ocean.

A complete description of the measures, and the purpose and need for the proposed action, is contained in the proposed rule published on February 14, 1997 (62 FR 6935) and is not repeated here. Copies of the proposed rule may be obtained by writing (see **ADDRESSES**) or calling the contact person (see **FOR FURTHER INFORMATION CONTACT**).

To accommodate people unable to attend a hearing or wishing to provide additional comments, NMFS also solicits written comments on the proposed rule.

The public hearings will be held as follows:

Tuesday, March 4, 1997, Cape May Court House, NJ 7–9 p.m.

Rutgers' Cooperative Extension Office
355 South Dennis/Court House Road (Route 657)
Cape May Court House, NJ 08210

Thursday, March 6, 1997, Manteo, NC, 7–9 p.m.

North Carolina Aquarium
Airport Road
Manteo, NC 27954

Monday, March 10, 1997, Dover, DE, 7:30–9 p.m.

Department of Natural Resources
Environmental Control Auditorium
89 Kings Highway
Dover, DE 19903

The purpose of this document is to alert the interested public of hearings and provide for public participation. These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas Meyer by February 25, 1997 (see **ADDRESSES**).

Authority: 16 U.S.C. 5101 *et seq.*

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–4349 Filed 2–20–97; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agriculture Research Service

Notice of Federal Invention Available for Licensing and Intent to Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of availability and intent.

SUMMARY: Notice is hereby given that a Federally owned invention, U.S. Plant Patent Application Serial No. 08/634,149, filed April 19, 1996, entitled "Tift 94 Bermudagrass" is available for licensing and that the U.S. Department of Agriculture, Agricultural Research Service intends to grant to The University of Georgia Research Foundation of Athens, Georgia, an exclusive license for U.S. Plant Patent Application Serial No. 08/634,149.

DATES: Comments must be received by May 22, 1997.

ADDRESSES: Send comments to: USDA, ARS, Office of the Director, National Center for Agricultural Utilization Research, Room 2042, 1815 N. University Street, Peoria, Illinois 61604.

FOR FURTHER INFORMATION CONTACT: Andrew Watkins of the National Center for Agricultural Utilization Research at the Peoria address given above; telephone: 309–681–6545.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as The University of Georgia Research Foundation has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within ninety days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

R.M. Parry, Jr.,
Assistant Administrator.

[FR Doc. 97–4248 Filed 2–20–97; 8:45 am]
BILLING CODE 3410–03–M

Animal and Plant Health Inspection Service

[Docket No. 97–006–1]

Calgene, Inc.; Receipt of Petition for Determination of Nonregulated Status for Genetically Engineered Cotton

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from Calgene, Inc., seeking a determination of nonregulated status for cotton lines designated as BXN® with Bt cotton lines derived from transformation events 31807 and 31808 that have been genetically engineered for tolerance to the herbicide bromoxynil and for resistance to lepidopteran insect pests. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether these cotton lines present a plant pest risk.

DATES: Written comments must be received on or before April 22, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–006–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–006–1. A copy of the petition and any comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing access to that room to inspect the petition or comments are asked to call in advance of visiting at (202) 690–2817.

FOR FURTHER INFORMATION CONTACT: Dr. James White, BSS, PPQ, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–7612. To obtain a copy of the petition, contact Ms. Kay Peterson at (301) 734–7612; e-mail: mkpeterson@aphis.usda.gov.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles."

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for determination of nonregulated status must take and the information that must be included in the petition.

On January 13, 1997, APHIS received a petition (APHIS Petition No. 97–013–01p) from Calgene, Inc., (Calgene) of Davis, CA, requesting a determination of nonregulated status under 7 CFR part 340 for bromoxynil-tolerant and lepidopteran insect-resistant cotton lines designated as BXN® with BT derived from transformation events 31807 and 31808 (events 31807 and 31808). The Calgene petition states that the subject cotton lines should not be regulated by APHIS because they do not present a plant pest risk.

As described in the petition, events 31807 and 31808 have been genetically engineered to express a nitrilase enzyme isolated from *Klebsiella pneumoniae* subsp. *ozaenae* which degrades the herbicide bromoxynil, and a CryIA(c) insect control protein originally derived from *Bacillus thuringiensis* subsp. *kurstaki* HD–73 (Bt). The subject cotton lines also contain the *nptII* gene which codes for the enzyme neomycin phosphotransferase and has been used as a selectable marker in the development of the transgenic cotton plants. Expression of the introduced genes is controlled in part by noncoding DNA sequences derived from the plant pathogens *Agrobacterium tumefaciens* and cauliflower mosaic virus. The *Agrobacterium* transformation system was used to transfer the added genes into the *Gossypium hirsutum* (var. Coker 130) parental plants.

The subject cotton lines are currently considered regulated articles under the regulations in 7 CFR part 340 because they contain gene sequences derived from plant pathogenic sources. Events 31807 and 31808 have been evaluated in field trials conducted since 1994 under APHIS notifications. In the process of reviewing the notifications for field trials of these cotton lines, APHIS determined that the vectors and other elements were disarmed and that the trials, which were conducted under conditions of reproductive and physical containment or isolation, would not present a risk of plant pest introduction or dissemination.

In the Federal Plant Pest Act, as amended (7 U.S.C. 150aa *et seq.*), "plant pest" is defined as "any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants." APHIS views this definition very broadly. The definition covers direct or indirect injury, disease, or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

The U.S. Environmental Protection Agency (EPA) is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136 *et seq.*). FIFRA requires that all pesticides, including insecticides and herbicides, be registered prior to distribution or sale, unless exempt by EPA regulation. Accordingly, the plant pesticide active ingredient Bt CryIA(c) delta-endotoxin will be regulated by EPA under an existing registration. In cases in which the genetically modified plant allows for a new or different use pattern for an herbicide, the EPA must approve the new or different use.

Residue tolerances for pesticides are established by the EPA under the Federal Food, Drug and Cosmetic Act (FFDCA) (21 U.S.C. 201 *et seq.*), and the Food and Drug Administration (FDA) enforces tolerances set by the EPA under the FFDCA.

The FDA published a statement of policy on foods derived from new plant varieties in the **Federal Register** on May 29, 1992 (57 FR 22984–23005). The statement of policy includes a discussion of the FDA's authority for ensuring food safety under the FFDCA, and provides guidance to industry on the scientific considerations associated with the development of foods derived from new plant varieties, including those plants developed through the techniques of genetic engineering. Calgene has entered into the consultative process with the FDA on the subject cotton lines.

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the Petition for Determination of Nonregulated Status from any interested person for a period of 60 days from the date of this notice. The petition and any comments received are available for public review, and copies of the petition may be ordered (see the **ADDRESSES** section of this notice).

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. Based on the available information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of Calgene's BXN® with Bt cotton lines derived from transformation events 31807 and 31808 and the availability of APHIS' written decision.

Authority: 7 U.S.C. 150aa–150jj, 151–167, and 1622n; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 14th day of February 1997.

Terry L. Medley,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–4308 Filed 2–20–97; 8:45 am]
BILLING CODE 3410–34–P

Commodity Credit Corporation

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Commodity Credit Corporation's (CCC) intention to request an extension for and revision to a currently approved information collection in support of the CCC's Dairy Export Incentive Program (DEIP) based on re-estimates.

DATES: Comments on this notice must be received by April 22, 1997.

ADDITIONAL INFORMATION OR COMMENTS: Contact L.T. McElvain, Director, Commodity Credit Corporation Operations Division, Foreign Agricultural Service, U.S. Department of Agriculture, AgBox 1035, Washington, DC 20250–1035, telephone (202) 720–6211.

SUPPLEMENTARY INFORMATION:

Title: CCC's Dairy Export Incentive Program (DEIP).

OMB Number: 0551–0029.

Expiration Date of Approval: June 30, 1997.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The major objectives of the DEIP are to expand U.S. dairy exports and to encourage other countries exporting agricultural commodities to undertake serious negotiations on agricultural trade problems. At the current time, more than 112 countries and 3 country regions are targeted destinations under the program and more than 226 exporters are eligible to participate. Under 7 CFR Part 1494, exporters are required to submit the following: (1) information required for program participation (section 1494.301), (2) performance security (section 1494.401), (3) export sales information in connection with applying for a CCC bonus (section 1494.501), (4) evidence of export and related information (section 1494.701), and (5) evidence that the eligible commodity entered into the eligible country (section 1494.401). In addition, each exporter must maintain accurate records showing sales and deliveries of the eligible commodity exported in connection with an agreement made under the DEIP as outlined in section 1494.1001. The information collected is

used by CCC to manage, plan for and evaluate the use of, and account for Government resources. The reports and records are required to ensure the proper and judicious use of public funds.

Estimate of Burden: The public reporting burden for these collections is estimated to average .3722 hours per response.

Respondents: U.S. exporters of U.S. dairy products, U.S. banks or other financial institutions, dairy associations, U.S. export trade associations, and U.S. Government agencies.

Estimated Number of Respondents: 47 per annum.

Estimated Number of Responses per Respondent: 64 per annum.

Estimated Total Annual Burden of Respondents: 1,119.58 hours.

Copies of this information collection can be obtained form Valerie Countiss, the Agency Information Collection Coordinator, at (202) 720–6713.

Requests for comments: Send comments regarding (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to L.T. McElvain, Director, Commodity Credit Corporation Operations Division, Foreign Agricultural Service, U.S. Department of Agriculture, AgBox 1035, Washington, DC 20250–1035.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Christopher E. Goldthwait,

General Sales Manager, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. 97–4108 Filed 2–20–97; 8:45 am]

BILLING CODE 3410–10–M

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Commodity Credit Corporation's (CCC) intention to request an extension for and revision to a currently approved information collection in support of the CCC's Export Enhancement Program (EEP) based on re-estimates.

DATES: Comments on this notice must be received by April 22, 1997.

ADDITIONAL INFORMATION OR COMMENTS: Contact L. T. McElvain, Director, Commodity Credit Corporation Operations Division, Foreign Agricultural Service, U.S. Department of Agriculture, AgBox 1035, Washington, DC 20250–1035, telephone (202) 720–6211.

SUPPLEMENTARY INFORMATION:

Title: CCC's Export Enhancement Program (EEP).

OMB Number: 0551–0028.

Expiration Date of Approval: June 30, 1997.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The major objectives of the EEP are to expand U.S. agricultural exports and to challenge unfair trade practices by paying cash to exporters as bonuses, allowing them to sell U.S. agricultural products in targeted countries at competitive prices. At the current time, more than 87 countries and 5 country regions are targeted export destinations under the program and more than 311 exporters are eligible to participate. Under 7 CFR part 1494, exporters are required to submit the following: (1) information required for program participation (section 1494.301), (2) performance security (section 1494.401), (3) export sales information in connection with applying for a CCC bonus (section 1494.501), (4) evidence of export and related information (section 1494.701), and (5) evidence that the eligible commodity entered into the eligible country (section 1494.401). In addition, each exporter must maintain accurate records showing sales and deliveries of the eligible commodity exported in connection with an agreement made under the EEP as outlined in section 1494.1001. The information collected is used by CCC to manage, plan for and evaluate the use of, and account for Government resources. The reports and records are required to ensure the proper and judicious use of public funds.

Estimate of Burden: The public reporting burden for these collections is estimated to average .3535 hours per response.

Respondents: U.S. exporters of U.S. agricultural commodities, U.S. banks or other financial institutions, producer associations, U.S. export trade associations, and U.S. Government agencies.

Estimated Number of Respondents: 40 per annum.

Estimated Number of Responses per Respondent: 139 per annum.

Estimated Total Annual Burden of Respondents: 1,965.46 hours.

Copies of this information collection can be obtained from Valerie Countiss, the Agency Information Collection Coordinator, at (202) 720–6713.

Requests for comments: Send comments regarding (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to L.T. McElvain, Director, Commodity Credit Corporation Operations Division, Foreign Agricultural Service, U.S. Department of Agriculture, AgBox 1035, Washington, DC 20250–1035.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Christopher E. Goldthwait,

General Sales Manager, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. 97–4109 Filed 2–20–97; 8:45 am]

BILLING CODE 3410–10–M

ASSASSINATION RECORDS REVIEW BOARD

Formal Determinations, Releases, Designation, Reconsideration, and Corrections

AGENCY: Assassination Records Review Board.

ACTION: Notice.

SUMMARY: The Assassination Records Review Board (Review Board) met in a closed meeting on January 29–30, 1997, and made formal determinations on the release of records under the President John F. Kennedy Assassination Records Collection Act of 1992 (Supp. V 1994) (JFK Act). By issuing this notice, the Review Board complies with the section of the JFK Act that requires the Review Board to publish the results of its decisions on a document-by-document basis in the **Federal Register** within 14 days of the date of the decision.

FOR FURTHER INFORMATION CONTACT: T. Jeremy Gunn, General Counsel and Associate Director for Research and Analysis, Assassination Records Review Board, 600 E St., NW., Second Floor, Washington, D.C. 20530, (202) 724–0088, fax (202) 724–0457.

SUPPLEMENTARY INFORMATION: This notice complies with the requirements of the President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. § 2107.9(c)(4)(A) (1992). On January 29–30, 1997, the Review Board made formal determinations on records it reviewed under the JFK Act. These determinations are listed below. The assassination records are identified by the record identification number assigned in the President John F. Kennedy Assassination Records Collection database maintained by the National Archives.

Notice of Formal Determinations

For each document, the number of releases of previously redacted information immediately follows the record identification number, followed in turn by the number of postponements sustained, and, where appropriate, the date the document is scheduled to be released or re-reviewed.

FBI Documents: Open in Full
124–10128–10191; 10; 0; n/a
124–10128–10197; 11; 0; n/a
124–10163–10139; 1; 0; n/a
124–10167–10450; 11; 0; n/a
124–10185–10114; 2; 0; n/a
124–10189–10029; 3; 0; n/a
124–10234–10394; 11; 0; n/a
124–10234–10396; 3; 0; n/a
124–10235–10045; 3; 0; n/a
124–10235–10047; 5; 0; n/a
124–10237–10258; 9; 0; n/a
124–10237–10295; 7; 0; n/a
124–10259–10083; 12; 0; n/a
124–10259–10309; 2; 0; n/a
124–10263–10263; 5; 0; n/a
124–10263–10331; 9; 0; n/a
124–10263–10332; 7; 0; n/a
124–10263–10394; 9; 0; n/a
124–10263–10402; 8; 0; n/a
124–10263–10403; 8; 0; n/a
124–10263–10406; 6; 0; n/a
124–10263–10407; 4; 0; n/a
124–10264–10348; 3; 0; n/a
124–10265–10025; 3; 0; n/a
124–10265–10363; 11; 0; n/a
124–10265–10448; 2; 0; n/a
124–10266–10001; 3; 0; n/a
124–10268–10153; 7; 0; n/a
124–10272–10231; 19; 0; n/a
CIA Documents: Open in Full
104–10012–10017; 8; 0; n/a
104–10013–10274; 3; 0; n/a
104–10067–10007; 1; 0; n/a
USSS Documents: Open in Full
154–10002–10430; 5; 0; n/a
Office of the Secretary of Defense Documents: Open in Full
195–10004–10001; 1; 0; n/a
195–10004–10002; 1; 0; n/a
195–10004–10003; 1; 0; n/a
FBI Documents: Postponed in Part
124–10031–10007; 3; 1; 01/2007
124–10031–10293; 0; 2; 01/2007
124–10044–10072; 3; 4; 01/2007
124–10046–10313; 3; 1; 01/2007
124–10050–10186; 1; 1; 10/2017
124–10053–10347; 0; 1; 10/2017
124–10058–10419; 18; 2; 01/2007
124–10059–10118; 10; 3; 01/2007
124–10063–10229; 30; 24; 01/2007
124–10073–10090; 10; 3; 01/2007
124–10086–10157; 29; 2; 01/2007
124–10118–10393; 7; 3; 01/2007
124–10129–10308; 1; 1; 10/2017
124–10131–10126; 7; 3; 01/2007
124–10136–10002; 1; 1; 10/2017
124–10138–10036; 16; 7; 01/2007
124–10144–10091; 0; 1; 10/2017
124–10144–10092; 0; 2; 10/2017
124–10144–10093; 19; 2; 10/2017
124–10144–10095; 4; 13; 10/2017
124–10151–10109; 1; 1; 01/2007
124–10151–10264; 18; 2; 01/2007
124–10160–10065; 3; 1; 01/2007
124–10160–10402; 1; 1; 01/2007
124–10161–10016; 8; 5; 01/2007
124–10171–10425; 18; 20; 01/2007
124–10173–10044; 29; 2; 01/2007
124–10175–10037; 19; 2; 10/2017
124–10177–10365; 10; 3; 01/2007
124–10179–10107; 19; 5; 01/2007
124–10179–10108; 16; 3; 01/2007
124–10184–10313; 30; 24; 01/2007
124–10187–10049; 0; 2; 10/2017
124–10237–10296; 3; 4; 01/2007
124–10250–10229; 0; 2; 01/2007
124–10250–10245; 29; 2; 01/2007
124–10251–10033; 3; 1; 01/2007
124–10251–10316; 3; 1; 01/2007
124–10256–10146; 3; 1; 01/2007
124–10259–10019; 18; 2; 01/2007
124–10259–10330; 1; 1; 01/2007
124–10267–10302; 18; 2; 01/2007
124–10269–10159; 3; 1; 01/2007
124–10270–10080; 1; 1; 01/2007
124–10049–10139; 1; 1; 01/2007
124–10180–10124; 3; 1; 01/2007
124–10180–10250; 18; 3; 01/2007
124–10181–10339; 11; 3; 10/2017
124–10182–10310; 2; 3; 10/2017
124–10182–10417; 11; 6; 01/2007
124–10184–10157; 7; 2; 10/2017
124–10188–10261; 7; 1; 01/2007
124–10189–10024; 4; 4; 01/2007
124–10228–10341; 9; 2; 01/2007
124–10231–10312; 2; 2; 01/2007
124–10231–10316; 4; 4; 01/2007
124–10231–10326; 4; 4; 01/2007
124–10231–10336; 4; 4; 01/2007
124–10231–10339; 2; 2; 01/2007
124–10243–10003; 11; 6; 01/2007
124–10245–10256; 6; 2; 01/2007
124–10248–10186; 1; 1; 01/2007
124–10253–10096; 1; 1; 01/2007
124–10263–10356; 4; 2; 01/2007
124–10263–10408; 2; 2; 01/2007
124–10265–10035; 0; 1; 01/2007
124–10266–10025; 12; 3; 01/2007
124–10266–10027; 5; 2; 01/2007
124–10266–10111; 2; 2; 01/2007
124–10270–10024; 5; 2; 01/2007
124–10270–10448; 17; 8; 01/2007
124–10276–10019; 24; 6; 01/2007
CIA Documents: Postponed in Part
104–10051–10152; 0; 2; 05/1997
104–10051–10153; 13; 4; 05/1997
104–10052–10015; 78; 34; 01/2007
104–10054–10051; 361; 10; 01/2007
104–10054–10060; 44; 19; 10/2017
104–10054–10287; 96; 100; 05/1997
104–10059–10337; 67; 33; 05/1997
104–10063–10125; 3; 3; 01/2007
104–10063–10276; 3; 2; 01/2007
104–10063–10279; 5; 4; 01/2007
104–10063–10295; 14; 12; 01/2007
104–10063–10297; 2; 2; 01/2007
104–10063–10322; 16; 12; 05/1997
104–10063–10331; 1; 1; 01/2007
104–10063–10333; 16; 12; 05/1997
104–10063–10339; 12; 21; 01/2007
104–10063–10340; 2; 4; 01/2007
104–10063–10347; 3; 3; 01/2007
104–10063–10349; 3; 3; 01/2007
104–10065–10028; 0; 36; 05/1997
104–10065–10085; 26; 19; 05/1997
104–10065–10197; 4; 6; 05/2001
104–10065–10288; 1; 2; 10/2017
104–10066–10006; 5; 5; 05/1997
104–10066–10031; 6; 6; 01/2007
104–10066–10051; 1; 2; 10/2017
104–10066–10066; 5; 19; 05/1997
104–10066–10107; 6; 6; 05/1997
104–10066–10133; 13; 18; 05/1997
104–10066–10226; 4; 1; 05/1997
104–10066–10235; 8; 9; 05/1997
104–10067–10117; 3; 9; 05/1997
104–10067–10190; 2; 1; 10/2017
104–10067–10209; 2; 10; 05/1997
104–10067–10251; 1; 1; 10/2017
104–10067–10291; 11; 9; 01/2007
104–10067–10378; 29; 3; 10/2017
104–10067–10420; 4; 9; 05/1997
104–10068–10115; 1; 4; 05/1997
104–10068–10119; 10; 12; 01/2007
104–10068–10166; 22; 8; 01/2007
104–10068–10168; 12; 7; 05/1997
104–10068–10170; 20; 7; 05/1997
104–10068–10174; 3; 3; 10/2017

The following documents contained postponements that were scheduled for

re-review on 12/1996. Those postponements were reviewed on January 30, 1997 with the following results:

104–10012–10022; 3; 4; 05/1997
104–10012–10035; 5; 7; 05/1997
104–10015–10261; 57; 19; 05/1997
104–10054–10018; 35; 36; 05/1997
104–10054–10366; 7; 30; 05/1997
104–10055–10058; 2; 28; 05/1997
104–10055–10125; 146; 2; 10/2017
104–10057–10096; 2; 39; 09/2006
104–10057–10117; 1; 6; 09/2006
104–10061–10080; 1; 9; 05/1997
104–10061–10208; 15; 15; 05/1997
104–10061–10261; 4; 5; 05/1997
104–10061–10265; 4; 6; 05/1997
104–10061–10315; 4; 4; 05/1997
104–10061–10325; 17; 7; 05/1997
104–10062–10160; 13; 1; 10/2017
104–10062–10207; 9; 9; 10/2017
USSS Documents: Postponed in Part
154–10002–10428; 0; 5; 10/2017
154–10002–10429; 3; 2; 10/2017
HSCA Documents: Postponed in Part
180–10077–10403; 0; 1; 10/2017
180–10078–10492; 0; 1; 10/2017
180–10089–10489; 0; 1; 10/2017
180–10089–10490; 0; 1; 10/2017
180–10089–10492; 0; 1; 10/2017
180–10104–10298; 0; 4; 10/2017
180–10104–10299; 0; 6; 10/2017
180–10104–10335; 0; 2; 10/2017
180–10104–10340; 0; 2; 10/2017
180–10108–10017; 0; 5; 10/2017
180–10110–10029; 11; 98; 05/1997
180–10110–10061; 1; 1; 05/1997
180–10110–10074; 0; 2; 10/2017
180–10110–10078; 4; 4; 05/2001
180–10110–10108; 0; 4; 05/1997
180–10110–10113; 0; 1; 05/1997
180–10110–10121; 3; 4; 10/2017
180–10110–10123; 1; 29; 05/1997
180–10110–10124; 2; 2; 05/1997
180–10110–10125; 0; 14; 05/1997
180–10110–10147; 0; 1; 05/1997
180–10118–10087; 0; 2; 10/2017
180–10131–10332; 9; 62; 05/1997
180–10140–10100; 0; 3; 01/2007
180–10140–10102; 1; 1; 05/1997
180–10140–10107; 0; 1; 05/1997
180–10140–10117; 6; 1; 01/2007
180–10140–10126; 9; 2; 05/1997
180–10140–10131; 1; 1; 01/2007
180–10140–10147; 1; 1; 01/2007
180–10140–10182; 0; 3; 05/1997
180–10140–10185; 1; 1; 05/1997
180–10140–10245; 1; 2; 05/1997
180–10140–10246; 12; 8; 05/1997
180–10140–10266; 3; 1; 10/2017
180–10140–10267; 3; 1; 10/2017
180–10140–10268; 2; 1; 10/2017
180–10140–10320; 2; 1; 05/1997
180–10140–10336; 14; 4; 05/1997
180–10140–10341; 0; 2; 05/2001
180–10140–10350; 12; 1; 01/2007
180–10140–10351; 12; 1; 01/2007
180–10140–10368; 0; 9; 01/2007
180–10140–10374; 0; 2; 05/1997
180–10140–10381; 58; 3; 05/1997
180–10140–10449; 1; 1; 10/2017
180–10141–10094; 1; 1; 10/2017
180–10141–10154; 1; 1; 05/1997
180–10141–10168; 4; 1; 01/2007
180–10141–10304; 0; 3; 05/1997
180–10141–10313; 62; 42; 05/1997
180–10141–10481; 2; 1; 05/2001
180–10141–10490; 11; 2; 10/2017
180–10141–10491; 28; 9; 05/1997
180–10141–10498; 18; 2; 10/2017
180–10142–10001; 12; 4; 10/2017
180–10142–10002; 5; 4; 05/1997
180–10142–10010; 5; 6; 05/1997
180–10142–10012; 4; 2; 05/2001
180–10142–10016; 4; 1; 10/2017
180–10142–10024; 2; 1; 05/1997
180–10142–10040; 1; 1; 05/1997
180–10142–10061; 12; 8; 05/1997
180–10142–10076; 34; 13; 05/1997
180–10142–10078; 35; 3; 05/1997
180–10142–10080; 1; 6; 05/2001
180–10142–10086; 28; 14; 05/1997
180–10142–10088; 5; 1; 01/2007
180–10142–10089; 2; 1; 05/1997
180–10142–10092; 13; 6; 05/2001
180–10142–10099; 0; 1; 05/1997
180–10142–10101; 3; 29; 05/1997
180–10142–10102; 2; 1; 10/2017
180–10142–10114; 12; 4; 05/1997
180–10142–10117; 3; 9; 05/1997
180–10142–10122; 17; 6; 05/2001
180–10142–10127; 9; 2; 10/2017
180–10142–10129; 13; 4; 05/2001
180–10142–10133; 19; 5; 05/2001
180–10142–10135; 12; 4; 10/2017
180–10142–10160; 18; 5; 10/2017
180–10142–10162; 25; 4; 05/1997
180–10142–10174; 8; 9; 01/2007
NSA Documents: Postponed in Part:
144–10001–10119; 9; 9; 10/2017

Notice of Additional Releases

After consultation with appropriate Federal Agencies, the Review Board announces that the following Federal Bureau of Investigation records are now being opened in full: 124–10003–10052; 124–10003–10385; 124–10003–10395; 124–10003–10402; 124–10003–10462; 124–10023–10256; 124–10027–10415; 124–10029–10267; 124–10029–10391; 124–10031–10145; 124–10035–10390; 124–10039–10485; 124–10058–10058; 124–10058–10078; 124–10058–10087; 124–10061–10458; 124–10062–10389; 124–10062–10400; 124–10065–10074; 124–10067–10124; 124–10067–10267; 124–10067–10268; 124–10067–10271; 124–10081–10383; 124–10085–10201; 124–10085–10319; 124–10089–10177; 124–10094–10029; 124–10103–10218; 124–10108–10346; 124–10118–10374; 124–10121–10020; 124–10126–10320; 124–10129–10086; 124–10130–10251; 124–10135–10139; 124–10137–10135; 124–10138–10016; 124–10138–10065; 124–10140–10116; 124–10147–10142; 124–10148–10032; 124–10153–10000; 124–10155–10276; 124–10158–10028; 124–10158–10029; 124–10160–10018; 124–10162–10023; 124–10162–10068; 124–10163–10222; 124–10164–10474; 124–10168–10001; 124–10168–10013; 124–10168–10022; 124–10168–10029; 124–10168–10030; 124–10168–10034; 124–10168–10039; 124–10170–10002; 124–10170–10007; 124–10170–10014; 124–10170–10020; 124–10171–10007; 124–10172–10076; 124–10173–10069; 124–10173–10378; 124–10173–10399; 124–10174–10453; 124–10175–10340; 124–10176–10178; 124–10177–10012; 124–10179–10105; 124–10179–10106; 124–10179–10263; 124–10180–10224; 124–10180–10227; 124–10180–10235; 124–10180–10240; 124–10180–10246; 124–10180–10292; 124–10180–10299; 124–10180–10301; 124–10181–10189; 124–10181–10254; 124–10181–10286; 124–10181–10306; 124–10182–10276; 124–10182–10282; 124–10182–10324; 124–10182–10337; 124–10182–10339; 124–10182–10342; 124–10182–10346; 124–10182–10354; 124–10182–10358; 124–10182–10364; 124–10182–10416; 124–10183–10200; 124–10184–10021; 124–10184–10099; 124–10184–10104; 124–10184–10118; 124–10184–10128; 124–10184–10149; 124–10184–10219; 124–10184–10261; 124–10185–10106; 124–10185–10108; 124–10185–10120; 124–10185–10223; 124–10185–10239; 124–10185–10262; 124–10187–10146; 124–10187–10205; 124–10188–10073; 124–10188–10074; 124–10188–10082; 124–10188–10086; 124–10188–10095; 124–10188–10107; 124–10188–10108; 124–10188–10111; 124–10188–10112; 124–10188–10117; 124–10188–10124; 124–10188–10128; 124–10188–10129; 124–10188–10131; 124–10188–10184; 124–10188–10186; 124–10188–10234; 124–10188–10310; 124–10188–10313; 124–10188–10328; 124–10188–10333; 124–10188–10336; 124–10188–10342; 124–10188–10468; 124–10188–10471; 124–10190–10001; 124–10190–10003; 124–10190–10019; 124–10190–10021; 124–10190–10025; 124–10190–10027; 124–10190–10033; 124–10190–10041; 124–10190–10047; 124–10190–10067; 124–10190–10069; 124–10229–10403; 124–10230–10436; 124–10233–10377; 124–10238–10312; 124–10239–10212; 124–10243–10001; 124–10243–10017; 124–10246–10233; 124–10253–10103; 124–10257–10409; 124–10260–10275; 124–10264–10170; 124–10265–10483; 124–10267–10470; 124–10267–10491; 124–10270–10004; 124–10270–10019; 124–10270–10037; 124–10273–10117; 124–10273–10297; 124–10273–10374; 124–10274–10039; 124–10274–10286; 124–10274–10293; 124–10274–10294; 124–10275–10209; 124–10275–10216; 124–10275–10220; 124–10275–10224

After consultation with appropriate Federal Agencies, the Review Board announces that the following House Select Committee on Assassination records are now being opened in full: 180–10065–10357; 180–10065–10358; 180–10065–10362; 180–10065–10385; 180–10066–10437; 180–10066–10438; 180–10066–10439; 180–10066–10440; 180–10066–10492; 180–10066–10494; 180–10069–10443; 180–10069–10449; 180–10071–10108; 180–10071–10109; 180–10071–10110; 180–10071–10168; 180–10072–10351; 180–10074–10033; 180–10074–10055; 180–10074–10305; 180–10076–10005; 180–10076–10009; 180–10076–10195; 180–10076–10197; 180–10076–10198; 180–10076–10210; 180–10076–10236; 180–10077–10275; 180–10077–10277; 180–10078–10018; 180–10078–10019; 180–10078–10020; 180–10078–10297; 180–10078–10298; 180–10078–10299; 180–10078–10343; 180–10078–10356; 180–10078–10357; 180–10078–10359; 180–10078–10476; 180–10078–10479; 180–10080–10017; 180–10081–10402; 180–10084–10203; 180–10085–10136; 180–10085–10137; 180–10085–10399; 180–10085–10474; 180–10085–10476; 180–10085–10480; 180–10086–10265; 180–10087–10439; 180–10088–10069; 180–10091–10172; 180–10091–10230; 180–10091–10477; 180–10091–10478; 180–10091–10488; 180–10091–10491; 180–10093–10004; 180–10096–10375; 180–10096–10397; 180–10096–10404; 180–10096–10412; 180–10096–10414; 180–10096–10415; 180–10096–10416; 180–10096–10461; 180–10097–10293; 180–10099–10252; 180–10100–10006; 180–10100–10007; 180–10100–10017; 180–10100–10019; 180–10100–10021; 180–10100–10022; 180–10100–10023; 180–10100–10024; 180–10100–10025; 180–10100–10026; 180–10100–10027; 180–10101–10173; 180–10101–10216; 180–10101–10335; 180–10101–10371; 180–10101–10372; 180–10101–10373; 180–10102–10301; 180–10102–10302; 180–10102–10303; 180–10102–10304; 180–10102–10305; 180–10102–10307; 180–10102–10308; 180–10102–10309; 180–10102–10310; 180–10102–10311; 180–10102–10312; 180–10102–10313; 180–10102–10314; 180–10102–10329; 180–10104–10332; 180–10104–10333; 180–10104–10334; 180–10104–10336; 180–10104–10337; 180–10104–10338; 180–10104–10339; 180–10104–10341; 180–10104–10361; 180–10104–10460; 180–10108–10000; 180–10112–10100; 180–10112–10102; 180–10112–10177; 180–10113–10433; 180–10120–10321; 180–10147–10279

Notice of Assassination Records Designation

Designation: On January 30, 1997, the Assassination Records Review Board designated the following United States Secret Service materials assassination records: "Protect Subject Abstract" CASE NR: 127–671–0018686 (four pages)

Notice of Reconsideration

On January 29–30, 1997, the CIA provided additional evidence to the Review Board regarding four documents that previously had been voted upon by the Review Board at meetings reported at **Federal Register** Notice 97–492, 62 FR 1311. Upon receiving and evaluating this additional evidence, the Review Board voted to sustain postponements as follows:

Record No.	Number of original releases	Number of original postponements	Number of revised releases	Number of revised postponements	Date of revised re-review
104–10004–10213	19	9	18	10	05/1997
104–10051–10106	4	4	5	10	05/1997
104–10054–10007	85	4	84	5	12/2006
104–10055–10072	83	4	82	5	12/2006

On January 29–30, 1997, the FBI provided additional evidence to the Review Board regarding three documents that previously had been voted upon by the Review Board at meetings reported at **Federal Register** Notices FR Doc. 96–19278, 61 FR 39624, FR Doc. 96–13838, 61 FR 28158, and FR Doc. 15835, 61 FR 31917. Upon receiving and evaluating this additional evidence, the Review Board voted to sustain postponements as follows:

Record No.	Number of original releases	Number of original postponements	Number of revised releases	Number of revised postponements	Date of revised re-review
124–10035–10387	10	0	11	3	01/2007
124–10172–10033	4	11	10	3	10/2017
124–10273–10136	69	27	68	28	10/2017

On September 27, 1996, the Review Board made formal determinations that were published in the October 18, 1996 **Federal Register** (FR Doc. 96–26742, 61 FR 54411). At its January 29–30, 1997 meeting, the Review Board voted to withdraw its votes on the following CIA document for reconsideration at a future meeting: 180–10078–10478.

On December 16–17, 1996, the Review Board made formal determinations that were published in the January 9, 1997 **Federal Register** (FR Doc. 97–492, 62 FR 1311). At its January 29–30, 1997 meeting, the Review Board voted to withdraw its votes on the following CIA documents for reconsideration at a future meeting: 104–10009–10224, 104–10012–10080.

Notice of Correction

In its implementation of the JFK Act, the Federal Bureau of Investigation inadvertently assigned two record identification numbers (124–10237–10162 and 124–10240–10037) to the same assassination record. The Review Board's final determinations regarding this assassination record were published in the November 5, 1996 **Federal Register** (see FR Doc. 96–28333, 61 FR 56937) under record number 124–10237–10162. The FBI subsequently notified the Review Board of the prior inadvertent assignment of two record identification numbers, and of the FBI's decision to use 124–10240–10037 as the sole record identification number henceforward. Accordingly, the assassination record in question is being processed and released to the public, pursuant to the Review Board's determinations, as record identification number 124–10240–10037.

Dated: February 14, 1997.
David G. Marwell,
Executive Director.
[FR Doc. 97–4226 Filed 2–20–97; 8:45 am]
BILLING CODE 6118–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.
ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.
EFFECTIVE DATE: March 24, 1997.
ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.
FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.
SUPPLEMENTARY INFORMATION: On October 4, 25 and December 30, 1996, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (61 FR 51881, 55268 and 68706) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.
2. The action will not have a severe economic impact on current contractors for the commodities and services.
3. The action will result in authorizing small entities to furnish the commodities and services to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Stakes/Lath, Survey, Wood
5510–00–NSH–0044 thru –0097
(Requirements for the USDA Forest Service, Fort Jones, CA)

Xerographic Paper
7530–01–156–9775
7530–01–157–1015

Services

Administrative Services, General Services Administration, PBS, Northwest/Arctic Region
Commissary Shelf Stocking and Custodial, Fort Monroe, Virginia

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,
Executive Director.
[FR Doc. 97–4341 Filed 2–20–97; 8:45 am]
BILLING CODE 6353–01–P

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled
ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.
EFFECTIVE DATE: March 24, 1997.
ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.
FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.
SUPPLEMENTARY INFORMATION: On December 30, 1996, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (61 F.R. 30223) of proposed addition to the Procurement List. Comments were received from one current contractor for patient examining gloves. The contractor took issue with the statement concerning impact on small entities that appeared in the notice of proposed rulemaking and with the idea of nonprofit agencies employing people who are blind or have other severe disabilities having preference over other contractors.

The statement in the notice of proposed rulemaking to which the first contractor objected was a conclusion by the Committee, required by the Regulatory Flexibility Act, that it did not appear that the proposed addition to the Procurement List would have a severe impact on a significant number of small entities. Because the addition will only affect a small number of contractors, the Committee believes this statement was correct. As for the contractor's objection to the JWOD Program, it should be noted that the Program was created by statute to help the large number of people who are blind or have other severe disabilities and who cannot obtain or have difficulty obtaining other employment. By creating the JWOD Program, the Congress recognized that some other Government contractors would lose business opportunities.

The Committee is only adding a portion of the Government requirement covered by this MAS to the Procurement List. Other contractors will continue to be able to supply gloves using the MAS, under which no contractor has any guarantee of receiving a specific level of sales. The Committee will monitor the number of gloves sold by the nonprofit agency to assure the maximum annual amount set aside for the JWOD Program is not exceeded. If that point is reached, the nonprofit agency will be instructed to discontinue marketing its gloves under the JWOD name. Under these circumstances, the Committee does not believe that this addition will have a severe adverse impact on any current contractor.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities.
3. The action will result in authorizing small entities to furnish the commodities to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List.

Accordingly, the following commodities are hereby added to the Procurement List:

Gloves, Patient Examining
6515–01–373–8306
6515–01–411–4796
6515–01–441–6103
(25% of VA purchases of powdered gloves inspected to the highest standard (e.g., Aladan's "Classic" glove))

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,
Executive Director.
[FR Doc. 97–4342 Filed 2–20–97; 8:45 am]
BILLING CODE 6353–01–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.
ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.
COMMENTS MUST BE RECEIVED ON OR BEFORE: March 24, 1997.
ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.
FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.
SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and service to the Government.
2. The action does not appear to have a severe economic impact on current contractors for the commodity and service.
3. The action will result in authorizing small entities to furnish the commodity and service to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and service proposed for addition to Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information. The following commodity and service have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Service

Janitorial/Custodial

Naval Reserve Center
Kearny, New Jersey
NPA: The First Occupational Center of New Jersey, Orange, New Jersey

Commodity

Strap, Webbing
5340–01–114–7712
NPA: Mississippi Industries for the Blind, Jackson, Mississippi.

Beverly L. Milkman,
Executive Director.
[FR Doc. 97–4343 Filed 2–20–97; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket No. 970212029–7029–01]
RIN 0607–XX27

Annual Surveys in Manufacturing Area

AGENCY: Bureau of the Census, Commerce.
ACTION: Notice of determination.

SUMMARY: In conformity with Title 13, United States Code (Sections 182, 224, and 225), I have determined that annual data to be derived from the surveys listed below are needed to aid the efficient performance of essential governmental functions and have significant application to the needs of the public and industry. The data derived from these surveys, most of which have been conducted for many years, are not publicly available from nongovernmental or other governmental sources.
FOR FURTHER INFORMATION CONTACT: David W. Cartwright, Chief, Manufacturing and Construction Division on (301) 457–4593
SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to take surveys necessary to furnish current data on the subjects covered by the major censuses authorized by Title 13, United States Code. These surveys will provide continuing and timely national statistical data on manufacturing for the period between economic censuses. The next economic censuses will be conducted for 1997. The data collected in these surveys will be within the general scope and nature of those inquiries covered in the economic censuses.

Annual Current Industrial Reports

Most of the following commodity or product surveys provide data on shipments or production; some provide data on stocks, unfilled orders, orders booked, consumption, and so forth. Reports will be required of all or a sample of establishments engaged in the production of the items covered by the following list of surveys.

In accordance with the Paperwork Reduction Act, Public Law 104–13, these surveys have been approved by the Office of Management and Budget (OMB) under OMB control numbers 0607–0392, 0607–0395, 0607–0476, and 0607–0625.

MA22F—Yarn Production
MA22K—Knit Fabric Production
MA22Q—Carpets and Rugs
MA23D—Gloves and Mittens
MA24T—Lumber Production and Mill Stocks
MA28A—Inorganic Chemicals
MA28B—Inorganic Fertilizer Materials and Related Products
MA28C—Industrial Gases
MA28F—Paint and Allied Products
MA28G—Pharmaceutical Preparations, except Biologicals
MA31A—Footwear
MA32C—Refractories

MA32E—Consumer, Scientific, Technical, and Industrial Glassware
MA33A—Ferrous Castings
MA33B—Steel Mill Products
MA33E—Nonferrous Castings
MA33L—Insulated Wire and Cable
MA34K—Steel Shipping Drums and Pails
MA35A—Farm Machinery and Lawn and Garden Equipment
MA35D—Construction Machinery
MA35F—Mining Machinery and Mineral Processing Equipment
MA35J—Selected Industrial Air Pollution Control Equipment
MA35L—Internal Combustion Engines
MA35M—Air-conditioning and Refrigeration Equipment
MA35P—Pumps and Compressors
MA35Q—Antifriction Bearings
MA35R—Computers and Office and Accounting Machines
MA36A—Switchgear, Switchboard Apparatus, Relays, and Industrial Controls
MA36E—Electric Housewares and Fans
MA36F—Major Household Appliances
MA36H—Motors and Generators
MA36K—Wiring Devices and Supplies
MA36M—Consumer Electronics
MA36P—Communication Equipment
MA36Q—Semiconductors and Printed Circuit Boards
MA37D—Aerospace Orders
MA38B—Selected Instruments and Related Products
MA38R—Electromedical Equipment

The following list of surveys represents annual counterparts of monthly and quarterly surveys and will cover only those establishments that are not canvassed or do not report in the more frequent surveys. Accordingly, there will be no duplication in reporting. The content of these annual reports will be identical with that of the monthly and quarterly reports.

M20A—Flour Milling Products
M32G—Glass Containers
M33D—Aluminum Producers and Importers
M33J—Inventories of Steel Producing Mills
M37G—New Complete Aircraft and Aircraft Engines, except Military
M37L—Truck Trailers
MQ22D—Consumption on the Woolen System and Worsted Combing
MQ23A—Apparel (short form)
MQ23K—Sheets, Pillowcases, and Towels
MQ32A—Flat Glass
MQ32D—Clay Construction Products
MQ34E—Plumbing Fixtures
MQ36C—Fluorescent Lamp Ballasts

Annual Survey of Manufactures

The Annual Survey of Manufactures collects industry statistics such as total value of shipments, employment, payroll, workers' hours, capital expenditures, cost of materials consumed, supplemental labor costs, and so forth. This survey, while conducted on a sample basis, covers all manufacturing industries, including data on plants under construction but not yet in operation.

In accordance with the Paperwork Reduction Act, Public Law 104–13, this survey has been approved by the OMB under OMB control number 0607–0449.

Survey of Industrial Research and Development

The Survey of Industrial Research and Development measures spending on research and development activities in private U.S. businesses. The Census Bureau collects and compiles this information with funding from the National Science Foundation (NSF). The NSF publishes the results in its publication series. Four data items in the survey provide interim statistics collected in the Census Bureau's Economic Censuses. These items (total company sales, total company employment, total expenditures and Federally-funded expenditures for research and development conducted within the company) are collected on a mandatory basis under the authority of Title 13. Responses to all other data collected for the NSF are voluntary.

In accordance with the Paperwork Reduction Act, Public Law 104–13, this survey has been approved by the OMB under OMB control number 3145–0027.

Conclusion

I have, therefore, directed that these annual surveys be conducted for the purpose of collecting the data as described.

Dated: February 12, 1997.

Martha Farnsworth Riche,

Director, Bureau of the Census.

[FR Doc. 97–4320 Filed 2–20–97; 8:45 am]

BILLING CODE 3510–07–P

Bureau of Export Administration

Materials Processing Equipment Technical Advisory Committee; Open Meeting

A meeting of the Material Processing Equipment Technical Advisory Committee will be held March 18, 1997, 9 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials processing and related technology.

Agenda

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Update on The Wassenaar Arrangement.
4. Update on the Nuclear Suppliers Group.
5. Discussion on guaranteed machine tool positioning accuracy.

The meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Ms. Lee Ann Carpenter, OAS/EA MS: 3886C, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230.

For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 482–2583.

Dated: February 18, 1997.

Lee Ann Carpenter,

Director, Technical Advisory Committee Unit.

[FR Doc. 97–4362 Filed 2–20–97; 8:45 am]

BILLING CODE 3510–DT–M

Transportation and Related Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Transportation and Related Equipment Technical Advisory Committee will be held March 18, 1997, 9 a.m., in the Herbert C. Hoover Building, Room 1617M(2), 14th Street between Constitution & Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to transportation and related equipment or technology.

General Session

1. Opening remarks by the Chairman.
2. Presentation of public papers or comments.
3. Report on the status of the Wassenaar Arrangement: implementation, List Review schedule, and reporting status.

4. Report on the status of the encryption regulations.
5. Update on the Missile Technology Control Regime.
6. Discussion of commercial communications satellite and "hot section" technology regulations, in particular the status of the fuels issue.

Closed Session

7. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that you forward your public presentation materials two weeks prior to the meeting to the following address: Ms. Lee Ann Carpenter, OAS/EA MS: 3886C, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 16, 1996, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to the public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records, Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call (202) 482–2583.

Dated: February 18, 1997.

Lee Ann Carpenter,

Director, Technical Advisory Committee Unit.

[FR Doc. 97–4361 Filed 2–20–97; 8:45 am]

BILLING CODE 3510–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Submission for OMB Review; Comment Request

February 14, 1997.

The Corporation for National and Community Service (CNCS), has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, (44 U.S.C. Chapter 35). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service Office of Evaluation, Chuck Helfer, (202) 606–5000, Extension 248.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Corporation for National and Community Service, Office of Management and Budget, Room 10235, Washington, D.C., 20503. (202) 395–7316, on or before March 24, 1997.

The OMB is particularly interested in comments which:

Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;

Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

Enhance the quality, utility and clarity of the information to be collected; and

Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Agency: Corporation for National and Community Service.

Title: LSAHE Participant Outcome Survey.

OMB Number: New form.

Affected Public: College students in institutions supported by the LSAHE program.

Number of Respondents: 2,000.

Estimated Time Per Respondent: 25 minutes.

Total Burden Hours: 833.

Total Annualized capital/startup costs: 0.

Total Annual Cost (operating/maintaining systems or purchasing services): $5,000.

Description: The Corporation for National and Community Service seeks approval of a new form to evaluate the impact of the LSAHE program on student participants.

Dated: February 14, 1997.

Lance Potter,

Director, Office of Evaluation

[FR Doc. 97–4283 Filed 2–20–97; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF EDUCATION

[CFDA NO.: 84.031G]

Endowment Challenge Grant Program; Withdrawal of Closing Date Notice Inviting Applications for New Awards for Fiscal Year (FY) 1997

SUMMARY: On August 20, 1996 a notice was published in the **Federal Register** (61 FR 43128) inviting applications for new awards under the Endowment Challenge Grant Program for FY 1997. Since the Congress did not appropriate FY 1997 funds for the Endowment Challenge Grant Program, the Department of Education withdraws this notice inviting applications for new awards for FY 1997 under this program. The Department will not make new awards in FY 1997.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Carter, U.S. Department of Education, 600 Independence Avenue, S.W., Portals Building, Suite CY–80, Washington, D.C. 20202–5337. Telephone: (202) 708–8866. Internet address: William_Carter@ed.gov; FAX: (202) 401–7532. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday.

Program Authority: 20 U.S.C. 1065.

Dated: February 12, 1997.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 97–4272 Filed 2–20–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–1328–000, et al.]

Boston Edison Company, et al.; Electric Rate and Corporate Regulation Filings

February 12, 1997.

Take notice that the following filings have been made with the Commission:

1. Boston Edison Company

[Docket No. ER97–1328–000]

Take notice that on January 31, 1997, Boston Edison Company (Boston Edison) of Boston, Massachusetts, tendered for filing amendments to conform its open-access transmission Tariff No. 8 to the new NEPOOL tariff, submitted by the NEPOOL Executive Committee on December 31, 1996, and amendments to make Boston Edison's share of the Hydro-Quebec transmission facilities available on an open-access basis. Boston Edison asks that the proposed Hydro-Quebec amendments be made effective as of March 1, 1997. Boston Edison asks that its NEPOOL conforming amendments be made effective on March 1, 1997 if the new NEPOOL Tariff is allowed to become effective on that date. Due to the relationship between its conforming amendments and the new NEPOOL Tariff, Boston Edison states that the conforming amendments should not become effective unless and until the NEPOOL amendments become effective.

Boston Edison states that this filing has been posted and that copies have been served upon its own transmission customers, the recipients of the new NEPOOL tariff, and the Massachusetts Department of Public Utilities.

Comment date: February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Duke Power Company and PanEnergy Corp

[Docket No. EC97–13–000]

Take notice that on February 3, 1997, Duke Power Company ("Duke"), on behalf of itself and certain of its affiliates, and PanEnergy Corp ("PanEnergy"), on behalf of itself and certain of its affiliates (collectively "Applicants"), tendered for filing pursuant to Section 203 of the Federal Power Act (the "FPA"), 16 U.S.C. § 824b, Part 33 of the Commission's Regulations, 18 CFR 33, and 18 CFR 2.26, an Application for an order approving the proposed merger of Duke and PanEnergy and changes in control over certain of their respective power marketer affiliates.

Applicants state that pursuant to an Agreement and Plan of Merger dated as of November 24, 1996, Duke and PanEnergy will merge through an exchange of stock, with Duke to continue as the surviving corporation. They state that after consummation of the merger, PanEnergy will become a wholly-owned subsidiary of Duke, which will change its name to Duke Energy Corporation. Applicants further state that, as a result of the merger of Duke and PanEnergy, control over Duke/Louis Dreyfus L.L.C. (an FPA-jurisdictional affiliate of Duke) and PanEnergy Trading and Market Services L.L.C., PanEnergy Power Services, Inc. and PanEnergy Lake Charles Generation, Inc. (each an FPA-jurisdictional affiliate of PanEnergy) will change. According to Applicants, the FPA-jurisdictional contracts held by their power marketer affiliates will not be transferred at the time of the merger, and the respective power marketers will continue to hold and perform under them. The Applicants state that they have submitted the information required by Part 33 of the Commission's Regulations, and by the Commission's recently-issued Merger Policy Statement (Order No. 592, Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act; Policy Statement (issued December 18, 1996), 61 Fed. Reg. 68,595 (December 30, 1996), to be codified at 18 CFR 2.26, in support of the Application.

Applicants represent that, as required by 18 CFR 33.6, copies of the Application and related testimony and exhibits have been served on each of Duke's wholesale customers and on the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: April 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. CMS Generation Pinamucan Limited Duration Company

[Docket No. EG97–30–000]

On January 27, 1997, CMS Generation Pinamucan Limited Duration Company, Fairlane Plaza South, 330 Town Center Drive, Suite 1100, Dearborn, Michigan 48126, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant intends to acquire up to 44 percent of the common stock of Magellan Corporation, Inc., a Philippine Corporation. Magellan Corporation, Inc. owns and operates an approximately 63 MW diesel fuel-fired electric generating facility (Facility) located in Rosario, Cavite, Philippines. The electric energy produced by the Facility will be sold exclusively at wholesale. None of the electric energy generated will be sold to consumers in the United States.

Comment date: March 4, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Logan Generating Company, L.P., Premier Enterprises, Inc., E Prime, Inc., Mid American Natural Resources, Inc., Texaco Natural Gas Inc., WPS Power Development, Inc., North American Power Brokers, Inc.

[Docket Nos. ER95–1007–003, ER95–1123–005, ER95–1269–005, ER95–1423–004, ER95–1787–005, ER96–1088–007, and ER96–1156–003 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On February 3, 1997, Logan Generating Company, L.P. filed certain information as required by the Commission's June 28, 1995, order in Docket No. ER95–1007–000.

On February 7, 1997, Premier Enterprises, Inc. filed certain information as required by the Commission's August 7, 1995, order in Docket No. ER95–1123–000.

On February 6, 1997, E Prime, Inc. filed certain information as required by the Commission's March 29, 1996, order in Docket No. ER95–1269–000.

On February 7, 1997, Mid American Natural Resources, Inc. filed certain information as required by the Commission's August 25, 1995, order in Docket No. ER95–1423–000.

On February 6, 1997, Texaco Natural Gas Inc. filed certain information as required by the Commission's January 25, 1996, order in Docket No. ER95–1787–000.

On January 22, 1997, WPS Power Development, Inc. filed certain information as required by the Commission's April 16, 1996, order in Docket No. ER96–1088–000.

On February 7, 1997, North American Power Brokers, Inc. filed certain information as required by the Commission's April 24, 1996, order in Docket No. ER96–1156–000.

5. Ohio Valley Electric Corporation, Indiana-Kentucky Electric Corporation

[Docket No. ER97–1447–000]

Take notice that on January 29, 1997, Ohio Valley Electric Corporation (including its wholly-owned subsidiary, Indiana-Kentucky Electric Corporation) (OVEC), tendered for filing a Service Agreement for Non-Firm Point-to-Point transmission Service, dated November 1, 1996 (the Service Agreement) between OVEC and The Cincinnati Gas & Electric Company, PSI Energy, Inc. (together, the Cinergy Operating Companies) and Cinergy Services, Inc. (Cinergy Services), as agent for and on behalf of the Cinergy Operating Companies. OVEC proposes an effective date of January 27, 1997 and requests waiver of the Commission's notice requirement to allow the requested effective date. The Service Agreement provides for non-firm transmission service by OVEC to the Cinergy Operating Companies.

In its filing, OVEC states that the rates and charges included in the Service Agreement are the rates and charges set forth in OVEC's Order No. 888 compliance filing (Docket No. OA96–190–000).

Copies of this filing were served upon the Public Utilities Commission of Ohio, the Indiana Utility Regulatory Commission, the Kentucky Public Service Commission and Cinergy Services.

Comment date: February 26, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. The Dayton Power and Light Company

[Docket No. ER97–1448–000])

Take notice that on January 30, 1997, The Dayton Power and Light Company (Dayton), submitted service agreements establishing VTEC Energy, Inc. as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of the filing were served upon VTEC Energy, Inc., and the Public Utilities Commission of Ohio.

Comment date: February 26, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Wisconsin Public Service Corporation

[Docket No. ER97–1449–000]

Take notice that on January 29, 1997, Wisconsin Public Service Corporation (WPSC), tendered for filing executed Transmission Service Agreements with itself for its own off-system sales. The Agreements provide for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

Comment date: February 26, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Public Service Electric and Gas Company

[Docket No. ER97–1450–000]

Take notice that on January 29, 1997, Public Service Electric and Gas Company (PSE&G), tendered for filing an agreement to provide non-firm transmission service to NorAm Energy Services, Inc., pursuant to PSE&G's Open Access Transmission Tariff presently on file with the Commission in Docket No. OA96–80–000.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of January 15, 1997.

Comment date: February 26, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. The Dayton Power and Light Company

[Docket No. ER97–1451–000]

Take notice that on January 30, 1997, The Dayton Power and Light Company (Dayton), submitted service agreements establishing Consumers Power Company, and The Detroit Edison Company as customers under the terms of Dayton's Market-Based Sales Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of this filing were served upon Consumers Power Company, The Detroit Edison Company and the Public Utilities Commission of Ohio.

Comment date: February 26, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Atlantic City Electric Company

[Docket No. ER97–1452–000]

Take notice that on January 29, 1997, Atlantic City Electric Company (Atlantic Electric), tendered for filing service agreements under which Atlantic Electric will provide capacity and energy to Aquila Power Corporation, Baltimore Gas and Electric Company, Carolina Power & Light Company, Catex Vitol Electric L.L.C., Citizens Lehman Power Sales, Consolidated Edison Company, Coral Power, L.L.C., Duke/Louis Dreyfus L.L.C., Enron Capital & Trade Resources, Equitable Power Service Company, Heartland Energy Services, Koch Power Services, Long Island Lighting Company, Morgan Stanley Capital Group, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, NorAm Energy Services, PECO Energy Company, Pennsylvania Power and Light, Plum Street Energy Marketing, Public Service Electric & Gas Company, Rainbow Energy Marketing Corporation, Sonat Power Marketing, L.P., Tenneco Energy, TransCanada Power Corporation, USGen Power Services, L.P. and The Utility Trade Corporation in accordance with the Atlantic Electric wholesale power sales tariff. Atlantic Electric requests the agreements be accepted to become effective on January 1, 1997.

Atlantic Electric states that a copy of the filing has been served on the listed entities.

Comment date: February 26, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Atlantic City Electric Company

[Docket No. ER97–1453–000]

Take notice that on January 29, 1997, Atlantic City Electric Company (Atlantic Electric) tendered for filing an amendment to its tariff under which it sells power and energy at market-based rates.

Atlantic Electric states that a copy of the filing was served on all existing customers under the Atlantic Electric market-based rate tariff and on the New Jersey Board of Public Utilities.

Comment date: February 26, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Southwestern Public Service Company

[Docket No. ER97–1454–000]

Take notice that on January 30, 1997, Southwestern Public Service Company (Southwestern), submitted a Quarterly Report under Southwestern's market-based sales tariff. The report is for the period of October 1, 1996 through December 31, 1996.

Comment date: February 26, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. New York State Electric & Gas Corporation

[Docket No. ER97–1455–000]

Take notice that on January 30, 1997, New York State Electric & Gas Corporation (NYSEG), filed Service Agreements between NYSEG and Heartland Energy Services, Inc., Green Mountain Power Corporation, and Rainbow Energy Marketing Corporation.

(Customers). These Service Agreements specify that the customers have agreed to the rates, terms and conditions of the NYSEG open access transmission tariff filed on July 9, 1996, in Docket No. OA96–195–000.

NYSEG requests waiver of the Commission's sixty-day notice requirements and an effective date of January 31, 1997, for the Service Agreements. NYSEG has served copies of the filing on The New York State Public Service Commission and on the Customers.

Comment date: February 26, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. The Montana Power Company

[Docket No. ER97–1458–000]

Take notice that on January 29, 1997, The Montana Power Company (Montana), tendered for filing a revised Appendix 1 as required by Exhibit C for retail sales in accordance with the provisions of the Residential Purchase and Sale Agreement (Agreement) between Montana and the Bonneville Power Administration (BPA).

The Agreement was entered into pursuant to the Pacific Northwest Electric Power Planning and Conservation Act, Public Law 96–501. The Agreement provides for the exchange of electric power between Montana and BPA for the benefit of Montana's residential and farm customers.

A copy of the filing has been served upon BPA.

Comment date: February 26, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. New England Power Company

[Docket No. ER97–1459–000]

Take notice that on January 30, 1997, New England Power Company filed a Service Agreement with Citizens Lehman Power Sales under NEP's FERC Electric Tariff, Original Volume No. 5.

Comment date: February 26, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Kentucky Utilities Company

[Docket No. ER97–1460–000]

Take notice that on January 30, 1997, Kentucky Utilities Company (KU), tendered for filing information on transactions that occurred during October 1, 1996 through December 31, 1996, pursuant to the Power Services Tariff accepted by the Commission in Docket No. ER95–854–000.

Comment date: February 26, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Virginia Electric and Power Company

[Docket No. ER97–1461–000]

Take notice that on January 29, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing Service Agreements for Non-Firm Point-to-Point Transmission Service with Cleveland Electric Illuminating Company, Niagara Mohawk Power Corporation, Plum Street Energy Marketing, Inc., SCANA Energy Marketing, Inc., Southern Company Services, Inc., The Power Company of America, Toledo Edison Company, Wisconsin Electric Power Company and The Wholesale Power Group and two Service Agreements for Firm Point-to-Point Transmission service with Carolina Power & Light Company under the Open Access Transmission Tariff to Eligible Purchasers dated July 9, 1996. Under the tendered Service Agreement Virginia Power will provide non-firm/firm point-to-point service to the Transmission customers as agreed to by the parties under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission, the North Carolina Utilities Commission, the Ohio Public Utilities Commission and the Wisconsin Public Service Commission.

Comment date: February 26, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Virginia Electric and Power Company

[Docket No. ER97–1462–000]

Take notice that on January 30, 1997, Virginia Electric and Power Company, tendered for filing an application for membership in the Western System Power Pool.

Comment date: February 26, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Southwestern Public Service Company

[Docket No. ER97–1463–000]

Take notice that on January 28, 1997, Southwestern Public Service Company submitted revisions to its market-based sales tariff which correct minor typographical errors and add language implementing the Commission's transmission unbundling requirement.

Comment date: February 26, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Louisville Gas and Electric Company

[Docket No. ER97–1464–000]

Take notice that on January 29, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Service Agreement between LG&E and Southern Indiana Gas and Electric Company (SIGECO) under LG&E's Rate GSS. LG&E originally filed an unexecuted agreement in Docket No. ER97–1095–000.

Comment date: February 26, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Northern States Power Company (Minnesota Company)

[Docket No. ER97–1465–000]

Take notice that on January 30, 1997, Northern States Power Company (Minnesota) (NSP), tendered for filing a Firm Point-to-Point Transmission Service Agreement for NSP Wholesale (Point of Delivery: Wisconsin Public Service) under the Northern States Power Company Transmission Tariff.

NSP requests that the Commission accept the agreement effective January 1, 1997, and requests waiver of the commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: February 26, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Boston Edison Company

[Docket No. ER97–1466–000]

Take notice that on January 30, 1997, Boston Edison Company (Boston Edison), tendered for filing a Service Agreement under Original Volume No. 8, FERC Order 888 Tariff (Tariff) for TransCanada Energy Ltd. (TransCanada). Boston Edison requests that the Service Agreement become effective as of January 1, 1997.

Boston Edison states that it has served a copy of this filing on TransCanada and the Massachusetts Department of Public Utilities.

Comment date: February 26, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. PECO Energy Company

[Docket No. ER97–1467–000]

Take notice that on January 29, 1997, PECO Energy Company (PECO), filed a summary of transactions made during the fourth quarter of calendar year 1996 under PECO's market based rate tariff for power service accepted by the Commission in Docket No. ER96–640–000.

Comment date: February 26, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Great Bay Power Corporation

[Docket No. ER97–1468–000]

Take notice that on January 29, 1997, Great Bay Power Corporation, tendered for filing a summary of activity for the quarter ending December 31, 1996.

Comment date: February 26, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Louisville Gas and Electric Company

[Docket No. ER97–1470–000]

Take notice that on January 29, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Service Agreement between LG&E and Koch Energy Trading, Inc. under LG&E's Rate GSS.

Comment date: February 26, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Arizona Public Service Company

[Docket No. ER97–1471–000]

Take notice that on January 29, 1997, Arizona Public Service Company (APS), tendered for filing a Service Agreement to provide Network Integration Transmission Service under APS' Open Access Transmission Tariff filed in Compliance with FERC Order No. 888 with Ajo Improvement Company (Ajo).

A copy of this filing has been served on Ajo and the Arizona Corporation Commission.

Comment date: February 26, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Central Vermont Public Service Corporation

[Docket No. OA97–508–000]

Take notice that on January 27, 1997, Central Vermont Public Service Corporation tendered for filing an amendment to its open access transmission tariff that provides for service over Central Vermont's share of the Phase I and Phase II transmission facilities between Des Cantons, Quebec and Tewsbury, Massachusetts. Central Vermont requests that the Commission waive its notice of filing requirements and allow the amendment to become effective on January 27, 1997.

Comment date: March 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Nevada Power Company

[Docket No. OA97–509–000]

Take notice that on January 24, 1997, Nevada Power Company (Nevada Power) tendered for filing 12 letters which demonstrate its intent to unbundle the transmission and generation components of the rate contained in certain economy energy agreements executed on or before July 9, 1996 pursuant to the Federal Energy Regulatory Commission Order No. 888 dated April 24, 1996.

Copies of this filing have been served on The Public Service Commission of Nevada, California Department of Water Resources, Citizens Utilities Company, City of Anaheim, City of Boulder City, City of Burbank, City of Colton, City of Farmington, City of Glendale, City of Pasadena, City of Riverside, City of Vernon, Colorado River Commission, Deseret Generation & Transmission Cooperative, Lincoln County Power District No. 1, Metropolitan Water District of Southern California, Overton Power District No. 5, Pacific Gas & Electric Company, PacifiCorp, Public Service Company of New Mexico, Salt River Project, Southern California Edison Company, Tri-State Generation, Tucson Electric Power Company, Utah Assoc. Municipal Power Systems, and Valley Electric Association.

Comment date: March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4245 Filed 2–20–97; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 11499–000; Tennessee]

Armstrong Energy Resources; Notice of Opportunity for Site Visit

February 14, 1997.

The Federal Energy Regulatory Commission (FERC) and the Tennessee Valley Authority (TVA) are reviewing a proposal from Armstrong Energy Resources to construct and operate the 1,500-megawatt Laurel Branch Pumped Storage Project No. 11499. The Laurel Branch Project would be located in Bledsoe County, Tennessee, seven miles northeast of Dunlap, Tennessee.

Since the July 1996 Scoping Document I was issued for Armstrong Energy Resources' (AER) proposed Laurel Branch Project No. 11499 and Reynolds Creek Project No. 11500, AER has decided not to pursue the Reynolds Creek Project. AER, by letter filed January 9, 1997, with the FERC, has withdrawn its proposal, and surrendered its preliminary permit, for the Reynolds Creek Pumped Storage Project No. 11500. AER, in deciding to pursue only the Laurel Branch Project, has also defined the preferred transmission line corridor and alternative corridors for the project and reduced the initial project boundary.

Scoping and Site Visit

FERC and TVA have scheduled a joint second public scoping meeting for Armstrong Energy Resources' revised proposal on March 4, 1997 (notice of this meeting was issued earlier on February 3, 1997). The meeting will be held at Sequatchie County High School on the west side of Highway #28 in Dunlap, Tennessee. The March 4 meeting will focus on the proposed changes to Laurel Branch Project and the proposed transmission corridor and alternative corridors. The formal public meeting will be held from 6:30 pm to 9:30 pm, CDT, with registration beginning at 5 pm.

Prior to the formal public meeting, an Information Open House will be held from 5 pm to 6:30 pm, or later. The Information Open House is an informal opportunity for questions and information about the overall project scope and environmental review process. At the Information Open House, AER will have on display for public examination, a large map showing the proposed Laurel Branch Project, the preferred transmission corridor and alternatives, and private properties that will be affected with names of the landowners.

After the meeting on March 5, 1997, there will be an opportunity for a short site visit. The site visit will be conducted mostly by private vehicles and will cover the project areas, including the defined transmission corridor (and alternatives), that are accessible by paved public roads. Further details of the site visit will be provided at the scoping meetings. Those persons who are interested in the site visit may contact Ginger Seeber of TVA at (423) 632–1721, to register. There will also be an opportunity at the meeting to register for the site visit.

For further information on this process, please contact Eddie R. Crouse,

FERC, (202) 219–2794, or Linda Oxendine, TVA, (423) 632–3440.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4247 Filed 2–20–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–193–000]

Transcontinental Gas Pipe Line Corp.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Maiden Lateral Looping Project and Request for Comments on Environmental Issues

February 14, 1997.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of about 17.77 miles of 16-inch-diameter pipeline loop and upgrades to an existing meter station, proposed in the Maiden Lateral Looping Project.[1] This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

Summary of the Proposed Project

Transacontinental Gas Pipe Line Corporation (Transco) wants to expand the capacity of its facilities in North Carolina to transport an additional 38,000 dekatherms of natural gas per day to Piedmont Natural Gas Company (Piedmont). Transaco seeks authority to construct and operate:

- About 17.77 miles of 16-diameter pipeline loop on Transco's existing 10-inch-diameter Maiden Lateral in Lincoln and Catawba Counties, North Carolina; and
- The expansion of Transco's existing Lowesville Meter Station, which is located at the interconnection of Transco's mainline and the Maiden Lateral.

The location of the project facilities is shown in appendix 1.[2] If you are interested in obtaining procedural information, please write to the Secretary of the Commission.

Land Requirements for Construction

Construction of the proposed facilities, including the meter station modification, would require about 152.2 acres of land. Transco proposes to use a construction right-of-way width of about 65 feet (5 feet southerly and 60 feet northerly of its existing 10-inch-diameter Maiden Lateral). This 20-foot offset would allow Transco to construct the majority of its new pipeline loop within its existing 50-foot-wide right-of-way. Since Transco would use its existing right-of-way during construction activities, only 1.19 acres of new permanent right-of-way would be required. Temporary work areas would be restored and allowed to revert to their former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Water resources, fisheries, and wetlands.
- Land use.
- Cultural resources.
- Vegetation and wildlife.
- Endangered and threatened species.
- Public safety.
- Air quality and noise.
- Hazardous waste.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified two issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Transco. This preliminary list of issues may be changed based on your comments and our analysis.

- About 48 private water supply wells and springs are within 150 feet of the construction right-of-way; and
- About 28 residences are within 50 feet of the edge of the proposed construction right-of-way; 17 of which would be within or at 25 feet of the construction right-of-way.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;
- Reference Docket No. CP97–193–000;
- Mail your comments so that they will be received in Washington, DC on or before March 10, 1997.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an "intervenor". Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

You do not need intervenor status to have your scoping comments considered.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4246 Filed 2–20–97; 8:45 am]

BILLING CODE 6717–01–M

[1] Transcontinental Gas Pipe Line Corporation's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5691–5]

Protection of Stratospheric Ozone: Notice of Revocation of a Technician Certification Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of revocation.

SUMMARY: Through this action EPA is announcing the revocation of Refrigerant Certification Services (RCS) of Houston, Texas, previously approved to provide the technician certification exam in accordance with the regulations promulgated at 40 CFR part 82 subpart F. RCS was issued a letter of revocation on February 13, 1997, that included an explanation of the basis for EPA's decision.

This program has not complied with the requirements established for technician certification programs pursuant to section 608 of the Clean Air Act Amendments (the Act). In accordance with those requirements, all approved technician certification programs must provide the certification test and issue credentials consistent with the applicable requirements. Failure to comply with any of the requirements may result in revocation. RCS has been indicted for criminal actions directly related to the administration of the section 608 Technician Certification Program.

In accordance with 40 CFR 82.161(e), EPA revoked approval of RCS to offer the section 608 Technician Certification Program on February 13, 1997. RCS is no longer authorized to certify technicians or issue valid certification credentials.

The criminal indictment against RCS and the three related indictments against RCS representatives are based on information regarding administration of certification test and inappropriate issuance of credentials. Therefore, most technicians certified by RCS during the period that the program operated an EPA-approved program will remain certified in accordance with 40 CFR section 82.161(a). Technicians that were not properly certified by RCS and/or were issued credentials indicating that such certification did occur properly will be contacted by EPA. Technicians that comprise this subset either participated in testing events proctored by Herman E Brodzenski or were in contact with Mr. Brodzenski regarding the issuance of certification credentials. EPA would like to clarify that not every technician that participated in testing events administered by Mr. Brodzenski may be contacted by EPA. However, a group of approximately 100 technicians that either participated in a testing event or requested the issuance of certification credentials from Mr. Brodzenski will be contacted regarding whether or not these individuals are properly certified.

DATE: Refrigerant Certification Services had their approval to offer a technician certification program revoked, effective February 13, 1997.

FOR FURTHER INFORMATION CONTACT: Sue Stendebach, Program Implementation Branch, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205–J), 401 M Street, SW., Washington, DC 20460, 202/233–9117. The Stratospheric Ozone Information Hotline at 1–800–296–1996 can also be contacted for further information.

Dated: February 13, 1997.

Paul M. Stolpman,

Director, Office Of Atmospheric Programs.

[FR Doc. 97–4331 Filed 2–20–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5692–5]

Proposed Settlement Agreement, Clean Air Act Suit

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended, ("CAA"), notice is hereby given of a proposed settlement agreement, which was lodged with the United States District Court for the District of Columbia by the United States Environmental Protection Agency ("EPA") on January 31, 1997, in a lawsuit filed by the Washington Legal Foundation. A number of United States Senators and Representatives are co-plaintiffs. This lawsuit concerns, among other things, EPA's alleged failure to meet mandatory deadlines under section 312 of the CAA to provide to Congress (1) a Cost/Benefit Report regarding the costs and benefits of past compliance with certain CAA standards ("Retrospective Report") and (2) the first Cost/Benefit Report making projections into the future regarding expected costs, benefits and other effects of compliance with CAA standards ("Prospective Report"). The proposed settlement agreement provides that EPA shall promulgate the Retrospective Report to Congress no later than October 15, 1997 and the first Prospective Report no later than August 30, 1999.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed settlement agreement from persons who were not named as parties to the litigation in question. In accordance with section 113(g) of the CAA, EPA or the Department of Justice may withhold or withdraw consent to the proposed settlement agreement if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, following the comment period, that consent is inappropriate, the parties intend that the CAA provisions of the final settlement agreement, including the deadlines for the promulgation of the reports provided for in § 312, will be incorporated into an appropriate order of the court.

A copy of the proposed settlement agreement was lodged with the Clerk of the United States District Court for the District of Columbia on January 31, 1997. Copies are also available from Samantha Hooks (2344), Air and Radiation Division, Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 260–7620. Written comments should be sent to Hale Hawbecker at the above address and must be submitted on or before March 24, 1997.

Dated: February 10, 1997.

Scott C. Fulton,

Acting General Counsel.

[FR Doc. 97–4322 Filed 2–20–97; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5692–4]

Proposed Settlement Agreement; National Emission Standards for Hazardous Air Pollutants (NESHAP) From Facilities That Manufacture Pharmaceutical Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act as amended (CA), 42 U.S.C. § 7413(g), notice is hereby given of a proposed settlement agreement entered into by EPA and the Natural Resources Defense Council (NRDC). The proposed settlement agreement establishes a schedule for when EPA intends to take final action on the NESHAP for manufacturers of pharmaceutical products. The proposed settlement agreement accompanies revisions to a consent decree entered into by EPA and NRDC in establishing schedules for EPA's issuance, *inter alia*, of a number of effluent guidelines and standards under section 304(m) of the Clean Water Act (CA), including effluent guidelines for pharmaceutical manufacturers. EPA is agreeing to undertake the NESHAP rulemaking for the pharmaceutical manufacturers on the same schedule as the effluent guidelines for pharmaceutical manufacturers.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement from persons not party to the proposed settlement agreement. EPA or the Department of Justice may withhold or withdraw consent to the proposed settlement if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the CA.

A copy of the proposed settlement agreement was filed with the clerk of the United States District Court for the District of Columbia on January 31, 1997. Copies are also available from Phyllis Cochran, Air and Radiation Division (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 260–7606. Written comments should be sent to Karen H. Clark at the address above and must be submitted on or before March 24, 1997.

Dated: February 10, 1997.

Scott C. Fulton,

Acting General Counsel.

[FR Doc. 97–4323 Filed 2–20–97; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5693–3]

Establishment of the Microbial and Disinfectants/Disinfection Byproducts Advisory Committee

AGENCY: U.S. Environmental Protection Agency.

ACTION: Establishment of FACA committee and meeting announcement.

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act (FACA) at 5 U.S.C. App. II section 9(a)(2), the Environmental Protection Agency (EPA) is giving notice that it is establishing the Microbial and Disinfectants/Disinfection Byproducts Advisory Committee. The purpose of this Committee is to assist the Agency in the development of regulations, guidance and policies to address microorganisms and disinfectants/disinfection byproducts in drinking water. EPA has determined that this is in the public interest and will assist the Agency in performing its duties as prescribed in the Safe Drinking Water Act (SDWA).

Copies of the committee Charter will be filed with the appropriate committees of Congress and the Library of Congress.

NOTICE OF MEETING: The Committee's first meeting is scheduled for March 13 and 14, 1997, from 9:00 a.m. until 5:30 p.m. on each day, at the office of RESOLVE at 2828 Pennsylvania Avenue, Northwest, Suite 402, Washington D.C. The purpose of the meeting is to discuss 1) organizational matters of the Committee and 2) possible components of an Interim Enhanced Surface Water Treatment Rule (IESWTR) and a Stage 1 Disinfectants/Disinfection Byproducts (DBP) Rule, including discussion of related technical issues such as enhanced coagulation and turbidity control.

The meeting will be open to the public. Members of the public may attend the meeting, make statements to the extent time permits and file written statements with the Committee for its consideration.

FOR FURTHER INFORMATION: Members of the public who would like more information or who would like to present an oral statement or submit a written statement are requested to contact Steve Potts, Office of Ground Water Drinking Water, U.S. EPA, Mail Code 4607, 401 M Street, SW, Washington, DC 20460. Mr. Potts may also be reached by telephone at (202) 260–5015 or contacted by e-mail at Potts.Steve@EPAMAIL.EPA.GOV.

SUPPLEMENTARY INFORMATION:

Background

EPA is responsible under the SDWA for the development of regulations to address microbial pathogens and DBPs in drinking water. The 1996 amendments to the Act require the Agency to promulgate two of these regulations, the IESWTR and Stage 1 DBP Rule, by November 1998. The amendments also establish deadlines for subsequent rules in this cluster. Regulatory concerns include possible risk trade-offs between microbial pathogens and chemical DBPs.

As a result of formal regulatory negotiations in 1992 and 1993, EPA published regulatory proposals in the **Federal Register** in July 1994. In May 1996, the Agency initiated a series of public meetings for purposes of information exchange on issues related to the development of rules in the cluster. The creation of a Microbial and Disinfectants/Disinfection Byproducts Advisory Committee is necessary and in the public interest as it will provide the structured environment for focused efforts to collect, share and analyze information and data and for consensus building discussions.

Participants: The Committee will consist of a balanced membership of approximately twenty (20) members appointed by the Deputy Administrator. Membership will include but is not limited to representatives of EPA, States, drinking water suppliers and public interest groups.

Dated: February 18, 1997.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 97–4493 Filed 2–20–97; 8:45 am]

BILLING CODE 6560–50–P

[ER-FRL–5477–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed February 10, 1997 Through February 14, 1997 Pursuant to 40 CFR 1506.9.

EIS No. 970057, Final EIS, AFS, TN, Upper Ocoee River Corridor Land and Water-Based Recreational Development, Implementation, Cherokee National Forest, Ocoee Ranger District, Polk County, TN, *Due:* March 24, 1997, *Contact:* Dave Carroll (423) 339–8620.

EIS No. 970058, Draft EIS, FAA, NH, Manchester (New Hampshire) Airport Master Plan Update, Improvements to Airside and Landside Facilities, Airport Layout Plan, Permits and Approvals, Manchester, NH, Due: April 07, 1997, *Contact:* John Sila (617) 647–8211.

EIS No. 970059, Draft Supplement, AFS, AK, Kensington Venture Underground Gold Mine Project, Additional Information, Development, Construction and Operation, Operating Plan Approval, NPDES, Section 10 and 404 Permits, Tongass National Forest, Sherman Creek, City of Juneau, AK, *Due:* April 07, 1997, Contact: Roger Birk (907) 586–8800.

Dated: February 18, 1997.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–4351 Filed 2–20–97; 8:45 am]

BILLING CODE 6560–50–U

[ER-FRL–5477–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared February 3, 1997 Through February 7, 1997 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 5, 1996 (61 FR 15251).

Draft EISs

ERP No. D–AFS–J65060–UT Rating EC2, Alta Ski Area Master Development Plan Update Approval, Special-Use-Permit and COE Permits Issuance, Wasatch-Cache National Forest, Salt Lake Ranger District, Salt Lake County, UT.

Summary: EPA expressed environmental concerns about impacts to wetlands and air quality impacts.

ERP No. D–AFS–J65258–MT Rating EC2, Lewis and Clark National Forest Plan, Implementation, Oil and Gas Leasing Analysis, Upper Missouri River Basin, several counties, MT.

Summary: EPA expressed environmental concerns about potential cumulative impacts from directional drilling and associated oil and gas exploration and development activities. The final EIS should address wetland protection, specific air and water quality monitoring and validation plans.

ERP No. D–AFS–J65259–CO Rating EC2, Aspen Highlands Ski Area Expansion, Master Development Plan Amendment, COE 404 Permit and Special-Use-Permit, White River National Forest, Aspen Ranger District, Pitkin County, CO.

Summary: EPA expressed environmental concerns about inadequate modeling and analysis to determine air quality impacts.

ERP No. D–AFS–K65192–CA Rating EC2, Jaybird Multi-Resource Project, Implementation, Downieville Ranger District, Yuba County, CA.

Summary: EPA expressed environmental concerns that the proposed management activities are not directly integrated into the overall watershed management plan. The final EIS should clearly define roles and responsibilities for monitoring activities.

ERP No. D–AFS–L65265–WA Rating LO, North Sherman and Fritz Timber Sales, Implementation, Colville National Forest, Kettle Falls Ranger District, Ferry County, WA.

Summary: EPA expressed lack of objections. No formal comment letter was sent to the preparing agency.

ERP No. D–AFS–L65280–ID Rating EC2, Mosquito-Fly Project Area, Implementation, Harvest Timber, Road Construction and Grant Access to Private Land, Idaho Panhandle National Forests, St. Joe Ranger District, Shoshone County, ID.

Summary: EPA expressed environmental concerns about the retention of roadless area characteristics, water quality, and cumulative/indirect impacts.

ERP No. D–AFS–L67035–OR Rating EO2, Stewart Mining Operation, Plan of Operation Approval, Implementation, City Creek, North Umpqua Ranger District, Umpqua National Forest, Douglas and Lane Counties, OR.

Summary: EPA expressed environmental objections about compliance with Aquatic Conservation Strategy Objectives provided in the Northwest Forest Plan Record of Decision, and about impacts to the Outstandingly Remarkable Values recognized in the North Umpqua River and Streamboat Creek, from sedimentation and acid rock drainage.

ERP No. D–BLM–J65191–00 Rating EC2, Standards for Rangeland Health and Guidelines for Livestock Grazing Management on Bureau of Land Management Administered Lands, Implementation, MT, ND and SD.

Summary: EPA expressed environmental concerns that the Standards and Guidelines may not adequately protect the chemical, physical and biological integrity of water quality to meet the Clean Water Act. There was confusion concerning what CWA Section 303 water quality standards (WQS) mean and how the States implement WQS. Consistency, additional information and environmental commitments were requested in the final EIS. The final EIS should include specifics of the mitigation plans.

ERP No. D–BLM–K67039–NV Rating LO, Denton-Rawhide Mine Expansion Project, Plan of Operation Approval, Implementation, Mineral County, NV.

Summary: EPA expressed a lack of objection.

ERP No. D–BLM–L65272–ID Rating EC2, Challis Land and Resource Management Plan, Implementation, Upper Columbus—Salmon Clearwater Districts, Salmon River, Lemhi and Custer Counties, ID.

Summary: EPA expressed environmental concerns on water quality impacts from grazing activities. EPA suggests that the final EIS include specifics on mitigation plans, including implementation to improve degraded riparian areas.

ERP No. D–COE–L36104–WA Rating LO, Howard A. Hanson Dam Continued Operation and Maintenance Plan, Implementation, Green River, King County, WA.

Summary: Our abbreviated review has revealed no EPA concerns on this project.

ERP No. D–IBR–K31018–AZ Rating EO2, Programmatic EIS—Pima-Maricopa Irrigation Project, Construction and Operation, Maricopa and Pinal Counties, AZ.

Summary: EPA had environmental objection with the large scope of the proposed action and its long-term sustainability. The PDEIS did not persuasively demonstrate that potential adverse environmental impacts can be avoided, minimized, or mitigated. EPA recommended prioritization of project components for implementation with primary emphasis on rehabilitation of existing irrigation systems and agricultural areas. EPA also strongly advocated monitoring and adaptive management and urged full integration of the local comprehensive water management plan. EPA expressed concern with potential adverse impacts to surface and groundwater quality, riparian areas, air quality, fish and

wildlife habitat, and public health and safety.

ERP No. D-STA-G50009-00 Rating LO, Programmatic EIS—International Bridge Crossing Project, Construction and Operation, Along the United States-Mexico Border from EL Paso to Brownsville, TX, Presidential Permit, NM and TX.

Summary: EPA had no objection to the proposed action.

ERP No. D-UMC-K24018-CA Rating EC2, Sewage Effluent Compliance Project, Implementation, Lower Santa Margarita Basin; Marine Corps Base Camp Pendleton, San Diego County, CA.

Summary: EPA expressed environmental concerns with the alternative analysis and requested clarification of wetland issues.

ERP No. DA-DOE-A22076-NM Rating LO, Waste Isolation Pilot Plant Disposal Phase, Updated Information, Disposal of Transuranic Waste, Carlsbad, NM.

Summary: EPA expressed lack of objections to the preferred alternative.

Final EISs

ERP No. F-AFS-J60017-CO Fraser Valley Loop Transmission Line Project, Construction, Operation, Associated Operations and Maintenance Activities, Approval of Permits, Arapaho and Roosevelt National Forests, Grand County, CO.

Summary: EPA continued to express environmental concerns that many of the potential impacts to wetlands, old growth, and raptor nests will not be known until a biological survey of the area is done. EPA also expressed environmental concern over possible conflicts that may still exist between this EIS and draft land management plans.

ERP No. F-AFS-J65242-MT Checkerboard Land Exchange, Plan of Approval and Implementation, Kootenai, Lolo and Flathead National Forests, Lincoln, Flathead and Sanders Counties, MT.

Summary: EPA expressed environmental concerns about potential adverse water quality and fisheries impacts that could occur on lands exchanged to the Plum Creek Timber Company (PCTC) due to high intensity timber harvesting and road building activities by PCTC on these lands.

ERP No. F-AFS-K65189-CA, Cavanah Multi-Resource Management Project, Implementation, Enhancing Forest Health and Productivity, Tahoe National Forest, Foresthill Ranger District, Placer County, CA.

Summary: EPA expressed environmental concerns that the number of proposed road obliterations will not be adequate to improve water quality.

ERP No. F-BLM-K67037-NV, Twin Creeks Mine Consolidation and Expansion, which Encompasses the former Rabbit Creek Mine and the former Chimney Creek Mine, Plan of Operation Approval and Permit Issuance, Winnemucca District, Humboldt County, NV.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F-COE-G39029-LA, Programmatic EIS—Marsh Management Project, Hydrologic Manipulation, COE Section 10 and 404 Permit Issuance, Coastal Wetland of Louisiana a part of the Coastal Wetlands Planning, Protection and Restoration Act (CWPPRA) River Basins, LA.

Summary: EPA recommended that the Record of Decision identify the future directions or activities that can be implemented by the COE to address hydrologic manipulation issues in coastal Louisiana.

ERP No. F-COE-G85180-LA, Estelle Plantation Partnership Municipal Golf Course and Housing Development, Implementation, Jefferson Parish, LA.

Summary: EPA continued to have environmental concerns regarding the preferred actions but defers further comment pending completion of the Clean Water Act Section 404 Permit processing.

ERP No. F-FHW-K40214-CA, Alternatives to Replacement of the Embarcadero Freeway and the Terminal Separator Structure, (Formerly CA-480) Implementation, Permit Approvals and Funding, San Francisco County, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F-GSA-C81017-NY, US Brooklyn Court Project, Demolition of the Emanuel Celler Federal Building, Construction of a New Courthouse and Renovation/Adaptive Reuse of the General Post Office at Cadman Plaza East, Kings County, NY.

Summary: EPA continued to have environmental concerns about the meteorological data used in the air model. EPA has requested that updated information be used in a revised modeling analysis.

Dated: February 18, 1997.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97-4352 Filed 2-20-97; 8:45 am]

BILLING CODE 6560-50-U

[FRL-5691-9]

Notice of Public Meeting on the National Performance Measures Strategy for Enforcement and Compliance Assurance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of second public meeting to solicit suggestions for innovative, supplemental measures of enforcement and compliance assurance program performance; develop a common understanding with partners and stakeholders about a set of national measures and the steps necessary to implement them (based on the state of national compliance); and discuss how to carry out an implementation plan to put the new set of measures into practice.

SUMMARY: The Environmental Protection Agency (EPA) Office of Enforcement and Compliance Assurance (OECA) held its first public meeting on Monday, February 3, 1997, in Alexandria, VA to hear presentations and statements from a cross-section of stakeholders about innovative approaches to measuring enforcement and compliance assurance program performance. This notice is hereby given that the EPA is soliciting comments for the second public meeting to continue to hear from stakeholders regarding the way EPA measures its enforcement programs.

DATES: The meeting date will take place on Monday, March 17, 1997, from 8:30 a.m to 5 p.m.

ADDRESSES: The public meeting will take place on Monday, March 17, 1997 at the Holiday Inn Civic Center, 50 8th Street, San Francisco, California 94103 (415-626-6103 or 1-800-243-1135).

FOR FURTHER INFORMATION CONTACT: James McDonald, U.S. Environmental Protection Agency, Office of Enforcement and Compliance Assurance, 401 M Street, S.W. (2201A), Washington, D.C., 20460; telephone (202) 564-4043, fax (202) 501-0701 or via the INTERNET at McDonald.James@EPAMAIL.EPA.GOV.

SUPPLEMENTARY INFORMATION:

I. Background

For many years, EPA has counted annual enforcement outputs (e.g., inspections conducted, number of civil and criminal cases, penalties assessed) as the predominant measure of performance for the enforcement and compliance assurance program. While these outputs will continue to be used as an important measure of environmental enforcement, EPA seeks additional measures to assess the status and trends of regulatory compliance, as well as environmental improvements resulting from enforcement and compliance assurance activities. This need was recognized during the enforcement reorganization in 1993, and a commitment was made during that process to develop additional measures. In addition, the requirements of the Government Performance and Results Act (GPRA) offer an opportunity to review and improve performance measures.

For almost three years, the Office of Enforcement and Compliance Assurance (OECA) has been taking steps to improve its performance measures for enforcement and compliance assurance activities. During that time, OECA: (1) convened a Measures of Success Work Group comprised of EPA and Regional officials, (2) developed and implemented a Case Conclusion Data Sheet (CCDS) to gather new types of information about completed cases, (3) developed and implemented a reporting measure for compliance assistance activities, and (4) realigned single-media data bases to enable reporting of enforcement data by industry sector.

Through these steps, OECA has made progress in developing an enhanced set of performance measures. Specifically, OECA is now able to supplement traditional enforcement output measures with other measures, including: (1) actions taken by violators to return to compliance, (2) quantitative environmental impact and qualitative environmental benefit of those actions, (3) types, amounts, and impact of compliance assistance activities, and (4) industry-specific compliance rates. These elements were fully operational together for the first time in FY 96, and the results of these efforts are being compiled in a national accomplishments report. However, OECA recognizes further improvements can, and should, be made with regard to reporting the state of national compliance and trends of environmental enforcement and compliance.

The purpose of this notice is to reach out for new ideas from EPA's regulatory partners (i.e., State, Tribal, and local governments) and interested stakeholders, and solicit participation in EPA's second national meeting on performance measures for its enforcement and compliance assurance program.

II. The National Performance Measures Strategy

The purpose of the National Performance Measures Strategy is to develop and implement an enhanced set of performance measures for the enforcement and compliance assurance program. The Strategy includes: (1) soliciting new ideas from regulatory partners and stakeholders for more meaningful and sophisticated measures of program performance, (2) developing a common understanding with regulatory partners and stakeholders about a set of national measures and the short- and long-term steps necessary to implement them, and (3) carrying out an implementation plan to put the new set of measures into practice.

The Strategy includes the following elements:

1. Conduct dialogue with regulatory partners, including senior EPA Headquarters and Regional managers, State officials, and a Department of Justice representative, to assist with implementation of the Strategy.
2. Hold initial public meetings to present objectives of the Strategy and key measurement issues and hear presentations and statements from a cross-section of stakeholders (by mid-March 1997).
3. Meet with sets of stakeholders during FY 97 to discuss ideas and proposals for improved measures and/or conduct meetings of mixed stakeholders in various locations (between March and June 1997).
4. Meet with other Federal regulatory and law enforcement agencies to learn about new performance measurement approaches being used in enforcement and compliance programs (between March and June 1997).
5. Hold a "capstone" conference with a cross-section of stakeholders at the end of the outreach process to identify common understandings, areas of agreement, and unresolved issues (by mid-September 1997).
6. Develop a report of findings and an implementation plan with a schedule (by October 1, 1997).
7. Implement new ideas and approaches in accordance with the schedule.

III. Agenda/Focus Topics for Public Meeting

EPA is interested in hearing and considering ideas from regulatory partners and a wide range of stakeholders regarding the state of compliance and additional ways to measure the performance of EPA's enforcement and compliance assurance program. EPA accepts the idea that its current approach of counting annual enforcement outputs needs to be supplemented by other approaches that measure improvements in environmental quality and the state of compliance. As such, the Agency wants to focus the outreach effort on identifying and implementing new approaches rather than on the limitations of its current approach.

Stakeholders and regulatory partners are asked to focus on the following issues of special interest to EPA:

1. What innovative approaches are being used (or could be used) by other environmental agencies, other regulatory agencies, and law enforcement agencies to measure the effects of their enforcement and compliance assurance programs?

2. What innovative approaches are being used by regulated facilities, companies, or trade groups and associations to measure the effect of their efforts to achieve and maintain compliance and protect the environment?

3. What can EPA use to measure the impact of its enforcement and compliance assurance program in low-income/ minority population communities?

4. How can EPA measure industry performance in complying with environmental laws and regulations?

5. How can EPA measure the deterrent effect of its enforcement-related activities, including conducting inspections, taking enforcement actions, and publicizing those actions?

6. How can EPA measure the impact of compliance assistance activities and compliance incentives, such as its audit and self-disclosure policy?

IV. Information for Participants

Persons wishing to attend the meeting, and/or make an oral presentation are encouraged to offer ideas and proposals through submission of written comments, participation in the public meeting organized by EPA, or both. Prior registration is encouraged by sending your name, affiliation, phone and fax number. Persons interested in presenting should send in addition to the general registration information, a brief statement describing your presentation to Michelle Angelich, Science Applications International Corporation, 1710 Goodridge Drive, MS 1-11-8, McLean, Virginia, 22102; telephone 703-821-4432, fax 703-903-1373 by Friday, March 7, 1997. Persons wishing to submit pre-filed testimony may also send or fax such material to Ms. Angelich. Presenters will be notified of their time slots or panel assignments once the final format is determined. This meeting will be open to the public as space permits, and a transcript of the proceedings will be prepared.

Dated: February 14, 1997.

Michael M. Stahl,

Acting Assistant Administrator, Office of Enforcement and Compliance Assurance.

[FR Doc. 97–4336 Filed 2–20–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5692–6]

Proposed Settlement Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act; In the Matter of Union Steel Products, Inc. Site

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Request for public comment.

SUMMARY: Notice of Settlement: in accordance with Section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), notice is hereby given of a settlement concerning past response costs at the Union Steel Products, Inc. Site in Albion, Michigan. This proposed agreement has been forwarded to the Attorney General for the required prior written approval for this Settlement, as set forth under section 122(g)(4) of CERCLA.

DATES: Comments must be provided on or before March 24, 1997.

ADDRESSES: Comments should addressed to the Docket Clerk, Mail Code MFA–10J, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and should refer to: In the Matter of Union Steel Products, Inc. Site, Docket No. _____.

FOR FURTHER INFORMATION CONTACT: Kurt N. Lindland, Mail Code CS–29A, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

SUPPLEMENTARY INFORMATION: The following party executed binding certification of its consent to participate in the settlement: Eagle-Picher Industries, Inc.

This party will pay proceeds from a $450,000 bankruptcy claim for response costs related to the Union Steel Products, Inc. Site, if the United States Environmental Protection Agency determines that it will not withdraw or withhold its consent to the proposed settlement after consideration of comments submitted pursuant to this notice.

U.S. EPA may enter into this settlement under the authority of section 122(h) of CERCLA. Section 122(h)(1) authorizes EPA to settle any claims under section 107 of CERCLA where such claim has not been referred to the Department of Justice. Pursuant to this authority, the agreement proposes to settle with a party who is potentially responsible for costs incurred by EPA at the Union Steel Products, Inc. Site.

A copy of the proposed administrative order on consent and additional background information relating to the settlement, including a list of parties to the settlement, are available for review and may be obtained in person or by mail from Kurt N. Lindland, Mail Code CS–29A, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

The U.S. Environmental Protection Agency will receive written comments relating to this settlement for thirty days from the date of publication of this notice.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. sections 9601 *et seq.*

William E. Muno,

Director, Superfund Division.

[FR Doc. 97–4324 Filed 2–20–97; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission

February 13, 1997.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarify of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments April 22, 1997.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications Commissions, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0108.

Title: Emergency Alert Systems EAS Activation Report.

Form No.: FCC Form 201.

Type of Review: Revision of existing collection.

Respondents: Broadcasting Stations.

Number of Respondents: 13,000 respondents with 1,300 annually.

Estimated Time Per Response: 2 minutes.

Total Annual Burden: 42.

Estimated costs per respondent: 0.

Needs and uses: The Emergency Broadcast System (EBS) has been changed to the Emergency Alert System (EAS). This change required that all EBS collections/forms to be corrected to reflect the name change. The EAS Activation Report Postcard was developed as part of the EAS planning program. The program is a three agency agreement between the FCC, NOAA National Weather Service, and the Federal Emergency Management Agency (FEMA). The information is needed to maintain accurate records and documentation of broadcast stations and cable systems in compliance with FCC rules, and to enhance and encourage participation in the national, state and local EAS. Any reduction in the frequency of this activity would result in a proportional loss of benefit and would cause a delay in the detection of EAS equipment failures that could cause the loss of national, state and local emergency messages to the public which in turn could cause the loss of life and property.

OMB Number: 3060–0589.

Title: Remittance Advice Form.

Type of Review: Revision of currently approved collection.

Form Number: FCC Form 159/159–C.

Respondents: Businesses or other for-profit; Individuals or households; small business or organizations.

Number of Respondents: 213,500.

Estimated time per response: 15 minutes.

Total annual burden: 53,375 hours.

Needs and Uses: Fees, Fines & Debts. This form is the Commission's remittance advice and is to accompany any payment submitted with it. The purpose of the form is to provide the identity of the payor, the amount being paid, and the reason the payment is being made. Specific identification of the payor, such as call sign, or the bill that was rendered, such as invoice number, is also required. This information facilitates the efficient and accurate processing of the Commission's collections by its designated entities, such as a lockbox bank. In P.L. 104–134, Chapter 10, Sec.31001, signed April, 1966, the head of each Federal agency must require each person doing business with that agency to furnish to it such person's taxpayer identifying number. Effective July, 1996 the U.S. Treasury will "flag" (and notify the Commission) andy and all payment requests to anyone doing business with the U.S. Government, if their taxpayer identifying number has not been furnished. The information will be used by the FCC and the U.S. Treasury for purposes of collecting and reporting on any delinquent amounts arising out of such person's relationship with the Government. For businesses, the taxpayer identifying number is its Internal Revenue Service-issued employer identification number. This number is currently used by the FCC as the business' account number for identification purposes only. Obtaining a social security number from an individual is a new requirement imposed on all Federal agencies.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Branch.

[FR Doc. 97–4295 Filed 2–20–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, February 25, 1997, to consider the following matters:

SUMMARY AGENDA: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions taken pursuant to authority delegated by the Board of Directors.

DISCUSSION AGENDA: Memorandum and resolution re: Notice of Proposed Rulemaking re: Recordkeeping and Confirmation Requirements for Securities Transactions, 12 C.F.R. Part 344.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2449 (Voice); (202) 416–2004 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Jerry L. Langley, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: February 18, 1997.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 97–4452 Filed 2–19–97; 11:32 am]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

A2Z International Trading, Inc., 2920 West Aireport Blvd., Sanford, FL 32771, Officers: Nema Moussa, President and Ali Alawadhi, Vice President

"A" Pacific Express, Enterprises, 1710 S. Del Mar Ave., Suite 123, San Gabriel, CA 91776, Officers: Karly Kai Lai Vanders, President and Abby An, Director

Unik Forwarding, Inc., 146-42 Guy Brewer Boulevard, Jamaica, NY 11434, Officer: Urban Mounsey, Director

Dated: February 18, 1997.

Joseph C. Polking,

Secretary.

[FR Doc. 97–4309 Filed 2–20–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, February 26, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda: Because of their routine nature, no discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that the items be moved to the discussion agenda.

1. Proposed technical and clarifying amendments to Regulation CC (Availability of Funds and Collection of Checks) (proposed earlier for public comment; Docket No. R–0926).

2. Proposals concerning (a) guidelines for the use of volume-based pricing for Federal Reserve priced services and (b) volume-based fees for the automated clearing house (ACH) service.

3. Any items carried forward from a previously announced meeting.

Discussion Agenda: PLEASE NOTE THAT NO DISCUSSION ITEMS ARE SCHEDULED FOR THIS MEETING.

Note: If the item is moved from the Summary Agenda to the Discussion Agenda, discussion of the items will be recorded. Cassettes will then be available for listening in the Board's Freedom of Information Office, and copies can be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: February 19, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–4423 Filed 2–19–97; 9:59 am]

BILLING CODE 6210–01–P

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: Approximately 10:15 a.m., Wednesday, February 26, 1997, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 19, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–4424 Filed 2–19–97; 9:59 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Record of Decision; Centers for Disease Control and Prevention; Clifton Road Campus Expansion, Atlanta, GA

Action

This is the Record of Decision (ROD) for the Clifton Road Campus Expansion for the Centers for Disease Control and Prevention (CDC) in Atlanta, Georgia. The Proposed Action includes demolition, new construction, and renovation of buildings on CDC's existing Clifton Road Campus, as well as acquisition and development of a 17.6 acre site adjacent to the existing campus.

Over a 20-year planning period (1995–2015), the General Services Administration (GSA) and CDC anticipate the Proposed Action will meet the following long-range CDC housing requirements:

- Increase existing workstations from 2,095 to approximately 3,300;
- Increase existing parking spaces from 1,781 to approximately 3,300, including visitor;
- Increase existing gross building area from 1,006,000 square feet to 1,702,000 square feet;
- Reduce the number of antiquated and non-functional Clifton Road facilities; and,
- Increase the physical security of the Clifton Road Campus, which is CDC's World Headquarters and primary infectious disease research facility.

CDC and GSA plan for the expansion to occur in two general 10-year phases. From 1995–2005, the Government will renovate and/or replace existing facilities, and will construct replacement parking facilities and minor support buildings. During the second period, 2006–2015, CDC expects to house additional programmatic growth in new construction. CDC intends for the Clifton Road Campus to continue to serve as its World Headquarters, and as its primary infectious disease research facility. Other CDC functions, such as environmental health, and general office space, will be housed at the CDC Chamblee Campus, or in leased office space located away from the Clifton Road Corridor. If the Proposed Action is implemented, additional land acquisition to house the long-range program will increase the site area of the existing Clifton Road Campus from 27.6 acres to 45.2 acres;

The purpose and need for the Proposed Action is to provide an efficient, cost-effective means to accommodate CDC's current and future space needs in its Clifton Road location through the year 2015. The Proposed Action is needed to adequately address CDC's current program needs at Clifton Road through renovation and reconfiguration of existing antiquated space, as well as to provide new space to accommodate anticipated future research and operational activities.

Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, the Council on Environmental Quality Regulations (40 CFR Part 1500–1508), and GSA Order PBS P 1095.4B, GSA prepared an Environmental Impact Statement (EIS) for the Proposed Action. The purpose of the EIS is to:

- Identify and analyze reasonable alternatives to the Proposed Action;
- Identify the potential impacts resulting from the Proposed Action and reasonable alternatives;
- Identify measures to mitigate adverse impacts resulting from the Proposed Action and reasonable alternatives, and;
- Actively solicit and incorporate public comments into the CDC/GSA decision making process.

The purpose of the ROD is to clearly communicate the Government's decision on implementing the Proposed Action or a reasonable alternative to the Proposed Action, and the basis for that decision, and to identify any mitigation measures to be implemented as part of the decision. The Draft and Final EIS documents are incorporated into this ROD by reference, and are available upon request from GSA.

GSA released the Draft EIS for a 45-day public comment period on August 16, 1996. The Final EIS was released for a 30-day public comment period that closed on January 6, 1997. GSA provided written notices of availability for these documents in the Federal Register, the Atlanta Journal-Constitution, and through direct mailings to interested parties. GSA distributed approximately 80 copies of the Draft and Final EIS to Federal, state and local governments, elected officials, neighborhood associations, and other interested parties identified during the 19 month NEPA review process.

GSA and CDC involved the public in the decision making process through a combination of newspaper notices, direct mailings, written correspondence, a public scoping meeting (August 1, 1995), a public hearing on the Draft EIS (September 25, 1996), and several meetings with Civic Associations and not-for-profit organizations who own property on the 17.6 acres to be acquired as part of the Proposed Action. CDC and GSA elected to add one major alternative with two sub-alternatives (discussed below) to the Draft EIS as a result of these meetings.

Alternatives Considered

In 1992, CDC and GSA began looking at alternative strategies to house CDC's current and long-term space requirements through a master planning approach. CDC and GSA considered many factors in developing the master plan, including: site acquisition and development costs and suitability; expandability of sites for future growth; traffic and environmental considerations; current land use of potential sites; and, proximity to existing Government-owned CDC campuses (Clifton Road and Chamblee).

In the initial master planning stages, CDC and GSA considered total and partial relocation of the Clifton Road Campus (Environmental Assessment, GSA, July 20, 1993). GSA and CDC examined several alternative sites near the Clifton Road Campus, including a site near the Veterans Administration Hospital Complex on Clairemont Road near Emory University, and a site near Mercer University-Atlanta Campus at University Drive and Flowers Road. Neither of these sites met the CDC/GSA criteria for partial relocation of the Clifton Road Campus. Based on the conclusions of the Environmental Assessment, CDC and GSA concentrated on meetings CDC's housing needs closer to the existing CDC World Headquarters, the Clifton Road Campus.

Through the environmental review process, GSA and CDC identified a technically preferred alternative and several feasible alternatives, defined below, as well as the "No Action" alternative required under NEPA.

Technically Preferred Alternative (i.e., the Proposed Action): The Government would acquire 17.6 acres of existing residential, commercial and institutional property immediately to the west of the existing CDC Clifton Road Campus. The site is generally bounded by Clifton Road, Clifton Way and Michael Streets. The Government would acquire and demolish up to 43 existing structures on site, and would modify portions of Clifton Way and Michael Street to improve traffic ingress/egress, and improve physical security on the site. Existing residential, commercial and institutional occupants would be compensated and relocated from the 17.6 acre site under the provisions of the Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs relations (40 CFR Part 24). This alternative maximizes design options and development potential for both the existing and proposed CDC campuses, and would also greatly enhance the security of the CDC World Headquarters Complex.

Limited Expansion Alternatives: Under these alternatives, the Government would acquire less than the full 17.6 acres adjacent to the existing Clifton Road Campus in order to minimize adverse impacts to several institutional uses located immediately adjacent to Clifton Road, namely a Dekalb County Fire Station, the Emory University Research Committee Graduate School Annex (Emory Annex), located in a single-family detached home, office of the Georgia Association for Pastoral Care (GAPC), and the offices of Global Health Action (GHA), formally the International Service Association for Health. The bulk of the 20-year CDC program would be constructed on a site approximately one to three acres smaller than the proposed action site, and would exclude all or a combination of the above mentioned properties from Government acquisition.

On-Site Consolidation: Under this alternative, CDC and GSA would implement the construction and modernization program discussed under the Proposed Action on the existing Clifton Road Campus: that is, the Government would not acquire any additional land proximate to the existing Clifton Road Campus.

No Action Alternative: Under this alternative, CDC and GSA would not implement the construction program and the land acquisition described under the Proposed Action. This means that CDC would adopt a *status quo* approach to its long-term housing needs, staying in over-crowded, antiquated buildings on campus, and housing any overflow needs in leased space off-campus. For purposes of this EIS, the No Action alternative serves as a baseline for measuring future conditions in the vicinity of the proposed action in key impact areas such as traffic, air and water quality, and development type and density, against the projected impacts of the proposed Action and feasible alternatives.

Environmental Consequences of the Proposed Action and Feasible Alternatives

The Proposed Action (Technically Preferred Alternative): Based on the research and analyses conducted in the preparation of the Draft and Final EIS, the Proposed Action is expected to have minor adverse impacts on ambient air quality, housing, and transportation & parking, minor positive impacts on comprehensive planning and zoning, and a major adverse impact on vegetation & wildlife.

Short-term and highly localized air quality impacts would occur primarily during the construction periods for new facilities, and during highly congested AM and PM peak traffic hours. Air quality impacts will be partially mitigated through CDC's continued use of Transportation Demand Management (TDM) strategies designed to increase use of alternatives to single-occupant vehicle commuting. CDC will continue to work closely with MARTA, with other large employers in the Clifton Road Corridor, and with concerned citizens to improve TDM measures.

Minor housing impacts will occur through the demolition of 35 single family residences, and one small multi-family apartment complex. Within the census tract containing the proposed site, this reduction constitutes approximately four percent of existing housing stock, and only one percent of housing stock in the Druid Hills census designated place (CDP). Adverse impacts to displaced owners will be mitigated under the provisions of the Uniform Relocation Assistance and Real Property Acquisition for Federal and Federal Assisted Programs regulations (40 CFR Part 24).

The Proposed Action will result in adverse traffic impacts to several important intersections in the form of increased delay time, expressed as Level of Service (LOS) degradation. Intersections where at least one future year LOS component will be worse under the Proposed Action versus the No Action Alternative are: Clifton Road and Briarcliff Road (2005); Clifton Road and Houston Mill Road (year 2015); Clifton Road and North Decatur Road (2015); Briarcliff Road and La Vista Road (2015); Shepherds Lane and La Vista Road (2005); and Clifton Road and Clifton Way (2005). CDC will partially mitigate the Clifton Road/Clifton Way intersection LOS degradation through redesign and possible resignalization of the intersection, in consultation with Dekalb County. Neither GSA nor CDC is authorized to spend Government funds for off-site road improvements, but will attempt to partially mitigate LOS degradation at other key intersections through the use of TDM measures.

The Proposed Action is expected to have minor positive impacts to planning and zoning because it is more consistent with future intended land use patterns than current uses.

Vegetation and wildlife will be adversely affected by the Proposed Action due primarily to habitat destruction when the site is graded. CDC will implement a comprehensive tree identification and retention element as part of a master landscaping plan for the entire 17.6 acre site to mitigate these impacts to the greatest extent practicable.

Limited Expansion Alternatives: Based on the research and analyses conducted in the preparation of the Draft and Final EIS, GSA and CDC expect the Limited Expansion Alternatives to have impacts similar to and of approximately the same magnitude as the Proposed Action. These include minor adverse impacts on ambient air quality, housing, and transportation & parking, minor positive impacts on comprehensive planning and zoning, and major adverse impacts on vegetation & wildlife, and landforms & topography.

Short-term and highly localized air quality impacts would occur primarily during the construction periods for new facilities, and during highly congested AM and PM peak traffic hours. These air quality impacts would be partially mitigated through CDC's continued use

of TDM strategies designed to increase use of transportation alternatives to single-occupant vehicle commuting. CDC would continue to work closely with MARTA and with other large employers in the Clifton Road Corridor and concerned citizens to improve TDM measures.

Minor housing impacts will occur through the demolition of 35 single family residences, and one small multi-family apartment complex. Within the census tract containing the proposed site, this reduction constitutes approximately four percent of existing housing stock, and only one percent of housing stock in the Druid Hills CDP. Adverse impacts to displaced owners will be mitigated under the provisions of the Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs regulations (40 CFR Part 24). The Limited Expansion Alternatives would minimize adverse impacts to several institutional uses along the Clinton Road portion of the site, including a Dekalb County Fire Station, the Emory Annex, GHA, and GAPC, by excluding all or a combination of them from Government acquisition and subsequent relocation.

The Limited Expansion Alternatives would result in adverse traffic impacts to several important intersections in the form of increased delay time, expressed as LOS degradation. Intersections where at lease one future year LOS component will be worse under the proposed action versus the No Action Alternative are: Clinton Road and Briarcliff Road (2005); Clifton Road and Houston Mill Road (year 2015); Clifton Road and North Decatur Road (2015); Briarcliff Road and La Vista Road (2015); Shepherds Land and La Vista Road (2005); and, Clifton Road and Clifton Way (2005). CDC would partially mitigate the Clifton Road/Clifton Way intersection LOS degradation through redesign and possible resignalization of the intersection, in consultation with Dekalb County, Neither GSA nor CDC is authorized to spend Government funds for off-site road improvements, but CDC would attempt to partially mitigate LOS degradation at other key intersections through the use of TDM measures.

The Limited Expansion Alternatives are expected to have minor positive impacts to planning and zoning because they are more consistent with future intended land use patterns than current uses.

Vegetation and wildlife would be adversely affected by the proposed action due primarily to habitat destruction when the site is partially graded. CDC would implement a comprehensive tree identification and retention element as part of a master landscaping plan for the entire 17.6 acre site to mitigate these impacts to the greatest extent practicable.

The Limited Expansion Alternatives would have adverse effects on landforms & topography because CDC would not control the entire site and would have to use less efficient solutions than comprehensive site grading to overcome the extreme elevation differences and drainage issues from Clifton Road down to Peavine Creek. For example, large retaining walls similar to the one behind the existing Dekalb County Fire Station would have to be constructed behind all the facilities adjacent to Clifton Road, thus exacerbating elevation differences between the upper and middle parts of the site.

On Site Expansion: Based on the research and analyses conducted in preparation of the Draft and Final EIS, GSA and CDC expect the On Site Expansion Alternative to have minor adverse impacts on hydrology/water quality, vegetation & wildlife, ambient air quality, ambient noise, comprehensive planning & zoning, and housing, and a major adverse impact on transportation & parking.

CDC and GSA anticipate potential minor adverse impacts to hydrology/water quality, and vegetation & wildlife because even though the Government would not acquire the 17.6 acre parcel, growth patterns in the area indicate that it would likely be developed by other parties over the 20-year analysis period. If the development occurs sporadically over this period, the opportunities to systematically address grading, runoff control, tree retention and landscaping, etc. are significantly reduced.

Short-term and highly localized air quality impacts would occur primarily during the construction periods for new CDC facilities and for private development of the 17.6 acre site, and during highly congested AM and PM peak traffic hours. These impacts would be higher under this alternative than others because this alternative projects the greatest additional density in the Clifton Road Corridor. Air quality impacts would be partially mitigated through CDC's continued use of TDM strategies designed to increase use of transportation alternatives to single-occupational vehicle commuting. CDC would continue to work closely with MARTA and with other large employers in the Clifton Road Corridor and concerned citizens to maximize effective TDM measures.

Ambient noise impacts to adjacent residential areas of the 17.6 acre site would increase somewhat during CDC construction periods, but not to unacceptably high levels.

Minor adverse housing impacts could occur under the On Site Expansion Alternative because private development of the 17.6 acre site could take place over the 20-year analysis period in a piecemeal fashion, leaving some residential properties "as-is" while others are developed. This type of development pattern can create noise, traffic, and other nuisances for residents while the area is in transition.

The On Site Expansion Alternative would result in adverse traffic impacts to several important intersections in the form of increased delay time, expressed as LOS degradation. Intersections where at least one future year LOS component will be worse under the Limited Expansion Alternatives versus the No Action Alternative are: Clifton Road and Briarcliff Road (2005); Clifton Road and Houston Mill Road (2005); Clifton Road and Haygood Drive (2005); Clifton Road and North Decatur Road (2015); Shepherds Lane and La Vista Road (2005); Briarcliff Road and La Vista Road (2005); North Decatur Road and Haygood Drive (2005); and Clifton Road and Clifton Way (2205). CDC could partially mitigate the Clifton Road/Clifton Way intersection LOS degradation through redesign and possible resignalization of the intersection, in consultation with Dekalb County and surrounding property owners. Neither GSA nor CDC is authorized to spend Government funds for off-site road improvements, but will attempt to partially mitigate LOS degradation at other key intersections through the use of TDM measures.

The On Site Expansion Alternative is expected to have minor negative impacts to planning and zoning because it does not allow for the comprehensive development of the 17.6 acre site in a manner consistent with future intended land use patterns.

No Action: Based on the research and analyses conducted in preparation of the Draft and Final EIS, GSA and CDC expect the No Action Alternative to have minor adverse impacts on hydrology/water quality, vegetation & wildlife, ambient air quality, ambient noise, comprehensive planning & zoning, housing, and on transportation & parking.

CDC and GSA anticipate potential minor adverse impacts to hydrology/water quality, and vegetation & wildlife because even though the Government would not acquire the 17.6 acre parcel, growth patterns in the area indicate that it would likely be developed by other parties over the 20-year analysis period. If the development occurs sporadically over this period, the opportunities to systematically address grading, runoff control, tree retention and landscaping, etc. are significantly reduced.

Short-term and highly localized air quality impacts would occur primarily during the construction periods for private development of the 17.6 acre site, and during highly congested AM and PM peak traffic hours. Air quality impacts would be partially mitigated through CDC's continued use of TDM strategies designed to increase use of transportation alternatives to single-occupant vehicle commuting. CDC would continue to work closely with MARTA, with other large employers in the Clifton Road Corridor, and with concerned citizens to improve TDM measures.

Minor ambient noise impacts to adjacent residential areas of the 17.6 acre site would occur from private development of the 17.6 acre site over the 20-year analysis period.

Minor adverse housing impacts could occur under the No Action Alternative because private development of the 17.6 acre site could take place over the 20-year analysis period in a piecemeal fashion, leaving some residential properties "as-is" while others are developed. This type of development pattern can create noise, traffic, and other nuisances for residents while the area is in transition.

The No Action Alternative would result in adverse traffic impacts to several important intersections in the form of increased delay time, expressed as LOS degradation, because of "background development" that would occur in the area regardless of CDC's development activities. Intersections where at least one future year LOS component will be worse under the No Action Alternative versus current conditions are: Clifton Road and Briarcliff Road (2005); Clifton Road and Haygood Drive (2005); Clifton Road and North Decatur Road (2005); Shepherds Lane and La Vista Road (2005); Briarcliff Road and La Vista Road (2005); North Decatur Road and Haygood Drive (2005); and, Clifton Road and Clifton Way (2005). CDC could partially mitigate the Clifton Road/Clifton Way intersection LOS degradation through redesign and possible resignalization of the intersection, in consultation with Dekalb County and surrounding property owners. Neither GSA nor CDC is authorized to spend Government funds for off-site road improvements, but will attempt to partially mitigate LOS degradation at other key intersections through the use of TDM measures.

The No Action Alternative is expected to have minor negative impacts to planning and zoning because it does not allow for the comprehensive development of the 17.6 acre site in a manner consistent with future intended land use patterns.

Rationale for Decision

The Proposed Action, which is also the Technically Preferred Alternative, will enable GSA and CDC to plan for and accommodate CDC's long-term housing needs at the Clifton Road Campus in the most economical and efficient manner. The Proposed Action maximizes design options and development potential for both the existing campus and the proposed CDC expansion, and, most importantly, will greatly enhance the security of the Headquarters Complex. This alternative poses the least adverse environmental impacts compared with other feasible alternatives, and is, therefore, the Environmentally Preferred Alternative.

The Limited Expansion Alternatives are feasible, but would not allow the Government the maximum flexibility to plan for and configure site security, site infrastructure, or the placement of future laboratory, parking and support facilities in the most efficient and cost-effective ways over the 20-year development horizon. The environmental impacts of the Limited Expansion Alternatives are very similar to those resulting from the Proposed Action; therefore, implementing a Limited Expansion Alternative versus the Proposed Action would not result in additional mitigation of adverse environmental impacts, but would pose additional constraints and costs on the Government to implement CDC's long-range facility plans.

Implementing the No Action Alternative neither results in additional mitigation of environmental impacts, nor allows the Government to address the purpose and need for the Proposed Action: to provide an efficient, cost-effective means to accommodate CDC's future space needs in its Clifton Road location through the year 2015. The Proposed Action is needed to adequately address CDC's current program needs at Clifton Road through renovation and reconfiguration of existing space, as well as to provide new space to accommodate anticipated future research and operational activities.

Therefore, having given consideration to all of the factors discovered during the 19 month environmental review process, it is GSA's decision to proceed with the Proposed Action: Government acquisition and development of 17.6 acres of existing residential, commercial and institutional property immediately to the west of the existing CDC Clifton Road Campus, as described in this ROD, and in the Draft and Final EIS documents incorporated by reference in this ROD.

Dated: February 10, 1997.

Phil Youngberg,

Regional Environmental Officer.

[FR Doc. 97–4026 Filed 2–20–97; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Public Health and Science; Notice of a Cooperative Agreement With the Children's Hospital of Philadelphia

The Office of Minority Health (OMH), Office of Public Health and Science, announces that it will enter into a cooperative agreement with Children's Hospital of Philadelphia to establish a model program for asthma attack avoidance education.

The purpose of this cooperative agreement is to establish a community-based, parent-child focused program designed to increase identification of potential asthma attack-triggering factors among minority, specifically African-American, urban children, and to ensure appropriate referral for medical care. The OMH will provide technical assistance and oversight as necessary for the implementation, conduct, and assessment of the project activities. On an as-needed basis, OMH will assist in arranging consultation from other Government agencies and non-government agencies.

Authorizing Legislation

This cooperative agreement is authorized under Title XVII, Section 1707(d)(1) of the Public Health Service Act, as amended by Public Law 101–527.

Background

Assistance will be provided only to Children's Hospital of Philadelphia. No other applications are being solicited under this announcement. The Children's Hospital of Philadelphia is uniquely qualified to accomplish the objectives of this cooperative agreement because it has the following combination of factors:

- A service area consisting primarily of an economically disadvantaged minority population.

- Pediatric services focusing on predominately African-American children from economically disadvantaged neighborhoods.
- Primary care programs which include a full range of medical care and educational programs promoting good health practices. These education programs are designed to meet the health care prevention needs of critical and chronically ill children.
- An established Center for Asthma Treatment that provides services primarily to African American children.
- An urban area with a predominant minority population which has a high rate of asthma among children and youth of African American descent, as evidenced by the 1,873 asthma related visits the hospital reported in 1995, with 1,540 of them being children of African-American descent.
- Commitment of neighborhood partners to provide sites for asthma related educational and prevention programs.
- Experience in conducting parent and teen focused programs.

This cooperative agreement will be awarded for a 3-year project period with funding at $250,000 (including indirect cost) per 12-month budget period. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Where To Obtain Additional Information

If you are interest in obtaining information regarding this project, contact Ms. Cynthia Amis, Office of Minority Health, 5515 Security Lane, Suite 1000, Rockville, Maryland 20852 or telephone (301) 594–0769.

Dated: January 23, 1997.

Clay E. Simpson, Jr.,

Deputy Assistant Secretary for Minority Health.

[FR Doc. 97–4287 Filed 2–20–97; 8:45 am]

BILLING CODE 4160–17–M

Centers for Disease Control and Prevention

[INFO–97–03]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Wilma Johnson, CDC Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. Technical Assistance to Enhance the Statistical and Analytic capacity of State and Local Public Health Professionals For Year 2000 Applications—(0920–0290)—Extension—Responsibility for identifying and providing data for monitoring the Year 2000 objectives is shared by agencies throughout the government, in State and local governments and in the private sector. Each of the 22 health priority areas outlined in the Year 2000 Objectives provides an assessment of the availability of data for establishing baseline measures and potential data sources for tracking progress. A key set of provisions of the Year 2000 Health Objectives Planning Act of 1990 (Pub. L. 101–582) provided for grants to states for the development of plans to implement the Year 2000 Health Objectives within each state, including the assessment of health within each of the states. The Act further mandated the development of uniform health status indicators for use by federal, state and local health agencies and model methods of collecting and reporting data. In order to enhance state capacity to use data, the National Center for Health Statistics (NCHS/CDC) has provided training in the use of data for public health purposes through the Applied Statistics Training Institute (ASTI). ASTI presents a series of short focused courses on data collection, analysis and utilization. These courses are offered to professionals in state and local health departments. The attendees gain knowledge of practical applications and techniques for evaluating the Year 2000 health objectives. Also, by sponsoring these courses, CDC can expect certain standards of data analysis on the local level. An upgrading of methodological skills for those persons at the local level primarily responsible for analysis is vitally important in understanding the health status of a population and in planning effective prevention programs. Each year ASTI mails a Bulletin of Courses to state and local public health agencies informing them, of the curriculum of courses available. An application for training form is included in the Bulletin of Courses for use by individuals interested in attending a course. This collection of information consists solely of those application forms. The total cost to respondents is estimated at $2,000.

Respondents	Number of respondents	Number of responses/ respondent	Average burden/ response (in hrs.)	Total burden (in hrs.)
Agencies and Individuals	600	1	0.167	100
Total				100

Wilma G. Johnson,

Acting Associate Director for Policy Planning And Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–4005 Filed 2–20–97; 8:45 am]

BILLING CODE 4163–18–P

National Institute for Occupational Safety and Health; Request for Comments on the Toxicity of Carbonless Copy Paper

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC), Department of Health and Human Services.

ACTION: Request for comments.

SUMMARY: NIOSH is requesting comments from all interested parties concerning possible adverse health effects among workers who have used carbonless copy paper. Interested parties may submit medical case reports, experimental data, or other information relating to the effects caused by such exposures. This information will be used by NIOSH to evaluate whether exposure to the chemical substances in carbonless copy paper poses health risks, and to determine the need for preventive health measures or additional research.

DATES: Written comments to this notice should be submitted to Diane Manning, NIOSH Docket Office, 4676 Columbia Parkway, M/S C–34, Cincinnati, Ohio 45226 on or before April 22, 1997. Comments may also be faxed to Diane Manning at (513) 533–8285 or submitted by email to: dmm2@cdc.gov as WordPerfect 5.0, 5.1/5.2, 6.0/6.1, or ASCII files.

FOR FURTHER INFORMATION CONTACT: Technical information may be obtained from Dr. Paul A. Schulte, NIOSH, CDC, 4676 Columbia Parkway, Mailstop C–14, Cincinnati, Ohio 45226, telephone (513) 533–8303.

SUPPLEMENTARY INFORMATION: Pursuant to sections 20 and 22 of the Occupational Safety and Health Act of 1970 [29 U.S.C. 669 and 671], NIOSH is authorized to gather information in order to develop recommendations for improving occupational safety and health. NIOSH has been concerned about reported undesirable health effects in workers occupationally exposed to chemicals contained in or released from carbonless copy paper. On June 12, 1987, NIOSH published a **Federal Register** Notice (52 FR 22534) requesting comments and secondary data on the toxicity of carbonless copy paper. At that time it was determined, based on the submitted information, that insufficient data were available to conclude that the relationship between exposure to carbonless copy paper and the suggested health effects was a causal one.

Carbonless copy paper is used to simultaneously make multiple paper copies of an original document. This system eliminates the need for carbon paper by using paper with a microencapsulated undercoating containing dyes and solvents. Writing, typing, or printing on the top sheet breaks the microcapsules immediately underneath, releasing the dyes and solvents to form the image on the paper surface below. Some substances used in carbonless copy paper include aliphatic compounds (C_{10}–C_{14}), aromatic compounds such as alkyl substituted biphenyls (polychlorinated biphenyls have not been used in carbonless copy paper in the United States since the early 1970's), phenyl methyl benzenes and hydrogenated terphenyls, diaryl ethanes, alkyl benzenes, benzyl xylene, isoparaffins, diisopropyl nâthhalenes, dibutyl phthalate, glutaraldehyde, formaldehyde, organic dyes, phenol-formaldehyde resin, kaolin, starch, styrene, butadiene-latex, hydrogenated aluminum silicate, mineral oil, and sanatasol oil.

Carbonless copy paper chemicals can be absorbed dermally or by inhalation. Several factors such as chemical composition and volume of the paper used, ambient temperature and ventilation rates in work or storage areas, and work practices may affect the extent of exposure. Adverse health effects in exposed workers were first reported in the scientific literature in the late 1960's. The signs and symptoms attributed to dermal exposure have included dryness, redness, irritation, eczema, tingle, and itchiness of the skin. The signs and symptoms attributed to inhalation exposures have included nasal congestion, drainage, bleeding, and irritation; upper respiratory tract irritation; asthma; throat tickle and hoarseness; and joint pain, fatigue, and headache.

In order to update the information on carbonless copy paper, NIOSH is interested in obtaining existing and available information published or developed since 1987, including reports and research findings, to evaluate whether recommendations for health protection or further research on carbonless copy paper chemicals are needed. Examples of requested information include, but may not be limited to, the following:

1. Adverse health signs or symptoms associated with occupational exposure to carbonless copy paper or its components.
2. Epidemiology data assessing the incidence of health effects associated with occupational exposure to carbonless copy paper.
3. Medical case reports and studies of adverse health effects associated with occupational exposure to carbonless copy paper. These medical case reports and studies should be submitted without personal identifiers.
4. Industrial hygiene data and reports from work places where carbonless copy paper is used or handled.
5. *In Vivo* or *In Vitro* toxicity data and studies on the components of carbonless copy paper.

All information received in response to this notice, except that designated as trade secret and protected by section 15 of the Occupational Safety and Health Act, will be available for public examination and copying at the above address.

Dated: February 12, 1997.

Linda Rosenstock,

Director, National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–4280 Filed 2–20–97; 8:45 am]

BILLING CODE 4163–19–P

Availability of Draft Guidance on Childhood Lead Screening

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services.

ACTION: Notice of availability and request for comments.

SUMMARY: This notice announces the availability for review and comment of a draft document entitled, "Screening Young Children for Lead Poisoning." The document was prepared by CDC staff with advice from CDC's Advisory Committee on Childhood Lead Poisoning Prevention, a group of non-Federal experts on childhood lead poisoning prevention. The document also reflects the comments of many other persons involved in scientific and programmatic aspects of childhood lead poisoning prevention and child health.

DATES: To ensure consideration, written or verbal comments on this draft document must be received by April 7, 1997.

ADDRESSES: Requests for copies of the draft document must be made by calling the toll free telephone number: (888) 232–6789. Verbal comments on the draft document may be made by calling the same toll free telephone number. Written comments on the draft

document should be sent by mail or facsimile to: Nancy Tips, NCEH/CDC, Mailstop F42, 4770 Buford Highway, N.E., Atlanta, GA, 30341–3724, facsimile (770) 488–7335.

SUPPLEMENTARY INFORMATION: Childhood lead poisoning is a major preventable environmental health problem in the United States. Since 1975, when CDC issued its first comprehensive guidelines for preventing lead poisoning in children, "Increased Lead Absorption and Lead Poisoning in Young Children," CDC has worked with public health agencies, child health-care providers, and various concerned groups to prevent lead poisoning in young children. Other editions of the guidelines have been published in 1975, 1978, 1985, and 1991. Each revision has incorporated new scientific and practical information on how best to reduce the adverse effects of lead on the health of young children. This draft guidance is narrower in scope than the 1991 edition of "Preventing Lead Poisoning in Young Children." It does not modify CDC's position on adverse health effects caused by lead. Instead, it makes recommendations to improve the use of screening to prevent lead poisoning among young children. These recommendations are needed because data indicate that many children, especially those living in older housing, continue to be heavily exposed to lead, whereas the average exposure of children in the United States has substantially declined. To address this situation, the recommendations in this guidance are intended to increase the screening and follow-up care of children who most need these services and to ensure that prevention approaches are appropriate to local conditions. The audience for this guidance includes State and local public health officials, who will make screening recommendations for their jurisdictions, and pediatricians and other child health-care providers, public health agencies, and health care organizations, including managed care organizations.

Dated: February 14, 1997.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–4281 Filed 2–20–97; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

[Docket No. 97N–0025]

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by March 24, 1997.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Margaret R. Wolff, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance:

Medical Devices Standards Activities Report (OMB Control Number 0910–0219—Extension)

FDA is collecting information necessary to update a comprehensive listing of current national and international standards activities in the field of medical devices. The collection of this information is authorized by section 514(a)(4)(B) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360d(a)(4)(B)), which requires FDA to consult with other nationally or internationally recognized standard-setting entities, including other Federal agencies concerned with standard-setting, in carrying out its responsibility to establish special controls for medical devices. This report is used by approximately 39 standards-developing organizations to coordinate their standards activities. This coordination prevents duplication of effort and insures efficient and expeditious management of standards development. Over 700 copies of this report are used by government, hospitals, libraries, industry, private citizens, and State and local government agencies, including FDA, to keep abreast of standards development activities and current technology concerning the safety of medical devices. Without the report, there would be duplication of standards efforts by voluntary standards organizations because there is no other publication that can be easily referenced to ascertain if a certain medical device standard is being or has been developed.

FDA estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
39	0.5	19.5	3	58.5

There are no capital costs or operating and maintenance costs associated with this collection of information.

This collection occurs biennially and is voluntary. There are 39 national and international organizations with one report each reporting period.

Dated: February 12, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–4227 Filed 2–20–97; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95D–0283]

Deciding When to Submit a 510(k) for a Change to an Existing Device; Guidance; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled "Deciding When to Submit a 510(k) for a Change to an Existing Device." This guidance is intended to provide direction to manufacturers of devices who intend to modify their devices and are in the process of deciding whether the modification requires a new premarket notification submission (510(k)).

DATES: Written comments on this guidance may be submitted at any time.

ADDRESSES: Submit written requests for single copies of "Deciding When to Submit a 510(k) for a Change to an Existing Device" to the Division of Small Manufacturers Assistance, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–443–6597 (outside MD 1–800–638–2041). Send two self-addressed adhesive labels to assist that office in processing your requests, or fax your request to 301–443–8818. Copies of a facsimile of the guidance, are available from the Division of Small Manufacturers Assistance (DSMA) Facts on Demand, Center for Devices and Radiological Health (CDRH), 1–800–899–0381. Copies of the guidance may also be obtained from the World Wide Web at http://www.fda.gov/cdrh administered by DSMA and are available to anyone with a video terminal or personal computer (1–800–252–1366). Submit written comments on this guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Two copies of any comments are to be submitted, except that individuals may submit one copy. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the guidance and received comments are available for public examination in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Heather S. Rosecrans, Center for Devices and Radiological Health (HFZ–404), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1190.

SUPPLEMENTARY INFORMATION: On April 8, 1994, FDA circulated for comment the first draft guidance entitled "Deciding When to Submit a 510(k) for a Change to an Existing Device." The draft guidance was intended to provide direction to manufacturers on deciding when to submit a new 510(k) for changes to an existing device. The April 8, 1994, draft guidance was the subject of a May 12, 1994, FDA teleconference and the subject of discussion at several trade and industry association meetings.

FDA received over 60 comments regarding the April 8, 1994, draft guidance. Based on the comments received, FDA developed an August 1, 1995, second draft guidance entitled "Deciding When to Submit a 510(k) for a Change to an Existing Device." FDA received 11 comments regarding the October 16, 1996, draft guidance. The comments supported the October 16, 1996, draft guidance and suggested that FDA make the following changes: (1) Include the recent publication of the Quality Systems Regulation; (2) add more references for definition and as a referral to other guidance documents; (3) give more examples and explanation of materials, particularly with labeling changes and changes in material for in vitro devices; (4) update Appendix A on suggested material terminology to reflect latest industry comment on the biomaterials compendium; and (5) correct the logic flow in the materials change chart.

Guidances have generally been issued under § 10.90(b) (21 CFR 10.90(b)), which provides for the use of guidances to state procedures or standards of general applicability that are not legal requirements, but that are acceptable to FDA. The agency is now in the process of revising § 10.90(b). Therefore, the guidance is not being issued under the authority of current § 10.90(b), and it does not create or confer any rights, privileges, or benefits for or on any person, nor does it operate to bind FDA or device manufacturers in any way.

Interested persons may, at any time, submit to the Dockets Management Branch (address above) written comments on the guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Received comments will be considered to determine if further revision of the guidance is warranted.

Dated: February 4, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 97–4303 Filed 2–20–97; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 97M–0054]

Schneider (USA), Inc.; Premarket Approval of WALLSTENT® Iliac Endoprosthesis

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Schneider (USA), Inc., Minneapolis, MN, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the WALLSTENT® Iliac Endoprosthesis. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of May 28, 1996, of the approval of the application. In addition, the WALLSTENT® Iliac Endoprosthesis requires tracking under the act as amended by the Safe Medical Devices Act of 1990.

DATES: Petitions for administrative review by March 24, 1997.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Judy J. Danielson, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8243.

SUPPLEMENTARY INFORMATION: On June 9, 1994, Schneider (USA), Inc., Minneapolis, MN 55432, submitted to CDRH an application for premarket approval of the WALLSTENT® Iliac Endoprosthesis. The device is a peripheral stent and is indicated for use following suboptimal percutaneous transluminal angioplasty (PTA) of common and/or external iliac artery stenotic lesions, which are less than or equal to 10 centimeters in length. A suboptimal PTA is defined as a technically successful dilation, judged by the physician to be suboptimal due to the presence of unfavorable lesion morphology such as: An inadequate angiographic and/or hemodynamic result as defined by a 30 percent or greater residual stenosis after PTA, lesion recoil, or intimal flaps; flow limiting dissections post PTA longer than the initial lesion length; or a 5 mmHg or greater mean transtenotic pressure gradient post PTA.

On March 4, 1996, the Circulatory System Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On May 28, 1996, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Under section 519(e) of the act (21 U.S.C. 360i(e)) as amended by the Safe Medical Devices Act of 1990, manufacturers of certain types of devices are required to adopt a method of tracking that follows the devices through the distribution chain and then identifies and follows the patients who receive them. FDA has identified the above device as a new generic type of device requiring tracking. FDA is providing a 30-day period for interested persons to submit to the Dockets Management Branch (address above) written comments regarding the agency's position that this new generic type of device requires tracking.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under 21 CFR 10.33(b). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before March 24, 1997, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: January 16, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 97–4228 Filed 2–20–97; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[HCFA–462 A/B]

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Clinical Laboratory Improvement Amendments (CLIA) Adverse Action Extract; *Form No.:* HCFA–462A/B; *Use:* This form is used by HCFA surveyors (State Health Department surveyors and other HCFA agents) to record which types of adverse actions are imposed against laboratories. The form will also serve to track dates of the impostion of adverse actions, dates on which a laboratory corrects deficiences, and all appeals activity. *Frequency:* Biennially; *Affected Public:* Not-for-profit institutions, Federal Government, State, Local or Tribal Govt; *Number of Respondents:* 2,500; *Total Annual Responses:* 2,500; Total Annual Hours: 5,625

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov/regs/prdact95.htm, or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human Resources, Management Analysis and Planning Staff, Attention: John Rudolph, Room C2–25–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: February 13, 1997.

Edwin J. Glatzel,

Director, Management Analysis and Planning Staff, Office of Financial and Human Resources.

[FR Doc. 97–4338 Filed 2–20–97; 8:45 am]

BILLING CODE 4120–03–P

[HCFA–841–853]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

3. HCFA–841–853 *Type of Information Collection Request:* Revision of currently approved collection; *Title of Information Collection:* Durable Medical Equipment Regional Carrier, Certificate of Medical Necessity; *Form Nos.:* HCFA–841–853 (formally HCFA–R–182); *Use:* A Certificate of Medical Necessity is a standardized format used to communicate information provide by an attending physician and a supplier of medical equipment and supplies. The information is used by carriers to determine the medical necessity of an item or service covered by the Medicare program and being used for the treatment of the Medicare beneficiary's condition. The CMNs being submitted for OMB review are necessary in order for HCFA to determine the medical necessity of the item or service. The information needed to make this determination requires application of medical judgment that can only be provided by a physician or other clinician who is familiar with the condition of the beneficiary; *Frequency:* On Occasion; *Affected Public:* Suppliers and physicians, business or other for-profit, federal government; *Number of Respondents:* 140,000; *Total Annual Responses:* 6.8 million; *Total Annual Hours Requested:* 1.7 million.

To obtain copies of the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC. 20503.

Dated: February 18, 1997.

Edwin J. Glatzel,

Director, Management Analysis and Planning Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 97–4339 Filed 2–20–97; 8:45 am]

BILLING CODE 4120–03–P

Health Resources and Services Administration

"Low Income Levels" for Health Professions and Nursing Programs

The Health Resources and Services Administration (HRSA) is updating income levels used to identify a "low income family" for the purpose of providing training for individuals from disadvantaged backgrounds under various health professions and nursing programs included in titles VII and VIII of the Public Health Service Act (the Act).

The Department periodically publishes in the **Federal Register** low income levels used for grants and cooperative agreements to institutions providing training for individuals from disadvantaged backgrounds. A "low income level" is one of the factors taken into consideration to determine if an individual qualifies as a disadvantaged student for purposes of health professions and nursing programs.

The programs under the Act that use "low income levels" as one of the factors in determining disadvantaged backgrounds include the Health Careers Opportunity Program, section 740, the Program of Financial Assistance for Disadvantaged Health Professions Students, section 740 (a)(2)(F), and Nursing Education Opportunities for Individuals from Disadvantaged Backgrounds, section 827. Loans to Disadvantaged Students, section 724, Scholarships for Health Professions Students from Disadvantaged Backgrounds, section 737, Disadvantaged Health Professions Faculty Loan Repayment and Fellowships Program, section 738 were added to title VII by the Disadvantaged Minority Health Improvement Act of 1990 (Pub. L. 101–527) and are also using the low income levels. Other factors used in determining "disadvantaged backgrounds" are included in individual program regulations and guidelines.

Health Careers Opportunity Program (HCOP), Section 740

This program awards grants to accredited schools of medicine, osteopathic medicine, public health, dentistry, veterinary medicine, optometry, pharmacy, allied health, podiatric medicine, chiropractic and public or nonprofit private schools which offer graduate programs in clinical psychology, and other public or private nonprofit health or educational entities to assist individuals from disadvantaged backgrounds to enter and graduate from health professions schools.

Financial Assistance for Disadvantaged Health Professions Students (FADHPS), Section 740 (a)(2)(F)

This program awards grants to accredited schools of medicine, osteopathic medicine, and dentistry to provide financial assistance to individuals from disadvantaged backgrounds who are of exceptional financial need, to help pay for their health professions education. The provision of these scholarships shall be subject to section 795 relating to residency training and practice in primary health care.

Nursing Education Opportunities for Individuals From Disadvantaged Backgrounds, Section 827

This program awards grants to public and nonprofit private schools of nursing and other public or nonprofit private entities to meet costs of special projects to increase nursing education opportunities for individuals from disadvantaged backgrounds

Loans to Disadvantaged Students, Section 724

This program makes awards to certain accredited schools of medicine, osteopathic medicine, dentistry, optometry, pharmacy, podiatric medicine, and veterinary medicine for financially needy students from disadvantaged backgrounds.

Scholarships for Health Professions Students From Disadvantaged Backgrounds, Section 737

This program awards grants to schools of medicine, nursing, osteopathic medicine, dentistry, pharmacy, podiatric medicine, optometry, veterinary medicine, allied health, or public health, or schools that offer graduate programs in clinical psychology for the purpose of assisting such schools in providing scholarships to individuals from disadvantaged backgrounds who enrolled (or are accepted for enrollment) as full-time students.

Disadvantaged Health Professions Faculty Loan Repayment and Fellowship Program, Section 738

This program awards grants to repay the health professions education loans of disadvantaged health professionals who have agreed to serve for at least 2 years as a faculty member of a school of medicine, nursing, osteopathic medicine, dentistry, pharmacy, podiatric medicine, optometry, veterinary medicine, public health, or a

school that offers a graduate program in clinical psychology. Section 738 (a) allows loan repayment only for an individual who has not been a member of the faculty of any school at any time during the 18-month period preceding the date on which the Secretary receives the request of the individual for repayment contract (ie.,"new" faculty).

The following income figures were taken from low income levels published by the U.S. Bureau of the Census, using an index adopted by a Federal Interagency Committee for use in a variety of Federal Programs. That index includes multiplication by a factor of 1.3 for adaptation to health professions and nursing programs which support training for individuals from disadvantaged backgrounds. The income figures have been updated to reflect increases in the Consumer Price Index through December 31, 1996.

Size of parents family [1]	Income Level [2]
1	$10,500
2	13,700
3	16,300
4	20,800
5	24,600
6 or more	27,600

[1] Includes only dependents listed on Federal income tax forms.

[2] Rounded to the nearest $100. Adjusted gross income for calendar year 1996.

Dated: February 14, 1997.

Ciro V. Sumaya,

Administrator.

[FR Doc. 97–4304 Filed 2–20–97; 8:45 am]

BILLING CODE 4160–15–P

Office of Inspector General

Program Exclusions: January 1997

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of January 1997, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, Maternal and Child Health Services Block Grant and Block Grants to States for Social Services programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

SUBJECT, CITY, STATE	EFFECTIVE DATE
PROGRAM-RELATED CONVICTIONS	
ALS, DARRELL LAMONT, LITTLE ROCK, AR	01/29/97
BASS, SUZANNE, HOPKINSVILLE, KY	01/30/97
BILODEAU, TINA R, CRESCENT CITY, CA	02/04/97
BRADLEY, GEOFFREY STEPHEN, STRAWBERRY PLAINS, TN	02/03/97
CALHOON, JOHN E, ST PETERSBURG, FL	01/30/97
DEROSA, KAREN R, KNOXVILLE, TN	02/03/97
FLEMING, PAUL D, LITTLE ROCK, AR	01/29/97
FOLEY, CANDACE E, WINTERPORT, ME	02/03/97
GAINEY, WAYMON R, FAYETTEVILLE, NC	01/30/97
GIFFORD, LOREN ARDEN, SPRINGFIELD, MO	01/29/97
GONZALEZ, JOANN, MIAMI, FL	01/30/97
GRAY, REL, OAKDALE, LA	01/29/97
HENDERSON, RANDOLF L, HOPKINSVILLE, KY	01/30/97
HENDERSON, LEROY R, TEXARKANA, TX	01/29/97
JORDAN, CARL RANKIN, SAVANNAH, GA	01/30/97
MATUTE, JOSE MANUEL, MIAMI, FL	01/30/97
NEVINS, RICHARD L, EL PASO, TX	01/29/97
NORTH SHORE EYE CLINIC, P.A., HOUSTON, TX	01/29/97
SAGMAQUEN, ROLANDA R, FRESNO, CA	02/04/97
SHELLY, RANDY, OVILLA, TX	01/29/97
SIMPSON, TAMMY S, KNOXVILLE, TN	02/03/97
SKODNEK, RICHARD P, MONTGOMERY, PA	02/03/97
VENABLE, GLORIA, CORAL CITY, FL	01/30/97
PATIENT ABUSE/NEGLECT CONVICTIONS	
ALLEN, JAMES CHRISTOPHER, TAFT, OK	01/29/97
AVANT, GUY RICHARD, HAMPTON, AR	01/29/97
BARKER, TABITHA N, FRANKLINTON, LA	01/29/97
BATES, THOMAS W, MEMPHIS, TN	01/30/97
BERRY, ESSIE M, AURORA, CO	02/18/97
BUSH, CHARLES LAMONT, ABILENE, TX	01/29/97
DENNEY, VICKIE SUE, ARDMORE, OK	01/29/97
GIPSON, RUTH EVELYN, STRATFORD, OK	01/29/97
HOLLAND, CAROL RENEE, OKLAHOMA CITY, OK	01/29/97
JOWERS, ELBERT JR, ALEXANDRIA, LA	01/29/97
KING, CAROLYN ANN, SAYRE, OK	01/29/97
MATHIS, CHARLES R, MILLERS CREEK, NC	01/30/97
MILES, CARL STEVEN, PAULS VALLEY, OK	01/29/97
SAYSON, DANIEL M, OAK HARBOR, WA	02/04/97
SPIRKA, JOHN F, PASCOAG, RI	02/03/97
VIGIL, MELVIN PAUL, GRANTS, NM	01/29/97
CONVICTION FOR HEALTH CARE FRAUD	
BARRINGTON, RAMONA L, SOAPLAKE, WA	02/04/97
CONTROLLED SUBSTANCE CONVICTIONS	
BROWN, JAMES JOSEPH, DELRAY BEACH, FL	01/30/97
LICENSE REVOCATION/SUSPENSION/SURRENDER	
ANTHONY, NETTIE, COLORADO SPRINGS, CO	02/18/97
BALLARD, MARLA JUNE, LINSIDE, WV	02/03/97
BLACKWELL, BARBARA REECE, ELIZABETHTON, TN	01/30/97
BROWN, MAUREEN ANNE, PORTSMOUTH, NH	02/03/97
CALLAHAN, GUY, CLEARWATER, FL	02/03/97
CHANG, DEBORAH RUTH, DERRY, NH	02/03/97
CLEGG, SANDRA, LEBANON, NH	02/03/97
COXEN, DIANNA, COLORADO SPRINGS, CO	02/18/97
DAIGLE, THEOPHILE H, CLAREMONT, NH	02/03/97
DAVIS, FORREST, SIERRA VISTA, AZ	02/03/97
DEGUZMAN, ANTONIO, PEMBROKE, MA	02/03/97
DENEHY, MARY, HARWINTON, CT	02/03/97
DERBY, JAMES H, WATERFORD, CT	02/03/97
DEVAN, KAJUAN M, DENVER, CO	02/18/97
DRAGONAS, PETER H, BEVERLY, MA	02/03/97
EMOND, JAMES A, MANCHESTER, NH	02/03/97
FACKLER, JANELL, STERLING, CO	02/18/97
FISCHL, HENRY J, BRIGHTON, TN	01/30/97
FROST, JENNIFER, AURORA, CO	02/18/97
FULLER, LOUISE H, WINDSOR, MA	02/03/97
FULLER, MARK, DENVER, CO	02/18/97

SUBJECT, CITY, STATE	EFFECTIVE DATE
FURNESS, PATRICIA K, HENNIKER, NH	02/03/97
GADISON, ROSILYN, DENVER, CO	02/18/97
GRACE, AYAKO, AURORA, CO	02/18/97
GREEN, FRANK D, JR, KNOXVILLE, TN	01/30/97
GREENWALD, MICHAEL, BROOKLINE, MA	02/03/97
HACKNEY, CHARLES LANDIS, WILMINGTON, NC	01/30/97
HAXO, JOHN, MARBLEHEAD, CT	02/03/97
HOLMAN, GERALD L, YAKIMA, WA	01/12/97
KAHLER, SARAH, HUGO, CO	02/18/97
KELLEY, DEBRA, LAKEWOOD, CO	02/18/97
KELLY, RONALD KAY, ELKO, NV	01/12/97
KITTREDGE, PATRICIA, HAVERILL, MA	02/03/97
LABBE, MAURICE, LEWISTON, ME	02/03/97
LYNCH, ANNETTE M, RUTLAND, VT	02/03/97
MAHBOUBIAN, SOHAIL SAM, WOODLAND HILLS, CA	01/12/97
MALIK, JULIA, STRATFORD, C	02/03/97
MAHINO, VINCENT, MARLBOROUGH, CT	02/03/97
MARTIN, CHRISTINA, LAKEWOOD, CO	02/18/97
MARTIN, LISA, TYNGSBORO, MA	02/03/97
MARTINEZ, CHRISTINE C, PUEBLO, CO	02/18/97
MARTINEZ, CHARLOTTE C, WESTMINSTER, CO	02/18/97
MARTINI, ALICE E, RAYMOND, NH	02/03/97
MASTRONARDI, ANTHONY, KEENE, NH	02/03/97
MCFARLAND, MARY A, THOMASTON, ME	02/03/97
MENO, GEORGE, WILTON, CT	02/03/97
MOOSMAN, DALLIS, LA JUNTA, CO	02/18/97
MURPHY, MARJORIE, CANTON CENTER, CT	02/03/97
NELSON, ONIE, DENVER, CO	02/18/97
NIVETTE, JAMES D, CARMEL, CA	02/04/97
NORE, ALBERT T, S WEYMOUTH, MA	02/03/97
OUELLETTE, MAUREEN ANN, MANCHESTER, NH	02/03/97
PENA, PRISCILLA, DENVER, CO	02/18/97
PIERCE, SUSAN, WELLS RIVER, VT	02/03/97
PRITCHETT, DEAN, HOTCHKISS, CO	02/18/97
PRUITT, LEITAN, THORNTON, CO	02/18/97
PULSIFER, JACQUELINE, COVENTRY, RI	02/03/97
RATTIGAN, RENEE C, MANCHESTER, NH	02/03/97
RICKER, BARBARA, LACONIA, NH	02/03/97
RODNEY, BELINDA LEE, MILTON, NH	02/03/97
ROUSE, CHRISTOPHER, LOVELAND, CO	02/18/97
SILL, POLLY, CORY, CO	02/18/97
SMITH, CECIL R, DENVER, CO	02/18/97
SNOW, KATHI, DENVER, CO	02/18/97
SOUTHWOOD, ERIC J, REDWOOD CITY, CA	02/04/97
SYREN, LEE, DENVER, CO	02/18/97
TECHLOWEC, MYRON, NORWICH, CT	02/03/97
VAUGHN, DAVID, DENVER, CO	02/18/97
WHALEN, PATRICIA K, CROYDON, NH	02/03/97
WILLIAMS, KARLA, DENVER, CO	02/18/97
OWNED/CONTROLLED BY CONVICTED/EXCLUDED	
DR NEVINS' EYEWORLD, EL PASO, TX	01/29/97
ESTRADA CHIROPRACTIC CLINIC, GALESBURG, IL	02/05/97
HEALTH CARE INNOVATIONS, INC, OVILLA, TX	01/29/97
JORDAN CLINIC, SAVANNAH, GA	01/30/97
MOBILE OPTICS, TEXARKANA, TX	01/29/97
MOUNTAIN AMBULANCE, CAMPTON, KY	01/30/97
PROGRESSIVE BILLING & MGMT SVC, MIAMI, FL	01/30/97
RANDY L SHELLY DME, OVILLA, TX	01/29/97
SUPERIOR CONVALESCENT TRANSPOR, DECATUR, GA	01/30/97
TEXAS UNITED HEALTH CARE, INC, OVILLA, TX	01/29/97
TRANS TEXAS VISION ASSOCIATES, TEXARKANA, TX	01/29/97
UNITED HEALTH CARE OF DALLAS, OVILLA, TX	01/29/97
DEFAULT ON HEAL LOAN	
ACKERMAN, ANNE E, MARIETTA, GA	02/18/97
ACKERMAN, BRIAN J, KENNESAW, GA	02/18/97
AGATA, RICHARD C, BROOKLYN, NY	02/18/97
ALEXANDER, ZANDRINA, VALRICO, FL	01/12/97
ALI, ABDIRAZAK A, COLLEGE PARK, GA	01/12/97
ALLEN, SHERMAN L, SOUTHFIELD, MI	02/05/97
AMBROSIO, JOSEPH A, GREAT NECK, NY	02/18/97
ARREOLA, RODOLFO JR, MORGANTOWN, WV	02/04/97
AUSTIN, JERRY, DANIA, FL	01/12/97
AVELAR, SUSANA, SAN FRANCISCO, CA	02/04/97
BADIA, RAYMOND, GAFNEY, SC	01/12/97
BAILEY, DARRELL E, WOODSTOCK, GA	01/12/97
BARNER, ROBERT W JR, MARIETTA, GA	02/18/97
BEERS, RICHARD H, WINTER PARK, FL	01/12/97
BERMAN, DAVID H, MARIETTA, GA	01/12/97
BILLSTROM, RICHARD L, MARIETTA, GA	01/12/97
BONDS, FREDERICK R, MT PLEASANT, MI	02/05/97
BRASWELL, JAMES, DETROIT, MI	02/05/97
BRAULT, PETER C, W MINSTER, MA	02/18/97
BREA, ANTHONY F, ROSLYN, NY	02/18/97
BREAZEALE, MICHAEL E MARIETTA, GA	01/12/97
BRENNEIS, GERARD, SHARON, PA	02/18/97
BROOKS, WILLIAM B, CHAMBLEE, GA	01/12/97
BROWN, GEOFFREY G, DECATUR, GA	01/12/97
BROWN, SHEILA V, PITTSBURGH, PA	02/18/97
BYRD, RICARDAU E, ATLANTA, GA	01/12/97
CAIN, ALICIA R, WOODBRIDGE, NJ	02/13/97
CARABALLO-WESLEY, ELIZABETH, BOSTON, MA	02/18/97
CASSAN, STEVEN S, MARIETTA, GA	02/18/97
CAVALIERE, FRANCES C, MARIETTA, GA	02/18/97
CICALA, CARMINE J, MARIETTA, GA	02/18/97
CLARK, JIMOTHY, BALTIMORE, MD	02/04/97
CLAY, CASSIUS C, ACWORTH, GA	02/18/97
COMER, BARRY L, DECATUR, GA	02/18/97
COOPER, CHARLES, BRIDGEPORT, CT	02/18/97
COX, HAROLD D, TRYON, NC	01/30/97
CRANDELL, ROBYN G, AMHERST, MA	02/18/97
CRAWFORD, FRANKLIN R, MABLETON, GA	02/18/97
CRONIN, DENIS P JR, MEDFORD, MA	02/13/97
CULBERTSON, WILLIAM J, QUINCY, MA	02/13/97
CULVER, TONI Y, COLLEGE PARK, GA	02/18/97
DANIEL, FELTON J, GAINESVILLE, GA	02/18/97
DANIELS, PATRICIA A, PHILADELPHIA, PA	02/04/97
DEOPP, WILLIAM N, MARIETTA, GA	01/12/97
DIFRANCESCO, EILEEN, HAVERTOWN, PA	02/04/97
DOOLEY, PAUL, BOSTON, MA	02/18/97
DOWNES, ROBERT R, COMMACK, NY	02/18/97
EIDENSOHN, ALAN S, BALTIMORE, MD	02/04/97
FISHER, MICHAEL J, SMYRNA, GA	01/12/97
FORTSON, HENRY D, THOMASVILLE, GA	01/12/97

SUBJECT, CITY, STATE	EFFECTIVE DATE
FOUNTAIN, RODNEY E, PENSACOLA, FL	01/12/97
FRICK, DEBORAH M, ANAHEIM, CA	02/04/97
FRIGARD, SCOTT N, MARIETTA, GA	01/12/97
GAY, WARNER A, MARIETTA, GA	01/12/97
GLOSHINSKI, LAURA E, SOUTH ORANGE, NJ	02/13/97
GOLDBLATT, AARON J, DANBORO, PA	02/18/97
GOLDFARB, GEORGIA, MCLEAN, VA	02/04/97
GRANT, PATRICIA E, DECATUR, GA	01/12/97
GRATTA, JAMES A, LAUREL, MS	02/18/97
HALL, JOHN E, ATLANTA, GA	01/12/97
HALL, JOHN L, CARTERSVILLE, GA	01/12/97
HAMMOCK, MARK A, DECATUR, GA	01/12/97
HARDING, PHYLLIS D, GARFIELD HEIGHTS, OH	02/05/97
HARRIS, JOHN D, PHILADELPHIA, PA	02/18/97
HARRIS, HAZEL P, IRVINGTON, NJ	02/13/97
HARRISON, GORDON E, HARDIN, MT	01/29/97
HEARNS, BEN J, HIGHLAND PARK, MI	02/05/97
HOWARD, ANTHONY L, SWAINSBORO, GA	01/30/97
HOWARD-JACKSON, LESLIE A, EXTON, PA	02/18/97
IBEH, FIDELIS A, BROOKLYN, NY	02/18/97
JOHNSON, CHRISTOPHER L, W HOLLYWOOD, CA	02/18/97
KLE, JAMES P, RIDGEWOOD, NY	02/18/97
LEE, CAROLE A, ACKWORTH, GA	01/12/97
MANNINO, TROY M, KATY, TX	01/29/97
MARSHALL, JOHN T, PHILLIPPI, WV	02/04/97
NICHOLAS, ROBERT K, RICHMOND, VA	02/04/97
NICHOLSON, JAMES E JR, POWDER SPRINGS, GA	01/12/97
NICOSIA, MICHAEL L, PORTLAND, TX	01/29/97
OAKES, CRAIG, EAST WINDSOR, NJ	02/13/97
OWENS, JAMES R, ATLANTA, GA	01/12/97
PAUL, FITZPATRICK, BROOKLYN, NY	02/18/97
PROVINCE, SUSAN L, SCOTTDALE, PA	02/04/97
RAIS, MATTIE B, LEXINGTON, MS	02/18/97
RAWLINS, JOEL J, DOUGLAS, GA	01/30/97
RENZ, HOWARD WAYNE, LIC, NY	02/18/97
ROBERTS, CHARLES C, DENVER, CO	01/12/97
ROBINSON, ROBYN C, NEW HAVEN, CT	02/18/97
ROEBUCK, JAMES N, NORTH WALES, PA	02/04/97
ROSS, ROGER A HAVERTOWN, PA	02/04/97
RUCKS, ANDREW C ABINGTON, MA	02/13/97
SALAZAR, MARIELENA, NEW YORK, NY	01/18/97
SALLEY, HEZEKIAH JR, SMOAKS, SC	01/12/97
SCARFO, DAN J, NEW YORK, NY	02/18/97
SCARPA, PETER D JR, PHILADELPHIA, PA	02/04/97
SCHOTT, ALAN J, BALTIMORE, MD	02/04/97
SCHRODER, ANTHONY M, MIDDLETOWN, NY	02/18/97
SCHWARTZ, ERIC G, LONG BEACH, NY	02/18/97
SENIOR, DUANE A, DETROIT, MI	02/05/97
SHAW, LINDA J, GLADYNE, PA	02/04/97
SHEAHAN, MICHAEL D, STATEN ISLAND, NY	02/18/97
SIEGEL, ROY F, SOMERVILLE, NJ	02/13/97
SIVERLING, GERALD D, BRANDON, FL	01/12/97
SKIRPAN, FRANK T, MARYSVILLE, PA	02/04/97
SMITH, CHARLES A, KANSAS CITY, MO	02/05/97
SOLLIDAY, MICHAEL P, NORTH MERRICK, NY	02/18/97
SOTO, LUCY, THROGGS NECK, NY	02/18/97
STANLEY, CAROLYN, WILMINGTON, DE	02/04/97
STEWART, MIKEL T, IRVING, TX	01/29/97
STOKKA, WAYNE M, LITTLETON, CO	02/18/97
STONE, GRACE M, ROOSEVELT, NY	02/18/97
STORER, JOHN W, CAMP HILL, PA	02/04/97
TABER, STUART M, COLUMBIA, SC	01/12/97
TANWI, LYNDON B, PITTSBURGH, PA	02/04/97
THOMAS, ROBERT L, ANDERSON, SC	01/29/97
THOMAS, ROBERT B SR, MACON, GA	01/12/97
THOMAS, VALERIE E, DETROIT, MI	02/05/97
THOMPSON, JOHN E, E BRIDGEWATER, MA	02/13/97
TIEMO, VINCENT DOYAH, PROVIDENCE, RI	02/13/97
TRODDEN, SCOTT A, NEW CASTLE, PA	02/04/97
TURNER, KEVIN J, LYNN, MA	02/18/97
VALVO, CARL L, KOUTS, IN	02/05/97
VALVO, NILA, KOUTS, IN	02/05/97
VARGAS-BIRD, IRMA M, BELLEVILLE, NJ	02/13/97
VEAL, PAUL E, COLUMBUS, MS	02/18/97
VELU, GITA, JERSEY CITY, NJ	02/13/97
VILORIA-ELSE, JENIFER, MARSHFIELD, MA	02/13/97
VOGEL, JOSEPH M, ENON VALLEY, PA	02/04/97
WAITE, WILLIAM C, PITTSBURGH, PA	02/04/97
WAKEFIELD, WILLIAM C, PITTSBURGH, PA	02/18/97
WHITE, KEVIN G, ST LOUIS, MO	02/05/97
WILLIAMS, JOSEPH F, IDAHO FALLS, ID	02/18/97
WILLIAMS, KENNETH, DURHAM, NC	01/12/97
WILLIS, ORION W, PORTSMOUTH, VA	02/04/97
WILSON, ORIN M, CAKEWOOD, NJ	02/13/97
WOOLING, LEONARD C, MARIETTA, GA	01/12/97
XIRADAKIS, MARIA, BROOKLYN, NY	02/18/97
YEATES, TERRANCE C, BROOKLYN, NY	02/18/97
ZAUN, TIMOTHY M, LAKEWOOD, OH	02/05/97
ZONDER, STUART R, ANN ARBOR, MI	02/05/97

Dated: February 12, 1997.

William M. Libercci,

Director Health Care Administrative Sanctions, Office of Enforcement and Compliance.

[FR Doc. 97–4279 Filed 2–20–97; 8:45 am]

BILLING CODE 4150–04–P

National Institute of Health

National Heart, Lung, and Blood Institute; Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Heart, Lung, and Blood Special Emphasis Panel (SEP) meetings:

Name of SEP: Sympathetic Nervous System Modulation and Blood Pressure Regulation.

Date: March 10–11, 1997.

Time: 7:30 p.m.

Place: Gaithersburg Marriott Washington Center, 9751 Washingtonian Boulevard, Gaithersburg, Maryland 20878.

Contact Person: Jon Ranhand, Ph.D., Two Rockledge Center, Room 7188, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0280.

Purpose/Agenda: To review and evaluate grant applications.

This notice is being published less than fifteen days prior to this meeting due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Response and Adaptation to Exercise.

Date: March 25–26, 1997.

Time: 7:30 p.m.

Place: Holiday Inn, 2 Montgomery Village Avenue, Gaithersburg, Maryland.

Contact Person: Anthony M. Coelho, Ph.D., Two Rockledge Center, Room 7194, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0288.

Purpose/Agenda: To review and evaluate grant applications.

These meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. (Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Disease Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: February 13, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 97–4255 Filed 2–20–97; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Division of Extramural Activities; Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel (Telephone Conference Call).

Date: March 12, 1997.

Time: 11 a.m.

Place: National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, Maryland 20892.

Contact Person: Dr. Howard Weinstein, Scientific Review Administrator, National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892, (301) 496–9223.

Purpose/Agenda: To review and evaluate one SBIR Phase I Topic 032 Contract Proposal.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. (Catalog of Federal Domestic Assistance Program No. 93.853, Clinical Research Related to Neurological Disorders; No. 93.854, Biological Basis Research in the Neurosciences)

Dated: February 12, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–4249 Filed 2–20–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Child Health and Human Development Special Emphasis Panel (SEP) meeting:

Purpose/Agenda To review and evaluate an individual contract proposal (TELECONFERENCE).

Name of SEP: NICHD Pediatric/Perinatal HIV Clinical Trials Network Coordinating Center.

Date: March 20, 1997.

Time: 2:00 p.m.–1:00 p.m.

Place: 6100 Executive Boulevard, 6100 Building—Room 5E01F, Rockville, Maryland 20852.

Contact Person: Hameed Khan, Ph.D., Scientific Review Administrator, NICHD, 6100 Executive Boulevard, 6100 Building, Room 5E01F, Rockville, Maryland 20852, Telephone: 301–496–1485.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The discussions of this proposal could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposal, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. (Catalog of Federal Domestic Assistance Program Nos. [93.864, Population Research and No. 93.865, Research for Mothers and Children, National Institutes of Health.)

Dated: February 12, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–4250 Filed 2–20–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following advisory committee meeting of the National Institute of General Medical Sciences Special Emphasis Panel:

Committee Name: Anesthetics: Cellular & Molecular Actions.

Date: March 19, 1997.

Time: 8:00 a.m.—until conclusion.

Place: Radisson Hotel Clayton, 7750 Carondelet, Clayton, Missouri.

Contact Person: Irene B. Glowinski, Ph.D., Scientific Review Administrator, NIGMS, Office of Scientific Review, 45 Center Drive, Room 1AS–13J, Bethesda, MD 20892–6200, 301–594–2772 or 301–594–3663.

Purpose: To review and evaluate program project applications.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support [MBRS])

Dated: February 12, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–4251 Filed 2–20–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Purpose/Agenda: To review and evaluate grant applications.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Dates of Meeting: March 7, 1997

Time: 8:00 a.m. to adjournment.

Place of Meeting: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Ronald Suddendorf, Ph.D., 6000 Executive Blvd, Suite 409, Bethesda, MD 20892–7003, 301–443–2926.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which woud constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.271, Alcohol Research Career

Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; National Institutes of Health).

Dated: February 12, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–4252 Filed 2–20–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: February 27, 1997.

Time: 4 p.m.

Place: Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Donna Ricketts, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: February 12, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–4253 Filed 2–20–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Neurological Disorders and Stroke Division of Extramural Activities; Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: March 11–12, 1997.

Time: March 11, 12:00 p.m. to recess, March 12, 8:00 a.m. to adjournment.

Place: Crystal City Courtyard Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Dr. Paul Sheehy, Scientific Review Branch, National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892, (301) 496–9223.

Purpose/Agenda: To review and evaluate two grant applications.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.853, Clinical Research Related to Neurological Disorders; No. 93.854, Biological Basis Research in the Neurosciences)

Dated: February 13, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 97–4254 Filed 2–20–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of General Medical Sciences; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following advisory committee meeting of the National Institute of General Medical Sciences Special Emphasis Panel:

Committee Name: Structural Biology of AIDS Related Proteins.

Date: March 24–25, 1997.

Time: 8:30 a.m.–5 p.m.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Contact Person: Arthur L. Zachary, Ph.D., Scientific Review Administrator, NIGMS, Office of Scientific Review, 45 Center Drive, Room 1AS–13, Bethesda, MD 20892–6200, 301–594–2886.

Purpose: To review and evaluate program project grant applications.

This meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support (MBRS))

Dated: February 13, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, National Institute of Health.

[FR Doc. 97–4256 Filed 2–20–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of General Medical Sciences; Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of General Medical Sciences Review Committee meeting:

Committee Name: Minority Biomedical Research Support Review Subcommittee.

Date: March 27–28, 1997.

Time of Meeting: 8:30 a.m–5 p.m.

Open Session: 8:30 a.m.–9:30 a.m.—March 27.

Agenda: Special reports related to committee activities.

Closed Session: 9:30 a.m.–5 p.m.—March 27. 8:30 a.m.–5 p.m.—March 28.

Place: National Institutes of Health, Building 31—Conference Room 8, Bethesda, MD 20892.

Contact Person: Michael A. Sesma, Ph.D., Scientific Review Administrator, NIGMS, 45 Center Drive, Room 1AS–19, Bethesda, MD 20892–6200, 301–594–2048.

Purpose: To review institutional research training grant applications.

The meeting will be open to the public as indicated above, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed above in advance of the meeting.

This meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support (MBRS).

Dated: February 13, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 97–4257 Filed 2–20–97; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: March 14, 1997.

Time: 10 a.m.

Place: River Inn, 924 25th Street NW., Washington, DC 20037.

Contact Person: Jean G. Noronha, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: (301) 443–6470.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: March 19, 1997.

Time: 2 p.m.

Place: Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Phyllis D. Artis, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: (301) 443–6470.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: February 13, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–4258 Filed 2–20–97; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

National Institutes of Health

Office of Research on Women's Health; Notice of Meeting—"Beyond Hunt Valley: Research on Women's Health for the 21st Century"

Notice is hereby given that the Office of Research on Women's Health, Office of the Director, National Institutes of Health, will convene a meeting on April 5, 6, and 7, 1997, at the Pyramid Crowne Plaza Hotel, Albuquerque, New Mexico. The purpose of the meeting is to update the current biomedical and behavioral research agenda for women's health, as presented in the Report of the National Institutes of Health: Opportunities for Research on Women's Health, a publication based on a conference held in Hunt Valley, Maryland, September 1991.

The NIH/FAES is accredited by the Accreditation Council for Continuing Medical Education to sponsor continuing medical educations for physicians.

The NIH/FAES designates this educational activity for a maximum of 10 hours in category 1 credit towards the AMA Physician's Recognition Award. Each physician should claim only those hours of credit that he/she actually spent in the educational activity.

The first day, April 5 will be devoted to receiving public testimony from 1:00 p.m. to 5:00 from individuals representing organizations interested in biomedical and behavioral research on women's health issues. On April 6 and 7 concurrent working groups will discuss women's health research, with particular reference to differences among populations of women. The schedule for April 6 is 8:30 a.m. to 5:30 p.m. and on April 7 the meeting will end approximately at 2:30 p.m. All sessions of the meeting are open to the public.

Studies have shown that differences exist among women, in regards to health status and health outcomes. Also, some diseases, disorders, and conditions are more common among some populations of women than others. The reasons for these differences have not been delineated. Some studies have implicated socioeconomic status, access to health care, individual behavior and attitudes, provider attitudes, culture and race/ethnicity as different reasons. However, some differences cannot be explained totally on the basis of any of these examples.

The purpose of this conference is to identify where differences exist in the diverse populations of women and to modify the NIH research agenda to better enable the identification of why these differences exist. In addition, strategies, based upon the research which can result in an improved health status and health outcome for all women, will be developed.

Experts in the fields of basic and clinical science, practitioners interested in women's health, representatives of scientific, professional and women's health organizations, and women's health advocates will be asked to assess the current status of research in women's health, in these, and other areas, identify gaps in existing knowledge, and recommend scientific approaches and strategies to take advantage of promising opportunities for research on women's health.

Open sessions will be devoted to identifying those factors which may influence health status and health outcomes including, but not limited to, racial, cultural and ethnic beliefs, attitudes, behavior environmental influences, biologic difference, effects of the changing health care environment, and socioeconomic status.

Sessions that follow will be devoted to identifying major factors among populations of women within each life stage/age group and examples of diseases, disorders, and conditions where population differences most impact women's health, and recommend research (and public policy) strategies to address these gaps in knowledge.

The Office of Research on Women's Health invites individuals representing organizations with an interest in research areas related to women's health to provide written and oral testimony on these topics and on career issues for women scientists.

Due to time constraints, only one representative from each organization may present oral testimony, with presentations limited to 10 minutes. A letter of intent to present such testimony should be sent by interested individuals and organizations to Ms. Nancy Teed, Houston Associates, 1010 Wayne Avenue, Suite 1200, Silver Spring, MD 20910. The date of receipt of the letter will establish the order of presentations at the April meeting.

Presenters should send three (3) written copies of their testimony, including a brief description of their organization, to the above address no later than March 20, 1997.

Individuals and organizations wishing to provide written statements only made send three (3) copies of their statements to the above address by March 20, 1997. All written testimony will be made available to the conferees prior to the April 6 meeting day. Comments and questions related to the April meeting should be addressed to Ms. Teed.

This meeting is the second of three regional public hearings and scientific workshops of similar design to be convened by the Office of Research on Women's Health. At the conclusion of this series of meetings, the Office of Research on Women's Health will convene a national meeting to address the deliberations and recommendations from the regional public hearingsand scientific workshops for the purpose of developing a report of priorities for research on women's health for the 21st century.

Dated: February 10, 1997.

Ruth L. Kirschstein,

Deputy Director, NIH.

[FR Doc. 97–4259 Filed 2–20–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*).

PRT–824189

Applicant: Alexsandr Rivlin, Oak Park, IL.

The applicant requests a permit to import one female Cuban parrot (*Amazona leucocephala*) from Kharkov, Krasnoznamennay, Ukraine for pet purposes.

PRT–825319

Applicant: End of the Road Bird Ranch, Millington, MI.

The applicant requests a permit to import six captive-bred brown-eared pheasants (*Crossoptilon crossoptilon*), ten captive-bred white-eared pheasants (*Crossoptilon mantchuricum*), and four captive-bred Elliot's pheasants (*Syrmaticus ellioti*) from the Beijing Breeding Center, Beijing, China to maintain genetic vitality for captive propagation.

PRT–825314

Applicant: Kenneth Behring, Danville, CA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–825358

Applicant: Charles J. Watkins, Little Rock, AR.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203 and must be received by the Director on or before March 24, 1997.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: February 14, 1997.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 97–4271 Filed 2–20–97; 8:45 am]

BILLING CODE 4310–55–P

Availability of a Draft Programmatic Environmental Impact Statement on Impacts of Artificial Salmon and Steelhead Production Strategies in the Columbia Basin

AGENCIES: U.S. Fish and Wildlife Service, (lead agency), National Marine Fisheries Service, Bonneville Power Administration (cooperating agencies).

ACTION: Notice of Reopening of Comment Period.

SUMMARY: As specified in the official Notice of Availability (FR, Vol. 61, No. 250, p. 68284), the U.S. Fish and Wildlife Service (Service) requested comments on the Draft Programmatic Environmental Impact Statement be received by February 10, 1997. This notice announces the Service has reopened the comment period.

DATES: Written comments are requested by May 1, 1997.

ADDRESS WRITTEN COMMENTS: Send comments to PEIS Team Leader, U.S. Fish and Wildlife Service, 911 NE 11 Ave, Portland, Oregon, 97232–4181.

FOR FURTHER INFORMATION CONTACT: Lee Hillwig, U.S. Fish and Wildlife Service, Telephone: 503–872–2766 or Dave Riley, Telephone: 503–226–2460.

Dated: February 13, 1997.

Michael J. Spear,

Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 97–4140 Filed 2–20– 97; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Land Management

[AK–962–1410–00–P, AA–8446–A, AA–8446–A2]

Notice for Publication; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to The Chenega Corporation for approximately 1,509.46 acres. The lands involved are in the vicinity of Chenega, Alaska.

Seward Meridian, Alaska

U.S. Survey No. 1639

T. 4 N., R. 7 E.,
T. 1 N., R. 10 E.,
T. 3 N., R. 7 E.,

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Anchorage Daily News. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until March 24, 1997 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Chris Sitbon,

Land Law Examiner, ANCSA Team, Branch of 962 Adjudication.

[FR Doc. 97–4282 Filed 2–20–97; 8:45 am]

BILLING CODE 4310–JA–P

[NV–930–1430–00; Nev–059798]

Public Land Order No. 7247; Partial Revocation of Public Land Order No. 3512; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes a public land order insofar as it affects 140 acres of public land withdrawn for use by the Bureau of Reclamation for the Robert B. Griffith Water Project. The land is no longer needed for the purpose for which it was withdrawn and the revocation is needed to permit disposal of the land by non-competitive sale to the City of Henderson. The land is temporarily closed to surface entry and mining due to the pending non-competitive sale. The land is within an incorporated city and will remain closed to mineral leasing.

EFFECTIVE DATE: February 21, 1997.

FOR FURTHER INFORMATION CONTACT: Dennis J. Samuelson, BLM Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, 702–785–6532.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Public Land Order No. 3512, which withdrew public land for the Bureau of Reclamation's Robert B. Griffith Project, is hereby revoked insofar as it affects the following described land:

Mount Diablo Meridian

T. 21 S., R. 63 E.,
sec. 28, S½NW¼SW¼ and SW¼SW¼;
sec. 29, S½SE¼.

The area described contains 140 acres in Clark County.

2. The land described in paragraph 1 is hereby made available for conveyance to the City of Henderson in accordance with Section 203 and 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713, 1719 (1988).

Dated: February 7, 1997.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–4319 Filed 2–20–97; 8:45 am]

BILLING CODE 4310–HC–P

[CA–065–06–1430–00, CACA–23033]

Notice of Realty Action; Classification of Public Lands for Recreation and Public Purposes, Kern County, California; Correction

AGENCY: Bureau of Land Management.

ACTION: Correction.

SUMMARY: In notice document 97–1899 beginning on page 3911 in the issue of Monday, January 27, 1997, make the following correction: The legal land description was written as follows:

San Bernardino Meridian

T.9S., R.13W.,
Section 14 Lots 6–7 (excluding MS 5254, MS 5210, and MS 5217)
Containing 15.41 acres, more or less.

The legal description should be changed to read as follows:

San Bernardino Meridian

T.9N., R.13W.,
Section 14 Lots 6–7 (excluding MS 5254 and MS 5217)
Containing 15.41 acres, more or less.

Lee Delaney,

Area Manager.

[FR Doc. 97–4277 Filed 2–20–97; 8:45 am]

BILLING CODE 4310–40–P

[UT–040–1430–01; UTU 74938]

Notice of Proposed Withdrawal; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of correction.

SUMMARY: This order will correct the errors in acreage and legal land descriptions in Notice of Proposed Withdrawal and Opportunity for Public Meeting; Utah.

EFFECTIVE DATE: February 21, 1997.

FOR FURTHER INFORMATION CONTACT: Michael Barnes, Salt Lake District Office, (801) 977–4372 or Angela Williams, Utah State Office, (801) 539–4107.

The acreage and legal land descriptions in Notice of Proposed Withdrawal and Opportunity for Public Meeting; Utah, 49 FR 68774–68776, dated December 30, 1996, are corrected as follows:

On page 68774, third column, in the summary "38,102.78 acres of public surface/" is corrected to read "38,092.78 acres of public surface/"

On page 68774, third column, in the summary "An additional 17,210.01 acres of non-" is corrected to read "17,220.01 acres of non-"

On page 68775, first column, line 19, which reads "NE¼SW¼NW¼, E½SE¼NW¼;" is corrected to read "NE¼SW¼NW¼, E½SW¼SE¼NW¼, E½SE¼NW¼,"

On page 68775, first column, line 26, which reads "SE¼SW¼, SW¼SW¼, embracing that" is corrected to read "SE¼SW¼, SW¼SE¼, embracing that"

On page 68775, first column, line 44, which reads "SW¼SW¼SW¼, E½SE¼SW¼SW¼," is corrected to read "SW¼SW¼SW¼,"

On page 68775, first column, line 45, which reads "W½SW¼SE¼SW¼;" is removed.

On page 68775, second column, line 73, which reads "Sec. 17, Lot SW¼SE¼, NW¼SW¼;" is corrected to read "Sec. 17, Lot 4, SW¼NW¼, NW¼SW¼;"

On page 68775, third column, line 4, which reads "W½E½SW¼, W½SE¼;" is corrected to read "W½E½SE¼, W½SE¼;"

On page 68775, third column, line 8, which reads "Sec. 29, NW¼NW½;" is corrected to read "Sec. 29, NW¼NW¼;"

On page 68775, third column, line 18, which reads "T. S., R. 15 W.," is corrected to read "T. 41 S., R. 15 W.,"

On page 68775, third column, line 20, which reads "Sec. 20, N½S½SW¼," is corrected to read "Sec. 20, N½S½SW¼, SE¼SW¼SW¼;"

On page 68775, third column, line 21, which reads "W½SE¼SW¼SW¼," is corrected to read "S½SE¼SW¼;"

On page 68775, third column, line 22, which reads "E½SW¼SE¼SW¼, SE¼SE¼SW¼;" is removed.

On page 68775, third column, line 67, which reads "N½SE¼, NW¼;" is corrected to read "N½SE¼NW¼;"

On page 68776, first column, line 13, which reads "public surface/mineral estate of 38,102.78" is corrected to read "public surface/mineral estate of 38,092.78"

On page 68776, first column, line 15, which reads "6,675.20 acres. The remaining 17,210.01" is corrected to read "6,675.20 acres. The remaining 17,220.01"

G. William Lamb,

State Director.

[FR Doc. 97–3924 Filed 2–20–97; 8:45 am]

BILLING CODE 4310–DQ–P

Minerals Management Service

Announcement of Minerals Management Service Public Meetings on New Royalty-In-Kind Projects

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of public meetings.

SUMMARY: The Minerals Management Service (MMS) will hold a series of one-day public meetings to discuss new ways to further utilize Federal royalty-in-kind (RIK) oil and gas programs onshore and on the Outer Continental Shelf (OCS). The meetings will be open to the public without advance registration. Public attendance may be limited to the space available. For building security measures, each person may be required to present a picture identification to gain entry to the meetings in Houston and New Orleans.

DATES: The meetings will be held as follows: Houston, TX, March 18, 1997 (OCS Oil RIK); Houston, TX, March 19, 1997 (OCS Gas RIK); Casper, WY, March 25, 1997 (Onshore Oil RIK); New

Orleans, LA, April 1, 1997 (OCS Oil RIK); and New Orleans, LA, April 2, 1997 (OCS Gas RIK). The meetings will commence at 9:30 a.m. on these respective dates and should end by 4:30 p.m.

ADDRESSES: The meetings will be held at the following locations:

Minerals Management Service, Houston Area Audit Office, 4141 N. Sam Houston Parkway, Houston, Texas 77032–3843, (281) 987–6805;

Hilton Inn Casper, 800 N. Poplar Rd., Casper, Wyoming 82601, (307) 266–6000;

Minerals Management Service, Gulf of Mexico Regional Office, Elmwood Towers Building, Conference Rooms 111–115, 1201 Elmwood Park Boulevard, Jefferson, Louisiana 70123, (504) 736–2949.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Smith, Minerals Management Service, P.O. Box 25165, Mail Stop 9130, Denver, CO, 80401, telephone number (303) 275–7102, fax (303) 275–7124; e-mail Greg_Smith@SMTP.MMS.GOV or contact Mr. Jim McNamee at the same address and fax, telephone number (303) 275–7126, e-mail James_McNamee@ SMTP.MMS.GOV.

COMMENTS: Written comments on the meetings or the issues discussed below should be addressed to Mr. Greg Smith at the address given in the **FURTHER INFORMATION** section.

SUPPLEMENTARY INFORMATION: MMS conducted a Royalty Gas Marketing Pilot in 1995 in the Gulf of Mexico. The MMS sold its royalty gas to competitively selected gas marketers. The MMS had two objectives in conducting the pilot: (1) streamline royalty collections, and (2) test a process which could result in increased efficiency and greater certainty in valuation.

MMS' assessment of the gas RIK pilot indicated that it was an operational success, proving that the concept of MMS taking and selling royalty gas in-kind is feasible. However, MMS' analysis of the gas RIK revenues, as compared to in-value royalties paid and administrative savings realized, was not favorable to MMS.

Congress has directed MMS to consider additional projects for taking oil and/or gas in-kind. MMS is currently considering a variety of RIK scenarios that would build on lessons learned from the 1995 Royalty Gas Marketing Pilot. Any further RIK projects undertaken by MMS would be intended to address specific operational and revenue issues necessary before any longer-term implementation. The objectives of the proposed RIK options are to:

- Simplify the royalty collection process;
- Decrease administrative costs for both MMS and industry;
- Realize fair and equitable market value for the products;
- Provide certainty in royalty valuation;
- Decrease audit burden and appeal actions; and
- Provide MMS with alternative sources of data for use for in-value product valuation.

MMS is developing several options for taking Federal oil and gas in-kind. However, any new RIK programs will be separate from the current program of providing royalty oil in-kind to small refiners and will not involve production from Indian lands. The following are the general options being considered:

- Take OCS and onshore oil production in-kind; and
- Take OCS gas in-kind.

At the public meetings, MMS will present one or several specific options for taking royalties in-kind on a project/test basis. MMS will solicit public input at the meetings on the workability of these option(s). The issues that MMS would like to discuss at the meetings are presented below. The listing of issues is not necessarily complete but will be used as a starting point for the meetings.

1. Mandatory or voluntary participation;
2. Areas/leases to be selected for royalty in-kind projects;
3. Delivery points for RIK production: at the lease or various points away from the lease (e.g., first mainline interconnect, gas plant/refinery inlet, gas plant tailgate);
4. Transportation responsibility away from the lease (e.g., MMS, marketer, or lessee);
5. Aggregation of royalty volumes;
6. Pricing indicators to be used to assure a fair and equitable price for RIK production as well as certainty of price to industry;
7. Requirements to be placed on lessees (e.g., marketable condition, data submitted to MMS, coordination with purchasers); and
8. Requirements to be placed on purchasers (e.g., transportation of product away from the lease, data required by MMS, coordination with lessees, balancing, contract provisions concerning breach, payment terms).

MMS will more fully develop the RIK option(s) before the public meetings. Interested parties may request this information from the contacts listed in the **FURTHER INFORMATION** section.

Dated: February 14, 1997.

Robert E. Brown,

Acting Associate Director, Policy and Management Improvement.

[FR Doc. 97–4350 Filed 2–20–97; 8:45 am]

BILLING CODE 4310-MR-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–379]

Likely Impact of Providing Quota-Free and Duty-Free Entry To Textiles and Apparel From Sub-Saharan Africa

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

EFFECTIVE DATE: February 10, 1997.

SUMMARY: Following receipt on January 14, 1997 of a request from the Committee on Ways and Means of the U.S. House of Representatives for an investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332 (g)), the Commission instituted Investigation No. 332–379, Likely Impact of Providing Quota-Free and Duty-Free Entry to Textiles and Apparel from Sub-Saharan Africa. As requested by the Committee, the Commission will provide the following in its report—

(1) A review of any relevant literature on this issue prepared by governmental and non-governmental organizations;

(2) An assessment of the competitiveness of the textile and apparel industries in Sub-Saharan African countries, to the extent possible;

(3) A qualitative and quantitative assessment of the economic impact on U.S. producers, workers, and consumers of quota-free entry for imports of textiles and apparel from Sub-Saharan Africa. This assessment will address the potential shifting of global textile and apparel production facilities to Sub-Saharan Africa that might occur as a result of the changes contained in proposed legislation [H.R. 4198, African Growth and Opportunity: The End of Dependency Act of 1996, introduced in the 104th Congress by Mssrs. Crane, Rangel and McDermott]; and

(4) A qualitative and quantitative assessment of the economic impact on U.S. producers, workers, and consumers of an elimination of the exclusion of textile and apparel products from Sub-Saharan African countries, from coverage under the Generalized System of Preferences in addition to quota-free entry for imports from these same countries.

The Committee also requested that the Commission attempt to identify the specific types of textiles and apparel products that are most likely to be produced in Sub-Saharan African countries, and which would have the most significant impact on U.S. producers, workers, and consumers. As requested by the Committee, the Commission will seek to provide its advice not later than September 2, 1997.

FOR FURTHER INFORMATION CONTACT: Lee Cook, Office of Industries (202–205–3471) or Mary Elizabeth Sweet, Office of Industries (202–205–3455), or William Gearhart, Office of the General Counsel (202–205–3091) for information on legal aspects. The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202–205–1810).

Background

Among the provisions in H.R. 4198 is one relating to increased U.S. market access for textiles and apparel from Sub-Saharan Africa. According to the Committee's request, Sub-Saharan Africa supplied less than 1 percent, or about $400 million, of U.S. imports of textiles and apparel in 1995. H.R. 4198 provides that, until imports of these articles from Sub-Saharan Africa reach a much higher level, the transitional safeguards provided in Article 6 of the Uruguay Round Agreement on Textiles and Clothing should not apply. In addition, H.R. 4198 would eliminate existing U.S. quotas on imports of textiles and apparel from Sub-Saharan Africa. The Sub-Saharan African countries currently covered by U.S. textiles and apparel quotas are Kenya and Mauritius.

The Sub-Saharan African countries covered in this investigation include the following 48 countries: Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo, Côte d'Ivoire, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gabon, The Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Niger, Nigeria, Rwanda, São Tomé and Principe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, Sudan, Swaziland, Togo, Tanzania, Uganda, Zaire, Zambia, and Zimbabwe.

Public Hearing

A public hearing in connection with this investigation is scheduled to begin at 9:30 a.m. on May 1, 1997, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, D.C. All persons have the right to appear by counsel or in person, to present information, and to be heard. Persons wishing to appear at the public hearing should file a letter asking to testify with the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, not later than the close of business (5:15 p.m.) on April 17, 1997. In addition, persons testifying should file prehearing briefs (original and 14 copies) with the Secretary by the close of business on April 17, 1997. In the event that no requests to appear at the hearing are received by the close of business on April 17, 1997, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary (202–205–1816) after April 17, 1997 to determine whether the hearing will be held. Posthearing briefs/statements and other written submissions should be filed not later than the close of business on May 8, 1997.

Written Submissions

In lieu of or in addition to appearing at the public hearing, interested persons are invited to submit written statements concerning the investigation. Written statements should be received by the close of business on May 8, 1997. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C.

Issued: February 10, 1997

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–4286 Filed 2–20–97; 8:45 am]

BILLING CODE 7020-02-P

JUDICIAL CONFERENCE OF THE UNITED STATES

Committee on Automation and Technology; Notice of Opportunity To Comment and of Public Hearing on the ABA Citation Resolution

AGENCY: Judicial Conference of the United States, Committee on Automation and Technology.

ACTION: Notice of opportunity to comment and of public hearing on the ABA Citation Resolution.

In August 1996, the American Bar Association (ABA) approved a resolution made by its Special Committee on Citation Issues calling for state and federal courts to develop a standard citation system and recommending a format that could be used by state and federal courts. That resolution calls for courts to identify the citation on each decision at the time it is made available to the public. The ABA resolution is available through the Internet (http://www.ABANET.ORG/citation/home.html).

The federal judiciary seeks written public comments from judges, court personnel, the bar, and the public as to:

(1) Whether the federal courts should adopt the form of official citation for court decisions recommended by the ABA resolution; and,

(2) The costs and benefits such a decision would have on the courts, the bar, and the public.

In addition, a public hearing will be held on Thursday, April 3, beginning at 9 a.m. in the ceremonial courtroom of the U.S. District Court for the District of Columbia, 3rd and Constitution Ave., N.W., Washington, D.C. to address issues (1) and (2) stated above.

Persons and organizations wishing to submit written comments should do so by sending them to: Appellate Court and Circuit Administration Division, ATTN: ABA Citation Resolution, Suite 4–512, Administrative Office of the U.S. Courts, Washington, D.C. 20544, Fax (202) 273–1555. *Internet address:* citation@ao.uscourts.gov.

Submission of written comments is preferred in electronic form and should be sent to citation@ao.uscourts.gov in ASCII or WordPerfect 6.1 or earlier versions. Alternatively, comments may be submitted in printed form through mail or facsimile. Persons without access to Internet may send a diskette. If printed comments are submitted, ten copies should be provided. Written comments are due no later than Friday, March 14, 1997. All comments received will be considered public information.

Anyone submitting written comments who also is interested in testifying at the

public hearing should submit a written request to the above address no later than Friday, March 14, 1997. Since it is expected that only a limited number of requests can be granted, the request should set forth reasons why an oral presentation in addition to written comments would be helpful to consideration of these issues. The request should identify the persons who wish to testify, the subjects to be addressed, the estimated amount of time desired (the maximum is 15 minutes), and the organization represented, phone number, and fax number. If possible, advance copies of testimony should be submitted.

Any questions about this notice may be directed to Joan Countryman at (202) 273–1543.

Dated: February 12, 1997.

Leonidas Ralph Mecham,

Director, Administrative Office of the U.S. Courts.

[FR Doc. 97–4230 Filed 2–20–97; 8:45 am]

BILLING CODE 2210–01–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA")

Consistent with the policy set forth in Section 122(d)(2)(B) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended ("CERCLA"), 42 U.S.C. 9622(d)(2)(B), and the Department of Justice regulations at 28 CFR 50.7, notice is hereby given that on January 21, 1997, a proposed Consent Decree was lodged with the United States District Court for the Southern District of Indiana in *United States* v. *Jonathan W. Bankert, Jr., et al.*, Cause No. IP–91–1181C–M/S. This Consent Decree settles claims asserted by the United States pursuant to Section 107 of CERCLA, 42 U.S.C. 9607, for partial reimbursement of response costs incurred by the U.S. Environmental Protection Agency in connection with response actions at the Northside Sanitary Landfill Site in Zionsville, Indiana.

The Department of Justice will receive written comments relating to the proposed Consent Decree for thirty (30) days from the date of publication of this notice. Comments should be directed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Jonathan W. Bankert, Jr., et al.*, DOJ Reference # 90–11–2–48H.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the Southern District of Indiana, U.S. Courthouse, 5th Floor, 46 East Ohio Street, Indianapolis, Indiana 46204, at the Region V offices of the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $2.75, (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–4278 Filed 2–20–97; 8:45 am]

BILLING CODE 4410–15–M

Drug Enforcement Administration

[Docket No. 95–29]

Roger D. McAlpin, D.M.D., Grant of Restricted Registration

On March 7, 1995, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Roger McAlpin, D.M.D. (Respondent) of Louisville, Kentucky, notifying him of an opportunity to show cause as to why DEA should not deny his application for registration as a practitioner under 21 U.S.C. 823(f), for reason that such registration would be inconsistent with the public interest.

By letter dated March 29, 1995, the Respondent, acting *pro se*, timely filed a request for a hearing, and following prehearing procedures, a hearing was held in Louisville, Kentucky on February 21, 1996, before Administrative Law Judge Mary Ellen Bittner. At the hearing, both parties called witnesses to testify and the Government introduced documentary evidence. After the hearing, the Government submitted proposed findings of fact, conclusions of law and argument. On July 3, 1996, Judge Bittner issued her Opinion and Recommended Ruling. Findings of Fact, Conclusions of Law and Decision, recommending that Respondent's application for a DEA Certificate of Registration should be granted in Schedules III non-narcotic, IV and V subject to various restrictions. On July 22, 1996, the Government filed exceptions to the Recommended Ruling of the Administrative Law Judge, and on August 6, 1996, Judge Bittner transmitted the record of these proceedings, including the Government's exceptions to the Deputy Administrator.

The Acting Deputy Administrator has considered the record in it entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts, except as specifically noted below, the Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge. The Acting Deputy Administrator's adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Acting Deputy Administrator finds that Respondent received his D.M.D. degree from the University of Kentucky in 1979. Following graduation, Respondent worked for a non-profit dental clinic in California for approximately two years. Over the ensuing years, Respondent practiced dentistry at various times in Kentucky, Illinois and Tennessee.

According to Respondent, he began using cocaine recreationally while in dental school. He testified that he quit using cocaine after graduation, but then resumed using cocaine and other controlled substances in 1981. Respondent quit abusing drugs again after approximately two years and then recommenced his abuse in the late 1980's. According to Respondent, in April 1988 he entered into a 30-day in-patient rehabilitation treatment facility. Following his discharge from the facility, he continued to attend Narcotics Anonymous and Alcoholics Anonymous meetings three to four nights a week. Subsequently, Respondent concluded that he was cured of his addiction, stopped attending support meetings, and broke off all contact with his sponsor.

In 1989, Respondent was working for a dental clinic in Tennessee which was owned by an individual who was not a dentist. In November 1989, the Tennessee Department of Health and Environment, Health Related Boards initiated an investigation of Respondent after receiving a complaint from a local pharmacist that Respondent was possibly overprescribing and distributing controlled substances. A review of Respondent's prescriptions revealed that several of Respondent's patients had received Schedule II controlled substances at regular intervals; that multiple prescriptions for Schedule II controlled substances were filled by the same individuals at different pharmacies on the same day; and that many of these patients had the same address or interchanged addresses. On March 27, 1990, Tennessee Investigators interviewed Respondent during which Respondent admitted to abusing cocaine in the past and to selling prescriptions. Sometime in 1989, Respondent began writing and selling Schedule II prescriptions for no legitimate medical reason to approximately eight individuals who sold the drugs on the street. Respondent testified at the hearing before Judge Bittner that he needed the money to pay for his daughter's eye surgery and to reimburse the Internal Revenue Service for unpaid taxes. According to Respondent, he sold the prescriptions for approximately nine months and was occasionally using drugs himself during that time.

On March 30, 1990, Respondent surrendered his previous DEA Certificate of Registration. On June 14, 1990, the Tennessee Board of Dentistry (Tennessee Board) revoked Respondent's license to practice dentistry in the State of Tennessee. The Tennessee Board found that Respondent unlawfully prescribed controlled substances for financial gain and violated a provision of Tennessee law which prohibits a licensed dentist from being employed by a non-dentist.

In the meantime, Respondent had applied for and received a dental license in the Commonwealth of Virginia on May 1, 1990. On September 20, 1990, the Virginia Board of Dentistry (Virginia Board) revoked Respondent's license in that state. The Virginia Board found that Respondent's Tennessee license had been revoked for allowing controlled substances to be diverted to the public for illicit use; that Respondent had falsified his Virginia application, in that he denied an addiction to drugs and that he had any complaints pending in any jurisdiction against him; and that Respondent had not finalized a contract with the Caring Dentists Committee of the Virginia Dental Association as required by the Impaired Dentists' Contract he had signed with the Concerned Dentist Committee of the Tennessee Dental Association.

Subsequently, on December 15, 1990, the Kentucky Board of Dentistry (Kentucky Board) conducted a hearing regarding Respondent's license to practice dentistry in that state. The Kentucky Board concluded that Respondent violated state law by engaging in unprofessional conduct culminating in the revocation of his licenses to practice dentistry in Tennessee and Virginia. The Kentucky Board placed Respondent on probation for two years and ordered him to sign a contract with and participate in the impaired dentists program of the Kentucky Dental Association, make quarterly reports to the Kentucky Board regarding his progress in that program, and otherwise comply fully with the Kentucky Dental Practice Act. By the time of the hearing before Judge Bittner, Respondent had completed his probation with the Kentucky Board.

On May 18, 1991, Respondent forged a prescription for 16 dosage units of Lortab 7.5 mg., a Schedule III controlled substance, and attempted to have it filled at a local pharmacy. Respondent testified that he had arrived early at his Narcotics Anonymous meeting that evening and was reading a book in his car when he noticed that the book marker was an old prescription form of a dentist for whom he used to work. He then spontaneously forged the prescription and attempted to have it filled, but never received the drugs because the pharmacist determined that the prescription was forged. On August 15, 1991, Respondent pled guilty in state court to criminal attempt to possess a Schedule IV non-narcotic controlled substance and was sentenced to six months in prison, fined $200.00, and ordered to pay court costs. The sentence was credited four days for time served and then stayed in favor of one year probation and payment of the fine.

Respondent testified at the hearing before Judge Bittner that he has been drug-free since 1990, and that after his 1991 conviction he began seeing a doctor for chemical dependency counseling and drug screening. According to Respondent, he was unable to introduce into evidence any documentation regarding the drug screens and counseling because the doctor has since died. Respondent further testified that he has maintained close contact with a counselor at his church; has been attending Narcotics Anonymous meetings; had been attending Caduceus group meetings, a medical professionals support group, until the group relocated; and has been trying to get invited to join a Caduceus group that meets in Louisville.

A DEA investigator contacted the doctor at the treatment facility where Respondent had received treatment for his addiction from April 10 through May 10, 1988. The doctor indicated to the investigator that he had not had any contact with Respondent since May 10, 1988, other than one telephone call during which Respondent "sounded grandiose" causing the doctor to suspect that Respondent had not made a sound recovery. The doctor stated that he would not recommend granting Respondent his DEA registration without evidence of sound recovery.

Respondent testified at the hearing that if his application for DEA registration is granted, he is willing to have whatever conditions/restrictions DEA deems appropriate placed on his registration. He also testified that he is currently paying taxes and that he is repaying the Internal Revenue Service on an arranged payment schedule.

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny an application for a DEA Certificate of Registration if he determines that such registration would be inconsistent with the public interest. In determining the public interest, the following factors are considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. See Henry J. Schwarz, Jr., M.D., Docket No. 88–42, 54 FR 16,422 (1989).

Regarding factor one, Respondent has had his license to practice dentistry revoked in both Tennessee and Virginia and the Kentucky Board placed his license on probation for two years. While Respondent is not currently authorized to practice dentistry in Tennessee and Virginia, he does now have an unrestricted registration in Kentucky, the state in which he is applying to be registered with DEA. As Judge Bittner noted, "[w]hile a state license to practice dentistry is a necessary condition for the granting of a DEA registration, it is not dispositive."

As to factor two, Respondent's experience in dispensing controlled substances, it is undisputed that in 1989, Respondent, motivated solely by financial gain, sold controlled substance prescriptions to approximately eight

individuals over a nine month period for no legitimate medical purpose, and that he attempted to fill a forged prescription for a controlled substance in 1991. Judge Bittner concluded that, "Respondent's conduct in this respect weighs in favor of a finding that Respondent's registration would be inconsistent with the public interest; however, I found Respondent to be a credible witness and believe his expressions of remorse."

Regarding factor three, following his attempt to fill a forged prescription for controlled substances, Respondent was convicted in 1991 of criminal attempt to possess a controlled substance. Judge Bittner found that "[t]his criminal conviction supports the Government's contention that Respondent cannot responsibly handle controlled substances," and therefore concluded that "this factor weighs in favor of a finding that Respondent's registration with the DEA would be inconsistent with the public interest." The Acting Deputy Administrator finds however, that while Respondent was charged with obtaining a controlled substance by fraud, he ultimately was convicted of criminal attempt to possess a controlled substance. Therefore, the Acting Deputy Administrator concludes that it appears that Respondent has no conviction record relating to the manufacture, distribution or dispensing of controlled substances.

As to factor four, it is evident from the record that Respondent has violated various laws and regulations relating to controlled substances. By prescribing controlled substances to eight individuals over a nine year period in 1989 for no legitimate medical purpose, Respondent violated 21 U.S.C. 841(a)(1) and 21 CFR 1306.04. He violated various state and Federal laws by self-abusing cocaine and other controlled substances. Further, his attempt to obtain controlled substances by forging a prescription violated 21 U.S.C. 843(a)(3). Judge Bittner concluded that, "this factor weighs in favor of finding that his reregistration would be inconsistent with the public interest; however, Respondent's most recent misconduct occurred five years before the date of this hearing, and it now appears that Respondent acknowledges his wrongdoing and realizes the consequences of his actions."

Finally, as to factor five, as Judge Bittner notes, "[t]here is no dispute that Respondent has had a long history of drug abuse, dating back to 1974." Respondent acknowledged at the hearing that he has relapsed in the past following efforts at rehabilitation, however he has been drug-free since 1990, and as of the date of the hearing, continues to strive to maintain his successful rehabilitation. The Acting Deputy Administrator is troubled however, at the lack of evidence in the record regarding Respondent's rehabilitation efforts. In fact, other than Respondent's own testimony, the only other evidence presented was a letter from the doctor who oversaw his treatment in 1988, who stated that, "(Respondent) sounds grandiose over the phone and I suspect that he does not have a sound recovery." However, Judge Bittner noted that she "was very impressed by Respondent as a witness; he appeared very candid and remarkably straight-forward at the hearing and I credit his testimony that he has been in rehabilitation and has remained drug-free for five years."

The Administrative Law Judge concluded that Respondent's past history regarding controlled substances is "dismal", finding that Respondent "has abused drugs, including cocaine, throughout most of his adult life, that he sold Schedule II controlled substance prescriptions to approximately eight individuals for no legitimate medical purpose, and that he attempted to pass a forged prescription for a Schedule III controlled substance during a relapse." However, in light of her finding that Respondent's testimony regarding his rehabilitation from drug abuse was credible, Judge Bittner concluded that it would not be inconsistent with the public interest to grant Respondent's application for DEA registration. Judge Bittner determined however, that some restrictions were appropriate to protect the public. Accordingly, Judge Bittner recommended that Respondent's registration should be limited to non-narcotic controlled substances in Schedule III and controlled substances in Schedule IV and V; Respondent should be permitted to prescribe, but not administer or otherwise dispense, controlled substances in the above categories; and he should be required to submit a log of his prescriptions to the nearest DEA resident office for review every three months for two years from the date of issuance of his registration.

The Government filed exceptions to the Recommended Ruling of the Administrative Law Judge. The Government argued that "the record in this proceeding, specifically Respondent's past abuse of prescribing privileges and the absence of evidence regarding Respondent's rehabilitation, supports denial of Respondent's application for DEA registration." The Government further argued that, "should the Acting Deputy Administrator decide to adopt the recommended ruling of the administrative law judge, the Government requests that Respondent also be restricted from prescribing any controlled substance to himself or to members of his immediate family."

The Acting Deputy Administrator concludes that the evidence in the record raises serious questions regarding Respondent's fitness to possess a DEA registration based upon Respondent's prescribing of controlled substances in 1989 purely for financial gain and not for any legitimate medical reason, his self-abuse of controlled substances from at least 1974 to 1990, and his attempt to obtain controlled substances by forging a prescription. Nevertheless, the Acting Deputy Administrator notes that there is no evidence of any wrongdoing since 1991, and Judge Bittner found Respondent to be credible in his expressions of remorse and assertions regarding his rehabilitative efforts. Thus, the Acting Deputy Administrator concludes that it would not be inconsistent with the public interest to grant Respondent a DEA registration. However, the Acting Deputy Administrator is concerned by the lack of evidence in the record regarding Respondent's rehabilitative efforts, other than Respondent's own testimony, and therefore, concludes that additional restrictions beyond those recommended by the Administrative Law Judge are necessary to protect the public interest. Accordingly, the Acting Deputy Administrator concludes that Respondent should be issued a limited DEA Certificate of Registration in Schedules III non-narcotic, IV and V subject to the following terms and conditions for a period of three years from the date of issuance of the registration:

(1) Respondent shall be permitted to prescribe, but not administer or otherwise dispense, controlled substances.

(2) Respondent shall not be permitted to possess any controlled substance unless properly authorized by another licensed practitioner who has been advised of the restrictions on Respondent's registration.

(3) Respondent shall not prescribe controlled substances for himself or any member of his immediate family.

(4) Respondent shall be required to submit a log of his prescriptions to the DEA Louisville Resident Office for review every three months. This log shall include, at a minimum, the date of issuance of the prescription, the name of the patient receiving the prescription, and the name, dosage and quantity of the controlled substance prescribed.

(5) Respondent is required to undergo random drug screening at his own expense not less than one time per month, and is required to forward the results of the drug screens to the DEA Louisville Resident Office.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b) and 0.104, hereby orders that the application, submitted by Roger McAlpin, D.M.D., for a DEA Certificate of Registration be, and it hereby is, granted in Schedules III non-narcotic, IV and V subject to the above described restrictions. This order is effective March 24, 1997.

Dated: February 10, 1996.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 97–4345 Filed 2–20–97; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 13, 1997, Noramco of Delaware, Inc., Division of McNeilab, Inc., 500 Old Swedes Landing Road, Wilmington, Delaware 19801, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Morphine (9300)	II
Codeine (9050)	II
Thebaine (9333)	II
Hydrocodone (9193)	II
Oxycodone (9143)	II

The firm plans to manufacture the listed controlled substances for distribution to its customers as bulk product.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than April 22, 1997.

Dated: February 6, 1997.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–4346 Filed 2–20–97; 8:45 am]

BILLING CODE 4410–09–M

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on December 3, 1996, Noramco of Delaware, Inc., Division of McNeilab, Inc., 500 Old Swedes Landing Road, Wilmington, Delaware 19801, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Opium, raw (9600)	II
Poppy Straw Concentrate (9670)	II

The firm plans to import the listed controlled substances to produce codeine phosphate, codeine sulfate, morphine sulfate, oxycodone and hydrocodone.

Any manufacture holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than March 24, 1997.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: February 7, 1997.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–4347 Filed 2–20–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL–2–93]

Entela, Inc.; Expansion for Recognition as a Nationally Recognized Testing Laboratory

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of requests for expansions of recognition as a nationally recognized testing laboratory, and preliminary finding.

SUMMARY: This notice announces the applications of Entela, Inc. for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7, for laboratory facilities, test standards, and programs and procedures, and presents the Agency's preliminary finding.

DATES: The last date for interested parties to submit comments is April 22, 1997.

ADDRESSES: Send comments to: NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor—Room N3653, 200 Constitution Avenue, N.W., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N3653, Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

Notice of Application

Notice is hereby given that Entela, Inc. (ENT), which previously made application pursuant to section 6(b) of the Occupational Safety and Health Act of 1970, (84 Stat. 1593, 29 U.S.C. 655), Secretary of Labor's Order No. 1–90 (55 FR 9033), and 29 CFR 1910.7, for recognition as a Nationally Recognized Testing Laboratory (see 59 FR 10180, 3/3/94), and was so recognized (see 59 FR 37997, 7/26/94), has made application for expansion of its recognition as a Nationally Recognized Testing Laboratory for the programs and procedures, the equipment or materials, and the programs and procedures, listed below.

The address of the laboratory covered by this application is: Entela, Inc., 3033 Madison, S.E., Grand Rapids, Michigan 49548.

Background

This **Federal Register** notice is a compilation of three separate applications from Entela, Inc., as follows:

(1) Application for expansion of recognition as a Nationally Recognized Testing Laboratory for inclusion of Entela's Taiwan facility, dated May 15, 1996; (2) Application for expansion of recognition as a Nationally Recognized Testing Laboratory for additional programs and procedures, dated June 26, 1996; and (3) Application for expansion of recognition as a Nationally Recognized Testing Laboratory for additional standards, dated August 13, 1996.

Expansion of Recognition—Facilities

A report prepared by the NRTL Program Lead Assessor, dated February 24, 1994, relative to ENT's request for inclusion of its Taiwan facility in its recognition as a Nationally Recognized Testing Laboratory, contains a positive recommendation with limitations. The recommendation was limited to minor mechanical and electrical testing of instruments and small appliances as well as inspections being carried out only by Entela personnel.

By letter dated July 5, 1995, to Ken Klouse, the Lead Assessor for the NRTL Program, Kim Phillipi, President of ENT, stated that ENT would not pursue the inclusion of the Taiwan facility until changes to their overall program were reviewed. On May 15, 1996, Timothy Hubbard of Entela wrote to Ken Klouse and enclosed a revised Entela Third Party Certification Program Manual which, among other things, addressed outstanding issues concerning the Taiwan facility.

The original limitations as cited in the on-site Survey Report dated February 24, 1994, will apply to the recognition of theTaiwan facility, specifically:

a. The Taiwan facility shall be limited to carrying out minor mechanical and electrical testing of instruments and small appliances.

b. Performance of inspections shall be limited to Entella personnel.

The Taiwan facility is located at: 3F No. 260 262 Wen, Lin North Road, Pei Tou, Taipei, Taiwan.

Expansion of Recognition—Test Standards

Entela, Inc., desires recognition for testing and certification of products when tested for compliance with the following test standards, which are appropriate within the meaning of 29 CFR 1910.7(c):

ANSI/UL 22—Amusement and Gaming Machines
UL 122—Photographic Equipment
ANSI/UL 244A—Solid State Controls for Appliances
ANSI/UL 353—Limit Controls
UL 355—Cord Reels
UL 429—Electrically Operated Valves
ANSI/UL 467—Grounding and Bonding Equipment
ANSI/UL 499—Electric Heating Appliances
ANSI/UL 696—Electric Toys
UL 745–1—Portable Electric Tools
UL 745–2–1—Drills
UL 745–2–2—Screwdrivers and Impact Wrenches
UL 745–2–3—Grinders, Polishers and Disk-type Sanders
UL 745–2–4—Sanders
UL 745–2–5—Circular Saws and Circular Knives
UL 745–2–6—Hammers
UL 745–2–8—Shears and Nibblers
UL 745–2–9—Tappers
UL 745–2–11—Reciprocating Saws
UL 745–2–12—Concrete Vibrators
UL 745–2–14—Planers
UL 745–2–17—Routers and Trimmers
UL 745–2–30—Staplers
UL 745–2–31—Diamond Core Drills
UL 745–2–32—Magnetic Drill Press
UL 745–2–33—Portable Bandsaws
UL 745–2–34—Strapping Tools
UL 745–2–35—Drain Cleaners
UL 745–2–36—Hand Motor Tools
UL 745–2–37—Plate Joiners
UL 749—Household Dishwashers
UL 763—Motor Operated Commercial Food Preparing Machines
ANSI/UL 826—Household Electric Clocks
ANSI/UL 859—Household Electric Personal Grooming Appliances
ANSI/UL 917—Clock Operated Switches
ANSI/UL 921—Commercial Electric Dishwashers
UL 982—Motor Operated Household Food Preparing Machines
UL 987—Stationary and Fixed Electric Tools
UL 1018—Electric Aquarium Equipment
UL 1028—Hair Clipping and Shaving Appliances
ANSI/UL 1083—Household Electric Skillets and Frying Type Appliances
UL 1086—Household Trash Compactors
UL 1206—Electric Commercial Clothes Washing Machines
ANSI/UL 1262—Laboratory Equipment
ANSI/UL 1310—Class 2 Power Units
ANSI/UL 1447—Electric Lawn Mowers
ANSI/UL 1448—Electric Hedge Trimmers
ANSI/UL 1555—Electric Coin Operated Clothes Washing Equipment
ANSI/UL 1556—Electric Coin Operated Clothes Drying Equipment
UL 1574—Track Lighting Systems
ANSI/UL 1585—Class 2 and Class 3 Transformers
ANSI/UL 1594—Sewing and Cutting Machines
ANSI/UL 1727—Commercial Electric Personal Grooming Appliances
UL 1786—Nighlights
UL 1838—Low Voltage Landscape Lighting Systems
UL 3101–1—Electric Equipment for Laboratory Use, Part 1, General
UL 3111–1—Electric Controls for Household and Similar Use, Part 1, General

An on-site audit and an assessment of ENT's Grand Rapids facility was carried out on August 29, 1996. See the Survey Report dated November 26, 1996. for the results of the assessment. The NRTL staff made an in-depth study of the details of ENT's original application for recognition, as well as its requests for expansion, and the original and expansion on-site assessments, and its audit, and determined that ENT had the staff capability and the necessary equipment to conduct testing of producing the proposed test standards.

Expansion of Recognition—Programs and Procedures

Entela, Inc., requested expansion of its recognition, based upon the conditions as detailed in the **Federal Register** document titled "Nationally Recognized Testing Laboratories; Clarification of the Types of Programs and Procedures", 60 FR 12980, 3/9/95, for the following programs and procedures:

1. Acceptance of testing data from independent organizations, other than NRTLs.

2. Acceptance of product evaluations from independent organizations, other than NRTLs.

3. Acceptance of witnessed testing data.

4. Acceptance of testing data from non-independent organizations.

5. Acceptance of evaluation data from non-independent organizations (requiring NRTL review prior to marketing).

6. Acceptance of continued certification following minor modifications by the client.

7. Acceptance of product evaluations from organizations that function as part of the International Electrotechnical Commission Certification Body (IEC–CB) Scheme.

8. Acceptance of services other than testing or evaluation performed by subcontractors or agents.

Preliminary Finding

Based upon a review of the completed application file, the on-site assessment reports, and the recommendations of the staff, the Assistant Secretary has made a preliminary finding that Entela, Inc. can meet the requirements as prescribed by 29 CFR 1910.7 for the expansion of its recognition: (1) to recognize the Taiwan facility; (2) to include the 57 test standards previously listed; and (3) to incorporate the additional eight programs and procedures noted above.

All interested members of the public are invited to supply detailed reasons and evidence supporting or challenging the sufficiency of the applicant's having met the requirements for expansion of its recognition as a Nationally Recognized Testing Laboratory, as required by 29 CFR 1910.7 and Appendix A to 29 CFR 1910.7. Submission of pertinent written documents and exhibits shall be made no later than April 22, 1997, and must be addressed to the NRTL Recognition Program, Office of Variance Determination, Room N 3653, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Copies of the ENT application, the laboratory survey reports, and all submitted comments, as received, (Docket No. NRTL–2–93), are available for inspection and duplication at the Docket Office, Room N 2634, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address.

The Assistant Secretary's final decision on whether the applicant (Entela, Inc.) satisfies the requirements for expansion of its recognition as an NRTL will be made on the basis of the entire record including the public submissions and any further proceedings that the Assistant Secretary may consider appropriate in accordance with Appendix A to Section 1910.7.

Signed at Washington, D.C., this 13th day of February, 1997.

Greg Watchman,

Acting Assistant Secretary.

[FR Doc. 97–4321 Filed 2–20–97; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Nancy E. Weiss, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code

1. Date: March 3, 1997.
Time: 9:00 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Museums and Historical Organizations submitted to the Division of Public Programs, for projects at the December 6, 1996 deadline.

2. Date: March 7, 1997.
Time: 9:00 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Media submitted to the Division of Public Programs, for projects at the December 6, 1996 deadline.

3. Date: March 10, 1997.
Time: 9:00 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Libraries and Archives submitted to the Division of Public Programs, for projects at the December 6, 1996 deadline.

4. Date: March 14, 1997.
Time: 9:00 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Museums and Historical Organizations submitted to the Division of Public Programs, for projects at the December 6, 1996 deadline.

5. Date: March 17, 1997.
Time: 9:00 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Media submitted to the Division of Public Programs, for projects at the December 6, 1996 deadline.

Nancy E. Weiss,

Advisory Committee Management Officer.

[FR Doc. 97–4311 Filed 2–20–97; 8:45 am]

BILLING CODE 7536–01–M

National Endowment for the Arts

Leadership Initiatives Advisory Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Leadership Initiatives Advisory Panel (Media Arts Millennium Section) to the National Council on the Arts will be held on February 21, from 2:00 p.m. to 4:00 p.m. The meeting will be held in Room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C., 20506.

A portion of this meeting will be open to the public from 3:30 p.m. to 4:00 p.m. for a policy discussion.

The remaining portion of this meeting from 2:00 p.m. to 3:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as

amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of June 22, 1995, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Committee Management Officer, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682–5691.

Dated: February 12, 1997.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 97–4312 Filed 2–20–97; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—(1194).

Date and Time: March 11–12, 1997, 8:30 a.m.–5:00 p.m.

Place: Room 370, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Persons: Dr. Kesh Narayanan, Head, Small Business Office, (703) 306–1391, Cheryl Albus, Program Analyst, Small Business Office, (703) 306–1391, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate SBIR Phase II proposals for commercial potential as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: February 18, 1997.

Linda Allen-Benton,

Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.

[FR Doc. 97–4316 Filed 2–20–97; 8:45 am]

BILLING CODE 7555–01–M

Earth Sciences Proposal Review Panel; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Earth Sciences Proposal Review Panel (1569).

Date: March 12, 13, & 14, 1997.

Time: 8:00 a.m. to 6:00 p.m. each day.

Place: Rooms 310, 340, 360, 380, & 390, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Alan M. Gaines, Section Head, Division of Earth Sciences, Room 785, National Science Foundation, Arlington, VA (703) 306–1553.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate earth sciences proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 18, 1997.

Linda Allen-Benton,

Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.

[FR Doc. 97–4314 Filed 2–20–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Geosciences: Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in the Geosciences (1756).

Date and Time: March 11–12, 1997, 9:00 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 770, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Stephan P. Nelson, Program Director for the Mesoscale Dynamic Meteorology Program; Division of Atmospheric Sciences; Room 775; 4201 Wilson Blvd., Arlington, VA 22230; telephone number (703) 306–1526.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate the U.S. Weather Research Program (USWRP) preliminary proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempted under 5 U.S.C. 552b(c), (4) and (6) of the Government Sunshine Act.

Dated: February 18, 1997.

Linda Allen-Benton,

Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.

[FR Doc. 97–4313 Filed 2–20–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name and Committee Code: Special Emphasis Panel in Materials Research (DMR) #1203.

Date and Time: March 11, 1997 8:30 a.m.–5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 1020, Arlington, VA 22230.

Type of Meeting: Closed.

Contact person: Dr. LaVerne D. Hess, Program Director, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 306–1837.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Faculty Early Career Development (CAREER) Program.

Reason for Closing: The proposals being reviewed may include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 18, 1997.

Linda Allen-Benton,

Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.

[FR Doc. 97–4315 Filed 2–20–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Public Forum in Washington, D.C.: Automobile Airbags and Child Transportation

In connection with its investigation of the issues concerning automobile airbags and child transportation, the National Transportation Safety Board will convene a public forum at 9 a.m., (local time) on March 17, 1997, at the Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC. For more information, contact Paul Schlamm, Office of Public Affairs, Washington, DC 20594, telephone (202) 314–6100.

February 18, 1997.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 97–4310 Filed 2–20–97; 8:45 am]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–397]

Washington Public Power Supply System; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Washington Public Power Supply System (the licensee) to withdraw its June 6, 1995, as supplemented by letter dated April 22, 1996, application for proposed amendment to Facility Operating License No. NPF–21 for the Washington Nuclear Project No. 2, located in Benton County, Washington.

The proposed change would have modified the facility Technical Specifications (TS) pertaining to organizational position titles, Plant Operations Committee composition and chairmanship, and a minor editorial correction. In addition, TS 6.2.1.e would have been deleted and 6.2.1.d modified to incorporate the quality assurance function per Generic Letter 88–06 dated March 22, 1988.

The Commission had previously issued Notices of Consideration of Issuance of Amendment published in the **Federal Register** on July 19, 1995 (60 FR 37102) and June 28, 1996 (61 FR 33779). However, by letter dated January 29, 1997, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated June 6, 1995, as supplemented by letter dated April 22, 1996, and the licensee's letter dated January 29, 1997, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

Dated at Rockville, Maryland, this 13th day of February 1997.

For the Nuclear Regulatory Commission.

Timothy G. Colburn,

Senior Project Manager, Project Directorate IV–2, Division of Reactor Projects—III/IV Office of Nuclear Reactor Regulation.

[FR Doc. 97–4307 Filed 2–20–97; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Budget Rescissions and Deferrals; Notice

To The Congress of The United States

In accordance with the Congressional Budget and Impoundment Control Act of 1974, I herewith report nine proposed rescissions of budgetary resources, totaling $397 million, and one revised deferral, totaling $7 million.

The proposed rescissions affect the Departments of Agriculture, Defense-Military, Energy, Housing and Urban Development, and Justice, and the General Services Administration. The deferral affects the Social Security Administration.

William J. Clinton.

The White House
February 10, 1997.

BILLING CODE 0110–01–P

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

Rescission No.	ITEM	Budgetary Resources
	Department of Agriculture	
	Foreign Agricultural Service	
R97-1	P.L. 480 grants – Titles I (OFD), II, and III	3,500
R97-2	P.L. 480 program account	46,500
	Department of Defense - Military	
	Operation and Maintenance	
R97-4	Operation and maintenance, Defense-wide	10,000
	Procurement	
R97-5	National Guard and Reserve equipment	62,000
	Department of Energy	
	Energy Programs	
R97-6	Strategic petroleum reserve	11,000
	Power Marketing Administrations	
R97-7	Construction, rehabilitation, operation and maintenance, Western Area Power Administration	2,111
	Department of Housing and Urban Development	
	Public and Indian Housing Programs	
R97-8	Annual contributions for assisted housing	250,000
	Department of Justice	
	General Administration	
R97-9	Working capital fund	6,400
	General Services Administration	
	General Activities	
R97-10	Expenses, Presidential transition	5,600
	Total, rescissions	397,111

Deferral No.	ITEM	Budgetary Resources
	Social Security Administration	
D97-7A	Limitation on administrative expenses	7,369
	Total, deferrals	7,369

Department of Agriculture

Foreign Agricultural Service

Public Law 480 Program and Grant Accounts

Of the funds made available under this heading in Public Law 104–180, $50,000,000 are rescinded of which: $3,500,000 shall be from the amounts appropriated for ocean freight differential costs; and $46,500,000 shall be from the amounts appropriated for the costs of direct credit agreements as authorized by the Agricultural Trade Development and Assistance Act of 1954, as amended, and the Food for Progress Act of 1985, as amended.

Rescission Proposal No. R97-1

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Agriculture	New budget authority (P.L. 104-180) $ 880,405,000
BUREAU: Foreign Agricultural Service	Other budgetary resources $ 27,190,615
Appropriations title and symbol: P.L. 480 grants - Titles I (OFD), II, and III 12X2278	Total budgetary resources $ 907,595,615
	Amount proposed for rescission $ 3,500,000
OMB identification code: 12-2278-0-1-151	**Legal authority (in addition to sec. 1012):** [X] Antideficiency Act [ ] Other _____
Grant program: [X] Yes [ ] No	
Type of account or fund: [ ] Annual [ ] Multi-year: _____ (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other _____

Justification: Funding is provided in this account for the non-credit components of Public Law 480: Title I ocean freight differential, Title II and Title III.

The Administration and the Congress agreed to make market development the primary purpose of the P.L. 480 direct credit program in the 1996 Farm Bill. This streamlined focus allows for a greater targeting of program resources on the most promising market development opportunities. This $3.5 million rescission of Title I Ocean Freight Differential funds, when combined with a proposed rescission of $46.5 million in subsidy budget authority in the P.L. 480 direct credit program account, totals a proposed $50 million reduction that would bring the net FY 1997 budget authority for the program as a whole to $151 million. Commodity shipments would be reduced by approximately 200,000 metric tons as a result of this proposed rescission. However, allocations of Title I commodity assistance that have already been announced for FY 1997 would not be affected by the proposed rescission because the reduction in program funding will be taken from a reserve of unallocated funds and from unobligated funds carried over from FY 1996.

U.S. farm incomes are higher, making this subsidy excessive. In addition, U.S. farmers no longer produce large, unmarketable surpluses of commodities. The original purpose of the program was to help dispose of such surpluses.

Estimated Program Effect: Commodity shipments would be reduced by 200,000 metric tons.

Outlay Effect: (in thousands of dollars):

1997 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002
1,097,769	1,095,774	-1,995	-1,295	-210	—	—	—

Rescission Proposal No. R97-2

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Agriculture **BUREAU:** Foreign Agricultural Service **Appropriations title and symbol:** P.L. 480 program account 12X2277	New budget authority..... $ 187,369,000 (P.L. 104-180) Other budgetary resources.. $ 7,404,644 Total budgetary resources... $ 194,773,844 Amount proposed for rescission..... $ 46,500,000
OMB identification code: 12-2277-0-1-151 **Grant program:** ☐ Yes ☒ No	**Legal authority (in addition to sec. 1012):** ☒ Antideficiency Act ☐ Other _____
Type of account or fund: ☐ Annual ☐ Multi-year: _____ (expiration date) ☒ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

Justification: Funding is provided in this account for the subsidy costs associated with direct loans obligated in FY 1992 and beyond, as well as administrative expenses of this program.

The Administration and the Congress agreed to make market development the primary purpose of the P.L. 480 Title I direct credit program in the 1996 Farm Bill. This streamlined focus allows for a greater targeting of program resources on the most promising market development opportunities. This $46.5 million rescission in subsidy budget authority, when combined with a proposed rescission of $3.5 million in Title I ocean freight differential funds in the P.L. 480 grant account, totals a proposed $50 million reduction that would bring the net FY 1997 budget authority for the program as a whole to $151 million. Commodity shipments would be reduced by approximately 200,000 metric tons as a result of this proposed rescission. However, allocations of Title I commodity assistance that have already been announced for FY 1997 would not be affected by the proposed rescission because the reduction in program funding will be taken from a reserve of unallocated funds and from unobligated funds carried over from FY 1996.

U.S. farm incomes are higher, making this subsidy excessive. In addition, U.S. farmers no longer produce large, unmarketable surpluses of commodities. The original purpose of the program was to help dispose of such surpluses.

Estimated Program Effect: Commodity shipments would be reduced by 200,000 metric tons.

Outlay Effect: (in thousands of dollars):

1997 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002
187,674	161,169	-26,505	-17,205	-2,790	—	—	—

Department of Defense

Operation and Maintenance

Operation and Maintenance, Defense-Wide

Of the funds made available under this heading in Public Law 104–208, $10,000,000 are rescinded.

Rescission Proposal No. R97-4

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Defense - Military **BUREAU:** Operation and Maintenance **Appropriations title and symbol:** Operation and maintenance, Defense-wide 9770100	New budget authority..... $ 10,073,736,000 (P.L. 104-208) Other budgetary resources.. $ 825,264,000 Total budgetary resources... $ 10,899,000,000 Amount proposed for rescission..... $ 10,000,000
OMB identification code: 97-0100-0-1-051 **Grant program:** ☐ Yes ☒ No	**Legal authority (in addition to sec. 1012):** ☒ Antideficiency Act ☐ Other _____
Type of account or fund: ☒ Annual ☐ Multi-year: _____ (expiration date) ☐ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

Justification: Funding is provided in this account for Defense-wide operation and maintenance activities, including operating forces, mobilization, training and recruiting, and administration and service-wide activities.

Due to slight variations in force structure and training schedules, the funds proposed for rescission are in excess of requirements and are not needed for training and other activities funded by this account. Funds would be rescinded from low-priority Reserve programs.

Estimated Program Effect: There would be no effect on the military capability of Reserve forces.

Outlay Effect: (in thousands of dollars):

1997 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002
10,215,000	10,207,500	-7,500	-1,860	-390	-160	-50	—

Department of Defense

Procurement

National Guard and Reserve Equipment

Of the funds made available under this heading in Public Law 104–208, $62,000,000 are rescinded.

Rescission Proposal No. R97-5

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Defense - Military	New budget authority..... (P.L. 104-208) $ 779,000,000
BUREAU: Procurement	Other budgetary resources.. $ 445,000,000
Appropriations title and symbol: National Guard and Reserve equipment 977/90350 975/70350 976/80350	Total budgetary resources... $ 1,224,000,000
	Amount proposed for rescission..... $ 62,000,000
OMB identification code: 97-0350-0-1-051	**Legal authority (in addition to sec. 1012):** [X] Antideficiency Act [ ] Other _____
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual September 30, 1997 [X] Multi-year: September 30, 1998 / September 30, 1999 (expiration date) [ ] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other _____

Justification: Funding is provided in this account for Reserve and National Guard equipment.

The funds proposed for rescission are in excess of amounts necessary to meet all required equipment needs.

Estimated Program Effect: There would be no effect on the military readiness of Reserve forces.

Outlay Effect: (in thousands of dollars):

1997 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002
798,000	788,390	-9,610	-22,196	-14,446	-8,610	-4,402	-2,666

Department of Energy

Energy Programs

Strategic Petroleum Reserve

Of the available unobligated balances under this heading, $11,000,000 are rescinded.

Rescission Proposal No. R97-6

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Energy	New budget authority..... (P.L. 104-208) $ 220,000,000
BUREAU: Energy Programs	Other budgetary resources.. $ 77,328,934
Appropriations title and symbol: Strategic Petroleum Reserve 89x0218	Total budgetary resources... $ 297,328,934
	Amount proposed for rescission..... $ 11,000,000
OMB identification code: 89-0218-0-1-274	**Legal authority (in addition to sec. 1012):** [X] Antideficiency Act [ ] Other _____
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [ ] Multi-year: _____ (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other _____

Justification: This account was established to provide the United States with adequate strategic and economic protection against disruption in oil supplies. This proposal would rescind funds in excess of program needs. Funds are derived through cost savings resulting from: commercialization of two pipelines and St. James terminal in which maintenance costs will be transferred to the lessee; and eliminating and replacing high maintenance equipment.

Estimated Program Effect: The Department's ability to accomplish its mission successfully would not be affected by this rescission proposal.

Outlay Effect: (in thousands of dollars):

1997 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002
246,000	239,950	-6,050	-3,850	-1,100	—	—	—

Department of Energy

Power Marketing Administration

Construction, Rehabilitation, Operation and Maintenance, Western Area Power Administration

Of the available unobligated balances under this heading, $2,111,000 are rescinded.

Rescission Proposal No. R97-7

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Energy	New budget authority..... (P.L. 104-206) $ 197,356,000
BUREAU: Power Marketing Administrations	Other budgetary resources.. $ 217,539,000
Appropriations title and symbol: Construction, rehabilitation, operation and maintenance, Western Area Power Administration 89X5068	Total budgetary resources... $ 414,895,000
	Amount proposed for rescission..... $ 2,111,000
OMB identification code: 89-5068-0-2-271	**Legal authority (in addition to sec. 1012):** [X] Antideficiency Act [ ] Other _____
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [ ] Multi-year: _____ (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other _____

Justification: This proposal would rescind funds in excess Western Area Power Administration program needs. Excess funds result from lower than anticipated costs in FY 1997 programs.

Estimated Program Effect: The Department's ability to accomplish its mission successfully would not be affected by this rescission proposal.

Outlay Effect: (in thousands of dollars):

1997 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002
230,000	229,050	-950	-1,161	—	—	—	—

Department of Housing and Urban Development

Public and Indian Housing Programs

Annual Contributions for Assisted Housing

Of the amounts recaptured under this head during fiscal year 1997 and prior years, with the exception of the recaptures specified in section 214 of Public Law 104–204, $250,000,000 shall be rescinded.

Rescission Proposal No. R97-8

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Housing and Urban Development	New budget authority..... (P.L. 104-204) $ 484,442
BUREAU: Public and Indian Housing Programs	Other budgetary resources.. $ 1,891,569,068
Appropriations title and symbol: Annual contributions for assisted housing 86X0164	Total budgetary resources... $ 1,892,033,510
	Amount proposed for rescission..... $ 250,000,000
OMB identification code: 86-0164-0-1-604	**Legal authority (in addition to sec. 1012):** [X] Antideficiency Act [ ] Other _____
Grant program: [X] Yes [ ] No	
Type of account or fund: [ ] Annual [ ] Multi-year: _____ (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other _____

Justification: Funding is provided in this account for three major housing categories: (1) Low-income housing (section 8); (2) Housing for the elderly and disabled (sections 202 and 811); and, (3) Public and Indian housing.

This proposal would rescind approximately $250 million of obligated balances estimated to be recaptured during FY 1997 and prior years. These recaptures will result from the elimination of excess funds available on some long-term section 8 contracts, the cancellation of reservations for public housing development projects that are unable to proceed to construction, and the recapture of funds from inactive programs. It is anticipated that $325 million in recaptures will be realized. Pursuant to section 214 of P.L. 104-204, $25 million of these recaptures will be transferred to the Housing for Persons with AIDS (HOPWA) program, and $50 million will be used for the Preservation program. The remaining amount, approximately $259 million, is proposed for rescission.

Estimated Program Effect: There would be no effect on HUD's housing programs from the rescission of recaptured funds.

Outlay Effect: (in thousands of dollars):

1997 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002
19,847,000	19,837,000	-10,000	-25,000	-41,000	-34,000	-33,000	-33,000

Department of Justice

General Administration

Working Capital Fund

Of the available unobligated balances under this heading, $6,400,000 are rescinded.

Rescission Proposal No. R97-9

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Justice	New budget authority.....	$ 0
BUREAU: General Administration	Other budgetary resources..	$ 928,266,780
Appropriations title and symbol: Working capital fund 15X4526	Total budgetary resources...	$ 928,266,780
	Amount proposed for rescission.....	$ 6,400,000
OMB identification code: 15-4526-0-4-751	**Legal authority (in addition to sec. 1012):** [X] Antideficiency Act; [ ] Other _____	
Grant program: [ ] Yes [X] No		
Type of account or fund: [ ] Annual; [ ] Multi-year: _____ (expiration date); [X] No-Year	**Type of budget authority:** [ ] Appropriation; [ ] Contract authority; [X] Other Offsetting Collections	

Justification: The funds proposed for rescission are in excess of resources needed for currently approved initiatives.

Estimated Program Effect: None.

Outlay Effect: (in thousands of dollars):

1997 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002
758,000	751,600	-6,400	—	—	—	—	—

General Services Administration

Expenses, Presidential Transition

Of the amounts made available under this heading in Public Law 104–208, $5,600,000 are rescinded.

Rescission Proposal No. R97-10

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: General Services Administration	New budget authority..... (P.L. 104-208)	$ 5,600,000
BUREAU: General Activities	Other budgetary resources..	$ 0
Appropriations title and symbol: Expenses, Presidential transition 4770107	Total budgetary resources...	$ 5,600,000
	Amount proposed for rescission.....	$ 5,600,000
OMB identification code: 023-30-0107-0-1-802	**Legal authority (in addition to sec. 1012):** [X] Antideficiency Act; [ ] Other _____	
Grant program: [ ] Yes [X] No		
Type of account or fund: [X] Annual; [ ] Multi-year: _____ (expiration date); [ ] No-Year	**Type of budget authority:** [X] Appropriation; [ ] Contract authority; [ ] Other _____	

Justification: The FY 1997 Treasury/Postal Appropriations Act provided $5.6 million for expenses associated with Presidential transition. Pursuant to the Presidential Transition Act of 1963, as amended (3 U.S.C. 102, note), these funds are not to be expended when the incumbent President is reelected and shall be returned to the general funds of the Treasury.

Under the terms of the Budget Enforcement Act (BEA), the Treasury/Postal Appropriations Act was scored in the amount of $5.6 million in budget authority and outlays for this appropriation by both OMB and CBO. Since these funds will revert to the Treasury, the Administration is proposing this rescission to capture savings under the terms of the BEA. It is our understanding that the CBO baseline contains this funding.

Estimated Program Effect: None.

Outlay Effect: (in thousands of dollars):

1997 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002
—	—	—	—	—	—	—	—

Supplemental Report; Report Pursuant to Section 1014(c) of Public Law 93–344

This report updates Deferral No. 97–7, which was transmitted to Congress on December 4, 1996.

This revision increases by $4,136 the previous deferral of $7,364,828 in the Limitation on administrative expenses, Social Security Administration, resulting in a total deferral of $7,368,964. This increase results from the deferral of additional carryover of funds from FY 1996 that cannot be used in FY 1997.

Deferral No. 97-7A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Social Security Administration	**New budget authority** (P.L. 104-208) $ 234,895,000
BUREAU:	**Other budgetary resources** $ 54,414,828
Appropriation title and symbol: Limitation on administrative expenses 1/ 28X8704	**Total budgetary resources** $ 289,309,828
	Amount to be deferred: Part of year $ ____ Entire year *$ 7,368,964
OMB identification code: 20-8007-0-7-651	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act [ ] Other ____
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [ ] Multi-year: ____ (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other ____

Justification: This account includes funding for construction and/or renovation of Social Security trust fund-owned headquarters and field office buildings. In addition, funds remain available for costs associated with acquisition of land in Colonial Park Estates adjacent to the Social Security Administration complex in Baltimore, Maryland. The Social Security Administration has received an approved FY 1997 apportionment for $50,000 to cover potential upward adjustments of prior-year costs related to field office roof repair and replacement projects. Deferred funds may be made available for two purposes: (1) purchase of 9.8 acres of privately-owned land consisting of 14 scattered lots within the Social Security Administration complex that the Federal Government made a commitment to the original owners to purchase and to pay relocation costs contingent upon the owner's desire to sell at some future date; and (2) construction, renovation, and expansion projects when a need for such projects is identified and determined to be necessary for the efficient operation of the Social Security Administration. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None.

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1996 (D96-2A).

* Revised from previous report.

[FR Doc. 97–4276 Filed 2–20–97; 8:45 am]
BILLING CODE 3110–01–C

PENSION BENEFIT GUARANTY CORPORATION

Request for Comment on Proposed Collection of Information Under the Paperwork Reduction Act; Locating and Paying Participants

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intention to request OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation intends to request that the Office of Management and Budget approve a collection of information under the Paperwork Reduction Act. The purpose of the information collection is to enable the PBGC to pay benefits to participants and beneficiaries in plans covered by the PBGC insurance program.

ADDRESSES: All written comments should be addressed to: Office of General Counsel, Pension Benefit Guaranty Corporation, Suite 340, 1200 K St. NW., Washington, D. C. 20005. The comments will be available for public inspection at the PBGC Communications and Public Affairs Department, Suite 240, 1200 K Street, NW., Washington, DC 20005, between the hours of 9 a.m. and 4 p.m. A copy of the proposed collection can be obtained, without charge, by writing to the PBGC the above address.

FOR FURTHER INFORMATION CONTACT: Marc L. Jordan, Attorney, Office of the General Counsel, Suite 340, 1200 K Street, NW., Washington, DC 20005, 202–326–4026 (202–326–4179 for TTY and TDD). (These are not toll-free numbers.) A copy of the proposed collection can be obtained, without charge, by writing to the PBGC at the above address.

SUPPLEMENTARY INFORMATION: The PBGC intends to request OMB approval of a collection of information needed to pay participants and beneficiaries who may be entitled to pension benefits under a defined benefit plan that has terminated. The collection consists of information participants and beneficiaries are asked to provide in connection with an application for benefits. In addition, in some instances, as part of a search for participants and beneficiaries who may be entitled to benefits, the PBGC requests individuals to provide identifying information that the individual would provide as part of an initial contact with the PBGC. All requested information is needed to enable the PBGC to determine benefit entitlements and to make appropriate payments.

The PBGC estimates that it will request that 62,720 individuals submit applications for benefits and that the associated burden is 30,360 hours (an average of slightly less than 30 minutes per individual). The PBGC further estimates that 5,000 individuals will provide the PBGC with identifying information as part of an initial contact and that the associated burden is 1,250 hours (15 minutes per individual). Thus, the total estimated burden associated with this collection of information is 36,610 hours.

The PBGC solicits comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Issued at Washington, D.C., this 18th day of February, 1997.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 97–4344 Filed 2–20–97; 8:45 am]
BILLING CODE 7708–01–P

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Qualified Domestic Relations Orders Submitted to the PBGC

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice.

SUMMARY: The Pension Benefit Guaranty Corporation has requested that the Office of Management and Budget ("OMB") extend the approval for a collection of information under the Paperwork Reduction Act. The information collection relates to model forms contained in a PBGC booklet ("Divorce Orders & PBGC") providing guidance on how to submit a proper qualified domestic relations order to the PBGC. The effect of this notice is to advise the public of, and to solicit public comment to OMB on, the extension of approval of this collection of information.

DATE: All comments must be submitted to OMB by March 24, 1997.

ADDRESSES: All written comments should be addressed to: Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Pension Benefit Guaranty Corporation, 725 17th Street, NW., Room 10235, Washington, DC 20503. A copy of the request for approval may be obtained by writing to the PBGC Communications and Public Affairs Department, suite 240, 1200 K Street, NW., Washington, DC 20005, or by visiting that office between the hours of 9 a.m. and 4 p.m. Copies of the booklet, "Divorce Orders & PBGC," may be obtained by calling PBGC's Customer Service Center at 1–800–400–PBGC or writing to the PBGC QDRO Coordinator, P.O. Box 19153, Washington, DC 20036–0153. The booklet also is available from the PBGC Homepage on the World Wide Web, at http://www.pbgc.gov.

FOR FURTHER INFORMATION CONTACT: James L. Beller, Attorney, Office of the General Counsel, Suite 340, 1200 K Street, NW., Washington, DC 20005, 202–326–4020, ext. 3865 (202–326–4179 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTAL INFORMATION: The Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) establishes policies and procedures for controlling the paperwork burdens imposed by Federal agencies on the public. The Act vests the OMB with regulatory responsibility over these burdens, and OMB has promulgated rules on the clearance of collections of information by Federal agencies.

On September 10, 1996, the PBGC published a notice (61 FR 47774) of its request for approval, on an emergency basis, of a new collection of information relating to guidance on the submission of qualified domestic relations orders ("QDROs") to the PBGC. OMB approved the collection of information with an expiration date of March 31, 1997. On November 25, 1996, the PBGC published a notice (61 FR 59917) informing the public of its intention to seek a three-year extension of the approval of this collection of information and soliciting comments. No comments were received.

The PBGC is a federal agency that insures the benefits of nearly 42 million working men and women in about 55,000 private-sector defined benefit pension plans. A defined benefit pension plan that does not have enough

money to pay benefits may be terminated if the employer responsible for the plan faces severe financial difficulty, such as bankruptcy, and is unable to maintain the plan. In such an event, the PBGC becomes trustee of the plan and pays benefits, subject to legal limits, to plan participants and beneficiaries.

The benefits of a pension plan participant generally may not be assigned or alienated. Title I of ERISA provides an exception for domestic relations orders that relate to child support, alimony payments, or marital property rights of an alternate payee (a spouse, former spouse, child, or other dependent of a plan participant). The exception applies only if the domestic relations order meets specific legal requirements that make it a QDRO. The PBGC reviews submitted domestic relations orders to determine whether the order is qualified before paying benefits to an alternate payee.

The PBGC receives many inquiries on the requirements for QDROs. Many domestic relations orders, both in draft and final form, do not meet the applicable requirements. The PBGC works with practitioners on a case-by-case basis to ensure that their orders are amended to meet applicable requirements. This process is time-consuming for practitioners and for the PBGC.

To simplify the process, the PBGC has included model QDROs and accompanying guidance in a booklet, "Divorce Orders & PBGC," that attorneys and other professionals who are preparing QDROs for plans trusteed by the PBGC may submit to the PBGC after receiving court approval. These models and the guidance are intended to assist parties by making it easier to comply with ERISA's QDRO requirements in plans trusteed by the PBGC.

The requirements for submitting a QDRO are established by statute. The model QDROs and accompanying guidance do not create any additional requirements and will result in a reduction of the statutory burden. The PBGC estimates that it will receive 333 QDROs each year from prospective alternate payees; that the average burden of preparing a QDRO with the assistance of the guidance and model QDROs in PBGC's booklet will be ¼ hour of the alternate payee's time and $400 in professional fees if the alternate payee hires an attorney or other professional to prepare the QDRO, or 10 hours of the alternate payee's time if the alternate payee prepares the QDRO without hiring an attorney or other professional; and that the total annual burden will be 113 hours and $132,000.

Issued at Washington, DC., this 14th day of February 1997.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 97–4306 Filed 2–20–97; 8:45 am]

BILLING CODE 4163–19–P

POSTAL RATE COMMISSION

Sunshine Act Meeting; Notice of Commission Visits

February 19, 1997.

Notice is hereby given that members of the Postal Rate Commission and certain advisory staff members will visit the facilities of the following businesses to observe their operations:

R.R. Donnelley & Sons Co. Levittown Distribution Facility, Levittown, Pennsylvania on March 5, 1997.

R.R. Donnelley & Sons Co. Lancaster East Division (printing plant) and R.R. Donnelley & Sons Co. Lancaster Fulfillment Services, Lancaster, Pennsylvania on March 6, 1997.

Reports of these visits will be placed on file in the Commission's Docket Room. For further information contact Margaret P. Crenshaw, Secretary of the Commission at 202–789–6840.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 97–4533 Filed 2–19–97; 3:57 pm]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22510; 811–4784]

Counsellors Tandem Securities Fund, Inc.; Notice of Application

February 13, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Counsellors Tandem Securities Fund, Inc. (formerly Counselors Dual Purpose Utility Fund, Inc.).

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on January 28, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 10, 1997, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 466 Lexington Avenue, New York, New York 10017–3147.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end, diversified management investment company organized as a Maryland corporation.[1] On July 31, 1986 applicant registered as an investment company under the Act. On that same date, applicant filed a registration statement on Form N–2 under section 8(b) of the Act and the Securities Act of 1933. The registration statement became effective on October 23, 1986 and the initial public offering began thereafter.

2. On July 22, 1996, without taking formal action, applicant's Board of Directors discussed various options effectuating the terms of applicant's Articles of Incorporation, which required that on or prior to December 31, 1996, applicant must either (1) liquidate, or (2) call a special meeting of shareholders to consider converting to open-end status. Applicant's adviser, Warburg, Pincus Counsellors, Inc. advised that, in its view open-ending applicant, either by having it remain a stand-alone fund or by merger would not be economically viable and accordingly not in the best interest of shareholders.

3. At a duly constituted Board meeting held on November 4, 1996, the Board resolved to liquidate all of applicant's assets and distribute on November 22, 1996 all of the proceeds of such liquidation, in the form of cash, less an amount provided for debts and liabilities of applicant, to shareholders of record as of November 21, 1996. In approving such action, the Board considered a number of factors, including possible tax consequences to shareholders, the relatively small size of applicant's assets, the likelihood of redemption requests following conversion of applicant to an open-end fund, the resulting high expense ratio of the Fund, and the improbability that sales of applicant's shares could be increased to raise applicant's assets to a more economically viable level.

4. On October 30, 1996, all issued and unredeemed Preferred Shares of applicant were redeemed in full in accordance with the Articles of Incorporation. As of November 21, 1996, there were 2,729,862.351 Common Shares of applicant outstanding, having an aggregate net asset value of $53,632,507 and a per share net asset value of $19.65. Applicant had no other classes of securities outstanding. On November 22, 1996 applicant's assets were liquidated and distributed to its Common shareholders.

5. In connection with its liquidation, applicant incurred expenses of approximately $23,000, consisting of auditing and legal expenses. These expenses were borne by applicant.

6. As of the date of the filing of the application, applicant has no shareholders, liabilities, or assets. Applicant is not a party to any litigation or administrative proceeding.

7. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

8. Applicant intends to terminate its existence under the laws of the State of Maryland.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4240 Filed 2–20–97; 8:45 am]

BILLING CODE 8010–01–M

[1] The Articles of Incorporation of applicant authorize applicant to issue 36,000,000 shares of capital stock divided into 6,000,000 Preferred Shares (par value $0.01 per share) ("Preferred Shares") and 30,000,000 Common Shares (par value $.01 per share) ("Common Shares") with varying rights attached thereto. The Articles of Incorporation of applicant also provide that all issued and outstanding Preferred Shares of applicant must be redeemed 10 years after the date of the initial issuance of such shares, which date was October 30, 1986.

[Investment Company Act Release No. 22509]

Kansas Farm Bureau Life Variable Account; Notice of Application

February 13, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Kansas Farm Bureau Life Variable Account.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on February 3, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 10, 1997, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 2627 KFB Plaza, Manhattan, Kansas 66503.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or H. R. Hallock, Jr., Special Counsel, at (202) 942–0564 (Division or Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants Representations

1. Applicant is a registered unit investment trust under the Act. On March 1, 1988, applicant filed a notification of registration on Form N–8A pursuant to section 8(a) of the Act, and a registration statement on Form N–8B–2 pursuant to section 8(b) of the Act. On the same date, applicant filed a registration statement on Form S–6 under the Securities Act of 1933. Applicant's registration statement was never declared effective and no public offering ever commenced.

2. Applicant has no security holders, debts, liabilities or assets. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4241 Filed 2–20–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26665]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

February 14, 1997.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 10, 1997, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Northeast Utilities, et al. (70–8507)

Northeast Utilities ("NU"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, a registered holding company, and its wholly owned subsidiaries, Charter Oak Energy, Inc.

("Charter Oak") and COE Development Corporation ("COE Development"), both located at 107 Seldon Street, Berlin, Connecticut 06037, (collectively, the "Applicants") have filed a post-effective amendment to their application-declaration under section 12(c) of the Act and rule 46 thereunder, regarding the payment to dividends out of capital or unearned surplus.

By order dated December 12, 1996 (HCAR No. 2613) ("Order"), the Commission authorized the Applicants to engage in certain power development activities. Specifically, the Order authorized Charter Oak and COE Development to, among other things, invest in, and finance the acquisition of, exempt wholesale generators within the meaning of section 32 of the Act ("EWGs") and foreign utility companies within the meaning of section 33 of the Act ("FUCOs," and together with EWGs, "Exempt Projects"), subject to certain limitations. In addition, the Applicants may acquire interests in, finance the acquisition, and hold the securities, of one or more companies ("Intermediate Companies") engaged directly or indirectly and exclusively in the business of holding the securities of one or more Exempt Projects and in project development activities relating to the acquisition of such interests and securities in the underlying projects, without filing specific project applications with the Commission, and to issue guarantees and assume liabilities subsequent to operation with regard to those projects.

Nu's authorized investment in Charter Oak, Charter Oak's authorized investment in COE Development and Charter Oak's and COE Development's authorized expenditures are $200 million for the period from January 1, 1997 to December 31, 1997.

The Applicants now propose to expand their authorization to allow Intermediate Companies and/or Exempt Projects to pay dividends to their parent companies, from time to time out of capital or unearned surplus, and for Charter Oak to use such funds to pay dividends to NU, to the extent permitted by applicable corporate law and to be accounted for in a manner consistent with rule 46 promulgated under the Act.

Central and South West Corporation et al. (70–8979)

Central and South West Corporation ("CSW"), 1616 Woodall Rodgers Freeway, Dallas, Texas 75202, a registered holding company, and its wholly-owned public utility subsidiaries, Central Power and Light Company ("CP&L"), 539 North Carancahua Street, Corpus Christi, Texas 78401–2802, Public Service Company of Oklahoma ("PSO"), 212 East Sixth Street, Tulsa, Oklahoma 74119–1212, Southwestern Electric Power Company, 428 Travis Street, Shreveport, Louisiana 71156–0001 ("SWEPCO") and West Texas Utilities Company ("WTU"), 301 Cypress Street, Abilene, Texas 79601–5820, have filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(a)—(e) of the Act and rules 43, 44, 51, 54, 62 and 65 thereunder.[1]

Proxy Solicitation

All of the outstanding common stock of the Subsidiaries is held by CSW (individually and collectively, "Common Stock"). As of September 30, 1996, CP&L, PSO, SWEPCO and WTU had issued seven,[2] two,[3] four[4] and one[5] series, respectively, of preferred stock, $100 par value per share (individually and collectively, "Preferred Stock"), none of which are listed on a securities exchange. The Common Stock and Preferred Stock of each series are each entitled to one vote per share. None of the Subsidiaries has any other authorized class of equity securities.

CP&L's and WTU's respective Restated Articles of Incorporation and PSO's and SWEPCO's respective Restated Certificates of Incorporation (collectively, "Articles") currently provide that, without the consent of the holders of at least a majority of the total number of such Subsidiary's shares of Preferred Stock of all series voting as one class, it may not issue or assume any unsecured notes, debentures or other securities representing unsecured indebtedness ("Unsecured Obligations"), for any purpose other than (a) refunding or renewing outstanding Unsecured Obligations resulting in later maturities, or (b) funding existing unsecured indebtedness (not represented by Unsecured Obligations), if immediately after such issue or assumption (1) the principal amount of all Unsecured Obligations issued or assumed by the Subsidiary and then outstanding would exceed 20% of the aggregate of (i) the principal amount of all bonds or other securities representing secured indebtedness issued or assumed by the Subsidiary and then outstanding and (ii) the total capital stock and surplus of the Subsidiary as then recorded on its books (the "20% Provision"), or (2) the principal amount of all Unsecured Obligations maturing in less than ten years,[6] issued or assumed by the Subsidiary and then outstanding would exceed 10% of such aggregate amount (the "10% Provision").

The Subsidiaries propose to solicit proxies or consents from the holders of their outstanding shares of Common Stock and Preferred Stock ("Proxy Solicitation")[7] to approve a proposed amendment to each Subsidiary's Articles that would eliminate in their entirety the 10% Provision and 20% Provision (individually, "Proposed Amendment" and collectively, "Proposed Amendments") from each of their Articles. Approval and adoption of the applicable Proposed Amendment by each Subsidiary's shareholders requires the affirmative vote of the holders of not less than two-thirds of the outstanding shares of the Subsidiary's (1) Preferred Stock of all series, voting together as one class, and (2) Common Stock. CSW has advised the Subsidiaries that it will vote its shares of Common Stock of each Subsidiary in favor of the Proposed Amendments. If proxies are solicited, they would be voted at special meetings of the Subsidiaries' respective stockholders to be held as soon as possible ("Special Meetings") for the purpose of voting on the Proposed Amendments. Each Subsidiary may elect to make a special cash payment out of its general funds (each, a "Cash Payment") to each holder of its Preferred Stock who voted in favor of the applicable Proposed Amendment (except that no Cash Payment will be made with respect to any share of Preferred Stock validly tendered pursuant to the concurrent tender offer described below). The Cash Payment also may be conditioned on approval and adoption of the Proposed Amendments.

Tender Offer

Concurrently with or shortly before the commencement of the Proxy Solicitation, and subject to the terms and conditions to be stated in an Offer to Purchase and Proxy Statement and accompanying Letter of Transmittal and Proxy (together, "Offer Documents"), CSW may make a cash tender offer ("Tender Offer") to acquire from the holders of the preferred stock of one or more series (each a "Series") any and all shares ("Shares") of such Series at cash purchase prices (which CSW anticipates will reflect a premium over the current market price at the commencement of the Tender Offer) to be determined based on market conditions (each a "Purchase Price").[8] Additionally, the Subsidiaries may call shares of any or all series of outstanding Preferred Stock at the applicable call price. The Tender Offer consists of separate offers by CSW to acquire some or all Series of preferred stock of each Subsidiary, except for CP&L's MMP Series, ARP Series A and ARP Series B, for which no Tender Offer will be made, with the Tender Offer for any one Series being independent of the Tender Offer for any other Series. The applicable Purchase Price and the other terms and conditions of the Tender Offer apply equally to all preferred stockholders of a respective Series.

CSW anticipates that the Tender Offer for each Series of preferred stock will expire on the date of the applicable Special Meeting or expiration of the consent solicitation ("Expiration Date") but the Expiration Date may be extended or the Tender Offer terminated early under certain circumstances. The Tender Offer would not be conditioned upon any minimum number of Shares of the applicable Series being tendered, but may be conditioned, among other things, on the Proposed Amendments being adopted and/or all tendering preferred stockholders voting in favor of the applicable Proposed Amendment.

Tenders of Shares made pursuant to the Tender Offer may be withdrawn at any time prior to the Expiration Date. Thereafter, such tenders will be irrevocable, subject to certain conditions identified in the Offer Documents. CSW states that its obligation to proceed with the Tender Offer and to accept for payment and to pay for any Shares tendered is subject to various conditions that will be enumerated in the Offer Documents, which include the Commission issuing an order under the Act authorizing the proposed transactions, and which may include, among other conditions, that the Proposed Amendments be adopted and/or that all tendering preferred stockholders vote in favor of the applicable Proposed Amendment.

Shares validly tendered to the depositary for the Tender Offer ("Depositary") pursuant to the Tender Offer and not withdrawn in accordance with procedures in the Offer Documents will be held by CSW until the Expiration Date (or returned in the event the Tender Offer is terminated). Subject to the terms and conditions of the Tender Offer, as promptly as practicable after the Expiration Date, CSW will accept for payment and pay for any and all Shares validly tendered and not withdrawn. CSW plans to use its general funds and/or funds borrowed through its commercial paper program[9] on an interim basis to pay the Purchase Price for all tendered Shares. CSW expects to select one or more dealer managers in connection with the Tender Offer.[10] In addition, CSW will pay soliciting brokers and dealers a separate fee for Shares tendered that are accepted and paid for pursuant to the Tender Offer.[11]

If the Proposed Amendments are adopted, promptly after consummation of the Tender Offer the Subsidiaries propose to purchase the Shares sold to CSW pursuant to the Tender Offer at the relevant Purchase Price, and the Subsidiaries will retire and cancel such Shares.

If the Tender Offer is conditioned upon the Proposed Amendments being adopted at the Special Meetings and the Proposed Amendments are not adopted, CSW may elect to waive such condition. In that case or if the Tender Offer is not conditioned upon the Proposed Amendments being adopted, as promptly as practicable after CSW's purchase of any Shares validly tendered pursuant to the Tender Offer, each Subsidiary may call another special meeting or commence another consent solicitation of its common and preferred stockholders and solicit proxies or consents (to secure the requisite two-thirds affirmative vote of stockholders to amend the Articles) to eliminate the 10% Provision and the 20% Provision. At each such meeting, CSW would vote any Shares acquired by it pursuant to the Tender Offer or otherwise (as well as all of its shares of Common Stock of the Subsidiaries) in favor of the Proposed Amendments. if the Proposed Amendments are adopted at that meeting and in any event within one year from the Expiration Date (including any potential extension thereto pursuant to the Tender Offer), the Subsidiaries will acquire all shares from CSW at the Purchase Price after such meetings or at the expiration of such one-year period, as applicable, and the Subsidiaries will retire and cancel such Shares.

Proposed Financing

CSW and/or the Subsidiaries propose to issue junior subordinated debentures ("Debentures") and tax deductible preferred securities ("Preferred Securities") indirectly through a special purpose financing subsidiary to the public from time to time in one or more series, through December 31, 2001, not to exceed the following aggregate principal amounts (each, an "Offering Limit"): CSW–$500 million, CP&L–$350 million, PSO–$100 million, SWEPCO–$150 million and WTU–$80 million. Each series of Debentures and Preferred Securities will mature in not more than 49 years.

Debentures issued and sold to the public are expected to be sold through negotiation with underwriters, agents or other entities, at an initial public offering price resulting in a yield to maturity that is not expected to exceed by more than 3% the yield to maturity on United States Treasury bonds of similar maturity. The commission payable to agents or underwriters would not exceed 3.5% of the principal amount of the Debentures sold.

CSW and the Subsidiaries may have the right to defer payment of interest on the Debentures for up to five years. In the event interest payments are so deferred on the Debentures, CSW and the Subsidiaries may not declare and pay dividends (except in common stock) on outstanding stock. The payment of principal, premium and interest on the Debentures would be subordinated in right of payment to the prior payment in

[1] CP&L, PSO, SWEPCO & WTU are sometimes referred to herein individually as a "Subsidiary" or collectively as "Subsidiaries."

[2] The seven series of CP&L Preferred Stock consist of a Money Market Preferred series, of which 750,000 shares are outstanding ("MMP Series"); an Auction Rate Preferred Series A series, of which 425,000 shares are outstanding ("ARP Series A"), an Auction Rate Preferred Series B series, of which 425,000 shares are outstanding ("ARP Series B"); a 8.72% series, of which 500,000 shares are outstanding; a 7.12% series, of which 260,000 shares are outstanding; a 4.20% series, of which 75,000 shares are outstanding; and a 4.00% series, of which 100,000 shares are outstanding.

[3] The two series of PSO Preferred Stock consist of a 4.24% series, of which 100,000 shares are outstanding; and a 4.00% series, of which 97,900 shares are outstanding.

[4] The four series of SWEPCO Preferred Stock consist of a 6.95% series, of which 340,000 shares are outstanding; a 5.00% series, of which 75,000 shares are outstanding; a 4.65% series, of which 25,000 shares are outstanding; and a 4.28% series, of which 60,000 shares are outstanding.

[5] The series of WTU Preferred Stock is a 4.40% series, of which 60,000 shares are outstanding.

[6] The principal amount of any Unsecured Obligations which had an original single maturity of more than ten years from the date thereof, and the principal amount of the final maturity of any serially-maturing Unsecured Obligations which had one or more original maturities of more than ten years from the date thereof, may not be regarded as Unsecured Obligations maturing in less than ten years until such principal amount is due or required to be paid within three years.

[7] In connection with the Proxy Solicitation, the Subsidiaries will engage an information agent and will pay such information agent a fee and reimburse reasonable out-of-pocket expenses in an amount expected not to exceed approximately $75,000.

[8] The Purchase Price would be based on a number of factors, including the dividend payable on the preferred stock, the redemption price on the date of acquisition and the then current market rates for similar securities.

[9] See Holding Co. Act Release No. 26254 (March 21, 1995) (authorizing CSW to issue and sell commercial paper and notes to banks up to $1.2 billion to finance the capital expenditures of the Subsidiaries through March 31, 1997).

[10] The applicants state that dealer manager fees will be determined following negotiation and investigation of fees in similar transactions and will include reasonable out-of-pocket expenses, including attorneys' fees.

[11] The applicants state that fees to soliciting brokers and dealers will be determined following negotiation and investigation of fees in similar transactions. In addition, CSW proposes to pay the Depositary a fee estimated at approximately $30,000.

full of senior indebtedness. The Debentures may be subject to redemption and, in addition, their maturities may be extended up to 49 years if the original maturity is less than 49 years, provided other conditions are met. The Debentures will be issued under indentures between the issuing applicant and a trustee.

CSW and the Subsidiaries anticipate that the issuance and sale of Preferred Securities would occur through a special purpose entity ("SPE"), organized as a limited liability company ("LLC"), a limited partnership ("LP") or a statutory business trust ("Trust").[12] Depending on the form of the SPE, the Preferred Securities would constitute preferred membership interests in an LLC, limited partnership interests in an LP or preferred interests (or senior trust certificates) in a Trust. With respect to a SPE that is a LLC, CSW or the respective Subsidiary may also form a wholly-owned subsidiary ("Investment Sub") to acquire and hold an interest in the SPE so that any applicable two-member LLC requirement would be satisfied. Similarly, with respect to a SPE that is a LP, CSW or the respective Subsidiary may form an Investment Sub to act, or may itself act, as the general partner of such SPE and may acquire, either directly or indirectly through such Investment Sub a limited partnership interest in such SPE so that any applicable two-partner LP requirement would be satisfied. The Preferred Securities will have aggregate par or stated value or liquidation preference of up to $1,000 per security.

CSW and the Subsidiaries and/or their respective Investment Subs will acquire an aggregate ownership interest, including general partnership interests or common membership interests, as the case may be, or will become the grantors and holders of the junior trust certificates, of their respective SPE in an amount not to exceed 10% of the total equity capitalization or deposits from time to time of such SPE ("Equity Contribution"). At any time or from time to time in one or more series, CSW and the Subsidiaries may issue and sell Debentures to their respective SPE and the SPE would purchase such Debentures, applying both the Equity Contribution made to it and the proceeds from the sale of Preferred Securities. CSW and each Subsidiary may sell Debentures and utilize their respective SPE to issue Preferred Securities. The payment rate, terms, redemption and other provisions of the Preferred Securities would correspond to those of the Debentures purchased from CSW or the Subsidiaries, as the case may be.

In order for the SPE to sell Preferred Securities up to the maximum Offering Limit, CSW or the Subsidiaries would be required to issue Debentures to such SPE in an amount equal to the maximum Offering Limit plus the total Equity Contribution. CSW or the Subsidiaries selling such Debentures to an SPE may or may not be the owner of the general partnership interests, common member interests or the grantor or holder of the junior trust certificates of such SPE, as the case may be.

CSW or the Subsidiaries may redeem the Debentures held by an SPE which is required to redeem the related series of Preferred Securities at a price equal to their par or stated value or liquidation preference, as the case may be, plus any accrued and unpaid dividends or distributions, under certain circumstances, including if an SPE may become subject to federal income tax on the interest it received on Debentures issued to the SPE, a determination that the interest payment by CSW or a Subsidiary on its Debentures are not deductible for income tax purposes, or the SPE becomes subject to regulation as an "investment company" under the Investment Company Act of 1940, as amended. The Preferred Securities also may be subject to mandatory redemption under certain circumstances. In certain instances, CSW and the Subsidiaries also may have the right to exchange the Preferred Securities of their respective SPE for the related Debentures.

In connection with the Preferred Securities, CSW and the Subsidiaries request authorization to guarantee the payment of dividends or distributions on the Preferred Securities of their respective SPE, payments to the holder of Preferred Securities of amounts due upon liquidation of such SPE or redemption of the Preferred Securities, payments of certain additional amounts that may be payable in respect of such Preferred Securities and/or certain other matters.

It is expected that each applicant's interest payments on the Debentures it issues will be deductible for federal income tax purposes and that any respective SPE will be treated as a grantor trust if organized as a Trust or a partnership if organized as a LP or LLC, as the case may be, for federal income tax purposes. Consequently, holders of the Preferred Securities, the applicants and any respective Investment Sub, will be deemed to have received either payments in respect of the Debentures or partnership distributions from their respective SPE and will not be entitled to any "dividends received deduction" under the Internal Revenue Code.

In the event that any SPE is required to withhold or deduct certain amounts in connection with dividends, distributions or other payments, the SPE may have the obligation to "gross up" such payments so that the holders or the Preferred Securities issued by such SPE will receive the same payment after withholding or deduction as they would have received if no withholding or deduction were required. CSW or the related Subsidiary would be required to make corresponding payments under the Debentures that would provide the SPE with sufficient funds to make the additional payment.

If any SPE is required to pay taxes with respect to income derived from interest payments on the Debentures issued to it, CSW or the related Subsidiary may be required to pay such additional interest on the Debentures as shall be necessary in order that net amounts received and retained by such SPE after the payment of such taxes, shall result in the SPE having such funds as it would have had in the absence of such payment of taxes.

In the event of any liquidation, dissolution or winding up of any SPE, the holders of the Preferred Securities of such SPE will be entitled to receive before any distribution of assets to the common membership interest holders, general partner, grantor or junior trust certificate holder of such SPE, an amount equal to the par or stated value or liquidation preference of such Preferred Securities plus any accrued and unpaid dividends or distributions.

The applicants represent that the constituent documents governing each SPE will contain provisions, among others, limiting the SPE's activities to (i) the issuance and sale of Preferred Securities and (ii) the loan of proceeds from the sale of Preferred Securities and the Equity Contribution by the SPE to CSW, Subsidiaries and Investment Subs. The applicants propose that the constituent documents of any SPE contain no interest or dividend coverage or capitalization ratio restrictions in respect of issuance and sale of Preferred Securities. Moreover, the applicants state that CSW and the Subsidiaries' ownership interests in any SPE will be subject to transfer restrictions, the business of the SPE will be managed and controlled by CSW, the respective Subsidiary and/or their respective Investment Sub, and CSW and each Subsidiary will pay all expenses of its SPE.

CSW and Subsidiaries request authorization to enter into negotiations with underwriters to establish the interest rate, right of redemption and other terms and conditions applicable to the Debentures and Preferred Securities, subject to the receipt, or terms of an order under the Act.

CSW and the Subsidiaries intend to use the net proceeds of the Debentures to retire or replace, through redemption, repurchase or otherwise, outstanding first mortgage bonds or preferred stock (or any combination thereof), to pay outstanding short-term borrowings and for other general corporate purposes. CSW intends to use the net proceeds of the Debentures to loan or make equity contributions to the Subsidiaries to be evidenced by a Subsidiary's issuance of notes, preferred securities and/or common stock to CSW. Such notes and preferred securities would have substantially the same terms as the Debentures issued by CSW.

In connection with the issuance of Debentures and Preferred Securities, the applicants seek authorization to manage interest rate risk, through the use of interest rate management instruments, including interest rate swaps, caps, floors, collars and other similar instruments. The applicants represent that in no event would the aggregate notional amount of the interest rate swaps, at any one time, exceed the respective Offering Limit for CSW and the Subsidiaries, and that none of the interest rate swaps would be "leveraged".

The applicants also request authorization to deviate from the preferred stock provisions of the *Statement of Policy Regarding Preferred Stock Subject to the Public Utility Holding Company Act of 1935*, HCAR No. 13106 (Feb. 16, 1956), as amended in HCAR No. 16758 (June 22, 1970) to the extent applicable with respect to the Proposed Amendments.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4243 Filed 2–20–97; 8:45 am]

BILLING CODE 8010–10–M

[12] The applicants state that a LLC, LP or Trust would be organized under the Delaware Limited Liability Company Act, Delaware Revised Uniform Limited Partnership Act or Delaware Business Trust Act, respectively, or other similar statutes.

[Rel. No. IC–22512; 812–10132]

Sierra Prime Income Fund, et al.; Notice of Application

February 14, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Sierra Prime Income Fund (the "Trust"), Sierra Investment Advisors Corporation (the "Adviser"), and Sierra Investment Services Corporation (the "Distributor").

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from sections 18(c) and 18(i) of the Act, and under section 17(d) of the Act and rule 17d–1 thereunder permitting certain joint transactions.

SUMMARY OF APPLICATION: Applicants request an order that would permit certain closed-end investment companies to issue multiple classes of shares in the same portfolio of securities and impose distribution fees on one or more classes of shares.

FILING DATES: The application was filed on May 7, 1996 and amended on August 14, 1996, and on November 26, 1996. Applicants have agreed to file an amendment during the notice period, the substance of which is incorporated herein.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 11, 1997 and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, 9301 Corbin Avenue, Suite 333, Northridge, California 91324.

FOR FURTHER INFORMATION CONTACT: Sarah A. Buescher, Staff Attorney, at (202) 942–0573, or Elizabeth G. Osterman, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is a registered closed-end management investment company organized as a Massachusetts business trust. The Trust has entered into an investment advisory agreement with the Adviser, a wholly-owned subsidiary of Sierra Capital Management Corporation. The Adviser has delegated the management of the Trust's investment portfolio to Van Kampen American Capital Management Inc. The Trust has entered into a distribution agreement with the Distributor pursuant to which the Distributor acts as principal underwriter or distributor for the Trust. Applicants request that relief extend to all future series of the Trust and all other registered closed-end investment companies with substantially the same investment policies and manner of operation as the Trust for which the Adviser, the Distributor, or any entity controlling, controlled by, or under common control with the Adviser or Distributor acts as adviser or distributor now or in the future.

2. The Trust's investment objective is to provide as high a level of income as is consistent with the preservation of capital primarily through investment in senior collateralized corporate loans ("Senior Loans") in the form of participation interests in Senior Loans made by banks or other financial institutions. The Trust and funds with similar investment policies and manners of operation are commonly known as "prime rate" funds. While the Trust's investment policies require it to be organized as a closed-end investment company, the Trust has characteristics largely associated with an open-end investment company. Similar to open-end funds, shares of the Trust are not listed on an exchange and are not traded over-the-counter on the National Association of Securities Dealers, Inc.'s ("NASD's") Automated Quotation National Market System. Also similar to open-end funds, the Trust engages in a continuous offering of its shares, and updates its registration statement annually. The Trust currently offers one class of shares to investors with a front-end sales load, as described below.

3. Because the Trust does not currently anticipate that a secondary market will develop for its shares, the Trust considers the shares to be illiquid. Therefore, consistent with section 23(c)(2) of the Act, the Trust intends to consider making tender offers each quarter to purchase its shares from shareholders at the then current net asset value ("NAV") per share. Section 23(c)(2) provides that a registered closed-end investment company may

purchase securities of which it is the issuer pursuant to tenders, after reasonable opportunity to submit tenders given to all holders of securities of the class to be purchased.[1]

4. Applicants propose to continue to operate as a "prime rate" fund, with the addition of a multiclass pricing system (the "System"). On April 24, 1996, the board of trustees of the Trust approved the establishment of the System, subject to the receipt of the order requested in the application. Under the System, the Trust could provide investors with the option of purchasing shares: (a) Subject to a conventional front-end sales load and, under certain circumstances, an Early Withdrawal Charge ("EWC") ("Class A Shares"); (b) subject to an EWC, an asset-based distribution fee ("Distribution Fee"), and a service fee ("Service Fee") ("Class B Shares"); and (c) subject to an EWC, a Distribution Fee, and a Service Fee offered in connection with the Sierra Asset Management Program ("SAM Program") ("Class S Shares"). All fees charged by applicants under the System will comply with Rule 2830 of the NASD Conduct Rules, although such rule does not technically apply to the Trust. If applicants receive the relief requested, sales loads, Distribution Fees, EWCs, and exchange procedures for the Trust will be structurally similar to those in open-end investment companies. In addition, the only differences between the Trust's current and future operations would be the offering of multiple classes of shares, and the imposition of Distribution Fees and Service Fees, as described below.

5. Currently, Class A Shares of the Trust are offered to investors at NAV plus a front-end sales load ("Class A Sales Load"). The Class A Sales Load is graduated from 4.5% of the offering price per share for purchases of less than $50,000 to 0% for purchases of $1,000,000 or more. Applicants will waive the Class A Sales Load for certain purchases described in the application. The Trust may impose an EWC on certain Class A Shares redeemed within one or two years of purchase. The Class A Shares subject to an EWC include those purchased at NAV without a sales charge, acquired through certain exchanges of shares, and purchased through certain employee benefit plans. The EWC for Class A Shares is waived for certain repurchases or tenders outlined in the application. The EWC for Class A Shares is calculated based on the lower of the shares' cost or current NAV. In determining whether the EWC is payable, the Trust will first redeem shares not subject to an EWC. Class A Shares are not subject to a Distribution Fee.

6. Applicants propose to offer Class B Shares of the Trust at NAV without the imposition of a sales load at the time of purchase. Applicants would impose a Distribution Fee on Class B Shares of up to .75% of the value of Class B's average daily net assets. The Distribution Fee, similar to a fee charged under a rule 12b–1 plan for open-end investment companies, would compensate the Distributor for its services and expenses in distributing Class B Shares, including payments made to broker-dealers and certain financial institutions as commissions. Class B Shares also may be subject to a Service Fee (as defined in NASD Conduct Rule 2830) of up to .25% of Class B's average daily net assets. The Service Fee would compensate certain broker-dealers, financial institutions, and others that provide personal services or maintain shareholder accounts.

7. An investor's proceeds from a redemption of Class B Shares made within a certain period after the purchase of the shares may be subject to an EWC that is paid to the Distributor. The amount of the EWC would be calculated by multiplying the applicable percentage charge by the lesser of: (a) The NAV of the shares at the time of purchase; or (b) the NAV of the shares at the time of redemption. Applicants currently expect that the EWC would be graduated from 4% to 0% over five years.

8. Class S Shares would be sold in connection with the SAM Program.[2] Class S Shares have the same characteristics as Class B Shares except for the SAM requirement and a modification to the EWC. The EWC for Class S Shares graduates from 5% to 0% over seven years. Shares purchased through the reinvestment of dividends and other distributions paid in Class S Shares will be Class S Shares, but will not be subject to an EWC. A shareholder's termination of participation in the SAM Program will not affect the shareholder's continued ability to hold Class S Shares, but the shareholder would be precluded from purchasing additional Class S Shares.

9. All expenses incurred by the Trust will be allocated to each class of shares based upon the net assets of the Trust attributable to each class. Distribution Fees, Service Fees, and other incremental expenses that may be attributable to a particular class of shares will be charged directly to the net assets of the particular class. Incremental expenses include transfer agent fees, printing and postage expenses, state and federal registration fees, and other incremental expenses that should be allocated to a particular class of shares. Because of the higher fees or expenses paid by the holders of certain classes, the net income attributable to and the dividends payable on shares of one class may differ from the net income attributable to and the dividends payable on shares of other classes in the Trust. As a result, the NAV per share of the classes will differ at times. Expenses of the Trust allocated to a particular class of shares will be borne on a *pro rata* basis by each outstanding share of that class.

10. The Trust may create additional classes of shares or series that may differ from Class A, Class B, or Class S Shares in the following respects: (a) The amount of Distribution Fees; (b) voting rights with respect to each class' expenses; (c) the designation of each class; (d) the impact of any class expenses directly attributable to a particular class of shares; (e) the dividends and NAV resulting from differences in fees under a plan of distribution or class expenses; (f) the EWC structure; (g) the sales load structure; and (h) exchange privileges or conversion features.

Currently, Class A Shares of the Trust may be exchanged during a tender offer period for Class A shares of equal value of any portfolio of any open-end investment company advised by Sierra Advisors ("Sierra Funds"). In addition, Class A shares of Sierra Funds may be exchanged for Class A Shares of the Trust. Under the proposal, the Trust will permit shareholders at the time of a tender offer to exchange Trust shares for the same class of shares of the Sierra Funds (except for The Sierra Variable Trust) equal in value to the tendered Trust shares in lieu of cash. All exchanges of Trust shares will comply with rule 13e–4 under the Exchange

[1] Each tender offer will be made in accordance with section 13(e) of the Securities Exchange Act of 1934 (the "Exchange Act") and rule 13e–4 thereunder. Applicants received an exemption from rule 10b–6 under the Exchange Act from the SEC's Division of Market Regulation to permit the Trust to make tender offers for its shares while simultaneously engaging in a continuous offering of its shares. Applicants also received an exemption from rule 13e–4(f)(8)(ii) under the Exchange Act to permit the Trust to allow shareholders to exchange shares of the Trust for either cash or the cash-equivalent amount of the same class of shares of certain open-end investment companies advised by the Adviser. *See* Sierra Prime Income Fund (pub. avail. June 5, 1996).

[2] The SAM Program is an asset allocation program that provides two levels of professional management and diversification to clients. The Distributor determines an asset allocation strategy and investment policy for each SAM Program strategy.

Act.[3] In addition, shareholders of any portfolio of Sierra Funds could exchange their shares for shares of the Trust of equal value in lieu of cash. The exchanges of shares from the Sierra Funds into shares of the Trust will comply with rule 11a–3 under the Act, except to the extent that the Trust operates as a closed-end fund. Although applicants currently do not intend to do so, the Trust may in the future offer a class of shares that will convert into shares of another class of the Trust. Except to the extent that the Trust operates as a closed-end fund, it would comply with rule 18f–3 under the Act with respect to such conversions.

Applicant's Legal Analysis

1. Applicants request an exemption under section 6(c) of the Act from sections 18(c) and 18(i) of the Act to the extent that the proposed issuance and sale of multiple classes of shares might be deemed to result in the issuance of a "senior security" within the meaning of section 18(g) of the Act and thus be prohibited by section 18(c), and violate the equal voting provisions of section 18(i) of the Act.

2. Section 18(c) provides, in relevant part, that a closed-end investment company may not issue or sell any senior security that is stock if, immediately thereafter, the company has more than one class of senior security that is a stock. An exception to this prohibition is that any such class of stock may be issued in one or more series provided no series has a preference or priority over any other series upon the distribution of the company's assets or in respect of payment of interest or dividends. The creation of multiple classes of shares may result in shares of a class having priority over another class as to the payment of dividends because shareholders of different classes would pay different Distribution Fees, Service Fees, and other incremental expenses that should be allocated to a particular class of shares.

3. Section 18(i) provides that each share of stock issued by a registered management company shall be a voting stock and have equal voting rights with every other outstanding voting stock. The System may violate section 18(i) because each class would be entitled to exclusive voting rights with respect to matters solely related to such class.

4. Section 6(c) of the Act provides that the SEC may exempt persons or transactions from any provision of the Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

5. Applicants believe that the proposed allocation of expenses and voting rights in the manner described above is equitable and would not discriminate against any group of shareholders. According to applicants, the proposed arrangements would permit the Trust to facilitate the distribution of its securities and provide investors with a broader choice of shareholder services without the Trust assuming excessive costs or unnecessary investment risks.

6. Applicants represent that if the Trust was required to organize separate investment portfolios for each class of shares, it could face liquidity and diversification problems that could prevent the Trust from producing a favorable return. Under the proposal, investors would be able to benefit, according to applicants, by investing in an established, sizable fund. In addition, shareholders may be relieved of a portion of the fixed costs of the Trust because such costs, potentially, would be spread over a greater number of shares than they would be otherwise.

7. Applicants believe that their proposal does not raise the concerns that section 18 was designed to ameliorate to any greater degree than open-end investment companies' multiple class systems. Under rule 18f–3, open-end investment companies may offer multiple classes of shares without seeking individual exemptive orders from the SEC. Applicants further believe that their arrangement does not involve borrowings and it would not adversely affect the assets of the Trust.

8. Section 17(d) and rule 17d–1 prohibit an affiliated person of an investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. Applicants request an order pursuant to section 17(d) and rule 17d–1 to permit the Trust to impose Distribution Fees in a manner similar to rule 12b–1 fees imposed by open-end investment companies. While rule 12b–1 does not apply to closed-end investment companies, there is some question as to whether section 17(d) and rule 17d–1 apply to such fees.

9. In passing upon applications submitted pursuant to section 17(d) and rule 17d–1, the SEC considers whether the participation of such registered or controlled company in such joint enterprise, joint arrangement, or profit-sharing plan on the basis proposed is consistent with the provisions, policies, and purposes of the Act, and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

10. Applicants have agreed to comply with rule 12b–1 as if the Trust is an open-end investment company. Applicants believe that any section 17(d) concerns in connection with the Trust financing the distribution of its shares should be resolved by this undertaking. By complying with rule 12b–1, applicants believe that the Trust would participate in substantially the same way and under substantially the same conditions as would be the case with an open-end investment company imposing distribution fees under rule 12b–1.

Applicants' Condition

Applicants expressly consent, in connection with this request for exemptive relief, to be subject to conditions applicable to open-end investment companies as set forth in rules 18f–3, 6c–10, and 12b–1 under the Investment Company Act, as amended from time to time, as if the rules applied to them.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4244 Filed 2–20–97; 8:45 am]

BILLING CODE 8010–01–M

[3] *See, supra,* note 1.

[Release No. 34–38285; File Nos. SR–AMEX–97–07, SR–BSE–96–11, SR–CHX–96–34, SR–CSE–97–03, SR–NASD–97–09, SR–NYSE–97–03, SR–PSE–97–05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Changes by the American Stock Exchange, Inc., Boston Stock Exchange, Inc., Chicago Stock Exchange, Inc., Cincinnati Stock Exchange, Inc., National Association of Securities Dealers, Inc., New York Stock Exchange, Inc., and Pacific Stock Exchange, Inc., To Amend Each Exchange's Rules Concerning the Pre-Opening Application of the Intermarket Trading System

February 13, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 10, 1996, December 19, 1996, January 29, 1997, January 31, 1997, February 10, 1997, February 10, 1997, and February 11, 1997, respectively, the Boston Stock Exchange Incorporated ("BSE"), the Chicago Stock Exchange, Incorporated

("CHX"), the Cincinnati Stock Exchange, Incorporated ("CSE"), the New York Stock Exchange, Incorporated ("NYSE"), the American Stock Exchange, Incorporated ("AMEX"), the Pacific Stock Exchange, Incorporated ("PSE"), and the National Association of Securities Dealers, Incorporated ("NASD") (each individually referred to herein as a "Participant" and two or more collectively referred to as "Participants") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization.[1] The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

The proposed amendments are to enhance the operation of the Pre-Opening Application[2] by effectively including circuit breakers as a trading halt situation that will trigger the Pre-Opening Application.[3]

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, the self-regulatory organizations included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organizations have prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

1. Purpose

The purpose of the proposed rule change is to enhance the operation of the ITS Pre-Opening Application. The Participants' ITS Pre-Opening Application rules contain basic definitions pertaining to ITS, prescribe the types of transactions that may be effected through ITS and the pricing of commitments to trade, and specify the procedures pertaining to the Pre-Opening Application, whereby an Exchange specialist ("specialist") or a ITS/CAES market maker ("market maker") in any ITS participant market who wishes to open his or her market in an ITS security may obtain any pre-opening interest in that security by other market makers registered in that security in other Participant markets.

The current Pre-Opening Application prescribes that, if a specialist or a market maker anticipates that its opening transaction in the security the specialist or market maker trades through ITS will be at a price that represents a change from the security's previous day's consolidated closing price of more than the "applicable price change," the specialist or market maker shall notify other Participant markets by sending a pre-opening notification through the ITS. The "applicable price changes" are:

Consolidated closing price[4]	Applicable price change (more than)
Network A:[5]	
Under $15	⅛ point.
$15 or over	¼ point.
Network B:	
Under $5	⅛ point.
$5 or over	¼ point.

Thereafter, the specialist or market maker shall not open the market in the security until not less than three minutes after the transmission of the pre-opening notification. Once a specialist or market maker has issued a pre-opening notification, other Participant markets may transmit "pre-opening responses" to the specialist or market maker through the ITS that contain "obligations to trade." The specialist or market maker is then obligated to combine these obligations with orders it already holds in the security, and, on the basis of this aggregated information, decide upon the opening transaction in the security.

The Pre-Opening Application also applies whenever an "indication of interest" is sent to the Consolidated Tape Association ("CTA") Plan Processor prior to the opening of trading in the relevant security or prior to the reopening of trading in the relevant security following the declaration of a trading halt for certain defined reasons, even if the anticipated opening or re-opening price is not greater than the "applicable price change." The current Pre-Opening Application provides that the Pre-Opening Application applies when an indication of interest is disseminated following five defined trading halt situations; reopenings following order imbalance, order influx, equipment changeover, news pending and news dissemination, and for a delayed opening.

The purpose of the proposed amendments to the Participants' respective rules, to which all the Participants have agreed, is to amend the Pre-Opening Application to provide that the Pre-Opening Application would be triggered whenever an "indication of interest" (i.e., an anticipated opening price range) is sent to the Consolidated Tape system prior to the opening or reopening of trading in the relevant security. Under the proposed change, the Pre-Opening Application would also be triggered when indications of interest are disseminated in situations other than those five defined trading halts, including the resumption of trading following the activation of market-wide circuit breakers. In particular, the proposed amendment would delete the definition of "Trading Halt," which is limited to the five defined trading halt situations mentioned above, and replace all references to "Trading Halt" with "halt or suspension in trading." As a result, one standard procedure would then govern all trading halt situations and would include suspensions of trading pursuant to circuit breakers.[6]

[1] The Commission is noticing these rule filings in one notice and will notice the proposed rule changes from the remaining self-regulatory organizations as they are filed.

[2] The Participants filed substantially similar proposed rule changes to amend their respective ITS Rules regarding the ITS Pre-Opening Application. The Commission notes that some of the proposed rule changes by the ITS Participants contain additional technical changes. In addition, the NASD is proposing to incorporate language into NASD Rule 5240 from the model Pre-Opening Application Rule contained as Exhibit A to the ITS Plan that was previously inadvertently omitted. Also, the PSE and CHX proposed amendments to their respective Pre-Opening Application rules to add a footnote from the model Pre-Opening Application Rule regarding the definition of when a market in a security is considered opened or re-opened, for purposes of pre-opening responses. The language of each proposed rule changes is on file at the Commission and at the principal offices of the various Participants. The file numbers for the rule filings are as follows: SR–AMEX–97–07; SR–BSE–96–11; SR–CHX–96–34; SR–CSE–97–03; SR–NASD–97–09; SR–NYSE–97–03; and SR–PSE–97–05.

[3] The respective Pre-Opening Application Rules that the Participants are proposing to amend are: AMEX, Rule 232; BSE, Chapter XXXI; CHX, Article XX, Rule 39; CSE, Chapter 14, Rules 14.1 and 14.3; NASD, Rule 5210, 5240 and 5250; NYSE, Rule 15; and PSE, Rule 5.20.

[4] If the previous day's consolidated closing price of the security exceeded $100 and the security does not underlie an individual stock option contract listed and currently trading on an exchange, the "applicable price change" is one point.

[5] Network A is comprised of NYSE securities; Network B is comprised of AMEX securities.

[6] In its proposed rule change, the NYSE notes that indications are also required pursuant to NYSE rules in other situations, including circuit breaker halts, when a stock's price will change the lesser of 10% or three points from the last sale, or five points for stocks over $100, unless the price change is less than one point. The NYSE notes that NYSE rules would continue to govern when NYSE specialists would be required to issue indications of interest. *See* NYSE filing SR–NYSE–97–03. Similarly, AMEX notes that in connection with a reopening following a "circuit breaker" halt, AMEX's rules require dissemination of an indication in the same circumstances as the NYSE. AMEX notes that its proposed amendments are intended to conform to the amendment to the ITS Plan agreed to by the Participants. *See* AMEX filing SR–AMEX–97–07.

[7] 15 U.S.C. 78f(b)(6); 15 U.S.C. 78o–3(b)(6).

[8] 15 U.S.C. 78k–1(a)(1)(D).

2. Statutory Basis

These proposed amendments are consistent with sections 6(b)(5) and 15A(b)(6) of the Act[7] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The amendment is also consistent with section 11A(a)(1)(D) of the Act[8] which provides that the linking of all markets for qualified securities through communications and date processing facilities will foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors' orders, and contribute to the best execution of such orders. In particular, by enhancing the linkage among all ITS Participant Markets and promoting coordinated openings and reopenings in ITS Securities, the Participants believe the proposed rule changes are consistent with the Act.

B. Self-Regulatory Organizations' Statement on Burden on Competition

The Participants do not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Changes Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Participants. All submissions should refer to File Nos. SR–AMEX–97–07, SR–BSE–96–11, SR–CHX–96–34, SR–CSE–97–03, SR–NASD–97–09, SR–NYSE–97–03, and SR–PSE–97–05 and should be submitted by March 14, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4231 Filed 2–20–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38272; File No. SR–DTC–96–24]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Revision of Fees

February 11, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 31, 1996, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends DTC's schedule of fees to establish a 3.5 percent surcharge on all service fees DTC charges to participants, pledge banks, limited participants, and other DTC users ("participants and users").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to establish a surcharge of 3.5 percent on all service fees DTC charges to its participants and users beginning on January 1, 1997. According to DTC, the surcharge is necessary to recover the costs of upgrading its systems to recognize data fields containing dates incorporating the year 2000 and the years thereafter ("Year 2000 Project"). DTC estimates that the total cost of its compliance initiatives will range from $25 million to $35 million over the duration of the Year 2000 Projects. These costs reflect new staff to be hired for year 2000 conversion efforts, the cost associated with diverting present DTC staff from service-related development, other staff related costs, and the cost of consulting assistance. The cost of the Year 2000 Project for 1996 has been charged against DTC's excess revenues for the year.

DTC will list the surcharge as a separate line item on its monthly bill to its participants and users and will continue the surcharge indefinitely until all compliance costs have been

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

recovered. Pass-through charges to participants, such as the cost of Participant Terminal System terminals and lines and transfer agent fees, will be excluded from the surcharge. DTC anticipates that the surcharge will raise $11 million in 1997. DTC will evaluate the surcharge at least annually and will modify the rate if necessary.

DTC believes that the proposed rule change is consistent with Section 17A(b)(3)(D) of the Act [3] and the rules and regulations thereunder because it provides for the equitable allocation of reasonable dues, fees, and other charges among DTC's participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments have been solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [4] and pursuant to Rule 19b–4(e)(2) [5] promulgated thereunder because the proposal changes a due, fee, or other charge imposed by DTC. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respected to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–96–24 and should be submitted by March 14, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4236 Filed 2–20–97; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. 78q–1(b)(3)(D).

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(e)(2).

[6] 17 CFR 200.30–3(a)(12).

[Release No. 34–38287; File No. SR–GSCC–96–12]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Interdealer Broker Repurchase Agreement Transactions

February 13, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 21, 1996, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–GSCC–96–12) as described in Items I, II, and III below, which items have been prepared primarily by GSCC. On December 3, 1996, GSCC filed with the Commission an amendment to the proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to amend GSCC rules to authorize GSCC to assess the clearing fund margin and mark-to-market consequences of a brokered repurchase agreement transaction ("repro") that is uncompared on one side as if it were fully compared.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Occasionally, an interdealer broker ("IDB") and one of its non-IDB counterparties to a repo transaction submit to GSCC on a timely basis the relevant data for a transaction, but the other non-IDB counterparty fails to submit in a timely or accurate fashion data related to the transaction. When this occurs, the IDB's trade with the non-submitting counterparty will not compare and will not enter GSCC's netting system. The corresponding side between the IDB and the submitting counterparty will compare and will enter the net assuming all comparison requirements have been met. As a result, the IDB will not have offsetting compared and netted trades with its two counterparties and will carry a net settlement position. Thus, the IDB may incur clearing fund and mark-to-market (particularly forward margin) assessments. Given the intermediary role of IDBs in the marketplace and their more limited financial resources, GSCC believes that its risk management process works best and most safely if IDBs are netted out of their positions as intermediaries in brokered repo transactions.

To promote the overall risk management process, GSCC believes that the clearing fund and the funds-only settlement consequences of any trade that does not compare because of a non-IDB's failure to submit data should fall on that non-IDB counterparty and not on the IDB. Thus, GSCC proposes to amend Rule 19, which sets forth special provisions for brokered repo transactions, by adding Section 3 to: (1) reaffirm the obligation of a non-IDB netting member to submit in a timely and accurate manner to GSCC or to another registered or exempted clearing agency data on all of its brokered repo transactions [4] and (2) provide that if a non-IDB member fails without good cause to submit data on a brokered repo transaction in a timely or accurate basis, GSCC may treat the transaction as compared based on the data submission received from the counterparty IDB for purposes of assessing all clearing fund. Prior to GSCC's assessing clearing fund and funds-only settlement consequences to a non-IDB netting member that has failed to submit such trade data in a timely and accurate basis, GSCC would attempt to contact (*e.g.*, by telephone) as promptly as possible such non-IDB netting member in order to confirm the accuracy of the data submitted by its IDB netting member counterparty. If the lack of comparison arose because of operational or other problems on the part of the IDB party and the non-IDB netting member therefore does not know the trade, GSCC would not assess margin consequences against the non-IDB netting member.

GSCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because the rule proposal will promote the prompt and accurate clearance and settlement of securities transactions and will assure the safeguarding of securities and funds in the custody or control of GSCC or for which GSCC is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments have been solicited or received. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which GSCC consents, the Commission will:

(a) by order approve such proposed rule change or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to the file number SR–GSCC–96–12 and should be submitted by March 14, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4232 Filed 2–20–97; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] Letter from Karen Walraven, Vice President and Associate Counsel, GSCC (November 26, 1996).

[3] The Commission has modified the text of the summaries submitted by GSCC.

[4] GSCC rules currently require that repo netting members submit either to GSCC or to another registered clearing agency or a clearing agency that has been exempted from registration as a clearing agency by the Commission in a timely manner data on all eligible repo transactions. Currently, only one other registered clearing agency clears and settles repo transactions in government securities. Typically, dealers enter into a brokered transaction with the understanding that such trade will be cleared and settled through a specified clearing agency. Therefore if the counterparties to a repo transaction have selected GSCC as the clearing agency to be used, failure to submit the relevant data may be a violation of GSCC's rules.

[5] 17 CFR 200.30–3(a)(12).

[Release No. 34–38283; File No. SR–NSCC–96–19]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change To Discontinue the Operation of the Securities Clearing Group's Data Base

February 13, 1997.

On October 3, 1996, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–NSCC–96–19) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on November 6, 1996.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

I. Description

The proposed rule change amends the Securities Clearing Group Agreement of the Securities Clearing Group ("SCG")[3] to discontinue the operation of the SCG data base. The SCG data base contains information on common participants of the SCG members relating to settlement payment obligations, clearing fund and margin requirements and deposits, and other related information. The members of the SCG created the SCG data base as a means to coordinate and share information on common participants and increase cooperation among the SCG members.

Termination of the SCG data base is desirable for several reasons. First, NSCC has established and agreed to make available to the SCG members access to its Collateral Management Service ("CMS").[4] The CMS will not only make available to the SCG members information similar to that

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 37904 (October 31, 1996), 61 FR 57506.

[3] The SCG was established in 1989 as a result of developments surrounding the October market break and subsequent studies on the causes of the market break. The stated purpose of the SCG is to increase cooperation and coordination among securities clearing entities and to facilitate the sharing of certain clearance and settlement information regarding surveillance and member risk monitoring. For a further description of the SCG, refer to Securities Exchange Act Release No. 27044 (July 25, 1989), 54 FR 30963 [File Nos. SR–DTC–88–20, SR–MCC–88–10, SR–MSTC–88–07, SR–NSCC–88–09, SR–OCC–89–02, SR–Philadep–89–01, and SR–SCCP–89–01] (order approving the establishment of the SCG).

[4] For a description of the Collateral Management Service, refer to Securities Exchange Act Release No. 36091 (August 10, 1995), 60 FR 42931 [File No. SR–NSCC–95–06] (order approving a proposed rule change establishing the CMS).

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contained in the SCG data base but will also provide members with enhanced features and capabilities. For example, the SCG data base contains aggregate information on clearing fund and margin deposits including excess and deficit amounts whereas the CMS contains both aggregate information on clearing fund and margin deposits including excess and deficit amounts as well as detailed information on the underlying collateral comprising clearing fund and margin deposits (*i.e.*, cash, securities, and letters of credit). The SCG members recognize that termination of the SCG data base is desirable at this point to avoid redundancies with the CMS.

Second, termination of the SCG data base will eliminate the occurrence of a significant increase in costs that would be required to maintain the SCG data base because the data base on which it is built is no longer supported by the original vendor. As a result, SCG members would be required to enter into a new and more costly contract with a new vendor. Third, because the CMS contains more detailed information and more features than the SCG data base, use of the CMS in place of the SCG data base should enable the SCG members to better coordinate and share information and to monitor clearing fund and margin deposits with respect to common participants.

Accordingly, the SCG members have executed Amendment No. 6 to the SCG Agreement.[5] The Amendment: (i) authorizes the termination of the SCG data base, (ii) authorizes NSCC to use all data information, computer coding, and programs contained in the SCG data base in establishing and maintaining the operation of CMS, and (iii) grants to each SCG Member a nonexclusive and nontransferable license to use NSCC's CMS.

II. Discussion

Section 17A(b)(3)(F) provides that the rules of a clearing agency must be designed to assure the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible and to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.[6] The Commission believes that the proposed rule change is consistent with the Act because the amendment to the SCG Agreement provides for each SCG member to have access to the CMS, and the Commission believes the CMS and the data contained in it should assist SCG members in assuring the safeguarding of securities and funds in their custody or control. The Commission also believes the termination of the SCG data base in conjunction with NSCC's grant to each SCG member of a nonexclusive and nontransferable license to use the CMS, should foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–96–19) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4235 Filed 2–20–97; 8:45 am]

BILLING CODE 8010–01–M

[5] A copy of the Amendment is attached to NSCC's filing. A copy of the filing is available for copying and inspection in the Commission's Public Reference Room or through NSCC.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 17 CFR 200.30–3(a)(12).

[Release No. 34–38284; File No. SR–OCC–96–15]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Revisions to the Standards for Letters of Credit Deposited as Margin

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 4, 1996, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–OCC–96–15) as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to request the Commission's permanent approval for OCC's modifications to its standards for letters of credit deposited with OCC as a form of margin.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[3]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Purposed Rule Change

In previous filings, OCC has proposed and the Commission has approved on a temporary basis OCC's modifications to its rules governing letters of credit deposited with OCC as a form of margin.[4] This filing proposes to make permanent the Commission's temporary approval of OCC's modifications to its Rule 604, which sets forth the standards for letters of credit deposited with OCC as a form of margin.

The modifications for which OCC has temporary approval are as follows. First, in order to conform to the Uniform Commercial Code and to avoid any ambiguity as to the latest time for honoring demands upon letters of credit, letters of credit must state expressly that payment must be made prior to the close of business on the third banking day following demand. Second, letters of credit must be irrevocable. Third, letters of credit must expire on a quarterly basis. Fourth, OCC included language in its Rule 604 to make explicit OCC's authority to draw upon letters of credit at any time, whether or not the clearing member that deposited the letter of credit has been suspended or is in default, if OCC determines that such draws are advisable to protect OCC, other clearing members, or the general public.

According to OCC, since its original filing, OCC has received no adverse comments or complaints from any of its clearing members, the banks, or other interested parties with respect to the modifications to Rule 604 or the implementation of the revised letter of credit standards. As a result, OCC now requests that the Commission permanently approve its revisions.

OCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[5] because the proposed rule change promotes the protection of investors by enhancing OCC's ability to safeguard the securities and funds in its possession or subject to its control.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were not and are not intended to be solicited by OCC with respect to the proposed rule change, and none were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which OCC consents, the Commission will:

(a) by order approve such proposed rule change or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the file number SR–OCC–96–15 and should be submitted by March 14, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4234 Filed 2–20–97; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] For a complete description of these modifications to the standards for letters of credit, refer to Securities Exchange Act Release No. 29641 (August 30, 1991), 56 FR 46027 [File No. SR–OCC–91–13] (order temporarily approving proposed rule change through February 28, 1992).

[3] The Commission has modified the text of the summaries prepared by OCC.

[4] Securities Exchange Act Release Nos. 29641 (August 30, 1991), 56 FR 46027 [File No. SR–OCC–91–13] (order temporarily approving proposed rule change through February 28, 1992); 30424 (February 28, 1992), 57 FR 8106 [File No. SR–OCC–92–06] (order temporarily approving proposed rule change through May 31, 1992); 30763 (June 1, 1992), 57 FR 24284 [File No. SR–OCC–92–11] (order temporarily approving proposed rule change through August 31, 1992); 31126 (September 1, 1992), 57 FR 40925 [File No. SR–OCC–92–19] (order temporarily approving proposed rule change through December 31, 1992); 31614 (December 17, 1992), 57 FR 61142 [File No. SR–OCC–92–37] (order temporarily approving proposed rule change through June 30, 1993); 32532 (June 28, 1993), 58 FR 36232 [File No. SR–OCC–93–14] (order temporarily approving proposed rule change through June 30, 1994); 34206 (June 13, 1994), 59 FR 31661 [File No. SR–OCC–94–06] (order temporarily approving proposed rule change through June 30, 1995); 36138 (August 23, 1995), 60 FR 44926 [File No. SR–OCC–95–9] (order temporarily approving proposed rule change through June 28, 1996); and 37618 (August 29, 1996), 61 FR 46889 [File No. SR–OCC–96–07] (order temporarily approving proposed rule change through June 30, 1997).

[5] 15 U.S.C. 78q–1.

[6] 17 CFR 200.30–3(1)(12).

Federal Register on January 14, 1997.[3] No comments were received on the proposal. This order approves the proposal.

I. Description

The Exchange proposes to adopt new Rule 7.8(e), entitled "A.M.-Settled Index Options." This rule provides that the last day of trading for A.M.-settled index option shall be the business day preceding the last day of trading in the underlying securities prior to expiration. It states that the current index value at the expiration of an A.M.-settled option shall be determined on the last day of trading in the underlying securities prior to expiration. It further provides that the current index value shall be determined by reference to the reported level of such index is derived from first reported sale (opening) prices of the underlying securities on such day. In addition, in any case where the security does not open for trading on that day, the last reported sale price of such security shall be used unless the exercise settlement amount is fixed in accordance with the Rules and By-Laws of The Options Clearing Corporation.

Subsection (1)(B) of the proposed rule further states that in any case where an exercise settlement amount is fixed for any series of index options pursuant to the Rules and By-Laws of The Options Clearing Corporation, the amount so fixed shall be the amount required to be paid upon exercise of options of that series notwithstanding any difference between the current index value used by The Options Clearing Corporation in fixing that amount and the index value determined pursuant to Exchange Rules or practices.

The rule change further states that the following A.M.-settled index options are approved for trading on the Exchange: the PSE Technology Index; the Wilshire Small Cap Index, and the Dow Jones & Co. Taiwan Index.

II. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[4] Specifically, the proposal clarifies procedures for determining the current index value of A.M.-settled index options by conforming PSE's rules and practices regarding these products to the current rules and practices of The

[3] Securities Exchange Act Release No. 34–38127 (January 14, 1997).

[4] 15 U.S.C. § 78(b).

[Release No. 34–38279; File No. SR–PSE–96–48]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to A.M.-Settlement

February 12, 1997.

On December 18, 1996, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to codify certain existing procedures relating to a.m.-settled index options.

Notice of the proposed rule change was published for comment in the

[1] 15 U.S.C. § 78s(b).

[2] 17 CFR 240.19b–4.

Options Clearing Corporation and the other exchanges. Thus, the Commission believes that the proposal is consistent with the Section 6(b)(5)[5] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public, in that it will foster cooperation and coordination with persons engaged in regulating, clearing, selling and processing information with respect to transactions in securities.[6]

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–PSE–96–48) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4233 Filed 2–20–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38280; File No. SR–PTC–96–09]

Self-Regulatory Organizations, Participants Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Declaring a Dividend

February 12, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 23, 1996, the Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–PTC–96–09) as described in Items I, II, and III below, which Items have been prepared primarily by PTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change declares a dividend payable on January 21, 1997, to PTC's stockholders of record as of December 31, 1996.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

As a condition to approving PTC's application for stock in the Federal Reserve Bank of New York, the Board of Governors of the Federal Reserve System ("Board of Governors") prohibited PTC from paying dividends to its stockholders.[3] The Board of Governors subsequently relieved PTC of the restriction on payment of dividends with the understanding that dividends, if declared, would be declared periodically by PTC's Board of Directors and would be paid at a rate not to exceed the 90-day United States Treasury bill rate in effect at the time the dividend is declared.[4]

The Commission approved PTC's practice of paying dividends out of net profits subject to the limitations imposed by the Board of Governors and subject to the limitations imposed by the Board of Governors and subject to the further requirements that (i) prior to using excess income from invested principal and interest ("P&I") to pay a dividend, PTC's Board of Directors be advised of any amount related to the investment of P&I which has not been rebated and is part of the net profits used to declare the dividend and affirmatively approve the application of such excess P&I income for the dividend and (ii) PTC file a proposed rule change pursuant to Section 19(b)(3)(A) of the Act each time it declares a dividend.[5]

PTC has paid dividends on January 18, 1993, in the amount of $.52 per share to stockholders of record as of the close of business on December 31, 1992,[6] on January 20, 1994, in the amount of $.525 per share to stockholders of record as of the close of business on December 31, 1993,[7] on January 20, 1995, in the amount of $1.00 per share to stockholders of record as of the close of business on December 31, 1994,[8] and on December 29, 1995, in the amount of $.98 per share to stockholders of record as of the close of business on December 21, 1995.[9] At its meeting on December 19, 1996, PTC's Board of Directors declared a dividend payable on January 21, 1997, in the amount of $.98 per share to stockholders of record as of the close of business on December 31, 1996. This dividend rate does not exceed the 90-day United States Treasury bill rate in effect on December 19, 1996.[10] The dividend does not include any excess income attributable to investments of P&I as all such P&I related income with respect to fiscal year ended December 31, 1996, will be rebated to participants on a *pro rata* basis based on the amount of P&I disbursements to each participant.

PTC believes that the proposed rule change is consistent with Section 17A(b)(3)(D) of the Act[11] and the rules and regulations thereunder in that it provides for the equitable allocation of reasonable fees and other charges among participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

PTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

PTC has not solicited comments with respect to the proposed rule change, and none have been received.

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[5] 15 U.S.C. § 78f(b)(5).

[6] In approving these rules, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. 15 U.S.C. § 78c(f).

[7] 15 U.S.C. § 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by PTC.

[3] Letter from William A. Wiles, Secretary of the Board, Board of Governors, to Thomas A. Williams, Milbank, Tweed, Hadley & McCloy (March 27, 1989).

[4] Letter from Jennifer J. Johnson, Associate Secretary, to the Board, Board of Governors, to Leopold S. Rassnick, Vice President and General Counsel, PTC (June 9, 1992)

[5] Securities Exchange Act Release No. 31746 (January 15, 1993), 58 FR 6319 [File No. SR–PTC–92–15].

[6] *Id.*

[7] Securities Exchange Act Release No. 33487 (January 18, 1994), 59 FR 3900 [File No. SR–PTC–93–07].

[8] Securities Exchange Act Release No. 35205 (January 9, 1995), 59 FR 3444 [File No. SR–PTC–94–08].

[9] Securities Exchange Act Release No. 36790 (January 30, 1996), 61 FR 4507 [File No. SR–PTC–95–09].

[10] The 90-day United States Treasury bill rate, as published in *The Wall Street Journal* on December 19, 1996, was 5.00%.

[11] 15 U.S.C. 78q–1(b)(3)(D).

III. Date for Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(A)(i) of the Act[12] and subparagraph (e)(1) of Rule 19b–4[13] thereunder because the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of PTC. All submissions should refer to File No. SR–PTC–96–09 and should be submitted by March 14, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4237 Filed 2–20–97; 8:45 am]

BILLING CODE 8010–01–M

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[12] 15 U.S.C. 78s(b)(3)(A)(i).

[13] 17 CFR 240.19b–4(e)(1).

[14] 17 CFR 200.30–3(a)(12).

[Release No. 34–38281; File No. SR–Philadep–96–15]

Self-Regulatory Organizations; Philadelphia Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change To Amend and Clarify Certain Same-Day Funds Settlement Procedures

February 13, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 6, 1996, the Philadelphia Depository Trust Company ("Philadep") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–Philadep–96–15) as described in Items I and II below, which items have been prepared primarily by Philadep. On November 12, 1996, Philadep filed an amendment to the proposed rule change to clarify the minimum net debit cap procedures.[2] The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to amend and to clarify certain same-day funds settlement ("SDFS") procedures relating to Philadep's risk management controls.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Philadep included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Philadep has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On February 22, 1996, the Commission granted partial permanent approval and partial temporary approval of proposed rule changes filed by Philadep and the Stock Clearing Corporation of Philadelphia's ("SCCP") to establish an SDFS system.[4] The purpose of the proposed rule change is to amend and to clarify certain SDFS procedures relating to the risk management controls (*i.e.*, collateral monitor and net debit cap).

Pursuant to the SDFS Approval Orders, Philadep provides each participant with a settlement amount which is an aggregate of a participant's end-of-day net debits and net credits in their SCCP and Philadep accounts.[5] Because of this common net settlement feature, Philadep's SDFS Approval Order sets forth that Philadep's SDFS system risk management controls would be applied in a limited manner to SCCP's Continuous Net Settlement ("CNS") activity. However, SCCP and Philadep will not suspend the processing of a participant's CNS activity when the participant's collateral monitor is negative or its net debit cap is exceeded because CNS activity is exempt from the risk management controls.

Philadep's proposed amendments to its SDFS system risk management procedures clarify that the collateral of a joint SCCP/Philadep participant that is contained in the participant's collateral monitor may be fully utilized by Philadep to address any settlement default of such joint participant. In this regard, Philadep recognizes several sources of collateral that may be derived to support a joint participant's Philadep activities as well as its SCCP CNS activities. Collateral derived from a SCCP CNS participant generally includes the participant's SCCP participants fund contribution and CNS securities received. Collateral derived from a Philadep participant generally includes the participant's Philadep participants fund contribution, miscellaneous delivery order interest, interest, dividend and reorganization credits, free receives, and proprietary positions that the participant designated as collateral.

Philadep's procedures make clear that in the event of a joint participant insolvency or a joint participant's failure to pay its end-of-day settlement

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[1] 15 U.S.C. 78s(b)(1).

[2] Letter from Kieth Kessel, Compliance Officer, Philadep (November 12, 1996).

[3] The Commission has modified the text of the summaries submitted by Philadep.

[4] Securities Exchange Act Release Nos. 36875 (February 22, 1996), 61 FR 7846 [File No. SR–SCCP–95–06] and 36876 (February 22, 1996), 61 FR 7841 [SR–Philadep–95–08] (orders granting partial temporary approval and partial permanent approval of proposed rule changes to convert to same-day funds settlement systems) ("SDFS Approval Orders").

[5] Philadep's collateral monitor and net debit cap analysis are structured to incorporate this netting of SCCP and Philadep settlements.

obligation, Philadep can use any and all such collateral contained in the participant's collateral monitor to address the default pursuant to Philadep's existing default procedures.

Philadep also proposes to clarify and to amend its SDFS procedures relating to minimum net debit caps. Currently, the minimum net debit cap applied to participants' accounts is an amount equal to 50% of the combined Philadep and SCCP participants funds (a Philadep-only participant's minimum net debit cap is the amount equal to 50% of the Philadep participants fund). Philadep proposes to establish a minimum net debit cap formula which is the lesser of: (1) An amount equal to 50% of the combined Philadep and SCCP participants funds (a Philadep-only participant's minimum net debit cap is an amount equal to 50% of the Philadep participants fund); or (2) an amount equal to twice the participant's aggregate end-of-day settlement amounts calculated over the past three months. The minimum net debit cap will be recalculated and adjusted on a monthly basis. Furthermore, Philadep reserves the right to set an individual participant's minimum net debit cap at a level less than that computed by the above formulas if Philadep believes that for risk management purposes the minimum net debit cap should be adjusted downward.

Philadep believes the proposed rule change is consistent with Section 17A of the Act and the rules and regulations thereunder because the proposal will assure the safeguarding of securities and funds which are in the custody or control of Philadep or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Philadep does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. Philadep will notify the Commission of any written comments received by Philadep.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act[6] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes that Philadep's proposed rule change clarifying certain SDFS procedures is consistent with Philadep's obligations because the proposal should provide participants with some certainty with respect to Philadep's application of SDFS risk management controls to CNS activity and failure to settle procedures. Additionally, the proposed rule change is consistent with Philadep's obligations because the proposal establishes a second minimum net debit cap formula which produces a more conservative minimum net debit cap for certain participants.

Philadep has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing because the proposed rule change, which should clarify certain SDFS procedures that are currently being applied to participants, should become effective as soon as possible.[7]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of Philadep. All submissions should refer to the file number SR–Philadep–96–15 and should be submitted by March 14, 1997.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–Philadep–96–15) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4239 Filed 2–26–97; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] The staff of the Board of Governors of the Federal Reserve System has concurred with the Commission's granting of accelerated approval. Telephone conversation between John Rudolph, Board of Governors of the Federal Reserve System, and Chris Concannon, Staff Attorney, Division of Market Regulation, Commission (February 13, 1997).

[8] 17 CFR 200.30–3(a)(12).

[Release No. 34–38282; File No. SR–SCCP–96–06]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change To Amend and Clarify Same-Day Funds Settlement Procedures

February 13, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 6, 1996, the Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–SCCP–96–06) as described in Items I and II below, which items have been prepared primarily by SCCP. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to amend and clarify SCCP's same-day funds settlement ("SDFS") procedures.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, SCCP included statements concerning the purpose of and basis for the proposed rule change and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. SCCP has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On February 22, 1996, the Commission granted partial permanent approval and partial temporary approval of proposed rule changes filed by SCCP and the Philadelphia Depository Trust Company ("Philadep") to establish an SDFS system.[3] The purpose of the proposed rule change is to amend and clarify certain SDFS procedures relating to the risk management controls (*i.e.*, collateral monitor and net debit cap).

Pursuant to SCCP's SDFS Approval Order, SCCP provides each participant with a settlement amount which is an aggregate of the participant's end-of-the-day net debits and net credits in its SCCP and Philadep accounts.[4] Because of this common net settlement feature, Philadep's SDFS Approval Order sets forth that Philadep's SDFS system risk management controls would be applied in a limited manner to SCCP's Continuous Net Settlement ("CNS") activity. Specifically, SCCP will not suspend the processing of a participant's CNS activity when the participant's collateral monitor is negative on its net debit cap is exceeded.

Pursuant to Philadep's SDFS Approval Order, a participant's activities at SCCP, such as CNS securities delivered to a SCCP participant, are included in the participant's Philadep collateral monitor. Additionally, a participant's net debit cap is determined by a participant's combined net debit history at Philadep and SCCP, and for purpose of calculating a participant's net debit settlement, Philadep includes net CNS settlements.

The purpose of the proposed rule change is to formally restate and clarify in SCCP's procedures the limited applicability of Philadep SDFS risk management controls on SCCP participants' activity. The proposed rule change also provides that all collateral derived from any SCCP CNS participant contained in Philadep's collateral monitor may be used by Philadep to address any settlement default by such joint participant. Collateral derived from a SCCP CNS participant generally includes the participant's SCCP participants fund contribution and CNS securities received.

Furthermore, SCCP authorizes Philadep to utilize any collateral derived from a defaulting SCCP/Philadep participant to address a default in accordance with Philadep Rule 4(a) and any subsequent amendments thereto.

SCCP believes the proposed rule change is consistent with Section 17A of the Act and the rules and regulations thereunder because the proposal should promote the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

SCCP believes that the proposed rule change will not impose any burden on competition not permitted by the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act[5] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes hat SCCP's proposed rule change clarifying certain SDFS procedures are consistent with such obligations because the proposal should provide participants with some certainty with respect to SCCP's application of SDFS risk management controls to CNS activity.

SCCP has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing because the proposal, which should clarify certain SDFS procedures that are currently being applied to participants, should become effective as soon as possible.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of SCCP. All submissions should refer to the file number SR–SCCP–96–06 and should be submitted by March 14, 1997.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–SCPP–96–06) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4238 Filed 2–20–97; 8:45 am]

BILLING CODE 8010–01–M

[2] The Commission has modified the text of the summaries submitted by SCCP.

[3] Securities Exchange Act Release Nos. 36875 (February 22, 1996), 61 FR 7846 File No. SR–SCCP–95–06] and 36876 (February 22, 1996), 61 FR 7841 [SR–Philadep–95–08] (orders granting partial temporary approval and partial permanent approval of proposed rule changes to convert to same-day funds settlement systems) ("SDFS Approval Orders").

[4] Philadep's collateral monitor and net debit cap analysis were structured to incorporate this netting of SCCP and Philadep settlements.

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Advisory Committee on Veterans Business Affairs; Reestablishment

The U.S. Small Business Administration, The Office of Veterans Affairs, Washington D.C., Central Office, wishes to submit a statement in the **Federal Register** regarding reestablishment of the Advisory Committee on Veterans Business Affairs at the Small Business Administration, 409 3rd St. SW, Washington, DC 20416.

For further information, write or call Joan McNair, Office of Veterans Affairs, at SBA, 409 3rd St. SW., Washington, DC 20416, telephone 205–6775.

Dated: February 3, 1997.

Michael P. Novelli,

Director, Office of Advisory Councils.

[FR Doc. 97–4267 Filed 2–20–97; 8:45 am]

BILLING CODE 8025–01–P

National Small Business Development Center Advisory Board; Public Meeting

The U.S. Small Business Administration, National Small Business Development Center Advisory Board located in the geographical area of Washington, DC, will hold a public meeting on Monday and Tuesday, March 3–4, 1997, from 8:15 AM to 5 PM, at the U.S. Small Business Administration, 409 3rd St. SW, Washington, DC, 4th Floor Conference Room, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mary Ann Holl, SBA, 409 3rd St. SW, 4th Floor, Washington, D.C. 20416, telephone 202/205–7302.

Dated: February 3, 1997.

Michael P. Novelli,

Director, Office of Advisory Councils.

[FR Doc. 97–4270 Filed 2–20–97; 8:45 am]

BILLING CODE 8025–01–P

Region I Advisory Council; Public Meeting

The U.S. Small Business Administration Region I Advisory Council located in the geographical area of Providence, Rhode Island, will hold a public meeting on Friday, March 7, 1997 at 8:00 a.m., at the Providence Marriott, Charles at Orms Street, Providence, Rhode Island to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call the office of the District Director, Providence District Office, U.S. Small Business Administration, 380 Westminster Street, Providence, Rhode Island 02903. (401) 528–4561.

Dated: February 3, 1997.

Michael P. Novelli,

Director, Office of Advisory Councils.

[FR Doc. 97–4269 Filed 2–20–97; 8:45 am]

BILLING CODE 8025–01–P

Washington, D.C. District Advisory Council; Public Meeting

The U.S. Small Business Administration Region III District Advisory Council located in the geographical area of Washington, D.C., will hold a public meeting from 9:00 a.m.–11:00 a.m., on Wednesday, February 19, 1997, at 733 15th Street, N.W., Suite 300, Washington, D.C., to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Anita L. Irving, Public Information Officer, U.S. Small Business Administration, 1110 Vermont Avenue, N.W., Suite 900, (P.O. Box 34500), Washington, D.C. 20045; telephone 202/606–4000, ext. 275.

Dated: February 3, 1997.

Michael P. Novelli,

Director, Office of Advisory Councils.

[FR Doc. 97–4266 Filed 2–18–97; 11:37 am]

BILLING CODE 8025–01–P

Region V Advisory Council Public Meeting

The U.S. Small Business Administration Region V Advisory Council located in the geographical area of Milwaukee, Wisconsin, will hold a public meeting from 12:00 p.m. to 1:30 p.m., on Tuesday, February 18, 1997, at the Milwaukee Area Chamber (MMAC) Association of Commerce Building (Milwaukee & Mason) Fourth Floor—The Milwaukee Room, 756 North Milwaukee Street, Milwaukee, Wisconsin, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Gloria Holter at (414) 287–4100.

Dated: February 3, 1997.

Michael P. Novelli,

Director, Office of Advisory Councils.

[FR Doc. 97–4268 Filed 2–18–97; 11:37 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Pierce County, Washington

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Revised Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that the scope of a project in Pierce County, Washington for which a notice of intent had previously been issued has been changed and that additional scoping and public involvement meetings will be conducted.

FOR FURTHER INFORMATION CONTACT: Gene Fong, Division Administrator, Federal Highway Administration, 711 South Capitol Way, Suite 501, Olympia WA 98501, telephone (360) 753-9413; or Gary Demich, Region Administrator, Olympic Region, Washington State Department of Transportation, P.O. Box 7440, Olympia WA 98504, telephone (360) 357-2659.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Washington State Department of Transportation issued a Notice of Intent December 9, 1993, to prepare an environmental impact statement on a proposal to improve State Route 16 (SR 16) in Pierce County, Washington. Scoping comments to date have been in favor of operational improvements and/or capacity improvements with a strong preference for HOV treatments. A Major Investment Study currently being conducted in the SR 16 corridor has indicated the need to expand the scope of this EIS. The scope of the proposed action is being expanded to address congestion and improve safety and operational reliability in the SR 16 corridor from the Cedar Street overcrossing in Tacoma to the SR 302 interchange south of Purdy in Pierce County, a distance of 20.4 kilometers (12.7 miles). Reduced congestion in the SR 16 corridor would be provided by either added highway capacity, Transportation Demand Management, Transportation System Management, or other general approaches derived from the Major Investment Study.

The SR 16 corridor between Cedar Street in Tacoma and SR 302 near Purdy has experienced substantial increases in traffic volumes, congestion and accidents as a result of regional growth. Regional growth patterns have established this corridor as a major commute route. There are no alternate routes between Tacoma and Gig Harbor and those points north of Gig Harbor in Pierce and Kitsap Counties. Substantial delays in traffic caused by the high volumes are exacerbated by even minor accidents in the corridor. The proposed additional HOV lanes are consistent with, and a part of, WSDOT's overall Transportation System Plan for the SR 16 corridor.

Alternatives under consideration include (1) no action; (2) added capacity alternatives with either a parallel span or a retrofitted Tacoma Narrows Bridge; (3) Transportation Demand Management; and (4) Transportation System Management. Other alternatives will be considered, as appropriate, as a result of public scoping or the Major Investment Study. Incorporated into and studied with the build alternatives will be the siting of a new interchange in the vicinity of 36th Street NW., the addition of HOV lanes within the existing Rights of Way whenever possible, and the addition of toll facilities in the 24th Street vicinity.

Announcements describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies. These announcements will also be set to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public scoping meetings will be held in Tacoma, Gig Harbor, and on the Kitsap Peninsula on March 11th, 12th, 13th, 18th, and 19th 1997. In addition, a public hearing on the Draft EIS will be held. Public notice will be given of the time and place of these meetings and of the hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

It is important that the full range of issues related to this proposed action be addressed and that all significant issues be identified. To ensure this, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address and phone number provided above. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on February 14, 1997.

José M. Miranda,

Environmental Program Manager, Olympia, Washington.

[FR Doc. 97–4332 Filed 2–20–97; 8:45 am]

BILLING CODE 4910–22–M

Surface Transportation Board

[STB Ex Parte No. 546]

Surface Transportation Board—1997 Office Relocation Business Plan

AGENCY: Surface Transportation Board.

ACTION: Notice.

SUMMARY: The Surface Transportation Board (the Board) is scheduled to relocate over the weekend of March 15–16, 1997. The Board is giving notice of pre-location and post-location procedures. The Board's new address will be: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

EFFECTIVE DATE: February 13, 1997.

FOR FURTHER INFORMATION CONTACT: Anne Quinlan, (202) 927–5679 (after March 16, 1997, (202) 565–1650); or Beryl Gordon, (202) 927–5660 (after March 16, 1997, (202) 565–1600). (TDD for the hearing impaired: (202) 927–5721 (after March 16, 1997, (202) 565–1695).)

SUPPLEMENTARY INFORMATION: The Board is issuing this notice to advise the public of its new location, effective March 17, 1997. The Board is scheduled to relocate its offices over the weekend of March 15–16, 1997. Its new address will be: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, the Board is also giving the public advance notice that normal service to the public, including normal case intake and processing will not occur during the immediate pre-relocation and post-relocation dates of March 13, 1997, through March 18, 1997, due to necessary equipment relocation and other disruptions anticipated during the relocation.

The Board is, therefore, by this notice, announcing that mail will not be received and decisions will not be served on Thursday, March 13, 1997; Friday, March 14, 1997; Monday, March 17, 1997; and Tuesday, March 18, 1997, with the exception noted below. In particular, the Board will not serve decisions on March 13, 14, 17 or 18, 1997; the Board will not receive mail from March 13, through March 18, inclusive (mail delivery will resume thereafter at the new location); the Board will not accept non-mail filings (other than tariff filings) from March 13, 1997, through March 18, 1997, inclusive; the Board will not accept new case filings between March 13, 1997, and March 18, 1997, inclusive; and the Board will, for the duration of the period between March 13 and March 18, toll the time period for calculating the effective date of all Board decisions and notices that would otherwise be scheduled to take effect between March 13, 1997, and March 18, 1997, inclusive. Because of the number of time-sensitive matters handled by the Board, the Board is providing advance notice that case filings that would begin a proceeding and trigger a deadline for processing or for effectiveness will not be accepted during this period and that effectiveness of previously issued decisions, or previously filed self-executing notices (notices of exemption, for example) that would otherwise be scheduled to take effect between March 13, 1997, and March 18, 1997, inclusive, will be delayed one day for every calendar day during the March 13–18 interval. Also, to avoid any potential unfairness to the public, the effectiveness of any notice of exemption filed on March 12, 1997, that would normally become effective in 7 days (on March 19, 1997), will be delayed one day for each of the 6 calendar days between March 13, 1997, and March 18, 1997, and thus will not be permitted to take effect until March 25, 1997. This should alleviate any problems that could otherwise be presented for those persons who wish to seek a stay of effectiveness or problems that might otherwise occur in connection with processing of offers of financial assistance to continue rail service following Board approval of a rail line abandonment or discontinuance.

The Board will continue to receive tariff filings during this interval (so as not to delay effectiveness of rate decreases for service in the noncontiguous domestic trade that may become effective on one day's notice).

DC News & Data, Inc., the official copy contractor for the Board, which is responsible for the duplication and distribution of Board decisions and orders to the public, will relocate its offices from 1201 Constitution Avenue, N.W., Room 2229, Washington, DC, to 1925 K Street, NW, Suite 210, Washington, DC 20006. Telephone: (202) 289–4357. DC News & Data, Inc., will close its office from March 13, 1997, through March 18, 1997, and reopen for business on March 19, 1997.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: February 13, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–4274 Filed 2–20–97; 8:45 am]

BILLING CODE 4915–00–P

[STB Docket No. AB–397 (Sub-No. 5X)]

Tulare Valley Railroad Company—Abandonment and Discontinuance Exemption—in Tulare and Kern Counties, CA

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board exempts Tulare Valley Railroad Company (TVR) from the prior approval requirements of 49 U.S.C. 10903 to permit TVR to abandon an 18.5-mile

line of railroad extending from milepost 47.2 near Lindsay to milepost 66.0 near Ultra, in Tulare County, CA, and to discontinue trackage rights over 25.7 miles of railroad owned by San Joaquin Valley Railroad Co. from SP milepost 287.1 near Ducor to SP milepost 308.7 near Famoso, including the branch line from SP milepost 295.0 near Richgrove to SP milepost 299.1 near Jovista, in Tulare and Kern Counties, CA, subject to standard employee protective conditions and environmental conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption is effective on March 23, 1997. Formal expressions of intent to file an OFA [1] under 49 CFR 1152.27(c)(2) must be filed by March 3, 1997; petitions to stay must be filed by March 10, 1997; requests for a public use condition must be filed by March 13, 1997; and petitions to reopen must be filed by March 18, 1997.

ADDRESSES: Send pleadings referring to STB Docket No. AB–397 (Sub-No. 5X) to: (1) Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Ave., NW., Washington, DC 20423; and (2) Petitioner's representative: Paul C. Oakley, 1350 New York Ave., NW, Suite 800, Washington, DC 20005–4797.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5660. (TDD for the hearing impaired: (202) 927–5721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC News & Data, Inc., Room 2229, 1201 Constitution Ave., NW., Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 927–5721.)

Decided: February 13, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–4273 Filed 2–20–97; 8:45 am]

BILLING CODE 4915–00–P

[1] *See Exempt. of Rail Abandonment-Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Federal Reserve System

Federal Deposit Insurance Corporation

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: On September 16, 1996, the OCC, the Board, and the FDIC (the agencies) requested public comment for 60 days on proposed revisions to the Consolidated Reports of Condition and Income (Call Report), which are currently approved collections of information. After considering the comments the agencies received, the Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, adopted several modifications to the revised reporting requirements initially proposed.

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid Office of Management and Budget (OMB) control number. Comments are invited on: a. whether the proposed revisions to the following collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility; b. the accuracy of the agencies' estimates of the burden of the information collections as they are proposed to be revised, including the validity of the methodology and assumptions used; c. ways to enhance the quality, utility, and clarity of the information to be collected; d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and e. estimates of capital or startup costs and costs of operational, maintenance, and purchase of services to provide information.

DATES: Comments must be submitted on or before March 24, 1997.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number(s), will be shared among the agencies.

OCC: Written comments should be submitted to the Communications Division, Office of the Comptroller of the Currency, 250 E Street, S.W., Washington, D.C. 20219; Attention: Paperwork Docket No. 1557–0081 [FAX number (202) 874–5274; Internet address: Regs.comments@occ.treas.gov]. Comments will be available for inspection and photocopying at that address.

Board: Written comments should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room M–P–500 between 9:00 a.m. and 5:00 p.m., except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

FDIC: Written comments should be addressed to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. Comments may be hand-delivered to Room F–402, 1776 F Street, N.W., Washington, D.C. 20429, on business days between 8:30 a.m. and 5:00 p.m. Comments may be sent through facsimile to: (202) 898–3838 or by the Internet to: comments@fdic.gov. Comments will be available for inspection at the FDIC Public Information Center, Room 100, 801 17th Street, N.W., Washington, D.C., between 9:00 a.m. and 4:30 p.m. on business days.

A copy of the comments may also be submitted to the OMB desk officer for the agencies: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the revised collection of information may be requested from any of the agency clearance officers whose names appear below.

OCC: Jessie Gates, OCC Clearance Officer, (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street, S.W., Washington, D.C. 20219.

Board: Mary M. McLaughlin, Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551. Telecommunications Device for the Deaf (TDD) users only, Dorothea Thompson, (202) 452–3544, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551.

FDIC: Steven F. Hanft, FDIC Clearance Officer, (202) 898–3907, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: Request for OMB approval to extend, with revision, the following currently approved collections of information:

Report Title: Consolidated Reports of Condition and Income

Form Number: FFIEC 031, 032, 033, 034. [1]

Frequency of Response: Quarterly.

For OCC:

OMB Number: 1557–0081.

Affected Public: National Banks.

Estimated Number of Respondents: 2,800 national banks.

Estimated Time per Response: 39.92 burden hours.

Estimated Total Annual Burden: 447,132 burden hours.

For Board:

OMB Number: 7100–0036.

Affected Public: State Member Banks.

Estimated Number of Respondents: 1,002 state member banks.

Estimated Time per Response: 45.80 burden hours.

Estimated Total Annual Burden: 183,566 burden hours.

For FDIC:

OMB Number: 3064–0052.

Affected Public: Insured State Nonmember Commercial and Savings Banks.

Estimated Number of Respondents: 6,374 insured state nonmember banks.

Estimated Time per Response: 29.67 burden hours.

Estimated Total Annual Burden: 756,511 burden hours.

The estimated time per response is an average which varies by agency because of differences in the composition of the banks under each agency's supervision (e.g., size distribution of banks, types of activities in which they are engaged, and number of banks with foreign offices). The time per response for a bank is estimated to range from 15 to 400 hours, depending on individual circumstances.

General Description of Report: This information collection is mandatory: 12 U.S.C. 161 (for national banks), 12 U.S.C. 324 (for state member banks), and 12 U.S.C. 1817 (for insured state nonmember commercial and savings banks). Except for select sensitive items, this information collection is not given confidential treatment. Small businesses (i.e., small banks) are affected.

Abstract: Call Reports are filed quarterly with the agencies for their use in monitoring the condition and performance of reporting banks and the industry as a whole. The call reports also are used to calculate banks' deposit insurance assessments and for monetary policy and other public policy purposes.

Current Actions: Revisions initially proposed for the Call Report consisted of: the deletion or combining of a number of existing items; the revision of the Call Report instructions to eliminate instructions that differ from generally accepted accounting principles (GAAP) and the addition of a small number of new items to meet supervisory or insurance assessment calculation data needs resulting from this move to GAAP; the addition of new items and modification of existing items to enhance the agencies' ability to monitor interest rate risk, identify bank usage of credit derivatives, and support the FDIC's calculation of deposit insurance assessments for Oakar institutions; and changes to several other instructions. After considering the comments, the FFIEC approved several modifications to the initial set of proposed revisions. The comments on the initial proposal and the changes made in response to the comments are discussed below.

Type of Review: Revision.

On September 16, 1996, the agencies jointly published a notice soliciting comments for 60 days on proposed revisions to their currently approved Call Report information collections (61 FR 48687). The notice described the specific changes that the agencies, with the approval of the FFIEC, were proposing to implement as of March 31, 1997.

In response to this notice, the agencies collectively received 38 comment letters: 16 from community banks, 12 from large banks, 5 from bankers' associations, 2 from accounting organizations, 1 from another specialized trade association, 1 from a state banking authority, and 1 from a law firm. In general, most large banks and bankers' associations commented on several, but not necessarily all, of the areas in which the agencies proposed to change the Call Report requirements. Each of the remaining commenters typically addressed only one or two aspects of the proposal. The agencies and the FFIEC have considered all of the comments received on the proposal.

With respect to the proposed deletions and reductions in detail, commenters agreed with these changes, but several of them stated that the agencies had not gone far enough in their efforts to eliminate items and reduce reporting burden. Furthermore, as discussed further below, virtually all of the commenters expressing opinions on the Call Report revisions designed to enhance the agencies' ability to monitor interest rate risk opposed these proposed changes. They found them to be unnecessary and contrary to the statutory mandate to the agencies set forth in section 307 of the Riegle Community Development and Regulatory Improvement Act of 1994. In this regard, the agencies and the Office of Thrift Supervision, through the FFIEC's Task Force on Reports, are working to develop a common core report and supplemental schedules that will satisfy the requirements of section 307. The proposed Call Report changes for 1997 were not intended to fulfill those requirements in their entirety, but the deletions and reductions in detail as well as the adoption of GAAP represent important initial steps in that direction.

More specific information on the comments received is presented below.

Comments on Proposed Deletions and Reductions in Detail—The agencies had proposed to eliminate the separate Schedule RC–L items for "Gross commitments to purchase" and "Gross commitments to sell" when-issued securities (items 10.a and 10.b) and, instead, to have these commitments reported as forward contracts in the off-balance sheet derivative contract portion of that schedule. This change was proposed because of the relatively small number of banks reporting when-issued securities commitments and because these commitments are treated as derivative contracts under the agencies' risk-based capital standards. However, one commenter observed that the Financial Accounting Standards Board (FASB) defined the term "derivative financial instrument" in its June 1996 exposure draft of the proposed accounting standard "Accounting for Derivative and Similar Financial Instruments and for Hedging Activities" as a financial instrument

[1] The FFIEC 031 report form is filed by banks with domestic and foreign offices. The FFIEC 032 report form is filed by banks with domestic offices only and total assets of $300 million or more. The FFIEC 033 report form is filed by banks with domestic offices only and total assets of $100 million or more but less than $300 million. The FFIEC 034 report form is filed by banks with domestic offices only and total assets of less than $100 million.

that generally does not require the holder or writer of the instrument to own or deliver the underlying. This commenter felt it would be confusing to report when-issued securities as derivatives in Schedule RC–L if they are not reported as such for other financial reporting purposes. The FFIEC agreed and decided that institutions that do not include when-issued securities commitments as part of their disclosures about derivatives for other financial reporting purposes would be permitted to report commitments to sell when-issued securities as "other off-balance sheet assets" and commitments to purchase when-issued securities as "other off-balance sheet liabilities" in Schedule RC–L. There would be no change in the risk-based capital treatment of these contracts regardless of the Schedule RC–L item in which they are reported.

The agencies had proposed to combine items 1.d, "Securities underwriting," and 1.e. "Other unused commitments," on Schedule RC–L—Off-Balance Sheet Items, because only a small number of banks report that they have securities underwriting commitments. However, because of regulatory and possible statutory changes, the extent of bank involvement in securities underwriting may increase in the near future. Therefore, upon further consideration by the agencies, item 1.d is being retained.

Comments on the Elimination of Call Report Instructions That Differ From GAAP, Related New Items, and Other Affected Call Report Items and Instructions—Commenters addressing the adoption of GAAP as the reporting basis for the balance sheet, income statement, and related schedules in the Call Report expressed broad support for this concept. However, many of these commenters had opinions on certain issues relating to the implementation of GAAP-based reporting in the Call Report.

First, the proposal stated that the Call Report "instructions will continue to contain and the FFIEC and the agencies will continue when necessary to issue specific reporting guidance that falls within the range of acceptable practice under GAAP."[2] The proposal further noted that "[e]ach agency also will retain existing authority to require an institution to report a transaction in the Call Report in accordance with that agency's interpretation of GAAP." Commenters considered these practices contrary to the proposal's objective of moving to GAAP and expressed concern that the exercise of this authority would cause the Call Report to fall back into a reporting mode similar to the current situation in which the instructions contain departures from GAAP. Moreover, permitting individual agencies the discretion to interpret GAAP for Call Report purposes may affect consistency and comparability among the reported information. Several commenters recommended that any plans to require a specific reporting practice within the range of acceptable GAAP or to interpret GAAP in a way that departs from industry practice should first be issued as a proposal for public comment by all of the agencies.

The agencies and the FFIEC have in the past limited the number of circumstances in which they have adopted specific Call Report guidance that falls within GAAP to those few situations where safety and soundness objectives argue for a single reporting rule for all institutions or where the GAAP alternatives for reporting a transaction produce accounting results with a significant lack of comparability. When the agencies have previously considered implementing specific GAAP guidance, the FFIEC's Task Force on Reports has normally consulted with the staffs of the FASB and the Securities Exchange Commission (SEC). If reporting guidance of a supervisory nature is being pursued, the agencies and the FFIEC also decide whether public comment should be solicited. These practices are expected to continue and the adoption of specific Call Report instructions that fall within the range of GAAP should remain infrequent in the future.

In addition, the Call Report instructions have for many years stated that when a bank and its primary federal regulator have differing interpretations of how GAAP should be applied to a specific transaction, the agency may require the bank to report the transaction in the Call Report in accordance with the agency's interpretation and, if appropriate, to amend previously submitted reports. The agencies do not believe they have excessively or improperly invoked this authority in the past and would not expect this to change. In practice, when issues of GAAP interpretation are raised with an agency's Washington Office, the staff normally consults with the other agencies and with the FASB and SEC staffs and considers the views of the bank and its accountant before reaching a decision. This authority is essentially the same as the authority the SEC exercises over the public financial statements filed with it. The SEC can and does challenge registrants over their application of GAAP to specific events or transactions reflected in their financial statements. The SEC also can require restatement when it concludes that a registrant has not properly applied GAAP given the facts and circumstances surrounding an event or transaction. Therefore, the agencies believe it is appropriate to retain this authority.

Second, the proposal reminded banks that their regulatory capital ratios will continue to be calculated in accordance with the agencies' capital standards rather than in accordance with GAAP. At least five commenters responded to this statement. As long as the capital standards differ from GAAP, some felt that true relief from the burden of regulatory reporting requirements will not be achieved. Three suggested that the agencies should adopt GAAP for purposes of measuring regulatory capital. On the other hand, one commenter strongly supported the agencies' ability to decide whether to adopt new accounting standards for regulatory capital purposes. Revisions to the agencies' capital standards fall outside the scope of the Call Report proposal for 1997 and would need to be addressed by each agency, in consultation with the other agencies, as part of a rulemaking. Appropriate agency staff have been advised of this request.

Along a similar vein, two commenters observed that there are other laws and regulations that are based on income or capital levels that are reported in Call Reports such as legal lending limits, dividend limitations, loans to insiders, and permissible investment activities. One of these two commenters, which had recommended that the agencies adopt GAAP for regulatory capital purposes, also urged the agencies to adopt GAAP for purposes of these other laws and regulations as well as for all supervisory purposes. The other commenter requested that the agencies provide guidance to institutions and examiners on how these other laws and regulations would be applied under the GAAP basis of reporting in the Call Report. Appropriate agency staff have been advised of this request.

Third, several commenters questioned how the agencies would define "materiality" when they interpret GAAP for Call Report purposes. It was stated that the agencies cannot truly "adopt" GAAP without adopting the

[2] Call Report instructions providing such specific reporting guidance include the nonaccrual rules, the treatment of impaired collateral dependent loans, the Glossary entry for the "Allowance for Loan and Lease Losses" which references the 1993 Interagency Policy Statement on this subject, the separate entity method of accounting for income taxes of bank subsidiaries of holding companies, push down accounting, and property dividends.

consideration of materiality in the application of accounting standards. Materiality is a qualitative characteristic of accounting information which is defined in FASB's Statement of Financial Accounting Concepts No. 2. At the end of each Statement of Financial Accounting Standards, the FASB states that the Statement's provisions "need not be applied to immaterial items." Commenters indicated that the agencies' failure to recognize the concept of materiality for regulatory reporting purposes would add to the cost and regulatory burden of the Call Report. One commenter complained that regulators consider all items material, regardless of size.

The General Instructions section of the Call Report instructions discusses the applicability of GAAP to regulatory reporting requirements. While not specifically referring to materiality, banks generally are directed to follow GAAP when reporting events and transactions in the Call Report except where the instructions do not follow GAAP. When discussing the need for banks to amend previous reports, the General Instructions to the Call Report state that the agencies may require amendments if reports contain *significant* errors. The Glossary entry for "Accounting Changes" in the Call Report instructions states that a bank *may* be directed to file amended reports for periods that were *significantly* affected by a *material* error. Consistent with this language, the members of the FFIEC's Task Force on Reports and their agencies' accounting policy staffs, as a matter of practice, routinely consider materiality when responding to inquiries about how banks should account for specific events and transactions for Call Report purposes. Therefore, when dealing with the recognition and measurement of events and transactions in the Call Report, the General Instructions' reference to "significant" errors should be interpreted to mean errors that are "material" for the reporting bank.

In addition to situations involving recognition and measurement, the issue of materiality also arises in connection with how items must be classified or categorized in the Call Report, i.e., on what line of the Call Report must an item be reported. The Call Reports are standardized forms with preprinted captions for specific types of information. The agencies use the data reported on specific lines of the Call Report for purposes such as the FDIC's measurement of banks' assessable deposits in order to calculate deposit insurance premiums. The Board's research divisions use Call Report data for a variety of purposes, including for constructing and benchmarking various measures of the domestic (U.S.) banking system and for construction of the Flow-of-Funds accounts, all of which are provided to the Board of Governors and the Federal Open Market Committee, and for providing the Board of Governors with policy analyses of fundamental banking issues. Because of uses such as these for Call Report data, the need for banks to report items on the proper line of the standardized form may not be fully compatible with the concept of materiality. The agencies will need to give further study to the issue of materiality in relation to the classification of items in the Call Report.

Fourth, a number of commenters requested that they be given the opportunity to review and comment on the Call Report instructions as they would be revised to bring them into conformity with GAAP before they are finalized prior to the March 31, 1997, report date. One other commenter specifically suggested that the agencies provide a comment period after March 31 in order to permit banks to comment on any Call Report instructions they feel do not conform to GAAP. These commenters indicated that this process would help to ensure that the instructions do not inadvertently contain wording that is inconsistent with GAAP or otherwise presents problems to banks. Accordingly, the FFIEC's Task Force on Reports will provide draft instructions to each commenter who requested this opportunity and to the members of the Inter-Association Committee on Bank Accounting as they become available. In addition, once the new or revised instructions for 1997 are issued, the Task Force on Reports will set a specific time period, which will likely begin in the second quarter of 1997, during which banks can submit further comments about instructions that appear inconsistent with GAAP.

Fifth, the agencies proposed to add certain new items and to modify a number of existing Call Report items because of the effect that the adoption of GAAP will have on the manner in which several types of transactions or activities are reported in 1997. In the proposal, the caption to Schedule RC–F—Other Assets, item 3, "Excess [first lien 1-to-4 family] residential mortgage servicing fees receivable," was to be revised to refer to interest-only strips receivable in response to the provisions of (FASB) Statement No. 125, "Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities" (FAS 125), which take effect in 1997. The agencies also proposed to add a new item to this schedule for interest-only strips receivable on other financial assets. One commenter recommended adding two more new items for interest-only strips receivable: one for mortgage-related assets other than first lien 1-to-4 family residential mortgages and another for credit card-related assets. After considering this commenter's suggestion, the FFIEC decided that only two items on interest-only strips receivable should be collected, but that the coverage of the proposed item for interest-only strips receivable on first lien 1-to-4 family residential mortgage loans be expanded to include all mortgage loans. The second proposed item would continue to refer to all other financial assets, but would no longer include any amounts related to mortgage loans.

Sixth, the proposal further noted that while the treatment of assets sold with recourse would be brought into conformity with GAAP for purposes of the Call Report balance sheet and income statement, the agencies' risk-based capital standards refer to the existing Call Report instructions as the source for the definition of asset sales with recourse. Thus, the Call Report Glossary entry for "Sales of Assets" would be recaptioned "Sales of Assets for Risk-Based Capital Purposes." The Glossary entry's existing general rule would remain applicable for identifying those asset sales that would be treated as recourse transactions for risk-based capital purposes and be reportable as such in Call Report Schedule RC–R—Regulatory Capital.

The proposal also explained that, in connection with the implementation of FAS 125 in 1997, banks may be able to reflect as an asset certain previously nonrecognized (for Call Report purposes) contractual cash flows (e.g., excess servicing fees that are placed in so-called "spread accounts") that act as credit enhancements for assets (typically credit card receivables) that have been transferred and securitized. However, asset transfers that qualify for sale treatment under GAAP, but which use such cash flows as credit enhancements and carry them as on-balance sheet assets at a discounted amount, would be treated as sales with recourse under the "Sales of Assets for Risk-Based Capital Purposes" general rule because the bank has retained risk of loss with respect to these asset amounts. This means that a bank would have to hold risk-based capital against the full amount of assets transferred with recourse, but such transfers may qualify for low-level recourse capital treatment which would limit the

required amount of capital to the carrying amount of these contractual cash flows net of any noncapital GAAP recourse liability account associated with the asset transfer.

The proposed post-1996 reporting treatment for asset transfers in which certain contractual cash flows act as credit enhancements was intended to produce the same regulatory capital outcome as the current (non-GAAP) nonrecognition of these cash flows. Several commenters concurred with the agencies' desire for the move to GAAP in this area to produce no significant change in the risk-based capital ratios calculated for a bank using the data reported in the Call Report's risk-based capital schedule. However, they observed that this would not be the case because a bank's reported assets would increase based on the carrying amount of these "spread accounts," but the amount by which its reported undivided profits and Tier 1 capital would increase would be reduced by the related tax effect. The agencies and the FFIEC did not intend for the adoption of GAAP to significantly penalize institutions from a risk-based capital perspective. Accordingly, until any new regulatory capital rules for recourse arrangements and direct credit substitutes take effect, the Call Report instructions relating to the completion of the regulatory capital schedule will permit banks to apply the low-level recourse capital rule on a net of tax basis to "spread accounts" that act as credit enhancements for asset transfers.

Finally, several commenters addressed specific Call Report instructions or reporting practices which the proposal had not indicated would be revised to conform with GAAP. Some of these commenters offered specific suggestions about changing how the current instructions tell banks to report various types of income statement and balance sheet items so that banks are permitted to report this information in accordance with either the current instructions or prevalent banking industry practice. These commenters stated that these instructional changes would help to reduce reporting burden. Accordingly, as mentioned in the Introduction, a number of instructions will be revised to accommodate bankers' suggestions. Some commenters also pointed out certain Call Report instructions with ambiguous wording that could be interpreted as inconsistent with GAAP. The agencies plan to clarify these instructions to avoid possible misinterpretation in a GAAP reporting environment.

At least three commenters addressed the regulatory reporting practice that calls for transfers of assets (other than cash) between a bank and an affiliate or other related party to be reported at fair value rather than book value. While the agencies acknowledge that GAAP permits such transfers to be recorded at book value, the agencies believe that the use of fair value falls within the range of acceptable practice under GAAP when an entity that is consolidated in the GAAP financial statements of its parent prepares separate financial statements like the Call Report. In addition, the provision of section 23A of the Federal Reserve Act requiring both covered and exempt transactions between a bank and an affiliate to "be on terms and conditions that are consistent with safe and sound banking practices" has been interpreted to mean that transfers must be reported at fair value.

One commenter disagreed with the agencies' proposed approach for reporting the effect of the retroactive application of GAAP to transactions previously reported in accordance with Call Report instructions that differ from GAAP. The agencies proposed that banks should report the effect of this "catch-up" adjustment on a bank's undivided profits as of January 1, 1997, as a direct adjustment to equity capital. This commenter believes that the adoption of GAAP for Call Report purposes represents a change in accounting principle, the effect of which should be reflected in the income statement rather than as an equity capital adjustment. The agencies considered this comment and concluded that they should retain the proposed method of reporting the effect of the retroactive application of GAAP for Call Report purposes. Because the agencies are permitting banks to decide for themselves whether to retroactively apply GAAP to previous transactions or to continue to report them in accordance with the existing instructions that differ from GAAP, the agencies believe it is more appropriate for the retroactive effect to be reported outside of the Call Report income statement.

Comments on the Subchapter S Election for Federal Income Tax Purposes—The unanticipated change to Subchapter S of the Internal Revenue Code enabling banks, savings associations, and their parent holding companies to elect Subchapter S corporation status for federal income tax purposes in 1997 occurred when the FFIEC was being asked to approve by notation vote the publication of the proposed Call Report changes for 1997 for a 60-day comment period as required by the Paperwork Reduction Act of 1995. One commenter recommended that the agencies add a Call Report item for a bank's tax status, indicating that this would provide federal and state regulatory agencies (and other users of the Call Report) with one central data source for identifying those institutions that have elected Subchapter S status. The agencies and the FFIEC agreed with this recommendation and added a simple "yes/no" question to the Call Report asking whether the reporting bank has a Subchapter S election in effect for the current tax year. Such an item should produce a nominal amount of reporting burden.

Comments on the Reporting of Adjusted Attributable Deposit Amounts by Oakar Institutions—The FDIC's final rule amending certain provisions of its assessment regulations that pertain to Oakar institutions, which was published on December 10, 1996, calls for the FDIC to take over from Oakar institutions the responsibility for calculating the Adjusted Attributable Deposit Amount (AADA) resulting from previous assumptions of secondary-fund deposits. To support this calculation, the agencies proposed to revise the Call Report for 1997 to replace the existing item for AADAs in Schedule RC–O—Other Data for Deposit Insurance Assessments with two items that Oakar institutions currently report on a separate FDIC report form that would be eliminated and with one new item. The proposal indicated that Oakar institutions should experience a net reduction in reporting burden from these proposed reporting changes. However, several commenters that addressed this reporting change disagreed with this statement because Oakar institutions have not previously reported the third item that would be added to Schedule RC–O and because these institutions will now need to verify the accuracy of the FDIC's calculation of their AADAs each quarter. Therefore, the burden estimate for the Call Report was modified.

Comments on Credit Derivatives—The proposal discussed the effect of credit derivatives on the amounts reported in Call Report Schedule RC–R—Regulatory Capital and several comment letters addressed this matter. The agencies and the FFIEC agreed with these commenters that the instructions for Schedule RC–R should for the time being refer institutions to the guidance on credit derivatives issued by their primary federal supervisory agency rather than providing detailed instructional language in this evolving area.

Comments on Other Instructional Changes—The agencies proposed to revise the Call Report instructions in six other areas, two of which were addressed by commenters.

. The first area involves the reporting of full-time equivalent employees and their compensation expense. Two commenters expressed concern that the proposal would cause banks to break out the compensation component of intercompany cost allocations and the related pro rata full-time equivalent employees. However, this was not the intent of the proposed change. Instructions will so indicate.

The second area involves the proposed elimination of conflicting instructions concerning the reporting of loans and leases held for sale. One commenter did not disagree with this proposed clarification, but suggested that the agencies also clarify that loans and leases held for short-term trading purposes and marked-to-market through the income statement may continue to be reported as trading assets. The agencies had not intended to change this existing reporting practice which is consistent with GAAP and will make this additional suggested instructional clarification.

Comments on Enhanced Interest Rate Risk Information—The industry comments on the proposed additions to the Call Report for interest rate risk monitoring purposes were generally unfavorable. Nearly three-fourths of the commenters, including almost all of the community banks, addressed the revisions related to interest rate risk. Most considered these revisions unnecessary, many stated that the expanded data will increase the cost and burden of the Call Report. Others suggested that the marginal benefit of these data to the agencies (in terms of earlier identification of some banks with interest rate risk problems than at present) would exceed the cost to implement the proposed changes. Some commenters reported that they or their data processing servicers would not have sufficient time to make the necessary systems changes by the proposed March 1997 implementation date and urged the agencies to move this date until June or September 1997 if they decide to proceed with their proposal. Some commenters also noted that the agencies just made some changes to the Call Report's maturity and repricing data in March 1996, are proposing further revisions for 1997, and may make additional changes as they design the common core report for banks, savings associations, and bank holding companies which at present is targeted for implementation not earlier than in 1998. In contrast, one commenting bankers' association agreed that, in general, "the proposed changes are appropriate to analyze interest rate risk," but went on to state that it had some objections, including the cost.

After considering the comments, the agencies still believe that a revision of the Call Report that is substantially the same as proposed is necessary in order to obtain information that is better suited for off-site identification of institutions that have either minimal or potentially high interest rate risk. Revisions allowing a better identification of basic repricing/maturity mismatches and the presence of potential option risk are particularly important. A few commenters recognized that the proposed revisions accomplish this objective but commented negatively on the increased burden and the costs incurred in making programming changes to current systems.

Some commenters questioned the agencies' commitment to developing a risk assessment approach to determining the capital adequacy of an institution for interest rate risk. These commenters questioned the need for any revision to the Call Report given the increased focus on on-site examination of qualitative and quantitative risk management factors. Moreover, they viewed these modifications as auguring a shift in the policy stance taken by the agencies in the June 26, 1996, Joint Agency Policy Statement on Interest Rate Risk (1996 Policy Statement). Indeed, some industry commenters questioned whether these revisions represented a way to eventually implement a standardized model approach to assessing capital adequacy for interest rate risk.

The agencies remain committed to a risk assessment approach to determining capital adequacy for interest rate risk. However, the 1996 Policy Statement explicitly noted the Agencies' intent to "use various quantitative screens and filters to identify banks that may have high exposures or complex risk profiles, to allocate examiner resources, and to set examination priorities. These tools rely on Call Report data and various economic indicators and data." The agencies do not intend, with or without these Call Report changes, to construct a standardized supervisory measure of interest rate risk. The recent adoption of the market risk capital charge clearly signals and establishes precedent that the agencies will rely increasingly on the internal risk measures of institutions. The agencies intend to use the data from the Call Report as it would be revised to develop screens that will permit the allocation of examiner resources toward the potentially riskier institutions and away from potentially less risky institutions.

Without the increased identification power provided by the additional data, the agencies may tend to conduct more in-depth on-site examinations than might otherwise be conducted. With the revisions to the Call Report, the agencies will be better equipped to identify both high and low interest rate risk institutions, off-site, and will be able to better focus examiner resources to address interest rate risk in a more efficient and burden sensitive manner.

The agencies recognize that the cost associated with changing the Call Report is not inconsequential. However, the proposed modifications will cause institutions to incur a significant one-time reprogramming cost with a smaller increase in periodic reporting cost. Moreover, these revisions are a small fraction of the proposed data collection requirements contained in the Supervisory Policy Statement Concerning a Supervisory Framework for Measuring and Assessing Banks' Interest Rate Risk Exposure which the agencies proposed in August 1995. The agencies have chosen only those modifications that afford the greatest potential benefit to off-site risk identification and resource allocation. The increased transparency provided by the changes will enhance the agencies' ability to distinguish institutions with potentially higher interest rate sensitivity. Additionally, it extends the agencies' ability to monitor structural changes in portfolio composition over time, enhancing the agencies' ability to redirect resources in a timely fashion as potential risks at individual institutions change.

In response to the burden concerns raised by commenters, the agencies and the FFIEC reviewed the specific interest rate risk-related changes that had been proposed and have made some modifications to the original proposal. First, the FFIEC deferred the effective date for the interest rate risk revisions to the Call Report from March until June 1997. This will increase the lead time that banks and their servicers will have to make necessary systems changes. Commercial banks will report the existing Call Report items that provide maturity and repricing data in March 1997. FDIC-supervised savings banks will continue to complete their supplemental interest rate risk schedule (Schedule RC–J) in March 1997, except for the weighted average cost and yield factors and the principal payments

received memorandum items which will be eliminated.

Second, the FFIEC dropped three of the new items that had been proposed because of their relatively lower importance for interest rate risk screening purposes. These three items are "Long positions in interest rate futures and forwards," "Short positions in interest rate options," and "Outstanding principal balance of 1-to-4 family residential mortgage loans held in portfolio that are serviced by others." The first two items would have been added to the off-balance sheet schedule (Schedule RC–L) and the third would have appeared on the memoranda schedule (Schedule RC–M).

Third, another proposed memoranda schedule item on servicing, "Outstanding principal balance of loans other than 1-to-4 family residential mortgage loans that are serviced for others," will not be completed by all banks. Instead, this item will be applicable only to those banks filing the FFIEC 031, 032, and 033 report forms that service more than $10 million of such loans and whose servicing volume exceeds 10 percent of the reporting bank's assets. This item will not be applicable to banks with less than $100 million in assets that file the FFIEC 034 report form.

Fourth, the coverage of one of the proposed off-balance sheet items on interest rate swaps held for purposes other than trading has been revised to provide the agencies with a better indication of the volume of such swaps used for hedging purposes. The proposed item for "Interest rate swaps where the bank has undertaken a floating rate obligation" has been changed to cover those swaps "where the bank has agreed to pay a fixed rate."

Dated: February 14, 1997.

Karen Solomon,

Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, February 7, 1997.

William W. Wiles,

Secretary of the Board.

[THIS SIGNATURE PAGE PERTAINS TO THE JOINT NOTICE AND REQUEST FOR COMMENT, "SUBMISSION FOR OMB REVIEW; COMMENT REQUEST"]

Dated at Washington, D.C., this 7th day of February, 1997.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 97–4363 Filed 2–20–97; 8:45 am]

BILLING CODE OCC: 4810–33–P ⅓, Board: 6210–01–P ⅓, FDIC: 6714–01–P ⅓

Corrections

Federal Register

Vol. 62, No. 35

Friday, February 21, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11499–000 Tennessee]

Armstrong Energy Resources; Notice of Public Scoping Meetings

Correction

In notice document 97–3037 beginning on page 5812, in the issue of Friday, February 7, 1997 make the following correction:

On page 5813, in the first column, in the second paragraph, in the first line, "not" should read "now".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. OA96-11-001, et al.]

Long Sault, Inc., et al.; Notice of Filings Made Pursuant to Order Nos. 888 and 889 Not Covered by Other Notices

Correction

In notice document 97–2542, beginning on page 4994, in the issue of Monday, February 3, 1997, make the following corrections:

1. On Page 4995, in the Attachment to the notice, in the first column, in the third line, docket number "OA96–018–000" should read "OA96–018–001".

2. On the same page, in the Attachment to the notice, in the first column, in the 30th line, docket number "OA97–015–002" should read "OA96–015–002".

3. On the same page, in the Attachment to the notice, in the first column, in the eighth line from the bottom, docket number "OA97–064–000" should read "OA96–064–001".

4. On page 4997, in the Attachment to the notice, in the first column, in the 20th line, docket number "OA97–037–000" should read "OA96–037–002".

5. On the same page, in the Attachment to the notice, in the first column,in the 29th line, docket number "OA97–011–001" should read "OA96–011–001".

6. On the same page, in the Attachment to the notice, in the first column, in the 33rd line, docket number "OA97–122–001" should read "OA96–122–001".

7. On page 4998, in the Attachment to the notice, in the first column, in the sixth line from the bottom, docket number "OA96–424–000" should read "OA97–424–000".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

[Secretary's Order 5-96]

Delegation of Authorities and Assignment of Responsibilities to the Assistant Secretary for Employment Standards and Other Officials in the Employment Standards Administration

Correction

In notice document 96–33365 beginning on page 107 in the issue of Thursday, January 2, 1997 make the following corrections:

1. On page 110, second column, paragraph (a), line ten, "Wage-Hour" should read "Wage and Hour".

2. On page 111, second column, paragraph h., line 14, "and" should read "are".

3. On the same page, in the same column, paragraph 5.a. (at the bottom of the page), line four, "Administrative" should be removed and replaced with the words "administration of the statutory provisions and Executive".

4. On the same page, third column, paragraph 7.b., line three, "paragraph 4," should read "paragraph 4.".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

[Secretary's Order 6-96]

Delegation of Authority and Assignment of Responsibility to the Assistant Secretary for Occupational Safety and Health

Correction

In notice document 96–33366 beginning on page 111 in the issue of Thursday, January 2, 1997 make the following corrections:

1. On the same page, third column, the subject heading above has been corrected.

2. On the same page, third column, line six from the bottom, "whiteblower" should read "whistleblower".

3. On page 112, first column, first paragraph, line seven, "whitleblower" should read "whistleblower".

4. On the same page, first column, first paragraph, line nineteen, "act" should read "Act".

5. On the same page, second column, second line in paragraph (l), "300J" should read "300j".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–AGL–15]

Modification of Class E Airspace; Toledo, OH

Correction

In rule document 97–1925, beginning on page 3787, in the issue of Monday, January 27, 1997, make the following correction:

§ 71.1 [Corrected]

On Page 3788, in the second column, in § 71.1, under **AGL OH E5 Toledo, OH [Revised]**, in the first full paragraph, the sixth line should read, "41°34′00″N., long. 83°19′00″W.; to lat.".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8707]

RIN 1545–AT19

Distribution of Marketable Securities by a Partnership

Correction

In rule document 97–32854, beginning on page 67936, in the issue of Thursday, December 26, 1996, make the following correction:

§ 1.731–2 [Corrected]

On page 67937, in the second column, in example 4, the table should read as follows:

	Value	Basis	Gain (Loss)
Security X	1,000	500	500
Security Y	1,000	800	200
Security Z	1,000	1,100	(100)

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–209817–96]

RIN 1545–AU19

Treatment of Obligation-Shifting Transactions

Correction

In proposed rule document 96–32670, beginning on page 68175, in the issue of Friday, December 27, 1996, make the following correction:

§ 1.7701 (l)–2 [Corrected]

On page 68179, in the third column, in footnote 2 to § 1.7701 (l)–2, the last line should read "27834, 27844).".

BILLING CODE 1505-01-D

federal register

Friday
February 21, 1997

Part II

Department of Housing and Urban Development

Federal Property Suitable as Facilities to Assist the Homeless; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4124–N–26]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Air Force:* Ms. Barbara Jenkins, Air Force Real Estate Agency, (Area–MI), Bolling Air Force Base, 112 Luke Avenue, Suite 104, Building 5683, Washington, DC 20332–8020, (202) 767–4184; *GSA:* Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405, (202) 501–2059; *Transportation:* Mr. Rugene Spruill, Department of Transportation, Acting Director, Space Management, SVC–140, Transportation Administrative Service Center, 400 7th Street, SW, Room 2310, Washington, DC 20590, (202) 366–4246; (these are not toll-free numbers).

Dated: February 13, 1997.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM; FEDERAL REGISTER REPORT FOR FEBRUARY 21, 1997

Suitable/Available Properties

Buildings (by State)

Alaska

10 Office Buildings
Anchorage Native Medical Center
255 Gambell St.
Anchorage Co: Anchorage AK 99501–
Landholding Agency: GSA
Property Number: 549710002
Status: Surplus
Comment: high maintenance costs, does not meet Fed. seismic standards, presence of asbestos, PCB's, lead paint
GSA Number: 9–F–AK–750

3 Storage Buildings
Anchorage Native Medical Center
255 Gambell St.
Anchorage Co: Anchorage AK 99501–
Landholding Agency: GSA
Property Number: 549710003
Status: Surplus
Comment: high maintenance costs, does not meet Fed. seismic standards, presence of asbestos, PCB's, lead paint
GSA Number: 9–F–AK–750

1 Hospital
Anchorage Native Medical Center
255 Gambell St.
Anchorage Co: Anchorage AK 99501–
Landholding Agency: GSA
Property Number: 549710004
Status: Surplus
Comment: 173,336 sq. ft., high maintenance costs, does not meet Fed. seismic standards, presence of asbestos, PCB's, lead paint
GSA Number: 9–F–AK–750

Arizona

38 Family Housing
Gila Bend AF Auxiliary Field
Gila Bend Co: Maricopa AZ 86025–
Landholding Agency: Air Force
Property Number: 189510036
Status: Excess
Comment: 1170 sq. ft. ea., 1 story relocatable framed residences, good condition, secured area w/alternate access

26 Family Housing
Gila Bend AF Auxiliary Field
Gila Bend Co: Maricopa AZ 86025–
Landholding Agency: Air Force
Property Number: 189510037
Status: Excess
Comment: 1456 sq. ft. ea., 1 story slump block frame residences, off-site removal only, good condition

18 Detached Garages

Gila Bend AF Auxiliary Field
Gila Bend Co: Maricopa AZ 86025–
Location: Inc. bldgs. 630, 640, 670, 680, 710, 720, 740, 760, 790, 800, 820, 840, 870, 880, 910, 920, 950, 960 on Milan Loop
Landholding Agency: Air Force
Property Number: 189510039
Status: Excess
Comment: 186 sq. ft. ea., wood frame, 1 story, good condition, off-site removal only, most recent use—storage

Facility # 1004
Gila Bend AF Auxiliary Field
Gila Bend Co: Maricopa AZ 86025–
Landholding Agency: Air Force
Property Number: 189510040
Status: Excess
Comment: 1734 sq. ft., slump blocks frame, 1 story, good condition, off-site removal only, most recent use—residence

Facility # 4250
Gila Bend AF Auxiliary Field
Gila Bend Co: Maricopa AZ 86025–
Landholding Agency: Air Force
Property Number: 189510043
Status: Excess
Comment: 7800 sq. ft., prefab steel frame, 2 story, good condition, off-site removal only, most recent use—dormitory

Facility # 4252
Gila Bend AF Auxiliary Field
Gila Bend Co: Maricopa AZ 86025–
Landholding Agency: Air Force
Property Number: 189510044
Status: Excess
Comment: 144 sq. ft., metal frame, 1 story, good condition, off-site removal only, most recent use—storage

California

Bldg. 604
Point Arena Air Force Station
Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010237
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 605
Point Arena Air Force Station
Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010238
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 612
Point Arena Air Force Station
Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010239
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 611
Point Arena Air Force Station Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010240
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 613
Point Arena Air Force Station Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010241
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 614
Point Arena Air Force Station Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010242
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 615
Point Arena Air Force Station Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010243
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 616
Point Arena Air Force Station Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010244
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 617
Point Arena Air Force Station Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010245
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing; needs rehab.

Bldg. 618
Point Arena Air Force Station Co: Mendorino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010246
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing; needs rehab

Colorado

Bldg. 08000
Lamar Comm. Facility
La Mar Co: Prowers CO 81052–
Landholding Agency: GSA
Property Number: 189620034
Status: Excess
Comment: 2332 sq. ft. bldg. on approx. 3.67 acres, hook-ups disconnected, needs repair
GSA Number: 7–D–CO–6025

Weather Service Forecast Ofc.
Limon Co: Lincoln CO 80828–
Landholding Agency: GSA
Property Number: 549640019
Status: Excess
Comment: 2650 sq. ft., needs repair, most recent use—office, existing easements
GSA Number: 7–C–CO–640

Florida

Bldg. 244
MacDill Auxiliary Airfield No. 1
Avon Park Co: Polk FL 33825–
Landholding Agency: Air Force
Property Number: 189520001
Status: Excess
Comment: 6239 sq. ft., masonry frame, needs rehab, secured area w/alternate access, most recent use—commissary

Bldg. 242
MacDill Auxiliary Airfield No. 1
Avon Park Co: Polk FL 33825–
Landholding Agency: Air Force
Property Number: 189520002
Status: Excess
Comment: 8554 sq. ft., steel frame module, secured area w/alternate access, most recent use—exchange branch

Bldg. 427
MacDill Auxiliary Airfield No. 1
Avon Park Co: Polk FL 33825–
Landholding Agency: Air Force
Property Number: 189520003
Status: Excess
Comment: 5258 sq. ft., metal & masonry frame, secured area w/alternate access, most recent use—bowling center

Facility No. 0001
Cocoa Beach Comm. Annex No. 2
Cocoa Beach Co: Brevard FL 32931–
Landholding Agency: Air Force
Property Number: 189610010
Status: Unutilized
Comment: telephone switchgear bldg., 474 sq. ft., possible asbestos

Facility No. 00901
Cocoa Beach Comm. Annex No. 1
Cocoa Beach Co. Brevard FL 32931–
Landholding Agency: Air Force
Property Number: 189610011
Status: Unutilized
Comment: 1100 sq. ft., telephone switch bldg., possible asbestos

Idaho

Bldg. 121
Mountain Home Air Force Base
Main Avenue Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 18900007
Status: Excess
Comment: 3375 sq. ft.; 1 story wood frame; potential utilities; needs rehab; presence of asbestos; building is set on piers; most recent use—medical administration, veterinary services.

Bldg. 611
Mountain Home Air Force Base
Mountain Home AFB Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 189440016
Status: Underutilized
Comment: 3200 sq. ft.; 1 story wood frame; needs repair, presence of lead base paint and asbestos, most recent use—base chapel.

Bldg. 2201
Mountain Home Air Force Base
Mountain Home Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 189520005
Status: Underutilized
Comment: 6804 sq. ft.; 1 story wood frame; most recent use—temporary garage for base fire dept. vehicles, presence of lead paint and asbestos shingles

Maine

Bldg. 1001–1005, 1131–1140
Charleston Family Housing
Randolph/Union/Maxwell
Bangor Co.: Penobscot ME 04401–
Landholding Agency: Air Force
Property Number: 189640023
Status: Unutilized

Comment: 15 duplex homes with 30 4-bedroom housing units, each unit=2605 sq. ft. w/one car garage
Bldg. 1126–1130
Charleston Family Housing
Randolph Drive
Bangor Co: Penobscot ME 04401–
Landholding Agency: Air Force
Property Number: 189640024
Status: Unutilized
Comment: 5 duplex homes with 10 4-bedroom housing units, each unit=1451 sq. ft. with one car garage
Bldg. 1141–1143
Charleston Family Housing
Maxwell Lane
Bangor Co: Penobscot ME 04401–
Landholding Agency: Air Force
Property Number: 189640025
Status: Unutilized
Comment: 3 4-bedroom housing units, each unit=2675 sq. ft. w/one car garage
Bldg. 1141–1147, 1159–1162
Charleston Family Housing
Randolph Drive
Bangor Co: Penobscot ME 04401–
Landholding Agency: Air Force
Property Number: 189640026
Status: Unutilized
Comment: 8 4-bedroom housing units, each unit=1537 sq. ft. w/one car garage
51 Housing Units w/garages
Charleston Family Housing Complex
Maxwell Lane 7 Randolph Drive
Bangor Co: Penobscot ME 04401–
Landholding Agency: GSA
Property Number: 549640012
Status: Excess
Comment: 1300 sq. ft. each, 1-story
GSA Number: 1–D–ME–526H

Michigan

Bldg. 30
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010779
Status: Excess
Comment: 2593 sq. ft.; 1 floor; concrete block; possible asbestos; potential utilities; most recent use—communications transmitter building.
Bldg. 46
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010786
Status: Excess
Comment: 5898 sq. ft.; 2 story; concrete block; potential utilities; possible asbestos; most recent use—visiting personnel housing.
Bldg. 51
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010791
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 52
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010792
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 53
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010793
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 54
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010794
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 55
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010795
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 56
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010796
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 57
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010797
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 58
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010798
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 59
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010799
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 60
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010800
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 61
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010801
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 62
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010802
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 63
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010803
Status: Excess
Comment: 1306 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 64
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010804
Status: Excess
Comment: 1306 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 65
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010805
Status: Excess
Comment: 1306 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 66
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010806
Status: Excess
Comment: 1306 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 67
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010807
Status: Excess
Comment: 1306 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 68
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010808
Status: Excess
Comment: 1478 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 70
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010809
Status: Excess
Comment: 1394 sq. ft.; 1 story concrete block; possible asbestos; most recent use—youth center.
Bldg. 72
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010811
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.

Bldg. 73
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010812
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 74
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010813
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 75
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010814
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 76
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010815
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 77
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010816
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 78
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010817
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 79
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010818
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 80
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010819
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 81
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010820
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 82
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010821
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 83
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010822
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 84
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010823
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; possible utilities; possible asbestos.
Bldg. 85
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010824
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 86
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010825
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 87
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010826
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 88
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010827
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 89
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010828
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 97
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010829
Status: Excess
Comment: 171 sq. ft.; 1 floor; potential utilities; most recent use—pump house.
Bldg. 98
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010830
Status: Excess
Comment: 114 sq. ft.; 1 floor; potential utilities; most recent use—pump house.
Bldg. 10
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010836
Status: Excess
Comment: 1056 sq. ft.; 1 story wood frame residence.
Bldg. 216
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010847
Status: Excess
Comment: 780 sq. ft.; 1 story wood frame housing garage.
Bldg. 217
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010848
Status: Excess
Comment: 780 sq. ft.; 1 story wood frame housing garage.
Bldg. 218
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010849
Status: Excess
Comment: 780 sq. ft.; 1 story wood frame housing garage.
Bldg. 219
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010850
Status: Excess
Comment: 780 sq. ft.; 1 story wood frame housing garage.
Bldg. 220
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010851
Status: Excess
Comment: 780 sq. ft.; 1 story wood frame housing garage.
Bldg. 221
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010852

Status: Excess
Comment: 780 sq. ft.; 1 story wood frame housing garage.
Bldg. 222
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010853
Status: Excess
Comment: 780 sq. ft.; 1 story wood frame housing garage.
Bldg. 223
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010854
Status: Excess
Comment: 780 sq. ft.; 1 story wood frame housing garage.
Bldg. 224
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010855
Status: Excess
Comment: 780 sq. ft.; 1 story wood frame housing garage.
Bldg. 215
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010856
Status: Excess
Comment: 390 sq. ft.; 1 story wood frame housing garage.
Bldg. 212
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010859
Status: Excess
Comment: 780 sq. ft.; 1 story wood frame housing garage.
Bldg. 214
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010861
Status: Excess
Comment: 780 sq. ft.; 1 story wood frame housing garage.
Bldg. 23
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010865
Status: Excess
Comment: 44 sq. ft.; 1 story; metal frame; prior use—storage of fire hoses.
Bldg. 24
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010866
Status: Excess
Comment: 44 sq. ft.; 1 story; metal frame; prior use—storage of fire hoses.
Bldg. 36
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010872
Status: Excess
Comment: 25 sq. ft.; 1 floor metal frame; prior use—storage of fire hoses.
Bldg. 37
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010873
Status: Excess
Comment: 25 sq. ft.; 1 floor metal frame; prior use—storage of fire hoses.
Bldg. 201
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010879
Status: Excess
Comment: 25 sq. ft.; 1 floor metal frame; prior use—storage of fire hoses.
Seul Choix Point Light
Gulliver Co: Schoolcraft MI 49840–
Landholding Agency: GSA
Property Number: 549640005
Status: Excess
Comment: 1000 sq. ft. lighthouse, lease with Gulliver Historical Society thru Dec. 2009
GSA Number: 1–U–MI–679A

Mississippi

Old Greenville Depot
Greenville Co: Washington MS 38701–
Landholding Agency: GSA
Property Number: 549640020
Status: Excess
Comment: 3365 sq. ft. bldg., 3.442 acres, most recent use—office, garage and mooring site for Coast Guard, periodic flooding, wetlands
GSA Number: 4–U–MS–551

Montana

Facility #1
Havre Training Site
Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189530047
Status: Excess
Comment: 6843 sq. ft., 1 story brick frame, good condition, most recent use—technical training site
Bldg. 110
Forsyth Training Site
Co: Rosebud MT
Landholding Agency: Air Force
Property Number: 189610001
Status: Unutilized
Comment: 6843 sq. ft., needs repair, on top of bluff, most recent use—offices
Bldg. 112
Forsyth Training Site
Co: Rosebud MT
Landholding Agency: Air Force
Property Number: 189610002
Status: Unutilized
Comment: 586 sq. ft., most recent use—cold storage

Nebraska

Bldg. 20
Offutt Communications Annex 4
Silver Creek Co: Nance NE 68663–
Landholding Agency: Air Force
Property Number: 189610004
Status: Unutilized
Comment: 4714 sq. ft., most recent use—dormitory

New York

Fed. Office Building
35 Ryerson Street
Brooklyn Co: Kings NY
Landholding Agency: GSA
Property Number: 549630011
Status: Excess
Comment: nine floors and basement, possible asbestos, need rehab, most recent use—VA Clinic
GSA Number: 1–G–NY–637A

Ohio

Marblehead Light Tower
East Harbor State Park
Marblehead Co: Ottawa OH 43440–
Landholding Agency: GSA
Property Number: 549710005
Status: Excess
Comment: 67 foot tall light tower w/87-step spiral staircase, one room/60 sq. ft., covenants and restrictions must be complied with
GSA Number: 1–U–OH–655–C

Pennsylvania

DuBois Federal Bldg.
127 North Brady St.
DuBois Co: Clearfield PA 15801–
Landholding Agency: GSA
Property Number: 549710006
Status: Surplus
Comment: 9200 sq. ft. brick, 2-story, most recent use—office/post office
GSA Number: 4–G–PA–0774

South Dakota

West Communications Annex
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189340051
Status: Unutilized
Comment: 2 bldgs. on 2.37 acres, remote area, lacks infrastructure, road hazardous during winter storms, most recent use—industrial storage

Texas

Bldg. 110
Fort Crockett/43rd St. Housing
Galveston Co: Galveston TX 77553–
Landholding Agency: DOT
Property Number: 879630006
Status: Unutilized
Comment: 500 sq. ft., most recent use—garage, historic properties
Bldg. 109
Fort Crockett/43rd St. Housing
Galveston Co: Galveston TX 77553–
Landholding Agency: DOT
Property Number: 879630007
Status: Unutilized
Comment: 2880 sq. ft. per floor, 2-story, most recent use—residential, historic properties
Bldg. 428
Fort Crockett/53rd St. Housing
Galveston Co: Galveston TX 77553–
Landholding Agency: DOT
Property Number: 879630009
Status: Unutilized
Comment: 2700 sq. ft., most recent use—warehouse/office, historic properties
Bldg. 433
Fort Crockett/53rd St. Housing
Galveston Co: Galveston TX 77553–
Landholding Agency: DOT
Property Number: 879630010
Status: Unutilized

Comment: 1632 sq. ft. per floor, 2-story, most recent use—residential, historic properties
Bldg. 439
Fort Crockett/53rd St. Housing
Galveston Co: Galveston TX 77553–
Landholding Agency: DOT
Property Number: 879630011
Status: Unutilized
Comment: 1632 sq. ft. per floor, 2-story, most recent use—residential, historic properties
Bldg. 440
Fort Crockett/53rd St. Housing
Galveston Co: Galveston TX 77553–
Landholding Agency: DOT
Property Number: 879630012
Status: Unutilized
Comment: 1632 sq. ft. per floor, 2-story, most recent use—residential, historic properties
Bldg. 441
Fort Crockett/53rd St. Housing
Galveston Co: Galveston TX 77553–
Landholding Agency: DOT
Property Number: 879630013
Status: Unutilized
Comment: 1632 sq. ft. per floor, 2-story, most recent use—residential, historic properties
Bldg. 442
Fort Crockett/53rd St. Housing
Galveston Co: Galveston TX 77553–
Landholding Number: DOT
Property Number: 879630014
Status: Unutilized
Comment: 1632 sq. ft. per floor, 2-story, most recent use—residential, historic properties
Bldg. 106
Fort Crockett/Seawall Blvd. Housing
Galveston Co: Galveston TX 77553–
Landholding Agency: DOT
Property Number: 879630015
Status: Unutilized
Comment: 2000 sq. ft., most recent use—garage, historic properties
Bldg. 105
Fort Crockett/Seawall Blvd. Housing
Galveston Co: Galveston TX 77553–
Landholding Agency: DOT
Property Number: 879630016
Status: Unutilized
Comment: 1634 sq. ft. per floor, 2-story, most recent use—residential, historic properties
Bldg. 104
Fort Crockett/Seawall Blvd. Housing
Galveston Co: Galveston TX 77553–
Landholding Agency: DOT
Property Number: 879630017
Status: Unutilized
Comment: 1634 sq. ft. per floor, most recent use—residential, historic properties
Bldg. 103
Fort Crockett/Seawall Blvd. Housing
Galveston Co: Galveston TX 77553–
Landholding Agency: DOT
Property Number: 879630018
Status: Unutilized
Comment: 1634 sq. ft. per floor, 2-story, most recent use—residential, historic properties
Bldg. 102
Fort Crockett/Seawall Blvd. Housing
Galveston Co: Galveston TX 77553–
Landholding Agency: DOT
Property Number: 879630019
Status: Unutilized
Comment: 1634 sq. ft. per floor, 2-story, most recent use—residential, historic properties

Virginia

Housing
Rt. 637—Gwynnville Road
Gwynn Island Co: Mathews VA 23066–
Landholding Agency: DOT
Property Number: 879120082
Status: Unutilized
Comment: 929 sq. ft., one story residence

West Virginia

Guthrie Center Property
4860 Brenda Lane
Charleston Co: Kanauha WV
Landholding Agency: GSA
Property Number: 549640018
Status: Excess
Comment: 18 frame houses/one cinder block bldg., 1200 sq. ft. each, most recent use—residential, needs repair
GSA Number: 4–GR–WV–470

Wisconsin

Washburn Ranger's Dwelling
3 East 3rd St.
Washburn Co: Bayfield WI 54891–
Landholding Agency: GSA
Property Number: 549630010
Status: Excess
Comment: 619 sq. ft., wood frame residence w/garage, historic preservation covenant
GSA Number: 1–A–WI–590
Wind Point Light Station
Racine Co: Racine WI 53402–
Landholding Agency: GSA
Property Number: 549710007
Status: Excess
Comment: 4500 sq. ft. dwelling w/attached tower, garage, and 4 storage bldgs., covenants and restrictions must be complied with
GSA Number: I–U–WI–574

Land (by State)

California

60 ARG/DE
Travis ILS Outer Marker Annex
Rio-Dixon Road
Travis AFB Co: Solano CA 94535–5496
Location: State Highway 113
Landholding Agency: Air Force
Property Number: 189010189
Status: Excess
Comment: .13 acres; most recent use—location for instrument landing systems equipment

Kentucky

Land—5 acres
Cannelton Locks & Dams Project
Located on the banks of the Ohio River
Hawesville Co: Hancock KY
Landholding Agency: GSA
Property Number: 549710008
Status: Excess
Comment: 5 acres, most recent use—construction equipment storage
GSA Number: 4–D–KY–539C

Maine

Irish Ridge NEXRAD Site
Loring AFB
Fort Fairfield Co: Aroostook ME 04742–
Landholding Agency: Air Force
Property Number: 189640017
Status: Unutilized
Comment: 3.491 acres in fee simple
Patten Communications Site
Loring AFB
Stacyville Co: Herseytown ME 04742–
Landholding Agency: Air Force
Property Number: 189640018
Status Unutilized
Comment: 19.3 acres in fee simple plus access easements

Massachusetts

Estate of S. Newburg
Lois and Ellen Street
Haverhill Co: Essex MA 01830–
Landholding Agency: GSA
Property Number: 549630017
Status: Excess
Comment: land—36,425 sq. ft.—two noncontiguous parcels, heavily wooded
GSA Number: 1–G–MA–793

Michigan

Calumet Air Force Station
Section 1, T57N, R31W
Houghton Township
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010862
Status: Excess
Comment: 34 acres; potential utilities.
Calumet Air Force Station
Section 31, T58N, R30W
Houghton Township
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010863
Status: Excess
Comment: 3.78 acres; potential utilities.

Montana

6.43 acres
Forsyth Training Site
Co: Rosebud MT
Landholding Agency: Air Force
Property Number: 189610003
Status: Unutilized
Comment: 6.43 acres, most recent use—tech. oper. site for radar bombing range.

Oregon

Portion, Astoria Field Office
Via Hwy 30
Astoria Co: Clatsop OR 97103–
Landholding Agency: GSA
Property Number: 549640015
Status: Excess
Comment: 20.6 acres, includes wetlands & tidelands, parking lot under construction, portion located within floodplain
GSA Number: 9–D–OR–447F

Pennsylvania

Former Warehouse Site
1020 South Broad Street
Philadelphia PA 19146–
Landholding Agency: GSA
Property Number: 549640017
Status: Excess
Comment: 1.82 acres, most recent use—parking lot
GSA Number: 4–G–PA–0773

Suitable/Unavailable Properties

Buildings (by State)

Arkansas

Federal Building
129 North Main Street
Benton Co: Saline AR 72201–
Landholding Agency: GSA

Property Number: 549620005
Status: Excess
Comment: 1900 sq. ft., most recent use—office, limitations due to potential historic significance
GSA Number: 7–G–AR–550

Portion Fed. Bldg.
College and Center Streets
Marshall Co: Searcy AR 72650–
Landholding Agency: GSA
Property Number: 549630002
Status: Excess
Comment: portion of 3500 sq. ft., most recent use—office
GSA Number: 7–G–AR–552

California

Hawes Site (KHGM)
March AFB
Hinckley Co: San Bernardino CA 92402–
Landholding Agency: Air Force
Property Number: 189010084
Status: Unutilized
Comment: 9290 sq ft., 2 story concrete, most recent use—radio relay station, possible asbestos, land belongs to Bureau of Land Management, potential utilities.

Bldg. 1
Fruit & Vegetable Chemistry lab
263 South Chester Ave.
Pasadena Co: Los Angeles CA 91106–3108
Landholding Agency: GSA
Property Number: 549610015
Status: Excess
Comment: 16,500 sq. ft., most recent use—ofc/library/lab
GSA Number: 9–A–CA–1469

Bldg. 2
Fruit & Vegetable Chemistry Lab
263 South Chester Ave.
Pasadena Co: Los Angeles CA 91106–3108
Landholding Agency: GSA
Property Number: 549610016
Status: Excess
Comment: 828 sq. ft., most recent use—isolation operation bldg.
GSA Number 9–A–CA–1469

Bldg. 3
Fruit & Vegetable Chemistry Lab
263 South Chester Ave.
Pasadena Co: Los Angeles CA 91106–3108
Landholding Agency: GSA
Property Number: 549610017
Status: Excess
Comment: 624 sq. ft., most recent use—boiler rm/garage/pit house
GSA Number: 9–A–CA–1469

Bldg. 4
Fruit & Vegetable Chemistry Lab
263 South Chester Ave.
Pasadena Co: Los Angeles CA 91106–3108
Landholding Agency: GSA
Property Number: 549610018
Status: Excess
Comment: 146 sq. ft., most recent use—solvent storage
GSA Number: 9–A–CA–1469

Bldg. 5
Fruit & Vegetable Chemistry Lab
263 South Chester Ave.
Pasadena Co: Los Angeles CA 91106–3108
Landholding Agency: GSA
Property Number: 549610019
Status: Excess
Comment: 2212 sq. ft., most recent use—green house
GSA Number: 9–A–CA–1469

Bldg. 5
Fruit & Vegetable Chemistry Lab
263 South Chester Ave.
Pasadena Co: Los Angeles CA 91106–3108
Landholding Agency: GSA
Property Number: 549610020
Status: Excess
Comment: 200 sq. ft., most recent use—secure transformer bldg.
GSA Number: 9–A–CA–1469

Colorado

Former AF Finance Center
3800 York Street
Denver Co: Denver CO 80205–
Landholding Agency: GSA
Property Number: 549310011
Status: Excess
Comment: 293,932 sq. ft., 1-story timber frame with masonry exterior, fair condition, most recent use—storage, office, rehab
GSA Number: 7–GR–CO–468–D

Idaho

Bldg. 516
Mountain Home Air Force Base
Mountain Home Co: Elmore ID 86348–
Landholding Agency: Air Force
Property Number: 189520004
Status: Excess
Comment: 4928 sq. ft., 1 story wood frame, presence of lead paint and asbestos, most recent use—offices

Illinois

Parcel 2
Portion Former Lock & Dam 51
Golconda Co: Pope IL 62938–
Landholding Agency: GSA
Property Number: 549610011
Status: Excess
Comment: 1274 sq. ft., bldg. which housed the lock control structures 2160 sq. ft. warehouse and ofc. bldg., presence of lead base paint, periodic flooding, Fed. Reg. of Historic Places
GSA Number: 2–D–IL–703

Parcel 3
Portion Former Lock & Dam 51
Golconda Co: Pope IL 62938–
Landholding Agency: GSA
Property Number: 549610012
Status: Excess
Comment: 3244 sq. ft. metal bldg., 11852 sq. ft. marina dock and parking lot, 100 year floodplain
GSA Number: 2–IL–D–703

Iowa

Bldg. 00627
Sioux Gateway Airport
Sioux City Co: Woodbury IA 51110–
Landholding Agency: Air Force
Property Number: 189310001
Status: Unutilized
Comment: 1932 sq. ft., 1-story concrete block bldg., most recent use—storage; pigeon infested, contamination investigation in progress

Bldg. 00669
Sioux Gateway Airport
Sioux City Co: Woodbury IA 51110–
Landholding Agency: Air Force
Property Number: 189310002
Status: Unutilized
Comment: 1113 sq. ft., 1-story concrete block bldg., contamination clean-up in process

Kansas

Federal Office Building
400 Houston Street
Manhattan Co: Riley KS 66502–
Landholding Agency: GSA
Property Number: 549640014
Status; Surplus
Comment: portion of 11398 sq. ft. bldg., 1½ story w/basement, most recent use—office/storage
GSA Number: 7–G–KS–0519

Maine

Mount Desert Rock Light
U.S. Coast Guard
Southwest Harbor Co: Hancock ME 04679–
Landholding Agency: DOT
Property Number: 879240023
Status: Unutilized
Comment: 1600 sq. ft., 2-story wood frame dwelling, needs rehab, limited utilities, limited access, property is subject to severe storms

Little River Light
U.S. Coast Guard
Cutler Co: Washington ME
Landholding Agency: DOT
Property Number: 879240026
Status: Unutilized
Comment: 1100 sq. ft., 2-story wood frame dwelling, well is contaminated, limited utilities

Burnt Island Light
U.S. Coast Guard
Southport Co: Lincoln ME 04576–
Landholding Agency: DOT
Property Number: 879240027
Status: Unutilized
Comment: 750 sq. ft., 2-story wood frame dwelling

Massachusetts

17 Single Family Residences
Navy Family Housing, Westover AFB
Chicopee Co: Hampden MA 01022–
Landholding Agency: GSA
Property Number: 549520002
Status: Excess
Comment: various sq. ft., good condition, utilities systems modification

99 Duplex Residences
Navy Family Housing, Westover AFB
Chicopee Co: Hampden MA 01022–
Landholding Agency: GSA
Property Number: 549520003
Status: Excess
Comment: various sq. ft., good condition, utilities systems modification

20 Fourplex Residences
Navy Family Housing, Westover AFB
Chicopee Co: Hampden MA 01022–
Landholding Agency: GSA
Property Number: 549520004
Status: Excess
Comment: various sq. ft., good condition, utilities systems modification

Keepers Dwelling
Cape Ann Light, Thachers Island
U.S. Coast Guard
Rockport Co: Essex MA 01966–
Landholding Agency: DOT
Property Number: 879240024
Status: Unutilized

Comment: 1000 sq. ft., 2-story brick dwelling, large wave action with severe ocean storms

Assistant Keepers Dwelling
Cape Ann Light, Thachers Island
U.S. Coast Guard
Rockport Co: Essex MA 01966–
Landholding Agency: DOT
Property Number: 879240025
Status: Unutilized
Comment: 1100 sq. ft., 2-story wood frame dwelling, large wave action with severe ocean storms

Michigan

Bldg. 20
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010775
Status: Excess
Comment: 13404 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—warehouse/supply facility.

Bldg. 21
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010776
Status: Excess
Comment: 2146 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—storage.

Bldg. 22
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010777
Status: Excess
Comment: 1546 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—administrative facility

Bldg. 28
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010778
Status: Excess
Comment: 1000 sq. ft.; 1 floor; possible asbestos; potential utilities; most recent use—maintenance facility.

Bldg. 40
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010780
Status: Excess
Comment: 2069 sq. ft.; 2 floors; concrete block; possible asbestos; potential utilities, most recent use—administrative facility.

Bldg. 41
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010781
Status: Excess
Comment: 2069 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—dormitory.

Bldg. 42
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010782
Status: Excess
Comment: 4017 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—dining hall.

Bldg. 43
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010783
Status: Excess
Comment: 3674 sq. ft.; 2 story; concrete block; potential utilities; possible asbestos; most recent use—dormitory.

Bldg. 44
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010784
Status: Excess
Comment: 7216 sq. ft.; 2 story; concrete block; possible asbestos; potential utilities; most recent use—dormitory.

Bldg. 45
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010785
Status: Excess
Comment: 6070 sq. ft.; 2 story; concrete block; potential utilities; possible asbestos; most recent use—administrative facility.

Bldg. 47
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010787
Status: Excess
Comment: 83 sq. ft.; 1 story; concrete block; potential utilities; most recent use—storage.

Bldg. 48
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010788
Status: Excess
Comment: 96 sq. ft.; 1 story; concrete block; potential utilities; most recent use—storage.

Bldg. 49
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010789
Status: Excess
Comment: 1944 sq. ft.; 1 story; concrete block; potential utilities; most recent use—dormitory.

Bldg. 50
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010790
Status: Excess
Comment: 6171 sq. ft.; 1 story; concrete block; potential utilities; possible asbestos; most recent use—Fire Department vehicle parking building.

Bldg. 14
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010833
Status: Excess
Comment: 6751 sq. ft.; 1 floor concrete block; possible asbestos; most recent use—gymnasium.

Bldg. 16
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010834
Status: Excess
Comment: 3000 sq. ft.; 1 floor concrete block; most recent use—commissary facility.

Bldg. 9
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010835
Status: Excess
Comment: 1056 sq. ft.; 1 story wood frame residence.

Bldg. 11
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010837
Status: Excess
Comment: 1056 sq. ft.; 1 floor wood frame residence.

Bldg. 12
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010838
Status: Excess
Comment: 1056 sq. ft.; 1 story wood frame residence.

Bldg. 13
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010839
Status: Excess
Comment: 1056 sq. ft.; 1 story wood frame residence.

Bldg. 5
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010840
Status: Excess
Comment: 864 sq. ft.; 1 floor wood frame residence; possible asbestos.

Bldg. 6
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010841
Status: Excess
Comment: 864 sq. ft.; 1 floor wood frame residence; possible asbestos.

Bldg. 7
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010842
Status: Excess
Comment: 864 sq. ft.; 1 story wood frame residence; possible asbestos.

Bldg. 8
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010843
Status: Excess
Comment: 864 sq. ft.; 1 floor wood frame residence; possible asbestos.

Bldg. 4
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010844
Status: Excess
Comment: 2340 sq. ft.; 1 floor concrete block; most recent use—heating facility.
Bldg. 3
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010845
Status: Excess
Comment: 5314 sq. ft.; 1 floor concrete block; possible asbestos; most recent use—maintenance shop and office.
Bldg. 1
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010846
Status: Excess
Comment: 4528 sq. ft.; 1 floor concrete block; possible asbestors; most recent use—office.
Bldg. 158
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010857
Status: Excess
Comment: 3603 sq. ft.; 1 story concrete/steel; possible asbestos; most recent use—electrical power station.
Bldg. 15
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010864
Status: Excess
Comment: 538 sq. ft.; 1 floor; concrete/wood structure; potential utilities; most recent use—gymnasium facility.
Bldg. 31
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010867
Status: Excess
Comment: 36 sq. ft.; 1 story, prior use—metal frame; storage of fire hoses.
Bldg. 32
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010868
Status: Excess
Comment: 36 sq. ft.; 1 story metal frame; prior use—storage of fire hoses.
Bldg. 33
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010869
Status: Excess
Comment: 36 sq. ft.; 1 story metal frame; prior use—storage of fire hoses.
Bldg. 34
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010870
Status: Excess
Comment: 36 sq. ft.; 1 story metal frame; prior use—storage of fire hoses.
Bldg. 35
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010871
Status: Excess
Comment: 36 sq. ft.; 1 story metal frame; prior use—storage of fire hoses.
Bldg. 39
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010874
Status: Excess
Comment: 25 sq. ft.; 1 floor metal frame; prior use—storage of fire hoses.
Bldg. 202
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010880
Status: Excess
Comment: 25 sq. ft.; 1 floor metal frame; prior use—storage of fire hoses.
Bldg. 203
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010881
Status: Excess
Comment: 25 sq. ft.; 1 floor metal frame; prior use—storage of fire hoses.
Bldg. 204
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010882
Status: Excess
Comment: 25 sq. ft.; 1 floor metal frame; prior use—storage of fire hoses.
Bldg. 205
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010883
Status: Excess
Comment: 25 sq. ft.; 1 floor metal frame; prior use—storage of fire hoses.
Bldg. 206
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010884
Status: Excess
Comment: 25 sq. ft.; 1 floor metal frame; prior use—storage of fire hoses.
Bldg. 207
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010885
Status: Excess
Comment: 25 sq. ft.; 1 floor metal frame; prior use—storage of fire hoses.
Bldg. 153
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010886
Status: Excess
Comment: 4314 sq. ft.; 2 story concrete block facility; (radar tower bldg.) potential use—storage.
Bldg. 154
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010887
Status: Excess
Comment: 8960 sq. ft.; 4 story concrete block facility; (radar tower bldg.) potential use—storage.
Bldg. 157
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010888
Status: Excess
Comment: 3744 sq. ft.; 1 story concrete/steel facility; (radar tower bldg.); potential use—storage.
Detroit Job Corps Center
10401 E. Jefferson & 1438 Garland;
1265 St. Clair
Detroit Co: Wayne MI 42128–
Landholding Agency: GSA
Property Number: 549510002
Status: Surplus
Comment: Main bldg. is 80,590 sq. ft., 5-story, adjacent parking lot, 2nd bldg. on St. Clair Ave. is 5140 sq. ft., presence of asbestos in main bldg., to be vacated 8/97
GSA Number: 2–L–MI–757
Little Rapids Lightkeeper Sta.
Little Rapids Channel
Sault St. Marie Co: Chippewa MI 49873–
Landholding Agency: GSA
Property Number: 549530002
Status: Excess
Comment: 1411 sq. ft. wood frame dwelling with 480 sq. ft. garage, and 121 sq. ft. storage bldg., poor condition, needs rehab, possible asbestos
GSA Number: 2–D–MI–722A

Minnesota

Coast Guard Family Housing
404 East Hamilton Avenue
Baudette Co: Lake of the Woo MN 56623–
Landholding Agency: GSA
Property Number: 549230007
Status: Surplus
Comment: 1333 sq. ft., 1-story frame residence
GSA Number: 2–U–MN–503–E
Coast Guard Family Housing
406 East Hamilton Avenue
Baudette Co: Lake of the Woo MN 56623–
Landholding Agency: GSA
Property Number: 549230008
Status: Surplus
Comment: 1633 sq. ft., 1-story wood frame residence
GSA Number: 2–U–MN–503–E
Coast Guard Family Housing
408 East Hamilton Avenue
Baudette Co: Lake of the Woo MN 56623–
Landholding Agency: GSA
Property Number: 549230009
Status: Surplus
Comment: 1633 sq. ft., 1-story wood frame residence
GSA Number: 2–U–MN–503–E
Coast Guard Family Housing
416 East Hamilton Avenue
Baudette Co: Lake of the Woo MN 56623–
Landholding Agency: GSA
Property Number: 549230010
Status: Surplus

Comment: 1633 sq. ft., 1-story wood frame residence
GSA Number: 2–U–MN–503–E

Missouri

District 2 Flag Quarters
16 Chaminade
Creve Coeur Co: St. Louis MO 63141–
Landholding Agency: GSA
Property Number: 549620003
Status: Excess
Comment: 2320 sq. ft. residence
GSA Number: 7–U–MO–0629

Montana

Bldg. 00007
Havre Air Force Station
Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330066
Status: Unutilized
Comment: 992 sq. ft., 1-story metal, most recent use—auto/hobby shop
Bldg. 00008
Havre Air Force Station
Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330067
Status: Unutilized
Comment: 2640 sq. ft., 1-story metal, most recent use—vehicle parking
Bldg. 00016
Havre Air Force Station
Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330068
Status: Unutilized
Comment: 3604 sq. ft., 1-story cinder block, most recent use—storage
Bldg. 00023
Havre Air Force Station
Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330069
Status: Unutilized
Comment: 3315 sq. ft., 1-story wood, most recent use—fire station
Bldg. 00024
Havre Air Force Station
Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330070
Status: Unutilized
Comment: 5016 sq. ft., 1-story brick, most recent use—dormitory
Bldg. 00027
Havre Air Force Station
Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330071
Status: Unutilized
Comment: 14280 sq. ft., 1-story cinder block, most recent use—recreation center and commissary store
Bldg. 00029
Havre Air Force Station
Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330072
Status: Unutilized
Comment: 63 sq. ft., 1-story metal
Bldg. 00031
Havre Air Force Station
Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330073
Status: Unutilized
Comment: 3130 sq. ft., 1-story cinder block, most recent use—maintenance shop and admin.
Bldg. 00032
Havre Air Force Station
Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330074
Status: Unutilized
Comment: 64 sq. ft., metal, most recent use—storage
Bldg. 00035
Havre Air Force Station
Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330075
Status: Unutilized
Comment: 2252 sq. ft., 4-story metal, most recent use—storage
Bldg. 00039
Havre Air Force Station
Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330076
Status: Unutilized
Comment: 21824 sq. ft., 1-story masonry, most recent use—storage
Bldg. 00040
Havre Air Force Station
Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330077
Status: Unutilized
Comment: 874 sq. ft., 1-story masonry, most recent use—storage.
Bldg. 00041
Havre Air Force Station
Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330078
Status: Unutilized
Comment: 108 sq. ft., 1-story masonry.
Bldg. 00042
Havre Air Force Station
Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330079
Status: Unutilized
Comment: 760 sq. ft., 1-story masonry, most recent use—warehouse.
Bldg. 00044
Havre Air Force Station
Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330080
Status: Unutilized
Comment: 3298 sq. ft., 1-story metal, most recent use—wood hobby shop.
Bldgs. 51, 52, 56, 58
Havre Air Force Station
Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330081
Status: Unutilized
Comment: 1352 sq. ft. each, 1-story wood, most recent use—residential.
Bldgs. 53–55, 57, 59, 61, 63, 65, 67, 69, 71
Havre Air Force Station
Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330082
Status: Unutilized
Comment: 1152 sq. ft., each, 1-story wood, most recent use—residential.
Bldgs. 60, 62, 64, 66, 68
Havre Air Force Station
Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330083
Status: Unutilized
Comment: 1361 sq. ft., each 1-story wood, most recent use—residential.
Bldgs. 70, 72, 74, 78
Havre Air Force Station
Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330084
Status: Unutilized
Comment: 1455 sq. ft., each, 1-story woods, most recent use—residential.
Bldgs. 76, 80
Havre Air Force Station
Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330085
Status: Unutilized
Comment: 1343 sq. ft., each, 1-story wood, most recent use—residential.
Bldg. 82
Havre Air Force Station
Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330086
Status: Unutilized
Comment: 1553 sq. ft., 1-story woods, most recent use—residential.
Bldgs. 150, 152, 154, 156, 158, 160, 162, 164, 168, 170, 172, 174, 176, 178, 180, 182, 184
Havre Air Force Station
Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330087
Status: Unutilized
Comment: 1247 sq. ft., each, 1-story wood, most recent use—residential.
Bldgs. 106–109, 112–113
Havre Air Force Station
Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330088
Status: Unutilized
Comment: 36 sq. ft., each, most recent use—fire hose house.
Bldgs. 202, 204, 206, 212, 214, 216, 218
Havre Air Force Station
Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330089
Status: Unutilized
Comment: 72 sq. ft., each, most recent use—storage units.
Bldgs. 208, 210
Havre Air Force Station
Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330090
Status: Unutilized
Comment: 36 sq. ft., each, most recent use—storage.
Bldg.—Conrad Training Site
15 miles east of the City of Conrad
Co: Pondera MT 59425–
Landholding Agency: GSA
Property Number: 189420025
Status: Excess
Comment: 700 sq. ft., 1-story brick, most recent use—technical training site.

Malstrom Communications Annex
(Transmitter), 39 78th St., N.
Malstrom AFB Co: Cascade MT 59405–
Landholding Agency: Air Force
Property Number: 189510023
Status: Excess
Comment: 1966 sq. ft., 1 story masonry block bldg. on 22 acres, limited utilities, roof needs replacement
GSA Number: 7–D–MT–4240

Malstrom Communications Annex
(Transmitter), 39 78th St., N.
Malstrom AFB Co: Cascade MT 59405–
Landholding Agency: GSA
Property Number: 189510023
Status: Excess
Comment: 1966 sq. ft., limited utilities, needs roof replacement
GSA Number: 7–D–MT–4240

USARC Bozeman Reserve Center
32 South Tracy Ave.
Bozeman Co: Gallatin MT
Landholding Agency: GSA
Property Number: 219420391
Status: Excess
Comment: 7600 sq. ft., 2-story, most recent use—office, sound condition, presence of asbestos, on list of historic buildings
GSA Number: 7–D–MT–0605

Nevada

5 Single Family Residences
Tonopah Housing Complex
Tonopah Co: Nye NV 89049–
Landholding Agency: GSA
Property Number: 549430004
Status: Excess
Comment: 1192 to 1378 sq. ft., 1 story wood residences, 3 bedrooms/1 bathroom
GSA Number 9–U–NV–467–C

13 Single Family Residences
Tonopah Housing Complex
Tonopah Co: Nye NV 89049–
Landholding Agency: GSA
Property Number: 549430005
Status: Excess
Comment: 1192–1898 sq. ft., 1 story wood residences, 4 bedrooms/2 bathrooms
GSA Number: 9–U–NV–467–C

New Hampshire

Bldg. 127
New Boston Air Force Staton
Amherst Co: Hillsborough NH 03031–1514
Landholding Agency: Air Force
Property Number: 189320057
Status: Excess
Comment: 698 sq. ft., 1-story, concrete and metal frame, possible asbestos, access restrictions, most recent use—storage

North Carolina

Grove Arcade Fed. Bldg.
37 Battery Park Ave.
Asheville Co: Buncombe NC 28802–
Landholding Agency: GSA
Property Number: 549630018
Status: Excess
Comment: 169340 sq. ft., concrete, most recent use—office, historic preservation covenants
GSA Number: 4–G–NC–710

North Dakota

Dickinson Tech. Oper. Site
3 mi South of New England
Dickinson Co: Hettinger ND 58647–
Landholding Agency: GSA
Property Number: 549610009
Status: Excess
Comment: 6900 sq. ft. bldg. in good condition on 10 acres of land
GSA Number: 7–D–ND–0497

Ohio

Zanesville Federal Building
65 North Fifth Street
Zanesville Co: Muskingum OH
Landholding Agency: GSA
Property Number: 549520018
Status: Excess
Comment: 18750 sq. ft., most recent use—office, possible asbestos, eligible for listing on the Natl Register of Historic Places
GSA Number: 2–G–OH–781A

Natl. Weather Met. Observatory
Huber Heights Co: Montgomery OH
Landholding Agency: GSA
Property Number: 549540005
Status: Excess
Comment: 1100 sq. ft., 1 story, most recent use—office/admin.
GSA Number: 2–C–OH–796

Oklahoma

U.S. Federal Building
103 S. Hudson
Altus Co: Jackson OK 73521–
Landholding Agency: GSA
Property Number: 549620006
Status: Excess
Comment: 9860 gross sq. ft. with 25 outside parking spaces, most recent use—govt. offices, needs some repair
GSA Number: 7–G–OK–558

Texas

Bldg. 697
Brooks Air Force Base
San Antonio Co: Bexar TX 78235–
Landholding Agency: Air Force
Property Number: 189110092
Status: Unutilized
Comment: 770 sq. ft.; possible asbestos; most recent use—supply store; needs rehab.

Bldg. 698
Brooks Air Force Base
San Antonio Co: Bexar TX 78235–
Landholding Agency: Air Force
Property Number: 189110093
Status: Unutilized
Comment: 5815 sq. ft.; 1 story corrugated iron; possible asbestos; needs rehab; most recent use—recreation, workshop.

7 Office Buildings
Former SW Regional Headquarters
4400 Blue Mound Road TX 76106–
Landholding Agency: GSA
Property Number: 549630007
Status: Excess
Comment: 1–3 stories, potential restrictive covenants (historic)
GSA Number: 7–U–TX–1041

5 Storage Buildings
Former SW Regional Headquarters
4400 Blue Mound Road TX 76106–
Landholding Agency: GSA
Property Number: 549630008
Status: Excess
Comment: 1-story, potential restrictive covenants (historic)
GSA Number: 7–U–TX–1041

6 Misc. Buildings
Former SW Regional Headquarters
4400 Blue Mound Road TX 76106–
Landholding Agency: GSA
Property Number: 549630009
Status: Excess
Comment: including cafeteria, guard shacks, pumphouse, transformer eng. gen. bldg., potential restrictive covenants (historic)
GSA Number: 7–U–TX–1041

Former Weather Radar Site Co: Rusk TX 72652–
Landholding Agency: GSA
Property Number: 549630012
Status: Excess
Comment: 2542 sq. ft. office, needs rehab
GSA Number: 7–C–TX–1042

Brownsville Urban System (Grantee)
700 South Iowa Avenue
Brownsville Co: Cameron TX 78520–
Landholding Agency: DOT
Property Number: 879010003
Status: Unutilized
Comment: 3500 sq. ft., 1 story concrete block, (2nd floor of Admin. Bldg.) on 10750 sq. ft. land, contains underground diesel fuel tanks

Bldg. 115
Fort Crockett/43rd St. Housing
Galveston Co: Galveston TX 77553–
Landholding Agency: DOT
Property Number: 879630001
Status: Unutilized
Comment: 500 sq. ft., most recent use—garage, historic properties

Bldg. 114
Fort Crockett/43rd St. Housing
Galveston Co: Galveston TX 77553–
Landholding Agency: DOT
Property Number: 879630002
Status: Unutilized
Comment: 3150 sq. ft. per floor, 2-story, most recent use—residence, historic properties

Bldg. 113
Fort Crockett/43rd St. Housing
Galveston Co: Galveston TX 77553–
Landholding Agency: DOT
Property Number: 879630003
Status: Unutilized
Comment: 200 sq. ft., most recent use—garage, historic properties

Bldg. 112
Fort Crockett/43rd St. Housing
Galveston Co: Galveston TX 77553–
Landholding Agency: DOT
Property Number: 879630004
Status: Unutilized
Comment: 2880 sq. ft., per floor, 2-story, most recent use—residential, historic properties

Bldg. 111
Fort Crockett/43rd St. Housing
Galveston Co: Galveston TX 77553–
Landholding Agency: DOT
Property Number: 879630005
Status: Unutilized
Comment: 2880 sq. ft., per floor, 2-story, most recent use—residential, historic properties

Utah

House
North Utah Highway 16
Randolph Co: Rich UT 84064–
Landholding Agency: GSA
Property Number: 549620001
Status: Excess

Comment: 1148 sq. ft. wooden frame, most recent use—office, septic system on private land
GSA Number: 7–A–UT–0498A

Vermont

Bennington Federal Building
118 South Street
Bennington VT 05201–
Landholding Agency: GSA
Property Number: 549620009
Status: Excess
Comment: 3326 sq. ft., most recent use—office/courts, listed on National Register of Historic Places/preservation restrictions
GSA Number: 1–G–VT–470

Virginia

Bristol U.S. Army Reserve Ctr.
100 Piedmont Avenue
Bristol Co: Washington VA 24201–
Landholding Agency: GSA
Property Number: 219440317
Status: Excess
Comment: 13,460 sq. ft., 2-story plus basement, brick structure, presence of asbestos, needs some rehab. (Property was published incorrectly on 10/13/95)
GSA Number: 4–D–VA–711

Washington

Coast Guard Housing
9551 Avondale Rd., NE
Redmond Co: King WA 98052–
Landholding Agency: GSA
Property Number: 549620008
Status: Excess
Comment: 3.6 existing units, major rehab, maybe economically infeasible to rehab due to present zoning
GSA Number: 9–U–WA–1109

West Virginia

R.T. Price House
U.S. Route 2
Williamson Co: Mingo WV 25661–
Landholding Agency: GSA
Property Number: 319520004
Status: Excess
Comment: 3116 sq. ft., brick, most recent use—office/conf., listed on Natl. Reg. of Historic Places, restriction against human habitation, recommend flood protection measures.
GSA Number: 4–D–WV–525
Ravenswood Public Access Site
No. 2, 4, 6 Washington Street South
Ravenswood Co: Jackson WV 26164–
Landholding Agency: GSA
Property Number: 549640013
Status: Excess
Comment: 3 bldgs., most recent use—senior citizens center, museum, residence, preservation restrictions, subject to lease
GSA Number: 4–D–WV–526

Land (by State)

California

Norton Com. Facility Annex
Norton AFB
Sixth and Central Streets
Highland Co: San Bernadino CA 92409–5045
Landholding Agency: Air Force
Property Number: 189010194
Status: Excess
Comment: 30.3 acres; most recent use—recreational area; portion subject to easements.

Receiver Site
Delano Relay Station
Route 1, Box 1350
Delano Co: Tulare Co: 93215–
Location: 5 miles west of Pixley, 17 miles north of Delano.
Landholding Agency: GSA
Property Number: 549010044
Status: Surplus
Comment: 81 acres, 1560 sq. ft. radio receiver bldg. on site, subject to grazing lease, potential utilities, environmental restrictions
GSA Number: 9–2–CA–1308
(P) Camp Elliott
Rosedale Tract
San Diego Co: San Diego CA
Landholding Agency: GSA
Property Number: 549310008
Status: Surplus
Comment: Parcel 1—0.15 acre, Parcel 2—0.17 acre, located in the narrow median strip between Murphy Canyon Rd. and State Highway 15, previously leased by homeless provider
GSA Number: 9–GR(6)–CA–694A
Excess Land at Eureka Housing
Eureka Co: Humboldt CA 95501–
Landholding Agency: DOT
Property Number: 879540001
Status: Unutilized
Comment: .5 acres, encroachment by adjoining land owners, easement

Colorado

Cotter Transfer Site
White Water Co: Mesa CO 81527–
Landholding Agency: GSA
Property Number: 549630006
Status: Excess
Comment: 109.63 acres, portion may be in floodplain, most recent use—train, truck transfer
GSA Number: 7–B–CO–626

Florida

Woodland Tract
Elgin AFB, AF Enlisted Widows' Home
Ft. Walton Beach Co: Okaloosa FL 32542–5000
Landholding Agency: Air Force
Property Number: 189540020
Status: Unutilized
Comment: 3.43 acres, easement

Georgia

Land—St. Simons Boathouse
St. Simons Island Co: Glynn GA 31522–0577
Landholding Agency: DOT
Property Number: 879540003
Status: Unutilized
Comment: .08 acres, most recent use—pier and dockage for Coast Guard boats

Guam

Unimproved Land
Rt. 2A
Agat GU
Landholding Agency: GSA
Property Number: 549630019
Status: Excess
Comment: 44.37 acres
GSA Number: 9–N–GU–420D

Indiana

Portion
Bureau of Prisons Vigo Farm
Linden Twp Co: Vigo IN
Landholding Agency: GSA
Property Number: 549620002
Status: Excess
Comment: 17.65 acres, most recent use—agriculture
GSA number: 2–J–IN–507C

Kentucky

West Point Access Site No. 12
Cannelton Locks & Dam
West Point Co: Hardin KY 40177–
Landholding Agency: GSA
Property Number: 549630005
Status: Excess
Comment: 20.55 acres w/comfort station, periodic flooding, most recent use—recreational area
GSA Number: 4–D–KY–0539B

Louisiana

New Iberia Training Area
Iberia Parish LA
Landholding Agency: GSA
Property Number: 549610004
Status: Excess
Comment: 203.5 acres, potential environmental condition—storm water runoff
GSA Number: 7–D–LA–0467E

Maine

Remote Center Air
Ground Communication Facility
Westfort Hill Road
Hodgdon Co: Aroostook ME 04730–
Landholding Agency: GSA
Property Number: 549610014
Status: Excess
Comment: 0.91 acre with 554 sq. ft. bldg and tower, most recent use—unmanned communications facility
GSA Number: 1–ME–624

Montana

U.S. Army Reserve Center
Marcella Avenue
Lewistown Co: Fergus MT
Landholding Agency: GSA
Property Number: 219420009
Status: Unutilized
Comment: 4.16 acres of bare land
GSA Number: 7–D–MT–0607

Ohio

Middleport Public Access Site
Robert C. Byrd Locks & Dam
Middleport Co: Meigs OH 45760–
Landholding Agency: GSA
Property Number: 319230001
Status: Excess
Comment: approximately 17.23 acres including parking lot, flowage easement, right-of-way for city street and utilities
GSA Number: 2–D–OH–793

Bethany Relay Station
8070 Tylersville Road
Union Township Co: Butler OH 45040–
Landholding Agency: GSA
Property Number: 549610008
Status: Excess
Comment: 625 acres, most recent use—radio relay station, bldg. and approx. 125 acres are unsuitable due to distance from flammable explosive material
GSA Number: 1–Z–OH–726B

Pennsylvania

Land—Tioga-Hammond Lakes

Mansfield Co: Tioga PA 16933—
Location: 2 miles northeast of Mansfield on State Route 58044
Landholding Agency: GSA
Property Number: 319120001
Status: Excess
Comment: approximately 10.82 acres, steep terrain, flowage easement
GSA Number: 4–D–PA–0699G

Puerto Rico

La Hueca–Naval Station
Roosevelt Roads
Vieques PR 00765—
Landholding Agency: GSA
Property Number: 549420006
Status: Excess
Comment: 323 acres, cultural site

Tennessee

Former Pumping Facility
Portion of Volunteer Army Ammunition Plant
Chickamauga Lake
Chattanooga Co: Hamilton TN 37402—
Landholding Agency: GSA
Property Number: 549630004
Status: Excess
Comment: 10.83 acres w/inactive pumping station, previously published as 219520031, 219013791, 219013880
GSA Number: 4–D–TN–594C

Texas

Fort Hood Training Area
Ft. Hood Co: Coryell TX
Landholding Agency: GSA
Property Number: 549640004
Status: Excess
Comment: 4.808 acres, most recent use—training area
GSA Number: 7–D–TX–496–CG

Virginia

4.619 (P) Atlantic Marine Ctr
561 Front Street
Norfolk VA 23510–
Landholding Agency: GSA
Property Number: 549620010
Status: Excess
Comment: 4.619 acres, most recent use—storage easement/lease restrictions, subject to Chesapeake Bay Preservation Act
GSA Number: 4–C–VA–712

Washington

Sandpoint Control Tower
Near 7600 Sandpoint Way, NE
Seattle Co: King WA 98115–
Landholding Agency: GSA
Property Number: 549440003
Status: Excess
Comment: 11.3 acres, w/deteriorated bldg, and parking lot
GSA Number: 9–C–WA–1069

Second Stadium Home Site
1701 Martin Luther King Blvd.
Seattle Co: King WA 98144–
Landholding Agency: GSA
Property Number: 549540008
Status: Excess
Comment: 1.5061 acres of unimproved land, most recent use—temporary storage for construction equipment
GSA Number: 9–GRI–WA–543

Suitable/To Be Excessed

Buildings (by State)

Massachusetts

Cuttyhunk Boathouse
South Shore of Cuttyhunk Pond
Gosnold Co: Dukes MA 02713–
Landholding Agency: DOT
Property Number: 879310001
Status: Unutilized
Comment: 2700 sq. ft., wood frame, one story, needs rehab, limited utilities, off-site use only.

Nauset Beach Light
Nauset Beach Co: Barnstable MA
Landholding Agency: DOT
Property Number: 879420001
Status: Unutilized
Comment: 48 foot tower, cylindrical cast iron, most recent use—aid to navigation

Plymouth Light
Co: Plymouth MA
Landholding Agency: DOT
Property Number: 879420003
Status: Unutilized
Comment: 250 sq. ft. tower, and 2096 sq. ft. dwelling, wood frame, most recent use—aid to navigation/housing

Light Tower, Highland Light
Near Rt. 6, 9 miles south of Race Point
North Truro Co: Barnstable MA 02652–
Landholding Agency: DOT
Property Number: 879430005
Status: Excess
Comment: 66 ft. tower, 14'9" diameter, brick structure, scheduled to be vacated 9/94

Keepers Dwelling
Highland Light
Near Rt. 6, 9 miles south of Race Point
North Truro Co: Barnstable MA 02652–
Landholding Agency: DOT
Property Number: 879430006
Status: Excess
Comment: 1160 sq. ft., 2-story wood frame, attached to light tower, scheduled to be vacated 9/94

Duplex Housing Unit
Highland Light
Near Rt. 6, 9 miles south of Race Point
North Truro Co: Barnstable MA 02652–
Landholding Agency: DOT
Property Number: 879430007
Status: Excess
Comment: 2 living units, 930 sq. ft. each, 1-story each, located on eroding ocean bluff, scheduled to be vacated 9/94

Nahant Towers
Nahant Co: Essex MA
Landholding Agency: DOT
Property Number: 879530001
Status: Unutilized
Comment: 196 sq. ft., 8-story observation tower

Michigan

Former C.G. Lightkeeper Sta.
Little Rapids Channel Project
St. Marys River
Sault Ste. Marie Co: Chippewa MI 49783–
Location: 3 miles east of downtown Sault Ste. Marie.
Landholding Agency: GSA
Property Number: 319011573
Status: Excess
Comment: 1411 sq. ft.; 2 story; wood frame on .62 acres; needs rehab; secured area with alternate access.

New York

Bldg. 1
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 189530048
Status: Excess
Comment: 4955 sq. ft., 2 story concrete block, needs rehab, most recent use—administration

Bldg. 2
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 189530049
Status: Excess
Comment: 1476 sq. ft., 1 story concrete block, needs rehab, most recent use—repair shop

Bldg. 6
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 189530050
Status: Excess
Comment: 2466 sq. ft., 1 story concrete block, needs rehab, most recent use—repair shop

Bldg. 11
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 189530051
Status: Excess
Comment: 1750 sq. ft., 1 story wood frame, needs rehab, most recent use—storage

Bldg. 8
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 189530052
Status: Excess
Comment: 1812 sq. ft., 1 story concrete block, needs rehab, most recent use—repair shop communications

Bldg. 14
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 189530053
Status: Excess
Comment: 156 sq. ft., 1 story wood frame, most recent use—vehicle fuel station

Bldg. 30
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 189530054
Status: Excess
Comment: 3649 sq. ft., 1 story, needs rehab, most recent use—assembly hall

Bldg. 31
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 189530055
Status: Excess
Comment: 8252 sq. ft., 1 story concrete block, most recent use—storage

Bldg. 32
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force

Property Number: 189530056
Status: Excess
Comment: 1627 sq. ft., 1 story concrete block, most recent use—storage

Oregon

Yaquina Head Lighthouse
860 Lighthouse Drive
Newport Co: Lincoln OR 97365–
Landholding Agency: DOT
Property Number: 879430003
Status: Underutilized
Comment: 300 sq. ft., tower and needs repair, 4.52 acres lighthouse area, historic property

Land (by State)

Michigan

U.S. Coast Guard—Air Station
Traverse City Co: Grand Traverse MI 49684–
Landholding Agency: DOT
Property Number: 879120099
Status: Underutilized
Comment: 21.7 acres, most recent use—helo landings

New York

14.90 Acres
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 189530057
Status: Excess
Comment: Fenced in compound, most recent use—Air Natl. Guard Communication & Electronics Group

Unsuitable Properties

Buildings (by State)

Alabama

Sand Island Light House
Gulf of Mexico
Mobile AL
Landholding Agency: GSA
Property Number: 549610001
Status: Excess
Reason: Other
Comment: Inaccessible
GSA Number: 4–U–AL–763

Dwelling A
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 879120001
Status: Excess
Reason: Floodway

Dwelling B
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 879120002
Status: Excess
Reason: Floodway

Oil House
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 879120003
Status: Excess
Reason: Floodway

Garage
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 879120004
Status: Excess
Reason: Floodway

Shop Building
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 879120005
Status: Excess
Reason: Floodway

Alaska

Bldg. 203
Tin City Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010296
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination

Bldg. 165
Sparrevohn Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010298
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination

Bldg. 150
Sparrevohn Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010299
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination

Bldg. 130
Sparrevohn Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010300
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination

Bldg. 306
King Salmon Airport
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010301
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 11–230
Elmendorf Air Force Base
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010303
Status: Unutilized
Reason: Secured Area, Contamination.

Bldg. 21–116
Elmendorf Air Force Base
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010304
Status: Unutilized
Reason: Secured Area, Contamination.

Bldg. 63–320
Elmendorf Air Force Base
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010307
Status: Unutilized
Reason: Secured Area, Contamination.

Bldg. 63–325
Elmendorf Air Force Base
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010308
Status: Unutilized
Reason: Secured Area, Contamination.

Bldg. 103
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010309
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 110
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010310
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 112
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010311
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road. Contamination.

Bldg. 113
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010312
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 114
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010313
Status: Unutilized

Bldg. 116
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010314
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 117
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010315
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 118
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010316
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 119
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010317
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 120
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010318
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 121
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010319
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 122
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010320
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 123
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010321
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 124
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010322
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 125
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010323
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 126
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010324
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 127
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010325
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 128
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010326
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 129
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010327
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 130
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010328
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 131
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010329
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 132
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010330
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 133
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010331
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 134
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010332
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 135
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010333
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 136
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010334
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 137
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010335
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 138
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010336
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 139
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010337
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 140
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010338
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 141
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010339
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 142
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010340
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 143
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010341
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 144
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010342
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 145
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010343
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 146
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010344
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 147
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010345
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 148
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010346
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 149
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010347
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 150
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010348
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 115
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010314
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 118
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010315
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 1018
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010317
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination

Bldg. 1025
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010318
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination

Bldg. 1055
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010319
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination

Bldg. 107
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010320
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination

Bldg. 115
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010321
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination

Bldg. 113
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010322
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination

Bldg. 150
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010323
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination

Bldg. 152
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010324
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination

Bldg. 301
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010325
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination

Bldg. 1001
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010326
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination

Bldg. 1003
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010327
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination

Bldg. 1055
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010328
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination

Bldg. 1056
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010329
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination

Bldg. 103
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010330
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination

Bldg. 104
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010331
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination

Bldg. 105
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010332
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination

Bldg. 110
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010333
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination

Bldg. 114
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010334
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination

Bldg. 202
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010335
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination

Bldg. 204
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010336
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination

Bldg. 205
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010337
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination

Bldg. 1001
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010338
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination

Bldg. 1015
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010339
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination

Bldg. 50
Cold Bay Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010433
Status: Unutilized
Reason: Secured Area, Not accessible by road
Comment: Isolated and remote; Arctic environment

Bldg. 1548, Galena Airport
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189420001
Status: Unutilized
Reason: Floodway, Secured Area, Extensive deterioration

Bldg. 1568, Galena Airport
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189420002
Status: Unutilized
Reason: Floodway, Secured Area, Extensive deterioration

Bldg. 1570, Galena Airport
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189420003
Status: Unutilized
Reason: Floodway, Secured Area, Extensive deterioration

Bldg. 1700, Galena Airport
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189420004
Status: Unutilized
Reason: Floodway, Secured Area, Extensive deterioration

Bldg. 1832, Galena Airport
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189420005
Status: Unutilized
Reason: Floodway, Secured Area, Extensive deterioration

Bldg. 1842, Galena Airport
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189420006
Status: Unutilized
Reason: Floodway, Secured Area, Extensive deterioration

Bldg. 1844, Galena Airport
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189420007
Status: Unutilized
Reason: Floodway, Secured Area, Extensive deterioration

Bldg. 1853, Galena Airport
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189440011
Status: Unutilized
Reason: Secured Area, Floodway

Bldg. 24–825
Elmendorf Air Force Base
Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189440012
Status: Unutilized
Reason: Secured Area, Within airport runway clear zone

Bldg. 24–820
Elmendorf Air Force Base
Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189440013
Status: Unutilized
Reason: Secured Area, Within airport runway clear zone

Bldg. 21–878
Elmendorf Air Force Base
Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189440014
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 10–480
Elmendorf Air Force Base
Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189440015
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 142
Tin City Long Range Radar Site
Wales Co: Nome AK
Landholding Agency: Air Force
Property Number: 189520013
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 110
Tin City Long Range Radar Site
Wales Co: Nome AK
Landholding Agency: Air Force
Property Number: 189520014
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 646
King Salmon Airport
Naknek Co: Bristol Bay AK
Landholding Agency: Air Force
Property Number: 189520015
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 2541
Galena Airport
Galena Co: Yukon AK
Landholding Agency: Air Force
Property Number: 189520016
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 1770
Galena Airport
Galena Co: Yukon AK
Landholding Agency: Air Force
Property Number: 189520017
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 1
Lonely Dewline Site
Fairbanks Co: Fairbanks NS AK
Landholding Agency: Air Force
Property Number: 189520024
Status: Unutilized
Reason: Extensive deterioration

Bldg. 2
Lonely Dewline Site
Fairbanks Co: Fairbanks NS AK
Landholding Agency: Air Force
Property Number: 189520025
Status: Unutilized
Reason: Extensive deterioration, Not accessible by road

Bldg. 12
Lonely Dewline Site
Fairbanks Co: Fairbanks NS AK
Landholding Agency: Air Force
Property Number: 189520026
Status: Unutilized
Reason: Extensive deterioration, Not accessible by road

Bldg. 1
Wainwright Dewline Site
Fairbanks Co: Fairbanks NS AK
Landholding Agency: Air Force
Property Number: 189520027
Status: Unutilized
Reason: Extensive deterioration

Bldg. 2
Wainwright Dewline Site
Fairbanks Co: Fairbanks NS AK
Landholding Agency: Air Force
Property Number: 189520028
Status: Unutilized
Reason: Extensive deterioration, Not accessible by road

Bldg. 3
Wainwright Dewline Site
Fairbanks Co: Fairbanks NS AK
Landholding Agency: Air Force
Property Number: 189520029
Status: Unutilized
Reason: Extensive deterioration, Not accessible by road

Bldg. 3024
Tatalina Long Range Radar Site
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189530001
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 3045
Tatalina Long Range Radar Site

Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189530002
Status: Unutilized
Reason: Secured Area, Extensive deterioration
Bldg. 18
Lonely Dewline Site
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189530003
Status: Unutilized
Reason: Secured Area, Extensive deterioration
Bldg. 23
Lonely Dewline Site
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189530004
Status: Unutilized
Reason: Secured Area, Extensive deterioration
Bldg. 1015
Kotzebue Long Range Radar Site
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189530005
Status: Unutilized
Reason: Secured Area, Extensive deterioration
Bldg. 1
Flaxman Island DEW Site
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189530006
Status: Unutilized
Reason: Secured Area, Extensive deterioration
Bldg. 2
Flaxman Island DEW Site
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189530007
Status: Unutilized
Reason: Secured Area, Extensive deterioration
Bldg. 3
Flaxman Island DEW Site
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189530008
Status: Unutilized
Reason: Secured Area, Extensive deterioration
Bldg. 4100
Cape Romanzof Long Range Radar Site
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189530009
Status: Unutilized
Reason: Secured Area, Extensive deterioration
Bldg. 200
Cape Newenham Long Range Radar Site
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189530010
Status: Unutilized
Reason: Secured Area, Extensive deterioration
Bldg. 2166
Cape Newenham Long Range Radar Site
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189530011
Status: Unutilized
Reason: Extensive deterioration
Bldg. 5500
Cape Newenham Long Range Radar Site
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189530012
Status: Unutilized
Reason: Secured Area, Extensive deterioration
Bldg. 8
Barter Island
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189530013
Status: Unutilized
Reason: Secured Area, Extensive deterioration
Bldg. 75
Barter Island
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189530014
Status: Unutilized
Reason: Secured Area, Extensive deterioration
Bldg. 86
Barter Island
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189530015
Status: Unutilized
Reason: Secured Area, Extensive deterioration
Bldg. 3060
Barter Island
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189530016
Status: Unutilized
Reason: Secured Area, Extensive deterioration
Bldg. 11–330
Elmendorf Air Force Base
Anchorage AK 99506–3240
Landholding Agency: Air Force
Property Number: 189530017
Status: Unutilized
Reason: Within airport runway clear zone, Secured Area, Extensive deterioration
Bldg. 11–490
Elmendorf Air Force Base
Anchorage AK 99506–3240
Landholding Agency: Air Force
Property Number: 189530018
Status: Unutilized
Reason: Within airport runway clear zone, Secured Area, Extensive deterioration
Bldg. 21–870
Elmendorf Air Force Base
Anchorage AK 99506–3240
Landholding Agency: Air Force
Property Number: 189530019
Status: Unutilized
Reason: Secured Area
Bldg. 22–010
Elmendorf Air Force Base
Anchorage AK 99506–3240
Landholding Agency: Air Force
Property Number: 189530020
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration
Bldg. 24–811
Elmendorf Air Force Base
Anchorage AK 99506–3240
Landholding Agency: Air Force
Property Number: 189530021
Status: Unutilized
Reason: Within airport runway clear zone, Secured Area, Extensive deterioration
Bldg. 31–342
Elmendorf Air Force Base
Anchorage AK 99506–3240
Landholding Agency: Air Force
Property Number: 189530022
Status: Unutilized
Reason: Secured Area, Extensive deterioration
Bldg. 32–126
Elmendorf Air Force Base
Anchorage AK 99506–3240
Landholding Agency: Air Force
Property Number: 189530023
Status: Unutilized
Reason: Within airport runway clear zone, Secured Area, Extensive deterioration
Bldg. 32–129
Elmendorf Air Force Base
Anchorage AK 99506–3240
Landholding Agency: Air Force
Property Number: 189530024
Status: Unutilized
Reason: Within airport runway clear zone, Secured Area, Extensive deterioration
Bldg. 42–350
Elmendorf Air Force Base
Anchorage AK 99506–3240
Landholding Agency: Air Force
Property Number: 189530025
Status: Unutilized
Reason: Within airport runway clear zone, Secured Area, Extensive deterioration
Bldg. 44–775
Elmendorf Air Force Base
Anchorage AK 99506–3240
Landholding Agency: Air Force
Property Number: 189530026
Status: Unutilized
Reason: Within airport runway clear zone, Secured Area, Extensive deterioration
Bldg. 73–402
Elmendorf Air Force Base
Anchorage AK 99506–3240
Landholding Agency: Air Force
Property Number: 189530027
Status: Unutilized
Reason: Within airport runway clear zone, Secured Area
Bldg. 73–403
Elmendorf Air Force Base
Anchorage AK 99506–3240
Landholding Agency: Air Force
Property Number: 189530028
Status: Unutilized
Reason: Within airport runway clear zone, Secured Area, Extensive deterioration
Bldg. 21–737
Elmendorf Air Force Base
Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189540001
Status: Unutilized
Reason: Secured Area, Extensive deterioration
Bldg. 23–990
Elmendorf AFB

Anchorage AK 99506–3240
Landholding Agency: Air Force
Property Number: 189630034
Status: Unutilized
Reason: Within airport runway clear zone, Floodway, Secured Area, Extensive deterioration
Bldg. 25–001
Elmendorf Air Force Base
Anchorage AK 99506–3240
Landholding Agency: Air Force
Property Number: 189710005
Status: Unutilized
Reason: Secured Area
Bldg. 25–002
Elmendorf Air Force Base
Anchorage AK 99506–3240
Landholding Agency: Air Force
Property Number: 189710006
Status: Unutilized
Reason: Secured Area
Bldg. 25–003
Elmendorf Air Force Base
Anchorage AK 99506–3240
Landholding Agency: Air Force
Property Number: 189710007
Status: Unutilized
Reason: Secured Area
Bldg. 25–004
Elmendorf Air Force Base
Anchorage AK 99506–3240
Landholding Agency: Air Force
Property Number: 189710008
Status: Unutilized
Reason: Secured Area
Bldg. 25–005
Elmendorf Air Force Base
Anchorage AK 99506–3240
Landholding Agency: Air Force
Property Number: 189710009
Status: Unutilized
Reason: Secured Area
Bldg. 25–010
Elmendorf Air Force Base
Anchorage AK 99506–3240
Landholding Agency: Air Force
Property Number: 189710010
Status: Unutilized
Reason: Secured Area
Bldg. 25–011
Elmendorf Air Force Base
Anchorage AK 99506–3240
Landholding Agency: Air Force
Property Number: 189710011
Status: Unutilized
Reason: Secured Area
Bldg. 25–019
Elmendorf Air Force Base
Anchorage AK 99506–3240
Landholding Agency: Air Force
Property Number: 189710012
Status: Unutilized
Reason: Secured Area
Bldg 25–300
Elmendorf Air Force Base
Anchorage AK 99506–3240
Landholding Agency: Air Force
Property Number: 189710013
Status: Unutilized
Reason: Secured Area
Unalakleet Health Clinic (Former)
Unalakleet AK 99684–
Landholding Agency: GSA
Property Number: 549620007
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 9–F–AK–748
USCG MSD Office (2 buildings)
2958 Tongass Avenue
Ketchikan Co: Ketchikan AK 99901–
Landholding Agency: GSA
Property Number: 879130004
Status: Excess
Reason: Extensive deterioration
Bldg. 28
USCG Support Center
Kodiak Co: Kodiak Island AK 99619–5000
Landholding Agency: DOT
Property Number: 879210126
Status: Excess
Reason: Within airport runway clear zone, Secured Area
Bldg. 24
USCG Support Center
Kodiak Co: Kodiak Island AK 99619–5000
Landholding Agency: DOT
Property Number: 879210127
Status: Excess
Reason: Within airport runway clear zone, Secured Area, Within 2000 ft. of flammable or explosive material
Bldg. 19
USCG Support Center
Kodiak Co: Kodiak Island AK 99619–5000
Landholding Agency: DOT
Property Number: 879210128
Status: Excess
Reason: Within airport runway clear zone, Secured Area, Other
Comment: Extensive deterioration
Bldg. 94
USCG Support Center
Kodiak Co: Kodiak Island AK 99619–5000
Landholding Agency: DOT
Property Number: 879210129
Status: Excess
Reason: Secured Area, Other
Comment: Extensive deterioration
Bldg. 18
USCG Support Center
Kodiak Co: Kodiak Island AK 99619–5000
Landholding Agency: DOT
Property Number: 879210132
Status: Excess
Reason: Secured Area, Within airport runway clear zone
GSA Number: U–ALAS–655A
Bldg. A512
USCG Support Center
Kodiak Co: Kodiak Island AK 99619–5000
Landholding Agency: DOT
Property Number: 879210133
Status: Excess
Reason: Secured Area, Within airport runway clear zone, Within 2000 ft. of flammable or explosive material
Bldg. R1, Holiday Beach
U.S. Coast Guard Support Center
Kodiak Co: Kodiak Island AK 99619–5014
Landholding Agency: DOT
Property Number: 879310014
Status: Unutilized
Reason: Secured Area
Bldg. S–3
U.S. Coast Guard Support Center
Kodiak Co: Kodiak Island AK 99619–5014
Landholding Agency: DOT
Property Number: 879310015
Status: Unutilized
Reason: Secured Area
Bldg. S–16
U.S. Coast Guard Support Center
Kodiak Co: Kodiak Island AK 99619–5014
Landholding Agency: DOT
Property Number: 879310016
Status: Unutilized
Reason: Secured Area
Bldg. 82
U.S. Coast Guard Support Center
Kodiak Co: Kodiak Island AK 99619–5014
Landholding Agency: DOT
Property Number: 879310017
Status: Unutilized
Reason: Secured Area
Bldg. 86
U.S. Coast Guard Support Center
Kodiak Co: Kodiak Island AK 99619–5014
Landholding Agency: DOT
Property Number: 879310018
Status: Unutilized
Reason: Secured Area
Bldg. 98
U.S. Coast Guard Support Center
Kodiak Co: Kodiak Island AK 99619–5014
Landholding Agency: DOT
Property Number: 879310019
Status: Unutilized
Reason: Secured Area
Bldg. 524A
U.S. Coast Guard Support Center
Kodiak Co: Kodiak Island AK 99619–5014
Landholding Agency: DOT
Property Number: 879310020
Status: Unutilized
Reason: Within airport runway clear zone, Secured Area
Bldg. 624
U.S. Coast Guard Support Center
Kodiak Co: Kodiak Island AK 99619–5014
Landholding Agency: DOT
Property Number: 879310021
Status: Unutilized
Reason: Within airport runway clear zone, Secured Area
Housing Ketchikan (Naushon UPH)
3615 Baranof Avenue
Ketchikan Co: Ketchikan AK 99801–
Landholding Agency: DOT
Property Number: 879320005
Status: Unutilized
Reason: Extensive deterioration
Old Petersburg Moorings
Cannery Wharf
Petersburg AK 99833–
Landholding Agency: DOT
Property Number: 879330002
Status: Unutilized
Reason: Extensive deterioraiton
Building. 408–B
USCG Support Center Kodiak
Kodiak Co: Kodiak Island AK 99619–
Landholding Agency: DOT
Property Number: 879640001
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Arizona

Facility 90002
Holbrook Radar Site
Holbrook Co: Navajo AZ 86025–

Landholding Agency: Air Force
Property Number: 189340049
Status: Unutilized
Reason: Within airport runway clear zone

Facility #41
Gila Bend AF Auxiliary Field
Gila Bend Co: Maricopa AZ
Landholding Agency: Air Force
Property Number: 189710002
Status: Unutilized
Reason: Secured Area

Clifton Administrative Site
Clifton Co: Greenlee AZ 85533–
Landholding Agency: GSA
Property Number: 549640006
Status: Excess
Reason: Floodway
GSA Number: 9–A–AZ–0797

Arkansas

Fort Smith USAR Center
1218 South A Street
Fort Smith Co: Sebastian AR 72901–
Landholding Agency: GSA
Property Number: 219014928
Status: Excess
Reason: Extensive deterioration
GSA Number: 7–D–AR–551

California

Bldg. 4052
March AFB
Ice House in West March
Riverside Co: Riverside CA 92518–
Landholding Agency: Air Force
Property Number: 189010082
Status: Unutilized
Reason: Within airport runway clear zone

Bldg. 1182 60 ABG/DE
Travis Air Force Base
Perimeter Road
Travis AFB Co: Solano CA 94535–5496
Landholding Agency: Air Force
Property Number: 189010188
Status: Unutilized
Reason: Within airport runway clear zone, Secured Area

Bldg. 152 60 ABG/DE
Travis Air Force Base
Broadway Street
Travis AFB Co: Solano CA 94535–5496
Landholding Agency: Air Force
Property Number: 189010190
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 159 60 ABG/DE
Travis Air Force Base
Broadway Street
Travis AFB Co: Solano CA 94535–5496
Landholding Agency: Air Force
Property Number: 189010191
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 384 60 ABG/DE
Travis Air Force Base
Broadway Street
Travis AFB Co: Solano CA 94535–5496
Landholding Agency: Air Force
Property Number: 189010192
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 707 63 ABG/DE
Norton Air Force Base
Norton Co: San Bernadino CA 92409–5045
Landholding Agency: Air Force
Property Number: 189010193
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 575 63 ABG/DE
Norton Air Force Base
Norton Co: San Bernadino CA 92409–5045
Landholding Agency: Air Force
Property Number: 189010195
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 502 63 ABG/DE
Norton Air Force Base
Norton Co: San Bernadino CA 92409–5045
Landholding Agency: Air Force
Property Number: 189010196
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 23 63 ABG/DE
Norton Air Force Base
Norton Co: San Bernadino CA 92409–5045
Landholding Agency: Air Force
Property Number: 189010197
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 100
Point Arena Air Force Station
(See County) Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010233
Status: Unutilized
Reason: Secured Area.

Bldg. 101
Point Arena Air Force Station
(See County) Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010234
Status: Unutilized
Reason: Secured Area.

Bldg. 116
Point Arena Air Force Station
(See County) Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010235
Status: Unutilized
Reason: Secured Area.

Bldg. 202
Point Arena Air Force Station
(See County) Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010236
Status: Unutilized
Reason: Secured Area.

Bldg. 201
Vandenberg Air Force Base
Point Arguello
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Landholding Agency: Air Force
Property Number: 189010546
Status: Unutilized
Reason: Secured Area.

Bldg. 202
Vandenberg Air Force Base
Point Arguello
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Landholding Agency: Air Force
Property Number: 189010547
Status: Unutilized
Reason: Secured Area.

Bldg. 203
Vandenberg Air Force Base
Point Arguello
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Landholding Agency: Air Force
Property Number: 189010548
Status: Unutilized
Reason: Secured Area.

Bldg. 204
Vandenberg Air Force Base
Point Arguello
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn
Landholding Agency: Air Force
Property Number: 189010549
Status: Unutilized
Reason: Secured Area

Bldg. 1823
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito CYN
Landholding Agency: Air Force
Property Number: 189130360
Status: Excess
Reason: Secured Area, Within 2000 ft. of flammable or explosive material

Bldg. 10312
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189210026
Status: Unutilized
Reason: Secured Area

Bldg. 10503
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189210028
Status: Unutilized
Reason: Secured Area

Bldg. 16104, Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Hwy 1, Hwy 246, Coast Rd., Pt Sal Rd.; Miguelito Cyn
Landholding Agency: Air Force
Property Number: 189230020
Status: Underutilized
Reason: Secured Area

Bldg. 5428, Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189310015
Status: Unutilized
Reason: Secured Area

Bldg. 5430, Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189310016

Status: Unutilized
Reason: Secured Area

Bldg. 6407, Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189310024
Status: Unutilized
Reason: Secured Area

Bldg. 6425, Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189310027
Status: Unutilized
Reason: Secured Area

Bldg. 6444, Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189310028
Status: Unutilized
Reason: Secured Area

Bldg. 7304, Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency : Air Force
Property Number: 189310030
Status: Unutilized
Reason: Secured Area

Bldg. 13010, Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189310036
Status: Unutilized
Reason: Secured Area

Bldg. 8215
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189330016
Status: Unutilized
Reason: Secured Area

Bldg. 8220
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189330019
Status: Unutilized
Reason: Secured Area

Bldg. 9001
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189330028
Status: Unutilized
Reason: Extensive deterioration, Secured Area

Bldg. 13025
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189330032
Status: Unutilized
Reason: Secured Area

Bldg. 1988
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340003
Status: Unutilized
Reason: Other Secured Area
Comment: Electrical Power Generator Bldg.

Bldg. 1324
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340006
Status: Unutilized
Reason: Secured Area

Bldg. 1341
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340007
Status: Unutilized
Reason: Secured Area

Bldg. 1955
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340008
Status: Unutilized
Reason: Secured Area

Bldg. 5007
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340009
Status: Unutilized
Reason: Secured Area

Bldg. 6008
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340014
Status: Unutilized
Reason: Secured Area

Bldg. 6418
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340015
Status: Unutilized
Reason: Secured Area

Bldg. 6442
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340019
Status: Unutilized
Reason: Secured Area

Bldg. 6443
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340020
Status: Unutilized
Reason: Secured Area

Bldg. 7301
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340021
Status: Unutilized
Reason: Secured Area

Bldg. 7306
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340022
Status: Unutilized
Reason: Secured Area

Bldg. 11190
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340025
Status: Unutilized
Reason: Secured Area

Bldg. 16164
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340028
Status: Unutilized
Reason: Secured Area

Bldg. 6521
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189410004
Status: Unutilized
Reason: Secured Area

Bldg. 501
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189420008
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 1203
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189440001
Status: Unutilized
Reason: Secured Area

Bldg. 11183
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189440005
Status: Unutilized
Reason: Secured Area

Bldg. 11219
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189440006
Status: Unutilized
Reason: Secured Area

Bldg. 11238
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189440007
Status: Unutilized
Reason: Secured Area

Bldg. 6348
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–

Landholding Agency: Air Force
Property Number: 189510020
Status: Unutilized
Reason: Secured Area

Bldg. 908
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189520018
Status: Excess
Reason: Other
Comment: Detached Latrine

Bldg. 13002
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189520021
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 13004
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189520022
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 422
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189530029
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 431
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189530030
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 470
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189530031
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 480
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189530032
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 508
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189530033
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 951
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189530034
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 6011
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189530035
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 6520
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189530036
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 6606
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189530037
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 7200
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189530038
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 7307
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189530039
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 10717
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189530041
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 10722
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189530043
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 13213
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189530044
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 13215
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189530045
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 893
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189620028
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 3193
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189620029
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 9350
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189620030
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 13003
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189620031
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 1322
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189620032
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 16197
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189620033
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 611
Vandenberg AFB

Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189630039
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 815
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189630040
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 1850
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189630041
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 1853
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189630042
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 1856
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189630043
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 1865
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189630044
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 1874
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189630045
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 1875
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189630046
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 1877
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189630047
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 1879
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189630048
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 1885
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189630049
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 1898
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189630050
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 06440
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189630051
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 06445
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189630052
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 06830
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189630053
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 13016
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189630054
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 21160
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189630055
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 00350
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189630058
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Cape Mendocino Lighthouse
Capetown Co: Humboldt CA
Landholding Agency: GSA
Property Number: 549540004
Status: Excess
Reason: Other, Secured Area
Comment: Structural deficiencies
GSA Number: 9–U–CA–622–B

National Weather Service Ofc.
Kern County Airport
Bakersfield Co: Kern CA
Landholding Agency: GSA
Property Number: 549640011
Status: Excess
Reason: Within airport runway clear zone
GSA Number: 9–C–CA–1481

10 Bldg.
USCG Station Humboldt Bay
Samoa Co: Humboldt CA 95564–9999
Landholding Agency: DOT
Property Number: 879440027
Status: Excess
Reason: Extensive deterioration
Comment: Land to be relinquished to BLM (Public Domain Land)

Colorado

Bldg. 00910
"Blue-Barn"—Falcon Air Force Base
Falcon Co: El Paso CO 80912–
Landholding Agency: Air Force
Property Number: 189530046
Status: Underutilized
Reason: Secured Area

Alemeda Facility
350 S. Santa Fe Drive
Denver Co: Denver CO 80223–
Landholding Agency: DOT
Property Number: 879010014
Status: Unutilized
Reason: Other environmental
Comment: contamination

Connecticut

Bldg. 10053
Bradley International Airport
East Granby Co: Hartford CT 06026–9309
Landholding Agency: Air Force
Property Number: 189640001
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material—Extensive deterioration

Bldg. 13
Bradley International Airport
East Granby Co: Hartford CT 06026–9309
Landholding Agency: Air Force
Property Number: 189640002
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material—Secured Area

Bldg. 10
Bradley International Airport

East Granby Co: Hartford CT 06026–9309
Landholding Agency: Air Force
Property Number: 189640003
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material—Secured Area

Bldg. 5
Bradley International Airport
East Granby Co: Hartford CT 06026–9309
Landholding Agency: Air Force
Property Number: 189640004
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 4
Bradley International Airport
East Granby Co: Hartford CT 06026–9309
Landholding Agency: Air Force
Property Number: 189640005
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Falkner Island Light
U.S. Coast Guard
Guilford Co: New Haven CT 06512–
Landholding Agency: DOT
Property Number: 879240031
Status: Unutilized
Reason: Floodway

Delaware

Bldg. 1304 (436 CSG)
Dover Air Force Base
Dover Co: Kent DE 19902–5065
Landholding Agency: Air Force
Property Number: 189140018
Status: Unutilized
Reason: Secured Area, Within airport runway clear zone

Delaware Breakwater Light
Lewes Co: Sussex DE 19958–
Landholding Agency: GSA
Property Number: 549640007
Status: Excess
Reason: Other
Comment: Inaccessible
GSA Number: 4–U–DE–460

Florida

Bldg. 1179
Patrick Air Force Base
1179 School Avenue
Co: Brevard FL 32935–
Landholding Agency: Air Force
Property Number: 189240030
Status: Unutilized
Reason: Secured Area, Other
Comment: Extensive Deterioration

Bldg. 575
Patrick Air Force Base
Co: Brevard FL 32935–
Landholding Agency: Air Force
Property Number: 189320004
Status: Unutilized
Reason: Secured Area, Within 2000 ft. of flammable or explosive material, Within airport runway clear zone, Other
Comment: Extensive Deterioration

Bldg. 184, MacDill AFB
MacDill AFB Co: Hillsbourgh FL 33608–
Landholding Agency: Air Force
Property Number: 189320100
Status: Unutilized
Reason: Extensive deterioration

Facility 90523
Cape Canaveral AFS
Cape Canaveral AFS Co: Brevard FL
Landholding Agency: Air Force
Property Number: 189330001
Status: Underutilized
Reason: Secured Area

Bldg. 921
Patrick Air Force Base
Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 189430002
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Facility 01676V
Cape Canaveral AFS
Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 189430003
Status: Unutilized
Reason: Secured Area

Bldg. 2613
Tyndall Air Force Base
Panama City Co: Bay FL 32403–
Landholding Agency: Air Force
Property Number: 189430004
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 2625
Tyndall Air Force Base
Panama City Co: Bay FL 32403–
Landholding Agency: Air Force
Property Number: 189430005
Status: Unutilized
Reason: Extensive deterioration, Secured Area

Bldg. 2639
Tyndall Air Force Base
Panama City Co: Bay FL 32403–
Landholding Agency: Air Force
Property Number: 189430006
Status: Unutilized
Reason: Extensive deterioration, Secured Area

Bldg. 2642
Tyndall Air Force Base
Panama City Co: Bay FL 32403–
Landholding Agency: Air Force
Property Number: 189430007
Status: Unutilized
Reason: Secured Area, Extensive deterioration

23 Family Housing
MacDill Auxiliary Airfield No. 1
Avon Park Co: Polk FL 33825–
Location: Include Bldgs: 448, 451 thru 470, 472 and 474
Landholding Agency: Air Force
Property Number: 189520006
Status: Excess
Reason: Within airport runway clear zone

Bldg. 240
MacDill Auxiliary Airfield No. 1
Avon Park Co: Polk FL 33825–
Landholding Agency: Air Force
Property Number: 189520007
Status: Excess
Reason: Extensive deterioration

Bldg. 243
Eglin Air Force Base
Eglin AFB Co: Okaloosa FL 32542–5000
Landholding Agency: Air Force
Property Number: 189540002
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 510
Eglin Air Force Base
Eglin AFB Co: Okaloosa FL 32542–5000
Landholding Agency: Air Force
Property Number: 189540003
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 521
Eglin Air Force Base
Eglin AFB Co: Okaloosa FL 32542–5000
Landholding Agency: Air Force
Property Number: 189540004
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 872
Eglin Air Force Base
Eglin AFB Co: Okaloosa FL 32542–5000
Landholding Agency: Air Force
Property Number: 189540005
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 30004
Eglin Air Force Base
Eglin AFB Co: Okaloosa FL 32542–5000
Landholding Agency: Air Force
Property Number: 189540006
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 12513
Eglin Air Force Base
Eglin AFB Co: Okaloosa FL 32542–5000
Landholding Agency: Air Force
Property Number: 189540007
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 538, Patrick AFB
Cocoa Beach Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 189630056
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 1487, Patrick AFB
Cocoa Beach Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 189630057
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Facility 36901
Cape Canaveral Air Station
Cape Canaveral Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 189640006
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Facility 8816
Cape Canaveral Air Station
Cape Canaveral Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 189640007
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Facility 02
Melbourne Beach Tracking Annex
Melbourne Beach Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 189640008
Status: Unutilized
Reason: Secured Area

Facility 03
Melbourne Beach Tracking Annex
Melbourne Beach Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 189640009
Status: Unutilized
Reason: Secured Area

Bldg. 231, Patrick AFB
Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 189640010
Status: Unutilized
Reason: Secured Area

Bldg. 12734, Eglin AFB
Eglin AFB Co: Okaloosa FL 32542–5133
Landholding Agency: Air Force
Property Number: 189640011
Status: Unutilized
Reason: Secured Area

Bldg. 12708, Eglin AFB
Eglin AFB Co: Okaloosa FL 32542–5133
Landholding Agency: Air Force
Property Number: 189640012
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. #3, Recreation Cottage
USCG Station
Marathon Co: Monroe FL 33050–
Landholding Agency: DOT
Property Number: 879210008
Status: Unutilized
Reason: Secured Area, Floodway

Bldg. 103, Trumbo Point
Key West Co: Monroe FL 33040–
Landholding Agency: DOT
Property Number: 879230001
Status: Unutilized
Reason: Floodway, Secured Area

Exchange Building
St. Petersburg Co: Pinellas FL 33701–
Landholding Agency: DOT
Property Number: 879410004
Status: Unutilized
Reason: Floodway

9988 Keepers Quarters A
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 879440009
Status: Underutilized
Reason: Secured Area, Floodway

9989 Keepers Quarters B
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 879440010
Status: Underutilized
Reason: Secured Area, Floodway

9990 Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 879440011
Status: Underutilized
Reason: Secured Area, Floodway

9991 Plant Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 879440012
Status: Underutilized
Reason: Secured Area, Floodway

9992 Shop Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 879440013
Status: Underutilized
Reason: Secured Area, Floodway

9993 Admin. Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 879440014
Status: Underutilized
Reason: Secured Area, Floodway

9994 Water Pump Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 879440015
Status: Underutilized
Reason: Secured Area, Floodway

Storage Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 879440016
Status: Underutilized
Reason: Secured Area, Floodway

9999 Water Storage Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 879440017
Status: Underutilized
Reason: Secured Area, Floodway

3 Bldgs. and Land
Peanut Island Station
Riveria Beach Co: Palm Beach FL 33419–0909
Landholding Agency: DOT
Property Number: 879510009
Status: Unutilized
Reason: Secured Area, Floodway

Cape St. George Lighthouse
Co: Franklin FL 32328–
Landholding Agency: DOT
Property Number: 879640002
Status: Unutilized
Reason: Extensive deterioration

Georgia

Coast Guard Station
St. Simons Island
Co: Glynn GA 31522–0577
Landholding Agency: DOT
Property Number: 879540002
Status: Unutilized
Reason: Extensive deterioration

Idaho

Bldg. 1012
Mountain Home Air Force Base
7th Avenue
(See County) Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 189030004
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 923
Mountain Home Air Force Base
7th Avenue
(See County) Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 189030005
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 604
Mountain Home Air Force Base
Pine Street
(See County) Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 189030006
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 229
Mt. Home Air Force Base
1st Avenue and A Street
Mt. Home AFB Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 189040857
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone

Bldg. 4403
Mountain Home Air Force Base
Mountain Home Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 189520008
Status: Unutilized
Reason: Extensive deterioration

Illinois

Bldg. 3191
Scott Air Force Base
East Drive 375/ABG/DE
Scott AFB Co: St. Clair IL 62225–5001
Landholding Agency: Air Force
Property Number: 189010247
Status: Unutilized
Reason: Within airport runway clear zone, Secured Area

Bldg. 3670
Scott Air Force Base
East Drive 375 ABG/DE
Scott AFB Co: St. Clair IL 62225–5001
Landholding Agency: Air Force
Property Number: 189010248
Status: Unutilized
Reason: Secured Area

Bldg. 503
Scott Air Force Base
Scott AFB Co: St. Clair IL 62225–
Landholding Agency: Air Force
Property Number: 189010725
Status: Unutilized
Reason: Secured Area

Bldg. 869
Scott Air Force Base
375 CSG/DEER
Scott AFB Co: St. Clair IL 62225–5045
Landholding Agency: Air Force
Property Number: 189110087
Status: Unutilized
Reason: Secured Area

Bldg. 865
Scott Air Force Base
Belleville Co: St. Clair IL 62225–
Landholding Agency: Air Force
Property Number: 189130347
Status: Unutilized

Reason: Secured Area

Parcel 1
Portion Former Lock & Dam 51
Golconda Co: Pope IL 62938–
Landholding Agency: GSA
Property Number: 549610010
Status: Excess
Reason: Extensive deterioration
GSA Number: 2–D–IL–703

Calumet Harbor Station
U.S. Coast Guard
Chicago Co: Cook IL
Landholding Agency: DOT
Property Number: 879310005
Status: Excess
Reason: Secured Area

Indiana

Coast Guard Housing
5 Houses
Dana Co: Vermillion IN 47847–
Landholding Agency: GSA
Property Number: 549620011
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 1–U–IN–505D

Iowa

Bldg. 00671
Sioux Gateway Airport
Sioux Co: Woodbury IA 51110–
Landholding Agency: Air Force
Property Number: 189310009
Status: Unutilized
Reason: Other
Comment: Fuel pump station

Bldg. 00736
Sioux Gateway Airport
Sioux Co: Woodbury IA 51110–
Landholding Agency: Air Force
Property Number: 189310010
Status: Unutilized
Reason: Other
Comment: Pump station

Kansas

Bldg. 1407
McConnell Air Force Base
Wichita Co: Sedgwick KS 67221–
Landholding Agency: Air Force
Property Number: 189340029
Status: Unutilized
Reason: Within airport runway clear zone, Secured Area

Bldg. 186
McConnell Air Force Base
Wichita Co: Sedgwick KS 67221–
Landholding Agency: Air Force
Property Number: 189340030
Status: Unutilized
Reason: Extensive deterioration, Secured Area

Bldg. 187
McConnell Air Force Base
Wichita Co: Sedgwick KS 67221–
Landholding Agency: Air Force
Property Number: 189340031
Status: Unutilized
Reason: Extensive deterioration, Secured Area

Louisiana

Bldg. 3477
Barksdale Air Force Base
Davis Avenue
Barksdale AFB Co: Bossier LA 71110–5000
Landholding Agency: Air Force
Property Number: 189140015
Status: Unutilized
Reason: Secured Area

Maine

Supply Bldg., Coast Guard
Southwest Harbor
Southwest Harbor Co: Hancock ME 04679–5000
Landholding Agency: DOT
Property Number: 879240005
Status: Unutilized
Reason: Floodway

Base Exchange, Coast Guard
Southwest Harbor
Southwest Harbor Co: Hancock ME 04679–5000
Landholding Agency: DOT
Property Number: 879240006
Status: Unutilized
Reason: Floodway

Engineering Shop, Coast Guard
Southwest Harbor
Southwest Harbor Co: Hancock ME 04679–5000
Landholding Agency: DOT
Property Number: 879240007
Status: Unutilized
Reason: Floodway

Storage Bldg., Coast Guard
Southwest Harbor
Southwest Harbor Co: Hancock ME 04679–5000
Landholding Agency: DOT
Property Number: 879240008
Status: Unutilized
Reason: Floodway

Squirrel Point Light
U.S. Coast Guard
Phippsburg Co: Sayadahoc ME 04530–
Landholding Agency: DOT
Property Number: 879240032
Status: Unutilized
Reason: Floodway

Keepers Dwelling
Heron Neck Light, U.S. Coast Guard
Vinalhaven Co: Knox ME 04841–
Landholding Agency: DOT
Property Number: 879240035
Status: Unutilized
Reason: Extensive deterioration

Fort Popham Light
Phippsburg Co: Sagadahoc ME 04562–
Landholding Agency: DOT
Property Number: 879320024
Status: Unutilized
Reason: Extensive deterioration

Nash Island Light
U.S. Coast Guard
Addison Co: Washington ME 04606–
Landholding Agency: DOT
Property Number: 879420005
Status: Unutilized
Reason: Other
Comment: Inaccessible

Bldg.—South Portland Base
U.S. Coast Guard
S. Portland Co: Cumberland ME 04106–
Landholding Agency: DOT
Property Number: 879420006
Status: Unutilized
Reason: Secured Area

Garage—Boothbay Harbor Stat.
Boothbay Harbor Co: Lincoln ME 04538–
Landholding Agency: DOT
Property Number: 879430001
Status: Unutilized
Reason: Secured Area

Maryland

Upper Waldorf Field Site
Rt. 228—Bensville Rd.
Waldorf Co: Charles MD 20601–
Landholding Agency: GSA
Property Number: 549630013
Status: Excess
Reason: Extensive deterioration
GSA Number: 4–N–MD–0587

Fishing Battery Lighthouse
Havre De Grace Co: Harford MD 21078–
Landholding Agency: GSA
Property Number: 549640008
Status: Excess
Reason: Extensive deterioration
GSA Number: 4–U–MD–589

Bldgs. 38–39, 41, 43–46, 56
U.S. Coast Guard Yard
Baltimore MD 21226–
Landholding Agency: DOT
Property Number: 879540005
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 53
U.S. Coast Guard Yard
Baltimore MD 21226–
Landholding Agency: DOT
Property Number: 879540006
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 6
U.S. Coast Guard Yard, 2401 Hawkins Point Rd.
Baltimore MD 21226–1797
Landholding Agency: DOT
Property Number: 879620001
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 59
U.S. Coast Guard Yard, 2401 Hawkins Point Rd.
Baltimore MD 21226–1797
Landholding Agency: DOT
Property Number: 879620002
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Massachusetts

Bldg. 1900
Westover Air Force Base
Chicopee Co: Hampden MA 01022–
Landholding Agency: Air Force
Property Number: 189010438
Status: Unutilized
Reason: Secured Area

Bldg. 1833
Westover Air Force Base
Chicopee Co: Hampden MA 01022–5000
Landholding Agency: Air Force
Property Number: 189040002
Status: Unutilized
Reason: Secured Area

Bldg. 4, USCG Support Center
Commercial Street
Boston Co: Suffolk MA 02203–
Landholding Agency: DOT
Property Number: 879240001
Status: Underutilized
Reason: Secured Area

Eastern Point Light
U.S. Coast Guard
Gloucester Co: Essex MA 01930–
Landholding Agency: DOT
Property Number: 879240029
Status: Unutilized
Reason: Floodway, Secured Area

Storage Shed
Highland Light
N. Truro Co: Barnstable MA 02652–
DeSoto Johnson KS66018–
Landholding Agency: DOT
Property Number: 879430004
Status: Unutilized
Reason: Extensive deterioration

Michigan

Bldg. 1005
Selfridge Air National Guard Base
1005 C. Street
Selfridge Co: Macomb MI 48045–
Landholding Agency: Air Force
Property Number: 189010526
Status: Unutilized
Reason: Secured Area

Bldg. 1012
Selfridge Air National Guard Base
1012 A. Street
Selfridge Co: Macomb MI 48045–
Landholding Agency: Air Force
Property Number: 189010527
Status: Unutilized
Reason: Secured Area

Bldg. 1041
Selfridge Air National Guard Base
Selfridge Co: Macomb MI 48045–
Landholding Agency: Air Force
Property Number: 189010528
Status: Unutilized
Reason: Secured Area

Bldg. 1412
Selfridge Air National Guard Base
1412 Castle Avenue
Selfridge Co: Macomb MI 48045–
Landholding Agency: Air Force
Property Number: 189010529
Status: Unutilized
Reason: Secured Area

Bldg. 1434
Selfridge Air National Guard Base
1434 Castle Avenue
Selfridge Co: Macomb MI 48045–
Landholding Agency: Air Force
Property Number: 189010530
Status: Unutilized
Reason: Secured Area

Bldg. 1688
Selfridge Air National Guard Base
Selfridge Co: Macomb MI 48045–
Location: Near South Perimeter Road, near Building 1694.
Landholding Agency: Air Force
Property Number: 189010531
Status: Unutilized
Reason: Secured Area

Bldg. 1689
Selfridge Air National Guard Base
Selfridge Co: Macomb MI 48045–
Location: Near South Perimeter Road, near Building 1694.
Landholding Agency: Air Force
Property Number: 189010532
Status: Unutilized
Reason: Secured Area

Bldg. 5670
Selfridge Air National Guard Base
Selfridge Co: Macomb MI 48045–
Landholding Agency: Air Force
Property Number: 189010533
Status: Unutilized
Reason: Secured Area

Bldg. 71
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010810
Status: Excess
Reason: Other
Comment: sewage treatment and disposal facility.

Bldg. 99 (WATER WELL)
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010831
Status: Excess
Reason: Other
Comment: water well

Bldg. 100 (WATER WELL)
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010832
Status: Excess
Reason: Other
Comment: water well

Bldg. 118
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010875
Status: Excess
Reason: Other
Comment: Gasoline Station

Bldg. 120
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010876
Status: Excess
Reason: Other
Comment: Gasoline Station

Bldg. 166
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010877
Status: Excess
Reason: Other
Comment: Pump lift station.

Bldg. 168
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010878
Status: Excess
Reason: Other
Comment: Gasoline station.

Bldg. 69
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010889
Status: Excess
Reason: Other
Comment: Sewer pump facility.

Bldg. 2
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010890
Status: Excess
Reason: Other
Comment: Water pump station

Facility 102
Selfridge Air National Guard Base
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189620001
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Facility 135
Selfridge Air National Guard Base
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189620002
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Facility 136
Selfridge Air National Guard Base
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189620003
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Facility 163
Selfridge Air National Guard Base
Mt. Clemens Co: Macomb MI 48045–5295
Landholdng Agency: Air Force
Property Number: 189620004
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Facility 169
Selfridge Air National Guard Base
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189620005
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Facility 173
Selfridge Air National Guard Base
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189620006
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Facility 318
Selfridge Air National Guard Base
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189620007
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Facility 502
Selfridge Air National Guard Base
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number 189620008
Status: Unutilized

Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Facility 704
Selfridge Air National Guard Base
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189620009
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Facility 706
Selfridge Air National Guard Base
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189620010
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Facility 707
Selfridge Air National Guard Base
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189620011
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Facility 802
Selfridge Air National Guard Base
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189620012
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Facility 816
Selfridge Air National Guard Base
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189620013
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Facility 817
Selfridge Air National Guard Base
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189620014
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Facility 819
Selfridge Air National Guard Base
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189620015
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Facility 821
Selfridge Air National Guard Base
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189620016
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Facility 829
Selfridge Air National Guard Base
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189620017
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Facility 831
Selfridge Air National Guard Base
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189620018
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Facility 834
Selfridge Air National Guard Base
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189620019
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Facility 838
Selfridge Air National Guard Base
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189620020
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Facility 20
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630001
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Facility 21
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630002
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Facility 30
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630003
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Facility 98
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630004
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Facility 103
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630005
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Facility 116
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630006
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Facility 129
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630007
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Facility 152
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630008
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Facility 156
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630009
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Facility 181
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630010
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Facility 509
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630011
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Facility 562
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630012
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Facility 573
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630013
Status: Unutilized
Reason: Secured Area
Facility 801
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630014
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Facility 827
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630015
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Facility 832
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630016

Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Facility 833
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630017
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Facility 1005
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630018
Status: Unutilized
Reason: Secured Area
Facility 1012
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630019
Status: Unutilized
Reason: Secured Area
Facility 1017
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630020
Status: Unutilized
Reason: Secured Area
Facility 1025
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630021
Status: Unutilized
Reason: Secured Area
Facility 1031
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630022
Status: Unutilized
Reason: Secured Area
Facility 1041
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630023
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Facility 1445
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630024
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Facility 1514
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630025
Status: Unutilized
Reason: Secured Area
Facility 1575
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630026
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Facility 1576
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630027
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Facility 1578
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630028
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Facility 1580
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630029
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Facility 1582
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630030
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Facility 1583
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630031
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Facility 1584
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630032
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Facility 1585
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630033
Status: Unutilized
Reason: Secured Area
15 Offshore Lighthouses
Great Lakes MI
Landholding Agency: GSA
Property Number: 549630014
Status: Excess
Reason: Extensive deterioration
Fog Signal Building
St. Martins Island Co: Delta MI 49829–
Landholding Agency: GSA
Property Number: 549640001
Status: Unutilized
Reason: Other
Comment: Inaccessible
GSA Number: 1–U–MI–760
Crisp Point Light Station
McMillan Township Co: Luce MI
Landholding Agency: GSA
Property Number: 549640002
Status: Unutilized
Reason: Extensive deterioration
GSA Number: 1–U–MI–541A
Paint Locker
St. Martins Island/Lake Michigan Co: Delta MI 49829–
Landholding Agency: GSA
Property Number: 549640009
Status: Excess
Reason: Other
Comment: Inaccessible
GSA Number: 1–U–MI–760
Dwelling/Light Tower
St. Martins Island/Lake Michigan Co: Delta MI 49829–
Landholding Agency: GSA
Property Number: 549640010
Status: Excess
Reason: Other
Comment: Inaccessible
GSA Number: 1–U–MI–760
Bldg. 402, U.S. Air Station
Traverse City Co: Grand Traverse MI 49684–3586
Landholding Agency: DOT
Property Number: 879220001
Status: Unutilized
Reason: Extensive deterioration

Minnesota

Bldg. 644
Minnesota Air National Guard
Minneapolis Co: Hennepin MN 55111–4137
Landholding Agency: Air Force
Property Number: 189630035
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. 684
Minnesota Air National Guard
Minneapolis Co: Hennepin MN 55111–4137
Landholding Agency: Air Force
Property Number: 189630036
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Mississippi

Natchez Moorings
82 L.E. Berry Road
Natchez Co: Adams MS 39121–
Landholding Agency: DOT
Property Number: 879340002
Status: Unutilized
Reason: Extensive deterioration

Montana

Bldg. 280
Malmstrom AFB
Flightline & Avenue G
Malmstrom Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189010077
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone, Secured Area, Other environmental
Bldg. 440
Malmstrom Air Force Base
Great Falls Co: Cascade MT 59402–7525
Landholding Agency: Air Force
Property Number: 189430008
Status: Unutilized

Reason: Extensive deterioration, Secured Area
Bldg. 444
Malmstrom Air Force Base
Great Falls Co: Cascade MT 59402–7525
Landholding Agency: Air Force
Property Number: 189430009
Status: Unutilized
Reason: Secured Area, Extensive deterioration
Bldg. 529
Malmstrom Air Force Base
Malmstrom AFB Co: Cascade MT 59405–
Landholding Agency: Air Force
Property Number: 189510011
Status: Underutilized
Reason: Secured Area, Within 2000 ft. of flammable or explosive material
Bldg. 557, Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189540010
Status: Underutilized
Reason: Secured Area
Bldg. 666, Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189540011
Status: Underutilized
Reason: Secured Area
Bldg. 1189, Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189540013
Status: Underutilized
Reason: Secured Area
Bldg. 1308, Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189540014
Status: Underutilized
Reason: Secured Area
Bldg. 1309, Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189540015
Status: Underutilized
Reason: Secured Area
Bldg. 547
Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189620025
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. 1709
Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189620026
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. 1897
Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189620027
Status: Unutilized
Reason: Secured Area
Bldg. 1810
Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189630037
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. 1194
Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189640013
Status: Unutilized
Reason: Secured Area
Bldg. 1198
Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189640014
Status: Unutilized
Reason: Secured Area

Nebraska

Offutt Communications Annex—#3

Offutt Air Force Base
Scribner Co: Dodge NE 68031–
Landholding Agency: Air Force
Property Number: 189210006
Status: Unutilized
Reason: Other
Comment: former sewage lagoon
Bldg. 637
Lincoln Municipal Airport
2301 West Adams
Lincoln Co: Lancaster NE 68524–
Landholding Agency: Air Force
Property Number: 189230021
Status: Unutilized
Reason: Extensive deterioration
Bldg. 639
Lincoln Municipal Airport
2301 West Adams
Lincoln Co: Lancaster NE 68524–
Landholding Agency: Air Force
Property Number: 189230022
Status: Unutilized
Reason: Extensive deterioration
Bldg. 31
Offutt Air Force Base
Sac Boulevard
Offutt Co: Sarpy NE 68113–
Landholding Agency: Air Force
Property Number: 189240007
Status: Unutilized
Reason: Secured Area
Bldg. 311
Offutt Air Force Base
Nelson Drive
Offutt Co: Sarpy NE 68113–
Landholding Agency: Air Force
Property Number: 189240008
Status: Unutilized
Reason: Secured Area
Bldg. 401
Offutt Air Force Base
Custer Drive
Offutt Co: Sarpy NE 68113–
Landholding Agency: Air Force
Property Number: 189240009
Status: Unutilized
Reason: Secured Area
Bldg. 416
Offutt Air Force Base
Sherman Turnpike
Offutt Co: Sarpy NE 68113–
Landholding Agency: Air Force
Property Number: 189240010
Status: Unutilized
Reason: Secured Area
Bldg. 417
Offutt Air Force Base
Sherman Turnpike
Offutt Co: Sarpy NE 68113–
Landholding Agency: Air Force
Property Number: 189240011
Status: Unutilized
Reason: Secured Area
Bldg. 545
Offutt Air Force Base
Offutt Co: Sarpy NE 68113–
Landholding Agency: Air Force
Property Number: 189240012
Status: Unutilized
Reason: Secured Area
Bldg. 21
Hastings Radar Bomb Scoring Site
Hastings Co: Admas NE 68901–
Landholding Agency: Air Force
Property Number: 189320058
Status: Excess
Reason: Other
Comment: Generator
Bldg. 4, Hastings Family Hsg.
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320059
Status: Excess
Reason: Other
Comment: Contamination
Bldg. 500
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320060
Status: Excess
Reason: Other
Comment: Contamination
Bldg. 502
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320061
Status: Excess
Reason: Other
Comment: Contamination
Bldg. 504
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320062
Status: Excess
Reason: Other
Comment: Contamination
Bldg. 506
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320063
Status: Excess
Reason: Other
Comment: Contamination
Bldg. 507
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–

Landholding Agency: Air Force
Property Number: 189320064
Status: Excess
Reason: Other
Comment: Contamination
Bldg. 509
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320065
Status: Excess
Reason: Other
Comment: Contamination
Bldg. 511
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320066
Status: Excess
Reason: Other
Comment: Contamination
Bldg. 512
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320067
Status: Excess
Reason: Other
Comment: Contamination
Bldg. 515
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320068
Status: Excess
Reason: Other
Comment: Contamination
Bldg. 517
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320069
Status: Excess
Reason: Other
Comment: Contamination
Bldg. 519
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320070
Status: Excess
Reason: Other
Comment: Contamination
Bldg. 521
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320071
Status: Excess
Reason: Other
Comment: Contamination
Bldg. 523
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320072
Status: Excess
Reason: Other
Comment: Contamination
Bldg. 525
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320073
Status: Excess
Reason: Other
Comment: Contamination
Bldg. 526
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320074
Status: Excess
Reason: Other
Comment: Contamination
Bldg. 529
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320075
Status: Excess
Reason: Other
Comment: Contamination
Bldg. 531
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320076
Status: Excess
Reason: Other
Comment: Contamination
Bldg. 533
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320077
Status: Excess
Reason: Other
Comment: Contamination
Bldg. 534
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320078
Status: Excess
Reason: Other
Comment: Contamination
Bldg. 536
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320079
Status: Excess
Reason: Other
Comment: Contamination
Bldg. 538
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320080
Status: Excess
Reason: Other
Comment: Contamination
Bldg. 541
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320081
Status: Excess
Reason: Other
Comment: Contamination
Bldg. 542
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320082
Status: Excess
Reason: Other
Comment: Contamination
Bldg. 544
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320083
Status: Excess
Reason: Other
Comment: Contamination
Bldg. 546
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320084
Status: Excess
Reason: Other
Comment: Contamination
Bldg. 549
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320085
Status: Excess
Reason: Other
Comment: Contamination
Bldg. 550
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320086
Status: Excess
Reason: Other
Comment: Contamination
Bldg. 552
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320087
Status: Excess
Reason: Other
Comment: Contamination
Bldg. 553
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320088
Status: Excess
Reason: Other
Comment: Contamination
Bldg. 555

Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320089
Status: Excess
Reason: Other
Comment: Contamination

Bldg. 557
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320090
Status: Excess
Reason: Other
Comment: Contamination

Bldg. 558
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320091
Status: Excess
Reason: Other
Comment: Contamination

Bldg. 560
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320092
Status: Excess
Reason: Other
Comment: Contamination

27 Detached Garages
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320093
Status: Excess
Reason: Other
Comment: Contamination

Bldg. 17
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320094
Status: Excess
Reason: Other
Comment: Contamination

Bldg. 16
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320095
Status: Excess
Reason: Other
Comment: Contamination

Bldg. 18
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320096
Status: Excess
Reason: Other
Comment: Contamination

Bldg. 6
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320097
Status: Excess
Reason: Other
Comment: Contamination

Bldg. 547
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320098
Status: Excess
Reason: Other
Comment: Contamination

Bldg. 604
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320099
Status: Excess
Reason: Other
Comment: Contamination

Bldg. 686
Offutt Air Force Base
Offutt Co: Sarpy NE 68113–
Landholding Agency: Air Force
Property Number: 189510021
Status: Unutilized
Reason: Secured Area

Bldg. 439
Offutt Air Force Base
Offutt Co: Sarpy NE 68113–
Landholding Agency: Air Force
Property Number: 189510022
Status: Unutilized
Reason: Secured Area

New Hampshire

Bldg. 101
New Boston Air Force Station
Amherst Co: Hillsborough NH 03031–1514
Landholding Agency: Air Force
Property Number: 189320005
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 102
New Boston Air Force Station
Amherst Co: Hillsborough NH 03031–1514
Landholding Agency: Air Force
Property Number: 189320006
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 104
New Boston Air Force Station
Amherst Co: Hillsborough NH 03031–1514
Landholding Agency: Air Force
Property Number: 189320007
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 116
New Boston Air Force Station
Amherst Co: Hillsborough NH 03031–1514
Landholding Agency: Air Force
Property Number: 189540016
Status: Unutilized
Reason: Extensive deterioration

New Jersey

Piers and Wharf
Station Sandy Hook
Highlands Co: Monmouth NJ 07732–5000
Landholding Agency: DOT
Property Number: 879240009
Status: Unutilized
Reason: Extensive deterioration, Secured Area

Chapel Hill Front Range, Light Tower
Middletown Co: Monmouth NJ 07748–
Landholding Agency: DOT
Property Number: 879440002
Status: Unutilized
Reason: Other
Comment: Skeletal tower

Bldg. 103
U.S. Coast Guard Station Sandy Hook
Middleton Co: Monmouth NJ 07737–
Landholding Agency: DOT
Property Number: 879610002
Status: Unutilized
Reason: Secured Area

New Mexico

Bldg. 831
833 CSG/DEER
Holloman AFB Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189130333
Status: Unutilized
Reason: Secured Area

Bldg. 21
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240032
Status: Unutilized
Reason: Secured Area

Bldg. 80
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240033
Status: Unutilized
Reason: Secured Area

Bldg. 98
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240034
Status: Unutilized
Reason: Secured Area

Bldg. 324
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240035
Status: Unutilized
Reason: Secured Area

Bldg. 598
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240036
Status: Unutilized
Reason: Secured Area

Bldg. 801
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240037
Status: Unutilized
Reason: Secured Area

Bldg. 802
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240038
Status: Unutilized
Reason: Secured Area

Bldg. 1095
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240039
Status: Unutilized
Reason: Secured Area

Bldg. 1096
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240040
Status: Unutilized
Reason: Secured Area

Facility 321
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240041
Status: Unutilized
Reason: Secured Area

Facility 75115
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240042
Status: Unutilized
Reason: Secured Area

Bldg. 874
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189320041
Status: Unutilized
Reason: Secured Area, Other
Comment: Extensive Deterioration

Bldg. 1258
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189320042
Status: Unutilized
Reason: Secured Area, Other
Comment: Extensive Deterioration

Bldg. 134
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189430014
Status: Unutilized
Reason: Secured Area

Bldg. 640
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189430015
Status: Unutilized
Reason: Secured Area

Bldg. 703
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189430016
Status: Unutilized
Reason: Within airport runway clear zone, Secured Area

Bldg. 813
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189430017
Status: Unutilized
Reason: Secured Area

Bldg. 821
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189430018
Status: Unutilized
Reason: Secured Area

Bldg. 829
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189430019
Status: Unutilized
Reason: Within airport runway clear zone, Secured Area

Bldg. 867
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189430020
Status: Unutilized
Reason: Secured Area

Bldg. 884
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189430021
Status: Unutilized
Reason: Within airport runway clear zone, Secured Area

Bldg. 886
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189430022
Status: Unutilized
Reason: Within airport runway clear zone, Secured Area

Bldg. 908
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189430023
Status: Unutilized
Reason: Secured Area

Bldg. 599
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189510001
Status: Unutilized
Reason: Secured Area

Bldg. 600
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189510002
Status: Unutilized
Reason: Secured Area

Bldg. 599
Holloman AFB
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189510001
Status: Unutilized
Reason: Secured Area

Bldg. 600
Holloman AFB
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189610008
Status: Unutilized
Reason: Secured Area

Bldg. 995
Holloman AFB
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189610009
Status: Unutilized
Reason: Secured Area

New York

Bldg. 626 (Pin: RVKQ)
Niagara Falls International Airport
914th Tactical Airlift Group
Niagara Falls Co: Niagara NY 14303–5000
Landholding Agency: Air Force
Property Number: 189010075
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 272
Griffiss Air Force Base
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force
Property Number: 189140022
Status: Excess
Reason: Secured Area

Bldg. 888
Griffiss Air Force Base
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force
Property Number: 189140023
Status: Excess
Reason: Secured Area

Facility 814, Griffiss AFB
NE of Weapons Storage Area
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force
Property Number: 189230001
Status: Excess
Reason: Within airport runway clear zone, Secured Area

Facility 808, Griffiss AFB
Perimeter Road
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force
Property Number: 189230002
Status: Excess
Reason: Within airport runway clear zone, Secured Area

Facility 807, Griffiss AFB
Perimeter Road
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force
Property Number: 189230003
Status: Excess
Reason: Within airport runway clear zone, Secured Area

Facility 126
Griffiss Air Force Base
Hanger Road
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 189240020
Status: Unutilized

Reason: Secured Area
Facility 127
Griffiss Air Force Base
Hanger Road
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 189240021
Status: Unutilized
Reason: Secured Area
Facility 135
Griffiss Air Force Base
Hanger Road
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 189240022
Status: Unutilized
Reason: Secured Area
Facility 137
Griffiss Air Force Base
Otis Street
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 189240023
Status: Unutilized
Reason: Secured Area
Facility 138
Griffiss Air Force Base
Otis Street
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 189240024
Status: Unutilized
Reason: Secured Area
Facility 173
Griffiss Air Force Base
Selfridge Street
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 189240025
Status: Unutilized
Reason: Secured Area
Facility 261
Griffiss Air Force Base
McDill Street
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 189240026
Status: Unutilized
Reason: Secured Area
Facility 308
Griffiss Air Force Base
205 Chanute Street
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 189240027
Status: Unutilized
Reason: Secured Area
Facility 1200
Griffiss Air Force Base
Donaldson Road
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 189240028
Status: Unutilized
Reason: Secured Area
Bldg. 759, Hancock Field
6001 East Molloy Road
Syracuse Co: Onondaga NY 13211–7099
Landholding Agency: Air Force
Property Number: 189310007
Status: Unutilized
Reason: Extensive deterioration, Secured Area
Facility 841
Griffiss Air Force Base
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 189330097
Status: Unutilized
Reason: Secured Area
Bldg. 852
Niagara Falls International Airport
914th Tactical Airlift Group
Niagara Falls Co: Niagara NY 14304–5000
Landholding Agency: Air Force
Property Number: 189420013
Status: Unutilized
Reason: Secured Area
Naval Indus. Rsv. Ordance Pl.
121 Lincoln Avenue
Rochester Co: Monroe NY 14611–
Landholding Agency: GSA
Property Number: 549430011
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: TENT–2–N–NY–592
Fed. Bldg.
Multi Bldg. Complex, 252 7th Avenue
New York NY 10001–
Landholding Agency: GSA
Property Number: 549630001
Status: Excess
Reason: Extensive deterioration
GSA Number: NY–0783A
2 Offshore Lighthouses
Great Lakes NY
Landholding Agency: GSA
Property Number: 549630015
Status: Excess
Reason: Extensive deterioration
Bldgs. 501, 502
Scotia Storage Depot
Scotia NY 12302–
Landholding Agency: GSA
Property Number: 549640021
Status: Excess
Reason: Extensive deterioration
GSA Number: 1–G–NY–554E
2 Buildings
Ant Saugerties
Saugerties Co: Ulster NY 12477–
Landholding Agency: DOT
Property Number: 879230005
Status: Unutilized
Reason: Extensive deterioration
Bldg. 606, Fort Totten
New York Co: Queens NY 11359–
Landholding Agency: DOT
Property Number: 879240020
Status: Unutilized
Reason: Secured Area
Bldg. 607, Fort Totten
New York Co: Queens NY 11359–
Landholding Agency: DOT
Property Number: 879240021
Status: Unutilized
Reason: Secured Area, Other
Comment: Extensive deterioration
Bldg. 605, Fort Totten
New York Co: Queens NY 11359–
Landholding Agency: DOT
Property Number: 879240022
Status: Unutilized
Reason: Secured Area, Other
Comment: Extensive deterioration
Eatons Neck Station
U.S. Coast Guard
Huntington Co: Suffolk NY 11743–
Landholding Agency: DOT
Property Number: 879310003
Status: Unutilized
Reason: Extensive deterioration, Secured Area
Bldg. 517, USCG Support Center
Governors Island Co: Manhattan NY 10004–
Landholding Agency: DOT
Property Number: 8793200025
Status: Unutilized
Reason: Secured Area
Bldg. 138
U.S. Coast Guard Support Center
Governors Island Co: Manhattan NY 10004–
Landholding Agency: DOT
Property Number: 879410003
Status: Unutilized
Reason: Secured Area
Point AuRoche Light
Beekmantown Co: Clinton NY 12901–
Landholding Agency: GSA
Property Number: 879420002
Status: Excess
Reason: Floodway, Extensive deterioration
GSA Number: 2–4–NY–817
Bldg. 830
U.S. Coast Guard
Governors Island Co: Manhattan NY 10004–
Landholding Agency: DOT
Property Number: 879420004
Status: Unutilized
Reason: Secured Area
Rochester Harbor Light
Greece Township Co: Monroe NY
Landholding Agency: DOT
Property Number: 879430008
Status: Excess
Reason: Secured Area, Extensive deterioration
Bldg. 8
Rosebank—Coast Guard Housing
Staten Island Co: Richmond NY 10301–
Landholding Agency: DOT
Property Number: 879530009
Status: Unutilized
Reason: Secured Area
Bldg. 7
Rosebank—Coast Guard Housing
Staten Island Co: Richmond Ny 10301–
Landholding Agency: DOT
Property Number: 879530010
Status: Unutilized
Reason: Secured Area, Extensive deterioration
Station Bldg.
USCG, AUXOP Station
Sodus Point Co: Wayne NY 14555–
Landholding Agency: DOT
Property Number: 879610001
Status: Unutilized
Reason: Secured Area, Extensive deterioration
Bldg. 222
Fort Wadsworth
Staten Island Co: Richmond NY 10305–
Landholding Agency: DOT
Property Number: 879620003
Status: Unutilized
Reason: Secured Area
Bldg. 223
Fort Wadsworth
Staten Island Co: Richmond NY 10305–
Landholding Agency: DOT

Property Number: 879620004
Status: Unutilized
Reason: Secured Area
Bldg. 205
Fort Wadsworth
Staten Island Co: Richmond NY 10305–
Landholding Agency: DOT
Property Number: 879620005
Status: Unutilized
Reason: Secured Area
Bldg. 9
U.S. Coast Guard—Rosebank
Staten Island Co: Richmond NY 10301–
Landholding Agency: DOT
Property Number: 879630027
Status: Excess
Reason: Secured Area
Bldg. 10
U.S. Coast Guard—Rosebank
Staten Island Co: Richmond NY 10301–
Landholding Agency: DOT
Property Number: 879630028
Status: Excess
Reason: Secured Area
Bldg. 206, Rosebank
Staten Island Co: Richmond NY 10301–
Landholding Agency: DOT
Property Number: 879530029
Status: Unutilized
Reason: Secured Area

North Carolina

Bldg. 4230—Youth Center
Cannon Ave.
Goldsboro Co: Wayne NC 27531–5005
Landholding Agency: Air Force
Property Number: 189120233
Status: Underutilized
Reason: Secured Area
Bldg. 607, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2890
Landholding Agency: Air Force
Property Number: 189330041
Status: Unutilized
Reason: Secured Area, Extensive deterioration
Bldg. 255, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2003
Landholding Agency: Air Force
Property Number: 189420019
Status: Unutilized
Reason: Secured Area, Extensive deterioration
Bldg. 370, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2003
Landholding Agency: Air Force
Property Number: 189420020
Status: Unutilized
Reason: Secured Area, Extensive deterioration
Bldg. 904, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2003
Landholding Agency: Air Force
Property Number: 189420021
Status: Unutilized
Reason: Secured Area, Extensive deterioration
Bldg. 910, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2003
Landholding Agency: Air Force
Property Number: 189420022
Status: Unutilized
Reason: Secured Area, Extensive deterioration
Bldg. 912, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2003
Landholding Agency: Air Force
Property Number: 189420023
Status: Unutilized
Reason: Secured Area Extensive deterioration
Bldg. 914, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2003
Landholding Agency: Air Force
Property Number: 189420024
Status: Unutilized
Reason: Secured Area Extensive deterioration
Bldg. 633, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–
Landholding Agency: Air Force
Property Number: 189540019
Status: Unutilized
Reason: Secured Area Extensive deterioration
Bldg. 517, Pope Air Force Base
Fayetteville Co: Cumberland NC
Landholding Agency: Air Force
Property Number: 189710001
Status: Unutilized
Reason: Secured Area Extensive deterioration
Dwelling 1
USCG Coinjock Housing
Coinjock Co: Currituck NC 27923—
Landholding Agency: GSA
Property Number: 189120083
Status: Excess
Reason: Extensive deterioration
GSA Number: 4–U–NC–722
Dwelling 2
USCG Coinjock Housing
Coinjock Co: Currituck NC 27923—
Landholding Agency: GSA
Property Number: 189120084
Status: Excess
Reason: Extensive deterioration
GSA Number: 4–U–NC–722
Dwelling 3
USCG Coinjock Housing
Coinjock Co: Currituck NC 27923—
Landholding Agency: GSA
Property Number: 189120085
Status: Excess
Reason: Extensive deterioration
GSA Number: 4–U–NC–722
Group Cape Hatteras
Boiler Plant
Buxton Co: Dare NC 27902—0604
Landholding Agency: DOT
Property Number: 879240018
Status: Unutilized
Reason: Secured Area
Group Cape Hatteras
Bowling Alley
Buxton Co: Dare NC 27902—0604
Landholding Agency: DOT
Property Number: 879240019
Status: Unutilized
Reason: Secured Area
Bldg. 21, Fuel Farm
U.S. Coast Guard Air Station
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 879320010
Status: Unutilized
Reason: Floodway, Secured Area
Bldg. 22, Fuel Farm
U.S. Coast Guard Air Station
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 879320011
Status: Unutilized
Reason: Floodway, Secured Area
Bldg. 25, Fuel Farm
U.S. Coast Guard Air Station
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 879320012
Status: Unutilized
Reason: Floodway, Secured Area
Bldg. 27, Fuel Farm
U.S. Coast Guard Air Station
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 879320013
Status: Unutilized
Reason: Floodway, Secured Area
Bldg. 32, Fuel Farm
U.S. Coast Guard Air Station
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 879320014
Status: Unutilized
Reason: Floodway, Secured Area
Bldg. 67, USCG Support Center
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 879320016
Status: Unutilized
Reason: Floodway, Secured Area
Bldg. 69, USCG Support Center
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 879320017
Status: Unutilized
Reason: Secured Area
Bldg. 71, USCG Support Center
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 879320018
Status: Unutilized
Reason: Secured Area
Bldg. 73, USCG Support Center
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 879320019
Status: Unutilized
Reason: Secured Area
Bldg. 54
Group Cape Hatteras
Buxton Co: Dare NC 27902–0604
Landholding Agency: DOT
Property Number: 879340004
Status: Unutilized
Reason: Secured Area
Bldg. 83
Group Cape Hatteras
Buxton Co: Dare NC 27902–0604
Landholding Agency: DOT
Property Number: 879340005
Status: Unutilized
Reason: Secured Area
Water Tanks
Group Cape Hatteras
Buxton Co: Dare NC 27902–0604
Landholding Agency: DOT

Property Number: 879340006
Status: Unutilized
Reason: Secured Area

USCG Gentian (WLB 290)
Fort Macon State Park
Atlantic Beach Co: Carteret NC 27601–
Landholding Agency: DOT
Property Number: 879420007
Status: Excess
Reason: Secured Area

Unit #71
Buxton Annex, Cape Kendrick Circle
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 879530011
Status: Unutilized
Reason: Floodway

Unit #72
Buxton Annex, Cape Kendrick Circle
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 879530012
Status: Unutilized
Reason: Floodway

Unit #73
Buxton Annex, Cape Kendrick Circle
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 879530013
Status: Unutilized
Reason: Floodway

Unit #74
Buxton Annex, Cape Kendrick Circle
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 879530014
Status: Unutilized
Reason: Floodway

Unit #75
Buxton Annex, Cape Kendrick Circle
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 879530015
Status: Unutilized
Reason: Floodway

Unit #63
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 879530016
Status: Unutilized
Reason: Floodway

Unit #64
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 879530017
Status: Unutilized
Reason: Floodway

Unit #76
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 879530018
Status: Unutilized
Reason: Floodway

Unit #68
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 879530019
Status: Unutilized
Reason: Floodway

Unit #69
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 879530020
Status: Unutilized
Reason: Floodway

Unit #70
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 879530021
Status: Unutilized
Reason: Floodway

Unit #77
Buxton Annex, Old Lighthouse Road
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 879530022
Status: Unutilized
Reason: Floodway

Unit #78
Buxton Annex, Old Lighthouse Road
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 879530023
Status: Unutilized
Reason: Floodway

Bldg. 45
Coast Guard Support Center
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 879630020
Status: Unutilized
Reason: Secured Area

Bldg. 47
Coast Guard Support Center
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 879630021
Status: Unutilized
Reason: Secured Area

Bldg. 53
Coast Guard Support Center
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 879630022
Status: Unutilized
Reason: Secured Area

Bldg. 57
Coast Guard Support Center
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 879630023
Status: Unutilized
Reason: Secured Area

Bldg. 59
Coast Guard Support Center
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 879630024
Status: Unutilized
Reason: Secured Area

Bldg. 92
Coast Guard Support Center
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 879630025
Status: Unutilized
Reason: Secured Area

Bldg. 94, Coast Guard
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 879640004
Status: Unutilized
Reason: Secured Area

North Dakota

Bldg. 422
Minot Air Force Base
Minot Co: Ward ND 58705–
Landholding Agency: Air Force
Property Number: 189010724
Status: Underutilized
Reason: Secured Area

Bldg. 50
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Number: 189310107
Status: Excess
Reason: Other
Comment: garbage incinerator

Bldg. 119
Minot Air Force Base
Minot Co: Ward ND 58701–
Landholding Agency: Air Force
Property Number: 189320034
Status: Unutilized
Reason: Secured Area

Bldg. 191
Minot Air Force Base
Minot Co: Ward ND 58701–
Landholding Agency: Air Force
Property Number: 189320035
Status: Unutilized
Reason: Secured Area

Bldg. 490
Minot Air Force Base
Minot Co: Ward ND 58701–
Landholding Agency: Air Force
Property Number: 189320036
Status: Unutilized
Reason: Secured Area

Bldg. 509
Minot Air Force Base
Minot Co: Ward ND 58701–
Landholding Agency: Air Force
Property Number: 189320037
Status: Unutilized
Reason: Secured Area

Bldg. 526
Minot Air Force Base
Minot Co: Ward ND 58701–
Landholding Agency: Air Force
Property Number: 189320038
Status: Unutilized
Reason: Secured Area

Bldg. 895
Minot Air Force Base
Minot Co: Ward ND 58701–
Landholding Agency: Air Force
Property Number: 189320039
Status: Unutilized
Reason: Secured Area

Bldg. 1019
Minot Air Force Base
Minot Co: Ward ND 58701–
Landholding Agency: Air Force
Property Number: 189320040
Status: Unutilized
Reason: Secured Area

Ohio

Bldg. 404, Hydrant Fuel
910 Airlift Group
Kings-Graves Road
Vienna Co: Trumbull OH 44473–5000
Landholding Agency: Air Force
Property Number: 189220015
Status: Unutilized
Reason: Secured Area

Bldg. 405, Test Cell
910 Airlift Group
Kings-Graves Road
Vienna Co: Trumbull OH 44473–5000
Landholding Agency: Air Force
Property Number: 189220016
Status: Unutilized
Reason: Secured Area

Oregon

Mooring/Boathouse
Station Chetco River
Brookings Co: Curry OR 97415–
Landholding Agency: DOT
Property Number: 879630026
Status: Excess
Reason: Floodway

Puerto Rico

Bldg. 10
Punta Salinas Radar Site
Toa Baja Co: Toa Baja PR 00759–
Landholding Agency: Air Force
Property Number: 189010544
Status: Underutilized
Reason: Secured Area

NAFA Warehouse
U.S. Coast Guard Air Station Borinquen
Aquadilla PR 00604–
Landholding Agency: DOT
Property Number: 879310011
Status: Unutilized
Reason: Secured Area

Storage Equipment Bldg.
U.S. Coast Guard Air Station Borinquen
Aquadilla PR 00604–
Landholding Agency: DOT
Property Number: 879330001
Status: Unutilized
Reason: Secured Area

Bldg. 115
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 879510001
Status: Unutilized
Reason: Secured Area

Bldg. 117
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 879510002
Status: Unutilized
Reason: Secured Area

Bldg. 118
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 879510003
Status: Unutilized
Reason: Secured Area

Bldg. 119
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 879510004
Status: Unutilized
Reason: Secured Area

Bldg. 120
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 879510005
Status: Unutilized
Reason: Secured Area

Bldg. 122
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 879510006
Status: Unutilized
Reason: Secured Area

Bldg. 128
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 879510007
Status: Unutilized
Reason: Secured Area

Bldg. 129
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 879510008
Status: Unutilized
Reason: Secured Area

Rhode Island

Station Point Judith Pier
Narranganset Co: Washington RI 02882–
Landholding Agency: DOT
Property Number: 879310002
Status: Unutilized
Reason: Extensive deterioration

South Dakota

Bldg. 200, South Nike Ed Annex
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 189320048
Status: Unutilized
Reason: Extensive deterioration

Bldg. 201, South Nike Ed Annex
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 189320049
Status: Unutilized
Reason: Extensive deterioration

Bldg. 203, South Nike Ed Annex
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 189320050
Status: Unutilized
Reason: Extensive deterioration

Bldg. 204, South Nike Ed Annex
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 189320051
Status: Unutilized
Reason: Extensive deterioration

Bldg. 205, South Nike Ed Annex
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 189320052
Status: Unutilized
Reason: Extensive deterioration

Bldg. 206, South Nike Ed Annex
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 189320053
Status: Unutilized
Reason: Extensive deterioration

Bldg. 00605
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 189320054
Status: Underutilized
Reason: Secured Area

Bldg. 88470
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189340033
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 9011
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189340035
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Other, Secured Area
Comment: Extensive deterioration

Bldg. 7506
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189340037
Status: Unutilized
Reason: Secured Area

Bldg. 6908
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189340038
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Other, Secured Area
Comment: Extensive deterioration

Bldg. 6904
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189340039
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Other, Secured Area
Comment: Extensive deterioration

Bldg. 6905, Ellsworth AFB
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 189440010
Status: Underutilized
Reason: Secured Area

Bldg. 1111, Ellsworth AFB
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 189610005
Status: Unutilized
Reason: Secured Area

Texas

Bldg. 40
Laughlin Air Force Base
Co: Val Verde TX 78843–5000
Landholding Agency: Air Force
Property Number: 189420014
Status: Unutilized

Reason: Extensive deterioration
Bldg. 119
Laughlin Air Force Base
Co: Val Verde TX 78843–5000
Landholding Agency: Air Force
Property Number: 189420016
Status: Unutilized
Reason: Extensive deterioration
Bldg. 00153
Reese Air Force Base
Lubbock Co: Lubbock TX 79489–5000
Landholding Agency: Air Force
Property Number: 189540017
Status: Unutilized
Reason: Secured Area
Bldg. 03130
Reese Air Force Base
Lubbock Co: Lubbock TX 79489–5000
Landholding Agency: Air Force
Property Number: 189540018
Status: Unutilized
Reason: Secured Area
Bldg. 122, Laughlin AFB
Co: Val Verde TX
Landholding Agency: Air Force
Property Number: 189640015
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material
Old Exchange Bldg.
U.S. Coast Guard
Galveston Co: Galveston TX 77553–3001
Landholding Agency: DOT
Property Number: 879310012
Status: Unutilized
Reason: Secured Area
WPB Building
Station Port Isabel
Coast Guard Station
South Padre Island Co: Cameron TX 78597–6497
Landholding Agency: DOT
Property Number: 879530002
Status: Unutilized
Reason: Floodway
Aton Shops Building
USCG Station Sabine
Sabine Co: Jefferson TX 77655–
Landholding Agency: DOT
Property Number: 879530003
Status: Unutilized
Reason: Secured Area, Within 2000 ft. of flammable or explosive material
WPB Storage Shed
USCG Station Sabine
Sabine Co: Jefferson TX 77655–
Landholding Agency: DOT
Property Number: 879530004
Status: Unutilized
Reason: Secured Area, Within 2000 ft. of flammable or explosive material.
Flammable Storage Building
USCG Station Sabine
Sabine Co: Jefferson TX 77655–
Landholding Agency: DOT
Property Number: 879530005
Status: Unutilized
Reason: Secured Area, Within 2000 ft. of flammable or explosive material
Battery Storage Building
USCG Station Sabine
Sabine Co: Jefferson TX 77655–
Landholding Agency: DOT
Property Number: 879530006
Status: Unutilized
Reason: Secured Area, Within 2000 ft. of flammable or explosive material
Boat House
USCG Station Sabine
Sabine Co: Jefferson TX 77655–
Landholding Agency: DOT
Property Number: 879530007
Status: Unutilized
Reason: Secured Area, Within 2000 ft. of flammable or explosive material
Small Boat Pier
USCG Station Sabine
Sabine Co: Jefferson TX 77655–
Landholding Agency: DOT
Property Number: 879530008
Status: Unutilized
Reason: Secured Area, Within 2000 ft. of flammable or explosive material
Bldg. 108
Fort Crockett/43rd St. Housing
Galveston Co: Galveston TX 77553–
Landholding Agency: DOT
Property Number: 879630008
Status: Unutilized
Reason: Extensive deterioration

Utah

Bldg. 789
Hill Air Force Base
(See County) Co: Davis UT 84056–
Landholding Agency: Air Force
Property Number: 189040859
Status: Unutilized
Reason: Within support runway clear zone, Secured Area

Vermont

Depot Street
Downtown at the Waterfront
Burlington Co: Chittenden VT 05401–5226
Landholding Agency: DOT
Property Number: 879220003
Status: Excess
Reason: Floodway

Virginia

Bldg. 417
Camp Pendleton
Virginia Beach VA 23451–
Landholding Agency: Air Force
Property Number: 189710003
Status: Unutilized
Reason: Extensive deterioration
Bldg. 418
Camp Pendleton
Virginia Beach VA 23451–
Landholding Agency: Air Force
Property Number: 189710004
Status: Unutilized
Reason: Extensive deterioration
Bldg. 052 & Tennis Court
USCG Reserve Training Center
Yorktown Co: York VA 23690–
Landholding Agency: DOT
Property Number: 879230004
Status: Excess
Reason: Secured Area
Damage Control Bldg.
Coast Guard, Group Eastern Shores
Chincoteague Co: Accomack VA 23361–510
Landholding Agency: DOT
Property Number: 879240013
Status: Unutilized
Reason: Secured Area
Admin. Bldg.
Coast Guard, Group Eastern Shores
Chincoteague Co: Accomack VA 23361–510
Landholding Agency: DOT
Property Number: 879240014
Status: Unutilized
Reason: Secured Area
Storage Bldg.
Coast Guard, Group Eastern Shores
Chincoteague Co: Accomack VA 23361–510
Landholding Agency: DOT
Property Number: 879240015
Status: Unutilized
Reason: Secured Area
Little Creek Station
Navamphib Base, West Annex, U.S. Coast Guard
Norfolk Co: Princess Anne VA 23520–
Landholding Agency: DOT
Property Number: 879310004
Status: Unutilized
Reason: Secured Area

Washington

Bldg. 640
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010139
Status: Unutilized
Reason: Secured Area
Bldg. 641
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010140
Status: Unutilized
Reason: Secured Area
Bldg. 642
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010141
Status: Unutilized
Reason: Secured Area
Bldg. 643
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010142
Status: Unutilized
Reason: Secured Area
Bldg. 645
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010143
Status: Unutilized
Reason: Secured Area
Bldg. 646
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010144
Status: Unutilized
Reason: Secured Area
Bldg. 647
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010145
Status: Unutilized
Reason: Secured Area
Bldg. 1415
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010146
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. 1429
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010147
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. 1464
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010148
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. 1465
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010149
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. 1466
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010150
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. 3503
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010151
Status: Unutilized
Reason: Secured Area
Bldg. 3504
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010152
Status: Unutilized
Reason: Secured Area
Bldg. 3505
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010153
Status: Unutilized
Reason: Secured Area
Bldg. 3506
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010154
Status: Unutilized
Reason: Secured Area
Bldg. 3507
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010155
Status: Unutilized
Reason: Secured Area
Bldg. 3510
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010156
Status: Unutilized
Reason: Secured Area
Bldg. 3514
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010157
Status: Unutilized
Reason: Secured Area
Bldg. 3518
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010158
Status: Unutilized
Reason: Secured Area
Bldg. 3521
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010159
Status: Unutilized
Reason: Secured Area
Bldg. 100, Geiger Heights
Grove and Hallet Streets
Fairchild AFB Co: Spokane WA 99204–
Landholding Agency: Air Force
Property Number: 189210004
Status: Unutilized
Reason: Extensive deterioration
Bldg. 261
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189310053
Status: Unutilized
Reason: Secured Area
Bldg. 284
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189310054
Status: Unutilized
Reason: Secured Area
Facility 923
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189310055
Status: Unutilized
Reason: Secured Area
Bldg. 1330
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189310056
Status: Unutilized
Reason: Secured Area, Within 2000 ft. of flammable or explosive material
Bldg. 1336
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189310057
Status: Unutilized
Reason: Secured Area, Within 2000 ft. of flammable or explosive material
Bldg. 2000
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189310058
Status: Unutilized
Reason: Secured Area, Within 2000 ft. of flammable or explosive material
Bldg. 2143
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189310059
Status: Unutilized
Reason: Secured Area, Within 2000 ft. of flammable or explosive material
Bldg. 2385
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189310060
Status: Unutilized
Reason: Secured Area
Bldg. 3509
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189310061
Status: Unutilized
Reason: Secured Area
Bldg. 1405
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189310062
Status: Underutilized
Reason: Secured Area, Within 2000 ft. of flammable or explosive material
Facility 1468
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189310063
Status: Unutilized
Reason: Secured Area, Within 2000 ft. of flammable or explosive material
Facility 1469
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189310064
Status: Unutilized
Reason: Secured Area, Within 2000 ft. of flammable or explosive material
Facility 2450
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189310065
Status: Unutilized
Reason: Secured Area, Within 2000 ft. of flammable or explosive material
Bldg. 1, Waste Annex
West of Craig Road
Co: Spokane WA 99022–
Landholding Agency: Air Force
Property Number: 189320043
Status: Unutilized
Reason: Secured Area
Bldg. 1220
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189330091
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. 1224

Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189330092
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 2004
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189330093
Status: Unutilized
Reason: Secured Area

Bldg. 2018
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189330094
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 2150
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189330095
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 2164
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Numbers: 189330096
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Portion—Former Sage Complex
Moses Laiek Co: Grant WA 98837–
Landholding Agency: GSA
Property Number: 549530007
Status: Underutilized
Reason: Secured Area
GSA Number: 9–G–WA–513M

Pistol Range Bldg.
USCG Port Angeles
Port Angeles
Port Angeles Co: Clallam WA 98362–0159
Landholding Agency: DOT
Property Number: 879630030
Status: Unutilized
Reason: Within airport runway clear zone, Secured Area, Extensive deterioration

Wisconsin

Bldg. 306, 440 Airlift Wing
Gen. Mitchell IAP
Milwaukee Co: Milwaukee WI 53207–6299
Landholding Agency: Air Force
Property Number: 189320033
Status: Unutilized
Reason: Secured Area

2 Offshore Lighthouses
Great Lakes WI
Landholding Agency: GSA
Property Number: 549630016
Status: Excess
Reason: Extensive deterioration

Rawley Point Light
Two Rivers Co: Manitowoc WI
Landholding Agency: DOT
Property Number: 879540004
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Wyoming

Bldg. 31
F.E. Warren Air Force Base
Cheyenne Co: Laramie WY 82005–
Landholding Agency: Air Force
Property Number: 189010198
Status: Unutilized
Reason: Secured Area

Bldg. 34
F.E. Warren Air Force Base
Cheyenne Co: Laramie WY 82005–
Landholding Agency: Air Force
Property Number: 189010199
Status: Underutilized
Reason: Secured Area

Bldg. 37
F.E. Warren Air Force Base
Cheyenne Co: Laramie WY 82005–
Landholding Agency: Air Force
Property Number: 189010200
Status: Unutilized
Reason: Secured Area

Bldg. 284
F.E. Warren Air Force Base
Cheyenne Co: Laramie WY 82005–
Landholding Agency: Air Force
Property Number: 189010201
Status: Unutilized
Reason: Secured Area

Bldg. 385
F.E. Warren Air Force Base
Cheyenne Co: Laramie WY 82005–
Landholding Agency: Air Force
Property Number: 189010202
Status: Unutilized
Reason: Secured Area

Bldg. 2780
Warren Air Force Base
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number: 189240005
Status: Unutilized
Reason: Secured Area

Bldg. 2781
Warren Air Force Base
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number: 189240006
Status: Unutilized
Reason: Secured Area

Bldg. 386
F.E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number: 189620021
Status: Unutilized
Reason: Secured Area

Bldg. 831
F.E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number: 189620022
Status: Unutilized
Reason: Secured Area

Bldg. 832
F.E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number: 189620023
Status: Unutilized
Reason: Secured Area

Bldg. 833
F.E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number: 189620024
Status: Unutilized
Reason: Secured Area

Bldg. 920, F.E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number: 189640016
Status: Unutilized
Reason: Secured Area

Land (by State)

Alaska

Campion Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010430
Status: Unutilized
Reason: Other, Isolated area, Not accessible by road
Comment: Isolated and remote area; Arctic environment

Lake Louise Recreation
21 CSG–DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010431
Status: Unutilized
Reason: Other, Isolated area, Not accessible by road
Comment: Isolated and remote area; Arctic coast.

Nikolski Radio Relay Site
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010432
Status: Unutilized
Reason: Other, Isolated area, Not accessible by road
Comment: Isolated and remote area; Arctic coast.

Russian Creek Aggregate Site
USCG Support Center Kodiak
Kodiak Co: Kodiak AK 99619–
Landholding Agency: DOT
Property Number: 879440025
Status: Excess
Reason: Floodway

Sargent Creek Aggregate Site
USCG Support Center Kodiak
Kodiak Co: Kodiak AK 99619–
Landholding Agency: DOT
Property Number: 879440026
Status: Excess
Reason: Floodway

Land—Sanak Island
106+acres
Sanak Island Co: Sanak Harbor AK
Landholding Agency: DOT
Property Number: 879640003
Status: Unutilized
Reason: Other
Comment: Inaccessible

California

Parcel B
Santa Rosa Co: Sonoma CA
Landholding Agency: GSA
Property Number: 549310016
Status: Excess
Reason: Other
Comment: Sewage Treatment Plant
GSA Number: 9–G–CA–580C

Florida

Land
MacDill Air Force Base
6601 S. Manhattan Avenue
Landholding Agency: DOT
Tampa Co: Hillsborough FL 33608–
Landholding Agency: Air Force
Property Number: 189030003
Status: Excess
Reason: Floodway

Land—approx 220 acres
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 879440018
Status: Underutilized
Reason: Secured Area, Floodway

Guam

Submerged Lands
Ritidian Point GU
Landholding Agency: GSA
Property Number: 549640003
Status: Excess
Reason: Other
Comment: Inaccessible
GSA Number: 9–N–GU–437

Kentucky

9 Tracts
Daniel Boone National Forest
Co: Owsley KY 37902–
Landholding Agency: GSA
Property Number: 549620012
Status: Excess
Reason: Floodway
GSA Number: 4–G–KY–607

Louisiana

Site No. 17
Lazarre Point
West Monroe Co: Ouachita Parish LA 71291–
Landholding Agency: GSA
Property Number: 549630021
Status: Excess
Reason: Floodway
GSA Number: 7–D–LA–0550

Maryland

Land
Brandywine Storage Annex
1776 ABW/DE Brandywine Road, Route 381
Andrews AFB Co: Prince Georges MD 20613–
Landholding Agency: Air Force
Property Number: 189010263
Status: Unutilized
Reason: Secured Area

Michigan

Middle Marker Facility
Yipsilanti Co: Washtenaw MI 48198–
Location: 549 ft. north of intersection of Coolidge and Bradley Ave. on East side of street
Landholding Agency: DOT
Property Number: 879120006
Status: Unutilized
Reason: Within airport runway clear zone

New Mexico

Facility 75100
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240043
Status: Unutilized
Reason: Secured Area

Ohio

Lewis Research Center
Cedar Point Road
Cleveland Co: Cuyahoga OH 44135–
Landholding Agency: GSA
Property Number: 549610007
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone
GSA Number: 2–Z–OH–598–I

South Carolina

Land—2.66 acres
Port Royal Co: Beaufort SC 29902–6148
Landholding Agency: GSA
Property Number: 549240009
Status: Excess
Reason: Floodway
GSA Number: 4–N–SC–0489A

South Dakota

Badlands Bomb Range
60 miles southeast of Rapid City, SD
1½ miles south of Highway 44
Co: Shannon SD
Landholding Agency: Air Force
Property Number: 189210003
Status: Unutilized
Reason: Secured Area

Utah

4.3 acres—Portion
Wendover Airport
Wendover Co: Tooele UT 83354–
Landholding Agency: GSA
Property Number: 549630003
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 7–G–UT–401–L

Washington

Fairchild AFB
SE corner of base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010137
Status: Unutilized
Reason: Secured Area

Fairchild AFB
Fairchild AFB Co: Spokane WA 99011–
Location: NW corner of base
Landholding Agency: Air Force
Property Number: 189010138
Status: Unutilized
Reason: Secured Area

Wyoming

Land—Seminoe Boat Club
Co: Carbon WY 82301–
Landholding Agency: GSA
Property Number: 549640016
Status: Excess
Reason: Other
Comment: no legal public access
GSA Number: 7–1–WY–0537

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federal register

Friday
February 21, 1997

Part III

Department of Education

National Institute on Disability and Rehabilitation Research; Final Funding Priorities for Fiscal Year 1997–1998; and Applications for New Awards Under Certain Programs for Fiscal Year 1997; Notices

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

AGENCY: Department of Education.

ACTION: Notice of Final Funding Priorities for Fiscal Years 1997–1998 for a Research and Demonstration Project and Rehabilitation Research and Training Centers.

SUMMARY: The Secretary announces final funding priorities for the Research and Demonstration Project (R&D) Program and the Rehabilitation Research and Training Center (RRTC) Program under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1997–1998. The Secretary takes this action to focus research attention on areas of national need consistent with NIDRR's long-range planning process, to improve rehabilitation services and outcomes for individuals with disabilities, and to assist in the solutions to problems encountered by individuals with disabilities in their daily activities.

EFFECTIVE DATE: These priorities take effect on March 24, 1997.

FOR FURTHER INFORMATION CONTACT: David Esquith. Telephone: (202) 205–8801. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8133. Internet: David_Esquith@ed.gov.

SUPPLEMENTARY INFORMATION: This notice contains final priorities to establish one R&D project for research on improving employment practices covered by Title I of the Americans with Disabilities Act (ADA), and two RRTCs for research related to personal assistance services (PAS) and employment for persons with long-term mental illness (LTMI).

NIDRR is in the process of developing a revised long-range plan. The final priorities in this notice are consistent with the long-range planning process. These final priorities support the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Note: This notice of final priorities does *not* solicit applications. A notice inviting applications under these competitions is published in a separate notice in this issue of the **Federal Register**.

Analysis of Comments and Changes

On October 31, 1996, the Secretary published a notice of proposed priorities in the **Federal Register** (61 FR 56374–56379). The Department of Education received 9 letters commenting on the notice of proposed priorities by the deadline date. Two additional comments were received after the deadline date and were not considered in this response. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under statutory authority—are not addressed.

Research and Demonstration Projects Program

Priority: Improving Employment Practices Covered by Title I of the Americans With Disabilities Act

Comment: One commenter recommended that the grantee should research the practices and procedures businesses have used to create a diverse work force and the attitudinal factors that affect hiring and employment decisions regarding persons with disabilities.

Discussion: The Secretary believes that research on the practices and procedures business have used to create a diverse work is an important, but overly broad, topic that addresses issues unrelated to those involving persons with disabilities. As indicated in the background to the priority, the Secretary believes that a sufficent body of attitudinal research exists, including attitudinal research on the factors that affect hiring and employment decisions regarding persons with disabilities. The Secretary does not believe that any further attitudinal research is necessary at this time.

Changes: None.

Comment: One commenter recommended that the research team include people with an established credibility with the corporate community.

Discussion: The Secretary believes that the grantee's ability to gain the confidence and cooperation of private sector entities with responsibilities under Title I of the ADA is essential to the success of the project. The composition of the research team and the qualifications of key personnel are evaluated in the peer review process using the applicable selection criteria. The Secretary does not believe any further personnel requirements are necessary.

Changes: None.

Comment: One commenter recommended that NIDRR suggest collaborations that would enhance the effectiveness of the interventions that the project will develop to address challenging employment practices.

Discussion: The Secretary believes that applicants should have complete discretion to select the participants in any collaborative effort that is proposed. The Secretary does not believe that NIDRR should influence this decision by making suggestions.

Changes: None.

Rehabilitation Research and Training Centers (RRTCs)

Priority 1: Personal Assistance Services

Comment: One commenter applauded the reference to studying PAS in the community (outside the home), but noted that the definition of PAS used in the priority referred to home-based services.

Discussion: NIDRR used the definition of PAS that is included in the Rehabilitation Act. The definition specifically refers to services provided on the job. The commenter focused on the initial descriptive phrase "forms of home-based assistance," which was intended to imply only that the services are provided outside of an institution. The definition of PAS in the priority encompasses community-based services, and this descriptive phrase in the background statement does not affect the required scope of work.

Changes: None.

Comment: Two commenters noted that the priority appeared to either be stating a preference for the "independent living" model of PAS, or to be suggesting a comparative evaluation of that model and the "medical model." The commenters believed that there was too much emphasis on the differences between the two models.

Discussion: The discussion of the two models of PAS was intended only to illustrate some of the ways in which PAS is organized and delivered in the community. The Secretary realizes that these are two points on a continuum, and that in fact most programs contain elements of each of the "pure" models. The important issue is to determine what components of a PAS delivery system are most appropriate for individuals with disabilities of varying ages, types of disabilities, cultural backgrounds, lifestyles, and life goals. The Secretary points out that all of the references to models of PAS are included in the background section and do not have direct relevance to the activities to be performed by the Center.

Changes: None.

Comment: One commenter recommended that the compilation of a database on extant PAS programs should be considered a service, rather than a research activity, and should not compete for the limited resources available for this Center.

Discussion: NIDRR has identified the need for such a database for research purposes, not as a referral service. The types of data to be collected could be regularly updated to track trends in availability, funding sources, eligibility requirements, demand and usage, and costs and resources. Such a database is seen as a key to determining who has access to PAS, and whether the PAS that can be accessed varies according to characteristics of the individual consumer.

Changes: None.

Comment: One commenter stated that there should be more emphasis on training and services or technical assistance in the priority.

Discussion: The Secretary believes that there are many research issues that must be addressed in the area of PAS and that there is a tendency to respond to the demands for training and technical assistance before the research base is secure. For that reason, the priority focuses on research. Applicants are free to propose training and technical assistance that they believe complements the research scope, but the Secretary will not impose additional requirements.

Changes: None.

Comment: The priority currently calls for one conference for consumers and one conference for policymakers to share findings and obtain input on outstanding issues in the final year of the project. One commenter stated that the priority should include a requirement for three conferences to assist in the design of the Center, evaluate progress at the mid-point, and extend the availability of effective PAS.

Discussion: The Secretary requires conferences targeted to these two audiences as a dissemination mechanism. The commenter's suggestions would amount to dictating the process that the grantee would use in designing and evaluating its activities, and the Secretary declines to limit grantees in proposing their own approaches to planning and managing the project.

Changes: None.

Comment: Two commenters noted that there were many required activities in the priority and suggested that various of these specific activities could be deleted, while one suggested adding a requirement to examine the ways in which technology can be used to replace or supplement personal assistance, particularly in the workplace.

Discussion: The Secretary points out that the Center focuses on four objectives: analyzing the availability of PAS; analyzing State policies and practices; evaluating the impact of various types of PAS; and developing strategies to increase the supply of qualified PAS. In addressing these objectives, the Center is required to conduct six activities. The Secretary believes that all the required activities are important in addressing the objectives of the Center, and declines to eliminate any of the basic requirements in the priority. The requirement to investigate the use of PAS at the workplace reflects the importance of identifying effective approaches that have the potential to expand employment opportunities and enhance employment outcomes for individuals with significant disabilities. In fulfilling this requirement, the applicant may address the use of technology to promote independent functioning at the workplace. The Secretary emphasizes that applicants are free to determine their approach to each of the objectives of the RRTC within the constraints of available resources.

Changes: None.

Priority 2: Vocational Rehabilitation Services for Persons With Long-Term Mental Illness

Comment: Two commenters recommended studying the impact of behavioral managed care on the delivery of vocational rehabilitation services for persons with LTMI.

Discussion: Based on the first purpose of the priority, the Secretary believes that an application could propose to study the impact of behavioral managed care on the delivery of vocational rehabilitation services for persons with LTMI. However, the Secretary prefers to provide applicants with the discretion to propose specific topics for investigation.

Changes: None.

Comment: One commenter recommended studying the cost-effectiveness of vocational rehabilitation for persons with LTMI, and a second commenter recommended studying the costs and benefits of providing vocational rehabilitation to persons with LTMI.

Discussion: The Secretary believes that an applicant could propose to conduct either study if the study furthered the purpose of the RRTC to conduct research on the achievement of high quality employment outcomes for persons with LTMI. However, the Secretary prefers to provide applicants with the discretion to propose specific topics for investigation.

Changes: None.

Comment: One commenter recommended including individuals with head injury in the definition of individuals with LTMI.

Discussion: The Secretary believes that individuals who have experienced a head injury and exhibit behaviors of individuals with a long-term mental illness could be included within the target population of this RRTC. The Secretary points out that for Fiscal Year 1996, NIDRR is funding ten projects related to brain injury, including two RRTCs. The Secretary does not believe that NIDRR should support any additional research on head injury at this time.

Changes: None.

Comment: One commenter recommended addressing the needs of persons with dual diagnosis, youth, women, and persons from minority backgrounds.

Discussion: The Secretary points out that all applicants must meet the statutory requirement to demonstrate how the application will address the needs of individuals with disabilities from minority backgrounds. In regard to persons with dual diagnosis, youth, and women, the Secretary believes that an applicant could propose to address the needs of these individuals. However, the Secretary prefers to provide applicants with the discretion to propose specific target populations for investigation.

Changes: None.

Comment: The same commenter recommended requiring training and dissemination activities to provide consumers and families members with useful information to assist them in personal and systems advocacy. In addition, the commenter recommended assuring that any research and training activities be undertaken within an evaluative context.

Discussion: The Secretary agrees that the RRTC should provide consumers and family members with useful information, and expects the RRTC's evaluation plan to address all research and training activities. Dissemination activities and the evaluation plan are evaluated in the peer review process using the applicable selection criteria. The Secretary does not believe any further personnel requirements are necessary.

Changes: None.

Comment: One commenter suggested identifying high demand occupational opportunities that may match the work skills and workplace requirements of persons with LTMI. The commenter also suggested identifying individualized strategies that lead to economic self-sufficiency.

Discussion: The Secretary believes that within the activity to analyze the relationships between employment experiences and the characteristics of

impairment, an applicant could propose to identify occupational opportunities that may match the work skills and workplace requirements of workers with LTMI, and identify individualized strategies that lead to economic self-sufficiency. However, the Secretary prefers to provide applicants with the discretion to propose specific topics for investigation.

Changes: None.

Comment: The same commenter suggested applying short-term outcome measures, such as occupational growth, improved workplace behavioral and coping strategies, and effective use of helping behavior in the workplace, to determine whether high quality employment outcomes are being achieved. The commenter also recommended considering economic self-sufficiency as a long-term outcome.

Discussion: The Secretary believes applicants should have the discretion to propose the types of employment outcomes and outcome measures that will be used in the RRTC's research activities. The proposed outcomes and outcome measures will be evaluated in the peer review process using the applicable selection criteria. The Secretary does not believe any further requirements are necessary.

Changes: None.

Comment: The same commenter recommended identifying necessary supports and successful methods to secure and sustain family and therapeutic supports for the attainment of employment outcomes.

Discussion: The Secretary believes that within the activity to identify models of long-term vocational and community support for persons who have achieved an employment outcome after the receipt of VR services, an applicant could propose to identify necessary supports and successful methods to secure and sustain family and therapeutic supports. However, the Secretary prefers to provide applicants with the discretion to propose specific topics for investigation.

Changes: None.

General

Comment: One commenter recommended that the Centers publish their research findings in refereed journals.

Discussion: The quality of an applicant's proposed dissemination activities are evaluated in the peer review process using applicable selection criteria. The Secretary does not believe any further dissemination requirements are necessary.

Changes: None.

Comment: One commenter recommended that the Secretary establish an RRTC focusing on individuals with a combination of significant physical and speech disabilities with an emphasis on those who use alternative and augmentative communication devices.

Discussion: The Secretary believes that individuals with a combination of physical and speech disabilities face significant barriers. The Secretary points out that NIDRR is currently supporting a Rehabilitation Engineering Research Center in Augmentative Communication. In response to the commenter's suggestion, NIDRR will consider conducting a planning meeting to explore research needs in this area and issuing an invitational priority in the FY 1998 Field-Initiated Research competition to address the needs of individuals with a combination of significant physical and speech disabilities.

Changes: None.

Research and Demonstration Projects

Authority for the R&D program of NIDRR is contained in section 204(a) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760–762). Under this program the Secretary makes awards to public agencies and private agencies and organizations, including institutions of higher education, Indian tribes, and tribal organizations. This program is designed to assist in the development of solutions to the problems encountered by individuals with disabilities in their daily activities, especially problems related to employment (see 34 CFR 351.1). Under the regulations for this program (see 34 CFR 351.32), the Secretary may establish research priorities by reserving funds to support the research activities listed in 34 CFR 351.10.

Priority

Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary will fund under this program only applications that meet this absolute priority:

Priority: Improving Employment Practices Covered by Title I of the Americans With Disabilities Act

Background

The intent of Title I of the Americans with Disabilities Act (ADA) is to include and empower people with disabilities in the work force (P. Blanck, The Americans with Disabilities Act: Putting the Employment Provisions to Work, Annenberg Washington Program, page 9, 1993). Title I provides that employers, employment agencies, labor organizations, or joint labor-management committees may not discriminate against a qualified individual with a disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training and other terms, conditions, and privileges of employment. Discrimination under Title I includes not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business.

The employment status of persons with disabilities is a matter of critical importance, both in terms of public expenditures and in the right of persons with disabilities to participate fully in the labor market (J. McNeil, Americans with Disabilities: 1991–1992, Household Economic Studies, pp. 70–33, December, 1993). One of the assumptions underlying the ADA is that discriminatory employment practices are contributing significantly to the depressed employment status of persons with disabilities. For 1994, of the 29.41 million persons 21 to 64 years old who had a disability, 14.03 million or 47.7 percent were unemployed. For the same year, the mean monthly earnings of workers with disabilities was $1,713 compared to $2,160 for workers without disabilities (J. McNeil, U.S. Bureau of the Census, Survey of Income and Program Participation, 1994).

The Equal Employment Opportunity Commission (EEOC), which has enforcement responsibility for Title I of the ADA, estimates that Title I covers approximately 666,000 businesses employing approximately 86 million workers (EEOC Press Release, July 19, 1994). Title I became effective for employers with 25 or more employees on July 26, 1992, and on July 26, 1994 for employers with 15 or more employees. Partially as a result of the recency of these effective dates, little is known about the actual impact of Title I on the employment practices of covered entities. The research that has been conducted on the impact of Title I on employment practices relies primarily on attitudinal surveys of employers toward the ADA, and the anticipated impact that Title I might have on their employment practices (see Baseline Study to Determine Business' Attitudes, Awareness, and Reaction to the Americans with Disabilities Act, Gallup Survey Report, 1992).

While little is known about the actual impact of Title I on employment practices, data collected by the EEOC provide information about alleged Title I ADA violations involving employment practices. Since July 26, 1992 the EEOC has maintained a database regarding the number of ADA violations that have been cited in charges and the impairments cited in those charges. For the cumulative reporting period between July 26, 1992 and June 30, 1996, the EEOC reports that a total of 68,203 ADA charges were filed. Of the 68,203 charges, 52,448 or 76.9 percent have been resolved. The majority of resolutions are either "Administrative Closures" (40.2 percent) or "No Reasonable Cause" (45.2 percent). While it is impossible to determine what percentage of the "Administrative Closures" involve charges that are meritorious, the remaining 14.6 percent of the charges resulted in "Merit Resolutions" (settlements—4.9 percent, withdrawals with benefits—7.2 percent, reasonable cause 2.5 percent) (EEOC Office of Program Operations from EEOC's Charge Data National Data Base).

The complaints filed with the EEOC that result in "Merit Resolutions" may be indications of not only discriminatory employment practices, but also the difficulties that employers are having understanding or implementing Title I's requirements. In a 1992 survey of 618 employers in Georgia, 84 percent of the companies indicated that they would like to receive more information concerning ADA requirements, 65 percent wanted more information about financial incentives, and 62 percent wanted disability awareness training for employees and having access to trained, motivated employees with disabilities (J. Newman and R. Dinwoodie, Impact of the Americans with Disabilities Act on Private Sector Employers, Journal of Rehabilitation Administration, Vol. 20, No. 1, February, 1996).

Persons with disabilities may be exposed to substantial emotional and financial hardship as a result of discrimination or an employer's lack of understanding of the employment practice requirements of the ADA. Attempting to resolve Title I disputes through the complaint process or litigation, can be costly and time-consuming for persons with disabilities, employers, and the EEOC. Preventing employment discrimination and disputes through the provision of information and technical assistance enables employers and persons with disabilities to share in the benefits of productive and financially rewarding employment.

Priority

The Secretary will establish a research and demonstration project on improving employment practices covered by Title I of the ADA that will:

(1) Investigate the impact of the ADA on the employment practices of private sector small, medium, and large businesses;

(2) Identify the ADA employment practice requirements (with a special emphasis on hiring) that have been most challenging for employers to implement successfully;

(3) Identify interventions that can be used by private sector employers and persons with disabilities to address the challenging employment practice requirements identified in (2) above;

(4) Demonstrate the effectiveness of the interventions involving small, medium-sized, and large businesses; and

(5) Widely disseminate information on effective interventions to employers and persons with disabilities.

In carrying out the purposes of the priority, the R&D project shall:

- Consult with the EEOC in order to determine how EEOC public-use data demonstrate the findings of compliance problems in covered areas, especially in hiring, and how those and future data may be available for the purposes of the project;
- Complement the General Accounting Office qualitative evaluation of the employment provisions of the ADA; and
- Use a variety of information dissemination strategies to reach as wide an audience as possible, including using the ten regional Disability and Business Technical Assistance Centers.

Rehabilitation Research and Training Centers (RRTCs)

Authority for the RRTC program of NIDRR is contained in section 204(b)(2) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760–762). Under this program the Secretary makes awards to public and private organizations, including institutions of higher education and Indian tribes or tribal organizations for coordinated research and training activities. These entities must be of sufficient size, scope, and quality to effectively carry out the activities of the Center in an efficient manner consistent with appropriate State and Federal laws. They must demonstrate the ability to carry out the training activities either directly or through another entity that can provide such training.

The Secretary may make awards for up to 60 months through grants or cooperative agreements. The purpose of the awards is for planning and conducting research, training, demonstrations, and related activities leading to the development of methods, procedures, and devices that will benefit individuals with disabilities, especially those with the most severe disabilities.

Under the regulations for this program (see 34 CFR 352.32) the Secretary may establish research priorities by reserving funds to support particular research activities.

Description of the Rehabilitation Research and Training Center Program

RRTCs are operated in collaboration with institutions of higher education or providers of rehabilitation services or other appropriate services. RRTCs serve as centers of national excellence and national or regional resources for providers and individuals with disabilities and the parents, family members, guardians, advocates or authorized representatives of the individuals.

RRTCs conduct coordinated and advanced programs of research in rehabilitation targeted toward the production of new knowledge to improve rehabilitation methodology and service delivery systems, alleviate or stabilize disabling conditions, and promote maximum social and economic independence of individuals with disabilities.

RRTCs provide training, including graduate, pre-service, and in-service training, to assist individuals to more effectively provide rehabilitation services. They also provide training including graduate, pre-service, and in-service training, for rehabilitation research personnel and other rehabilitation personnel.

RRTCs serve as informational and technical assistance resources to providers, individuals with disabilities, and the parents, family members, guardians, advocates, or authorized representatives of these individuals through conferences, workshops, public education programs, in-service training programs and similar activities.

NIDRR encourages all Centers to involve individuals with disabilities and minorities as recipients in research training, as well as clinical training.

Applicants have considerable latitude in proposing the specific research and related projects they will undertake to achieve the designated outcomes; however, the regulatory selection criteria for the program (34 CFR 352.31) state that the Secretary reviews the

extent to which applicants justify their choice of research projects in terms of the relevance to the priority and to the needs of individuals with disabilities. The Secretary also reviews the extent to which applicants present a scientific methodology that includes reasonable hypotheses, methods of data collection and analysis, and a means to evaluate the extent to which project objectives have been achieved.

The Department is particularly interested in ensuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Not later than three years after the establishment of any RRTC, NIDRR will conduct one or more reviews of the activities and achievements of the Center. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

General

The following requirements apply to these RRTCs pursuant to the priorities unless noted otherwise:

Each RRTC must conduct an integrated program of research to develop solutions to problems confronted by individuals with disabilities.

Each RRTC must conduct a coordinated and advanced program of training in rehabilitation research, including training in research methodology and applied research experience, that will contribute to the number of qualified researchers working in the area of rehabilitation research.

Each Center must disseminate and encourage the use of new rehabilitation knowledge. They must publish all materials for dissemination or training in alternate formats to make them accessible to individuals with a range of disabling conditions.

Each RRTC must involve individuals with disabilities and, if appropriate, their family members, as well as rehabilitation service providers in planning and implementing the research and training programs, in interpreting and disseminating the research findings, and in evaluating the Center.

Priorities

Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet one of the following priorities. The Secretary will fund under these competitions only applications that meet one of these absolute priorities:

Priority 1: Personal Assistance Services

Background

Over the past 20 years, various forms of home-based assistance have emerged as alternatives to institutional or congregate care for individuals who are unable to perform activities of daily living (ADLs, such as eating, speaking, toileting), or instrumental activities of daily living (IADLs, such as housekeeping, shopping, or food preparation). This assistance often comes in the form of chore services or home health aides provided for older persons through community agencies or corporations and financed through public or private health insurance. However, individuals with disabilities, particularly through the independent living movement, have developed and promoted an alternative model of personal assistance featuring consumer direction. In this priority, personal assistance services (PAS) is used to refer to the full range of service delivery models for providing home-based support services, including chore services, home health care, and consumer-directed personal assistants (PAs).

Programs to fund and provide personal assistance services for individuals with severe disabilities have developed in response to the increased numbers of persons with disabilities living independently in their homes (Kennedy, J., Policy and Program Issues in Providing Personal Assistance Services, Journal of Rehabilitation, July/August/September, 1993). The term "personal assistance services" was added to the Rehabilitation Act of 1973, with the 1992 amendments, and defined as "a range of services, provided by one or more persons, designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform if the individual did not have a disability" (section 7(11)). The provision of on-the-job or related PAS is specifically authorized under the Vocational Rehabilitation Services Program while an individual is receiving services under the program (section 103(a)(15)). In addition, PAS is considered to be an element in the definition of "independent living services" in section 7(30)(B)(vi) of the Act.

PAS is also supported by health care agencies, public welfare agencies, educational institutions, private insurance providers, nonprofit organizations, client self-funding, and a host of less common sources. Indeed, researchers have identified more than 300 State level PAS programs, and suggest that they may be categorized by: (1) target population, such as persons who are aged, persons with developmental disabilities, persons with mental illness; (2) type of service, such as chore services and medical services; and (3) method of funding, such as public Medicaid assistance or private individual or insurer purchase of care from home health care providers (Medlantic Research Foundation, The Feasibility of Establishing a Regional Personal Assistance Program in the Metropolitan Washington D.C. Area, 1991).

Information from the 1990 Survey of Income and Program Participation (SIPP) and the 1990 Decennial Census indicates that about 4.1 million nonelderly adults, and 5.8 million elderly persons living in community settings have acute or chronic health conditions that may make them candidates for individual personal assistance in their homes (Adler, Population Estimates of Disability and Long-Term Care, ASPE Research Notes, 1995). The population potentially in need of PAS is very diverse in terms of geographic location, disability or medical condition, personal health care needs, and psychosocial characteristics.

Two major contrasting models of personal assistance may be identified as the independent living (IL) model, and the medical model. The range of personal services programs may be arrayed on a continuum between the two pure archetypes, with many variations falling at various points on the continuum. The original, or medical model, is characterized by professionalism; agency control and supervision of service providers; and strictly specified tasks that generally must be provided in the home. An agency hires, trains (usually under a medical, nursing, or health services approach), pays, assigns, supervises, and terminates the workers, commonly referred to as health aides, and the user has a limited role in planning, directing, and assessing this delimited range of services. In the IL model, individuals with disabilities have a substantial role in determining the terms and conditions of PAS, and they hire, train, and supervise their PAs (A Comparison of Some of the Characteristics of Two Models of Personal Assistance Services, World Institute on Disability, 1995). Although research has shown that PAS are effective, cost efficient, and popular with those assisted under the IL model, the medical model predominates throughout the United States (Kennedy, 1991; Kennedy and Litvak, S. Case Studies of Six State Personal Assistance Service Programs funded by the Medicaid Personal Care Option, 1991). The reasons for the prevalence of the medical model are not entirely clear, but there are several possible explanations. The medical model emerged earlier, in response to the needs of elderly persons, who were then being cared for in a medical or quasi-medical environment. It was a logical extension to duplicate the medical model in home-based services, including elements of medical prescriptiveness, health services training and qualifications, and focus on such things as security and accountability. It is also possible that older clients are less comfortable with learning new roles in determining their own needs and supervising their care, and that some may lack the physical or cognitive capacities to assume these roles. On the other hand, it may be that younger disabled individuals place much higher value on autonomy, social integration, self-determination and independence than do many of the frail elderly.

Although researchers have described these two models of PAS, there is insufficient information on the characteristics of the PAS that is available to various subgroups of individuals with disabilities, including not only information on the service delivery models, but also factors such as eligibility criteria, quantity and nature of services provided, sources of financing, and costs (per client, per unit of services, and total). Researchers, service providers, policymakers, and advocates would benefit from greater knowledge about the kinds of PAS services available to disabled individuals with various characteristics, including age, type of disability, geographic location, work history, and residential and family status. A comprehensive database of available PAS, on a State-by-State basis, is fundamental to conducting the analyses that will accomplish the purposes of this priority.

Beyond improving understanding of what exists, it is important to both assess the contributions of these services to individuals with disabilities and to society, and to anticipate new developments in service provision and planning. The objectives of the IL model of PAS are somewhat different from those of the medical model. To some extent, these are the individual goals and objectives of the disabled persons who use PAS. However, there are some overall objectives or expectations that society has in their establishment and funding of these programs. It is important to define both sets of objectives and develop standards and measures that will permit an assessment of the effectiveness of PAS in achieving societal objectives as well as in satisfying the expectations of the users of PAS. The objectives of these two groups are expected to be similar, although not necessarily identical and not prioritized in the same order. Societal objectives may include the avoidance of costly future interventions through health maintenance, prevention of further disablement, safety, and return to work, and these may be reasonably objective and quantifiable outcomes. Consumer objectives may focus on more subjective measures such as autonomy, social integration, and quality of life. Consumers and policymakers will be best served by a comprehensive assessment of PAS outcomes. This priority focuses on the access to, use and outcomes of, and satisfaction with, various configurations of PAS by individuals of working age.

Increasingly, individuals using PAS, and often the PAs as well, are entering the worksite as a result of innovations in telecommuting, flexiplace, home businesses, and individual accommodations for workers in traditional work sites. There is need for studies that will examine alternative approaches to providing PAS to individuals with disabilities in employment settings, including on-site versus off-site assistance, configurations of services necessary to support employment, and that examine relations between PAs and job coaches, rehabilitation counselors, interpreters, and other service personnel. The relationship between the types of services available through PAS and the likelihood of maintaining employment is an area for investigation.

The introduction of managed care approaches to health care delivery and financing and the influence of Federal court decisions are likely to result in extensive changes to State-administered Medicaid programs providing PAS. In addition, the Robert Wood Johnson Foundation is providing $3 million in grants to stimulate States, nonprofit organizations, and communities to demonstrate the effectiveness of the choice concept in PAS. There is also an anticipated decentralization of responsibility for service delivery and devolution of regulatory control over funds and services to the States or local government levels. It is unclear what effect these new patterns will have on availability, eligibility, and service configurations. There is a need to analyze the impact of these anticipated new public program and policy directions on the administration of PAS, and to improve public information, increase interagency collaboration on effective program features, and develop strategies to address shortages of trained personnel for providing PAS.

Priority 1: The Secretary will establish an RRTC that will contribute to the understanding of personal assistance services that informs policymaking and practice throughout the nation by:

(1) Analyzing the patterns of access to PAS in terms of the characteristics of the consumers with disabilities, the components of the PAS programs, and the administrative requirements;

(2) Assessing the impact of devolution/decentralization on PAS through the analysis of trends in the availability of PAS and the correlation of these trends with new developments in State policies;

(3) Evaluating the impact of various types and amounts of PAS on desired consumer outcomes, including health maintenance and secondary prevention, appropriate versus inappropriate health care utilization, productivity and employment, community participation, emotional well-being, and life satisfaction; and

(4) Developing strategies to increase the availability of effective PAS and qualified PAs.

In addition to activities proposed by the applicant to carry out these objectives, the RRTC must conduct the following activities:

- Develop and maintain a comprehensive database on types of PAS available on a State-by-State basis, including relevant descriptors of the PAS and the clients served;
- Investigate existing practices of integrating PAS into the workplace, and disseminate models of effective practices;
- Assess the availability of qualified PAs and develop strategies to increase the pool, skill levels, work performance, job satisfaction, and sustained involvement of qualified PAs in the field;
- Identify new models at the State level, including service configurations, financing methods, or delivery practices that have the potential to make more effective PAS available to individuals with disabilities who need PAS;
- Conduct at least one conference for consumers and one conference for policy makers in the final year of operations to share findings with these target audiences and to obtain feedback on outstanding issues; and
- Coordinate with ongoing research activities in the Robert Wood Johnson Independence initiative and the Department of Health and Human Services Cash and Counseling demonstration, as well as with other

relevant NIDRR research centers and projects.

Priority 2: Vocational Rehabilitation Services for Persons With Long-term Mental Illness

Background

The National Institute of Mental Health estimates that there are over 3 million adults ages 18–69 who have a serious mental illness (Manderscheid, R.W. & Sonnenschein, M.A. (Eds.), Mental Health, United States 1992 U.S. Department of Health and Human Services, Rockville, MD; DHHS Publication No.(SMA) 92–1942). Estimates of unemployment among this group remains in the 80–90 percent range (Baron, R., NIDRR Public Hearing on Disability Research, November 28, 1995).

The Social Security Administration (SSA) operates the nation's two largest Federal programs providing cash benefits to people with disabilities—the Supplemental Security Income (SSI) and the Social Security Disability Insurance (SSDI) programs. The number of SSI/SSDI beneficiaries with severe mental illness, and the nation's expenditures for them, have continued to grow over the last ten years and SSA expects the number will continue to grow (SSA, Developing a World-Class Employment Strategy for People with Disabilities, September, 1994). A recent study by the U.S. General Accounting Office (GAO) found that by 1994, mental impairments, which are associated with the longest entitlement periods, accounted for 57 percent of the SSI beneficiary population aged 18 to 64 and 31 percent of the SSDI beneficiary population (GAO Report, SSA DISABILITY, Program Redesign Necessary to Encourage Return to Work, April, 1996).

There are significant complexities in designing effective return-to-work strategies to assist individuals in the SSA caseload. Assisting those individuals who can return to work will require varying approaches and levels of support. Individuals who have completed the process of establishing themselves as disabled for SSA purposes may find it difficult to later view themselves as having remaining work potential. The transfer payments and other benefits contingent on SSI/SSDI eligibility (especially medical insurance benefits) may increase the opportunity costs involved in return to work beyond the level acceptable to the individual. The benefit structure may provide a particular barrier for low-wage workers, those who are unskilled, or had marginal attachments to the labor market in the past. Beneficiaries face the loss of Medicare or Medicaid benefits if they return to work and marginal jobs may not offer adequate, or any, medical coverage, especially for pre-existing conditions. Relinquishing these benefits is particularly risky for individuals with LTMI, since recurring episodes of their illness may result in repeated job loss and the need for quick access to benefits.

SSA has implemented several work incentive programs to help people with disabilities enter or re-enter the workforce by protecting their cash and medical benefits until they can support themselves (Red Book on Work Incentives—A Summary Guide to Social Security and Supplemental Security Income Work Incentives for People with Disabilities, SSA Pub. No. 64–030, U.S. Government Printing Office, June, 1992). For individuals with a LTMI, the Social Security Work Incentives (SSWI) have the potential to be a valuable component of the overall rehabilitation process. However, there has been neither a comprehensive assessment of the effectiveness of the SSWI programs nor an identification of the possible improvements to the program. There is some evidence, especially anecdotal evidence, that rather than using SSA work incentives, individuals may decide to work for earnings at a level that does not threaten continued eligibility for benefits (Rehabilitation Services Administration (RSA), Program Administrative Review—The Provision of Vocational Rehabilitation Services to Individuals Who Have Severe Mental Illness, 1995).

The State Vocational Rehabilitation (VR) Program provides services to nearly 1,000,000 individuals with disabilities each year. In fiscal year 1992, individuals with the primary disabling condition of a mental illness made up about 19 percent of those who received services from the State VR Program, the second largest disability group. However, RSA has reported that the success rate for this population generally falls below the average success rate for the VR program. In 1993, RSA conducted a Program Administrative Review (PAR) in order to improve the provision of vocational rehabilitation services to individuals who have severe mental illness. Specifically the study examined the use of identified best practices including their use and relationship to successful outcomes and made recommendations for actions to be taken by VR State agencies to improve employment outcomes. In their review of a sample of case records of individuals with severe mental illness, documentation of the use of SSWIs was found in a relatively small percentage of the records of those individuals eligible for such incentives. RSA also found that individuals who achieved employment outcomes were more likely to have used work incentives.

There are numerous other barriers facing individuals with severe mental illness seeking vocational rehabilitation including the often chronic and episodic nature of the illness, the iatrogenic effects of pharmacological and psychological treatment interventions, difficulties in assessing clients' work readiness, and stigma toward persons with mental illness. There is still much to be learned about the interaction of diagnosis, symptoms, skills and job environment. Because the severity of symptoms does not necessarily correspond with an individual's functional limitations, it is important to develop a better understanding of how psychiatric symptoms and diagnosis affect vocational outcomes (Cook, J.A. & Picket, S.A., Recent Trends in Vocational Rehabilitation for Persons with Psychiatric Disabilities, American Rehabilitation, 20(4), pages 2–12, 1995).

There have been a variety of types or models of vocational rehabilitation programs and techniques that have been developed to increase the employment of individuals with mental illness, including models which have demonstrated effectiveness in returning persons with LTMI to competitive employment. What we do not know is which types of vocational rehabilitation model are most beneficial for which types of consumers and at which stages of their recovery process (McGurrin, M.C., An Overview of the Effectiveness of Traditional Vocational Rehabilitation Services in the Treatment of Long Term Mental Illness, Psychosocial Rehabilitation Journal, 17(3), pp. 37–54, 1994).

In addition, there is a need for more information on duration and quality of employment, including issues of disclosure and consumer choice. Individuals with mental illness bring to the work place a range of unique needs. Because the episodic nature of the disability may cause intermittent instability, ongoing support is often needed for both the employee with mental illness and the employer in order to maintain employment. One study of outcomes among this population found that the occurrence of uninterrupted vocational support was a major predictor of employment status, even controlling for prior work history, client demographics, and level of functioning (Cook, J.A. et al., Cultivation and Maintenance of Relationships with Employers of People with Psychiatric Disabilities, Psychosocial Rehabilitation Journal, 17(3), pp. 103–115, 1994).

RSA in its examination of the use of best practices in VR State agencies found that the use of ongoing vocational support services and community-based support services were not frequently planned for at the time individuals' service plans were being developed nor routinely planned for at the time individuals were leaving the VR program. However, individuals who achieved employment outcomes were more likely to have had post-employment needs assessed during the development of their individualized rehabilitation program

There is a need for studies that examine long-term employment issues including the experiences of employers and employees with LTMI in long term employment relationships and that assess the vocational and community supports needed to maintain employment.

Priority 2: The Secretary will establish an RRTC for the purpose of conducting a comprehensive program of research on the achievement of high quality employment outcomes for persons with LTMI. The RRTC shall:

(1) Examine how public policies and benefit programs affect the employment of individuals with LTMI;

(2) Identify the characteristics of consumers (including their stage in the recovery process) that benefit from various types of vocational rehabilitation models;

(3) Examine factors that promote long term job retention such as workplace strategies that assist in the maintenance of employee—employer relationships and the availability of long-term supports; and

(4) Develop and deliver training and technical assistance to rehabilitation service providers and consumers of mental health services on new and effective rehabilitation techniques and accommodations and evaluate the efficacy of the training.

In addition to the activities proposed by the applicant to fulfill these objectives, the RRTC shall:

- Identify effective strategies to broaden the understanding and use of the SSA's Work Incentives Program for individuals with LTMI;
- Conduct studies on long-term relationships between employers and persons with LTMI including in-depth assessment of disclosure issues, career patterns, accommodations and conflict resolution in the workplace;
- Analyze the relationships between employment experiences and the characteristics of impairment (e.g., diagnosis, periodicity, medication, symptoms), and between employment experiences and the characteristics of the work environment; and
- Identify successful models of long-term vocational and community support for persons who have attained employment after the receipt of VR services.

In carrying out the purposes of the priority, the RRTC shall:

- Involve individuals with psychiatric disabilities in all phases of the planning, implementation, evaluation and dissemination of project activities; and
- Coordinate with the Social Security Administration and with other relevant research and demonstration activities sponsored by the Center for Mental Health Services, Rehabilitation Services Administration and the NIDRR.

Applicable Program Regulations: 34 CFR Parts 350, 351, and 352.

Program Authority: 29 U.S.C. 760–762.

(Catalog of Federal Domestic Assistance Numbers: 84.133A, Research and Demonstration Projects, 84.133B, Rehabilitation Research and Training Center Program)

Dated: February 18, 1997.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

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DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.133A and 84.133B]

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for New Awards Under Certain Programs for Fiscal Year 1997

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the programs and applicable regulations governing the programs, including the Education Department General Administrative Regulations (EDGAR), this notice contains information, application forms, and instructions needed to apply for a grant under these competitions.

These programs support the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The estimated funding levels in this notice do not bind the Department of Education to make awards in any of these categories, or to any specific number of awards or funding levels, unless otherwise specified in statute.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, and 86; and the following program regulations:

(a) *Research and Demonstration Projects (R&D)*—34 CFR Parts 350 and 351;

(b) *Rehabilitation Research and Training Centers (RRTCs)*—34 CFR Parts 350 and 352; and

(c) The Notice of Final Funding Priorities published elsewhere in this issue of the **Federal Register**.

Program Title: Research and Demonstration Projects.

CFDA Number: 84.133A.

Purpose of Program: The Research and Demonstration Projects program is designed to support discrete research, demonstration, training, and related projects to develop methods, procedures, and technology that maximize the full inclusion and integration into society, independent living, employment, family support, and economic and social self-sufficiency of individuals with disabilities, especially those with the most severe disabilities. In addition, the R&D program supports discrete research, demonstration, and training projects that specifically address the implementation of Titles I, III, VI, VII, and VIII of the Rehabilitation Act, with emphasis on projects to improve the effectiveness of these programs and to meet the needs described in State Plans submitted to the Rehabilitation Services Administration by State vocational rehabilitation agencies.

Selection Criteria: The Secretary uses the following selection criteria to evaluate applications under this program.

(a) *Potential Impact of Outcomes: Importance of Program* (Weight 3 0). The Secretary reviews each application to determine to what degree—

(1) The proposed activity relates to the announced priority;

(2) The research is likely to produce new and useful information (research activities only);

(3) The need and target population are adequately defined;

(4) The outcomes are likely to benefit the defined target population;

(5) The training needs are clearly defined (training activities only);

(6) The training methods and developed subject matter are likely to meet the defined need (training activities only); and

(7) The need for information exists (utilization activities only).

(b) *Potential Impact of Outcomes: Dissemination/Utilization* (Weight 3.0). The Secretary reviews each application to determine to what degree—

(1) The research results are likely to become available to others working in the field (research activities only);

(2) The means to disseminate and promote utilization by others are defined;

(3) The training methods and content are to be packaged for dissemination and use by others (training activities only);

(4) The utilization approach is likely to address the defined need (utilization activities only); and

(5) There is likely to be widespread dissemination of the results, in a usable and effective manner, to all appropriate target populations, including individuals with disabilities and their family members.

(c) *Probability of Achieving Proposed Outcomes; Program/Project Design* (Weight 5.0). The Secretary reviews each application to determine to what degree—

(1) The objectives of the project(s) are clearly stated;

(2) The hypothesis is sound and based on evidence (research activities only);

(3) The project design/methodology is likely to achieve the objectives;

(4) The measurement methodology and analysis is sound (research and development/demonstration activities only);

(5) The conceptual model (if used) is sound (development/demonstration activities only);

(6) The sample populations are correct and significant (research and development/demonstration activities only);

(7) The human subjects are sufficiently protected (research and development/demonstration activities only);

(8) The device(s) or model system is to be developed in an appropriate environment;

(9) The training content is comprehensive and at an appropriate level (training activities only);

(10) The training methods are likely to be effective (training activities only);

(11) The new materials (if developed) are likely to be of high quality and uniqueness (training activities only);

(12) The target populations are linked to the project (utilization activities only);

(13) The format of the dissemination medium is the best to achieve the desired result (utilization activities only); and

(14) The materials to be used in the project and the materials to be disseminated are likely to be in formats that are accessible to the appropriate populations.

(d) *Probability of Achieving Proposed Outcomes: Key Personnel* (Weight 4.0). The Secretary reviews each application to determine to what degree—

(1) The principal investigator and other key staff have adequate training and/or experience and demonstrate appropriate potential to conduct the proposed research, demonstration, training, development, or dissemination activity;

(2) The principal investigator and other key staff are familiar with pertinent literature and/or methods;

(3) All required disciplines are effectively covered;

(4) Commitments of staff time are adequate for the project; and

(5) The applicant is likely, as part of its non-discriminatory employment practices, to encourage applications for employment from persons who are members of groups that traditionally have been underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Handicapped persons; and

(iv) The elderly.

(e) *Probability of Achieving Proposed Outcomes: Evaluation Plan* (Weight 1.0). The Secretary reviews each application to determine to what degree—

(1) There is a mechanism to evaluate plans, progress and results;

(2) The evaluation methods and objectives are likely to produce data that are quantifiable; and

(3) The evaluation results, where relevant, are likely to be assessed in a service setting.

(f) *Program/Project Management: Plan of Operation* (Weight 2.0). The Secretary reviews each application to determine to what degree—

(1) There is an effective plan of operation that insures proper and efficient administration of the project(s);

(2) The applicant's planned use of its resources and personnel is likely to achieve each objective;

(3) Collaboration between institutions, if proposed, is likely to be effective; and

(4) There is a clear description of how the applicant will include eligible project participants who have been traditionally underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Handicapped persons; and

(iv) The elderly.

(g) *Program/Project Management: Adequacy of Resources* (Weight 1.0). The Secretary reviews each application to determine to what degree—

(1) The facilities planned for use are adequate;

(2) The equipment and supplies planned for use are adequate; and

(3) The commitment of the applicant to provide administrative support and adequate facilities is evident.

(h) *Program/Project Management: (Budget and Cost Effectiveness* (Weight 1.0). The Secretary reviews each application to determine to what degree—

(1) The budget for the project(s) is adequate to support the activities;

(2) The costs are reasonable in relation to the objectives of the projects(s); and

(3) The budget for subcontracts (if required) is detailed and appropriate.

Eligible Applicants: Parties eligible to apply for grants under this program are public and private nonprofit and for-profit agencies and organizations, including institutions of higher education and Indian tribes and tribal organizations.

Program Authority: 29 U.S.C. 761a and 762.

APPLICATION NOTICE FOR FISCAL YEAR 1997 RESEARCH AND DEMONSTRATION PROJECTS 84.133A

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Maximum award amount (per year) *	Project period (months)
Improving Employment Practices Covered by Title I of the ADA	April 8, 1997	1	$250,000	48

Note: The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount (See 34 CFR 75.104(b)).

Program Title: Rehabilitation Research and Training Centers.

CFDA Number: 84.133B.

Purpose of Program: RRTCs conduct coordinated and advanced programs of research on disability and rehabilitation that will produce new knowledge that will improve rehabilitation methods and service delivery systems, alleviate or stabilize disabling conditions, and promote maximum social and economic independence for individuals with disabilities. RRTCs provide training to service providers at the pre-service, in-service training, undergraduate, and graduate levels, to improve the quality and effectiveness of rehabilitation services. They also provide advanced research training to individuals with disabilities and those from minority backgrounds, engaged in research on disability and rehabilitation. RRTCs serve as national and regional technical assistance resources, and provide training for service providers, individuals with disabilities and families and representatives, and rehabilitation researchers.

Selection Criteria: The Secretary uses the following selection criteria to evaluate applications under this program.

(a) *Relevance and importance of the research program* (20 points). The Secretary reviews each application to determine to what degree—

(1) The proposed activities are responsive to a priority established by the Secretary and address a significant need of a disabled target population and rehabilitation service providers;

(2) The overall research program of the Center includes appropriate interdisciplinary and collaborative research activities, is likely to lead to new and useful knowledge in the priority area, and is likely to become a nationally recognized source of scientific knowledge; and

(3) The applicant demonstrates that all component activities of the Center are related to the overall objective of the Center, and will build upon and complement each other to enhance the likelihood of solving significant rehabilitation problems.

(b) *Quality of the research design* (35 points). The Secretary reviews each application to determine to what degree—

(1) The applicant proposes a comprehensive research program for the entire project period, including at least three interrelated research projects;

(2) The research design and methodology of each proposed activity are meritorious in that—

(i) The literature review is appropriate and indicates familiarity with current research in the field;

(ii) The research hypotheses are important and scientifically relevant;

(iii) The sample populations are appropriate and significant;

(iv) The data collection and measurement techniques are appropriate and likely to be effective;

(v) The data analysis methods are appropriate; and

(vi) The applicant assures that human subjects, animals, and the environment are adequately protected; and

(3) The application discusses the anticipated research results and demonstrates how those results would satisfy the original hypotheses and could be used for planning future research, including generation of new hypotheses where applicable.

(c) *Quality of the training and dissemination program* (25 points). The Secretary reviews each application to determine the degree to which—

(1) The proposed plan for training and dissemination provides evidence that research results will be effectively disseminated and utilized based on the identification of appropriate and accessible target groups; the proposed training materials and methods are appropriate; the proposed activities are relevant to the regional and national needs of the rehabilitation field; and the training materials and dissemination packages will be developed in alternate media that are usable by people with various types of disabilities.

(2) The proposed plan for training and dissemination provides for—

(i) Advanced training in rehabilitation research;

(ii) Training rehabilitation service personnel and other appropriate individuals to improve practitioner skills based on new knowledge derived from research;

(iii) Training packages that make research results available to service providers, researchers, educators, individuals with disabilities, parents, and others;

(iv) Technical assistance or consultation that is responsive to the concerns of service providers and consumers;

(v) Dissemination of research findings through publication in professional journals, textbooks, and consumer and other publications, and through other appropriate media such as audiovisual materials and telecommunications.

(vi) Widespread dissemination of findings and other appropriate materials to providers of rehabilitation and other relevant services to individuals with disabilities, family members of individuals with disabilities, and other authorized representatives, advocates, and organizations that provide information and support to individuals with disabilities and their families; and

(vii) Dissemination of research findings and other materials in appropriate formats and accessible media for use by individuals with various disabilities.

(d) *Quality of the organization and management* (20 points). The Secretary reviews each application to determine the degree to which—

(1) The staffing plan for the Center provides evidence that the project director, research director, training director, principal investigators, and other personnel have appropriate training and experience in disciplines required to conduct the proposed activities; the commitment of staff time is adequate to conduct all proposed activities; and the Center, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping conditions;

(2) The budgets for the Center and for each component project are reasonable, adequate, and cost-effective for the proposed activities;

(3) The facilities, equipment, and other resources are adequate and are appropriately accessible to persons with disabilities;

(4) The plan of operations is adequate to accomplish the Center's objectives and to ensure proper and efficient management of the Center;

(5) The proposed relationships with Federal, State, and local rehabilitation service providers and consumer organizations are likely to ensure that the Center program is relevant and applicable to the needs of consumers and service providers;

(6) The past performance and accomplishments of the applicant indicate an ability to complete successfully the proposed scope of work;

(7) The application demonstrates appropriate commitment and support by the host institution and opportunities for interdisciplinary activities and collaboration with other institutions and organizations; and

(8) The plan for evaluation of the Center provides for an annual assessment of the outcomes of the research, the impact of the training and dissemination activities on the target populations, and the extent to which the overall objectives have been accomplished.

Eligible Applicants: Institutions of higher education and public or private agencies and organizations collaborating with institutions of higher education, including Indian tribes and tribal organizations, are eligible to apply for awards under this program.

Program Authority: 29 U.S.C. 762.

APPLICATION NOTICE FOR FISCAL YEAR 1997 REHABILITATION RESEARCH AND TRAINING CENTERS CFDA NO. 84.133B

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Maximum award amount (per year)*	Project period (months)
Personal Assistance Services	April 8, 1997	1	$500,000	60
Vocational Rehabilitation Services for Persons with Long-term Mental Illness	April 8, 1997	1	500,000	60

Note: The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount (See 34 CFR 75.104(b)).

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Washington, D.C. 20202–4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. [Washington, D.C. time] on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Room #3633, Regional Office Building #3, 7th and D Streets, S.W., Washington, D.C.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Forms and Instructions

The appendix to this application is divided into four parts. These parts are organized in the same manner that the submitted application should be organized. These parts are as follows:

PART I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

PART II: Budget Form—Non-Construction Programs (Standard Form 524A) and instructions.

PART III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Work-Place Requirements (ED Form 80–0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80–0014) and instructions.

Note: ED Form GCS–014 is intended for the use of primary participants and should not be transmitted to the Department.

Disclosure of Lobbying Activities (Standard Form LLL (if applicable) and instructions; and Disclosure Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an *original signature*. No grant may be awarded unless a completed application form has been received.

FOR APPLICATIONS CONTACT: In request an application package, write the Grants and Contracts Service Team, U.S. Department of Education, 600 Independence Avenue S.W., Switzer Building, 3317, Washington, D.C. 20202, or call (202) 260–9182. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8133.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server (at gopher://gcs.ed.gov); or on the World Wide Web (at http://gcs.ed.gov). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 29 U.S.C. 760–762.

Dated: February 18, 1997.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

Appendix

Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this Section. Applicants are required to submit an original and two copies of each application as provided in this Section.

Frequent Questions

1. Can I Get an Extension of the Due Date?

No! On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register**. However, there are no extensions or exceptions to the due date made for individual applicants.

2. What Should Be Included in the Application?

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and all subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is *not* useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. What Format Should Be Used for the Application?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

4. May I Submit Applications to More Than One NIDRR Program Competition or More Than One Application to a Program?

Yes, you may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

5. What Is the Allowable Indirect Cost Rate?

The limits on indirect costs vary according to the program and the type of application.

An applicant for a project in the R&D grant program is limited to the organization's approved indirect cost rate. If the organization does not have an approved indirect cost rate, the application should include an estimated actual rate.

An applicant for a project in the RRTC program is limited to an indirect cost rate of 15 percent.

6. Can Profitmaking Businesses Apply for Grants?

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs will be required to share in the costs of the project.

7. Can Individuals Apply for Grants?

No. Only organizations are eligible to apply for *grants* under NIDRR programs. However, individuals are the only entities eligible to apply for fellowships.

8. Can NIDRR Staff Advise me Whether My Project Is of Interest to NIDRR or Likely To Be Funded?

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

9. How Do I Assure That My Application Will Be Referred to the Most Appropriate Panel for Review?

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424, and including a project title that describes the project.

10. How Soon After Submitting My Application Can I Find Out if it Will Be Funded?

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

11. Can I Call NIDRR To Find Out if My Application Is Being Funded?

No. When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

12. If My Application is Successful, Can I Assume I will Get the Requested Budget Amount in Subsequent Years?

No. Funding in subsequent years is subject to availability of funds and project performance.

13. Will All Approved Applications Be Funded?

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

BILLING CODE 4000–01–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify): _____

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award; B. Decrease Award; C. Increase Duration; D. Decrease Duration; Other (specify): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐☐ ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

SF 424 (REV 4-88) Back

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1875-0102

Expiration Date: 9/30/98

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington, D.C. 20503.

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.
2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.
3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.
4. Provide other explanations or comments you deem necessary.

Public reporting burden for these collections of information is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to: the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820-0027, Washington, D.C. 20503.

Research and Demonstration Projects (CFDA No. 84.133A) 34 CFR Parts 350 and 351.

Rehabilitation Research and Training Center (CFDA No. 84.133B) 34 CFR Parts 350 and 352.

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted–

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract ☐ b. grant ☐ c. cooperative agreement ☐ d. loan ☐ e. loan guarantee ☐ f. loan insurance	2. Status of Federal Action: ☐ a. bid/offer/application ☐ b. initial award ☐ c. post-award	3. Report Type: ☐ a. initial filing ☐ b. material change For Material Change Only: year _____ quarter ___ date of last report ___

4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier ____, *if known:* Congressional District, *if known:*	5. If Reporting Entity in No.4 is Subawardee, Enter Name and Address of Prime: Congressional District, *if known:*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable:*
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $
10. a. Name and Address of Lobbying Entity Registrant *(if individual, last name, first name, MI):*	b. Individuals Performing Services *(including address if different from No. 10a) (last name, first name, MI):*
11. Amount of Payment *(check all that apply):* $ _____ ☐ actual ☐ planned	13. Type of Payment *(Check all that apply):* ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ○ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply):* ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11: *(Attach Continuation Sheet(s) SF-LLL-A, if necessary)*	
15. Continuation Sheet(s) SF-LLL attached: ☐ Yes ☐ No	
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only	Authorized for Local Reproduction Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a follow up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee" then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number, grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state, and zip code of the lobbying entity registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

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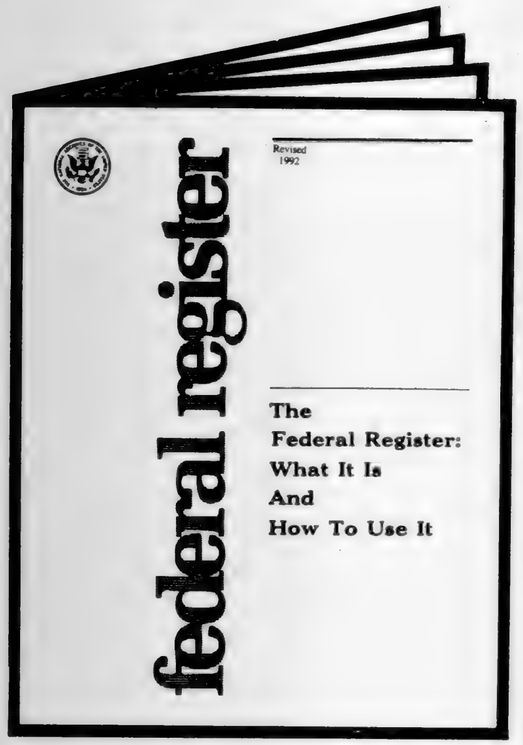

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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Federal Register
Vol. 62, No. 36
Monday, February 24, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 790 and 792

Description of NCUA; Requests for Agency Action and Requests for Information Under the Freedom of Information Act and Privacy Act, and by Subpoena; Security Procedures for Classified Information

AGENCY: National Credit Union Administration (NCUA)

ACTION: Final rule

SUMMARY: Due to changes in the credit union environment, in October of 1996, the NCUA authorized a change in the mission and a corresponding name change of the Asset Liquidation and Management Center (ALMC). The new name is the Asset Management and Assistance Center (AMAC). A description of the new AMAC replaces the description of the ALMC. In addition, AMAC replaces ALMC in another part of the regulations.

EFFECTIVE DATE: Effective February 24, 1997.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

FOR FURTHER INFORMATION CONTACT: Hattie M. Ulan, Special Counsel to the General Counsel at the above address or telephone: 703–518–6540.

SUPPLEMENTARY INFORMATION: The NCUA Board established the Asset Liquidation Management Center (ALMC) in July 1988, to deal with an emerging concentration of real estate assets in a limited number of troubled credit unions. The mission of the ALMC was to minimize losses to the National Credit Union Share Insurance Fund by managing and disposing of real estate assets acquired from troubled credit unions. In February of 1990, the Board added the agency's liquidation activity to the ALMC. Although the number of liquidations are down, liquidations have become increasingly complex. The ALMC's responsibilities have expanded to include the review of large, complex loan portfolios, assistance in uncovering and developing bond claims and complex record reconstruction. The ALMC provides additional depth, experience and resources in liquidation related as well as other matters to NCUA's six regional offices.

The Board believed that the name ALMC did not accurately reflect the responsibilities the center was carrying out. Therefore, in October 1996, the Board officially changed the name to Asset Management and Assistance Center (AMAC). The Board is now amending its regulation which describes the duties of AMAC, formerly the ALMC. The description of the office is found in 12 CFR 790.2(b)(4). There is also a reference to ALMC in 12 CFR 792.2(f). This paragraph describes information centers for purposes of requesting materials under the Freedom of Information Act. The reference is corrected to read AMAC. An additional sentence is added to paragraph 792.2(f) to indicate that the President of the AMAC is responsible for the operation of the information center maintained there. This is a technical addition of a responsibility already delegated to the President of AMAC.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact any regulation may have on a substantial number of small credit unions. The changes made by this rule are merely housekeeping changes. Therefore, the NCUA Board has determined and certifies that, under the authority granted in 5 U.S.C. 605(b), this final rule will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

This final rule does not change any paperwork requirements.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. Since these are housekeeping changes only, there is no effect on state interests.

List of Subjects in 12 CFR Parts 790 and 792

Credit Unions.

By the National Credit Union Administration Board on February 13, 1997.

Becky Baker,

Secretary of the Board.

Accordingly, for the reasons set out in the preamble, 12 CFR Ch. VII is amended as set forth below.

PART 790—DESCRIPTION OF NCUA; REQUESTS FOR AGENCY ACTION

1. The authority citation for part 790 continues to read as follows:

Authority: 12 U.S.C. 1766, 12 U.S.C. 1789, 12 U.S.C. 1795f.

2. Amend § 790.2 by revising paragraph (b)(4) to read as follows:

§ 790.2 Central and regional office organization.

* * * * *

(b) * * *

(4) *Asset Management and Assistance Center.* The President of the Asset Management and Assistance Center (AMAC) is responsible for monitoring, evaluating, disposing, and/or managing major assets acquired by NCUA; responsible for managing involuntary liquidations for all federally insured credit unions placed into involuntary liquidation including the orderly processing of payments of share insurance, sale and/or collection of loan portfolios, liquidation of other assets and achieving other recoveries, payments to creditors, and distributions to any uninsured shareholders. The President, AMAC, serves as a primary consultant with the regional offices on asset sales or purchases to restructure problem case credit unions, as technical expert to evaluate specific areas of credit union operations, and as instructor in training classes; responsible to prepare and negotiate bond claims; responsible to manage or assist in the management of conservatorships. The address of AMAC is 4807 Spicewood Springs Road, Suite 5100, Austin, Texas 78759–8490.

* * * * *

PART 792—REQUESTS FOR INFORMATION UNDER THE FREEDOM OF INFORMATION ACT AND PRIVACY ACT, AND BY SUBPOENA; SECURITY PROCEDURES FOR CLASSIFIED INFORMATION

3. The authority citation for part 792 is revised to read as follows:

Authority: 12 U.S.C. 1766, 12 U.S.C. 1789, 12 U.S.C. 1795f; 5 U.S.C. 552, 5 U.S.C. 552b; Executive Orders 12600 and 12356.

4. Amend § 792.2 by revising paragraph (f) to read as follows:

§ 792.2 Information made available to the public and requests for such information.

* * * * *

(f) *Information Centers.* The Central Office, Regional Offices and the Asset Management and Assistance Center are the designated Information Centers for the NCUA. The Freedom of Information Officer of the Office of General Counsel is responsible for the operation of the Information Center maintained at the Central Office. The Regional Directors are responsible for the operation of the Information Centers in their Regional Offices. The President of the Asset Management and Assistance Center is responsible for the operation of the Information Center maintained there.

* * * * *

[FR Doc. 97–4441 Filed 2–21–97; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–38–AD; Amendment 39–9941; AD 97–04–16]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F27 Series Airplanes Equipped With Walter Kidde Nose Wheel Steering System

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F27 series airplanes, that requires increasing the torque value of the bolt that connects the gearbox housing assembly of the steering unit to the pivot bracket of the nose landing gear (NLG). This amendment also requires that periodic inspections of that torque value be incorporated into the FAA-approved maintenance program. This amendment is prompted by several reports that the dowel pins in the Walter Kidde nose wheel steering system were found broken and/or had elongated holes due to a reduced torque value of the subject bolt. The actions specified by this AD are intended to prevent such a reduction in the torque value, which could result in failure of the dowel pins in the Walter Kidde nose wheel steering system; this situation could result in reduced controllability of the airplane or the collapse of the NLG during landing.

DATES: Effective March 31, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 31, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth Harder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1721; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker Model F27 series airplanes was published in the **Federal Register** on July 29, 1996 (61 FR 39366). That action proposed to require increasing the torque value of the bolt that connects the gearbox housing assembly of the steering unit to the pivot bracket of the nose landing gear (NLG).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

One commenter supports the proposed rule.

Request to Withdraw Proposal

One commenter, a U.S. operator, requests that the proposal be withdrawn because it is unnecessary. The commenter points out that the proposed requirements previously were issued by Fokker both as a service bulletin and a maintenance circular several years ago. This commenter has already added the inspections to its maintenance program, far in advance of any requirement by AD to do so. The commenter contends that mandating the actions via an AD will "only add an administrative burden on an industry already overburdened with administrative tasks, many of which are redundant." Instead of issuing this AD, the commenter recommends that the proposed requirements be added to the airlines' Operations Specifications, or merely have the Principal Maintenance Inspectors for the affected airlines talk to the operators about this issue. The commenter maintains that handling the proposed requirements in some other way than by AD action would save the affected operators a considerable amount of time and money.

The FAA does not concur with the commenter's request to withdraw the proposal. The FAA acknowledges that the required actions specified in this AD were contained in a manufacturer's service bulletin and maintenance circular, both of which were released some time ago. Prudent operators, such as the commenter, may have accomplished those actions already. However, until an AD is issued, there is no legal basis for requiring U.S. operators to comply with those actions. The AD is the vehicle for ensuring, by law, that all affected operators perform the necessary actions that will address the identified unsafe condition. In light of this, the FAA has determined that this AD is appropriate and warranted.

Further, the FAA is not convinced that issuance of this AD will add a significant economic or administrative burden on operators who have already accomplished the required actions, as the commenter suggests:

First, the FAA points out that there are currently only 34 U.S.-registered airplanes that are affected by the AD.

Second, the compliance provision of the AD clearly states that compliance is "required as indicated, unless accomplished previously." Therefore, operators who have already accomplished the required actions need only make a single entry in their maintenance logs to indicate compliance with the AD. Further, once the maintenance program is changed to include the required periodic inspections, in accordance with paragraph (b) of the AD, operators do not need to make a maintenance log entry to show compliance with the AD every time those inspections are accomplished thereafter. (A new **Note 2** has been added to the final rule to specify this.) Such procedures should not pose a serious burden on any operator.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 34 Fokker Model F27 series airplanes of U.S. registry will be affected by this AD.

It will take approximately 2 work hours per airplane to accomplish the required actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $4,080, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

However, the FAA has been advised that one U.S. operator already has accomplished the required actions on its 2 affected airplanes. Therefore, the future cost impact of this AD is only $4,056.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–04–16 Fokker: Amendment 39–9941. Docket 96–NM–38–AD.

Applicability: Model F27 series airplanes, serial numbers 10102 through 10692 inclusive; equipped with Walter Kidde nose wheel steering system (steering unit gearbox housing assembly) having part number 893954; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a reduction in the torque value of the bolt in the Walter Kidde nose wheel steering system, which could result in reduced controllability of the airplane or the collapse of the nose landing gear (NLG) during landing, accomplish the following:

(a) Within 500 flight hours after the effective date of this AD, or within 4 months after the effective date of this AD, whichever occurs first, tighten the bolt that connects the gearbox housing assembly of the steering unit to the pivot bracket of the NLG to a torque value of 700 to 800 inch-pounds, in accordance with Fokker Service Bulletin F27/32–166, dated September 7, 1993.

(b) Within 30 days following accomplishment of paragraph (a) of this AD, revise the FAA-approved maintenance program to include periodic inspections of the torque value of the affected bolt, as described in Fokker F27 Maintenance Circular No. 32–6, dated April 30, 1993; and, thereafter, comply with those requirements.

Note 2: Once the maintenance program is changed to include the required periodic inspections, in accordance with this paragraph, operators do not need to make a maintenance log entry to show compliance with this AD every time those inspections are accomplished thereafter.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The actions shall be done in accordance with Fokker Service Bulletin F27/32–166, dated September 7, 1993; and Fokker F27 Maintenance Circular No. 32–6, dated April 30, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on March 31, 1997.

Issued in Renton, Washington, on February 13, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–4201 Filed 2–21–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–NM–48–AD; Amendment 39–9942; AD 97–04–17]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model BAe 146 Series Airplanes and Model Avro 146–RJ Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 146 series airplanes and Model Avro 146–RJ series airplanes, that requires inspections to detect leakage of hydraulic fluid from the lock jack assemblies of the main landing gear (MLG), and eventual replacement of those assemblies with new or serviceable assemblies. This amendment is prompted by reports of leakage of hydraulic fluid from lock jack assemblies due to a manufacturing forging defect that extends through the wall of the lock jack assembly. The actions specified by this AD are intended to prevent leakage of hydraulic fluid from the lock jack assemblies of the MLG, which, in conjunction with a hot brake, could cause a fire in the MLG bay.

DATES: Effective March 31, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 31, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Holding, Inc., Avro International Aerospace Division, P.O. Box 16039, Dulles International Airport, Washington, DC 20041–6039. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain British Aerospace Model BAe 146 series airplanes and Model Avro 146–RJ series airplanes was published in the **Federal Register** on August 27, 1996 (61 FR 44006). That action proposed to require an inspection to identify affected lock jack assemblies by serial number. That action also proposed to require repetitive inspections of certain lock jack assemblies to detect leakage of hydraulic fluid from the lock jack assemblies, and, if leakage is detected, replacement of the lock jack assemblies with new or serviceable assemblies. That action also proposed to require eventual replacement of the lock jack assemblies with new or serviceable assemblies.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 52 airplanes of U.S. registry will be affected by this AD.

To accomplish the required inspections will take approximately 1 work hour per airplane, per inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the required inspections on U.S. operators is estimated to be $3,120, or $60 per airplane, per inspection cycle.

To accomplish the required replacement of the lock jack assembly will take approximately 1 work hour per airplane, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the required replacement on U.S. operators is estimated to be $3,120, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–04–17 British Aerospace Regional Aircraft Limited, AVRO International Aerospace Division (formerly British Aerospace, plc; British Aerospace Commercial Aircraft Limited): Amendment 39–9942. Docket 96–NM–48–AD.

Applicability: Model BAe 146 series airplanes and Model Avro 146–RJ series airplanes having lock jack assemblies of the main landing gear as listed in British Aerospace Inspection Service Bulletin SB 32–103, Revision 1, dated February 22, 1991; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent leakage of hydraulic fluid from the lock jack assemblies of the main landing gear (MLG), which, in conjunction with a hot brake, could cause a fire in the MLG bay; accomplish the following:

(a) Within 30 days after the effective date of this AD, verify the serial number of all lock jack assemblies, part number 104275001, of the MLG.

Note 2: Verification may be accomplished by a review of appropriate records.

(1) If no lock jack assembly has a serial number as listed in British Aerospace Inspection Service Bulletin SB 32–103, Revision 1, dated February 22, 1991, no further action is required by this paragraph.

(2) If any lock jack assembly has a serial number as listed in British Aerospace Inspection Service Bulletin SB 32–103, Revision 1, dated February 22, 1991, prior to further flight, perform a visual inspection to detect any leakage of hydraulic fluid from the lock jack assembly, in accordance with the service bulletin.

(i) If no leakage of hydraulic fluid is detected, thereafter, repeat the inspection at intervals not to exceed 30 days, until the requirements of paragraph (b) of this AD are accomplished.

(ii) If any leakage of hydraulic fluid is detected, prior to further flight, replace the lock jack assembly with a new or serviceable unit that does not have one of those serial numbers, in accordance with the service bulletin.

(b) Within 6 months after the effective date of this AD, replace any lock jack assembly having a serial number listed in British Aerospace Inspection Service Bulletin SB 32–103, Revision 1, dated February 22, 1991, with a new or serviceable assembly that does not have one of those serial numbers, in accordance with the service bulletin.

(c) As of the effective date of this AD, no person shall install a lock jack assembly, having any serial number listed in British Aerospace Inspection Service Bulletin SB 32–103, Revision 1, dated February 22, 1991, on any airplane.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspections and replacements shall be done in accordance with British Aerospace Inspection Service Bulletin SB 32–103, Revision 1, dated February 22, 1991, which contains the specified list of effectives pages:

Page No.	Revision level shown on page	Date shown on page
1, 2, Appendix A1, Page 1–3.	1	Feb. 22, 1991.
3, Appendix A1, Page 4.	Original	June 15, 1990.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Holding, Inc., Avro International Aerospace Division, P.O. Box 16039, Dulles International Airport, Washington, DC 20041–6039. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on March 31, 1997.

Issued in Renton, Washington, on February 13, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–4200 Filed 2–21–97; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–NM–142–AD; Amendment 39–9943; AD 97–04–18]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, that requires repetitive x-ray inspections to detect cracks in stringers 4 through 7 of the lower skin of the wings, and modification or repair, if necessary. This amendment also requires modification of the stringers of the lower skin of the wings, which terminates the repetitive inspections. This amendment is prompted by reports of fatigue cracking found in stringers 4 through 7 of the lower skin of the wings. The actions specified by this AD are intended to prevent such fatigue cracking, which could result in reduced structural integrity of the wings.

DATES: Effective March 31, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of March 31, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth Harder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1721; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes was published in the **Federal Register** on August 6, 1996 (61 FR 40760). That action proposed to require repetitive x-ray inspections to detect cracks of stringers 4 through 7, inclusive, at certain wing stations of the lower skin of the wings; and modification or repair, if necessary. That action also proposed to require modification of certain stringers of the lower skin of the wings, which, when accomplished, would constitute terminating action for the repetitive inspection requirements.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

One commenter supports the proposed AD.

Request to Extend Proposed Compliance Time

One commenter requests that the proposal be revised to extend the compliance time for the initial x-ray inspection (Part 2 of the Fokker Service Bulletin F27/57–70)) and the terminating modification (Part 1 of the Fokker service bulletin) to the next regularly scheduled "C" check. This commenter states that the 12-month compliance time for the inspection creates unnecessary burdens both economically and operationally. However, since the downtime for accomplishing the terminating action

would be a minimum of 6 days (dictated by the number of maintenance personnel who can work on this area at one time), the commenter considers that it would be more feasible to allow both the inspection and terminating action to be accomplished during that one time. A convenient time for this to take place would be during a "C" check inspection or equivalent.

The FAA acknowledges this commenter's request, but finds that clarification of the intent of the compliance time is necessary, based on the commenter's apparent misinterpretation of it.

Paragraph (a) of the AD is meant to require that the initial inspection be performed at the later of either:

—paragraph (a)(1)—prior to the accumulation of 30,000 total flight cycles; or

—paragraph (a)(2)—within 2,000 flight cycles or 12 months after the effective date of the AD, whichever is earlier.

The 2,000-cycle/12-month compliance time provided by paragraph (a)(2) is meant to serve as a "grace period" if an affected airplane has already accumulated nearly or more than 30,000 total flight cycles. This grace period provision eliminates the situation where an airplane having over 30,000 flight cycles would be in immediate non-compliance with the AD. For those airplanes then, the inspection must be accomplished either within 2,000 flight cycles after the effective date of the AD or within 12-months after the effective date, whichever occurs first.

As for the terminating modification, paragraph (d) requires that it be installed on all airplanes prior to the accumulation of 30,000 total flight cycles, or within 30 months after the effective date of this AD, whichever occurs later. Again, this paragraph provides a grace period of 30 months for airplanes that are nearly approaching or have exceeded 30,000 total flight cycles.

In looking at the AD as a whole, operators should note that the inspection specified in paragraph (a) actually is meant to be an "optional" interim action that can be accomplished on higher-time airplanes prior to accomplishing the terminating modification, if time and schedules dictate. For example, a higher time airplane meeting the utilization criteria relevant to paragraph (a)(2) could be initially inspected within 12 months and, if no cracking was found during any inspection, need not be modified in accordance with paragraph (d) for another 18 months (totaling 30 months after the effective date of the AD). On the other hand, that airplane instead could be modified prior to the 12-month period and, therefore, need not be inspected in accordance with paragraph (a) at all.

For very low-time airplanes, as long as the terminating modification is accomplished prior to the accumulation of 30,000 flight cycles, the inspection specified in paragraph (a) need not be performed.

In light of this explanation, the FAA does not consider that any change to the compliance times, based on the commenters request, is necessary.

Further, the FAA does not concur with the commenter's suggestion to state compliance times in terms of maintenance checks (i.e., "C" checks), since the intervals for those checks may vary greatly from operator to operator. Based on the data available concerning fatigue cracking in the subject areas, the FAA finds that the compliance time intervals, as proposed, are appropriate. Under the provisions of paragraph (e) of this final rule, however, operators may request approval of adjustments of the compliance time, provided that sufficient data are presented to the FAA to justify the request.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 34 Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes of U.S. registry will be affected by this AD.

It will take approximately 16 work hours per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $32,640, or $960 per airplane, per inspection cycle.

It will take approximately 400 work hours per airplane to accomplish the required modification, at an average labor rate of $60 per work hour. Required parts will cost approximately $1,365 per airplane. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $862,410, or $25,365 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–04–18 Fokker: Amendment 39–9943. Docket 96-NM–142-AD.

Applicability: All Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue-related cracking of stringers of the lower skin of the wings, which could result in reduced structural integrity of the wing, accomplish the following:

(a) Perform an x-ray inspection to detect cracks in stringers 4 through 7, inclusive, at wing stations 11260, 11860, 12660, and 13460 of the lower skin of the wings, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin F27/57–70, May 17 ,1993, at the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD.

(1) Prior to the accumulation of 30,000 total flight cycles; or

(2) Within the next 2,000 flight cycles, or within 12 months after the effective date of this AD, whichever occurs first.

(b) If no crack is detected during any inspection required by paragraph (a) of this AD, repeat the inspection thereafter at intervals not to exceed 4,000 flight cycles.

(c) If any crack is detected during any inspection required by this AD, prior to further flight, accomplish either paragraph (c)(1) or (c)(2) of this AD.

(1) Modify the stringers 4 through 7, inclusive, at wing stations 11260, 11860, 12660, and 13460 of the lower skin of the wings, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin F27/57–70, dated May 17, 1993. After accomplishment of the modification, no further action is required by this AD.

(2) Repair the crack in accordance with Part 3 of the Accomplishment Instructions of Fokker Service Bulletin F27/57–70, dated May 17, 1993. Within the next 2,000 flight cycles or 1 year following accomplishment of the repair, whichever occurs first, modify the stringers 4 through 7, inclusive, at wing stations 11260, 11860, 12660, and 13460 of the lower skin of the wings, in accordance with Part 1 of the Accomplishment Instructions of the service bulletin. After accomplishment of the modification, no further action is required by this AD.

(d) Prior to the accumulation of 30,000 flight cycles, or within 30 months after the effective date of this AD, whichever occurs later, modify the stringers 4 through 7, inclusive, at wing stations 11260, 11860, 12660, and 13460 of the lower skin of the wings, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin F27/57–70, dated May 17, 1993. Accomplishment of the modification constitutes terminating action for the requirements of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The actions shall be done in accordance with Fokker Service Bulletin F27/57–70, dated May 17, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on March 31, 1997.

Issued in Renton, Washington, on February 13, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–4199 Filed 2–21–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–NM–236–AD; Amendment 39–9944; AD 97–04–19]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Saab Model SAAB 2000 series airplanes, that requires a visual inspection to determine if rudder disconnection has occurred, and replacement of the disconnect unit with a new disconnect unit, if necessary. This amendment is prompted by reports that, due to the existing design, the disconnect unit of the rudder disconnect system inadvertently opened on some airplanes. The actions specified by this AD are intended to prevent the disconnect unit from opening inadvertently, which could lead to inadequate rudder control, if the engine fails during take-off or go-around and if the airplane is at low speed.

DATES: Effective March 31, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 31, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from SAAB Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth Harder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1721; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Saab Model SAAB 2000 series airplanes was published in the **Federal Register** on December 12, 1996 (61 FR 65369). That action proposed to require a visual inspection to determine if rudder disconnection has occurred, and, if so, the immediate replacement of the disconnect unit with a new unit.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 3 Saab Model SAAB 2000 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 7 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $1,260, or $420 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish

those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–04–19 SAAB Aircraft AB: Amendment 39–9944. Docket 96–NM–236–AD.

Applicability: Model SAAB 2000 series airplanes, serial number 004 through 035 inclusive, equipped with a disconnect unit having part number (P/N) 7327305–511 or –512; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the disconnect unit from opening inadvertently, which could lead to inadequate rudder control, if the engine fails during take-off or go-around and if the airplane is at low speed, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform a visual inspection to determine if rudder disconnection has occurred, in accordance with Saab Service Bulletin 2000–A27–020, dated March 25, 1996.

(1) If no disconnection has occurred, within 6 months after the effective date of this AD, replace the disconnect unit with a new disconnect unit, in accordance with Saab Service Bulletin 2000–27–021, Revision 1, dated June 19, 1996. After replacement, no further action is required by this AD.

(2) If disconnection has occurred, prior to further flight, replace the disconnect unit with a new disconnect unit, in accordance with Saab Service Bulletin 2000–27–021, Revision 1, dated June 19, 1996. After replacement, no further action is required by this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspection shall be done in accordance with Saab Alert Service Bulletin 2000–A27–020, dated March 25, 1996. The replacement shall be done in accordance with Saab Service Bulletin 2000–27–021, Revision 1, dated June 19, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from SAAB Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on March 31, 1997.

Issued in Renton, Washington, on February 13, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–4198 Filed 2–21–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 97–ACE–3]

Airport Name Change; Johnson County Industrial Airport, Olathe, KS

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Final rule; amendment.

SUMMARY: This amendment changes the name of the Johnson County Industrial Airport, Olathe, KS to New Century Aircenter, Olathe, KS for the class D and E5 airspace.

EFFECTIVE DATE: February 24, 1997.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Operations Branch, ACE–530C, Federal Aviation Administration, 601 E. 12th St., Kansas City, MO 64106; telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

In February 1995, the name of the Johnson County Industrial Airport, Olathe, KS was changes to New Century Aircenter. FAA Order 7400.9D was not amended to reflect this change. This docket amends that Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends the name of Johnson County Industrial Airport to New Century Aircenter. The FAA has determined that this regulation only involves a technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, it (1) is not a "significant regulatory action" under Executive Order 12886; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 CFR 11034: February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipate impact is so minimal. Since this is a routine matter that will only affect an airport name, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

ACE KS D Olathe, KS [Amend]

Olathe, New Century Aircenter, KS
(Lat. 38°49'54" N., long. 94°53'24" W.)

* * * * *

Paragraph 6005 Class E airspace areas extending from 700 feet or more above the surface of the earth.

* * * * *

ACE KS E5 Olathe, KS [Amend]

Olathe, New Century Aircenter, KS
(Lat. 38°49'54" N., long. 94°53'24" W.)

* * * * *

Issued in Kansas City, MO, on February 6, 1997.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 97–4501 Filed 2–21–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 131 and 133

[Docket Nos. 95P–0125, 95P–0250, 95P–0261, and 95P–0293]

Lowfat and Skim Milk Products, Lowfat Cottage Cheese: Revocation of Standards of Identity

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; response to objection and denial of the request for a hearing; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is responding to objections and is denying the requests that it received for a hearing on the final rule removing the standards of identity for lowfat milk and skim milk as well as those for other lower-fat dairy products. After reviewing the objections to the final rule, the agency has concluded that the objections do not raise issues of material fact that justify granting a hearing. Therefore, FDA is confirming the effective date for the final rule. The final rule was based, in part, on petitions filed jointly by the Milk Industry Foundation and the Center for Science in the Public Interest and on a petition filed by the American Dairy Products Institute. This action is also part of the agency's ongoing review of existing regulations under President Clinton's Regulatory Reinvention Initiative.

DATES: Effective date confirmed: January 1, 1998. This rule is applicable to all products initially introduced or initially delivered for introduction into interstate commerce on or after this date. Compliance may begin on November 20, 1996. Any labels or labeling that require revision as a result of this revocation shall comply no later than January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099.

SUPPLEMENTARY INFORMATION:

I. Background—The Final Regulation

In the **Federal Register** of November 20, 1996 (61 FR 58991), FDA issued a final rule entitled "Lowfat and Skim Milk Products, Lowfat and Nonfat Yogurt Products, Lowfat Cottage Cheese: Revocation of Standards of Identity; Food Labeling, Nutrient Content Claims For Fat, Fatty Acids and Cholesterol Content of Food" which removed the standards of identity for the following lower-fat dairy products: Sweetened condensed skimmed milk (21 CFR 131.122), lowfat dry milk (21 CFR 131.123), evaporated skimmed milk (21 CFR 131.132), lowfat milk (21 CFR 131.135), acidified lowfat milk (21 CFR 131.136), cultured lowfat milk (21 CFR 131.138), skim milk (21 CFR 131.143), acidified skim milk (21 CFR 131.144), cultured skim milk (21 CFR 131.146), sour half-and-half (21 CFR 131.185), acidified sour half-and-half (21 CFR 131.187), and lowfat cottage cheese (21 CFR 133.131) (the November 1996 final rule). The final regulation also amended the standard of identity for dry cream in 21 CFR 131.149 by removing the reference to 21 CFR 131.135 (the lowfat milk standard). FDA announced that it was deferring action, for 120 days, on its proposal to remove the standards of identity for lowfat and nonfat yogurt (21 CFR 131.203 and 131.206). Further, the final rule amended the nutrient content claims regulations for fat, fatty acids, and cholesterol content to provide for "skim" as a synonym for "nonfat" when used in labeling milk products.

Interested persons had until December 20, 1996, to file written objections to the revisions in parts 131 and 133 (21 CFR parts 131 and 133) or to request a hearing on the specific provisions to which there were objections. FDA received one letter, from Mid-America Dairymen, Inc., Associated Milk Producers, Inc., and Swiss Valley Farms (hereinafter referred to as "Mid-America" or "the objector") containing objections to portions of the November 1996 final rule and requests for a hearing on those objections. Under section 701(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 371(e)), FDA has carefully considered the objections and requests for a hearing, and other responses. The specific objections and the agency's conclusions follow.

II. Standards for Granting a Hearing

Section 701(e) of the act provides that, within 30 days after publication of an order relating to standards of identity for dairy products, any person adversely affected by such an order may file objections, specifying with particularity the provisions of the order "deemed objectionable, stating the grounds therefor," and requesting a public hearing based upon such objections. FDA may deny a hearing request if the objections to the regulation do not raise genuine and substantial issues of fact that can be resolved at a hearing (*Community Nutrition Institute* v. *Young*, 773 F.2d 1356, 1364 (D.C. Cir. 1985), *cert. denied*, 475 U.S. 1123 (1986)). Specific criteria for determining whether a request for a hearing is justified are set forth in 21 CFR 12.24(b).

A party seeking a hearing is required to meet a "threshold burden of tendering evidence suggesting the need for a hearing." (See *Costle* v. *Pacific Legal Foundation*, 445 U.S. 198, 214–215 (1980) *reh. den.*, 445 U.S. 947 (1980), citing *Weinberger* v. *Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609, 620–621 (1973).) If a hearing request fails to identify any factual evidence

that would be the subject of a hearing, there is no point in holding one.

A hearing request must not only contain evidence, but that evidence should raise a material issue of fact concerning which a meaningful hearing might be held (*Pineapple Growers* v. *FDA*, 673 F.2d 1083, 1085 (9th Cir. 1982)). Where the issues raised in the objection are, even if true, legally insufficient to alter the decision, the agency need not grant a hearing (*Dyestuffs and Chemicals, Inc.*, v. *Flemming*, 271 F.2d 281 (8th Cir. 1959) *cert. denied*, 362 U.S. 911 (1960)). A hearing is justified only if the objections are made in good faith, and if they "draw into question in a material way the underpinnings of the regulation at issue" (*Pactra Industries* v. *CPSC*, 555 F.2d 677 (9th Cir. 1977)). Finally, courts have uniformly recognized that a hearing need not be held to resolve questions of law or policy. (See *Citizens for Allegan County, Inc.*, v. *FPC*, 414 F.2d 1125 (D.C. Cir. 1969); *Sun Oil Co.* v. *FPC*, 256 F.2d 233, 240 (5th Cir.) *cert. denied*, 358 U.S. 872 (1958).)

In sum, a hearing request should present sufficient credible evidence to raise a material issue of fact, and the evidence must be adequate to resolve the issue as requested and to justify the action requested.

III. Objections and Requests for a Hearing

1. The first objection was about the removal of the standards of identity for lowfat milk (21 CFR 131.135) and skim milk (21 CFR 131.143). In the November 1996 final rule, FDA removed the standards of identity for lower-fat dairy products, including the standards for lowfat milk and skim milk, so that these products would be subject to the requirements in 21 CFR 130.10 (the general standard). FDA concluded that the final regulation will provide for consistency in the nomenclature and labeling of most nutritionally modified dairy products and other foods bearing "lowfat" and "nonfat" claims; promote honesty and fair dealing in the interest of consumers; increase flexibility for manufacturers of lower-fat dairy products; and increase product choices available to consumers.

Mid-America objected to the removal of the standards for lowfat and skim milk stating that those standards were issued because the Commissioner of Food and Drugs (the Commissioner) found that they would promote honesty and fair dealing in the interest of consumers. In support of this objection, Mid-America cited section 401 of the act (21 U.S.C. 341) which provides:

> Whenever in the judgment of the Secretary such action will promote honesty and fair dealing in the interest of consumers, he shall promulgate regulations fixing and establishing for any food, under its common or usual name so far as practicable, a reasonable definition and standard of identity.

Mid-America also included by reference "all of the factual findings made by the Commissioner when the lowfat and skim milk standards were promulgated."

In further support of the objection, Mid-America maintained that new nutrition and other labeling requirements do not obviate the need for standards of identity for lowfat milk and skim milk. Mid-America acknowledged that some of the rationale in the preamble to the November 1996 final rule may be sound for products other than lowfat milk and skim milk, because of the new labeling requirements. However, according to Mid-America, these new requirements cannot be interpreted to mean that removing the standards for lowfat milk and skim milk will be in the interest of consumers because the standards were issued to promote honesty and fair dealing in the interest of consumers.

Mid-America did not specify to which new labeling requirements it was referring. FDA assumes the reference is to the January 6, 1993, final rules implementing the Nutrition Labeling and Education Act of 1990 (the 1990 amendments). These final rules included new requirements for nutrition labeling, uniform definitions for nutrient content claims and health claims, and more complete ingredient declaration, particularly for standardized foods. Further, the objection did not identify the foods to which it was referring in saying that the new nutrition labeling regulations may justify removal of the standards of identity in part 131 or 133, nor did it offer any reason for treating lowfat milk and skim milk differently from other lower-fat dairy products with respect to the new nutrition labeling requirements. Thus, this part of the objection does not present any substantive evidence in support of the objection.

In addition, Mid-America included by reference all the "factual findings" made by the Commissioner in establishing the standards for lowfat and skim milk. The objection's premise appears to be that if those findings justified issuance of the standards of identity, they must now preclude removal of the standards. However, an evidentiary hearing was not held when the standards were originally issued, and, therefore, there were no formal findings of fact.

FDA assumes that by referring to "factual findings," without any more specific references, Mid-America may have intended to include by reference all conclusions reached by the agency during the course of the rulemaking that resulted in the standards for lowfat milk and skim milk. This rulemaking spanned 14 years, however, and Mid-America has provided no specific information to help the agency focus its attention on any factual evidence or legal arguments that Mid-America might present at a hearing. Consequently, it is difficult for the agency to determine the specific issues to which the objection refers. Nonetheless, FDA has carefully reviewed the record of the rulemaking that resulted in the standards for lowfat milk and skim milk to see whether there were any findings or conclusions that were in conflict with the agency's determination in the November 1996 final rule to revoke these standards and to replace them with the general standard.

Most of the objections to the original final rule issuing standards for lowfat and skim milk (38 FR 27924, October 10, 1973) (the 1973 final rule), as discussed in a notice in the **Federal Register** of December 5, 1974 (39 FR 42351), have no bearing here. For example, FDA received objections to the requirement in the 1973 final rule that milk be pasteurized. Other objections concerned the failure of the standards for fluid milks to provide for fortification with minerals and vitamins other than vitamins A and D.

The only issue that the agency found that could be even partially related to Mid-America's objection was one over whether FDA should have provided for the use of stabilizers and emulsifiers, and the basis for limiting the permitted amounts of these substances, in lowfat milk and skim milk. The 1973 final rule establishing standards of identity for lowfat milk and skim milk provided for limited use of stabilizers and emulsifiers in these foods. FDA received a number of objections and requests for a hearing based on its failure to provide for unrestricted use of stabilizers. These objections maintained that stabilizers could improve the palatability of lower-fat milks and would be more economical than nonfat milk-derived solids.

On December 5, 1974, FDA published a notice staying the provision that would have limited the use of stabilizers and emulsifiers in lower-fat milks (39 FR 42351). In an attempt to avoid a hearing, FDA proposed to amend the standards for lowfat milk and skim milk to expand the uses of stabilizers and emulsifiers (41 FR 46873, October 26, 1976) (the 1976 proposal). Subsequently, based on comments to the 1976 proposal, FDA published a final rule in the **Federal Register** of December 12, 1980 (45 FR 81734), terminating the 1976 rulemaking and continuing the stay on the provisions in the 1973 standard that would have restricted the use of stabilizers and emulsifiers in lowfat and skim milks. In 1983, FDA published a notice announcing a public hearing on stayed provisions of the 1973 final rule. Based on a motion by FDA for summary judgment, and a lack of opposition by the original objectors, an administrative law judge issued an order, dated December 12, 1983, finding that the provisions in the original standards that limited the use of stabilizers and emulsifiers would promote honesty and fair dealing in the interest of consumers (51 FR 40313, November 6, 1986).

After carefully reviewing the record on this issue, FDA concludes that nothing in the record of the 1973 final rule raises an issue of fact about the agency's decision with respect to the use of stabilizers and emulsifiers that is embodied in the November 1996 final rule. The controversy in 1973 concerned a comparison between lower-fat milks containing stabilizers and emulsifiers and lower-fat milks to which milk solids not fat (msnf) are added so that the finished product contains 10 percent msnf. In that context, FDA concluded (45 FR 81734 at 81736) that lower-fat milks thickened with stabilizers and emulsifiers would be nutritionally inferior to the same products containing not less than 10 percent msnf, and that, therefore, use of stabilizers and emulsifiers to thicken lower-fat milk products would not promote honesty and fair dealing in the interest of consumers. No conclusions were reached in that rulemaking on the broader issue of adding ingredients, including stabilizers and emulsifiers, to a nutritionally modified food (that is, foods to which vitamins have been added to avoid nutritional inferiority) to restore functional properties that are reduced or lost when fat is removed compared to the same food without added ingredients, which is the issue that FDA decided in replacing the standards in 21 CFR 131.135 and 131.143 with the general standard in the November 1996 final rule.

Furthermore, and more importantly, the finding of an administrative law judge in 1983 that a standard of identity will promote honesty and fair dealing in the interest of consumers does not mean that that standard cannot be changed. FDA's administrative regulations in 21 CFR 10.30 provide that interested persons may petition the agency to amend standards to reflect changes in consumer needs and perceptions, along with advances in technology, whenever such changes will promote honesty and fair dealing in the interest of consumers. Further, FDA can propose on its own initiative to amend a standard when the agency considers the amendment to be appropriate. To raise an issue of fact that would justify a hearing, an objector must do more than point out that a standard has changed, yet that is all the objector has done here.

In addition, Mid-America appears to misunderstand the impact of the November 1996 final rule in at least one important regard. Removing the standards of identity for lowfat milk and skim milk in 21 CFR 131.135 and 131.143 does not mean that these foods are not covered by a standard of identity. Rather, these foods will continue to be regulated as standardized foods under the requirements in the general standard (21 CFR 130.10).

Mid-America failed to identify any specific evidence in support of its objection. FDA has carefully reviewed the record associated with issuing the original standards of identity for lowfat and skim milk. The agency has been unable to find anything in that record that conflicts with the agency's determination that creating new standards for lower-fat milk products under the general standard will promote honesty and fair dealing in the interest of consumers, in a way that raises a material issue of fact.

FDA concludes that the objection did not raise a genuine and substantial issue of fact that might be readily resolved by the evidence identified in the objection. Therefore, Mid-America's first objection fails, under 21 CFR 12.24(b)(1), to justify a hearing, and thus its request for a hearing on this objection is denied.

2. Mid-America objected to the removal of the standards for lowfat milk and skim milk on the basis that relying on other sections of the regulations to protect consumers is factually unsound. In support of its second objection, Mid-America maintained that a number of factual issues remain unresolved. This assertion was followed by a series of questions, including, for example: "(1) What ingredients may be added to lowfat milk and skim milk [under 21 CFR 130.10]?" and "(2) In what amount may those ingredients be added?" These questions were not accompanied by any additional information that could have clarified the position of Mid-America or that indicated why resolution of the question in any particular way might be in conflict with the agency's action in the November 1996 final rule.

First, FDA notes that most of the questions asked by Mid-America have already been addressed by the agency, either in the preamble of the November 1996 final rule or in the preambles to the proposal (56 FR 60512, November 27, 1991) and final rule (58 FR 2431, January 6, 1993) establishing the general standard, and Mid-America has not provided any basis for finding that a factual issue persists with respect to these questions. For example, both the November 20, 1996, and the January 6, 1993, final rules contain extensive discussions about the extent to which a nutritionally modified food named using a nutrient content claim and a standardized term may deviate from the food for which it substitutes and the types of labeling necessary to inform consumers about such deviations (61 FR 58991 at 58994 and 58 FR 2431 at 2433). In addition, requirements limiting such deviations are codified in 21 CFR 130.10. The objector's questions raised no new issues that have not previously been considered by the agency. Secondly, to the extent that any of the questions posed by Mid-America are not fully answered, Mid-America did not provide any basis to find that there is a factual issue with respect to any of those questions. Thus, the questions represent nothing more than mere allegations. Under 21 CFR 12.24(b)(2), a hearing will not be granted on the basis of mere allegations. Thus, the questions posed in support of the objection do not justify the granting of a hearing.

Furthermore, as noted in the agency's response to the first objection, it is not clear whether the objection takes into consideration that, although FDA removed the standards of identity in 21 CFR 131.135 and 131.143, there are new standards for lower-fat milk products under 21 CFR 131.10. Mid-America did not provide any evidence that would provide a basis for questioning the agency's finding that the new standards for lower-fat milk products under 21 CFR 130.10 are in the interest of consumers and promote fair dealing.

FDA concludes that Mid-America's second objection did not raise any genuine and substantial issue of fact that would justify a hearing. Rather, the questions posed in support of the second objection amount to little more than "mere allegations or denials or general description and contentions" that the agency has said in 21 CFR 12.24(b)(2) will not justify a hearing. Consistent with this regulation, the relevant case law provides that where a party requesting a hearing only offers allegations without an adequate proffer to support them, the agency may properly disregard those allegations

(*General Motors Corp.* v. *FERC*, 656 F.2d 791, 798 n.20 (D.C. Cir. 1981)). Mid-America failed to submit any evidence that creating new standards for lowfat milk and skim milk under the general standard will not promote honesty and fair dealing in the interest of consumers. Because it did not proffer support for its allegations, Mid-America did not justify a hearing on this issue. Therefore, FDA denies the request for a hearing on the second objection.

3. Mid-America cited the agency's desire to reduce the burden of regulation and a need for increased flexibility in at least some standards of identity. At the same time, Mid-America said that none of these facts justify removing the standards for lowfat milk and skim milk that promote honesty and fair dealing in the interest of consumers. As with its second objection, Mid-America maintained that this objection raised several "factual issues" and proceeded to list a series of questions. The questions included: "What do consumers expect when they purchase 'lowfat milk' or 'skim milk'?" "Would honesty and fair dealing in the interest of consumers be promoted if products labeled as 'lowfat milk' and 'skim milk' are permitted to contain any 'safe and suitable ingredients'?"

Mid-America's third objection did not raise any genuine and substantial issue of fact that might be readily resolved by any evidence identified in the objection. Again, the questions posed in support of the objection amount to little more than mere allegations or denials or general description and contentions that, under 21 CFR 12.24(b)(2), will not justify a hearing. Therefore, FDA denies the request for a hearing on this objection.

FDA notes that the letter containing objections and a request for a hearing was filed within the time specified in 21 CFR 12.22(e). However, as noted in section III.1. and III.2. of this document, the objections to the final rule removing the standards for lowfat and skim milk and placing these foods under new standards in 21 CFR 130.10 do not raise genuine and substantial issues of fact for resolution through a public hearing or other procedure as provided for under 21 CFR 12.24, nor did the objections provide any evidence that the November 1996 final rule would not promote honesty and fair dealing in the interest of consumers. Therefore, in accordance with 21 CFR 12.28, FDA is denying Mid-America's requests for a hearing. There were no objections to the November 1996 final rule other than those addressed above.

List of Subjects

21 CFR Part 131

Cream, Food grades and standards, Milk, Yogurt.

21 CFR Part 133

Cheese, Food grades and standards, Food labeling.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 401, 403, 409, 701, 721 (21 U.S.C. 321, 341, 343, 348, 371, 379e)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is hereby given that the objections received did not justify a hearing, and that the final regulation to amend parts 131 and 133 by removing the standards of identity for various lower-fat milk, sour half-and-half, and cottage cheese products and amending the standard of identity for dry cream, as issued in the **Federal Register** of November 20, 1996 (61 FR 58991), will become effective on January 1, 1998. Any labels or labeling that require revision as a result of the final regulation must comply no later than January 1, 1998.

Dated: February 14, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–4365 Filed 2–18–97; 4:10 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 723

Board for Correction of Naval Records

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending the Procedures for the Board for Correction of Naval Records. This revision incorporates format changes and clarifies various minor provisions of the part.

DATES: *Effective date:* February 24, 1997.

FOR FURTHER INFORMATION CONTACT: W. Dean Pfeiffer, Executive Director, Board for Correction of Naval Records, 2 Navy Annex, Washington, DC 20370–5100, (703) 614–1402.

SUPPLEMENTARY INFORMATION: The Department of the Navy has determined that this rule is not a major rule because it will not have an annual effect on the economy of $100 million or more. The Assistant Secretary of the Navy (Manpower and Reserve Affairs) certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–611, and does not have a significant economic impact on small entities as defined by the Act. This rule imposes no obligatory information requirements beyond internal Navy use. The proposed rule was published for comment on October 12, 1995, at 60 FR 53153. No comments or objections to the proposed rule were received. The final rule contains no substantive changes from the proposed rule.

List of Subjects in 32 CFR Part 723

Administrative practice and procedure, Claims, Military personnel.

Accordingly, part 723 of chapter VI of title 32 of the Code of Federal Regulations is revised as follows:

PART 723—BOARD FOR CORRECTION OF NAVAL RECORDS

Sec.

723.1 General provisions.
723.2 Establishment, function and jurisdiction of the Board.
723.3 Application for correction.
723.4 Appearance before the board; notice; counsel; witnesses; access to records.
723.5 Hearing.
723.6 Action by the Board.
723.7 Action by the Secretary.
723.8 Staff action.
723.9 Reconsideration.
723.10 Settlement of claims.
723.11 Miscellaneous provisions.

Authority: 10 U.S.C. 1034, 1552.

§ 723.1 General Provisions.

This part sets up procedures for correction of naval and marine records by the Secretary of the Navy acting through the Board for Correction of Naval Records (BCNR or the Board) to remedy error or injustice. It describes how to apply for correction of naval and marine records and how the BCNR considers applications. It defines the Board's authority to act on applications. It directs collecting and maintaining information subject to the Privacy Act of 1974 authorized by 10 U.S.C. 1034 and 1552.

§ 723.2 Establishment, function and jurisdiction of the Board.

(a) *Establishment and composition.* Under 10 U.S.C. 1034 and 1552, the Board for Correction of Naval Records is established by the Secretary of the Navy. The Board consists of civilians of the executive part of the Department of the Navy in such number, not less than three, as may be appointed by the Secretary and who shall serve at the pleasure of the Secretary. Three members present shall constitute a quorum of the Board. The Secretary of the Navy will designate one member as Chair. In the absence or incapacity of the Chair, an Acting Chair chosen by the Executive Director shall act as Chair for all purposes.

(b) *Function.* The Board is not an investigative body. Its function is to consider applications properly before it for the purpose of determining the existence of error or injustice in the naval records of current and former members of the Navy and Marine Corps, to make recommendations to the Secretary or to take corrective action on the Secretary's behalf when authorized.

(c) *Jurisdiction.* The Board shall have jurisdiction to review and determine all matters properly brought before it, consistent with existing law.

§ 723.3 Application for correction.

(a) *General requirements.* (1) The application for correction must be submitted on DD 149 (Application for Correction of Military Record) or exact facsimile thereof, and should be addressed to: Board for Correction of Naval Records, Department of the Navy, 2 Navy Annex, Washington, DC 20370–5100. Forms and other explanatory matter may be obtained from the Board upon request.

(2) Except as provided in paragraph (a)(3) of this section, the application shall be signed by the person requesting corrective action with respect to his/her record and will either be sworn to or will contain a provision to the effect that the statements submitted in the application are made with full knowledge of the penalty provided by law for making a false statement or claim. (18 U.S.C. 287 and 1001)

(3) When the record in question is that of a person who is incapable of making application, or whose whereabouts is unknown, or when such person is deceased, the application may be made by a spouse, parent, heir, or legal representative. Proof of proper interest shall be submitted with the application.

(b) *Time limit for filing application.* Applications for correction of a record must be filed within 3 years after discovery of the alleged error or injustice. Failure to file within the time prescribed may be excused by the Board if it finds it would be in the interest of justice to do so. If the application is filed more than 3 years after discovery of the error or injustice, the application must set forth the reason why the Board should find it in the interest of justice to excuse the failure to file the application within the time prescribed.

(c) *Acceptance of applications.* An application will be accepted for consideration unless:

(1) The Board lacks jurisdiction.

(2) The Board lacks authority to grant effective relief.

(3) The applicant has failed to comply with the filing requirements of paragraphs (a)(l), (a)(2), or (a)(3) of this section.

(4) The applicant has failed to exhaust all available administrative remedies.

(5) The applicant has failed to file an application within 3 years after discovery of the alleged error or injustice and has not provided a reason or reasons why the Board should find it in the interest of justice to excuse the failure to file the application within the prescribed 3-year period.

(d) *Other proceedings not stayed.* Filing an application with the Board shall not operate as a stay of any other proceedings being taken with respect to the person involved.

(e) *Consideration of application.* (1) Each application accepted for consideration and all pertinent evidence of record will be reviewed by a three member panel sitting in executive session, to determine whether to authorize a hearing, recommend that the records be corrected without a hearing, or to deny the application without a hearing. This determination will be made by majority vote.

(2) The Board may deny an application in executive session if it determines that the evidence of record fails to demonstrate the existence of probable material error or injustice. The Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Applicants have the burden of overcoming this presumption but the Board will not deny an application solely because the record was made by or at the direction of the President or the Secretary in connection with proceedings other than proceedings of a board for the correction of military or naval records. Denial of an application on the grounds of insufficient evidence to demonstrate the existence of probable material error or injustice is final subject to the provisions for reconsideration contained in § 723.9.

(3) When an original application or a request for further consideration of a previously denied application is denied without a hearing, the Board's determination shall be made in writing and include a brief statement of the grounds for denial.

(4) The brief statement of the grounds for denial shall include the reasons for the determination that relief should not be granted, including the applicant's claims of constitutional, statutory and/or regulatory violations that were rejected, together with all the essential facts upon which the denial is based, including, if applicable, factors required by regulation to be considered for determination of the character of and reason for discharge. Further the Board shall make a determination as to the applicability of the provisions of the Military Whistleblower Protection Act (10 U.S.C. 1034) if it is invoked by the applicant or reasonably raised by the evidence. Attached to the statement shall be any advisory opinion considered by the Board which is not fully set out in the statement. The applicant will also be advised of reconsideration procedures.

(5) The statement of the grounds for denial, together with all attachments, shall be furnished promptly to the applicant and counsel, who shall also be informed that the name and final vote of each Board member will be furnished or made available upon request. Classified or privileged material will not be incorporated or attached to the Board statement; rather, unclassified or nonprivileged summaries of such material will be so used and written explanations for the substitution will be provided to the applicant and counsel.

§ 723.4 Appearance before the board; notice; counsel; witnesses; access to records.

(a) *General.* In each case in which the Board determines a hearing is warranted, the applicant will be entitled to appear before the Board either in person or by counsel of his/her selection or in person with counsel. Additional provisions apply to cases processed under the Military Whistleblower Protection Act (10 U.S.C. 1034).

(b) *Notice.* (1) In each case in which a hearing is authorized, the Board's staff will transmit to the applicant a written notice stating the time and place of hearing. The notice will be mailed to the applicant, at least 30 days prior to the date of hearing, except that an earlier date may be set where the applicant waives his/her right to such notice in writing.

(2) Upon receipt of the notice of hearing, the applicant will notify the Board in writing at least 15 days prior to the date set for hearing as to whether he/she will be present at the hearing and will indicate to the Board the name of counsel, if represented by counsel, and the names of such witnesses as he/she intends to call. Cases in which the applicant notifies the Board that he/she does not desire to be present at the hearing will be considered in accordance with § 723.5(b)(2).

(c) *Counsel.* As used in this part, the term "counsel" will be construed to include members in good standing of the federal bar or the bar of any state, accredited representatives of veterans' organizations recognized by the Secretary of Veterans Affairs under 38 U.S.C. 3402, or such other persons who, in the opinion of the Board, are considered to be competent to present equitably and comprehensively the request of the applicant for correction, unless barred by law. Representation by counsel will be at no cost to the government.

(d) *Witnesses.* The applicant will be permitted to present witnesses in his/her behalf at hearings before the Board. It will be the responsibility of the applicant to notify his/her witnesses and to arrange for their appearance at the time and place set for hearing. Appearance of witnesses will be at no cost to the government.

(e) *Access to records.* (1) It is the responsibility of the applicant to procure such evidence not contained in the official records of the Department of the Navy as he/she desires to present in support of his/her case.

(2) Classified or privileged information may be released to applicants only by proper authorities in accordance with applicable regulations.

(3) Nothing in this part authorizes the furnishing of copies of official records by the Board. Requests for copies of these records should be submitted in accordance with applicable regulations governing the release of information. The BCNR can provide a requestor with information regarding procedures for requesting copies of these records from the appropriate retention agency.

§ 723.5 Hearing

(a) *Convening of board.* The Board will convene, recess and adjourn at the call of the Chair or Acting Chair.

(b) *Conduct of hearing.* (1) The hearing shall be conducted by the Chair or Acting Chair, and shall be subject to his/her rulings so as to ensure a full and fair hearing. The Board shall not be limited by legal rules of evidence but shall maintain reasonable bounds of competency, relevancy, and materiality.

(2) If the applicant, after being duly notified, indicates to the Board that he/she does not desire to be present or to be represented by counsel at the hearing, the Board will consider the case on the basis of all the material before it, including, but not limited to, the application for correction filed by the applicant, any documentary evidence filed in support of such application, any brief submitted by or in behalf of the applicant, and all available pertinent records.

(3) If the applicant, after being duly notified, indicates to the Board that he/she will be present or be represented by counsel at the hearing, and without good cause and timely notice to the Board, the applicant or representative fails to appear at the time and place set for the hearing or fails to provide the notice required by § 723.4(b)(2), the Board may consider the case in accordance with the provisions of paragraph (b)(2) of this section, or make such other disposition of the case as is appropriate under the circumstances.

(4) All testimony before the Board shall be given under oath or affirmation. The proceedings of the Board and the testimony given before it will be recorded verbatim.

(c) *Continuance.* The Board may continue a hearing on its own motion. A request for continuance by or in behalf of the applicant may be granted by the Board if a continuance appears necessary to insure a full and fair hearing.

§ 723.6 Action by the Board.

(a) *Deliberations, findings, conclusions, and recommendations.* (1) Only members of the Board and its staff shall be present during the deliberations of the Board.

(2) Whenever, during the course of its review of an application, it appears to the Board's satisfaction that the facts have not been fully and fairly disclosed by the records or by the testimony and other evidence before it, the Board may require the applicant or military authorities to provide such further information as it may consider essential to a complete and impartial determination of the facts and issues.

(3) Following a hearing, or where the Board determines to recommend that the record be corrected without a hearing, the Board will make written findings, conclusions and recommendations. If denial of relief is recommended following a hearing, such written findings and conclusions will include a statement of the grounds for denial as described in § 723.3(e)(4). The name and final vote of each Board member will be recorded. A majority vote of the members present on any matter before the Board will constitute the action of the Board and shall be so recorded.

(4) Where the Board deems it necessary to submit comments or recommendations to the Secretary as to matters arising from but not directly related to the issues of any case, such comments and recommendations shall be the subject of separate communication. Additionally, in Military Whistleblower Protection Act cases, any recommendation by the Board to the Secretary that disciplinary or administrative action be taken against any Navy official based on the Board's determination that the official took reprisal action against the applicant will not be made part of the Board's record of proceedings or furnished the applicant but will be transmitted to the Secretary as a separate communication.

(b) *Minority report.* In case of a disagreement between members of the Board a minority report will be submitted, either as to the findings, conclusions or recommendation, including the reasons therefor.

(c) *Record of proceedings.* Following a hearing, or where the Board determines to recommend that the record be corrected without a hearing, a record of proceedings will be prepared. Such record shall indicate whether or not a quorum was present, and the name and vote of each member present. The record shall include the application for relief, a verbatim transcript of any testimony, affidavits, papers and documents considered by the Board, briefs and written arguments, advisory opinions, if any, minority reports, if any, the findings, conclusions and recommendations of the Board, where appropriate, and all other papers, documents, and reports necessary to reflect a true and complete history of the proceedings.

(d) *Withdrawal.* The Board may permit an applicant to withdraw his/her application without prejudice at any time before its record of proceedings is forwarded to the Secretary.

(e) *Delegation of authority to correct certain naval records.* (1) With respect to all petitions for relief properly before it, the Board is authorized to take final corrective action on behalf of the Secretary, unless:

(i) Comments by proper naval authority are inconsistent with the Board's recommendation;

(ii) The Board's recommendation is not unanimous; or

(iii) It is in the category of petitions reserved for decision by the Secretary of the Navy.

(2) The following categories of petitions for relief are reserved for decision by the Secretary of the Navy:

(i) Petitions involving records previously reviewed or acted upon by the Secretary wherein the operative facts remained substantially the same;

(ii) Petitions by former commissioned officers or midshipmen to change the character of, and/or the reason for, their discharge; or,

(iii) Such other petitions as, in the determination of Office of the Secretary or the Executive Director, warrant Secretarial review.

(3) The Executive Director after ensuring compliance with this section, will announce final decisions on applications decided under this section.

§ 723.7 Action by the Secretary.

(a) *General.* The record of proceedings, except in cases finalized by the Board under the authority delegated in § 723.6(e), and those denied by the Board without a hearing, will be forwarded to the Secretary who will direct such action as he or she determines to be appropriate, which may include the return of the record to the Board for further consideration. Those cases returned for further consideration shall be accompanied by a brief statement setting out the reasons for such action along with any specific instructions. If the Secretary's decision is to deny relief, such decision shall be in writing and, unless he or she expressly adopts in whole or in part the findings, conclusions and recommendations of the Board, or a minority report, shall include a brief statement of the grounds for denial. See § 723.3(e)(4).

(b) *Military Whistleblower Protection Act.* The Secretary will ensure that decisions in cases involving the Military Whistleblower Protection Act are issued 180 days after receipt of the case and will, unless the full relief requested is granted, inform applicants of their right to request review of the decision by the Secretary of Defense. Applicants will also be informed:

(1) Of the name and address of the official to whom the request for review must be submitted.

(2) That the request for review must be submitted within 90 days after receipt of the decision by the Secretary of the Navy.

(3) That the request for review must be in writing and include:

(i) The applicant's name, address and telephone number;

(ii) A copy of the application to the Board and the final decision of the Secretary of the Navy; and

(iii) A statement of the specific reasons the applicant is not satisfied with the decision of the Secretary of the Navy.

(4) That the request must be based on the Board record; request for review based on factual allegations or evidence not previously presented to the Board will not be considered under this paragraph but may be the basis for reconsideration by the Board under § 723.9.

§ 723.8 Staff action.

(a) *Transmittal of final decisions granting relief.* (1) If the final decision of the Secretary is to grant the applicant's request for relief the record of proceedings shall be returned to the Board for disposition. The Board shall transmit the finalized record of proceedings to proper naval authority for appropriate action. Similarly final decisions of the Board granting the applicant's request for relief under the authority delegated in § 723.6(e), shall also be forwarded to the proper naval authority for appropriate action.

(2) The Board shall transmit a copy of the record of proceedings to the proper naval authority for filing in the applicant's service record except where the effect of such action would be to nullify the relief granted. In such cases no reference to the Board's decision shall be made in the service record or files of the applicant and all copies of the record of proceedings and any related papers shall be forwarded to the Board and retained in a file maintained for this purpose.

(3) The addressees of such decisions shall report compliance therewith to the Executive Director.

(4) Upon receipt of the record of proceedings after final action by the Secretary, or by the Board acting under the authority contained in § 723.6(e), the Board shall communicate the decision to the applicant. The applicant is entitled, upon request, to receive a copy of the Board's findings, conclusions and recommendations.

(b) *Transmittal of final decisions denying relief.* If the final decision of the Secretary or the Board is to deny relief, the following materials will be made available to the applicant:

(1) A statement of the findings, conclusions, and recommendations made by the Board and the reasons therefor;

(2) Any advisory opinions considered by the Board;

(3) Any minority reports; and

(4) Any material prepared by the Secretary as required in § 723.7. Moreover, applicant shall also be informed that the name and final vote of each Board member will be furnished or made available upon request and that he/she may submit new and material evidence or other matter for further consideration.

§ 723.9 Reconsideration.

After final adjudication, further consideration will be granted only upon presentation by the applicant of new and material evidence or other matter not previously considered by the Board. New evidence is defined as evidence not previously considered by the Board and not reasonably available to the applicant at the time of the previous application. Evidence is material if it is likely to have a substantial effect on the outcome. All requests for further consideration will be initially screened by the Executive Director of the Board to determine whether new and material evidence or other matter (including, but not limited to, any factual allegations or arguments why the relief should be granted) has been submitted by the applicant. If such evidence or other matter has been submitted, the request shall be forwarded to the Board for a decision. If no such evidence or other matter has been submitted, the applicant will be informed that his/her request was not considered by the Board because it did not contain new and material evidence or other matter.

§ 723.10 Settlement of claims.

(a) *Authority.* (1) The Department of the Navy is authorized under 10 U.S.C. 1552 to pay claims for amounts due to applicants as a result of corrections to their naval records.

(2) The Department of the Navy is not authorized to pay any claim heretofore compensated by Congress through enactment of a private law, or to pay any amount as compensation for any benefit to which the claimant might subsequently become entitled under the laws and regulations administered by the Secretary of Veterans Affairs.

(b) *Application for settlement.* (1) Settlement and payment of claims shall be made only upon a claim of the person whose record has been corrected or legal representative, heirs at law, or beneficiaries. Such claim for settlement and payment may be filed as a separate part of the application for correction of the record.

(2) When the person whose record has been corrected is deceased, and where no demand is presented by a duly appointed legal representative of the estate, payments otherwise due shall be made to the surviving spouse, heir or beneficiaries, in the order prescribed by the law applicable to that kind of payment, or if there is no such law covering order of payment, in the order set forth in 10 U.S.C. 2771; or as otherwise prescribed by the law applicable to that kind of payment.

(3) Upon request, the applicant or applicants shall be required to furnish requisite information to determine their status as proper parties to the claim for purposes of payment under applicable provisions of law.

(c) *Settlement.* (1) Settlement of claims shall be upon the basis of the decision and recommendation of the

Board, as approved by the Secretary or his designee. Computation of the amounts due shall be made by the appropriate disbursing activity. In no case will the amount found due exceed the amount which would otherwise have been paid or have become due under applicable laws had no error or injustice occurred. Earnings received from civilian employment, self employment or any income protection plan for such employment during any period for which active duty pay and allowances are payable will be deducted from the settlement. To the extent authorized by law and regulation, amounts found due may be reduced by the amount of any existing indebtedness to the Government arising from military service.

(2) Prior to or at the time of payment, the person or persons to whom payments are to be made shall be advised by the disbursing activity of the nature and amount of the various benefits represented by the total settlement and shall be advised further that acceptance of such settlement shall constitute a complete release by the claimants involved of any claim against the United States on account of the correction of the record.

(d) *Report of settlement.* In every case where payment is made, the amount of such payment and the names of the payee or payees shall be reported to the Executive Director.

§ 723.11 Miscellaneous provisions.

(a) *Expenses.* No expenses of any nature whatsoever voluntarily incurred by the applicant, counsel, witnesses, or by any other person in the applicant's behalf, will be paid by the Government.

(b) *Indexing of decisions.* (1) Documents sent to each applicant and counsel in accordance with § 723.3(e)(5) and § 723.8(a)(4), together with the record of the votes of Board members and all other statements of findings, conclusions and recommendations made on final determination of an application by the Board or the Secretary will be indexed and promptly made available for public inspection and copying at the Armed Forces Discharge Review/Correction Boards Reading Room located on the Concourse of the Pentagon Building in Room 2E123, Washington, DC.

(2) All documents made available for public inspection and copying shall be indexed in a usable and concise form so as to enable the public to identify those cases similar in issue together with the circumstances under and/or reasons for which the Board and/or Secretary have granted or denied relief. The index shall be published quarterly and shall be available for public inspection and distribution by sale at the Reading Room located on the Concourse of the Pentagon Building in Room 2E123, Washington, DC. Inquiries concerning the index or the Reading Room may be addressed to the Chief, Micromation Branch/Armed Forces Discharge Review/Correction Boards Reading Room, Crystal Mall 4, 1941 Jefferson Davis Highway, Arlington, Virginia 22202.

(3) To the extent necessary to prevent a clearly unwarranted invasion of personal privacy, identifying details of the applicant and other persons will be deleted from the documents made available for public inspection and copying. Names, addresses, social security numbers and military service numbers must be deleted. Deletions of other information which is privileged or classified may be made only if a written statement of the basis for such deletion is made available for public inspection.

Dated: January 30, 1997.

D.E. Koenig, Jr.,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 97–4390 Filed 2–21–97; 8:45 am]

BILLING CODE 3810–FF–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH49–1–6072; FRL–5649–6]

Approval and Promulgation of Implementation Plans; Ohio Stage II Vapor Recovery Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Technical amendment.

SUMMARY: On October 20, 1994, the EPA published a direct final rule partially approving and partially disapproving the Ohio Stage II gasoline vapor recovery program. Subsequent to that publication, EPA approved additional sections of the Ohio Administrative Code (OAC) concerning control of volatile organic compounds, including Stage II test methods and a schedule for implementation. This second action inadvertently omitted mention of the OAC rules incorporated by reference in the codification of the October 20, 1994 document. This inadvertent omission of the incorporation by reference of the Stage II gasoline vapor recovery material was unintentional and is being corrected in this document.

EFFECTIVE DATE: February 24, 1997.

FOR FURTHER INFORMATION CONTACT: John Paskevicz, Air Programs Branch, Regulation Development Section (AR–18J), United States Environmental Protection, Region 5, Chicago, Illinois 60604, (312) 886–6084.

Background

On June 13, 1996, the Ohio EPA notified the EPA that a correction was needed to the Code of Federal Regulations (CFR) regarding the codification of the Stage II gasoline vapor recovery program. The State noted that a portion of the Federal approval of the Stage II gasoline vapor recovery rules, published in the **Federal Register** on October 20, 1994 (59 FR 52911), was missing from the CFR. On October 20, 1994, a direct final rule was published (59 FR 52915) which partially approved the Stage II gasoline vapor recovery program for selected areas in the State of Ohio. The direct final rule incorporated by reference Ohio Administrative Code (OAC) rules 3745–21–09(DDD) (1)–(4). This reference was inadvertently omitted from the subsequent publication of a direct final rule in the **Federal Register** on March 23, 1995 (60 FR 15235). This direct final rule approved OAC Chapter 3745–21, regarding volatile organic compound emissions, and included revisions to 40 CFR 52.1870(c)(104). The EPA action published on March 23, 1995 (60 FR 15240), inadvertently omitted the incorporation by reference of the previous partial approval of State rules requiring Stage II gasoline vapor recovery controls, codified at OAC rules 3745–21–09(DDD) (1)–(4), from its revisions to 40 CFR 52.1870(c)(104).

Action

OAC rules 3745–21–09(DDD)(1)-(4) are hereby incorporated by reference into 40 CFR as § 52.1870(c)(104)(i)(C). This action is prompted by a request from the State of Ohio to correct the CFR to include the reference of this codification.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and, is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, air pollution control, Incorporation by reference, ozone, Volatile organic compounds.

Dated: October 11, 1996.

David A. Ullrich,

Acting Regional Administrator.

Title 40 of the Code of Federal Regulations, chapter I, part 52, subpart KK, is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401—7671q.

2. Section 52.1870 is amended by adding paragraph (c)(104)(i)(C) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(104) * * *

(i) * * *

(C) Ohio Administrative Code rules 3745–21–09(DDD)(1)-(4), effective date March 31, 1993.

[FR Doc. 97–4422 Filed 2–21–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[CA–13–0027a; FRL 5688–2]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District and Yolo-Solano Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern rules from the South Coast Air Quality Management District (SCAQMD) and Yolo-Solano Air Quality Management District (YSAQMD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rules control VOC emissions from wastewater separators and pharmaceutical manufacturing operations. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This action is effective on April 25, 1997 unless adverse or critical comments are received by March 26, 1997. If the effective date is delayed, a timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Section [Air-4], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 92123–1095.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182.

Yolo-Solano Air Quality Management District, 1947 Galileo Court, Suite 103, Davis, CA 95616.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Section [Air–4], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1197.

SUPPLEMENTARY INFORMATION:

Applicability

The rules being approved into the California SIP include: South Coast Air Quality Management District (SCAQMD) Rule 464, Wastewater Separators, and Yolo-Solano Air Quality Management District (YSAQMD) Rule 2.35, Pharmaceutical Manufacturing Operations. These rules were submitted by the California Air Resources Board to EPA on May 13, 1991 and November 30, 1994, respectively.

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the Yolo-Solano County Area and the Los-Angeles-South Coast Air Basin (LA Basin). 43 FR 8964, 40 CFR 81.305. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the above districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The Yolo-Solano County Area is classified as serious; the portion of Solano County in the Sacramento Metropolitan Area is classified as

[1] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

serious; the portion of Solano County in the San Francisco-Bay Area is classified as moderate.[2] The LA Basin is classified as extreme;[3] therefore, these areas were subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP on May 13, 1991 and November 30, 1994, including the rules being acted on in this document. This document addresses EPA's direct-final action for YSAQMD Rule 2.35, Pharmaceutical Manufacturing Operations and SCAQMD Rule 464, Wastewater Separators. YSAQMD adopted Rule 2.35 on September 14, 1994; and SCAQMD adopted Rule 464 on December 7, 1990. These submitted rules were found to be complete on July 10, 1991 and January 30, 1995, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, Appendix V [4] and is being finalized for approval into the SIP.

YSAQMD Rule 2.35 controls VOC emissions from the manufacture of pharmaceutical and cosmetic products or devices; and SCAQMD Rule 464 controls VOC emissions from wastewater treatment equipment used to separate petroleum-driven compounds from wastewater, which includes separator basins, skimmers, grit chambers, and sludge hoppers. VOCs contribute to the production of ground level ozone and smog. YSAQMD Rule 2.35 and SCAQMD Rule 464 were originally adopted as part of each district's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and final action for this rule.

EPA Evaluation and Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTGs applicable to these rules are entitled, "Control of Refinery Vacuum Producing Systems, Wastewater Separators, and Process Unit Turnarounds," EPA–450/2–77–025; and "Control of Volatile Organic Emissions from Manufacture of Synthesized Pharmaceutical Products," EPA–450/2–78–029. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 1. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

YSAQMD's submitted Rule 2.35, Pharmaceutical Manufacturing Operations, is a new rule and includes:

- Specific emissions standards and control methods for equipment, maintenance and repair, and surface preparation and cleanup solvents;
- A compliance schedule for existing source modifications;
- Exemptions for small facilities and sources subject to other district rules;
- Extensive monitoring and recordkeeping requirements for small-users, organic compound processing, emission control equipment, and solvent waste/residue disposal.

SCAQMD Rule 464, Wastewater Separators, includes the following significant changes from the current SIP:

- The definition of wastewater separator was added to the rule;
- The equivalency provision in section (b)(1)(C) was deleted at the request of EPA because it allowed the Executive Director to approve the use of other equipment of equivalent effectiveness as a solid cover and/or a floating pontoon or double-deck type cover without EPA's concurrence;
- The effective dates were deleted because they were outdated.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, YSAQMD Rule 2.35, Pharmaceutical Manufacturing Operations and SCAQMD Rule 464, Wastewater Separators, are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this document without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revisions should adverse or critical comments be filed. This action will be effective April 25, 1997, unless, by March 26, 1997, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective April 25, 1997.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that these rules will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over population of less than 50,000.

SIP approvals under sections 110 and 301(a) and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Part D of the Clean Air Act. These rules may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being approved by this action will impose no new requirements because affected sources are already subject to these regulations under State law. Therefore, no additional costs to State, local, or tribal governments or to the private sector result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: February 3, 1997.

Felicia Marcus,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart F—California

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.220 is amended by adding paragraphs (c)(184) (i)(B)(*6*) and (c)(207)(i)(C)(*5*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(184) * * *

(i) * * *

(B) * * *

(*6*) Rule 464, adopted on December 7, 1990.

* * * * *

(207) * * *

(i) * * *

(C) * * *

(*5*) Rule 2.35, adopted on September 14, 1994.

* * * * *

[FR Doc. 97–4421 Filed 2–21–97; 8:45 am]

BILLING CODE 6560–50–P

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[2] Yolo County, the portion of Solano County in the Sacramento Metropolitan Area, and the portion of Solano County in the San Francisco-Bay Area retained their designations and were classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

[3] The LA Basin has retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

[4] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

GENERAL SERVICES ADMINISTRATION

41 CFR Part 302–11

[FTR Amendment 57]

RIN 3090–AG28

Federal Travel Regulation; Relocation Income Tax (RIT) Allowance Tax Tables

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: The Federal, State, and Puerto Rico tax tables for calculating the relocation income tax (RIT) allowance must be updated yearly to reflect changes in Federal, State, and Puerto Rico income tax brackets and rates. The Federal, State, and Puerto Rico tax tables contained in this rule are for calculating the 1997 RIT allowance to be paid to relocating Federal employees.

DATES: This final rule is effective January 1, 1997, and applies for RIT allowance payments made on or after January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Jane Groat, Office of Governmentwide Policy (MTT), Washington, DC 20405, telephone 202–501–1538.

SUPPLEMENTARY INFORMATION: This amendment provides the tax tables necessary to compute the relocation income tax (RIT) allowance for employees who are taxed in 1997 on moving expense reimbursements.

The General Services Administration has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993. This final rule is not required to be published in the **Federal Register** for notice and comment. Therefore, the Regulatory Flexibility Act does not apply. This rule also is exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 302–11

Government employees, Income taxes, Relocation allowances and entitlements, Transfers.

For the reasons set out in the preamble, 41 CFR part 302–11 is amended to read as follows:

PART 302–11—RELOCATION INCOME TAX (RIT) ALLOWANCE

1. The authority citation for part 302–11 is revised to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a).

2. Appendixes A, B, C, and D to part 302–11 are amended by adding the following tables at the end of each appendix, respectively:

APPENDIX A TO PART 302–11—FEDERAL TAX TABLES FOR RIT ALLOWANCE

* * * * *

FEDERAL MARGINAL TAX RATES BY EARNED INCOME LEVEL AND FILING STATUS—TAX YEAR 1996

The following table is to be used to determine the Federal marginal tax rate for Year 1 for computation of the RIT allowance as prescribed in § 302–11.8(e)(1). This table is to be used for employees whose Year 1 occurred during calendar year 1996.

Marginal tax rate (percent)	Single taxpayer		Heads of household		Married filing jointly/qualifying widows and widowers		Married filing separately	
	Over	But not over	Over	But not over	Over	But not over	Over	But not over
15	$6,885	$31,807	$12,295	$45,572	$17,027	$59,055	$8,229	$29,600
28	31,807	70,867	45,572	105,805	59,055	123,190	29,600	61,245
31	70,867	144,170	105,805	168,990	123,190	179,414	61,245	90,611
36	144,170	292,883	168,990	301,968	179,414	295,681	90,611	150,779
39.6	292,883		301,968		295,681		150,779	

APPENDIX B TO PART 302–11—STATE TAX TABLES FOR RIT ALLOWANCE

* * * * *

STATE MARGINAL TAX RATES BY EARNED INCOME LEVEL—TAX YEAR 1996

The following table is to be used to determine the State marginal tax rates for calculation of the RIT allowance as prescribed in § 302–11.8(e)(2). This table is to be used for employees who received covered taxable reimbursements during calendar year 1996.

State (or district)	Marginal tax rates (stated in percents) for the earned income amounts specified in each column [1] [2]			
	$20,000–$24,999	$25,000–$49,999	$50,000–$74,999	$75,000 and over
1. Alabama	5	5	5	5
2. Alaska	0	0	0	0
3. Arizona	3	3.5	4.2	5.6
4. Arkansas	4.5	7	7	7
If single status [3]	6	7	7	7
5. California	2	4	8	11
If single status [3]	4	9.3	9.3	11
6. Colorado	5	5	5	5
7. Connecticut	4.5	4.5	4.5	4.5
8. Delaware	6	7.1	7.1	7.1
9. District of Columbia	8	9.5	9.5	9.5
10. Florida	0	0	0	0
11. Georgia	6	6	6	6
12. Hawaii	8	9.5	10	10
If single status [3]	9.5	10	10	10
13. Idaho	7.8	8.2	8.2	8.2
14. Illinois	3	3	3	3
15. Indiana	3.4	3.4	3.4	3.4
16. Iowa	6.8	7.55	9.98	9.98
If single status [3]	7.2	8.8	9.98	9.98
17. Kansas	3.5	6.25	6.25	6.45
If single status [3]	4.4	7.75	7.75	7.75
18. Kentucky	6	6	6	6
19. Louisiana	2	4	4	6
If single status [3]	4	4	6	6
20. Maine	4.5	7	8.5	8.5
If single status [3]	8.5	8.5	8.5	8.5
21. Maryland	5	5	5	5
22. Massachusetts	5.95	5.95	5.95	5.95
23. Michigan	4.4	4.4	4.4	4.4
24. Minnesota	6	8	8	8.5
If single status [3]	8	8	8.5	8.5
25. Mississippi	5	5	5	5
26. Missouri	6	6	6	6

State (or district)	Marginal tax rates (stated in percents) for the earned income amounts specified in each column [1] [2]			
	$20,000–$24,999	$25,000–$49,999	$50,000–$74,999	$75,000 and over
27. Montana	6	9	10	11
28. Nebraska	3.65	5.24	6.99	6.99
If single status [3]	5.24	6.99	6.99	6.99
29. Nevada	0	0	0	0
30. New Hampshire	0	0	0	0
31. New Jersey	1.4	1.75	2.45	6.37
If single status [3]	1.4	3.45	5.25	6.37
32. New Mexico	3.2	6	7.1	8.5
If single status [3]	6	7.1	7.9	8.5
33. New York	5	7.125	7.125	7.125
If single status [3]	7.125	7.125	7.125	7.125
34. North Carolina	6	7	7	7.75
35. North Dakota	6.67	9.33	12	12
If single status [3]	8	10.67	12	12
36. Ohio	2.972	4.457	5.201	7.5
37. Oklahoma	4	7	7	7
If single status [3]	7	7	7	7
38. Oregon	9	9	9	9
39. Pennsylvania	2.8	2.8	2.8	2.8
40. Rhode Island	27.5	27.5	27.5	27.5
41. South Carolina		(See footnote 4)		
42. South Dakota	7	7	7	7
43. Tennessee	0	0	0	0
44. Texas	0	0	0	0
45. Utah	0	0	0	0
46. Vermont	7	7	7	7
47. Virginia		(See footnote 5)		
48. Washington	5	5.75	5.75	5.75
49. West Virginia	0	0	0	0
50. Wisconsin	4	4.5	6	6.5
51. Wyoming	6.55	6.93	6.93	6.93
	0	0	0	0

[1] Earned income amounts that fall between the income brackets shown in this table (e.g., $24,999.45, $49,999.75) should be rounded to the nearest dollar to determine the marginal tax rate to be used in calculating the RIT allowance.

[2] If the earned income amount is less than the lowest income bracket shown in this table, the employing agency shall establish an appropriate marginal tax rate as provided in § 302–11.8(e)(2)(ii).

[3] This rate applies only to those individuals certifying that they will file under a single status within the States where they will pay income taxes. All other taxpayers, regardless of filing status, will use the other rate shown.

[4] The income tax rate for Rhode Island is 27.5 percent of Federal income tax liability for all employees. Rates shown as a percent of Federal income tax liability must be converted to a percent of income as provided in § 302–11.8(e)(2)(iii).

[5] The income tax rate for Vermont is 25 percent of Federal income tax liability for all employees. Rates shown as a percent of Federal income tax liability must be converted to a percent of income as provided in § 302–11.8(e)(2)(iii).

APPENDIX C TO PART 302–11—FEDERAL TAX TABLES FOR RIT ALLOWANCE—YEAR 2

* * * * *

FEDERAL MARGINAL TAX RATES BY EARNED INCOME LEVEL AND FILING STATUS—TAX YEAR 1997

The following table is to be used to determine the Federal marginal tax rate for Year 2 for computation of the RIT allowance as prescribed in § 302–11.8(e)(1). This table is to be used for employees whose Year 1 occurred during calendar years 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, or 1996.

Marginal tax rate (percent)	Single taxpayer		Heads of household		Married filing jointly/qualifying widows and widowers		Married filing separately	
	Over	But not over	Over	But not over	Over	But not over	Over	But not over
15	$7,067	$32,674	$12,963	$46,966	$16,798	$59,856	$8,702	$29,669
28	32,674	71,647	46,966	104,632	59,856	123,931	29,669	62,023
31	71,647	141,006	104,632	161,381	123,931	180,221	62,023	92,072
36	141,006	288,900	161,381	293,567	180,221	299,695	92,072	152,835
39.6	288,900		293,567		299,695		152,835	

APPENDIX D TO PART 302–11—PUERTO RICO TAX TABLES FOR RIT ALLOWANCE

* * * * *

PUERTO RICO MARGINAL TAX RATES BY EARNED INCOME LEVEL—TAX YEAR 1996

The following table is to be used to determine the Puerto Rico marginal tax rate for computation of the RIT allowance as prescribed in § 302–11.8(e)(4)(i).

Marginal tax rate (percent)	Single filing status		Any other filing status	
	Over	But not over	Over	But not over
12	.....	.....	.....	$25,000
18	.....	$25,000	.....	.....
31	$25,000	$50,000	$25,000	$50,000
33	$50,000	.....	$50,000	.....

Dated: February 18, 1997.

David J. Barram,

Acting Administrator of General Services.

[FR Doc 97–4557 Filed 2–21–97;8:45am]

BILLING CODE 6820–34–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7859]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 6464, Rockville, MD 20849, (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street SW., room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Executive Associate Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Executive Associate Director finds that the delayed effective dates would be contrary to the public interest. The Executive Associate Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Executive Associate Director certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U. S. C. 601 et seq., because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community number	Effective date of eligibility	Current effective map date
New Eligibles—Emergency Program			
Iowa: Gray, city of, Audobon County	190318	Jan. 10, 1997	July 19, 1977.
Pennsylvania: Jenkintown, borough of, Montgomery County.	422717	.....do.....	Dec. 19, 1996.
Alaska: Togiak, city of, unorganized borough	020090	Jan. 17, 1997	
Michigan: Zeeland, city of, Ottawa County	260983	.....do.....	
Idaho: Adams County, unincorporated areas	160204	Jan. 16, 1997	
Louisiana: Hessmer, village of, Avoyelles Parish	220294	Jan. 27, 1997	
Illinois: Lerna, village of, Coles County	171044	Jan. 29, 1997	
Michigan:			
Hay, township of, Gladwin, County	260984	.....do.....	
Secord, township of, Gladwin County	260985	.....do.....	
California: Riverbank, city of, Stanislaus County	060391	Jan. 28, 1997	
New Eligibles—Regular Program			
Washington: Vader, city of, Lewis County	530266	Jan. 17, 1997	Sept. 14, 1979.
Delaware: Ardentown, village of, New Castle County	100058	Jan. 28, 1997	Apr. 17, 1996.
Texas: Aledo, city of, Parker County	481659	Jan. 29, 1997	Jan. 3, 1997.
Reinstatements			
Pennsylvania:			
West Brandywine, township of, Chester County	421496	Aug. 6, 1975, Emerg. Sept. 28, 1979, Reg; Nov. 20, 1996, Susp; Jan. 9, 1997, Rein.	Nov. 20, 1996.
Orbisonia, borough of, Huntingdon County	421682	Oct. 15, 1975, Emerg; Dec. 31, 1982, Reg; July 3, 1995, Susp; Jan. 10, 1997, Rein.	July 3, 1995.
London Grove, township of, Chester County	422274	Oct. 17, 1974, Emerg; Feb. 11, 1983, Reg; Nov. 20, 1996, Susp; Jan. 16, 1997, Rein.	Nov. 20, 1996.
Washington: Steilacoom, town of, Pierce County	530146	June 4, 1975, Emerg; July 19, 1982, Reg; July 19, 1982, Susp; Jan. 16, 1997, Rein.	July 19, 1982.
Pennsylvania: New Garden, township of, Chester County.	422275	Nov. 3, 1975, Emerg; Oct. 15, 1982, Reg; Nov. 20, 1996, Susp; Jan. 24, 1997, Rein.	Nov. 20, 1996.
New York: Fort Ann, town of, Washington County	361231	Feb. 2, 1976, Emerg; Apr. 17, 1985, Reg; May 17, 1988, Susp; Jan. 24, 1997, Rein.	Apr. 17, 1985
Nebraska: Gibbon, city of, Buffalo and Pierce Counties.	310015	June 25, 1975, Emerg; Sept. 27, 1985, Reg; June 5, 1989, Susp; Jan. 28, 1997, Rein.	Sept. 27, 1985.
Regular Program Conversions			
Region I:			
Connecticut: Clinton, town of, Middlesex County	090061	Jan. 17, 1997, Suspension Withdrawn	Jan. 17, 1997.
Vermont: Weston, town of, Windsor County	500157	.....do.....	Do.
Region II:			
New York: Owego, town of, Tioga County	360839	.....do.....	Do.
Region III:			
Pennsylvania: Flemington, borough of, Clinton County.	420326	.....do.....	Do.
Region IV:			
Tennessee:			
Sevierville, city of, Sevier County	475444	.....do.....	Do.
Shelbyville, city of, Bedford County	470008	.....do.....	Do.
Region V:			
Michigan: Torch Lake, township of, Antrim County.	260414	.....do.....	Do.
Region VII:			
Missouri: Greene County, unincorporated areas	290782	.....do.....	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension; With.—Withdrawn.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: February 11, 1997.

Richard W. Krimm,

Executive Associate Director, Mitigation Directorate.

[FR Doc. 97–4459 Filed 2–21–97; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–177; RM–8853]

Radio Broadcasting Services; Galena and Baxter Springs, KS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Acorn Broadcasting Company, allots Channel 282A to Galena, Kansas. *See* 61 FR 47471, September 9, 1996. Channel 282A can be allotted to Galena in compliance with the Commission's distance separation requirements with a site restriction of 6.5 kilometers (4.0 miles) west to avoid short-spacing conflicts with Stations KBEQ(FM), Channel 282C, Kansas City, Missouri; KBCN(FM), Channel 282C, Marshall, Arkansas; and KQMO(FM), Channel 281C3, Ash Grove, Missouri. The coordinates for Channel 282A at Galena are 37–03–24 and 94–42–11. With this action, this proceeding is terminated.

DATES: Effective March 31, 1997. The window period for filing applications will open on March 31, 1997, and close on May 1, 1997.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 96–177, adopted February 7, 1997, and released February 14, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, and 307.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by adding Galena, Channel 282A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–4394 Filed 2–21–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Chapter VI

[Docket No. 970130016–7016–01; I.D. 012797F]

RIN 0648–XX80

Magnuson-Stevens Fishery Conservation and Management Act; Public Comments on Fishery Management Plans and Regulations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Policy statement.

SUMMARY: NMFS notifies the public of how public comments on Fishery Management Plans (FMPs), FMP amendments, and their implementing regulations will be handled under the procedures of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended by the Sustainable Fisheries Act (SFA). The intent is to ensure that the public has full opportunity for input to the fishery management decision process.

FOR FURTHER INFORMATION CONTACT: George H. Darcy, 301–713–2341.

SUPPLEMENTARY INFORMATION: On October 11, 1996, the President signed into law the SFA (Public Law 104–297), which made numerous amendments to the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*). The amendments significantly changed the process and schedules under which FMPs, FMP amendments, and most regulations are reviewed and implemented. Because of those changes, NMFS has had to revise its procedures for handling public comments on FMPs, FMP amendments, and their implementing regulations.

Specifically, the SFA decoupled the schedule for approval/disapproval of FMPs and FMP amendments submitted by Regional Fishery Management Councils (Councils) from the schedule for publication of proposed and final rules to implement them. Because both the notice of availability (NOA) of an FMP/amendment and the proposed rule request public comments, the timing of the receipt of those comments relative to the timing of decisions regarding the FMP/amendment and associated rules has been complicated. To address these issues and to inform the public of how and when public comments will be considered, NMFS will follow the procedures outlined below.

FMPs and FMP Amendments

An NOA will be published in the **Federal Register** as soon as possible after transmittal of an FMP/amendment from a Council, as required by sec. 304(a) of the Magnuson-Stevens Act. The NOA will request comments on the FMP/amendment and will alert the public that (1) public comments are being solicited on the FMP/amendment through the end of the 60-day comment period stated in the NOA; (2) a proposed rule that would implement the FMP/amendment may be published in the **Federal Register** for public comment, following NMFS' evaluation of the proposed rule under the Magnuson-Stevens Act procedures; and (3) public comments on the proposed rule must be received by the end of the comment period on the FMP/amendment to be considered in the approval/disapproval decision on the FMP/amendment. All comments received by the end of the comment period on the FMP/amendment, whether specifically directed to the FMP/amendment or the proposed rule, will be considered in the approval/disapproval decision; comments received after that date will not be considered in the approval/disapproval decision on the FMP/amendment. To be considered, comments must be received by close of business on the last day of the comment period established by the NOA.

Proposed Rules

If NMFS' evaluation of the proposed rule under procedures specified in sec. 304(b) of the Magnuson-Stevens Act determines that it is consistent with the FMP, FMP amendment, the Magnuson-Stevens Act, and other applicable laws, NMFS will publish the proposed rule with a request for public comment; the comment period will normally be 45 days. The preamble of the proposed rule will inform the public that (1) public comments are being solicited on the FMP/amendment through the end of the comment period stated in the NOA; and (2) public comments on the proposed rule must be received by the end of the comment period on the FMP/amendment, as published in the NOA, to be considered in the approval/disapproval decision on the FMP/amendment. To be considered, comments must be received by close of business on the last day of the comment period.

Responses to Comments

All comments received during the public comment periods will be responded to in the final rule. The preamble of the final rule will contain a summary of the comments received, both on the FMP/amendment and on the proposed rule, and responses to those comments.

NMFS expects that the comment periods for the FMP/amendment (as published in the NOA) and the proposed rule will generally end on or about the same date, and NMFS will attempt to achieve that result. However, because there is the possibility that the comment period ending dates could be significantly different, it is important for commenters to focus their comments on either the FMP/amendment or on the proposed rule, if possible, and to be aware of the decisional timing issues that have resulted from the Magnuson-Stevens Act amendments. By publishing this policy statement, and through language to be included in NOAs and preambles to proposed rules, NMFS is attempting to ensure that the public has full opportunity for input to the decision process.

Classification

This rule has been determined to be not significant for purposes of Executive Order 12866.

Pursuant to authority at 5 U.S.C. 553(b)(A), prior notice and an opportunity for public comment are not required to be provided for this rule, as this is a rule of procedure. Further, because prior notice and an opportunity for public comment are not required under 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable. Finally, because this rule is not substantive it is not subject to the 30-day delay in effective date required of substantive rules under 5 U.S.C. 553(d).

Dated: February 14, 1997.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97–4457 Filed 2–21–97; 8:45 am]

BILLING CODE 3510–22–F

50 CFR Part 679

[Docket No. 961126334–7025–02; I.D. 111296A]

RIN 0648–XX74

Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska; Final 1997 Harvest Specifications for Groundfish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final 1997 harvest specifications for groundfish and associated management measures; closures.

SUMMARY: NMFS announces final 1997 harvest specifications for Gulf of Alaska (GOA) groundfish and associated management measures. This action is necessary to establish harvest limits and associated management measures for groundfish during the 1997 fishing year. NMFS is also closing fisheries as specified in the final 1997 groundfish specifications. These measures are intended to carry out management objectives contained in the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP).

EFFECTIVE DATES: The final 1997 harvest specifications are effective at noon on February 19, 1997 through 2400 hrs, Alaska local time (A.l.t.), December 31, 1997, or until changed by subsequent notification in the **Federal Register**. The closures to directed fishing are effective February 19, 1997 through 2400 hrs, A.l.t., December 31, 1997, or until changed by subsequent notification in the **Federal Register**.

ADDRESSES: Copies of the Environmental Assessment (EA) for 1997 Groundfish Total Allowable Catch Specifications, dated January 1997, may be obtained from NMFS, Fisheries Management Division, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel, or by calling 907–586–7228. The Final Stock Assessment and Fishery Evaluation Report (SAFE report), dated November 1996, is available from the North Pacific Fishery Management Council, 605 West 4th Avenue, Suite 306, Anchorage, AK 99501–2252, or by calling 907–271–2809.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson 907–486–6919.

SUPPLEMENTARY INFORMATION:

Background

Groundfish fisheries in the exclusive economic zone of the GOA are managed by NMFS according to the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. The FMP is implemented by regulations at 50 CFR part 679.

NMFS announces for the 1997 fishing year: (1) Specifications of total allowable catch (TAC) amounts for each groundfish species category in the GOA, and reserves; (2) apportionments of reserves; (3) allocations of the sablefish TAC to vessels using hook-and-line and trawl gear; (4) apportionments of pollock TAC among regulatory areas, seasons, and allocations for processing between inshore and offshore components; (5) allocations for processing of Pacific cod TAC between inshore and offshore components; (6) "other species" TAC; (7) closures to directed fishing; (8) Pacific halibut prohibited species catch (PSC) limits; and (9) fishery and seasonal apportionments of the Pacific halibut PSC limits. A discussion of each of these measures follows.

The process of determining TACs for groundfish species in the GOA is established in regulations implementing the FMP. Pursuant to § 679.20(a)(2), the sum of the TACs for all species must fall within the combined optimum yield (OY) range of 116,000–800,000 metric tons (mt) established for these species in § 679.20(a)(1)(ii).

The Council met from September 18 through 22, 1996, and developed recommendations for proposed 1997 TAC specifications for each species category of groundfish on the basis of the best available scientific information. The Council also recommended other management measures pertaining to the 1997 fishing year. Under § 679.20(c)(1)(ii), the proposed GOA groundfish specifications and specifications for prohibited species bycatch allowances for the groundfish fishery of the GOA were published in the **Federal Register** on December 4, 1996 (61 FR 64310). Comments were invited through December 30, 1996. Two letters were received that expressed a comment on the environmental assessment prepared for the 1997 GOA specifications. The comment is summarized and responded to below in the Response to Comments

section. Interim amounts of one-fourth the TAC were published in the **Federal Register** on December 4, 1996 (61 FR 64299). The final 1997 initial groundfish harvest specifications and prohibited species bycatch allowances implemented under this action supersede the interim 1997 specifications.

The Council met December 11 through 15, 1996, to review the best available scientific information concerning groundfish stocks and to consider public testimony regarding 1997 groundfish fisheries. Scientific information is contained in the November 1996 SAFE report for the GOA. The SAFE report was prepared and presented by the GOA Plan Team (Plan Team) to the Council and the Council's Scientific and Statistical Committee (SSC) and Advisory Panel (AP) and includes the most recent information concerning the status of groundfish stocks, based on the most recent catch data, survey data, and biomass projections using different modeling approaches or assumptions.

For establishment of the acceptable biological catches (ABCs) and TACs, the Council considered information in the SAFE report, recommendations from its SSC and AP, as well as public testimony. The SSC adopted the overfishing level (OFL) recommendations from the Plan Team, which were provided in the SAFE report, for all groundfish species categories, except for the nearshore pelagic shelf rockfish species (black rockfish and blue rockfish) in the Eastern and Western GOA. The SSC also adopted the ABC recommendations from the Plan Team, which were provided in the SAFE report, for all of the groundfish species categories, except sablefish, nearshore pelagic shelf rockfish in the Eastern and Western GOA, and Atka mackerel.

The SSC did not adopt the Plan Team's recommendation of ABC for sablefish. The SSC received additional information from NMFS stock assessment scientists that both the Plan Team's ABC recommendation and an ABC based on the $F_{40\%}$ strategy adjusted by biomass would increase the actual exploitation rate. This fact, combined with 15 years of low recruitment, which could result in the biomass declining below the lowest observed levels since 1979, led the SSC to agree with the assessment authors' recommendation for ABC. The Council accepted the SSC's recommendation.

The Plan Team recommended the division of the pelagic shelf rockfish assemblage into nearshore (black rockfish and blue rockfish) and offshore (dusky, widow, and yellowtail rockfish) assemblages. The Plan Team recommended an OFL and ABC for the Central GOA based, on historic harvests, and for the Eastern and Western GOA based, on an approximation of the amount of nearshore rockfish habitat relative to the Central GOA. The SSC adopted the Plan Team's recommendations for separating the pelagic shelf rockfish assemblage into nearshore and offshore assemblages in the Central GOA but did not agree with the Plan Team's apportionment method for the Eastern and Western GOA nearshore and offshore species because very little information is available, and the method assumes an equal density-per-unit area that has not been demonstrated. The Council accepted the SSC's recommendation.

The SSC also did not accept the Plan Team's ABC (1,580 mt) for Atka mackerel. The Plan Team's recommendation was based upon the most recent year's harvest in 1996. The SSC noted that a brief directed fishery occurred in 1996, whereas none occurred in the 1995 fishing year. The SSC concluded that the gulfwide 1995 harvest of 801 mt more accurately reflects the amount of bycatch needed in other directed fisheries through the fishing year and adopted the assessment authors' recommendation of an ABC of 1,000 mt. The SSC agreed with the Plan Team that the ABC for Atka mackerel be 1,000 mt for the entire GOA. The Council accepted the SSC's recommendation.

The Council adopted the SSC ABC recommendations for each species category. The Council's recommended ABCs, listed in Table 1, reflect harvest amounts that are less than the specified overfishing amounts (Table 1). The sum of 1997 ABCs for all groundfish is 493,050 mt, which is higher than the 1996 ABC total of 475,170 mt.

1. Specifications of TAC and Reserves

The Council recommended TACs equal to ABCs for pollock, deep-water flatfish, rex sole, sablefish, northern rockfish, shortraker/rougheye rockfish, pelagic shelf rockfish including the split in the assemblage in the Central GOA between nearshore and offshore species, demersal shelf rockfish, Atka mackerel, and thornyhead rockfish. The Council recommended TACs less than the ABC for Pacific cod, flathead sole, shallow-water flatfish, arrowtooth, other slope rockfish, and Pacific ocean perch (Table 1).

The TAC for pollock has increased gulfwide but has decreased in the Western GOA from 25,480 mt in 1996 to 18,600 mt in 1997. This apportionment of TAC in the Central and Western GOA reflects the current biomass distribution. For 1997, the State of Alaska has established a guideline harvest level (GHL) of 1,800 mt for pollock in Prince William Sound (PWS). The SSC did not have information to indicate whether the PWS pollock fishery exploits a stock that is independent of the assessed GOA pollock population. Therefore, the SSC recommended that PWS pollock harvests be applied against the total GOA ABC of pollock. NMFS will deduct harvest of pollock in PWS from the Eastern GOA TAC in 1997.

The 1997 Pacific cod TAC is affected by the State of Alaska's plan to develop a state-managed fishery for Pacific cod in state waters in the Central and Western GOA, as well as PWS. The SSC, AP, and Council recommended that the sum of all Pacific cod removals should not exceed the ABC. The Council recommended that the TAC for the Eastern GOA be lower than the ABC by 400 mt, the amount of the proposed GHL for PWS. The TACs for the Central and Western GOA are also recommended to be lower than the ABCs by 7,710 mt and 4,275 mt respectively, the amount of the proposed GHLs for these areas. The Council requested that NMFS review, by October 1997, the likelihood that the State of Alaska's GHLs of Pacific cod will be achieved in 1997. If unused amounts of the State's 1997 GHLs are anticipated, the Council requested that NMFS make these amounts available to fishermen participating in the federally managed fishery by October 1, 1997.

The Council accepted the AP recommendation that the TACs for flathead sole, shallow-water flatfish, and arrowtooth flounder be set at 1996 TAC levels, which are lower than their respective 1997 ABC specifications. With respect to "other rockfish" in the Eastern GOA, the Council recommended that NMFS establish a TAC that would provide for bycatch only. NMFS has reviewed bycatch needs for "other rockfish" and has set a TAC at 1,500 mt, which will provide enough for bycatch needs.

The Council reduced the AP's recommendation for Pacific ocean perch (POP) TACs in the Western and Central Gulf by 20 percent to 1,472 mt and 5,352 mt respectively to create a management buffer between ABC and TAC to account for harvest overages that occurred during 1996. In the Eastern GOA, the Council recommended that the POP TAC be reduced from the 1997 ABC of 4,460 mt to the 1996 TAC level of 2,366 mt to reduce the bycatch of shortraker and rougheye rockfish in the POP fishery.

Amendment 38 to the FMP was approved October 2, 1996 (61 FR 51374) giving the Council the alternative of recommending a lower POP TAC in the annual specification process for the purpose of addressing biological or resource conservation concerns that are not addressed under the Rebuilding Plan or SAFE reports.

The sum of the TACs for all GOA groundfish is 282,815 mt, which is within the OY range specified by the FMP. The sum of the TACs is higher than the 1996 TAC sum of 260,207 mt.

NMFS has reviewed the Council's recommendation for TAC specifications and apportionments and hereby approves these specifications under § 679.20(c)(3)(ii). The TAC for "other species" is calculated as 5 percent of the sum of TACs for the other groundfish species categories, or 13,470 mt.

The 1997 ABCs, TACs, and overfishing levels are shown in Table 1.

TABLE 1.—1997 ABCs, TACs, INITIAL TACs (PACIFIC COD ONLY) AND OVERFISHING LEVELS OF GROUNDFISH (METRIC TONS) FOR THE WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULF-WIDE (GW) DISTRICTS OF THE GULF OF ALASKA

Species and area [1]	ABC (mt)	TAC (mt)	Initial TAC (mt)[2]	Overfishing (mt)
Pollock:[3]				
Shumagin (610)	18,600	18,600	.....	.....
Chirikof (620)	31,250	31,250	.....	.....
Kodiak (630)	24,550	24,550		
Subtotal:				
W/C	74,400	74,400	.....	103,500
E	5,580	5,580	.....	7,770
Total	79,980	79,980	.....	111,270
Pacific cod:[4]				
W	28,500	24,225	19,380	.....
C	51,400	43,690	34,952	.....
E	1,600	1,200	960	.....
Total	81,500	69,115	55,292	180,000
Flatfish[5] (deep-water):				
W	340	340	.....	.....
C	3,690	3,690	.....	.....
E	3,140	3,140	.....	.....
Total	7,170	7,170	.....	9,440
Rex sole:[5]				
W	1,190	1,190	.....	.....
C	5,490	5,490	.....	.....
E	2,470	2,470	.....	.....
Total	9,150	9,150	.....	11,920
Flathead sole:				
W	8,440	2,000	.....	.....
C	15,630	5,000	.....	.....
E	2,040	2,040	.....	.....
Total	26,110	9,040	.....	34,010
Flatfish[6] (shallow-water):				
W	22,570	4,500	.....	.....
C	19,260	12,950	.....	.....
E	1,320	1,180	.....	.....
Total	43,150	18,630	.....	59,540
Arrowtooth flounder:				
W	31,340	5,000	.....	.....
C	142,100	25,000	.....	.....
E	24,400	5,000	.....	.....
Total	197,840	35,000	.....	280,800
Sablefish:[7]				
W	1,860	1,860	.....	.....
C	6,410	6,410	.....	.....
WYK	2,410	2,410	.....	.....

TABLE 1.—1997 ABCs, TACs, INITIAL TACs (PACIFIC COD ONLY) AND OVERFISHING LEVELS OF GROUNDFISH (METRIC TONS) FOR THE WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULF-WIDE (GW) DISTRICTS OF THE GULF OF ALASKA—Continued

Species and area[1]	ABC (mt)	TAC (mt)	Initial TAC (mt)[2]	Overfishing (mt)
SEO	3,840	3,840		
Total	14,520	14,520		39,950
Pacific[8] ocean perch:				
W	1,840	1,472		2,790
C	6,690	5,352		10,180
E	4,460	2,366		6,790
Total	12,990	9,190		19,760
Short raker/rougheye:[9]				
W	160	160		
C	970	970		
E	460	460		
Total	1,590	1,590		2,740
Other rockfish:[10, 11, 12]				
W	20	20		
C	650	650		
E	4,590	1,500		
Total	5,260	2,170		7,560
Northern Rockfish:[13]				
W	840	840		
C	4,150	4,150		
E	10	10		
Total	5,000	5,000		9,420
Pelagic shelf rockfish:[14]				
W combined	570	570		
C nearshore	260	260		
C offshore	3,320	3,320		
E combined	990	990		
Total	5,140	5,140		8,400
Demersal shelf rockfish:[12] SEO	950	950		1,450
Thornyhead rockfish: GW	1,700	1,700		2,400
Atka mackerel: GW	1,000	1,000		6,200
Other[15] species: GW	N/A[16]	13,470		
Total[17]	493,050	282,815	55,292	784,860

[1] Regulatory areas and districts are defined at § 679.2.
[2] Twenty percent of Pacific cod TAC is put into a reserve. The initial TAC is the remaining TAC after subtracting the reserve (see § 679.20(b)(2) and "Apportionments of Reserves" below).
[3] Pollock is apportioned to three statistical areas in the combined Western/Central Regulatory Area (Table 3), each of which is further divided into three seasonal allowances. In the Eastern Regulatory Area, pollock is not divided into seasonal allowances.
[4] Pacific cod is allocated 90 percent for processing by the inshore, and 10 percent for processing by the offshore component. Component allocations are shown in Table 4.
[5] "Deep water flatfish" means Dover sole and Greenland turbot.
[6] "Shallow water flatfish" means flatfish not including "deep water flatfish," flathead sole, rex sole, or arrowtooth flounder.
[7] Sablefish is allocated to trawl and hook-and-line gears (Table 2).
[8] "Pacific ocean perch" means *Sebastes alutus*.
[9] "Shortraker/rougheye rockfish" means *Sebastes borealis* (shortraker) and *S. aleutianus* (rougheye).
[10] "Other rockfish" in the Western and Central Regulatory Areas and in the West Yakutat District means slope rockfish and demersal shelf rockfish. The category "other rockfish" in the Southeast Outside District means Slope rockfish.
[11] "Slope rockfish" means *Sebastes aurora* (aurora), *S. melanostomus* (blackgill), *S. paucispinis* (bocaccio), *S. goodei* (chilipepper), *S. crameri* (darkblotch), *S. elongatus* (greenstriped), *S. variegates* (harlequin), *S. wilsoni* (pygmy), *S. babcocki* (redbanded), *S. proriger* (redstripe), *S. zacentrus* (sharpchin), *S. jordani* (shortbelly), *S. brevispinis* (silvergrey), *S. diploproa* (splitnose), *S. saxicola* (stripetail), *S. miniatus* (vermilion), and *S. reedi* (yellowmouth).
[12] "Demersal shelf rockfish" means *Sebastes pinniger* (canary), *S. nebulosus* (china), *S. caurinus* (copper), *S. maliger* (quillback), *S. helvomaculatus* (rosethorn), *S. nigrocinctus* (tiger), and *S. ruberrimus* (yelloweye).
[13] "Northern rockfish" means *Sebastes polyspinis*.
[14] "Pelagic shelf rockfish" means *Sebastes melanops* (black), *S. mystinus* (blue), *S. ciliatus* (dusky), *S. entomelas* (widow), and *S. flavidus* (yellowtail). "Pelagic shelf rockfish nearshore" means *Sebastes melanops* (black) and *S. mystinus* (blue). "Pelagic shelf rockfish offshore" means *Sebastes ciliatus* (dusky), *S. entomelas* (widow), and *S. flavidus* (yellowtail).

[15] "Other species" means sculpins, sharks, skates, eulachon, smelts, capelin, squid, and octopus. The TAC for "other species" equals 5 percent of the TACs of target species.
[16] N/A means not applicable.
[17] The total ABC is the sum of the ABCs for target species.

2. Apportionments of Reserves

Regulations implementing the FMP require 20 percent of each TAC for pollock, Pacific cod, flounder, and the "other species" category be set aside in reserves for possible apportionment at a later date (§ 679.20(b)(2)). For the preceding 9 years, including 1996, NMFS has reapportioned all of the reserves in the final harvest specifications. NMFS proposed reapportionment of all reserves for 1997 in the proposed GOA groundfish specifications published in the **Federal Register** on December 4, 1996 (61 FR 64310). NMFS received no public comments on the proposed reapportionments. For 1997, NMFS reapportions all the reserves for pollock, flounder, and "other species." NMFS is retaining the Pacific cod reserves at this time to provide for a management buffer to account for excessive fishing effort and/or incomplete or late catch reporting. In recent years, unpredictable increases in fishing effort and harvests, uncertainty of bycatch needs in other directed fisheries throughout the year, and untimely submission and revision of weekly processing reports have resulted in early and late closures of the Pacific cod fishery. NMFS believes that the retention of Pacific cod reserve amounts to provide for TAC management difficulties later in the year is a conservative approach that will lead to a more orderly fishery and provide greater assurance that Pacific cod bycatch may be retained throughout the year. Specifications of TAC shown in Table 1 reflect apportionment of reserve amounts for pollock, flatfish species, and "other species." Table 1 also lists the initial TACs for Pacific cod that reflect the withholding of the Pacific cod TAC reserves as follows: 4,845 mt in the Western GOA, 8,738 mt in the Central GOA, and 240 mt in the Eastern GOA.

3. Allocations of the Sablefish TACs to Vessels Using Hook-and-Line and Trawl Gear

Under § 679.20(a)(4)(i) and (ii), sablefish TACs for each of the regulatory areas and districts are allocated to hook-and-line and trawl gear. In the Western and Central Regulatory Areas, 80 percent of each TAC is allocated to hook-and-line gear and 20 percent to trawl gear. In the Eastern Regulatory Area, 95 percent of the TAC is allocated to hook-and-line gear and 5 percent is allocated to trawl gear. The trawl gear allocation in the Eastern Regulatory Area may only be used as bycatch to support directed fisheries for other target species. Sablefish caught in the GOA with gear other than hook-and-line or trawl gear must be treated as prohibited species and may not be retained. Table 2 shows the allocations of the 1997 sablefish TACs between hook-and-line and trawl gear.

TABLE 2.—1997 SABLEFISH TAC SPECIFICATIONS IN THE GULF OF ALASKA AND ALLOCATIONS THEREOF TO HOOK-AND-LINE AND TRAWL GEAR

[Values are in metric tons]

Area/district	TAC	Hook-and-line share	Trawl share
Western	1,860	1,488	372
Central	6,410	5,128	1,282
West Yakutat	2,410	2,290	120
Southeast Outside	3,840	3,648	192
Total	14,520	12,554	1,966

4. Apportionments of Pollock TAC Among Regulatory Areas, Seasons, and Allocation for Processing Between Inshore and Offshore Components

In the GOA, pollock is apportioned by area, season, and allocated for processing by inshore and offshore components. Regulations at § 679.20(a)(5)(ii)(A) require that the TAC for pollock in the combined Western and Central GOA be apportioned among statistical areas Shumagin (610), Chirikof (620), and Kodiak (630) in proportion to the known distribution of the pollock biomass. This measure was intended to provide spatial distribution of the pollock harvest as a sea lion protection measure. Each statistical area apportionment is further apportioned into three seasonal allowances of 25, 25, and 50 percent, respectively (§ 679.20(a)(5)(ii)(B)). As established under § 679.23(d)(2), the first, second, and third seasonal allowances are available on January 1, June 1, and September 1, respectively. Within any fishing year, any unharvested amount of any seasonal allowance of pollock TAC is added in equal proportions to all subsequent seasonal allowances, resulting in a sum for each allowance not to exceed 150 percent of the initial seasonal allowance. Similarly, harvests in excess of a seasonal allowance of TAC are deducted in equal proportions from the remaining seasonal allowances of that fishing year. The Eastern Regulatory Area pollock TAC of 5,580 mt is not allocated among smaller areas or seasons.

Regulations at § 679.20(a)(6)(ii) require that the pollock TAC in all regulatory areas and all seasonal allowances thereof be allocated for processing by the inshore and offshore components. One hundred percent of the pollock TAC in each regulatory area is allocated to vessels catching pollock for processing by the inshore component after subtraction of amounts that are projected by the Administrator, Alaska Region, NMFS (Regional Administrator) to be caught by, or delivered to, the offshore component incidental to directed fishing for other groundfish species. The amount of pollock available for harvest by vessels harvesting pollock for processing by the offshore component is that amount actually taken as bycatch during directed fishing for groundfish species other than pollock, up to the maximum retainable bycatch amounts allowed under regulations at § 679.20(e). At this time, these bycatch amounts are unknown and will be determined during the fishing year. The distribution of pollock within the combined Western and Central Regulatory Areas is shown

in Table 3, except allocations of pollock for processing by the inshore and offshore component are not shown.

TABLE 3.—DISTRIBUTION OF POLLOCK IN THE WESTERN AND CENTRAL REGULATORY AREAS OF THE GULF OF ALASKA (W/C GOA); BIOMASS DISTRIBUTION, AREA APPORTIONMENTS, AND QUARTERLY ALLOWANCES. ABC FOR THE W/C GOA IS 74,400 METRIC TONS (MT). BIOMASS DISTRIBUTION IS BASED ON 1996 SURVEY DATA. TACS ARE EQUAL TO ABC. INSHORE AND OFFSHORE ALLOCATIONS OF POLLOCK ARE NOT SHOWN. ABCS AND TACS ARE ROUNDED TO THE NEAREST 10 MT.

Statistical area	Biomass percent	1997 ABC = TAC	Seasonal allowances		
			First	Second	Third
Shumagin (610)	25	18,600	4,650	4,650	9,300
Chirikof (620)	42	31,250	7,812	7,812	15,626
Kodiak (630)	33	24,550	6,138	6,138	12,274
Total	100	74,400	18,600	18,600	37,200

5. Allocations for Processing of Pacific Cod TAC Between Inshore and Offshore Components

Regulations at § 679.20(a)(6)(iii) require that the TAC apportionment of Pacific cod in all regulatory areas be allocated to vessels catching Pacific cod for processing by the inshore and offshore components. Ninety percent of the Pacific cod TAC in each regulatory area is allocated to vessels catching Pacific cod for processing by the inshore component. The remaining 10 percent of the TAC is allocated to vessels catching Pacific cod for processing by the offshore component. These allocations of the 69,115 mt Pacific cod TAC for 1997 are shown in Table 4. The Pacific cod reserves are not included in the table.

TABLE 4.—1997 ALLOCATION (METRIC TONS) OF PACIFIC COD INITIAL TAC AMOUNTS IN THE GULF OF ALASKA; ALLOCATIONS FOR PROCESSING BY THE INSHORE AND OFFSHORE COMPONENTS

Regulatory area	Initial TAC	Component allocation	
		Inshore (90%)	Offshore (10%)
Western	19,380	17,442	1,938
Central	34,952	31,457	3,495
Eastern	960	864	96

TABLE 4.—1997 ALLOCATION (METRIC TONS) OF PACIFIC COD INITIAL TAC AMOUNTS IN THE GULF OF ALASKA; ALLOCATIONS FOR PROCESSING BY THE INSHORE AND OFFSHORE COMPONENTS—Continued

Regulatory area	Initial TAC	Component allocation	
		Inshore (90%)	Offshore (10%)
Total	55,292	49,763	5,529

6. "Other Species" TAC

The FMP specifies that amounts for the "other species" category are calculated as 5 percent of the combined TAC amounts for target species. The GOA-wide "other species" TAC is 13,470 mt, which is 5 percent of the sum of the combined TAC amounts for the target species.

7. Closures to Directed Fishing

The "Interim 1997 Harvest Specifications of Groundfish, Associated Management Measures, and Closures" for the GOA (61 FR 64299, December 4, 1996) contained several closures to directed fishing for groundfish during 1997. The closures for the final specifications, which supersede the closures announced in the interim specifications, are listed in Table 5.

Under § 679.20(d)(1)(iii)(A), the Regional Administrator determined that the entire TACs or allocations of TAC of groundfish species and species groups listed in Table 5 will be needed as incidental catch to support other anticipated groundfish fisheries during 1997. The Regional Administrator is establishing directed fishing allowances of zero mt and prohibiting directed fishing for the remainder of the year for the fisheries listed in Table 5. Maximum retainable bycatch amounts for the aforementioned closures may be found at § 679.20(e).

Under authority of the interim 1997 specifications (61 FR 64299, December 4, 1996), pollock fishing opened on January 1, 1997, for amounts specified in that notice. NMFS has since closed Statistical Area 610 to directed fishing for pollock, effective 1200 hrs, A.l.t., January 26, 1997 (62 FR 4192, January 29, 1997); Statistical Area 620 to directed fishing for pollock, effective 1200 hrs, A.l.t., February 7, 1997 (62 FR 6132, February 11, 1997); and Statistical Area 630 to directed fishing for pollock, effective 1200 hrs, A.l.t., February 4, 1997 (62 FR 5781, February 7, 1997). The closures for Statistical Areas 610–630 will remain in effect until 1200 hrs, A.l.t., June 1, 1997, or until changed by subsequent notification in the **Federal Register**. The above closures are in addition to the closures listed in Table 5.

TABLE 5.—CLOSURES TO DIRECTED FISHING FOR TOTAL ALLOWABLE CATCHES IMPLEMENTED BY THIS ACTION.[1] BOTH = OFFSHORE AND INSHORE COMPONENTS; OFFSHORE = OFFSHORE COMPONENT; ALL = ALL GEARS; WG = WESTERN REGULATORY AREA; EG = EASTERN REGULATORY AREA; GOA = ENTIRE GULF OF ALASKA

Fishery	Component	Gear	Closed areas
Atka mackerel	Both	All	GOA.
Northern rockfish	Both	All	WG, EG.
Deep-water flatfish	Both	All	WG.
Other rockfish[2]	Both	All	GOA.

TABLE 5.—CLOSURES TO DIRECTED FISHING FOR TOTAL ALLOWABLE CATCHES IMPLEMENTED BY THIS ACTION.[1] BOTH = OFFSHORE AND INSHORE COMPONENTS; OFFSHORE = OFFSHORE COMPONENT; ALL = ALL GEARS; WG = WESTERN REGULATORY AREA; EG = EASTERN REGULATORY AREA; GOA = ENTIRE GULF OF ALASKA—Continued

Fishery	Component	Gear	Closed areas
Pacific cod	Offshore	All	GOA.
Pollock	Offshore	All	GOA.
Sablefish	Both	All	GOA.
Shortraker/rougheye rockfish	Both	All	GOA.
Thornyhead rockfish	Both	All	GOA.

[1] These closures to directed fishing are in addition to closures and prohibitions found in regulations at 50 CFR part 679.
[2] Other rockfish includes slope and demersal shelf rockfish in the Western and Central GOA.

8. Pacific Halibut Prohibited Species Catch (PSC) Mortality Limits

Under § 679.21(d), annual Pacific halibut PSC limits are established and apportioned to trawl and hook-and-line gear and may be established for pot gear.

As in 1996, the Council recommended that pot gear, jig gear, and the hook-and-line sablefish fishery be exempted from the non-trawl halibut limit for 1997. The Council recommended these exemptions because of the low halibut bycatch mortality experienced in the pot gear fisheries (17 mt in 1996) and the jig gear fisheries (not estimated in 1996) and because of the 1995 implementation of the sablefish and halibut Individual Fishing Quota program, which allows legal-sized halibut to be retained in the sablefish fishery.

As in 1996, the Council recommended a hook-and-line halibut PSC mortality limit of 300 mt. Ten mt of this limit are apportioned to the DSR fishery. The remainder is seasonally apportioned among the non-sablefish hook-and-line fisheries as shown in Table 6.

The Council continued to recommend a trawl PSC mortality limit of 2,000 mt. The PSC limit has remained unchanged since 1989. Regulations at § 679.21(d)(3)(iii) authorize separate apportionments of the trawl halibut PSC limit between trawl fisheries for deep-water and shallow-water species fisheries. Regulations at § 679.21(d)(5) authorize seasonal apportionments of halibut PSC limits.

NMFS concurs with the Council's recommendations listed above. The following types of information as presented in, and summarized from, the 1996 SAFE report, or as otherwise available from NMFS, Alaska Department of Fish and Game, the International Pacific Halibut Commission (IPHC) or public testimony were considered:

(A) Estimated Halibut Bycatch in Prior Years

The best available information on estimated halibut bycatch is available from 1996 observations of the groundfish fisheries as a result of the NMFS Observer Program. The calculated halibut bycatch mortality by trawl, hook-and-line, and pot gear through December 28, 1996, is 1,964 mt, 172 mt, and 17 mt, respectively, for a total of 2,153 mt.

Halibut bycatch restrictions seasonally constrained trawl gear fisheries throughout the year. Trawling for the deep-water fishery complex was closed during the first quarter on March 21, 1996 (61 FR 13462), for the second quarter on April 15, 1996 (61 FR 17256) and for the third quarter on August 7, 1996 (61 FR 41523). The shallow-water fishery complex was closed in the second quarter on May 13, 1996 (61 FR 24729) and in the third quarter on August 5, 1996 (61 FR 41363). All trawling was closed in the fourth quarter on December 2, 1996 (61 FR 64487).

The amount of groundfish that trawl gear might have harvested if halibut had not been seasonally limiting in 1996 is unknown.

(B) Expected Changes in Groundfish Stocks

At its December 1996 meeting, the Council adopted higher ABCs for pollock, Pacific cod, and POP than those established for 1996. The Council adopted lower ABCs for deep-water flatfish, rex sole, flathead sole, shallow-water flatfish, arrowtooth flounder, sablefish, other rockfish, northern rockfish, shortraker and rougheye rockfish, pelagic shelf rockfish, and Atka mackerel than those established for 1996. More information on these changes is included in the Final SAFE Report dated November 1996 and in the Council and SSC minutes.

(C) Expected Changes in Groundfish Catch

The total of the 1997 TACs for the GOA is 282,815 mt, a slight increase from the 1996 TAC total of 260,207 mt. At its December 1996 meeting, the Council changed the 1997 TACs for some fisheries from the 1996 TACs. Those fisheries for which the 1997 TACs are lower than in 1996 are deep-water flatfish (decreased to 7,170 mt from 11,080 mt), rex sole (decreased to 9,150 mt from 9,690 mt), flathead sole (decreased to 9,040 mt from 9,740), sablefish (decreased to 14,520 mt from 17,080 mt), northern rockfish (decreased to 5,000 mt from 5,270 mt), shortraker and rougheye rockfish (decreased to 1,590 from 1,910 mt), pelagic shelf rockfish (decreased to 5,140 from 5,190 mt), and Atka mackerel (decreased to 1,000 mt from 3,240 mt). Those species for which the 1997 TACs are higher than in 1996 are pollock (increased to 79,980 mt from 54,810 mt), Pacific cod (increased to 69,115 mt from 65,000 mt), POP (increased to 9,190 mt from 6,959 mt), other rockfish (increased to 2,170 mt from 2,020 mt), and other species (increased to 13,470 mt from 12,390 mt).

(D) Current Estimates of Halibut Biomass and Stock Condition

The stock assessment for 1996 conducted by the IPHC indicates that the total exploitable biomass and recruitment of Pacific halibut in the Bering Sea and Aleutian Islands and GOA has been underestimated in previous years. Due to substantial changes in the assessment model and methods, new estimates of exploitable biomass are not yet available but will be included in next year's SAFE.

The increase in estimated biomass under the new method can be attributed to three factors: (1) Halibut size at age information (a growth rate parameter) is better represented in the population model. Growth rates have declined, and the new method more appropriately accounts for the capture of young halibut by setline gear. The estimated abundance of young halibut has increased accordingly; (2) bycatch mortality of legal-sized halibut (32 inches or greater) is now included in the assessment along with other removals such as commercial and sport. This increases the estimated biomass to account for the increase in removals; and (3) catch rates from IPHC setline

surveys are included in the analysis. These data support trends observed in the commercial fishery that the halibut population has increased.

The old method not only underestimated the exploitable biomass of halibut in recent years, but the catch limits were set lower than they might have been if it had been known that biomass was being underestimated. This low rate of exploitation plus above average recruitment of juvenile halibut during the 1980s allowed halibut abundance to increase beyond historically normal levels. The 1987 year class of halibut, although small in individual size, appears to be very abundant. The strength of this year class has increased current estimates of abundance and suggests that halibut biomass is likely to stay high for the next several years.

(E) Other Factors

Potential impacts of expected fishing for groundfish on halibut stocks and U.S. halibut fisheries and methods available for, and costs of, reducing halibut bycatch in the groundfish fisheries were discussed in the proposed 1997 specifications (61 FR 64310, December 4, 1996). That discussion is not repeated here.

9. Fishery and Seasonal Apportionments of the Halibut PSC Limits

Under § 679.21(d)(5), NMFS seasonally apportions the halibut PSC limits based on recommendations from the Council. The FMP requires that the following information be considered by the Council in recommending seasonal apportionments of halibut: (a) Seasonal distribution of halibut, (b) seasonal distribution of target groundfish species relative to halibut distribution, (c) expected halibut bycatch needs on a seasonal basis relative to changes in halibut biomass and expected catches of target groundfish species, (d) expected bycatch rates on a seasonal basis, (e) expected changes in directed groundfish fishing seasons, (f) expected actual start of fishing effort, and (g) economic effects of establishing seasonal halibut allocations on segments of the target groundfish industry.

The publication of the final 1996 initial groundfish and PSC specifications (61 FR 4304, February 5, 1996) summarizes Council findings with respect to each of the FMP considerations set forth above. At this time, the Council's findings are unchanged from those set forth for 1996. Pacific halibut PSC limits, and apportionments thereof, are presented in Table 6. Regulations specify that any overages or shortfalls in a seasonal apportionment of a PSC limit will be deducted from or added to the next respective seasonal apportionment within the 1997 season.

TABLE 6.—FINAL 1997 PACIFIC HALIBUT PSC LIMITS, ALLOWANCES, AND APPORTIONMENTS. THE PACIFIC HALIBUT PSC LIMIT FOR HOOK-AND-LINE GEAR IS ALLOCATED TO THE DEMERSAL SHELF ROCKFISH (DSR) FISHERY AND FISHERIES OTHER THAN DSR

[Values are in metric tons]

Trawl gear		Hook-and-line gear			
		Other than DSR		DSR	
Dates	Amount	Dates	Amount	Dates	Amount
Jan 1–Mar 31	600 (30%)	Jan 1–May 17	250 (86%)	Jan 1–Dec 31	10 (100%)
Apr 1–Jun 30	400 (20%)	May 18–Aug 31	15 (5%)		
Jul 1–Sep 30	600 (30%)	Sep 1–Dec 31	25 (9%)		
Oct 1–Dec 31	400 (20%)				
Total	2,000 (100%)		290 (100%)		10 (100%)

Regulations at § 679.21(d)(3)(iii) authorize apportionments of the trawl halibut PSC limit to a deep-water species fishery, comprised of sablefish, rockfish, deep-water flatfish, rex sole, and arrowtooth flounder and a shallow-water species fishery, comprised of pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and other species. The apportionment for these two fishery categories is presented in Table 7.

TABLE 7.—FINAL 1997 APPORTIONMENT OF PACIFIC HALIBUT PSC TRAWL LIMITS BETWEEN THE DEEP-WATER SPECIES COMPLEX AND THE SHALLOW-WATER SPECIES COMPLEX

[Values are in metric tons]

Season	Shallow-water	Deep-water	Total
Jan. 20–Mar. 31	500	100	600
Apr. 1–Jun. 30	100	300	400
Jul. 1–Sep. 30	200	400	600
Jan. 20–Sep. 30[1]	800	800	1,600
Oct. 1–Dec. 31			400
Total			2,000

[1] No apportionment between shallow-water and deep-water fishery categories during the 4th quarter.

The Council recommended that the revised halibut discard mortality rates recommended by the IPHC be adopted for purposes of monitoring halibut bycatch mortality limits established for the 1997 groundfish fisheries. NMFS concurs with the Council's recommendation. Most of the IPHC's assumed halibut mortality rates were based on an average of mortality rates determined from NMFS-observer data collected during 1994 and 1995. For fisheries where a steady trend from 1992 to 1995 towards increasing or decreasing mortality rates was observed, the IPHC recommended using the most recent year's observed rate. Rates for 1994 and 1995 were lacking for some fisheries, so rates from the most recent years were used. Seasonal variation in halibut mortality rates in the deep-water flatfish and rex sole target fisheries are not recommended for 1997 as they were in 1996, nor were separate rates for pollock harvested for processing by the inshore component and the offshore component. Most of the assumed mortality rates recommended for 1997 differ slightly from those used in 1996. The recommended mortality rates for specific targets range from 6 to 27 percent for hook-and-line gear, from 51 to 66 percent for trawl gear, and from 19 to 100 percent for pot gear. The halibut mortality rates are listed in Table 8.

TABLE 8.—1997 ASSUMED PACIFIC HALIBUT MORTALITY RATES FOR VESSELS FISHING IN THE GULF OF ALASKA

[Table values are percent of halibut bycatch assumed to be dead]

Gear and target	(percent)
Hook-and-line:	
Sablefish	27
Pacific cod	12
Rockfish	6
Other species	12
Trawl:	
Midwater pollock	51
Rockfish	65
Shallow-water flatfish	66
Pacific cod	59
Deep-water flatfish	58
Flathead sole	59
Rex sole	66
Bottom pollock	57
Atka mackerel	53
Sablefish	62
Other species	66
Pot:	
Pacific cod	19
Bottom pollock	100
Other species	19

Comment and Response

Comment. The draft environmental assessment prepared for the 1997 specifications provides an inadequate basis for a Finding of No Significant Impact. The environmental impact statement (EIS) prepared for the GOA groundfish fishery was drafted in 1977. Since that time, the conduct of the fisheries has changed, new information regarding the affected groundfish species exists, and substantial and unanalyzed questions exist regarding the impact of the groundfish fisheries on the GOA ecosystem. NMFS should prepare a supplement to the EIS that fully evaluates the potential impacts of the groundfish TACs on the GOA ecosystem.

Response. NMFS acknowledges that the final EIS prepared for the GOA groundfish fishery is 20 years old. Nonetheless, NMFS believes the final EA prepared for the 1997 GOA groundfish specifications, as well as the documents incorporated by reference into the EA, adequately support a Finding of No Significant Impact (FONSI). The FONSI is based on the best available information contained in the SAFE report on the biological condition of groundfish stocks, the socioeconomic condition of the fishing industry, and consultation with the Council at its December 1996 meeting. For each species category, the Council recommended harvest amounts such that catches at or below these amounts would not result in overfishing as defined by the FMP. The Council's recommended final TACs for many groundfish species differ from the proposed TACs due to new information on status of stocks and/or changes in exploitation strategy. Each of the Council's recommended TACs for 1997 is equal to or less than the ABC for each species category. Therefore, NMFS finds that the recommended TACs are consistent with the biological condition of the groundfish stocks.

This action is authorized under 50 CFR 679.20 and is exempt from review under E.O. 12866.

This action adopts final 1997 harvest specifications for the GOA, revises associated management measures, and closes specified fisheries. Generally, this action does not significantly revise management measures in a manner that would require time to plan or prepare for those revisions. In some cases, such as closures, action must be taken immediately to conserve fishery resources. Without these closures, specified TAC amounts would be overharvested, and retention of these species would become prohibited, which would disadvantage fishermen who could no longer retain bycatch amounts of these species. In some cases, the interim specifications in effect would be insufficient to allow directed fisheries to operate during a 30-day delayed effectiveness period, which would result in unnecessary closures and disruption within the fishing industry; in many of these cases, the final specifications will allow the fisheries to continue without interruption. The immediate effectiveness of this action is required to provide consistent management and conservation of fishery resources. Accordingly, the Assistant Administrator for Fisheries, NOAA (AA) finds there is good cause to waive the 30-day delayed effectiveness period under 5 U.S.C. 553(d)(3) with respect to such provisions and to the apportionment discussed above.

Pursuant to Section 7 of the Endangered Species Act, NMFS and the U.S. Fish & Wildlife Service have determined that the groundfish fishery operating under the 1997 GOA TAC specifications is unlikely to jeopardize the continued existence or recovery of species listed as endangered or threatened or to adversely modify critical habitat.

NMFS prepared an environmental assessment (EA) on the 1997 TAC specifications. The AA concluded that no significant impact on the environment will result from their implementation. A copy of the EA is available (see **ADDRESSES**).

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for the Advocacy of the Small Business Administration that this final specification will not have a significant economic impact on a substantial number of small entities. The number of fixed gear and trawl catcher vessels expected to be operating as small entities in the Gulf of Alaska groundfish fishery is 1,541, excluding catcher/processor vessels. All these small entities will be affected by the harvest limits established in the 1997 specifications but changes from 1996 are relatively minor and are expected to be shared proportionally among participants. For this reason, the expected effects would not likely cause a reduction in gross revenues of more than 5 percent, increase compliance costs by more than 10 percent, or force small entities out of business.

The Alaska commercial fishing industry is accustomed to shifting effort among alternative species and management areas in response to changes in TAC between years and inseason closures. Such mobility is necessary to survive in the open access fishery. Therefore, the annual specification process for Alaska groundfish for 1997 would not have significant economic impact on a significant number of small entities. No comments were received regarding this certification.

Authority: 16 U.S.C. 773 *et seq.* and 16 U.S.C. 1801 *et seq.*

Dated: February 19, 1997.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97–4456 Filed 2–19–97; 2:14 pm]

BILLING CODE 3510–22–P

50 CFR Part 679

[Docket No. 961107312–7012–02; I.D. 021897C]

Fisheries of the Exclusive Economic Zone Off Alaska; Inshore Component Pollock in the Bering Sea Subarea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the inshore component in the Bering Sea subarea (BS) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the first seasonal allowance of the pollock total allowable catch (TAC) apportioned to vessels harvesting pollock for processing by the inshore component in the BS.

EFFECTIVE DATE: 1200 hrs, Alaska local time (A.l.t.), February 19, 1997, until 1200 hrs, A.l.t., April 15, 1997.

FOR FURTHER INFORMATION CONTACT: David Ham, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and CFR part 679.

In accordance with § 679.20(c)(3)(iii), the first seasonal allowance of pollock for vessels catching pollock for processing by the inshore component in the BS was established by the Final 1997 Harvest Specifications of Groundfish as 164,627 metric tons (mt). The Final 1997 Specifications were published in the **Federal Register** on February 18, 1997 (62 FR 7168).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the first seasonal allowance of pollock TAC specified for vessels catching pollock for processing by the inshore component in the BS soon will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 150,127 mt, and is setting aside the remaining 14,500 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance soon will be reached. Consequently, NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the inshore component in the BS. This closure is effective from 1200 hrs, A.l.t., February 19, 1997, through 1200 hrs, A.l.t., April 15, 1997. Under § 679.20(a)(5)(i), the second seasonal allowance of pollock TAC will become available for directed fishing at 1200 hrs, A.l.t., September 1.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 679.20(e) and (f).

Classification

This action is required by § 679.20, and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 19, 1997.

Gary Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–4458 Filed 2–19–97; 2:14 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 36
Monday, February 24, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products: Workshop to Consider a Revised Approach for Analyzing the Manufacturer Impacts from New or Revised Appliance Energy-Efficiency Standards

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of Workshop on a Revised Manufacturer Impact Analysis Approach.

SUMMARY: The Department of Energy (the Department or DOE) is convening a public workshop to discuss a new approach to assessing the likely impacts on manufacturers of appliance energy-efficiency standards that are under consideration by the Department. All persons are hereby given notice of the opportunity to attend and participate in the public workshop.

DATES: The workshop on a revised manufacturer impact analysis approach will be held on Tuesday and Wednesday, March 11 and 12, 1997, from 9:00 a.m. to 5:00 p.m.

ADDRESSES: A transcript of the workshop may be read at the DOE Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–6020, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

The Manufacturer Impact Analysis Workshop will be held in Room 1E–245, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

If you are planning to attend the workshop or wish to receive material prepared for the workshop, please contact either Qonnie Laughlin or Sandy Beall, as listed below.

FOR FURTHER INFORMATION CONTACT:

Ms. Qonnie Laughlin, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–43, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–9632.

Ms. Sandy Beall, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, Mail Stop EE–43, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–7574.

SUPPLEMENTARY INFORMATION: The Energy Policy and Conservation Act, as amended by the National Energy Policy Conservation Act, the National Appliance Energy Conservation Act, the National Appliance Energy Conservation Amendments of 1988, and the Energy Policy Act of 1992, prescribes energy conservation standards for certain major appliances and equipment and requires the Department of Energy to administer an energy conservation program for the products. Earlier appliance rulemakings have highlighted the need to address a number of complex issues concerning the impact of standards on consumers and manufacturers. In response to these issues, the Department initiated a comprehensive process improvement effort to examine, through a series of stakeholder meetings and interviews, issues surrounding the appliance standards program. On July 15, 1996, (61 FR 36974) DOE issued Procedures for Consideration of New or Revised Energy Conservation Standards for Consumer Products final rule (process rule) resulting from the process improvement effort.

In the July 15, 1996, procedures, the Department committed to a comprehensive review of its existing methodology for analyzing the likely impacts on manufacturers of new or revised appliance minimum energy efficiency standards. In that review, the Department identified several ways to improve such analyses, and has incorporated these into a Manufacturer Impact Analysis Approach—Draft Workplan.

The Department intends to introduce for consideration and discussion its Draft Workplan at the Workshop that is the subject of this Notice.

A central feature of the draft approach is the incorporation of the industry-provided Government Regulatory Impact Model (GRIM). The GRIM meets a number of the Department's objectives in revising the manufacturer impact analysis approach, in that the model is transparent, relatively easy to use, and capable of being used by any individual manufacturer. The GRIM, however, also requires a number of significant inputs to be operational. These inputs include forecasts of expected prices and industry shipments, as well as information about firm-level production costs. The Department desires to address the derivation of these important inputs as soon as possible, and the workshop will be the initial opportunity for individuals to provide comments to the Department on this topic. The Department hopes to obtain guidance from individuals attending this workshop, on methods for estimating the impacts of standards on appliance prices, shipments and manufacturer costs.

While there will be some presentations, the workshop is being designed to maximize open discussions. The Manufacturer Impact Analysis Workshop will be professionally facilitated. It is expected that one outcome of this workshop will be the formation of a working group that would meet subsequent to the workshop to help the Department further develop its workplan.

Below is the preliminary agenda for the public workshop:

Preliminary Agenda, Manufacturer Impact Analyses Workshop, March 11 and 12, 1997, Room 1E–245, 1000 Independence Ave SW, Washington, D.C.

Purpose: To describe and obtain comments on the draft workplan for future manufacturer impact analysis. To describe and obtain comments on existing and proposed analytical tools.

Expected Outcomes: Formation of a working group(s) consisting of representatives of different industries and other interested parties. Guidance for further development of the workplan, including advice on the desirability of making changes to existing models or developing new tools.

Day 1—March 11

Methodology Overview and Description of Analytical Tools

9:00 a.m.—9:15 a.m.
Opening Remarks, Overview, Agenda Review
9:15 a.m.—9:30 a.m.
Description of the Review Process
—Major objectives of the process rule regarding the analysis of manufacturer impacts
—Process description
—Schedule
9:30 a.m.—9:45 a.m.
Analytical Framework
—Measures of impact
—Firms considered
—Balance of qualitative and quantitative assessments
9:45 a.m.—10:30 a.m.
Description of New Approach
—Overview
—Relationship to other standards analyses
—Phase 1, Industry Profile
—Phase 2, Industry Cash Flow
—Phase 3, Sub-Group Analysis
10:30 a.m.—10:45 a.m.
Break
10:45 a.m.—12:00 noon
Description of the GRIM Model
—Role and applicability of the GRIM Model
—Financial principles
—Input requirements
—Output results
—Open discussion, suggested modification, e.g. inclusion of return on investment
12:00 noon—1:00 p.m.
Lunch
1:00 p.m.—2:00 p.m.
Preparing the Industry Profiles
—Industry characterization
—Industry data book
2:00 p.m.—3:30 p.m.
Issues in Shipments Forecasts—*Panel and Open Discussion*
—Role of forecasting models in the manufacturer impact analyses
—General description of models, including
- Input requirements
- Outputs
- Key assumptions
- Uncertainty analysis
- Track record
- Operating characteristics

—New spread sheet approach
—Advantages and disadvantages of alternate approaches to forecasting shipments for GRIM
3:30 p.m.—5:00 p.m.
Optional hands-on computer training on the models

Day 2—March 12

Methodology Implementation

9:00 a.m.—9:15 a.m.
Opening Remarks, Agenda Review
—Objectives
9:15 a.m.—9:45 a.m.
Review of Day One Outcomes
—Key issues
—DOE perspective
—Stakeholder comments
9:45 a.m.—10:00 a.m.
Break
10:00 a.m.—11:30 a.m.
Estimating Manufacturing Costs for Input to GRIM—*Panel and Open Discussion*
—Relationship to engineering analysis
—Uncertainty in key variables
—Variability between firms
—Data collection methods e.g. ASHRAE methodology
—Costs not considered in GRIM
11:30 a.m.—12:30 p.m.
Lunch
12:30 p.m.—1:30 p.m.
Estimating Prices for Input to GRIM—*Panel and Open Discussion*
—Relationship to life-cycle cost analysis
—Economic concepts
—DOT methodology
—Alternative forecasts
—Scenario/ uncertainty analysis
—Open discussion
1:30 p.m.—2:30 p.m.
Estimating Shipments for Input to GRIM—*Panel and Open Discussion*
—Relationship to national benefits forecasts
—Appropriateness of existing forecasting models
—Simplified spreadsheet model
—Alternative forecasts
—Scenario/uncertainty analysis
—Open discussion
2:30 p.m.—2:45 p.m.
Break
2:45 p.m.—4:15 p.m.
Non-Model Impact Evaluation—*Panel and Open Discussion*
—Competitive impacts
—Manufacturing capacity, lost investment
—Employment impacts
—Information gathering and assessment methodology
—Cumulative impacts
4:15 p.m.—4:45 p.m.
Other Issues/Alternative Methods/ Stakeholder Comments
4:45 p.m.—5:00 p.m.
Discussion of Future Steps
—Working group(s) composition, role and meetings
5:00 p.m.
Adjourn

Issued in Washington, DC, on February 18, 1997.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 97–4427 Filed 2–21–97; 8:45 am]

BILLING CODE 6450–01–P

10 CFR Part 835

[Docket Number EH–RM–96–835]

Occupational Radiation Protection

AGENCY: Office of Environment, Safety and Health, DOE.

ACTION: Proposed Rule; Extension of Public Comment Period.

SUMMARY: The Department of Energy (DOE) published a notice of proposed rulemaking on December 23, 1996, (61 FR 67600) concerning amending its primary standards for occupational radiation protection. That notice provided the public with the opportunity to provide written comments on this issue with a written comment period to end on February 21, 1997. Today's notice extends this written comment period to March 31, 1997.

DATES: Written comments and data must be received by the Department on or before March 31, 1997.

ADDRESSES: Written comments and data (5 copies and, if possible, a computer disk) should be addressed to Dr. Joel Rabovsky, U.S. Department of Energy, Office of Environment, Safety and Health, EH–52, EH–RM–96–835, 1000 Independence Avenue, SW, Washington, DC 20585. Telephone: 202 586–3012.

FOR FURTHER INFORMATION CONTACT: Dr. Joel Rabovsky, U.S. Department of Energy, Office of Environment, Safety and Health, EH–52, 1000 Independence Avenue, SW, Washington, DC 20585. Telephone: 301 903–2135.

For Information concerning the submission of comments, contact Ms. Andi Kasarsky on (202) 586–3012.

Issued in Washington, DC on February 18, 1997.

Peter N. Brush,

Principal Deputy Assistant Secretary for Environment, Safety and Health.

[FR Doc. 97–4426 Filed 2–21–97; 8:45 am]

BILLING CODE 6450–01–P

FARM CREDIT ADMINISTRATION

12 CFR Part 650

RIN 3052–AB72

Federal Agricultural Mortgage Corporation; Receivers and Conservators

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA), by the FCA Board (Board), proposes to amend the regulations that appertain to the Federal Agricultural Mortgage Corporation (Farmer Mac or Corporation) by adding a subpart to govern a receivership or conservatorship. This action is the result of changes made to the Farm Credit Act of 1971, as amended (Act), by the Farm Credit System Reform Act of 1996 (1996 Reform Act), Pub. L. 104–105 (Feb. 10, 1996). The proposed rule implements the receivership/ conservatorship authorities granted to the FCA in the 1996 Reform Act and by previous law.

DATES: Written comments should be received on or before March 26, 1997.

ADDRESSES: Comments may be mailed or delivered to Patricia W. DiMuzio, Director, Regulation Development Division, Office of Policy Development and Risk Control, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 or sent by facsimile transmission to FAX number (703) 734–5784. Comments may also be submitted via electronic mail to "reg-comm@fca.gov". Copies of all communications received will be available for review by interested parties in the Office of Policy Development and Risk Control, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT: Larry W. Edwards, Director, Office of Secondary Market Oversight, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4051, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: The 1996 Reform Act added section 8.41 to the Act, which grants the FCA the authority to place the Corporation into receivership and expands FCA's existing authority to place the Corporation into conservatorship. The 1996 Reform Act provides that the receiver or conservator appointed for the Corporation shall have such powers as are authorized in regulations adopted by the FCA and that such powers shall be comparable to those of a receiver or conservator appointed pursuant to section 4.12(b) of the Act. The proposed regulations implement these statutory provisions.

Based on the comparability requirement in section 8.41(e), the proposed regulations contain most of the provisions of existing part 627 (§§ 627.2700–627.2790) with certain modifications as necessary to implement section 8.41 and to reflect the unique characteristics of Farmer Mac. [1] The following is a section-by-section summary of the proposed regulations.

Section 650.50—Grounds for Appointment of a Receiver or Conservator

The 1996 Reform Act incorporated the grounds for receivership or conservatorship listed in existing section 4.12(b) of the Act and added an additional criterion for determining whether the Corporation is insolvent. Insolvency is defined in proposed § 650.50(a) as when: (1) The assets of the Corporation are less than its obligations to creditors and others; or (2) the Corporation is unable to pay its debts as they fall due in the ordinary course of business. The remaining grounds listed in section 4.12(b) are incorporated in proposed § 650.50(a) with one exception. Section 4.12(b)(6) is inapplicable to Farmer Mac because it pertains solely to the inability to pay the principal or interest on "insured obligations." Section 5.51 of the Act defines "insured obligations" as those obligations issued by Farm Credit System banks and, therefore, does not include the obligations of Farmer Mac.

Proposed § 650.50(b) incorporates the three additional grounds that are in the 1996 Reform Act for appointment of a receiver for the Corporation. A receiver may be appointed if: (1) The authority of the Corporation to purchase qualified loans or issue or guarantee loan-backed securities is suspended; or (2) the Corporation is classified under section 8.35 of the Act as within enforcement level III or IV and the alternative actions available under subtitle B are not satisfactory; and (3) prior to appointing a receiver under the first two conditions, the FCA determines that the appointment of a conservator would not be appropriate.

Pursuant to the 1996 Reform Act, proposed § 650.50(c) authorizes the FCA to appoint a conservator for Farmer Mac if its authority to purchase qualified loans or issue or guarantee loan-backed securities is suspended. Proposed § 650.50(c) also incorporates the authority in section 8.37 of the Act for the FCA to appoint a conservator for Farmer Mac if the Corporation is classified under section 8.35 of the Act as within enforcement level III or IV.

Section 650.51—Action for Removal of Receiver or Conservator

Proposed § 650.51 contains the procedures provided by the 1996 Reform Act for the Corporation to challenge the FCA's appointment of a receiver or conservator. Proposed § 650.51 also authorizes the Corporation's board of directors to meet following the appointment of the receiver or conservator in order to authorize the filing of an action for removal of the receiver or conservator.

Section 650.52—Voluntary Liquidation

Proposed § 650.52 incorporates the authority in the 1996 Reform Act for Farmer Mac to voluntarily liquidate with the consent of the FCA, provided that the liquidation is conducted in accordance with a plan of liquidation approved by the FCA. Although the regulation does not require that a voluntary liquidation include a receiver, the FCA may, in its discretion, appoint a receiver as part of an approved liquidation plan. If a receiver is appointed to conduct a voluntary liquidation of the Corporation, the receivership will be conducted pursuant to these regulations, except to the extent that a plan for voluntary liquidation, approved by the stockholders and FCA, provides otherwise.

In addition, proposed § 650.52 requires that the resolution of the Corporation's board of directors and the liquidation plan be submitted to the FCA for preliminary approval. If preliminary approval is given, the resolution must be approved by the Corporation's stockholders. The stockholder voting procedures would be in accordance with the Corporation's bylaws. Following an affirmative vote of the stockholders, the FCA will consider final approval of the resolution and plan for voluntary liquidation.

Section 650.55—Appointment of a Receiver

Consistent with part 627, proposed § 650.55 provides for notification of the Corporation immediately upon appointment of the receiver and for public notification in the **Federal Register**. Further, upon appointment of the receiver, all rights, privileges, and powers of the board of directors, officers, and employees of the Corporation would be vested exclusively in the receiver, except that the board of directors is authorized by proposed § 650.51 to maintain an action to challenge the receivership. Finally, pursuant to the 1996 Reform Act, proposed § 650.55 authorizes the FCA to cancel the charter of the Corporation upon appointment of the receiver or at such later date as the FCA determines is appropriate, but not later than the conclusion of the receivership.

[1] For more information on the regulations in 12 CFR part 627, *see* 57 FR 46482 (Oct. 9, 1992); 57 FR 23348 (Jun. 3, 1992); 54 FR 1148 (Jan. 12, 1989); 51 FR 32444 (Sept. 12, 1986).

Section 650.56—Powers and Duties of the Receiver

Pursuant to the requirement in the 1996 Reform Act that the powers of a receiver or conservator of Farmer Mac be comparable to the powers of a receiver or conservator of a Farm Credit institution, proposed § 650.56 incorporates all of the powers of receivers found in § 627.2725, except those few that deal only with the functions of banks and associations and would not be applicable to a receiver of Farmer Mac. Generally, a receiver or conservator of Farmer Mac would have all of the rights and powers that the Corporation had prior to the appointment of the conservator or receiver, including the power to issue guarantees of securities. The FCA requests comment on whether it would be appropriate to place limitations on any of these powers of Farmer Mac and if so asks for comment concerning specific reasons for any such limitation. In addition, the 1996 Reform Act authorizes a receiver or conservator of Farmer Mac to borrow funds to meet the ongoing administrative expenses and other liquidity needs of the receivership or conservatorship. Funds may be borrowed from such sources, in such amounts, and at such rates of interest as the receiver or conservator determines are necessary or appropriate to fund the working capital needs of the receivership or conservatorship.

Section 650.57—Report to Congress

Proposed § 650.57 incorporates the 1996 Reform Act requirement that the receiver submit a report to Congress on the financial condition of the receivership if the receiver determines that it is likely that there will be insufficient assets of the receivership to pay all valid claims.

Section 650.58—Preservation of Equity

Proposed § 650.58 provides for preservation of the equities of the Corporation in receivership until final distribution and also protects the equities of the Corporation in a voluntary liquidation until the stockholders and the FCA have approved the liquidation plan. If a voluntary liquidation is approved by the stockholders and the FCA and a receiver is appointed, disposition of equities of the Corporation would proceed in accordance with proposed § 650.62(b). If a receiver is not appointed, disposition would proceed according to the plan of liquidation approved by the FCA pursuant to proposed § 650.52.

Section 650.59—Notice to Stockholders

Proposed § 650.59 incorporates the provisions in part 627 for notifying stockholders of the appointment of a receiver.

Section 650.60—Creditor Claims

The requirements for publication of a notice to creditors, allowance of claims, and payment of claims contained in part 627 are incorporated in proposed § 650.60.

Section 650.61—Priority of Claims

Proposed § 650.61 governs the priority of claims that apply to the distribution of assets of the Corporation in receivership. Distribution of assets begins with the first class of claims and will continue with each succeeding class until all claims are paid or the assets of the Corporation are exhausted. First in priority would be administrative expenses of the Corporation in receivership, including any amounts borrowed for working capital pursuant to proposed § 650.56(b)(3). Also included in this class would be FCA's annual assessment of the Corporation pursuant to section 5.15 of the Act,[2] including any unpaid amounts as of the date of appointment of the receiver. Section 5.15 requires that the FCA determine, assess and collect the costs of supervising and examining the Corporation separate from the costs of administering the Act with regard to other Farm Credit System institutions. The intent of separate apportionment is to ensure, in accordance with section 8.1(a)(3), that Farmer Mac does not pay for the costs of supervising and examining the other Farm Credit System institutions and that the other institutions do not pay FCA's similar costs related to Farmer Mac. The FCA believes that providing for FCA assessments as an administrative expense of the receivership and a first priority claim is necessary to ensure that the provisions of the Act regarding separate assessments are not violated.

Next in priority are administrative expenses of the Corporation, incurred within 60 days prior to the receiver's taking possession, claims for wages and salaries of employees of the Corporation, and claims for taxes, respectively. Following these claims, all claims of creditors that are secured by specific assets of the Corporation would be paid. Finally, payments would be made for the claims of general creditors of the Corporation.

[2] Such assessments will continue until the Corporation's charter is canceled and the Office of Secondary Market Oversight is abolished.

The FCA notes that pursuant to these priorities, obligations of Farmer Mac, whether general obligations issued under section 8.6(e)(2) or obligations issued to the Secretary of the Treasury under section 8.13, will fall in either the category of secured obligations (§ 650.61(f)) or unsecured obligations (§ 650.61(g)) depending on the terms of each individual debt issuance. The FCA is considering whether the Secretary of the Treasury should be afforded a priority higher than other creditors and requests comments.

In addition, the maximum amount for wage and salary claims of employees not engaged by the receiver in proposed § 650.61(d) is stated in terms of the 1992 baseline of $3,000. The baseline will be adjusted to compute the maximum compensation limit at the time of any receivership.[3]

Section 650.62—Payment of Claims

Proposed § 650.62 provides for payment of claims according to the priorities set forth in proposed § 650.61 and distribution of the remainder of the assets of the Corporation according to the Corporation's bylaws.

Section 650.63—Inventory, Audit, and Reports

The requirements in part 627 for an inventory of assets, annual audit of the receivership, annual accounting to stockholders (available upon request), and a report to each stockholder at the conclusion of the receivership summarizing the disposition of the assets and claims are incorporated into proposed § 650.63.

Section 650.64—Final Discharge and Release of the Receiver

Proposed § 650.64 provides that after the receiver has made a final distribution of the assets of the receivership, the receivership will be terminated and the receiver finally discharged and released. In addition, if the charter of the Corporation has not been canceled pursuant to proposed § 650.55(c), the charter will be canceled at the time of discharge and release of the receiver.

[3] If the FCA were to compute the maximum compensation limit based on 1996 and include the 1996 number as the baseline year, the maximum claim amounts under part 627 and part 650, as calculated in any year subsequent to 1996, would be slightly different due to the different base amounts. The FCA believes that the maximum claim amount for wages and salaries of employees not retained by a receiver should be the same when computed under any FCA receivership regulation.

Section 650.65—Appointment of a Conservator

Consistent with part 627, proposed § 650.65 provides for notification of the appointment of a conservator and authorizes the Board to terminate the conservatorship at any time and direct the conservator to turn over the Corporation's operation to such management as the Board may designate.

Section 650.66—Powers and Duties of the Conservator

Pursuant to the requirement in the 1996 Reform Act that a conservator of the Corporation have powers comparable to those of a conservator of a Farm Credit institution appointed under section 4.12(b) of the Act, proposed § 650.66 incorporates the powers and duties of conservators that are contained in part 627. A conservator for Farmer Mac will have all of the powers of a receiver of Farmer Mac with the exception of those listed in proposed § 650.56(b)(2) and (b)(16).

Section 650.67—Inventory, Examination, and Reports to Stockholders

Proposed § 650.67 requires the conservator to prepare an inventory of assets and liabilities of the Corporation and clarify that the FCA has authority to examine the Corporation in conservatorship. Further, the Corporation in conservatorship will be required to file financial reports with the FCA in accordance with § 620.40 and part 621 and will be required to comply with the applicable provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934.

Section 650.68—Final Discharge and Release of the Conservator

Proposed § 650.68 requires the conservator to file a report on its activities with the FCA at such time as the conservator is relieved of its duties and will then be completely and finally released.

List of Subjects in 12 CFR Part 650

Agriculture, Banks, banking, Conflicts of interests, Rural areas.

For the reasons stated in the preamble, part 650 of chapter VI, title 12 of the Code of Federal Regulations is proposed to be amended to read as follows:

PART 650—FEDERAL AGRICULTURAL MORTGAGE CORPORATION

1. The authority citation for part 650 is revised to read as follows:

Authority: Secs. 4.12, 5.9, 5.17, 8.11, 8.37, 8.41 of the Farm Credit Act (12 U.S.C. 2183, 2243, 2252, 2279aa–11, 2279bb–6, 2279cc); sec. 514 of Pub. L. 102–552, 106 Stat. 4102; sec. 118 of Pub. L. 104–105, 110 Stat. 168.

2. Part 650 is amended by adding a new subpart C to read as follows:

Subpart C—Receiver and Conservator

Sec.
650.50 Grounds for appointment of a receiver or conservator.
650.51 Action for removal of receiver or conservator.
650.52 Voluntary liquidation.
650.55 Appointment of a receiver.
650.56 Powers and duties of the receiver.
650.57 Report to Congress.
650.58 Preservation of equity.
650.59 Notice to stockholders.
650.60 Creditor claims.
650.61 Priority of claims.
650.62 Payment of claims.
650.63 Inventory, audit, and reports.
650.64 Final discharge and release of the receiver.
650.65 Appointment of a conservator.
650.66 Powers and duties of the conservator.
650.67 Inventory, examination, and reports to stockholders.
650.68 Final discharge and release of the conservator.

Subpart C—Receiver and Conservator

§ 650.50 Grounds for appointment of a receiver or conservator.

(a) The grounds for the appointment of a receiver or conservator for the Corporation are:

(1) The Corporation is insolvent. For purposes of this paragraph, insolvent means:

(i) The assets of the Corporation are less than its obligations to its creditors and others; or

(ii) The Corporation is unable to pay its debts as they fall due in the ordinary course of business;

(2) There has been a substantial dissipation of the assets or earnings of the Corporation due to the violation of any law, rule, or regulation, or the conduct of an unsafe or unsound practice;

(3) The Corporation is in an unsafe or unsound condition to transact business;

(4) The Corporation has committed a willful violation of a final cease-and-desist order issued by the Farm Credit Administration Board;

(5) The Corporation is concealing its books, papers, records, or assets, or is refusing to submit its books, papers, records, assets, or other material relating to the affairs of the Corporation for inspection to any examiner or any lawful agent of the Farm Credit Administration Board.

(b) In addition to the grounds set forth in paragraph (a) of this section, a receiver can be appointed for the Corporation if the Farm Credit Administration determines that the appointment of a conservator would not be appropriate when one of the following conditions exists:

(1) The authority of the Corporation to purchase qualified loans or issue or guarantee loan-backed securities is suspended; or

(2) The Corporation is classified under section 8.35 of the Act as within enforcement level III or IV and the alternative actions available under subtitle B of title VIII of the Act are not satisfactory.

(c) In addition to the grounds set forth in paragraph (a) of this section, a conservator can be appointed for the Corporation if:

(1) The Corporation is classified under section 8.35 of the Act as within enforcement level III or IV; or

(2) The authority of the Corporation to purchase qualified loans or issue or guarantee loan-backed securities is suspended.

§ 650.51 Action for removal of receiver or conservator.

Upon the appointment of a receiver or conservator for the Corporation by the Farm Credit Administration Board pursuant to § 650.50 of this subpart, the Corporation may, within 30 days of such appointment, bring an action in the United States District Court for the District of Columbia, for an order requiring the Farm Credit Administration Board to remove the receiver or conservator and, if the charter has been canceled, to rescind the cancellation of the charter. Notwithstanding any other provision of this part, the Corporation's board of directors is empowered to meet subsequent to such appointment and authorize the filing of an action for removal. An action for removal may be authorized only by the Corporation's board of directors.

§ 650.52 Voluntary liquidation.

(a) The Corporation may voluntarily liquidate by a resolution of its board of directors, but only with the consent of, and in accordance with a plan of liquidation approved by, the Farm Credit Administration Board. Upon adoption of such resolution, the Corporation shall submit the resolution and proposed voluntary liquidation plan to the Farm Credit Administration for preliminary approval. The Farm Credit Administration Board, in its discretion, may appoint a receiver as part of an approved liquidation plan. If a receiver is appointed for the Corporation as part of a voluntary

liquidation, the receivership shall be conducted pursuant to the regulations of this part, except to the extent that an approved plan of liquidation provides otherwise.

(b) If the Farm Credit Administration Board gives preliminary approval to the liquidation plan, the board of directors of the Corporation shall submit the resolution to liquidate to the stockholders for a vote in accordance with the bylaws of the Corporation.

(c) The Farm Credit Administration Board will consider final approval of the resolution to voluntarily liquidate and the liquidation plan after an affirmative stockholder vote on the resolution.

§ 650.55 Appointment of a receiver.

(a) The Farm Credit Administration Board may in its discretion appoint, ex parte and without prior notice, a receiver for the Corporation provided that one or more of the grounds for appointment as set forth in § 650.50 of this subpart exist.

(b) Upon the appointment of the receiver, the Chairman of the Farm Credit Administration Board shall immediately notify the Corporation and shall publish a notice of the appointment in the **Federal Register**.

(c) Upon the issuance of the order placing the Corporation into liquidation and appointing the receiver, all rights, privileges, and powers of the board of directors, officers, and employees of the Corporation shall be vested exclusively in the receiver. The Farm Credit Administration Board may cancel the charter of the Corporation on such date as the Farm Credit Administration determines is appropriate, but not later than the conclusion of the receivership and discharge of the receiver.

§ 650.56 Powers and duties of the receiver.

(a) *General.* Upon appointment as receiver, the receiver shall take possession of the Corporation in order to wind up the business operations of the Corporation, collect the debts owed to the Corporation, liquidate its property and assets, pay its creditors, and distribute the remaining proceeds to stockholders. The receiver is authorized to exercise all powers necessary to the efficient termination of the Corporation's operation as provided for in this part.

(2) Upon its appointment as receiver, the receiver automatically succeeds to:

(i) All rights, titles, powers, and privileges of the Corporation and of any stockholder, officer, or director of the Corporation with respect to the Corporation and the assets of the Corporation; and

(ii) Title to the books, records, and assets of any other legal custodian of the Corporation.

(3) The receiver of the Corporation serves as the trustee of the receivership estate and conducts its operations for the benefit of the creditors and stockholders of the Corporation.

(b) *Specific powers.* The receiver may:

(1) Exercise all powers as are conferred upon the officers and directors of the Corporation under law and the articles and bylaws of the Corporation.

(2) Take any action the receiver considers appropriate or expedient to carry on the business of the Corporation during the process of liquidating its assets and winding up its affairs.

(3) Borrow funds in accordance with section 8.41(f) of the Act to meet the ongoing administrative expenses or other liquidity needs of the receivership.

(4) Pay any sum the receiver deems necessary or advisable to preserve, conserve, or protect the Corporation's assets or property or rehabilitate or improve such property and assets.

(5) Pay any sum the receiver deems necessary or advisable to preserve, conserve, or protect any asset or property on which the Corporation has a lien or in which the Corporation has a financial or property interest, and pay off and discharge any liens, claims, or charges of any nature against such property.

(6) Investigate any matter related to the conduct of the business of the Corporation, including, but not limited to, any claim of the Corporation against any individual or entity, and institute appropriate legal or other proceedings to prosecute such claims.

(7) Institute, prosecute, maintain, defend, intervene, and otherwise participate in any legal proceeding by or against the Corporation or in which the Corporation or its creditors or stockholders have any interest, and represent in every way the Corporation, its stockholders and creditors.

(8) Employ attorneys, accountants, appraisers, and other professionals to give advice and assistance to the receivership generally or on particular matters, and pay their retainers, compensation, and expenses, including litigation costs.

(9) Hire any agents or employees necessary for proper administration of the receivership.

(10) Execute, acknowledge, and deliver, in person or through a general or specific delegation, any instrument necessary for any authorized purpose, and any instrument executed under this paragraph shall be valid and effective as if it had been executed by the Corporation's officers by authority of its board of directors.

(11) Sell for cash or otherwise any mortgage, deed of trust, chose in action, note, contract, judgment or decree, stock, or debt owed to the Corporation, or any property (real or personal, tangible or intangible).

(12) Purchase or lease office space, automobiles, furniture, equipment, and supplies, and purchase insurance, professional, and technical services necessary for the conduct of the receivership.

(13) Release any assets or property of any nature, regardless of whether the subject of pending litigation, and repudiate, with cause, any lease or executory contract the receiver considers burdensome.

(14) Settle, release, or obtain release of, for cash or other consideration, claims and demands against or in favor of the Corporation or receiver.

(15) Pay, out of the assets of the Corporation, all expenses of the receivership (including compensation to personnel employed to represent or assist the receiver) and all costs of carrying out or exercising the rights, powers, privileges, and duties as receiver.

(16) Pay, out of the assets of the Corporation, all approved claims of indebtedness in accordance with the priorities established in this part.

(17) Take all actions and have such rights, powers, and privileges as are necessary and incident to the exercise of any specific power.

(18) Take such actions, and have such additional rights, powers, privileges, immunities, and duties as the Farm Credit Administration Board authorizes by order or by amendment of any order or by regulation.

§ 650.57 Report to Congress.

On a determination by the receiver that there are insufficient assets of the receivership to pay all valid claims against the receivership, the receiver shall submit to the Secretary of the Treasury and Congress a report on the financial condition of the receivership.

§ 650.58 Preservation of equity.

(a) Except as provided for upon final distribution of the assets of the Corporation pursuant to § 650.62 of this subpart, no capital stock, equity reserves, or other allocated equities of the Corporation in receivership shall be issued, allocated, retired, sold, distributed, transferred, or assigned.

(b) Immediately upon the adoption of a resolution by its board of directors to voluntarily liquidate the Corporation,

the capital stock, equity reserves, and allocated equities of the Corporation shall not be issued, allocated, retired, sold, distributed, transferred, assigned, or applied against any indebtedness of the owners of such equities. Such activities could resume if the stockholders of the Corporation or the Farm Credit Administration Board disapprove the resolution. In the event the resolution is approved by the stockholders of the Corporation and the Farm Credit Administration Board, the liquidation plan shall govern disposition of the equities of the Corporation, except that if the Corporation is placed in receivership, the provisions of paragraph (a) of this section shall govern further disposition of the equities of the Corporation.

§ 650.59 Notice to stockholders.

As soon as practicable after a receiver takes possession of the Corporation, the receiver shall notify, by first class mail, each holder of stock of the following matters:

(a) The number of shares such holder owns;

(b) That the stock and other equities of the Corporation may not be retired or transferred until the liquidation is completed, whereupon the receiver will distribute a liquidating dividend, if any, to the stockholders; and

(c) Such other matters as the receiver or the Farm Credit Administration deems necessary.

§ 650.60 Creditor claims.

(a) Upon appointment, the receiver shall promptly publish a notice to creditors to present their claims against the Corporation, with proof thereof, to the receiver by a date specified in the notice, which shall be not less than 90 calendar days after the first publication. The notice shall be republished approximately 30 days and 60 days after the first publication. The receiver shall promptly send, by first class mail, a similar notice to any creditor shown on the Corporation's books at the creditor's last address appearing thereon. Claims filed after the specified date shall be disallowed except as the receiver may approve them for full or partial payment from the Corporation's assets remaining undistributed at the time of approval.

(b) The receiver shall allow any claim that is timely received and proved to the receiver's satisfaction. The receiver may disallow in whole or in part any creditor's claim or claim of security, preference, or priority that is not proved to the receiver's satisfaction or is not timely received and shall notify the claimant of the disallowance and reason therefor. Sending the notice of disallowance by first class mail to the claimant's address appearing on the proof of claim shall be sufficient notice. The disallowance shall be final unless, within 30 days after the notice of disallowance is mailed, the claimant files a written request for payment regardless of the disallowance. The receiver shall reconsider any claim upon the timely request of the claimant and may approve or disapprove such claim in whole or in part.

(c) Creditors' claims that are allowed shall be paid by the receiver from time to time, to the extent funds are available therefor and in accordance with the priorities established in this part and in such manner and amounts as the receiver deems appropriate. In the event the Corporation has a claim against a creditor of the Corporation, the receiver shall offset the amount of such claim against the claim asserted by such creditor.

§ 650.61 Priority of claims.

The following priority of claims shall apply to the distribution of the assets of the Corporation in liquidation:

(a) All costs, expenses, and debts incurred by the receiver in connection with the administration of the receivership, all FCA assessments for the costs of supervising and examining the Corporation, and any amounts borrowed pursuant to § 650.56(b)(3).

(b) Administrative expenses of the Corporation, provided that such expenses were incurred within 60 days prior to the receiver's taking possession, and that such expenses shall be limited to reasonable expenses incurred for services actually provided by accountants, attorneys, appraisers, examiners, or management companies, or reasonable expenses incurred by employees that were authorized and reimbursable under a preexisting expense reimbursement policy and that, in the opinion of the receiver, are of benefit to the receivership, and shall not include wages or salaries of employees of the Corporation.

(c) If authorized by the receiver, claims for wages and salaries, including vacation pay, earned prior to the appointment of the receiver by an employee of the Corporation whom the receiver determines it is in the best interest of the receivership to engage or retain for a reasonable period of time.

(d) If authorized by the receiver, claims for wages and salaries, including vacation pay, earned prior to the appointment of the receiver, up to a maximum of three thousand dollars ($3,000) per person as adjusted for inflation, by an employee of the Corporation not engaged or retained by the receiver. The adjustment for inflation shall be the percentage by which the Consumer Price Index (as prepared by the Department of Labor) for the calendar year preceding the appointment of the receiver exceeds the Consumer Price Index for the calendar year 1992.

(e) All claims for taxes.

(f) All claims of creditors which are secured by specific assets of the Corporation, with priority of conflicting claims of creditors within this same class to be determined in accordance with priorities of applicable Federal or State law.

(g) All claims of general creditors.

§ 650.62 Payment of claims.

(a) All claims of each class described in § 650.61 of this subpart shall be paid in full or provisions shall be made for such payment prior to the payment of any claim of a lesser priority. If there are insufficient funds to pay all claims in a class in full, distribution to that class will be on a pro rata basis.

(b) Following the payment of all claims, the receiver shall distribute the remainder of the assets of the Corporation, if any, to the owners of stock and other equities in accordance with the priorities for impairment set forth in section 8.4(e)(3) of the Act and the bylaws of the Corporation.

§ 650.63 Inventory, audit, and reports.

(a) As soon as practicable after taking possession of the Corporation, the receiver shall take an inventory of the assets and liabilities as of the date possession was taken.

(b) The receivership shall be audited on an annual basis by a certified public accountant selected by the receiver.

(c) The receiver shall make an annual accounting or report, as appropriate, available upon request to any stockholder of the Corporation or any member of the public, with a copy provided to the Farm Credit Administration.

(d) As soon as practicable after final distribution, the receiver shall send to each stockholder of record a report summarizing the disposition of the assets of the receivership and claims against the receivership.

§ 650.64 Final discharge and release of the receiver.

After the receiver has made a final distribution of the assets of the receivership, the receivership shall be terminated, the charter shall be canceled by the Farm Credit Administration Board if such cancellation has not previously occurred, and the receiver shall be finally discharged and released.

§ 650.65 Appointment of a conservator.

(a) The Farm Credit Administration Board may in its discretion appoint, ex parte and without prior notice, a conservator for the Corporation provided that one or more of the grounds for appointment as set forth in § 650.50 of this subpart exist;

(b) Upon the appointment of a conservator, the Chairman of the Farm Credit Administration shall immediately notify the Corporation and shall publish a notice of the appointment in the **Federal Register**.

(c) As soon as practicable after the conservator takes possession of the Corporation, the conservator shall notify, by first class mail, each holder of stock in the Corporation of the establishment of the conservatorship and shall describe the effect of the conservatorship on the Corporation's operations and equity holdings.

(d) Upon the issuance of the order placing the Corporation in conservatorship, all rights, privileges, and powers of the members, board of directors, officers, and employees of the Corporation are vested exclusively in the conservator.

(e) The Farm Credit Administration Board may, at any time, terminate the conservatorship and direct the conservator to turn over the Corporation's operations to such management as the Farm Credit Administration Board may designate, in which event the provisions of this subpart shall no longer apply.

§ 650.66 Powers and duties of the conservator.

(a) The conservator shall direct the Corporation's further operation until the Farm Credit Administration Board decides that the Corporation can operate without the conservatorship or places the Corporation into receivership. Upon correction or resolution of the problem or condition that provided the basis for the appointment, the Farm Credit Administration Board may turn the Corporation over to such management as the Farm Credit Administration Board may direct.

(b) The conservator shall exercise all powers necessary to continue the ongoing operations of the Corporation, to conserve and preserve the Corporation's assets and property, and otherwise protect the interests of the Corporation, its stockholders, and creditors as provided in this subpart.

(c) The conservator serves as the trustee of the Corporation and conducts its operations for the benefit of the creditors and stockholders of the Corporation.

(d) The conservator may exercise the powers that a receiver of the Corporation may exercise under any of the provisions of § 650.56(b) of this subpart, except paragraphs (b)(2) and (b)(16). In interpreting the applicable paragraphs for purposes of this section, the terms "conservator" and "conservatorship" shall be read for "receiver" and "receivership".

(e) The conservator may also take any other action the conservator considers appropriate or expedient to the continuing operation of the Corporation.

§ 650.67 Inventory, examination, and reports to stockholders.

(a) As soon as practicable after taking possession of the Corporation, the conservator shall take an inventory of the assets and liabilities of the Corporation as of the date possession was taken. One copy of the inventory shall be filed with the Farm Credit Administration.

(b) The conservatorship shall be examined by the Farm Credit Administration in accordance with section 8.11 of the Act.

(c) The conservatorship shall prepare and file financial reports and other documents in accordance with the requirements of § 620.40 and part 621 of this chapter. The conservator of the Corporation shall provide the certification required in § 621.14 of this chapter.

§ 650.68 Final discharge and release of the conservator.

At such time as the conservator shall be relieved of its conservatorship duties, the conservator shall file a report on the conservator's activities with the Farm Credit Administration. The conservator shall thereupon be completely and finally released.

Dated: February 19, 1997.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–CE–56–AD]

RIN 2120–AA64

Airworthiness Directives; I. A. M. Rinaldo Piaggio Model P180 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain I. A. M. Rinaldo Piaggio (Piaggio) Model P180 airplanes. The proposed action would require repetitively inspecting for cracks around the vertical pin and the torque tube bottom flange of the rudder and the fasteners that connect the torque tube to the bottom flange. If cracks are evident, the proposed action would require modifying the rudder torque tube bottom flange assembly by replacing the cracked part with a part of improved design which would terminate the repetitive inspection. The proposed AD is the result of several reports of fatigue cracks around the pin that vertically supports the rudder axle. The actions specified by the proposed AD are intended to prevent fatigue cracks in the rudder torque tube bottom flange which could result in loss of rudder control and possible loss of the airplane.

DATES: Comments must be received on or before April 30, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–56–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from I. A. M. Rinaldo Piaggio, S.p.A., Via Cibrario, 4 16154 Genoa, Italy. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Rodriguez, Program Officer, Brussels Aircraft Certification Division, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; telephone (322) 508.2715; facsimile (322) 230.6899; or Mr. Roman T. Gabrys, Project Officer, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6934; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 96–CE–56–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–56–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Registro Aeronautico Italiano (RAI), which is the airworthiness authority for Italy, recently notified the FAA that an unsafe condition may exist on certain Piaggio P180 airplanes. The RAI reports that fatigue cracks are appearing in the area of the vertical pin support and around the torque tube bottom flange of the rudder. These cracks were discovered during routine inspections on high flight hour Piaggio P180 airplanes. This condition, if not detected and corrected, could result in loss of rudder control and possible loss of the airplane.

Relevant Service Information

Piaggio has issued Service Bulletin 80–0076, ORIGINAL ISSUE: May 30, 1995 which specifies procedures for inspecting for cracks and modifying the torque tube bottom flange and fasteners, if cracks are found.

The RAI classified this service bulletin as mandatory and issued AD No. 95–183, Issued July 3, 1995, in order to assure the continued airworthiness of these airplanes in Italy.

The FAA's Determination

This airplane model is manufactured in Italy and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RAI has kept the FAA informed of the situation described above. The FAA has examined the findings of the RAI, reviewed all available information including the service information referenced above, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Piaggio P180 airplanes of the same type design registered in the United States, the proposed AD would require inspecting for cracks around the torque tube bottom flange, the fasteners, and vertical support pin of the rudder; and, if cracks are found, modifying the rudder torque tube bottom flange assembly by replacing the cracked part with a part of improved design. If no cracks are found, the proposed action would require repetitively inspecting the area until cracks appear and then modifying the rudder torque tube bottom flange by replacing the cracked part with a part of improved design. Accomplishment of the proposed modification would be in accordance with Piaggio Service Bulletin 80–0076, ORIGINAL ISSUE: May 30, 1995.

Differences Between the Proposed AD, Service Bulletin, and RAI AD

I.A.M. Rinaldo Piaggio SB 80–0076, Original Issue May 30, 1995, and the RAI AD No. 95–183, dated July 3, 1995, specify repetitively inspecting every 500 hours time-in-service (TIS) using a dye penetrant method, and if the crack lengths are greater than 6 mm, the part must be replaced prior to further flight. If the crack lengths are greater than 3 mm, but less than 6 mm, the part must be replaced within the next 50 hours TIS; and, if the cracks are less than 3 mm, then the parts must be replaced within the next 100 hours TIS. The proposed AD, if adopted, would not allow any continued flight with any crack found. FAA policy is to disallow airplane operation when known cracks exist in primary structure (the rudder is considered primary structure).

Cost Impact

The FAA estimates that 4 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 6 workhours per airplane to accomplish the proposed initial inspection and that the average labor rate is approximately $60 an hour. Parts are not accounted for in this cost analysis because, on some airplanes, cracks may never be discovered during one of these inspections. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,440 ($360 per airplane). The FAA is not taking into account the cost for the repetitive inspections because there is no way to determine the number of repetitive inspections that might be incurred over the life of the airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

I.A.M. Rinaldo Piaggio: Docket No. 96–CE–56–AD.

Applicability: Model P180 airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 100 hours time-in-service (TIS) after the effective date of this AD, and thereafter as indicated in the body of this AD, unless already accomplished.

To prevent fatigue cracks in the rudder torque tube bottom flange which could result in loss of rudder control and possible loss of the airplane, accomplish the following:

(a) Inspect the area around the torque tube, bottom flange, and vertical support pin of the rudder for cracks (using a dye penetrant method) and visually inspect for cracks in the fasteners that connect the torque tube to the bottom flange.

Note 2: The inspection in Part A of the Compliance section of Piaggio Service Bulletin (SB) 80–0076, ORIGINAL ISSUE: May 30, 1995, uses different criteria than the inspection required in paragraph (a) of this AD. This AD takes precedence over Piaggio SB 80–0076.

(b) If cracks are found, prior to further flight, modify the rudder torque tube bottom flange by replacing any cracked part with a part of improved design in accordance with Part B and Attachment #1 of the ACCOMPLISHMENT INSTRUCTIONS of Piaggio SB 80–0076, ORIGINAL ISSUE: May 30, 1995.

(c) If no cracks are found, continue to inspect at intervals not to exceed 100 hours TIS thereafter until cracks appear. If cracks appear during any inspection required by this AD, prior to further flight, modify the rudder torque tube bottom flange by the replacing cracked part with a part of improved design in accordance with Part B and Attachment #1 of the ACCOMPLISHMENT INSTRUCTIONS of Piaggio SB 80–0076, ORIGINAL ISSUE: May 30, 1995.

(d) Modifying the rudder torque tube flange by replacing a cracked torque tube bottom flange, part number (P/N) 80–373108–103, with an improved torque tube bottom flange (P/N 80–373201–001) is considered a terminating action for the repetitive inspections required in paragraph (c) of this AD.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Division, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; or the Manager, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Division or Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Brussels Aircraft Certification Division or the Small Airplane Directorate.

(g) All persons affected by this directive may obtain copies of the documents referred to herein upon request to I. A. M. Rinaldo Piaggio, S.p.A., Via Cibrario, 4 16154 Genoa, Italy; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on February 14, 1997.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–4371 Filed 2–21–97; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 97–ANE–08]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D–200 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Pratt & Whitney JT8D–200 series turbofan engines, that currently requires for front compressor front hubs (fan hubs), cleaning; initial and repetitive eddy current (ECI) and fluorescent penetrant inspections (FPI) of tierod and counterweight holes for cracks; removal of bushings; the cleaning and ECI and FPI of bushed holes for cracks; and, if necessary, replacement with serviceable parts. In addition, the current AD requires reporting the findings of cracked fan hubs. This action will not change the current AD's inspection procedures, or the effectivity date that starts the cycle count for the initial inspection schedules. This AD will, however, add an additional inspection schedule that requires the initial inspection of certain fan hubs with standard drilled holes and coolant channel drilled (CCD) holes to occur earlier than the existing AD requires. This proposal is prompted by additional investigation since publication of the current AD that reveals that certain fan hubs with standard drilled holes and CCD holes may be more susceptible to cracking. This proposal also requires reporting the results of the initial fan hub inspections. The actions specified by the proposed AD are intended to prevent fan hub failure due to tierod, counterweight, or bushed hole cracking, which could result in an uncontained engine failure and damage to the aircraft.

DATES: Comments must be received by April 25, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–ANE–08, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.dot.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–6600, fax (860) 565–4503. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Diane Cook, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7134, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–ANE–08." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–ANE–08, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On January 13, 1997, the Federal Aviation Administration (FAA) issued airworthiness directive AD 97–02–11, Amendment 39–9896 (62 FR 4902, February 3, 1997), applicable to Pratt & Whitney (PW) JT8D–200 series turbofan engines, to require cleaning, initial and repetitive eddy current inspections (ECI) and fluorescent penetrant inspections (FPI) for cracks of tierod and counterweight holes; removal of bushings; the cleaning and initial and repetitive ECI and FPI of bushed holes for cracks; and, if necessary, replacing with serviceable parts. The compliance requirements allow selection of inspection schedules depending on front compressor front hub (fan hub) Serial Numbers (S/Ns) listed in PW Alert Service Bulletin (ASB) No. A6272, dated September 24, 1996, and includes an inspection schedule for those fan hubs whose S/Ns are not listed in the ASB. In addition, the AD requires reporting findings of cracked fan hubs. That action was prompted by a report of an uncontained failure of a fan hub. That condition, if not corrected, could result in fan hub failure due to tierod, counterweight, or bushed hole cracking, which could result in an uncontained engine failure and damage to the aircraft.

Since the issuance of that AD, the FAA has conducted additional investigation of fan hub cracking and has determined it necessary to include an additional inspection schedule for certain fan hubs with standard drilled holes and coolant channel drilled (CCD) holes. The FAA reviewed the manufacturing records of all fan hubs, a total of 253 which had notations related to the tierod or counterweight holes. Notations are made in the manufacturing records if an event occurred during manufacture of the hole such as a tool break, which can result in work hardened material, which is more susceptible to cracking. Of the 253 fan hubs with such notations, 113 were manufactured with a CCD and the remaining 140 were manufactured with a standard drill. Although CCD fan hubs are more prone to a work hardened layer, a standard drill, under certain circumstances, may also cause a work hardened layer and subsequent cracking.

The FAA has reviewed and approved the technical contents of PW ASB No. A6272, dated September 24, 1996, that describes procedures for cleaning and ECI and FPI of tierod and counterweight holes for cracks; removal of bushings; and the cleaning, FPI, and ECI of bushed holes for cracks. Even though the ASB contains three of the S/Ns of the fan hubs that were removed from service in accordance with AD 96–15–06, the manufacturer has informed the FAA that these fan hubs have been destroyed during the investigation to confirm the failure mode.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 97–02–11 to include an additional inspection schedule for certain fan hubs with standard drilled holes and CCD holes without changing inspection procedures, the existing inspection schedules, or the current effectivity date of March 5, 1997.

There are approximately 2,624 engines of the affected design in the worldwide fleet. The FAA estimates that 1,279 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take 20 work hours per engine for 360 engines to disassemble, remove, inspect, and reassemble engines, and 4 work hours per engine for 919 engines to inspect at piece-part exposure, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $862,560.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9896 (62 FR 4902, February 3, 1997) and by adding

a new airworthiness directive to read as follows:

Pratt & Whitney: Docket No. 97–ANE–08. Supersedes AD 97–02–11, Amendment 39–9896.

Applicability: Pratt & Whitney JT8D–209, –217, –217C, and –219 series turbofan engines with front compressor front hub (fan hub), Part Number (P/N) 5000501–01, installed. These engines are installed on but not limited to McDonnell Douglas MD–80 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fan hub failure due to tierod, counterweight, or bushed hole cracking, which could result in an uncontained engine failure and damage to the aircraft, accomplish the following:

(a) Inspect fan hubs for cracks in accordance with the Accomplishment Instructions, Paragraph A, Part 1, and, if applicable, Paragraph B, of PW ASB No. A6272, dated September 24, 1996, as follows:

(1) For fan hubs identified by Serial Numbers (S/Ns) in Table 2 of this AD, after the fan hub has accumulated more than 4,000 cycles since new (CSN), as follows:

(i) Initially inspect within 790 cycles in service after March 5, 1997 (the effective date of AD 97–02–11), or 4,790 CSN, whichever occurs later.

(ii) Thereafter, reinspect after accumulating 2,500 CIS since last inspection, but not to exceed 10,000 CIS since last inspection.

(2) For fan hubs identified by S/Ns in Appendix A of PW ASB No. A6272, dated September 24, 1996, after the fan hub has accumulated more than 4,000 CSN, as follows:

(i) Select an initial inspection interval from Table 1 of this AD, and inspect accordingly.

TABLE 1

Initial inspection	Reinspection
1. Within 1,050 cycles in service (CIS) after the effective date of AD 97–02–11, March 5, 1997, or prior to accumulating 5,050 CSN, whichever occurs later;	After accumulating 2,500 CIS since last inspection, but not to exceed 6,000 CIS since last inspection.
or	
2. Within 990 CIS after the effective date of AD 97–02–11, March 5, 1997, or prior to accumulating 4,990 CSN, whichever occurs later;	After accumulating 2,500 CIS since last inspection, but not to exceed 8,000 CIS since last inspection.
or	
3. Within 965 CIS after the effective date of AD 97–02–11, March 5, 1997, or prior to accumulating 4,965 CSN, whichever occurs later.	After accumulating 2,500 CIS since last inspection, but not to exceed 10,000 CIS since last inspection.

TABLE 2
[Hubs with traveler notations]

Non CCD	Non CCD	Non CCD	Non CCD
M67663	M67802	P66880	S25545
M67671	M67812	P66885	S25558
M67675	M67826	R32732	S25564
M67681	M67829	R32733	S25598
M67685	M67830	R32735	S25618
M67686	M67831	R32740	S25621
M67687	M67832	R32741	S25637
M67697	M67834	R32810	S25640
M67700	M67843	R32849	T50693
M67706	M67849	R32850	T50752
M67710	M67858	S25222	T50785
M67712	M67866	S25464	T50791
M67713	M67868	S25481	T50792
M67714	M67869	S25483	T50819
M67715	M67872	S25484	T50823
M67716	M67888	S25486	T50827
M67717	N71771	S25488	T50874
M67722	N71804	S25489	T50875
M67723	N71806	S25490	T51058
M67725	N71810	S25491	T51104
M67726	N71811	S25492	R33186
M67730	N71875	S25494	S25528
M67731	N71876	S25495	
M67746	N71921	S25497	
M67751	N71965	S25498	
M67753	N72062	S25499	
M67764	N72126	S25500	
M67765	N72152	S25501	
M67784	N72162	S25502	
M67791	N72207	S25505	
M67792	N72216	S25506	
M67793	N72219	S25507	
M67794	N72242	S25508	
M67795	P66693	S25509	

TABLE 2—Continued
[Hubs with traveler notations]

Non CCD	Non CCD	Non CCD	Non CCD
M67796	P66695	S25514	
M67797	P66696	S25529	
M67798	P66698	S25532	
M67799	P66699	S25541	
M67800	P66737	S25543	
M67801	P66753	S25544	
CCD Hub	CCD Hub	CCD Hub	
P66747	R33099	S25292	
P66756	R33107	S25299	
P66800	R33113	S25301	
P66814	R33124	S25302	
P66819	R33131	S25308	
P66831	R33132	S25312	
R32767	R33133	S25316	
R32787	R33136	S25323	
R32792	R33152	S25334	
R32795	R33157	S25335	
R32796	R33163	S25337	
R32800	R33165	S25344	
R32807	R33168	S25369	
R32856	R33171	S25377	
R32860	R33173	S25378	
R32870	R33180	S25381	
R32883	R33181	S25394	
R32905	R33189	S25399	
R32926	R33194	S25402	
R32930	R33198	S25406	
R32952	R33201	S25411	
R32964	R33202	S25413	
R32966	R33207	S25414	
R32971	S25193	S25415	
R32976	S25195	S25418	

TABLE 2—Continued
[Hubs with traveler notations]

Non CCD	Non CCD	Non CCD	Non CCD
R32981	S25207	S25419	
R32990	S25208	S25421	
R32994	S25221	S25422	
R33000	S25229	S25430	
R33004	S25238	S25437	
R33040	S25246	S25439	
R33055	S25248	S25449	
R33059	S25250		
R33077	S25256		
R33080	S25262		
R33082	S25268		
R33086	S25278		
R33087	S25287		
R33089	S25288		
R33090			

(ii) Thereafter, reinspect at intervals that correspond to the selected inspection interval.

(3) If a fan hub is identified in both Table 2 of this AD and Appendix A of PW ASB No. A6272, dated September 24, 1996, inspect in accordance with paragraph (a)(1) of this AD.

(4) For fan hubs with S/Ns not listed in Table 2 of this AD or in Appendix A of PW ASB No. A6272, dated September 24, 1996, after the fan hub has accumulated more than 4,000 CSN, inspect the next time the fan hub is in the shop at piece-part level, but not to exceed 10,000 CIS after March 5, 1997.

(5) Prior to further flight, remove from service fan hubs found cracked or that exceed the bushed hole acceptance criteria described in PW ASB No. A6272, dated September 24, 1996.

(b) Report the number of completed inspections on a monthly basis and report findings of cracked fan hubs in accordance with Accomplishment Instructions, Paragraph F, of Attachment 1 to PW ASB No. A6272, dated September 24, 1996, within 48 hours after inspection to Robert Guyotte, Manager, Engine Certification Branch, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7142, fax (617) 238–7199; Internet: Robert.Guyotte@faa.dot.gov. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120–0056.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the inspection requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on February 14, 1997.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 97–4370 Filed 2–21–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Employment Standards Administration

20 CFR Parts 718, 722, 725, 726 and 727

RIN 1215–AA99

Regulations Implementing the Federal Coal Mine Health and Safety Act of 1969, as Amended; Extension of Comment Period

AGENCY: Employment Standards Administration, Labor.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This document extends the period for filing comments regarding the proposed rule to amend and revise the regulations implementing the Black Lung Benefits Act. This action is taken to permit additional comment from interested persons.

DATE: Comments must be received on or before May 23, 1997.

ADDRESSES: Send written comments on the proposed rule to James L. DeMarce, Director, Division of Coal Mine Workers' Compensation, Room C–3520, Frances Perkins Building, 200 Constitution Ave., NW, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: James L. DeMarce, (202) 219–6692.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of the January 22, 1997 (62 FR 3338–3435), the Department of Labor published a proposed rule intended to amend and revise the regulations implementing the Black Lung Benefits Act, subchapter IV of the Federal Coal Mine Health and Safety Act of 1969, as amended. Interested persons were requested to submit comments on or before March 24, 1997.

The Department has received requests for an extension of the comment period from groups representing coal mine operators, coal mine construction companies, the insurance industry, organized labor, and black lung claimants. Because of the interest in this proposal, the Department believes that it is desirable to extend the comment period for all interested persons. Therefore, the comment period for the proposed rule, amending and revising 20 CFR parts 718, 722, 725, 726 and 727, is extended through May 23, 1997.

Signed at Washington, DC, this 18 day of February, 1997.

Bernald E. Anderson,

Assistant Secretary for Employment Standards.

[FR Doc. 97–4467 Filed 2–21–97; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 3 and 4

RIN 2900–AH41

Service Connection of Dental Conditions for Treatment Purposes

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs is proposing to amend its adjudication regulations for determining service connection of dental conditions for purposes of eligibility for outpatient dental treatment. Current regulations contain overlapping provisions which do not clearly state requirements for service connection, and provide that service connection will be granted for certain dental conditions shown after a "reasonable period of service" without defining what constitutes such a period. We intend to consolidate the information, and replace the term "reasonable period of service" with a precise period of 180 days. We also propose to eliminate redundant material, and to clearly state requirements for service connection for purposes of eligibility for outpatient dental treatment.

DATES: Comments must be received on or before April 25, 1997.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900–AH41." All written comments will be made available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Lorna Fox, Consultant, Regulations Staff, Compensation and Pension Service (213), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW, Washington, DC 20420, (202) 273–7223.

SUPPLEMENTARY INFORMATION: The provisions of 38 U.S.C. 1712 (restated in 38 CFR 17.123) set forth eligibility requirements for VA outpatient treatment of dental conditions and disabilities. This section provides that veterans with non-compensable service-connected dental conditions are entitled to a one-time correction of the dental condition provided that certain requirements are met, including application for dental treatment made within 90 days of service discharge. Following completion of this initial care, subsequent additional treatment may be provided in certain other cases, i.e., if the veteran was a prisoner of war, if the dental condition or disability is due to combat or other in-service trauma, or if the veteran has service-connected disabilities rated at 100 percent.

38 CFR part 4, the Schedule for Rating Disabilities, provides evaluations for dental conditions considered disabling in nature. (See § 4.150, Schedule of ratings—dental and oral conditions.) There are other dental conditions, however, which are not considered disabling and thus do not generally fall under the purview of § 4.150. The issue of service connection arises for these conditions only for the purpose of

determining eligibility for outpatient dental treatment. These conditions are listed at 38 CFR 4.149, "Rating diseases of the teeth and gums", and include treatable carious teeth, replaceable missing teeth, dental or alveolar abscesses, periodontal disease, and Vincent's stomatitis (also referred to as Vincent's infection, Vincent's disease, or acute necrotizing gingivitis).

The Schedule for Rating Disabilities is a guide for evaluating disabilities for compensation purposes. Because the dental conditions listed in § 4.149 are not evaluated for compensation, but only to determine eligibility for treatment, it is more appropriate to list them in 38 CFR part 3, which contains general rules for determining service connection. We therefore propose to list these non-compensable dental conditions in § 3.381(a) and to delete section § 4.149.

The current regulations at 38 CFR 3.381 and 3.382 set forth the principles for determining whether a dental condition was incurred or aggravated during service for purposes of treatment. Provisions for determining which conditions are service connected for outpatient treatment purposes, and which are not, are scattered throughout both sections. Section 3.381 establishes the conditions under which dental conditions that were present at entry into service will be service connected; § 3.382 (a) and (b) list the evidence requirements for establishing service connection; and § 3.382(c) states that certain dental conditions will not be service connected. We propose to rewrite the regulations to consolidate the information, make requirements for service connection for treatment purposes clear, list specific conditions that will not be service connected, and eliminate redundant material.

The regulations at §§ 3.381 and 3.382 currently state that service connection for certain non-compensable dental conditions is warranted only if the conditions are shown after a "reasonable period of service." The condition of "reasonable period of service" was intended to provide a basis for determining those dental conditions which would be considered as incurred or aggravated during active duty. (See 38 U.S.C. 1110, 1131.) In the absence of a definition for the term "reasonable period of service," the Court of Veterans Appeals held in *Manio* v. *Derwinski*, 1 Vet. App. 140 (1991), that four months "is sufficient to satisfy the 'reasonable period of service' requirement" under the facts of that case.

We propose to revise § 3.381 to replace the subjective term "reasonable period of service" with the objective requirement of 180 days or more of active service. Dental caries and other dental pathology take time to develop, often a year or two in permanent teeth. Thus it is more likely than not that caries or pathology that became apparent within the first 180 days of a person's active service pre-existed that service. Periodontal disease, which results from the long term effects of plaque on the periodontium, also develops over time, and we believe the same period is appropriate for effects of this condition.

In § 3.381, paragraph (c) currently states that effective principles relating to the establishment of service connection for dental diseases and injuries by reason of their association with other service-connected diseases and injuries will be observed. The provisions governing such secondary service connection are contained in § 3.310. Therefore, inclusion of this statement here is unnecessary and we propose to delete it.

In § 3.381, paragraph (d) currently states that the presumption of soundness does not apply to non-compensable dental conditions. However, 38 CFR 3.304(b) provides that a veteran shall be considered to have been in sound condition when entering service "except as to defects, infirmities, or disorders noted at entrance into service." In order to maintain consistency between the provisions of 38 CFR part 3, we propose to eliminate the statement in § 3.381, paragraph (d) that the presumption of soundness does not apply to non-compensable dental conditions.

In § 3.381, paragraph (b) currently states that treatment during service is not considered per se as aggravation of a condition noted as present at entry because such treatment is considered ameliorative. We propose to retain that principle in proposed § 3.381, paragraph (c) but will replace the phrase "per se" with a statement that treatment in service is not evidence that a condition noted at entry has been aggravated, unless additional pathology developed after 180 days or more of service. The use of the 180-day time period has already been explained.

We propose to place in § 3.381, paragraph (d), specific rules for determining whether dental conditions that are noted at entry into service and treated during active duty are service connected for treatment purposes. This paragraph will incorporate provisions now listed at § 3.381(b) for teeth that are noted as carious but restorable, filled, and defective but not restorable. We propose to include new provisions for teeth normal at entry but which are filled or extracted during service and teeth missing at entry because these situations frequently require decision but are not addressed in the current regulation.

In § 3.381, paragraph (d)(1), we propose to state that teeth noted as normal at the time of entry into service will be service connected only if filled or extracted after 180 days or more of active service. Setting a precise period of 180 days for development of dental pathology as a requirement for service connection is consistent with our statement that conditions that manifested before expiration of 180 days of active service more likely than not pre-existed that service.

In § 3.381, paragraph (d)(2), we propose to state that teeth noted as filled at entry into service will be service connected if they were extracted, or if the existing filling was replaced, after 180 days or more of service. This is not a change from the current provision, but substitutes a precise period of 180 days for the "reasonable time" provision of the current rule.

In § 3.381, paragraph (d)(3), we propose to state that teeth that are carious but restorable at entry will not be service connected if they are filled during service, but that if new caries develop in the same tooth 180 days or more after a filling has been placed, service connection will be granted. This substitutes a precise period for the current language granting service connection if such new caries develop "a reasonable time" after the original cavity has been filled.

In § 3.381, paragraph (d)(4), we propose to state that teeth noted as carious but restorable at entry will be service connected, regardless of whether or not they are filled, if extraction is required after 180 days or more of active service. This is not a change from the current provision, but substitutes the precise period of 180 days for the "reasonable time" provision of the current rule.

In § 3.381, paragraph (d)(5), we propose to state that teeth noted to be defective and non-restorable at entry will not be service connected, regardless of treatment during service. This is not a change from the current provision.

In § 3.381, paragraph (d)(6), we propose to state that teeth noted at entry as missing will not warrant service connection for treatment purposes, notwithstanding treatment which may have been administered during active duty. This provision is consistent with proposed § 3.381(c) which states that treatment in service for a pre-existing condition does not represent aggravation of that condition.

In § 3.381, paragraph (e), we propose to list conditions that will not be service connected for treatment purposes. Conditions now listed at § 3.382(c) for which service connection will not be granted include: salivary deposits; gingivitis; acute Vincent's disease; pyorrhea; impacted or malposed teeth and third molars (wisdom teeth).

Impacted and malposed teeth are considered developmental defects, as is the presence of third molars. As noted above, these conditions are not service connected under current provisions, unless separate pathology develops "after a reasonable time." In the revised § 3.381 (e)(3) and (e)(4), we propose to replace this term with the precise period of 180 days or more of active service. We have already explained our use of the 180-day time period.

We have incorporated current medical terminology in the regulation, and; therefore, have substituted the term "calculus" for "salivary deposits" and "periodontal disease" for the terms "gingivitis," "Vincent's disease," and "pyorrhea."

The current regulation states that gingivitis is not a disease entity and thus is not ratable. Gingivitis is an inflammatory condition which is usually an acute condition, but can be a precursor of more serious inflammatory processes. Vincent's disease is a form of gingival inflammation also called "trench mouth" or "necrotizing ulcerative gingivitis" which the current regulation does not service connect in its acute state. Periodontitis is a more current term for pyorrhea. All of these conditions are encompassed by the broader, more general term periodontal disease. Periodontal disease is related to dental hygiene and can be affected by such other factors as diet, abnormal stress, other disease processes, and reaction to certain drugs or chemicals. With proper treatment, most periodontal disease resolves with no residuals. For this reason, service connection for acute periodontal disease is not warranted. However, under the current regulation, chronic periodontal disease (pyorrhea), which may result in tooth extraction, warrants service connection for the lost teeth. We propose to retain this provision, with the clarification that such tooth loss will be service connected only if extraction is required after at least 180 days of service.

We propose to eliminate as unnecessary paragraphs (a) and (b) of § 3.382, "Evidence to establish service connection for dental disabilities." These paragraphs contain information about kinds of evidence needed to establish service connection and alternate sources of evidence when service medical records are unavailable. Evidence requirements are adequately covered elsewhere in the regulations and stating them here is unnecessary. (*See* regulations at 38 CFR 3.303, "Principles relating to service connection" and § 3.304 "Direct service connection; wartime and peacetime.'.)

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The proposed amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), the proposed amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance program numbers are 64.104, 64.105, 64.109 and 64.110.

List of Subjects

38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Pesticides and pests, Radioactive materials, Veterans, Vietnam.

38 CFR Part 4

Disability benefits, Pensions, Individuals with disabilities, Veterans.

Approved: November 6, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR parts 3 and 4 are proposed to be amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Section 3.381 is revised to read as follows:

§ 3.381 Service connection of dental conditions for treatment purposes.

(a) Treatable carious teeth, replaceable missing teeth, dental or alveolar abscesses, and periodontal disease will be considered service connected solely for the purpose of establishing eligibility for outpatient dental treatment as provided in section 17.123 of this chapter.

(b) The rating activity will consider each defective or missing tooth and each disease of the teeth and periodontal tissues separately to determine whether the condition was incurred or aggravated in line of duty during active service. When applicable, the rating activity will determine whether the condition is due to combat or other in-service trauma, or whether the veteran was interned as a prisoner of war.

(c) In determining service connection, the condition of teeth and periodontal tissues at the time of entry into active duty will be considered. Treatment during service, including filling or extraction of a tooth, or placement of a prosthesis, will not be considered evidence of aggravation of a condition that was noted at entry, unless additional pathology developed after 180 days or more of active service.

(d) The following principles apply to dental conditions noted at entry and treated during service:

(1) Teeth noted as normal at entry will be service connected if they were filled or extracted after 180 days or more of active service.

(2) Teeth noted as filled at entry will be service connected if they were extracted, or if the existing filling was replaced, after 180 days or more of active service.

(3) Teeth noted as carious but restorable at entry will not be service connected on the basis that they were filled during service. However, new caries that developed 180 days or more after such a tooth was filled will be service connected.

(4) Teeth noted as carious but restorable at entry, whether or not filled, will be service connected if extraction was required after 180 days or more of active service.

(5) Teeth noted at entry as non-restorable will not be service connected, regardless of treatment during service.

(6) Teeth noted as missing at entry will not be service connected, regardless of treatment during service.

(e) The following will not be considered service connected for treatment purposes:

(1) Calculus;

(2) Acute periodontal disease;

(3) Third molars, unless disease or pathology of the tooth developed after 180 days or more of active service, or was due to combat or in-service trauma; and

(4) Impacted or malposed teeth, and other developmental defects, unless disease or pathology of these teeth developed after 180 days or more of active service.

(f) Chronic periodontal disease. Teeth extracted because of chronic periodontal disease will be service connected only if they were extracted after 180 days or more of active service.

(Authority: 38 U.S.C. 1712)

§ 3.382 [Removed]

3. Section 3.382 is removed.

PART 4—SCHEDULE FOR RATING DISABILITIES

Subpart B—Disability Ratings

4. The authority citation for part 4 continues to read as follows:

Authority: 38 U.S.C. 1155.

§ 4.149 [Removed]

5. Section 4.149 is removed.

[FR Doc. 97–4419 Filed 2–21–97; 8:45 am]
BILLING CODE 8320–01–P

38 CFR Part 4

RIN 2900–AI22

Intervertebral Disc Syndrome

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs (VA) Schedule for Rating Disabilities by revising the evaluation criteria for diagnostic code 5293, intervertebral disc syndrome. The intended effect of this amendment is to clarify the criteria to ensure that veterans diagnosed with this condition meet uniform criteria and receive consistent evaluations.

DATES: Comments must be received by VA on or before April 25, 1997.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington DC 20420. Comments should indicate that they are in response to "RIN 2900–AI22." All written comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Caroll McBrine, M.D., Consultant, Regulations Staff (213A), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW, Washington, DC 20420, (202) 273–7230.

SUPPLEMENTARY INFORMATION: The central portion of one or more intervertebral discs, cartilages that separate the spinal vertebrae, may protrude or rupture through the outer fibrous part of the disc and compress or irritate the adjacent nerve root. Intervertebral disc syndrome is a group of signs and symptoms due to nerve root irritation that commonly includes back pain and sciatica (pain along the course of the sciatic nerve) in the case of lumbar disc disease, and neck and arm or hand pain in the case of cervical disc disease. It may also include scoliosis, paravertebral muscle spasm, limitation of motion of the spine, tenderness over the spine, limitation of straight leg raising, and neurologic findings corresponding to the level of the disc. If the disc compresses the cauda equina (the collection of nerve roots extending from the lower end of the spinal cord), bowel or bladder sphincter functions or sexual function may also be affected.

Intervertebral disc syndrome has a variable course and variable manifestations. Many people have a series of relapses and remissions of back pain and sciatica over a long period of time with no symptoms during remission; other patients experience chronic signs and symptoms.

The current evaluation criteria for intervertebral disc syndrome (DC 5293) include: a 60-percent evaluation for persistent sciatic neuropathy or other neurologic findings, with little intermittent relief; a 40-percent evaluation for severe recurring attacks; a 20-percent evaluation for moderate recurring attacks; a 10-percent evaluation if the condition is mild; and a zero-percent evaluation if the condition is postoperative, cured. These criteria require rating agencies to make a subjective determination as to whether the condition is "mild," "moderate," or "severe." In addition, they raise questions as to whether any neurologic manifestation, regardless of severity, warrants a 60-percent evaluation, or whether intervertebral disc syndrome with neurologic manifestations may be evaluated higher or lower than 60 percent.

In order to clarify the evaluation criteria, and thereby assure more consistent evaluations, we propose to eliminate subjective terms such as mild, moderate, and severe in favor of more objective criteria, and to provide specific instructions for evaluating both the orthopedic and neurologic manifestations of intervertebral disc syndrome. We also propose that these criteria apply both pre-operatively and post-operatively.

We propose to evaluate intervertebral disc syndromes that are primarily disabling because of periods of acute symptoms that require bed rest according to the cumulative amount of time over the course of a year that the patient is incapacitated, i.e., requires bed rest and treatment by a physician. Incapacitating episodes of at least six weeks total duration per year would be evaluated at 60 percent; incapacitating episodes of at least four but less than six weeks total duration per year at 40 percent; incapacitating episodes of at least two but less than four weeks total duration per year at 20 percent; and incapacitating episodes of at least one but less than two weeks total duration per year at 10 percent. Evaluating the condition in this manner will assure more consistent evaluations when the disc disease is episodic because percentage evaluations will be assigned based on an objective standard—yearly cumulative duration of incapacitating episodes—rather than a subjective assessment of whether the condition is mild, moderate, or severe.

We propose to evaluate intervertebral disc syndromes that are disabling primarily because of chronic orthopedic manifestations (e.g., painful muscle spasm or limitation of motion), chronic neurologic manifestations (e.g., footdrop, muscle atrophy, or sensory loss), or a combination of both, by assigning separate evaluations for the orthopedic and neurologic manifestations, using DC 5293 hyphenated with the appropriate orthopedic or neurologic code. Assigning separate evaluations for the orthopedic and neurologic manifestations will assure that evaluations accurately reflect the actual disabling effects of the condition, and that neurologic manifestations in particular will not be over-or under-evaluated by being considered categorically rather than individually.

When an intervertebral disc syndrome is disabling both because of incapacitating episodes and persistent orthopedic or neurologic manifestations, we propose that the rating agency use whichever alternative method of evaluation results in a higher evaluation.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

This regulatory amendment has been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.109.

List of Subjects in 38 CFR Part 4

Disability benefits, Individuals with disabilities, Pensions, Veterans.

Approved: November 5, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 4, subpart B, is proposed to be amended as set forth below:

PART 4—SCHEDULE FOR RATING DISABILITIES

1. The authority citation for part 4 continues to read as follows:

Authority: 38 U.S.C. 1155.

2. Section 4.71a is amended by revising diagnostic code 5293 and adding an authority citation at the end of the section to read as follows:

§ 4.71a Schedule of ratings—musculoskeletal system.

The Spine

* * * * *

5293 Intervertebral disc syndrome: Evaluate intervertebral disc syndrome (preoperatively or postoperatively) based on either its chronic manifestations or on the annual duration of incapacitating episodes, whichever results in a higher evaluation.

With incapacitating episodes having a total duration of at least six weeks per year	60
With incapacitating episodes having a total duration of at least four weeks but less than six weeks per year	40
With incapacitating episodes having a total duration of at least two weeks but less than four weeks per year	20
With incapacitating episodes having a total duration of at least one week but less than two weeks per year	10

Note (1): An incapacitating episode of intervertebral disc syndrome means a period of acute symptoms (orthopedic, neurologic, or both), requiring bed rest and treatment by a physician.

Note (2): When evaluating on the basis of chronic manifestations, evaluate orthopedic manifestations, such as limitation of motion of lumbar or cervical spine, paravertebral muscle spasm, or scoliosis of the spine, under DC 5293, using evaluation criteria for an appropriate diagnostic code; evaluate neurologic manifestations, such as footdrop, muscle atrophy, sensory loss, or neurogenic bladder separately under DC 5293, using evaluation criteria for an appropriate diagnostic code.

* * * * *

(Authority: 38 U.S.C. 1155.)

[FR Doc. 97–4415 Filed 2–21–97; 8:45 am]
BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–13–0027b; FRL–5688–1]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District and Yolo-Solano Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from wastewater separators and pharmaceutical manufacturing operations.

The intended effect of proposing approval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the final rules section of this **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by March 26, 1997.

ADDRESSES: Written comments on this action should be addressed to: Andrew Steckel, Rulemaking Section [Air-4], Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182.

Yolo-Solano Air Quality Management District, 1947 Galileo Court, Suite 103, Davis, CA 95616.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Section [Air-4], Air Division, Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1197.

SUPPLEMENTARY INFORMATION: This document concerns South Coast Air Quality Management District Rule 464, Wastewater Separators; and Yolo-Solano Air Quality Management District, Rule 2.35, Pharmaceutical Manufacturing Operations, submitted to EPA on May 13, 1991 and November 30, 1994, respectively, by the California Air Resources Board. For further information, please see the information provided in the direct final action which is located in the rules section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 3, 1997.

Felicia Marcus,

Regional Administrator.

[FR Doc. 97–4420 Filed 2–21–97; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 544

[Docket No. 96–130; Notice 01]

RIN 2127–AG56

Insurer Reporting Requirements; List of Insurers Required to File Reports

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: NHTSA proposes to update its lists in Appendices A, B, and C of Part 544 of passenger motor vehicle insurers that are required to file reports on their motor vehicle theft loss experiences. If these revised appendices are adopted in a final rule, each insurer included in any of these appendices must file a report for the 1994 calendar year not later than October 25, 1997. Further, as long as they remain listed, they must submit reports by each subsequent October 25.

DATES: Comments on this proposed rule must be received by this agency not later than April 25, 1997. If this rule is made final, insurers listed in the appendices would be required to submit reports beginning with the one due October 25, 1997.

ADDRESSES: Comments on this proposed rule must refer to the docket number referenced in the heading of this notice, and be submitted to: Docket Section, NHTSA, Room 5109, 400 Seventh Street, SW, Washington, DC 20590. Docket hours are 9:30 a.m. to 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Ms. Proctor's telephone number is (202) 366–1740. Her fax number is (202) 493–2739.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 49 U.S.C. 33112, Insurer reports and information, NHTSA requires certain passenger motor vehicle insurers to file an annual report. Each insurer's report includes information about thefts and recoveries of motor vehicles, the rating rules used by the insurer to establish premiums for comprehensive coverage, the actions taken by the insurer to reduce such premiums, and the actions taken by the insurer to reduce or deter theft. Under the agency's implementing regulation, 49 CFR Part 544, the following insurers are subject to the reporting requirements: (1) Those issuers of motor vehicle insurance policies whose total premiums account for 1 percent or more of the total premiums of motor vehicle insurance issued within the United States; (2) Those issuers of motor vehicle insurance policies whose premiums account for 10 percent or more of total premiums written within any one State; and (3) Rental and leasing companies with a fleet of 20 or more vehicles not covered by theft insurance policies issued by insurers of motor vehicles, other than any governmental entity.

Pursuant to its statutory exemption authority, the agency has exempted smaller passenger motor vehicle insurers from the reporting requirements.

A. Small Insurers of Passenger Motor Vehicles

Section 33112(f)(2) provides that the agency shall exempt small insurers of passenger motor vehicles if NHTSA finds that such exemptions will not significantly affect the validity or usefulness of the information in the reports, either nationally or on a State-by-State basis. The term "small insurer" is defined in Section 33112(f)(1)(A) and (B) as an insurer whose premiums for motor vehicle insurance issued directly or through an affiliate, including pooling arrangements established under State law or regulation for the issuance of motor vehicle insurance, account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States. However, that section also stipulates that if an insurance company satisfies this definition of a "small insurer," but accounts for 10 percent or more of the total premiums for all motor vehicle insurance issued in a particular State, the insurer must report about its operations in that State.

As described in the final rule establishing the requirement for insurer reports (52 FR 59, January 2, 1987), in 49 CFR Part 544, NHTSA exercises its exemption authority by listing in Appendix A each insurer which must report because it had at least 1 percent of the motor vehicle insurance premiums nationally. Listing the insurers subject to reporting instead of each insurer exempted from reporting because it had less than 1 percent of the premiums nationally is administratively simpler since the former group is much smaller than the latter. In Appendix B, NHTSA lists those insurers that are required to report for particular states because each insurer had a 10 percent or greater market share of motor vehicle premiums in those States. In the January 1987 final rule, the agency stated that Appendices A and B will be updated annually. It has been NHTSA's practice to update the appendices based on data voluntarily provided by insurance companies to A.M. Best, and made available for the agency each spring. The agency uses the data to determine the insurers' market shares nationally and in each state.

B. Self-insured Rental and Leasing Companies

In addition, upon making certain determinations, NHTSA is authorized to grant exemptions to self-insurers, i.e., any person who has a fleet of 20 or more motor vehicles (other than any governmental entity) which are used primarily for rental or lease and which are not covered by theft insurance policies issued by insurers of passenger motor vehicles, 49 U.S.C. 33112(b)(1) and (f). NHTSA may exempt a self-insurer from reporting, if the agency determines:

(1) The cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer; and

(2) The insurer's report will not significantly contribute to carrying out the purposes of Chapter 331.

In a final rule published June 22, 1990 (55 FR 25606), the agency granted a class exemption to all companies that rent or lease fewer than 50,000 vehicles because it believed that reports from only the largest companies would sufficiently represent the theft experience of rental and leasing companies. NHTSA concluded that reports by the many smaller rental and leasing companies do not significantly contribute to carrying out NHTSA's statutory obligations, and that exempting such companies will relieve an unnecessary burden on most companies that potentially must report. As a result of the June 1990 final rule, the agency added a new Appendix C, which consists of an annually updated list of the self-insurers that are subject to Part 544. Following the same approach as in the case of Appendix A, NHTSA has included in Appendix C each of the relatively few self-insurers which are subject to reporting instead of relatively numerous self-insurers which are exempted. NHTSA updates Appendix C based primarily on information from the publications *Automotive Fleet Magazine* and *Business Travel News*.

C. When a Listed Insurer Must File a Report

Under Part 544, as long as an insurer is listed, it must file reports on or before each October 25. Thus, any insurer listed in the appendices as of the date of the most recent final rule must file a report by the following October 25, and by each succeeding October 25, absent a further amendment removing the insurer's name from the appendices.

Notice of Proposed Rulemaking

1. Insurers of Passenger Motor Vehicles

Based on the 1994 calendar year A.M. Best data for market shares, NHTSA proposes to amend the list in Appendix A of insurers which must report because each had at least one percent of the motor vehicle insurance premiums on a national basis. The list was last amended in a notice published on August 13, 1996 (See 61 FR 41985). One company, Allmerica Property and Casualty Company erroneously included in the August 1996 listing, is proposed to be removed from Appendix A.

Each of the 18 insurers listed in Appendix A of this notice would be required to file a report not later than October 25, 1997, setting forth the information required by Part 544 for each State in which it did business in the 1994 calendar year. As long as those 18 insurers remain listed, they would be required to submit reports by each subsequent October 25 for the calendar year ending slightly less than 3 years before.

Appendix B lists those insurers that would be required to report for particular States for calendar year 1994, because each insurer had a 10 percent or greater market share of motor vehicle premiums in those States. Based on the 1994 calendar year A.M. Best data for market shares, it is proposed that Amica Mutual Insurance Company, reporting on its activities in the State of Rhode Island be removed from Appendix B. One company, Integon Corporate Group, that was not listed in Appendix B, is proposed to be added.

The 12 insurers listed in Appendix B of this notice would be required to report on their calendar year 1994 activities in every State in which they had a 10 percent or greater market share. These reports must be filed no later than October 25, 1997, and set forth the information required by Part 544. As long as those 12 insurers remain listed, they would be required to submit reports on or before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

2. Rental and Leasing Companies

Based on information in *Automotive Fleet Magazine* and *Business Travel News* for 1994, the most recent year for which data are available, NHTSA is proposing several changes in Appendix C. As indicated above, that appendix lists rental and leasing companies required to file reports. Based on the data reported in the above mentioned publications, it is proposed that two rental and leasing companies, ARI (Automotive Rentals, Inc.) and A T & T Automotive Services, Inc., be included in Appendix C. Accordingly, each of the 15 companies (including franchisees and licensees) listed in this notice in Appendix C would be required to file reports for calendar year 1994 no later than October 25, 1997, and set forth the information required by Part 544. As long as those 15 companies remain listed, they would be required to submit reports on or before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

NHTSA notes that on July 5, 1994, the Cost Savings Act (including Title VI—Theft Prevention) was revised and codified "without substantive change." The passenger motor vehicle theft insurers' reporting provisions, formerly at 15 U.S.C. 2032 are now at 49 U.S.C. 33112. In this NPRM, NHTSA proposes to make minor technical amendments to make Part 544 reflect its changed statutory authority.

Regulatory Impacts

1. Costs and Other Impacts

This notice has not been reviewed under Executive Order 12866. NHTSA has considered the impact of this proposed rule and has determined the action not to be "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. This proposed rule implements the agency's policy of ensuring that all insurance companies that are statutorily eligible for exemption from the insurer reporting requirements are in fact exempted from those requirements. Only those companies that are not statutorily eligible for an exemption are required to file reports.

NHTSA does not believe that this proposed rule, reflecting more current data, affects the impacts described in the final regulatory evaluation prepared for the final rule establishing Part 544 (52 FR 59, January 2, 1987). Accordingly, a separate regulatory evaluation has not been prepared for this rulemaking action. Using the cost estimates in the 1987 final regulatory evaluation, the agency estimates that the cost of compliance will be about $50,000 for any insurer that is added to Appendix A, about $20,000 for any insurer added to Appendix B, and about $5,770 for any insurer added to Appendix C. If this proposed rule is made final, for Appendix A, the agency would remove one insurer; for Appendix B, the agency would remove one insurer and add one insurer; and for Appendix C, the agency would add two additional companies. The agency therefore estimates that the net effect of this proposal, if made final, would be a cost decrease to insurers, as a group of approximately $38,460.

Interested persons may wish to examine the 1987 final regulatory evaluation. Copies of that evaluation have been placed in Docket No. T86–01; Notice 2. Any interested person may obtain a copy of this evaluation by writing to NHTSA, Docket Section, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590, or by calling (202) 366–4949.

2. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted to and approved by the Office of Management and Budget (OMB) pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This collection of information was assigned OMB Control Number 2127–0547 ("Insurer Reporting Requirements") and was approved for use through October 31, 1996. The agency has begun the process of seeking reinstatement of OMB's approval of the collection of information. It expects that process to be complete well before October 25, 1997, when the next reports are due. The agency will publish a **Federal Register** notice with the control number when it receives notice from OMB that it has approved the requirement.

3. Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. The rationale for the certification is that none of the companies proposed to be included on appendices A, B, or C would be construed to be a small entity within the definition of the RFA. "Small insurer" is defined in part under 49 U.S.C. 33112 as any insurer whose premiums for all forms of motor vehicle insurance account for less than one percent of the total premiums for all forms of motor vehicle insurance issued

by insurers within the United States, or any insurer whose premiums within any State, account for less than 10 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the State. This notice would exempt all insurers meeting those criteria. Any insurer too large to meet those criteria is not a small entity. In addition, in this rulemaking, the agency proposes to exempt all "self insured rental and leasing companies" that have fleets of fewer than 50,000 vehicles. Any self insured rental and leasing company too large to meet that criterion is not a small entity.

4. Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

5. Environmental Impacts

In accordance with the National Environmental Policy Act, NHTSA has considered the environmental impacts of this proposed rule and determined that it would not have a significant impact on the quality of the human environment.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies of the comments be submitted. All comments must not exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be accompanied by cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after the date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 544

Crime insurance, Insurance, Insurance companies, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Part 544 is proposed to be amended as follows:

PART 544—[AMENDED]

1. The authority citation for part 544 would be revised to read as follows:

Authority: 49 U.S.C. 33112; delegation of authority at 49 CFR 1.50.

2. Section 544.2 would be revised to read as follows:

§ 544.2 Purpose.

The purpose of the reporting requirements in this part is to aid in implementing and evaluating the provisions of 49 U.S.C. chapter 331 *Theft Prevention* to prevent or discourage the theft of motor vehicles, to prevent or discourage the sale or distribution in interstate commerce of used parts removed from stolen motor vehicles, and to help reduce the cost to consumers of comprehensive insurance coverage for motor vehicles.

§ 544.4 [Amended]

3. Paragraph (a) of § 544.4 would be revised to read as follows:

§ 544.4 Definitions.

(a) *Statutory terms.* All terms defined in 49 U.S.C. 32101 and 33112 are used in accordance with their statutory meanings unless otherwise defined in paragraph (b) of this section.

* * * * *

§ 544.5 [Amended]

4. Paragraph (a) of § 544.5 would be revised to read as follows:

§ 544.5 General requirements for reports.

(a) Each insurer to which this part applies shall submit a report annually not later than October 25, beginning on October 25, 1986. This report shall contain the information required by § 544.6 for the calendar year three years previous to the year in which the report is filed (e.g., the report due by October 25, 1997 shall contain the required information for the 1994 calendar year).

* * * * *

5. Appendix A to Part 544 would be revised to read as follows:

Appendix A—Insurers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements in Each State in Which They Do Business

Aetna Life & Casualty Group
Allstate Insurance Group
American Family Group
American International Group
California State Auto Association
CNA Insurance Companies
Farmers Insurance Group
Geico Corporation Group
ITT Hartford Insurance Group
Liberty Mutual Group
Metropolitan Group
Nationwide Group
Progressive Group
Prudential of America Group
Safeco Insurance Companies
State Farm Group
Travelers Insurance Group
USAA Group

6. Appendix B to Part 544 would be revised to read as follows:

Appendix B—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements Only in Designated States

Alfa Insurance Group (Alabama)
Arbella Mutual Insurance (Massachusetts)
Auto Club of Michigan (Michigan)
Commerce Group, Inc. (Massachusetts)
Commercial Union Insurance Companies (Maine)
Concord Group Insurance Companies (Vermont)
Erie Insurance Group (Pennsylvania)
Integon Corporate Group "
Kentucky Farm Bureau Group (Kentucky)
Nodak Mutual Insurance Company (North Dakota)
Southern Farm Bureau Casualty Group (Arkansas, Mississippi)
Tennessee Farmers Companies (Tennessee)

7. Appendix C to Part 544 would be revised to read as follows:

Appendix C—Motor Vehicle Rental and Leasing Companies (Including Licensees and Franchisees) Subject to the Reporting Requirements of Part 544

Alamo Rent-A-Car, Inc.
ARI (Automotive Rentals, Inc.)[1]
A T & T Automotive Services, Inc.[1]
Avis, Inc.
Budget Rent-A-Car Corporation
Citicorp Bankers Leasing Corporation
Dollar Rent-A-Car Systems, Inc.
Donlen Corporation
Hertz Rent-A-Car Division (subsidiary of Hertz Corporation)
Lease Plan International
National Car Rental System, Inc.
Penske Truck Leasing Company
Ryder System, Inc. (Both rental and leasing operations)
U-Haul International, Inc. (Subsidiary of AMERCO)
USL Capital Fleet Services

[1] Indicates a newly listed company which must file a report beginning with the report due on October 25, 1997.

Issued on: February 18, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–4355 Filed 2–21–97; 8:45 am]

BILLING CODE 4910–59–P

Surface Transportation Board

49 CFR Part 1136

[STB Ex Parte No. 624]

Removal of Obsolete Regulations Concerning Rail Passenger Fare Increases

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Surface Transportation Board (Board) proposes to remove from the Code of Federal Regulations obsolete regulations concerning rail passenger carrier commutation or suburban fare increases.

DATES: Comments are due on March 26, 1997.

ADDRESSES: Submit comments to Surface Transportation Board, Office of the Secretary, Case Control Board, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Effective January 1, 1996, the ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (ICCTA), abolished the Interstate Commerce Commission (ICC) and established the Board within the Department of Transportation. Section 204(a) of the ICCTA provides that "[t]he Board shall promptly rescind all regulations established by the [ICC] that are based on provisions of law repealed and not substantively reenacted by this Act."

The regulations at 49 CFR part 1136 require that a rail passenger carrier proposing commutation or suburban fare increases concurrently file tariffs and verified statements with the ICC and the Governor and appropriate state or county regulatory agency. The carrier is also to certify that the notice provisions of 49 CFR 1312.5 have been met.[1]

The ICC issued these regulations, in *Notice of Increases* in Frt. Rates and Pass. Fares, 349 I.C.C. 741 (1975), to ensure that rail and motor carriers would give advance notice of and justification for commutation and suburban passenger fare increases. The rules were designed to facilitate the filing of potential protests seeking the suspension and/or investigation of fare increases. Subsequently, the ICC modified these regulations by removing their application to motor passenger carriers. *Practice and Procedure-Misc. Amendments-Revisions*, 6 I.C.C.2d 587 (1990). The ICC reasoned that it could not investigate, suspend, revise or revoke for being unreasonable a rate proposed by a motor passenger carrier acting independently and noted, moreover, that there had been no complaints or protests under these rules regarding ratemaking activity by passenger carriers. *See Practice and Procedure-Miscellaneous Amendments-Revision*, Ex Parte No. 55 (Sub-No.73) (ICC served Oct. 10, 1989).

We believe that the remaining regulations in Part 1136 are now also obsolete. Under the ICCTA, with certain exceptions not relevant here, "the Board does not have jurisdiction * * * over mass transportation provided by a local governmental authority." 49 U.S.C. 10501(c)(2). Even as to rail passenger transportation that might not qualify for that exemption, our regulatory authority is quite limited. The tariff filing requirements formerly applicable to rail carriers, at former 49 U.S.C. 10761 and 10762, have been repealed.[2] Moreover, although the Board has the authority to issue injunctions "when necessary to prevent irreparable harm,"[3] there is no longer a procedure for protesting, investigating, and suspending rates or fares prior to their going into effect. Under these circumstances, we do not believe that the regulations at 49 CFR 1136 are necessary. We seek comments concerning their proposed removal.

The Board preliminarily concludes that the removal of the rule, if adopted, would not have a significant effect on a substantial number of small entities. The effect, if any, of this rule's removal will be to lessen the regulatory filing requirements of rail passenger carriers. We believe that the removal of the notice provision is unlikely to significantly affect small governmental jurisdictions. The Board, however, seeks comments on whether there would be effects on small entities that should be considered.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1136

Administrative practice and procedure, Buses, Railroads.

Decided: February 10, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

PART 1136—[REMOVED]

For the reasons set forth in the preamble and under the authority of 49 U.S.C. 721(a), title 49, chapter X of the Code of Federal Regulations is proposed to be amended by removing part 1136.

[FR Doc. 97–4502 Filed 2–21–97; 8:45 am]

BILLING CODE 4915–00–P

[1] These regulations describe, *inter alia*, the placement, form, and content of the notice given when a rail passenger carrier seeks a fare increase. The Board has proposed that these regulations be eliminated. *Regulations for the Publication, Posting and Filing of Tariffs for the Transportation of Property by or with a Water Carrier in the Noncontiguous Domestic Trade*, STB Ex Parte No. 618 (STB served Dec. 20, 1996).

[2] New 49 U.S.C. 11101 (b) and (d) require disclosure of rail common carrier rates and service terms. New 49 U.S.C. 11101(c) further requires rail carriers providing common carriage to give advance notice of rate increases to those who have requested such notification. *See Disclosure, Pub. & Notice of Change of Rates—Rail Carriage*, 1 S.T.B. 153 (1996) and 49 CFR 1300.

[3] *See* 49 U.S.C. 721(b)(4).

Notices

Federal Register
Vol. 62, No. 36
Monday, February 24, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Special Provisions for Canadian Fresh Fruit and Vegetable Imports Under the North American Free Trade Agreement

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of Determination of Existence of Conditions Necessary for Imposition of Temporary Duty on Cabbage From Canada.

SUMMARY: As required by section 301(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, as amended by the North American Free Trade Agreement Implementation Act ("FTA Implementation Act"), this is a notification that the Secretary of Agriculture has determined that the necessary conditions exist with respect to United States acreage and import price criteria for cabbage classifiable to subheadings 0704902000 of the Harmonized Tariff Schedule of the United States (HTS) imported from Canada to permit the Secretary to consider recommending to the President that imposition of a temporary duty ("snapback duty") by the United States pursuant to section 301(a) of the FTA Implementation Act, implementing Article 702 of the United States-Canada Free-Trade Agreement, Special Provisions for Fresh Fruits and Vegetables, as incorporated by reference and made a part of the North American Free Trade Agreement (NAFTA) pursuant to Annex 702.1, paragraph 1 of NAFTA.

FOR FURTHER INFORMATION CONTACT: Howard Wetzel, Horticultural & Tropical Products Division, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, DC 20250–1000 or telephone at (202) 720–3423.

SUPPLEMENTARY INFORMATION: The FTA Implementation Act, in accordance with the NAFTA, authorizes the imposition of a temporary duty (snapback) for a limited group of fresh fruits and vegetables from Canada when certain conditions exist. Cabbage, classified under subheadings 0704902000 of the HTS is a good subject to the snapback duty provision.

Under section 301(a) of the FTA Implementation Act, two conditions must exist before imposition by the United States of a snapback duty can be considered. First, the import price of a covered Canadian fruit or vegetable, for each of five consecutive working days, must be less than ninety percent of the corresponding five-year average monthly import price. This price for a particular day is the average import price of a Canadian fresh fruit or vegetable imported into the United States from Canada, for the calendar month in which that day occurs, in each of the five preceding years, excluding the years with the highest and lowest monthly averages.

Second, the planted acreage in the United States for the like fruit or vegetable must be no higher than the average planted acreage over the preceding five years, excluding the years with the highest and lowest acreage.

From November 18 to November 22, 1996, the price conditions with respect to cabbage were met.

The most recent revision of planted acreage for cabbage shows that this year's planted acreage is below the planted acreage over the preceding five years, excluding the years with the highest and lowest planted acreages.

Issued at Washington, D.C. the 12th day of February 1997.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 97–4413 Filed 2–21–97; 8:45 am]
BILLING CODE 3410–10–M

Animal and Plant Health Inspection Service

[Docket No. 96–101–1]

Revision of the International Plant Protection Convention

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice and solicitation of comments.

SUMMARY: We are giving notice that the International Plant Protection Convention (IPPC), an international treaty developed to control the global spread of plant pests, is currently being revised to meet the changing needs of plant protection and international trade. The United States is a signatory to the IPPC, and the United States Department of Agriculture's Animal and Plant Health Inspection Service is the lead U.S. agency participating in the technical discussions with other member countries and the Food and Agriculture Organization of the United Nations to revise the IPPC. This notice contains the entire text of the current IPPC with guidance on which areas are being considered for updates or revisions. We are soliciting public comment on any aspect of the scope, coverage, or institutions of the current IPPC.

DATES: Consideration will be given only to comments received on or before April 10, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 96–101–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 96–101–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Griffin, Senior Plant Pathologist, Risk Analysis Systems, PPD, APHIS, 4700 River Road Unit 117, Riverdale, MD 20737–1228, (301) 734–3576, rgriffin@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

As the result of the World Trade Organization (WTO) Agreement on Sanitary and Phytosanitary measures (commonly referred to as the "SPS Agreement"), contracting parties, including the United States, are committed to harmonizing their human, animal, and plant health import requirements by basing their sanitary and phytosanitary (SPS) import measures on international standards (SPS Agreement Article 3.1). The SPS Agreement recognizes three international standard-setting bodies as the official entities for developing health-related standards, guidelines, and recommendations (SPS Agreement Article 3.4): Codex Alimentarius for food safety standards, International Plant Protection Convention (IPPC) for plant health standards, and Office of International Epizootics for animal health standards.

IPPC Membership and Secretariat

The IPPC, in effect since 1952, is a multilateral treaty that promotes "* * * common and effective action to prevent the spread and introduction of pests of plants and plant products and to promote measures for their control (IPPC Preamble)." The treaty is administered by the Food and Agricultural Organization (FAO) of the United Nations. Currently, 105 signatory countries adhere to IPPC principles. Because of the technical and regulatory nature of plant health issues covered by the IPPC, the Animal and Plant Health Inspection Service (APHIS) is the lead U.S. agency participating in IPPC activity.

In 1989, FAO member countries considered the creation of an IPPC Secretariat to coordinate activities for the IPPC and to support the development and administration of international phytosanitary standards under the IPPC. The IPPC Secretariat, located at FAO headquarters in Rome, Italy, became operational in 1993.

Revision of the IPPC

The IPPC was amended in 1979 in response to changing plant pest conditions and quarantine concerns. The amendment came into force in 1991, upon ratification by two-thirds of the signatory countries. In October 1995, IPPC contracting parties agreed to revise the IPPC again in response to changes in global agriculture and the signing of the WTO SPS Agreement promoting the use of international standards, including plant health standards developed under the IPPC.

In June 1995, the IPPC Secretariat took the lead in gathering recommendations from countries regarding potential revisions to the current scope, coverage, and institutions of the IPPC. The proposed revisions were reviewed in September 1995 and formed the basis for identifying changes in the text. In March 1996, plant quarantine experts from various signatory countries met to further discuss and develop the draft text. The resulting second draft is currently under review by all signatory countries. The signatory countries met to discuss the current amended version of the IPPC at a Technical Consultations meeting at FAO headquarters from January 13–17, 1997.

The IPPC Secretariat set a timetable for reviewing, approving, and adopting an amended version of the IPPC by October 1997. However, completion of the process is dependent on the progress of the signatory countries to propose language acceptable to the majority of contracting parties. FAO adoption of the amended IPPC can occur either through consensus or by a two-thirds vote of FAO members in favor.

We are soliciting public comment on any aspect of the scope, coverage, or institutions of the current IPPC. The entire text of the current IPPC, with guidance on which areas are being considered for updates or revisions, follows:

Done in Washington, DC, this 18th day of February 1997.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

International Plant Protection Convention	Issues identified for revision or proposals for review
PREAMBLE	
The contracting parties, recognizing the usefulness of international cooperation in controlling pests of plants and plant products and in preventing their spread, and especially their introduction across national boundaries, and desiring to ensure close coordination of measures directed to these ends, have agreed as follows:	Does not discuss the harmonization of phytosanitary measures through standards and ensuring that measures are not unjustified barriers to trade.
ARTICLE I—Purpose and responsibility	
1. With the purpose of securing common and effective action to prevent the spread and introduction of pests of plants and plant products and to promote measures for their control, the contracting parties undertake to adopt the legislative, technical, and administrative measures specific in this Convention and in supplementary agreements pursuant to Article III.	Clarify the scope of the Convention with respect to plant protection, plant quarantine, and the environment. Demonstrate recognition of SPS principles and obligations.
2. Each contracting party shall assume responsibility for the fulfillment within its territories of all requirements under this Convention.	Clarify the obligations and role of "regional economic integration organizations" such as the European Union here and in various other articles.
ARTICLE II—Scope	Clarify scope in Article I and use Article II to define key terms.
1. For the purpose of this Convention the term "plants" shall comprise living plants and parts thereof, including seeds insofar as the supervision of their importation under Article VI of the Convention or the issue of phytosanitary certificates in respect of them under Articles IV(1)(a)(iv) and V of this Convention may be deemed necessary by contracting parties; and the term "plant products" shall comprise unmanufactured material of plant origin (including seeds insofar as they are not included in the term "plants") and those manufactured products which, by their nature or that of their processing, may create a risk for the spread of pests.	Define key terms by updating existing definitions and adding new terms. Proposed terms include: Commission on Phytosanitary Measures, Harmonization, Introduction, Pest, Phytosanitary measures, Plants, Plant products, Quarantine pest, Regulated article, Secretariat, and Standards.
2. For the purpose of this Convention, the term "pest" means any form of plant or animal life, or any pathogenic agent, injurious or potentially injurious to plants or plant products; and the term "quarantine pest" means a pest of potential national economic importance to the country endangered thereby and not yet present there, or present but not widely distributed and being actively controlled.	Definitions for quarantine pests and phytosanitary measures will be linked to decisions concerning the scope of the Convention with respect to nonquarantine pests.

International Plant Protection Convention	Issues identified for revision or proposals for review
3. Where appropriate, the provisions of this Convention may be deemed by contracting parties to extend to storage places, conveyances, containers, and any other object or material capable of harbouring or spreading plant pests, particularly where international transportation is involved.	
4. This Convention applies mainly to quarantine pests involved with international trade.	
5. The definitions set forth in this Article, being limited to the application of this Convention, shall not be deemed to affect definitions established under domestic laws or regulations of contracting parties.	
ARTICLE III—Supplementary agreements	
1. Supplementary agreements applicable to specific regions, to specific pests, to specific plants and plant products, to specific methods of international transportation of plants and plant products, or otherwise supplementing the provisions of this Convention, may be proposed by the Food and Agriculture Organization of the United Nations (hereinafter referred to as FAO) on the recommendation of a contracting party or on its own initiative, to meet special problems of plant protection which need particular attention or action.	Clarify intent and application; possibly delete or replace with a discussion of regulated-non quarantine pests.
2. Any such supplementary agreements shall come into force for each contracting party after acceptance in accordance with the provisions of the FAO Constitution and General Rules of the Organization.	
ARTICLE IV—National organization for plant protection	Cover general provisions for a national plant protection organization in terms of functions and responsibilities.
1. Each contracting party shall make provision, as soon as possible and to the best of its ability, for	Expand scope from cultivated systems to include wild flora.
(a) An official plant protection organization with the following main functions:	Include responsibilities for risk analysis or technical justifications forming the basis for requirements.
(i) the inspection of growing plants, of areas under cultivation (including fields, plantations, nurseries, gardens, and greenhouses), and of plants and plant products in storage or in transportation, particularly with the object of reporting the existence, outbreak, and spread of plant pests and of controlling those pests;	Include the designation of pest free areas as a responsibility.
(ii) the inspection of consignments of plants and plant products moving in international traffic, and, where appropriate, the inspection of consignments of other articles or commodities moving in international traffic under conditions where they may act incidentally as carriers of pests of plants and plant products, and the inspection and supervision of storage and transportation facilities of all kinds involved in international traffic whether of plants and plant products or of other commodities, particularly with the object of preventing the dissemination across national boundaries of pests of plants and plant products;	Update the concept of inspection using surveillance.
(iii) the disinfestation or disinfection of consignments of plants and plant products moving in international traffic, and their containers (including packing material or matter of any kind accompanying plants or plant products), storage places, or transportation facilities of all kinds employed; and	Note responsibility for issuing regulations.
(iv) the issuance of certificates relating to phytosanitary condition and origin of consignments of plants and plant products (hereinafter referred to as "phytosanitary certificates");	
(b) The distribution of information within the country regarding the pests of plants and plant products and the means of their prevention and control;	
(c) Research and investigation in the field of plant protection.	
2. Each contracting party shall submit a description of the scope of its national organization for plant protection and of changes in such organization to the Director-General of FAO, who shall circulate such information to all contracting parties.	
ARTICLE V—Phytosanitary certificates	

International Plant Protection Convention	Issues identified for revision or proposals for review
1. Each contracting party shall make arrangements for the issuance of phytosanitary certificates to accord with the plant protection regulations of other contracting parties, and in conformity with the following provisions:	Refer to a standard and/or the model annex.
(a) Inspection shall be carried out and certificates issued only by or under the authority of technically qualified and duly authorized officers and in such circumstances and with such knowledge and information available to those officers that the authorities of importing countries may accept such certificates with confidence as dependable documents.	Consider new certifying statements.
(b) Each certificate for the export or re-export of plants or plant products shall be as worded in the Annex to this Convention.	Limit issuance to national officials but allow for the accreditation of personnel for supporting activities.
(c) Uncertified alterations or erasures shall invalidate the certificates.	Limit declarations to those technically justified.
2. Each contracting party undertakes not to require consignments of plants or plant products imported into its territories to be accompanied by phytosanitary certificates inconsistent with the models set out in the Annex to this Convention. Any requirement for additional declarations shall be kept to a minimum.	Recognize electronically equivalent certification.
ARTICLE VI—Requirements in relation to imports	Reorganize in terms of rights and obligations.
1. With the aim of preventing the introduction of pests of plants and plant products into their territories, contracting parties shall have full authority to regulate the entry of plants and plant products and to this end, may:	Clarify sovereign authority with respect to other agreements.
(a) Prescribe restrictions or requirements concerning the importation of plants or plant products;	Clarify right to restrict pests and biocontrol organisms.
(b) Prohibit the importation of particular plants or plant products, or of particular consignments of plants or plant products;	Extend reporting for noncompliance beyond commercially certified consignments.
(c) Inspect or detain particular consignments of plants or plant products;	Note obligation to use international standards.
(d) Treat, destroy, or refuse entry to particular consignments of plants or plant products that do not comply with the requirements prescribed under subparagraph (a) or (b) of this paragraph, or require such consignments to be treated or destroyed or removed from the country;	Clarify obligations concerning the movement of people.
(e) List pests the introduction of which is prohibited or restricted because they are of potential economic importance to the country concerned.	Note the importance of pest risk analysis or the technical justification for restrictive measures.
2. In order to minimize interference with international trade, each contracting party undertakes to carry out the provisions referred to in paragraph 1 of this Article in conformity with the following:	Broaden and strengthen provisions for emergency action.
(a) Contracting parties shall not, under their plant protection legislation, take any of the measures specified in paragraph 1 of this Article unless such measures are made necessary by phytosanitary considerations.	Add a separate article covering regulated nonquarantine pests.
(b) If a contracting party prescribes any restrictions or requirements concerning the importation of plants and plant products into its territories, it shall publish the restrictions or requirements and communicate them immediately to FAO, any regional plant protection organization of which the contracting party is a member, and all other contracting parties directly concerned.	
(c) If a contracting party prohibits, under the provisions of its plant protection legislation, the importation of any plants or plant products, it shall publish its decision with reasons and shall immediately inform FAO, any regional plant protection organization of which the contracting party is a member, and all other contracting parties directly concerned.	
(d) If a contracting party requires consignments of particular plants or plant products to be imported only through specified points of entry, such points shall be so selected as not unnecessarily to impede international commerce. The contracting party shall publish a list of such points of entry and communicate it to FAO, any regional plant protection organization of which the contracting party is a member, and all other contracting parties directly concerned. Such restrictions on points of entry shall not be made unless the plants or plant products concerned are required to be accompanied by phytosanitary certificates or to be submitted to inspection or treatment.	

International Plant Protection Convention	Issues identified for revision or proposals for review
(e) Any inspection by the plant protection organization of a contracting party of consignments of plants or plant products offered for importation shall take place as promptly as possible with due regard to the perishability of the plants or plant products concerned. If any commercial or certified consignment of plants or plant products is found not to conform to the requirements of the plant protection legislation of the importing country, the plant protection organization of the importing country must ensure that the plant protection organization of the exporting country is properly and adequately informed. If the consignment is destroyed, in whole or in part, an official report shall be forwarded immediately to the plant protection organization of the exporting country.	
(f) Contracting parties shall make provisions which, without endangering their own plant production, will keep certification requirements to a minimum, particularly for plants or plant products not intended for planting, such as cereals, fruits, vegetables, and cut flowers.	
(g) Contracting parties may make provisions, with adequate safeguards, for the importation for purposes of scientific research or education, of plants and plant products and of specimens of plant pests. Adequate safeguards likewise need to be taken when introducing biological control agents and organisms claimed to be beneficial.	
3. The measures specified in this Article shall not be applied to goods in transit throughout the territories of contracting parties unless such measures are necessary for the protection of their own plants.	
4. FAO shall disseminate information received on importation restrictions, requirements, prohibitions, and regulations (as specified in paragraph 2(b), 2(c), and 2(d) of this Article) at frequent intervals to all contracting parties and regional plant protection organizations.	
ARTICLE VII—International cooperation	
The contracting parties shall cooperate with one another to the fullest practicable extent in achieving the aims of this Convention, in particular as follows:	
(a) Each contracting party agrees to cooperate with FAO in the establishment of a world reporting service on plant pests, making full use of the facilities and services of existing organizations for this purpose and, when this is established, to furnish FAO periodically, for distribution by FAO to the contracting parties, with the following information:.	Cooperate in the exchange of information for pest risk analysis. Identify contact points for the exchange of information.
(i) reports on the existence, outbreak, and spread of economically important pests of plants and plant products which may be of immediate or potential danger;	
(ii) information on means found to be effective in controlling the pests of plants and plant products.	
(b) Each contracting party shall, as far as is practicable, participate in any special campaigns for combating particular destructive pests that may seriously threaten crop production and need international action to meet the emergencies.	
ARTICLE VIII—Regional plant protection organizations	
1. The contracting parties undertake to cooperate with one another in establishing regional plant protection organizations in appropriate areas.	Strengthen or weaken the role of regional plant protection organizations.
2. The regional plant protection organizations shall function as the coordinating bodies in the areas covered, shall participate in various activities to achieve the objectives of this Convention and, where appropriate, shall gather and disseminate information.	
ARTICLE IX—Settlement of disputes	Add a new Article describing the establishment of standards and the role of a Commission in standard setting.
1. If there is any dispute regarding the interpretation or application of this Convention, or if a contracting party considers that any action by another contracting party is in conflict with the obligations of the latter under Articles V and VI of this Convention, especially regarding the basis of prohibiting or restricting the imports of plants or plant products coming from its territories, the government or governments concerned may request the Director-General of FAO to appoint a committee to consider the question in dispute.	Encourage country consultation as the first level of resolution. Involve the Commission.

International Plant Protection Convention	Issues identified for revision or proposals for review
2. The Director-General of FAO shall thereupon, after consultation with the governments concerned, appoint a committee of experts which shall include representatives of those governments. This committee shall consider the question in dispute, taking into account all documents and other forms of evidence submitted by the governments concerned. This committee shall submit a report to the Director-General of FAO, who shall transmit it to the governments concerned and to the governments of other contracting parties.	
3. The contracting parties agree that the recommendations of such a committee, while not binding in character, will become the basis for renewed consideration by the governments concerned of the matter out of which the disagreement arose.	
4. The governments concerned shall share equally the expenses of the experts.	
ARTICLE X—Substitution of prior agreements	Add an Article describing the role and function of a Commission on Phytosanitary Measures.
This Convention shall terminate and replace, between contracting parties, the International Convention respecting measures to be taken against the Phylloxera vastatrix of 3 November 1881, the additional Convention signed at Berne on 15 April 1889, and the International Convention for the Protection of Plants signed at Rome on 16 April 1929.	No changes proposed.
ARTICLE XI—Territorial application	Add an Article describing the role and function of the IPPC Secretariat
1. Any state may at the time of ratification or adherence or at any time thereafter communicate to the Director-General of FAO a declaration that this Convention shall extend to all or any of the territories for the international relations of which it is responsible and this Convention shall be applicable to all territories specified in the declaration as from the thirtieth day after the receipt of the declaration by the Director-General.	Clarify the role of regional economic integration organizations.
2. Any state which has communicated to the Director-General of FAO a declaration in accordance with paragraph 1 of this Article may at any time communicate a further declaration modifying the scope of any former declaration or terminating the application of the provisions of the present Convention in respect of any territory. Such modification or termination shall take effect as from the thirtieth day after the receipt of the declaration by the Director-General.	
3. The Director-General of FAO shall inform all signatory and adhering states of any declaration received under this Article.	
ARTICLE XII—Ratification and adherence	
1. This Convention shall be open for signature by all states until 1 May 1952 and shall be ratified at the earliest possible date. The instruments of ratification shall be deposited with the Director-General of FAO, who shall give notice of the date of deposit to each of the signatory states.	Clarify the role of regional economic integration organizations.
2. As soon as this Convention has come into force in accordance with Article XIV, it shall be open for adherence by non-signatory states. Adherence shall be effected by the deposit of an instrument of adherence with the Director-General of FAO, who shall notify all signatory and adhering states.	
ARTICLE XIII—Amendment	
1. Any proposal by a contracting party for the amendment of this Convention shall be communicated to the Director-General of FAO.	Add provisions for a Commission.
2. Any proposed amendment of this Convention received by the Director-General of FAO from a contracting party shall be presented to a regular or special session of the Conference of FAO for approval and, if the amendment involves important technical changes or imposes additional obligations on the contracting parties, it shall be considered by an advisory committee of specialists convened by FAO prior to the Conference.	
3. Notice of any proposed amendment of this Convention shall be transmitted to the contracting parties by the Director-General of FAO not later than the time when the agenda of the session of the Conference at which the matter is to be considered is dispatched.	
4. Any such proposed amendment of this Convention shall require the approval of the Conference of FAO and shall come into force as from the thirtieth day after acceptance by two-thirds of the contracting parties. Amendments involving new obligations for contracting parties, however, shall come into force in respect of each contracting party only on acceptance by it and as from the thirtieth day after such acceptance.	

International Plant Protection Convention	Issues identified for revision or proposals for review
5. The instruments of acceptance of amendments involving new obligations shall be deposited with the Director-General of FAO, who shall inform all contracting parties of the receipt of acceptance and the entry into force of amendments.	
ARTICLE XIV—Entry into force	
As soon as this Convention has been ratified by three signatory states it shall come into force between them. It shall come into force for each state ratifying or adhering thereafter from the date of deposit of its instrument of ratification or adherence.	Clarify the role of regional economic integration organizations.
ARTICLE XV—Denunciation	
1. Any contracting party may at any time give notice of denunciation of this Convention by notification addressed to the Director-General of FAO. The Director-General shall at once inform all signatory and adhering States. 2. Denunciation shall take effect one year from the date of receipt of the notification by the Director-General of FAO.	Clarify the role of regional economic integration organizations.
ANNEX	Replace with standard for certification.
1. Model Phytosanitary Certificate	Continue to maintain annexes, replace or supplement with standards.
2. Model Phytosanitary Certificate for Re-Export	Amend certifying statements.

[FR Doc. 97–4477 Filed 2–21–97; 8:45 am]
BILLING CODE 3410–34–P

Commodity Credit Corporation

Notice and Request for Comment for an Approval of a New Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: The Commodity Credit Corporation (CCC) is seeking approval from the Office of Management and Budget (OMB) to revise procedures for accepting vendor bids to supply commodities for use under export donation programs. An Electronic Bid Entry System (EBES) will provide for electronic submission of bids via the Internet. This will replace the current system, which requires hard-copy bids and manual entry into CCC's system. The new procedure will be more reliable and more efficient than the current procedure.

DATES: Comments on this notice must be received on or before April 25, 1997 to be assured consideration.

ADDITIONAL INFORMATION OR COMMENTS: Comments regarding this information collection requirement may be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USDA, Washington, DC 20503 and to Donna Ryles, Chief Planning and Analysis Division, Kansas City Commodity Office, 9200 Ward Parkway, Kansas City, Missouri 64114, telephone (816) 926–1505, fax (816) 926–6767.

SUPPLEMENTARY INFORMATION:

Title: Electronic Bid Entry System (EBES)—7 CFR 1496.

OMB Number: New submission.

Expiration Date: Not yet determined.

Type of Request: Approval of a new information collection.

Abstract: The United States donates agricultural commodities overseas under Title II of the Agricultural Trade Development and Assistance Act of 1954 (P.L. 480) to meet famine or other relief requirements to combat malnutrition and to promote economic development.

CCC issues invitations to purchase or process commodities for food donation programs monthly. Vendors respond by making offers using the CCC Commodity Bid Form (form PBI170). CCC verifies that the PBI170 is responsive and manually enters the information on the form into the bid evaluation program to determine the lowest landed cost and award data for the creation of contracts.

The current keypunching process requires entering hand-written data and then verifying the results. The sensitivity of the data and the high value of the contracts at stake requires a reliable and efficient system for capturing the bid data.

Regulations governing paperwork burdens on the public require that before an agency collects information from the public, the agency must receive approval from OMB. In accordance with those regulations, CCC is seeking approval for EBES to provide for the submission of bids through the Internet.

Under OMB regulations, comments concerning EBES must be submitted to OMB within 30 days of this notice's publication in the **Federal Register**. Within 60 days "after receipt of the proposed collection of information or publication of the notice" in the **Federal Register**, whichever is later, OMB shall notify CCC of its decision to approve, require modifications to, or disapprove EBES.

Bid Process Modifications

In August 1996, the Export Operations Division, Kansas City Commodity Office (KCCO), issued a survey to all active vendors requesting specifics about their computer capabilities. Based on the response to that survey, it was determined that a majority of vendors have IBM-compatible Personal Computers (PC's), and are currently involved in some form of electronic commerce. Therefore, this project will require IBM-compatible PC's. We anticipate having the final PC configuration requirements for this project by March 1997. In addition to meeting the PC specifications, each vendor will be required to obtain an Internet Service Provider to participate in the EBES.

KCCO will provide vendor training and offer hotline assistance for EBES. It is anticipated EBES will be put into operation in the summer of 1997. Vendor participation in the EBES shall be required to submit bids to CCC for the purchase of agricultural commodities intended for food donation programs for export distribution. The EBES will capture commodity vendor bid data for the regular monthly purchases of agricultural commodities for food donation programs for export distribution in a more reliable and efficient way than the current system. EBES provides the data in an electronic and linear format.

Estimate of Burden: Public reporting burden for collecting information under this notice is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Business and other for profit.

Respondents: 60.

Estimated Number of Annual Responses per Respondent: 24.

Estimated Total Annual Burden on Respondents: 720 hours.

Proposed topics for comment include: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information collected; or (d) ways to minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments regarding this information collection requirement may be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USDA, Washington, DC 20503, and to Donna Ryles, Chief Planning and Analysis Division, Kansas City Commodity Office, 9200 Ward Parkway, Kansas City, Missouri 64114, telephone (816) 926–1505, fax (816) 926–6767.

Signed at Washington, D.C., on February 13, 1997.

Alan King,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 97–4414 Filed 2–21–97; 8:45 am]
BILLING CODE 3410–05–P

Forest Service, Eastern Region

Waterville Valley Ski Area Ltd. Snowmaking Ponds; Notice of Availability for Review of Draft Environmental Impact Statement

SUMMARY: The Department of Agriculture, Forest Service has prepared a Draft Environmental Impact Statement (DEIS) issued on February 28, 1997 for the Waterville Valley Ski Area Snowmaking Pond Impoundments Project (Waterville Valley Impoundments Project), on the Pemigewasset Ranger District, White Mountain National Forest, Grafton County, New Hampshire. The New Hampshire Department of Environmental Services participated as a cooperating agency. The U.S. Corps of Engineers the Fish and Wildlife Service, Department of Interior and the Town of Waterville Valley provided assistance in the preparation of the document.

The DEIS is for the proposed action of the construction of five water impoundments (ponds) for the storage of approximately 130 million gallons of water for snowmaking purposes. In addition, the project would result in the change of the February Median Flow (FMF) from the presently approved 0.50 csm to 0.75 csm (recommended by the Fish and Wildlife FMF) for the Mad River. The project would be phased in over a five to ten year period. The DEIS describes alternatives to and environmental effects of the proposal on National Forest System lands where the ponds would be constructed.

The project area is located in the town of Waterville Valley, NH. Waterville Valley Ski Area operates under a Special Use Permit issued by the USDA Forest Service. Currently, Waterville Valley Ski Area withdraws water from the Mad River for the purposes of snowmaking on the mountain. They are allowed to withdraw water from the Mad River down to 0.50 csm, as identified in the White Mountain Land and Resource Management Plan. Given the small size of the watershed and periodic droughts that result in the availability of no water, the Mad River is an unreliable water source for snowmaking at Waterville Valley Ski Area. In addition, to utilizing the Mad River the ski area also uses Cochranes Pond, located in the town of Waterville Valley as a supplemental source of water. Cochranes pond only holds approximately 5 million gallons of water. This combination results in Waterville Valley only being able to provide adequate snowmaking coverage 68% of the time over the ski season. Water Valley would like to be able to provide adequate snowmaking so to be able to provide 100% coverage in 95% of the years.

In April 1996 the USDA Forest Service issued a Notice of Intent (NOI) to prepare a Environmental Impact Statement. At the same time a scoping letter was mailed to the public that requested if there were concerns to the proposed action that they submit their concerns to the Forest Supervisor of the White Mountain National Forest. During the 45-day comment period (April 26 to June 10, 1996) fifteen letters were received that brought forth issues/concerns to the proposal. The four main issues identified through scoping were; (1) Changes in Water Withdrawal from the Mad River, (2) Increase in Water Withdrawal Rates and Total Water Withdrawal Needed, and (3) Impacts to Wetlands. Additional issues were identified that were important in the overall analysis and development of the alternatives, but were not the "driving issues" for the purposes of alternative development.

DISCUSSION ON PREFERRED ALTERNATIVE: The agency gives notice that a complete DEIS is available for public review and requests input from the public to the Preferred Alternative. The analysis was completed by a third party contractor, Sno.Engineering (Sno.e) of Littleton, NH, and overseen by the USDA Forest Service. The Forest Supervisor has identified Alternative 2 (Proposed Action) as the "Preferred Alternative." Alternative 2 (Proposed Action) includes the construction of four ponds (Pond Sites 2, 3a, 3b and 5). This Alternative would allow for the storage of 130 million gallons (mg) of water, which would achieve coverage of 100% of the mountain, 91% of the time.

Alternative 2 is preferred because it would allow for the necessary storage and upgrade of facilities needed to provide for improved alpine skiing opportunities at Waterville Valley Ski Area. This alternative should allow Waterville Valley Ski Area to become more competitive with other New England ski areas that offer the same facilities to skiers. Aquatic resources should be improved by having a stepped increase of the February median flow over the 5 to 10 year implementation period. Loss of wetlands in the project area would be mitigated through the improvement, creation and preservation of wetlands outlined in Option 2 (described in Chapter IV Effects to Wetlands section).

Finally, the U.S. Army Corps of Engineers (Corps) has jurisdiction over portions of the project under Section 404 of the Clean Water Act. A Corps permit is required under Section 404 for the placement of dredged or fill material, excavation, or mechanized land clearing in waters of the United States. Areas under Corps jurisdiction include wetlands associated with: the construction of the snowmaking ponds with wetlands (Pond Sites 2, 3a, 3b and 4), upgrade of the intake structure in the Mad River, upgrade of the piping form its present 10" diameter to 18", and the improvement, creation and preservation wetland projects as discussed in the environmental analysis.

DATES: The public comment period for the DEIS will end on April 14, 1997. If you would like to comment, please review the entire DEIS. You may receive a copy of the DEIS by writing to the Forest Service, 719 Main Street,

Loconia, NH 03246, or calling (603) 528–8721/TTY (603) 528–8722.

In addition, there will be two Open Houses held that will allow for the opportunity for the public to collect additional information on the project and comment on the DEIS. These forums will be held March 12, 1997 and March 19, 1997 at the Waterville Valley Conference Center, Waterville Valley, NH and at the Pease Public Library, Plymouth, NH, respectively. The Open Houses will be from 6 p.m. to 9 p.m. For those individuals who require sign language interpretation for these open houses please contact the Forest Service office in Laconia, NH through their TTY phone number—(603) 528–8721. Please call within three days of the meeting to allow us time to contact an interpreter for the meeting.

ADDRESSES: Submit written comments to Jerry Perez, Project Coordinator for WV DEIS, Green Mountain National Forest, Rochester, VT 05767.

FOR FURTHER INFORMATION CONTACT: Please direct questions about the proposed action and DEIS to Jerry Perez, Eastern Region Winter Sports Team Environmental Coordinator, Green Mountain National Forest, Rochester, VT 05767, (phone/TTY 802–767–4261).

SUPPLEMENTARY INFORMATION: The DEIS describes four alternatives to the proposed action. The alternatives were developed to respond to issues, concerns and opportunities identified during the analysis. Alternative 2 has been identified as the Preferred Alternative in the DEIS.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

After the comment period ends on the DEIS, the comments will be analyzed and considered by the agency in preparing the Final Environmental Impact Statement (FEIS).

The FEIS is scheduled to be completed and available to the public approximately 6 months following the close of the review period for the DEIS. The responsible Forest Service official will document the decision and the reasons supporting it in a Record of Decision. That decision will be subject to appeal pursuant to 36 CFR 215.

The Forest Service official responsible for approving the proposed action is Forest Supervisor Donna Hepp, 719 Main St., Laconia, NH 03245.

Dated: February 18, 1997.

Donna L. Hepp,

Forest Supervisor.

[FR Doc. 97–4455 Filed 2–21–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Under Secretary for Technology; National Medal of Technology Nomination Evaluation Committee; Notice of Open Meeting

The National Medal of Technology Nomination Evaluation Committee has scheduled a meeting for March 7, 1997.

The Committee was established to assist the Department in executing its responsibilities under 15 U.S.C. 3711. Under this provision, the Secretary is responsible for recommending to the President prospective recipients of the National Medal of Technology. The Committee's recommendations are made after reviewing all nominations received in response to a public solicitation and based on criteria made available to the public through nomination application forms. From time to time the Committee convenes to evaluate the criteria and nomination process to ensure continued relevance to the current environment for technological innovation. The Committee is chartered to have twelve members.

TIME AND PLACE: The meeting will begin at 10:30 a.m. and end at 2:00 p.m. on March 7, 1997. The meeting will be held in Room 1411 at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Agenda

1. Review existing criteria, categories, and procedures for nominating candidates for the National Medal of Technology.

2. Make recommendations for revisions to the nomination criteria, categories and procedures for the National Medal of Technology to be forwarded to the Under Secretary of Technology.

Public Participation

The meeting will be open to public participation and the last thirty minutes will be set aside for oral comments or questions. Seats will be available on a first-come, first-served basis. Members of the public may submit written comments concerning the committee's affairs at any time before and after the meeting. A copy of the minutes will be available for public inspection and copying in the National Medal of Technology Program Office by April 4, 1997. Inquires should be addressed to the Director of the National Medal of Technology as indicated below.

FOR FURTHER INFORMATION CONTACT: Katie Wolf, Director, National Medal of Technology, U.S. Department of Technology, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Herbert C. Hoover, Building, Room 4823, Washington, DC 20230, phone: 202/482–5572, email:kwolf@doc.gov.

Dated: February 14, 1997.

Graham R. Mitchell,

Assistant Secretary for Technology Policy.

[FR Doc. 97–4395 Filed 2–21–97; 8:45 am]

BILLING CODE 3510–18–M

Bureau of the Census

Quarterly Financial Report

ACTION: Proposed collection: comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 25, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ronald Lee, Bureau of the Census, Room 301–11 Iverson Mall, Washington, DC 20233, Telephone (301) 763–5435.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Bureau of the Census plans to revise three of four data collection forms it uses in its Quarterly Financial Report (QFR) Program. QFR Forms QFR–101(MG)-long form, QFR–102(TR)-long form, and QFR–101A(MG)-short form are being revised. Form QFR–103(NB)-Nature of Business Report will not be revised. The purpose of these revisions is to bring the data collection forms up-to-date from an accounting and financial statement presentation viewpoint and to provide more meaningful data to users. These forms have not been substantially revised since their introduction in 1973.

The QFR Program has published up-to-date aggregate statistics on the financial results and position of U.S. corporations since 1947. It is a principal economic indicator that also provides financial data essential to the calculation of key Government measures of national economic performance. The importance of this data collection is reflected by the granting of specific authority to conduct the program in Title 13 of the United States Code, Section 91, which requires that financial statistics of business operations be collected and published quarterly. Public Law 103–105 extended the authority of the Secretary of Commerce to conduct the QFR Program under Section 91 through September 30, 1998.

The purpose of the QFR Program is to provide timely, accurate data on business financial conditions for use by Government and private-sector organizations and individuals. An extensive subscription mailing list attests to the diverse groups using these data including foreign countries, universities, financial analysts, unions, trade associations, public libraries, banking institutions, and U.S. and foreign corporations. The primary users are governmental organizations charged with economic policy-making responsibilities. These organizations play a major role in providing guidance, advice, and support to the QFR Program.

While the Office of Management and Budget's (OMB) current approval for the QFR Program's data collection forms runs through September 30, 1998, the current quarterly report forms are outdated and have not undergone substantial revision for more than 20 years. There have been sweeping changes in financial statement presentation and the underlying accounting principles since the form's introduction in 1973. We have been able to forestall form revision because QFR "catchall" data line items provided corporations with a dumping ground for new data items spawned by these accounting changes. The published values in the "catchall" items however, have increased measurably, and will continue to do so, as the number of accounting changes since 1973 mounts.

Our primary data users, the Bureau of Economic Analysis (BEA) and the Federal Reserve Board (FRB), want less data item aggregation particularly in the QFR. This would allow separation of recurring and nonrecurring income/expense items. Others in the user community repeatedly request QFR data presentation to be more consistent with other financial data sets, such as SEC. filings and request the addition of new line items for improved calculation of ratios measuring industry performance. Also, large reporting companies frequently call for assistance because there is insufficient space on the forms to accommodate the reporting of data items they usually report separately in their financial statements.

In order to bring the QFR data collection forms up-to-date and provide more meaningful data to users, we plan to make changes to the quarterly financial report forms QFR–101(MG)-long form, QFR–102(TR)-long form, and QFR–101A(MG)-short form. Form QFR–103(NB)-Nature of Business Report which is used to determine industry classification, verify corporate identity, and analyze parent-subsidiary relations will not be revised. The proposed new forms retain the single-page format. The number of reportable data items increases from 35 to 36 for form QFR–101A to accommodate for interest expense. The number of reportable data items remain the same for forms QFR–101 and QFR–102. These two forms do, however contain more detailed reporting of significant economic events such as asset sales and disposal of business segments. This additional level of detail will enable BEA to adjust more accurately the "income before tax" numbers for these events. Currently, we and BEA do ad hoc research of newspapers for these items and often must telephone companies for their detail. The proposed new forms also contain separate information on interest expense and corporate bonds. Both of these data items have been long standing requests from a variety of users, including the FRB, business economists, and the banking community.

We began addressing the issue of form redesign with a draft of the revised forms in January 1993. We sent these forms to more than 100 trade associations, interested parties, and user agencies for comment. Most of the comments received were positive. A number of the trade associations asked their members to comment on the proposed revision and they in turn passed these comments back to us. Suggestions for rewording and clarification of requirements were incorporated in a revised draft. The most notable change was the dropping of the research and development expense request. The comments we received indicated that these data are not uniformly available on a quarterly basis.

In July 1994, pursuant to the OMB generic clearance for questionnaire pretesting research (OMB number 0607–0725), we conducted a pretest of the revised forms and instructions. Revised QFR data collection forms were sent to 100 corporations currently participating in the QFR Program. Thirty of these cases were selected from the noncertainty or sample segment of the program and 70 cases were selected from the certainty or "take all" segment.

The results of the test were favorable. Response rates for the test cases were similar to those having to file the old or "current" form. The average time it took to complete the revised form for the noncertainty cases did not differ significantly from the time we estimate it takes to complete the current form. However, the average time it took for the certainty cases was significantly less than we estimate it takes to complete the current form. We believe this difference is primarily due to an over-estimate of the time it takes to complete the current form, rather than a result of the revised form. This is corroborated by the responses to the question on the debriefing questionnaire that compared the difficulty of the new form to the current form. Over 80% of the certainty

cases reported that the revised and current forms required about the same level of effort to complete.

II. Method of Collection

The Census Bureau will use mail out/mail back survey forms to collect data. Companies will be asked to respond to the survey within 25 days of the end of the quarter the data are being requested for. Letters and/or telephone calls encouraging participation will be directed to respondents that have not responded by the designated time.

III. Data

OMB Number: 0607–0432

Form Number: QFR–101 (Sent to manufacturing, mining, and wholesale trade corporations with assets of $50 million or more at time of sampling), QFR–102 (Sent to retail trade corporations with assets of $50 million or more at time of sampling), QFR–101A (Sent to manufacturing corporations with assets of less than $50 million at time of sampling), and QFR–103 (Sent at the beginning of sample selection and at 2-year intervals if the corporation is included in the sample for more than eight quarters)

Type of Review: Regular Review

Affected Public: Manufacturing corporations with assets of $250 thousand or more and mining and wholesale and retail trade corporations with assets of $50 million or more.

Estimated Number of Respondents:

Form QFR–101—3,475 per quarter, 13,900 annually

Form QFR–102—575 per quarter, 2,300 annually

Form QFR–101A—4,500 per quarter, 18,000 annually

Form QFR–103—1,225 per quarter 4,900 annually

Estimated Time Per Response: The average for all respondents is about 2.1 hours. For companies completing form the QFR–101 or QFR–102, the range is from less than 1 to 10 hours, averaging 2.9 hours. For companies completing form QFR–101A, the range is less than 1 hour to 3 hours, averaging 1.2 hours. For companies completing form QFR–103, the range is from 1 to 4 hours, averaging 2.4 hours.

Estimated Total Annual Burden Hours: The total annual burden for fiscal years 1997 and 1998 is estimated to be 78,600 hours.

Estimated Total Annual Cost: $2,950,000

Respondents' Obligation: Mandatory

Legal Authority: Title 13 United States Code, Sections 91 and 224

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 18, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–4398 Filed 2–21–97; 8:45 a.m.]

BILLING CODE 3510–07–P

International Trade Administration

Format for Petition Requesting Relief Under U.S. Countervailing Duty Law

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (c) (2) (A)).

DATES: Written comments must be submitted on or before April 25, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th & Constitution Avenue, NW, Washington, DC 20230. Phone number: (202) 482–3272.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to: Roy A. Malmrose, AD/CVD Enforcement I, Room 3707, 1400 Constitution Ave, NW, Washington, DC 20230; phone: (202) 482–5414, and fax: (202) 501–5439.

SUPPLEMENTARY INFORMATION:

I. Abstract

The International Trade Administration, Import Administration, AD/CVD Enforcement, implements the U.S. anti-dumping and countervailing duty law. Import Administration investigates allegations of unfair trade practices by foreign governments and producers and, in conjunction with the U.S. International Trade Commission, can impose duties on the product in question to offset the unfair practices. Form ITA–366P—Format for Petition Requesting Relief Under the U.S. Countervailing Duty Law—is designed for U.S. companies or industries that are unfamiliar with the countervailing duty law and the petition process. The Form is designed for potential petitioners that believe a foreign competitor is being subsidized unfairly. Since a variety of detailed information is required under the law before initiation of a countervailing duty investigation, the Form is designed to extract such information in the least burdensome manner possible.

II. Method of Collection

Form ITA–366P is sent by request to potential U.S. petitioners and completed in written form.

III. Data

OMB Number: 0625–0148

Form Number: ITA–366P

Type of Review: Renewal—Regular submission

Affected Public: U.S. companies or industries that suspect the presence of unfair competition from subsidized foreign enterprises

Estimated Number of Respondents: 5

Estimated Time Per Response: 40 hours

Estimated Total Annual Burden Hours: 200 hours

Estimated Total Annual Cost: Assuming the number of petitioners remains the same, with a total of 40 hours per respondent, at an estimated cost of $70 per hour, the total annual cost is $14,000.

IV. Requested for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 18, 1997.

Linda Engelmeier,

Department Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–4397 Filed 2–21–97; 8:45 am]

BILLING CODE 3510–DS–P

Environmental Technologies Trade Advisory Committee (ETTAC) Meeting

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Open Meeting.

SUMMARY: The Environmental Technologies Trade Advisory Committee (ETTAC) will hold its eighth plenary meeting. The ETTAC was created on May 31, 1994, to promote a close working-relationship between government and industry and to expand export growth in priority and emerging markets for environmental products and services.

DATES AND PLACE: February 27, 1997 from 9:00 a.m to 3:00 p.m. The meeting will take place in Room 3407 of the Department of Commerce, 14th Street and Constitution Ave., N.W., Washington D.C. 20230.

The agenda will include a discussion of ETTAC recommendations that were presented to the Secretary of Commerce in October, 1996; future steps for the ETTAC; and the current status of ETTAC memberships.

This program is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Amy Bellanca, Department of Commerce, Room 1002, Washington D.C. 20230. Seating is limited and will be on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: The Office of Environmental Technologies Exports, Room 1003, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, phone (202) 482–5225, facsimile (202) 482–5665 TDD 1–800–833–8723.

Dated: February 10, 1997.

Eric Fredell,

Acting Deputy Assistant Secretary for Environmental Technologies Exports.

[FR Doc. 97–4396 Filed 2–21–97; 8:45 am]

BILLING CODE 3510–DR–P

National Oceanic and Atmospheric Administration

Notice of Solicitation for Sea Grant Review Panelists

SUMMARY: This notice responds to Section 209(c) of the National Sea Grant College Program Act, 33 U.S.C. 1128, which requires the Secretary of Commerce to solicit nominations for membership on the Sea Grant Review Panel at least once a year. This advisory committee provides advice on the implementation of the National Sea Grant College Program.

DATES: Resumes should be sent to the address specified and must be received by March 26, 1997.

ADDRESSES: Dr. Ronald C. Baird, Director, National Sea Grant College Program, 1315 East-West Highway, Room 11716, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald Baird of the National Sea Grant College Program at the address given above; telephone (301) 713–2448, or fax number (301) 713–0799.

SUPPLEMENTARY INFORMATION: Section 209 of the Act establishes a sea grant review panel to advise the Secretary of Commerce, the Under Secretary for Oceans and Atmosphere, and the Director of the National Sea Grant College Program on the implementation of the Sea Grant Program. The panel provides advice of such matters as:

(a) The Sea Grant Fellowship Program;

(b) Applications or proposals for, and performance under, grants and contracts awarded under section 205 and section 208 of the Sea Grant Program Improvement Act of 1976;

(c) The designation and operation of sea grant colleges and sea grant regional consortia; and the operation of the sea grant program;

(d) the formulation and application of the planning guidelines and priorities under section 204(a) and (1); and,

(e) Such other matters as the Secretary refers to the panel for review and advice.

The Panel is to consist of 15 voting members composed as follows: Not less than eight of the voting members of the panel should be individuals who, by reason of knowledge, experience, or training, are especially qualified in one or more of the disciplines and fields included in marine science. The other voting members shall be individuals who by reason of knowledge, experience, or training, are especially qualified in, or representative of, education, extension service, state government, industry, economics, planning, or any other activity which is appropriate to, and important for, any effort to enhance the understanding, assessment, development, utilization, or conservation of ocean and coastal resources. No individual is eligible to be a voting member of the panel if the individual is (a) the director of a sea grant college, sea grant regional consortium, or sea grant program, (b) an applicant for or beneficiary (as determined by the Secretary) of any grant or contract under Section 205 or (c) a full-time officer or employee of the United States. The Director of the National Sea Grant College Program and one Director of a Sea Grant Program also serve as non-voting members. The positions on the panel will become vacant during 1997. Candidates who are selected to fill these vacancies will be appointed for a 3-year term.

Dated: February 18, 1997.

Alan R. Thomas,

Acting Assistant Administrator for Oceanic and Atmospheric Research.

[FR Doc. 97–4429 Filed 2–21–97; 8:45 am]

BILLING CODE 3510–12–P

National Technical Information Service

NTIS Advisory Board Meeting

AGENCY: National Technical Information Service, Technology Administration, U.S. Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the National Technical Information Service Advisory Board (the "Board") will meet on Tuesday, March 18, 1997, from 9:00 a.m. to 4:00 p.m., and on Wednesday, March 19, 1997, from 9:00 a.m. to 4:00 p.m. The session on Wednesday, March 19, 1997, will be closed to the Public.

The Board was established under the authority of 15 U.S.C. 3704(c), and was Chartered on September 15, 1989. The Board is composed of five members appointed by the Secretary of Commerce who are eminent in such fields as information resources management, information technology, and library and information services. The purpose of the meeting is to review and make

recommendations regarding general policies and operations of NTIS, including policies in connection with fees and charges for its services. The agenda will include a progress report on NTIS activities, an update on the progress of FedWorld, and a discussion of NTIS' long range plans. The closed session discussion is scheduled to begin at 9:00 a.m. and end at 4:00 p.m. on March 19, 1997. The session will be closed because premature disclosure of the information to be discussed would be likely to significantly frustrate implementation of NTIS' business plans.

DATES: The meeting will convene on March 18, 1997, at 9:00 a.m. and adjourn at 4:00 p.m. and convene again on March 19, 1997, at 9:00 a.m. and adjourn at 4:00 p.m.

ADDRESS: The meeting will be held in Room 2029 Sills Building, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

PUBLIC PARTICIPATION: The meeting will be open to public participation on March 18, 1997, and closed on March 19, 1997. Approximately thirty minutes will be set aside on March 18, 1997, for comments or questions from the public. Seats will be available for the public and for the media on a first-come, first-served basis. Any member of the public may submit written comments concerning the Board's affairs at any time. Copies of the minutes of the open session meeting will be available within thirty days of the meeting from the address given below.

FOR FURTHER INFORMATION CONTACT: Linda Lucas, NTIS Advisory Board Secretary, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. Telephone: (703) 487–4636; Fax (703) 487–4093.

Dated: February 19, 1997.

Donald R. Johnson,

Director.

[FR Doc. 97–4430 Filed 2–21–97; 8:45 am]

BILLING CODE 3510–04–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increase of a Guaranteed Access Level for Certain Wool Textile Products Produced or Manufactured in Honduras

February 18, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a guaranteed access level.

EFFECTIVE DATE: February 24, 1997.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this level, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6703. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

On the request of the Government of Honduras, the U.S. Government agreed to increase the 1996 guaranteed access level for Category 435.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 38237, published on July 23, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 18, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on July 18, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Honduras and exported during the twelve-month period beginning on January 1, 1996 and extending through December 31, 1996.

Effective on February 24, 1997, you are directed to increase the guaranteed access level for Category 435 to 50,000 dozen.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–4448 Filed 2–21–97; 8:45 am]

BILLING CODE 3510–DR–F

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. § 552b), notice is hereby given of the Defense Nuclear Facilities Safety Board's (Board) meeting described below.

Time and Date: 9:00 a.m., March 19, 1997.

Place: The Defense Nuclear Facilities Safety Board, Public Hearing Room, 625 Indiana Avenue, NW, Suite 300, Washington, DC 20004.

Matters to be Considered: The Defense Nuclear Facilities Safety Board will reconvene and continue the open meeting conducted on February 5, 1997, regarding the status of DOE's Implementation Plan for Board Recommendation 95–2, Integrated Safety Management. Specifically, the Board will be given status reports by DOE relative to the Department's efforts to improve the technical expertise necessary to review and implement safety management systems, including establishment of a Core Technical group, and the development of guidance for implementation of the Safety Management System.

Contact Person for More Information: Robert M. Andersen, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004, (800) 788–4016. This is a toll-free number.

Supplementary Information: The Defense Nuclear Facilities Safety Board reserves its right to further schedule and otherwise regulate the course of this meeting, to recess, reconvene, postpone or adjourn the meeting, and otherwise exercise its authority under the Atomic Energy Act of 1954, as amended.

Dated: February 20, 1997.

John T. Conway,

Chairman.

[FR Doc. 97–4570 Filed 2–20–97; 10:38 am]

BILLING CODE 3670–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by March 12, 1997. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before April 25, 1997.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer: Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 7th & D Streets, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Written comments regarding the regular clearance and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronic mailed to the internet address #FIRB@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 3506 (c)(2)(A) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Group, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 18, 1997.

Gloria Parker,

Director, Information Resources Management Group.

Office of the Under Secretary

Type of Review: NEW.

Title: Study of Barriers, Benefits, and Costs of Using Private Schools to Alleviate Overcrowding in Public Schools.

Abstract: This congressionally-mandated study will examine the extent to which private schools (including religious schools) might be used to alleviate overcrowding in urban public schools by accepting public school students in exchange for tuition reimbursement. The study is examining the extent of overcrowding in urban public schools and the extent to which private schools in these areas have spaces available that might be used to accommodate students from overcrowded public schools. The study will also examine the costs that would be involved in such a program (including tuition reimbursement, transportation, and administration), program design and implementation issues that would need to be considered in developing such a proposal, and the constitutional issues and other legal impediments that might be raised if such a proposal were adopted.

Additional Information: The study was mandated in the Conference Report for H.R. 3610 (Report 104–863, September 28, 1996, p. 1060) and is due to the Appropriations Committees by September 1, 1997. An emergency clearance is needed in order to meet this deadline.

Frequency: One Time.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 1,035.
Burden Hours: 345.

[FR Doc. 97–4410 Filed 2–21–97; 8:45 am]

BILLING CODE 4000–01–P

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Director, Information Resources Management Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 26, 1997.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or

waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: February 18, 1997.

Gloria Parker,

Director, Information Resources Management Group.

Office of Bilingual Education and Minority Languages and Affairs

Type of Review: REINSTATEMENT.

Title: Biennial Report Form for the Emergency Immigrant Education Program.

Frequency: Biennially.

Affected Public: State, Local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Burden:

Responses: 944.

Burden Hours: 5,620.

Abstract: This form is used by State educational agencies to submit a biennial report to the Secretary concerning expenditures of EIEP funds by their local educational agencies as well as national origin of immigrant children served under the Emergency Immigrant Education Act (Title VI of Public Law 98–511, 20 U.S.C. 4101–4108, as amended by Pub. L. 103–382, 20 U.S.C. 7541–7549).

[FR Doc. 97–4411 Filed 2–21–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Research

Energy Research Financial Assistance Program Notice 97–09: Biotechnological Investigations—Ocean Margin Program (BI–OMP)

AGENCY: Office of Energy Research, U.S. Department of Energy.

ACTION: Notice inviting research grant applications.

SUMMARY: The Office of Health and Environmental Research (OHER) of the Office of Energy Research, U.S. Department of Energy (DOE) announces its interest in receiving research applications involving the use of molecular biological and biogeochemical techniques to understand the linkages between coastal carbon and nitrogen cycles (primary production and microbial processes) in the Northern and Temperate latitudes. This information is crucial to the responses of ocean margin ecosystems to atmospheric radiative budgets and global biogeochemical cycles. Specifically, DOE seeks applications to:

- Apply new and innovative techniques in marine molecular biology and marine biotechnology to assess fixation of carbon dioxide from the atmosphere, determine the mechanisms and processes that control the dynamics of nitrogen fixation or denitrification in coastal waters and sediments, define the coupling and/or decoupling of carbon and nitrogen cycles in coastal environments, and determine the linkages between the function and structure of microbial communities mediating carbon and nitrogen cycling in coastal environments, and
- Examine the environmental factors (including nutrient availability, temperature, irradiance, and biopolymer lability) that affect the linkages between primary productivity, the utilization of particulate and dissolved organic matter (POM and DOM) by bacterial populations, and nitrogen cycling in coastal areas.

Applications must involve mutually collaborative partnerships between institutions with a strong tradition of research in marine sciences and those institutions with developing research capabilities in marine science. Partnerships are particularly encouraged with institutions that traditionally have served groups underrepresented in the sciences. The goals of such collaborative research projects are to enhance the research capabilities of both institutions, to promote significant interactions between institutions, and to foster long term collaboration among investigators.

DATES: To permit timely consideration for awards in Fiscal Year 1997 and early Fiscal Year 1998, formal applications submitted in response to this notice should be received by 4:30 p.m., E.D.T., May 6, 1997.

ADDRESSES: Formal applications referencing Program Notice 97–09 should be forwarded to: U.S. Department of Energy, Office of Energy Research, Grants and Contracts Division, ER–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 97–09. This address also must be used when submitting applications by U.S. Postal Service Express Mail or any commercial mail delivery service, or when hand-carried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. Anna Palmisano, Environmental Sciences Division, ER–74, Office of Health and Environmental Research, Office of Energy Research, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone (301) 903–4183, e-mail anna.palmisano@oer.doe.gov, fax (301) 903–8519.

SUPPLEMENTARY INFORMATION: The primary research goal of the Biotechnological Investigations—Ocean Margin Program is to establish a more thorough understanding of the molecular to global scale links and feedback mechanisms between solar irradiance, marine microbial activity, primary productivity, carbon and nitrogen cycles and remotely-sensed ocean color data. This information is crucial to understanding the responses of marine biological systems to changes in atmospheric radiative budgets and global biogeochemical cycles.

Program Relationships

The Biotechnological Investigations—Ocean Margins Program is expected to build on past research results and accomplishments within the Ocean Margins Program (OMP) component of the Biological and Environmental Research (BER) program. The main objective of OMP was determining whether primary productivity on continental shelves is quantitatively significant in removing carbon dioxide (CO_2.) from the atmosphere. Other objectives of the OMP were: (1) Quantifying the ecological and biogeochemical processes that affect the cycling, flux, and storage of carbon and other biogenic elements at the land/ocean interface; and (2) Defining ocean margin sources and sinks in global biogeochemical cycles.

Under the OMP, molecular biological techniques were developed, adapted, and applied to determine how biological processes are regulated and controlled by genetic limitations and environmental variables. Research emphasis was placed on molecular regulation of photosynthetic carbon reduction by phytoplankton; molecular diagnostic markers of bacterial growth, production, and nutrient limitations to growth, and; molecular techniques for elucidating metabolic pathways.

Biotechnological Investigations—Ocean Margins Program (BI–OMP)

BI–OMP is the second phase of the Ocean Margins Program (OMP); it places an increased emphasis on the application of modern molecular tools to marine microbes and their role in carbon and nitrogen cycling, and processes affecting global change. Photosynthetic rates in the ocean, and sequestration of atmospheric CO_2 by marine primary production greatly depend on the availability of fixed inorganic nitrogen. Hence, any increase in the net sequestration of CO_2 by oceanic photosynthetic organisms requires an addition of nitrogen or other limiting elements external to the ocean. Three major external sources of fixed inorganic nitrogen are cultural eutrophication of the coastal zone; atmospheric deposition of anthropogenic and naturally produced oxides of nitrogen; and nitrogen fixation from the atmosphere by microorganisms.

Research in Temperate and High Latitude coastal areas indicates that the availability and cycling of nitrogen is likely to be the major control on primary productivity and carbon cycling in these areas. In general, coastal areas are believed to be net heterotrophic on an annual basis. This means that they receive more organic substrate than is produced within the system by photosynthesis. Bacteria metabolize a large fraction of the organic pool, both dissolved and particulate, and it appears that most of the excess organic matter in coastal areas is degraded by microbial processes.

Moreover, it appears that denitrification (the reduction of fixed nitrogen to N_2) overwhelms nitrogen fixation by cyanobacteria in Northern Latitude waters and sediments. In these areas, there does not appear to be paucity of iron (Fe) to limit nitrogen fixation, but nitrogenase activity may be inhibited by the elevated concentrations of ammonia (NH_3) that occur in Arctic waters following phytoplankton blooms. Since little is known about the rates of nitrogen fixation, primary productivity, and bacterial respiration in cold water areas, this notice calls for applications to help understand the molecular to global scale links and feedback mechanisms between solar irradiance, marine microbiology, coastal nitrogen and carbon cycles, primary productivity, and remotely-sensed ocean color data in the low-temperature waters off Alaska and the Pacific Northwest.

Although it is anticipated that most of the research performed will be laboratory-based, if field studies are necessary, they should be conducted in the coastal waters off the North Slope of Alaska and Pacific Northwest; or, in the estuarine and shelf waters of the Mississippi River and Gulf of Mexico; Savannah River and South Atlantic Bight; or Chesapeake Bay and Mid-Atlantic Bight. Applications that are solely concerned with the taxonomic characterization or distributions of bacteria, or the identification of new biochemicals or enzymes from marine organisms, are excluded from consideration within this notice.

Application of Molecular Tools to Microbes Mediating Carbon and Nitrogen Cycling

This announcement encourages applications that use molecular approaches to study marine microbial processes, in particular, carbon and nitrogen cycling. Insights can be gained from application of biotechnology to carbon sequestration and storage, nitrogen fixation and denitrification. Knowledge of the genes responsible for these processes, and most importantly, the expression of these genes in marine environments is needed. The mechanisms by which environmental factors regulate gene expression in ocean margin environments will help us to understand the natural controls on these processes.

The advent of modern molecular biology has provided powerful tools for examining genes and gene expression. Molecular methods are now being applied to research problems in marine biology, including the enzymes involved in carbon fixation (e.g., ribulose bisphosphate carboxylase), nitrogen fixation (e.g., nitrogenase) and denitrification (e.g., nitrate reductase). Examples of enabling biotechnologies include *in situ* polymerase chain reaction (PCR) to amplify specific catabolic genes within bacterial cells, and fluorescent *in situ* hybridization (FISH) to elucidate genotypes in microbial communities. A fundamental knowledge of molecular regulatory mechanisms of photosynthesis and nitrogen cycling in the oceans is needed.

Environmental Factors That Affect Linkages Between Carbon and Nitrogen Cycling

Environmental factors such as nutrient availability, temperature, irradiance, and biopolymer lability affect the coupling and decoupling of primary production, bacterial respiration, POM and DOM formation, and nitrogen metabolism in coastal areas. The impact of individual environmental factors, and synergistic effects of multiple environmental factors, on these processes is poorly understood. This announcement encourages applications that address the environmental controls on carbon and nitrogen cycles, and their coupling and decoupling. An understanding of these linkages is critical to monitoring and predicting potential changes due to physical, chemical or biological factor, and may ultimately contribute to the development of algorithms for remotely sensed ocean color data.

Collaborative Partnerships

Research applications shall include a mutually collaborative partnership between institutions that have a strong tradition of research in the marine sciences and those institutions with developing research capabilities in marine science. Participation of institutions with a high proportion of groups that are under represented in the sciences are particularly encouraged. Examples of collaborative activities include co-investigator status, periodic exchanges of researcher-in-residence between institutions, and joint supervision of research students. It is critical that both institutions have key roles in the collaboration. One institution should serve as the primary applicant with a subcontract to the collaborative institution. The applications should:

- Clearly state the nature of the collaborative research agreement between the institutions;
- Define respective research roles and responsibilities of scientists at each institution; describe how the partnership between the institutions will be effected (e.g., team meetings, shared students, etc.), and
- Provide separate institutional budgets.

In addition, the applicants will need to show how their proposed collaborative research addresses the goals stated in this notice and convey a commitment to developing research partnerships between respective institutions.

It is anticipated that up to $4 million will be available for multiple grants awarded in FY 1997 and FY 1998, contingent upon availability of appropriated funds. Applications may request project support up to three years, with out-year support contingent on availability of funds, progress of the research, and programmatic needs. Annual budgets are expected to range from approximately $50,000 to $500,000. Applications should include detailed budgets for each year of support requested. The technical portion of the application should not exceed twenty-five (25) double-spaced pages. Lengthy application appendices are not encouraged.

Applications will be subjected to formal merit review (peer review) and will be evaluated against the following evaluation criteria which are listed in descending order of importance codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project;

2. Appropriateness of the Proposed Method or Approach;

3. Competency of Applicant's personnel and Adequacy of Proposed Resources;

4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and an agency's programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers will often be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

To provide a consistent format for the submission, review and solicitation of grant applications submitted under this notice, the preparation and submission of grant applications must follow the guidelines given in the Application Guide for the Office of Energy Research Financial Assistance Program 10 CFR Part 605. Access to ER's Financial Assistance Application Guide is possible via the World Wide Web at: http://www.er.doe.gov/production/grants/grants.html.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, DC, on February 13, 1997.

John Rodney Clark,

Associate Director for Resource Management, Office of Energy Research.

[FR Doc. 97–4429 Filed 2–21–97; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. CP97–243–000]

ANR Pipeline Company; Notice of Application

February 18, 1997.

Take notice that on February 12, 1997, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP97–243–000 an application pursuant to Section 7(c) of the Natural Gas Act for authorization to utilize temporary work spaces associated with a pipeline replacement project located in Berrien County, Michigan, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR proposes to replace 1.12 mile of 22-inch pipeline with heavier wall pipe in order to continue to meet the safety requirements of the U.S. Department of Transportation (DOT) regulations. ANR states that the required replacement has been triggered by an increase in population density in Berrien County, Michigan. ANR states that in this area, ANR's main line consists of three parallel pipelines: a 22-inch O.D. mainline; a 30-inch O.D. loop line; and a 42-inch O.D. loop line. ANR maintains that both loop lines are currently in compliance with DOT regulations.

ANR states that the pipeline replacement project consists of removing and replacing in the same trench 5,905 feet of the 22-inch O.D. main line. ANR states that the replacement project will not include replacement of the pipeline crossing under the St. Joseph River and 61 and 81 feet on the west and east sides of the river, respectively. ANR states that the replacement will begin at Mile Post 927.45 and proceed northeast for 5,361 feet toward the southwest bank of the St. Joseph River where it will connect with the existing 22-inch O.D. main line. ANR further states that the replacement will continue on the northeast side of the St. Joseph River for an additional 544 feet where it will connect with the existing 22-inch O.D. main line. ANR maintains that when the pipeline replacement has been completed, the entire length of the pipeline, including the crossing under the St. Joseph River, will be hydrostatically tested to DOT standards.

ANR states that the pipeline replacement will be made within ANR's existing permanent right-of-way and will be placed in the same trench as the pipe being removed. ANR states that the pipeline replacement will not alter the capacity of ANR's main line and no compression or above ground facilities are associated with the project. It is stated that during the period that the pipeline replacement is taking place, service will continue to be provided to customers through the adjacent 30-inch and 42-inch loop lines.

ANR states that in order to make the replacement it will have to utilize work areas which may not have been included in the scope of the original authorization, 5 FPC 953, to construct the facilities. Therefore, ANR requests the temporary use of work space in order to make the replacement. ANR states that the construction will be done under Section 2.55(b) of the Commission's Regulations and has an estimated cost of $1,471,140.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 11, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for ANR to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4402 Filed 2–21–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–161–006]

Avoca Natural Gas Storage; Notice of Amendment

February 18, 1997.

Take notice that on February 11, 1997, Avoca Natural Gas Storage (Avoca), One Bowdoin Square, Boston, MA 02114, filed in Docket No. CP94–161–006, pursuant to Section 7(c) of the Natural Gas Act, an amendment to the certificate of public convenience and necessity issued by the Commission on September 20, 1994, in Docket No. CP94–161–000. Avoca seeks to construct a brine pipeline, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Specifically, Avoca seeks to amend its certificate to change the method of brine disposal. Avoca proposes to construct a 45-mile brine pipeline from its storage facility in Avoca, NY to two salt processing plants in Watkins Glen, NY. Avoca states that this will provide it with a viable means of disposing of the brine that will be generated from solution mining of the salt caverns that will be used to store natural gas. As authorized, Avoca was to drill disposal wells into which the brine created by the solution mining of the salt caverns would be injected. However, it has been determined that this method is no longer a viable option for disposal of brine.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before March 11, 1997, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this amendment if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Avoca to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4400 Filed 2–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. OA97–519–000]

Bangor Hydro-Electric Company; Notice of Filing

February 18, 1997.

Take notice that on January 31, 1997, Bangor Hydro-Electric Company ("Bangor") tendered for filing pursuant to Order No. 889, its Code of Conduct.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 210, 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.210, 385.211 and 385.214). All such petitions or protests should be filed on or before February 28, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4404 Filed 2–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. OA97–520–000]

Citizens Utilities Company; Notice of Filing

February 18, 1997.

Take notice that on January 31, 1997, Citizens Utilities Company (Citizens) tendered for filing in Docket No. OA97–520–000, Standards of Conduct and Procedures for Compliance applicable to its Vermont Electric Division ("VED"). In addition, Citizens requests waiver of Section 37.4 of the Commission's regulations, 18 CFR 37.4, in order to allow one employee of its VED to engage in both wholesale merchant functions and transmission operations of a six-month period.

Citizens, as more fully detailed in its filing, states that its Standards of Conduct are in substantial compliance with the requirements of Order No. 889 and Section 37.4 of the Commission's regulations issued thereunder.

Citizens states that it served copies of this filing on all affected state commissions and customers, as well as on certain other interested parties.

Any person desiring to be heard or to protest said filings should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 28, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4405 Filed 2–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–149–000]

Gas Research Institute; Notice of Public Conference

February 18, 1997.

Take notice that on March 21, 1997, the members of the Federal Energy Regulatory Commission will hold a public conference to discuss the future funding of research and development (R&D) in the natural gas industry. Specifically, the members of the Commission are interested in a public policy discussion of the appropriate role

of the Gas Research Institute (GRI) in funding R&D.

The conference will be divided into four parts. The first part will consist of a presentation by GRI describing its current program, including the various sources of funding for the program.

The second part will consist of a panel focusing on whether GRI's current program is appropriate. As a threshold matter, the panel should address the question of what is the appropriate role of joint research and development in today's market environment. The Commission seeks input on (1) whether the program should stay at its current funding level; (2) whether it should be increased and, if so, to what level; or (3) whether it should be decreased to a core program and, if so, what should be included.

The third and fourth parts of the conference will address the matters contained in GRI's January 24, 1997, motion for an expedited technical conference. In that filing GRI proposed a two stage technical conference. GRI said:

GRI proposes that the *first stage* of the requested technical conference be devoted to the following questions: Whether there is an equitable mechanism under FERC auspices that in today's regulatory environment would fund a core gas industry/GRI cooperative R&D program with widely dispersed benefits that are not subject to capture by a single party? And, if so, what would be the fundamental attributes of such a long-term funding mechanism and the appropriate scope and design of such a core R&D program?

GRI further proposes that the *second stage* of the technical conference be devoted to the following question: Whether the currently pending proposal is appropriate for use in transitioning to a long-term funding mechanism or as a basis for developing a long-term funding mechanism?

During this portion of the conference, the Commission seeks input on whether the proposed GRI funding mechanism requires captive customers to shoulder more than their fair share of R&D funding and is thereby unduly discriminatory.

The conference will be convened at 9:30 a.m. at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. The Commission will issue a supplemental notice that will further describe the structure of the conference.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4399 Filed 2–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–55–003]

Great Lakes Gas Transmission Limited Partnership; Notice of Proposed Changes in FERC Gas Tariff

February 18, 1997.

Take notice that on February 11, 1997, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, 2nd Sub First Revised Sheet No. 20, to be effective June 1, 1997.

Great Lakes states that the above named tariff sheet is being filed to clarify the Heat Content provision of Section 8.1 of the General Terms and Conditions as proposed in its January 29, 1997 filing to convert its rates and tariff from a volumetric to a thermal basis in compliance with the Commission's Order No. 582 and to convert its Btu measurement from a wet to a dry basis in compliance with the Commission's Order No. 587.

Great Lakes intends that when the heat content of gas received at any point drops below 1013 Btu per cubic foot and it is unable to transport a shipper's scheduled daily delivery due to this drop, Great Lakes will utilize the Curtailment provision of Section 11.4 of the General Terms and Conditions, but only for those shippers from whom gas was received at that point.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Commission's Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4407 Filed 2–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–53–004]

NE Hub Partners, L. P. Notice of Amendment

February 18, 1997.

Take notice that on February 13, 1997, NE Hub Partners, L.P. (NE Hub) filed in Docket No. CP96–53–004 an amendment to its pending application filed in Docket No. CP96–53–000 requesting to omit the original request for authorization to provide hub services and firm or interruptible transportation services, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said petition to amend should, on or before March 11, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4401 Filed 2–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. OA97–518–000 and ER97–1477–000]

New Hampshire Electric Cooperative, Inc.; Notice of Filing

February 18, 1997.

Take notice that New Hampshire Electric Cooperative, Inc., on January 30, 1997, tendered for filing its FERC Open Access Transmission Tariff, two rate schedules and a petition for waiver from requirements under Part 37 of the Commission's regulations, as promulgated in Order 889.

On January 30, 1997 the New Hampshire Electric Cooperative will complete the payment and retirement of all debts issued by the Rural Utilities Service of the United States Department of Agriculture, and it accordingly will become a Public Utility subject to the general regulatory jurisdiction of the Federal Energy Regulatory Commission under Part II of the Federal Power Act. At the present time, the Cooperative provides transmission service to one customer, Goodrich Falls Hydroelectric Company, and it sells its share of the output of Seabrook Nuclear Power Plant Unit No. 1 to the Public Service Company of New Hampshire. Regulatory jurisdiction over these two transactions is being transferred from the New Hampshire Public Utilities Commission to the Federal Energy Regulatory Commission as of January 30, 1997. Accordingly, NHEC has submitted for filing rate schedules for these transactions pursuant to Section 205(c) of the Federal Power Act and Section 35.12 of FERC's regulations. Pursuant to Section 35.28 of FERC's regulations, NHEC is also filing a nondiscriminatory Open Access Transmission Tariff. In addition, because NHEC operates limited, discrete transmission facilities rather than an integrated grid, it is applying for a waiver of Part 37 of the Commission's regulations, as promulgated in Commission Order No. 889.

Copies of the filing were served upon the Cooperative's jurisdictional customers Goodrich Falls Hydroelectric Company and the Public Service Company of New Hampshire, and upon New Hampshire Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 28, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with Commission and are available for pubic inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4403 Filed 2–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–197–025]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

February 18, 1997.

Take notice on February 12, 1997, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain tariff sheets, which tariff sheets are enumerated in Appendix A attached to the filing.

On June 19, 1996 Transco filed a Stipulation and Agreement (Agreement) in Docket Nos. RP95–197, et al. which, among other things, resolves Transco's cost of service, overall throughput level and mix of throughput for the Docket No. RP95–197 rate period commencing September 1, 1995. In addition, the Agreement resolves, pursuant to Article V of the Agreement, certain tariff issues, including (1) Implementation of a new open-access, interruptible storage service (ISS) and a new Interconnect Transfer Service (ICTS), and (2) revised tariff provisions regarding Delivery Point Entitlements (DPE) and Intra-Day Scheduling (Intra-Day) procedures to be implemented upon the effectiveness of the Agreement. Consistent with Article V of the Agreement, the instant filing proposes to implement the new services under Rate Schedules ISS and ICTS and the revised tariff provisions regarding DPE and Intra-Day. Such tariff sheets are proposed to be effective April 1, 1997.

In addition to the foregoing, included therewith are tariff sheets submitted in the instant filing, proposed to be effective April 1 and July 1, 1996, which reflect the settlement rates updated to incorporate approved tracker filings made subsequent to the date the Agreement was filed (i.e. subsequent to June 19, 1996). Finally, the filing includes a revision to its Index of Provisions of its General Terms & Conditions (Section 29) to reflect a reference to tariff provisions regarding "latest estimated allocated data" which became effective August 1, 1996.

Transco states that it is serving copies of the instant filing to customers, State Commissions and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4406 Filed 2–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–251–000]

Viking Gas Transmission Company; Notice of Penalty Revenue Crediting Report

February 18, 1997.

Take notice that on February 12, 1997, Viking Gas Transmission Company (Viking) filed a report of penalty revenues and credit for the period of November 1, 1995 through October 31, 1996.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed on or before February 25, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4408 Filed 2–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–3026–000, et al.]

Florida Power & Light Company, et al.; Electric Rate and Corporate Regulation Filings

February 14, 1997.

Take notice that the following filings have been made with the Commission:

1. Florida Power & Light Company

[Docket No. ER96–3026–000]

Take notice that on January 27, 1997, Florida Power & Light Company tendered for filing an amendment in the above-referenced docket.

Comment date: February 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Chewton Glen Energy-Ford Heights LLC

[Docket Nos. EL97–27–000 and QF92–101–000]

Take notice that on February 5, 1997, Chewton Glen Energy-Ford Heights LLC tendered for filing a Petition for

Declaratory Order and request for waiver of filing fee.

Comment date: March 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Florida Power & Light Company

[Docket No. ER97–102–000]

Take notice that on January 27, 1997, Florida Power & Light Company tendered for filing an amendment in the above-referenced docket.

Comment date: February 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Florida Power & Light Company

[Docket No. ER97–536–000]

Take notice that on January 27, 1997, Florida Power & Light Company tendered for filing an amendment in the above-referenced docket.

Comment date: February 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Toledo Edison Company

[Docket No. ER97–738–000]

Take notice that on January 28, 1997, Toledo Edison Company tendered for filing an amendment in the above-referenced docket.

Comment date: February 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. West Texas Utilities Company

[Docket No. ER97–777–000]

Take notice that on February 10, 1997, West Texas Utilities Company tendered for filing an amendment in the above-referenced docket.

Comment date: February 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Wasatch Energy Corporation

[Docket No. ER97–1248–000]

Take notice that on February 5, 1997, Wasatch Energy Corporation tendered for filing an amendment in the above-referenced docket.

Comment date: February 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Cinergy Services Inc.

[Docket No. ER97–1274–000]

Take notice that on January 31, 1997, Cinergy Services Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: February 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Southern Indiana Gas and Electric Company

[Docket No. ER97–1311–000]

Take notice that on January 21, 1997, Southern Indiana Gas and Electric Company (SIGECO) tendered for filing two (2) service agreements for non-firm transmission service under Part II of its Transmission Services Tariff with the following entities:

1. Vitol Gas & Electric LLC
2. Coral Power, L.L.C.

Copies of the filing were served upon each of the parties to the service agreements.

Comment date: February 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. South Carolina Electric & Gas Company

[Docket No. ER97–1318–000]

Take notice that on January 27, 1997, South Carolina Electric & Gas Company tendered for filing an amendment in the above-referenced docket.

Comment date: February 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Cinergy Services Inc.

[Docket No. ER97–1416–000]

Take notice that on February 6, 1997, Cinergy Services Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: February 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Louisville Gas and Electric Company

[Docket No. ER97–1426–000]

Take notice that on January 23, 1997, Louisville Gas and Electric Company, tendered for filing a submission of its obligation to file the rates and agreements for wholesale transactions made pursuant to its market-based Generation Sales Service (GSS) Tariff.

Comment date: February 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Entergy Services, Inc.

[Docket No. ER97–1487–000]

Take notice that on January 31, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (Entergy Operating Companies), tendered for filing a Non-Firm Point-to-Point Transmission Agreement between itself and Minnesota Power & Light Company dated October 15, 1996.

Comment date: February 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Entergy Services, Inc.

[Docket No. ER97–1488–000]

Take notice that on January 31, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (Entergy Operating Companies), tendered for filing the First Amendment to the Non-Firm Point-to-Point Transmission Agreement between itself and Arkansas Electric Cooperative Corporation dated October 1, 1996.

Comment date: February 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Entergy Services, Inc.

[Docket No. ER97–1489–000]

Take notice that on January 31, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Energy Louisiana, Inc., Entergy Mississippi, Inc., and Energy New Orleans, Inc. (Entergy Operating Companies), tendered for filing the First Amendment to the Non-Firm Point-to-Point Transmission Agreement between itself and Southwestern Public Service Company dated January 10, 1997.

Comment date: February 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. PECO Energy Company

[Docket No. ER97–1490–000]

Take notice that on January 31, 1997, PECO Energy Company (PECO), filed a Service Agreement dated January 8, 1997 with Scana Energy Marketing, Inc. (SCANA) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds SCANA as a customer under the Tariff.

PECO requests an effective date of January 8, 1997, for the Service Agreement.

PECO states that copies of this filing have been supplied to SCANA and to the Pennsylvania Public Utility Commission.

Comment date: February 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. PECO Energy Company

[Docket No. ER97–1491–000]

Take notice that on January 31, 1997, PECO Energy Company (PECO), filed a Service Agreement dated January 8, 1997 with City of Gainesville, PL (GAINESVILLE) under PECO's FERC Electric tariff Original Volume No. 1 (Tariff). The Service Agreement adds GAINESVILLE as a customer under the Tariff.

PECO requests an effective date of January 8, 1997, for the Service Agreement.

PECO states that copies of this filing have been supplied to GAINESVILLE and to the Pennsylvania Public Utility Commission.

Comment date: February 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Texas Utilities Electric Company

[Docket No. ER97–1492–000]

Take notice that on January 31, 1997, Texas Utilities Electric Company (TU Electric), tendered for filing five executed transmission service agreements (TSAs) with AES Power, Inc., UtiliCorp United Inc., PanEnergy Trading and Market Services, L.L.C., VTEC Energy, Inc. and Sonat Power Marketing L.P. for certain Economy Energy Transmission Service transactions under TU Electric's Tariff for Transmission Service To, From and Over Certain HVDC Interconnections.

TU Electric requests an effective date for the TSA's that will permit them to become effective on or before the service commencement date under each of the five TSA's. Accordingly, TU Electric seeks waiver of the Commission's notice requirements. Copies of the filing were served on AES Power, Inc., UtiliCorp United Inc., PanEnergy Trading and Market Services, L.L.C., VTEC Energy, Inc. and Sonat Power Marketing L.P. as well as the Public Utility Commission of Texas.

Comment date: February 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. PECO Energy Company

[Docket No. ER97–1493–000]

Take notice that on January 31, 1997, PECO Energy Company (PECO), filed a Service Agreement dated January 8, 1997 with Stand Energy Corporation (SEC) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds SEC as a customer under the Tariff.

PECO requests an effective date of January 8, 1997, for the Service Agreement.

PECO states that copies of this filing have been supplied to SEC and to the Pennsylvania Public Utility Commission.

Comment date: February 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. PECO Energy Company

[Docket No. ER97–1494–000]

Take notice that on January 31, 1997, PECO Energy Company (PECO), filed a Service Agreement dated January 8, 1997 with Hoosier Energy (HOOSIER) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds HOOSIER as a customer under the Tariff.

PECO requests an effective date of January 8, 1997, for the Service Agreement.

PECO states that copies of this filing have been supplied to HOOSIER and to the Pennsylvania Public Utility Commission.

Comment date: February 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Entergy Services, Inc.

[Docket No. ER97–1495–000]

Take notice that on January 31, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (Entergy Operating Companies), tendered for filing the First Amendment to the Non-Firm Point-to-Point Transmission Agreement between itself and Entergy Power Marketing Corporation dated October 1, 1996.

Comment date: February 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Consumers Power Company, d/b/a Consumers Energy Company

[Docket No. ER97–1496–000]

Take notice that on January 31, 1997, Consumers Power Company, d/b/a Consumers Energy Company (Consumers) filed Service Agreements for Network Integration Transmission Service with the Cities of Bay City, Eaton Rapids, Hart, Portland and St. Louis, the Village of Chelsea, Southeastern Rural Electric Cooperative, Inc. and Wolverine Power Supply Cooperative, Inc.

Consumers states the filed agreements will take effect January 1, 1997, extend for a five-year term and provide the transmission arrangements required to implement the power sale agreements previously filed with and accepted by the Federal Energy Regulatory Commission in Docket No. ER97–294–000.

Copies of the filed agreements were served upon the Michigan Public Service Commission.

Comment date: February 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Northern Indiana Public Service Company

[Docket No. ER97–1497–000]

Take notice that on January 31, 1997, Northern Indiana Public Service Company, tendered for filing an executed Service Agreement between Northern Indiana Public Service Company and Cinergy Operating Companies (The Cincinnati Gas & Electric Company, PSI Energy, Inc., and Cinergy Services, Inc.).

Under the Service Agreement, Northern Indiana Public Service Company agrees to provide services to Cinergy Operating Companies under Northern Indiana Public Service Company's Power Sales Tariff. Northern Indiana Public Service Company and Cinergy Operating Companies request waiver of the Commission's sixty-day notice requirement to permit an effective date of January 15, 1997.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: February 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Consumers Power Company, d/b/a Consumers Energy Company

[Docket No. ER97–1498–000]

Take notice that on January 31, 1997, Consumers Power Company, d/b/a Consumers Energy Company (Consumers), tendered for filing an unexecuted Transmission Service Agreement with the Lansing Board of Water & Light (Lansing). The filed Service Agreement makes available non-firm point-to-point transmission service. A copy of the filing was served upon Lansing and the Michigan Public Service Commission.

Comment date: February 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. PECO Energy Company

[Docket No. ER97–1499–000]

Take notice that on January 31, 1997, PECO Energy Company (PECO), filed a Service Agreement dated January 8, 1997 with Montaup Electric Company (MONTAUP) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds MONTAUP as a customer under the Tariff.

PECO requests an effective date of January 8, 1997, for the Service Agreement.

PECO states that copies of this filing have been supplied to MONTAUP and to the Pennsylvania Public Utility Commission.

Comment date: February 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. PECO Energy Company

[Docket No. ER97–1500–000]

Take notice that on January 31, 1997, PECO Energy Company (PECO), filed a Service Agreement dated January 22, 1997 with Western Power Services (WPS) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds WPS as a customer under the Tariff.

PECO requests an effective date of January 22, 1997, for the Service Agreement.

PECO states that copies of this filing have been supplied to WPS and to the Pennsylvania Public Utility Commission.

Comment date: February 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4436 Filed 2–21–97; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. EG97–32–000, et al.]

GPUI Lake Holdings, Inc., et al.; Electric Rate and Corporate Regulation Filings

February 13, 1997.

Take notice that the following filings have been made with the Commission:

1. GPUI Lake Holdings, Inc.

[Docket No. EG97–32–000]

On February 5, 1997, GPUI Lake Holdings, Inc. ("GPUI Lake Holdings") of One Upper Pond Road, Parsippany, New Jersey, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

The Applicant is a Delaware corporation which was formed to acquire an indirect ownership interest in a 106 MW natural gas fueled, topping cycle cogeneration facility located in Umatilla, Florida, which is an eligible facility as defined in the Public Utility Holding Company Act of 1935. All of the electric energy produced by the facility is sold at wholesale to Florida Power Corporation.

Comment date: March 5, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limits its consideration of comments to those that concern the adequacy or accuracy of the application.

2. TransCanada Energy Ltd.

[Docket No. ER97–1417–000]

Take notice that on January 27, 1997, TransCanada Power Corporation tendered for filing a letter stating that effective January 1, 1997, TPC was amalgamated with affiliated corporations to become TransCanada Energy Ltd.

Comment date: February 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Delmarva Power & Light Company

[Docket No. ER97–1456–000]

Take notice that on January 30, 1997, Delmarva Power & Light Company (Delmarva) tendered for filing its quarterly report of short-term transactions under Delmarva's Market Rate Sales Tariff.

Comment date: February 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Grumman Aerospace Corporation

[Docket No. ER97–1469–000]

Take notice that on January 29, 1997, Grumman Aerospace Corporation tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 1.

Comment date: February 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Arizona Public Service Company

[Docket No. ER97–1472–000]

Take notice that on January 29, 1997, Arizona Public Service Company (APS), tendered for filing a Service Agreement to provide Non-Firm Point-to-Point Transmission Service under APS' Open Access Transmission Tariff filed in Compliance with FERC Order No. 888 with Southern Energy Trading and Marketing, Inc. (Southern).

A copy of this filing has been served on Southern and the Arizona Corporation Commission.

Comment date: February 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Arizona Public Service Company

[Docket No. ER97–1473–000]

Take notice that on January 29, 1997, Arizona Public Service Company (APS), tendered for filing a Service Agreement to provide Non-Firm Point-to-Point Transmission Service under APS' Open Access Transmission Tariff filed in Compliance with FERC Order No. 888 with DuPont Power Marketing, Inc. (DuPont).

A copy of this filing has been served on the DuPont and the Arizona Corporation Commission.

Comment date: February 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. The Montana Power Company

[Docket No. ER97–1474–000]

Take notice that on January 2, 1997, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission changes to its FERC Electric Tariff, Second Revised Volume No. 1. These changes are required by Commission Order No. 888 and unbundle Montana's power supply and transmission services. In addition, Montana tendered for filing Service Agreements under FERC Electric Tariff, Second Revised Volume No. 1 with Flathead Electric Cooperative, Inc. (Flathead), Public Utility District No. 1 of Benton County (Benton), The City of McMinnville, a Municipal corporation of the State of Oregon (McMinnville), and Questar Energy Trading (Questar). Questar previously filed in Docket No. ER96–3049–000.

A copy of the filing was served Flathead, Benton, McMinnville and Questar.

Comment date: February 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Soyland Power Cooperative, Inc.

[Docket No. ER97–1475–000]

Take notice that on January 22, 1997, Soyland Power Cooperative, Inc. (Soyland), tendered for filing an initial rate schedule pursuant to Section 205 of the Federal Power Act and 35.12 of the regulations of the Federal Energy Regulatory Commission (Commission). Soyland determined that its change in status to a Commission-regulated "public utility" from a rural electric cooperative regulated by the Administrator of the Rural Utilities Service necessitated the filing of this contract.

The filing consists of an Interconnection Agreement dated September 1, 1983, between Soyland and City of Springfield, Illinois (Springfield). Soyland is not currently engaged in any transactions under the Interconnection Agreement, nor has it engaged in any such transactions since September 13, 1996, the date it became a Commission-regulated public utility.

Copies of the filing were served upon Springfield, Springfield's Washington, DC counsel, and the Illinois Commerce Commission.

Comment date: February 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Entergy Services, Inc.

[Docket No. ER97–1476–000]

Take notice that on January 30, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating companies), tendered for filing a Network Integration Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating companies, and East Texas Electric Cooperative, Inc., Sam Rayburn G&T Electric Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc.

Comment date: February 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Central Power and Light Company West Texas Utilities Company Public Service Company of Oklahoma Southwestern Electric Power Company

[Docket No. ER97–1478–000]

Take notice that on January 31, 1997, Public Service Company of Oklahoma (PSO), Southwestern Electric Power Company (SWEPCO), Central Power and Light Company (CPL) and West Texas Utilities Company (WTU) (collectively, the "CSW Operating Companies") submitted for filing service agreements under which the CSW Operating Companies will provide transmission and ancillary services in accordance with the CSW Operating Companies' open access transmission service tariff accepted for filing in Docket No. OA97–24–000.

The Companies state that portions of the filing have been served on each customer and that the entire filing has been served on the Public Utility Commission of Texas, the Louisiana Public Service Commission, the Arkansas Public Service Commission and the Oklahoma Corporation Commission.

Comment date: February 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. New England Power Company Massachusetts Electric Company Ashburnham Municipal Light Department

[Docket No. ER97–1479–000]

Take notice that on January 31, 1997, New England Power Company (NEP), Massachusetts Electric Company (MECo) and Ashburnham Municipal Light Department (Ashburnham) tendered for filing a Joint Use Agreement which permits each of the parties to make specified uses of NEP's Substation No. 610. NEP also tendered an Interconnection Service Agreement with Ashburnham pursuant to NEP's Tariff No. 9.

Comment date: February 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Southern California Edison Company

[Docket No. ER97–1480–000]

Take notice that on January 31, 1997, Southern California Edison Company (Edison), tendered for filing the following 1997 Settlement Agreement (Settlement) with the City of Banning, California (City) and Amendment No. 2 to the 1990 Integrated Operations Agreement, FERC Rate Schedule No. 248:

1997 Settlement Agreement Between Southern California Edison Company and the City Of Banning, California

Amendment No. 2 to the 1990 Integrated Operations Agreement Between Southern California Edison Company and the City Of Banning

The Settlement sets forth the terms and conditions by which Edison agrees to integrate new Capacity Resources, supersedes parts of Appendix B to the 1992 Settlement regarding integration of resources, and terminates the 1995 Power Sale Agreement between Edison and the City. Additionally, Edison and the City have agreed to amend the termination provisions of the 1990 IOA to require only three years notice for termination. Edison seeks waiver of the 60 day prior notice requirement and requests that the Commission assign an effective date of February 1, 1997.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: February 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Idaho Power Company

[Docket No. ER97–1481–000]

Take notice that on January 31, 1997, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission an Application for Order Approving Rate Schedule and Granting Certain Authority.

Comment date: February 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Arizona Public Service Corp.

[Docket No. ER97–1482–000]

Take notice that on January 31, 1997, Arizona Public Service Corporation tendered for filing a Notice of Cancellation of its Firm Point-to-Point Transmission Service Agreement.

Comment date: February 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Washington Water Power

[Docket No. ER97–1483–000]

Take notice that on January 31, 1997, Washington Water Power, tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, executed Service Agreements under WWP's FERC Electric Tariff Original Volume No. 9. WWP requests an effective date of January 1, 1997.

Comment date: February 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Northern States Power Company (Minnesota Company)

[Docket No. ER97–1484–000]

Take notice that on January 31, 1997, Northern States Power Company, Minnesota (NSP), tendered its filing of Amendment No. 1 to the Municipal Interconnection and Interchange Agreement between NSP and the city of Kasota, Minnesota. The filing contains cost support and the unbundled power sale rate information.

A copy of the filing was served upon each of the parties named in the Service List.

Comment date: February 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Wisconsin Public Service Corporation

[Docket No. ER97–1485–000]

Take notice that on January 31, 1997, Wisconsin Public Service Corporation

("WPSC"), tendered for filing an executed Electric Service Agreement for partial requirements service with the Washington Island Electric Cooperative ("the Cooperative) under the WPSC's W–2A Tariff and an unexecuted Network Integration Transmission Service Agreement under WPSC's Open Access Transmission Tariff. WPSC requests that the Commission make the service agreements effective on February 1, 1997.

WPSC states that copies of this filing have been served on the Cooperative, on the Michigan Public Service Commission and on the Public Service Commission of Wisconsin.

Comment date: February 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Illinois Power Company

[Docket No. ER97–1486–000]

Take notice that on January 31, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Progress Power Marketing, Inc. will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of January 23, 1997.

Comment date: February 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation, Power Authority of the State of New York

[Docket No. ER97–1523–000]

New York Power Pool

[Docket No. OA97–470–000]

Take notice that on January 31, 1997, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation, and the Power Authority of the State of New York filed Agreements to form an Independent System Operator, New York Power Exchange, and New York State Reliability Council, and to provide statewide transmission service.

In addition, New York Power Pool amended its compliance filing pursuant to Order No. 888 in Docket No. OA97–470–000.

Comment date: February 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Lake Cogen, Ltd.

[Docket No. QF92–198–002]

On February 5, 1997, Lake Cogen, Ltd. (Applicant), c/o GPU International, Inc., One Upper Pond Road, Parsippany, New Jersey 07054, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to Applicant, the topping-cycle cogeneration facility is located in Umatilla, Florida. The Commission previously certified the facility as a qualifying cogeneration facility in *Lake Cogen, Ltd.*, 61 FERC ¶ 62,109 (1992) and recertified the facility in Lake Cogen, Ltd., 76 FERC ¶ 62,102 (1996). The instant request for recertification is due to a change in ownership of the facility.

Comment date: February 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4435 Filed 2–21–97; 8:45 am]

BILLING CODE 6717–01–P

[Project Nos. 1494–136, et al.]

Hydroelectric Applications [Grand River Dam Authority (GRDA), et al.]; Notice of Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1a. *Type of Application:* Non-project Use of Project Lands (Construction of a New Marina).

b. *Project No.:* 1494–136.

c. *Date Filed:* January 14, 1997.

d. *Applicant:* Grand River Dam Authority (GRDA).

e. *Name of Project:* Pensacola Project.

f. *Location:* The proposed marina expansion would be located in the Honey Creek arm of Grand Lake O' the Cherokees in Delaware County, Oklahoma.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C., § 791(a)-825(r).

h. *Applicant contact:* Marsha Hawkins, Grand River Dam Authority, P.O. Box 409, Vinita, OK 74301, (918) 256–5545.

i. *FERC contact:* John K. Hannula, (202) 219–0116.

j. *Comment date:* MARCH 17, 1997.

k. *Description of the Application:* GRDA requests approval to permit Brian Miller and Dennis Blakemore, d/b/a Honey Creek Landing, Ltd., LLC, to build a new marina consisting of 7 docks containing 242 boat slips. The marina is located near Honey Creek Bridge (U.S.Route 59).

1. This notice also consists of the following standard paragraphs: B, C1, and D2.

2a. *Type of Filing:* Request for Extension of Time to Commence Project Construction.

b. *Applicant:* Borough of Cheswick, Pennsylvania and the Allegheny Valley North Council of Governments.

c. *Project No.:* The proposed Allegheny River Lock & Dam No. 3 Hydroelectric Project, FERC No. 4474–061, is to be located on the Allegheny River in Allegheny County, Pennsylvania.

d. *Date Filed:* January 7, 1997.

e. *Pursuant to:* Public Law 104–254.

f. *Applicants Contact:* Donald H. Clarke, Counsel for Licensee, Wilkinson, Barker, Knauer & Quinn, 1735 New York Avenue, N.W., Washington, DC 20006, (202) 783–4141.

g. *FERC Contact:* Mr. Lynn R. Miles, (202) 219–2671.

h. *Comment Date:* MARCH 21, 1997.

i. *Description of the Request:* The licensees for the subject project have requested that the deadline for commencement of construction be extended. The deadline to commence project construction for FERC Project No. 4474 would be extended to September 26, 1999. The deadline for completion of construction would be extended to September 26, 2003.

j. This notice also consists of the following standard paragraphs: B, C1, and D2.

3a. *Type of Application:* Surrender of License.

b. *Project No:* 11285–003.

c. *Date Filed:* December 31, 1996.

d. *Applicant:* Casitas Municipal Water District.

e. *Name of Project:* Lake Casitas Power Project.

f. *Location:* Lake Casitas, Ventura County, CA.

g. *Filed Pursuant to:* Federal Power Act, 16 USC Section 791(a)—825(r).

h. *Applicant Contact:* John J. Johnson, 1055 Ventura Avenue, Oak View, CA 93022, (805) 649–2251.

i. *FERC Contact:* Hillary Berlin, (202) 219–0038.

j. *Comment Date:* MARCH 25, 1997.

k. *Description of Application:* The licensee states that the project is not economical. No construction has occurred.

l. The notice also consists of the following standard paragraphs: B, C1, and D2.

4a. *Type of filing:* Notice of Intent to File Application for New License.

b. *Project No.: 2016.*

c. *Date filed:* November 29, 1996.

d. *Submitted By:* City of Tacoma, current licensee.

e. *Name of Project:* Cowlitz River.

f. *Location:* On the Cowlitz River, in Lewis County, Washington.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6 of the Commission's regulations.

h. *Effective date of original license:* January 1, 1952.

i. *Expiration date of original license:* December 31, 2001.

j. The 462-megawatt project consists of the Mayfield Dam and Powerhouse, Mossyrock Dam and Powerhouse, Cowlitz Salmon Hatchery, Cowlitz Trout Hatchery, Mossyrock Park, Taidnapam Park, and other associated facilities.

k. *Pursuant to 18 CFR 16.7, information on the project is available at:* Tacoma Public Utilities, 3628 South 35th Street, P.O. Box 11007, Tacoma, WA 98411–0007, ATTN: Barbara Werelius, Records Management Supervisor, (206) 502–8764.

l. *FERC contact:* Hector M. Perez (202) 219–2843.

m. Pursuant to 18 CFR 16.9(b)(1) each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1999.

5a. *Type of filing:* Notice of Intent to File Application for New License.

b. *Project No.:* 2030.

c. *Date filed:* December 6, 1996, by Portland General Electric Company and December 26, 1996, by the Confederated Tribes of the Warm Springs Reservation of Oregon.

The project is currently licensed to PGE and the Tribes to the extent of their interests.

d. *Name of Project:* Pelton-Round Butte.

e. *Location:* On the Deschutes River, in Jefferson County, Oregon.

f. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6 of the Commission's regulations.

g. *Effective date of original license:* January 1, 1952.

h. *Expiration date of original license:* December 31, 2001.

i. *The existing project consists of: The Pelton Development* consisting of a 205-foot-high concrete arch dam, a reservoir, a powerhouse with an installed capacity of 108,000 kilowatts, a 7-mile-long transmission line, and other appurtenant facilities; the *Round Butte Development* consisting of a 440-foot-high rock-fill dam, a reservoir, a powerhouse with an installed capacity of 300,000 kilowatts, a 96-mile-long transmission line, and other appurtenant facilities; and the *Reregulating Development* consisting of a concrete gravity and earth reregulating dam, a reservoir, a powerhouse with an installed capacity of 15,000 kilowatts, a 3-mile-long transmission line, and other appurtenant facilities.

j. *Pursuant to 18 CFR 16.7, information on the project is available at:* Portland General Electric Company, 121 SW Salmon, 3WTC–BRLH, Portland, OR 97204, ATTN: Richard Dyer, Senior Vice President, (503) 464–8454.

Warm Springs Power Enterprises, The Confederated Tribes of the Warm Springs Reservation of Oregon, P.O. Box 960, 5180 Jackson Trail Road, Warm Springs, OR 97761, (541) 553–1161.

k. *FERC contact:* Hector M. Perez (202) 219–2843.

l. Pursuant to 18 CFR 16.9(b)(1) each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1999.

6a. *Type of filing:* Notice of Intent to File Application for New License.

b. *Project No.:* 2042.

c. *Date filed:* January 16, 1997.

d. *Submitted By:* Public Utility District No. 1 of Pend Oreille County.

e. *Name of Project:* Box Canyon.

f. *Location:* On the Pend Oreille River, in Pend Oreille County, Washington and Bonner County, Idaho.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6 of the Commission's regulations.

h. *Effective date of original license:* February 1, 1952.

i. *Expiration date of original license:* January 31, 2002.

j. *The project consists of:* (1) a 46-foot-high and 160-foot-long reinforced concrete dam with an integral spillway; (2) a 8,850-acre reservoir; (3) a 217-foot-long horseshoe shaped diversion tunnel with reinforced concrete lining; (4) a 1,170-foot-long forebay channel; (5) a reinforced concrete powerhouse with an installed capacity of 60,000 kilowatts; and (5) other appurtenances.

k. *Pursuant to 18 CFR 16.7, information on the project is available at:* Public Utility District No. 1 of Pend Oreille County, District Headquarters, 130 N. Washington, Newport, WA 99156, ATTN: Robert Geddes, (509) 447–3137.

l. *FERC contact:* Hector M. Perez (202) 219–2843.

m. Pursuant to 18 CFR 16.9(b)(1) each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by January 31, 2000.

7a. *Type of Application:* Exemption From Licensing.

b. *Project No.:* P–11549–001.

c. *Date Filed:* January 21, 1997.

d. *Applicant:* Dunkirk Water Power Company, Inc.

e. *Name of Project:* Dunkirk Hydro Project.

f. *Location:* On the Yahara River in Dane County, near Dunkirk, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791 (a)–825(r).

h. *Applicant Contact:* Mr. Thomas J. Reiss, Jr., President, Dunkirk Water Power Company, Inc., P.O. Box 353, 319 Hart Street, Watertown, WI 53094, (414) 261–7975.

i. *FERC Contact:* Ed Lee (202) 219–2809.

j. *Comment Date:* APRIL 7, 1997.

k. *Description of Project:*

The existing run-of-river project consists of: (1) a dam and reservoir; (2) a powerhouse containing two generating units for a total installed capacity of 345 kW; (3) a transmission line; and (4) appurtenant facilities. The applicant estimates that the total average annual generation would be 1,000 MWh. The applicant has secured a long term lease from the owner, Dunkirk Dam Lake District, P.O. Box 83, Stoughton, WI 53589, which provides all necessary real property interests to develop and operate the project.

l. With this notice, we are initiating consultation with the *WISCONSIN STATE HISTORIC PRESERVATION OFFICER (SHPO)*, as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR, at 800.4.

m. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the issuance date of this notice and serve a copy of the request on the applicant.

8a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11592–000.

c. *Date filed:* September 25, 1996.

d. *Applicant:* Herman Allmaras.

e. *Name of Project:* Debeque GV Project.

f. *Location:* At the Bureau of Reclamation's Grand Valley Diversion dam, on the Colorado river, near the town of Palisade, in Mesa County, Colorado.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Herman Allmaras, 731 353/10 Road, Palisade, CO 81526, (970) 464–7686.

i. *FERC Contact:* Mr. Michael Strzelecki, (202) 219–2827.

j. *Comment Date:* April 11, 1997.

k. *Description of Project:* The proposed run-of-river project would utilize the Bureau of Reclamation's existing Grand Valley Diversion dam, and would consist of: (1) an intake; (2) four ten-foot-long penstocks; (3) a powerhouse containing four generating units with a total installed capacity of 1,600 kW; (4) a tailrace; (5) a 250-foot-long transmission line interconnecting with an existing Tri State Generating and Transmission Association, Inc. Transmission line; and (6) and appurtenant facilities.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

Standard Paragraphs

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: February 12, 1997, Washington, D.C.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4434 Filed 2–21–97; 8:45 am]

BILLING CODE 6717–01–P

Sunshine Act Meeting

February 19, 1997.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: February 26, 1997, following adjournment of the Commission's 10:00 a.m. open meeting.

PLACE: Room 2C, 888 First Street, N.E., Washington, D.C. 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Koch Gateway Pipeline Company.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4600 Filed 2–20–97; 11:25 am]

BILLING CODE 6717–01–M

Sunshine Act Meeting

February 19, 1997.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: February 26, 1997 10:00 a.m.

PLACE: Room 2C 888 First Street, N.E. Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda—* Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400, for a recording listing items stricken from or added to the meeting, call (202) 208–1627.

THIS IS A LIST OF MATTERS TO BE CONSIDERED BY THE COMMISSION. IT DOES NOT INCLUDE A LISTING OF ALL PAPERS RELEVANT TO THE ITEMS ON THE AGENDA; HOWEVER, ALL PUBLIC DOCUMENTS MAY BE EXAMINED IN THE REFERENCE AND INFORMATION CENTER.

CONSENT AGENDA—HYDRO 668TH MEETING—FEBRUARY 26, 1997, REGULAR MEETING (10:00 A.M.)

CAH–1.
DOCKET# DI95–3, 001, GEORGIA-PACIFIC CORPORATION
OTHER#S P–2618, 010, GEORGIA-PACIFIC CORPORATION,
P–2660, 009, GEORGIA-PACIFIC CORPORATION
CAH–2.
DOCKET# P–11128, 006, ODELL HYDROELECTRIC COMPANY
CAH–3.
DOCKET# P–2145, 029, PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY, WASHINGTON
OTHER#S EL97–12, 000, PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY, WASHINGTON
CAH–4.
DOCKET# P–2306, 014, CITIZENS UTILITIES COMPANY
OTHER#S P–2306, 015, CITIZENS UTILITIES COMPANY
P–2306, 017, CITIZENS UTILITIES COMPANY
P–2306, 021, CITIZENS UTILITIES COMPANY
CAH–5.
DOCKET# P–11446, 000, MID-ATLANTIC ENERGY ENGINEERS, LTD.
OTHER#S P–11481, 000, CUFFS RUN ENERGY PARTNERS
CAH–6.
DOCKET# P–11524, 001, MOKELUMNE RIVER WATER AND POWER AUTHORITY

CONSENT AGENDA—ELECTRIC

CAE–1.
DOCKET# ER97–1068, 000, COMMONWEALTH ELECTRIC COMPANY AND CAMBRIDGE ELECTRIC LIGHT COMPANY
CAE–2.
DOCKET# OA97–221, 000, DUQUESNE LIGHT COMPANY
OTHER#S ER97–881, 000, CENTRAL POWER & LIGHT COMPANY, WEST TEXAS UTILITIES COMPANY, PUBLIC SERVICE COMPANY OF OKLAHOMA, ET AL.
ER97–976, 000, SOUTHERN COMPANY SERVICES, INC.
ER97–978, 000, PUBLIC SERVICE COMPANY OF COLORADO
ER97–987, 000, WESTERN SYSTEMS POWER POOL
ER97–1023, 000, DETROIT EDISON COMPANY
ER97–1055, 000, JERSEY CENTRAL POWER AND LIGHT COMPANY, METROPOLITAN EDISON COMPANY AND PENNSYLVANIA ELECTRIC COMPANY
ER97–1062, 000, PUBLIC SERVICE COMPANY OF COLORADO
ER97–1079, 000, NEW ENGLAND POWER POOL
ER97–1080, 000, MASSACHUSETTS MUNICIPAL WHOLESALE ELECTRIC COMPANY
ER97–1082, 000, ATLANTIC CITY ELECTRIC COMPANY, BALTIMORE GAS & ELECTRIC COMPANY, DELMARVA POWER & LIGHT COMPANY, ET AL.
ER97–1083, 000, MOKAN POWER POOL
ER97–1162, 000, MID-CONTINENT AREA POWER POOL
ER97–1165, 000, DUQUESNE LIGHT COMPANY
ER97–1166, 000, CONSUMERS POWER COMPANY AND DETROIT EDISON COMPANY
ER97–1167, 000, CLEVELAND ELECTRIC ILLUMINATING COMPANY
ER97–1168, 000, CONSUMERS POWER COMPANY
ER97–1169, 000, OHIO EDISON COMPANY AND PENNSYLVANIA POWER COMPANY
ER97–1523, 000, CENTRAL HUDSON GAS & ELECTRIC CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., ET AL.
OA97–21, 000, WASHINGTON WATER POWER COMPANY
OA97–24, 000, CENTRAL POWER & LIGHT COMPANY, WEST TEXAS UTILITIES COMPANY, PUBLIC SERVICE COMPANY OF OKLAHOMA, ET AL.
OA97–163, 000, MID-CONTINENT AREA POWER POOL
OA97–197, 000, DUKE POWER COMPANY
OA97–210, 000, DUKE POWER COMPANY
OA97–220, 000, WESTERN SYSTEMS POWER POOL
OA97–237, 000, NEW ENGLAND POWER POOL
OA97–238, 000, MASS. MUN. WHOLESALE ELECTRIC CO.
OA97–249, 000, CONSUMERS POWER COMPANY AND DETROIT EDISON COMPANY
OA97–261, 000, ATLANTIC CITY ELECTRIC COMPANY, BALTIMORE GAS & ELECTRIC COMPANY, DELMARVA POWER & LIGHT COMPANY, ET AL.
OA97–262, 000, MOKAN POWER POOL
OA97–281, 000, NORTHEAST UTILITIES SERVICE COMPANY
OA97–296, 000, TAMPA ELECTRIC COMPANY
OA97–470, 000, CENTRAL HUDSON GAS & ELECTRIC CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., ET AL.
OA97–472, 000, DETROIT EDISON COMPANY
OA97–480, 000, AMERICAN ELECTRIC POWER SERVICE CORPORATION
OA97–489, 000, SOUTHERN COMPANY SERVICES, INC.
OA97–496, 000, JERSEY CENTRAL POWER & LIGHT COMPANY, METROPOLITAN EDISON COMPANY AND PENNSYLVANIA ELECTRIC COMPANY
OA97–497, 000, PUBLIC SERVICE COMPANY OF COLORADO
OA97–500, 000, ALLEGHENY POWER SERVICE CORPORATION
OA97–501, 000, PUBLIC SERVICE COMPANY OF COLORADO
CAE–3.
DOCKET# ER97–913, 000, CONNECTICUT YANKEE ATOMIC POWER COMPANY
CAE–4.
DOCKET# ER97–988, 000, TEXAS-NEW MEXICO POWER COMPANY
CAE–5.
DOCKET# ER96–1315, 000, FLORIDA POWER CORPORATION
CAE–6.
DOCKET# ER96–1471, 000, CLEVELAND ELECTRIC ILLUMINATING COMPANY
OTHER#S ER96–1471, 002, CLEVELAND ELECTRIC ILLUMINATING COMPANY
CAE–7.

DOCKET# OA96–146, 001, NIOBRARA VALLEY ELECTRIC MEMBERSHIP COMPANY
OTHER#S ER97–1412, 000, NIOBRARA VALLEY ELECTRIC MEMBERSHIP COMPANY
CAE–8.
DOCKET# ER96–2830, 001, WASHINGTON GAS ENERGY SERVICES, INC

CONSENT AGENDA—GAS AND OIL

CAG–1.
DOCKET# RP97–240, 000, TEXAS GAS TRANSMISSION CORPORATION
CAG–2.
DOCKET# RP97–246, 000, ANR PIPELINE COMPANY
CAG–3.
DOCKET# RP97–236, 000, NORTHWEST PIPELINE CORPORATION
CAG–4.
DOCKET# RP97–239, 000, NORTHWEST PIPELINE CORPORATION
CAG–5.
OMITTED
CAG–6.
OMITTED
CAG–7.
DOCKET# RP97–248, 000, NORTHERN NATURAL GAS COMPANY
CAG–8.
DOCKET# RP97–104, 000, KENTUCKY WEST VIRGINIA GAS COMPANY
CAG–9.
DOCKET# RP97–105, 000, NORA TRANSMISSION COMPANY
CAG–10.
DOCKET# RP97–109, 000, SABINE PIPE LINE COMPANY
CAG–11.
DOCKET# RP97–138, 000, SHELL GAS PIPELINE COMPANY
OTHER#S RP97–138, 001, SHELL GAS PIPELINE COMPANY
CAG–12.
DOCKET# RP97–145, 000, CROSSROADS PIPELINE COMPANY
CAG–13.
DOCKET# RP97–146, 000, U–T OFFSHORE SYSTEM
CAG–14.
DOCKET# RP97–150, 000, RICHFIELD GAS STORAGE SYSTEM
CAG–15.
DOCKET# RP97–157, 000, GAS TRANSPORT, INC.
CAG–16.
DOCKET# RP97–159, 000, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–17.
DOCKET# RP97–162, 000, COVE POINT LNG LIMITED PARTNERSHIP
CAG–18.
DOCKET# RP97–166, 000, COLUMBIA GULF TRANSMISSION COMPANY
CAG–19.
DOCKET# RP97–170, 000, BLUE LAKE GAS STORAGE COMPANY
CAG–20.
DOCKET# RP97–177, 000, STEUBEN GAS STORAGE COMPANY
CAG–21.
DOCKET# RP97–182, 000, SOUTH GEORGIA NATURAL GAS COMPANY
CAG–22.
DOCKET# RP97–197, 000, CHANDELEUR PIPE LINE COMPANY
CAG–23.
DOCKET# RP97–224, 000, SEA ROBIN PIPELINE COMPANY
CAG–24.
DOCKET# RP96–348, 000, PANHANDLE EASTERN PIPE LINE COMPANY
CAG–25.
DOCKET# RP97–110, 000, BLACK MARLIN PIPELINE COMPANY
CAG–26.
OMITTED
CAG–27.
OMITTED
CAG–28.
DOCKET# RP97–134, 000, PACIFIC GAS TRANSMISSION COMPANY
CAG–29.
DOCKET# RP97–139, 000, CAPROCK PIPELINE COMPANY
CAG–30.
DOCKET# RP97–140, 000, LOUISIANA-NEVADA TRANSIT COMPANY
CAG–31.
OMITTED
CAG–32.
DOCKET# RP97–143, 000, T C P GATHERING COMPANY
CAG–33.
DOCKET# RP97–144, 000, K N WATTENBERG TRANSMISSION LIMITED LIABILITY COMPANY
CAG–34.
DOCKET# RP97–156, 000, VIKING GAS TRANSMISSION COMPANY
CAG–35.
OMITTED
CAG–36.
DOCKET# RP97–169, 000, RIVERSIDE PIPELINE COMPANY, L.P.
CAG–37.
DOCKET# RP97–174, 000, GULF STATES TRANSMISSION CORPORATION
CAG–38.
DOCKET# RP97–176, 000, MIGC, INC.
CAG–39.
DOCKET# RP97–178, 000, KERN RIVER GAS TRANSMISSION COMPANY
CAG–40.
DOCKET# RP97–179, 000, OZARK GAS TRANSMISSION SYSTEM
CAG–41.
DOCKET# RP97–187, 000, ARKANSAS WESTERN PIPELINE COMPANY
OTHER#S RP97–187, 001, ARKANSAS WESTERN PIPELINE COMPANY
RP97–187, 002, ARKANSAS WESTERN PIPELINE COMPANY
CAG–42.
DOCKET# RP97–244, 000, MISSISSIPPI RIVER TRANSMISSION CORPORATION
CAG–43.
DOCKET# TM97–2–76, 000, WYOMING INTERSTATE COMPANY, LTD.
CAG–44.
DOCKET# PR97–1, 000, CONSUMERS POWER COMPANY
CAG–45.
DOCKET# RP92–149, 008, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–46.
DOCKET# RP97–97, 001, TENNESSEE GAS PIPELINE COMPANY
CAG–47.
DOCKET# RP94–72, 008, IROQUOIS GAS TRANSMISSION SYSTEM, L.P.
OTHER#S FA92–59, 006, IROQUOIS GAS TRANSMISSION SYSTEM, L.P.
CAG–48.
DOCKET# RP91–229, 022 ET AL., PANHANDLE EASTERN PIPE LINE COMPANY
OTHER#S RP88–262, 033 ET AL., PANHANDLE EASTERN PIPE LINE COMPANY
RP92–166, 016 ET AL., PANHANDLE EASTERN PIPE LINE COMPANY
RS92–22, 014 ET AL., PANHANDLE EASTERN PIPE LINE COMPANY
CAG–49.
OMITTED
CAG–50.
OMITTED
CAG–51.
OMITTED
CAG–52.
DOCKET# RM96–1, 004, STANDARDS FOR BUSINESS PRACTICES OF INTERSTATE NATURAL GAS PIPELINES
CAG–53.
DOCKET# MG97–7, 000, TRANSCOLORADO GAS TRANSMISSION COMPANY
CAG–54.
DOCKET# CP96–820, 001, QUESTAR PIPELINE COMPANY
CAG–55.
DOCKET# CP96–52, 002, PINE NEEDLE LNG COMPANY, LLC
OTHER#S CP96–134, 002, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–56.
DOCKET# CP96–311, 001, WILLIAMS NATURAL GAS COMPANY
CAG–57.
DOCKET# CP96–591, 001, ALGONQUIN GAS TRANSMISSION COMPANY
CAG–58.
DOCKET# CP96–212, 000, COLORADO INTERSTATE GAS COMPANY
OTHER#S CP96–212, 001, COLORADO INTERSTATE GAS COMPANY
CAG–59.
DOCKET# CP94–38, 000, OUACHITA RIVER GAS STORAGE COMPANY, L.L.C.
OTHER#S CP94–38, 001, OUACHITA RIVER GAS STORAGE COMPANY, L.L.C.
CAG–60.
DOCKET# CP94–183, 000, EL PASO NATURAL GAS COMPANY
CAG–61.
DOCKET# CP96–288, 000, WYOMING INTERSTATE COMPANY, LTD.
OTHER#S CP96–288, 001, WYOMING INTERSTATE COMPANY, LTD.
CAG–62.
DOCKET# CP96–589, 000, KOCH GATEWAY PIPELINE COMPANY
OTHER#S CP96–585, 000, SOUTHERN NATURAL GAS COMPANY
CP96–620, 000, KOCH GATEWAY PIPELINE COMPANY
CAG–63.
DOCKET# CP96–806, 000, TENNESSEE GAS PIPELINE COMPANY AND COLUMBIA GULF TRANSMISSION COMPANY
CAG–64.
DOCKET# CP96–53, 000, NE HUB PARTNERS, L.P.
CAG–65.
DOCKET# CP96–214, 000, TRANSWESTERN PIPELINE COMPANY
CAG–66.
DOCKET# CP96–739, 000, KOCH GATEWAY PIPELINE COMPANY
CAG–67.
DOCKET# CP94–207, 003, SOUTHERN CALIFORNIA GAS COMPANY
CAG–68.
DOCKET# RP96–81, 002, CARNEGIE INTERSTATE PIPELINE COMPANY
CAG–69.
OMITTED
CAG–70.
DOCKET# CP96–9, 001, SHELL GAS PIPELINE COMPANY
CAG–71.
DOCKET# CP96–796, 000, MANTA RAY OFFSHORE GATHERING COMPANY, L.L.C.
CAG–72.
DOCKET# CP96–711, 000, DISCOVERY PRODUCER SERVICE LLC
OTHER#S CP96–712, 000, DISCOVERY GAS TRANSMISSION LLC
CP96–719, 000, DISCOVERY GAS TRANSMISSION LLC
CAG–73.
DOCKET# RP96–352, 000, TRANSWESTERN PIPELINE COMPANY, PACIFIC GAS & ELECTRIC COMPANY AND SOUTHERN CALIFORNIA GAS COMPANY
OTHER #S RP96–352, 001, TRANSWESTERN PIPELINE COMPANY
RP96–352, 003, TRANSWESTERN PIPELINE COMPANY
RP96–352, 004, TRANSWESTERN PIPELINE COMPANY
RP96–352, 005, TRANSWESTERN PIPELINE COMPANY

HYDRO AGENDA

H–1.
RESERVED

ELECTRIC AGENDA

E–1.
DOCKET# RM95–8, 001, PROMOTING WHOLESALE COMPETITION THROUGH OPEN-ACCESS NON-DISCRIMINATORY TRANSMISSION SERVICES, ETC.
OTHER#S RM94–7, 002, RECOVERY OF STRANDED COSTS BY PUBLIC UTILITIES AND TRANSMITTING UTILITIES
ORDER ON REHEARING
E–2.
DOCKET# RM95–9, 001, OPEN ACCESS SAME-TIME INFORMATION SYSTEM (FORMERLY REAL-TIME INFORMATION NETWORKS) AND STANDARDS OF CONDUCT
ORDER ON REHEARING
E–3.
DOCKET# EC96–36, 000, ENRON CORPORATION AND PORTLAND GENERAL CORPORATION
OTHER#S ER96–3065, 000, ENRON POWER MARKETING, INC.
ER97–708, 000, COOK INLET ENERGY SUPPLY L.P.
ORDER ON MERGER AND RELATED FILINGS

OIL AND GAS AGENDA

I. PIPELINE RATE MATTERS
PR–1.
DOCKET# RM91–11, 006, PIPELINE SERVICE OBLIGATIONS AND REVISIONS TO REGULATIONS GOVERNING SELF-IMPLEMENTING TRANSPORTATION, ETC.
OTHER#S RM87–34, 072, REGULATION OF NATURAL GAS PIPELINES AFTER PARTIAL WELLHEAD DECONTROL
ORDER ON REMAND
PR–2.
DOCKET# PL97–1, 000, CURRENT ISSUES IN NAT. GAS INDUSTRY
NOTICE OF PUBLIC CONFERENCE
II. PIPELINE CERTIFICATE MATTERS
PC–1.
RESERVED

Lois D. Cashell,

Secretary.

[FR Doc. 97–4601 Filed 2–20–97; 11:25 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5693–1]

Acid Rain Program: Permit and Permit Modifications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of permits and permit modifications.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is issuing, as a direct final action, Phase I Acid Rain permits and permit modifications including nitrogen oxides (NO_x) compliance plans in accordance with the Acid Rain Program regulations (40 CFR parts 72 and 76). Because the Agency does not anticipate receiving adverse comments, the exemptions are being issued as a direct final action.

DATES: The permits and permit modifications issued in this direct final action will be final on April 7, 1997 or 40 days after publication of a similar notice in a local publication, whichever is later, unless significant, adverse comments are received by March 26, 1997 or 30 days after publication of a similar notice in a local publication, whichever is later. If significant, adverse comments are timely received on any permit or permit modification in this direct final action, that permit or permit modification will be withdrawn through a notice in the **Federal Register**.

ADDRESSES: *Administrative Records.* The administrative record for the permits, except information protected as confidential, may be viewed during normal operating hours at the following locations: for plants in Connecticut, EPA Region 1, JFK Building, One Congress Street, Boston, MA, 02203; for plants in Iowa, Kansas, Missouri, and Nebraska, EPA Region 7, 726 Minnesota Ave., Kansas City, KS, 66101; and for plants in Oregon, EPA Region 10, 1200 Sixth Avenue (AT–082), Seattle, Washington, 98101.

Comments. Send comments, requests for public hearings, and requests to receive notice of future actions to: for plants in Connecticut, EPA Region 1, Air, Pesticides and Toxics Management Division, Attn: Ian Cohen (address above); for plants in Iowa, Kansas, Missouri, and Nebraska, EPA Region 7, Air, RCRA, and Toxics Division, Attn: Jon Knodel (address above); and for plants in Oregon, EPA Region 10, Air and Toxics Division, Attn: Joan Cabreza (address above). Submit comments in duplicate and identify the permit to which the comments apply, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of all units in the plan. All timely comments will be considered, except those pertaining to standard provisions under 40 CFR 72.9 or issues not relevant to the permit or the permit modification.

Hearings. To request a public hearing, state the issues proposed to be raised in the hearing. EPA may schedule a hearing if EPA finds that it will contribute to the decision-making process by clarifying significant issues affecting a NO_x compliance plan.

FOR FURTHER INFORMATION CONTACT: For plants in Connecticut, call Ian Cohen, (617) 565–3568; for plants in Iowa, Kansas, Missouri, and Nebraska, call Jon Knodel, (913) 551–7622; and for plants in Oregon, call Joan Cabreza (206) 553–8505.

SUPPLEMENTARY INFORMATION: Title IV of the Clean Air Act directs EPA to establish a program to reduce the adverse effects of acidic deposition by promulgating rules and issuing permits to emission sources subject to the program. In today's action, EPA is issuing permits and permit modifications that include approval of early election plans for NO_x. The units that are included in the early election plans will be required to meet an actual annual average emissions rate for NO_x of either 0.45 lbs/MMBtu for tangentially-fired boilers or 0.50 lbs/mmBtu for dry bottom wall-fired boilers

beginning on January 1, 1997 through December 31, 2007, after which they will be required to meet any applicable Phase II emissions limitation for NO_X. The following is a list of units included in the permits or permit modifications and the limits that they are required to meet:

Bridgeport Harbor unit BHB3 in Connecticut: 0.45 lbs/mmBtu. The designated representative is John A. Buffa.

Ames units 7 and 8 in Iowa: 0.45 lbs/mmBtu for unit 7, 0.50 lbs/mmBtu for unit 8. The designated representative is Merlin C. Hove.

Council Bluffs units 1 and 3 in Iowa: 0.45 lbs/mmBtu. The designated representative is William Leech.

George Neal North units 2 and 3 in Iowa: 0.50 lbs/mmBtu. The designated representative is William Leech.

George Neal South unit 4 in Iowa: 0.50 lbs/mmBtu. The designated representative is William Leech.

Lansing unit 4 in Iowa: 0.50 lbs/mmBtu. The designated representative is Dale R. Sharp.

Louisa unit 101 in Iowa: 0.50 lbs/mmBtu. The designated representative is William Leech.

Ottumwa unit 1 in Iowa: 0.45 lbs/mmBtu. The designated representative is William W. Douglass.

Nearman Creek unit 1 in Kansas: 0.50 lbs/mmBtu. The designated representative is Larry Adair.

Riverton units 39 and 40 in Kansas: 0.50 lbs/mmBtu for unit 39, 0.45 lbs/mmBtu for unit 40. The designated representative is Bruce Baker.

Sikeston unit 1 in Missouri: 0.50 lbs/mmBtu. The designated representative is Randall Pick.

Gerald Gentleman units 1 and 2 in Nebraska: 0.50 lbs/mmBtu. The designated representative is W. J. Fehrman.

Gerald Whelan Energy Center unit 1 in Nebraska: 0.45 lbs/mmBtu. The designated representative is Marvin Schultes.

Nebraska City unit 1 in Nebraska: 0.50 lbs/mmBtu. The designated representative is William C. Jones.

North Omaha unit 4 in Nebraska: 0.45 lbs/mmBtu. The designated representative is William C. Jones.

Boardman unit 1SG in Oregon: 0.50 lbs/mmBtu. The designated representative is Richard J. Hess.

Dated: February 14, 1997

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 97–4497 Filed 2–21–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5693–2]

Acid Rain Program: Draft Permits and Permit Modifications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft permits and permit modifications.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is issuing for comment draft Phase I Acid Rain permits and permit modifications including nitrogen oxides (NO_X) compliance plans in accordance with the Acid Rain Program regulations (40 CFR parts 72 and 76). Because the Agency does not anticipate receiving adverse comments, the permits and permit modifications are also being issued as a direct final action in the notice of permits and permit modifications published elsewhere in today's **Federal Register**.

DATES: Comments on the draft permits and permit modifications must be received no later than March 26, 1997 or 30 days after the date of publication of a similar notice in a local newspaper, whichever is later.

ADDRESSES: *Administrative Records.* The administrative record for the permits, except information protected as confidential, may be viewed during normal operating hours at the following locations: for plants in Connecticut, EPA Region 1, JFK Building, One Congress Street, Boston, MA, 02203; for plants in Iowa, Kansas, Missouri, and Nebraska, EPA Region 7, 726 Minnesota Ave., Kansas City, KS, 66101; and for plants in Oregon, EPA Region 10, 1200 Sixth Avenue (AT–082), Seattle, Washington, 98101.

Comments. Send comments, requests for public hearings, and requests to receive notices of future actions to: for plants in Connecticut, EPA Region 1, Air, Pesticides and Toxics Management Division, Attn: Ian Cohen (address above); for plants in Iowa, Kansas, Missouri, and Nebraska, EPA Region 7, Air, RCRA, and Toxics Division, Attn: Jon Knodel (address above); and for plants in Oregon, EPA Region 10, Air and Toxics Division, Attn: Joan Cabreza (address above). Submit comments in duplicate and identify the permit to which the comments apply, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of all units in the plan. All timely comments will be considered, except those pertaining to standard provisions under 40 CFR 72.9 or issues not relevant to the permit or the permit modification.

Hearings. To request a public hearing, state the issues proposed to be raised in the hearing. EPA may schedule a hearing if EPA finds that it will contribute to the decision-making process by clarifying significant issues affecting a NO_X compliance plan.

FOR FURTHER INFORMATION CONTACT: For plants in Connecticut, call Ian Cohen, (617) 565–3568; for plants in Iowa, Kansas, Missouri, and Nebraska, call Jon Knodel, (913) 551–7622; and for plants in Oregon, call Joan Cabreza (206) 553–8505.

SUPPLEMENTARY INFORMATION: If no significant, adverse comments are timely received, no further activity is contemplated in relation to these draft permits and draft permit modifications and the permits and permit modifications issued as a direct final action in the notice of permits and permit modifications published elsewhere in today's **Federal Register** will automatically become final on the date specified in that notice. If significant, adverse comments are timely received on any permit or permit modification, that permit or permit modification in the notice of permits and permit modifications will be withdrawn and public comment received on that permit or permit modification based on this notice of draft permits and permit modifications will be addressed in a subseqent notice of permit or permit modification. Because the Agency will not institute a second comment period on this notice of draft permits and permit modifications, any parties interested in commenting should do so during this comment period.

For further information and a detailed description of the permits and permit modifications, see the information provided in the notice of permits and permit modifications elsewhere in today's **Federal Register**.

Dated: February 14, 1997.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 97–4498 Filed 2–21–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5692–7]

Clean Air Act Advisory Committee Notice of Meeting

SUMMARY: The Environmental Protection Agency (EPA) established the Clean Air Act Advisory Committee (CAAAC) on November 19, 1990 to provide independent advice and counsel to EPA on policy issues associated with implementation of the Clean Air Act of 1990. The Committee advises on economic, environmental, technical, scientific, and enforcement policy issues.

OPEN MEETING NOTICE: Pursuant to 5 U.S.C. App. 2 Section 10(a)(2), notice is hereby given that the Clean Air Act Advisory Committee will hold its next open meeting on Thursday, April 10, 1997 from 8:30 a.m. to 3:30 p.m. at Fairview Park Marriott Hotel, 3111 Fairview Park Dr., Falls Church, Virginia. Seating will be available on a first come, first served basis. The Permits/NSR/Toxics Integration Subcommittee, the Economic Incentives and Regulatory Innovations Subcommittee, the Linking Transportation and Air Quality Concerns Subcommittee and the Climate Change Subcommittee will conduct meetings on Wednesday, April 9, 1997, from 7:00 p.m. to 9:00 p.m. Subcommittee meeting times may change at the discretion of the co-chairs.

INSPECTION OF COMMITTEE DOCUMENTS: The committee agenda and any documents prepared for the meeting will be publicly available at the meeting. Thereafter, these documents, together with the CAAAC meeting minutes, will be available by contacting Committee DFO Paul Rasmussen at (202) 260–6877.

FOR FURTHER INFORMATION CONTACT: Concerning this meeting of the CAAAC, please contact Paul Rasmussen, Office of Air and Radiation, US EPA (202) 260–6877, fax (202) 260–4185, or by mail at US EPA, Office of Air and Radiation (Mail Code 6102), Washington, DC 20460. If you would like to receive an agenda for the CAAAC meeting, please leave your fax number on Mr. Rasmussen's voice mail and it will be forwarded to you.

Dated: February 14, 1997.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 97–4496 Filed 2–21–97; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5693–9]

Peer-Review Workshop for Draft Dose-Response Modeling Chapter for the Reassessment of Dioxin

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of Peer-Review Workshop for Draft Dose-Response Modeling Chapter of EPA's Health Assessment Document for Dioxin.

SUMMARY: The U.S. Environmental Protection Agency (EPA) has scheduled a peer-review workshop to be held on March 5, 1997, from 9:00 a.m. to 3:00 p.m. to review a revised draft of Chapter 8. Dose-Response Modeling, which is part of the Health Assessment Document for 2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD) and Related Compounds. The health assessment document is one component of the Agency's reassessment of dioxin.

This revised chapter on dose-response was one of two chapters referred back to the EPA for substantial revision after the Science Advisory Board (SAB) review in May 1995. The public is invited to attend the workshop, but seating will be limited and advance reservations are suggested. Because time is limited for review of the draft chapter prior to the peer-review workshop, written comments must be provided to the Agency for 60 days subsequent to this notice. All comments submitted within that time will be considered when the chapter is revised for SAB review. At the workshop, a panel of scientific experts from outside the Agency will review the draft dose-response modeling chapter which, at this stage, is a work in progress and does not represent Agency policy. Since the chapter evaluates only part of the evidence supporting dioxin's overall toxic potential, no general conclusions regarding the potential health effects or classification of these compounds will be presented. This broader determination will be based on the full weight-of-evidence and will be part of the risk characterization component of the reassessment.

DATES: The peer-review workshop to review the draft dose-response modeling chapter will be held March 5, 1997. Comments on the draft chapter must be submitted in writing and be postmarked by April 25, 1997.

ADDRESSES: The meeting will be held at The Channel Inn Hotel, 650 Water Street, SW, Washington, D.C. 20024. Members of the public wishing to register to attend the meeting may phone Ms. Linda Tuxen at 202–260–5949 between 10:00 a.m. and 6:00 p.m. Eastern Standard Time. During the meeting some time will be designated for questions and comments from the floor to encourage interactions among authors, peer-panel members, and the other meeting attendees.

Members of the public may also submit written comments and other materials relevant to the topic to: Ms. Linda Tuxen, National Center for Environmental Assessment (8601), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460, Attention: Dioxin Reassessment.

The draft chapter will be available on or about February 24, 1997. To obtain a copy of the draft dose-response modeling chapter, interested parties should contact the ORD Publications Center, U.S. Environmental Protection Agency, 26 W. Martin Luther King Drive, Cincinnati, OH 45268; telephone (513) 569–7562; fax (513) 569–7566. Please provide your name, mailing address, and the chapter title and EPA number as follows: Chapter 8. Dose-Response Modeling, EPA/600/P–92/001C8.

The draft chapter also will be provided for inspection at the ORD Public Information Shelf, EPA Headquarters Library, 401 M Street, S.W., Washington, DC 20460, between the hours of 10:00 a.m. and 4:00 p.m., Monday through Friday, except for Federal holidays, and at all of the EPA Regional and Laboratory libraries.

FOR FURTHER INFORMATION CONTACT: To register for the workshop: Ms. Linda Tuxen, National Center for Environmental Assessment (8601), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460; phone: 202–260–5949; fax: 202–401–2492; e-mail: tuxen.linda@epamail.epa.gov.

For copies of the document: ORD Publications Center, CERI-FRN, Office of Research and Development, U.S. Environmental Protection Agency, 26 W. Martin Luther King Drive, Cincinnati, OH 45268; telephone (513) 569–7562; fax (513) 569–7566.

For questions on the overall reassessment of dioxin: Dr. William Farland, National Center for Environmental Assessment (8601), Office of Research and Development, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460; telephone (202) 260–7315; fax (202) 401–2492; e-mail: farland.william@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

History of the Scientific Reassessment of Dioxin

As part of the SAB's May 1995 review of the draft Health Assessment Document for 2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD) and Related Compounds, Chapter 8. Dose-Response Relationships, was identified as one that may need substantial revision and further review. The SAB commented that the chapter should be revised to better integrate human and laboratory animal data, consider alternatives to the linear non-threshold model, and clarify important

points. The purpose of this peer-review workshop is to review the comments provided independently by the reviewers and to receive further comment based on their discussion.

The EPA has undertaken this task in response to emerging scientific knowledge of the biological, human health, and environmental effects of dioxin. Significant advances have occurred in the scientific understanding of mechanisms of dioxin toxicity, of the carcinogenic and other adverse health effects of dioxin in people, of the pathways to human exposure, and of the toxic effects of dioxin to the environment.

In 1985 and 1988, the Agency prepared assessments of the human health risks from environmental exposures to dioxin. These assessments were reviewed by the Agency's SAB. At the time of the 1988 risk assessment, there was general agreement within the scientific community that there could be a substantial improvement over the existing response approach, but there was no consensus as to a more biologically defensible methodology. The Agency was asked to explore the development of such a method. The current reassessment activities are in part in response to this request.

The EPA is making each phase of the current reassessment of dioxin an open and participatory effort. It previously has convened two public meetings (on November 15, 1991, and April 28, 1992) to inform the public of the Agency's plans and activities, to hear and receive public comments and reviews of the proposed plans for the reassessment, and receive any current, scientifically relevant information.

The Agency convened two peer-review workshops to review draft documents related to EPA's scientific reassessment of the health effects of dioxin. The first workshop was held September 10 and 11, 1992, to review a draft exposure assessment titled, Estimating Exposures to Dioxin-Like Compounds. The second workshop was held September 22–25, 1992, to review eight chapters of a draft health assessment document. The epidemiology chapter was also reviewed in another workshop on September 8–9, 1993. It should be noted that outside scientists have been heavily involved in the writing and peer review of these draft documents. Drafts of the health and exposure documents were made available for public review and comment in the fall of 1994, both with a formal public comment period and at a number of public meetings that were held around the country. The SAB reviewed the documents in May 1995.

The purpose of the March 1997 peer-review workshop is to review the draft of a revised and expanded dose-response modeling chapter. The revised chapter evaluates the scientific quality and strength of the dose-response modeling in the evaluation of toxic health effects, both cancer and noncancer, from exposure to dioxin, with an emphasis on the specific congener, 2,3,7,8-TCDD. A critical analysis of all available data has been performed. It is hoped that the peer-review workshop will provide a thoughtful and critical review of the dose-response portion of the dioxin reassessment.

Dated: February 20, 1997.

William H. Farland,

Director, National Center for Environmental Assessment.

[FR Doc. 97–4618 Filed 2–21–97; 8:45 am]

BILLING CODE 6560–50–P

[OPP–00470; FRL–5591–6]

Plant Pesticides Resistance Management; Notice of Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Meeting.

SUMMARY: EPA will hold a public meeting on March 21, 1997, to solicit public comment on resistance management plans for plant pesticides, including the necessity for such plans, critical elements of resistance management plans and requirements for successful implementation.

DATES: The meeting will be held on March 21, 1997, from 8:30 am until 5 pm. Written comments from interested parties not able to attend the meeting must be received on or before March 21, 1997. Persons who wish to speak at the public meeting are encouraged to register in advance by submitting a brief written request and abstract to EPA on or before March 14, 1997.

ADDRESSES: The meeting is open to the public and will be held in the EPA Auditorium at EPA Headquarters, 401 M St., SW., Washington, DC 20460. Interested parties who cannot attend the public meeting but who wish to comment may do so by submitting written comments. Comments should be identified by the docket control number OPP-00470, and be submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number OPP–00470. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit IV of this document.

FOR FURTHER INFORMATION CONTACT: By mail: Willie H. Nelson, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, U. S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail address: 5th Floor CS, 2800 Crystal Drive, Arlington, VA 22202, Telephone No: 703–308–8682, e-mail:nelson.willie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Resistance management has been a consideration for the registration of plant pesticides for some time. This is because plant pesticides tend to produce the pesticidal active ingredient throughout a growing season, increasing the selection pressure upon both the target pests and any other susceptible insects feeding on the transformed crop.

Resistance management has become an issue particularly in relation to plant-pesticides based on the insecticidal proteins from the bacterium *Bacillus thuringiensis* (Bt). EPA recognizes the value of Bt as a safer pesticide and has determined that it is necessary to conserve this resource as appropriate by requiring resistance management plans. The Agency has reviewed initial strategies from registrants for managing resistance to Bt delta endotoxins produced in potato, corn, and cotton. EPA has worked with stakeholders (industry, public sector research and extension, growers, user groups, and government agencies) to address resistance management for primarily Bt-based plant pesticides.

In March of 1995, EPA held a Scientific Advisory Panel (SAP) meeting as part of the review for the first registered plant pesticides. This meeting primarily addressed issues related to the *Bacillus thuringiensis* (Bt) *tenebrionis* CryIII delta endotoxin in potato, although some issues related to Bt corn and Bt cotton were also discussed. The

Panel stated in their review that the submitted resistance management plan (RMP) is a "scientifically credible Colorado potato beetle (CPB) resistance management protocol." For the Bt potato, the SAP recommended that the applicant should have specific monitoring plans for resistance which should be sent to the Agency for review. The SAP also requested that the applicant make specific recommendations on what course of action should be taken if resistance should be discovered. It was the opinion of the panel that EPA should work with the applicant in developing a long-term RMP, but that such plans should not be a formal condition of registration. EPA agreed with this assessment for Bt potato as the pesticide was only for the control of the Colorado Potato Beetle, the CryIII delta endotoxin was at a high dose, and existing Bt *tenebrionis* sprayable products only worked for early instars of this pest. In addition, the Colorado potato beetle has a limited host range of economic crops.

The SAP further agreed with the seven elements, described by OPP, that need to be addressed to develop an adequate resistance management plan for plant-pesticides. These elements are: (1) Knowledge of pest biology and ecology, (2) Appropriate gene deployment strategy, (3) Appropriate refugia (primarily for insecticides, (4) Monitoring and reporting of incidents of pesticide resistance development, (5) Employment of Integrated pest management (IPM), (6) Communication and educational strategies for use of the product and (7) Development of alternative modes of action.

Bt CryIA(b) delta endotoxin in corn was the second plant pesticide registered. This product was intended primarily for the control of the European corn borer. EPA noted in its review of the application that other lepidopterous pests that also feed on corn might be affected by the endotoxin, and therefore have the potential for the development of resistance to Bt. This review also noted that both the primary pests claimed on the label and those secondary pests may be controlled by the use of existing sprayable Bt products. Bt is considered to be a reduced risk pesticide and corn is planted in large acreages in the United States. Therefore the Agency required the development of a resistance management plan as a condition of the corn Bt registrations, so that such plans could be implemented if pest resistance was detected.

Bt cotton containing CryIA(c) was the last plant pesticide crop to be registered. For Bt cotton, there was compelling evidence to require the implementation of a RMP as a condition of the registration. This was due to the fact that: (1) Bt was already used extensively on cotton, (2) corn earworm (a primary pest, known as the bollworm when feeding on cotton) moves from corn to cotton thus extending the period of exposure to the Bt toxin, and (3) that corn earworm feeds on many other crops that are treated with Bt in significant amounts. Cotton is also planted in large acreages in the United States. An RMP was therefore required as a condition of the registration for Bt Cotton.

The Pesticide Program Dialogue Committee (PPDC) is a group representing various interests and points of view including public interest, industry, users, public health, legal, Congress, and the general public. The PPDC meeting in July of 1996 addressed the issue of resistance management. OPP asked the committee for their views on the best approach for the Agency to take in addressing the problem of pest resistance; the need for a new active ingredient screening process; whether OPP should address the problem of pest resistance to already registered pesticides; and whether resistance management recommendations should be required on pesticide labeling.

Panelists agreed that EPA should have some role in resistance management, but disagreed as to what that role should be. Panelists indicated that EPA should not make resistance management mandatory in all cases.

It was the general opinion of the PPDC that the Agency should function as a liaison or clearing house for RMP information, but only require resistance management plans as part of the registration when the development of resistance would cause the potential loss of a pesticide that was in the "public good", like Bt. The committee found it difficult to define "public good" parameters. Other panelists commented that EPA needed to provide more alternative tools for minor crops, and one panelist suggested that EPA could promote better resistance management by classifying pesticides according to their mode of action similar to Canadian requirements.

During the 1996 season, there were numerous instances reported to EPA where Bt cotton failed to control a segment of the bollworm population. The registrant has submitted a report concerning these instances. The report is currently under review by the Agency to determine how pest populations, and crop performance is related to resistance management.

II. Information Sought by EPA

EPA is required by law to ensure that pesticides have a reasonable certainty of no harm to people (including infants and children) and do not cause unreasonable adverse effects to the environment. As part of the evaluation process, the Agency collects information on the risks and benefits of pesticides. The Agency is interested in soliciting public comment regarding resistance management plans for plant pesticides because resistance management plans are a new requirement related to a novel technology.

1. *The requirement for resistance management plans.* This will include information on the criteria for requiring a resistance management plan and whether such plans should be voluntary or mandatory (conditions of registration).

2. *Scientific needs for resistance management plans.* Certain data may be required in order to adequately evaluate resistance management plans. EPA needs information on what kinds of data should be required to assess the potential for resistance and/or adequately evaluate proposed plans.

3. *"Public good" criteria.* The Agency wants comment on whether this criteria should be used, and if so, information on the definition or determination of when a pesticide would be in the "public good."

4. *Performance failures for Bt cotton.* Information concerning the control failures for Bt cotton, suggested evaluation tools concerning these failures, and implications on future resistance management efforts.

III. Registration For Purposes of Commenting

Persons who wish to speak at the public meeting are encouraged to register in advance by submitting a brief written request to EPA on or before March 14, 1997. Those who do not register by March 14 may register in person, on March 21, to make a presentation if time permits. Register by mail with the person listed under FOR FURTHER INFORMATION CONTACT.

IV. Public Record

The Agency encourages parties to submit data to substantiate comments whenever possible. A record has been established for this rulemaking under docket control number OPP–00470 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI,

is available for inspection from 8:30 am to 4 pm, Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:
opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

Information submitted as part of any comment may be claimed as confidential by marking any or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with the procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by the Agency without prior notice. The Agency anticipates that most of the comments will not be classified as CBI, and prefers that all information submitted be publicly available. Any records or transcripts of the open meeting will be considered public information and cannot be declared CBI.

V. Structure of the Meeting

EPA will open the meeting with brief introductory comments. EPA will then invite those parties who have registered by March 14 to present their comments. Those who register the day of the meeting will be offered the opportunity to present their comments if time permits. EPA anticipates that each speaker will be permitted about 10 minutes to make comments. After each speaker, Agency representatives may ask the presenter questions of clarification. The Agency reserves the right to adjust the time for presenters depending upon the number of speakers.

Members of the public are encouraged to submit written documentation to EPA at the meeting to ensure that their entire position goes on record in the event that time does not permit a complete oral presentation. Written comments should include the name and address of the author as well as any sources used. Written documentation should be submitted to Willie H. Nelson at the address stated earlier in this notice.

Dated: February 19, 1997.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 97–4621 Filed 2–20–97; 1:07 pm]

BILLING CODE 6560–50–F

[PF–710A; FRL–5591–4]

Appropriate Technology Limited; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing; Technical amendment.

SUMMARY: EPA is correcting the time for the submission of comments on the notice of filing of a pesticide petition proposing the establishment of a regulation exempting from the requirement of a tolerance residues of extracts from *Quercus falcata* (red oak) *Rhus aromatic* (sumac), *Rhizophora mangle* (mangrove), and *Opuntia lindheimeri* (prickly pear cactus). The petition was submitted by Appropriate Technology Limited.

FOR FURTHER INFORMATION CONTACT: By mail: Teung F. Chin, Biopesticides and Poliution Prevention Division, (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 5th Floor, CS #1, 2800 Crystal Drive, Arlington, VA 22202, 703–308–1259, e-mail: chin.teung@epamail.epa.gov.

In FR Doc. 97-3517, appearing at page 6777 in the issue for Thursday, February 13, 1997, the comment period under "DATES" is corrected to read as March 17, 1997.

List of Subjects

Environmental protection.

Dated: February 19, 1997.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 97–4622 Filed 2–21–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5693–4]

Notice of Proposed Assessment of Clean Water Act Class II Administrative Penalty to A&D Plating, Inc. and Opportunity To Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment.

SUMMARY: EPA is providing notice of proposed administrative penalty assessment and proposed Consent Agreement for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. Section 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue these orders after the commencement of either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessments pursuant to 33 U.S.C. Section 1319(g)(4)(a).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation and Suspension of Permits, 40 CFR part 22. The procedures through which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the Procedures by which a Respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty days after publication of this notice.

On the date identified below, EPA commenced the following Class II proceeding for the assessment of penalties:

In the Matter of A&D Plating, Inc., 2265 Micro Place, Suite A, Escondido, California; EPA Docket No. CWA–IX–FY97–02; filed on February 11, 1997, with Mr. Steven Armsey, Regional Hearing Clerk, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1389; proposed penalty of $35,000 for failure to comply with the categorical pretreatment standards and requirements for new source metal finishers (40 CFR 433). EPA and A&D Plating, Inc. have agreed to a proposed Consent Agreement in which A&D Plating, Inc. shall pay a Civil penalty of $35,000.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review of the complaint or other documents filed in this proceeding, comment upon a proposed assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above. The administrative record for this proceeding is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by the respondent is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in these proceedings prior to thirty (30) days after the date of publication of this notice.

Dated: February 11, 1997.

Alexis Strauss,

Acting Director, Water Division.

[FR Doc. 97–4494 Filed 2–21–97; 8:45 am]

BILLING CODE 6560–50–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Notice of History of the Former Jackson Farm Credit District

AGENCY: Farm Credit Administration.

ACTION: Notice.

SUMMARY: The Farm Credit Administration (FCA) is publishing a notice outlining the history of the former Jackson Farm Credit District and explains that the Federal Land Bank of Jackson (FLBJ) and the Federal Land Bank Association of Jackson (FLBAJ) were placed into receivership and that they no longer exist, that their charters have been canceled, that the institutions can no longer assert any claims, that the Receiver subsequently was discharged and released, and that all claims against the receivership are barred.

FOR FURTHER INFORMATION CONTACT: Jane Virga, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4071, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: Like other lenders, the FLBJ and the FLBAJ sometimes did not record that borrowers had paid their mortgages in full. Former borrowers (and their successors) have been unable to obtain title insurance or convey property when the land records have indicated, incorrectly, that there was an outstanding mortgage on the property. Similar problems have also arisen for others that were associated with the FLBJ and FLBAJ. The Receiver for the FLBJ and the FLBAJ was discharged and released effective January 30, 1995, and can no longer provide clarification in such situations. Neither the FCA nor the Farm Credit Bank of Texas, which purchased the majority of the assets of the FLBJ and the FLBAJ, has the authority to provide relief to borrowers whose property was once mortgaged to the FLBJ and FLBAJ or to others affected by recordation problems involving those institutions. Therefore, the FCA is providing the following information in an effort to assist affected borrowers and others in resolving title and other recordation problems.

The Farm Credit Administration (FCA), a Federal agency established under the Farm Credit Act of 1971, as amended (Act), 12 U.S.C. 2001 *et seq.*, regulates and examines a nationwide network of banks, associations, and related institutions chartered under the Act. The institutions of the Farm Credit System furnish credit and closely related services to farmers, ranchers, producers and harvesters of aquatic products, their cooperatives, and farm-related businesses.

Prior to July 1, 1988, the nation was geographically divided into 12 Farm Credit Districts. Traditionally, each District had one Federal Land Bank, which made long-term agricultural and rural housing loans through Federal land bank associations; one Federal Intermediate Credit Bank, which provided shorter term agricultural loans to eligible borrowers through production credit associations; and a Bank for Cooperatives.

The Federal Land Bank of New Orleans was the Federal Land Bank for one of the Farm Credit Districts prior to September 1, 1984. On September 1, 1984, the Federal Land Bank of New Orleans moved its headquarters from New Orleans, Louisiana, to Jackson, Mississippi, and changed its name to the Federal Land Bank of Jackson (FLBJ).

On May 20, 1988, the FCA determined that statutory grounds existed for the appointment of a receiver for the FLBJ and the Federal Land Bank Association of Jackson (FLBAJ), the Association through which the FLBJ extended long-term credit, under its authority in section 4.12 of the Act and 12 CFR 611.1156, and placed the FLBJ and FLBAJ into receivership. A receiver was appointed on the same date. See 53 FR 18812, May 20, 1988.

In 1989, the majority of the long-term loans held by the FLBJ were sold to the Farm Credit Bank of Texas. In June 1990, the Farm Credit System Banks, with the exception of the Farm Credit Bank of Spokane, purchased the remaining assets of the FLBJ.

On January 27, 1995, the FCA determined that all assets of the FLBJ and FLBAJ (including claims it could assert against others) and claims against the FLBJ and FLBAJ had been disposed of by the receiver in accordance with the provisions of FCA regulations and the written agreement by and between the receiver and the FCA. The FCA therefore ordered that, effective as of January 30, 1995, all claims of creditors, stockholders, holders of participation certificates and other equities, and any other persons and/or entities against the FLBJ and FLBAJ were forever and completely discharged and released. The FCA Board also provided that the commencement of any action, the employment of any process or any other act to collect, recover, or offset any such claims was barred. Finally, the charters of the FLBJ and FLBAJ were canceled. *See* 60 FR 7054, Feb. 6, 1995.

The authority to make long-term loans once exercised by the FLBJ is now exercised by the Farm Credit Bank of Texas. Short-term lending authority for the geographic area formerly served by the FLBJ is now exercised by AgFirst Farm Credit Bank. Neither of these institutions is the legal successor in interest to the FLBJ or FLBAJ. The corporate existences of the FLBJ and the FLBAJ were terminated effective January 30, 1995, with the termination of the receivership.

Dated: February 18, 1997.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 97–4474 Filed 2–21–97; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket No. 92–266; FCC 96–499]

Statistical Report on Average Rates for Basic Service, Cable Programming and Equipment

AGENCY: Federal Communications Commission.

ACTION: Notice; Report.

SUMMARY: Section 623(k) of the Communications Act of 1934, as amended, 47 U.S.C. 534(k), which was added by the Cable Television and Consumer Protection Act of 1992, requires the Commission to publish

annually a statistical report on average rates for the delivery of basic cable service, other cable programming services, and equipment. Pursuant to this requirement, the Commission conducted a survey and, on January 2, 1997, released its *Report on Cable Industry Prices* ("*Report*"). The *Report* contains data and information that summarize survey responses from 756 cable franchises concerning cable industry prices for the delivery of basic cable service, other cable programming services, and equipment on three dates: August 31, 1993, July 14, 1994, and January 1, 1995. The *Report* is intended to examine the effects of the Commission's regulation of the cable industry on cable prices.

FOR FURTHER INFORMATION CONTACT: Dan Hodes, Cable Services Bureau (202) 418–7041 or Kiran Duwadi, Cable Services Bureau (202) 418–7028.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Report* in MM Docket No. 92–266, FCC 96–499, adopted December 31, 1996, and released January 2, 1997. The complete text of the *Report* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., 20554, and may also be purchased from the Commission's copy contractor, International Transcription Service ("ITS, Inc."), (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. In addition, the complete text of the *Report* is available on the Internet at http://www.fcc.gov/Bureaus/Cable/WWW/csb.html

Synopsis of the Report

1. Pursuant to the statutory requirement, the distributed survey gathered information on the prices charged in two groups of cable franchises: (1) those in which there was effective competition, referred to as the "competitive group," and (2) those in which there was not, referred to as the "noncompetitive group." A significant portion of the noncompetitive group, representing more than two-thirds of the total number of subscribers served by cable operators in franchises included in the sample, was subject to rate regulation. The remaining one-third subscribed to services from cable operators in franchises which were unregulated. Three of the more significant findings of the *Report* are summarized below.

2. First, the *Report* found that prices charged in the noncompetitive group were higher in all three time periods studied than those charged in the competitive group. In addition, the *Report* found that the price differential between the competitive and noncompetitive groups was significant prior to the implementation of rate regulation under the 1992 Cable Act, and that the differential narrowed substantially after rate regulation was instituted. This finding is consistent with expectations since the intent of rate regulation was to simulate the effects of a competitive marketplace.

3. Specifically, the *Report* found that prior to the implementation of rate regulation, on August 31, 1993, the average cable rate for services and equipment charged by the competitive group was $20.51 per month, and the average charged by the noncompetitive group was $22.23 per month, a differential of 8.4%. After the imposition of rate regulation, the differential narrowed to 2.7% ($21.04 charged by the competitive group compared with $21.61 charged by the noncompetitive group) in July 1994, and narrowed further to 2.3% ($21.25 charged by the competitive group compared with $21.74 charged by the noncompetitive group) by January 1, 1995. Similarly, a comparison of the regulated portion of the noncompetitive group with the competitive group indicates that the differential in prices charged for equipment, basic, and other programming services narrowed even further to 2.1% in July 1994 and to 1.6% in January 1995.

4. Second, the *Report* found a large drop in equipment prices between August 1993 and July 1994, the period during which rate regulation took effect. For example, the monthly rate for remotes for the noncompetitive group dropped from $1.32 per month in August 1993 to $0.26 in July 1994. Similarly, over the same period, the average monthly rate for nonaddressable converters dropped from $1.58 to $1.27 and for addressable converters, from $2.46 to $2.17.

5. Third, the *Report* found that the average monthly rate per channel charged by cable operators in franchises subject to rate regulation fell from $0.62 per channel to $0.53 per channel between August 1993 and July 1994, a drop of 14.5%. This decline reflects both an increase in the average number of channels received as well as a decline in the average monthly rate for programming services. Between July 1994 and January 1995, the per channel rate remained steady at $0.53 because the underlying average rate per month and the average number of channels offered remained roughly the same. The number of channels received and the average price per channel provide a comparable way of measuring the services received by cable subscribers.

Ordering Clause

6. It is *Ordered* that this *Report* is issued pursuant to authority contained in Section 623(k) of the Communications Act of 1934, as amended, 47 U.S.C. 534(k).

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 97–4425 Filed 2–21–97; 8:45 am]
BILLING CODE 6712–01–P

Sunshine Act Meeting

February 19, 1997.

Deletion of Agenda Items From February 20th Open Meeting

The following items have been deleted from the list of agenda items scheduled for consideration at the February 20, 1997, Open Meeting and previously listed in the Commission's Notice of February 13, 1997.

Item No.	Bureau	Subject
3	Wireless telecommunications	Title: Amendment of the Commission's Rules Regarding Multiple Address Systems and Implementation of Section 309(j) of the Communications Act—Competitive Bidding (PR Docket No. 93–253). Summary: The Commission will consider proposing new service, licensing, and competitive bidding rules for spectrum allocated to Multiple Address Systems in the Fixed Microwave Services.
4	Wireless telecommunications	Title: Revised of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems (WT Docket No. 96–18) and Implementation of Section 309(j) of the Communications Act—Competitive Bidding (PP Docket No. 93–253).

Item No.	Bureau	Subject
5	Wireless telecommunications	Summary: The Commission will consider action concerning geographic area licensing of common carrier paging and 929 MHz private carrier paging, and competitive bidding procedures for auctioning geographic area paging licenses. Title: Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service (PR Docket No. 89–552, RM–8506); Implementation of Sections 3(n) and 332 of the Communications Act—Regulatory Treatment of Mobile Services (GN Docket No. 93–252) and Implementation of Section 309(j) of the Communications Act—Competitive Bidding, 220–222 MHz (PP Docket No. 93–253). Summary: The Commission will consider action concerning the future operation and licensing of the 220–222 MHz band.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 97–4574 Filed 2–20–97; 10:43 am]
BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1158–DR]

Minnesota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).
ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Minnesota (FEMA–1158–DR), dated January 16, 1997, and related determinations.

EFFECTIVE DATE: February 5, 1997.
FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective February 3, 1997.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Lacy E. Suiter,
Executive Associate Director, Response and Recovery Directorate.
[FR Doc. 97–4460 Filed 2–21–97; 8:45 am]
BILLING CODE 6718–02–P

[FEMA–1159–DR]

Washington; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).
ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Washington, (FEMA–1159–DR), dated January 17, 1997, and related determinations.

EFFECTIVE DATE: February 6, 1997.
FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Washington, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 17, 1997:

The counties of Asotin, Jefferson, Pend Oreille and Whatcom for Individual Assistance (already designated for Public Assistance and Hazard Mitigation).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Lacy E. Suiter,
Executive Associate Director, Response and Recovery Directorate.
[FR Doc. 97–4461 Filed 2–21–97; 8:45 am]
BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 10, 1997.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. The Winton Jones Revocable Trust of 1997, Carl Jones, Christopher Jones, and Richard McMahon, as trustees, Wayzata, Minnesota; to acquire 100 percent of the voting shares of Anchor Bancorp, Inc., Wayzata, Minnesota, and thereby indirectly acquire Anchor Bank, N.A., Wayzata, Minnesota; Anchor Bank, West St. Paul, N.A., West St. Paul, Minnesota; The Bank of Saint Paul, St. Paul, Minnesota; Heritage National Bank, North St. Paul, Minnesota; and The First National Bank of Farmington, Farmington, Minnesota.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Robert S. Appel, Englewood, Colorado, and William P. Johnson, Boulder, Colorado, Co-trustees of FirstBank Holding Company of Colorado Employee Stock Ownership Plan, Lakewood, Colorado, and its subsidiary, FirstBank Holding Company of Colorado, Lakewood, Colorado; to vote as trustee, 26.8 percent of the voting shares of FirstBank of Arvada, N.A., Arvada, Colorado, and thereby indirectly acquire FirstBank of Aurora, N.A., Aurora, Colorado; FirstBank of Avon, Avon, Colorado; FirstBank of Boulder, N.A., Boulder, Colorado; FirstBank of Breckenridge, N.A., Breckenridge, Colorado; FirstBank of Douglas County, N.A., Castle Rock, Colorado; FirstBank of Colorado Springs, Colorado Springs, Colorado; FirstBank of Cherry Creek, N.A., Denver, Colorado; FirstBank of Denver, N.A., Denver, Colorado; FirstBank of Longmont, Longmont, Colorado; FirstBank of Northern Colorado, Fort Collins, Colorado; FirstBank of Greeley, Greeley, Colorado; FirstBank of Tech Center, N.A., Englewood, Colorado; FirstBank of Colorado, N.A., Lakewood, Colorado; FirstBank of South Jeffco,

Littleton, Colorado; FirstBank of Lakewood, N.A., Lakewood, Colorado; FirstBank of Littleton, N.A., Littleton, Colorado; FirstBank of Arapahoe County, N.A., Littleton, Colorado; FirstBank of Silverthorne, N.A., Silverthorne, Colorado; FirstBank of Vail, Vail, Colorado; FirstBank North, N.A., Westminster, Colorado; FirstBank of Wheat Ridge, N.A., Wheat Ridge, Colorado; and FirstBank, N.A., Palm Desert, California.

2. Benedict Enslinger, Trustee, Benedict Enslinger Revocable Trust, both of La Crosse, Kansas; to acquire an additional 1.30 percent, for a total of 11.96 percent, of the voting shares of NSB Bancshares, Inc., La Crosse, Kansas, and thereby indirectly acquire Nekoma State Bank, La Crosse, Kansas.

3. Matthew T. Ley, as Trustee, Portland, Oregon; to acquire an additional 38.2 percent, for a total of 40.9 percent, of the voting shares of State National Bancshares, Inc., Wayne, Nebraska, and thereby indirectly acquire State National Bank and Trust Company, Wayne, Nebraska.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Cecil R. Simmons, San Benito, Texas; to acquire an additional 2.1 percent, for a total of 14.8 percent, and Cecil R. Simmons, as Trustee for the First National Bank Employee Stock Ownership Plan, San Benito, Texas, to acquire an additional 11.4 percent, for a total of 17.3 percent, of the voting shares of First San Benito Bancshares, Inc., San Benito, Texas, and thereby indirectly acquire First National Bank of San Benito, San Benito, Texas.

Board of Governors of the Federal Reserve System, February 18, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–4372 Filed 2-21-97; 8:45 am]

BILLING CODE 6210-01-F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 10, 1997.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. Community First Bankshares, Inc., Fargo, North Dakota; to engage *de novo* through its subsidiary, Community First Financial, Inc., Fargo, North Dakota, in leasing personal property or acting as agent, broker, or adviser in leasing personal property, pursuant to § 225.25(b)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 18, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–4373 Filed 2-21-97; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96D–0513]

Guidance on Labeling of Foods That Need Refrigeration by Consumers

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing guidance on labeling of foods that need refrigeration by consumers to maintain safety or quality. This guidance, which represents FDA's policy on adequate safe handling instructions for food, should reduce the likelihood of temperature abuse of certain foods by consumers, and it is intended to reduce the potential for foodborne illness and death. The guidance also responds to the recommendations of the National Advisory Committee on Microbiological Criteria for Foods (NACMCF), the National Food Processors Association (NFPA), the Association of Food and Drug Officials (AFDO), and the Centers for Disease Control and Prevention (CDC) for labeling foods needing refrigeration. FDA is soliciting comments on this guidance.

DATES: Written comments may be submitted at any time.

ADDRESSES: Submit written comments on this guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Geraldine A. June, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099.

SUPPLEMENTARY INFORMATION:

I. Background

Refrigeration has long been used to retard deterioration of the flavor, color, and texture of foods. More importantly, refrigeration helps maintain the microbiological safety of potentially hazardous foods. Temperature abuse, i.e., failure to maintain foods at appropriate temperatures, may result in the outgrowth of microorganisms that may have contaminated the foods before, or at the time of, harvest or during processing, handling, or storage. The rate of growth of these microorganisms is reduced as the storage temperature is lowered. Proper refrigeration, therefore, prevents or slows the growth of human pathogens and spoilage microorganisms and reduces the likelihood of foodborne illness.

Refrigeration is only one of many individual factors, called barriers, that can be used to control microbiological risks. It is, for many foods, the only practicable barrier to reduce or prevent pathogen growth. Examples of other types of barriers include acidification ($pH \leq 4.6$), use of preservatives, such as salt, and low water activity ($a_w \leq 0.85$). Barriers used individually, or in combination with each other, may reduce or retard pathogenic microbial growth.

In the past, consumers could generally tell if a product were perishable by its packaging or lack of packaging. Products in a can or a jar were generally considered to be shelf-stable (i.e., products that can be stored on the shelf without spoilage), at least until opened. However, today's new packaging technologies have changed this situation. Many liquids or semi-liquids in flexible packages have airtight

liners and are shelf-stable. Vacuum packed foods or foods packaged in modified (oxygen reduced) atmospheres, which are shelf-stable, may appear to the consumer to be safe to eat, even if they have been temperature abused. These foods may not have developed organoleptic signs (such as deterioration of color, flavor, texture, etc.) that consumers associate with spoiled or unsafe foods. However, foods in these packages may present a potential hazard if, once opened, they are stored unrefrigerated.

Recently, there have been reports of botulism food poisonings resulting from consumption of food that had been temperature abused by consumers, even though the products were labeled "keep refrigerated." FDA is concerned that such foods are not labeled adequately or conspicuously enough to advise consumers that the product must be refrigerated to maintain its safety. The specific foods implicated in the botulism poisonings were clam chowder and black bean dip. Packaging for both of these products could have made the food appear shelf-stable to the consumer.

The potential for foodborne illness from temperature abused foods is widely recognized. Efforts to reduce this health risk in potentially hazardous foods that need refrigeration to ensure their safety and quality have included voluntary use of label statements such as "keep refrigerated" and "refrigerate after opening." Use of such label statements no longer provides meaningful consumer information because the same label statements appear both on foods needing refrigeration to ensure safety and foods needing refrigeration to maintain quality. NACMCF has made specific recommendations for label statements on potentially hazardous foods (Ref. 1) to address this problem. NFPA has developed guidelines for the food industry for voluntary label statements using the language in the NACMCF recommendation (Ref. 2). AFDO has endorsed the guidelines developed by NFPA (Ref. 3) and has recommended them to State regulatory agencies to assist those agencies in requiring and enforcing improved labeling (Ref. 4). Finally, CDC sent FDA a memorandum expressing concern about the recent botulism outbreaks and recommending, among other things, better labeling for foods requiring refrigeration (Ref. 5).

II. Inadequacy of Current Labeling

Because of the recent reports of botulism food poisonings from consumption of foods that had been temperature abused by consumers, FDA has evaluated the labeling on foods that must be refrigerated to prevent outgrowth of pathogens and has found that most of this labeling does not adequately advise the consumer of the need to keep the food refrigerated or of the health risk if it is not. For example, the packaging for the clam chowder and black bean dip that were implicated in the recent botulism poisonings made the foods appear shelf-stable. The clam chowder was packaged in a plastic bag inside a cardboard carton. The bean dip was packaged in a resealable plastic tub. These items were displayed in refrigerated cases in the supermarket. While both items had a "keep refrigerated" statement on their labels, consumers failed to maintain these products under refrigeration.

Most consumers seem to understand that foods that are displayed only in the refrigerated section of a grocery store, such as dairy products, eggs, cold cuts, fresh meats, poultry, and seafood, must be refrigerated to maintain their quality. While it is unlikely that a majority of consumers are aware of the hazards and food safety issues that temperature abuse of these products can present, it is likely that most consumers will refrigerate these foods even in the absence of labeling instructions to do so for safety. Therefore, the fact that these foods are refrigerated does not really provide evidence of the effectiveness of the "keep refrigerated" instructions in their labeling.

Foods such as mustard, salad dressings, jams, jellies, salsa, and spaghetti sauce bear a statement advising refrigeration once the product is opened to retard deterioration in the quality of the food. Nonetheless, consumers often do not refrigerate these foods. Although consumers may notice a deterioration in flavor, color, or texture over time, they may not associate foodborne illness with consumption of these products. Therefore, consumers do not seem to associate safety concerns with the "keep refrigerated" or "refrigerate after opening" statements.

The agency is concerned that consumers may not be aware that some newer, less traditional, packaged foods need refrigeration to maintain their safety. Some examples are fresh cut fruits and vegetables, food packaged in cardboard containers resembling shelf-stable packages (such as the previously mentioned clam chowder and bean dip), and vacuum or modified (reduced oxygen) atmosphere packaged products in clear flexible packaging. Consumer understanding of the significance or reason for advising that a product be kept refrigerated is likely hampered by the rapidly expanding marketing of foods having convenient preparation and "close to fresh" product characteristics.

In addition, as previously mentioned, the food industry is developing new types of foods with extended shelf life (i.e., the length of time that a product may be stored without deterioration) that have to be refrigerated. Foods known as "partially processed" or "minimally processed" may have received a heat process or other preservation treatment during manufacturing that reduces the microbiological load in the food but that does not render the food "commercially sterile." These partially processed foods share the hazard common to all potentially hazardous foods, i.e., ability to support the growth of pathogens, unless they are refrigerated. Thus, if only a "keep refrigerated" label appears on these types of foods, and consumers choose not to pay attention to it, the consumers would be taking a significant risk.

The agency is also concerned about the potential abuse of a category of products (e.g., low acid canned foods that are not otherwise preserved) that need refrigeration after being opened. The potential for temperature abuse of these products may be even greater than that for foods that need constant refrigeration. These products are generally displayed in a section of the store that is not refrigerated, and these products are provided in packaging similar to foods that do not need refrigeration even after opening. Even though these shelf-stable foods may bear storage instructions for the unused portion, the need for refrigeration is frequently not conveyed on the label, or not conveyed in a way that consumers can see and understand.

Current labeling of shelf-stable packaged foods is not adequate because the same label statements, e.g., "keep refrigerated" or "refrigerate after opening," appear both on foods that are potentially hazardous and on foods that do not pose a hazard but that are refrigerated to retard deterioration in quality. The labeling of potentially hazardous foods that need refrigeration should distinguish these products from products for which refrigeration is only to protect quality. FDA is concerned that, without adequate labeling on these potentially hazardous products, efforts by the food industry to develop new types of foods with extended shelf life prior to being refrigerated and while under refrigeration will result in more illnesses.

Further, different formulations and processing methods for different

versions of the same food, such as pumpkin pie, may or may not need refrigeration for safety. In addition, different versions of these foods can be displayed in different sections of the retail store, with the "keep refrigerated" statement on the version of the food that needs refrigeration as the only indication that there is a difference in safety considerations among the versions of the product. Furthermore, the "keep refrigerated" statement often appears in small print and is placed on an obscure part of the label. Therefore, the consumer may not understand or interpret the "keep refrigerated" statement as an instruction about what must be done to maintain the safety of the product.

Moreover, "keep refrigerated" or "refrigerate after opening" statements generally do not include the reason the product is to be refrigerated. The agency regards it as unlikely that most consumers know and are able to distinguish the underlying reasons for a "keep refrigerated" label statement when comparing products that bear that statement to maintain microbiological safety with products that bear that statement for maintaining quality. Therefore, consumers would have no reason to consider one such statement any more important for product safety than another. Thus, the statements "keep refrigerated" or "refrigerate after opening" alone are not adequate to appropriately alert consumers to the importance of properly handling potentially hazardous foods.

III. Labeling Options Considered

The agency has considered the recommendations offered by CDC, NACMCF, AFDO, and NFPA. In a memorandum dated February 14, 1995 (Ref. 5), CDC recommended that food labels advising refrigeration should be reviewed. CDC maintained that labels advising "keep refrigerated" may not be sufficient to warn consumers about the health risks associated with noncompliance. Further, CDC advised that for foods for which refrigeration is the only barrier to prevent growth of *C. botulinum*, the label should identify the risks of botulism if mishandled.

FDA has also considered the labeling recommendations for foods requiring refrigeration by consumers that have been offered by NACMCF, NFPA, and AFDO (Refs. 1, 2, and 4). NACMCF maintained that consumers have difficulty distinguishing the differences among various label statements and their relationship to product safety. Therefore, it recommended that the following label statement be used on packaged food that poses a safety hazard if temperature abused: "IMPORTANT MUST BE KEPT REFRIGERATED".

Recommendations from NFPA and AFDO recognize two categories of foods. Group A foods are potentially hazardous, packaged, processed foods that must be refrigerated for safety reasons, and Group B foods are products that are intended to be refrigerated but that do not pose a safety hazard if temperature abused. The recommended label statement for Group A foods is: "IMPORTANT: Must Be Kept Refrigerated".

The recommended label statement for Group B foods is "keep refrigerated," although such products would be allowed to utilize the Group A suggested label statement.

A. Analysis of Options

FDA agrees with CDC that the label statement "keep refrigerated" may not be sufficient to warn consumers about a health risk. However, the agency does not agree that the label should specifically identify the risk of botulism because it is not the only risk if foods that need refrigeration are temperature abused.

While FDA finds considerable merit in the labeling recommendations of NACMCF, NFPA, and AFDO, the agency is concerned that these recommendations do not inform consumers of the reasons for refrigeration of foods and do not fully differentiate the types of foods that should bear a "keep refrigerated" label. Moreover, the suggested label statements will not eliminate the confusion generated by the current voluntary label statements used on foods to be refrigerated, especially if foods that do not pose a safety hazard are permitted to bear the same labeling statements as those that do pose a safety hazard if not refrigerated.

Having considered these recommendations, the agency is recommending an approach that is somewhat different than those suggested in the recommendations that it has received. In the agency's view, labeling will be more effective if it is more specific to the types of hazards that are presented, and to the types of storage conditions that are necessary, after the product is opened. In FDA's view, this specificity is provided if foods that need refrigeration are divided into three groups. The first group, Group A, are the foods that were in NFPA's and AFDO's Group A foods that are potentially hazardous and that must be kept refrigerated for safety reasons. Group B includes foods that are shelf-stable but that need refrigeration after opening for safety. Group C (described as Group B foods in the NFPA and AFDO recommendations) include foods that are refrigerated only to retard deterioration in quality.

FDA has sought to craft label statements that will help consumers to differentiate among these types of foods. Phrases such as "to maintain safety" and "for quality" are essential in drawing a distinction between Groups A and B on the one hand and Group C on the other. Furthermore, the agency agrees with the recommendations of NACMCF, NFPA, and AFDO that the term "Important" would help to underscore this distinction and to indicate the significance of the statement. The phrase "after opening," or some similar statement, is essential to distinguish Group B from Group A.

Thus, the agency considers that the statement "Important must be kept refrigerated to maintain safety" for Group A foods is appropriate because it can adequately convey to consumers that continued refrigeration is mandatory to reduce safety risks. Similarly, the agency considers "Important must be refrigerated after opening to maintain safety" an appropriate label statement for Group B foods because such foods are shelf-stable and may pose a health hazard only after opening. In contrast, "refrigerate for quality" or "keep refrigerated for quality" for Group C foods is sufficient, in the agency's opinion, to distinguish this category from Groups A and B and to inform consumers that refrigeration is only necessary to retard deterioration in product quality.

B. Labeling Placement and Prominence

In addition to label statements that are focused on the type of product and the risk it represents, placing the statements on the label in a way that gives them appropriate prominence is critical to ensuring that the label statements will be seen, read, and understood. The placement and prominence guidelines suggested by NFPA are particularly useful and helpful in this regard. NFPA recommended that the label statements be set off by the use of hairlines at the top and bottom of the statement area. The type should: (1) Be on a contrasting background; (2) utilize a single, easy-to-read style and size; (3) have at least one point leading (space between two lines of text); and (4) ensure that letters never touch. On Group A and B foods, the word "IMPORTANT" should be in all capital letters, while the remaining words should use uppercase and lowercase letters, with the first letter in each word capitalized. The hairlined area should appear on the label prominently and conspicuously as compared to other words, statements, designs, or devices. FDA strongly agrees and urges all firms to follow these recommendations. In addition, the agency notes that its general approach to type size of label information is that it should be not less than one-sixteenth inch unless the package is too small to accommodate this type size. The agency encourages placement of this statement on the principal display panels, at least for group A and B foods. If the statement does not fit on the principal display, it should be placed on the information panel.

C. FDA Labeling Policy

To clarify this guidance, the agency has delineated each of the three groups and developed model statements for each:

1. *Group A Foods*

Group A foods are potentially hazardous foods, which, if subjected to temperature abuse, will support the growth of infectious or toxigenic microorganisms that may be present. Outgrowth of these microorganisms would render the food unsafe. Foods that must be refrigerated for food safety possess the following characteristics: (1) Product pH > 4.6; (2) water activity a_w > 0.85; (3) do not receive a thermal process or other treatment in the final package that is adequate to destroy foodborne pathogens that can grow under conditions of temperature abuse during storage and distribution; and (4) have no barriers (e.g., preservatives such as benzoates, salt, acidification), built into the product formulation that prevent the growth of foodborne pathogens that can grow under conditions of temperature abuse during storage and distribution.

The appropriate label statement for Group A foods is:

IMPORTANT Must Be Kept Refrigerated To Maintain Safety

2. *Group B Foods*

Group B includes those foods that are shelf-stable as a result of processing, but once opened, the unused portion is potentially hazardous unless refrigerated. These foods possess the following characteristics: (1) Product pH > 4.6; (2) water activity a_w > 0.85; (3) receive a thermal process or other treatment that is adequate to destroy or inactivate foodborne pathogens in the unopened package, but after opening, surviving or contaminating microorganisms can grow and render the product unsafe; and (4) have no barriers (for example, preservatives such as benzoates, salt, acidification) built into the product formulation to prevent the growth of foodborne pathogens after opening and subsequent storage under temperature abuse conditions.

The appropriate label statement for Group B foods is:

IMPORTANT Must Be Refrigerated After Opening To Maintain Safety

3. *Group C Foods*

Group C are those foods that do not pose a safety hazard even after opening if temperature abused, but that may experience a more rapid deterioration in quality over time if not refrigerated. The manufacturer determines whether to include on the label a statement that refrigeration is needed to maintain the quality characteristics of the product to maximize acceptance by the consumer. These foods do not pose a safety problem. Foods in this group possess one or more of the following characteristics to ensure that the food does not present a hazard if temperature abused: (1) Product pH ≤ 4.6 to inhibit the outgrowth and toxin production of *C. botulinum*; or (2) water activity $a_w \leq$ 0.85; or (3) have barriers built into the formulation (for example, preservative systems such as benzoates, salt, acidification) to prevent the growth of foodborne pathogens if the product is temperature abused.

The suggested optional label statement for Group C foods is: "Refrigerate for Quality" or some other statement that explains to the consumer that the storage conditions are recommended to protect the quality of the product. To avoid confusion between refrigeration for safety purposes and refrigeration for quality reasons, Group A and Group B statements should not be used on Group C foods.

The agency is publishing this document to provide this guidance by the quickest means to as many manufacturers as possible, so that they may begin using the label statements. If manufacturers follow this guidance, the consumer will have clear, concise, and prominent labeling information for maintaining the safety of potentially hazardous food products. Inclusion of these statements in the labeling of appropriate foods will help the consumer recognize when appropriate storage temperatures are needed to maintain the safety or quality of those foods. Such information will reduce the likelihood of temperature abuse of the food and, consequently, reduce the potential for foodborne illness and death.

While this guidance is primarily intended to address the need for safe handling of potentially hazardous foods by consumers, the agency recognizes that there also is a need for safe handling during the transportation and distribution of these foods. The Food Safety and Inspection Service of the U.S. Department of Agriculture and FDA have jointly published an advance notice of proposed rulemaking in the **Federal Register** of November 22, 1996 (61 FR 59372) to solicit comments on approaches that the two agencies may take to foster safety improvements in the storage and transportation of potentially hazardous foods. Therefore, this guidance does not address how foods that need refrigeration during transportation and storage should be labeled.

IV. Consumer Education

Most consumers are not aware of the hazards associated with temperature abuse of foods needing refrigeration, especially foods that use newer, less traditional means of packaging. If firms follow the guidance set out in this document, it will help consumers to recognize the difference between the messages, "refrigerate for safety" and "refrigerate for quality." The agency recognizes, however, that a coordinated public education campaign is needed to ensure that consumers understand the

significance of the differences in these messages. Given the significance of the underlying problem, FDA intends to undertake an educational effort, including press releases and consumer pamphlets. The agency requests the cooperation and assistance of industry and other private groups in this effort. The agency also requests comments on additional ways to educate the consumer.

The guidance represented here reflects FDA's current thinking on safe handling labeling for foods that need refrigeration by the consumer. This document does not bind FDA and does not create or confer any rights, privileges, benefits, or immunities for or on any persons.

Interested persons may submit written comments on the guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. The guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

V. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Recommendations of the National Advisory Committee on Microbiological Criteria for Foods for Refrigerated Foods Containing Cooked, Uncured Meat or Poultry Products that are Packaged for Extended Refrigerated Shelf Life and that are Ready-To-Eat or Prepared with Little or No Additional Heat Treatment, January 31, 1990.

2. Guidelines for the Development, Production, Distribution, and Handling of Refrigerated Foods, National Food Processors Association, 1989.

3. Letter from J. Corby, New York Department of Agriculture and Markets to A. Dell'Aria, Virginia Department of Agriculture, September 8, 1995.

4. Memorandum from A. Dell'Aria, AFDO, December 20, 1995.

5. Letter from P. Griffin and R. Tauxe, CDC to K. Wachsmuth, FDA, February 14, 1995.

Dated: February 12, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–4364 Filed 2–21–97; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[R–38]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection; *Title of Information Collection:* Conditions of Participation for Rural Health Clinics, 42 CFR 491.9 Subpart A; *Form No.:* HCF–AR–38; *Use:* This information is needed to determine if rural health clinics meet the requirements for approval for Medicare participation. *Frequency:* Other (Initial application for Medicare); *Affected Public:* Individuals or Households; Business or other for profit; Not for profit institutions; Farms; Federal Government; and State, Local or Tribal Government; *Number of Respondents:* 3,076; *Total Annual Hours:* 9,744.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's Web Site Address at http://www.hcfa.gov/regs/prdact95.htm, or to obtain the supporting statement and any related forms, e-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: February 13, 1997.

Edwin J. Glatzel,

Director, Management Analysis and Planning Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 97–4374 Filed 2–21–97; 8:45 am]

BILLING CODE 4120–03–P

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, DHHS.

ACTION: Notice.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESS: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804 (telephone 301/496–7057; fax 301/402–0220). A signed Confidential Disclosure Agreement (CDA) will be required to receive copies of the patent applications.

Chromosomal Markers and Diagnostic Tests For Manic-Depressive Illness

S Detera-Wadleigh (NIMH), E Gershon (NIMH), J Badner (NIMH), L Goldin (NIMH), W Berrettini (Thomas Jefferson University), T Yoshikawa (NIMH), A Sanders (NIMH), L Esterling (NIMH)

Serial No. 60/029,278 filed 28 Oct 96

Licensing Contact: Stephen Finley, 301/496–7735, ext. 215.

Bipolar disease, or manic-depressive illness, affects approximately 1% of the population and is generally controlled through medication. Not all patients respond similarly to a given medication. A medication that works well in one individual may be ineffective in another individual. It is unclear why this is, but it has been theorized that bipolar disease may involve multi-genes, possible on several chromosomes. It is not known if one genetic locus dominates over another, but if one does, then it may explain the variable medication effectiveness. One genetic locus has been identified on chromosome 18 having allelic variations which may be used to determine if an individual has an increased susceptibility to bipolar disease. This method may be useful in determining if an individual has an increased susceptibility to bipolar disease, or ultimately, it may provide a means to predict which medication will provide the best treatment. (portfolio: Central Nervous System—Diagnostics, in vitro)

The Use of Functional N-Methyl-D-Aspartate Antagonists to Ameliorate or Prevent Aminoglycoside-induced Ototoxicity

A Basile and P Skolnick (NIDDK)

Serial No. 08/712,477 filed 11 Sep 96

Licensing Contact:: Stephen Finley, 301/496–7735, ext. 215.

Aminoglycoside (AGS) antibiotics are extremely effective at treating bacterial infections such as sepsis, endocarditis, and tuberculosis, but are currently used in only 3% of all clinical admissions in the United States because of their tendency to induce ototoxicity. Approximately 30–40% of all patients who receive an AGS antibiotic will develop measurable and usually permanent hearing loss. A guinea pig model was used to test whether N-Methyl-D-Aspartate (NMDA) antagonists could prevent or reduce the severity of the hearing loss when AGS antibiotics were administered. For example, the NMDA antagonists, dizocilpine and ifenprodil, were tested with the AGS antibiotics, neomycin and kanamycin, and were found to prevent or lessen the hearing loss in over 98% of the animals tested. Over 75% of the tested animals maintained normal hearing levels. It is believed that the use of this method will allow physicians to readily administer aminoglycoside antibiotics without the fear of causing permanent hearing loss in the patient. (portfolio: Internal Medicine—Therapeutics, other)

A Basal Cell Carcinoma Tumor Suppressor Gene

M Dean et al. (NCI)

Serial No. 60/017,906 filed 17 May 96

Licensing Contact: Ken Hemby, 301/496–7735 ext. 265.

Novel human nucleic acid sequences and polypeptides derived from the tumor suppressor, PTC or patched gene which have been mapped to human chromosome 9q22.3–q31, have been discovered for use in cancer diagnosis and therapy. Mutations of this gene are associated with Nevoid Basal Cell Carcinoma Syndrome (NBCCS) a disease associated with skin cancer and human developmental defects such as Gorlin Syndrome comprising skeletal defects, craniofacial and brain abnormalities. Methods of detection of PTC in a tissue sample have been found as well as recombinant cells, antibodies, and pharmacological compositions useful in treatment of the disease. Methods of diagnosis of and therapy for NBCCS have also been found.

The PTC gene is thought to encode a protein which selectively switches off growth factor production in certain cells by interaction with members of the family of proteins encoded by the "hedgehog" gene, which instructs cells during development and growth. NBCCS is the result of abnormal PTC gene products that encode non-functional or functionally reduced NBCCS polypeptides. This lack of function may be caused by insertions, deletions, point mutations, splicing errors, premature termination codons, missing initiators, etc. The tumors caused by NBCCS are slow growing tumors that rarely metastasize, but which can cause significant morbidity and occasional mortality from local invasion. (portfolios: Cancer—Diagnostics; Cancer—Therapeutics; Cancer—Research Materials)

Process for Detecting Alzheimer's Disease Using Cultured Cells

KK Sanford-Miffin, R Parshad, JH Robbins (NCI)

Serial No. 08/611,330 filed 08 Mar 96 (CIP of 08/225,825, CIP of 07/957,315)

Licensing Contact: Leopold J. Luberecki, Jr., 301/496–7735 ext. 223.

A novel process has been developed for distinguishing between clinically normal individuals and those who have Alzheimer's disease (AD), a form of senile dementia that affects millions of Americans. This invention should aid considerably in the diagnosis of sporadic AD before signs and symptoms become fully apparent and will make it possible in familiar AD to determine the presence or absence of AD gene(s) years before the patient becomes symptomatic. Previous studies of AD revealed that cells cultured from patients with familial or sporadic AD were hypersensitive to the lethal effects of ionizing radiation; however, none of these assays provided large enough differences between normal and AD cells to be useful in reliably distinguishing an AD patient from normal. The present invention provides an improved assay that demonstrates very large differences between AD cells and normal cells because it is based on the cytogenic response of an individual's cultured cells to fluorescent light in the presence and absence of a DNA repair inhibitor during the post-exposure period. This greater difference makes it possible to distinguish a single AD cell line (i.e., a cell line from one AD patient) from lines from most, if not all, normal people. The test is conducted on either skin fibroblasts or peripheral blood lymphocytes. (portfolio: Central Nervous System—Diagnostics, in vitro, other)

Methods and Compositions for Monitoring DNA Binding Molecules in Living Cells

H Htun and G Hager (NCI)

OTT Reference No. E-021-96/0 filed 08 Dec 95 and OTT Reference No. E-021-96/1 (CIP); foreign rights are available

Licensing Contact: Stephen Finley, 301/496–7735, ext. 215.

This technology is directed to methods of detecting the binding of fluorescently labeled compounds to DNA by a direct, real time, visual detection and to the characterization/screening of ligands to ligand-dependent DNA-binding proteins. Using cell lines harboring multiple copies of a defined transcriptional regulatory unit, visualization system and assay have been developed to determine the effect of ligand in promoting binding of ligand-dependent DNA binding proteins to nuclear targets, including to a define transcriptional regulatory DNA sequence. Quantitative and qualitative analyses show that when this technology is applied to study the effect of ligand, such as antagonist RU486 and agonist dexamethasone, on the glucocorticoid receptor, agonist ligand induces a nuclear accumulation of the receptor in a dose-dependent manner that is strickingly different from an antagonist ligand. Furthermore, by taking advantage of a unique cell line designated 3134, which contains 200 copies of a promotor region each containing 4 copies of a specific DNA-binding sequence for the receptor in a tandem array thereby producing 1600 copies of the DNA binding region, the agonist-induced binding of the receptor to this array can be observed in living cells. This cell line and the related methods may prove to be an important aid in monitoring steriod administration to patients through the direct measurement of steroid activity from a blood sample. This method is also applicable for high throughput visual (quantitative and qualitative) screening of ligands to orphan receptors either agonist or antagonist, determining the effective dosage levels of agonist/antagonists on a real time basis, and to identify modifying chemical or biological agents that alter DNA-binding specificity in living cells. (portfolios:

Internal Medicine—Diagnostics, anti-inflammatory; Internal Medicine—Diagnostics, imaging agents; Internal Medicine—Therapeutics)

Dated: February 12, 1997.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 97–4369 Filed 2–21–97; 8:45am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Cancer Institute Special Emphasis Panel (SEP) meeting:

Name of SEP: Program Project Review Meeting.

Date: March 17–19, 1997.

Time: 7:30 pm—March 17, 5:00 pm—March 18, 8:00 am—March 19.

Place: Best Western, 4630 Lindell Boulevard, St. Louis, Missouri 63108.

Contact Person: Mary Bell, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 611A, 6130 Executive Boulevard, MSC 7410, Bethesda, MD 20892–7405, Telephone: 301/496–7978.

Purpose/Agenda: To evaluate and review grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552(c)(6), Title 5 U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: February 18, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–4478 Filed 2–21–97; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of General Medical Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of General Medical Sciences Review Committee meeting:

Committee Name: Minority Biomedical Research Support Review Subcommittee.

Date: March 27–28, 1997.

Time of Meeting: 8:30 a.m.–5:00 p.m.

Open Session: 8:30 a.m.–9:30 a.m.—March 27.

Agenda: Special reports related to committee activities.

Closed Session: 9:30 a.m.–5:00 p.m.—March 27, 8:30 a.m.–5:00 p.m.—March 28.

Place: National Institutes of Health, Building 31—Conference Room 8, Bethesda, MD 20892.

Contact Person: Michael A. Sesma, Ph.D., Scientific Review Administrator, NIGMS, 45 Center Drive, Room 1AS–19, Bethesda, MD 20892–6200, 301–594–2048.

Purpose: To review institutional research training grant applications.

The meeting will be open to the public as indicated above, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sing language interpretation or other reasonable accommodations, should inform the Contact Person listed above in advance of the meeting.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6). Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support [MBRS])

Dated: February 18, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–4479 Filed 2–21–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel (SEP) meeting:

Name of SEP: E–CC Couplind: Signaling Between Calcium Channels.

Date: March 18, 1997.

Time: 8:00 a.m.–adjournment.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Contact Person: Melvin H. Gottlieb, Ph.D., Natcher Building, 45 Center Drive, Rm 5AS–25U, Bethesda, Maryland 20892–6500, Telephone: 301–594–4952.

Purpose/Agenda: To evaluate and review a research grant application.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussion of this application could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the application, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. [93.846, Project Grants in Arthritis, Musculoskeletal and Skin Diseases Research], National Institutes of Health, HHS)

Dated: February 18, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–4480 Filed 2–21–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Notice of Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 United States Code Appendix 2), notice is hereby given of the following meeting:

Name of Committee: Ad Hoc Smell, Taste and Touch and Chemosensory Disorders Subcommittee of the National Deafness and Other Communication Disorders Advisory Council.

Date: April 2, 1997.

Time: 1–4 pm.

Place: National Institutes of Health, Building 31C, Conference Room 9, 9000 Rockville Pike, Bethesda, MD 20892, (telephone conference call).

Contact Person: Mr. Baldwin Wong, Program Analyst, NIDCD/PPHRB, 31 Center Drive, MSC 2320, Room 3C–31, Bethesda, MD 20892–2320, (301) 496–7243.

Purpose: To discuss changes in the scientific field of smell, taste and touch and chemosensory disorders since the Research Plan was written, compare the research portfolio of the Institute with the priorities in the Research Plan to determine areas of emphasis and levels of activity, and identify gaps and suggest new initiatives in preparation for the updating of the smell, taste and touch and chemosensory disorders section of the Research Plan.

Attendance by the public will be limited to the space available. A summary of the Subcommittee's meeting and a roster of members may be obtained from Mr. Wong, upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mr. Wong in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.173, Biological Research Related to Deafness and Communication Disorders.)

Dated: February 18, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–4481 Filed 2–21–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 United States Code, Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

Date: March 20–21, 1997.

Time: 8:00 a.m.–5:00 p.m., March 20, 8:00 a.m.—adjourment, March 21.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda MD 20814.

Contact Person: Mary Nekola, Ph.D., Scientific Review Administrator, NIDCD/DEA/SRB, EPS Room 400C, 6120 Executive Boulevard, MSC 7180, Bethesda MD 20892–7180, 301–496–8683.

Purpose/Agenda: To review and evaluate Program Project applications. The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, United States Code. The applications and/or proposals and the discussion could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: February 18, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–4482 Filed 2–22–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Child Health and Human Development Initial Review Group (IRG) meetings.

Name of IRG: Maternal and Child Health Research Subcommittee.

Date: March 4–5, 1997.

Time: March 4—8:00 a.m.—5:00 p.m.; March 5—8:00 a.m.—adjournment.

Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, Maryland 20852.

Contact Person: Dr. Gopal Bhatnagar, 6100 Executive Boulevard, 6100 Building—Rm. 5E03, Rockville, Maryland 20852, Telephone: 301–496–1696.

Name of IRG: Mental Retardation Research Subcommittee.

Date: March 7, 1997.

Time: 8:00 a.m.—adjournment.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Contact Person: Dr. Norman Chang, 6100 Executive Boulevard, 6100 Building—Rm. 5E03, Rockville, Maryland 20892, Telephone: 301–496–1484.

Name of IRG: Medical Rehabilitation Research Subcommittee.

Date: March 10, 1997.

Time: 8:00 a.m.—adjournment.

Place: Bethesda Marriott Hotel, 5151 Pooks Hills Road, Bethesda, Maryland 20814.

Contact Person: Anne Krey, 6100 Executive Boulevard, 6100 Building—Rm. 5E03, Rockville, Maryland 20852, Telephone: 301–496–1696.

Name of IRG: Population Research Subcommittee.

Date: March 27–28, 1997.

Place: Ramada Ind—Bethesda, 8400 Wisconsin Avenue, Bethesda, Maryland 20814.

Time: March 27—8:00 a.m.—5:00 p.m.; March 28—8:00 a.m.—adjournment.

Contact Person: Dr. A.T. Gregoire, 6100 Executive Boulevard, 6100 Building—Rm. 5E01, Rockville, Maryland 20852, Telephone: 301–496–1485.

Purpose/Agenda To evaluate and review grant applications.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.864, Population Research and No. 93.865, Research for Mothers and Children, National Institutes of Health.)

Dated: February 18, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–4484 Filed 2–21–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of General Medical Services; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following advisory committee meeting of the National Institute of General Medical Sciences Special Emphasis Panel:

Committee Name: Mechanisms of Anesthetic Action on Signal Transduction.

Date: March 26, 1997.

Time: 8:00 a.m.–until conclusion.

Place: Omni Hotel, 235 W. Main Street, Charlottesville, Virginia 22902.

Contact Person: Irene B. Glowinski, Ph.D., Office of Scientific Review, 45 Center Drive, Room 1AS–13J, Bethesda, MD 20892–6200, 301–594–2772 or 301–594–3663.

Purpose: To review and evaluate program project applications.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support [MBRS].)

Dated: February 18, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–4485 Filed 2–21–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute on Drug Abuse (NIDA) Initial Review Group and Special Emphasis Panel meetings.

Purpose/Agenda: To review and evaluate grant applications.

Name of Committee: Health Service Research Subcommittee.

Date: March 4–5, 1997.

Time: 8:30 a.m.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Raquel Crider, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–9042.

Name of Committee: Treatment Research Subcommittee.

Date: March 4–6, 1997.

Time: 8:30 a.m.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Kesinee Nimit, M.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–9042.

Name of Committee: NIDA Special Emphasis Panel (Treatment).

Date: March 5, 1997.
Time: 1:00 p.m.
Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Rita Liu, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–2620.

This notice is being published less than 15 days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of Committee: AIDS Behavioral Research Subcommittee.
Date: March 10–11, 1997.
Time: 8:30 a.m.
Place: Key Bridge Marriott, 1401 Lee Highway, Arlington, VA 22209.
Contact Person: William C. Grace, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–9042.

Name of Committee: Aids Biomedical and Clinical Research Subcommittee.
Date: March 18–19, 1997.
Time: 8:30 a.m.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Contact Person: Gamil Debbas, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–2620.

Name of Committee: NIDA Special Emphasis Panel (Centers).
Date: March 18–19, 1997.
Time: 8:00 a.m.
Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Mary C. Custer, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–2620.

Name of Committee: NIDA Special Emphasis Panel (SBIRs).
Date: March 20–21, 1997.
Time: 8:30 a.m.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Contact Person: Mary C. Custer, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–2620.

Name of Committee: NIDA Special Emphasis Panel (RFA DA–97–002—Neurobiological Effects of Drug Abuse Therapies).
Date: March 24–25, 1997.
Time: 8:30 a.m.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Contact Person: Kesinee Nimit, M.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–9042.

The meetings will be closed in accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C.. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.277, Drug Abuse Research Scientist Development and Research Scientist Awards: 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs.)

Dated: February 18, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–4486 Filed 2–21–97; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Behavioral and Neurosciences.
Date: March 10, 1997.
Time: 8:30 a.m.
Place: Ramada Hotel, Bethesda, Maryland.
Contact Person: Dr. Carl Banner, Scientific Review Administrator, 6701 Rockledge Drive, Room 5182, Bethesda, Maryland 20892, (301) 435–1251.

Name of SEP: Clinical Sciences.
Date: March 10, 1997.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 4138, Telephone Conference.
Contact Person: Dr. Anthony Chung, Scientific Review Administrator, 6701 Rockledge Drive, Room 4138, Bethesda, Maryland 20892, (301) 435–1213.

Name of SEP: Microbiological and Immunological Sciences.
Date: March 11, 1997.
Time: 10:00 a.m.
Place: NIH, Rockledge 2, Room 4180, Telephone Conference.
Contact Person: Dr. Tim Henry, Scientific Review Administrator, 6701 Rockledge Drive, Room 4180, Bethesda, Maryland 20892, (301) 435–1147.

Name of SEP: Microbiological and Immunological Sciences.
Date: March 11, 1997.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 4180, Telephone Conference.
Contact Person: Dr. Tim Henry, Scientific Review Administrator, 6701 Rockledge Drive, Room 4180, Bethesda, Maryland 20892, (301) 435–1147.

Name of SEP: Biological and Physiological Sciences.
Date: March 11, 1997.
Time: 1:30 p.m.
Place: NIH, Rockledge 2, Room 6166, Telephone Conference.
Contact Person: Dr. Abubakar Shaik, Scientific Review Administrator, 6701 Rockledge Drive, Room 6166, Bethesda, Maryland 20892, (301) 435–1042.

Name of SEP: Behavioral and Neurosciences.
Date: March 11, 1997.
Time: 8:30 a.m.
Place: NIH, Rockledge 2, Room 5170, Telephone Conference.
Contact Person: Dr. Luigi Giacometti, Scientific Review Administrator, 6701 Rockledge Drive, Room 5170, Bethesda, Maryland 20892, (301) 435–1246.

Name of SEP: Microbiological and Immunological Sciences.
Date: March 12, 1997.
Time: 10:00 a.m.
Place: NIH, Rockledge 2, Room 4180, Telephone Conference.
Contact Person: Dr. Tim Henry, Scientific Review Administrator, 6701 Rockledge Drive, Room 4180, Bethesda, Maryland 20892, (301) 435–1147.

Name of SEP: Microbiological and Immunological Sciences.
Date: March 12, 1997.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, room 4180, Telephone Conference.
Contact Person: Dr. Tim Henry, Scientific Review Administrator, 6701 Rockledge Drive, Room 4180, Bethesda, Maryland 20892, (301) 435–1147.

Name of SEP: Microbiological and Immunological Sciences.
Date: March 13, 1997.
Time: 10:00 a.m.
Place: NIH, Rockledge 2, Room 4180, Telephone Conference.
Contact Person: Dr. Tim Henry, Scientific Review Administrator, 6701 Rockledge Drive, Room 4180, Bethesda, Maryland 20892, (301) 435–1147.

Name of SEP: Chemistry and Related Sciences.
Date: March 16–18, 1997.
Time: 8:00 p.m.
Place: Medford Inn, Long Island, New York.
Contact Person: Dr. Richard Panniers, Scientific Review Administrator, 6701 Rockledge Drive, Room 5106, Bethesda, Maryland 20892, (301) 435–1166.

Name of SEP: Multidisciplinary Sciences.
Date: March 17, 1997.
Time: 1:00 p.m.
Place: Radisson Barcelo Hotel, Washington, DC.
Contact Person: Dr. Lee Rosen, Scientific Review Administrator, 6701 Rockledge Drive, Room 5116, Bethesda, Maryland 20892, (301) 435–1171.

Name of SEP: Behavioral and Neurosciences.
Date: March 17, 1997.
Time: 8:30 a.m.
Place: NIH, Rockledge 2, Room 5170 Telephone Conference.
Contact Person: Dr. Luigi Giacometti, Scientific Review Administrator, 6701 Rockledge Drive, Room 5170, Bethesda, Maryland 20892, (301) 435–1246.

Name of SEP: Microbiological and Immunological Sciences.
Date: March 18, 1997.
Time: 2:00 p.m.
Place: NIH, Rockledge 2, Room 4190 Telephone Conference.
Contact Person: Dr. Garrett Keefer, Scientific Review Administrator, 6701 Rockledge Drive, Room 4190, Bethesda, Maryland 20892, (301) 435–1152.

Name of SEP: Biological and Physiological Sciences.
Date: March 19, 1997.
Time: 3:00 p.m.
Place: NIH, Rockledge 2, Room 4144, Telephone Conference.
Contact Person: Dr. Paul Strudler, Scientific Review Administrator, 6701 Rockledge Drive, Room 4144, Bethesda, Maryland 20892, (301) 435–1716.

Name of SEP: Biological and Physiological Sciences.
Date: March 19, 1997.
Time: 2:00 p.m.
Place: NIH, Rockledge 2, Room 5126, Telephone Conference.
Contact Person: Dr. Anne Clark, Scientific Review Administrator, 6701 Rockledge Drive, Room 5126, Bethesda, Maryland 20892, (301) 435–1017.

Name of SEP: Microbiological and Immunological Sciences.
Date: March 24–25, 1997.
Time: 8:30 a.m.
Place: Doubletree Hotel, Rockville, Maryland.
Contact Person: Dr. Rita Anand, Scientific Review Administrator, 6701 Rockledge Drive, Room 4188, Bethesda, Maryland 20892, (301) 435–1151.

Name of SEP: Biological and Physiological Sciences.
Date: April 1, 1997.
Time: 2:00 p.m.
Place: NIH, Rockledge 2, Room 5196, Telephone Conference.
Contact Person: Ms. Carol Campbell, Scientific Review Administrator, 6701 Rockledge Drive, Room 5196, Bethesda, Maryland 20892, (301) 435–1257.

Name of SEP: Chemistry and Related Sciences.
Date: April 3, 1997.
Time: 10:00 a.m.
Place: Doubletree Hotel, Rockville, Maryland.
Contact Person: Dr. Gopa Rakhit, Scientific Review Administrator, 6701 Rockledge Drive, Room 4154, Bethesda, Maryland 20892, (301) 435–1721.

Name of SEP: Behavioral and Neurosciences.
Date: April 5, 1997.
Time: 8:30 a.m.
Place: Holiday Inn-Georgetown, Washington, DC.
Contact Person: Dr. Samuel Rawlings, Scientific Review Administrator, 6701 Rockledge Drive, Room 5160, Bethesda, Maryland 20892, (301) 435–1243.

Purpose/Agenda: To review Small Business Innovation Research.

Name of SEP: Biological and Physiological Sciences.
Date: March 18, 1997.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 5112, Telephone Conference.
Contact Person: Dr. Harish Chopra, Scientific Review Administrator, 6701 Rockledge Drive, Room 5112, Bethesda, Maryland 20892, (301) 435–1169.

Name of SEP: Clinical Sciences.
Date: April 1–2, 1997.
Time: 8:30 a.m.
Place: Doubletree Hotel, Rockville, Maryland.
Contact Person: Dr. Gertrude McFarland, Scientific Review Administrator, 6701 Rockledge Drive, Room 4110, Bethesda, Maryland 20892, (301) 435–1784.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93,893, National Institutes of Health, HHS)

Dated: February 18, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–4483 Filed 2–21–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4170–N–06]

Notice of Native American Housing Assistance and Self-Determination Act of 1996 Implementation Meetings

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of implementation meetings for the Native American Housing Assistance and Self-Determination Act of 1996.

SUMMARY: This notice announces (1) preliminary meetings sponsored by HUD to develop the regulations necessary to carry out the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (Pub. L. 104–330, approved October 26, 1996); and (2) on February 27, 1997, the commencement of the negotiated rulemaking process authorized by NAHASDA. This notice supersedes the notice of meetings published on February 19, 1997 and provides the new location for the meetings.

DATES: The meetings will be held on February 25, 26, 27, and 28, 1997. The meetings will begin at approximately 9:00 am and end at approximately 5:00 on each day.

ADDRESS: The meetings will be held at the Warwick International Hotel, 1776 Grant Street, Denver, CO 80203; telephone (303) 861–2000 or 1–800–525–2888; fax (303) 832–0320 (With the exception of the "800" telephone number, these are not toll-free numbers).

FOR FURTHER INFORMATION CONTACT: Dominic Nessi, Deputy Assistant Secretary for Native American Programs, Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO; telephone (303) 675–1600 (voice) or 1–800–877–8339 (TTY for speech or hearing impaired individuals) (with the exception of the "800" number, these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Secretary of HUD has established the Native American Housing Assistance & Self-Determination Negotiated Rulemaking Committee (Committee) to negotiate and develop a proposed rule implementing NAHASDA. HUD will hold a series of meetings on February 25, 26, 27, and 28, 1997 in Denver, Colorado to discuss the regulatory implementation of NAHASDA. The meetings to be held on these dates will be (1) preliminary meetings to develop the regulations necessary to carry out NAHASDA, and (2) on February 27, 1997, the commencement of the negotiated rulemaking process authorized by NAHASDA.

The agenda planned for the week includes: (1) The formation of workgroups charged with the drafting of regulatory language; (2) the development of a schedule for future Committee meetings; (3) the distribution of background materials; and (4) other agenda items which may be agreed upon by the Committee.

The meetings will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent time permits, and file written statements with the Committee for its consideration. Written statements should be submitted to the address listed in the **FOR FURTHER INFORMATION** section of this notice. Summaries of Committee meetings will be available for public inspection and copying at the same address.

The location and dates of future meetings will be published in the **Federal Register**. HUD will make every effort to publish such notice at least 15 calendar days prior to each meeting. In

this case, HUD has found it necessary to provide less than 15 days advance notice due to the difficulty of identifying appropriate meeting facilities on the dates that the negotiated rulemaking process could commence. Additionally, given the statutory deadline for the final rule that will result from this negotiated rulemaking process, there is a need to begin the negotiated rulemaking process as quickly as possible.

HUD anticipates that it will be able to provide 15 days notice for future Committee meetings.

Dated: February 19, 1997.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

[FR Doc. 97–4539 Filed 2–20–97; 10:31 am]

BILLING CODE 4210–33–P

[Docket No. FR–4170–N–05]

Native American Housing Block Grant Program—Notice of Transition Requirements; Extension of Deadline for Submission of Indian Housing Plans

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of transition requirements; Extension of deadline for the submission of Indian Housing Plans.

SUMMARY: On January 27, 1997 (62 FR 3972), HUD published a notice to implement that part of section 106 of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (Pub. L. 104–330, approved October 26, 1996) that requires HUD to publish a notice establishing requirements necessary to provide for the transition from the provision of assistance for Indian tribes and Indian housing authorities under the United States Housing Act of 1937 (the 1937 Act) and other related provisions of law to the provision of assistance in accordance with NAHASDA.

In that notice, HUD provided that Indian Housing Plans must be submitted no later than June 1, 1997. This notice extends the Indian Housing Plan submission date to no later than November 3, 1997.

Other changes that may be made to the transition requirements set forth in the January 27, 1997 notice, as a result of public comment received on the notice by the February 26, 1997 public comment deadline, will be made by separate notice published in the **Federal Register**. This notice only extends the submission date for Indian Housing Plans.

DATES: *IHP submission date:* Indian Housing Plans must be submitted no later than November 3, 1997.

FOR FURTHER INFORMATION CONTACT: Dominic Nessi, Deputy Assistant Secretary for Native American Programs, Office of Native American Programs, Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO; telephone (303) 675–1600 (voice) or 1–800–877–8339 (TTY for speech or hearing impaired individuals). These are not toll-free numbers. Indian tribes or tribally designated housing entities with specific questions relating to the preparation of Indian Housing Plans as required by the January 27, 1997 notice may call their local Office of Native American Programs for assistance in resolving their questions. The telephone numbers and addresses for these offices appear in a table published in the January 27, 1997 notice (62 FR 3975).

SUPPLEMENTARY INFORMATION: On January 27, 1997 (62 FR 3972), HUD published a notice to implement that part of section 106 of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (Pub. L. 104–330, approved October 26, 1996) that requires HUD to publish a notice establishing requirements necessary to provide for the transition from the provision of assistance for Indian tribes and Indian housing authorities under the United States Housing Act of 1937 (the 1937 Act) and other related provisions of law to the provision of assistance in accordance with NAHASDA. The January 27, 1997 publication also provided notice of the negotiated rulemaking process for the development of regulations necessary to implement the program, and solicited comments on the transition requirements.

In the January 27, 1997 notice, HUD provided that Indian Housing Plans must be submitted no later than June 1, 1997. This notice extends the Indian Housing Plan (IHP) submission date to no later than November 3, 1997.

HUD is extending the plan submission date to November 3, 1997, to ensure that there is sufficient time for tribes to prepare their IHPs.

Other changes that may be made to the transition requirements set forth in the January 27, 1997 notice, as a result of public comment received on the notice by the public comment deadline of February 26, 1997, will be made by separate notice published in the **Federal Register**. This notice only extends the submission date for Indian Housing Plans.

Dated: February 18, 1997.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

[FR Doc. 97–4412 Filed 2–21–97; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Coastal Barrier Improvement Act of 1990 (Pub. L. 101–591); Section 4(c)—5-Year Review and Modification to the Coastal Barrier Resources System as a Result of Natural Forces

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of modifications to 28 units of the Coastal Barrier Resources System.

SUMMARY: The Coastal Barrier Improvement Act requires the Secretary of the Interior to review the maps of the Coastal Barrier Resources System (System) at least once every 5 years and make any minor and technical modifications to the boundaries of System units that the Secretary determines are necessary to reflect changes occurring as a result of natural forces. This notice announces the findings of the review of the System.

DATES: Changes to the System become final on February 24, 1997.

ADDRESSES: Revised maps of System units affected by this review are available for purchase from the U.S. Geological Survey, Earth Science Information Center, P.O. Box 25286, Denver, Colorado 80225. Official maps can be viewed at Fish and Wildlife Service offices listed in the appendix.

FOR FURTHER INFORMATION CONTACT: Ms. Denise Henne, Department of the Interior, U.S. Fish and Wildlife Service, Division of Habitat Conservation, (703) 358–2201.

SUPPLEMENTARY INFORMATION: Section 4 of the Coastal Barrier Resources Act of 1982, as amended by the Coastal Barrier Improvement Act, established the Coastal Barrier Resources System as referred to and adopted by Congress. Section 4(c) states the Secretary of the Interior shall conduct a review of the System at not less than 5-year intervals and make, in consultation with appropriate Federal, State, and local officials, any necessary minor and technical modifications to unit boundaries to reflect changes caused by natural forces. Secretarial Order 3093 delegated responsibility for Section 4 to the Fish and Wildlife Service on April 28, 1983.

The Service contracted with the National Aeronautics and Space Administration to photograph all units of the System in 1992 and 1993 using infra-red photography at a scale of 1:65,000. Photographs of units were enlarged to 1:12,000 and 1:24,000 and overlayed with mylar sheets depicting unit boundaries. The photographs were compared with the topographic maps depicting the units of the System, as approved by Congress in 1990, to determine if changes had occurred due to natural forces.

Upon completion of this review and consultation, as appropriate, 28 units of the System were found to have changed due to natural forces. These units were as follows:

Maine
- ME–17—Small Point Beach
- ME–18—Stover Point

Massachusetts
- MA–03—Castle Neck
- C01B–Brace Cove
- MA–20P—Nauset Beach/Monomoy
- MA–24—Naushon Island Complex
- C28—South Beach
- C31—Elizabeth Islands

Rhode Island
- D02B—Prudence Island Complex

New York
- NY–04P—Prospect Point
- NY–50—Fresh Pond
- F10—Napeague

New Jersey
- NJ–09—Stone Harbor

Maryland
- MD–03—Sound Shore
- MD–37P—Flag Ponds
- MD–38—Cove Point Marsh

Virginia
- VA–09—Elliotts Creek
- VA–23—Simpson Bend
- VA–36—Presley Creek

North Carolina
- L07—Lea Island Complex
- L09—Masonboro Island

Florida
- P16—Keewaydin Island
- P17—Lovers Key Complex
- FL–89—Peninsula Point
- FL–99—Tom King
- FL–101—Garcon Point

Alabama
- Q01A—Pelican Island

U.S. Virgin Islands
- VI–07—Great Pond

Copies of the official System maps reflecting the boundary modifications have been filed with the House of Representatives Committee on Resources and the Committee on Banking and Financial Services, and the Senate Committee on Environment and Public Works. Copies of these maps have been distributed to the Chief Executive Officer (or representative) of each appropriate Federal, State, or local agency having jurisdiction over an area in which a modified unit is located. Copies of the maps are also available for inspection through the Service's Regional and Field Offices. The aerial photography of the units is available in certain Field Offices (see addresses in appendix).

Coastal Barrier Resources System Revised Maps

The Service has made the following revisions to System units, as required by Section 4(c) of Public Law 101–591:

Maine

ME–17—Small Point Beach. The unit has been expanded to include the mouth of Sprague River, which has migrated outside of the original unit boundary.

ME–18—Stover Point. The south boundary has been modified to include both sides of the entrance to the embayment, plus the associated aquatic habitat.

Massachusetts

MA–03—Castle Neck. The south boundary at the entrance to Essex Bay has been moved to incorporate the expanded barrier.

C01B—Brace Cove. The boundary has been expanded to include all of Brace Cove and the associated aquatic habitat.

MA–20P—Nauset Beach/Monomoy. The south end of Nauset Beach has eroded away, with part of the barrier retreating onto Morris Island. The boundary has been moved onto Morris Island to incorporate this change.

MA–24—Naushon Island Complex. A narrow barrier now connects the West Beach and Crescent Beach segments of this unit. Wetlands have developed between the barrier and Westend Pond. The unit has been expanded to include the connecting barrier, associated aquatic habitat, and Westend Pond.

C28—South Beach. The dune line has moved inland and out of the unit on most of the peninsulas connecting the bays in the unit. The unit has been expanded to include all of the dune formations.

C31—Elizabeth Islands. Narrow barriers have developed outside of two segments of the unit on Pasque Island. The boundaries have been moved to include these barriers and associated aquatic habitat.

Rhode Island

D02B—Prudence Island Complex. A narrow barrier now connects the two segments on Coggeshall Cove, Prudence Island. The boundary has been expanded to connect the two segments and include the associated aquatic habitat.

New York

NY–04P—Prospect Point. The barrier has expanded north to Prospect Point. This expansion plus the associated aquatic habitat have been added to the unit.

NY–50—Fresh Pond. The mouth of the south pond has migrated outside of the unit. The unit has been expanded to include this area.

F10—Napeague. The head of the spit at the mouth of Napeague Harbor is outside of the unit. The unit has been expanded to include the entire spit.

New Jersey

NJ–09—Stone Harbor. A substantial shoal has developed at the mouth of Hereford Inlet, much of which is outside the unit. The unit has been expanded to include all of this sand-sharing system.

Maryland

MD–03—Sound Shore. The barrier has expanded across a creek to the south of the unit. The unit has been expanded to include all of the barrier plus the associated aquatic habitat.

MD–37P—Flag Ponds. The barrier has expanded to the south, outside of the unit. The unit has been expanded to include all of the barrier plus the associated aquatic habitat.

MD–38—Cove Point Marsh. The barrier at the north end of the unit has receded behind the boundary and no longer has associated aquatic habitat. The unit boundary has been adjusted to exclude this open-water area.

Virginia

VA–09—Elliotts Creek. The barrier has expanded to the south. The unit has been modified to include all of the barrier and the associated aquatic habitat.

VA–23—Simpson Bend. France and Little Back Creeks are now connected by a barrier. The unit has been expanded to include all of the barrier and the associated aquatic habitat.

VA–36—Presley Creek. The mouth of the creek has migrated outside of the unit. The boundary has been modified to include the mouth of the creek.

North Carolina

L07—Lea Island Complex. The spit on the south side of Rich Inlet is prograding and is no longer completely within the unit. The unit has been expanded to include the entire spit and associated aquatic habitat.

L09—Masonboro Island. The spit on the north side of Masonboro Inlet has prograded outside of the unit. The unit boundary has been adjusted to include all of the undeveloped portion of the spit and associated aquatic habitat.

Florida

P16—Keewaydin Island. A substantial shoal has developed outside of the unit at the mouth of Big Marco Pass. The boundary has been adjusted to include this sand-sharing area.

P17—Lovers Key Complex. A barrier is developing outside of the unit on the north side of Big Carlos Pass. The unit boundary has been adjusted to include this area.

FL–89—Peninsula Point. The peninsula is prograding to the north across the mouth of Alligator Harbor. The unit has been expanded to include all of the peninsula and the associated aquatic habitat.

FL–99—Tom King. The spit has accreted to the north of the unit. The unit boundary has been adjusted to include all of the spit and associated aquatic habitat.

Fl–101—Garcon Point. The secondary barrier has expanded northward on the East Bay side of the unit. The unit has been expanded to include the barrier and the associated aquatic habitat.

Alabama

Q01A—Pelican Island. The island is prograding across Pelican Passage toward Dauphin Island. The boundary has been adjusted to include all of Pelican Island, the secondary barrier developing on Dauphin Island behind Pelican Island, and all associated aquatic habitat.

U.S. Virgin Islands

VI–07—Great Pond. The barrier has expanded to the south of Great Pond. The unit has been expanded to include the barrier and associated aquatic habitat.

APPENDIX—LOCATION OF MAPS AVAILABLE FOR REVIEW

U.S. Fish and Wildlife Service	States of jurisdiction
Regional Offices	
Regional Director, Region 4, U.S. Fish and Wildlife Service, 75 Spring St. SW, Atlanta, Georgia 30303, (404) 331–3580.	North Carolina, Florida, Alabama, Virgin Islands.
Regional Director, Region 5, U.S Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589, (413) 253–8200.	Maine, Massachusetts, Rhode Island, New York, New Jersey, Maryland, Virginia.
Field Offices	
Field Supervisor, U.S. Fish and Wildlife Service, 22 Bridge St., Concord, NH 03301–4986, (603) 225–1411	Maine, Massachusetts, Rhode Island.
Field Supervisor, U.S. Fish and Wildlife Service, 3817 Luker Road, Cortland, NY 13045, (607) 753–9334	New York.
Field Supervisor, U.S. Fish and Wildlife Service, 927 N. Main St., Bldg. D–1, Pleasantville, NJ, 08232, (609) 646–0620.	New Jersey.
Field Supervisor, U.S. Fish and Wildlife Service, 177 Admiral Cochrane Dr., Annapolis, MD, 21401, (410) 573–4500.	Maryland.
Field Supervisor, U.S. Fish and Wildlife Service, Mid County Center, U.S. Route 17, White Marsh, VA 23183, (804) 693–6694.	Virginia.
Field Supervisor, U.S. Fish and Wildlife Service, 551–F Pylon Dr., Raleigh, NC 27636–3726, (919) 856–4520	North Carolina.
Field Supervisor, U.S. Fish and Wildlife Service, 1360 U.S. Highway 1, Vero Beach, FL 32961, (407) 562–3909	Florida: Lee & Collier Counties.
Field Supervisor, U.S. Fish and Wildlife Service, 1612 June Ave., Panama City, FL 32405–3721, (904) 769–0552	Florida: Franklin & Santa Rosa Counties.
Field Supervisor, U.S. Fish and Wildlife Service, 2001 Highway 98, Daphne, AL 36526, (334) 441–5181	Alabama.
Field Supervisor, U.S. Fish and Wildlife Service, P.O. Box 491, Boqueron, PR 00622, (809) 851–7297	U.S. Virgin Islands.

Dated: January 28, 1997.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 97–4462 Filed 2–21–97; 8:45 am]

BILLING CODE 4310–55–M

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain recovery-related activities with endangered species. This notice is provided pursuant to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Permit No. 821962

Applicant: Mark E. Angelos, Torrance, California

The applicant requests a permit to take (harass by survey, capture and release, collect voucher specimens) the San Diego fairy shrimp (*Brachinecta sandiegonensis*) in Los Angeles, Riverside, and San Diego Counties, California in conjunction with presence or absence surveys and aquatic insect research for the purpose of enhancing its survival.

Permit No. 821401

Applicant: Brian Daniels, Long Beach, California.

The applicant requests a permit to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*) throughout its range in California, Nevada, Utah, Arizona, New Mexico, and Colorado in conjunction with presence or absence surveys for the purpose of enhancing its survival.

Permit No. 821404

Applicant: Douglas R. Willick, Anaheim, California.

The applicant requests a permit to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus) throughout its range in California, Nevada, Utah, Arizona, New Mexico, and Colorado in conjunction with presence or absence surveys for the purpose of enhancing its survival.*

Permit No. 795934

Applicant: Jones and Stokes, Sacramento, California.

The applicant requests an amendment to his permit to take (harass by survey; capture and release; collect voucher specimens) the San Diego fairy shrimp (*Branchinecta sandiegonensis*) throughout the range of the species in California in conjunction with presence or absence surveys and scientific research for the purpose of enhancing their survival.

Permit No. 795938

Applicant: EIP Associates, Sacramento, California.

The applicant requests an amendment to his permit to take (harass by survey; capture and release; collect voucher specimens) the San Diego fairy shrimp (*Branchinecta sandiegonensis*) throughout the range of the species in California in conjunction with presence or absence surveys and scientific research for the purpose of enhancing their survival.

Permit No. 782274

Applicant: Michael Brandman Associates, Sacramento, California.

The applicant requests an amendment to his permit to take (harass by survey; capture and release; collect voucher specimens) the San Diego fairy shrimp (*Branchinecta sandiegonensis*) throughout the range of the species in California in conjunction with presence or absence surveys and scientific research for the purpose of enhancing their survival.

Permit No. 787037

Applicant: Branchiopod Research Group, San Diego, California.

The applicant requests an amendment to her permit to take (harass by survey; capture and release; collect voucher specimens) the San Diego fairy shrimp (*Branchinecta sandiegonensis*) throughout the range of the species in California in conjunction with presence or absence surveys and scientific research for the purpose of enhancing their survival.

Permit No. 797665

Applicant: Regional Environmental Consultants, San Diego, California.

The applicant requests an amendment to his permit to take (harass by survey; capture and release; collect voucher specimens) the San Diego fairy shrimp (*Branchinecta sandiegonensis*) throughout the range of the species in California in conjunction with presence or absence surveys and scientific research for the purpose of enhancing their survival.

Permit No. 812792

Applicant: Julie Vanderwier, Encinitas, California.

The applicant requests an amendment to her permit to take (harass by survey; capture and release; collect voucher specimens) the San Diego fairy shrimp (*Branchinecta sandiegonensis*) throughout the range of the species in California in conjunction with presence or absence surveys and scientific research for the purpose of enhancing their survival.

Permit No. 796288

Applicant: California Department of Transportation, Sacramento, California.

The applicant requests an amendment to his permit to take (harass by survey; capture and release; collect voucher specimens) the San Diego fairy shrimp (*Branchinecta sandiegonensis*) throughout the range of the species in California in conjunction with presence or absence surveys and scientific research for the purpose of enhancing their survival.

Permit No. 797999

Applicant: Merkel & Associates, Inc., San Diego, California.

The applicant requests an amendment to his permit to take (harass by survey; capture and release; collect voucher specimens) the San Diego fairy shrimp (*Branchinecta sandiegonensis*) throughout the range of the species in California in conjunction with presence or absence surveys and scientific research for the purpose of enhancing their survival.

Permit No. 797930

Applicant: Brent Paul Helm, Sacramento, California.

The applicant requests an amendment to his permit to take (harass by survey; capture and release; collect voucher specimens) the San Diego fairy shrimp (*Branchinecta sandiegonensis*) throughout the range of the species in California in conjunction with presence or absence surveys and scientific research for the purpose of enhancing their survival.

Permit No. 785148

Applicant: Ogden Environmental and Energy Services, San Diego, California.

The applicant requests an amendment to his permit to take (harass by survey; capture and release; collect voucher specimens) the San Diego fairy shrimp (*Branchinecta sandiegonensis*) throughout the range of the species in California in conjunction with presence or absence surveys and scientific research for the purpose of enhancing their survival.

Permit No. 778195

Applicant: Sweetwater Environmental Biologists, Inc., San Diego, California.

The applicant requests a permit to take (harass by survey; capture and release; collect voucher specimens) the San Diego fairy shrimp (*Branchinecta sandiegonensis*) throughout the range of the species in California in conjunction with presence or absence surveys and scientific research for the purpose of enhancing their survival.

Permit No. 797234

Applicant: LSA Associates, Inc., Point Richmond, California.

The applicant requests an amendment to his permit to take (harass by survey; capture and release; collect voucher specimens) the San Diego fairy shrimp (*Branchinecta sandiegonensis*) throughout the range of the species in California in conjunction with presence or absence surveys and scientific research for the purpose of enhancing their survival.

Permit No. 702631

Applicant: Assistant Regional Director-Ecological Services, Region 1, U.S. Fish and Wildlife Service, Portland, Oregon.

The applicant requests amendment of his permit to allow take of the following species: Mount Hermon June beetle (*Polyphylla barbata*), quino checkerspot butterfly (*Euphydryas editha quino*), Zayante band-winged grasshopper (*Trimerotropis infantilis*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and Laguna Mountains skipper (*Pyrgus ruralis lagunae*). Authorization to remove and reduce to possession specimens of the following plant species is also requested: *Astragalus brauntonii* (Braunton's milk-vetch), *Pentachaeta lyonii* (Lyon's pentachaeta), and *Pseudobahia bahiifolia* (Hartweg's golden sunburst). Take and collection activities will be conducted throughout the range of species in conjunction with recovery efforts in order to enhance their propagation and survival.

DATES: Written comments on these permit applications must be received on or before March 26, 1997.

ADDRESSES: Written data or comments should be submitted to the Chief, Division of Consultation and Conservation Planning, Ecological Services, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; FAX: 503–231–6243. Please refer to the respective permit number for each application when submitting comments. All comments, including names and addresses, received will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and

Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to the address above; telephone: 503–231–2063. Please refer to the respective permit number for each application when requesting copies of documents.

Dated: February 13, 1997.

Thomas J. Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 97–4453 Filed 2–21–97; 8:45 am]

BILLING CODE 4310–55–P

Geological Survey

Federal Geographic Data Committee (FGDC); Public Review of the "Content Standards for Digital Orthoimagery", and the "Content Standards for Digital Elevation Data"

ACTION: Notice; Request for comments.

SUMMARY: The FGDC is sponsoring a public review of the draft "Content Standards for Digital Orthiomagery", and the draft "Content Standards for Digital Elevation Data" to be considered for adoption as FGDC standards. If adopted, the standards must be followed by all Federal agencies for digital orthoimage and elevation data collected directly or indirectly, through grants, partnerships, or contracts.

In its assigned leadership role for developing the National Spatial Data Infrastructure (NSDI), the FGDC recognizes that the standards must also meet the needs and recognize the views of State and local governments, academia, industry, and the public. The purpose of this notice is to solicit such views. The FGDC invites the community to review, test, and evaluate the proposed standards. Comments are encouraged about the content, completeness, applicability, and usability of the proposed standard.

The FGDC anticipates that the proposed standards will be adopted as Federal Geographic Data Committee standards after updating or revision. The standards may be forwarded to voluntary standards bodies for adoption if interest warrants such actions.

DATES: Comments must be received on or before July 25, 1997.

CONTACT AND ADDRESSES: Requests for written copies of the "Content Standards for Digital Orthoimagery" and and the "Content Standards for Digital Elevation Data" should be addressed to "Content Standards for Digital Orthoimagery Review", and/or "Content Standards for Digital Elevation Data Review", the FGDC Secretariat (attn: Jennifer Fox), U.S. Geological Survey, 590 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 22092; telephone 703–648–5514; facsimile 703–648–5755; or Internet "gdc@usgs.gov." The standards may be downloaded from the following Internet address:

ftp://www.fgdc.gov/pub/standards/DigOrtho/.

ftp://www.fgdc.gov/pub/standards/DigElev/.

Reviewer comments may be sent to the FGDC Secretariat at the above address. Please send one hardcopy version of the comments and a soft copy version, preferably on a 3.5x3.5 diskette in WordPerfect 5.0 or 6.0/6.1 format. Comments may also be sent via Internet mail. Send comments on the "Content Standards for Digital Orthoimagery" to: gdc-doi@www.fgdc.gov. Send comments on the "Content Standards for Digital Elevation Data Review" to: gdc-ded@www.fgdc.gov

SUPPLEMENTARY INFORMATION: The objective of these standards is to define the digital orthoimage and elevation themes of the digital geospatial data framework as envisioned by the FGDC. It is the intent of these standards to set a common baseline that will ensure the widest utility of digital orthoimagery and elevation data for the user and producer communities through enhanced data sharing and the reduction of redundant data production. The framework will provide a base on which to collect, register, and integrate digital geospatial information accurately. Digital orthoimagery and elevation data are both parts of this basic set of data described as framework. These standards are intended to facilitate the interchange and use of digital orthoimage and elevation data under the framework concept. These standards describe quality control, testing, processing, accuracy, reporting, and applications considerations for digital orthoimagery and elevation data.

Dated: February 12, 1997.

Richard E. Witmer,

Acting Chief, National Mapping Division.

[FR Doc. 97–4378 Filed 2–21–97; 8:45 am]

BILLING CODE 4310–31–M

Bureau of Land Management

[NM–060–07–1110–(00) (0002)]

Intent of Seasonal Road Closure; Caprock Wildlife Habitat Area, Mescalero Sands, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent of Seasonal Road Closure within the Caprock Wildlife Habitat Area at Mescalero Sands.

SUMMARY: Pursuant to 43 CFR Part 8364, the Bureau of Land Management (BLM) will annually close a BLM-maintained road designated as Mathers TT329 to public access at State Highway 380 from March 1 through June 1. This period may be extended earlier or later, or with additional closure periods imposed during the year, for Lesser prairie chicken research needs.

DATE: This action is effective March 1, 1997, and will remain in effect until the cessation of Lesser prairie chicken studies projected through the year 2001.

ADDRESSES: Maps showing the location of the access point from State Highway 380 that will be closed will be available at the BLM District Office, 2909 West 2nd Street, Roswell, New Mexico.

FOR FURTHER INFORMATION CONTACT: T.R. Kreager, Area Manager, Roswell Resource Area, 2909 West 2nd Street, Roswell, New Mexico 88201–2019, Telephone (505) 627–0272.

SUPPLEMENTARY INFORMATION: Approximately six miles of caliche-surfaced road maintained by the BLM will be seasonally closed to the general public by the physical restriction of access from State Highway 380 at the following location:

New Mexico Principal Meridian

Caprock Wildlife Habitat Area, Mescalero Sands

T. 10 S., R. 31 E., Section 30: SWNE

The access point is at State Highway 380, across from the Waldrop Rest Area (Mile Marker 196), approximately forty-two miles east of Roswell, New Mexico. The area restricted to public access is north of the highway.

This temporary road and are closure will be in effect annually from March 1, 1997, until the cessation of Lesser prairie chicken studies in the year 2001. The purpose of the closure is to restrict currently open public access into important Lesser prairie chicken habitat targeted for long-term ecological studies. Specifically, to prevent disturbance to prairie chicken booming grounds (leks) and trapping efforts at the grounds for radio-telemetry work conducted to determine movement and habitat use. Unrestricted access to the area may compromise or jeopardize prairie chicken research efforts in this portion of the Caprock Wildlife Habitat Area.

Vehicle access for administrative purposes, and those activities authorized by the BLM, will continue to be allowed. Only the road and general area serviced by the road is affected by this action.

Dated: February 12, 1997.

Edwin L. Roberson,

Acting District Manager.

[FR Doc. 97–4392 Filed 2–21–97; 8:45 am]

BILLING CODE 4310–VA–M

[CA–060–07–1990–00]

Meeting of the California Desert District Advisory Council

SUMMARY: Notice is hereby given, in accordance with Public Laws 92–463 and 94–579, that the California Desert District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, will meet in formal session on Thursday, March 20 from 8:00 a.m. to 4:30 p.m. and Friday, March 21, 1996, from 7:30 a.m. to 4:30 p.m. The Thursday session will be held in the Needles City hall Council Chambers located at 111 Baily Avenue, Needles, California.

Council members will participate in a field tour on Friday. The tour will assemble at the Travelers Inn parking lot at 7:15 a.m., and depart at 7:30 a.m. The hotel is located at 1195 3rd Street. The public is welcome to participate in the field tour, but should dress appropriately and plan on providing their own transportation, food, and beverage. Anyone interested in participating in the field tour should contact BLM at (909) 697–5215 for more information.

The Thursday meeting will begin at 8 a.m. All Desert District Advisory Council meetings are open to the public. Time for public comment may be made available by the Council Chairman during the presentation of various agenda items, and is scheduled at the end of the meeting for topics not on the agenda.

Written comments may be filed in advance of the meeting for the California Desert District Advisory Council, c/o Bureau of Land Management, Public Affairs Office, 6221 Box Springs Boulevard, Riverside, California 92507–0714. Written comments also are accepted at the time of the meeting and, if copies are provided to the recorder, will be incorporated into the minutes.

FOR FURTHER INFORMATION AND MEETING CONFIRMATION: Contact the Bureau of Land Management, California Desert District, Public Affairs Office, 6221 Box Springs Boulevard, Riverside, California 92507–0714; (909) 697–5215.

Dated: February 14, 1997.

Jo Simpson,

Assistant District Manager, External Affairs.

[FR Doc. 97–4454 Filed 2–21–97; 8:45 am]

BILLING CODE 4310–40–M

(CO–935–1430–01; COC–28582, COC–0123470)

Public Land Order No. 7244; Partial Revocation of Secretarial Order Dated March 25, 1910, Which Established Power Site Reserve No. 133; Opening of Land Under Section 24 of the Federal Power Act in the Secretarial Order Dated July 12, 1957, Which Established Power Project No. 2204; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a Secretarial order insofar as it affects 600 acres of public lands withdrawn for Powersite Reserve No. 133. The waterpower potential in these lands has been fully developed. These lands have been open to mineral leasing and, under the provisions of the Mining Claims Rights Restoration Act of 1955, to mining. These provisions are no longer required. This order also opens 359.57 acres of lands withdrawn for Power Project No. 2204, subject to Section 24 of the Federal Power Act, to disposal to the Project licensee. The revocation and opening actions will allow for consummation of a pending land exchange with the Denver Water Board. All of the lands continue to be segregated by an exchange application.

EFFECTIVE DATE: March 26, 1997.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, 303–239–3706.

1. By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988) it is ordered as follows:

The Secretarial Order dated March 25, 1910, which established Power Site Reserve No. 133, is hereby revoked insofar as it affects the following described public lands:

Sixth Principal Meridian

T. 1 N., R. 79 W.,
Sec. 14, SE¼SE¼;
Sec. 23, NE¼NE¼, E½W½NE¼, SW¼, NE¼SE¼, and W½SE¼;
Sec. 25, NW¼NE¼;
Sec. 26, NE¼.

The areas described aggregate 600 acres in Grand County.

At 9:00 a.m. on March 26, 1997, the lands described above are relieved of the segregative effects of Power Site Reserve No. 133. The lands remain segregated by an exchange application.

2. By virtue of the authority vested in the Secretary of the Interior by the Act of June 10, 1920, Section 24, as amended, 16 U.S.C. 818 (1988), and pursuant to the determination by the Federal Energy Regulatory Commission in DVCO–546, it is ordered as follows:

At 9:00 a.m. on March 26, 1997, the following described public lands withdrawn by Secretarial Order dated July 12, 1957, which established Power Project No. 2204, will be opened to disposal by land exchange to the Denver Water Board only, subject to the provisions of Section 24 of the Federal Power Act, valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law:

Sixth Principal Meridian

T. 1 N., R. 78 W.,
Sec. 19, lot 2 lying West of County Road 3.
T. 1 N., R. 79 W.,
Sec. 27, E½NE¼, NW¼SE¼, and SE¼SW¼ lying East of County Road 33;
Sec. 34, NW¼NE¼ and NE¼NW¼ lying East of County Road 33;
Sec. 35, W½NW¼ and NE¼NW¼.

The areas described aggregate approximately 359.57 acres in Grand County.

3. The State of Colorado, with respect to the lands described in paragraphs 1 and 2, has waived its preference right to file for the public highway rights-of-way or material sites, as provided by the Act of June 10, 1920, Section 24 as amended, 16 U.S.C. 818 (1988).

Dated: February 4, 1997.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–4391 Filed 2–21–97; 8:45 am]

BILLING CODE 4310–JB–P

[WY–989–1050–00–P]

Filing of Plats of Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled

to be officially filed in the Wyoming State Office, Cheyenne, Wyoming, thirty (30) calendar days from the date of this publication.

Sixth Principal Meridian, Wyoming

T.50 N., R. 71 W., accepted December 13, 1996
T.47 N., R. 73 W., accepted December 13, 1996
T.48 N., R. 73 W., accepted December 13, 1996
T.28 N., R. 71 W., accepted February 12, 1997
T.35 N., R. 113 W., accepted February 12, 1997

If protests against a survey, as shown on any of the above plats, are received prior to the official filing, the filing will be stayed pending consideration of the protest(s) and or appeal(s). A plat will not be officially filed until after disposition of protest(s) and or appeal(s).

These plats will be placed in the open files of the Wyoming State Office, Bureau of Land Management, 5353 Yellowstone Road, Cheyenne, Wyoming, and will be available to the public as a matter of information only. Copies of the plats will be made available upon request and prepayment of the reproduction fee of $1.10 per copy.

A person or party who wishes to protest a survey must file with the State Director, Bureau of Land Management, Cheyenne, Wyoming, a notice of protest prior to thirty (30) calendar days from the date of this publication. If the protest notice did not include a statement of reasons for the protest, the protestant shall file such a statement with the State Director within thirty (30) calendar days after the notice of protest was filed.

The above-listed plats represent dependent resurveys, subdivision of sections.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, P.O. Box 1828, 5353 Yellowstone Road, Cheyenne, Wyoming 82003.

Dated: February 14, 1997.

John P. Lee,

Chief, Cadastral Survey Group.

[FR Doc. 97–4464 Filed 2–21–97; 8:45 am]

BILLING CODE 4310–22–M

National Park Service

Meeting of Delta Region Preservation Commission

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Delta Region Preservation Commission will be held at the following place and time.

DATES: Wednesday, March 12, 1997, at 7 p.m.

ADDRESSES: The meeting will be held at the German-American Cultural Center located at 519 Huey P. Long Avenue, Gretna, Louisiana 70053.

FOR FURTHER INFORMATION CONTACT: Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Geraldine Smith, Superintendent, Jean Lafitte National Historical Park and Preserve, 365 Canal Street, Suite 3080, New Orleans, Louisiana 70130–1142, telephone (504) 589–3882, extension 108.

SUPPLEMENTARY INFORMATION: The Delta Region Preservation Commission was established pursuant to Section 907 of Public Law 95–625 (16 U.S.C. 230f), as amended, to advise the Secretary of the Interior in the selection of sites for inclusion in Jean Lafitte National Historical Park and Preserve, and in the implementation and development of a general management plan and of a comprehensive interpretive program of the natural, historic, and cultural resources of the region.

The matters to be discussed at this meeting include:
—Old Business
—New Business
—General Park Update

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis. Any member of the public may file a written statement concerning matters to be discussed with the Superintendent, Jean Lafitte National Historical Park and Preserve.

Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of Jean Lafitte National Historical Park and Preserve.

Dated: February 7, 1997.

Daniel W. Brown,

Acting Regional Director, Southeast Region.

[FR Doc. 97–4473 Filed 2–21–97; 8:45 am]

BILLING CODE 4310–70–M

Keweenaw National Historical Park Advisory Commission; Notice of Meeting

SUMMARY: This notice announces an upcoming meeting of the Keweenaw National Historical Park Advisory Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

DATES: Tuesday, February 25, 1997; 8:30 a.m. until 4:30 p.m.

ADDRESSES: Keweenaw National Historical Park Headquarters, 100 Red Jacket Road (2nd floor), Calumet, Michigan 49913–0471.

This meeting is open to the public. We will begin with the Chairman's welcome; minutes of the previous meeting; update on the general management plan; update on park activities; old business; new business; next meeting date; adjournment.

FOR FURTHER INFORMATION CONTACT: Superintendent, Keweenaw National Historical Park, P.O. Box 471, Calumet, Michigan 49913–0471, or telephone 906–337–3168.

SUPPLEMENTARY INFORMATION: The Keweenaw National Historical Park was established by Public Law 102–543 on October 27, 1992.

Dated: February 12, 1997.

William W. Schenk,

Field Director, Midwest Field Area.

[FR Doc. 97–4471 Filed 2–21–97; 8:45 am]

BILLING CODE 4310–70–P

Denali National Park and Preserve, AK; Notice of Availability

SUMMARY: Notice is hereby given that pursuant to the provisions of Section 2 of the Act of September 28, 1976, U.S.C. 1901 et seg., and according to the provisions of Section 9.17(a) of Title 36 of the Code of Federal Regulations Part 9, Subpart A, Steve Hicks has filed, on behalf of claim owners Arnold Howard and the estates of Arley Taylor, a plan of operations in support of proposed appraisal sampling operations on lands embracing the Caribou Howtay Association Claim #1 in Denali National Park and Preserve.

ADDRESSES: This plan is available for inspection during normal business hours at the following location: Denali National Park and Preserve, Park Headquarters, P.O. Box 9, Denali Park, Alaska 99755.

FOR FURTHER INFORMATION CONTACT: Phil Brease, Geologist, Denali National Park and Preserve (907) 683–2294, at the address above.

Dated: February 3, 1997.

Ken Kehrer,

Chief Ranger, Denali National Park and Preserve.

[FR Doc. 97–4472 Filed 2–21–97; 8:45 am]

BILLING CODE 4310–70–M

Notice of Intent to Repatriate Cultural Items in the Possession of the Heard Museum, Phoenix, AZ

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3005 (a)(2), of the intent to repatriate cultural items in the possession of the Heard Museum, Phoenix, AZ, which meet the definition of "sacred objects" under Section 2 of the Act.

The cultural items are two painted rawhide rattles with wood and rawhide handles. Prior to 1954, these rattles were purchased by the Heard Museum and are identified as Oglala from South Dakota.

Consultation evidence presented by representatives of the Cheyenne River Sioux Tribe, Devil's Lake Sioux Tribe, Standing Rock Sioux Tribe, and Three Affiliated Tribes indicate these rattles are part of a *Yuwipi* ceremony, and are specific ceremonial objects needed by traditional religious leaders for the practice of Native American religion by present day adherents.

Based on the above-mentioned information, officials of the Heard Museum have determined that, pursuant to 25 U.S.C. 3001 (3)(C), these cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Heard Museum have also determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these items and the Oglala Sioux Tribe.

This notice has been sent to officials of the Cheyenne River Sioux Tribe, Devil's Lake Sioux Tribe, Oglala Sioux Tribe, Rosebud Sioux Tribe, Santee Sioux Tribe of Nebraska, and Standing Rock Sioux Tribe. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Martin Sullivan, Director, The Heard Museum, 22 E. Monte Vista Rd., Phoenix, AZ 85004–1480, telephone (602) 252–8840 before March 26, 1997. Repatriation of these objects to the Cheyenne River Sioux Tribe on behalf of the Oglala Sioux Tribe may begin after that date if no additional claimants come forward.

Dated: February 14, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 97–4468 Filed 2–21–97; 8:45 am]

BILLING CODE 4310–70–F

Notice of Inventory Completion for Native American Human Remains from Coos County, OR, in the Possession of the Los Angeles County Museum of Natural History, Los Angeles, CA

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of human remains from Coos County, OR, in the possession of the Los Angeles County Museum of Natural History, Los Angeles, CA.

A detailed assessment of the human remains was made by Los Angeles County Museum professional staff in consultation with representatives of the Coquille Indian Tribe.

In 1969, human remains representing one individual were recovered from site 35CS3 one the north bank near the mouth of the Coquille River, Coos County, OR, by Mrs. Lee Hall. Mrs. Hall donated the human remains to the Los Angeles County Museum in 1970. No known individuals were identified. No associated funerary objects are present.

Site 35CS3 has been identified as a Lower Coquille (Miluk) village site occupied into the historic period based on manner of internment, oral history, linguistic distribution, and geographic location.. Accession information with this individual states the remains were found eroding from the riverbank near the site of an earlier University of Oregon excavation of the village. Consultation evidence presented by representatives of the Coquille Indian Tribe indicates this is a known village site and traditional cemetery area.

Based on the above mentioned information, officials of the Los Angeles County Museum of Natural History have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Los Angeles County Museum of Natural History have also determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Coquille Indian Tribe.

This notice has been sent to officials of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians, the Confederated Tribes of the Siletz Reservation, and the Coquille Indian Tribe. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Margaret Ann Hardin, Los Angeles County Museum of Natural History, 900 Exposition Blvd., Los Angeles, CA 90007; telephone: (213) 744–3382 before March 26, 1997. Repatriation of the human remains to the Coquille Indian Tribe may begin after that date if no additional claimants come forward.

Dated: February 13, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 97–4470 Filed 2–21–97; 8:45 am]

BILLING CODE 4310–70–F

Notice of Inventory Completion for Native American Human Remains and Unassociated Funerary Objects from Emmet County, MI, in the Possession of the Museum of Anthropology, University of Michigan, Ann Arbor, MI

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of human remains and unassociated funerary objects in the possession of the Museum of Anthropology, University of Michigan, Ann Arbor, MI.

A detailed assessment of the human remains was made by Museum of Anthropology professional staff in consultation with representatives of the Grand Traverse Bay Band of Chippewa and Ottawa Indians and the Little Traverse Bay Band of Odawa Indians.

In 1924, human remains representing one individual were sold to the Museum of Anthropology, University of Michigan by Rev. L.P. Rowlands of Detroit, MI. Accession and other collection information indicates this individual was recovered during the late nineteenth century from the Lake Michigan shore area in Emmet County, MI between the localities of Cross Village and Seven Mile Point. No known individual was identified. No associated funerary objects are present.

The 510 unassociated funerary objects include silver ornaments, glass beads, brass and copper kettles, an iron hoe, trap fragments, a tomahawk pipe, and textile fragments. In 1924, these items were sold to the Museum of Anthropology, University of Michigan by Rev. L.P. Rowlands of Detroit, MI. Accession and other collection information indicates these items came from graves in the areas of Middle

Village, Goodhart, and Cross Village, all located in Emmet County, MI.

Morphological evidence indicates this individual is Native American, based on the brachialcephalic formation of the occipital region of the skull. The areas of Cross Village, Gathered, and Middle Village are historic Odawa settlements, and the types of unassociated funerary objects are consistent with Odawa burials of the late seventeenth and eighteenth centuries. Consultation evidence presented by the Grand Traverse Bay Band of Chippewa and Ottawa Indians and the Little Traverse Bay Band of Odawa Indians supports the Odawa affiliation for these sites.

Based on the above mentioned information, officials of the Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (3)(B), these 510 cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual. Lastly, officials of the Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Little Traverse Bay Band of Odawa Indians.

This notice has been sent to officials of the Grand Traverse Bay Band of Chippewa and Ottawa Indians and the Little Traverse Bay Band of Odawa Indians. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact David Kennedy, Collections Manager, Museum of Anthropology, University of Michigan, Ann Arbor, MI 48901; telephone: (313) 764–0485 before March 26, 1997. Repatriation of the human remains and associated funerary objects to the Little Traverse Bay Band of Odawa Indians may begin after that date if no additional claimants come forward.

Dated: February 18, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 97–4469 Filed 2–21–97; 8:45 am]

BILLING CODE 4310–70–F

Bureau of Reclamation

Bay-Delta Advisory Council Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bay-Delta Advisory Council (BDAC) will meet to discuss several issues including: a review of the Phase II schedule; an overview of the storage and conveyance component; an overview of the ecosystem restoration component; an update on restoration coordination activities; an update on activities resulting from the recent flooding; and an update of progress on the water use efficiency component. The BDAC meeting is open to the public. Interested persons may make oral statements to the BDAC or may file written statements for consideration.

DATES: The Bay-Delta Advisory Council meeting will be held from 9:30 am to 5:00 pm on Wednesday, March 12, 1997.

ADDRESSES: The Bay-Delta Advisory Council meeting will meet at the Beverly Garland Hotel, 1780 Tribute Road (at Exposition Boulevard/West), Sacramento, CA.

CONTACT PERSON FOR FURTHER INFORMATION: For the BDAC meeting, contact Sharon Gross, CALFED Bay-Delta Program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The CALFED Bay-Delta Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA) as the Bay-Delta Advisory Council (BDAC) to advise CALFED on the program mission, problems to be addressed, and objectives for the CALFED Bay-Delta Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff.

Minutes of the meeting will be maintained by the CALFED the Bay-Delta Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: February 18, 1997.

Roger Patterson,

Regional Director, Mid-Pacific Region.

[FR Doc. 97–4451 Filed 2–21–97; 8:45 am]

BILLING CODE 4310–94–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Voluntary Foreign Aid Advisory Committee; Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA).

Date: March 12, 1997 (9:00 a.m. to 5:00 p.m.).

Location: State Department, Loy Henderson Auditorium, 23rd Street Entrance.

The purpose of the meeting is to discuss an ACVFA Study on the State of the USAID/PVO Partnership.

The meeting is free and open to the public. However, notification by noon, March 11, 1997, through the Advisory Committee Headquarters is required. Persons wishing to attend the meeting must call Lisa J. Douglas (703) 351–0243 or Susan Saragi (703) 351–0244 or FAX (703) 351–0228/0212. Persons attending must include their name, organization, birthdate and social security number for security purposes.

Dated: January 29, 1997.

Adele Liskov,

Acting Director, Office of Private and Voluntary Cooperation, Bureau for Humanitarian Response.

[FR Doc. 97–4380 Filed 2–21–97; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

State of Oregon, et al. v. Jeff Mulkey, et al., No. 97–234MA District of Oregon, Filed February 11, 1997

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16 (b)–(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of Oregon in the above-captioned case.

On February 11, 1997 the United States jointly filed with the states of Oregon, California and Washington a complaint to prevent and restrain the defendants from violating Section 1 of the Sherman Act. The Complaint alleges that in late 1995 and early 1996 the defendant commercial crab fishermen were leaders in a conspiracy with unnamed co-conspirators to restrain competition among commercial crab fishermen in violation of § 1 of the Sherman Act. The conspiracy consisted of an agreement and concert of action between the defendants and co-conspirators to fix the price at which they would sell their catch to purchasers at a minimum of $1.25 per pound and to eliminate competition among commercial fishermen in the sale of crab. As a result of the conspiracy, the vast majority of west coast commercial crab fishermen did not fish for crab during December 1995.

The proposed Final Judgment enjoins the defendants from participating in any discussion, communication or agreement, except as members of a fishermen's marketing association formed pursuant to the Fishermen's Collective Marketing Act (15 U.S.C. § 521) or similar state statutes, with other fishermen, regarding the price or sales terms to be negotiated with purchasers, or refraining from fishing while commercial fishermen are negotiating price with purchasers. The defendants are also enjoined from any interference with any other commercial fisherman's business through threats or other means of intimidation.

Public comment is invited within the statutory 60-day period. Such comments will be published in the **Federal Register** and filed with the Court. Comments should be addressed to Christopher S. Crook, Acting Chief, San Francisco Office, U.S. Department of Justice, Antitrust Division, Box 36046, 460 Golden Gate Avenue, San Francisco, California 94102 (telephone: (415) 436–6660).

Rebecca P. Dick,

Deputy Director of Operations.

Hardy Myers,
Attorney General
Andrew E. Aubertine,
Assistant Attorney General, Oregon Department of Justice, 1162 Court Street NE, Salem, Oregon 97310, (503) 378–4732, OSB #: 83013.

Liaison counsel for all plaintiffs identified on attached signature pages.

In the United States District Court for the District of Oregon

State of Oregon, *ex rel.*, Attorney General Hardy Myers, State of Washington, *ex rel.*, Attorney General Christine O. Gregoire, State of California, *ex rel.*, Attorney General Daniel Lungren, United States of America, Plaintiffs, v. Jeff Mulkey, Jerry Hampel, Todd Whaley, Brad Pettinger, Joseph Speir, Thomas Timmer, Richard Sheldon, Dennis Sturgell, Allen Gann and Russell Smotherman, Defendants. Civil Action No. 97–234MA, Stipulation—Judge Malcom Marsh.

Stipulation

It is stipulated by and between the undersigned parties, and by their respective attorneys, that:

(1) The parties consent that a final judgment in the form hereto attached as Exhibit A may be filed and entered by the Court at any time after the expiration of the sixty (60) day period for public comment provided by the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16 (b)–(h), without further notice to any party or other proceedings, either upon the motion of any party or upon the Court's own motion, provided that plaintiff has not withdrawn its consent as provided herein;

(2) The parties further consent that, pending entry of the Consent Decree, defendants shall be subject to and abide by the terms of the injunction set forth in the Consent Decree.

(3) The plaintiffs or any of them may withdraw their consent hereto at any time within said period of sixty (60) days by serving notice thereof upon the other party hereto and filing said notice with the Court;

(4) In the event one or more plaintiffs withdraw their consent hereto, this stipulation shall be of no effect and shall not be binding upon the withdrawing plaintiff(s) in this or any other proceeding, and the making of this stipulation shall not in any manner prejudice any consenting party to any subsequent proceedings.

Respectfully submitted,

Dated this 6th day of February, 1997.

Hardy Myers,
Attorney General of Oregon.
Andrew E. Aubertine #83013,
Assistant Attorney General, Oregon Department of Justice, 1162 Court Street, NE, Salem, Oregon 97310, (503) 378–4732.

Dated this _____ day of January, 1997.

Christine O. Gregoire,
Attorney General of Washington.
Marta Lowy #14430,
Assistant Attorney General.
Brian Dew #18877,
Assistant Attorney General, Office of the Washington Attorney General, 900 4th Avenue, Suite 2000, Seattle, WA 98164, (206) 464–6433.

Dated this 14th day of January, 1997.

Daniel Lungren,
Attorney General of California.
Lindsay Bower #69577,
Assistant Attorney General, California Department of Justice, 50 Fremont Street, Suite 300, San Francisco, CA 94105–2239, (415) 356–6377.

Dated this _____ day of December, 1996.

United States of America Department of Justice, Antitrust Division
Richard Cohen WA#3671/CA79601,
Trial Attorney, U.S. Department of Justice, Antitrust Division, 450 Golden Gate Avenue, San Francisco, CA 94102, (415) 436–6695.

Dated this _____ day of December, 1996.

Thomas Triplett #65125,
Schwabe, Williamson, et al. 1600–1800 Pacwest Center, 1211 SW 5th Avenue, Portland, OR 97204, (503) 796–2901.
Counsel for Defendants Jeff Mulkey and Allen Gann

Dated this 30th day of December, 1996.

Michael Treman #063039 Cal.,
Attorney at Law, 1428 Chapala Street, Santa Barbara, CA 93101, (805) 962–6544.
Counsel for Defendant Thomas Timmer

Dated this _____ day of December, 1996.

Frank H. Hilton #66064,

Dunn, Carney, Allen, Higgins and Tongue 851 SW 6th Avenue, #1500, Pacific First Center, Portland, OR 97204, (503) 224–6440

Counsel for Defendants Brad Pettinger, Todd Whaley, and Joseph Speir

Dated this _____ day of December, 1996.

Kathleen P. Eymann #79220,

Attorney at Law, 14303 SE Amillia Court, Portland, OR 97267, (503) 654–6797.

Counsel for Defendants Jerry Hampel and Richard Sheldon

Dated this _____ day of December, 1996.

Harold A. Snow #68156,

McCallister & Snow, 801 Commercial, P.O. Box 508, Astoria, OR 97103, (503) 325–2511.

Counsel for Defendant Dennis Sturgell

Dated this _____ day of December, 1996.

Russell Smotherman,

Pro Se, 310 SW Cedar, Warrenton, OR 97146.

Hardy Myers,
Attorney General
Andrew E. Aubertine,
Assistant Attorney General, Oregon Department of Justice, 1162 Court Street NE, Salem, Oregon 97310, (503) 378–4732, OSB # 83013.

Liaison counsel for all plaintiffs identified on attached signature pages.

In the United States District Court for the District of Oregon

State of Oregon, *ex rel.*, Attorney General Hardy Myers, State of Washington, *ex rel.*, Attorney General, Christine O. Gregoire, State of California, *ex rel.*, Attorney General Daniel Lungren, and United States of America, Plaintiffs, v. Jeff Mulkey, Jerry Hampel, Todd Whaley, Brad Pettinger, Joseph Speir, Thomas Timmer, Richard Sheldon, Dennis Sturgell, Allen Gann and Russell Smotherman, Defendants. Civil Action No. 97–234MA, Consent Decree—Judge Malcom Marsh.

Plaintiffs, through their respective attorneys, and defendants, through their respective attorneys or appearing pro se, have stipulated to entry of this Consent Decree in accordance with the terms of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16 and that this Consent Decree shall be a consent judgment as the term is used in 15 U.S.C. § 16(a).

Whereas: Plaintiffs, State of Oregon, State of Washington, State of California, and the United States Department of Justice through their respective attorneys, filed their complaint on February 11, 1997, alleging a violation of the Sherman Act, 15 U.S.C. § 1 and counterpart state statutes, Oregon Revised Statutes 646.725; Revised Code of Washington § 19.86.030, and California Professional & Business Code §§ 16720–16770;

Whereas: Defendants Jeff Mulkey, Jerry Hampel, Todd Whaley, Brad Pettinger, Joseph Speir, Thomas Timmer, Richard Sheldon, Dennis Sturgell, Allen Gann and Russell Smotherman deny any liability with respect to all matters which are the subject of the complaint;

Whereas: There has been no determination by the Court that a violation of law occurred;

Whereas: The plaintiffs and defendants desire to resolve their dispute without adjudication of any issue of law or fact; and

Whereas: The Consent Decree shall not be evidence against nor an admission by any party with respect to any issue of law or fact;

Now, Therefore, before the taking of any testimony, and without trial or adjudication of any issue of law or fact herein, and upon the consent of the parties hereto, it is hereby ordered, adjudged and decreed as follows:

I. Jurisdiction

This Court has jurisdiction over the subject matter herein and each of the parties consenting hereto. This Court has jurisdiction over Counts I through VIII of the Complaint pursuant to 15 U.S.C. § 4, 15 U.S.C. § 26, and 28 U.S.C. § 1367(a). The Complaint states claims upon which relief may be granted against defendants under 15 U.S.C. § 1 and related pendent state antitrust claims under ORS 646.725, 646.760 and 646.770; RCW § 19.86.030; and Cal Prof & Bus. Code §§ 16720–16770.

II. Definitions

As used in this Consent Decree:

A. "Association" means any group of fishermen organized under the Fisherman's Collective Marketing Act, 15 U.S.C. § 521 or under the companion laws of the State of California, Cal. Corp. Code § 130.26, the State of Washington, RCW § 24.36, and/or the State or Oregon.

B. "Commercial Seafood Fishermen" means fishermen who fish for and catch seafood products and sell the seafood products to purchasers.

C. "Ex-vessel price" means the price paid by purchasers to fishermen for seafood products.

D. "Person" means any individual, sole proprietorship, partnership, firm, corporation or any other legal or business entity.

E. "Purchasers" mean commercial seafood processors, commercial seafood canneries, retail stores and/or restaurants.

F. "Seafood" and "Seafood Products" mean crab, crab meat, and any and all other crab products, whether fresh, raw, cooked, frozen, canned, or otherwise preserved or prepared for consumption.

III. Applicability

The provisions of this Consent Decree shall apply to plaintiffs and defendants and to all of defendants' managers, agents, employees, affiliates, and to those persons in active concert or participation with them who receive actual notice of this Consent Decree by personal service or otherwise.

IV. Injunction

A. Defendants are enjoined from forming or participating in, or continuing to participate in any agreement, plan, scheme, arrangement or undertaking, with any other commercial seafood fisherman, the purpose or effect of which is:

1. To set, fix, or stabilize the ex-vessel price of seafood or any price terms or conditions for the sale of seafood, directly or indirectly, either (i) through coercion or intimidation, or threats of coercion or intimidation, including, but not limited to, the use or threat of use of physical force or reprisal against persons or property or (ii) where antitrust immunity is not provided under federal or state law;

2. To reduce, limit or eliminate the supply of seafood, directly or indirectly, either (i) through coercion or intimidation, or threats of coercion or intimidation, including, but not limited to, the use or threat of use of physical force or reprisal against persons or property or (ii) where antitrust immunity is not provided under federal or state law; and

3. To impede, obstruct, or prevent any person from processing, purchasing or selling or offering to purchase or sell seafood, directly or indirectly, either (i) through coercion or intimidation, or threats of coercion or intimidation, including, but not limited to, the use or threat of use of physical force or reprisal against persons or property or (ii) where antitrust immunity is not provided under federal or state law.

B. Defendants are also enjoined from compelling any fisherman or other person to become a member of, or to participate in the activities of, any association through coercion or intimidation, or threats of coercion or intimidation, including, but not limited to, the use or threat of physical force or reprisal against persons or property.

C. This Consent Decree shall not be interpreted to limit or constrict any rights to form or participate as a member in activities of a fishermen's marketing association granted to defendants by the Fishermen's Collective Marketing Act (15 U.S.C. § 521) or other similar state statutes. Oregon law shall be interpreted to permit defendants to engage in

fishermen marketing association activities which are immune or exempt from antitrust liability under 15 U.S.C. § 521, unless and until the Oregon legislature amends any existing law or passes any new law that provides a different standard of immunity or exemption than what is provided under 15 U.S.C. § 521.

V. Payment to States

A. In settlement of all of plaintiffs' claims set forth in the complaint, and pursuant to ORS 646.760 and ORS 180.095, RCW 19.86.080 and 19.86.090, and Cal Prof. & Bus. Code 16750, defendants agree to pay to the Oregon Department of Justice the total sum of Ninety Thousand Eight Hundred Seventy Four dollars ($90,874.00) in this matter for reimbursement of attorneys fees and investigative costs incurred herein.

B. The plaintiffs' apportioned shares of defendants' payments and the use of such shares shall be determined exclusively by the plaintiffs. Oregon's share of said payments shall be deposited into the Oregon Department of Justice Consumer Protection and Education Revolving Account and shall be used as provided by Oregon law.

C. Payments shall be made by certified check and made payable to the Oregon Department of Justice in accordance with the schedules set forth in the Settlement Agreement between the parties to this Consent Decree.

VI. Securing Compliance With Consent Decree

For the purpose of securing compliance with this Consent Decree defendants shall fully and completely cooperate in any future investigation for violations of this Consent Decree or any matters related to this Decree in accordance with the following conditions:

A. Any information provided to plaintiffs under this Consent Decree shall be kept confidential by plaintiffs and shall not be disclosed to third parties except as necessary to enforce the Consent Decree, as otherwise previously agreed, and/or as permitted or required under applicable state or federal law.

B. The defendants shall have the right to be represented by counsel in any process permitted by this Consent Decree section, including those described in Paragraph C.

C. Subject to any legally recognized privilege, the defendants agree that duly authorized representatives of plaintiffs shall, on written request and on reasonable notice to Defendant, be permitted:

1. Access during the office hours of the defendant to inspect any copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession, custody or control of such defendant relating to any matters contained in this Consent Decree; and

2. To interview defendant or any employee or agent of defendants regarding any matters contained in this Consent Decree, under oath if requested, subject to reasonable convenience of the defendant and without restraint or interference from defendant.

D. Subject to any legally recognized privilege, the defendants further agree that upon written request from duly authorized representatives of the plaintiffs to a defendant, defendant shall submit written reports, under oath if requested, with respect to any of the matters contained in the Consent Decree.

VII. Violations of Consent Decree

A. In the event that one or more of the plaintiffs believe that one or more of the Defendants have violated any provisions of this Consent Decree, plaintiffs, either jointly or individually, may move the Court for an Order for Show Cause for violation of this Consent Decree, based upon affidavits stating factual grounds, after notice by regular mail to the last known address of the defendants allegedly involved and to their attorneys of record.

B. After a hearing at which defendants involved shall have a reasonable opportunity to present evidence and legal argument, the Court may enter an order which, among other remedies, may require each defendant involved to pay a penalty to the moving plaintiffs of up to fifteen thousand dollars ($15,000) per violation and any other sanction the Court deems appropriate.

C. Upon a defendant's failure to pay the penalty provided in this section, or for any other violation of this Consent Decree, the moving plaintiffs, either jointly or individually, may exercise all remedies available at law or in equity, including plaintiff United States seeking an order of criminal contempt.

VIII. Enforcement of Consent Decree

A. Plaintiffs shall have concurrent authority to enforce any provision of this Consent Decree against any party to this Consent Decree.

B. The authority to enforce this Consent Decree shall be in addition to any other enforcement action authority plaintiffs may have in prosecuting new violations of state or federal antitrust laws.

C. Nothing contained in this Consent Decree shall limit the rights of the United States from utilizing other investigative alternatives, such as the Civil Investigative Demand process provided by 15 U.S.C. § 1311 and § 1314, or a federal grand jury. Nothing contained in this Consent Decree shall limit the rights of the States of Oregon, California and Washington from utilizing other investigative alternatives, such as their civil investigative authority and, if applicable, their grand jury authority.

IX. Retention of Jurisdiction

Jurisdiction shall be retained by the United States District Court for the District of Oregon to enable any party to apply for further orders and directions as are necessary and appropriate for enforcement, compliance, construction, or modification of this Consent Decree.

X. Scope of Consent Decree

This Consent Decree and the Settlement Agreement represent the complete agreement of the parties. Nothing in this Consent Decree or the Settlement Agreement shall give standing to any person not a party to this Consent Decree to seek any relief related to it.

XI. Length of Consent Decree

This Consent Decree shall be in full force and effect for a period of five (5) years following entry of this decree.

XII. Public Interest

Entry of this Consent Decree is in the public interest. Except as provided in this Consent Decree for future action taken pursuant to Section IX, this proceeding in all other respect is hereby dismissed with prejudice with respect to defendants.

Approved and Ordered this _____ day of _____, 1997.

_____
United States District Court Judge

Presented by:

Andrew E. Aubertine,
Assistant Attorney General, Oregon Department of Justice, 1162 Court Street, NE, Salem, Oregon 97310, (503) 378–4732, OSB# 83013.

Liaison Counsel for Plaintiffs

Hardy Myers
Attorney General
Andrew E. Aubertine,
Assistant Attorney General, Oregon Department of Justice, 1162 Court Street NE, Salem, Oregon 97310, (503) 378–4732, OSB #83013.

Liaison counsel for all plaintiffs identified on attached signature pages.

In the United States District Court for the District of Oregon

State of Oregon, *ex rel.*, Attorney General Hardy Myers, State of Washington, *ex rel.*, Attorney General Christine O. Gregoire, State of California, *ex rel.*, Attorney General Daniel Lungren, and United States of America, Plaintiffs, v. Jeff Mulkey, Jerry Hampel, Todd Whaley, Brad Pettinger, Joseph Speir, Thomas Timmer, Richard Sheldon, Dennis Sturgell, Allen Gann and Russell Smotherman, Defendants. Civil Action, No. 97–234MA, Consent Decree—Judge Malcom Marsh.

Plaintiffs, through their respective attorneys, and defendants, through their respective attorneys or appearing pro se, have stipulated to entry of this Consent Decree in accordance with the terms of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16 and that this Consent decree shall be a consent judgment as the term is used in 15 U.S.C. § 16(a).

Whereas: Plaintiffs, State of Oregon, State of Washington, State of California, and the United States Department of Justice through their respective attorneys, filed their complaint on February 11, 1997, alleging a violation of the Sherman Act, 15 U.S.C. § 1 and counterpart state statutes, Oregon Revised Statues 646.725; Revised Code of Washington § 19.86.030, and California Professional & Business Code §§ 16720–16770;

Whereas: Defendants Jeff Mulkey, Jerry Hampel, Todd Whaley, Brad Pettinger, Joseph Speir, Thomas Timmer, Richard Sheldon, Dennis Sturgell, Allen Gann and Russell Smotherman deny any liability with respect to all matters which are the subject of the complaint;

Whereas: There has been no determination by the Court that a violation of law occurred;

Whereas: The plaintiffs and defendants desire to resolve their dispute without adjudication of any issue of law or fact; and

Whereas: The Consent Decree shall not be evidence against nor an admission by any party with respect to any issue of law or fact;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of law or fact herein, and upon the consent of the parties hereto, it is hereby ordered, adjudged and decreed as follows:

I. Jurisdiction

This Court has jurisdiction over the subject matter herein and each of the parties consenting hereto. This Court has jurisdiction over Counts I through VIII of the Complain pursuant to 15 U.S.C. § 4, 15 U.S.C. § 26, and 28 U.S.C. § 1367(a). The Complaint states claims upon which relief may be granted against defendants under 15 U.S.C. § 1 and related pendent state antitrust claims under ORS 646.725, 646.760 and 646.770; RCW § 19.86.030; and Cal Prof & Bus. Code §§ 16720–16770.

II. Definitions

As used in this Consent Decree:

A. "Association" means any group of fishermen organized under the Fisherman's Collective Marketing Act, 15 U.S.C. § 521 or under the companion laws of the State of California, Cal. Corp. Code § 130.26, the State of Washington, RCW § 24.36, and/or the State of Oregon.

B. "Commercial Seafood Fishermen" means fishermen who fish for and catch seafood products and sell the seafood products to purchasers.

C. "Ex-vessel price" means the price paid by purchasers to fishermen for seafood products.

D. "Person" means any individual, sole proprietorship, partnership, firm, corporation or any other legal or business entity.

E. "Purchasers" mean commercial seafood processors, commercial seafood canneries, retail stores and/or restaurants.

F. "Seafood" and "Seafood Products" mean crab, crab meat, and any and all other crab products, whether fresh, raw, cooked, frozen, canned, or otherwise preserved or prepared for consumption.

III. Applicability

The provisions of this Consent Decree shall apply to plaintiffs and defendants and to all of defendants' managers, agents, employees, affiliates, and to those persons in active concert or participation with them who receive actual notice of this Consent Decree by personal service or otherwise.

IV. Injunction

A. Defendants are enjoined from forming or participating in, or continuing to participating in any agreement, plan, scheme, arrangement or undertaking, with any other commercial seafood fisherman, the purpose or effect of which is:

1. To set, fix or stabilize the ex-vessel price of seafood or any price terms or conditions for the sale of seafood, directly or indirectly, either (i) through coercion or intimidation, or threats of coercion or intimidation, including, but not limited to, the use or threat of use of physical force or reprisal against persons or property or (ii) where antitrust immunity is not provided under federal or state law;

2. To reduce, limit or eliminate the supply of seafood, directly or indirectly, either (i) through coercion or intimidation, or threats of coercion or intimidation, including, but not limited to, the use or threat of use of physical force or reprisal against persons or property or (ii) where antitrust immunity is not provided under federal or state law; and

3. To impede, obstruct, or prevent any person from processing, purchasing or selling or offering to purchase or sell seafood, directly or indirectly, either (i) through coercion or intimidation, or threats of coercion or intimidation, including, but not limited to, the use of threat of use of physical force or reprisal against persons or property or (ii) where antitrust immunity is not provided under federal or state law.

B. Defendants are also enjoined from compelling any fisherman or other person to become a member of, or to participate in the activities of, any association through coercion or intimidation, or threats of coercion or intimidation, including, but not limited to, the use of threat of physical force or reprisal against persons or property.

C. This Consent Decree shall not be interpreted to limit or constrict any rights to form or participate as a member in activities of a fishermen's marketing association granted to defendants by the Fishermen's Collective Marketing Act (15 U.S.C. § 521) or other similar state statutes. Oregon law shall be interpreted to permit defendants to engage in fishermen marketing association activities which are immune or exempt from antitrust liability under 15 U.S.C. § 521, unless and until the Oregon legislature amends any existing law or passes any new law that provides a different standard of immunity or exemption that what is provided under 15 U.S.C. § 521.

V. Payment to States

A. In settlement of all of plaintiffs' claims set forth in the complaint, and pursuant to ORS 646.760 and ORS 180.095, RCW 19.86.080 and 19.86.090, and Cal Prof. & Bus. Code 16750, defendants agree to pay to the Oregon Department of Justice the total sum of Ninety Thousand Eight Hundred Seventy Four dollars ($90,874.00) in this matter for reimbursement of attorneys fees and investigative costs incurred herein.

B. The plaintiffs' apportioned shares of defendants' payments and the use of such shares be determined exclusively by the plaintiffs. Oregon's share of said payments shall be deposited into the Oregon Department of Justice Consumer Protection and Education Revolving Account and shall be used as provided by Oregon law.

C. Payments shall be made by certified check and made payable to the Oregon Department of Justice in accordance with the schedules set forth in the Settlement Agreement between the parties to this Consent Decree.

VI. Securing Compliance With Consent Decree

For the purpose of securing compliance with this Consent Decree defendants shall fully and completely cooperate in any future investigation for violations of this Consent Decree or any matters related to this Decree in accordance with the following conditions.

A. Any information provided to plaintiffs under this Consent Decree shall be kept confidential by plaintiffs and shall not be disclosed to third parties except as necessary to enforce the Consent Decree, as otherwise previously agreed, and/or as permitted or required under applicable state or federal law.

B. The defendants shall have the right to be represented by counsel in any process permitted by this Consent Decree section, including those described in Paragraph C.

C. Subject to any legally recognized privilege, the defendants agree that duly authorized representatives of plaintiffs shall, on written request and on reasonable notice to Defendant, be permitted:

1. Access during the office hours of the defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession, custody or control of such defendant relating to any matters contained in this Consent Decree; and

2. To interview defendant or any employee or agent of defendants regarding any matters contained in this Consent Decree, under oath if requested, subject to reasonable convenience of the defendant and without restraint or interference from defendant.

D. Subject to any legally recognized privilege, the defendants further agree that upon written request from duly authorized representatives of the plaintiffs to a defendant, defendant shall submit written reports, under oath if requested, with respect to any of the matters contained in the Consent Decree.

VII. Violations of Consent Decree

A. In the event that one or more of the plaintiffs believe that one or more of the Defendants have violated any provisions of this Consent Decree, plaintiffs, either jointly or individually, may move the Court for an Order for Show Cause for violation of this Consent Decree, based upon affidavits starting factual grounds, after notice by regular mail to the last known address of the defendants allegedly involved and to their attorneys of record.

B. After a hearing at which defendants involved shall have a reasonable opportunity to present evidence and legal argument, the Court may enter an order which, among other remedies, may require each defendant involved to pay a penalty to the moving plaintiffs of up to fifteen thousand dollars ($15,000) per violation and any other sanction the Court deems appropriate.

C. Upon a defendant's failure to pay the penalty provided in this section, or for any other violation of this Consent Decree, the moving plaintiffs, either jointly or individually, may exercise all remedies available at law or in equity, including plaintiff United States seeking an order of criminal contempt.

VIII. Enforcement of Consent Decree

A. Plaintiffs shall have concurrent authority to enforce any provision of this Consent Decree against any party to this Consent Decree.

B. The authority to enforce this Consent Decree shall be in addition to any other enforcement action authority plaintiffs may have in prosecuting new violations of state or federal antitrust laws.

C. Nothing contained in this Consent Decree shall limit the rights of the United States from utilizing other investigative alternatives, such as the Civil Investigative Demand process provided by 15 U.S.C. § 1311 and § 1314, or a federal grand jury. Nothing contained in this Consent Decree shall limit the rights of the States of Oregon, California and Washington from utilizing other investigative alternatives, such as their civil investigation authority and, if applicable, their grand jury authority.

IX. Retention of Jurisdiction

Jurisdiction shall be retained by the United States District Court for the District of Oregon to enable any party to apply for further orders and directions as are necessary and appropriate for enforcement, compliance, construction, or modification of this Consent Decree.

X. Scope of Consent Decree

This Consent Decree and the Settlement Agreement represent the complete agreement of the parties. Nothing in this Consent Decree or the Settlement Agreement shall give standing to any person not a party to this Consent Decree to seek any relief related to it.

XI. Length of Consent Decree

This Consent Decree shall be in full force and effect for a period of five (5) years following entry of this decree.

XII. Public Interest

Entry of this Consent Decree is in the public interest. Except as provided in this Consent Decree for future action taken pursuant to Section IX, this proceeding in all other respects is hereby dismissed with prejudice with respect to defendants.

Approved and Ordered this _____ day of _____, 1997.

_____

United States District Court Judge

Presented by:

Andrew E. Aubertine,
Assistant Attorney General, Oregon Department of Justice, 1162 Court Street, NE, Salem, Oregon 97310, (503) 378–4732, OSB# 83013.
Liaison Counsel for Plaintiffs

Richard B. Cohn,
Antitrust Division, U.S. Department of Justice, 450 Golden Gate Avenue, Box 36046, Room 10–0101, San Francisco, California 94102, Telephone: (415) 436–6660, Cal. Bar #: 79601.
Attorney for the United States

In the United States District Court for the District of Oregon

State of Oregon, *ex rel.*, Attorney General Hardy Myers, State of Washington, *ex rel.*, Attorney General Christine O. Gregorie, State of California, *ex rel.*, Attorney General Daniel Lungren, United States of America, Plaintiffs, v. Jeff Mulkey, Jerry Hampel, Todd Whaley, Brad Pettinger, Joseph Speir, Thomas Timmer, Richard Sheldon, Dennis Sturgell, Allan Gann and Russell Smotherman, Defendants. Civil Action No. 97–234MA, Competitive Impact Statement—Antitrust.

Filed: February 11, 1997, Judge Malcom Marsh

Competitive Impact Statement

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h), the United States files this Competitive Impact Statement relating to the proposed Consent Decree submitted for entry in this civil antitrust proceeding.

I

Nature and Purpose of the Proceeding

The United States and the states of Oregon, California, and Washington have filed a civil antitrust suit alleging that ten (10) commercial crab fisherman and various unnamed co-conspirators conspired to restrain competition among commercial fishermen in violation of § 1 of the Sherman Act, 15 U.S.C. § 1. The Complaint asks the Court to find that the defendant fishermen have violated § 1 of the Sherman Act, requests that the defendants pay civil penalties and the

costs of the investigation to the plaintiff states and further requests the Court to enjoin the continuance of the alleged unlawful acts.

Entry of the proposed Consent Decree will terminate the action, except that the Court will retain jurisdiction over the matter for further proceedings which may be required to interpret, enforce or modify the Consent Decree or to punish violations of any of its provisions.

II

Practices Giving Rise to the Alleged Violation

The defendants are commercial crab fishermen who fish in waters off the coasts of California, Oregon, and Washington.

The Oregon defendant fisherman are not members of a fishermen's marketing association. They are thus not entitled to the exemption given to fishermen's marketing associations by the Fishermen's Collective Marketing Act of 1934 ("FCMA"), 15 U.S.C. §§ 521–522. The exemptions provided by the FCMA do not apply to fishermen who do not belong to fish marketing associations formed pursuant to the FCMA or to FCMA association members who enter into marketing agreements with non-FCMA association fishermen. Price fixing and horizontal boycott agreements which are not protected by the FCMA are *per se* violations of § 1 of the Sherman Act (15 U.S.C. § 1) and are subject to criminal prosecution by the United States Department of Justice. The United States chose not to proceed criminally in this matter because most of the defendants mistakenly believed their conduct was protected by the FCMA from prosecution under the Sherman Act.

The United States and the states of Oregon, California, and Washington contend and were prepared to show at trial, that beginning in or about December 1995 and continuing up until at least January 1996, the defendants were leaders in a conspiracy with unnamed co-conspirators to restrain competition among commercial crab fishermen in violation of § 1 of the Sherman Act. The conspiracy consisted of an agreement and concert of action between the defendants and co-conspirators to fix the "ex vessel" price (price at which fishermen sell their catch to purchasers such as processors) at a minimum of $1.25 per pound and to eliminate competition among commercial fishermen in the sale of crab. In furtherance of this conspiracy the defendants and co-conspirators: (1) Agreed to sell crab at a minimum "ex vessel" price of $1.25 per pound; (2) agreed not to fish for crab until all purchasers operating in the major West Coast crab fishing ports had agreed to pay a minimum "ex vessel" price of $1.25 per pound; and (3) compelled, through threats of physical and economic harm, harassment and other forms of intimidation, other fishermen not to fish for crabs until all the purchasers agreed to pay a minimum $1.25 "ex-vessel" price.

This conspiracy fixed the "ex vessel" price of crab sold by commercial fishermen, eliminated price and other forms of competition among commercial fishermen in the sale of crab and deprived purchasers of commercial crab of the benefits of free and open competition in the sale of crab.

III

Explanation of the Proposed Consent Decree

The United States and the defendants have stipulated that the Court may enter the proposed Consent Decree after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16 (b)–(h). The proposed Consent Decree provides that its entry does not constitute any evidence against or admission by either party with respect to any issue of fact or law.

Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(e), the proposed Consent Decree may not be entered unless the Court finds that entry is in the public interest. Section XII of the proposed Consent Decree sets forth such a finding.

The proposed Consent Decree is intended to ensure that the defendants discontinue all practices which restrain competition among commercial fishermen.

A. Prohibitions and Obligations

Under Section IV of the proposed Consent Decree, the defendants are enjoined from participating in any discussion, communication or agreement, except as members of FCMA fishermen's marketing associations interacting with other members of such associations, regarding: (1) The "ex vessel" prices to be negotiated between purchasers and the defendants; (2) any terms or conditions to be offered for the sale of seafood; or (3) refraining from fishing while commercial fishermen are negotiating with purchasers on an "ex vessel" price. Section IV also enjoins the defendants from requesting or coercing other fishermen to refrain from fishing or to sell fish to processors at specified prices or under specified terms or conditions. The defendants are also enjoined from any interference with any other commercial fishermen's business through threats or other means of intimidation. The Consent Decree further enjoins the defendants from impeding, obstructing, or preventing any person from processing, purchasing, or selling or offering to purchase or sell crab or any other seafood. Finally, the Consent Decree restrains the defendants from compelling any fishermen or other person to become a member, or to participate in the activities, of any association.

Section V. of the Consent Decree requires the defendants to pay the states of Oregon, California and Washington pursuant to ORS 646.760 and ORS 180.095, RCW 19.86.080 and 19.86.090, and Cal. Prof. & Bus. Code 16760 $90,874.00 for civil penalties and reimbursement of attorney fees and investigative costs.

B. Scope of the Proposed Consent Decree

Section XI. of the proposed Consent Decree provides that the Consent Decree shall remain in effect for five years.

Section III. of the proposed Consent Decree provides that the Consent Decree shall apply to the defendants and all of their managers, agents, employees, affiliates, successors and assigns, and to those persons in active concert or participation with any of them who shall have received actual notice of the Consent Decree.

C. Effect of the Proposed Consent Decree on Competition

The relief set out in the proposed Consent Decree is designed to prevent recurrence of the activities alleged in the Complaint. The proposed Consent Decree's provisions are intended to ensure that commercial crab fishermen act independently, except as members of a FCMA fish marketing association interacting with other association members, in any marketing or pricing decisions and that they not interfere with the marketing and price decisions of other commercial crab fishermen.

IV

Alternatives to the Proposed Consent Decree

The alternative to the proposed Consent Decree would be a full trial of the case. In the view of the Department of Justice and the states of Oregon, California and Washington, such a trial would involve substantial cost to the plaintiffs and is not warranted since the proposed Consent Decree provides almost all the relief sought in the Complaint.

V

Remedies Available to Private Litigants

Section 4 of the Clayton Act (15 U.S.C. § 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorney fees. Under the provisions of Section 5(a) (15 U.S.C. § 16(a)), this Consent Decree has no *prima facie* effect in the lawsuits which may be brought against the defendants.

VI

Procedures Available for Modification of the Proposed Consent Decree

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Consent Decree should be modified may submit written comments to Christopher S. Crook, Acting Chief, San Francisco Office, U.S. Department of Justice, Antitrust Division, 450 Golden Gate Avenue, Box 36046, Room 10–0101, San Francisco, California 94012, within the 60-day period provided by the Act. The comments and the Government's responses to them will be filed with the Court and published in the **Federal Register**. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Consent Decree at any time period to its entry if it should determine that some modification of the Consent Decree is necessary to the public interest. The proposed Consent Decree itself provides that the Court will retain jurisdiction over this action, and that the parties may apply to the Court for such orders as may be necessary or appropriate for the modification or enforcement of the Consent Decree.

VII

Determinative Documents

No materials and documents of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16(b)) were considered in formulating this proposed Consent Decree. Consequently, none are filed herewith.

Dated: February 6, 1997.

Christopher S. Crook,

Richard B. Cohen,

Attorneys, Antitrust Division, U.S. Department of Justice.

[FR Doc. 97–4389 Filed 2–21–97; 8:45 am]

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Antitrust Division

U.S. v. US WEST, Inc. and Continental Cablevision, Inc.; Public Comments and Response on Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(c)–(h), the United States publishes below the comments received on the proposed final judgment in U.S. v. US WEST, Inc. and Continental Cablevision, Inc., Civil Action No. 96–2529 TPS, filed in the United States District Court for the District of Columbia, together with the United States' response to that comment.

Copies of the comments and response to the comments are available for inspection and copying in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, N.W., Washington, D.C. 20530 (telephone: (202) 514–2481), and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations.

In The United States District Court for The District of Columbia

United States of America, Plaintiff, v. *US West, Inc. and Continental Cablevision, Inc.*, Defendants.

[No. 96–2529 TPS (Antitrust)]

Comments Relating to Proposed Final Judgment and Response of The United States to Comments

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16(b)–(h) ("APPA"), the United States of America hereby files the public comments it has received relating to the proposed Final Judgment in this civil antitrust proceeding, and herein responds to the public comments. The United States has carefully reviewed the public comments on the proposed Final Judgment and remains convinced that entry of the proposed Final Judgment is in the public interest.

I.—Background

This action was commenced on November 5, 1996, when the United States filed a civil antitrust complaint under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, alleging that the proposed acquisition of Continental Cablevision, Inc. ("Continental") by US WEST, Inc. ("US WEST"), would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. US WEST is the dominant provider of local telecommunications services, including dedicated services, within its telephone service area in the States of Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming. At the time the acquisition was announced, Continental owned 20% of Teleport Communications Group, Inc. ("TCG"), a competitive access provider ("CAP") providing dedicated services in various cities across the nation, including Denver, Omaha, Phoenix and Seattle. The complaint alleges that US WEST's acquisition of Continental's interest in TCG would substantially lessen competition in the sale of dedicated services in the areas within Denver, Omaha, Phoenix and Seattle in which TCG provides such services.

Contemporaneously with filing its Complaint, the United States submitted a proposed Final Judgment, a Competitive Impact Statement and a Stipulation signed by the defendants consenting to entry of the proposed Final Judgment. The proposed Final Judgment orders US WEST to divest the TCG Common Stock by certain specified dates and contains other provisions designed to bar US WEST's access to highly sensitive TCG business information, and to treat TCG as a passive business investment. The Competitive Impact Statement explains the basis for the Complaint and the reasons why entry of the proposed Final Judgment would be in the public interest. In the Stipulation, the defendants and the United States consented to entry of the proposed Final Judgment by the Court after completion of the procedures required by the APPA.

II.—Compliance With the APPA

The APPA requires a sixty-day period for the submission of public comments on the proposed Final Judgment, 15 U.S.C. 16(b). In this case, the sixty-day comment period commenced on November 18, 1996, and terminated on January 16, 1997. During this period, the United States received only one comment relating to the proposed Final Judgment.[1] The United States herein responds to this comment. Upon publication of this comment and the following response of the United States to this comment in the **Federal Register** pursuant to 15 U.S.C. 16(d) of the APPA, the procedures required by the APPA prior to entry of the proposed Final Judgment will be completed, and the Court may enter the proposed Final

[1] This comment is attached hereto as Exhibit A.

Judgment. The United States will move the Court for entry of the proposed Final Judgment after the public comment and this response of the United States have been published in the **Federal Register**.

III.—Response to Public Comments

The only comment received by the United States was filed by TCG. TCG does not object to the substantive provisions of the proposed Final Judgment. In particular, TCG does not object to the requirement that US WEST divest its interest in TCG nor to the timing or manner in which such divestiture must be carried out. Indeed, TCG's comments do not relate to either the anticompetitive consequences of the acquisition or the adequacy of relief provided by the proposed Final Judgment to remedy the antitrust violations alleged in the Complaint. The only objection that TCG raises with respect to the proposed Final Judgment relates to the provision requiring US WEST to deliver to the United States periodic affidavits setting forth the fact and manner of US WEST's efforts to comply with the divestiture provisions of the proposed Final Judgment. Because these affidavits are likely to contain sensitive business information relating to the sale or attempted sale of TCG Common Stock, TCG requests that the proposed Final Judgment be modified so as to require that such affidavits "be submitted confidentially to the plaintiff and not filed in the public docket of the Court." Letter from W. Terrell Wingfield to Donald J. Russell, dated December 18, 1996, Exhibit A at 2.

The United States shares TCG's concerns about the potential disclosure of highly confidential and sensitive business information. For the following reasons, however, the United States does not believe that a modification of the proposed Final Judgment is necessary to protect affidavits containing such information. First, it is not the standard practice of the United States to voluntarily disclose affidavits submitted pursuant to a consent decree. Second, there are only two situations in which disclosure could occur: (1) If the United States is ordered or otherwise finds it necessary to file such affidavits on the public docket in any legal proceeding; and/or (2) If a request is made under the Freedom of Information Act, 5 U.S.C. 552 *et seq.* ("FOIA"), and the United States determines that any such affidavit does not fall into one of the FOIA exemptions to disclosure.

In the event that the United States receives an order, a subpoena and/or otherwise intends to use such information in any legal proceeding, Section IX.D of the proposed Final Judgment requires the United States to give the defendants ten (10) calendar days notice prior to divulging any material to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure and which the defendants have marked as being, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure."

In the event that the United States determines that any such affidavit is not exempt from FOIA, then the United States would follow the procedures set forth in 28 CFR 16.7. Section 16.7 provides, in relevant part, that the United States:

> shall, to the extent permitted by law, provide a submitter [of confidential and sensitive business information] with prompt written notice of a Freedom of Information Act request or administrative appeal encompassing its business information. * * * in order to afford the submitter an opportunity to object to disclosure * * * Such written notice shall either describe the exact nature of the business information requested or provide copies of the records or portions thereof containing the business information.

16 CFR 16.7(c). Section 16.7(b) defines a submitter as "any person or entity who provides business information, directly or indirectly to the Department." Absent exigent circumstances, the United States generally gives the submitter ten (10) calendar days notice of a request or intention to disclose the business information so as to allow the submitter sufficient time to file an objection to disclosure or otherwise move to protect the information. TCG has been informed of the foregoing protections and has authorized the United States to inform the Court that these protections are adequate to address TCG's concerns. Given these facts, the United States does not believe that a modification of the proposed Final Judgment is warranted in the public interest.

IV.—Standard of Review

Pursuant to 15 U.S.C. § 16(e), the proposed Modified Final Judgment cannot be entered unless the Court determines that it is in the public interest. The focus of this determination is whether the relief provided by the proposed Modified Final Judgment is adequate to remedy the antitrust violations alleged in the Complaint. *United States* v. *Bechtel Corp.*, 648 F.2d 660, 665–66 (9th Cir.), *cert. denied*. 454 U.S. 1083 (1981), *quoted with approval in United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1457–58, *see also* 56 F.3d at 1459–60 (D.C. Cir. 1995). In the recent *Microsoft* decision by the United States Court of Appeals for the District of Columbia Circuit, which reversed the district court's refusal to enter an antitrust consent decree proposed by the United States, the court of appeals held that the provision in Section 16(e)(1) of the Tunney Act allowing the district court to consider "any other considerations bearing upon the adequacy of such judgment," does not authorize extensive inquiry into the conduct of the case. 56 F.3d at 1458–60. The court of appeals concluded that "Congress did not mean for a district judge to construct his own hypothetical case and then evaluate the decree against that case." *Id.* To the contrary, "[t]he court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," and so the district court "is only authorized to review the decree itself," not other matters that the government might have but did not pursue. *Id.*

Under the public interest standard, the Court's role is limited to determining whether the proposed decree is within the "zone of settlements" consistent with the public interest, not whether the settlement diverges from the Court's view of what would best serve the public interest. *United States* v. *Western Electric Co.* 993 F.2d 1572, 1576 (quoting *United States* v. *Western Electric Co.*, 900 F.2d 283, 307 (D.C. Cir. 1990)); *United States* v. *Microsoft Corp.*, 56 F.3d at 1460. Moreover, the Court should give a request for entry of a proposed decree even more deference that a request by a party to an existing decree for approval of a modification, for in dealing with an initial settlement the Court is unlikely to have substantial familiarity with the market involved. *United States* v. *Microsoft Corp.*, 56 F.3d at 1460–61.

Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. ¶61,508, at 71,980 (W.D. Mo. 1977). The Court may reject the agreement of the parties as to how the public interest is best served only if it has "exceptional confidence that adverse antitrust consequence will result.* * *" *United States* v. *Western Electric Co.*, 993 F.2d at 1577 (D.C. Cir.), *cert. denied*, 114 S. Ct. 487 (1993), *quoted with approval in United States* v. *Microsoft Corp.*, 56 F.3d at 1460.

V.—Conclusion

After careful consideration of the comments and for the reasons stated herein and in the Competitive Impact Statement, the United States continues to believe that the proposed Final Judgment is adequate to remedy the antitrust violations alleged in the Complaint. There has been no allegation or showing that the proposed settlement constitutes an abuse of the United States' discretion nor that it is inconsistent with the public interest. Accordingly, entry of the proposed Final Judgment should be deemed to be in the public interest.

Dated: February 7, 1997.

Respectfully submitted,

Yvette Benguerel,

Attorney, Telecommunications Task Force, U.S. Department of Justice, Antitrust Division, 555 4th Street, N.W., Room 8104, Washington, D.C. 20001, (202) 514–5808.

[December 18, 1996—*Via Federal Express*]

Donald J. Russell, Esq.,
Chief, Telecommunications Task Force, Antitrust Division, U.S. Department of Justice, Room 8104, 555 4th Street, N.W., Washington, D.C. 20001.

Re: *United States of America* v. *U S West Inc. and Continental Cablevision, Inc., United States District Court for the District of Columbia*

On behalf of Teleport Communications Group Inc. (TCG), and in accordance with the provisions of 15 U.S.C. Sec. 16(d), we hereby submit the following comments in connection with the matter of *United States of America* v. *U S West Inc. and Continental Cablevision Inc.* TCG seeks an amendment to the Final Judgment providing that the Affidavits submitted pursuant to Section VII will be submitted confidentially and not be filed in the public docket of the Court. The undersigned has been in communication with Robert J. Sachs, counsel for Continental, and has been advised that they do not oppose this request.

The proposed Final Judgment provides, inter alia, that U S West use its best efforts to divest the approximately 11% interest of TCG held by Continental as expeditiously as possible. The proposed Final Judgment further provides that U S West divest a portion of its interest in TCG sufficient to cause it to own less than 10% by June 30, 1997, and divest any remaining portion of the TCG interest by December 31, 1998. The divestiture must be made to a purchaser or purchasers in a manner that "shall not injure TCG."

The proposed Final Judgment orders U S West to deliver periodic Affidavits to the plaintiff setting forth its efforts in connection with the ordered divestiture. Said Affidavits are to include such information as the names of potential purchasers contacted or expressing interest, and describe "in detail each contact." These Affidavits could be subject to public disclosure unless they are submitted confidentially pursuant to an Order of this Court.

TCG is a publicly traded company with approximately 30 million shares traded on the NASDAQ National Market. TCG is concerned that information concerning efforts to sell a major block of the company's stock could have a significant adverse impact on the market for TCG stock. Traders may engage in speculative activity based on information contained in these Affidavits causing significant volatility in TCG's stock price. As a result, premature disclosure of U S West's activities could significantly disrupt the market for TCG's securities. Further, the information contained in these Affidavits is subject to being available selectively to certain investors and not others, thereby possibly requiring TCG to fully disseminate such information so as to be in full compliance with securities laws.

Additionally, there may be a chilling effect on some of the prospective purchasers of U S West's interest in TCG if the possibility exists that an inquiry or expression of interest is subject to being publicly disclosed. Such prospective purchasers may not even want their interests made public, much less risk a "public negotiation" for TCG. This may have the effect of reducing the universe of prospective purchasers, some of whom may be best suited to insure the continued viability of TCG. Furthermore, public disclosure of the negotiations may jeopardize or render unavailable any exemption under federal and state securities law upon which the parties intend to rely. This would cause additional expense and may complicate or even terminate negotiations.

TCG proposes that the required Affidavits be submitted confidentially to the plaintiff and not filed in the public docket of the Court. In the event the divestiture is not accomplished in the time frame set out in the Final Judgment, a Trustee is appointed to effect the divestiture. Although the Trustee is similarly required to submit monthly status reports, such reports are specifically to be submitted confidentially. It appears the failure of the proposed Final Judgment to contain similar confidentiality protection was an oversight by the parties, and a similar restriction should be imposed upon the pre-Trustee status reports as well.

TCG believes the overriding principle in the Final Judgment is to force a divestiture of U S West's interest in TCG in a fashion that is not injurious to TCG and that could not lessen competition. However, information contained in the status Affidavits could impact TCG's financial well-being pending the disposition. If there is any possibility that such an outcome may occur, it is in the best interest of the public to support TCG's request and maintain the confidentiality of such information.

TCG further submits that existing federal securities laws provide an appropriate framework for the public disclosure of the disposition of U S West's holdings in TCG. Because U S West will be subject to the public reporting obligations under both Section 13 and 16 of the Securities Exchange Act of 1934 with respect to its TCG stock, U S West is already required to make public filings as to changes in its TCG stock holdings when it enters into binding agreements to dispose of such stock. TCG believes that the public disclosure mandated by these securities laws provides the best and most orderly mechanism for the public disclosure of changes in U S West's holdings.

In conclusion, TCG asserts that its request is consistent with the underlying premise of the proposed Order—to cause a divestiture of U S West's holdings in TCG in a manner that is not injurious to TCG. In light of the fact that the request is not contested by Continental, we request the United States concur and submit such request to the Court.

Sincerely,

W. Terrell Wingfield, Jr.,
Vice President and General Counsel.

Service List

C. Loring Jetton, Jr., Wilmer, Cutler & Pickering, 2445 M Street, NW., Washington, DC 20037.
John McGrew, Wilkie Farr & Gallagher, Three Lafayette Center, 1155 21st Street, NW., Washington, DC 20036–3384.
W. Terrell Wingfield, Jr., Vice President and General Counsel, Teleport Communications Group, 429 Ridge Road, Dayton, NJ 08810.
Sean C. Lindsay, U.S. West, Inc., 7800 East Orchard Road, Suite 490, P.O. Box 6508, Englewood, CO 80155–6508.
Robert J. Sachs, Senior Vice President, Corporate and Legal Affairs, Continental Cablevision, Inc., The Pilot House, Lewis Wharf, Boston, MA 02110.

Certificate of Service

I, Tracy Varghese, hereby certify under penalty of perjury that I am not a party to this action, that I am not less than 18 years of age, and that I have on this day caused the Comments Relating to Proposed Final Judgment and Response of the United States to Comments to be served on defendants, intervenors, and other interested persons by mailing a copy, postage prepaid, to each of the individuals and organizations on the attached service list.

February 7, 1997.

Tracy Varghese.

[FR Doc. 97–4377 Filed 2–21–97; 8:45 am]

BILLING CODE 4410–11–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Commercial Turf Products, Ltd. Joint Research, Development and Production Joint Venture

Notice is hereby given that, on January 9, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), Commercial Turf Products, Ltd. filed written

notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the joint venture. The notifications were filed for the purpose of invoking venture. The notifications were filed for the purpose of invoking the Act's provisions limiting recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities to the parties are LESCO., Inc., Cleveland, OH and MTD Products, Inc., Valley City, OH.

The nature and objectives of this venture are research, development and manufacturing production of commercial turf care equipment. The venture will include engineering, product development, and manufacturing. The manufacturing will be conducted in the United States. The products that are manufactured will be sold in the United States and potentially abroad.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97-4375 Filed 2-21-97; 8:45 am]

BILLING CODE 4410-11-M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Infotest International

Notice is hereby given that, on July 2, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), InfoTEST International ("InfoTEST") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, American Medical Outcomes Repository; Government Services, Information Systems Branch; and The Lewis Group are no longer members of InfoTEST.

No other changes have been made in the membership, nature or objectives of the consortium. Membership in InfoTEST remains open, and the consortium intends to file additional written notifications disclosing all changes in membership.

On December 7, 1993, InfoTEST filed its original notification (as the National Information Infrastructure Testbed) pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 18, 1994 (60 FR 25960).

The last notification was filed with the Department of Justice on October 9, 1996. A notice was published in the **Federal Register** on December 19, 1996 (61 FR 67067).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97-4376 Filed 2-21-97; 8:45 am]

BILLING CODE 4410-11-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) Propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303a(a).

DATES: Requests for copies must be received in writing on or before April 10, 1997. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Civilian Appraisal Staff (NWRC), National Archives and Records Administration, College Park, MD 20740-6001. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Congressional Budget Office (N1-520-96-1). Tax analysis data, documentation and supplementary data files (final reports will be preserved).
2. Department of the Air Force (N1-AFU-96-9). Bioenvironmental engineering surveys/case files proposed for long-term retention.
3. Department of Health and Human Services, Health Care Financing Administration (N1-440-96-1). Medicare waivers for hospital payments, instructions and background files, chrono-logical files of state reviews, CLIA data and HCFA forms 114 and 116.
4. Department of Health and Human Services, Health Care Financing Administration (N1-440-97-1). Appointee clearance and vetting files.
5. Department of Housing and Urban Development (N1-207-95-8). Records relating to Cultural Design Awards (program files and winning nomination case files are designated for preservation).
6. Department of Housing and Urban Development (N1-207-96-7).

Community Development Block Grant (CDBG) Indian Program System.

7. Department of Justice (N1-60-97-2). Reduction in retention period for disposable case files relating to habeas corpus proceedings.
8. Department of the Treasury, Office of Thrift Supervision (N1-483-96-1). Branch Office Survey System comment sheets.
9. Department of Veterans Affairs, Veterans Health Administration (N1-15-97-1). Electroencephalographic reports and tracings.
10. Department of Veterans Affairs, Office of Human Resources Management (N1-15-97-2). Political appointee application files.
11. Department of Veterans Affairs, Veterans Health Administration (N1-15-97-4). Quality management files.
12. Central Intelligence Agency (N1-263-97-1). Thrift savings plan records.
13. Consumer Product Safety Commission (N1-424-97-1). Routine correspondence from citizens regarding issues within the agency's jurisdiction.
14. Defense Intelligence Agency (N1-373-96-1). Routine and facilitative reports files.
15. Defense Logistics Agency (N1-361-97-3). Automated information systems related to warehouse distribution and other routine administrative functions.
16. Defense Logistics Agency (N1-361-97-2). Chaplain records relating to routine administrative functions and to programs and projects.
17. Tennessee Valley Authority (N1-142-96-5). Occupancy emergency plans for TVA office buildings.
18. Tennessee Valley Authority (N1-142-97-3). Engineering Services cross section and profiles field books and related data base.
19. U.S. Arms Control and Disarmament Agency (N1-383-97-1). Comprehensive schedule update. Overall program records are permanent. Records that are duplicative or facilitative are proposed for disposal.

Dated: February 14, 1997.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 97-4393 Filed 2-21-97; 8:45 am]

BILLING CODE 7515-01-P

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation (NSF) announces the following meeting.

Name: Special Emphasis Panel in Biological Sciences (#1754)

Date and Time: March 6-7, 1997; 8:30 a.m.-5:00 p.m.

Place: National Science Foundation, Room 360, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Fred Stollnitz, Program Officer for Cross-Directorate Activities in the Division of Integrative Biology and Neuroscience, Room 685, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306-1413.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Research Planning Grants and Career Advancement Awards for Women Scientists and Engineers (RPG/CAA) proposals as part of the selection process for awards.

Reason for Late Notice: Final list of panelists could not be confirmed until February 14, 1997.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 19, 1997.

Linda Allen-Benton,

Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.

[FR Doc. 97-4437 Filed 2-21-97; 8:45 am]

BILLING CODE 7555-01-M

SECURITIES AND EXCHANGE COMMISSION

Request for Public Comment

Extension:

Rule 6e-2, SEC File No. 270-177, OMB Control No. 3235-0177.

Rule 22d-1, SEC File No. 270-275, OMB Control No. 3235-0310.

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is publishing the following summaries of collections for public comment.

Rule 6e-2 (17 CFR 270.6e-2) under the Investment Company Act of 1940 ("Act") is an exemptive rule which permits separate accounts, formed by life insurance companies, to fund certain variable life insurance products. The rule exempts such separate accounts from the registration requirements under the Act, among others, on condition that it comply with all but certain designated provisions of the Act and meet the other requirements of the rule. The rule sets forth several information collection requirements.

Rule 6e-2 provides a separate account with an exemption from the registration provisions of section 8 of the Act if the account files with the Commission Form N-6EI-1, a notification of claim of exemption.

The rule also exempts a separate account from a number of other sections of the Act, provided that the separate account makes certain disclosure in its registration statements and reports to contract holders about actions taken under those exemptions.

In regard to the foregoing, Rule 6e-2 provides an exemption from section 17(f) of the Act. Section 17(f) requires that every registered management company meet various custody requirements for its securities and similar investments. Paragraph (b)(9) of Rule 6e-2 provides an exemption from the requirements of section 17(f) of the Act and imposes a reporting burden and certain other conditions. Paragraph (b)(9) applies only to management accounts that offer life insurance contract subject to Rule 6e-2.

Since 1988, there have been no filings under paragraph (b)(9) of Rule 6e-2 by management accounts. Further, all post-effective amendments filed by variable life separate accounts under Rule 6e-2 have been structured as unit investment trusts and are thus not subject to the requirements of paragraph (b)(9) of the rule. Therefore, since 1988, there has been no burden to the industry regarding the information collection requirements of paragraph (b)(9) of Rule 6e-2.

Rule 22d-1 (17 CFR 270.22d-1) provides registered investment companies that issue redeemable securities ("funds") an exemption from section 22(d) of the Act to the extent necessary to permit scheduled variations in or elimination of the sales load on fund securities for particular classes of investors or transactions, provided certain conditions are met. The rule imposes an annual burden per fund of approximately 15 minutes, so that the total annual burden for the approximately 1,865 funds that might rely on the rule is estimated to be 466 hours.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper

performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W. Washington, DC 20549.

Dated: February 14, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4388 Filed 2–21–97; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22514; File No. 812–10412]

Ameritas Variable Life Insurance Company, et al.

February 14, 1997.

AGENCY: The Securities and Exchange Commission (the "Commission").

ACTION: Notice of Application for an Order Pursuant to the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: Ameritas Variable Life Insurance Company Separate Account V ("Separate Account V"), Ameritas Variable Life Insurance Company Separate Account VA–2 ("Separate Account VA–2," together with Separate Account V, the "Applicant Accounts"), the Ameritas Variable Life Insurance Company ("AVLIC").

RELEVANT 1940 ACT SECTIONS: Order requested pursuant to Section 26(b).

SUMMARY OF THE APPLICATION: Applicants seek an order approving the proposed substitution of shares of the Index 500 Portfolio of the Variable Insurance Products Fund II ("Index 500 Portfolio") for shares of The Dreyfus Stock Index Fund ("Dreyfus Fund") held by Applicant Accounts.

FILING DATES: The application was filed on October 21, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 11, 1997, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requestor's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC., 20549. Applicants, c/o Norman M. Krivosha, Esq., Ameritas Variable Life Insurance Company, 5900 "O" Street, Lincoln, Nebraska 68510.

FOR FURTHER INFORMATION CONTACT: Kevin M. Kirchoff, Branch Chief, Office of Insurance Products (Division of Investment Management), at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the Commission.

Applicants' Representations

1. AVLIC, a stock life insurance company organized pursuant to Nebraska law, is a wholly-owned subsidiary of AMAL Corporation. Ameritas Life Insurance Corporation, also a Nebraska corporation, owns a majority interest in AMAL Corporation.

2. The Applicant Accounts were established by AVLIC and registered with the Commission as unit investment trusts pursuant to the 1940 Act. Separate Account VA–2 was established on May 28, 1987, to fund group variable annuity policies ("VA Policies"). Separate Account V was established on August 28, 1985, to fund variable universal life insurance policies ("VUL Policies"). The VA and VUL Policies (collectively, the "Subject Contracts") are issued and administered by AVLIC and are offered exclusively by means of separate prospectuses that describe the applicable terms and conditions of the respective contracts.

3. Each of the Applicant Accounts is divided into separate subaccounts that invest exclusively in shares of one of the investment portfolios of certain open-end investment companies (collectively, "Underlying Funds"). The Underlying Funds in which the subaccounts of the Applicant Accounts may invest are: The Alger American Fund, which currently offers to Applicant Accounts six investment portfolios, and MFS Variable Insurance Trust, which currently offers three investment portfolios. In addition, Variable Insurance Products Fund I and Variable Insurance Products Fund II currently offer to Applicant Accounts ten investment portfolios, one of which is the Index 500 Portfolio. Applicant Accounts offer subaccounts that invest exclusively in the Index 500 Portfolio ("Index 500 Subaccounts").

4. Applicant Accounts also offered subaccounts that invested exclusively in shares of the Dreyfus Fund ("Dreyfus Subaccounts"). New investments in the Dreyfus Subaccounts have not been accepted since May 1, 1996, and all prospectuses relating to the Subject Contracts have been amended to eliminate reference to them. Subject Contract owners who invested in the Dreyfus Subaccounts ("Affected Contractholders") were permitted to remain in the Dreyfus Subaccounts after May 1, 1996, and to continue to reinvest dividends paid by the Dreyfus Fund in the Dreyfus Subaccounts. All Affected Contractholders continue to have the option of transferring investments without charge from the Dreyfus Subaccounts to the Index 500 Subaccounts or to other subaccounts, but it is not anticipated that all Affected Contractholders will take advantage of this option. As of July 31, 1996, the Dreyfus Subaccount of Separate Account VA–2 had total assets of $8,561,723, representing the interests of 916 owners, and the Dreyfus Subaccount of Separate Account V had total assets of $2,067,298, representing the interests of 735 owners.

5. Applicants represent that the investment objectives of the Index 500 Portfolio and the Dreyfus Fund are identical. Both are "index funds" that attempt to allocate assets to correspond to the Standard & Poor's Index ("S&P 500"). Each fund: (a) must invest at least 80% of its assets in securities represented in the S&P 500; (b) seeks to achieve a total return that reflects at least a 95% correlation with the S&P 500; and (c) may use financial futures for hedging purposes only.

6. Fidelity Management & Research Company ("FRM"), which manages the Index 500 Portfolio, is entitled to receive an investment advisory fee at the annual rate of .28% of the Portfolio's net assets. For each of the fiscal years ended December 31, 1995, 1994, and 1993, the expense ratio of the Index 500 Portfolio, taking into account expense reimbursements and fee waivers, was .28% of the Portfolio's average net assets. During each such period FMR voluntarily reimbursed the Index 500 Portfolio to the extent that its ratio of expenses to average net assets exceeded .28%. Had this reimbursement policy not been in place, the expense ratios for the Index 500 Portfolio for the fiscal years ended December 31, 1995, 1994, and 1993, would have been .47%, .81%, and .95%, respectively.

7. The Dreyfus Corporation ("Dreyfus"), which manages the Dreyfus Fund, receives a fee at the annual rate of .245% of the Fund's average daily net assets. The expense ratios for the Dreyfus Fund for the fiscal years ended December 31, 1995, 1994, and 1993, were .39%, .40%, and .40% of the Fund's average daily net assets. These expense levels take into account Dreyfus's policy to voluntarily reimburse the Fund in any year in which the Fund's expenses exceeded .40% of the Fund's average net assets. Dreyfus has undertaken to maintain this expense reimbursement policy absent 180 days notice to the Fund's shareholders of any change in the policy.

8. The proposed substitution will be effected by redeeming the shares of the Dreyfus Fund held by the Dreyfus Subaccounts, transferring the cash values of Affected Contractholders from the Dreyfus Subaccounts to the Index 500 Subaccounts, and then purchasing shares of the Index 500 Portfolio. The Dreyfus Subaccounts would then be eliminated. All redemptions of shares of the Dreyfus Fund and purchases of shares of the Index 500 Portfolio will be effected in compliance with Rule 22c-1 under the 1940 Act. The substitution will be at net asset value of the respective shares, without the imposition of any transfer, sales, or similar charge. There will be no change in the amount of any Affected Contractholder's investment after the substitution.

Applicants' Legal Analysis

1. Section 26(b) of the 1940 Act provides in pertinent part that "it shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution." Section 26(b) provides that the Commission will approve a substitution if it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. The purpose of Section 26(b) is to protect the expectation of investors in a unit investment trust that the unit investment trust will accumulate the shares of a particular issuer and to prevent unscrutinized substitutions which might, in effect, force the contractholders, dissatisfied with the substituted security, to redeem their shares, thereby incurring either a loss of the sales load deducted from initial proceeds, an additional sales load upon reinvestment of the redemption proceeds, or both.

2. Applicants request that the Commission issue an order pursuant to Section 26(b) of the 1940 Act to permit the Applicant Accounts to substitute securities of the Index 500 Portfolio for securities of the Dreyfus Fund.

3. Applicants submit that the proposed substitution meets the standard enunciated in Section 26(b), and further that, if implemented, the substitution would not raise any of the concerns that Congress sought to address when the 1940 Act was amended to include the provision. Applicants further submit that the substitution will not result in the type of costly forced redemption that Section 26(b) was intended to guard against and is consistent with the protection of investors and the purposes fairly intended by the 1940 Act.

4. Applicants submit that the investment objective, policies, and operating expenses of the Index 500 Portfolio and the Dreyfus Fund are substantially the same or comparable. Applicants state that the Index 500 Portfolio is large enough to provide the portfolio diversification necessary to decrease investment risk and to provide the economies of scale that may benefit the Affected Contractholders, as well as other Subject Contractholders.

5. Applicants represent that AVLIC will bear the costs of the proposed substitution, including legal, accounting, and brokerage fees, and Affected Contractholders will not incur any fees or charges as a result of the substitution. Applicants also represent that the substitution will not impose any tax liability on Affected Contractholders or raise the level of fees and charges currently paid by Affected Contractholders. Applicants further represent that the rights of affected Contractholders and AVLIC's obligations under any of the Subject Contracts will also not change.

6. Applicants represent that as soon as reasonably practicable after the requested order is issued, AVLIC will send to the Affected Contractholders a written notice ("Notice") describing the proposed substitution, including the date on which the substitution will take effect. The Notice will advise Affected Contractholders that either before or within thirty days from the date on which the substitution occurs, they may transfer all substituted assets to other subaccounts. Applicants also represent that any transfer of cash values in the Dreyfus Subaccounts that occurs either prior to, or within the thirty days, after the substitution will not be treated as a transfer that may be restricted because of earlier transfers between subaccounts. Applicants further represent that no transfer charge is currently in effect, and none will be imposed before the end of the thirty-day period.

Conclusion

For the reasons summarized above, Applicants assert that the requested order approving the proposed substitution is consistent with the protection of investors and the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4386 Filed 2–21–97; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22515; International Series Release No. 1053; File No. 812–10150]

Enron Corp., et al.; Notice of Application

February 14, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Enron Corp. ("Enron"), Enron Oregon Corp. ("Enron Oregon"), Enron Oil & Gas Company ("EOG"), Enron Global Power & Pipelines L.L.C. ("EPP"), and Enron International Inc. ("EII").

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from all provisions of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit applicants and certain of their controlled companies to engage, directly or through subsidiaries, in certain foreign infrastructure projects without being subject to the provisions of the Act.

FILING DATE: The application was filed on May 15, 1996, and amended on October 22, 1996 and February 12, 1997. Applicants have agreed to file an amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's

Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 12, 1997 by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 1400 Smith, Suite 5011, Houston, Texas 77002.

FOR FURTHER INFORMATION CONTACT: David W. Grim, Staff Attorney, at (202) 942–0571, or Elizabeth G. Osterman, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Enron, a Delaware corporation organized in 1930, is an integrated natural gas company with headquarters in Houston, Texas. Essentially all of Enron's operations are conducted through its subsidiaries and affiliates, which are principally engaged in the transportation and wholesale marketing of natural gas to markets throughout the United States and internationally through approximately 44,000 miles of natural gas pipelines; the exploration for and production of natural gas and crude oil in the United States and internationally; the production, purchase, transportation, and worldwide marketing of natural gas liquids and refined petroleum products; the independent (i.e., non-utility) development, promotion, construction, and operation of natural gas-fired and non-gas-fired power plants in the United States and internationally; and the non-price regulated purchasing and marketing of long-term energy related commitments.

2. Enron Oregon is an Oregon corporation that was organized recently for the purpose of effecting the merger (the "PGC Merger") of Enron with Portland General Corporation ("PGC"), an electric utility company organized as an Oregon corporation. Pursuant to the merger agreement among Enron, PGC, and Enron Oregon, subject to satisfaction or waiver of the conditions to the obligations of the parties to effect the PGC Merger, (a) both Enron and PGC will merge with and into Enron Oregon, (b) Enron Oregon will succeed to all of the assets and liabilities of both Enron and PGC, and (c) Enron Oregon will change its name to Enron Corp.[1]

3. EOG, a Delaware corporation, is engaged in the exploration for, and the development, production, and marketing of, natural gas and crude oil primarily in major producing basins in the United States, as well as in Canada, Trinidad, and India, and, to a lesser extent, selected other international areas. Enron currently owns approximately 54% of the outstanding common stock of EOG.

4. EPP is a Delaware limited liability company formed by Enron to acquire, own, and manage operating power plants and natural gas pipelines around the world. EPP's assets consist of interests in two power plants in the Philippines, power plants in both Guatemala and the Dominican Republic, and natural gas pipeline systems in Argentina and Colombia. EPP's strategy is to generate long-term growth in dividends, cash flow, and earnings per share through the selective acquisition and efficient management of operating power plants and natural gas pipelines around the world. Enron owns approximately 54% of the outstanding common shares of EPP.

5. EII is a Delaware corporation that is a wholly-owned subsidiary of Enron. In December 1996, Enron announced that it was reorganizing its business units and that as part of the reorganization Enron International would be Enron's business unit that would develop and own integrated energy projects, commercial power generation, and pipeline activities outside of North America and Europe. This newly organized business unit will pursue all or substantially all of Enron's foreign infrastructure projects outside of North America and Europe, will offer merchant, finance, and risk management products to third parties in emerging markets, and will be responsible for Enron's interest in EPP. As the reorganization was announced only recently, Enron must make a number of decisions and take a number of actions regarding transfers of subsidiaries or properties to this new business unit and other matters in order to complete the organization of the Enron International business unit. Based on preliminary planning, when the organization is completed, EII will be the parent company of the corporate family of companies that comprises Enron International. It is possible, however, that EII will be a wholly-owned subsidiary of the parent company within the Enron International business unit. This could occur if, for example, Enron decides that another form of entity (such as a limited liability company) or an entity incorporated in another jurisdiction (such as a foreign jurisdiction) should be the parent company within the Enron International business unit.

6. Enron, Enron Oregon, EOG, EPP, and EII request relief to permit each applicant and each entity now or in the future controlled by, or under common control with, any of them (Enron, Enron Oregon, EOG, EPP, EII, and each controlled entity, the "Covered Entities") to engage, directly or through subsidiaries, in certain foreign infrastructure projects without being subject to the provisions of the Act.

7. Enron is the largest interstate natural gas pipeline company in the United States, and its subsidiaries have participated in the development or ownership and management of gas transmission pipelines, crude oil and refined petroleum products pipelines, natural gas liquids pipelines, oil and gas gathering facilities, gas processing facilities, and chemical manufacturing facilities. Enron and its affiliates also have developed and own and operate a number of domestic facilities for the generation of electricity and steam.

8. As a result of relatively recent changes in the international political and business climate, applicants and their subsidiaries have begun to develop and acquire and operate infrastructure projects throughout the world. Foreign infrastructure projects that applicants have or may become involved in are roads, bridges, communication facilities, mass transit systems or facilities, rail transportation facilities, airports, ports, waterways, water supply facilities, desalinization facilities, recycling or waste water treatment facilities, solid waste disposal facilities, oil, gas, or other mineral exploration, development, or production facilities, housing, schools, hospitals, prisons, electricity generation facilities, electricity transmission or distribution facilities, stream generation facilities, natural gas transmission or distribution pipelines of facilities, petroleum storage facilities, petroleum liquids pipelines, natural gas liquids separating, processing, or distribution facilities, facilities for the liquefication of natural gas or the transportation, distribution, or regasification of liquefied natural gas, refineries, chemical or other manufacturing or processing facilities, or any similar facilities or operations. Applicants and their subsidiaries currently are working on approximately 25 foreign infrastructure projects in various stages of development, involving estimated total capital expenditures of approximately $20 billion. These include projects in Guam, India, Indonesia, Israel, Italy, Jordan, Mozambique, Puerto Rico, Qatar, and Turkey. Although it is unlikely that all of the projects ultimately will be completed, the dollar amounts involved are quite significant relative to the size of Enron, EOG, and EPP, whose total assets at year end 1995 were $13.2 billion, $2.1 billion and $188 million, respectively.

9. There are numerous steps that must be pursued by a developer/owner of a foreign infrastructure project. Project development involves, among other things, engineering or architectural design services, site selection, governmental relations, construction services, and the arrangement of financing. The management of operating projects involves responsibilities such as employee and customer relations, contract administration, continuing compliance with environmental and other legal requirements, community and governmental relations, financial and accounting issues, etc.

10. The physical assets comprising a foreign infrastructure project are or will be owned by an entity (a "Foreign Infrastructure Project Company") in which a Covered Entity has or will have a direct or indirect beneficial interest. In most cases, the Foreign Infrastructure Project Company is or will be a special purpose entity set up for the sole purpose of owning and operating the assets attributable to a single foreign infrastructure project, although in some cases, Foreign Infrastructure Project Companies own or will own interests in assets comprising multiple foreign infrastructure projects.

11. In some cases, entities are organized for the purpose of providing development, construction, operational, or maintenance services to one or more Foreign Infrastructure Project Companies ("Foreign Infrastructure Service Companies"). Such entities are distinguishable from Foreign Infrastructure Project Companies in that the former do not own assets directly, but rather engage in the business of providing services.

12. For purposes of the application, applicants represent that Foreign Infrastructure Project Companies and Foreign Infrastructure Service Companies are included within the term "Foreign Infrastructure Company," which is any company (a) substantially all of whose operations are conducted outside of the United States; and (b) whose business primarily relates to or whose operations consist primarily of the development, construction, ownership, or operation of, or the provision of management, operational, or maintenance services relating to, foreign infrastructure projects. Applicants and other Covered Entities own and will own their interests in a Foreign Infrastructure Company through direct or indirect interests in companies known as "Foreign Infrastructure Finance Companies."

13. For purposes of the application, applicants represent that a "Foreign Infrastructure Finance Company" is any company (a) that is a majority-owned subsidiary of a Covered Entity; (b) that has not made, is not making, and does not presently propose to make a public offering of its securities; and (c) that is primarily engaged in the business of owning or holding 10% or more of the economic or voting interests in Foreign Infrastructure companies with respect to which the Covered Entity, the Foreign Infrastructure Finance Company, or a majority-owned subsidiary of either of them, provides "active developmental assistance."

14. For purposes of the application, applicants represent that "active developmental assistance" means the provision of material assistance in the development, construction, or operation of, or the provision of management, operational or maintenance services relating to, a foreign infrastructure project. An entity will be deemed to furnish such assistance if it is or has been materially involved in providing such assistance. Thus, if an entity was materially involved in the development of a Foreign Infrastructure Company, such entity will be deemed to be providing active developmental assistance to such Foreign Infrastructure Company even after the Foreign Infrastructure Company has moved past the development stage. In addition, the expiration of a long-term contract relating to the operation of a foreign infrastructure project will not cause a company to cease to qualify as a Foreign Infrastructure Finance Company. The requirement of material involvement will not be satisfied, however, by arrangements that are immaterial to the overall development of an infrastructure project or overall success of the Foreign Infrastructure Company's operations, such as a short-term contract or a non-substantive contract (*e.g.*, a consulting arrangement that is sometimes entered into as part of an executive employee's severance arrangement, pursuant to which the ex-employee is paid but does little in the way of actual consulting). A contract that is renewable automatically on a periodic basis unless canceled at the option of one or more contracting parties would not, by virtue of the cancellation provisions, be deemed to be a short-term or non-substantive contract.

15. Because regulations in many countries limit the percentage interest in host country companies that can be owned by foreign companies, the Covered Entities have been and will continue to be permitted to own only minority interests in many Foreign Infrastructure Companies. As a result, it has become increasingly difficult for the Covered Entities to structure their interests so that they may operate without technically falling within the definition of "investment company" under the Act. The Covered Entities believe they are not the type of entities that should be regulated under the Act and thus seek relief from all provisions of the Act.

Applicants' Legal Analysis

1. Section 3(a)(3) of the Act defines an "investment company" as including any issuer that is engaged in the business of investing, reinvesting, owning, holding, or trading in securities, and owns investment securities having a value exceeding 40% of the value of such issuer's total assets (exclusive of Government securities and cash items). Section 3(a) defines "investment securities" to include all securities except, in pertinent part, securities issued by majority-owned subsidiaries of the owner which are not investment companies. Section 2(a)(24) defines a "majority-owned subsidiary" of a person as a company 50% or more of the outstanding voting securities of which are owned by such person, or by a company which, within the meaning of section 2(a)(24), is a majority-owned subsidiary of such person.

2. Applicants represent that the proposed ownership structure for foreign infrastructure projects is the result of legitimate and compelling tax, limited liability, governance, and other reasons. The proposed ownership structure protects applicants against liability to creditors of the Foreign Infrastructure Companies. In addition, some foreign governments remain committed to retaining control over infrastructure projects. Moreover, under the laws of many host countries, there are limitations on the percentage equity interest in host country entities that can be owned by companies such as the Covered Entities that are organized in jurisdictions other than the host

[1] After the PGC Merger, Enron Corp. will be the seventh largest seller of electricity in the United States. Benjamin A. Holden, *Enron Corp. has Accord to Buy Portland General*, Wall St. J., July 23, 1996, at A3.

country. As a result, a company desiring to participate in a foreign infrastructure project will often have to choose between becoming a minority project participant with other companies or not participating at all. Because sections 3(a) and 2(a)(24), taken together, impose limits on the percentage of assets of the Covered Entities that may be attributable to securities representing minority interests in other companies, the Act may, in the absence of the requested relief, prevent these entities from participating in foreign infrastructure projects on desirable terms.

3. In certain cases, a Covered Entity may rely on section 3(c)(1) or section 3(c)(9) of the Act or rule 3a–1 thereunder. These provisions, however, are inadequate to permit these entities to participate in foreign infrastructure projects on desirable terms.

4. Section 3(c)(1) of the Act excepts from the definition of investment company private investment companies ("3(c)(1) Entities") that have 100 or fewer shareholders. Under section 3(c)(1)(A), a company is counted as one shareholder of a 3(c)(1) Entity unless that company owns 10% or more of the shares of the 3(c)(1) Entity and more than 10% of that company's assets are shares of 3(c)(1) Entities. If a company meets these tests, the beneficial ownership of the 3(c)(1) Entity is deemed to be that of the holders of such company's outstanding securities. As a result of this provision, applicants are forced by the Act to limit their investments in 3(c)(1) Entities even where compelling business reasons favor making those investments and where, applicants believe that, none of the Act's purposes would be served by preventing them from making the investments.

5. The National Securities Markets Improvement Act of 1996 (the "1996 Act") amended section 3(c)(1)(A) of the Act. When the relevant provisions of the 1996 Act become effective (on the earlier of April 9, 1997 or the date on which the related rulemaking is completed), the amended section 3(c)(1)(A) will no longer apply to a shareholder of a 3(c)(1) Entity that is an operating company (i.e., a company that is not an investment company or a 3(c)(1) Entity). Accordingly, the exception provided by amended section 3(c)(1) may be available to Foreign Infrastructure Finance Companies. However, the 1996 Act also amends the definition of "investment securities" under section 3(a) of the Act to provide that securities of majority-owned 3(c)(1) Entities are investment securities. The amended section 3(a) will limit the amount that the Covered Entities can invest in majority-owned 3(c)(1) Entities, such as Foreign Infrastructure Finance Companies. As a result, applicants cannot rely on the current or amended version of section 3(c)(1) to participate in foreign infrastructure projects on desirable terms.

6. Section 3(c)(9) of the Act excepts from the definition of investment company any company substantially all of whose business consists of owning or holding oil, gas, or other mineral royalties or leases. Although the section 3(c)(9) exception may be available to EOG in a number of cases, it does not cover Enron or EPP because of the nature of their businesses. Many foreign infrastructure projects do not involve oil and gas exploration or production properties. Moreover, some projects that do involve such properties involve additional assets not qualifying under section 3(c)(9). As a result, the section 3(c)(9) exception is inadequate to permit the Covered Entities from participating in foreign infrastructure projects on desirable terms.

7. Rule 3a–1 under the Act deems certain issuers that meet the statutory definition of investment company in section 3(a)(3) of the Act not to be investment companies, provided such issuers meet certain criteria. An issuer can qualify for this exemption only if no more than 45% of its assets consist of, and no more than 45% of its net income is derived from, securities other than, among others, securities of certain companies controlled primarily by the issuer. Although the exemption may be relied upon by the Covered Entities from time to time, a company relying on the exemption as a result of a control relationship must have a degree of control greater than that of any other person.[2] Because a foreign government often will primarily control a Foreign Infrastructure Company, rule 3a–1 is inadequate to permit the Covered Entities to participate in foreign infrastructure projects on desirable terms.

8. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act or any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an order under section 6(c) to permit the Covered Entities to engage, directly or through subsidiaries, in foreign infrastructure projects without being subject to the provisions of the Act.

9. Applicants believe that the requested relief is necessary and appropriate in the public interest. Applicants state that in many foreign infrastructure projects, foreign regulations force applicants to structure their interests in the project such that they may technically fall within the definition of investment company under the Act. In addition, applicants state that the fact that they conduct their foreign infrastructure activities through subsidiaries is not by any means an attempt to circumvent the limitations imposed in connection with the exception in section 3(c)(1) of the Act. Applicants assert that those limitations were not aimed at situations, such as those described herein, where an active business is conducted through subsidiaries that are set up for legitimate and compelling tax, limited liability, governance, and other reasons that prevent companies actively conducting such business from acquiring direct ownership interests. Applicants argue that section 3(c)(1) reflects a congressional determination that no significant public interest exists in regulating 3(c)(1) Entities under the Act. The beneficial ownership attribution rules in section 3(c)(1)(A) are, in effect, intended to prevent companies from circumventing the requirements of the Act by setting up one or more majority-owned subsidiaries that would be regulated as investment companies but for the fact that no single one of them had more than 100 security holders. Further, the amendments to the beneficial ownership rules in section 3(c)(1)(A) reflect an intent by Congress to simplify the application and limit the scope of the rules rather than a change in the underlying purpose of the section. As a result, applicants assert that the foreign infrastructure activities described herein, which require active developmental assistance, clearly are not the type intended to be covered by the current or amended section 3(c)(1).

10. Applicants believe that the relief requested is consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants state that the Act was not intended to regulate the kind of industrial activity in which the Covered Entities engage. Applicants historically have developed as operating industrial companies rather than investment pools, engaging principally in the natural gas and other energy-related business. In addition, their proposed participation in foreign infrastructure projects through the provision of active developmental assistance to a Foreign Infrastructure Company is consistent with the type of activities typically associated with an operating industrial company. Finally, the Covered Entities do not hold themselves out as being engaged in the business of investing, reinvesting, or trading in securities or otherwise as investment pools of the type intended to be regulated by the Act.

[2] Health Communications Services, Inc. (pub. avail. Apr. 26, 1985).

Applicants' Conditions

Applicants agree that the order granting the required relief shall be subject to the following conditions:

1. No Covered Entity that proposes to rely on the requested relief will hold itself out as being engaged in the business of investing, reinvesting, or trading in securities.

2. The Covered Entities will rely on the order granting the requested relief only to the extent that the manner in which they are involved in foreign infrastructure projects does not differ materially from that described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4442 Filed 2–21–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26669]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

February 14, 1997.

Notice is hereby given that the following filings(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 10, 1997, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Ameren Corporation (70–8945)

Ameren Corporation ("Ameren"), 1901 Chouteau Avenue, St. Louis, Missouri 63103, a Missouri corporation not currently subject to the Act, has filed an application-declaration under sections 4, 5, 6(a), 7, 8, 9(a), 10, 11, 12(b), (d) and (e), and 13(b) and Rules 42, 43, 45, 62, 65, 82, 83, 87, 88, 90 and 91 thereunder.

Ameren proposes to acquire by merger Union Electric Company ("UE") and Central Illinois Public Service Company ("CIPS"), a wholly-owned utility subsidiary of CIPSCO Inc. ("CIPSCO"), and acquire indirectly 60% of the outstanding common stock of Electric Energy, Inc., ("EEI"). UE and CIPS will become wholly-owned subsidiaries of Ameren ("Transaction"), and Ameren will register with the Commission under section 4 of the Act.

Ameren also proposes to engage in other Transaction-related activities, including the retention of combination gas and electric public utilities, the retention of all of CIPSCO's and UE's nonutility activities, formation of a service Company and the transfer of certain utility assets from UE to CIPS.

UE is a combination gas and electric public-utility company and an exempt public-utility holding company, pursuant to an order of the Commission under section 3(a)(2) of the Act, authorized to do business in Missouri and Illinois. The principal business of UE is to provide electric energy to customers in a 24,500 square mile area of Missouri and Illinois.

UE's Missouri electric service area includes the City of St. Louis and St. Louis County, and all or portions of 65 other counties. Its Illinois service area includes the cities of East St. Louis and Alton. In addition to the retail electric business, UE serves 18 wholesale electric customers, all of which are located in Missouri. Union Electric also provides natural gas service to customers in 23 Missouri counties and two Illinois counties. UE also provides steam service in Jefferson City, Missouri.

UE provides retail electric service to approximately 1.069 million customers in Missouri and 63,000 in Illinois. UE provides natural gas service to approximately 102,000 customers in Missouri and 18,000 customers in Illinois. As of June 30, 1996, UE has 6,167 employees in its two-state operations. UE owns 100 percent of Union Electric Development Corporation ("UEDC") (formerly known as Union Colliery), a nonutility subsidiary, and 40 percent of EEI. UE funds UEDC's investments through intercompany loans or advances. These intercompany loans bear interest at a market rate and are short-term in nature or due on demand.

UEDC's nonutility activities include the owning of and/or investing in energy-related and civic and community development-related investments in UE's service territory. EEI, which owns a coal-fired generating plant and transmission lines, was formed in the early 1950s to provide electric energy to a uranium enrichment plant located near Paducah, Kentucky, which is now operated by the United States Enrichment Corporation. The uranium enrichment facility is its only end-user customer. EEI's common stock is held by four utility companies: UE, 40%; CIPS, 20%; and two unaffiliated, utilities, Kentucky Utilities Company, 20%; and Illinois Power Company, 20%. EEI also sells electricity to its sponsoring utilities for resale.

CIPSCO, incorporated under the laws of the State of Illinois in 1986, is an exempt public utility holding company under section 3(a)(1) of the Act, and owns all of the issued and outstanding common stock of CIPS. CIPS, an Illinois corporation organized in 1902, supplies electricity and natural gas services in a 20,000 square mile region of central and southern Illinois, rendering service to approximately 319,000 retail electricity customers in 557 communities and distributing natural gas to approximately 167,000 customers in 267 communities. CIPS' utility service territory has an estimated population of 820,000 (about seven percent of Illinois' population) and contains about 35% of the surface area of Illinois. In addition, CIPS sells electricity in the wholesale and interchange markets to such entities as Soyland Electric Cooperative, Illinois Municipal Electric Agency, Wabash Valley Power Association, Inc., Mt. Carmel Public Utility Company, individual municipal electric systems and other public- and investor-owned electric systems. As noted above, CIPS owns 20 percent of the capital stock of EEI and is an exempt holding company pursuant to section 3(a)(2) of the Act. As of June 30, 1996, CIPS had approximately 2,360 employees.

CIPSCO owns 100 percent of CIPSCO Investment, the holding company for

CIPSCO's nonutility activities. CIPSCO's nonutility investments include leveraged leases, marketable securities and investments in energy projects. CIPSCO Investment has four first-tier subsidiaries: CIPSCO Securities Company, which manages a portfolio of equities and other marketable securities; CIPSCO Leasing Company, which manages long-term leveraged leases for various equipment and real estate; CIPSCO Energy Company, which manages electric generation projects under leveraged leases and a limited partnership; and CIPSCO Venture Company, which makes investments in the CIPS service territory. CIPSCO Investment will be wholly owned by Ameren, and Ameren expects that, following consummation of the Transaction, CIPSCO Investment will continue to operate much as it does today.

In the ordinary course of business, there have been and the applicant proposes to continue to make intercompany loans and advances among CIPSCO and its direct and indirect nonutility subsidiaries including CIPSCO Investment. Generally, if any of CIPSCO Investment's subsidiaries has excess cash, such excess is loaned to CIPSCO Investment or CIPSCO Securities. These borrowed funds, as well as any funds borrowed under a $30 million line of credit available to CIPSCO Investment or other bank lines, are used by CIPSCO Investment to finance its own activities or are loaned to its subsidiaries. Such subsidiaries will borrow funds from CIPSCO Investment, to the extent available, to finance their own activities or to finance the activities of entities in which they have an equity investment. These intercompany loans also bear interest at a market rate and are generally short-term in nature or due on demand.

In 1992, CIPSCO entered into a support agreement and has agreed to maintain the financial condition of CIPSCO Investment. In addition, CIPSCO has entered into certain support letters and CIPSCO Investment has entered into certain guarantees in connection with leveraged lease investments. The applicant requests that the Commission approve the continuance of all outstanding and committed intercompany loans and advances, support arrangements and guarantees.

Ameren was incorporated under the laws of the State of Missouri to become a holding company for UE and CIPS following the Transaction and for the purpose of facilitating the Transaction. Ameren has, and prior to the consummation of the Transaction will have, no operations other than those contemplated by the merger agreement to accomplish the Transaction ("Merger Agreement"). The authorized capital stock of Ameren consists of 400 million shares of common stock and 100 million shares of preferred stock par value $.01 per share. Upon consummation of the Transaction, Ameren will be a public-utility holding company and will directly own all of the issued and outstanding common stock of UE, CIPS and CIPSCO Investment. At present, the common stock of Ameren is owned 50% by UE and 50% by CIPSCO. No shares of Ameren preferred stock have been issued.

Soley for the purpose of facilitating the Transaction, Arch Merger, Inc. ("Arch Merger") was incorporated under the laws of the State of Missouri on August 5, 1995. Arch Merger has, and prior to the closing of the Transaction will have, no operations other than the activities contemplated by the Merger Agreement necessary to accomplish the transaction.

Under the Merger Agreement executed by CIPSCO and UE on August 11, 1995, upon receipt of all necessary approvals, the Transaction will be consummated by merging CIPSCO into Ameren, with Ameren as the surviving corporation, and by merging UE with Arch Merger, with UE as the surviving corporation. The shareholders of UE and CIPSCO have approved the Transaction. Pursuant to the Merger Agreement, each outstanding share of CIPSCO common stock will be converted into 1.03 shares of Ameren Common Stock, par value $.01 per share ("Ameren Common Stock"), and each outstanding share of UE common stock will be converted into one share of Ameren Common Stock. The outstanding UE and CIPS preferred stock will not be affected in the Transaction. Ameren is expected to have a total of 137,215,462 shares of Ameren Common Stock outstanding.

The Merger Agreement also provides that UE expects to transfer its retail electric and gas distribution utility assets located in Illinois to CIPS. As a result, after consummation of the Transaction, CIPS is expected to begin providing service to the approximately 65,000 electric customers and 18,000 as customers currently served by UE in Illinois.

Ameren proposes to issue and/or acquire in open market transactions, from time to time during the first five years after the date of the order issued by the Commission herein, up to 19 million shares of Ameren Common Stock under Ameren's proposed dividend reinvestment plan and certain employee benefit plans that will use Ameren Common Stock.

Ameren Services will be incorporated in Missouri, prior to the consummation of the Transaction, to serve as the service company for the Ameren system. Ameren Services will provide UE and CIPS, and the other companies of the Ameren system, with a variety of administrative, management and support services. The authorized capital stock of Ameren Services will consist of 1,000 shares of common stock, par value $.01 per share, and all issued and outstanding shares will be held by Ameren upon consummation of the Transaction. Ameren Services will enter into a General Services Agreement with Ameren, UE, CIPS and CIPSCO Investment.

Ameren Services will provide UE, CIPS, UEDC and CIPSCO Investment, pursuant to a General Services Agreement, with one or more of the following: building services, accounting, corporate communications, corporate planning, customer services and division support, economic development, energy supply, engineering and construction, environmental services and safety, fossil fuel procurement, gas supply, general counsel, human resources, industrial relations, information services, internal audit, marketing, merger coordination, motor transportation, purchasing, real estate, stores, tax, treasury operations, investor services and other services. In accordance with the General Services Agreement, services provided by Ameren Services will be directly assigned, distributed or allocated by activity, project, program, work order or other appropriate basis. Employees of Ameren Services will record transactions utilizing existing data capture and accounting systems. Costs of Ameren Services will be accumulated in accounts and directly assigned, distributed and allocated to the appropriate company in accordance with the guidelines set forth in the General Services Agreement.

It is anticipated that Ameren Services will be staffed primarily by transferring personnel from the current employee rosters of UE and CIPS. Ameren Services' accounting and cost allocation methods and procedures will be structured so as to comply with the Commission's standards for service companies in registered holding company systems. Ameren will structure a General Services Agreement so as to comply with section 13 of the Act and the Commission's rules and regulations thereunder. Thus, charges for all services provided by Ameren Services to affiliated utility companies and nonutility companies will be on an "at cost" basis as determined under rules 90 and 91 of the Act.

In addition to the services to be provided by Ameren Services, UE and CIPS may from time to time or in emergency situations provide one another with certain services incidental to their utility businesses, such as meter reading, materials management, transportation, and services of linemen and gas trouble crews. These services will be provided at cost in accordance with the standards of the Act and the Commission's rules and regulations thereunder.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4444 Filed 2–21–97; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22516; 811–5255]

The Rodney Square International Securities Fund, Inc.; Notice of Application

February 14, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: The Rodney Square International Securities Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on December 26, 1996 and amended on February 11, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 11, 1997, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, Rodney Square North, 1100 North Market Street, Wilmington, Delaware 19809–0001.

FOR FURTHER INFORMATION CONTACT: Shirley A. Bodden, Paralegal Specialist, at (202) 942–0575, or Mercer E. Bullard, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a registered open-end management investment company organized as a Maryland corporation. On July 24, 1987, applicant registered under the Act by filing a notification of registration on Form N–8A. On the same date, applicant filed a registration statement under the Act and under the Securities Act of 1933 to register an indefinite number of shares of its only series, The Rodney Square International Equity Fund (the "Fund"). The registration statement became effective on October 27, 1987, and applicant commenced a public offering of the shares on November 2, 1987.

2. In order to stop further losses on the part of the shareholders, and because net asset value was declining, on May 20, 1996, applicant's board of directors adopted the following resolutions: (1) that liquidation and dissolution of the applicant was advisable and (2) that a special meeting of the applicant's shareholders be called to approve the liquidation and dissolution of the applicant. Proxy materials were filed with the SEC on July 5, 1996 and were mailed to applicant's shareholders on or about that date. At a meeting held on July 25, 1996, shareholders approved the liquidation and dissolution of the applicant.

3. At the close of business on July 30, 1996, the Fund had approximately 102,312 outstanding shares with an aggregate net asset value of $1,334,984 and a per share net asset value of $13.05. Immediately following the close of business on July 31, 1996, applicant redeemed all of its outstanding shares at their net asset value of $13.06 per share, except for 25,000 shares held by Rodney Square Mangement Corporation, applicant's administrator and transfer agent. The shares held by Rodney Square Management Corporation were not redeemed on July 31, 1996, as certain of applicant's portfolio securities were "when-issued" and not readily saleable. These securities were subsequently sold in open market transactions at their then-current market prices. The shares held by Rodney Square Management Corporation were redeemed on October 30, 1996, for $323,811, or $12.95 per share. Applicant has made distributions in complete liquidation to all its securityholders.

4. All expenses, including legal, accounting, and other general and administrative expenses, relating to applicant's liquidation and the winding up of its affairs, except for brokerage commissions incurred in connection with the sale of applicant's portfolio securities, have been borne by Wilmington Trust Company, applicant's investment adviser. These expenses totaled approximately $22,771. Brokerage commissions incurred from May 20, 1996 to October 30, 1996 in connection with the sale of applicant's portfolio securities were approximately $62,584.

5. At the time of this application, applicant has no outstanding assets, securityholders, debts or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

6. Applicant intends to file Articles of Resolution with the State of Maryland to effect its dissolution as a Maryland corporation.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4443 Filed 2–21–97; 8:45 am]

BILLING CODE 8010–01–M

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following open meeting during the week of February 24, 1997.

An open meeting will be held on Thursday, February 27, 1997, at 9:00 a.m., in Room 1C30.

The subject matter of the open meeting scheduled for Thursday, February 27, 1997, at 9:00 a.m., will be:

The Commission will consider whether to propose for public comment: (i) amendments to Form N–1A under the Investment Company Act of 1940 and the Securities Act of 1933, which would revise the disclosure requirements for mutual fund prospectuses to focus prospectus disclosure on essential information about a particular fund that

would assist an investor in deciding whether to invest in that fund; (ii) rule 498 under the Securities Act and the Investment Company Act, which would permit investors to buy mutual fund shares based on a summary document, or profile, that would provide key information about a mutual fund; and (iii) rule 35d–1 under the Investment Company Act, which would require mutual funds and other registered investment companies with names suggesting that the company focuses on a particular type of investment (e.g., a fund that calls itself the ABC Stock Fund, the XYZ Bond Fund, or the 123 Government Fund) to invest at least 80% of its assets in the type of investment suggested by its name. For further information please contact: Elizabeth R. Krentzman or Kathleen K. Clarke, (202) 942–0721.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: February 20, 1997.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–4666 Filed 2–20–97; 3:45 pm]

BILLING CODE 8010–01–M

[Release No. 34–38293; File No. SR–PSE–96–42]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange Incorporated Relating to an Amendment to the Minor Rule Plan and the Adoption of a Forum Fee for Minor Rule Plan Appeals

February 14, 1997.

Pursuant to Section 19(b) (1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 25, 1996, the Pacific Stock Exchange Incorporated ("PSE", or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On October 26, 1996, PSE submitted an amendment that clarifies certain aspects of the proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b) (1).

[2] Letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PSE, to Ivette López, Assistant Director, Division of Market Regulation, SEC ("Amendment No. 1").

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its rules to adopt a forum fee that may be imposed when a Member or Member Organization appeals a finding of a Minor Rule Plan ("MRP") violation, and the review panel affirms the initial finding of a violation. The Exchange also is proposing to amend its MRP to include PSE Rule 6.87(c), which prohibits the dividing up of an option order to make its parts eligible for entry into Auto-Ex. The text of the proposed rule change is available at the Exchange and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to adopt a new subsection (5) to PSE Rule 10.11(d) to provide as follows: If, after a hearing or review on the papers pursuant to subsection (d) of PSE Rule 10.11,[3] a panel appointed by the pertinent committee determines that a Member or Member Organization has violated one or more Exchange rules, as alleged, that panel: (i) May impose any one or more of the disciplinary sanctions authorized by the Exchange's Constitution and Rules and (ii) shall impose a forum fee against the person charged in the amount of two hundred fifty dollars ($250) if the determination was reached based on a review of the papers, or in the amount of five hundred dollars ($500) if a hearing was conducted. In the event that the Panel determines that a Member or Member Organization has violated one or more Exchange rules, as alleged, and the sole disciplinary sanction imposed by the pertinent committee for such rule violation(s) is a fine that is less than the total fine initially imposed by the Exchange for the subject violation(s), the Committee has the discretion to waive the imposition of a forum fee.[4] The Exchange believes this fee is necessary to, among other things, help offset the costs associated with certain appeals involving MRP violations.

The Exchange also is proposing to amend its MRP,[5] which provides that the Exchange may impose a fine not to exceed $5,000 on any member, member organization, or person associated with a member organization for any violation of an Exchange rule that has been deemed to be minor in nature and approved by the Commission for inclusion in the MRP. PSE Rule 10.13, subsection (h)–(j), sets forth the specific Exchange rules deemed to be minor in nature.

Specifically, the Exchange is proposing to add the following violation to the section of the MRP relating to Options Floor Decorum and Minor Trading Rule Violations: "Dividing up an order to make its parts eligible for entry into Auto-Ex (Rule 6.87(c))" (with recommended fines of $2,500, $3,750 and $5,000 for first, second, and third violations). The Exchange believes that violations of Rule 6.87(c) are objective in nature and easily verifiable and, therefore, appropriate to include this rule in the MRP.[6] The Exchange also

[3] PSE Rule 10.11, entitled "Appeal of Floor Citations and Minor Rule Plan Sanctions," sets forth the procedures that apply when a member or member organization appeals a sanction imposed in connection with a floor citation or the MRP. *See* PSE Rules 10.11 and 10.13.

[4] The provisions of proposed Rule 10.11(d) (5) are essentially the same as Rule 17.50(d) (2) of the Chicago Board Options Exchange ("CBOE"), except that the proposed PSE forum fees are higher than those of the CBOE.

[5] Rule 19d–1(c) (2) under the Act authorizes national securities exchanges to adopt minor rule violation plans for the summary discipline and abbreviated reporting of minor rule violations by exchange members and member organizations. *See* Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (approving amendments to paragraph (c) (2) of Rule 19d–1 under the Act). The PSE's MRP was approved by the Commission in 1985. *See* Securities Exchange Act Release No. 22654 (Nov. 21, 1985), 50 FR 48853 (approving File No. SR–PSE–85–24). In 1993, the Exchange amended its MRP and adopted detailed procedures relating to the adjudication of minor rule violations. *See* Securities Exchange Act Release No. 32510 (June 24, 1993), 58 FR 35491. Thereafter, the Exchange has modified its MRP several times. *See* Securities Exchange Act Release Nos. 34322 (July 6, 1994), 59 FR 35958; 35144 (Dec. 23, 1994), 59 FR 67743 (Dec. 30, 1994); 36622 (Dec. 21, 1995), 60 FR 67384 (Dec. 29, 1995); 37886 (Oct. 29, 1996), 61 FR 37886 (approving File No. SR–PSE–96–26). *See also* Securities Exchange Act Release No. 37799 (Oct. 9, 1996), 61 FR 54479 (publishing File No. SR–PSE–96–30, proposed additions to the MRP, for comment).

[6] For example, an investigation will reveal that a customer's original order, as represented on an "upstairs" trading ticket, was for a number of option contracts that was greater than ten, but

notes that the recommended fine levels being proposed are comparable to the fines that the Exchange has imposed previously for violations of Rule 6.87(c).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[7] of the Act in general and furthers the objectives of Section 6(b)(5)[8] and Section 6(b)(7)[9] in particular in that it is designed to promote just and equitable principles of trade, to assure that members, member organizations, and persons associated with members and member organizations are appropriately disciplined for violations of Exchange rules and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Also, copies of such filing will be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–96–42 and should be submitted by March 17, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4446 Filed 2–21–97; 8:45 am]

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handwritten notes will indicate that the original order has been divided up. In addition, the Exchange's time and sales report will establish that a number of sub-orders occurred sequentially on the Auto-Ex system during a relatively short period of time.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b)(7).

[10] 17 CFR 200.30–3(a)(12).

[Release No. 34–38286; File No. SR–CBOE–96–70]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc., Order Approving Proposed Rule Change Relating to the Reporting Requirements for Securities Accounts and Orders of Market-Makers and Joint Account Provisions

February 13, 1997.

I. Introduction

On November 20, 1996, the Chicago Board Options Exchange, Inc., ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder[2] a proposed rule change relating to the reporting requirements for securities accounts and orders of market-makers and joint account provisions. The proposed rule change was published for comment in Securities Exchange Act Release No. 38085 (December 24, 1996), 62 FR 434 (January 3, 1997). The Commission received no comments on the proposal.

II. Description of the Proposal

CBOE proposes amending Rule 8.9, regarding Securities Accounts and Orders of Market-Makers. Specifically, CBOE is amending Rule 8.9(a), regarding the identification of accounts, to eliminate the routine submission of information by market-makers respecting non-market-maker trading accounts, or "outside accounts." Currently, Exchange market-makers are required to identify and report to the Exchange all accounts in which the market-maker may engage in stock, option and securities trading, directly or indirectly, or over which it has investment discretion. The rule in its current form is broad enough to require market-makers to report professional trading accounts held at clearing firms, as well as outside personal accounts such as brokerage accounts. The Exchange is amending the reporting requirements of Rule 8.9(a) to eliminate the routine submission of information respecting non-market-maker trading accounts, or "outside accounts." The rule change will require market-makers to report outside account information only when requested by the Exchange.

CBOE also proposes amending Rule 8.9(b), regarding the reporting of market-maker orders. Currently, each market-maker is required to report to the Exchange every order entered into by that market-maker within the specifications of the Rule. CBOE proposes amending Rule 8.9(b) to require the clearing firm that maintains the market-maker's trading account, rather than the market-maker personally, to report executed order information to the Exchange. The Exchange believes it is appropriate to limit the required order information to "executed" orders only, based upon its position that only marginal surveillance benefits are derived from gathering unexecuted order information on a routine basis.

Under the proposal, the market-maker will be held responsible for the reporting requirements only if the clearing firm is not reporting executed order information to the Exchange and/or if the Exchange has requested that the market-maker provide the information. Furthermore, the proposed rule change will clarify that this reporting requirement applies to "professional trading accounts" (*i.e.*, transactions cleared into all accounts carried for market-makers who are the subject of a clearing firm letter of guarantee issued to the Exchange pursuant to CBOE Rule 8.5).

The clearing firm thus will be the primary source for the reporting of market-maker executed order information to the Exchange. However, all firms which represent and execute market-maker orders, including order services firms as defined in Exchange Rule 6.77, will continue to be

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.18b-4.

responsible for maintaining and retaining executed and unexecuted order information as required by Rules 17a-3 and 17a-4 under the Act and by Exchange Rule 15.1. The continuing recordkeeping obligations of such firms pursuant to Exchange rules and other applicable securities laws and regulations will be noted in an Exchange regulatory circular upon approval of the proposed rule change.

In an effort to improve reporting and move toward electronic reporting in the future, CBOE proposes to eliminate the existing description of specific order information required to be reported as set forth in Rule 8.9(b).[3] Upon approval of this filing, the Exchange will issue a regulatory circular to clearing firms which will list the order reporting requirements that were previously embodied in Rule 8.9(b). CBOE will issue additional circulars as reporting requirements are added.

Finally, CBOE proposes to amend Interpretation and Policy .06 to Rule 8.9 to clarify that the existing prohibition against a joint account participant effecting a transaction with another member acting on behalf of the same joint account applies whether the transaction is effected in person or via order. CBOE will also revise Interpretation and Policy .06 to Rule 8.9 to prohibit transactions between two joint accounts if the member who causes a transaction to be executed for one of the joint accounts knows or has reason to know that the two joint accounts have one or more common participants.

The addition to Interpretation .06 to Rule 8.9 codifies in the rule's current provisions in regulatory circulars which seek to ensure that joint account transactions result in a bona fide change in beneficial ownership. Existing regulatory circulars RG96–28 (item 7(b)) and RG95–64 (item 8(b)) provide that a member has the responsibility to ensure that in-person transactions or the entry of orders with floor brokers do not result in trades occurring "between two joint accounts that have common participants." The rule change expressly imposes a knowledge requirement as an element of the offense of effecting a transaction between joint accounts with common participants. This recognizes that members are not always able to know whether there are common participants in two joint accounts because of the frequency with which joint account composition may change.

[3] CBOE Rule 8.9(b) states that the report pertaining to orders must include the terms of each order, identification of the brokerage firms through which the orders were entered, the times of entry or cancellation, the times report of execution were received and, if all or part of the order was executed, the quantity and execution price.

III. Discussion

The Commission believes CBOE's proposed rule change is consistent with Section 6(b)(5) of the Act.[4] Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, perfect the mechanism of a free and open national market system, and, in general, to further investor protection and the public interest.

The Commission believes that CBOE's proposal to allow market-makers to provide outside account information upon request by the Exchange rather than providing such information on a routine basis is a reasonable revision to CBOE's market-maker account reporting procedures. This conclusion is based on CBOE's representation that outside account information provides little benefit to the Exchange's surveillance programs unless special circumstances exist. The Commission believes that the ability of the Exchange to request outside account information upon request should help preserve the Exchange's ability to conduct adequate surveillance.

The Commission believes that CBOE's proposal to make a market maker's clearing firm the primary responsible source for reporting market-maker executed order information to the Exchange is a reasonable means of streamlining the order reporting process. The Commission also recognizes the Exchange's position that clearing firms with back-office systems capabilities can most accurately gather and report market-maker order information to the Exchange. Accordingly, the proposed change should result in more effective and efficient reporting of market-maker accounts and executed order information to the Exchange, thus promoting just and equitable principles of trade, perfecting the mechanism of a free and open national market system, and furthering investor protection and the public interest.

The Commission believes it is appropriate to limit the required submitted order information to "executed" orders only, based on CBOE's representation that only minimal surveillance benefits are gained by gathering unexecuted order information on a routine basis. Where the clearing firm is not reporting the information to the Exchange and if the Exchange requests that the market-maker provide the information, the market-maker will be responsible for reporting executed order information. Moreover, while the clearing firm is the primary source for the reporting of market-maker executed order information, the firms representing and executing market-maker orders will continue to be responsible for maintaining and retaining executed and unexecuted order information pursuant to Rules 17a–3 [5] and 17a–4,[6] of the Act and CBOE Rule 15.1. These provisions offer further assurance that executed order information will be reported and records of executed and unexecuted orders will be maintained.

The Commission believes that CBOE's proposal to eliminate the existing description of specific order information required to be reported pursuant to Rule 8.9(b), and its proposal to issue a regulatory circular to clearing firms listing the order reporting requirements, will provide the CBOE with greater flexibility in adding reporting requirements as needed. The Commission notes that the Exchange has agreed to issue a regulatory circular to its members reflecting that all of the specific order information currently contained in Rule 8.9(b)[7] will continue to be required to be reported pursuant to the rule. If the CBOE in the future seeks to eliminate the required reporting of any of this specific information, such a change would require the submission of a rule filing pursuant to Section 19(b)[8] of the Act.[9]

The Commission believes that CBOE's proposed clarifications to Interpretation .06 will aid members in understanding their responsibilities with regard to joint account transactions, thus assuring that such transactions result in a bona fide change in beneficial ownership. Finally, the Commission believes that CBOE's proposed change to require knowledge as an element of the offense of effecting a transaction between joint accounts with common participants constitutes a reasonable clarification of CBOE's existing joint account provisions, thereby serving to protect investors and the public interest.

[4] 15 U.S.C. § 78f(b)(5).

[5] 17 CFR 240.17a–3.

[6] 17 CFR 240.17a–4.

[7] *See supra* note 3.

[8] 15 U.S.C. 78s(b).

[9] Although the submitted filing indicated that circulars would be issued to clearing members, the CBOE has clarified that all members will receive a circular informing them of changes in the reporting requirements. Although the circulars sent to clearing firms may differ from those sent to other CBOE members, the information contained therein will be the same. Phone conversation between Jeff Schroer, Market Surveillance, CBOE, and Peggy Blake, Division of Market Regulation, Commission (February 13, 1997).

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the CBOE, and in particular Section 6(b)(5).

It is therefore ordered, Pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (File No. SR–CBOE–96–70) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

[FR Doc. 97–4387 Filed 2–21–97; 8:45 am]

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[Release No. 34–38294; File No. SR–NASD–97–07]

Self-Regulatory Organizations; Notice of Filing and Order Granting Temporary Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Rule 4612, Primary Nasdaq Market Maker Standards Through October 1, 1997

February 14, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 31, 1997, the Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Act, Nasdaq, a wholly owned subsidiary of the National Association of Securities Dealers, Inc. ("NASD" or "Association"), is herewith filing a proposed rule change to temporarily suspend the use of the Primary Nasdaq Market Maker qualification criteria found in Rule 4612 (a) and (b) of the Nasdaq Market Maker Requirements of the NASD Rules for all Nasdaq National Market securities for the remainder of the current pilot period of the Nasdaq Short Sale Rule or until such earlier time when new primary market maker qualification criteria can be devised and adopted.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

After the first week of trading under the new SEC rules regarding a Nasdaq market maker's order handling obligations, *i.e.,* Rule 11Ac1–4 (the customer limit order display rule) and amended Rule 11Ac1–1 (amendments to the firm quote rule regarding the display of priced orders entered by market makers or specialists into electronic communications networks ("ECNs")),[2] Nasdaq has re-evaluated its existing qualification criteria in the primary market maker standards rule, Rule 4612 (a) and (b), in those stocks that are not subject to the primary market maker standard suspension approved in SR–NASD–96–55.[3] In that rule filing, Nasdaq noted that because of the potential changes in quotation and trading activity in Nasdaq securities when the new SEC Rules became effective, the existing numerical criteria used to qualify a registered market maker as a primary market maker would be significantly affected. Because the precise effects on market maker quotes and trades were not possible to predict until Nasdaq could develop practical experience with new patterns of activity under the new rules, Nasdaq believed that it should attempt to minimize the possible harmful unintended consequences that could occur by leaving the current standards in place. Accordingly, Nasdaq proposed, and the SEC approved, that the existing standards would be temporarily suspended on the same schedule for the phase in of the SEC Rules requirements.

However, based upon trading experience in the first week of trading under the new SEC and NASD Rules, Nasdaq believes that the primary market maker standards should be suspended immediately for *all* National Market securities and all registered market makers in those securities should be designated as primary market makers. Nasdaq bases this proposed rule change on three factors that were not readily apparent at the time it filed SR–NASD–96–55: (1) many market makers have voluntarily chosen to display customer limit orders in their quotes even though the SEC's Limit Order Display Rule does not yet require it; (2) SOES decrementation for all Nasdaq stocks has significantly affected market maker ability to meet several of the primary market maker standards; and (3) with the inability to meet the existing criteria for a larger number of securities, a market maker may be prevented from registering as a primary market maker in an initial public offering because it fails to meet the 80% primary market maker test contained in Rule 4612(g)(2)(B).

Under existing Rule 4612, a registered Nasdaq Market Maker may be deemed to be a Primary Market Maker in National Market securities if the market maker meets two of three criteria: (1) the market maker maintains the best bid or best offer as shown on Nasdaq no less than 35% of the time; (2) a market maker maintains a spread no greater than 102% of the average dealer spread; and (3) no more than 50% of a market maker's quotation changes occur without a trade execution. In addition, if a registered market maker meets only one of the above criteria, it may nevertheless qualify as a primary market maker if the market maker accounts for volume at least 1½ times its proportionate share of overall volume in the stock. The review period for meeting any of these criteria is one calendar month. Nasdaq notifies a market maker at the beginning of the new calendar month if it does not meet the tests, and one business day following the notification, Nasdaq withdraws the "p" designator.

The changes to market maker quotation and trading activities have been dramatic in the first week of trading in the new environment. To provide their customers with the greater transparency, many market makers have begun to display customer limit orders in *all* Nasdaq securities, not only those subject to the phase-in of the Limit Order Display Rule, Rule 11Ac1–4. With the voluntary display of customer limit orders in stocks not yet subject to Rule 11Ac1–4, Nasdaq market makers are changing their quotes when they are in

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. § 78s(b)(1).

[2] See Securities Exchange Act Release No. 37619A (September 6, 1996); 61 FR 48290 (September 12, 1996) (Order Handling Rules Adopting Release).

[3] See Securities Exchange Act Release No. 38175 (January 23, 1997); 62 FR 3548.

receipt of customer limit orders that improve upon their current quotations. Because more dealer quotes are now being driven not merely by the market maker's proprietary interests, but also the interests of customers that place limit orders with the market maker, Nasdaq believes that a market maker's ability to meet the 102% of average dealer spread test may be more difficult to meet. For example, because a quote of a market maker driven by a customer limit order is indistinguishable from that of a quote driven by a customer order, it is impossible to tell when market maker quote changes are being driven by customer interests that are entered and then subsequently canceled without any execution. In addition, the test regarding the percentage of time in which the market maker's quote is at the inside will also be driven to some extent by customer limit order interest.

Moreover, the SOES decrementation feature is having a significant impact on individual market maker quotations. Under the new SOES rules, which apply to all securities, when SOES executes against a quotation, whether it is on behalf of a customer or not, Nasdaq's system decreases the quotation size. If the quote is decreased to zero, and the market maker has the Nasdaq auto-refresh feature turned on, the market maker's quote is changed pursuant to that execution, However, because the auto-refresh moves only one side of the market maker's quote, the market maker's quote is spread wider than many market makers want. Therefore, market makers then change the quote to a narrower spread. While Nasdaq believes that narrower spreads are beneficial for investors overall, in this instance, the quote movement without a corresponding trade causes the market maker to exceed the 50% quote to trade ratio established in the primary market maker standards. If the market maker, on the other hand, chooses not to narrow its quote after the auto-refresh, that market maker runs the risk that it may not meet the 102% of the average spread test. Finally, Nasdaq notes that if a market maker fails to meet the standards and falls below the test regarding being a primary market maker in 80% or more of the securities for which it is registered as a market maker, it will not be allowed to register as a primary market maker in an initial public offering, even if it is an underwriter of that security and may be required to play an important liquidity providing role in that stock's initial trading activity.

Nasdaq believes that it is in the public investor's best interests to temporarily suspend the operation of the primary market maker standards that currently exist. If the standards are not suspended, the significant shift in the patterns of quotation and executions that Nasdaq is beginning to experience is going to cause primary market makers operating under the existing standards to lose that status. Loss of the designation would mean that market makers without the designator would not be permitted to avail themselves of the short sale exemption for primary market makers. If a significant number of registered market makers were to lose the short sale exemption, or if a single market maker that handled a significant portion of the order flow in a security were to lose the exemption, liquidity in that particular stock could be seriously harmed.

Therefore, as of February 3, 1997, any registered market maker would be able to avail itself of the short sale exemption for qualified market makers found in Rule 3350(c)(1). In seeking to temporarily suspend the use of the primary market maker qualification criteria, Nasdaq believes that the suspension of the criteria is an appropriate balance between the need for limitations on the market maker short sale exemption and the potential for loss of liquidity and market disruption in a period when new patterns and practices of trading are first being developed. Nasdaq believes that the period of time in which the new SEC Rules are first being implemented may be a period of uncertainty for market makers and investors alike and that the prudent course of action would be to identify and eliminate as many potential areas for increasing that uncertainty as possible. Nasdaq has identified this issue as a critical area of uncertainty and believes that the suspension of the market maker qualification standards on a temporary basis is an appropriate market quality response. This relief will enable Nasdaq market makers to better satisfy investor liquidity demands and could help to promote pricing efficiency.

Nasdaq also plans to develop new standards as soon as practicable so that Nasdaq can obtain experience with the manner in which the new SEC Rules affect market makers. The plan is to analyze the data from January and February and discuss the practices among staff and with the Quality of Markets Committee.

Nasdaq believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act in that it is designed to prevent fraudulent and manipulative acts and facilities transactions in securities. In particular, this temporary amendment to the existing rule should provide market makers with certainty regarding whether they are entitled to an exemption under the rule which should promote market efficiency and enhance the orderliness of the market during a transition period. It should also help in reducing investor confusion at this time and thereby promote efficient and fair markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Commission's Findings and Order Granting Temporary Accelerated Approval of Proposed Rule Change

The Commission has reviewed carefully Nasdaq's proposed rule change and believes, for the reasons set forth below, that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A(b)(6), 15A(b)(9), and 15A(b)(11). In addition, the Commission finds that the rule change is consistent with the Congressional objectives for the equity markets, set out in Section 11A of the Act, of achieving more efficient and effective market operation, fair competition among brokers and dealers, and economically efficient execution of investor orders in the best market. In particular, this temporary amendment to the existing rule should avoid frustrating the operation of the Order Handling Rules in light of the existence of market factors not readily apparent at the time the NASD requested more limited relief with respect to the suspension of primary market maker standards.[4] The Commission is approving the rule change on a pilot basis through October 1, 1997. During this time, however, the Commission expects that, as with the NASD's excess spread rule,[5] the NASD must develop new primary market maker standards well before the expiration of the pilot.

Nasdaq has requested that the Commission find good cause pursuant to Section 19(b)(2) for approving the proposed rule change prior to the 30th day after publication in the **Federal Register**. The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in that accelerated approval will accommodate the Order Handling Rules, which went into effect January 20, 1997.[6]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–97–07 and should be submitted by March 17, 1997.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change be, and hereby is, approved on an accelerated basis, effective February 14, 1997 through October 1, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4445 Filed 2–21–97; 8:45 am]

BILLING CODE 8010–01–M

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[4] *Id.*

[5] As with the primary market maker standards, there is also a dealer spread test that is part of the NASD's "excess spread rule," Rule 4613(d). The Commission recently approved a proposed rule change on a pilot basis through July 1, 1997, providing that a registered market maker in a security listed on the Nasdaq stock market shall be precluded from being a registered market maker in that issue for twenty business days if its average spread in the security over the course of any full calendar month exceeds 150 percent of the average of all dealer spreads in such issue for the month. *See* Securities Exchange Act Release No. 38180 (January 16, 1997), 62 FR 3725. Although the Commission approved the proposed rule change on a temporary basis to facilitate compliance with the Commission's Order Handling Rules, the Commission stated that during this time period, the NASD should monitor the effects of the pilot, as well as study alternative methods that would enhance market making performance while completely fulfilling the NASD's obligation regarding the excess spread rule before the August 8, 1997, deadline contained in the Commission's Order Instituting Public Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Securities Exchange Act Release No. 37538 (August 8, 1996).

[6] The Division of Market Regulation issued an interim no-action letter to the NASD and Nasdaq with respect to the enforcement of the NASD's primary market maker standards during the consideration of this proposed rule change. The approval of this rule change supersedes that no-action position. *See* Letter from Howard Kramer, Associate Director, Division of Market Regulation, SEC, to Eugene A. Lopez, Assistant General Counsel, Nasdaq, dated February 3, 1997.

[7] 15 U.S.C. 78s(b)(2).

[8] 17 U.S.C. 200.30–3(a)(12).

[Release No. 34–38292; File No. SR–Phlx–96–36]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing of, and Order Granting Accelerated Approval to, Amendment No. 1 to the Proposed Rule Change Relating to Index Value Calculations by the Index Calculation Engine ("ICE") System

February 14, 1997.

On October 3, 1996, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to permit the Phlx to act as the reporting authority for its index options under certain circumstances.

The proposed rule change was published for comment in the **Federal Register** on October 10, 1996.[3] No comments were received on the proposal. Subsequently, the Phlx amended the proposed rule change.[4] This order approves the proposal, including Amendment No. 1 on an accelerated basis.

Currently, three market (broad-based) index options, seven industry (narrow-based or sector) index options, and the Super Cap Index option trade on the Exchange. The reporting authority for each index option is currently Bridge Data. For each index option listed on the Exchange, the specifications and descriptions filed with the Commission detail how the index value is calculated and that the calculation is conducted by Bridge.

In the course of reviewing inconsistencies in index value calculations, as well as the disaster recovery implications of using a single, outside reporting authority, the Exchange decided to create its own internal system for the calculation and dissemination of index values—the Index Calculation Engine ("ICE") system. Recently, this system was completed, tested, and implemented as a surveillance tool for Phlx Regulatory Services and Market Surveillance staff monitoring Exchange index options trading. In an effort to make use of the capabilities of the ICE system, the Phlx proposes to utilize the ICE system value as the official index value in two situations.

First, the ICE system value would act as the official index value in the event the reporting authority designated by the Phlx is experiencing difficulties in disseminating an accurate value (*e.g.*, computer failure, line problem). Under these circumstances, the Exchange would automatically switch to using the ICE system value as the official index value, but only for the time period that is necessary for the designated agent to correct its problem.

Second, the Phlx, when determining which entity to utilize as the permanent reporting authority for its index options, would like to be able to select the ICE system as the designated reporting authority.[5] Economic and efficiency considerations are the impetus for this request.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 37782 (Oct. 3, 1996), 61 FR 53254.

[4] *See* Letter from Theresa McCloskey, Vice President, Regulatory Services, Phlx, to Sharon Lawson, Senior Special Counsel, Division of Market Regulation, Office of Market Supervision, SEC, dated January 23, 1997, and letter from Theresa McCloskey, Vice President, Regulatory Services, Phlx, to Sharon Lawson, Senior Special Counsel, Division of Market Regulation, Office of Market Supervision, SEC, dated January 29, 1997 (collectively "Amendment No. 1"). Amendment No. 1 withdraws that portion of the proposal seeking "interim authority" to utilize the ICE system value. Interim authority, in this case, refers to the Exchange's ability to continue to utilize the ICE system during that interim time period after a temporary operational problem at the designated reporting authority is corrected, but before receiving Commission approval to appoint a different reporting authority. In addition, Amendment No. 1 clarifies that designation of ICE as the reporting authority for a particular options product must be filed pursuant to Section 19(b) of the Act and that the Phlx's request for using ICE as the reporting authority for FLEX options will be incorporated into the FLEX options proposal (SR-Phlx–96–36).

[5] Any request to utilize ICE as the permanent reporting authority for a particular options product will have to be submitted to the Commission for approval under Section 19(b) of the Act. *See* Amendment No. 1, *supra* note 4.

requirements of Section 6(b).[6] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5)[7] requirements that the rules of an exchange be designated to promote just and equitable principles of trade, to facilitate transactions in securities, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.[8]

The Commission believes it is appropriate to allow the temporary use of the ICE system value as the official index value when the designated reporting authority is experiencing operating difficulties. Utilizing the ICE system as a backup in such situations will add stability to the affected options market because it will ensure the continued availability of current index values, which are essential to investment decisions in index options, while the designated reporting authority identifies and corrects the problems prohibiting the dissemination of an accurate index value.

The Commission also believes it is appropriate to provide the Phlx with the option of designating the ICE system as the reporting authority for its proprietary index options as long as prior Commission approval pursuant to Section 19 of the Act is obtained. Permitting the Phlx to act as the reporting authority for its proprietary index options should benefit investors by reducing the response time needed in the event there is a problem disseminating index values. Moreover, the Phlx has represented that the ICE system has been tested fully and that this system is capable of handling the proposed tasks.[9]

The Commission finds good cause for approving Amendment No. 1 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Amendment No. 1 simply clarifies that designation of ICE as the reporting authority must be filed pursuant to Section 19(b) of the Act, explains that the Phlx's request for using ICE as the reporting authority for FLEX options will be proposed in the FLEX options proposal (SR–Phlx–96–38), and removes the previous request for interim authority to utilize ICE which was deemed to be unnecessary given the Exchange's ability to use ICE until a problem in the designated reporting authority has been corrected.[10]

Therefore, the Commission believes that granting accelerated approval to Amendment No. 1 is appropriate and consistent with Section 6 and Section 19(b)(2) of the Act.[11]

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rules change that are filed with the Commission, and all written communications relating to Amendment No. 1 between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–96–36 and should be submitted by March 17, 1997.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–Phlx–96–36), as amended by Amendment No. 1, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4447 Filed 2–21–97; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] See letter from Thomas A. Wittman, Vice President, Trading Systems Development, Phlx, to George Jenkins, Division of Market Regulation, SEC, dated November 20, 1996; telephone conversation between Thomas A. Wittman, Vice President, Trading Systems Development, Phlx, and Anthony P. Pecora, Attorney, Division of Market Regulation, SEC, November 22, 1996 (representing that ICE is capable of acting as a primary system despite the fact that it originally was designed as a backup system).

[10] The proposal allows the Phlx to utilize the ICE system as the official reporting authority whenever the designated reporting authority is experiencing operating difficulties, but only until such difficulties are resolved. As soon as the problem is corrected, the Phlx must switch back to the designated reporting authority. If the reporting authority's problems occur on a regular basis, the Phlx can designate a different reporting authority, including ICE, by submitting a filing with the Commission pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder.

[11] 15 U.S.C. 78f, 78s(b)(2).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster Loan Area Number 9378]

North Dakota (And Contiguous Counties in Minnesota, South Dakota & Montana); Declaration of Disaster Loan Area

All counties in the State of North Dakota except Billings, Bowman, Golden Valley, and Slope; Clay, Kittson, Marshall, Norman, Polk, Traverse, and Wilkin Counties in Minnesota; Brown, Campbell, Corson, Marshall, McPherson, Perkins, and Roberts Counties in South Dakota; and Richland, Roosevelt, and Sheridan Counties in Montana constitute an economic injury disaster loan area as a result of severe winter storms and blizzard conditions during the period of January 3 through January 31, 1997. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on November 12, 1997 at the address listed below: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Fort Worth, TX 76155, or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: February 11, 1997.

Philip Lader,

Administrator.

[FR Doc. 97–4431 Filed 2–21–97; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Economic Injury Disaster Loan Area # 9382]

Commonwealth of Pennsylvania; Declaration of Disaster Loan Area

Allegheny County and the contiguous counties of Armstrong, Beaver, Butler, Washington, and Westmoreland in the Commonwealth of Pennsylvania constitute an economic injury disaster loan area as a result of damages caused by a fire which occurred on January 31, 1997 in the Glassport Industrial Park. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on November 14, 1997 at the address listed below: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Floor, Niagara Falls, NY 14303, or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: February 14, 1997.

Ginger Lew,

Acting Administrator.

[FR Doc. 97–4433 Filed 2–21–97; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Economic Injury Disaster Loan Area # 9383]

South Dakota (And Contiguous Counties in Minnesota, Iowa, Nebraska & Wyoming)

Declaration of Disaster Loan Area Aurora, Dewey, Hamlin, Hutchinson, Lake, Lincoln, Lyman, McPherson, Pennington, Perkins, Roberts, Shannon, Spink, and Todd Counties, which together with their contiguous counties comprise the entire State of South Dakota; as well as Big Stone County, Minnesota; Lyon and Sioux Counties in Iowa; Cherry, Dawes, Keya Paha, and Sheridan Counties in Nebraska; and Weston County, Wyoming constitute an economic injury disaster loan area as a result of severe winter storms and blizzard conditions during the period of January 3 through January 31, 1997. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on November 14, 1997 at the address listed below: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Fort Worth, TX 76155, or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent. Any contiguous counties not listed herein have been covered under a separate declaration for the same occurrence.

The economic injury numbers assigned to this disaster are 938300 for South Dakota; 938400 for Minnesota; 938500 for Iowa; 938600 for Nebraska; and 938700 for Wyoming.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: February 14, 1997.

Ginger Lew,

Acting Administrator.

[FR Doc. 97–4432 Filed 2–21–97; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences; Information on Imports During First 10 Months of 1996; Opportunity for Public Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: By this notice, the Trade Policy Staff Committee informs the public of certain U.S. import statistics for the period from January through October 1996 and affords the public an opportunity to comment on decisions, (including certain discretionary decisions) the President will make with respect to the Generalized System of Preferences (GSP) program. Before July 1, 1997, the President must announce the GSP "competitive need" limits set forth in section 503(c)(2)(A) of the Trade Act of 1974, as amended (the "1974 Act") (19 U.S.C. 2463(c)(2)(A)). The discretionary decisions concern (1) the "de minimis waiver" authority set forth in section 503(c)(2)(F) of their 1974 Act; and (2) the redesignation authority set forth in section 503(c)(2)(C) of the 1974 Act. Presidential decisions concerning the application of competitive need limits and other product-related decisions stemming from the 1995 Annual Review are expected to be announced in April, and implemented no later than July 1, 1997. (Note because the program's authorization previously expired on July 31, 1995, the Annual Review for that year was delayed until the program's reauthorization was signed into law on August 20, 1996. At that time the 1995 Annual Review resumed and no review for 1996 was conducted.

FOR FURTHER INFORMATION CONTACT:

GSP Subcommittee, Office of the U.S. Trade Representative, 600 17th Street, NW., Room 517, Washington, DC 20508. The telephone number is (202) 395–6971.

SUPPLEMENTARY INFORMATION:

I. Competitive Need Limits

Pursuant to section 503(c)(2)(A), any GSP-eligible beneficiary country that exported to the United States in 1996 a quantity of any one GSP eligible article in excess of (1) $75 million, or (2) 50 percent of the value of total U.S. imports of the article, is to be removed from GSP eligibility with respect to that article not later than July 1 of the next calendar year.

II. Discretionary Decisions

A. De Minimis Waivers

Section 503(c)(2)(F) of the 1974 Act permits the President to disregard the 50 percent "competitive need" limit with respect to any eligible article if the value of total imports of the article during calendar year 1996 did not exceed $13 million.

B. Redesignation of Eligible Articles

If a country is no longer a beneficiary developing country with respect to an eligible article because imports exceeded the competitive need limits in a prior year, then, pursuant to section 503(c)(2)(C) of the 1974 Act, the President may redesignate the beneficiary developing country with respect to the eligible article if imports do not exceed the competitive need limits in a subsequent year.

III. Implementation of Competitive Need Limits, Waivers, and Redesignations

A proclamation will be issued to be effective no later than July 1, 1997, making the adjustments to the list of eligible articles that are required by section 503(c)(2)(A) of the 1974 Act and announcing the discretionary decisions referred to in this notice, on the basis of official data covering all of calendar year 1996.

It should be emphasized that the information set forth below covers only the first 10 months of 1996. Partial year data is being published now to provide the maximum possible advance indication of adjustments that may be made to meet the requirements of section 503(c)(2)(A) of the 1974 Act and to afford the earliest opportunity for comment on the possible discretionary decisions.

List I below shows specific GSP-eligible articles for beneficiaries which have already exceeded estimated competitive need limitations (i.e., a beneficiary supplied over $75 million of an article and/or over 50 percent of imports of an article during the period from January through October, 1996) or have been graduated from the GSP in earlier years pursuant to the President's discretionary authority.

List II below shows beneficiaries which are approaching the competitive need limitations (i.e., a beneficiary accounted for over 48 percent of the value of total U.S. imports and/or over $63 million during the period from January through October 1996).

List III below shows beneficiaries which, despite accounting for more than 50 percent of the value of total U.S. imports of an article, may be eligible to

receive GSP benefits through the *de minimis* waiver (i.e., where a beneficiary accounted for more than the applicable percentage limit but the value of total U.S. imports of the item was less than $13 million during the period from January through October 1996).

List IV below shows articles from beneficiaries which are currently ineligible for GSP duty-free treatment but which may be eligible for redesignation to GSP status pursuant to the President's discretionary authority (i.e., a beneficiary accounted for less than 50 percent of the value of U.S. imports and the value of U.S. imports of the article from the beneficiary developing country was less than the applicable dollar limit during the period from January through October 1996). This list does not include articles from India which do not receive GSP treatment as a result of Presidential Proclamations 6425 of April 29, 1992 (57 FR 19067).

IV. Public Comments

All written comments with regard to the decisions summarized above should be addressed to: GSP Subcommittee, Office of the U.S. Trade Representative, 600 17th Street, NW., Room 517, Washington, DC 20508. All submissions must be in English and should conform to the information requirements of 15 CFR part 2007. Furthermore, each party providing comments should indicate on the first page of the submission its name, the relevant Harmonized Tariff Schedule subheading(s), the beneficiary country or territory of interest, and the type of action (e.g., the use of the President's *de minimis* waiver authority) in which the party is interested.

A party must provide fourteen copies of its statement which must be received by the Chairman of the GSP Subcommittee no later than 5 p.m., Friday, March 19. Comments received after the deadline will not be accepted. If the comments contain business confidential information, fourteen copies of a non-confidential version must also be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, the submissions containing confidential information should be clearly marked "confidential" at the top and bottom of each page of the submission. The version that does not contain confidential information should also be clearly marked, at the top and bottom of each page, "public version" or "non-confidential".

Written comments submitted in connection with these decisions, except for information granted "business confidential" status pursuant to 15 CFR 2007.7, will be available for public inspection shortly after the filing deadline by appointment only with the staff of the USTR Public Reading Room (202) 395–6186. Other requests and questions should be directed to the GSP Information Center at USTR by calling (202) 395–6971.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

BILLING CODE 3190–01–M

LIST I : COUNTRIES GRADUATED OR EXCEEDING COMPETITIVE NEED LIMITS
1996 U.S. IMPORTS - JANUARY THROUGH OCTOBER

IMPORTS	SHARE	FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
131,132,564	89.8%	*	8802.30.00	Brazil	92,502,023	4.9%
6,776,453	20.8%		9006.53.00	Malaysia	103,797,634	16.0%
150,323,267	18.3%	*	9009.12.00	Thailand	78,782,756	4.2%
125,346,935	15.3%	*	9018.90.80	Dominican Republic	244,038,834	33.4%
79,297,735	59.5%	G	9401.61.40	Croatia	267,098	0.1%
8,107,374	57.1%	G	9401.69.60	Croatia	505,625	0.2%
124,068,871	17.8%	G	9401.69.60	Slovenia	1,371,269	0.3%
92,143,155	15.2%	G	9401.69.60	Slovenia	16,005,690	4.4%
403,594,940	66.7%		9401.69.60	Malaysia	95,529,427	26.5%
78,151,933	58.2%	G	9401.90.40	Croatia	259,127	0.4%
110,779,117	38.7%	G	9401.90.40	Slovenia	2,442,451	4.6%
199,685,156	68.5%		9403.60.80	Malaysia	108,837,365	8.0%
420,133	10.0%			TOTALS BY PARTNER		
947,633	5.8%			PARTNER	IMPORTS	COUNT
2,395,802	36.2%			Argentina	110,779,117	1
57,519	0.8%			Brazil	488,012,757	11
151,607,563	59.4%			Chile	263,269,918	2
84,698,651	30.3%			Colombia	131,132,564	1
75,938,166	4.2%			Croatia	1,897,494	3
170,902,473	9.5%			Dominican Republic	701,205,565	5
14,749,033	10.5%			India	170,902,473	1
177,996	0.7%			Indonesia	418,351,775	3
48,865	0.1%			Malaysia	3,604,399,609	16
106,670,859	58.3%			Peru	107,278,492	1
107,278,492	11.3%			Philippines	85,078,570	2
156,599,059	16.6%			Slovenia	18,953,766	3
35,000	0.2%			Thailand	1,063,005,352	9
249,984	0.8%			Venezuela	126,045,538	5
33,138	0.0%					
1,658,545	7.5%			TOTAL	7,290,312,790	63
88,036,104	43.3%					
287,280,589	5.8%					
546,558,120	11.1%					
85,021,051	26.7%					
109,112,019	19.2%					
254,697,792	22.1%					
141,224,989	15.8%					
112,202,262	18.0%					
84,858,897	13.6%					
141,726,079	46.9%					
330,885,706	27.4%					
143,925,909	6.5%					
487,708,553	22.0%					
155,280,859	10.8%					
92,158,641	6.4%					
363,479,609	50.2%					
76,940,540	10.6%					
273,521,734	64.5%					
151,613,959	63.3%					
87,780,110	13.8%					
147,883,558	4.7%					

FLAGS: 'G'=Grad; '*'=Excl full yr; '1'=Excl Jan/Jun; '2'=Excl Jul/Dec; 'B'=Reduced limits apply; 'D'=De min; 'X'=Reduced limit waiver
'H'=Grad, Reduced limit would apply; '2'=Subject to reduced limits, All limits waived.

FLAGS	HTSUS	PARTNER
*	0603.10.70	Colombia
G	1605.10.20	Thailand
	1701.11.10	Dominican Republic
*	1701.11.10	Brazil
*	2402.10.80	Dominican Republic
G	2825.90.15	Brazil
	2909.19.10	Venezuela
	4015.11.00	Thailand
	4015.11.00	Malaysia
	4015.19.10	Malaysia
	4104.31.40	Argentina
	4412.13.30	Indonesia
G D	4412.22.30	Brazil
G	4412.29.35	Brazil
G D	4412.29.45	Brazil
G D	4412.29.45	Philippines
*	6406.10.65	Dominican Republic
	7113.11.50	Thailand
	7113.19.50	Dominican Republic
*	7113.19.50	India
G	7202.21.50	Brazil
G	7307.21.50	Brazil
G	7307.91.50	Brazil
*	7402.00.00	Chile
	7403.11.00	Peru
*	7403.11.00	Chile
G D	7604.10.30	Venezuela
G	7604.29.30	Venezuela
G	7605.11.00	Venezuela
G	7605.21.00	Venezuela
	8413.30.10	Brazil
*	8471.60.35	Thailand
	8471.60.35	Malaysia
	8471.70.50	Philippines
	8516.50.00	Thailand
	8517.11.00	Malaysia
	8517.19.80	Malaysia
*	8517.21.00	Thailand
	8517.21.00	Malaysia
	8517.80.10	Indonesia
*	8519.99.00	Malaysia
	8521.10.60	Thailand
*	8521.10.60	Malaysia
	8527.21.10	Brazil
*	8527.21.10	Malaysia
	8527.31.40	Malaysia
	8527.39.00	Malaysia
	8528.12.12	Malaysia
	8531.20.00	Malaysia
*	8544.30.00	Thailand

LIST II : COUNTRIES APPROACHING COMPETITIVE NEED LIMITS
1996 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
D	0202.30.02	Uruguay	53,636	71.2%
D	0302.65.00	Ecuador	1,534,170	44.0%
D	0302.69.10	Ecuador	20,956	44.4%
D	0303.32.00	Russia	117,704	69.0%
D	0303.71.00	Venezuela	633,696	45.5%
D	0303.77.00	Argentina	4,783,361	71.5%
D	0304.10.30	Chile	79,410	54.7%
* D	0304.20.50	Argentina	2,022,733	83.6%
D	0305.20.20	Russia	4,500	100.0%
1 D	0708.10.20	Guatemala	542,490	51.9%
D	0708.90.15	India	65,324	59.4%
D	0708.90.30	Ecuador	197,999	63.0%
* D	0709.20.10	Peru	4,516,837	63.0%
1 D	0710.29.30	Dominican Republic	1,060,549	43.7%
D	0710.29.30	Ecuador	1,054,419	43.5%
1 D	0710.80.93	Guatemala	916,135	48.8%
1 D	0711.30.00	Turkey	952,027	45.0%
D	0711.30.00	Morocco	1,113,108	52.6%
D	0711.40.00	India	1,522,862	68.6%
D	0713.31.40	Thailand	968,139	42.1%
D	0713.90.10	Peru	741,781	64.3%
D	0714.10.10	Costa Rica	2,862,804	95.3%
1 D	0714.10.20	Costa Rica	9,886,504	98.7%
1 D	0714.20.20	Dominican Republic	3,397,411	93.8%
1	0714.90.10	Costa Rica	7,730,779	49.3%
	0714.90.20	Costa Rica	5,904,984	42.5%
	0714.90.20	Jamaica	5,915,424	42.6%
1 D	0802.50.20	Turkey	204,806	57.8%
1 D	0802.50.40	Turkey	280,751	75.8%
1 D	0804.50.80	Thailand	1,017,355	51.5%
*	0811.20.20	Chile	8,416,137	63.5%
D	0811.90.10	Costa Rica	1,589,962	65.2%
1 D	0811.90.50	Costa Rica	2,227,918	83.4%
*	0813.10.00	Turkey	21,771,875	94.3%
* D	0813.30.00	Argentina	4,577,770	52.5%
1 D	0813.40.10	Thailand	784,727	77.3%
D	1007.00.00	Argentina	215,728	70.3%
D	1102.30.00	Thailand	2,096,095	80.8%
D	1102.90.30	India	11,512	43.6%
D	1103.14.00	Thailand	135,707	73.8%
1 D	1106.30.20	Ecuador	24,172	59.9%
D	1212.92.00	Thailand	17,450	46.3%
D	1301.90.40	Indonesia	742,816	61.9%
D	1403.90.40	India	1,279,732	50.3%
*	1602.50.20	Argentina	52,337,571	74.2%
D	1604.14.50	Philippines	117,873	91.4%
* D	1604.15.00	Chile	6,694,903	72.1%
*	1604.16.10	Morocco	8,719,681	53.4%
1 D	1604.16.30	Morocco	855,710	81.6%
1 D	1604.30.20	Russia	4,700,206	82.0%
D	1605.90.55	Indonesia	1,078,971	48.3%
D	1701.11.05	India	5,964,507	99.8%
D	1702.60.22	Argentina	45,420	100.0%
1 D	1702.90.35	Belize	4,079,796	79.2%
D	1702.90.40	Dominican Republic	1,025,126	93.7%
D	1703.10.30	Dominican Republic	1,030,424	53.0%
1 D	1703.90.30	Lebanon	20,850	56.8%
D	1806.32.55	Colombia	174,900	54.1%
D	2004.10.40	Colombia	17,807	75.2%
D	2005.10.00	Guatemala	118,473	54.6%
1 D	2005.80.00	Thailand	2,011,374	81.0%
D	2006.00.70	Thailand	1,747,027	50.5%
	2008.19.15	Dominican Republic	6,497,254	42.2%
* D	2008.30.10	Dominican Republic	61,669	50.0%
* D	2008.50.20	Argentina	640,730	69.8%
D	2008.99.13	Costa Rica	6,103,696	71.5%
D	2008.99.23	Dominican Republic	325,061	78.0%
1 D	2008.99.35	Thailand	3,103,219	82.9%
D	2008.99.45	Dominican Republic	102,683	54.1%
D	2106.90.03	Dominican Republic	10,200	44.9%
D	2106.90.12	Dominican Republic	4,761	66.4%
D	2202.90.36	Dominican Republic	112,649	98.5%
* D	2208.60.50	Russia	67,368	79.3%
D	2516.22.00	India	85,851	76.1%
1 D	2516.90.00	Republic of South Af	1,783,565	48.7%
	2603.00.00	Chile	48,563,636	70.2%
D	2608.00.00	Peru	2,349,969	54.3%
D	2619.00.30	Venezuela	403,276	73.3%
D	2707.99.40	Czech Republic	597,100	52.6%
1 D	2804.29.00	Ukraine	1,756,474	56.9%
D	2811.29.50	Brazil	6,041,378	60.3%
D	2819.10.00	Kazakhstan	2,714,927	46.7%
1 D	2825.30.00	Republic of South Af	4,113,768	84.6%
1 D	2825.70.00	Chile	4,899,779	79.2%
* D	2827.39.20	India	41,583	49.7%
* D	2833.29.30	India	14,905	100.0%
D	2836.99.20	Brazil	150,733	86.4%
1 D	2840.11.00	Turkey	2,410,000	99.5%
D	2840.19.00	Turkey	27,599	94.9%
D	2841.61.00	Czech Republic	1,059,798	43.4%
D	2841.90.10	Republic of South Af	397,631	83.9%
D	2841.90.20	Chile	1,781,314	66.5%
* D	2848.00.10	India	5,040	61.5%
D	2849.10.00	Argentina	165,449	48.6%
	2849.90.50	Trinidad and Tobago	9,534,233	45.3%
D	2850.00.20	Republic of South Af	3,486,838	100.0%
D	2902.60.00	Brazil	1,298,461	48.9%
* D	2902.90.40	India	11,686	50.7%
* D	2903.19.10	Brazil	244,799	56.5%
1 D	2903.23.00	Brazil	6,184,112	74.7%
* D	2904.90.04	India	81,444	92.8%
D	2904.90.15	Brazil	12,576,566	99.9%

FLAGS: 'G'=Grad; '*'=Excl full yr; '1'=Excl Jan/Jun; '2'=Excl Jul/Dec; 'R'=Reduced limits apply; 'D'=De min; 'X'=Reduced limit waiver
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LIST II : COUNTRIES APPROACHING COMPETITIVE NEED LIMITS
1996 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
*	2905.11.20	Trinidad and Tobago	56,552,817	31.7%
*	2906.11.00	India	11,033,770	45.9%
D	2908.90.24	Czech Republic	196,269	74.3%
D	2909.50.40	Indonesia	2,586,025	52.1%
D	2912.13.00	Colombia	13,205	100.0%
D	2914.40.20	Czech Republic	43,533	92.3%
* D	2914.69.10	India	64,700	55.8%
D	2916.31.15	Estonia	6,339,551	49.3%
D	2916.39.08	Hungary	179,380	89.7%
* D	2916.39.15	India	2,406,192	67.8%
D	2917.19.10	Hungary	1,384,399	73.3%
* D	2917.32.00	Brazil	358,030	45.9%
	2918.21.10	Brazil	6,519,431	47.3%
D	2918.21.50	Poland	355,294	70.4%
D	2918.22.50	Jordan	70,401	64.8%
D	2918.90.35	Romania	674,707	76.8%
* D	2921.42.21	India	363,616	100.0%
D	2921.42.23	Guatemala	221,432	70.1%
* D	2921.42.55	India	431,058	75.6%
D	2921.43.19	Hungary	366,786	60.9%
* D	2922.29.26	India	472,180	99.4%
D	2931.00.25	Brazil	2,520,154	100.0%
D	2932.13.00	Republic of South Af	3,261,187	67.3%
D	2932.29.25	Czech Republic	6,714	100.0%
*	2933.29.45	Slovenia	15,956,977	51.8%
* D	2933.39.25	Brazil	4,188,000	56.9%
1 D	2933.40.08	Hungary	346,243	95.9%
D	2933.40.10	Russia	3,615,624	53.9%
* D	2933.40.30	Brazil	5,037,311	69.8%
D	2934.90.08	Czech Republic	15,850	100.0%
1 D	2938.10.00	Brazil	529,859	52.5%
*	3301.12.00	Brazil	18,646,112	78.6%
* D	3301.24.00	India	5,713,436	87.8%
*	3301.90.10	India	11,777,182	69.9%
D	3603.00.30	Brazil	1,930,359	63.9%
D	3808.20.28	Colombia	2,240,160	47.9%
D	3808.30.20	Brazil	1,771,176	82.9%
* D	3808.90.70	India	615,538	69.4%
D	3823.11.00	Malaysia	717,682	53.1%
D	3823.12.00	Malaysia	500,245	76.3%
D	3823.19.20	Malaysia	5,162,531	59.0%
	3824.90.40	Malaysia	30,640,741	64.0%
D	3912.90.00	Brazil	3,388,301	42.9%
D	3920.59.80	Dominican Republic	1,065,858	61.0%
	3921.12.11	Colombia	29,148,693	47.1%
D	4010.19.50	Malaysia	2,814,014	54.4%
D	4010.24.41	Malaysia	47,526	97.4%
*	4011.10.10	Brazil	66,890,327	6.1%
*	4016.99.35	Thailand	8,262,454	43.0%
D	4104.39.20	Thailand	2,220,624	79.4%
D	4104.39.50	India	3,957,873	58.4%
* D	4106.19.30	Pakistan	194,063	51.1%
* D	4106.20.60	Pakistan	6,806,332	65.2%
*	4107.90.60	Republic of South Af	16,259,416	66.2%
* D	4109.00.70	Brazil	340,139	63.8%
*	4203.21.20	Indonesia	10,814,253	61.4%
D	4205.00.60	Venezuela	304,780	66.7%
D	4302.20.60	Brazil	73,003	55.8%
*	4411.11.00	Brazil	20,468,003	51.2%
* D	4411.19.20	Brazil	4,090,264	57.7%
D	4412.13.25	Malaysia	1,318,543	49.9%
	4412.13.30	Malaysia	59,141,059	20.3%
	4412.13.55	Indonesia	10,134,707	65.7%
* D	4412.14.25	Brazil	5,610,847	96.7%
* D	4412.19.10	Brazil	348,888	91.9%
* D	4412.22.30	Indonesia	2,700,701	66.6%
D	4412.22.40	Colombia	815,956	52.5%
D	4412.22.50	Malaysia	2,776,529	47.6%
* D	4412.92.10	Brazil	29,635	100.0%
D	4412.92.50	Indonesia	71,963	57.4%
D	4412.92.90	Malaysia	336,817	43.2%
* D	4412.99.15	Brazil	551,891	100.0%
1 D	4412.99.45	Indonesia	112,876	49.6%
D	4412.99.55	Colombia	736,714	62.1%
* D	4417.00.60	Brazil	705,910	54.0%
D	4421.90.30	Philippines	375,816	46.9%
D	4602.10.23	Indonesia	1,822	100.0%
1	4823.90.20	Philippines	8,362,976	61.2%
D	5110.00.00	Czech Republic	36,883	52.9%
* D	5208.31.20	India	167,351	99.0%
* D	5208.32.10	India	404,413	62.7%
* D	5208.41.20	India	520,836	78.7%
* D	5208.42.10	India	1,216,312	93.7%
* D	5208.51.20	India	10,776	67.1%
* D	5208.52.10	India	88,671	55.6%
* D	5209.31.30	India	1,347,446	96.9%
* D	5209.41.30	India	2,303,201	97.6%
* D	5209.51.30	India	89,110	65.5%
* D	5310.90.00	India	268,113	70.5%
1 D	5607.30.20	Philippines	3,481,331	86.1%
1 D	5609.00.20	Philippines	383,457	50.0%
* D	5702.20.10	India	3,956,456	98.9%
D	5702.49.15	India	1,502,835	76.6%
* D	5702.99.20	India	1,445,234	58.5%
* D	5703.90.00	India	4,873,827	55.7%
D	5904.91.00	India	6,770	100.0%
	6116.10.08	Thailand	8,607,562	44.2%
D	6116.99.35	Philippines	71,341	61.4%
D	6304.99.25	Philippines	99,041	61.2%
1 D	6501.00.60	Czech Republic	8,210	50.7%
D	7002.10.20	Malaysia	506,560	65.8%
D	7010.91.30	Egypt	543,852	47.0%

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LIST II : COUNTRIES APPROACHING COMPETITIVE NEED LIMITS
1996 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
D	7018.90.50	Czech Republic	5,762,544	57.1%
D	7019.19.30	Brazil	3,602,910	85.9%
D	7109.00.00	Peru	528,785	61.9%
	7113.19.21	Peru	20,383,225	49.8%
D	7113.20.21	India	123,171	56.5%
D	7113.20.30	Mauritius	508,445	52.1%
*	7116.20.05	Thailand	8,512,189	47.6%
D	7202.21.10	Egypt	619,814	49.9%
D	7319.20.00	Malaysia	1,397,752	50.8%
1 D	7403.12.00	Peru	723,176	100.0%
D	7409.39.50	Hungary	186,550	64.8%
D	7411.21.50	Trinidad and Tobago	2,877,193	49.7%
* D	7614.90.20	Venezuela	1,296,914	50.5%
1 D	7614.90.50	Venezuela	3,838,319	82.0%
	7616.99.50	Malaysia	60,120,515	13.6%
D	7904.00.00	Republic of South Af	661,131	47.0%
	7905.00.00	Peru	15,377,152	94.0%
*	8104.11.00	Russia	41,353,782	81.0%
	8108.90.60	Russia	41,658,207	59.8%
	8112.30.60	Russia	6,917,123	46.9%
1 D	8112.91.50	Chile	6,368,902	83.1%
D	8202.91.30	Brazil	2,200,553	52.2%
D	8211.92.80	Pakistan	1,800,157	49.8%
1 D	8213.00.60	Brazil	286,955	51.8%
	8412.10.00	Russia	12,896,789	87.5%
	8414.30.40	Brazil	74,422,749	47.6%
	8414.30.80	Brazil	64,662,208	15.3%
	8426.11.00	Brazil	8,997,507	44.6%
	8428.32.00	Slovenia	6,540,500	45.3%
*	8429.30.00	Brazil	19,096,315	70.6%
1 D	8450.90.40	Brazil	29,093	63.5%
D	8459.51.00	Czech Republic	2,021,724	59.4%
*	8471.49.26	Thailand	68,485,132	12.2%
D	8471.49.31	Malaysia	1,302,135	49.0%
	8471.60.35	Indonesia	65,144,707	1.3%
	8483.10.30	Brazil	57,316,358	31.0%
D	8483.50.40	Malaysia	355,867	66.2%
	8504.40.90	Malaysia	67,347,783	4.9%
D	8519.21.00	Malaysia	414,572	62.4%
D	8519.31.00	Malaysia	226,701	52.2%
	8520.33.00	Malaysia	69,253,134	23.8%
	8521.10.90	Malaysia	22,950,172	70.1%
	8525.20.05	Thailand	10,260,287	47.2%
	8525.20.30	Malaysia	58,101,088	12.9%
	8527.12.00	Malaysia	62,119,565	52.6%
	8527.13.60	Malaysia	72,865,797	20.3%
	8527.29.40	Brazil	26,874,947	50.1%
	8527.32.50	Malaysia	19,300,796	74.2%
	8528.12.04	Indonesia	61,416,774	98.8%
D	8528.12.16	Hungary	1,760,551	47.9%
D	8528.12.76	Malaysia	4,987,343	57.2%
	8531.20.00	Thailand	67,782,301	10.7%
	8541.40.20	Malaysia	59,238,326	23.3%
D	8543.81.00	Philippines	1,856,042	43.4%
	8544.30.00	Indonesia	57,199,581	1.8%
* D	8546.10.00	Brazil	735,580	52.0%
D	8703.10.50	Poland	2,080,695	42.1%
	8708.39.50	Brazil	69,229,772	5.3%
D	9006.62.00	Thailand	10,383,025	82.5%
D	9009.30.00	Malaysia	3,058,035	49.0%
D	9013.10.30	Ukraine	709,325	43.2%
D	9018.90.10	Argentina	614,391	68.5%
1 D	9102.29.04	Philippines	909,635	80.8%
D	9401.69.40	Indonesia	6,118,886	50.6%
D	9403.50.60	Macao	3,308	49.0%
	9403.60.80	Indonesia	72,389,582	5.3%
*	9405.50.30	India	19,487,961	63.9%
D	9506.19.40	Czech Republic	1,653,743	62.3%
* D	9506.61.00	Philippines	5,278,022	76.3%
1 D	9614.20.60	Turkey	86,762	54.9%
1 D	9614.20.80	Turkey	182,963	46.7%

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LIST II : COUNTRIES APPROACHING COMPETITIVE NEED LIMITS
1996 U.S. IMPORTS - JANUARY THROUGH OCTOBER

TOTALS BY PARTNER

PARTNER	IMPORTS	COUNT
Argentina	65,403,153	9
Belize	4,079,796	1
Brazil	497,948,636	38
Chile	76,804,081	7
Colombia	33,147,435	7
Costa Rica	36,306,647	7
Czech Republic	11,402,348	11
Dominican Republic	14,693,645	12
Ecuador	2,831,716	5
Egypt	1,163,666	2
Estonia	6,339,551	1
Guatemala	1,798,530	4
Hungary	4,223,909	6
India	83,732,474	38
Indonesia	290,513,664	14
Jamaica	5,915,424	1
Jordan	70,401	1
Kazakhstan	2,714,927	1
Lebanon	20,850	1
Macao	3,308	1
Malaysia	607,001,828	27
Mauritius	508,445	1
Morocco	10,688,499	3
Pakistan	8,800,552	3
Peru	44,620,925	7
Philippines	20,935,534	10
Poland	2,435,989	2
Republic of South Af	29,963,536	7
Romania	674,707	1
Russia	111,331,303	9
Slovenia	22,497,477	2
Thailand	196,394,667	17
Trinidad and Tobago	68,964,243	3
Turkey	25,916,783	8
Ukraine	2,465,799	2
Uruguay	53,636	1
Venezuela	6,476,985	5
TOTAL	2,298,845,069	275

LIST III : POSSIBLE de MINIMIS ITEMS
1996 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
D	0202.30.02	Uruguay	53,636	71.2%
D	0302.65.00	Ecuador	1,534,170	44.0%
D	0302.69.10	Ecuador	20,956	44.4%
D	0303.32.00	Russia	117,704	69.0%
D	0303.71.00	Venezuela	633,696	45.5%
D	0303.77.00	Argentina	4,783,361	71.5%
D	0304.10.30	Chile	79,410	54.7%
* D	0304.20.50	Argentina	2,022,733	83.6%
D	0305.20.20	Russia	4,500	100.0%
1 D	0708.10.20	Guatemala	542,490	51.9%
D	0708.90.15	India	65,326	59.4%
D	0708.90.30	Ecuador	197,999	63.0%
* D	0709.20.10	Peru	4,516,837	63.0%
1 D	0710.29.30	Dominican Republic	1,060,549	43.7%
D	0710.29.30	Ecuador	1,054,419	43.5%
1 D	0710.80.93	Guatemala	916,135	48.8%
1 D	0711.30.00	Turkey	952,027	45.0%
D	0711.30.00	Morocco	1,113,108	52.6%
D	0711.40.00	India	1,522,862	68.6%
D	0713.31.40	Thailand	968,139	42.1%
D	0713.90.10	Peru	741,781	64.3%
D	0714.10.10	Costa Rica	2,862,804	95.3%
1 D	0714.10.20	Costa Rica	9,886,504	98.7%
1 D	0714.20.20	Dominican Republic	3,397,411	93.8%
1 D	0802.50.20	Turkey	204,806	57.8%
1 D	0802.50.40	Turkey	280,751	75.8%
1 D	0804.50.80	Thailand	1,017,355	51.5%
D	0811.90.10	Costa Rica	1,589,962	65.2%
1 D	0811.90.50	Costa Rica	2,227,918	83.4%
* D	0813.30.00	Argentina	4,577,770	52.5%
1 D	0813.40.10	Thailand	784,727	77.3%
D	1007.00.00	Argentina	215,728	70.3%
D	1102.30.00	Thailand	2,096,095	80.8%
D	1102.90.30	India	11,512	43.6%
D	1103.14.00	Thailand	135,707	73.8%
1 D	1106.30.20	Ecuador	24,172	59.9%
D	1212.92.00	Thailand	17,450	46.3%
D	1301.90.40	Indonesia	742,816	61.9%
D	1403.90.40	India	1,279,732	50.3%
D	1604.14.50	Philippines	117,873	91.4%
* D	1604.15.00	Chile	6,694,903	72.1%
1 D	1604.16.30	Morocco	855,710	81.6%
1 D	1604.30.20	Russia	4,700,206	82.0%
D	1605.90.55	Indonesia	1,078,971	48.3%
D	1701.11.05	India	5,964,507	99.8%
D	1702.60.22	Argentina	45,420	100.0%
1 D	1702.90.35	Belize	4,079,796	79.2%
D	1702.90.40	Dominican Republic	1,025,126	93.7%
D	1703.10.30	Dominican Republic	1,030,424	53.0%
1 D	1703.90.30	Lebanon	20,850	56.8%
D	1806.32.55	Colombia	174,900	54.1%
D	2004.10.40	Colombia	17,807	75.2%
D	2005.10.00	Guatemala	118,473	54.6%
1 D	2005.80.00	Thailand	2,011,374	81.0%
D	2006.00.70	Thailand	1,747,027	50.5%
D	2008.30.10	Dominican Republic	61,669	50.0%
* D	2008.50.20	Argentina	640,730	69.8%
D	2008.99.13	Costa Rica	6,103,696	71.5%
D	2008.99.23	Dominican Republic	325,061	78.0%
1 D	2008.99.35	Thailand	3,103,219	82.9%
D	2008.99.45	Dominican Republic	102,683	54.1%
D	2106.90.03	Dominican Republic	10,200	44.9%
D	2106.90.12	Dominican Republic	4,761	66.4%
D	2202.90.36	Dominican Republic	112,649	98.5%
* D	2208.60.50	Russia	67,368	79.3%
D	2516.22.00	India	85,851	76.1%
1 D	2516.90.00	Republic of South Af	1,783,565	48.7%
D	2608.00.00	Peru	2,349,969	54.3%
D	2619.00.30	Venezuela	403,276	73.3%
D	2707.99.40	Czech Republic	597,100	52.6%
1 D	2804.29.00	Ukraine	1,756,474	56.9%
D	2811.29.50	Brazil	6,041,378	60.3%
D	2819.10.00	Kazakhstan	2,714,927	46.7%
1 D	2825.30.00	Republic of South Af	4,113,768	84.6%
1 D	2825.70.00	Chile	4,899,779	79.2%
* D	2827.39.20	India	41,583	49.7%
* D	2833.29.30	India	14,905	100.0%
D	2836.99.20	Brazil	150,733	86.4%
1 D	2840.11.00	Turkey	2,410,000	99.5%
D	2840.19.00	Turkey	27,599	94.9%
D	2841.61.00	Czech Republic	1,059,798	43.4%
D	2841.90.10	Republic of South Af	397,631	83.9%
D	2841.90.20	Chile	1,781,314	66.5%
* D	2848.00.10	India	5,040	61.5%
D	2849.10.00	Argentina	165,449	48.6%
D	2850.00.20	Republic of South Af	3,486,838	100.0%
D	2902.60.00	Brazil	1,298,461	48.9%
* D	2902.90.40	India	11,686	50.7%
* D	2903.19.10	Brazil	244,799	56.5%
1 D	2903.23.00	Brazil	6,184,112	74.7%
* D	2904.90.04	India	81,444	92.8%
D	2904.90.15	Brazil	12,576,566	99.9%
D	2908.90.24	Czech Republic	196,249	74.3%
D	2909.50.40	Indonesia	2,586,025	52.1%
D	2912.13.00	Colombia	13,205	100.0%
D	2914.40.20	Czech Republic	43,533	92.3%
* D	2914.69.10	India	64,700	55.8%
D	2916.31.15	Estonia	6,339,551	49.3%
D	2916.39.08	Hungary	179,380	89.7%
* D	2916.39.15	India	2,406,192	67.8%
D	2917.19.10	Hungary	1,384,399	73.3%
* D	2917.32.00	Brazil	358,030	45.9%

FLAGS: 'G'=Grad; '*'=Excl full yr; '1'=Excl Jan/Jun; '2'=Excl Jul/Dec; 'R'=Reduced limits apply; 'D'=De min; 'X'=Reduced limit waiver
'H'=Grad, Reduced limit would apply; 'Z'=Subject to reduced limits, All limits waived.

LIST III : POSSIBLE de MINIMIS ITEMS
1996 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
D	2918.21.50	Poland	355,294	70.4%
D	2918.22.50	Jordan	70,401	64.8%
D	2918.90.35	Romania	674,707	76.8%
* D	2921.42.21	India	363,616	100.0%
D	2921.42.23	Guatemala	221,432	70.1%
* D	2921.42.55	India	431,058	75.6%
D	2921.43.19	Hungary	366,786	60.9%
* D	2922.29.26	India	472,180	99.4%
D	2931.00.25	Brazil	2,520,154	100.0%
D	2932.13.00	Republic of South Af	3,261,187	67.3%
D	2932.29.25	Czech Republic	6,714	100.0%
* D	2933.39.25	Brazil	4,188,000	56.9%
1 D	2933.40.08	Hungary	346,243	95.9%
D	2933.40.10	Russia	3,615,624	53.9%
* D	2933.40.30	Brazil	5,037,311	69.8%
D	2934.90.08	Czech Republic	15,850	100.0%
1 D	2938.10.00	Brazil	529,859	52.5%
* D	3301.24.00	India	5,713,436	87.8%
D	3603.00.30	Brazil	1,930,359	63.9%
D	3808.20.28	Colombia	2,240,160	47.9%
D	3808.30.20	Brazil	1,771,176	82.9%
* D	3808.90.70	India	615,538	69.4%
D	3823.11.00	Malaysia	717,682	53.1%
D	3823.12.00	Malaysia	500,245	76.3%
D	3823.19.20	Malaysia	5,162,531	59.0%
D	3912.90.00	Brazil	3,388,301	42.9%
D	3920.59.80	Dominican Republic	1,065,858	61.0%
D	4010.19.50	Malaysia	2,814,014	54.4%
D	4010.24.41	Malaysia	47,526	97.4%
D	4104.39.20	Thailand	2,220,624	79.4%
D	4104.39.50	India	3,957,873	58.4%
* D	4106.19.30	Pakistan	194,063	51.1%
* D	4106.20.60	Pakistan	6,806,332	65.2%
* D	4109.00.70	Brazil	340,139	63.8%
D	4205.00.60	Venezuela	304,780	66.7%
D	4302.20.60	Brazil	73,003	55.8%
* D	4411.19.20	Brazil	4,090,264	57.7%
D	4412.13.25	Malaysia	1,318,543	49.9%
* D	4412.14.25	Brazil	5,610,847	96.7%
* D	4412.19.10	Brazil	348,888	91.9%
* D	4412.22.30	Indonesia	2,700,701	64.6%
D	4412.22.40	Colombia	815,956	52.5%
D	4412.22.50	Malaysia	2,776,529	47.6%
* D	4412.92.10	Brazil	29,635	100.0%
D	4412.92.50	Indonesia	71,963	57.4%
D	4412.92.90	Malaysia	336,817	43.2%
* D	4412.99.15	Brazil	551,891	100.0%
1 D	4412.99.45	Indonesia	112,876	49.6%
D	4412.99.55	Colombia	736,714	62.1%
* D	4417.00.60	Brazil	705,910	54.0%
D	4421.90.30	Philippines	375,816	46.9%
D	4602.10.23	Indonesia	1,822	100.0%
D	5110.00.00	Czech Republic	36,883	52.9%
* D	5208.31.20	India	167,351	99.0%
* D	5208.32.10	India	404,413	62.7%
* D	5208.41.20	India	520,836	78.7%
* D	5208.42.10	India	1,216,312	93.7%
* D	5208.51.20	India	10,776	67.1%
* D	5208.52.10	India	88,671	55.6%
* D	5209.31.30	India	1,347,446	96.9%
* D	5209.41.30	India	2,303,201	97.6%
* D	5209.51.30	India	89,110	65.5%
* D	5310.90.00	India	268,113	70.5%
1 D	5607.30.20	Philippines	3,481,331	86.1%
1 D	5609.00.20	Philippines	383,457	50.0%
* D	5702.20.10	India	3,956,456	98.9%
D	5702.49.15	India	1,502,835	76.6%
* D	5702.99.20	India	1,445,234	58.5%
* D	5703.90.00	India	4,873,827	55.7%
D	5904.91.00	India	6,770	100.0%
D	6116.99.35	Philippines	71,341	61.4%
D	6304.99.25	Philippines	99,041	61.2%
1 D	6501.00.60	Czech Republic	8,210	50.7%
D	7002.10.20	Malaysia	506,560	65.8%
D	7010.91.30	Egypt	543,852	47.0%
D	7018.90.50	Czech Republic	5,762,544	57.1%
D	7019.19.30	Brazil	3,602,910	85.9%
D	7109.00.00	Peru	528,785	61.9%
D	7113.20.21	India	123,171	56.5%
D	7113.20.30	Mauritius	508,445	52.1%
D	7202.21.10	Egypt	619,814	49.9%
D	7319.20.00	Malaysia	1,397,752	50.8%
1 D	7403.12.00	Peru	723,176	100.0%
D	7409.39.50	Hungary	186,550	64.8%
D	7411.21.50	Trinidad and Tobago	2,877,193	49.7%
* D	7614.90.20	Venezuela	1,296,914	50.5%
1 D	7614.90.50	Venezuela	3,838,319	82.0%
D	7904.00.00	Republic of South Af	661,131	47.0%
1 D	8112.91.50	Chile	6,368,902	83.1%
D	8202.91.30	Brazil	2,200,553	52.2%
D	8211.92.60	Pakistan	1,800,157	49.8%
1 D	8213.00.60	Brazil	286,955	51.8%
1 D	8450.90.40	Brazil	29,093	63.5%
D	8459.51.00	Czech Republic	2,021,724	59.4%
D	8471.49.31	Malaysia	1,302,135	49.0%
D	8483.50.40	Malaysia	355,867	66.2%
D	8519.21.00	Malaysia	414,572	62.4%
D	8519.31.00	Malaysia	226,701	52.2%
D	8528.12.16	Hungary	1,760,551	47.9%
D	8528.12.76	Malaysia	4,987,343	57.2%
D	8543.81.00	Philippines	1,856,042	43.4%
* D	8546.10.00	Brazil	735,580	52.0%

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LIST III : POSSIBLE de MINIMIS ITEMS
1996 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
D	8703.10.50	Poland	2,080,695	42.1%
D	9006.62.00	Thailand	10,383,025	82.5%
D	9009.30.00	Malaysia	3,058,035	49.0%
D	9013.10.30	Ukraine	709,325	43.2%
D	9018.90.10	Argentina	614,391	68.5%
1 D	9102.29.04	Philippines	909,635	80.8%
D	9401.69.40	Indonesia	6,118,886	50.6%
D	9403.50.60	Macao	3,308	49.0%
D	9506.19.40	Czech Republic	1,653,743	62.3%
* D	9506.61.00	Philippines	5,278,022	76.3%
1 D	9614.20.60	Turkey	86,762	54.9%
1 D	9614.20.80	Turkey	182,963	46.7%

TOTALS BY PARTNER

PARTNER	IMPORTS	COUNT
Argentina	13,065,582	8
Belize	4,079,796	1
Brazil	64,824,907	27
Chile	19,824,308	5
Colombia	3,998,742	6
Costa Rica	22,670,884	5
Czech Republic	11,402,348	11
Dominican Republic	8,196,391	11
Ecuador	2,831,716	5
Egypt	1,163,666	2
Estonia	6,339,551	1
Guatemala	1,798,530	4
Hungary	4,223,909	6
India	41,433,561	35
Indonesia	13,414,060	8
Jordan	70,401	1
Kazakhstan	2,714,927	1
Lebanon	20,850	1
Macao	3,308	1
Malaysia	25,922,852	16
Mauritius	508,445	1
Morocco	1,968,818	2
Pakistan	8,800,552	3
Peru	8,860,548	5
Philippines	12,572,558	9
Poland	2,435,989	2
Republic of South Af	13,704,120	6
Romania	674,707	1
Russia	8,505,402	5
Thailand	24,484,742	11
Trinidad and Tobago	2,877,193	1
Turkey	4,144,908	7
Ukraine	2,465,799	2
Uruguay	53,636	1
Venezuela	6,476,985	5
TOTAL	346,534,691	216

LIST IV : POSSIBLE REDESIGNATION ITEMS
1996 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
*	0703.10.20	Chile	0	0.0%
*	0709.10.00	Chile	95,570	11.4%
*	0710.80.70	Guatemala	848,201	18.2%
*	0811.20.40	Chile	735,503	25.6%
*	1005.90.20	Argentina	0	0.0%
*	1005.90.40	Argentina	35,556	2.2%
*	1301.90.40	Brazil	425,808	35.5%
*	1604.14.50	Thailand	0	0.0%
*	1701.11.05	Brazil	0	0.0%
*	1701.11.20	Guatemala	49,814,034	36.5%
*	1701.11.20	Brazil	9,552,693	7.0%
*	1701.12.10	Brazil	0	0.0%
*	1701.91.05	Brazil	0	0.0%
*	1701.91.10	Brazil	0	0.0%
*	1701.99.05	Brazil	0	0.0%
*	1701.99.10	Brazil	1,088,400	6.3%
*	1806.10.65	Brazil	0	0.0%
*	2007.99.48	Argentina	77,844	25.0%
*	2007.99.50	Brazil	596,812	6.4%
*	2515.11.00	Brazil	0	0.0%
*	2603.00.00	Indonesia	0	0.0%
*	2804.69.10	Brazil	14,425,657	25.8%
*	2843.30.00	Chile	0	0.0%
*	2849.10.00	Brazil	102,157	30.0%
*	2905.11.20	Trinidad and Tobago	56,552,817	31.7%
*	2906.11.00	Brazil	1,104,000	4.5%
*	2907.23.00	Brazil	270,011	6.2%
*	2909.44.00	Brazil	0	0.0%
*	2915.31.00	Brazil	0	0.0%
*	2917.32.00	Brazil	358,030	45.9%
*	2918.22.10	Turkey	0	0.0%
*	2921.12.00	Brazil	0	0.0%
*	2933.71.00	Russia	0	0.0%
*	2934.90.15	Brazil	1,347,580	28.9%
*	3806.30.00	Argentina	0	0.0%
*	3812.20.10	Brazil	76,032	1.6%
*	3824.90.40	Brazil	2,154,746	4.5%
*	3904.21.00	Brazil	0	0.0%
2	3926.20.30	Pakistan	391,460	12.0%
*	4006.10.00	Brazil	52,810	14.5%
*	4011.10.10	Brazil	66,890,327	6.1%
*	4011.10.50	Brazil	2,723,377	11.5%
*	4011.20.10	Brazil	37,627,642	4.7%
*	4011.20.50	Brazil	986,835	0.9%
*	4016.99.30	Thailand	591,093	2.2%
*	4016.99.35	Thailand	8,262,454	43.0%
*	4104.21.00	Argentina	3,240,405	14.3%
*	4104.22.00	Brazil	512,896	7.1%
*	4104.22.00	Argentina	145,249	2.0%
*	4104.29.50	Argentina	75,011	3.4%
*	4104.29.90	Argentina	51,728	0.2%
*	4104.31.50	Argentina	1,455,083	5.4%
*	4104.31.60	Argentina	606,617	2.2%
*	4104.31.80	Argentina	1,014,435	1.0%
*	4104.39.50	Argentina	14,865	0.2%
*	4104.39.60	Argentina	2,899,103	22.1%
*	4104.39.80	Argentina	446,468	1.1%
*	4105.20.60	Argentina	69,836	0.2%
*	4106.12.00	India	223,204	11.6%
*	4106.20.30	India	646,710	20.5%
*	4106.20.60	India	2,692,475	25.8%
*	4107.21.00	Argentina	0	0.0%
*	4107.29.30	Argentina	173,767	2.8%
*	4107.29.60	Argentina	37,847	0.4%
*	4107.90.60	Argentina	279	0.0%
*	4109.00.70	Argentina	0	0.0%
2	4203.21.20	Pakistan	211,833	1.2%
2	4203.21.55	Pakistan	358,261	21.6%
2	4203.21.60	Pakistan	593,862	10.9%
2	4203.21.80	Pakistan	6,087,354	8.0%
*	4205.00.60	Argentina	16,684	3.6%
*	4411.19.40	Brazil	3,742,570	8.5%
*	4411.21.00	Brazil	0	0.0%
*	4411.29.60	Brazil	0	0.0%
*	4411.29.90	Brazil	0	0.0%
*	4412.13.05	Indonesia	10,903,891	33.9%
*	4412.13.25	Brazil	977,513	37.0%
*	4412.13.25	Indonesia	10,314	0.3%
*	4412.14.30	Brazil	25,091,876	22.4%
*	4412.14.30	Indonesia	36,121,665	32.3%
*	4412.14.55	Brazil	856,137	9.6%
*	4412.14.55	Indonesia	990,746	11.1%
*	4412.22.40	Indonesia	369,225	23.7%
*	4412.22.40	Brazil	0	0.0%
*	4412.29.35	Indonesia	1,236,742	7.5%
*	4412.29.45	Indonesia	292,744	4.4%
*	4421.90.50	Brazil	0	0.0%
*	4421.90.60	Brazil	0	0.0%
*	4802.60.10	Brazil	8,385	0.9%
*	4823.20.10	Brazil	0	0.0%
*	5607.29.00	Brazil	1,538,667	23.6%
2	5701.10.13	Pakistan	26,054	27.1%
2	5702.10.10	Pakistan	2,165	0.4%
2	5702.91.20	Pakistan	1,600	6.0%
2	5805.00.20	Pakistan	0	0.0%
2	6304.99.10	Pakistan	0	0.0%
2	6304.99.40	Pakistan	0	0.0%
*	6406.10.65	Brazil	4,618,180	1.8%
*	6406.99.60	Argentina	4,177,941	20.7%
*	6702.90.65	Thailand	0	0.0%
*	6905.10.00	Venezuela	2,839,964	36.1%
*	6908.10.20	Thailand	600,646	6.4%

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LIST IV : POSSIBLE REDESIGNATION ITEMS
1996 U.S. IMPORTS - JANUARY THROUGH OCTOBER

IMPORTS	SHARE	FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
1,518,126	2.9%	*	9105.19.10	Brazil	0	0.0%
157,632	0.1%	*	9105.19.40	Brazil	4,273	0.0%
0	0.0%	*	9401.30.40	Croatia	0	0.0%
109,398	0.1%	*	9401.30.40	Slovenia	0	0.0%
20,046,064	22.8%	*	9403.60.80	Thailand	14,628,867	3.6%
0	0.0%	*	9405.30.00	Thailand	2,978,319	3.4%
0	0.0%	2	9506.62.80	Pakistan	216,127	0.0%
0	0.0%	2	9506.91.00	Pakistan		
1,400	0.0%					
0	0.0%					

TOTALS BY PARTNER

PARTNER	IMPORTS	COUNT
Argentina	14,540,118	25
Brazil	321,747,607	64
Chile	39,650,642	12
Croatia	0	1
Dominican Republic	0	1
Guatemala	50,662,235	2
India	4,057,058	4
Indonesia	50,006,958	9
Pakistan	30,151,812	14
Peru	0	1
Philippines	39,435,995	1
Russia	0	3
Slovenia	0	1
Thailand	175,069,799	19
Trinidad and Tobago	56,552,817	1
Turkey	0	1
Venezuela	2,839,964	2
TOTAL	784,715,005	161

IMPORTS	SHARE	FLAGS	HTSUS	PARTNER
8,512,189	47.6%	*	6910.10.00	Brazil
1,959,395	11.7%	*	6910.90.00	Brazil
0	0.0%	*	6911.90.00	Brazil
0	0.0%	*	6912.00.44	Brazil
0	0.0%	*	7103.99.10	Thailand
0	0.0%	*	7106.92.00	Chile
0	0.0%	*	7113.11.20	Thailand
0	0.0%	*	7113.19.50	Thailand
0	0.0%	*	7115.90.10	Argentina
0	0.0%	*	7115.90.20	Argentina
38,819,569	13.3%	*	7116.10.10	Thailand
0	0.0%	*	7116.20.05	Thailand
0	0.0%	*	7116.20.15	Thailand
0	0.0%	*	7202.21.10	Brazil
0	0.0%	*	7202.30.00	Brazil
0	0.0%	*	7308.90.70	Venezuela
921,050	1.2%	*	7403.12.00	Chile
0	0.0%	*	7403.13.00	Chile
0	0.0%	*	7403.19.00	Chile
0	0.0%	*	7403.21.00	Chile
0	0.0%	*	7403.22.00	Chile
0	0.0%	*	7403.23.00	Chile
0	0.0%	*	7403.29.00	Chile
2,627	2.3%	*	7407.21.90	Brazil
0	0.0%	*	7413.00.10	Peru
2,299,910	2.5%	*	7604.10.50	Russia
311,048	1.8%	*	7605.11.00	Russia
0	0.0%	*	7614.10.50	Brazil
20,214,299	1.8%	*	7615.19.10	Thailand
38,507,328	13.8%	*	8408.20.20	Brazil
38,396,440	12.9%	*	8408.20.90	Brazil
0	0.0%	*	8409.91.30	Brazil
11,196,427	10.5%	*	8409.91.50	Brazil
1,624,449	5.0%	*	8409.91.91	Brazil
28,384,737	3.7%	*	8409.99.91	Brazil
81,633	0.4%	*	8409.99.99	Brazil
68,485,132	12.2%	*	8419.90.20	Brazil
34,111	0.2%	*	8429.11.00	Brazil
2,521,914	0.6%	*	8429.20.00	Brazil
0	0.0%	*	8431.49.90	Brazil
49,427,934	5.5%	*	8469.12.00	Indonesia
39,435,995	23.1%	*	8471.49.26	Thailand
0	0.0%	*	8471.49.29	Thailand
0	0.0%	*	8471.60.45	Thailand
19,284,777	2.6%	*	8517.19.40	Thailand
970,522	41.4%	*	8517.19.80	Thailand
494,669	21.1%	*	8527.90.90	Philippines
		*	8535.40.00	Dominican Republic
		*	9018.11.60	Argentina
		*	9018.90.80	Pakistan
		*	9025.11.20	Brazil
		*	9025.11.20	India

FLAGS: '0'=Excl Jan/Jun; '1'=Excl Jul/Dec; 'R'=Reduced limits apply; 'D'=De min; 'X'=Reduced limit waiver
'G'=Grad; '*'=Excl full yr; '1'=Excl Jan/Jun; '2'=Excl Jul/Dec; 'R'=Reduced limits apply; 'D'=De min; 'X'=Reduced limit waiver
'N'=Gred, Reduced limit would apply; '2'=Subject to reduced limits, All limits waived.

[FR Doc. 97–4476 Filed 2–21–97; 8:45 am]
BILLING CODE 3190–01–C

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending February 14, 1997

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–97–2127.

Date filed: February 11, 1997.

Parties: Members of the International Air Transport Association.

Subject: PTC2 EUR-AFR 0010 dated February 7, 1997 r1; PTC2 EUR-AFR 0011 dated February 7, 1997 r2–3; PTC2 EUR-AFR 0012 dated February 7, 1997 r4, Expedited Resolutions (Summaries attached.)

Intended effective date: March 14/March 15/April 1, 1997.

Paulette V. Twine,

Chief, Documentary Services.

[FR Doc. 97–4465 Filed 2–21–97; 8:45 am]
BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending February 14, 1997

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–97–2136.

Date filed: February 14, 1997.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 14, 1997.

Description: Application of Royal Jordanian Airlines, pursuant to 49 U.S.C. Section 41302 and Subpart Q of the Regulations, requests an amendment of its foreign air carrier permit to authorize Royal Jordanian to engage in the authority available to carriers from Jordan under the terms of the recently concluded U.S.-Jordan Air Transport Agreement. This includes the authority to engage in scheduled foreign air transportation of persons, property and mail from points behind Jordan via Jordan and intermediate points to a point or points in the United States and beyond; to engage in charter air transportation between any point or points in Jordan and any point or points in the United States; to engage in charter air transportation between any point or points in the United States and any point or points in a third country or countries, provided such service constitutes part of a continuous operation that includes service to Jordan; and to engage in other charter air transportation in accordance with the Department's regulation contained in 14 C.F.R. Part 212.

Paulette V. Twine,

Chief, Documentary Services.

[FR Doc. 97–4466 Filed 2–21–97; 8:45 am]
BILLING CODE 4910–62–P

Federal Aviation Administration

Notice of Intent To Rule on Application (#97–01–C–00–COD) To Impose and use the Revenue From a Passenger Facility Charge (PFC) at Yellowstone Regional Airport, Submitted by the Joint Powers Board, Yellowstone Regional Airport, Cody, Wyoming

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Yellowstone Regional Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before March 26, 1997.

ADDRESS: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan E. Wiechmann, Manager; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, Co 80249–6361.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. David Ulane, Airport Manager, at the following address: Joint Powers Board, Yellowstone Regional Airport, P.O. Box 2748, Cody, WY 82414.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Yellowstone Regional Airport, under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Schaffer, (303) 342–1258; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 68th Avenue, Suite 224; Denver, CO 80249–6361. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (#97–01–C–00–COD) to impose and use PFC revenue at Yellowstone Regional Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On February 13, 1997, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Joint Powers Board, Yellowstone Regional Airport, Cody, Wyoming, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 17, 1997.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: August 1, 1997.

Proposed charge expiration date: October 1, 1999.

Total requested for use approval: $102,662.00.

Brief description of proposed project: Aircraft rescue and fire fighting (ARFF) vehicle; Installation of FAR Part 139 signs; Master plan update; ARFF/maintenance hall; Construct/overlay terminal apron area; Snow removal equipment.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** *and at the FAA Regional Airports Office located at:* Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue S.W., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Yellowstone Regional Airport.

Issued in Renton, Washington on February 13, 1997.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 97–4499 Filed 2–21–97; 8:45 am]
BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement Suspension; Santa Fe and San Miguel Counties, NM

SUMMARY: The FHWA is issuing this notice to advise the public that we have suspended preparation of an environmental impact statement for a proposed transportation improvement project in Santa Fe and San Miguel Counties, New Mexico.

FOR FURTHER INFORMATION CONTACT: Reuben S. Thomas, Division Administrator, Federal Highway Administration, 604 W. San Mateo, Santa Fe, NM 87505. Telephone: (505) 820–2022.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the New Mexico State Highway and

Transportation Department (NMSHTD), has decided to suspend preparation of an environmental impact statement (EIS) on three alternative alignments for connecting NM 50 to I–25 in the vicinity of the Glorieta Unit of the Pecos National Historical Park.

In the late fall of 1996 the FHWA and NMSHTD concluded from the information prepared in the EIS study, from public and agency input received over the course of the study and from the lack of available funding, that an alternative outside the existing roadway corridor would not be in the best interest of the traveling public. Likewise, the FHWA/NMSHTD concluded that any improvements along the existing roadway corridor within the Pecos National Historical Park, Pigeon's Ranch Subunit, do not appear to be compatible with National Park Service preservation and interpretation commitments. Therefore this notice of EIS study suspension has been published in the **Federal Register**. Work to date is documented in an Environmental Data Investigation Report. This report is available for review in the Santa Fe offices of NMSHTD and FHWA.

Issued on: February 4, 1996.

Reuben S. Thomas,

Division Administrator, Santa Fe, NM.

[FR Doc. 97–4463 Filed 2–21–97; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Worcester County, Maryland

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Worcester County, Maryland.

FOR FURTHER INFORMATION CONTACT: Ms. Renee Sigel, Planning, Research and Environment Team Leader, Federal Highway Administration, The Rotunda-Suite 220, 711 West 40th Street, Baltimore, Maryland 21211, Telephone: (410) 962–4342.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Maryland State Highway Administration and Worcester County, will prepare an environmental impact statement (EIS) on a proposal to improve US 113 in Worcester County. The proposed improvement would address the project's purpose and need which is to improve safety and traffic flow along US 113 from Snow Hill to the Delaware State Line.

Improvements to this roadway are considered necessary because of the high number of fatal accidents in the study area. Additionally, an increase in travel demand is projected to lower the level of service of this roadway throughout the project area by the year 2020.

The alternatives under consideration include: (1) Taking no action, (2) construction improvements that are part of an integrated plan of phased safely and capacity improvements, as well as traffic management strategies, that would provide lower cost refinements to the existing transportation system without major alteration to the existing two lane highway, (3) dualization on existing alignment, (4) dualization on new alignment and (5) a combination of dualization on new alignment with dualizing US 113 in selected areas.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have an interest in this proposal. A public hearing will be held in May of 1997. Public notice will be given of the time and place of this hearing.

The draft EIS will be available for public and agency review and comment prior to the public hearing. A formal scoping meeting for this project was held in May of 1995.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. [Comments or questions concerning this proposed action and EIS should be directed to the FHWA at the address provided above]. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal Programs and activities apply to this program).

Issued on: February 12, 1997.

Renee Sigel,

Planning, Research and Environment Team Leader.

[FR Doc. 97–4379 Filed 2–21–97; 8:45 am]

BILLING CODE 4910–22–M

Federal Railroad Administration

[FRA Docket Number RST–95–3]

Amendment to Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request from the New York State Department of Transportation (NYDOT) for a waiver of compliance with certain requirements of 49 CFR Part 213, Track Safety Standards.

In its original request, NYDOT requested to operate the Rohr Turboliner trainsets at higher cant deficiencies on the Empire Corridor extending from New York City, New York, to Niagara Falls, New York, (see 60 **Federal Register** No. 230, November 30, 1995). Due to an FRA clerical error, the notice of NYDOT's request to add various types of equipment to its original petition did not clearly indicate that NYDOT seeks to add equipment owned by the Metro North Commuter Railroad as well as equipment owned by the National Railroad Passenger Corporation.

The second paragraph of the notice, Addendum to Petition for Waiver of Compliance (see 61 **Federal Register** No. 234, December 4, 1996), should read as follows: NYDOT now requests to add the National Railroad Passenger Corporation's (Amtrak) equipment and the following Metro North Commuter Railroad (Metro-North) equipment types: FL–9, FL–9 AC, Genesis I and II locomotives, Bombardier Shoreliner coaches, M–1 and M–3 electric-propelled coaches. NYDOT also proposes to limit its request to underbalance levels up to six inches and limit the territory of its request to that portion of the Empire Corridor extending between Penn Station, New York, and Poughkeepsie, New York, over track segments owned by Amtrak and Metro North.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning this proceeding should identify the appropriate docket number (e.g., Waiver Petition Docket Number RST–95–3) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.—5:00 p.m.) at FRA's temporary docket room located at 1120 Vermont Avenue, N.W., Room 7051, Washington, D.C. 20005.

Issued in Washington, D.C. on February 19, 1997.

Phil Olekszyk,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 97–4487 Filed 2–21–97; 8:45 am]

BILLING CODE 4910–06–P

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of 49 CFR Part 236

Pursuant to 49 CFR Part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

Block Signal Application (BS–AP)–No. 3415

Applicant: Union Pacific Railroad Company, Mr. P. M. Abaray, Chief Engineer-Signals/Quality, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179–0001.

The Union Pacific Railroad Company seeks approval of the proposed discontinuance and removal of signals 1636 and 1644, on the single main track automatic block signal system, near Hampton, Iowa, milepost 164.0, on the Mason City Subdivision.

The reason given for the proposed change is that the two signals are no longer needed.

BS–AP–No. 3416

Applicant: Terminal Railroad Association of St. Louis, Mr. C. D. Trice, Manager Signals and Communications, 1201 McKinley Street, Venice, Illinois 62090.

The Terminal Railroad Association of St. Louis seeks approval of the proposed relocation of automatic signal 211, southward a distance of 1,350 feet, near Brooklyn, Illinois, on the Illinois Transfer District.

The reasons given for the proposed change are that the signal no longer serves the purpose for which it was intended, the relocation will improve functionality of the signal, make signal spacing more uniform and less confusing to train crews, and increase braking distance.

BS–AP–No. 3417

Applicant: Union Pacific Railroad, Mr. J. A. Turner, Engineer—Signals, Southern Pacific Building, One Market Plaza, San Francisco, California 94105.

The Union Pacific Railroad (former Southern Pacific Lines, St. Louis and Southwestern Railroad) seeks approval of the proposed modification of the traffic control system, on the single main track and siding, mileposts 339.9 and 340.9, near Herbert, Arkansas, Central Region, Midwest Division, Pine Bluff Subdivision consisting of the following: discontinuance of East and West Herbert control points; conversion of the power-operated switches to hand operation; discontinuance and removal of controlled signals 62L, 62RA, and 60LA; conversion of controlled signal 60R to back-to-back automatic signals; and retention of the trailing siding signals in lieu of electric locks at each end of the siding.

The reason given for the proposed changes is that Herbert siding is no longer used to meet or pass trains, and is used as a storage track no longer requiring the power-operated switches.

BS–AP–No. 3418

Applicant: Union Railroad Company, Mr. J. J. Lacey, Assistant Vice President and General Manager, 135 Jamison Lane, P.O. Box 68, Monroeville, Pennsylvania 15146.

The Union Railroad Company seeks approval of the proposed discontinuance and removal of a portion of the automatic block signals from the Munhall Branch, near West Mifflin, Pennsylvania, and govern train movements by yard limit rules.

The reason given for the proposed changes is that traffic and train movements have declined during recent years as a result of the retired Homestead Works steel plant, and traffic presently averages between 30 and 35 movements per week.

BS–AP–No. 3419

Applicant: Bessemer and Lake Erie Railroad Company, Mr. J. J. Lacey, Assistant Vice President and General Manager, 135 Jamison Lane, P.O. Box 68, Monroeville, Pennsylvania 15146.

The Bessemer and Lake Erie Railroad Company seeks approval of the proposed discontinuance and removal of the traffic control system, on the single main track, between "KO North End," milepost 93.5, near Adamsville, Pennsylvania and "RX Interlocking," milepost 123.8, near Albion, Pennsylvania, a distance of approximately 30 miles; and the associated installation of a Dispatcher Control Track Warrant System to govern train movements.

The reason given for the proposed changes is that traffic and train movements have declined during recent years with the vast reduction of ore and coal movements associated with declining steel operations, and traffic reductions do not support the expense to maintain the centralized traffic control system.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 within 45 calendar days of the date of issuance of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, D.C. on February 19, 1997.

Phil Olekszyk,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 97–4488 Filed 2–21–97; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this

opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Application For Disposition—United States Savings Bonds/Notes and/or Related Checks Owned by Decedent Whose Estate is Being Settled Without Administration.

DATES: Written comments should be received on or before April 28, 1997, to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Application For Dispostion—United States Savings Bonds/Notes and/or Related Checks Owned by Decedent Whose Estate Is Being Settled Without Administration.

OMB Number: 1535–0118.

Form Number: PD F 5336.

Abstract: The information is requested to support a request for distribution when a decedent's estate is not being administered.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: 80,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 40,000.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 18, 1997.

Vicki S. Thorpe,

Manager, Graphic's, Printing and Records Branch.

[FR Doc. 97–4449 Filed 2–21–97; 8:45 am]

BILLING CODE 4810–39–P

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Certificate by Legal Representative(s) of Decedent's Estate, During Administration, of Authority to Act and of Distribution Where Estate Holds No More Than $1000 (face amount) United States Savings and Retirement Securities, Excluding Checks Representing Interest.

DATES: Written comments should be received on or before April 28, 1997, to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Certificate By legal Representative(s) of Decedent's Estate, During Administration, Of Authority To Act and Of Distribution Where Estate Holds No More Than $1000 (face amount) United States Savings and Retirement Securities, Excluding Checks Representing Interest.

OMB Number: 1535–0060.

Form Number: PD F 2488–1.

Abstract: The information is requested to establish legal representative of a decedent's estate authority to act and request disposition of securities.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: 6,300.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 1,575.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 18, 1997.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 97–4450 Filed 2–21–97; 8:45 am]

BILLING CODE 4810–39–P

Submission for OMB Review; Comment Request

February 11, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

SPECIAL REQUEST: In order to begin the survey described below in May 1997, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by February 24, 1997. To obtain a copy of this survey, please contact the IRS Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432

Project Number: PC:V 97–003–G

Type of Review: Revision

Title: Examination Customer Satisfaction Survey

Description: The purpose of this survey will be to provide the IRS with the following information concerning its two principal Examination Programs (office audit, and field audit):

- What is the present level of satisfaction among taxpayers with recent income tax examinations conducted by the IRS?
- What comments and suggestions do taxpayers with recent income tax examinations have that would enable the IRS to increase this level of satisfaction, and thereby improve the efficiency and effectiveness of the examination process?
- What recurrent operational and programmatic problems are evident? How can IRS correct these problems
- How do our customers' perceptions of the quality and efficiency of the examination process compare to our internal assessments of examination quality and productivity?

This survey will enable IRS to realize its ongoing objective of providing improved services to taxpayers, increase the operational efficiency of the Examination process, and strengthen its efforts in this vital area of voluntary tax compliance.

Respondents: Individuals or households

Estimated Number of Respondents: 5,940

Estimated Burden Hours Per Respondent: 10 minutes

Frequency of Response: Other

Estimated Total Reporting Burden: 990 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–4438 Filed 2–21–97; 8:45 am]

BILLING CODE 4830–01–P

Submission for OMB Review; Comment Request

February 11, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

SPECIAL REQUEST: In order to begin the survey described below during the April-May 1997, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by February 24, 1997. To obtain a copy of this survey, please contact the IRS Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1349.

Project Number: SOI–25.

Type of Review: Revision.

Title: 1997 First Quarter Form 941 TeleFile System Customer Satisfaction Survey.

Description: The survey requests information about satisfaction and whether the business filer would be willing to use the TeleFile system again. Data collected during the surveys will only be used to make recommendations and improvements to the Transcript application.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 2,275.

Estimated Burden Hours Per Respondent: 1 minutes.

Frequency of Response: Other.

Estimated Total Reporting Burden: 38 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–4439 Filed 2–21–97; 8:45 am]

BILLING CODE 4830–01–P

Submission to OMB for Review; Comment Request

February 11, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–1237

Regulation Project Number: CO–24–96 (formerly CO–78–90) NPRM and TEMP

Type of Review: Extension

Title: Consolidated Returns—Limitations on the Use of Certain Losses and Deductions

Description: Section 1502 provides for the promulgation of regulations with respect to corporations that file consolidated income tax returns. These regulations amend the current regulations regarding the use of certain losses and deductions by such corporations.

Respondents: Business or other for-profit

Estimated Number of Respondents: 6,000

Estimated Burden Hours Per Respondent: 10 minutes

Frequency of Response: Annually

Estimated Total Reporting Burden: 1,000 hours

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–4440 Filed 2–21–97; 8:45 am]

BILLING CODE 4830–01–P

Internal Revenue Service

Art Advisory Panel of the Commissioner of Internal Revenue Availability of Report of 1996 Closed Meetings

AGENCY: Internal Revenue Service.

ACTION: Notice of availability of report on closed meetings of the art advisory panel.

SUMMARY: The report is now available.

Pursuant to 5 U.S.C. app. I section 10(d), of the Federal Advisory Committee Act; and 5 U.S.C. section 552b, the Government in the Sunshine Act: A report summarizing the closed meeting activities of the Art Advisory Panel during 1996, has been prepared. A copy of this report has been filed with the Assistant Secretary of the Treasury for Management and is now available for public inspection at: Internal Revenue Service, Freedom of Information Reading Room, Room 1621, 1111 Constitution Avenue, NW Washington, DC 20224 .

Requests for copies should be addressed to: Director, Disclosure Operations Division, Attn: FOI Reading Room, Box 388, Benjamin Franklin Station, Washington, DC 20224, Telephone (202) 622–5164 (Not a toll free telephone number).

The Commissioner of Internal Revenue has determined that this document is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

FOR FURTHER INFORMATION CONTACT: Karen Carolan, C:AP:AS:4, 901 D Street, SW., Room 224, Washington, DC 20024, Telephone (202) 401–4128 (Not a toll free telephone number).

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 97–4492 Filed 2–21–97; 8:45 am]

BILLING CODE 4830–01–U

Art Advisory Panel—Notice of Closed Meeting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of closed meeting of art advisory panel.

SUMMARY: Closed meeting of the Art Advisory Panel will be held in Washington, DC.

DATE: The meeting will be held April 8th and 9th, 1997.

ADDRESSES: The closed meeting of the Art Advisory Panel will be held on April 8th and 9th, 1997 in Room 240 beginning at 9:30 a.m., Aerospace Center Building, 901 D Street, SW, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Karen Carolan, C:AP:AS:4 901 D Street, SW, Washington, DC 20024. Telephone (202) 401–4128, (not a toll free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), that a closed meeting of the Art Advisory Panel will be held on April 8th and 9th, 1997 in Room 240 beginning at 9:30 a.m., Aerospace Center Building, 901 D Street, SW, Washington, DC 20024.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of section 6103 of Title 26 of the United States Code.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in section 552b(c)(3), (4), (6), and (7) of Title 5 of the United States Code, and that the meeting will not be open to the public.

The Commissioner of Internal Revenue has determined that this document is not a significant regulatory action as defined in Executive Order 12866 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 97–4491 Filed 2–21–97; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determinations

Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that four objects to be included in the exhibit "Images in Ivory: Precious Objects from the Gothic Age" (see list*), imported from abroad for temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the British Museum. I also determine that the temporary exhibition or display of the listed exhibit objects at the Detroit Institute of Arts, Detroit, MI, beginning on or about March 7, 1997, to on or about May 11, 1997, and at the Walters Art Gallery, Baltimore, MD, beginning on or about June 22, 1997, to on or about August 31, 1997, is in the national interest.

Public notice of these determinations is ordered to be published in the **Federal Register**.

Dated: February 19, 1997.

Les Jin,

General Counsel.

[FR Doc. 97–4537 Filed 2–21–97; 8:45 am]

BILLING CODE 8230–01–M

* A copy of this list may be obtained by contacting Lorie J. Nierenberg of the Office of the General Counsel, U.S. Information Agency. The telephone number is 202/619–6084; the address is USIA, 301–4th Street SW., Room 700, Washington, DC 20547.

DEPARTMENT OF VETERANS AFFAIRS

Special Medical Advisory Group, Notice of Availability of Annual Report

Under Section 10(d) of Public Law 92–463 (Federal Advisory Committee Act), notice is hereby given that the Annual Report of the Department of Veterans Affairs Special Medical Advisory Group for Fiscal Year 1996 has been issued.

The report summarizes activities of the Group relative to the care and treatment of disabled veterans and other matters pertinent to the Department of Veterans Affairs, Veterans Health Administration. It is available for public inspection at two locations:

Federal Documents Section, Exchange and Gift Division, LM 632, Library of Congress, Washington, D.C. 20540; and

Department of Veterans Affairs, Office of the Under Secretary for Health, VA Central Office, Room 811, 810 Vermont Avenue, N.W., Washington, D.C. 20420.

Dated: February 13, 1997.

By Direction of the Secretary:

Heyward Bannister,

Committee Management Officer.

[FR Doc. 97–4416 Filed 2–21–97; 8:45 am]

BILLING CODE 8320–01–M

Veterans' Advisory Committee on Education, Notice of Meeting

The Department of Veterans Affairs gives notice that a meeting of the Veterans' Advisory Committee on Education, authorized by 38 U.S.C. 3692, will be held on March 6 and March 7, 1997. The meetings will take place at the Department of Veterans Affairs, Veterans Benefits Administration Office, Room 542, 1800 G. St., NW., Washington, DC, from 8:30 a.m. to 4:30 p.m. on Thursday, March 6, and from 8:30 a.m. to 12:00 p.m. on Friday, March 7. The purpose of the Committee is to assist in the evaluation of existing programs and services, and recommends needed new programs and services. The agenda for both days will be devoted to discussion of the Montgomery GI Bill—Selected Reserve (MGIB–SR) program and if it is fulfilling its intention as a recruitment and retention tool.

The meeting will be open to the public. Those wishing to attend should contact Ms. June Schaeffer, Assistant Director, Education Policy and Program Administration, (phone 202–273–7187) prior to February 28, 1997.

Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before or within 10 days after the meeting. Oral statements will be heard at 9:00 a.m., Friday, March 7, 1997.

Dated: February 11, 1997.

By Direction of the Secretary:

Heyward Bannister,

Committee Management Officer.

[FR Doc. 97–4417 Filed 2–21–97; 8:45 am]

BILLING CODE 8320–01–M

Advisory Committee on Prosthetics and Special-Disabilities Programs: Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Advisory Committee on Prosthetics and Special-Disabilities Programs will be held Tuesday and Wednesday, March 11–12, 1997, at VA Headquarters, 810 Vermont Avenue, N.W., Washington, D.C. The meeting on March 11 will be held in Room 630 and the meeting on March 12 will be held in the Omar Bradley Conference Room, 10th Floor. The March 11 session will convene at 8:00 a.m. and adjourn at 4 p.m. and the March 12 session will convene at 9:00 a.m. and adjourn at 12:00 noon. The meeting on March 11 will involve briefings by the National Program Directors of the Special-disabilities Programs regarding the status of their activities over the last six months, a status report on implementation of the Veterans' Health Care Eligibility Reform Act of 1996 as it pertains to the Benefits Package and the legislative requirement to maintain capacity to meet specialized needs of disabled veterans. The meeting on March 12 will consist of a joint meeting of the Advisory Committee on Prosthetics and special-Disabilities Programs and the Veterans Advisory Committee on Rehabilitation. The purpose of this meeting is to discuss program issues of mutual interest and concern.

The purpose of the Advisory committee on Prosthetics and Special-disabilities Program is to advise the Department on its prosthetic programs designed to provide state-of-the-art prosthetics and the associated rehabilitation research, development, and evaluation of such technology. The Advisory Committee also advises the Department on special disability programs which are defined as any program administered by the Secretary to serve veterans with spinal cord injury, blindness or vision impairment, loss of or loss of use of extremities, deafness or hearing impairment, or other serious incapacities in terms of daily life functions.

The meeting is open to the public to the capacity of the room. For those wishing to attend, contact Kathy Pessagno, Veterans Health Administration (113), phone (202) 273–8512, Department of Veterans Affairs, 810 Vermont Avenue, N.W., Washington, D.C. 20420, prior to March 7, 1997.

Dated: February 13, 1997.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 97–4418 Filed 2–21–97; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 62, No. 36
Monday, February 24, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Office of the Secretary

Continued Health Care Benefit Program (CHCBP) Premium Rate Change

Correction

In notice document 97–3243 appearing on page 6225 in the issue of Tuesday, February 11, 1997 under **SUMMARY:** in the 20th line "$993" should read "$933".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Revised Polio Vaccine Information Materials

Correction

In notice document 97–2927, beginning on page 5659, in the issue of Thursday, February 6, 1997, make the following corrections:

1. On page 5696, in the third column, in the first full paragraph, in the eighth line, "Untied" should read "United".
2. On the same page, in the same column, in the second full paragraph, in the third line, "poliomyelitis" should read "Poliomyelitis".
3. On the same page, in the same column, in the same paragraph, in the ninth line, "practices", should read "Practices".
4. On the same page, in the same column, in the same paragraph, in the 12th line, "weekly report" should read "Weekly Report".
5. On page 5697, in the second column, under **Polio Vaccines**, in the second full paragraph, in the fourth line, "whole" should read "world".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 173

[Docket No. 96F-0184]

Secondary Direct Food Additives Permitted in Food for Human Consumption; Sulphopropyl Cellulose

Correction

In rule document 97–4082 beginning on page 7678 in the issue of Thursday, February 20, 1997, make the following corrections:

On page 7678, in the second column, in the **DATES** section, in the first line "February 19, 1997" should read "February 20, 1997" and in the third line "March 21, 1997" should read "March 24, 1997".

BILLING CODE 1505-01-D

federal register

Monday
February 24, 1997

Part II

Environmental Protection Agency

40 CFR Part 51, et al.
Credible Evidence Revisions; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 52, 60 and 61

[FRL–5691–2]

RIN 2020–AA27

Credible Evidence Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In an October 22, 1993 **Federal Register**, EPA solicited public comment on a proposal to amend 40 CFR Parts 51, 52, 60 and 61 to eliminate language that has been read to provide for exclusive reliance on reference test methods as the means of demonstrating compliance with various emission limits under the Clean Air Act ("CAA" or "Act"). These revisions—generally referred to as the "credible evidence" revisions—were designed to clarify that non-reference test data can be used in enforcement actions, and to remove any potential ambiguity regarding this data's use for compliance certifications under Section 114 and Title V of the Act. In the same document, EPA proposed an "enhanced monitoring" rule under Section 114 and Title V. EPA subsequently decided to suspend development of the original enhanced monitoring rule and develop a compliance assurance monitoring ("CAM") approach to serve the same statutory goals as the original enhanced monitoring proposal. Today's rulemaking finalizes the previously proposed credible evidence revisions to Parts 51, 52, 60 and 61. EPA will take final action regarding enhanced monitoring and CAM in a separate rulemaking.

DATES: *Effective Date:* April 25, 1997. *Judicial Review:* Under CAA section 307(b)(1), judicial review of this nationally applicable final action is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under CAA section 307(b)(2), the regulations that are the subject of today's rule may not be challenged later in civil or criminal proceedings brought by EPA in reliance on them.

ADDRESSES: *Docket.* Supporting information used in developing this rulemaking is contained in Public Docket No. A–91–52. This docket is available for public inspection and copying between 8:00 a.m. and 5:30 p.m. on weekdays, excluding federal holidays, at the EPA Air and Radiation Docket and Information Center, Room M–1500, Waterside Mall, 401 M Street SW., Washington, DC 20460; telephone (202) 260–7548. A reasonable fee may be charged for photocopying docket materials.

FOR FURTHER INFORMATION CONTACT: Gregory Jaffe, Air Enforcement Division (Mailcode 2242–A), Office of Regulatory Enforcement, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460; telephone (202) 564–2260.

SUPPLEMENTARY INFORMATION: The contents of the preamble are listed in the following outline:

I. Background
  A. Statutory and Regulatory Authority
  B. Benefits of the Credible Evidence Revisions
  C. Public Participation
II. Summary of Final Rule
  A. 40 CFR Part 51, § 51.212
  B. 40 CFR Part 52, § 52.12
  C. 40 CFR Part 52, § 52.30
  D. 40 CFR Part 60, § 60.11
  E. 40 CFR Part 61, § 61.12
III. Major Issues
  A. Use of Credible Evidence in Enforcement Actions
  B. Use of Credible Evidence in Compliance Certifications
  C. EPA's Authority To Promulgate the Credible Evidence Revisions
  1. Statutory Authority
  2. The *Kaiser Steel* Decision Does Not Constrain EPA's Authority To Amend its Regulations
  3. Despite Commenters' Claims, Clean Air Act Case Law Does Not Mandate Exclusive Reference Tests
  4. The 1990 CAA Amendments Further Support EPA's Authority
  5. Commenters' Attempts To Narrow the Scope of Sections 113(e) and 113(a) Are Unpersuasive
  6. EPA Can Promulgate the Credible Evidence Revisions Without Reproposal
  D. Stringency
  1. Emissions Limits Require Continuous Compliance (Consistent With Any Averaging Times) Except During Periods Where Compliance is Specifically Excused
  2. Commenters' Advocacy of Noncontinuous Compliance Would Lead to Numerous Anomalies
  3. Comments Regarding Continuous Compliance Are Not Directed at Today's Action, but Rather at Underlying Emission Standards
  4. Enforcement Using Continuous Monitoring Data Does Not Increase the Stringency of Applicable Requirements
  5. Sources Must Comply Both With Good Operation and Maintenance Requirements and With Emission Limits
  E. SIP Call
IV. Administrative Requirements
  A. Docket
  B. Office of Management and Budget (OMB) Review
  C. Unfunded Mandates Reform Act
  D. Regulatory Flexibility Act
  E. Paperwork Reduction Act
  F. Submission to Congress and the General Accounting Office

I. Background

A. Statutory and Regulatory Authority

The credible evidence revisions are based on EPA's long-standing authority under the Act, and on amplified authority provided by the 1990 CAA Amendments. Section 113(a) of the Act authorizes EPA to bring an administrative, civil or criminal enforcement action "on the basis of any information available to the Administrator." In this provision, which predates the 1990 CAA Amendments, Congress gave EPA clear statutory authority to use any available information—not just data from reference tests or other federally promulgated or approved compliance methods—to prove CAA violations. (The preamble will generally use the phrase "reference tests" to include all these compliance methods. Where appropriate, the phrase "reference tests" will also include test conditions specified in individual regulations.)

In the 1990 CAA Amendments, Congress included an enforcement title (Title VII) to enhance EPA's compliance and enforcement authorities. Among other things, Congress revised Section 113(e)(1) of the Act to overrule a federal court decision (*Kaiser Steel*, discussed below) that had held that only specified reference test data could prove violations. Thus, although the pre-existing authority of Section 113(a) forms the principal basis for today's action, the credible evidence revisions are also supported by the language, history and intent of the 1990 CAA Amendments. *See also* Section III.C. below.

In addition to clarifying EPA's, states' and citizens' enforcement authorities under the Act, the credible evidence revisions eliminate any potential ambiguity regarding the use of non-reference test data as a basis for Title V compliance certifications. Such potential ambiguity could arise from comparing the draft compliance assurance monitoring (CAM) approach and associated Part 70 changes, which would allow sources to include CAM data as a basis for certifying compliance, with various EPA regulations that could be read on their face to specify reference test methods as the sole means of determining compliance.

B. Benefits of the Credible Evidence Revisions

As a preliminary matter, EPA wishes to clearly state that this rulemaking merely addresses an evidentiary issue. The credible evidence revisions are not intended to and will not serve to affect the stringency of underlying emission standards by amending the nature of the compliance obligation. This rulemaking does not amend existing emission standards nor does it modify generic regulations affecting the compliance obligation such as exceptions for startup, shutdown, and malfunctions. See, e.g., 40 CFR 60.8(c). This regulation also does not designate any particular data as probative of a violation of an emission standard. Rather, this regulation merely removes what some have construed to be a regulatory bar to the admission of non-reference test data to prove a violation of an emission standard, no matter how credible and probative those data are that a violation has occurred. The credible evidence revisions do not affect the compliance obligation and thus do not affect the stringency of existing emission standards. What compliance obligation is imposed by any given emission standard remains an issue ultimately to be determined based on that emission standard and not this rulemaking.

For these reasons, we do not believe that this rulemaking affects whether emission standards require intermittent or continuous compliance. However, as made clear below, and in the detailed response to comments document, EPA's position continues to be that an emission standard requires continuous compliance unless the emission standard specifically provides otherwise.

Today's credible evidence revisions will benefit sources, state environmental agencies, EPA and the public. EPA, states and citizens will be able to use credible evidence to assess a source's compliance status and respond to noncompliance. This will help ensure that the government and citizens alike can respond to sources that are not complying with air pollutant emission standards on an ongoing basis, thus furthering the protection of public health and the environment. At the same time, sources will be able to use credible evidence for contesting allegations of noncompliance in enforcement actions. Accordingly, today's rulemaking exemplifies EPA's "common sense" approach to environmental protection, which encourages smarter, cheaper and more flexible means of achieving environmental goals without compromising the fundamental health and environmental protections provided by federal environmental laws.

In the past, state regulatory authorities and EPA have relied primarily on infrequent on-site inspections and even more infrequent reference tests in order to check compliance with emission limits at major stationary sources. According to a September, 1990, General Accounting Office (GAO) report, these on-site inspections were performed approximately once a year; the reference tests, typically once every five years. "Air Pollution: Improvements Needed in Detecting and Preventing Violations," GAO, No. GAO/RCED–90–155, September 1990, at 12, 19. These methods are inadequate to ensure that sources continuously stay within their emission limits: for example, Pennsylvania officials have estimated that, in comparison with continuous emissions monitoring, on-site inspections may be 50 times less likely to detect non-compliance. *Id.* at 18. Reference tests may not yield a representative emissions picture because the sources typically schedule, set up and run the tests themselves. This allows sources to "fine tune" their operations and emissions control processes prior to the tests, and generate results that may not be typical of day-to-day source operations. *Id.* at 19–20. Reference tests can also be expensive and burdensome: They can cost up to $100,000, and take a week or more to complete. *See, e.g.*, 43 FR 7568, 7571 (1978).

In contrast to the above approach, today's rule will make it clear that various kinds of information other than reference test data, much of which is already available and utilized for other purposes, may be used to demonstrate compliance or noncompliance with emission standards. (The preamble generally refers to this other information as "non-reference test data"). EPA, state agencies and industry routinely rely on many types of information, including engineering calculations, indirect estimates of emissions, and direct measurement of emissions by a variety of means, in order to assess compliance with CAA requirements. Where available, continuous emission monitoring (CEM) data and well-chosen parametric monitoring data, such as the operating temperature and air flow rate of a regenerative thermal oxidizer, generally provide accurate data regarding a source's compliance with emission limits and standards. These data also generally cover a greater percentage of a source's time in operation and are more representative of a source's ongoing compliance status than sporadic performance testing.

Under today's rule both sources and potential enforcers will be put on the same evidentiary footing in an enforcement action. Further, since 1992, EPA's Part 70 operating permit regulations have allowed the use of this data in compliance certifications. Today's action reaffirms this approach, and removes any potential ambiguity regarding the use of such data for this purpose.

Today's action reflects EPA's efforts to make existing regulatory programs work better rather than creating additional requirements. By ensuring greater compliance with existing emissions limits, the credible evidence revisions will help minimize the need for further requirements to achieve air quality goals. *See* the October, 1993, proposal, 58 FR 54654.

C. Public Participation

The final credible evidence revisions were developed with the benefit of insight from many parties that will be affected by the regulations, including State and local air pollution control agencies, large and small industries, trade associations and environmental organizations. Many comments regarding credible evidence issues were received during the development and after the proposal of the original enhanced monitoring rule, in 1991 through 1995. Many additional comments were received after the Agency announced that it was continuing to go forward with the credible evidence revisions in 1996.

To obtain the views of all interested parties at the early stages of developing the enhanced monitoring rulemaking, EPA published a notice in the **Federal Register** on August 8, 1991, to make available a Public Information Document on enhanced monitoring and to provide notice of a public meeting to be held on August 22, 1991, on the subject (56 FR 37700–37701, August 8, 1991). In response to the public meeting, EPA received many comments which were included in the docket for the proposed regulations.

Over the next four years, EPA held over one hundred informal informational and discussion sessions with representatives of interested organizations to receive their views on enhanced monitoring, as well as a second informational meeting with approximately fifty attendees held on August 12, 1993. Following publication of the proposed enhanced monitoring regulations on October 22, 1993 at 58 FR 54648, EPA conducted a public hearing in Washington, D.C., on November 19, 1993. Testimony was given by twelve individuals, representing industry and environmental organizations.

In addition, during the public comment period, which was first scheduled to close on December 30, 1993, and was extended until January 31, 1994, in response to requests for

extension, EPA received comments from a wide variety of interested parties concerning the enhanced monitoring proposal, including numerous comments on credible evidence issues. In the fall of 1994, EPA held a series of informational meetings with interested parties affected by the rule. The Agency then reopened the public comment period on specific issues to solicit additional comments, and held an additional stakeholder meeting. In response to the reopened public comment period, EPA received over 200 additional comment letters.

In April, 1995, EPA announced that it was suspending development of the enhanced monitoring rule while it developed the CAM approach to serve the same statutory goals. In a September, 1995, public draft of the CAM approach, EPA stated that it would hold further discussions with stakeholders before it proceeded to finalize the credible evidence revisions. On March 8, 1996, EPA announced that a public meeting on credible evidence issues would be held on April 2, 1996. To focus the meeting's discussion, EPA released a paper on March 21, 1996, entitled "The Use of Information Other Than Reference Test Results for Determining Compliance With the Clean Air Act" (sometimes referred to as the "Credible Evidence White Paper"). EPA distributed this paper by electronic bulletin board to the same stakeholders who were involved in the enhanced monitoring and CAM rulemakings, further distributed it to various other interested parties, and made it generally available to the public.

The public meeting was held on April 2, 1996, where twenty-three organizations and individuals presented oral statements and written comments. At the meeting, EPA announced that, although the rulemaking docket would not formally be re-opened, additional written comments would be accepted for at least another 30 days. Moreover, EPA stated that it would meet with any interested parties to discuss the credible evidence rules. As a result, many additional written comments have been received, and numerous additional EPA/stakeholder meetings have been held.

Section III of this preamble contains a description of the most significant public comments and EPA's responses to them. Summaries of other public comments on the credible evidence revisions received over the past five years, together with the Agency's responses, are available in the docket in a document entitled "Credible Evidence Revisions: Detailed Response to Comments Document" (referred to in this preamble as the "Detailed Response Document").

II. Summary of Final Rule

The credible evidence revisions consist of various changes to 40 CFR 51.212, 52.12, 52.30, 60.11 and 61.12. These revisions provide minor modifications to existing regulatory provisions to clearly allow for the use of any credible evidence—that is, both reference test and comparable non-reference test data—to prove or disprove violations of the Act in enforcement actions. These revisions make clear that enforcement authorities can prosecute actions based exclusively on any credible evidence, without the need to rely on any data from a particular reference test. The revisions also have the effect of eliminating any potential ambiguity regarding the use of non-reference test data as a basis for Title V compliance certifications. The credible evidence revisions do not call for the creation or submission of any new emissions or parametric data, but rather address the role of existing data in enforcement actions and compliance certifications. As such, today's final action is distinct and separable from the bulk of the proposed enhanced monitoring rule, which addressed new monitoring requirements.

By clearly providing that federally approved SIP test methods or Agency reference test methods are not the exclusive means of establishing noncompliance or compliance, EPA in no way intends to alter the underlying emission standards. The Agency will still use the reference methods for exactly what they are: test methods of reference against which to compare information generated by means other than the reference tests. The National Bureau of Standards maintains a number of standards against which other measuring devices, used in scientific or commercial applications, are calibrated. Similarly, where a SIP, New Source Performance Standard or permit specifies EPA Method 25A, for example, for determining the amount of volatile organic compounds ("VOCs") that are emitted, the "other evidence" that could establish compliance would have to relate to the likely measurement of VOCs that would be obtained by a Method 25A measurement. This could include, for example, consideration of key operating parameters for the facility as correlated with emissions during a Method 25A test.

A. 40 CFR Part 51, § 51.212

Section 51.212(c) is revised to clarify that the inclusion in a state implementation plan (SIP) of enforceable test methods for SIP emissions limits does not preclude enforcement based on other credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test procedures or methods had been performed. This revision does not affect the existing requirements in §§ 51.212(a) and (b) for periodic testing and inspections, and establishment of a system of violation detection and investigation.

The proposed revisions to § 51.212 contained detailed lists of "presumptively credible evidence" and "presumptively credible monitoring methods." After consideration of public comments, EPA has decided to delete these lists because they are potentially confusing and unnecessary. While EPA continues to believe that the listed evidence and monitoring methods are indeed credible, the Agency recognizes that both judicial and administrative tribunals routinely make determinations concerning the admissibility and weight of evidence on a case-by-case basis.

B. 40 CFR Part 52, § 52.12

Section 52.12(c) is revised to clarify that, for purposes of federal enforcement, any credible evidence relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test procedures or methods had been performed may be used to establish whether or not SIP violations have occurred. As with § 51.212 above, EPA has deleted the proposed lists of presumptively credible evidence and monitoring methods for the same reasons stated above. Under today's final action, where an emission limitation specifies a particular monitoring or testing method approved by EPA for use in the SIP to determine compliance, data from such method will continue to be the benchmark against which other emissions or parametric data, or engineering analyses, will be measured. Similarly, where there are no approved SIP methods, the test methods specified in part 60 of this chapter will remain the standard against which other such information will be evaluated.

C. 40 CFR Part 52, § 52.30

Proposed § 52.30(a), which concerned compliance certifications, has been revised in accordance with § 51.212 above, and the same comments apply. The enforcement-related § 52.30(b) is rendered unnecessary by today's final § 52.12(c), which effectively

encompasses it. Finally, the entire section has been renumbered as § 52.33.

D. 40 CFR Part 60, § 60.11

Similar to the existing regulation, § 60.11(a) states that compliance with Part 60 standards shall be determined in accordance with the applicable performance tests and performance testing provisions in this part. A new § 60.11(g) clarifies that nothing in § 60.11 precludes the use, including exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test or procedure had been performed, for purposes of submitting compliance certifications or establishing whether or not a source has violated or is in violation of any Part 60 standard, including opacity standards.

The first sentence in today's final § 60.11(a) has been modified from the proposal. EPA has decided to use mandatory phrasing in the first sentence ("Compliance with standards * * * shall be determined in accordance with the applicable performance tests * * *") as is included in the existing regulation, rather than adopt the permissive language proposed in 1993 ("Compliance with standards * * * may be determined by performance tests * * *"). The rationale for retaining this mandatory language is to make clear that, although the regulation is being modified to clarify that it does not establish an exclusive method of determining compliance, the reference tests remain the benchmark against which other emissions or parametric data, engineering analyses, or other information will be evaluated. For similar reasons, EPA included in § 60.11(g) the requirement that evidence or information gathered by other means than the reference tests be "relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test or procedure had been performed". This phrase means that the evidence or information must bear on whether a facility would have been found to be in compliance, during the time period in question, if the appropriate performance test had been conducted. It does not mean that, to prove a violation occurred, ideal testing conditions, for example the sun light at a certain angle to the tester for an opacity reading, must exist if other credible evidence, such as continuous opacity monitor data, can establish that a violation occurred. These changes have been made in response to comments that EPA's proposal did not give full recognition to the role of reference tests in determining compliance with emission standards. Section 60.11(g) combines the requirements of the proposed subsections (g) and (h) with the exception of presumptions included in those sections which have been deleted. The clarifying language in § 60.11(g) renders unnecessary the previously proposed language in § 60.11(b). Accordingly, the proposed language for that subsection is deleted from today's rule. The proposed changes to subsection (e) have been deleted as unnecessary due to changes to subsections (a) and (g). Finally, § 60.11(f) is revised so as to clarify that it does not countermand subsection (g).

Under today's revisions, information generated from an appropriate and properly conducted test method established under the general provisions of Part 60 or in the applicable subpart will still generally be the best method for determining a source's compliance during the test period. Other emissions or parametric data, or engineering analyses, may be considered if relevant to the results that would have been obtained by the appropriate, properly conducted reference test methods.

E. 40 CFR Part 61, § 61.12

Today's revisions to § 61.12 generally mirror the revisions to § 60.11, largely for the same reasons. Section 61.12(b) remains unchanged from its current promulgated version because credible evidence has always been used to establish violations of these standards.

III. Major Issues

Throughout the development of this rulemaking, various commenters have expressed concerns regarding the proposed rule's potential effects on CAA enforcement, compliance certifications and emissions standards. The most significant of these comments, together with EPA's responses, are discussed below.

A. Use of Credible Evidence in Enforcement Actions

Commenters raised various concerns regarding the potential use of credible evidence in enforcement actions. Some commenters argued that the use of such evidence would be unconstitutional, unprecedented and unfair. Others expressed concern that EPA, states or citizen groups would use credible evidence to bring enforcement actions for insignificant violations. These comments are addressed below.

Industry commenters have argued that the use of credible evidence in enforcement actions would violate sources' constitutional right to due process. Specifically, the commenters argue that EPA must comprehensively identify the precise types of information that can be used as credible evidence, or else sources will not have sufficient "fair warning" regarding potential enforcement. EPA rejects this view. "Fair warning" jurisprudence holds that regulated sources must have adequate notice identifying "the standards with which the agency expects parties to conform." *General Electric Co.* v. *U.S. EPA*, 53 F.3d 1324, 1329 (D.C. Cir. 1995). Today's rule does not establish or alter standards with which sources regulated under the CAA must comply. Rather, today's rule only concerns the evidence that can be used to prove violations of a standard, giving full recognition to the role of reference test methods under the standards. The Federal Rules of Evidence govern the admission of evidence in all federal district court litigation, including CAA enforcement actions, without any discernible constitutional infirmity. Similar evidentiary rules govern federal administrative and state environmental actions. Our legal system provides that a federal or administrative law judge will be the ultimate, independent arbitrator of the evidence's admissibility and credibility.

Credible evidence is far from a new concept in judicial and administrative actions. In private lawsuits such as contract disputes, and in governmental and citizen enforcement actions brought under environmental laws other than the CAA, litigants can and do use a wide variety of information to prove their claims, or to refute the claims of opposing parties. In all these lawsuits, the judge acts as the final, independent arbitrator of what constitutes credible and admissible evidence. Today's final rule addresses problems arising from certain CAA regulations, which predate the 1990 Amendments to the CAA, containing language that has been read to allow only a very limited amount of information, i.e., data from reference test methods, to be used as evidence of violations. As such, the rule merely corrects an anomaly that has been read into these regulations, and brings their potential enforcement into line with that of other CAA requirements such as the "general duty obligations" in 40 CFR 60.11(d) (for NSPS standards) and 40 CFR 61.22(c) (for National Emission Standards for Hazardous Air Pollutants (NESHAPs)), and with other environmental statutes. It should be emphasized that the determination that evidence or information is credible is merely a threshold determination that

the evidence or information in question is technically relevant, and therefore, legally admissible in an enforcement action. In light of section 113(a) providing that the Administrator may bring an enforcement action based on "any information", EPA believes that Congress intended this threshold to be a low one.

Industry commenters have also argued that using credible evidence in enforcement actions is unfair because sources will not know what credible evidence may be used against them. EPA believes that this claim lacks merit. This issue is no different in CAA enforcement than in any civil or criminal matter resolved by our nation's courts. Further, EPA disagrees with the notion that sources will likely be faced with an unknown and unlimited array of evidence. To the contrary, with regard to sources subject to Title V permits, EPA generally expects that most if not all of the data that EPA would consider as potentially credible evidence of an emission violation at a unit subject to monitoring under the agency's proposed CAM rule would be generated through means of appropriate, well-designed parametric or emission monitoring submitted by the source itself and approved by the permitting authority, or through other requirements in the source's permit. Sources not subject to CAM should still be readily able to discern the information, for example information about the operation of pollution control devices, that is relevant to their compliance with applicable regulation.

Some industry representatives have expressed concern that the use of credible evidence in compliance determinations will reveal multiple minor violations for which EPA, the states or citizens will bring lawsuits. It is not EPA's intent to foster frivolous lawsuits, and EPA does not expect that such lawsuits will occur as the result of today's action. As EPA explained in the Credible Evidence March 1996 memorandum, EPA generally focuses its judicial enforcement resources on violations that (1) may threaten or result in harm to public health or the environment, (2) are of significant duration or magnitude, (3) represent a pattern of noncompliance, (4) involve a refusal to provide specifically requested compliance information, (5) involve criminal conduct, or (6) allow a source to reap an economic windfall. *See* March 1996 Memorandum, p. 5.

An examination of EPA's judicial enforcement cases over the past few years reveals that EPA has focused its judicial enforcement resources on large, significant cases rather than a large number of relatively minor matters. The Credible Evidence March 1996 memorandum contains several examples that illustrate this point. In contrast, EPA's approach to minor unexcused violations generally has been to exercise prosecutorial discretion and use tools such as notices of violation and administrative compliance and penalty orders. In every case, EPA considers the nature and extent of the violation and all other circumstances surrounding the violation in determining whether and what kind of enforcement response is appropriate. Further, for any type of noncompliance, EPA generally will not bring a federal enforcement action where a state or local permitting authority has taken timely and appropriate action under existing policies to resolve the violations. Finally, for all violations, EPA will apply all other existing specific enforcement policies, such as the May, 1996, *Policy on Compliance Incentives for Small Businesses*, in accordance with their terms. EPA does not intend to use credible evidence to change any of these policies.

EPA has a balanced enforcement program that seeks to assure compliance using the mix of the compliance and enforcement tools available to it. Deterrence is also an overall goal of the program. Judicial enforcement against minor CAA violations generally is a lower enforcement priority, because EPA believes its other enforcement and compliance assistance tools allow it to respond to such violations without the need to file an action in federal court. Accordingly, in considering whether to bring a judicial action, or whether to use some other enforcement or compliance tool, EPA generally takes into consideration such factors as number and duration of the exceedances, harm or risk posed by the exceedance, potential for recurrence, the source's compliance history, and other circumstances surrounding the violation. For example, if a source were installing a new unit subject to an NSPS standard and had some difficulty getting the control equipment to operate properly after the "shakedown" period permitted before the initial performance test (*see* 40 CFR 60.8(a)) but solved the problem promptly after the test, this generally would be a low enforcement priority, absent other circumstances indicating a need for judicial action.

These same general policies regarding EPA's use of judicial and administrative enforcement actions were discussed in Section I.D. of the August 2, 1996, CAM draft approach. Therein, EPA provided various specific examples of circumstances where the Agency was or was not likely to take compliance or enforcement action based on the examination of CAM data.

Finally, the NSPS general provisions and many SIPs generally excuse sources from compliance with emissions limits during periods of startup, shutdown or malfunction. *See* 40 CFR 60.11(c). Some specific NSPS standards additionally excuse sources from compliance during certain operating periods. Exceedances monitored during any of these specifically excused periods are not violations of the emission limit. Moreover, some NSPS standards specify averaging periods for determining compliance and noncompliance. As a result, many short term emissions values when averaged with other values in the relevant averaging period, will not constitute violations. The credible evidence proposal does not change any of these general or specific periods of excused noncompliance, or any averaging periods, or any of their effects on compliance.

Regarding citizen suits, in February, 1996, EPA performed a review of citizen enforcement actions under the Clean Water Act (CWA), and found that citizen enforcers generally do not focus on sporadic, inconsequential violations. This analysis was summarized in the Credible Evidence White Paper, and is included in the Air Docket. Although to date there have been far fewer CAA citizen suits than CWA citizen suits, there have been at least two notable CAA citizen cases involving serious violations: *National Wildlife Federation* v. *Copper Range Co.*, Civil Action No. 2:92–CV–186 (W.D. Michigan), involving one of the largest sources of particulate matter in Michigan's Upper Peninsula, which was emitting particulates at 230 lbs/hour (over five times its permitted limit) and toxic air pollutants including mercury, arsenic, cadmium and lead; and *Sierra Club* v. *Public Service Company*, 894 F. Supp. 1455 (D.C. Col. 1995), involving a power plant that had committed over 19,000 opacity emission violations, which had allegedly affected a nearby wilderness area. Both of these suits were ultimately settled (with the United States an intervenor) for multi-million dollar penalties and significant injunctive relief, including the installation of appropriate pollution controls.

EPA notes that today's rule creates no new rights or powers for citizen enforcers; instead, the rule clarifies existing EPA regulations. Citizens have been free to use credible evidence in Clean Air Act enforcement, and have won at least two court cases using it. *See Sierra Club* v. *PSC*, cited above, and *Unitek Environmental Services* v. *Hawaiian Cement*, Civ. No. 95–00723 (D. Hawaii 1996). Also, EPA is aware of no increase in citizen suits in any of the five states—Kansas, Iowa, Nebraska, North Dakota and Georgia—whose SIPs, based on EPA's SIP Call, have specifically clarified that credible evidence can be used for enforcement, or in those states that have credible evidence provisions in other parts of their state law.

Finally, EPA takes this opportunity to further elaborate on certain credible evidence and enforcement issues that were discussed in the August, 1996, draft CAM approach preamble. Therein, EPA explained that "the CAM rule cannot and does not replace a source's obligation to comply with otherwise applicable emission limits." Nonetheless, as a practical matter, "EPA expects that a unit that is operating within appropriately established indicator ranges as part of an approved CAM plan will, in fact, be in compliance with its applicable limits." (*See* draft CAM rule § 64.6(c), which requires that "the ranges shall be established so as to provide a reasonable assurance of compliance with emission limitations or standards for the anticipated range of operations at a pollutant-specific emissions unit.") Such a unit generally will not be an enforcement target. However, if the Agency obtains information that the unit is in fact exceeding its applicable emission limit even though it is operating within its approved indicator ranges, the Agency will consider whether or not to take compliance or enforcement action in accordance with its general enforcement policies. Further, under the CAM approach, the source has such information, it would have to promptly remedy the exceedance and notify the permitting authority and submit a proposed permit modification to correct its CAM monitoring as required under draft CAM rule § 64.3(b)(5).

Under today's rule, the legal burdens regarding the establishment of violations or compliance in an enforcement action are not changed. The means of meeting these burdens will vary in different circumstances. Today's rule provides that where information (such as non-reference emissions data, parametric data or engineering analyses) is equivalent to information generated by reference test methods, the former may be used to establish compliance or noncompliance in an enforcement action. There is no need to establish that every test condition specified in a reference test method has been matched by a surrogate condition in the method used to generate the comparable information. Typically, reference test methods (and any additional test conditions specified in individual regulations) quantify the presence of particular physical attributes—for example, mass or concentration of a chemical or group of chemicals—over a specified period of time. As long as these two elements—quantification and specified time period—are retained and the data from the alternate method is related to the reference test, information generated by alternate methods yield data bearing on what the results of a reference test would have been, and the use of such information to establish compliance or noncompliance in an enforcement action will not affect the stringency of the underlying standard. Of course, non-reference data that is already quantified in the same units as the underlying standard, e.g., emissions data generated by properly operating and calibrated non-reference CEMs, should generally be comparable to reference test data, with all specified averaging periods still applying.

For example, Method 9, the NSPS reference method for opacity, requires that a trained visible emissions observer (VEO) view a smoke plume with the sun at a certain angle to the plume in order to properly illuminate it. In contrast, a continuous opacity monitor (COM) contains a calibrated light source that provides for accurate and precise measurement of opacity at all times. Notably, EPA uses COM data to certify and re-certify the credentials of VEOs under Method 9. Accordingly, since a comparable light source is provided by a COM, if COM data were offered in an enforcement action to prove or disprove opacity violations, there would be no need to establish that the sun was shining during the period the COM data was collected. Where a reference test method or test requirements in an individual regulation include plant operating conditions, e.g., a requirement that testing be conducted at a specified percentage of maximum plant capacity, this does not mean that the underlying standard applies only when the plant is operating at that capacity or that the "other information" would have to show that the plant was operating at the specified capacity during the period that the other "credible evidence" was obtained.

Where a party seeks to introduce other sorts of information in an enforcement action, for example, expert testimony as to whether a unit was able to meet its emission limit based on the operation or nonoperation of its control equipment during the period of alleged violation, the information would still need to be relevant to reference test data in the sense that it must be related to reference test data in some fashion. In the expert testimony example, this might be accomplished by a qualified expert opinion that a reference test would have demonstrated noncompliance in these same circumstances. Finally, where general burdens of proof for the proponent of this information are reduced through statutory provisions or other means, the same reduced burdens will apply in circumstances where EPA uses non-reference test data to assert noncompliance. *See, e.g.*, CAA section 113(e)(2).

B. Use of Credible Evidence in Compliance Certifications

Some commenters argued that today's final action will create new uncertainties and burdens for sources, because sources will not know what information they must consider before certifying compliance with Title V permit requirements. Previously, these commenters argue, sources would have needed to consider only the results of any specified reference tests, whereas under the credible evidence revisions almost any information could be potentially relevant to determining compliance. Thus, as a practical matter sources would need to "go through every file drawer" and examine a great deal of additional information before certifying compliance. Even then, sources would not know whether they had reviewed all compliance information that was potentially credible. According to some commenters, even if the source determined its compliance using a reference method, the source would still be uncertain as to whether it could certify compliance during that period, because other contemporaneous information might still indicate noncompliance. Still other commenters argue that allowing a broad array of information to be considered in compliance certifications would render the certification requirement void for vagueness.

At the outset, EPA notes that today's action merely eliminates any potential ambiguity or conflict between Parts 51, 52, 60, and 61 and Part 70 regarding the ability of sources to use non-reference test data in compliance certifications. Consistent with the congressional intent reflected in Title V and section 114(a)(3), Part 70 already contemplates use of non-reference test data in compliance certifications. There are other pending rulemakings—specifically, pending actions involving the CAM approach and Part 70—that are

proposing to modify existing Part 70 requirements to provide additional detail as to what information sources must consider when certifying compliance. Nothing in these rule revisions is meant to specify what degree of correlation there must be between CAM monitoring data and emissions violations or compliance certifications; rather this issue will be discussed in the CAM rulemaking.

In addition, EPA believes that the commenters have greatly exaggerated the purported uncertainties and burdens in certifying compliance under Part 70 and notes that facilities routinely determine their compliance with numerous statutory or regulatory obligations without government imposed "checklists." Under Title V, the source's substantive CAA obligations (i.e., the source's applicable requirements) are clearly set forth in the source's CAA operating permit.

Contrary to the commenters' claims, sources that are certifying compliance using properly conducted continuous reference methods may generally certify compliance based solely on the continuous reference method data, although naturally such sole reliance would be inappropriate in the face of obvious contrary information or fraud as discussed below.

Of course, if a source becomes aware of other material information that indicates that an emission unit has experienced deviations (as that term is defined in the draft CAM approach) or may otherwise be out of compliance with an applicable requirement even though the unit's permit-identified data indicates compliance, the source must consider this information, identify and address it in the compliance certification, and certify accordingly. This ensures, among other things, that sources will not certify compliance in circumstances where doing so would constitute a violation of CAA section 113(c) and 18 U.S.C. Section 1001, which prohibits sources from knowingly making a false certification or omitting material information, or a violation of other prohibitions on fraud. EPA emphasizes, however, that its purpose here is to make clear that sources may not ignore obvious relevant information. EPA does not view compliance certification requirements as imposing a duty on the source to search out and review every possible document to determine its relevance on the issue of the source's compliance.

Following on the above discussion, the Agency takes this opportunity to restate that while a Title V permit can include a "permit shield" protecting it from allegations that it has failed to satisfy CAA *monitoring* requirements, such shield does not relieve the source of its obligation to comply with the underlying emission limits or other applicable requirements being monitored. In other words, even where a source receives a "shield" providing that the monitoring provisions set forth in its Title V permit constitute compliance with all monitoring requirements of the CAA, the source would not be shielded from allegations of noncompliance with the underlying substantive requirements (e.g., emission limits) being monitored even if the source's required monitoring failed to detect the violation. *See also* the October, 1993, proposal, 58 FR 54678.

Industry commenters argued that allowing credible evidence in Title V compliance certifications would render the certification requirement constitutionally void for vagueness. According to these commenters, reference test methods are necessary to define, in a consistent and reproducible manner, the level of performance that constitutes compliance; without a reference method, an emission limit would be incomplete. As discussed above, EPA in no way intends to eliminate reference tests or to alter their methodology. Instead, these tests, performed as specified under EPA and state regulations, will remain the benchmark against which to compare other emissions or parametric data, or engineering analyses, regarding source compliance.

Finally, numerous commenters argued that allowing credible evidence in compliance certifications and enforcement actions would disrupt the Title V permit process and cause substantial delays in the issuance of these permits because local permitting authorities would have to adjust many of the sources' emission limits, which the commenters contend were not intended to be complied with continuously. Such Title V gridlock could occur only if today's action in fact changed the stringency of emission standards.

C. EPA's Authority To Promulgate the Credible Evidence Revisions

1. Statutory Authority

Today's rulemaking and related SIP call are based primarily on EPA's existing authority prior to the 1990 CAA Amendments. Section 113(a) of the Act authorizes EPA to bring an administrative, civil or criminal enforcement action "on the basis of any information available to the Administrator." This provision provides the Agency with clear statutory authority to use any available information to prove violations of requirements under the Act, and demonstrates that Congress did not intend to limit EPA to using reference test method results in bringing enforcement actions. The language of Section 113(a), together with the fact that the Act nowhere prohibits the use of information other than reference test results to prove violations, indicates that the Act does not limit the use of any information to prove a violation. Therefore, by law the Agency is limited only by general evidentiary rules in what it can use to prove a violation alleged in an enforcement action.

2. The Kaiser Steel Decision Does Not Constrain EPA's Authority To Amend Its Regulations

Although the Act sets no inherent limits on EPA's authority to use any type of information to prove a violation, some EPA regulations provide for specific test methods for determining compliance and have been read by some to constrain EPA's enforcement authority. In *United States* v. *Kaiser Steel Corp.*, No. CV–82–2623 IH (C.D. Cal. Jan. 17, 1984), the district court construed the language of EPA's regulations at 40 CFR 60.11 as limiting the admissible evidence of violations of opacity standards to observations utilizing Method 9, the opacity reference test method. Thus, when the Agency attempted to use expert testimony pertaining to opacity to prove the existence of violations without Method 9 test data, the court rejected the evidence and held that EPA could prove violations only on those days where the Method 9 test was conducted. This decision—which interpreted only EPA's existing regulations, not the Act—was specifically overruled by Congress in the 1990 CAA Amendments. Today's rulemaking is intended to clarify that EPA's regulations do not constrain EPA to using reference tests to prove a violation of an emission standard. Rather, EPA retains its full authority under Section 113(a) to use "any information" as the basis for an enforcement action.

3. Despite Commenters' Claims, Clean Air Act Case Law Does Not Mandate Exclusive Reference Tests

At least one commenter has asserted that the decision in *Portland Cement Ass'n* v. *Ruckelshaus*, 486 F.2d 375, 399 (D.C. Cir. 1973), *cert. denied*, 417 U.S. 921 (1974), stands for the proposition that CAA emission standards may be enforced only through an exclusive reference test method. First, the commenter relies on the court's ruling that a reference test method must make measurements with "reasonable accuracy" and be "objective." 486 F.2d at 401 & n. 103. Second, the commenter cited the court's concern with deviations between sampling methods used in gathering data to set an emission standard and sampling methods used in reference methods. The court stated that "a significant difference between techniques used by the agency in arriving at standards, and requirements presently prescribed for determining compliance with standards [i.e., the reference method], raises serious questions about the validity of the standards." 486 F.2d at 396. EPA disagrees with this reading of *Portland Cement*.

These holdings, individually or together, do not support the conclusion that violations of an emission standard may only be demonstrated by an exclusive reference method. The court's statements regarding the reliability of reference methods were made in context of a challenge to an opacity standard. The industry petitioner argued that testing compliance with that standard, inspector observations, is inaccurate and therefore arbitrary. The court agreed that the evidence called the reliability of inspector observations into question and remanded to EPA for it to determine if there was a way to measure compliance with the standard with "reasonable accuracy." In no way did the court imply that the opacity standard had to have an exclusive reference test but simply rejected the test EPA proposed to use as insufficiently supported.

The *Portland Cement* court's discussion of a compliance method that differed from the test method used to develop the standard also lends no support to the conclusion that an exclusive test method is required. It is true that the court mentioned reference methods "outlined by regulation." However, the mere description of an agency practice (here, the inclusion of a reference test in a regulation setting an emission standard) does not transform that practice into a statutory requirement. Moreover, the thrust of the court's remarks was to caution EPA that, where EPA has established by regulation a reference method for sources to demonstrate compliance, the best data EPA can put forth to show that a standard is in fact achievable is data generated by the reference method. The D.C. Circuit, however, has specifically rejected the assertion that standards can only be supported by reference test data. *See National Lime Ass'n* v. *EPA*, 627 F.2d 416, 446, fn.103 (D.C. Cir. 1980). None of this, thus, supports the commenter's claim that a standard's supporting data must be generated using the reference method, and its supposed corollary that only reference method data can be used to enforce the standard, especially where, as here, that other information must be related back to a reference test method. At best, the commenter's arguments would apply only in the context of an original standard-setting, where an emission limitation or other standard newly promulgated by EPA was being challenged on the basis that the standard's supporting data was inadequate. Today's rule sets no new emission or work-practice standards, and amends no existing ones.

Thus, the commenter is mistaken. Neither of the two passages in *Portland Cement* cited by the commenter address whether exclusive reference tests are necessary, much less mandate establishment of such tests. Further, EPA regulations are inconsistent with the exclusivity argument of the commenter. For example, section 60.8(a) of Title 40 of the CFR provides a whole string of circumstances under which a source can alter or completely replace the reference test required by the regulation. Finally, today's final action regarding the use of non-reference test data in enforcement is fully consistent with the court's requirement that reference testing be conducted in a nonarbitrary manner.

4. The 1990 CAA Amendments Further Support EPA's Authority

Various provisions of the 1990 CAA Amendments provide additional support for EPA's position that reference tests are not the exclusive means of proving violations. As noted above, Congress specifically reversed the *Kaiser Steel* decision in Section 113(e) of the Amendments by providing that the duration of a violation may be established "by any credible evidence (including evidence other than the applicable test method)." The legislative history for this provision shows that Congress meant to clarify that in an enforcement action courts are not restricted to reference test method data, but may consider any evidence of violation or compliance admissible under relevant evidentiary rules. *See* S. Rep. No. 228, 101st Cong., 1st Sess. 1, 358 (1989) ("Senate Report"), *reprinted in* 1990 U.S. Code Cong. & Admin. News 3385, 3741 ("Reprint").

Other provisions of the 1990 CAA Amendments also evidence Congressional intent that reference test methods should not be used as the exclusive means for assessing compliance with CAA emission limits. Most pointedly, the requirements in Section 114(a)(3) for enhanced monitoring and for compliance certifications based on a determination of whether compliance was continuous or intermittent presumes that data other than reference tests would be used for these purposes. As explained in the October, 1993, proposal, the use of non-reference test data is also consistent with the monitoring, compliance assurance, and compliance certification requirements in Sections 504(a), 504(c), and 503(b)(2) of the Act. *See* 58 FR 54649–50. In addition, Section 504(b) of the Act grants discretionary authority to the Administrator to prescribe procedures and methods for monitoring, and provides that continuous emission monitoring systems need not be required "if alternative methods are available that provide sufficiently reliable and timely information for determining compliance." In sum, Congress' repeated emphasis on providing reliable and timely compliance information is inconsistent with the notion that only data from infrequently performed reference tests is relevant to compliance certifications and enforcement actions.

5. Commenters' Attempts To Narrow the Scope of Sections 113(e) and 113(a) Are Unpersuasive

Several industry commenters have claimed that the legislative history of the 1990 CAA Amendments shows that section 113(e)(1) does not provide authority for today's final action. Additionally, these commenters have asserted that the section's legislative history upon which EPA has relied is ambiguous.

In the October, 1993, proposal, EPA cited to the Senate Report's discussion of Section 113(e)(1). The Senate Report stated:

> This title of the bill enhances the ability of the Environmental Protection Agency * * * by making clear that the Agency may rely upon any credible evidence of violations in pursuing alleged violations.

Senate Report at 358, Reprint at 3741. The Report further explained:

> [T]he amendment clarifies that courts may consider any evidence of violation or compliance admissible under the Federal Rules of Evidence, and that they are not limited to consideration of evidence that is based solely on the applicable test method in the State implementation [plan] or regulation. For example, courts may consider evidence from continuous emission monitoring systems, expert testimony, and bypassing and control equipment malfunctions, even if these are not the applicable test methods. Thus, this amendment overrules the ruling in *United States v. Kaiser Steel Corp.*, No. 82–2623 (C.D. Cal. January 17, 1984) to the extent that

the court in that case excluded the consideration of such evidence.

Senate Report at 366, Reprint at 3749. Finally, the Report notes that data from enhanced monitoring and compliance certifications "will facilitate enforcement, due in part to the fact that such data and certifications can be used as evidence." Senate Report at 368, Reprint at 3751.

The commenters, in turn, rely on the views of Senator Chafee regarding S. 1630, inserted into the Congressional Record at the time the legislation was introduced. Senator Chafee stated with regard to Section 113(e)(1):

> Subsection 113(e) also clarifies and confirms that once EPA establishes evidence of a violation using a formal test method, EPA can use other credible evidence to prove additional violations, or that violation has continued.

135 Cong. Rec. S 9650, 9655 (August 3, 1989).

EPA believes that the best reading of the legislative history still supports its interpretation of Section 113(e)(1). First, there is no ambiguity in the Senate Report, the language of which unreservedly supports enforcement actions brought on the basis of non-reference test data. Second, EPA does not believe that Senator Chafee's floor statement outweighs the clear statement in the Senate Report. The Senate Report is a more authoritative reflection of congressional intent than a floor statement produced at the beginning of the legislative process.

Various commenters also objected to EPA's reliance on Section 113(a) as a basis for today's action. One commenter argued that Section 113(a) does not preempt regulatorily specified reference test methods. Several commenters asserted that EPA's construction of Section 113(a) would render superfluous the new language in Section 113(e)(1) concerning credible evidence. These commenters claim that, under EPA's interpretation of Section 113(a), Congress could have "fixed" the *Kaiser Steel* decision simply by clarifying the scope of EPA's authority under Section 113(a).

These various commenters have misunderstood EPA's interpretation of Section 113(a). EPA has not asserted that Section 113(a) preempts reference test methods. Rather, EPA believes that Section 113(a) provides authority to amend current regulations to make clear that data from reference test methods are not the exclusive means of establishing noncompliance or compliance in enforcement actions. Given this interpretation of Section 113(a), Congress's passage of Section 113(e)(1) cannot be described as superfluous—particularly in light of the decision in *Kaiser Steel*.

6. EPA Can Promulgate the Credible Evidence Revisions Without Reproposal

Several commenters have argued that finalization of the proposed changes in Parts 51, 52, 60 and 61 without first reproposing those changes violates the Administrative Procedure Act (APA), the CAA, and due process. The commenters' main argument is based on EPA's presumed change in course on implementing the requirement in Section 114(a)(3) concerning enhanced monitoring and compliance certification. As noted above, the changes to Parts 51, 52, 60 and 61 were proposed in the same rulemaking that proposed an enhanced monitoring and compliance certification program. Since that proposal, EPA has re-evaluated its approach to enhanced monitoring and has made publicly available and has sought comment on a revised approach—the CAM approach—for satisfying the same statutory goals as the original enhanced monitoring proposal. Some commenters contend that switching to CAM will fundamentally change their view of the proposed changes to Parts 51, 52, 60 and 61 because those proposed changes were evaluated only in terms of how they would be implemented under the October, 1993, proposal on enhanced monitoring. Until CAM is formally proposed, these commenters assert, they cannot give meaningful comments on the credible evidence revisions. Further, the commenters argue that the proposed revisions provided insufficient notice and opportunity to comment because EPA has not adequately defined the term "credible evidence."

EPA believes today's rule has no procedural infirmities. EPA is today finalizing the enforcement-related portions of the proposal it made in 1993 with only minor changes.

The commenters' claim that they cannot meaningfully comment on credible evidence revisions prior to proposal of the CAM approach is not well-taken for two reasons. First, EPA does not believe that any knowledge of the draft CAM approach is necessary to comment on today's rulemaking. In today's final rule, EPA has removed any presumptions regarding the credibility of any specific data. If and when the draft CAM approach is finally adopted, CAM data will be treated under today's rule like any other potential source of compliance information. Thus, knowledge of the draft CAM approach is not critical to commenting on this rulemaking. In any event, the nature of the draft CAM approach has been generally available in some detail since September, 1995—well before EPA renewed its request for comment on today's rulemaking. Further, EPA has sought and received additional comment on the enforcement consequences of the draft CAM approach by distribution of a revision of the CAM approach in August, 1996. The revised approach specifically discussed the relationship of the draft CAM approach and today's action.

Second, the October, 1993, proposed rulemaking gave interested parties sufficient notice of the issues raised by the proposed changes to Parts 51, 52, 60 and 61. The Agency made clear that these revisions were designed to remove any potential ambiguity regarding the use of enhanced monitoring data in compliance certifications, and to clarify that any credible evidence of a violation of an emission standard was admissible to prove (or disprove) such a violation. *See* 58 FR 54677. To clarify that these credible evidence revisions extended beyond the data gathered under an enhanced monitoring program, EPA gave two specific examples of evidence collected outside the enhanced monitoring program that under the revised regulations could be used to prove a violation. *See* 58 FR 54676–54677. Thus, the October, 1993, proposal clearly put interested parties on notice that the credible evidence revisions were not merely an adjunct to the enhanced monitoring program. In fact, industry commenters on the October, 1993, proposal clearly understood the central issue posed by the proposed credible evidence changes, and they commented on it extensively. Today's final action promulgates revisions to *existing* regulations, and are not contingent upon *future* promulgation of the CAM approach or any other form of enhanced monitoring requirement.

Neither is this rulemaking procedurally deficient for not providing an express regulatory definition of the term "credible evidence"—a term which Congress itself inserted, without definition, into the Act. The issues of credibility, admissibility and weight of evidence have been exhaustively addressed by federal and state court evidentiary rules regarding evidence, and the thousands of cases decided under them. Today's final action defers to those regulations and makes clear that there are no bars in regulations under the CAA which prevent the use of evidence or information other than reference test methods in compliance certifications and enforcement actions. Of course, in judicial enforcement proceedings, what evidence is credible and admissible will be determined by the court taking into account how the evidence was gathered and the specifics of the emission standard and any associated reference method.

Finally, EPA believes that it has taken extensive steps, detailed in Section I.C. above, to ensure that the concerns of affected parties were fully aired. None of the additional public outreach actions that EPA undertook in 1996 were required by the APA or the CAA; instead, EPA undertook them voluntarily to ensure full input by interested parties regarding the credible evidence rules.

D. Stringency

Industry commenters have presented several arguments in support of their position that this rulemaking requires sources to be in continuous compliance and thus would effectively increase the stringency of underlying requirements, including SIP limits and standards established by EPA under the NSPS and NESHAP programs.

EPA believes that industry's arguments on this point are fundamentally wrong. It is not EPA's intent that these rules should increase the stringency of any applicable requirement. These rules do not do so because they maintain the focus of the compliance determination on whether or not the appropriate reference test would have shown a violation.

The commenters' arguments regarding increased stringency are as follows: applicable requirements are accompanied by specified reference tests. Any departure from past practice regarding the use of these tests, including the use of other credible information to directly assess compliance, particularly on a more frequent basis, will inevitably change the results of an inquiry into the compliance status of any source compared to exclusive reliance on the infrequent performance of the reference tests. Therefore, industry argues, using credible evidence would change the underlying applicable requirements—usually in a manner that makes them more stringent—without going through the necessary rulemaking procedures.

Industry's argument hinges on the premise that adoption of an emission standard that includes a particular form of reference test—one that is not required to be performed continuously as a matter of course—limits the compliance obligation. The scope of the compliance obligation is not at issue in this rulemaking. The scope of the compliance obligation prescribed by any particular standard shall be based on the emission standard and not this rulemaking. However, to fully respond to industry comments, and to give notice of the position EPA will take in future enforcement proceedings, EPA believes it is necessary to address in some detail the nature of the compliance obligation under emission standards with particular emphasis on the compliance obligation as it pertains to emission standards which have a reference test method that is not required to be performed continuously.

While the bulk of the commenters' concerns were expressed with respect to NSPS, the same concerns also apply in most cases to NESHAPs and SIPs. Likewise, EPA's responses focus on NSPS, but are generally applicable to other emissions limits as well.

1. Emissions Limits Require Continuous Compliance (Consistent With Any Averaging Times) Except During Periods Where Compliance Is Specifically Excused

To resolve commenters' claims of increased stringency, the nature of the compliance obligation facing owners and operators of sources of air pollution under the Act must be addressed. Under the CAA, its regulations, and the case law, a source's compliance with emission limitations must be continuous (consistent with any averaging times) except where a particular emission standard specifically provides for periods of noncompliance.

The Statute. The Clean Air Act defines the terms "emission limitation" and "emission standard" as meaning "a requirement established by the State or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a *continuous* basis * * *." CAA section 302(k) (emphasis added). In accordance with this clear statutory statement, the Act authorizes penalties for multiple days of violation should a source fail to meet its continuing obligation. *See also* CAA sections 113(e)(2) (providing that "a penalty may be assessed for each day of violation," and establishing a presumption of continuing violation if certain conditions are met) and 113(e)(1).

CAA Regulations. The Act's general requirement of continuous compliance is mirrored in the NSPS regulations, which generally require that sources comply with established emission limits except during certain defined time periods. NSPS provisions typically specify that compliance with stated limits is required "on and after the date" of an initial performance test conducted in accordance with 40 CFR 60.8. *See, e.g.*, 40 CFR 60.502. The need for continuous compliance is also discussed in the preambles to numerous NSPS, including many older ones. For example, in proposing standards for glass manufacturing plants (Subpart CC), EPA stressed the need for effective monitoring to assure that affected facilities are "continuing to maintain the emission reduction observed during the performance test." 48 FR 50670, 50675 (1983). EPA has also made this point clear in publicly-available guidance memoranda. *See* Detailed Response Document at Section 4.

In addition to requirements for continuous compliance, NSPS regulations also typically contain specifically excused periods of noncompliance. These periods confirm that compliance is required at other times. They also confirm the basic reasonableness of this compliance scheme—that is, sources must generally comply continuously with their numerical emission limits, but not during periods of specifically excused noncompliance, and only in accordance with any specified averaging periods. For example, for many standards, compliance is not required during periods of startup, shutdown or malfunction. This exception is contained in the NSPS general provisions and in individual standards. *See* 40 CFR 60.8(c); *see also, e.g.*, 40 CFR 60.46a.

Case Law. In various judicial decisions, courts have approved of the basic NSPS regulatory scheme of continuous compliance accompanied by limited, specified exceptions for noncompliance. The courts have stated that the specified exceptions are needed because sources must comply at all other times. *See, e.g., Portland Cement*, 486 F.2d at 399 (court noted EPA's then-proposed "startup, shutdown and malfunction" compliance exclusion regulation with approval, suggested that it was a "limited safety valve" and stated that it imparts a construction of "reasonableness" to the standards as a whole and adopts a more flexible system of regulation that can be had by a system devoid of "give"; (*Essex Chemical Corp.* v. *Ruckelshaus*, 486 F.2d. 427, 433 (D.C. Cir. 1973), *cert. denied*, 416 U.S. 969 (1974) (in a challenge to sulfuric acid plant and coal-fired steam generator NSPS standards, the court again noted with approval the proposed start-up, shutdown and malfunction exception and remanded the rule stating that "such variant provisions appear necessary to preserve the reasonableness of the standards as a whole and that the record does not support the "never to be

exceeded" standard currently in force") (emphasis added); and *Bunker Hill Co.* v. *EPA*, 572 F.2d 1286, 1301–02 (9th Cir. 1977) (in challenge to SIP sulfur dioxide standard, court observed that EPA regulations required that the standard be met "all of the time," and thus EPA must typically promulgate upset provisions to excuse noncompliance beyond the source's control). Similarly, the proposition that compliance must be continuous is reflected in numerous judicial decisions involving challenges to various NSPS rulemakings. In these cases, both the D.C. Circuit Court and industry petitioners have emphasized that for an emission standard to be achievable it must be able to be continuously complied with over wide operating ranges at varied facilities. *See, e.g., Portland Cement, Essex Chemical, National Lime,* and *Sierra Club* v. *Costle*, 657 F.2d 298 (D.C. Cir. 1981). In *National Lime*, for example, the lime industry's trade association itself complained that the data underlying the promulgated numerical emission standards were insufficient to show that the standards were "in fact achievable on a continuous basis." 627 F.2d at 430. In holding that EPA had not adequately demonstrated the achievability of the standards for the industry as a whole, the court explained that "to be achievable, we think a uniform standard must be capable of being met under most adverse conditions that can reasonably be expected to recur . . . ." *Id.* at 431. In *Sierra Club* v. *Costle*, various electric utility companies challenged a particulate standard on the basis that "the data reflect only short term performance while the standard requires long term continuous compliance." 657 F.2d at 377 (emphasis added). This challenge was rejected by the court based on data showing that certain sources had "consistently complied with the standard." *Id.* at 382.

2. Commenters' Advocacy of Noncontinuous Compliance Would Lead to Numerous Anomalies

Some industry commenters have argued that numerous emissions limitations do not require continuous compliance or, alternatively, that "continuous" does not have the straightforward meaning suggested above. The commenters' argument centers on NSPS standards issued under CAA section 111. In the commenters' view, many such standards do not contemplate that facilities will operate in compliance on a continuous basis with stated emissions limits, but rather require only an initial demonstration of compliance with stated limits upon start-up or shortly thereafter. After an initial performance test, continuous compliance is required only with respect to operation and maintenance "in a manner consistent with good air pollution control practice" as specified in 40 CFR 60.11(d). As to numerical emissions limits, commenters suggest that these must be met only on those infrequent occasions that a subsequent performance test is conducted. So long as any such performance test is passed, the source is in "continuous" compliance with numerical emissions limits without regard to whether its emissions in fact exceeded the numerical limit during the time between the tests, no matter how long that may be.

EPA rejects this view of the nature of the obligation to comply with NSPS and other emission limits under the CAA. *See* Detailed Response Document. EPA and the courts have long held that emission limits must be complied with continuously, consistent with any associated averaging periods, except where a particular limit provides otherwise. Adopting the commenters' view of compliance would lead to numerous anomalies.

In the April 2, 1996, public meeting and in follow-up written comments, several commenters argued that many reference test methods were selected specifically because they would only be performed infrequently—for example, on a yearly basis. These once a year tests would be proper for their associated emission standards, which in the commenters' view were intended to be complied with only 95% of the time. Specifically, performing a reference test once a year would yield "acceptable" compliance results, because on average a source would be found out of compliance only 5% of the time—that is, in one in twenty tests, or once every twenty years. According to these commenters, testing for compliance more frequently would be unfair, because it would increase the likelihood that the source would be found out of compliance during periods where the standard itself contemplated noncompliance. In order to avoid being found in noncompliance, sources would have to continuously stay below their emission limits—which in these commenters' view would effectively increase the stringency of the emission standard.

EPA disagrees with the commenters' notion that sources must meet their legal numerical air emission limits only seldomly. Further, EPA rejects as inconsistent with the Act and its underlying purposes the notion that sources can somehow be in routine "compliance" without staying within these limits on an ongoing basis. The fundamental goal of the CAA and the emission standards established under it, is to achieve clean air. Moreover, many emission standards, such as hazardous air pollutant standards under Section 112 and emission standards in State Implementation Plans designed to implement national ambient air quality standards, have a direct relationship to the protection of human health. Routine compliance with numerical emission standards is critical to achieving this goal. The commenters' view that such compliance is somehow not required would completely undercut these public health and safety goals.

If the commenters' view was correct, any EPA or state targeting of a specific source by requiring the source to perform more frequent reference tests would be unfair and presumably illegal, because any such increased frequency in reference testing would destroy the delicate balance of frequent noncompliance and infrequent testing that the commenters claim is contemplated by the rules. Under this view, EPA and states might not be able to require an apparently violating source to conduct a previously unscheduled reference test, because it would improperly raise the source's chances of being found in noncompliance and thereby "increase the stringency of the underlying standards."

The commenters" argument is also inconsistent with the language, structure, and purpose of the CAA. For example, if the frequency of testing must be limited to meet the intent of the emission limits, to be fair to all sources EPA's regulations should have required that the tests be performed only at infrequent intervals. EPA's rules contain no such restrictions; rather, CAA section 114(a)(1)(D) grants EPA broad discretion to order reference tests whenever the Administrator deems it appropriate. Moreover, commenters" argument is inconsistent with CAA section 113(e)(1), which even on its narrowest reading (note that EPA's reading is considerably broader) specifically provides for use of non-reference test data to prove continuing additional days of violation after an initial violation is established by reference test data, and by CAA section 113(e)(2), which establishes a presumption of continuing violation after notice of the violation has been given to the source, provided that EPA can make a prima facie showing that "the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice." This presumption continues until the violator "establishes that continuous compliance has been achieved."

Likewise, sections 114(a)(3) and 504(a)-(c) regarding enhanced monitoring and certification as to whether compliance is continuous or intermittent, and prompt reporting of deviations, are simply inconsistent with a regulatory regime that would require only occasional demonstrations of compliance with emission limits. Taken together, these provisions, represent a fundamental statutory rejection of the commenters' argument. *See* Detailed Response Document, Section 4, which discusses other reasons why these comments are without merit.

3. Comments Regarding Continuous Compliance Are Not Directed at Today's Action, but Rather at Underlying Emission Standards

Industry commenters have argued that the quality and quantity of the data used in establishing emissions limitations, such as those under the NSPS and NESHAP programs, reflect a conscious decision by EPA that compliance with such standards would need to be demonstrated only periodically. It follows that requiring continuous compliance with stated limits at this juncture would effectively increase the stringency of the standards. As discussed above, EPA believes that the commenters' general arguments strain common sense. Commenters have pointed to various NSPS standards to support their views, but EPA finds these examples unpersuasive.

In particular, commenters have pointed to the NSPS for kraft pulp mills, 40 CFR Part 60, Subpart BB, and for steam electric generators constructed between 1971 and 1978, Subpart D, as reflecting a general acknowledgment by EPA that national standards need not be complied with at all times. EPA believes that, to the contrary, Subparts BB and D and other cases demonstrate that where EPA intended to allow affected sources to exceed stated emissions limits, the standards in question expressly so provide. It is true that in the development of some NSPS and NESHAP standards, EPA was concerned with the limited number and distribution of test runs and the inherent variability in levels of emissions from even well-controlled facilities. Where appropriate, EPA addressed those concerns by adjusting the numerical value of the standard, providing excess emissions allowances and provisions for noncompliance during certain upset conditions, or through changes in averaging times. With other standards, EPA did not provide for any departure from the general requirement that compliance must be continuous. Examples of all these approaches, and specific responses to comments regarding Subparts D and BB, are provided in the Detailed Response Document.

The commenters' assertions that sources cannot comply on a continuous basis are really directed not to the propriety of today's rules, but rather to the adequacy of the underlying NSPS and other emission standards that are not at issue in this rulemaking. To the extent there is any documentation that a well-run facility cannot comply consistently with underlying national emission standards, or applicable SIP requirements, such documentation would be relevant only to those existing standards, not to today's rule. EPA notes that despite several requests to commenters to identify any standards that cannot be complied with on a regular basis, no specific information has been provided to this rulemaking docket that demonstrates that well operated and maintained facilities employing pollution control technologies of the types upon which the underlying emission standards were based cannot comply with those standards on a continuing basis. The most that was submitted was a statistical re-analysis of the data relied upon by EPA in promulgating several emission standards and a one page graph purporting to show that an industrial boiler could not comply with the NO_x emission limit at low levels.

The agency has considered this comment concerning the Subpart D NO_x standard carefully, as it does not intend to impose requirements that are impossible for well-designed sources to meet, but believes that this concern is largely theoretical. The information provided by the commenter to EPA was vague and did not prove that the undisclosed source could not comply with the emission standard. Further, if a standard was impossible to achieve under some circumstance, EPA and citizens are not likely to bring enforcement cases in such instances. In reviewing CAA enforcement actions the agency has been unable to identify any case where either the agency or a citizen sought to enforce a standard that was impossible to achieve. The agency was also unable to identify any case in which a defendant established that compliance was not possible at the time of the alleged violation. This appears to be the case even in those states and localities that have had "credible evidence" rules for years.

Additionally, should it be determined that a standard could not be met during some relatively infrequent or inconsequential period of source activity, the potential for significant adverse impact on that source is remote. The agency has previously expressed its policy that, generally, judicial enforcement is not the appropriate vehicle to redress sporadic, infrequent violations with no environmental consequence. Further, it is unlikely that a citizen could prevail in enforcing a theoretically impossible standard since Courts will not issue an injunction where there is nothing to be done. Similarly, where one cannot establish that a source failed to act in a manner required by law a significant penalty will not be imposed by the courts. The agency is not aware of any situation in which it has filed, and one should not anticipate large numbers of citizen suits being filed, where there is nothing the source could have done or could do to achieve a greater degree of compliance. Moreover, the courts today have additional tools, including fee awards and sanctions available under the Federal Rules of Civil Procedure and other statutes to address meritless suits.

In further response to these industry comments, EPA has included in the record a 1993 study conducted by EPA Region V that shows that almost all (95%) of sources with sulfur dioxide CEMs were meeting their federal and state sulfur dioxide emission limits approximately 97% of the time, with excess emission periods totaling only 3%. *See* Region V Study, Figure 2. Because this 3% figure included excess emissions recorded during periods in which compliance is specifically not required, such as startup and shutdown, the percentage of operating time in noncompliance with the standard is even smaller and may mean that most sources are in compliance all the time. EPA Region V sources with continuous opacity monitors showed similar results: the average source's percentage of opacity exceedances was less than 2%, with 95% of sources at or below approximately 4%. *See* Study, Figure 1. As with the sulfur dioxide data, opacity exceedances during periods of startup, shutdown and other excused periods were not excluded. Accordingly, the percentage of actual noncompliance with opacity limits was even smaller. Note that these figures are for the average (50th percentile) and worst (95th percentile) facilities. The best run facilities have fewer excess emissions reports.

Additional CEM data from EPA Region V that focused specifically on exceedances from NSPS Subpart D SO_2 emission standards shows similar results. This data shows that Subpart D sources report few or no excess SO_2 emissions. Approximately two-thirds of the sources report no excess emissions

at all, during any three month reporting period. Further, since 1990, the vast majority of sources (95%) have reported total excess emissions averaging less than 2.5% of operating time; since 1993, less than 1.7%. Since these figures include all excess emission periods, including periods that are probably excused, the actual SO_2 exceedance rates were even lower.

These data show that there are not "fundamental flaws" in the subject standards such that the standard cannot be met. *Indeed,* the data demonstrate that most sources do comply all or nearly all of the time.

If the regulated community believes that a standard cannot be met across some meaningful range of normal operating conditions, or if specific exemptions beyond those currently provided are proper, we believe the appropriate action is for the affected industry to file a petition for amendment of the standard at issue or propose more specific permit conditions so that the matter can be fully assessed and addressed through the regulatory process. However, the information submitted by the commenters does not show that there currently exists a significant "impossibility" issue that is so widespread as to outweigh the benefits of the proposed rule.

4. Enforcement Using Continuous Monitoring Data Does Not Increase the Stringency of Applicable Requirements

Industry commenters have argued that the stringency of emission standards will be increased if enforceable data is obtained more frequently than has been ordinarily obtained in the past through reference testing. Further, the commenters argue that direct enforceability of this data would contradict EPA's stated positions in adopting standards under the NSPS and NESHAP programs because EPA intended that continuous monitoring would only show compliance with good operation and maintenance procedures, i.e., general duty requirements, and would not be otherwise used in enforcement. (*See, e.g.,* 38 FR 10820 (1973) (preamble to proposed startup, shutdown and malfunction regulation); 43 FR 7571 (1978) (preamble to final kraft pulp mill standards).

Because the NSPS and NESHAP emission standards must be met continuously, consistent with any averaging times and except during periods where compliance is specifically excused, any more frequent or continuous monitoring of the standards and any enforcement based on violations uncovered thereby have no effect on the stringency of the standards. To take a simple analogy, allowing the use of radar guns or increasing the number of police checking for speeding may raise the chance that a speeder will be detected, but this does not alter the legal stringency of a posted speed limit.

In some early NSPS, the agency required the installation of what were styled "indicator monitors" and provided policy guidance that such monitoring data would not be used as the sole basis of enforcement actions absent further rulemaking. 38 FR 10820. To the extent that the CAA Amendments of 1990 did not supersede this policy statement, today's action is that future rulemaking. These policy statements, like today's rulemaking, pertain only to the kinds of evidence EPA uses to prove violations. The policy change that was contemplated in our 1993 proposal and 1996 memorandum are supported by technological advances in the accuracy and reliability of continuous emission monitors, deficiencies in EPA's previous practices identified by GAO and others, and the language and intent of the Act and the 1990 CAA Amendments.

EPA's past statements regarding limitations on the use of data derived from continuous monitoring methods for purposes of enforcing standards were motivated in part by concerns over the cost and availability of such methods and their ability to accurately determine compliance. *See, e.g., National Lime,* 627 F.2d at 450 (responding to petitioners' argument that there was no adequately demonstrated technology for monitoring opacity, EPA stated that the continuous monitoring data would not be used to determine compliance with the opacity standard but "to keep a check on the operation and maintenance of the control equipment," and that the monitors were reliable enough to perform this limited function). For example, in the 1973 startup, shutdown and malfunction regulation proposal, EPA noted that while continuous monitoring data would not, at that time, be used to determine compliance as a general matter, such data could be used if "approved as [an] equivalent or alternative method for performance testing." 38 FR 10820. Indeed, the NSPS general provisions have long provided that in lieu of performance tests using reference methods, a source could demonstrate compliance using an approved equivalent or alternative method, and that EPA can waive reference tests where the source has otherwise satisfactorily demonstrated compliance. *See* 40 CFR 60.8(b).

Since the 1970s, the availability, cost and accuracy of methods that enable determinations of compliance on a continuous basis has improved markedly. *See, e.g.,* 1990 GAO report at 19, 22–23 (1986 and 1988 EPA studies showed CEM data highly reliable); *Continuous Emission Monitoring,* 1993, Jahake, Thomas Publishing Co. For these reasons, EPA believes it is appropriate as a technical matter to allow information derived from these methods to be used in compliance certifications and enforcement actions. In fact, more recent national standards issued by EPA provide for determining and enforcing compliance directly by use of continuous monitoring data.

5. Sources Must Comply Both With Good Operation and Maintenance Requirements and With Emission Limits

Industry commenters have claimed that as to the NSPS program, the only goal of the program was to insure that best demonstrated technology was employed, such that once an initial reference test demonstrated that compliance with the standards could be achieved, it need not be demonstrated thereafter, and that an affected source's only ongoing obligation was its "general duty" to employ good operation and maintenance practices to minimize emissions in accordance with 40 CFR 60.11(d).

EPA agrees that proper operation and maintenance of an emissions unit and any associated pollution controls in accordance with 40 CFR 60.11(d) is vital to complying with emission standards. However, while it is true that sources have a continuing duty to employ good operations and maintenance practices, this duty does not substitute for the sources' obligation to comply with its emission limits. The two obligations, while related, are separate requirements in the NSPS regulations and in legal effect.

EPA has made these points plain as far back as 1973 in the proposed NSPS startup, shutdown and malfunction rulemaking:

> It is anticipated that the initial performance test and subsequent performance tests will ensure that equipment is installed which will permit the standards to be attained and that such equipment is not allowed to deteriorate to the point where the standards are no longer maintained. In addition, the proposed regulation requires that the plant operator use maintenance and operating procedures designed to minimize emissions in excess of the standard.

38 FR 10820 (1973) (emphasis added). This preamble text clearly states both that proper equipment maintenance is vital to remaining within an emission standard (otherwise equipment would deteriorate to the point where standards were not met) and that the general operation and maintenance obligation is a separate regulatory requirement. Additional discussion of the distinction between the emission limits and good operating practice requirements can be in the Detailed Response Document. These statements make it clear that good operating practices requirements are separate and distinct from the need to continuously comply with emissions limits.

E. SIP Call

In the October, 1993, proposal, EPA announced that it planned to call for States to amend their applicable implementation plans to ensure that owners or operators may use enhanced monitoring (or other monitoring approved for the source pursuant to part 70) for compliance certification purposes, and that data from this monitoring, along with any other credible evidence, may be used as evidence of a violation of an applicable plan. 58 FR 54660. In December, 1993, and February, 1994, the Office of Air and Radiation's Stationary Source Compliance Division, the division then responsible for writing and implementing the enhanced monitoring rules, issued memoranda to EPA's Regional offices instructing them to conduct the SIP call. As of September, 1996, fifteen states and local air pollution control districts, together with the Commonwealth of Puerto Rico, had responded to the call and submitted SIP amendments for EPA approval. Kansas, Iowa, Nebraska, North Dakota, Georgia and Puerto Rico had received approval; the other states and districts' revisions were pending.

For substantially the same reasons that allow EPA to go forward with today's final rule, EPA has the authority to initiate and continue this SIP call. EPA's decision to forego the enhanced monitoring approach in favor of the CAM proposal has no effect on the basic goals of the SIP call, which are to clarify that non-reference test data can be used in enforcement actions, and to remove any potential ambiguity regarding this data's use for Title V compliance certifications.

Today's action ensures that the evidentiary rules for CAA violations are consistent in all fifty states. EPA has surveyed those states that have responded to the SIP call and has determined that the credible evidence changes have not created the difficulties forecast by the commenters.

IV. Administrative Requirements

A. Docket

Today's final rulemaking action is subject to Section 307(d) of the Act. Accordingly, EPA has established a docket (No. A–91–52), which consists of an organized and complete file of all information submitted to, or otherwise considered by, EPA in the development of today's action and the CAM approach. The docket includes all memoranda and studies cited by EPA in this preamble. The principal purposes of the docket are: (1) to allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review. The docket is available for public inspection at EPA's Air Docket, which is listed under the **ADDRESSES** section of this document.

B. Office of Management and Budget (OMB) Review

Today's rulemaking is not a "significant regulatory action" because the revisions make only evidentiary changes and do not impose any additional implementation costs on regulated sources. Nevertheless, EPA submitted this final rule to OMB for review. Changes made in response to OMB suggestions and recommendations will be documented in the public record.

C. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, EPA generally must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in expenditure by State, local, or tribal governments in the aggregate, or by the private sector, of $100 million or more. Before promulgating a rule for which such a statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Today's rulemaking makes only evidentiary changes and does not impose any additional costs on regulated sources or State, local, or tribal governments. For the same reason, these evidentiary changes will not significantly or uniquely affect small governments. Accordingly, this rulemaking is not subject to the requirements of sections 202, 203, and 205 of the UMRA.

D. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. As explained above, this rulemaking does not impose any additional implementation costs on small or large entities.

E. Paperwork Reduction Act

The information collection requirements for the proposed enhanced monitoring rule were previously submitted for approval to OMB under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* In contrast, today's rule does not contain any information collection requirements subject to OMB review under the PRA.

F. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 847), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Controller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. For the same reasons that this rulemaking is not a "significant regulatory action" under Executive Order 12866, this rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 51

Environmental protection, Air pollution control.

40 CFR Part 52

Air pollution control.

40 CFR Part 60

Air pollution control.

40 CFR Part 61

Air pollution control.

Dated: February 13, 1997.

Carol M. Browner,

Administrator, U.S. Environmental Protection Agency.

For the reasons set out in the preamble, 40 CFR Chapter I is amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for part 51 is revised to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7412, 7413, 7414, 7470–7479, 7501–7508, 7601, and 7602.

2. Section 51.212 is amended by revising paragraph (c) to read as follows:

§ 51.212 Testing, inspection, enforcement, and complaints.

* * * * *

(c) Enforceable test methods for each emission limit specified in the plan. For the purpose of submitting compliance certifications or establishing whether or not a person has violated or is in violation of any standard in this part, the plan must not preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test or procedure had been performed. As an enforceable method, States may use:

(1) Any of the appropriate methods in appendix M to this part, Recommended Test Methods for State Implementation Plans; or

(2) An alternative method following review and approval of that method by the Administrator; or

(3) Any appropriate method in appendix A to 40 CFR part 60.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 is revised to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Section 52.12 is amended by revising paragraph (c) to read as follows:

§ 52.12 Source surveillance.

* * * * *

(c) For purposes of Federal enforcement, the following test procedures and methods shall be used, provided that for the purpose of establishing whether or not a person has violated or is in violation of any provision of the plan, nothing in this part shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test procedures or methods had been performed:

(1) Sources subject to plan provisions which do not specify a test procedure and sources subject to provisions promulgated by the Administrator will be tested by means of the appropriate procedures and methods prescribed in part 60 of this chapter unless otherwise specified in this part.

(2) Sources subject to approved provisions of a plan wherein a test procedure is specified will be tested by the specified procedure.

3. Subpart A is amended by adding a new § 52.33 to read as follows:

§ 52.33 Compliance certifications.

(a) For the purpose of submitting compliance certifications, nothing in this part or in a plan promulgated by the Administrator shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed.

(b) For all federal implementation plans, paragraph (a) of this section is incorporated into the plan.

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for part 60 is revised to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7413, 7414, 7416, 7601 and 7602.

2. Section 60.11 is amended by revising paragraphs (a) and (f) and by adding paragraph (g) to read as follows:

§ 60.11 Compliance with standards and maintenance requirements.

(a) Compliance with standards in this part, other than opacity standards, shall be determined in accordance with performance tests established by § 60.8, unless otherwise specified in the applicable standard.

* * * * *

(f) Special provisions set forth under an applicable subpart shall supersede any conflicting provisions in paragraphs (a) through (e) of this section.

(g) For the purpose of submitting compliance certifications or establishing whether or not a person has violated or is in violation of any standard in this part, nothing in this part shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test or procedure had been performed.

PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

1. The authority citation for part 61 is revised to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7413, 7414, 7416, 7601 and 7602.

2. Section 61.12 is amended by revising paragraph (a) and adding paragraph (e) to read as follows:

§ 61.12 Compliance with standards and maintenance requirements.

(a) Compliance with numerical emission limits shall be determined in accordance with emission tests established in § 61.13 or as otherwise specified in an individual subpart.

* * * * *

(e) For the purpose of submitting compliance certifications or establishing whether or not a person has violated or is in violation of any standard in this part, nothing in this part shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed.

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Part III

Department of Transportation

Federal Railroad Administration

49 CFR Parts 223 and 239
Passenger Train Emergency Preparedness; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 223 and 239

[FRA Docket No. PTEP–1, Notice No. 1]

RIN 2130–AA96

Passenger Train Emergency Preparedness

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: Pursuant to section 215 of the Federal Railroad Safety Authorization Act of 1994, FRA proposes a rule to require minimum Federal safety standards for the preparation, adoption, and implementation of emergency preparedness plans by railroads connected with the operation of passenger trains, including freight railroads hosting the operations of rail passenger service. The proposed rule also requires each affected railroad to instruct its employees on the plan's provisions. Elements of this emergency preparedness plan would include communication, employee training and qualification, joint operations, tunnel safety, liaison with emergency responders, on-board emergency equipment, and passenger safety information. The plan adopted by each affected railroad would be subject to formal review and approval by FRA.

This proposal for emergency preparedness regulations, which formalizes a planning requirement and identifies certain mandatory elements, is the second phase in a four-phase process that began in 1994. In the first phase, FRA encouraged railroads to examine their programs to determine what improvements could be made, while in the third phase, FRA will review the railroad plans to determine if all emergency preparedness issues have been adequately addressed within the varying contexts of railroad operations. In the fourth phase, FRA will review the implementation and effectiveness of the proposed standards and related voluntary developments, and will address the need for further rulemaking activity.

The proposed rule does not apply to tourist and historic railroad operators. However, after appropriate consultation with the excursion railroad associations to determine appropriate applicability in light of financial, operational, or other factors unique to such operations, emergency preparedness requirements for these operations may be prescribed by FRA that are different from those affecting other types of passenger operations.

DATES: (1) *Written comments:* Written comments must be received on or before April 25, 1997. Comments received after that date will be considered by FRA and the Passenger Train Emergency Preparedness Working Group in preparing the final rule to the extent possible without incurring additional expense or delay. The docket will remain open until the Working Group proceedings are concluded. Requests for formal extension of the comment period must be made by April 10, 1997.

(2) *Public hearings:* FRA intends to hold two public hearings, and the dates of these hearings will be published in a forthcoming notice in the **Federal Register**. Anyone who desires to make an oral statement at either of the hearings must notify the Docket Clerk by telephone (202–632–3198) or mail, and must submit three copies of the oral statement that he or she intends to make at the hearing. The dates by which the Docket Clerk must be notified about the oral statement and receive the three copies of this statement will be set forth in the notice announcing the public hearings.

ADDRESSES: *Written Comments:* Written comments should identify the docket number and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. Persons desiring to be notified that their comments have been received by FRA should submit a stamped, self-addressed postcard with their comments. The Docket Clerk will indicate on the postcard the date on which the comments were received and will return the card to the addressee. Written comments will be available for examination, both before and after the closing date for written comments, during regular business hours on the Seventh floor of 1120 Vermont Avenue, N.W. in Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mr. Edward R. English, Director, Office of Safety Assurance and Compliance, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone number: 202–632–3349), or David H. Kasminoff, Esq., Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone: 202–632–3191).

SUPPLEMENTARY INFORMATION:

Request for Comments

In accordance with Executive Order 12866, FRA is allowing 60 days for comments. FRA believes that a 60-day comment period is necessary for parties with interests that were not represented by the working group on passenger train emergency preparedness that has been established by the agency under 49 U.S.C. 20133.

Background

The overall safety record of conventional intercity and commuter passenger train operations in the United States has been exemplary. However, accidents continue to occur, often as a result of factors beyond the control of the passenger railroad. Further, the rail passenger operating environment in the United States is rapidly changing—technology is advancing, equipment is being designed for ever-higher speeds, and many potential new operators of passenger equipment are appearing. With this more complex operating environment, FRA must become more proactive to ensure that operators of passenger train service, as well as freight railroads hosting passenger operations, engage in careful, advance planning to minimize the consequences of emergencies that could occur. Even minor incidents could easily develop into life-threatening events if they are not addressed in a timely and effective manner.

In recent years, passenger train accidents, such as the tragic "Sunset Limited" passenger train derailment near Mobile, Alabama in September 1993, have demonstrated the need to improve the way railroads respond in emergency situations. On September 22, 1993, at about 2:45 a.m., barges that were being pushed by the towboat Mauvilla in dense fog struck and displaced the Big Bayou Canot railroad bridge near Mobile, Alabama. At about 2:53 a.m., National Railroad Passenger Corporation (Amtrak) train no. 2, the Sunset Limited, en route from Los Angeles, California to Miami, Florida with 220 persons on board, struck the displaced bridge and derailed. The three locomotive units, the baggage and dormitory cars, and two of the six passenger cars fell into the water. The fuel tanks on the locomotive units ruptured, and the locomotive units and the baggage and dormitory cars caught fire. Forty-two passengers and five crewmembers were killed, and 103 passengers were injured. The towboat's four crewmembers were not injured.

In a report on the accident released on September 19, 1994, the National Transportation Safety Board (NTSB) determined that several circumstances hampered emergency response efforts. NTSB Railroad-Marine Accident Report 94/01. In its assessment of emergency response at the accident site, the NTSB noted that the location of the accident was remote (accessible only by rail, water, or air), fog in the area was dense (requiring the use of radar to navigate boats), limited modes of transportation were available for bringing in personnel and equipment, and the magnitude of the accident was great. Nevertheless, the NTSB concluded that, following the delay while emergency responders identified the location of the accident, emergency response activities were efficient and effective. The report did find, however, that Amtrak did not have an effective system in place to apprise passengers of train safety features, passengers were at a disadvantage during evacuation due to the absence of portable lighting on the passenger cars, and emergency responders were at a disadvantage because they were unable to obtain an adequate passenger and crew list from Amtrak until the next day. The NTSB also noted that had the Mobile County Emergency Management Agency held drills to simulate a train accident, the incident commander may have known about Amtrak's procedure for accounting for passengers, and CSX Transportation, Inc., the owner of the bridge, may have had the correct telephone number to contact the U.S. Coast Guard.

Considerable effort has focused on how to mitigate casualties after a train accident occurs. In this regard, even before the occurrence of the tragic accident near Mobile, FRA had tasked DOT's Volpe National Transportation Systems Center (TSC), in Cambridge, Massachusetts, to perform research and to recommend emergency preparedness guidelines for passenger train operators. The results were published at the end of 1993 as a publication entitled "RECOMMENDED EMERGENCY PREPAREDNESS GUIDELINES FOR PASSENGER TRAINS" (Volpe Report), which is available to the public through the National Technical Information Service, Springfield, VA 22161 (DOT/FRA/ORD–93–24—DOT–VNTSC–FRA–93–23). The publication references safety recommendations of the NTSB, as well as many other publications on the subject of emergency preparedness, and contains recommended guidelines designed to assist passenger train operating systems and emergency response organization management in evaluating and modifying or supplementing their emergency response plans. A copy of the Volpe Report has been placed in the public docket for this rulemaking.

The Volpe Report recommendations address guidelines relating to emergency plans, procedures, and training. In addition, guidelines for passenger train and facility features intended to shorten emergency response time, improve the effectiveness of evacuating passengers, and minimize the effects of an emergency are presented. The publication also lists inter-organizational emergency protocols, which include those of fire departments, emergency medical services (EMS), police departments, public utilities, hospitals, and local, State, regional, and Federal governments.

In an effort to be proactive after the accident near Mobile, FRA mailed the Volpe Report to all intercity passenger and commuter railroads, freight railroads, the United Transportation Union, and the Brotherhood of Locomotive Engineers in March 1994 for their information and guidance. Concurrent with this mailing, FRA invited the railroads to attend a roundtable meeting in Washington, D.C., on June 9, 1994, to discuss the emergency preparedness issues addressed in the publication. The 23-member roundtable discussion was comprised of representatives from the following organizations:

Amtrak,
FRA,
Long Island Rail Road (LIRR),
MTA Metro-North Railroad (METRO-NORTH),
Northeast Illinois Regional Commuter Railroad Corporation (METRA),
Peninsula Corridor Joint Powers Board (CALTRAIN),
Port Authority Trans-Hudson Corporation (PATH),
Southern California Regional Rail Authority (METROLINK),
Southeastern Pennsylvania Transportation Authority (SEPTA),
Tri-County Commuter Rail Authority (TRI-RAIL),
TSC, and
Virginia Railway Express (VRE).

During the meeting, FRA agreed to assist the passenger railroads in establishing improved working relationships with their host freight railroads. FRA also promised to help the passenger railroads in their emergency response efforts in larger metropolitan areas by contacting emergency response agencies and eliciting more cooperation between them. In addition, FRA stated that it would conduct field visits to several passenger railroads to study their equipment and their emergency response and training programs.

At that same meeting, the passenger railroads agreed to provide stronger supervisory oversight of their emergency response and training programs, and stated that they would offer additional, structured "hands-on" training to their train crews concerning the removal of emergency windows and passenger evacuation. They also agreed to develop programs for recurring passenger car inspections, emphasizing checking of emergency equipment such as windows, tools, and fire extinguishers. Further, they agreed to improve their methods of apprising passengers of emergency information, to include seat drops, placards inside each car, and messages in on-board magazines. While FRA is encouraged that passenger railroads have already begun to incorporate the recommendations of the Volpe Report into their own emergency preparedness plans, more progress by the entire industry is needed.

As a result of concerns raised about the safety of the operation of rail passenger service, Congress enacted section 215 of the Federal Railroad Safety Authorization Act of 1994, Public Law No. 103–440, 108 Stat. 4619, 4623–4624 (November 2, 1994), entitled "Passenger Car Safety Standards." Section 215, as now codified at 49 U.S.C. 20133, reads as follows:

§ 20133. Passenger cars.

(a) MINIMUM STANDARDS.—The Secretary of Transportation shall prescribe regulations establishing minimum standards for the safety of cars used by railroad carriers to transport passengers. Before prescribing such regulations, the Secretary shall consider—

(1) the crashworthiness of the cars;

(2) interior features (including luggage restraints, seat belts, and exposed surfaces) that may affect passenger safety;

(3) maintenance and inspection of the cars;

(4) emergency response procedures and equipment; and

(5) any operating rules and conditions that directly affect safety not otherwise governed by regulations.

The Secretary may make applicable some or all of the standards established under this subsection to cars existing at the time the regulations are prescribed, as well as to new cars, and the Secretary shall explain in the rulemaking document the basis for making such standards applicable to existing cars.

(b) INITIAL AND FINAL REGULATIONS.—(1) The Secretary shall prescribe initial regulations under subsection (a) within 3 years after the date of enactment of the Federal Railroad Safety Authorization Act of 1994. The initial regulations may exempt equipment used by tourist, historic, scenic, and excursion railroad carriers to transport passengers.

(2) The Secretary shall prescribe final regulations under subsection (a) within 5 years after such date of enactment.

(c) PERSONNEL.—The Secretary may establish within the Department of Transportation 2 additional full-time equivalent positions beyond the number

permitted under existing law to assist with the drafting, prescribing, and implementation of regulations under this section.

(d) CONSULTATION.—In prescribing regulations, issuing orders, and making amendments under this section, the Secretary may consult with Amtrak, public authorities operating railroad passenger service, other railroad carriers transporting passengers, organizations of passengers, and organizations of employees. A consultation is not subject to the Federal Advisory Committee Act (5 U.S.C. App.), but minutes of the consultation shall be placed in the public docket of the regulatory proceeding.

The Secretary of Transportation has delegated these rulemaking responsibilities to the Federal Railroad Administrator. 49 CFR 1.49(m).

FRA is committed to the maximum feasible use of collaborative processes in the development of safety regulations. Consistent with the intent of Congress that FRA consult with the railroad industry, FRA invited various organizations to participate in a working group (Working Group) to focus on the issues related to passenger train emergency preparedness and build the framework for the development of a Notice of Proposed Rulemaking (NPRM) and, ultimately, a final rule. FRA held its first Working Group meeting on August 8, 1995. The 33-member Working Group was comprised of representatives from the following organizations:

American Public Transit Association (APTA),
Amtrak,
Association of American Railroads (AAR),
Brotherhood of Locomotive Engineers (BLE),
CALTRAIN,
FRA,
LIRR,
Maryland Mass Transit Administration (MARC),
Massachusetts Bay Transportation Authority (MBTA),
METRA,
METRO-NORTH,
METROLINK,
National Association of Railroad Passengers (NARP),
NTSB,
New Jersey Transit Rail Operations, Inc. (NJTR),
Northern Indiana Commuter Transportation District (NICTD),
PATH,
Safe Travel America (STA),
SEPTA,
TRI-RAIL,
TSC,
United Transportation Union (UTU), and
VRE.

Regulations covering rail passenger equipment safety standards—inspection, testing, and maintenance of passenger equipment; equipment design and performance criteria related to passenger and crew survivability in the event of a train accident; and the safe operation of passenger train service—supplementing existing railroad safety standards, will be covered by a separate rulemaking and are being addressed by a separate working group. Persons wishing to receive more information regarding this other rulemaking should refer to FRA Docket No. PCSS–1 and contact either Mr. Thomas Peacock, Staff Director, Motive Power and Equipment Division, Office of Safety Assurance and Compliance, RRS–14, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone 202–632–3338), or Daniel L. Alpert, Esq., Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone 202–632–3186).

The proposed rule was developed by FRA in consultation with the Working Group. The proposal incorporates comments submitted by the Working Group in response to a preliminary draft of the proposed rule text. FRA expects that the Working Group will help FRA develop the final rule based on a consensus process, with facts and analysis flowing from both the Working Group's deliberations and information submitted by commenters on this NPRM. In accordance with 49 U.S.C. 20133(d), the evolving positions of the Working Group members—as reflected in the minutes of the group meetings and associated documentation, together with data provided by the membership during their deliberations—will be placed in the public docket of this rulemaking. All comments submitted in response to this NPRM will be provided to the Working Group for their consideration in preparation of the final rule.

FRA convened the first meeting of the Working Group on August 8, 1995, by announcing that the purpose of the meeting was to provide an opportunity to collectively focus on evaluating issues related to passenger train emergency preparedness, as well as to develop and formulate plans and programs that would culminate in a final rule. The discussion focused on the key issues of emergency notification, training of railroad employees and emergency responders, suitability of on-board emergency equipment, and the Volpe Report. While FRA did not limit the Working Group's discussions, the agency requested that, at a minimum, the following topics and issues should be considered and addressed during the consultation process for possible inclusion in the rule:

- Types of safety equipment that should be required in each passenger car (*e.g.*, fire extinguishers, saws, hammers, and flashlights) including where the equipment should be located, who should have access to it, and how to avoid pilferage;
- Training for railroad employees on the use of on-board emergency equipment;
- Frequency of inspection of on-board emergency equipment;
- Effective marking of emergency windows on each passenger car;
- Informing passengers about safety procedures and emergency equipment, including locations of exit doors and windows;
- Demonstrations by on-board crewmembers of emergency procedures and exits after major station stops;
- Communication capabilities of on-board crewmembers;
- Requiring on-board crewmembers to be trained to provide cardio-pulmonary resuscitation (CPR) and/or first aid treatment;
- Ensuring that on-board crewmembers have contact telephone numbers for control centers and local authorities;
- Requiring preparation of an emergency preparedness plan, including periodic exercises to test employee knowledge of proper procedures involving passenger illness or injury, stalled trains, evacuation procedures, derailments, collisions, severe weather, and security threats;
- Coordinating applicable portions of emergency preparedness plans between passenger railroads and freight railroads that host these passenger operations;
- Extent to which safety action plans should be regulated in terms of content or format, and whether such plans should be subject to FRA review and approval;
- Training for auxiliary individuals participating in passenger emergencies (*e.g.*, control center employees, on-board service staff, and appropriate supervisory and maintenance personnel);
- Training for emergency responders along passenger corridor routes;
- Accounting for the unique emergency preparedness concerns raised by passenger operations through tunnels, on elevated structures, and in electrified territory;
- Level of training specificity required for each category of employee;
- Requiring passenger railroads to develop and update inter-organizational emergency protocols with local communities, in order to augment safety action plans;

- Providing emergency responders with accurate passenger counts; and
- Emergency lighting in passenger cars (*e.g.*, floor strip lighting, flood lighting, and emergency exit lighting), including standards for testing and reliability.

FRA deliberated at length with members of the Working Group about what the proposed rule would demand of affected railroads, in order to achieve the goal of optimizing their level of preparedness when faced with passenger train emergencies. The consensus was that the final rule needed to be flexible in its requirements to allow each railroad to address the unique characteristics of its individual operation. The Working Group recommended that FRA require each affected railroad to prepare a formal emergency preparedness plan covering broad elements, such as: employee and emergency responder training; on-board crewmember responsibilities; communication between the train crew and the control center, and between the control center and the emergency responders; delineation of passenger railroad and freight railroad responsibilities in cases of joint operations; and operations in tunnels or over elevated structures. However, the group urged FRA to afford railroads considerable latitude to design and administer emergency preparedness plans that best address each railroad's specific safety issues and concerns, with each plan then subject to review and approval by FRA.

FRA incorporated the Working Group's recommendations into a draft NPRM, and mailed the draft to the group on December 14, 1995, along with a copy of the minutes of the first meeting of the Working Group. Copies of both documents, and other relevant enclosures, have been placed in the public docket for this rulemaking. The 34-member Working Group held its second meeting on February 6–7, 1996, and was comprised of representatives from the same organizations in attendance at the first Working Group meeting. The Working Group reviewed the draft and presented its comments, and a copy of the minutes of the second meeting of the group has also been included in the rulemaking docket. The Working Group's comments were then incorporated into this NPRM. Through subsequent communication with the Working Group, additional specificity has been incorporated into this proposal.

While FRA has focused on crafting a rule containing comprehensive requirements in connection with railroads adopting, implementing, and complying with their emergency preparedness plans, many details remain unresolved concerning the enforcement obligations that FRA will impose in the final rule. Among the broad range of possibilities, the final rule could impose a "reasonable care" standard and focus on achieving substantial compliance, with an emphasis on determining whether each railroad has demonstrated a general effort to fulfill each of the elements of its emergency preparedness plan. Under this approach, for example, FRA would verify whether a railroad has established a training program for its employees on the applicable provisions of the emergency preparedness plan, and could impose a civil penalty on a railroad for failing to comply with this basic element of emergency preparedness. However, if FRA concluded that the railroad had properly adopted a training program, but during the occurrence of an actual emergency several employees failed (under the stress of the situation) to fulfill all of their responsibilities under the emergency preparedness plan, FRA would not penalize the railroad. Also, if a railroad failed to designate an employee to maintain a current list of emergency telephone numbers, for use by control center personnel to notify outside emergency responders, adjacent rail modes of transportation, and appropriate railroad officials that a passenger train emergency has occurred, FRA could clearly penalize the railroad for this omission. However, if a railroad's plan properly provided for the maintenance of the list of emergency telephone numbers, but one telephone number on a long list of accurate numbers was found by FRA to be out of date, and thus incorrect, the railroad would not face the imposition of a civil penalty.

As an alternative, FRA could maintain strict oversight by requiring compliance with every individual element of the emergency preparedness plan, and impose a civil penalty in every instance in which a railroad fails to achieve compliance. Accordingly, under this approach, a railroad could be penalized for failing to constantly update its list of emergency telephone numbers, neglecting to distribute applicable portions of its emergency preparedness plan to all on-line emergency responders, or operating a train with an incorrect type of on-board emergency equipment. Rather than stress the concept of determining the overall level of emergency preparedness achieved by a railroad before the emergency occurs, this enforcement philosophy would specifically focus on whether the railroad in fact complied with all of the written emergency plan procedures for implementing each plan element. FRA invites commenters to address the questions of what compliance obligations should exist in the final rule, in the context of requiring railroads to adopt and implement procedures for achieving emergency preparedness, and what enforcement policy should be exercised by the agency regarding those obligations. Commenters are also asked to review the language of the section-by-section analysis and rule text of the proposed rule and to offer suggestions on whether FRA's expectations for compliance with the emergency preparedness plan elements are too rigid, or not strict enough.

In drafting the final rule, FRA also expects to incorporate all relevant information derived from the investigation of the accident involving Amtrak train no. 1, the "Sunset Limited," which occurred in Hyder, Arizona on October 9, 1995. In that accident, the initial notification was made by the Amtrak locomotive engineer to the Southern Pacific Transportation Company (SP) train dispatcher's office in Denver, Colorado, which then notified the appropriate local emergency response agencies. The SP yardmaster in Phoenix Yard also dialed 911 after hearing the engineer's radio transmissions to the train dispatcher.

While the local emergency responders stated that the accident was handled well by all parties involved, the responders noted that they were hampered in reaching the accident site by extremely rough terrain, initially negotiable only by four-wheel drive vehicles until graders and earth movers created a trail for conventional vehicles. The responders were somewhat confused by being provided with only a milepost location instead of a more familiar identifier. The responders were also frustrated by the lack of an accurate passenger count, but Amtrak has stated that once it has satellite cellular telephone capabilities train conductors will report passenger counts to a central telephone number after leaving each station. In addition, the responders indicated that, although the emergency lighting did not function on the overturned passenger cars, passengers were able to disembark through the car doors and emergency windows.

FRA also expects to include requirements in the final rule relating to emergency egress from passenger trains, based upon information obtained from the investigations of the two recent train accidents in New Jersey and Maryland.

In the first accident, a near-head-on collision occurred on February 9, 1996 between NJTR trains 1254 and 1107 at milepost 2.8, on the borderline of Secaucus and Jersey City, New Jersey. Of the 331 passengers and crew on both trains, two crewmembers and one passenger were fatally injured, and an additional 162 passengers reported minor injuries. In the second accident, a near-head-on collision occurred on February 16, 1996 between MARC train 286 and Amtrak train 29 on CSX Transportation, Inc., at Silver Spring, Maryland, milepost 8.3. The accident resulted in 11 fatalities, consisting of three crewmembers and eight passengers, and at least 12 non-fatal injuries to passengers of the MARC train.

While many of the questions raised by the New Jersey and Maryland train accidents are being addressed by the working group which is considering regulations covering rail passenger equipment safety standards, the important issue of emergency egress must be addressed by this rulemaking. Specifically, the Silver Spring accident raised serious concerns as to whether MARC passengers had sufficient information about the location and operation of emergency exits to enable them to find and use those exits in an emergency or accident. FRA believes that all commuter and intercity passenger railroads should review their practices, in addition to marking the exits, for providing this information. On February 20, 1996, FRA issued Emergency Order No. 20 (Notice No. 1), which required prompt action to immediately enhance passenger train operating rules and emergency egress and to develop an interim system safety plan addressing cab car forward and multiple unit (MU) operations. 61 FR 6876, Feb. 22, 1996. In pertinent part, Notice No. 1 of the Emergency Order stated:

> [T]here is a need to ensure that emergency exits are clearly marked and in operable condition on all passenger lines, regardless of the equipment used or train control system. FRA's regulations generally require that all passenger cars be equipped with at least four emergency opening windows, which must be designed to permit rapid and easy removal during a crisis situation. The investigation of the Silver Spring accident has raised some concerns that at least some of the occupants of the MARC train attempted unsuccessfully to exit through the windows. Whether those same people eventually were among those who exited safely, or whether those persons were attempting to open windows that were not emergency windows is not known at this time. However, there is sufficient reason for concern to require that measures be taken to ensure that such windows are readily identifiable and operable when they are needed. Accordingly, the order requires that any emergency windows that are not already legibly marked as such on the inside and outside be so marked, and that a representative sample of all such windows be examined to ensure operability. (FRA Safety Glazing Standards, 49 CFR Part 223, require that each passenger car have a minimum of four emergency window exits "designed to permit rapid and easy removal during a crisis situation.")

61 FR 6880, Feb. 22, 1996.

On February 29, 1996, FRA issued Notice No. 2 to Emergency Order No. 20 to refine three aspects of the original order, including providing more detailed guidance on the emergency egress sampling provision. 61 FR 8703, Mar. 5, 1996. In pertinent part, Notice No. 2 of the Emergency Order stated:

> The original order required but did not set parameters for testing a representative sample of emergency exits. The alteration to the emergency egress provisions requires that sampling of emergency window exits be conducted in conformity with either of two alternate methods commonly recognized for such efforts. This modification provides a degree of uniformity industry wide. These methods require sampling meeting a 95 percent confidence level that all emergency window exits operate properly (i.e., the methods do not accept a defect rate of 5 percent). Although the original order would have required testing all exits on a specific series or type of car if one such car had a defective window exit, the amended order permits the use of these commonly accepted sampling techniques to determine how many additional windows in [sic] test. In general, these principles require that the greater the percentage of windows initially found defective, the greater the percentage of windows that will have to be tested.
>
> In addition, FRA has modified the emergency egress portion of the order to clarify that the exterior marking requirement applies to those windows that may be employed for access by emergency responders, which may be windows other than, or in addition to, those designed for emergency egress for passengers. In addition, FRA has modified the interim system safety plan portion of the order to require discussion of the railroad's programs and plans for liaison with and training of emergency responders with respect to emergency access to passengers. The original order required discussion only of methods used to inform passengers of the location and method of emergency exits.

61 FR 8703, Mar. 5, 1996.

On March 12, 1996, in response to the MARC train accident in Silver Spring, Maryland on February 16, 1996, the NTSB issued "Safety Recommendations" to both the Maryland Mass Transit Administration (R–96–4 through R–96–6) and FRA (R–96–7). The NTSB was concerned because the emergency quick-release mechanisms for the exterior doors on MARC's Sumitomo rail cars are located in a secured cabinet some distance from the doors that they control, and the emergency controls for each door are not readily accessible and identifiable. The NTSB recommends that emergency quick-release mechanisms for exterior doors on MARC cars be well marked and relocated, so that they are immediately adjacent to the door control and readily accessible for emergency escape. The NTSB also noted that the left and right rear exterior side doors of the first car and the front interior end door and the right front exterior door of the second car were jammed, and observed that none of the car doors had removable windows or pop-out emergency escape panels (kick panels) for use in an emergency.

In addition, the NTSB stated that several train passengers were unaware of the locations of emergency exits, and none knew how to operate them. The NTSB found that the interior emergency window decals were not prominently displayed and that one car had no interior emergency window decals. Also, the exterior emergency decals were often faded or obliterated, and the information on them, when legible, directed emergency responders to another sign at the end of the car for instructions on how to open emergency exits. The NTSB recommends that all emergency exits be clearly identified, with easily understood operating instructions prominently located on each car's interior for use by passengers and on the exterior for use by emergency responders.

Based upon its investigation, the NTSB recommends that FRA:

> Inspect all commuter rail equipment to determine whether it has: (1) easily accessible interior emergency quick-release mechanisms adjacent to exterior passageway doors; (2) removable windows or kick panels in interior and exterior passageway doors; and (3) prominently displayed retroreflective signage marking all interior and exterior emergency exits. If any commuter equipment lacks one or more or these features, take appropriate emergency measures to ensure corrective action until these measures are incorporated into minimum passenger car safety standards. (Class 1, Urgent Action) (R–96–7)

Safety Recommendation R–96–7 at page 3.

On March 26, 1996, FRA convened a joint meeting of the Passenger Train Emergency Preparedness Working Group and the Passenger Equipment Safety Standards Working Group to discuss the NTSB's recommendations and incorporate the Safety Board's findings, as appropriate, into each working group's rulemaking proceeding.

Fifty-seven members from 21 different organizations attended the joint meeting. Although some of the recommendations involving structural modifications to rail equipment will be dealt with by the Passenger Equipment Safety Standards Working Group, the remaining NTSB recommendations involving marking, inspection, maintenance, and repair of emergency exits are reflected in proposed § 223.9(d), entitled "Requirements for new or rebuilt equipment," and proposed § 239.17, entitled "Emergency exits." The Section-by-Section Analysis contains a detailed discussion of FRA's proposed requirements, particularly in light of the two recent accidents in New Jersey and Maryland and the NTSB's safety investigations and recommendations.

In a letter to FRA dated June 24, 1996, Mr. Donald N. Nelson, President of Metro-North and Chairperson of APTA's Commuter Railroad Committee, announced that commuter railroads nationwide are implementing a series of rail passenger safety initiatives building on the safety provisions of FRA's Emergency Order No. 20 and the NTSB's Safety Recommendations R–96–4 through R–96–7. In pertinent part, all commuter rail authorities have committed to early voluntary implementation of the emergency preparedness requirements proposed in this NPRM, including requiring inspection and testing of all emergency window exits as part of routine car maintenance to ensure correct operation and ease of egress, offering emergency responder training for every jurisdiction within each commuter railroad's service area, and educating passengers on the use of emergency exits on commuter trains. The commuter railroads also indicated that each one will ensure the safety of its operation by adopting a comprehensive system safety plan that:

(a) Defines the overall safety effort, how it is to be implemented and the staff required to maintain it;

(b) Establishes the safety interface within the railroad, as well as with its key outside agencies;

(c) Clearly indicates Senior Management support for implementing the safety plan and the railroad's overall commitment to safety;

(d) Establishes the safety philosophy of the organization and provides the means for implementation;

(e) Defines the authority and responsibilities of the safety organization and delineates the safety related authority and responsibilities of other departments; and

(f) Incorporates safety goals and objectives into the overall corporate strategic plan.

APTA's Commuter Railroad Committee letter at pages 1 and 2.

As part of the ongoing review process within DOT, and subsequent to the Working Group's previous opportunities to review the proposed rule text, FRA implemented changes to the draft regulatory text and preamble. FRA initiated these changes in order to strengthen the rule's requirements and establish more objective criteria for FRA's review of each railroad's emergency preparedness plan. In a letter dated December 27, 1996, FRA sent a copy of the revised regulatory text to members of the Working Group, and requested comments on issues that the members wished to see included in the preamble section of the proposal. FRA requested that all comments be submitted to FRA by the close of business on January 8, 1997.

Development of the Passenger Safety Program

As discussed above, this proposed rule is one element of a comprehensive effort to address the safety of rail passenger service. In addition to this rulemaking, FRA is currently addressing related issues in several contexts. Recent actions addressing passenger safety needs have included, for instance, Emergency Order No. 20, which addressed on an interim basis key issues regarding railroad operating rules, inspection of required emergency window exits, and emergency exit signage and marking.

In the Passenger Equipment Safety Standards Working Group, FRA is examining possible requirements for improved emergency egress features for both retrofit and new construction. Affected railroads have already completed, or will complete by the end of this calendar year, the removal of latches requiring special tools for access to manual releases on powered doors. Separately, FRA is reviewing the totality of emergency egress requirements and the issue of their overall adequacy, including the relocation of manual releases to locations immediately adjacent to end vestibule doors. FRA anticipates that these efforts will be advanced through a collaborative rulemaking process. However, if necessary to ensure prompt action; FRA may propose specific requirements based upon its own staff analysis.

In the context of improving railroad communications, the Railroad Safety Advisory Committee (RSAC) has established a working group to specifically address communication facilities and procedures, with a strong emphasis on passenger train emergency requirements. FRA expects that that group will report recommendations to the RSAC early in 1997. FRA anticipates that those recommendations will address the issue of whether there should be redundant communications capability on all passenger trains. Although that rulemaking will establish minimum safety requirements with respect to communications equipment, it should be noted that intercity and commuter railroads already make extensive provision for ensuring communication capabilities during emergencies.

FRA plans a four-phase process to address emergency preparedness. In 1994, FRA distributed the Volpe Report described above and encouraged railroads to examine their existing programs to determine what improvements could be made. This rulemaking represents the second step in this process, formalizing a planning requirement and identifying certain mandatory elements. The third phase will begin as FRA reviews railroad plans to determine that the issues presented by the Volpe Report and the rule have been adequately addressed within the varying contexts of the commuter authority operations. FRA will conduct a detailed review of each plan. Following review and formal approval of written plan submissions, it will also be necessary for FRA to determine how the program is being implemented in the field. FRA will also be interested in determining how this effort is being integrated into the overall system safety planning process that commuter authorities have agreed to undertake.

FRA is optimistic that this approach will yield positive results, promoting creativity and cross-fertilization of the emergency preparedness planning process through FRA, APTA, and other channels. This give-and-take approach should facilitate standardization of matters involving interface with passengers, while permitting continued adaptation of programs to local needs.

The fourth phase would involve FRA's review, after having gained at least a full year of actual experience under the standards proposed here, of the implementation and effectiveness of the standards and related voluntary developments. In this phase of activity, FRA would work with interested parties to evaluate whether further rulemaking or other action might be necessary to ensure that, for each program element, standards and practices are sufficiently precise and stringent to achieve the desired improvements in emergency

preparedness. Further, this review will determine whether experience in working with emergency responders indicates that additional program elements should be addressed.

Section-by-Section Analysis

FRA proposes to amend Part 223 to Title 49, Code of Federal Regulations by adding three new definitions and requiring railroads operating passenger train service to clearly mark emergency windows. FRA also proposes to add Part 239 to Title 49, Code of Federal Regulations specifically devoted to prescribing minimum Federal safety standards concerning the preparation, adoption, and implementation of emergency preparedness plans by railroads connected with the operation of passenger trains.

1. Definitions: Section 223.5

Section 223.5 would be reorganized and definitions of three important terms employed in the proposed passenger train emergency preparedness regulations would be added. The three new defined terms are "emergency responder," "passenger train service," and "railroad." For ease of reference, FRA proposes to define the term "railroad" so as to include the statutory (49 U.S.C. 20102) definitions of both "railroad" and "railroad carrier" and to clarify that those who provide railroad transportation directly or through an operating contractor are railroad carriers. Thus, the term "railroad" is clearly intended to include commuter authorities. These terms are intended to have the same meaning as in proposed part 239 of this chapter.

Of course, the term "railroad," as used by FRA in the context of regulating passenger train emergency preparedness, is not controlled by the definitions of "rail carrier" and "railroad" set forth in 49 U.S.C. 20102 (5) and (6). Likewise, FRA does not intend for its definition of "railroad" to have any bearing on how the term is used for purposes of the regulatory activities of the Surface Transportation Board.

2. Requirements for New or Rebuilt Equipment: Section 223.9

In accordance with the requirements of 49 CFR 223.9(c) and 223.15(c), all passenger cars must be equipped with at least four emergency windows, which must be designed to permit rapid and easy removal during a crisis situation. Proposed paragraph 223.9(d) requires that all windows intended by a railroad to be used during an emergency situation be properly marked inside and outside, and that the railroad post clear and understandable instructions for their use at the designated locations.

Paragraph 223.9(d)(1) requires that the emergency windows be conspicuously and legibly marked on the inside of the car with luminescent material. FRA realizes that during an emergency the main power supply to the passenger cars may become inoperative and that crewmembers with portable flashlights may be unavailable. Since lack of clear identification or lighting could make it difficult for passengers to find the emergency exits, the proposed rule requires luminescent material on all emergency windows to assist and speed passenger egress from the train during an emergency. The marking of the emergency windows must be conspicuous enough so that a reasonable person, even while enduring the stress and panic of an emergency evacuation, can determine where the closest and most accessible emergency route out of the car is located. In addition, while this proposed section does not prescribe a particular brand, type, or color of luminescent paint or material that a railroad must use to identify a window exit, FRA expects each railroad to select a material durable enough to withstand the daily effects of passenger traffic, such as the contact that occurs as passengers enter and leave the cars.

METROLINK, in noting that the last line of paragraph 223.9(d) requires "each railroad [to] post clear and legible operating instructions at or near such exits," stated that it assumes that the referenced instructions relate to the doors rather than the windows.

Paragraph 223.9(d)(2) requires that the emergency windows intended for emergency access by emergency responders for extrication of passengers be marked with retroreflective material. Since FRA recognizes that not every window will be equipped for emergency access, railroads are required to choose a retroreflective, unique and easily recognizable symbol that will readily attract the attention of emergency responders. The proposed rule does not require a specific size or shape for the symbol, but FRA expects the railroad's emergency preparedness plan developed pursuant to § 239.13 of this chapter to contain a provision detailing emergency responder access (along with passenger car egress), consistent with the evacuation strategy formulated jointly by the passenger train operator and the emergency responder organizations, in accordance with the emergency responder liaison provision set forth in § 239.13(a)(5) of this chapter. Of course, while the proposed rule would not require emergency responders to participate in evacuation planning or strategy with the railroads, the railroads would be required to offer liaison assistance. FRA is working to identify an appropriate marking that might be capable of universal recognition. Although the proposed rule allows a marking that could consist of a symbol or words (such as "RESCUE ACCESS"), FRA reserves the right to be more prescriptive in the final rule based upon a uniform pattern.

The proposed rule requires railroads to post clear and understandable instructions at designated locations describing how to operate the emergency windows. This paragraph does not mandate that railroads use specific words or phrases to guide the passengers and emergency responders. Instead, each railroad should evaluate the operational characteristics of its emergency windows, and select key words or diagrams that adequately inform the individuals who must use them. While railroads are encouraged to post comprehensive instructions, FRA also realizes that during an emergency situation every additional moment devoted to reading and understanding access or egress information places lives at risk. In addition, FRA would already expect passengers and emergency responders to be familiar with the location and operation of the railroad's emergency windows as a result of emergency responder liaison activities and passenger awareness programs conducted in accordance with §§ 239.13 (a)(5) and (a)(7) of this chapter.

3. Appendix B to 49 CFR Part 223

FRA plans to revise Appendix B to 49 CFR Part 223—Schedule of Civil Penalties, to include penalties for violations of the provisions of § 223.9(d) to be included in the final rule. Because such penalty schedules are statements of policy, notice and comment are not required prior to their issuance. See 5 U.S.C. 553(b)(3)(A). Nevertheless, commenters are invited to submit suggestions to FRA describing the types of actions or omissions that would subject a person to the assessment of a civil penalty. Commenters are also invited to recommend what penalties may be appropriate, based upon the relative seriousness of each type of violation.

4. Purpose and Scope: Section 239.1

Section 239.1(a) states that the purpose of this part is to reduce the magnitude of casualties in railroad operations by ensuring that railroads involved in passenger train operations can effectively and efficiently manage emergencies. Subsection (b) states that these regulations provide minimum standards for the subjects addressed, and the affected railroads may adopt more stringent requirements, so long as they are not inconsistent with this part. FRA does not in any way intend that the subject matter of 49 CFR Part 239, Passenger Train Emergency Preparedness, be read to impose burdens or requirements on emergency responders who either participate with railroads in emergency simulations involving the operation of passenger train service or respond to actual emergency situations, or on any other person who may be involved with the aftermath of a passenger train emergency not specified in proposed § 239.3 concerning applicability. Accordingly, FRA does not intend to restrict a State from adopting a law, rule, regulation, order, or standard affecting emergency responders.

5. Application: Section 239.3

As a general matter, FRA proposes that this rule apply to all railroads that operate passenger train service on the general railroad system of transportation, provide commuter or other short-haul passenger train service in a metropolitan or suburban area, or host the operations of such passenger train service. A public authority that indirectly provides passenger train service by contracting out the actual operation to another railroad or independent contractor would be regulated by FRA as a railroad under the provisions of the proposed rule. Although the public authority would ultimately be responsible for the development and implementation of an emergency preparedness plan (along with all related recordkeeping requirements), the railroad or other independent contractor that operates the authority's passenger train service would be expected to fulfill all of the responsibilities under this part with respect to emergency preparedness planning, including implementation.

The proposed rule is structured to apply to intercity and commuter service, not tourist operations. At a later time, FRA may propose application of the rule, or some portion thereof, to tourist, scenic, historic, and excursion railroads. FRA's regulatory authority permits it to tailor the applicability sections of its various regulations so as to expand or contract the populations of railroads covered by a particular set of regulations. FRA has had jurisdiction over all railroads since the Federal Railroad Safety Act of 1970 was enacted.

In considering the issue of requiring emergency preparedness planning by tourist and historic railroad operators in the context of this rulemaking, FRA has not yet had the opportunity to fully consult with those railroads and their associations to determine appropriate applicability in light of financial, operational, or other factors that may be unique to such railroad operations. After appropriate consultation with the excursion railroad associations takes place, emergency preparedness requirements for these operations may be prescribed by FRA that are different from those affecting other types of passenger train operations. These requirements may be more or less onerous, or simply different in detail, depending in part on the information gathered during FRA's consultation process.

The Federal Railroad Safety Authorization Act of 1994 instructed FRA to examine the unique circumstances of tourist railroads when establishing safety regulations. The Act, which amended 49 U.S.C. 20103, stated that:

> In prescribing regulations that pertain to railroad safety that affect tourist, historic, scenic, or excursion railroad carriers, the Secretary of Transportation shall take into consideration any financial, operational, or other factors that may be unique to such railroad carriers. The Secretary shall submit a report to Congress not later than September 30, 1995, on actions taken under this subsection.

Public Law No. 103–440, § 217, 108 Stat. 4619, 4624 (November 2, 1994). In addition, section 215 of that Act specifically permits FRA to exempt equipment used by tourist, historic, scenic, and excursion railroads to transport passengers from the initial regulations that must be prescribed by November 2, 1997. 49 U.S.C. 20133(b)(1). In its report to Congress entitled "Regulatory Actions Affecting Tourist Railroads," FRA responded to the direction in the statutory provision and also provided additional information related to tourist railroad safety for consideration of the Congress. FRA will address the emergency preparedness concerns for these unique types of operations at a later date in a separate rulemaking proceeding. To facilitate resolution of this issue, and a significant number of related issues, the Railroad Safety Advisory Committee (RSAC) has established a Tourist and Historic Railroads Working Group. As a matter of cost efficiency, the Working Group may elect to cover emergency preparedness planning for tourist railroads as part of a package of tourist-specific safety proposals during a multi-day consultation on several rulemaking dockets. FRA would then issue a Notice of Proposed Rulemaking addressing issues in several dockets that pertain to these smaller passenger operations.

In § 239.3(b)(2), FRA proposes that the requirements of this part would not apply to the operation of private passenger train cars, including business or office cars and circus trains. While FRA believes that a private passenger car operation should be held to the same basic level of emergency preparedness planning as other passenger train operations, FRA intends to take into account the financial burden imposed by requiring private passenger car owners and operators to conform to the requirements of this part. Private passenger cars are often hauled by host railroads such as Amtrak and commuter railroads, and these hosts often impose their own safety requirements on the operation of the private passenger cars. Pursuant to this part, the host railroads would already be required to have emergency preparedness plans in place to protect the safety of their own passengers; the private car passengers would presumably benefit from these plans even without the rule directly covering private car owners or operators. In the case of non-revenue passengers, including employees and guests of railroads that are transported in business and office cars, as well as passengers traveling on circus trains, the railroads would provide for their safety in accordance with existing safety operating procedures and protocols relating to normal freight train operations.

6. Preemptive Effect: Section 239.5

Section 239.5 informs the public as to FRA's views regarding the preemptive effect of the proposed rule. While the presence or absence of such a section does not in itself affect the preemptive effect of this part, it informs the public concerning the statutory provision which governs the preemptive effect of these rules. Section 20106 of title 49 of the United States Code provides that all regulations prescribed by the Secretary relating to railroad safety preempt any State law, regulation, or order covering the same subject matter, except a provision necessary to eliminate or reduce an essentially local safety hazard that is not incompatible with a Federal law, regulation, or order and that does not unreasonably burden interstate commerce. With the exception of a provision directed at an essentially local safety hazard, 49 U.S.C. 20106 preempts any State regulatory agency rule covering the same subject matter as these regulations proposed today.

Of course, the subject matter of these regulations covers only the preparation,

adoption, and implementation of emergency preparedness plans for passenger train operations. Accordingly, States are in no way preempted from regulating any of the training requirements or other activities of the non-railroad emergency responders who arrive at the scene of an emergency after a railroad's emergency preparedness plan has been activated.

7. Definitions: Section 239.7

This section contains an extensive set of definitions to introduce the regulations. FRA intends these definitions to clarify the meaning of important terms as they are used in the text of the proposed rule. The proposed definitions are carefully worded in an attempt to minimize the potential for misinterpretation of the rule. Several of the definitions introduce new concepts which require further discussion.

Although the definition of "crewmember" is primarily intended to cover persons who either perform on-board functions connected with the movement of a train (e.g., a locomotive engineer, conductor) or provide on-board service (e.g., an Amtrak food service employee or sleeping car attendant), a deadheading employee is covered by the definition as well. Accordingly, such an employee could count as a "qualified" employee under § 239.101(a)(2)(iv) for purposes of meeting a railroad's minimum on-board staffing requirements for its emergency preparedness plan. However, during a passenger train emergency situation, off-duty employees would also be expected to assume their appropriate roles under the railroad's emergency preparedness plan and assist the passengers. METROLINK indicated that on some trains it has conductors who perform the function of fare enforcement, and recommended that FRA exclude these individuals from the definition of "crewmember." METROLINK also requested that FRA exclude contract food workers from the definition of "crewmember."

The term "control center" envisions not only the traditional railroad concept of a train dispatcher's office, but also railroad offices that are identified as "control centers" but only monitor railroad operations, and modern system operations centers such as those of CSX Transportation, Inc., in Jacksonville, Florida and the Burlington Northern Santa Fe Corporation in Ft. Worth, Texas. The term does not include a location on a railroad with responsibility for the security of railroad property, personnel, or passengers.

It is very likely that control center personnel are located at facilities which are remote from the right-of-way. These facilities should consist of the necessary command, control, and communications equipment to maintain normal train operations, to control electric traction, and to maintain communications throughout the passenger train system. In addition to these functions, the control center should help coordinate responses to emergencies by using equipment such as radio communications systems, direct "hotline" telephones, wayside power removal controls, and ventilation controls under the direction of emergency responders, according to the protocols and procedures of the emergency preparedness plan.

Typical emergency scenarios encompassed by the term "emergency" or "emergency situation" involving a significant threat to the safety or health of one or more persons requiring immediate action may include one or more of the following: illness or injury; a stalled train in a tunnel or on a bridge; collision with a person, including suicides; collision or derailment; fire; collision or derailment with a fire; collision or derailment with water immersion; severe weather conditions; natural disasters; and security situations (e.g., bombings, bomb threats, hijacking, civil disorders, and other acts of terrorism).

The term "qualified," as used in the rule, means employees who are trained under an applicable emergency preparedness plan's components and implies no provision or requirement for Federal certification of persons who perform those functions.

The definition of "railroad" is based upon 49 U.S.C. 20102 (1) and (2), and encompasses any person providing railroad transportation directly or indirectly, including a commuter rail authority that provides railroad transportation by contracting out the operation of the railroad to another person, as well as any form of nonhighway ground transportation that runs on rails or electromagnetic guideways, but excludes urban rapid transit not connected to the general system.

The terms explained here are not exhaustive of the definitions that are proposed for inclusion in § 239.7. This introduction merely provides a sampling of the most important concepts of the proposed rule. Many other terms are defined and explained in the section-by-section analysis when analyzing the actual proposed rule text to which they apply.

8. Responsibility for Compliance: Section 239.9

Section 239.9 clarifies FRA's position that the requirements contained in the proposed rules are applicable to any "person," including a contractor, that performs any function required by the proposed rules. Although all sections of the proposed rule address the duties of a railroad, FRA intends that any person who performs any action required by this part on behalf of a railroad is required to perform that action in the same manner as required of a railroad or be subject to FRA enforcement action. For example, if an independent contractor is hired by a railroad to maintain its records of inspection, maintenance, and repair of emergency window and door exits, pursuant to proposed § 239.17, the contractor would be required to perform those duties in the same manner as required by a railroad.

9. Penalties: Section 239.11

Section 239.11 identifies the penalties that FRA may impose upon any person, including a railroad or an independent contractor providing goods or services to a railroad, that violates any requirement of this part. These penalties are authorized by 49 U.S.C. 21301, 21304, and 21311, formerly contained in § 209 of the Federal Railroad Safety Act of 1970 (Safety Act) (49 U.S.C. 20101–20117, 20131, 20133–20141, 20143, 21301, 21302, 21304, 21311, 24902, and 24905, and §§ 4(b)(1), (i), and (t) of Public Law 103–272, formerly codified at 45 U.S.C. 421, 431 *et seq.*). The penalty provision parallels penalty provisions included in numerous other regulations issued by FRA under authority of the provisions of law formerly contained in the Safety Act. Essentially, any person who violates any requirement of this part or causes the violation of any such requirement will be subject to a civil penalty of at least $500 and not more than $10,000 per violation. Civil penalties may be assessed against individuals only for willful violations, and where a grossly negligent violation or a pattern of repeated violations creates an imminent hazard of death or injury to persons, or causes death or injury, a penalty not to exceed $20,000 per violation may be assessed. In addition, each day a violation continues will constitute a separate offense. Finally, a person may be subject to criminal penalties for knowingly and willfully falsifying reports required by these regulations. FRA believes that the inclusion of penalty provisions for failure to comply with the regulations is important in ensuring that compliance is achieved not only in terms of developing and implementing emergency preparedness plans, but also to better determine if railroads are planning ahead to minimize the consequences of emergencies that could occur.

The final rule will include a schedule of civil penalties in an Appendix A to 49 CFR Part 239, to be used in connection with this part. Because such penalty schedules are statements of policy, notice and comment are not required prior to their issuance. See 5 U.S.C. 553(b)(3)(A). Nevertheless, commenters are invited to submit suggestions to FRA describing the types of actions or omissions under each regulatory section that would subject a person to the assessment of a civil penalty. Commenters are also invited to recommend what penalties may be appropriate, based upon the relative seriousness of each type of violation.

10. Emergency Preparedness Plan: Section 239.101

In drafting the proposed rule, FRA recognized that the operations of each individual passenger train system must be considered in the development and implementation of effective emergency preparedness programs. Factors which should be considered include system sizes and route locations, types of passenger cars and motive power units, types of right-of-way structures and wayside facilities, and numbers of passengers carried, as well as internal railroad organizations and outside emergency response resources. Under the proposed rule, each railroad subject to the regulation is required to establish an emergency preparedness plan designed to safely manage emergencies and minimize subsequent trauma and injury to passengers and on-board railroad personnel. The plan must reflect the railroad's policies, plans, and readiness procedures for addressing emergencies. The railroad is expected to employ its best efforts, under the circumstances of the emergency situation, to execute the provisions of its plan.

In their development of emergency preparedness plans, FRA encourages railroads to integrate, as practicable, the recommended guidelines contained in the Volpe Report. The report provides a comprehensive degree of specificity. While the proposed rule does not require the special level of detail reflected in the Volpe Report, FRA advocates that railroads voluntarily incorporate such elements and items as appropriate into the development of their own emergency preparedness plans, and exclude recommendations only after judicious consideration.

While FRA stresses that each railroad should retain latitude in developing an emergency preparedness plan appropriate for its operations, the plan must provide a comprehensive overview, make clear and positive statements to railroad employees, and contain implementation details concerning the roles, responsibilities, and expectations for employee participation. The plan does not have to be one single document with every section applying to every railroad employee and location; instead, the plan may consist of multiple documents, with a separate section of the plan detailing the specific responsibilities for each job category or function. In instances where a freight railroad hosts the operations of a passenger railroad, both railroads would have to address issues of emergency preparedness. However, the rule would require the hosting freight railroad to develop only the applicable portions of an emergency preparedness plan uniquely dealing with the passenger operations not otherwise addressed.

The majority of passenger train operational difficulties are handled effectively and do not become emergencies. Since in many instances a train crew can immediately take action to resolve a problem and potential emergency without evacuating the train, existing emergency preparedness policies de-emphasize immediate evacuation from trains located between stations unless passengers and crews are in immediate danger. Accordingly, in most situations, after notifying the control center that a problem exists and receiving permission, the train crew will move the train to the nearest station or safe location (e.g., outside a tunnel) before taking further action. If the train crew is unable to resolve the situation, railroad personnel or outside emergency responders may be sent to the emergency scene to provide mechanical aid, alternate transportation, or medical assistance.

The effectiveness of a railroad's overall response under its emergency preparedness plan will be greatly influenced by the type of emergency with which the train crew is presented (e.g., injury or illness, stalled train, suicide or accidental collision with a person, derailment or collision, smoke or fire, severe weather conditions or natural disasters, and vandalism or sabotage). The response will also be affected by the characteristics and type of train involved and the functional status of electrical and mechanical systems, including lighting, ventilation, and public address systems. In addition, the operational environment (e.g., a train is located in a tunnel, on an elevated structure, or in electrified territory), and the type of right-of-way structure or wayside facility must be addressed, as appropriate, in each railroad's emergency preparedness plan.

The emergency preparedness plan should establish a chain of command which assigns functions and responsibilities to appropriate passenger railroad operating personnel, while recognizing the authority and responsibilities of emergency responders. Coordination is important to the ability of all parties to respond appropriately to an emergency, regardless of its size and location. Documentation, including applicable portions of the emergency preparedness plan, protocols, and procedures within rulebooks, manuals, and guidelines for control center employees and on-board personnel, provides the basic framework for coordination between all internal parties responding to an emergency. This internal documentation should address at least the following issues:

- Delineation of functions and responsibilities during emergencies for passenger railroad operating personnel, including control center personnel;
- Telephone numbers of railroad personnel and emergency responders who need to be notified;
- Criteria for determining whether an emergency exists and requires assistance from emergency responders;
- Procedures for determining the specific type, location, and severity of the emergency, and thus which response is appropriate;
- Procedures for notifying emergency responders; and
- Procedures and decision-making criteria for transferring incident responsibility from the passenger railroad operator to emergency responders.

Section 239.101 sets forth the general requirement that railroads shall develop and comply with their own emergency preparedness plans and written procedures to implement their own plans for addressing issues of emergency preparedness, that meet Federal minimum standards. Paragraph 239.101(a) requires all railroads affected by this proposed part to develop and implement written procedures to fulfill each applicable element of this section. Depending on the nature of a railroad's operations, as well as on whether its operations involve a host freight railroad, different elements of this proposed section may be fulfilled by more than one entity. While FRA requires all elements of this section to

be addressed for each passenger train operation, the rule does not mandate that every element be addressed in each affected entity's emergency preparedness plan. Accordingly, if a passenger train service operator relies on its freight railroad host to notify outside emergency responders after an emergency occurs, FRA would permit the freight railroad's emergency preparedness plan to address this element. Provided that both entities properly coordinate their emergency preparedness plans (and include cross-reference citations to each other's plan), the passenger train service operator's plan could omit this item and still be in compliance with the proposed rule.

The proposed rule would not require that the public authority and the operating railroad or independent contractor each file a separate emergency preparedness plan with FRA if the operating railroad or independent contractor is the only party performing a function under the regulation. However, each party's responsibility for compliance with this part must be clearly spelled out in the emergency preparedness plan or plans that are filed with FRA for approval covering the entire passenger train service operation. After approval of the plan or plans, FRA may hold the public authority or the other entity or both responsible for compliance with this part.

FRA proposes to establish the parameters for such a plan and defer to the expertise of each individual railroad to adopt a suitable emergency preparedness plan for its railroad, in accordance with these parameters. As noted previously in the preamble to this proposed rule, the emergency preparedness plan may consist of multiple documents, with a separate document detailing the responsibilities of each category of employee under the railroad's plan. Each railroad is also encouraged to review the suggestions provided in the Volpe Report before developing an emergency preparedness plan in accordance with the requirements set forth in this section. In developing the plan, railroads are reminded that the goal of the proposed rule is to maximize the safety of passengers, railroad personnel, emergency response personnel, property, and the general public which come in contact with the railroad by providing for immediate notification of outside law enforcement officials and emergency responders. Railroads should not instruct their on-board employees to substitute as professional emergency responders and delay notification of appropriate railroad and outside officials.

Paragraph 239.101(a)(1) sets forth the requirement that the passenger train crewmembers must communicate immediately and effectively with each other, as well as with the control center and the passengers. Typically, in an emergency situation the proposed rule requires an on-board train crewmember to immediately contact the control center via a dependable on-board radio or an alternate means of communication (e.g., wayside railroad telephone, public telephone, private residence telephone, or cellular telephone) to advise appropriate railroad officials of the nature of the emergency and the type of assistance required. After this initial notification to the control center occurs, the passengers must be informed of the emergency and provided directions. As appropriate, all passengers should be accounted for (particularly in sleeping compartments) so as to expedite evacuation, if necessary, and to avoid needless effort to search for "missing" persons.

METROLINK stated that the train crewmember should notify the passengers after consultation with the control center and the control center officer, unless the train must be evacuated immediately. Also, the LIRR recommended that FRA revise paragraph 239.101(a)(1) in the final rule to require an on-board crewmember to remove all occupants of the train from imminent danger as a first step after he or she quickly and accurately assesses the passenger train emergency situation. FRA recognizes that each emergency situation is unique, and may require rapid decisionmaking by on-board crewmembers on how best to ensure the safety of the passengers. Moreover, it is FRA's expectation that railroads will properly train their employees to perform the requisite life-saving functions after an emergency (e.g., relocation of passengers from a smoke-filled car to a safer section of the train or evacuation of the passengers from a derailed car), in conjunction with their responsibilities to assess the nature of the emergency and notify the control center as soon as practicable thereafter. Accordingly, while FRA may conclude in the course of investigating a specific train incident or accident that a particular employee's egregious mishandling of an emergency situation warrants individual enforcement action and/or enforcement action against the railroad, we are reluctant to strictly impose the precise order or manner in which on-board crewmembers must execute their individual responsibilities under the railroad's emergency preparedness plan. However, in the course of drafting the final rule text, FRA may elect to incorporate recommended practices as specific directives to railroads concerning how they must respond to the various types of emergency situations most likely to occur during passenger operations, such as on-board fires, downed electrical power sources, or passenger injuries from a derailment.

Although the proposed rule does not require a railroad to use a specific means of communication, FRA expects the railroad to select a method that is effective and capable of reaching pertinent railroad control centers and on-board locations in order to comply with the notification requirement of this subsection. FRA further expects that railroads will voluntarily build redundancy into their emergency preparedness plans by outfitting their crewmembers with an immediately available backup means of communication, in the event that primary communications systems are either damaged during the emergency or otherwise rendered inoperative. For example, a cellular telephone could be made available for use by on-board crewmembers to contact the control center in the event the locomotive radio is inoperative. Also, on-board crewmembers could still maintain proper communication with the passengers, in the event that regular or emergency power was unavailable to operate the train's public address system, by using portable megaphones. Commenters are asked to discuss whether the final rule should expand the subsection's language requiring notification to mandate a specific primary means of communication, and/or whether the final rule should also require each affected railroad to equip its passenger trains with a secondary means of communication in the event that the primary means is unavailable. This issue may be resolved in this proceeding or in the context of the forthcoming revision of the Radio Standards and Procedures in 49 CFR Part 220. That rulemaking was tasked to the RSAC on April 1, 1996.

It is FRA's understanding that many railroads publish an emergency toll-free telephone number in the employee timetable which connects with the control center office. Amtrak also has a nationwide toll-free telephone number which connects the caller to the national Amtrak police desk in Washington, DC, which is manned around the clock. The rule does not require that notification to either the control center or the train passengers occur within a precisely measured number of minutes, rather it uses the

words "as soon as practicable" in order to give railroads maximum flexibility. FRA expects that in the totality of the circumstances of the emergency situation, the train crewmembers will exercise their best judgment using the railroad's own emergency preparedness plan procedures.

Under current practice, Amtrak's notification of the emergency responders will vary slightly depending on whether or not the passenger train emergency occurs in Amtrak-dispatched territory. In territory where trains are dispatched by Amtrak, either the control center will directly notify the emergency responder or the control center will notify Amtrak police, who will then, as appropriate, notify pertinent emergency responders, state and federal agencies, and Amtrak supervisors. In territory where trains are not dispatched by Amtrak, the host railroad control center will directly notify the appropriate emergency responders, government agencies, and host railroad supervisors. Which emergency responders and agencies are notified depends on the nature of the emergency. Most control centers have emergency telephone numbers already in their computer systems, usually listed alphabetically by city, with hard copy backups.

FRA is aware that each railroad's operations are somewhat unique, and that the appropriate persons and organizations who must be notified will vary based upon the railroad's individual operating characteristics and the actual type of emergency that occurs. Accordingly, paragraph 239.101(a)(1)(ii) does not specify emergency responder organizations (e.g., fire departments, helicopter rescue groups) or job titles or duties of appropriate railroad officials whom the control center must contact. The subsection also does not specify which control center employees may be designated by the railroad to maintain the list of emergency telephone numbers; METROLINK recommended that FRA require that the railroad designate an employee function or position to be responsible for maintaining current emergency telephone numbers, rather than a particular employee. In addition, the term "adjacent" is not defined (e.g., a distance measurement from the passenger train experiencing the emergency to adjacent rail modes) for purposes of determining which other rail modes must be notified. Instead, consistent with the Working Group's recommendation that the proposed rule should provide each affected railroad with flexibility to implement the rule's provisions, this subsection requires that the emergency preparedness plan state how the railroad will achieve the appropriate notifications.

Paragraph 239.101(a)(2) requires that the emergency preparedness plan provide for initial and periodic training at least once every two years of all railroad employees who have responsibilities under the plan, and that the training address the role of each affected employee. Adequate training is integral to any safety program. This subsection recognizes that the successful implementation of an emergency preparedness plan depends upon the knowledge of the on-board and control center personnel about the system route characteristics, passenger cars and motive power units, and emergency plans, protocols, procedures, and on-board emergency equipment. An employee who has not been trained to react properly during an emergency situation may present a significant risk to railroad personnel and passengers. Employees must receive "hands-on" instruction concerning the location, function, and operation of on-board emergency equipment, stressing the following:

- Opening emergency window, roof, and door exits, with an emphasis on operating them during adverse conditions such as when a rail car is overturned;
- Use of emergency tools and fire extinguishers;
- Use of portable lighting when the main power source is unavailable on a passenger train; and
- Use of megaphones and public address systems (if they are provided by the railroad for communication purposes).

The proposed rule affords the passenger railroad operator a time period of up to two years to provide each session of "periodic" training after the operator provides initial training in the emergency preparedness plan's provisions to its employees. The periodic training requirement is intended to inform railroad personnel of changes in procedures and equipment and ensure that their skills remain at a level that enables them to effectively execute their responsibilities under the emergency preparedness plan. In addition, the recurrent training will reinforce segments of the emergency preparedness plan for individuals who have not performed properly.

FRA concludes that the unique operating characteristics of all the different railroads subject to the proposed rule, as well as the financial costs involved with providing training, would make it impractical to include a calendar year or other more restrictive or specific requirement for periodic training in the proposed rule. Moreover, assuming that FRA elects to specify in the final rule that the upper limit of the term "periodic" will remain at two years, anytime the provisions of an emergency preparedness plan are invoked during an actual emergency, we would count that event toward the training requirement for those affected employees.

FRA is interested in receiving comments from railroads on the costs of implementing the on-board personnel training requirements of the proposed rule. Specifically, FRA wants to determine the extent of the current training that railroads already provide to their on-board employees (including emergency preparedness training) as part of regular operating rules training programs. Comments are requested concerning the estimated dollar amount of the incremental additional costs connected with modifying existing training programs to comply with this proposal. FRA is interested in ascertaining whether the proposed training requirements will add merely *de minimis* costs to each railroad's existing training program or if compliance would entail moderate or significant additional costs.

As discussed in the analysis of proposed § 239.103, FRA expects railroads operating passenger train service to conduct emergency simulations to evaluate their overall emergency response capabilities and ensure that emergency preparedness plans, procedures, and equipment address the particular needs of various types of passengers. Emergency simulations can help railroads achieve theses goals through careful selection of the time and location of the simulation and participation by personnel from the railroads, outside emergency responder organizations, and "volunteer passengers". In addition to classroom training, simulations provide employees with a practical and realistic understanding of rules, procedures, trains, and right-of-way structures/wayside facilities as they relate to emergency response. FRA expects that the employee training provided in accordance with paragraph 239.101(a)(2) will include instruction on the importance of emergency simulations in achieving successful implementation of the emergency preparedness plan.

The proposed rule does not require on-board personnel to receive training in first aid or in CPR. Although FRA initially considered including these items as training requirements in the

proposed rule, or at least mandating that railroads offer employees the opportunity to receive this training, the consensus of the Working Group was that both first aid and CPR training should be excluded from the rule. The Working Group stressed that the goal of the proposed rule is to ensure that emergency responders arrive promptly at the scene of an emergency, not to train on-board personnel to act as emergency responders. The Working Group also stated that even if FRA requires a railroad to offer first aid and CPR training, no railroad can literally force an on-board crewmember to assist an ailing passenger. Further, trains with heavier passenger loadings are likely to have on board one or more medical professionals whose skills will be more extensive, and better practiced, than those of a crewmember whose primary and recurring duties do not include medical emergencies.

During the Working Group meeting on February 7, 1996, Amtrak stated that it is spending between $2.5 to $3 million by fiscal year 1998 to train the chiefs of on-board service and to provide for at least one employee on every train being trained to administer first aid and perform CPR. Under the Amtrak plan, employees will not be required to use this training, merely to receive it. Despite the extent of Amtrak's commitment to voluntarily providing extensive first aid and CPR training, Amtrak did not want these items required in the final rule. Another member of the Working Group, Metrolink, stated that it has served approximately eight million passengers in three years of operation, and has never had a passenger require CPR. Metrolink also noted that commuter railroads generally operate in populated areas, with professional emergency responders in most cases only minutes away. The LIRR stated that it offers CPR training to newly hired employees and shows a refresher film to employees every five years, but acknowledged that it cannot force employees to administer CPR. The railroad also noted that it would never want the engineer to leave the controls of the locomotive during an emergency. NJTR indicated that its train crews already have many duties to perform during an emergency and that first aid and CPR should be performed by emergency medical services personnel.

FRA invites commenters to submit their views on whether the final rule should include the issues of first aid and CPR training. If FRA does decide to address these issues, one option would be to mandate that railroads offer their employees first aid and CPR training, without requiring employees to actually use this training during an emergency. Under this scenario, a railroad employee who offered no assistance during an emergency, because he or she feared coming into contact with an injured or ill passenger's bodily fluids, would not violate these regulations. (The experience of the American Red Cross is that volunteers who receive first aid and CPR training, and appropriate equipment, are motivated to provide needed assistance when the time comes.) The second option would be not only to require railroads to train their employees in first aid and CPR, but also to mandate that employees use this training during an emergency.

The proposed rule also does not require railroads to record the number of passengers riding on their trains at any given time or to record how many people get on and off at each train stop. Although lack of an exact passenger manifest may delay emergency responders in determining when every passenger has been removed from a derailed or disabled train, the frequency with which many passenger trains pick up and discharge passengers would create logistical difficulties for a train operator. A train crew can usually provide a good estimate to emergency responders, so that they can respond with the necessary personnel and equipment. Moreover, it is doubtful that emergency responders would simply trust an exact passenger count provided by a train crew and cease looking for additional survivors of an emergency. Commenters are invited to offer proposals for training on-board crewmembers to track the exact number of passengers present on a train at any given moment, and to include suggestions on cost-efficient technology for achieving this goal.

The proposed rule also requires appropriate training of control center personnel who affect the implementation of a railroad's emergency response plan. FRA expects the railroad to provide training only for the requisite control center employees designated under the plan to convey the nature and extent of a passenger train's emergency to the emergency responder organizations. Accordingly, FRA does not wish to require training of other control center employees who perform merely incidental functions, e.g., a clerical or other office employee who receives a telephone call from a stalled train.

The term "accurately measure" is used in proposed paragraph 239.101(a)(2)(iii) relative to employee qualification in a broad sense to mean that the employee being tested will show to the railroad sufficient understanding of the emergency preparedness plan subject area for which he or she is responsible, and that the employee can perform the duties required under the plan in a safe and effective manner. Proficiency must be demonstrated by successful completion of a written examination, but in addition may be illustrated by an interactive training program using a computer, a practical demonstration of understanding and ability, or an appropriate combination of these in accordance with this section.

This section permits railroads discretion to design the tests that will be employed (which for most railroads will entail some modification of their existing "book of rules" examination to include new subject areas), provided that the design addresses all relevant elements of the emergency preparedness plan. This section does not specify things like the number of questions to be asked or the passing score to be obtained. It does, however, contain the requirement that the test not be conducted with open reference books unless use of such materials is part of a test objective. This section also requires that the test be in writing. In deciding to require a written test, FRA was aware that the test taking skills of some individuals may be deficient and that some persons may have literacy problems. However, FRA believes that minimum reading and comprehension skills are needed to assure proper execution of an emergency preparedness plan.

Paragraph 239.101(a)(2)(iv) requires that at least one on-board crewmember be qualified under the applicable provisions of the railroad's emergency preparedness plan. For example, a commuter railroad operates with a three-person crew fully trained under the applicable provisions of the railroad's emergency preparedness plan, but includes an engineer trainee in the locomotive cab who is not qualified under the plan's provisions. Since the train already has a fully trained and qualified crew operating the train, the commuter railroad is in full compliance with the proposed rule even though one on-board crewmember is not qualified under the emergency preparedness plan. This paragraph may also apply if, for example, a fully-trained passenger train crew turns over the operation of its train to a freight railroad train crew that is not qualified under the passenger railroad's emergency preparedness plan. Provided that the passenger train is operated by the freight crew with at least one on-board crewmember of the passenger train present who is qualified under the passenger railroad's emergency preparedness plan, there would be no violation of the proposed rule. Although the proposed rule requires only one qualified crewmember, FRA anticipates that railroads will voluntarily elect to train most, if not all, on-board crewmembers in emergency response procedures.

Paragraph 239.101(a)(3) contains the requirement that freight railroads must prepare emergency preparedness plans addressing instances when they host the operations of rail passenger service over their lines. Even though freight railroads may neither provide nor operate rail passenger service themselves, and therefore not be subject to most requirements of the proposed rule, these railroads still have certain significant emergency preparedness responsibilities. The emergency preparedness plans for freight railroads must, at a minimum, include procedures for making emergency responder notifications, and discuss their general capabilities for rendering assistance to the involved passenger railroads during emergency situations. The hosting freight railroads must address any physical and operating characteristics of their rail lines that may affect the safety of these rail passenger operations, e.g., evacuating passengers from a train stalled in a tunnel or on an elevated structure.

FRA expects a railroad that operates rail passenger service over the line of a freight railroad to review all of the requirements imposed by the proposed rule with the host railroad, and coordinate their respective roles in implementing a coherent response to an emergency situation. While FRA presumes that the freight railroad will bear primary responsibility for ensuring the emergency preparedness of any railroad permitted to operate intercity passenger or commuter trains over its line, the proposed rule does not restrict the host railroad and the operating railroad from assigning responsibility for compliance with this part via a private contractual arrangement. FRA included the coordination requirement to ensure that all railroads involved in a particular rail passenger service operation understand each other's crucial role in planning for emergency preparedness.

Paragraph 239.101(a)(4)(i) addresses FRA's expectations for compliance with this part from railroads with operations that include tunnels of considerable length, where immediate passenger egress is not feasible. In order to limit the number of structures covered by this proposed paragraph to the longer ones that could be expected to present more impediments to the safe and orderly withdrawal of passengers from a disabled train, tunnels of less than 1,000 feet are excluded. This limitation is reasonable, considering that intercity passenger trains seldom consist of less than four cars and often have many more cars than this, implying a minimum total train length of 400 or more feet. Most likely, a train of this or greater length will have either the head or rear end close to or outside of a tunnel portal should an unplanned stop occur in a tunnel less than 1,000 feet long.

Over the years, passenger train emergencies have occurred in tunnels where existing emergency procedures and tunnel characteristics, such as lighting and communication capabilities, were determined to be inadequate. In order to better evaluate tunnel safety issues related to emergency preparedness, FRA requested additional information from the railroad industry. The results were summarized in a report entitled "Tunnel Safety Analysis" (Tunnel Report), which was published by FRA in February 1990. A copy of the report was also made available to the rail passenger railroads for their information and guidance, and has been placed in the docket for this rulemaking. FRA encourages all railroads required to address tunnel safety in their emergency preparedness plans to consult the Tunnel Report for guidance. FRA is also aware that many State and local jurisdictions already impose site-specific regulations to address tunnel safety, and that most railroads with operations involving tunnels have long-standing internal emergency tunnel procedures.

Paragraph 239.101(a)(4)(ii) proposes that railroads operating on elevated structures, over drawbridges, and in electrified territory, incorporate emergency preparedness procedures into their plans to address these unique physical characteristics. For example, in an emergency in electrified territory, the control center should be responsible for issuing instructions to deenergize the electrical power. Also, the train crew and emergency responders should know how, when, and when not to remove on-board power from the train, including traction power, train-lined (head-end) power to individual cars, and battery source power.

Paragraph 239.101(a)(4)(iii) recognizes that the emergency preparedness plans of certain freight and passenger railroads will need to address the unique safety concerns posed by adjacent rail modes of transportation. For example, employees of a freight railroad to which this part applies, who have knowledge of or observe an emergency in a common corridor, e.g., fire, derailment, or intrusion by rapid transit rail equipment or vehicles, must be required by the plan to immediately notify the control center with details. The control center must attempt to determine the exact location of the incident, any condition that would affect safe passage by affected trains or road vehicles, and whether hazardous materials are involved, and then initiate appropriate responsive action.

Many emergencies require response from outside emergency responder organizations in addition to the railroad. Proper coordination of roles between all of the organizations that may respond to an emergency is essential to ensure timely and effective response, since the number of passengers carried and the railroad operating environment may be quite different according to the type of service and routes. Paragraph 229.101(a)(5) recognizes that the successful implementation of any emergency preparedness plan depends upon the affected railroads maintaining current working relationships with the emergency responder organizations, so that each party can learn of the full preparedness capabilities that the other can offer during an emergency. In this regard, each railroad's emergency preparedness plan must provide for distribution to emergency responders of railroad equipment diagrams and manuals, right-of-way maps, information on physical characteristics such as tunnels, bridges, and electrified territory, and other related materials. In order to continually reinforce the familiarization of the emergency responder organizations with the railroads' protocols, procedures, operations, and equipment, the proposed rule requires railroads to periodically distribute applicable portions of the plan to emergency responders at least once every three years, even if no changes have been implemented. Further, since the knowledge and ability to carry out procedures and use emergency equipment are essential to the success of emergency response actions, the proposal requires the railroads to promptly notify emergency responders whenever material alterations to the plan occur (e.g., revisions to emergency exit information, pertinent changes in system route characteristics or railroad equipment operated on the system, or updates to names and telephone numbers of relevant contact officials on the railroad).

FRA wants to ensure that the emergency responders will receive the maximum amount of available

information about a railroad's operations in advance of an emergency, and hopes that emergency responders will voluntarily study the material distributed and participate in emergency simulations. However, the proposed rule would only require that affected railroads make the operations information available to emergency responders, and that the responders merely be invited to participate in emergency simulations. FRA has no authority to penalize an emergency responder organization if it chooses to ignore the distributed information or refuses to attend simulations with the railroad. Likewise, the proposed rule would not hold a railroad accountable for an emergency responder organization's unwillingness to enter into a liaison relationship, provided that the railroad made the liaison opportunities known and available to the responders.

In its comments on the revised regulatory text, METROLINK questioned the meaning in paragraph 239.101(a)(5)(ii) of the phrase "maintaining an awareness of each emergency responders' capability." METROLINK noted that its operations include 33 different fire districts, over 50 ambulance companies, and 45 police agencies, and contended that maintaining this type of awareness is not a railroad function. METROLINK also stressed that the proposed rule does not require emergency responders to notify each affected railroad when their capabilities change, and stated that it is the responsibility of the emergency responders to establish mutual aid with other local agencies when emergency situations exceed their capabilities. In addition, METROLINK indicated that it lacks the technical capacity to know or understand when a significant change may occur in an emergency responder's response capability.

FRA is aware of the great number of jurisdictions that intercity trains operate through, and that it is neither simple nor inexpensive for passenger train operators to provide material and familiarization to every outside emergency response organization within all individual communities along each route. Some commuter train operators have developed booklets and videotapes to illustrate equipment and describe entry and evacuation procedures for its trains and certain right-of-way facilities. However, Amtrak stated at the Working Group meetings that because it operates through thousands of jurisdictions with thousands of potential emergency responder organizations located throughout the United States, it would have difficulty complying with this paragraph.

While FRA considers the establishment of liaison relationships between railroads involved with rail passenger operations and emergency responders crucial to achieving the goals of the proposed rule, the agency is also fully aware of the unique circumstances of Amtrak's operations. Commenters are invited to suggest either how Amtrak can best comply with the emergency responder liaison requirement as set forth in the proposed rule, or whether the final rule should establish a different standard for railroads that operate in territories with large numbers of potential emergency responders to contact. Any commenter proposing two or more sets of standards should also suggest what numerical or mileage criteria should be used to distinguish the railroads, and state how these differing standards would still ensure adequate levels of safety and emergency preparedness.

Paragraph 239.101(a)(6) states that each railroad's emergency preparedness plan shall indicate the types of on-board emergency equipment and the location on each passenger car. Although the proposed rule requires a minimum of only one fire extinguisher and one pry bar per passenger car, and one flashlight per on-board crewmember, FRA would strongly encourage each railroad to voluntarily supplement this list of on-board emergency equipment. Further, FRA recognizes that there may be special local interests that might need to be accommodated, particularly in cases of public authorities operating passenger train service within only one territory. While national uniformity to the extent practicable of laws, regulations, and orders related to railroad safety is important, FRA does not wish to decrease the level of emergency preparedness already in place on a passenger railroad.

FRA must determine whether the final rule should specifically address special circumstances that may exist in local jurisdictions throughout the country on a categorical basis, which are currently subject to more stringent requirements than the minimum quantities of on-board emergency equipment set forth in the proposed rule. Accordingly, FRA invites comments on what types and quantities of on-board emergency equipment railroads are currently required to carry pursuant to laws in the local jurisdictions in which they operate. FRA also invites comments on the reasons for these more stringent requirements. Depending on the comments received, FRA may adopt the minimums set forth in the text of the proposed rule or decide to broaden the coverage and requirements of § 239.101(a)(6) by specifying additional types and/or quantities of on-board emergency equipment that some or all railroads must carry on each passenger car.

This paragraph does not require railroads to instruct their passengers about either the location or use of the on-board emergency equipment. As stated, FRA is committed to crafting a final rule that avoids micromanagement of the provisions of a railroad's emergency preparedness plan. FRA recognizes that passengers might benefit from receiving routine instructions about the location and operation of on-board emergency equipment during each train trip, in the event that the crewmembers are injured or otherwise unable to access the equipment before the outside emergency responders arrive. However, FRA is also aware from its consultations with the Working Group that pilferage of on-board emergency equipment is a serious problem on many passenger railroads, and that specifically focusing the attention of passengers on where the equipment is located would only exacerbate the problem. Clearly, the equipment can only help both crewmembers and passengers during an emergency if it is available for proper use. Also, members of the Working Group stressed that regular riders on intercity or commuter operations are probably already familiar with the on-board emergency equipment by virtue of their frequent presence on the train, and would not benefit from any additional required information.

Since the rulemaking on rail passenger equipment safety standards is still ongoing, FRA is unable to state whether railroads will be required to install permanent or auxiliary emergency lighting on their rail cars. However, whatever requirements eventually appear in a new set of regulations at 49 CFR Part 238, paragraph 239.101(a)(6)(ii) states that auxiliary portable lighting must be available for assistance in an emergency and should be routinely maintained and replaced as necessary. The proposed rule does not require that every rail passenger car have such lighting, but the train itself must carry enough portable lighting capable of fostering passenger evacuation. In its comments on paragraph 239.101(a)(6)(ii) of the revised regulatory text, METROLINK stated that FRA needs to define the phrase "auxiliary portable lighting must be accessible," and questioned whether a flashlight is an acceptable form of such lighting. FRA intends for a handheld flashlight, such as a flashlight with a "D" cell, to be one of the means of satisfying the auxiliary portable lighting requirement.

Finally, paragraph 239.101(a)(7) requires railroads to make passengers aware of emergency procedures to follow before an emergency situation develops, thus enabling them to respond properly during the emergency. All passenger awareness efforts must emphasize that passengers must follow the directions of the train crew during an emergency. If passengers are on a disabled train, but are not injured or facing imminent danger, they could safely await the arrival of trained emergency responders with appropriate evacuation equipment. However, in a serious emergency involving smoke or fire, passengers may have to evacuate the train before emergency responders arrive. Thus, operators of rail passenger service should take steps to increase passenger awareness about basic evacuation procedures. Since passengers could inadvertently jeopardize their own safety, it is appropriate for them to take the initiative only if the crewmembers are incapacitated.

Passenger railroads must educate passengers about their role in cooperating in emergencies by conspicuously and legibly posting emergency instructions inside each passenger car, and by utilizing at least one of the additional methods designated in this paragraph to provide safety awareness information. These methods include distributing pamphlets, posting information in stations on signs or on video monitors, and the review of procedures by crewmembers via public address announcements. All brochures and signage must emphasize that passengers must follow the directions of the train crew during an emergency.

Although paragraph 239.101(a)(7)(ii)(A) permits a railroad to fulfill the secondary passenger education requirement of the proposed rule by making on-board announcements, the proposed language does not specify the frequency with which these announcements must be made during a train run. While FRA believes that, with regard to intercity service, announcements are appropriate after at least each major passenger pick-up point, commenters are invited to suggest ways of providing safety information to all new riders without becoming repetitious to the remaining passengers. In addition, while the proposed rule requires railroads to utilize only one additional method to disseminate safety awareness information to passengers, FRA encourages railroads to employ as many of the options as possible based on operating and budgetary considerations.

The information in the various sources of passenger safety awareness information must be consistent in content and sufficient for first-time users of the railroad, but not so overwhelming as to arouse undue concern. All information must be printed or spoken in English, but railroads serving large non-English speaking communities should consider providing information in other languages as well. Materials for persons who are visually impaired should be printed in large type format and in braille. Finally, for persons with other types of disabilities, appropriate passenger awareness materials should provide information about evacuation policies and procedures and other emergency actions, to the extent practicable.

Passenger awareness education should include information that may permit passengers to accomplish the following:

- Recognize and immediately report potential emergencies to crewmembers;
- Recognize hazards;
- Recognize and know how and when to operate appropriate emergency-related features and equipment, such as fire extinguishers, train doors, and emergency exits; and
- Recognize the potential special needs of fellow passengers during an emergency, such as children, the elderly, and disabled persons.

Paragraph 239.101(a)(7)(iii) requires railroads to perform surveys of their passengers in order to learn how successful the passenger awareness program activities have been in apprising passengers of the procedures that must be followed during an emergency. In addition to verifying that passengers can locate and operate the emergency window and door exits in the event of an evacuation, the surveys must determine that passengers know where the safety information is posted in the car and that during an emergency they must follow the directions of the train crew.

Although the railroad is required to maintain records of the information obtained from its passenger surveys, the proposal does not mandate that railroads ask passengers to complete written questionnaires. Instead of handing out questionnaire surveys at station stops and hoping that passengers will voluntarily elect to either provide responses in narrative form or fill in answers to multiple choice questions, the railroad could direct its employees to wait at either station stops or onboard trains and orally read the questions to selected members of the traveling public who voluntarily agree to participate. The oral responses would then be recorded by the railroad in writing on records that would be maintained at the system headquarters for the railroad and at the division headquarters for each division where the surveys were conducted (i.e., the records availability must be division specific). The records can consist of multiple documents, and may contain separate sections covering locations of the safety information on the cars and knowledge of the safety procedures to follow in an emergency. Additionally, railroads must make these survey records available to duly authorized FRA representatives for inspection and copying (e.g., photocopying or handwritten notetaking) during normal business hours.

The proposal specifies that a railroad must survey a representative sample of passengers at least once during each calendar year to determine the effectiveness of its passenger awareness activities. FRA is not proposing a methodology for conducting this sampling, nor is it requiring that the surveys be distributed at every station stop or along particular major lines. FRA is confident that each railroad will use due dilgence in surveying a statistically significant cross section of its customer population in order to periodically update and improve its passenger safety awareness information and amend its emergency preparedness plan, as appropriate. Although FRA is proposing that railroads conduct the surveys at least annually, we expect that after the initial education effort takes place in the first year that the rule is in effect the ridership awareness level will reach a percentage in the range of between 60 to 75 percent. If this increased awareness level occurs, as reflected in a high rate of correct survey responses, FRA believes that the requirement could be modified to permit railroads to conduct the surveys at least once every three years. FRA seeks public comment on both whether the final rule should permit railroads to conduct surveys less frequently than annually, and if so, on what would be an appropriate minimum percentage of public awareness that must be reached before less frequent surveying would be justified.

Since the issue of passenger surveys was not fully developed with the Working Group during the drafting of this proposal, FRA looks forward to working with the members of the

Working Group during the final rule phase to develop the most effective means of verifying that the passenger awareness program activities will achieve their objectives. In this regard, FRA seeks comments on whether the survey process anticipated by this proposal can be a reliable measure of the effectiveness of the passenger information programs or whether there are more efficient or less expensive means than surveys to determine the success of these programs, such as focus groups or unstructured meetings and discussions with members of the traveling public. Commenters from railroads are urged to discuss what sampling techniques they currently use when they conduct customer satisfaction surveys in order to assist them in improving passenger comfort, determining if railroad employees are providing proper customer service, and planning timetable schedules.

Since proposed paragraph 239.101(a)(7)(ii) requires railroads to utilize an additional method of providing safety information without specifying how frequently the information must be provided, commenters are encouraged to address this issue by indicating whether each railroad should be allowed to study the results of the passenger surveys in order to determine the effectiveness and proper timing of passenger safety awareness program activities appropriate for its operation. Accordingly, instead of specifying a fixed maximum time interval between utilization of the additional forms of program activity, FRA could elect to require that railroads determine the optimal frequency that best serves their passengers. In addition, it is expected that as the traveling public grows more accustomed to reading and understanding the emergency instructions posted inside all passenger cars on bulkhead signs, seatback decals, or seat cards the need for redundant reminders (e.g., on-board announcements, ticket envelope safety information, or public service announcements), especially at frequent time intervals, will greatly diminish. Moreover, depending on the additional method selected, different time intervals may be appropriate. For example, while it may be suitable for a railroad to distribute safety awareness information on a seat drop every three months, the railroad may conclude that it should arrange for public service announcements on a weekly basis. Commenters recommending inclusion of fixed timeframes for providing passengers with additional methods of safety awareness information are urged, if possible, to provide scientific or sociological data and/or cost estimates to support their suggested time intervals.

11. Passenger Train Emergency Simulations: Section 239.103

Section 239.103 recognizes that one of the most effective training techniques is a simulation of specific emergency scenarios. Simulations may vary from a small-scale drill or tabletop exercise for just one train crew or control center operator, to a full-scale emergency exercise involving several levels of railroad management that includes the voluntary participation of fire departments, ambulance and emergency medical service units, local police, sheriff and state police organizations, local emergency auxiliary groups, and state and federal regulatory agencies. While simulations are primarily designed to demonstrate that railroad employees can quickly and efficiently manage an emergency situation to ensure that emergency responders arrive quickly, simulations are also intended to determine whether train crews are properly trained to get passengers out of an imperiled train.

The tabletop exercise is the simplest to stage, as it involves only a meeting room and knowledgeable managers and employees from the passenger train operator and the appropriate responding organizations who voluntarily participate. For an imaginary emergency, the actions to be taken by the appropriate personnel are described; the time, equipment, and personnel necessary are estimated; and potential problems are predicted. Conflicts of functional areas, lack of equipment, procedural weaknesses or omissions, communication difficulties, and confusing terminology are among the problems which can be identified.

Passenger train operators can drill their train crews, other on-board personnel, supervisors, and control center operators on emergency operating procedures by posing a hypothetical emergency for employees to resolve without dispatching emergency responders to the scene. A drill could also involve the voluntary participation of personnel of a particular response organization, e.g., a fire department. The same type of problems as indicated for the tabletop exercise can be identified, and the actual response capabilities of personnel in terms of their knowledge of procedures and equipment can be evaluated.

Full-scale emergency exercises require weeks of carefully organized plans involving all participating organizations and will involve the expenditure of funds for both the training and actual full-scale exercise. Recording or videotaping the scenes and conversations in key areas of the exercise itself will serve as valuable classroom training for later years. A full-scale exercise is the total application of the resources of the passenger railroad operator and the voluntarily participating emergency response organizations. Such an exercise can reveal the degree of familiarity of both the passenger train system and emergency response organization personnel with train operations, the physical layout of trains, right-of-way structures and wayside facilities, emergency exits, and emergency equipment. Thus, shortcomings in the emergency preparedness plan and specific response protocols and procedures, as well as equipment, can be identified and corrected.

FRA is seriously evaluating whether tabletop exercises should be afforded the same weight in the final rule as full-scale simulations for purposes of demonstrating the readiness of a railroad to successfully react to a passenger train emergency, and we are considering requiring that each railroad conduct a minimum number of its simulations as full-scale exercises. In this regard, FRA is skeptical as to whether a tabletop exercise can equal the comprehensiveness of a full-scale exercise and be a highly effective means of determining whether a railroad is adequately prepared for the likely variety of emergency scenarios that could occur on its lines, as well as an important training tool for the train crews, control center employees, and members of the emergency responder community who elect to participate. In considering whether to strengthen the emergency simulation requirement, FRA is aware that realistic full-scale simulations that enable all participants to practice using the on-board emergency equipment and emergency exits, and encourage the emergency responders to become personally familiar with passenger equipment and applicable railroad operations, could prove invaluable in helping railroads and the emergency responder community to manage real emergencies in ways that tabletop exercises cannot. However, FRA is also aware that the financial and logistical costs of conducting full-scale simulations are undoubtedly higher, including the need to close railroad tracks during the hours of the simulation, opportunity costs for the railroads due to lost use of the passenger equipment that is employed in the simulations, unavailability of firefighting and rescue equipment for other emergencies while the simulations are being conducted, and salary costs for many or all of the simulation participants.

In order to best determine whether the final rule should require full-scale emergency simulations in conjunction with tabletop exercises, or perhaps in place of such exercises, FRA must carefully weigh the expected costs and potential benefits of all available options. FRA therefore seeks public comment on the perceived effectiveness of both full-scale emergency simulations and tabletop exercises, including a discussion of whether tabletop exercises can achieve the equivalent level of emergency preparedness as full-scale simulations. FRA is particularly interested in receiving comments from the emergency responder community, especially from those members who have participated in either emergency simulations or actual emergency situations with railroads.

To achieve a maximum level of effectiveness, drills and exercises should reinforce classroom training in emergency response and passenger evacuation for the passenger train operator personnel and the emergency response units who voluntarily participate. Procedures should also be included to teach personnel to identify the emergency and distinguish its unique demands, and to follow through with the appropriate responses. In addition, the drills and exercises should be planned to minimize hazards which could create an actual emergency or cause injuries and to provide a mechanism for simultaneous testing and reinforcement of emergency operating procedures for specific types of emergencies and evacuation procedures. Moreover, the drills and exercises should test the communication capabilities and coordination of the passenger operator with the emergency responders, as well as the operability and effectiveness of emergency equipment.

Paragraph (b) requires each railroad that provides commuter or other short-haul passenger train service to conduct an emergency simulation at least once during every two calendar year on all major lines, and include at least 50 percent of the major lines in the total number of simulations held during any given calendar year. Since FRA has determined that a train crew on a commuter or other short-haul operation will usually operate a train along the same line for an extended period of time, and that emergency responder organization personnel tend to be line-specific in terms of their familiarity with a railroad's operations, it is crucial that each affected railroad provide adequate opportunities along all of its major lines for its employees and the responder community to obtain emergency simulation training. While FRA anticipates that each commuter or short-haul railroad will conduct emergency simulations as frequently as possible on its entire system, the proposal applies only to operations over major lines so that the railroad can best reach the most heavily traveled portions of its system while conserving limited resources. In this regard, FRA recognizes that emergency responder organizations tend to be densely located along the major lines of commuter and short-haul railroad operations.

FRA seeks public comment on whether the final rule should require a different timetable for accomplishing emergency simulations along each major route and/or require a greater total number of emergency simulations during any given calendar year. In this regard, since emergency simulations are such an important means for a railroad to measure its degree of emergency preparedness, FRA is considering strengthening the final rule to require that each railroad conduct a sufficient number of emergency simulations so that each major line will be included at least once during every calendar year, instead of only once during every two calendar years.

Although the proposal sets forth a requirement for each commuter and short-haul railroad to perform emergency simulations on all of its major lines, FRA does not expect the railroad to require all employees along those lines who are trained under the emergency preparedness plan to attend the simulations, nor do we expect the railroad to invite all potential emergency responders along those lines to participate. While FRA hopes that over the long term all railroad employees involved in the operation of passenger train service, as well as the applicable members of the emergency responder community, will have the opportunity to participate in this valuable training exercise and enhance their individual emergency preparedness skills, the simulations are also intended to identify shortcomings in each railroad's emergency preparedness plan and specific response protocols and procedures. The railroad must discuss the identified weaknesses and overall effectiveness of the emergency preparedness plan with the simulation participants at the debriefing and critique session held under proposed § 239.105, and then initiate any appropriate improvements and/or amendments to the plan. As part of this review process, FRA expects the railroad to revise its training program and liaison relationships with the emergency responder community, in accordance with proposed § 239.101. Accordingly, while the proposed rule does not mandate that affected railroads conduct numerous simulations all along the major lines so as to include every possible participant, FRA concludes that the lessons learned from the required debriefing and critique sessions will have far reaching benefits.

In order to ensure that each affected railroad evaluates its overall emergency response capabilities through careful selection of the appropriate scenarios and locations on each of its main lines for the emergency simulations, the proposal requires each railroad to organize simulations that will adequately test the performance of the railroad's program under the variety of emergency situations that could reasonably be expected to occur on the operation. For example, a railroad operating in territory that includes underground tunnels will need to conduct simulations to test the railroad's ability to ensure employee and passenger safety during an emergency situation occurring in this unique environment. Adequate lighting and sources of air in tunnels and underwater tubes are critical for successful passenger evacuation during emergencies. Further, emergency responders depend on sufficient lighting for visibility during fire suppression and rescue operations. If the railroad intends to evacuate passengers by using cross passages and/or fire doors leading to the opposite track area, or a separate center passageway between the adjacent track areas, the simulation should include practice in the requisite evacuation protocols and procedures.

In the case of a railroad providing intercity passenger service involving a number of lines operated over long distances, such as the coast-to-coast service provided by Amtrak, the need for the railroad to carefully plan its simulations and concurrently examine the effectiveness of its emergency preparedness plan under a variety of scenarios becomes crucial. Many of Amtrak's lines run for hundreds of miles through remote locations that could include risks from tunnel mishaps, natural disasters (e.g., fires, floods, and earthquakes), hazardous material leaks, and/or acts of terrorism. Further, because of the length of time required to travel these lines, the same train will be operated by more than one crew and may involve operation over

the line of a freight railroad. Since Amtrak's lines traverse numerous populated communities throughout the United States, an emergency situation could require the assistance of any number of potentially thousands of emergency responders from these locations.

While FRA is not proposing at this time to require operators of intercity service to conduct additional emergency simulations along its lines in order to reach a greater proportion of employees and members of the emergency response community (equivalent to the number required on the major lines of railroads that provide commuter or other short-haul service), we do expect such railroads to plan simulations that sufficiently test the elements of their emergency preparedness plan under the variety of circumstances that could occur in intercity service. Although FRA recognizes that the length and diversity of Amtrak's operations limit the potential benefits from resources spent on conducting emergency simulations, the proposed rule requires Amtrak to conduct at least two full-scale or tabletop exercises per year on each of its business units. However, FRA is considering imposing more rigorous requirements in the final rule on operators of intercity service such as Amtrak in order to ensure the requisite level of emergency preparedness. By considering each of the emergency scenarios that could possibly occur on the different segments of the railroad (e.g., simulations of a derailment at a remote location where emergency responder assistance is not immediately available, an on-board fire inside a tunnel or on a bridge, a derailment involving a freight train carrying a hazardous materials spill, etc.), Amtrak can carefully design a program to fulfill its overall emergency response needs. While we recognize that the term "business unit" represents the current organizational structure of Amtrak in 1997, and have therefore incorporated that concept into the proposed rule, FRA expects to craft a term for inclusion in the final rule that has broader applicability.

While the proposal requires railroads that provide intercity passenger train service to conduct two emergency simulations on each business unit or other major organizational element during each calendar year, FRA seeks public comment on whether this number should be increased in the final rule. Commenters, especially those representing members of the emergency response community, are encouraged to discuss how their recommended minimum number of required emergency simulations can best achieve the rule's emergency preparedness objectives in a cost beneficial manner that does not compromise rail safety. In recommending an optimal minimum number of emergency simulations, commenters are specifically urged to opine on how a passenger railroad as diverse as Amtrak, which operates coast-to-coast service under a wide variety of operating conditions through the jurisdictions of numerous emergency responders, can best achieve the emergency preparedness goals of this section throughout its entire system without expending a disproportionate amount of its limited resources.

12. Debriefing and Critique: Section 239.105

Section 239.105 recognizes the value of conducting a formal evaluation process after the occurrence of either an actual emergency situation or an emergency simulation such as a full-scale or tabletop exercise to determine what lessons can be learned. To increase the effectiveness of the evaluation of an emergency simulation, railroad personnel should be designated as evaluators to provide a perspective on how well the emergency preparedness plan and procedures were carried out. Although not required by the proposed rule, railroads are also encouraged to invite outside emergency response organizations and other outside observers to participate as evaluators. Evaluators should be given copies of the railroad's emergency preparedness plan before the simulation is conducted, and a preliminary meeting should be held to familiarize the evaluators with the drill or exercise and assign functional areas of concern for evaluation (*e.g.*, communications, evacuation times). Depending on the elaborateness of the simulation, evaluators may also choose to use video cameras to record the sequence of events, actions of personnel, and use of emergency equipment.

The purpose of a debriefing and critique session is to review with railroad personnel the reports of evaluators, present comments or observations from other persons, and to assess the need for any remedial action, either to correct deficiencies or to generally improve the effectiveness of the emergency operations and procedures. Persons responsible for conducting the sessions should be instructed by the railroad to ask questions that will test emergency preparedness procedures, assess training, and evaluate equipment. After a simulation, these persons should debrief all participants (including simulated victims, if any) who can offer valuable insights and thus help the railroad to revise its procedures. The debriefing session should help to determine what emergency preparedness or response procedures could not be used because of the special circumstances of either the train or the passengers, and whether coordination between the railroad and the emergency responders requires improvement.

The above method of conducting post-simulation debriefing and critique sessions should also be used by railroads to evaluate reactions to actual emergencies. Weaknesses in emergency preparedness procedures and equipment and areas for improving training should be identified, and the railroad shall amend its emergency preparedness plan in accordance with proposed § 239.201. All persons involved should be debriefed.

Although the term "emergency or emergency situation" is defined in proposed § 239.7 to include a collision with a person, including suicides, FRA does expect a railroad to conduct a debriefing and critique session after every grade crossing accident. While the railroad would still be expected to invoke its emergency preparedness plan in the event of a grade crossing accident, the goal of this proposed rule is to ensure that railroads effectively and efficiently manage passenger train emergencies. Accordingly, FRA does not intend for the debriefing and critique requirements of this section to apply when an emergency situation involves only a motorist or pedestrian who has been injured or killed, and does affect the passengers onboard the train. In addition, a railroad cannot count its activation of the emergency preparedness plan under these circumstances for purposes of satisfying the emergency simulation requirements of § 239.103. While a significant derailment with one or more injured passengers or a fire on a passenger train would undoubtedly involve significant threats to passenger safety, and therefore require a debriefing and critique session, the proposed rule leaves open the question of what other types of emergency situations would trigger the requirements of this section. Since the threshold issue of what constitutes a "significant threat" to the safety or health of one or more persons requiring immediate action has not been fully determined by either FRA or the Working Group, FRA is seeking public comment on what sorts of situations to include in the final rule under the definition of "emergency" or "emergency situation" set forth in proposed § 239.7.

The proposed rule does not require railroads to use a prescribed FRA form or other specific document at the debriefing and critique sessions, nor does the proposed rule set forth specific questions that railroads must ask after a simulation or actual emergency.

However, as a result of whatever means the railroad selects to ascertain the effectiveness of its emergency preparedness plan, paragraph (b) requires the railroad to determine the functional capabilities of the on-board communications equipment, the timeliness of the required emergency notifications, and the overall efficiency of the emergency responders and the emergency egress of the passengers.

In order to achieve the goals of this proposed section, and to comply with the debriefing and critique recordkeeping requirement of paragraph (c), evaluators should be provided with critique sheets, to be collected and used in the debriefing and critique sessions conducted by the railroads. At a minimum, whatever documentation the railroad selects to comply with paragraph (c) should contain the date(s) and location(s) of the simulation and the debriefing and critique session, and should include the names of all participants. Under the proposed rule, the critique sheets, or equivalent records, would then be maintained by the railroad at its system and applicable division headquarters, and be made available for FRA inspection and copying during normal business hours.

FRA invites comments on whether the final rule should specify additional types of issues that must be addressed by railroads at debriefing and critique sessions (in addition to the five issues required to be addressed in proposed paragraph (b)), or whether each railroad should retain some flexibility to develop it own approach to conducting these sessions. In this regard, FRA encourages comments on the relative value of the final rule requiring discussion and documentation of any or all of the following questions:

- Did on-board personnel try to initiate a radio call immediately?
- How long did it take for on-board personnel to reach and inform the control center of the emergency situation?
- What was the method of notification to the control center? Was the method an on-board radio or a wayside radio (if equipped)?
- Was there adequate radio communication equipment? Was it used properly? Did it work properly?
- Did on-board personnel know the proper emergency telephone number to call from the wayside telephone?
- Did on-board personnel identify him/herself to the control center by name and location?
- Did on-board personnel report the number (approximate or actual, as appropriate) and status of the passengers?
- Did on-board personnel make audible, appropriate announcements to passengers? How many minutes elapsed after the simulation or emergency began before the first announcement was made?
- Did on-board personnel properly operate the fire extinguishers?
- Did on-board personnel request deenergization of the third rail or catenary power?
- Did on-board personnel request the halting of train movements?
- How long did it take for the first emergency response unit to arrive at the emergency scene?
- How long did it take to completely evacuate the train or right-of-way structure or wayside facility and/or extinguish a fire (real or simulated)?

In its comments on the revised regulatory text, METROLINK stated that if a commuter railroad performs a tabletop exercise or simulation it cannot follow the criteria for a debriefing and critique session set forth in this section. Specifically, METROLINK contends that during field drill and tabletop exercise simulations the railroads usually do not involve real passengers and do not notify the emergency responders via the normal means of communication. Moreover, the emergency responders do not respond with lights and sirens as they would under real emergency conditions.

13. Emergency Exits: Section 239.107

In the course of normal passenger train operations, persons enter and exit passenger cars at a station platform through doors on the side of the train. However, when a disabled train cannot be moved to the nearest station, alternative evacuation methods must be employed. Emergency access to and egress from a passenger car may be achieved through outside doors, end doors, and windows. In some emergencies, such as when a fire is confined to a single passenger car, persons may be moved through the end door(s) to an adjacent car. In other emergencies, transfer of all the passengers from the disabled train may be required.

Not all passenger cars have vestibule side doors on both ends, and in some equipment, operation of these doors has required considerable effort, including hand tools. If a power loss occurs, crewmembers may be unable to open either or both of the car vestibule side doors from the normal key control station in the car. If side-door emergency controls permit opening of only one sliding door, it could prove difficult to move certain individuals through it. Also, if the vestibule side doors cannot be opened immediately from either the inside or the outside, persons may panic and could be injured as others attempt to leave the car.

Commuter railroads have agreed to FRA's request that arrangements requiring hand tools (coins and pencils) be retrofitted. Two railroads with significant numbers of affected cars are already completing this work, and this issue will be separately addressed in the forthcoming NPRM on Passenger Equipment Safety Standards. The Passenger Equipment Safety Standards Working Group will be evaluating other improvements in door design and operation. Paragraph 239.107(a) requires that all doors intended by a railroad to be used during an emergency situation be properly marked inside and outside, and that the railroad post clear and understandable instructions for their use at the designated locations.

Paragraph 239.107(a)(1) requires that the emergency egress exits be conspicuously and legibly marked on the inside of the car with luminescent material or be properly lighted. FRA realizes that during an emergency the main power supply to the passenger cars may become inoperative and that crewmembers with portable flashlights may be unavailable. Since lack of clear identification or lighting could make it difficult for passengers to find the emergency door exits, the proposed rule requires luminescent material on all emergency egress door exits (or secondary auxiliary lighting near these exits) to assist and speed passenger egress from the train during an emergency. The marking of the emergency door exits must be conspicuous enough so that a reasonable person, even while enduring the stress and panic of an emergency evacuation, can determine where the closest and most accessible emergency route out of the car is located. In addition, while this proposed section does not prescribe a particular brand, type, or color of luminescent paint or material that a railroad must use to identify an exit, FRA expects each railroad to select a material durable enough to withstand the daily effects of passenger traffic, such as the contact that occurs as passengers enter and leave the cars.

Paragraph 239.107(a)(2) requires that the emergency door exits intended for emergency access by emergency

responders for extrication of passengers be marked with retroreflective material, so that the emergency responders can easily distinguish them from the nonaccessible doors simply by shining their flashlights or other portable lighting on the marking or symbol selected by the railroad. Again, while this proposed section does not prescribe that a railroad use a particular brand, type, or color of retroreflective material to identify an access location, FRA expects each railroad to select a material durable enough to withstand the daily effects of weather and passenger contact, and capable of resisting, to the extent possible, the effects of heat and fire. If all doors are equally operable from the exterior, no designation would be useful, nor would any be required. In a separate rulemaking, FRA's Passenger Equipment Safety Standards Working Group (FRA Docket No. PCSS–1) will address appropriate requirements for periodic maintenance and replacement of the emergency door exit markings.

The proposed rule requires railroads to post clear and understandable instructions at designated locations describing how to operate the emergency door exits. This section does not mandate that railroads use specific words or phrases to guide the passengers and emergency responders. Instead, each railroad should evaluate the operational characteristics of its emergency door exits, and select key words or diagrams that adequately inform the individuals who must use them. While railroads are encouraged to post comprehensive instructions, FRA also realizes that during an emergency situation every additional moment devoted to reading and understanding access or egress information places lives at risk. In addition, FRA would already expect passengers and emergency responders to be familiar with the location and operation of the railroad's emergency door exits as a result of emergency responder liaison activities and passenger awareness programs conducted in accordance with proposed § 239.101 (a)(5) and (a)(7).

Paragraph (b) requires each railroad operating passenger train service to properly consider the nature and characteristics of its operations and passenger equipment to plan for routine and scheduled inspection, maintenance, and repair of all windows and door exits intended for either emergency egress or rescue access by emergency responders. In the case of emergency window exits, the inspection, maintenance, and repair activities should be performed consistent with the requirements of part 223 of this chapter. While the proposed rule does not require railroads to perform these tasks in accordance with a specific timetable or methodology, except with respect to the periodic sampling requirement for emergency window exits discussed below, FRA expects each railroad to develop and implement procedures for achieving the goals of this paragraph. Visual inspections must be performed periodically to verify that no emergency exit has a broken release mechanism or other overt sign that would render it unable to function in an emergency. Maintenance, including lubrication or scheduled replacement of depreciated parts or mechanisms, must be performed in accordance with standard industry practice and/or manufacturer recommendations. All emergency exits that are found during the course of an inspection or maintenance cycle to be broken, disabled, or otherwise incapable of performing their intended safety function must be repaired before the railroad may return the car to passenger service.

Carrying forward requirements currently contained in FRA's Emergency Order No. 20, the proposed rule also requires each railroad to periodically test a representative sample of emergency window exits on its passenger cars to verify their proper operation. The sampling of these emergency window exits must be conducted in conformity with either of two commonly recognized alternate methods, which will provide a degree of uniformity industry wide. Both methods require sampling meeting a 95-percent confidence level that all emergency window exits operate properly (i.e., the methods do not accept a defect rate of 5 percent). Rather than require railroads to test all window exits on a specific type or series of car if one car has a defective window exit, the proposed rule permits the railroads to use commonly accepted sampling techniques to determine how many additional windows to test. In general, these principles require that the greater the percentage of windows exits that a railroad finds defective, the greater the percentage of windows that the railroad will have to test. Specifically, sampling must be conducted to meet a 95-percent confidence level that no defective units remain in the universe and be in accord with either Military Standard MIL–STD–105(D) Sampling for Attributes or American National Standards Institute ANSI–ASQC Z1.4–1993 Sampling Procedures for Inspections by Attributes. Defective units must be repaired before the passenger car is returned to service.

The proposal specifies that a railroad must test a representative sample of emergency window exits on its cars at least once during every 180 days to verify their proper operation. However commenters are encouraged to address this issue by indicating whether the sampling should occur on an annual basis, or on a less frequent basis. Commenters are also urged, if possible, to provide scientific data and/or cost estimates to support their suggested sampling interval.

The inspection, maintenance, and repair records concerning emergency window and door exits must be retained at the system headquarters for the railroad and at the division headquarters for each division where the inspections, maintenance, or repairs are performed (i.e., the records availability must be division specific). The records can consist of multiple documents, and may contain separate sections covering inspection, maintenance, and repair or separate sections covering different types of passenger equipment. Additionally, railroads must make these inspection, maintenance, and repair records available to duly authorized FRA representatives for inspection and copying (e.g., photocopying or handwritten notetaking) during normal business hours.

METROLINK commented that in order to avoid the unnecessary burden of maintaining duplicate records, the rule should require railroads to store all of the maintenance records for the emergency window and door exits at the site of the inspections. In METROLINK's case, that site would be the applicable division headquarters, which is no more than 15 miles from its system headquarters. METROLINK also noted that paragraph 239.107(c) does not indicate for how long the inspection records must be retained, and recommended that since the current rule calls for major service inspections to be retained for 180 days (or until the next inspection is performed) the final rule should establish a similar timeframe.

14. Emergency Preparedness Plan; Filing and Approval: Section 239.201

Section 239.201 specifies the process for review and approval of each railroad's emergency preparedness plan by FRA. The intent of the review and approval is to be constructive, rather than restrictive. It is anticipated that the railroads will develop and implement varied plans based upon the special circumstances involving their individual operations. Under the proposal, FRA would also require that the railroad summarize its internal discussions and deliberative processes to explain how the railroad's unique and individual operating characteristics determined how each issue was finally addressed in the emergency preparedness plan. Specifically, FRA expects the railroad to include a review of the analysis that led to each element of the emergency preparedness plan it submits to FRA for approval, including a consideration of the expected monetary costs and anticipated safety benefits associated with each section of the plan.

In its comments, METROLINK stated that the term "analysis" in the phrase "shall include a summary of the railroad's analysis supporting each plan element and describing how each condition on the railroad's property is addressed in the plan" is vague and lacking in direction. METROLINK then asked whether FRA expects to receive a cost benefit analysis, systems approach, or safety value analysis. In addition, METROLINK questioned whether the term "condition on the railroad's property" concerns elements of the plan such as earthquakes, wind, and power outages.

FRA will conduct a review of each plan so that there can be an open discussion of the plan's provisions from which all concerned parties can benefit. However, in order to ensure compliance with minimum plan requirements FRA will review each plan in detail prior to approval and implementation. FRA expects to involve members of the Passenger Train Emergency Preparedness Working Group in developing benchmark criteria for plan approvals to simplify plan development and approval. It is anticipated that this criteria will address program elements that include the following:

- Specific course content for training programs of on-board personnel, control center personnel, and other key employees;
- Minimum requirements for emergency exercises, including frequency and content of drills with emergency responders and simulations to determine rapidity of emergency evacuations under varying scenarios;
- Specific means for providing emergency safety information to passengers, similar to on-board briefings provided in commercial aviation;
- Detailed requirements for tunnel safety, including lighting and equipment; and
- Additional attention to emergency equipment, by prescribing types and numbers of various kinds of equipment that may be useful under varying operating scenarios.

FRA will also review all plan amendments prior to their going into effect. FRA requests comment on whether there are any categories of plan amendments that should be permitted to go into effect immediately, prior to review and approval, because they constitute improvements for which implementation delay should be avoided.

All persons, such as contractors, who perform any action on behalf of a railroad will be required to conform to the emergency preparedness plans in effect on the railroads upon which they are working. Persons whose employees are working under a railroad's approved emergency preparedness plan need not submit a separate plan to FRA for review and approval. For example, if a railroad hires an outside independent contractor to conduct an emergency simulation pursuant to 49 CFR 239.103, the contractor must perform this task in accordance with the railroad's plan. However, if a freight railroad train crew operates a passenger train for a commuter rail authority, the freight railroad must coordinate the applicable portions of its emergency preparedness plan with the corresponding portions of the commuter rail authority's, unless an assignment of responsibility for compliance is made under 49 CFR 239.101(a)(3).

The proposed rule does not specifically call for the involvement of railroad employees or their representatives in the process of designing or reviewing the emergency preparedness plan, because the responsibility for having a plan that conforms with this rule lies with the employer. However, it should be noted that the success of an emergency preparedness plan will require the willing cooperation of all persons whose duties or personal safety are affected by the plan.

15. Retention of Emergency Preparedness Plan: Section 239.203

The emergency preparedness plan and all subsequent amendments must be retained at the system headquarters for the railroad and at the division headquarters for each division where the plan is in effect (i.e., the records availability must be division specific). The emergency preparedness plan may consist of multiple documents or booklets and may contain separate sections covering the varying job functions and plan responsibilities of on-board and control center personnel. Additionally, railroads must make their emergency preparedness plan records available to duly authorized FRA representatives for inspection and copying (e.g., photocopying or handwritten notetaking) during normal business hours.

16. Operational (efficiency) tests: Section 239.301

Section 239.301 contains the requirement that railroads monitor the routine performance of employees who have individual responsibilities under the emergency preparedness plan to verify that the employee can perform the duties required under the plan in a safe and effective manner. It permits the railroad to test proficiency by requiring the employee to complete a written or oral examination, an interactive training program using a computer, a practical demonstration of understanding and ability, or an appropriate combination of these in accordance with this section. This testing can also involve check rides and control center visits, along with unannounced, covert observation of the employees.

This section requires a railroad to keep a record of the date, time, place, and result of each operational (efficiency) test that was performed in accordance with its emergency preparedness plan. Each record must identify the railroad officer administering the test of each employee. Accordingly, by identifying the specific data points that each record must provide, this section will promote the examination of relevant information from captured data sources, enabling FRA to better determine the effectiveness of a railroad's emergency preparedness plan. Written or electronic records must be kept of these operational (efficiency) tests for one calendar year after the end of the year in which the test was conducted, available for inspection and copying by FRA during normal business hours.

17. Electronic recordkeeping: Section 239.303

Section 239.303 authorizes railroads to retain their operational (efficiency) test records by electronic recordkeeping, subject to the conditions set forth in that provision. This provision provides an alternative for railroads retaining certain information, as required in proposed § 239.301. FRA realizes that requiring railroads to retain the information in paper form would impose additional administrative and storage costs, and that computer storage of these documents would also enable railroads to immediately update any amendments to their operational testing programs.

Each participating railroad must have the essential components of a computer system, i.e., a desktop computer and either a facsimile machine or a printer connected to retrieve and produce

records for immediate review. The material retrieved in hard copy form must contain relevant information organized in usable format to render the data completely understandable. The documents must be made available for FRA inspection during normal business hours, which FRA interprets as the times and days of the week when railroads conduct their regular business transactions. Nevertheless, FRA reserves the right to review and examine the documents prepared in accordance with the Passenger Train Emergency Preparedness regulations at any reasonable time if situations warrant.

Additionally, each railroad must provide adequate security measures to limit employee access to its electronic data processing system and must prescribe who can create, modify, or delete data from the database. Although FRA does not identify the management position capable of instituting changes in the database, each railroad must indicate the source authorized to make such changes. Each railroad must also designate who will be authorized to authenticate the hard copies produced from the electronic format. In short, each railroad electing to electronically retain its records must ensure the integrity of the information and prevent possible tampering of data, enabling FRA to fully execute its enforcement responsibilities.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule has been evaluated in accordance with existing policies and procedures. Due to the intense public interest in the subject matter of the proposed rule, the proposed rule is considered to be significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034; February 26, 1979). FRA has prepared and placed in the docket a regulatory analysis addressing the economic impact of the proposed rule. It may be inspected and photocopied at the Office of Chief Counsel, FRA, Seventh Floor, 1120 Vermont Avenue, N.W., in Washington, D.C. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

As part of the benefit-cost analysis, FRA has assessed quantitative measurements of costs and benefits expected from the adoption of the proposed rule. The Net Present Value (NPV) of the total 20-year costs which the industry is expected to incur is $4.285 million. Following is a breakdown of the costs by requirement.

Section	Requirement	Cost
239.101, 201, 203 ..	Emergency Preparedness Plan (EPP)	$105,754
	Control Center Notification	957
	On-board Personnel Training	0
	Control Center Personnel Training	55,520
	Joint Operations	16,562
	Parallel Operations	1,297
	Emergency Responder Liaison	
	—Provide EPP to Responders	12,741
	—Awareness of Responder Capabilities	56,928
	On-board Emergency Equipment	
	—One Fire Extinguisher/Car	147,801
	—One Pry Bar/Car	92,066
	—Instruction on Pry Bar Use	242,868
	Passenger Safety Awareness	
	—Permanent On-board Procedures	65,611
	—Periodic Reinforcement	0
	—Annual Customer Surveys	26,616
239.103, 105	Passenger Train Emergency Simulations	969,140
239.107	Emergency Exits	
	—Marking—Interior	450,525
	—Marking—Exterior	1,347,505
	—Inspection and Recordkeeping	327,948
239.301	Operational Efficiency Tests	590,441
Total		4,510,280

Each year there are passenger train accidents which result in one or more fatalities. In the last ten years there have been about seven passenger train accidents which resulted in a significant loss of life. FRA does not know how many commuter or intercity train accidents will occur in the future. Although the passenger rail industry has a very high level of safety, the potential for injuries and loss of life in certain emergency situations is very high. FRA believes that the proposed rule represents a cost-effective approach to providing a reasonable level of protection against known threats to human life, and that if only two fatalities were to be avoided over a twenty-year period then the rule would be cost beneficial. Accordingly, while FRA cannot predict with confidence the likelihood of particular accident circumstances in which particular rule elements will be useful, FRA believes that it is reasonable to expect that the measures called for in this proposal would prevent or mitigate the severity of injuries greater in value than the costs of developing and implementing emergency preparedness plans.

Monetary benefit levels associated with several of the proposed requirements are not estimated due to lack of data. FRA would greatly appreciate receiving information and comments regarding the benefits that would result from complying with the distinct requirements proposed. It should be noted that FRA expects total benefits to exceed total costs for the proposed rule, and that the rule's provisions are necessary components of FRA's overall initiatives for passenger train emergency preparedness.

Included within the $4,510,280 total cost figure are proposed requirements for equipping each passenger car with a pry bar, marking and inspecting emergency exits, and providing passengers with emergency situation procedures that will ensure that each passenger is able to escape from a life threatening situation on his or her own initiative. The NPV of the twenty-year cost associated with the requirements aimed at ensuring that in a life threatening situation passengers trapped in a car would be afforded enough opportunity to escape safely is $1.2 million.

Section	Requirement	Cost
239.101	Pry Bars	
	—One Pry Bar per Car	$ 92,066
	—Instruction on Pry Bar Use	242,868
	Passenger Safety Awareness	
	—Permanent Car Procedures	65,611
	—Periodic Reinforcement	0
	Annual Customer Surveys	26,616
239.107	Marking Emergency Exits—Interior	450,525
	Inspection of Emergency Exits	327,948
Total		1,193,820

These costs would be justified if the next passenger train emergency situation is handled in such a way that loss of life is contained.

As previously noted, FRA is allowing 60 days for comments and invites public comment on the issue of regulatory impact. FRA seeks comment and/or data to help identify or quantify other factors that may affect the benefits or costs of the proposal, including alternatives that were not explored by the Working Group and any costs or benefits associated with such alternatives.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires an assessment of the impacts of proposed rules on small entities. This proposed rule affects intercity and commuter passenger railroads. Commuter railroads are part of larger transit organizations that receive Federal funds. The American Public Transit Association (APTA) represents the interests of commuter railroads in regulatory matters. Further, the proposed standards were developed by FRA in consultation with a Working Group that included Amtrak, individual commuter railroads, and APTA.

Entities impacted by the proposed rule are governmental jurisdictions or transit authorities, none of which are small for purposes of the United States Small Business Administration (i.e., no entity operates in a locality with a population of under 50,000 people). Smaller commuter railroads will not be affected disproportionately. The level of costs incurred by each organization should vary in proportion to the organization's size. For instance, railroads with fewer employees and fewer passenger cars will have lower costs associated with both employee efficiency testing and emergency exit inspections.

Smaller passenger rail operations such as tourist, scenic, excursion, and historic railroads are excepted from the proposed rule. The proposed rule does not affect small entities.

A joint FRA/industry working group formed by the RSAC is currently developing recommendations regarding the applicability of FRA regulations, including this one, to tourist, scenic, historic, and excursion railroads. After appropriate consultation with the excursion railroad associations takes place, emergency preparedness requirements for these operations may be proposed by FRA that are different from those affecting other types of passenger train operations. These requirements may be more or less onerous, or simply different in detail, depending in part on the information gathered during FRA's consultation process.

Paperwork Reduction Act

The proposed rule contains information collection requirements. FRA has submitted these information collection requirements to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d) *et seq.*). FRA has endeavored to keep the burden associated with this proposal as simple and minimal as possible. The proposed sections that contain the new and/or revised information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
223..9d/ 239.107:					
A. Emergency egress	17 RRs	1,300 new decals	4 minutes	621	$18,630
		4,575 replace decals	7 minutes		
		1,300 new decals			
B. Emergency exits	17 RRs	6,320 new decals	4 minutes	824	24,720
			7 minutes		
239.107(b)	17 RRs	1,800 tests	20 minutes (18 minutes to perform test and 2 minutes for recordkeeping).	600	18,000
239.101/239.201	17 RRs	17 plans	158 hours	2,685	90,168
	17 RRs	17 amendments	1.6 hours	27	756
239.101 (1)(i)	17 RRs	N/A	Usual and customary procedure—No new paperwork.	N/A	N/A
239.101 (1)(ii)	17 RRs	N/A	Usual and customary procedure—No new paperwork.	N/A	N/A
239.101 (1)(ii)	5 RRs	5 updates of records	1 hour	5	140
239.101 (a)(3)	33 RRs	33 negotiations	16 hours	528	19,800
239.101 (a)(7)(ii)	5 RRs	1,300 passenger cars	5 minutes per bulkhead card	108	2,808

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
		5 safety messages	1 hour per RR to develop safety message.	5	190
239.105	17 RRs	66 records	30 minutes per record	33	924
239.301/ 239.303	17 RRs	11,600 tests	8 minutes per test	1,547	58,786
239.101 (a)(5)	16 RRs	16 reponses to distribute info to emergency responders.	2 hours	32	896
	1 RR (Amtrak).	1 response to distribute info to emergency responders.	100 hours	100	2,800
	16 RRs	16 updates of emergency responder records.	30 minutes per updated	8	224
	1RR (Amtrak).	1 update of emergency responder records.	5 hours	5	140

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, please contact Ms. Gloria Swanson at 202–632–3318.

Organizations and individuals desiring to submit comments on the collection of information requirements should submit their views in writing to the Office of Management and Budget, Attention: Desk Officer for the Federal Railroad Administration, Office and Information and Regulatory Affairs, New Executive Office Building, 726 Jackson Place, N.W., Washington, D.C. 20503, and should also send a copy of their comments to Ms. Gloria D. Swanson, Federal Railroad Administration, RRS–21.1, 400 Seventh Street, S.W., Washington D.C. 20590. Copies of any such comments should also be submitted to the docket of this rulemaking at the mailing address for the Docket Clerk provided above.

OMB is required to make a decision concerning the collection of information requirements contained in this NPRM between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of a final rule. The OMB control number, when assigned, will be announced in the **Federal Register**.

Environmental Impact

FRA has evaluated these proposed regulations in accordance with its procedures for ensuring full consideration of the environmental impact of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and related directives. This notice meets the criteria that establish this as a non-major action for environmental purposes.

Federalism Implications

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The fundamental policy decision providing that Federal regulations should govern aspects of service provided by municipal and public benefit corporations (or agencies) of State governments is embodied in the statute quoted above. FRA has made every effort to provide reasonable flexibility to State-level decision making and has included commuter authorities as full partners in development of this proposed rule.

List of Subjects

49 CFR Part 223

Railroad safety, Glazing standards.

49 CFR Part 239

Railroad safety, Passenger train emergency preparedness.

Request for Public Comments

FRA proposes to amend part 223 and adopt a new part 239 of Title 49, Code of Federal Regulations, as set forth below. FRA solicits comments on all aspects of the proposed rule whether through written submissions, or participation in the public hearing, or both. FRA may make changes in the final rule based on comments received in response to this notice.

The Proposed Rule

In consideration of the foregoing, FRA proposes to amend chapter II of Title 49, Code of Federal Regulations as follows:

PART 223—[AMENDED]

1. The authority citation for part 223 is revised to read as follows:

Authority: 49 U.S.C. 20102–20103, 20105–20114, 20133, 20701, 21301–21302, and 21304; Sec. 215, Pub. L. No. 103–440, 108 Stat. 4623–4624 (49 U.S.C. 20133); and 49 CFR 1.49(c), (g), (m).

2. By revising § 223.5 to read as follows:

§ 223.5 Definitions.

As used in this part—

Caboose means a car in a freight train intended to provide transportation for crewmembers.

Certified glazing means a glazing material that has been certified by the manufacturer as having met the testing requirements set forth in Appendix A of this part and that has been installed in such a manner that it will perform its intended function.

Designated service means exclusive operation of a locomotive under the following conditions:

(1) The locomotive is not used as an independent unit or the controlling unit is a consist of locomotives except when moving for the purpose of servicing or repair within a single yard area;

(2) The locomotive is not occupied by operating or deadhead crews outside a single yard area; and

(3) The locomotive is stenciled "Designated Service—DO NOT OCCUPY".

Emergency opening window means that segment of a side facing glazing location which has been designed to permit rapid and easy removal during a crisis situation.

Emergency responder means a qualified member of a police or fire department, or other organization involved with public safety, who responds to a passenger train emergency.

End facing glazing location means any location where a line perpendicular to the plane of the glazing material makes a horizontal angle of 50 degrees or less with the centerline of the locomotive, caboose or passenger car. Any location which, due to curvature of the glazing material, can meet the criteria for either a front facing location or a side facing location shall be considered a front facing location.

Locomotive means a self-propelled unit of equipment designed primarily for moving other equipment. It does not include self-propelled passenger cars.

Locomotive cab means that portion of the superstructure designed to be occupied by the crew while operating the locomotive.

Passenger car means a unit of rolling equipment intended to provide transportation for members of the general public and includes self-propelled cars designed to carry baggage, mail, express and passengers.

Passenger train service means the transportation of persons (other than employees, contractors, or persons riding equipment to observe or monitor railroad operations) in intercity passenger service, commuter or other short-haul service.

Railroad means:

(1) Any form of non-highway ground transportation that runs on rails or electromagnetic guideways, including:

(i) Commuter or other short-haul rail passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979, and

(ii) High speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads, but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation and

(2) A person that provides railroad transportation, whether directly or by contracting out operation of the railroad to another person.

Rebuilt locomotive, caboose or passenger car means a locomotive, caboose or passenger car that has undergone overhaul which has been identified by the railroad as a capital expense under Surface Transportation Board accounting standards.

Side facing glazing location means any location where a line perpendicular to the plane of the glazing material makes an angle of more than 50 degrees with the centerline of the locomotive, caboose or passenger car.

Windshield means the combination of individual units of glazing material of the locomotive, passenger car, or caboose that are positioned in an end facing glazing location.

Yard is a system of auxiliary tracks used exclusively for the classification of passenger or freight cars according to commodity or destination; assembling of cars for train movement; storage of cars; or repair of equipment.

Yard caboose means a caboose that is used exclusively in a single yard area.

Yard locomotive means a locomotive that is operated only to perform switching functions within a single yard area.

3. In § 223.9, paragraph (d) is added to read as follows:

§ 223.9 Requirements for new or rebuilt equipment.

* * * * *

(d) *Marking.* Each railroad providing passenger train service shall ensure that:

(1) All emergency windows are conspicuously and legibly marked with luminescent material on the inside of each car to facilitate passenger egress. Each railroad shall post clear and legible operating instructions at or near such exits.

(2) All windows intended for emergency access by emergency responders for extrication of passengers are marked with a retroreflective, unique, and easily recognizable symbol or other clear marking. Each railroad shall post clear and understandable window access instructions either at each window or at the car ends.

4. Part 239 is added to read as follows:

PART 239—PASSENGER TRAIN EMERGENCY PREPAREDNESS

Subpart A—General

Sec.
239.1 Purpose and scope.
239.3 Application.
239.5 Preemptive effect.
239.7 Definitions.
239.9 Responsibility for compliance.
239.11 Penalties.

Subpart B—Specific Requirements

239.101 Emergency preparedness plan.
239.103 Passenger train emergency simulations.
239.105 Debriefing and critique.
239.107 Emergency exits.

Subpart C—Review, Approval, and Retention of Emergency Preparedness Plans

239.201 Emergency preparedness plan; filing and approval.
239.203 Retention of emergency preparedness plan.

Subpart D—Operational (Efficiency) Tests; Inspection of Records and Recordkeeping

239.301 Operational (efficiency) tests.
239.303 Electronic recordkeeping.

Appendix A to Part 239—Schedule of Civil Penalties (Reserved)

Authority: 49 U.S.C. 20102–20103, 20105–20114, 20133, 21301, 21304, and 21311; Sec. 215, Pub. L. No. 103–440, 108 Stat. 4623–4624 (49 U.S.C. 20133); and 49 CFR 1.49 (c), (g), (m).

Subpart A—General

§ 239.1 Purpose and scope.

(a) The purpose of this part is to reduce the magnitude and severity of casualties in railroad operations by ensuring that railroads involved in passenger train operations can effectively and efficiently manage passenger train emergencies.

(b) This part prescribes minimum Federal safety standards for the preparation, adoption, and implementation of emergency preparedness plans by railroads connected with the operation of passenger trains, and requires each affected railroad to instruct its employees on the plan's provisions. This part does not restrict railroads from adopting and enforcing additional or more stringent requirements not inconsistent with this part.

§ 239.3 Application.

(a) Except as provided in paragraph (b), this part applies to all:

(1) Railroads that operate intercity or commuter passenger train service on standard gage track which is part of the general railroad system of transportation;

(2) Railroads that provide commuter or other short-haul rail passenger train service in a metropolitan or suburban area [as described by 49 U.S.C. 20102(1)], including public authorities operating passenger train service; and

(3) Freight railroads hosting the operation of passenger train service described in paragraph (a)(1) or (a)(2) of this section.

(b) This part does not apply to:

(1) Rapid transit operations in an urban area that are not connected with the general railroad system of transportation;

(2) Operation of private cars, including business/office cars and circus trains; or

(3) Tourist, scenic, historic, or excursion operations, whether on or off the general railroad system.

§ 239.5 Preemptive effect.

Under 49 U.S.C. 20106 [formerly § 205 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 434)], issuance of these regulations preempts any State law, rule, regulation, order, or standard covering the same subject matter, except a provision necessary to eliminate or reduce an essentially local safety hazard, that is not incompatible with Federal law or regulation and does not unreasonably burden interstate commerce.

§ 239.7 Definitions.

As used in this part—

Adjacent rail modes of transportation includes other railroads, trolleys, light rail, and heavy transit.

Crewmember means a person, other than a passenger, who performs either:

(1) On-board functions connected with the movement of the train or

(2) On-board service.

Control center means a central location on a railroad with responsibility for directing the safe movement of trains.

Division headquarters means the location designated by the railroad where a high-level operating manager (e.g., a superintendent, division manager, or equivalent), who has jurisdiction over a portion of the railroad, has an office.

Emergency or emergency situation means an unexpected event related to the operation of passenger train service involving a significant threat to the safety or health of one or more persons requiring immediate action.

Emergency preparedness plan means one or more documents focusing on preparedness and response in dealing with a passenger train emergency.

Emergency responder means a qualified member of a police or fire department, or other organization involved with public safety, who responds to a passenger train emergency.

Emergency window means that segment of a side facing glazing location which has been designed to permit rapid and easy removal in an emergency situation.

Joint operations means rail operations conducted by more than one railroad on the same track regardless of whether such operations are the result of:

(1) Contractual arrangements between the railroads;

(2) Order of a governmental agency or a court of law; or

(3) Any other legally binding directive.

Passenger train service means the transportation of persons (other than employees, contractors, or persons riding equipment to observe or monitor railroad operations) by railroad in intercity passenger service, commuter, or other short-haul passenger service.

Private car means a rail passenger car used to transport non-revenue passengers on an occasional contractual basis, and includes business/office cars and circus trains.

Qualified means a status attained by an employee who has successfully completed any required training for, has demonstrated proficiency in, and has been authorized by the employer to perform the duties of a particular position or function.

Railroad means:

(1) Any form of non-highway ground transportation that runs on rails or electromagnetic guideways, including:

(i) Commuter or other short-haul rail passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979, and

(ii) High speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads, but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation and

(2) A person that provides railroad transportation, whether directly or by contracting out operation of the railroad to another person.

Railroad officer means any supervisory employee of a railroad.

System headquarters means the location designated by the railroad as the general office for the railroad system.

§ 239.9 Responsibility for compliance.

Although the requirements of this part are stated in terms of the duty of a railroad, when any person, including a contractor for a railroad, performs any function required by this part, that person (whether or not a railroad) is required to perform that function in accordance with this part.

§ 239.11 Penalties.

Any person who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $500 and not more than $10,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. A person may also be subject to the criminal penalties provided for in 49 U.S.C. 21311 (formerly codified in 45 U.S.C. 438(e)) for knowingly and willfully falsifying reports required by this part. Appendix A contains a schedule of civil penalty amounts used in connection with this part.

Subpart B—Specific Requirements

§ 239.101 Emergency preparedness plan.

(a) Each railroad to which this part applies shall adopt and comply with written emergency preparedness plan procedures for implementing each plan element, including those listed below.

(1) *Communication.* (i) *Initial and on-board notification.* An on-board crewmember shall quickly and accurately assess the passenger train emergency situation and then notify the control center as soon as practicable by the quickest available means. The train crewmember shall then inform the passengers about the nature of the emergency and indicate what corrective countermeasures are in progress.

(ii) *Notifications by control center.* The control center shall promptly notify outside emergency responders, adjacent rail modes of transportation, and appropriate railroad officials that a passenger train emergency has occurred. Each railroad shall designate an employee responsible for maintaining current emergency telephone numbers for use in making such notifications.

(2) *Employee training and qualification.* (i) *On-board personnel.* The railroad's emergency preparedness plan shall address individual employee responsibilities, and provide for initial and periodic training at least once every two years on the applicable plan provisions, including, as a minimum:

(A) Rail equipment familiarization;

(B) Situational awareness;

(C) Passenger evacuation;

(D) Coordination of functions; and

(E) "Hands-on" instruction concerning the location, function, and operation of on-board emergency equipment.

(ii) *Control center personnel.* The railroad's emergency preparedness plan shall require initial and periodic training at least once every two years of responsible control center personnel on appropriate courses of action for each potential emergency situation.

(iii) *Testing of on-board and control center personnel.* A railroad shall have procedures for testing a person being evaluated for qualification under the emergency preparedness plan. The testing methods selected by the railroad shall be:

(A) Designed to accurately measure an individual employee's knowledge of his or her responsibilities under the plan;

(B) Objective in nature;

(C) Administered in written form; and

(D) Conducted without reference to open reference books or other materials except to the degree the person is being tested on his or her ability to use such reference books or materials.

(iv) *On-board staffing.* Each passenger train shall have a minimum of one on-board crewmember who is qualified under the applicable emergency preparedness plan's provisions.

(3) *Joint operations.* (i) Each freight railroad hosting passenger train service shall have an emergency preparedness plan addressing its specific responsibilities consistent with this part.

(ii) Each railroad that operates passenger train service over the line of a freight railroad shall coordinate the applicable portions of its emergency preparedness plan with the corresponding portions of the freight railroad's emergency preparedness plan, to ensure that an optimum level of preparedness is achieved. Nothing in this paragraph shall restrict the ability of the railroads to provide for an appropriate assignment of responsibility for compliance with this part among those railroads through a joint operating agreement or other binding contract. However, the assignor shall not be relieved of responsibility for compliance with this part.

(4) *Special circumstances.* (i) *Tunnels.* When applicable, the railroad's emergency preparedness plan shall reflect readiness procedures designed to ensure passenger safety in an emergency situation occurring in a tunnel of 1,000 feet or more in length. The railroad's emergency preparedness plan shall address, as a minimum, availability of emergency lighting, access to emergency evacuation exits, benchwall readiness, ladders for detraining, effective radio or other communication between on-board crewmembers and the control center, and options for assistance from other trains.

(ii) *Other operating considerations.* When applicable, the railroad's emergency preparedness plan shall address passenger train emergency procedures involving operations on elevated structures, including drawbridges, and in electrified territory.

(iii) *Parallel operations.* When applicable, the railroad's emergency preparedness plan shall provide for coordination of emergency efforts where adjacent rail modes of transportation run parallel to either the passenger railroad or freight railroad hosting passenger operations.

(5) *Liaison with emergency responders.* Each railroad to which this part applies shall establish and maintain a working relationship with the on-line emergency responders by, as a minimum:

(i) Distributing applicable portions of its current emergency preparedness plan at least once every three years, or whenever the railroad materially changes its plan in a manner that could reasonably be expected to affect the railroad's interface with the on-line emergency responders, whichever occurs earlier, including documentation concerning the railroad's equipment and the physical characteristics of its line, necessary maps, and the names and telephone numbers of relevant railroad officers to contact;

(ii) Maintaining an awareness of each emergency responders' capabilities; and

(iii) Inviting emergency responders to participate in emergency simulations, including tabletop exercises.

(6) *On-board emergency equipment.* (i) *General.* Each railroad's emergency preparedness plan shall designate the types of on-board emergency equipment and indicate their location(s) on each passenger car. This equipment shall include, at a minimum:

(A) One fire extinguisher per passenger car;

(B) One pry bar per passenger car; and

(C) One flashlight per on-board crewmember.

(ii) *On-board emergency lighting.* Consistent with the requirements of 49 CFR Part 238, auxiliary portable lighting must be accessible.

(iii) *Maintenance.* Each railroad's emergency preparedness plan shall provide for scheduled maintenance and replacement of on-board emergency equipment and lighting.

(7) *Passenger safety information.* (i) *General.* Each railroad's emergency preparedness plan shall provide for passenger awareness of emergency procedures, to enable passengers to respond properly during an emergency.

(ii) *Passenger awareness program activities.* Each railroad shall conspicuously and legibly post emergency instructions inside all passenger cars (e.g., on car bulkhead signs, seatback decals, or seat cards) and shall utilize one or more of the following additional methods to provide safety awareness information:

(A) On-board announcements;

(B) Laminated wallet cards;

(C) Ticket envelopes;

(D) Timetables;

(E) Station signs or video monitors;

(F) Public service announcements; or

(G) Seat drops.

(iii) *Passenger surveys.* Each railroad shall survey representative samples of passengers at least once during each calendar year to determine the effectiveness of its passenger awareness program activities, and shall improve its program, as appropriate, in accordance with the information developed.

(A) The survey shall be designed to examine passenger awareness of the location(s) on the passenger car of the available safety information and verify passenger knowledge of the safety procedures to be followed in the event of an emergency.

(B) The railroad shall inform each surveyed passenger that completion of the survey is strictly voluntary.

(C) Each railroad shall maintain records of its passenger surveys at its system headquarters and applicable division headquarters. These records shall be made available to representatives of FRA for inspection and copying during normal business hours.

(b) [Reserved]

§ 239.103 Passenger train emergency simulations.

(a) *General.* Each railroad operating passenger train service shall conduct emergency simulations, either full-scale or tabletop exercises, in order to determine its capability to execute the emergency preparedness plan under the variety of scenarios that could reasonably be expected to occur on its operation, and ensure coordination with all emergency responders who voluntarily agree to participate in the emergency simulations.

(b) *Frequency of the emergency simulations.* Each railroad that provides commuter or other short-haul passenger train service shall conduct a sufficient number of emergency simulations so that each major line will be included at least once during every two calendar years and the number of simulations performed during any given calendar year will include at least 50 percent of the total number of major lines. Each railroad that provides intercity passenger train service shall conduct at least two emergency simulations during each calendar year for each business unit or other major organizational element.

(c) *Definition.* As used in this section, in the case of a railroad that provides commuter or other short-haul passenger train service, *major line* includes each principal route and its branches.

(d) *Actual emergency situations.* Provided that a railroad conducts a debriefing and critique session meeting the requirements of § 239.105 of this subpart, a railroad may count the activation of its emergency preparedness plan during an actual emergency situation toward the minimum number of simulations required under this section. However, a railroad may substitute the activation of its emergency preparedness plan to satisfy no more than 50 percent of the total number of simulations required under this section.

§ 239.105 Debriefing and critique.

(a) *General.* Each railroad operating passenger train service shall conduct a debriefing and critique session after each passenger train emergency situation or simulation to determine the effectiveness of its emergency preparedness plan, and shall improve and/or amend its plan, as appropriate, in accordance with the information developed.

(b) *Purpose of debriefing and critique information.* The debriefing and critique session shall be designed to determine, at a minimum:

(1) Whether the on-board communications equipment functioned properly;

(2) The elapsed time between the occurrence of the emergency situation or simulation and notification to the emergency responders involved;

(3) Whether the control center promptly initiated the required notifications;

(4) How quickly and effectively the emergency responders responded after notification; and

(5) The efficiency of passenger egress from the car through the emergency exits.

(c) *Records.* Each railroad shall maintain records of its debriefing and critique sessions at its system headquarters and applicable division headquarters. These records shall be made available to representatives of FRA for inspection and copying during normal business hours.

§ 239.107 Emergency exits.

(a) *Marking.* Each railroad operating passenger train service shall ensure that each of the following occur.

(1) All door exits intended for emergency egress are either lighted or conspicuously and legibly marked with luminescent material on the inside of the car. Each railroad shall post clear and understandable instructions at or near such exits.

(2) All door exits intended for emergency access by emergency responders for extrication of passengers are marked with retroreflective material. Each railroad shall post clear and understandable instructions at each such door.

(b) *Inspection, maintenance, and repair.* Consistent with the requirements of part 223 of this chapter, each railroad operating passenger train service shall provide for scheduled inspection, maintenance, and repair of emergency window and door exits. Each railroad shall test a representative sample of emergency window exits on its cars at least once every 180 days to verify their proper operation, and shall repair a defective unit before returning the car to service.

(c) *Records.* Each railroad operating passenger service shall maintain records of its inspection, maintenance, and repair of emergency window and door exits at its system headquarters and applicable division headquarters. These records shall be made available to representatives of FRA for inspection and copying during normal business hours.

Subpart C—Review, Approval, and Retention of Emergency Preparedness Plans

§ 239.201 Emergency preparedness plan; filing and approval.

(a) *Filing.* Each railroad to which this part applies shall file one copy of its emergency preparedness plan with the Associate Administrator for Safety, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, not more than 180 days after (the effective date of the final rule), or not less than 90 days prior to commencing passenger operations, whichever is later. The emergency preparedness plan shall include the name, title, address, and telephone number of the primary person to be contacted with regard to review of the plan, and shall include a summary of the railroad's analysis supporting each plan element and describing how each condition on the railroad's property is addressed in the plan. Each subsequent amendment to a railroad's emergency preparedness plan shall be filed with FRA not less than 60 days prior to the proposed effective date.

(b) *Approval.* (1) Within 180 days of receipt of each initial plan, and within 60 days in the case of a railroad commencing or hosting passenger operations after the initial deadline for plan submissions, FRA will conduct a formal review of the emergency preparedness plan. FRA will then notify the primary railroad contact person of the results of the review, whether the emergency preparedness plan has been approved by FRA, and if not approved, the specific points in which the plan is deficient. If an emergency preparedness plan is not approved by FRA, the railroad shall amend its plan to correct all deficiencies (and provide FRA with a corrected copy) not later than 30 days following receipt of FRA's written notice that the plan was not approved.

(2) FRA will review each proposed plan amendment within 45 days of receipt. FRA will then notify the primary railroad contact person of the results of the review, whether the proposed amendment has been approved by FRA, and if not approved, the specific points in which the proposed amendment is deficient. The railroad shall correct any deficiencies and file the corrected amendment prior to implementing the amendment.

(3) Following initial approval of a plan or amendment, FRA may reopen consideration of the plan or amendment for cause stated.

§ 239.203 Retention of emergency preparedness plan.

Each railroad to which this part applies shall retain one copy of its emergency preparedness plan and one copy of each subsequent amendment to its emergency preparedness plan at its system and division headquarters, and shall make such records available to representatives of FRA for inspection and copying during normal business hours.

Subpart D—Operational (Efficiency) Tests; Inspection of Records and Recordkeeping

§ 239.301 Operational (efficiency) tests.

(a) Each railroad to which this part applies shall periodically conduct operational (efficiency) tests of its on-board and control center employees to determine the extent of compliance with its emergency preparedness plan.

(b) Each railroad to which this part applies shall maintain a record of the date, time, place, and result of each operational (efficiency) test that was performed in accordance with paragraph (a) of this section. Each record shall specify the name of the railroad officer who administered the test and the name of each employee tested. The conduct of the test shall be documented in writing and the documentation shall contain sufficient information to identify the relevant facts relied on for evaluation purposes.

(c) These records shall be retained at the system headquarters of the railroad and at the division headquarters for each division where the tests are conducted for one calendar year after the end of the calendar year to which they relate. These records shall be made available to representatives of FRA for inspection and copying during normal business hours.

§ 239.303 Electronic recordkeeping.

(a) Each railroad to which this part applies is authorized to retain by electronic recordkeeping the information prescribed in § 239.301, provided that all of the following conditions are met:

(1) The railroad adequately limits and controls accessibility to such information retained in its database system and identifies those individuals who have such access;

(2) The railroad has a terminal at the system headquarters and at each division headquarters;

(3) Each such terminal has a desk-top computer (*i.e.*, monitor, central processing unit, and keyboard) and either a facsimile machine or a printer connected to the computer to retrieve and produce information in a usable format for immediate review by FRA representatives;

(4) The railroad has a designated representative who is authorized to authenticate retrieved information from the electronic system as true and accurate copies of the electronically kept records; and

(5) The railroad provides representatives of FRA with immediate access to these records for inspection and copying during normal business hours and provides printouts of such records upon request.

(b) [Reserved]

Appendix A to Part 239—Schedule of Civil Penalties [Reserved]

Issued in Washington, D.C., on February 19, 1997.

Jolene M. Molitoris,

Federal Railroad Administrator.

[FR Doc. 97–4489 Filed 2–21–97; 8:45 am]

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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1996. The CFR volume issued April 1, 1990, should be retained.

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 5

RIN 0560–AF08

Update of the Parity Price Regulations

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the regulations regarding commodity definitions applicable to parity price determinations under the Agricultural Adjustment Act of 1938. The revisions update commodity definitions and incorporate recent reorganizational changes within USDA. This action is being taken as part of the National Performance Review.

EFFECTIVE DATE: February 25, 1997.

FOR FURTHER INFORMATION CONTACT: Kathryn A. Broussard, Agricultural Economist, Food Grains Analysis Division, Farm Service Agency, U.S. Department of Agriculture, STOP 0518, P.O. Box 2415, Washington, DC 20013–2415 or telephone 202–720–9222.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined not to be significant under Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because the Secretary of Agriculture is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

This action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies, is: Agricultural Statistics Reports (Agricultural Estimates)—10.950.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule do not preempt State laws, are not retroactive, and do not require the exhaustion of any administrative appeal remedies.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

The amendments to 7 CFR Subtitle A Part 5 set forth in this rule do not contain information collections that require clearance by OMB under the provisions of 44 U.S.C. 3507.

Background

This final rule updates the definition of "Wool and Mohair" and "Sugar Crops" commodities for which a marketing season average price is determined; and revises the regulations to incorporate recent reorganizational changes within USDA.

List of Subjects in 7 CFR Part 5

Calendar year price, Marketing season average price, Parity index, Parity price.

For reasons set out in the preamble, 7 CFR part 5 is amended as follows:

PART 5—DETERMINATION OF PARITY PRICES

1. The authority citation is revised to read as follows:

Authority: 7 U.S.C. 1301, 1375.

2. In 7 CFR part 5 all references to "Statistical Reporting Service" are revised to read "National Agricultural Statistics Service", all references to "Consumer and Marketing Service" are revised to read "Agricultural Marketing Service", all references to "Agricultural Stabilization and Conservation Service" are revised to read "Farm Service Agency", and all references to "Office of Hearing Examiners of the United States Department of Agriculture" are revised to read "Office of Administrative Law Judges."

§ 5.2 [Amended]

3. In § 5.2, the entry under the heading "Wool and Mohair" is revised to read "Wool and Mohair." and the entry under the heading "Sugar Crops" is revised to read "Sugar beets and sugarcane for sugar."

Signed at Washington, DC, on February 12, 1997.

Dan Glickman,

Secretary.

[FR Doc. 97–4599 Filed 2–24–97; 8:45 am]

BILLING CODE 3410–05–P

Food and Consumer Service

7 CFR Part 250

RIN 0584–AB55

Food Assistance in Disaster and Distress Situations

AGENCY: Food and Consumer Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the provisions of the Food Distribution Program Regulations and Policies that relate to food assistance provided in response to Presidentially declared disasters and in situations of distress. The amendments contained in this rule address the simultaneous issuance of commodities and disaster food stamp benefits in a disaster, distribution of commodities to households in situations of distress, authorization for providing commodity assistance, reporting requirements, and the replacement of

commodities. In addition, revised definitions are included which encompass the definitions contained in the Robert T. Stafford Disaster Relief and Emergency Assistance Act. These revisions will help ensure that commodity assistance is made available to victims of disasters and to those in situations of distress in the most efficient and effective manner possible while maintaining the integrity of the program.

EFFECTIVE DATE: This final rule is effective April 28, 1997.

FOR FURTHER INFORMATION CONTACT: Lillie Ragan, Assistant Branch Chief, Household Programs Branch, Food Distribution Division, Food and Consumer Service, U.S. Department of Agriculture, Park Office Center, Room 502, 3101 Park Center Drive, Alexandria, Virginia 22302–1594, or telephone (703) 305–2661.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The Administrator of the Food and Consumer Service (FCS) has certified that this action will not have a significant economic impact on a substantial number of small entities. The primary impact of the procedures in this rulemaking will be on FCS regional offices, State governments and individuals who might apply for disaster or distress commodity benefits. To the extent that county or other local governments assist in the distribution of commodities at a disaster or distress feeding site, they will also be affected.

Executive Order 12372

These programs are listed in the Catalog of Federal Domestic Assistance under 10.550 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, Subpart V and final rule-related notices published at 48 FR 29114, June 24, 1983 and 49 FR 22676, May 31, 1984).

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** section of the preamble. All available administrative procedures must be exhausted prior to any judicial challenge to the provisions of this rule or the application of its provisions.

Background

The Department of Agriculture (USDA or Department) makes commodities available for use in providing food assistance to victims of disasters and to those in situations of distress, in accordance with authority contained in several statutes. The regulations governing the Food Distribution Program (7 CFR Part 250) outline the responsibilities of FCS and distributing agencies with regard to the distribution of donated commodities during a disaster and in situations of distress.

On December 8, 1995, the Department published a proposed rule in the **Federal Register** at 60 FR 62999 which reflected amendments which have been made to the authorizing legislation, and also included regulatory changes recommended by the Task Force for Disaster Preparedness, established by the Department in response to issues which arose in the course of providing food assistance to victims of several disasters and other types of emergencies in the past several years. The Task Force was comprised of representatives from USDA, the Federal Emergency Management Agency (FEMA), private national organizations such as the Red Cross, and State and local agencies. One of the objectives of the Task Force was to identify current Federal disaster policies that are in need of revision. Regulatory amendments embodying Task Force recommendations were proposed under the discretionary authority granted to the Secretary and are part of the Department's effort to ensure that commodity assistance is made available to victims of disasters and situations of distress in the most efficient and effective manner possible while maintaining the integrity of the program. The proposed rule provided a 60-day comment period.

Analysis of Comments Received

The Department received a total of 6 comment letters. Comment letters were submitted by four State distributing agencies, one State food stamp agency, and one county social service agency. All but one of the commenters were substantially in favor of the rule. Comments received are discussed in detail below.

Definitions

The definition of "Situation of Distress" contained in Section 250.3 of the proposed rule would provide distributing agencies with authority to make commodities available for use in congregate feeding in instances when the disaster or emergency is natural, e.g., hurricane, tornado, storm, or flood. One commenter expressed concern that use of the word "emergency" in the definition will cause confusion since that term was not defined in the rule. The commenter also recommended that the definitions of "Disaster" and "Situations of Distress" encompass the recovery time period that follows such conditions.

One of the purposes for revising existing definitions under the proposed rule was to provide clarity. Since elimination of the term "emergency" will have no effect on the definition, the term has been deleted from the definition of "Situation of Distress" contained in Section 250.3 of this final rule. With regard to recognizing a period of time for recovery, the distribution of commodities under the provisions contained in the rule is, by definition, limited to disasters and situations of distress since the delivery of assistance through traditional food assistance programs is not adequate in such instances. Once the situation is such that the needs of victims can be met through traditional food assistance programs, the distribution of commodities is no longer warranted.

Simultaneous Distribution of Commodities and Disaster Food Stamp Benefits

Sections 250.43 and 250.44 of the proposed rule would permit the simultaneous distribution of commodities and issuance of disaster food stamp benefits during Presidentially declared disasters and in situations of distress in instances in which such distributions are warranted.

One commenter strongly opposed the simultaneous distribution of such benefits for reasons such as the additional costs that would be incurred by the State, the inability of State and local agencies to transport commodities due to damaged infrastructure, the lack of refrigeration units, and in instances in which commodities are made available for use in situations of distress, the absence of a guarantee that the Department will replace the commodities used. Other commenters did not expressly oppose the authority provided under the proposed rule to permit the simultaneous distribution of commodity and disaster food stamp benefits. However, comments regarding issues such as cost and the ability of distributing agencies and disaster organizations to provide such services indicate a basic misunderstanding of the approval process as described in the proposed rule.

Because the Department has determined that there are instances in which States may need to distribute commodities and issue disaster food stamp benefits simultaneously to ensure that some form of food assistance is available to all victims of disasters and situations of distress, Sections 250.43 and 250.44 of this final rule retain provisions which *permit* the simultaneous distribution and issuance of these benefits. However, further review of the provisions contained in the proposed rule relative to the submission and approval of requests to conduct such distributions suggests that the proposed language could be interpreted to *require* that distributing agencies forward all requests received from organizations for the receipt and distribution of commodities to FCS for approval. In fact, the proposal was not intended to remove the State's discretion to determine whether distribution of commodities to households is warranted. The proposed rule was intended only to clarify the approval process in instances in which the State has decided that such distribution would be appropriate. When States have so decided, distributing agencies would be required to submit applications to the Food and Consumer Service regional office (FCSRO), and such applications would be forwarded to FCS headquarters for approval. Sections 250.43 and 250.44 of this final rule have been revised to make it clear that States retain full discretion in determining whether a request to permit commodity distributions to households will be submitted to the FCSRO. In making such a determination, States will have to ascertain whether the necessary facilities and financial resources are available to support such distributions. In addition, language in the proposed rule has also been revised to clarify that only those organizations wishing to obtain donated foods for use in providing food assistance to victims of disasters and situations of distress are expected to submit applications for the receipt of such food to the distributing agency.

Dual Participation

Section 250.43(c)(2)(viii) of the proposed rule would require disaster organizations to submit a statement of assurance that simultaneous food stamp and commodity assistance will not be provided to individual households; and, Section 250.43(c)(3)(iv)(D) would require that, before receiving commodities, each household sign a statement certifying that it is not receiving food stamp assistance. The proposed rule contained parallel requirements in Sections 250.44(c)(2)(vii) and 250.44(c)(3)(iv)(D) relative to the distribution of commodities during situations of distress.

Ambiguous references to food stamp benefits were the major focus of most of the comments received; 5 of the 6 commenters addressed the issue, and 4 of them recommended clarification. As pointed out by the commenters, the language as written in the proposed rule is unclear as to which aspect of the Food Stamp Program is being referenced, and could be easily interpreted to proscribe receipt of commodities by those who are regular and customary recipients of food stamps. This is obviously not the intent of the rule, for households which have been on the Food Stamp Program are likely to be just as hard-hit by a disaster as their non-food-stamp-receiving neighbors, perhaps having lost their entire food supply.

It is not the intent of the Department to prohibit the distribution of commodities to disaster victims who have been receiving assistance under the "conventional" Food Stamp Program. Therefore, Sections 250.43 and 250.44 are revised under this final rule to specifically prohibit only the distribution of commodities to households which have received *disaster* food stamp benefits since the issuance of both types of benefits would in fact be duplicative.

Three of the five respondents also made comments related to dual participation which were not attributable to the ambiguous language in the proposed rule. One commenter stated that it would be impossible to ensure that dual participation does not occur, and the other two expressed concern about the amount of time and cost associated with the collection and verification of information necessary to prevent the issuance of dual benefits. One commenter recommended waiving the prohibition against dual participation for a limited period of time, such as 30 days, while the other two recommended eliminating the prohibition entirely.

The nutritional needs of households during a disaster or situation of distress can be fully met through the provision of either commodities or disaster food stamp benefits. Therefore, since the elimination of the prohibition against dual participation would significantly increase Federal outlays, and could result in a windfall to households in excess of their nutritional needs, the provisions relative to the prohibition against dual participation are being retained in this final rule.

Responsibility for Establishing and Pursuing Claims

Two of the six commenters addressed this provision, one pointing out that the preamble of the proposed rule does not state with sufficient clarity who will be responsible for establishing and pursuing claims against households for dual participation. The language in question reads as follows: "In instances when it is determined that claims action against a household is warranted due to the receipt of both food stamp and commodity assistance, the Department intends to pursue such action through establishment of a claim against the household for the value of the food stamps issued." (60 FR page 63002, middle column, first complete paragraph, first sentence).

Current regulations make State agencies responsible for establishing and pursuing such claims. The Department had intended no change from current regulations and practice Therefore in instances when it is determined that claims action against a household is warranted due to the receipt of both disaster food stamp and commodity assistance, the State agency will be required to pursue such action through establishment of a claim against the household for the value of the food stamps issued.

Another commenter expressed concern about whether a State will have access to records showing that a household did in fact receive commodities and the amount of commodities provided. Section 250.16 requires that records be maintained by recipient agencies for a period of at least three years from the close of the fiscal year to which they pertain. However, in instances when claims action and/or audit findings have not been resolved, the records must be retained as long as required for the resolution of such action or findings. In addition, Sections 250.43(c)(3) and 250.44(c)(3) of the proposed rule would require that information obtained from households for the receipt of commodities be forwarded to the distributing agency and maintained by the distributing agency in accordance with the recordkeeping requirements as stated above. Distributing agencies may.

however, permit an organization that is an agency of the State government to retain such records. Based on these recordkeeping requirements, the State agency responsible for establishing and pursuing a claim should be able to access statements signed by all households which were provided commodities by contacting the distributing agency. With regard to information concerning the amount of commodities provided to a household not being recorded, this information is not necessary since households that received both commodities and disaster food stamp benefits will be expected to make restitution for the full value of disaster food stamp benefits issued without regard to the value of commodities provided.

Information Collection Burden

Sections 250.43(c) and 250.44(c) of the proposed rule would require several kinds of information collection at different levels. First, in requesting FCS approval for the distribution of commodities to households, the distributing agency would be required to submit the following information (plus additional information as outlined in the section) to the FCSRO: (1) An explanation as to why the distribution of commodities to households is warranted; (2) identification of the specific area(s) included in the request; (3) a statement of assurance that simultaneous food stamp and commodity assistance will not be provided to individual households; and (4) a description of the system that will be implemented to prevent dual participation. Second, minimal information would be required of each household applying for commodities in instances in which the Food Stamp Program is in operation, to include: (1) Name of one household member applying for assistance; (2) address; and (3) the number of persons in the household. In addition to providing the above information, organizations distributing donated foods to households would be required to obtain a signed statement of assurance from the household applying for benefits to the effect that the household: (1) Is in need of food assistance; (2) understands that misrepresentation of need and the sale or exchange of the donated food are prohibited and could result in a fine, imprisonment, or both; (3) is not residing in a shelter which provides food assistance; and (4) is not receiving disaster food stamp assistance.

Two of the six commenters addressed the information collection requirements contained in the proposed rule. One commenter stated that the burden on his State agency, its subunits and recipients would be minor, as similar information collection requirements already exist elsewhere, but at the same time, he expressed concern that, due to the burden, FCS may not be able to provide authorization to distribute commodities in a timely manner. The other commenter stated that the information collection requirements contained in the proposed rule would require a complex data collection and control system which would be very difficult to manage during a disaster. It was further recommended that the Federal Government fully finance food assistance programs in emergency situations.

It is the opinion of the Department that the information collection requirements as proposed provide the minimum requirements that are needed to maintain program accountability, i.e., to ensure that commodity distributions are truly necessary and that systems are in place to prevent dual participation. These requirements present a minimal burden, especially when balanced against the greater flexibility which the proposed rule affords to States. Additionally, FCS has proven its ability to respond quickly to disasters through its network of regional offices. Therefore, this final rule retains the information collection requirements as originally proposed.

With regard to the recommendation that the Department pay all costs incurred in providing food assistance to victims of disasters or situations of distress, while funds are authorized and appropriated for use in procuring commodities for such occurrences, the Department is not authorized to use such funds for the purpose of paying costs associated with the distribution of the commodities once they are delivered to the State.

With respect to disaster food stamps, Section 16 of the Food Stamp Act of 1977, as amended (7 U.S.C. 2011 *et seq.*), (the Act), only permits the Department to pay 50 percent of the administrative costs associated with issuing disaster food stamps, although the benefits are fully funded. Section 5(h) of the Act authorizes the Secretary, in response to a disaster, to establish temporary eligibility criteria and to adjust reporting and other application requirements as appropriate. Although it could have done so, Congress did not authorize the Secretary to depart from the provisions of the Act that allow the Department to pay 50 percent of State agencies' administrative costs. The Department, therefore, does not have the statutory authority to pay more than 50 percent of the administrative costs incurred to issue disaster food stamp benefits.

Types of Foods Authorized for Donation

Sections 250.43(e) and 250.44(e) of the proposed rule identified the various legislative authorities under which the Secretary is afforded discretionary authority to authorize the use of commodities during disasters and situations of distress. One commenter was confused as to what commodities can be used from each of the food distribution programs to provide food assistance during situations of distress.

Commodities being held in State and local inventories for any food distribution program can be used to provide food assistance in such situations. However, in making decisions as to what types and amounts of commodities to make available, distributing agencies should keep in mind that, while there is a USDA replacement guarantee for commodities used in disasters, there is no such guarantee for commodities used in situations of distress.

Summary Report

Sections 250.43(f) and 250.44(f) of the proposed rule would have required the distributing agency to provide a summary report (Form FCS–292, Report of Coupon Issuance and Commodity Distribution for Disaster Relief) to the appropriate FCSRO within 30 days following termination of the disaster/distress assistance.

One commenter recommended that the 30-day requirement for the submission of such reports be extended to 45 days, based on past experience of 30 days being too short. The commenter cautioned against lengthening the time period beyond 45 days, because agencies and personnel disband following disasters and information thus becomes difficult to trace. FCS has decided to implement this suggestion, in deference to the experience of local agencies and in the interest of program flexibility. Therefore, this final rule extends the time limits in Sections 250.43(f) and 250.44(f) from 30 days to 45 days.

Replacement of Foods Made Available

When the distribution of commodities has been authorized for disasters or situations of distress, Sections 250.43(g) and 250.44(g) of the proposed rule would require that the distributing agency request replacement of foods used from State and/or local inventories, in writing to the FCSRO, within 30 days following termination of the assistance. In the case of disasters, the proposed rule provided for a waiver of the 30-day requirement in instances when sufficient justification is provided, and guaranteed replacement of foods used from State and/or local inventories. In the case of situations of distress, no such waiver of the 30-day limit would be provided, and foods would be replaced only to the extent that they are available.

Two of the six commenters addressed the replacement provisions. One recommended that the replacement policy used for disasters be applied to situations of distress, and the other recommended that choice of foods made available in situations of distress be limited to those acquired through commodity loans and surplus-removal activities.

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et. seq.*) specifically authorizes the Secretary to use funds appropriated under section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), to purchase commodities for use in providing food assistance to victims of Presidentially declared disasters. There is no specified limit as to the amount of funds that can be used for this purpose. In contrast, funds authorized for use in purchasing commodities for situations of distress are provided annually as part of the Department's appropriation and cannot exceed the level specified in the appropriations legislation. Therefore, while commodities used from State or local warehouses to provide food assistance for situations of distress will be replaced to the degree possible, the Department cannot guarantee replacement. With regard to the choice of food to be made available in situations of distress, the purpose of the proposed rule was merely to provide States with discretionary authority to make commodities available for distribution to households in situations of distress once FCS approval for such distributions is obtained. States will identify the types and amounts of commodities they wish to make available depending upon their inventories, immediate needs for other purposes, and additional factors unique to the situation. It would not be appropriate for the Department to impose limitations on foods which the State can make available. Therefore, the provisions contained in Sections 250.43(g) and 250.44(g) are retained in this final rule as proposed, except however, that the language contained in these sections has been revised to clarify that requests for replacement must be submitted only in instances when the distributing agency is seeking replacement of foods used from State and/or local inventories.

List of Subjects in 7 CFR Part 250

Aged, Agricultural commodities, Business and industry, Food assistance programs, Food donations, Food processing, Grant programs-social programs, Indians, Infants and children, Commodity loan programs, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

Accordingly, 7 CFR Part 250 is amended as follows:

PART 250—DONATION OF FOODS FOR USE IN THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS AND AREAS UNDER ITS JURISDICTION

1. The authority citation for part 250 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 612c, 612c note, 1431, 1431b, 1431e, 1431 note, 1446a-1, 1859, 2014, 2025; 15 U.S.C. 713c; 22 U.S.C. 1922; 42 U.S.C. 1751, 1755, 1758, 1760, 1761, 1762a, 1766, 3030a, 5179, 5180.

2. In § 250.3:

a. The definitions of *Emergency* and *Major disaster* are removed; and

b. Definitions of *Disaster* and *Situation of distress* are added in alphabetical order.

The additions read as follows:

§ 250.3 Definitions.

* * * * *

Disaster means:

(a) Any natural catastrophe (including any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) (Stafford Act) to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby; or

(b) Any other occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

* * * * *

Situation of distress means:

(a) A hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other natural catastrophe not declared by the President to be a disaster, but which, in the judgment of the distributing agency, warrants the use of USDA commodities for congregate feeding; and

(b) Any other situation not declared by the President to be a disaster, but which, in the judgment of FCS, warrants the use of USDA commodities for congregate feeding or household distribution.

* * * * *

3. Section 250.43 is revised to read as follows:

§ 250.43 Disaster food assistance.

(a) *Organizational eligibility.* In instances in which the President has declared a disaster and FCS has determined that, as a result of the disaster, low-income households are unable to purchase adequate amounts of nutritious food, disaster organizations (including agencies of State and Federal government) may be eligible to receive donated foods for congregate meal service or household distribution to disaster victims. Applications submitted by disaster organizations to the distributing agency for the receipt and distribution of donated foods in accordance with paragraphs (b)(2) and (c)(2) of this section shall be initially submitted in writing if circumstances permit and, if not, confirmed in writing in a timely manner. Both the applications and the written approval for the use of USDA commodities shall be maintained in accordance with the recordkeeping requirements of this part.

(b) *Congregate meal service*—(1) *Approval authority and duration.* Distributing agencies may review and approve applications submitted by disaster organizations for the donation of foods for use in preparing congregate meals for disaster victims. Distributing agencies also shall determine the length of such donations, taking into consideration the magnitude of the situation, and may extend the duration of such donations as developing circumstances dictate. Following approval of a request for donated foods, the distributing agency shall make appropriate donated foods available from any source within the State to the disaster organization(s) and within 24 hours of approving the application shall report the information listed in paragraph (b)(2) of this section to the appropriate FCSRO.

(2) *Applications.* (i) Disaster organizations wishing to receive donated foods for use in preparing meals for disaster victims shall submit applications to the distributing agency. Applications shall, to the extent possible, include the following information:

(A) Description of disaster situation;

(B) Number of people requiring meals;

(C) Period of time for which commodities are requested; and

(D) Quantity and types of food needed for congregate meal service.

(ii) In addition, organizations shall report to the distributing agency the number and location of sites providing congregate meal service as such sites are established.

(c) *Household distribution*—(1) *Approval authority and duration.* In instances in which the distributing agency has determined that the distribution of donated foods to households is appropriate, the distributing agency shall submit applications requesting approval for such distributions to the appropriate FCSRO for submission to FCS for prior approval. FCS will determine the length of time such donations will be made, taking into consideration the magnitude of the situation, and may extend the duration of such donations as developing circumstances dictate.

(2) *Applications.* (i) Disaster organizations wishing to receive and distribute donated foods to households shall submit applications to the distributing agency. Applications shall, to the extent possible, include the following information:

(A) Description of disaster situation;

(B) Identification of the specific area(s) included in the request;

(C) Number of households affected;

(D) Explanation as to why the distribution of commodities to households is warranted;

(E) Anticipated distribution period;

(F) Method(s) of distribution available;

(G) Quantity and types of food needed for distribution;

(H) Statement of assurance that simultaneous disaster food stamp benefits and commodity assistance will not be provided to individual households; and

(I) Description of the system that will be implemented to prevent dual participation.

(ii) In addition, information on the number and location of sites where commodities are to be distributed shall be provided to the distributing agency as such sites are established.

(3) *Collection of household information.* In instances in which the issuance of disaster food stamp benefits has been approved, any entity (i.e., Federal, State, or local) distributing donated foods to households shall, at a minimum, collect the information listed below in a format prescribed by the distributing agency. Such information shall be forwarded to the distributing agency and maintained by the distributing agency in accordance with the recordkeeping requirements contained in this part, except that such information may, at the discretion of the distributing agency, be maintained by the organization distributing commodities if such organization is an agency of the State government.

(i) Name of household member applying for assistance;

(ii) Address;

(iii) Number of household members; and

(iv) Statement signed by the household certifying that the household:

(A) Is in need of food assistance;

(B) Understands that misrepresentation of need, and the sale or exchange of the donated food, are prohibited and could result in a fine, imprisonment, or both;

(C) Is not residing in a shelter which provides food assistance; and

(D) Is not receiving disaster food stamp benefits.

(d) *Quantities and value of donated foods.* The distributing agency shall make donated foods available to approved disaster organizations based on the caseload factor information provided by the disaster organizations.

(e) *Types of donated foods authorized for donation.* Disaster organizations providing food assistance under this Section are eligible to receive donated foods under section 416, section 32, section 709, section 4(a), and sections 412 and 413 of the Stafford Act.

(f) *Summary report.* Within 45 days following termination of the disaster assistance, the distributing agency shall provide a summary report to the appropriate FCSRO using Form FCS–292, Report of Coupon Issuance and Commodity Distribution for Disaster Relief.

(g) *Replacement.* Distributing agencies which decide to seek replacement of foods used from State and/or local inventories for disaster assistance shall file their request in writing to the FCSRO within 30 days following termination of the assistance. FCS will replace such foods in instances when a request for replacement is submitted within the required 30 days or sufficient justification exists to waive the 30-day requirement.

4. Section 250.44 is revised to read as follows:

§ 250.44 Food assistance in situations of distress.

(a) *Organizational eligibility.* In situations of distress in which needs for food assistance cannot be met under other provisions of this Part, organizations (including agencies of State and Federal government) may be eligible to receive donated foods for congregate meal service or household distribution to victims of the situation of distress. Applications submitted to the distributing agency for the receipt and distribution of donated foods in accordance with paragraphs (b)(2) and (c)(2) of this section shall be initially submitted in writing if circumstances permit and, if not, confirmed in writing in a timely manner. Both the applications and the written approval for the use of USDA commodities shall be maintained in accordance with the recordkeeping requirements of this Part.

(b) *Congregate meal service.* (1) *Approval authority and duration.* Distributing agencies may review and approve applications for the donation of foods for use in preparing congregate meals for a period not to exceed 30 days for victims of situations of distress in instances in which the need for such assistance meets the conditions of paragraph (a) of the definition of *situation of distress* in § 250.3. Following approval of a request, distributing agencies shall report the information listed in paragraph (b)(2) of this section to the appropriate FCSRO within 24 hours. In instances when the distributing agency extends the originally approved distribution period from less than 30 days to the 30-day limit, it shall notify the FCSRO of such extensions. Distributing agencies shall request approval from FCS, via the appropriate FCSRO, for donations to exceed 30 days. Upon determining that there is a need for the donation of foods for congregate meals in instances other than those that meet the criteria in paragraph (a) of the definition of *situation of distress* in § 250.3, the distributing agency shall forward applications to the appropriate FCSRO for submission to FCS for prior approval. FCS will determine the duration of such donations, taking into consideration the magnitude of the situation. Determinations as to the length of donations may be revised as developing circumstances dictate.

(2) *Applications.* (i) Organizations wishing to receive donated foods for use in preparing meals shall submit applications to the distributing agency. Applications shall, to the extent possible, include the following information:

(A) Description of the situation of distress;

(B) Number of people requiring meals and congregate meal service period; and

(C) Quantity and types of food needed.

(ii) In addition, information on the number and location of sites providing meals shall be submitted to the distributing agency as such sites are established.

(c) *Household distribution.*—(1) *Approval authority and duration.* In instances in which the distributing agency has determined that the distribution of donated foods to households is appropriate, the distributing agency shall submit applications requesting approval for such distributions to the appropriate FCSRO for submission to FCS for approval. FCS will determine the duration of the donations, taking into consideration the magnitude of the situation. Such determinations may be revised as developing circumstances dictate.

(2) *Applications.* (i) Organizations wishing to receive and distribute donated foods to households shall submit applications to the distributing agency. Applications shall, to the extent possible, include the following information:

(A) Description of the situation of distress;

(B) Explanation as to why the distribution of commodities to households is warranted;

(C) Identification of the specific area(s) included in the request;

(D) Anticipated distribution period;

(E) Number of households expected to participate;

(F) Quantity and types of food needed for distribution;

(G) Statement of assurance that simultaneous disaster food stamp benefits and commodity assistance will not be provided to individual households; and

(H) Description of the system that will be implemented to prevent dual participation.

(ii) In addition, information on the number and location of sites shall be provided to the distributing agency as such sites are established.

(3) *Collection of household information.* In a format prescribed by the distributing agency, any entity (i.e., Federal, State, or local) distributing donated foods to households in an area where the issuance of disaster food stamp benefits has been approved shall, at a minimum, collect the information listed below. Such information shall be forwarded to the distributing agency and maintained by the distributing agency in accordance with the recordkeeping requirements contained in this part, except that such information may, at the discretion of the distributing agency, be maintained by the organization distributing commodities if such organization is an agency of the State government.

(i) Name of household member applying for assistance;

(ii) Address;

(iii) Number of household members; and

(iv) Statement signed by the household certifying that the household:

(A) Is in need of food assistance;

(B) Understands that misrepresentation of need, and the sale or exchange of the donated food are prohibited and could result in a fine, imprisonment, or both;

(C) Is not residing in a shelter which provides food assistance; and

(D) Is not receiving disaster food stamp benefits.

(d) *Quantities and value of donated foods.* The distributing agency shall make donated foods available to eligible organizations based on the caseload factor information provided by the organizations.

(e) *Types of donated foods authorized for donation.* Organizations providing food assistance in situations of distress are eligible to receive donated foods under section 416, section 32, section 709, and section 4(a).

(f) *Summary report.* Within 45 days following termination of the assistance, the distributing agency shall provide a summary report to the appropriate FCSRO using Form FCS–292, Report of Coupon Issuance and Commodity Distribution for Disaster Relief.

(g) *Replacement.* Distributing agencies which decide to seek replacement of foods used from State and/or local inventories for situations of distress shall file their request in writing to the FCSRO within 30 days following termination of the assistance. FCS will replace such foods to the extent that foods are available.

Dated: February 14, 1997.

William E. Ludwig,

Administrator.

[FR Doc. 97–4536 Filed 2–24–97; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–223–AD; Amendment 39–9894; AD 97–02–09]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects information in an existing airworthiness directive (AD), applicable to all Boeing Model 727 series airplanes, that currently requires inspections to detect cracking of the actuator rib fitting of the inboard door of the main landing gear (MLG); and various follow-on actions. This action corrects a reference to the amendment number of a previously-issued AD, which was superseded by AD 97–02–09.

DATES: Effective March 4, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 7, 1997 (62 FR 3988, January 28, 1997).

SUPPLEMENTARY INFORMATION: On January 14, 1997, the FAA issued AD 97–02–09, amendment 39–9894 (62 FR 3988, January 28, 1997), which is applicable to all Boeing Model 727 series airplanes. That AD requires inspections to detect cracking of the actuator rib fitting of the inboard door of the main landing gear (MLG); and various follow-on actions. It was prompted by a report of a fractured rib fitting that had been reworked in accordance with one of two existing AD's. The actions specified by that AD are intended to prevent damage to the airplane caused by a failure of the landing gear to extend due to a fractured rib fitting.

AD No.	Amendment No.	Federal Register citation
AD 90–02–19	39–6433	(55 FR 601, January 8, 1990)
AD 93–01–14	39–8468	(58 FR 5574, January 22, 1993)

Actions Since Issuance of the AD

Since the issuance of AD 97–02–09, the FAA has become aware of the fact that certain references made to the amendment number of AD 93–01–14, which appeared throughout the preamble of AD 96–02–09, its amendatory language, and the rule itself, were incorrect. The referenced amendment number that appeared in the published version of the AD was "amendment 39–8368;" however, the correct amendment number correlating to AD 93–01–14 is "amendment 39–8468."

Corrections Necessary to the Current AD

The FAA has determined that it is appropriate to take action to correct AD 97–02–09 by revising all references to the amendment number of AD 93–01–14 to specify "amendment 39–8468." Since AD 97–02–09 supersedes AD 93–01–14, this correction is necessary in order to ensure that the proper amendment number is removed from the regulations as a result of this supersedure.

Action is taken herein to correct the error and to correctly add the AD as an amendment to § 39.13 of the Federal Aviation Regulations (14 CFR 39.13). The effective date of the rule remains March 4, 1997.

Since no other part of the regulatory information has been changed, the final rule is not being republished.

§ 39.13 [Corrected]

In the issue of January 28, 1997, beginning in the third column of page 3989 and continuing to the first column of page 3990, the amendatory language, as well as the introductory text of the rule that specifies pertinent agency numbers and the airplane manufacturer, are corrected to read as follows:

* * * * *

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6433 (55 FR 601, January 8, 1990); and by removing amendment 39–8468 (58 FR 5574, January 22, 1993); and by adding a new airworthiness directive (AD), amendment 39–9894, to read as follows:

97–02–09 Boeing: Amendment 39–9894. Docket 95–NM–223–AD. Supersedes AD 90–02–19, amendment 39–6433; and supersedes AD 93–01–14, amendment 39–8468.

* * * * *

Issued in Renton, Washington, on February 19, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–4554 Filed 2–24–97; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 95–AWP–26]

Establishment of Class D Airspace; Victorville, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a Class D airspace area at Victorville, CA. The extension of Southern California International Airport Air Traffic Control Tower operating hours has made this action necessary. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Southern California International Airport, Victorville, CA.

EFFECTIVE DATE: 0901 UTC May 22, 1997.

FOR FURTHER INFORMATION CONTACT: William Buck, Airspace Specialist, Operations Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6556.

SUPPLEMENTARY INFORMATION:

History

On November 20, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing a Class D airspace area at Victorville, CA (61 FR 59040). This action will provide adequate controlled airspace to accommodate IFR operations at Southern California International Airport, Victorville, CA.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class D airspace designations are published in paragraph 5000 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designations listed in this document will be published subsequently in this Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class D airspace area at Victorville, CA. The extension of Southern California Air Traffic Control Tower operating hours has made this action necessary. The effect of this action will provide adequate controlled airspace for IFR operations at Southern California International Airport, Victorville, CA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

AWP CA D Victorville, CA [New]

Victorville, Southern California International Airport, CA
(Lat. 34°35'67" N, long. 117°22'93" W)

That airspace extending upward from the surface to 5,400 feet MSL within a 6-mile radius of the Victorville, Southern California International Airport, CA. This Class D airspace area is effective during the specific dates and times established in advance be a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, California, on February 5, 1997.

Leonard A. Mobley,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 97–4576 Filed 2–24–97; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–AWP–27]

Amendment of Class E Airspace; San Jose, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace area at San Jose, CA. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 14/32 at South County of Santa Clara County has made this action necessary. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at South County of Santa Clara County, San Martin, CA.

EFFECTIVE DATE: 0901 UTC March 27, 1997.

FOR FURTHER INFORMATION CONTACT: William Buck, Airspace Specialist, Operations Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6556.

SUPPLEMENTARY INFORMATION:

History

On December 16, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending the Class E airspace area at San Jose, CA (61 FR 65992). This action will provide adequate controlled airspace to accommodate a GPS SIAP to RWY 14/32 at South County Airport of Santa Clara County, San Martin, CA.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in this Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends the Class E airspace area at San Jose, CA. The development of a GPS SIAP to RWY 14/32 has made this action necessary. The effect of this action will provide adequate airspace for aircraft executing the GPS RWY 14/32 SIAP at South County Airport of Santa Clara County, San Martin, CA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace area extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 San Jose, CA [Revised]

San Jose International Airport, CA
(Lat. 37°21'42" N, long. 121°55'43" W)
NAS Moffett Field TACAN
(Lat. 37°25'57" N, long. 122°03'26" W)
San Jose NDB (Jorge)
(Lat. 37°20'56" N, long. 121°54'54" W)
South County Airport of Santa Clara County, CA
(Lat. 37°04'55" N, long. 121°35'49" W)

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the San Jose International Airport and within 4.3 miles each side of the NAS Moffett Field TACAN 157° radial extending from the NAS Moffett Field TACAN to 20 miles southeast of the TACAN and within 4 miles each side of the 139° bearing from the San Jose NDB, extending from the 5-mile radius of the San Jose International Airport to 24.3 miles southeast of the NDB and within a 6.9-mile radius of the South County Airport of Santa Clara County and that airspace bounded by a line beginning at lat. 37°30'00" N, long. 121°52'04" W; to lat. 37°22'00"N, long. 121°08'04" W; to lat. 37°22'00" N, long. 121°24'04" W; to lat. 37°30'00" N, long. 122°27'04" W, thence to the point of beginning. That airspace extending upward from 1,200 feet above the surface bounded of the north by lat. 37°30'00" N, on the east and northeast by long. 121°50'04" W; and the southwest edge of V–107, on the southeast and south by the northwest edge of V–111, and lat. 37°00'00" N, and on the west by the east edge of V–27 to lat. 37°30'00" N.

* * * * *

Issued in Los Angeles, California on February 3, 1997.

George D. Williams,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 97–4578 Filed 2–24–97; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–AWP–30]

Revision of Class E Airspace; Victorville, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the Class E airspace area at Victorville, CA. The closure of George Air Force Base has made this action necessary. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Southern California International Airport, Victorville, CA.

EFFECTIVE DATE: 0901 UTC May 22, 1997.

FOR FURTHER INFORMATION CONTACT: William Buck, Airspace Specialist, Operations Branch, AWP–530, Air Traffic Division, Western-Pacific

Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6556.

SUPPLEMENTARY INFORMATION:

History

On November 20, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by revising the Class E airspace area at Victorville, CA (61 FR 59042). This action will provide adequate controlled airspace to accommodate IFR operations at Southern California International Airport, Victorville, CA.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in this Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends the Class E airspace area at Victorville, CA. The closure of George Air Force Base has made this action necessary. The effect of this action will provide adequate controlled airspace for IFR operations at Southern California International Airport, Victorville, CA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E Airspace

* * * * *

AWP CA E5 Victorville, CA [Revised]

Victorville, Southern California International Airport, CA
(Lat. 34°35'67" N, long. 117°22'93" W)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Victorville, Southern California International Airport, CA.

* * * * *

Issued in Los Angeles, California on February 5, 1997.

Leonard A. Mobley,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 97–4577 Filed 2–24–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Monensin Blocks; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of October 15, 1996 (61 FR 53614). The document amended the animal drug regulations to reflect approval of supplemental new animal drug applications filed by Cooperative Research Farms and PM Ag Products, Inc. The document was published with an incorrect approval date. This document corrects that error.

EFFECTIVE DATE: October 15, 1996.

FOR FURTHER INFORMATION CONTACT: David L. Gordon, Center for Veterinary Medicine (HFV–238), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1737.

In FR Doc. 96–26374, appearing on page 53614, in the **Federal Register** of Tuesday, October 15, 1996, the following correction is made:

1. On page 53615, in the first column under the "**SUPPLEMENTARY INFORMATION**" caption, in line 14, "September 10, 1996" is corrected to read "October 15, 1996".

Dated: February 10, 1997.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 97–4518 Filed 2–24–97; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Sulfadimethoxine Oral Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Fermenta Animal Health. The ANADA provides for use of sulfadimethoxine oral solution to prepare medicated drinking water for animals to treat bacterial infections sensitive to sulfadimethoxine.

EFFECTIVE DATE: February 25, 1997.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center For Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1643.

SUPPLEMENTARY INFORMATION: Fermenta Animal Health Co., 10150 North Executive Hills Blvd., Kansas City, MO 64153, filed ANADA 200–165, which provides for use of sulfadimethoxine 12.5 percent oral solution to prepare medicated drinking water for broiler and replacement chickens, meat-producing turkeys, and dairy calves, dairy heifers, and beef cattle for the treatment of bacterial diseases susceptible to sulfadimethoxine.

Fermenta Animal Health's ANADA 200–165 for sulfadimethoxine oral solution 12.5 percent is approved as a generic copy of Hoffmann-LaRoche's Albon/Agribon (sulfadimethoxine) 12.5 percent solution in NADA 31–205. The ANADA is approved as of December 4, 1996, and the regulations are amended by revising 21 CFR 520.2220a(b) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FDA has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually of cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 520.2220a [Amended]

2. Section 520.2220a *Sulfadimethoxine oral solution and soluble powder* is amended in paragraph (b) by removing "000069 and 057561" and adding in its place "000069, 054273, and 057561".

Dated: February 3, 1997.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 97–4515 Filed 2–24–97; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Lufenuron Suspension and Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two supplemental new animal drug applications (NADA's) filed by Ciba-Geigy Animal Health, Ciba-Geigy Corp. The supplements provide that veterinary prescriptions are no longer required for use of lufenuron tablets for dogs and oral suspension for cats.

EFFECTIVE DATE: February 25, 1997.

FOR FURTHER INFORMATION CONTACT: Marcia K. Larkins, Center for Veterinary Medicine (HFV–112), Food and Drug Administration, 7500 Standish P1., Rockville, MD 20855, 301–594–0614.

SUPPLEMENTARY INFORMATION: Ciba-Geigy Animal Health, Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419–8300, filed supplemental NADA 141–026 that provides for oral administration of Program® (lufenuron) suspension for cats and kittens for control of flea populations and supplemental NADA 141–035 that provides for oral administration of Program® (lufenuron) tablets for dogs and puppies for prevention and control of flea populations. The supplemental NADA's provide that veterinary prescriptions are no longer required. The supplemental NADA's are approved as of December 31, 1996, and the regulations are amended by revising 21 CFR 520.1288(c)(3) and 520.1289(c)(3) to remove the limitation for veterinary prescription use.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 520.1288 [Amended]

2. Section 520.1288 *Lufenuron tablets* is amended in paragraph (c)(3) by removing the last sentence.

§ 520.1289 [Amended]

3. Section 520.1289 *Lufenuron suspension* is amended in paragraph (c)(3) by removing the last sentence.

Dated: February 3, 1997.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 97–4513 Filed 2–24–97; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Progesterone and Estradiol Benzoate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Ivy Laboratories, Inc. The supplemental NADA provides for use of a progesterone-estradiol benzoate ear implant in suckling beef heifer calves for increased rate of weight gain.

EFFECTIVE DATE: February 25, 1997.

FOR FURTHER INFORMATION CONTACT: Jack Caldwell, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0217.

SUPPLEMENTARY INFORMATION: Ivy Laboratories, Inc., 8857 Bond St., Overland Park, KS 66214, filed a supplement to NADA 110–315, which provides for use of a progesterone-estradiol benzoate ear implant in suckling beef heifer calves for increased rate of weight gain. Studies have shown no detrimental effects on reproduction after use of the implants in heifer calves. The supplement is approved as of January 22, 1997, and the regulations are amended in 21 CFR 522.1940(d)(1)(iii) to reflect the approval by limiting the use to indicate

that the implant is not for use in bull calves intended for reproduction. The basis for approval is discussed in the freedom of information summary.

In addition, due to enactment of the Generic Animal Drug and Patent Term Restoration Act of 1988, the paragraph concerning National Academy of Science/National Research Council status is outdated. At this time, 21 CFR 522.1940 is amended by removing paragraph (d)(2)(iv).

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval qualifies for 3 years of marketing exclusivity beginning January 22, 1997, because the application contains substantial evidence of the effectiveness of the drug involved, studies of animal safety or, in the case of food-producing animals, human food safety studies (other than bioequivalence or residue studies) required for approval and conducted or sponsored by the applicant.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 522.1940 [Amended]

2. Section 522.1940 *Progesterone and estradiol benzoate in combination* is amended in paragraph (d)(1)(iii) by removing the phrases "For 000033:" and "For 021641: Do not use in calves intended for reproduction." and by removing paragraph (d)(2)(iv).

Dated: February 10, 1997.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 97–4517 Filed 2–24–97; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 529

Certain Other Dosage Form New Animal Drugs; Salicylic Acid; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations concerning the use of salicylic acid to correct a certain typographical error. This action is being taken to clarify and improve the accuracy of the regulations.

EFFECTIVE DATE: February 25, 1997.

FOR FURTHER INFORMATION CONTACT: David L. Gordon, Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1737.

SUPPLEMENTARY INFORMATION: FDA has found an error concerning the amount of salicylic acid per dose. In 21 CFR 529.2090(a)(1) that error has been incorporated into the agency's animal drug regulations. FDA is correcting this error. The approved concentration is 0.55 grain of salicylic acid per dose, not 0.55 gram of salicylic acid.

List of Subjects in 21 CFR Part 529

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 529 is amended as follows:

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 529 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 529.2090 [Amended]

2. Section 529.2090 *Salicylic acid* is amended in paragraph (a)(1) by removing the word "gram" and by adding in its place the word "grain".

Dated: January 31, 1997.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 97–4516 Filed 2–24–97; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Melengestrol Acetate, Monensin, and Tylosin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pharmacia & Upjohn Co. The supplement provides for the use of separately approved Type A medicated articles containing melengestrol acetate (dry form only), monensin, and tylosin to manufacture certain combination drug, dry, meal Type B medicated feeds for use in making Type C medicated feeds. The feeds are for heifers fed in confinement for slaughter for increased rate of weight gain, improved feed efficiency, suppression of estrus, and reduced incidence of liver abscesses.

EFFECTIVE DATE: February 25, 1997.

FOR FURTHER INFORMATION CONTACT: Jack Caldwell, Center For Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1638.

SUPPLEMENTARY INFORMATION: Pharmacia & Upjohn, 7000 Portage Rd., Kalamazoo, MI 49001–0199, filed supplemental NADA 138–792, which provides for combining separately approved melengestrol acetate (MGA) (dry form only), monensin sodium, and tylosin phosphate Type A medicated articles to manufacture dry, meal Type B medicated feeds used to make Type C medicated feeds for heifers fed in confinement for slaughter for increased rate of weight gain, improved feed efficiency, suppression of estrus (heat), and reduced incidence of liver abscesses. The supplement is approved as of December 17, 1996, and 21 CFR 558.342 is amended in paragraph (c)(5)(iii)(C) to reflect the approval.

Approval of this supplement which provides for use of a different physical form of Type B feed did not require reevaluation of the safety or effectiveness data supporting the NADA or the submission of any new data. Therefore, a freedom of information summary is not required.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval does not qualify for marketing exclusivity because the supplement does not contain substantial evidence of the effectiveness of the drug involved, any studies of animal safety, or in the case of food-producing animals, human food safety studies (other than bioequivalence or residue studies), required for approval of the supplement and conducted or sponsored by the applicant.

The agency has determined under 21 CFR 25.24(d)(1)(ii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center For Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.342 [Amended]

2. Section 558.342 *Melengestrol acetate* is amended in paragraph (c)(5)(ii)(C) by removing the word "pelleted".

Dated: January 31, 1997.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 97–4514 Filed 2–24–97; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 558

New Animal Drugs For Use In Animal Feeds; Bambermycins

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Hoechst-Roussel Agri-Vet Co. The supplement provides for using liquid bambermycins Type B medicated feeds to make Type C medicated feeds for cattle fed in confinement for slaughter for increased rate of weight gain and improved feed efficiency.

EFFECTIVE DATE: February 25, 1997.

FOR FURTHER INFORMATION CONTACT: Russell G. Arnold, Center for Veterinary Medicine (HFV–142), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1674.

SUPPLEMENTARY INFORMATION: Hoechst-Roussel Agri-Vet Co., Route 202–206, P.O. Box 2500, Somerville, NJ 08876–1258, filed supplemental NADA 141–034 that provides for using 10-gram per pound (g/lb) Flavomycin® (bambermycins) Type A medicated articles to make 40 to 800 g/ton liquid Type B medicated feeds, the liquid Type B feeds used to make dry Type C medicated feeds. The Type C feeds containing 1 to 4 g/ton bambermycins are for cattle fed in confinement for slaughter to provide 10 to 20 milligrams bambermycins per head per day for increased rate of weight gain and improved feed efficiency. The regulations are amended in § 558.95 (21 CFR 558.95) by adding new paragraph (a)(5), by redesignating paragraph (b) as paragraph (d), and by revising newly redesignated paragraph (d)(4)(i)(*b*) to reflect the approval.

Furthermore, use of liquid Type B feeds to make Type C feeds requires publication of specifications and expiration information. New § 558.95(b) is established to reflect the Type B feed specifications and expiration information. In the interest of issuing uniform regulations in the future, new § 558.95(c) is also established at this time and reserved for future use.

Approval of this supplement did not require submission of additional safety or efficacy data. A freedom of information (FOI) summary as in 21 CFR part 20 and 514.11(e)(2)(ii) is not required. An FOI summary submitted to support approval of the original application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval for food producing animals does not qualify for marketing exclusivity because the supplement does not contain substantial evidence of effectiveness of the drug involved, any studies of animal safety or human food safety studies (other than bioequivalence or residue studies) required for approval of the supplement and conducted or sponsored by the applicant.

The agency has determined under 21 CFR 25.24(d)(1)(iii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

2. Section 558.95 is amended by adding new paragraph (a)(5), by redesignating paragraph (b) as paragraph (d), by adding new paragraph (b), by adding and reserving paragraph (c), and by adding a new fourth sentence to newly redesignated paragraph (d)(4)(i)(*b*), to read as follows:

§ 558.95 Bambermycins.

(a) * * *

(5) 10 grams of activity per pound to 012799 in § 510.600(c) of this chapter to make 40 to 800 gram/ton Type B feeds for use as in paragraph (d)(4)(i) of this section.

(b) *Special considerations.* (1) Bambermycins liquid Type B feeds may be manufactured from dry bambermycins Type A articles. The liquid Type B feeds must have a pH of 3.8 to 7.5, moisture content of 30 to 45 percent.

(2) The expiration date for the liquid Type B feed is 8 weeks after date of manufacture. The expiration date for the dry Type C feed made from the liquid Type B feed is 1 week after date of manufacture.

(c) [Reserved]

(d) * * *

(4) * * *

(i) * * *

(*b*) * * * Liquid Type B feeds containing bambermycins may be used in the preparation of dry complete ration Type C feeds.

* * * * *

Dated: February 10, 1997.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 97–4512 Filed 2–24–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 47 and 55

[T.D. ATF–387]

RIN 1512–AB63

Implementation of Public Law 104–132, the Antiterrorism and Effective Death Penalty Act of 1996, Relating to the Marking of Plastic Explosives for the Purpose of Detection (96R–029P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Temporary rule (Treasury decision) and request for comments.

SUMMARY: This temporary rule implements certain provisions of the Antiterrorism and Effective Death Penalty Act of 1996 (Pub. L. 104–132). These regulations implement the law by requiring detection agents for plastic explosives. The temporary rule also authorizes the use of four specific detection agents to mark plastic explosives and provides for the designation of other detection agents. The temporary rule will remain in effect until superseded by final regulations.

In the Proposed Rules section of this **Federal Register**, ATF is also issuing a notice of proposed rulemaking inviting comments on the temporary rule for a 90-day period following the publication date of this temporary rule.

DATES: The temporary regulations are effective April 24, 1997. Comments due by May 27, 1997.

ADDRESSES: Send written comments to: Chief, Regulations Branch; Bureau of Alcohol, Tobacco and Firearms; Washington, DC 20091–0221.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–8230).

SUPPLEMENTARY INFORMATION:

Background

Public Law 104–132, 110 Stat. 1214, the Antiterrorism and Effective Death Penalty Act of 1996 (hereafter, "the Act") was enacted on April 24, 1996. Title VI of the Act, "Implementation of Plastic Explosives Convention," added new requirements to the Federal explosives laws in 18 U.S.C. Chapter 40. Section 607 of the Act states that, except as otherwise provided, the amendments made by Title VI shall take effect 1 year after the date of enactment, i.e., on April 24, 1997. The stated purpose of Title VI is to fully implement the Convention on the Marking of Plastic Explosives for the Purpose of Detection, Done at Montreal on 1 March 1991 (hereafter, "the Convention").

The Convention represents an important achievement in international cooperation in response to the threat posed to the safety and security of international civil aviation by virtually undetectable plastic explosives in the hands of terrorists. Such explosives were used in the tragic destruction of Pan Am flight 103 over Lockerbie, Scotland, in December 1988, and UTA flight 772 in September 1989.

In the aftermath of these bombings, the international community moved to draft a multilateral treaty to ensure that plastic explosives would thereafter contain a chemical marking agent to render them detectable.

The new statutory provisions and the regulation changes necessitated by the law are as follows:

(1) *Definitions.* Section 602 of the Act added three definitions to section 841 of title 18, U.S.C. The term "Convention on the Marking of Plastic Explosives" is defined in the law to mean the Convention on the Marking of Plastic Explosives for the Purpose of Detection, Done at Montreal on 1 March 1991.

The term "detection agent" is defined as any one of the following substances when introduced into a plastic explosive or formulated in such explosive as a part of the manufacturing process in such a manner as to achieve homogeneous distribution in the finished explosive:

(1) Ethylene glycol dinitrate (EGDN), $C_2H_4(NO_3)_2$, molecular weight 152, when the minimum concentration in the finished explosive is 0.2 percent by mass;

(2) 2,3–Dimethyl-2,3-dinitrobutane (DMNB), $C_6H_{12}(NO_2)_2$, molecular weight 176, when the minimum concentration in the finished explosive is 0.1 percent by mass;

(3) Para-Mononitrotoluene (p-MNT), $C_7H_7NO_2$, molecular weight 137, when the minimum concentration in the finished explosive is 0.5 percent by mass;

(4) Ortho-Mononitrotoluene (o-MNT), $C_7H_7NO_2$, molecular weight 137, when the minimum concentration in the finished explosive is 0.5 percent by mass; and

(5) any other substance added by the Secretary of the Treasury by regulation, after consultation with the Secretary of State and the Secretary of Defense. Permitting the Secretary to designate detection agents other than the four listed in the statute would facilitate the use of other substances without the need for legislation. However, as specified in the law, only those substances which have been added to the table in Part 2 of the Technical Annex to the Convention on the Marking of Plastic Explosives may be designated as approved detection agents. ATF would have no authority to issue a regulation adding to the list of approved detection agents until the Technical Annex has been so modified.

The last term added to section 841 of title 18, U.S.C., "plastic explosive," is defined as an explosive material in flexible or elastic sheet form formulated with one or more high explosives which in their pure form has a vapor pressure less than 10^{-4} Pa at a temperature of 25 °C, is formulated with a binder material, and is as a mixture malleable or flexible at normal room temperature. Pursuant to Part I of the Technical Annex to the Convention, high explosives include, but are not restricted to, cyclotetramethylenetetranitramine (HMX), pentaerythritol tetranitrate (PETN), and cyclotrimethylenetrinitramine (RDX).

The above changes to the regulations are prescribed in § 55.180.

(2) *Requirement of Detection Agents for Plastic Explosives.* The Act amended the Federal explosives laws in 18 U.S.C. Chapter 40 by adding new subsections (l)–(o) to section 842. Section 842(l) makes it unlawful for any person to manufacture any plastic explosive that does not contain a detection agent.

Section 842(m) makes it unlawful for any person to import or bring into the U.S. or export from the U.S. any plastic explosive that does not contain a detection agent. The provisions of this section do not apply to the importation or bringing into the U.S. or the exportation from the U.S. of any plastic explosive that was imported or brought into or manufactured in the U.S. prior to the date of enactment of the Act by or on behalf of any agency of the U.S. performing military or police functions (including any military reserve component) or by or on behalf of the National Guard of any State, not later than 15 years after the Convention enters into force with respect to the U.S. Pursuant to Article XIII of the Convention, the Convention will enter into force on the sixtieth day following the date of deposit of the thirty-fifth instrument of ratification, acceptance, approval or accession with the Depositary, i.e., the International Civil Aviation Organization, provided that no fewer than five such States (nations) have declared that they are producer States. (A "producer State" means any State in whose territory explosives are manufactured.) Should thirty-five such instruments be deposited prior to the deposit of their instruments by five producer States, the Convention will enter into force on the sixtieth day following the date of deposit of the instrument of ratification, acceptance, approval or accession of the fifth producer State. For other States, the Convention will enter into force sixty days following the date of deposit of their instruments of ratification, acceptance, approval or accession.

Section 842(n) provides that it is unlawful for any person to ship, transport, transfer, receive, or possess any plastic explosive that does not contain a detection agent. Exceptions to the prohibitions are provided for any plastic explosive that was imported or brought into, or manufactured in the U.S. prior to the date of enactment of the Act by any person during the period beginning on that date, i.e., April 24, 1996, and ending 3 years after that date, i.e., April 24, 1999. Exceptions to the prohibitions are also provided for any plastic explosive that was imported or brought into, or manufactured in the U.S. prior to the date of enactment of the Act by or on behalf of any agency of the U.S. performing a military or police function (including any military reserve component) or by or on behalf of the National Guard of any State, not later than 15 years after the date of entry into force of the Convention on the marking of Plastic Explosives with respect to the U.S.

The above changes to the regulations are prescribed in § 55.180.

Section 842(o) provides that any person, other than an agency of the U.S. (including any military reserve component) or the National Guard of any State, possessing any plastic explosive on the date of enactment, shall report to the Secretary within 120 days after the date of enactment the quantity of such explosives possessed, the manufacturer or importer, any marks of identification on such explosives, and such other information as the Secretary may prescribe by regulation. Regulations implementing this provision of the Act were prescribed in T.D. ATF–382, published in the **Federal Register** on July 23, 1996 (61 FR 38084). However, a technical amendment is being made to § 55.181 to include the control number assigned by the Office of Management and Budget (OMB).

(3) *Criminal Sanctions.* The Act amended section 844(a) of title 18, U.S.C., by providing that any person who violates any of the provisions of section 842(l)–(o) shall be fined under title 18, imprisoned for not more than 10 years, or both. Changes to the regulations in § 55.185 have been made to implement this provision of the law.

(4) *Exceptions.* The Act amended 18 U.S.C. § 845(a) to provide that the exemptions from the requirements of 18 U.S.C. Chapter 40 that apply to governmental entities and other specified uses of explosives do not apply to section 842(l)–(o). Changes to the regulations in § 55.141(a) have been made to implement this provision of the law.

The Act also made a technical amendment to 18 U.S.C. § 845(a)(1) to clarify the current exemption from the requirements of 18 U.S.C. Chapter 40 for aspects of the transportation of explosives regulated by the U.S. Department of Transportation. The amendment makes it clear that the exemption applies only to those aspects of the transportation related to safety. Changes to the regulations in § 55.141(a)(1) have been made to implement this change in the law.

The Act also amended section 845 of title 18, U.S.C., by adding a new subsection (c). This amendment provides that it is an affirmative defense against any proceeding involving section 842(l)–(o) of title 18, U.S.C., if the proponent proves by a preponderance of the evidence that the plastic explosive—

(1) Consisted of a small amount of plastic explosive intended for and utilized solely in lawful—

(a) research, development, or testing of new or modified explosive materials;

(b) training in explosives detection or development or testing of explosives detection equipment; or

(c) forensic science purposes; or

(2) was plastic explosive that, within 3 years after the date of enactment of the Act, will be or is incorporated in a military device within the territory of the U.S. and remains an integral part of such military device, or is intended to be, or is incorporated in, and remains an integral part of a military device that is intended to become, or has become, the property of any agency of the U.S. performing military or police functions (including any military reserve component) or the National Guard of any State, wherever such device is located.

As defined in the Act, the term "military device" includes, but is not restricted to, shells, bombs, projectiles, mines, missiles, rockets, shaped charges, grenades, perforators, and similar devices lawfully manufactured exclusively for military or police purposes.

The affirmative defenses provided in the law could be asserted in a criminal case, a judicial forfeiture case, or an administrative license or permit denial or revocation.

Changes to the regulations in § 55.182 have been made to implement the provisions of section 845(c) of title 18, U.S.C.

(5) *Seizure and Forfeiture of Plastic Explosives.* The Act amended section 596(c)(1) of the Tariff Act of 1930, 19 U.S.C. 1595a(c)(1), to provide for the seizure or forfeiture of plastic explosive that does not contain a detection agent that is introduced or attempted to be introduced into the U.S. Changes to the regulations in § 55.186 have been made to implement this provision of the law.

Miscellaneous. In order to fully implement the provisions of the Act, regulations are prescribed in § 55.184 which authorize the Director to request from licensed manufacturers and licensed importers accurate and complete statements of process with regard to any plastic explosive or any detection agent that is to be introduced into a plastic explosive or formulated in such explosive. The regulations also give ATF the authority to require samples of any plastic explosive or detection agent from such licensees.

As stated in Article III of the Convention, "[e]ach State Party shall take the necessary and effective measures to prohibit and prevent the movement into or out of its territory of unmarked (plastic) explosives" so as to prevent their diversion or use for purposes inconsistent with the Convention. In order to comply with the objectives of the Convention, regulations are prescribed in § 55.183 which require persons filing Form 6 applications for importation of plastic explosives on or after April 24, 1997, to attach to the application a statement certifying that the plastic explosive to be imported contains a detection agent or is a "small amount" to be used for research, training, or testing purposes and is exempt from the detection agent requirement.

Finally, this Treasury decision also makes certain technical amendments and conforming changes to the

regulations in Part 55. For example, sections 55.49, 55.52, and 55.55 are being amended to remove the reference to § 55.182. Section 55.182, *Classes of explosive materials*, was replaced by § 55.202 pursuant to T.D. ATF–87 (August 7, 1981; 46 FR 40382).

Executive Order 12866

It has been determined that this temporary rule is not a significant regulatory action as defined in E.O. 12866, because the economic effects flow directly from the underlying statute and not from this temporary rule. Therefore, a regulatory assessment is not required.

Administrative Procedure Act

Because this document merely implements the law and because immediate guidance is necessary to implement the provisions of the law, it is found to be impracticable to issue this Treasury decision with notice and public procedure under 5 U.S.C. 553(b), or subject to the effective date limitation in section 553(d).

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this temporary rule because the agency was not required to publish a notice of proposed rulemaking under 5 U.S.C. 553 or any other law. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed under the requirements of the Paperwork Reduction Act (44 U.S.C. 3507(j)) and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1512–0539. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

The collection of information in this regulation is in section 27 CFR 55.184(a). This information is required to ensure compliance with the provisions of Public Law 104–132. This information will be used to ensure that plastic explosives contain a detection agent as required by law. The collection of information is mandatory. The likely respondents are individuals and businesses.

For further information concerning this collection of information, and where to submit comments on the collection of information, refer to the preamble to the cross-referenced notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**.

Drafting Information

The author of this document is James P. Ficaretta, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 47

Administrative practice and procedure, Arms controls, Arms and munitions, Authority delegation, Chemicals, Customs duties and inspection, Imports, Penalties, Reporting and recordkeeping requirements, Scientific equipment, Seizures and forfeitures.

27 CFR Part 55

Administrative practice and procedure, Authority delegations, Customs duties and inspection, Explosives, Hazardous materials, Imports, Penalties, Reporting and recordkeeping requirements, Safety, Security measures, Seizures and forfeitures, Transportation, Warehouses.

Authority and Issuance

Accordingly, 27 CFR Parts 47 and 55 are amended as follows:

PART 47—IMPORTATION OF ARMS, AMMUNITION AND IMPLEMENTS OF WAR

1. The authority citation for 27 CFR Part 47 continues to read as follows:

Authority: 22 U.S.C. 2778.

2. Section 47.42 is amended by designating the existing paragraph as paragraph (a) and by adding a new paragraph (b) to read as follows:

§ 47.42 Application for permit.

* * * * *

(b) For additional requirements relating to the importation of plastic explosives into the United States on or after April 24, 1997, see § 55.183 of this title.

PART 55—COMMERCE IN EXPLOSIVES

3. The authority citation for 27 CFR Part 55 is revised to read as follows:

Authority: 18 U.S.C. 847.

4. Section 55.1 is amended by revising paragraph (a), by removing the word "of" in paragraph (b)(1) and adding in its place the word "or", by removing the word "and" at the end of paragraph (b)(7), by removing the period at the end of paragraph (b)(8) and adding in its place "; and", and by adding new paragraph (b)(9) to read as follows:

§ 55.1 Scope of regulations.

(a) *In general.* The regulations contained in this part relate to commerce in explosives and implement Title XI, Regulation of Explosives (18 U.S.C. Chapter 40; 84 Stat. 952), of the Organized Crime Control Act of 1970 (84 Stat. 922), Public Law 103–322 (108 Stat. 1796), and Public Law 104–132 (110 Stat. 1214).

(b) * * *

(9) The marking of plastic explosives.

§ 55.11 [Amended]

5. Section 55.11 is amended by removing the definition for "plastic explosive."

6. Section 55.26 is amended by adding paragraph (d) to read as follows:

§ 55.26 Prohibited shipment, transportation, receipt, possession, or distribution of explosive materials.

* * * * *

(d) See § 55.180 for regulations concerning the prohibited manufacture, importation, exportation, shipment, transportation, receipt, transfer, or possession of plastic explosives that do not contain a detection agent.

§ 55.49 [Amended]

7. Section 55.49(b)(6) is amended by removing "§ 55.182 or".

§ 55.52 [Amended]

8. Section 55.52 is amended by removing "§ 55.182 or" in paragraphs (a) and (b).

§ 55.55 [Amended]

9. Section 55.55 is amended by removing "§ 55.182 or" in the first sentence.

§ 55.108 [Amended]

10. Section 55.108 is amended by adding a new paragraph (d) to read as follows:

§ 55.108 Importation.

* * * * *

(d) For additional requirements relating to the importation of plastic explosives into the United States on or after April 24, 1997, see § 55.183.

11. Section 55.129 is amended by adding a sentence at the end of the section to read as follows:

§ 55.129 Exportation.

* * * See § 55.180 for regulations concerning the exportation of plastic explosives.

12. Section 55.141 is amended by revising the introductory text of paragraph (a) and by revising paragraph (a)(1) to read as follows:

§ 55.141 Exemptions.

(a) *General.* Except for the provisions of §§ 55.180 and 55.181, this part does not apply to:

(1) Any aspect of the transportation of explosive materials via railroad, water, highway, or air which is regulated by the U.S. Department of Transportation and its agencies, and which pertains to safety.

* * * * *

13. Section 55.180 is added to Subpart J to read as follows:

§ 55.180 Prohibitions relating to unmarked plastic explosives.

(a) No person shall manufacture any plastic explosive that does not contain a detection agent.

(b) No person shall import or bring into the United States, or export from the United States, any plastic explosive that does not contain a detection agent. This paragraph does not apply to the importation or bringing into the United States, or the exportation from the United States, of any plastic explosive that was imported or brought into, or manufactured in the United States prior to April 24, 1996, by or on behalf of any agency of the United States performing military or police functions (including any military reserve component) or by or on behalf of the National Guard of any State, not later than 15 years after the date of entry into force of the Convention on the Marking of Plastic Explosives with respect to the United States.

(c) No person shall ship, transport, transfer, receive, or possess any plastic explosive that does not contain a detection agent. This paragraph does not apply to:

(1) The shipment, transportation, transfer, receipt, or possession of any plastic explosive that was imported or brought into, or manufactured in the United States prior to April 24, 1996, by any person during the period beginning on that date and ending on April 24, 1999; or

(2) The shipment, transportation, transfer, receipt, or possession of any plastic explosive that was imported or brought into, or manufactured in the United States prior to April 24, 1996, by or on behalf of any agency of the United States performing a military or police function (including any military reserve component) or by or on behalf of the National Guard of any State, not later than 15 years after the date of entry into force of the Convention on the Marking of Plastic Explosives with respect to the United States.

(d) When used in this subpart, terms are defined as follows:

(1) *Convention on the Marking of Plastic Explosives* means the Convention on the Marking of Plastic Explosives for the Purposes of Detection, Done at Montreal on 1 March 1991.

(2) *Date of entry into force* of the Convention on the Marking of Plastic Explosives means that date on which the Convention enters into force with respect to the U.S. in accordance with the provisions of Article XIII of the Convention on the Marking of Plastic Explosives.

(3) *Detection agent* means any one of the substances specified in this paragraph when introduced into a plastic explosive or formulated in such explosive as a part of the manufacturing process in such a manner as to achieve homogeneous distribution in the finished explosive, including—

(i) Ethylene glycol dinitrate (EGDN), $C_2H_4(NO_3)_2$, molecular weight 152, when the minimum concentration in the finished explosive is 0.2 percent by mass;

(ii) 2,3-Dimethyl-2,3-dinitrobutane (DMNB), $C_6H_{12}(NO_2)_2$, molecular weight 176, when the minimum concentration in the finished explosive is 0.1 percent by mass;

(iii) Para-Mononitrotoluene (p-MNT), $C_7H_7NO_2$, molecular weight 137, when the minimum concentration in the finished explosive is 0.5 percent by mass;

(iv) Ortho-Mononitrotoluene (o-MNT), $C_7H_7NO_2$, molecular weight 137, when the minimum concentration in the finished explosive is 0.5 percent by mass; and

(v) Any other substance in the concentration specified by the Director, after consultation with the Secretary of State and Secretary of Defense, that has been added to the table in Part 2 of the Technical Annex to the Convention on the Marking of Plastic Explosives.

(4) *Plastic explosive* means an explosive material in flexible or elastic sheet form formulated with one or more high explosives which in their pure form has a vapor pressure less than 10^{-4} Pa at a temperature of 25 °C, is formulated with a binder material, and is as a mixture malleable or flexible at normal room temperature. *High explosives*, as defined in § 55.202(a), are explosive materials which can be caused to detonate by means of a blasting cap when unconfined.

14. Section 55.181 is amended by adding a parenthetical text at the end of the section to read as follows:

§ 55.181 Reporting of plastic explosives.

* * * * *

(Approved by the Office of Management and Budget under control number 1512–0535)

15. Sections 55.182 through 55.186 are added to Subpart J to read as follows:

§ 55.182 Exceptions.

It is an affirmative defense against any proceeding involving §§ 55.180 and 55.181 if the proponent proves by a preponderance of the evidence that the plastic explosive—

(a) Consisted of a small amount of plastic explosive intended for and utilized solely in lawful—

(1) Research, development, or testing of new or modified explosive materials;

(2) Training in explosives detection or development or testing of explosives detection equipment; or

(3) Forensic science purposes; or

(b) Was plastic explosive that, by April 24, 1999, will be or is incorporated in a military device within the territory of the United States and remains an integral part of such military device, or is intended to be, or is incorporated in, and remains an integral part of a military device that is intended to become, or has become, the property of any agency of the United States performing military or police functions (including any military reserve component) or the National Guard of any State, wherever such device is located. For purposes of this paragraph, the term "military device" includes, but is not restricted to, shells, bombs, projectiles, mines, missiles, rockets, shaped charges, grenades, perforators, and similar devices lawfully manufactured exclusively for military or police purposes.

§ 55.183 Importation of plastic explosives on or after April 24, 1997.

Persons filing Form 6 applications for the importation of plastic explosives on or after April 24, 1997, shall attach to the application the following written statement, prepared in triplicate, executed under the penalties of perjury:

(a) "I declare under the penalties of perjury that the plastic explosive to be imported contains a detection agent as required by 27 CFR 55.180(b)"; or

(b) "I declare under the penalties of perjury that the plastic explosive to be imported is a "small amount" to be used for research, training, or testing purposes and is exempt from the

detection agent requirement pursuant to 27 CFR 55.182."

§ 55.184 Statements of process and samples.

(a) A complete and accurate statement of process with regard to any plastic explosive or to any detection agent that is to be introduced into a plastic explosive or formulated in such plastic explosive shall be submitted by a licensed manufacturer or licensed importer, upon request, to the Director.

(b) Samples of any plastic explosive or detection agent shall be submitted by a licensed manufacturer or licensed importer, upon request, to the Director.

(Paragraph (a) approved by the Office of Management and Budget under control number 1512–0539)

§ 55.185 Criminal sanctions.

Any person who violates the provisions of 18 U.S.C. 842(l)–(o) shall be fined under title 18, U.S.C., imprisoned for not more than 10 years, or both.

§ 55.186 Seizure or forfeiture.

Any plastic explosive that does not contain a detection agent in violation of 18 U.S.C. 842(l)–(n) is subject to seizure and forfeiture, and all provisions of 19 U.S.C. 1595a, relating to seizure, forfeiture, and disposition of merchandise introduced or attempted to be introduced into the U.S. contrary to law, shall extend to seizures and forfeitures under this subpart. See § 72.27 of this chapter for regulations on summary destruction of plastic explosives that do not contain a detection agent.

Dated: December 3, 1996.

John W. Magaw,

Director.

Approved: January 3, 1997.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 97–4559 Filed 2–24–97; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 220

Third Party Collection Program

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Final rule; correction.

SUMMARY: On January 30, 1997, the Department of Defense published a final rule (62 FR 4458) to remove 32 CFR part 220. The removal of part 220 was made due to an administrative error and should not have been removed. This document is published to correct the removal and reinstate part 220.

EFFECTIVE DATE: This correction is effective January 30, 1997.

SUPPLEMENTARY INFORMATION: All previous publications and amendments to part 220 remain effective. The last amendment to part 220 was published on January 7, 1997 (62 FR 941) which amended § 220.8(k)(2). No other adjustments or amendments or changes are effective as of February 19, 1997.

PART 220—COLLECTION FROM THIRD PARTY PAYERS OF REASONABLE COSTS OF HEALTHCARE SERVICES

For reasons set forth in the preamble, 32 CFR part 220 is reinstated as it appeared in the 32 CFR Chapter 1, July 1, 1996 edition, and amended at 62 FR 941, January 7, 1997.

Dated: February 19, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–4366 Filed 2–24–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100 and 165

[CGD 97–010]

Safety Zones, Security Zones, and Special Local Regulations

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary rules issued.

SUMMARY: This document provides required notice of substantive rules adopted by the Coast Guard and temporarily effective between July 4, 1996 and December 31, 1996, which were not published in the **Federal Register**. This quarterly notice lists temporary local regulations, security zones, and safety zones, which were of limited duration and for which timely publication in the **Federal Register** was not possible.

DATES: This notice lists temporary Coast Guard regulations that became effective and were terminated between July 4, 1996 and December 31, 1996, as well as several regulations which were not included in the previous quarterly list.

ADDRESSES: The complete text of these temporary regulations may be examined at, and is available on request, from Executive Secretary, Marine Safety Council (G–LRA), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Commander Stephen J. Darmody, Executive Secretary, Marine Safety Council at (202) 267–1477 between the hours of 8 a.m. and 3 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: District Commanders and Captains of the Port (COTP) must be immediately responsive to the safety needs of the waters within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain local regulations. Safety zones may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. Security zones limit access to vessels, ports, or waterfront facilities to prevent injury or damage. Special local regulations are issued to enhance the safety of participants and spectators at regattas and other marine events. Timely publication of these regulations in the **Federal Register** is often precluded when a regulation responds to an emergency, or when an event occurs without sufficient advance notice. However, the affected public is informed of these regulations through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is provided by Coast Guard patrol vessels enforcing the restrictions imposed by the regulation. Because mariners are notified by Coast Guard officials on-scene prior to enforcement action, **Federal Register** notice is not required to place the special local regulation, security zone, or safety zone in effect. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To discharge this legal obligation without imposing undue expense on the public, the Coast Guard periodically publishes a list of these temporary special local regulations, security zones, and safety zones. Permanent regulations are not included in this list because they are published in their entirety in the **Federal Register.** Temporary regulations may also be published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. These safety zones, special local regulations and security zones have been exempted from review under E.O. 12866 because of their emergency nature, or limited scope and temporary effectiveness.

The following regulations were placed in effect temporarily during the period July 4, 1996 and December 31, 1996, unless otherwise indicated.

Stephen J. Darmody,

Commander, U.S. Coast Guard, Executive Secretary, Marine Safety Council.

QUARTERLY REPORT

District docket	Location	Type	Effective date
01–96–114	Hudson River, NY and NJ	Safety Zone	9/21/96
01–96–117	Boston, MA	Safety Zone	9/20/96
01–96–120	East River, New York	Safety Zone	10/6/96
01–96–123	East River, New York	Security Zone	9/24/96
01–96–125	Boston, MA	Security Zone	9/28/96
01–96–130	New York Harbor	Safety Zone	10/5/96
01–96–132	Hudson River, NY and NJ	Safety Zone	9/19/96
01–96–133	East River, New York	Security Zone	10/20/96
01–96–134	Hudson River, NY and NJ	Safety Zone	10/20/96
01–96–136	Boston, MA	Safety Zone	11/1/96
01–96–137	Boston, MA	Safety Zone	11/8/96
01–96–138	Boston, MA	Safety Zone	11/15/96
01–96–141	Portland, ME	Safety Zone	12/16/96
05–96–069	Elizabeth River, VA	Safety Zone	8/14/96
05–96–070	Elizabeth River, VA	Safety Zone	8/16/96
05–96–071	Elizabeth River, VA	Safety Zone	8/22/96
05–96–077	Elizabeth River, VA	Safety Zone	9/4/96
05–96–081	Virginia Seacoast, VA	Security Zone	9/11/96
05–96–084	Salem River, NJ	Safety Zone	9/13/96
05–96–087	Neuse River, N.C.	Safety Zone	9/30/96
05–96–088	Delaware Bay	Safety Zone	10/3/96
05–96–089	Neuse River, N.C.	Safety Zone	10/4/96
05–96–090	Neuse River, N.C.	Safety Zone	10/8/96
05–96–091	James River, VA	Safety Zone	10/12/96
05–96–092	Hampton Road, VA	Safety Zone	10/10/96
05–96–093	Delaware River	Safety Zone	10/18/96
05–96–096	Delaware River	Safety Zone	9/15/96
05–96–097	Elizabeth River, VA	Safety Zone	10/17/96
05–96–098	James River, VA	Safety Zone	10/17/96
05–96–099	Norfolk, VA	Security Zone	10/19/96
05–96–100	Chesapeake Bay, VA	Safety Zone	10/22/96
05–96–104	Hampton Roads, VA	Safety Zone	11/1/96
05–96–106	Elizabeth River, VA	Safety Zone	11/15/96
05–96–109	Chesapeake Bay, VA	Safety Zone	11/15/96
05–96–110	Wrightsville Beach, N.C.	Safety Zone	11/26/96
05–96–111	Elizabeth River, VA	Safety Zone	12/2/96
05–96–112	Chesapeake Bay, VA	Security Zone	12/4/96
05–96–115	Channel of Chesapeake, VA	Safety Zone	12/10/96
07–96–055	Islamorada, FL	Special Local	9/14/96
07–96–059	Old San Juan, PR	Special Local	10/13/96
07–96–065	Key West, FL	Special Local	11/6/96
08–96–044	Ohio River, M. 792 to Evansville, IA	Special Local	9/14/96
08–96–045	Licking River, M. 0.0 to M. 3.5	Special Local	9/28/96
08–96–059	Clear Lake, TX	Special Local	12/14/96
09–96–006	Detroit River, MI	Safety Zone	8/3/96
09–96–013	Fox River	Security Zone	9/2/96
09–96–015	Illinois Waterway	Safety Zone	10/15/96
09–96–018	Passage Island	Safety Zone	11/1/96
11–96–009	San Joaquin River, CA	Special Local	9/8/96
13–96–032	Queets, WA	Safety Zone	9/4/96
13–96–033	Queets, WA	Safety Zone	9/10/96
13–96–035	Benton, WA	Safety Zone	9/19/96
13–96–036	Queets, WA	Safety Zone	9/18/96
13–96–037	Queets, WA	Safety Zone	9/24/96
13–96–038	Portland, OR	Security Zone	9/19/96
13–96–039	Benton, WA	Safety Zone	9/26/96
13–96–040	Tacoma, WA	Safety Zone	9/29/96
13–96–041	Queets, WA	Safety Zone	10/2/96
13–96–042	Benton, WA	Safety Zone	10/3/96
13–96–043	Benton, WA	Safety Zone	10/17/96
13–96–044	Queets, WA	Safety Zone	10/15/96
13–96–045	Puget Sound, WA	Safety Zone	10/28/96
13–96–048	Port Orchard, WA	Safety Zone	12/30/96

QUARTERLY REPORT

COTP docket	Location	Type	Effective date
Charleston 96–058	Cooper River, SC	Safety Zone	9/22/96
Corpus Christi 96–010	Gulf Intracoastal Waterway	Safety Zone	9/4/96
Corpus Christi 96–011	Gulf Intracoastal Waterway	Safety Zone	11/12/96
Corpus Christi 96–013	Corpus Christi Chip Channel	Safety Zone	12/23/96
Houston/Galveston 96–003	Galveston, TX	Security Zone	10/31/96
Houston/Galveston 96–004	Freeport, TX	Safety Zone	11/7/96
Houston/Galveston 96–011	Houston, TX	Safety Zone	9/6/96
Houston/Galveston 96–012	Houston, TX	Safety Zone	9/10/96
Houston/Galveston 96–014	Houston, TX	Safety Zone	10/23/96
Huntington 96–001	Ohio River, M. 322.5 to M. 322.8	Security Zone	8/25/96
LA/Long Beach 96–019	San Pedro Bay, CA	Safety Zone	8/20/96
LA/Long Beach 96–021	San Pedro Bay, CA	Safety Zone	8/30/96
LA/Long Beach 96–022	San Pedro Bay, CA	Safety Zone	9/7/96
LA/Long Beach 96–024	San Pedro Bay, CA	Safety Zone	10/17/96
LA/Long Beach 96–025	Santa Barbara, CA	Security Zone	11/1/96
Memphis 96–001	Mississippi River, M. 722.3 to M. 725.5	Safety Zone	8/26/96
Miami 96–066	Biscayne National Park, FL	Safety Zone	11/7/96
Miami 96–070	Biscayne National Park, FL	Safety Zone	11/20/96
Miami 96–071	Biscayne National Park, FL	Safety Zone	11/21/96
Mobile 96–021	Gulf of Mexico, FL	Safety Zone	8/8/96
Mobile 96–022	Gulf of Mexico, FL	Safety Zone	8/8/96
Mobile 96–024	Gulf of Mexico, MS	Safety Zone	9/19/96
Mobile 96–026	Gulf of Mexico, FL	Safety Zone	11/10/96
Mobile 96–028	Fulton, MS	Safety Zone	12/14/96
Morgan City 96–003	Vermillion River, LA	Safety Zone	11/1/96
New Orleans 96–009	Mississippi River, M. 94 to M. 95	Safety Zone	9/26/96
New Orleans 96–010	Mississippi River, M. 94 to M. 95	Safety Zone	9/27/96
New Orleans 96–011	Industrial Canal	Security Zone	11/6/96
New Orleans 96–012	Crescent City Connection Bridge	Security Zone	10/24/96
New Orleans 96–013	Canal Bridge	Security Zone	10/24/96
New Orleans 96–014	Bienville Street Wharf	Security Zone	11/2/96
New Orleans 96–015	Mississippi River, M. 94 to M. 95	Safety Zone	11/2/96
New Orleans 96–017	Mississippi River, M. 94 to M. 95	Safety Zone	12/31/96
Paducah 96–001	Tennessee River, M. 2.5 to M. 5.5	Security Zone	10/11/96
San Diego Bay 96–008	San Diego Bay, CA	Safety Zone	8/24/96
San Diego Bay 96–010	San Clemente Island, CA	Safety Zone	11/14/96
San Francisco Bay 96–004	San Francisco Bay, CA	Safety Zone	7/4/96
San Francisco Bay 96–005	San Francisco Bay, CA	Safety Zone	10/12/96
San Francisco Bay 96–006	San Francisco Bay, CA	Safety Zone	10/10/96
San Francisco Bay 96–007	San Francisco Bay, CA	Safety Zone	10/12/96
San Francisco Bay 96–079	San Francisco Bay, CA	Security Zone	10/31/96
Savannah 96–073	Savannah, GA	Safety Zone	12/5/96
Southeast Alaska 96–001	Tongass Narrows, Ketchkan	Security Zone	11/5/96
Tampa 96–061	Tampa Bay, FL	Safety Zone	10/7/96
Western Alaska 96–001	UnAlaska Island, AK	Safety Zone	10/18/96

[FR Doc. 97–4575 Filed 2–24–97; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD040–3010a and MD048–3011a; FRL–5688–5]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Control of Volatile Organic Compound Emissions From Open Fires, "Once-in, Always-in," and Definition for the Term "Annual"

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions submitted by the State of Maryland on July 12, 1995 and July 17, 1995. These revisions establish a definition for the term "annual," expand Maryland's once-in, always-in provisions, and require an open burning ban in Maryland's serious and severe ozone nonattainment areas during the summer months. The intended effect of this action is to approve these provisions into the Maryland SIP, in accordance with the SIP submittal and revision provisions of the Act.

DATES: This final rule is effective April 28, 1997 unless within March 27, 1997, adverse or critical comments are received. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to David L. Arnold, Chief, Ozone/CO and Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107 and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore Maryland 21224.

FOR FURTHER INFORMATION CONTACT: Maria A. Pino, (215) 566–2181, at the EPA Region III office address listed above, or via e-mail at pino.maria@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above Region III address.

SUPPLEMENTARY INFORMATION: On July 12, 1995, the Maryland Department of the Environment (MDE) submitted amendments to its open fires regulation to EPA as a State Implementation Plan (SIP) revision. This regulation controls emissions of volatile organic compounds (VOCs) through a seasonal ban on open burning in Maryland's serious and severe ozone nonattainment areas. MDE submitted this SIP revision request pursuant to the rate-of-progress (ROP) requirements of section 182 of the Clean Air Act (the Act).

On July 17, 1995, MDE submitted amendments to its "once-in, always-in" provisions to EPA as a SIP revision. These revisions expand the applicability of Maryland's once-in, always-in provisions to include VOC regulations triggered by applicability thresholds based on a source's actual emissions. Also on July 17, 1995, MDE submitted a definition for the term "annual." This revision clarifies applicability provisions for many Maryland VOC emission control requirement provisions.

Summary of SIP Revision

State Submittal: Open Fires, COMAR 26.11.07

Maryland has amended COMAR 26.11.07 to institute a ban on open burning during the peak ozone season in Maryland's severe and serious ozone nonattainment areas. Maryland considers the months of June, July, and August the peak ozone, because that is when ambient levels of ozone in Maryland are usually the highest. The areas subject to this ban are the Baltimore severe ozone nonattainment area (Baltimore City and Anne Arundel, Baltimore, Carroll, Harford, and Howard Counties), the Maryland portion of the Philadelphia severe ozone nonattainment area (Cecil County), and the Maryland portion of the Washington, DC serious ozone nonattainment area (Calvert, Charles, Frederick, Montgomery, and Prince George's Counties). These revisions were adopted on May 1, 1995, and effective on May 22, 1995.

The following open fires are not prohibited, as long as all reasonable means are used to minimize smoke:

(1) For cooking of food on noncommercial property (cook outs);

(2) For recreational purposes (camp fires);

(3) For prevention of fire hazards that cannot be abated by any other means;

(4) For the instruction of fire fighters or the testing of fire fighter training systems fueled by propane or natural gas;

(5) For protection of health & safety when disposal of hazardous waste is not possible by any other means;

(6) For burning pest infested crops or agricultural burning for animal disease control;

(7) For good forest resource management practices;

(8) For the burning of excessive lodging for the purpose of re-cropping; and

(9) For testing fire fighting training systems.

This ban is in effect during the "peak ozone season". During the remainder of the year (September 1–May 31) Maryland's existing open fire regulations apply. Current regulations require a permit to be obtained before open burning can take place.

The program will be enforced through a coordinated effort between Maryland Department of the Environment, local agencies and public officials. There will also be a coordinated public awareness effort to educate the public about the alternatives to open burning. The ban will result in emission reductions of 13.28 tons per day (tpd) VOC. The ban will also result in significant emission reductions of carbon monoxide (CO), oxides of nitrogen (NO_x), and toxics (carcinogenic polycyclic materials).

In addition, Maryland has made the following administrative amendments to COMAR 26.11.07.

(1) All references to Ringlemann Smoke Chart have been replaced by references to opacity throughout this regulation.

(2) All references to "Areas I–VI" have been replaced by county names throughout this regulation.

(3) All references to "I.I.A waste type 0 and 1" have been placed with references to all "ordinary household trash" throughout this regulation.

EPA Evaluation: Open Fires, COMAR 26.11.07

These revisions, which prohibit all but certain specific open burning activities in Maryland's serious and severe ozone nonattainment areas in the peak ozone season (June, July & August), will result in significant enforceable VOC emission reductions. These reductions are needed for Maryland's 15% plans.

State Submittal: Once-in, Always in, COMAR 26.11.19.02A(3)–(5)

These SIP revisions add a once-in, always-in provision for VOC regulations triggered by applicability thresholds based on a source's actual emissions (as opposed to potential emissions). These revisions were adopted on April 7, 1995, and effective on May 8, 1995, and are applicable statewide.

The once-in, always-in provision that is currently in Maryland's SIP states that if a source is subject to the requirements of COMAR 26.11.19 (Maryland's category specific VOC regulations) because its potential emissions exceed an applicability threshold, the source will continue to be subject to the requirements, regardless of whether future emissions are below the applicability threshold. Maryland has expanded this provision to include exceedances of actual emissions thresholds. Actual emissions since January 1, 1990 will be considered in determining applicability.

EPA Evaluation: Once-in, Always in, COMAR 26.11.19.02A(3)–(5)

This revision will ensure that any new VOC requirements that have applicability thresholds based on actual emissions are enforceable for all sources that have exceeded the applicability threshold from January 1, 1990 into the future.

State Submittal: Definition of "Annual", COMAR 26.11.19.01B(1–1)

This SIP revision adds a definition for the term "annual." This revision was adopted on April 7, 1995, and effective on May 8, 1995, and is applicable statewide.

Maryland has added a definition for the term "annual." COMAR 26.11.19.01B(1–1) defines the term "annual" as meaning a calendar year, unless otherwise specified.

EPA Evaluation: Definition of the Term "Annual", COMAR 26.11.19.01B

Many of Maryland's new VOC control measures, both Reasonably Available Control Technology (RACT) regulations and other VOC control measures needed for Maryland's 15% plans and other ROP requirements, use the term "annual" in provisions for determining a facilities applicability. This revision will clarify any applicability provisions in COMAR 26.11.19 that use the term annual.

EPA is approving these SIP revisions without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective April 28, 1997

unless, by March 27, 1997, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on April 28, 1997.

Final Action

EPA is approving amendments to COMAR 26.11.07 as revisions to Maryland's ozone SIP. These revisions, which institute a ban on open burning during the peak ozone season in Maryland's severe and serious ozone nonattainment areas, were submitted by Maryland on July 12, 1995. EPA is also approving amendments to COMAR 26.11.19.02A(3)–(5) and COMAR 26.11.19.01B(1–1) as revisions to Maryland's ozone SIP. These revisions, which add a definition for the term "annual" and add a "once-in, always-in" provision for VOC regulations triggered by applicability thresholds based on a source's actual emissions, were submitted by Maryland on July 17, 1995.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Regional Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action, pertaining to revisions to COMAR 26.11.07, COMAR 26.11.19.02A(3)–(5), and COMAR 26.11.19.01B(1–1) of Maryland's ozone SIP, must be filed in the United States Court of Appeals for the appropriate circuit by April 28, 1997. Filing a petition for reconsideration by the Regional Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: January 31, 1997.

W. Michael McCabe,

Regional Administrator, Region III.

40 CFR part 52, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart V—Maryland

2. Section 52.1070 is amended by adding paragraphs (c) (120) and (121) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(120) Revisions to the Maryland State Implementation Plan submitted on July 12, 1995 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of July 12, 1995 from the Maryland Department of the Environment transmitting additions, deletions, and revisions to Maryland's State Implementation Plan, pertaining to volatile organic compound regulations in Maryland's air quality regulations, Code of Maryland Administrative Regulations (COMAR) 26.11.

(B) The following amendments to COMAR 26.11.07, pertaining to open fires, adopted by the Secretary of the Environment on May 1, 1995, effective May 22, 1995:

(*1*) the deletion of sections 26.11.07.01 A and B, definitions for the terms "hazardous material" and "I.I.A. standards."

(*2*) addition of new section 26.11.07.01B, "Terms Defined."

(*3*) addition of new sections 26.11.07.01B(1) and (2), definitions of the terms "excessive lodging" and "forest resource management practices."

(*4*) renumbering of old sections 26.11.07.01C & D, now new sections 26.11.07.01B(3) & (4).

(*5*) amendments to section 26.11.07.02, pertaining to general provisions.

(*6*) amendments to sections 26.11.07.03A, B, and B(1), pertaining to open fires authorized by control officers.

(*7*) addition of new section 26.11.07.03C, "Prohibition on Open Burning."

(*8*) amendments to section 26.11.07.04, pertaining to open fires authorized by public officers, including the addition of new sections (4)—(7).

(*9*) amendments to section 26.11.07.05, pertaining to open fires allowed without authorization.

(ii) Additional material.

(A) Remainder of July 12, 1995 Maryland State submittal pertaining to COMAR 26.11.19.07.

(121) Revisions to the Maryland State Implementation Plan submitted on July 17, 1995 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of July 12, 1995 from the Maryland Department of the Environment transmitting additions, deletions, and revisions to Maryland's State Implementation Plan, pertaining to volatile organic compound regulations in Maryland's air quality regulations, Code of Maryland Administrative Regulations (COMAR) 26.11.

(B) Amendments to COMAR 26.11.19.02A, pertaining to once-in, always-in applicability provisions, consisting of revisions to COMAR 26.11.19.02A(3), and the addition of new COMAR 26.11.19.02A (4) and (5), adopted by the Secretary of the Environment on April 7, 1995, and effective on May 8, 1995.

(C) Amendments to COMAR 26.11.19.01B, consisting of the addition of new COMAR 26.11.19.01B(1–1), the definition for the term "annual," adopted by the Secretary of the Environment on April 7, 1995, effective on May 8, 1995.

(ii) Additional material.

(A) Remainder of July 17, 1995 Maryland State submittal pertaining to COMAR 26.11.19.02A(3)–(5) and COMAR 26.11.19.01B(1–1).

[FR Doc. 97–4524 Filed 2–24–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[OH102–1a; FRL–5675–5]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Ohio on August 30, 1996, which provides Ford Motor Company an extended exemption from opacity limitations for start-up of coal-fired boilers at its Cleveland Engine Plant 1. This revision extends the exemption for these boilers from 3 hours to 6 hours after start-up.

DATES: The "direct final" approval is effective on April 28, 1997 unless adverse or critical comments are received by March 27, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the revision request are available for inspection at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone John Summerhays at (312) 886–6067 before visiting the Region 5 Office.)

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Summerhays at (312) 886–6067.

SUPPLEMENTARY INFORMATION:

I. Background

In the first version of Ohio particulate matter regulations approved by USEPA, i.e., Ohio's 1972 SIP submittal, Ohio's regulations imposed a limitation on opacity without any exemptions for special circumstances. However, as experience was gained enforcing this limitation, the State identified a number of circumstances in which compliance with the limitation could be considered an unreasonable requirement. One type of such circumstances is the start-up of a boiler, before stable combustion conditions have been achieved. In rule revisions adopted in the early 1980s, the State exempted sources from the opacity limitation for a period of six hours after start-up of a boiler. USEPA accepted the principle of exempting boilers from the opacity limitation for a period necessary to achieve stable combustion, but objected to provision of an automatic six hour exemption. USEPA recommended instead that Ohio provide a three hour exemption, with provision that Ohio could request longer exemptions for specific sources on a case-by-case basis.

Pursuant to USEPA's recommendation, Ohio in 1991 modified its rule on opacity, Rule 3745–17–07, in accordance with USEPA's recommendations. Paragraph (A)(3)(b)(ii) states that:

> the visible particulate emission limitations established in paragraph (A)(1) of this rule shall not apply to * * * the start-up of * * * any fuel burning equipment which are uncontrolled or which are equipped solely with mechanical collectors * * *, for a period of not more than three hours from the moment of start-up, provided that the director may incorporate a longer start-up time period in the permit * * * for such source for which an applicant demonstrates to the satisfaction of the director that the longer time period is required.

Paragraph (D) of this rule then states that:

> Any revision approved by the director in accordance with paragraph (A)(3)(a)(ii) [*et al.*] shall not revise the federally enforceable requirements of the state implementation plan until approved by the U.S. environmental protection agency.

USEPA approved Rule 3745–17–07, including the above language, on May 27, 1994, at 59 FR 27464.

II. Review of State Submittal

In this submittal, Ohio requests that the start-up exemption from opacity limitations be extended from three hours to six hours for coal-fired boilers at Ford's Cleveland Engine Plant 1, pursuant to Paragraphs (A)(3)(a)(ii) and (D) of its Rule 3745–17–07. The

submittal provides various evidence in support of this extension. In correspondence from an engineering consulting firm to Ford dated November 27, 1991, evidence was provided that starting up these boilers in less than six to ten hours (for a "cold" start-up) would be injurious to the heat transfer tubes in the boiler and would thereby create a safety hazard. A second type of evidence is data on the duration of opacity in excess of baseline limits during routine start-ups of these boilers. These data indicate that excess opacity essentially always exceeds the baseline opacity limit for at least some time after start-up, that excess opacity often occurs beyond three hours and up to six hours after start-up, and that excess opacity rarely occurs after 6 hours after start-up of these boilers.

Ohio's submittal includes a letter from USEPA, suggesting the possibility of avoiding an extended period of excess opacity by providing for use of natural gas as a fuel while the boilers are being started up. The submittal also includes a response to this suggestion from Ford's engineering consultant, dated March 10, 1995 (attached to correspondence from a law firm representing Ford dated March 13, 1995). This response provides cost estimates for installing burners capable of gas firing during boiler start-up, supplementing information included in the earlier document as to the historic frequency of start-ups of these boilers, indicating that provision for use of gas firing during start-up would impose high costs and would provide relatively little emissions reduction.

The State's submittal further includes a comment received from the Gas Research Institute during its public comment period. The Gas Research Institute commented that gas firing during start-up can be implemented at reasonable cost, and described selected cases where this approach has in fact been implemented. Notably, the costs cited by the Gas Research Institute in a case it describes are comparable to the cost estimates developed by Ford's consultant. The principal difference is that the Gas Research Institute notes that installation of gas-fired alternative burners would minimize emissions during ash-pulling and soot-blowing as well as during start-ups, and indicates that the costs of gas burner installation are reasonable when one considers the full range of benefits. Ohio did not provide an explicit review of this comment; nevertheless, by virtue of its request for an extension of the start-up exemption for Ford, the State can be presumed to have continued to compare costs for gas firing only against the benefits of start-up emissions reductions, and concluded that these costs would be unreasonable and disproportionate to the relevant reduction in emissions. In any case, USEPA has approved a State-wide exemption from the general stack opacity limit during ash-pulling and soot-blowing for certain classes of boilers that include Ford's boilers, and no rationale has been provided that these exemptions should not apply to Ford. Therefore, USEPA is comparing the costs of gas burner installation solely against the benefits of emissions reductions during start-up, and concludes that the cost of gas burner installation is not warranted.

The State is authorized to adopt the extension to the exemption from the opacity limit both as a condition in a permit to operate and as a provision in an administrative order. Ohio adopted both instruments, but requested USEPA action only on the administrative order. USEPA is rulemaking only on the order, for consistency with the State's request, and because the order does not expire.

USEPA guidance states that relaxations in particulate matter limitations must be evaluated as to whether the relaxation creates the potential for violation of the air quality standard. In this case, although the revision would add three hours after start-up when previously applicable opacity limits would no longer apply, the mass emissions limitations for these boilers remain in effect throughout the start-up period and thereafter. The extension of the exemption from the opacity limit is judged not to significantly affect USEPA's ability to assure achievement of the mass emissions level which has been shown to suffice to assure attainment. Therefore, no additional analyses are needed in this case to demonstrate that attainment remains assured notwithstanding this extension of the opacity limit exemption.

III. Final Rulemaking Action

USEPA has reviewed the State's request for extending the exemption from opacity limits for the boilers at Ford Motor Company's Cleveland Engine Plant 1 from three hours to six hours after start-up, and has reviewed the materials provided by the State in conjunction with this request. USEPA concurs that as these boilers are currently configured, start-up in a manner that would avoid exceedance of opacity limits beyond three hours after start-up would cause unreasonable wear on the equipment and an unreasonable risk to plant personnel. USEPA further concurs that boiler modifications to accommodate natural gas firing during start-up would impose unreasonable costs relative to the quantity of reduction of start-up emissions that such modifications would provide. Therefore, USEPA is approving the State's request to extend the period of exemption from opacity limits for start-up of Ford's Cleveland Engine Plant 1.

The USEPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, USEPA is publishing a proposal to approve the SIP revision should significant adverse or critical comments which have not been previously addressed be filed. This action will be effective April 28, 1997 unless, by March 27, 1997 such adverse or critical comments are received.

If USEPA receives such comments, this action will be withdrawn by publishing a subsequent document that will withdraw today's final action. Public comments received will be addressed in a subsequent final rule based on the proposed action published elsewhere in today's **Federal Register**. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective April 28, 1997.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from review under Executive Order 12866.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301, and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, USEPA must undertake various actions in association with any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. This Federal action approves pre-existing requirements under state or local law, and imposes no new Federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

D. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 28, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2))

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter.

Dated: January 30, 1997.

David A. Ullrich,

Acting Regional Administrator.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart KK—Ohio

2. Section 52.1870 is amended by adding paragraph (c)(113) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(113) On August 30, 1996, Ohio submitted a request to extend the exemption from opacity limits for the boilers at Ford's Cleveland Engine Plant 1 to six hours after start-up.

(i) Incorporation by reference.

(A) Findings and Orders for boilers number 1 through number 5 at Ford's Cleveland Engine Plant 1, signed by Donald Schregardus on May 31, 1996.

[FR Doc. 97–4522 Filed 2–24–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[OR34–1–6136a, OR51–7266a, OR58–7273a; FRL–5680–3]

Approval and Promulgation of Implementation Plans: Oregon

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: Environmental Protection Agency (EPA) approves revisions to the State of Oregon Implementation Plan. EPA is approving revisions to Oregon Administrative Rules (OAR) Chapter 340, Divisions 21 through 24, 26, 27, 30, and 34 submitted to EPA on May 28, 1993, and a revision to Division 22 submitted to EPA on September 27, 1995, and revisions to Division 20, 21, 22, 25, 27, and 30 submitted to EPA on October 8, 1996, to satisfy the requirements of section 110 of the Clean Air Act (CAA) and 40 CFR part 51.

DATES: This action is effective on April 28, 1997 unless adverse or critical comments are received by March 27, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: Montel Livingston, SIP Manager, Office of Air Quality (OAQ–107), EPA, 1200 Sixth Avenue, Seattle, Washington 98101.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. Copies of material submitted to EPA may be examined during normal business hours at the following locations: EPA, Region 10, Office of Air Quality, 1200 Sixth Avenue (OAQ–107), Seattle, Washington 98101, and ODEQ.

FOR FURTHER INFORMATION CONTACT: Catherine Woo, Office of Air Quality (OAQ–107), EPA, Seattle, Washington 98101, (206) 553–1814.

SUPPLEMENTARY INFORMATION:

I. Background

The Oregon Department of Environmental Quality (ODEQ) submitted to EPA revisions to OAR, Divisions 21–24, 26, 27, 30 and 34, on May 28, 1993. A separate revision to Division 22–100, –130, and –137 was submitted September 27, 1995. A third revision to Divisions 20, 21, 22, 25, 27, and 30 was submitted October 8, 1996.

The revisions submitted on May 28, 1993, were State-effective on March 10, 1993. The submittal contained revisions to Oregon's General Emission Standards For Particulate Matter (OAR 340–21–010, –027; –040, –055 through –230, and –240 through –245); General Gaseous Emissions (OAR 340–22–005 through –100, –104 through –120, and –133 through –640); Rules For Open Burning (OAR 340–23–022 through –115); Motor Vehicles Visible Emissions (OAR 340–24–300 through –307, and –325); Field Burning Rules (OAR 340–26–001 through –015, and –031 through –055); Air Pollution Emergencies (OAR 340–27–010 through –035); Specific Air Pollution Control Rules For Areas With Unique Air Quality Control Needs (OAR 340–30–005, –012 through –030, and –035 through –230); and Residential Woodheating (OAR 340–34–001 through –215.)

The revisions submitted on September 27, 1995, were State-effective on November 2, 1994. The submittal contained revisions to Oregon's requirements for General Gaseous Emissions (OAR 340–22–110, 22–130 and 22–137.)

The following revisions were submitted on October 8, 1996 with their respective effective dates: State of Oregon Clean Air Act Implementation Plan (OAR 340–020–0047, effective date September 24, 1996); General Emission Standards for Particulate Matter (OAR 340–21–0005 through –0007, –0015 through –0025, –0030 through –0035, –0045 through –0050, and –0235, effective date January 29, 1996); General Gaseous Emissions (OAR 340–022–0102, effective date March 29, 1996, and –0130, effective date December 6, 1995); Specific Industrial Standards (OAR 340–025–0260 through –0265, effective date December 6, 1995, –0280, effective date December 6, 1995, and –0320 through –0325, effective date January 29, 1996); Air Pollution Emergencies (OAR 340–027–0005, effective date September 24, 1996); and Specific Air Pollution Control Rules For Areas With Unique Air Quality Control Needs (OAR 030–0007, –0010 and –0031, effective date January 29, 1996.)

II. Discussion

This action approves the following parts of the May 28, 1993, and September 27, 1995, submittals:

OAR 340–21–005 through –060 and OAR 340–21–200 through –240 (General Emission Standards for Particulate Matter) contained editorial changes which were minor in nature and are approved as such.

OAR 340–22–005 through –300 (General Gaseous Emissions) contained editorial changes which were housekeeping in nature and are approved as such. OAR 320–22–100 added two new source categories, Aerospace Component Coatings and Automotive Gasoline. Changes for OAR 340–22–110 and OAR 340–22–137, submitted on September 27, 1995, added permit and permit fee requirements to Gasoline Dispensing Facilities ($50 application fee) and Testing Vapor Transfer and Collection Systems ($25 application fee), along with editorial housekeeping changes, which are approved.

OAR 340–23–022 to 115 (Rules for Open Burning) contained editorial changes which were housekeeping in nature and are approved as such. OAR 340–23–030 added terms to the Definitions of open burning ("ventilation index," "Waste," and "yard debris"), which are approved. OAR 340–23–110 (requiring fire permit issuing agencies to maintain records of open burning permits) was repealed by the Department of Environmental Quality and EPA is approving its deletion from the SIP as it has no adverse impact on air quality.

OAR 340–24–300 through –307 and OAR 340–24–325 (Motor Vehicle Visible Emissions) contained editorial changes which were housekeeping and clarifying in nature and are approved as such.

OAR 340–26–001 through –055 (Field Burning Rules) contained editorial changes which were housekeeping and clarifying in nature and are approved as such. OAR 340–26–005 contained additions to their Definitions for Field Burning Rules ("fire safety buffer zone," "marginal day," "open burning," "propane flaming permit," "released allocation," and "stack burning permit") which are approved. OAR 340–26–013 also added a maximum acreage to be propane-flamed annually in the Willamette Valley, which is approved.

OAR 340–27–005 through –035 (Air Pollution Emergencies) contained editorial changes which were housekeeping in nature and approved as such. The Tables within OAR 340–27–005 through –035 also contained clarifications which are approved.

OAR 340–30–005 through –230 (Specific Air Quality Rules for Areas With Unique Needs) contained editorial changes which were housekeeping in nature and approved as such.

OAR 340–34–001 through –210 (Residential Woodheating) contained editorial changes which were housekeeping and clarifying in nature and are approved as such.

This action approves the following parts of the October 8, 1996, submittal:

OAR 340–20–0047 (State of Oregon Clean Air Act Implementation Plan) contained administrative changes which were routine in nature and are approved as such.

OAR 340–21–0005, –0015 through –0025, –0030 through –0035, –0045 through –0050, and –0235 (General Emission Standards for Particulate Matter) contained clarification changes and are approved as such.

OAR 340–22–0102 (General Gaseous Emissions) contained clarification changes for the definition of "VOC" and is approved. OAR–22–0130 also contained clarification changes and is approved.

OAR 340–25–0260 through –0265, –0280, and –0320 through –0325 (Specific Industrial Standards) contained clarification changes and are approved.

OAR 340–27–0005 (Air Pollution Emergencies) contained clarification changes to the definitions and is approved.

OAR 340–30–0007, Emission Limitations, was added to explain how the limits would be calculated and is approved. OAR 340–30 –0010 and –0031 contained clarification changes and are approved.

OAR 340–21–0007 (Application) will not be acted upon by EPA at this time and is deferred to a later date.

III. Summary of Action

EPA is approving the following revisions to OAR Chapter 340, Divisions 21 through 24, 26, 27, 30, and 34 as submitted on May 28, 1993, revisions to Division 22 as submitted on September 27, 1995, and revisions to Divisions 20, 21, 22, 25, 27, and 30 as submitted on October 8, 1996. The following is a list of sections of Divisions 20 through 25, 26, 27, 30, and 34 being approved.

(Note: this is not the entire table of contents for the Oregon State Implementation Plan):

Division 20—Air Pollution Control (With State-effective Dates)

20–0047 State of Oregon Clean Air Act Implementation Plan (9/24/96)

Division 21—General Emission Standards for Particulate Matter (With State-effective Dates)

21–005 Definitions (1–29–96)
21–010 Special Control Areas (3–10–93)
21–015 Visible Air Contaminant Limitations (1–29–96)
21–020 Fuel Burning Equipment Limitations (1–29–96)
21–025 Refuse Burning Equipment Limitations (1–29–96)
21–027 Municipal Waste Incinerator in Coastal Areas (3–10–93)
21–030 Particulate Emission Limitations for Sources Other Than Fuel Burning and Refuse Burning Equipment (1–29–96)

Particulate Emissions From Process Equipment

21–035 Applicability (1–29–96)
21–040 Emission Standard (3–10–93)
21–045 Determination of Process Weight (3–10–93)

Fugitive Emissions

21–050 Definitions (1–29–96)
21–055 Applicability (3–10–93)
21–060 Requirements (3–10–93)

Industrial Contingency Requirements for PM–10 Nonattainment Areas

21–200 Purpose (3–10–93)
21–205 Relation to Other Rules (3–10–93)
21–210 Applicability (3–10–93)
21–215 Definitions (3–10–93)
21–220 Compliance Schedule for Existing Sources (3–10–93)
21–225 Wood-Waste Boilers (3–10–93)
21–230 Wood Particulate Dryers at Particleboard Plants (3–10–93)
21–235 Hardboard Manufacturing Plants (1–29–96)
21–240 Air Conveying Systems (3–10–93)
21–245 Fugitive Emissions (3–10–93)

Division 22—General Gaseous Emissions General Emission Standards for Sulfur Content of Fuels

22–005 Definitions (3–10–93)
22–010 Residual Fuel Oils (3–10–93)
22–015 Distillate Fuel Oils (3–10–93)
22–020 Coal (3–10–93)
22–025 Exemptions (3–10–93)

General Emission Standards for Sulfur Dioxide

22–050 Definitions (3–10–93)
22–055 Fuel Burning Equipment (3–10–93)

General Emission Standards for Volatile Organic Compounds

22–100 Introduction (12–6–95)
22–102 Definitions (3–29–96)

Limitations and Requirements

22–104 General Requirements for New and Existing Sources (3–10–93)
22–106 Exemptions (3–10–93)
22–107 Compliance Determination (3–10–93)
22–108 Applicability of Alternative Control Systems (3–10–93)
22–110 Gasoline Dispensing Facilities (3–10–93)
22–120 Bulk Gasoline Plants and Delivery Vessels (3–10–93)
22–130 Bulk Gasoline Terminals (12–6–95)
22–137 Testing Vapor Transfer and Collection Systems (11–2–94)
22–140 Cutback and Emulsified Asphalt (3–10–93)
22–150 Petroleum Refineries (3–10–93)
22–153 Petroleum Refinery Leaks (3–10–93)
22–160 Liquid Storage (3–10–93)
22–170 Surface Coating in Manufacturing (3–10–93)
22–175 Aerospace Component Coating Operations (3–10–93)
22–180 Degreasers (3–10–93)
22–183 Open Top Vapor Degreasers (3–10–93)
22–186 Conveyorized Degreasers (3–10–93)
22–190 Asphaltic and Coal Tar Pitch Used for Roofing Coating (3–10–93)
22–200 Flat Wood Coating (3–10–93)
22–210 Rotogravure and Flexographic Printing (3–10–93)
22–220 Perchloroethylene Dry Cleaning (3–10–93)
22–300 Reid Vapor Pressure for Gasoline, except that in Paragraph (6) only sampling procedures and test methods specified in 40 CFR Part 80 are approved (3–10–93)

Division 23—Rules for Open Burning

23–022 How to Use These Open Burning Rules (3–10–93)
23–025 Policy (3–10–93)
23–030 Definitions (6–16–84); (15) "Disease and Pest Control" (3–10–93)
23–035 Exemptions, Statewide (3–10–93)
23–040 General Requirements Statewide (3–10–93)
23–042 General Prohibitions Statewide (3–10–93)
23–043 Open Burning Schedule (3–10–93)
23–045 County Listing of Specific Open Burning Rules (3–10–93)

Open Burning Prohibitions

23–055 Baker, Clatsop, Crook, Curry, Deschutes, Gilliam, Grant, Harney, Hood River, Jefferson, Klamath, Lake, Lincoln, Malheur, Morrow, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco, and Wheeler Counties (3–10–93)
23–060 Benton, Linn, Marion, Polk, and Yamhill Counties (3–10–93)
23–065 Clackamas County (3–10–93)
23–070 Multnomah County (3–10–93)
23–075 Washington County (3–10–93)
23–080 Columbia County (3–10–93)
23–085 Lane County (3–10–93)
23–090 Coos, Douglas, Jackson and Josephine Counties (3–10–93)
23–100 Letter Permits (3–10–93)
23–105 Forced Air Pit Incinerators (3–10–93)
23–110 Records and Reports (3–10–93)
23–115 Open Burning Control Areas (3–10–93)

Division 24—Motor Vehicles: Motor Vehicle Emission Control Inspection Test Criteria, Methods and Standards

24–300 Scope (3–10–93)
24–301 Boundary Designations (3–10–93)
24–305 Definitions (3–10–93)
24–306 Publicly Owned and Permanent Fleet Vehicle Testing Requirements (3–10–93)
24–307 Motor Vehicle Inspection Program Fee Schedule (3–10–93)
24–325 Heavy Duty Gasoline Motor Vehicle Emission Control Test Criteria (3–10–93)

Primary Aluminum Plants

25–260 Definitions (12–6–95)
25–265 Emission Standards (12–6–95)
25–280 Monitoring (12–6–95)

Specific Industrial Standards

25–320 Particleboard Manufacturing Operations (1–29–96)
25–325 Hardboard Manufacturing Operations (1–29–96)

Division 26—Rules for Open Field Burning (Willamette Valley)

26–001 Introduction (3–10–93)
26–003 Policy (3–10–93)
26–005 Definitions (3–10–93)
26–010 General Requirement (3–10–93)
26–012 Registration, Permits, Fees, Records (3–10–93)
26–013 Acreage Limitations, Allocations (3–10–93)
26–015 Daily Burning Authorization Criteria (3–10–93)
26–031 Burning by Public Agencies (Training Fires) (3–10–93)
26–033 Preparatory Burning (3–10–93)
26–035 Experimental Burning (3–10–93)
26–040 Emergency Burning, Cessation (3–10–93)
26–045 Propane Flaming (3–10–93)
26–055 Stack Burning (3–10–93)

Division 27—Air Pollution Emergencies

All of Division 27 (3–10–93), except
27–0005 Introduction (9–24–96)

Division 30—Specific Air Pollution Control Rules for the Medford-Ashland Air Quality Maintenance Area

All of Division 30 (3–10–93), except
30–0007 Emission Limitations (1–29–96)
30–0010 Definitions (1–29–96)
30–0031 Hardboard Manufacturing Plants (1–29–96)

Division 34—Residential Wood Heating

34–001 Purpose (3–10–93)
34–020 Civil Penalties (3–10–93)

Woodburning Curtailment

34–150 Applicability (3–10–93)
34–155 Determination of Air Stagnation Conditions (3–10–93)
34–160 Prohibition on Woodburning During Periods of Air Stagnation (3–10–93)
34–165 Public Information Program (3–10–93)
34–170 Enforcement (3–10–93)
34–175 Suspension of Department Program (3–10–93)

Woodstove Removal Contingency Program for PM–10 Nonattainment Areas

34–200 Applicability (3–10–93)
34–205 Removal and Destruction of Uncertified Stove Upon Sale of Home (3–10–93)
34–210 Home Seller's Responsibility to Verify Stove Destruction (3–10–93)
34–215 Home Seller's Responsibility to Disclose (3–10–93)

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective April 28, 1997 unless, by March 27, 1997 adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on the document found in the proposed rule section of today's **Federal Register** serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective April 28, 1997.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Implementation Plan (SIP). Each request for revision to the State Implementation Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the

procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D, of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action as promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 28, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2), 42 U.S.C. 7607(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: January 15, 1997.

Charles Findley,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart MM—Oregon

2. Section 52.1970 is amended by adding paragraph (c) (116) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(116) On May 27, 1993, September 27, 1995, and October 8, 1996, the Director of ODEQ submitted to the Regional Administrator of EPA revisions to its Oregon SIP: the Oregon Administrative Rules (OAR), Housekeeping Amendments (Chapter 340, Divisions 21 through 24, 26, 27, 30, and 34); OAR, Division 22, General Gaseous Emissions (340–22–100, –130, and –137); and OAR, Divisions 20, 21, 22, 25, 27 and 30).

(i) Incorporation by reference.

(A) May 27, 1993, letter from ODEQ to EPA submitting a revision to the Oregon Administrative Rules: Housekeeping Amendments, Oregon Administrative Rules, Chapter 340, Divisions 21 through 24, 26, 27, 30, and 34, State-effective on March 10, 1993.

(B) September 27, 1995, letter from ODEQ to EPA submitting a revision to the Oregon Administrative Rules: Permits and Fees for Stage I Vapor Recovery Program, Division 22, General Gaseous Emissions, Sections 100, 130, and 137, State-effective on November 2, 1994.

(C) October 8, 1996, letter from ODEQ to EPA submitting a revision to the Oregon Administrative Rules: OAR 340–020–0047 (State-effective on September 24, 1996); OAR 340–21–0005, –0015, –0020, –0025, –0030, –0035, –0045, –0050, and –0235 (State-effective on January 29, 1996); OAR 340–022–0102 (State-effective on March 29, 1996), and –0130 (State-effective on December 6, 1995); OAR 340–025–0260 and –0265 (State-effective on December 6, 1995), –0280 (State-effective on December 6, 1995), –0320 and –0325 (State-effective on January 29, 1996); OAR –027–0005 (State-effective on September 24, 1996); OAR 030–0007, –0010 and –0031 (State-effective on January 29, 1996).

[FR Doc. 97–4519 Filed 2–24–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 81

[PA034–4054a; FRL–5688–7]

Pennsylvania Attainment Date Extension for the Pittsburgh-Beaver Valley Ozone Nonattainment Area; PA and VA Determination of Valid Air Quality Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is extending the attainment date for the Pittsburgh-Beaver Valley moderate ozone nonattainment area in Pennsylvania from November 15, 1996 to November 15, 1997. This extension is based in part on monitored air quality readings for the national ambient air quality standard (NAAQS) for ozone during 1996. Accordingly, EPA is updating the table in 40 CFR part 81 concerning attainment dates in the Commonwealth of Pennsylvania. EPA is also announcing its determination that air quality data collected during 1996 indicates attainment of the ozone NAAQS in the Reading, Pennsylvania and the Richmond, Virginia moderate ozone nonattainment areas by the November 15, 1996 deadline for moderate areas.

DATES: This extension becomes effective April 11, 1997 unless within March 27, 1997 adverse or critical comments are received. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Marcia L. Spink at (215) 566–2104, or by e-mail at spink.marcia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Request for Attainment Date Extension for the Pittsburgh-Beaver Valley Area

On November 25, 1996, the Commonwealth of Pennsylvania requested a one-year attainment date extension for the Pittsburgh-Beaver Valley moderate ozone nonattainment area. This area, which consists of Allegheny, Armstrong, Beaver, Butler, Fayette, Washington, and Westmoreland Counties, is currently designated a moderate ozone nonattainment area. The statutory ozone attainment date, as prescribed by section 181(a) of the Clean Air Act as amended in 1990 ("the Act"), was November 15, 1996.

CAA Requirements and EPA Actions Concerning Designation and Classification

Section 107(d)(4) of the Act required the States and EPA to designate areas as attainment, nonattainment, or unclassifiable for ozone as well as other pollutants for which national ambient air quality standards (NAAQS) have been set. Section 181(a)(1) required that ozone nonattainment areas be classified as marginal, moderate, serious, severe, or extreme, depending on their air quality.

In a series of **Federal Register** documents, EPA completed this process by designating and classifying all areas of the country for ozone. See, *e.g.*, 56 FR 58694 (Nov. 6, 1991); 57 FR 56762 (Nov. 30, 1992); 59 FR 18967 (April 21, 1994).

Areas designated nonattainment for ozone are required to meet attainment dates specified under the Act. The Pittsburgh-Beaver Valley, Pennsylvania ozone nonattainment area was designated nonattainment and classified moderate for ozone pursuant to 56 FR 58694 (Nov. 6, 1991). By this classification, its attainment date became November 15, 1996. A discussion of the attainment dates is found in 57 FR 13498 (April 16, 1992) (the General Preamble).

CAA Requirements and EPA Actions Concerning Meeting the Attainment Date

Section 181(b)(2)(A) requires the Administrator, within six months of the attainment date, to determine whether ozone nonattainment areas attained the NAAQS. For ozone, EPA determines attainment status on the basis of the expected number of exceedances of the NAAQS over the three-year period up to, and including, the attainment date. See General Preamble, 57 FR 13506. In the case of ozone moderate nonattainment areas, the three-year period is 1994–1996. CAA section 181(b)(2)(A) further states that, for areas classified as marginal, moderate, or serious, if the Administrator determines that the area did not attain the standard by its attainment date, the area must be reclassified upwards.

However, CAA section 181(a)(5) provides an exemption from these bump up requirements. Under this exemption, EPA may grant up to two one-year extensions of the attainment date under specified conditions:

> Upon application by any State, the Administrator may extend for 1 additional year (hereinafter referred to as the "Extension Year") the date specified in table 1 of paragraph (1) of this subsection if—
>
> (A) the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan, and
>
> (B) no more than 1 exceedance of the national ambient air quality standard level for ozone has occurred in the area in the year preceding the Extension Year.
>
> No more than 2 one-year extensions may be issued under this paragraph for a single nonattainment area.

EPA interprets this provision to authorize the granting of a one-year extension under the following minimum conditions: (1) The State requests a one-year extension, (2) all requirements and commitments in the EPA-approved SIP for the area have been complied with, and (3) the area has no more than one measured exceedance of the NAAQS during the year that includes the attainment date (or the subsequent year, if a second one-year extension is requested).

A review of the actual ambient air quality ozone data from the EPA Aerometric Information Retrieval System (AIRS), shows that six air quality monitors located in the Pittsburgh-Beaver Valley ozone nonattainment area recorded exceedances of the NAAQS for ozone during the three year period from 1994 to 1996. At three of these monitors, the number of expected exceedances was greater than 1.0 per year, and therefore constituted a violation of the ozone NAAQS.

However, in its November 25, 1996 request, the Commonwealth of Pennsylvania certified that the Pittsburgh-Beaver Valley area monitored no exceedances during 1996. The 1996 monitoring data has been quality controlled and quality assured. EPA has determined that the requirements for a one-year extension of the attainment date have been fulfilled as follows:

(1) Pennsylvania has formally submitted the attainment date extension request.

(2) Pennsylvania is currently implementing the EPA-approved SIP.

(3) Pennsylvania has certified that the area has monitored no exceedances during 1996.

Therefore, EPA approves Pennsylvania's attainment date extension request for the Pittsburgh-Beaver Valley ozone nonattainment area. As a result, the chart in 40 CFR 81.339 entitled "Pennsylvania—Ozone" is being modified to reflect EPA's approval of Pennsylvania's attainment date extension request.

Determination of Validated Air Quality Data for the Reading, PA and Richmond, VA Moderate Ozone Nonattainment Areas

EPA has determined that both Pennsylvania and Virginia have validated as accurate the 1994, 1995 and 1996 ozone air quality data indicating attainment of the ozone standard in the Reading, PA and Richmond, VA moderate ozone nonattainment areas. Therefore, EPA has determined that the Reading, Pennsylvania and Richmond, Virginia areas have met the November 15, 1996 attainment date for moderate areas specified in the Act. Although EPA has determined that the Reading, Pennsylvania and Richmond, Virginia areas have air quality data indicating that the NAAQS for ozone has been attained, today's action does not formally redesignate these areas to attainment. Any moderate area which has attained the ozone NAAQS will remain designated nonattainment and classified moderate until a formal redesignation request and maintenance plan is submitted and EPA fully approves it. Complying with specific ambient air quality standards is only the first step toward being officially redesignated to "attainment". "Attainment" is a legal term defined under the Act which determines whether an area is subject to certain emission control requirements proscribed by the Act. There are redesignation requests currently pending before EPA for both of these areas. EPA shall act upon those requests submitted by the Commonwealths of Pennsylvania and Virginia for their respective areas in separate rulemaking documents.

EPA Action

EPA is approving the attainment date extension for the Pittsburgh-Beaver Valley moderate ozone nonattainment area from November 15, 1996 to November 15, 1997 without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve this part 81 action should adverse or critical comments be filed. This action will be effective April 11, 1997 unless, by March 27, 1997 adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on April 11, 1997.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Extension of an area's attainment date under the CAA does not impose any new requirements on small entities. Extension of an attainment date is an action that affects a geographical area and does not impose any regulatory requirements on sources. EPA certifies that the approval of the attainment date extension will not affect a substantial number of small entities.

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by section 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 28, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to grant Pennsylvania an extension to attain the ozone NAAQS in the Pittsburgh/Beaver Valley ozone nonattainment area as defined in 40 CFR 81.339 may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: February 5, 1997.

W. Michael McCabe,

Regional Administrator, Region III.

Part 81 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.339, the "Pennsylvania—Ozone" table is amended by revising the entry for "Pittsburgh-Beaver Valley Area" to read as follows:

§ 81.339 Pennsylvania.

* * * * *

PENNSYLVANIA—OZONE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * * *		*	*	*
Pittsburgh-Beaver Valley Area:				
Allegheny County		Nonattainment		Moderate,[2]
Armstrong County		Nonattainment		Moderate,[2]
Beaver County		Nonattainment		Moderate,[2]
Butler County		Nonattainment		Moderate,[2]
Fayette County		Nonattainment		Moderate,[2]
Washington County		Nonattainment		Moderate,[2]
Westmoreland County		Nonattainment		Moderate,[2]
* * * *		*	*	*

[1] This date is November 15, 1990, unless otherwise noted.
[2] Attainment date extended to 11/15/97.

[FR Doc. 97–4119 Filed 2–24–97; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 61

RIN 3067–AC54

National Flood Insurance Program; Standard Flood Insurance Policy

AGENCY: Federal Insurance Administration (FEMA).

ACTION: Final rule.

SUMMARY: This rule amends the National Flood Insurance Program (NFIP) regulations to add coverage under the Standard Flood Insurance Policy to pay for the increased cost to rebuild or otherwise alter flood-damaged structures to conform with State or local floodplain management ordinances or laws consistent with the requirements and guidance of the NFIP.

EFFECTIVE DATE: June 1, 1997.

FOR FURTHER INFORMATION CONTACT: Charles M. Plaxico, Jr., Federal Insurance Administration, 500 C Street SW., Washington, DC 20472, (202) 646–3422.

SUPPLEMENTARY INFORMATION: On September 23, 1996, FEMA published in the **Federal Register**, 61 FR 49717, a proposed rule to amend the National Flood Insurance Program (NFIP) regulations by adding coverage under the Standard Flood Insurance Policy (SFIP) for the increased cost, up to a maximum liability of $15,000, to bring structures into compliance with State or community floodplain management laws or ordinances after flood losses. This coverage, which is referred to in the proposed rule as "increased cost of construction" coverage but hereinafter referred to in this final rule as "increased cost of compliance" coverage (ICC), is mandated by § 555 of Public Law 103–325 which requires the NFIP to "enable the purchase of insurance to cover the cost of compliance with land use and control measures established under section 1361 * * *."

The following are the principal features of the September 23, 1996 proposed rule:

(1) The limit for ICC coverage would be $15,000.

(2) Only flood-damaged structures would be eligible for the coverage.

(3) Only those structures substantially or repetitively damaged by flood would be eligible for ICC coverage.

(4) Only structures in areas of special flood hazard would be eligible for ICC payments.

(5) ICC payments would be limited to the amount necessary to meet but not exceed the NFIP elevation requirements after flood damage. (This feature of the proposed rule has been changed. See below.)

(6) Repetitive loss structures would be eligible for ICC payments when two conditions are met:

(a) The community has adopted and is enforcing a cumulative substantial damage provision or repetitive loss provision in its floodplain management ordinance that requires action by the property owner; and

(b) The structure has a history of flood claims under the NFIP that satisfies the statutory definition of repetitive loss structure.

During the comment period, sixteen (16) sets of comments were received by FEMA. In many cases, commenters shared similar views and recommendations on individual issues. The commenters' recommendations, concerns, and questions have been considered and, where appropriate, incorporated into this final rule.

$15,000 Maximum Benefit

Five commenters objected to the maximum benefit of $15,000 proposed in the rule for ICC coverage. The underlying concern is that $15,000 will be insufficient to pay for the increased costs to elevate or floodproof a structure substantially or repetitively damaged by flood. For example, one commenter concluded, "the ICC's maximum coverage of $15,000 is far below the $35,000 average cost to elevate a

structure." Another commenter recommended "full Ordinance or Law coverage up to the statutory limit" which, for a single family dwelling, would be $250,000. One commenter, however, supported this maximum benefit for ICC coverage saying, "In order to maintain fiscal control over the program the $15,000 cap on ICC payment should be retained."

FEMA arrived at the $15,000 cap from basic pricing considerations and the current status of the National Flood Insurance Fund. After years of surplus in the Fund, FEMA currently has in excess of $600 million on loan from the Treasury under the program's borrowing authority as a result of unusually heavy flood losses since 1993. With this as a backdrop, FEMA had to consider several issues in establishing the coverage and in pricing ICC. First, the pricing for this coverage should be actuarially sound with premiums varying, to the extent practical, by risk. Second, § 555 of the National Flood Insurance Reform Act of 1994 sets a cap on the amount the NFIP may charge on each policy for ICC coverage. The statute says, "The Director shall impose a surcharge on each insured *of not more than $75 per policy* to provide cost of compliance coverage." (Emphasis added.) Third, FEMA estimates that on average 3400–3700 ICC claims will be made each year to bring flood-damaged structures into compliance with State or local floodplain management laws or ordinances. Fourth, FEMA has drawn on its NFIP underwriting experience to make projections for ICC coverage, but there are uncertainties associated with the introduction of any new product, particularly one for which there is no direct experience. Fifth, aside from the NFIP's borrowing authority, there is currently no surplus of funds to provide a cushion against uncertainties.

For these reasons, FEMA has determined that a $15,000 limit on ICC coverage is a prudent amount for the introduction of this new product. FEMA recognizes that $15,000 generally will not be sufficient to pay all of the costs to bring the structure into compliance with state and community floodplain management laws and ordinances, but it will make a significant contribution toward those costs. Although the individual property owner will have to bear a portion of the cost of the selected mitigation measure (elevation, floodproofing, relocation or demolition or combinations thereof), there should be a commensurate increase in the value of the property that will offset at least part of those costs. FEMA will review its experience with ICC from time to time to determine whether adjustments should be made in the pricing, the amount of the benefit, or other aspects of the coverage.

Furthermore, other mitigation resources and programs from FEMA, as well as other Federal, State and local resources, can be used to supplement the ICC payment to help property owners comply with State and community laws and ordinances. For example, currently, the Hazard Mitigation Grant Program available pursuant to § 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93–288, as amended, could be used to supplement the ICC benefit in communities which initiate mitigation projects.

Limitation of ICC to Flood Damaged Structures

One commenter recommended that ICC coverage not be limited to flood damages. This recommendation, however, cannot be incorporated in the final rule since § 555 of the National Flood Insurance Reform Act of 1994 authorizes ICC coverage only for flood-damaged structures. The statute authorizes ICC coverage for "(1) properties that are repetitive loss structures; (2) properties that have *flood damage* in which the cost of repairs equals or exceeds 50 percent of the value of the structure at the time of the *flood event;* and (3) properties that have sustained *flood damage* on multiple occasions * * *." "Repetitive loss structure" is defined at § 512 of Pub. L. 103–325 as "a structure covered by a contract for flood insurance under this title that has incurred *flood-related damage* on 2 occasions during a 10-year period ending on the date of the event for which a second claim is made, in which the cost of repair, on the average, equaled or exceeded 25 percent of the value of the structure at the time of *each such flood event.*" (Emphasis added.) The final rule limits the benefit of ICC coverage under Coverage D of the Standard Flood Insurance Policy to bring *flood-damaged structures* into compliance with State or local floodplain management laws or ordinances.

ICC Benefits Within the Maximum Limits of Insurance Coverage

One commenter objected that the $15,000 ICC benefit was included within, and not in addition to, the maximum statutory limits of flood insurance coverage available to property owners for direct, physical damage from flood, which for a single family dwelling is $250,000. The commenter felt that the maximum liability of $250,000 for a single family dwelling for Coverage A (direct, physical loss from flood), combined with the new Coverage D (increased cost of compliance), effectively denied $15,000 of flood insurance benefits to the policyholder who has purchased the statutory limits of coverage.

FEMA considered this objection but concluded it does not have the authority to exceed the maximum statutory limits set by Congress for the NFIP in the Act, as amended (42 U.S.C. 4013). Consequently, as stated in the proposed rule, the ICC benefit would be added to the policy limit for direct loss from flood, but the total payment for the ICC benefit and the direct loss payment for flood would not be greater than the maximum limits of coverage for that class of structure authorized under the Act, as amended. In that connection, § 573 of Pub. L. 103–325 increased the maximum limit of flood insurance coverage for a single family dwelling from $185,000 to $250,000 and for non-residential structures from $250,000 to $500,000. For structures insured to the statutory limit, FEMA's pricing of ICC coverage, however, reflects the possibility that, under some conditions, a full $15,000 could not be collected.

Types of Mitigation Allowed

One commenter stated that the proposed rule centers on elevation and floodproofing and does not address relocation or demolition. The Proposed Rule for ICC coverage indicated in the Standard Flood Insurance Policy and in the "Supplementary Information" section that the allowable mitigation measures under ICC include elevation, floodproofing, relocation, and demolition, or any combination thereof. These allowable mitigation activities have been retained in the final rule. It is the property owner's decision which mitigation measure will be undertaken provided that he or she complies with applicable State or community floodplain management laws or ordinances. However, FEMA expects that States or communities will work closely with the property owner to determine the most technically feasible and cost effective mitigation measure for the damaged structure. It is also expected that States or communities that have adopted a mitigation plan will ensure that the selection of the mitigation measure will be consistent with the approved plan and coordinated with other mitigation programs and activities.

Another commenter asked whether ICC is available for floodproofing residential buildings in those communities that are permitted by FEMA to adopt standards for residential floodproofed basements. Under 44 CFR 60.6 (b) or (c) of the NFIP's Floodplain Management Regulations, communities that have been approved for residential basement exceptions by FEMA may adopt standards for floodproofed residential buildings. The ICC benefit can be used to floodproof a residential basement only if the building is located in one of these communities approved for residential basements exceptions. The final rule says this and also indicates that ICC payments will be made in connection with non-residential floodproofing to meet State or local floodplain management requirements.

Payments for Elevating or Floodproofing to Elevations Which Exceed NFIP Minimum Requirements

Seven comments objected to the limitation in the proposed rule that ICC pay for the cost of elevation or floodproofing flood-damaged structures only to the base flood elevation, the NFIP minimum standard, and not to a higher elevation required in some State and community laws and ordinances. The comments pointed out that some States and communities, in the interest of sound floodplain management and in recognition of future floodplain development, exceed the NFIP's minimum standards by requiring new or substantially improved structures to be elevated or floodproofed to one or more feet above the base flood elevation. This more restrictive elevation requirement is generally referred to as "freeboard." Furthermore, the comments noted that FEMA has, as a matter of policy, encouraged communities to exceed the NFIP's minimum standards, and that FEMA's Community Rating System (CRS) in fact provides premium rate discounts to communities that exceed the minimum requirements.

FEMA agrees with these comments that the cost to elevate or floodproof structures to higher State or community floodplain management standards should be eligible for ICC benefits. The final rule has, therefore, been revised to permit ICC payments, up to the $15,000 limit of coverage, to elevate or floodproof structures to the "freeboard" established and enforced in the State or community's floodplain management law or ordinance.

ICC Benefits for Map Revisions and Areas Designated as Zone A

Two aspects of ICC that should be clarified are: (1) How ICC coverage will respond to situations where FEMA issues an advisory map or has issued a preliminary or draft Flood Insurance Study, and (2) how ICC will respond to elevation requirements in areas designated as Zone A. If FEMA issues an advisory map and increases the base flood elevation, and the community adopts the map and the higher base flood elevations, ICC benefits will be paid to elevate or floodproof flood-damaged structures to these preliminary or advisory base flood elevations. ICC benefits will be paid even if the zone was previously designated Zone B, C, X, or D. Also, in communities that have areas designated as unnumbered A Zones on their Flood Insurance Rate Map, ICC benefits will be paid on a flood damaged structure for elevation, floodproofing, demolition, relocation, or any combination thereof. The community must obtain, review and reasonably utilize any base flood elevation data available from a Federal, State, or other sources in accordance with 44 CFR 60.3(b)(4) and require that the structure be elevated or floodproofed to that elevation. The base flood elevation data should be used as long as the data: (1) Reasonably reflect flooding conditions expected during the base (100-year) flood, (2) are not known to be scientifically or technically incorrect, and (3) represent the best data available.

Demolition

An issue needing clarification is where a structure is demolished, and a replacement structure is built at the same or another site. In this situation, ICC coverage will pay for the cost of demolition as well as for the incremental costs to elevate or floodproof the structure during the course of rebuilding to meet elevation requirements at the same site or another location provided the elevation or floodproofing is to comply with State or community floodplain management laws or ordinances. The ICC payment, within the $15,000 limit, will also be made when the structure, after demolition, is rebuilt at a new site even if the base flood elevations are higher there than at the original location. FEMA's decision to permit ICC benefits to pay for the incremental costs of elevation or floodproofing after a structure has been demolished is based on the statutory language of § 555 of Public Law 103–325, i.e., that the new coverage is to pay for "increased cost of compliance" with land use and control measures being enforced by the State or community that meet the standards of 44 CFR 60.3 established under § 1361 of the National Flood Insurance Act of 1968, as amended.

In sum, ICC benefits will be paid to perform mitigation activities to help bring a structure into compliance with State and community floodplain management laws or ordinances. Not included in any ICC payment for demolition will be the residual value of the undamaged portion of the structure.

FEMA considered whether to pay for loss of residual value when the demolition option is selected. Offering ICC benefits for loss of residual value is a potentially costly initiative—one that could undermine FEMA's ability to raise the initial cap of $15,000 at some later date if program experience warrants such an increase. Hence, FEMA has decided to gain experience with ICC and to analyze that program experience in order to determine the feasibility of providing ICC benefits for loss of residual value. FEMA will initiate this analysis after nine months from the effective date on this final rule.

Market Value versus Replacement Cost and Substantial Improvements

One commenter stated that "market value" was not defined and recommended the use of "replacement cost" instead. Another commenter asked how States or communities that use "replacement cost" instead of "market value" implement the substantial damage requirement.

While the statute does not specify what value should be used in determining substantially damaged or repetitive loss structures, "market value" is currently used in the definitions of "substantial damage" and "substantial improvement" in the NFIP's Regulations (44 CFR 59.1). For this reason, "market value" will be used for consistency for ICC substantial damage and repetitive loss determinations. Under the NFIP, substantially damaged structures must be elevated or floodproofed (non-residential structures only) to or above the Base Flood Elevation. States and communities participating in the NFIP are required to use market value in determining whether a structure has been substantially damaged. Use of "replacement cost" is not permitted under the NFIP's floodplain management regulations.

A related issue that should be clarified is how ICC coverage will respond to situations involving improvements that are made to a damaged structure at the same time that it is being repaired. The final rule provides that payment be made to help policyholders comply with State and community floodplain management laws and ordinances after a flood loss. Unless the flood loss alone constitutes "substantial damage" or the loss meets the criteria for a "repetitive loss", ICC will not provide coverage even if the

combination of the cost of the repair and the cost of the improvement exceeds the 50 percent of market value threshold for a "substantial improvement" under the community's ordinance. The improvement represents a voluntary decision by the individual to improve or add on to an existing structure in a special flood hazard area and is not a flood loss as required by the statute. In addition, ICC will not cover the costs to bring into compliance with State or community elevation or floodproofing requirements any improvements or additions to damaged structures at the time repairs are made, such as a new addition. Although ICC benefits are not paid for substantial improvements, substantially improved structures and improvements made along with repairs to a substantially damaged structure must still meet all the minimum requirements of the NFIP.

Repetitive Loss Structures

A number of comments were received on implementation of the repetitive loss coverage under ICC. These comments relate to ordinance adoption, timing of the flood losses relative to the effective date of the final rule, and how losses are counted toward a repetitive loss determination.

There were several questions and comments on whether States and communities will be required to amend their floodplain management ordinances to include a repetitive loss provision. One commenter suggested that communities be given a reasonable time frame within which to adopt this provision before the coverage goes into effect. One commenter recommended that the requirement to adopt a repetitive loss provision be eliminated as a condition for receiving the benefit. Two other commenters noted that very few communities currently have a repetitive loss provision in their floodplain management ordinance and that the requirement to adopt such a provision would be at great expense and difficulty. A commenter also asked what the effect would be on a policyholder if a community did not adopt a repetitive loss provision.

Based on a review of the statute and the NFIP's other authorities, FEMA has concluded that the statute does not mandate that it change the NFIP's floodplain management regulations at 44 CFR 59.1 and 60.3 to require States and communities to adopt a repetitive loss requirement. Therefore, adoption of a cumulative substantial damage provision or a repetitive loss provision is voluntary and will be at the discretion of the State or community. Making adoption of such a provision voluntary recognizes that very few of the approximately 18,500 participating NFIP communities have adopted a cumulative substantial damage provision or repetitive loss provision in their floodplain management laws or ordinances. Furthermore, FEMA recognizes that there is an added administrative burden to communities in adopting and administering these types of provisions. Finally, not all NFIP communities have a history of repetitive flood losses to existing structures. Making this feature of ICC implementation voluntary will allow States and communities to evaluate historic flood losses carefully to determine whether such a provision would significantly mitigate the flood risk to existing structures. While the ICC benefit will not be paid for a repetitive loss structure if the State or local government has not adopted a cumulative substantial damage or repetitive loss provision in its floodplain management law or ordinance, the ICC benefit will still be paid for substantially damaged structures whether or not the community adopts a repetitive loss provision. A State or community can adopt a law or ordinance addressing repetitive loss structures at any time before or after this final rule becomes effective.

FEMA has concluded that since the statute ties the availability of ICC to the land use and control measures under § 1361 of the Act (42 U.S.C. 4102), as amended, ICC coverage is intended to respond only to State or local ordinances or laws requiring repetitive loss structures to be rebuilt to at least NFIP floodplain management requirements for substantially damaged structures. Therefore, one of the conditions for the ICC benefit to be paid under the SFIP for repetitive loss structures is for the State or community to be enforcing a repetitive loss provision or a cumulative substantial damage provision requiring action by the property owner. The second condition that must be met is that the structure have a history of claims payments that satisfy the statutory definition of repetitive loss structure.

Several commenters recommended that ordinance language be flexible to meet local concerns. One commenter noted that communities may already have a cumulative substantial damage requirement that is inconsistent with the repetitive loss definition in the proposed rule. The State or community's requirement for a property owner to bring a building into compliance can be triggered by a cumulative substantial damage or repetitive loss ordinance that deviates from the National Flood Insurance Reform Act's definition; however, a policyholder will only be eligible for ICC payments when the Act's repetitive loss definition is satisfied. With either type of provision, the State or community must apply it consistently to all structures regardless of whether or not the structure is covered by a contract for flood insurance. At a minimum, structures that met the definition of a "repetitive loss structure" would be required to meet the minimum floodplain management requirements that apply to substantially damaged structures.

FEMA will develop model ordinance language for addressing repetitive loss structures consistent with the statute's definition. FEMA also will be developing guidance on adoption of the repetitive loss provision; however, States or communities with questions concerning whether an existing repetitive loss or cumulative substantial damage provision in a community's law or ordinance is consistent with the definition in the final rule can contact their respective FEMA Regional Offices for assistance.

Questions were raised concerning the timing of the first and second loss relative to when the ICC coverage takes effect and when the community adopts a repetitive loss provision for determining if a structure has been repetitively damaged. Specifically, the comments questioned why the first qualifying loss has to occur after the State or community amends its law or ordinance to include a repetitive loss provision or why both claims have to occur after ICC coverage takes effect. In a related comment, it was asked how FEMA intends to treat a loss after the effective date of the final rule on ICC coverage, but before community adoption of a repetitive loss provision.

The proposed rule stated that the benefit of ICC under the SFIP for repetitive loss structures requires that two conditions be met. First, the State or community must be enforcing a cumulative substantial damage or repetitive loss provision requiring action by the property owner. Second, the NFIP must have a history of claims payments for the structure that satisfies the statutory definition of repetitive loss structure.

FEMA is implementing the repetitive loss provision of the statute by providing ICC coverage when a property owner is required to rebuild in compliance with a community's substantial damage or repetitive loss provision and the accumulated damage based on two losses within a 10-year

period that, combined, total more than 50% of the value of the structure. The date on which the first loss occurred is immaterial as to eligibility, even if the loss occurred before the effective date of this final rule since ICC coverage will respond to enforceable State or community floodplain management laws or ordinances for compliance.

Several comments and questions were received on how repetitive losses are counted toward a repetitive loss determination. One commenter asked whether each of the two losses have to equal at least 25% of the value of the structure for a total of 50% in order to qualify as a repetitive loss structure. Another commenter suggested that the determination should be flexible to reach a 50% loss, whether the first loss is only 10% and the second is 40%.

The definition of "repetitive loss structure" in the statute, states that "the cost of repair, on the average, equaled or exceeded 25 percent of the value of the structure at the time of each such flood event". In the proposed rule, FEMA stated that the two losses, when combined, must equal or exceed 50 percent of the market value of the structure within a 10-year period ending on the date of the event for which the second claim is made. Therefore, if the first loss is only 10% and the second loss is 40% and the State or community enforces the repetitive loss ordinance for these losses, the structure qualifies for the ICC payment. However, two or more losses that when combined are less than 50 percent of the market value of the structure do not qualify under the statutory definition of a "repetitive loss structure."

ICC Coverage for Multiple Flood Damages

Two commenters mentioned that specific guidance should be developed as soon as possible for the third category of flood-damaged structures eligible under the statute for ICC coverage. The third category consists of structures damaged by flood "on multiple occasions, if the Director determines that it is cost-effective and in the best interests of the National Flood Insurance Fund to require compliance with the land use and control measures" (42 U.S.C. 4011). As mentioned in the "Supplementary Information" section of the September 23, 1996 proposed rule, since the statute does not specify a specific loss threshold for the third category of multiple losses, the NFIP needs specific experience with this new coverage to determine what multiple loss situations would be reasonable, cost-effective candidates for compliance with State or local land use and control measures after a flood loss. FEMA will review the loss history for ICC coverage and the status of the National Flood Insurance Fund after the first several years of implementation of this coverage. At that point, FEMA will decide whether ICC coverage should be implemented for the third category of structures "damaged by flood on multiple occasions where the FEMA Director had determined it is in the best interests of the National Flood Insurance Fund to require compliance with land use and control measures (42 U.S.C. 4011)." The decision will be based on the best interests of the NFIP's financial status at that time, and whether the pricing constraints imposed by the statute can accommodate an expansion of coverage.

Adjustment of ICC Claims

Three commenters raised specific questions about the adjustment process for ICC claims under the SFIP. FEMA is drafting detailed procedures to be used by adjusters for ICC claims. The final loss adjustment procedures implementing ICC coverage will be distributed to the companies participating in the Write Your Own program as well as the adjusters servicing the NFIP business written directly by the Government approximately 30–60 days before the effective date of this final rule. Also, FEMA in conjunction with the NFIP Bureau and Statistical Agent will conduct approximately 30 workshops for insurance adjusters to address ICC.

ICC: Optional vs. Mandatory Coverage

Two commenters recommended that ICC coverage should be made optional. Section 555 of Public Law 103–325 requires the NFIP to "enable the purchase of this coverage * * *" What makes any coverage under an insurance contract possible, however, is the spread of the risk over a sufficiently large population exposed to a common peril. For this reason, and the high potential that only the worst risks would purchase ICC coverage if it were optional, it is necessary to provide this coverage by incorporating it as a standard coverage for every flood insurance policy. Reasonable pricing would be impossible otherwise.

One commenter raised a related question whether policyholders outside areas of special flood hazard could ever be eligible to make an ICC claim. ICC coverage for policies in zones B, C, X, and D insures against the possibility that, after the rating of policies in those zones, the Flood Insurance Rate Map (FIRM) is changed and the community requires such structures to be in compliance after substantial or cumulative substantial flood damage. Because of the lower potential for ICC claims from policies rated outside of the current special flood hazard area, the premium charges are considerably less, at $6 per year, than for the higher risk, i.e., pre-FIRM properties in the special flood hazard area at $75 per year.

Range of Premiums Charged for ICC Coverage

On a related issue, four commenters asked how the premiums charged for ICC would be calculated and whether the maximum surcharge of $75 would be applied to all structures. As explained above, the surcharge for ICC coverage ranges from $6 to $75 and is based on the likelihood of loss payments for each risk zone. The underlying concern was that surcharges would be assessed of policyholders who would not be eligible for the ICC coverage. As indicated above, all structures regardless of risk zone are eligible for ICC coverage, and premium surcharges, reflective of the risk, have been set for ICC coverage.

Exclusions

The September 23, 1996 proposed rule was silent on the availability of ICC coverage in Emergency Program communities and for those recipients of Individual and Family Grant (IFG) awards insured under a Group Flood Insurance Policy (GFIP). FEMA's pricing considerations for ICC coverage have never included policyholders in Emergency Program communities or IFG recipients insured under the GFIP since any premium surcharge would be onerous in light of the limited amount of structure coverage available to these categories of policyholders. (The maximum amount of structure coverage authorized by the Act for a single family dwelling under the Emergency Program is $35,000 which would also be the limit on the combined building and ICC loss payment.)

With regard to the GFIP, FEMA is considering whether to issue a proposed rule soliciting comments on adding ICC coverage to the certificate holders covered under the GFIP. At this juncture, however, those insured under the GFIP are excluded from ICC coverage.

This final rule addresses the omissions by excluding from ICC coverage "the cost associated with enforcement of any floodplain management ordinance or law in communities participating in the Emergency Program" and "for any structure insured under a Group Flood

Insurance Policy issued pursuant to 44 CFR 61.17."

Appurtenant Structures

One commenter asked whether ICC coverage would apply to appurtenant structures. Only the SFIP's Dwelling Form provides coverage against direct, physical loss from flood for appurtenant structures. As indicated in the "Exclusions" section of the Dwelling Form of the SFIP (see new Article 4 of Appendix A (1) being added by this final rule), ICC coverage does not apply to appurtenant structures. No similar exclusionary language is needed for ICC coverage in the General Property Form (Appendix A (2)) and the Residential Condominium Building Association Policy Form (Appendix A (3)) since there is no coverage for direct physical loss from flood for appurtenant structures in these forms. ICC coverage is available for appurtenant structures only when a separate flood insurance policy is written on an appurtenant structure, since ICC coverage will be included as Coverage D in every SFIP written or renewed on and after June 1, 1997.

Cancellations and Refunds

Two commenters asked specific questions on cancellations and refunds. One commenter asked, since it will be possible for the owners of 3-year policies to cancel on the anniversary date and purchase a new policy with ICC coverage on and after the effective date of the final rule on ICC coverage, will the owners of 1-year policies have the option of canceling mid-term. Cancellations in connection with ICC will be subject to the NFIP's current rules. A policyholder of a 1-year policy will have to wait until the policy is renewed at which time the premium surcharge will automatically be charged for ICC coverage. A policyholder of a 3-year policy written before this coverage becomes effective may cancel and rewrite on the anniversary date of the policy on and after June 1, 1997 in order to add ICC coverage. To ensure continuous coverage, policyholders must submit policy applications and premium payments 30 days before the anniversary date of the policy since "cancel-rewrite" situations for 3-year policies are subject to the statutory 30-day waiting period.

One commenter also asked about whether a refund of premium for ICC coverage is available when a policy is canceled. Refunds for ICC coverage will also be subject to the NFIP's current rules for premium refunds.

Interim Final Rule vs. Final Rule

Three commenters recommended that, in implementing ICC coverage, FEMA publish this rule as an "interim final" rule rather than a "final rule" which would conceivably permit more time by States to recommend adjustments to the implementation of ICC coverage.

The Office of the Federal Register, National Archives and Records Administration, has issued guidance to Federal agencies on the appropriate type of action, i.e., proposed, interim, or final rule, to be selected for any rule making activity. The following selection from the **Federal Register's** Document Drafting Handbook says, "An interim rule is usually issued without prior notice of proposed rule making. An immediate effective date is generally specified and comments on the interim rule may be requested. The interim rule is designed to respond to an emergency situation and is usually followed by a final rule which confirms that the interim rule is final and may include further amendments." (p. 39). The particulars of this final rule do not warrant publication as an interim final rule since proposed rule making has been conducted, comments have been solicited on the proposed rule, substantive changes have been made to this final rule based on comments received during the comment period, and no emergency situation exists.

Consistent with agency policy, FEMA considers State and local governments to be essential partners in the implementation of a national emergency management program, and mitigation is the cornerstone of that program. As a result, during the first years of implementing ICC coverage, FEMA expects to benefit from the experience of States, local governments, policyholders, insurance agents, insurance adjusters, and the Write Your Own companies selling and servicing a majority of the SFIPs and make any necessary changes to the rule implementing ICC coverage as necessary.

Increased Cost of Compliance Coverage

One commenter from the insurance industry recommended that the title for Coverage D read "increased cost of compliance" coverage rather than "increased cost of construction" as reflected in the September 23, 1996 proposed rule. FEMA agrees with this recommendation since the new coverage mandated by § 555 of Pub. L. 103–325 is described as "compliance coverage" in the statute. "Increased cost of compliance" more accurately describes the kind of coverage being added to the SFIP and is consistent with the terminology in the industry's Law and Ordinance coverage.

Guidance and Technical Assistance

Questions were also raised on how FEMA intends to inform policyholders as well as States and communities and others impacted on the availability of this new coverage. Several commenters stated that implementation procedures will need to be developed for State and local officials who may potentially have increased responsibility as a result of this new coverage. In addition, it was recommended that a model ordinance on the repetitive loss aspect of ICC be developed and assistance be provided to communities regarding this provision. It was also recommended that FEMA provide an explanatory letter or brochure to accompany each policy which fully explains the new coverage.

It is FEMA's intention to inform policyholders in the renewal notice on the new ICC coverage. All future insurance adjuster and agents workshops will include a segment explaining the new coverage. It is also FEMA's intention to develop before the effective date of the final rule a publication for use by State and local officials explaining the details of the new coverage, their responsibilities under their floodplain management laws and ordinances as it pertains to the ICC coverage, their relationship to the flood insurance adjustment process, as well as information on cost effective mitigation measures. FEMA will also include in this guidance model ordinance language on a repetitive loss provision. FEMA Regional Office will provide technical assistance to States and communities on technically feasible and cost-effective mitigation measures. Existing opportunities, such as Community Assistance Visits, workshops, conferences, and FEMA sponsored flood mitigation courses will be utilized to explain this new coverage. There are also a number of FEMA publications available to assist States, communities, architects, engineers, builders, and contractors, as well as individual property owners on various mitigation measures and techniques for elevation, floodproofing, and relocation (e.g., Engineering Principles and Practices for Retrofitting Flood Prone Residential Structures", "Elevated Residential Structures", "Floodproofing Non-Residential Structures", and "Technical Bulletins" on NFIP building standards).

Technical Corrections to the Policy Language

The final rule clarifies coverage issues and corrects several technical inconsistencies in the policy language as it appeared in the September 23, 1996 proposed rule. For example, to make it clear for the policyholder, community officials, and insurance adjusters precisely what floodproofing activities are eligible for ICC coverage, eligible floodproofing have been related to the applicable NFIP floodplain management standards at 44 CFR 60.3(b) or (c). As mentioned above, the proposed rule was silent on several exclusions, and the final rule has been revised to correct that omission. Also, Coverage A was incorrectly referred to in the proposed rule as "Dwelling" in the proposed addition to Appendix A (1) and "Building" in the proposed addition to Appendices A (2) and (3). The final rule has been revised to correctly identify Coverage A in each of the SFIP's Forms as "Building Property." Also, the reference to "other insurance" which was contained in the proposed rule has been removed from Coverage D since the SFIP already treats the issue of "other insurance" in Article 9 of the Dwelling Form, Article 8 of the General Property Form, and Article 10 of the Residential Condominium Building Association Policy Form.

National Environmental Policy Act

This final rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental assessment has been prepared.

Executive Order 12898, Environmental Justice

The socioeconomic conditions to this final rule were reviewed and a finding was made that no disproportionately high and adverse effect on minority or low income populations would result from this final rule.

Executive Order 12866, Regulatory Planning and Review

This final rule is not a significant regulatory action within the meaning of sec. 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735, and has not been reviewed by the Office of Management and Budget. Nevertheless, this final rule adheres to the regulatory principles set forth in E.O. 12866.

Paperwork Reduction Act

This final rule does not contain a collection of information and is therefore not subject to the provisions of the Paperwork Reduction Act.

Executive Order 12612, Federalism

This final rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This final rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 61

Flood insurance.

Accordingly, 44 CFR Part 61 is amended as follows:

PART 61—INSURANCE COVERAGE AND RATES

1. The authority citation for Part 61 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978; 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

Appendix A(1)—[Amended]

2. Paragraph A.6. of Article 3 of Appendix A (1) is amended to add the following phrase at the end:

* * * * *

* * * except as provided in Coverage D—Increased Cost of Compliance.

* * * * *

3. A new section is added to Article 4 of Appendix A (1) to read as follows:

* * * * *

Coverage D—Increased Cost of Compliance Coverage

Increased Cost of Compliance coverage (Coverage D) is for the consequential loss brought on by a floodplain management ordinance or law affecting repair and reconstruction involving elevation, floodproofing, relocation, or demolition (or any combination thereof) of a structure, after a direct loss caused by a "flood" as defined by this policy. (Floodproofing activities eligible for Coverage D and referred to hereafter in this policy are limited to residential structures with basements that satisfy the criteria of 44 CFR 60.6 (b) or (c) and to non-residential structures.)

The limit of liability under this Coverage D (Increased Cost of Compliance) will not exceed $15,000. This coverage is only applicable to policies with building coverage (Coverage A) and is in addition to the Building limit you selected on your application, and appears on the Declarations Page. No separate deductible applies. The maximum amount collectible under this policy for both Coverage A (Building Property) and Coverage D (Increased Cost of Compliance), however, cannot exceed the maximum permitted under the Act.

Eligibility

A structure covered under Coverage A—Building Property—sustaining a loss caused by a "flood" as defined by this policy must:

1. Be a structure that is a repetitive loss structure. A "repetitive loss structure" means a structure, covered by a contract for flood insurance issued pursuant to the Act, that has incurred flood-related damage on 2 occasions during a 10-year period ending on the date of the event for which a second claim is made, in which the cost of repairing the flood damage, on the average, equaled or exceeded 25% of the market value of the structure at the time of each such flood event. In addition to the current claim, the National Flood Insurance Program must have paid the previous qualifying claim, and the State or community must have a cumulative, substantial damage provision or repetitive loss provision in its flood plain management law or ordinance being enforced against the structure; or

2. Be a structure that has had flood damage in which the cost to repair equals or exceeds 50% of the market value of the structure at the time of the flood event. The State or community must have a substantial damage provision in its floodplain management law or ordinance being enforced against the structure.

This Coverage D will not pay for Increased Cost of Compliance to meet State or community floodplain management laws or ordinances which exceed the minimum criteria at 44 CFR 60.3, except as provided in 1. above or a. or b. as follows:

a. elevation or floodproofing in any risk zone to preliminary or advisory base flood elevations provided by FEMA which the State or local government has adopted and is enforcing for flood-damaged structures in such areas. (This includes compliance activities in B, C, X, or D zones which are being changed to zones with base flood elevations. This also includes compliance activities in zones where base flood elevations are being increased, and a flood-damaged structure must comply with the higher advisory base flood elevation.) Increased Cost of Compliance coverage does not respond to situations in B, C, X, or D zones where the community has derived its own elevations and is enforcing elevation or floodproofing requirements for flood-damaged structures to elevations derived solely by the community.

b. elevation or floodproofing above the base flood elevation to meet State or local "freeboard" requirements, i.e., that a structure must be elevated above the base flood elevation.

Under the minimum NFIP criteria at 44 CFR 60.3(b) (4), States and communities must require the elevation or floodproofing of structures in unnumbered A zones to the base flood elevation where elevation data are obtained from a Federal, State, or other source. Such compliance activities are also eligible for this Coverage D.

This coverage will also pay for the incremental cost, after demolition, or relocation, of elevating or floodproofing a structure during its rebuilding at the same or another site to meet State or local floodplain management laws or ordinances, subject to Exclusion (7).

This coverage will also pay to bring a flood-damaged structure into compliance with State or local floodplain management laws or ordinances even if the structure had received a variance before the present loss from the applicable floodplain management requirements.

Conditions

(1) When a structure covered under Coverage A—Building Property—sustains a loss caused by a "flood" as defined by this policy, our payment for the loss under this Coverage D will be for the increased cost to elevate, floodproof, relocate, demolish, or any combination thereof, caused by enforcement of current State or local floodplain management ordinances or laws. Our payment for eligible demolition activities will be for the cost to demolish and clear the site of the building or a portion thereof caused by enforcement of current State or local floodplain management ordinances or laws. Eligible activities for the cost of clearing the site will include those necessary to discontinue utility service to the site and ensure proper abandonment of on-site utilities.

(2) When the building is repaired or rebuilt, it must be intended for the same occupancy as the present building unless otherwise required by current floodplain management ordinances or laws.

Exclusions

Under this Coverage D (Increased Cost of Compliance), we will not pay for:

(1) The cost associated with enforcement of any floodplain management ordinance or law in communities participating in the Emergency Program.

(2) The cost associated with enforcement of any ordinance or law that requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants. Pollutants include but are not limited to any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acid, alkalis, chemicals and waste. Waste includes but is not limited to materials to be recycled, reconditioned or reclaimed.

(3) The loss in value to any covered building or other structure due to the requirements of any ordinance or law.

(4) The loss in residual value of the undamaged portion of a building demolished as a consequence of enforcement of any State or local floodplain management law or ordinance.

(5) Any increased cost of compliance under this Coverage D:

(a) Until the covered building is actually elevated, floodproofed, demolished or relocated on the same or to another premises; and

(b) Unless the covered building is elevated, floodproofed, demolished, or relocated as soon as reasonably possible after the loss, not to exceed two years.

(6) For any code upgrade requirements, e.g., plumbing or electrical wiring, not specifically related to the State or local floodplain management law or ordinance.

(7) For any compliance activities needed to bring additions or improvements made after the loss occurred into compliance with State or local floodplain management laws or ordinances.

(8) Loss due to any ordinance or law that you were required to comply with before the current loss.

(9) For any rebuilding activity to standards that do not meet the NFIP's minimum requirements. This includes any situation where the insured has received from the State or community a variance in connection with the current flood loss to rebuild the property to an elevation below the base flood elevation.

(10) Increased cost of compliance for appurtenant structure(s).

(11) For any structure insured under a Group Flood Insurance Policy issued pursuant to 44 CFR 61.17.

(12) Assessments made by a condominium association on individual condominium unit owners to pay increased costs of repairing commonly owned buildings after a flood in compliance with State or local floodplain management ordinances or laws.

Other Provisions

(1) Increased Cost of Compliance coverage will not be included in the calculation to determine whether coverage meets the 80% insurance-to-value requirement for replacement cost coverage under Article 8 or for payment under Article 3.B.3 for loss from land subsidence, sewer backup, or seepage of water.

(2) All other conditions and provisions of the policy apply.

* * * * *

Appendix A(2)—[Amended]

4. Paragraph A.6. of Article 3 of Appendix A (2) is amended to add the following phrase at the end:

* * * * *

* * * except as provided in Coverage D—Increased Cost of Compliance.

* * * * *

5. A new section is added to Article 4 of Appendix A (2), to read as follows:

* * * * *

Coverage D—Increased Cost of Compliance Coverage

Increased Cost of Compliance coverage (Coverage D) is for the consequential loss brought on by a floodplain management ordinance or law affecting repair and reconstruction involving elevation, floodproofing, relocation, or demolition (or any combination thereof) of a structure, after a direct loss caused by a "flood" as defined by this policy. (Floodproofing activities eligible for Coverage D and referred to hereafter in this policy are limited to residential structures with basements that satisfy the criteria of 44 CFR 60.6 (b) or (c) and to non-residential structures.)

The limit of liability under this Coverage D (Increased Cost of Compliance) will not exceed $15,000. This coverage is only applicable to policies with building coverage (Coverage A) and is in addition to the Building limit you selected on your application, and appears on the Declarations Page. No separate deductible applies. The maximum amount collectible under this policy for both Coverage A (Building Property) and Coverage D (Increased Cost of Compliance), however, cannot exceed the maximum permitted under the Act.

Eligibility

A structure covered under Coverage A—Building Property—sustaining a loss caused by a "flood" as defined by this policy must:

1. Be a structure that is a repetitive loss structure. A "repetitive loss structure" means a structure, covered by a contract for flood insurance issued pursuant to the Act, that has incurred flood-related damage on 2 occasions during a 10-year period ending on the date of the event for which a second claim is made, in which the cost of repairing the flood damage, on the average, equaled or exceeded 25% of the market value of the structure at the time of each such flood event. In addition to the current claim, the National Flood Insurance Program must have paid the previous qualifying claim, and the State or community must have a cumulative, substantial damage provision or repetitive loss provision in its flood plain management law or ordinance being enforced against the structure; or

2. Be a structure that has had flood damage in which the cost to repair equals or exceeds 50% of the market value of the structure at the time of the flood event. The State or community must have a substantial damage provision in its floodplain management law or ordinance being enforced against the structure.

This Coverage D will not pay for Increased Cost of Compliance to meet State or community floodplain management laws or ordinances which exceed the minimum criteria at 44 CFR 60.3, except as provided in 1. above or a. or b. as follows:

a. Elevation or floodproofing in any risk zone to preliminary or advisory base flood elevations provided by FEMA which the State or local government has adopted and is enforcing for flood-damaged structures in such areas. (This includes compliance activities in B, C, X, or D zones which are being changed to zones with base flood elevations. This also includes compliance activities in zones where base flood elevations are being increased, and a flood-damaged structure must comply with the higher advisory base flood elevation.) Increased Cost of Compliance coverage does not respond to situations in B, C, X, or D zones where the community has derived its own elevations and is enforcing elevation or floodproofing requirements for flood-damaged structures to elevations derived solely by the community.

b. Elevation or floodproofing above the base flood elevation to meet State or local "freeboard" requirements, i.e., that a structure must be elevated above the base flood elevation.

Under the minimum NFIP criteria at 44 CFR 60.3(b)(4), States and communities must require the elevation or floodproofing of structures to the base flood elevation where elevation data are obtained from a Federal, State, or other source. Such compliance activities are also eligible for this Coverage D.

This coverage will also pay for the incremental cost, after demolition, or relocation, of elevating or floodproofing a structure during its rebuilding at the same or another site to meet State or local floodplain management laws or ordinances, subject to Exclusion (7).

This coverage will also pay to bring a flood-damaged structure into compliance with State or local floodplain management laws or ordinances even if the structure had received a variance before the present loss from the applicable floodplain management requirements.

Conditions

(1) When a structure covered under Coverage A—Building Property—sustains a loss caused by a "flood" as defined by this policy, our payment for the loss under this Coverage D will be for the increased cost to elevate, floodproof, relocate, demolish, or any combination thereof, caused by enforcement of current State or local floodplain management ordinances or laws. Our payment for eligible demolition activities will be for the cost to demolish and clear the site of the building or a portion thereof caused by enforcement of current State or local floodplain management ordinances or laws. Eligible activities for the cost of clearing the site will include those necessary to discontinue utility service to the site and ensure proper abandonment of on-site utilities.

(2) When the building is repaired or rebuilt, it must be intended for the same occupancy as the present building unless otherwise required by current floodplain management ordinances or laws.

Exclusions

Under this Coverage D (Increased Cost of Compliance), we will not pay for:

(1) The cost associated with enforcement of any floodplain management ordinance or law in communities participating in the Emergency Program.

(2) The cost associated with enforcement of any ordinance or law that requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants. Pollutants include but are not limited to any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acid, alkalis, chemicals and waste. Waste includes but is not limited to materials to be recycled, reconditioned or reclaimed.

(3) The loss in value to any covered building or other structure due to the requirements of any ordinance or law.

(4) The loss in residual value of the undamaged portion of a building demolished as a consequence of enforcement of any State or local floodplain management law or ordinance.

(5) Any increased cost of compliance under this Coverage D:

(a) Until the covered building is actually elevated, floodproofed, demolished or relocated on the same or to another premises; and

(b) Unless the covered building is elevated, floodproofed, demolished, or relocated as soon as reasonably possible after the loss, not to exceed two years.

(6) For any code upgrade requirements, e.g., plumbing or electrical wiring, not specifically related to the State or local floodplain management law or ordinance.

(7) For any compliance activities needed to bring additions or improvements made after the loss occurred into compliance with State or local floodplain management laws or ordinances.

(8) Loss due to any ordinance or law that you were required to comply with before the current loss.

(9) For any rebuilding activity to standards that do not meet the NFIP's minimum requirements. This includes any situation where the insured has received from the State or community a variance in connection with the current flood loss to rebuild the property to an elevation below the base flood elevation.

(10) For any structure insured under a Group Flood Insurance Policy issued pursuant to 44 CFR 61.17.

Other Provisions

(1) Increased Cost of Compliance coverage will not be included in the calculation to determine whether coverage meets the 80% insurance-to-value requirement for payment under Article 3.B.3 for loss from land subsidence, sewer backup, or seepage of water.

(2) All other conditions and provisions of the policy apply.

* * * * *

Appendix A (3)—[Amended]

6. Paragraph A.6. of Article 3 of Appendix A (3) is amended to add to the end the following phrase:

* * * * *

* * * except as provided in Coverage D—Increased Cost of Compliance.

* * * * *

7. A new section is added to Article 4 of Appendix A (3), to read as follows:

* * * * *

Coverage D—Increased Cost of Compliance Coverage

Increased Cost of Compliance coverage (Coverage D) is for the consequential loss brought on by a floodplain management ordinance or law affecting repair and reconstruction involving elevation, floodproofing, relocation, or demolition (or any combination thereof) of a structure, after a direct loss caused by a "flood" as defined by this policy. (Floodproofing activities eligible for Coverage D and referred to hereafter in this policy are limited to residential structures with basements that satisfy the criteria of 44 CFR 60.6 (b) or (c) and to non-residential structures.)

The limit of liability under this Coverage D (Increased Cost of Compliance) will not exceed $15,000. This coverage is only applicable to policies with building coverage (Coverage A) and is in addition to the Building limit you selected on your application, and appears on the Declarations Page. No separate deductible applies. The maximum amount collectible under this policy for both Coverage A (Building Property) and Coverage D (Increased Cost of Compliance), however, cannot exceed the maximum permitted under the Act.

Eligibility

A structure covered under Coverage A—Building Property—sustaining a loss caused by a "flood" as defined by this policy must:

1. Be a structure that is a repetitive loss structure. A "repetitive loss structure" means a structure, covered by a contract for flood insurance issued pursuant to the Act, that has incurred flood-related damage on 2 occasions during a 10-year period ending on the date of the event for which a second claim is made, in which the cost of repairing the flood damage, on the average, equaled or exceeded 25% of the market value of the structure at the time of each such flood event. In addition to the current claim, the National Flood Insurance Program must have paid the previous qualifying claim, and the State or community must have a cumulative, substantial damage provision or repetitive loss provision in its flood plain management law or ordinance being enforced against the structure; or

2. Be a structure that has had flood damage in which the cost to repair equals or exceeds 50% of the market value of the structure at the time of the flood event. The State or community must have a substantial damage provision in its floodplain management law or ordinance being enforced against the structure.

This Coverage D will not pay for Increased Cost of Compliance to meet State or community floodplain management laws or ordinances which exceed the minimum criteria at 44 CFR 60.3, except as provided in 1. above or a. or b. as follows:

a. Elevation or floodproofing in any risk zone to preliminary or advisory base flood elevations provided by FEMA which the State or local government has adopted and is enforcing for flood-damaged structures in such areas. (This includes compliance activities in B, C, X, or D zones which are being changed to zones with base flood elevations. This also includes compliance activities in zones where base flood elevations are being increased, and a flood-damaged structure must comply with the higher advisory base flood elevation.) Increased Cost of Compliance coverage does not respond to situations in B, C, X, or D zones where the community has derived its own elevations and is enforcing elevation or floodproofing requirements for flood-damaged structures to elevations derived solely by the community.

b. Elevation or floodproofing above the base flood elevation to meet State or local "freeboard" requirements, i.e., that a structure must be elevated above the base flood elevation.

Under the minimum NFIP criteria at 44 CFR 60.3(b)(4), States and communities must require the elevation or floodproofing of structures to the base flood elevation where elevation data are obtained from a Federal, State, or other source. Such compliance activities are also eligible for this Coverage D.

This coverage will also pay for the incremental cost, after demolition, or relocation, of elevating or floodproofing a structure during its rebuilding at the same or another site to meet State or local floodplain management laws or ordinances, subject to Exclusion (7).

This coverage will also pay to bring a flood-damaged structure into compliance with State or local floodplain management laws or ordinances even if the structure had received a variance before the present loss from the applicable floodplain management requirements.

Conditions

(1) When a structure covered under Coverage A—Building Property—sustains a loss caused by a "flood" as defined by this policy, our payment for the loss under this Coverage D will be for the increased cost to elevate, floodproof, relocate, demolish, or any combination thereof, caused by enforcement of current State or local floodplain management ordinances or laws. Our payment for eligible demolition activities will be for the cost to demolish and clear the site of the building or a portion thereof caused by enforcement of current State or local floodplain management ordinances or laws. Eligible activities for the cost of clearing the site will include those necessary to discontinue utility service to the site and ensure proper abandonment of on-site utilities.

(2) When the building is repaired or rebuilt, it must be intended for the same occupancy as the present building unless otherwise required by current floodplain management ordinances or laws.

Exclusions

Under this Coverage D (Increased Cost of Compliance), we will not pay for:

(1) The cost associated with enforcement of any floodplain management ordinance or law in communities participating in the Emergency Program.

(2) The cost associated with enforcement of any ordinance or law that requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants. Pollutants include but are not limited to any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acid, alkalis, chemicals and waste. Waste includes but is not limited to materials to be recycled, reconditioned or reclaimed.

(3) The loss in value to any covered building or other structure due to the requirements of any ordinance or law.

(4) The loss in residual value of the undamaged portion of a building demolished as a consequence of enforcement of any State or local floodplain management law or ordinance.

(5) Any increased cost of compliance under this Coverage D:

(a) Until the covered building is actually elevated, floodproofed, demolished or relocated on the same or to another premises; and

(b) Unless the covered building is elevated, floodproofed, demolished, or relocated as soon as reasonably possible after the loss, not to exceed two years.

(6) For any code upgrade requirements, e.g., plumbing or electrical wiring, not specifically related to the State or local floodplain management law or ordinance.

(7) For any compliance activities needed to bring additions or improvements made after the loss occurred into compliance with State or local floodplain management laws or ordinances.

(8) Loss due to any ordinance or law that you were required to comply with before the current loss.

(9) For any rebuilding activity to standards that do not meet the NFIP's minimum requirements. This includes any situation where the insured has received from the State or community a variance in connection with the current flood loss to rebuild the property to an elevation below the base flood elevation.

(10) For any structure insured under a Group Flood Insurance Policy issued pursuant to 44 CFR 61.17.

Other Provisions

(1) Increased Cost of Compliance coverage will not be included in the calculation to determine whether coverage meets the 80% replacement cost requirement under Article 9 or for payment under Article 3.B.3 for loss from land subsidence, sewer backup, or seepage of water.

(2) All other conditions and provisions of the policy apply.

* * * * *

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: February 18, 1997.

Spence W. Perry,

Executive Administrator, Federal Insurance Administration.

[FR Doc. 97–4640 Filed 2–24–97; 8:45 am]

BILLING CODE 6718–03–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[FCC 96–467]

Commission Organization; Cable Services Bureau

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this Order, we amend the Commission's rules regarding the functions of the Cable Services Bureau and the delegated authority of the Chief of the Cable Services Bureau. This action is necessary to permit the Cable Services Bureau to oversee pole attachment matters and administration and enforcement of relevant provisions of the Telecommunications Act of 1996.

EFFECTIVE DATE: February 25, 1997.

FOR FURTHER INFORMATION CONTACT: For additional information concerning this rulemaking contact Meryl S. Icove, Cable Services Bureau, (202) 418–7200.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Order, FCC 96–467, adopted December 3, 1996 and released December 5, 1996. The complete text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc. ("ITS Inc.") at (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20017.

Synopsis of Order

In this Order, we amend the Commission's rules regarding the functions of the Cable Services Bureau and the delegated authority of the Chief of the Cable Services Bureau.

This action is necessary to permit the Cable Services Bureau to oversee pole attachment matters and administration and enforcement of relevant provisions of the Telecommunications Act of 1996. The amendments adopted herein pertain to agency organization, procedure and practice. Consequently, the requirements of notice and comment rulemaking contained in 5 U.S.C. 553(b) and the effective date provisions of 5 U.S.C. 553(d) of the Administrative Procedure Act do not apply. Authority for the amendments adopted herein is contained in section 4(i), 5(c)(1), 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 155(c)(1), 303(r).

It is ordered that §§ 0.91, 0.101 and 0.321 of the Commission's rules, 47 CFR 0.91, 0.101, 0.321 are amended as set forth below, effective February 25, 1997.

Lists of Subjects in 47 CFR Part 0

Organization and functions (Government agencies).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 0 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Section 0.91 is amended by revising the introductory text, removing paragraph (h) and redesignating paragraphs (i) through (k) as paragraphs (h) through (j) to read as follows:

§ 0.91 Functions of the Bureau.

The Common Carrier Bureau develops, recommends, and administers policies and programs for the regulation of services, facilities and practices of entities which furnish interstate communications service or interstate access service for hire—whether by wire, radio or cable—and of ancillary operations related to the provision of such services (excluding public coast stations in the maritime mobile services and multi-point and multi-channel multi-point distribution services and excluding matters pertaining exclusively to the regulation and licensing of wireless telecommunications services and facilities). The Bureau also develops, recommends, and administers policies and programs for the regulation of rates, terms and conditions under which communications entities furnish interstate communications service, interstate access service, and (in cooperation with the International Bureau) foreign communications service for hire—whether by wire, cable or satellite. The Bureau also performs the following functions:

* * * * *

3. Section 0.101 is revised to read as follows:

§ 0.101 Functions of the Bureau.

The Cable Services Bureau develops, recommends and administers policies and programs with respect to the regulation of services, facilities, rates and practices of cable television systems and with respect to the creation of competition to cable systems, and with respect to video programming services provided by other multichannel video programming distributors and multichannel video programmers. The Cable Services Bureau advises and recommends to the Commission, or acts for the Commission under delegated authority, in matters pertaining to the regulation and development of cable television and other multichannel video programming services. The Bureau also performs the following functions:

(a) Administers and enforces rules and policies regarding:

(1) Cable television systems, operators, and services, including those relating to rates, technical standards, customer service, ownership, competition to cable systems, broadcast station signal retransmission and carriage, program access, wiring equipment, channel leasing, and federal-state/local regulatory relationships. This includes: acting, after Commission assumption of jurisdiction to regulate cable television rates for basic service and associated equipment, on cable operator requests for approval of existing or increased rates; reviewing appeals of local franchising authorities' rate making decisions involving rates for the basic service tier and associated equipment, except when such appeals raise novel or unusual issues; acting upon complaints involving cable programming service rates except for final action on complaints raising novel or unusual issues; evaluating basic rate regulation certification requests filed by cable system franchising authorities; periodically reviewing and, when appropriate, revising standard forms used in administering: the Commission's complaint process regarding cable programming service rates; the certification process for local franchising authorities wishing to regulate rates, and the substantive rate regulation standards prescribed by the Commission;

(2) Access to poles, ducts, conduits and rights-of-way and the rates, terms and conditions for pole attachments, when such attachments are not regulated by a state and not provided by railroads or governmentally or cooperatively owned utilities, and complaints involving access to or rates, terms and conditions arising from pole attachments, except for final action on complaints raising novel or unusual issues;

(3) Open video systems;

(4) Preemption of restrictions on devices designed for over-the-air reception of television broadcast signals, multichannel multipoint distribution service, and direct broadcast satellite services;

(5) The commercial availability of navigational devices;

(6) The accessibility of video programming to persons with disabilities; and

(7) Scrambling of sexually explicit adult video programming by multichannel video programming distributors.

(b) Plans and develops proposed rulemakings and conducts studies and analyses (legal, engineering, social and economic) of various petitions for policy or rule changes submitted by industry or the public.

(c) Conducts studies and compiles data relating to multichannel video programming services necessary for the Commission to develop and maintain an adequate regulatory program.

(d) Advises and assists the public, other government agencies and industry groups.

(e) Administers financial and other reporting systems.

(f) Investigates complaints and answers general inquiries from the public.

(g) Participates in hearings before the Administrative Law Judges and the Commission.

(h) Processes applications for authorizations in the Cable Television Relay Service.

(i) Processes and acts on all applications for authorization, petitions for special relief, petitions to deny, waiver requests, requests for certification, objections, complaints, and requests for declaratory rulings and stays regarding the areas listed above, that do not involve novel questions of fact, law or policy that cannot be resolved under existing precedents and guidelines.

(j) Periodically reviews and, when appropriate, revises standard forms related to the areas listed above.

(k) Exercises authority to issue non-hearing related subpoenas for the attendance of witnesses and the production of books, papers, correspondence, memoranda, schedule of charges, contracts, agreements, and any other records deemed relevant to the investigation of the Cable Services Bureau. Before issuing a subpoena, the Cable Services Bureau shall obtain the approval of the Office of General Counsel.

(l) Carries out the functions of the Commission under the Communications Act of 1934, as amended, except as reserved to the Commission under § 0.321.

4. Section 0.321 is revised to read as follows:

§ 0.321 Authority delegated.

The Chief, Cable Services Bureau is delegated authority to perform all functions of the Bureau, described in § 0.101, subject to the following exceptions and limitations:

(a) Designate for hearing any formal complaints that present novel questions of fact, law or policy that cannot be resolved under existing precedents for guidelines;

(b) Impose, reduce, or cancel forfeitures pursuant to section 503(b) of the Communications Act of 1934, as amended, in amounts of more than $20,000;

(c) Act upon any applications for review of actions taken by the Chief, Cable Services Bureau pursuant to any delegated authority which comply with § 1.115 of this chapter;

(d) Issue notices of proposed rulemaking, notices of inquiry or to issue report and orders arising from either of the foregoing, except that the Chief, Cable Services Bureau shall have authority to issue notices of rulemaking and report and orders redesignating market areas in accordance with section 614(f) of the Communications Act of 1934, as amended; and

(e) Act on any applications in the Cable Television Relay Service that present novel questions of fact, law, or policy that cannot be resolved under existing precedents and guidelines.

[FR Doc. 97–4566 Filed 2–24–97; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 193

[Docket No. PS–151; Amdt. 193–13]

RIN 2137–AC 91

Liquefied Natural Gas Regulations—Miscellaneous Amendments

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Direct final rule.

SUMMARY: This direct final rule updates the Liquefied Natural Gas (LNG) regulations by replacing the current "Flammable vapor-gas dispersion protection" method with a method based on the "dense gas dispersion (DEGADIS)" model, and replacing the current "Thermal Radiation Protection" method with a method based on the "LNGFIRE" program model. In addition, this final rule incorporates safety requirements for mobile and temporary LNG facilities by referring to the National Fire Protection Association (NFPA) Standard 59A (1996 edition)—Standard for the Production, Storage and Handling of Liquefied Natural Gas (LNG).

DATES: This direct final rule takes effect June 25, 1997 unless RSPA receives adverse comments or notice of intent to file adverse comment by April 28, 1997. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of June 25, 1997. If RSPA does not receive any adverse comment or notice of intent to file an adverse comment by April 28, 1997 the rule will become effective on the date specified. RSPA will issue a subsequent notice in the **Federal Register** by May 27, 1997 after the close of the comment period to confirm that fact and reiterate the effective date. If an adverse comment or notice of intent to file an adverse comment is received, RSPA will issue a timely notice in the **Federal Register** to confirm that fact and RSPA would withdraw the direct final rule in whole or in part. RSPA may then incorporate the adverse comment into a subsequent direct final rule or may publish a notice of proposed rulemaking.

ADDRESSES: Written comments must be submitted in duplicate and mailed or hand-delivered to the Dockets Unit, room 8421, U.S. Department of Transportation, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590. Identify the docket and notice numbers stated in the heading of this notice. All comments and materials cited in this document will be available for inspection and copying in room 8421 between 8:30 a.m. and 4:30 p.m. each business day. Non-federal employee visitors are admitted to the DOT headquarters building through the southwest quadrant entrance at Seventh and E Streets.

FOR FURTHER INFORMATION CONTACT: Mike Israni, (202) 366–4571, regarding the subject matter of this document, or the Dockets Unit (202) 366–4453, for copies of this document or other information in the docket.

SUPPLEMENTARY INFORMATION:

Background

Section 193.2019 Mobile and Temporary LNG Facilities

RSPA is amending 49 CFR Part 193 by adding a section 193.2019 on mobile and temporary LNG facilities. Mobile and temporary LNG facilities have a good safety record and their use has become quite common. However, Part 193 currently does not contain requirements for such temporary operations and many temporary operations cannot meet some of the Part 193 requirements. In those cases, operations have been authorized through waivers issued by the relevant states, and approved by RSPA, for mobile and temporary facilities for peakshaving applications, for service maintenance during gas pipeline systems repair/alteration, or for other short term applications. In acting on waiver requests, RSPA reviews justification for not complying with Part 193 and requires alternative safety provisions to maintain public safety. There has been no adverse impact on safety as a result of the waiver process and RSPA anticipates an equivalent level of safety following implementation of this direct final rule. The safety guidelines and the restrictions for LNG mobile facilities in section 2–3.4 of the NFPA 59A (1996 edition) provide an adequate level of assurance of public safety. The safety guidelines are identical to those required as conditions for waiver. Thus, we do not see any necessity for issuing a proposed rule. Therefore, RSPA is incorporating by reference NFPA 59A section 2–3.4 for mobile and temporary LNG facilities in this direct final rule. Operators will no longer need a waiver from Part 193 requirements for mobile facilities if they comply with section 2–3.4 of NFPA 59A. This will reduce the burden on the industry and state and federal governments without compromising safety.

Section 193.2057 Thermal Radiation Protection

RSPA is amending Section 193.2057, "Thermal radiation protection", by deleting the method prescribed and replacing it with a method based on the "LNGFIRE" program model developed by the Gas Research Institute (GRI). RSPA is amending this section in response to an American Gas Association (AGA) petition dated October 14, 1992.

According to the AGA petition, the current method is a simple geometrical method with assumptions of flame radiant properties for computing the radiation from burning vapor above a concentric pool. Flame radiant properties were rationalized to provide results that agree with early experimental results for the lowest level of radiant exposures. The current method also assumes an idealized tilted cylindrical flame. Experimental data shows that the current method underestimates exclusion distances for large pool fires, such as those that could occur in a tank dike, and overestimates exclusion distances for small and high ratio length-to-width rectangular fires that could occur in pipe impoundments.

AGA states that since 1982 GRI has funded a series of research projects dealing with LNG pool fire radiation. This research has culminated in a model which more accurately reflects experimental data. The research has also produced a personal computer based program called "LNGFIRE." This computer model has numerous advantages over the current method, including the ability to account for a wide variety of containments. The resulting computer program is easy to use and is in the public domain. The results of the model and the "LNGFIRE" program correlate very well with experimental results from the numerous pool fire tests conducted during the last 15 years.

AGA further explains that the "LNGFIRE" program and model effectively take into account wind speed, relative humidity and asymmetrical pool configuration. One unique feature in the "LNGFIRE" program model is the effect called wind drag. This is the tendency of the wind to move the base of the flame downwind from the pool. The "LNGFIRE" program also calculates the heat output of the fire based on the heating value, density and boiling temperature of the LNG. Although average default properties are included in the program, the properties of unusually heavy or light LNG can be substituted to reflect the product used at a particular facility.

RSPA agrees with the AGA's rationale and is replacing the current thermal radiation protection method with the method based on the "LNGFIRE" program model.

Section 193.2059 Flammable Vapor-Gas Dispersion Protection

RSPA is amending section 193.2059, "Flammable vapor-gas dispersion protection," by deleting the prescribed method based on the mathematical model in Appendix B of the AGA's 1974 report, "Evaluation of LNG Vapor Control Methods," also referred to as the Gaussian Line Source (GLS) model, and replacing it with the "DEGADIS" dense gas dispersion model. RSPA is amending this section in response to the American Gas Association (AGA) petition dated October 14, 1992.

According to the AGA petition, the dispersion models available at the time the current federal regulation was issued were limited. Based on the limited vapor dispersion data available in 1980, DOT provided for use of the GLS dispersion model as the method for calculating LNG vapor-gas dispersion siting standards. The GLS dispersion model does not account for important LNG vapor dispersion phenomena, including gravity spreading, negative or positive buoyancy effects on air entrainment, surface-to-cloud heat transfer, or phase change energy effects associated with air humidity.

AGA states that under GRI sponsorship beginning in 1982, extensive vapor dispersion experimental and analytical work has been conducted. The DEGADIS dispersion model, developed for GRI and the U.S. Coast Guard and recently modified (to allow application to elevated jet releases) for the U.S. Environmental Protection Agency (EPA), accounts for effects described above and can be run on a personal computer.

AGA further explains that the DEGADIS model has been shown to be consistent with a wide range of laboratory and field test data for dense gas releases on a flat surface with dispersion over unobstructed flat terrain. Comparison of DEGADIS model predictions with data obtained from pertinent vapor dispersion field tests has been reviewed. To provide direct comparison with the GLS model prescribed in 49 CFR 193.2059, the maximum predicted distance to 2.5% methane concentration was determined for 324 LNG release scenarios with the DEGADIS and GLS models. DEGADIS generally predicted the longer distances to the 2.5% methane concentration level than the GLS model for "B" atmospheric stability and shorter distances than the GLS model for "F" stability.

AGA states that the recommendation for specification of a surface roughness factor of 3 cm in DEGADIS presumes the terrain upwind of the LNG release to be covered with short (order 10 cm) grass. The value of this surface roughness factor is recommended for normal usage to provide consistency with the implicit assignment of 3 cm surface roughness factor in the application of the Guassian model currently prescribed.

The theoretical and experimental basis for the DEGADIS model are fully reviewed in GRI Report No. 89/0242 and its applicability to LNG vapor dispersion prediction has been considered.

The results given in the GRI report indicate that the DEGADIS model is superior both in dispersion phenomena and performance to the GLS model promulgated in 49 CFR 193.2059 for LNG vapor dispersion simulation. Availability in IBM–PC formats provides for wide use of the DEGADIS model. The DEGADIS model has been accepted and used by federal agencies such as the Federal Emergency Management Administration (FEMA), the National Oceanic and Atmospheric Administration (NOAA), EPA, and the U.S. Coast Guard for dense gas vapor dispersion analysis. It has also been incorporated in the ALOHA (Area Location of Hazardous Atmospheres) model. ALOHA is designed for on-site use at accidental releases for emergency response planning purposes. The South Coast Air Quality Management District of California has also accepted the use of the DEGADIS model.

Since the DEGADIS model is in the public domain, is recognized by other federal and state agencies, and provides significantly more realistic determination of vapor exclusion distances than the GLS model currently in 49 CFR 193.2059, RSPA is adopting the DEGADIS model.

Rulemaking Analysis and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule is not considered to be a significant regulatory action under section 3(f) of Executive Order 12866, and is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

This rule amends LNG regulations to include requirements for mobile and temporary facilities. This rule replaces the current method prescribed for "Thermal Radiation Protection" with the "LNGFIRE" program model. In addition, this rule replaces the current method prescribed for "Flammable vapor-gas dispersion protection" with the "DEGADIS" dense gas dispersion model. This is consistent with the President's goal of regulatory reinvention and improvement of customer service to the American people. There is no additional cost to comply with this rule. These changes do not warrant preparation of a Regulatory Evaluation.

Executive Order 12612

This action has been analyzed under the criteria of Executive Order 12612 (52 FR 41685; October 30,1987) and does not have sufficient federalism impacts to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

Based on the facts available concerning the impact of this rule, I certify under section 606 of the Regulatory Flexibility Act that it does not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This rule does not modify the paperwork burden that LNG operators already have. Therefore, a paperwork evaluation is unnecessary.

List of Subjects in 49 CFR Part 193

Fire prevention, Incorporation by reference, Pipeline safety, Reporting and recordkeeping requirements, Security measures.

In consideration of the foregoing, RSPA amends Part 193 of title 49 of the Code of Federal Regulations as follows:

PART 193—[AMENDED]

1. The authority citation for Part 193 continues to read as follows:

Authority: 49 U.S.C. 5103, 60103, 60104, 60108, 60109, 60111, 60112, 60118; and 49 CFR 1.53.

2. Part 193 is amended by adding § 193.2019 to subpart A to read as follows:

§ 193.2019 Mobile and temporary LNG facilities.

Mobile and temporary LNG facilities for peakshaving application, for service maintenance during gas pipeline systems repair/alteration, or for other short term applications need not meet the requirements of this part if the facilities are in compliance with section 2–3.4 of NFPA 59A (1996 edition).

3. Section 193.2057 is amended by revising paragraphs (b) and (c)(1) to read as follows:

§ 193.2057 Thermal radiation protection.

* * * * *

(b) *Measurement.* The exclusion distance "d" is the horizontal distance measured from the impoundment area to the target where the following apply:

(1) The maximum calculated exclusion distance for each thermal flux level shall be used for that exposure (offsite target) in paragraph (d) of this section.

(2) The wind speed producing the maximum exclusion distances shall be used except for wind speeds that occur less than 5 percent of the time based on recorded data for the area.

(3) The ambient temperature and relative humidity that produce the maximum exclusion distance shall be used except that values that occur less than 5 percent of the time based on recorded data for the area shall not be used.

(4) Properties of LNG with the highest anticipated heating value shall be used.

(5) The height of the flame base should be that of any dike or containment in relation to the horizontal reference plane. The height of the target shall be in relation to the same reference plane.

(c) * * *

(1) The method of calculating the exclusion distances for levels of radiant exposure listed in paragraph (d) of this section shall be the method described in Gas Research Institute report GRI–89/0176 and also available as the "LNGFIRE" computer program from GRI.

* * * * *

4. The "Impoundment & Topography Elevation Profile" diagram following § 193.2057(b) of this section is removed.

5. Section 193.2059 is amended by revising paragraphs (c) introductory text and (d)(1)(ii) and adding paragraph (c)(4), to read as follows:

§ 193.2059 Flammable vapor-gas dispersion protection.

* * * * *

(c) *Computing dispersion distance.* A minimum dispersion distance must be computed for the impounding system. If grading and drainage are used under § 193.2149(b), operators must comply with the requirements of this section by assuming the space needed for drainage and collection of spilled liquid in an impounding system. Dispersion distances must be determined in accordance with the following dispersion parameters, using the "DEGADIS" model described in Gas Research Institute report No. GRI 89/0242 titled "LNG Vapor Dispersion Predication with the DEGADIS Dense Gas Dispersion Model", or a model for vapor dispersion which meets the requirements of § 193.2057(c)(2)(ii) through (iv):

* * * * *

(4) A surface roughness factor of 3 cm shall be used. Higher values for the roughness factor may be used if it can be shown that the terrain both upwind and downwind of the vapor cloud has dense vegetation and that the vapor cloud height is more than ten times the height of the obstacles encountered by the vapor cloud.

(d) * * *

(1) * * *

(ii) In determining variations in the vaporization rate due to surface contact, the time necessary to wet 100 percent of the impounding floor area shall be determined by equation C–9 in the 1974 AGA report titled "Evaluation of LNG Vapor Control Methods," or by using an equivalent personal computer program based on equation C–9 or by an alternative model which meets the requirements of § 193.2057(c)(2)(ii) through (iv).

* * * * *

6. Appendix A to Part 193 is amended in subsection I. by revising the entries E., F., G., and H. and adding an entry I., and amended in subsection II. by redesignating entries F. and G. as entries G. and H. and adding a new entry F. to read as follows:

Appendix A to Part 193—Incorporation by Reference

I. List of Organizations and Addresses

* * * * *

E. American Society of Civil Engineers (ASCE), 345 East 47th Street, New York, NY 10017–2398.

F. American Society of Mechanical Engineers (ASME), United Engineering Center, 345 East 47th Street, New York, NY 10017.

G. Gas Research Institute (GRI), 8600 West Bryn Mawr Ave, Chicago, IL 60631.

H. International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, CA 90601.

I. National Fire Protection Association (NFPA), 1 Batterymarch Park, P.O.Box 9101, Quincy, MA 02269–9101.

II. Documents Incorporated by Reference. (Numbers in Parentheses Indicate Applicable Editions)

* * * * *

F. Gas Research Institute (GRI):

1. GRI–89/0176 "LNGFIRE: A Thermal Radiation Model for LNG Fires" (June 29, 1990).

2. GRI–89/0242 "LNG Vapor Dispersion Prediction with the DEGADIS Dense Gas Dispersion Model" (April 1988–July 1990).

* * * * *

Issued in Washington, D.C. on January 23, 1997.

Kelley S. Coyner,

Deputy Administrator.

[FR Doc. 97–4614 Filed 2–24–97; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 970211028–7028–01; I.D. 012397A]

RIN 0648–AJ34

Fisheries of the Northeastern United States; Framework 21 to the Northeast Multispecies Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement measures contained in Framework Adjustment 21 to the Northeast Multispecies Fishery Management Plan (FMP). These regulations allow vessels with general category scallop permits or limited access permits, if not fishing under a days-at-sea (DAS) limitation, to fish for scallops with small dredges (combined width not to exceed (10.5 ft (3.2 m)) within the Gulf of Maine Small Mesh Northern Shrimp Fishery Exemption Area. The intent of this action is to allow small scallop dredge vessels to harvest scallops in a manner that is consistent with the bycatch reduction objectives of the FMP.

EFFECTIVE DATE: February 20, 1997.

ADDRESSES: Copies of Amendment 7 to the FMP (Amendment 7), its regulatory impact review and the initial regulatory flexibility analysis, its final supplemental environmental impact statement (FSEIS), and the supporting documents for Framework Adjustment 21 are available from Christopher B. Kellogg, Acting Executive Director, New England Fishery Management Council, 5 Broadway, (Route 1), Saugus, MA 01906–1097.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 508–281–9273.

SUPPLEMENTARY INFORMATION:

Background

Regulations implementing Amendment 7 became effective on July 1, 1996 (61 FR 27710, May 31, 1996). The amendment prohibited all fishing in the Gulf of Maine small mesh exemption area unless the vessel was fishing under a multispecies or scallop DAS allocation, or with exempted gear, or under the handgear permit restrictions, or in an exempted fishery (a fishery in which it has been determined to have less than 5 percent bycatch of regulated species). Amendment 7, in effect, eliminated fisheries that were determined to be inconsistent with the bycatch reduction goal of the FMP. One of the fisheries eliminated was the General Permit Category, small dredge scallop fishery in the Gulf of Maine (GOM).

Framework Adjustment 21 provides an exemption from the multispecies regulations to allow the conduct of a small dredge (combined width not to exceed 10.5 ft (3.2 m)) sea scallop fishery for General Category scallop permit holders and for limited access scallop vessels when not fishing under a DAS. This exemption is implemented year-round in the Gulf of Maine Small Mesh Exemption Area, except in the Mid-Coast Closure Area, because of high aggregations of cod in that area. Vessels fishing in this exemption program are further prohibited from landing or possessing any species other than Atlantic sea scallops.

This framework adjustment is consistent with the bycatch reduction goal of the FMP, based on the following information. Reports from at-sea observation by state biologists from Maine and Massachusetts indicate minimal or no bycatch from the small dredge scallop fishery. NMFS weighout records of interviewed trips from the GOM during 1988–93 indicate the average bycatch of regulated species was 1.5 percent over the 6-year period. NMFS vessel trip reports from 1994 and 1995 also show minimal amounts of bycatch from this fishery. Based on available information, the New England Fishery Management Council (Council) has concluded, and NMFS agrees, that the bycatch of regulated species by small scallop dredges in the GOM Small Mesh Exemption Area is less than 5 percent by weight of total catch and does not jeopardize fishing mortality objectives or other goals and objectives of the FMP. The States of Maine and Massachusetts have offered observer coverage during the initial implementation of this framework adjustment to assure that the bycatch of regulated species is within the 5 percent level.

The Council recommended publication of this management measure as a final rule after considering the required factors stipulated under the framework measures in the FMP, 50 CFR 648.90, and has provided supporting analyses for each factor considered. The Administrator, Northeast Region, NMFS, concurs with the Council's recommendation and has determined that Framework Adjustment 21 should be published as a final rule.

NMFS is amending the multispecies regulations following the procedure for framework adjustments established by Amendment 7 and codified in 50 CFR part 648. The Council developed and analyzed the actions at two Council meetings held on October 2–3 (61 FR 50796, September 27, 1996) and November 6–7, 1996 (61 FR 56213, October 31, 1996).

Comments and Responses

The October 2–3, 1996, Council meeting was the first of two meetings that provided an opportunity for public comment on Framework Adjustment 21. A draft document containing the proposed management measures and their rationale was available to the public during the last week in September 1996, and notices of the initial and final Council meetings were mailed to approximately 1,900 people and published in the **Federal Register**. The final public hearing was held on November 6–7, 1996. Testimony provided by industry members at the public meetings favored the framework adjustment. No other comments were received.

Classification

This final rule has been determined to be not significant for the purposes of E.O. 12866.

NMFS reinitiated consultation on the Northeast Multispecies, Atlantic Sea Scallop and American Lobster FMPs, and this action was considered as part of this comprehensive consultation. The consultation considered new information concerning the status of the northern right whale. As a result of the consultation, NMFS has determined that: (1) The fishing activities carried out under the Multispecies and Lobster FMPs are likely to jeopardize the continued existence of the northern right whale; (2) the prosecution of the multispecies, lobster, and scallop fisheries will not adversely modify right whale critical habitat; (3) that the current fishing practices allowed under the Lobster FMP and the Multispecies FMP may affect but are not likely to jeopardize the continued existence of the harbor porpoise and the distinct population segment of Atlantic salmon stocks found in certain Maine rivers that are both currently proposed to be listed as threatened; and (4) no new information has become available that changes the basis for previous determinations that the scallop FMP and prosecution of the scallop fishery, which is provided additional fishing opportunity as a result of this action, is not likely to adversely affect endangered, threatened, and proposed species or adversely modify critical habitat. The new information provided above does not change the basis for the conclusions of the 1996 Biological Opinion that the fishing activities carried out under the Lobster and Multispecies FMPs may affect, but are not likely to jeopardize, the continued existence of the other endangered and threatened whale and sea turtle species under NMFS jurisdiction.

The Assistant Administrator for Fisheries, NOAA (AA), under 5 U.S.C. 553(b)(B), finds that there is good cause to waive the requirement to provide prior notice and opportunity for public comment as such procedures are unnecessary. Public meetings held by the Council to discuss the management measure implemented by this rule provided adequate prior notice and opportunity for public comment to be heard and considered. Further, NMFS is responding in this rule to the comments it received during these meetings. This rule removes a prohibition on fishing applied to certain gear types in certain areas, thereby relieving a restriction. As such, under 5 U.S.C. 553(d)(1), this rule is not subject to the 30-day delay in effectiveness.

Because a general notice of proposed rulemaking is not required to be published for this rule by 5 U.S.C. 553 or by any other law, this rule is exempt from the requirement to prepare an initial or final regulatory flexibility analysis under the Regulatory Flexibility Act. As such, none has been prepared. The primary intent for this action is to allow small scallop dredges to harvest scallops in amounts that are consistent with the bycatch reduction objectives of the FMP.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 19, 1997.

Rolland A. Schmitten

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended to read as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.80, paragraph (a)(2)(iii) is revised and paragraph (a)(10) is added to read as follows:

§ 648.80 Regulated mesh areas and restrictions on gear and methods of fishing

* * * * *

(a) * * *

(2) * * *

(iii) *Other gear and mesh exemptions.* The minimum mesh size for any trawl net, sink gillnet, Scottish seine, midwater trawl, or purse seine on a vessel or used by a vessel when fishing in the GOM/GB Regulated Mesh Area while not under the NE multispecies DAS program, but when under one of the exemptions specified in paragraphs (a)(3), (a)(4), (a)(6), (a)(8), (a)(9), (d), (e), (h), and (i) of this section, is set forth in the respective paragraph specifying the exemption. Vessels that are not fishing under one of these exemptions, or under the small dredge exemption specified in § 648.54 and (a)(10) of this section, under the scallop state waters exemption specified in § 648.54, or under a NE multispecies DAS, are prohibited from fishing in the GOM/GB regulated mesh area.

* * * * *

(10) *Scallop Dredge Fishery Exemption within the Gulf of Maine (GOM) Small Mesh Northern Shrimp Fishery Exemption Area.* Vessels with a limited access scallop permit that have declared out of the DAS program as specified in § 648.10, or have used up their DAS allocations, and vessels issued a general scallop permit may fish in the GOM Small Mesh Northern Shrimp Fishery Exemption Area when not under a NE multispecies DAS providing the vessel complies with the requirements specified in paragraph (a)(10)(i) of this section. The GOM Scallop Dredge Fishery Exemption Area is equivalent to the area defined in paragraph (a)(3) of this section and designated as the Small Mesh Northern Shrimp Fishery Exemption Area.

(i) *Requirements.* (A) A vessel fishing in the GOM Scallop Dredge Fishery Exemption Area specified in paragraph (a)(10) of this section, may not fish for, possess on board, or land any species of fish other than Atlantic sea scallops.

(B) The combined dredge width in use by or in possession on board vessels fishing in the GOM Scallop Dredge Fishery Exemption Area shall not exceed 10.5 ft (3.2 m) measured at the widest point in the bail of the dredge. (C) The exemption does not apply to areas closed to meet the Mid-coast closure fishery mortality reduction targets as specified in § 648.81(g).

(ii) [Reserved]

* * * * *

[FR Doc. 97–4590 Filed 2–20–97; 2:27 pm]

BILLING CODE 3510–22–F

50 CFR Part 679

[Docket No. 960502124–6190–02; I.D. 021997E]

Fisheries of the Exclusive Economic Zone Off Alaska; Scallop Fishery; Registration Area D

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the scallop fishery in all districts of Scallop Registration Area D (Yakutat) other than District 16. This action is necessary to prevent exceeding the scallop 1997 total allowable catch (TAC) in this area.

EFFECTIVE DATES: 1200 hrs, Alaska local time (A.l.t.), February 20, 1997, until 2400 hrs, A.l.t., June 30, 1997.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: The scallop fishery in the exclusive economic zone off Alaska is managed by NMFS according to the Fishery Management Plan for the Scallop Fishery Off Alaska (FMP), which was prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing for scallops is governed by regulations appearing at subpart F of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.62(b), the 1997 scallop TAC for all districts of Scallop Registration Area D, other than District 16, was established by the Final 1996 Harvest Specifications of Scallops (61 FR 38099, July 23, 1996) as 250,000 lb (113,430 kg) shucked meat.

In accordance with § 679.62(c), the Administrator, Alaska Region, NMFS, has determined that the scallop TAC for all districts of Scallop Registration Area D, other than District 16, has been reached. Consequently, NMFS is prohibiting the taking and retention of scallops in all districts of Scallop Registration Area D, other than District 16.

Classification

This action is required by § 679.62 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 19, 1997.

Gary Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–4586 Filed 2–20–97; 2:28 pm]

BILLING CODE 3510–22–F

50 CFR Part 679

[Docket No. 961107312–7021–02; I.D. 021997A]

Fisheries of the Exclusive Economic Zone Off Alaska; Offshore Component Pollock in the Bering Sea Subarea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the offshore component in the Bering Sea subarea (BS) of the Bering Sea and Aleutian Islands Management Area (BSAI). This action is necessary to prevent exceeding the first seasonal allowance of the pollock total allowable catch (TAC) apportioned to vessels harvesting pollock for processing by the offshore component in the BS.

EFFECTIVE DATE: 1200 hrs, Alaska local time (A.l.t.), February 20 1997, until 1200 hrs, A.l.t., April 15, 1997.

FOR FURTHER INFORMATION CONTACT: David Ham, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and CFR part 679.

In accordance with § 679.20(c)(3)(iii), the first seasonal allowance of pollock for vessels catching pollock for processing by the offshore component in the BS was established by the Final 1997 Harvest Specifications of Groundfish. The Final 1997 Specifications were published in the **Federal Register** on February 18, 1997 (62 FR 7168).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the first allowance of pollock TAC for vessels catching pollock for processing by the offshore component in the BS soon will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 278,736 mt, and is setting aside the remaining 27,000 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the offshore component in the BS. This closure is effective from February 20, 1997, through 1200 hrs, A.l.t., April 15, 1997. Under § 679.20(a)(5)(i), the second seasonal allowance of pollock TAC will become available for directed fishing at 1200 hrs, A.l.t., September 1. Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 679.20(e) and (f).

Classification

This action is required by § 679.20, and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 19, 1997.

Gary Matlock

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–4589 Filed 2–20–97; 2:27 pm]

BILLING CODE 3510–22–F

50 CFR Part 679

[Docket No. 961107312–7021–02; I.D. 021997C]

Fisheries of the Exclusive Economic Zone Off Alaska; Species in the Rock Sole/Flathead Sole/"Other Flatfish" Fishery Category by Vessels Using Trawl Gear in Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for species in the rock sole/flathead sole/"other flatfish" fishery category by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the first seasonal apportionment of the 1997 Pacific halibut bycatch allowance of halibut specified for the trawl rock sole/flathead sole/"other flatfish" fishery category.

EFFECTIVE DATE: 1200 hrs, Alaska local time (A.l.t.), February 20, 1997, until 1200 hrs, A.l.t., April 1, 1997.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The first seasonal apportionment of the prohibited species bycatch mortality allowance of halibut for the BSAI trawl rock sole/flathead sole/"other flatfish" fishery category, which is defined at § 679.21(e)(3)(iv)(B)(*2*), was established by the Final 1997 Harvest Specifications of Groundfish (62 FR 7168, February 18, 1997) as 485 mt.

In accordance with § 679.21(e)(7)(iv), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the first seasonal apportionment of the 1997 halibut bycatch allowance specified for the trawl rock sole/flathead sole/"other flatfish" fishery in the BSAI has been caught. Consequently, NMFS is closing directed fishing for species in the rock sole/flathead sole/"other flatfish" fishery category by vessels using trawl gear in the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e).

Classification

This action is required by 50 CFR 679.21 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 19, 1997.

Gary Matlock

Director, Office of Sustainable Fisheries, National Marine Fisheries Serivce.

[FR Doc. 97–4588 Filed 2–20–97; 2:28 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 37
Tuesday, February 25, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–94–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320 and Model A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Airbus Model A320 series airplanes, that would have required repetitive inspections to verify proper installation of the plain bushings of the upper and lower connection links on the forward and aft passenger/crew doors, and correction of discrepancies. That AD also would have required replacement of the shouldered bushing on the locking mechanism with a new oversized bushing, which would have terminated the repetitive inspection requirements. That proposal was prompted by a report that, during an emergency evacuation of in-service airplanes, the left aft passenger/crew door jammed against the fuselage structure in a nearly closed position due to bushing migration. This action revises the proposed rule by expanding the applicability of the proposed rule to include additional airplanes; and adding new repetitive inspections and a terminating modification for those new airplanes. The actions specified by this proposed AD are intended to prevent jamming of the passenger/crew door, which could delay or impede the evacuation of passengers during an emergency.

DATES: Comments must be received by March 17, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–94–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Charles Huber, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1100.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–94–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–94–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Airbus Model A320 and Model A320 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on August 30, 1994 (59 FR 44670). That NPRM would have required repetitive detailed visual inspections to verify proper installation of the plain bushings of the upper and lower connection links on the forward and aft passenger/crew doors, and correction of discrepancies. That NPRM also would have required replacement of the shouldered bushing on the locking mechanism with a new oversized bushing, which would have terminated the repetitive inspection requirements. That NPRM was prompted by a report that, during an emergency evacuation of in-service airplanes, the left aft passenger/crew door jammed against the fuselage structure in a nearly closed position due to bushing migration. That condition, if not corrected, could delay or impede the evacuation of passengers during an emergency.

Actions Prompting This Supplemental Proposal

Several commenters who responded to the original notice pointed out that the applicability of the proposed AD should be revised to include Airbus Model A320 and Model A321 series airplanes, on which Airbus Modification 22422 (reference Airbus Service Bulletin A320–52–1027) was installed during production. The unsafe condition (i.e., bushing migration) addressed by the proposal has also occurred on these airplanes, and Airbus has issued service information that contains new procedures for addressing the unsafe condition on these airplanes.

Explanation of New Relevant Service Information

Since issuance of the NPRM, Airbus has issued All Operators Telex (AOT) 52–07, dated July 28, 1994, and Service Bulletin A320–52–1066, dated March 6, 1995. These service documents describe procedures for performing repetitive detailed visual inspections to verify proper installation of the plain bushings of the upper and lower connection links.

Airbus also has issued Service Bulletin A320–52–1064, Revision 1, dated September 8, 1995, which describes procedures for modification of the frame segment bushings. The modification involves replacing the plain bushing with a shouldered bushing on the frame used for attachment of the connection links. Accomplishment of the modification would eliminate the need for the repetitive detailed visual inspections.

The effectivity listing of these service documents includes certain additional Airbus Model A320 and Model A321 series airplanes that are subject to the unsafe condition. (These airplanes were not identified in the applicability of the original NPRM.)

The Direction Générale de l'Aviation Civile (DGAC), which the airworthiness authority for France, classified these service documents as mandatory and issued French airworthiness directive 95–004–062(B)R1, dated May 10, 1995, in order to assure the continued airworthiness of these airplanes in France.

FAA's Action

In light of this new information, the FAA has revised the applicability of the proposal to include the additional airplanes listed in the new Airbus service documents. For these additional airplanes, the FAA also has revised the proposal to include new requirements for accomplishing the procedures specified in those service bulletins. The actions that were proposed in the originally-issued NPRM for the other affected airplanes are retained in this supplemental NPRM.

In addition, the FAA has increased the labor rate used in the cost impact calculations, below, from $55 per work hour to $60 per work hour. The $60 figure more accurately represents the current labor rate in the aviation industry.

Conclusion

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

The FAA estimates that 94 Airbus Model A320 and Model A321 series airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 6 work hours per airplane to accomplish the proposed detailed visual inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the modification proposed AD on U.S. operators is estimated to be $33,840, or $360 per airplane, per inspection cycle.

For certain airplanes, it would take approximately 72 work hours per airplane to accomplish the proposed modification, at an average labor rate of $60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the modification proposed AD on U.S. operators is estimated to be $406,080, or $4,320 per airplane.

For certain other airplanes, it would take approximately 53 work hours per airplane to accomplish the proposed modification, at an average labor rate of $60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the modification proposed AD on U.S. operators is estimated to be $298,920, or $3,180 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 94–NM–94–AD.

Applicability: Model A320 and Model A321 series airplanes; on which Airbus Modification 22422 (reference Airbus Service Bulletin A320–52–1027) has been installed, or Airbus Modification 24497 (reference Airbus Service Bulletin A320–52–1064) has not been installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent jamming of the passenger/crew door, which could delay or impede the evacuation of passengers during an emergency, accomplish the following:

(a) For Model A320 series airplanes on which Airbus Modification 22422 (reference Airbus Service Bulletin A320–52–1027) has not been accomplished: Within 450 flight hours after the effective date of this AD, perform a detailed visual inspection to verify proper installation of the plain bushings of the upper and lower connection links on the forward and aft passenger/crew doors, in

accordance with Airbus Service Bulletin A320–52–1047, dated April 25, 1994.

(1) If all bushings are installed properly, repeat the inspection thereafter at intervals not to exceed 900 flight hours until the modification required by paragraph (c) of this AD is accomplished.

(2) If any bushing has migrated, prior to further flight, remove the passenger/crew door and visually inspect the bushing to detect damage, in accordance with the service bulletin.

(i) If the bushing housings are not damaged, prior to further flight, reinstall the bushing in accordance with the service bulletin. Repeat the detailed visual inspections of the bushings thereafter at intervals not to exceed 450 flight hours until the modification required by paragraph (b) of this AD is accomplished.

(ii) If any bushing housing is damaged, prior to further flight, ream the door structure and install an oversize shouldered bushing, in accordance with the service bulletin. If the damage is not completely removed after reaming, prior to further flight, repair the bushing housing in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(b) For Model A320 and Model A321 series airplanes; on which Airbus Modification 22422 (reference Airbus Service Bulletin A320–52–1027) has been installed, and Airbus Modification 24497 (reference Airbus Service Bulletin A320–52–1064) has not been installed: Within 450 flight hours after the effective date of this AD, perform a detailed visual inspection to verify proper installation of the plain bushings of the upper and lower connection links (2 bushings per door), in accordance with Airbus All Operators Telex AOT 52–07, dated July 28, 1994, or Airbus Service Bulletin A320–52–1066, dated March 6, 1995.

(1) If the bushings are installed properly, repeat the detailed visual inspection thereafter at intervals not to exceed 900 flight hours.

(2) If any bushing is found to be improperly installed, prior to further flight, modify the frame segment bushings in accordance with Airbus Service Bulletin A320–52–1064, Revision 1, dated September 8, 1995. Accomplishment of the modification constitutes terminating action for the requirements of this AD.

(c) For Model A320 series airplanes on which Airbus Modification 22422 (reference Airbus Service Bulletin A320–52–1027) has not been accomplished: Within 3,500 flight hours after the effective date of this AD, replace the shouldered bushing on the locking mechanism with a new oversized bushing (Kit No. 521027A02), in accordance with Airbus Service Bulletin A320–52–1027, Revision 2, dated February 18, 1993, or Revision 3, dated December 10, 1993. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirements of paragraph (a) of this AD.

(d) For Model A320 and Model A321 series airplanes on which Airbus Modification 22422 (reference Airbus Service Bulletin A320–52–1027) has been installed, and Airbus Modification 24497 (reference Airbus Service Bulletin A320–52–1064) has not been installed: Within 15 months after the effective date of this AD, modify the frame segment bushing in accordance with Airbus Service Bulletin A320–52–1064, Revision 1, dated September 8, 1995. Accomplishment of the modification constitutes terminating action for the repetitive detailed visual inspection requirements of paragraph (b) of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 19, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–4556 Filed 2–24–97; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 96–AWP–34]

Proposed Revision of Class D and Class E Airspace; Los Angeles, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws the Notice of Proposed Rulemaking (NPRM) to revise the Class D and Class E airspace areas at Los Angeles Hawthorne Municipal Airport, CA. The NPRM is being withdrawn as a result of the complexity of the air traffic procedures and operations in this area. Further analysis is necessary to reduce the complexity and incorporate appropriate changes into the airspace design.

DATES: The proposed rule is withdrawn as of February 25, 1997.

FOR FURTHER INFORMATION CONTACT: William Buck, Airspace Specialist, Operations Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, Docket No. 96–AWP–34, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6556.

SUPPLEMENTARY INFORMATION:

The Proposed Rule

On January 8, 1997, a Notice of Proposed Rulemaking was published in the **Federal Register** to revise the Class D and Class E airspace areas at Los Angeles Hawthorne Municipal Airport, CA (62 FR 1063). During airspace reclassification, the Hawthorne Airport Traffic Area (ATA) and the Los Angeles ATA were combined to form the Hawthorne Class D airspace. Action was initiated to redesign the Los Angeles Hawthorne Municipal Airport surface areas to reduce the complexity of air traffic procedures within this area.

Conclusion

The proposed action would have resulted in a reduction of the surface areas for the Los Angeles Hawthorne Municipal Airport, CA. The proposal would not have reduced the complexity of the air traffic procedures and operations in this area. Further analysis is necessary to incorporate appropriate changes into the airspace design.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Withdrawal of Proposed Rule

Accordingly, pursuant to the authority delegated to me, Airspace Docket No. 96–AWP–34, as published in the **Federal Register** on January 8, 1997 (62 FR 1063), is hereby withdrawn.

Issued in Los Angeles, California, on February 5, 1997.

Leonard A. Mobley,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 97–4579 Filed 2–24–97; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 97–AEA–14]

Proposed Establishment of Class E Airspace, Kutztown, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish Class E Airspace at Kutztown, PA. The development of a new Standard Instrument Approach Procedure (SIAP) at Kutztown Airport based on the VHF Omni-Directional Radio Range (VOR) and Global Positioning System (GPS) has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for Instrument Flight Rules (IFR) operations to the airport. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before March 30, 1997.

ADDRESSES: Send comments on the proposed rule in triplicate to: Manager, Operations Branch, AEA–530, Docket No. 97–AEA–14, F.A.A. Eastern Region, Federal Building # 111, John F. Kennedy Int'l Airport, Jamaica, NY 11430. The official docket may be examined in the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building # 111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Operations Branch, AEA–530, F.A.A. Eastern Region, Federal Building # 111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Operations Branch, AEA–530, F.A.A. Eastern Region, Federal Building # 111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–AEA–14". The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building # 111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace extending upward from 700 feet above the surface (AGL) at Kutztown, PA. A VOR or GPS A SIAP has been developed for Kutztown Airport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for IFR operations at the airport. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace extending upward from 700 feet above the surface are published in Paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA E5 Kutztown, PA [New]

Kutztown Airport, PA

(Lat. 40°30'13" N, long. 75°47'14" W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Kutztown Airport, excluding the portions that coincides with the Allentown, PA, and Reading, PA Class E airspace areas.

* * * * *

Issued in Jamaica, New York, on February 12, 1997.

James K. Buckles,

Acting Manager, Air Traffic Division, Eastern Region.

[FR Doc. 97–4580 Filed 2–24–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 47 and 55

[Notice No. 847]

RIN 1512–AB63

Implementation of Public Law 104–132, the Antiterrorism and Effective Death Penalty Act of 1996, Relating to the Marking of Plastic Explosives for the Purpose of Detection (96R–029P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Proposed rulemaking.

SUMMARY: In the Rules and Regulations portion of this **Federal Register**, the Bureau of Alcohol, Tobacco and Firearms (ATF) is issuing temporary regulations regarding the implementation of certain provisions of the Antiterrorism and Effective Death Penalty Act of 1996 (Pub. L. 104–132). These regulations implement the law by requiring detection agents to mark plastic explosives and provides for the designation of other detection agents. The temporary regulations also serve as the text of this notice of proposed rulemaking for final regulations.

DATES: Written comments must be received on or before May 27, 1997.

ADDRESSES: Send written comments to: Chief, Regulations Branch; Bureau of Alcohol, Tobacco and Firearms; P.O. Box 50221; Washington, DC 20091–0221; *ATTN: Notice No. 847.*

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–8230).

SUPPLEMENTARY INFORMATION:

Executive Order 12866

It has been determined that this proposed rule is not a significant regulatory action as defined in E.O. 12866, because the economic effects flow directly from the underlying statute and not from this temporary rule. Therefore, a regulatory assessment is not required.

Regulatory Flexibility Act

It is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. The revenue effects of this rulemaking on small businesses flow directly from the underlying statute. Likewise, any secondary or incidental effects, and any reporting, recordkeeping, or other compliance burdens flow directly from the statute.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Office of Information and Regulatory Affairs, Washington, DC, 20503, with copies to the Chief, Document Services Branch, Room 3450, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the function of the Bureau of Alcohol, Tobacco and Firearms, including whether the information will have practical utility; the accuracy of the estimated burden associated with the proposed collection of information (see below), and; how the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology.

The collection of information in this proposed regulation is in 27 CFR 55.184(a). This information is required to ensure compliance with the provisions of Public Law 104–132. This information will be used to ensure that plastic explosives contain a detection agent as required by law. The collection of information is mandatory. The likely respondents are individuals and businesses.

Estimated total annual reporting burden: 96 hours.

Estimated average annual burden hours per respondent: 12 hours.

Estimated number of respondents: 8.

Estimated annual frequency of responses: quarterly.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Public Participation

ATF requests comments on the temporary regulations from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing should submit his or her request, in writing, to the Director within the 90-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing is necessary.

The temporary regulations in this issue of the **Federal Register** amend the regulations in 27 CFR Part 55. For the text of the temporary regulations, see T.D. ATF 387 published in the Rules and Regulations section of this issue of the **Federal Register**.

Drafting Information

The author of this document is James P. Ficaretta, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

Dated: December 3, 1996.

John W. Magaw,

Director.

Approved: January 3,1997.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary, (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 97–4558 Filed 2–24–97; 8:45 am]

BILLING CODE 4810–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD040–3010b and MD048–3011b; FRL–5688–4]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Control of Volatile Organic Compound Emissions From Open Fires, "Once-in, Always-in," and Definition for the Term "Annual"

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Maryland on July 12, 1995 and July 17, 1995. These revisions establish a definition for the term "annual," expand Maryland's once-in, always-in provisions, and institute an open burning ban in Maryland's serious and severe ozone nonattainment areas during the summer months. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by March 27, 1997.

ADDRESSES: Written comments on this action should be addressed to David L. Arnold, Chief, Ozone/CO and Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107 and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Maria A. Pino, (215) 566–2181, at the EPA Region III office address listed above, or via e-mail at pino.maria@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above Region III address.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title, pertaining to Maryland's open fires regulation, once-in, always-in provision, and definition for the term annual, which is located in the Rules and Regulations Section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: January 31, 1997.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 97–4523 Filed 2–24–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[OH102–1b; FRL–5675–4]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Ohio on August 30, 1996, which would provide Ford Motor Company an extended exemption from opacity limitations for start-up of coal-fired boilers at its Cleveland Engine Plant 1. This revision would extend the exemption from 3 hours to 6 hours after start-up. In the Final Rules section of this **Federal Register**, USEPA is approving this SIP revision as a direct final rule without prior proposal because the agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. However, if the USEPA receives significant adverse comments which have not been previously addressed, the direct final rule will be withdrawn and the public comments received will be addressed in a subsequent final rule based on this proposed rule. The USEPA does not plan a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by March 27, 1997.

ADDRESSES: Copies of the revision request are available for inspection at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone John Summerhays at (312) 886–6067 before visiting the Region 5 Office.)

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Summerhays, at (312) 886–6067.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: January 30, 1997.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 97–4521 Filed 2–24–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[OR34–1–6136b, OR51–7266b, OR58–7273b; FRL–5680–4]

Approval and Promulgation of State Implementation Plans: Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Environmental Protection Agency (EPA) proposes to approve revisions to Oregon's State Implementation Plan (SIP). EPA is proposing to approve revisions to Oregon Administrative Rules (OAR) Chapter 340, Divisions 21 through 24, 26, 27, 30, and 34 submitted to EPA on May 28, 1993, a revision to Division 22 submitted to EPA on September 27, 1995, and revisions to Division 20, 21, 22, 25, 27, and 30 submitted to EPA on October 8, 1996, to satisfy the requirements of section 110 of the Clean Air Act (CAA) and 40 CFR part 51.

In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action.

DATES: Comments on this proposed rule must be received in writing by March 27, 1997.

ADDRESSES: Written comments should be addressed to Montel Livingston,

Environmental Protection Specialist (OAQ–107), Office of Air Quality, at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations: Environmental Protection Agency, Region 10, Office of Air Quality, 1200 6th Avenue, Seattle, WA 98101. Oregon Department of Environmental Quality, 811 SW Sixth Avenue, Portland, Oregon 97204–1390.

FOR FURTHER INFORMATION CONTACT: Catherine Woo, Office of Air Quality, (OAQ–107), EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553–1814.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

Dated: January 15, 1997.

Charles Findley,

Acting Regional Administrator.

[FR Doc. 97–4520 Filed 2–24–97; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 81

[PA034–4054b; FRL–5688–6]

Clean Air Act Promulgation of Extension of Attainment Date for the Pittsburgh-Beaver Valley Moderate Ozone Nonattainment Area; Pennsylvania

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to extend the attainment date for the Pittsburgh-Beaver County moderate ozone nonattainment area in Pennsylvania to November 15, 1997. This extension is based in part on monitored air quality readings for the national ambient air quality standard (NAAQS) for ozone during 1996. Accordingly, EPA proposes to update the table in 40 CFR part 81 concerning attainment dates in the State of Pennsylvania. A detailed rationale for the approval is set forth in the direct final rule and accompanying technical support document. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule.

EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by March 27, 1997.

ADDRESSES: Written comments may be mailed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Marcia L. Spink at (215) 566–2104, or by e-mail at spink.marcia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671.

Dated: February 5, 1997.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 97–4120 Filed 2–24–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[CC Docket No. 96–115, DA 97–385]

Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; Request for Further Comment on Specific Questions in CPNI Rulemaking

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission's Common Carrier Bureau is issuing this Public Notice seeking further comment to supplement the record in the rulemaking proceeding that the Commission initiated on May 17, 1996 to implement the customer proprietary network information ("CPNI") requirements of section 222 of the Telecommunications Act of 1996 ("1996 Act"). The objective of the Public Notice is to provide an additional opportunity for public comment on specific issues in that rulemaking and to provide a record for a Commission decision on those issues.

DATES: Comments are due on or before March 17, 1997, and reply comments are due on or before March 27, 1997.

ADDRESSES: Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Room 222, 1919 M Street, N.W. Washington, D.C. Comments and reply comments should reference CC Docket No. 96–115. Parties should also send two copies of their comments and reply comments to Janice M. Myles of the Common Carrier Bureau, Room 544, 1919 M Street, N.W., Washington, D.C. 20554, (202)418–1577, as well as one copy to the Commission's copy contractor, International Transcription Service, Room 140, 2100 M Street, N.W., Washington, D.C. 20037, at (202)857–3800. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. 20554. Parties are also asked to submit comments and reply comments on diskette. Such diskette submissions would be in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to Janice M. Myles of the Common Carrier Bureau and to International Transcription Service at the above addresses. Each such submission should be on a 3.5 inch diskette in an IBM compatible format using WordPerfect 5.1 for Windows software in a "read only" mode. The diskette should be clearly labelled with the party's name, proceeding, and date of submission. The diskette should be accompanied by a cover letter.

FOR FURTHER INFORMATION CONTACT: Dorothy Tyyne Attwood, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580.

SUPPLEMENTARY INFORMATION: This is text of the Commission's Common Carrier Bureau's Public Notice adopted and released February 20, 1997 (DA 97–385).

Text of Public Notice

Common Carrier Bureau Seeks Further Comment on Specific Questions in CPNI Rulemaking

CC DOCKET No. 96–115

Comment Date: March 17, 1997.
Reply Comment Date: March 27, 1997.

1. On May 17, 1996, the Commission released *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, Notice of Proposed Rulemaking, 61 FR 43031, August 20, 1996 (NPRM), initiating a proceeding to implement the customer proprietary network information (CPNI) requirements of section 222 of the Telecommunications Act of 1996 (1996 Act). The *CPNI NPRM* sought comment on, among other things: (1) the scope of the phrase "telecommunications service," as it is used in section 222; (2) when telecommunications carriers may use, disclose, or permit access to individually identifiable CPNI absent customer approval; and (3) the requirements for customer approval.

2. On December 24, 1996, the Commission released *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, First Report and Order and Further Notice of Proposed Rulemaking, 62 FR 2991, January 21, 1997 (*Non-Accounting Safeguards Order*), which adopted rules and policies governing the Bell Operating Companies' (BOCs') provision of certain services through section 272 affiliates. In paragraph 222 of that Order, the Commission concluded that the nondiscrimination provisions of section 272(c)(1) govern the BOCs' use of CPNI and that BOCs must comply with the requirements of both section 222 and section 272(c)(1). Section 272(c)(1) requires that a BOC not discriminate between its section 272 affiliate and other entities in, among other things, the provision of services and information. In paragraph 222 of the *Non-Accounting Safeguards Order*, however, the Commission deferred to the CPNI rulemaking proceeding issues concerning the interplay between section 222 and section 272(c)(1). In paragraph 300 of that Order, the Commission deferred to the CPNI proceeding issues that concern the interplay between the joint marketing restrictions of section 272(g) and section 222. The Commission emphasized, however, that if a BOC markets or sells the services of its section 272 affiliate pursuant to section 272(g), it must comply with the statutory requirements of section 222 and any rules promulgated thereunder.

3. On February 7, 1997, the Commission released *Implementation of the Telecommunications Act of 1996: Telemessaging, Electronic Publishing, and Alarm Monitoring Services*, First Report and Order and Further Notice of Proposed Rulemaking, 62 FR 7690, February 20, 1997 (*Electronic Publishing Order*), which adopted policies and rules governing, among other things, BOC provision of electronic publishing under section 274. Section 274 permits BOCs to provide electronic publishing services only through a "separated affiliate" or "electronic publishing joint venture" that meets certain separation, nondiscrimination, and joint marketing requirements. In paragraph 142 of that Order, the Commission deferred to the CPNI proceeding any decision on the extent, if any, that section 222 affects implementation of the joint marketing provisions of section 274. In paragraph 169 of that Order, the Commission also deferred to this proceeding the following issues: (1) Whether the term "basic telephone service information," as defined in section 274(i)(3), includes CPNI; (2) whether section 222 requires a BOC engaged in permissible marketing activities under section 274(c)(2) to obtain customer approval before using, disclosing, or permitting access to CPNI; and (3) whether or to what extent section 274(c)(2)(B) imposes any obligations on BOCs that use, disclose, or permit access to CPNI pursuant to a "teaming" or "business arrangement" under that section.

4. Comments and reply comments in the CPNI proceeding were received on June 11, 1996 and June 26, 1996, respectively. In view of the Commission's determinations in the *Non-Accounting Safeguards and Electronic Publishing* Orders, the Common Carrier Bureau (Bureau) seeks further comment to supplement the record in the CPNI proceeding on specific issues relating to the subjects previously noticed in this proceeding and their interplay with sections 272 and 274. Specifically, interested parties are invited to file comments and reply comments on the attached list of questions. Commenters should address these questions in the order in which they are presented and should restate and highlight each question above their responses. Commenters should identify specific statutory language or legislative history that supports their arguments and address the impact of their positions on customer privacy and competition. The comments should not exceed 40 pages; reply comments should not exceed 25 pages. Comments should be filed on or before March 17, 1997. Any reply comments should be filed on or before March 27, 1997.

5. Neither this public notice nor the attached questions resolve any of the issues in the CPNI rulemaking. To help focus the parties' responses, however, certain individual questions include assumptions as to how the Commission might resolve specific issues in the rulemaking. Commenters should not construe these assumptions or any other aspect of the questions as indicating how the Bureau might advise the Commission with regard to those issues or how the Commission might resolve them.

6. Interested parties must file an original and four copies of their comments and reply comments with the Office of the Secretary, Federal Communications Commission, Room 222, 1919 M Street, N.W., Washington, D.C. 20554. Comments and reply comments should reference CC Docket No. 96–115. Parties should also send two copies of their comments and reply comments to Janice M. Myles of the Common Carrier Bureau, Room 544, 1919 M Street, N.W., Washington, D.C. 20554, (202) 418–1577, as well as one copy to the Commission's copy contractor, International Transcription Service, Room 140, 2100 M Street, N.W., Washington, D.C. 20037, at (202) 857–3800. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. 20554.

7. Parties are also asked to submit comments and reply comments on diskette. Such diskette submissions would be in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to Janice M. Myles of the Common Carrier Bureau and to International Transcription Service at the above addresses. Each such submission should be on a 3.5 inch diskette in an IBM compatible format using WordPerfect 5.1 for Windows software in a "read only" mode. The diskette should be clearly labelled with the party's name, proceeding, and date of submission. The diskette should be accompanied by a cover letter.

8. For further information contact: Dorothy Tyyne Attwood, (202) 418–1580.

Federal Communications Commission.

A. Richard Metzger, Jr.,

Deputy Chief, Common Carrier Bureau.

Note: This attachment will not be published in the Code of Federal Regulations.

Attachment

Questions

I. Interplay Between Section 222 and Section 272

A. Using, Disclosing, and Permitting Access to CPNI

1. Does the requirement in section 272(c)(1) that a BOC may not discriminate between its section 272 "affiliate and any other entity in the provision or procurement of * * * services * * * and information * * *" mean that a BOC may use, disclose, or permit access to CPNI for or on behalf of that affiliate only if the CPNI is made available to all other entities? If not, what obligation does the nondiscrimination requirement of section 272(c)(1) impose on a BOC with respect to the use, disclosure, or permission of access to CPNI?

2. If a telecommunications carrier may disclose a customer's CPNI to a third party only pursuant to the customer's "affirmative written request" under section 222(c)(2), does the nondiscrimination requirement of section 272(c)(1) mandate that a BOC's section 272 affiliate be treated as a third party for which the BOC must have a customer's affirmative written request before disclosing CPNI to that affiliate?

3. If a telecommunications carrier may disclose a customer's CPNI to a third party only pursuant to the customer's "affirmative written request" under section 222(c)(2), must carriers, including interexchange carriers and independent local exchange carriers (LECs), treat their affiliates and other intra-company operating units (such as those that originate interexchange telecommunications services in areas where the carriers provide telephone exchange service and exchange access) as third parties for which customers' affirmative written requests must be secured before CPNI can be disclosed? Must the answer to this question be the same as the answer to question 2?

B. Customer Approval

4. If sections 222(c)(1) and 222(c)(2) require customer approval, but not an affirmative

written request, before a carrier may use, disclose, or permit access to CPNI, must a BOC disclose CPNI to unaffiliated entities under the same standard for customer approval as is permitted in connection with its section 272 affiliate? If, for example, a BOC may disclose CPNI to its section 272 affiliate pursuant to a customer's oral approval or a customer's failure to request non-disclosure after receiving notice of an intent to disclose (i.e., opt-out approval), is the BOC required to disclose CPNI to unaffiliated entities upon the customer's approval pursuant to the same method?

5. If sections 222(c)(1) and 222(c)(2) require customer approval, but not an affirmative written request, before a carrier may use, disclose, or permit access to CPNI, must each carrier, including interexchange carriers and independent LECs, disclose CPNI to unaffiliated entities under the same standard for customer approval as is permitted in connection with their affiliates and other intra-company operating units?

6. Must a BOC that solicits customer approval, whether oral, written, or opt-out, on behalf of its section 272 affiliate also offer to solicit that approval on behalf of unaffiliated entities? That is, must the BOC offer an "approval solicitation service" to unaffiliated entities, when it provides such a service for its section 272 affiliate? If so, what specific steps, if any, must a BOC take to ensure that any solicitation it makes to obtain customer approval does not favor its section 272 affiliate over unaffiliated entities? If the customer approves disclosure to both the BOC's section 272 affiliate and unaffiliated entities, must a BOC provide the customer's CPNI to the unaffiliated entities on the same rates, terms, and conditions (including service intervals) as it provides the CPNI to its section 272 affiliate?

C. Other Issues

7. If, under sections 222(c)(1), 222(c)(2), and 272(c)(1), a BOC must not discriminate between its section 272 affiliate and non-affiliates with regard to the use, disclosure, or the permission of access to CPNI, what is the meaning of section 272(g)(3), which exempts the activities described in sections 272(g)(1) and 272(g)(2) from the nondiscrimination obligations of section 272(c)(1)? What specific obligations with respect to the use, disclosure, and permission of access to CPNI do sections 222(c)(1) and 222(c)(2) impose on a BOC that is engaged in the activities described in sections 272(g)(1) and 272(g)(2)?

8. To what extent is soliciting customer approval to use, disclose, or permit access to CPNI an activity described in section 272(g)? To the extent that a party claims that CPNI is essential for a BOC or section 272 affiliate to engage in any of the activities described in section 272(g), please describe in detail the basis for that position. To the extent that a party claims that CPNI is not essential for a BOC or section 272 affiliate to engage in those activities, please describe in detail the basis for that position.

9. Does the phrase "information concerning [a BOC's] provision of exchange access" in section 272(e)(2) include CPNI as defined in section 222(f)(1)? Does the phrase "services * * * concerning [a BOC's] provision of exchange access" in section 272(e)(2) include CPNI-related approval solicitation services? If such information or services are included, what must a BOC do to comply with the requirement in section 272(e)(2) that a BOC "shall not provide any * * * services * * * or information concerning its provision of exchange access to [its affiliate] unless such * * * services * * * or information are made available to other providers of interLATA services in that market on the same terms and conditions"?

10. Does a BOC's seeking of customer approval to use, disclose, or permit access to CPNI for or on behalf of its section 272 affiliate constitute a "transaction" under section 272(b)(5)? If so, what steps, if any, must a BOC and its section 272 affiliate take to comply with the requirements of section 272(b)(5) for purposes of CPNI?

11. Please comment on any other issues relating to the interplay between sections 222 and 272.

12. Please propose any specific rules that the Commission should adopt to implement section 222 consistent with the provisions of section 272.

II. Interplay Between Section 222 and Section 274

A. Threshold Issues

13. To what extent, if any, does the term "basic telephone service information," as used in section 274(c)(2)(B) and defined in section 274(i)(3), include information that is classified as CPNI under section 222(f)(1)?

B. Using, Disclosing, and Permitting Access to CPNI

(i). Section 274(c)(2)(A)—Inbound Telemarketing or Referral Services

14. Does section 274(c)(2)(A) mean that a BOC that is providing "inbound telemarketing or referral services related to the provision of electronic publishing" to a separated affiliate, electronic publishing joint venture, or affiliate may use, disclose, or permit access to CPNI in connection with those services only if the CPNI is made available, on nondiscriminatory terms, to all unaffiliated electronic publishers who have requested such services? If not, what obligation does the nondiscrimination requirement of section 274(c)(2)(A) impose on a BOC with respect to the use, disclosure, or permission of access to CPNI?

(ii). Section 274(c)(2)(B)—Teaming or Business Arrangements

15. To the extent that basic telephone service information is also CPNI, should section 274(c)(2)(B) be construed to mean that a BOC, engaged in an electronic publishing "teaming" or "business arrangement" with "any separated affiliate or any other electronic publisher," may use, disclose, or permit access to basic telephone service information that is CPNI in connection with that teaming or business arrangement only if such CPNI is also made available on a nondiscriminatory basis to other teaming or business arrangements and unaffiliated electronic publishers? If not, what obligation does the nondiscrimination requirement of section 274(c)(2)(B) impose on a BOC with respect to the use, disclosure, or permission of access to CPNI?

16. If section 222(c)(2) permits a BOC to disclose a customer's CPNI to a third party only pursuant to the customer's "affirmative written request," does section 274(c)(2)(B) require that the entities, both affiliated and non-affiliated, engaged in section 274 teaming or business arrangements with the BOC be treated as third parties for which the BOC must have a customer's affirmative written request before disclosing CPNI to such entities?

(iii). Section 274(c)(2)(C)—Electronic Publishing Joint Ventures

17. Should section 274(c)(2)(C) be construed to mean that an electronic publishing joint venture be treated as a third party for which the BOC must have a customer's approval, whether oral, written, or opt-out, before disclosing CPNI to that joint venture or to joint venture partners?

C. Customer Approval

(i). Section 274(c)(2)(A)—Inbound Telemarketing or Referral Services

18. Must a BOC that is providing inbound telemarketing or referral services to a "separated affiliate, electronic publishing joint venture, affiliate, or unaffiliated electronic publisher" under section 274(c)(2)(A) obtain customer approval pursuant to section 222(c) before using, disclosing, or permitting access to CPNI on behalf of such entities? If so, what forms of customer approval (oral, written, or opt-out) would be necessary to permit a BOC to use a customer's CPNI on behalf of each of these entities in this situation? What impact, if any, does section 222(d)(3) have on the forms of customer approval in connection with section 274(c)(2)(A) activities?

19. Must a BOC that solicits customer approval, whether oral, written, or opt-out, on behalf of its separated affiliate or electronic publishing joint venture also offer to solicit that approval on behalf of unaffiliated entities? That is, must the BOC offer an "approval solicitation service" to unaffiliated electronic publishers when it provides such a service for its section 274 separated affiliates, electronic publishing joint ventures, or affiliates under section 274(c)(2)(A)? What impact, if any, does section 222(d)(3) have on the BOC's obligations under section 274(c)(2)(A) with regard to the solicitation of a customer's approval during a customer-initiated call? What specific steps, if any, must a BOC take to ensure that any solicitation it makes to obtain customer approval does not favor its section 274 separated affiliates or electronic publishing joint ventures or affiliates over unaffiliated entities? If the customer approves disclosure to both the BOC's section 274 separated affiliates or electronic publishing joint ventures or affiliates and unaffiliated entities, must a BOC provide the customer's CPNI to the unaffiliated entities on the same rates, terms, and conditions (including service intervals) as it provides the CPNI to its section 274 separated affiliates or electronic publishing joint ventures or affiliates?

20. To the extent that sections 222(c)(1) and 222(d)(3) require customer approval, but not an affirmative written request, before a carrier may use, disclose, or permit access to CPNI, must a BOC disclose CPNI to unaffiliated electronic publishers under the same standard for customer approval as is permitted in connection with its section 274 separated affiliate, electronic publishing joint venture, or affiliate under section 274(c)(2)(A)? If, for example, a BOC may disclose CPNI to its section 274 separated affiliate pursuant to the customer's oral or opt-out approval, is the BOC required to disclose CPNI to unaffiliated entities upon the customer's approval pursuant to the same method?

(ii). Section 274(c)(2)(B)—Teaming or Business Arrangements

21. Must a BOC, that is engaged in a teaming or business arrangement under section 274(c)(2)(B) with "any separated affiliate or with any other electronic publisher," obtain customer approval before using, disclosing, or permitting access to CPNI for such entities? What forms of customer approval (oral, written, or opt-out) would be necessary to permit a BOC to use a customer's CPNI on behalf of each of these entities in this situation?

22. Must a BOC that solicits customer approval, whether oral, written, or opt-out, on behalf of any of its teaming or business arrangements under section 274(c)(2)(B) also offer to solicit that approval on behalf of other teaming arrangements and unaffiliated electronic publishers? That is, must the BOC offer an "approval solicitation service" to unaffiliated electronic publishers and teaming arrangements when it provides such a service for any of its teaming or business arrangements under section 274(c)(2)(B)? If so, what specific steps, if any, must a BOC take to ensure that any solicitation it makes to obtain customer approval does not favor its electronic publishing teaming or business arrangements over unaffiliated entities? If the customer approves disclosure to both the BOC's electronic publishing teaming or business arrangements and unaffiliated entities, must a BOC provide the customer's CPNI to the unaffiliated entities on the same rates, terms, and conditions (including service intervals) as it provides the CPNI to its electronic publishing teaming or business arrangements?

23. To the extent that sections 222(c)(1) and 222(c)(2) require customer approval, but not an affirmative written request, before a carrier may use, disclose, or permit access to CPNI, must a BOC disclose CPNI to unaffiliated electronic publishers under the same standard for customer approval as is permitted in connection with its teaming or business arrangements under section 274(c)(2)(B)? If, for example, a BOC may disclose CPNI to a section 274 separated affiliate with which the BOC has a teaming arrangement pursuant the customer's oral or opt-out approval, is the BOC likewise required to disclose CPNI to unaffiliated electronic publishers or teaming arrangements upon obtaining approval from the customer pursuant to the same method?

D. Other Issues

24. Does the seeking of customer approval to use, disclose, or permit access to CPNI for or on behalf of its section 274 separated affiliate or electronic publishing joint venture constitute a "transaction" under section 274(b)(3)? If so, what steps, if any, must the BOC and its section 274 separated affiliate or electronic publishing joint venture take to comply with the requirements of section 274(b)(3) for purposes of CPNI?

25. Please comment on any other issues relating to the interplay between sections 222 and 274.

26. Please propose any specific rules that the Commission should adopt to implement section 222 consistent with the provisions of section 274?

[FR Doc. 97–4760 Filed 2–24–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD35

Endangered and Threatened Wildlife and Plants; Notice of Reopening of Public Comment Period on the Proposed Rule to List the Pallid Manzanita as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed Rule; notice of reopening of the comment period.

SUMMARY: The Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), provides notice of reopening of the comment period on the proposed threatened status for *Arctostaphylos pallida* (pallid manzanita). The comment period has been reopened to acquire additional information from interested parties, and to resume the proposed listing actions.

DATES: The public comment period closes March 27, 1997. Any comments received by the closing date will be considered in the final decision on this proposal.

ADDRESSES: Written comments and materials concerning this proposal should be sent directly to the Field Supervisor, Sacramento Field Office, 3310 El Camino Avenue, Suite 130, Sacramento, California 95821–6340. Comments and materials received will be available for inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Betty Warne (see **ADDRESSES** section) at (916) 979–2120.

SUPPLEMENTARY INFORMATION:

Background

On August 2, 1995, the Service published a rule proposing threatened status for *Arctostaphylos pallida* (60 FR 39309–39314). The original comment period closed on September 25, 1995. No public hearing was requested.

Pallid manzanita is found only in the northern Diablo Range of California. It occupies 13 sites in Alameda and Contra Costa Counties. The two largest populations are located at Huckleberry Ridge and Sobrante Ridge. The plants are found in manzanita chaparral habitat that is frequently surrounded by oak woodlands and coastal scrub. The plants are threatened by shading and competition from native and non-native plants, fire suppression, habitat fragmentation, hybridization, disease, herbicide spraying, unauthorized tree cutting and inadequate regulatory mechanisms.

The Service was unable to make a final listing determination on this species because of a limited budget, other endangered species assignments driven by court orders, and higher listing priorities. In addition, a moratorium on listing actions (Pub. L. 104–6), which took effect on April 10, 1995, stipulated that no funds could be used to make final listing determinations or critical habitat determinations. Now that the funding has been restored, the Service is proceeding with a final determination for this species.

Due to the length of time that has elapsed since the close of the last comment period, changing procedural and biological circumstances, and the need to review the best scientific information available during the decision-making process, the comment period is being reopened. For these reasons, the Service particularly seeks information concerning:

(1) The known or potential effects of fire suppression and general fire management practices on the pallid manzanita and its habitat.

(2) other updated biological, commercial, or other relevant data on any threats (or lack of thereof) to the species; and

(3) the current size, number, or distribution of populations of the species.

Written comments may be submitted until March 27, 1997 to the Service office in the **ADDRESSES** section.

Author: The primary author of this notice is Betty Warne (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: February 14, 1997.

Thomas J. Dwyer,

Acting Regional Director.

[FR Doc. 97–4549 Filed 2–24–97; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 62, No. 37

Tuesday, February 25, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

Agency Information Collection Activities: Proposed Collection; Comment Request: National Survey of WIC Participants and Their Local Agencies (NSWP)

AGENCY: Food and Consumer Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collection of the National Survey of WIC Participants and Their Local Agencies (NSWP).

DATES: Comments on this notice must be received by April 28, 1997.

ADDRESSES: Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Michael E. Fishman, Acting Director, Office of Analysis and Evaluation, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Michael E. Fishman, (703) 305–2117.

SUPPLEMENTARY INFORMATION:

Title: National Survey of WIC Participants and Their Local Agencies (NSWP).

OMB Number: Not yet assigned.

Expiration Date: N/A.

Type of Request: New collection of information.

Abstract: This study will survey a nationally representative sample of WIC participants through personal interviews at the time of WIC certification in order to better respond to congressional inquiries and strengthen FCS data used for budgetary and legislative estimates as well as monitoring and planning for the WIC Program. It will also provide a nationally representative estimate of case error and dollar error in current WIC certification processes through in-home income verification interviews.

The study's data collection component is comprised of:

1. Collecting income and other demographic information through in-person interviews at the time of WIC certification, with a nationally representative sample of 3,000 WIC participants consisting of approximately 600 individuals in each WIC certification category. These categories are pregnant women, breastfeeding women, postpartum women, infants up to the age of twelve months, and children under five years of age. Parents and caretakers of infants and children will be interviewed.

2. In-home interviews to verify income information obtained during the WIC certification process and other selected topics identified as of interest during the earlier in-person interviews, for example immunization documentation if not available at the time of WIC certification. Verification interviews will be conducted with 1,000 WIC participants.

3. Follow-up telephone interviews with approximately 600 WIC participants with whom in-home income verification interviews were conducted. These interviews will gather data on changes in employment and income during the first four months following WIC certification as well as inquiring about the participants' experiences as part of the WIC Program. Special arrangements will be made to contact persons who do not have telephones in their homes.

4. A survey of 100 local WIC agencies serving the study sample will obtain information on local operating procedures.

Affected Public: WIC participants and WIC local agency administrators serving them.

Estimated Number of Respondents: 3,000 WIC participants and 100 local WIC administrators. For infants and children, parents or caretakers will serve as the interview respondent.

Estimated Time per Response: For 2,000 WIC participants, one 30 minute response; for 400 WIC participants, one 30 minute response and one 45 minute response; for 600 WIC participants one 30 minute, one 45 minute and one 15 minute response; and for 100 local WIC administrators, one 30 minute response.

Estimated Total Annual Burden: 2,450 hours.

Dated: February 14, 1997.

William E. Ludwig,

Administrator, Food and Consumer Service.

[FR Doc. 97–4583 Filed 2–24–97; 8:45 am]

BILLING CODE 3410–30–U

Forest Service

Birch Creek/Worm Creek Proposed Timber Sale; Cache National Forest (Administered by the Caribou National Forest), Franklin County, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare Environmental Impact Statement.

SUMMARY: The USDA, Forest Service will prepare an Environmental Impact Statement to document the analysis and disclose the environmental impacts of proposed actions to harvest timber, build roads, and regenerate new stands of trees in the Birch Creek/Worm Creek area of the Cache National Forest. The project is located in Franklin County, ID in the Birch Creek, Worm Creek and South Canyon drainages, administered by the Montpelier Ranger District of the Caribou National Forest. The need for the proposal is to treat stands of timber to enhance sustainable productivity as outlined in the Caribou National Forest Land and Resource Management Plan. Treatment would be designed to address

silvicultural condition of the affected timber stands.

The Montpelier Ranger District of the Caribou National Forest proposes to harvest an estimated 3300 MBF (thousand board feet) of commercial timber in 28 timber stands on approximately 658 acres. One 15-acre stand would be clearcut and planted. The remaining stands would be partially cut using either a sanitation/salvage cut or a shelterwood method. Thirteen stands would be logged by tractor and fifteen stands would be logged by helicopter. Approximately 5.5 miles of new road would be built, and 3.8 miles of road would be relocated to access the stands for logging. All new roads and 3.4 miles of relocated roads would be closed to vehicle travel after logging. The timber would be offered for sale in 1999. For a map of the proposed project area, please contact the Montpelier Ranger District, 431 Clay Street, Montpelier, ID 83254, (208) 847–0375.

DATE: Written comments concerning the scope of the analysis described in this Notice should be received on or before March 27, 1997.

ADDRESSES: Send written comments to Caribou National Forest, Montpelier Ranger District, 431 Clay Street, Montpelier, ID 83254.

FOR FURTHER INFORMATION CONTACT: Questions concerning the proposed action and EIS should be directed to T.W. Smith, Forester, Caribou National Forest, Montpelier Ranger District (Telephone: (208) 847–0375.)

SUPPLEMENTARY INFORMATION: This EIS will tier to the final EIS for the Caribou National Forest Land and Resource Management Plan (Forest Plan). The Caribou Forest Plan provides the overall guidance (Goals, Objectives, Standards, and Management Area direction) to achieve the Desired Future Condition for the area being analyzed and contains specific management area prescriptions for the entire Forest. The specific objective of this proposal is to contribute to the sustained yield of timber assigned the Caribou National Forest in the Forest's Land and Resource Management Plan.

Possible alternatives to the proposal are to cut no timber or to cut only some of the stands at this time.

Public scoping letters have been sent to individuals, and news articles regarding the project have appeared in local newspapers. Initial scoping comments indicated concerns about the project's environmental impacts on water quality, fish habitat, and roadless area characteristics. The Caribou National Forest determined impacts could be significant and will complete an Environmental Impact Statement to address these concerns. At this time, no public scoping meetings have been planned.

Issues/Concerns

Tentative issues and concerns identified to date are:

1. Birch Creek is a section 303(d) Water Quality Limited stream. Beneficial uses, which include beneficial uses for fisheries, must be protected and regulatory water quality standards met.

2. Steep slopes limit tractor logging in some stands and helicopter logging is proposed in these instances. Cable systems may be considered as another means of logging steep slopes, because they are less expensive to operate and would make the sale available to more timber operators; however, they require more roads than helicopters.

3. Stands in the Worm Creek drainage are accessible by approximately 3.4 miles of road that would require relocation. Road relocation would be expensive, raise logging costs, and make the area more accessible while the road was open.

4. Regeneration would be difficult in many stands that have an understory of shrubs. Tractor logging reduces shrubs and exposes mineral soil allowing tree seedlings to germinate and grow. Helicopter logging does not disturb the ground, and therefore, tree regeneration would be difficult to establish in helicopter units.

5. The Birch Creek Road is rocky, making maintenance difficult. Lack of maintenance causes ruts and increases erosion. The Birch Creek Road would be used to haul logs from the sale area. The proposal creates an opportunity to improve the road and reduce surface runoff into Birch Creek.

6. Birch Creek is a tributary of Mink Creek. Mink Creek contains Bonneville Cutthroat Trout. The proposal could adversely affect fish habitat in both streams.

7. Birch Creek Road is groomed for snowmobile use in the winter and provides access to winter play areas. Winter logging would require plowing the road. The narrow canyon would not allow snowmobiling off the plowed road. Snowmobile use on the plowed road would create a public safety hazard.

8. The proposed project is located in the Station Creek Roadless Area, #04178. The environmental analysis will need to determine how the proposed action would affect existing roadless characteristics.

9. The proposed project area contains wildlife habitat used by deer and elk. Harvest activities and road-building could make these animals more vulnerable to hunters.

10. Permitted cattle grazing occurs in Birch Creek and Worm Creek. Tree regeneration, occurring as a result of this proposal, would require protection from damage by cattle.

11. Douglas-fir and subalpine fir trees in the project area have been attacked and killed by bark beetles over the past ten years. Since the trees are of an age and density that invite continued attacks, mortality can be expected to continue. The project offers an opportunity to harvest recently killed trees for timber products.

A Biological assessment of threatened, endangered and sensitive species will be completed as part of the environmental analysis.

A Cultural Resource Survey of the area will be completed as part of the environmental analysis, and any cultural resources found would be protected.

No permits or licenses are required to implement the proposed action.

The tentative date for filing the Draft EIS is June 1997. The tentative date for filing the final EIS is September 1997. The comment period on the draft environmental impact statement will be open for 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period of the Draft Environmental Impact Statement so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the Final Environmental Impact Statement. Agency representatives and other interested people are invited to visit with Forest Service officials at any time during the EIS process.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the Draft Environmental Impact Statement should be as specific as possible, it is also helpful if comments refer to specific pages or chapters of the Draft. Comments may also address the adequacy of the Draft Environmental Impact Statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The USDA, Forest Service is the lead agency in preparing the Environmental Impact Statement for this proposal. The responsible official is Paul R. Nordwall, Supervisor, Caribou National Forest, 250 South Fourth Avenue, Pocatello, ID 83254.

Dated: February 12, 1997.

Paul R. Nordwall,

Forest Supervisor, Caribou National Forest.

[FR Doc. 97–4631 Filed 2–24–97; 8:45 am]

BILLING CODE 3410–11–M

Klamath Provincial Advisory Committee (PAC); Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Klamath Provincial Advisory Committee will meet on March 10, 1997 at the Miner's Inn Conference Room, 122 East Miner, Yreka, California. The meeting will begin at 9 a.m. and adjourn at 5 p.m. Agenda items to be covered include: (1) Klamath Province storm damage overview; (2) a strategy plan for the next two years of PAC Charter with recommendations; (3) socio-economic subcommittee discussion on possible proposal; (4) Province Interagency Executive Committee Report; and (5) public comment periods. All PAC meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Connie Hendryx, USDA, Klamath National Forest, at 1312 Fairlane Road, Yreka, California 96097; telephone 916–842–6131, (FTS) 700–467–1309.

Dated: February 18, 1997.

K. Mike Ford,

Acting Forest Supervisor.

[FR Doc. 97–4551 Filed 2–24–97; 8:45 am]

BILLING CODE 3410–11–M

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Action of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by April 28, 1997.

FOR FURTHER INFORMATION CONTACT: Jonathan Claffey, Acting Deputy Director, Advanced Telecommunications Services Staff, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1701, Room 2919 South Building, Washington, DC 20250–1701. Telephone: (202) 720–0530. FAX: (202) 720–2734.

SUPPLEMENTARY INFORMATION:

Title: Preloan Procedures and Requirements for Telecommunications Program.

OMB Control Number: 0572–0079.

Type of Request: Reinstatement of a previously approved information collection, without change.

Abstract: This program is necessary in order for the Rural Utilities Service (RUS) to determine an applicant's eligibility to borrower from RUS under the terms of the RE Act. This information is also used by RUS to determine that the Government's security for loans made by RUS is reasonably adequate and that the loans will be repaid within the time agreed.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 9 hours per response.

Respondents: Small business or organizations.

Estimated Number of Respondents: 95.

Estimated Number of Responses per Respondent: 8.

Estimated Total Annual Burden on Respondents: 7,177.

Copies of this information collection, and related form and instructions. can be obtained from Dawn Wolfgang, Program Support and Regulatory Analysis Group, at (202) 720–0812.

Comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments may be sent to: F. Lamont Heppe, Jr., Director, Program Support and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. FAX: (202) 720–4120.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: February 18, 1997.

Wally Beyer,

Administrator, Rural Utilities Service.

[FR Doc. 97–4641 Filed 2–24–97; 8:45 am]

BILLING CODE 3410–15–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has scheduled its regular business meetings to take place in Washington, D.C. on Monday, Tuesday, and Wednesday, March 10–12, 1997 at the times and location noted below.

DATES: The schedule of events is as follows:

Monday, March 10, 1997

8:30 am–10:00 am—Ad Hoc Committee on Bylaws and Statutory Review
10:00 am–11:00 am—Long-Range Planning Group
11:00 am–12:30 pm—Briefing on Proposed Rule for Access to Telecommunications Equipment (Closed Meeting)

2:00 pm–5:00 pm—Committee of the Whole—State and Local Government Facilities Final Rule (Closed Meeting)

Tuesday, March 11, 1997

9:00 am–noon and 1:30 pm–5:00 pm ADAAG Revision—Discussion of Issues (Closed Meeting)

Wednesday, March 12, 1997

9:00 am–10:30 am—Briefing on Play Facilities Regulatory Negotiation (Closed Meeting)

10:30 am–noon—Planning and Budget Committee

1:30 pm–3:30 pm—Board Meeting.

ADDRESSES: The meetings will be held at: Embassy Suites Hotel, 1250 22nd Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact Lawrence W. Roffee, Executive Director, (202) 272–5434 ext. 14 (voice) and (202) 272–5449 (TTY).

SUPPLEMENTARY INFORMATION: At the Board meeting, the Access Board will consider the following agenda items:

Open Meeting

- Approval of the Minutes of the January 15, 1997 and November 13, 1996 Board Meetings.
- Ad Hoc Committee on Bylaws and Statutory Review Report.
- Planning and Budget Committee Report.

Closed Meeting

- Proposed Rule for Access to Telecommunications Equipment.
- Committee on the Whole Report—State and Local Government Facilities Final Rule.
- ADAAG Revision.
- Play Facilities Regulatory Negotiation.

All meetings are accessible to persons with disabilities. Sign language interpreters and an assistive listening system are available at all meetings.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 97–4638 Filed 2–24–97; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Docket 8–97]

Foreign-Trade Zone 82; Mobile, Alabama; Application for Subzone Status Coastal Mobile Refining Company (Oil Refinery Complex) Mobile County, Alabama

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Mobile, Alabama, grantee of FTZ 82, requesting special-purpose subzone status for the oil refinery complex of Coastal Mobile Refining Company (wholly-owned subsidiary of Coastal Corporation), located in Mobile County, Alabama. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on February 12, 1997.

The refinery complex (45 acres, 41 employees) consists of 3 sites and connecting pipelines in Mobile County, Alabama: *Site 1* (10 acres)—main refinery complex (15,000 BPD), located on Chickasaw Creek at 200 Viaduct Road, some 2 miles north of Mobile; *Site 2* (17 acres)—North Terminal storage facility (290,000 barrel capacity), located on Chickasaw Creek, 1 mile north of the refinery; and *Site 3* (18 acres)—three storage tanks (450,000 barrel capacity) at Blakely Island Terminal, located on the Mobile River, some 7 miles south of the refinery.

The refinery produces fuels and petrochemical feedstocks. Fuels produced include gasoline, jet fuel, kerosene, distillates and residual fuels. Petrochemical feedstocks and refinery byproducts include butane, propane, benzene, toluene, xylene, propylene, cumene, sulfur, petroleum coke and asphalt. All of the crude oil (85 percent of inputs) and some feedstocks and motor fuel blendstocks used in producing fuel products are sourced abroad.

Zone procedures would exempt the operations involved from Customs duty payments on the foreign products used in its exports. On domestic sales, the company would be able to choose the finished product duty rate (nonprivileged foreign status—NPF) on certain petrochemical feedstocks and refinery byproducts (duty-free) instead of the duty rates that would otherwise apply to the foreign-sourced inputs (e.g., crude oil, natural gas condensate). The duty rates on crude oil range from 5.25¢/barrel to 10.5¢/barrel. The application indicates that the savings from zone procedures would help improve the refinery's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is April 28, 1997. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to May 12, 1997).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Customs Service Port Director's Office, Suite 3400, 150 N. Royal Street, Mobile, Alabama 36602

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230

Dated: February 18, 1997.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–4507 Filed 2–24–97; 8:45 am]

BILLING CODE 3510–DS–P

Foreign-Trade Zones Board

[Docket 7–97]

Foreign-Trade Zone 15; Kansas City, Missouri Area Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Kansas City Foreign Trade Zone, Inc., grantee of Foreign-Trade Zone 15, requesting authority to expand its zone in the Kansas City, Missouri area, adjacent to the Springfield, Missouri, Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on February 11, 1997.

FTZ 15 was approved on March 23, 1973 (Board Order 93, 38 FR 8622, 4/4/73) and expanded on October 25, 1974 (Board Order 102, 39 FR 39487, 11/7/74); February 28, 1996 (Board Order 804, 61 FR 9676, 3/11/96); and, May 31, 1996 (Board Order 824, 61 FR 29529, 6/11/96). The zone project includes 4 general-purpose sites in the Kansas City, Missouri, port of entry area: *Site 1* (250,000 sq. ft.)—Midland International Corp. warehouse, 1690 North Topping, Kansas City; *Site 2* (2,815,000 sq. ft.)—surface/underground warehouse complex, 8300 N.E. Underground Drive, Kansas City; *Site 3* (10,000 acres)—entire Kansas City International Airport facility, 12600 N.W. Prairie View Road, Kansas City; and, *Site 4* (416 acres)—surface/underground business park (Carefree Industrial Park), 1600 N. M–291 Highway, Sugar Creek.

The applicant is now requesting authority to further expand the general-purpose zone to include an additional site (proposed *Site 5* (5.75 million sq. ft.)—underground business park and a 1,000-acre surface industrial park (CARMAR Underground Business Park/CARMAR Industrial Park), located at No. 1 Civil War Road, Carthage. The complex includes space in underground caverns left from limestone and marble mining. It is owned by the CARMAR Group and includes refrigerated and frozen warehouse space, as well as a large intermodal facility. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is April 28, 1997. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to May 12, 1997).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Economic Development Director, City of Carthage, City Hall, 326 Grant, Carthage, MO 64836

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: February 18, 1997.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–4506 Filed 2–24–97; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–549–502]

Certain Circular Welded Carbon Steel Pipes and Tubes from Thailand: Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On November 1, 1996, the Department of Commerce (the Department) published the final results of administrative review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Thailand (61 FR 56515). On January 15, 1997, the Department published the amended final results of that administrative review (62 FR 2131). This review covers Saha Thai Steel Pipe Company, SAF Steel Pipe Export Company, and Pacific Pipe Company.[1] The period of review (POR) is March 1, 1994 through February 28, 1995.

On January 16, 1997, Counsel for Saha Thai filed an allegation, pursuant to 19 CFR 353.28, of a clerical error with regard to the amended final results of the above review. Saha Thai's submission alleged that the Department made errors in calculating the importer-specific assessment rates for subject merchandise sold by Saha Thai. On January 24, 1997, petitioners in this proceeding objected to Saha Thai's request, arguing that the allegation was untimely because the alleged error occurred in the original final results. Petitioners claimed that the Department's regulations do not authorize further alteration of the final results except through action by the Court of International Trade, pursuant to 19 USC 1516a. Petitioners further contend that 19 CFR 353.28 does not provide for correction of clerical errors in amended final determinations.

The Department finds that correction of the ministerial error in the amended final results of review is appropriate. Section 751(h) of the Act authorizes the Department to correct final determinations issued pursuant to section 751(a)(1). Because an amended final results of review is a final determination under section 751, the Department may correct ministerial errors found in amended final determinations in accordance with 19 CFR 353.28.

In reviewing Saha Thai's submission, the Department found that the alleged error in our amended final results calculations did in fact occur and that the same error had not been present in the calculations for the final results of review. Therefore, Saha Thai's allegation, which was filed within five business days of the date of disclosure of the amended final results calculations, was timely in accordance with 19 CFR 353.28(b). Due to a computer programming error, the importer-specific antidumping duty rate was inadvertently overstated in the amended final results. The Department agrees with Saha Thai that this clerical error should be corrected in accordance with 19 CFR 353.29(c). This correction affects only the importer-specific assessment rates and will therefore only change our instructions to the Customs Service. This modification does not change any other part of the calculations, final results notice, or amended final results notice.

EFFECTIVE DATE: February 25, 1997.

FOR FURTHER INFORMATION CONTACT: James Rice or Jean Kemp, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–0162 or (202) 482–4037, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Scope of the Review

The products covered by this administrative review are certain circular welded carbon steel pipes and tubes from Thailand. The subject merchandise has an outside diameter 0.375 inches or more, but not exceeding 16 inches. These products, which are commonly referred to in the industry as "standard pipe" or "structural tubing," are hereinafter designated as "pipe and tube." The merchandise is classifiable under the Harmonized Tariff Schedule (HTS) item numbers 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085 and 7306.30.5090. Although the HTSUS subheadings are provided for convenience and Customs

[1] The Department has determined that Pacific Pipe Company had no U.S. sales during the period of review.

purposes, our written description of the scope of the order is dispositive.

Amended Final Results of Review

Upon correction of the ministerial error, we have determined that the margin remains unchanged from the amended final results published on January 15, 1997. However, as discussed above, importer specific assessment rates will change and we will instruct Customs accordingly.

Manufacturer/exporter	Time period	Margin (percent)
Saha Thai/SAF	3/1/94–2/28/95	7.27

The Customs Service shall assess antidumping duties on all appropriate entries. Individual differences between United States price and normal value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of certain circular welded carbon steel pipes and tubes from Thailand entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided for by section 751(a)(2)(C) of the Act: (1) the cash deposit rates for the reviewed companies will be the rates for those firms as stated above; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 15.67 percent for circular welded carbon steel pipes and tubes, the all others rate established in the LTFV investigations. See *Final Determination and Antidumping Duty Order: Certain Welded Carbon Steel Pipes and Tubes from Thailand*, (51 FR 8341, March 11, 1986).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation. This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.28(c).

Dated: February 13, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–4632 Filed 2–24–97; 8:45 am]

BILLING CODE 3510–DS–P

[A–580–815 & A–580–816]

Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea; Extension of Time Limits for Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Extension of time limits for antidumping duty administrative reviews of certain cold-rolled and corrosion-resistant carbon steel flat products from Korea.

SUMMARY: The Department of Commerce ("the Department") is extending the time limits for the preliminary results of the third antidumping duty administrative reviews of the antidumping orders on certain cold-rolled and corrosion-resistant carbon steel flat products from Korea. These reviews cover three manufacturers and exporters of the subject merchandise: Dongbu Steel Co., Ltd., Union Steel Manufacturing Co., Ltd., and Pohang Iron and Steel Co., Ltd. The period of review is August 1, 1995 through July 31, 1996.

EFFECTIVE DATE: February 25, 1997.

FOR FURTHER INFORMATION CONTACT: Alain Letort or John R. Kugelman, AD/CVD Enforcement Group III—Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230, telephone (202) 482–4243 or 482–0649, respectively.

SUPPLEMENTARY INFORMATION: The Department initiated these administrative reviews on September 16, 1996 (61 FR 48882). Because it is not practicable to complete these reviews within the time limits mandated by section 751(a)(3)(A) of the Tariff Act of 1930 ("the Act"), as amended by the Uruguay Round Agreements Act of 1994, the Department is extending the time limits for the preliminary results of the aforementioned reviews to August 1, 1997. See memorandum from Joseph A. Spetrini to Robert S. LaRussa, which is on file in Room B–099 at the Department's headquarters.

This extension of time limits is in accordance with section 751(a)(3)(A) of the Act.

Dated: February 18, 1997.

Joseph A. Spetrini

Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 97–4508 Filed 2–24–97; 8:45 am]

BILLING CODE 3510–DS–P

[A–570–830]

Coumarin From the People's Republic of China: Amended Order and Final Determination of Antidumping Duty Investigation in Accordance With Decision Upon Remand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Amendment to final determination of antidumping duty investigation in accordance with decision upon remand.

SUMMARY: On May 9, 1996, the Court of International Trade (CIT) remanded to the Department of Commerce, International Trade Administration (the Department), one issue arising from the antidumping determination titled Final Determination of Sales at Less Than Fair Value: Coumarin From the People's Republic of China (59 FR 66895, December 28, 1994).

Pursuant to the remand order, the Departmental filed its *Remand Determination: Rhone-Poulenc, Inc.* v. *United States*, Court No. 95–03–00275, on September 23, 1996. Upon finding errors in the Remand Determination, the Department filed its *Amended Remand Determination: Rhone-Poulenc, Inc.* v. *United States* on October 3, 1996 (the "Amended Remand Results"). In accordance with the remand order, the Department reconsidered its valuation of the by-products of coumarin production in light of the presence of impurities, recalculated the value of the by-products, and adjusted the subject PRC exporters' dumping margins accordingly. The Department applied best information available (BIA) in revaluing Tianjin Native Produce Import and Export Corporation's by-products because of the company's failure to provide information in response to the Department's remand questionnaire. After recalculation, the Department revised the final determination margins, as shown below.

In plaintiff's comments to the Department's Amended Remand Results, filed October 7, 1996, Rhone-Polenc indicated its concurrence with said results and asked that they be affirmed by the CIT. The Cit affirmed and dismissed (*Rhone-Poulenc, Inc.*, v. *United States*, Slip Op. 97–15 (dated February 4, 1997).

EFFECTIVE DATE: July 30, 1994, pursuant to the CIT's preliminary injunction dated July 7, 1995 (see "Suspension of Liquidation" section).

FOR FURTHER INFORMATION CONTACT: David J. Goldberger, Office 5, AD/CVD Enforcement II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4136.

SUPPLEMENTARY INFORMATION:

Background

On December 28, 1994, the Department published its Notice of Final Determination of Sales at Less Than Fair Value: Coumarin from the People's Republic of China (59 FR 66895). In its final determination, the Department calculated the foreign market value (FMV) for each exporter by valuing the factors of production according to the appropriate surrogate value, in accordance with Section 773(c)(2)–(4) of the Tariff Act of 1930, as amended. In the LTFV investigation, the Department had offset the cost of manufacturing by the surrogate value of the by-products recovered, *i.e.*, acetic acid, hydrochloric acid and alcohol, as adjusted (where appropriate) only for concentration levels. The CIT remanded the final determination to the Department for reconsideration of its valuation of the by-products for Changzhou, Jiangsu Native's supplier, and Tianjin Perfumery, Tiajin Native's supplier, to either take into account whether there were impurities, and their effect on value, or alternatively, to present valid reasons for the Department's failure to determine the effect of impurities on the value of the by-products.

Remand Results

The Department set about requesting and obtaining information to determine whether there were impurities in the by-products in question. Both petitioner and Changzhou submitted information in this regard, but Tianjin Perfumery did not respond to a questionnaire or provide any other information for the remand proceeding. In addition, the Department obtained information concerning acetic acid from *Chemical Business*, an Indian publication used as the source for a number of surrogate values in the original proceeding and also consulted with chemical industry specialist at the International Trade Commission (ITC). In the LTFV investigation, the Department had valued by-product acetic acid as glacial acetic acid, which has a concentrated level of 99% purity. However, for the remand, in comparing the chemical specification of glacial acetic acid provided by *Chemical Business* to the composition of Changzhou's recovered acetic acid, we found that Changzhou's recovered acetic acid was not glacial acetic acid. As a result, for the remand, the Department attempted to find a value from the surrogate country that best approximated the recovered acetic acid reported.

Acetic Acid

For the remand, Changzhou provided the Department with the actual percentage of acetic acid (97%–98%) found in its recovered acetic acid resulting from its production of coumarin during the POI. Changzhou also indicated that it did not have any impurities in its recovered acidic acid. The Department was able to obtain additional information on Indian price data for recovered acetic acid at a concentration level comparable to Changzhou's actual recovered acetic acid. However, neither the Department nor the petitioner was able to obtain any information as to what impurities may also be present in the recovered acetic acid. The price quote was corroborated by the Department through the research performed by the U.S. Consulate General in Mumbai, India. It appeared that recovered acetic acid of 97–98% concentrate is not typically traded in India, but at least two Indian companies offered this product for sale. The Consulate General contacted the source of the July 1996 written price quote that petitioner had submitted for the remand and confirmed that this company offered 96%–98% recovered acetic acid at the price reported by petitioner. We determined that this price quote would take into account whatever impurities may exist. As a result, we revised our valuation of Changzhou's recovered acetic acid using this verified Indian price quote, after making adjustments.

Our recalculation adjusted the tax-exclusive POI glacial acetic acid value, which the Department had obtained in the LTFV investigation from *Chemical Weekly*, an Indian industry publication, to reflect a recovered acetic acid value of 96–98% percent concentration. This adjustment was based on the percentage difference between the price levels of these two grades of acetic acid as observed in July 1996. The resulting POI surrogate value for this by-product factor more accurately reflects the actual concentration level of the Changzhou product as well as the price impact of any chemical impurities that might be present at that concentration level.

Hydrochloric Acid

For the remand, Changzhou stated that there were no impurities in its recovered hydrochloric acid, apart from water. In consultation with the ITC, the Department determined that the presence of any alleged impurities (*i.e.* other than water) was insignificant and would not affect the value for Changzhou's recovered hydrochloric acid. Further, the Department determined that the water present in the hydrochloric acid only affected the value by establishing the concentration level. In our LTFV calculation, we had already reduced the surrogate value of Changzhou's recovered hydrochloric acid to account for its lower concentration level compared to standard commercial grades. However, for the remand, the Department also obtained additional information on the standard commercial grades of hydrochloric acid, ranging from petitioner's 31.45% grade to the 36% grade found in the *The Merck Index* which was used by the ITC chemists. These two grades fall within the range of standard commercial grades of 28% to 37% described in *The Condensed Chemical Dictionary*. In the LTFV investigation, we used the midpoint of this range, 32.5%, as the average commercial grade, and then adjusted the surrogate value for this by-product by the ratio of Changzhou's verified concentration level to the average commercial concentration. For these remand results, we found no basis to further adjust the surrogate value.

Because Tianjin Perfumery did not respond to our questionnaire, we drew adverse inferences regarding the extent

to which impurities reduced the value of its recovered acetic acid. Therefore, as BIA, we discounted this value by 52%, the amount calculated by petitioner, based on the lowest price on the LTFV investigative record for recovered acetic acid of unknown specifications sold in India.

Additionally, we had no information on the impurities present in Tianjin Perfumery's hydrochloric acid. As BIA, we drew the adverse inference that it contained impurities which reduced its value. We had no information on the record from which to quantify the effect of these impurities beyond the adjustment for the concentration percentage. However, the Department had verified that this by-product was sold, and not given away, to unrelated parties during the POI. Therefore, as BIA, we did not value hydrochloric acid at zero. Rather, for the remand, instead of using petitioner's price quote as BIA as we did in the final LTFV determination, we used price information from export statistics which was lower. Finally, since Tianjin Perfumery refused to provide information about the impurities present in its alcohol by-product, as BIA, we made the adverse inference that the effect of impurities is great enough to render negligible the value of the recoverable alcohol. Accordingly, we revised Tianjin Perfumery's FMV calculation by valuing the offset for the recovered alcohol as zero.

On February 4, 1997, the CIT affirmed the remand results of the Department in the matter of: Coumarin from the People's Republic of China; Final Determination of Sales at Less Than Fair Value, *Rhone Poulenc, Inc.* v. *United States*, Court No. 95–03–00275 (May 9, 1996). As a result, the margins changed as listed below.

Suspension of Liquidation

During the pendency of the court suit, on July 7, 1995, the Court of International Trade preliminarily enjoined liquidation on all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after July 30, 1994, the date of publication of the preliminary determination in the LTFV investigation. Therefore, because no request for review was made in the anniversary month of the first review, and in accordance with 19 USC 1516a(e)(2), the Department will instruct the Customs Service to liquidate entries from July 30, 1994, up to and including February 29, 1996, the period of the first review, at the rates set forth below. Additionally, the Department will instruct the Customs Service to collect cash deposits at these same rates for entries of subject merchandise occurring on or after March 1, 1996.

Conclusion

For the reasons stated above, we have re-calculated the LTFV margins as follows:

Exporter	Margin (percent)
Jiangsu Native Produce Import and Export Corp.	31.02.
Tiangin Native Produce Import and Export Corp.	70.45.
PRC-Wide Rate	160.80 (no change).

Dated: February 18, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–4509 Filed 2–24–97; 8:45 am]

BILLING CODE 3510–DS–M

[A–560–801, A–570–844, A–583–825]

Notice of Antidumping Duty Orders and Amendment to Final Determination: Melamine Institutional Dinnerware Products From Indonesia, the People's Republic of China, and Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 25, 1997.

FOR FURTHER INFORMATION CONTACT: Everett Kelly or David J. Goldberger, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4194, or (202) 482–4136, respectively.

Amended Final Determination

In accordance with section 735(a) of the Tariff Act of 1930, as amended (the Act), on January 6, 1997, the Department of Commerce (the Department) made its final determinations that melamine institutional dinnerware from Indonesia, the People's Republic of China (PRC), and Taiwan is being sold at less than fair value (62 FR 1708–1733, January 13, 1997).

After publication of our final determinations, the American Melamine Institutional Dinnerware Association, the petitioner in these cases, alleged that the Department committed certain ministerial errors in calculating the margins in these investigations. We have determined that ministerial errors were committed in calculating the margin from the Indonesian respondent P.T. Multi Rayah Indah Abah (Multiraya) (See, Memoranda to the file dated January 31, 1997, and February 3, 1997).

We are amending the final determination of the antidumping investigation of melamine institutional dinnerware from Indonesia to correct the ministerial error in the calculation for Multiraya. The correct cash deposit rate for Multiraya and the "all others" category producers/exporters of the subject merchandise from Indonesia is 8.95 percent.

With respect to the Department's final determinations for melamine institutional dinnerware from the PRC and Taiwan, the Department determined that certain corrections to these determinations were appropriate (see Memoranda to the file dated January 30 (Taiwan) and 31 (PRC), 1997). However, these corrections did not alter the margin percentages in the Taiwan case, nor alter the *de minimis* finding in the PRC case. Therefore, no amendments to the final determinations are necessary.

Scope of Orders

The merchandise covered by these orders is all items of dinnerware (*e.g.*, plates, cups, saucers, bowls, creamers, gravy boats, serving dishes, platters, and trays) that contain at least 50 percent melamine by weight, have a minimum wall thickness of 0.08 inch, and are intended for use by institutions such as schools, hospitals, cafeterias, restaurants, and nursing homes. Melamine dinnerware that meets the physical characteristics described above that is generally sold to the retail sector and intended for use by households is not covered by these orders. Excluded as well from the scope of these orders are flatware products (*e.g.*, knives, forks, and spoons).

The merchandise is classifiable under subheadings 3924.10.20, 3924.10.30, and 3924.10.50 of the Harmonized Tariff Schedule of the United States (HTSUS).

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of these orders is dispositive.

Antidumping Duty Orders

In accordance with section 735(a) of the Act, the Department made its final determinations that melamine institutional dinnerware from Indonesia, the PRC, and Taiwan is being sold at less than fair value (62 FR 1708–1733, January 13, 1997). On February 18, 1997, the International Trade Commission (ITC) notified the Department of its final determination, pursuant to section 735(b)(1)(A)(i) of the Act, that an industry in the United States is materially injured by reason of imports of the subject merchandise from Indonesia, the PRC, and Taiwan. In its final determination, the ITC determined that two like products exist for the merchandise covered by the Commerce investigations: (a) Melamine dinnerware for institutional uses, and (b) melamine dinnerware for non-institutional uses. The ITC's affirmative injury determination covered only melamine dinnerware for institutional uses. Accordingly, the scope of the antidumping duty orders, as described above, reflects the ITC's distinction between institutional and non-institutional uses.

In accordance with section 736(a)(1) of the Act, the Department will direct Customs officers to assess, upon further advice by the administering authority, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or the constructed export price) of the merchandise for all relevant entries of melamine institutional dinnerware from Indonesia, the PRC, and Taiwan, except for imports from the PRC manufactured and sold to the United States by Chen Hao (Xiamen) Plastic Industrial Co. Ltd. ("Chen Hao Xiamen"), Gin Harvest Melamine (Heyuan) Enterprises Co. Ltd. ("Gin Harvest"), and Sam Choan Plastic Co. Ltd. ("Sam Choan"), and for imports from Taiwan sold by Yu Cheer Industrial Co., Ltd. ("Yu Cheer"). Accordingly, all bonds may be released and entries of these exporters may be liquidated without regard to antidumping duties. For all other exporters, Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below. The "All Others" or "PRC-wide" rate listed for each country applies to all exporters of melamine institutional dinnerware not specifically listed below. For melamine dinnerware products intended for sale to the retail sector and for use by households, importers shall maintain on file a declaration as to the intended use of the imported merchandise. If the Customs officer is satisfied that the intended use of the imported merchandise is not for institutional purposes, the entry will not be covered by this order.

The ad valorem weighted-average dumping margins are as follows:

Producer/manufacturer/exporter	Margin percentage
I. Indonesia:	
P.T. Mayer Crocodile	12.90.
P.T. Multi Raya Indah Abah.	8.95.
All Others	8.95.
II. People's Republic of China:	
Chen Hao (Xiamen) Plastic Industrial Co. Ltd.	0.46 (*de minimis*).
Gin Harvest Melamine (Heyuan) Enterprises Co. Ltd.	0.47 (*de minimis*).
Sam Choan Plastic Co. Ltd.	0.04 (*de minimis*).
Tar-Hong Melamine Xiamen Co. Ltd.	2.74.
PRC-Wide Rate	7.06.
III. Taiwan:	
Chen Hao Plastic Industrial Co., Ltd.	3.25.
Yu Cheer Industrial Co., Ltd.	0.00.
IKEA Trading Far East Ltd	53.13.
Gallant Chemical Corporation.	53.13.
All Others	3.25.

This notice constitutes the antidumping duty orders with respect to melamine institutional dinnerware from Indonesia, the PRC, and Taiwan. The Department is excluding from the application of the orders products from Taiwan manufactured and sold to the United States by Yu Cheer. The Department is also excluding products from the PRC that are manufactured and sold to the United States by Chen Hao Xiamen, Gin Harvest, and Sam Choan; however, the ad valorem weighted-average dumping margin applicable to melamine institutional dinnerware manufactured by any other PRC manufacturer and exported by any of these companies is 7.06 percent (the PRC-wide rate).

Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

These orders are published in accordance with section 736(a) of the Act.

Dated: February 18, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–4510 Filed 2–24–97; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

Notice of Compilation of Individuals and Companies That Are Prepared To Provide Guidance Regarding Doing Business in the Pacific Islands

AGENCY: International Trade Administration, Department of Commerce.

SUMMARY: The International Trade Administration (ITA) is compiling a list of individuals and companies that are prepared to provide guidance regarding doing business in the Pacific Islands. ITA invites interested parties to express their interest to the Office of South Asia and Oceania.

DATES: Interested parties will be retained on the list for a period of two years. A party may request that it be removed from the list at an earlier date.

ADDRESSES: Send by fax expressions of interest to the Department's Office of South Asia and Oceania at (202) 482–5330. Letters may be sent to: U.S. Department of Commerce, Office of South Asia and Oceania, 14th and Constitution Ave. N.W., Rm. 2308, Washington D.C. 20230.

FOR FURTHER INFORMATION: Contact Kent Stauffer at the above address, or at telephone number (202) 482–2955.

SUPPLEMENTARY INFORMATION: The Office of South Asia and Oceania coordinates activity for the U.S. side of the United States-Pacific Island Nations Joint Commercial Commission (JCC). The Island side is comprised of the following thirteen countries: Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Nauru, Niue, Papua New Guinea, Republic of the Marshall Islands, Solomon Islands, Tonga, Tuvalu, Vanuatu, Western Samoa.

The JCC plans to produce a listing of individuals and firms (Counselors) that are familiar with the business conditions and government procedures in the Pacific Islands. Interested individuals and firms should have extensive business experience and/or have worked with governments in fields involving economic developments in the region. The Counselors will serve without compensation from ITA or the JCC. The JCC will maintain and publicize a register of names for referral purposes. The Counselors will have access to JCC-generated information and will provide a link to people in the private sector seeking experienced guidance about doing business in the region.

Dated: February 5, 1997.

Nancy Linn Patton,

Deputy Assistant Secretary for Asia and the Pacific.

[FR Doc. 97–4504 Filed 2–24–97; 8:45 am]

BILLING CODE 3510–DA–P

National Institute of Standards and Technology

Notice of Prospective Grant of Exclusive Patent License

AGENCY: National Institute of Standards and Technology, Commerce.

SUMMARY: This is a notice in accordance with 35 USC 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institute of Standards and Technology ("NIST"), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Patent Application Number 08/487,557, titled, "Pre-Ceramic Polymers in Fabrication of Ceramic Composites," in the field of use of dental and costmetic products, to Vident, having a place of business in Brea, California.

FOR FURTHER INFORMATION CONTACT: Bruce E. Mattson, National Institute of Standards and Technology, Industrial Partnerships Program, Building 820, Room 213, Gaithersburg, MD 20899.

SUPPLEMENTARY INFORMATION: The prosective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NIST receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

U.S. Patent Application Number 08/487,557 provides composites in the form of a three-dimensional framework or skeleton of ceramic particles which are formed by a low cost, low temperature sintering process which decomposes a pre-ceramic inorganic or organic precursor.

NIST may enter into a Cooperative Research and Development Agreement ("CRADA") with the licensee to perform further research on the invention for purposes of commercialization. NIST may grant the licensee an option to negotiate for exclusive licenses to any jointly owned inventions which arise from the CRADA as well as an option to negotiate for exclusive royalty-bearing licenses for NIST employee inventions which arise from the CRADA.

The availability of the invention for licensing was published in the Federal Register, Vol. 61, No. 107 (June 2, 1996). A copy of the patent application may be obtained from NIST at the Foregoing Address.

Dated: February 6, 1997.

Elaine Bunten-Mines,

Director, Program Office.

[FR Doc. 97–4615 Filed 2–24–97; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[I.D. 021897A]

Mid-Atlantic Take Reduction Team

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of establishment of team and public meeting.

SUMMARY: The Take Reduction Team to address bycatch of harbor porpoise in U.S. mid-Atlantic gillnet fisheries is established February 25, 1997 and will hold its first meeting to develop a Take Reduction Plan as described in the Marine Mammal Protection Act (MMPA) focusing on reducing bycatch in these fisheries.

DATES: The team is established as of February 25, 1997. The first meeting of the team will be held on March 4–5, 1997, from 8:30 a.m. to 5:30 p.m. Future meetings are tentatively scheduled for April 23–24, 1997, and June 3–4, 1997.

ADDRESSES: The first meeting will be held at the Holiday Inn SunSpree Resort, 3900 Atlantic Avenue, Virginia Beach, VA 23451. Future meetings are tentatively scheduled for Salisbury, MD, (April) and Washington, D.C. (June).

FOR FURTHER INFORMATION CONTACT: Victoria Cornish, (301) 713-2322.

SUPPLEMENTARY INFORMATION: On April 30, 1994, the 1994 Amendments to the MMPA were signed into law. Section 117 of the MMPA requires that NMFS complete stock assessment reports for all marine mammal stocks within U.S. waters. Each stock assessment report is required to categorize the status of the stock as one that either has a level of human-caused mortality and serious injury that is not likely to cause the stock to be reduced below its optimum sustainable population; or is a strategic stock, with a description of the reasons therefore; and estimate the potential biological removal (PBR) level for the stock, describing the information used to calculate it, including the recovery factor. Stock Assessment Reports and the calculated PBR were published by NMFS in July 1995.

The MMPA defines a "strategic stock" as a marine mammal stock for which the level of direct human-caused mortality exceeds the PBR level; which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act of 1973 (ESA) within the foreseeable future; which is listed as a threatened species or endangered species under the ESA, or is designated as depleted under the MMPA. The MMPA further defines the term "potential biological removal," or PBR, as "the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population."

Mid-Atlantic gillnet fisheries interact with the Gulf of Maine/Bay of Fundy stock of harbor porpoise (supporting documentation at 60 FR 67063, December 28, 1995). This stock is considered strategic under the MMPA because the level of human-caused mortality is greater than its PBR levels.

Section 118(f) of the MMPA requires NMFS to establish a Take Reduction Team to prepare a draft Take Reduction Plan designed to assist in the recovery or prevent the depletion of each strategic marine mammal stock that interacts with certain fisheries. Section 118(f)(6)(C) requires that members of Take Reduction Teams have expertise regarding the conservation or biology of the marine mammal species that the plan will address, or the fishing practices that result in the incidental mortality and serious injury of such species. The MMPA further specifies that members of the team shall include representatives of Federal agencies, each coastal state with fisheries that interact with the species or stock, appropriate Regional Fishery Management Councils, interstate fisheries commissions, academic and scientific organizations, environmental groups, all commercial and recreational fisheries groups and gear types which incidentally take the species or stock, Alaska Native organizations, or Indian tribal organizations, and others as deemed appropriate.

As a result of an extended interview process conducted by a NMFS-contracted facilitator, NMFS has asked the following individuals to be a member of the team, which will focus on reducing bycatch of harbor porpoise taken as bycatch in U.S. mid-Atlantic gillnet fisheries: Erik Anderson, independent fisher, New Hampshire, and member of the New England Fishery Management Council; Herb Austin, fishery scientist, Virginia Institute of Marine Science; Susan Barco, marine mammal scientist, Virginia Science Museum; Charles Bergman, independent fisher, New Jersey, and member of the Mid-Atlantic Fishery Management Council; Ernie Bowden, independent fisher, Virginia, and member of the Eastern Shore Watermen's Association; David Bower, fishery manager, Virginia Marine Resources Commission; Kevin Chu, fishery biologist, National Marine Fisheries Service; Victoria Cornish, fishery biologist, National Marine Fisheries Service; Gordon Elliott, independent fisher, North Carolina; Bruce Halgren, fishery manager, New Jersey Division of Fish, Game and Wildlife; Thomas Hoff, fishery scientist, Mid-Atlantic Fishery Management Council; George LaPointe, fishery scientist, Atlantic States Marine Fisheries Commission; Matt Linnell, independent fisher, Massachusetts; Richard Luedtke, independent fisher, New Jersey; Bridget Mansfield, fishery biologist, National Marine Fisheries Service, Rick Marks, fishery scientist, North Carolina Fisherman's Association; Dave Martin, independent fisher, Martin Fish Company; William McLellan, marine mammal scientist, University of North Carolina; Robert Munson, independent fisher, New Jersey; Jeff Oden, independent fisher, North Carolina; Bill Outten, fishery manager, Maryland Department of Natural Resources; Andrew Read, marine mammal scientist, Duke University; Tom Smith, independent fisher, Maryland; Michael Street, fishery manager, North Carolina Division of Marine Fisheries; Leonard Voss, Jr., independent fisher, Delaware; Rob West, independent fisher, North Carolina; Nina Young, conservationist, Center for Marine Conservation; Sharon Young, conservationist, Humane Society of the United States. Other individuals from NMFS, state and Federal agencies may be present as observers or for their scientific expertise. The team will be facilitated by RESOLVE Center for Environmental Dispute Resolution, Washington, DC.

The team is officially established upon publication of the first meeting notice in the **Federal Register**. NMFS fully intends to convene the Take Reduction Team process in a way that provides for national consistency yet accommodates the unique regional needs and characteristics of the team. Take Reduction Teams are not subject to the Federal Advisory Committee Act (5 App. U.S.C.). Meetings are open to the public.

Dated: February 19, 1997.

Patricia A. Montanio

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–4591 Filed 2–24–97; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 020697A]

Formation of Advisory Panels for National Academy of Sciences Study on Individual Fishing Quotas

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: Notice is hereby given that NMFS is accepting nominations for two advisory panels for an Individual Fishing Quota (IFQ) study to be conducted by the National Academy of Sciences' National Research Council (NRC). This action is taken to comply with the Magnuson-Stevens Fishery Conservation and Management Act as amended by the Sustainable Fisheries Act of 1996.

DATES: Interested parties should submit a statement of interest by March 24, 1997. See **SUPPLEMENTARY INFORMATION** for specific details about the statement.

ADDRESS: Send statements of interest to the Director of the Office of Science and Technology, NMFS, 1315 East-West Highway, Silver Spring, MD, 20910.

FOR FURTHER INFORMATION CONTACT: Amy Gautam, NMFS, Office of Science and Technology. Telephone: (301)713–2328.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*, as amended by the Sustainable Fisheries Act of 1996, mandates that "The Secretary of Commerce shall, in consultation with the National Academy of Sciences, the Councils, the fishing industry, affected States, conservation organizations and other interested persons, establish two individual fishing quota review groups to assist in the preparation of the report, which shall represent: (A) Alaska, Hawaii, and the other Pacific coastal States; and (B) Atlantic coastal States and the Gulf of Mexico coastal States. The Secretary shall, to the extent practicable, achieve a balanced representation of viewpoints among the individuals on each review group * * *" Therefore, NMFS is establishing two advisory panels, one serving the East coast and one serving the West coast.

The East and Wast coast panels will be comprised of no more than fifteen members each. Members of the panels will serve as technical advisors to the NRC committee with respect to any issues relating to IFQ implementation. Members may give expert testimony at the public hearings on IFQs. Members may also be asked to assist in the facilitation of NOAA's public hearings in terms of developing questions to be asked at the hearings and in guiding the discussions. Members will be expected to attend one public hearing or one public NRC meeting on IFQs but will not be asked to attend NRC committee meetings. No other meetings are anticipated for the advisory panels. There is no compensation for membership on an advisory panel. NMFS will pay for the travel of each advisory panel member to one public hearing or one NRC public meeting on IFQs. Finally, the advisory panels will serve as an "information clearinghouse."

Interested parties should submit a statement of interest. The statement should include a description of the nominee's background and experience, particularly with respect to IFQs; current occupation and position; reasons for wishing to participate on an advisory panel; and a statement identifying why the nominee should be considered for membership on an advisory panel. Interested parties need not include additional letters of support or sponsorship other than their own self-nominating statements. NMFS will announce the selection of advisory panel members no later than April 14, 1997.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 19, 1997.

Rolland A. Schmitten,

Assistant Administrator, National Marine Fisheries Service.

[FR Doc. 97–4592 Filed 2–24–97; 8:45 am]

BILLING CODE 3510–22–F

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission, Washington, DC 20207.

TIME AND DATE: Tuesday, March 4, 1997, 10:00 a.m.

LOCATION: Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sayde E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: February 21, 1997.

Sayde E. Dunn,

Secretary.

[FR Doc. 97–4784 Filed 2–21–97; 2:06 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Scientific Advisory Board Closed Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Scientific Advisory Board has been scheduled as follows:

DATES: 12–13 March 1997 (800 am to 1600 pm).

ADDRESS: The Defense Intelligence Agency, Bolling AFB, Washington, D.C. 20340–5100.

FOR FURTHER INFORMATION CONTACT: Maj Michael W. Lamb, USAF, Executive Secretary, DIA Scientific Advisory Board, Washington, D.C. 20340–1328 (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(I), Title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: February 20, 1997.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 97–4561 Filed 2–24–97; 8:45 am]

BILLING CODE 5000–04–M

Defense Intelligence Agency, Scientific Advisory Board Closed meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Scientific Advisory Board has been scheduled as follows:

DATES: March 11–12, 1997 (800 am to 1600 pm).

ADDRESSES: The Defense Intelligence Agency, Bolling AFB, Washington, D.C. 20340–5100.

FOR FURTHER INFORMATION CONTACT: Maj Michael W. Lamb, USAF, Executive Secretariat, DIA Scientific Advisory Board, Washington, D.C. 20340–1328, (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(I), Title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: February 20, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–4562 Filed 2–24–97; 8:45 am]

BILLING CODE 5000–04–M

Meeting of the National Defense Panel

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for the first meeting of the National Defense Panel, and describes the functions of the Panel. The meeting will be closed to the public, in accordance with U.S. Code Title 552b, (c)(1) in order for the panel to discuss classified material. Notice of this meeting is required under the Federal Advisory Committee Act, (Pub. L. 92–463). Notice of this meeting is less than fifteen days prior to the meeting due the Panel's delayed selection and the Panel members' subsequent need to meet at the earliest date possible.

DATES: February 27, 1997.

ADDRESSES: Room 3E912, Pentagon, Washington, DC 20310–1010.

SUPPLEMENTARY INFORMATION: The National Defense Panel was established January 24, 1997 by the Military Force Structure Review Act of 1996, Pub. L. 104–201, and will expire after December 15, 1997. The purpose of the Panel is to provide the Secretary of Defense and the Congress with an independent, nonpartisan assessment of the Secretary's Quadrennial Defense Review. The Panel will also provide the Secretary and the Congress by December 15, 1997 with an Alternate Force Structure Analysis that will explore innovative ways to meet the national security challenges of the Twenty-First century.

PROPOSED SCHEDULE AND AGENDA: The National Defense Panel will meet in closed session from approximately 12:00 PM until 3:30 PM on February 27, 1997. The Panel will discuss classified intelligence information on the international security environment provided to the Panel by the Defense Intelligence Agency and the National Intelligence Council.

FOR FURTHER INFORMATION CONTACT: Please call the National Defense Panel at (703) 697–5136.

Dated: February 19, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–4564 Filed 2–24–97; 8:45 am]

BILLING CODE 5000–04–M

Revised Non-Foreign Overseas Per Diem Rates

AGENCY: DoD, Per Diem, Travel and Transportation Allowance Committee.

ACTION: Notice of revised non-foreign overseas per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 192. This bulletin lists revisions in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. Bulletin Number 192 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: March 1, 1997.

SUPPLEMENTARY INFORMATION: This document gives notice of revisions in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. It supersedes Civilian Personnel Per Diem Bulletin Number 191. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of revisions in per diem rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office. The text of the Bulletin follows:

BILLING CODE 5000–04–M

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA:				
ANCHORAGE				
05/01 -- 09/30	147	66	213	02/01/97
10/01 -- 04/30	81	60	141	02/01/97
ANCHORAGE NAVAL RESERVE CENTER				
05/01 -- 09/30	147	66	213	02/01/97
10/01 -- 04/30	81	60	141	02/01/97
BARROW	110	76	186	03/01/96
BETHEL	93	61	154	02/01/97
CORDOVA	74	72	146	02/01/97
CRAIG				
05/01 -- 08/31	97	96	193	03/01/96
09/01 -- 04/30	75	94	169	03/01/96
DELTA JUNCTION	75	64	139	02/01/97
DUTCH HARBOR-UNALASKA	110	75	185	02/01/97
EARECKSON AIR STATION	75	60	135	02/01/97
EIELSON AFB				
05/16 -- 09/14	121	60	181	02/01/97
09/15 -- 05/15	75	55	130	02/01/97
ELMENDORF AFB				
05/01 -- 09/30	147	66	213	02/01/97
10/01 -- 04/30	81	60	141	02/01/97
FAIRBANKS				
05/16 -- 09/14	121	60	181	02/01/97
09/15 -- 05/15	75	55	130	02/01/97
FT. GREELY	75	64	139	02/01/97
FT. RICHARDSON				
05/01 -- 09/30	147	66	213	02/01/97
10/01 -- 04/30	81	60	141	02/01/97
FT. WAINWRIGHT				
05/16 -- 09/14	121	60	181	02/01/97
09/15 -- 05/15	75	55	130	02/01/97
HOMER				
05/01 -- 09/30	116	64	180	02/01/97
10/01 -- 04/30	90	61	151	02/01/97
JUNEAU	89	79	168	02/01/97
KENAI-SOLDOTNA				
05/01 -- 09/30	94	61	155	02/01/97
10/01 -- 04/30	74	59	133	02/01/97
KETCHIKAN				
05/01 -- 09/30	99	77	176	02/01/97
10/01 -- 04/30	83	75	158	02/01/97

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
KING COVE	85	69	154	03/01/96
KING SALMON	77	68	145	03/01/96
KLAWOCK				
05/01 -- 08/31	97	96	193	03/01/96
09/01 -- 04/30	75	94	169	03/01/96
KODIAK	88	72	160	02/01/97
KULIS AGS				
05/01 -- 09/30	147	66	213	02/01/97
10/01 -- 04/30	81	60	141	02/01/97
MURPHY DOME				
05/16 -- 09/14	121	60	181	02/01/97
09/15 -- 05/15	75	55	130	02/01/97
NOME	93	76	169	02/01/97
PETERSBURG	82	58	140	02/01/97
SEWARD				
05/01 -- 09/15	114	74	188	02/01/97
09/16 -- 04/30	78	71	149	02/01/97
SITKA-MT. EDGECOMBE				
04/01 -- 10/31	97	63	160	02/01/97
11/01 -- 03/31	86	62	148	02/01/97
SKAGWAY				
05/01 -- 09/30	99	77	176	02/01/97
10/01 -- 04/30	83	75	158	02/01/97
SPRUCE CAPE	88	72	160	02/01/97
TANANA	93	76	169	02/01/97
VALDEZ				
05/15 -- 09/15	105	65	170	02/01/97
09/16 -- 05/14	84	64	148	02/01/97
WASILLA	89	65	154	02/01/97
WRANGELL				
05/01 -- 09/30	99	77	176	02/01/97
10/01 -- 04/30	83	75	158	02/01/97
[OTHER]	75	60	135	02/01/97
AMERICAN SAMOA:				
AMERICAN SAMOA	73	53	126	03/01/97
GUAM:				
ANDERSEN AFB 2/	190	85	275	05/01/96
GUAM	190	85	275	05/01/96
NAVAL AIR STATION 2/	190	85	275	05/01/96
NAVAL COMM STATION 2/	190	85	275	05/01/96
NAVAL STATION 2/	190	85	275	05/01/96
US NAVAL HOSPITAL 2/	190	85	275	05/01/96

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
HAWAII:				
CAMP H M SMITH	110	70	180	07/01/96
EASTPAC NAVAL COMP TELE AREA	110	70	180	07/01/96
FT. DERUSSEY	110	70	180	07/01/96
FT. SHAFTER	110	70	180	07/01/96
HICKAM AFB	110	70	180	07/01/96
HONOLULU NAV & MC RESERVE CTR	110	70	180	07/01/96
ISLE OF HAWAII: HILO	74	60	134	07/01/96
ISLE OF HAWAII: OTHER	105	63	168	07/01/96
ISLE OF KAUAI	114	75	189	07/01/96
ISLE OF KURE	10	8	18	07/01/96
ISLE OF MAUI				
04/16 -- 12/14	100	63	163	07/01/96
12/15 -- 04/15	113	65	178	07/01/96
ISLE OF OAHU	110	70	180	07/01/96
KANEOHE BAY MC BASE	110	70	180	07/01/96
KEKAHA PACIFIC MISSILE RANGE FAC	114	75	189	07/01/96
KILAUEA MILITARY CAMP	74	60	134	07/01/96
LULUALEI NAVAL MAGAZINE	110	70	180	07/01/96
NAS BARBERS POINT 2/	110	70	180	07/01/96
PEARL HARBOR AFLOAT TNG GRP, MIDDLE	110	70	180	07/01/96
PEARL HARBOR NAVAL COMPLEX	110	70	180	07/01/96
PEARL HARBOR NAVAL SUBMARINE BASE	110	70	180	07/01/96
PEARL HARBOR NAVY PUBLIC WORKS CTR	110	70	180	07/01/96
SCHOFIELD BARRACKS	110	70	180	07/01/96
WHEELER ARMY AIRFIELD	110	70	180	07/01/96
[OTHER]	79	62	141	06/01/93
JOHNSTON ATOLL:				
JOHNSTON ATOLL	22	24	46	07/01/96
MIDWAY ISLANDS:				
MIDWAY ISLAND NAVAL AIR FACILITY	60	13	73	02/01/97
MIDWAY ISLANDS	60	13	73	02/01/97
NORTHERN MARIANA ISLANDS:				
ROTA	83	90	173	05/01/96
SAIPAN	138	89	227	05/01/96
TINIAN	61	72	133	06/01/95
[OTHER]	20	13	33	12/01/90

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
PUERTO RICO:				
BAYAMON				
05/01 -- 12/14	102	60	162	10/01/96
12/15 -- 04/30	130	63	193	10/01/96
CAROLINA				
05/01 -- 12/14	102	60	162	10/01/96
12/15 -- 04/30	130	63	193	10/01/96
DORADO				
04/01 -- 12/21	164	83	247	10/01/96
12/22 -- 03/31	300	96	396	10/01/96
FAJARDO [INCL CEIBA, LUQUILLO & HUMACAO]				
05/01 -- 11/23	70	64	134	10/01/96
11/24 -- 04/30	114	68	182	10/01/96
FT. BUCHANAN [INCL GSA SVC CTR, GUAYNABO]				
05/01 -- 12/14	102	60	162	10/01/96
12/15 -- 04/30	130	63	193	10/01/96
LUIS MUNOZ MARIN IAP AGS				
05/01 -- 12/14	102	60	162	10/01/96
12/15 -- 04/30	130	63	193	10/01/96
MAYAGUEZ	90	58	148	02/01/97
PONCE	107	58	165	10/01/96
ROOSEVELT ROADS				
05/01 -- 11/23	70	64	134	10/01/96
11/24 -- 04/30	114	68	182	10/01/96
ROOSEVELT ROADS NAS 2/				
05/01 -- 11/23	70	64	134	10/01/96
11/24 -- 04/30	114	68	182	10/01/96
SABANA SECA				
05/01 -- 12/14	102	60	162	10/01/96
12/15 -- 04/30	130	63	193	10/01/96
SABANA SECA US NAVAL SEC GRP ACT				
05/01 -- 12/14	102	60	162	10/01/96
12/15 -- 04/30	130	63	193	10/01/96
SAN JUAN				
05/01 -- 12/14	102	60	162	10/01/96
12/15 -- 04/30	130	63	193	10/01/96
SAN JUAN US NAVAL RESERVE STATION				
05/01 -- 12/14	102	60	162	10/01/96
12/15 -- 04/30	130	63	193	10/01/96
[OTHER]	70	50	120	10/01/96
VIRGIN ISLANDS (U.S.):				
ST. CROIX	127	78	205	08/01/96

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ST. JOHN						
04/16 -- 12/21	242		89		331	08/01/96
12/22 -- 04/15	391		100		491	08/01/96
ST. THOMAS						
04/12 -- 12/15	168		93		261	08/01/96
12/16 -- 04/11	268		103		371	08/01/96
WAKE ISLAND:						
WAKE ISLAND	40		35		75	10/01/96

Dated: February 20, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–4563 Filed 2–24–97; 8:45 am]

BILLING CODE 5000–04–C

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Resources Management Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507(j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by March 31, 1997.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer: Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 7th & D Streets, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Written comments regarding the regular clearance and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronic mailed to the internet address #FIRB@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 3506(c)(2)(A) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Group, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 19, 1997.

Gloria Parker,

Director, Information Resources Management Group.

Office of Educational Research and Improvement

Type of Review: Revision.

Title: Application for Special Projects Grants Under Library Services for Indian Tribes and Hawaiian Natives Program

Abstract: This form allows Indian Tribes to apply for Special Projects grants under Section 404 of the Library Services for Indian Tribes and Hawaiian Natives Program, Title IV of the Library Services and Construction Act, as amended.

Additional Information: Although Library Services and Construction Act, Title IV (LSCA IV) was technically repealed by the 104th Congress and new legislation—the Library Services and Technology Act—was enacted, the LSCA IV program will continue in FY 1997. Since this continues to be a Department program, it must again operate under the Department of Education regulations and procedures. Although this package was cleared last year, program regulations, including the evaluation criteria, have since been abolished, thus requiring this emergency clearance request.

It is essential that grant awards be made in a timely manner, allowing grantees to begin and conduct projects without delay. Also, it is essential that Library Programs staff be able to provide an acceptable level of customer service to potential applicants, providing timely responses to their technical questions concerning the competition. An emergency clearance of March 31 would ensure both an acceptable level of customer service and the timely awarding of grants.

Frequency: One time.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden: responses, 75; burden hours, 600.

[FR Doc. 97–4543 Filed 2–24–97; 8:45 am]

DEPARTMENT OF ENERGY

BILLING CODE 4000–01–P

Federal Energy Regulatory Commission

[Docket No. RP96–185–004]

Algonquin Gas Transmission Company; Notice of Refund Report

February 19, 1997.

Take notice that on February 5, 1997, Algonquin Gas Transmission Company (Algonquin Gas) tendered for filing a Refund Report showing that on January 7, 1997, it issued refunds (or surcharges) to its customers as required by the Stipulation and Agreement in Docket No. RP93–14–000.

Algonquin Gas states that the refunds totaled $36,070.28, including $1,006.08 in interest, and were calculated for the period May 1, 1996, to October 31, 1996.

Algonquin Gas also states that copies of the filing were served upon its customers and all interested State Commissions.

Any person desiring to protect said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before February 26, 1997. Protests will be considered by the Commission in determining the

appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4547 Filed 2–24–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–383–003]

CNG Transmission Corporation; Notice of Compliance Tariff Filing

February 19, 1997.

Take notice that on February 13, 1997, CNG Transmission Corporation (CNG), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of November 1, 1996:

2nd Substitute 2nd Revised Sheet No. 369
Substitute First Revised Sheet No. 378
Original Sheet No. 378A

CNG states that the purpose of this filing is to revise CNG's proposed tariff provisions with regard to Negotiated Rates, as directed by the Commission's January 29, 1997, "Order on Compliance Filing."

CNG states that copies of its filing have been mailed to CNG's customers and interested state commissions, and to parties to the captioned proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC, 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4548 Filed 2–24–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–242–000]

Northwest Pipeline Corporation, Notice of Request Under Blanket Authorization

February 19, 1997.

Take notice that on February 12, 1997, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP97–242–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for approval to upgrade its Portland West Meter Station in Multnomah County, Oregon, to accommodate a request by Northwest Natural Gas Company (Northwest Natural) for additional capacity at that delivery point to more reliably serve the peak-day requirements of its distribution customers, under the blanket certificate issued in Docket No. CP82–433–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest proposes to upgrade the Portland West Meter Station's capacity by using an orifice plate, appropriately-sized for a 0.65 Beta Ratio. Northwest says this is available at the station and has been used in the past for operational purposes to accommodate Northwest Natural's peak-day requirements at that delivery point. Northwest states that by recalculating the meter station capacity using a Beta ratio of 0.65, rather than the 0.6 Beta factor it uses on a standard basis, results in an increase in the maximum design delivery capacity from 110,000 Dth/d to 134,000 Dth/d at the 450 psig delivery pressure.

Northwest says there will be no cost associated with the proposed capacity increase since no modification of facilities is required. Northwest explains there will be no increase in its total contract demand delivery obligations nor any impact on its system peak day deliveries. Northwest estimates that the requirements to be served via the upgraded meter station capacity will result in no increased annual throughput on its system. Northwest explains that any deliveries made to Northwest Natural through the Portland West Meter Station will be gas delivered either for Northwest Natural or other shippers for whom Northwest is authorized to transport gas. Northwest states that any volumes delivered to the Portland West delivery point will be within the authorized entitlements of such shippers. Northwest says its tariff does not prohibit the capacity upgrade of delivery point facilities.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4545 Filed 2–24–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–112–019]

Tennessee Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

February 19, 1997.

Take notice that on February 13, 1997, Tennessee Gas Pipeline Company (Tennessee) tendered for filing to become part its FERC Gas Tariff, Fifth Revised Volume No. 1 and Original Volume No. 2 the following Revised Tariff Sheets:

Fifth Revised Volume No. 1
Fourteenth Revised Sheet No. 20
Eighth Revised Sheet No. 21
Sixteenth Revised Sheet No. 21A
Twenty-first Revised Sheet No. 22
Sixteenth Revised Sheet No. 22A
Thirteenth Revised Sheet No. 23
Fourth Revised Sheet No. 23A
Eighth Revised Sheet No. 23B
Second Revised Sheet No. 23C
Eighteenth Revised Sheet No. 24
Thirteenth Revised Sheet No. 25
Seventh Revised Sheet No. 26
Eighth Revised Sheet No. 26A
Fourteenth Revised Sheet No. 26B
Sixth Revised Sheet No. 27
Fourth Revised Sheet No. 28
First Revised Sheet No. 29
Second Revised Sheet No. 109
First Revised Sheet No. 128A
Third Revised Sheet No. 129
First Revised Sheet No. 129A
First Revised Sheet No. 134
First Revised Sheet No. 139
Fourth Revised Sheet No. 154
First Revised Sheet No. 154A
First Revised Sheet No. 155
Third Revised Sheet No. 155E
Fourth Revised Sheet No. 159
First Revised Sheet No. 196
First Revised Sheet No. 200
First Revised Sheet No. 201
Third Revised Sheet No. 304
Fourth Revised Sheet No. 337
Second Revised Sheet No. 337A
First Revised Sheet No. 338
Third Revised Sheet No. 339
Second Revised Sheet No. 339A
First Revised Sheet No. 366
First Revised Sheet No. 367
Third Revised Sheet No. 398A
First Revised Sheet No. 602
Original Volume No. 2
Thirty-Third Revised Sheet No. 5

Tennessee states that the purpose of this filing is to implement the Settlement Rates and other tariff changes provided for in the Stipulation and Agreement filed on April 5, 1996, in Docket No. RP95–112 (Stipulation) which the Commission approved by an order issued on October 30, 1996, 77 FERC ¶ 61,083 ("October 30 Order"). Tennessee further states that on January 29, 1997, the Commission denied the requests for rehearing of the October 30 Order. Tennessee proposes that the tariff sheets become effective on March 1, 1997, with the exception of Sheet Nos. 134, 139, 196, 200 and 201 which are to become effective on July 1, 1995, in accord with the Stipulation.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4546 Filed 2–24–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER90–168–031, et al.]

National Gas & Electric L.P., et al.; Electric Rate and Corporate Regulation Filings

February 18, 1997.

Take notice that the following filings have been made with the Commission:

1. National Gas & Electric L.P., AES Power, Inc., Direct Electric Inc., Energy Services Inc., QST Energy Trading Inc., TransAlta Enterprises Corporation, and LISCO, Inc.

[Docket Nos. ER90–168–031, ER94–890–012, ER94–1161–011, ER95–1021–006, ER96–553–005, ER96–1316–003 and ER96–1406–002 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On February 4, 1997, National Gas & Electric L.P. filed certain information required by the Commission's March 20, 1990, order in Docket No. ER90–168–000.

On February 4, 1997, AES Power, Inc. filed certain information required by the Commission's April 8, 1994, order in Docket No. ER94–890–000.

On January 28, 1997, Direct Electric Inc. filed certain information required by the Commission's July 18, 1994, order in Docket No. ER94–1161–000.

On February 5, 1997, Energy Services Inc. filed certain information required by the Commission's June 13, 1995, order in Docket No. ER95–1021–000.

On February 3, 1997, QST Energy Trading Inc. filed certain information required by the Commission's March 14, 1996, order in Docket No. ER96–553–000.

On February 3, 1997, TransAlta Enterprises Corporation filed certain information required by the Commission's June 12, 1996, order in Docket No. ER96–1316–000.

On February 3, 1997, LISCO, Inc. filed certain information required by the Commission's June 10, 1996, order in Docket No. ER96–1406–000.

2. NorAm Energy Services, Inc., New Energy Ventures, Inc., Southern Energy Marketing Corp. Inc., TECO EnergySource, Inc., Alliance Power Marketing, Mid-American Power, LLC, and PanEnergy Trading and Market Services, L.L.C.

[Docket Nos. ER94–1247–012, ER96–1387–002, ER96–1516–002, ER96–1563–003, ER96–1818–004, ER96–1858–003, and ER96–2921–002 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On February 3, 1997, NorAm Energy Services, Inc. filed certain information as required by the Commission's July 25, 1994, order in Docket No. ER94–1247–000.

On January 31, 1997, New Energy Ventures, Inc. filed certain information as required by the Commission's September 6, 1996, order in Docket No. ER96–1387–000.

On January 13, 1997, Southern Energy Marketing Corporation, Inc. filed certain information as required by the Commission's May 8, 1996, order in Docket No. ER96–1516–000.

On February 3, 1997, TECO EnergySource, Inc. filed certain information as required by the Commission's June 11, 1996, order in Docket No. ER96–1563–000.

On January 13, 1997, Alliance Power Marketing Inc. filed certain information as required by the Commission's June 17, 1996, order in Docket No. ER96–1818–000.

On February 3, 1997, Mid-American Power, LLC filed certain information as required by the Commission's June 16, 1996, order in Docket No. ER96–1858–000.

On January 30, 1997, PanEnergy Trading and Market Services, L.L.C. filed certain information as required by the Commission's October 2, 1996, order in Docket No. ER96–2921–000.

3. Duke Energy Marketing Corp., Enserver, L.C. Power Providers, Inc., CMS Marketing, Service and Trading Company, Strategic Energy Management, Inc., Dayton Power & Light Company, and EnerZ Corporation

[Docket Nos. ER96–109–008, ER96–182–005, ER96–2303–002, ER96–2350–005, ER96–2591–002, ER96–2602–002, and ER96–3064–001 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On January 30, 1997, Duke Energy Marketing Corp. filed certain information as required by the Commission's December 14, 1995, order in Docket No. ER96–109–000.

On January 27, 1997, Enserver, L.C. Duke Energy Marketing Corp. filed certain information as required by the Commission's December 14, 1995, order in Docket No. ER96–109–000.

On January 29, 1997, Power Providers, Inc. filed certain information as required by the Commission's September 3, 1996, order in Docket No. ER96–2303–000.

On January 30, 1997, CMS Marketing, Service and Trading Company filed certain information as required by the Commission's September 6, 1996, order in Docket No. ER96–2350–000.

On February 3, 1997, Strategic Energy Management, Inc. filed certain information as required by the Commission's September 13, 1996, order in Docket No. ER96–2591–000.

On January 30, 1997, Dayton Power & Light Company filed certain information as required by the Commission's September 30, 1996, order in Docket No. ER96–2602–000.

On January 29, 1997, EnerZ Corporation filed certain information as required by the Commission's October 21, 1996, order in Docket No. ER96–3064–000.

4. Arizona Public Service Company

[Docket Nos. ER96–2741–003 and ER97–500–001]

Take notice that on February 10, 1997, Arizona Public Service Company tendered for filing a Revised Service Agreement for firm Point-to-Point Transmission Service in accordance with the Commission's January 10, 1997 order in the aforementioned dockets.

Comment date: March 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Consumers Power Company, d/b/a Consumers Energy Company

[Docket No. ER97–1502–000]

Take notice that on January 31, 1997, Consumers Power Company, d/b/a Consumers Energy Company (Consumers), tendered for filing an unexecuted service agreement for Network Integration Transmission Service and an unexecuted Network Operating Agreement with the Municipal Cooperative Coordinated Pool. A copy of the filing was served on the Michigan Public Service Commission, Michigan Public Power Agency and Wolverine Power Supply Cooperative.

Comment date: March 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Northern States Power Company

[Docket No. ER97–1503–000]

Take notice that on January 31, 1997, Northern States Power Company (Minnesota) (NSP), tendered for filing a Firm Point-to-Point Transmission Service Agreement for NSP Wholesale (Point of Delivery: City of Kasota, MN) under the Northern States Power Company Transmission Tariff.

NSP requests that the Commission accept the agreement effective February 1, 1997, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: March 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Commonwealth Edison Company

[Docket No. ER97–1504–000]

Take notice that on January 31, 1997, Commonwealth Edison Company (ComEd), submitted for filing Service Agreements, establishing East Kentucky Power Cooperative (East Kentucky), and NIPSCO Energy Services Inc. (NESI), as customers under the terms of ComEd's Power Sales and Reassignment of Transmission Rights Tariff PSRT–1 (PSRT–1 Tariff). The Commission has previously designated the PSRT–1 Tariff as FERC Electric Tariff, First Revised Volume No. 2.

ComEd requests an effective date of January 1, 1997, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon East Kentucky, NESI, and the Illinois Commerce Commission.

Comment date: March 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Northern Indiana Public Service Company

[Docket No. ER97–1505–000]

Take notice that on January 31, 1997, Northern Indiana Public Service Company, tendered for filing an executed Service Agreement between Northern Indiana Public Service Company and Southern Indiana Gas and Electric Company.

Under the Service Agreement, Northern Indiana Public Service Company agrees to provide services to Southern Indiana Gas and Electric Company under Northern Indiana Public Service Company's Power Sales Tariff. Northern Indiana Public Service Company and Southern Indiana Gas and Electric Company request waiver of the Commission's sixty-day notice requirement to permit an effective date of January 2, 1997.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: March 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Northern Indiana Public Service Company

[Docket No. ER97–1506–000]

Take notice that on January 31, 1997, Northern Indiana Public Service Company, tendered for filing an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and Cinergy Operating Companies (The Cincinnati Gas & Electric Company, PSI Energy, Inc., and Cinergy Services, Inc.).

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to Cinergy Operating Companies pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service company in Docket No. ER96–1426–000 and allowed to become effective by the Commission, and as amended in Docket No. OA96–47–000. *Northern Indiana Public Service Company*, 75 FERC ¶ 61,213 (1996). Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of January 15, 1997.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: March 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Consolidated Edison Company of New York, Inc.

[Docket No. ER97–1508–000]

Take notice that on January 31, 1997, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing proposed supplements to its Rate Schedule FERC No. 92 and FERC No. 96.

The proposed supplement No. 11 to Rate Schedule FERC No. 96 increases the rates and charges for electric delivery service furnished to public customers of the New York Power Authority (NYPA) by $10,899,000 annually based on the 12-month period ending March 31, 1998.

The proposed supplement No. 10 to Rate Schedule FERC No. 96, applicable to electric delivery service to NYPA's non-public, economic development customers, and the proposed supplement No. 6 to Rate Schedule FERC No. 92, applicable to electric delivery service to commercial and industrial economic development customers of the County of Westchester Public Utility Service Agency (COWPUSA) or the New York City Public Utility Service (NYCPUS), increase the rates and charges for the service by $50,000 annually based on the 12-month period ending March 31, 1998.

The proposed decreases are a part of a Company-wide general electric rate change application which Con Edison filed to implement rates for the third year of a multi-year rate plan previously approved by the New York Public Service Commission (NYPSC) and which is pending before the NYPSC.

Although the proposed supplements bear a nominal effective date of April 1, 1997, Con Edison will not seek permission to make these effective until the effective date, estimated to be April 1, 1997, of the rate changes, if any, authorized by the NYPSC.

A copy of this filing has been served on NYPA, COWPUSA, NYCPUS, and the New York Public Service Commission.

Comment date: March 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Consumers Power Company, d/b/a Consumers Energy Company

[Docket No. ER97–1509–000]

Take notice that on January 31, 1997, Consumers Power Company, d/b/a Consumers Energy Company (Consumers), tendered for filing an unexecuted service agreement for Non-Firm Point-to-Point Transmission Service and an unexecuted Operating Agreement and an executed service agreement for Wholesale Power Service with the City of Holland. A copy of the filing was served on the Michigan Public Service Commission and the City of Holland.

Comment date: March 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Consumers Power Company, d/b/a Consumers Energy Company

[Docket No. ER97–1510–000]

Take notice that on January 31, 1997, Consumers Power Company, d/b/a Consumers Energy Company (Consumers), tendered for filing an unexecuted service agreement for Network Integration Transmission Service and an unexecuted Network Operating Agreement with the Michigan South Central Power Agency (MSCPA). A copy of the filing was served on the Michigan Public Service Commission and the MSCPA.

Comment date: March 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Florida Power & Light Company

[Docket No. ER97–1511–000]

Take notice that on February 3, 1997, Florida Power & Light Company, filed executed Service Agreements with Southern Energy Marketing Corporation, Inc., Pan Energy and Market Services, L.L.C., CNG Power Services Corporation, Duke/Louis Dreyfus L.L.C., LG&E Power Marketing, Inc., Rainbow Energy Marketing Corporation and Tampa Electric Company for service pursuant to Tariff No. 1 for Sales of Power and Energy by Florida Power & Light. FPL requests that each Service Agreement be made effective on January 3, 1997.

Comment date: March 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Portland General Electric Company

[Docket No. ER97–1512–000]

Take notice that on February 3, 1997, Portland General Electric Company (PGE), tendered for filing under PGE's Final Rule pro forma tariff (FERC Electric Tariff Original Volume No. 8, Docket No. OA96–137–000), an executed Service Agreement for Long-Term Firm Point-to-Point Transmission Service with The Washington Water Power Company.

Pursuant to 18 CFR 35.11, and the Commission's Order in Docket No. PL93–2–002 issued July 30, 1993, PGE respectfully requests that the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the executed Service Agreement to become effective February 1, 1997.

A copy of this filing was caused to be served upon The Washington Water Power Company as noted in the filing letter.

Comment date: March 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Portland General Electric Company

[Docket No. ER97–1513–000]

Take notice that on February 3, 1997, Portland General Electric Company (PGE), tendered for filing under PGE's Final Rule pro forma tariff (FERC Electric Tariff Original Volume No. 8, Docket No. OA96–137–000), an executed Service Agreement for Long-Term Firm Point-to-Point Transmission Service with Portland General Electric Company.

Pursuant to 18 CFR 35.11, and the Commission's Order in Docket No. PL93–2–002 issued July 30, 1993, PGE respectfully requests that the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the executed Service Agreement to become effective February 1, 1997.

A copy of this filing was retained for PGE's records and distributed accordingly.

Comment date: March 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Catalyst Old River Hydroelectric Limited Partnership

[Docket No. ES97–22–000]

Take notice that on February 10, 1997, Catalyst Old River Hydroelectric Limited Partnership (Catalyst) filed an application, under § 204 of the Federal Power Act, seeking authorization to issue securities and assume obligations in connection with its lease of the Old River Hydroelectric Project.

Comment date: March 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Central Maine Power Company

[Docket No. OA96–43–003]

Take notice that on January 17, 1997, Central Maine Power Company submitted to the Federal Energy Regulatory Commission and other interested persons revisions to its open access transmission tariff (FERC Electric Tariff, Original Volume No. 3, as supplemented) to eliminate certain limited deviations to the Commission's pro forma tariff as directed by the Commission by Order, dated December 18, 1996, in this proceeding.

Comment date: March 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Consolidated Edison Company of New York, Inc.

[Docket No. OA97–516–000]

Take notice that on January 28, 1997, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing an amendment to rate schedule FERC No. 140, an agreement with PECO Energy (PECO) to provide for the sale of energy and capacity.

Con Edison states that a copy of this filing has been served by mail upon PECO.

Comment date: March 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Consolidated Edison Company of New York, Inc.

[Docket No. OA97–517–000]

Take notice that on January 28, 1997, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing an amendment to Rate Schedule 68, an agreement with Northeast Utilities for the sale and purchase of energy and capacity.

Con Edison states that a copy of this filing has been served by mail upon Northeast Utilities.

Comment date: March 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4602 Filed 2–24–97; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER97–1514–000, et al.]

New York State Electric & Gas Corporation, et al.; Electric Rate and Corporate Regulation Filings

February 19, 1997.

Take notice that the following filings have been made with the Commission:

1. New York State Electric & Gas Corporation

[Docket No. ER97–1514–000]

Take notice that on February 3, 1997, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to 35.12 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35.12, as an initial rate schedule, an agreement with The Power Company of America, L.P. (PCA). The agreement provides a mechanism pursuant to which the parties can enter into separately scheduled transactions under which NYSEG will sell to PCA and PCA will purchase from NYSEG either capacity and associated energy or energy only as the parties may mutually agree.

NYSEG requests that the agreement become effective on February 4, 1997, so that the parties may, if mutually agreeable, enter into separately scheduled transactions under the agreement. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission and PCA.

Comment date: March 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Central Louisiana Electric Company, Inc.

[Docket No. ER97–1515–000]

Take notice that on January 31, 1997, Central Louisiana Electric Company, Inc., ("CLECO"), tendered for filing a service agreement under which Central Louisiana Electric Company, Inc. ("CLECO") as transmission provider, will provide non-firm point-to-point transmission service to Central and South West Services, Inc. ("CSWS") under its point-to-point transmission tariff.

CLECO states that a copy of the filing has been served on CSWS.

Comment date: March 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. The Cleveland Electric Illuminating Company

[Docket No. ER97–1516–000]

Take notice that on January 31, 1997, The Cleveland Electric Illuminating Company (CEI) filed Electric Power Service Agreements (Agreements) between CEI and Pennsylvania Power and Light Company, American Electric Power Service Corporation, Delmarva Power & Light Company, The Cincinnati Gas & Electric Company, PSI Energy, Inc. and Cinergy Services, Inc., Ohio Edison Company and Pennsylvania Power Company, Duquesne Light Company, Consumers Power Company and The Detroit Edison Company, Atlantic City Electric Company, Illinois Power Company, NIPSCO Energy Services, Inc., and the City of Painesville.

Comment date: March 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. The Toledo Edison Company

[Docket No. ER97–1517–000]

Take notice that on January 31, 1997, The Toledo Edison Company (TE) filed Electric Power Service Agreements (Agreements) between TE and Pennsylvania Power and Light Company, American Electric Power Service Corporation, Delmarva Power & Light Company, The Cincinnati Gas & Electric Company, PSI Energy, Inc. and Cinergy Services, Inc., Ohio Edison Company and Pennsylvania Power Company, Duquesne Light Company, Consumers Power Company and The Detroit Edison Company, Atlantic City Electric Company, Illinois Power Company, NIPSCO Energy Services, Inc., Wabash Valley Power Association, Inc., and AMP-Ohio, Inc.

Comment date: March 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Ohio Edison Company, Pennsylvania Power Company

[Docket No. ER97–1518–000]

Take notice that on January 31, 1997, Ohio Edison Company, tendered for filing on behalf of itself and Pennsylvania Power Company, Service Agreements for Non-Firm Point-to-Point Transmission Service with The Toledo Edison Company and Koch Energy Trading, Inc., pursuant to Ohio Edison's Open Access Tariff. These Service Agreements will enable the parties to obtain Non-Firm Point-to-Point Transmission Service in accordance with the terms of the Tariff.

Comment date: March 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Virginia Electric and Power Company

[Docket No. ER97–1519–000]

Take notice that on January 31, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing an unexecuted Service Agreement between Morgan Stanley Capital Group, Inc. and Virginia Power, dated January 1, 1996, under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994, as revised on December 31, 1996. Under the tendered Service Agreement Virginia Power agrees to provide services to Morgan Stanley Capital Group, Inc. under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon Morgan Stanley Capital Group, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: March 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. American Electric Power Service Corporation

[Docket No. ER97–1520–000]

Take notice that on January 31, 1997, the American Electric Power Service Corporation (AEPSC), tendered for filing executed service agreements with several parties, under the AEP Companies' Power Sales Tariff. The Power Sales Tariff was accepted for filing effective October 1, 1995, and has been designated AEP Companies' FERC Electric tariff First Revised Volume No. 2. AEPSC requests waiver of notice requirements to permit the Service Agreements to be made effective for service billed on and after January 3, 1997.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commission of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: March 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Virginia Electric and Power Company

[Docket No. ER97–1521–000]

Take notice that on January 31, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing an unexecuted Service Agreement between Southern Trading and Marketing, Inc. and Virginia Power, dated January 1, 1996, under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994, as revised on December 31, 1996. Under the tendered Service Agreement Virginia Power agrees to provide services to Southern Trading and Marketing, Inc. under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon Southern Trading and Marketing, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: March 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Virginia Electric and Power Company

[Docket No. ER97–1522–000]

Take notice that on January 31, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing an unexecuted Service Agreement between AIG Trading Corporation, and Virginia Power, dated January 1, 1996, under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994, as revised on December 31, 1996. Under the tendered Service Agreement Virginia Power agrees to provide services to AIG Trading Corporation under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon AIG Trading Corporation, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: March 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Niagara Mohawk Power Corporation

[Docket No. ER97–1525–000]

Take notice that on January 31, 1997, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and Wisconsin Electric Power Company. This Transmission Service Agreement specifies that Wisconsin Electric Power Company has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and Wisconsin Electric Power Company to enter into separately scheduled transactions under which NMPC will provide transmission service for Wisconsin Electric Power Company as the parties may mutually agree.

NMPC requests an effective date of January 24, 1997. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and Wisconsin Electric Power Company.

Comment date: March 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Ohio Valley Electric Corporation; Indiana-Kentucky Electric Corporation

[Docket No. ER97–1526–000]

Take notice that on February 3, 1997, Ohio Valley Electric Corporation (including its wholly-owned subsidiary, Indiana-Kentucky Electric Corporation) (OVEC), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service, dated January 30, 1997 (the Service Agreement) between Morgan Stanley Capital Group, Inc. (MSCG) and OVEC. OVEC proposes an effective date of January 30, 1997 and requests waiver of the Commission's notice requirement to allow the requested effective date. The Service Agreement provides for non-firm transmission service by OVEC to MSCG.

In its filing, OVEC states that the rates and charges included in the Service Agreement are the rates and charges set forth in OVEC's Order No. 888 compliance filing (Docket No. OA96–190–000).

A copy of this filing was served upon MSCG.

Comment date: March 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Niagara Mohawk Power Corporation

[Docket No. ER97–1528–000]

Take notice that on February 3, 1997, Niagara Mohawk Power Corporation (Niagara Mohawk), notified the Commission that it is canceling Electric Rate Schedule No. 124, which involves wholesale power sales to Vermont Electric Power Company, Inc. (VELCO). Cancellation of the rate schedule is effective on January 1, 1997.

Niagara Mohawk is requesting a waiver of the Commission's notice requirements.

A copy of this filing has been served on the New York State Public Service Commission and VELCO.

Comment date: March 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Niagara Mohawk Power Corporation

[Docket No. ER97–1534–000]

Take notice that on February 3, 1997, Niagara Mohawk Power Corporation (Niagara Mohawk), notified the Commission that it is canceling Electric Rate Schedule No. 132, which involves wholesale power sales to Massachusetts Municipal Wholesale Electric Company (MMWEC). Cancellation of the rate schedule is effective on January 1, 1997.

Niagara Mohawk is requesting a waiver of the Commission's notice requirements.

A copy of this filing has been served on the New York State Public Service Commission, and MMWEC.

Comment date: March 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. PacifiCorp

[Docket No. ER97–1535–000]

Take notice that on February 3, 1997, PacifiCorp, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, Non-Firm Transmission Service Agreements with Dupont Power Marketing and Tri-State Generation & Transmission Association, Inc. under, PacifiCorp's FERC Electric Tariff, Original Volume No. 11.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: March 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Public Service Electric and Gas Company

[Docket No. ER97–1539–000]

Take notice that on February 3, 1997, Public Service Electric and Gas Company (PSE&G), tendered for filing an agreement to provide non-firm transmission service to Southern Energy Trading and Marketing, Inc., pursuant to PSE&G's Open Access Transmission Tariff presently on file with the Commission in Docket No. OA96–80–000.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of January 31, 1997.

Comment date: March 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Wisconsin Electric Power Company

[Docket No. ER97–1544–000]

Take notice that on February 4, 1997, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing two firm transmission service agreements with Upper Peninsula Power Company (UPPCO). Under each agreement, power will be transmitted from Wisconsin Power and Light Company (WP&L) to UPPCO's isolated Iron River, Michigan service area.

Wisconsin Electric respectfully requests an effective date of March 1, 1997 for the first agreement and May 1, 1997 for the second, six-month agreement. Wisconsin Electric has also submitted a Notice of Cancellation of Service Agreement No. 5, under FERC Electric Tariff, Original Volume No. 1. Wisconsin Electric is authorized to state that UPPCO supports the requested effective date.

Copies of the filing have been served on UPPCO, WP&L, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: March 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Florida Power Corporation

[Docket No. ER97–1545–000]

Take notice that on February 4, 1997, Florida Power Corporation (Florida Power), tendered for filing a service agreement providing for service to Aquila Power Corporation (Aquila) pursuant to its open access transmission tariff (the T–6 Tariff). Florida Power requests that the Commission waive its notice of filing requirements and allow the agreement to become effective on February 5, 1997.

Comment date: March 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Illinova Power Marketing, Inc.

[Docket No. ER97–1546–000]

Take notice that on February 4, 1997, Illinova Power Marketing, Inc. (IPMI), 1405 West 2200 South, Salt Lake City, Utah, 84119, tendered for filing a proposed change to its code of conduct with its public utility affiliate, Illinois Power Company, regarding the independent functioning of wholesale merchant personnel and the sharing of bulk power marketing information.

Comment date: March 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. PECO Energy Company

[Docket No. ER97–1547–000]

Take notice that on February 3, 1997, PECO Energy Company (PECO), filed a Service Agreement dated January 9, 1997 with NIPSCO Energy Services, Inc. (NESI) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds NESI as a customer under the Tariff.

PECO requests an effective date of January 9, 1997, for the Service Agreement.

PECO states that copies of this filing have been supplied to NESI and to the Pennsylvania Public Utility Commission.

Comment date: March 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Power Marketing Coal Services, Inc.

[Docket No. ER97–1548–000]

Take notice that, Power Marketing Coal Services, Inc. (PMCS), on February 3, 1997, tendered for filing pursuant to Rule 205, 18 CFR 385.205, an application for blanket authorizations and waivers from the Commission, including approval of its FERC Electric Rate Schedule No. 1 to be effective upon acceptance by the Commission for filing.

PMCS plans to participate in the wholesale electric power market as a bulk power broker, bulk power marketer, and financial risk manager. PMCS will take ownership or title to electric energy and capacity it purchases and sells to other wholesale entities. PMCS will also arrange appropriate transmission and ancillary services necessary to facilitate any transactions it undertakes as a marketer. PMCS anticipates that such transactions will vary in duration and firmness of service. The price PMCS proposes to charge for its services will be negotiated at market based rates between PMCS and the purchaser of such services. PMCS states that it does not own or control any electric power transmission or distribution facilities, nor is it affiliated with any entity which owns or controls such facilities. Further, PMCS does not own any electric generating facilities nor does it hold any franchise or service territory for the transmission, distribution, or sale of electric power. Consequently, PMCS has no market power in the electric power marketplace.

Comment date: March 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Wisconsin Public Service Corp.

[Docket No. ER97–1549–000]

Take notice that on February 3, 1997, Wisconsin Public Service Corporation ("WPSC"), tendered for filing an executed Transmission Service Agreement between WPSC and Minnesota Power & Light Company. The Agreement provides for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

Comment date: March 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. UtiliCorp United Inc.

[Docket No. ER97–1550–000]

Take notice that on February 3, 1997, UtiliCorp United Inc. (UtiliCorp), filed service agreements with Enron Power Marketing, Inc. for service under its non-firm point-to-point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: March 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. PECO Energy Company

[Docket No. ER97–1551–000]

Take notice that on February 3, 1997, PECO Energy Company (PECO), filed a Service Agreement dated January 27, 1997, with The Utility-Trade Corporation (UTC) under PECO's FERC Electric Tariff Original Volume No. 5 (Tariff). The Service Agreement adds UTC as a customer under the Tariff.

PECO requests an effective date of January 27, 1997, for the Service Agreement.

PECO states that copies of this filing have been supplied to UTC and to the Pennsylvania Public Utility Commission.

Comment date: March 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4603 Filed 2–24–97; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP96–610–000]

Granite State Gas Transmission, Inc.; Notice of Public Meetings on the Alternative Sites Supplement to the Draft Environmental Impact Statement for the Granite State LNG Project

February 19, 1997.

The Office of Pipeline Regulation environmental staff will conduct public meetings on the Alternative Sites Supplement to the Draft Environmental Impact Statement (Supplement). This Supplement focuses solely on an expanded alternative siting analysis for the liquefied natural gas (LNG) facilities proposed in Wells, Maine by Granite State Gas Transmission, Inc.

Public meetings to receive comments on the Supplement will be held at the following times and locations:

March 10, 1997, 6:00 p.m.—Wells-Ogunquit High School Auditorium

March 11, 1997, 6:00 p.m.—South Berwick Town Hall

Interested groups and individuals are encouraged to attend and present oral comments on the alternative sites described in the Supplement. Anyone who would like to speak may sign up on a speakers list at the meetings. Transcripts will be made of each of the meetings. For further information, call Paul McKee in the Commission's Office of External Affairs at (202) 208–1088.

Warren C. Edmunds,

Acting Director, Office of Pipeline Regulation.

[FR Doc. 97–4544 Filed 2–24–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5694–1]

Agency Information Collection: Proposed and Continuing Collection; Comment Request; Combined Sewer Overflow Information Collection Activities Being Proposed and Continued (OMB Control Number 2040–0170)

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA plans to submit the following continued Information Collection Request (ICR) to the Office of Management and Budget (OMB): Combined Sewer Overflow Information Collection Activities (OMB Control Number 2040–0170, EPA ICR number 1680.02, current expiration date 4/30/97). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the amended information collection as described below.

DATES: Comments must be submitted on or before April 28, 1997.

ADDRESSES: Environmental Protection Agency, Office of Wastewater Management (Mail Code 4203), 401 M Street S.W., Washington, D.C. 20460. Interested persons may obtain a copy of the ICR amendment and supporting analysis without charge by contacting the individual listed below.

FOR FURTHER INFORMATION CONTACT: Timothy Dwyer, EPA Office of Wastewater Management (Mail Code 4203), 401 M Street S.W., Washington, D.C. 20460. Telephone: (202) 260–6064. Fax: (202) 260–1460.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities affected by this action are municipalities with combined sewer systems, which are covered by EPA's Combined Sewer Overflow (CSO) Control Policy.

Title: ICR for the Combined Sewer Overflow Control Policy (OMB Control Number 2040–0170; EPA ICR Number 1680.02) expiring on April 30, 1997.

Abstract: EPA is proposing to continue its ICR for the Combined Sewer Overflow (CSO) Control Policy that was approved in April 1994 and to amend that ICR to include the burden associated with third-party notification provisions under the Policy. That amendment was proposed in the **Federal Register** on January 31, 1996 (61 FR 3396) and was prepared to reflect changes to ICR requirements identified in the Paperwork Reduction Act of 1995. Specifically, it addresses the expanded scope of the Act in redefining "collection of information" to include "disclosure to third parties or the public." Information collection burden other than third-party notification is reflected in the existing ICR for the CSO Control Policy. This ICR will also include the estimated burden for the reporting and recordkeeping associated with monitoring CSOs during wet weather events. This monitoring is necessary to determine the effectiveness of selected CSO control measures to comply with CWA requirements and to achieve compliance with applicable State water quality standards.

Combined sewer systems (CSSs) serve approximately 950 municipalities, primarily in the Northeast and Great Lakes regions. This number is smaller than that in the initial ICR largely because the Agency has better data on the number of municipalities with combined sewer systems nationwide. CSOs occur when these systems overflow and discharge to receiving waters prior to treatment in a publicly owned treatment works (POTW).

The CSO Control Policy, published on April 19, 1994 (59 FR 18688), is a national framework for controlling CSOs through the National Pollutant Discharge Elimination System (NPDES) permitting program. The Policy represents a comprehensive national strategy to ensure that municipalities with CSSs, NPDES permitting authorities, water quality standards authorities, and the public engage in a comprehensive and coordinated planning effort to achieve cost-effective CSO controls that ultimately meet appropriate health and environmental objectives, including compliance with water quality standards.

Among the provisions in the CSO Policy are the "nine minimum controls" (NMC), which are technology-based actions or measures designed to reduce the magnitude, frequency, and duration of CSOs and their effects on receiving water quality. The CSO Control Policy provided for implementation of the NMC by January 1, 1997.

One of the NMC is public notification of CSO occurrences and impacts. Public notification is of particular concern at beach and recreation areas directly or indirectly affected by CSOs, where public exposure is likely to be significant. Although the information collection burden associated with implementing and documenting the NMC is included in the ICR for the CSO Control Policy, that ICR does not include any burden associated with third-party notification. That burden is included in this renewal.

The CSO Control Policy also contains a provision for the development of long-term control plans. The policy recommends that permit writers require permittees to develop a long-term plan within two years of the issuance of an NPDES permit or other enforceable mechanism containing such a requirement. The core of the plan is the development and evaluation of long-term control alternatives. One of the elements of the long-term plan is the development of a post-construction

compliance monitoring program to be implemented when selected controls are completed. OMB's approval of the initial ICR for the CSO Control Policy recommended that the renewal ICR include EPA's best estimate of the burden associated with a reasonable and targeted compliance monitoring program.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments on its ICR amendment. Specifically, we would like comments to help us to:

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond.

Burden Statement: The estimated burden reflected in this ICR is 1,861,528 hours and a cost of $58,737,887.

Of this total, the portion for municipalities with combined sewer systems is 1,774,319 hours at a cost of $55,975,099, including start-up costs of $180,080 for the third party notification under the Nine Minimum Controls (NMC) in the CSO policy. The estimated burden on each of 238 municipalities for DMR reporting and recordkeeping is 291 hours and $9,219. The estimated burden on each of 570 municipalities for NMC reporting and long-term control plan development and submission is 2,978 hours and $93,598 and for third-party notification, 24 hours and $756.

The estimated burden for Federal and State governments is 8896.5 hours and $281,844 and 78,312.5 hours and $2,480,944, respectively. This includes the burden associated with reviewing the DMRs, the NMC documentations, and the long-term control plans submitted by the respondents and reissuing NPDES permits or issuing other enforceable mechanisms to municipalities with CSSs to implement the CSO Control Policy. The annual average burden for Federal and State review of DMRs, NMC documentations, and long-term control plans is 2,445.5 hours and $77,475 and 21,157.5 hours and $670,271, respectively. The annual average burden associated with reissuing NPDES permits or issuing other enforceable mechanisms to CSO municipalities is 520 hours and $16,474 for the Federal government and 4,547 hours and $144,039 for State governments.

The estimated burden on the States to report summary information to EPA for oversight of the EPA's CSO Control Policy and for GPRA purposes is 1,200 hours and $38,016.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Interested parties may obtain a copy of the draft supporting statement, including the burden analysis, from Timothy Dwyer, EPA Office of Wastewater Management, at (202) 260–6064.

Dated: February 14, 1997.

Michael B. Cook,

Director, Office of Wastewater Management.

[FR Doc. 97–4617 Filed 2–24–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5693–7]

Notice of Proposed Assessment of Clean Water Act Class II Administrative Penalty to Golden City Gateway and Opportunity To Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment.

SUMMARY: EPA is providing notice of proposed administrative penalty assessment and proposed Consent Agreement for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. Section 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue these orders after the commencement of either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessments pursuant to 33 U.S.C. Section 1319(g)(4)(a).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation and Suspension of Permits, 40 C.F.R. Part 22. The procedures through which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the Procedures by which a Respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty days after publication of this notice.

On the date identified below, EPA commenced the following Class II proceeding for the assessment of penalties:

In the Matter of Golden City Gateway, Ca Limited Partnership, 711 Church Hill Rd La Habra Hts. Ca 90061; EPA Docket No. CWA–IX–FY97–11; filed on Febraury 18, 1997, with Mr. Steven Armsey, Regional Hearing Clerk, U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1389, proposed penalty of $40,000 for failure to comply with the California General Stormwater Permit for Construction Activities. EPA and Golden City Gateway have agreed to a proposed Consent Agreement in which Golden City Gateway shall pay a civil penalty of $40,000.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review of the complaint or other documents filed in this proceeding, comment upon a proposed assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above. The administrative record for this proceeding is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by the respondent is available as part of this administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in these proceedings prior to thirty (30) days after the date of publication of this notice.

Dated: January 31, 1997.

John Ong,

Acting Director, Water Management Division.

[FR Doc. 97–4616 Filed 2–24–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission

February 19, 1997.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarify of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments April 28, 1997.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications Commissions, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–XXXX.

Title: Marketing of RF Devices Prior to Equipment Authorization (Section 2.803).

Form No.: None.

Type of Review: New Collection.

Respondents: Business/For Profit Institutions.

Number of Respondents: 6,000.

Estimated time per response: .5.

Total annual burden: 3,000.

Needs and Uses: FCC rules permit the display and advertising of radio frequency devices prior to equipment authorization or a determination of compliance with the rules, providing that the advertising or display contains a conspicuous notice as specified by the rules. The notice that must be displayed is defined in Section 2.803(c). A notice that applies specifically to prototype equipment is defined in Section 2.803(c)(1). In addition, as defined in Section 2.803(c)(2) any RF device that is offered for sale to specific entities defined in the rule part, prior to equipment authorization or a showing of compliance, must be accompanied by a written notice that the equipment is subject to the FCC rules and will comply with all FCC rules prior to delivery. The information is disclosed to third parties to ensure that they are fully aware of the FCC's requirement for the responsible party to fully comply with the Commission Rules.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–4503 Filed 2–24–97; 8:45 am]

BILLING CODE 6712–01–P

Notice of Public Information Collections Being Reviewed by FCC For Extension Under Delegated Authority 5 CFR 1320 Authority, Comments Requested

February 19, 1997.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

The FCC is reviewing the following information collection requirements for possible 3-year extension under delegated authority 5 CFR 1320, authority delegated to the Commission by the Office of Management and Budget (OMB).

DATES: Written comments should be submitted on or before April 28, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0017.

Title: Application for a Low Power TV, TV Translator or TV Booster Station License .

Form Number: FCC 347.

Type of Review: Extension of currently approved collection.

Respondents: Businesses or other for-profit, state, local or tribal government.

Number of Respondents: 400.

Estimated time per response: 2.5 hours.

Total annual burden: 1000 hours.

Needs and Uses: FCC Form 347 is required to be filed when applying for a Low Power Television, TV Translator or TV Booster Station License. This form will be revised to add the new requirements regarding antenna tower registration. This unique antenna registration number identifies an antenna structure and must be used on all filings related to the antenna structure. Several questions will be added to the engineering portion of the FCC 350 to collect this information. This requirement was approved by OMB under control number 3060–0714. The data is used by FCC staff to confirm that the station has been built to terms specified in the outstanding

construction permit. Data is then extracted from FCC 347 for inclusion in the subsequent license to operate the station.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–4568 Filed 2–24–97; 8:45 am]

BILLING CODE 6712–01–P

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission

February 19, 1997.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments April 28, 1997.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0066.

Title: Application for Renewal of Instructional Television Fixed Station and/or Response Station(s) and Low Power Relay Station(s) License.

Form No.: FCC 330–R .

Type of Review: Revision of currently approved collection.

Respondents: Not for-profit institutions, state, local or tribal government.

Number of Respondents: 250.

Estimated time per response: 3.

Total annual burden: 750.

Needs and Uses: FCC 330–R is used by licensees of Instructional Television Fixed (ITFS), Response, and Low Power Relay Stations to file for renewal of their licenses. On 6/9/94, the Commission adopted a Report and Order in MM Docket No. 93–106, Amendment of Part 74 of the Commission's Rules Governing use of the Frequencies in the Instructional Television Fixed Service. Among other things, this Report and Order amended Section 74.931 to allow an ITFS licensee to shift its requisite ITFS programming onto fewer than its authorized number of channels, via channel mapping technology or channel loading. An ITFS licensee can lease its full-time channel capacity to a wireless cable operator, subject to the condition that it provide a total average of at least 20 hours per channel per week of ITFS programaming on its authorized channels. A licensee may provide the requisite ITFS programming on each of its authorized channels or it may now shift that programming onto fewer than its authorized number of channels, via channel mapping technology or chananel loading. The form will be revised to add a question on channel mapping/loading with an increase in burden of 30 minutes per form. The data is used by FCC staff to ensure that the licensee continues to meet basic Commission policies and rules, as well as statutory requirements to remain a licensee of an ITFS station. The information submited on channel mapping/loading will permit the Commission to verify that programming aired outside the traditional school day is in fact directed to legitimate educational needs.

OMB Number: 3060–0016.

Title: Application for Authority to Construct or Make Changes in a Low Power TV, TV Translator or TV Booster Station.

Form Number: FCC 346.

Type of Review: Extension of currently approved collection.

Respondents: Businesses or other for-profit, state, local or tribal government.

Number of Respondents: 1,050.

Estimated time per response: 25 hours (9 hours applicant; 16 hours contract time).

Total annual burden: 9,450.

Needs and Uses: FCC Form 346 is used by licensees/permittees/applicants when applying for authority to construct or make changes in a Low Power Television, TV Translator or TV Booster broadcast station. This form will be revised to add the new requirements regarding antenna tower registration. This unique antenna registration number identifies an antenna structure and must be used on all filings related to the antenna structure. Several questions will be added to the engineering portion of the FCC 346 to collect this information. This requirement was approved by OMB under control number 3060–0714. The data is used by FCC staff to determine if the applicant is qualified, meets basic statutory and treaty requirements and will not cause interference to other authorized broadcast services.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–4569 Filed 2–24–97; 8:45 am]

BILLING CODE 6717–01–P

[DA 97–351]

Filing Period Announced for Comments on Qualcomm's Pioneer's Preference Application (GEN Docket No. 90–314)

February 18, 1997.

The Court of Appeals for the D.C. Circuit recently vacated the FCC's decision to deny QUALCOMM, Inc.'s application for a broadband Personal Communications Services pioneer's preference in GEN Docket No. 90–314, and remanded the matter for further proceedings. *Freeman Engineering Associates, Inc.* v. *FCC*, D.C. Cir. No. 94–1779 (Jan. 7, 1997). The Office of Engineering and Technology (OET) requests comment from QUALCOMM as to what action OET should recommend to the Commission in light of the remand. QUALCOMM should file its comments by March 5, 1997. Any interested parties may then file reply comments by March 20, 1997.

For additional information, contact Rodney Small, (202) 418–2452; email rsmall@fcc.gov, Office of Engineering and Technology.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–4567 Filed 2–24–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

[Notice 1997–1]

Filing Dates for the Texas Special Elections

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special elections.

SUMMARY: Texas has scheduled a special election on March 15, 1997, to fill the U.S. House seat in the Twenty-Eighth Congressional District held by the late Congressman Frank Tejeda. There are two possible elections, but only one may be necessary. If no candidate wins a majority of votes in the Special General Election, the two top vote-getters, regardless of party affiliation, will participate in a Special Runoff on a date to be set by the Governor after March 15.

Committees required to file reports in connection with the Special General Election on March 15 should file a 12-day Pre-General Election Report on March 3, 1997; a 30-day Post-General Report on April 14, 1997; and a Mid-Year Report on July 31, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Werfel, Information Division, 999 E Street NW., Washington, DC 20463. Telephone: (202) 219–3420; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION: All principal campaign committees of candidates who participate in the Texas Special General Election and all other political committees not filing monthly which support candidates in the Special Election shall file a 12-day Pre-General Report on March 3, 1997, with coverage dates from the close of the last report filed, or the day of the committee's first activity, whichever is later, through February 23, 1997. If there is a majority winner, committees must also file a Post-General Report on April 14, 1997, with coverage dates from February 24 through April 4, 1997, and a Mid-Year Report on July 31, 1997, with coverage dates from April 5 through June 30, 1997.

In the event that no candidate receives a majority of the votes in the Special General Election, a Special Runoff Election will be held. The Commission will publish a future notice giving the filing dates for that election if it becomes necessary.

CALENDAR OF REPORTING DATES FOR TEXAS SPECIAL ELECTIONS

Report	Close of books *	Reg./cert. mailing date **	Filing date
I. If only the special general is held (03/15/97), committees must file:			
Pre-General	02/23/97	02/28/97	03/03/97
Post-General	04/04/97	04/14/97	04/14/97
Mid-Year	06/30/97	07/31/97	07/31/97
II. If two elections are held, committees involved in only the special general (03/15/97) must file:			
Pre-General	02/23/97	02/28/97	03/03/97
Mid-Year	06/30/97	07/31/97	07/31/97

* The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.

** Reports sent by registered or certified mail must be postmarked by the mailing date; otherwise, they must be received by the filing date.

Dated: February 20, 1997.

[FR Doc. 97–4598 Filed 2–24–97; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 232–011566.

Title: NSCSA/Wallenius Line Space Charter Agreement.

Parties: National Shipping Company of Saudi Arabia ("NSCSA") Wallenius Rederierna AB ("Wallenius").

Synopsis: The proposed Agreement permits Wallenius to charter space from NSCSA, on its vessels operating in the trade from Livorno, Italy to U.S. Atlantic & Gulf Coast ports, and for the parties to coordinate vessel operations. The parties have requested a shortened review period.

Dated: February 20, 1997.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 97–4560 Filed 2–24–97; 8:45 am]

BILLING CODE 6730–01–M

Request for Additional Information

Agreement No.: 217–011563.

Title: NOL/HMM Space Charter Agreement.

Parties: Hyundai Merchant Marine Co., Ltd., Neptune Orient Lines, Ltd.

Synopsis: Notice is hereby given that the Federal Maritime Commission pursuant to section 6(d) of the Shipping Act of 1984 (46 U.S.C. app. 1701–1720) has requested additional information from the parties to the Agreement in order to complete the statutory review of the Agreement as required by the Act. This action extends the review period as provided in section 6(c) the Act.

Dated: February 19, 1997.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 97–4535 Filed 2–24–97; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Aero-Mar-Terra Forwarding, 22302 Acorngrove Drive, Spring, TX 77389,

Jose Guillermo Saavedra, Sole Proprietor

International Transport Services, 18747 Sheldon Road, Cleveland, OH 44130, Officers: Lawrence P. Yankow, President, JoAnne Hill, Secretary

Royal International Freight Forwarding Company, 366 Woodlawn Avenue, Jersey City, NJ 07305–1306, Louis A. Espinoza, Sole Proprietor

Quality Cargo & Messenger Corp., 4770 N.W. 178th Terrace, Miami, FL 33055, Officer: Ana G. Leon, President

Dated: February 19, 1997.

Joseph C. Polking,

Secretary.

[FR Doc. 97–4531 Filed 2–24–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 11, 1997.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. F.W. Lampert Trust B; Larry D. Lampert and Robert L. Lampert, beneficial owners; and Robert L. Lampert, Trustee, all of Beloit, Kansas; to acquire an additional 14.3 percent, for a total of 27.4 percent, and Robert L. and Andra V. Lampert, Beloit, Kansas, to acquire an additional 28.05 percent, for a total of 42.02 percent, of the voting shares of First National Bankshares of Beloit, Inc., Beloit, Kansas, and thereby indirectly acquire First National Bank of Beloit, Beloit, Kansas.

Board of Governors of the Federal Reserve System, February 19, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–4584 Filed 2–24–97; 8:45 am]

BILLING CODE 6210–01–F

Change in Bank Control Notices; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 97-3425) published on page 6535 of the issue for Wednesday, February 12 1997.

Under the Federal Reserve Bank of Kansas City heading, the entry for Clayton L. Green, Jr., Lawton, Oklahoma, is revised to read as follows:

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Clayton L. Green, Jr., Lawton, Oklahoma; to acquire an additional 86.25 percent, for a total of 100 percent of the voting shares of B.O.E. Bancshares, Inc., Elgin, Oklahoma, and thereby indirectly acquire Bank of Elgin, Elgin, Oklahoma.

Comments on this application must be received by February 26, 1997.

Board of Governors of the Federal Reserve System, February 19, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–4585 Filed 2–24–97; 8:45 am]

BILLING CODE 6210–01–F

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, March 3, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 21, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–4794 Filed 2–21–97; 3:23 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–P–15–A]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. HCFA–P–15A *Type of Information Collection Request*: Extension of currently approved collection; *Title of Information Collection*: Medicare Current Beneficiary Survey Suppliment—Round 18; *Form No.*: HCFA–P–15A; *Use*: The Office of the Actuary, HCFA, conducts the Medicare Current Beneficiary Survey (MCBS) through personal interviews of a random sample of Medicare beneficiaries. When sampled persons are found to reside in a long-term care facility, interviewers use a version of the questionnaire which is specially designed to obtain data about the beneficiary's health care from knowledgeable staff members. We are preparing to convert the facility interview from a hard-copy questionnaire to a Computer Assisted Personal Interviewing (CAPI) format, beginning in May, 1997. CAPI, which we are currently using in the community interviews, increases the accuracy of the interview process by automating skip patterns, customizing questions, creating computed variables such as a time line of residence history, and automatically checking completeness and consistency of responses. Concurrently, we are modifying some of the questions we currently use in the facility interview to make them more comparable to those in other surveys, particularly the Medical Expenditure Panel Survey (MEPS). These modifications are responsive to the President's initiative toward consistency and integration among surveys; *Frequency*: Annually; *Affected Public:*; *Number of Respondents*: 1,900; *Total Annual Responses*: 1,900; *Total Annual Hours*: 1,900.

To obtain copies of the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: February 26, 1997.

Edwin J. Glatzel

Director, Management Analysis and Planning Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 97–4633 Filed 2–24–97; 8:45 am]

BILLING CODE 4120–03–P

[ORD–096–N]

New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: December 1996

AGENCY: Health Care Financing Administration (HCFA).

ACTION: Notice.

SUMMARY: This notice announces that, during the month of December 1996, no new proposals were submitted under the authority of section 1115 of the Social Security Act and no proposals were disapproved or withdrawn. The notice also identifies approved and pending proposals for this time period. (This notice can be accessed on the Internet at HTTP://WWW.HCFA.GOV/ORD/ORDHP1.HTML.)

COMMENTS: We will accept written comments on these proposals. We will, if feasible, acknowledge receipt of all comments, but we will not provide written responses to comments. We will, however, neither approve nor disapprove any new proposal for at least 30 days after the date of this notice to allow time to receive and consider comments. Direct comments as indicated below.

ADDRESSES: Mail correspondence to: Susan Anderson, Office of Research and Demonstrations, Health Care Financing Administration, Mail Stop C3–11–07, 7500 Security Boulevard, Baltimore, MD 21244–1850.

FOR FURTHER INFORMATION CONTACT: Susan Anderson, (410) 786–3996.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 1115 of the Social Security Act (the Act), the Department of Health and Human Services (HHS) may consider and approve research and demonstration proposals with a broad range of policy objectives. These demonstrations can lead to improvements in achieving the purposes of the Act.

In exercising her discretionary authority, the Secretary has developed a number of policies and procedures for reviewing proposals. On September 27, 1994, we published a notice in the **Federal Register** (59 FR 49249) that specified (1) the principles that we ordinarily will consider when approving or disapproving demonstration projects under the authority in section 1115(a) of the Act; (2) the procedures we expect States to use in involving the public in the development of proposed demonstration projects under section 1115; and (3) the procedures we ordinarily will follow in reviewing demonstration proposals. We are committed to a thorough and expeditious review of State requests to conduct such demonstrations.

As part of our procedures, we publish a notice in the **Federal Register** with a monthly listing of all new submissions, pending proposals, approvals, disapprovals, and withdrawn proposals. Proposals submitted in response to a grant solicitation or other competitive process are reported as received during the month that such grant or bid is awarded, so as to prevent interference with the awards process.

II. Listing of New, Pending, Approved, Disapproved, and Withdrawn Proposals for the Month of December 1996

A. Comprehensive Health Reform Programs

1. New Proposals

No new proposals were received during the month of December.

2. Pending Proposals

Pending proposals for the month of November 1996 identified in the **Federal Register** of January 16, 1997 (62 FR 2374) and listed in part in the **Federal Register** of December 9, 1995 (61 FR 64914) remain unchanged, except for the Alabama proposal identified under item 4 that was approved.

3. Approved Conceptual Proposals

No conceptual proposals were approved during the month of December.

4. Approved Proposals

The following comprehensive health reform proposal was approved during the month of December.

Demonstration Title/State: Better Access for You (BAY) Health Plan Demonstration—Alabama.

Description: Alabama's Section 1115 demonstration waiver proposal, Better Access for You (BAY) Health Plan," is a 5-year demonstration project that will enroll current Medicaid beneficiaries into managed care and offer enhanced family planning benefits up to 24 months to low-income women. The State will initially implement the demonstration in Mobile County with possible expansion to other counties.

Date Received: July 10, 1995.

State Contact: Vicki Huff, Director of Managed Care, Alabama Medicaid Agency, 501 Dexter Avenue, P.O. Box 5624, Montgomery, AL 36103–5624, (334) 242–5011.

Federal Project Officer: Maria Boulmetis, Health Care Financing Administration, Office of Research and Demonstrations, Office of State Health Reform Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

5. Disapproved Proposals

No proposals were disapproved during the month of December.

6. Withdrawn Proposals

No proposals were withdrawn during the month of December.

B. Other Section 1115 Demonstration Proposals

1. New, Pending, Approved, Disapproved, and Withdrawn Proposals

We did not receive any new proposals or approve or disapprove any Other Section 1115 Demonstration Proposals during the month of December nor were any proposals withdrawn during that month. Pending proposals for the month of November 1996 identified in the **Federal Register** of January 16, 1997 (62 FR 2374) and listed in the **Federal Register** of December 9, 1996 (61 FR 64914) remain unchanged.

III. Requests for Copies of a Proposal

Requests for copies of a specific Medicaid proposal should be made to the State contact listed for the specific proposal. If further help or information is needed, inquiries should be directed to HCFA at the address above.

(Catalog of Federal Domestic Assistance Program, No. 93.779; Health Financing Research, Demonstrations, and Experiments)

Dated: February 10, 1997.

Barbara Cooper,

Acting Director, Office of Research and Demonstrations.

[FR Doc. 97–4649 Filed 2–24–97; 8:45 am]

BILLING CODE 4120–01–P

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of March 1997:

Name: National Advisory Council on Migrant Health

Date & Time: Starts: Friday, March 21, 1997 at 8:00 am; Ends: Saturday, March 22, 1997 at 5:00 pm.

Place: Embassy Row Hotel, 2015 Massachusetts Avenue, NW, Washington, DC 20036, 202/256–1600.

The meeting is open to the public.

Agenda: This will be a meeting of the Council. The agenda includes an overview of Council general business activities and priorities. The Council will hear a presentation from EPA regarding the outcome of the public hearings on the Worker Protection Standards. They will also be discussing Council Recommendations with federal representatives.

The Council meeting is being held in conjunction with the National Association of Community Health Centers, Policy and Issues Forum, March 22–26, 1997.

Anyone requiring information regarding the subject Council should contact Susan Hagler, Migrant Health Program, Staff Support to the National Advisory Council on Migrant Health, Bureau of Primary Health Care, Health Resources and Services Administration, 4350 East West Highway, Room 7–A51, Bethesda, Maryland 20814, Telephone (301) 594–4302.

Agenda Items are subject to change as priorities dictate.

Dated: February 19, 1997.

J. Henry Montes,

Director, Office of Policy and Information Coordination, HRSA.

[FR Doc. 97–4593 Filed 2–24–97; 8:45 am]

BILLING CODE 4160–15–P

Substance Abuse and Mental Health Services Administration

Community Action Grant Applications—Technical Assistance Workshop

AGENCY: Center for Mental Health Services, Substance Abuse and Mental Health Services Administration, DHHS.

ACTION: Notice of technical assistance workshop.

The Division of Knowledge Development and Systems Change, Center for Mental Health Services, Substance Abuse and Mental Health Services Administration will hold a technical assistance workshop to assist prospective applicants in responding to the Guidance for Applicants (GFA No. SM 97–002) entitled "Community Action Grants for Service Systems Change." A Notice of Funding Availability for this grant program was published in the **Federal Register** on February 10, 1997.

DATE: March 4, 1997.

LOCATIONS: Prospective applicants may participate at any one of four locations. Three of those locations will be satellite units at Federal Regional Offices connected to the central unit by teleconference. However, Federal personnel will be available at each location. For further information, please call (301) 443–3606 except that telephone requests for directions to the satellite units should be made by calling the phone number listed for that site. Please note the meeting times vary according to location. The central unit will be located at: U.S. Public Health Service, 5600 Fishers Lane, Conference Room G, Rockville, MD 20857, Attn: Neal Brown, Telephone: (301) 443–3606, Time: 1:00 to 4:00 pm EST.

Satellite units will be located at these offices of the U.S. Health Care Financing Administration:

101 Marietta Towers, Suite 701, Atlanta, GA 30323, Attn: Janice Hargrove, Telephone: (404) 331–2329, Time: 1:00 to 4:00 pm EST.

1200 Main Street, Suite 2000, Dallas, TX 75202, Attn: Mary Jane Collard, Telephone: (214) 767–6428, Time: 12:00 to 3:00 pm CST.

75 Hawthorne Street, Room 401, San Francisco, CA 94105, Attn: Janice Myrick, Telephone: (415) 744–3523, Time: 10:00 am to 1:00 pm PST.

Limited audio connection may be available on a first-come, first-served basis at the time of the meeting. To access, please call (410) 786–7370, at callers expense.

AGENDA HIGHLIGHTS: Federal personnel will briefly explain the Community Action Grant program and answer questions about the program, and about administrative requirements for grant applications. The presentation will include explanations of the purpose of the program, its key elements, application review criteria, and grant award criteria. Copies of GFA No. SM 97–002, Public Health Service Grant Application forms—PHS 5161–1 (Rev. 5/96), will be available at the workshop at all four locations.

Those attending the workshop are expected to make their own arrangements for travel and accommodations. Reservations for the workshop are not necessary.

Dated February 18, 1997.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 97–4595 Filed 2–24–97; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4200–N–31]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: April 28, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing and Urban Development, 451—7th Street, SW, Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Joseph McCloskey, Telephone number (202) 708–1672 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Monthly Delinquent Loan Report.

OMB Control Number: 2502–0060.

Description of the need for the information and the proposed use: The data compiled from the information collected is a management tool which assists HUD in monitoring, evaluating and comparing the performance and servicing practices of HUD-approved mortgagees.

HUD uses the data collected to identify potential risks to the insurance fund. A high default/foreclosure ratio is an immediate indicator that a mortgagee may be servicing its loans in a manner that encourages defaults and which increases HUD's exposure and likelihood of paying a claim.

Agency form numbers: HUD–92068A.

Members of affected public: Business or other for-profit.

An estimation of the total numbers of hours needed to prepare the information collection is 24,000, number of respondents is 4,000, frequency of response is monthly and the hours per response is .5.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: February 19, 1997.

Nicolas P. Retsinas,

Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 97–4684 Filed 2–24–97; 8:45 am]

BILLING CODE 4210–27–M

[Docket No. FR–4200–N–29]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: March 27, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 13, 1997.

David S. Cristy,

Acting Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: The Community Renaissance Fellows Program.

Office: Policy Development and Research.

OMB Approval Number: 2528–0183.

Description of the Need for the Information and its Proposed Use: The Community Renaissance Fellows Program will provide stipends to exceptional mid-career professionals to become community builders. HUD created the Community Renaissance Fellows Program in response to the lack of trained urban planning, development, and public housing professionals necessary to undertake large-scale, complex urban revitalization projects. The program will place at least 20 Fellows annually in HOPE VI and other Public Housing Authorities projects.

Form Number: None.

Respondents: Individuals or Households, Business or Other For-Profit, Not-For-Profit Institutions, and State, Local, or Tribal Government.

Frequency of Submission: On Occasion and Monthly.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Application	300		1		16		4,800
Monthly Reports	20		12		2		480

Total Estimated Burden Hours: 5,280.
Status: Reinstatement, without changes.
Contact: Jane Karadbil, HUD, (202) 708–1537, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

[FR Doc. 97–4540 Filed 2–24–97; 8:45 am]
BILLING CODE 4210–01–M

[Docket No. FR–4200–N–28]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: March 27, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 14, 1997.

David S. Cristy,

Acting Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Hispanic-Serving Institutions Work Study Program.
Office: Policy Development and Research.
OMB Approval Number: 2528–0182.
Description of the Need for the Information and Its Proposed Use: The information collection is essential to select grantees for the Hispanic-serving Institution Work Study Program. The information collected will be needed to ensure that grantees are utilizing their funds in accordance with statutory requirements and program goals.
Form Number: None.
Respondents: Not-For-Profit Institutions.
Frequency of Submission: On Occasion, Annually, and Recordkeeping.
Reporting Burden:

	Number of respondents	×	Frequence of response	×	Hours per response	=	Burden hours
Application	89		1		40		3,560
Annual Reports	30		1		6		180
Final Reports	30		1		8		240
Recordkeeping	30		1		5		150

Total Estimated Burden Hours: 4,130.
Status: Reinstatement, without change.
Contact: Jane Karadbil, HUD, (202) 708–1537, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

[FR Doc. 97–4541 Filed 2–24–97; 8:45 am]
BILLING CODE 4210–01–M

[Docket No. FR–4200–N–27]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: March 27, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 14, 1997.

David S. Cristy,

Acting Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Rental Schedule.
Office: Housing.
OMB Approval Number: 2502–0012.
Description of the Need for the Information and its Proposed Use: Section 207(a) of the National Housing Act requires all project owners to submit a "Rental Schedule" when requesting an adjustment to project rents. Form HUD–92458 is used by the Department to establish and approve rental charges and utility allowances.
Form Number: HUD–92458.
Respondents: Business or Other For-Profit, Not-For-Profit Institutions, and the Federal Government.
Frequency of Submission: On Occasion and Recordkeeping.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–92458	16,000		1		.33		5,333

Total Estimated Burden Hours: 5,333.
Status: Reinstatement, without changes.
Contact: Barbara D. Hunter, HUD, (202) 708–3944, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

[FR Doc. 97–4542 Filed 2–24–97; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application.

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

PRT–825384

Applicant: Wisconsin Department of Natural Resources, Madison, Wisconsin.

The applicant requests a permit to take Karner Blue Butterflies (*Lycaeides melissa samuelis*) on lands owned and/or managed by the Wisconsin Department of Natural Resources. Take will involve land use and land management practices to create and protect suitable butterfly habitat. Habitat management involves various forms of disturbance which may injure or kill individual butterflies, but maintains habitat upon which the species depends. In addition to land management and disturbance, the applicant proposes to implement biological monitoring of habitats and populations, including, but not limited to, biological surveys and research activities to begin implementation of recovery goals for the species. Activities are proposed for the purpose of survival and enhancement of the species in the wild.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Division of Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Division of Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612/725–3536 x250); FAX: (612/725–3526).

Dated: February 14, 1997.

John A. Blankenship,

Assistant Regional Director, IL, IN, MO (Ecological Services), Region 3, Fort Snelling, Minnesota.

[FR Doc. 97–4505 Filed 2–24–97; 8:45 am]
BILLING CODE 4310–55–P

North American Wetlands Conservation Council; Meeting Announcement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The North American Wetlands Conservation Council (Council) will meet on March 27 to review proposals for funding submitted pursuant to the North American Wetlands Conservation Act. Upon completion of the Council's review, proposals will be submitted to the Migratory Bird Conservation Commission for funding approval. The meeting is open to the public.

DATES: March 27, 1997, 1 p.m.

ADDRESSES: The meeting will be held at 4401 N. Fairfax Drive, Room 200, Arlington, Virginia 22203. The North

American Wetlands Conservation Council Coordinator is located at Fish and Wildlife Service, Arlington Square Building, 4401 N. Fairfax Drive, Room 110, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Byron Kenneth Williams, Coordinator, North American Wetlands Conservation Council, (703) 358–1784.

SUPPLEMENTARY INFORMATION: In accordance with the North American Wetlands Conservation Act (Pub. L. 101–233, 103 Stat. 1968, December 13, 1989, as amended), the North American Wetlands Conservation Council is a Federal-State-private body which meets to consider wetland acquisition, restoration, enhancement and management projects for recommendation to and final approval by the Migratory Bird Conservation Commission. Proposals from State, Federal, and private sponsors require a minimum of 50 percent non-Federal matching funds.

Dated: February 13, 1997.

Jay L. Gerst,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 97–4550 Filed 2–24–97; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Indian Affairs

Proposed Road Maintenance Funding Distribution Methodology

ACTION: Notice; Reopening of comment period.

SUMMARY: This notice reopens the comment period on the Bureau of Indian Affairs' proposed funding distribution methodology for the road maintenance program. The Bureau is seeking more comments to better enable it to develop and implement a policy that will meet the needs of the tribes.

DATES: Comments must be received on or before April 28, 1997.

ADDRESSES: Send written comments to the Chief, Division of Transportation, Bureau of Indian Affairs, 1849 C Street NW, Mail Stop 4058 MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Chief, Division of Transportation, Bureau of Indian Affairs at (202) 208–4359.

SUPPLEMENTARY INFORMATION: On December 19, 1996, we published a notice in the **Federal Register** at 61 FR 67058 that requested comments on a proposed methodology and formula for distributing the Bureau's road maintenance funds to tribes. The comment period for the proposal ended on February 3, 1997.

Because we did not receive enough comments, we are reopening the comment period. We will consider the comments that we receive as we develop a policy for determining base funding for each tribe that is eligible for road maintenance funds. Interested persons may submit written comments regarding this proposed methodology and formula to the location identified in the address section of this notice.

Dated: February 18, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–4690 Filed 2–24–97; 8:45 am]

BILLING CODE 4310–02–P

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act, 25 U.S.C. § 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Tribal-State Compact between the Burns-Paiute Tribe and the State of Oregon, which was executed on December 19, 1996.

DATES: This action is effective February 25, 1997.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4068.

Dated: February 12, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–4597 Filed 2–24–97; 8:45 am]

BILLING CODE 4310–02–P

Bureau of Land Management

[CA–060–07–1990–00]

Notice of Public Meeting

SUMMARY: Notice is hereby given, in accordance with Public Laws 92–463 and 94–579, that the Bureau of Land Management and the U.S. Army have scheduled an additional public meeting in Barstow, California on Thursday, March 6 on the Draft Environmental Impact Statement for the Army's proposed expansion of the National Training Center at Fort Irwin. The meeting will begin at 7 p.m. in the Barstow Holiday Inn, located at 1511 East Main Street.

The meeting is scheduled to provide the public who attended the Tuesday, February 18 meeting in Barstow additional opportunity to comment on the DEIS. Army and BLM representatives will present an overview of the DEIS and provide attendees the opportunity to ask questions prior to the formal public meeting. A court reporter will record all comments, which will become part of the record.

Meetings also are scheduled for Thursday, February 20 at 2 p.m. in the Baker Community Center, in Baker and in Sacramento on Monday, February 24 at 2 p.m. and 7 p.m. in the City Council Chambers, located at 915 "I" Street.

The Draft Environmental Impact Statement (DEIS) for the Army's proposed Land Acquisition Project for Fort Irwin was released for public comment January 3 and comments will be accepted through April 4. The DEIS addresses the proposed withdrawal of approximately 310,000 acres of public lands currently managed by BLM from entry under public land laws.

Public comments will be accepted through April 4, 1997. Send written comments to the Bureau of Land Management, Attention: Mike Dekeyrel, Project Manager, 150 Coolwater Lane, Barstow, California 92311.

FOR MORE INFORMATION: Contact Mike Dekeyrel at (619) 255–8730 or BLM public affairs in Riverside at (909) 697–5215 for more information or to request a copy of the Fort Irwin DEIS, executive summary or technical appendices.

Dated: February 19, 1997.

Jo Simpson,

Assistant. District Manager, External Affairs.

[FR Doc. 97–4552 Filed 2–24–97; 8:45 am]

BILLING CODE 4310–40–M

[MT–065–07–1430–01; MTM–83721]

Notice of Realty Action and Plan Amendment; Montana

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: The Bureau of Land Management (BLM) is providing notice of a plan amendment of the Judith Valley Phillips Resource Management Plan. The purpose of the amendment is to allow the sale of 80 acres of public land directly to Phillips County, Montana under criterion 2 of section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. 1713). The BLM is also providing notice of the proposed sale of the same public land in Phillips County involving the surface estate to Phillips County.

SUMMARY: Phillips County will use the purchased land as part of a new proposed Malta Airport. The BLM advised state and local officials about the proposed sale. The estimated fair market value is $12,400. Sale of the public land will occur in May 1997. The 80 acres of described public land is suitable for sale under criterion 2 of section 203 of FLPMA of 1976 (43 U.S.C. 1713); T. 30 N., R. 29 E., P.M.M. sec 11, S½SE¼.

DATES, COMMENTS AND PROTESTS: The effective date of this plan amendment decision and proposed sale notice is the publication date of this notice in the **Federal Register**.

Any person who participated in the Judith Valley Phillips Resource Management Plan amendment process having an interest or adversely affected by the approval or amendment of a resource management plan may protest such approval or amendment as stated in 43 CFR 1610.5–2. The protest shall be in writing and filed within 30 days of the effective date of this notice. Send protests to the: Director (WO–210), Bureau of Land Management, Attn: Brenda Williams 1849 "C" Street NW, Washington, DC 20240.

The protest must contain:

1. The name, mailing address, telephone number and interest of the person filing the protest.
2. A statement of the issue or issues being protested.
3. A statement of the part or parts of the plan amendment being protested.
4. A copy of all documents addressing the issue or issues submitted during the planning process by the protesting party or an indication of the discussion date of the issue(s) for the record.
5. A concise statement explaining why the State Director's decision is believed to be incorrect.

Comments on the proposed sale may occur for 45 days from the date of this notice. Send comments to: Bureau of Land Management, Phillips Resource Area Office, HC 65 Box 5000, Malta, Montana. 59538–0047.

The State Director will weigh adverse comments on the proposed sale and may vacate or change this notice concerning the proposed sale. Without any objections this notice will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Information related to the plan amendment, proposed sale and environmental assessment are available from Richard M. Hotaling, Area Manager, Phillips Resource Area, HC 65 Box 5000, Malta, MT 59538–0047, 406–654–1240.

SUPPLEMENTARY INFORMATION: The publication of this notice segregates the public land described above from appropriation under the public land laws, including the mining laws but not from sale under Section 203 of the FLPMA of 1976. The segregation will end upon issuance of the conveyance document or 270 days from the date of publication of this notice, whichever occurs first. The conveyance of public land is subject to a reservation of a right-of-way for ditches and canals under 43 U. S. C. 945 and a reservation of all federal minerals.

Dated: February 12, 1997.

Richard M. Hotaling,

Area Manager.

[FR Doc. 97–4525 Filed 2–24–97; 8:45 am]

BILLING CODE 4310–DN–P

[UT–942–1430–00]

Notice of Intent to Amend Resource Management Plans (RMPs) and Management Framework Plans (MFPS).

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to prepare plan amendments for the following plans located in said Field Office; Richfield District; Henry Mountain MFP and Parker Mountain MFP, Fillmore District; House Range RMP and Warm Springs RMP, Cedar City District; Pinyon MFP, Vermillion MFP, Zion MFP and portions of the Paria MFP and Cedar Beaver Garfield Antiomony RMP.

SUMMARY: This notice is to advise the public that the Bureau of Land Management is preparing an Environmental Assessment to consider proposed amendments to the above stated land use plans that guide management of the public lands within the Fillmore District and portions of Richfield and Cedar City Districts located within the State of Utah. The proposed amendments would consider additional disposal criteria providing opportunities for land tenure adjustments (excluding sales pursuant to the Federal Land Policy and Managment Act, Section 203).

DATES: The comment period for the preliminary issues and planning criteria identified for the proposed plan amendments will commence with publication of this notice. Comments must be submitted on or before March 27, 1997.

FOR FURTHER INFORMATION CONTACT: For the Cedar City District, Beaver River Resource Area, contact Craig Zufelt or Ervin Larson at 176 East D.L. Sargent Dr., Cedar City, Utah 84720 @ 801–586–2401. For the Cedar City District, Kanab Resource Area contact Mike Noel at 318 North First East, Kanab, Utah 84741 @ 801–644–2672. For the Richfield District, Henry Mountain Resource Area contact Rod Lee at 150 East 900 North, Richfield, Utah 84701 @ 801–896–1524. For the Fillmore District, House Range and Warm Springs Resource Areas contact Nancy DeMille at 35 East 500 North, Richfield, Utah 84631 @ 801–896–6811. Existing planning documents describing current management of the above-stated areas are available at the above addresses. Comments on the proposed plan amendments should be sent to the respective addresses listed above.

SUPPLEMENTARY INFORMATION: The Richfield District; Henry Mountain Resource Area, Fillmore District; House Range and Warm Springs Resource Areas, and Cedar City District, Beaver River and Kanab Resource Area, BLM, are proposing to amend the above mentioned planning documents, to allow opportunities for land tenure adjustments not previously identified in the current planning documents by adding five new land tenure adjustment criteria.

Preliminary planning issues have been identified and consist of possible adverse impacts to public lands that could be removed from public ownership, socio-economic impacts, and impacts on known sensitive natural resources.

The following preliminary disposal criteria have been identified and would set the parameters under which land tenure adjustments (including acquisitions) may take place:

Public lands, in order to be considered for disposal or exchange within the above-mentioned plans, must meet one or more of the following criteria. The land tenure adjustment;

(1) Is in the public interest and accommodates the needs of State, local or private entities, including needs for the economy, community growth and expansion and are in accordance with other land use goals and objectives and RMP/MFP planning decisions;

(2) Results in a net gain of important and manageable resource values on public lands such as crucial wildlife habitat, significant cultural sites, high quality riparian areas, live water, recreation, threatened & endangered species habitat, or areas key to the maintenance of productive ecosystems;

(3) Ensures the accessibility of public lands in areas where access is needed and cannot otherwise reasonably be obtained;

(4) Is essential to allow effective management of public lands in areas where consolidation of ownership is necessary to meet resource management objectives;

(5) Results in the acquisition of lands which serve a national priority as identified in national policy that cannot otherwise be obtained.

All subsequent land tenure adjustments processed in accordance with the above criteria would require additonal site specific analysis as required by the National Environmental Policy Act. Further, land tenure adjustments would be subject to valid existing rights and must be in conformance with other objectives stated in the current planning documents, some of which may preclude disposal.

The following disciplines will be utilized for interdisciplinary input throughout the NEPA process: Archeologist, Lands and Realty Specialist, Wildlife Biologist, Range Conservationist, Botanist, Mineral Specialist and Geologist, Planning Specialist, Soils Scientist, Recreation Specialist and Hydrologist.

Dated: February 18, 1997.

G. William Lamb,

State Director, Utah.

[FR Doc. 97–4526 Filed 2–24–97; 8:45 am]

BILLING CODE 4310–DQ–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–760 (Preliminary)]

Needle Bearing Wire From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigation and scheduling of a preliminary phase investigation.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping investigation No. 731–TA–760 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of needle bearing wire, having a diameter of 1.0 mm or more, provided for in subheading 7229.90.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. § 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by March 31, 1997. The Commission's views are due at the Department of Commerce within five business days thereafter, or by April 7, 1997.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207), as amended in 61 FR 37818 (July 22, 1996).

EFFECTIVE DATE: February 14, 1997.

FOR FURTHER INFORMATION CONTACT: Fred Fischer (202–205–3179), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed on February 14, 1997, by E.C.D., Inc., Hillside, NJ.

Participation in the investigation and public service list.—Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. § 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on March 7, 1997, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Fred Fischer (202–205–3179) not later than March 4, 1997, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before March 12, 1997, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: February 21, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–4734 Filed 2–24–97; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

February 19, 1997.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). A copy of ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Theresa M. O'Malley ((202) 219–5096 ext. 143). Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for Occupational Safety and Health Administration, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

* evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
* evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
* enhance the quality, utility, and clarity of the information to be collected; and
* minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Title: OSHA Data Collection Systems.

OMB Number: Form 196A, 196B.

Frequency: Annually.

Affected Public: Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 80,000.

Estimated Time Per Respondent: 30 minutes.

Total Burden Hours: 35,000.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The 1997 OSHA Data Collection will request 1996 injury and illness data from 80,000 worksites with 60 or more employees in industries listed in the following table.

1997 DATA COLLECTION INDUSTRIES

[All worksites with 60 or more employees]

SIC	Industry
20–39	Manufacturing
0783	Ornamental shrub and tree services.
4214	Local trucking with storage.
4215	Courier services, except by air.
4220	Public warehousing and storage.
4491	Marine cargo handling.
4580	Airports, flying fields, & services.
4783	Packing and crating.
4953	Refuse systems.
5051	Metals service centers and offices.
5093	Scrap and waste materials.
5140	Groceries and related products.
5180	Beer, wine, and distilled beverages.
5210	Lumber and other building materials.
8050	Nursing and personal care facilities.

Theresa M. O'Malley,

Departmental Clearance Officer.

[FR Doc. 97–4635 Filed 2–24–97; 8:45 am]

BILLING CODE 4510–26–M

Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting Notice

Pursuant to the provisions of the Federal Advisory Committee Act (P.L. 92–463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: March 13, 1997, 10:00 a.m.–12:00 noon, U.S. Department of Labor, Room S–1011, 200 Constitution Ave., NW, Washington, D.C. 20210.

Purpose: The meeting will include a review and discussion of current issues which influence U.S. trade policy. Potential U.S. negotiating objectives and bargaining positions in current and anticipated trade negotiations will be discussed. Pursuant to section 9(B) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(9)(B) it has been determined that the meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions. Accordingly, the meeting will be closed to the public.

For further information, contact: Jorge Perez-Lopez, Director, Office of International Economic Affairs. Phone: (202) 219–7597.

Signed at Washington, D.C. this 19th day of February, 1997.

Andrew J. Samet,

Acting Deputy Under Secretary, International Affairs.

[FR Doc. 97–4637 Filed 2–24–97; 8:45 am]

BILLING CODE 4510–28–M

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collection of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the "Local Area Unemployment Statistics (LAUS) Reports 8, 15–17."

A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before April 28, 1997.

The Bureau of Labor Statistics is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Send comments to Karin G. Kurz, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue, N.E., Washington, D.C. 20212. Ms. Kurz can be reached on 202—606–7628 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Bureau of Labor Statistics has been charged by Congress [Congressional Act of July 7, 1930 (29 U.S.C. Chapters 1 and 2)] with the responsibility of collecting and publishing monthly information on employment, the average wage received, and the hours worked by area and industry. The process for developing residency based employment and unemployment estimates is a cooperative Federal-State program which uses employment and unemployment inputs available through State agencies.

The reports covered by this collection are integral parts of the Local Area Unemployment Statistics (LAUS) program insofar as they insure and/or measure the timeliness, quality, consistency, and adherence to program directions of the LAUS estimates and related research. LAUS program data are used in economic analysis by public agencies and private industry, and for State and area allocations and eligibility determinations according to legal and administrative requirements. Implementation of policy and legislative prerogatives could not be accomplished as now written without collection of the data.

II. Current Actions

Exportable software associated with monthly LAUS transmittals eliminated the need for the Monthly Report on Continued Claimants by Place of Residence (LAUS 6). Electronic transmittals of any corrections to regularly submitted data have eliminated the need to use Monthly and Area Correction Forms (LAUS 13 and 14).

Type of Review: Revision.

Agency: Bureau of Labor Statistics.

Title: Local Area Unemployment Statistics (LAUS) Reports 8, 15–17.

OMB Number: 1220–0043.

Affected Public: State Government.

Form	Total respondents	Frequency (years)	Total annual responses	Average time per response (hours)	Estimated total burden (hours)
LAUS 8	52	15	780	1	780
LAUS 15	52	0.5	26	2	52
LAUS 16	52	2	104	1	104
LAUS 17	52	4	208	0.5	104
Totals			1,118		1,040

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, D.C., this 18th day of February, 1997.

W. Stuart Rust, Jr.,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 97–4636 Filed 2–24–97; 8:45 am]

BILLING CODE 4510–24–M

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Full Committee Meeting

Notice is hereby given that the Advisory Committee on Construction Safety and Health (ACCSH), established under section 107(e)(1) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656), will meet on March 13–14, 1997 at the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–4215A–C, Washington, DC.

In addition, on March 11, 1997, the Safety and Health Program Standard Work Group will meet in Room C–5521 #4. On March 11–12, 1997, the Scaffolds/Appendix B Work Group will meet in Room S–5215C. On March 12, the Residential Construction Project Work Group will meet in Room N–3437A–B, the Health and Safety of Women in Construction Work Group will meet in Room C–5515B, and the Data Collection Work Group will meet in Room C–5515C from 2:00–4:30 p.m. The meetings of the work groups and of the full Committee are open to the public and, except as noted above, will begin at 9 a.m. on each day. The meeting will conclude at approximately 4:30 p.m. on March 13 and at approximately 12:00 p.m. on March 14.

On March 13, the Agency will update the Committee regarding the activities of the Directorate of Construction, OSHA rulemaking activity, and the application of OSHA's Butadiene standard to construction employment. In addition, there will be a presentation regarding the standards for cranes used in construction (part 1926, subpart N). Also, NIOSH will describe its recent construction-related activities.

After a lunch break, OSHA will brief the Committee regarding Ergonomics, the Agency's budget, and OSHA's FY 1997 initiatives. There will also be presentations regarding the interpretation of OSHA enforcement data and the use of OSHA settlement agreements to improve employee protection.

On March 14, there will be a presentation regarding efforts to certify that employees have received required training. In addition, the work groups on Safety and Health Programs, Residential Construction, Scaffolds, Health and Safety of Women in Construction, and Data Collection will report back to the full Advisory Committee. The full Committee will discuss the reports from the work groups.

Written data, views or comments may be submitted, preferably with 20 copies, to the Office of Public Affairs, at the address provided below. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting.

Anyone who wishes to make an oral presentation should notify the Office of Public Affairs before the meeting. The request should state the amount of time desired, the capacity in which the person will appear and a brief outline of the content of the presentation. Persons who request the opportunity to address the Advisory Committee may be allowed to speak, as time permits, at the discretion of the Chairman of the Advisory Committee. Individuals with disabilities who wish to attend the meeting should contact Theresa Berry, at the address indicated below, if special accommodations are needed.

For additional information contact: Theresa Berry, Office of Public Affairs, Room N–3647, Telephone 202–219–8615, at the Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Washington, DC, 20210. An official record of the meeting will be available for public inspection at the OSHA Docket Office, Room N–2625, Telephone 202–219–7894.

Signed at Washington, D.C. this 20th day of February, 1997.

Gregory R. Watchman,

Acting Assistant Secretary of Labor.

[FR Doc. 97–4634 Filed 2–24–97; 8:45 am]

BILLING CODE 4510–26–M

LEGAL SERVICES CORPORATION

Sunshine Act Meeting; Sunshine Act Meeting of the Presidential Search Committee of the Board of Directors

TIME AND DATE: The Presidential Search Committee of the Legal Services Corporation Board of Directors will meet by teleconference on February 27, 1997, at 10:30 a.m. EST.

STATUS OF MEETING: Open.

LOCATION: Members of the Committee and directors wishing to participate, as well as members of the Corporation's staff and the public, will be able to hear and participate in the meeting by means of telephonic conferencing equipment set up for this purpose in the Corporation's Conference Room, on the 11th floor of 750 First Street, N.E., Washington, D.C. 20002.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Formulation and adoption of process to govern the committee's remaining functions, including but not necessarily limited to interviewing of candidates and development of recommendation(s) to make to the full board.
3. Other business, including public comment and scheduling of the Committee's next meeting.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel & Secretary of the Corporation, (202) 336–8810.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Barbara Asante, at (202) 336–8800.

Dated: February 21, 1997.

Victor M. Fortuno,

General Counsel.

[FR Doc. 97–4781 Filed 2–21–97; 2:36 pm]

BILLING CODE 7050–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Agenda, Sunshine Act Meeting

TIME: 9:30 a.m., Tuesday, March 4, 1997.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE DISCUSSED:

6814

Aviation Accident Report: In-flight Loss of Control and Subsequent Collision with Terrain, Cessna 177B, N35207, Cheyenne, Wyoming, April 11, 1996.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 314–6065.

Dated: February 21, 1997.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 97–4780 Filed 2–21–97; 1:57 pm]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of February 24, March 3, 10, and 17, 1997.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of February 24

Wednesday, February 26

11:30 a.m. Affirmation Session (Public Meeting) (if needed)

Week of March 3—Tentative

There are no meetings scheduled for the Week of March 3.

Week of March 10—Tentative

Monday, March 10—Tentative

10:30 a.m. Briefing on 10 CFR 50.59 Regulatory Process Improvements (Public meeting)

2:30 p.m. Briefing on Implementation of Maintenance Rule, Revised Regulatory Guide, and Consequences (Public meeting) (Contact: Suzanne Black, 301–415–1017)

Thursday, March 13—Tentative

11:30 a.m. Affirmation Session (Public meeting) (if needed)

Week of March 17—Tentative

There are no meetings scheduled for the Week of March 17.

* * * * *

By a vote of 5–0 on February 18, the Commission determined pursuant to U.S.C. 552b(e) and 10 CFR Sec. 9.107(a) of the Commission's rules that "Discussion of Interagency Issues (Closed—Ex. 9)" be held on February 18, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in

receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

* * * * *

Dated: February 21, 1997.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 97–4789 Filed 2–21–97; 2:33 pm]

BILLING CODE 7590–01–M

[Docket No. 50–271]

Vermont Yankee Nuclear Power Corporation; Vermont Yankee Nuclear Power Station; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that on December 6, 1996, the Citizens Awareness Network, Inc. (CAN or Petitioner) filed a Petition pursuant to 10 CFR 2.206 with the Secretary of the U.S. Nuclear Regulatory Commission (NRC) requesting evaluation of certain documents relating to the Vermont Yankee Nuclear Power Station operated by the Vermont Yankee Nuclear Power Corporation (Licensee) to determine whether enforcement action was warranted.

The first document included in the Petition is a CAN memorandum dated December 5, 1996, that reviews information presented by the Licensee at an enforcement conference held on July 23, 1996, involving the Vermont Yankee residual heat removal system minimum flow valves. CAN raises a concern that the corrective action taken by the Licensee in opening these valves may have introduced an unreviewed safety question with regard to containment isolation.

The second document included in the Petition is a CAN memorandum dated December 6, 1996, that reviews certain licensee event reports (LERs) submitted by the Licensee in the latter part of 1996. A variety of issues are discussed including fire protection, tornado protection, thermal protection for piping lines, equipment operability, and equipment testing. On the basis of its analysis of the LERs, CAN reaches certain conclusions regarding the performance of the Licensee and actions that should be taken.

On the basis of these documents, CAN requests that the NRC determine whether enforcement action is warranted pursuant to 10 CFR 2.206.

The issues in the Petition are being treated pursuant to 10 CFR 2.206 of the Commission's regulations. As provided by 10 CFR 2.206, appropriate action with regard to these issues will be taken within a reasonable time. By letter dated February 12, 1997, the Acting Director acknowledged receipt of the Petition.

A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street, N.W., Washington, D.C. 20555–0001, and at the local public document room located at Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

Dated at Rockville, Maryland, this 12th day of February 1997.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–4572 Filed 2–24–97; 8:45 am]

BILLING CODE 7590–01–P

Operator Licensing Examination Standards Interim Revision; Notice of Availability

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of Availability.

SUMMARY: The Nuclear Regulatory Commission has issued interim Revision 8 of NUREG–1021, "Operator Licensing Examination Standards for Power Reactors," (formerly "Operator Licensing Examiner Standards"). The Commission uses this document to provide policy and guidance for the development, administration, and grading of written examinations and operating tests used to determine the qualifications of individuals who apply for operator and senior operator licenses at nuclear power plants pursuant to Part 55 of Title 10 of the Code of Federal Regulations (10 CFR Part 55). The NUREG provides similar guidance for verifying the continued qualifications of licensed operators when the staff determines that NRC requalification examinations are necessary.

NUREG–1021 has been revised to incorporate the examination development process described in Generic Letter 95–06, "Changes in the Operator Licensing Program," dated August 15, 1995, and permits power reactor facility licensees to continue preparing their initial operator licensing examinations on a voluntary basis pending an amendment to 10 CFR Part 55 that will require facility participation. Interim Revision 8 incorporates lessons learned during a pilot examination program conducted from October 1995 to April 1996 and industry recommendations submitted in response to the NRC's request for public comments published in the **Federal Register** on February 22, 1996 (61 FR 6869). The guidance that was previously contained in NUREG/BR–0122, "Examiners' Handbook for Developing Operator Licensing Written Examinations," has been appended to NUREG–1021, and a number of minor improvements and clarifications that were recommended by industry groups, licensed operators, and NRC examiners and managers have also been adopted. The entire NUREG has been reformatted to more clearly identify the various organizational responsibilities and is being reissued in its entirety. The NRC intends to solicit comments on this interim revision during the rulemaking process and to issue the final version of Revision 8 in conjunction with the final rule.

For examinations prepared by the NRC, interim Revision 8 will become effective 60 days after the date of this notice. The corporate notification letters issued after the effective date will give facility licensees at least 120 days of advance notice that the examinations will be administered in accordance with the revised procedures. Facility licensees that volunteered to prepare their examinations before the date of this notice are expected to prepare the examinations based on the guidance in interim Revision 8 or the pilot examination guidance in Generic Letter 95–06, as arranged with their NRC Regional Office. Facility licensees that volunteer after the date of this notice are expected to prepare the examinations based on the guidance in interim Revision 8. Facility licensees may propose deviations from the specific guidance in NUREG–1021, and the NRC will review and approve the deviations, as appropriate. However, the NRC will not approve any deviation that would compromise its statutory responsibility of prescribing uniform conditions for the licensing of nuclear power plant operators.

Copies of NUREG–1021, interim Revision 8, are being mailed to the plant or site manager at each nuclear power facility regulated by the NRC. A copy is available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC. NUREG–1021 is also electronically available for downloading from the Internet at "http://www.nrc.gov".

Dated at Rockville, Maryland, this 3rd day of February 1997.

For the Nuclear Regulatory Commission.

Stuart A. Richards,

Chief, Operator Licensing Branch, Division of Reactor Controls and Human Factors, Office of Nuclear Reactor Regulation.

[FR Doc. 97–4571 Filed 2–24–97; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Issuance of Transmittal Memorandum No. 17, Amending OMB Circular No. A–76, "Performance of Commercial Activities"

AGENCY: Office of Management and Budget.

SUMMARY: This notice contains Transmittal Memorandum No. 17, to OMB Circular No. A–76, "Performance of Commercial Activities."

This Transmittal Memorandum updates the Federal pay raise assumptions and inflation factors used for computing the Government's in-house personnel and non-pay costs for Fiscal Years 1997 through 2003. The Federal pay raise assumptions and the non-pay category rates are, generally, contained in the President's Budget for Fiscal Year 1998. The factors contained in OMB Circular No. A–76, Transmittal Memorandum No. 16 are outdated. It should not be assumed that these civilian pay raises will be those that will be in effect for preparation of the FY 1999 Budget. Guidance on pay raise assumptions to use for the FY 1999 Budget will be issued to agencies prior to the Budget submission date.

The revision does not require any agency to (1) create or maintain a duplicate control/monitoring/reporting system or (2) adopt any additional controls, not presently in compliance with Federal Acquisition Regulations (FAR).

Agencies are reminded that OMB Circular No. A–76, Transmittal Memoranda 1 through 14 are canceled. Transmittal Memorandum No. 15 provided the Revised Supplemental Handbook, dated March 1996 (**Federal Register**, April 1, 1996, pages 14338–14346).

DATES: As with previous OMB Circular A–76 Transmittals, the provisions of Transmittal Memorandum No. 17 are effective immediately and shall apply to all cost comparisons in progress that have not yet undergone bid opening or where the in-house bid has not yet otherwise been revealed.

FOR FURTHER INFORMATION CONTACT: Mr. David Childs, Budget Analysis and Systems Division, NEOB Room 6002, Office of Management and Budget, 725 17th Street, N.W., Washington, D.C. 20503, Telephone Number: (202) 395–6104, FAX Number (202) 395–7230.

Franklin D. Raines,

Director.

Executive Office of the President

Office of Management and Budget

Washington, D.C. 20503

February 13, 1997.

Circular No. A–76 (Revised)

Transmittal Memorandum No. 17

To the Heads of Executive Departments and Agencies

Subject: Performance of Commercial Activities

This Transmittal Memorandum updates the Federal pay raise assumptions and inflation factors used for the computing the Government's in-house personnel and non-pay costs, as generally provided in the President's Budget for Fiscal Year 1998. However, because the 1998 Budget did not specify 1999–2003 pay raises for civilian employees, *for purposes of A–76 cost comparison determinations only*, the civilian pay raise percentages for 1999–2003 shall be assumed to be the same as the military pay raise assumptions for the corresponding years as shown below. It should *not* be assumed that these civilian pay raises will be those that will be in effect for preparation of the FY 1999 Budget. Guidance on pay raise assumptions to use for the FY 1999 Budget will be issued to agencies prior to the Budget submission date.

Similarly, the non-pay inflation factors are for purposes of A–76 cost comparison determinations only. They reflect the generic non-pay inflation assumptions used to develop the FY 1998 Budget baseline estimates required by law. The law requires that a specific inflation factor (GNP fixed-weight FY/FY index) be used for this purpose. These inflation factors should not be viewed as estimates of expected inflation rates for major long-term procurement items or as an estimate of inflation for any particular agency's non-pay purchases mix.

The following factors should be applied per paragraph B, pages 19–21 of the OMB Circular A–76 Revised Supplemental Handbook (March 1996).

Federal pay raise assumptions effective date	Military/ civilian
January 1998	2.8
January 1999	3.0
January 2000	3.0
January 2001	3.0
January 2002	3.0
January 2003	3.0

Non-Pay Categories (Supplies and Equipment, etc.)

FY 1996	2.2
FY 1997	2.5
FY 1998	2.6
FY 1999	2.6
FY 2000	2.6
FY 2001	2.6
FY 2002	2.6
FY 2003	2.6

Geographic pay differentials received in 1997 shall be included for the development of in-house personnel costs. The above pay raise factors shall be applied after consideration is given to the geographic pay differentials. The pay raise factors provided for 1998 and beyond shall be applied to all employees, with no assumption being made as to how they will be distributed between possible locality and ECI-based increases.

These updates are effective as follows: all changes in the Transmittal Memorandum are effective immediately and shall apply to all cost comparisons in process where the Government's in-house cost estimate has not been publicly revealed before this date.

Agencies are reminded that OMB Circular No. A–76, Transmittal Memorandum 1 through Transmittal Memorandum 14 are canceled. Transmittal Memorandum No. 15 provided the Revised Supplemental Handbook, and is dated March 27, 1997 (Federal Register, April 1, 1996, pages 14338–14346). Transmittal Memorandum No. 16, which provided last year's OMB Circular A–76 Federal pay raise and inflation factor assumptions is also hereby canceled.

Sincerely,

Franklin D. Raines,

Director.

[FR Doc. 97–4511 Filed 2–24–97; 8:45 am]

BILLING CODE 3110–01–P

POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting

TIMES AND DATES: 10:30 a.m., Monday, March 3, 1997; 8:30 a.m., Tuesday, March 4, 1997; and 8:00 a.m. Wednesday, March 5, 1997.

PLACE: Washington, D.C., U.S. Postal Service Headquarters, 475 L'Enfant Plaza, S.W., in the Benjamin Franklin Room.

STATUS: March 3 (Closed); March 4 (Open); March 5 (Closed).

MATTERS TO BE CONSIDERED:

Monday, March 3 – 10:30 a.m. (Closed)

1. Inspector General Functions.
2. Postal Rate Commission Docket No. C96–1, Pack & Send.
3. Postal Rate Commission Opinion and Recommended Decision on Special Services.
4. Exercising the Board's Reserved Approval Authority with Respect to Performance of a Prototype for the Tray Management System.
5. Contingency Planning.
6. Compensation Issues.

Tuesday, March 4 – 8:30 a.m. (Open)

1. Minutes of the Previous Meeting, February 3–4, 1997.
2. Remarks of the Postmaster General/ Chief Executive Officer.

3. Consideration of Inspector General Functions.

4. Briefing on Customer Perfect!

5. Briefing on Procurement Policies.

6. Tentative Agenda for the April 7–8, 1997, meeting in New Orleans, Louisiana.

Wednesday, March 5 – 8:00 a.m. (Closed)

1. Continuation of Monday's Closed Agenda.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Koerber, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260–1000. Telephone (202) 268–4800.

Thomas J. Koerber,

Secretary.

[FR Doc. 97–4782 Filed 2–21–97; 2:01 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38299; File No. SR–Amex–97–01]

Self-Regulatory Organizations; Notice of Filing of, and Order Granting Accelerated Approval to, Proposed Rule Change by the American Stock Exchange, Inc. Relating to a Pilot Program for Execution of Specialists' Liquidating Transactions

February 18, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 13, 1997, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange submitted Amendment No. 1 on February 14, 1997.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] *See* letter from Claudia Crowley, Special Counsel, Amex, to Anthony P. Pecora, Attorney, Division of Market Regulation, SEC, dated February 14, 1997 ("Amendment No. 1"). Amendment No. 1 modified the proposed rule change by granting the Commission the authority to extend the specialist liquidating pilot program for up to three weeks as an alternative to permanent approval of the pilot program.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex is proposing permanent approval of the pilot program that amended Exchange Rule 170 to permit a specialist to effect a liquidating transaction on a zero minus tick,[3] in the case of a "long" position, or a zero plus tick,[4] when covering a "short" position, without Floor Official approval. The pilot program also amended Rule 170 to set forth the affirmative action that specialists are required to take subsequent to effecting various types of liquidating transactions. In the alternative, the Exchange is requesting a three-week extension of the pilot program.

The text of the proposed rule change is available at the Office of the Secretary, the Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On November 15, 1996, the Commission approved an extension until February 14, 1997 of a pilot program that amended Exchange Rule 170 to permit a specialist to effect a liquidating transaction on a zero minus tick, in the case of a "long" position, or a zero plus tick, when covering a "short" position, without Floor Official approval.[5] The amendments also set forth the affirmative action that specialists are required to take subsequent to effecting various types of liquidating transactions.

During the course of the pilot program, the Exchange has monitored compliance with the requirements of the Rule, and its findings in this regard have been forwarded to the Commission under separate cover. The Amex believes the amendments have provided specialists with flexibility in liquidating specialty stock positions in order to facilitate their ability to maintain fair and orderly markets, particularly during unusual market conditions. In addition, the specialist's concomitant obligation to participate as a dealer on the opposite side of the market after a liquidating transaction has been strengthened.

The Exchange is therefore proposing permanent approval of the amendments to Rule 170 or, in the alternative, a three-week extension of the pilot program.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act[6] in general and furthers the objectives of Section 6(b)(5)[7] in particular in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and, in general, protect investors and the public interest. The Exchange also believes the proposed rule change is consistent with Section 11(b) of the Act[8] which allows exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the

[3] A zero minus tick is a price equal to the last sale where the last preceding transaction at a different price was at a higher price.

[4] A zero plus tick is a price equal to the last sale where the last preceding transaction at a different price was at a lower price.

[5] Securities Exchange Act Release No. 37958 (Nov. 15, 1996), 61 FR 59476 (approving File No. SR–Amex–96–42) ("November 1996 Approval Order").

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(15).

[8] 15 U.S.C. 78k(b).

submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Also, copies of such filing will be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–97–01 and should be submitted by [insert date 21 days from date of publication].

IV. Commission's Findings and Order Granting Accelerated Approval to the Proposed Rule Change

The Commission finds that the Exchange's proposal to extend its pilot program concerning the execution of specialists' liquidating transactions until March 7, 1997, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5)[9] requirements that the rules of an exchange be designed to promote just the equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. The Commission also believes the proposal is consistent with Section 11(b) of the Act[10] and Rule. 11b–1[11] thereunder, which allow exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets.

The Exchange originally proposed to amend Amex Rule 170 in File No. SR–Amex–92–26.[12] The proposed rule change, filed as a one-year pilot program, amended Amex Rule 170 to permit specialists to "reliquidate" a dealer position by selling stock on a direct minus tick or by purchasing stock on a direct plus tick, but only if such transactions are reasonably necessary for the maintenance of a fair and orderly market and only if the specialist has obtained the prior approval of a Floor Official. Under the pilot program, a specialist, also may sell "long" on a zero minus tick, or by purchasing on a zero plus tick to cover a "short" position, without Floor Official approval. Although liquidations on a zero minus or on a zero plus tick can be effected under the pilot procedures without a Floor Official's prior approval, such liquidations are still subject to the restriction that they be effected only when reasonably necessary to maintain a fair and orderly market. In addition, the specialist must maintain a fair and orderly market during the liquidation.

After the liquidation, the specialist is required to re-enter the market on the opposite side of the market from the liquidating transaction to offset any imbalances between supply and demand. During any period of volatile or unusual market conditions resulting in significant price movement in a specialist's specialty stock, the specialist's re-entry into the market must reflect, a minimum, his or her usual level of dealer participation in the speciality stock. In addition, during such periods of volatile or unusual price movements, re-entry into the market following a series of transactions must reflect a significant level of dealer participation.

In the April 1994 Approval Order, the Commission requested that the Amex Submit a report setting forth the criteria developed by the Exchange to determine whether any reliquidation by specialist were necessary and appropriate in connection with fair and orderly markets.[13] The Commission also asked, among other things, that the Exchange provide information regarding the Exchange's monitoring of liquidation transactions effected by specialists on any destabilizing tick. In all of the approval orders, the Commission requested that the Amex continue to monitor the pilot and update its report where appropriate.[14] In particular, the Commission asked the Amex to report any noncompliance with the Rule and the action the Amex took as a result of such noncompliance.

The Amex submitted its reports concerning the pilot program to the Commission in May 1995, April 1996, and January 1997. As noted above, the Amex believes the pilot procedures appear to be working well in enabling specialists to reliquidate appropriately to meet the needs of the market. After reviewing the data, the Commission agrees with the Exchange that the pilot program generally is working well. In particular, the Commission believes the report indicates that specialists generally are entering the aftermarket after effecting liquidating transactions when appropriate.

Nevertheless, the Commission believes certain issues concerning the pilot program need to be revisited before permanent approval can be granted. In this regard, the Exchange should continue to emphasize the requirements of Amex Rule 170, including the necessity for Floor Official approval of specialists' purchases and sales on direct plus or minus ticks and that such transactions can only be effected if reasonably necessary for the maintenance of fair and orderly markets. In addition, where proper procedures are not followed, the Amex should take appropriate disciplinary action.[15]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. This will permit the pilot program to continue on an uninterrupted basis. In addition, the Exchange proposes to continue using the identical procedures contained in the pilot program. These procedures have been published in the **Federal Register** on several occasions for the full comment period,[16] and no comments have been received. Furthermore, the Commission approved a similar rule change for the NYSE also without receiving comments on the proposal.[17] For these reasons, the Commission finds that accelerating approval of the proposed rule change is consistent with Section 19(b)(2) of the Act.[18] Any requests to modify this pilot program, to extend its effectiveness, or to seek permanent approval for the pilot program also should include an update on the disciplinary actions taken for violations of these procedures.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78k(b).

[11] 17 CFR 240.11b–1.

[12] *See* Securities Exchange Act Release No. 33957 (Apr. 22, 1994), 59 FR 22188 ("April 1994 Approval Order") (approving File No. SR–Amex–92–26). *See also* Securities Exchange Act Release No. 35635 (Apr. 21), 1995), 60 FR 20780 (approving File No. SR–Amex–95–11); Securities Exchange Act Release No. 36014 (July 21, 1995), 60 FR 38870 (approving File No. SR–Amex–95–19); Securities Exchange Act Release No. 37448 (July 17, 1996), 61 FR 38487 (approving File No. SR–Amex–96–19); Securities Exchange Act Release No. 37704 (Sept. 19, 1996), 61 FR 50525 (approving File No. SR–Amex–96–33); November 1996 Approval Order, *supra* note 5.

[13] *See* 1994 Approval Order, *supra* note 12.

[14] *See supra* note 12.

[15] All "nonsubstantive" violations of this rule (*e.g.*, failure to obtain the required Floor Official approval when such approval, if sought, would have been granted) should be referred to the Minor Floor Violation Disciplinary Committee, as required by Amex Rule 590. Also, as the Amex has indicated previously, all "substantive" violations of this rule (*e.g.*, failure to properly reenter the market or failure to obtain the required Floor Official approval when such approval, if sought, would not have been granted) will be dealt with according to the Exchange's formal disciplinary procedures.

[16] *See supra* note 12 and November 1996 Approval Order *supra* note 5.

[17] *See* Securities Exchange Act Release No. 31797 (Jan. 29, 1993), 58 FR 7277 (approving File No. SR–NYSE–92–20).

[18] 15 U.S.C. 78s(b)(2).

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–Amex–97–01), as amended, is approved for a pilot period ending on March 7, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4527 Filed 2–24–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38310; International Series Release No. 1054; File No. SR–AMEX–96–36]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto Relating to the Policy of the Amex Regarding Information Obtained Pursuant to the SEC's Memorandum of Understanding With the CONSOB

February 19, 1997.

I. Introduction

On October 2, 1996, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] a proposed rule change to adopt an official Exchange policy concerning the circumstances and conditions under which the Exchange, in order to carry out its market surveillance and enforcement functions for derivative products containing Italian component securities, may obtain access to information regarding activity on the Italian securities markets obtained by the SEC pursuant to the Commission's Memorandum of Understanding ("MOU") with the Commissione Nazionale per le Societa e la Borsa ("CONSOB"). Amex submitted Amendment No. 1 to the filing on November 12, 1996,[2] which made several clarifications to the original filing.

The proposed rule change was published for comment in the **Federal Register** on December 2, 1996.[3] No comments were received on the proposal. This order approves the proposal, as amended.

II. Description of the Proposal

The Amex does not have a surveillance sharing agreement with the Milan exchange, which is an unincorporated association and is not able under Italian law to enter into such an arrangement. Therefore, Amex submitted this rule filing to enable the Exchange to carry out its market surveillance and enforcement functions for derivative products containing Italian component securities by seeking the necessary information about activity on the Italian securities markets from the SEC pursuant to the SEC's MOU with CONSOB. The Exchange's proposed policy details the circumstances and conditions under which the Exchange may obtain access to such information from the SEC. By adopting this policy, therefore, the Exchange believes it will be in a position to list derivative products containing Italian component securities because it will be able to have access to information on the underlying securities which it may need for enforcement or market surveillance purposes.[4]

The Exchange's proposed policy provides that the Exchange will advise the SEC of information it needs regarding activity on the Italian securities markets for market surveillance and enforcement purposes. The SEC, in turn, may request the CONSOB's assistance, pursuant to the MOU, in gaining access to such information. The Exchange will use such information it may receive from the SEC only for the purposes of conducting market surveillance and enforcement proceedings. The Exchange will limit distribution of such information to officers and directors of the Exchange and other employees directly responsible for conducting market surveillance and enforcement proceedings relating to the matter in connection with which the SEC provided the information to the Exchange. The Exchange also will undertake to maintain the confidentiality of the information and to take appropriate disciplinary action in the event it learns of a breach of such confidentiality, including referral to the SEC for any action the SEC deems necessary or appropriate.

By adopting a policy that provides access to information on the underlying securities for market surveillance and enforcement purposes, the Exchange will be able to list options and other derivative products containing Italian component securities, provided that all other applicable product listing standards are met. Therefore, the Exchange believes that the proposed rule change could potentially provide investors with the opportunity to invest in such products and hedge their exposure to the Italian securities market.

III. Discussion

After careful review, the Commission finds that the proposed rule hang is consistent with the requirements of the Act, and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes that the proposal is consistent with Section 6(b) of the Act, in general, and Section 6(b)(5),[5] in particular, as it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, and to protect investors and the public interest.[6].

Specifically, the Commission believes that, since the Amex does not and cannot have a surveillance sharing agreement with the Milan Exchange, the Amex's adoption of the proposed policy will enable the Exchange to carry out its market surveillance and enforcement functions for derivative products containing Italian component securities by seeking the necessary information about activity on the Italian securities markets from the SEC per the latter's MOU with the CONSOB. The Commission believes that the Exchange's proposed policy adequately details the circumstances and conditions under which the Exchange may obtain access to such information from the SEC.

The Commission believes that, under the Exchange's proposed policy, the Exchange will advise the SEC of information it needs regarding activity on the Italian securities markets for market surveillance and enforcement purposes. The Commission, in turn, may request the CONSOB's assistance, pursuant to the MOU, in gaining access to such information. The Commission notes that the Exchange will use such information it may receive from the SEC only for the purposes of conducting market surveillance and enforcement proceedings. The Commission also notes that the Exchange will limit distribution of such information to officers and directors of the Exchange and other employees directly responsible for conducting market surveillance and enforcement proceedings relating to the matter in connection with which the SEC provided the information to the Amex. In view of the importance of maintaining the confidentiality of this information, the SEC believes that the officers and/or directors overseeing the exchange employees conducting the relevant market surveillance and enforcement proceedings would be responsible for ensuring the confidentiality of the information provided by the SEC pursuant to the MOU with the CONSOB and should take reasonable measures to ensure that the information does not become available to unauthorized persons. Thus, the Commission believes that the Exchange will undertake to maintain the confidentiality of such information and to take appropriate disciplinary action in the event it learns of a breach of such confidentiality, including referral to the SEC for any action the SEC deems necessary or appropriate.

The Commission believes that the Amex, by adopting a policy that provides access to information on the underlying securities for market surveillance and enforcement purposes, will be in a position to list options and other derivative products containing Italian component securities, provided that all other applicable product listing standards are met. Therefore, the Exchange's proposed rule change could potentially provide investors with the opportunity to invest in such products and hedge their exposure to the Italian securities market. Accordingly, the Commission believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act, in that it is designed to perfect the mechanisms of a free and open market and to protect investors and the public interest.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–AMEX–96–36) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4604 Filed 2–24–97; 8:45 am]

BILLING CODE 8010–01–M

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[19] *Id.*

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] On November 12, 1996, Amex submitted Amendment No. 1 to its proposed rule filing, making several clarifications to the original filing. See Letter from Claire P. McGrath, Managing Director and Special Counsel, Amex, to Michael Walinskas, Senior Special Counsel, Division, Commission, dated November 7, 1996.

[3] Securities Exchange Act Release No. 37973 (November 22, 1996), 61 FR 63884.

[4] This filing only addresses trading requirements relating to necessary surveillance sharing procedures.

[5] 15 U.S.C. 78f(b) and 78f(b)(5).

[6] In approving the rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

[Release No. 34–38308; File No. SR–Amex–96–44]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the American Stock Exchange, Inc. Relating to the Listing and Trading of Options on Exchange-Traded Fund Shares

February 19, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 21, 1996, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. On January 16, 1997, the Exchange filed Amendment No. 1 to the proposal.[1] On February 19, 1997, the Exchange filed Amendment No. 2 to the proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment Nos. 1 and 2 from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes the adoption of rules to permit the trading of options on securities representing interests in open-end, exchange-listed investment companies that hold securities constituting or based on an index or a portfolio of securities.

The text of the proposed rule change is available at the Office of the Secretary, the Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to provide for the trading of options on exchange-listed securities representing interests in open-end unit investment trusts or open-end management investment companies that hold securities based on an index or a portfolio of securities (referred to hereinafter as "Exchange-Traded Fund Shares" or "Fund Shares").[3]

As noted above, a characteristic of all Exchange-Traded Fund Shares is that they are open-ended, and new shares may be created on any business day at a cost related to the net asset value in a transaction with the fund itself. The ability of the seller of a call on any of these Fund Shares to deliver upon exercise will thus be a function of the

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[1] In Amendment No. 1, the Exchange states: (1) that the proposal is limited to the listing and trading of options on those exchange-traded fund shares that have received approval from the Commission; and (2) the Exchange will list and trade options on exchange-traded funds shares that hold foreign country securities only if: (i) the Exchange has a market information sharing agreement with the primary exchange for each of the securities held by the fund, or (ii) the fund is classified as a diversified fund as that term is defined by Section 5(b) of the Investment Company Act of 1940 and the securities held in the fund are issued by issuers based in five or more countries. *See* letter from Claire P. McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Ivette Lopez, Assistant Director, Office of Market Supervision ("OMS", Division of Market Regulation ("Division"), Commission, dated January 15, 1997. ("Amendment No. 1").

[2] Amendment No. 2 supersedes and replaces Amendment No. 1 to the extent that it modifies proposed Commentary .06(4) to state that the Amex will list and trade options on exchange-traded fund shares that hold foreign country securities only if: (i) the exchange has an effective surveillance sharing agreement with the primary exchange for each of the securities held by the fund, or (ii) the fund is classified as a diversified fund as that term is defined by Section 5(b) of the Investment Company Act of 1940 and the securities held in the fund are issued by issuers based in five or more countries. The Exchange defines an "effective surveillance sharing agreement" as an agreement that would permit the Exchange to obtain trading information relating to the securities held by the fund including the identity of the customers transacting in those securities. *See* letter from Claire P. McGrath, Managing Director and Special Counsel, Amex, to Ivette Lopez, Assistant Director, OMS, Division, Commission, dated February 18, 1997 ("Amendment No. 2").

[3] Currently, the Exchange trades unit investment trust securities known as Portfolio Depositary Receipts℠ ("PDRs") based on the Standard & Poor's 500® Composite Stock Price Index and the Standard & Poor's MidCap 400 Index™. In addition, the Exchange trades Index Fund Shares which are issued by an open-end management investment company consisting of seventeen separate series known as World Equity Benchmark Shares℠ ("WEBS") based on seventeen foreign equity market indexes. PDRs and WEBS are listed on the Amex pursuant to Rule 1000, et seq. and Rule 1000A et seq., respectively, and trade like shares of common stock.

availability of shares from the fund itself (which is itself a function of the creation mechanism and the shares underlying the index or portfolio) and not of the bid/ask spread, trading volume, or the portfolio size of the fund. Exchange-Traded Fund Shares are also redeemable on any business day, at a price related to the net asset value. Consequently, the ability to liquidate shares received on the exercise of a put will be a function of the ability to redeem the shares from the fund (which is itself a function of the creation mechanism and the shares underlying the index or portfolio), not the bid/ask spread, trading volume, or the portfolio size of the fund.

Options on Exchange-Traded Fund Shares are proposed to be traded on the Exchange pursuant to the same rules and procedures that apply generally to trading in options on equity securities or indexes of equity securities. However, the Exchange proposes some different listing criteria for options on Exchange-Traded Fund Shares and intends to have each option contract cover 1000 Exchange-Traded Fund Shares. Also, reflecting the open-ended nature of the Fund Shares, the Exchange is not proposing any position or exercise limits to apply to options on Exchange-Traded Fund Shares.

The listing standards proposed for options on Exchange-Traded Fund Shares are set forth in proposed Commentary .06 under Exchange Rule 915 and in proposed Commentary .08 under Exchange Rule 916. These standards, which provide for the listing of European-style options only, are substantially the same as those that apply to the initial and continued listing of the Fund Shares pursuant to Exchange Rules 1002 and 1002A. Conforming the listing standards for options on Exchange-Traded Fund Shares to the listing standards that apply to Fund Shares themselves will assure that whenever there is trading in the underlying Fund Shares, options on these same Fund Shares will also be available. The Exchange believes that the contemporaneous availability of both options and Fund Shares is particularly necessary for Fund Shares on indexes or portfolios of securities when there already exist Fund Shares based on the same or a similar index or portfolio of securities. It is expected that Fund Shares with underlying options will be more useful to investors seeking to modify their risk in such Fund Shares, the underlying indices, markets or market segments. Demand for and creation of Fund Shares with overlying options is likely to exceed demand for and creation of Fund Shares without overlying options on the same or a similar index or portfolio of securities. Correspondingly, a new fund without options will have a difficult time competing with an established fund with overlying options. A new fund based on a Japanese index, for example, would encounter major obstacles in achieving a reasonable size when in competition with an established fund that has overlying options if the new fund does not have options. The Exchange's proposed listing standards provide that if a particular series of Exchange-Traded Fund Shares should cease to trade on an exchange or as national market securities in the over-the-counter market, there will be no opening transactions in the options on the Fund Shares, and all such options will trade on a liquidation-only basis.

The Amex believes the availability of these options will be beneficial to investors, since options will permit investors to adjust the risks and rewards of investing in the unit investment trust or fund to their individual needs. Options also will add depth and liquidity to the market for Exchange-Traded Fund Shares by permitting market makers in that market to hedge the risks of their market-making activities efficiently. Options traders and market makers, in turn, will obtain liquidity from the market in Fund Shares and the market in the underlying securities represented in the portfolio.

Reflecting the open-ended nature of Exchange-Traded Fund Shares, maintenance or continued listing standards for these Fund Shares do not include criteria based on either the number of Fund Shares outstanding or trading volume.[4] Similarly, the Exchange believes it is neither necessary nor appropriate to apply traditional position or exercise limits to Fund Share options, and it is proposing to amend Rules 904 and 905 to provide that these limits shall not ordinarily apply. Since it should always be possible to create more Fund Shares at a cost related to their net asset value by tendering a specified in-kind deposit of the securities that constitute the underlying index or portfolio and/or cash, there is no meaningful limit on the available supply underlying Fund Shares. The diversification inherent in the satisfaction of regulated investment company requirements for pass-through tax treatment of dividends and other income insures that the market value of the shares underlying any fund will be very large. Accordingly, the Exchange believes there is no need for option position and exercise limits to protect the underlying market against squeezes and other attempts at manipulation, or inadvertent market disruption stemming from temporary supply and demands imbalances. The Amex believes the proposed Exchange-Traded Fund Shares options' European-style exercise (which gives the option seller ample advance knowledge of the time and size of any possible exercise transaction), physical settlement of the option, Creation Unit size share and/or cash deposits, and a substantial underlying market in the securities held by the Fund, combine to insure against successful attempts at manipulation or material market disruptions stemming from trading activity in the Fund Shares, multiple Creation Unit sized baskets of portfolio securities, or options on Fund Shares. Furthermore, in the absence of any maintenance or continued listing requirements in the underlying market that call for a minimum number of outstanding Exchange-Traded Fund Shares or for minimum trading volume, the Exchange believes that position and exercise limits would not be meaningful or useful as a percentage of any of these measures. For these reasons, and to assure that as long as there is trading in the underlying Fund Shares there can also be trading in the related options, the Exchange is not proposing any position or exercise limits for Fund Shares options. The Exchange reserves the right, however, to impose position and exercise limits if, for reasons not now conceivable, such limits should ever be needed in the interest of fair and orderly markets in the options, the underlying Fund Shares, or the portfolio securities underlying the Fund Shares.

Reflecting that the underlying portfolios of Exchange-Traded Fund Shares are diversified and generally less volatile than a typical component of the portfolios, it is also proposed that each option contract cover 1000 Exchange-Traded Fund Shares and that the minimum strike price intervals for options on Exchange-Traded Fund Shares will be $2.50 where the strike price is $200 or less, and $5.00 where the strike price is over $200. These are comparable to the strike price intervals applicable to index options having strike prices at about the level expected for Fund Share options.

The proposed margin requirements for options on Exchange-Traded Fund Shares are at the same levels that apply to options generally under Exchange Rule 462, except, reflecting the diversified nature of the underlying portfolios represented by the Fund Shares, minimum margin must be deposited and maintained equal to 100% of the current market value of the option plus 15% of the market value of equivalent units of the underlying security value. In this respect, the margin requirements proposed for options on Exchange-Traded Fund Shares are comparable to margin requirements that currently apply to broad-based index options under Exchange Rule 462.

The Exchange believes it has the necessary systems capacity to support the additional series of options that would result from the introduction of Fund options, and it has been advised that the Options Price Reporting Authority ("OPRA") also will have the capacity to support these additional series now that it has implemented an additional outgoing high speed line from the OPRA processor.[5]

2. Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5) in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–96–44 and should be submitted by March 18, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

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[4] As set forth in Rules 1002 and 1002A, the Exchange establishes a minimum number of units to be outstanding before trading in a series of Exchange-Traded Fund Shares may commence. Although there is no comparable maintenance standard, as a practical matter there can never be trading in a series of Fund Shares in which there is less than one Creation Unit outstanding, since Fund Shares may only be created and redeemed in Creation Unit size, and if the last outstanding Creation Unit should ever be redeemed, the series (and options on that series) will cease to trade.

[5] *See* letter from Joseph P. Corrigan, Executive Director, OPRA, to Ivette Lopez, Assistant Director, OMS, Division, Commission, dated November 8, 1996.

[6] 17 CFR 200.30–3(a)(12).

[Release No. 34–38307; File No. SR–Amex–97–04]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange, Inc., Relating to Options on the de Jager Year 2000 Index

February 19, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 27, 1997, the American Stock Exchange, Inc., ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade options on The de Jager Year 2000 Index ("Index"), a new stock index developed by the Amex and de Jager & Company based on stocks (or American Depositary Receipts ("ADRs") thereon) of companies whose business is expected to benefit from the need of companies, governments, and others to address and resolve the "Year 2000" problem. In addition, the Amex proposes to amend Exchange Rule 901C, Commentary .01 to reflect that 90 percent of the Index's numerical index value will be accounted for by stocks which meet the current criteria and guidelines set forth in Exchange Rule 915.

II. Self-Regulatory Organization's Statement of the Propose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries; set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex and de Jager & Company have developed a new index called The de Jager Year 2000 Index, based entirely on shares of widely-held companies whose business is expected to benefit from the need of companies, governments, and others to address and resolve the "Year 2000" problem.[3] The

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4.

[3] The components securities in the Index include: American Management System; Analysts International Corp.; Ciber Inc.; Computer Associates International Inc.; Computer Horizons Corp.; Computer Sciences Corp.; Compuware Corp.; Data Dimensions Inc.; Dun & Bradstreet Corp; Electronic

Continued

"Year 2000" problem arises because most business application software programs (mainframe, client/server, and personal computer) written over the past twenty-years use only two digits to specify the year, rather than four. Therefore, on January 1, 2000, unless the software is corrected, most computers with time-sensitive software programs will recognize the year as "00" and may assume that this year is "1900." This could either force the computer to shut down or lead to incorrect calculations. de Jager & Company is a small consulting firm that, through Peter de Jager, is solely involved in promoting awareness of the "Year 2000" problem.[4] The industries represented by these companies include: packaged software providers; computer programming consulting firms; and computer outsourcing services. Each of the component securities are traded on the Amex, the New York Stock Exchange, Inc. ("NYSE"), or through the facilities of the National Association of Securities Dealers ("NASD") Automated Quotation system ("NASDAQ") and are reported national market system securities ("NASDAQ/NMS"). The Amex intends to trade standardized option contracts on the newly developed Index. The Exchange is filing this proposal pursuant to Exchange Rule 901C, Commentary .02, which provides for the commencement of trading of options on the Index thirty days after the date of this filing. The proposal meets all the criteria set forth in Commentary .02 and the Commission's order approving that rule.[5]

Eligibility Standards for Index Components

Pursuant to Commentary .02 to Exchange Rule 901C, (1) all of the component securities of the Index are listed on the Amex, the NYSE, or are NASDAQ/NMS listed; (2) each of the component securities has a minimum market capitalization of at least $75 million;[6] (3) seventeen of the eighteen components have had a monthly trading volume of at least one million shares during the previous six months (one component had a monthly trading volume of 650,000 shares during the previous six months); (4) sixteen of the component securities in the Index (84.21 percent) and 91.63 percent of the Index's numerical index value have met the initial eligibility criteria for standardized options trading set forth in Exchange Rule 915; (5) foreign country securities or ADRs thereon that are not subject to comprehensive surveillance sharing agreements do not in the aggregate represent more than 20 percent of the weight of the Index; and (6) the Index is price-weighted, and no individual component stock in the Index represents more than 25 percent of the weight of the Index, and the five highest weighted component stocks in the Index do not in the aggregate account for more than 60 percent of the weight of the Index.

Maintenance of the Index

The Amex will maintain the Index in accordance with Exchange Rule 901C, Commentary .02 so that the Index continues to meet the eligibility standards set forth above, except that: (1) the total number of component securities will not increase or decrease by more than 33⅓ percent from the number of components in the Index at the time of its initial listing, and in no event will the Index have less than nine components; (2) component stocks constituting the top 90 percent of the Index, by weight, will have a minimum market capitalization of $75 million, and the component stocks constituting the bottom 10 percent of the Index, by weight, will have a minimum market capitalization of $50 million; (3) the monthly trading volume of each component security will be at least 500,000 shares, or for each of the lowest weighted components in the Index that in the aggregate account for no more than 10 percent of the weight of the Index, the monthly trading volume will be at least 400,000 shares; (4) no single component will represent more than 25 percent of the weight of the Index, and the five highest weighted components will represent no more than 60 percent of the Index as of the first day of January and July in each year; and (5) 90 percent of the Index's numerical index value and at least 80 percent of the total number of component securities will meet the then current criteria for standardized option trading set forth in Exchange Rule 915.

The Exchange will not open for trading any additional option series should the Index fail to satisfy any of the maintenance criteria set forth above unless such failure is determined by the Exchange not to be significant and the Commission concurs in that determination, or unless the continued listing of the Index option has been approved by the Commission pursuant to Section 19(b)(2) of the Act.

Index Calculation

The Index is price-weighted; the Index value corresponds to the sum of the prices of each of the component stocks divided by the current index divisor. The Index divisor was initially determined to yield a benchmark value of 250 on December 31, 1996. Similar to other stock index values published by the Exchange, the value of the Index will be calculated continuously and disseminated every fifteen seconds over the Consolidated Tape Association's Network B.

The Index will be calculated and maintained by the Amex. A representative of de Jager & Company will be available to advise the Exchange when, pursuant to Exchange Rule 901C(b), the Amex substitutes stocks, or adjusts the number of stocks included in the Index, based on changing conditions in the "Year 2000" industry or in the event of certain types of corporate actions, such as a merger or a takeover which warrants the removal of a component security from the Index. It is anticipated that the Amex will consult with de Jager & Company on a quarterly basis to review possible candidates for removal from or inclusion in the Index.[7] Such consultations will occur after the close of trading and any determination to remove or to include a component in the Index will be publicly announced prior to the opening of trading on the following business day. However, in the event the Exchange determines to increase the number of Index component stocks to greater than 24 or to reduce the number of component stocks to fewer than 12, the Exchange will submit a rule filing pursuant to Rule 19b–4 under the Act to the Commission. In selecting securities to be included in the Index, the Exchange, in conjunction with de Jager & Company, will be guided by a number of factors including market value of outstanding shares and trading activity

Data Systems Corp.; Information Management Resources Inc.; Intersolv; Keane Inc.; Peoplesoft Inc.; Platinum Technology Inc.; Sterling Software Inc.; Viasoft Inc.; and Zitel Corp.

[4] Mr. de Jager worked for many years in computer operations and programming prior to becoming a speaker and writer on various computer related issues and has recently become involved in promoting awareness of the "Year 2000" problem.

[5] See Securities Exchange Act Release No. 34157 (June 3, 1994), 59 FR 30062 (June 10, 1994) (Amex–92–35) (approval order relating to narrow-based index options listing standards) ("Generic Index Approval Order").

[6] In the case of ADRs, this represents market value as measured by total world-wide shares outstanding.

[7] Surveillance procedures currently used to monitor trading in each of the Exchange's other index options will also be used to monitor trading in options on the de Jager Year 2000 Index, including, but not limited to, insider trading reviews of component securities and stockwatch monitoring. Telephone conversation between Claire P. McGrath, Managing Director and Special Counsel, Derivatives Securities, Amex and Matthew S. Morris, Division of Market Regulation, Commission, on February 11, 1997.

and adherence to Exchange Rule 901C, Commentary .02.

Expiration and Settlement

The proposed options on the Index will be European-style (*i.e.*, exercises are permitted at expiration only), and cash settled. Standard option trading hours (9:30 a.m. to 4:10 p.m., New York time) will apply. The options on The de Jager Year 2000 Index will expire on the Saturday following the third Friday of the expiration month ("Expiration Friday"). The last trading day in an expiring options series will normally be the second to last business day preceding the Saturday following the third Friday of the expiration month (normally a Thursday). Trading in expiring options will cease at the close of trading on the last trading day.

The Exchange plans to list options series with expirations in the three near-term calendar months and in the two additional calendar months in the February cycle. In additions, longer term options series having up to thirty-six months to expiration may be traded. In lieu of such long-term options on a full value Index level, the Exchange may instead list long-term, reduced value put and call options based on one-tenth (1/10th) the Index's full value. In either event, the interval between expiration months for either a full value or reduced long-term option will not be less than six-months. The trading of any long-term options would be subject to the same rules which govern the trading of all the Exchange's index options, including sales practice rules, margin requirements, and floor trading procedures and all options will have European-style exercise. Position limits on reduced-value long-term de Jager Year 2000 Index options will be equivalent to the position limits for regular (full-value) Index options and would be aggregated with such options. (For example, if the position limit for the full-value options is 12,000 contracts on the same-side of the market, then the position limit for the reduced-value options will be 120,000 contracts on the same-side of the market.)

The exercise settlement value for all of the Index's expiring options will be calculated based upon the primary exchange regular way opening sale prices for the component stocks. In the case of securities traded through the NASDAQ system, the first reported regular way sale price will be used. If any component stock does not open for trading on its primary market on the last trading day before expiration, then the prior day's last sale price will be used in the calculation.[8]

Exchange Rules Applicable to Stock Index Options

Exchange Rules 900C through 980C will apply to the trading of option contracts based on the Index. These rules cover issues such as surveillance, exercise prices, and position limits. Surveillance procedures currently used to monitor trading in each of the Exchange's other index options will also be used to monitor trading in options on The de Jager Year 2000 Index. The Index is deemed to be a Stock Index Option under Exchange Rule 901C(a) as well as a Stock Index Industry Group under Exchange Rule 900C(b)(1). With respect to Exchange Rule 903C(b), the Amex proposes to list near-the-money (*i.e.*, within ten points above or below the current index value) option series on the Index at 2-½ point strike (exercise) price intervals when the value of the Index is below 200 points. In addition, the Amex expects that the review required by Exchange Rule 904C(c) will result in a position limit of 12,000 contracts with respect to options on this Index.

2. Statutory Basis

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change will impose any inappropriate burden on competition.

[8] The Commission notes that pursuant to Article XVII, Section 4 of the Options Clearing Corporation's ("OCC") by-laws, the OCC is empowered to fix an exercise settlement amount in the event it determines a current index value is unreported or otherwise unavailable. Further, the OCC has the authority to fix an exercise settlement amount whenever the primary market for the securities representing a substantial part of the value of the underlying index is not open for trading at the time when the current index value (*i.e.*, the value used for exercise settlement purposes) ordinarily would be determined. See Securities Exchange Act Release No. 37315 (June 17, 1996), 61 FR 32471 (June 24, 1996) (OCC–95–18).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change complies with the standards set forth in the Generic Index Approval Order,[9] it has become effective pursuant to Section 19(b)(3)(A) of the Act. Pursuant to the Generic Index Approval Order, the Amex may not list options for trading on the Index prior to thirty days after January 27, 1997, the date the proposed rule change was filed with the Commission. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–97–04 and should be submitted by March 18, 1997.

[9] See *supra* note 5

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4612 Filed 2–24–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38290; File No. SR–CBOE–96–73]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Membership Committee Jurisdiction Over Continuing Membership

February 14, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on November 26, 1996, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CBOE Rule 3.4 to: (i) grant the Membership Committee, instead of the BCC, the power to decide whether to limit or condition the right of a person to continue as a member, or as a person associated with a member, when such person fails to meet any of the qualification requirements for membership or association after the membership or association has been approved, fails to meet any condition placed by the Membership Committee on such membership or association, violates an agreement with the Exchange, or becomes subject to a statutory disqualification under the Act; and (ii) require a member or person associated with a member who is subject to a statutory disqualification to submit an application to the Membership Committee in order to continue as a member or as a person associated with a member.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to grant to the CBOE's Membership Committee certain authority over persons who fail to meet conditions to their remaining as members or persons associated with members, or who become subject to a statutory disqualification after becoming a member or person associated with a member. Presently this authority rests with the Exchange's BCC. The proposed rule change also requires a member or person associated with a member who is subject to a statutory disqualification and who wants to continue as a member or in association with a member to submit an application to that effect to the CBOE's Membership Committee.

CBOE Rule 3.4 (a) through (c) sets forth the reasons the CBOE's Membership Committee may deny or condition membership or a person's association with a member. However, the jurisdiction of the CBOE's Membership Committee currently applies only to applicants for membership or association with a member, not to existing members or associated persons. CBOE Rule 3.4(e) currently authorizes the Exchange's BCC to take action against an existing member under Chapter XVII, "Discipline," of the CBOE's rules when any of these reasons for denying or conditioning membership (or association with a member) comes into existence. Under this authority, the Exchange's BCC may suspend or bar from membership an existing member for the same reasons a person applying for membership could be denied membership or be granted only conditional membership. For example, if an existing member becomes subject to a statutory disqualification under Sections 3(a)(39) and 15(b) under the Act, the CBOE's BCC may take action, pursuant to CBOE Rule 3.4(e), to discontinue that member's membership. In addition, Section 2.2 under the CBOE's Constitution, "Eligibility for Membership; Good Standing," provides that the good standing of a CBOE member may be suspended, terminated or otherwise withdrawn, as provided in the CBOE's Rules, if any of the conditions for approval cease to be maintained or the member violates any of its agreements with the Exchange or any of the provisions of the Constitution. Again, the CBOE's BCC currently would take action under Section 2.2 of the Exchange's Constitution against existing members or associated persons.

The CBOE believes it is more appropriate for the Exchange's Membership Committee to deal with membership related issues (whether those issues concern an applicant for membership or an already existing CBOE member), and for the Exchange's BCC to limit its activities to disciplinary matters involving allegations of specific rule violations. The Exchange believes that its Membership Committee is more familiar with the considerations that properly bear on decisions to deny or condition membership, and is best able to evaluate cases involving whether to continue or condition the membership of an existing member by referring to the standards it applies when evaluating applicants for membership. The Exchange's BCC may not be privy to membership applications that were denied by the CBOE's Membership Committee and the reasons for such denial. Furthermore, the CBOE's BCC may not be familiar with the factors considered by the Exchange's Membership Committee when acting on membership applications, or the types of conditions that may be imposed on applicants. In short, the Exchange believes that the present bifurcation of membership issues between the two committees could result in the CBOE's BCC treating existing members who now fail to meet conditions of membership inconsistently with the way the CBOE's Membership Committee treats applicants for CBOE membership who are also subject to these same conditions.

The CBOE believes the same committee should make determinations about a person's fitness for CBOE membership whether that person is applying for CBOE membership or is an existing member whose ability to continue in membership is at issue. The proposed rule change would accomplish this. The CBOE states that, under the proposed rule change, the CBOE's Membership Committee may determine whether to limit or condition the right of a person to continue as a member or as a person associated with a member for the same reasons that the Exchange's BCC may presently take such action.

Pursuant to the proposed rule change, the CBOE's BCC will retain its powers to take action against existing members or associated persons under Section 2.2 of the Exchange's Constitution if the member or associated person violates any provision of the Exchange's Constitution or Rules. However, pursuant to the proposed rule change, the CBOE's BCC will no longer have the ability to take action pursuant to CBOE Rule 3.4(e) for the circumstances set forth in CBOE Rule 3.4(c).[4] Practically, the Exchange believes that this change will have little effect because the CBOE's BCC does not typically rely on CBOE Rule 3.4(e) to take action for the circumstances set forth in CBOE Rule 3.4(c). Instead, the practice of the CBOE's BCC is to take disciplinary action for specific rule violations. Most of the circumstances set forth in CBOE Rule 3.4(c) are covered by CBOE Rules 16.1, "Imposition of suspension," or 4.2, "Adherence to Law." Following the Exchange's present practice, the CBOE's BCC will continue to take disciplinary action based on CBOE Rule 4.2 and the Chairman of the Board or Chairman of the Executive Committee will continue to take action based on CBOE Rule 16.1.

The proposed rule change will also clarify that CBOE Rule 3.4(e) applies to persons associated with members as well as members. The other subsections of CBOE Rule 3.4 refer to persons associated with members and it appears to be an oversight that subsection (e) does not refer to such persons. The Exchange has always interpreted Rule 3.4(e) to apply to associated persons.

Presently, under Chapter XIX, "Hearings and Review," of the CBOE's rules, if a person's application for membership is denied, that person may apply for a hearing before a panel of the Appeals Committee to review the Membership Committee's denial. The panel's decision may then be reviewed by the CBOE's Board of Directors pursuant to CBOE Rule 19.5, "Review." The proposed amendment will grant this same right of review to an existing member or person associated with a member and will reference this right in new paragraph (g) to CBOE Rule 3.4. New paragraph (g) to CBOE Rule 3.4 also provides that no determination of the Membership Committee to discontinue or condition a person's membership or association with a member pursuant to CBOE Rule 3.4(e) shall take effect until the review procedures under Chapter XIX have been exhausted or the time for review has expired.

The proposed rule change will also add a paragraph (f) to CBOE Rule 3.4 requiring a member or person associated with a member who becomes subject to a statutory disqualification to submit an application to the Exchange's Membership Committee within 30 days of becoming subject to a statutory disqualification if the member or person associated with a member wants to continue in their membership or association with a member.[5] Paragraph (b) of Rule 19h–1 under the Act requires a self-regulatory organization to file a preliminary notice with the Commission promptly after it receives an application for admission to, or continuance in, membership or association with a member, notwithstanding a statutory disqualification. In order to permit the Exchange to file the required preliminary notice in respect of existing members and associated persons, proposed paragraph (f) of CBOE Rule 3.4 requires the statutorily disqualified member or associated person to sumit a formal application to the Exchange requesting permission to continue in membership or association. The application would include the permission to continue in membership or association and would include the information the Exchange needs from the member or associated person in order to complete the Rule 19h–1 preliminary notice. The application would also inform the Exchange that it needs to devote the resources necessary to make a decision regarding whether to continue the membership or association of this statutorily disqualified person or entity.

Pursuant to proposed paragraph (f) of CBOE Rule 3.4, absent extenuating circumstances, if the member or associated person who is subject to a statutory disqualification fails to file an application with the CBOE's Membership Committee seeking to continue in Exchange membership or association, the Exchange will consider such failure as a factor to be considered by the Membership Committee in making determinations with respect to the person's membership or association pursuant to Rule 3.4(e).[6]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b) (6) and (7) of the Act, in that it is designed to protect investors and the public interest by providing appropriate standards of qualification for membership and association with members, and procedures intended to assure the consistent application of these standards.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On February 12, 1997, the Exchange filed an amendment to the rule proposal. *See* Letter from Arthur Reinstein, Senior Attorney, CBOE, to Janice Mitnick, Attorney, Division of Market Regulation, Commission, dated February 12, 1997 ("Amendment No. 1"). Amendment No. 1 provides that failure to file an application notifying the Exchange of a statutory disqualification would be a factor to be considered by the CBOE's Membership Committee in making determinations with respect to the person's membership or association pursuant to CBOE Rule 3.4(e), instead of constituting a waiver of the individual's right of appeal. Further, Amendment No. 1 describes the procedures to be followed by the Exchange's Membership Committee in reviewing an application submitted pursuant to proposed Rule 3.4(f). Finally, Amendment No. 1 describes the composition of the CBOE's Business Conduct Committee ("BCC") and CBOE's Membership Committee.

[4] Under CBOE Rule 3.4(c), the CBOE's Membership Committee may deny or condition membership or prevent or condition a person from becoming an associated person if the applicant has a negative net worth or other financial difficulties, is unable to satisfactorily demonstrate a capacity to adhere to all applicable CBOE, Commission, Options Clearing Corporation, and Federal Reserve Board policies and rules, would bring the CBOE into disrepute, or for such other cause as the CBOE's Membership Committee may reasonably decide.

[5] *See* Amendment No. 1 *supra* note 3. Procedures to be followed by the CBOE's Membership Committee in considering an application filed pursuant to CBOE Rule 3.4(f) to continue as a member or associated person after becoming subject to a statutory disqualification will be the same procedures that are followed currently by the CBOE's Membership Committee when it reviews an application from a person subject to a statutory disqualification who is applying for exchange membership or association with an Exchange member. These procedures are generally set forth in Exchange Regulatory Circular RG95–93.

[6] *See* Amendment No. 1, *supra* note 3.

publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and coping at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–96–73 and should be submitted by March 18, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4529 Filed 2–24–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38311; International Series Release No. 1055; File No. SR–CBOE–96–77]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to the Policy of the CBOE Relating to Information Obtained Pursuant to the SEC's Memorandum of Understanding With the CONSOB

February 19, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 17, 1996, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change is described in Items I and II below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE is submitting this rule filing to adopt an official policy concerning the circumstances and conditions under which the Exchange, in order to carry out its market surveillance and enforcement functions for derivative products containing Italian component securities, may obtain access to information regarding activity on the Italian securities markets obtained by the SEC pursuant to the Commission's Memorandum of Understanding ("MOU") with the Commissione Nazionale per le Societa e la Borsa ("CONSOB"). The text of the proposed rule change is available at the Office of the Secretary, the CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The CBOE does not have a surveillance sharing agreement with the Milan Exchange, which is an unincorporated association and is not able under Italian law to enter into such an arrangement. Therefore, the purpose of the proposed rule change is to enable the CBOE to carry out its market surveillance and enforcement functions for derivative products containing Italian component securities by seeking the necessary information about activity on the Italian securities markets from the SEC per the latter's MOU with the CONSOB. The Exchange's proposed policy details the circumstances and conditions under which the Exchange may obtain access to such information from the SEC. By adopting this policy, therefore, the Exchange believes it will be in a position to list derivative products containing Italian component securities because it will be able to have access to information on the underlying securities which it may need for enforcement or market surveillance purposes.

The Exchange's proposed policy provides that the Exchange will advise the SEC of information it needs regarding activity on the Italian securities markets for market surveillance and enforcement purposes. The SEC, in turn, may request the CONSOB's assistance, pursuant to the MOU, in gaining access to such information. The Exchange will use such information it may receive from the SEC only for the purposes of conducting market surveillance and enforcement proceedings. The Exchange will limit distribution of such information to officers and directors of the Exchange and other employees directly responsible for conducting market surveillance and enforcement proceedings relating to the matter in connection with which the SEC provided the information to the CBOE. The Exchange also will undertake to maintain the confidentiality of the information and to take appropriate disciplinary action in the event it learns of a breach of such confidentiality, including referral to the SEC for any action the SEC deems necessary or appropriate.

By adopting a policy that provides access to information on the underlying securities for market surveillance and enforcement purposes, the Exchange will be able to list options and other derivative products containing Italian component securities, provided that all other applicable product listing standards are met.[3] Therefore, the Exchange believes that the proposed rule change could potentially provide investors with the opportunity to invest in such products and hedge their exposure to the Italian securities market. The Exchange also believes that the proposed rule change, therefore, is consistent with and furthers the objectives of Section 6(b)(5) of the Act, in that it is designed to perfect the mechanisms of a free and open market and to protect investors and the public interest.[4]

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act. The Commission finds that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder applicable to a national securities exchange, in that the proposal is consistent with Section 6(b) of the Act, in general and, Section 6(b)(5),[5] in particular, as it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, and to protect investors and the public interest.

Specifically, the Commission believes that, since the CBOE does not and cannot have a surveillance sharing agreement with the Milan Exchange, the CBOE's adoption of the proposed policy will enable the Exchange to carry out its market surveillance and enforcement functions for derivative products containing Italian component securities by seeking the necessary information about activity on the Italian securities markets from the SEC per the latter's MOU with the CONSOB. The Commission believes that the Exchange's proposed policy adequately details the circumstances and conditions under which the Exchange may obtain access to such information from the SEC.

The Commission believes that, under the Exchange's proposed policy, the Exchange will advise the SEC of information it needs regarding activity on the Italian securities markets for market surveillance and enforcement purposes. The Commission, in turn, may request the CONSOB's assistance, pursuant to the MOU, in gaining access to such information. The Commission notes that the Exchange will use such information it may receive from the SEC only for the purposes of conducting market surveillance and enforcement proceedings. The Commission also notes that the Exchange will limit distribution of such information to officers and directors of the Exchange and other employees directly responsible for conducting market surveillance and enforcement proceedings relating to the matter in connection with which the SEC provided the information to the CBOE. In view of the importance of maintaining the confidentiality of this information, the SEC believes that the officers and/or directors overseeing the exchange employees conducting the relevant market surveillance and enforcement proceedings would be responsible for ensuring the confidentiality of the information provided by the SEC pursuant to the MOU with the CONSOB and should take reasonable measures to ensure that the information does not become available to unauthorized persons. Thus, the Commission believes that the Exchange will undertake to maintain the confidentiality of such information and to take appropriate disciplinary action in the event it learns of a breach of such confidentiality, including referral to the SEC for any action the SEC deems necessary or appropriate.

The Commission believes that the CBOE, by adopting a policy that provides access to information on the underlying securities for market surveillance and enforcement purposes, will be in a position to list options and other derivative products containing Italian component securities, provided that all other applicable product listing standards are met. Therefore, the Exchange's proposed rule change could potentially provide investors with the opportunity to invest in such products and hedge their exposure to the Italian securities market. Accordingly, the Commission believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act, in that it is designed to perfect the mechanisms of a free and open market and to protect investors and the public interest.

The Commission notes that a substantially identical proposal was published by the American Stock Exchange ("AMEX") for the full 21 day comment period without any comments being received by the Commission. The Commission therefore believes that approving the CBOE policy on an accelerated basis will allow the Exchange to pursue trading in options and other derivative products containing Italian component securities without further delay. Accordingly, the Commission finds that, consistent with Section 6(b)(5) of the Act, good cause exists to approve CBOE's proposed rule change on an accelerated basis prior to the thirtieth day after the date of publication thereof in the **Federal Register**.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR–CBOE–96–77 and should be submitted by March 18, 1997.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (SR–CBOE–96–77) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4605 Filed 2–24–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38302; File No. SR–GSCC–96–14]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Eliminate Grandfather Privileges

February 18, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

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[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] This filing only addresses trading requirements relating to necessary surveillance sharing procedures.

[4] In approving the rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b) and 78f(b)(5).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

("Act"),[1] notice is hereby given that on December 19, 1996, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No SR–GSCC–96–14) as described in Items, I, II, and III below, which items have been prepared primarily by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to eliminate the ability of GSCC's interdealer broker netting members ("IDB") to trade with certain nonmembers identified on GSCC's grandfather list.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepare summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organizations's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In May 1993, GSCC established limitations on the trading activity of IDBs with firms that are not a members of GSCC's netting system.[3] GSCC restricted category 1 IDBs to trading only with GSCC netting members and limited the trading activity of category 2 IDBs with nonmember firms to ten percent. At that time, GSCC decided to allow IDBS to continue to trade with certain nonmember firms ("grandfather nonmembers") that historically have had access to the IDB's screens and that GSCC has identified on its grandfather list.[4] GSCC believed that it was unfair to penalize IDBs for continuing to trade with firms that GSCC was not yet successful in bringing into its netting system membership. Accordingly, category 1 IDBs can continue to trade with the grandfathered nonmember dealers and trading between category 2 IDBs and grandfathered firms does not count toward category 2 IDBs' ten percent limit.

Since 1993, GSCC has made numerous attempts to encourage each of the grandfathered firms either to join GSCC's netting system or to have their eligible trades submitted to the net by an affiliated netting member.[5] GSCC also has established a category of netting system membership for foreign entities. Thus, all entities on the grandfather list are now eligible for direct netting membership in GSCC.

GSCC believes that trades between an IDB and a grandfathered firm expose GSCC to greater risks than trades between an IDB and a netting member because trades with a grandfathered firm are not eligible for netting by GSCC. As a result, when an IDB has offsetting trades with a netting member and a grandfathered firm, only the trade with the netting member will be netted thereby leaving the IDB instead of a grandfathered firm with a position.[6]

Therefore, GSCC is proposing to eliminate the grandfather list, effective June 30, 1997. GSCC believes that the effective date provides grandfathered firms with sufficient time to join GSCC's netting system or to adjust to nongrandfathered status. Once the grandfather list has been eliminated, category 2 IDBs, which do virtually all of the brokered transactions with the current grandfathered firms, will have to trade with the formerly grandfathered firms that do not join GSCC's netting system under the category 2 IDB's authority to engage in ten percent of its trading activity with nonmember firms. Category 1 IDBs will be prohibited from doing any netting eligible activity with a formerly grandfathered firm that does not join GSCC's netting system.

GSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[7] and the rules and regulations thereunder because it would end the exposure to GSCC that the trading by the IDBs with grandfathered firms creates.

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have an impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. Members will be notified of the rule change filing and comments will be solicited by an Important Notice. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which GSCC consents, the Commission will:

(A) by order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to the file number SR–GSCC–96–14 and should be submitted by March 18, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4607 Filed 2–24–97; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by GSCC.

[3] Securities Exchange Act Release No. 32722 (August 5, 1993), 58 FR 42993 (order approving establishment of new membership categories).

[4] The grandfather list includes the following firms:

Aubrey G. Lanston & Co., Inc.
The Nikko Securities Co., Ltd. (Tokyo)
Nikko Europe PLC (London)
Nomura International Inc. (Tokyo)
Nomura Securities Co., Ltd. (Tokyo)
Nomura International PLC (London)
Daiwa Europe Ltd. (London)

[5] The number of grandfathered firms has decreased from twelve to seven.

[6] While the number of trades between IDBs and grandfathered firms is a relatively small percentage of the IDB's trades, they are significant in absolute terms.

[7] 15 U.S.C. 78q–1.

[8] 17 CFR 200.30–3(a)(12)

[Release No. 34–38309; File No. SR–NASD–96–54]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of a Proposed Rule Change Relating to Reconfirmation and Pricing Services

February 19, 1997.

On December 20, 1996, the NASD Regulation, Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–NASD–96–54) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on January 9, 1997.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

I. Description

Several years ago, the National Securities Clearing Corporation ("NSCC") began operating its Reconfirmation and Pricing Service ("RECAPS") that permits NSCC participants to submit their fail transactions for reconfirmation and repricing on a quarterly basis. Rule 11190 (formerly Section 69) of the Uniform Practice Code ("Code") of the National Association of Securities Dealers, Inc. ("NASD") mandates that a member which is a participant in a registered clearing agency participate in the clearing agency's fail reconfirmation and pricing service.

Even after a transaction is compared, fails can occur for many reasons (*e.g.*, because the securities fail to be received or delivered or payment is not received or delivered). RECAPS provides a means for parties with open fails on their books to send them to NSCC for matching on a quarterly basis. The RECAPS process allows members to reconfirm outstanding fails by establishing a new settlement date and to reprice such fails by marking the contract to the current market price. It also identifies a submitting member's fails that may have been settled or for which the contraparty has no record.

Prior to this amendment, when one of the parties did not respond to a RECAPS submission, the submitting party could either leave the fail open for three more months and try again for resolution through RECAPS or could buy in or sell out the transaction pursuant to NASD's Code. The submitting member was required by Rule 11810 of NASD's Code to send another notification to the contraparty and wait another two days prior to effecting a buy in. No prior notice is or was required before effecting a sell out pursuant to Rule 11820 of NASD's Code.

As amended, Rule 11190(b)(1) permits a contract that has been submitted to a reconfirmation and repricing service and that has been DK'ed by the contraparty or is otherwise deemed a DK under the rules of the service[3] to be closed out by the submitting party without notice during normal trading hours promptly after the completion of the reconfirmation and pricing cycle for the account and liability of the nonconfirming member.[4] New paragraph (b)(2) of Rule 11190 requires that the submitting member notify the nonresponding member of any execution to close the contract on the day of execution and the action of the member to buy in or sell out in accordance with the provisions of Rules 11810 and 11820, respectively. However, if the submitting member determines not to close out a DK, the fail continues to remain open on the submitting member's books until the next RECAPS cycle.

II. Discussion

Section 15A(b)(6) provides that the rules of an association must be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.[5] The Commission believes that the proposed rule change is consistent with the NASD's obligations under the Act. The proposals provides an expedited mechanism to reduce long outstanding fails that have been submitted to RECAPS. When a selling member DKs a transaction or fails to respond to a RECAPS advisory, Rule 11190(b) of the Code allows the buying member to immediately execute a buy in transaction and notify the nonresponding selling member of its liability for the transaction. The proposal provides an incentive to parties to resolve RECAPS transactions submitted against them in a timely fashion. By encouraging and assisting parties to resolve their trade disputes, the proposal helps foster cooperation and coordination with persons engaged in clearing, settling, and facilitating transactions in securities.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 15A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NASD–96–54) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4606 Filed 2–24–97; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 38115 (January 3, 1997), 62 FR 1351.

[3] Recently, NSCC amended its Procedure II(G) to provide that failure to respond to a RECAPS reconfirmation attempt shall result in the transaction being DK'ed. Treating a failure to respond to a RECAPS reconfirmation attempt as a DK under NSCC's rules extinguishes any rights of the nonresponding member with respect to the transaction.

[4] The word "promptly" in paragraph (b)(1) is intended to be interpreted in accordance with the nature and liquidity of the securities.

[5] 15 U.S.C. 78o–3(b)(6).

[6] 17 CFR 200.30–3(a)(12).

[Release No. 34–38291; File No. SR–NASD–97–10]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Distribution of Information Concerning the Availability of the NASD Regulation, Inc. Public Disclosure Program

February 14, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 11, 1997, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to

solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Below is the text of the proposed rule change. Proposed new language is italicized.

2280. Investor Education and Protection

(a) Each member shall, with a frequency of not less than once every calendar year, provide in writing to each customer the following items of information.

(1) NASD Regulation Public Disclosure Program Hotline Number
(2) NASD Regulation Web Site Address
(3) A statement as to the availability to the customer of an investor brochure that includes information describing the Public Disclosure Program

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

During 1995, at the request of the Honorable Edward J. Markey, the General Accounting Office ("GAO") undertook a review of the effectiveness of the NASD's toll-free telephone information service used to disseminate information under the NASD Regulation Public Disclosure Program ("PDP"). In July 1996, the General Accounting Office issued a report of its review of the PDP. The report included a recommendation that NASD Regulation publicize and educate investors about the availability of information through the NASD Regulation PDP. Specifically, the report recommended that NASD Regulation:

[E]xplore other ways of publicizing the hotline to a wider audience of investors, such as including the hotline number on account-opening documents or account statements, making disciplinary-related information directly available to investors through the Internet.

The Proposed amendment in new paragraph 2280(a) would require each member to provide to each customer, at least once annually on a written statement, the 800 telephone number for the PDP, the NASD Regulation Web Site Address, and the availability of an investor brochure that includes information describing the PDP. This proposal gives NASD members the flexibility to determine what kind of written statement is to be used. Some members may elect to include this information on customer account statements and some may elect to use another kind of publication.

The NASD believes that the proposed rule change is consistent with the provision of Sections 15A(b)(6) and 15A(i) of the Act in that the requirement that firms publish on a written statement to existing customer accounts, as least annually, the availability of information through the PDP is an important element in promoting the availability of the PDP information to investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participant, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning SR–NASD–97–10. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by March 18, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4610 Filed 2–24–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38303; File No. SR–PHIL–96–18]

Self-Regulatory Organizations; Philadelphia Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Establishment of Fees Charged for Direct Registration System

February 18, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 6, 1996, Philadelphia Depository Trust Company ("Philadep") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by Philadep. The Commission is publishing this notice to solicit

[1] 15 U.S.C. 78s(b)(1) (1988).

comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to establish Philadep's fee schedule for participants using direct registration system ("DRS") services.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Philadep included statements concerning the purpose of and statutory basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Philadep has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to establish Philadep's fee schedule for DRS services. Philadep proposes to enable its participants to use Philadep's processing environment to account for certain investors' purchases and sales of securities according to the DRS procedures. Philadep will establish a limited participant category of participant which will be charged the following fees:

1. Limited Participant Accountholder Fee—$225 per month
2. Deliver Order Transaction Processing Fee—$.45 per transaction

Philadep participants receiving such a DRS delivery also will be charged $.45 per transaction. In addition, when a transfer agent mails a transaction advice to the shareholder, the transfer agent's fee of $.55 for mailing and handling the DRS transaction advice will be charged back to the participant directly by Philadep. Philadep will collect the advice fees and will periodically remit such fees to the transfer agent.

The proposed rule change complies with Section 17A of the Act in providing for equitable allocation of reasonable dues, fees, and other charges among participants.

[2] The Commission has modified parts of these statements.

B. Self-Regulatory Organization's Statement on Burden on Competition

Philadep does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by Philadep, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(e)(2) thereunder.[4] At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at Philadep. All submissions should refer to the File No. SR–Phil–96–18 and should be submitted by March 18, 1997.

[3] 15 U.S.C. 78q–1(b)(3)(A) (1988).

[4] 17 CFR 240.19b–4(e)(2) (1994).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4530 Filed 2–24–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38305; File No. SR–Philadep–96–23]

Self-Regulatory Organizations; The Philadelphia Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Consolidate and Restate Its Fee Schedule

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 23, 1996, the Philadelphia Depository Trust Company ("Philadep") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by Philadep. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to consolidate and restate Philadep's schedule of fees and charges (Exhibit A).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Philadep included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. Philadep has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to consolidate and restate

[5] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by Philadep.

Philadep's schedule of fees and charges. This filing is being made in accordance with Philadep's policy to annually file a comprehensive schedule of all existing fees and charges. Philadep also is revising certain fees associated with the stock loan program.

Additionally, Philadep is implementing a 3½% surcharge based on service fee revenues and pass-through charges to recover costs associated with making Philadep's system Year 2000 compliant. The surcharge will be billed and collected as part of routine monthly invoicing. Philadep currently estimates that Year 2000 costs will be recovered in three to four years. Philadep will evaluate surcharge revenues annually and will recommend to its Board of Directors any modifications that may become necessary, including the removal of the surcharge.

Philadep believes the proposed rule change is consistent with Section 17A of the Act and the rules and regulations thereunder because the proposal provides for the equitable allocations of reasonable dues, fees, and other charges among participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Philadep does not believe the proposed rule change will impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Sections 19(b)(3)(A)(ii)[3] of the Act and pursuant to Rule 19b–4(e)(2)[4] promulgated thereunder because the proposal establishes a due, fee, or other charge. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of Philadep. All submissions should refer to File No. SR–Philadep–96–23 and should be submitted by March 18, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

Exhibit A—SR–PHILADEP–96–23

(Deleted text bracketed, new text italicized)

PHILADELPHIA DEPOSITORY TRUST COMPANY CONSOLIDATED RESTATEMENT OF FEES

Service	Fee
1. Account Fees:	
a. General Maintenance Fee	$400.00 per month with account activity. $200.00 per month for accounts with less than $10.00 of depository activity.
b. Pledge Bank Fee	$100.00 per month.
c. Manual Interface Fee	$150.00 per month in addition to the general maintenance fee.
d. Bearer Municipal Bonds	$200.00 per month in addition to the general maintenance fee. $260.00 per month for bearer bond account only.
2. Custody Fees:	
a. Registered Securities	Base fee of $0.50 per issue, per month. Plus for each 100 shares or $4,000.00 in bonds: 0–1 Million Shares $0.01. 1–5 Million Shares $0.005. Over 5 Million Shares $0.0025. Additional $0.50 fee per issue if Philadep eligible only, per month.
b. Bearer Municipal Bonds	Base fee of $1.45 per issue, per month. Plus for each $1,000 of par value: $0–$0.5 Billion $0.010. $0.5–$1.0 Billion $0.007. More than $1 Billion $0.005.
3. Deposit Fees:	
a. Registered Securities	$1.60 per deposit.*
b. Bearer Municipal Bonds	$8.00 per deposit.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).
[4] 17 CFR 240.19b–4(e)(2).
[5] 17 CFR 200.30–3(a)(12)

PHILADELPHIA DEPOSITORY TRUST COMPANY CONSOLIDATED RESTATEMENT OF FEES—Continued

Service	Fee
4. Deposit Reject Fees:	
a. Registered Securities	No charge if total deposit rejects are less than 1% of total deposits for the month. Charge of $10.00 per reject if more than 1%.
b. Bearer Municipal Bonds	$10.00 per reject.
5. Legal Deposits	Processing fees are based on monthly deposit volume: Volume Level Per Deposit. 1–300—$8.50. 301–3000—$3.50. 3001 and over $2.75 flat fee for all legal deposits. No charge for deposit rejects. Transfer agent charges will be passed through to the Participant on an item for item basis.
6. Withdrawals:	
a. Registered Securities	$2.60 per manual (paper) transfer.* $1.65 per computer to computer transfer.* $2.60 per terminal originated transfer.* $25.00 per rush transfer. $2.00 per cancelled transfer.
b. By Certificate	$22.95 per urgent certificate withdrawal (same-day or next-day).*
7. Customer Name Mailing:	
a. Full Service	$0.65 per transfer, plus appropriate transfer withdrawal charge (fee does not include postage and delivery valuation charges).
b. Interdepository	$0.75 per transfer, for securities delivered interdepository plus appropriate transfer withdrawal charge (fee does not include postage and delivery valuation charges).
c. Transmittal Messages	$.10 per transmittal
8. Certificate Fees	$5.75 deposits. $7.50 transfers.
9. Accommodation Transfers and Ironclads	$5.00 per request, plus applicable transfer agent fees.
10. MDO Movements:	
a. Automated Bookentry, Delivery/Receive	$0.75 per movement.
b. Manual Bookentry, Delivery/Receive	$1.50 per movement.
c. Automatic Bookentry, Interdepository, Deliveries	$0.50 per CUSIP (daily deliveries). $0.55 per CUSIP (weekly deliveries). $0.60 per CUSIP (bi-weekly deliveries). $0.65 per CUSIP (monthly deliveries).
d. Bearer Municipal Bonds, Automated or Manual	$0.94 per movement.
11. CNS/PHILADEP Movements	$0.20 per movement.
12. Underwritings	$400.00 plus $3.00 per million (plus applicable activity charges).
13. Pledge Fees:	
a. Bank loan pledge or release	$0.35 each per line item to broker and bank.
b. OCC pledge or release	$0.35 per line item.
c. SCCP margin pledge (no charge for release)	$0.10 per line item.
14. Dividend and Interest Payments	$1.50 per cash line item; $10.00 per stock dividend payment.
15. Reorganization Fees:	
a. Mandatory Exchanges	$23.00 per position.
b. Voluntary Offers	$30.00 per instruction received before cut-off. $50.00 per instruction received after cut-off, with authorization.
c. Redemptions: Stocks, Corporate Bonds, Registered Municipal Bonds, others.	$25.00 per position.
d. Post Corporate Actions	$20.00 per item (plus costs).
16. Combined Legal Deposits and Letters of Correction (Ironclads)	$6.25 per item (one legal deposit and one letter of correction is defined as one item).
17. Research Fees:	
a. Per photocopy of records	$4.00.
b. Per microfiche copy	$4.00.
c. Items less than 90 days old	No charge.
d. Items 1 year old or less	$15.00 per hour.
e. Items over 1 year old	$15.00 per hour, $25.00 minimum, plus archive retrieval costs.
18. Reports on Microfiche	$1.25 per page.
19. Eligibility Book	$35.00 per book.
20. Stock Loan Program:	
Interest charge to lender	Percentage of [bank broker call rate] *federal funds rate (fee will be waived if less than $500 per month).*
21. National Institutional Delivery System (NIDS):	
a. Confirms	$0.40 per confirm.
b. For each unaffirmed trade reported	$0.09 to broker.
c. For each eligible trade reported	$0.09 to broker and clearing agent.
d. For each ineligible trade reported	$0.09 to broker and clearing agent.
e. Automated Settlement	$0.26 per receive and per delivery to broker and clearing agent.

PHILADELPHIA DEPOSITORY TRUST COMPANY CONSOLIDATED RESTATEMENT OF FEES—Continued

Service	Fee
22. Philadep Discounts: Participants may select one of the following discount plans (the greater discount will apply)	
a. Volume	5% off Philadep charges for participants with 10,001 to 15,000 trades per month. An additional 5% off Philadep charges for participants with 15,001 to 30,000 trades per month. An additional 5% off Philadep charges for participants with 30,001 to 45,000 trades per month. An additional 5% off Philadep charges for participants with 45,001 or more trades per month.
b. Automated Deposit Reporting Service (ADRS)	$0.40 per deposit for participants utilizing Philadep ADRS and CNM services.
23. Computer Transmission/Tapes:	
a. Eligibility Files:	
1. Daily Update	$50.00 per month.
2. Weekly Full File	$200.00 per month.
3. Monthly or on Request	$75.00 each request.
b. Bookkeeping Positions:	
1. Daily	$150.00 per month.
2. Weekly	$100.00 per month.
3. Monthly or on Request	$50.00 each request.
c. Activity:	
1. Daily	$150.00 per month.
d. Bookkeeping plus Activity:	
1. Daily	$250.00 per month.
2. Weekly	$200.00 per month.
e. Cash Settlement (fee includes both dividends and reorganizations; transmissions are separate):	
1. Daily	$100.00 per month.
f. Record Date Positions:	
1. Daily	$100.00 per month.
g. Status of Withdrawals by Transfer:	
1. Daily	$100.00 per month.
24. Philanet Terminal:	
a. Dedicated Line	$250.00 per month.
b. Dial-up Line	$150.00 per month.
c. Installation	$600.00.
d. Usage	No Charge.
25. Position Listings	
a. General Fees	$45.00—per individual request (per date, per CUSIP) (plus costs). $360.00 annually—monthly basis (plus costs). $1,300.00 annually—weekly basis (plus costs).
b. Municipal Bonds Quantity Discount[1] (multiple CUSIP requests for the same issuer and for the same date).	1st 100 CUSIPs—$20 per CUSIP. 2nd 100 CUSIPs—$15 per CUSIP. 3rd 100 CUSIPs—$10 per CUSIP. In excess of 300 CUSIPs—$7.50.
26. Direct Registration System:	
a. Limited Participants:	
1. Accountholder Fee	$225.00 per month.
2. Deliver Order Transaction Processing Fee	$0.45 per transaction.
b. Participants:	
1. Deliver Order Transaction Processing Fee	$0.45 per transaction.
2. Transfer Agent Fee	$0.55 for mailing and handling.
27. Year 2000 System Change Surcharge	*Participants monthly fee billings (which include pass-through charges) will include a 3½% surcharge to offset costs to make Philadep systems Year 2000 compliant. The surcharge will be removed by Philadep's Board of Directors once such costs are fully offset by revenues collected from the surcharge.*

* Transfer and deposit activity subject to pass-through charges.
[1] Requests made pursuant to this discount may take ten or more business days to be reached and sent.

[FR Doc. 97–4608 Filed 2–24–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38295; International Series Release No. 1052; File No. SR–PHLX–96–44]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 4 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Modifying the Formula Which Calculates the Settlement Value for Dollar Denominated Deliver Options

February 14, 1997.

I. Introduction

On October 30, 1996, as subsequently amended on November 19, 1996, December 2, 1996, December 3, 1996,[1] and February 11, 1997,[2] the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[3] and Rule 19b–4 thereunder,[4] a proposed rule change to modify the formula which calculates the settlement value for Dollar Denominated Deliver foreign currency options ("3D Options").

Notice of the proposed rule change, including Amendment Nos. 1, 2 and 3, together with the substance of the proposal, was published for comment in Securities Exchange Act Release No. 38017 (December 3, 1996), 61 FR 65244 (December 12, 1996). No comments were received on the proposal. This order approves the proposed rule change, as amended, including Amendment No. 4 on an accelerated basis.

[1] *See* Letters to Heather Seidel, Attorney, Market Regulation, SEC, from Nandita Yagnik, Attorney, PHLX, dated November 18, 1996 ("Amendment No. 1"), November 25, 1996 ("Amendment No. 2"), and December 3, 1996 ("Amendment No. 3") respectively. The substance of these amendments was incorporated into the notice release and is discussed below. *See* Securities Exchange Act Release No. 38017 (December 4, 1996), 61 FR 65244 (December 12, 1996).

[2] Amendment No. 4 was filed with the Commission on February 11, 1997. The amendment changed the rule language to require that the appropriate number of interbank foreign exchange participants be selected at random from a pool of *at least* twenty-five (25) active interbank foreign exchange participants (addition underlined), and further explained the procedure for calculating a settlement value for the 3D Options. *See* letter from Nandita Yagnik, Attorney, New Product Development, PHLX to Heather Seidel, Attorney, Market Regulation, Commission, dated February 7, 1997.

[3] 15 U.S.C. 78s(b)(1).

[4] 17 CFR 240.19b–4.

II. Description

The Exchange proposes to amend PHLX Rule 1057, in order to modify the formula which calculates the settlement value for 3D Options. The Commission approved trading for 3D Foreign Currency Options on the Deutsche Mark ("3D Mark") on March 8, 1994.[5] In November 1995, the Commission approved trading for 3D Foreign Currency Options on the Japanese Yen ("3D Yen").[6] 3D Yen options, however, have not begun trading on the Exchange to date. Presently, for the 3D Mark, bid and offer quotations for the current foreign exchange spot price are collected from fifteen interbank foreign exchange participants randomly selected from a list of forty active interbank foreign exchange participants.[7] This group of forty is selected from a larger list of interbank foreign exchange participants who provide continuous quotations for each currency and consists of the most active interbank participants out of the larger list.[8] According to the PHLX, the actual number of interbank foreign exchange participants used for a particular currency will depend on the current number of interbank participants making active quotes, which is measured by frequency.[9] After discarding the five highest offers and the five lowest bids of the randomly selected fifteen, the remaining ten bids and offers are arithmetically averaged to arrive at a closing settlement value.[10]

[5] *See* Securities Exchange Act Release No. 33732 (March 8, 1994), 59 FR 12023 (order approving the listing and trading of cash/spot dollar denominated delivery foreign currency option contracts).

[6] *See* Securities Exchange Act Release No. 36505, (November 22, 1995), 60 FR 61277 (order approving listing and trading of 3D foreign currency options on the Japanese yen).

[7] PHLX rules currently require such list to be selected from a group of twenty-five (25) interbank foreign exchange participants. Amendment No. 4 amends the rule to reflect current practice to use "at least" twenty-five (25) interbank participants. *See* Amendment No. 4.

[8] Telephone conversation between Nandita Yagnik, Attorney, PHLX, and Heather Seidel, Attorney, Market Regulation, Commission, on February 11, 1997.

[9] Active interbank participants are defined by PHLX to be "those which provide quotations with the greatest frequency from 2:30 a.m. (the start of the trading day) until 9:30 a.m." *See* Amendment No. 4.

[10] *See* Exchange Rule 1057. The Commission approved PHLX filing SR–PHLX–96–11, which allows PHLX to elect to calculate the settlement value in house instead of requiring an agent/vendor to do it. In addition, the new rule limits the liability of the Exchange regarding the accuracy of the settlement value except for intentional misconduct and/or any violations of the federal securities laws. *See* Securities Exchange Act Release Nos. 37323 (June 18, 1996), 61 FR 32880 (June 25, 1996) (notice) and 38041 (December 11, 1996), 61 FR 66721 (December 18, 1996) (approval order).

The algorithm for calculating the settlement value has a feature that scans the group of fifteen randomly selected quotations and automatically identifies those that are updated every five or more minutes and replaces them with quotations from the original pool of interbank participants[11] that are updated more frequently than every five minutes. PHLX's goal is to use quotations that are updated every one to two minutes for settlement value purposes, but the algorithm will not replace quotations until they are being updated every five or more minutes.[12]

The Exchange found that the number of banks that are able to provide active bid and offer quotations for different currencies varies according to the currency. For some of the more widely traded currencies, such as the Deutsche mark, there are many more interbank foreign exchange participants that update the bids and offers more frequently than every five minutes than for the less popular currencies, where the pool of potential contributors of the spot value for the individual currency is much smaller and quotations may be updated less often, although still on a continual basis.

To reflect the fact that there may be variation in the appropriate number of bids and offers that are available for each currency, the Exchange is proposing to make the current settlement value formula more flexible by permitting the Exchange, within certain guidelines, to determine the appropriate number of bids and offers to collect and average on a currency-by-currency basis. The Exchange would randomly select at least five interbank participants from a pool of at least twenty-five active interbank foreign participants. Additionally, as the number of bids and offers may vary across currencies, the existing rule language that requires the five highest offers and the five lowest bids to be discarded would also be modified. Instead, the Exchange proposes to discard one third of the highest offers and one third of the lowest bids and average the remaining bids and offers to arrive at the closing settlement value. The Exchange would set the number for each individual currency prior to commencing trading 3D Options on that

[11] As noted above, the rule is being amended to indicate such pool must be at least twenty-five. Currently the PHLX selects from a pool of forty interbank participants for the 3D option on the German Mark and intends to use forty for the 3D option on the Japanese Yen.

[12] *See* Amendment No. 4.

currency.[13] In addition, the Exchange will employ the same back up procedures that are outlined for the 3D Mark and the 3D Yen that guard against unreliable or manipulated quotes.[14]

The Exchange's Foreign Currency Option Committee ("the Committee") will determine what the appropriate number of bid and offer quotations should be for determining settlement values on each currency within the minimum requirements of the PHLX rule. For example, the Committee will not have the discretion to select less than five interbank foreign exchange participants from which to obtain these bid and offer quotations. In addition, under the rule, the minimum number of bids and offers must still be randomly selected from a pool of at least twenty-five active interbank foreign participants and the Committee will not have the discretion to reduce the pool of participants below this number.

Although the Committee will have the ability to increase or decrease the number of bids and offers randomly selected from the larger pool of at least twenty-five bids and offers, to determine the settlement value for 3D options, the Exchange has stated it does not anticipate this occurring very frequently. The Exchange will periodically review the contributing interbanks to assure that the number has not materially increased or decreased. The Committee will then have the discretion to act upon this information within the rule's requirements. Notice of any change, however, to the number of contributor bank quotations used must be provided to the membership and public at least one week prior to settlement of the 3D currency option.

The Committee has determined to continue to collect fifteen bid and offer quotations from a pool of forty for the 3D Mark.[15] For the 3D Yen, however, there are fewer banks that diligently provide quotes that are updated more frequently than every five minutes. This results in the algorithm not being able to replace quotes updated every five minutes or more with more frequently updated quotes because there are not enough quotes that are less than five minutes old.[16] Therefore, the Committee has determined that a more accurate representation of the Japanese Yen Market would be derived from collecting ten bid and ask quotations from a group of forty active interbank participants and discarding the three highest offers and the three lowest bids prior to averaging them.

The Exchange maintains that in proposing any new 3D Foreign Currency Option contracts for listing and trading on the Exchange, the Exchange will identify the appropriate number of bank quotations that will be collected to arrive at the settlement value in the rule filing submitted pursuant to Section 19(b) and Rule 19b–4 of the Act. As noted above, the number of interbank participants from which the quotations are collected cannot be less than five. Further, the Exchange will provide at least one week notice of the number of contributor bank quotations used to derive the settlement value prior to listing and trading the 3D options on the new currency.

III. Discussion

The Commission believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[17] The Commission finds that the proposed rule change promotes just and equitable principles of trade, prevents fraudulent and manipulative acts and practices, and protects investors and the public interest because it will provide the Exchange with greater flexibility to ensure that settlement values for 3D foreign currency options are an accurate reflection of the most current and active contributor interbank participants. This should benefit investors trading these products, thereby facilitating transactions in foreign currency options in accordance with Section 6(b)(5) of the Act.

The Commission believes that the proposed rule change will more accurately reflect the foreign currency spot price for each individual currency because it allows the Exchange to tailor the number of interbank foreign exchange participants to the active spot market in each individual currency. The Commission finds that PHLX's amended procedures for calculating the settlement value for the 3D Options, and the competitive nature of the spot market for foreign currencies, should help to ensure that the settlement values accurately reflect the spot price for each foreign currency.[18] In addition, the Commission believes that PHLX's amended procedure will continue to guard against unreliable or manipulated quotes because the designated agent(s) will continue to randomly choose interbank foreign exchange participants for the purpose of collecting quotes, and those randomly chosen quotes will then be averaged to arrive at the final settlement value. In addition, as described above, although the change does give PHLX some flexibility in the number of bids and offers randomly selected, the current methodology for eliminating less frequent quotes will remain the same. This should continue to ensure settlement values are on an accurate reflection of the most current quotes.

The Commission also believes that the inability of the Exchange to decrease the number of bid and offer quotations for each currency that will be randomly selected from the larger pool of at least twenty-five to less than five interbank foreign exchange participants guards against potential manipulation by ensuring that the final settlement value is an average of a minimum number of interbank quotations and is not determined by one or two banks. By requiring bid and offer quotations from at least five interbank participants and allowing only one third of the highest and one third of the lowest bids and offers to be discarded, the amended rule requires that, at a minimum, the final settlement value for any 3D Option must be calculated from at least three bid and offer quotations.[19] Additionally, the Commission finds that the requirement that the Exchange provide notice (at least one week in advance of settlement of the 3D Option) to its membership and public of any change in the number of contributor bank quotations used to calculate the final settlement value for that 3D Option helps to ensure that the investors are aware of the terms of the 3D Option and how the settlement value will be calculated before the expiration of that option.

The Commission finds good cause for approving Amendment No. 4 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Among other things, Amendment No. 4 amends PHLX's rules to allow the number of interbank exchange participants to be chosen from a pool of twenty-five participants or more, rather than a pool of only twenty-five, by adding the words "at least." The Commission believes good cause exists to accelerate approval of Amendment No. 4 because this amendment may provide a more accurate final settlement value, by providing more quotes for the calculation. The algorithm will still replace any quotes that are updated five minutes or more with more frequently updated quotes if they are available. In addition, in approving the 3D Japanese Yen options, the Commission understood that PHLX may use more than twenty-five interbank foreign exchange participants. Also, the amendment further explains the process for calculating the settlement value for 3D Options and clarifies the Exchange's purpose for the proposed rule change. Further, the proposal to change the formula for calculating the settlement value for 3D options was noticed previously in the **Federal Register** for the full statutory period and the Commission did not receive any comments. Accordingly, the Commission believes that it is consistent with Sections 6 and 19(b)(2) of the Act to approve Amendment No. 4 to the proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 4 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rules change that are filed with the Commission, and all written communications relating to the Amendment No. 4 between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available at the principal office of the Exchange. All submissions should refer to File No. SR–PHLX–96–44 and should be submitted by March 18, 1997.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[20] that the proposed rule change (SR–PHLX–96–44), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4528 Filed 2–24–97; 8:45 am]

BILLING CODE 8010–01–M

[13] The Exchange would have the ability to obtain bids and offers from more than five interbank foreign exchange participants as determined by the Foreign Currency Option Committee.

[14] *See* Securities Exchange Act Release Nos. 33732 (March 8, 1994), 59 FR 12023 (March 15, 1994) (3D Mark approval order) and 36505 (November 22, 1995), 60 FR 61277 (November 29, 1995) (3D Yen approval order).

[15] *See* Amendment No. 4.

[16] *See* Amendment No. 4.

[17] 15 U.S.C. 78f(b)(5).

[18] The Commission has previously found that the interbank foreign currency spot market, in general, is an extremely large, diverse market comprised of banks and other financial institutions worldwide. The foreign currency spot market is supplemented by equally deep and liquid markets for standardized options and futures on foreign currencies and options on those futures. There is also an active over-the-counter market for foreign currency options. *See* Securities Exchange Act Release No. 31627 (December 21, 1992), 57 FR 62399.

[19] *See* Amendment No. 4.

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

[Release No. 34–38306; File No. SR–SCCP–96–13]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Consolidate and Restate its Fee Schedule

February 19, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 23, 1996, the Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by SCCP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to consolidate and restate SCCP's schedule of fees and charges (Exhibit A).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, SCCP included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. SCCP has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to consolidate and restate SCCP's schedule of fees and charges. SCCP proposes to revise its volume discounts applicable to trade recording fees and value charges for PACE CNS trades settling at SCCP. SCCP currently provides a flat $0.77 per side discount for 4,000 or more trades per month. SCCP's discounts have been revised into the following schedule: $0.77 per side for 4,000 to 6,000 trades per month; $0.55 per side for 6,001 to 8,000 trades per month; and $0.35 per side for over 8,000 trades per month.[3]

Additionally, SCCP proposes to consolidate and restate existing fees and charges. This filing is being made in accordance with SCCP's policy to annually file a comprehensive schedule of all existing fees and charges.

SCCP believes the proposed rule change is consistent with Section 17A of the Act[4] and the rules and regulations thereunder because it will provide for the equitable allocation of dues, fees, and other charges among participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not believe the proposed rule change will impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Sections 19(b)(3)(A)(ii)[5] of the Act and pursuant to Rule 19b–4(e)(2)[6] promulgated thereunder because the proposal establishes a due, fee, or other charge. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by SCCP.

[3] This is not a graduated rate schedule. Once a volume threshold is reached, all trades receive such volume discount rate.

[4] 15 U.S.C. 78q–1

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(e)(2).

or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of SCCP. All submissions should refer to File No. SR–SCCP–96–13 and should be submitted by March 18, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

Exhibit A—SR–SCCP–96–13

[Deleted text bracketed, new text italicized]

STOCK CLEARING CORPORATION OF PHILADELPHIA, CONSOLIDATED RESTATEMENT OF FEES

Service	Fee	
1. Account Fees:		
a. Maintenance Fee	$150.00 per month (20 or fewer trades per month) $250.00 per month (over 20 trades per month) $650.00 per month (specialist)	
b. Additional Suffix	$32.00 per month per suffix	
2. Trade Recording Fees:		
a. Regular Trades	$0.47 per side	
b. PACE Trades	$0.30 per side	
c. Municipal Bonds Trades	$1.00 per compared side	
d. Yellow Tickets (between two accounts).	$0.47 per side	
e. Basket Trades	0.60 per side for 1–1,000 trades per month 0.54 per side for 1,001–3,000 trades per month 0.48 per side for 3,001–5,000 trades per month 0.40 per side for more than 5,000 trades per month	
3. Value Fees:		
a. CNS Accounts	0.05 per $1,000 of contract value	
b. Margin Accounts	0.035 per $1,000 of contract value	
c. PACE Trades	None	
d. Maximum Value Charge	25.00 per trade per side	
4. Volume Discounts (Trade Recording Fees and Value Charges):		
a. CNS Trades settling at SCCP (utilizing PACE).	[$0.77 per side maximum with 4,000 or more PACE trades per month] $0.77 per side—4000–6000 PACE trades per month** $0.55 per side—6001–8000 PACE trades per month** $0.35 per side—over 8000 PACE trades per month**	
5. Specialist Discounts for Trades Cleared Through a SCCP Margin Account:	Volume level (including PACE trades)	Discount per side
	2,501 to 10,000 sides per month	0.05
	10,001 to 15,000 sides per month	0.10
	15,001 to 20,000 sides per month	0.15
	20,001 to 25,000 sides per month	0.20
	25,001 to 30,000 sides per month	0.25
	30,001 to 35,000 sides per month	0.30
	35,001 to 40,000 sides per month	0.35
	40,001 and over	0.40
6. Municipal Bond Margin Service	$500.00 per month with activity	
7. Treasury Transactions:		
a. Per trade transaction	$40.00 (plus pass through costs)	
b. Per withdrawal—Bearer	$15.00	
c. Per withdrawal—Registered	$10.00	
d. Per transfer	$10.00	
8. Margin Account Pledge Fees	$1.00	
9. New York Office Transactions:		
a. Over the Window Delivery Clearing House.	$5.00	
b. Over the Window Delivery Paid or Suspended.	$5.00	

[7] 17 CFR 200.30–3(a)(12).

STOCK CLEARING CORPORATION OF PHILADELPHIA, CONSOLIDATED RESTATEMENT OF FEES—Continued

Service	Fee	
c. Over the Window Delivery "Don't Know".	$10.00	
d. Over the Window Receive Clearing House.	$6.00	
e. Dividend Settlement Service	$5.00	
f. Envelope Settlement Service/Inter-City/Funds Only Settlement Service.	$5.00	
g. Over the Window Delivery Fed Funds.	$22.50	
h. Over the Window Receive Fed Funds.	$22.50	
i. Syndicate Re-Delivery-Paid	$14.00	
j. Syndicate Re-Delivery "Don't Know"	$17.00	
k. Securities Hold	$5.00	
l. Reorganization Pick-up	$5.00	
m. Reorganization Reject	$10.00	
n. Reorganization Agent Delivery	$15.00	
o. Syndicate Pick-Up	$17.00	
p. Miscellaneous	$5.00	
q. Deliveries to New Jersey	$12.00 per item (plus costs)	
10. Margin Account Interest:		
Charge on net debit balances	½% above bank broker call rate	
11. Research Fees:		
a. Per photocopy of input forms	$4.00	
b. Per microfiche copy	$4.00	
c. Items less than 90 days old	No charge	
d. Items 1 year old or less	$15.00 per hour	
e. Items over 1 year old	$15.00 per hour, $25.00 minimum, plus archive retrieval costs	
12. Computer Transmission/Tapes:		
a. Purchase and Sale, Trade Data (daily).	$100.00 per month	
b. Purchase and Sale, Trades plus T+2 Settling Trades (daily).	$150.00 per month	
c. Miscellaneous	$150.00 per month; includes 6 tapes/transmission $25.00 per additional tape/transmission	
13. Lost and Stolen Securities Program	$100.00 per year, $2.50 per inquiry	
14. P&L Statement Charges	$0.01 per line	
15. Buy-ins	$5.00 per items submitted	
16. Member to Member Envelope Service	$5.00 per envelope (charged to sender), plus carrier costs	

**This is not a graduated rate schedule. Once this volume threshold is reached, all trades from the first trade receive such volume discount rate.

[FR Doc. 97–4609 Filed 2–24–97; 8:45 am]

BILLING CODE 8010–01–M

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of: (1) Promulgation of a temporary, "emergency" guideline amendment generally increasing the offense levels for List I chemicals by two levels and a proposal to re-promulgate such amendment as a non-emergency amendment; (2) deferred action until the March 19, 1997, meeting on previously proposed temporary, "emergency" guideline amendments increasing penalties for alien smuggling, fraudulent use of government-issued documents, and involuntary servitude, peonage, and slave trade offenses; (3) other proposed non-emergency amendments to sentencing guidelines and commentary; (4) proposed conforming amendments relating to proposed amendment 18, published in 62 FR 151 (January 2, 1997); and (5) proposed conforming amendment relating to proposed amendment 12, published in 62 FR 151 (January 2, 1997). Request for comment.

SUMMARY: The Sentencing Commission hereby gives notice of the following actions: (1) Pursuant to section 302 of the Comprehensive Methamphetamine Control Act of 1996, the Commission is promulgating a temporary, emergency amendment to § 2D1.11 and accompanying commentary; pursuant to section 217(a) of the Comprehensive Crime Control Act of 1984 (28 U.S.C. 994(a) and (p)), the Commission further proposes to re-promulgate such amendment as a non-emergency amendment; (2) the Commission has deferred action on promulgating amendments to §§ 2L1.1, 2L2.1, 2L2.2, and 2H4.1 relating to sections 203, 211, and 218 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 until the meeting on March 19, 1997; and (3) pursuant to section 217 (a) of the Comprehensive Crime Control Act of 1984 (28 U.S.C. 994 (a) and (p)), the Commission is considering promulgating certain other non-emergency amendments to the sentencing guidelines and commentary. The Commission may submit the non-emergency amendments to the Congress not later than May 1, 1997.

This notice sets forth the emergency and other proposed amendments and a synopsis of the issues addressed by the amendments, as well as additional issues for comment. The proposed amendments are presented in this notice in one of two formats. First, some of the

amendments are proposed as specific revisions to a guideline or commentary. Bracketed text within a proposed amendment indicates alternative proposals and that the Commission invites comment and suggestions for appropriate policy choices; for example, a proposed enhancement of [3–5] levels means a proposed enhancement of either three, four, or five levels. Similarly, a proposed enhancement of [4] levels indicates that the Commission is considering, and invites comment on, alternative policy choices. Second, the Commission has highlighted certain issues for comment and invites suggestions for specific amendment language.

DATES: (1) The Commission has specified an effective date of May 1, 1997, for the emergency amendment increasing the penalties for offenses involving List I chemicals.

(2) Comment on the non-emergency amendments and issues set forth in this notice should be received not later than March 28, 1997.

(3) The Commission has re-scheduled the public hearing on non-emergency amendments proposed for comment in the **Federal Register** of January 2, 1997, (62 FR 151) and in this notice for March 18, 1997, beginning at 9:30 a.m. in the Thurgood Marshall Federal Judiciary Building, One Columbus Circle, NE, Washington, DC 20002–8002.

A person who desires to testify at the public hearing should notify Michael Courlander, Public Information Specialist, at (202) 273–4590 not later than March 3, 1997. Written testimony for the hearing must be received by the Commission not later than March 10, 1997. Submission of written testimony is a requirement for testifying at the public hearing.

ADDRESSES: Public comment should be sent to: United States Sentencing Commission, One Columbus Circle, NE, Suite 2–500, Washington, DC 20002–8002, Attention: Public Information.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Information Specialist, Telephone: (202) 273–4590.

Authority: 28 U.S.C. 994 (a), (o), (p), (x).

Richard P. Conaboy,

Chairman.

Emergency Amendments

Section 2D1.11 Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy

1. Synopsis of Amendment: This amendment implements section 302 of the Comprehensive Methamphetamine Control Act of 1996. That section raises the statutory maximum penalties under 21 U.S.C. 841(d) and 960(d) from ten to twenty years' imprisonment. The Act also instructs the Commission to increase by at least two levels the offense levels for offenses involving list I chemicals under 21 U.S.C. 841(d) (1) and (2) and 960(d) (1) and (3). These offenses involve the possession and importation of listed chemicals knowing, or having reasonable cause to believe, the chemicals will be used to unlawfully manufacture a controlled substance. The Act requires that the offense levels be calculated proportionately on the basis of the quantity of controlled substance that reasonably could be manufactured in a clandestine setting using the quantity of list I chemical possessed, distributed, imported, or exported.

The amendment raises the penalties for list I chemicals by two levels. The top of the Chemical Quantity Table for list I chemicals will now be at level 30. The offense level for list II chemicals remains the same. With the new statutory maximum of 20 years, the guidelines will now be able to better take into account aggravating adjustments such as those for role in the offense. Additionally, the increased statutory maximum will allow for higher sentences for cases convicted under this statute that involve the actual manufacture of a controlled substance.

The amendment also makes a clerical change to correct the spelling of "Isosafrole".

Effective Date: The Commission has specified an effective date of May 1, 1997, for this emergency amendment.

Notice of Proposed Re-Promulgation as Permanent Amendment: The Commission also proposes to re-promulgate this amendment as a non-emergency amendment and submit it to Congress not later than May 1, 1997.

Amendment: Section 2D1.11(d) is amended by deleting subsections (d)(1)–(9) and inserting in lieu thereof the following:

Listed chemicals and quantity	Base offense level
(1) List I Chemicals	Level 30.
17.8 KG or more of Benzaldehyde;	
20 KG or more of Benzyl Cyanide;	
20 KG or more of Ephedrine;	
200 G or more of Ergonovine;	
400 G or more of Ergotamine;	
20 KG or more of Ethylamine;	
44 KG or more of Hydriodic Acid;	
320 KG or more of Isosafrole;	
4 KG or more of Methylamine;	
500 KG or more of N-Methylephedrine;	
500 KG or more of N-Methylpseudoephedrine;	
12.6 KG or more of Nitroethane;	
200 KG or more of Norpseudoephedrine;	
20 KG or more of Phenylacetic Acid;	
200 KG or more of Phenylpropanolamine;	
10 KG or more of Piperidine;	
320 KG or more of Piperonal;	
1.6 KG or more of Propionic Anhydride;	
20 KG or more of Pseudoephedrine;	
320 KG or more of Safrole;	
400 KG or more of 3, 4-Methylenedioxyphenyl-2-propanone;	
(2) List I Chemicals	Level 28.

Listed chemicals and quantity	Base offense level
At least 5.3 KG but less than 17.8 KG of Benzaldehyde;	
At least 6 KG but less than 20 KG of Benzyl Cyanide;	
At least 6 KG but less than 20 KG of Ephedrine;	
At least 60 G but less than 200 G of Ergonovine;	
At least 120 G but less than 400 G of Ergotamine;	
At least 6 KG but less than 20 KG of Ethylamine;	
At least 13.2 KG but less than 44 KG of Hydriodic Acid;	
At least 96 KG but less than 320 KG of Isosafrole;	
At least 1.2 KG but less than 4 KG of Methylamine;	
At least 150 KG but less than 500 KG of N-Methylephedrine;	
At least 150 KG but less than 500 KG of N-Methylpseudoephedrine;	
At least 3.8 KG but less than 12.6 KG of Nitroethane;	
At least 60 KG but less than 200 KG of Norpseudoephedrine;	
At least 6 KG but less than 20 KG of Phenylacetic Acid;	
At least 60 KG but less than 200 KG of Phenylpropanolamine;	
At least 3 KG but less than 10 KG of Piperidine;	
At least 96 KG but less than 320 KG of Piperonal;	
At least 480 G but less than 1.6 KG of Propionic Anhydride;	
At least 6 KG but less than 20 KG of Pseudoephedrine;	
At least 96 KG but less than 320 KG of Safrole;	
At least 120 KG but less than 400 KG of 3, 4-Methylenedioxyphenyl-2-propanone;	
List II Chemicals	
11 KG or more of Acetic Anhydride;	
1175 KG or more of Acetone;	
20 KG or more of Benzyl Chloride;	
1075 KG or more of Ethyl Ether;	
1200 KG or more of Methyl Ethyl Ketone;	
10 KG or more of Potassium Permanganate;	
1300 KG or more of Toluene.	
(3) List I Chemicals	Level 26.
At least 1.8 KG but less than 5.3 KG of Benzaldehyde;	
At least 2 KG but less than 6 KG of Benzyl Cyanide;	
At least 2 KG but less than 6 KG of Ephedrine;	
At least 20 G but less than 60 G of Ergonovine;	
At least 40 G but less than 120 G of Ergotamine;	
At least 2 KG but less than 6 KG of Ethylamine;	
At least 4.4 KG but less than 13.2 KG of Hydriodic Acid;	
At least 32 KG but less than 96 KG of Isosafrole;	
At least 400 G but less than 1.2 KG of Methylamine;	
At least 50 KG but less than 150 KG of N-Methylephedrine;	
At least 50 KG but less than 150 KG of N-Methylpseudoephedrine;	
At least 1.3 KG but less than 3.8 KG of Nitroethane;	
At least 20 KG but less than 60 KG of Norpseudoephedrine;	
At least 2 KG but less than 6 KG of Phenylacetic Acid;	
At least 20 KG but less than 60 KG of Phenylpropanolamine;	
At least 1 KG but less than 3 KG of Piperidine;	
At least 32 KG but less than 96 KG of Piperonal;	
At least 160 G but less than 480 G of Propionic Anhydride;	
At least 2 KG but less than 6 KG of Pseudoephedrine;	
At least 32 KG but less than 96 KG of Safrole;	
At least 40 KG but less than 120 KG of 3, 4-Methylenedioxyphenyl-2-propanone;	
List II Chemicals	
At least 3.3 KG but less than 11 KG of Acetic Anhydride;	
At least 352.5 KG but less than 1175 KG of Acetone;	
At least 6 KG but less than 20 KG of Benzyl Chloride;	
At least 322.5 KG but less than 1075 KG of Ethyl Ether;	
At least 360 KG but less than 1200 KG of Methyl Ethyl Ketone;	
At least 3 KG but less than 10 KG of Potassium Permanganate;	
At least 390 KG but less than 1300 KG of Toluene.	
(4) List I Chemicals	Level 24.

Listed chemicals and quantity	Base offense level
At least 1.2 KG but less than 1.8 KG of Benzaldehyde;	
At least 1.4 KG but less than 2 KG of Benzyl Cyanide;	
At least 1.4 KG but less than 2 KG of Ephedrine;	
At least 14 G but less than 20 G of Ergonovine;	
At least 28 G but less than 40 G of Ergotamine;	
At least 1.4 KG but less than 2 KG of Ethylamine;	
At least 3.08 KG but less than 4.4 KG of Hydriodic Acid;	
At least 22.4 KG but less than 32 KG of Isosafrole;	
At least 280 G but less than 400 G of Methylamine;	
At least 35 KG but less than 50 KG of N-Methylephedrine;	
At least 35 KG but less than 50 KG of N-Methylpseudoephedrine;	
At least 879 G but less than 1.3 KG of Nitroethane;	
At least 14 KG but less than 20 KG of Norpseudoephedrine;	
At least 1.4 KG but less than 2 KG of Phenylacetic Acid;	
At least 14 KG but less than 20 KG of Phenylpropanolamine;	
At least 700 G but less than 1 KG of Piperidine;	
At least 22.4 KG but less than 32 KG of Piperonal;	
At least 112 G but less than 160 G of Propionic Anhydride;	
At least 1.4 KG but less than 2 KG of Pseudoephedrine;	
At least 22.4 KG but less than 32 KG of Safrole;	
At least 28 KG but less than 40 KG of 3, 4-Methylenedioxyphenyl-2-propanone;	
List II Chemicals	
At least 1.1 KG but less than 3.3 KG of Acetic Anhydride;	
At least 117.5 KG but less than 352.5 KG of Acetone;	
At least 2 KG but less than 6 KG of Benzyl Chloride;	
At least 107.5 KG but less than 322.5 KG of Ethyl Ether;	
At least 120 KG but less than 360 KG of Methyl Ethyl Ketone;	
At least 1 KG but less than 3 KG of Potassium Permanganate;	
At least 130 KG but less than 390 KG of Toluene.	
(5) List I Chemicals	Level 22.
At least 712 G but less than 1.2 KG of Benzaldehyde;	
At least 800 G but less than 1.4 KG of Benzyl Cyanide;	
At least 800 G but less than 1.4 KG of Ephedrine;	
At least 8 G but less than 14 G of Ergonovine;	
At least 16 G but less than 28 G of Ergotamine;	
At least 800 G but less than 1.4 KG of Ethylamine;	
At least 1.76 KG but less than 3.08 KG of Hydriodic Acid;	
At least 12.8 KG but less than 22.4 KG of Isosafrole;	
At least 160 G but less than 280 G of Methylamine;	
At least 20 KG but less than 35 KG of N-Methylephedrine;	
At least 20 KG but less than 35 KG of N-Methylpseudoephedrine;	
At least 503 G but less than 879 G of Nitroethane;	
At least 8 KG but less than 14 KG of Norpseudoephedrine;	
At least 800 G but less than 1.4 KG of Phenylacetic Acid;	
At least 8 KG but less than 14 KG of Phenylpropanolamine;	
At least 400 G but less than 700 G of Piperidine;	
At least 12.8 KG but less than 22.4 KG of Piperonal;	
At least 64 G but less than 112 G of Propionic Anhydride;	
At least 800 G but less than 1.4 KG of Pseudoephedrine;	
At least 12.8 KG but less than 22.4 KG of Safrole;	
At least 16 KG but less than 28 KG of 3, 4-Methylenedioxyphenyl-2-propanone;	
List II Chemicals	
At least 726 G but less than 1.1 KG of Acetic Anhydride;	
At least 82.25 KG but less than 117.5 KG of Acetone;	
At least 1.4 KG but less than 2 KG of Benzyl Chloride;	
At least 75.25 KG but less than 107.5 KG of Ethyl Ether;	
At least 84 KG but less than 120 KG of Methyl Ethyl Ketone;	
At least 700 G but less than 1 KG of Potassium Permanganate;	
At least 91 KG but less than 130 KG of Toluene.	
(6) List I Chemicals	Level 20.

Listed chemicals and quantity	Base offense level
At least 178 G but less than 712 G of Benzaldehyde;	
At least 200 G but less than 800 G of Benzyl Cyanide;	
At least 200 G but less than 800 G of Ephedrine;	
At least 2 G but less than 8 G of Ergonovine;	
At least 4 G but less than 16 G of Ergotamine;	
At least 200 G but less than 800 G of Ethylamine;	
At least 440 G but less than 1.76 KG of Hydriodic Acid;	
At least 3.2 KG but less than 12.8 KG of Isosafrole;	
At least 40 G but less than 160 G of Methylamine;	
At least 5 KG but less than 20 KG of N-Methylephedrine;	
At least 5 KG but less than 20 KG of N-Methylpseudoephedrine;	
At least 126 G but less than 503 G of Nitroethane;	
At least 2 KG but less than 8 KG of Norpseudoephedrine;	
At least 200 G but less than 800 G of Phenylacetic Acid;	
At least 2 KG but less than 8 KG of Phenylpropanolamine;	
At least 100 G but less than 400 G of Piperidine;	
At least 3.2 KG but less than 12.8 KG of Piperonal;	
At least 16 G but less than 64 G of Propionic Anhydride;	
At least 200 G but less than 800 G of Pseudoephedrine;	
At least 3.2 KG but less than 12.8 KG of Safrole;	
At least 4 KG but less than 16 KG of 3, 4-Methylenedioxyphenyl-2-propanone;	
List II Chemicals	
At least 440 G but less than 726 G of Acetic Anhydride;	
At least 47 KG but less than 82.25 KG of Acetone;	
At least 800 G but less than 1.4 KG of Benzyl Chloride;	
At least 43 KG but less than 75.25 KG of Ethyl Ether;	
At least 48 KG but less than 84 KG of Methyl Ethyl Ketone;	
At least 400 G but less than 700 G of Potassium Permanganate;	
At least 52 KG but less than 91 KG of Toluene.	
(7) List I Chemicals	Level 18.
At least 142 G but less than 178 G of Benzaldehyde;	
At least 160 G but less than 200 G of Benzyl Cyanide;	
At least 160 G but less than 200 G of Ephedrine;	
At least 1.6 G but less than 2 G of Ergonovine;	
At least 3.2 G but less than 4 G of Ergotamine;	
At least 160 G but less than 200 G of Ethylamine;	
At least 352 G but less than 440 G of Hydriodic Acid;	
At least 2.56 KG but less than 3.2 KG of Isosafrole;	
At least 32 G but less than 40 G of Methylamine;	
At least 4 KG but less than 5 KG of N-Methylephedrine;	
At least 4 KG but less than 5 KG of N-Methylpseudoephedrine;	
At least 100 G but less than 126 G of Nitroethane;	
At least 1.6 KG but less than 2 KG of Norpseudoephedrine;	
At least 160 G but less than 200 G of Phenylacetic Acid;	
At least 1.6 KG but less than 2 KG of Phenylpropanolamine;	
At least 80 G but less than 100 G of Piperidine;	
At least 2.56 KG but less than 3.2 KG of Piperonal;	
At least 12.8 G but less than 16 G of Propionic Anhydride;	
At least 160 G but less than 200 G of Pseudoephedrine;	
At least 2.56 KG but less than 3.2 KG of Safrole;	
At least 3.2 KG but less than 4 KG of 3, 4-Methylenedioxyphenyl-2-propanone;	
List II Chemicals	
At least 110 G but less than 440 G of Acetic Anhydride;	
At least 11.75 KG but less than 47 KG of Acetone;	
At least 200 G but less than 800 G of Benzyl Chloride;	
At least 10.75 KG but less than 43 KG of Ethyl Ether;	
At least 12 KG but less than 48 KG of Methyl Ethyl Ketone;	
At least 100 G but less than 400 G of Potassium Permanganate;	
At least 13 KG but less than 52 KG of Toluene.	
(8) List I Chemicals	Level 16.

Listed chemicals and quantity	Base offense level
3.6 KG or more of Anthranilic Acid;	
At least 107 G but less than 142 G of Benzaldehyde;	
At least 120 G but less than 160 G of Benzyl Cyanide;	
At least 120 G but less than 160 G of Ephedrine;	
At least 1.2 G but less than 1.6 G of Ergonovine;	
At least 2.4 G but less than 3.2 G of Ergotamine;	
At least 120 G but less than 160 G of Ethylamine;	
At least 264 G but less than 352 G of Hydriodic Acid;	
At least 1.92 KG but less than 2.56 KG of Isosafrole;	
At least 24 G but less than 32 G of Methylamine;	
4.8 KG or more of N-Acetylanthranilic Acid;	
At least 3 KG but less than 4 KG of N-Methylephedrine;	
At least 3 KG but less than 4 KG of N-Methylpseudoephedrine;	
At least 75 G but less than 100 G of Nitroethane;	
At least 1.2 KG but less than 1.6 KG of Norpseudoephedrine;	
At least 120 G but less than 160 G of Phenylacetic Acid;	
At least 1.2 KG but less than 1.6 KG of Phenylpropanolamine;	
At least 60 G but less than 80 G of Piperidine;	
At least 1.92 KG but less than 2.56 KG of Piperonal;	
At least 9.6 G but less than 12.8 G of Propionic Anhydride;	
At least 120 G but less than 160 G of Pseudoephedrine;	
At least 1.92 KG but less than 2.56 KG of Safrole;	
At least 2.4 KG but less than 3.2 KG of 3, 4-Methylenedioxyphenyl-2-propanone;	
List II Chemicals	
At least 88 G but less than 110 G of Acetic Anhydride;	
At least 9.4 KG but less than 11.75 KG of Acetone;	
At least 160 G but less than 200 G of Benzyl Chloride;	
At least 8.6 KG but less than 10.75 KG of Ethyl Ether;	
At least 9.6 KG but less than 12 KG of Methyl Ethyl Ketone;	
At least 80 G but less than 100 G of Potassium Permanganate;	
At least 10.4 KG but less than 13 KG of Toluene.	
(9) List I Chemicals	Level 14.
At least 2.7 KG but less than 3.6 KG of Anthranilic Acid;	
At least 71.2 G but less than 107 G of Benzaldehyde;	
At least 80 G but less than 120 G of Benzyl Cyanide;	
At least 80 G but less than 120 G of Ephedrine;	
At least 800 MG but less than 1.2 G of Ergonovine;	
At least 1.6 G but less than 2.4 G of Ergotamine;	
At least 80 G but less than 120 G of Ethylamine;	
At least 176 G but less than 264 G of Hydriodic Acid;	
At least 1.44 G but less than 1.92 KG of Isosafrole;	
At least 16 G but less than 24 G of Methylamine;	
At least 3.6 KG but less than 4.8 KG of N-Acetylanthranilic Acid;	
At least 2.25 KG but less than 3 KG of N-Methylephedrine;	
At least 2.25 KG but less than 3 KG of N-Methylpseudoephedrine;	
At least 56.25 G but less than 75 G of Nitroethane;	
At least 800 G but less than 1.2 KG of Norpseudoephedrine;	
At least 80 G but less than 120 G of Phenylacetic Acid;	
At least 800 G but less than 1.2 KG of Phenylpropanolamine;	
At least 40 G but less than 60 G of Piperidine;	
At least 1.44 KG but less than 1.92 KG of Piperonal;	
At least 7.2 G but less than 9.6 G of Propionic Anhydride;	
At least 80 G but less than 120 G of Pseudoephedrine;	
At least 1.44 G but less than 1.92 KG of Safrole;	
At least 1.8 KG but less than 2.4 KG of 3, 4-Methylenedioxyphenyl-2-propanone;	
List II Chemicals	
At least 66 G but less than 88 G of Acetic Anhydride;	
At least 7.05 KG but less than 9.4 KG of Acetone;	
At least 120 G but less than 160 G of Benzyl Chloride;	
At least 6.45 KG but less than 8.6 KG of Ethyl Ether;	
At least 7.2 KG but less than 9.6 KG of Methyl Ethyl Ketone;	
At least 60 G but less than 80 G of Potassium Permanganate;	
At least 7.8 KG but less than 10.4 KG of Toluene.	
(10) List I Chemicals	Level 12.
Less than 2.7 KG of Anthranilic Acid;	
Less than 71.2 G of Benzaldehyde	
Less than 80 G of Benzyl Cyanide;	
Less than 80 G of Ephedrine;	
Less than 800 MG of Ergonovine;	
Less than 1.6 G of Ergotamine;	
Less than 80 G of Ethylamine;	
Less than 176 G of Hydriodic Acid;	
Less than 1.44 G of Isosafrole;	
Less than 16 G of Methylamine;	
Less than 3.6 KG of N-Acetylanthranilic Acid;	
Less than 2.25 KG of N-Methylephedrine;	
Less than 2.25 KG of N-Methylpseudoephedrine;	
Less than 56.25 G of Nitroethane;	
Less than 800 G of Norpseudoephedrine;	
Less than 80 G of Phenylacetic Acid;	
Less than 800 G of Phenylpropanolamine;	
Less than 40 G of Piperidine;	
Less than 1.44 KG of Piperonal;	
Less than 7.2 G of Propionic Anhydride;	
Less than 80 G of Pseudoephedrine;	
Less than 1.44 G of Safrole;	
Less than 1.8 KG of 3, 4-Methylenedioxyphenyl-2-propanone;	
List II Chemicals	
Less than 66 G of Acetic Anhydride;	
Less than 7.05 KG of Acetone;	
Less than 120 G of Benzyl Chloride;	
Less than 6.45 KG of Ethyl Ether;	
Less than 7.2 KG of Methyl Ethyl Ketone;	
Less than 60 G of Potassium Permanganate;	
Less than 7.8 KG of Toluene.".	

Section 2D1.11 is amended in Note "E" (List I Chemical Equivalency Table) of the guideline by deleting "Isoafrole" and inserting in lieu thereof "Isosafrole".

The Commentary to § 2D1.11 captioned "Application Notes" is amended in Note 4(a) by deleting "three kilograms" and inserting in lieu thereof "300 grams"; by deleting "24" each time it appears and inserting in lieu thereof "26"; and by deleting "14" and inserting in lieu thereof "16".

"Emergency" Amendments on Alien Smuggling, Immigration Document Fraud, and Involuntary Servitude

2. In its previous Notice of Proposed Amendments, see 62 FR 151 (January 2, 1997), the Commission gave notice of an intent to promulgate as temporary, "emergency" amendments certain proposals relating to Alien Smuggling (§ 2L1.1), Immigration Document Fraud (§ 2L2.1 and 2L2.2), and Involuntary Servitude (§ 2H4.1). The Commission considered these amendments at its February 12, 1997, meeting but deferred action on them until its March 19, 1997 meeting. At that meeting, the Commission intends to further consider these proposals and may promulgate some version of them as temporary, "emergency" amendments. If the Commission so acts, it may also propose to re-promulgate these proposals as non-emergency amendments to be submitted to Congress by May 1, 1997. These proposals should be considered in light of that likely course of action.

Non-Emergency Amendments

Immigration

3. Synopsis of Proposed Amendment: The proposed amendment implements sections 321 and 334 of the Illegal Immigration and Immigrant Responsibility Act of 1996 ("the Act"). Section 321 of the Act amends the definition of "aggravated felony" in the Immigration and Nationality Act in several different ways including adding to the definition the crimes of rape and sexual abuse of a minor as well as any crime of violence for which the term of imprisonment is at least one year. This proposed amendment makes the definition of "aggravated felony" in the guidelines coextensive with the amended definition in the Immigration and Nationality Act.

Section 334 directs the Sentencing Commission to promulgate amendments to the sentencing guidelines for offenses for the crimes of unlawfully remaining and illegally entering the United States corresponding to changes made in statutory penalties for these offenses in the Violent Crime Control and Law Enforcement Act of 1994. This proposed amendment provides for enhanced penalties for those who unlawfully enter or remain in the United States following conviction for an aggravated felony, any other felony, or three misdemeanor crimes of violence or controlled substance offenses. The proposed amendment also makes clarifying changes to the commentary.

Proposed Amendment: Section 2L1.2 is amended by deleting subsection (b) and inserting in lieu thereof the following:

"(b) Specific Offense Characteristics:

If the defendant previously was deported after a criminal conviction, or if the defendant unlawfully remained in the United States following a removal order issued after a criminal conviction, increase as follows (if more than one applies, use the greater):

(1) If the conviction was for a crime of violence or controlled substance offense[, and such conviction was punishable by more than five years imprisonment], increase by 16 levels.

(2) If the conviction was for any other aggravated felony, increase by [10, 12] levels.

(3) If the conviction was for (A) any other felony, [other than a felony involving violation of the immigration laws], or (B) three or more misdemeanors that were either crimes of

violence or controlled substance offenses, increase by 4 levels.".

The Commentary to § 2L1.2 captioned "Application Notes" is amended by deleting Notes 3 and 4 in their entirety; by renumbering Notes 1 and 2 as Notes 2 and 3 and by inserting the following as a new Note 1:

"1. For purposes of this guideline—'Deported after a conviction,' means that the deportation was subsequent to the conviction, whether or not the deportation was in response to such conviction. An alien has previously been 'deported' if he or she has been removed or has departed the United States while an order of exclusion, deportation, or removal was outstanding. 'Remains in the United States following a removal order issued after a conviction,' means that the removal order was subsequent to the conviction, whether or not the removal order was in response to such conviction. 'Aggravated felony,' is defined at 8 U.S.C. 1101(a)(43) [without regard to the date of conviction of the aggravated felony]. 'Crime of violence,' and 'controlled substance offense' are defined in § 4B1.2. ['Punishable by more than five years imprisonment,' as used in subsection (b)(1) means that the aggravated felony offense of conviction had a maximum term of imprisonment exceeding five years.] For purposes of subsection (b)(3), 'crime of violence' includes offenses punishable by imprisonment for a term of one year or less.".

The Commentary to § 2L1.2 captioned "Application Notes" is amended in Note 5 by deleting "(b)(1) or (b)(2)" and inserting in lieu thereof "(b)"; and by redesignating Note 5 as Note 4.".

The Commentary to § 2L1.2 captioned "Application Notes" is amended by deleting Notes 6 and 7 in their entirety.

4. Synopsis of Proposed Amendment: The proposed amendment implements sections 108 and 216 of the Illegal Immigration and Immigrant Responsibility Act of 1996 ("the Act"). Section 108 creates a new crime, at 18 U.S.C. 758, for fleeing or evading a law enforcement checkpoint at high speed. This proposed amendment changes Appendix A to reference the new offense to § 2A2.4. Section 216 of the Act creates a new crime, at 18 U.S.C. 611, for voting by any alien in a federal election. This proposed amendment changes Appendix A to reference the new offense to § 2H2.1.

Appendix A is amended by inserting the following at the appropriate place by title and section:

"18 U.S.C. § 611 2H2.1",

"18 U.S.C. § 758 2A2.4".

Reckless Endangerment During Flight

5. Synopsis of Proposed Amendment: The proposed amendment provides a minimum offense level of either 18, 19, or 20 for any offense where the defendant recklessly created a substantial risk of death or bodily injury to another person in the course of fleeing from a law enforcement officer. This proposed amendment was requested by the Department of Justice and is consistent with the approach taken by the Commission in the proposed amendment to the alien smuggling guideline, published in the **Federal Register** on January 2, 1997. That amendment provides minimum offense levels when a defendant creates a substantial risk of death or bodily injury in the course of an alien smuggling offense.

Section 3C1.2 is amended by inserting after the "2 levels" the following:

", but if the resulting offense level is less than level [18–20], increase to level [18–20]" following "2 levels".

6(A). Synopsis of Proposed Amendment: This amendment addresses several new offenses, including the offense of interstate stalking, 18 U.S.C. 2261A, which was recently enacted in section 1069 of the Defense Authorization Act for Fiscal Year 1997. That offense makes it unlawful to travel across a State line or within Federal jurisdiction with the intent to injure or harass another person and, in the course of such travel, to place that person in reasonable fear of death or serious bodily injury to that person or that person's immediate family. The maximum term of imprisonment for violation of the statute is (A) 5 years, (B) 10 years, if serious bodily injury occurred or a dangerous weapon was used, (C) 20 years, if permanent disfigurement or life threatening bodily injury occurred, or (D) any term of years or life, if the victim dies.

Two options are presented. Option One references the new offense in the Statutory Index to various Chapter Two offense guidelines that the Commission has concluded will most likely cover the underlying conduct embodied in the federal stalking offense, including minor assault, aggravated assault, rape, and murder. This approach is consistent with the approach the Commission adopted two years ago with respect to the federal domestic violence offenses, 18 U.S.C. 2261–62.

In addition, the minor assault guideline, § 2A2.3, is amended in several respects by Option One to provide a more appropriate and sufficiently severe offense level for offenses sentenced under that guideline. First, the amendment proposes to increase the base offense level to [9], if bodily injury occurred or if a dangerous weapon was possessed and its use was threatened, or [6], otherwise. Second, the amendment provides an enhancement if the offense involved stalking. Third, the amendment adds a cross reference to the aggravated assault guideline, § 2A2.2, if the conduct involved aggravated assault.

In order to most efficiently provide the same increase in offense level for the minor assault guideline that deals with obstructing or impeding an officer, § 2A2.4, Option One consolidates that guideline with the minor assault guideline, § 2A2.3.

Option One also incorporates repetitive stalking conduct and the violation of a court protection order into the threatening communications guideline, § 2A6.1. It expressly provides for the grouping of multiple counts involving the same victim (in order to avoid double counting with the multiple act enhancement). A cross reference is provided in that guideline to apply the Chapter Two offense guideline most appropriate to the underlying conduct, if the resulting offense level is greater.

Option Two refers the new offense only to the threatening communications guideline, § 2A6.1, and reworks that guideline to better take into account the variety of offenses covered by the expanded guideline. Option Two provides an enhancement for the commission of repetitive acts of stalking and threatening communication and for the violation of a court protection order. It expressly provides for the grouping of multiple counts involving such conduct with respect to the same victim (in order to avoid double counting with the multiple act enhancement and to address a recurring case law and hotline issue). It also provides for a cross reference to other Chapter Two offense guidelines covering crimes against the person, if the resulting offense level is higher. The cross reference is provided to cover circumstances in which offenses covered by the guideline, particularly stalking, involve underlying crimes of violence.

Option Two also adds an enhancement to the minor and aggravated assault guidelines if the offense involved the violation of a court protection order. This change is proposed in order to better ensure an adequate offense level for offenses, particularly domestic violence offenses under 18 U.S.C. 2261, 2262, in which such conduct is often a factor. In addition, Option Two references offenses under 18 U.S.C. 2262 to the threatening communications guideline (to cover cases involving repetitive harassment in violation of a protection order) and incorporates the definition of "bodily injury" statutorily applicable to such cases.

Both options also address several new harassing telecommunications offenses, 47 U.S.C. 223(a)(1)(C)–(E), which were enacted in section 502 of the Telecommunications Act of 1996. The new offenses, which carry a maximum term of imprisonment of two years, make it unlawful to:

(C) Make a telephone call or utilize a telecommunications device, whether or not conversation or communication ensues, without disclosing one's identity and with intent to annoy, abuse, threaten, or harass any person at the called number or who receives the communication;

(D) Make or cause the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number; or

(E) Make repeated telephone calls or repeatedly initiate communication with a telecommunications device, during which conversation or communication ensues, solely to harass any person at the called number or who receives the communication.

Both options reference the new telecommunications offenses to the threatening communications guideline and amend that guideline to provide a lower offense level if the offense involved only harassment unaccompanied by a threat or stalking.

Both options also address a circuit conflict regarding the enhancement in the threatening communication guideline that provides for a 6-level increase if the offense involved any conduct evidencing an intent to carry out a threat. Specifically, the conflict is whether or not conduct which occurred prior to the making of a threat can evidence an intent to carry out the threat. Compare *United States* v. *Hornick*, 942 F.2d 105 (2d Cir. 1991) ("a person cannot take action that will constitute proof of his intent to carry out a threat until after the threat has been made") with *United States* v. *Gary*, 18 F.3d 1123 (4th Cir. 1994) ("any acts that evidence an intent to carry out the threats on which a conviction is predicated, whether committed prior to or following such threats, may form the basis of the § 2A6.1(b)(1) adjustment"); *United States* v. *Sullivan*, 75 F.3d 297 (7th Cir. 1996); *United States* v. *Hines*, 26 F.3d 1469 (9th Cir. 1994); *United States* v. *Taylor*, 88 F.3d 938 (11th Cir. 1996) ("the essential inquiry for § 2A6.1(b)(1) is whether the facts of the case, taken as a whole, establish a sufficiently direct connection between the defendant's pre-threat conduct and his threat"). Both options essentially adopt the Eleventh Circuit's view by adding an application note to provide that conduct other than the offense of conviction and relevant conduct under § 1B1.3 may be considered in determining the application of the guideline's enhancements if there is a sufficient, direct connection between that other conduct and the offense of conviction.

Proposed Amendment: Option One:

Section 2A2.3 is amended in the title by inserting "; Obstructing or Impeding Officers" after "Minor Assault".

Section 2A2.3(a)(1) is amended by deleting "6" and inserting in lieu thereof "[9]"; and by deleting "physical contact" and inserting in lieu thereof "bodily injury".

Section 2A2.3(a)(2) is amended by deleting "3" and inserting in lieu thereof "[6]".

Section 2A2.3(b) is amended by deleting "Characteristic" and inserting in lieu thereof "Characteristics"; and by adding at the end the following:

"(2) If the offense involved (A) [two or more] instances of stalking, or (B) violation of a court protection order, increase by [2,3] levels.

(3) If the offense involved obstructing or impeding a governmental officer in the performance of his duties, increase by 3 levels.

(c) Cross Reference.

(1) If the offense involved aggravated assault, apply § 2A2.2 (Aggravated Assault).".

The Commentary to § 2A2.3 captioned "Application Notes" is amended in Note 1 by inserting "For purposes of this guideline—" before "'Minor Assault'".

The Commentary to § 2A2.3 captioned "Application Notes" is amended in Note 2 by deleting "2.".

The Commentary to § 2A2.3 captioned "Application Notes" is amended in Note 3 by adding at the end the following new paragraph:

"'Stalking' means traveling with the intent to injure or harass another person and, in the course of, or as a result, of such travel, placing the person in reasonable fear of death or serious bodily injury to the person or the person's immediate family. See 18 U.S.C. 2261A. 'Immediate family' has the meaning set forth in 18 U.S.C. 115(c)(2).".

The Commentary to § 2A2.3 captioned "Application Notes" is amended in Note 3 by deleting "3."; by deleting "'bodily" and inserting in lieu thereof "bodily"; and by deleting "faculty.'" and inserting in lieu thereof "faculty. See".

The Commentary to § 2A2.3 captioned "Application Notes" is amended by adding at the end the following new notes:

"3. Subsection (b)(3) reflects the fact that the victim was a governmental officer performing official duties. If subsection (b)(3) applies, do not apply § 3A1.2 (Official Victim) unless the offense level is determined by use of the cross reference in subsection (c).

4. The offense level under this guideline does not assume any significant disruption of governmental functions. In situations involving such disruption, an upward departure may be warranted. See § 5K2.7 (Disruption of Governmental Functions).".

Chapter Two, Part A, Subpart 6 is amended in the title by inserting "or Harassing" after "Threatening".

Section 2A6.1 is deleted in its entirety and the following inserted in lieu thereof:

"§ 2A6.1. Threatening or Harassing Communications.

(a) Base Offense Level: [12].

(b) Specific Offense Characteristics.

(1) If the offense involved any conduct evidencing an intent to cause bodily injury or to carry out a threat, increase by [6] levels.

(2) If the defendant[, or another person for whose conduct the defendant is accountable under § 1B1.3 (Relevant Conduct),] committed [two or more] instances of stalking, or making a threatening communication to, the same victim, [or a combination of [two or more] instances of stalking, and making a threatening communication to, the same victim), increase by [2] levels.

(3) If the defendant[, or another person for whose conduct the defendant is accountable under § 1B1.3 (Relevant Conduct),] violated a court protection order, increase by [2] levels.

(4) If subdivisions (1), (2), and (3) do not apply, and the offense involved (A) a single instance evidencing little or no deliberation, or (B) harassing communication that did not involve a threat or stalking, decrease by [4] levels.

(c) Cross Reference.

(1) If the offense involved conduct covered by another offense guideline from Chapter Two, Part A (Offenses Against the Person), apply that offense guideline, if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 18 U.S.C. 871, 876, 877, 878(a), 879; 47 U.S.C. 223(a)(1)(C)–(E). For additional statutory provision(s), see Appendix A (Statutory Index).

Application Notes:

1. For purposes of this guideline—

"Stalking" means traveling with the intent to injure or harass another person and, in the course of, or as a result of, such travel, placing the person in reasonable fear of death or serious bodily injury to the person or the person's immediate family. "Immediate family" has the meaning set forth in 18 U.S.C. 115(c)(2).

2. In determining whether subsections (b)(1), (b)(2), and (b)(3) apply, the court shall consider any conduct that occurred prior to or during the offense; however, conduct that occurred prior to the offense must be sufficiently, directly connected to the offense, under the facts of the case taken as a whole. For example, if a defendant engaged in several acts of mailing threatening letters to the same victim over a period of years, then for purposes of determining whether or not subsections (b)(1), (b)(2), and (b)(3) apply, the court shall consider each prior act of mailing threatening letters to the victim, and the conduct surrounding that act, but only if there is a sufficient, direct connection between the prior act and the offense.

For purposes of Chapter Three, Part D (Multiple Counts), multiple counts involving making a threatening or harassing communication to the same victim are grouped together under § 3D1.2 (Groups of Closely Related Counts). Multiple counts involving different victims are not to be grouped under § 3D1.2.

If the defendant was convicted of (A) [numerous][more than two] counts of making a threatening or harassing communication to the same victim, or (B) only one such count but the court determines that the offense involved [numerous][more than two] acts of making a threatening or harassing communication to the same victim, an upward departure may be warranted.

3. Prior convictions resulting in an enhancement under subsection (b)(2) or (b)(3) are also counted for purposes of determining criminal history points pursuant to Chapter Four, Part A (Criminal History).

4. The Commission recognizes that this offense includes a particularly wide range of conduct and that it is not possible to include all of the potentially relevant circumstances in the offense level. Factors not incorporated in the guideline may be considered by the court in determining whether a departure from the guidelines is warranted. See Chapter Five, Part K (Departures).

Background: "These statutes cover a wide range of conduct, including harassing but nonthreatening phone calls and threats to a government official. Because of the wide range of conduct covered by these statutes, the appropriate offense level under this guideline largely depends upon the defendant's intent, the likelihood that the defendant would carry out a threat or injure the victim, and whether or not stalking or the violation of a court protection order was involved. The specific offense characteristics are intended to distinguish such cases.".

Appendix A (Statutory Index) is amended by inserting the following at the appropriate place by title and section:

"18 U.S.C. § 2261A 2A1.1, 2A1.2, 2A1.3, 2A1.4, 2A2.1, 2A2.2, 2A2.3, 2A4.1, 2B1.3, 2B3.2, 2K1.4.".

Option Two: Section 2A2.2(b) is amended by adding at the end the following:

"(5) If the offense involved the violation of a court protection order, increase by [2] levels.".

Section 2A2.3(b) is amended by deleting "Characteristic" and inserting in lieu thereof "Characteristics"; and by adding at the end the following:

"(2) If the offense involved the violation of a court protection order, increase by [2] levels.".

Chapter Two, Part A, Subpart 6 is amended in the title by deleting "Threatening Communications" and inserting in lieu thereof "Threatening or Harassing Communications and Stalking".

Section 2A6.1 is deleted in its entirety and the following inserted in lieu thereof:

"§ 2A6.1. Threatening or Harassing Communications; Stalking.

(a) Base Offense Level: [12].

(b) Specific Offense Characteristics.

(1) If the defendant[, or another person for whose conduct the defendant is accountable under § 1B1.3 (Relevant Conduct),] committed [two or more] instances of stalking, or making a threatening communication to, the same victim, (or a combination of [two or more] instances of stalking, and making a threatening communication to, the same victim), increase by [2] levels.

(2) If the defendant[, or another person for whose conduct the defendant is accountable under § 1B1.3 (Relevant Conduct),] violated a court protection order, increase by [2] levels.

(3) If the defendant[, or another person for whose conduct the defendant is accountable under § 1B1.3 (Relevant Conduct),] engaged in any conduct evidencing an intent to carry out the threat made in a threatening communication or to cause bodily injury, increase by [6] levels.

(4) If subdivisions (1), (2), and (3) do not apply, and the offense involved (A) a single instance evidencing little or no deliberation, or (B) only harassing communication that did not involve a threatening communication or stalking, decrease by [4–8] levels.

(c) Cross Reference.

(1) If the offense involved conduct covered by another offense guideline from Chapter Two, Part A (Offenses Against the Person), apply that offense guideline, if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 18 U.S.C. 871, 876, 877, 878(a), 879, 2261A; 47 U.S.C. 223(a)(1)(C)–(E). For additional statutory provision(s), see Appendix A (Statutory Index).

Application Notes:

1. For purposes of this guideline—

"Bodily injury" means any act, except one done in self defense, that results in physical injury or sexual abuse. See 18 U.S.C. 2266.

"Stalking" means traveling with the intent to injure or harass another person and, in the course of, or as a result of, such travel, placing the person in reasonable fear of death or serious bodily injury to the person or the person's immediate family. See 18 U.S.C. 2261A. "Immediate family" has the meaning set forth in 18 U.S.C. 115(c)(2).

2. In determining whether subsections (b)(1), (b)(2), and (b)(3) apply, the court shall consider any conduct that occurred prior to or during the offense; however, conduct that occurred prior to the offense must be sufficiently, directly connected to the offense, under the facts of the case taken as a whole. For example, if a defendant engaged in several acts of stalking the same victim over a period of years, then for purposes of determining whether or not subsections (b)(1), (b)(2) and (b)(3) apply, the court shall consider each prior act of stalking the victim, and the conduct surrounding that act, but only if there is a sufficient, direct connection between the prior act and the offense.

For purposes of Chapter Three, Part D (Multiple Counts), multiple counts involving stalking of, or threatening or harassing communication to, the same victim are grouped together under § 3D1.2 (Groups of Closely Related Counts). Multiple counts involving different victims are not to be grouped under § 3D1.2.

If the defendant was convicted of (A) [numerous][more than two] counts of stalking or of threatening or harassing communications, or (B) only one such count but the court determines that the offense involved [numerous][more than two] acts of stalking or threatening or harassing communications, an upward departure may be warranted.

3. Prior convictions resulting in an enhancement under subsection (b)(1) or (b)(2) are also counted for purposes of determining criminal history points pursuant to Chapter Four, Part A (Criminal History).

4. The Commission recognizes that this offense includes a particularly wide range of conduct and that it is not possible to include all of the potentially relevant circumstances in the offense level. Factors not incorporated in the guideline may be considered by the court in determining whether a departure from the guidelines is warranted. See Chapter Five, Part K (Departures).

Background: These statutes cover a wide range of conduct, including harassing but nonthreatening phone calls, threats to a government official, and repeated acts of stalking with intent to injure the victim. Because of the wide range of conduct covered by these statutes, the appropriate offense level under this guideline largely depends upon the defendant's intent, the likelihood that the defendant would carry out a threat or injure the victim, and whether or not the conduct is repetitive. The specific offense characteristics are intended to distinguish such cases.".

Appendix A (Statutory Index) is amended in the item referenced to 18 U.S.C. 2262 by inserting "2A6.1," after "2A4.1,"; and by inserting the following at the appropriate place by title and section:

"18 U.S.C. 2261A 2A6.1
47 U.S.C. 223(a)(1)(C)–(E) 2A6.1".

(B). Issues for Comment: The Commission requests comment on alternative ways to address the new federal stalking offense at 18 U.S.C. 2261A. For example, instead of incorporating the stalking offense into the threatening communications guideline (§ 2A6.1), as proposed above, should the Commission reference the stalking offense to the assault guidelines? If so, what changes, if any, are appropriate to make to the assault guidelines to adequately cover the stalking offense?

Currently, counts of conviction of offenses covered by § 2A6.1 are excluded from the application of § 3D1.2(d) but may be groupable under § 3D1.2(b). The Second and Eleventh Circuits, however, have held that such counts of conviction are not groupable under § 3D1.2(b) because the conduct covered by such counts inflicts distinct psychological harms upon the victim. See United States v. Miller, 993 F.2d 16 (2d Cir. 1993); United States v. Bonner, 85 F.3d 522 (11th Cir. 1996). The amendment proposed above adds an enhancement in subsection (b) for multiple incidents and expressly provides for grouping under § 3D1.2. The Commission requests comment on how multiple instances of stalking, threatening, or harassing the same victim should be treated under the guidelines.

The Commission also requests comment on whether, in determining the offense level under this guideline, the court should be able to take into account certain prior conduct ordinarily not considered to be part of the offense. Currently, there is a circuit conflict on whether or not conduct which occurred prior to the making of a threat can evidence an intent to carry out the threat for purposes of this guideline. Compare United States v. Hornick, 942 F.2d 105 (2d Cir. 1991) ("a person cannot take action that will constitute proof of his intent to carry out a threat until after the threat has been made") with United States v. Gary, 18 F.3d 1123 (4th Cir. 1994) ("any acts that evidence an intent to carry out the threats on which a conviction is predicated, whether committed prior to or following such threats, may form the basis of the § 2A6.1(b) (1) adjustment"); United States v. Sullivan, 75 F.3d 297 (7th Cir. 1996); United States v. Hines, 26 F.3d 1469 (9th Cir. 1994); United States v. Taylor, 88 F.3d 938 (11th Cir. 1996) ("the essential inquiry for § 2A6.1(b)(1) is whether the facts of the case, taken as a whole, establish a sufficiently direct connection between the defendant's pre-threat conduct and his threat"). The amendment proposed above adds an application note to provide that conduct occurring prior to the offense is to be considered in determining the application of the guideline's enhancements if there is a sufficient, direct connection between that prior conduct and the offense.

The Commission further requests comment on whether the definition of aggravated assault in the commentary to § 2A2.2 should be amended to eliminate the requirement that intent to do bodily injury be present in an assault involving a dangerous weapon in order for that assault to be considered "aggravated", rather than "minor", under the guidelines.

Chapter Two, Parts B and F

7. Synopsis of Proposed Amendment: This amendment adds Commentary to §§ 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Receiving, Transporting, Transferring, Transmitting, or Possessing Stolen Property); 2B1.3 (Property Damage or Destruction); 2B2.3 (Trespass); 2B3.2 (Extortion by Force or Threat of Injury or Serious Damage); and 2F1.1 (Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States). Specific offense characteristics are added to §§ 2B1.1 and 2B2.3. Also, special instructions are added to §§ 2B1.3 and 2F1.1.

This amendment also addresses several new statutes including: 18 U.S.C. 1030(a)(7), which prohibits extortion by threats to damage or impair a non-public government computer or a computer of a financial institution (18 U.S.C. 1030(e)(2) (A) or (B)); 18 U.S.C. 1831, which prohibits "economic espionage"; and 18 U.S.C. 1832, which prohibits theft of "trade secrets" as broadly defined at 18 U.S.C. 1839. Offenses under 18 U.S.C. 1030(a)(7) are referenced to the extortion guideline 2B3.2; offenses under 18 U.S.C. 1031 and 1832 are referenced to § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft).

A specific offense characteristic has been added to § 2B1.1 to increase offense levels for those defendants who misappropriate a trade secret with the knowledge that the information will benefit a foreign government. This behavior is "economic espionage" as proscribed by 18 U.S.C. 1831. Congress set a maximum sentence of 15 years for those convicted of "economic espionage". A maximum sentence of ten years was set forth for those convicted of "theft of trade secrets". The proposed 2-level increase for "economic espionage" is in recognition of Congress' assessment that providing a victim's trade secrets to foreign interests is a more serious offense than providing that victim's trade secrets to a domestic competitor.

A specific offense characteristic has been added to § 2B2.3 which will increase the offense levels for those who trespass in a non-public database to the extent that the trespass creates financial loss as measured by the table in § 2B1.1.

Special instructions have been added to §§ 2B1.3 and 2F1.1 to the effect that the minimum guideline sentence for those convicted under 18 U.S.C. 1030(a)(4) and (5) is six months' imprisonment. This has been done pursuant to Congress' direction in the Antiterrorism and Effective Death Penalty Act of 1996.

Salient among the commentary changes is an addition to § 2B1.1, Application Note 2, which expands the definition of "loss" for unlawfully

accessing, or exceeding authorized access to, a "protected computer" as defined in 18 U.S.C. 1030(e)(2) (A) or (B). "Loss" in that context will now include "the reasonable cost to the victim of conducting a damage assessment, restoring the system and data to their condition prior to the offense, and any lost revenue or costs incurred due to interruption of service." Upward departures are invited in § 2B1.1, Application Notes 15 and 16, where unauthorized access to a computer invades a substantial privacy interest or is in furtherance of a "broader criminal purpose".

Finally, this amendment changes the Statutory Index reference for computer crimes under 18 U.S.C. 1030(a)(2)(3) and (5) from the fraud guideline, § 2F1.1, to more appropriate subsections of Part B—Offenses Involving Property. These new references accommodate changes made to 18 U.S.C. 1030 by the National Information Infrastructure Protection Act of 1996.

Proposed Amendment: Section 2B1.1(b) is amended by inserting at the end the following new subdivision:

"(7) If the offense involved misappropriation of a trade secret and the defendant knew or intended that the offense would benefit any foreign government, foreign instrumentality, or foreign agent, increase by [2] levels.".

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 1 by inserting as the second and third sentences the following:

"'Trade secret' is defined in 18 U.S.C. 1839(3). "Foreign instrumentality" and "foreign agent" are defined in 18 U.S.C. § 1839 (1) and (2), respectively.".

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 2 by inserting after the fourth paragraph the following new paragraph:

"In an offense involving unlawfully accessing, or exceeding authorized access to, a 'protected computer' as defined in 18 U.S.C. 1030(e)(2) (A) or (B), "loss" includes the reasonable cost to the victim of conducting a damage assessment, restoring the system and data to their condition prior to the offense, and any lost revenue due to interruption of service.".

The Commentary to § 2B1.1 captioned "Application Notes" is amended by inserting at the end the following new notes:

"15. In cases where the loss determined under subsection (b)(1) does not fully capture the harmfulness of the conduct, an upward departure may be warranted. For example, the theft of personal information or writings (e.g., medical records, educational records, a diary) may involve a substantial invasion of a privacy interest that would not be addressed by the monetary loss provisions of subsection (b)(1).

16. In cases involving theft of information from a "protected computer", an upward departure may be warranted where the defendant sought the stolen information to further a broader criminal purpose.".

Section 2B1.3 is amended by inserting after subsection (c) the following new subsection:

"(d) Special Instruction

"(1) If the defendant is convicted under 18 U.S.C. 1030(a)(5), the minimum guideline sentence, notwithstanding any other adjustment, shall be six months' imprisonment.".

The Commentary to § 2B1.3 is amended by inserting at the end the following:

"Background: Subsection (d) implements the instruction to the Commission in section 805(c) of Public Law 104–132.".

Section 2B2.3(b) is amended by inserting after subdivision (2) the following new subdivision:

"(3) If the offense involved invasion of a protected computer resulting in a loss exceeding [$2000], increase by the corresponding number of levels from the table in § 2F1.1.".

The Commentary to § 2B2.3 captioned "Application Note" is amended in Note 1 by inserting "For purposes of this guideline—" before "'Firearm'"; and by inserting as the second paragraph the following:

"'Protected computer' means a computer described in 18 U.S.C. 1030(e)(2)(A) or (B).".

The Commentary to § 2B2.3 captioned "Application Note" is amended by inserting the following additional note:

"2. Valuation of loss is discussed in the Commentary to § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft).".

The Commentary to § 2B2.3 captioned "Application Note" is amended by deleting "Note" and inserting in lieu thereof "Notes".

The Commentary to § 2B3.2 captioned "Background" is amended by inserting the following sentence at the end:

"This guideline also applies to offenses under 18 U.S.C. 1030(a)(7) involving a threat to impair the operation of a 'protected computer.'".

Section 2F1.1 is amended by inserting the following new subsection:

"(c) Special Instruction

(1) If the defendant is convicted under 18 U.S.C. 1030(a)(4), the minimum guideline sentence, notwithstanding any other adjustment, shall be six months' imprisonment.".

The Commentary to § 2F1.1 captioned "Background" is amended by inserting as the last paragraph the following:

" Subsection (c) implements the instruction to the Commission in section 805 (c) of Public Law 104–132.".

Appendix A (Statutory Index) is amended by inserting, in the appropriate place by title and section, the following:

"18 U.S.C. 1831 2B1.1";
"18 U.S.C. 1832 2B1.1";
"18 U.S.C. 1030(a)(7) 2B3.2";

In the line referenced to "18 U.S.C. 1030(a)(2)" by deleting "2F1.1" and inserting in lieu thereof "2B1.1";

In the line referenced to "18 U.S.C. 1030(a)(3)" by deleting "2F1.1" and inserting in lieu thereof "2B2.3";

In the line referenced to "18 U.S.C. 1030(a)(5)" by deleting "2F1.1" and inserting in lieu thereof "2B1.3".

8(A). Synopsis of Proposed Amendment: The Drug-Induced Rape Prevention Act of 1996 raises the penalty for offenses involving trafficking in flunitrazepam, a Schedule IV controlled substance, from a maximum of three years' imprisonment for any amount of the drug to 20 years' imprisonment for one gram of flunitrazepam and to not more than five years' imprisonment for 30 milligrams of flunitrazepam. The maximum sentence for importing and exporting offenses involving flunitrazepam is raised to twenty years' imprisonment regardless of weight.

The Act also instructs the Sentencing Commission to "review and amend as appropriate the sentencing guidelines for offenses involving flunitrazepam" and to ensure the guidelines reflect the serious nature of offenses involving flunitrazepam.

Under the revised statute, trafficking in precisely one gram of flunitrazepam will have a maximum penalty of 20 years' imprisonment and trafficking in precisely 30 milligrams of flunitrazepam will have a maximum of five years' imprisonment. Trafficking in any amount other than those specified will be governed by 21 U.S.C. 841(b)(1)(C)(2), which provides a maximum penalty for Schedule IV controlled substances of not more than three years' imprisonment.

The following proposed amendment assumes Congress meant to treat flunitrazepam in the trafficking statute as it did in the export/import statute (i.e., raise the maximum penalty from three to twenty years' imprisonment). Accordingly, this amendment treats flunitrazepam as a Schedule I and II depressant because Schedule I and II depressants also carry a maximum penalty of twenty years' imprisonment.

The offense levels are bracketed to indicate the possibility that the offense levels ultimately adopted for flunitrazepam may be higher than those indicated in this amendment.

The Act also raises the maximum sentence for simple possession of flunitrazepam from one year's imprisonment to three years. The new statute treats the simple possession of flunitrazepam as more serious than the simple possession of personal amounts of any other controlled substance, in that it establishes a three-year maximum sentence of imprisonment as compared to one year for all other controlled substances (except 5 or more grams of crack).

There are two options for addressing the increase in the maximum sentence for simple possession of flunitrazepam. Currently, flunitrazepam has a base offense level of 4. The first option is to treat flunitrazepam the same as the simple possession of other Schedule I and II depressants (as it is in the proposed trafficking guideline). This option would effect no change in the current guideline. The second option, as shown in the amendment below, is to change the base offense level for flunitrazepam from level 4 to level 8. This option raises the base offense level to the same base offense level as heroin, other Schedule I and II opiates, and cocaine base.

Proposed Amendment: Section 2D1.1(c) (10)–(17) is amended by inserting ", Flunitrazepam" immediately following "II Depressants" wherever it appears.

Section 2D1.1(c)(14)–(17) is amended by inserting "(except Flunitrazepam)" immediately following "Schedule IV substances" wherever it appears.

Section 2D1.1(c) is amended in the section titled "*Notes to the Drug Quantity Table" in Note (F) by inserting "or flunitrazepam" following "II Depressants", and by inserting "(except flunitrazepam)" following "IV substances".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 in the Drug Equivalency Tables in the subsection captioned "Schedule I or II Depressants**" by inserting "or Flunitrazepam" immediately following "or II Depressants"; by inserting "or Flunitrazepam" immediately following "II Depressant"; by inserting ", flunitrazepam" immediately following "or II depressants"; and by inserting "(except flunitrazepam)" immediately following "IV substances".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 in the Drug Equivalency Tables in the subsection captioned "Schedule IV Substances**"; by inserting "(except Flunitrazepam)" immediately following "IV Substances"; by inserting "(except Flunitrazepam)" immediately following "IV Substance"; and by inserting "(except flunitrazepam)" immediately following "Schedule IV".

Section 2D2.1(a)(1) is amended by deleting "or" before "cocaine" and by inserting ", or flunitrazepam" following "base".

(B). Issue for Comment: The Drug-Induced Rape Prevention and Punishment Act of 1996 included a section concerning "date rape" and related crimes. This section amends 21 U.S.C. 841(b) by adding:

Whoever, with intent to commit a crime of violence, as defined in section 16 of title 18, United States Code (including rape), against an individual, violates subsection (a) by distributing a controlled substance to that individual without that individual's knowledge, shall be imprisoned not more than 20 years and fined in accordance with title 18, United States Code.

"Without the individual's knowledge" is defined by the statute as meaning "that the individual is unaware that a substance with an ability to alter that individual's ability to appraise conduct or to decline participation in or communicate unwillingness to participate in conduct is administered to the individual.".

Currently, the guidelines cover the commission of violent offenses as well as attempts to commit these offenses; they do not have a general mechanism covering offenses committed with intent to commit another crime. Section 2A3.1 (Criminal Sexual Abuse) does not currently include intent but does have an enhancement for the use of controlled substances to commit criminal sexual abuse. Specifically, this guideline contains a 4-level enhancement above the base offense level of 27 for offenses committed by means listed in 18 U.S.C. 2241 (a) or (b), which includes the use of drugs or intoxicants to commit the offense.

The Commission solicits comment as to how offenses committed under this section of the Drug Induced Rape Prevention Act of 1996 should be included in the guidelines. Should the Commission treat these offenses as an attempt and reference them to the underlying crimes of violence? If these crimes are seen as something less than an attempt, how should the guidelines cover the offenses?

Chapter Two, Part D—Offenses Involving Drugs

9(A). Synopsis of Proposed Amendment: Section 101 of the Comprehensive Methamphetamine Control Act of 1996 adds listed chemicals to 21 U.S.C. 959. Section 959(a) makes it unlawful to manufacture or distribute a schedule I or II controlled substance intending or knowing that such substance will be unlawfully imported into the United States. Section 959(b) makes it unlawful for a United States citizen, or any person aboard an aircraft owned by a United States citizen or an aircraft registered in the United States, to manufacture, distribute, or possess with intent to distribute a controlled substance. The penalty for such an offense involving a listed chemical is a fine in accordance with title 18, United States Code, not more than ten years' imprisonment, or both. This amendment references these statutes in the Statutory Index to § 2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical).

Section 201 of the Act makes an addition to Title 21, United States Code (simple possession), which states:

It shall be unlawful for any person knowingly or intentionally to possess any list I chemical obtained pursuant to or under authority of a registration issued to that person . . . if that registration has been revoked or suspended, if that registration has expired, or if the registrant has ceased to do business in the manner contemplated by his registration.

This amendment adds list I chemicals to § 2D2.1 (Unlawful Possession: Attempt or Conspiracy). This guideline contains a base offense level of eight for Schedule I and II opiates, their analogues, and cocaine base; a base offense level of 6 for cocaine PCP, and LSD; and a base offense level of 4 for all other controlled substances. This amendment includes list I chemicals with other controlled substances, thereby having a base offense level of four.

Section 209 of the Act makes several technical changes to 21 U.S.C. 802 by correcting the spelling for several precursors. The only correction for the guidelines is to correct the spelling of isosafrole, a list I chemical.

Proposed Amendment: Section 2D2.1(a)(3) is amended by inserting "or a list I chemical" after "other controlled substance".

Appendix A (Statutory Index) in the line referenced to "21 U.S.C. 959" is amended by inserting ", 2D1.11" following "2D1.1".

Appendix A (Statutory Index) is amended by inserting at the appropriate place by line and title the following:

"21 U.S.C. 960(d)(7) 2D1.11".

(B). Issue for Comment: Section 203 amends 21 U.S.C. 843(d) to state that anyone who violates 21 U.S.C. 843(a) (6) or (7) (possession, manufacture or distribution of certain laboratory equipment) with the intent to manufacture or facilitate the manufacture of methamphetamine is subject to a term of imprisonment of up to ten years. The statute gives instructions to the Commission to amend the sentencing guidelines to ensure that violations of this section are treated as a significant violation.

Violations of 21 U.S.C. 843(a) (6) or (7) currently carry a maximum sentence of imprisonment of four years and cover knowing, intending, or having reasonable cause to believe the equipment will be used to manufacture a controlled substance. The guidelines provide a base offense level of 12 if the defendant intended to manufacture a controlled substance and 9 if the defendant had reasonable cause to believe the equipment would be used to manufacture a controlled substance. The level 12 was used to correspond to the lowest offense level for methamphetamine in the Drug Quantity Table and the lowest level of the Chemical Quantity Table. Additionally, the guideline contains a cross reference to § 2D1.1 if the offense involved the actual manufacture of a controlled substance.

The Commission requests comment on the proper offense level for possession of equipment (i.e., a round-bottomed three-necked flask, tableting machine, gelatin capsule, or any equipment, chemical, product, or material used to manufacture a controlled substance) to manufacture methamphetamine. Should there be an enhancement if the equipment is used to manufacture methamphetamine and, if so, how many levels?

10(A). Synopsis of Proposed Amendment: This multi-part amendment implements sections 301 and 303 of the Comprehensive Methamphetamine Control Act of 1996. Among other things, the Act generally instructs the Commission to increase the penalties for unlawful manufacturing, importing, exporting and trafficking of methamphetamine. This amendment is in four parts, followed by a fifth part requesting comment.

Part A of this amendment directly increases the penalties for methamphetamine by reducing by one-half the quantity at each offense level found in the Drug Quantity Table at § 2D1.1(c). This proposal has the same effect on methamphetamine guideline penalties that would have occurred if Congress had passed legislation to reduce by half the quantities to trigger the mandatory minimum penalties under 21 U.S.C. 841.

For example, offense level 26, which is equivalent to the five-year mandatory minimum sentence, is currently applied when the amount of methamphetamine (actual) falls between 10 and 40 grams, or the amount of methamphetamine mixture is between 100 and 400 grams. The amendment reduces the amounts in question by one-half, to 5 to 20 grams for methamphetamine (actual) and 50 to 200 grams for methamphetamine mixture. A corresponding change is made at level 32, which is equivalent to the ten-year mandatory minimum sentence. Other offense levels have been changed to conform with these changes.

In addition, a conforming change is made to the drug equivalency tables, doubling the amount of marijuana to be used in multi-drug crimes involving methamphetamine, methamphetamine (actual), and "ice."

Finally, Note "(B)" following the Drug Quantity Table is rewritten to emphasize that the offense level for methamphetamine (or PCP) mixtures is to be determined by the quantity (weight) of the actual controlled substance in the mixture whenever the purity can be determined and exceeds 10 percent.

Part B of this amendment proposes, either as an alternative or an addition to Part A, changes in the guidelines directed to the importation of methamphetamine and precursor chemicals. These changes would add a new specific offense characteristic for the unlawful importation of methamphetamine or its precursor drugs. Multiple options regarding the formulation of this enhancement are presented. Accompanying commentary would indicate that this new adjustment is not to be applied in addition to the enhancement available under § 2D1.1(b)(2), which also relates to importation. A third option proposes an alternative approach of an invited upward departure if the offense involved importation of methamphetamine or listed chemicals.

Part C of this amendment proposes, either as an alternative or an addition to Part A, changes in the guidelines to address environmental damage associated with the manufacture of methamphetamine. This proposed amendment adds environmental damage as a ground for either a specific offense characteristic enhancement (Option 1) or an invited upward departure (Option 2) to §§ 2D1.1, 2D1.11, 2D1.12, and 2D1.13.

Congress specifically asked the Commission to address the adequacy of penalties for violations of environmental laws which are covered by guidelines §§ 2D1.11, 2D1.12, and 2D1.13. Although the drug trafficking guideline was not specifically addressed in this directive, it is reasonable for the Commission to consider similar means of addressing adverse environmental impact in guideline § 2D1.1. As a result, these changes would also affect sentencing under that guideline.

Part D of this amendment proposes, either as an alternative or an addition to Part A, changes to the guidelines which would add provisions relating to the use of a special skill in the manufacture of controlled substances. The amendments would add language to § 2D1.1 (comment. n. 8) indicating that persons involved in the illegal manufacture of controlled substances may be subject to an enhancement under § 3B1.3 (Abuse of Position of Trust or Use of a Special Skill). It also offers, as an option, eliminating language in existing guideline § 3B1.3 that currently prohibits the Special Skill enhancement from being applied cumulatively with an enhancement for Aggravating Role. This change is not limited to methamphetamine cases, but would apply to all affected cases.

Part E is a section requesting comment on specific issues. First, the section requests comment on other aggravating factors which distinguish methamphetamine offenses and which should be included in the guidelines. Second, the section requests comment on how the proposed aggravating factors (Parts B through D) might be coupled with lesser penalty increases in Part A. Third, comment is requested on whether changes in methamphetamine penalties as proposed in Part A should lead to further changes in the Chemical Quantity Table in § 2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy). (In this regard, it should be noted that the Commission has promulgated, effective May 1, 1997, an emergency amendment that generally increases the offense levels in the Chemical Quantity Table by two levels. This amendment responds to the congressional directive in section 302 of the Comprehensive Methamphetamine Control Act of 1996).

Part A

Proposed Amendment: Section 2D1.1(c)(1) is amended by deleting:

"30 KG or more of Methamphetamine, or 3 KG or more of Methamphetamine (actual), or 3 KG or more of 'Ice' ",

and inserting in lieu thereof:

"15 KG or more of Methamphetamine, or 1.5 KG or more of Methamphetamine (actual), or 1.5 KG or more of 'Ice' ".

Section 2D1.1(c)(2) is amended by deleting:

"At least 10 KG but less than 30 KG of Methamphetamine, or at least 1 KG but less than 3 KG of Methamphetamine (actual), or at least 1 KG but less than 3 KG of 'Ice' ",

and inserting in lieu thereof:

"At least 5 KG but less than 15 KG of Methamphetamine, or at least .5 KG but less than 1.5 KG of Methamphetamine (actual), or at least .5 KG but less than 1.5 KG of 'Ice' ".

Section 2D1.1(c)(3) is amended by deleting:

"At least 3 KG but less than 10 KG of Methamphetamine, or at least 300 G but less than 1 KG of Methamphetamine (actual), or at least 300 G but less than 1 KG of 'Ice' ",

and inserting in lieu thereof:

"At least 1.5 KG but less than 5 KG of Methamphetamine, or at least 150 G but less than 500 G of Methamphetamine (actual), or at least 150 G but less than 500 G of 'Ice' ".

Section 2D1.1(c)(4) is amended by deleting:

"At least 1 KG but less than 3 KG of Methamphetamine, or at least 100 G but less than 300 G of Methamphetamine (actual), or at least 100 G but less than 300 G of 'Ice' ",

and inserting in lieu thereof:

"At least 500 G but less than 1.5 KG of Methamphetamine, or at least 50 G but less than 150 G of Methamphetamine (actual), or at least 50 G but less than 150 G of 'Ice' ".

Section 2D1.1(c)(5) is amended by deleting:

"At least 700 G but less than 1 KG of Methamphetamine, or at least 70 G but less than 100 G of Methamphetamine (actual), or at least 70 G but less than 100 G of 'Ice' ",

and inserting in lieu thereof:

"At least 350 G but less than 500 G of Methamphetamine, or at least 35 G but less than 50 G of Methamphetamine (actual), or at least 35 G but less than 50 G of 'Ice' ".

Section 2D1.1(c)(6) is amended by deleting:

"At least 400 G but less than 700 G of Methamphetamine, or at least 40 G but less than 70 G of Methamphetamine (actual), or at least 40 G but less than 70 G of 'Ice' ",

and inserting in lieu thereof:

"At least 200 G but less than 350 G or Methamphetamine, or at least 20 G but less than 35 G of Methamphetamine (actual), or at least 20 G but less than 35 G of 'Ice' ".

Section 2D1.1(c)(7) is amended by deleting:

"At least 100 G but less than 400 G of Methamphetamine, or at least 10 G but less than 40 G of Methamphetamine (actual), or at least 10 G but less than 40 G of 'Ice' ",

and inserting in lieu thereof:

"At least 50 G but less than 200 G of Methamphetamine, or at least 5 G but less than 20 G of Methamphetamine (actual), or at least 5 G but less than 20 G of 'Ice' ".

Section 2D1.1(c)(8) is amended by deleting:

"At least 80 G but less than 100 G of Methamphetamine, or at least 8 G but less than 10 G of Methamphetamine (actual), or at least 8 G but less than 10 G of 'Ice' ",

and inserting in lieu thereof:

"At least 40 G but less than 50 G of Methamphetamine, or at least 4 G but less than 5 G of Methamphetamine (actual), or at least 4 G but less than 5 G of 'Ice' ".

Section 2D1.1(c)(9) is amended by deleting:

"At least 60 G but less than 80 G of Methamphetamine, or at least 6 G but less than 8 G of Methamphetamine (actual), or at least 6 G but less than 8 G of 'Ice' ",

and inserting in lieu thereof:

"At least 30 G but less than 40 G of Methamphetamine, or at least 3 G but less than 4 G of Methamphetamine (actual), or at least 3 G but less than 4 G of 'Ice' ".

Section 2D1.1(c)(10) is amended by deleting:

"At least 40 G but less than 60 G of Methamphetamine, or at least 4 G but less than 6 G of Methamphetamine (actual), or at least 4 G but less than 6 G of 'Ice' ",

and inserting in lieu thereof:

"At least 20 G but less than 30 G of Methamphetamine, or at least 2 G but less than 3 G of Methamphetamine (actual), or at least 2 G but less than 3 G of 'Ice' ".

Section 2D1.1(c)(11) is amended by deleting:

"At least 20 G but less than 40 G of Methamphetamine, or at least 2 G but less than 4 G of Methamphetamine (actual), or at least 2 G but less than 4 G of 'Ice' ",

and inserting in lieu thereof:

"At least 10 G but less than 20 G of Methamphetamine, or at least 1 G but less than 2 G of Methamphetamine (actual), or at least 1 G but less than 2 G of 'Ice' ".

Section 2D1.1(c)(12) is amended by deleting:

"At least 10 G but less than 20 G of Methamphetamine, or at least 1 G but less than 2 G of Methamphetamine (actual), or at least 1 G but less than 2 G of 'Ice' ",

and inserting in lieu thereof:

"At least 5 G but less than 10 G Methamphetamine, or at least 500 MG but less than 1 G of Methamphetamine (actual), or at least 500 MG but less than 1 G of 'Ice' ".

Section 2D1.1(c)(13) is amended by deleting:

"At least 5 G but less than 10 G of Methamphetamine, or at least 500 MG but less than 1 G of Methamphetamine (actual), or at least 500 MG but less than 1 G of 'Ice' ",

and inserting in lieu thereof:

"Less than 5 G of Methamphetamine, or less than 500 MG Methamphetamine (actual), or less than 500 MG of 'Ice' ".

Section 2D1.1(c)(14) is amended by deleting:

"Less than 5 G of Methamphetamine, or less than 500 MG of Methamphetamine (actual), or less than 500 MG of 'Ice' ".

Section 2D1.1(c) is amended in the notes following the Drug Quantity Table by deleting the last sentence in Note B and inserting in lieu thereof the following:

"In the case of a mixture or substance containing PCP or methamphetamine, if the purity of the mixture or substance can be determined and exceeds 10 percent, then the weight of the actual controlled substance in the mixture shall be used to determine the offense level. In any other case involving a mixture or substance containing PCP or methamphetamine, use the weight of the mixture containing PCP or methamphetamine to determine the offense level.".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10(d) in the Drug Equivalency Tables in the subdivision captioned "Cocaine and Other Schedules I and II Stimulants (and their immediate precursors)" by deleting:

"1 gm of Methamphetamine =	1 kg of marihuana
1 gm of Methamphetamine (Actual) =	10 kg of marihuana
1 gm of 'Ice' = ...	10 kg of marihuana",

and inserting in lieu thereof:

"1 gm of Methamphetamine =	2 kg of marihuana
1 gm of Methamphetamine (actual) =	20 kg of marihuana
1 gm of 'Ice' = ...	20 kg of marihuana".

Part B

Section 2D1.1(b) is amended by renumbering subdivision (4) as subdivision (5); and by inserting after subdivision (3) the following new subdivision (4):

[Option 1: "(4) If the offense involved the importation of methamphetamine, or the manufacture of methamphetamine from listed chemicals that the defendant knew were imported unlawfully, increase by [2] levels."].

[Option 2: "(4) If (A) the offense involved the importation of methamphetamine [or the manufacture of methamphetamine from listed chemicals that the defendant knew were imported unlawfully,] and (B) the defendant [is subject to an adjustment under § 3B1.1 (Aggravating Role)][is not subjected to an adjustment under § 3B1.2 (Mitigating Role)], increase by 2 levels.]".

[Both Options: The Commentary to § 2D1.1 captioned "Application Notes" is amended by inserting the following additional note:

"19. If the offense involved importation of methamphetamine, and an adjustment from subsection (b)(2) applies, do not apply subsection (b)(4).".].

[Option 3: The Commentary to § 2D1.1 captioned "Application Notes" is amended by inserting the following additional note:

"19. If the offense involved the unlawful importation of methamphetamine, or the manufacture of methamphetamine from listed chemicals that the defendant knew were imported unlawfully, an upward departure may be warranted [, particularly if the defendant had an aggravating role in the offense under § 3B1.1 (Aggravating Role)].".].

Part C

[Option 1: Section 2D1.1(b) is amended renumbering subsection (4) as subsection (5) and by inserting the following as the new subsection (4):

"(4) If the offense involved a discharge or emission into the environment of a hazardous or toxic substance or created a substantial risk of environmental harm, increase by [2–6] levels.".]

[Option 2: The Commentary to § 2D1.1 captioned "Application Notes" is amended by inserting the following additional note:

"19. If the offense involved a discharge or emission into the environment of a hazardous or toxic substance or created a substantial risk of environmental harm, an upward departure may be warranted.".].

[Option 1: Section 2D1.11(b) is amended by adding the following new subdivision:

"(3) If the offense involved a discharge or emission into the environment of a hazardous or toxic substance or created a substantial risk of environmental harm, increase by [2–6] levels.".].

[Option 2: The Commentary to § 2D1.11 captioned "Application Notes" is amended by inserting the following new note:

"8. If the offense involved a discharge or emission into the environment of a hazardous or toxic substance or created a substantial risk of environmental harm, an upward departure may be warranted.".].

[Option 1: Section 2D1.12 is amended by renumbering subsection (b) as (c) and by inserting the following new subsection:

"(b) Specific Offense Characteristic

(1) If the offense involved a discharge or emission into the environment of a hazardous or toxic substance or created a substantial risk of environmental harm, increase by [2–6] levels.".].

The Commentary to § 2D1.12 captioned "Application Notes" is amended by inserting the following new note:

"3. If the offense involved a discharge or emission into the environment of a hazardous or toxic substance or created a substantial risk of environmental harm, an upward departure may be warranted.".].

[Option 1: Section 2D1.13 is amended by inserting the following new subsection:

"(b) Specific Offense Characteristic

(1) If the offense involved a discharge or emission into the environment of a hazardous or toxic substance or created a substantial risk of environmental harm, increase by [2–6] levels.".].

[Option 2: The Commentary to § 2D1.13 captioned "Application Note" is amended by deleting "Note" and inserting in lieu thereof "Notes" and by inserting the following new note:

"2. If the offense involved a discharge or emission into the environment of a hazardous or toxic substance or created a substantial risk of environmental harm, an upward departure may be warranted.".].

Part D

The Commentary to § 2D1.1 captioned "Application Notes" is amended in the second sentence of Note 8 by inserting "and other persons with highly developed skills" immediately following "professionals" and by inserting "manufacturing and" immediately following "drug"; in the third sentence by deleting "professionals" and inserting in lieu thereof "persons" and by inserting "'cooks' (depending on the level of skill and sophistication)," immediately before "accountants".

Section 3B1.3 is amended by deleting the third sentence.

The Commentary to 3B1.3 captioned "Application Notes" is amended in Note 2 by inserting the following as the last sentence:

"Depending on their level of skill and sophistication, persons involved in the manufacture of methamphetamine or other controlled substances, including individuals described as "cooks," may be subject to this enhancement.".

Part E

Issue for Comment: The Sentencing Commission requests comment on the following issues related to the above amendments:

(a) The existence of other aggravating factors which distinguish methamphetamine offenses and should be recognized as such under the guidelines; and

(b) Whether and how the proposed aggravating factors listed in Parts B through D, and any other factors that meaningfully distinguish methamphetamine cases, might be combined with quantity-related increases in punishment of lesser magnitude than those proposed in Part A.

(c) If the changes in Part A are made, conforming changes to 2D1.11 may be necessary. The Commission invites comment on how the offense levels in the chemical Quantity Table should be changed to reflect the changes in the Drug Quantity Table.

11. Synopsis of Proposed Amendment: This amendment makes Appendix A (Statutory Index) more comprehensive based on newly enacted legislation described below.

(A) Health Insurance Portability and Accountability Act of 1996

1. Section 242 creates a new crime at 18 U.S.C. 1347, with a maximum penalty of 10 years imprisonment, for schemes to defraud or to obtain funds by false pretenses from any health care benefit program. Penalties increase to 20 years or life imprisonment, respectively, if "serious bodily injury" or death results from the violation. Because this new offense involves fraud, it is recommended that 18 U.S.C.1347 be referenced to § 2F1.1 (Fraud and Deceit).

2. Section 243 creates a new crime at 18 U.S.C. 669 for the theft, embezzlement, or intentional misapplication of the funds, property, or assets of a health care benefit program. The maximum penalty is 10 years imprisonment, but the statutory maximum drops to 1 year if the value of the property involved is less than $100. Because this new offense involves fraud, it is recommended that 18 U.S.C. 669 be referenced to § 2F1.1 (Fraud and Deceit).

3. Section 244 creates a new crime at 18 U.S.C. 1035 for false statements relating to health care matters, with a maximum penalty of 5 years' imprisonment. Because this new offense involves fraud, it is recommended that 18 U.S.C. 1035 be referenced to § 2F1.1.

4. Section 245 creates a new crime at 18 U.S.C. 1518 for obstruction of a criminal investigation of a health care offense, with a maximum penalty of 5 years' imprisonment. Because this new offense involves obstruction of justice, it is recommended that 18 U.S.C. 1518 be referenced to § 2J1.2 (Obstruction of Justice).

(B) Omnibus Consolidated Appropriations for Fiscal Year 1997

1. Section 648 reclassifies as Class B felonies the counterfeit offenses at 18 U.S.C. 474 (Plates or stones for counterfeiting obligations or securities) and 474A (Deterrents to counterfeiting of obligations and securities) (previously Class C felonies), which effectively increases the statutory maximum penalties for these offenses from 12 years to 25 years. The effective date is the date of enactment. The legislation does not contain any directions to the Commission regarding the drafting of sentencing guidelines. Appendix A references violations of § 474 to § 2B5.1 (Offenses Involving Counterfeit Bearer Obligations of the United States) and § 2F1.1 (Fraud); Appendix A does not currently reference violations of § 474A. It is recommended that 18 U.S.C. 474A be referenced to § 2B5.1.

2. Section 648 creates a new crime at 18 U.S.C. 514 for offenses involving fictitious obligations. This new provision, classified as a Class B felony, prohibits the production and transfer, with the intent to defraud, of any false or fictitious instrument, document or other item representing through scheme or artifice, to be an actual security or other financial instrument issued under the authority of the United States, a foreign government, a State or other political subdivision of the United States, or an organization. Section 514 also prohibits the use of the mails, wire, radio or other electronic communication to move the false instruments through interstate or foreign commerce. Section 514 covers attempts and imposes the same penalties on attempts as the completed substantive offense. The effective date is the date of enactment. The legislation does not contain any directions to the Commission regarding the drafting of sentencing guidelines.

The Financial Crimes Unit of the U.S. Secret Service explained that this legislation stems from the criminal activity of groups like the Freeman of Montana; these groups manufacture "bogus" financial instruments that are transferred as if the instruments were real. As opposed to a "counterfeit" item, which purports to be genuine but is not because it has been falsely made or manufactured in its entirety, a "fictitious obligation" is an instrument that cannot be genuine because the instrument is entirely "made-up" or "invented". The counterfeiting statutes do not cover manufacturing of fictitious instruments because such conduct does not involve the counterfeiting of any existing financial obligation or instrument.

The amendment below references 18 U.S.C. 514 to § 2F1.1 (Fraud and Deceit). The conduct involved seems more like fraud than counterfeiting because (1) the manufactured obligation is an entirely phony instrument and not a copy of a legitimate type of financial instrument; and (2) this conduct does not seem to raise the public policy interest in protecting the integrity of government obligations that counterfeiting offenses raise because the United States has no obligation to pay on a "bogus" type of financial instrument. Further, § 514 includes conduct comprising mail and wire fraud. The Commission can monitor the types of financial instruments involved in § 514 offenses to determine whether a reference to the counterfeiting guideline (§ 2B5.1) is also necessary.

Proposed Amendment: Appendix A (Statutory Index) is amended by inserting the following at the appropriate place by title and section:

"18 U.S.C. 474A 2B5.1";
"18 U.S.C. 514 2F1.1";
"18 U.S.C. 669 2F1.1";
"18 U.S.C. 1035 2F1.1";
"18 U.S.C. 1347 2F1.1";
"18 U.S.C. 1518 2J1.2".

Fraud, Theft, and Tax Offenses—Chapter Two, Parts B, C, and Q (Addendum to Proposed Amendment #18 in the Guideline Amendments for Public Comment—Part I, 62 FR 151, Dated January 2, 1997)

12. Synopsis of Proposed Amendment: (A) Generally conforms the loss enhancements to those proposed in Amendment #18, and (B) proposes a one level increase in the base offense level of each of these guidelines. These latter changes are designed to avoid any unintended decreases in offense level of the cases sentenced under these guidelines that may result from the adoption of Amendment #18.

Each of the guidelines affected by this amendment has a specific offense characteristic that references the loss table in § 2F1.1. For example, § 2B3.3 (Blackmail and Similar Forms of Extortion) has a specific offense characteristic that provides that "If the greater of the amount obtained or demanded exceeded $2,000," the offense level should be increased "by the corresponding number of levels from the table in § 2F1.1." Among other provisions, options one and three of Amendment #18 would increase the amount of loss required to trigger the first increase for loss from $2,000 to $5,000. Consequently, options one and three, if adopted, would produce a one-level reduction compared to the current guideline for those cases sentenced under each of the guidelines listed in this amendment if the loss amount was between $2,000 and $5,000. Because of the nature of the loss table proposed in option two (the first trigger of an increase for loss remains at $2,000), if that option is adopted the conforming changes in this amendment would be unnecessary.

It should be noted that, because these guidelines listed in this amendment do not have an enhancement for more-than-minimal planning so they would be affected in a more complex way by Amendment #18 than guidelines that currently have that enhancement. The package of proposals in Amendment #18 would eliminate the two-level enhancement for more-than-minimal planning from guidelines where it currently exists, build that two-level increase into the loss table, and add a new enhancement for "sophisticated means." Amendment #18 also proposes significant increases for loss amounts near the top of the table. Because the guidelines listed in this amendment reference the loss table, the changes to the loss tables proposed by Amendment #18 would cause increases to offense levels for cases sentenced under these guidelines (under options one and three, for loss amounts over $5,000; under option two, loss over $2,000). Moreover, any resulting increases in offense levels for cases sentenced under the guidelines will not be offset—even partially—by the elimination of the enhancement for more-than-minimal planning.

Proposed Amendment: Section 2B3.3(a) is amended by deleting "9" and inserting in lieu thereof "10".

Section 2B3.3(b)(1) is amended by deleting "$2,000" and inserting in lieu thereof "$5,000".

Section 2B4.1(a) is amended by deleting "8" and inserting in lieu thereof "9".

Section 2B4.1(b)(1) is amended by deleting "$2,000" and inserting in lieu thereof "$5,000".

Section 2B5.1(a) is amended by deleting "9" and inserting in lieu thereof "10".

Section 2B5.1(b)(1) is amended by deleting "$2,000" and inserting in lieu thereof "$5,000".

Section 2B5.3(a) is amended by deleting "6" and inserting in lieu thereof "7".

Section 2B5.3(b)(1) is amended by deleting "$2,000" and inserting in lieu thereof "$5,000".

Section 2B6.1(a) is amended by deleting "8" and inserting in lieu thereof "9".

Section 2B6.1(b)(1) is amended by deleting "$2,000" and inserting in lieu thereof "$5,000".

Section 2C1.1(a) is amended by deleting "10" and inserting in lieu thereof "11".

Section 2C1.1(b)(2)(A) is amended by deleting "$2,000" and inserting in lieu thereof "$5,000".

Section 2C1.2(a) is amended by deleting "7" and inserting in lieu thereof "8".

Section 2C1.2(b)(2)(A) is amended by deleting "$2,000" and inserting in lieu thereof "$5,000".

Section 2C1.6(a) is amended by deleting "7" and inserting in lieu thereof "8".

Section 2C1.6(b)(1) is amended by deleting "$2,000" and inserting in lieu thereof "$5,000".

Section 2C1.7(a) is amended by deleting "10" and inserting in lieu thereof "11".

Section 2C1.7(b)(1)(A) is amended by deleting "$2,000" and inserting in lieu thereof "$5,000".

Section 2Q2.1(a) is amended by deleting "6" and inserting in lieu thereof "7".

Section 2Q2.1(b)(3)(A) is amended by deleting "$2,000" and inserting in lieu thereof "$5,000".

Section 2B4.1 (Bribery in Procurement of Bank Loan and Other Commercial Bribery)(Addendum to Proposed Amendment #12 in the Guideline Amendments for Public Comment—Part I, 62 FR 151, Dated January 2, 1997)

13. Synopsis of Proposed Amendment: In the January 2, 1997 **Federal Register** notice, the Commission published an amendment to § 2B1.1(b)(6)(B) and § 2F1.1(b)(6)(B). That amendment (amendment 12) addresses the difficulty in interpreting the meaning of "affected a financial institution and the defendant derived more than $1,000,000 in gross receipts from the offense." This amendment makes conforming changes to § 2B4.1 (Bribery in Procurement of Bank Loan and Other Commercial Bribery), which also contains an enhancement to cover instances when the defendant's conduct "affected a financial institution and the defendant derived more than $1,000,000 in gross receipts from the offense."

Section 2B4.1 is amended in subsection (b)(2) by deleting "—" immediately following "offense"; by deleting "(A)"; by deleting "; or" immediately following "institution"and inserting in lieu thereof ","; by deleting subsection (b)(2)(B) in its entirety; and by inserting the following additional subsection:

"(3) If (A) obtaining or retaining the gross receipts of one or more financial institutions was an object of the offense, (B) the defendant derived more than $1,000,000 in gross receipts from such institutions, and (C) the offense level as determined above is less than level 24, increase to level 24.".

The Commentary to § 2B4.1 captioned "Application Notes" is amended in the first sentence of Note 5 by deleting "from the offense" immediately following "receipts"; by deleting "(2)(B)" and inserting in lieu thereof "(3)"; by deleting "generally"; by deleting the second sentence in its entirety; and by deleting "See 18 U.S.C. 982(a)(4).".; and by inserting the following as the first sentence:

"For purposes of subsection (b)(3), 'gross receipts' means any moneys, funds, credits, assets, securities, or other real or personal property, whether tangible or intangible, owned by, or under the custody or control of, a financial institution, that are obtained directly or indirectly as a result of such offense. See 18 U.S.C. 982(a)(4), 1344.".

The Commentary to § 2B4.1 captioned "Background" is amended in the seventh paragraph by deleting "Subsection" and inserting in lieu thereof "Subsections"; by deleting "(A)" and inserting in lieu thereof "and (b)(3)"; by deleting "implements" and inserting in lieu thereof "implement"; by deleting "instruction" and inserting in lieu thereof "instructions"; and by inserting "and section 2507 of Public Law 101–647, respectively" immediately following "101–73".

The Commentary to § 2B4.1 captioned "Background" is amended by deleting the last paragraph in its entirety.

[FR Doc. 97–4565 Filed 2–24–97; 8:45 am]

BILLING CODE 2210–40–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendation

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted on or before April 28, 1997.

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, S. W., Suite 5000, Washington, D.C. 20416. Phone Number: 202–205–6629.

SUPPLEMENTARY INFORMATION:

Title: "Request From Borrower".

Type of Request: Extension of a Currently Approved Collection.

Form No.: SBA Form 770.

Description of Respondents: Recipients of SBA Loans.

Annual Responses: 161,000.

Annual Burden: 281,750.

Comments: Send all comments regarding this information collection to Annie McCluney, Program Analyst, Office of Borrower and Lender Servicing, Small Business Administration, 409 3rd Street, S. W., Suite 8300 Washington, D.C. 20416. Phone No.: 202–205–7545. Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Title: "Survey on the Effects of Bank Mergers and Acquisitions on Small Business Lending in the United States'.

Type of Request: Extension of Currently Approved Collections.

Form No.: SBA Form 1981.

Description of Respondents: Banks Involved in Mergers or Acquisitions.

Annual Responses: 235.

Annual Burden: 117.

Comments: Send all comments regarding this information collection to Charles Ou, Office of Advocacy, Small Business Administration, 409 3rd Street, S.W., Suite 7800 Washington, D.C. 20416. Phone No. 202–205–6966.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 97–4532 Filed 2–24–97; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Advisory Committee for Trade Policy and Negotiations (ACTPN)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of meeting.

SUMMARY: The Advisory Committee for Trade Policy and Negotiations (ACTPN) will hold a meeting on March 6, 1997 from 10:00 a.m. to 2:00 p.m. The meeting will be open to the public from 1:30 p.m. to 2:00 p.m.

DATES: The meeting is scheduled for Marcy 6, 1997, unless otherwise notified.

ADDRESS: The meeting will be held at the Sheraton Carlton Hotel in the Chandelier Room, located at 16th and K Streets, Washington, D.C., unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Suzanna Kang, Office of the United States Trade Representative, 600 17th St. N.W., Washington, D.C. 20508, (202) 395–6120.

SUPPLEMENTARY INFORMATION: The ACTPN will hold a meeting on March 6, 1997 from 10:00 a.m. to 2:00 p.m. The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code and Executive Order 11846 of March 27, 1975, the Office of the U.S. Trade Representative has determined that part of this meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States. During the discussion of such matters, the meeting will be closed to the public from 10:00 a.m. to 1:30 p.m. The meeting will be open to the public and press from 1:30 p.m. to 2:00 p.m. when other trade policy issues will be discussed. Attendance during this part of the meeting is for observation only. Individuals who are not members of the committee will not be invited to comment.

Charlene Barshefsky,

United States Trade Representative—Designate.

[FR Doc. 97–4594 Filed 2–24–97; 8:45 am]

BILLING CODE 3190–01–M

Trade Policy Staff Committee; Public Comments on the Accessions of Algeria, Jordan, Kazakstan, Kyrgyz Republic, Moldova, Oman, Seychelles and Vanuatu to the World Trade Organization (WTO), and on U.S. Participation in Negotiations for the Terms of Those Accessions

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: The Trade Policy Staff Committee (TPSC) is requesting written public comments concerning U.S. commercial interests and other issues related to the accessions of Algeria, Jordan, Kazakstan, Kyrgyz Republic, Moldova, Oman, Seychelles and Vanuatu to the WTO. Public comments should include, but not be limited to, information concerning those countries' current trade policies and practices which affect (A) market access for U.S. exports, e.g., tariffs, non-tariff measures; (B) trade and investment in services, (C) other aspects of the trade regime affecting U.S. trade interests subject to WTO provisions, and (D) conditions or practices that impair the ability of WTO provisions to be applied on a reciprocal basis in these countries' trade regimes. Comments received will be considered in developing U.S. positions and objectives for the multilateral and bilateral negotiations that will determine the terms of WTO accession for Algeria, Jordan, Kazakstan, Kyrgyz Republic, Moldova, Oman, Seychelles and Vanuatu to the World Trade Organization.

DATES: Public comments are due by noon on Friday, March 28, 1997.

ADDRESSES: Office of the U.S. Trade Representative, 600 17th Street, N.W., Washington, D.C. 20508.

FOR FURTHER INFORMATION CONTACT: Barbara Chattin, Director for Tariff Negotiations (202–395–5097), Peter Collins, Deputy Assistant USTR for Services and Investment (202–395–7271) or Cecilia Leahy Klein, Director for WTO Accessions (202–395–9437), Office of the U.S. Trade Representative.

SUPPLEMENTARY INFORMATION: The Chairman of the Trade Policy Staff Committee invites written comments from the public on market access and other issues to be addressed in the course of negotiations with Algeria, Jordan, Kazakstan, Kyrgyz Republic, Moldova, Oman, Seychelles and Vanuatu to the WTO. Each of these countries have already tabled the documentation necessary to begin the process of accession. Jordan and Vanuatu have already completed their first working party meetings, and first working party meetings are scheduled during the first half of 1997 for Algeria, Kazakstan, Kyrgyz Republic, Moldova, Oman, and Seychelles. The terms of WTO membership for these countries will be negotiated with WTO Members bilaterally and in meetings of the Working Parties established by the Members of the WTO to conduct negotiations.

All comments received will be considered in developing U.S. positions and objectives for participation in these negotiations, which will establish schedules of commitments and concessions in the areas of agriculture, industrial goods, and trade and investment in services, and will develop elements of the protocols of accession for Algeria, Jordan, Kazakstan, Kyrgyz Republic, Moldova, Oman, Seychelles and Vanuatu to the WTO.

The Committee is seeking public comments on the possible affect on U.S. trade of the accessions of Algeria, Jordan, Kazakstan, Kyrgyz Republic, Moldova, Oman, Seychelles and Vanuatu to the WTO, with reference to tariffs applied to imports and any other trade measures currently applied by those countries that could be subject to the provisions of the WTO; particularly market access issues for goods and services, or practices that could affect the competitiveness of U.S. goods and services in those markets. Issues of interest to the TPSC include, but are not limited to: (a) Comments on possible tariff reductions and the removal of border measures such as quotas or import licensing requirements; (b) uniform application of the trading system and access to the right to trade; (c) the provision of national treatment and nondiscriminatory treatment for imports, especially in the area of domestic taxation; (d) transparency in application of trade laws and regulations; (e) right of appeal in cases involving application of trade laws and other laws relating to WTO provisions, such as protection and enforcement of

intellectual property rights (IPR) and services; (f) customs processing issues; such as document certification prior to export, fees, customs valuation, and certification requirements; (g) industrial export and domestic subsidies; (h) agricultural export subsidies and domestic supports and incentives; (i) safeguard and unfair trade practice procedures applied to imports; (j) plant, animal, and human health and safety requirements; (k) requirements for and restrictions on the right to import and export goods; (l) technical barriers to trade; (m) utilization of preshipment inspection services; (n) activities of state trading enterprises, including restrictions and other trade-distorting practices made effective through state trading; (o) price controls and policies; (p) foreign exchange controls that act as barriers to trade and investment; (q) membership in preferential trade arrangements, free trade arrangements, or customs unions; (r) government procurement practices; (s) policies concerning trade in civil aircraft; (t) the trade-related aspects of investment policies; and (u) the protection and enforcement of intellectual property. Market access issues for services include, but are not limited to, the right of establishment for U.S. services providers, the right to purchase services abroad, the ability to provide services on a cross-border basis, and the ability of persons to enter temporarily to provide services.

Information on products or practices subject to these negotiations should include, whenever appropriate, the import or export tariff classification number used by Algeria, Jordan, Kazakstan, Kyrgyz Republic, Moldova, Oman, Seychelles and Vanuatu for the product concerned.

WRITTEN COMMENTS: All written comments should be addressed to: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, 600 17th Street N.W., Room 501, Washington, D.C. 20508.

All submissions must be in English and should conform to the information requirements of 15 CFR 2003.

A party must provide ten copies of its submission which must be received at USTR no later than noon, Friday, March 28, 1997. If the submission contains business confidential information, ten copies of a non-confidential version must also be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, any submissions containing business confidential information must be clearly marked "confidential" at the top and bottom of the cover page (or letter) and of each succeeding page of the submission. The version does not contain confidential information should also be clearly marked, at the top and bottom of each page, "public version" or "non-confidential."

Written comments submitted in connection with this request, except for information granted "business confidential" status pursuant to 15 CFR 2003.6, will be available for public inspection shortly after the filing deadline. Inspection is by appointment only with the staff of the USTR Public Reading Room and can be arranged by calling (202) 395–6186.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 97–4645 Filed 2–24–97; 8:45 am]

BILLING CODE 3190–01–M

Trade Policy Staff Committee; Public Comments on the Accession of Vietnam to the World Trade Organization (WTO), and on U.S. Participation in Negotiations for the Terms of Those Accessions

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: The Trade Policy Staff Committee (TPSC) is requesting written public comments concerning U.S. commercial interests and other issues related to the accession of Vietnam to the WTO. Public comments should include, but not be limited to, information concerning that country's current trade policies and practices which affect (A) market access for U.S. exports, e.g., tariffs, non-tariff measures; (B) trade and investment in services, (C) other aspects of its trade regime affecting U.S. trade interests subject to WTO provisions, and (D) conditions or practices that impair the ability of WTO provisions to be applied on a reciprocal basis in Vietnam's trade regime. Comments received will be considered in developing U.S. positions and objectives for the multilateral and bilateral negotiations that will determine the terms of WTO accession for Vietnam to the World Trade Organization.

DATES: Public comments are due by noon on Friday, March 28, 1997.

ADDRESSES: Office of the U.S. Trade Representative, 600 17th Street, N.W., Washington, D.C. 20508.

FOR FURTHER INFORMATION CONTACT: Barbara Chattin, Director for Tariff Negotiations (202–395–5097), Peter Collins, Deputy Assistant USTR for Services and Investment (202–395–7271), Joe Damond, Director for South East Asia (202–395–6813), or Cecilia Leahy Klein, Director for WTO Accessions (202–395–9437), Office of the U.S. Trade Representative.

SUPPLEMENTARY INFORMATION: The Chairman of the Trade Policy Staff Committee invites written comments from the public on market access and other issues to be addressed in the course of negotiations with Vietnam to the WTO. Vietnam applied for WTO accession in January 1995. At that time, a Working Party was established by the WTO General Council to review the application and to conduct negotiations with Vietnam for the terms of its WTO membership. The United States will participate in the Working Party deliberations and in bilateral negotiations with Vietnam as part of the accession process. All comments received will be considered in developing U.S. positions and objectives for participation in these negotiations, the establishment of schedules of commitments and concessions in the areas of agriculture, industrial goods, and trade and investment in services, and for the development of the elements of the protocol of accession for Vietnam to the WTO.

The Committee is seeking public comments on the possible affect on U.S. trade of the accession of Vietnam to the WTO, with reference to tariffs applied to imports and any other trade measures currently applied by that country that could be subject to the provisions of the WTO; particularly market access issues for goods and services, or practices that could affect the competitiveness of U.S. goods and services in that market. Issues of interest to the TPSC include, but are not limited to: (a) comments on possible tariff reductions and the removal of border measures such as quotas or import licensing requirements; (b) uniform application of the trading system; (c) the provision of national treatment and nondiscriminatory treatment for imports, especially in the area of domestic taxation; (d) transparency in application of trade laws and regulations; (e) right of appeal in cases involving application of trade laws and other laws relating to WTO provisions, such as protection and enforcement of intellectual property rights (IPR) and services; (f) customs processing issues, such as document certification prior to export, fees, customs valuation, and certification requirements; (g) industrial export and domestic subsidies; (h) agricultural export subsidies and domestic supports and incentives; (i) safeguard and unfair trade practice procedures applied to imports; (j) plant, animal, and human health and safety requirements; (k) requirements for and restrictions on the right to import and export goods; (l) technical barriers to trade; (m) utilization of preshipment inspection services; (n) activities of state trading enterprises, including restrictions and other trade-distorting practices made effective through state trading; (o) price controls, two-tier pricing, and other price policies; (p) foreign exchange controls that act as barriers to trade and investment; (q) membership in preferential trade arrangements, free trade arrangements, or customs unions; (r) government procurement practices; (s) policies concerning trade in civil aircraft; (t) the trade-related aspects of investment policies, and (u) the protection and enforcement of intellectual property. Market access issues for services include, but are not limited to, the right of establishment for U.S. services providers, the right to purchase services abroad, the ability to provide services on a cross-border basis, and the ability of persons to enter temporarily to provide services.

Information on products or practices subject to these negotiations should include, whenever appropriate, the import or export tariff classification number used by Vietnam for the product concerned.

All comments on the above subject matter that were already provided in response to FR 61 59920 published on November 25, 1996 (requesting comments on the Negotiation of a Bilateral Trade Agreement Between the United States and the Socialist Republic of Vietnam), will be considered as having also been submitted in response to this request, absent notification to the contrary. Supplementary comments to such earlier submissions will also be considered if submitted in response to this notice.

WRITTEN COMMENTS: All written comments should be addressed to: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, 600 17th Street N.W., Room 501, Washington, D.C. 20508.

All submissions must be in English and should conform to the information requirements of 15 CFR 2003.

A party must provide ten copies of its submission which must be received at USTR no later than noon, Friday, March 28, 1997. If the submission contains business confidential information, ten copies of a non-confidential version must also be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, any submissions containing business confidential information must be clearly marked "confidential" at the top and bottom of the cover page (or letter) and of each succeeding page of the submission. The version that does not contain confidential information should also be clearly marked, at the top and bottom of each page, "public version" or "non-confidential."

Written comments submitted in connection with this request, except for information granted "business confidential" status pursuant to 15 CFR 2003.6, will be available for public inspection shortly after the filing deadline. Inspection is by appointment only with the staff of the USTR Public Reading Room and can be arranged by calling (202) 395–6186.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 97–4646 Filed 2–24–97; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Maglev Study Advisory Committee; Notice of Third Meeting

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of third meeting of the Maglev Study Advisory Committee.

SUMMARY: As required by Section 9(a)(2) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2 (1988) and 41 C.F.R. Part 101–6, section 101–6, 1015(a), the Federal Railroad Administration (FRA) gives notice of the third meeting of the Maglev Study Advisory Committee ("MSAC"). The purpose of the meeting is to advise DOT/FRA on the Congressionally mandated study of the near-term applications of maglev technology in the United States.

DATES: The third meeting of the MSAC is scheduled for 8:30 a.m. to 4:30 p.m. EST on Monday and Tuesday, March 24 and 25, 1997.

ADDRESSES: The third meeting of the MSAC will be held in the 9th floor Conference Room at FRA Headquarters, 1120 Vermont Avenue NW, Washington, D.C. The meeting is open to the public on a first-come, first-served basis and is accessible to individuals with disabilities. Those with special needs should inform Mr. Mongini 5 days in advance of the meeting so appropriate facilities can be provided.

FOR FURTHER INFORMATION CONTACT: Arrigo Mongini, Deputy Associate Administrator for Railroad Development, FRA RDV–2, 400 Seventh Street S.W., Washington D.C. 20590 (mailing address only) or by telephone at (202) 632–3286.

SUPPLEMENTARY INFORMATION: The third meeting of the Maglev Study Advisory Committee (MSAC) will be held on March 24 and 25 from 8:30 a.m. to 4:30 p.m. at the Federal Railroad Administration (FRA) headquarters, 1120 Vermont Avenue, N.W., Washington, DC, in the 9th floor conference room. The meeting is open to the public.

The MSAC was created by the National Highway System Designation Act to advise the Secretary of Transportation in the preparation of a report to be submitted by the Secretary to the Congress evaluating the near term applications of magnetic levitation transportation technology in the U.S. "with particular emphasis on identifying projects warranting immediate application of such technology." The Act further specifies that the study also "evaluate the use of innovative finance techniques for the construction and operation of such projects." The eight committee members collectively have experience in magnetic levitation transportation, design and construction, public and private finance, and infrastructure policy disciplines. The conference report on the National Highway System Designation Act specifies that "[t]he Committee should identify and analyze specific magnetic leviation projects, such as a connector from New York City to its airports, the transportation project under development between Baltimore, Maryland and Washington, DC , and technology transfer efforts underway in Pittsburgh, Pennsylvania, so that Congress can better assess how near-term magnetic levitation technology could complement existing modes of transportation * * *." The Secretary has assigned responsibility for preparing the report to the Federal Railroad Administrator, working closely with the MSAC. The Secretary's report to the Congress will discuss the extent to which the above and other potential magnetic levitation projects warrant immediate application, taking into account such factors as ability to be financed, benefits vs costs, extent of public commitment and support, and national significance.

The period from 8:30 a.m. to approximately 1:30 p.m., with appropriate breaks, will be set aside on Tuesday, March 25 to hear presentations from sponsors or proponents of maglev projects such as those mentioned in the conference report. Any such project, in order to be considered, should be based on full scale high-speed maglev technology capable of near term application. Sponsors or proponents of projects representing low speed applications, or projects where there is no evidence of public sector interest, should not apply for permission to give a presentation. Sponsors or proponents of projects representing tests of technologies that are not yet fully developed may contact Mr. Harding to discuss whether a presentation would be appropriate.

Persons interested in giving a presentation should contact John Harding, of the Federal Railroad Administration (phone: 202 632–3387/ fax: 202 632–3854) in order to be given a time on the scheduled program. Presentations will not be accepted on a "walk in" basis, although, if there is sufficient time, there may be opportunity for comments from the public other than in the scheduled presentations.

Presentations should contain information describing the project, public and private sponsorship, any studies of revenues, costs, and benefits, proposed means of financing, and national significance. Facilities for overhead and 35mm slide projection will be provided. Twelve hard copies of the presentation and accompanying literature should be provided by the presenter for use of the MSAC and staff.

Issued in Washington, D.C. on February 14, 1997.

Jolene M. Molitoris,

Administrator.

[FR Doc. 97–4613 Filed 2–24–97; 8:45 am]

BILLING CODE 4910–06–P

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before March 27, 1997.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications (See Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW. Washington, DC 20590.

NEW EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11832–N	RSPS–97–2130	Air Liquide Corp., Houston, TX.	49 CFR 172.203, 173.318, 173.320.	To authorize the manufacture, mark and sale of a non-DOT specification portable tank for use in the transportation of helium, refrigerated liquid, Division 2.2. (mode 1).
11834–N	RSPA–97–2131	Ashland Chemical Co., Dublin, OH.	49 CFR 173.173, 173.202.	To authorize the transportation of Division 3 and 5.1 material in UN 1A2/Y1.4/100 openhead steel drums as part of a mechanical application system. (modes 1, 2).

NOTE: Correction, Trinity Industries, Inc. application notice published on Wednesday February 5, 1997 FR Vol. 62, No. 24, Page 5506, should have appeared as Trinity Industries, Inc., Dallas, TX, modes 1, 2, and 3.

(1) To modify the exemption to provide for an additional container equipped with side discharge for use in transporting certain blasting agents.

(2) To modify the exemption to provide for an additional motor vehicle, equipped with specific diesel-operated heating equipment, for use in the transportation of certain Class 3 liquids or gases.

(3) To modify the exemption to provide for Division 2.2 and 5.1 as additional classes of hazardous material to be unloaded with the physical presence of an unloader.

(4) To modify the exemption to increase the service life to 24 years, increase the retest schedule to 7 years and eliminate the marking requirement on non-DOT specification welded stainless steel cylinders.

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on February 19, 1997.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 97–4581 Filed 2–24–97; 8:45 am]

BILLING CODE 4910–60–M

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemptions or Applications to Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions or applications to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. Application numbers with the suffix "P" denote a party to request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before March 12, 1997.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street SW, Washington, DC.

Application No.	Applicant	Renewal of exemption
8723–M	Dyno Nobel Inc., Salt Lake City, UT (see footnote 1)	8723
10803–M	Westinghouse Electric Corporation, Pittsburgh, PA (see footnote 2)	10803
10929–M	Conrail, Philadelphia, PA (see footnote 3)	10929
11025–M	Mass Systems Inc., Baldwin Park, CA (see footnote 4)	11025

(1) To modify the exemption to provide for an additional container equipped with side discharge for use in transporting certain blasting agents.

(2) To modify the exemption to provide for an additional motor vehicle, equipped with specific diesel-operated heating equipment, for use in the transportation of certain Class 3 liquids or gases.

(3) To modify the exemption to provide for Division 2.2 and 5.1 as additional classes of hazardous materials to remain standing with unloading connection attached when product is being transferred, without the physical presence of an unloader.

(4) To modify the exemption to increase the service life to 24 years, increase the retest schedule to 7 years and eliminate the marking requirement on non-DOT specification welded stainless steel cylinders.

Application	Applicant	Parties to exemption
2582–P	Praxair Distribution, Inc., Danbury, CT	2582
3004–P	Praxair Distribution, Inc., Danbury, CT	3004
4850–P	Allied Signal Inc., Morristown, NJ	4850
4884–P	Praxair Distribution, Inc., Danbury, CT	4884
5643–P	Praxair Distribution, Inc., Danbury, CT	5643
5704–P	Chemical Waste Management, Inc., Sauget, IL	5704
5923–P	Praxair Distribution, Inc., Danbury, CT	5923
6349–P	Praxair Distribution, Inc., Danbury, CT	6349
6530–P	Western International Gas & Cylinders Inc., Bellville, TX	6530
6530–P	Praxair Distribution, Inc., Danbury, CT	6530
6543–P	Praxair Distribution, Inc., Danbury, CT	6543
6691–P	Praxair Distribution, Inc., Danbury, CT	6691
6765–P	Praxair Distribution, Inc., Danbury, CT	6765
6805–P	Praxair Distribution, Inc., Danbury, CT	6805
7268–P	Praxair Distribution, Inc., Danbury, CT	7268
7274–P	Praxair Distribution, Inc., Danbury, CT	7274
7451–P	Praxair Distribution, Inc., Danbury, CT	7451
7835–P	Praxair Distribution, Inc., Danbury, CT	7835
7846–P	Praxair Distribution, Inc., Danbury, CT	7846
8013–P	Praxair Distribution, Inc., Danbury, CT	8013
8156–P	Praxair Distribution, Inc., Danbury, CT	8156
8451–P	Primex Technologies, Inc.., St. Petersburg, FL	8451
8451–P	ICI Explosives, Middletown, IA	8451
8451–P	MK Ballistic Systems, Hollister, CA	8451
8451–P	Chemical Waste Management, Inc.., Sauget, IL	8451
8556–P	Praxair Distribution, Inc., Danbury, CT	8556
8582–P	Paducah & Louisville Railway, Inc.., Paducah, KY	8582
8698–P	Praxair Distribution, Inc., Danbury, CT	8698
8915–P	Praxair Distribution, Inc., Danbury, CT	8915
8915–P	Fiba Technologies, Westboro, MA	8915
9034–P	Praxair Distribution, Inc., Danbury, CT	9034
9047–P	Praxair Distribution, Inc., Danbury, CT	9047
9414–P	Praxair Distribution, Inc., Danbury, CT	9414
9480–P	Praxair Distribution, Inc., Danbury, CT	9480
9507–P	Praxair Distribution, Inc., Danbury, CT	9507
9723–P	Rollins Environmental, Inc., Wilmington, DE	9723
9723–P	Chemical Waste Management, Inc., Sauget, IL	9723
9769–P	Chemical Waste Management, Inc., Sauget, IL	9769
01–P	Praxair Distribution, Inc., Danbury, CT	10101
10441–P	Bechem Transport, Inc., New Haven, CT	10441
10441–P	Chemical Waste Management, Inc., Sauget, IL	10441
10457–P	Advance Chemical Distribution, Inc., Sand Springs, OK	10457
10798–P	Callaway Chemical Company, Smyrna, GA	10798
10798–P	Callaway Chemical Company, Dalton, GA	10798
10798–P	Callaway Chemical Company, Chattanooga, TN	10798

Application	Applicant	Parties to exemption
10933–P	Chemical Waste Management, Inc., Sauget, IL	10933
11043–P	Chemical Waste Management, Inc., Sauget, IL	11043
11043–P	Bechem Transport, Inc., New Haven, CT	11043
11055–P	Chemical Waste Management, Inc., Sauget, IL	11055
11055–P	MSE Environmental, Inc., Camarillo, CA	11055
11153–P	General Chemical Corporation, Framingham, MA	11153
11156–P	Dixie Chemical Corporation, New Bern, NC	11156
11197–P	Chemical Waste Management, Inc., Sauget, IL	11197
11294–P	Chemical Waste Management, Inc., Sauget, IL	11294
11294–P	Bechem Transport, Inc., New Haven, CT	11294
11388–P	Nalco Chemical Company/Exxon Energy Chemicals L.P., Sugar Land, TX	11388
11588–P	Medwaste Management, Inc. of New England, North Haven, CT	11588
11602–P	Atlantic Coast Recycling, Inc., Fort Pierce, FL	11602
11602–P	Southwestern Die Casting Co., Inc., Fort Smith, AR	11602
11602–P	East Tennessee Iron & Metal, Inc., Rogersville, TN	11602
11624–P	Environmental Transportation Services, Inc., Oklahoma City, OK	11624
11624–P	Republic Environmental Systems, Hatfield, PA	11624
11624–P	Chemical Waste Management, Inc., Sauget, IL	11624
11821–P	Wyoming Steel & Fab, Inc., Reliance, WY	11821
11822–P	Westinghouse Hanford Company, Richland, WA	11822
11826–P	MG Industries Gas Technology & Services Group, Houston, TX	11826
11829–P	Parsin Chemicals Limited, Andhra Pradesh, India	11829
11829–P	ICI Explosives Canada, Quebec, Canada	11829

This notice of receipt of applications for modification of exemptions and for party to an exemption is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on February 20, 1997.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 97–4582 Filed 2–24–97; 8:45 am]

BILLING CODE 4910–60–M

Surface Transportation Board

[STB Docket No. AB–33 (Sub-No. 103X)]

Union Pacific Railroad Company—Abandonment Exemption—in Sarpy County, NE (Gilmore Industrial Lead)

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: The Board, pursuant to 49 U.S.C. 10502, exempts Union Pacific Railroad Company from the prior approval requirements of 49 U.S.C. 10903 to abandon service over a portion of rail line known as the Gilmore Industrial Lead in Sarpy County, NE, subject to standard labor protective conditions. The line extends between milepost 11.76 and milepost 12.23, near Gilmore, NE, a distance of 0.47-mile.

DATES: Provided no formal expression of intent to file a financial assistance offer has been received, this exemption will be effective on March 27, 1997. Formal expressions of intent to file financial assistance offers under 49 CFR 1152.27(c)(2) must be filed by March 7, 1997. Petitions to stay must be filed by March 12, 1997. Petitions to reopen must be filed by March 24, 1997.

ADDRESSES: Send pleadings referring to STB Docket No. AB–33 (Sub-No. 103X) to: (1) Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423; and (2) Petitioner's representative: Joseph D. Anthofer, 1416 Dodge Street, Room 830, Omaha, NE 68179–0830.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC News & Data, Inc., Room 2229, 1201 Constitution Avenue, N.W., Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: February 13, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–4642 Filed 2–24–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Project No. TIRNO–97–R–00018]

Proposed Establishment of a Federally Funded Research and Development Center

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of intent.

SUMMARY: The Internal Revenue Service (IRS) intends to sponsor a Federally Funded Research and Development Center (FFRDC) to provide system engineering and technical assistance along with strategic advice and guidance. Also required will be technical management capabilities to facilitate the operation and modernization of Tax Systems. The FFRDC will be established under the authority of 48 CFR Subpart 35.017 and Office of Federal Procurement Policy Letter 84–1. The FFRDC shall provide technical advice and assistance to the IRS and/or its contractors in the areas of program and project management. This will consist of expert advice/guidance focused on increasing the effectiveness and efficiency of strategic information management and technical activities. The FFRDC will be available for IRS's Chief Information Officer (CIO) or the CIO's designees or Department of the Treasury executive support. Examples of this support may include, but are not limited to the following:—Information Systems (IS) input to business case development—Business Process Analysis—IS management and oversight of IRS contractors—Evaluation of IRS contractors' performance and development of performance measures—Development of recommendations regarding a prime integration contractor—Evaluation of IRS effectiveness—Ad hoc technical advice—Acquisition Support as necessary. This procurement will not involve a request for proposals. However, expressions of interest and qualification or capability statements should be submitted by interested entities who are capable of fulfilling this requirement. The qualification or capability statements received will be used to select potentially qualified entities, which may at a later date be requested to submit additional information and/or provide an oral presentation as part of a final selection. This is the third and final announcement issued under the authority of 48 CFR 5.205(b)

DATES: Please submit your qualification or capability statements not later than March 27, 1997.

ADDRESSES: Responses to this notice must be mailed to the Internal Revenue Service, A/C Procurement, Office of End Users Systems Branch, 6009 Oxon Hill Road, Oxon Hill, MD 20745 7th floor/ Constellation Building M:P:I:E.

SUPPLEMENTARY INFORMATION: Upon request, a copy of a scope of work for the intended FFRDC will be mailed to any interested party or interested parties can download the information from the IRS Procurement Bulletin Board System. Please follow these instructions to access the PBBS, dial the following number (202) 799–0943. Your system must be set at the following defaults: Baud Rate of 9600, No Parity, 8 Data Bits, 1 Stop Bit. The system will prompt you for your name, business name and address, the kind of system you are using, user ID and a password of your choice. At the Main System Menu the following will appear "Make your selection (T,F,E, etc.* * *):" Type "L" and press the <ENTER> Key. Type "S" to select a library and press the <ENTER> Key. Type "*RFP*" and press the <ENTER> Key. Type "F" and press the <Enter> Key to list files. Press the <ENTER> Key to view the list of files. Type "C" to view the file list. Download the file "*FFRDC.DOC*". The system operates 24 hours a day 7 days a week. Send a written request, for a copy of the statement of work, to the contracting officer at the address specified above. No oral communication will be accepted. Qualification or Capability Statement, should be submitted in written form to the Contracting Officer at the address specified above. Responses to this notice should make reference to Project No. TIRNO–97–R–00018.

James A. Williams,

Deputy Assistant Commissioner (Procurement).

[FR Doc. 97–4644 Filed 2–25–97; 8:45 am]

BILLING CODE 4830–01–U

Office of Thrift Supervision

[AC–3; OTS No. 03369]

Hemlock Federal Bank for Savings, Oak Forest, Illinois; Approval of Conversion Application

Notice is hereby given that on February 12, 1997, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Hemlock Federal Bank for Savings, Oak Forest, Illinois, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Central Regional Office, Office of Thrift Supervision, 200 West Madison Street, Suite 1300, Chicago, Illinois 60606.

Dated: February 20, 1997.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 97–4643 Filed 2–24–97; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF VETERANS AFFAIRS

Agency Information Collection: Emergency Submission for OMB Review; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following emergency proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. 3507(j)(1)). The reason for emergency clearance request is that these information collections are essential to the VA's mission. The use of normal clearance procedures is reasonably likely to prevent the VHA from timely conducting the collections of information. OMB has been requested to act this emergency clearance request by March 11, 1997.

OMB Control Number: None assigned.

Title and Form Number: Generic Clearance for the Veterans Health Administration Customer Satisfaction Surveys.

Type of Review: New collection.

Need and Uses: VHA will conduct the customer satisfaction surveys under this generic clearance to implement Executive Order 12862, Setting Customer Service Standards. If the surveys were not conducted, VHA would be unable to comply with the Executive Order, and would not have the information needed to establish standards for the best possible customer-focused service. VHA will use the information gathered to determine where and to what extent services are satisfactory, and where and to what extent they are in need of improvement. The information may lead to policy changes to improve VHA's overall operations. Voluntary customer surveys will not be used as substitutes for traditional program evaluation surveys that measure objectives outcomes. In order to maximize the voluntary response rates, the information collections will be designed to make participation convenient, simple, and free of unnecessary barriers.

Affected Public: Individuals or households.

Estimated Annual Burden: 22,350 hours.

a. Nationwide Inpatient Survey—10,500 hours.

b. Nationwide Outpatient Survey—7,625 hours.

c. Outpatient Home Based Survey—1,225 hours.

d. Local Surveys (VA Medical Facilities)—1,225 hours.

Estimated Average Burden Per Respondent:

a. Nationwide Inpatient Survey—15 minutes.

b. Nationwide Outpatient Survey—15 minutes.

c. Outpatient Home Based Survey—15 minutes.

d. Local Surveys (VA Medical Facilities)—10 minutes.

Frequency of Response: Annually.

Estimated Total Number of Respondents: 94,900.

a. Nationwide Inpatient Survey—42,000.

b. Nationwide Outpatient Survey—30,000.

c. Outpatient Home Based Survey—4,900.

d. Local Surveys (VA Medical Facilities)—18,000.

ADDRESSES: A copy of this submission may be obtained from Ron Taylor,

Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8015.

Comments and recommendations concerning this submission should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before March 4, 1997.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273–8015.

Dated: February 11, 1997.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 97–4687 Filed 2–24–97; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection: Emergency Submission for OMB Review; Comment Request

AGENCY: Board of Veterans' Appeals, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Board of Veterans' Appeals (BVA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following emergency proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. 3507(j)(1)). The reason for emergency clearance request is that the ongoing survey is essential to the VA's mission. Disruption of the collection of information will harm the BVA's efforts to identify aspects of the service that are most important to our customers. OMB has been requested to act this emergency clearance request by March 11, 1997.

OMB Control Number: 2900–0548.

Title and Form Number: Generic Clearance for the Board of Veterans' Appeals Customer Satisfaction Survey.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Need and Uses: The BVA will conduct the customer satisfaction survey under this generic clearance to implement Executive Order 12862, Setting Customer Service Standards. If the survey was not conducted, BVA would be unable to comply with the Executive Order, and would not have the information needed to establish standards for the best possible customer-focused service. BVA will use the information gathered to determine where and to what extent services are satisfactory, and where and to what extent they are in need of improvement. The information may lead to policy changes to improve the Board's overall operations. BVA anticipates the survey will identify those aspects of service that are most important to benefit claims appellants.

Affected Public: Individuals or households.

Estimated Annual Burden: 400 hours.

Estimated Average Burden Per Respondent: 6 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 4,000.

ADDRESSES: A copy of this submission may be obtained from Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015.

Comments and recommendations concerning this submission should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Do Not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before March 4, 1997.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273–8015.

Dated: February 11, 1997.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 97–4688 Filed 2–24–97; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection: Emergency Submission for OMB Review; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following emergency proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. 3507(j)(1)). The reason for emergency clearance request is that these information collections are essential to the VA's mission. The use of normal clearance procedures is reasonably likely to prevent the VBA from timely conducting the collections of information. OMB has been requested to act this emergency clearance request by March 11, 1997.

OMB Control Number: None assigned.

Title and Form Number: Generic Clearance for the Veterans Benefits Administration Customer Satisfaction Surveys.

Type of Review: New collection.

Need and Uses: VBA will conduct the customer satisfaction surveys under this generic clearance to implement Executive Order 12862, Setting Customer Service Standards. If the surveys were not conducted, VBA would be unable to comply with the Executive Order, and would not have the information needed to establish standards for the best possible customer-focused service. VBA will use the information gathered to determine where and to what extent services are satisfactory, and where and to what extent they are in need of improvement. The information may lead to policy changes to improve VBA's overall operations. Voluntary customer surveys will not be used as substitutes for traditional program evaluation surveys that measure objectives outcomes. In order to maximize the voluntary response rates, the information collection will be designed to make participation convenient, simple, and free of unnecessary barriers.

Affected Public: Individuals or households; Business or other for-profit.

Estimated Annual Burden: 1,494 hours.

a. Lender Survey—303 hours.

b. VA Loan Customer Service Survey—575 hours.

c. Insurance Customer Survey—216 hours.

d. Vocational Rehabilitation Service-St. Petersburg—100 hours.

e. Customer Survey for VAMC Outbased Team—200 hours.

f. Pretest-Education Questionnaire—100 hours.

Estimated Average Burden Per Respondent:

a. Lender Survey—20 minutes.

b. VA Loan Customer Service Survey—15 minutes.

c. Insurance Customer Survey—6 minutes.

d. Vocational Rehabilitation Service-St. Petersburg—15 minutes.

e. Customer Survey for VAMC Outbased Team—10 minutes.

f. Pretest-Education Questionnaire—15 minutes.

Frequency of Response: One-time.

Estimated Total Number of Respondents: 7,369.

a. Lender Survey—909.

b. VA Loan Customer Service Survey—2,300.

c. Insurance Customer Survey—2,160.

d. Vocational Rehabilitation Service-St. Petersburg—400.

e. Customer Survey for VAMC Outbased Team—1,200.

f. Pretest-Education Questionnaire—400.

ADDRESSES: A copy of this submission may be obtained from Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015.

Comments and recommendations concerning this submission should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before March 4, 1997.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273–8015.

Dated: February 11, 1997.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 97–4689 Filed 2–24–97; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 62, No. 37
Tuesday, February 25, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Commercial Encryption Items

Correction

In notice document 97–3413, beginning on page 6515, in the issue of Wednesday, February 12, 1997, in the **DATES** section, "Febraury 12, 1997." should read "April 14, 1997.".

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96-AWP-23]

Proposed Establishment of Class E Airspace; Atwater, CA

Correction

In proposed rule document 97–2422 appearing on page 4668 in the issue of Friday, January 31, 1997 make the following correction:

§ 71.1 [Corrected]

In the third column, § 71.1, airspace description following Castle Airport, CA, line five, "410°" should read "310°".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Public Meeting of the Inter-Tribal Council on Hanford Health Projects (ICHHP), in Association With the Meeting of the Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Hanford Health Effects Subcommittee

Correction

In notice document 97–3732 beginning on page 6973 in the issue of Friday, February 14, 1997 make the following correction:

The meeting schedule in the third column is corrected below.

Dates:	February 19, 1997	May 7, 1997
Times:	9 a.m.–5 p.m.	9 a.m.–5 p.m.
Place:	Red Lion Hotel/Jantzen Beach 909 North Hayden Island Drive Portland, Oregon 97217	Cavanaugh's at Columbia Center 1101 Columbia Center Boulevard Kennewick, Washington 99336
Tel:	503/283–4466	509/783–0611
Fax:	503/283–4743	509/735–3087
Dates:	July 23, 1997	October 8, 1997
Times:	9 a.m.–5 p.m.	9 a.m.–5 p.m.
Place:	Marines' Memorial Club 609 Sutter Street (at Mason) San Francisco, California 94102	Coeur d'Alene Inn West 414 Appleway Coeur d'Alene, Idaho 83814
Tel:	415/673–6672	208/765–3200
Fax:	415/441–3649	208/664–1962
Date:	December 10, 1997	
Time:	9 a.m.–5 p.m.	
Place:	Madison Hotel 515 Madison Street Seattle, Washington 98104	
Tel:	206/583–0300	
Fax:	206/624–8125	

BILLING CODE 1505-01-D

federal register

Tuesday
February 25, 1997

Part II

Office of Personnel Management

SES Positions That Were Career Reserved During 1996; Notice

OFFICE OF PERSONNEL MANAGEMENT

SES Positions That Were Career Reserved During 1996

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: As required by the Civil Service Reform Act of 1978, this gives notice of all positions in the Senior Executive Service (SES) that were career reserved during 1996.

FOR FURTHER INFORMATION CONTACT: Charles Vaughn, Office of Executive Resources, (202) 606–1927.

SUPPLEMENTARY INFORMATION: Below is a list of titles of SES positions that were career reserved any time in calendar year 1996 whether or not they were still career reserved on December 31, 1996. Section 3132(b)(4) of title 5, United States Code, requires that the head of each agency publish the list by March of the following year. OPM is publishing a consolidated list for all agencies.

Office of Personnel Management.

James B. King,

Director.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996

Agency/organization	Career reserved positions
Advisory Council on Historic Preservation:	
Ofc of the Exec Director	Executive Director.
Department of Agriculture:	
Ofc of the Inspector General	Deputy Inspector General.
	Asst Inspector General for Investigations.
	Dep Asst Inspector General for Investigation.
	Asst Inspector General for Audit.
	Dep Assistant Inspector General for Audit.
	Dep Asst Inspector General for Audit.
	Asst Inspector Gen for Pol Dev & Res Mgmt.
	Dep Asst Insp Gen for Invest Immediate Office.
Office of Asst Sec'y Administration	Deputy Chief Financial Officer.
Office of Operations	Director Office of Operations.
Office of Finance and Management	Director, Applications Systems Division.
	Dir, Info Resources Management Division.
	Director, Financial Services Division.
	Dir, Thrift Savings Plan Division.
Rural Housing Service	Assistant Administrator, Finance Office.
	Controller.
	Deputy Administrator for Operations & Mgmt.
Rural Business Service	Deputy Administrator for Business Programs.
Agricultural Marketing Service	Director, Fruit & Vegetable Division.
	Director, Cotton Division.
	Director, Dairy Division.
	Director, Livestock Division.
	Director, Tobacco Division.
	Agricultural Marketing Svc, Dir Poultry Div.
	Director, Compliance Staff.
	Director.
	Director.
Animal & Plant Health Inspection Service	Dep Admr, Regulatory Enforcement/Animal Care.
Veterinary Services	Director, Northern Region.
	Dir, S E Region, Veterinary Services.
	Director, Western Region.
	Director, South Central Region.
	Dep Admr, Animal Damage Control.
	Dir, Operational Support, Veterinary Services.
	Dir, Natl CTR for Veterinary Epidemiology.
Plant Protection & Quarantine Service	Dep Admr, International Services.
	Director Northeastern Region.
	Director, South Central Region.
	Director, Western Region.
	Director, Southeastern Region.
	Director, Operational Support PPQ.
Food Safety and Inspection Service	Asst Deputy Admin, Technical Services.
	Dep Admir-Administrative Mgmt.
	Dir, Northeast Region, Phila., PA.
	Regl Director, Atlanta, Georgia.
	Dir, North Central Region, Des Moines, Iowa.
	Director, Southwestern Region, Dallas, Texas.
	Asst Dep Admin (Admin Mgt).
	Asst Deputy Administrator.
	Regional Director.
	Associate Deputy Administrator.
	Associate Administrator.
	Deputy Administrator.
	Deputy Administrator.
	Director.
	Deputy Administrator.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
	Deputy Administrator.
	U.S. Coordinator for Codex Alimentarius.
	Deputy Director.
	Dir, Animal Production Food Safety Staff.
	Deputy Administrator.
Food and Consumer Service	Deputy Admin for Financial Management.
	Deputy Admr for Management.
Farm Service Agency	Director, Budget Division.
	Asst Manager for Research & Development.
	Director, Insurance Services Division.
	Controller.
Foreign Agricultural Service	Dir, Grain & Feed Div.
	Assistant Deputy Administrator Management.
Agriculture Research Service	Dep Admr for Adm Mgmt.
	Assoc Dep Admin for Administrative Management.
	Asst Administrator for Technology Transfer.
	Global Change Research Staff Assistant.
	Associate Deputy Admin, Financial Management.
National Program Staff Office	Deputy Administrator, National Program Staff.
	Assoc Dep Admr.
	Associate Dep Administrator, Animal Sciences.
Beltsville Area Office	Director, Beltsville Area Office.
	Assoc Dir, Beltsville Area.
	Assoc Dep Admr, Natural Resources/Systems.
	Associate Deputy Admin, Genetic Resources.
	Associate Deputy Administrator.
	Supervisory Research Chemist.
	Dir, U.S. National Arboretum.
	Dir, Beltsville Human Nutrition Research Ctr.
	Director, Plant Sciences Institute.
	Dir, Livestock & Poultry Sciences Institute.
	Dir, Natural Resources Institute.
North Atlantic Area Office	Director, Eastern Regl Research Center.
	Director, North Atlantic Area.
	Assoc Dir, North Atlantic Area.
	Director, Plum Island Animal Disease Center.
South Atlantic Area Office	Res Leader-Plant Physio & Photosynthesis Res.
	Associate Dir, South Atlantic Area.
	Director, Russell Research Center.
	Supervisory Research Geneticist.
	Supervisory Research Physiologist.
	Director, South Atlantic Area.
	Dir, Center for Medical A & V Entomology.
Midwest Area Office	Dir, Midwest Area.
	Assoc Dir, Midwest Area.
	Supervisory Veterinary Medical Officer.
	Supervisory Research Geneticist (Plants).
	Dir, Natl Ctr for Agri Utilization.
Midsouth Area Office	Dir, Southern Regional Res Center, New Orlean.
	Director, Mid-South Area.
Central Plains Area Office	Dir, Natl Animal Disease Center.
Southern Plains Area Office	Director, Southern Plains Area.
	Dir, Subtropical Agricultural Res Laboratory.
	Research Leader F & F Safety Res Laboratory.
Northern Plains Area Office	Director, Northern Plains Area.
	Associate Director, Northern Plains Area Ofc.
	Dir, R.L. Hruska US Meat Animal Res Center.
	Supervisory Soil Scientist.
Pacific West Area Office	Director, Western Regional Research Center.
	Dir. Western Human Nutrition Research Center
	Director, Pacific West Area Office.
	Associate Director, Pacific West Area Office.
	Dir, Western Cotton Research Laboratory.
	Supervisory Soil Scientist.
	Supervisory Soil Scientist.
Cooperative State Res Education, & Extension Service	Assoc Administrator for Grants & Program Sys.
	Deputy Administrator, Partnerships.
Natural Resources Conservation Service	Director, Engineering Division.
	Dir, Ecological Sciences and Technology Divisi.
	Deputy Chief for Management.
	Dir, Consv Planning and App.
	Dir, Community Asst & Res Development Div.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
	Associate Deputy Chief for Management.
	Dir, Soils (Soil Scientist).
	Dir, Land Treatment Program.
	Associate Deputy Chief for Technology Sci Tec.
	Director, Strategic Planning Division.
	Dir, Biological Conservation Sciences Division.
	Dir, Quality Management & Prog Eval Division.
	Spec Asst, Strategic Natl Resources Issues.
	National Information Res Mgmt Leader.
	Dir, Conservation & Ecosystem Asst Division.
	Dep Chief for Mgnt & Strategic Planning.
	Special Asst to the Chief for Soil Science.
Forest Service	Dep Chf for Administration.
	Associate Deputy Chief-Administration.
	Dir, Forest Pest Mgmt Staff.
	Dir, Fiscal & Accounting Services.
	Associate Deputy Chief for Administrator.
	Director, Fire and Aviation Staff.
Research	Dir, Insect and Disease Research Staff.
	Dir, Forest Environment Research Staff.
	Dir, Forest Resource Economics Staff.
	Dir, Forest Fire & Atmos Sciences Res Staff.
Nat'l Forest System	Dir, Range Management Staff.
	Dir, Recreation, Mgmt Staff.
	Dir, Timber Management Staff.
	Director, Engineering Staff.
	Director, Lands Staff.
	Dir, Land Management Planning Staff.
	Dir, Wildlife & Fisheries Mgmt Staff.
	Dir, Minerals & Geology Staff.
	Director, Watershed & Air Management Staff.
State & Private Forestry	Dir, Cooperative Forestry.
Field Units	NE Area Dir, State & Private Forestry, U Darb.
	Dir, N Eastern Forest Experiment Station.
	Dir, Pacific NW Forest & Range Exp Station.
	Dir, Pacific SW For & Range Exper Stat.
	Director, Rocky Mt Forest & Range Exper Stat.
	Dir, S Eastern Forest Experiment Station.
	Director, Forest Products Laboratory.
	Dep Dir, Forest Products Lab.
International Forest System	Associate Deputy Chief.
	Dir, International Institute of Tropical Forest.
Economic Research Service	Admr, Economic Research Service.
	Associate Administrator—Economic Rsch Svc.
	Director, Resources & Technology Division.
	Dir, Natural Res & Environment Division.
	Director, Information Services Division.
	Director, Commercial Agriculture Division.
	Director, Rural Economy Division.
	Dir, Ofc of Risk Assessment & Cost-Benefit Anl.
	Budget Coordinator and Strategic Planner.
	Dir, Food & Consumer Economics Division.
National Agricultural Statistics Service	Admr, National Agricultural Statistics Serv.
	Dir, Estimates Div.
	Dir, State Statistical Division.
	Deputy Administrator for Programs.
	Dir, Systems & Information Division.
	Director, Office of Energy.
	Director, Survey Management Division.
World Agricultural Outlook Board	Dep Chairperson.
American Battle Monuments Commission:	
Office of Executive Director	Executive Director.
Department of Commerce:	
Office of the General Counsel	Asst General Counsel for Finance & Litigation.
	Director, Office of Intelligence Liaison.
Assistant Secy Legislative & Intergovernmental Affs	Dep Admin for Legislative & Internal Affairs.
Director for Human Resources Management	Director for Human Resources Management.
	Dep Dir of Human Resources Management.
Director for Financial Management	Dir for Financial Management.
Office of Budget Mgmt & Info & Chief Information Offcr	Director, Office of Budget.
Director for Executive Budgeting & Assistance Mgmt	Dir for Federal Asst & Management Support.
Office of Security and Administrative Services	Director for Procurement & Admin Services.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
	Director, Office of Security.
	Deputy Director for Procurement.
Office of the Assistant Secretary for Administration	Dir, for Information Resources Management.
Office of Inspector General	Asst Inspector General for Syst Evaluation.
Office of Counsel to the Inspector General	Counsel to the Inspector General.
Office of Compliance and Audit Resolution	Asst Insp Gen for Compl & Audit Resolution.
Office of Inspections and Resource Management	Asst Insp Gen for Plng, Eval & Inspections.
Office of Audits	Assistant Inspector General for Auditing.
	Deputy Assistant Inspector Gen for Auditing.
Office of Investigations	Asst Inspector General for Investigations.
Immediate Office	Dep Asst Secy for Statistical Affairs.
Office of the Director	Assoc Dir for Field Operations.
	Assistant Director for Decennial Census.
	Dep Dir.
	Chief, Marketing Services Office.
	Principal Assoc Dir & Chief Financial Officer.
	Principal Associate Director for Programs.
	Chief, Policy & Strategic Planning Division.
	Chief, Field Division.
	Senior Program Analyst.
Associate Director for Administration/Comptroller	Associate director for Administration.
	Comptroller.
Administrative and Customer Services Division	Chief, Human Resources Management.
Associate Director for Information Technology	Chief Admin & Customer Services Division.
	Assoc Dir for Information Technology.
Associate Director for Field Operations	Chief, Human Resources Management.
Data Preparation Division	Chief, Computer Services Division.
Associate Director for Economic Programs	Chief, Data Preparation Division.
	Associate Director for Economic Programs.
Economic Planning and Coordination Division	Assistant Director for Economic Programs.
Economic Statistical Methods and Programming Division	Chf, Economic Planning & Coordination Div.
Agriculture and Financial Statistics Division	Chf, Economic Statistical M & P Division.
	Chief, Agriculture Div.
Services Division	Chief, Financial & Admin Systems Division.
Foreign Trade Division	Chief, Services Division.
Governments Division	Chf, Foreign Trade Div.
	Chf, Government Div.
Manufacturing and Construction Division	Assoc Dir For Planning & Organ Development.
Associate Director for Decennial Census	Chf, Manufacturing & Construction Division.
Decennial Management Division	Associate Director for the Decennial Census.
Geography Division	Chief, Decennial Management Division.
Decennial Statistical Studies Division	Chf, Geography Div.
Associate Director for Demographic Programs	Chief, Decennial Statistical Studies Div.
	Associate Dir for Demographic Progs.
	Chf, Population Div.
	Chief Demographic Surveys Division.
Housing & Household Economic Statistics Division	Chf, Housing & Household Econ Statistics Div.
Demographic Statistical Methods Division	Chief, Statistical Methods Division.
Associate Director for Methodology & Standards	Assoc Dir for Statistical Standards & Method.
Statistical Research Division	Chief Statistical Research Division.
Office of the Director	Director.
	Dep Dir, Bur of Economic Analysis.
	Chief Economist.
	Chf Statistician.
Associate Director for Regional Economics	Assoc Dir for Regional Economics.
Associate Director for International Economics	Assoc Dir for International Economics.
Assoc Director for Natl Income, E & W Accounts	Assoc Dir for Natl Inc, Exp, Wealth Accounts.
	Chf, Natl Income & Wealth Div.
	Chief, International Investment Division.
	Chief, Computer Systems and Services Division.
Director of Administration	Director of Administration.
Office of the Asst Secretary for Export Enforcement	Dep Asst Secry for Xort Enforcement.
Office of Chief Counsel	Dep Director for Program Operations.
Office of Consumer Goods	Director, Office of Consumer Goods.
Organization Abolished	Dir, Office of Agreements Compliance.
	Dir, Office of Antidumping Compliance.
Organization Abolished	Dir, Office of Antidumping Investigations.
	Dir, Office of countervailing Investigations.
Office of Under Secretary	Director, Information Systems Office (ISO).
Office of International Affairs	Chief Financial Officer/Admin Officer.
NOAA Coastal Ocean Program Office	Dir, NOAA Coastal Ocean Program Office.
Office of Finance and Administration	Dir for Information Systems & Finance.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
	Dir for Human Resources Management.
	Dir for Procurement, Grants & Adm Services.
Office of High Performance Computing and Communications	Dir for High Performance Computing Commun.
Systems Acquisition Office	Nexrad Acquisition Manager.
Advanced Weather Interactive P/S (AWIPS) Program	Chf/AWI Interactive Processing System/1990's.
	Dep Chf, Fin Ofcr/Chf Adm Officer (CF/AO).
National Ocean Service	Senior Scientist for Ocean Services.
Strategic Environmental Assessments Division	Chf, Strategic Environmental Assessments Div.
Coastal Monitoring and Bioeffects Assessment Division	Chief, Coastal Monitoring Bioeffects Asses Div.
Hazardous Materials Response and Assessment Division	Chf, Hazardous Materials R & A Division.
Office of Assistant Administrator, Weather Services	Dir, Ofc of Aeronautical Charting/Cartography.
	ASOS Program Manager.
	Deputy Assistant Administrator for Operations.
Management and Budget Office	Chief, Management and Budget Staff.
Office—Fed Coordinator—Meteorology	Chf, Ofc of the Fed Coordinator for Meteorolg.
Office of Meteorology	Dir, Office of Meteorolgy.
Service Division	Chief Service Division.
	Chief, Science Division.
Office of Hydrology	Director, Office of Hydrology.
Hydrologic Operations Division	Chief, Hydrologic Services Division.
Hydrologic Research Laboratory	Chief, Hydrologic Research Laboratory.
Office of Systems Development	Director, Office of Systems Development.
	Dep Dir, Office of Systems Development.
Integrated Systems Laboratory	Chief, Integrated Systems Laboratory.
Techniques Development Laboratory	Chief, Techniques Devel Laboratory.
Office of Systems Operations	Dir, Office of Systems Operations.
Systems Integration Division	Chief, Systems Integration Division.
Systems Operations Center	Chief, Systems Operations Center.
Engineering Division	Chief, Engineering Division.
WSR–88D Operational Support Facility	Dir, NEXRAD Operational Support Facility.
National Data Buoy Center	Director, NOAA Data Buoy Office.
Eastern Region	Dir, Eastern Region NWS.
Southern Region	Dir, Southern Region, Ft Worth.
Central Region	Director, Central Region.
Western Region	Dir, Salt Lake City Region.
Aslaka Region	Dir, Alaska Region, Anchorage.
National Centers for Environmental Prediction	Director, National Meteorological Center.
	Dir, Nat'l Severe Storms Lab.
NCEP Central Operations	Chief, Automation division.
	Director, Aviation Weather Center (AWC).
Environmental Modeling Center	Chief, Development Div.
Hydrometeorological Prediction Center	Chf, Meteorological Operations Division.
Climate Prediction Center	Dir, Climate Prediction Ctr (CPC).
Storm Prediction Center	Director, Storm Prediction Center.
Tropical Prediction Center	Director, Natl Hurricane Center.
National Marine Fisheries Service	Dir, Ofc of Research & Environmental Info.
Northeast Fisheries Science Center	Science & Research Dir, Northeast Region.
	Senior Advisor for International Relations.
Southeast Fisheries Science Center	Science & Research Dir.
Northwest Fisheries Science Center	Science & Research Dir.
Southwest Fisheries Science Center	Science & Research Dir, Southwest Region.
Alaska Fisheries Science Center	Science & Research Director.
Office of Asst Administrator Satellite, Data Info Serv	Sr Sci for Environ Satel, D&I Serv (NESDIS).
	Senior Advisor for Data systems.
Director NPOESS Integrated Program	Systems Program Director.
National Climatic Data Center	Director, National Climatic Data Center.
National Oceanographic Data Center	Dir, Natl Oceanographic Data Center.
	Chief, Advanced Devel & Demonstration Lab.
National Geophysical Data Center	Dir, National Geophysical Data Center.
Office of Systems Development	Dir, Ofc of Sys Development.
Ofc of Asst Administrator, Ocean & Atmospheric Research	Program Director for Weather Research.
	Dep Asst Admr for Extramural Research.
National Sea Grant College Program	Director, National Sea Grant College Program.
Aeronomy Laboratory	Director, Aeronomy Laboratory.
Air Resources Laboratory	Director, Air Resources Laboratory.
Atlantic Ocean and Meteorology Laboratory	Dir, Atlantic Oceanographic & Meteorological.
Geophysical Fluid Dynamics Laboratory	Director.
	Supervisory Rsch Meteorologist.
	Supervisory Rsch Meteorologist.
Great Lake Environmental Research Laboratory	Dir, Great Lakes Environmental Research Lab.
Pacific Marine Environmental Research Laboratory	Dir, Pacific Marine Environmental Lab.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
Space Environment Center	Dir, Space Environment Laboratory.
Environmental Technological Laboratory	Director.
Forecast Systems Laboratory	Director, Forecast Systems Laboratory.
Climate Monitoring and Diagnostics Laboratory	Dir, Climate Monitoring & Diagnostics Lab.
Institute for Telecommunication Sciences	Assoc Admr for Telecommunications Science.
ITS, Systems and Networks Division	Deputy Dir for Systems & Networks.
Patent and Trademark Office	Admin for Leg & Interni Affairs.
	Chief of Staff.
Chemical Patent Exam Groups	Group Director—110.
	Group Director—120.
	Group Director—130.
	Group Director—150.
	Deputy Group Director—110.
	Group Director—180.
	Deputy Group Dir—150.
	Deputy Group Director—180.
Office of Asst Commissioner for Patents	Administrator for Search & Information Res.
	Dep Asst Comm for Patent Process Services.
Electrical Patent Exam Groups	Group Director for 260.
	Group Director 210.
	Group Director for 220.
	Group Director—230.
	Group Director 240.
	Group Director 250.
	Deputy Group Director—250.
	Deputy Group Director—260.
	Deputy Group Director—230.
Mechanical Patent Exam Groups	Group Director—310.
	Group Director—320.
	Group Director —330.
	Group Director—340.
	Group Director—350.
Office of Asst Commissioner for Trademarks	Chairman, Trademark Trial & Appeal Board.
	Deputy Asst Commissioner for Trademarks.
	Director, Trademark Examining Operation.
Office of Quality Programs	Director for Quality Programs.
	Dep. Dir. Ofc of Quality Programs.
Program Office	Director, Program Office.
Office of International and Academic Affairs	Dir International & Academic Affairs.
	Chief Financial Officer.
Office of the Director for Technology Services	Deputy Director, Technology Services.
	Senior Policy Advisor for Standards & Technol.
Manufacturing Extension Partner Ship Program	Dir, Manufacturing Extension Partnership Prog.
	Associate Director for Program Quality.
Office of the Director for Technology Partnerships	Dir, Office of Technology Commercialization.
Office of the Director's Office, Measurement Services	Director, Office of Measurement Services.
Office of the Director's Office, Technology Innovation	Dir, Ofc of Technol Evaluation & Assessment.
Ofc of the Director's Ofc, Advanced Technology Program	Dir, Chemical & Biomedical Technol Office.
	Dir, Electronics & Photonic Technology Ofc.
	Dir, Materials & Manufacturing Technol Ofc.
	Dir, Information Technol & Applications Ofc.
	Assoc Dir for Tech & Business Assessment.
	Dep Director, Advanced Technology Program.
	Director, Advanced Technology Program.
	Dir, Materials & Manufacturing Technology Ofc.
Electronics and Electrical Engineering Laboratory Ofc	Dir, Electronics & Electrical Eng Laboratory.
	Deputy Director.
	Dir, Office of Microelectronics Programs.
Semiconductor Electronics Division	Senior Research Scientist.
Manufacturing Engineering Laboratory Office	Manager for Industrial Relations.
	Dep Dir, Manufacturing Engineering Laboratory.
Precision Engineering Division	Chief, Precision Engineering Division.
Automated Production Technology Division	Dir, Manufacturing Engineering Laboratory.
	Chief, Automated Production, Technology Div.
Intelligent Systems Division	Chief, Intelligent Systems Division.
Manufacturing Systems Integration Division	Chief, Factory Automation Systems Division.
Chemical Science and Technolgy Laboratory Office	Dep Dir, Chemical Sci & Technology Laboratory.
	Dir, Chemical Sci & Technology Laboratory.
	Dep. Dir, Chemical Sci & Technol Laboratory.
Surface and Microanalysis Science Division	Chf, Surface & Microanalysis Science Division.
Physical and Chemical Properties Division	Chief, Physical & Chemical Properties Div.
Analytical Chemistry Division	Chief, Analytical Chemistry Division.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
Physics Laboratory Office	Director, Physics Laboratory.
	Mgr, Fundamental Constant Data Center.
	Coordinator of Radiation Measurement Services.
	Deputy Director, Physics Laboratory.
Electron and Optical Physics Division	Group Leader for Far Ultraviolet Physics.
Atomic Physics Division	Chief, Quantum Metrology Division.
	Chief, Atomic Physics Division.
Time and Frequency Division	Chief, Time and Frequency Division.
Quantum Physics Division	Senior Scientist & Fellow of Jila.
	Seniro Scientist & Fellow of Jila.
Materials Science and Engineering Laboratory Office	Dir, Materials Sci & Eng Laboratory.
Ceramics Division	Senior Scientist.
	Scientific Assistant to the Director, Imse.
	Dep Dir, Materials Sci & Eng Lab.
	Chief, Film & Fiber Technology.
	Chief, Ceramics Division.
Materials Reliability Division	Chief Materials Reliability Div.
Polymers Division	Physicist (Solid State).
	Chief, Polymers Division.
Reactor Radiation Division	Chief, Reactor Radiation Division.
	Group Leader Neutron Condensed Matter Science.
	Chief, Reactor Operations.
Building and Fire Research Laboratory	Dir, Building & Fire Research Laboratory.
	Dep Dir, Building & Fire Research Laboratory.
	Asst Dir, Building & Fire Research Laboratory.
	Chief, Fire Safety Engineering Division.
Building Materials Division	Chf, Building Materials Div.
Building Environment Division	Chief, Building Envirnment Division.
Fire Science Division	Chief, Fire Science Division.
Computer Systems Laboratory Office	Chief Inform Systems Architrecture Division.
	Associate Director for Program Implementation.
Advanced Network Technologies Division	Chief Advanced Network Technologies Div.
Computer Security Division	Chief, Computer Security Division.
Computing and Applied Mathematics Laboratory Office	Dir, Computing & Applied Mathematics Lab.
	Dep Dir, Computing & Applied Mathematics Lab.
	Associate Director for Computing.
Applied and Computational Mathematics Division	Chief High Perf Systems & Services Division.
Statistical Engineering Division	Chief Scientific Computing Division.
National Technical Information Service	Chief, Statistical Engineering Division.
Organziation Abolished	Deputy Director, Natl Technical Info Service.
Organziation Abolished	Senior Scientist for Fisheries.
Organziation Abolished	Dep Dir Ofc of Oceanic Research Programs.
	Dir, Office of Ocean & Earth Sciences.
Organziation Abolished	Chief Ocean & Lake Levels Division.
Organziation Abolished	Chief Semiconductor Electronics Division.
Organziation Abolished	Chief Molcular Phsics Div.
Organziation Abolished	Chf, Metallurgy Division.
Commodity Futures Trading Commission:	
Office of the General Counsel	Deputy General Counsel (Opinions & Review).
	Deputy General Counsel (Litigation).
	Deputy General Counsel (Reg & Adm).
Office of the Executive Director	Dep Exec Dir.
	Dir, Ofc in Information Resources Mgmt.
Division Economic Analysis	Dep Chf Economist.
	Chief Counsel.
	Associate Director for Surveillance.
Division of Enforcement	Associate Director.
	Associate Director.
	Associate Director 1
Division of Trading and Markets	Deputy Director (Contract Markets).
	Chief Counsel.
Consumer Product Safety Commission:	
Ofc of Executive Dir	Asst Exec Dir for Compliance & Enforcement.
	Associate Executive Dir for Field Operations.
	Asst Exec Director for Information Services.
	Executive Assistant.
Office of Hazard Identification & Reduction	Asst Exec Dir for Hazard I & R.
	Associate Executive Director for Economics.
Corporation for National and Community Service:	
Department of the Chief Financial Officer	Associate Director of Management & Budget.
	Asst Dir for Financial Management.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
Ofc Secy of Defense:	
Office of the Secretary	Asst to the Secy of Defense (Intel Oversight).
Office of Assistant Secretary (Solic)	Dep Asst Secy of Defense (Forces & Resources).
	Director of Budget and Execution.
	Director for Requirements & Programs.
Joint Activities	Director Desa.
Director Operational Test and Evaluation	Dep Dir for Resources & Administration.
	Dep Dir for Live Fire Test & Evaluation.
Ofc of Inspector General	Deputy Inspector General.
	Asst Inspector General for Investigations.
	Dep Asst Inspector Gen for Investigations.
	Dep Asst Inspector General for Inspections.
	Asst Insp Gen for Adm & Info Management.
	Dep Asst Inspector Gen for Adm & Info Mgmt.
	Dir, Audit Planning & Technical Support.
	Director, Logistics and Support.
	Director, Contract Management.
	Asst Inspector Gen for Audit, Pol & Oversight.
	Deputy Asst Inspector General for Auditing.
	Asst Inspector General for Auditing.
	Dir for Investigative Operations.
	Dep Asst Inspector Gen for Program Evaluation.
	Director, Readiness & Operational Support.
	Director, Acquisition Management Directorate.
	Special Assistant.
	Asst Inspector General for Policy & Oversight.
	Director, Audit Followup Directorate.
	Dep Asst Insp Gen for Criminal Invest P & O.
	Dep Asst Inspect General Auit Policy Oversight.
	Director, Office of Departmental Inquiries.
Office of Assistant Secy of Defense (Force Mgmt Policy	Director, Staffing & Career Management.
	Spec Asst DASD (CPP)/Dir, Def CPMS.
OFC of Dir of DOD Dependents Schools	Chief of Educational Support Policy & Legisl.
	Dep Dir Dep of Dfense Dependents School.
	Assoc Dir For Financial, Logistl, & Info Mgmt.
Office Assistant Sec Health Affairs	Executive Dir. Def Medical Info Mgmt.
Uniformed Serv. University of the Health Sciences	Scientific Director, AFRRI
Office of Asst Secy of Def for Public Affairs	Dir, Freedom of Information & Security Review.
	Dir Armed Forces Radio & Television Service.
	Dir Policy and Support.
Deputy Comptroller (Management Systems)	Deputy Chief Financial Officer.
Washington Headquarters Services	Director of Personnel and Security.
	Director Real Estate and Facilities.
	Dep Dir, Real Estate & Facilities.
	Dep Dir, Personnel and Security.
Office of the General Counsel	Deputy General Counsel (IG).
	Dir Def Ofc of Hearings & Appeals.
OFC of Under Secy of Def for Acq & Technology	Director for Defense Procurement.
	Sr Staff Specialist for S & A Systems.
	Dep Dir Naval Warfare.
	Deputy Dir, Cost Pricing & Finance.
	Sr Staff Spec for Air Weapons Def Supp Sys.
	Dep Dir Munitions.
	Sr Staff Special for Air Superiority Systems.
	Dep Dir, Contract Pol & Administration.
	Deputy Dir Test Facilities & Resources.
	Dep Dir Land Warfare.
	Executive Director, Defense Science Board.
	Dir Computer Aided Logistics Support Offics.
	Director, Pacific Armaments Cooperation.
	Dep Dir, Acquisition Resources.
	Dep Dir, Def Syst Procurement Strategies.
	Dep Dir Electronic Warfare.
	Dir Planning & Analysis.
	Dep Dir, Foreign Contractor.
	Dep Dir Mayor Policy Initiatives.
	Staff Spec for Spec Tech Program.
	Special Asst Concepts & Plans.
	Deputy Director Defensive Ssytems.
	Adusd (Ballistic Missile Defense).

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
	DD Modeling & Simulation Software.
	Dir OSD Studies & FFRDCA.
	Asst Dep Under Secy Def (Cruise Missile Def).
	Princ Dep Dir, Strategic & Tactical Systems.
	Dir, Prog Acquisition Strategies Improvement.
	Deputy Director Air Warfare.
	Dep Dir Arms Control Implementation Compl.
	Asst Dep Dir, Arms Control I & C.
	Deputy Dir, Information Management.
	Director Ind Capabilities & Assessments.
	Dep Dir (Test & Evaluation).
	Asst Dep Under Secy of Def (Acq P & P).
	PDUSD (Advanced Technology).
	Asst Dep Under Secry of Defense SSA.
	Special Asst to the USD (A&T).
	Dep Dir Test Facilities & Resources.
Nuclear & Chemical & Biological Defense Programs (NCB)	Prin DASD (NCB).
	Senior Policy ADV/DAS Def (NCB).
	DAS of Def (Nuclear Treaty Programs).
Ofc of the Dir, Defense Research & Engineering	Staff Specialist for Sensor Technology.
Ofc of DD (Research and Advance Tech)	Staff Specialist for Vehicle Propulsion.
	Staff Specialist for Materials & Structures.
	Staff Specialist for Weapons.
	Dir Environmental & Life Sciences.
	Staff Spec for Electronic W/C, Ctrl & Comms.
	Dir. balanced technology initiative.
Deputy Assistant Secretary of Defense (Intelligence)	Director, Intelligence Resources.
	Director, Intelligence Policy.
	Principal Dir to DASD I & S.
	Director, Intelligence Systems.
	Dir Intelligence Operations.
	Dep Dir Counterintelligence.
	Dep Director, Intilligence Policy.
	Dir Special Technology.
	Deputy Dir. Def Air Borne Reconnaissance OFC
	Director Resources.
	Deputy Dir Intelligence Policy Plans & Prog
Deputy Assistant Secretary of Defense (Defense-Wide C3)	Deputy Dir, Command & Control.
Director, Information Technology Resources	Director, Sensor & Electronic Technology
Advanced Research Projects Agency (ARPA)	Director, ASTO.
	Dir Nuclear Monitoring Research OFC
	Deputy Director, ASTO.
	Deputy Director, Management.
	Dir Electronic Systems Technology Office.
	Dir Land Systems Office.
	Dir Sensor Technology Officer.
	Dir Microelectronics Technology.
	Dep Dir Micro Electronics Technology.
	Dir Martime Systems Technology.
	Chief, Advanced Technology.
	Executive Dir. Defense Science Office.
	Asst Dir. Sensors & Processing.
	Special Asst. Information Technology.
	Assistant Director, Intelligence & Targeting.
	Dep Dir for Warfare Info Technology.
	Deputy Director DARPA.
	Dep Dir (Battlefield Awareness).
Defense Sciences Office	Dir Defense Sciences Office.
	Assistant Director for Material Sciences.
Defense Manufacturing Office	Executive Director, M M Wave, Technology.
Contracts Management Office	Dir, Contracts Management Office.
Office of the Joint Chiefs of Staff	Dep Dir for Wargaming, Simulation & OPS
Ballistic Missle Defense Organization	Assoc Deputy for I & C Technology.
	Deputy for Program Operations.
	Director, Contracts Directorate.
	Dir Battle Magt Command Control & Commun.
	Deputy for Technology Readiness.
	Principal Dep for Acquisition Theater Mis Def.
Defense Contract Audit Agency	Director, DCAA.
	Deputy Director, DCAA.
	Assistant Director, Operations.
	Asst Dir. Policy & Plans

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
	Director, Field Detachment.
Regional Managers	Regional Director, Eastern.
	Regional Director, Northeastern.
	Regional Director, Central.
	Regional Director, Western.
	Regional Director, Mid-Atlantic.
	Dep Regional Eastern Region.
	Deputy Regional Director Northeastern Region.
	Deputy Regional Dir Central Region.
	Deputy Regional Director, Western.
	Dep Reg Dir Mid Atlantic Region.
Defense Logistics Agency	Special Asst for Integrity in Contracting.
	Dir. Defense Manpower Data Center.
	Chief Actuary.
	Dep Gen Counsel (Acquisition & Contract Mgmt)
	Deputy Executive Director, Disrtribution.
	Dep Commander Defense Industrial Supply Ctr.
	Director CPMS.
Office of Deputy Director, Acquisition	Executive Dir. Contract MGMT Pol Acquisition.
	Assoc Dir for Operations Acquisition.
	Exec Dir. OPL Assessment & Programming Acq.
	Assoc Director, Acquisition (Acquisition).
Directorate of Quality Assurance	Deputy Commander.
OFC of Staff Dir—Small & Disadvantaged Business Until	Staff Dir. Small & Disadv Busin Utilization.
Office of Deputy Director, corporate administration	Executive director, Human Resources.
	Acquisition management advisor DLA chair.
	Logistics mgmt advr, DLA chair (ICAF).
Office of Deputy Director, material management	Executive director procurement.
	DEP executive director, supply management.
	Deputy commander.
	Deputy commander.
	Asst exec dir, syst, techn & intl programs.
	Executive director, logistics management.
	Assoc exec dir, pol, systems & engineering.
	Executive dir, business management.
	Executive dir, DLA logistics busin syst moder.
Directorate of tech & logistics services	Dir for infor tech.
Defense personnel support center	Deputy commander.
	DEP commander, DEF fuel supply center.
Defense training & performance data center	Deputy dir defense manpower data center.
Defense contract management	Executive director, program integration.
Defense information systems agency	DEP director for strategic plans & policy.
	Special Assistant for Liaison Activities.
	Professor of information science.
Office of the Director	Deputy manager national commun systems.
	Inspector general.
Directorate for strategic plans and policy	Chief information officer.
	DEP dir for operations.
National communications system	Asst mgr, NCS, technology & standards.
	Asst manager NCS plans & programs.
	Chief plans policy cust svcs & info assurance.
	Chief, technology & standards division.
DISA (field activity)	DEP commander interoperability & testing.
	Assoc DEP cmdr, center for software.
	Assoc D/D, functional info mgmt support dept.
	DEP commander, center for info syst security.
	DEP commander DISA westhem.
	Deputy commander center for standards.
	Chf, operational R & S technology management.
	DEP comm ctr for computer systems engineering.
	Deputy Commander for OPS, DISA Westhem.
	Assoc dir, joint interoperability eng org.
Directorate for C4 & Intelligence Programs	S/A to the DIR, CPSI for satllite com sys.
	Dir military satellite communications.
	Dir centr for systems intero & integration.
	DEP dir joint (IEO).
	Dir center for technical architecture.
	Tech DIR joint intero & eng comm (JIEO).
	Assoc DIR center for standards.
	Director, center for info systems security.
	Associate deputy director C41 programs.
	Deputy Dir C41 Integration support activity.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
Directorate for operations	Tech dir adv info tech services joint prog. DEP dir for C41 programs. DEP dir for C41 modeling, simulation & assess. Asst deputy dir for operations. Chief operational requirement customer service.
Directorate DISA, for logistics, F & S Projects	Technical dir, space information syst office. ADUSD (Space Systems & Architectures). Dir Defense Informtion Systems. Dep Dir, Logistics, Facilities & Special Proj. Dep Dir for Procurement & Logistics.
Directorate for Personnel and Manpower	Chief management support operations DISA west. Dep dir for personnel & manpower.
Direcorate for engineering & interoperability	Assoc dir for technical & management support.
Direcorate for C4 Modeling, Simulation and Assessment	Dir, def information systems program org. Deputy commander center for software.
Directorate for Enterprise Integration	Director, information management center. Director, technical integration office. Dir, Navy information resources management. Technical dir, Naval data automation command.
Comptroller Directorate	Comptroller.
Defense Nuclear Agency	Director for electronics and systems. Director for weapons effects. Chief, weapons lethality division. Chief, electronics technology division. Dir, Acquisition Management. Deputy Director, Operations Directorate. Deputy Director. Director for Test. Chief, Structural Dynamics Division. Dir for Tech applications. Assistant Director for Arms Control. Director for Information Systems. Chief, Simulation and Test Division. Deputy for Nuclear Matters. Director for Programs. Prog Dir, Hard Target Defeat Program Office. Program Director, Special Programs Office.
National Imagery and Mapping Agency	Deputy Director. Director, Installation & Management Group. Director, Planning & Analysis. Director, Procurement. Associate Director Operations Support. Director Human Resources. Director, Acquisition & Technology. Assoc Director, Customer Support Division. Asst Dir Customer Support/Modeling & Simulat. Assoc Dir, Eng & Maintenance Support Division. Assoc Dir, Interoperability Division. Assoc Director, Program Management Division. Associate Director, Support Staff. Asst Dir, Data Generation Div Eastern Office. Asst Dir, Data Generation Div Western OFC. Associate Director, Customer Services Div. Assoc Director, Data Generation Division. Director, Operations Group. Associate Dir, Customer Support Division. Assoc Director, International Operations Div. Associate Director, OG Support Staff. Associate Dir, Source Management Division. Asst Dir, Source Mgmt Div Eastern Office. Asst Dir, Source Mgmt Div Western Office. Assoc Director, Requirements & Operations. Dir, Requirements & Pol Integration Dir. Assoc Dir. Technology & Information. Spec Asst to the Dep Director, Corp Affairs. Assoc Dir, Contract Production Division. Chief, Geospatial IPT Office.
Defense Finance & Accounting Service	Deputy Director, Cleveland Center.
Defense Investigative Service	Dir, Defense Investigative Service. Deputy Director (Investigations).

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
	Dep Dir (Industrial Security). Deputy Director (Resources). Dep Dir (Investigations Control & Automation). Deputy Director, Dis. Special Asst to the Director.
Department of Air Force:	
Office of Administrative Assistant to the Secretary	Administrative Assistant.
Office of Small & Disadvantaged Business Utilization	Dir, Ofc of Small & Disadv Bus Utilization.
Office of the Inspector General	Dep Asst Inspector Gen/Spec Investigations.
Office of ASAF for Financial Management & Comptroller	Principal Dep Asst Secry (Financial Mgmt).
ODAS Budget	Deputy for Budget. Director of Budget Investment. Director of Budget Management & Execution.
ODAS Cost & Economics	Dep Asst Secy (Cost & Economics.
Office of ASAF for Acquisition	Principal Das (Acquisition & Mgmt).
Centralized Rfp Support Team Office	Assoc Dep Asst Secy (Transportation). Dir, Centralized Rfp Support Team.
ODAS Research, Engineering & Industrial Policy	Assoc Dep Asst Secy (Info & Support Systems). DAS (Research & Engineering).
ODAS Management Policy & Program Integration	DAS (Science, Technology & Engineering). Dep Asst Secy (Mgmt Pol & Prog Integration).
ODAS Contracting	Assoc Dep Asst Secy (Contracting).
Air Force Program Executive Office	AF Program Exec Officer, Info Systems. Air Force Prog Exec Ofcr, Conventional Strike. AF Prog Executive Officer Logistics Systems. AF Program Executive Officer Space.
OFC of ASAF for Manpower, Reserve Affairs, Install & Env	Dep for Air Force Review Boards.
ODAS Installations	Deputy for Installations Management.
Air Force Base Conversion Agency	Dir Air Force Base Conversion Agency.
Office of the Chief of Staff	Air Force Historian.
Test and Evaluation	Deputy Dir Test & Evaluation.
Assistant Chief of Staff, Communications & Information	Dir of Architectures Tech & Interoperability.
Deputy Chief of Staff, Installations & Logistics	Chief Modification & O&M Programs Division. Chief, Combat Support Division.
Civil Engineer	Deputy Civil Engineer.
Services	Dir of Res Mgmt & Dep Dir for MWR & Services.
Maintenance	Assoc Dir of Maintenance & Supply.
Logistics Support & Integration	Director of Concepts & Integration.
Field Operating Agencies	Dir AF Center for Environmental Excellence.
Programs	Associate Director of Programs & Evaluation.
Deputy Chief of Staff, Personnel	Asst Deputy Chief of Staff Personnel. Dir Civil Personnel Policy & Personnel Plans. Chief Air Force Personnel Operations Agency.
Field Operating Agencies	Assoc DCS/Personnel & Chief AFPOA.
Deputy Chief of Staff, Operations	Associate Director of Operations.
Personnel	Director, Personnel.
Contracting	Deputy Director Contracting. Dep DIR for Programs S & B Clearance.
Logistics	Deputy Director, Logistics.
Engineering & Technical Management	Director, Engineering & Technical Mgmt.
Financial Management & Comptroller	Dep Director, Financial Mgmt & Comptroller.
Corporate Information	Dir Corporate Information.
Plans & Programs	Deputy Director, Plans & Programs.
Space and Missile Systems Center	Executive Director. Director Contracting.
Phillips Laboratory	Deputy Director.
Geophysics Directorate	Dir, Space Physics Division.
Electronic Systems Center	Executive Director. Prog Dir for Air Base Decision Systems. Director, Engineering & Program Management.
Plans and Programs Directorate	Director, Plans & Advanced Programs. Dir Plans & Programs.
Command, Control and Communications Directorate	Dir Command Control Communications.
Standard Systems Group	Director, Standard System Group.
Aeronautical Systems Center	Executive Director. Director System Management. Dir Financial Management & Comptroller. Director Contracting.
Development Planning	Dir Advanced Systems Analysis.
Integrated Engineering & Tech Management	Dir Systems Engineering.
Directors of Engineering	Director of Engineering F–16. Dir of Engineering B–2.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
Systems Program Offices	Dir of Engineering F–22.
	Dir of Engineering C–17.
	Director of Engineering Propulsion.
	Dir Program Integration & Analysis.
	Development System Manager Propulsion.
Wright Laboratory	Prog Dir Joint Air-To Surface Standoff Miss.
	Dir Manufacturing Technology.
	Dir, Plans & Programs Directorate.
Human Systems Center	Executive Director.
Arnold Engineering Development Center	Executive Director.
Air Force Development Test Center	Executive Director.
Air Force Flight Test Center	Executive Director.
Joint Logistics Systems Center	Dir Depot Maintenance.
	Dir Corporate Integration.
Air Logistics Center, San Antonio	Executive Director.
	Director, Financial Management.
	Product Group Manager, Propulsion Systems.
	Dir, Privatization & Realignment.
	Director, Contracting.
Air Logistics Center, Oklahoma City	Executive Director.
	Director, Financial Management.
	Director, Commodities Management.
	Director, Contracting.
Air Logistics Center, Warner Robins	Executive Director.
	Director, Financial Management.
	Director, Technology & Industrial Support.
	Director, Contracting.
Air Logistics Center, Odgen	Executive Director.
	Director, Financial Management.
	Director, Technology & Industrial Support.
	Director, Contracting.
Air Logistics Center, Sacramento	Executive Director.
	Director, Financial Management.
	Director, Technology & Industrial Support.
	Director, Contracting.
Air Force Audit Agency	Auditor General of the Air Force.
	Asst Aud Gen (Acquisition & Log Audits).
	Asst Aud Gen (Field Activities).
	Asst Aud Gen (Operations).
	Asst Aud Gen (Financial & Support Audits).
Air Education & Training Command	Provost, Air University.
Air Mobility Command	Principal Dep Dir of Operations for Transport.
Air Force Reserves	Air Commander 4th Air Force.
	Air Commander 10th Air Force.
	Air Commander 22nd Air Force.
AF Space Command	Sr Scientist & Tech Advisor for AFspacecom.
AF Operational Test & Eval Ctr	Technical Director.
U.S. Central Command	Scientific Advisor.
U.S. Strategic Command	Assoc Dir for Strategic Planning.
	Dep Dir Comd Ctrl Comm Computer & Intel Sys.
U.S. Transportation Command	Dir, Program Analysis & Financial Mgmt.
Shape Technical Centre	Deputy Director.
Department of Army:	
Office of the Secretary	Special Asst to the Under Secretary.
Office Deputy Under Secretary of Army (OPS Research)	Spec Asst for Air & Missile Defense.
	Special Asst for Forces & Program Evaluation.
	Special Assistant for Systems.
	Special Assistant for Electronic Systems.
	Dir, Test and Evaluation Management Agency.
	Dir, U.S. Army Model I & S Management Agency.
Office Administrative Asst to the Sec of Army	Adm Asst to the Secy of the Army.
	Dep Admin Asst to the Secy of the Army.
Office of the General Counsel	Deputy General Counsel (Ethics & Fiscal(.
Ofc Asst Secretary Army (Civil Works)	Deputy ASA (Management & Budget).
	DAS of the Army (Policy & Legislation).
Ofc Asst Sec Army (Financial Management & Comptroller)	Assistant Deputy ASA for Army Budget.
	Deputy for Cost Analysis.
	Dir of Investment.
	DAS of the Army (Financial Operations).
	Spec Adv for Economic Pol & Productivity Prog.
OASA (Installations, Logistics & Environment)	Director for Business Resources.
	Dep for Programs & Install Assistance.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
Ofc Asst Sec Army (Manpower & Reserve Affairs)	Dep Dir for Civilian Personnel Mgmt & Ops.
	DAS (Army Rev Brds/EEO Complaints).
Ofc Asst Sec Army (Research, Development & Acquisition)	Deputy Asst Secy of the Army (Procurement).
	DAS for Res & Tech/Chief Scientist.
	Dep Asst Secy for Plans & Programs.
	Dep Dir US Contracting Support Agency.
	Director for Research.
	Director for Technology.
	Director for Assessment & Evaluation.
HQDA Army Acquisition Executive	Dep Prog Mgr for Chem Demilitarization Oper.
	Deputy PEO, Armored Systems Modernization.
	Dep Prog Exec Ofcr, Command & Control Systems.
	Deputy Prog Executive Officer Comm Systems.
	Program Executive Officer Stamis.
	Prog Exec Ofcr, Field Artillery Systems.
	Dep Program Executive Officer for Aviation.
	Dep PEO, Intelligence & Electronic Warfare.
	Prog Exec Ofcr, Tactical Wheeled Vehicles.
	Prog Executive Ofcr, Tactical Missiles.
	Deputy Prog Executive Ofcr, Missile Defense.
	Program Manager, National Missile Defense.
Ofc of Dir of Info Sys for Comm, Contl, Comms/Computers	Vice Director to the Disc4.
	Dir of Army Information.
	Dir, Ofc US Army Info Syst Sel & Acq Agency.
Army Audit Agency	The Auditor General.
	Deputy Auditor General.
	Director, Logistical & Financial Audits.
	Dir, Acquisition & Force Mgmt.
	Dir Audit Policy Plans and Resources.
Concepts Analysis Agency (OSCA FOA)	Dep Dir for Strategy & Resource Analysis.
Operations Test & Evaluation Command (OCSA FOA)	Tech Dir. Test & Exper Command.
USA Space & Strategic Def Comm Huntsvill (AL (OCSA FOA)	Chief, Battle Management Division.
	Prin Assistant Resp for Contracting.
	Assistant Director for Discrimination.
	Dir, Advanced Technology Directorate.
	Director, Systems Directorate.
	Director, Weapons Directorate.
	Dir Miss Def Battle Integration CTR.
Army Center of Military History (OCSA FOA)	Chief Historian.
Office, Assistant Chief of Staff for Installation MGMT	Dep Asst Chief of Staff for Installation Mgnt.
Office, Deputy Chief of Staff for Logistics	Asst Director for Supply Mgmt.
	Asst Dir for Maintenance Mgmt.
	Asst Dir for Transportation.
	Asst Dir for Energy & Troop Support.
	Director for Security Assistance.
	Director for Resources and Management.
	Executive Director, Strategic Logistic Logistics Agcy.
	Chief Aviation Logistics Office.
Office Dep Chf of Staff for Operations & Plans	Tech Adv to the DCSOPS.
	Dir. U.S. Army Nuclear & Chemical Agency.
Office, Dep Chief of Staff for Personnel	Director of Manprint.
	ADCSPER (Army Civilians).
Army Research Institute (DCSPER FOA)	Dir, US Army Res Inst & Chief Psychologist.
	Dir, Manp & Pers Res Lab & Assoc Dir. ARI.
National Guard Bureau	Program Manager, Res Comp Auto Sys
Water Reed Army Institute of Research	Chief Dept of Pharmacology.
Training and Doctrine Command (TRADOC)	Scientific Advisor to CG.
	Asst Deputy Chief of Staff for Resources Mgmt.
	ADCOS for Training Policy Plans and Programs.
	Deputy to the Commanding Gen, CASCOM.
	Asst Dep Chief of Staff for Base Ops support.
	Asst Dep Chief of Staff for Combat Develop.
Tradoc Analysis Center	Director of Operations.
National Simulations Center	Technical Director National Simulations Ctr.
Military Traffic Mgmt Command	Deputy to the Commander.
	Special Asst for Transportation Engineering.
U.S. Army Forces Command	Deputy Director Resource Management.
	Asst DCS for Pers & Inst Mgmt.
U.S. Army Corps of Engineers	Dir of Real Estate.
	Director of Human Resources.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
	Director Resource Management.
	Director, U.S. Army Center for Public Works.
	Principal Asst Reponsible for Contracting.
	Dep to the Commander for Prog & Tech Mgnt.
Directorate of Research & Development	Asst to Chf of Eng for R & D Dir R & D Dir.
	Asst Dir for Research & Dev (civil works prog).
	Asst Dir Research & Dev (Military Prog).
Directorate of Civil Works	Deputy Director, Civil Works.
	Chief, Programs Management Division.
	Chief, Planning Division.
	Chief Engineering Division.
	Chf, Ops, Construction & Readiness Division.
	Chief Policy Review & Analysis Division.
Directorate of Military Programs	Deputy Director, Military Programs.
	Chief Construction Division.
	Chief, Engineering Division.
	Chief, Programs Management Division.
	Chief, Environmental Restoration Division.
Directors of Programs Management	Dir Programs Management, LMVD.
	Director of Programs Mgnt.
	Dir Programs Management, NAD.
	Director of Programs Management.
	Dir Programs Management, NPD.
	Dir Programs Management, ORD.
	Dir Programs Management, POD.
	Dir of Programs Management, SAD.
	Dir Programs Management, SPD.
	Dir Programs Management, SWD.
Directors of Engineering & Technical Services	Dir Engineering & Technical Services, LMVD.
	Dir Engineering & Technical Services, MRD.
	Dir Engineering & Technical Services, NAD.
	Dir Engineering & Technical Services, NAD.
	Dir Engineering & Technical Services, NPD.
	Dir Engineering & Technical Services, ORD.
	Dir Engineering & Technical Services, POD.
	Dir Engineering & Technical Services, SAD.
	Dir Engineering & Technical Services, SPD.
	Dir of Engineering & Technical Services, SWD.
Engineer Waterways Experiment Station, COE	Dir Waterways Experiment Station
	Director, Geotechnical Laboratory.
	Director Hydraulics Laboratory.
	Director Environmental LAB.
	Director, Structures Laboratory.
	Director Coastal Engineering Research Center.
Engineer Topographic Laboratories, C of Engineers	Director.
	Associate Director of Technology.
Construction Engineering Res Lab Champaign, IL	Director.
Cold Regions Research & Engineering Lab Hanover, NH	Director.
Office of DCS for Logistics & Operations	Asst Dep Chief of Staff for Logs & Operations.
	Exec Director, Logistics Support Activity.
Special Analysis Office	Chief Special Analysis Office.
Office Deputy Commanding General	Principal Deputy for Logistics.
	Principal Deputy for Acquisition.
	Principal Deputy for Technology.
Army Research Office (AMC)	Director.
	Dir, Electronics Division.
	Director, Materials Science Division.
	Dir Physics Div.
	Dir, Mathematical & Computer Sciences Div.
	Dir, Eng & Environmental Sciences Division.
	Dir, Research & Technology Integration.
	Dir Chem & Bio Sci Div.
Office of DCS for Research Dev and Engineering	ADCS for Res, D & E for Technol & Eng.
Office of Deputy Chief of Staff for Ammunition	Asst Deputy Chief of Staff for Ammunition.
Office of DCS for Acquisition	Asst Dep Chf of Staff for Acq & Contract.
Office of Deputy Chief of Staff for Personnel	Dep Chief of Staff for Personnel.
Office of the Deputy Chief of Staff for Res Management	Deputy Chief of Staff for Resource Management.
	ADCS for Resource Mgmt/Exec Dir for Busin.
USA Security Assistance Command	Deputy.
US Army Industrial Operations Command	Dir, U.S. Army Def Ammunition Center & School.
U.S. Army Chemical & Biological Defense Command	Deputy to the Commander.
US Army C & B Def Command (CBDCOM)—Edgewood RD&E Center.	Director, Engineering Directorate.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
	Dir, Res & Technology Directorate.
	Technical Director.
US Army Aviation & Troop Command (ATCOM)	Deputy to the Commander.
	Exec Dir—US Army Aviation RD & E Center.
	Director of Engineering.
	Dir of Aeroflight Dynamics.
	Executive Director, Acquisition Center.
	Dir of Advanced Syst/Assoc Dir for Technol.
	Assoc Dir for Tech Appl/Dir of Spec Prog.
	Exec Dir, Integrated Materiel Mgmt Center.
U.S. Army Soldier Systems Command	Deputy to the Commander.
Natick Research Development & Engineering Center	Director, Natick RD & E Center.
	Dir, Individual Protection Directorate.
	Director, Soldier Science Directorate.
US Army Communications Elect Comd (CECOM)	Deputy to the Commander.
	Comptroller.
	Director C3I Acquisition Center.
CECOM Research, Development & Engineering Center	Director/Army Systems Engineer.
	Dir, Space & Terrestrial Comm Directorate.
	Dir, E/W, Reconnaissance, Surveillance, TAD.
	Dir, I & E Warfare Directorate.
	Dir, Software Engineering Directorate.
	Dir for C4I Log & Readiness Center.
	Assoc Tech Dir Resech Devel & Engineering Ctr.
U.S. Army Research Laboratory	Director US. Army Research Laboratory.
	ADCS for Technology Planning & Management.
	Director Sensors Directorate.
	Dir, Information Sci & Technology Directorate.
Organization Abolished	Dir Operations Directorate.
Advanced Concepts & Plans Directorate	Dir Advanced Concepts & Plans Directorate.
Electronics & Powers Sources Directorate	Director.
Battlefield Environment Directorate	Director.
Survivability/Lethality Analysis Directorate	Director.
	Chief, Ballistic Vulnerability Division.
Vehicle Structures Directorate	Director.
Advanced Computing & Information Sciences Directorate	Director.
US Army Weapons Technology Directorate	Director.
	Chief, Propulsion & Flight Division.
	Chief, Terminal Effects Division.
	Chief, Weapons Concepts Division.
Human Research and Engineering Directorate (ARL)	Director, Human R & E Directorate.
US Army Materials Directorate (ARL)	Director.
US Army Missile Command (MICOM)	Deputy to the Commander.
	Director, Acquisition Center.
	Dir, Integrated Materiel Mgmt Center.
	Deputy Executive Director for TMDE.
Research Development & Engineering Center (RDEC)	Tech Dir for M & D, Res, Dev & Eng Center.
	Dir for System Engineering & Production.
	Director for Advanced Sensors.
	Director for Propulsion.
	Dir for Systems Simulation & Development.
	Associate Director for Systems.
	Assoc Director for Product Assurance.
	Director for Weapons Sciences.
	Dir for Missile Guidance.
Tank-Automotive and Armaments Comd (TACOM)	Deputy to the Commander.
	Director of Resource Mgt.
	Director of Acquisition Center.
	Director, Integrated Materiel Mgmt Center.
	Dir U S Army Arament & Chemical Acq Logis Act.
Tank-Automotive Res, D & E Center (TARDEC)	President/Director.
	Vice President for Research.
	Vice President for Customer Engineering.
	Vice President for Product Development.
US Army Armament Research, D & E Center (ARDEC)	Technical Director for Armament.
	A/Tech/Dir (Systems Concepts & Technology).
	A/Tech/Dir (Sys Development & Engineering.
	Assoc Tech Dir (Producib & Process Technol).
Armament Engineering Directorate	Director, Armament Engineering Directorate.
	Chf, Energetics & Warheads Division.
Fire Support Armaments Centers	Dep Director Fire Support Armaments Center.
Close Combat Armaments Center	Deputy Director, Close Combat Armament Ctr.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
US Army Simulation, Training & Instrumentation Command	Deputy to the Commander.
US Army Test and Evaluation Command, (TECOM)	Dir, Redstone Technical Test Center.
	Tech Dir & Chf Sci.
	Dir for Test and Assessment.
	Dir, Joint Prog Ofc for Test & Evaluation.
US Army Materiel Systems Analysis Activity	Director.
	Chief, Combat Integration Division.
	Chief, Combat Evaluation Division.
	Chief, Reliability Analysis Division.
	Chf, Ground Warfare Division—AMSAA.
Army Information Systems Command	Deputy Chief of Staff for Resource Management.
	Technical Director/Chief Engineer.
	Technical Director, ISEC.
	Director of Operations.
Headquarters, US Army, Europe	Asst Dep Chf of Staff, Personnel (CIV PERS).
	Asst Dept Chief of Staff Eng for Eng & Housing.
	Asst Dep Chf of Staff, Resource Mgmt USAREUR.
	Asst Dep Chf Staff for Eng (Intl Affairs).
U.S. Army Special Operations Command	Dir of Force Development & Integration.
NATO ACISA	Asst Dir, Command, Control and Comms Syst.
Organization Abolished	Principal Deputy to the Commander.
National Defense University	Dir, Information Resources Management College.
U.S. Southern Command	Spec Asst for Technology & Requirements Integ.
Department of Navy:	
Office of the Under Secretary of the Navy	Assistant for Administration.
Office of the Auditor General	Auditor General of the Navy.
Naval Audit Service	Eastern U.S. Audit Services Facilitator.
	Director, Plans and Policy.
	Dir, Naval Audit Service Western Region.
	Dir, Naval Audit Service Capital Region.
	Director, Audit Operations.
Ofc of the Asst Secy of Navy (Manpwr & Res Affs)	Dir, Human Resources Operations Center.
Office of Civilian Personnel Management	Dir, Civilian Personnel Programs Division.
	Dir, Ofc of Civilian Personnel Management.
	Associate Director (OCPM–30).
	Associate Director (OCPM–20).
	Associate Director (OCPM–10).
OAS of the Navy (Research, Dev & Acquisition)	Director, Navy Acquisition R&S Improvement.
	Director, Procurement Policy.
	Head, Contract Policy.
	Dir, Intl Agreements, TTSARB & Special Proj.
	Director, Acquisition Career Management.
	Director for AAW & Strike Air Programs.
	Dir, Navy International Programs Office.
	Dep Dir Navy International Programs Office.
Program Executive Officers	Chief Engineer Theater Air Defense.
	Dep Prog Exec Ofcr for Tactical Air Progs.
	Director, Plans & Programs Division.
	Head Fire Control Section.
	Head Operations Engineering Section.
	Test & Instrumentation Branch Engineer.
	Chf Engr, Missile Branch.
	Chf Engr
	Asst for Fire Control & Guidance Systems.
	Branch Head, Reentry Systems Branch.
	Dep P/E Office for Unmanned Aerial Vehicles.
	Dep Prog Exec Officer for Theater Air Defense.
	Technical Plans Officer.
	Head, Res Branch & De Dir, Plans & Progs Div.
	Assistant for Missile Engineering Systems.
	Dep P/E Officer for Cruise Missiles Program.
	Prog Manger for Comm Satellite Programs.
	Dep Prog Officer Submarines.
	Program Executive Officer, Undersea Warfare.
	Asst for Systems Integration & Compatibility.
	Dep Prog Exec Ofcr for Tactical Air Programs.
	Deputy Peo, Mine Warfare.
	Prog Exec Officer for Space Comms & Sensors.
	AEGIS Deputy Program Manager.
	Prog Exec Officer ASW Assault & Spec Miss Pro.
	Chief Engineer, Peo, SCS.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
	Program Manager Ship Self Defense.
Ofc of the Asst Secy of Navy (Fin Mgmt Comptroller)	Assoc Dir, Budget & Reports/Fiscal Manag Div.
	Asst General Counsel (Financial Management).
	Dir, Investment & Dev Div.
	Dir, Financial Mgmt Pol & Systems Division.
	Dir, Ofc of Fin Mgt Syst.
	Dir, Budget Evaluation Group.
	Dir Resource Allocation & Analysis Division.
	Director, Financial Management Division.
	Director, Civilian-Contractor Manpower Div.
Naval Center for Cost Analysis	Dir Naval Center for Cost Analysis.
Office of the Naval Inspector General	Deputy Naval Inspector General.
Office of the General Counsel	Asst Gen Coun (Res, Dev & Acquisition).
	Special Counsel for Litigation.
	Asst General Counsel (Install & Environment).
	Assist Gen Coun (Manpower & Reserve Affairs).
Naval Criminal Investigative Service	Dir Naval Criminal Invest Service.
	Asst Dir of Counterintelligence.
	Special Agent in Charge Norfolk Field Ofc.
	Special Agent in Charge.
	Asst Dir of Criminal Investigation.
	Deputy Director, NCIS.
Chief of Naval Operations	Asst Dep Chf of Naval Operations (Logistics).
	Techn Dir, Pentagon S/A Info Technol Services.
	Dep Dir of Naval Training.
	Asst Dep Chief Naval Oper Res Warfare.
	Head, Studies & Analysis Branch.
	Associate Director, Assessment Division.
	Tech Dir, Submarine & SSBN Security program.
	Technical Director.
	Advisor for Research & Development Programs.
	Executive Assistant.
	Dep Dir, Supportability, M & M Division.
	Deputy Director for Programming.
	Head Assessment & Affordability Branch.
	Assoc Dir, Expeditionary Warfare Division.
	Dir Naval History/Dir, Naval Historical Ctr.
	Special Asst for Technology and Analysis.
	Head Deep Submergence Systems Branch.
	Dep Dir Envir Protection Safety Occp Heal Div.
	Director Strategic Sealift Division.
	Asst for Educational Resources.
Bureau of Naval Personnel	ACNP for MPN Financial Management.
Bureau of Medicine & Surgery	Dep Commander for Fin Mgmt & Comptroller.
Military Sealift Command	Counsel.
	Comptroller.
	Deputy Commander.
	Asst Dep Comdr for Business Operations.
Naval Oceanography Command	Technical/Deputy Director.
OFC of Commander in Chf/Allied Forces/Southern Eur	Dir Joint Train Analysis & Simulation Ctr.
	Dep Dir Fleet Maintenance.
	Deputy Director Shore Activities Readiness.
	Dir Warfare Programs & Readiness.
Ofc of the Commander-in-Chief, U.S. Pacific Command	Chief, Research & Analysis.
CINCPACFLT	Deputy Director Fleet Maintenance.
	Deputy Director Shore Installation Management.
	Associate Director Resources Req & Assessment.
Ofc of the Chief of Naval Education and Training	Comptroller.
Naval Air Systems Command Headquarters	Standards Improvement Executive.
	Executive Dir, Corporate Operations.
	Exec Dir for Industrial Capabilities.
	Executive Director for Logistics.
	Executive Director for Contracts.
	Deputy Comptroller.
	Counsel, Naval Air Systems Command.
	Assoc Director Weapons Sys Eng Division.
	Deputy Head, Avionics Dept.
	Deputy Head Air Vehicle Dep.
	Dep Head Logistics Management.
	Head, Tactical A & M Contracts Department.
	Head Aircraft Support Dept.
	Head Cost Department.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
	Deputy Acquisition Executive.
	Executive Director for Engineering.
	Dir Industrial Operations.
	Head Concepts Analysis Evaluation Plan Dept.
	Head Propulsion & Power Systems Dept.
	Dep Head Aircraft Sys Engineering Department.
	Head Logistics Support Department.
	Deputy Commander, Naval Air Sys Command.
	Head, Cruise M & U Aerial Vehicles Dept.
	Dir Budget Formulation Justification Exe Div.
	Deputy Counsel, NAVAIR.
	Executive Dir for Industrial Capabilities.
	Dir Naval Aviation Science & Tech Office.
	Asst Commander for Corporate Operations.
	Dir, Technology Maturation Directorate.
	Head Air ASW Assault & Special Mission Prog.
	Chief Scientist/Technologist.
	Special Asst for Navy Test & Evaluation.
Organization Abolished	Technical Director.
Naval Air Warfare Center Aircraft Division Warminster	Head, Air Vehicle Department.
Naval Air Warfare Center Aircraft Division Lakehurst	Director, Engineering Competency.
	Chief Engineer.
Navy Air Warfare Center Aircraft Division	Exec Dir, T & E Group NAWC—Aircraft Div.
	Head, Avionics Department.
	Dir of Atlantic Ranges & Facilities Dept.
	Dep Commander, NAWC—Aircraft Division.
Naval Air Warfare Center Aircraft Div Indianapolis	Head, Systems Engineering Depart.
	Head Program Management Competency.
	Head, Industrial Competency.
Naval Air Warfare Center Weapons Div, Pt. Mugu, CA	Head Test Evaluation Engineering Department.
	Head, Syst Engineering Department.
	Director for Test & Evaluation.
	Head, Threat/Target Syst Depart.
Naval Air Warfare Center Weapons Div. China Lake, CA	Head, Res and Technology Division.
	Head, Pacific Ranges & Facilities Depart.
	Head, Avionics Dept.
	Head, Weapons/Target Dept.
	Dir, Aircraft Weapons Systems Directorate.
	Dir for Eng, NAWC-Weapons Directorate.
	Director of Corporate Operations.
Naval Training Systems Center	Executive Director.
	Dir of Acq, Analysis, Engineering & Research.
Space & Naval Warfare Systems Command	Exec Dir, Contracts.
	Deputy Comptroller.
	Counsel Space & Naval Warfare Systems Com.
	Chief eng Comms Sys Program Directorate.
	Chief Engineer Command Sys Prog Directorate.
	Assoc Tech Dir for Research & Technology.
	Exec Dir, Space Technology Directorate.
	Exec Dir, Undersea Surveillance Prog Dir.
	Chief Eng Undersea Surveillance Prog Dir.
	Dir of Tech Head Engineering Tech Group.
	Director, Information Systems Security Office.
	Executive Dir C41 Systems Directorate.
	Chief Eng SPAWAR.
	Exec Dir, NWSAED.
	Prog Dir, I & E Warfare Syst Program Dir.
	Asst Comdr for POL, OPS & Acq Support Direct.
	Deputy Commander.
Naval Command Control & Ocean Surveillance Center	Technical Director.
Naval Command C & O Surveillance Ctr. RDT&E Division	Head, Surveillance Dept.
	Executive Director.
	Head: Navigation & Air C3 Department.
	Head, Command and Control Department.
	Dep Exec Dir Sci Tech Engineering.
	Head, Communication Department.
Nav Command Control & Ocean Surveil Comm West Cost Div	Executive Director West Coast ISE.
	Dir Naval Space & Electronic Warfare/C4ISR.
East Coast ISE Division	Executive Director East Coast.
Naval Facilities Engineering Command	Senior Executive for Public Works Support.
	Counsel Naval Facilities Engineering Command.
	Deputy Comptroller.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
	Director for Contracts Support.
	Chief Engineer.
	Dir of Real Estate Support.
	Dir of Base Closure.
	Director for Environment.
	Director, Planning & Engineering Support.
Naval Sea Systems Command	Executive Director.
	Asst Deputy Commander for Contracts.
	Counsel Naval Sea Systems Command.
	Asst Dep Commander for Contracts.
	Dep Prog Mgr & Tech Dir, PMS396B.
	Executive Director/Deputy Comptroller.
	Prog Mgr, Mine Warfare Ship Program.
	Dir, Submarine Systems (S5W & S8G) Division.
	Director, Reactor Materials Divisions.
	Director, Secondary Plant Components Division.
	Head, Advanced Reactor Branch.
	Dir Naval Architecture Group.
	Dep Dir Surface Ship Design & Sys Eng Group.
	Director cost Estimating & Analysis.
	Dir, Shipbuilding Contracts Division.
	Exec Dir, Industrial & Facility Mgmt Dir.
	Executive Director, Surface Ship Directorate.
	Exec Dir Submarine Directorate.
	Director, Warfare Systems Group.
	Director, Corporate Operations.
	Deputy Commander for Fleet Logistics Support.
	Dep Prog Mgr/Techn Dir, New Attack Submarines.
	Dep Prog Manager Tech Dir Attack Subm Prog.
	Dep Program Mgr, Surface Ship Prog Mgmt Ofc.
	Dep Prog Manager, Aircraft Carrier Prog Ofc.
	Dir, Environmental Engineering Group.
	Dir Reactor Plant Components Auxil Equip Div.
	Director For Submarine Refuelings.
	Dir Surface Ship Systems Division.
	Deputy Director, Nuclear Components Div.
	Dir, Reactor Plant Safety & Analysis Division.
	Dir, Ship S & S Integrity Group.
	Dir Power Systems Group.
	Director, Materials Engineering Office.
	Dir Electrical Engineering Group.
	Exec Dir, Ship Design & Engrng Directorate.
	Prog Mgr, Amphibious W & S Sealift Program.
	Dir, Naval Shipyard Mgt Group.
	Program Manager for Commissioned Submarines.
	Command Asst for Human Resources Prog & Dir.
	Dir, Surface Systems Contracts Division.
	Assoc Director for Regulatory Affairs.
	Asst Dep Commander, Surface & Area AAW Syst.
	Director, Office of Resource Management.
	Dir, Reactor Refueling Division.
	Deputy Counsel, Naval Sea Systems Command.
	Dir Environmental Protection Office.
	Director, Ship Signatures Group.
	Director, Auxiliary Systems Group.
	Dir, Combat Systems Design & Eng Group.
	Program Manager, Strategic Sealift Prog Ofc.
	Dir, Ship Availability Plnng & Eng Center.
Naval Ordnance Center	Deputy Commander, Naval Ordnance Center.
Norfolk Naval Shipyard	Naval Shipyard Nuclear Eng Manager.
	Naval Shipyard Nuclear Eng Mgr Puget Nal Ship.
Naval Surface Warfare Center	Technical Director.
Naval Undersea Warfare Center	Technical Director.
Naval Surface Warfare Center, Crane Division	Executive Director.
	Executive Director.
Naval Undersea Warfare Center Div, Keyport, WA	Executive Director.
	Chf Res Scientist (Arctic Submarine Tech.
Naval Surface Warfare Center, Pt. Hueneme Division	Executive Director.
Naval Surface Warfare Center, Indian Head Division	Director.
Coastal Systems Station	Executive Director.
	Head, Coastal Sci, Technology & Analysis Dept.
	Head, Coastal Warfare Systems Department.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
Naval Surface Warfare Center, Carderock Division	Director.
	Assoc Dir for Hydromechanics/Head, HD.
	Assoc Dir for Business OPS/HBD.
	Assoc Dir for Syst/P & H Ship S/P Directorate.
	Assoc Dir for Ship A/E S/H S/Directorate.
	Assoc Dir for SS & M/HSS & M Directorate.
	Assoc Dir for Mise/HMIS Eng Directorate.
Naval Surface Warfare Center, Dahlgren Division	Exec Director.
	Head, Strategic & Space Systems Department.
	Head, Weapons Systems Department.
	Head, Combat Systems Department.
	Head, Ship Defense Systems Department.
	Deputy Executive Director/Business Manager.
	Head, Strike Systems Department.
	Head, Systems Res & Technology Department.
	Head, Warfare Systems Department.
	Head, Warfare Analysis Department.
Naval Undersea Warfare Center Division, Newport, RI	Head, Submarine Sonar Department.
	Executive Director.
	Head Test and Evaluation Dept.
	Superintendent Underwater Sound Ref Div.
	Director for Submarine Combat Systems.
	Director, Submarine Warfare Systems.
	Director, Surface Anti-Submarine Warfare.
	Hd, Submarine Electromagnetic Sys Dept.
	Head Combat Control Systems Department.
	Head Combat Systems Analysis Department.
Naval Supply Systems Command Hdqtrs	Dir Plans Programs & Resources.
	Counsel.
	Dir, Defense Printing Serv/Dep Comdr, Navsup.
	Competition Advoctate Gen/Adc. Contracting Mgr.
	Director of Contracting for Special Programs.
	Assistant Commander for Fleet Logistics Ops.
	Dir Info Tech Initiatives Division.
	Executive Director.
Naval Inventory Control Point	Executive Dir Logistics Planning & Support.
	Executive Dir. Acquisition & Strategic Plnng.
	Vice Commander.
Navy Fleet Material Support Office	Exec Dir. ADP System Planning and Development.
U.S. Marine Corps Headquarters Office	Dep Dir Facilities & Services Division.
	Fiscal Dir of the Marine Corps.
	Dir Contracts Division.
	Counsel for the Commandant.
	Deputy counsel for the Commandant.
	Director of Administration and Resources.
	Asst Dep Chf for Prog & Resourc Fiscal Div.
	Asst Dep Chf of Staff for Installations & Log.
	Asst to the Dep Chf of Staff for M & R Affs.
	Asst Dep Chf of Staff For Requirements & Prog.
Marine Corps Systems Command	Executive Director.
	Deputy for Financial Management.
Marine Corps Logistics Base Albany Ga	Deputy Commander for Logistics Operations.
Office of Naval Research	Dir. Ship Structures & Systems S&T Div.
	Dir. Mechanics & Energy Conversion S&T Div.
	Dep Chief Nav Res & Tech Dir Ofc of Nav Res.
	Head Special Programs Department.
	Executive Dir for Acquisition Management.
	Dir Financial Management Comptroller.
	Deputy Counsel (Intellectual Property).
	Counsel, Office of Naval Research.
	Head Engineering.
	Dir Strike Technology Division.
	Dir Math Computer & Information Science Div.
	Director, OAS Sci & Technol M & P Division.
	Dir Science & Technology Directorate.
	Dir OAS At Sensing & Systems Division.
	Head Industrial Programs Department.
	Dir Chemistry & Physics Sci & Tech Div.
	Dep Dir Science & Technology Directorate.
	Dir Cognitive & Neural Science & Tech Div.
	Head Personnel Optimization Bio Sci & Tec Dep.
	Dir Biological & Biomedical Science & Tech Div.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
	Head Info Electronics & Surveil Sci Tech Dept.
	Dir of Surveillance Communications Electronic.
	Director, Electronics Division.
	Assoc for Integration OAS St Modeling Pred Dv.
	Head Ocean Atmosphere Space Sci Tech Dept.
	Dir Reliance Sci Opportunities Prog Intell.
	Dir Materials Sci and Technology Division.
	Assoc For Integration OAS St Sensing Sys Div.
NATO SACLANT ASW Research Center	Director NATO SACLANT ASW Research Center.
Naval Research Laboratory	Superintendent, Chemistry Division.
	Superintendent, Optical Sciences Div.
	Supt Materials Sci and Tech Division.
	Superintendent, Plasma Physics Div.
	Supt Condensed Matter & Radiation Sci Div.
	Assoc Dir of Res for Matl Sci & Comp Technol.
	Superintendent, Info Technol Div.
	Chf Sci, Lab for Structure of Matter.
	Dir of Research.
	Superintendent Space Science Div.
	Supt. Radar Div.
	Supt. Acoustics Div.
	Superintendent Electronics Technology Div.
	Supt. Tactical Electronic Warfare Div.
	Chief Scientist Lab for Compt Phy Fluid Dynam.
	Chf Scientist & Head, Solar Physics Program.
	Superintendent, Remote Sensing Division.
	Assoc Dir of Res for Business Operations.
	Chief Sci & Head, Beam Physics Program.
	Superintendent, Marine Meteorology Division.
	Mgr, Joint Space Systems Technology Programs.
	Assoc Dir Res for Ocean & Atmospheric Sci Tec.
	Superintendent Ctr Bio/Molecular Science Eng.
	Head Elect Warfare Strategic Planning Org.
	Assoc Dir of Res for Warfare Sys & Senors Res.
	Superintendent, Space Syst Development Dep.
	Superintendent, Oceanography Division.
	Superintendent, Spacecraft Engineering Dep.
	Scientific Advisor to Naval Doctrine Command.
	Dir, Naval Center for Space Technology.
	Superintendent, Marine Geosciences Division.
Defense Nuclear Facilities Safety Board	Asst Dir for Sys Analysis & Integration.
	Asst Dir for Operational Safety.
	Asst Dir for Engineering Develop & Technology.
	Asst Dir for Standards Develop & Implement.
	Dep Gen Counsel for Pol & Litigation.
	Chief Radiation & Environmental Safety.
	Deputy General Manager.
	Asst Dir for Process Engineering.
Department of Education:	
Chief Financial Officer	Director, Grants and Contracts Service.
	Dep Chf Fin Ofcr/Dir Financial Services.
	Director, Fin Rep & Systems Operations.
Office of Management	Chairperson, Education Appeal Board.
	Dir Human Resources Group.
Inspector General	Assistant Inspector General for Audits.
	Asst Insp Gen for Policy Plng & Mgmt Serv.
	Asst Inspector General for Investigation.
	Dep Asst Insp Gen for Audit Operations.
	Dep Asst Inspector Gen for Techn Audit Svc.
	Associate Inspector General.
	Dep Asst Inspector General for Investigation.
	Counsel to the Inspector General.
	Deputy Inspector General.
	Asst Inspector General for Operations.
	Asst Inspector General for Operations.
General Counsel	Asst Gen Coun for Busin & Adm Law.
	Asst General Counsel for Educational Equity.
	Asst Gen Counsel for Regulations.
	Asst Gen Coun for Div of Legislative Counsel.
	Asst Gen Coun for Postsecondary Ed & Ed Res.
National Center for Education Statistics	Assoc Commr/Surveys & Cooperative Syst Group.
	Assoc Commr for Data D & L Studies Group.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
Department of Energy:	Assoc Commissioner Assessment Group.
Office of Chief Financial Officer	Dir Ofc of Budget.
	Dep Dir Ofc of Budget.
	Dir Ofc of Headquarters Accounting Operations.
	Director, Budget Operations Division.
	Dir Ofc of Dep Accounting & Fin Sys Dev.
	Dir Ofc of Financial Policy.
	Dir Ofc Compliance and Audit Liaison.
	Deputy Controller.
	Controller.
Asst Secy for Defense Programs	Assoc Dep Asst Secy for Military Application.
	Nuclear Weapons Complex Project Manager.
	Assoc Das for Human & Administrative Res.
	Assoc Das for Program A & F Management.
Asst Secy for Energy Efficiency & Renewable Energy.	Dir. Wind/Hydro/Ocean Technology Division.
	Assoc Dep Asst Secretary for Utility Tech.
	Manager, Golden Field Office.
Asst Secy for Environment, Safety & Health	Dir Nuclear Safety Enforcement Division.
	Dep Dir Invest Nuclear Safety Enforcement Div.
	Deputy Director Ofc of ES&H Evalutions.
Organization Abolished	Director, Office of Environmental Audit.
Energy Information Administration	Director, EIA–ADP Services Staff.
	Dir. Ofc of Oil and Gas.
	Director Petroleum Supply Division.
	Dir Ofc of Coal Nucl Elec & Altern Fuels.
	Director, Ofc of Energy Markets & End Use.
	Director Economics & Statistics Division.
	Dir Ofc of Statistical Standards.
	Director Quality Assurance Division.
	Dir Reserves and Natural Gas Division.
	Director Petroleum Marketing Division.
	Dir, Ofc of Integration Nal & Forecasting.
	Dir, EEUISD.
	Dir, Energy Supply & Conversion Div.
	Dir, Analysts & Systems Div.
	Dir, Energy Markets & Contingency Info Div.
	Dir, Survey Mgmt Div.
Asst Secy for Environmental Management	Director, Office of Research & Development.
Office of Energy Research	Dir, Chem Sci Div.
	Dir, Mat Sci Div.
	Dir, High En Physics Div.
	Dir, Health Effects Research Division.
	Deputy Dir for Nuclear Safety Safeguard.
	Dir, International Programs Staff.
	Dir, Confinement Systems Div.
	Assoc Dir Ofc of Computational & Tech Research.
Organization Abolished	Dir, Engr Math and Geo Sci Div.
Office of Science Education & Technical Information	Dir for University & Science Ed Prog.
Office of Fossil Energy	Director, Ofc of Resource Management.
Associate DS for Field Management	Manager Strategic Planning.
	Dir, Ofc of Resource Management & Services.
Albuquerque Operations Office	Dir, Weapons Quality Division.
	Dir, Transportation Safeguards Div.
	Dir, Production Assurance & Ops Division.
	Dir, Weapons Programs Div.
	Dir, of Emergency Plans & Operations.
	Asst Manager.
	Carlsbad Area Office Manager.
	Chief Financial Officer.
Chicago Operations Office	Acquisition & Asst Group Manager.
	Area Manager Batavia Area Office.
Idaho Operations Office	Chief Financial Officer.
	Asst Mgr Ofc of Program Execution.
	Asst Manager, Ofc of Pol, A & R Management.
	Asst Manager for Applied E & T Transfer.
Nevada Operations Office	Chief Counsel.
	Asst Manager for Business & Financial Service.
Ohio Field Office	Manager Ohio Field Ofc.
Oakland Operations Office	Asst Mgr for Admin.
	Field Chf Fin Officer and Business Manager.
	Assoc Manager for Site Management.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
Oak Ridge Operations Office	Asst Manager for Administration.
	Chief Financial Officer.
Rocky Flats Office	Manager, Rocky Flats Field Office.
	Deputy Manager, Rocky Flats Field Office.
	Asst Manager for Government Operations.
	Asst Mgr for Project Management & Engineering.
Richland Operations Office	Asst Mgr Business Mgmt & Chief Fin Ofcr.
	Source Evaluation Board Advisor.
Savannah River Operations Office	Asst Mgr for Admin.
	Chief Financial Officer.
	Asst Manager for Business & Logistics.
Office of Hearings & Appeals	Dep Dir for Legal Analysts.
	Dep Dir for Financial Analysis.
	Dep Dir for Econ Analysis.
Asst Secy for Human Resources & Administration	Dir Ofc of Industrial Relations.
	Dir, Hq Personnel Operations Div.
	Dir, Ofc of Admin Svcs.
	Assoc DAS for Headquarters Procurement Ops.
	Associate Dir, Office of Resource Mgmt.
	Dep Dir of Administrative Services (Wash, DC).
	Dir, Ofc of Organization & Management.
	Dir, Ofc of Contractor Mgmt & Admin.
	Dir, Ofc Policy.
	Dir, Ofc of Special Proj & Mgmt Systems.
	Dir, Ofc of Executive & Technical Resources.
Office of Inspector General	Asst Inspector General for Investigations.
	Manager, Western Regional Audit Office.
	Director, Audit Policy, Plans & Programs.
	Manager, Eastern Regional Audit Office.
	Dir, Capitol Regional Audit Office.
	Deputy Asst Inspector Gen for Investigations.
	Spec Asst for Policy and Planning.
	Counsel to the Inspector General.
	Dir, Office of Contractor Employee Protection.
	Asst Inspector General for Resource Mgmt.
	Principal Deputy Inspector General.
	Assistant Inspector General for Audits.
	Deputy Inspector General for Inspections.
	Deputy Inspector General for Audits.
Office of Fissile Materials Disposition	Deputy Director.
Office of Nuclear Energy, Science & Technology	Dir Submarine Systems Div.
	Dir Instrumentation & Control Div.
	Asst Program Manager for Surface Ships.
	Deputy Director for Naval Reactors.
	Sr. Naval Reactors Rep. (Nwpt News).
	Senior Naval Reactors Rep (Pearl Harbor).
	Director Nuclear Technology Div.
	Dir Reactor Engineering Division.
	Head, Core Manufacturing Branch.
	Dep Director Reactor Materials Division.
	Director, Fiscal Division.
	Asst Manager for Operations.
	Program Manager for Shipyard Matters.
	Dir Nuclear Components Division.
	Senior Naval Reactors Representative.
	Manager, Idaho Branch Office.
	Prog Manager for Advanced Submarines.
	Dir Isotope Production & Distribution Prog.
	Asst Manager for Operations.
	Senior Naval Reactors Representative.
	Engel Walter P.
	Director Acquisition Division.
	Director for Submarine Refuelings.
	Senior Naval Reactors Representative.
	Dep Program Mgr for Commissioned Subs.
	Prog Mgr Prototype & Mooored Training Ship.
	Assoc Dir., Ofc of Isotope P & D.
Office of Nonproliferation and National Security	Dir Ofc of Classification & Technology.
	Dir Ofc of Security Affairs.
	Dep Dir, Ofc of Security Affairs.
Western Area Power Administration	Chief Administrative Officer.
	Chief Financial Officer.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
Environmental Protection Agency:	
Office of Small and Disadvantaged Business Utilization	Deputy Dir, Ofc of Small & Disadv Busin Util.
Ofc of the Asst Admr for Admin & Resources Management	Director, Ofc of Pol & Resource Mgmt.
	Principal Dep Asst Admr for Amd & Res Mgmt.
Office of the Comptroller	Dir Ofc of the Comptroller.
	Dir, Financial Mgmt Div.
	Associate Comptroller.
	Director, Budget Division.
	Assoc Dir, Financial Management Division.
	Dir, Resource Management Division.
Office of Administration	Dir Ofc of Administration.
	Deputy Dir Ofc of Administration.
	Dir, Facilities & Support Services Division.
	Dir, Sfty, Health & Environmental Mgmt Div.
Office of Information Resources Management	Dir Ofc of Information Resources Management.
	Dep Dir Ofc of Information Resources Magnt.
	Director Enterprise Systems Division.
Ofc of Administration & Resources Mgmt—Cincinnati OH	Dir Ofc of Admin and Resources Management.
Office of Administration & Resources Mgmt—RTP, NC	Director Office of Administration & Res Mgmt.
	Director, Office of Data Processing.
Ofc of Human Resources and Organizational Services	Dir Office of Human Resources & Org Services.
	Assoc Dir for Integration & Innovation.
	Dep Dir Ofc of Human Resources & Org Services.
	Assoc Director for Reengineering & Automation.
	Dir Exec Resources & Special Programs Staff.
	Director, Org & Management Consulting Serv.
	Dir Strategic Planning & Policy Systems.
Office of Acquisition Management	Dir, Superfund/RCRA Procurement Ops Division.
	Director, Office of Acquisition Management.
	Dep Dir, Office of Acquisition Management.
Office of Grants and Debarment	Dir, Grants Admin Div.
	Director, Office of Grants & Debarment.
Office of the Asst Admr for Enf & Comp Assurance	Director, Ofc of Environmental Justice.
Office of Federal Activities	Dir, International Enforcement Program Div.
Office of Regulatory Enforcement	Director, Office of Regulatory Enforcement.
	Dep Dir, Office of Regulatory Enforcement.
	Dir Air Enforcement Division.
Office of Criminal Enforcement, Forensics & Training	Dir Natl Enforcement Training Institute.
	Dir Ofc of Criminal Enforce Forensics Train.
Office of Compliance	Director, Office of Compliance.
	Senior Legal Advisor.
	Dir, Enforcement Planning, T&D Division.
	Dep Dir, Enforcement Planning, T&D Division.
	Dir, Manufacturing, ET Division.
	Deputy Director, Office of Compliance.
	Dir Import Export Program.
Office of Site Remediation Enforcement	Director, Ofc of Site Remediation Enforcement.
	Dep Dir, Ofc of Site Remediation Enforcement.
Federal Facilities Enforcement Office	Dir Federal Facilities Enforcement Office.
Office of Policy Development	Dir Waste & Chemical Policy Division.
Office of the Inspector General	Deputy Inspector General.
	Deputy Inspector General.
Office of Investigations	Assist Inspector Gen for Investigations.
	Dep Asst Inspector General for Investigations.
Office of Audit	Asst Inspector General for Audits.
	Dep Asst Insp Gen for Acq & Asst Audits.
	Principal Dep Asst Insp Gen for Audit.
Office of Management	Assistant Inspector General for Management.
Office of Wastewater	Director, Permits Division.
	Director, Municipal Support Division.
	Deputy Director, Municipal Support Division.
Office of Science and Technology	Senior Science Advisor.
	Director, Engineering & Analysis Division.
	Dir, Health & Ecological Criteria Division.
Office of Wetlands, Oceans and Watersheds	Dir, Assessment & Watershed Protection Div.
	Dir, Oceans & Coastal Protection Division.
	Director, Wetlands Division.
Office of Ground Water & Drinking Water	Dir, E&P Implementation Division.
	Director, Drinking Water Standards Division.
	Director, Ground Water Protection Division.
	Dir Implementation & Assistance.
Office of Solid Waste	Dir, Municipal & Industrial Solid Waste Div.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
Office of Air Quality Planning and Standards	Dir Hazardous Waste Identification Division.
	Dir, Emission Standards Division.
	Assoc Dir for Intermedia & Intgovt Prog.
	Dir Air Quality Strategies & Standards Div.
	Dir Emissions Monitoring & Analysis Division.
	Deputy Dir Ofc of Air Quality Planning & Stds.
Office of Mobile Sources	Dir Advanced Technology Support Division.
	Dir Fuels & Energy Division.
	Dir Vehicle Programs & Compliance Division.
Office of Radiation & Indoor Air	Dir, Criteria & Standards Div.
	Director, Radon Division.
Office of Atmospheric Programs	Dir Atmospheric Pollution Prevention Division.
	Director, Acid Rain Division.
Ofc of the Asst Admr for Pest & Toxic Substances	Dir Ofc of Program management Operations.
Office of Pesticide Programs	Dir—Registration Dvision.
	Director—Program Support Division.
	Dir, Biological & Economic Analysis Division.
	Dir, Spec Review & Reregistration Division.
	Dir Envir Fate and Effects Division.
	Dir Health Effects Division.
	Dir Policy & Special Projects Staff.
Office of Pollution Prevention and Toxics	Dir, Health & Environmental Rev Div.
	Director, Environmental Assistance Division.
	Dir, Economics Exposure and Technology Div.
	Director, Chemical Control Division.
	Director, Information Management Division.
	Dir, Pollution Prevention Div.
	Dir Chemical Screening & Risk Assessment Div.
	Dir Chemical Management Division.
	Dir Health Effects Division.
Office of Resources Management and Administration	Dir Ofc of Resources Mgmt & Admin.
Office of Science Policy	Director, Office of Science Policy.
Office of Research and Science Integration	Dir Ofc of Research & Sci Integration.
	Dep Dir ofc of Research and Science Integration.
National Health & Environmental Effects Res Lab (RTP)	DIR Natl Health & Effects Res Lab (RTP).
	Assoc Dir for Health NHEERL (RTP).
	Associate Director for Ecology NHEERL (RTP).
Western Ecology Division-Corvallis	Dir Western Ecology Division Corvallis.
Gulf Ecology Division—Gulf Breeze	Dir Gulf Breeze Ecology Division.
National Exposure Research Laboratory (RTP)	Dir Natl Exposure Res Laboratory (RTP).
	Dep Dir For Management NERL (RTP).
	Asst Dir For Ecology Nerl (RTP).
Characterization Research Division—Las Vegas	Dir Characterization Research Division.
Ecosystems Research Division—Athens	Dir Ecosystems Res Div Athens.
National Risk Mgmt Research Laboratory (Cincinnati)	Dir Natl Risk Mgmt Lab (Cinn).
	Dep Dir For Mgmt Nrml (Cinn).
	Assoc Dir For Health Nrml (Cinn).
	Spec Asst Dir Natl Risk Mgmt Lab.
	Environmental Technology Executive.
Air Pollution Prevention and Control Division—RTP	Dir Air Pollution Prevention & Control Div.
Subsurface Processes and Systems Division—Ada	Dir Subface Process & Systems Division.
National Center for Environmental Assessment	Dir Natl Ctr for Environmental Assessment.
	Associate Director for Health NCEA.
	Associate Director for Ecology NCEA.
	Senior Executive Liaison for Global Climate.
	Spec Asst to Asst Admin for Air Radiation.
National Center for Environmental Assessment—Washington	Dir Natl Ctr Environ Assessment.
National Center for Environmental Assessment—RTP	Dir Natl Ctr Environ Assessment.
National Center for Environmental Assessment—Cincinnati	Dir Natl Ctr for Environmental Assessment.
Natl Center for Environmental Res & Quality Assurance	Deputy Dir for Mgmt (NCERQA).
	Peer Review Compliance Executive.
	Dir Environmental Engineer Research Division.
	Associate Director for Science (NCERQA)
	Dir Natl Ctr for Env Res & Quality Assurance.
Region I—Boston	Director, Water Management Division.
	Regional Counsel.
	Dir Ofc of Ecosystem Protection.
	Dir Ofc of Site Remediation Restoration.
	Dir Ofc of Environmental Stewardship.
	Asst Regional Administrator.
Region II—New York	Dir, Ofc of Administration & Resources Mgmt.
	Director, Environmental Services Division.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
Region III—Philadelphia	Director, Water Management Division. Asst Regl Admr for Policy and Management. Dir Air and Waste Management Division. Regional Counsel, Region II, New York. Dir, Office of Emergency & Remedial Response. Dir, Div of Environmental Plnng &Protection. Dir, Div of Enforcement & Compliance Asst. Director, water management Division Reg III. Regional Counsel. Director, Hazadous Waste Mgmt Div. Asst Reg Admin for Policy & Management. Dir, Air Management Division. Dir Chesapeake Bay Program Office.
Region IV—Atlanta	Dir Water Management Division Region IV. Asst Regional Admin for Policy and Mgmt. Regional Counsel, Reg IV, Atlanta, Georgia. Director Waste Management Division.
Region V—Chicago	Dir Air Management Div Region V. Dir Envir Services Div Region V. Dir Water Management Div Region V. Director, Resources Management. Regional Counsel. Dir Waste Pesticides & Toxics Division. Dir Great Lakes Natl Prog Ofc.
Region VI—Dallas	Director Superfund Division. Asst Regional Admr for Management. Regional Counsel. Director, Compliance A & E Division. Dir Superfund Division. Dir Water Quality Protection Division.
Region VII—Kansas City	Dir Multimedia Plann & Permitting. Regional Counsel. Asst Reg Admin for Policy & Mgmt—Reg VII. Dir Superfund Division. Dir Air RCRA and Toxics Division.
Region VIII—Denver	Dir Water Wetlands & Pesticides Division. Dir Ecosystems Protection & Remediation. Dir Ofc of Pollution Prevention State Tribal. Dir Ofc of Tech & Mgmt Services. Regional Counsel Region VIII.
Region IX—San Francisco	Director, Water Management Division. Director, Air Management Division. Regional Counsel, Reg IX, San Fran, Cal. Dir, Toxics & Waste Management Div. Asst Regional Admr for Policy & Management.
Region X—Seattle	Dir—Water Div Reg X. Regional Counsel. Director Air and Toxics Division. Director, Hazardous Waste Division. Asst Regl Admr for Policy & Management.
Equal Employment Opportunity Commission:	
Office of the Chairman	Inspector General.
Field Management—East	Director Field Management Programs (East). District Director (Baltimore). Dist Dir (New York). Dist Dir (Atlanta). District Director (Detroit). Dist Dir (Miami). Dist Dir (Memphis). Dist Dir—(Birmingham). Dist Dir—(New Orleans). Dist Dir—(Charlotte). District Director (Cleveland). Dist Dir—(Philadelphia).
Field Management—West	Program Manager. Dir Field Management Programs (West). Dist Dir (Houston). Dist Dir (San Francisco). Dist Dir (Dallas). Dist Dir (Chicago). Dist Dir—(St Louis). Dist Dir—(Indianapolis).

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
	Program Manager (Los Angeles). Dist Dir—(Denver). Dist Dir—(Phoenix). District Dir—(San Antonio). District Director (Seattle). District Director (Milwaukee).
Federal Communications Commission:	
Office of the Managing Director	Assoc Managing Director/Human Resources Mgmt.
Office of Engineering & Technology	Assistant Bureau Chief for Technology.
Compliance and Information Bureau	Chief Enforcement Division.
Common Carrier Bureau	Chief, Competitive Pricing Division. Chief Domestic Facilities Division.
Mass Media Bureau	Chief Accounting & Audits Division. Chief Video Services Division. Chf, Enforcement Div.
Federal Emergency Management Agency:	
Office of the Director	Chief of Staff.
Office of Financial Management	Chief Financial Officer. Deputy Chief Financial Officer. Senior Procurement Executive.
Office of Human Resources Management	Director of Human Resources.
Office of Inspector General	Deputy Inspector General. Asst Inspector General for Auditing. Asst Inspector General for Investigations.
Preparedness, Training and Exercises Directorate	Div Dir, State & Local Preparedness Division.
Response & Recovery Directorate	Div Dir, Human Services Support Division. Div Dir, Infrastructure Support Division.
Federal Insurance Administration	Deputy Administrator.
Federal Energy Regulatory Commission (DOE):	
Ofc of Chief Accountant	Deputy Chief Accountant. Dir Division of Audits. Director, Division of Accounting Systems.
Ofc of Hydropower Licensing	Dir Div of Dam Safety & Inspections.
Federal Labor Relations Authority:	
Office of the Chairman	Solicitor. Chief Counsel. Asst to the Chm for Prog Dev & New Initiative.
Office of Member	Chief Counsel.
Office of Member	Chief Counsel.
Federal Service Impasses Panel	Exec Director FSIP.
Ofc of the Executive Director	Executive Director. Dir, Information Resources & Research Serv.
Ofc of the General Counsel	Deputy General Counsel. Assist General Counsel (Appeals). Asst Gen Counsel, Legal Policy & Advice.
Regional Offices	Director of Operations & Resources Management. Regional Director—Washington, D.C. Regional Director—Boston. Regional Director—Atlanta. Regional Director—Dallas. Regional Director, Chicago Illinois. Regional Director, San Francisco. Regional Director, Denver.
Federal Maritime Commission:	
Office of the Members	Secretary.
Office of the Managing Director	Dep Managing Dir. Dir, Bureau of Administration. Prog Manager (Dir Bur of Trade M & A). Prog Mgr (Dir Bur of Tariffs C & L). Deputy Director Bureau of Enforcement. Dir Bureau of Enforcement. Deputy Managing Director.
Federal Retirement Thrift Investment Board:	
	Assistant General Counsel (Programs). Director of Investments. Director of Contracts & Administration. Director of Automated Systems. Director of Benefits and Program Analysis. Director of Accounting. Director of Communications. Deputy General Counsel. Associate General Counsel.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
Federal Trade Commission:	
Office of the Inspector General	Inspector General.
Ofc of Executive Director	Deputy Exec Dir for Management.
	Dep Exec Dir for Planning & Information.
General Services Administration:	
Office of Management Services and Human Resources	Director of Human Services.
	Dir of Management Services.
	Dir Total Quality Management & Training.
Office of Governmentwide Policy	Deputy Associate Admin for Acquisition Policy.
	Director, Governmentwide Information Systems.
	Dir Governmentwide Info Systems Division.
	Deputy Assoc Administrator for Real Property.
	Asst Deputy Assoc Adm for Information Technol.
Office of Inspector General	Deputy Inspector General.
	Asst Inspector Gen for Auditing.
	Deputy Asst Inspector General for Auditing.
	Counsel to the inspector General.
	Asst Inspector Gen for Investigations.
	Asst Inspector General for Quality Management.
Organization Abolished	Director of Federal Acquisition Policy.
Office of the Chief Financial Officer	Director of Finance.
	Director of Budget.
	Dir of Financial Management Systems.
Public Buildings Service	Assistant Commr for Property Management.
	Assistant Commr for Fed Protective Service.
	Dep Asst Commissioner for Property Management.
	Asst Comm for Portfolio Management.
	Asst Commr for Business Development.
	Assistant Commr for Property Disposal.
	Assistant Commissioner for Property Devel.
	Dep Asst Commissioner for Portfolio Manage.
Federal Telecommunications Service	Assistant Commissioner for Serv Development.
	Asst Regional Admin for Info Tech Service.
	Assistant Reg Admin for Inform Res Mgmt—R–4.
	Asst Regl Admr for Info Resources Mgmt.
	Asst Reg Admr for Info Reso Mgmt Ser. NE Zone.
	Assistant Commissioner for Service Delivery.
	Asst Commissioner for Customer Service.
	Assistant Commr for Network Applications.
	Asst Commissioner for Acquisition.
Information Technology Service	Deputy Commr for Info Technology Integration.
	Deputy Commr for Local Telecommunications.
	Assistant Commissioner for Resource Mgmt.
	Dep Chief Information Officer.
Office of the Chief Information Officer	Assistant Chief Information Officer.
	Assistant Chief Information Officer.
Federal Supply Service	Asst Commr for Quality and Contract Admn.
	Asst Commissioner for Acquisition.
	Asst Comr for Transportation & Property Mgt.
	Asst Comm for Bus Management & Marketing.
	Asst Comm for Distribution Mgt.
	Dep Asst Commissioner for Acquisition.
	Assistant Commissioner for FSS Info Systems.
New England Region	Asst Reg Admr for Public Bldg Service.
Northeast & Caribbean Region	Asst Reg Admr for Public Blds Service.
	Asst Reg Admr for Federal Supply Service.
Mid-Atlantic Region	Asst Reg Admr for Public Blds Service.
	Asst Regl Admr, Federal Supply Service.
National Capital Region	Assistant Regional Administrator, PBS, NCR.
	Executive Project Manager.
Southeast Sunbelt Region	Asst Reg Admr for Public Blds Service.
	Asst Reg Admr for Federal Supply & Services.
Great Lakes Region	Asst Reg Admr for Public Blds Service.
The Heartland Region	Asst Reg Admr for Public Blds Service.
Greater Southwest Region	Asst Reg Admr for Public Blds Service.
	Asst Reg Admr for Federal Supply Service.
Rocky Mountain Region	Asst Reg Admr for Public Blds Service.
Pacific Rim Region	Asst Regl Admr for Public Buildings Services.
	Asst Reg Admr for Federal Supply Service.
Northwest/Arctic Region	Asst Regional Administrator, PBS Region 10.
Department of Health and Human Services:	
ODAS for Budget	Dir, Div of Integrity & Organ Review.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
ODAS for Finance	Dep Asst Sec, Finance.
	Dir, Office of Financial Policy.
ODAS for Grants & Acquisition Management	Dep Asst Sec, OGAM.
OAS for Planning and Evaluation	Dep to Deputy Asst Secry for Plann & Evaluat.
OAS for Public Health and Science	Dir, Div of Research Investigations.
	Dir, Ofc of HIV/AIDS Policy.
	Dep Dir, Ofc of Management.
	Reg Health Administrator.
	Director, Office of Research Integrity.
Associate General Counsel Divisions	Assoc Gen Coun, Business & Adm Law Division.
	Dep Assoc Gen Counl, Bus & Adm Law Div.
Office of the Inspector General	Principal Dep Inspector General.
	Deputy Inspector General for Mgmt & Policy.
	DEO Inspector General for Legal Affairs.
ODIG for Investigations	Dep Insp Gen for Investigations.
	Asst Insp General for Criminal Investigations.
	Asst Insp Gen for Civil & Adm Remedies.
	Asst Insp Gen for Investigation P&O.
ODIG for Audit Services	Dep Inspector General for Audit Services.
	Asst Insp Gen for Adm of C/F & Agin Audits.
	Asst Inspector Gen for Health Care Fin Audits.
	Asst Inspector Gen for Audit Pol & Oversight.
	Asst Insp Gen for Public Health Serv Audits.
ODIG for Evaluation & Inspections	Dep Insp Gen for Evaluation & Inspections.
Administration on Aging	Director, Ofc of State & Community Programs.
	Das for Prog Dev & Elder Rights Programs.
Program Support Center	Dir, Program Support Center.
Office of Financial Management Service	Director, Financial Management Service.
Office of Program Support	Dir, Ofc of Financial Management.
Ofc of Information Systems Management	Dir, Ofc of Information Systems Management.
OAA for Management	Dir, Office of Acquisitions and Grants.
OAA for Program Development	Dir, Office of Demonstrations and Evaluations.
	Dir, Office of Research.
Office of Associate Admr for Policy	Dir, Ofc of the Actuary (Chief Actuary).
	Deputy Director, Office of the Actuary.
	Director, Ofc of Medicare & Medicaid Cost Est.
Office Assoc Admr, for Operations & Res Management	Dir, Bureau of Data Management and Strategy.
	Dep Dir, Bureau of Data Management & Strategy.
	Dir, Ofc of Contracting & Financial Management.
	Director, Office of Financial & Human Res.
	Director, Office of Financial Management.
	Deputy Director, Ofc of Financial Management.
	Dir, Ofc of Medicare Benefits Administration.
	Dir Ofc of Benefits Integrity.
Organization Abolished	Deputy Director, Office of Management.
	Dir, Div of Public Health Service Budget.
	Director, Div of Research Investigations.
Substance Abuse & Mental Health Services Administration	Assoc Admr for Extramural Programs.
Center for Substance Abuse Prevention	Dir Div of Comm Prevention & Training.
	Director, Division of Workplace Programs.
Center for Mental Health Services	Chief Retrovirus Branch.
	Dir Div of Stste & Community Systems Develop.
Center for Substance Abuse Treatment	Dir, Ofc of Scientific Analysis & Evaluation.
Centers for Disease Control & Prevention	Director, Financial Management Office.
	Senior Advisor for Minority Health Education.
Center for Infectious Diseases	Asst Dir for Laboratory Science.
Natl Institute for Occupational Safety & Health	Executive Officer, NIOSH.
Center for Env Health & Injury Control	Dir Div of Environmental Health Lab Sciences.
Center for Chronic Disease Prevention & Hlth Promotion	Director, Office on Smoking and Health.
Center for Prevention Services	Dir Div of STD/HIV Prevention.
National Center for Health Statistics	Assoc Dir for Analysis & Epidemiology.
	Associate Dir, Ofc of P & E Programs.
	Assoc Dir for Research & Methodology.
	Assoc Dir. Ofc of Vital & Health Stats Syst.
	Assoc Dir for Internal Statistics.
Food and Drug Administration	Senior Advisor.
	Deputy for Scientific & Medical Affairs.
	Deputy Chief Counsel for Program Review.
Center for Biological Evaluation & Research	Director, Division of Bacterial Products.
	Dir, Div of Biostatistics & Epidemiology.
	Dir Ofc of Compliance.
	Dir, Ofc of Vaccines Research & Review.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
Center for Drug Evaluation & Research	Dir Ofc of Therapeutics Research & Review. Dir Ofc of Blood Research & Review. Dir, Center for Drug Evaluation & Research. Director, Office of Management. Assoc Dir for Med Pol Dir Ofc of Drug Eval I. Dir, Div of Cardio-Rental Drug Products. Dir, Div of Neuropharmacological Drug Prod. Dir, Div of Midical Imaging S & D Products. Dir, Div of G & C Drug Products. Associate Director for Drug Monograph. Dir, Ofc of Over-The-Counter Drug Evaluation. Dir, Office of Epidemiology & Biostatistics. Dep Dir, Ofc of Epidemiology & Biostatistics. Dir, Office of Drug Evaluation II. Dir. Div of M & E Drug Products. Dir, Div of Anti-Viaral Drug Products. Director, Office of Compliance. Dir, Div of Scientific Investigations. Director, Office of Research Resources. Director, Division of Biopharmacentics. Dep Ctr for Pharmaceutical Science. Dir Ofc of Drug Evaluation V.
Center for Food Safety & Applied Nutrition	Director, Office of Seafood. Director, Office of Toxicological Sciences. Associate Dir for Laboratory Investigations. Dir Ofc of Premarket Approval. Dir Ofc of Field Programs. Dir, Ofc of Plant & Dairy Foods & Beverages. Director, Office of Food Labeling.
Center for Devices & Radiological Health	Dir, Ofc of Pol, P & S Initiatives. Dir Office of Device Evaluation. Dir, Div of Surgical & Rehabilitation Devices. Dir, Division of Cardovascular Devices. Dir, Div of General & Restorative Devices. Dir Office of Compliance. Dir, Office of Science and Technology. Dir Div of Reproductive Abdominal Ear Throat.
Center for Veterinary Medicine	Dir Ofc of Sys & Management. Director, Office of Science. Director, Office of Surveillance.
Office of Regulatory Affairs	Dir, Ofc of New Animal Drug Evaluation. Assoc Comr for Regulatory Affairs. Dep Assoc Comr for Regulatory Affairs. Regl Food & Drug Director, NE Region. Regl Food & Drug Director, Mid-Atlantic Region. Regl Food & Drug Director, Southeast Region. Regl Food & Drug Director, Midwest Region. Regl Food & Drug Director, Southwest Region. Regl Food & Drug Director, Pacific Region.
National Center for Toxicological Research	Director, Div of Biometry. Director, Office of Research.
Office of Health Affairs	Director Med Staff, Ofc of Health Affairs.
Office of Management and Systems	Dir Ofc of Financial Management.
Office of Management	Dir, Parklawn Computet Center.
Bureau of Health Resources Development	Dep Dir, Bureau of health Resources Dev.
Office of the Director	Director, Div of Financial Management. Director, Division of Contracts & Grants. Associate Director for Extramural Affairs. Associate Director for Disease Prevention. Dir, Ofc of Medical Applications of Research. Associate Director for Administration.
Nat'l Heart, Lung, & Blood Institute	Dir Div of Lung Diseases. Dir, Div of Blood Diseases & Resources. Director, Division of Extramural Affairs. Assoc Dir for International Programs. Dir Ofc of Biostatics Research. Dep Dir Div of Heart Vascular Diseases. Dep Dir Div of Epidem & Clinical Application.
Intramural Research	Dir, Division of Intramural Research. Chf Lab of Biochemical Genetics. Chf Lab of Biochemistry. Chief Lab of Biophysical Chemistry.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
National Cancer Institute	Chief Macromolecules Section. Chf, Intermediary M & B Section. Chf, Lab of Kidney & Electrolyte Metabolism. Chief Lab of Cardiac Energetics. Chief, Metabolic Regulation Section. Assoc Dir for Intramural Management. Assoc Director for Extramural Management.
Division of Cancer Biology, Diagnosis and Centers	Dir, Div of Cancer Biology Diagnosis & Ctrs. Dep Dir, Div of Cancer Biology Diag & Centers. Chf, Microbial G & B Section, Lab of Biochem. Chief, Lab of Biochem Intramural Res Prog. Assoc Dir, Extramural Research Program. Chief Dermatology Br, Intramural Res Prog. Chief, Cell Mediated Immunity Section. Chief, Lab of Tumor & Biol Immunology, Irp. Assoc Dir, Ctrs Training & Resources Prog.
Division of Cancer Etiology	Dir, Div of Cancer Etiology. Chief Lab of Biology. Chief Laboratory of Molecular Carcinogenesis. Chf Lab of Experimental Pathology.
Division of Cancer Prevention & Control	Dep Dir, Div of Cancer Prevention & Control. Associate Dir, Surveillance Program, DCPC. Assoc Dir, Early D & C Oncology Program.
Division of Extramural Activities	Dir, Div of Extramural Activities.
Division of Cancer Treatment	Chf-Radiation Oncology Br.
Natl Institute of Diabetes & Digestive & Kidney Dis	Dir Div Kidney Urologic & Hematlogic Diseases. Dir Division of Extramural Activities. Assoc Director for Research & Assessment.
Intramural Research	Chf, Lab of Molecular & Cellular Biology. Dep Dir for Management & Operations. Chief Section on Biochemical Mechanisms. Chf Sect on Metabolic Enzymes. Chf Sect on Physical Chemistry. Chief, Section on Molecular Structure. Chief Theoretical Biophysics Section. Chief, Laboratory of Bio-Organic Chemistry. Chief Oxidation Mechanisms Section L B C. Chief Laboratory of Biochemistry & Metabolism. Clinical Dir & Chief, Kidney Disease Section. Chief, Section on Molecular Biophysics. Chf, Sec Carbohydrates Lab of Chemistry/NIDDK. Chief, Laboratory of Neuroscience, NIDDK. Chief Epidemiology & Clinical Research Branch. Chf, Laboratory of Medicinal Chemistry. Chief, Morphogenesis Section.
Natl Inst of Arthr and Musculoskeletal and Skin Diseases	Director, Extramural Program. Deputy Dir.
National Library of Medicine	Dep Dir, Natl Lib of Medicine. Dep Dir for Res and Education. Associate Director for Library Operations. Assoc Dir for Extramural Programs. Dep Dir Lister Hill Natl Ctr for Biomed Comms. Director, Information Systems. Dir Natl Ctr for Biotech Info. Assoc Dir for Health & Info Prog Development.
Natl Inst of Allergy and Infectious Diseases	Dir, Div of Allergy/Immunology/Transplantatn. Chf, Lab of Parasitic Diseases. Dir, Div of Microbiology/Infectious Diseases. Chief, Lab of Immunogenetics. Dir, Div of Extramural Activities. Ch, Lab of Microbial Structure and Function. Chief Lab of Molecular Microbiology. Dir, Div Acquired Immunideficiency Syndrome. Chief, Biological Resources Branch. Head, Lymphocyte Biology Section. Chief, Laboratory of Infectious Diseases. Dep Dir Div of Acquired Immunodeficiency.
Natl Inst on Aging	Head Epidemiology Section. Chief, Laboratory of Malaria Research. Dir Div of Intramural Research. Dep Chief Lab of Imm & Head Lymp Biol Section. Scientific Director Gerontology Rsch Cntr.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
Natl Inst of Child Health and Human Development	Clin Director and Chief Clin Physiology Br. Assoc Dir Biology of Aging Program. Assoc Dir, Office of Extramural Affairs. Assoc Dir, Epidemi, Demo, & Biometry Program. Assoc Dir, Epidemi, Demo, & biometry Program. Assoc Dir, Ofc of Plnng, A & I Activities. Assoc Dir Neurosci & Neuropsych of Aging Prog. Chief, Laboratory of Molecular Genetics. Chf, Endocrinology & Reproduction Research Br. Director Ctr Forres for Mothers & Children. Director Cntr for Population Research. Chief, Section on Growth Factors. Assoc Dir for Prevention Research. Chief Laboratory of Mamalian Genes & Develop. Chief, Section on Molecular Endocrinology. Chief Section Neuroendocrinology. Chief Section on Microbial Genetics. Chief, Laboratory of Comparative Ethology. Associate Director for Administration. Dir, Natl Center for Medical Rehab Research.
Natl Inst of Dental Research	Chief, Laboratory of Immunology.
Natl Inst of Environmental Health Sciences	Dir, Extramural Program. Dir, Div of Intramural, NIEHS. Chf Lab of Pulmonary Pathobiology. Head Mutagenesis Section. Head Mammalian Mutagenesis Section. Senior Scientific Advisor. Associate Director for Management. Chief Lab of Molecular Carcinogenesis. Dir Natl Inst of Environmental Health Science. Dir Environmental Toxicology Program.
Natl Inst of General Medical Sciences	Dep Dir Natl Institute of General Med Sci. Dir Genetics Program. Assoc Dir for Program Activities. Dir Bio Phys Sciences Program Branch. Dir, Minority Opportunities in Res Prog Br.
Natl Inst of Neurological Disorders and Stroke	Dir, Div of Fundamental Neurosciences. Director, Division of Stroke & Trauma. Associate Director for Administration. Dir, Basic Neurosci Prog/Chf/Lab of Neurochem. Chf, Lab of Molecular & Cellular Neurobiology.
Intramural Research	Chief Lab of Central Nervous System Studies. Chf, Dev & Metabolic Neurology Branch. Deputy Chief, Lab of Central Nervous Sys Stud. HD Cellular Neuropathology Section. Chief, Neuroimaging Branch. Chf, Surgical Neurology Branch. Chief, Laboratory of Nuerobiology. Chief, Laboratory of Neura Control. Chief, Brain Structural Plaicity Section. Chief, Stroke Branch.
Natl Eye Institute	Chief Laboratory of Retinal Cell & MDO Biolog. Chief, Lab of Molecular & Dev. Biology. Chief, Laboratory of Sensorimotor Research.
Natl Inst on Deafness & Other Communication Disorders	Director of Human Communication.
NIH Clinical Center	Chief, Laboratory of Cellular Biology. Associate Director for Planning. Asso Chf, Position Emission T&R. Deputy Director for Magament and Operations. Deputy Director for Clinical Care.
Division of Computer Research & Tech	Chief, Computer Center Branch. Chief, Physical Sciences Lab. Deputy Director. Assoc Dir Ofc of Computing Resources Services.
John E. Fogarty Intl Center	Assoc Dir for Intl Advanced Studies. Dir, Gen Clinical Res Ctr for Res Resources.
Division of Research Grants	Dep Dir, Natl Center for Research Resources. Associate Director for Referral and Review. Assoc Dir for Statistics & Analysis.
National Center for Nursing Research	Director National Cntr for Nursing Research.
National Center for Human Genome Research	Deputy Director. Dir, Div of Intramural Res Natl Ctr HGR.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
National Institute on Drug Abuse	Chief, Diag Devel Br Natl Ctr Human Gen Res. Chf, Lab of Genetic Dis Res Natl Ctr for HGR. Assoc Dir for Planning & Resources Management. Dir, Office of Extramural Program Review. Director, Division of Clinical Research. Dir, Medications Development Division.
National Institute of Mental Health	Chief, Neuroscience Research Branch. Associate Director for Special Populations. Associate Director for Prevention. Exec Ofcr, Natl Institute of Mental Health. Dir, Ofc of Legislative Analysis & Coord. Dir, Div of Neuroscience & Behavioral Sci. Director, Division of Extramural Activities. Chief, Neuropsychiatry Branch. Chief, Child Psychiatry Branch. Chief, Biological Psychiatry Branch. Chief, Laboratory of Clinical Science. Chief, Section on Histopharmacology.
National Institute on Alcohol Abuse & Alcoholism	Dir, Natl Institute on Alcohol A&A.
Agency for Health Care Policy & Research	Director, Division of Basic Research. Dir, Ctr for Outcomes & Effectiveness Research. Dir, Ctr for Gen Health Serv Intramural Res. Dir, Ctr Gen Health Svce Extramural Research. Dir, Ofc of Sci & Data Dev/Agcy for Hcp & Res.
Department of Housing and Urban Development:	
Office of the General Counsel	Assoc Gen Coun for Program Enforcement.
Office of the Inspector General	Deputy Inspector General. Asst Inspector General for Investigations. Assistant Inspector General for Audit. Asst Inspector General for Management & Pol. Deputy Asst Inspector Gen for Audit Operation. Dep Asst Inspector Gen for P&O. Dep Asst Inspector General for Investigation. Counsel to the Inspector General.
Office of the Chief Financial Officer	Assoc Dep Chief Financial Officer for Account. Dep Chief Financial Officer for Accounting. Dep Chief Financial Officer for Finance.
Assistant Secretary for Administration	Deputy Director, Office of Human Resources. Dir, Ofc of Budget. Dep Dir, Ofc of Budget. Director, Ofc of Procurement & Contracts. Special Advisor/Comptroller.
Assistant Secy for Housing	Dir, Mortgage Insurance Acctng & Serv Group. Dir, Ofc of Multifamily Asset Management Dispo. Housing/Fed Housing Adm Comptroller. Dir of Multifamily Housing Development. Housing-FHA Deputy Comptroller. Dir, Ofc of Pol, P & F Systems Enhancements. Director, RESPA Enforcement Unit. Director, Office of Evaluation. Program Systems Project Officer.
Asst Secy for Fair Housing and Equal Opportunity	Director, Office of Investigations. Dir, Ofc of Fair Housing I & V Programs.
Office of Departmental Equal Opportunity	Dep Dir Ofc of Equal Employment Opportunity. Dir, Ofc of Departmental Equal Employ Opport.
Asst Secy for Community Planning and Development	Director, Office of Economic Development. Director, Ofc of Community Viability.
Government National Mortgage Association	Vice President for Finance. Vice President, Ofc of Pol, P & R Management. Vice President Ofc of Customer Service. VP Office of Multifamily Programs.
Asst Secy for Public and Indian Housing	Gen Dep Asst Secy for Public & Indian Housing. Public & Indian Housing—Comptroller. Dep Asst Secry for Public & Asst Housing Oper. Deputy Public & Indian Housing Comptroller. Dep Dir to Dep Asst for Pub Asst Housing. Dir, Ofc of Public Housing Partnership.
Department of Interior:	
Ofc of the Inspector General	Assistant Inspector General for Auditing. Ast Inspector General for Investigations. General Counsel. Deputy Asst Inspector General for Audits.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
Ofc of the Solicitor	Deputy Assoc Solicitor, General Law.
	Asst Solicitor Bureau of Parks and Recreation.
	Associate Solicitor for Administration.
	Dep Associate Solicitor—Energy & Resources.
	Dep Associate Solictor—Indian Affairs.
Asst Secy for Policy, Management and Budget	Asst Dir for Economics.
	Manager, Science and Engineering.
	Dir, Ofc of Fin Mgmt & Dep Chf Fin Officer.
	Chief Div of Budget & Program Review.
	Manager, Indian Programs.
	Chief Div of Budget Admin.
	Deputy Agency Ethics Staff Officer.
Asst Secretary for Fish & Wildlife & Parks	Executive Dir Regional Ecosystem Office.
Nat'l Park Service	Park Manager—Yosemite (Superintendent).
	Park Manager Everglades.
	Park Manager—Yellowstone (Superintendent).
	Asst Dir, Design & Construction (Mgr, DSC).
	Park Manager—Independence Natl Historic Park.
	Park Manager—Grand Canyon.
US Fish & Wildlife Service	Deputy Regl Director—Atlanta.
National Biological Service	Dep Asst Dir—Pol, Budget, & Administration.
	Research Director Patuxent Research Center.
	Spec Asst to the Reg Dir Research & Develop.
	Asst Dir for Information & Technology Service.
Office of the Regional Director	Assistant Director for Inventory & Monitoring.
Organization Abolished	Director, Health & Safety Research Center.
	Director, Environmetnal Remediation Res Ctr.
	Director, Materials Partnerships Res Center.
	Chief Div of Environmental Technology.
	Chief, Division of Resource Evaluation.
	Director, Office of Mineral Issues Analysis.
Bureau of Reclamation	Research Director.
	Director, Technical Services Center.
	Deputy Asst Commissioner—Resources Management.
	Spec Asst to the Dir, Reclamation Serv Center.
	Project Manager/Arizona Projects Office.
	Director, Management Srevices Office.
US Geological Survey	Staff Geologist for NPRA/Alaska Activities.
National Mapping Div	Chief, National Mapping Division.
	Chief, ERDS Data Center.
	Chief Western Mapping Center.
	Chief Mid-Continent Mapping Center.
	Chief Rocky Mountain Mapping Center.
	Asst Div Chief for Information & Data Svc.
	Chief Mapping Applications.
	Assoc Chief Programs & Finances.
	Associate Chief for Operations.
	SR Staff SCI for Mapping & Geographic Data.
Water Resources Div	Chief Hydrologist.
	Assoc Chief Hydrologist.
	Regional Hydrologist.
	Regl Hydrologist Southeastern Region.
	Regional Hydrologist, Western Region.
	Regional Hydrologist, Northeastern Region.
	Asst Chf Hydrologist for Operations.
	Asst Chf Hydrologist for Water A & D Coord.
	Asst Chf Hydro for Res & Extrnl Coordination.
	Chief, Natl Water Quality Assessment (NAWQA)
	Asst Chief Hydrologist for Tech Support.
	Asst Chief Hydrologist for Water Information.
	Chf, Ofc of Hydrologist Research.
	Chf, Br of Water Information Transfer.
	Chf, National Water Data Exchange Program.
Geologic Div	Chief Geologist.
	Chief, Ofc of Earthquakes, Volcanoes & Engr.
	Chief, Ofc of Scientific Publications.
	Assoc Chf Geologist.
	Chf Ofc of Mineral Resources.
	Chief, Office of Energy & Marine Geology.
	Chief, Office of International Geology.
	Chief, Office of Regional Geology.
	Assistant Chief Geologist for Programs.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
Bureau of Land Management	Chief, Office of IRM/Modernization.
	International Tech Asst Program Manager.
	Helium Program Administrator.
Ofc of Surface Mining Reclam & Enforcement	Regional Director.
	Regional Director.
	Regional Director.
Minerals Management Service	Regional Director, Gulf of Mexico OCS Region.
	Dep Associate Director for Offshore Leasing.
	Chief, Leasing Management Division.
	Regional Manager, Alaska OCS Region.
	Assistant Assoc Dir for Offshore Minerals Mgt.
	Regional Manager, Pacific OCS Region.
	Dep Associate Dir for Offshore Operations.
	Special Assistant to the Director.
	Dep Assoc Dir for Audit.
	Dep Assoc Dir for Valuation & Operations.
	Deputy Assoc Director for Administration.
Bureau of Indian Affairs	Special Assistant (Special Projects Officer).
	Dep to the Dir Indian Education Programs.
	Spec Asst to the Asst Secy—Indian Affairs.
International Development Cooperation Agency:	
Office of the General Counsel	Deputy General Counsel.
	Asst General Counsel for Ethics & Adm.
Office of the Inspector General	Asst Inspector General for Security.
	Asst Inspector General for Security.
	Asst Inspector General for Investigations.
	Counsel to the Inspector General.
	Deputy Inspector General.
Office of Equal Opportunity Programs	Dir Ofc of Equal Opportunity Programs.
Bureau for Global Programs, Field Support and Research	Assoc Asst Admr Center for Economic Growth.
	Senior Deputy Assistant Administrator.
	Dep Asst Admr Ctr for Pop, H/N BFGP,FS/RES
	Associate Assistant Administrator.
	Assoc Asst Admin.
Bureau for Europe and the New Independent States	Deputy Asst Administrator.
Bureau for Management	Deputy Director.
	Director Office of Financial Mgmt.
	Chf Fin Ofcr, Office of Financial Management.
	Dir Office of Information Resource Management.
	Deputy Director Ofc of Procurement.
	Deputy Director.
	Dir. Ofc of Admin Services.
	Dep Dir Ofc of Procurement Bureau for Magnt.
	Deputy Asst Admr Bureau for Management.
Department of Justice:	
Office of the Attorney General	Counsel on Professional Responsibility.
	Dep Counsel on Professional Responsibility.
Ofc of the Legal Counsel	Special Counsel
	Special Counsel.
Office of the Inspector General	Deputy Inspector General.
	Asst Inspector General for Inspections.
	Assistant Inspector General for Audit.
	Assistant Inspector General for Investigation.
	Asst Inspector Gen for Management & Planning.
	General Counsel.
	Dir, Special Investigational Review.
Office of the Deputy Attorney General	Correctional Prog Ofcr/Sr Dep Asst Dir Prd.
Justice Management Division	Asst Attorney General for Administration.
	Deputy Asst Attorney General.
	Dep Asst Attorney Gen Human Res/Admin.
	Dir, Security & Emergency Plnng Staff.
	Dir Library Staff.
	Dir, Facilities and Administrative Svc Staff.
	Dir Telecommunications Services Staff.
	Director Management and Planning Staff.
	Director, Budget Staff.
	Senior Policy Advisor.
	Dep Asst Attorney General, Info Res Mgt.
	Dir Procurement Services Staff.
	Dir, Systems Technology Staff.
	General Counsel.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
	Dir, Equal Employment Opportunity Staff.
	Senior Counsel.
Office of the Controller	Dep Asst Attorney General; Controller.
	Dir Finance Staff.
	Dep Asst Atty Gen for Debt Collection.
	Asst Dir, Management & Planning Staff.
Office of Human Resources and Administration	Director Personnel Staff.
	Director, Ofc of Atty Pers Mgmt.
Office of Info & Admin Services	Director, Computer Services Staff.
	Director, Information Mgmt & Security Staff.
Executive Office for Immigration Review	Chief Immigration Judge.
	Associate Director.
	Chairman, Board of Immigration Appeals.
	Chief Admin Hearing Officer.
Antitrust Division	Senior Litigator.
	Executive Officer.
	Chief Computers and Finance Section.
	Senior Litigator.
Office of Litigation	Dep Dir of Operations.
	Chief, Competition Policy Section.
Civil Division	Director of Management Programs.
	Deputy Director, Commercial Litigation Branch.
	Appellate Litigation Counsel.
Commercial Litigation Branch	Spec Litigation Counsel (Foreign Litigation).
	Sepc Litigation Coun, C/L Branch.
	Deputy Branch Director/Commercial Litigation.
	Deputy Branch Dir Civil Frauds.
Federal Programs Branch	Special Litigation Counsel (Federal Programs).
	Deputy Branch Director.
Torts Branch	Spec Litigation Counsel.
	Spec Litigation Counsel.
	Deputy Branch Director.
	Deputy Branch Director.
	Deputy Branch Director.
	Director Office of Consumer Litigation.
Civil Rights Division	Special Litigation Counsel.
Environment and Natural Resources Division	Executive Officer.
Office of Environmental Resources	Senior Litigation Coun Attorney-Examiner.
	Dep Chf, Environmental Enforcement Section.
	Deputy Chf, Environmental Enforcement Sect.
	Principal Deputy Chief Environ Enforce Sec.
Tax Division	Chief Civil Trial Section Southwestern Region.
Deputy Assistant Attorney General–I	Special Litigation Counsel.
	Sr Trial Attorney.
	Special Litigation Counsel.
	Spec Litigation Counsel.
Immigration and Naturalization Service	Asst Commissioner for Detention & Deportation.
	Asst Commissioner for Adjudication & Natural.
	Assistant Commissioner for Border Patrol.
	Director of Internal Audit.
	Director of Security.
	Asst Comr, Budget.
	Regional Director Central Region.
	Asst Commissioner Administration.
	Chief Patrol Agent.
	District Director.
	Chief Patrol Agent.
	District Dir, Western Reg, Phoenix District.
	Asst Commissioner Data Systems.
Associate Commissioner for Examinations	Asst Comm for Inspections.
Associate Commissioner for Enforcement	Assistant Commissioner for Investigations.
Executive Associate Commissioner for Management	Assistant Comr, Human Resources & Development.
Ofc of the Associate Attorney General	Executive Officer (Principal Assc Director).
Executive Ofc for U.S. Attorneys	Dir Ofc of Mgmt Information Systems Support.
	Dir, Office of Administration & Review.
	Dep Dir for Operations.
Criminal Division	Deputy Chief, Fraud Section.
	Dir Ofc of Asset Forfeiture.
	Senior Appellate Counsel.
	Senior Counsel.
	Executive Officer.
	Dir Intl Criminal Invest Train Asst Progam.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
	Chief, General Litigation & Legal Advice Sect.
	Senior Counsel for Natl Security Matters.
	Dep Chief Terrorism & Violent Crime Section.
Ofc of Deputy Asst Attorney General I	Counsel to the Office Fraud Section.
Ofc of Deputy Asst Attorney General II	Chf Public Integrity Section.
	Deputy Chief Public Integrity Section.
Federal Bureau of Prisons	Asst Dir for Planning and Development.
	General Counsel.
	Assoc Commr, Fed Prisons Industries, UNICOR.
	Dep Assoc Commr Fed Prison industries.
	Warden Ft Worth Texas.
	Asst Director for Human Res Mgmt.
	Asst Direct for Program Rev.
	(Warden) Miami, FL.
	Senior Deputy Asst Dir Health Services Div.
	Regional Director Mid Atlantic Division.
	Asst Dir., Community Corrections & Detention.
	Asst Dir, Info, Pol, & Public Afrs Div.
	Gen Counsel, Fed Prison Industries (UNICOR).
	Warden, Allenwood, Pennsylvania.
	Sr Mgt Counsel, (Fed Bureau of Prisons).
	(Warden) Fort Dix, NJ.
	(Warden) FCC, Floren, Co.
	Warden, USP, Florence, CO.
	CIA (Warden) Fed Medical Center Carswell, TX.
	CIA (Warden) U.S. Penitentiary, Allenwood, PA.
	(Warden) Ftc, Oklahoma, OK.
	Senior Dep Asst Dir (Administration).
	CIA (Warden) Fed Cortl Inst/El Reno, OK.
	CIA (Warden) Fed Medical Center/ Miami, FL.
	Correctional Prog Offcr/SR Dep Regl Dir.
	Correctional Inst Admr (Warden) FCI.
Office of Correctional Programs	Asst Dir Correctional Programs Div.
Northeast Region	Regional Director, Northeast Region.
	Warden, Lewisburg, PA.
	Warden, Mckean, PA.
	(Warden), Oakdale, LA.
	Correctional Institution ADMR (Warden).
Southeast Region	Regional Director, Southeast Region.
	Warden Atlanta.
	Warden, Lexington Kentucky.
	Warden Butner North Carolina.
North Central Region	Regional Director, North Central Region.
	Warden Leavenworth Kansas.
	Warden Springfield MO.
	Warden Marion IL.
	Warden Terre Haute, IN.
	Correctional Institution ADMR.
South Central Region	Regional Director, South Central Region.
Western Region	Regional Director, Western Region.
	Warden, Lompoc, CA.
	Warden, Phoenix, AZ.
	Warden, Federal Correctional Institution.
	Correctional Institution Admr (Warden).
	Asst Dir, Correction Prog Div., Wash., DC.
National Institute of Justice	Asst Dir, Ofc of Dev Testing & Dissemination.
Bureau of Justice Statistics	Deputy Dir, Bureau of Justice Statistics.
	Princl Dep Dir, Bureau of Justice Statistics.
U.S. Marshals Service	Associate Director for Administration.
	Assistant Director for Human Resources.
	Asst Dir for Research & Development.
	Assoc Director for Operational Support.
	Senior Management Advisor.
	Associate Director for Training.
	Assistant Director for Business Services.
	Assistant Director for Executive Service.
	Assistant Director for Investigative Servs.
	Assistant Director for Judicial Security.
	Asst Director for Organizational Development.
	Assistant Director for Training.
Department of Labor:	
Ofc of the Inspector General	Deputy Inspector General.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
	Asst Inspector General for Investigations.
	Asst Inspector Gen for Audit.
	Counsel to the Inspector General.
	Asst Inspector Gen for Mgmt & Counsel.
Ofc of the Asst Secy for Policy	Dir of Program Devel for Human Resources.
Office of Labor-Management Standards	Director, Ofc of Policy & Program Support.
Office of the Solicitor	Deputy Solicitor (Regional Operations).
	Associate Solicitor for Labor-Management Laws.
	Assoc Solicitor for Plan Benefits Security.
	Assoc Solicitor for Civil Rights.
	Assoc Solicitor for Occupational Safety & Hlt.
	Assoc Solicitor for Mine Safety & Health.
	Assoc Solicitor for Fair Labor Standards.
	Assoc Solicitor for Employee Benefits.
	Assoc Sol for Spec Appel & Sup Court Lit.
	Dep Solicitor for Planning and Coordination.
	Dir, Office of Management.
	Associate Solicitor for Black Lung Benefits.
Regional Solicitors	Regional Solicitor.
	Regional Solicitor Region IV—Atlanta.
	Regl Solicitor Boston.
	Regl Solicitor New York.
	Regional Solicitor Philadelphia.
	Regl Solicitor Dallas.
	Regl Solicitor Kansas City.
	Regl Solicitor San Francisco.
OAS for Administration and Management	DAS for Admin & Mgmt/Chf Information Ofcr.
	Dir of Management Policy and Systems.
	Director of Human Resources.
	Director, Directorate of Civil Rights.
	Director of Information Technology.
	Dir, Administrative & Procurement Programs.
	Deputy Chief Financial Officer.
	Dir Ofc of Fin Integrity.
	Deputy Assistant Secy for Budget.
	Director Business Operations Center.
	Director of Civil Rights.
	Dir Div of Agency Programs.
Office of Management, Administration and Planning	Dir Ofc of Mgmt, Administration and Planning.
Ofc of Federal Contract Compliance Programs	Director Division of Programs Operations.
Wage and Hour Division	Asst Admin for Policy Planning & Review.
	Dep Wage & Hour Admin.
	Dep Natl Ofc Program Administrator.
Ofc of Workers Compensation Programs	Dir Federal Employees Compensation.
	Dir Coal Mine Workers Compensation.
Pension & Welfare Benefits Administration	Dir of Regulations & Interpretations.
	Dep Asst Secy for Program Operations.
	Director of Exemption Determinations.
	Senior Policy Advisor.
	Regional Director.
	Regional Director.
	Regional Director.
	Regional Director.
	Dir of Enforcement.
Bureau of Labor Statistics	Deputy Commissioner.
	Asst Commr for Consumer Prices/Price Indexes.
	Associate Commissioner for Field Operations.
	Assoc Commr for Publications & Spec Studies.
	Asst Commr for Fedl/State Coop Stat Programs.
Data Analysis	Assoc Commr, Economic Growth.
	Assoc Comr for Prices and Living Conditions.
	Assoc Commr Productivity & Technology.
	Assoc Comr for Research & Evaluation.
	Assoc Comm for Employment & Unempl Statistics.
	Asst Commr for Consumer Prices & Price Indexes.
	Asst Commr for Indust Prices & Price Indexes.
	Assistant Commissioner for Economic Research.
	Asst Commissioner for Federal-State Programs.
	Asst Commissioner for Current Employ Analysis.
	Asst Comr for Compensation Levels & Trends.
	Asst Comr for Safety, H & W Conditions.
	Assoc Comr, Compensation & Working Conditions.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
	Asst Comm for Survey Methods Research.
	Asst Comm for International Prices.
Administrative and Internal Operations	Dep Comm for Adm and Internal Operations.
	Associate Commissioner for Administration.
	Director of Survey Processing.
	Dir of Technology & Computing Svcs.
	Asst Comr for Technology & Survey Processing.
	Dir, Quality & Info Management.
Office of Financial & Administrative Management	Comptroller.
	Admr, Ofc of Financial & Administrative Mgmt.
	Dir, Ofc of Information Resources Management.
Administrative Programs	Dir, Adm Progs.
Health Standards Programs	Dir Health Standards Programs.
Safety Standards Programs	Director Safety Standards Programs.
Federal/State Operations	Director, Federal/State Operations.
Technical Support	Director, Technical Support.
Mine Safety and Health Administration	Chf of Standards, Regulations & Variances.
	Director of Administration and Management.
	Director of Technical Support.
Merit Systems Protection Board:	
Office of the General Counsel	Deputy General Counsel.
Office of the Clerk of the Board	Clerk of the Board.
Office of Policy and Evaluation	Director, Office of Policy & Evaluation.
Office of Regional Operations	Director, Office of Regional Operations.
Central Region	Regional Director, Atlanta.
Chicago Regional Office	Regional Director, Chicago.
	Regional Director, Dallas.
Philadelphia Regional Office	Regional Director, Philadelphia.
San Francisco Regional Office	Regional Director, San Francisco.
Washington Regional Office	Regional Director, Washington, D.C.
National Aeronautics and Space Administration:	
Ofc of the Administrator	Technical Assistant to the Chief Engineer.
	Special Assistant to the Chief Engineer.
Office of the Chief Financial Officer/Comptroller	Dir Systems Analysis Division.
	Deputy Chief Financial Officer.
	Director, Financial Management Division.
	Director, Resources Analysis Division.
	Deputy Dir, Financial Management Division.
Office of Headquarters Operations	Chief, Information Syst & Technol Office.
	Director Headquarters Acquisition Division.
Office of Equal Opportunity Programs	Director, Discrimination Complaints Division.
	Director, Multicultural Prog & Support Div.
	Manager Minority University Programs.
Office of Human Resources & Education	Associate Administrator for Human Resources.
	Director, Education Division.
	Director, Personnel Division.
	Director, Management Systems Division.
	Dep Assoc Adm for Human Res & Education.
	Special Asst to the Associate Admr.
Office of Procurement	Asst Admr for Procurement.
	Director, Program Operations Division.
	Director, Procurement Policy Division.
	Dep Assistant Administrator for Procurement.
	Dir, Contract Pricing & Finance Office.
	Director, Analysis Division.
Office of External Relations	Dep Assoc Admin for Pol Coor & Intel Relation.
Defense Affairs	Director, Space Flight Division.
Space Flight	Spec Asst to the Dir Intl Relations Div.
Policy Coordination	Manager, International Technol Transfer Pol.
Office of Management Systems & Facilities	Special Assistant to the Assoc Administrator.
Security, Logistics & Industrial Relations	Program Manager.
	Dir, Logistics & Security Division.
Aircraft Management	Director, Aircraft Management Office.
Information Resources Management	Director, Information Resources Mgmt Division.
Facilities Engineering	Deputy Director, Facilities Engineering Div.
	Dir Environmental Management Division.
	Director, Facilities Engineering Division.
Office of Small & Disadvantaged Business Utilization	Assoc Admr for S&D Business Utilization.
Office of Legislative Affairs	Dep Assoc Admin.
	Dep Assoc Admin for Programs.
Office of Space Flight	Tech Asst to Dep Assoc Admin for Space Shuttl.
	Director, Advanced Project Office.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
	Senior NASA Representative.
	Deputy Assoc Admr for Space Communications.
Policy & Plans	Dir, Policy & Plans.
Institutions	Deputy Associate Admr for Business Mgmt.
	Dir, Institutions.
	Techn Asst to the Dep Assoc Adm for Bus Mgmt.
Chief Engineer	Tech Asst to the Chief Engineer.
	Deputy Chief Engineer.
	Senior Engineer.
Mission Director	Asst Mission Dir, Mir.
Space Shuttle Program	Manager, Space Shuttle Syst Integration.
	Mgr, 'Natl Space Trans Syst Integration & OPS.
	Manager, Safety & Obsolescence.
Space Station Program	Manager, Strategic Utilization & OPS Office.
	Deputy Director, Space Station Program.
	Senior Engineer Space Station Program.
Johnson Space Center	Dep Manager, Orbiter & GFE Projects Office.
	Chief Financial Officer.
	Director of Human Resources.
	Dep Mgr, Space Station Projects Office.
	Manager, Orbiter Project Office.
	Dir of Tech Transfer & Commercialization.
	Chief Information Officer.
	Deputy Chief Information Officer.
	Director, Phase One Program (JSC).
	Dep Manager, Johnson Space Ctr Projects Office.
	Associate Director (Technical).
	Assistant Director, Space Operations.
Space Operations Office	Manager, Space Operation Mgmt Office.
	Manager, Space Ops Engineering Office.
Space Station Program Office	Space Station Program Manager.
	Space Station Vehicle Manager.
	Business Manager, Space Station Program Ofc.
	Director, Management Operations.
	Deputy Space Station Vehicle Manager.
	Manager International Partners Office.
	Deputy Manager, Space Station Program.
	Tech Asst to the Mgr, Space Station Program.
	Dep Program Manager for Business Management.
	Deputy Program Mgr for Technical Development.
Space Shuttle Program Office	Manager, Space Shuttle Program Integration.
	Mgr, Space Shuttle Mgmt Integration Office.
	Manager, Shuttle Projects Office (MSFC).
	Mgr, Launch Integration (KSC).
	Director, Space Shuttle Operations.
	Mgr, Space Shuttle Business Office.
	Asst Mgr, Space Shuttle Prog Space Flight O/C.
	Asst Manager, Space Shuttle Program.
Mission Operations	Director Mission Operations.
	Assistant to the Asst Dir for Program Support.
	Chief Flight Director Office.
	Deputy Director, Mission Operations.
	Assistant Director for Program Support.
	Asst Dir for Operations.
	Chief, Integrated Planning System Office.
	Chief, Simulator & Operations Technology Div.
	Manager, Mission Ops Business Mgmt Office.
Flight Crew Operations	Chief, Aircraft Operations Division.
	Dep Dir, Flight Crew Operations.
Engineering	Deputy Director, Engineering.
	Chief, Structures and Mechanics Division.
	Chief, Crew & Thermal Systems Division.
	Chief, Automation, R & S Division.
	Director, Engineering.
	Chief Engineer, Space Station Program.
	Chief Avionic Systems Division.
	Dep Mgr, Technol & Proj Implementation Ofc.
	Assistant to the Director, Engineering.
	Manager, Technol & Proj Implementation Ofc.
	Deputy Chief, Avionic Systems Division.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
	Chief, Aeroscience & Flight Mechanics Div.
	Manager, Advanced Development Office.
	Deputy Mgr, Advanced Development Office.
	Asst Mgr, Advanced Development Office.
	Deputy Manager for Exploration.
Space & Life Sciences	Chief, Medical Sciences Division.
	Assistant Director for Engineering.
	Assistant to the Director for Russian Progs.
	Chief, Flight Crew Support Division.
	Assistant Director for Space Science.
	Deputy Director, Space and Life Sciences.
	Manager Payload Integration & Utilization Ofc.
	Life Sciences Requirements Manager.
	Chief, Solar System Exploration Division.
Information Systems	Director, Business & Information System.
	Deputy Director, Information Systems.
Business Management	Procurement Officer.
	Assistant Director, Business & Info Systems.
	Special Assistant to the Director.
	Assistant to the Director.
Center Operations	Special Assistant for Facility Management.
	Dir Center Operations.
	Deputy Director, Center Operations.
Safety, Reliability & Quality Assurance	Dir, Safety, Reliability, & Quality Assurance.
	Dep Dir, Safety, Reliability & Qual Assurance.
White Sands Test Facility	Manager, NASA White Sands Test Facility.
Kennedy Space Center	Dir Public Affairs.
	Associate Director.
	Manager Spacelab Carrier Prog.
	Special Assistant to the Director.
	Assoc Dir for Safety & Shuttle Upgrades.
Shuttle Management & Operations	Dir, Shuttle Logistics Project Management.
	Dir of Shuttle Mgmt & Operations.
	Director, Ground Engineering.
	Deputy Manager Launch Intgration.
	Director Process Integration.
Safety, Reliability & Quality Assurance	Director, Safety and Reliability.
	Director, Quality Assurance.
	Director Mission Assurance.
Engineering Development	Deputy Director of Engineering Development.
	Dir, Mechanical Engineering.
	Director, Electronic Engineering.
Installation Management & Operations	Director, Installation Mgmt & Operations.
	Director, Facilities Engineering.
	Deputy Dir, of Installation Mgmt & Operations.
Payload Management & Operations	Director, STS Payload Operations.
	Director Logistics Operations.
	Deputy Director, Payload Operations.
Procurement	Director, Procurement.
Biomedical Operations & Research	Director, Biomedical Ops & Res Office.
Marshall Space Flight Center	Dir, Systems Safety & Reliability Office.
	Director, Procurement Office.
	Chief Financial Officer.
	Assoc Dir for Advanced Planning.
	Director, Safety & Mission Assurance Office.
	Dir, Human Res & Administrative Support Ofc.
	Associate Director.
	Assistant to the Center Dir for Space Station.
	Director, Advanced Transportation Syst Office.
	Associate Director (Technical).
	Dep Dir, Human Res & Adm Support Division.
	Manager X–34 Program.
Program Development	Deputy Director, Program Development.
	Director, Preliminary Design Office.
	Deputy Manager, Technology Transfer Office.
	Dir, Research & Technology Office.
Science & Engineering	Director, Space Sciences Lab.
	Director, Propulsion Laboratory.
	Director, Syst Anal & Integration Laboratory.
	Dep Dir Structures & Dynamics Laboratory.
	Deputy Dir, Materials & Processing Laboratory.
	Dep Dir, Mission Operations Laboratory.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
	Dep Dir, Syst Anal & Integration Laboratory.
	Deputy Director, Propulsion Laboratory.
	Dir Astrionics Laboratory.
	Dep Dir Science & Engineering.
	Dir Structures Dynamics Laboratory.
	Chief Engineer Space Shuttle Main Engine Proj.
	Asst Director Science & Engineering.
	Dir, Materials & Processes Laboratory.
	Dep Dir for Space Transporation Systems.
	Manager Space Station Furnace Facility.
	Deputy Manager for Development.
	Director, Mission Operations Laboratory.
	Dep Manager Super Lightweight External Tank.
	Director, Propulsion Laboratory.
	Deputy Director, Space Sci Laboratory.
	Chf Eng, Reusable Launch Vehicle Project.
Institutional & Program Support	Dir Info Systems Office.
	Dir, Institutional & Program Support.
	Dep Dir, Institutional & Program Support.
	Director, Facilities Office.
	Dir Environmental Engineering & Mgnt Office.
Space Shuttle Projects	Manager, External Tank Project.
	Mgr Solid Rocket Booster Project.
	Manager Space Shuttle Main Engine Projects.
	Manager, Reusable Solid Rocket Motor Project.
Science & Applications Projects	Manager Global Hydrology & Climate Center.
	Manager Microgravity Projects.
Observatory Projects	Manager, Observatory Projects Office.
	Dep Mgr, Observatory Projects Office.
Payload Projects	Dep Manager Payload Projects Office.
Technology Transfer	Director, Technology Transfer Office.
	Mgr Earth & Space Sciences Projects.
Stennis Space Center	Director Center Operations & Support Director.
	Deputy Director, NASA Stennis Space Center.
	Assoc Director for Institution.
	Director, Propulsion Test Directorate.
	Dir Infor Management Systems.
	Deputy Director, Lead Center Development.
	Manager, Test Management Support.
Office of Space Communcations	Chief, Communications Systems Branch.
Ground Networks	Assistant Associate Administrators (Plans).
Program Integration	Dir Program Integration Division.
Communications & Data Systems	Dir, Communications & Data Systems Div.
	Dir, Ground Network Division.
	Dep Dir, Ground Network Division.
Space Network	Deputy Director Space Network Division.
Office of Safety & Mission Assurance	Dep Assoc Adm for Safety & Mission Quality.
	Director, Programs Assurance Division.
	Mgr Intl Sp Stn Indep A & O Act.
	Technical Advisor for SR M Qa Initiatives.
Safety & Risk Management	Director, Safety Division.
Payloads & Aeronautics	Director, Payloads & Aeronautics Division.
Engineering & Quality Management	Director, Quality Management Office.
Office of Aeronautics	Dep Assoc Admin for Aeronautics Mgmt.
	Senior Engineer.
	Special Assistant for Systems Integrations.
	Director, Inter-Enterprise Operations.
Resources & Management Systems	Director, Resources Management Office.
High Performance Computing & Communications	Spec Asst for Multimedia Technology Transfer.
High Performance Aircraft	Assistant Director for Program Evaluation.
High Speed Research	Dep Dir, High Speed Research Division.
	Director, Alliance Development Office.
National Aero-Space Plane	Assistant Dir for Aircraft Certification Serv.
Ames Research Center	Comptroller.
	Dir., National Rotorcraft Technology Center.
	Special Assistant for Programs.
	Manager, NASA Consolidated Supercomputing Ops.
	Associate Director for Institutional Mgmt.
Aerospace Systems	Chief, Aeronautical T & S Division.
	Chief, Flight Mgmt & Human Factors Division.
	Associate Director for Aeronautics.
	Deputy Director of Aeronautics.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
	Chief, Applied Aerodynamics Division.
Flight Operations	Deputy Chf, Airborne Science & Flight Res Div.
Aerophysics	Dir Software Independent Vertication Facility.
	Chief, Space Technology Division.
	Deputy Director of Information Systems.
Space Research	Chief, Space Science Division.
	Chief, Earth Systems Science Division.
	Chief, Advanced Life Support Division.
	Chief, Information Sciences Division.
	Deputy Director of Space Research.
	Director of Space.
Administration	Deputy Director of Center Operations (Adm).
	Chief, Airborne Science & Flight Res Div.
	Dep Director, Center Operations Directorate.
Engineering & Technical Services	Chf, Systems Engineering Div.
Dryden Flight Research Center	Asst Chief, Flight Operations Division.
	Director, Intercenter Aircraft Operations.
	Asst Dir for Program Integration.
	Assistant Director of Research Facilities.
Flight Operations	Chf, Flight Operations Division.
Aerospace Projects	Chief, Aerospace Projects Office.
Research Engineering	Chief, Research Engineering Division.
Langley Research Center	Chief Engineer.
	Dir of Education Programs.
	Assistant Director for Planning.
Aeronautics	Chief, Aeronautics Systems Analysis Div.
	Deputy Director, Aeronautics Program Group.
Space & Atmospheric Sciences	Chief, Atmospheric Sciences Division.
	Deputy Dir, S & A Sciences Program Group.
	Chief, Space Systems & Concepts Division.
Research & Technology	Chief, Materials Division.
	Chief, Structures Division.
	Chief, Information Systems Division.
	Chf, Flight Dynamics & Controls Division.
	Chief, Fluid Mechanics Division.
	Deputy Dir, Research & Technology Group.
	Chief, Aerodynamics Division.
	Director, Research & Technology Group.
	Chief, Gas Dynamics Division.
Technology Applications	Manager Space Technologies Thrust Office.
Internal Operations	Deputy Dir, Internal Ops Group (Fe & O).
	Chief, Aerospace Electronics Systems Division.
	Chief, Experimental Testing Technology Div.
	Deputy Dir, for Engineering & Info Syst (IOG).
	Special Assistant.
	Procurement Officer.
High-Speed Research Project	Director for High-Speed Res Project Office.
Hypersonic Vehicles	Director, Hypersonic Vehicles Offices.
Safety, Environmental & Mission Assurance	Dir, Ofc of Safety, E & M Assurance.
Comptroller	Chief Financial Officer.
Lewis Research Center	Deputy Director for Operations.
Aeronautics	Chf, Propulsion Systems Div.
	Chf, Internal Fluid Mechanics Division.
	Chf, Aeropropulsion Analysis Office.
Aerospace Technolgy	Chief, Space Propulsion Technology Division.
	Chief, Structural Systems Division.
	Chief, Structures Division.
	Deputy Director of Aerospace Technology.
	Chief, Space Communications Division.
	Chief, Power Technology Division.
	Chief, Interdisciplinary Technology Office.
Space Flight Systems	Chf, Advanced Space Analysis Office.
	Manager, Acts Project Office.
	Chief, Space Experiments Division.
	Deputy Director of Space Flight Systems.
	Chief, Power Systems Project Office.
	Senior Advisor for Advanced Concepts.
Engineering	Chf, Electronics & Control Systems Division.
	Director of Engineering.
	Deputy Director of Engineering.
	Chief, Propulsion & Fluid Systems Division.
	Chief Engineer.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
Administration & Computer Services	Chief, Computer Services Division.
	Dir. Adm & Computer Services Directorate.
External Programs	Director, External Programs.
Mission Safety & Assurance	Chf, Ofc of Sfty, Reliability & Quality Assur.
Comptroller	Comptroller.
Office of Space Science	Special Ast to the Deputy Assoc Admin.
	Asst Associate Admr for Technology.
	Manager, Cassini Program.
Solar System Exploration	Chief, Flight Programs Branch.
	Dep Dir, Solar System Exploration Division.
	Chief, Flight Programs Branch.
	Senior Program Dir, Solar Syst Exploration.
	Director, Mission & Payloa Development Div.
	Senior Program Executive for JPL Programs.
	Dir, Advanced Technol & Mission Studies Div.
Space Physics	Chief, Solar Physics Branch.
	Senior Program Executive for GSFC/APL Progs.
	Senior Program Director, Sun-Earth Connection.
	Chief, Planetary Science Branch.
	Sr Sci Prog Executive for Review & Evaluation.
	Director, Research Program Management.
Technology & Information Systems	Sr Sci Program Executive for Information Syst.
Astrophysics	Science Program Director, Galaxy & Universe.
	Chf, Ultraviolet/Visible Astrophysics Branch.
	Deputy Dir, Astrophysics Division.
	Assistant Director for Strategic Planning.
	Asst Assoc Admr for Education & Outreach.
	Science Prog Dir, Origins & Planetary Systems.
Microgravity Science & Applications	Dir, Microgravity Sciences & Applications Div.
Life & Biomedical Sciences	Chief, Envir Sys & Life Support Branch.
	Dir, Life & Biomedical Science & Applics Div.
Aerospace Medicine & Occupational Health	Director, Program Integration Office.
	Dir, Aerospace Med & Occupational Health Div.
Flight Systems	Chief, Mission Management Branch.
	Deputy Dir, Flight Systems Division.
Office of Inspector General	Assist Inspector General for Investigation.
	Assistant Inspector General for Auditing.
	Asst Insp Gen for Partnerships & Alliances.
Office of Space Access & Technology	Manager, Systems Integration.
	Chief Engineer.
	Special Assistant to the Director.
	Manager, Industry Planning.
	Manager, Orbital Maneuvering Vehicles.
	Manager, Communications Experiments.
	Deputy Assoc Admr for Space Access & Technol.
	Director, Commerical Dev & Technol Transfer.
	Manager for Propulsion Technology.
	Director, Space Processing Division.
	Special Asst for Commerical Development.
	Special Assistant for Facilities.
	Deputy Dir, Spacecraft Systems Division.
	Deputy Dir, Commerical Dev & Technol Transfer.
	Deputy Director, Space Transportation Div.
	Director, Space Transportation Division.
	Special Assistant for Special Projects.
Office of Mission to Planet Earth	Dep Assoc Admr for Mission to Planet Earth.
	Senior Science Advisor for Intl Programs.
Flight Systems	Director, Flight Systems Division.
Operations, Data & Information Systems	Director, Operations Data & Info Syst Div.
	Chief, Earth Science D & I System Branch.
Science	Director Science Division.
Goddard Space Flight Center	Director of Human Resources.
	Dir of University Programs.
Comptroller	Comptroller.
Management Operations	Dep Dir of Management Operations.
	Associate Director.
	Associate Director of Acquisition.
Flight Assurance	Director of Flight Assurance.
	Dep Dir of Flight Assurance.
Flight Projects	Deputy Director of Flight Projects.
	Mgr, Hubble Space Telescope Oper & Ground Syst.
	Project Mgr, Earth Observing Syst AM Project.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
	Assoc Dir of Flt Proj Hubble Space Telescope.
	Proj Mgr, Intl Solar Terr Physics Proj (ISTP).
	Dir of Flight Projects.
	Proj Mgr, Hubble Spc Telescope Syst & Serv.
	Tracking & Data Relay Satellite Tdrs Proj Mgr.
	Assoc Dir for Earth Sci Data & Info System.
	Proj Mgr, Eos-Pm Proj Flighg Proj Direct.
	Project Manager, Explorers Project.
	Project Mgr, Earth Sci D & I Syst Project.
Mission Operations & Data Systems	Chief, NASA Communications Division.
	Assoc Dir of Mission Operations & Data Syst.
	Dep Dir of Mission Operations & Data Systems.
	Chief, Networks Division.
	Chief, Flight Dynamics Division.
	Chf, Mission Ops & Syst Dev Division.
Space Sciences	Chief, Lab for Astronomy and Solar Physics.
	Chief, Lab for Extraterrestrial Physics.
	Director of Space Sciences.
	Chief, Goddard Institute for Space Studies.
	Chief, Laboratory for High Energy Astrophysics.
	Deputy Director of Space Sciences.
Engineering	Dep Dir of Engineering.
	Chief, Electrical Engineering Division.
	Chief Engineer.
	Chief, Special Payloads Division.
	Associate Director of Flight Projects.
	Chief, Mechanical Systems Division.
	Chief, Systems Engineering Division.
	Spec Asst to Dir of Eng (Space Technol Comm)
Suborbital Projects & Operations	Deputy Director, Mission to Planet Earth.
Earth Sciences	Chief, Lab for Hydrospheric Processes.
	Chief, Space Data and Computing Division.
	Associate Dir for Mission to Planet Earth.
	Asst Dir of Earth Sci for Projects Eng.
	Chf, Laboratory for Atmospheres.
	Deputy Director for Earth Sciences.
	Director for Earth Sciences.
	Chief, Laboratory for Terrestrial Physics.
	Deputy Assoc Dir for Earth Sci D & I Syst.
	Asst Dir of Mission to P/E Prog for Globe.
Office of Policy and Plans	Director of Special Studies.
	Director of Special Projects.
National Archives & Records Administration:	
National Archives & Records Administration	Deputy Archivist of the United States.
	Asst Archivist for the National Archives.
	Asst Archivist for Presidential Libraries.
	Asst Archivist for Federal Records Center.
	Director of the Federal Register.
	Asst Archivist for Records Administration.
	Director, Lyndon B. Johnson Library.
	Asst Archivist for Spec & Regl Archives.
	Assistant Archivist for Administrative Serv.
	Assistant Archivist for Policy & Irm Services.
National Capital Planning Commission:	
National Capital Planning Commission Staff	Executive Director.
	Deputy Executive Director.
	Dir of Intergovernmental & Public Affairs.
	General Counsel.
National Endowment for the Arts:	
National Endowment for the Arts	Director of Guidelines & Panel Operations.
	Director of Administration.
National Endowment for the Humanities:	
National Endowment for the Humanities	Dir, Office of Planning & Budget.
National Labor Relations Board:	
OFC of the Board Members	Executive Secy.
	Deputy Executive Secretary.
	Inspector General.
Div of Enforcement Litigation	Deputy Assoc. Gen. Counsel Appellate Court Br.
	Director, Office of Appeals.
Div of Advice	Associate Gen Counsel, Div of Advice.
Div of Administration	Director of Administration.
	Deputy Director of Administration.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
Div of Operations Management	Assoc General Counsel, Div of Operation-Mgmt.
	Dep Asso Gen Counsel, Div of Operations-Mgmt.
	Assistant General Counsel.
	Assistant General Counsel.
	Assistant General Counsel.
	Asst to the General Counsel.
Regional Offices	Regl Dir, Reg 1, Boston.
	Regional Director, Reg 2, New York.
	Regional Director, Reg 3, Buffalo.
	Regl Dir, Reg 4, Philadelphia.
	Regional Director, Reg 5, Baltimore.
	Regional Director, Reg 6, Pittsburgh.
	Regl Dir, Region 7, Detroit Mich.
	Regional Director, Reg 8, Cleveland.
	Regional Director, Reg 9, Cincinnati.
	Regl Dir, Reg 10, Atlanta.
	Regl Dir, Reg 11, Winston Salem.
	Regional Director, Reg 12, Tampa.
	Regional Director, Reg 13, Chicago.
	Regl Dir, Reg 14, St Louis.
	Regl Dir, Reg 15, New Orleans.
	Regl Dir, Reg 16, Ft Worth.
	Regl Dir, Reg 17, Kansas City.
	Regl Dir, Reg 18, Minneapolis.
	Regl Dir, Reg 19, Seattle.
	Regional Dir, Reg 20, San Francisco.
	Regional Director, Reg 21, Los Angeles.
	Regional Director, Reg 22, Newark.
	Regional Director, Reg 24, Hato Rey Puerto Rico.
	Regl Dir, Reg 25, Indianapolis.
	Regl Dir, Reg 26, Memphis.
	Regl Dir, Reg 27, Denver.
	Regl Dir, Reg 28, Phoenix.
	Regl Dir, Reg 29, Brooklyn.
	Regl Dir, Reg 30, Milwaukee.
	Regl Dir, Reg 32, Oakland.
	Regional Director, Reg 33, Peoria, Ill.
	Regl Dir, Reg 31, Los Angeles.
	Regional Director, Reg 34, Hartford.
National Science Foundation:	
Office of the Director	Executive Asst & Special Counsel.
Office of the General Counsel	Deputy General Counsel.
Office of Policy Support	Senior Advisor.
	Sr Staff Associate/Policy Analysis.
	Senior Staff Associate.
Office of Polar Programs	Deputy Office Director.
	Head, Polar Research Support Section.
Office of the Inspector General	Inspector General.
	Assistant Inspector General for Oversight.
	Dep Inspector Gen & Senior Legal Advisor.
	Asst Inspector General for Audit.
National Science Board	Senior Staff Associate.
Directorate for Geosciences	Senior Science Associate.
Division of Atmospheric Sciences	Section Head, Upper Atmosphere Section.
	Head, Lower Atmosphere Section.
Division of Earth Sciences	Head, Major Projects Section.
	Section Head, Research Grants Section.
Division of Ocean Sciences	Section Head, Ocean Sciences Research Section.
Director for Engineering	Senior Engineering Advisor.
Division of Engineering Education & Centers	Deputy Division Director (Education).
	Senior Staff Associate.
	Senior Engineering Advisor.
Division of Design, Manufacture & Industrial Innovation	Senior Advisor, Technology Integration.
	Senior Advisor.
Division of Civil and Mechanical Systems	Head Hazard Mitigation Section.
Directorate for Biological Sciences	Executive Officer.
Division of Environmental Biology	Deputy Division Director.
Division of Molecular & Cellular Biosciences	Deputy Director.
Directorate for Mathematical and Physical Sciences	Executive Officer.
	MPS Coordinator.
	Special Assistant to the Assistant Director.
Division of Physics	Executive Officer.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
Division of Astronomical Sciences	Executive Officer.
Division of Mathematical Sciences	Executive Officer.
Division of Materials Research	Executive Officer.
	Senior Staff Scientist.
Directorate for Education & Human Resources	Deputy Asst Director.
	Senior Staff Associate.
Division of Undergraduate Education	Senior Staff Associate.
Directorate for Social, Behavioral and Economic Sciences	Exe Officer Social Behavioral Econ Sciences.
	Senior Advisor Planning & Policy.
Division of International Programs	Deputy Division Director.
	Senior Staff Associate.
	Senior Staff Associate.
Division of Social, Behavioral & Economic Research	Deputy Director.
Directorate for Computer & Info Science & Engineering	Deputy Asst Dir.
Div of Computer and Computation Research	Deputy Division Director.
Division of Microelectronic Information Processing Sys	Deputy Division Director.
Div of Networking & Comm Res & Infrastructure	Deputy Division Director.
Office of Budget, Finance and Award Management	Director, Ofc of Budget, F & A Management.
Budget Division	Director, Budget Division.
Division of Financial Management	Division Director.
Division of Grants & Agreements	Division Director.
	Deputy Director.
Division of Contracts, Policy & Oversight	Division Director.
Office of Information and Resource Management	Dep Dir, Ofc of Information & Resource Mgmt.
	Senior Staff Associate.
Division of Information Systems	Dep Dir, Div of Information Systems.
Division of Human Resource Management	Div Dir, Div of Human Resource Management.
Division of Administrative Services	Dir, Division of Administrative Services.
National Transportation Safety Board:	
Office of the Managing Director	Deputy Managing Director.
	Chief Technical Advisor.
Office of Administration	Dir Office of Administration.
Office of Aviation Safety	Director Ofc of Aviation Safety.
	Deputy Director Ofc of Aviation Safety.
Office of Research & Engineering	Dir Ofc of Research and Engineering.
	Deputy Dir Ofc of Research and Engineering.
Office of Safety Recommendations	Director Ofc of Safety Recommendations.
Office of Surface Transportation Safety	Dir Ofc of Surface Transportation Safety.
	Deputy Director.
Nuclear Regulatory Commission:	
Atomic Safety and Licensing Brd Panel	Chairman ASLBP.
	Deputy Chief Administrative Judge Executive.
Office of the Inspector General	Asst Inspector General for Investigations.
	Asst Inspector General for Audits.
Deputy GC for Licensing & Regulation	Deputy Assistant GC/Legislative Counsel.
Dep GC for Hearings, Enforcement & Administration	Deputy Assistant GC for Administration.
Assistant GC for Hearings and Enforcement	Deputy Assistant General Counsel.
	Deputy Assistant General Counsel.
	Deputy Assistant General Counsel.
Office of Commission Appellate Adjudication	Dir Ofc of Comm Appellate Adjudication.
Division of Operational Assessment	Deputy Director, Div Incident Response.
	Special Assistant to the Director.
Division of Safety Programs	Chief Reactor Analysis Branch.
	Chf Reliability & Risk Assessment Branch.
Office of Administration	Assoc Dir for Contract, Security, FOI & Publ.
	Director, Div of Security.
	Dir Div of Freedom of Info & Publications.
Office of Information Resources Management	Dep Dir/LSS Admr, Ofc of Info Res Mgmt.
Office of the Controller	Dep Chief Financial Officer/Controller.
	Deputy Controller.
	Dir Division of Budget and Analysis.
	Dir Division of Accounting and Finance.
	Special Assistant for Internal Controls.
Ofc of Small and Disadv Bus Utilization/Civil Rights	Director.
Office of Nuclear Reactor Regulation	Proj Dir Project Directorate II–1.
	Project Director Project Directorate IV–3
	Chf, Vendor Inspection Branch.
	Chf, Radiation Protection Branch.
	Dep Dir Div of Radiation Safety & Safeguards.
Division of Inspection and Support Programs	Dir, Inspection & Support Programs.
	Chief, Plng, Program & Mgmt Support Branch.
	Chf, Inspection Program Branch.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
	Chf, Special Inspections Branch.
Associate Director for Projects	Dir, Cost Benefits License Act Programs.
Division of Reactor Projects I–II	Project Dir, Project Directorate I–1.
	Project Director, Project Directorate I–2.
	Project Director, Project Directorate I–4.
	Proj Dir Project Directorate II–2.
	Proj Dir Project Directorate II–3.
	Project Dir Project Directorate II–4.
	Deputy Dir, Div of Reactor Project I & II.
Division of Reactor Projects III & IV	Chf, Technical Specification Branch.
	Proj Dir Project Directorate III–1.
	Proj Dir Project Directorate III–2.
	Proj Director Project Directorate III–3.
	Proj Dir, Project Directorate IV–1.
	Chf, Events A & G Communications Branch.
	Proj Dir, N–P Reactor, D & E Proj Directorate.
	Project Dir, Proj Directorate IV–2.
	Chief, Iseneric Issues & Envir Proj Branch.
Division of Engineering.	
	Chief, Materials & Chemical Engineering BR.
	Chf, Mechanical Engineering Branch.
	Chief Civil Eng & Geosciences Branch.
	Chief Electrical Engineering Branch.
Division of Systems Safety & Analysis.	
	Chf, Plant Systems Branch.
	Chf, Reactor Systems Branch.
	Chief Probabilistic Safety Assessment Branch.
	Chief Containment Sys & Severe Accident Brch.
Division of Reactor Controls and Human Factors	Chf, Human Factors Assessment Branch.
	Chf, Operator Licensing Branch.
	Chf, Instrumentation & Control Branch.
	Chf, Quality Assur & Maint Branch.
Division of Reactor Program Management	Chf, Emergency P & R Protection.
	Chf, Safeguards Branch.
	Project Dir, Standardization Proj Directorate.
	Proj Dir License Renewal & Environmental Rev.
Office of Nuclear Material Safety and Safeguards	Deputy Director, Spent Fuel Project Ofc.
	Chief Transportation & Storage Safety.
Division of Fuel Cycle Safety & Safeguards	Chief, Operations Branch.
	Chief, Regl & Intl Safeguards Branch.
	Chief, Enrichment Branch.
	Chief, Licensing Branch.
Div of Industrial & Medical Nuclear Safety	Chief, Operations Branch.
	Chief, Medical, Acad & Com Use Sfty Branch.
	Chief Source Containment & Devices Br.
Division of Waste Management	Chf, High Level Waste & Uranium Recovery Proj.
	Chief, Perf Assess & Hydrology Branch.
	Chief, Engineering & Geosciences Branch.
	Asst to the Dir, Div of Waste Management.
	Chf, Low Level Waste & Decommissioning Proj.
Ofc of Nuc Regulatory Research	Director: Fin Mgt, Procurement & Admin Staff.
Division of Engineering Technology	Chief, Generic Safety Issues Branch.
	Chief, Elect, M & M Engineer Branch.
	Chief, Structural & Geological Eng Branch.
Division of Regulatory Applications	Chief Regulation Development Branch.
	Chief Waste Management Branch.
	Chf, Radiation Protection & Health Effects Br.
Divisions of Systems Technology	Chief Accident Evaluation Branch.
	Chf, Probabilistic Risk Analysis Branch.
	Chief, Reactor and Plant Systems Branch.
	Chief Control Instr & Human Factors Branch.
Region I	Deputy Regional Administrator.
	Dir, Div of Nuclear Materials Safety.
	Dep Dir, Div of Nuclear Materials Safety.
	Director Division of Reactor Safety.
	Dep Dir, Div of Reactor Safety.
	Director, Division of Reactor Projects.
	Deputy Director, Division of Reactor Projects.
Region II	Deputy Regional Administraor Region II.
	Dir, Div of Nuclear Materials Safety.
	Dep Dir, Div of Nuclear Materials Safety.
	Director, Division of Reactor Projects.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
	Deputy Director, Division of Reactor Projects.
	Director, Division of Reactor Safety.
	Dep Dir, Div of Reactor Safety.
Region III	Dep Regional Administrator Region III.
	Director, Division of Reactor Safety.
	Dep Dir, Div of Reactor Safety.
	Director, Division of Reactor Projects.
	Deputy Director Division of Reactor Projects.
	Dir, Div of Nuclear Materials Safety.
	Dep Dir, Nuclear Materials Safety.
Region IV	Deputy Regional Administrator Region IV.
	Director Div of Reactor Prjects.
	Deputy Director, Div of Reactor Projects.
	Dir, Div of Nuclear Materials Safety.
	Dir, Division of Reactor Safety.
	Dep Dir, Nuclear Materials Safety.
	Dep Dir, Division of Reactor Safety.
Office of Government Ethics:	
Office of Government Ethics	Deputy Director.
	Deputy General Counsel.
	Associate Director for Agency Programs.
Office of Management and Budget:	
Office of the Director	Assistant Director for Administration.
	Deputy Associate Dir For Economic Policy.
	Staff Assistant.
	Senior Advisor to the Dep Dir for Management.
	Dep Assistant Director for Administration.
	Assistant to the Deputy Director for Mgmt.
Legislative Reference Division	Asst Dir Legislative Reference.
	Chief, Labor, Welfare, Personnel Branch.
	Chief, Economics, Science & Govt. Branch.
	Chief, Resources-Defense-International Branch.
	Associate General Counsel for Budget.
Office of Federal Procurement Policy	Dep Admin for Procurement Law & Legislation.
Office of Information and Regulatory Affairs	Chief, Information Policy & Technology Branch.
	Chief, Human Resources and Housing Branch.
	Chief, Commerce and Lands Branch.
	Chief Statistical Policy Branch.
	Chief, Natural Resources Branch.
	Senior Advisor.
Office of Federal Financial Management	Chief Management Integrity Branch.
	Deputy Controller.
	Chief Federal Financial Systems Branch.
Budget Review Division	Asst Dir for Budget Review.
	Dep Asst Dir For Budet Analysis & Systems.
	Chief Budget Analysis Branch.
	Dep Chief Budget Analysis Branch.
	Dep Asst Dir for Budget Review & Concepts.
	Chief, Budget Concepts Branch.
	Chief, Budget Systems Branch.
International Affairs Division	Dep Assoc Dir for Internatl Affairs.
	Chief, State—USIA Branch.
	Chief, Economic Affairs Branch.
National Security Division	Dep Assoc Dir for National Security.
	Chief, Comand, Ctrl, Comms, & Intelig Branch.
	Chief, Force Structure & Investment Branch.
	Dep Chief Natl Sec Div & Chief Oper Sup Branch.
Associate Director for Human Resources	Associate Director for Human Resources.
Human Resources Division	Chief, Labor Branch.
	Deputy Assoc Dir for Human Resources.
	Chf, Income Maintenance Branch.
Transportation, Commerce, Justice & Services Division	D/A for Transp Commerce, Justice & Services.
	Chief Commerce Branch.
	Chief Transport Branch.
	Chief, Justice/GSA Branch.
Housing, Treasury And Finance Division	Deputy Assoc Dir for Housing Treasury Finance.
	Chief, Treasury Branch.
	Senior Advisor for Cash & Credit Mgmt.
	Chief, Financial Institutions Branch.
	Chief, Housing Branch.
Assoc Dir for Natural Resources, Energy, and Science	Senior Advisor.
Natural Resources Division	Dep. Associate Dir. for Natural Resources.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
	Chief, Agricultural Branch.
	Chief, Environmental Branch.
	Chief Interior Branch.
Energy and Science Division	Dep Assoc. Dir for Energy & Science.
	Chief, Water and Power Branch.
	Chief Science and Space Programs Branch.
	Chief, Energy Branch.
Health Division	Deputy Associate Director for Health.
	Chief Health Programs & Services Branch.
	Chief Health & Financing Branch.
VA/Personnel Division	CHF Veteran Affairs Branch.
	Deputy Assoc Director for VA & Personnel.
	Chief, Personnel, Portal, Exop Branch.
Office of Personnel Management:	
Office of the Chief Financial Officer	Chief Financial Officer.
Office of the Inspector General	Deputy Inspector General.
	Asst Inspector General for Audits.
Office of Actuaries	Director, Office of Actuaries.
Office of Insurance Programs	Asst Dir for Insurance Program.
Office of Retirement Programs	Asst Dir for Retirement Programs.
Personnel Research and Development Center	Director, Personnel Res & Development Center.
Staffing Service Center	Director, Staffing Automation.
Office of Classification	Asst Dir for Classification.
Investigating Service	Asst Dir for Wash Investigation & Training.
	Director, Fed Investigation Systems.
Office of Information Technology	Chief Information Technology Officer.
Office of Contracting and Administrative Services	Director of Contracting & Administrative Serv.
Office of Merit Systems Oversight and Effectiveness	Asst Dir for Merit Systems Oversight.
Office of Executive Resources	Asst Director for Executive Resources.
Office of Special Counsel:	
Headquarters, Office of Special Counsel	Assoc Spec Counsel (Investigation).
	Assoc Special Counsel (Prosecution).
	Deputy Associate Spec Counsel for Prosecution.
	Director for Management.
Railroad Retirement Board:	
Board Staff	Dir of Unemployment and Sickness Insurance.
	Chief of Data Processing.
	Director of Hearings and Appeals.
	Dir of Retirement & Survivor Programs.
	Chief Actuary.
	Director of Field Service.
	Director of Administration & Operations.
	Deputy General Counsel.
	Asst Inspector General for Investigations.
	Chief Financial Officer.
	Director of Taxation.
	General Counsel.
	Dir of Operations.
	Dir of Policy & Systems.
Office of Programs	Director of Programs.
Bureau of Information Systems	Chief Information Officer.
Securities and Exchange Commission:	
Office of the Chief Accountant	Dep CHF Accountant.
Office of the Executive Director	Associate Executive Director (Finance).
	Associate Executive Director (Administration).
Div of Corporation Finance	Associate Director (Operations).
	Associate Director (Legal).
Small Business Administration:	
Office of the Inspector General	Asst Inspector General for Auditing.
	Asst Inspector General for Investigations.
	Counsel to the Inspector General.
	Deputy Inspector General.
	Asst Inspector General for Magnt Legal Cousl.
	Assistant Inspector Gen/Inspector & Eval.
Office of the General Counsel	Associate General Counsel for General Law.
	Assoc Gen Counsel Litigation.
	Assoc Gen Coun—SBIC Liquidation/Litigation.
Office of Equal Employment O & C Rights Compliance	Asst Admr for Equal Employ O & C Right Compl.
Office of Hearings and Appeals	Asst Administrator for Hearings and Appeals.
Office of the Chief Financial Officer	Deputy Chief Financial Officer.
Office of Financial Assistance	Assoc Administrator for Financial Assist.
	Dep Assoc Admr for Financial Assistance.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
	Asst Admr for Borrower and Lender Servicing.
Office of Surety Guarantees	Assoc Administrator for Surety Guarantees.
Office of Minority Enterprise Development	Assoc Admr for MSB-COD.
	Dep Assoc Admr for Programs (MSB & COD).
Office of Management and Administration	Chief Fin Ofc & Assoc Dep Adm for MGT & ADM.
Office of Information Resources Management	Asst Adm for Information Resources Management.
	Dep Asst Adm for Information Res Mgmt.
Office of Human Resources	Asst Administrator for Human Resources.
District Directors	District Director.
	District Director.
	District Director.
	District Director.
	District Director.
	District Director.
	District Director.
	District Director.
Social Security Administration:	
Office of the Inspector General	Asst Inspector Gen for Social Security Audits.
	Asst Inspector Gen for Investigation, P & O.
	Asst Inspector General for Investigations.
	Dep Asst Inspector General for Investigations.
	Deputy Inspector General.
	Dep Asst Inspector General for Audits.
Office of Actuary	Chief Actuary.
	Deputy Chiefs Actuary (Long-Range)
	Deputy Chief Actuary (Short-Range)
Office of Finance, Assessment and Management	Senior Financial Executive.
Office of Financial Policy and Operations	Assoc Comr, Office of Fin Policy & Operations.
	Dep Assoc Comm Financial Policy & Operations
Office of Acquisition and Grants	Assoc Commissioner for Acquisition & Grants.
Division of General Law	Associate General Counsel for General Law.
Department of State	
Bureau of Administration	Director, Office of Acquisitions
Bureau of Intelligence and Research	Dir Ofc of Intelligence Resources.
Office of the Inspector General	Assistant Inspector General for Audits.
	Asst Inspector General for Investigations.
	Counsel to the Inspector General.
	Dep Asst Inspector General for Audits.
	Asst Insp Gen for Policy, Plng and Management.
	Dep Asst Inspector Gen for Inspections.
	Dep Asst Insp Gen for Ofc of Secur Oversight.
	Deputy Inspector General.
	Asst Inspector Gen for Security Oversight.
Bureau of Personnel	Director, Ofc of Civil Service Personnel Mgmt.
International Boundary & Water Commission	Supervisory Civil Engineer, Operations.
Department of Transportation:	
Office of Inspector General	Asst Insp General for Auditing.
	Asst Inspector General for Invetigations
	Dep Asst Inspector Geenral for Auditing.
	Dep Asst Inspector General for Investigations
	Deputy Inspector General.
	Asst Inspector General for Inspections & Eval.
	Director of Administration.
	Dir Ofc Onfo Tech Financial & Secretarial Aud.
	Senior Counsel.
Asst Secretary for Budget & Programs	Deputy Chief Financial Officer.
Asst Sec for Administration	Asst Secy for Administration.
Office of Acquisition & Grant Management	Director Ofc of Acquisition & Grant Mgnt.
Assoc Adm'r for Safety	Assoc Admr for Safety.
Office of Safety Enforcement	Director, Office of Safety Enforcement.
Associate Administration for Pipeline Safety	Assoc Admr for Pipeline Safety.
Ofc of Assoc Admr for Ship Financial A & C Preference	Assoc Admr for Ship Fin A & C Preference.
Office of the Administrator	Senior Advisor.
Organization Abolished	Dir Ofc of Safety Service.
Organization Abolished	Dir, Office of Airport Planning & Program Mgr, Airports Fin Assistance Division.
Organization Abolished	Dep Asst Admr for Civil Aviation Security.
Organization Abolished	Dir, Ofc of Civil Avn Security Pol & Planning.
Organization Abolished	Dir Ofc of Civil Aviation Security Operations.
	Dep Dir, Ofc of Civil Aviation Security OPS.
Organization Abolished	Dir Ofc Civil Aviation Security Intelligence.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
Organization Abolished	Director Asia/Pacific Office.
Organization Abolished	Director, Air Traffic Service, AAT–1.
	Deputy Director, Air Traffic Service, AAT–2.
Organization Abolished	Prog Dir, Spectrum Pol & Management Program.
Organization Abolished	Mgr, Air Traffic Division.
	Mgr, Air Traffic Division.
	Mgr, Air Traffic Div.
	Manager, Air Traffic Division.
	Mgr, Air Traffic Division.
	Mgr, Air Traffic Division.
	Manager, Air Traffic Division.
	Manager, Air Traffic Division, ANE–500.
Organization Abolished	Manager, Procedures Division.
	Mgr, Airspace—Rules & Aeronautical Inf. Div.
	Dir, Air Traffic Rules & Procedures Service.
Organization Abolished	Director, Air Traffic System Management.
Organization Abolished	Dir, Air Traffic Plans & Requirements Serv.
	Manager, System Plans & Programs Div.
	Mgr Automation Software Pol & Plnng Division.
	Manager, Advanced Syst & Facilities Div.
Organization Abolished	Dir, Ofc of Air Traffic Syst Effectiveness.
Organization Abolished	Dir, Ofc of Air Traffic Program Management.
Organization Abolished	Assoc Administrator for Aviation Standards.
	Dir, Aircraft Prog, Pol & Plans Staff, AAD–30.
Organization Abolished	Fed Air Surgeon.
	Deputy Federal Air Surgeon.
	Director, Civil Aeromed Institute.
Organization Abolished	Dir, Office of Accident Investigation.
Organization Abolished	Prog Dir, Aviation Syst Standards.
Organization Abolished	Prog Dir, NAS Transition & Implementation Dir.
Organization Abolished	Program Director, NAS Operations Directorate.
Organization Abolished	Assoc Admr for Regulations & Certification.
	Dep Assoc Admr for Regul & Certification.
Organization Abolished	Dir, Aircraft Certification Service.
	Deputy Director, Aircraft Certification Service.
	Manager, Aircraft Engineering Division.
	Manager, Aircraft Manufacturing Division.
Organization Abolished	Mgr, Transport Airplane Directorate.
	Mgr, Engine & Propeller Directorate.
	Mgr, Small Airplane Directorate.
	Manager, Rotorcraft Directorate.
Organization Abolished	Dir, Flight Standards Service.
	Dep Dir, Flight Standards Service.
	Manager, Air Transportation Division.
	Manager, Aircraft Maintenance Division.
	Mgr, Flight Standards Natl Fld Ofc, AFS–500.
	Manager, Technical Programs Division.
Organization abolished	Mgr, Flight Standards Div.
	Mgr, Flight Standards Division.
	Mgr, Flight Standards Div.
	Manager, Flight Standards Division.
	Mgr, Flight Standards Div.
	Mgr, Flight Standards Div.
	Mgr, Flight Standards Division.
	Mgr, Flight Standards Div.
Organization Abolished	Program Mgr for Advanced Automation.
	Dep Prog Mgr for Advanced Automated System.
	Integrated Prod Team Leader for Term, AUA–300.
	Program Manager for Enroute Systems.
Organization Abolished	Program Dir for Navigation & Landing Aids.
Organization Abolished	Mgr, Contracts Division.
	Director, Ofc of Acquisition, ASU–1.
	Deputy Director, Ofc of Acquisition.
Organization Abolished	Program Mgr, Business & Financial Mgmt.
	Integrated Product Team Leader Voice S&C.
	Integrated Product Team Leader Communication.
Organization Abolished	Deputy Director.
	Programs Director, Program Evaluation.
Federal Highway Administration	Executive Director.
	Director, Ofc of Compliance & Consumer Asst.
Office of Fiscal Services	Dir, Ofc of Budget & Finance.
Associate Administrator for Safety & System App	Assoc Admr for Safety & System Applications.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
Office of Highway Safety	Dir, Office of Highway Safety.
Office of Motor Carrier Standards	Dir Ofc of Motor Research & Standards.
Office of Motor Carrier Safety Field Operations	Director Ofc of Motor Carrier Field Operation.
Office of Environment & Planning	Chief Environmental Operations Division.
Office of Real Estate Services	Dir Ofc of Real Estate Services.
Natl Center for Statistics and Analysis	Chf, Accident Investigation Div.
Associate Administrator for Safety Assurance	Associate Administrator for Safety Assurance.
Ofc of Defects Investigation	Dir-Ofc of Defects Investigation.
Ofc of Vehicle Safety Comp	Dir-Ofc of Vehicle Safety Compliance.
Office of the Chief of Staff	Director of Finance and Procurement.
Surface Transportation-Board	Director of Economics, Environmental A & A.
Office of Proceedings	Deputy Director—Legal Analysis.
DEPARTMENT OF TREASURY:	
Assistant Secretary (International Affairs)	Dir Ofc of Foreign Exchange Operations.
Fiscal Assistant Secretary	Fiscal Assistant Secretary.
	Assistant Fiscal Assistant Secretary.
Financial Management Service	Commr of Financial Management Service.
	Dep Com Financial Management Service.
	Dir, Regional Financial Center (Chicago).
	Director, Regl Fin Ctr (San Francisco)
	Director, Regl Fin Ctr (Austin).
	Comptroller.
	Director, Systems Services Directorate.
	Asst Commissioner, Information Resources.
	Assistant Commissioner, Federal Finance.
	Director Operations Group.
	Assistant Commissioner, Regional Operations.
	Asst Comr, Management (Chief Fin Ofcr)
	Dir, Systems Development Directorate.
	Dir, Fin Information Management Directorate.
	Dir, Technology & Information Group.
	Assistant Commissioner, Financial Information.
	Assistant Commissioner (Agency Services).
	Associate Deputy Commissioner for Re-Engineer.
Bureau of the Public Debt	Commissioner.
	Dep Commr of the Public Debt.
	Asst Commissioner (Savings Bond Operations).
	Asst Commr (Financing)
	Asst Commr (Administration).
	Government Securities Act Program Director.
	Government Securities Policy Advisor.
	Asst Commr/Securities & Accounting Services.
	Asst Commissioner (Automated Info Systems)
	Asst Commissioner (Public Debt Accounting)
Assistant Secretary (Enforcement)	Dep Dir, Financial Crimes Enforcement Network.
	Director Fincen.
	Assoc Dir, Ofc of Mgmt/Chf Fin Ofcr, Fincen.
	Senior Advisor to the Asst Secy (Enforcement).
	Dir Exe Ofc for Asset Forfeiture.
Bureau of Alcohol Tobacco and Firearms	Associate Director (Enforcement)
	Special Agent in Charge (NY District Office).
	Spec Agent in Charge (Washington Dist Office).
	District Director (North Atlantic Distrct).
	Assistant Director (Inspection).
	Director, Laboratory Services.
	Dep Assoc Dir Reg Enforcement Field Operation
	Sac, Chicago Field Division
	Dep Assoc Dir (Criminal Enforcement Programs;
	Special Agent in Charge.
	Dep Assoc Dir Criminal Enforcement Field Oper
	Dep Assoc Dir Criminal Enfor Field Oper West.
	Asst Dir Science & Information Technology
	Dep Asst Dir. (Sci & Info Technology).
	Dep Assoc Dir Regulatory Enforcement Programs.
	Dep Asst Dir (Liaison & Public Information).
	Deputy Director.
	Asst Dir (Liaison & Public Information)
Chief Counsel	Assistant Chief Counsel (Chicago).
	Staff Assistant to the Chief Counsel
US Customs Service	Deputy Assistant Commissioner (Enforcement).
	Asst Commissioner for Internal Affairs.
	Dir, International Trade Compliance Division.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
	Dir Ofc of Regulatory Audit.
	Special Agent in Charge, Miami.
	District Director, Laredo.
	Director, Investigative Operations Division.
	Dir, Office of Enforcement Support.
	Special Agent in Charge—New York.
	Special Agent in Charge.
	Dir, Customs Management Center, New York.
	Area Dir, Newark.
	Dir, Customs Management Center.
	Dir, Strategic Trade Center, New York.
	Asst Commissioner, Field Operations.
	Dir, Strategic Trade Center, Plantation, FL.
	Dir, Customs Management Center, Gulf.
	Dir, Customs Management Center.
	Dir, Customs Management Center—S. Texas.
	Director, Customs Management Center.
	Project Executive.
	Asst Commissioner, Regulations & Rulings.
	Dir, Strategic Trade Center, Chicago.
	Area Director, JFK Airport.
	Port Director—Los Angeles.
	Asst Commissioner, Infor & Technical Services.
	Dir, Customs Management Center, South Florida.
	Special Agent in Charge (New Orleans).
	Dep Dir, Ofc of Regulatory Audit.
	Asst Commissioner, Investigations.
	Processes & Policy Executive.
	Dir, Laboratories & Scientific Services.
	Project Executive.
	Dir, Strategic Trade Center Operations.
	Special Agent in Charge.
	Dir, Budget and Planning.
	Exec Dir, The Interdiction Committee.
	Assistant Commissioner, Finance.
	Project Executive.
	Dir, Tariff Classification Appeals Division.
	Dir, Strategic Trade Center, Long Beach.
	Dir, Strategic Trade Center, Dallas/Ft Worth.
	Special Agent-in-Charge (Seattle, Wash).
	Special Agent in Charge—Baltimore.
	Dep Asst Comr, Ofc of A&M Interdiction.
	Special Agent in Charge (Houston).
	Dir, Customs Management Center.
	Dir, Office of Planning.
	Director, Applications Development Division.
	Dir, Customes Management Center, East Texas.
	Executive Director, Customs Management Center.
	Dir, Customs Management Center, South Pacific.
	Project Exec (Dir, Intervention Management).
	Asst Commissioner, Strategic Trade.
	Special Agent-in-Charge (San Diego).
	Asst Commissioner, Human Resources Mgmt.
	Director, Ofc of Automated Commercial Systems.
	Special Agent-in-Charge (Chicago).
	Special Agent-in-Charge-Dallas.
Customs Chief Counsel	Deputy Chief Financial Officer.
	Miami Regl Counsel.
	Chicago Regl Counsel.
	New York Regl Counsel.
	Associate Chief Counsel, Enforcement.
	Assoc Chief Counsel (Trade Tariff & Leg).
	Regional Counsel (Southwest Region).
	Assoc Chief Counsel (Administration).
	Regional Counsel (Pacific Region).
Secret Service	Asst Director, Investigations.
	Special Agent in Charge, New York Office.
	Director of the Secret Service.
	Deputy Director, U.S. Secret Service.
	Asst Dir (Protective Operations).
	Asst Dir (Protective Research).
	Assistant Director, Administration.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
	Assistant Director, Inspection.
	Dep Asst Dir (Protective Operations).
	Spec Agent in Charge-Presidential Protective.
	Special Agent in Charge, Chicago.
	Special Agent in Charge, Los Angeles Office.
	Dep. Asst. Dir. (Protective Research).
	Assistant Director—Training.
	Asst Director—Govt Liaison and Public Aff.
	Spec Agent in Charge—VP Protect Div.
	Spec Agent in Charge—Tech Sec Div.
	Spec Agent in Charge—Intelligence Div.
	Spec Agent in Charge—Washington Field Office.
	Spec Agent in Charge—Philadelphia Field Office.
	Special Agent in Charger, Detroit.
	Special Agent in Charge, Dallas Field Office.
	Deputy Asst Dir Investigations.
	DAD—Administration.
	Deputy Special Agent in Charge Pres Prot Div.
	DAD (Uniformed Forces, F & E Dev), Ofc Trng.
	Special Agent in Charge—Houston Field Ofc.
	Deputy Asst Director Office of Inspection.
	Spec Agent in Charge—Miami Field Office.
	Deputy Special Agent in Charge—VP Prot Div.
	Dep Asst Dir Protective Operations.
	Chf, Info Resources Management Division.
	Special Agent in Charge/Dignitary Prot Div.
	Special Agent in Charge—Boston Field Office.
	Spec Agent in Charge—Atlanta Field Office.
Ofc of the Inspector General	Dep Asst Inspector Gen for Audit (Fin Mgmt).
	Dep Asst Inspector Gen for Audit (Fin Mgmt).
	Dep Asst Inspector Gen for Audit (Audit Ops).
	Assistant Inspector General for Re. ources.
	Assistant Inspector General for Audit.
	Director of Oversight.
	Executive Assistant.
	Asst Inspector General for Investigations.
	Assoc Inspector Gen for Audit (Prog Audits).
	Dep Ass Inspector Gen for Investigations.
Assistant Secretary (Economic Policy)	Asst Dir for Economic Forecasting.
	Sr Economist.
Assistant Secretary (Tax Policy)	Dir (Economic Mod & Computer Applications).
Assistant Secretary (Management)	Director, Office of Procurement.
	Deputy Chief Financial Officer.
	Dep to the Chf Fin Ofcr for Pol & Planning.
United States Mint	Assoc Director, Chief Operating Officer.
	Dep Assoc Dir for Finance & Dep Chief Fin Ofc.
	Associate Director for Marketing.
	Assoc Dir for Pol & Mgmt Chf Fin Officer.
Organization Abolished	Special Agent in Charge (LA District Office).
	Special Agent in Charge (Miami District Ofc).
Organization Abolished	Director Ofc of Foreign Operations.
Organization Abolished	Deputy Chief Financial Officer (Cfo).
Organization Abolished	Exec Dir for Workforce Plann & Diversity Mgnt.
	Special Asst to the Director.
Internal Revenue Service	Reg Dir of Appeals, Mid-Atlantic Region.
	Regional Dir of Appeals North Atlantic Region.
	Regional Director of Appeals—Western Region.
	Asst to the Commissioner (Equal Opportunity).
	Chief Appeals Office in New York City.
	Deputy Commissioner.
	Special Asst to the Deputy Commissioner.
	National Transition Executive.
	Taxpayer Ombudsman.
	Chief, Appeals Office, Long Island.
	Regional Director of Appeals.
	Asst Natl Transition Executive for Appeals.
	National Director of Appeals.
	Chief Compliance.
	Associate Commissioner for Modernization.
	Assistant Dir, Office of Business Transition.
	District Office Transition Site Executive.
	Computing Cet Transition Site Executive.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
North Atlantic Region	Assistant National Transition Executive. Deputy National Dir of Appeals. Submission Processing Transition Site Exec. Customer Service Transition Site Executive. Asst to the Senior Dep Commissioner. Director, Office of Business Transition. Management Systems Site Executive. Reg Commr. Service Center Director, Andover, Mass. Srvc Ctr Dir, Brookhaven. District Dir, Manhattan. District Dir, Brooklyn. District Dir, Boston. District Dir (Hartford) District Dir, Buffalo. Asst Dist Dir, Brooklyn. Assistant District Director Manhattan. Asst District Dir, Boston. District Director Providence. District Director, Portsmouth. District Director, Burlington. Asst District Director Buffalo. Regional Chief Customer Service. Director of Support Services. Chief Compliance. Assistant District Director. Deputy Regional Counsel, Northeast. Regional Counsel, Northeast. Field Information Systems Officer.
Mid-Atlantic Region	Asst District Director. Assistant Regional Commissioner (Data Proc) Service Center Dir, Philadelphia. District Dir, Newark. District Director Richmond District. Asst District Dir, Philadelphia. Assistant District Director—Baltimore, Md. District Dir, Baltimore.
Southeast Region	Asst Service Center Director. District Director. Reg Commr. Service Center Director, Memphis. Srvc Ctr Dir, Atlanta. District Dir, Jacksonville. District Dir, Atlanta. District Director Greensboro. District Dir, Nashville. District Director Birmingham. District Dir, New Orleans. District Director, Columbia. District Director Little Rock District. District Director, Jackson, Miss. Asst District Director, Jacksonville. Assistant District Director, Atlanta. Assistant District Director, Gulf Coast. Dir of Support Services. Asst District Director. Assistant District Director. Regional Chief Customer Service. Field Information Systems Officer, Southeast.
Central Region	District Director. Assistant Service Center Director. Assistant District Director. Dir Service Ctr Cincinnati. District Dir (Cleveland). District Director Detroit. District Director, Indianapolis. District Dir, Cincinnati. Director of Support Services. Asst Director Detroit Computing Center. Asst District Director Denver. Assistant District Director. Assistant District Director Detroit.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
Midwest Region	Srvc Ctr Dir, Kansas City. District Dir, Chicago. District Director St Louis. District Dir, St Paul. District Dir, Omaha. District Dir, Springfield. District Dir, Milwaukee. Asst District Dir, Chicago. Assistant District Director. Assistant District Director. Dir of Support Services. National Director for Internal Audit Planning. Assistant District Director. District Director.
Southwest Region	Service Center Dir, Ogden. Service Center Director, Austin. District Dir, Austin. District Director, Dallas. District Director Oklahoma City. District Dir, Phoenix. District Dir, Denver. Assistant District Director, Dallas. District Director, Cheyenne. District Director, Salt Lake City. Compliance Center Director. Asst District Director, Austin. Asst Compliance Center Director. Field Information Systems Officer Midstates. Assistant Service Center Director. Director of Support Services. Assistant District Director, Houston. District Director, Houston. Regional Chief Customer Service. Regional Commissioner. Regional Director of Appeals Midstates.
Western Region	Regional Chf Compliance Ofcr, Southwest. District Dir, Los Angeles. District Dir, San Francisco. District Director, Portland District. District Dir, Seattle. Asst District Dir, Los Angeles. Asst District Dir, San Francisco. District Director, Honolulu. District Director, Anchorage. District Director (Sacramento). District Director, San Jose. Field Information Systems Officer, Western. Regional counsel, Western. Special Assistant to the Regional Commr. National Transition Executive for Appeals. Assistant District Director, Laguna Niguel. Asst District Director, San Jose. Regional Chief Customer Service. Asst District Director, Seattle. Chief Compliance. District Director, Laguna Niguel. Regional Commissioner, Western. Dir of Support Services. Service Center Director, Fresno.
Chief Compliance Officer	Asst Comr (Employee P & E Organizations). Asst Commissioner (Taxpayer Service). Asst Commr (Criminal Investigation). Dir Exempt Organizations Technical Division. D/Employee Plans Tech & Actuarial Division. Director, Statistics of Income Division. Dep Asst Commr (Criminal Investigation). Director of Investigations, Eastern Area Ops. Dir of Investigations. Dir of Investigations (Tax Refund Fraud). Dir of Investigations, Southern Area of Ops. Director, Office of National Operations. Dir of Investigations, Central Area of Ops.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
Chief, Taxpayer Services	Asst Commissioner (Collection).
	Natl Director Corporate Examinations.
	Assistant Commissioner (International).
	National Director, Compliance Specialization.
	National Director Specialty Taxes.
	Chief Compliance Officer.
	National Difector Service Center Compliance.
	National Dir, Collection Field Operations.
	National Director Compliance Research.
	Deputy Asst Commissioner (International).
	Asst Commr (Examination & Govntl Liaison).
	Executive for Electronic Filing Strategy.
	Asst. Service Center Dir Brookhaven.
	National Dir, Customer Service Operations.
	Deputy Chief, Taxpayer Service.
	Natl Dir, Submission Processing Division.
	Executive Ofcr for Service Center Operations.
	National Dir, Cutomer Serv Planning & Syst.
	Chief Taxpayer Services.
	National Dir, Multimedia Production Division.
	Executive Officer for Customer Service.
	Dir, Taxpayer Services Design & Review Div.
Chief Financial Officer	Chief Financial Officer.
	Controller National Dir for Financial Mgmt.
	Deputy Assistant Commissioner (Procurement).
	National Director for Financial Analysis.
	Director, Support & Services Division.
	National Director for Systems & Account Stds.
	Asst Comr (Procurement).
	National Director for Budget.
Chief, Management & Administration	Special Asst to Chief Mgmt & Administration.
	Exec Asst to the Natl Dir Ofc of Quality.
	Dean School of Information Technology.
	Dean School of Professional Development.
	Dir Ofc of Media Relations.
	Natl Dir Real Estate Planning & Management.
	National Director Personnel.
	National Director of Education.
	Asst Commissioner (Support Services).
	Chief, Management and Administration.
Chief Information Officer	Dir Martinsburg Computing Center.
	Dir, IRS Data Center Detroit.
	Director, Systems Design Division.
	Director Systems Acquisition Division.
	Dir Input Systems Division.
	Director, Government Program Management Ofc.
	Privacy Advocate.
	Dir Technical Management Division.
	Dir Case Systems Division.
	Asst Dir, Government Prog Management Ofc.
	Director, Technical Program Management.
	Director, Technical Contract Support.
	Dep Natl Dir Applications Design & Develop.
	National Dir, Application Design & Dev.
	Dep Natl Dir, Syst Eng & Program Management.
	Natl Dir Network & Systems Management.
	Dir Telecommunications Division.
	Dir Operations Management Division.
	Projects Director, Corporate Computing.
	Director, Quality Assurance Division.
	National Dir, Syst Eng & Program Management.
	Dean School of Taxation.
	Chief Information Officer.
	Dir Office of System Standards & Evaluation.
	Deputy Chief Information Officer.
	Dep Chief Information Officer (Operations).
Chief, Strategic Planning & Communications	Director, Tax Forms & Publications Division.
	Director, Legislative Affairs Division.
	Natl Director, Strategic Planning Division.
	National Director of Quality.
Chief, Headquarters Operations	Chief Headquarters Operations.
Chief Inspector	Chief Inspector.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
Chief Counsel	Dep Chief Inspector.
	Assistant Chief Inspector (Int Audit).
	Assistant Director Internal Audit Division.
	Asst Chief Inspector (Internal Security).
	Asst Dir, Internal Security Division.
	Regional Inspector, North Atlantic.
	Regional Inspector Western Region.
	Regional Inspector, Southwest Reg.
	Regional Inspector Southeast.
	Natl Dir for Comm Education & Quality.
	Asst Chief Counsel (General Litigation).
	Asst Chief Counsel (Criminal Tax).
	Asst Chief Counsel (General Legal Services).
	Asst Chief Counsel (Disclosure Litigation).
	Assistant Chief Counsel (International).
	Assistant Chief Counsel (Corporate).
	Dep Asst Chf Coun (Income Tax & Accounting).
	Dep Asst Chf Coun (Passthroughs/Spec Indust).
	Asst Chief Counsel (Field Service).
	Asst Chf Coun (Passthroughs/Spec Industries).
	Deputy Asst Chief Counsel (Corporate).
	Dep Assoc Chief Counsel (Fin & Management).
	Dep Asst Chief Counsel (Field Service).
	Dep Asst Chief Coun (Figancial Inst & Prod).
	Dep Assoc Chf Coun (Enforcement Litigation).
	Dep Assoc Chief Counsel International.
	Asst Chf Coun (Fin Institutions & Products).
	Dep Asst Chief Coun (Income Tax & Accounting).
	Dep Assoc Chief Counsel (EBEO).
	Dep Asst Chf Coun (Income Tax & Accounting).
	Asst Chief Counsel ((Income Tax & Accounting).
	Assoc Chief Counsel (Enforcement Litigation).
	Assoc Chief Counsel Emp Benefits Exempt Org.
	Special Counsel (Modernization & Strat Plnng).
	Special Litigation Counsel.
	Deputy Chief Counsel.
	Asst Chief Counsel (EBEO).
	Dep Assoc Chief Counsel (Domestic) (Technical).
	Associate Chief Counsel (International).
	Assoc Chf Counsel (Finance & Management).
	Dep Asoc Chief Coun (Domestic) (Field Serv).
Regional Counsels	Assoc Chief Counsel (Domestic).
	Regional Counsel SE Region.
	District Counsel—Boston.
	District Counsel—Los Angeles.
	District Counsel—Cincinnati.
	District Counsel—Philadelphia.
	District Counsel—Newark.
	District Counsel, Chicago.
	District Counsel, Manhattan.
	District Counsel—Dallas.
	District Counsel—San Francisco.
	District Counsel.
	District Counsel.
	Regional Counsel, Midstates.
	Deputy Regional Counsel (Southeast).
	Deputy Regional Counsel, Western Region.
	District Counsel, Seattle.
	District Counsel, Baltimore.
	District Counsel, Brooklyn, New York.
	District Counsel, Atlanta.
	District Regional Counsel, Midstates.
	District Counsel, Houston, Texas.
	District Counsel, Denver.
U.S. Arms Control and Disarmament Agency:	
Intelligence, Verification & Information Mgmt Bureau	Chief, Intelligence, Technol & Analysis Div.
Ofc of Administration	Director of Administration.
Strategic and Eurasian Affairs Bureau	Chief, Strategic Neg & Implementation Div.
	Chf, Theater & Strategic Defenses Division.
	Chief, Defense Conversion Division.
Non-Proliferation and Regional Arms Control Bureau	Chief Scientist.
	Chf, International Nuclear Affairs Divisions.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1996—Continued

Agency/organization	Career reserved positions
Multilateral Affairs Bureau	Chief Intl Security & Nuclear Policy Division.
	Chf, C & B Pol Div Bur of Multilateral Affs.
	Chief Sci & Technological Division.
United States Information Agency:	
Ofc of the Director	Assistant Inspector General for Audits.
	Assistant Inspector General for Inspections.
Bureau of Management	Director, Office of Personnel.
	Director, Office of the Comptroller.
	Dir Ofc of Contracts.
	Director, Office of Technology.
Bureau of Broadcasting	Dir Engineering and Technical Operations.
	Deputy of Systems Engineering.
	Deputy for Projects Management.
	Deputy for Operations.
Office of Information Resources	Director, Ofc of Information Resources.
Ofc of the Gen Counsel	Deputy General Counsel.
U S International Trade Commission:	
Office of Industries	Dir Ofc of Industries.
Office of Investigations	Dir, Ofc of Investigations.
Department of Veterans Affairs:	
Office of the Inspector General	Dep Inspector General.
	Assistant Inspector General for Auditing.
	Asst Inspector General for Investigations.
	Asst Insp Gen for Policy, Plan & Resources.
	Dep Asst Inspector General for Investigations.
	Counselor to the Inspector General.
	Asst Inspector General for Healthcare Inspect.
	Dir, Audit Planning, Fin Rev & Ops Support.
	Dep Asst Inspector General for Auditing.
	Executive Assistant for Medical Programs.
Board of Veterans Appeals	Vice Chairman.
	Deputy Vice Chairman.
Office of Financial Management	Dep Asst Secy for Financial Management.
	Assoc Dep Asst Secy for Financial Operations.
	Dir, Austin Finance Center, Austin, TX.
Office of Information Resources Management	Dir, VA Automation Ctr, Austin, TX.
	Assoc Dep Asst Secy for Telecommunications.
	Assoc Dep Asst Secy for Pol & Prog Assistance.
Office of Acquisition and Materiel Management	Dep Asst Sec for Acquisition & Materiel Mgmt.
	Assoc Dep Assistant Secy for Acquisitions.
	Assoc Dep Asst Secy for Serv & Distribution.
	Assoc Dep Asst Secy for Resources.
	Assoc Dep Asst Secy for Prog Mgmt & Oper.
	Assoc Das for VA Natl Acq Center Hines, IL.
Office of Human Resources Management	Assoc Dep Asst Secy for Human Res Management.
	Assoc Dep Asst Secy for Human Res Management.
Office of Security and Law Enforcement	Dep Asst Secy for Security & Law Enforcement.
Veterans Benefits Administration	Deputy Chief Financial Officer.
	Dep Dir Compensation & Pension Service.
	Chief Financial Officer.
Veterans Health Administration	Director, Budget Office.
	Dir, Office of Real Property Management.
	Dir VA/DOD Medical Sharing Office.
	Dir, Medical Care Cost Recovery Office.
	Dir Emergency Medical Preparedness Office.
	Deputy Director Emergency Medical Prep Ofc.
	Chief Financial Officer.
	Director, Western Area Office.
	Director, Eastern Area Office.
	Director, Facilities Quality Office.
	Dir Consulting Support Office.
	Director, Financial Management Office.
Veterans Integrated Service Network Directors	Dir Canteen Service.

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federal register

Tuesday
February 25, 1997

Part III

Environmental Protection Agency

Thirty-Ninth Report of the Interagency Testing Committee to the Administrator; Receipt of Report, Request for Comments; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–41046; FRL–5580–9]

Thirty-Ninth Report of the TSCA Interagency Testing Committee (ITC) to the Administrator; Receipt of Report, Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The TSCA Interagency Testing Committee (ITC), established under section 4(e) of the Toxic Substances Control Act (TSCA), transmitted its Thirty-Ninth Report to the Administrator of the EPA on November 27, 1996. In the Thirty-Ninth Report, which is included with this Notice, the ITC revised the TSCA section 4(e) *Priority Testing List* by recommending 2,4,6-tribromophenol, re-recommending 23 nonylphenol ethoxylates and removing 5 siloxanes. Moreover, the ITC requested that EPA stay certain provisions in the Agency's October 29, 1996, TSCA section 8(a) and 8(d) information reporting rules for the nonylphenol ethoxylates recommended in the ITC's Thirty-Eighth Report

There are no designated or recommended with intent-to-designate chemicals or chemical groups in the Thirty-Ninth Report. EPA invites interested persons to submit written comments on the Report.

DATES: Written comments on the Thirty-Ninth ITC Report should be received by March 27, 1997.

ADDRESSES: Comments on the Thirty-Ninth Report should be submitted to both the ITC and the TSCA Docket. Send one copy of written comments to: John D. Walker, ITC Executive Director (7401), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Send six copies of written comments to: Document Control Office, Rm. ET-G–099, Office of Pollution Prevention and Toxics (7407), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. All submissions should bear the docket number OPPTS–41046.

Comments may also be submitted electronically by sending electronic mail (e-mail) to: walker.johnd@epamail.epa.gov or to the EPA at: ncic@epamail.epa.gov. Electronic comments are preferred by the ITC. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of security encryption. Comments will be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All comments in electronic form must be identified by the docket number OPPTS–41046. No TSCA "Confidential Business Information" (CBI) should be submitted through e-mail. Electronic comments on the Thirty-Ninth Report may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit IV of this document.

The public record supporting this action, including comments, is available for public inspection in the TSCA Non-Confidential Information Center (NCIC), Rm. NE-B–607 at the address noted above from 12 noon to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: EPA has received the TSCA Interagency Testing Committee's Thirty-Ninth Report to the Administrator.

I. Background

TSCA (Pub. L. 94–469, 90 Stat. 2003 et seq; 15 U.S.C. 2601 et seq.) authorizes the Administrator of the EPA to promulgate regulations under section 4(a) requiring testing of chemicals and chemical groups in order to develop data relevant to determining the risks that such chemicals and chemical groups may present to health or the environment. Section 4(e) of TSCA established the ITC to recommend chemicals and chemical groups to the Administrator of the EPA for priority testing consideration. Section 4(e) directs the ITC to revise the TSCA section 4(e) *Priority Testing List* at least every 6 months.

II. The ITC Thirty-Ninth Report

The most recent revisions to the *Priority Testing List* are included in the ITC's Thirty-Ninth Report. The Report was received by the EPA Administrator on November 27, 1996, and is included in this Notice. The Report recommends 2,4,6-tribromophenol, re-recommends 23 nonylphenol ethoxylates and removes 5 siloxanes from the *Priority Testing List*. 2,4,6-Tribromophenol is being recommended to meet the data needs of the National Institute of Environmental Health Sciences (NIEHS). The nonylphenol ethoxylates are being re-recommended to meet the data needs of the Department of the Interior (DOI), the EPA, the Food and Drug Administration (FDA) and the NIEHS and to eliminate any ambiguities in TSCA section 8(a) and 8(d) reporting resulting from the previous use of alternate Chemical Abstracts Service (CAS) registry numbers in the ITC's Thirty-Eighth Report (61 FR 39832; July 30, 1996; FRL–5379–2). The ITC re-examined these alternate CAS registry numbers and determined that five were not associated with any of the listed nonylphenol ethoxylate chemical names. In the Thirty-Ninth Report, the ITC revised the list of nonylphenol ethoxylates by providing Ninth Collective Index names for all CAS-numbered nonylphenol ethoxylates, including the five not previously associated with a unique chemical name. This process eliminated the need for alternate CAS registry numbers. The ITC requested that the EPA stay certain provisions in the October 29, 1996, TSCA section 8(a) and 8(d) rules (61 FR 55871; FRL–5397–9) promulgated for the nonylphenol ethoxylates originally recommended in the ITC's Thirty-Eighth Report (61 FR 39832; July 30, 1996; FRL–5379–2). The EPA issued the stay which was published on December 11, 1996 (61 FR 65186; FRL–5577–5). Nothing in this Notice changes the status of the stayed rules affecting the nonylphenol ethoxylates. These rules remain stayed, and the EPA will address their future status in a subsequent **Federal Register** Notice.

III. Status of the Priority Testing List

The current TSCA section 4(e) *Priority Testing List* contains 1 individual chemical and 11 chemical groups; of these, 4 chemical groups were designated for testing.

IV. Electronic Comments

The EPA invites interested persons to submit detailed comments on the ITC's Thirty-Ninth Report.

A record has been established for this Notice under docket number OPPTS–41046 including comments submitted electronically as described below. A public version of this record, including printed paper versions of electronic comments, which does not contain any information claimed as TSCA "Confidential Business Information" (CBI), is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Non-Confidential Information Center, Rm. NE-B–607, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Electronic comments can be sent directly to the ITC at: walker.johnd@epamail.epa.gov and to the EPA at: ncic@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of security encryption. Comments will be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format.

The official record for the ITC's Thirty-Ninth Report, as well as the public version as described above, will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the EPA address in "ADDRESSES" at the beginning of this document.

Authority: 15 U.S.C. 2603.

Dated: February 13, 1997.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Administrator, U.S. Environmental Protection Agency

Summary

This is the 39th Report of the TSCA Interagency Testing Committee (ITC) to the Administrator of the U.S. Environmental Protection Agency (EPA). In this Report, the ITC is revising its TSCA section 4(e) *Priority Testing List* by recommending 2,4,6-tribromophenol, re-recommending 23 nonylphenol ethoxylates and removing 5 siloxanes. 2,4,6-Tribromophenol is being recommended to meet the data needs of the National Institute of Environmental Health Sciences (NIEHS). The nonylphenol ethoxylates are being re-recommended to meet the data needs of the Department of the Interior (DOI), the EPA, the Food and Drug Administration (FDA) and the NIEHS and to eliminate any ambiguities in TSCA section 8(a) and 8(d) reporting resulting from the previous use of alternate CAS numbers in the ITC's 38th Report (61 FR 39832, July 30, 1996). Comments on this Report should be submitted both to the ITC and the TSCA Public Docket. The revised TSCA section 4(e) *Priority Testing List* follows as Table 1.

TABLE 1.— THE TSCA SECTION 4(e) Priority Testing List (November 1996)

Report	Date	Chemical/Group	Action
26	May 1990	10 Isocyanates	Recommended with intent-to-designate
27	November 1990	62 Aldehydes	Recommended with intent-to-designate
28	May 1991	Chemicals with Low Confidence RfD Acetone Thiophenol	Designated
29	November 1991	10 Alkyl-, bromo-, chloro-, hydroxymethyl diaryl ethers	Recommended
30	May 1992	8 Siloxanes	Recommended
31	January 1993	24 Chemicals with insufficient dermal absorption rate data	Designated
32	May 1993	32 Chemicals with insufficient dermal absorption rate data	Designated
35	November 1994	24 Chemicals with insufficient dermal absorption rate data	Designated
36	May 1995	10 High Production Volume Chemicals (HPVCs)	Recommended
37	November 1995	28 Alkylphenols and Ethoxylates	Recommended
39	November 1996	23 Nonylphenol Ethoxylates	Recommended
39	November 1996	2,4,6-Tribromophenol	Recommended

I. Background

The TSCA Interagency Testing Committee (ITC) was established by section 4(e) of the Toxic Substances Control Act (TSCA) "to make recommendations to the Administrator respecting the chemical substances and mixtures to which the Administrator should give priority consideration for the promulgation of a rule for testing under section 4(a).... At least every 6 months..., the Committee shall make such revisions in the *List* as it determines to be necessary and to transmit them to the Administrator together with the Committee's reasons for the revisions" (Pub. L. 94–469, 90 Stat. 2003 et seq., 15 U.S.C. 2601 et seq.). Since its creation in 1976, the ITC has submitted 38 semi-annual Reports to the EPA Administrator transmitting the *Priority Testing List* and its revisions. These Reports have been published in the **Federal Register** and are also available from the ITC. The ITC meets monthly and produces its revisions of the *List* with the help of staff and technical contract support provided by EPA. ITC members and support personnel are listed at the end of this Report.

II. ITC's Activities During this Reporting Period (May to October, 1996)

Alkylphenols and ethoxylates. The ITC-Chemical Manufacturers Association (CMA) Alkylphenols and Ethoxylates Dialog Group met to discuss environmental monitoring, ecological effects, biodegradation and mammalian toxicology studies. This Dialog Group was established to facilitate the ITC's retrieval of information on uses, exposures and effects of alkyphenols and ethoxylates, and the CMA's understanding of data needed by the DOI, the FDA, the EPA and the NIEHS.

Siloxanes. The ITC-Silicones Environmental Health and Safety Council (SEHSC) Dialog Group met to discuss ongoing health effects and exposure studies. This Dialog Group was established to facilitate the ITC's retrieval of information on uses, exposures and effects of siloxanes, and the SEHSC's understanding of data needed by the FDA.

Isocyanates. During this reporting period, the ITC received information from the CMA's Diisocyanates Panel. The ITC's Isocyanates Subcommittee will review this information and discuss potential consumer uses, occupational exposures and health effects of isocyanates with the CMA Panel.

High Production Volume Chemicals (HPVCs). Through its 36th Report and letters to manufacturers and importers of HPVCs, the ITC is receiving use and exposure data for the 10 HPVCs remaining on the *Priority Testing List*. The ITC is reviewing these data.

Diaryl ethers. The ITC has identified manufacturers and importers of diaryl

ethers and is interested in working with them to obtain use and exposure data. Diaryl ethers were recommended in the ITC's 29th Report (56 FR 67424, December 30, 1991). An invitation to discuss use and exposure data and to develop Structure Activity Relationships for diaryl ethers was announced in the ITC's 38th Report (61 FR 39832, July 30, 1996)(FRL–5379–2).

2,4,6-Tribromophenol. Representatives of the ITC met with the CMA's Brominated Flame Retardants Industry Panel (BFRIP) Manager and representatives from a 2,4,6-tribromophenol manufacturer to discuss the data needs of the NIEHS. The ITC representatives provided the CMA with a copy of the National Toxicology Program (NTP) data summary for 2,4,6-tribromophenol (Ref. 5, NTP, 1996). The 2,4,6-tribromophenol manufacturer's representatives provided the ITC with a list of health effects, chemical fate, and ecological effects studies that were previously submitted under TSCA section 8(d) and reviewed by the ITC. These representatives also provided the ITC with a list of 2,4,6-tribromophenol producers, applications, commercial activities and sales statistics. The ITC is interested in promoting a dialog that is mutually beneficial to the NIEHS and the BFRIP.

III. TSCA Section 8 Reporting

Following receipt of the ITC's Report and the addition of chemicals to the *Priority Testing List*, EPA's Office of Pollution Prevention and Toxics adds new chemicals from the *List* to TSCA section 8(a) and 8(d) rules that require manufacturers and importers of these chemicals to submit TSCA section 8(a) production and exposure data and manufacturers, importers and processors of the listed chemicals to submit TSCA section 8(d) health and safety studies within 60 days of the rule's effective date. Unless otherwise noted in Unit IV A of this ITC Report, the ITC is requesting that the EPA exempt manufacturers and importers of chemicals added to the *List* from submitting studies conducted on mixtures (e.g., formulated products) containing a subject substance at a level below 1 percent of the mixture, unless a purpose of the study includes the investigation of the effects of an 8(d) rule-listed substance at levels below 1 percent (40 CFR 716.20(b)(4)).

TSCA section 8(a) and 8(d) submissions are indexed and maintained by EPA. The ITC reviews the TSCA section 8(a) and 8(d) information and other available data on chemicals and chemical groups (e.g., TSCA section 8(e) "substantial risk" notices, "For Your Information" (FYI) submissions to EPA, and published papers) to determine if revisions to the *List* are necessary. Revisions can include changing a general recommendation to a specific designation for testing action by the EPA Administrator within 12 months, modifying the recommended testing, or removing the chemical or chemical group from the *List*.

IV. Revisions to the TSCA Section 4(e) Priority Testing List

Revisions to the TSCA section 4(e) *Priority Testing List* are summarized in Table 2.

TABLE 2.—REVISIONS TO THE TSCA SECTION 4(e) PRIORITY TESTING LIST

CAS No.	Chemical Name	Action	Date
118–79–6	2,4,6-Tribromophenol	Recommended	11/96
	Nonylphenol ethoxylates	Recommended	11/96
7311–27–5	Ethanol, 2-[2-[2-[2-(4-nonylphenoxy) ethoxy]ethoxy]ethoxy]-		
9016–45–9	Poly(oxy-1,2-ethanediyl), .alpha.-(nonylphenyl)-.omega.-hydroxy-		
20427–84–3	Ethanol, 2-[2-(4-nonylphenoxy)ethoxy]-		
20636–48–0	3,6,9,12-Tetraoxatetradecan-1-ol, 14-(4-nonylphenoxy)-		
26027–38–3	Poly(oxy-1,2-ethanediyl), .alpha.-(4-nonylphenyl)-.omega.-hydroxy-		
26264–02–8	3,6,9,12-Tetraoxatetradecan-1-ol, 14-(nonylphenoxy)-		
26571–11–9	3,6,9,12,15,18,21,24-Octaoxahexacosan-1-ol, 26-(nonylphenoxy)-		
27176–93–8	Ethanol, 2-[2-(nonylphenoxy)ethoxy]-		
27177–01–1	3,6,9,12,15-Pentaoxaheptadecan-1-ol, 17-(nonylphenoxy)-		
27177–05–5	3,6,9,12,15,18,21-Heptaoxatricosan-1-ol, 23-(nonylphenoxy)-		
27177–08–8	3,6,9,12,15,18,21,24,27-Nonaoxanonacosan-1-ol, 29-(nonylphenoxy)-		
27986–36–3	Ethanol, 2-(nonylphenoxy)-		
37205–87–1	Poly(oxy-1,2-ethanediyl), .alpha.-(isononylphenyl)-.omega.-hydroxy-		
51938–25–1	Poly(oxy-1,2-ethanediyl), .alpha.-(2-nonylphenyl)-.omega.-hydroxy-		
65455–72–3	3,6,9,12,15,18,21,24,27-Nonaoxanonacosan-1-ol, 29-(isononylphenoxy)-		
68412–54–4	Poly(oxy-1,2-ethanediyl), .alpha.-(nonylphenyl)-.omega.-hydroxy-, branched		
98113–10–1	NP 9		
127087–87–0	Poly(oxy-1,2-ethanediyl), .alpha.-(4-nonylphenyl)-.omega.-hydroxy-, branched		
152143–22–1	Poly(oxy-1,2-ethanediyl), .alpha.-(4-nonylphenyl)-.omega.-hydroxy-, branched, phosphates		
NA[a]	Nonoxynol-2		
NA	Nonoxynol-3		
NA	Nonoxynol-7		
NA	.alpha.-(4-Nonylphenol)-.omega.-hydroxypoly-(oxyethylene)-		
	5 Siloxanes	Remove previously Recommended chemicals	11/96
69430–24–6	Cyclopolydimethylsiloxane (D_x)		
68083–14–7	Dimethyl, diphenyl siloxanes and silicones		
67762–90–7	Dimethyl silicones and siloxanes, reaction products with silica		
68037–74–1	Dimethylmonomethylpolysiloxanes		
70131–67–8	Dimethyl silicones and siloxanes hydroxy terminated		

[a]Not Assigned.

A. Chemicals Added to the Priority Testing List

Recommendations

a. *2,4,6-Tribromophenol— rationale for recommendation.* The ITC is recommending 2,4,6-tribromophenol at this time because the NIEHS needs chronic toxicology and 2-year carcinogenesis study data. As part of its continuing efforts to coordinate testing activities, the ITC is recommending and not designating 2,4,6-tribromophenol because it is currently promoting a dialog between a 2,4,6-tribromophenol manufacturer and the NIEHS to explain the need for chronic toxicity and 2–year carcinogenesis study data.

Background. Previous activities of the ITC, EPA and NTP for 2,4,6-tribromophenol are summarized below.

ITC. In the ITC's 25th Report, 2,4,6-tribromophenol and six other brominated flame retardants were recommended for chronic health effects testing, chronic ecological effects testing, and physical/chemical properties and persistence testing (54 FR 51114, December 12, 1989). In response to the 25th Report, as noted below, the EPA required the submission of TSCA section 8(a) and 8(d) data.

In the ITC's 33rd Report, 2,4,6-tribromophenol was removed from the *Priority Testing List* to give adequate priority to testing needs for other chemicals, e.g., those with U.S. Government data needs (59 FR 3764, January 26, 1994). At the time 2,4,6-tribromophenol was removed from the *List*, the ITC acknowledged that there were no existing U.S. Government data needs, but agreed to reconsider the chemical if data were needed in the future.

At this time, the ITC is requesting that the EPA not promulgate additional TSCA section 8 rules for 2,4,6-tribromophenol for the following reasons. First, the ITC has reviewed the TSCA section 8(a) and (d) data submitted under the previously-promulgated rules. Second, under the previously-promulgated TSCA section 8(d) rule, the ITC will learn of any new studies that are initiated. Third, the ITC believes that a dialog with the U.S. producer is likely to provide use and other relevant data that could not be obtained by re-promulgating these rules.

EPA. 2,4,6-Tribromophenol was included in a 1987 EPA TSCA section 4 test rule requiring that manufacturers and importers of 12 chemicals test for the presence of certain chlorinated and brominated dibenzo-p-dioxins and dibenzofurans (52 FR 21412, June 5, 1987). None of the seven 2,4,6-tribromophenol samples that were analyzed contained concentrations of brominated dibenzo-p-dioxins and dibenzofurans that were above the levels of quantitation (0.1 ppb for 2,3,7,8-tetrabrominated dibenzo-p-dioxin and 1 ppb for 2,3,7,8-tetrabrominated dibenzofuran).

2,4,6-Tribromophenol was also included in 1989 EPA TSCA section 8 rules promulgated for the ITC. These rules required the submission of production and exposure data and unpublished health and safety data under TSCA sections 8(a) and 8(d), respectively (54 FR 51131, December 12, 1989).

NTP. At the July 15, 1996 meeting of the NTP Interagency Committee for Chemical Evaluation and Coordination, the NIEHS identified data needs for 2,4,6-tribromophenol. The NIEHS needs chronic toxicology and 2–year carcinogenesis study data for 2,4,6-tribromophenol based on the absence of toxicology and carcinogenicity data and carcinogenicity data for 2,4,6-trichlorophenol. (Ref. 5, NTP, 1996).

Existing Data. 2,4,6-Tribromophenol is a chemical intermediate that is produced in closed process equipment, kept within that equipment and reacted to make flame retardants (Ref. 1, GLCC, 1996a). Recent production volumes ranged from 1 to 15 million pounds (Ref. 6, Walker, 1994).

The number of employees involved in the production, packaging, or handling of 2,4,6-tribromophenol is quite small. While the exact number of operators is confidential information, less than 50 workers have the potential for intermittent exposure to 2,4,6-tribromophenol during their normal workday (Ref.1, GLCC, 1996a). The use of closed processes limits potential exposure, but even this exposure is controlled through the use of local exhaust ventilation, personal protective equipment and other industrial hygiene practices where dust or vapor exposure might occur (Ref. 1, GLCC, 1996a). Flaked 2,4,6-tribromophenol contains particles (estimated to be 1 to 10 mm) which do not easily become airborne.

During domestic production of 2,4,6-tribromophenol, air emissions are regulated by State permits and releases to surface waters either do not occur or occur after discharge to Publicly Owned Treatment Works (Ref. 1, GLCC, 1996a). The only operation where 2,4,6-tribromophenol is not in closed reactors or piping is the flaking and packaging operation. Vapors and fine particulates from this process are controlled by a local exhaust system. Using a "worst case" assumption that the manufacturing facility operated 24 hour/day, 365 days per year (8,760 hours), annual point source emissions would be less than 90 pounds per year (Ref. 2, GLCC, 1996b).

2,4,6-Tribromophenol was not found to be mutagenic in the Ames assay (Ref. 8, Zeiger et al., 1987) or in the mouse lymphoma assay (Ref. 4, NCI, 1996). Doses ranging from 2,000 to 8,000 mg/kg were required to produce acute effects in laboratory animals by oral, dermal or inhalation exposures (Ref. 5, NTP, 1996).

The TSCA section 8 data for 2,4,6-tribromophenol were recently published in two reviews (Refs. 6 and 7, Walker, 1994; 1996). Data cited in the 1996 review indicated that 2,4,6-tribromophenol can be highly toxic to fish (LC_{50} values <1 mg/L) but less toxic to daphnids, in acute toxicity tests. Health effects studies cited in the 1994 review are summarized below.

In a 28–day dermal toxicity study, groups of 4 rabbits/sex/dose were used. Doses of 0, 100, 300 and 1,000 mg/kg were applied as skin suspensions 5 days a week for 4 weeks. At the highest dose (1,000 mg/kg) 1 male rabbit died. At doses of 100 and 300 mg/kg 2,4,6-tribromophenol was slightly irritating, but there were no treatment-related effects on body weight, clinical chemistry or organ weights (Ref. 6, Walker, 1994).

In a developmental toxicity screening study, groups of 5 pregnant rats were administered gavage doses of 2,4,6-tribromophenol in corn oil from gestation day 6 to 15. Doses of 0, 10, 30, 100, 300, 1,000 and 3,000 mg/kg/day were administered. All rats receiving 3,000 mg/kg/day died; animals receiving 1,000 mg/kg/day showed increased post implantation losses and a slight decrease in number of viable fetuses. Rats receiving 300 mg/kg/day or less showed no compound-related differences in maternal body weight, number of viable fetuses, resorptions, implantations or corpora lutea when compared with the controls (Ref. 6, Walker, 1994).

In an inhalation study, groups of 5 male and 5 female rats were exposed to 0, 0.1 and 0.9 mg/L 2,4,6-tribromophenol for 6 hours/day, 5 days/week for 3 weeks. Exposures to both doses of 2,4,6-tribromophenol produced liver and kidney lesions. At necropsy, 4/5 male and 5/5 female rats in the 0.1 mg/L dose group were emaciated (Ref. 6, Walker, 1994).

The NIEHS data needs are supported by carcinogenicity data for a close structural analog, 2,4,6-trichlorophenol (CAS No. 88–06–2). In a feeding study 2,4,6-trichlorophenol was a carcinogen in male rats and male and female mice, inducing lymphomas or leukemias in

male F344 rats; and increasing the incidence of hepatocellular carcinomas or adenomas in male and female B6C3F1 mice (Ref. 3, NCI, 1979).

b. *Nonylphenol ethoxylates—rationale for recommendation.* Twenty-three (23) nonylphenol ethoxylates are being re-recommended to eliminate any ambiguities in TSCA section 8(a) and 8(d) reporting resulting from the previous use of alternate CAS numbers in the ITC's 38th Report (61 FR 39832, July 30, 1996).

Background. Eighteen (18) nonylphenol ethoxylates were recommended in the ITC's 38th Report (61 FR 39832, July 30, 1996). Alternate CAS registry numbers were listed for some of these nonylphenol ethoxylates. The use of alternate CAS numbers produced some ambiguities in the TSCA section 8(a) and 8(d) rules that were promulgated for the nonylphenol ethoxylates (61 FR 55871, October 29, 1996). The ITC re-examined these alternate CAS registry numbers and determined that five were not associated with any of the listed nonylphenol ethoxylate chemical names. The ITC revised the list of nonylphenol ethoxylates by providing ninth collective index names for all CAS-numbered nonylphenol ethoxylates, including the five not previously associated with a unique chemical name. This process eliminated the need for alternate CAS registry numbers. The ITC is requesting that the EPA stay certain provisions in the October 29, 1996 TSCA section 8(a) and 8(d) rules promulgated for nonylphenol ethoxylates (61 FR 55871) because of ambiguities in reporting requirements associated with the use of alternate CAS registry numbers in the ITC's 38th Report (61 FR 39832, July 30, 1996). The ITC is requesting that the EPA promulgate the TSCA section 8(a) and 8(d) rules using the 23 nonylphenol ethoxylates in Table 2 of this ITC Report.

B. Chemicals Removed from the Priority Testing List

Silicone chemicals. Fifty-six (56) silicone chemicals were recommended for health effects testing in the ITC's 30th Report to meet the data needs of the Food and Drug Administration (FDA) (57 FR 30608, July 9, 1992). After this recommendation, the ITC's Silicones Subcommittee established a Dialog Group with the Silicones Environmental Health and Safety Council (SEHSC). The ITC-SEHSC Dialog Group has discussed unpublished toxicity data, current use and exposure data, and developed a prototype computer file of physical and chemical properties, health effects and use data that could be used by other government and trade organizations. As a result of the Dialog Group's discussions, the ITC removed 43 of the previously-recommended silicone chemicals from the *Priority Testing List* in its 37th Report (61 FR 4188, February 2, 1996; FRL–4991–6). As a result of further Dialog Group discussions, the ITC is removing five more siloxanes from the *List* in this Report (Table 3). The eight siloxanes remaining on the *List* are included in Table 4.

TABLE 3.—PREVIOUSLY-RECOMMENDED SILICONE CHEMICALS REMOVED FROM THE PRIORITY TESTING LIST

CAS No.	Chemical Name	Removal Rationale
69430–24–6	Cyclopolydimethylsiloxane (Dx)	Toxicity of cyclopolydimethylsiloxane is likely to be predicted from testing octamethylcyclotetrasiloxane (D4), decamethylcyclopentasiloxane (D5) and dodecamethylcyclohexasiloxane (D6) (see Table 4). Cyclopolydimethylsiloxane is used only as a site-limited intermediate to manufacture D4, D5 and D6.
68083–14–7	Dimethyl, diphenyl siloxanes and silicones	Low exposure potential based on annual production volume and specialized uses.
67762–90–7	Dimethyl silicones and siloxanes, reaction products with silica	Toxicity of siloxane polymers bearing CAS numbers 67762–90–7, 68037–74–1 and 70131–67–8 is likely to be predicted from testing dimethyl silicones and siloxanes bearing CAS number 63148–62–9 (see Table 4). Dimethyl silicones and siloxanes is a siloxane polymer of lower molecular weight, lower cross-linking ability and greater bioavailability potential than these 3 siloxane polymers.
68037–74–1	Dimethylmonomethylpolysiloxanes	Toxicity of siloxane polymers bearing CAS numbers 67762–90–7, 68037–74–1 and 70131–67–8 is likely to be predicted from testing dimethyl silicones and siloxanes bearing CAS number 63148–62–9 (see Table 4). Dimethyl silicones and siloxanes is a siloxane polymer of lower molecular weight, lower cross-linking ability and greater bioavailability potential than these 3 siloxane polymers.
70131–67–8	Dimethyl silicones and siloxanes hydroxy terminated	Toxicity of siloxane polymers bearing CAS numbers 67762–90–7, 68037–74–1 and 70131–67–8 is likely to be predicted from testing dimethyl silicones and siloxanes bearing CAS number 63148–62–9 (see Table 4). Dimethyl silicones and siloxanes is a siloxane polymer of lower molecular weight, lower cross-linking ability and greater bioavailability potential than these 3 siloxane polymers.

The eight siloxanes remaining on the *Priority Testing List* shown in table 4.

TABLE 4.—SILOXANES REMAINING ON THE PRIORITY TESTING LIST

CAS No.	Chemical Name
CYCLIC SILOXANES.	
556–67–2 ...	Octamethylcyclotetrasiloxane (D4)
541–02–6 ...	Decamethylcyclopentasiloxane (D5)
540–97–6 ...	Dodecamethylcyclohexasiloxane (D6)
LINEAR SILOXANES.	
107–46–0 ...	Hexamethyldisiloxane (L2)
107–51–7 ...	Octamethyltrisiloxane (L3)
141–62–8 ...	Decamethyltetrasiloxane (L4)
141–63–9 ...	Dodecamethylpentasiloxane (L5)
POLYMERS.	
63148–62–9	Dimethyl silicones and siloxanes
9006–65–9[a].	
9016–00–6[a].	

[a]Alternate CAS numbers are listed for this chemical.

References

(1) GLCC. November 13, 1996, Letter from Mr. Robert C. Campbell, TSCA Compliance Manager, Great Lakes Chemical Corporation (GLCC), West Lafayette, Indiana to Dr. John D. Walker, Executive Director, ITC, U.S. EPA, Washington, DC (1996a).

(2) GLCC. November 15, 1996, Letter from Mr. Robert C. Campbell, TSCA Compliance Manager, Great Lakes Chemical Corporation (GLCC), West Lafayette, Indiana to Dr. John D. Walker, Executive Director, ITC, U.S. EPA, Washington, DC (1996b).

(3) NCI. Bioassay of 2,4,6-trichlorophenol for possible carcinogenicity (CAS No. 88–06–2) (Technical Report Series No. 155; Department of Health Education and Welfare (DHEW) Publication No. (NIH) 79–1711). DHEW, Washington, DC. 115 pp. (1979).

(4) NCI. NCI/DCB Short-term test program. Ames *Salmonella typhimurium*/mouse lymphoma L5178Y, H. Seifried, Ph.D., Project Officer (1996).

(5) NTP. Draft NTP data summary for 2,4,6-tribromophenol (CAS No. 118–79–6). NTP, Research Triangle Park, NC. 19 pp. (1996).

(6) Walker, J.D. Testing decisions of the TSCA Interagency Testing Committee for brominated flame retardants: A review of decisions and health and safety data. pp. 185–220. In The Future of Fire Retarded Materials: Applications and Regulation. Fire Retardant Chemicals Association, Lancaster, PA. (1994).

(7) Walker, J.D. Testing decisions of the TSCA Interagency Testing Committee for chemicals on Canada's Domestic Substances List and Priority Substances List: Di-*tert*-butylphenol, ethyl benzene, brominated flame retardants, phthalate esters, chloroparaffins, chlorinated benzenes and anilines. pp. 18–54. In T.W. LaPoint, F.T. Price, and E.E. Little (eds.), *Environmental Toxicology and Risk Assessment*: Fourth Volume, ASTM STP 1241, ASTM, Philadelphia (1996).

(8) Zeiger, E., B. Anderson, S. Haworth, T. Lawlor, K. Mortelmans and W. Speck. *Salmonella* mutagenicity tests: III. Results from testing of 255 chemicals. *Environmental Molecular Mutagenicity* 9 (Suppl.9), 1–110 (1987).

TSCA Interagency Testing Committee

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Council on Environmental Quality
Brad Campbell, Member
Douglas Sanders, Alternate

Department of Commerce
Edward White, Member

Environmental Protection Agency
David R. Williams, Member
Lois Dicker, Alternate

National Cancer Institute
Victor Fung, Member, Chair
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federal register

Tuesday
February 25, 1997

Part IV

Office of Personnel Management

Science and Technology Reinvention Laboratory Personnel Demonstration Project at the Naval Sea Systems Command Warfare Centers; Notice

OFFICE OF PERSONNEL MANAGEMENT

Science and Technology Reinvention Laboratory Personnel Demonstration Project at the Naval Sea Systems Command Warfare Centers

AGENCY: Office of Personnel Management.

ACTION: Notice of intent to implement demonstration project.

SUMMARY: The National Defense Authorization Act for fiscal year 1995 (Pub. L. 103-337) authorizes the Secretary of Defense, with Office of Personnel Management (OPM) approval, to conduct a Personnel Demonstration Project at Department of Defense (DoD) laboratories designated as Science and Technology Reinvention Laboratories. The legislation requires that most requirements of Section 4703 of Title 5 shall apply to the Demonstration Project. Section 4703 requires OPM to publish the proposed project plan in the **Federal Register**. This notice meets that requirement.

DATES: *Comment date:* Written comments will be considered if received no later than April 9, 1997. Hearing date: A public hearing will be held on the proposed project plan on: March 26, 1997, at the Indian Head Pavillion, 100 Walter Thomas Road, Indian Head, MD, from 6:00 p.m. until testimony is completed.

ADDRESSES: Comment address: Send written comments to Shirley Scott, Head, Demonstration Project Office, NSWCDD, HR Department, 17320 Dahlgren Road, Dahlgren, VA 22448.

FOR FURTHER INFORMATION CONTACT: Shirley Scott at (540) 653–4623.

SUPPLEMENTARY INFORMATION: A public hearing will be held by OPM at the Indian Head Pavillion, 100 Walter Thomas Road, Indian Head, MD 20640, during which interested persons or organizations may present their written or oral views concerning the proposed Demonstration Project plan. So that OPM may regulate the course of the hearing and provide time for all who wish to present comments, parties who want to testify at the hearing are asked to contact one of the persons listed under **FOR FURTHER INFORMATION CONTACT:** for a specific scheduled time. Priority will be given to scheduled parties; others will be heard in the remaining available time. Each speaker's presentation will be limited to 10 minutes. In other respects, the hearing will be informal. The hearing record will be left open until April 9, 1997 to allow additional written data, views and arguments from the parties participating in the hearing.

Dated: February 21, 1997.
Office of Personnel Management.
James B. King,
Director.

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I. Executive Summary

The Naval Surface Warfare Center and the Naval Undersea Warfare Center, designated as Science and Technology Reinvention Laboratories, wish to conduct a Personnel Demonstration Project similar in nature to that of the 1980 Demonstration Project approved for the Naval Weapons Center, China Lake, and Naval Ocean Systems Center, San Diego. The Warfare Centers' project includes the following key project components: A Broad Banding Classification and Pay System for "white collar" employees; a Performance Development System; an Incentive Pay System; a new Reduction-in-Force (RIF) system; and a Competitive Examining and Appointment System. The Warfare Centers' project addresses an organization which is substantially larger (over 23,000 employees), has greater diversity of mission than previous projects, and has extensive union involvement at all major sites. In addition, the project plan has been developed with on-going involvement of the various unions represented in the Warfare Centers.

II. Introduction

A. Purpose

The overall goal of the Demonstration Project is to implement a Human Resource Management System that facilitates mission execution and organization excellence and responds to today's dynamic environment of downsizing, restructuring and closures by obtaining, developing, utilizing, incentivizing and retaining high performing employees; and adjusting workforce levels to meet program and organizational needs. The system to be demonstrated has the flexibilities to accommodate and support wide-ranging activity missions, strategies and cultures. It is responsive to business considerations and permits a high degree of control over workforce costs. Clearly, it is more streamlined and understandable for those who will use it as well as those affected by it. Most importantly, it is focused not just on the needs of the organization, but also on the needs of the people who are the organization.

These objectives reflect the Federal and DoD goals of creating a government that works better and costs less, and a flexible system that can reduce, restructure or renew to meet diverse mission needs, expand or contract a workforce quickly, respond to workload exigencies, and contribute to quality products, people and workplaces. The objectives also align with the Federal and DoD values and guiding principles of empowering employees to get results, maximum flexibility tempered with accountability, innovation and continuous improvement, caring for people during downsizing, and vital partnerships and teaming with all the stakeholders in the process.

B. Problems with Present System

The Warfare Centers find the current Federal Personnel System to be cumbersome, confusing, and unable to provide the flexibility necessary to respond to the current mandates of downsizing, restructuring, and possible closure while trying to maintain a high level of mission excellence. The present system—a patchwork of laws, regulations, and policies—often inhibits rather than supports the goals of developing, recognizing, and retaining the employees needed to realign the organization with its changing fiscal and production requirements.

The current Civil Service General Schedule (GS) system has 15 grades with 10 levels each and involves lengthy, narrative, individual position descriptions, which have to be classified by complex, OPM-mandated position classification standards. Because these standards have to meet the needs of the entire federal government, they are often not relevant to the needs of the Warfare Centers and are frequently obsolete. Distinctions between levels are often not meaningful. Currently, standards do not provide for a clear progression beyond

the full performance level, especially for science/engineering occupations where career progression through technical as well as managerial career paths is important.

In addition, there are limited mechanisms for dealing with an employee who has been promoted out of his/her level of expertise or who, after a successful career, has been unable to gain the skills required of a new work environment. In most cases, the only possible action may be a reduction in grade. Under the current system a demotion to a lower grade is considered an adverse action even if there is no loss in pay. Under the proposal, a reduction in band level without a loss in pay will not be considered an adverse action.

Performance Management systems require additional emphasis on continuous, career-long development in a work environment characterized by an ever increasing rate of change. Since past performance and/or longevity are the factors on which pay raises are currently assessed, there is often no positive correlation between compensation and performance contributions nor value to the organization. These limited criteria do not take into account the future needs of the organization nor other culturally relevant criteria which an organization may wish to use as incentives.

The present Reduction in Force (RIF) process is highly complicated and relatively unresponsive to requirements for rapid work force restructuring and retention of employees with mission appropriate skills. RIF is confused by an augmented service credit for performance that is based in a performance appraisal system fraught with contention. Round I adds complexity, confusion, and uncertainty. Cost savings expected from RIF are drastically reduced by the inordinate administrative costs of the process and the likelihood that the employee ultimately separated will be at a lower grade than the originally targeted position. Additionally there is the expense of retained grade and retained pay. Current RIF procedures impact negatively on morale because of the high number of people affected and frequent misunderstandings of a complicated system that leaves affected employees wondering why they have been "targeted".

And finally, the complexity of the current examining system creates delays in hiring. Line managers find the complexity limiting as they attempt to accomplish timely recruitment of needed skills. To compete with the private sector for the best talent available, they need a process which is streamlined, easy to administer, and allows for timely job offers.

C. Changes Required and Expected Benefits

The proposed Demonstration Project responds to problems in the classification system with a Broad Banding Classification system for GS employees; to problems in the current performance management system with Performance Development and Incentive Pay Systems; to the problems of the existing RIF procedures with a streamlined RIF system; and to problems of complicated hiring and examining procedures with a simplified examining and appointment process.

D. Participating Organizations and Mission

Both the Naval Surface Warfare Center and the Naval Undersea Warfare Center will participate in the project. The Warfare Centers are comprised of a total of seven Divisions with 14 major sites nationwide. The sites are diverse in employment profiles and size and have bargaining unit populations ranging from a small percentage to more than half of the workforce. These organizations operate throughout the full spectrum of research, development, test and evaluation, engineering and fleet support.

The Warfare Centers are Defense Business Operations Fund (DBOF) activities. Under DBOF, the cost of operating is paid by billing customers for work performed. The Warfare Centers seek to maximize management flexibility to control expenditures since the continued economic viability of a DBOF activity depends in large measure on remaining cost competitive with other organizations.

E. Participating Employees

This Demonstration Project will involve civilian personnel at all Warfare Center sites. There are 14 major sites (over 200 civilian personnel) and many smaller sites. Currently 23,697 civilians are employed as shown in Figure 1. The intent of the plan is to cover all civilian appropriated fund employees at all sites with the exception of the members of the Senior Executive Service. While the Demonstration Project, and its five components, cover all General Schedule (GS) employees, the Federal Wage System (FWS) employees are included only for purposes of changes in the Performance Development, Reduction-In-Force and Competitive Examining systems. Likewise, Senior Level (SL) and Scientific and Technical (ST) employees are covered only under the Incentive Pay, Performance Development and Reduction-In-Force systems. The Demonstration Project may be implemented incrementally throughout the Warfare Centers. The Demonstration Project will be implemented in bargaining units when those units so request and a negotiated agreement is reached. Approximately fifty percent of the workforce is represented by unions.

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Naval Surface Warfare Center (NSWC)							
DIVISIONS	P	A	T	C	W	O	Total
Dahlgren	2,617	558	583	288	334	160	4,540
Indian Head	802	365	382	122	380	90	2,141
Crane	1207	768	1,395	167	1,146	136	4,819
Pt. Hueneme	925	753	399	192	21	32	2,322
Carderock	2,324	453	653	216	345	136	4,127
NSWC Total	**7,875**	**2,897**	**3,412**	**985**	**2,226**	**554**	**17,949**
Naval Undersea Warfare Center (NUWC)							
Newport	2,308	416	404	259	125	11	3,523
Keyport	711	425	279	70	706	34	2,225
NUWC Total	**3,019**	**841**	**683**	**329**	**831**	**45**	**5,748**
Warfare Centers Total							23,697

key: P = Professional A= Administrative T=Technical C=Clerical W=Wage O=Other
data a/o 4/8/96

FIGURE 1

BILLING CODE 6325-01-C

F. Employee/Labor Participation

One of the keys to developing a project plan sensitive to the multiplicity of management and employee needs has been the involvement of a Steering Committee composed of representatives from the Warfare Center Divisions and six national unions having bargaining units at the Warfare Center sites. The American Federation of Government Employees (AFGE), Metal Trades Council (MTC), International Association of Machinists (IAM), National Association of Government Employees (NAGE), the National Federation of Federal Employees (NFFE) and Fraternal Order of Police (FOP) represent more than half of the more than 25,000 employees in a variety of occupational groups at Warfare Center sites across the United States. Appendix A further describes the employee/union participation in this effort. The Steering Committee developed a project plan capable of meeting the seemingly differing, sometimes conflicting, goals of management and the unions. The Steering Committee substantially altered the original concept to address those needs in order to provide a viable implementation framework capable of meeting the wide variety of cultures and needs across the Warfare Center spectrum. The Steering Committee is also working to foster the establishment of partnerships within the Warfare Centers.

The Steering Committee agreed to the following language with respect to the implementation of the Demonstration Project in the Warfare Center bargaining units. "Essential to the success of the Demonstration Project within a collective bargaining unit is the explicit choice of the parties to freely enter into the project with mutual agreement on all provisions associated with the project. To that end, either party will have the option NOT to enter the project up to the point where both parties sign a collective bargaining agreement covering the Demonstration Project and, if required, that agreement is ratified and approved. Further the parties may include in the contract provisions for evaluating, modifying and leaving the project during the life of the contract." Any disputes or impasses that arise in connection with the negotiation on the implementation of the Demonstration Project will be subject to mediation but not binding impasse procedures. For any bargaining subsequent to adoption of the Demonstration Project, the parties shall use impasse procedures defined in 5 U.S.C. 7119 unless alternative impasse procedures have been negotiated. In the event Executive Order 12871 is no longer in effect, the parties within the Demonstration Project will continue to negotiate issues covered by 5 U.S.C. 7106(b)(1) to the extent those issues impact on the provisions of the Demonstration Project. Within bargaining units, violations of provisions of the Demonstration Project may be covered by the negotiated grievance procedure.

This Demonstration Project was developed with management and union input through a collaborative process; however, it was agreed that union participation did not necessarily constitute full and complete endorsement of all details of the project. The Project will be implemented in bargaining units only after there is full agreement through the collective bargaining process.

While understanding that each bargaining unit will make its own choice about participating in the Demonstration Project, the Steering Committee has endeavored to create a project plan to fulfill the mutual interests of management and employees while supporting the long term objective of vital, competitive Warfare Centers capable of developing and delivering the best possible technology to their customers.

III. Methodology

A. Project Design

An overarching objective in the project design has been the development of a personnel system that provides a maximum opportunity for local "tailoring" to meet the variety of requirements of organizations engaged in missions ranging from theoretical research into submarine vulnerability and survivability to the storage of torpedoes. While the Divisions seek to recruit and retain world class engineers and scientists in order to remain viable as laboratories, they must also meet the development and motivational needs of an extraordinarily diverse workforce; i.e., employees ranging from small arms repairers in Crane, Indiana to program analysts in Newport, Rhode Island. In order to accomplish that end, the goal is to begin the process of delegating decision making to the people who know the most about what they need and how to get their work accomplished: the Divisions and sites.

While much of the Demonstration Project will be applied uniformly, there are decisions which will be delegated to the Divisions and activities so that the needs and cultures of those organizations may be taken into account. Decisions at the local level will be made through the collective bargaining process.

B. Personnel System Changes

1. Classification and Pay

A fundamental element of the system is a simplified white collar classification and pay component. The proposed broad banding scheme reduces the fifteen GS grade levels and the Senior Level (SL) and Scientific & Technical (ST) pay levels, into five to six broad pay bands. (See Figure 2) GS occupations are further broken down into three separate career paths: Scientific and Engineering (ND), Administrative and Technical (NT), and General Support (NG).

The OPM-developed classification standards are replaced by a small number of one-page, generic benchmark standards developed within the Demonstration Project. These standards also serve as the core of the position description and replace lengthy individually tailored position descriptions. These generic level descriptors encompass multiple series and provide maximum flexibility for the organization to assign individuals consistent with the needs of the organization, established level or rank that the individual has achieved, and the individual's qualifications. Career progression between levels will occur by promotion, and pay progression within levels will occur through incentive pay. Warfare Centers' long experience with industrial funding will ensure their ability to control costs, an essential requirement in today's environment.

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CAREER PATHS & BROAD BANDS

Career Paths:							
Scientific/ Engineering	GS	1-4	5-8	9-11	12-13	14-15	ST/SL
	ND	I	II	III	IV	V	VI
Administrative/ Technical	GS	1-4	5-8	9-10	11-12	13-14	14-15
	NT	I	II	III	IV	V	VI
General Support	GS	1-4	5-6	7-8	9-10	11-12	
	NG	I	II	III	IV	V	

Figure 2

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a. *Career Paths.* The Warfare Centers request exemption from the current GS classification system and substitute career paths and band levels. The designated career paths are: Scientific and Engineering (ND), Administrative and Technical (NT), and General Support (NG). Like the China Lake system, the GS classification series would be retained. More detailed descriptions of the career paths and the classification series for each path are provided below. The breakdown of occupational series to career paths reflects only those occupations which currently exist within the two Warfare Centers.

Additional series may be added as a result of changes in mission requirements or OPM recognized occupations. These additional series will be placed in the appropriate career path consistent with the established career path definitions.

Scientific and Engineering: Professional engineering positions and scientific positions in the physical, biological, mathematical, and computer sciences; and student positions for training in these disciplines. Series and titles included in the path are: 0401, General Biological Science Series; 0403, Microbiology Series; 0408, Ecology Series; 0440, Genetics Series; 0460, Forestry Series; 0471, Agronomy Series; 0499, Biological Science Student Trainee Series; 0801, General Engineering Series; 0803, Safety Engineering Series; 0804, Fire Protection Engineering Series; 0806, Materials Engineering Series; 0807, Landscape Architecture Series; 0808, Architecture Series; 0810, Civil Engineering Series; 0819, Environmental Engineering Series; 0830, Mechanical Engineering Series; 0840, Nuclear Engineering Series; 0850, Electrical Engineering Series; 0854, Computer Engineering Series; 0855, Electronics Engineering Series; 0861, Aerospace Engineering Series; 0871, Naval Architecture Series; 0892, Ceramic Engineering Series; 0893, Chemical Engineering Series; 0894, Welding Engineering Series; 0896,

Industrial Engineering Series; 0899, Engineering and Architecture Student Trainee Series; 1301, General Physical Science Series; 1306, Health Physics Series; 1310, Physics Series; 1313, Geophysics Series; 1320, Chemistry Series; 1321, Metallurgy Series; 1330, Astronomy and Space Science Series; 1350, Geology Series; 1360, Oceanography Series; 1372, Geodesy Series; 1386, Photographic Technology Series; 1399, Physical Science Student Trainee Series; 1515, Operations Research Series; 1520, Mathematics Series; 1529, Mathematical Statistician Series; 1530, Statistician Series; 1550, Computer Science Series; 1599, Mathematics and Statistics Student Trainee Series.

Administrative and Technical: Professional or specialist positions in such administrative, technical and managerial fields as finance, procurement, human resources, computer, legal, librarianship, public information, safety, social sciences, and program management and analysis; nonprofessional technician positions that support scientific and engineering activities through the application of various skills and techniques in electrical, mechanical, physical science, biology, mathematics, and computer fields; and student positions for training in these disciplines. Series and titles included in this path are: 0018, Safety and Occupational Health Management Series; 0020, Community Planning Series; 0028, Environmental Protection Specialist Series; 0080, Security Administration Series; 0099, General Student Trainee Series; 0101, Social Science Series; 0110, Economist Series; 0132, Intelligence Series; 0170, History Series; 0180, Psychology Series; 0185, Social Work Series; 0187, Social Services Series; 0188, Recreation Specialist Series; 0201, Personnel Management Series; 0205, Military Personnel Management Series; 0212, Personnel Staffing Series; 0221, Position Classification Series; 0230, Employee Relations Series; 0233, Labor Relations Series; 0235, Employee Development Series ; 0260, Equal Employment Opportunity Series; 0299, Personnel Management Student Trainee Series; 0301, Miscellaneous Administration and Program Series; 0334, Computer Specialist Series; 0340, Program Management Series; 0341, Administrative Officer Series; 0342, Support Services Administration Series; 0343, Management and Program Analysis Series; 0346, Logistics Management Series; 0391, Telecommunications Series; 0399, Administration and Office Support Student Trainee Series; 0501, Financial Administration and Program Series; 0505, Financial Management Series; 0510, Accounting Series; 0560, Budget Analysis Series; 0599, Financial Management Student Trainee Series; 0602, Medical Officer Series; 0610, Nurse Series; 0690, Industrial Hygiene Series; 0802, Engineering Technician Series; 0809, Construction Control Series; 0818, Engineering Drafting Series; 0856, Electronics Technician Series; 0895, Industrial Engineering Technician Series; 0899, Engineering and Architecture Student Trainee Series; 0905, General Attorney Series; 0950, Paralegal Specialist Series; 0962, Contact Representative; 1001, General Arts and Information Series; 1010, Exhibits Specialist Series; 1015, Museum Curator Series; 1016, Museum Specialist and Technician Series; 1020, Illustrating Series; 1035, Public Affairs Series; 1060, Photography Series; 1071, Audiovisual Production Series; 1082, Writing and Editing Series; 1083, Technical Writing and Editing Series; 1084, Visual Information Series; 1101, General Business and Industry Series; 1102, Contracting Series; 1103, Industrial Property Management Series; 1104, Property Disposal Series; 1150, Industrial Specialist Series; 1152, Production Control Series; 1173, Housing Management Series; 1176, Building Management Series; 1199, Business and Industry Student Trainee Series; 1222, Patent Attorney Series; 1311, Physical Science Technician Series; 1410, Librarian Series; 1412, Technical Information Services Series; 1420, Archivist Series; 1521, Mathematics Technician Series; 1601, General Facilities and Equipment Series; 1640, Facility Management Series; 1654, Printing Management Series; 1670, Equipment Specialist Series; 1701, General Education and Training Series; 1710, Educational and Vocational Training Series; 1712, Training Instruction Series; 1810, General Investigating Series; 1811, Criminal Investigating Series; 1910, Quality Assurance Series; 2001, General Supply Series; 2003, Supply Program Management Series; 2010, Inventory Management Series; 2030, Distribution Facilities and Storage Management Series; 2032, Packaging Series; 2050, Supply Cataloging Series; 2101, Transportation Specialist Series; 2130, Traffic Management Series; 2150, Transportation Operations Series; 2181, Aircraft Operations Series.

General Support: Assistant and clerical positions providing support in such fields as budget, finance, supply, human resources; positions providing support through application of typing, clerical, or secretarial knowledge and skills; positions providing specialized facilities support such as guards, police officers and firefighters; and student positions for training in these disciplines. This path includes the following series and titles: 0019, Safety Technician Series; 0029, Environmental Protection Assistant Series; 0081, Fire Protection and Prevention Series; 0083, Police Series; 0085, Security Guard Series; 0086, Security Clerical and Assistance Series; 0134, Intelligence Aid and Clerk Series; 0186, Social Services Aid and Assistant Series; 0189, Recreation Aid and Assistant Series; 0203, Personnel Clerical and Assistance Series; 0204, Military Personnel Clerical and Technician Series; 0303, Miscellaneous Clerk and Assistant Series; 0304, Information Receptionist Series; 0305, Mail and File Series; 0318, Secretary Series; 0322, Clerk-Typist Series; 0326, Office Automation Clerical and Assistance Series; 0332, Computer Operation Series; 0335, Computer Clerk and Assistant Series; 0344, Management Clerical and Assistance Series; 0350, Equipment Operator Series; 0351, Printing Clerical Series; 0356, Data Transcriber Series; 0361, Equal Opportunity Assistance Series; 0382, Telephone Operating Series; 0390, Telecommunications Processing Series; 0392, General Communications Series; 0394, Communications Clerical Series; 0399, Administration and Office Support Student Trainee Series; 0462, Forestry Technician Series; 0503, Financial Clerical and Assistance Series; 0525, Accounting Technician Series; 0530, Cash Processing Series; 0540, Voucher Examining Series; 0544, Civilian Pay Series; 0561, Budget Clerical and Assistance Series; 0640, Health Technician; 0647, Diagnostic Radiologic Technologist Series; 0679, Medical Clerk Series; 0698, Environmental Health Technician Series; 0945, Clerk of Court Series; 0986, Legal Clerical and Assistance Series; 1087, Editorial Assistance Series; 1105, Purchasing Series; 1106, Procurement Clerical and Technician Series; 1107, Property Disposal Clerical and Technician Series; 1411, Library Technician Series; 1531, Statistical Assistant; 1702, Education and Training Technician Series; 2005, Supply Clerical and Technician Series; 2091 Sales Store Clerical Series; 2102, Transportation Clerk and Assistant Series; 2131, Freight Rate Series; 2135, Transportation Loss and Damage Claims Examining Series; 2151, Dispatching Series.

b. Broad Bands and Levels of Responsibility. A fundamental purpose of broad banding is to make the distinctions between levels easier to discern and more meaningful. In that regard, the 15 GS grade levels are reduced to no more than six band levels, each representing a defined level of work. Within each career path, bands typically include the following categories of positions: student trainee and/or entry level, developmental, full performance level, and expert and/or supervisor/manager.

With fewer band levels than GS grades, the level of responsibility reflected in each band typically encompasses the responsibilities of two or more GS grade levels. For example, the responsibilities of a band level covering work at the full performance level may represent a synthesis of GS–11 and GS–12 responsibilities. For the NT career path, the responsibilities associated with the top two bands do not precisely align with equivalent GS levels. Some GS–14 level responsibilities band best with GS–13 while others band best with GS–15.

Although band VI of the ND career path covers SL and ST positions, this does not represent a requested change in the basis for classification or allocation of billets for these positions. The authority to allocate new billets, classify positions and set initial pay for assignment to SL and ST positions within the Warfare Centers will be retained at the Assistant Secretary of the Navy (Manpower and Reserve Affairs) level. The intent of including these positions in the SE career path was two fold: (1) to emphasize the dual career progression for scientists and engineers in nonsupervisory and nonmanagerial career paths; and (2) to include SL and ST employees in all other aspects of the Demonstration Project, i.e., performance development, incentive pay and reduction-in-force systems. Consistent with our goal of developing, recognizing, and retaining employees needed to meet our changing organizational needs, the Demonstration Project seeks the authority to manage its SL and ST workforce under the same performance development and incentive system as other employees. This includes the authority at the Division level to adjust the pay of SL and ST employees up to Level IV of the Executive Schedule. Incentive pay decisions will be made against criteria relevant to the needs of the organization including the criticality and difficulty of the position, critical skills, and current salary level of the employees.

c. Simplified Classification Process. A limited number of Warfare Center one-page generic, level descriptor that also serve as the core of preclassified position descriptions will be created within the Demonstration Project. Those descriptions may be further tailored with an addendum to provide information on Fair Labor Standards Act (FLSA) coverage, selective placement factors, specialized knowledge/skills/abilities, etc. Within the Demonstration Project, the term "classification of a position" for positions covered by broad banding is defined as the placement of a position in its appropriate career path, occupational series, and band level based on the application of standards (referred to as level descriptors or benchmark standards) established at the Warfare Center level. Line managers will be meaningfully involved in the classification process to make it more relevant to their organization's needs.

d. Simplified Assignment Process. Today's environment of downsizing and workforce transition mandates that the organization has maximum flexibility to assign individuals. Broad banding can be used to address these needs. As a result of the assignment to a particular level descriptor, the organization will have maximum flexibility to assign an employee within broad descriptions consistent with the needs of the organization, and the individual's qualifications and rank or level. Subsequent assignments to projects, tasks, or functions anywhere within the organization requiring the same level and area of expertise, and qualifications would not constitute an assignment outside the scope or coverage of the current level descriptor. Such assignments within the coverage of the generic descriptors are accomplished as realignments and do not constitute a position change. For instance, a technical expert can be assigned to any project, task, or function requiring similar technical expertise. Likewise, a manager could be assigned to manage any similar function or organization consistent with that individual's qualifications. This flexibility allows a broader latitude in assignments and further streamlines the administrative process and system.

e. Broad Bands and Salary Ranges. The basis for the Demonstration Project pay system is each band level having a basic salary range that exactly corresponds to salaries of three or more GS grade levels. This continued linkage with the GS system will result in adjustments to the salary ranges through future general and locality pay increases under the General Schedule System. To more closely replicate the salary overlap found in the current GS system, there is a one grade extended salary overlap with each lower band for bands II and above. (See Figure 3) The one exception is the band for ST and SL positions (ND VI). Consistent with law, the pay range for these positions will continue to be 120% of GS 15/1 salary up to Executive Level IV. The purpose of the salary overlap is twofold. First, it is to provide pay setting flexibilities and cost containment opportunities in promotions. This reduces the instances of non discretionary promotion pay increases of greater than 6% that may otherwise be required to advance pay to the lower end of the next higher band level. The second purpose is to facilitate an assignment back to the next lower level without loss in pay when appropriate.

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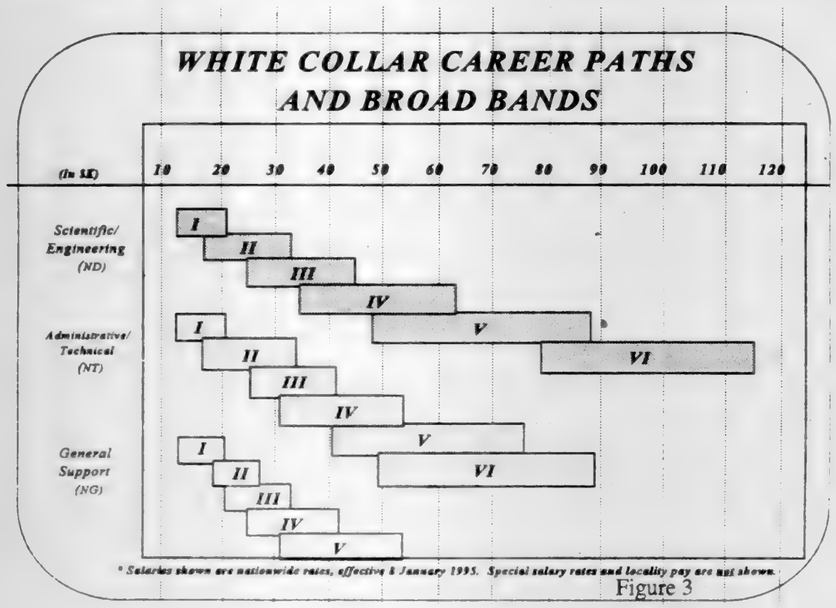

Figure 3

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f. Locality Pay and Special Salary Rates. For each band level, the basic annual rate of pay will be adjusted to reflect the appropriate locality pay percentage. The maximum salary with locality pay will be referred to as "locality pay point". When the special salary rates authorized under the GS system exceed the locality pay point, the top of the applicable band will be extended to the maximum special salary rate authorized for that series and geographic location. Placement within this special rate extension will be restricted to employees in a series covered by that special rate. An employee will be considered a special rate employee only if his/her basic pay falls within the extension, i.e., the basic pay exceeds the locality pay point. Consistent with the intent of locality pay, special salary rate employees, as defined above, will not be eligible for locality pay adjustments. When the locality pay point overtakes the employee's rate of basic pay through general or locality pay increases, the employee will no longer be considered a special salary rate employee. In this instance, the employee's total adjusted basic pay will be increased to the new locality pay point. The employee's new adjusted salary will then be reallocated into a new basic pay and a locality pay adjustment rate. Pay retention provisions and adverse action procedures will not apply to the reallocation of the employee's salary as the employee's total adjusted salary will remain the same.

g. Pay Administration. The following definitions and policies will apply to the movement of employees within the Demonstration Project from one career path or band level to another, or placement in a Demonstration Project Career Path from the GS, FWS, or other personnel systems:

Advanced In-Hire Rate: Upon initial appointment, the individual's pay may be set anywhere within the band level consistent with the special qualifications of the individual and the unique requirements of the position. These special qualifications may be in the form of education, training, experience, or any combination thereof that is pertinent to the position in which the employee is being placed.

Geographic Movement Within the Demonstration Project: An employee covered by broad banding who moves to a new duty station in a different geographic area and continues to be an employee covered by the Warfare Center Demonstration Project will have his/her pay in the new area computed as explained below. In all cases, the geographic movement is processed before any other simultaneous pay action (e.g., promotion, reassignment, downgrade, change in series, etc.) effective on the same day.

1. *Regular Range Employees.* An employee paid at a rate below the locality pay point for his or her band level will receive no change in his or her rate of basic pay upon geographic movement. The employee's locality pay adjustment will be recomputed using the newly applicable locality pay percentage, which may result in a higher or lower locality pay adjustment and, thus, a higher or lower adjusted rate (locality rate or special rate, as applicable). Exception: For employees who would be eligible for a special rate under the GS system and who are in the regular range of a band with a special rate extension, the new adjusted salary following a geographic move may not be less than the old adjusted salary multiplied by the factor derived by dividing the new adjusted band maximum by the old adjusted band maximum.

2. *Special Rate Extension Employees.* For an employee being paid at a rate in a special rate extension, the new adjusted salary following a geographic move is equal to the old adjusted salary multiplied by the factor derived by dividing the new adjusted band maximum by the old adjusted band maximum; however, the new adjusted rate may not be less than the applicable locality pay point in the new area.

3. *Pay Protection Provision.* A special pay protection provision applies to employees who (a) were entitled to a special rate immediately before conversion into the demonstration project, (b) continue to meet the GS special rate eligibility conditions, and (c) are paid at a rate that equals or exceeds the dollar amount of the pre-conversion special rate. For these employees, the new adjusted rate following a geographic move may not be less than the dollar amount of the employee's pre-conversion special rate. Adverse action and pay retention provisions of Title 5, United States Code, will not apply to any reduction in basic pay due solely to the operation of the above rules.

Promotion: Within the Demonstration Project Broad Banding system a promotion will be defined as the movement of an employee from a lower to a higher band level in the same career path, or from one career path to another wherein the band in the new career path has a higher maximum salary than the band from which the employee is moving.

After the implementation of the Demonstration Project, for an employee moving from the GS, a promotion will be defined as placement in a band level which incorporates a GS grade level which is higher than the employee's current grade.

For an employee moving from the FWS, a promotion will be defined as placement in the Demonstration Project in a band level where the representative rate of the highest GS grade covered (i.e. step 04 of the highest GS grade) is higher than the representative rate of the employee's current FWS grade (i.e. step 02).

Promotions will follow basic federal merit promotion policy that provides for competitive and non-competitive promotions. Upon promotion, an employee will normally receive an increase of six percent unless a higher increase is necessary to raise the employee's salary to the minimum salary of the new band. The employee's total adjusted pay (basic pay and locality pay; if any) will be used in determining the amount of the promotion increase and in setting the employee's adjusted pay in the higher band. Decisions not to increase pay or for increases of other than six percent or to the minimum level of the band must be approved at the Division level, unless otherwise delegated to lower levels. In no situation may an employee's salary upon promotion be established lower than the minimum salary range of the new band.

Factors to be used to help determine the amount of the increase may include, but are not limited to, the employee's directly related experience which may be of immediate use in the new position; the employee's current pay; and the relationship to salaries of other similarly qualified employees.

Reassignment: For movement within the Demonstration Project Broad Banding system, a reassignment will be movement to a position covered by the same band level, or from one career path to another when the salary range of the new band level and the employee's current band level remains the same.

For an employee moving from the GS, a reassignment will be defined as placement in the Demonstration Project in a band level where the highest GS grade covered is the same as the employee's current GS grade.

For an employee moving from the FWS, a reassignment will be defined as placement in the Demonstration Project in a band level where the representative rate of the highest GS grade covered (i.e., step 04 of the highest GS grade included in that broad band) is the same as the representative rate of the employee's current FWS grade.

Demotion or change to lower band level: For movement within the Demonstration Project Broad Banding system, a demotion will be defined as the movement of an employee from a higher band to a lower band within the same career path, or from one career path to another where the band in the new career path has a lower maximum salary than the band from which the employee is moving.

For an employee moving from the GS, a demotion will be defined as placement in the Demonstration Project in a band level where the highest GS grade covered is lower than the employee's current GS grade.

For employees moving from the FWS, a demotion will be defined as placement in the Demonstration Project in a band level where the representative rate of the highest GS grade covered (i.e. step 04 of the highest grade included in that pay band) is lower than the representative rate of the employee's current FWS grade.

Salary adjustment: A salary adjustment is defined as an increase in an employee's base pay (by other than the incentive pay process) within the employee's current band level to an amount which does not exceed the top of the band. The salary adjustment may be used to adjust the pay of individuals who have acquired a level of education that would otherwise make the employee qualified for an appointment at a higher level and would be used in lieu of a new appointment. For example, this authority may be used to adjust the pay of graduate level Cooperative Education (COOP) students or employees who have obtained an advanced degree, e.g., Ph.D.

Other: Current provisions for Highest Previous Rate, Pay Retention (except as otherwise noted), Special Recruitment and Relocation Bonuses, Retention Allowances and Accelerated Promotions will continue. The use of OPM's Operating Manual for "Qualification Standards For General Schedule Positions" will continue with minor modifications; "Band" will be substituted for "Grade" where appropriate and the time in grade requirement will be eliminated.

2. Performance Development System

The philosophical base of this Demonstration Project is that employees are valued and trusted and are the organization's most critical assets. Accordingly, the primary objectives of the Demonstration Project are to: Develop employees to meet the changing needs of the organization; to help employees achieve their career goals; to improve performance in current positions; to retain high performers, and to improve communication with customers, colleagues, managers and employees. The system focuses on continuous performance improvement and minimizes administrative requirements. On-going dialogue between the employee and supervisor is fundamental to this development focus, and Performance Development Resources are provided as part of the system to facilitate this dialogue and assist with diagnosis of performance issues. The emphasis on continued improvement is carried over into the process for addressing performance problems. The proposed system substitutes an early intervention which focuses immediately on a formal performance plan designed to support the employee's success. A determination of unacceptable performance is made only if the employee does not meet the requirements for acceptable performance detailed in that plan. The following paragraphs describe the key components of the Performance Development System. Figure 4 depicts the relationship of these components

and their linkage with the Incentive Pay system.

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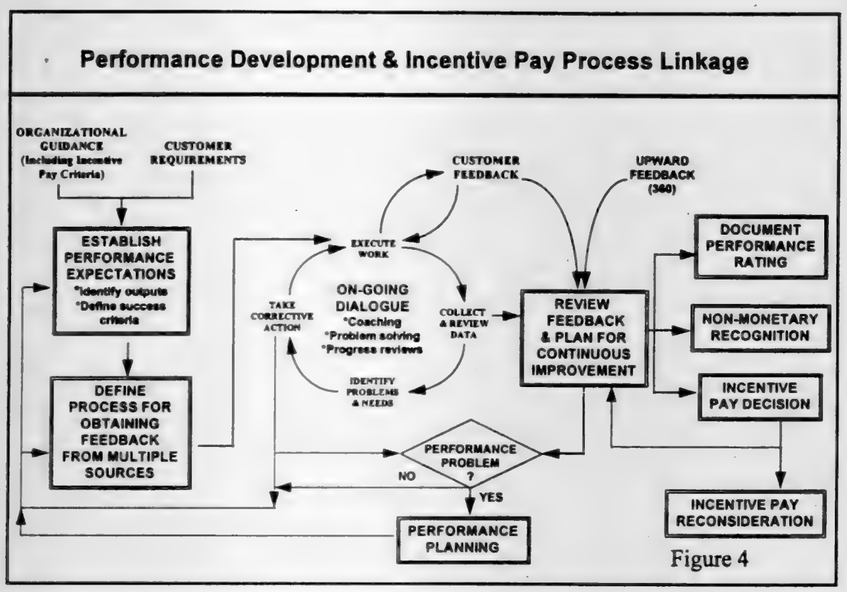

Figure 4

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a. Performance Development Resources. At the heart of the performance development system is the concept of providing organizational resources to support the development process. While the design of these resources will be delegated to each Division, they will typically consist of a pool of people, including union representatives, who act as a support system to identify or help provide for the needs of employees and managers in the development process. Current limitations regarding union involvement in discussions concerning assigning and directing employees will not prevent the parties within the Demonstration Project from developing appropriate procedures for the Performance Development Resources.

The Resources will be available to facilitate communications around expectations and needs, and help supervisors and employees seek agreement throughout all aspects of the performance development process. Should performance problems arise, these resources will be particularly useful in diagnosing issues impacting performance (e.g., employee skills, attitudes and motivation, clarity of job expectations, systemic issues, access to information and resources, relationships with co-workers and supervisor, etc.) and identifying options for addressing these issues (e.g., development opportunities, tools or equipment to support improved performance, reassignment of the employee to a position that better matches his/her capabilities and interests, etc.). They will also make referrals to others who may be helpful, and identify systemic or organization wide issues which may be affecting performance.

Supervisors are expected to utilize the Resources for assistance in preventing and alleviating performance problems. Employees may also use the resources to assist them in correcting self-identified performance problems, in development planning to enhance their career opportunities consistent with the needs of the organization, and to facilitate communication and feedback with their supervisors, etc.

b. Two Level Rating System. The system employs a two level rating system: "acceptable" and "unacceptable" performance. "Acceptable" performance is defined as "performance that fulfills the requirements for which the position exists." An employee's performance may not be determined "unacceptable" unless the employee has been placed on and failed a performance plan. Employee performance ratings will be documented annually.

c. Establishing Performance Expectations. Clear, mutually understood performance expectations that are linked to organizational goals, strategies and values are fundamental to successful individual and organizational performance. The outcome of this component of the Performance Development System is clear communication of the products and/or services to be delivered by the employee(s), and the success criteria against which those outputs will be assessed. Documentation of outputs and success criteria is expected when necessary to facilitate mutual understanding of performance expectations.

The most effective means of creating a common understanding is through a process in which the supervisor and employee(s) discuss requirements and establish performance goals and expectations. Employees and supervisors are expected to actively participate in these discussions to seek clarity regarding expectations and identify potential obstacles to meeting goals. In addition, employees should explain (to the extent possible) what they need from their supervisor to support goal accomplishment. The timing of these goal setting discussions will vary based on the nature of work performed, but will occur at least annually. More frequent, task specific, discussions of expectations may be more appropriate in some organizations. In cases where work is accomplished by a team, team discussions regarding goals and expectations may be appropriate; however, expectations for individual contributions to the team goals should always be clearly specified. Either the supervisor, the employee, or the union may enlist the assistance of the Performance Development Resources to facilitate effective dialogue with regard to these issues.

Documentation of performance expectations is a helpful mechanism for ensuring clarity of understanding and providing a focus for later discussions on progress and developmental needs. As a minimum, formal documentation of expectations is required when an employee begins a new or substantially different job. Documentation in other situations is based on the needs and desires of the employee and supervisor, and may rely on other existing documentation (e.g., project plans, process documentation, customer requirements, etc.) No prescribed format is required for such documentation; the employee and supervisor are encouraged to seek agreement on what form of documentation will meet their needs and who will be responsible for producing it. The assistance of the Performance Development Resources may be enlisted by either party to support their efforts to reach agreement. In bargaining units, documentation procedures will be subject to bargaining. Current limitations regarding union involvement in decisions concerning assigning and directing employees will not prevent the parties within the Demonstration Project from developing appropriate procedures for documenting performance discussions.

d. On-going Performance Dialogue. To facilitate performance development, employees and supervisors will engage in on-going dialogue. Ideally this dialogue will occur as part of normal day-to-day interactions for the purpose of ensuring a common understanding of expectations, reviewing whether expectations are being met, providing support in identifying resources or solving problems, providing coaching on complex or sensitive issues, providing information to increase the understanding of the project context, and keeping the supervisor informed of progress. In addition to this on-going interaction, however, it is expected that periodically a more formal dialogue will occur focused on reviewing progress, discussing customer feedback, exploring process improvements that could remove obstacles to effective performance, and identifying developmental needs to support continual improvement and career growth. The employee and supervisor should seek agreement on the frequency and form for both the formal and informal dialogues to ensure they will meet their needs. Either the supervisor, the employee or the union may call upon the Performance Development Resources to facilitate communications or conflict resolution around these issues. In cases where work is accomplished by a team, team meetings may be an appropriate forum for some of this interaction; however, team discussions do not eliminate the need for the supervisor to have some form of individual dialogue with each employee.

The expected outcomes from this on-going dialogue component are plans to support the continuous improvement of individual and organizational performance. Documentation of these discussions and resulting plans is encouraged to the extent that it contributes to clarity of understanding and facilitates later review of progress on continuous improvement efforts. The nature and content of such documentation is based on the needs and desires of the employee and supervisor. No prescribed format is required for such documentation; the employee and supervisor are encouraged to seek agreement on what form of documentation will meet their needs and who will be responsible for producing it. The assistance of the Performance Development Resources may be enlisted by either party to support their efforts to reach agreement.

In bargaining units, these procedures are subject to bargaining. Current limitations regarding union involvement in decisions concerning assigning and directing employees will not prevent the parties within the Demonstration Project from developing appropriate procedures for ongoing performance dialogues and for documenting performance discussions.

e. Feedback from Multiple Sources. The primary purpose of feedback in the Performance Development System is to provide employees with information regarding how well their performance is meeting customer requirements in order to help the employees continually improve their performance. The outputs expected from this component are data and customer feedback which enable review of performance against success criteria. These data provide input to the review and continuous performance improvement planning discussed as part of the on-going dialogue component.

The responsibility for employee development and continuous improvement is jointly held between the supervisor and employee. They are expected to work together to identify internal and external customers and to define and implement a process by which the employee can regularly receive feedback. A variety of mechanisms may be appropriate, such as customer surveys, process measures which track customer requirements, and discussions with customers. Supervisors are expected to facilitate this process and work with employees to interpret the feedback and establish improvement goals. Performance Development Resources may be helpful during this process. Their assistance may be requested by the supervisor, the employee or the union. Current limitations regarding union involvement in decisions concerning assigning and directing employees will not prevent the parties within the Demonstration Project from developing appropriate mechanisms and procedures for obtaining feedback from multiple sources.

Managers and supervisors are also expected to obtain feedback from their customers, including their employees, and to use that feedback as a basis for establishing both personal and organizational performance development goals. The use of an anonymous instrument is appropriate for providing feedback to supervisors and managers on the impact of their behavior. The use of these instruments will help focus attention on desired leadership behaviors, structure the feedback in a constructive manner, and offset the power imbalance that often prevents supervisors from getting useful feedback from their employees. When necessary, supervisors and managers may choose to use the Performance Development Resources to help support their own developmental needs.

f. Performance Plan. When an employee has continued performance difficulties, the organization will provide a formal Performance Plan to support the supervisor and employee in resolving the performance problems.

Use of the Performance Development Resources will be an integral part of this effort. Supervisors are expected to call on the Resources for assistance in preventing or alleviating performance problems before the need for formal action arises. When there is an indication that performance is not consistently meeting customer requirements, supervisors are expected to call on the Resources to analyze the causes of the difficulty and develop an approach for resolving it. Development of a formal Performance Plan is indicated if and when it is determined that the employee's performance (vs. system performance) is a contributor to the problem and informal intervention has not been successful in correcting the problem. Use of the Performance Development Resources is expected throughout the period of the Performance Plan in an attempt to facilitate a solution to the problem. The Performance Plan must be written, and will clearly document organizational expectations for successful job performance, specify accountability, identify developmental resources to correct any skill deficiencies, define the time frame of the performance plan, specify organizational support that will be provided and how performance results will be monitored. In addition, the Plan will clearly specify the potential consequences if performance is not acceptable. Periodic discussions between the supervisor and employee must occur during the time frame of the Performance Plan to review progress; these discussions must be documented. Current limitations regarding union involvement in decisions concerning assigning, directing, removing or reducing in grade employees will not prevent the parties within the Demonstration Project from developing appropriate procedures and documentation in connection with Performance Plans. (**Note:** Nothing in this subsection will preclude action under Title 5, United States Code, Chapter 75, when appropriate.)

g. Accountability for Performance. An employee will be given a rating of unacceptable only if and when the employee is unable to successfully complete the Performance Plan. When an employee's performance is rated as unacceptable, one of four actions will be taken: (1) removal from the Federal Service, (2) placement in a lower band level with a corresponding reduction in pay (demotion), (3) reduction in pay while remaining in the same band level, or (4) placement in a lower band level with no reduction in pay (demotion).

For the third category of action, the amount of reduction in pay will be up to, but may not exceed, the maximum amount of incentive pay (see below) that the employee could be eligible to receive during the current payout period, i.e., up to the equivalent of 4 continuing pay points as of the most recent payout cycle. Following the pay reduction, the objective is to restore performance and pay commensurate with it. A formal Development Plan will be established to maximize the opportunity for success in the assignment by clearly identifying performance expectations and defining a plan to achieve them within an appropriate time frame, not to exceed 12 months. The activity's Performance Development Resources will be utilized throughout this process. If and when performance improves during the period in which the employee is otherwise ineligible for incentive pay, some or all of the reduced pay may be restored. Such restoration is not retroactive and is separate and apart from incentive pay.

For the fourth category of action, the employee may be moved to the next lower band level provided no loss in pay results and the employee's pay does not exceed the top of the lower band level. Within the Demonstration Project, this would not be considered an adverse action and would not be appealable through a statutory appeals process except for preference eligible employees. Employees will be provided with a written notice of the decision and preference eligibles will be notified of their right to appeal the action to the Merit Systems Protection Board. Current limitations regarding union involvement in decisions concerning reducing employees in grade will not prevent the parties within the Demonstration Project from developing procedures for the non-adverse reduction in band level. The decision to reduce an employee to a lower band level with no reduction in pay will be subject to review under existing grievance or alternative dispute resolution procedures.

3. Incentive Pay System

The Incentive Pay System provides a mechanism for encouraging and rewarding performance contributions and other outcomes resulting from the continuous improvement focus of the performance development system.

Incentive Pay for Employees Covered by Broad Banding: Supervisors will conduct an annual review of each employee's salary and decide how total compensation should be adjusted to reflect the employee's performance contribution to the organization. The adjustment may be made as a continuing increase to base pay and/or as a one-time cash bonus to adjust total compensation. The philosophical foundation for incentive pay is described below:

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Principles of Incentive Pay

Background: One of the outcomes of pay banding is an expanded range of pay progression opportunities for employees. This is accomplished through "incentive pay." Incentive pay is awarded to people based on the value of their performance contributions to the organization. With this comes the necessity to insure that pay decisions are consistent with the needs and values of the organization. At the same time, they must be seen as fair and equitable. While the Demonstration Project provides discretion for Warfare Center Divisions to substantially define the criteria and process for managing incentive pay, it is appropriate that there be general Project-wide principles that provide a policy framework for division decisions. The following are those principles.

PRINCIPLE: "The organization succeeds through the collective contributions of people in all occupations."

The Warfare Centers perform critical missions for the Navy in support of national defense. These missions require the collective efforts of all their people. While certain positions and occupations are highly visible, it is the whole organization as a team pulling in the same direction and towards the same goals that enables the Centers to excel. In that regard, no occupational groups are to be effectively excluded from opportunities for incentive pay and other forms of recognition. Rather, there is an expectation that incentive pay generally will be distributed proportionally to the various career paths. Further, all people who are making positive performance contributions as demonstrated by acceptable performance will share in incentive pay. Amounts and time intervals will be set by Divisions/sites.

PRINCIPLE: "Pay should be commensurate with value of performance to the organization."

In general, an individual's total pay (base pay, plus any incentive pay) should be commensurate with the value of the performance contributions to the organization. Contributions may be based on past and/or potential performance consistent with criteria defined by the Warfare Center Divisions. In that regard, there should be relative pay equity between people whose contributions to the organization are of equal value. Consistent with this principle, as the value of a person's contribution increases, compensation should likewise increase. It follows that as an individual's compensation increases, there is a corresponding increase in expected performance contributions.

Typically, when a person is hired, or promoted to a higher band level, and pay is at or near the lower end of that band, there are expected successive increases in pay toward the mid range of that band. This pay growth is reflective of a learning curve upon entering a new position, and the corresponding increasing value to the organization. Pay progression through the mid range occurs with progressively higher levels of performance contributions. Beyond that, extraordinary contributions are expected for pay to increase through the upper levels of the band.

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a. Eligibility. All employees who are making positive performance contributions as demonstrated by acceptable performance will share in incentive pay with the amounts and time intervals set by the Divisions and sites. Employees receiving an unacceptable rating since the last incentive payout are ineligible for the next incentive pay consideration.

b. Incentive Pay Pool. Payments under the Incentive Pay System are made from the incentive pay pool. Within the

incentive pay pool, there are separate funds for continuing pay increases and bonus payments. The incentive pay pool is not used to fund promotions between pay bands. It is also not used to fund general pay increases, special rate increases, or locality pay increases; rather, employees will continue to receive any such increases consistent with other employees outside the demonstration project.

The incentive pay pool will be operated within the parameters of the overall finance system governing the Warfare Centers. As a Defense Business Operating Fund (DBOF) activity, the Warfare Centers are 100 percent industrially funded and operate as "not-for-profit" competitors within the Department of Defense. Under DBOF, the Centers are reimbursed for their work by their customers through billings based on stabilized rates. The assistant Secretary of the Navy for Financial Management and Comptroller oversees the establishment of these stabilized rates through reviews of Biannual Financial Management Budget submissions, which are highly visible at all Command levels. This funding process imposes a discipline in controlling costs (including salary expenditures) for the Warfare Centers that is not present under appropriated funded organizations.

The size of the continuing pay fund is based on appropriate factors, including the following:

a. historical spending for within-grade increases, quality step increases, and in-level career promotions (with dynamic adjustments to account for changes in law or in staffing factors e.g., average starting salaries and the distribution of employees among job categories and band levels);

b. labor market conditions and the need to recruit and retain a skilled workforce to meet the business needs of the organization; and

c. the fiscal condition of the organization.

Given the implications of base pay increases on long-term pay and benefit costs, the amount of the continuing pay fund will be derived after a cost analysis with documentation of the mission-driven rationale for the amount. Any decision to substantially reduce the amount of funds devoted to continuing pay increases would typically occur only in lieu of more drastic cost cutting measures (e.g., RIF or furlough). As part of the evaluation of the project, average salary (base pay) will be tracked over time using two comparison groups: (1) the original two Navy Demonstration labs in China Lake and San Diego, and (2) a comparison group constructed using OPM's Central Personnel Data File.

The size of the bonus pay fund will be based on appropriate factors, including the following:

a. historical spending for performance awards, special act awards, and awards for beneficial suggestions;

b. the organization's fiscal condition and financial strategies; and

c. employee retention rates.

The decision process for defining the size of the incentive pay pool and the two funds within that pool will be established at the Division/site level. The design of the decision process, insofar as it affects bargaining unit employees, will be subject to collective bargaining.

d. Delegated Criteria Setting. The criteria and process for incentive pay will be substantially defined at the Division/site level. The incentive pay decision may be based on some combination of past, present and future performance. Examples of criteria may include criticality of skills, difficulty of position, criticality of position, individual or team contributions, suggestions for improving system or organization processes, length and/or quality of experience, current total compensation, etc. The criteria and process for incentive pay distribution for bargaining unit employees are subject to collective bargaining. Current limitations regarding union involvement in decisions concerning assigning and directing employees will not prevent the parties from developing the criteria and process for incentive pay decisions. (Note: The movement of an employee within a band based on the execution of an incentive pay decision is not a "classification" action.)

e. Pay points. The payout process will utilize a point system to distribute incentive pay increases. A maximum of four (4) points will be available, thus each employee performing in an acceptable manner will be eligible to receive 0,1,2,3 or 4 pay points in the form of continuing pay, bonus pay or some combination.

For FWS employees, cash awards continue to be available under the existing Incentive Awards system based on performance and special acts.

f. Communication and Documentation. It is important that employees understand what is expected in order to receive a pay increase. Supervisors will interpret organizational criteria for their employees to clarify how it applies to their work and have periodic assessment discussions with employees to prevent surprise decisions at the time of payout. These assessment discussions should normally be held separately from performance development dialogues. Supervisors and employees are encouraged to seek agreement on their documentation needs. In addition, supervisors are expected to document their payout recommendation decisions and to discuss their decision rationale with employees. In bargaining units, documentation procedures will be subject to bargaining. Current limitations regarding union involvement in decisions concerning assigning and directing employees will not prevent the parties from developing documentation procedures for the communication and documentation of incentive pay discussions and decisions.

g. Reconsideration of Incentive Pay Decisions. Employees will have the opportunity for a reconsideration of incentive pay decisions. While the specific purpose of the reconsideration is to address employee concerns about such decisions, the process is also intended to facilitate communication and understanding between employees and supervisors/managers concerning performance contributions and their impact on pay decisions. In addition, the process seeks to identify possible systemic problems that need to be addressed. In that regard, reconsideration is considered a positive and integral component of an effective incentive pay system by providing a mechanism to support continuous improvement. Accordingly, employees will not be discouraged from requesting reconsideration. Neither will they be subjected to reprisal or stigma. The specific process for reconsideration will be defined at the Division/site level. Current limitations regarding union involvement in decisions concerning assigning and directing employees will not prevent the parties from developing procedures for the reconsideration of incentive pay decisions. That process will include, but will not necessarily be limited to, the following characteristics: It should be administratively streamlined; provide expedited resolution; maintain appropriate confidentiality; be fair and impartial; address assertions of harmful error involving issues of process and procedure; and ensure that management payout decisions reflect reasonableness in judgment in evaluating applicable criteria.

h. Guidance on Managing Incentive Pay. Each Division is expected to develop policies and criteria to guide the implementation of the incentive pay system which are consistent with their mission, strategies and organizational values, and supportive of the Naval Sea Systems Command and Warfare Center strategic plans. Some Divisions may rely on individual management judgment based on general guidance, while other Divisions may define a more mechanical process based on highly objective criteria. Additional guidance may be provided by major organizational components (e.g., departments or directorates) to tailor or interpret the command-level criteria for their specific mission and strategies. Each major organizational component will have authority to manage the incentive pay allocation derived from the salaries of employees in that component. Departments/Directorates may further delegate authority to manage a prorated portion of the fund to the next lower echelon. Supervisors and managers within the unit will be assessing the nature of each employee's contribution, consistent with the organization's policy and criteria as reflected in the written guidance. They will then make recommendations to a second level reviewer regarding the number of pay points to be awarded to each employee (i.e., 0 to 4 points) and the nature of incentive pay (i.e., continuing pay and/or bonus pay). Decisions regarding approval/disapproval of recommendations will be made at the organizational level to which authority has been delegated to manage the pay pool; typically this will be the second or third level reviewer. In cases where work is accomplished by a team, the team members may be involved in formulating the recommendation for distribution of incentive pay.

4. Reduction in Force (RIF)

Flexible and responsive alternatives are needed to restructure an organization in a short period of time. The current RIF system is complicated, costly, and relatively unresponsive to the needs of the organization.

The proposed RIF system will have a single round of competition to replace the current "two round" process. Once the position to be abolished has been identified, the incumbent of that position may "displace" another employee when the incumbent has a higher retention standing and is fully qualified for the position occupied by the employee with a lower standing. Retention standing is based on tenure, veteran's preference, length of service, and performance. However, there will be no augmented service credit based on performance ratings. An employee rated as unacceptable during the 12 month period preceding the effective date of a RIF may only displace an employee rated unacceptable during that same period. The same "undue disruption" standard currently utilized will serve as the criteria to determine if an employee is fully qualified. The displaced individual may similarly displace other employees. If/when there is no position in which an employee can be placed by this process or assigned to a vacant position, that employee will be separated.

Displacement is limited to one broad band level below the employee's present level. A preference eligible employee with a compensable service connected disability of 30 percent or more may displace up to two broad band levels (or the equivalent of five General Schedule grades) below the employee's present level. Employees not covered by broad banding (FWS), may "displace" up to three grades/intervals (five grades/intervals for preference eligibles with a service connected disability of 30 percent or more).

The new system will eliminate retained grade but will preserve retained pay.

All positions included in the Demonstration Project within an activity at a specific geographic location will be considered a separate competitive area.

5. Competitive Examining and Distinguished Scholastic Appointments

The Warfare Center needs a process which will allow for the rapid filling of vacancies, is less labor intensive, and is responsive to our needs. Restructuring the examining process and providing an authority to appoint candidates meeting distinguished scholastic achievements will help achieve these goals. When a Division implements the Demonstration Project for some portion of their workforce, this component may be available for all occupations. This will eliminate the imposition of multiple examining and appointment systems on the public and will strengthen efficiencies gained under the Demonstration Project. To further minimize resource requirements and the complexities inherent in administering two different sets of examining and hiring processes, this component may also be applied to GS and FWS positions in activities for which the Warfare Center Divisions provide human resource services.

a. Delegated Examining Authority. The Warfare Centers propose to demonstrate a streamlined examining process for both permanent and non-permanent positions. This authority will be further delegated to the Division level. This authority will apply to all positions with exception of positions in the Senior Executive Service, to Senior Level (ST/SL) positions, to the Executive Assignment System or positions of Administrative Law Judge. This authority will include the coordination of recruitment and public notices, the administration of the examining process, the administration of veteran's preference, the certification of candidates, and selection and appointment consistent with merit principles.

b. Description of Examining Process: The primary change in the examining process to be demonstrated is the grouping of eligible candidates into three Quality Groups using numerical scores and the elimination of consideration according to the "rule of three".

For each candidate, minimum qualifications will be determined using OPM's Operating Manual for "Qualification Standards For General Schedule Positions"/"Job Qualification Systems For Trades and Labor Occupations (Handbook X–118C)" including any selective placement factors identified for the position. Candidates who meet basic (minimum) qualifications will be further evaluated based on knowledge, skills and abilities which are directly linked to the position(s) to be filled. Based on this assessment, candidates will receive a numerical score of 70, 80, or 90. No intermediate scores will be granted except for those eligibles who are entitled to veterans preference. Preference eligibles meeting basic (minimum) qualifications will receive an additional 5 or 10 points (depending on their preference eligibility) which is added to the minimum scores identified above. Candidates will be placed in one of three quality groups based on their numerical score, including any veterans preference points: Basically Qualified (score of 70 and above), Highly Qualified (score of 80 and above), or Superior (score of 90 and above). The names of preference eligibles shall be entered ahead of others having the same numerical.

For scientific/engineering and professional positions at the equivalent of GS–9 and above, candidates will be referred by quality groups in the order of the numerical ratings, including any veterans preference points. For all other positions, i.e., other than scientific/engineering and professional positions at the equivalent of GS–9 and above, preference eligibles with a compensable service-connected disability of 10 percent or more who meet basic (minimum) eligibility will be listed at the top of the highest group certified.

In selecting the top candidate, selecting officials should be provided with a reasonable number of qualified candidates from which to choose. All candidates in the highest group will be

certified. If there is an insufficient number of candidates in the highest group, candidates in the next lower group may be certified in rank order. When two or more groups are certified, candidates will be identified by quality group (i.e., Superior, Highly Qualified, Basically Qualified) in the order of their numerical scores. In making selections, to pass over any preference eligible(s) to select a nonpreference eligible requires approval under current pass over or objection procedures.

c. Distinguished Scholastic Achievement Appointment: The Warfare Centers further propose to establish a Distinguished Scholastic Achievement Appointment using an alternative examining process which provides the authority to appoint undergraduates and graduates through the doctoral level who meet basic eligibility as determined by using OPM's Operating Manual for "Qualification Standards For General Schedule Positions" plus any previously established selective placement factors, if applicable and the following scholastic standards:

- 3.5 grade-point average (GPA) or above on a 4.0 scale for required courses in the major field of study, or for all course work; or
- graduated in the top 10% of their graduating class.

At the undergraduate level, the GPA may be based on 4 years of education or on those courses completed during the final 2 years of the curriculum.

Veterans preference procedures will apply when selecting candidates under this authority. Preference eligibles who meet the above criteria will be considered ahead of nonpreference eligibles. In making selections, to pass over any preference eligible(s) to select a nonpreference eligible requires approval under current objection procedures.

This authority allows for the competitive appointment to positions at the equivalent of GS–7 through GS–11, and GS–12 for positions involved in research. Distinguished Scholastic Achievement Appointments will enable the Warfare Centers to respond quickly to hiring needs with eminently qualified candidates possessing distinguished scholastic achievements.

C. Project Implementation

While many of the basic elements of each component of the project will be implemented uniformly at all sites through policies established at the Warfare Center level, a number of policies, procedures, or processes will be delegated to the Division and/or site levels. This permits the system to be operationally defined, within a Warfare Center directed framework, to fit the culture and needs of the local organizations. In bargaining units, the project will be implemented only after there is full agreement through the collective bargaining process.

D. Entry Into and Exit From the Project

1. Initial Conversion of Current Workforce. For the most part, current GS/GM employees will be converted automatically from their current grades to the appropriate career paths and band levels. However, the Warfare Centers consider it essential to the success of the project that employees, upon entering the project, feel that they are not losing a pay entitlement accrued under the GS system. Accordingly, current employees of the Warfare Centers will be "made whole" through a one year "buy-in" period. On the day of conversion, employees typically will receive base pay increases for prorated step increase equivalents. Employees at the 10th step are not eligible for the increase. Further, during the first 12 months following conversion, employees will receive pay increases for non-competitive promotion equivalents when the grade level of the promotion is encompassed within the same band, the employee's performance warrants the promotion and promotions would have otherwise occurred during that period. Employees who receive an in-level promotion at the time of conversion will not receive a prorated step increase equivalent.

Additionally, in many cases, employees who are today covered by a local or national special salary rate will no longer be considered a special rate employee under the Demonstration Project and will thus gain eligibility for full locality pay. To control conversion costs and to avoid a salary increase windfall for these employees, the adjusted salaries of these employees will not change. Rather, the employees will receive a new basic pay rate computed by dividing their adjusted basic pay by the locality pay factor for their area. A full locality adjustment will then be added to the new basic pay rate. Adverse action and pay retention provisions will not apply to the conversion process as there will be no change in total salary.

2. New and Transfer Employees. New hires, including employees transferring from other Federal activities, will be converted into the Demonstration Project in the career path and at the level and pay consistent with the duties and responsibilities of the position and individual qualifications.

3. Exit From the Demonstration Project. Employees who leave the Demonstration Project broad banding system to accept federal employment in the traditional Civil Service system will have their pay set by the gaining activity. To assist activities in setting pay and in determining whether such placement constitutes a promotion, reassignment, or change to lower grade, the employee's band and salary level will be converted to a General Schedule equivalent grade prior to leaving the Demonstration Project in the following manner:

Employees who exit the Demonstration Project will be tentatively converted to a GS grade most comparable to the employee's current Demonstration Project level and salary. In instances where the current salary is in the area between two overlapping GS grades within the same level, the converted grade is either (1) the higher of the two overlapping GS grades if the current salary meets or exceeds Step 4 of the higher GS grade, or (2) the lower of the overlapping grades if the current salary is less than Step 4 of the higher GS grade. In those instances where the current salary falls below the established GS salary range for the lowest GS grade covered by that Demonstration Project band level, the converted grade is the lowest GS grade level in that band. In those situations where an employee has not been promoted or placed in a lower pay band while covered by the Demonstration Project, the employee will be converted at a level which is no lower than the GS grade held immediately prior to entering the Demo project. This converted GS grade is the GS equivalent grade and is not necessarily the grade the employee will have upon transfer or reassignment outside the Demonstration Project.

An employee's pay within the converted GS grade is set by converting the demonstration project adjusted rate of pay to a rate on the highest applicable adjusted rate range for the converted GS grade (including locality rates and special rates, as applicable). For example, if the highest applicable adjusted rate range under the GS pay system for a particular employee is a special rate range, the adjusted project rate (locality rate or special rate) is converted to the lowest special rate in that range that equals or exceeds the project rate; from this converted special rate, the employee's unadjusted GS rate and locality rate would be derived. This pay conversion is done before processing any geographic movement or other pay-related action coinciding with the employee's conversion out of the demonstration project.

When an employee transfers to another activity, the employee's rating of record will be transferred. When the gaining activity uses other than a two level performance system, the employee may be provided a supplementary performance assessment using the gaining organizations appraisal criteria. If the employee requests such an appraisal, the employee will be responsible for providing the criteria to the supervisor for completion. Gaining organizations are not bound to use this supplementary performance appraisal in any formal actions.

E. Project Duration

The initial implementation period for the Project will be five years. At that time, the entire demonstration project will be reexamined to determine whether to continue, modify or terminate the Project.

IV Evaluation Plan

Chapter 47 (Title 5 U.S.C.) requires that an evaluation system be implemented to measure the effectiveness of the proposed personnel management interventions. An evaluation plan for the entire laboratory demonstration program covering 24 DOD labs was developed by a joint OPM/DOD Evaluation Committee. A Comprehensive evaluation plan was submitted to the Office of Defense Research & Engineering in 1995 and subsequently approved. (Proposed Plan for Evaluation of the Department of Defense S&T Laboratory Demonstration Program, Office of Merit Systems Oversight & Effectiveness, June 1995). The overall evaluation effort will be coordinated and conducted by OPM's Personnel Resources and Development Center(PRDC). The primary focus of the evaluation is to determine whether the waivers granted result in a more effective personnel system than the current as well as an assessment of the costs associated with the new system.

The present personnel system with its many rigid rules and regulations is generally perceived as an impediment to mission accomplishment. The Demonstration Project is intended to remove some of those barriers and therefore, is expected to contribute to improved organizational performance. While it is not possible to prove a direct causal link between intermediate and ultimate outcomes (improved personnel system performance and improved organizational effectiveness), such a linkage is hypothesized and data will be collected and tracked for both types of outcome variables.

An intervention impact model (Appendix B) will be used to measure the effectiveness of the various personnel system changes or interventions. Additional measures will be developed as new interventions are introduced or existing interventions modified consistent with expected effects. Measures may also be deleted when appropriate. Activity specific measures may also be developed to accommodate specific needs or interests which are locally unique.

The evaluation model for the Demonstration Project identifies elements critical to an evaluation of the effectiveness of the interventions. The overall evaluation approach will also include consideration of contact variables that are likely to have an impact on project outcomes: e.g., HRM regionalization, downsizing, cross-service integration, and the general state of the economy. However, the main focus of the evaluation will be on intermediate outcomes, i.e., the results of specific personnel system changes which are expected to improve human resources management. The ultimate outcomes are defined as improved organizational effectiveness, mission accomplishment and customer satisfaction.

Data from a variety of different sources will be used in the evaluation. Information from existing management information systems supplemented with perceptual data will be used to assess variables related to effectiveness. Multiple methods provide more than one perspective on how the demonstration project is working. Information gathered through one method will be used to validate information gathered through another. Confidence in the findings will increase as they are substantiated by the different collection methods. The following types of data will be collected as part of the evaluation: (1) Workforce data; (2) personnel office data; (3) employee attitudes and feedback using surveys, structured interviews and focus groups; (4) local activity histories; (5) core measures of laboratory effectiveness.

V. Waivers of Law and Regulation

A. Waivers to Title 5, United States Code

Chapter 33, Section 3317(a): Competitive service, certification from register (in so far as "rule of three" is eliminated under the Demonstration project).
Chapter 33, Section 3318(a): In so far as "rule of three" is eliminated under the Demonstration project.
Chapter 43, Section 4301: Definitions
Chapter 43, Section 4302: Establishment of performance appraisal systems.
Chapter 43, Section 4303: Modified to the extent that an employee may be removed, reduced in band level with a reduction in pay, reduced in pay without a reduction in band level or reduced in band level without a reduction in pay based on unacceptable performance. For employees who are reduced in band level without a reduction in pay, Sections 4303(b) and 4303(e) do not apply.
Chapter 43, Section 4303(b)(1)(A)(ii): Requirement for critical elements.
Chapter 51, Section 5101–5111: Purpose, definitions, basis, classification of positions, review, authority—To the extent that white collar employees will be covered by broad banding. Pay category determination criteria for Federal Wage System positions remain unchanged.
Chapter 53, Section 5301; 5302(1), (8), and (9); Section 5303; and Section 5304: Pay Comparability System. (To the extent necessary to allow Demonstration project employees covered by broad banding to be treated as General Schedule employees and to allow basic rates of pay under the Demonstration project to be treated as scheduled rates of basic pay.) (This waiver does not apply to Federal Wage System (FWS) employees. This waiver does not apply to SL/ST employees who continue to be covered by these positions, as appropriate.)
Section 404 of the Federal Employees Pay Comparability Act of 1990 (PL 101–509): Special Pay Adjustments for Law Enforcement Officers in Selected Cities. (To the extent necessary to allow law enforcement officers under the demonstration project to be treated as law enforcement officers under the General Schedule.)
Chapter 53, Section 5305: Special Pay Authority. (This waiver does not apply to FWS employees.)
Chapter 53, Sections 5331–5336: General Schedule Pay Rates.
Chapter 53, Section 5362. Grade Retention.
Chapter 53, Section 5363: Pay Retention. (Only to the extent necessary to provide that pay retention does not apply to—(1) conversions from General Schedule special rates to Demonstration project pay and reallocations of Demonstration project pay rates within special rate extensions to locality adjusted pay rates due to promotions or general or locality pay increases, as long as the employee's total rate of pay is not reduced; and (2) reductions in basic pay due solely to the operation of the pay setting

rules for geographic movement within the Demonstration Project.)

Chapter 55, Section 5545(d): Hazardous Duty Differential. (Only to the extent necessary to allow Demonstration project employees covered by broad banding to be treated as General Schedule employees.) (This waiver does not apply to FWS and SL/ST employees.)

Chapter 57, Sections 5753, 5754, and 5755: Recruitment; Relocation Bonuses; Retention Allowances; Supervisory Differentials: (Only to the extent necessary to allow employees and positions under the Demonstration project covered by broad banding to be treated as employees and positions under the General Schedule.) (This waiver does not apply to FWS employees. This waiver does not apply to SL/ST employees who continue to be covered by these provisions, as appropriate.)

Chapter 59, Section 5941: Allowances based on living costs and conditions of environment; employees stationed outside continental United States or Alaska (Only to the extent necessary to provide that COLA's paid to employees under the demonstration project are paid in accordance with regulations prescribed by the President (as delegated to OPM)). (This waiver does not apply to FWS employees. This waiver does not apply to SL/ST employees who continue to be covered by these provisions, as appropriate.)

Chapter 71, Section 7106(a)(2): In so far as provision on assigning and directing, documenting performance discussions, Performance Development Resources, Performance Plans, criteria and process for incentive pay, and communication and documentation requirements for incentive pay and reconsideration of incentive pay decisions; and, in so far as provision on reducing employees in grade may prevent the parties from negotiating procedures for non-adverse assignment of employees to a lower pay band.

Chapter 71, Section 7119(b)(1): In so far as provision for either party to request impasse proceedings would be contrary to provisions of the Demonstration project.

Chapter 75, Section 7512(3): To the extent necessary to exclude reductions in band level not accompanied by a reduction in pay taken under Chapter 43.

Chapter 75, Section 7512(4): Adverse Action. (Only to the extent necessary to provide that adverse action provisions do not apply to—(1) conversions from General Schedule special rates to Demonstration project pay and reallocations of Demonstration project pay rates within special rate extensions to locality adjusted pay rates due to promotions or general or locality pay increases, as long as the employee's total rate of pay is not reduced; and (2) reductions in basic pay due solely to the operation of the pay setting rules for geographic movement within the demonstration project.)

B. Waivers to Title 5, Code of Federal Regulations

Part 300, Sections 300.601 through .605: Time in grade restrictions are eliminated in the Demonstration project.

Part 332, Section 332.401(b): Only to the extent that for non-professional or scientific positions equivalent to GS–9 and above, preference eligibles with a compensable service-connected disability of 10 percent or more who meet basic (minimum) qualification requirements will be entered at the top of the highest group certified without the need for further assessment.

Part 332, Section 332.402: "Rule of three" will not be used in the Demonstration project.

Part 332, Section 332.404: Order of selection is not limited to highest three eligibles.

Part 351, Section 351.402(b): Competitive area to the extent that the Demonstration project will be a separate competitive area within the activity.

Part 351, Sections 351.403(a) and (b): Competitive levels to the extent that there is no requirement for the establishment of competitive levels in the Demonstration project.

Part 351, Section 351.404(a) and (b): Retention register to the extent that the requirement to establish separate retention registers by competitive level is eliminated.

Part 351, Section 351.501(a)(3): For order of retention, delete "as augmented by credit for performance under Section 351.504.

Part 351, Section 351.504: Credit for performance to the extent that the Demonstration project eliminates service credit for performance.

Part 351, Section 351.601 through .608: References to competitive levels are eliminated.

Part 351, Section 351.701(b) and (c) Assignment rights (bump and retreat). To the extent that the distinction between bump and retreat is elimininated and the placement of "white collar" Demonstration Project employees is restricted to no more than one broad band level below the employee's current level, except that for a preference eligible with a compensable service connected disability of 30 percent or more, the limit is two broad band levels (or the equivalent of five General Schedule grades) below the employee's present level."

Part 430, Subpart B: Performance appraisal for General Schedule, Prevailing Rate and certain other employees: Employees under the Demonstration project will not be subject to the requirements of this subpart.

Part 432: Modified to the extent that an employee may be removed, reduced in band level with a reduction in pay, reduced in pay without a reduction in band level and reduced in band level without a reduction in pay based on unacceptable performance. Also modified to delete referenced to critical element. For employees who are reduced in band level without a reduction in pay, Sections 432.105 and 432.106(a) do not apply, except that such sections continue to apply to preference eligible employees.

Part 432, Section 432.104 and .105: Proposing and Taking Action Based on Unacceptable Performance: In so far as references to "critical elements" are deleted and adding that the employee may be "reduced in grade or pay or removed" if performance does not improve to acceptable levels after a reasonable opportunity. In addition, requirements waived to the extent that a reduction in band level is taken based on skill utilization criteria when there is no reduction in pay.

Part 511, Section 511.201: Coverage of and exclusions from the General Schedule. (To the extent that White Collar positions are covered by broad banding. Pay category determination criteria for Federal Wage System positions remain unchanged.)

Part 511, Section 511.601: Classification appeals—modified to the extent that white collar positions established under 5 U.S.C. 4703, although specifically excluded from Title 5, are covered by the classification appeal process outlined in this section, as amended below.

Part 511, Section 511.603(a): Right to appeal—substitute "band" for grade.

Part 511, Section 511.607(b): Non Appealable Issues—add to the list of issues which are neither appealable nor reviewable, "the assignment of series under 5 U.S.C. 4703 to appropriate career paths."

Part 530, Subpart C: Special Salary Rates.

Part 531, Subparts B, D, and E: Determining The Rate of Basic Pay, Within-Grade Increases, and Quality Step Increases.

Part 531, Subpart C and F: Special Pay Adjustments for Law Enforcement Officers and Locality-Based Comparability Payments. (Only to the extent necessary to allow Demonstration Project employees covered by broad banding to be treated as General Schedule employees and to allow basic rates of pay under the demonstration project to be treated as scheduled annual rates of pay.) (This waiver does not apply to FWS employees. This waiver does not apply to SL/ST employees who continue to be covered by these provisions, as appropriate.)

Part 536: All provisions pertaining to grade retention.

Part 536, Section 536.104: Pay Retention. (Only to the extent necessary to provide that pay retention does not apply to—(1) conversions from General Schedule special rates to Demonstration project pay and reallocations of Demonstration project pay rates within special rate extensions to locality adjusted pay rates due to promotions or general or locality pay increases, as long as the employee's total rate of pay is not reduced; and (2) reductions in basic pay due solely to the operation of the pay setting rules for geographic movement within the Demonstration Project.)

Part 550, Section 550.703: Severance Pay. (Modify the definition of "reasonable offer" by replacing "two grade or pay levels" with "one band level" and "grade or pay level" with "band level".) (This waiver does not apply to FWS employees.)

Part 550, Section 550.902, definition of "employee": Hazardous Duty Pay. (Only to the extent necessary to treat demonstration project employees covered by broad banding as General Schedule employees.) (This waiver does not apply to FWS and SL/ST employees.)

Part 575, Subparts A, B, C, and D: Recruitment Bonuses, Relocation Bonuses, Retention Allowances, and Supervisory Differentials. (Only to the extent necessary to allow employees and positions under the demonstration project covered by broad banding to be treated as employees and positions under the General Schedule.) (This waiver does not apply to FWS employees. This waiver does not apply to SL/ST employees who continue to be covered by these provisions, as appropriate.)

Part 591, Subpart B: Cost-of-Living Allowances and Post Differential-Nonforeign Areas. (To the extent necessary to allow demonstration project employees covered by broad banding to be treated as employees under the General Schedule.) (This waiver does not apply to FWS employees. This waiver does not apply to SL/ST employees who continue to be covered by these provisions, as appropriate.)

Part 752: Section 752.401(a)(3): To the extent necessary to exclude reductions in band level not accompanied by a reduction in pay taken under Chapter 43.

Part 752: Section 752.401(a)(4): Adverse Action. (Only to the extent necessary to provide that adverse action provisions do not apply to—(1) conversions from General Schedule special rates to Demonstration project pay and reallocations of Demonstration project pay rates within special rate extensions to locality adjusted pay rates due to promotions or general or locality pay increases, as long as the employee's total rate of pay is not reduced; and (2) reductions in basic pay due solely to the operation of the pay setting rules for geographic movement within the demonstration project.)

VI. Cost

The goal of this Demonstration Project is the implementation of a system in which payroll costs and resource utilization can be controlled consistent with the organization's larger fiscal strategies. This is especially critical in our industrially funded (DBOF) environment. The continued economic viability of the DBOF activities depends in large measure on controlling expenditures and remaining cost competitive with other organizations. This Demonstration Project proposes a system of pay incentives and processes that are flexible and can operate in harmony with the organization's operational needs and the financial needs of the larger organization. The costs of project implementation will be borne by the Divisions/sites.

Costs associated with the development of the Demonstration project include software automation, training and project evaluation. All funding will be provided through the Warfare Centers budget. Training costs will be approximately $192K per thousand employees. The timing of the expenditure will be site specific and dependent upon the implementation schedules. Because automation requirements will be minimized as a result of system similarities to existing Navy Demonstration Projects, costs are estimated at $100K for the first two years of project implementation. Evaluation costs are estimated at approximately $60K per year.

VII. Project Oversight and Management

Project oversight and management will be carried out by the Warfare Center's Executive Group, composed of the Commanders and Technical Directors of the two Warfare Centers. They will be assisted by the Demonstration Project Management Office and the Steering Committee. (See Figure 5)

The Steering Committee, chaired by a senior executive or senior Navy officer appointed by the Executive Group, is comprised of a senior member of each Division of the Warfare Centers, and a member from the American Federation of Government Employees, Metal Trades Council, International Association of Machinists, National Association of Government Employees, National Federation of Federal Employees, and Fraternal Order of Police. This group serves as an advisory body to the Executive Group which makes final decisions on the Demonstration Project proposal and implementation. The role of the Steering Committee is to aggregate and analyze incoming data from formal and informal evaluations and make recommendations. It may also include facilitating information sharing, mediating impasses, and promotion of partnership roles.

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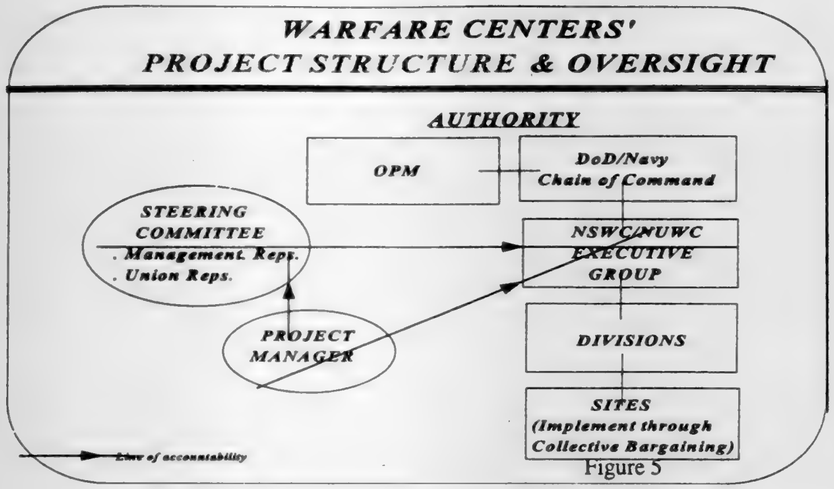

Figure 5

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Appendix A: Employee/Union Involvement Methodology

From the inception of the Naval Sea Systems Command Warfare Centers' Personnel Demonstration Project, employee involvement in crafting the Project Proposal was viewed as essential to producing a plan that considered the needs of all parties. National union representatives participated as members of the Steering Committee which developed the Personnel Demonstration Project Proposal and will be overseeing its implementation. While the process that produced the Project Proposal was a collaborative one, union participation did not necessarily constitute full and complete endorsement of all details of the Proposal.

At the Warfare Centers' various Divisions and sites, employees and unions are involved through a variety of communications strategies. Within the Divisions, communications teams composed of a cross section of the workforce have been formed for the purpose of disseminating information about the project as well as a focal point for employee questions. Further, Divisions are establishing groups or committees to help guide the implementation of the Project throughout the organization. This model of broad participation is envisioned to continue throughout the life of the Demonstration Project.

Unions Represented

Dahlgren, VA—American Federation of Government Employees
White Oak, MD—American Federation of Government Employees; Metal Trades Council
Panama City, FL—National Federation of Federal Employees
Crane, IN—American Federation of Government Employees; Fraternal Order of Police
Louisville, KY—International Association of Machinists & Aerospace Workers
Carderock, MD—Metal Trades Council; Federal Firefighters Association; Pattern Maker Association
Annapolis, MD—National Federation of Federal Employees
Philadelphia, PA—Metal Trades Council; Fraternal Order of Police; International Association of Firefighters
Ft. Lauderdale, FL—American Federation of Government Employees
Port Hueneme, CA—National Association of Government Employees; Federal Union of Scientists and Engineers
Indian Head, MD—American Federation of Government Employees; International Association of Firefighters; International Association of Machinists and Aerospace Workers
McAlester, OK—American Federation of Government Employees
Keyport, WA—Metal Trades Council
Newport, RI—National Association of Government Employees; Federal Union of Scientists and Engineers
New London, CT—National Association of Government Employees

Appendix B: Project Evaluation and Oversight

Intervention Impact Model—DOD Lab Demonstration Program

1. COMPENSATION

Intervention	Expected effects	Measures	Data sources
a. Broad banding	—Increased organizational flexibility.	—Perceived flexibility	—Attitude survey.
	—Reduced administrative workload, paperwork reduction.	—Actual perceived time savings	—Personnel office data, PME results, attitude survey.
	—Advanced in-hire rates	—Starting salaries of banded v. non-banded employees.	—Workforce data.

1. COMPENSATION—Continued

Intervention	Expected effects	Measures	Data sources
	—Slower pay progression at entry levels.	—Progression of new hires over time by band, career path.	—Workforce data.
	—Increased pay potential	—Mean salaries by band, career path, demographics.	—Workforce data.
	—Increased satisfaction with advancement.	—Employee perceptions of advancement.	—Attitude survey.
	—Increased pay satisfaction	—Pay satisfaction, internal/external equity.	—Attitude survey.
	—Improved recruitment	—Offer/acceptance ratios—Percent declinations.	—Personnel office data.
	—No change in high grade (GS–14) distribution.	—Number/percentage of high grade salaries pre/post banding.	—Workforce data.
b. Conversion buy-in	—Employee acceptance	—Employee perceptions of equity, fairness.	—Attitude survey.
		—Cost as a percent of payroll	—Workforce data.

2. PERFORMANCE MANAGEMENT

Intervention	Expected benefits	Measures	Data sources
a. Cash awards/bonuses	—Reward/motivate performance	—Perceived motivational power	—Attitude survey.
	—To support fair and appropriate distribution of awards.	—Amount and number of awards by career path, demographics.	—Workforce data.
		—Perceived fairness of awards	—Attitude survey.
		—Satisfaction with monetary awards.	—Attitude survey.
b. Performance/contribution based pay progression.	—Increased pay-performance link	—Perceived pay-performance link	—Attitude survey.
		—Perceived fairness of ratings	—Attitude survey.
	—Improved performance feedback	—Satisfaction with ratings	—Attitude survey.
		—Employee trust in supervisors	—Attitude survey.
		—Adequacy of performance feedback.	—Attitude survey.
	—Decreased turnover of high performers; increased turnover of low performers.	—Turnover by performance rating category.	—Workforce data.
	—Differential pay progression of high/low performers.	—Pay progression by performance rating category, career path.	—Workforce data.
	—Alignment of organizational and individual performance expectations and results.	—Linkage of performance expectations to strategic plans/goals; performance expectations; perceived involvement.	—Performance expectations, strategic plans; attitude survey/focus groups.
	—Increased employee involvement in performance planning and assessment.	—Performance management procedures.	—Attitude survey/focus groups; personnel regulations.
c. New appraisal process	—Reduced administrative burden	—Employee and supervisor perception of revised procedures.	—Attitude survey.
	—Improved communication	—Perceived fairness of process	—Focus group.
d. Performance development	—Better communication of performance expectations.	—Feedback and coaching procedures used.	—Focus groups.
	—Improved satisfaction and quality of workforce.	—Organizational commitment	—Attitude surveys.
		—Perceived workforce quality	—Attitude survey.

3. "WHITE COLLAR" CLASSIFICATION

Intervention	Expected effects	Measures	Data sources
a. Improved classification systems with generic standards.	—Reduction in amount of time and paper-work spent on classification.	—Time savings; reduction of paper work/number of personnel actions (classification/promotions).	—Personnel office data.
	—Ease of use	—Managers' perceptions of time savings, ease of use, improved ability to recruit.	—Attitude survey.
	—Improved recruitment of employees with appropriate skills.	—Perceived quality of recruits	—Focus groups/interviews.
		—GPA's of new hires, education levels.	—Personnel office data.

3. "WHITE COLLAR" CLASSIFICATION—Continued

Intervention	Expected effects	Measures	Data sources
b. Classification authority delegated to managers.	—Increased supervisory authority/accountability.	—Perceived authority	—Attitude survey.
	—Decreased conflict between management and personnel staff.	—Number of classification disputes/appeals pre/post.	—Personnel records.
		—Management satisfaction with service provided by personnel office.	—Attitude survey.
	—No negative impact on internal pay equity.	—Internal pay equity	—Attitude survey.
c. Dual career ladder	—Increased flexibility to assign employees.	—Assignment flexibility	—Focus groups, surveys.
		—Sup/non-sup ratios	—Workforce data.
	—Improved internal mobility	—Perceived internal mobility	—Attitude survey.
	—Increased pay equity	—Perceived pay equity	—Attitude survey.
	—Flatter organization	—Supervisory/non-supervisory ratios.	—Workforce data.
	—Improved quality of supervisory staff.	—Employee perceptions of quality of supervisors.	—Attitude survey.

4. STAFFING/RECRUITMENT

Intervention	Expected benefits	Measures	Data
Competitive examining and categorical grouping.	—Improved hiring process	—Management satisfaction with hiring process, time to hire, perceived quality of new hires.	—Attitude survey.
	—increased quality of hires	—GPA's of new hires, education levels.	—Personnel office data (from issue of Form 52 to referral of candidates).
	—Increased timeliness	—Time to fill positions	—Attitude survey.
	—No negative impact on fairness of process, openness to competition.	—Candidate/employee satisfaction.	

5. RIF

Intervention	Expected effects	Measures	Data sources
Modified RIF	—Prevent loss of high performing employees with needed skills.	—Separated employees by demographics, performance.	—Workforce data; attitude survey/focus groups.
	—Contain cost and disruption	—Satisfaction with RIF process	—Attitude survey/focus groups.
		—Cost comparisons of traditional v. modified RIF; time to conduct RIF; number of appeals/reinstatements.	—Rightsizing and documenting systems/personnel office/budget data.

6. COMBINATION OF ALL INTERVENTIONS

Intervention	Expected effects	Measures	Data sources
All	—Improved organizational effectiveness.	—Combination of personnel measures.	—All data sources.
	—Improved management of R&D workforce.	—Employee/management satisfaction.	—Attitude survey.
	—Improved planning	—Planning procedures	—Strategic planning documents.
	—Improved cross functional coordination.	—Perceived effectiveness of planning procedures.	—Attitude survey; organizational charts.
		—Actual/perceived coordination	—Attitude survey.
	—Increased product success	—Customer satisfaction	—Customer satisfaction surveys.
	—Cost of innovation	—Project training/development cost (staff salaries, contract cost, Training hours per employee).	—Demo project office records; contract documents.

7. CONTEXT

Intervention	Expected effects	Measures	Data sources
a. Regionalization	—Reduced servicing ratios/cost	—HR servicing ratios	—Attitude survey.
	—No negative impact on service quality.	—Average cost per employee served.	—Workforce data.
		—Service quality, timeliness	—Attitude survey/ focus groups.
b. GPRA	—Improved organizational performance.	—Other measures to be developed.	—As established.

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BILLING CODE 6325–01–P

Federal Register

Tuesday
February 25, 1997

Part V

Department of Health and Human Services

Food and Drug Administration

Prescription Drug Products; Certain Combined Oral Contraceptives for Use as Postcoital Emergency Contraception; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96N–0492]

Prescription Drug Products; Certain Combined Oral Contraceptives for Use as Postcoital Emergency Contraception

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Commissioner of Food and Drugs (the Commissioner) has concluded that certain combined oral contraceptives containing ethinyl estradiol and norgestrel or levonorgestrel are safe and effective for use as postcoital emergency contraception, and requests submission of new drug applications (NDA's) for this use. This notice is intended to encourage manufacturers to make this additional contraceptive option available.

ADDRESSES: Submit NDA's to the Food and Drug Administration, Center for Drug Evaluation and Research, Central Document Room, 12229 Wilkins Ave., Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Lisa D. Rarick, Center for Drug Evaluation and Research (HFD–580), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4260.

SUPPLEMENTARY INFORMATION:

I. Background

Combined oral contraceptives, which contain an estrogen and a progestin, were first approved in the United States in 1960 and in many other countries shortly thereafter. When taken daily for 3 weeks followed by a week without medication, these drugs provide effective contraception. They have become one of the most widely employed methods of pregnancy prevention, currently used by an estimated 11 million American women. In the period since the introduction of combined oral contraceptives, the amounts of estrogen and progestin have been reduced and explicit labeling guidance for safe use has been developed in response to extensive medical research. Consequently, combined oral contraceptives are now accepted as remarkably safe and effective when used as directed. There are more than 30 brands of FDA-approved oral contraceptives on the American market that contain estrogens and progestins. These products contain estrogens and progestins in different amounts and have some differences in labeling, but all are considered to be safe and effective.

For several decades, estrogens and progestins have also been used, either separately or in combination, to prevent pregnancy in women who have unprotected intercourse as a result of rape, contraceptive failure, or lack of planning. Such drugs, when used for this purpose, are known as emergency contraceptive pills, or postcoital pills, or morning-after pills.

The best researched regimen for emergency contraceptive pills was first described in 1974 by Professor A. Albert Yuzpe of Canada (Ref. 18). The regimen consists of two tablets, each tablet containing 0.05 milligram (mg) of ethinyl estradiol and 0.50 mg of norgestrel, taken within 72 hours after unprotected intercourse; a second identical dose is to be taken 12 hours after the first dose. When used in this manner, the treatment is 75 percent effective in preventing pregnancy.

This regimen and the very similar regimens described below are widely used. The specific regimen described by Yuzpe is approved for use by the drug regulatory agencies of the United Kingdom, Germany, Sweden, Switzerland, and New Zealand. The approved products used in this regimen contain ethinyl estradiol and, as the progestin, either norgestrel or levonorgestrel.

The Yuzpe regimen and similar regimens have been used extensively in the United States in the last two decades, even though no products are approved and labeled for this use. The drugs are prescribed by hospital emergency rooms, reproductive health clinics, and university health centers. They are also prescribed, although less widely, by physicians in private practice. On February 14, 1996, the Reproductive Health Technologies Project established a hotline number (1–800–584–9911) to inform women about this contraceptive method and about providers in their local area.

Since the United Kingdom approved emergency contraceptive pills in 1984, more than 4 million prescriptions have been recorded. However, the actual use is much greater because providers have found it less expensive to provide tablets of identical drugs taken from products packaged as combined oral contraceptives. The use of combined oral contraceptives for emergency contraception in the United States can only be estimated because they are not approved for this indication, but the results of a Kaiser Family Foundation survey reported at the June 28, 1996, meeting of FDA's Advisory Committee for Reproductive Health Drugs (the Advisory Committee) suggest that approximately 225,000 American women have used the method. A further indication of the extent of use is that over 25,000 calls were made to the hotline number (cited above) in the first 5 months of operation.

In November 1994, the Center for Reproductive Law & Policy filed a citizen petition asking FDA to require manufacturers of certain combined oral contraceptive products to amend their labeling and patient package inserts to include information regarding the use of these products for postcoital emergency contraception. Although FDA indicated that it had the authority to require that certain conditions of use be included in a product's labeling, it declined to exercise its discretion in this case to require the relabeling of these products for emergency contraception, and denied the petition. However, the agency decided to present the issue of the safety and effectiveness of combined oral contraceptives for postcoital emergency use to the Advisory Committee. The Advisory Committee met on June 28, 1996, to consider this issue and unanimously concluded that the four regimens below are safe and effective for postcoital emergency contraception. For the reasons described in section II. below, FDA agrees with this conclusion.

The four regimens for postcoital emergency contraception are as follows:

(1) For tablets that contain 0.05 mg of ethinyl estradiol and 0.50 mg of norgestrel, take 2 tablets within 72 hours after unprotected intercourse, then take 2 more tablets 12 hours after the first dose;

(2) For tablets that contain 0.03 mg of ethinyl estradiol and 0.30 mg of norgestrel, take 4 tablets within 72 hours after unprotected intercourse, then take 4 more tablets 12 hours after the first dose;

(3) For tablets that contain 0.03 mg of ethinyl estradiol and 0.15 of levonorgestrel, take 4 tablets within 72 hours after unprotected intercourse, then take 4 more tablets 12 hours after the first dose; and

(4) For tablets that contain 0.03 mg of ethinyl estradiol and 0.125 mg of levonorgestrel, take 4 tablets within 72 hours after unprotected intercourse, then take 4 more tablets 12 hours after the first dose.

The appendix to this notice provides information concerning the use of emergency contraceptive pills that might be useful to sponsors in drafting physician and patient labeling for these products for this use.

II. Discussion

A. Safety

Experience with the approved products in Europe and New Zealand has demonstrated the regimens to be safe. At the Advisory Committee's June 28, 1996, meeting, Elizabeth Barden presented information from the British Medicines Control Agency that only six serious adverse reactions associated with these products for this use were reported to it from 1984 to 1996. Of these, only one occurred close enough to the time of administration to indicate that the reaction might be drug related.

Emergency contraceptive pills are not effective if the woman is pregnant; they act by delaying or inhibiting ovulation, and/or altering tubal transport of sperm and/or ova (thereby inhibiting fertilization), and/or altering the endometrium (thereby inhibiting implantation). Studies of combined oral contraceptives inadvertently taken early in pregnancy have not shown that the drugs have an adverse effect on the fetus, and warnings concerning such effects were removed from labeling several years ago. There is, therefore, no evidence that these drugs, taken in smaller total doses for a short period of time for emergency contraception, will have an adverse effect on an established pregnancy.

B. Effectiveness

There are numerous published articles that support the effectiveness of oral contraceptive pills for emergency use (Refs. 1, 3, 4, 7 through 14, 16 and 18 through 21). In 1996, Trussell, Ellertson, and Stewart reported a meta-analysis of 10 published articles on clinical trials of emergency contraceptive pills in which the number of pregnancies among women with regular menstrual cycles who used emergency contraception was compared to the expected number of pregnancies based on the cycle day of intercourse and published estimates of conception probabilities by cycle day (Ref. 9). Defining effectiveness as the percent reduction in the likelihood of pregnancy occurring, the authors found a range of effectiveness of 55.3 percent to 94.2 percent, with an average effectiveness of 74.0 percent. In other words, if 100 women have unprotected intercourse once during the second or third week of their menstrual cycle, about 8 will become pregnant, but if the same women use emergency contraception after intercourse, only 2 will become pregnant.

III. References

The following references have been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Bagshaw, S. N., D. Edwards, and A. K. Tucker, "Ethinyl Oestradiol and D-Norgestrel Is an Effective Emergency Postcoital Contraceptive: A Report of Its Use in 1,200 Patients in a Family Planning Clinic," *Australian and New Zealand Journal of Obstetrics and Gynecology*, 28:137–140, 1988.

2. Delbanco, S., "1995 Kaiser Family Foundation Surveys on Emergency Contraceptive Pills: Knowledge and Attitudes among American Adults and Obstetrician/Gynecologists," Testimony before the FDA Reproductive Health Drugs Advisory Committee, June 28, 1996.

3. Fasoll, M., F. Parazzini, G. Cecchetti, and C. La Vecchia, "Post-coital Contraception: An Overview of Published Studies," *Contraception*, 39:459–468, 1989.

4. Glasier, A., "Postcoital Contraception," *Reproductive Medicine Review*, 2:75–84, 1993.

5. Glasier, A., et al., "Mifepristone (RU486) Compared with High-Dose Estrogen and Progestogen for Postcoidal Emergency Contraception," *New England Journal of Medicine*, 327:1041–1044, 1992.

6. Haspels, A. A., and M. R. Van Santen, "New Aspects in Post-coital Contraception," in "Future Aspects in Contraception," edited by B. Runnebaum, T. Rabe, and L. Kiesel, MTP Press Limited, Boston, 1985.

7. Ho, P. C., and M. S. W. Kwan, "A Prospective Randomized Comparison of Levonorgestrel with the Yuzpe Regimen in Post-coital Contraception," *Human Reproduction*, 8:389–392, 1993.

8. Percival-Smith, R. K. L., and B. Abercrombie, "Postcoital Contraception with dl-Norgestrel/Ethinyl Estradiol Combination: Six Years Experience in a Student Medical Clinic," *Contraception*, 36:287–293, 1987.

9. Trussell, J., C. Ellertson, and F. Stewart, "The Effectiveness of the Yuzpe Regimen of Emergency Contraception," *Family Planning Perspectives*, 28:58–87, 1996.

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12. Tully, B., "Postcoital Contraception—A Study," *British Journal of Family Planning*, 8:119–124, 1983.

13. Van Look, P. F. A., and H. von Hertzen, "Emergency Contraception," *British Medical Bulletin*, 49:158–170, 1993.

14. Van Santen, M. R., and A. Haspels, "Interception II: Postcoital Low-Dose Estrogens and Norgestrel Combination in 633 Women," *Contraception*, 31:275–293, 1985.

15. Webb, A., "Safety and Medical Contraindications," in "The Provision of Emergency Hormonal Contraception," edited by D. Paintin, ch. 4, RCOG Press, London, 1995.

16. Webb, A., J. Russell, and M. Elstein, "Comparison of Yuzpe Regimen, Danazol, and Mifepristone (RU486) in Oral Postcoital Contraception," *British Medical Journal*, 305:927–931, 1992.

17. Webb, A., and D. Taberner, "Clotting Factors After Emergency Contraception," *Advances in Contraception*, 9:75–82, 1993.

18. Yuzpe, A. A., et al., "Post Coital Contraception—A Pilot Study," *Journal of Reproductive Medicine*, 13:53–58, 1974.

19. Yuzpe, A. A., R. Percival Smith, and A. Rademaker, "A Multicenter Clinical Investigation Employing Ethinyl Estradiol Combined With dl-Norgestrel as a Postcoital Contraceptive Agent," *Fertility and Sterility*, 37:508–513, 1982.

20. Yuzpe, A. A., and W. J. Lancee, "Ethinylestradiol and dl-Norgestrel as a Postcoital Contraceptive," *Fertility and Sterility*, 28:932–936, 1977.

21. Zuliani, G., U. F. Colombo, and R. Molla, "Hormonal Postcoital Contraception with an Ethinylestradiol-Norgestrel Combination and Two Danazol Regimens," *European Journal of Obstetrics & Gynecology and Reproductive Biology*, 37:253–260, 1990.

IV. Conclusions

The Commissioner has concluded that combined oral contraceptives, taken initially within 72 hours of unprotected intercourse and providing a total of 0.10 or 0.12 mg of ethinyl estradiol and 0.50 or 0.60 mg of levonorgestrel in each of 2 doses separated by 12 hours, are safe and effective for use as postcoital emergency contraception. The Commissioner bases this conclusion on FDA's review of the published literature concerning this use (listed above), FDA's knowledge of the safety of combined oral contraceptives as currently labeled, and on the unanimous conclusion that these regimens are safe and effective made by the agency's Advisory Committee for Reproductive Health Drugs at its June 28, 1996, meeting. Because such combined oral contraceptives have not been labeled for this use or this dosage regimen, the Commissioner finds that these products are new drugs as defined in section 201(p)(1) and (p)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)(1) and (p)(2)). Accordingly, approved NDA's are required as a condition of marketing.

FDA is prepared to accept NDA's for combined oral contraceptives appropriately labeled for use as postcoital emergency contraception under section 505(b)(2) of the act (21 U.S.C. 355(b)(2)) and part 314 (21 CFR part 314). Because of the publicly available safety and effectiveness data documenting the drugs' use, the safety and effectiveness requirements of § 314.50 may be met by citing the

published literature listed in the references in section III. of this document. The Commissioner advises that it is unnecessary to submit copies and reprints of the data cited in section III. of this document. Both the safety and effectiveness data upon which the Commissioner bases the above conclusions and the minutes of the Advisory Committee meeting are on file for public inspection in the Dockets Management Branch (address above). The Commissioner invites applicants to submit any other pertinent studies and literature of which they are aware.

Dated: February 20, 1997.

David A. Kessler,

Commissioner of Food and Drugs.

Appendix

Use of Emergency Contraceptive Pills (ECP's)

ECP's consist of two doses of regular birth control pills containing estrogen and progestin. Taking ECP's provides a **short, strong, burst** of hormone exposure. Depending on where you are in your cycle and when you had unprotected intercourse, using ECP's may prevent ovulation, disrupt fertilization, or inhibit implantation of a fertilized egg in the uterus.

How To Use ECP's

The oral contraceptive pills that can be used as ECP's are listed below. **Take only one type of pill,** not all of them. For example, if you use Ovral, you do not need Nordette. If you are getting your ECP's from a regular pack of birth control pills containing 28 pills (1 for every day), remember that the last 7 (green or pink) pills do not contain any hormones.

Brand Name	Pill Color	Number of pills to swallow within 72 hours after unprotected sex	Number of pills to swallow 12 hours later
Ovral	white	2	2
Lo/Ovral	white	4	4
Nordette	light orange	4	4
Levlen	light orange	4	4
Triphasil	yellow	4	4
Tri-Levlen	yellow	4	4

1. Swallow the first dose no later than 72 hours after having unprotected sex. Remember that the second dose must be taken 12 hours after the first dose. Taking the first dose at 3 p.m. would mean taking the second dose at 3 a.m. So take the first dose at a time that will make it convenient to take the second dose 12 hours later.

2. Swallow the second dose 12 hours after taking the first dose. **Do not** swallow any extra ECP's. More pills will probably not decrease the risk of pregnancy any further and will increase the risk of nausea.

Side Effects of ECP's

About half the women who take ECP's have temporary nausea. It is usually mild and should stop in a day or so. The risk of nausea may be reduced if you take a long-acting nonprescription antinausea medicine (such as meclizine) 30 minutes to 1 hour before taking each of the two doses of ECP's. About 20 percent of women who take ECP's vomit. If you vomit within an hour after taking either dose of ECP's, call your clinician to discuss whether to repeat that dose or to take antinausea medicine.

Before Taking ECP's

If you think you might have gotten pregnant last month, see your clinician before taking ECP's. Early pregnancy symptoms can include breast tenderness, nausea, or a previous period that was not quite normal.

If you have a serious medical problem, talk to your clinician before using ECP's.

After Taking ECP's

Your next menstrual period may start a few days earlier or later than usual. If your period does not start within 3 weeks, see your clinician for an exam and pregnancy test. If ECP's fail, or if you were already pregnant when you took ECP's, the fetus would be exposed to hormones. Studies of women who continued to take birth control pills after they unknowingly became pregnant do not show any evidence of harm to the fetus.

ECP's may not prevent an ectopic pregnancy (in the tubes or abdomen). Ectopic pregnancy is a medical emergency. In ectopic pregnancies, spotting and cramping pain usually begin shortly after the first missed menstrual period. See your clinician immediately if you experience these symptoms.

After taking ECP's, get started as soon as you possibly can with a method of birth control you will be able to use every time you have sex. ECP's are meant for one-time, emergency protection. ECP's are not as effective as other forms of birth control. If you want to start or resume use of birth control pills after taking ECP's, consult your clinician. Protect yourself from Acquired Immune Deficiency Syndrome (AIDS) and other sexual infections as well as pregnancy. Use condoms every time you have sex if you think you may be at risk.

Source: Adapted (with permission) from Trussell, J., F. Stewart, F. Guest, and R. A. Hatcher, "Emergency Contraceptive Pills: A Simple Proposal To Reduce Unintended Pregnancies," *Family Planning Perspectives*, 24:269–273, 1992.

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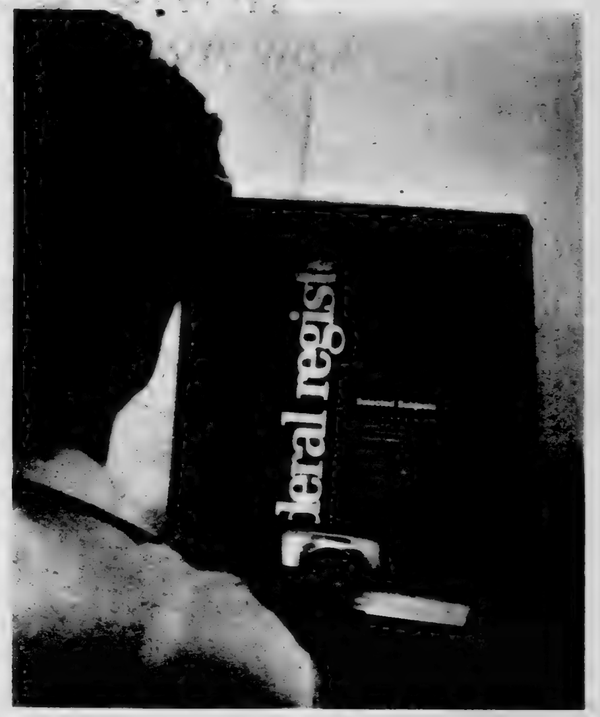

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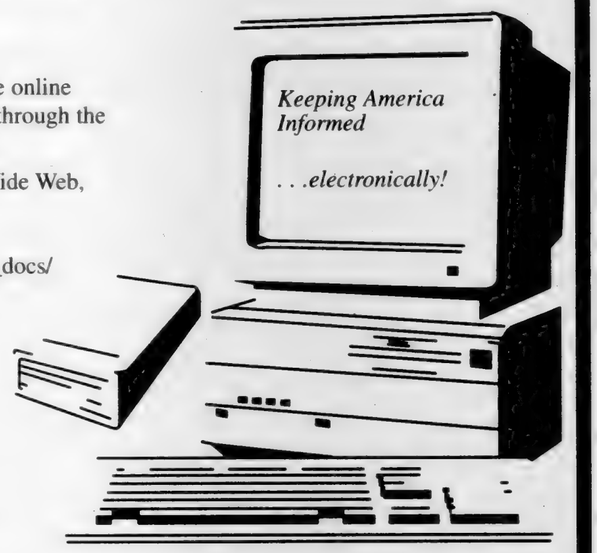

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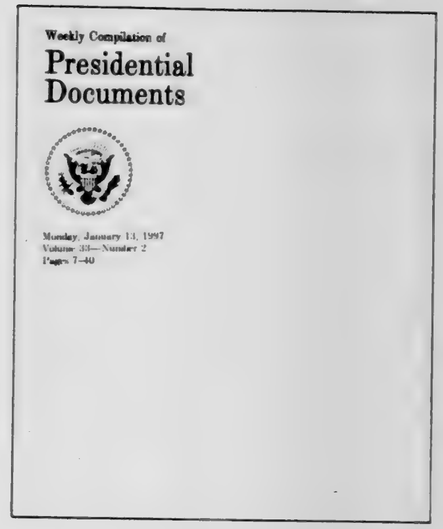
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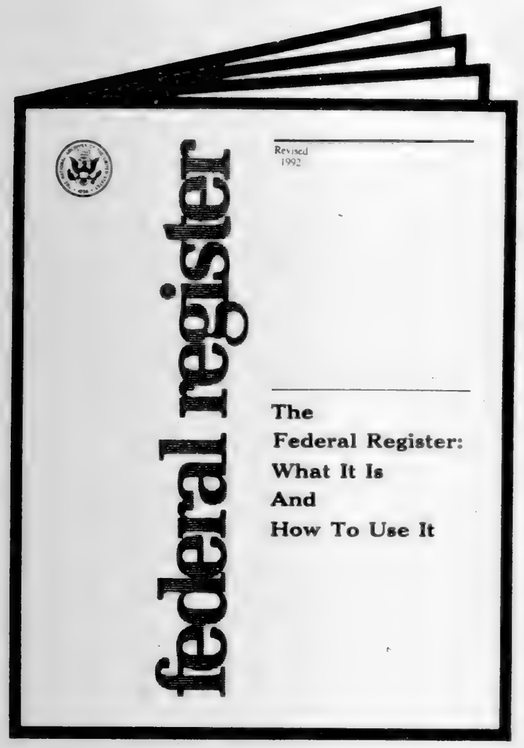

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Wednesday, February 26, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–71–AD; Amendment 39–0945; AD 97–05–01]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–200, –300, and –400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–200, –300, and –400 series airplanes, that requires repetitive inspections to detect cracking of the front spar web of the center section of the wing, and repair, if necessary. This amendment is prompted by reports of fatigue cracking found in the front spar web. The actions specified by this AD are intended to prevent the leakage of fuel into the forward cargo bay, as a result of fatigue cracking in the front spar web, which could result in a potential fire hazard.

DATES: Effective April 2, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 2, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tamara Dow, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227–2771; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747–200, –300, and –400 series airplanes was published in the **Federal Register** on November 18, 1996 (61 FR 58669). That action proposed to require repetitive HFEC inspections to detect cracking of the front spar web along the tangent point of the pocket fillet radii., and repair, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

Three commenters support the proposed AD.

Request to Extend Initial Compliance Time

One commenter requests that the proposal be revised to extend the compliance time for the initial inspection from the proposed 12 months to 18 months. The commenter requests this extension so that affected operators will be able to perform the inspection during a regularly scheduled maintenance visit. The extent of the work involved in the proposed inspection, and any necessary repair, cannot be accomplished at a line station, but must be accomplished when the airplane would be located at a main base where special equipment and trained personnel would be readily available. The commenter states that the adoption of the proposed compliance time of 12 months would require operators to schedule special times for the accomplishment of the inspection, at additional expense and downtime.

Further, this commenter states that the wing center section front spar web is inspected currently on some affected airplanes under the Supplemental Structural Inspection Document (SSID) program, which was mandated most recently by AD 94–15–18, amendment 39–8989 (59 FR 41233, August 11, 1994). There have been no reports of cracks found in this front spar web area during these required inspections. Additionally, the commenter states that, since June 1995, at least 3 airplanes in its fleet have undergone either NDT or visual inspections, and no cracks or other problems were found on the subject front spar web. The commenter requests that the FAA take this experience into consideration and extend the proposed compliance threshold as requested.

The FAA does not concur. Leakage of fuel into the forward cargo bay, as a result of fatigue cracking in the front spar web, is a significant safety issue, and the FAA has determined that the inspection threshold, as proposed, is warranted. The FAA considered not only these safety issues in developing an appropriate compliance time for this action, but the recommendations of the manufacturer, the availability of any necessary repair parts, and the practical aspect of accomplishing the required inspection within an interval of time that parallels normal scheduled maintenance for the majority of affected operators.

The FAA points out that the manufacturer recommended that the inspections begin within 18 months after the release of Boeing Service Bulletin 747–57A2298, Revision 1, on September 12, 1996; that interval corresponds to most operators' scheduled "C" checks. The FAA took this recommendation into account, as well as the time that would be necessary to complete the rulemaking process, and found that a 12-month initial compliance time should fall well within the time that the majority of operators have regular maintenance visits scheduled.

As for the results of inspections previously performed on the affected area, the FAA points out that this AD action was based on reports from two operators who did find cracking in the wing center section front spar web on at least three airplanes; the longest crack found was 17 inches. While those cracks were found on Model 747–100 series airplanes, the FAA maintains that similar cracking is likely to develop on Model 747–200, –300, and –400 series airplanes up to line number 744 because those models have the same web thickness and similar loading as the Model 747–100.

In light of these factors, the FAA has determined that the 12-month initial compliance time, as proposed, is appropriate. The FAA points out that, if operators already have accomplished the initial inspection within the last 12 months prior to the effective date of the AD, they are given "credit" for that inspection as compliance with the initial inspection requirement of the AD. The final rule has been revised to clarify this point.

Request To Extend Repetitive Inspection Intervals

One commenter requests that the proposal be revised to extend the repetitive inspection interval from the proposed 1,400 cycles to 2,000 cycles. The commenter, a U.S. operator, states that it already has inspected several of the airplanes in its fleet and has found no cracking. In addition, the commenter points out that the inspection area will be visually inspected at regular intervals to detect corrosion as part of the Boeing 747 Corrosion Prevention and Control Program, which was mandated by AD 90–25–05, amendment 39–6790 (55 FR 49268, November 27, 1990).

The FAA does not concur, since the commenter provided no technical justification for an extension. The repetitive interval of 1,400 cycles is based on damage tolerance and crack growth analyses that the manufacturer performed. Additionally, the interval was calculated based on accomplishing high frequency eddy current (HFEC) inspections, and the effectiveness of those inspections in detecting cracking. The FAA acknowledges that visual inspections to detect corrosion of the area are mandated by AD 90–25–05; however, the HFEC inspections required by this AD will provide a much higher level of precision than visual inspections, and will be able to detect cracking far earlier than could be discovered by visual inspections alone.

Request To Revise Method of Counting Accumulated Cycles

One commenter requests that the proposal be revised to include a provision specifying that pressurization cycles of 2.0 psi or less need not be counted as a flight cycle when determining the number of flight cycles relative to the proposed compliance thresholds. The commenter states that cabin pressure is the main contributor to stresses in the center section front spar web, but a cabin pressure of 2.0 psi would result in stresses of less than one-fourth the normal operating level. Further, with a maximum cabin pressure at 2.0 psi, the fatigue damage per cycle would be reduced by a factor of approximately 100.

The FAA does not concur with the commenter's request. The FAA considers that flights with less than 2.0 psi cabin pressure may contribute a negligible amount of fatigue damage to the front spar web of the wing center section. However, a pressurization cycle of 2.0 psi or less is a typical pressure used during flight training, and is not typical of normal operation of the affected airplanes. The FAA does not consider it appropriate to include various provisions in an AD applicable to a unique use of an affected airplane. Paragraph (e) of this final rule provides for the approval of alternative methods of compliance to address these types of unique circumstances.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the one change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 485 Model 747–200, –300, and –400 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 105 airplanes of U.S. registry will be affected by this AD, that it will take approximately 48 work hours per airplane to accomplish the required inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $302,400, or $2,880 per airplane, per inspection.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–05–01 Boeing: Amendment 39–9945. Docket 96–NM–71–AD.

Applicability: Model 747–200, –300, and –400 series airplanes, up to and including line number 744, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the leakage of fuel into the forward cargo bay through fatigue cracks in the front spar web, which could result in a potential fire hazard, accomplish the following:

(a) Perform a high frequency eddy current (HFEC) inspection to detect cracking of the front spar web of the center section of the wing, in accordance with Boeing Alert Service Bulletin 747–57A2298, Revision 1, dated September 12, 1996, at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For airplanes that have accumulated 12,000 to 17,999 total landings as of the effective date of this AD: Perform the initial inspection within 12 months after the effective date of this AD, unless previously accomplished within the last 12 months. Perform this inspection again prior to the accumulation of 18,000 total landings or within 1,400 landings, whichever occurs later; after accomplishing the initial inspection, and thereafter at intervals not to exceed 1,400 landings.

(2) For all other airplanes: Perform the initial inspection prior to the accumulation of 18,000 total landings or within 12 months after the effective date of this AD, whichever occurs later. Repeat this inspection thereafter at intervals not to exceed 1,400 landings.

(b) Except as provided by paragraph (c) of this AD, if any cracking is detected during an inspection required by paragraph (a) of this AD, prior to further flight, repair in accordance with paragraph (b)(1) or (b)(2) of this AD, as applicable. Thereafter repeat the HFEC inspection required by paragraph (a) of this AD at intervals not to exceed 1,400 landings.

(1) If any vertical crack is found that is less than 10 inches in length, repair in accordance with Boeing Alert Service Bulletin 747–57A2298, Revision 1, dated September 12, 1996.

(2) If any vertical crack is found that is 10 inches or greater in length; or if any crack is found that has extended in a diagonal direction (regardless of length); or if any crack is found that would affect an existing repair; repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(c) In lieu of accomplishing the procedures specified in paragraph (b) of this AD: If a crack in the front spar web is detected during an HFEC inspection required by paragraph (a) of this AD, prior to further flight, operators may accomplish the procedures for an optional HFEC inspection to confirm cracking, as described in paragraph III.D.2. of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2298, Revision 1, dated September 12, 1996.

(1) If this optional inspection is accomplished and cracking is not confirmed, thereafter repeat the HFEC inspection specified in paragraph (a) of this AD at intervals not to exceed 1,400 landings.

(2) If this optional inspection is accomplished and confirms cracking, prior to further flight, repair the cracking in accordance with paragraph (b)(1) or (b)(2) of this AD, as applicable.

(d) For airplanes that are required to perform an initial HFEC inspection in accordance with paragraph (a)(1) of this AD: Within 30 days after accomplishing the initial inspection, submit a report of inspection results, negative or positive, that includes the information identified in paragraphs (d)(1) through (d)(5) of this AD, to the Manager, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; fax (206) 227–1181. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) Airplane serial number.

(2) Total number of landings accumulated.

(3) Total number of hours time-in-service accumulated.

(4) Location, size and orientation of each crack.

(5) Whether fuel leakage resulted from the crack.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The actions shall be done in accordance with Boeing Alert Service Bulletin 747–57A2298, Revision 1, dated September 12, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on April 2, 1997.

Issued in Renton, Washington, on February 19, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–4555 Filed 2–25–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–51–AD; Amendment 39–9946; AD 97–05–02]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain EMBRAER Model EMB–120 series airplanes, that requires removal of the upper channel fairings and their shims; and rework of the riveting holes, the aileron sealing canvas (aerodynamic seals), and the protective covers of the trim tab hinge fittings of the aileron and elevator. This amendment is prompted by reports of binding of the aileron due to water freezing between the upper channel fairings and the surface of the leading edge of the aileron. The actions specified by this AD are intended to prevent water from freezing these areas, which could result in binding of the aileron and subsequent reduced controllability of the airplane.

DATES: Effective April 2, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 2, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Embraer, Empresa Brasileira De Aeronautica S/A, Sao Jose Dos Campos, Brazil. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Curtis Jackson, Aerospace Engineer, Airframe Branch, ACE–117A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7358; fax (404) 305–7348.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal

Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–120 series airplanes was published in the **Federal Register** on May 22, 1995 (60 FR 27056). That action proposed to require removal of the upper channel fairings and their shims; and rework of the riveting holes, the aileron sealing canvas (aerodynamic seals), and the protective covers of the trim tab hinge fittings of the aileron and elevator.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request to Reference Additional Service Information

The only commenter, a U.S. operator, supports the proposal, but requests that it be revised to reference EMBRAER Service Bulletin 120–57–0021, Change 2, dated March 8, 1996, as an appropriate source of service information. This change to the service bulletin revises Change 1, which was referenced in the proposal, by including additional rework instructions and correcting a reference to the Structural Repair Manual.

The FAA concurs. The FAA finds that accomplishment of the actions in accordance with either Change 1 or Change 2 of the EMBRAER service bulletin will provide an acceptable level of safety and meet the intent of this AD action. The final rule has been revised to reference both service documents. Operators who already have accomplished the actions in accordance with Change 1 will not have to perform any additional work.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 263 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. The cost for required parts is expected to be negligible. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $157,800, or $600 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–05–02 Embraer: Amendment 39–9946. Docket 95–NM–51–AD.

Applicability: Model EMB–120 series airplanes; as listed in EMBRAER Service Bulletin No. 120–57–0021, Change 2, dated March 8, 1996; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent binding of the aileron and subsequent reduced controllability of the airplane, accomplish the following:

(a) Within 3,000 hours time-in-service after the effective date of this AD, remove the upper channel fairings and their shims; and rework the riveting holes, the aileron sealing canvas (aerodynamic seals), and the protective covers of the trim tab hinge fittings of the aileron and elevator; in accordance with EMBRAER Service Bulletin No. 120–57–0021, Change 1, dated September 10, 1993; or Change 2, dated March 8, 1996.

(b) As of the effective date of this AD, no person shall install any aileron sealing canvas having part number (P/N) 120–08130–001, 120–08131–001, or 120–08132–001, on any airplane unless that canvas has been reworked in accordance with EMBRAER Service Bulletin No. 120–57–0021, Change 1, dated September 10, 1993; or Change 2, dated March 8,1996.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The actions shall be done in accordance with EMBRAER Service Bulletin No. 120–57–0021, Change 1, dated September 10, 1993; or EMBRAER Service Bulletin No. 120–57–0021, Change 2, dated March 8, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Embraer, Empresa Brasileira De Aeronautica S/A, Sao Jose Dos Campos, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on April 2, 1997.

Issued in Renton, Washington, on February 19, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–4553 Filed 2–25–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 97–CE–07–AD; Amendment 39–9947; AD 97–05–03]

RIN 2120–AA64

Airworthiness Directives; AlliedSignal Avionics, Inc. Models GNS–XLS or GNS–XL Flight Management Systems

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all owners/operators of aircraft equipped with AlliedSignal Avionics Inc. (AlliedSignal) Models GNS–XLS or GNS–XL global positioning systems (GPS) Flight Management Systems. This action requires inserting a limitation into the Airplane Flight Manual (AFM) or Flight Manual Supplement Limitations Section prohibiting the use of these AlliedSignal GPS units on previously published non-precision approaches. This action is prompted by recent reports of flight course deviations because of erroneous information provided by the GPS Flight Management System. The actions specified by this AD are intended to prevent deviation from an intended flight path during a non-precision approach to an airport.

DATES: Effective March 18, 1997.

Comments for inclusion in the Rules Docket must be received on or before April 18, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 97–CE–07–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Jose Flores, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4133, facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

AlliedSignal recently notified the FAA that their global positioning system (GPS) Flight Management System Models GNS–XLS and GNS–XL are malfunctioning. The AlliedSignal Models GNS–XLS and GNS–XL are used to determine the flight course of an airplane for previously published non-precision approaches to an airport. The GPS flight management system is integrated into the software of the flight management system recorder (black box) in the airplane. These GNS–XLS and GNS–XL GPS can be installed on, but are not limited to the following airplanes:

Manufacturer	Models
British Aerospace, Ltd. (BAe).	146–100A and 146–200A.
Cessna Aircraft Corporation.	525, 550, and 560.
Dausault Aviation	Mystere-Falcon 20 and 50.
Avions Marcel Dassault	Falcon 10.
Gulfstream Aerospace	G–1159 (G–II) and G–1159A (G–III).
Raytheon Corporate Jets	Hawker 800.
Israel Aircraft Industries, Ltd.	1124.
Sabreliner Corporation	NA–65.
Learjet Inc	35.
Jetstream Aircraft Ltd	4101.

Problems arose with these GPS flight management systems units after an installation of a GNS–XLS unit for certification in a Cessna Model 550 airplane. During this flight certification, the AlliedSignal Model GNS–XLS GPS provided erroneous information to the Flight Management System which caused the airplane to deviate from the previously published non-precision approach. Further investigation with flight tests on other airplane models confirmed this software malfunction. The manufacturer conducted bench tests on these models, and was also successful in duplicating the deviation occurring within the GPS flight management software while it is used in a previously published non-precision approach situation. The tests also showed that this malfunction is only randomly occurring approximately 20 percent of the time.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, including the relevant service information, the FAA has determined that AD action should be taken to prevent deviation of an intended flight path during a non-precision approach to an airport.

Explanation of the Provisions of the AD

Since an unsafe condition has been identified that is likely to exist or develop in other AlliedSignal Models GNS–XLS and GNS–XL GPS Flight Management Systems of the same type design, this AD requires inserting the following limitation into the Operations Limitations Section of the AFM or Flight Manual Supplement:

Operating Limitations

The GNS–XL (or GNS–XLS) is not approved for non-precision approaches.

Note

The GNS–XL (or GNS–XLS) may generate misleading information during non-precision GPS or Overlay approaches due to software limitations.

The FAA and AlliedSignal are currently working together toward an approved revision to the software problem on these GPS Flight Management System units.

Compliance Time of this AD

The compliance time of this AD is in calendar time instead of hours time-in-service (TIS). The average daily usage of the affected airplanes will have different ranges throughout the fleets. For example, one owner may operate the airplane 5 hours TIS in one day, while another operator may operate the airplane 5 hours TIS in one week. In order to ensure that all of the owners/operators of the affected airplanes have the chance to insert the limitation into the operating limitations of their Airplane Flight Manual or Flight Manual Supplement within a reasonable amount of time, the FAA is setting a compliance time of within the next 5 days after the effective date of this AD.

Determination of the Effective Date of the AD

Since a situation exists (misleading flight course information to the pilot during non-precision approaches) that requires the immediate adoption of this regulation, it is found that notice and opportunity for public prior comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements

affecting immediate flight safety and, thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–CE–07–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

97–05–03 ALLIEDSIGNAL AVIONICS INC.: Amendment 39–9947; Docket No. 97–CE–07–AD.

Applicability: Models GNS–XLS and GNS–XL global positioning systems, part numbers (P/N) 17960–0102–XXXX and P/N 18355–0101–XXXX respectively, installed on, but not limited to the following airplanes, certificated in any category.

Manufacturer	Models
British Aerospace, Ltd. (BAe).	146–100A and 146–200A.
Cessna Aircraft Corporation.	525, 550, and 560.
Dausault Aviation	Mystere-Falcon 20 and 50.
Avions Marcel Dassault	Falcon 10.
Gulfstream Aerospace	G–1159 (G–II) and G–1159A (G–III).
Raytheon Corporate Jets	Hawker 800.
Israel Aircraft Industries, Ltd.	1124.
Sabreliner Corporation	NA–65.
Learjet Inc	35.
Jetstream Aircraft Ltd	4101.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 5 days after the effective date of this AD, unless already accomplished.

To prevent deviation of the intended flight path during a non-precision approach to an airport, accomplish the following:

(a) Insert the following limitation into the Operations Limitations Section of the Airplane Flight Manual (AFM) or Flight Manual Supplement:

Operating Limitations

The GNS–XL (or GNS–XLS) is not approved for non-precision approaches.

Note

The GNS–XL (or GNS–XLS) may generate misleading information during non-precision GPS or Overlay approaches due to software limitations.

(b) Inserting a copy of this AD into the Limitations section as described in paragraph (a) of this AD is considered compliance with the requirements of this AD.

(c) Incorporating the AFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

(d) An alternative method of compliance or adjustment of compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from Wichita Aircraft Certification Office.

(e) Copies of this AD may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment (39–9947) becomes effective on March 18, 1997.

Issued in Kansas City, Missouri, on February 19, 1997.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–4662 Filed 2–25–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Docket No. 96–ACE–20]

Amendment to Class E Airspace, Imperial, NE

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The direct final rule published on November 29, 1996 (61 FR 60525), amends the Class E airspace area at Imperial Municipal Airport, Imperial NE. The effect of that rule is to provide additional controlled airspace for aircraft executing the new Standard Instrument Approach Procedure (SIAP) at Imperial Municipal Airport. This document confirms the effective date of that rule.

EFFECTIVE DATE: March 27, 1997.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Operations Branch, ACE–530C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published the direct final rule with a request for comments in the **Federal Register** on November 29, 1996, (61 FR 60525). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. The direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on March 27, 1997. No adverse comments were received, and thus this document confirms that the final rule will become effective on that date.

Issued in Kansas City, MO, on January 29, 1997.

Charles R. Raymond,

Acting Manager, Air Traffic Division Central Region.

[FR Doc. 97–3748 Filed 2–25–97; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–ACE–19]

Amendment to Class E Airspace, Olathe, KS; Correction

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the state identifier, geographic coordinates, and navigational aid designation of a final rule that was published in the **Federal Register** on November 19, 1996 (61 FR 58783), Airspace Docket No. 96–ACE–19. The Final Rule amended the Class E airspace area at Johnson County Executive Airport, Olathe, KS.

EFFECTIVE DATE: March 27, 1997.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Operations Branch, ACE–530C, Federal Aviation Administration, 601 E. 12th St., Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 96–29595, Airspace Docket No. 96–ACE–19, published on November 19, 1996 (61 FR 58783), revised the description of the Class E airspace area at Olathe, KS. An error was discovered in the state identifier, geographic coordinates and navigational aid designation for the Olathe, KS, Class E airspace area. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the Class E airspace area at Olathe, KS, as published in the **Federal Register** on November 19, 1996 (61 FR 58783), (Federal Register Document 96–29595; page 58784, column 1) is corrected to read as follows:

§ 71.71 [Corrected]

* * * * *

ACE KS E5 Olathe, KS [Corrected]

Johnson County Executive Airport, Olathe, KS
(lat. 38°50′51″N., long. 94°44′15″W.)
Johnson County VOR/DME
(lat. 38°50′26″N., long. 94°44′12″W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Johnson County Executive Airport and within 2.2 miles each side of the Johnson County VOR/DME 184° radial extending from the 6.4-mile radius to 7 miles south of the airport.

* * * * *

Issued in Kansas City, MO, on January 17, 1997.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division Central Region.

[FR Doc. 97–3749 Filed 2–25–97; 8:45 am]

BILLING CODE 4910–13–M

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1314

Book-Entry Procedures for TVA Power Securities Issued Through the Federal Reserve Banks; Correction

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the regulations which were published in the **Federal Register** on Tuesday, January 7, 1997 (62 FR 920). The regulations relate to the book-entry procedures for TVA power securities issued through the Federal Reserve Banks.

EFFECTIVE DATE: February 26, 1997.

FOR FURTHER INFORMATION CONTACT: Edward S. Christenbury at (423) 632–2241.

SUPPLEMENTARY INFORMATION:

Background

The regulations that are the subject of these corrections revised TVA's book-entry procedures to incorporate recent changes in commercial and property law and to bring them into accord with the revised book-entry procedures of the United States Department of the Treasury published in the **Federal Register** on August 23, 1996 (61 FR 43,626).

Need for Correction

As published, the regulations contain certain items which could be confusing and are in need of clarification.

Correction of Publication

Accordingly, the regulations (FR Doc. 97–228) as published on January 7, 1997, at 62 FR 920, are corrected as follows:

§ 1314.4 [Corrected]

1. On page 921, in the third column, in § 1314.4, paragraph (a)(1)(i), line one, the word "book-entry" is corrected to read "Book-entry".

§ 1314.5 [Corrected]

2. On page 922, in the first column, in § 1314.5, paragraph (a), lines five and six, the words "security account" are corrected to read "Security Account".

3. On page 922, in the first column, in § 1314.5, paragraph (b), line fifteen, the word "participant" is corrected to read "Participant".

§ 1314.6 [Corrected]

4. On page 922, in the second column, in § 1314.6, paragraph (a), line twenty, the words "security account" are corrected to read "Security Account".

5. On page 922, in the second column, in § 1314.6, paragraph (b)(2), line five, the words "security account" are corrected to read "Security Account".

§ 1314.8 [Corrected]

6. On page 922, in the third column, in § 1314.8, line fourteen, the word "number" is corrected to read "Number".

Dated: February 11, 1997.

John L. Dugger,

Assistant General Counsel.

[FR Doc. 97–4744 Filed 2–25–97; 8:45 am]

BILLING CODE 8120–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 12 and 113

[T.D. 97–9]

RIN 1515–AB97

Entry of Softwood Lumber Shipments From Canada

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim regulations; solicitation of comments.

SUMMARY: This document sets forth interim amendments to the Customs Regulations establishing additional entry requirements applicable to shipments of softwood lumber from Canada. The interim amendments involve the collection of certain additional information for purposes of monitoring and enforcing an agreement between the Governments of the United States and Canada regarding trade in softwood lumber.

DATES: Interim rule effective February 26, 1997; comments must be submitted by April 28, 1997.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, U.S. Customs Service, Franklin Court, 1301 Constitution Avenue, NW., Washington, DC 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, Franklin Court, 1099 14th Street, NW., Suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gary Manes, Office of Field Operations (202–927–1133).

SUPPLEMENTARY INFORMATION:

Background

On May 29, 1996, the United States entered into the Softwood Lumber Agreement (the Agreement) with Canada under the authority of section 301(c)(1)(D) of the Trade Act of 1974, as amended (19 U.S.C. 2411(c)(1)(D)), which authorizes the United States Trade Representative (the USTR) to "enter into binding agreements" with a foreign country that commit the foreign country to, *inter alia*, eliminate any burden or restriction on U.S. commerce resulting from an act, policy or practice of the foreign country. The Agreement, which went into effect on April 1, 1996, was specifically intended to provide a satisfactory resolution to certain acts, policies and practices of the Government of Canada affecting exports to the United States of softwood lumber which had been the subject of an investigation initiated by the USTR under section 302(b)(1)(A) of the Trade Act of 1974, as amended (19 U.S.C. 2412(b)(1)(A)), and which on October 4, 1991, pursuant to section 304(a) of the Trade Act of 1974, as amended (19 U.S.C. 2414(a)), had been found by the USTR to be unreasonable and to burden or restrict U.S. commerce. The Agreement is the product of a consultative process established by the United States and Canada and involving the participation of the U.S. Government, Canadian federal and provincial governments and, where appropriate, industries and other interested parties in both countries.

The Agreement refers specifically to softwood lumber mill products classified in subheadings 4407.10.00, 4409.10.10, 4409.10.20, and 4409.10.90 of the Harmonized Tariff Schedule of the United States (HTSUS) that were "first manufactured" into a product of one of those HTSUS subheadings in the Canadian provinces of Ontario, Quebec, British Columbia or Alberta. The Agreement requires that Canada assess fees on exports of such softwood lumber in each of the five years following April 1, 1996, based on the following schedule: (1) For total shipments up to 14.7 billion board feet, free (no fee); (2) for any amount shipped in excess of 14.7 billion board feet but not in excess of 15.35 billion board feet, US$50 per thousand board feet in the first year and with annual adjustments for inflation in subsequent years; and (3) for any amount shipped in excess of 15.35 billion board feet, US$100 per thousand board feet and with annual adjustments for inflation in subsequent years. The Agreement also allows an additional amount of exports of such softwood lumber in excess of 14.7 billion board feet without the payment of a fee if the average price of a benchmark softwood lumber price exceeds a prescribed "trigger price" during any quarterly period. In order to control and monitor exports of softwood lumber first manufactured in Ontario, Quebec, British Columbia and Alberta, the Agreement provides that Canada will issue an export permit for each shipment of such softwood lumber and that Canada will collect any required fee for amounts of lumber exported in excess of 14.7 billion board feet upon issuance of the export permit.

The Agreement requires the collection of information by Canada in connection with the issuance of export permits for softwood lumber first manufactured in Ontario, Quebec, British Columbia and Alberta and the collection of information by the United States in connection with import transactions involving such lumber.

With regard to the import end, the Agreement obligates the United States to require that the U.S. importer provide specific information in connection with the entry of the lumber under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484). The information required to be collected under the Agreement includes the following three specific data elements which are not already required under the Customs laws and regulations, the last two of which are required by the Agreement to be collected as soon as practicable after the entry into force of the Agreement: (1) The province of first manufacture of the lumber; (2) the export permit number issued in Canada for the shipment; and (3) the fee status of the lumber for which the export permit was issued (whether the lumber in the shipment was attributed to a quantity to which no fee applies or to a quantity that is subject to the US$50 fee or to a quantity that is subject to the US$100 fee or to a quantity that is covered by the trigger price mechanism).

In order to facilitate monitoring of the Agreement and in order to ensure that Canadian exporters have obtained the appropriate permits, the Agreement also sets forth various cooperative measures which include the periodic exchange of export and import information collected by the two countries under the Agreement.

On June 5, 1996, the USTR published a notice in the **Federal Register** (61 FR 28626) setting forth its determination that the Agreement will be subject to the provisions of section 306 of the Trade Act of 1974, as amended (19 U.S.C. 2416), and that the USTR will monitor Canadian compliance with the Agreement pursuant to section 306 and will take action under section 301(a) of the Trade Act of 1974, as amended (19 U.S.C. 2411(a)), if Canada fails to comply with the Agreement. Noting that adherence to the terms of the Agreement is vital to the achievement of its objectives, and consistent with the authority conferred on the USTR by section 141 of the Trade Act of 1974, as amended (19 U.S.C. 2171), to coordinate and draw upon the resources of other Federal agencies in connection with the performance of functions of the USTR regarding the proper administration and execution of trade agreement programs (including those arising out of unfair trade practice cases), the notice stated that the USTR, the Department of Commerce, Customs, and other agencies as appropriate, will carefully monitor and vigorously enforce the Agreement and that, to that end, Customs will provide to the USTR and to the Department of Commerce the data that Customs collects on imports (including province of origin and the type of permit) of softwood lumber from Canada.

The purpose of this document is to provide an appropriate regulatory context for the new requirements resulting from the Agreement as discussed above. Since those requirements relate to a special class of imported products, Customs believes that it would be appropriate to add to Part 12 of the Customs Regulations (19 CFR Part 12) a new § 12.140 to cover the Agreement provisions at issue.

Paragraph (a) of new § 12.140 reflects the basic onus that the Agreement places on exports of Canadian softwood lumber that are subject to the export permit and fee requirements and, by implication, on the U.S. importer (see also the below discussion of the changes to the bond provisions of Part 113 of the regulations). These paragraph (a) provisions are necessary to ensure that the basic purpose of the Agreement (the collection of export fees on appropriate shipments) is achieved.

Paragraph (b) of new § 12.140 specifies the information required to be collected pursuant to the Agreement. With regard to data concerning province of first manufacture, the regulatory text provides for submission of such data for all entries of softwood lumber products from Canada (rather than only those products first manufactured in Ontario, Quebec, British Columbia, or Alberta) because, in order to effectively determine if lumber is being entered with a false claim of province or territory of first manufacture so as to contravene the terms of the Agreement, it is necessary to be able to compare the entered quantity of lumber not only to the productive capacity of the claimed province or territory of first manufacture but also to the productive capacity of other provinces or territories.

Paragraph (c) of new § 12.140 addresses the untimely issuance of export permit numbers by the Canadian Government. In recognition of the fact that processing or other procedural delays may arise in connection with the issuance of export permit numbers, this paragraph provides for up to 10 additional working days to file the entry summary documentation setting forth the information required under the Agreement if the Canadian Government has not issued the export permit number within the 10-day filing period prescribed in § 142.12(b) or § 142.23 of the regulations. If the export permit number is not issued within the maximum 20-working-day period allowed under this paragraph, the text requires that the entry summary documentation be filed on the next (21st) business day with surrogate information inserted in place of the actual data in the export permit number and export fee payment status fields. The use of surrogate information in such cases is only intended to enable the importer to effect an entry summary filing (in particular electronically) and thus does not absolve an importer from his other responsibilities under the regulatory texts implementing the Agreement. The provision in this paragraph regarding the additional 10-working-day period for filing the entry summary documentation is at this point intended to be a temporary measure, and the need for retaining this provision within the new regulatory texts will be reviewed by the United States no later than April 1, 1997, in the context of a review of the overall operation of the Agreement and the interim regulations set forth in this document.

Finally, as an interim arrangement, paragraph (d) of new § 12.140 provides that an importer is not required to declare the number or type of export permit issued by Canada with respect to softwood lumber products that are imported into Canada, processed in Canada, and then exported to the United States; surrogate information also would be used instead in such cases. This exception to the paragraph (b) requirements has been included because the Government of Canada has to date not agreed to issue export permits for such remanufactured products because it takes the position that they are not covered by the Agreement; it is the position of the U.S. Government that such products are covered by the Agreement. Discussions with the Government of Canada are ongoing to ensure that the export permit and other requirements of the Agreement will be applied to these remanufactured products, and the need for retaining this exception within the new regulatory texts also will be reviewed by the United States no later than April 1, 1997. The volume of imports of remanufactured lumber historically has been small and, as a practical matter, it is expected that any future imports of such products would only involve certain specialty items. Customs notes that for any import transaction in which this exception is applied, the U.S. importer must maintain, and make available for Customs review when requested, appropriate records to establish that the exception was properly applied to the imported product. The use of this exception will be closely examined by Customs, and any filing of false information regarding the applicability of this exception may give rise to the assessment of penalties under section 592 of the Tariff Act of 1930, as amended (19 U.S.C. 1592).

This document also includes amendments to § 113.62 of the Customs Regulations (19 CFR 113.62) which sets forth the basic importation and entry bond conditions and consequences of default thereof. These amendments involve: (1) The addition of a bond condition as new paragraph (k) to reflect the importer's obligation under paragraph (a) of new § 12.140; and (2) in redesignated paragraph (l) (formerly paragraph (k)), the addition of a new paragraph (5) to set forth the consequences of a default on the new paragraph (k) bond condition, which would be liquidated damages in an amount equal to the highest export fee provided for under the Agreement.

In consideration of the fact that the data required under the regulatory text set forth in this document is required for the entry of the subject merchandise, the interim "(a)(1)(A) list" published in the **Federal Register** on July 15, 1996 (61 FR 36956) pursuant to 19 U.S.C. 1509(a)(1)(A) will be modified accordingly.

Comments

Before adopting this interim regulation as a final rule, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Franklin Court, 1099 14th

Street, N.W., Suite 4000, Washington, DC.

Inapplicability of Notice and Delayed Effective Date Requirements

Pursuant to the provisions of 5 U.S.C. 553(a), public notice is inapplicable to this interim regulation because it is within the foreign affairs function of the United States. The collection of information provided for in this interim regulation is required under the terms of the Softwood Lumber Agreement with Canada and is necessary to ensure effective monitoring of the operation of that Agreement. Furthermore, for the same reasons and because the collection of this information is required to begin as soon as practicable after entry into force of the Softwood Lumber Agreement, it is determined that good cause exists under the provisions of 5 U.S.C. 553(d)(3) for dispensing with a delayed effective date.

Executive Order 12866

Because this document involves a foreign affairs function of the United States and implements an international agreement, it is not subject to the provisions of E.O. 12866.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1515–0065.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collection of information in these regulations is in § 12.140. This information is required in connection with the entry of certain softwood lumber products from Canada and will be used by the U.S. Customs Service to administer, and monitor compliance with, the Softwood Lumber Agreement with Canada. The likely respondents are business organizations including importers, exporters and manufacturers.

Estimated total annual reporting and/or recordkeeping burden: 3,000 hours.

Estimated average annual burden per respondent/recordkeeper: 20 hours.

Estimated number of respondents and/or recordkeepers: 150.

Estimated annual number of responses: 350,000.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229.

List of Subjects

19 CFR Part 12

Bonds, Canada, Customs duties and inspection, Entry of merchandise, Imports, Prohibited merchandise, Reporting and recordkeeping requirements, Restricted merchandise, Trade agreements.

19 CFR Part 113

Air carriers, Bonds, Customs duties and inspection, Exports, Foreign commerce and trade statistics, Freight, Imports, Reporting and recordkeeping requirements, Vessels.

Amendments to the Regulations

Accordingly, Parts 12 and 113, Customs Regulations (19 CFR Parts 12 and 113), are amended as set forth below.

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for Part 12 continues to read, and a specific authority citation for § 12.140 is added to read, as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * *

Section 12.140 also issued under 19 U.S.C. 1484, 2416(a), 2171.

2. A new center heading and new § 12.140 are added to read as follows:

Softwood Lumber From Canada

§ 12.140 Entry of softwood lumber from Canada.

The requirements set forth in this section are applicable for as long as the Softwood Lumber Agreement, entered into on May 29, 1996, by the Governments of the United States and Canada, remains in effect.

(a) *Encumbrance regarding export permit and export fee.* In the case of softwood lumber first manufactured into a product classifiable in subheading 4407.10.00, 4409.10.10, 4409.10.20, or 4409.10.90, Harmonized Tariff Schedule of the United States (HTSUS), in the Province of Ontario, Quebec, British Columbia, or Alberta, the requirement that the Government of Canada issue an export permit and collect the appropriate export fees under the Softwood Lumber Agreement attaches to and encumbers the product when it is imported into the United States. Such imported merchandise remains subject to the encumbrance until the Government of Canada issues an export permit and collects the appropriate fees. The merchandise shall be released by Customs subject to the following conditions: The importer of record assumes an obligation to ensure within 20 working days of release that such export permit is issued by the Government of Canada and to provide sufficient information to satisfy U.S. Customs that the encumbrance no longer attaches or, if the merchandise remains encumbered at the expiration of 20 working days, to pay any liquidated damages assessed under the Customs bond.

(b) *Reporting requirements.* Except as otherwise provided in paragraph (d) of this section, in the case of a softwood lumber product classifiable in HTSUS subheading 4407.10.00, 4409.10.10, 4409.10.20, or 4409.10.90 that is imported from Canada and that was manufactured (that is, subjected to any processing operation other than mere loading, unloading or processing necessary to maintain the condition of the product) in Canada, whether or not such product was previously subjected to any processing operation outside Canada, the following information shall be included on the entry summary, Customs Form 7501, or on an electronic equivalent:

(1) The Canadian province or territory in which the product was first manufactured; and

(2) In the case of a product first manufactured into a product classifiable in HTSUS subheading 4407.10.00, 4409.10.10, 4409.10.20, or 4409.10.90 in the Province of Ontario, Quebec, British Columbia, or Alberta:

(i) The export permit number issued by the Government of Canada for the product; and

(ii) An indication of the export fee payment status of the product for which the permit was issued according to the following categories:

(A) Category A: No payment of an export fee because the exported product falls within the base amount of 14.7 billion board feet. This category includes products for which the export permit was issued without an indication of the export fee status;

(B) Category B: Payment of the export fee applicable to a product exported in excess of 14.7 billion board feet but not in excess of 15.35 billion board feet;

(C) Category C: Payment of the export fee applicable to a product exported in excess of 15.35 billion board feet; or

(D) Category D: No payment of an export fee where the product was exported in excess of 14.7 billion board feet because the average price of a benchmark softwood lumber price exceeds a prescribed trigger price during any quarterly period as determined by the Governments of Canada and the United States. If the issued permit pertains to this category, the specific quarterly period shall also be indicated on the Customs Form 7501 or electronic equivalent.

(c) *Untimely issuance of export permit.* If an export permit for the product has not been issued by the Government of Canada on or before the required date for filing the entry summary documentation as provided in § 142.12(b) or § 142.23 of this chapter, the importer shall have a maximum of 10 additional working days to file the entry summary documentation setting forth all of the information specified in paragraph (b)(2) of this section. If an export permit for the product has not been issued by the Government of Canada within the maximum time period specified in this paragraph, the entry summary or electronic equivalent shall be filed on the next business day and shall be completed in pertinent part as follows:

(1) The export permit number field shall be completed by inserting as many eights as are necessary to complete the field; and

(2) The export fee payment status field shall be completed by inserting an "A" followed by two zeros.

(d) *Absence of export permit number and fee status data for certain remanufactured softwood lumber products.* In the case of a softwood lumber mill product classifiable in HTSUS subheading 4407.10.00, 4409.10.10, 4409.10.20, or 4409.10.90 that is imported from Canada and that was first manufactured in Canada in the Province of Ontario, Quebec, British Columbia, or Alberta, if no export permit for the product is issued by the Government of Canada because the product was previously subjected to processing operations outside Canada, the entry summary, Customs Form 7501, or an electronic equivalent, shall include the Canadian province or territory in which the product was first manufactured and also shall be completed in pertinent part as follows:

(1) The export permit number field shall be completed by inserting as many nines as are necessary to complete the field; and

(2) The export fee payment status field shall be completed by inserting an "A" followed by two zeros.

PART 113—CUSTOMS BONDS

1. The authority citation for Part 113 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

* * * * *

2. Section 113.62 is amended:

a. By redesignating paragraph (k) as paragraph (l);

b. In the penultimate sentence of paragraph (l)(4) of redesignated paragraph (l), by removing the reference "paragraph (k)(1)" and adding, in its place, the reference "paragraph (l)(1)"; and

c. By adding a new paragraph (k) and adding a new paragraph (l)(5) at the end of newly designated paragraph (l) to read as follows:

§ 113.62 Basic importation and entry bond conditions.

* * * * *

(k) *Agreement to ensure and establish issuance of softwood lumber export permit and collection of export fees.* In the case of a softwood lumber product imported from Canada that is subject to the requirement that the Government of Canada issue an export permit pursuant to the Softwood Lumber Agreement, the principal agrees, as set forth in § 12.140(a) of this chapter, to assume the obligation to ensure within 20 working days of release of the merchandise, and establish to the satisfaction of Customs, that the applicable export permit has been issued by the Government of Canada.

(l) * * *

(5) If the principal defaults on agreements in the condition set forth in paragraph (k) of this section only, the obligors agree to pay liquidated damages equal to $100 per thousand board feet of the imported lumber.

Approved: February 20, 1997.

George J. Weise,

Commissioner of Customs.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 97–4682 Filed 2–25–97; 8:45 am]

BILLING CODE 4820–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 063–4036a, PA 063–4037a, PA 069–4035a; FRL–5690–4]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania Source-Specific VOC and NO_X RACT Determinations, and 1990 Base Year Emissions for One Source; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; correction.

SUMMARY: This action corrects the citation of a direct final rule, which was published on Friday, December 20, 1996 (61 FR 67229). This action pertains to the Pennsylvania source-specific RACT determinations for three sources: Caparo Steel Company, Sharon Steel Company, and Pennsylvania Electric Company—Williamsburg Station.

EFFECTIVE DATE: February 26, 1997.

FOR FURTHER INFORMATION CONTACT: Janice Lewis, (215) 566–2185, or Carolyn Donahue, (215) 566–2095.

SUPPLEMENTARY INFORMATION:

Background

On December 20, 1996 (61 FR 67229) EPA published a direct final rule approving a SIP revision submitted by Pennsylvania pertaining to Pennsylvania source-specific RACT determinations for Caparo Steel, Sharon Steel, and Penelec—Williamsburg, and 1990 Base year emissions for Sharon Steel Company.

Need for Correction

As published, the direct final rule contains an error which may prove to be misleading and is in need of clarification. The error is typographical in nature; the state submittal from the Pennsylvania Department of Environmental Protection (PADEP) correctly cites the emission limit for Penelec—Williamsburg.

Correction of Publication

Accordingly, the publication on December 20, 1996 (61 FR 57232, FR Doc. 96–32369), Part 52, § 52.2037 is being amended by correcting an error in paragraph (f). On page 67232, in the first column, in the second sentence of paragraph (f) the words, "* * * 21.7 pounds of NO_X per million British thermal units (lb/MMBtu) * * *" are corrected to read, "* * * 21.7 pounds of NO_X per ton of coal fired (lb/ton) * * *".

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and, is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: February 4, 1997.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 97–4661 Filed 2–25–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[WA50–7123a; FRL–5692–8]

Approval and Promulgation of Implementation Plans: Washington

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving in part, and disapproving in part, and taking no action in part on the Regulations of the Southwest Air Pollution Control Authority (SWAPCA) for the control of air pollution in Clark, Cowlitz, Lewis, Skamania and Wahkiakum Counties, Washington, as revisions to the Washington State Implementation Plan (SIP). These revisions pertain to General Regulations for Air Pollution Sources administered by SWAPCA. These revisions were submitted to EPA by the Director of the Washington Department of Ecology (WDOE) on January 24, 1996. In accordance with Washington statutes, SWAPCA rules must be at least as stringent as the WDOE statewide rules.

DATES: This action is effective on April 28, 1997, unless adverse or critical comments are received by March 28, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: Montel Livingston, SIP Manager, Office of Air Quality (OAQ–107), EPA, 1200 Sixth Avenue, Seattle, Washington 98101.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Copies of material submitted to EPA may be examined during normal business hours at the following locations: EPA, Region 10, Office of Air Quality, 1200 Sixth Avenue (OAQ–107), Seattle, Washington 98101; and, the State of Washington, Department of Ecology, 4550 Third Avenue SE, Lacey, Washington 98504.

FOR FURTHER INFORMATION CONTACT: Wayne Elson, Office of Air Quality (OAQ–107), EPA, Seattle, Washington 98101, (206) 553–1463.

SUPPLEMENTARY INFORMATION:

I. Background

SWAPCA amended Chapter 400 of its rules on September 21, 1995. The WDOE, on behalf of the Governor, submitted the amended regulations to EPA on January 24, 1996, as a revision to the Washington SIP. The amended regulations pertain to General and Operating Permit Regulations for Air Pollution Sources administered by SWAPCA, and adopt by reference various other State regulations. Some of the regulations adopted by reference have been the subject of previous EPA actions on the SIP.

II. This Action

The State of Washington's January 24, 1996, request for SIP revision includes regulations contained in Chapter 400 of SWAPCA's rules. Certain of these regulations are amendments to those currently contained in the SIP; others are entirely new additions.

A. Unchanged

EPA approves SWAPCA 400–052, –151, –161, –190, –205, –210, –220, –240, and –260 regulations currently in the SIP, and unchanged by the January 24, 1996, revisions.

B. Modifications

EPA approves the modifications and/or additions to the SWAPCA 400–010, –020, –030, –040, –050, –060, –070, –074, –075, –076, –081, –091, –100, –101, –105, –107, –109, –110, –112, –113, –114, –115, –171, –172, –200, –230, –250, –270, and –280 regulations currently in the SIP. Subsections of these regulations that EPA takes no action on are noted. Some are editorial changes which are housekeeping in nature. Most of those subsections EPA also took no action in May 3, 1995 (60 FR 21703). These minor changes are not substantial and provide technical or administrative clarification. The language in twelve of these regulations has been modified only slightly from that used in versions currently in the approved SIP. They include: 400–010 Policy and Purpose, 400–020 Applicability, 400–060 Emission Standards for General Process Units, 400–081 Startup and Shutdown, 400–091 Voluntary Limits on Emissions, 400–107 Excess Emissions, 400–112 Requirements for New Sources in Nonattainment Areas, 400–113 Requirements for New Sources in Attainment or Nonclassifiable Areas, 400–114 Requirements for Replacement or Substantial Alteration of Emission Control Technology at an Existing Stationary Source, 400–171 Public Involvement, 400–200 Creditable Stack Height and Dispersion Techniques, and 400–250 Appeals.

The remaining changed regulations are described as follows. In 400–030, a definition (15) "closure" or stopping all processes at a facility is added. In 400–030, the second sentence of definitions (14) "Class I area" and (45) "Mandatory Class I Federal area" are not being acted on as they may create a future conflict if a SWAPCA source is found to affect a Class I area that is not listed. In 400–030, a definition for (37) "good agricultural practices" is added. In 400–030, a definition for (86) "upgraded gasoline dispensing facilities" is added. EPA is taking no action on 400–040(2) Fallout and 400–040(4) Odors as these provisions are not related to the criteria pollutants regulated under the SIP. In 400–070, Emission Standards for Certain Source Categories, no action is taken on (5) Sulfuric Acid Plants, as it is not related to the criteria pollutants regulated under the SIP. Grain elevators and other wood waste burners source categories are deleted, (6) gasoline dispensing facilities and (7) abrasive blasting are added. In 400–074, Gasoline Transport Tankers, a new section is added requiring registration of owner or operator of gasoline transport tanker, gasoline loading facility or petroleum product transport tanker doing business in SWAPCA jurisdiction. In 400–075, Emission Standards for Sources Emitting Hazardous Air Pollutants, no action is being taken on the whole section because it has no relation to the criteria pollutants that are regulated under the SIP. In 400–076, Emissions Standards for Sources Emitting Toxic Air Pollutants, no action is being taken on this section because it has no relation to the criteria pollutants that are regulated under the SIP. In 400–100, Registration and Operating Permits, new registration requirements and inspections are added to this section. In 400–101, Sources Exempt from Registration Requirements, is revised to include further exemption categories and elaborates on others. In 400–105, Records, Monitoring and Reporting, no action is taken on additional emission inventory reporting requirements for sources that include toxic or hazardous air pollutants because it has no relation to the criteria pollutants that are regulated under the SIP. Inventory requirements are added for high VOC and NO_X emissions in ozone nonattainment areas. In 400–109, Notice of Construction Application, new section is added specifying conditions and applicability for filing applications for new sources. Subsection (3) lists nine activities that apply to Notice of Construction. Four of the activities are recognized as federally enforceable. They are as follows: (a) New construction or installation (d) Modification, alteration or replacement of existing process or control equipment (e) Change of registered owner (purchase or sale of source, facility or equipment) and (f) Change of location of operations of existing portable and stationary equipment. EPA takes no action on the remaining activities: (b) Change of existing approved emission limits (including Title V opt-out requests, (c) Review of existing or installed equipment operating without prior approval, (g) Review of existing equipment with an expired or lapsed approval or registration, (h) Review of a case-by-case RACT, BACT, MACT or other similar determination, and (i) Other activities as identified by the Authority. These activities would need source specific SIP revisions to change SIP requirements. 400–110 New Source Review, elaborates on applicability and clarifies and adjusts fee structure. Subsections are added to describe those conditions where a New Source Review is not required. Emission standards table added for technical clarification. Subsection (8) is added describing when Temporary, Emergency, or Substitution Sources, would come under new source requirements. Subsection (9) is added requiring new or upgraded Gasoline Dispensing Facilities to submit a Notice of Construction. In 400–115, Standards of Performance for New Sources, EPA is taking no action on this section as this provision is not related to the criteria pollutants regulated under the SIP. 400–172, Technical Advisory Council is not a requirement of the Clean Air Act (CAA), and does not directly apply to the regulation of the criteria pollutants, and thus is not being acted for inclusion into the SIP. 400–230 Regulatory Actions & Civil Penalties is expanded to identify and describe the process for each of the common types of regulatory orders issued by SWAPCA. 400–270 Confidentiality of Records and Information is a new section on confidentiality of records submitted to SWAPCA. 400–280 Powers of Authority describes statutory authority of SWAPCA as it exists in RCW 70.94.

C. Disapprovals

EPA already acted to disapprove a number of sections of the SWAPCA rules on May 3, 1995 (80 FR 21703), but notes that these disapproved sections are still included in WDOE SIP revisions that were submitted to EPA, with minor revisions. EPA still considers its disapproval of these sections to be in effect, and by this action is again disapproving the following sections: 400–040(1) (c) and (d) and 400–040(6)(a) Standards for Maximum Emissions; 400–050 Emission Standards for Combustion and Incineration Units, the exception provision in paragraph (3); 400–120 Bubble Rules; 400–130 Acquisition and Use of Emission Reduction Credits; 400–131 Issuance of Emission Reduction Credits; 400–136 Use of Emission Reduction Credits. 400–141 Prevention of Significant Deterioration (PSD); and 400–180 Variance. The only disapproval in addition to those sections disapproved on May 3, 1995 (80 FR 21703) is 400–030 Definition (80) SIP. A SIP is defined upon approval by EPA, not when it is submitted to EPA for approval as stated.

III. Summary of EPA Action

EPA is approving the following sections, with the following exceptions, of SWAPCA 400—General Regulation for Air Pollution Sources: 010; 020; 030 except the second sentences of (14), (45) and (80); 040 except (1)(c), (1)(d), (2), (4) and the exception provision of (6)(a); 050 except the exception provision of (3); 052; 060; 070 except (5); 074; 081; 091; 100 except the first sentence of (3)(a)(iv) and (4); 101; 105; 107; 109 except for (3)(b), (3)(c), (3)(g), (3)(h), and (3)(i), 110; 112; 113; 114; 151; 161; 171; 190; 200; 205; 210; 220; 230; 240; 250; 260; 270; and 280.

EPA is disapproving the following sections: 400–030 (80); 040(1) (c) and (d); the exception provision of 040(6)(a); the exception provision in 050(3); 120; 130; 131; 136; 141; and 180. EPA is taking no action on the following sections: the second sentence of 030 (14), and (45); 040(2); 040(4); 070(5); 075; 076; the first sentence of 100(3)(a)(iv); 100(4); 109 (3)(b), (3)(c), (3)(g), (3)(h), and (3)(i); 115; and 172.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective April 28, 1997 unless, by March 28, 1997, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective April 28, 1997.

Nothing in this action should be construed as permitting or allowing or

establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Review

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301, and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. section 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. section 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 28, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2), 42 U.S.C. 7607(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 14, 1997.

Charles Findley,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart WW—Washington

2. Section 52.2470 is amended by adding paragraph (c)(70) to read as follows:

§ 52.2470 Identification of plan.

* * * * *

(c) * * *

(70) On January 24, 1996 the Director of WDOE submitted to the Regional Administrator of EPA regulations of the SWAPCA for the control of air pollution in Clark, Cowlitz, Lewis, Skamania and Wahkiakum Counties, Washington (SWAPCA 400—General Regulation for Air Pollution Sources).

(i) Incorporation by reference.

(A) The January 24, 1996, letter from WDOE to EPA submitting requests for revisions to the Washington SIP to include regulations of the SWAPCA for the control air of pollution in Clark, Cowlitz, Lewis, Skamania and Wahkiakum Counties, Washington, as revisions to the Washington SIP, State-effective September 21, 1995. EPA is approving the following sections of SWAPCA 400—General Regulation for Air Pollution Sources: 010; 020; 030 except the second sentence of (14), (45) and (80); 040 except (1)(c), (1)(d), (2), (4) and (6)(a); 050 except the exception provision of (3); 052; 060; 070 except (5); 074; 081; 091; 100 except the first sentence of (3)(a)(iv) and (4); 101; 105; 107; 109 except for (3)(b), (3)(c), (3)(g), (3)(h), and (3)(i), 110; 112; 113; 114; 151; 161; 171; 190; 200; 205; 210; 220; 230; 240; 250; 260; 270; and 280.

[FR Doc. 97–4659 Filed 2–25–97; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 180

[OPP–300454; FRL–5590–8]

RIN 2070–AC78

Spinosad; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This regulation establishes a time-limited tolerance with an expiration date of November 15, 1999 for residues of the insecticide Spinosad in or on the raw agricultural commodity cottonseed. DowElanco submitted a petition to EPA under the Federal Food Drug and Cosmetic Act (FFDCA) as amended by the Food Quality Protection Act of 1996 (Pub. L. 104–170) requesting the tolerance.

EFFECTIVE DATE: This regulation becomes effective February 26, 1997. The tolerance expires on November 15, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300454], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300454], should be submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202. A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: OPP-docket@epamail.epa.gov.

Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [OPP–300454]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: George T. LaRocca, Product Manager (PM) 13, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail address: Rm. 204, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305-6100, e-mail: larocca.george@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, issued a notice, published in the **Federal Register** of July 10, 1996, (61 FR 36373)(FRL–5380–7), which announced that DowElanco, 9330 Zionsville Road, Indianapolis, IN 46268–1054, had submitted a pesticide petition (PP 6F4735) to EPA requesting that the Administrator, pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), establish a tolerance for residues of the insecticide Spinosad in or on the raw agricultural commodity cottonseed at 0.02 parts per million (ppm). Spinosad is a fermentation derived tetracyclic macrolide product produced by the *actinomycete, saccharopolyspora spinosa* and consists of two structurally related compounds, namely, Spinosyn A (CAS No. 131928–60–7) and Spinosyn D (CAS No. 131929–63–) whose chemical structures differ by a single methyl group. Spinosyn A is 2-[(6-deoxy-2,3,4-tri-*O*-methyl-α-*L*-manno-pyranosyl)oxy]-13-[[5-(dimethylamino)-tetrahydro-6-methyl-2H-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14,16a,16b-tetradecahydro-14-methyl-1H-as-Indaceno[3,2-d]oxacyclododecin-7,15-dione. Spinosyn D is 2-[(6-deoxy-2,3,4-tri-*O*-methyl-α-*L*-manno-pyranosyl)oxy]-13-[[5-(dimethylamino)-tetrahydro-6-methyl-2H-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14,16a,16b-tetradecahydro-4,14-dimethyl-1H-as-Indaceno[3,2-d]oxacyclododecin-7,15-dione.

In the **Federal Register** of November 22, 1996 (61 FR 59437) EPA issued a second notice of filing to amend the petition to bring it into conformity with the Food Quality Protection Act (FQPA) of 1996. The notice contained a summary of the petition prepared by the petitioner and this summary contained conclusions and assessments to support its conclusion that the petition complied with FQPA.

In March 1995 Spinosad was accepted by EPA as a reduced risk pesticide. Reduce risk status was granted primarily due to Spinosad's low acute mammalian toxicity, low non-target organism toxicity and compatibility with integrated pest management. The criteria initiating EPA's reduced risk pesticide process are set forth in Pesticide Regulation Notice 93–9 dated July 21, 1993 and the January 22, 1993 **Federal Register** (58 FR 5854).

There were no comments or requests for referral to an advisory committee received in response to the notice.

I. Background and Statutory Authority

The FQPA of 1996 (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the FFDCA, 21 U.S.C. 301 et seq., and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq. The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures.

New section 408(b)(2)(A)(i) allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...." Section 408(b)(2)(D) specifies factors EPA is to consider in establishing a tolerance. Section 408(b)(3) requires EPA to determine that there is a practical method for detecting and measuring levels of the pesticide chemical residue in or on food and that the tolerance be set at a level at or above the limit of detection of the designated method. Section 408(b)(4)requires EPA to determine whether a maximum residue level has been established for the pesticide chemical by the Codex Alimentarius Commission. If so, and EPA does not propose to adopt that level, EPA must publish for public comment a notice explaining the reasons for departing from the Codex level. Section 408(b)(2)(A) governs EPA's establishment of tolerances and incorporating the provisions of section 408(b)(2)(C) and (D).

II. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many

adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. For many of these studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (NOEL).

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose significant risks to human health. An uncertainty factor (sometimes called a "safety factor") of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100 percent or less of the RfD) is generally considered acceptable by EPA.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or margin of exposure calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

In examining aggregate exposure, FQPA requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, and other non-occupational exposures, such as where residues leach into groundwater or surface water that is consumed as drinking water. Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. The TMRC is a "worst case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100 percent of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Consistent with sections 408(b)(2)(C) and (D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has also assessed the toxicology data base for spinosad in its evaluation of applications for registration on cotton. EPA has sufficient data to assess the hazards of Spinosad and to make a determination on aggregate exposure, consistent with section 408(b)(2), for the time-limited tolerances for residues of Spinosad on cottonseed at 0.02 ppm. EPA's assessment of the database, dietary exposures and risks associated with establishing these tolerances follows:

A. Toxicology Data Base

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the tolerance include the following:

1. A battery of acute toxicity studies placing the technical Spinosad in Toxicity Category III and IV.

2. In a 21–day dermal study in rabbits the NOEL for dermal and systemic toxicity was 1,000 milligrams per kilogram per day (mg/kg/day) (limit dose). New Zealand White strain rabbits were given 15 dermal applications at 0, 100, 500, or 1,000 mg/kg/day for 21 days . Under the conditions of the test, there was no evidence of treatment-related toxicity from dermal application at doses up to 1,000 mg/kg/day.

3. In a 13–week feeding neurotoxicity study, Fischer 344 strain rats were given daily levels of 0, 2.2, 4.3, 8.6, or 42.7 mg/kg body weight for males and 0, 2.6, 5.2, 10.4 or 52.1 mg/kg/day for females. There were no effects observed on the functional observational battery (FOB), motor activity, or histological observations of the nervous system. Therefore, the NOEL for acute mammalian neurotoxicity in rats is ≥42.7 or 52.1 mg/kg/day for male and female rats, respectively.

4. A chronic 2–year feeding study in dogs at dietary doses of 1.44, 2.68, or 8.46 mg/kg/day in males, and 1.33, 2.72 or 8.22 mg/kg/day respectively in females with a NOEL of 2.68 mg/kg/day (100/120 ppm).

5. Two mouse carcinogenicity studies have been submitted and fulfill the requirement for mouse carcinogenicity testing. In the first study mice were dosed at 0, 3.4, 11.4 and 50.9 mg/kg/day in males and 4.2, 13.8, and 67.0 mg/kg/day respectively in females with systemic NOEL of 11.4 mg/kg/day for males and 13.8 mg/kg/day in females. In the second study, involving only females, dosing was at 0, 1.3 and 41.5 mg/kg/day highest dose tested (HDT). These studies, along with additional information from the petitioner do not indicate a potential for carcinogenicity.

6. A 24–month chronic feeding/carcinogenicity study in rats. The chronic feeding study using rats indicates that the rat is a less sensitive species than the dog with respect to Spinosad. The rat feeding study data support the NOEL selected from the dog feeding study as the basis of the RfD. The rat feeding study is currently determined to be supplemental since additional histopathology data on the animals that died during the study are required to upgrade the study from supplementary status. NOELs and lowest observed effect levels (LOELs) will be established for this study once the additional data are reviewed. There were no treatment related carcinogenic effects observed at any dose level.

7. Mutagenicity studies including an *in vitro* forward mutation assay (mouse lymphoma cells), *in vitro* chromosome aberration assay (Chinese hamster ovary cells), an *in vivo* micronucleus assay (mice), and an *in vitro* unscheduled DNA synthesis assay (primary rat hepatocytes) showed no mutagenic activity associated with Spinosad.

8. A metabolism study in rats demonstrates that there were no major differences between the bioavailability, routes of excretion, or metabolism of ^{14}C-Spinosad (Factor A) and ^{14}C-Spinosad (Factor D). Urine and fecal excretions were almost completed at 48 hours post-dosing.

9. An oral developmental toxicity study in rats with a developmental NOEL of ≥200 mg/kg/day highest dose tested (HDT). The NOEL for maternal toxicity is ≥200 mg/kg/day HDT. An oral developmental toxicity study in rabbits with a developmental NOEL of ≥50 mg/kg/day HDT. The NOEL for maternal toxicity is ≥50 mg/kg/day HDT. With respect to both studies there were no developmental effects that could be attributed to administration of Spinosad up to the HDT.

10. A two generation reproduction study in rats at dietary doses of 0, 3, 10, and 100 mg/kg/day with a NOEL for parental effects at 10 mg/kg/day based upon increases in heart, kidney, liver, spleen, and thyroid weights (both sexes), corroborative histopathology in the spleen and thyroid (both sexes), heart and kidney (males only), and histopathologic lesions in the lungs and mesenteric lymph nodes (both sexes), stomach (females only), and prostate in the high dose group (100 mg/kg/day).

The NOEL for reproductive effects was also 10 mg/kg/day based upon both maternal and reproductive effects including decreases in litter size, survival (F2 litters only), and body weights in the offspring, and increased incidence of dystocia and/or vaginal bleeding after parturition with associated increases in mortality in the dams in the high dose group (100 mg/kg/day).

B. Toxicological Profile

1. *Chronic effects.* Based on the available chronic toxicity data, EPA has established the Reference Dose (RfD) for spinosad at 0.0268 mg/kg/day based on a NOEL of 2.68 mg/kg/day and an uncertainty factor of 100. The NOEL is based on a 2–year dog chronic feeding study.

2. *Acute toxicity.* Based on the available acute toxicity data, EPA has determined that Spinosad does not pose any acute dietary risk.

3. *Carcinogenicity.* Based on the available carcinogenicity studies in two rodent species Spinosad has not been determined to be a human carcinogen. A final cancer classification using the Guidelines for Carcinogen Risk Assessment published September 24, 1986 (51 FR 33992) is pending; however, the current data does not indicate that a cancer risk assessment will be necessary.

III. Aggregate Exposure

1. *Food and fee uses.* For purposes of assessing the potential dietary exposure from use of Spinosad on cotton EPA has estimated aggregate exposure based on the TMRC from the tolerance for spinosad on cottonseed at 0.02 ppm. The TMRC is obtained by multiplying the tolerance level residue for cottonseed (0.02 ppm) by the food consumption factors for foods derived from cottonseed. Cottonseed is fed to animals thus exposure to residues in cottonseed might result if such residues are transferred to meat, milk, poultry or eggs. However, based upon the results of animal metabolism studies, EPA concludes there is no reasonable expectation of finite residues of spinosad in poultry tissues and eggs from cotton uses. With respect to meat and milk extrapolation from existing ruminant metabolism, studies indicates that secondary residues of spinosad in ruminant commodities are expected to be negligible. The analysis also included two commodities processed from cottonseed; cottonseed oil and cottonseed meal. Tolerance level residues on the oil and meal were assumed however EPA notes that Spinosad residues do not concentrate in processed commodities, and therefore this risk estimate is very conservative. The dietary risk assessment will be reevaluated with respect to secondary residues in ruminant tissues and milk upon submission and review of the field trial data for cotton gin by-products. There are no other established U.S. tolerances for Spinosad, and there are no registered uses for Spinosad on food or feed crops in the United States.

As indicated above, in conducting this exposure assessment, EPA has made very conservative assumptions—100 percent of cottonseed will contain spinosad residues including cottonseed oil and meal, and those residues would be at the level of the tolerance —which results in an overestimate of human exposure. Thus, in making a safety determination for these tolerances, EPA is taking into account this conservative exposure assessment.

2. *Potable water.* There is no established Maximum Concentration Level (MCL) for residues of Spinosad in drinking water. Because the Agency lacks specific water-related exposure data for most pesticides, EPA has begun and nerly completed a process to identify a reasonable yet conservative bounding figure for the potential contribution of water-related exposure to the aggregate risk posed by a pesticide. In developing the bounding figure, EPA estimated residue levels in water for a number of specific pesticides using various data sources. EPA then applied the estimated residue levels, in conjunction with appropriate toxicological endpoints (RfD's or acute dietary NOELs) and assumptions about body weight and consumption, to calculate, for each pesticide, the increment of aggregate risk contributed by consumption of contaminated water. This analysis can be found in the Special Record for the FQPA. While EPA has not yet pinpointed the appropriate bounding figure for consumption of contaminated water, the ranges EPA is continuing to examine are all well below the level that would cause spinosad to exceed the RfD, if the tolerance being considered in this document are granted. EPA has therefore concluded that the potential exposure associated with spinosad in water, even at the higher levels EPA is considering as a conservative upper bound, would not prevent EPA from determining that there is a reasonable certainty of no harm if the proposed tolerance on cottonseed is granted.

3. *Non-dietary uses.* EPA has not estimated non-occupational exposure for Spinosad since there are no chronic or acute residential risks expected from the use of Spinosad on cotton. The potential for non-occupational exposure to the general population is, thus, not expected to be significant.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408 (b)(2)(D)(V) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." While the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity in a meaningful way. EPA is commencing a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will enable the Agency to apply common mechanism issues to its pesticide risk assessments. At present, however, the Agency does not know how to apply the information in its files concerning common mechanism issues to risk assessments, and therefore believes that in most cases there is no available information concerning common mechanism that can be scientifically applied to tolerance decisions. Where it is clear that a particular pesticide may share a significant common mechanism with other chemicals, a tolerance decision may be affected by common mechanism issues. The Agency expects that most tolerance decisions will fall into the area in between, where EPA can not reasonably determine whether a pesticide does or does not share a

common mechanism of toxicity with other chemicals (and, if so, how that common mechanism should be factored into a risk assessment). In such circumstances, the Agency will reach a tolerance decision based on the best, currently available and useable information, without regard to common mechanism issues. However, the Agency will also revisit such decisions when the Agency learns how to apply common mechanism information to pesticide risk assessments.

In the case of Spinosad, it is unlikely that this pesticide shares a common mechanism of toxicity with other pesticides since Spinosad is a unique insecticide structurally unrelated to other registered pesticides. However since EPA has determined that it does not now have the capability to apply the information in its files to a resolution of common mechanism issues in a manner that would be useful in a risk assessment, this tolerance determination does not take into account common mechanism issues. The Agency will reexamine the tolerance for Spinosad, if reexamination is appropriate, after the Agency has determined how to apply common mechanism issues to its pesticide risk assessments.

IV. Determination of Safety for Infants and Children

In assessing the potential for additional sensitivity of infants and children to residues of Spinosad, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2–generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

Available data indicate that no developmental toxicity was observed in the rabbit study at the HDT (50 mg/kg/day). Slight maternal toxicity was observed in the rabbit at the HDT and consisted of marginal reductions in body weight gain, defecation, and food consumption. In the rat developmental study, a slight 1–day reduction in maternal body weight gain and body weight was observed at the HDT, but otherwise no developmental or maternal toxicity was observed at a high dose level (200 mg/kg/day). Developmental toxicity studies established the NOELs for maternal and developmental toxicity at ≥50 mg/kg/day in rabbits (HDT) and ≥200 mg/kg/day in rats HDT.

Reproductive toxicity appears to be related to systemic maternal toxicity, and was characterized by decreases in mean litter size and body weight throughout lactation. The NOEL for reproductive toxicity is 10 mg/kg/day.

FFDCA section 408 provides that EPA shall apply an additional safety factor for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that such additional factor is not necessary to protect the safety of infants and children. EPA believes that reliable data support using a different safety factor (usually 100x) and not the additional safety factor when EPA has a complete data base and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the traditional safety factors.

Based on current data requirements, the database relative to pre- and post-natal toxicity is complete. These data taken together suggest minimal concern for developmental or reproductive toxicity and do not indicate any increased pre- or postnatal sensitivity.

Therefore, EPA concludes that reliable data support use of a 100-fold safety factor and an additional 10-fold safety factor is not needed to protect the safety of infants and children.

V. Determination of Safety for U.S. Population Including Infants and Children

1. *Reference dose (RfD).* A chronic dietary exposure/risk assessment was performed for Spinosad using an RfD of 0.02 mg/kg/day based on a NOEL of 2.68 mg/kg/day from a 2–year dog feeding study with an uncertainty factor of 100. Using the conservative exposure assumptions described above and based on the completeness and reliability of the toxicity data base, EPA has concluded that aggregate exposure to Spinosad from it use on cotton will utilize less than 1 percent of the RfD for the U.S. population and for all of the 22 population subgroups including children and infants. EPA generally has no concern for exposures below 100 percent of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose significant risks to human health.

2. *Aggregate risks.* Based upon the available toxicity and exposure data and worst case assumptions for dietary exposure aggregate chronic risks are expected to be less than 1% of the RfD for the general U.S. population, including all population subgroups. As indicated above although EPA has not yet identified a water exposure figure based on available environmental data, Spinosad is not expected to be mobile in soil or water environments and poses relatively little threat to ground and drinking water. EPA therefore concludes that there is reasonable certainty that no harm will result to consumers, including infants and children, from aggregate exposure to spinosad residues.

VI. Other Considerations

A. Endocrine Effects

An evaluation of the potential effects on the endocrine systems of mammals has not been determined; however no evidence of such effects were reported in the toxicology studies described above. There is no evidence at this time that Spinosad causes endocrine effects.

B. Metabolism in Plants and Animals

The metabolism of spinosad in plants and animals is adequately understood for the purpose of this tolerance. There are no Codex maximum residue levels established for residues of Spinosad on cottonseed. There is a practical analytical method for detecting and measuring levels of spinosad in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set in the tolerance. EPA has provided information on this method to FDA. The method is available to anyone who is interested in pesticide residue enforcement from: By mail, Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: Crystal Mall #2, Rm 1128, 1921 Jefferson Davis Hwy., Arlington, VA 22202, 703–305–5805.

C. Summary of Findings

Tolerances are time limited to allow for development and review of residue field trials on cotton gin by products. The analysis for Spinosad using tolerance level residues shows that the proposed use on cotton will not cause exposure to exceed the levels at which EPA believes there is an appreciable risk. All population subgroups examined by EPA are exposed to Spinosad residues at levels well below 100 percent of the RfD for chronic effects. Based on the information and data considered, EPA concludes that the proposed time-limited tolerance will be safe. Therefore, the tolerance is established as set forth below.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "Object" to a tolerance regulation issued by EPA under the new section 408(d) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use its current procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by April 28, 1997, file written objections to any aspect of this regulation (including the automatic revocation provision) and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Docket

A record has been established for this rulemaking under docket number [OPP–300454]. A public version of this record, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

The official record for this rulemaking, as well as the public version, as described above, is kept in paper form. Accordingly, in the event there are objections and hearing requests, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

IX. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and, since this action does not impose any information collection requirements as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., it is not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Pursuant to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104–121, 110 Stat. 847), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2) of the APA as amended.

List of Subjects In 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and Recordkeeping requirements.

Dated: February 13, 1997.

Daniel M.Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Chapter I is amended as follows:

PART 180—[AMENDED]

1. The statutory authority for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. By adding a new § 180.495 to read as follows:

§ 180.495 Spinosad; tolerances for residues.

(a) [Reserved]

(b) A time-limited tolerance is established for residues of the insecticide Spinosad. Factor A is 2-[(6-deoxy-2,3,4-tri-*O*-methyl-α-*L*-manno-pyranosyl)oxy]-13-[[5-(dimethylamino)-tetrahydro-6-methyl-2H-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14,16a, 6b-tetradecahydro-14-methyl-1H-as-Indaceno[3,2-d]oxacyclododecin-7,15-dione. Factor D is 2-[(6-deoxy-2,3,4-tri-*O*-methyl-α-*L*-manno-pyranosyl)oxy]-13-[[5-(dimethylamino)-tetrahydro-6-methyl-2H-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14,16a,16b-tetradecahydro-4,14-dimethyl-1H-as-Indaceno[3,2-d]oxacyclododecin-7,15-dione.

Commodity	Parts per million	Expiration Date
Cottonseed	0.02	November 15, 1999

[FR Doc. 97–4625 Filed 2–25–97; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 261

[FRL–5694–6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: On July 18, 1996, the Environmental Protection Agency (EPA or Agency) published a final rule granting a petition submitted by United Technologies Automotive, Inc. (UTA), Dearborn, Michigan, to exclude (or "delist"), conditionally, on a one-time, upfront basis, a certain solid waste generated by UTA's chemical stabilization treatment of lagoon sludge at the Highway 61 Industrial Site in Memphis, Tennessee, from the lists of hazardous wastes in §§ 261.31 and 261.32. Based on careful analyses of the waste-specific information provided by the petitioner, the Agency concluded that UTA's petitioned waste will not adversely affect human health and the environment. Delisting levels for cadmium, chromium, lead, nickel, and cyanide which would be protective of human health and the environment were calculated and promulgated. This action addresses the fact that the actual volume of waste to be disposed is 39,400 cubic yards, instead of the 20,500 cubic yards estimated by the petitioner prior to publication of the final rule. Therefore, today's document corrects the delisting levels for the constituents of concern by using the dilution attenuation factor (DAF) of 79 for 40,000 cubic yards, instead of the DAF of 96 for 20,500 cubic yards.

EFFECTIVE DATE: July 18, 1996.

ADDRESSES: The RCRA regulatory docket for the final rule and today's document is located at the EPA Library, U.S. Environmental Protection Agency, Region 4, 100 Alabama Street, S.W., Atlanta, Georgia 30303, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays.

The reference number for this docket is R4–96–UTEF. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at a cost of $0.15 per page for additional copies. For copying at the Tennessee Department of Environment and Conservation, please see below.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424–9346, or at (703) 412–9810. For technical information concerning this notice, contact Judy Sophianopoulos, Enforcement and Compliance Branch, (Mail Code 4WD–RCRA), U.S. Environmental Protection Agency, Region 4, 100 Alabama Street, S.W., Atlanta, Georgia 30303–3104, (404) 562–8604, or call, toll free, (800) 241–1754, and leave a message, with your name and phone number, for Ms. Sophianopoulos to return your call. You may also contact Wayne Gregory, Tennessee Department of Environment and Conservation (TDEC), 5th Floor, L & C Tower, 401 Church Street, Nashville, Tennessee 37243–1535, (615) 532–0847. If you wish to copy documents at TDEC, please contact Mr. Gregory for copying procedures and costs.

SUPPLEMENTARY INFORMATION:

I. Reasons and Basis for Today's Document

Each delisting level in the final rule was calculated by multiplying the health-based level for each constituent of concern by the dilution attenuation factor (DAF) of 96 for a one-time disposal of an estimated volume of 20,500 cubic yards of petitioned waste. See 61 FR 37399, July 18, 1996. The petitioner reported that the actual volume to be disposed is 39,400 cubic yards. The DAF for this volume is 79. See the proposed rule for this petitioned waste at 61 FR 14703, April 3, 1996.

Therefore, today's document corrects the delisting level for each constituent of concern by multiplying each health-based level by 79.

II. Corrections to the Preamble of Final Rule

On page 37399, of the **Federal Register** of July 18, 1996, Table 1 of the Preamble:

The delisting level for chromium is corrected to read: "7.9; delisting level is set at less than 5.0, the toxicity characteristic level."

The delisting level for cyanide is corrected to read: "15.8; (cyanide extraction must be conducted using deionized water.)"

The delisting levels for cadmium, lead, and nickel are corrected to read: "0.40," "1.18," and " 7.9," respectively.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Dated: January 31, 1997.

Jewell A. Harper,

Deputy Director, Waste Management Division.

Correction to Final Rule

PART 261—[CORRECTED]

Appendix IX [Corrected]

On page 37402, of the **Federal Register** of July 18, 1996, in appendix IX to part 261, in the third column of table 1, condition (3) is corrected to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
•	•	• • •
		(3) *Delisting Levels:* All leachable concentrations for these constituents must not exceed the following levels (ppm): Cadmium—0.40; cyanide—15.8; lead—1.18; and nickel—7.9. The leachable concentration of chromium must be less than 5.0 ppm. Metal concentrations in the waste leachate must be measured by the method specified in 40 CFR 261.24. The cyanide extraction must be conducted using deionized water. Total cyanide concentration in the leachate must be measured by Method 9010 or Method 9012 of SW–846.
•	•	• • •

[FR Doc. 97–4755 Filed 2–25–97; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 43

Regulation of International Accounting Rates; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The FCC is correcting an error in § 43.51 of Part 43 of Title 47 of the Code of Federal Regulations which appeared in the **Federal Register** on February 6, 1997 (62 FR 5535).

FOR FURTHER INFORMATION CONTACT: Kathryn O'Brien, Attorney-Advisor, Policy and Facilities Branch, Telecommunications Division, International Bureau, (202) 418–1470.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections replace the § 43.51 (d) designation with the designation as § 43.51(e). The incorrect designation was a result of § 43.51(d) being reviewed by the Office of Management and Budget (OMB). OMB's approval of § 43.51(d) was effective on February 6, 1997, thereby necessitating a correction to the labeling of § 43.51(d) as contained in these final rules.

Need for Correction

As published, the final rules contain labeling errors that may prove to be misleading and are in need of corrections to properly identify the rule sections.

Correction of Publication

The following corrections are made in § 43.51 of Part 43 of Title 47 of the Code of Federal Regulations published in the **Federal Register** on February 6, 1997 (62 FR 5535).

§ 43.51 [Corrected]

1. On page 5541, first column, line 6, the amendatory instruction for § 43.51 is correctly revised to read as follows:

2. Section 43.51 is amended by revising paragraph (e) to read as follows:

2. On page 5541, first column, line 11, change "(d) *International settlement policy.*" to "(e) *International settlement policy.*"

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–4709 Filed 2–25–97; 8:45 am]
BILLING CODE 6712–01–P

47 CFR Parts 52 and 64

[CC Docket No. 92–105; FCC 97–51]

The Use of N11 Codes and Other Abbreviated Dialing Arrangements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On February 19, 1997, the Commission released a First Report and Order adopting various measures related to N11 codes. The First Report and Order is intended both to direct national assignment of certain N11 codes and to allow current allocation of other N11 codes to remain in place.

DATE EFFECTIVE: March 28, 1997.

FOR FURTHER INFORMATION CONTACT: Elizabeth Nightingale, Attorney, Network Services Division, Common Carrier Bureau, (202) 418–2352.

SUPPLEMENTARY INFORMATION: This summarizes the Commission's First Report and Order in the matter of The Use of N11 Codes and Other Abbreviated Dialing Arrangements, FCC 97–51, adopted February 18, 1997, and released February 19, 1997. The Commission concurrently released a Further Notice of Proposed Rulemaking in the same docket. The file is available for inspection and copying during the weekday hours of 9 a.m. to 4:30 p.m. in the Commission's Reference Center, room 239, 1919 M St., N.W., Washington D.C., or copies may be purchased from the Commission's duplicating contractor, ITS, Inc. 2100 M St., N.W., Suite 140, Washington, D.C. 20037, phone (202) 857–3800.

Analysis of Proceeding

In the *First Report and Order*, the Commission allows the incumbent LECs, in addition to the states and Bell Communications Research (Bellcore), to continue to perform the N11 code administration functions that they performed at the time of enactment of the 1996 Act amendments to the 1934 Act, until further Commission action. The Commission also adopts several other important measures regarding abbreviated dialing arrangements. Specifically, the Commission responds to a request for an N11 code that could be dialed to reach non-emergency police services by assigning 311 on a nationwide basis for this purpose. Wherever 311 is currently in use for other purposes, however, the Commission would allow that use to continue until the local government in that area was prepared to activate a non-emergency 311 service. In the *First Report and Order* the Commission also concludes that, as the incumbent LECs can do currently, all providers of telephone exchange service must be able to have their customers call 611 and 811 to reach their repair and business service offices. The Commission also concludes that a LEC may not itself offer enhanced services using a 411 code, or any other N11 code, unless that LEC offers access to the code on a reasonable, nondiscriminatory basis to competing enhanced service providers in the local service area for which it is using the code to facilitate distribution of their enhanced services. Finally, the Commission responds to a request for an N11 code that could be used throughout the nation to reach telecommunications relay services by directing Bellcore to assign 711 on a nationwide basis for this use. The Commission declines, however, to: (1) mandate that N11 numbers be made available for access to information services; (2) mandate that an N11 code be designated for access to government agencies; or (3) disturb the current allocation of various N11 codes for access to emergency services, directory assistance, and LEC repair and business offices.

Ordering Clauses

Accordingly, *it is ordered*, pursuant to Sections 1, 4(i), 201–205 and 251(e)(1) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 201–205, and 251(e)(1), that the *First Report and Order* is hereby Adopted.

It is further ordered, that Bellcore, as the NANP administrator, shall assign 711 as a national code for TRS use as of the effective date of this *First Report and Order*, as discussed in this *First Report and Order*.

It is further ordered, that Bellcore, as the NANP administrator, shall assign 311 as a national code for access to non-emergency police and other government services as of the effective date of this *First Report and Order*, as discussed in this *First Report and Order*.

It is further ordered, that when a provider of telecommunications services receives a request from an entity to use 311 for access to non-emergency police and other government services in a particular jurisdiction, it must ensure that, within six months of the request: (1) entities that were assigned 311 at the local level prior to the effective date of this *First Report and Order* relinquish non-compliant uses; and (2) it takes any steps necessary (for example reprogramming switch software) to complete 311 calls from its subscribers to a requesting 311 entity in its service area.

It is further ordered, that (1) all providers of telephone exchange

service, both incumbents and new market entrants, whether facilities or non facilities-based providers of telephone exchange service, should be enabled to use the 611 and 811 codes for repair services and business office uses as the incumbent LECs do now; and (2) by dialing these N11 numbers, customers should be able to reach their own carriers' repair or business services.

It is further ordered, that a LEC may not itself offer enhanced services using a 411 code, or any other N11 code, unless that LEC offers access to the code on a reasonable, nondiscriminatory basis to competing enhanced service providers in the local service area for which it is using the code to facilitate distribution of their enhanced services.

It is further ordered, that the North American Numbering Council will explore how rapidly abbreviated dialing arrangements could be deployed and report back to the Commission on this issue.

It is further ordered that GSA's request for a national N11 assignment is denied and that NASTD's request for a national assignment is granted in part as discussed in this *First Report and Order*, and otherwise denied.

List of Subjects

47 CFR Part 52

Local exchange carrier, Numbering, Telecommunications.

47 CFR Part 64

Communications common carriers, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–4787 Filed 2–25–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 960416112–7026–05; I.D. 020597C]

RIN 0648–AJ04

Atlantic Tuna Fisheries; Regulatory Adjustments

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim final rule.

SUMMARY: NMFS amends the regulations governing the Atlantic bluefin tuna (ABT) fisheries to provide authority for NMFS to close and/or reopen all or part of the Angling category in order to provide for equitable distribution of fishing opportunities throughout the species range. The regulatory amendments are necessary to increase the geographic and temporal scope of data collection from the scientific monitoring quota established for the United States under the international ABT stock recovery program. Additionally, this rule allows a more equitable geographic and temporal distribution of fishing opportunities for all fishermen in the Angling category, thus furthering domestic management objectives for the Atlantic tuna fisheries.

EFFECTIVE DATE: The interim final rule is effective February 21, 1997.

ADDRESSES: Comments on the interim final rule should be directed to, and copies of supporting documents, including an Environmental Assessment/Regulatory Impact Review (EA/RIR) are available from, William Hogarth, Acting Chief, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3282.

FOR FURTHER INFORMATION CONTACT: John Kelly, 301–713–2347.

SUPPLEMENTARY INFORMATION: The Atlantic tuna fisheries are managed under the authority of the Atlantic Tunas Convention Act (ATCA). ATCA authorizes the Secretary of Commerce (Secretary) to implement regulations as may be necessary to carry out the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The authority to implement ICCAT recommendations has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA). ICCAT has established a stock recovery program for ABT and has recommended an annual scientific monitoring quota of 2,354 metric tons (mt) for nations fishing in the western Atlantic Ocean, of which the United States has been allocated 1,344.4 mt for 1997.

An initial quota of 243 mt was established for the Angling category in 1996 (61 FR 30183, June 14, 1996). NMFS estimated that nearly 60 mt of this quota was harvested in an unprecedented winter fishery off of North Carolina. The high level of landings early in the season had an unanticipated negative impact on traditional ABT fisheries in northern states and resulted in premature closures. Consequently, a number of fishery participants requested that NMFS take measures to avoid such closures in the future.

This interim final rule responds to comments received in response to an advance notice of proposed rulemaking (ANPR) (61 FR 43518, August 23, 1996). As stated in the ANPR, current regulations require the AA to monitor catch and landings statistics and close a fishery or quota category when it is projected that the quota has been attained. Another regulation enables the AA to adjust the daily catch limit in order to effect a fair allocation of fishing opportunities as the ABT migrate along the Atlantic coast. However, since the regulations do not adequately provide for geographic or temporal distribution of the entire Angling category quota, is difficult to achieve an equitable distribution of fishing opportunities to all areas.

One of the regulatory options presented in the ANPR was implementation of a June 1 opening of the Angling category fishery. Such a delay in the season opening could ensure fishing opportunities for fishermen participating in the more northern ABT fisheries. This date would coincide with the commencement of the General category season. Under the alternative, fishing for ABT from January 1 to May 31 would be allowed under the tag and release program only.

Alternatively, the ANPR noted that regulations could be amended to allow the AA, upon determining that variations in seasonal distribution, abundance, or migration patterns of ABT, and the catch rate, are preventing fishermen in an identified area from harvesting a portion of the quota, to close the Angling category and reopen it at a later date, when the bluefin have migrated to the identified area.

The ANPR established a 30-day comment period during which NMFS received numerous comments on the options presented. These comments are summarized below.

Comments and Responses

Comment: Angling category permit holders expressed concern about decreased or loss of fishing opportunities in some areas as a result of increased landings of large school, small medium, and trophy class ABT in the North Carolina winter fishery. Some commenters support NMFS having the authority to close and/or reopen all or part of the Angling category in order to ensure an equitable distribution of fishing opportunities among anglers of all geographic areas. Some commenters felt that this would be a more reasonable solution than delaying the Angling category season until June 1. Still others suggested that since the winter fishery off North Carolina is not historical, at least at current levels, it should not be allowed to increase if it is likely to jeopardize the ABT recovery program or preclude fisheries in traditional areas.

Response: NMFS recognizes that the recent and unprecedented increase in Angling category landings of ABT in the early season North Carolina fishery has caused concern among Angling category permit holders about decreased fishing opportunities further north. This interim final rule is meant to address that concern by allowing NMFS to adjust opening and closing dates as the schools of fish move along the coast to new fishing areas, in order increase the scope of data collection and to allow a more equitable geographic and temporal distribution of fishing opportunities. NMFS believes that this expanded authority for interim closures, combined with geographic subdivisions of the quota currently under consideration, could adequately address the scientific monitoring and fishing opportunity issues without delaying the opening of the fishing season until June.

Management Measures

This interim final rule expands NMFS authority to close the ABT Angling category for reasons other than attainment of quota. Upon determining that variations in seasonal distribution, abundance, or migration patterns of ABT, or the catch rate in one area may preclude anglers in an another area from a reasonable opportunity to harvest a portion of the quota, NMFS may close all or part of the Angling category, and may reopen it at a later date, to ensure that ABT have migrated to the identified area before the entire Angling category quota is reached.

This regulatory change will improve NMFS' ability to implement ICCAT recommendations, including scientific monitoring of the stock and restricting catch to within the overall quota and the subquota for school size ABT. Additionally, this measure will further the domestic management objectives for the Atlantic tuna fisheries. This interim final rule will allow the North Carolina winter fishery for ABT to be conducted without taking such an inordinate share of any of the three size class quotas that fisheries in other areas are precluded.

Classification

This interim final rule is published under the authority of the ATCA, 16 U.S.C. 971 *et seq.* The AA has determined that the regulations contained in this rule are necessary to implement the recommendations of ICCAT and are necessary for management of the Atlantic tuna fisheries.

This interim final rule has been determined to be not significant for purposes of E.O. 12866.

NMFS has determined that, under 5 U.S.C. § 553(b)(B), there is good cause to waive the requirement for prior notice and an opportunity for public comment as such procedures would be contrary to the public interest. NMFS was undertaking rulemaking on this, and other, tuna fishery management issues. Specifically, NMFS had published an ANPR on August 23, 1996 seeking public comment on a variety of tuna issues. However, while that process remains ongoing, NMFS has received information from North Carolina that up to 10 metric tons of ABT have been taken by anglers since the fishery started on January 1, 1997. While the total 1997 annual quota for the Angling category of ABT has not yet been established, the historical allocation for this category has been set at approximately 220 mt. If the North Carolina harvest rate continues, it is possible that a significant portion of the entire angling quota might be taken prior to the time that the species migrates north. As such, given the public interest in an equitable distribution of catch among fishermen in the Angling category, the need for scientific data from throughout the species' range, and the fact that NMFS has already received public comment on the subject matter of this rule, further delay in the implementation of this action to provide an opportunity for additional comment is contrary to the public interest.

Further, under 5 U.S.C. § 553(d)(3), NMFS has determined that there is good cause, as explained above, to waive the 30-day delay in effective date. If this new authority results in a closure action for the ABT fishery, NMFS has the ability to rapidly communicate the closure to fishery participants through its FAX network, HMS Information Line, and NOAA weather radio. To the extent practicable, advance notice of such closure will be provided.

List of Subjects in 50 CFR Part 285

Fisheries, Fishing, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: February 20, 1997.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 285, is amended as follows:

PART 285—ATLANTIC TUNA FISHERIES

1. The authority citation for part 285 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*

2. In § 285.20, paragraph (b)(1) is revised to read as follows:

§ 285.20 Fishing Seasons.

* * * * *

(b) *Closure.* (1)(i) NMFS will monitor catch and landing statistics, including catch and landing statistics from previous years and projections based on those statistics, of Atlantic bluefin tuna by vessels other than those permitted in the Purse Seine category. On the basis of these statistics, NMFS will project a date when the catch of Atlantic bluefin tuna will equal any quota established under this section, and will file notification with the Office of the Federal Register stating that fishing for or retaining Atlantic bluefin tuna under the quota must cease on that date at a specified hour.

(ii) Upon determining that variations in seasonal distribution, abundance, or migration patterns of ABT, or the catch rate in one area may preclude anglers in an another area from a reasonable opportunity to harvest a portion of the quota, NMFS may close all or part of the Angling category, and may reopen it at a later date if NMFS determines that ABT have migrated into an identified area. In determining the need for any such temporary or area closure, NMFS will consider the following factors:

(A) The usefulness of information obtained from catches of a particular geographic area of the fishery for biological sampling and monitoring the status of the stock;

(B) The current year catches from the particular geographic area relative to the catches recorded for that area during the preceding four years;

(C) The catches from the particular geographic area to date relative to the entire category and the likelihood of closure of that entire category of the fishery if no allocation is made;

(D) The projected ability of the entire category to harvest the remaining amount of Atlantic bluefin tuna before the anticipated end of the fishing season.

* * * * *

[FR Doc. 97–4773 Filed 2–21–97; 4:51 pm]

BILLING CODE 3510–22–F

50 CFR Part 648

[Docket No. 961125328–7032–02; I.D. 103196B]

RIN 0648–AJ06

Fisheries of the Northeastern United States; Amendment 6 to the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this rule to implement measures contained in Amendment 6 to the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP). Amendment 6 establishes measures to prevent overfishing of the Atlantic squids and butterfish, allow for seasonal restrictions in the *Illex* squid fishery to improve yield per recruit, change the closure trigger for these species from 80 percent to 95 percent of the domestic annual harvest (DAH), and revise bycatch trip limits after closure.

EFFECTIVE DATE: March 28, 1997.

ADDRESSES: Copies of Amendment 6, the environmental assessment, regulatory impact review, and other supporting documents are available upon request from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790.

FOR FURTHER INFORMATION CONTACT: David M. Gouveia, Fishery Management Specialist, 508–281–9280.

SUPPLEMENTARY INFORMATION:

Background

This final rule implements measures in Amendment 6 to the FMP to prevent overfishing of the Atlantic squids and butterfish, allow for seasonal restrictions in the *Illex* squid fishery to improve yield per recruit, and change the closure trigger for these species from 80 percent to 95 percent of the DAH. Amendment 6 also revises the trip limits on bycatch of these species when a fishery is closed. Background concerning the development of Amendment 6 was provided in the notice of proposed rulemaking (December 9, 1996, 61 FR 64852), and is not repeated here. That notice provided a public comment period that concluded on January 21, 1997. No comments were received on the proposed rule.

Overfishing Definitions

Illex illecebrosus

Overfishing for *Illex* is defined to occur when the catch associated with a threshold fishing mortality rate (F) of F_{20} is exceeded. F_{20} is defined as the F that results in 20 percent of the maximum spawning potential (MSP) of the stock. This means that 20 percent of the maximum spawning biomass would remain in the population compared to an unfished population. For *Illex*, this overfishing definition would equate roughly to F=0.28, or an annual rate of removal of about 22 percent from the population due to fishing.

Maximum optimum yield (max OY) will also be specified as the catch that would result from F_{20}. To ensure that the overfishing F level is not closely approached, the annual quota would be specified to correspond to a target F of F_{50}. F_{50} is defined as the F that results in 50 percent of the MSP of the stock. This means that 50 percent of the spawning biomass would remain in the population compared to an unfished population. For *Illex*, this would equate roughly to F=0.11, and to an annual rate of removal of about 8 or 9 percent from the population due to fishing. Approval of Amendment 6 means that the annual specification of max OY is revised to 24,000 mt.

Loligo pealei

Overfishing for *Loligo* is defined to occur when the catch associated with a threshold F of F_{max} is exceeded. F_{max} is the F that results in the maximum yield per recruit. For *Loligo*, this overfishing threshold would equate roughly to F=0.36, and to an annual rate of removal of about 27 percent from the population due to fishing. Max OY will also be specified as the catch that would result from fishing at F_{max}. To ensure that the overfishing threshold is not closely approached, the annual quota would be specified to correspond to a target F of F_{50}. For *Loligo*, this would equate roughly to F=0.13, and to an annual rate of removal of about 1 percent from the population due to fishing. Approval of Amendment 6 means the annual specification of max OY is revised to 26,000 mt.

Atlantic Butterfish

Because current estimates of F are unreliable, Stock Assessment Workshop (SAW) 21 recommended amending the existing overfishing definition to take a more conservative (lower risk) approach. Overfishing is now defined as occurring when the 3-year moving average of pre-recruits from the Northeast Fisheries Science Center's autumn bottom trawl survey (mid-Atlantic to Georges Bank) falls within the lowest quartile of the time series, or when landings exceed a level that would result from a threshold F of F_{MSY}. Max OY is specified as the catch level that would result from fishing at F_{MSY}. Thus, when an estimate of F is available, it will be incorporated as a management tool. F_{MSY} is the F that results in the maximum sustainable yield.

Other Measures

In addition to defining overfishing, Amendment 6 specifies that, in order to prevent the DAH from being exceeded, the directed fisheries for these species will be closed when 95 percent of the DAH is projected to be taken. During the closure, any vessel of the United States can retain up to 2,500 lb (1.13 mt) of *Loligo* or butterfish and up to 5,000 lb (2.27 mt) of *Illex*.

Amendment 6 also contains a provision that will allow seasonal quotas to be specified annually for *Illex*. The FMP currently provides that seasonal quotas can be specified for *Loligo* only. This measure will provide a mechanism that could be used to delay the opening of the *Illex* season and increase yield, since the animals will be given more time to grow before they are harvested. The seasonal closure will be implemented on an annual basis through the Monitoring Committee process specified in the FMP.

Classification

NMFS has determined that this rule is consistent with the national standards, other provisions of the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable laws.

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. The reasons were discussed in the proposed rule published in the **Federal Register** on December 9, 1996 (61 FR 64852) and are not repeated here. No comments were received regarding certification. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 20, 1997.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES [AMENDED]

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.20, paragraphs (b) through (d) are revised to read as follows:

§ 648.20 Maximum optimum yield (OYs).

* * * * *

(b) *Loligo*—the catch associated with a fishing mortality rate of F_{max}.

(c) *Illex*—the catch associated with a fishing mortality rate of F_{20}.

(d) Butterfish—the catch associated with a fishing mortality rate of F_{MSY}.

3. In § 648.21, paragraph (c)(5) is revised to read as follows:

§ 648.21 Procedures for determining initial annual amounts.

* * * * *

(c) * * *

(5) Commercial seasonal quotas/closures for *Loligo* and *Illex*.

* * * * *

4. In § 648.22, paragraphs (a) and (c) are revised to read as follows:

§ 648.22 Closure of the fishery.

(a) *General.* The Assistant Administrator shall close the directed mackerel fishery in the EEZ when U.S. fishermen have harvested 80 percent of the DAH of that fishery if such closure is necessary to prevent the DAH from being exceeded. The closure shall remain in effect for the remainder of the fishing year, with incidental catches allowed as specified in paragraph (c) of this section, until the entire DAH is attained. When the Regional Director projects that DAH will be attained for mackerel, the Assistant Administrator shall close the mackerel fishery in the EEZ, and the incidental catches specified for mackerel in paragraph (c) of this section will be prohibited. The Assistant Administrator shall close the directed fishery in the EEZ for *Loligo*, *Illex*, or butterfish when 95 percent of DAH has been harvested. The closure of the directed fishery shall be in effect for the remainder of the fishing year with incidental catches allowed as specified in paragraph (c) of this section.

* * * * *

(c) *Incidental catches.* During the closure of the directed fishery for mackerel, the trip limit for mackerel is 10 percent by weight of the total amount of fish on board. During a period of closure of the directed fishery for *Loligo*, *Illex*, or butterfish, the trip limit for *Loligo* and butterfish is 2,500 lb (1.13 mt) each, and the trip limit for *Illex* is 5,000 lb (2.27 mt).

[FR Doc. 97–4779 Filed 2–25–97; 8:45 am]

BILLING CODE 3510–22–F

50 CFR Part 660

[Docket No. 961121322–7033–02; I.D. 110696B]

RIN 0648–AJ02

Fisheries Off West Coast States and in the Western Pacific; Western Pacific Bottomfish Fishery; Mau Zone Moratorium

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to impose a 2-year moratorium on issuing new permits for harvesting bottomfish in the Mau Zone of the Northwestern Hawaiian Islands so that effort in the fishery will be stabilized while the Western Pacific Fishery Management Council (Council) develops a limited access program for the area. This will stabilize effort in the fishery while the Council develops a management system for the Mau Zone that may limit access to the fishery.

EFFECTIVE DATE: March 27, 1997.

ADDRESSES: Send comments to Ms. Hilda Diaz-Soltero, Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802. Copies of the Environmental Assessment can be obtained from the same address.

FOR FURTHER INFORMATION CONTACT: Mr. Alvin Katekaru, NMFS, (808) 973–2985; Mr. Svein Fougner, NMFS, (562) 980–4034; or Ms. Kitty Simonds, Council, (808) 522–8220.

SUPPLEMENTARY INFORMATION: Following extensive review by the Council's advisory bodies, the details of which were summarized in the proposed rule (61 FR 60255, November 27, 1996) and will not be repeated here, the Council, at its 90th meeting, August 7–9, 1996, recommended that a moratorium be implemented for 2 years to allow sufficient time to complete an access limitation program for the Mau Zone bottomfish fishery. The Council recommended this action in accordance with the framework procedures of 50 CFR 660.67(d), which specifically addresses the access limitation process. During the moratorium, the Council will develop a program for the Mau Zone that aims to reduce the potential increase in fishing pressure in the Mau Zone and increase the economic efficiency of the fishery.

Discussions among the members of the Council's Bottomfish Plan Team, Task Force, Advisory Panel, and Review Board have pointed out the necessity of three elements in any limited access plan: Simplicity, equity, and the importance of restricting the number of potential participants. Approximately 80 vessels have had permits for the Mau Zone at some time in the past; however, some owners of vessels have died, and some vessels have permanently left the fishery, leaving a core of perhaps 30 vessels, whose owners could renew their permits and participate in the fishery. Any plan that the Council adopts is likely to contain some kind of qualifying criteria. A permit obtained by a former permittee during the moratorium may not guarantee a permit under the permanent limited access system. The Council is considering using qualification criteria based on historical landings data and current landings data, coupled with non-transferable permits for reducing the number of bottomfish vessels in the fishery and maintaining an active fleet at an optimal level.

Upon the effective date of this rule, only those vessel owners who have held Mau Zone permits will be eligible to renew or obtain permits for the length of the moratorium.

Classification

The Administrator, Southwest Region, NMFS, determined that the regulatory amendment is necessary for the conservation and management of the bottomfish fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable law.

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. The reasons were published on November 27, 1996 (61 FR 60255). No public comments were received on the certification. As a result, no final regulatory flexibility analysis has been prepared.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 21, 1997.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reason set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST AND WESTERN PACIFIC STATES

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 660.61, paragraph (a) is revised to read as follows:

§ 660.61 Permits.

(a) The owner of any vessel used to fish for bottomfish in the Mau Zone must have a permit issued under this section for that vessel. Permits for persons not previously permitted to fish in the Mau Zone will not be issued for a 2-year period beginning March 27, 1997.

* * * * *

[FR Doc. 97–4778 Filed 2–25–97; 8:45 am]

BILLING CODE 3510–22–F

50 CFR Part 679

[Docket No. 960502124–6190–02; I.D. 022097B]

Fisheries of the Exclusive Economic Zone Off Alaska; Scallop Fishery; District 16 of Registration Area D

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the scallop fishery in District 16 of Scallop Registration Area D (Yakutat). This action is necessary to prevent exceeding the scallop 1997 total allowable catch (TAC) in this area.

EFFECTIVE DATE: 1200 hrs, Alaska local time (A.l.t.), February 23, 1997, until 2400 hrs, A.l.t., June 30, 1997.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: The scallop fishery in the exclusive economic zone off Alaska is managed by NMFS according to the Fishery Management Plan for the Scallop Fishery Off Alaska (FMP), which was prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing for scallops is governed by regulations appearing at subpart F of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.62(b), the 1997 scallop TAC for District 16 of Scallop Registration Area D (Yakutat), was established by the Final 1996–97 Harvest Specifications of Scallops (61 FR 38099, July 23, 1996) as 35,000 lb (15,880 kg) shucked meat.

In accordance with 679.62(c), the Administrator, Alaska Region, NMFS, has determined that the scallop TAC for District 16 of Scallop Registration Area D (Yakutat), has been reached. Consequently, NMFS is prohibiting the taking and retention of scallops in District 16 of Scallop Registration Area D (Yakutat).

Classification

This action is required by § 679.62 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 20, 1997.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–4774 Filed 2–21–97; 4:51 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register

Vol. 62, No. 38

Wednesday, February 26, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1230

[No. LS–97–001]

Pork Promotion, Research, and Consumer Information Order—Increase in Importer Assessments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: Pursuant to the Pork Promotion, Research, and Consumer Information Act (Act) of 1985 and the Pork Promotion, Research, and Consumer Information Order (Order) issued thereunder, this proposed rule would increase by eight-hundredths of a cent per pound the amount of the assessment per pound due on imported pork and pork products to reflect an increase in the 1996 five-market average price for domestic barrows and gilts. This proposed action would bring the equivalent market value of the live animals from which such imported pork and pork products were derived in line with the market values of domestic porcine animals. These proposed changes will facilitate the continued collection of assessments on imported porcine animals, pork, and pork products.

DATES: Comments must be received by March 28, 1997.

ADDRESSES: Send two copies of comments to Ralph L. Tapp, Chief; Marketing Programs Branch, STOP 0251; Livestock and Seed Division; Agricultural Marketing Service (AMS), USDA, Room 2606–S; P.O. Box 96456; Washington, D.C. 20090–6456. Comments will be available for public inspection during regular business hours at the above office in Room 2606 South Building; 14th and Independence Avenue, SW.; Washington, D.C. 20090–6456.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch, 202/720–1115.

SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 12778 and Regulatory Flexibility Act

This proposed rule has been determined not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposal is not intended to have a retroactive effect. The Act states that the statute is intended to occupy the field of promotion and consumer education involving pork and pork products and of obtaining funds thereof from pork producers and that the regulation of such activity (other than a regulation or requirement relating to a matter of public health or the provision of State or local funds for such activity) that is in addition to or different from the Act may not be imposed by a State.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1625 of the Act, a person subject to an order may file a petition with the Secretary stating that such order, a provision of such order or an obligation imposed in connection with such order is not in accordance with the law; and requesting a modification of the order or an exemption from the order. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in the district in which person resides or does business has jurisdiction to review the Secretary's determination, if a complaint is filed not later than 20 days after the date such person receives notice of such determination.

This action also was reviewed under the Regulatory Flexibility Act (RFA) (5 United States Code (U.S.C.) 601 et seq.). The effect of the Order upon small entities was discussed in the September 5, 1986, issue of the **Federal Register** (51 FR 31898), and it was determined that the Order would not have a significant effect upon a substantial number of small entities. Many of the estimated 200 importers may be classified as small entities under the Small Business Administration definition (13 CFR 121.601). This proposed rule would increase the amount of assessments on imported pork and pork products subject to assessment by eight-hundredths of a cent per pound, or as expressed in cents per kilogram, nineteen-hundredths of a cent per kilogram. This increase is consistent with the increase in the annual average price of domestic barrows and gilts for calendar year 1996. Adjusting the assessments on imported pork and pork products would result in an estimated increase in assessments of $310,000 over a 12-month period. Assessments collected for 1996 were $2,804,935. Accordingly, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

The Act (7 U.S.C. 4801–4819) approved December 23, 1985, authorized the establishment of a national pork promotion, research, and consumer information program. The program was funded by an initial assessment rate of 0.25 percent of the market value of all porcine animals marketed in the United States and an equivalent amount of assessment on imported porcine animals, pork, and pork products. However, that rate was increased to 0.35 percent in 1991 (56 FR 51635) and to 0.45 percent effective September 3, 1995 (60 FR 29963). The final Order establishing a pork promotion, research, and consumer information program was published in the September 5, 1986, issue of the **Federal Register** (51 FR 31898; as corrected, at 51 FR 36383 and amended at 53 FR 1909, 53 FR 30243, 56 FR 4, 56 FR 51635, and 60 FR 29963) and assessments began on November 1, 1986.

The Order requires importers of porcine animals to pay U.S. Customs Service (USCS), upon importation, the assessment of 0.45 percent of the animal's declared value and importers of pork and pork products to pay USCS, upon importation, the assessment of 0.45 percent of the market value of the live porcine animals from which such pork and pork products were produced. This proposed rule would increase the assessments on all of the imported pork and pork products subject to assessment as published in the **Federal Register** as a final rule June 7, 1995, and effective

on September 3, 1995; (60 FR 29965). This increase is consistent with the increase in the annual average price of domestic barrows and gilts for calendar year 1996 as reported by USDA, AMS, Livestock and Grain Market News (LGMN) Branch. This increase in assessments would make the equivalent market value of the live porcine animal from which the imported pork and pork products were derived reflect the recent increase in the market value of domestic porcine animals, thereby promoting comparability between importer and domestic assessments. This proposed rule would not change the current assessment rate of 0.45 percent of the market value.

The methodology for determining the per pound amounts for imported pork and pork products was described in the Supplementary Information accompanying the Order and published in the September 5, 1986, **Federal Register** at 51 FR 31901. The weight of imported pork and pork products is converted to a carcass weight equivalent by utilizing conversion factors which are published in the Department's Statistical Bulletin No. 697 "Conversion Factors and Weights and Measures." These conversion factors take into account the removal of bone, weight lost in cooking or other processing, and the nonpork components of pork products. Secondly, the carcass weight equivalent is converted to a live animal equivalent weight by dividing the carcass weight equivalent by 70 percent, which is the average dressing percentage of porcine animals in the United States. Thirdly, the equivalent value of the live porcine animal is determined by multiplying the live animal equivalent weight by an annual average market price for barrows and gilts as reported by USDA, AMS, LGMN Branch. This average price is published on a yearly basis during the month of January in LGMN Branch's publication "Livestock, Meat, and Wool Weekly Summary and Statistics." Finally, the equivalent value is multiplied by the applicable assessment rate of 0.45 percent due on imported pork and pork products. The end result is expressed in an amount per pound for each type of pork or pork product. To determine the amount per kilogram for pork and pork products subject to assessment under the Act and Order, the cent per pound assessments are multiplied by a metric conversion factor 2.2046 and carried to the sixth decimal.

The formula in the preamble for the Order at 51 FR 31901 contemplated that it would be necessary to recalculate the equivalent live animal value of imported pork and pork products to reflect changes in the annual average price of domestic barrows and gilts to maintain equity of assessments between domestic porcine animals and imported pork and pork products.

The average annual market price increased from $41.99 in 1995 to $52.77 in 1996, an increase of about 25 percent. This increase would result in a corresponding increase in assessments for all HTS numbers listed in the table in § 1230.110, 60 FR 29965; June 7, 1995, of an amount equal to eight-hundredths of a cent per pound, or as expressed in cents per kilogram, nineteen-hundredths of a cent per kilogram. Based on the most recent available Department of Commerce, Bureau of Census, data on the volume of imported pork and pork products available for the period January 1, 1995, through September 30, 1995, the proposed increase in assessment amounts would result in an estimated $310,000 increase in assessments over a 12-month period.

List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreement, Meat and meat products, Pork and pork products.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 1230 be amended as follows:

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR Part 1230 continues to read as follows:

Authority: 7 U.S.C. 4801–4819.

2. In Subpart B—Rules and Regulations, § 1230.110 is revised to read as follows:

§ 1230.110 Assessments on imported pork and pork products.

(a) The following HTS categories of imported live porcine animals are subject to assessment at the rate specified.

Live porcine animals	Assessment
0103.10.0000 ...	0.45 percent Customs Entered Value.
0103.91.0000 ...	0.45 percent Customs Entered Value.
0103.92.0000 ...	0.45 percent Customs Entered Value.

(b) The following HTS categories of imported pork and pork products are subject to assessment at the rates specified.

Pork and pork products	Assessment	
	Cents/lb	Cents/kg
0203.11.0000	.34	.749564
0203.12.1010	.34	.749564
0203.12.1020	.34	.749564
0203.12.9010	.34	.749564
0203.12.9020	.34	.749564
0203.19.2010	.39	.859794
0203.19.2090	.39	.859794
0203.19.4010	.34	.749564
0203.19.4090	.34	.749564
0203.21.0000	.34	.749564
0203.22.1000	.34	.749564
0203.22.9000	.34	.749564
0203.29.2000	.39	.859794
0203.29.4000	.34	.749564
0206.30.0000	.34	.749564
0206.41.0000	.34	.749564
0206.49.0000	.34	.749564
0210.11.0010	.34	.749564
0210.11.0020	.34	.749564
0210.12.0020	.34	.749564
0210.12.0040	.34	.749564
0210.19.0010	.39	.859794
0210.19.0090	.39	.859794
1601.00.2010	.47	1.036162
1601.00.2090	.47	1.036162
1602.41.2020	.51	1.124346
1602.41.2040	.51	1.124346
1602.41.9000	.34	.749564
1602.42.2020	.51	1.124346
1602.42.2040	.51	1.124346
1602.42.4000	.34	.749564
1602.49.2000	.47	1.036162
1602.49.4000	.39	.859794

Dated: February 20, 1997.

Lon Hatamiya,

Administrator.

[FR Doc. 97–4772 Filed 2–25–97; 8:45 am]

BILLING CODE 3410–02–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Business Loan Programs

AGENCY: Small Business Administration.

ACTION: Proposed Rule.

SUMMARY: The U. S. Small Business Administration (SBA) is proposing to modify its rules regarding the financing and securitization of the unguaranteed portion of loans guaranteed under Section 7(a) of the Small Business Act. Present regulations provide these options only to non-depository lenders. (13 CFR 120.420, Revised as of March 1, 1996) These proposed rules would permit both depository and non-depository lenders to pledge or securitize the unguaranteed portions of SBA guaranteed loans.

DATES: Comments must be received March 28, 1997.

ADDRESSES: Comments may be mailed to Jane Palsgrove Butler, Acting Associate Administrator for Financial Assistance, U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416, Room 8200.

FOR FURTHER INFORMATION CONTACT: James W. Hammersley, Acting Deputy Associate Administrator for Financial Assistance, (202) 205–7505.

SUPPLEMENTARY INFORMATION: Over the past several years, the average SBA guaranty under its guaranteed business loan program (program) has decreased from nearly 90% to approximately 75%. This 150% increase in lender exposure requires lenders participating in the program to commit substantially more of their own capital in order to support their dollar volume of SBA guaranteed loans. In 1992, SBA promulgated regulations that permitted non-depository lenders participating in the program to pledge or securitize the unguaranteed portions of SBA guaranteed loans, thereby permitting them to fund unguaranteed portions of SBA guaranteed loans with the proceeds of loans and securities offerings. (See 13 CFR § 120.420, revised as of March 1, 1996.)

Since that time, bank (depository) participants have asked SBA to modify its regulations to provide the same ability to them, in order to offset the increase in commitment of capital needed to continue participation in the program. Bankers have told SBA that, in many cases, it is more efficient to raise funds through a pledge or securitization than to attract additional deposits. Congress has now recognized the need to permit all participants in the program to have a level playing field in raising capital needed to fund the increased requirement for unguaranteed portions. Therefore, recent legislation prohibits any securitization under SBA's present regulations after March 31, 1997, unless SBA develops regulations permitting all participating lenders to pledge and securitize the unguaranteed portions of their SBA guaranteed loans. See section 103(e) of Public Law 104–408, Oct. 1, 1996, which directs SBA to promulgate a final regulation "that applies uniformly to both depository institutions and other lenders * * * setting forth the terms and maintenance of appropriate reserve requirements and other safeguards to protect the safety and soundness of the program."

I. Advance Notice of Proposed Rulemaking

On November 29, 1996, SBA published an advance notice of proposed rulemaking which requested the views of interested parties on how this statutory requirement might be satisfied. 61 FR 60,649, Nov. 29, 1996.

SBA received nine responses, including one response which had four signatories. The comments corresponded to questions posed in the Advance Notice Proposed Rulemaking. The following is a discussion of the comments received.

Item one—How should lenders demonstrate a retained tangible economic interest in a guaranteed loan? Should lenders be required to retain an unguaranteed portion and/or a reserve? What level of retention and/or reserve is adequate to protect the interest of SBA?

Each of the respondents provided comments on this item. One suggested a 10% retention, one suggested a retention of 50% of the unguaranteed portion of the loan and five suggested a retention of 5% of the total amount of the loan. One respondent offered to work with the Agency to develop a retention level appropriate to the credits and one respondent proposed that a lender provide risk retention or supply a credit enhancement of the lesser of (1) the level required to cause all securities issued under the securitization transaction to third parties to receive an investment grade rating, or (2) 5% of the total outstanding principal of the loans which unguaranteed portion are securitized.

Item two—Should we permit financing transactions on a periodic scheduled basis or should lenders be permitted to submit transactions whenever they want?

All of the respondents who commented on this item suggested that there should not be a set schedule and that issuers should decide when to take an issue to market.

Item three—Should we permit multiple lenders to "pool" transactions in one multi-party transaction? If so, how should this be regulated?

Of the respondents who commented on this item, six were in favor and one was against. Those in favor stated that pooling will be necessary to make securitization available to small volume lenders. The respondent opposing this idea suggested that multi-issuer pools would allow lenders with poorer quality loans to spread their risk over a larger number of loans.

Item four—Should we use third party resources to help process the contemplated transactions? If so, what type of third parties? Who should bear the costs associated with using third parties?

Only one respondent was against using third parties. This respondent wants to keep the process as simple as possible and feels that adding third parties will complicate the process. All others did not object to using third parties as long as the fee for their services was reasonable.

II. Background

In developing these proposed regulations, SBA attempted to balance the needs of financial institutions, especially non-depository financial institutions, to raise funds for operations with the mandate that the program be operated on a safe and sound basis to protect the interests of the taxpayers.

SBA has deliberated extensively over the issue of requiring a retained economic interest in the loans. The Agency continues to believe that the risk of loss to the originating lender has been the cornerstone of the 7(a) loan program. For example, the Agency has previously taken steps to reduce the premium received by lenders upon the sale of the guaranteed portion of a loan when the Agency thought that premiums had reached the level at which they may be reducing the economic interest in the loans to the point that lenders would not be cautious providers of credit.

In determining the proposed regulatory structure, the Agency also tried to balance the ability of lenders to pledge the future income on the loan with the need to maintain a level of safety for lenders. The securitization structures used to date attempt to put the entire risk of loss on the lender. In reviewing these structures, the Agency has become concerned that there may not be a sufficient reserve available for the entity to survive a modest increase in the historic loss rate. One must remember that rating agencies involved in these transactions are rating the security and the cash flows associated with it. They are not making any type of determination as to whether the originator will survive for the duration of the securitization.

Absent a securitization, a lender will have a guaranty on 75% of a loan and have a 25% risk. If the unguaranteed portion of loans are securitized, underwriters will require that the securitization be structured so that investors are virtually protected from any loss. To do this, securitizing lenders have had to pledge all of the cash flow on the unguaranteed portion and a part of the cash flow on the guaranteed portion that would otherwise be received by the lender. Because the securitization does not change the risk of default on loans, a lender is left in the position of assuming, in this example, the entire risk associated with the 25% unguaranteed portion, but not having

the assets associated with that portion of the loan to offset its securitization.

SBA has proposed regulations with these concerns in mind. Clearly, it is not in SBA's interest to eliminate an avenue of funding used by some of its lenders. Therefore, the Agency will review any final regulations after a reasonable period of use and consider whether changes are necessary based on experience with the structure that is permitted.

III. Proposed Regulations

After having carefully considered all of these matters and the responses to the advance notice, SBA is now proposing the following regulations to satisfy the statutory requirement. The regulations being proposed extend the coverage of the 1992 regulations to depository lenders and propose a few changes in those regulations.

A. Technical Change

When SBA first considered securitization and pledging regulations in 1992, it was confident that it had the resources to take over the portfolio of a securitizing lender if the lender failed or defaulted on its obligations under a securitization agreement. Since the promulgation of those regulations, SBA has greatly decreased its staff. The reduction of personnel has reduced SBA's ability to absorb servicing and liquidation responsibilities for a large portfolio of loans in the case of failure or default by a participating lender which has securitized its unguaranteed portions. Therefore, as a condition to the approval of any securitization of unguaranteed portions under the 1992 regulations, the Agency has required in securitization documentation that a lender qualified to participate in the program, and acceptable to SBA, identified as a back up servicer, will take over the responsibilities required by SBA Form 750, "Guaranty Loan Agreement," for servicing and liquidation of loans made by a failed participant. The proposed regulations incorporate this requirement. Such servicing and liquidation must be performed under the terms of SBA's Blanket Guaranty Agreement.

B. Extent of Securitization

SBA has had over three years to review the use of securitization by non-depository participants. The Agency has decided that less than 100% securitization of unguaranteed portions by lenders participating in the program will provide them with enough capital to support adequate levels of SBA guaranteed lending. Therefore, SBA is proposing to modify its present regulations to require that participating lenders which undertake securitizations retain the equivalent of at least a 5% interest in each loan the unguaranteed portion of which is securitized.

In this regard, the proposed regulations are intended to provide a level playing field for both depository and non-depository lenders to securitize assets and ensure the safety and soundness of the program. SBA intends to require that any securitizing lender demonstrate its continuing economic interest in the securitized loans by one of the following: (1) Retaining in its own portfolio unguaranteed portions equal to 5% of the face value of all loans (guaranteed plus unguaranteed portions) the unguaranteed portions of which are contained in the securitization, (2) retaining a subordinate tranche equal to 5% of the face value of all the loans the unguaranteed portions of which are contained in the securitization, or (3) establishing a cash reserve equal to 5% of the total face value of all of the loans the unguaranteed portions of which are contained in the securitization. Under any of the options, only the participating lender may regain use of the proportional retained amount of funds after each corresponding loan has been paid in full, or, in the case of a default, after the collateral for the loan has been liquidated and a determination has been made that there is no additional collectability.

If option (1) is used, the retained amount may be pledged as collateral for a loan to fund the retainage. If option (3) is used, the lender must establish the cash reserve at the time of the securitization. The retainage in the case of option (3) must be held by a custodian acceptable to SBA. In the event of a failure by the securitizing lender, it must become available first to SBA to offset expenses relative to servicing or liquidating the loans, and secondly, to a subsequent servicer to be available for the same purposes.

C. Pledging

The 1992 regulations provided a method for non-depository lenders to pledge the guaranteed and unguaranteed portions of their loans as a means of financing the loans. The proposed regulations will extend the same option to depository lenders. However under this regulation, all lenders using a pledge agreement will be required to retain a cash flow equal to 1% of the principal balance of any loan pledged if the percentage of the loan pledged exceeds the unguaranteed percentage of the loan. Thus, if a lender is pledging 100% of a portfolio of loans, it must retain a cash flow equal to 1% of the principal balance of each loan pledged. The documentation for the pledge must indicate that the purpose of this holdback is to provide a sufficient reserve to pay the cost of a new participating lender to take over servicing of pledged loans in the event of the failure of the originating lender or its default under the pledge agreement.

D. Capital Requirements

Presently under SBA's regulations, Small Business Lending Companies (SBLCs), a subset of non-depository lenders, must maintain a minimum private capital of $1,000,000 or 10% of the unguaranteed portions of SBA guaranteed loans, whichever is more. (13 CFR 120.453) SBA is proposing to continue the minimum capital requirement for SBLCs. However, it is also proposing that SBLCs which securitize unguaranteed portions and choose the option under these regulations either to retain a percentage of the loans or a tranche of the securities must increase their private capital by 8% of the unguaranteed portions retained or of the tranche retained. This additional capital requirement will put depository lenders and non-depository SBLC lenders in an equivalent capital position with respect to SBA loans in which all or a part of their unguaranteed portions are securitized. Thus, under this proposal, an SBLC lender which retains a 5% tranche in a securitization, or retains unguaranteed portions equal to 5% of the face amount of the loans the unguaranteed portions of which are securitized must increase its private capital by an amount equal to 8% of the retained tranche. If the SBLC lender puts up a 5% cash reserve, the increase in capital will not be necessary.

E. Custodial Agent

SBA is proposing that physical custody of the pertinent loan documents relevant to pledging and securitizations be retained by the SBA's fiscal and transfer agent (FTA) for the Section 7(a) loan program, acting as custodian for the SBA and the parties to the transaction. Although SBA has approved securitizations using other entities as the custodian of the loan documents, the Agency is concerned that increased securitization activity could make it difficult for SBA to locate a particular borrower's note and collateral documents if multiple custodians are permitted. Therefore, SBA is proposing that the FTA handle this responsibility for all pledgings and securitizations. The FTA already performs this service for several existing transactions, and this requirement is not expected to have a negative effect on the ability of any lender to pledge or securitize unguaranteed portions of loans.

Under the proposed regulations lenders which securitize will continue to be bound by any other regulations and requirements that otherwise apply to lenders making SBA loans. Thus, for example, should a denial of liability on a guaranty or suit against a lender become necessary, SBA will hold the lender or subsequent servicer, if appropriate, responsible. The fact that unguaranteed portions of SBA guaranteed loans have been sold to a trust for the purpose of a securitization will not negate the requirements of SBA Form 750, "Blanket Loan Guaranty Agreement," and SBA's regulations which require the prudent servicing of SBA loans.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), and the Paperwork Reduction Act (44 U.S.C. Ch. 35).

SBA certifies that this proposed rule does constitute a significant rule within the meaning of Executive Order 12866 but would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* We believe this rule is likely to have an annual economic effect of $100 million or more, but we request comment from the public on its perception of the costs and benefits associated with this rule to enable SBA to prepare a cost benefit analysis in conjunction with the final rule. It will not result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

The proposed rule is consistent with the mandate of section 103(e) of Public Law 104–208 which is to set forth terms and conditions under which sales for the purpose of securitization can be permitted, including the maintenance of appropriate reserve requirements and other safeguards to protect the safety and soundness of the program. We believe that the reserve requirements and other safeguards built into the proposed regulations satisfy this concern. For the reasons set forth above, we feel that the proposed regulations have the benefit of permitting SBA's lenders to support an increased volume of SBA lending without the outlay of the cost of unguaranteed portions. There are reasonable alternatives involving retention of less or no reserve requirement, but we do not believe that they are as likely to uphold the safety and soundness of the program as are the proposed regulations. Finally, the proposed regulations have no negative impact on State, local, or tribal governments.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this final rule contains no new reporting or record keeping requirements.

For purposes of Executive Order 12612, SBA certifies that this rule has no federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that Order.

List of Subjects in 13 CFR Part 120

Business loans.

For the reasons set forth above, SBA proposes to amend Part 120 of title 13, Code of Federal Regulations, as follows:

PART 120—BUSINESS LOANS

1. The authority citation for 13 CFR part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6) and 636(a) and (h).

2. Section 120.420 is revised to read as follows:

§ 120.420 Financings by participating lenders.

(a) A participating lender may pledge the notes evidencing SBA guaranteed loans or sell interests in such notes representing the unguaranteed portions of such loans if SBA, in its sole discretion, gives its prior written consent. In order to obtain that consent, the lender must be secure financially and have a history of compliance with SBA's regulations and any other applicable state or Federal statutory and regulatory requirements, and agree to the terms of these regulations.

(b) A participating lender, SBA, and any third party involved in a pledging or securitization transaction must enter into a written agreement satisfactory to SBA in its sole discretion which acknowledges SBA's interest as guarantor of the subject loans and in which all relevant third parties agree to recognize and uphold those interests under the Act, this part, and the contractual provisions of SBA's Loan Guarantee Agreement. In any such agreement, the parties must agree to the following conditions:

(1) Except in extremely unusual circumstances as determined by SBA in its sole discretion, the fiscal and transfer agent for SBA will hold all pertinent loan instruments as designated by SBA, and the lender will continue to service the loans after the pledge or transfer is made.

(2) It must be demonstrated to SBA's satisfaction that the lender retains an economic risk in and bears the ultimate risk of loss on the unguaranteed portions. In the case of a pledge of notes, the lender must retain all of the economic interest in the unguaranteed portion of any loan which a pledged note evidences. In the case of a sale of unguaranteed portions of SBA guaranteed loans to support a securitization, the lender must agree to either hold unguaranteed portions equal to 5% of the total amount of the loans the remaining unguaranteed portions of which are contained in the securitization, or purchase or retain a subordinate tranche of the securitization equal to 5% of the total principal outstanding of the loans the unguaranteed portions of which are contained in the securitization, or establish a cash reserve of 5% of the face amount of the loans the unguaranteed portions of which are contained in the securitization. Any cash reserve retainage must be held in a bankruptcy remote environment, and in the event of a default by the lender under the securitization agreement shall become the property of SBA to be used first to cover SBA expenses and losses, and secondly for payment of servicing and liquidating expenses for the loans the unguaranteed portions of which are contained the securitization. Any retainage covered in this paragraph shall be proportionately decreased by the payment in full of each correspondent loan or when the collateral for each correspondent loan has been fully liquidated and a determination has been made that there is no additional collectability.

(c) A lender which pledges notes must retain an income stream equal to 1% of the face amount of any notes pledged if the percentage of the corresponding loan pledged exceeds the unguaranteed percentage. The fund must become the property of SBA in the event of a default by the lender under the pledging agreement to be used first to cover SBA expenses and losses, and secondly for payment to a backup servicer of servicing and liquidating expenses for the loans pledged.

(d) Other than for the pledging against Treasury Loans and Tax Accounts, a lender may not use SBA guaranteed loans or the collateral supporting such loans as collateral for any borrowing not related to financing of the guaranteed or unguaranteed portion of SBA loans.

(e) Any pledge or securitization agreement must identify a successor servicer to the pledging or securitizing

lender, agreeable to SBA which will be responsible for servicing and liquidating loans in the case of default under the agreement by the lender. A lender, or any successor servicer under a pledge or securitization agreement, will be considered the lender of the loan pledged or securitized under SBA rules, and will be bound by all restrictions that otherwise apply to lenders making SBA loans as long as either continues to act as servicer. SBA will hold the lender or successor servicer responsible in the case of a denial of liability or other adjustment to the amount of any SBA guaranty.

§ 120.470 [Amended]

3. Section 120.470(b)(3) is amended by adding the following sentence at the end thereof:

* * * * *

(b) * * *

If pursuant to Section 420 of these regulations an SBLC sells the unguaranteed portion of loans and retains either an amount of unguaranteed portions equal to 5% of the total amount of the loans the unguaranteed portions of which are contained in securitization, or a subordinate tranche of a securitization equal to 5% of the face value of the loans the unguaranteed portions of which are contained in the securitization, it must increase its private capital by 8% of either the face value of the unguaranteed portions of the loans retained or 8% of the face value of the subordinate tranche.

Dated: February 12, 1997.

Ginger Ehn Lew,

Acting Administrator.

[FR Doc. 97–4785 Filed 2–25–97; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–272–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –15, and –30 Series Airplanes, and C–9 (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–10, –15, and –30 series airplanes, and C–9 (military) airplanes. This proposal would require a one-time visual inspection to determine if all corners of the upper cargo doorjamb have been previously modified, various follow-on repetitive inspections, and modification, if necessary. This proposal is prompted by reports of fatigue cracks found in the fuselage skin and doubler at the corners of the upper cargo doorjamb. The actions specified by the proposed AD are intended to detect and correct such fatigue cracking, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane.

DATES: Comments must be received by April 7, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–272–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5324; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–272–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–272–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of fatigue cracks in the fuselage skin and doubler at the corners of the upper cargo doorjamb on Model DC–9 series airplanes. These cracks were discovered during inspections conducted as part of the Supplemental Structural Inspection Document (SSID) program, required by AD 96–13–03, amendment 39–9671 (61 FR 31009, June 19, 1996). Investigation revealed that such cracking was caused by fatigue-related stress. Fatigue cracking in the fuselage skin or doubler at the corners of the upper cargo doorjamb, if not detected and corrected in a timely manner, could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Service Bulletin DC9–53–276, dated September 30, 1996. The service bulletin describes the following procedures:

1. For airplanes on which the modification specified in Service Bulletin DC9–53–276 has not been accomplished: Performing x-ray inspections to detect cracks of the fuselage skin and doubler at all corners of the upper cargo doorjamb;

2. Conducting repetitive inspections, or modifying the corner skin of the upper cargo doorjamb and performing follow-on action eddy current inspections, if no cracking is detected;

3. Performing repetitive eddy current inspections to detect cracks on the skin adjacent to any corner that has been modified; and

4. Modifying any crack that is found to be 2 inches or less in length at all corners that have not been modified and performing follow-on repetitive eddy current inspections.

Accomplishment of the modification will minimize the possibility of cracks in the fuselage skin and doubler.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require a one-time visual inspection to determine if all corners of the upper cargo doorjamb have been previously modified, various follow-on repetitive inspections, and modification, if necessary. The follow-on repetitive inspections would be required to be accomplished in accordance with the service bulletin described previously.

Differences Between the Proposed Rule and the Relevant Service Information

The referenced service bulletin recommends performing an initial x-ray inspection in the fuselage skin and doubler at all corners of the upper cargo doorjamb. However, the FAA is unaware of the existence of an adequate x-ray inspection method for inspecting corners that have been modified. Therefore, for cases where the corners of the upper cargo doorjamb have been modified, the proposed AD would require an eddy current inspection to detect cracks on skin adjacent to the modification. For cases where the corners of the upper cargo doorjamb have not been modified, the proposed AD would require an x-ray inspection, as described previously. Since these inspections are dependent on whether the corners have been modified or not, the FAA finds that an initial one-time visual inspection is necessary to make such a determination.

Operators should note that, although the service bulletin specifies that the manufacturer must be contacted for disposition of certain conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Cost Impact

There are approximately 93 McDonnell Douglas Model DC–9–10, –15, and –30 series airplanes, and C–9 (military) airplanes, of the affected design in the worldwide fleet. The FAA estimates that 80 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed one-time visual inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the one-time visual inspection proposed by this AD on U.S. operators is estimated to be $4,800, or $60 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator be required to accomplish the necessary x-ray inspection, it would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of any necessary x-ray inspection action is estimated to be $60 per airplane, per inspection cycle.

Should an operator be required to accomplish the necessary eddy current inspection, it would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of any necessary eddy current inspection action is estimated to be $60 per airplane, per inspection cycle.

Should an operator be required to accomplish the necessary modification, it would take approximately 14 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. The cost of required parts could range from $714 per airplane to as much as $1,526 per airplane. Based on these figures, the cost impact of any necessary modification action is estimated to be between $1,554 and $2,366 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a significant regulatory action under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 96–NM–272–AD.

Applicability: Model DC–9–10, –15, and –30 series airplanes, and C–9 (military) airplanes; as listed in McDonnell Douglas Service Bulletin DC9–53–276, dated September 30, 1996; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking in the fuselage skin or doubler at the corners of the upper cargo doorjamb, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane, accomplish the following:

Note 2: Where there are differences between the service bulletin and the AD, the AD prevails.

Note 3: The words "repair" and "modify/modification" in this AD and the referenced service bulletin are used interchangeably.

Note 4: This AD will affect Principal Structural Element (PSE) 53.09.023 of the DC–9 Supplemental Inspection Document (SID).

(a) Prior to the accumulation of 41,000 total landings, or within 3,000 landings after the effective date of this AD, whichever occurs later, perform a one-time visual inspection to determine if the corners of the upper cargo doorjamb have been modified prior to the effective date of this AD.

(b) If the visual inspection required by paragraph (a) of this AD reveals that the corners of the upper cargo doorjamb have not been modified, prior to further flight, perform an x-ray inspection to detect cracks of the fuselage skin and doubler at all corners of the upper cargo doorjamb, in accordance with McDonnell Douglas Service Bulletin DC9–53–276, dated September 30, 1996.

(1) If no crack is detected during the x-ray inspection required by this paragraph, accomplish the requirements of either paragraph (b)(1)(i) or (b)(1)(ii) of this AD, in accordance with McDonnell Douglas Service Bulletin DC9–53–276, dated September 30, 1996.

(i) *Option 1.* Repeat the x-ray inspection required by paragraph (b) of this AD thereafter at intervals not to exceed 3,000 landings; or

(ii) *Option 2.* Prior to further flight, modify the corner skin of the upper cargo doorjamb, in accordance with the service bulletin. Prior to the accumulation of 28,000 landings after accomplishment of the modification, perform an eddy current inspection to detect cracks on the skin adjacent to the modification, in accordance with the service bulletin.

(A) If no crack is detected on the skin adjacent to the modification during the eddy current inspection required by this paragraph, repeat the eddy current inspection thereafter at intervals not to exceed 20,000 landings.

(B) If any crack is detected on the skin adjacent to the modification during any eddy current inspection required by this paragraph, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(2) If any crack is found during any x-ray inspection required by this paragraph and the crack is 2 inches or less in length: Prior to further flight, modify/repair it in accordance with the service bulletin. Prior to the accumulation of 28,000 landings after accomplishment of the modification, perform an eddy current inspection to detect cracks on the skin adjacent to the modification, in accordance with the service bulletin.

(i) If no crack is detected during the eddy current inspection required by this paragraph, repeat the eddy current inspection thereafter at intervals not to exceed 20,000 landings.

(ii) If any crack is detected during any eddy current inspection required by this paragraph, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

(3) If any crack is found during any x-ray inspection required by this paragraph and the crack is greater than 2 inches in length: Prior to further flight, modification it in accordance with a method approved by the Manager, Los Angeles ACO.

(c) If the visual inspection required by paragraph (a) of this AD reveals that the corners of the upper cargo doorjamb have been modified previously: Prior to the accumulation of 28,000 landings after accomplishment of that modification, or within 3,000 landings after the effective date of this AD, whichever occurs later, perform an eddy current inspection to detect cracks on the skin adjacent to the modification, in accordance with McDonnell Douglas Service Bulletin DC9–53–276, dated September 30, 1996.

(1) If no crack is detected during the eddy current inspection required by this paragraph, repeat the eddy current inspection thereafter at intervals not to exceed 20,000 landings.

(2) If any crack is detected during any eddy current inspection required by this paragraph, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 20, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–4714 Filed 2–25–97; 8:45 am]

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14 CFR Part 39

[Docket No. 96–NM–196–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model DH 125–1A and –3A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Raytheon Model DH 125–1A and –3A series airplanes. This proposal would require repetitive eddy current inspections to detect fatigue cracking of the main entry door/frame pressing, and repair, if necessary. This proposal is prompted by reports of fatigue cracking of the main entry door/frame pressing due to cyclic loading of the door frame. The actions specified by the proposed AD are intended to detect and correct such fatigue cracking, which could lead to the loss of structural integrity of the main entry door, and, consequently, result in decompression of the cabin.

DATES: Comments must be received by April 7, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–196–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Raytheon Aircraft Company, Commercial Service Department, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or the FAA, Wichita Aircraft Certification Office, Small Airplane Directorate, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Larry Engler, Aerospace Engineer, Airframe Branch, ACE–118W, FAA, Wichita Aircraft Certification Office, Small Airplane Directorate, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4122; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–196–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–196–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received several reports of fatigue cracking of the main entry door/frame pressing of Raytheon Model DH 125–1A and –3A series airplanes. Investigation revealed that cyclic loading of the door frame caused the fatigue cracking. Such fatigue cracking, if not detected and corrected in a timely manner, could cause the loss of structural integrity of the main entry door, and lead to decompression of the cabin.

Explanation of Relevant Service Information

The FAA has reviewed and approved Raytheon Aircraft Service Bulletin SB.52–48, dated June 19, 1996, which describes procedures for eddy current inspections to detect fatigue cracking of the main entry door/frame pressing. The service bulletin also describes procedures for repair, if necessary.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require repetitive eddy current inspections to detect and correct fatigue cracking of the main entry door/frame pressing. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

There are approximately 143 Raytheon Model DH 125 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 56 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $3,360, or $60 per airplane, per inspection.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Raytheon Aircraft Company (Formerly Beech, Raytheon Corporate Jets, British Aerospace, Hawker Siddeley, et al.): Docket 96–NM–196–AD.

Applicability: Model DH 125–1A and –3A series airplanes; equipped with a main entry door having part numbers 25FC3559A, 25FC3559A/B, or 25FC3559A/C; and on which Raytheon Modification 251429 has not been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the main entry door frame pressing area, which could result in loss of structural integrity of the door and consequent decompression of the cabin, accomplish the following:

(a) Within the next 150 landings or 90 days after the effective date of this AD, whichever occurs earlier, perform an eddy current inspection to detect fatigue cracking of the main entry door/frame pressing, in accordance with Raytheon Aircraft Service Bulletin SB.52–48, dated June 19, 1996.

(1) If no cracking is detected during the inspection, repeat the inspection thereafter at intervals not to exceed 1,000 flight hours.

(2) If any cracking is detected during the inspection, prior to further flight, repair the cracking in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 20, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–4716 Filed 2–25–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–NM–210–AD]

RIN 2120–AA64

Airworthiness Directives; Mitsubishi Model MU–300 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Mitsubishi Model MU–300 airplanes. This proposal would require revising the Airplane Flight Manual (AFM) to provide pilots with certain operating procedures during icing conditions, and to limit the maximum flaps position for flight in icing conditions or landing after an icing encounter. The proposal also would require installing an ice detector, and accomplishing a corresponding AFM revision to address its operation. For certain airplanes, the proposal would require converting the airplane configuration or modifying the warning horn system of the landing gear; and revising the AFM to specify flaps 10 degrees as a normal landing flap configuration. The actions specified by the proposed AD are intended to prevent uncommanded nose-down pitch at certain flap settings during icing conditions.

DATES: Comments must be received by April 7, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–210–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Mitsubishi Heavy Industries America, Inc., 15303 Dallas Parkway, Suite 685, LB–77, Dallas, Texas 75248. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Tina L. Miller, Aerospace Engineer, Flight Test Branch, ACE–117W, FAA, Wichita Aircraft Certification Office, Small Airplane Directorate, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4168; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–210–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–210–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On December 5, 1994, the FAA issued AD 94–25–10, amendment 39–9094 (59 FR 64112, December 13, 1994), that is applicable to all Raytheon (Beech) Model 400, 400A, 400T, and MU–300–10 airplanes, and all Mitsubishi Model MU–300 airplanes, to require a revision to the FAA-approved Airplane Flight Manual (AFM) to provide pilots with special operating procedures during icing conditions. That AD was prompted by results of icing tests, which demonstrated that ice accumulations on the horizontal stabilizer may cause the airplane to pitch down at certain flaps settings. The requirements of that AD are intended to prevent uncommanded nose-down pitch at certain flap settings during icing conditions.

Actions Since Issuance of Previous Rule

Since the issuance of AD 94–25–10, the FAA reviewed and approved Mitsubishi MU–300 Service Bulletin No. 30–007 (including Attachment 1), dated January 12, 1996. The service bulletin describes procedures for installing a Rosemount ice detector in accordance with Supplemental Type Certificate (STC) ST00383WI.

For Diamond I airplanes, Attachment 1 of the service bulletin describes procedures for modifying the warning horn system of the landing gear. That action involves modifying the center pedestal and the wiring of the warning horn, installing a switch panel assembly on the center pedestal, and performing a functional test of the warning horn system of the landing gear.

As an alternative to this modification, the service bulletin specifies that Diamond I airplanes may be converted to the Diamond IA airplane configuration by accomplishing Mitsubishi MU–300 Diamond Service Recommendation SR–001, Revision 2, dated June 1, 1984. That action involves upgrading the airplane to conform to an improved performance configuration, and includes modifications of the air conditioning system, the pitch trim indicator, the warning horn of the landing gear, and the engine indicating system.

Mitsubishi MU–300 Service Bulletin No. 30–007 also references the following documents as the additional sources of service information for accomplishment of certain other procedures:

1. Airplane Flight Manual Supplement M300–1003, dated December 6, 1995, which revises the Introduction, Operating Limitations, Emergency Procedures, Abnormal Procedures, Normal Procedures, Performance, and Weight and Balance Sections of the AFM to address the operation of the ice detector system.
2. Diamond I Flight Manual, Revision 29, dated January 5, 1996, which revises the Operating Limitations, Emergency Procedures, Abnormal Procedures, Normal Procedures, Performance, and Weight and Balance Sections of the AFM to limit the maximum flap position to flaps 10 degrees for flight in icing conditions or landing after an icing encounter, to allow landing flaps of 30 degrees if the icing encounter meets certain criteria, and to specify flaps 10 degrees as a normal landing flap configuration for Diamond I airplanes.
3. Mitsubishi MU–300 Diamond IA Airplane Flight Manual, Revision 9, dated January 5, 1996, which revises the Operating Limitations, Emergency Procedures, Abnormal Procedures, Normal Procedures, and Performance Sections of the AFM to limit the maximum flap position to flaps 10 degrees for flight in icing conditions or landing after an icing encounter, and to allow landing flaps of 30 degrees if the icing encounter meets certain criteria.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, for Model MU–300 airplanes, the proposed AD would continue to require the AFM revision, currently required by AD, that provides pilots with certain operating procedures during icing conditions, and limits the maximum flaps position for flight in icing conditions or landing after an icing encounter. This proposal also would require installing an ice detector, and accomplishing a corresponding AFM revision to address its operation.

For certain airplanes, the proposal would require converting the airplane configuration or modifying the warning horn system of the landing gear; and revising the AFM to specify flaps 10 degrees as a normal landing flap configuration.

The proposed actions would be required to be accomplished in accordance with the service documents described previously.

Accomplishment of the requirements of the proposed AD would constitute terminating action for the requirements of AD 94–25–10 for Model MU–300 airplanes.

Other Relevant Rulemaking

The FAA is considering issuing separate rulemaking action to supersede AD 94–25–10 to remove Model MU–300 airplanes from the applicability of the AD. That separate rulemaking action also would require, among other things, modification of the ice protection system of the horizontal stabilizer on all Beech Model 400, 400A, 400T, and MU–300–10 airplanes.

Difference Between Service Bulletin and the Proposed AD

Operators should note that Mitsubishi MU–300 Service Bulletin No. 30–007 recommends a compliance time of one year after the date of issuance of the service bulletin. However, this proposed AD requires that the actions specified in the service bulletin be accomplished within two years after the effective date of the AD. The FAA established the proposed two-year compliance time to coincide with the time specified in the separate rulemaking action to supersede AD 94–25–10 for Beech Model 400, 400A, 400T, and MU–300–10 airplanes, discussed previously. The FAA has determined that the proposed 2-year compliance time will not compromise safety, since the currently-required AFM revision will remain in effect in the interim.

Cost Impact

The FAA estimates that 89 Model MU–300 airplanes of U.S. registry would be affected by this proposed AD.

The AFM revision that is currently required by AD 94–25–10 for Model MU–300 airplanes takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the currently required AFM revision is estimated to be $5,340, or $60 per airplane.

The ice detector installation that is proposed in this AD action for all airplanes would take approximately 80 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $7,000 per airplane. Based on these figures, the cost impact on U.S. operators of the proposed installation of this AD is estimated to be $1,050,200, or $11,800 per airplane.

The new AFM revisions that are proposed in this AD action for all airplanes would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the new AFM revisions is estimated to be $5,340, or $60 per airplane.

The conversion of the configuration of the airplane that is specified in this AD action as an option for Diamond I airplanes, if accomplished, requires actions related to the airframe and the engine. The airframe portion of the conversion would take approximately 160 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $50,000 per airplane. The engine portion of the conversion should be accomplished during a regular engine overhaul; therefore, it would require no additional work hours. Required parts for this action would cost approximately $260,000 per airplane. Based on these figures, the cost impact of the proposed conversion on U.S. operators, who elect to accomplish it, is estimated to be $319,600 per airplane.

If accomplished, the option for modification of the warning horn system that is specified in this AD action for Diamond I airplanes would take approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $600 per airplane. Based on these figures, the cost impact of the proposed modification on U.S. operators is estimated to be $960 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Mitsubishi Heavy Industries, LTD.: Docket 96–NM–210–AD.

Applicability: All Model MU–300 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded nose-down pitch at certain flap settings during icing conditions, accomplish the following:

(a) For all airplanes: Within 20 days after December 28, 1994 (the effective date of AD 94–25–10, amendment 39–9094), revise the Limitations Section and Normal Procedures Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

"Icing Conditions

If icing conditions are encountered during flight, no greater than 10 degrees flaps may be utilized for landing unless the following conditions are met:

1. The icing conditions were encountered for less than 10 minutes, and the Ram Air Temperature (RAT) during such encounter was warmer than –8 degrees C. or

2. A RAT of +5 degrees C or warmer is observed during approach and landing.

If either of the above two conditions are met, 30 degrees flaps may be utilized for landing.

Otherwise:

Flaps (landing flaps setting)—10 degrees

Land Select (LAND SEL) Switch—Flaps 10 degrees

Use landing data for 10 degrees flaps from Appendix 1 of this AD.

Use landing data for 10 degrees flaps from Section 6, Performance.

(b) For Diamond I airplanes, as identified in Mitsubishi MU–300 Service Bulletin No. 30–007, dated January 12, 1996: Within 2 years after the effective date of this AD, accomplish the requirements of paragraphs (b)(1) through (b)(4) of this AD:

(1) Install an ice detector in accordance with Mitsubishi MU–300 Service Bulletin No. 30–007, dated January 12, 1996.

(2) Revise the Introduction, Operating Limitations, Emergency Procedures, Abnormal Procedures, Normal Procedures, Performance, and Weight and Balance Sections of the FAA-approved AFM to address the operation of the ice detector system. This may be accomplished by inserting a copy of Airplane Flight Manual Supplement M300–1003, dated December 6, 1995, in the AFM.

(3) Accomplish either paragraph (b)(3)(i) or (b)(3)(ii) of this AD.

(i) Convert the airplane from the Diamond I configuration to the Diamond IA configuration in accordance with Mitsubishi MU–300 Diamond Service Recommendation SR 71–001, Revision 2, dated June 1, 1984; and accomplish the AFM revision required by paragraph (c)(3) of this AD, or

(ii) Modify the warning horn system of the landing gear in accordance with Attachment 1 of Mitsubishi MU–300 Service Bulletin No. 30–007, dated January 12, 1996.

(4) Revise the Operating Limitations, Emergency Procedures, Abnormal Procedures, Normal Procedures, Performance, and Weight and Balance Sections of the AFM to limit the maximum flap position to flaps 10 degrees for flight in icing conditions or landing after an icing encounter, to allow landing flaps of 30 degrees if the icing encounter meets certain criteria, and to specify flaps 10 degrees as a normal landing flap configuration. This may be accomplished by inserting a copy of Diamond I Flight Manual, Revision 29, dated January 5, 1996, in the AFM.

(c) For Diamond IA airplanes: Within 2 years after the effective date of this AD, accomplish the requirements of paragraphs (c)(1), (c)(2), and (c)(3) of this AD.

(1) Install an ice detector in accordance with Mitsubishi MU–300 Service Bulletin No. 30–007, dated January 12, 1996.

(2) Revise the Introduction, Operating Limitations, Emergency Procedures, Abnormal Procedures, Normal Procedures, Performance, and Weight and Balance Sections of the FAA-approved AFM to address the operation of the ice detector system. This may be accomplished by inserting a copy of Airplane Flight Manual Supplement M300–1003, dated December 6, 1995, in the AFM.

(3) Revise the Operating Limitations, Emergency Procedures, Abnormal Procedures, Normal Procedures, and Performance Sections of the AFM to limit the maximum flap position to flaps 10 degrees for flight in icing conditions or landing after an icing encounter, and to allow landing flaps of 30 degrees if the icing encounter meets certain criteria. This may be accomplished by inserting a copy of Mitsubishi MU–300 Diamond IA Airplane Flight Manual, Revision 9, dated January 5, 1996, in the AFM.

(d) Accomplishment of the requirements of paragraph (b) or (c) of this AD, as applicable, constitutes terminating action for the requirements of AD 94–25–10, amendment 39–9094 (and paragraph (a) of this AD.) Following accomplishment of paragraph (b) or (c) of this AD, as applicable, the AFM revision required by paragraph (a) of this AD may be removed from the AFM.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 20, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–4718 Filed 2–25–97; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–NM–209–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon (Beech) Model 400, 400A, 400T, and MU–300–10 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Raytheon (Beech) Model 400, 400A, 400T, and MU–300–10 airplanes, and Mitsubishi Model MU–300 airplanes, that currently requires a revision to the Airplane Flight Manual (AFM) to provide pilots with special operating procedures during icing conditions. This proposal would require modification of the horizontal stabilizer ice protection system. This proposal also would remove Model MU–300 airplanes from the applicability of that AD. This proposal is prompted by the development of a modification that will positively address the unsafe condition. The actions specified by the proposed AD are intended to prevent uncommanded nose-down pitch at certain flap settings during icing conditions.

DATES: Comments must be received by April 7, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–209–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Tina L. Miller, Aerospace Engineer, Flight Test Branch, ACE–117W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4168; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–209–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–209–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On December 5, 1994, the FAA issued AD 94–25–10, amendment 39–9094 (59 FR 64112, December 13, 1994), applicable to all Raytheon Model 400, 400A, 400T, and MU–300–10 airplanes, and all Mitsubishi Model MU–300 airplanes, to require a revision to the FAA-approved Airplane Flight Manual (AFM) to provide pilots with special operating procedures during icing conditions. That action was prompted by the results of icing tests, which demonstrated that ice accumulations on the horizontal stabilizer may cause the airplane to pitch down at certain flaps settings. The requirements of that AD are intended to prevent uncommanded nose-down pitch at certain flap settings during icing conditions.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA has reviewed and approved Beechcraft Service Bulletin No. 2600, dated November 1995. The service bulletin describes procedures for modification of the horizontal stabilizer ice protection system on Model 400, 400A, and MU–300–10 airplanes. The modification involves replacing the existing ice protection system with an improved system and changing the horizontal stabilizer icing controls and annunciation. Accomplishment of this modification will improve the ice protection capabilities of the horizontal stabilizer.

That Beechcraft service bulletin does not address Model 400T airplanes, since the modification described in it has not been tested or approved for those airplanes. Nevertheless, the FAA has determined that modification of the horizontal stabilizer ice protection system on Model 400T airplanes must be accomplished in order to address the unsafe condition and ensure the continued operational safety of those airplanes.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 94–25–10 to continue to require revising the Limitations and Normal Procedures Sections of the AFM to provide pilots with special operating procedures during icing conditions. The proposed AD also would require modification of the horizontal stabilizer ice protection system. The modification would be required to be accomplished in accordance with the service bulletin described previously (if applicable), or in accordance with a method approved by the FAA. Accomplishment of the modification constitutes terminating action for the AFM revision required currently by AD 94–25–10.

Additionally, the proposed AD would remove Model MU–300 airplanes from the applicability of the existing AD. The FAA is considering issuing separate rulemaking action to require, among other things, certain AFM revisions and installation of an ice detector on those airplanes.

Cost Impact

There are approximately 237 Raytheon (Beech) Model 400, 400A, 400T, and MU–300–10 airplanes of the affected design in the worldwide fleet.

The FAA estimates that 39 Model 400 and MU–300–10 airplanes, 67 Model 400A airplanes, and 80 Model 400T airplanes of U.S. registry would be affected by this proposed AD.

The actions that are currently required by AD 94–25–10 (AFM revision) take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the actions currently required is estimated to be $11,160, or $60 per airplane.

The modification that is proposed in this AD would take approximately 320 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost between $37,000 and $45,000 per airplane. Based on these figures, the cost impact on the proposed requirements of this AD U.S. operators of those airplanes is estimated to be between $10,453,200 and $11,941,200, or between $56,200 and 64,200 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of

this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9094 (59 FR 64112, December 13, 1994), and by adding a new airworthiness directive (AD), to read as follows:

Raytheon Aircraft Company (Formerly Beech): Docket 96–NM–209–AD. Supersedes AD 94–25–10, Amendment 39–9094.

Applicability: All Model 400, 400T, and MU–300–10 airplanes; and Model 400A airplanes having serial numbers RK–1 through RK–107 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded nose-down pitch at certain flap settings during icing conditions, accomplish the following:

(a) Within 20 days after December 28, 1994 (the effective date of AD 94–25–10, amendment 39–9094), revise the Limitations Section and Normal Procedures Section of the FAA-approved Airplane Flight Manual (AFM) to include the following text. This may be accomplished by inserting a copy of this AD in the AFM.

"Icing Conditions

If icing conditions are encountered during flight, no greater than 10 degrees flaps may be utilized for landing unless the following conditions are met:

1. The icing conditions were encountered for less than 10 minutes, and the Ram Air Temperature (RAT) during such encounter was warmer than −8 degrees C.

Or

2. A RAT of +5 degrees C or warmer is observed during approach and landing.

If either of the above two conditions are met, 30 degrees flaps may be utilized for landing.

Otherwise:

Flaps (landing flaps setting)—10 degrees

Land Select (LAND SEL) Switch—Flaps 10 degrees

Use landing data for 10 degrees flaps from Appendix 1 of this AD.

(b) Within 2 years after the effective date of this AD, modify the horizontal stabilizer ice protection system in accordance with paragraph (b)(1) or (b)(2) of this AD, as applicable. Accomplishment of this modification constitutes terminating action for the AFM revision required by paragraph (a) of this AD. Following such accomplishment, that AFM revision may be removed from the AFM.

(1) For Model 400, 400A, and MU–300–10 airplanes: Accomplish the modification in accordance with Beechcraft Service Bulletin No. 2600, dated November 1995.

(2) For Model 400T airplanes: Accomplish the modification in accordance with a method approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

BILLING CODE 4910–13–U

Appendix 1

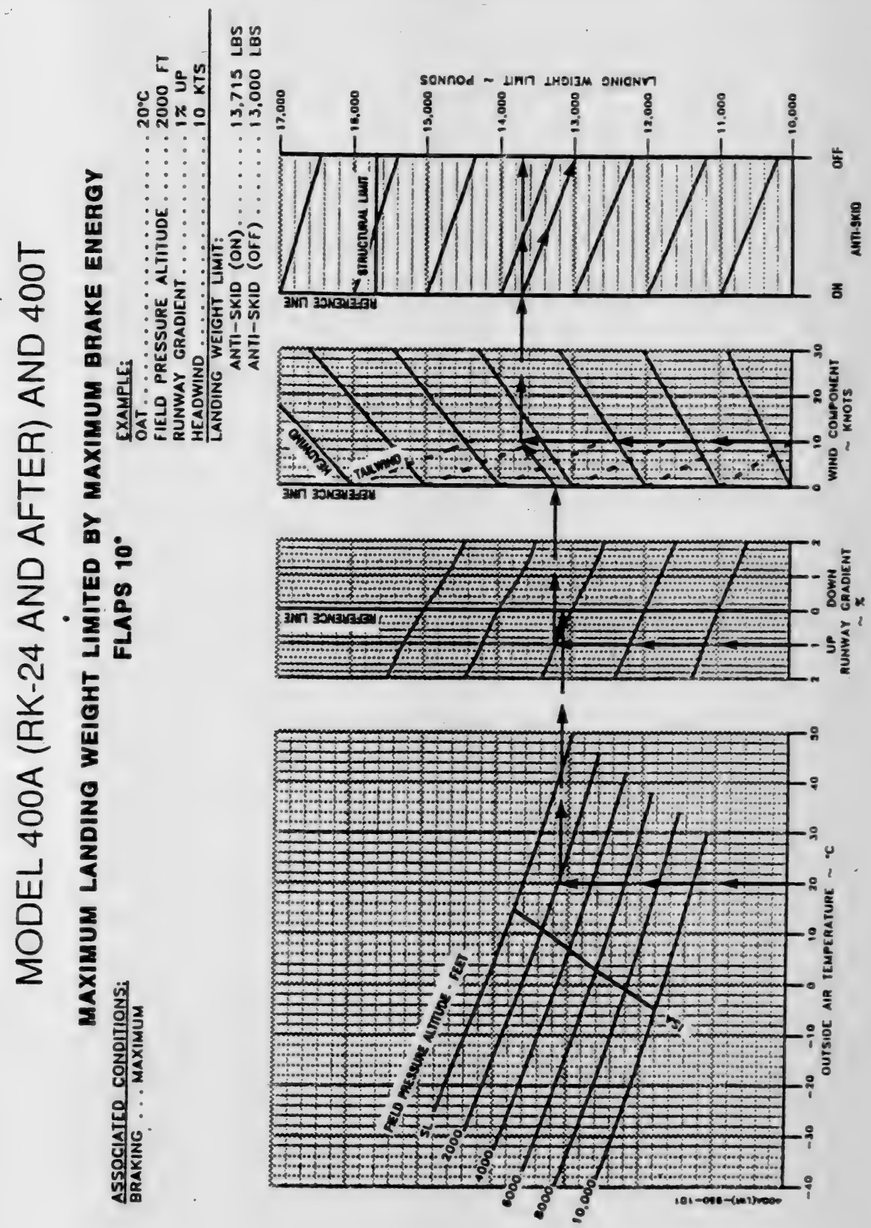

MODEL 400A (RK-24 AND AFTER) AND 400T

LANDING DISTANCE - FLAPS 10°

ASSOCIATED CONDITIONS:
THRUST....RETARDED TO MAINTAIN 3° APPROACH ANGLE TO 50 FT. AT 50 FT, RETARD TO IDLE.
RUNWAY....PAVED, DRY SURFACE
V_{REF}.....KIAS AS TABULATED
BRAKING...MAXIMUM

NOTE: TO DETERMINE THE FLAPS 10° LANDING DISTANCE, READ FROM THE "LANDING DISTANCE" GRAPH FOR THE APPROPRIATE FLAP 30° DISTANCE. THEN ENTER THE GRAPH BELOW WITH THAT VALUE, AND READ THE FLAPS 10° LANDING DISTANCE.

WEIGHT ~ POUNDS	V_{REF} ~ KNOTS
16,100	133
15,700	131
15,000	128
14,000	124
13,000	119
12,000	114
11,000	110
10,000	104

EXAMPLE:
FLAPS 30° LANDING DISTANCE
ANTI-SKID (ON).....3020 FT
ANTI-SKID (OFF).....3480 FT
LANDING WEIGHT.....13,000 LBS
FLAPS 10° LANDING DISTANCE
ANTI-SKID (ON).....3622 FT
ANTI-SKID (OFF).....5580 FT
V_{REF}.....119 KTS

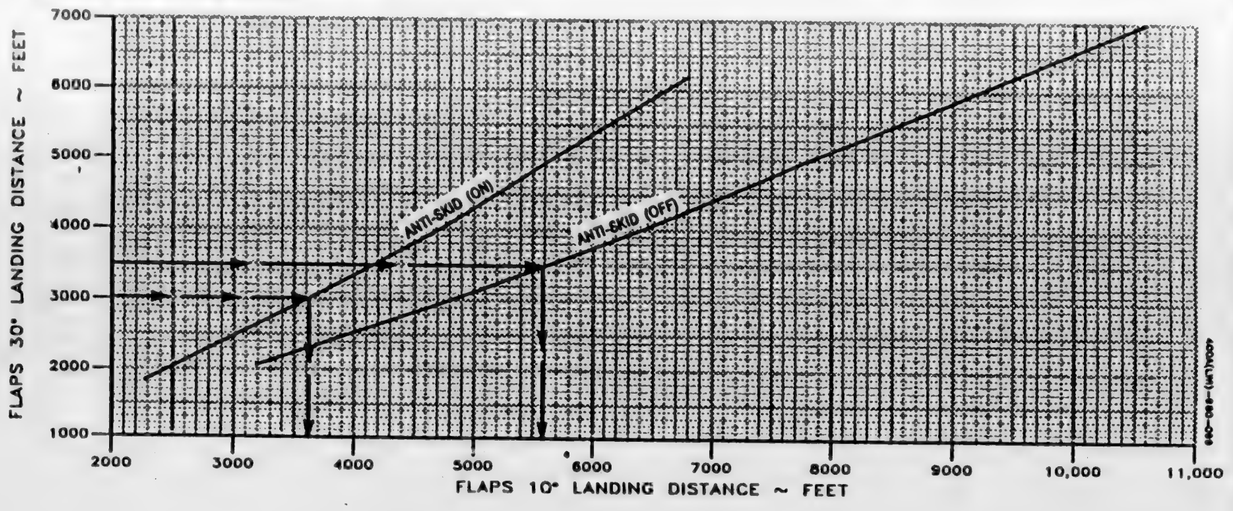

MODEL 400A (RK-24 AND AFTER) AND 400T

LANDING BRAKE ENERGY - FLAPS 10°

ASSOCIATED CONDITIONS:
THRUST.....RETARDED TO MAINTAIN 3° APPROACH ANGLE TO 50 FT. AT 50 FT, RETARD TO IDLE.
RUNWAY.....PAVED, DRY SURFACE
BRAKING.....MAXIMUM
ANTI-SKID....(ON) OR (OFF)

NOTES: 1. MAXIMUM LANDING BRAKE ENERGY = 8.12 MILLION FT-LBS.
2. TO DETERMINE THE FLAPS 10° LANDING BRAKE ENERGY, READ FROM THE "LANDING BRAKE ENERGY" GRAPH FOR THE APPROPRIATE FLAP 30° LANDING BRAKE ENERGY. THEN ENTER THE GRAPH BELOW WITH THAT VALUE, AND READ THE FLAPS 10° LANDING BRAKE ENERGY.

EXAMPLE:
LANDING BRAKE ENERGY
ANTI-SKID (ON).....5.18 MIL FT-LBS
FLAPS 10° LANDING BRAKE ENERGY
ANTI-SKID (ON).....7.93 MIL FT-LBS

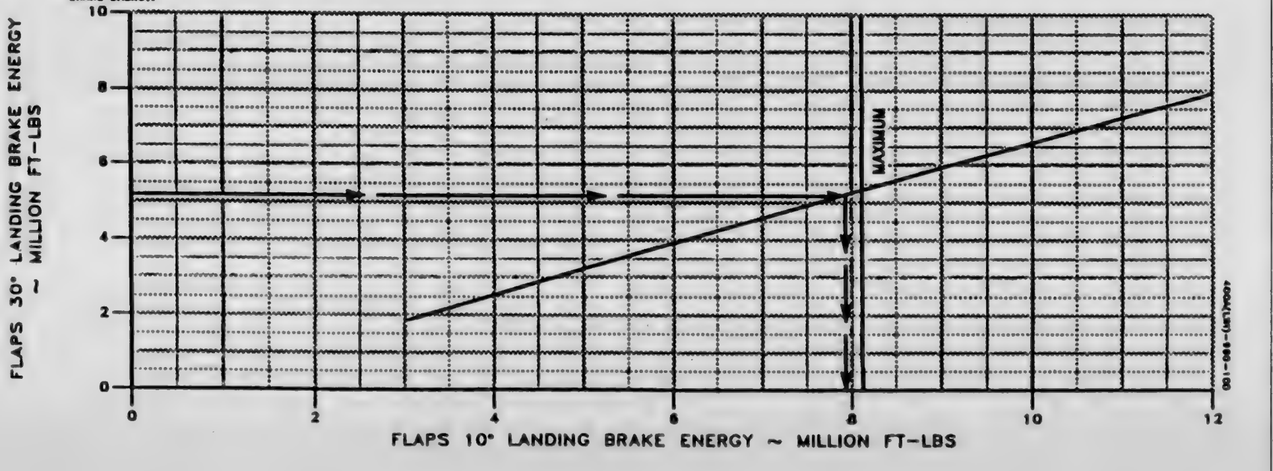

MODEL 400A (RK-1 THRU RK-23), 400, AND MU-300-10

LANDING FIELD LENGTH - FLAPS 10°

ASSOCIATED CONDITIONS:
THRUST....RETARDED TO MAINTAIN 3° APPROACH ANGLE TO 50 FT. AT 50 FT, RETARD TO IDLE.
RUNWAY....PAVED, DRY SURFACE
V_{REF}.....KIAS AS TABULATED
BRAKING...MAXIMUM

NOTE: TO DETERMINE THE FLAPS 10° LANDING FIELD LENGTH, READ FROM THE "LANDING FIELD LENGTH" GRAPH FOR THE APPROPRIATE FLAP 30° FIELD LENGTH. THEN ENTER THE GRAPH BELOW WITH THAT VALUE, AND READ THE FLAPS 10° LANDING FIELD LENGTH.

WEIGHT ~ POUNDS	V_{REF} ~ KNOTS
15,780	133
14,220	126
13,000	121
12,000	116
11,000	112
10,000	106
9000	101

EXAMPLE:
FLAPS 30° LANDING FIELD LENGTH
ANTI-SKID (ON).....3550 FT
ANTI-SKID (OFF).....4350 FT
LANDING WEIGHT.....13,700 LBS
FLAPS 10° LANDING FIELD LENGTH
ANTI-SKID (ON).....4214 FT
ANTI-SKID (OFF).....6892 FT
V_{REF}.....124 KTS

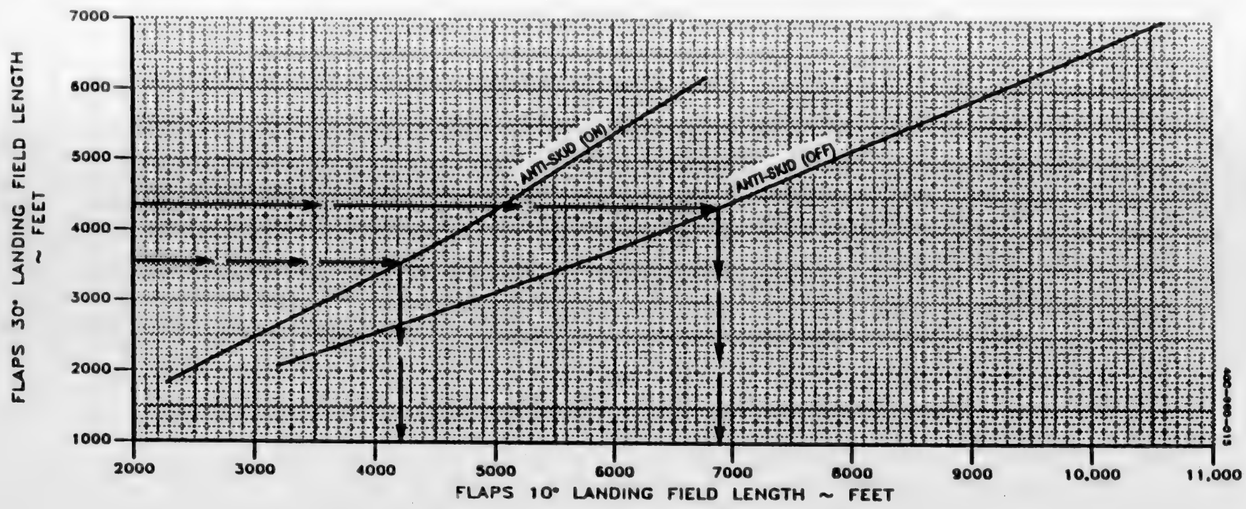

MODEL 400A (RK-1 THRU RK-23), 400, AND MU-300-10

LANDING BRAKE ENERGY - FLAPS 10°

ASSOCIATED CONDITIONS:
THRUST.....RETARDED TO MAINTAIN 3° APPROACH ANGLE TO 50 FT. AT 50 FT, RETARD TO IDLE.
RUNWAY.....PAVED, DRY SURFACE
BRAKING.....MAXIMUM
ANTI-SKID....(ON) OR (OFF)
NOTES: 1. MAXIMUM LANDING BRAKE ENERGY = 7.76 MILLION FT-LBS.
2. TO DETERMINE THE FLAPS 10° LANDING BRAKE ENERGY, READ FROM THE "LANDING BRAKE ENERGY" GRAPH FOR THE APPROPRIATE FLAP 30° LANDING BRAKE ENERGY. THEN ENTER THE GRAPH BELOW WITH THAT VALUE, AND READ THE FLAPS 10° LANDING BRAKE ENERGY.

EXAMPLE:
LANDING BRAKE ENERGY
ANTI-SKID (ON).....7.75 MIL FT-LBS
FLAPS 10° LANDING BRAKE ENERGY
ANTI-SKID (ON).....EXCEEDS MAXIMUM

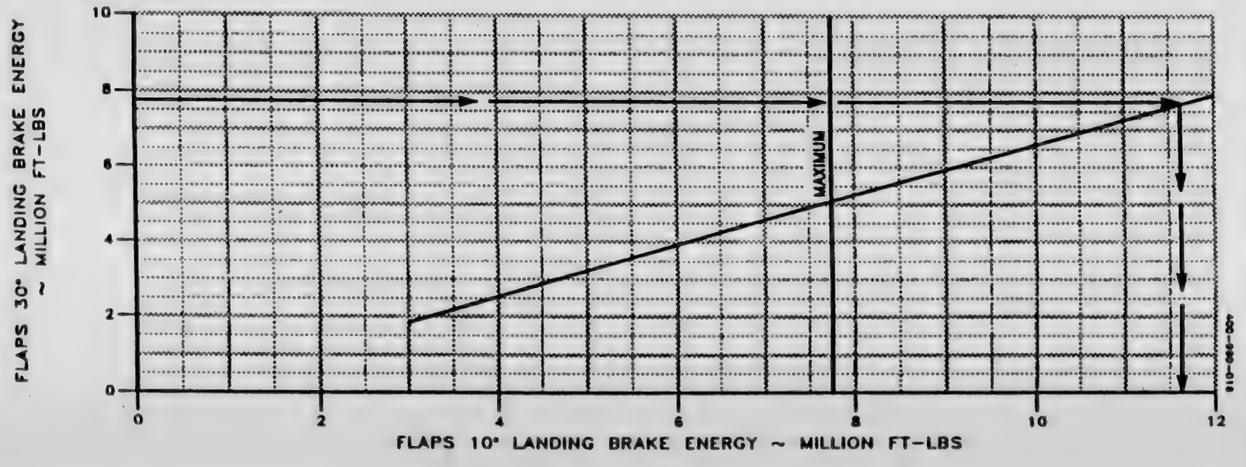

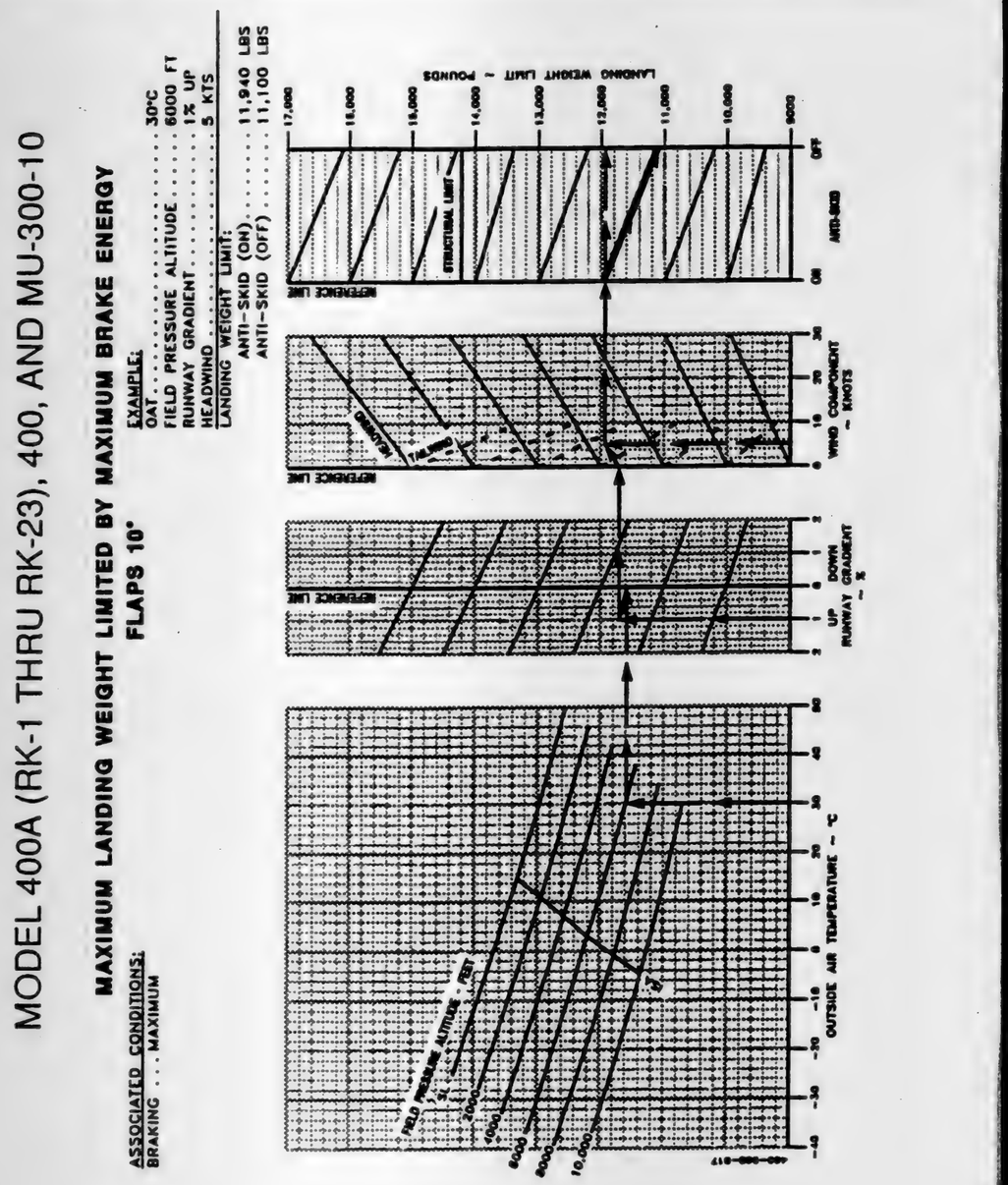

Issued in Renton, Washington, on February 20, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–4719 Filed 2–25–97; 8:45 am]

BILLING CODE 4910–13–C

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Household Products Containing Petroleum Distillates and Other Hydrocarbons; Advance Notice of Proposed Rulemaking; Request for Comments and Information

AGENCY: Consumer Product Safety Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Consumer Product Safety Commission ("CPSC" or "Commission") has reason to believe that child-resistant packaging may be needed to protect children from serious illness or injury from products that contain either petroleum distillates or other hydrocarbons or combinations of these ingredients. This advance notice of proposed rulemaking ("ANPR") initiates a rulemaking proceeding under the Poison Prevention Packaging Act ("PPPA"). Existing PPPA standards require child-resistant packaging for some products that contain petroleum distillates or other hydrocarbons. The Commission desires information on a variety of issues concerning products containing petroleum distillates or other hydrocarbons as it considers the possibility of requiring child-resistant packaging for additional consumer products that contain these substances.

The Commission solicits written comments from interested persons concerning the risks of injury or illness associated with household products containing petroleum distillates and other hydrocarbons, the regulatory alternatives discussed in this notice, other possible means to address these risks, and the economic impacts of the various regulatory alternatives.

DATES: Written comments and submissions in response to this notice must be received by the Commission by May 12, 1997.

ADDRESSES: Comments should be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207–0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814; telephone (301) 504–0800. Comments should be captioned "ANPR for Petroleum Distillates."

FOR FURTHER INFORMATION CONTACT: Suzanne Barone, Directorate for Epidemiology and Health Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0477, ext. 1196.

SUPPLEMENTARY INFORMATION:

I. Background

1. *Introduction.* Petroleum distillates are a group of hydrocarbon-based chemicals that are refined from crude oil. Petroleum distillates include gasoline, naphtha, mineral spirits, kerosene, paraffin wax, and tar. They are the primary ingredient in many consumer products, including certain furniture polishes, paint solvents, adhesives, and automotive chemicals. As explained below, the presence of such petroleum distillates in products may contribute to the products' toxicity.

A number of consumer products contain hydrocarbons that are not petroleum distillates, but that can cause similar toxic effects. These other hydrocarbons include substances such as benzene, toluene, xylene, pine oil, turpentine, and limonene.

The toxicity of petroleum distillates and other hydrocarbons affects the respiratory system. Aspiration of small amounts of these chemicals directly into the lung, or into the lung during vomiting of an ingested chemical, can cause chemical pneumonia, pulmonary damage, and death. Petroleum distillates with low viscosity, such as gasoline, kerosene, and mineral seal oil, possess the greatest potential for aspiration.[1]

As explained below, all household products that contain 10 percent or more of petroleum distillates, or of benzene, toluene, xylene, or turpentine, are required to have hazard warnings by regulations under the Federal Hazardous Substances Act ("FHSA"). Some other products that contain hydrocarbons may be required to be labeled by more general FHSA requirements. Some, but not all, of these products are also required to be in child-resistant packaging under PPPA regulations.

The purpose of this notice is to commence a rulemaking proceeding to examine whether additional products containing petroleum distillates or other hydrocarbons should be in child-resistant packaging.[2]

II. The Possible Need for Additional Regulation

1. *Poisoning information.* The Commission evaluated pediatric poisoning cases associated with product classes that are known to include products that contain hydrocarbons, and that are not currently required to be in child-resistant packaging. Such product areas include adhesives, automotive chemicals, workshop chemicals, metal polishes, spot removers, cleaning fluids, shoe polishes, and lubricants. The CPSC staff reviewed data from various sources, including the National Electronic Injury Surveillance System ("NEISS"), and the American Association of Poison Control Centers' ("AAPCC") Toxic Exposure Surveillance System ("TESS").

According to NEISS, between 1990 and 1994 there was an annual estimated average of about 2,300 emergency room visits of children under 5 years of age associated with exposure to product categories that are not required to be in child-resistant packaging and that include products containing petroleum distillates. About 5 percent of these cases resulted in hospitalization.

Between October 1994 and May 1996, a CPSC contractor conducted telephone investigations on incidents reported through NEISS that were treated in hospital emergency rooms and involved children under 5 years of age who had been exposed to products in the categories described above. The telephone investigations produced 43 cases for analysis. Of these, 18 involved petroleum distillates and 25 involved products containing the hydrocarbon pine oil. Most of the incidents occurred in the child's home. About 50 percent of the victims accessed the product from its normal storage area rather than from another location. Seventy-nine percent of the incidents involved products in the original packaging. Most of these containers were reported to be non-child-resistant.

In 1994, the Poison Control Centers ("PCC's) reported 5,791 exposures of children under 5 years of age that were attributed to product categories that included only products that contain petroleum distillates or other hydrocarbons. Of these, 1130 cases reported symptoms, most of which were minor (exhibited some symptoms that were minimally bothersome to the patient, *i.e.* the symptoms usually resolved rapidly and usually involved skin or mucous membranes). Ninety-three of these cases reported moderate outcomes (exhibited symptoms that were more pronounced, more prolonged, or of more of a systemic nature than minor symptoms). In addition, 7 cases reported major symptoms (life-threatening or resulted in significant residual disability or disfigurement). A number of other PCC product categories may also include products that contain petroleum distillates or other hydrocarbons.

The Commission is aware of 10 reported deaths since 1973 of children under 5 following exposure to products that contained petroleum distillates and for which child-resistant packaging is not currently required. Six of these reports indicated that the deaths were caused by chemical pneumonitis or aspiration.

The death and injury data discussed above suggest that the safety of young children could be improved if additional products that contain petroleum distillates and other hydrocarbons are required to be packaged in child-resistant packaging.

2. *Existing regulatory requirements.*

a. Applicable requirements under the Federal Hazardous Substances Act ("FHSA"). The CPSC regulates the labeling of hazardous household products under the FHSA, 15 U.S.C. 1261–1278. Currently, FHSA regulations require specified aspiration hazard labeling for products containing 10 percent or more by weight of benzene, toluene, xylene, or petroleum distillates such as kerosene, mineral seal oil, naphtha, gasoline, mineral spirits, Stoddard solvent, and "related" distillates. 16 CFR 1500.14(a)(3), (b)(3). The label must bear the signal word "DANGER," the statement of hazard "Harmful or fatal if swallowed," and the statement "Call physician immediately." 16 CFR 1500.14(b)(3). A similar labeling requirement applies to products containing 10 percent or more of turpentine because of the aspiration hazard. See 16 CFR 1500.14(b)(5).

[1] Liquids with high viscosity are thick and more like syrup, while liquids with low viscosities are thin and more watery. See Table 1.

[2] The Commission voted 2–1 to approve publication of this ANPR. Voting to approve were Chairman Ann Brown and Commissioner Thomas Moore. Commissioner Mary Sheila Gall voted to develop a Request for Information for publication in the **Federal Register** and to utilize other available information sources instead of an ANPR. Commissioner Gall also issued a statement concerning this vote. The statement is available from the Office of the Secretary.

In addition, section 2(p)(1) of the FHSA requires any household product that is "toxic" to bear specified hazard labeling. 15 U.S.C. 1261(p)(1). Any product that presents an aspiration risk from hydrocarbons is required to bear the labeling specified by section 2(p)(1), regardless of whether a regulation specifically applies to that product.

b. Applicable requirements under the Poison Prevention Packaging Act ("PPPA"). The CPSC also regulates the packaging of many household products containing petroleum distillates or other hydrocarbons under the PPPA, 15 U.S.C. 1471–1476. PPPA regulations require that products be sold in child-resistant packaging.

Currently, some consumer products containing 10 percent or more by weight of petroleum distillates, and with a viscosity less than 100 Saybolt Universal Seconds ("SUS") at 100°F, are subject to the PPPA's child-resistant packaging standards.[3] The particular types of petroleum distillate products that require child-resistant packaging under the PPPA include (1) prepackaged liquid kindling and illuminating preparations (*e.g.*, lighter fluid) (16 CFR 1700.14(a)(7)), (2) prepackaged solvents for paint or other similar surface-coating materials (*e.g.*, varnishes)(16 CFR 1700.14(a)(15)), and (3) nonemulsion liquid furniture polish (16 CFR 1700.14(a)(2)). Child-resistant packaging is also required for certain solvents containing 10 percent or more of benzene, toluene, or benzene, and with a viscosity less than 100 SUS at 100°F. 16 CFR 1700.14(a)(15). In addition, products containing 10 percent or more of turpentine are required to be in child-resistant packaging. 16 CFR 1700.14(a)(6).

c. Varying scope of the FHSA and PPPA regulations. While FHSA labeling regulations apply generically to products that contain 10 percent or more petroleum distillates or other hydrocarbons, only certain specified products are required to be in child-resistant packaging under the current PPPA regulations. Therefore, a number of household products containing petroleum distillates or other hydrocarbons are not required to be in child-resistant packaging. For example, cleaning solvents, automotive chemicals, shoe care products, and floor care products may contain large amounts of various petroleum distillates. These products are not required to be sold in child-resistant packaging, but some of them are required to be labeled under the FHSA. *See* 16 CFR 1500.14(a)(3), (b)(3).

In addition, there are some anomalies under the current PPPA regulations concerning which products are required to be in child-resistant packaging. For example, the existing standards require child-resistant packaging of prepackaged kerosene for use as lamp fuel. 16 CFR 1700.14(a)(7). However, a gun cleaning solvent that contains over 90 percent kerosene does not have this requirement. Mineral spirits used as a paint solvent require child-resistant packaging, 16 CFR 1700.14(a)(15), but such packaging is not required for spot removers containing 75 percent mineral spirits or water repellents containing 95 percent mineral spirits. Yet, all of these consumer products are required by the FHSA to be labeled "Harmful or fatal if swallowed." 16 CFR 1500.14(b)(3).

A rule to require child-resistant packaging of all household products that contain petroleum distillates and have specified characteristics would create a more consistent regulatory approach and afford greater protection against poisonings.

III. Issues to be Considered During the Rulemaking

During this rulemaking, the Commission will consider the following major issues.

1. *Viscosity and percentage composition.* As noted above, the PPPA's child-resistant packaging standards currently apply to certain specified consumer products containing 10 percent or more by weight of petroleum distillates, and with a viscosity less than 100 SUS at 100 °F. Products associated with chemical pneumonia and death have had viscosities below this level. Again, liquids with low viscosities are more likely to be aspirated than more syrup-like liquids with high viscosities.

The Commission's staff collected a limited number of household products that contain petroleum distillates and measured their viscosities. The results are listed in Table 1.

TABLE 1.—THE VISCOSITIES OF PRODUCTS CONTAINING PETROLEUM DISTILLATES

Product	PPPA Regulated (yes or no)	Viscosity (SUS @100 °F)[4]
Motor oil (10W–30) ...	N	≈325
Heavy Mineral Oil	N	180
Baby Oil	N	≈70
Furniture Polish	Y	≈40
Gasoline Treatment ..	N	≈35
Carburetor Cleaner ...	N	<32[5]
Degreaser	N	<32[4]
Lighter Fluid	Y	<32[4]

[4] The staff measured the viscosity at 100 °F using a Brookfield viscometer calibrated in centistokes (cs). The value was converted to SUS using Table 1 of ASTM D 2161–93, Standard Practice for Conversion of Kinematic Viscosity to Saybolt Universal Viscosity or to Saybolt Furol Viscosity.

[5] There are no equivalent viscosities measured in SUS for viscosities less than 1.8 cs. The viscosity of 1.83 cs is equivalent to 32 SUS.

The staff's initial laboratory analysis, summarized in Table 1, shows that lighter weight oils, including some baby oils, would be included in a regulation that required child-resistant packaging of all products containing at least 10 percent petroleum distillates with a viscosity less than 100 SUS at 100 °F.

[3] Saybolt Universal Seconds is a measure of viscosity. The higher the SUS, the more viscous the liquid.

There are reported cases of lipoid pneumonia and deaths from aspiration of lubricants, including baby oil, a spray lubricant, chain saw oil, and trumpet valve oil.[6]

The Commission will consider whether a viscosity criterion should be included in any regulation requiring child-resistant packaging for products containing petroleum distillates or other hydrocarbons. If such a criterion is to be included, the Commission will also consider at what level it should be set.

2. *Other hydrocarbons.* The CPSC's FHSA regulations for petroleum distillates require labeling of some products containing other hydrocarbons, including products that contain 10 percent or more by weight of benzene, toluene, or xylene. 16 CFR 1500.14(a)(3), (b)(3). FHSA labeling is required because these substances have an aspiration hazard similar to petroleum distillates.

A number of household products contain low-viscosity hydrocarbons other than petroleum distillates. These hydrocarbons include benzene, toluene, xylene, and terpenes. For example, terpene hydrocarbons derived from wood or fruit are in products such as turpentine, pine oil, and limonene. Pine oil and limonene are found in cleaning products and spot removers, as well as disinfectants. (Products marketed as disinfectants are not regulated by the CPSC; they are regulated as pesticides by the Environmental Protection Agency ("EPA").) Although pine oil and limonene cleaning products and spot removers require FHSA labeling, they are not currently required to be in child-resistant packaging.

The Commission will consider whether there is a need for a special packaging standard applicable to products containing hydrocarbons other than petroleum distillates.

3. *Aerosols.* The PPPA regulation for furniture polish excludes products in aerosol form. The rationale for excluding aerosol furniture polishes was that aerosols would be addressed separately. 36 FR 18012 (September 8, 1971). However, there has been no further regulatory action on aerosol furniture polishes.

The child-resistant packaging requirements for paint solvents and kindling and illuminating preparations do not specifically exempt aerosol products. See 16 CFR 1700.14(a)(7), (a)(15). However, the Commission is not aware of any paint solvent or liquid kindling or illuminating fluid sold in an aerosol form.

CPSC exposure data on aerosol products are limited.[7] Inhalation of a spray lubricant has been associated with lipoid pneumonia.[8] The NEISS case investigation study, described above, identified 4 percent of the cases as involving products in aerosol form. However, none of the people in these aerosol cases was hospitalized.

The cases described in the medical literature that resulted from the inhalation of petroleum distillates from aerosols or vapors involved prolonged or repeated exposure of adults. However, children are subject to greater inhalation risks than are adults, for equal exposure levels.[9]

The Commission will consider whether aerosol products should be included within any regulation applicable to products containing petroleum distillates and other hydrocarbons.

4. *Restricted flow.* The PPPA regulation for liquid furniture polish includes an additional requirement that no more than 2 milliliters of product shall be obtained when the container is shaken, squeezed, or activated once. 16 CFR 1700.14(a)(2). This requirement was included, in part, because an open container of polish may be moved and used multiple times throughout the house before the container is closed. 37 FR 5613 (March 17, 1972). Furniture polish is the only PPPA-regulated substance with a restricted-flow requirement.

The Commission will consider whether other products should be subject to a restricted flow requirement.

IV. Rulemaking Procedure

In order to issue a regulation under the PPPA, the Commission would have to find that "the degree or nature of the hazard to children in the availability of (petroleum distillates and other hydrocarbons), by reason of (their) packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substance." 15 U.S.C. 1472(a)(1). The Commission would also have to find that child-resistant packaging "is technically feasible, practicable, and appropriate" for products containing petroleum distillates or other hydrocarbons. 15 U.S.C. 1472(a)(2).

According to the PPPA's legislative history, "technically feasible" means that technology exists to produce packaging that conforms to the standards.[10] "Practicable" means that special packaging complying with the standards can utilize modern mass production and assembly line techniques.[11] "Appropriate" means that packaging complying with the standards will adequately protect the integrity of the substance and not interfere with its intended storage or use.[12]

In addition to the required findings, the Commission is required to consider, but not necessarily make formal findings on, (a) the reasonableness of the standard, (b) available scientific, medical, and engineering data concerning special packaging and concerning childhood accidental ingestions, illness, and injury caused by household substances, (c) the manufacturing practices of industries affected by the PPPA, and (d) the nature and use of the household substance. 15 U.S.C. 1472(b).

A rulemaking proceeding under the PPPA is subject to the requirements of the Administrative Procedure Act. Therefore, the proceeding can be commenced by publication of a notice of proposed rulemaking ("NPR"), without having previously published an ANPR. However, in this proceeding, the Commission is publishing an ANPR in order to obtain additional information before deciding whether to propose a special packaging standard for products that contain petroleum distillates or other hydrocarbons.

V. Comments Requested Concerning the Scope of a Rule

The Commission is seeking information on issues relevant to defining the scope of any child-resistant packaging requirement for products containing low-viscosity petroleum distillates and other hydrocarbons. These issues include the following:

1. What, if any, viscosity and/or percentage composition should be used as a threshold for requiring products that contain petroleum distillates to be in child-resistant packaging?

2. Should aerosol products be included in a requirement for the child-resistant packaging of products containing petroleum distillates or other hydrocarbons? The Commission seeks information on the possible effects to a young child of a single acute exposure to an aerosol product containing petroleum distillates.

3. Should PPPA regulation extend only to petroleum distillates or should such regulation also extend to other hydrocarbons, such as benzene, toluene, xylene, turpentine, pine oil, and limonene?

4. Should restricted flow be an additional requirement for certain products?

VI. Additional Requests for Information

The Commission believes that information on the following issues would also be helpful as it considers whether child-resistant packaging should be required for the entire class of consumer products that present an aspiration hazard because they contain petroleum distillates or other hydrocarbons.

1. *Chemical properties.* Information concerning the chemical properties of individual consumer products that contain petroleum distillates or other hydrocarbons will be used to compare products that do not currently require child-resistant packaging with those that do. The Commission requests information about the form (e.g., liquid or aerosol), formulation (including the amount of each component), and viscosity of each product.

2. *Users and use patterns.* The Commission would like information about consumer use patterns for various types of products containing petroleum distillates or other hydrocarbons. The Commission requests information concerning: The intended use of the product (e.g., as a shoe waterproofer, carpet cleaner, upholstery spot remover); the location(s) where it is used (e.g., in a garage, a kitchen, a bathroom); the frequency of use (e.g., daily, monthly, seasonally); how long a package of the product is retained in the home (e.g., used just once or stored for long periods between uses); and the location(s) where it is stored when not in use. In addition, is the product used by consumers (more than occasionally) or is the product only used in the home by workers, such as repair or cleaning persons?

3. *Current packaging and labeling.* Information about the packaging of products that contain petroleum distillates will be used to assess the technical feasibility, practicability, and appropriateness of child-resistant packaging. The Commission requests information describing current packaging, such as packaging sizes, container material, closure material, closure design, and ASTM classification if the package is child-resistant. Information is also requested about whether the product has labels with warnings and instructions for use.

4. *Economic information.* Economic information will be used to evaluate the impact of requiring child-resistant packaging for all products containing petroleum distillates or other hydrocarbons. The Commission requests information about sales of these products and about the range of wholesale and retail prices. Further, the Commission seeks comments on the expected cost of providing child-resistant packaging for these products. In addition, the Commission requests information about the potential impact that such child-resistant packaging requirements would have on businesses, especially small businesses.

5. *Incident information.* Although the Commission monitors data on ingestions by young children of products that contain petroleum distillates and other hydrocarbons, the Commission seeks additional information about such poisoning incidents. This information will be used to assess the extent of injury from different product formulations. The Commission requests information concerning the details of scenarios resulting in poisoning incidents, and the outcome of the incident.

Comments should be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207–0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814; telephone (301) 504–0800. All comments and submissions should be received no later than May 12, 1997.

VII. Trade Secret or Proprietary Information

Any person responding to this notice who believes that any information submitted is trade secret or proprietary should identify all such information at the time of submission. The Commission's staff will receive and handle such information confidentially and in accordance with section 6(a) of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. 2055(a). Such information will not be placed in a public file and will not be made available to the public simply upon request. If the Commission receives a request for disclosure of the information or concludes that its disclosure is necessary to discharge the Commission's responsibilities, the Commission will inform the person who submitted the information and provide that person an opportunity to present additional information and views concerning the confidential nature of the information. 16 CFR 1015.18(b).

The Commission's staff will then make a determination of whether the information is trade secret or proprietary information that cannot be released. That determination will be made in accordance with applicable provisions of the CPSA; the Freedom of Information Act ("FOIA"), 5 U.S.C. 552b; 18 U.S.C 1905; the Commission's procedural regulations at 16 CFR part 1015 governing protection and disclosure of information under provisions of FOIA; and relevant judicial interpretations. If any part of information that has been submitted with a claim that the information is a trade secret or proprietary is found to be disclosable, the person submitting the material will be notified in writing and given at least 10 calendar days from the receipt of the letter to seek judicial relief. 15 U.S.C. 2055(a) (5) and (6); 16 CFR 1015.19(b).

Dated: February 21, 1997.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 97–4783 Filed 2–25–97; 8:45 am]

BILLING CODE 6355–01–P

[6] Reyes De La Rocha, S. et al. Lipoid pneumonia secondary to baby oil aspiration: a case report and review of the literature. Pediatric Emergency Care. 1:74, 1985.

[7] Nierenberg, D.W., et al. Mineral Spirits Inhalation Associated with Hemolysis, Pulmonary Edema, and Ventricular Fibrillation. Arch Intern Med. 151:14337, 1991. Rodriguez de la Vega, A. et al. Kerosene-induced Asthma. Annals of Allergy. 64:362, 1990. Glynn, K.P. and Gale, N., Exogenous Lipoid Pneumonia due to Inhalation of Spray Lubricant. Chest. 97:1265, 1990.

[8] Id. (Glynn, 1990).

[9] Schiller-Scotland, C.F. et al. Experimental data for total disposition in the respiratory tract of children. Toxicol. Lett., 72: 137, 1994.

[10] S. Rep. 845, 91st Cong., 2d Sess. 10 (1970).

[11] Id.

[12] Id.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 352

[Docket No. 78N–0038]

RIN 0910–AA01

Sunscreen Drug Products for Over-the-Counter Human Use; Amendment to the Tentative Final Monograph; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice of proposed rulemaking that appeared in the **Federal Register** of September 16, 1996 (61 FR 48645). The document proposed to amend the tentative final monograph (proposed rule) for over-the-counter (OTC) sunscreen drug products. The document was published with an error. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: John D. Lipnicki, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

In FR Doc. 96–23547, appearing on page 48645 in the **Federal Register** of Monday, September 16, 1996, the following correction is made:

§ 352.20 [Corrected]

1. On page 48654, in the third column, in § 352.20 *Permitted combination of active ingredients*, in paragraph (a)(2), beginning in the second line, "§ 352.10(b), (c), (f), (i), (k), (l), (m), (n), (o), (s), and (u)" is corrected to read "§ 352.10(b), (c), (d), (f), (i), (l), (m), (n), (o), (s), and (u)".

Dated: February 19, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–4730 Filed 2–25–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3282

[Docket No. FR–4201–N–01]

National Manufactured Home Advisory Council; Notice Seeking Nominations for Membership

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Request for nominations of advisory committee members.

SUMMARY: This notice gives the public an opportunity to nominate persons for appointment to the National Manufactured Home Advisory Council. The 24-member Council, consisting of representatives from consumer, government, and industry organizations or agencies, is consulted before the Department establishes, amends, or revokes manufactured home construction and safety standards.

DATES: Nominations must be received by March 28, 1997.

ADDRESSES: Nominations should be submitted in writing to: Assistant Secretary for Housing-Federal Housing Commissioner, (Attention: Office of Consumer and Regulatory Affairs), Department of Housing and Urban Development, 451 7th Street, SW, Room 9156, Washington, DC 20410–8000.

FOR FURTHER INFORMATION CONTACT: David R. Williamson, Director, Office of Consumer and Regulatory Affairs, Department of Housing and Urban Development, 451 7th Street, SW, Room 9152, Washington, DC 20410–8000); telephone number (202) 708–6409 (this is not a toll-free number). For hearing- and speech-impaired persons, this number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Notice is hereby given that members of the public wishing to nominate persons for appointment to the National Manufactured Home Advisory Council should submit such nominations in writing to the address listed above.

Background:

The National Manufactured Home Advisory Council (Council) was mandated by the National Manufactured Housing Construction and Safety Standards Act of 1974 (title VI of the Housing and Community Development Act of 1974, 42 U.S.C. 5401 *et seq.*) (the Act), which authorized the Federal Manufactured Home Construction and Safety Standards program. Section 605 of the Act (42 U.S.C. 5404) requires the Secretary to appoint a Council that is composed of 24 members.

Eight members are selected from each of the following groups:

- Consumer organizations, community organizations, and recognized consumer leaders;
- The manufactured home industry and related groups, including at least one representative of small business; and
- Government agencies, including Federal, State, and local governments.

The Department consults with the Council to the extent feasible before any changes are made to the manufactured home design and construction standards. This process gives industry, State and local governments, consumers, and community groups an opportunity to consider proposed manufactured housing construction and safety standards and to make recommendations to the Department.

Term of Office and Nominee Information

The appointees to the Council will serve 1-or 2-year terms. The Charter for the Council has been submitted to the Committee Management Secretariat of the General Services Administration (Secretariat) for review, in accordance with 41 CFR 101–6.1007. Nominations of members to be appointed to the Council must be sent to the address indicated above, in the "Addresses" section of this notice. Self-nominations to the Council are permitted. When submitting nominations, please include the following information:

1. Name of nominee.
2. Home address and telephone number of nominee.
3. Business address and telephone number of nominee.
4. Group (i.e., consumer, industry, or government) the nominee represents.
5. A copy of a résumé and a statement of pertinent experience and background of the nominee which demonstrates that the nominee is qualified to serve as a member of the Council.
6. Name of group or person(s) making nomination.
7. The following data should be furnished for those nominated as official representatives of organized consumer or industrial groups or associations:
   (a) Name and address of organization.
   (b) Number of official members in organization.
   (c) Nominee's position in organization.
8. For those nominated to represent government agencies, the name of the government agency, its location, and the nominee's position or title should be provided.
9. A written commitment that the applicant or nominee shall actively participate in good faith in the activities of the Council.
10. Any other pertinent comments or remarks.

Future Actions

After receiving notification from the Secretariat of the completed review of the charter, the Department expects to publish notice in the **Federal Register** that the Council is being renewed. In addition, the Department will comply with the public notice requirements in 41 CFR 101–6.1015(b) before any Council meetings.

Dated: February 13, 1997.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 97–4683 Filed 2–25–97; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 11

RIN 1076–AD76

Law and Order on Indian Reservations; Correction.

AGENCY: Bureau of Indian Affairs.

ACTION: Correction to proposed regulations; reopening of comment period.

SUMMARY: This document contains corrections to the proposed regulations which were published Friday, July 5, 1996 (61 FR 35158). The proposed rule amends regulations governing Courts of Indian Offenses.

DATES: Comments must be received on or before March 28, 1997.

ADDRESSES: Comments are to be mailed to Bettie Rushing, Office of Tribal Services, Bureau of Indian Affairs, 1849 C Street, NW, MS 4641–MIB, Washington, DC 20240; or, hand delivered to Room 4641 at the same address.

FOR FURTHER INFORMATION CONTACT: Bettie Rushing, Bureau of Indian Affairs (202) 208–4400.

SUPPLEMENTARY INFORMATION:

Background

The proposed rule that is the subject of these corrections supersedes 25 CFR 11.100(a) and affects those tribes that have exercised their inherent sovereignty by removing the names of those tribes from the list of Courts of Indian Offenses.

The Assistant Secretary-Indian Affairs, or her designee, has received law and order codes adopted by the Lovelock Paiute Tribe of Nevada, the Absentee Shawnee Tribe of Indians of Oklahoma, the Cheyenne-Arapaho Tribes of Oklahoma, the Citizen Potawatomi Nation, the Iowa Tribe of Oklahoma, the Kaw Nation, the Kickapoo Tribe of Oklahoma, the Otoe-Missouria Tribe of Indians, the Pawnee Indian Tribe of Oklahoma, and the Osage Indian Nation (except those matters involving the Osage mineral estate) in accordance with their constitutions and by-laws and approved by the appropriate bureau official. The Assistant Secretary-Indian Affairs recognizes that these courts were established in accordance with the tribes' constitutions and by-laws.

Inclusion in § 11.100, Where are Courts of Indian Offenses established?, does not defeat the inherent sovereignty of a tribe to establish tribal courts and exercise jurisdiction under tribal law. Tillett v. Lujan, 931 F.2d 636, 640 (10th Cir. 1991) (CFR courts "retain some characteristics of an agency of the federal government" but they "also function as tribal courts"); Combrink v. Allen, 20 Indian L. Rep. 6029, 6030 (Ct. Ind. App., Tonkawa, Mar. 5, 1993) (CFR court is a "federally administered tribal court"); Ponca Tribal Election Board v. Snake, 17 Indian L. Rep. 6085, 6088 (Ct. Ind. App., Ponca, Nov. 10, 1988) ("The Courts of Indian Offenses act as tribal courts since they are exercising the sovereign authority of the tribe for which the court sits."). Such exercise of inherent sovereignty and the establishment of tribal courts shall comply with the requirements in 25 CFR 11.100(c).

Need for Correction

As published, the proposed rule contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication on July 5, 1996 of the proposed regulations, which were the subject of FR Doc. 96–16039, is corrected as follows:

§ 11.100 [Corrected]

1. On page 35159 in the third column and on page 35160 in the first column paragraph (a) is corrected to read as follows:

§ 11.100 Where are Courts of Indian Offenses established?

(a) Unless indicated otherwise in this title, the regulations in this part apply to the Indian country (as defined in 18 U.S.C. 1151) occupied by the following tribes:

(1) Red Lake Band of Chippewa Indians (Minnesota).
(2) Confederated Tribes of the Goshute Reservation (Nevada).
(3) Te-Moak Band of Western Shoshone Indians (Nevada).
(4) Yomba Shoshone Tribe (Nevada).
(5) Kootenai Tribe (Idaho).
(6) Shoalwater Bay Tribe (Washington).
(7) Eastern Band of Cherokee Indians (North Carolina).
(8) Ute Mountain Ute Tribe (Colorado).
(9) Quechan Indian Tribe (Arizona) (Except resident members).
(10) Valley Tribe, Yurok Tribe, and Coast Indian Community of California (California Jurisdiction limited to special fishing regulations).
(11) Louisiana Area (includes Coushatta and other tribes located in the State of Louisiana which occupy Indian and which accept the application of this part); Provided that this part shall not apply to any Louisiana tribe other than the Coushatta Tribe until notice of such application has been published in the **Federal Register**.
(12) For the following tribes located in the former Indian Territory (Oklahoma):
(i) Chickasaw Nation.
(ii) Choctaw Nation.
(iii) Thlopthlocco Tribal Town.
(iv) Seminole Nation.
(v) Eastern Shawnee Tribe.
(vi) Miami Tribe.
(vii) Modoc Tribe.
(viii) Ottawa Tribe.
(ix) Peoria Tribe.
(x) Quapaw Tribe.
(xi) Wyandotte Tribe.
(xii) Seneca-Cayuga Tribe.
(xiii) Osage Tribe (Limited to mineral estate matters).

* * * * *

Dated: February 14, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–4686 Filed 2–25–97; 8:45 am]

BILLING CODE 4310–22–P

Minerals Management Service

30 CFR Part 250

RIN 1010–AB97

Oil and Gas Production Measurement, Surface Commingling, and Security

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend MMS regulations governing oil and gas operations in the Outer Continental Shelf (OCS) to update production measurement and surface commingling requirements. The MMS needs this rule to help ensure that gas produced in the OCS is accurately measured and reported.

DATES: MMS will consider all comments received by May 27, 1997. We will begin reviewing comments at that time and may not fully consider comments we receive after May 27, 1997.

ADDRESSES: Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Mail Stop 4700; 381 Elden Street; Herndon, Virginia 20170–4817; Attention: Rules Processing Team.

FOR FURTHER INFORMATION CONTACT: Sharon Buffington, Engineering and Research Branch, at (703) 787–1147.

SUPPLEMENTARY INFORMATION: Pipeline and price deregulation and open access to pipelines that occurred in the late 1980's spawned a restructuring of OCS pipeline system operations. Pipeline companies traditionally were merchants buying and selling gas under long-term contracts to only a few well established customers. Under the Federal Energy Regulatory Commission Order 636, pipeline companies operate as common carriers involved in transportation services to a broad spectrum of gas producers, end users, and transportation brokers. Also, the OCS pipeline systems have hundreds of short-term, limited volume contracts, many of which require daily accounting and balance controls.

Because of the restructuring and complexity in pipeline operating systems and the increasing use and value of natural gas, the accuracy and reliability of meters have become even more important to ensuring product accountability and fiscal responsibility. Therefore, industry has initiated production measurement research that resulted in more precise metering and data collection equipment.

Most of the production in the OCS is natural gas and a 1 percent measurement or reporting uncertainty could result in royalty revenue variations of $15 million per year. MMS is responsible for ensuring accurate production measurement and reporting.

The gas measurement and commingling regulations now in effect were based on conditions before deregulation and before the industry began to apply the results of research efforts. Therefore, MMS is proposing to amend the production measurement and commingling regulations. The regulatory revisions proposed in this rule would:

- Reflect current industry technology,
- Form the basis for a gas verification system (GVS),
- Require tracking of gas lost or used on the lease, and
- Clarify the restrictions on surface commingling.

The liquid measurement regulations of 1988 already give the guidance for our liquid verification system. Therefore, MMS is not proposing technical changes to liquid measurement; we are only clarifying the language.

On June 23, 1994, a meeting was held at the Department of the Interior (DOI) in Washington, D.C., to introduce the oil and gas industry to the principles of this rulemaking and the proposed GVS. The participants generally agreed that the regulations on production measurement should be updated to include current industry standards. The main items discussed at the meeting are as follows:

1. If MMS verifies gas production and also conducts audits, it appears that industry is under a double jeopardy. Currently, MMS only audits some OCS gas production. MMS is proposing to supplement the audits by implementing a limited gas verification program that will create a system to quickly check submitted gas production volumes with gas volume statements. MMS will coordinate gas verification and the royalty audit programs.

2. Why does MMS want daily production data on the gas volume statements to verify production reported monthly? While daily production data is easier to obtain from electronically measured data than from chart recorders, it appears that meter owners provide gas producers (lessees) a daily breakout of gas production once a month. Daily production data is the best data to use to verify gas production.

3. How will MMS verify gas that is processed before royalty is calculated? MMS will use the monthly statement that gas plant managers supply to producers instead of the gas volume statement. However, if these statements are not prepared on a daily basis for the month, MMS may ask for additional data from the lessee to verify production.

4. MMS is seeking comments concerning whether you receive monthly gas measurement statements from meter owners that show a daily summary of volumes and quality. If you do not receive the statements, please list how you audit the production records.

5. MMS is seeking comments on the applicable industry standards and practices that we incorporate and exclude. This proposed rule would require that lessees follow the standards listed in 30 CFR 250.1, Documents Incorporated by Reference. MMS published that final rule on November 26, 1996, (61 FR 60019).

6. This proposed rule would require seals only on liquid hydrocarbon royalty installations. However, MMS may also require seals on gas installations in the final rule. Please comment on this proposal.

7. MMS is also seeking comments on the type of records you keep for gas used on the lease, how you record volumes and quality, and how you measure or estimate volumes and quality.

Executive Order (E.O.) 12866

DOI has certified that this proposed rule is not a significant rule under E.O. 12866.

E.O. 12988

DOI has certified to the Office of Management and Budget (OMB) that the rule meets the applicable reform standards provided in sections 3(a) and 3(b)(2) of E.O. 12988.

Unfunded Mandates Reform Act of 1995

DOI has determined and certifies according to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rule will not impose a cost of $100 million or more in any year on State, local, and tribal governments, or the private sector.

Regulatory Flexibility Act

The DOI has determined that this proposed rule will not have a significant economic effect on a substantial number of small entities.

Paperwork Reduction Act

This proposed rule contains a collection of information which has been submitted to OMB for review and approval under section 3507(d) of the Paperwork Reduction Act of 1995. As part of our continuing effort to reduce paperwork and respondent burden, MMS invites the public and other Federal agencies to comment on any aspect of the reporting burden. Submit your comments to the Office of Information and Regulatory Affairs; OMB; Attention Desk Officer for the Department of the Interior, 725 17th Street NW, Washington, D.C. 20503 (OMB control number 1010–0051). Send a copy of your comments to the Chief, Engineering and Standards Branch; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 20170–4817. You may obtain a copy of the proposed collection of information by contacting the Bureau's Information Collection Clearance Officer at (703) 787–1242.

OMB may make a decision to approve or disapprove this collection of information after 30 days from receipt of our request. Therefore, your comments are best assured of being considered by OMB if OMB receives them within that time period. However, MMS will consider all comments received during the comment period for this notice of proposed rulemaking.

The title of this collection of information is "30 CFR 250, Subpart L, Oil and Gas Production Measurement, Surface Commingling, and Security." OMB previously approved it under OMB control number 1010–0051.

The collection of information consists of oil run tickets; proving and calibrations reports; measuring liquid hydrocarbons and gas; applications for surface commingling, and various recordkeeping requirements. The proposed rule would delete some recordkeeping and reporting requirements. it would add the following when required by the Regional Supervisor:

- Gas volume statements,
- Production quality data, and
- Data concerning gas lost or used on the lease.

MMS would use the information to verify production measurements.

Respondents are Federal OCS oil, gas, and sulphur lessees. MMS will receive approximately 2,300 new responses each year. The frequency of submission varies.

MMS estimates the additional annual reporting burden as a result of this rule would be approximately 192 hours (.08 hour per response). We estimate the total annual burden to be 2,615 reporting hours and 2,429 recordkeeping hours. Based on $35 per hour, the total burden hour cost to respondents is estimated to be $176,540.

In calculating the burden, MMS assumed that respondents perform many of the requirements and maintain records in the normal course of their activities. MMS considers these to be usual and customary and did not include them in the burden estimates. Commenters are invited to provide information if they disagree with this assumption and they should tell us what are the burden hours and costs imposed by this collection of information.

MMS will summarize written responses to this notice and address them in the final rule. All comments will become a matter of public record.

1. MMS specifically solicits comments on the following questions:

(a) Is the proposed collection of information necessary for the proper performance of MMS's functions, and will it be useful?

(b) Are the estimates of the burden hours of the proposed collection reasonable?

(c) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(d) Is there a way to minimize the information collection burden on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other forms of information technology?

2. In addition, the Paperwork Reduction Act of 1995 requires agencies to estimate the total annual cost burden to respondents or recordkeepers resulting from the collection of information. MMS needs your comments on this item. Your response should split the cost estimate into two components:

(a) Total capital and startup cost and

(b) Annual operation, maintenance, and purchase of services.

Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: Before October 1, 1995; to comply with requirements not associated with the information collection; for reasons other than to provide information or keep records for the Government; or as part of customary and usual business or private practices.

The Paperwork Reduction Act of 1995 provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Takings Implication Assessment

DOI certifies that the proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared pursuant to E.O. 12630, Government Action and Interference with Constitutionally Protected Property Rights.

National Environmental Policy Act

DOI determined that this rulemaking does not constitute a major Federal action significantly affecting quality of the human environment; therefore, an Environmental Impact Statement is not required.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Natural gas, Petroleum, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: December 30, 1996.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

For the reasons in the preamble, the Minerals Management Service (MMS) proposes to amend 30 CFR part 250 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1334.

2. Subpart L is revised to read as follows:

Subpart L—Oil and Gas Production Measurement, Surface Commingling, and Security

Sec.

250.180 Question index table.
250.181 Definitions for Subpart L.
250.182 Liquid Hydrocarbon measurement.
250.183 Gas measurement.
250.184 Surface commingling.
250.185 Site security.
250.186 Measuring gas lost or used on a lease.

Subpart L—Oil and Gas Production Measurement, Surface Commingling, and Security

§ 250.180 Question Index Table

The table in this section lists questions concerning Oil and Gas Production Measurement, Surface Commingling, and Security and the location of the answers.

Frequently asked questions	CFR citation
1. What are the requirements for measuring liquid hydrocarbons?	§ 250.182 (a).
2. What are the requirements for liquid hydrocarbon royalty meters?	§ 250.182 (b).
3. What are the requirements for run tickets?	§ 250.182 (c).
4. What are the requirements for liquid hydrocarbon royalty meter provings?	§ 250.182 (d).
5. What are the requirements for a master meter and its calibration?	§ 250.182 (e).
6. What are the requirements for calibrating mechanical-displacement provers and tank provers?	§ 250.182 (f).
7. What correction factors must a lessee account for when calibrating meters with a mechanical displacement prover, tank provers or master meter?.	§ 250.182 (g).
8. What are the requirements for establishing and applying operating meter factors for liquid hydrocarbons?	§ 250.182 (h).
9. Under what circumstances does MMS consider that a liquid hydrocarbon royalty meter failed and what must a lessee do?	§ 250.182 (i).

Frequently asked questions	CFR citation
10. How must a lessee correct gross liquid hydrocarbon volumes measured under nonstandard conditions?	§ 250.182 (j).
11. What are the requirements for liquid hydrocarbon allocation meters?	§ 250.182 (k).
12. What are the requirements for tank facilities designated as a royalty point?	§ 250.182 (l).
13. To which meters do MMS requirements for gas measurement apply?	§ 250.183 (a).
14. What are the requirements for measuring gas?	§ 250.183 (b).
15. What are the requirements for gas meter calibrations?	§ 250.183 (c).
16. What must a lessee do if a gas meter is malfunctioning?	§ 250.183 (d).
17. What are the requirements when natural gas from a Federal lease is delivered to a gas plant?	§ 250.183 (e).
18. What are the requirements when commingling production at the surface?	§ 250.184 (a).
19. What are the requirements for a well test used for allocation?	§ 250.184 (b).
20. What are the requirements for site security?	§ 250.185 (a).
21. What are the requirements for using seals?	§ 250.185 (b).
22. What are the requirements for measuring gas lost or used on a lease?	§ 250.186.

§ 250.181 Definitions for subpart L.

Terms used in Subpart L have the following meaning:

Allocation meter means a meter whose volume measurement substantiates which portion of the volume measured by a royalty meter is attributable to a particular lease, unit, well, or other measurement point.

API MPMS means the American Petroleum Institute's Manual of Petroleum Measurement Standards.

British Thermal Unit (Btu) means the amount of heat needed to raise the temperature of one pound of water by 1 degree Fahrenheit (1°F) at standard atmospheric pressure.

Calibration means the adjustment or standardization of a measuring instrument to yield precise data.

Fractional Analysis means separating mixtures into identifiable components expressed in mole percent.

Gas meter means an approved meter that measures natural gas and upon which MMS bases royalty and/or allocation volumes.

Gas processing plant means an installation for processing natural gas to remove impurities and recover natural gas liquids (NGL's) and other products. The NGL's are reported as the sum of the products (ethane, propane, butane, and natural gasoline) on the report of sales and royalty remittance. Products like nitrogen, sulphur, carbon dioxide and helium are reported separately.

Gas processing plant statement means a monthly statement showing the volume and quality of the inlet gas stream and the plant products recovered during the period, volume of deductible plant fuel, and the allocation of plant products to the sources of the inlet stream.

Gas royalty meter malfunction means an error in the gas measurement device that exceeds manufacturers specifications.

Gas volume statement means a document prepared by the owner of a gas meter that identifies the volume of natural gas measured by the meter. The statement contains information such as pressure base, temperature base, and volumetric data in a thousand cubic feet (Mcf) and quality data in gross Btu's per cubic foot.

Liquid hydrocarbons (free liquids) mean a mixture of hydrocarbons produced in liquid form after passing through surface separating facilities.

Malfunction factor means a liquid hydrocarbon royalty meter factor that differs from the previous meter factor by an amount greater than 0.0025.

Natural gas means all components of a whole natural gas stream which pass a meter in vapor phase at the measurement point.

Natural gas liquids (NGL's) mean components of natural gas that are liquefied from the whole gas stream and extracted in gas processing plants.

Operating meter means a meter that is used for measurement at any time during the month. A meter must be proved or calibrated only if it is an operating meter.

Pressure base means the pressure at which gas volumes are reported. The standard pressure base for converting measured volumes to standard volumes is 14.73 pounds per square inch absolute (psia).

Prove means to determine the accuracy of a meter, usually by running a known quantity (or quantities) of hydrocarbon through the meter at a known temperature and pressure while recording the meter volume registration.

Retrograde condensate means liquid hydrocarbons that drop out of the separated gas stream at any point prior to entering a gas processing plant, but after the facility measurement point.

Royalty meter means an approved meter that measures natural gas or liquid hydrocarbons and upon which MMS bases royalty volumes.

Run ticket means the invoice for liquid hydrocarbons measured at a royalty point.

Sales meter means a meter at which custody transfer takes place (not necessarily a royalty meter).

Seal means a device or approved method used to prevent tampering with measurement facility components.

Standard conditions means 14.73 pounds per square inch absolute (psia) and 60° F.

Surface commingling means the surface mixing of production from two or more leases or units prior to measurement for royalty purposes.

Temperature base means the temperature at which gas volumes are reported. The standard temperature base for use in converting measured volumes to standard volumes is 60° F.

You or your means the lessee or contractor engaged in operations in the Outer Continental Shelf (OCS).

§ 250.182 Liquid hydrocarbon measurement.

(a) *What are the requirements for measuring liquid hydrocarbons?* Lessees must:

(1) Commence liquid hydrocarbon production or make changes to previously approved measurement procedures only after the Regional Supervisor has approved the liquid hydrocarbon application or changes to an existing approval;

(2) Use measurement equipment that will accurately measure the liquid hydrocarbons produced from a lease or unit;

(3) Use procedures and correction factors according to the applicable chapters of the API MPMS as referenced in 30 CFR 250.1 when obtaining net standard volume and associated measurement parameters; and

(4) When requested by the Regional Supervisor, determine the retrograde condensate volume and allocate it back to the individual leases and/or units and wells.

(b) *What are the requirements for liquid hydrocarbon royalty meters?* Lessees must:

(1) Ensure that the royalty meter facilities include the following components (or other MMS-approved components) which must be compatible with their connected systems:

(i) A positive-displacement meter equipped with a nonreset totalizer;

(ii) A mechanical displacement prover, a master meter, a calibrated tank prover;

(iii) A proportional-to-flow sampling device pulsed by the meter output; and

(iv) A temperature measurement or temperature compensation device.

(2) Ensure that the royalty meter facilities accomplish the following:

(i) Prevent flow reversal through the meter;

(ii) Protect meters subjected to pressure pulsations or surges;

(iii) Prevent the meter from shock pressures greater than the maximum working pressure; and

(iv) Prevent meter bypassing.

(3) Maintain royalty meter facilities to ensure the following:

(i) Meters operate within the gravity range specified by the manufacturer;

(ii) Meters operate within the manufacturer's specifications for maximum and minimum flow rate for linear accuracy; and

(iii) Meters are reproven when changes in metering conditions affect the meters performance such as changes in pressure, temperature, density (water content), viscosity, pressure, and flow rate.

(4) Ensure that sampling devices conform to the following:

(i) The sampling point is in the flowstream immediately upstream or downstream of the meter or divert valve;

(ii) The sample container is vapor-tight and includes a mixing device to allow complete mixing of the sample before removal from the container; and

(iii) The sample probe is in the center of the flow piping in a vertical run and is located at least three pipe diameters downstream of any pipe fitting within a region of turbulent flow.

(c) *What are the requirements for run tickets?* Lessees must:

(1) Send all run tickets pulled and/or completed to the Regional Supervisor within 15 days following the end of the month;

(2) Pull a run ticket when establishing the monthly meter factor or a malfunction meter factor. Send the Regional Supervisor a copy of this run ticket; and

(3) Ensure that run tickets clearly identify all observed data, all correction factors not included in the meter factor, the net standard volume, and all calculations and factors.

(d) *What are the requirements for liquid hydrocarbon royalty meter provings?* Lessees must:

(1) Permit MMS representatives to witness regularly scheduled provings or any proving requested by the Regional Supervisor;

(2) Ensure that the integrity of the prover calibration is traceable to test measures certified by the National Institute of Standards and Technology;

(3) Prove each operating royalty meter to determine the meter factor during each month but the time between meter factor determinations must not exceed 42 days; and

(4) Submit copies of all meter proving reports for royalty meters to the Regional Supervisor monthly within 15 days after the end of the month.

(e) *What are the requirements for a master meter and its calibration?* Lessees must:

(1) Calibrate the master meter to obtain a meter factor before using it to determine operating meter factors;

(2) Use a fluid of similar gravity, viscosity, temperature, and flow rate as the liquid hydrocarbons that flow through the operating meter to calibrate the master meter;

(3) Calibrate the master meter during each month but the time between calibrations must not exceed 42 days;

(4) Calibrate the master meter by recording runs until the results of two consecutive runs (if a tank prover is used) or five out of six consecutive runs (if a mechanical-displacement prover is used) produce maximum meter factor differences of 0.0002. Lessees must use the average of the two (or the five) runs that produced acceptable results to compute the master meter factor; and

(5) Install the master meter upstream of any back-pressure or reverse flow check valves associated with the operating meter. However, you may install master meters either upstream or downstream of the operating meter.

(6) Keep a copy of the master meter proving report at your field location for 2 years.

(f) *What are the requirements for calibrating mechanical-displacement provers and tank provers?* Lessees must:

(1) Calibrate mechanical-displacement provers and tank provers at least once every 5 years according to the API MPMS as referenced in 30 CFR 250.1; and

(2) Submit a copy of each calibration report to the Regional Supervisor within 15 days after the calibration.

(g) *What correction factors must a lessee account for when calibrating meters with a mechanical-displacement prover, tank prover, or master meter?* Use the following correction factors from the API MPMS as referenced in 30 CFR 250.1:

(1) The change in prover volume due to pressure in the steel pipe (Cps);

(2) The change in volume of the test liquid with the change in temperature (Ctl);

(3) The change in prover volume due to the change in temperature (Cts); and

(4) The change in volume of the test liquid with the change in pressure (Cpl).

(h) *What are the requirements for establishing and applying operating meter factors for liquid hydrocarbons?*

(1) If you use a mechanical-displacement prover, you must record proof runs until five out of six consecutive runs produce a maximum difference between individual runs of .0005. You must use the average of the five runs to compute the meter factor.

(2) If you use a master meter, you must record proof runs until three consecutive runs produce a maximum total meter factor difference of 0.0005. The volume of each run must be at least 10 percent of the hourly rated capacity of the operating meter. You must use the average of the three runs to compute the meter factor.

(3) If you use a tank prover, you must record proof funs until two consecutive runs produce a maximum meter factor difference of .05 percent of the tank prover volume. You must use the average of the two consecutive runs to compute the meter factor.

(4) You must apply meter factors that are within tolerance starting with the date of the proving.

(i) *Under what circumstances does MMS consider that a liquid hydrocarbon royalty meter failed and what must a lessee do?*

(1) If the difference between the meter factor and the previous factor exceeds 0.0025 it is a malfunction factor and lessees must do the following:

(i) Remove the meter from service and check it for damage and/or wear;

(ii) Adjust it and/or repair it, and reprove it;

(iii) Apply the average of the malfunction factor and the previous factor to the production measured through the meter between the date of the previous factor and the date of the malfunction factor; and

(iv) Show all appropriate remarks regarding subsequent repairs and/or adjustments on the proving report.

(2) If a meter fails to register production the lessee must do the following:

(i) Remove the meter from service, repair and reprove it;

(ii) Apply the previous meter factor to the production run between the date of that factor and the date of the failure; and

(iii) Estimate unregistered production by the best possible means and report it as estimated production on the proving report.

(3) If the results of a royalty meter proving exceed the run tolerance criteria and all measures excluding the adjustment and/or repair of the meter can't bring results within tolerance the lessees must:

(i) Establish a factor using proving results made before any adjustment and/or repair of the meter; and

(ii) Treat the established factor like a malfunction factor [See paragraph (i)(1) of this section].

(j) *How must a lessee correct gross liquid hydrocarbon volumes measured under nonstandard condition?*

(1) Calculate Cpl factors into the meter factor or list and apply them on the appropriate run ticket.

(2) List the Ctl factors on the appropriate run ticket when the meter is not automatically temperature compensated.

(k) *What are the requirements for liquid hydrocarbon allocation meters?* Lessees must:

(1) Take samples continuously or daily;

(2) For turbine meters, take the sample proportional to the flow;

(3) Prove allocation meters monthly if they measure 50 or more barrels of oil per day per meter; or

(4) Prove allocation meters quarterly if they measure less than 50 barrels of oil per day per meter;

(5) Keep a copy of the proving reports at the field location for 2 years;

(6) Adjust and reprove the meter if a meter factor differs from the previous meter factor by more than 2 percent and less than 7 percent;

(7) For turbine meters, inspect the meter if a factor differs from the previous meter factor by more than 2 percent and less than 7 percent; and

(8) Repair or replace and reprove the meter if a meter factor differs from the previous meter factor by 7 percent or more.

(l) *What are the requirements for tank facilities designated as a royalty point?* Lessees must:

(1) Equip the tank with a vapor-tight thief hatch, a vent-line valve, and a fill line designed to minimize free fall and splashing;

(2) Submit a complete set of calibration charts (tank tables) to the Regional Supervisor before using the tank for measuring sales;

(3) Obtain the volume and other measurement parameters by using correction factors and procedures in the API MPMS as referenced in 30 CFR 250.1; and

(4) Submit a copy of each run ticket written from tank gaugings to the Regional Supervisor within 15 days after the end of the month.

§ 250.183 Gas measurement

(a) *To which meters do MMS requirements for gas measurement apply?* All OCS gas royalty and allocation meters.

(b) *What are the requirements for measuring gas?* Lessees must:

(1) Commence gas production or make changes to previously approved measurement procedures only after the Regional Supervisor has approved the gas measurement application or changes to an existing approval.

(2) Design, install, use, maintain, and test measurement equipment to ensure accurate and complete measurement. You must follow the recommendations in API MPMS (referenced in 30 CFR 250.1).

(3) Ensure that the measurement components are compatible with their connected systems.

(4) Equip the meter with a chart or electronic data recorder. Electronic data recorders must be capable of displaying real-time data during MMS inspections.

(5) Use continuous on-line chromatographic analyzers or sampling ports upstream or downstream of the meter. Take a sample at least once each calendar month but intervals must not exceed 42 days.

(6) Ensure that standard conditions for reporting gross heating value are at a base temperature of 60° F and at a base pressure of 14.73 pounds per square inch absolute (psia).

(7) When requested by the Regional Supervisor, submit gas volume statements for each requested month's gas sales. Show whether gas volumes and gross Btu heating value are reported at saturated or unsaturated conditions.

(8) When requested by the Regional Supervisor, provide any data necessary for gas volume and quality calculations.

(c) *What are the requirements for gas meter calibrations?* Lessees must:

(1) Calibrate meters monthly but not exceed 42 days between calibrations.

(2) Following a meter calibration, adjust the meter equipment (if necessary) by using the manufacturer's specifications.

(3) For positive displacement or turbine meters, conduct calibrations at the average hourly rate of flow since the last calibration.

(4) Retain calibration test data at the field location for 2 years and send the data to the Regional Supervisor upon request.

(5) Permit MMS representatives to witness regularly scheduled calibrations and any calibration requested by the Regional Supervisor.

(d) *What must a lessee do if a gas meter is malfunctioning?*

(1) If a gas meter is malfunctioning, adjust the meter to function properly or remove it from service and replace it.

(2) Correct the volumes to the last acceptable calibration as follows:

(i) If the duration of the error can be determined, calculate the volume adjustment for that period. The MMS does not require retroactive volume adjustments for allocation beyond 21 days; or

(ii) If the duration of the error can't be determined, apply the volume adjustment to one-half of the time elapsed since the last calibration or 21 days, whichever is less.

(e) *What are the requirements when natural gas from a Federal lease is delivered to a gas plant?*

(1) Lessees must provide the following to the Regional Supervisor upon request:

(i) The gas processing plant statement;

(ii) A gas volume statement for each of the lessee's meter facility sites that contribute natural gas to the processing plant; and

(iii) Composite fractional analyses and gross heating values.

(2) MMS may inspect the measurement and sampling equipment of natural gas processing plants that process Federal production.

§ 250.184 Surface commingling.

(a) *What are the requirements when commingling production at the surface? Lessees must:*

(1) Commence commingling of production only after the Regional Supervisor has approved the commingling and the method of measurement.

(2) Submit an application containing the following information:

(i) The method of allocation measurement and processing, if applicable;

(ii) The manner of entry into the commingled system; and

(iii) Any other information that the Regional Supervisor requests.

(3) Submit any changes to an approved commingling application to the Regional Supervisor for approval.

(4) Upon the request of the Regional Supervisor, lessees who deliver natural gas into a commingled system of both Federal and non-Federal production must provide volumetric and fractional analyses on the non-Federal gas through the designated system operator. If a lessees fails to provide that data, MMS will not permit the lessee to deliver Federal gas into the commingled system.

(b) *What are the requirements for a well test used for allocation?* Lessees must:

(1) Conduct a well test at least once every 2 months unless the Regional Supervisor approved a different frequency;

(2) Follow the well test procedures in § 250.173; and

(3) Retain the well test data at the field location for 2 years.

§ 250.185 Site Security.

(a) *What are the requirements for site security?* Lessees must:

(1) Protect Federal production against production loss or theft;

(2) Post a sign at each storage tank that MMS uses to determine royalty. The sign must contain the name of the facility operator, the size of the tank, and the tank number;

(3) Not bypass MMS-approved liquid hydrocarbon royalty meters and tanks; and

(4) Report the following to the Regional Supervisor as soon as possible, but no later than the next business day after discovery:

(i) Theft or mishandling of production;

(ii) Tampering or bypassing of meter or prover devices; and

(iii) Falsifying production measurements.

(b) *What are the requirements for using seals?* Lessees must:

(1) Seal the following components of liquid hydrocarbon royalty installations to ensure that tampering cannot occur without destroying the seal:

(i) Meter stack component connections from the base of the stack to the register;

(ii) Sampling systems including packing device, fittings, chains, sight glass, and container lid;

(iii) Temperature and gravity compensation device components;

(iv) All valves on lines leaving an oil storage tank including load-out line valves, drain-line valves, and connection-line valves between royalty and non-royalty tanks; and

(v) Any additional components required by the Regional Supervisor.

(2) Number and track the seals and keep the record at the field location for 2 years; and

(3) Make the record of seals available for MMS inspection.

§ 250.186 Measuring gas lost or used on a lease.

What are the requirements for measuring gas lost or used on a lease?

(a) Lessees must either measure or estimate the volume as required by the Regional Supervisor.

(b) If the Regional Supervisor requires you to measure the volume, document the measurement equipment used and include the volume measured.

(c) If the Regional Supervisor requires you to estimate the volume, document the estimating method and the data used and include the volume estimated.

(d) Lessees must keep the volume estimates and documentation at the field location for 2 years.

(e) If the Regional Supervisor requests, lessees must provide copies of the records.

[FR Doc. 97–4534 Filed 2–25–97; 8:45 am]

BILLING CODE 4310–MR–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WA50–7123b; FRL–5692–9]

Approval and Promulgation of State Implementation Plans: Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving in part, and disapproving in part, and taking no action in part on the Regulations of the Southwest Air Pollution Control Authority (SWAPCA) for the control of air pollution in Clark, Cowlitz, Lewis, Skamania and Wahkiakum Counties, Washington, as revisions to the Washington State Implementation Plan (SIP). These revisions pertain to General Regulations for Air Pollution Sources administered by SWAPCA. In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action.

DATES: Comments on this proposed rule must be received in writing by March 28, 1997.

ADDRESSES: Written comments should be addressed to Montel Livingston, Environmental Protection Specialist (OAQ–107), Office of Air Quality, at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 10, Office of Air Quality, 1200 6th Avenue, Seattle, WA 98101.

Washington State Department of Ecology, P.O. Box 47600, PV–11, Olympia, WA, 98504–7600.

FOR FURTHER INFORMATION CONTACT: Wayne Elson, Office of Air Quality (OAQ–107), EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553–1463.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the rules section of this **Federal Register**.

Dated: February 14, 1997.

Charles Findley,

Acting Regional Administrator.

[FR Doc. 97–4660 Filed 2–25–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 52 and 64

[CC Docket No. 92–105; FCC 97–51]

The Use of N11 Codes and Other Abbreviated Dialing Arrangements

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule.

SUMMARY: On February 19, 1997, the Commission released a Further Notice of Proposed Rulemaking (*FNPRM*) addressing N11 codes. The FNPRM is intended to obtain comment on the technical feasibility of implementing 711 for access to telecommunications relay services (TRS) and on several other issues related to N11 code administration.

DATES: Comments must be filed on or before March 31, 1997, and reply comments must be filed on or before April 30, 1997.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Elizabeth Nightingale, Attorney, Network Services Division, Common Carrier Bureau, (202) 418–2352.

SUPPLEMENTARY INFORMATION: This summarizes the Commission's Further Notice of Proposed Rulemaking in the matter of The Use of N11 Codes and Other Abbreviated Dialing

Arrangements, FCC 97–51, adopted February 18, 1997, and released February 19, 1997. The Commission concurrently released a First Report and Order in the same docket. The file is available for inspection and copying during the weekday hours of 9 a.m. to 4:30 p.m. in the Commission's Reference Center, room 239, 1919 M St., N.W., Washington D.C., or copies may be purchased from the Commission's duplicating contractor, ITS, Inc. 2100 M St., N.W., Suite 140, Washington, D.C. 20037, phone (202) 857–3800.

Analysis of Proceeding

The *FNPRM* asks for comment on the technical feasibility of implementing 711 for TRS access. The *FNPRM* also ask parties: (1) if it would be possible to develop within a reasonable time an N11 "gateway" offering access to multiple TRS providers; (2) whether, with such gateway access, TRS calls would still be answered within our mandatory minimum standards for TRS answer times; (3) whether such a gateway would be consistent with Section 255 of the Act; and (4) whether any other important disability services could be accessed through the same gateway. Regarding TRS, the *FNPRM* also requests comment from interested parties, particularly TRS providers, about the possibility of providing both voice and text TRS services through the same abbreviated N11 code. The *FNPRM* also asks for comment on the technical feasibility and time needed to make network changes to ensure that all telecommunications carriers have the same access that LECs have to certain N11 codes. Finally, the *FNPRM* asks for comment on the proprietary nature of N11 codes and on our proposal to transfer the administration of N11 codes at the local level from the incumbent LECs to the NANP administrator.

Ordering Clauses

It is further ordered, pursuant to Sections 1, 4(i) and (j), 201–205, 218 and 251(e)(1) of the Communications Act as amended, 47 U.S.C. Sections 151, 154(i), 151(j), 201–205, 218 and 251(e)(1), that the Further Notice of Proposed Rulemaking is hereby ADOPTED.

List of Subjects

47 CFR Part 52

Local exchange carrier, Numbering, Telecommunications.

47 CFR Part 64

Communications common carriers, Individuals with disabilities, Telecommunications relay services, and related customer premises equipment for persons with disabilities, Telephone.

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 97–4786 Filed 2–25–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[I.D. 010897A]

RIN 0648–AE09

Atlantic Swordfish Fisheries; Notice of Availability of Amendment 1

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: NMFS announces that the Highly Migratory Species Division has submitted Amendment 1 to the Fishery Management Plan for Atlantic Swordfish (FMP) for review, approval, and implementation by NMFS. Written comments are requested from the public. Amendment 1 would implement limited access measures for the Atlantic swordfish fisheries.

DATES: Written comments must be received on or before April 28, 1997.

ADDRESSES: Send comments to William Hogarth, Acting Chief, Highly Migratory Species Management Division (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Requests for copies of Amendment 1, which includes an environmental assessment and a regulatory impact review, should be sent to James Chambers, Fishery Management Specialist, Highly Migratory Species Management Division (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: James Chambers or John Kelly, 301–713–2347; fax: 301–713–1917.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish fishery is managed under the FMP and its implementing regulations found at 50 CFR part 630 and issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act)(16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (ATCA) (16 U.S.C. 971 *et seq.*). Regulations issued under the authority of ATCA carry out the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The FMP was implemented on September 18, 1985.

If approved, Amendment 1 would redefine permits as directed or incidental, develop eligibility criteria for these permits based on historical participation, and specify rules for transferability of permits. NMFS has determined that the Atlantic swordfish fishery is overfished and overcapitalized, with an excessive number of permitted vessels relative to the harvest level prescribed by ICCAT. The objective of this Amendment is to take a first and significant step towards reducing fleet capacity to levels more closely aligned with resource production by implementing limited access, substantially reducing latent harvesting capacity, and implementing measures to prevent further overcapitalization while allowing traditional hand-gear fishers to participate fully as the stock recovers.

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 971 *et seq.*

Dated: February 19, 1997.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97–4657 Filed 2–20–97; 2:46 pm]

BILLING CODE 3510–22–F

50 CFR Part 630

[Docket No. 970206023–7023–01; I.D. 010897A]

RIN 0648–AE09

Atlantic Swordfish Fisheries; Limited Access Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement the limited access system contained in Amendment 1 to the Fishery Management Plan for Atlantic Swordfish (FMP). If approved, Amendment 1 would establish a two-tiered permit system for the Atlantic swordfish commercial fishery, set forth eligibility criteria for these permits based on historical participation, and limit the transferability of these permits. NMFS has determined that the Atlantic swordfish fishery is overfished and overcapitalized, with an excessive number of permitted vessels relative to the total allowable catch (TAC) recommended for each member state by the International Commission for the Conservation of Atlantic Tunas (ICCAT). NMFS is holding public hearings and requesting written comments from the public on this proposed rule. The objective of this amendment is to take a first and significant step to prevent further overcapitalization.

DATES: Writen comments on this proposed rule must be received on or before April 28, 1997.

ADDRESSES: Comments on this proposed rule should be sent to William Hogarth, Acting Chief, Highly Migratory Species Management Division (F/SF1), National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Copies of Amendment 1, which includes an Environmental Assessment (EA) and Regulatory Impact Review (RIR), are available from James Chambers, Fishery Management Specialist, at the same address. The locations and dates of public hearings on the proposed rule have been published in the **Federal Register** (62 FR 1705). Additional public hearings may be held if needed. Comments regarding the collection-of-information requirement contained in this rule should be sent to William Hogarth at the above address and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: James Chambers or John Kelly, 301-713-2347; fax: 301–713–1917.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic swordfish fishery is managed under the FMP for Atlantic Swordfish, developed by the South Atlantic Fishery Management Council, and its implementing regulations published September 18, 1985, and found at 50 CFR part 630 issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*); and the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*). Regulations issued under the authority of ATCA carry out the recommendations of ICCAT.

The FMP included a requirement for vessel permits beginning January 1, 1986. However, to date, there have been no eligibility requirements for obtaining a swordfish permit. Accordingly, the Atlantic swordfish fishery has operated under open access.

The north Atlantic swordfish stock is depleted due to overfishing. According to the latest ICCAT stock assessment, the fishable biomass (total weight) of north Atlantic swordfish is estimated to have declined 68 percent between 1960 and 1996, and by the beginning of 1996, was estimated to be at 58 percent of that needed to produce the maximum sustainable yield (MSY). The average size of north Atlantic swordfish has declined from over 266 lb (121 kg) live weight in 1963 to 90 lb (41 kg) in 1995. According to ICCAT's data, 88 percent of the swordfish caught in 1995 by the domestic industry, and 86 percent of those landed by the international fleets, were immature. Populations of swordfish along the U.S. coast of the Atlantic Ocean and Gulf of Mexico have declined such that a historical recreational fishery and commercial harpoon fishery (dating from the 19th century) have been virtually eliminated because the large swordfish, which these handgear fisheries targeted, are now scarce.

Due to the overfished status of the north Atlantic swordfish stock, current harvest levels (estimated to be about 17,000 MT per year) are scheduled for immediate reductions. At its November 1996 meeting, ICCAT adopted reductions in the TAC for north Atlantic swordfish to 11,300 MT for 1997, 11,000 MT for 1998, and 10,700 MT for 1999. In 1997, the U.S. allocation will be 29 percent of the TAC. To comply with ICCAT's recommendations for north Atlantic swordfish, NMFS has implemented several management measures including, on June 12, 1991 (56 FR 26934), quotas and a minimum size limit and, on August 30, 1991 (56 FR 42982), a notice of control date for entry into the fishery. The August 30, 1991 control date notice announced that anyone entering the fishery after that date (the "control date") may not be assured of future access to the fishery if some form of limited access were implemented later.

Need for Limited Access

The Atlantic swordfish fishery is overcapitalized in that there are more vessels permitted in the fishery than are necessary or desirable to harvest the total allowable catch (TAC). At least 1,531 vessel owners are "current permit holders," but only about 300 regularly land swordfish. The inactive, permitted vessels (about 1,200) represent a potential for increased overcapitalization, shortened fishing seasons, and significant economic impact if many enter the fishery.

The creation of a limited access system would be an initial step toward achieving a more reasonable balance between the harvesting capacity of the permitted fleet and the TAC. At a minimum, it would prevent further increases in the number of permits in the fisheries that target swordfish and would dramatically reduce the number of speculative permit holders (those without significant documented landings of Atlantic swordfish).

The objectives of this proposed rule are to (a) reduce the amount of latent effort in the U.S. Atlantic swordfish fishery without significantly affecting the livelihoods of those who have are substantially dependent on swordfish fisheries, (b) reduce the size of the incidental fishery over time, and (c) allow traditional handgear fishers (whose permits have lapsed due to the scarcity of large fish, which they target) to participate fully as the stock recovers. The long-term objective of the limited access program currently under development for the Atlantic swordfish fishery is to create a management system to make fleet capacity commensurate with resource productivity so as to achieve the dual goals of economic efficiency and biological conservation. The agency's long-term objective is to rebuild the stock to the level at which the maximum sustained yield will be produced at a minimum, and ultimately, to the level at which the maximum economic yield will be produced.

While limited access alone will not resolve all of the problems associated with open access fisheries (derby fishing conditions, "the race for fish," market gluts), it would help prevent them from becoming more severe. A limited access system would stabilize fleet size and provide an opportunity for NMFS to collect data, conduct studies, and work cooperatively with fishery participants and other constituents to develop a more flexible, permanent effort control program in the future.

Permit Categories

NMFS proposes to implement a two-tiered commercial fishing permit system in which permits would be classified as "directed" or "incidental." The reason for issuing two broad categories of permits is to define and regulate the directed swordfish fishery separately from commercial fisheries that target other species but take swordfish as bycatch. Only persons holding a directed fishery permit would be eligible to participate in the directed fisheries under the management measures already established, while those holding an incidental permit would be restricted to the bycatch fishery with more restrictive management measures. NMFS proposes to restrict access to both the directed

and incidental swordfish fisheries. Two types of directed permits would be issued: Longline and drift gillnet permits, and handgear (harpoon, rod and reel, and handline) permits. Only one permit would be issued to a vessel, i.e., a vessel would be issued a directed longline/drift gillnet, directed handgear, or incidental permit. No combination of permits would be issued.

Eligibility Criteria

Only persons or entities that held a swordfish permit at any time from July 1, 1994, through December 31, 1995, who have documented landings that meet at least the directed or incidental threshold levels of historical participation in the swordfish fishery, and who own a swordfish-permitted vessel at the time of publication of the final rule would receive a directed longline/drift gillnet commercial permit or an incidental commercial permit. Separate criteria would be established for former harpooners to be issued a directed handgear commercial permit for use only with handgear.

Specific eligibility criteria are proposed because the majority of existing swordfish permit holders have not participated in the fishery (have not had significant reported landings of swordfish). If all current swordfish permit holders were to be allowed future participation in the commercial swordfish fishery, there would be a potential to reach or even to exceed greatly the TAC in a short time.

For the directed longline and drift gillnet fisheries, NMFS proposes a minimum requirement of having landed at least 18 swordfish per year for any 2 years between January 1, 1987, and June 30, 1995 (which is equivalent to having landed sufficient swordfish each year on average to earn $5,000 per year in gross revenue). NMFS estimates that 231 vessels would be eligible for these directed swordfish permits.

NMFS proposes to issue directed fishery handgear permits only to those who (1) have previously been issued swordfish permits for use primarily with harpoon gear or (2) have documented landings of swordfish with handgear as evidenced by logbook records; official, verifiable sales slips or receipts from registered dealers; or state landings records. The number of vessel owners that would be eligible is estimated to be about 40.

Under the eligibility criteria proposed for longline and drift gillnet gear types, few (if any) former harpooners could qualify because their landings were made before 1987 when mandatory reporting began and because most have let their permits lapse because of the reduced abundance of large swordfish, which they target.

For the incidental fishery, NMFS proposes a minimum landings threshold of nine swordfish between January 1, 1987, and June 30, 1995, and an earned income requirement of $20,000 or more than half of one's earned income from commercial fishing or charter or headboat operations during 1 of the last 3 years. The earned income requirement is intended to limit the incidental fishery to bona fide commercial fishers who target other species but catch swordfish as bycatch. NMFS estimates that 134 vessels would be eligible for incidental swordfish permits under the preferred alternative.

It is considered that catch histories belong to the current permit holders rather than to vessels (i.e., if a swordfish permit holder sells one vessel and buys another, he or she retains the history of the vessel sold and does not acquire the history of the vessel purchased). Thus, it is considered that persons or entities purchasing existing swordfish vessels have not also purchased that vessel's catch history (since the fishery is currently open access, it would be imprudent for someone to pay money for a catch history from which he or she may never benefit). However, several vessels were purchased after the control date (August 30, 1991) with stipulations that the catch history of the purchased vessel was purchased as well. Accordingly, NMFS has decided to accept legal documentation of transfers of catch histories in the determination of eligibility. If a vessel was sold after the control date and its landings history was included specifically in the written sales agreement, such landings would accrue to the purchaser (and no longer to the seller) for purposes of qualifying for a directed or incidental permit under the proposed limited access system.

Permit Process

NMFS would identify and notify all current permit holders of their eligibility status for the directed or incidental swordfish fishery after analysis based on the established eligibility criteria.

Upon receipt of this initial notification, eligible permit holders may submit an application for a directed or incidental fishery permit. If a permit holder is informed that he or she does not qualify for a permit, but he or she believes that there is credible evidence to the contrary, the permit holder may apply for a permit and provide the appropriate documentation. NMFS would then evaluate all applications, and any accompanying documentation, and notify the applicant of its decision either to accept or deny the permit application.

If the permit application is denied, the applicant may appeal within 90 days of receipt of the notice of denial. Provisional directed or incidental fishery permits, as appropriate, would be issued, pending the outcome of an appeal, until the final decision has been rendered. All appeal decision letters would be mailed via certified mail. If the appeal is denied, provisional permits would become invalid 5 days after the receipt of the notice of denial. If the appeal is approved, provisional permits would become invalid upon receipt of the appropriate permit.

Only owners of permitted vessels that were permitted at any time from July 1, 1994, through December 31, 1995, would be considered for appeal. All appeals would need to be made in writing. To appeal, the applicant would complete an appeal cover sheet with the name, affiliation (if any), address, and telephone number of the applicant. Additional pages and documentation could be attached, as necessary.

The sole ground for appeal would be that NMFS used incorrect or incomplete landings data in the eligibility analysis. No other ground would be considered. Valid documentation of landings covering the eligibility period would be required for consideration of an appeal. Documentation that would be considered in support of an appeal from fishers who believe they qualify for a directed or incidental fishery permit would be restricted to official NMFS logbook records that have been submitted to NMFS prior to August 30, 1995 (60 days after the cutoff date for eligible landings); official, verifiable sales slips or receipts from registered dealers; and state landings records. Dealer sales slips or receipts would have to show definitively the species and the vessel's name or other traceable indication of the harvesting vessel. Dealer records would have to include a sworn affidavit by the dealer confirming the accuracy and authenticity of the records.

While photocopies would be acceptable for initial submission, NMFS might request originals at a later date, which would be returned to the applicant via certified mail. Any submitted materials of questionable authenticity would be referred for investigation to NMFS' Office of Enforcement.

NMFS would designate appeals officers who would be NOAA employees. The appeals officers would individually review cases but would confer regularly to ensure consistency.

The appeals officers would review appeals for no more than 30 days before making a recommendation to the Director of the Office of Sustainable Fisheries (Director). The Director would render the final decision for the Department of Commerce. All denial letters would be sent by certified mail with return receipt so that NMFS would know when letters were received by permit holders.

Restrictions on Transfer of Permits

NMFS recognizes that vessels may sink or deteriorate beyond repair, and vessel owners may have valid reasons for wishing to exit the fishery. NMFS proposes to create a system in which directed commercial permits would be transferable with the sale of the permitted vessel, or to a vessel of similar harvesting capacity, or to a replacement vessel owned or purchased by the original permittee, but not under any other circumstances. Such transfers would be subject to upgrading restrictions (defined in the next section). Incidental permits would not be transferable. Directed handgear permits would be transferable, but for use with only handgear. NMFS recognizes that the same factors present in the directed fishery (vessel sinking or deterioration, disability, retirement) would also be present in the incidental fishery and that non-transferability of incidental permits would eventually result in the elimination of the incidental fishery through attrition. Prohibiting transferability of incidental permits would slow the growth of fishing effort in the limited access fishery.

In years after 1997, the eligibility criteria to which initial limited access permit holders are subject would not apply. In other words, transferees/buyers and holders of limited access vessel permits would not be required to meet the initial limited access eligibility criteria (i.e., having held a swordfish permit at any time from July 1, 1994, through December 31, 1995; having met the landings thresholds; and owning a vessel at the time of publication of the final rule).

Restrictions on Vessel Upgrading

NMFS proposes to require that any vessel to which a permit is transferred would be defined as the "new" vessel and be required to have the same or less gross registered tonnage and registered length as the originally permitted vessel. This restriction would apply to "replacement vessels," or those vessels acquired by the original permittee to replace originally permitted vessels, and to "new vessels," or those vessels not originally permitted but to which a permit has been transferred after the original permittee has sold the permit. This restriction would also apply to the refurbishment of existing permitted vessels.

Ownership Limits

No one person or entity may own or control more than 5 percent of the permitted vessels in the directed fishery. This would prevent significant consolidation and maintain the historically predominant individual owner/operator character of the swordfish fishery.

Incidental Harvest Limits

Without limits on the harvest of bycatch, the potential would exist for the incidental fishery to target and harvest significant numbers of swordfish. This would defeat the purpose of the two-tiered commercial permit system. For these reasons, NMFS proposes to retain the existing harvest limit for the incidental fishery at a maximum of five swordfish per trip for squid/mackerel/butterfish otter trawl vessels and two per trip for all other gear types. Fishers with directed longline or drift gillnet permits would be limited to five swordfish per trip during a closure of the directed fishery. The current limit is 15 swordfish per trip, which is considered excessive in view of the depleted status of the resource. A lower bycatch limit would provide an incentive to avoid swordfish.

Handgear Set-aside

A quota equivalent to 2 percent of the directed fishery quota would be set-aside for holders of the directed handgear permit during each semiannual period. This percentage would be increased by subsequent regulation as the north Atlantic swordfish stock recovers.

Fees

The Regional Administrator may charge a fee to recover the administrative expenses of permit issuance and appeals. The amount of the fee would be determined, at least annually, in accordance with the procedures of the NOAA Finance Handbook, available from the Regional Administrator, for determining administrative costs of each special product or service. The fee would not exceed such costs and would be specified with each application form. The appropriate fee would be required to accompany each application. Failure to pay the fee would preclude issuance of the permit. Payment by a commercial instrument later determined to be insufficiently funded would invalidate any permit.

Classification

This proposed rule is published under authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*, and ATCA, 16 U.S.C. 971 *et seq.* The Assistant Administrator has preliminarily determined that the regulations contained in this proposed rule are necessary for management of the Atlantic swordfish fishery. NMFS prepared a draft EA for this proposed rule with a preliminary finding of no significant impact on the human environment. The biological opinion issued on September 1, 1995, indicated that the level of impact from the longline and drift gillnet fisheries for Atlantic swordfish was not likely to jeopardize the continued existence of any threatened or endangered species or marine mammal populations. This action to limit access is under review to determine if any environmental impacts would alter that opinion.

NMFS reinitiated formal consultation for all highly migratory species commercial fisheries on September 25, 1996, under section 7 of the Endangered Species Act. This consultation will consider new information concerning the status of the northern right whale. NMFS has determined that proceeding with this rule, pending completion of that consultation, will not result in any irreversible and irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures. This rule would reduce the number of permits in the Atlantic swordfish commercial fishery and freeze the harvesting capacity of the fleet at current levels, thereby preventing further overcapitalization and derby fishing conditions and would likely reduce interaction rates with such protected species.

A draft RIR was prepared with a preliminary finding of no significant economic impact. The RIR provides further discussion of the economic effects of the proposed rule.

The Assistant General Counsel for Legislation and Regulations of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

The purpose of this proposed rule is to rationalize current harvesting capacity with total allowable catch and substantially reduce latent effort without significantly

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altering the status quo in the Atlantic swordfish fishery. Practically all current participants of the swordfish fishery readily fall within the definition of a small business. The proposed rule will affect all current permit holders (1,531) in the Atlantic swordfish fishery. However, it will not have a "significant economic effect" or adversely affect a "substantial number" of those engaged in the fishery. In general, a substantial number of small entities is defined by the Department of Commerce as more than 20 percent of those engaged in the fishery.

Only about 300 permitted vessels catch at least one swordfish each year and together they constitute the Atlantic swordfish fishery. Few, if any, fishers who are considered to be substantially dependent on the fishery would be excluded under the proposed limited access regulation. All longline and drift gillnet vessel owners who can demonstrate a history of landings at a minimum threshold of 18 swordfish per year during the 2-year qualifying period would be eligible for a directed permit (about 231). Only the most recent entrants to the fishery and those without at least a minimal record of landings over two years would be excluded. Historical participants, particularly about 40 New England-based harpooners who have let their permits lapse and would otherwise be excluded from the directed fishery, could be issued a directed handgear permit allowing them to participate in any potential recovery of the stock.

Speculative permit holders (numbering 1,231), by definition, have not participated in the commercial swordfish fishery at all or have not been substantially dependent on the fishery for a period of years. The incidental bycatch limits continue to provide for speculative commercial fishers to land some swordfish; accordingly, their annual gross revenues should not decrease substantially. Incidental permits are also available to those who have participated in the fishery over a period of years but whose landings were at such low levels that they could not qualify for a directed fishery permit. Incidental landing limits (two swordfish per trip) should be comparable to their previous catch rates, thus their annual gross revenue should also not be affected.

Therefore, redefining commercial swordfish permits as directed and incidental as proposed will not have a significant economic impact on a majority of those engaged in the Atlantic swordfish fishery in terms of fishers' annual gross revenues. The substantive changes proposed primarily affect the applicability of permitting requirements. The need for these changes is explained in the preamble to the proposed rule.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with the collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

This proposed rule contains collections of information subject to the PRA. Revisions are proposed to the vessel permitting process, but these are minor and not expected to alter the estimated response time of 20 minutes. Permit requirements have been approved by OMB under Control Number 0648–0205. Reporting requirements remain unchanged from those approved by OMB under Control Number 0648–0016, with an estimated response time of 15 minutes per logbook report. The appeals procedure constitutes a new collection-of-information requirement and it has been submitted to OMB for approval. An appeal of a permit denial is estimated to take 1.5 hours, including the time to gather records, make copies, and mail documents to NMFS. Comments regarding: (1) The accuracy of this burden estimate (including hours and cost); (2) whether the proposed collection of information is necessary for the proper performance of NMFS' functions, including whether the sought information has practical utility; (3) ways to enhance the quality, utility, and clarity of the information to be collected; (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information; and (5) any other aspects of information collection should be sent to OMB and NMFS (see **ADDRESSES**).

This action has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 630

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: February 19, 1997.

Rolland Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 630 is proposed to be amended as follows:

PART 630—ATLANTIC SWORDFISH FISHERY

1. The authority citation for part 630 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 971 *et seq.*

2. In § 630.2, the definitions for "Director" and "Handgear" are added, in alphabetical order, and the definition of "Recreational fishery" is revised to read as follows:

§ 630.2 Definitions.

* * * * *

Director means the Director, Office of Sustainable Fisheries F/SF, NMFS, or a designee.

* * * * *

Handgear means harpoon, rod and reel, and handline fishing gear.

* * * * *

Recreational fishery means all activities involved in the catching of swordfish from a vessel, having only rod and reel or handline gear on board, intended solely for sport or pleasure , with no subsequent sale or commercial barter of any of the catch.

* * * * *

3. In § 630.4, paragraphs (a), (b), the first sentence of (d), and (e) through (g) are revised and paragraph (c)(1) is amended by adding a new first sentence to read as follows:

§ 630.4 Permits and fees.

(a) *Vessel permits*—(1) *General.* (i) Except as provided by paragraph (a)(1)(ii) of this section, a valid Federal permit issued under this paragraph must be obtained and carried on board at all times by the owner of the United States that fishes for, possesses, or lands Atlantic swordfish from the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N. latitude, the management unit; or that takes such swordfish as bycatch, whether or not retained.

(ii) The owner of a vessel that fishes for or possesses swordfish in or from the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N latitude in the recreational fishery is exempt from the requirement to have a permit.

(2) *Limited access eligibility in 1997.* NMFS will issue three types of limited access permits for Atlantic swordfish vessels: Directed longline and drift gillnet permits, directed handgear permits, and incidental permits. To be eligible to obtain a vessel permit in 1997—

(i) For use with longline or drift gillnet gear in the directed swordfish fishery, a vessel owner must have held a valid Federal commercial swordfish permit at any time during the period July 1, 1994, through December 31, 1995; met the landings criteria specified in paragraph (a)(3)(i) of this section; and own a vessel with a valid swordfish permit on Febraury 26, 1997.

(ii) For use with handgear (harpoon, rod and reel, or handline) but having no longline or drift gillnet gear on board, a vessel owner must have previously been issued a swordfish permit for use primarily with harpoon gear or have documented landings of swordfish with handgear as evidenced by official NMFS logbook records; official, verifiable sales slips or receipts from registered dealers; and state landings records.

(iii) For use by vessels targeting species other than swordfish, but catching limited numbers of swordfish incidentally, a vessel owner must have earned at least $20,000 or more than half of his or her earned income from commercial fishing or from charter or headboat operations during 1 of the last 3 years; held a valid Federal commercial swordfish permit during the period July 1, 1994, through December 31, 1995; met the landings criteria specified in paragraph (a)(3)(ii) of this section; and own a vessel with a valid swordfish permit on Febraury 26, 1997. A statement attesting to having met the earned income requirement must be furnished with an application for an incidental swordfish permit.

(3) *Landings Criteria.* (i) Directed permits for use with longline or drift gillnet gear will be issued only to eligible permit holders who have documented landings of at least 18 swordfish per year for any 2 years between January 1, 1987, and June 30, 1995.

(ii) Incidental permits will be issued only to eligible permit holders who have documented landings of nine swordfish during the period January 1, 1987, to June 30, 1995.

(4) *Eligibility in 1998 and thereafter.* To be eligible for a swordfish permit for use with longline or drift gillnet gear in years after 1997, a vessel owner must have been issued a permit for the directed longline or drift gillnet fishery for the preceding year, or the vessel must be replacing a vessel that has been retired from the directed longline or drift gillnet fishery and had been issued a permit for the preceding year, and the vessel and owner must meet the criteria set forth in paragraphs (b)(5) and (g). A vessel owner desiring to apply for a directed handgear permit must meet the eligibility criteria specified at paragraph (a)(2)(ii) of this section; handgear permits are renewable annually. If more than one vessel owner claims eligibility to apply for a limited access Atlantic swordfish vessel permit based on one vessel's fishing and permit history after 1997, NMFS shall determine who is entitled to qualify for the limited access Atlantic swordfish vessel permit according to paragraph (g)(3) of this section.

(5) *Notification of eligibility for 1997.* (i) NMFS will attempt to notify all commercial swordfish permit holders (and former permit holders that used harpoon gear) of their eligibility for a directed or incidental limited access Atlantic swordfish vessel permit, based on the requirements contained in paragraph (a)(2) of this section. Upon receipt of this initial notification, eligible permit holders may submit an application for the appropriate permit following procedures described in paragraph (b) of this section.

(ii) If an owner has been notified that the vessel is not eligible for a limited access Atlantic swordfish vessel permit, and the vessel owner can provide credible evidence that the vessel does qualify under the pertinent criteria, the vessel owner may apply for the appropriate permit by submitting the documentation required under paragraph (a)(8) of this section.

(6) If, based on the documentation supplied with the application, NMFS determines that the vessel meets the eligibility criteria, the appropriate limited access permit will be issued.

(7) *Application denial.* If, based on the documentation supplied with the application, NMFS determines that the vessel does not meet the eligibility criteria specified in paragraphs (a)(2) and (a)(3) of this section or the conditions specified in paragraphs (a)(5) and (e) of this section, the limited access permit application will be denied. Letters of denial will be sent via certified mail.

(8) *Appeals.* (i) Any applicant denied a limited access permit for Atlantic swordfish vessels may appeal the denial to NMFS within 90 days of the notice of denial. The sole ground for appeal is that NMFS erred in its determination of eligibility on the basis of incorrect or incomplete data. No other grounds will be considered. Valid documentation of landings specified in paragraph (a)(3) of this section covering the eligibility period must be provided by the applicant for NMFS to consider an appeal. Photocopies will be acceptable for initial submission. NMFS may request originals at a later date, which would be returned to the applicant via certified mail. Any such appeal must be in writing. Documentation that is of questionable authenticity will be referred for investigation to NMFS' Office of Enforcement.

(ii) The only landings documentation that will be considered in support of an application or appeal are official NMFS logbook records that were submitted to NMFS prior to August 30, 1995; state landings records; and official, verifiable sales slips or receipts from registered dealers. Dealer sales slips and receipts must definitively show the species landed and vessel's name or other traceable information for the harvesting vessel and must include a sworn affidavit by the dealer confirming the accuracy and authenticity of the records.

(iii) The Director shall issue a provisional permit, which shall be valid for the pendency of the appeal, to a vessel and owner for which an appeal has been initiated. The provisional permit shall be valid only for use with the gear appropriate to the category of permit the appellant is seeking. Any such decision is the final administrative action of the Department of Commerce on allowable fishing activity pending a final decision on the appeal. The provisional permit must be carried on board the vessel while participating in the Atlantic swordfish fishery and is not transferable.

(iv) NMFS will appoint appeals officers who will review the written materials for no more than 30 days before making a recommendation to the Director.

(v) Upon receiving the findings and a recommendation, the Director will issue a final decision on the appeal. The Director's decision is the final administrative action of the Department of Commerce.

(vi) The Director shall send letters of approval or denial of appeals to the vessel owners. All appeal decision letters will be mailed via certified mail. If the appeal is denied, provisional permits will become invalid 5 days after receipt of the notice of denial. If the appeal is approved, provisional permits will become invalid upon receipt of the appropriate permit.

(b) *Application for a limited access vessel permit.* (1) In the year 1997, an initial application for a limited access vessel permit must be submitted and signed by the owner (in the case of a corporation, the qualifying officer or shareholder; in the case of a partnership, the qualifying general partner) of the vessel. The application must be submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective. Permit application forms are available from the Regional Director. An applicant must provide the following information:

(i) A copy of the vessel's U.S. Coast Guard certificate of documentation or, if not documented, a copy of its state registration certificate.

(ii) The vessel's name, official number, registered gross tonnage, and registered length.

(iii) Name, mailing address including ZIP code, telephone number, and social security number, and date of birth of the owner (if the owner is a corporation/partnership, in lieu of the social security number, provide the employer identification number, if one has been

assigned by the Internal Revenue Service (IRS), and, in lieu of the date of birth, provide the date the corporation/

annually and renewal applications must be submitted to the Regional Director at least 30 days prior to the date on which

(iv) The applicant has failed to meet any other application requirements stated in this part.

§ 630.7 Prohibitions.

* * * * *

(1) * * *

(iii) A quota equivalent to 2 percent

historical participation, and limit the transferability of such permits.

assigned by the Internal Revenue Service (IRS), and, in lieu of the date of birth, provide the date the corporation/partnership was formed).

(iv) Information concerning vessel, gear used, fishing areas, and fisheries vessel is used in, as requested by the Regional Director and included on the application form.

(v) If a directed handgear permit is being sought, indication of the year a permit was issued for use primarily with harpoon gear, or if issued prior to 1984, a copy of the permit issued, or valid documentation of landings of swordfish with handgear. Valid documentation that will be considered in support of an application for a directed handgear permit are official NMFS logbook records; official, verifiable sales slips or receipts from registered dealers; or state landings records.

(vi) If an incidental swordfish permit is being sought, a sworn statement by the applicant certifying that, during 1 of the 3 calendar years preceding the application:

(A) More than 50 percent of his or her earned income was derived from commercial fishing, that is, sale of the catch, or from charter or headboat operations; or

(B) His or her gross sales of fish were more than $20,000; or

(C) For a vessel owned by a corporation or partnership, the gross sales of fish of the corporation or partnership were more than $20,000.

(vii) A sworn statement that the applicant agrees to the conditions specified in paragraph (a)(5) of this section.

(viii) Any other information that may be necessary for the issuance or administration of the permit, as requested by the Regional Administrator and included on the application form.

(ix) The Regional Administrator may require the applicant to provide documentation supporting the sworn statement under paragraph (b)(1)(vi) of this section before a permit is issued or to substantiate why such permit should not be revoked or otherwise sanctioned under paragraph (i) of this section. Such required documentation may include copies of appropriate forms and schedules from the applicant's income tax return. Copies of income tax forms and schedules will be treated as confidential.

(2) In years after 1997, a limited access permit holder may apply for a limited access permit renewal, provided that the initial information under which the permit holder qualified for a limited access permit has not changed. Limited access vessel permits must be renewed annually and renewal applications must be submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective. Only holders of valid limited access permits in the preceding year are eligible for a renewal of their limited access permits.

(3) In years after 1997, an application for permit transfer of a directed limited access vessel permit to a new vessel and/or owner will be authorized, subject to transfer and upgrading restrictions specified in § 630.4 (g)(1) through (g)(3) and ownership limits set forth in § 630.4 (b)(5). Incidental limited access permits are not transferable or assignable. All other requirements and restrictions specified in this part apply to transferred limited access permits and permit holders.

(4) A limited access vessel permit for 1997 will not be issued unless an application for such permit is received by NMFS on or before November 30, 1997.

(5) No person or entity may own or control more than 5 percent of the vessels in the limited access Atlantic swordfish directed fishery.

(c) *Application for an annual dealer permit.* (1) A dealer who receives swordfish harvested or possessed by a vessel of the United States must have an valid annual dealer permit issued under this part.* * *

* * * * *

(d) *Fees.* A fee is charged for each limited access vessel permit issued under paragraph (a) of this section, for each appeal under paragraph (b) of this section, and for each annual dealer permit issued under paragraph (c) of this section.

(e) *Issuance*—(1) *Limited access vessel permits.* Except as provided in subpart D of 15 CFR part 904 and under paragraphs (a)(7) and (a)(8) of this section, the Regional Administrator shall issue a Federal limited access Atlantic swordfish vessel permit within 30 days of receipt of the application unless:

(i) The applicant has failed to submit a complete application. An application is complete when all requested forms, information, documentation, and fees, if applicable, have been received and the applicant has submitted all applicable reports specified at § 630.5;

(ii) The application was not received by NMFS by the deadlines set forth in paragraph (b)(4) of this section;

(iii) The applicant and applicant's vessel failed to meet all eligibility requirements described in paragraph (a)(2) of this section; or

(iv) The applicant has failed to meet any other application requirements stated in this part.

(2) *Dealer permits.* The Regional Administrator will issue a dealer permit at any time to an applicant if the application is complete. An application is complete when all requested forms, information, and documentation have been received and the applicant has submitted all applicable reports specified at § 630.5(a) or § 630.5(b).

(3) *Incomplete applications.* Upon receipt of an incomplete application, the Regional Administrator will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 90 days of the date of the Regional Administrator's letter of notification, the application will be considered abandoned.

(f) *Duration.* A permit remains valid for the period specified on it, and the conditions accepted upon its issuance remain in effect for that period, unless the vessel is retired from the swordfish fishery or the permit is revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904.

(g) *Transfer.* (1) Directed limited access permits are transferable to a new vessel and/or owner or to a replacement vessel owned or purchased by the original permittee but not under any other circumstances. Such transfers are subject to requirements specified in paragraph (g)(2) of this section. Incidental permits are not transferable or assignable; incidental permits are valid only for the vessel and owner of original issuance. A person purchasing a permitted vessel who desires to conduct activities for which a permit is required must apply for a permit in accordance with the provisions of paragraph (b) of this section. The application must be accompanied by a copy of the bill of sale.

(2) Transfer of directed limited access permits is authorized only for new or replacement vessels not exceeding the gross registered tonnage and registered length as the originally permitted vessel.

(3) The fishing and permit history of a vessel is presumed to be retained by the original permit holder whenever the vessel is bought, sold, or otherwise transferred, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is transferring/selling the vessel's fishing and permit history.

* * * * *

4. In § 630.7, paragraph (bb) is added to read as follows:

§ 630.7 Prohibitions.

* * * * *

(bb) Aboard a vessel for which a directed swordfish handgear permit has been issued under § 630.4, retain or possess swordfish taken with gear other than harpoon, rod and reel, or handline and or to have longline or drift gillnet gear on board. 5. Section 630.22 is revised to read as follows:

§ 630.22 Gear Restrictions.

(a) *Drift gillnet.* A drift gillnet with a total length of 2.5 km or more may not be used to fish for swordfish. A vessel using or having aboard a drift gillnet with a total length of 2.5 km or more may not possess a swordfish.

(b) *Handgear.* A vessel for which a directed swordfish handgear permit has been issued under § 630.4 may retain or possess swordfish taken only with harpoon, rod and reel, or handline and must not have longline or drift gillnet gear on board.

6. In § 630.24, paragraph (a) is revised and paragraph (b)(1)(iii) is added to read as follows:

§ 630.24 Quotas.

(a) *Applicability.* A swordfish harvested from the North Atlantic swordfish stock by a vessel of the United States in other than the recreational fishery is counted against the directed fishery gear quota or the bycatch quota. A swordfish harvested commercially by longline, drift gillnet, harpoon, rod and reel or handline and landed before the effective date of a closure for that gear, done pursuant to § 630.25(a)(1), is counted against the applicable directed fishery gear quota. After a gear closure, a swordfish landed by a vessel using or possessing gear for which bycatch is allowed under § 630.25(c) is counted against the bycatch allocation specified in paragraph (c) of this section. Notwithstanding the above, a swordfish harvested by a vessel using or possessing gear other than longline, drift gillnet, harpoon, rod and reel or handline is counted against the bycatch quota specified in paragraph (c) of this section at all times.

(b) * * *

(1) * * *

(iii) A quota equivalent to 2 percent of the directed fishery quota will be set-aside for holders of the directed handgear permit during each semiannual period. Any unused portion of the set-aside quota will be returned to the directed fishery allocation by the end of September (the end of the handgear season) of each year.

* * * * *

7. In § 630.25, the first sentence in paragraph (c)(2)(ii) is amended by removing the numeral "15" and by adding the numeral "5" in its place, and paragraph (d) introductory text is revised to read as follows:

§ 630.25 Closures and bycatch limits.

* * * * *

(d) *Bycatch limits in the non-directed fishery.* Aboard a vessel using or having aboard gear other than longline, drift gillnet, harpoon, rod and reel or handline, other than in the recreational fishery—

* * * * *

[FR Doc. 97–4658 Filed 2–21–97; 12:08 pm]
BILLING CODE 3510–22–F

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50 CFR Part 678

[I.D. 121196A]

Atlantic Shark Fisheries; Limited Access Program; Extension of Comment Period

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Extension of comment period.

SUMMARY: NMFS extends the comment period for a proposed rule and Amendment 1 to the Fishery Management Plan for Atlantic Sharks (FMP) to implement the limited access system. The proposed rule was published in the Federal Register on December 27, 1996. The proposed rule would establish a two-tiered permit system for the Atlantic shark commercial fishery, set forth eligibility criteria for these permits based on historical participation, and limit the transferability of such permits. NMFS has determined that the Atlantic shark fishery is overfished and overcapitalized, with an excessive number of permitted vessels relative to the harvest level prescribed by the recovery plan.

DATES: Written comments on the proposed rule must be received on or before April 28, 1997.

ADDRESSES: Written comments should be sent to William T. Hogarth, Chief, Highly Migratory Species Management Division (F/SF1), Office of Sustainable Fisheries, National Marine Fisheries Service, 1315 East-West Highway, Room 14853, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: John Kelly or Margo Schulze at 301-713-2347; fax 301–713–1917.

SUPPLEMENTARY INFORMATION: NMFS has received requests from the affected public that more time is necessary to submit their comments on the Atlantic shark fishery proposed rule and FMP amendment to implement limited access (61 FR 68202, December 27, 1996). The extension in comment period will ensure that this proposed rule can be examined in conjunction with the proposed rule for limited access in the swordfish fishery, which is being published on the same date as this notice. The public has informed NMFS that it is essential to examine both proposals simultaneously in order to determine the net effect of the two proposed limited access systems.

The proposed rule, as published, would establish a two-tiered permit system for the Atlantic shark commercial fishery, set forth eligibility criteria for these permits based on historical participation, and limit the transferability of such permits. NMFS has determined that the Atlantic shark fishery is overfished and overcapitalized, with an excessive number of permitted vessels relative to the harvest level prescribed by the recovery plan.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 19, 1997.

Gary Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97–4656 Filed 2–20–97; 5:05 pm]
BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 62, No. 38
Wednesday, February 26, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

National Agricultural Research, Extension, Education, and Economics Advisory Board

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of Solicitation of Advisory Board Recommendations.

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463), the United States Department of Agriculture announces a solicitation of the National Agricultural Research, Extension, Education, and Economics Advisory Board members for recommendations on the reauthorization of the Title VIII—Research, Extension, and Education of the Federal Agriculture Improvement and Reform Act of 1996 (FAIR Act).

DATE: Deadline for Advisory Board Comments, February 27, 1997.

Comments: The public may file written comments before or after the **DATE** above with the contact person listed below.

FOR FURTHER INFORMATION CONTACT: Deborah Hanfman, Executive Director, National Agricultural Research, Extension, Education, and Economics Advisory Board, REE Office of the Advisory Board, Room 3918 South, U.S. Department of Agriculture, STOP: 2255, 1400 Independence Avenue, SW, Washington, DC 20250–2255. Telephone: 202–720–3684; Fax: 202–720–6199.

SUPPLEMENTARY INFORMATION: The National Agricultural Research, Extension, Education, and Economics Advisory Board has been asked by USDA to give general comments on some or all of the issues provided below regarding reauthorization of the Research, Extension, and Education Title.

Recurring Questions

(1) What is the appropriate mix of funding among intramural funds, formula funds, competitive grants, and special grants?

(2) Is stakeholder input into research and extension priority setting working?

(3) What is the role of the university system in terms of ARS agenda?

(4) What is the role of the Federal Government?

(5) What are the priorities for the Extension Service?

(6) What is the appropriate role for Special Grants?

Context for Research Title Reauthorization

Many changes have taken place in the agricultural sector. The FAIR Act of 1996 provides the following changes:

(1) Contract payment provisions in lieu of traditional support programs,

(2) A deregulated domestic economy—U.S. ratification of GATT means producers now compete in a deregulated global economy as well, and

(3) Significant policy decisions affecting natural resources & the environment.

Principles Guiding USDA's Approach to Research Title Reauthorization

(1) Use existing legislative & administrative authorities whenever possible.

(2) Improve efficiency throughout the research system—and re-invest in REE research, education, and extension programs.

(3) Encourage multi-functional, multi-regional, and multi-institutional activities to achieve maximum leverage of federal, state, and local dollars.

(4) Support a range of funding mechanisms and the current structure of intramural and extramural research. Must maintain long-term high-risk research as well as shorter term investigator-initiated research.

(5) Support the use of formula funds for research and extension activities at the land-grant universities, while providing greater accountability.

(6) Support merit review with peer evaluation in all research programs with competitively-awarded programs, as appropriate. We will improve merit review and peer evaluation in the intramural programs.

(7) Value an active federal-state-local partnership in setting priorities, conducting the work, and evaluating the results, as is consistent with Administration's position on states' roles. USDA will work in partnership with state and local entities where we have concurrent jurisdiction and build better accountability.

(8) Strengthen public sector/private sector partnerships.

(9) Be responsive to national and regional needs as the first guideline in priority setting.

(10) Improve communication with the public.

(11) Overarching Principle: Work to maintain world leadership in agricultural science and education.

Comments on the above issues will be consolidated by the Office of the Advisory Board at the direction of the Executive Committee and used in a statement of recommendations to the Secretary of Agriculture on Title VIII reauthorization.

Done at Washington, DC this 21st day of February, 1997.

Bob Robinson,

Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 97–4823 Filed 2–25–97; 8:45 am]

BILLING CODE 3410–22–M

Forest Service

Revised Land and Resource Management Plans for Some National Forest System Lands in Nebraska, North Dakota, South Dakota, and Wyoming

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement in conjunction with the revision of land and resource management plans for several National Grasslands (NG) and Forests (NF) on the Northern Great Plains.

The "planning area" includes these National Forest System lands:

Administrative unit	National grassland/forest	State	Counties
Cluster NF	Little Missouri NG	ND	Billings, Dunn, Golden, Valley, McHenry, McKenzie, Slope.
	Cedar River NG	ND	Grant, Sioux.
	Sheyenne NG	ND	Ransom, Richland.
	Grand River NG	SD	Corson, Perkins.
Nebraska NF	Oglala NG	NE	Dawes, Sioux.
	Nebraska NF	NE	Blaine, Dawes, Sioux, Thomas.
	Samuel R. McKelvie NF	NE	Cherry.
	Buffalo Gap NG	SD	Custer, Fall River, Jackson, Pennington.
	Fort Pierre NG	SD	Jones, Lyman, Stanley.
Medicine Bow-Routt NF	Thunder Basin NG	WY	Campbell, Converse, Crook, Niobrara, Weston.

SUMMARY: This planning effort is called the "Northern Great Plains Management Plans Revisions." Land and Resource Management Plans (hereafter referred to as Management Plan or Plans) will be prepared for each participating administrative unit, while one environmental impact statement for all affected units will be issued.

This notice describes the specific portions of the current Management Plans to be revised, environmental issues considered in the revisions, estimated dates for filing the environmental impact statement, information concerning public participation, and the names and addresses of the agency officials who can provide additional information.

DATES: Comments concerning the scope of the analysis should be received in writing by July 31, 1997. The agency expects to file a draft environmental impact statement with the Environmental Protection Agency (EPA) and make it available for public comment in June 1998. The agency expects to file the final environmental impact statement in May 1999.

ADDRESS: Send written comments to: Dave Cawrse, Team Leader, Northern Great Plains Planning Team, USDA Forest Service, 125 North Main Street, Chadron, NE 69337.

FOR FURTHER INFORMATION CONTACT: Dave Cawrse, Planning Team Leader, (308) 432–0300.

RESPONSIBLE OFFICIALS: Hal Salwasser, Northern Regional Forester at 200 East Broadway, Missoula, MT 59807; and Elizabeth Estill, Rocky Mountain Regional Forester at P.O. Box 25127, Lakewood, CO 80225–0127.

SUPPLEMENTARY INFORMATION: Pursuant to Part 36 Code of Federal Regulation (CFR) 219.10 (g), the Regional Foresters for the Northern and Rocky Mountain Regions give notice of the agency's intent to prepare an environmental impact statement for the revision effort described above. According to 36 CFR 219.10 (g), land and resource management plans are ordinarily revised on a 10- to 15-year cycle. The existing Management Plans were approved as follows:

Custer National Forest—June 10, 1987;

Medicine Bow-Routt National Forest—November 20, 1985;

Nebraska National Forest—December 14, 1984.

The Regional Foresters give notice that they are beginning an environmental analysis and decision-making process for this proposed action so that interested or affected people can participate in the analyses and contribute to the final decisions. One environmental impact statement will be prepared. Separate decisions, documented in Records of Decision, will be issued for each administrative unit. The combined revision effort makes sense because of common issues and concerns, and similar ecological landscapes. This effort will enable the administrative units to share assessments, plan-related analyses, and resource expertise, and will reduce costs.

Opportunities will be provided to discuss openly with the public the alternatives to be developed, which can potentially replace the existing Management Plans. The public is invited to discuss and help define the range of alternatives to be considered in the environmental impact statement. Forest Service officials will lead these discussions, helping to describe the preliminary alternatives brought forward by the agency. These officials will also explain the environmental analysis process and the disclosures of that analysis, which will be available for public review. Written comments concerning the range of alternatives will be encouraged.

Management plans describe the intended management of National Grasslands and Forests. Agency decisions in these plans will do the following things:

* Establish multiple-use goals and objectives (36 CFR 219.11);

* Establish grassland and forestwide management requirements (standards and guidelines) to fulfill the requirements of 16 U.S.C. 1604 applying to future activities (resource integration requirements, 36 CFR 219.13 to 219.27);

* Establish management areas and management area direction (management area prescriptions) applying to future activities in that management area (resource integration and minimum specific management requirements) 36 CFR 219.11 (c);

* Establish monitoring and evaluation requirements (36 CFR 219.11 (d));

* Determine suitability and potential capability of lands for producing forage for grazing animals and for providing habitat for management indicator species (36 CFR 219.20), designate lands not suited for timber production, and, where applicable, establish allowable timber sale quantity (36 CFR 219.14, 219.15, and 219.21);

* Where applicable, designate those lands administratively available for oil and gas leasing, and when appropriate, authorize the Bureau of Land Management to offer specific lands for leasing (36 CFR 228.102 (d) and (e));

* Where applicable, recommend Wild and Scenic River designations in accordance with 16 U.S.C. 1274; and

* Where applicable, recommend non-Wilderness allocations or Wilderness recommendations for roadless areas (36 CFR 219.17).

The authorization of project level activities within the planning area occurs through project decision-making, the second stage of forest and grassland planning. Project level decisions must comply with National Environmental Policy Act (NEPA) procedures and must include a determination that the project is consistent with the Management Plan.

Need for Changes in the Current Management Plans

Nearly a decade or more has lapsed since the current Management Plans were approved. Experience has shown the need for changes in management

direction for some resources or programs. Several sources have highlighted needed changes in the current Management Plans. In brief, these sources include:

* New issues and changing public values identified through public interaction;

* New information and knowledge gained through scientific research and effectiveness monitoring;

* Management concerns derived through implementation experience and insight into relationships between prairie and forest vegetation and other resources and better ways of accomplishing desired conditions.

In addition to changing public views about how these lands should be managed, a significant change in the information and scientific understanding of these ecosystems has occurred. Some new information is a product of research, while other information has resulted from changes in technology.

Major Revision Topics

Based on the information sources identified earlier, the combined effect of the needed changes demand attention through plan revision. The major revision topics described below influenced the decision to revise the plans.

Rangeland and Forest Health

Planning Questions

* What management goals, direction, and prescriptions will best attain desired conditions for rangeland and forest health?

Background. Issues and concerns over rangeland health frequently relate to the current productivity of these lands and the resulting capacity to provide livestock forage and wildlife food and cover. The quality and quantity of grass and other vegetation produced on these lands are influenced by soil type, weather, land use, disturbances such as fire and drought, and many other factors. Livestock grazing can help maintain, enhance or decrease rangeland productivity, depending on management. This planning effort will provide an opportunity to assess how livestock grazing can be used to best attain desired rangeland productivity. The issue of rangeland productivity is also relevant to addressing the role of National Grasslands in "* * * administering sound and progressive principles of land conservation and multiple use, and to promote development of grassland agriculture and sustained-yield management of the forage, fish and wildlife, timber, water and recreation resources * * *" (36 CFR 213.1). This role for the National Grasslands is established by regulation and pertains to those lands administered by the Forest Service under Title III of the Bankhead-Jones Farm Tenant Act.

Forest health issues on these lands are closely tied to the ability of riparian and other prairie woodlands to regenerate and sustain themselves. Fire suppression, and insect and disease damage in coniferous forests are other issues related to forest health.

Biological diversity is another aspect of rangeland and forest health. Numerous individuals and groups have expressed concerns about land-use effects on the diversity, abundance and distribution of native plants and animals. These concerns extend to terrestrial and aquatic plants and animals, rare species, declining grassland bird species, game species and other wildlife. For example, interest in black-tailed prairie dog colonies as habitat for threatened and endangered species and other wildlife on National Grasslands is high. Others suggest that more focus be placed on returning bison to their native habitats. Habitat for numerous threatened, endangered and sensitive species occurs on these areas, and the likelihood of other species being proposed for protection under the Endangered Species Act supports the need to revise current management plans. State fish and wildlife agencies and others have also expressed considerable interest in management and fish and wildlife habitats on these lands and have expertise to provide for conservation of these species and their habitats. The Council on Environmental Quality recommends incorporating biodiversity conservation in environmental analyses.

Other issues and concerns about rangeland and forest health include soil stability, water quality, noxious weeds, exotic plants and animals, and wetlands management.

Community and Lifestyle Relationships

Planning Questions

* How may communities, people and their lifestyles be affected by decisions made in the revision effort?

* How do communities and people and their lifestyles affect uses and management of these public lands?

* How do management decisions affect the interdependent relationship of resources, people, lifestyles, and economies?

Background. Commodity and amenity benefits from public lands within the planning area have contributed to the social systems and economic base of many neighboring communities. The human environment includes natural and physical environment and the interdependent relationship of people to that environment.

Management decisions determine public land uses and resource availability from those lands. In resource-based economies, these decisions can perpetuate or disrupt relationships between public land management, communities, and lifestyles. Communities with more diverse economies may be better able to adopt to changes, even though some economic sectors may be strained as change occurs. The capacity to handle change without major hardships or disruptions to social groups or institutions is an important component of community and lifestyle relationships.

Economic effects can include changes in local employment and income, payments to state and local government, and can also have possible implications to local government services and community infrastructure.

Livetock Grazing

Planning Questions

* How will management of vegetation affect availability of forage for permitted livestock?

* What are the desired vegetation conditions and how can livestock grazing be used to help achieve them?

Background. Livestock grazing occurs on most of these lands under a permit system and is a major economic activity in these rural areas. Livestock grazing levels and strategies need to provide for sustained stewardship of the land, resources and rural communities. However, appropriate grazing levels and strategies continue to be debated. Researcher, scientist and resource management specialists at various universities, agencies and institutions are currently gathering information that will be valuable in assessing issues related to livestock grazing.

The Forest Service is required by regulation (36 CFR 219.20) to determine suitability and potential capability of National Grasslands and Forest to produce forage for livestock. This regulation prescribes that the grazing systems and facilities (such as fencing and water developments) to support livestock grazing also be evaluated and considered during the planning process. The amount of facilities and structural developments on these lands to support livestock grazings is an issue. Some individuals want to see more developments on public lands while others want to see less or current levels.

Another issue related to livestock grazing is drought. Droughts can substantially reduce available livestock forage and, if prolonged, can result in long-lasting changes in plant species composition and rangeland productivity. Livestock grazing strategies during and after drought can affect range recovery so grazing guidelines for drought period may be proposed for some areas.

Oil and Gas Leasing

Planning Questions

* Which National Forests System lands (or portions) are administratively available for oil and gas leasing?

* What specific lease stipulations will apply to those lands determined to be administratively available for leasing?

* Are existing lease decisions and stipulations consistent with management goals and objectives?

Background. In 1987, Congress passed the Federal Onshore Oil and Gas Leasing Reform Act, which expanded the Secretary of Agriculture's role in the leasing decision process. Within the National Forest System, the Secretary of Agriculture is authorized to identify lands where leases can be sold and to determine appropriate stipulations to protect surface resources. Regulations to implement this Act were developed by the Secretary and became effective April 20, 1990 (36 CFR, Part 228, 100 et. seq.).

Leasing analyses in accordance with the requirements of 36 CFR 228.102(c) have been completed for about 1.7 million acres of the planning area, including the Little Missouri, Cedar River, and Thunder Basin National Grasslands and the western half of Fall River County on the Buffalo Gap National Grassland. Existing leasing decisions will be reviewed in light of new information generated as a result of Northern Great Plains Assessments and other sources since the leasing decisions were made (e.g., newly listed threatened and endangered species, rare ecosystem elements or habitats). This new information may result in changes to previous leasing availability decisions or to leasing requirements, or both. Existing leases will not be affected by these changes.

The remaining 1.2 million acres of the planning area (Sheyenne, Grand River, Fort Pierre, Oglala National Grasslands, the remainder of the Buffalo Gap National Grassland, and Nebraska and Samuel R. McKelvie National Forests) will be examined for oil and gas potential and, based on the potential, may have a leasing analysis completed.

Plant and Animal Control

Planning Questions

* How and when should resource or property damage caused by noxious weeds, exotic plants, insects, disease, rodents and other animals be controlled or managed?

Background. Under certain conditions, some plant and animal species can cause unacceptable economic and/or environmental damage. Plant and animal damage control activities currently conducted or authorized by the Forest Service on National Grasslands and Forests are largely directed towards noxious weeds and prairie dogs. Biological controls and herbicides are currently being used to control noxious weeds such as leafy spurge and Canada thistle. These weeds can substantially reduce native plant species and forage production. Prairie dog reductions in selected colonies on the National Grasslands are primarily in response to concerns of neighboring private landowners who do not want prairie dogs moving onto their lands. Concerns expressed about these programs range from the economic losses from damage to potential effects of the control activities on wildlife and the environment. Human health and safety issues are also associated with the use of pesticides and herbicides.

Predators are occasionally removed from some of the National Grasslands and Forests to protect livestock, wildlife, and public health and safety. The Animal and Plant Health Inspection Service (APHIS) is the lead federal agency for predator control on these public lands and is conducting its own evaluation and planning for these activities. However, in South Dakota, predator control is conducted by the South Dakota Department of Game, Fish and Parks through an agreement with APHIS. Under this agreement, APHIS acts in an advisory capacity. APHIS also has the lead responsibility for evaluating, planning and initiating grasshopper control projects on the National Grasslands. Issues related to the responsibilities of APHIS will not be addressed in this planning effort.

Recreation and Travel Management

Planning Question

* What recreation opportunities should be provided?

* What travel opportunities should be provided?

Background. Demand for recreational opportunities on these public lands is increasing dramatically. Contributing factors are: 1) Increasing number of hunters on public lands; 2) increasing appreciation for the beauty of the prairie; and 3) people taking shorter vacations on nearby public lands. The public is asking us to address recreational uses and values on these National Grasslands and Forests. During revision, scenery management objectives and recreational opportunities will be determined. Results from customer surveys will help determine public expectations for recreational opportunities.

Recreational uses and interests vary widely across the planning area. Some recreational activities, such as mountain biking and use of all-terrain vehicles, have increased in popularity since land and resource management plans were written. Current recreational use in some units exceeds levels anticipated in the existing plans. Increased recreational use highlights the importance and value of these National Forests and Grasslands in filling recreational, esthetic and spiritual needs.

Upland bird and big game hunting are major dispersed recreational activities on many of these public lands. Hunters are interested in how wildlife cover on these areas is managed. This concern is not fully addressed in existing land and resource management plans. Prairie dog shooting is another popular activity on the grasslands. Hunters have expressed concern over prairie dog management activities that might affect their recreational opportunities.

Travel management is often an important element in recreational experiences. Some users desire primitive recreational experiences with restricted motorized travel. Some recreationists rely on motorized access for their experiences, such as all-terrain vehicle users. Because recreational use on these public lands has increased over the last decade, the potential for conflicts has also increased. The appropriateness of motorized travel as it complements or conflicts with specific recreational settings and associated experiences will be examined and determined during the revision process.

Special Area Designations

Planning Questions

* Which, if any, roadless areas should be recommended to Congress for Wilderness designation?

* How should roadless areas not recommended for Wilderness designation be managed?

* Which rivers on the planning units are eligible for inclusion in the National Wild and Scenic Rivers System?

* Which, if any, eligible rivers are suitable and should be recommended for inclusion into the National Wild and Scenic River System?

* How should eligible rivers not recommended for inclusion be managed?

* What, if any, Research Natural Areas or Special Interest Areas may be needed for their contributions to furthering knowledge about natural systems or other objectives?

Background. The planning area includes many unique and outstanding combinations of physical and biological resources, and areas of social interest. These are collectively referred to as "special areas." Interest in protecting special areas has been shown by the public, other agencies, and Forest Service employees.

Special area designations may include Wilderness; Wild and Scenic Rivers; Research Natural Areas (RNAs); and special recreational areas with scenic, historical, geological, botanical, zoological, paleontological, archaeological or other special characteristics. These special areas may influence land allocation and management.

Maintaining grassland roadless areas and establishing grassland Wilderness areas have become important to some people. Within the last few years, various groups have offered proposals for grassland Wilderness in South Dakota and North Dakota. Likewise, interest for Research Natural Areas in grassland ecosystems has increased since the planning effort. Some would like to see the Forest Service preserve and study some areas of native prairie vegetation.

The Forest Service is required (36 CFR 219.17) to evaluate all roadless areas for potential Wilderness designation during the revision process. This process will produce an inventory of roadless areas meeting minimum criteria for Wilderness according to the 1964 Wilderness Act or 1975 Eastern Wilderness Act, as appropriate. Actual Wilderness designation is a Congressional responsibility; the Forest Service only makes recommendations.

The purpose and authority for study of Wild and Scenic Rivers are in the Wild and Scenic Rivers Act of October 1, 1968, as amended. All rivers and streams determined eligible for potential inclusion in the Wild and Scenic River System will be examined. The Custer National Forest Management Plan (1987) identified the Little Missouri River as an eligible river. A suitability study will be done as part of the revision process.

Topics Outside the Scope of Management Plan Decisions

Some topics are raised by the public that are outside the scope of this action. They include topics that require departmental or legislative actions or topics that come under the authority of other governmental agencies. Examples of topics that fit these categories are listed below:

Departmental and Legislative Topics—grazing fee levels; recreation user fees; sale or transfer of administration of National Grasslands; transfer of Cedar River and Grand River National Grasslands to the Standing Rock Sioux Tribe; and transfer of Buffalo Gap National Grassland to the Oglala Sioux Tribe.

Topics for Other Governmental Agencies—predator control; grasshopper control; and transfer of Shadehill Reservoir to another federal agency.

What To Do With This Information

This revision effort is being undertaken to develop management direction to:

* Provide goods and services to people;

* Involve people and communities; and

* Sustain ecosystem functions.

"Collaborative stewardship," which is defined as caring for the land and serving the people by listening to all constituents and living within the limits of the land, will guide the revision effort.

Framework for Alternatives To Be Considered

A range of alternatives will be considered when revising the Management Plans. The alternatives will address different options to resolve concerns raised as revision topics listed above and to fulfill the purpose and need. Reasonable alternatives will be evaluated and reasons will be given for eliminating some alternatives from detailed study. A "no-action alternative" is required, meaning that management would continue under existing plans. Alternatives will provide different ways to address and respond to public issues, management concerns, and resource opportunities identified during the scoping process. In describing alternatives, desired vegetation and resource conditions will be defined. Resource outputs from Management Plans will be estimated based upon achieving desired conditions. Preliminary information is available to develop alternatives; however, additional public involvement and collaboration will be done to complete this development.

Involving the Public

An atmosphere of openness is one of the objectives of the public involvement process, where all members of the public feel free to share information with the Forest Service and its employees on a regular basis. All parts of this process will be structured to maintain this openness.

The Forest Service is seeking information, comments, and assistance from individuals, organizations and federal, state, and local agencies who may be interested in or affected by the proposed action (36 CFR 219.6). The Forest Service is also looking for collaborative approaches among all landowners who desire health and productivity for the planning area. Many federal and state agencies and some private organizations have been cooperating in the development of assessments of current biological, physical, and economic conditions. This information will be used to prepare the Draft Environmental Impact Statement (DEIS). The range of alternatives to be considered in the DEIS will be based on public issues, management concerns, resource management opportunities, and specific decisions to be made.

Public participation will be solicited by notifying in person and/or by mail known interested and affected publics. News releases will be used to give the public general notice, and public scoping opportunities will be offered in numerous locations. Public participation activities will include (but are not limited to) requests for written comments, open houses, focus groups, field trips, and collaborative forums.

Public participation will be sought throughout the revision process and will be especially important at several points along the way. The first opportunity to comment is during the scoping process (40 CFR 1501.7). Scoping includes: (1) identifying potential issues, (2) from these, identifying significant issues or those that have been covered by prior environmental review, (3) exploring additional alternatives, and (4) identifying potential environmental effects of the proposed action and alternatives.

Release and Review of the EIS

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public comment by June 1998. At that time, the EPA will publish a notice of availability for the DEIS in the **Federal Register**. The comment period on the DEIS will be 90 days from the date the EPA publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of the DEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions; *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the DEIS stage but are not raised until after completion of the Final Environmental Impact Statement (FEIS) may be waived or dismissed by the courts; *City of Angoon* v. *Hodel*, 803 F. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.*, v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the three-month comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed actions, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statements. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

After the comment period ends on the DEIS, comments will be analyzed, considered, and responded to by the Forest Service in preparing the Final EIS. The FEIS is scheduled to be completed in May 1999. The responsible officials will consider the comments, responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies in making decisions regarding these revisions. The responsible officials will document their decisions and reasons for their decisions in a separate Record of Decision for each Management Plan. Each decision will be subject to appeal in accordance with 36 CFR 217.

The responsible official for each of the Management Plans is the appropriate Regional Forester.

Dated: February 11, 1997.

Kathleen McAllister,

Deputy Regional Forester, Northern Region.

Dated: February 13, 1997.

Elizabeth Estill,

Regional Forester, Rocky Mountain Region.

[FR Doc. 97–4681 Filed 2–25–97; 8:45 am]

BILLING CODE 3410–11–M

BARRY GOLDWATER SCHOLARSHIP AND EXCELLENCE IN EDUCATION FOUNDATION

Sunshine Act Meeting

TIME AND DATE: 2:00 pm, Wednesday, March 12, 1997.

PLACE: SDC–59, Dirksen Senate Office Building, Washington, DC 20510.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

1. Report on financial status of the Foundation fund
   A. Review of investment policy and current portfolio
2. Report on results of Scholarship Review Panel
   A. Discussion and consideration of scholarship candidates
   B. Selection of Goldwater Scholars

CONTACT PERSON FOR MORE INFORMATION: Gerald J. Smith, President, Telephone: (703) 756–6012.

Gerald J. Smith,

President.

[FR Doc. 97–4901 Filed 2–24–97; 12:41 pm]

BILLING CODE 4738–01–M

DEPARTMENT OF COMMERCE

Bureau of the Census

Current Industrial Reports Surveys—WAVE I (Voluntary and Mandatory Submissions)

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 28, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to:

Contact	Industries	Telephone	Address
Michael Zampogna	Manufactured nondurable products.	(301) 457–4810	Bureau of Census, Manufacturing & Construction Division, Room 2212, Building 4, Washington, DC 20233.
Kenneth Hansen	Manufactured durable products.	(301) 457–4755	Bureau of Census, Manufacturing & Construction Division, Room 2207, Building 4, Washington, DC 20233.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts a series of monthly, quarterly, and annual surveys as part of the Current Industrial Reports (CIR) program. The CIR deal mainly with the quantity and value of shipments of particular products and occasionally with data on production and inventories; unfilled orders, receipts, stocks and consumption; and comparative data on domestic production, exports, and imports of the products they cover. These surveys provide continuing and timely national statistical data on manufacturing. The results of these surveys are used extensively by individual firms, trade associations, and market analysts in planning or recommending marketing and legislative strategies.

The CIR program includes both mandatory and voluntary surveys.

Typically the monthly and quarterly surveys are conducted on a voluntary basis. Those companies that choose not to respond to the voluntary surveys are required to submit a mandatory annual counterpart. The annual counterpart collects annual data from those firms not participating in the more frequent collection.

Due to the large number of surveys in the CIR program, for clearance purposes we group the surveys into three Waves. The mandatory and voluntary surveys in each Wave are separately submitted. Thus, a total of six clearances cover all of the surveys in the CIR program. One Wave is submitted for reclearance each year. This year the Census Bureau plans to submit mandatory and voluntary surveys of Wave I for clearance. The surveys in Wave I are as follows:

Mandatory Surveys

M20H—Fats and Oils (Warehouse Stocks)
M20M—Fats and Oils (Consumers)
M20N—Fats and Oils (Producers)
MA28F—Paints and Allied Products
MA32C—Refractories
MA33A—Iron and Steel Foundries
MA33E—Nonferrous Casting
MA34K—Steel Drums and Pails
MA35A—Farm Machinery
MA35M—Air Conditioning and Refrigeration

Equipment

MA35Q—Anti-Friction Bearings
MA36A—Switchgear, Relays, Etc.
MA36F—Major Household Appliances
MA36H—Motors and Generators
MA36K—Wiring Devices and Supplies
MA36P—Communication Equipment
MA37D—Aerospace(will be merged with M37G)
MA38B—Instruments and Related Products

Voluntary Surveys

M37G—Civil Aircraft and Engines (MA37D will be merged with M37G)
M37L—Truck Trailers
MA35N—Fluid Power Products
MQ22D—Consumption on the Woolen System
MQ28B—Fertilizer Materials
MQ32D—Clay Construction Products
MQ34E—Plumbing Fixtures
MQ36B—Electric Lamps (discontinued in 1994)
MQ36C—Fluorescent Lamp Ballasts

II. Method of Collection

The Census Bureau will use mail out/mail back survey forms to collect data. We ask respondents to return monthly report forms within 10 days, quarterly report forms within 15 days, and annual report forms within 30 days of the initial mailing. Telephone calls and/or letters encouraging participation will be mailed to respondents that have not responded by the designated time.

III. Data

OMB Number: 0607–0392—Mandatory Surveys; 0607–0393—Voluntary Surveys and annual counterparts.
Form Number: See table above.
Type of Review: Regular Review.
Affected Public: Businesses, Other for Profit, or Organizations.

ESTIMATED NUMBER OF RESPONDENTS

Mandatory Surveys	11,429
Voluntary Surveys	1,735
Total	13,164

Estimated Time Per Response:
Mandatory Surveys—1.27 hrs
Voluntary Surveys—1.86 hrs

ESTIMATED TOTAL ANNUAL BURDEN HOURS

Mandatory Surveys	14,493
Voluntary Surveys	3,233
Total	17,726

Estimated Total Annual Cost: The estimated cost of the CIR program for fiscal year 1997 is $4.3 million.

Respondent's Obligation: The CIR program includes both mandatory and voluntary surveys. Typically the monthly and quarterly surveys are conducted on a voluntary basis. Those companies that choose not to respond to the voluntary surveys are required to submit a mandatory annual counterpart. The annual counterpart collects annual data from those firms not participating in the more frequent collection.

Legal Authority: Title 13, United States Code, Sections 61, 131, 182, 224, and 225.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 20, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–4697 Filed 2–25–97; 8:45 am]

BILLING CODE 3510–07–P

National Oceanic and Atmospheric Administration

[I.D. 022097A]

Advisory Panel on Atlantic Pelagic Longline Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: NMFS solicits nominations for the Atlantic pelagics longline advisory panel (AP). The purpose of the AP would be to assist NMFS in the design and implementation of a survey, workshops, and a comprehensive management system for pelagic longline fisheries. The AP will include representatives from all constituent groups with an interest in Atlantic pelagic longline fisheries.

DATES: Nominations must be submitted on or before March 28, 1997.

ADDRESSES: Nominations should be submitted Rebecca Lent, Highly Migratory Species Management Division, NMFS, 1315 East-West Highway, Silver Spring, MD, 20910. Nominations may be submitted by fax; 301–713–1917.

FOR FURTHER INFORMATION CONTACT: John Kelly, 301–713–2347.

SUPPLEMENTARY INFORMATION:

Introduction

In accordance with the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*, as amended by the Sustainable Fisheries Act, Public Law 104–297, an Advisory Panel (AP) will be established to assist NMFS in the design and implementation of a survey, workshops, and a comprehensive management system for pelagic longlining fishing vessels that participate in fisheries for Atlantic highly migratory species (HMS).

The purpose of the AP is to assist in developing a comprehensive management system for pelagic longline

fishing vessels that participate in HMS fisheries. Surveys and workshops will be conducted by NMFS personnel and/or contractors with affected fishery participants, in order to provide information and identify options for the development of the management system. NMFS, in consultation with the AP, will develop a plan to conduct a study on the feasibility of implementing a comprehensive management system.

Procedures and Guidelines

A. *Procedures for Establishing the Advisory Panel.*

Individuals representing definable interests in the recreational and commercial fishing and related industries, environmental community, academia, governmental and quasi-governmental entities will be considered as members of the AP. Selection of AP members will not be limited to those that are nominated.

Nominations are invited from all individuals and constituent groups. The nomination should include:

1. The name of the applicant or nominee and a description of their interest in or connection with HMS and the pelagic longline fishery in particular;

2. A statement of background and/or qualifications;

3. A written commitment that the applicant or nominee shall actively participate in good faith in the tasks of the AP.

B. *Participants.*

The AP shall consist of not less than seven (7) members who are knowledgeable about the Atlantic pelagic longline fishery. Nominations will be accepted to allow representation from recreational and commercial fishing interests, the conservation community, and the scientific community. NMFS does not believe that each potentially affected organization or individual must necessarily have its own representative, but each interest must be adequately represented. The intent is to have a group that as a whole reflects an appropriate balance and mix of interests given the responsibilities of the AP. Criteria for membership include (one or more of the following): a) Experience in or knowledge of the commercial longline fishing industry involved in harvesting tunas, swordfish, or sharks; b) experience in or knowledge of the recreational fishing industry involved in harvesting HMS; c) experience in connected industries (marinas, bait and tackle shops, processors); d) experience in the scientific community working with HMS; e) former or current representative of private, regional, state, national, or international organization representing marine fisheries interests dealing with HMS.

NMFS will provide the necessary administrative support, including technical assistance, for the AP. However, we will be unable to compensate participants with monetary support of any kind because no funds were appropriated to support this activity in fiscal year 1997. Members will be expected to pay for travel costs related to the AP.

C. *Tentative Schedule.*

Meetings of the AP will be held twice or thrice yearly. NMFS, in consultation with the AP, will develop by June 1997, a plan to conduct workshops/surveys and results of these workshops and surveys will be published by December 1997. A plan to conduct a feasibility study of the comprehensive management plan will be developed by July 1997 and the final study will be published and distributed by January 1998. NMFS has initially determined that the responsibilities of the AP members will be concluded by October 1998, as management advisory responsibilities will be carried out by other AP's for swordfish, sharks, billfish, and tunas. These AP's will consider any comprehensive management plan that is developed in consultation with this longline AP.

Dated: February 19, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–4655 Filed 2–25–97; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 012797G]

Magnuson-Stevens Fishery Conservation and Management Act; Request for Nominations of Individuals for the Ecosystem Research Advisory Panel

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of request for nominations.

SUMMARY: Section 406 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires NMFS to establish an advisory panel to develop recommendations to expand the application of ecosystem principles in fishery conservation and management activities. NMFS requests nominations of qualified individuals to serve on the advisory panel.

DATES: Nominations will be accepted through March 21, 1997.

ADDRESSES: Nominations should be sent to Office of Science and Technology, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, ATTN: Fisheries Ecosystem Panel.

FOR FURTHER INFORMATION CONTACT: Ned Cyr, NMFS, (301) 713–2363.

SUPPLEMENTARY INFORMATION: Section 406 of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*), as amended by the Sustainable Fisheries Act (Public Law 104–297), requires NMFS to establish an advisory panel, not later than April 11, 1997, to develop recommendations to expand the application of ecosystem principles in fishery conservation and management activities. The panel will consist of no more than 20 individuals with expertise in the structures, functions, and physical and biological characteristics of ecosystems. The panel will also consist of representatives from the Regional Fishery Management Councils, states, fishing industry, conservation organizations, or others with expertise in the management of marine resources. The panel will be required to submit a report to Congress by October 11, 1998, which includes: An analysis of the extent to which ecosystem principles are being applied in fishery conservation and management activities, including research activities; proposed actions by the Secretary of Commerce and by Congress that should be undertaken to expand the application of ecosystem principles in fishery conservation and management; and such other information as may be appropriate.

NMFS is requesting nominations of qualified individuals to serve as advisory panel members. Please submit nominations of qualified individuals, along with supporting credentials, to NMFS (see **ADDRESSES**).

Dated: February 19, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–4654 Filed 2–25–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF EDUCATION

Technology Innovation Challenge Grants

AGENCY: Department of Education.

ACTION: Notice of proposed selection criteria, selection procedures, and application procedures.

SUMMARY: The Secretary proposes selection criteria, procedures for

evaluating and selecting applications, and procedures for submission of applications under the Technology Innovation Challenge Grants Program. The Secretary may use these selection criteria, selection procedures and application procedures in fiscal year 1997 (FY 1997) and in subsequent years. The Secretary takes this action to make informed funding decisions on applications for technology projects having great promise for improving elementary and secondary education.

DATES: Comments must be received on or before March 28, 1997.

ADDRESSES: All comments concerning the proposed selection criteria, selection procedures, and application procedures should be sent to: Technology Innovation Challenge Grants, Office of Educational Research and Improvement, U.S. Department of Education, Room 606D, 555 New Jersey Avenue, NW, Washington, DC 20208–5544. Comments may also be sent through the Internet to ITO_STAFF1@ed.gov or by FAX to (202) 208–4042.

Comments that concern information collection requirements must be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this notice. A copy of those comments may also be sent to the address in the preceding paragraph.

FOR FURTHER INFORMATION CONTACT: Technology Innovation Challenge Grants, Office Of Educational Research and Improvement, U.S. Department of Education, Room 606D, 555 New Jersey Avenue, NW, Washington, DC 20208–5544. Telephone: (202) 208-3882. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Technology Innovation Challenge Grants Program is authorized in Title III, section 3136, of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 6846).

Under this program the Secretary makes grants to consortia. Each consortium must include at least one local educational agency (LEA) with a high percentage or number of children living below the poverty line and may include other LEAs, private schools, State educational agencies, institutions of higher education, businesses, academic content experts, software designers, museums, libraries, or other appropriate entities. The Technology Innovation Challenge Grants Program provides support to consortia that are developing, adapting, or expanding existing and new applications of technology to improve schools through activities that include continuous professional development for teachers and the development of high quality academic content that helps all children learn to challenging standards.

The Secretary will announce the final selection criteria, selection procedures, and application procedures in a notice in the **Federal Register**. The final selection criteria, selection procedures, and application procedures will be determined by responses to this notice and other considerations of the Department.

Note: This notice does not solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following publication of the notice of final selection criteria, selection procedures, and application procedures.

Selection Criteria

The Secretary proposes in this notice selection criteria, selection procedures, and application procedures for the FY 1997 competition and subsequent competitions. The program statute (20 U.S.C. 6846(c)) requires the Secretary to give priority in awarding grants to consortia that demonstrate certain factors in their applications. The Secretary proposes to carry out this mandate by incorporating the priority factors into the selection criteria. In addition, the Secretary believes that substantive selection criteria specifically framed for this program competition are necessary to enable the Secretary to evaluate how well the applicants address the purpose of the Technology Innovation Challenge Grants Program.

Proposed Criteria

The Secretary proposes the following unweighted selection criteria to evaluate applications:

(a) *Significance.* The Secretary reviews each proposed project for its significance by determining the extent to which the project—

(1) Offers a clear vision for the use of technology to help all students learn to challenging standards;

(2) Will achieve far-reaching impact through results, products, or benefits that are easily exportable to other settings and communities;

(3) Will directly benefit students by integrating acquired technologies into the curriculum to improve teaching and student achievement;

(4) Will ensure continuous professional development for teachers, administrators, and other individuals to further the use of technology in the classroom, library, or learning settings in the community;

(5) Is designed to serve areas with a high number or percentage of disadvantaged students or other areas with the greatest need for educational technology; and

(6) Is designed to create new learning communities among teachers, students, parents, and others, which contribute to State or local education goals for school improvement, and expand markets for high-quality educational technology or content.

(b) *Feasibility.* The Secretary reviews each proposed project for its feasibility by determining the extent to which—

(1) The project will ensure successful, effective, and efficient uses of technologies for educational reform that will be sustainable beyond the period of the grant;

(2) The members of the consortium or other appropriate entities will contribute substantial financial and other resources to achieve the goals of the project; and

(3) The applicant is capable of carrying out the project, as evidenced by the extent to which the project will meet the problems identified; the quality of the project design, including objectives, approaches, evaluation plan, and dissemination plan; the adequacy of resources, including money, personnel, facilities, equipment, and supplies; the qualifications of key personnel who would conduct the project; and the applicant's prior experience relevant to the objectives of the project.

Evaluation and Selection of Applications

The Secretary proposes to evaluate applications using unweighted selection criteria. The Secretary believes that the use of unweighted criteria is most appropriate because they will allow the reviewers maximum flexibility to apply their professional judgments in identifying the particular strengths and weaknesses in individual applications.

The Secretary also believes that due to the highly technical nature of the applications, it will be necessary to obtain clarification and additional information from applicants during the selection process. For the purposes of the Technology Innovation Challenge Grants Program, the Secretary proposes to be able to request highly rated applicants to submit additional information in response to specific questions raised during the application selection process for the FY 1997 competition and subsequent competitions. In accordance with 34 CFR 75.231, the Secretary also may request an applicant to submit additional information after the application has been selected for funding.

Proposed Selection Procedures

In applying the selection criteria, the Secretary proposes to use a three-tier peer review process for the FY 1997 competition and subsequent competitions. In view of the large number of applications in this program, and in consideration of the complexity of each application, the Secretary believes this process is necessary to ensure full and thorough consideration of each application.

At each tier of the review process panels of experts will read the applications under consideration to determine which applications are most deserving of further consideration in light of the selection criteria. The Department will, to the extent feasible, use reviewers that represent three areas of expertise: (1) K–12 school-based educators who use new technologies for classroom instruction or curriculum development; (2) K–12 school-based administrators who have management responsibility for school-wide, system-wide, or state-wide technology applications; and (3) educational technology experts drawn from higher education, consulting firms, or technology related firms.

At each tier of the review process, each reviewer assigns a qualitative rating for Significance and a qualitative rating for Feasibility to each application he or she reviews. The qualitative ratings used by individual reviewers are as follows: "A" for high quality; "B" for satisfactory quality; and "C" for unsatisfactory quality. The reviewers also assign an overall rating of "A", "B", or "C" for each application they review.

In Tier I of the review process reviewers are recruited to serve on panels that meet in several regional sites around the country. Tier I of the review process has two stages. In Stage 1 of Tier I, all of the applications received by the published application deadline are assigned to teams of readers at each site. The applications are read and rated by all of the individual readers on the team, who then meet to compare their individual ratings of each application they have read with each other. Through this process the reviewers identify applications that have been unanimously awarded high ratings. At the end of Stage 1 of Tier I each team at a review site forwards its most highly rated applications for further consideration. The applications forwarded for further consideration at that site are then read and individually rated by reviewers who served as team leaders in Stage 1 of Tier I. These team leaders use the same qualitative ratings of "A", "B", and "C" for Significance, Feasibility and the overall rating for each forwarded application they read. In Stage 2 of Tier I the team leaders meet to compare the ratings of all the applications they have read or considered at both stages of Tier I, taking into account all of the readings and ratings of all of the reviewers for each application at that site. Those applications that have been unanimously awarded high ratings by the team leaders at the end of Stage 2 of Tier I are forwarded for further consideration at Tier II of the review process.

In Tier II of the review process, team leaders from all of the regional sites are brought together to serve as reviewers at a single site. These reviewers read the applications forwarded for further consideration from Tier I. Taking into account the quality of all of the applications they have read, the reviewers assign a qualitative rating for Significance, a qualitative rating for Feasibility, and an overall rating of "A", "B", or "C" for each application they review.

Tier II of the review process has two stages. In Stage 1 of Tier II, the reviewers meet in teams to compare their individual ratings of each application they have read. Through this process the reviewers identify applications that have been unanimously awarded high ratings. At the end of Stage 1 of Tier II each team forwards its most highly rated applications for further consideration. The applications forwarded for further consideration are then read and individually rated "A", "B", or "C" by the team leaders who served in Stage 1 of Tier II. In Stage 2 of Tier II the team leaders meet to compare the ratings of all the applications they have read or considered at both stages of Tier II, taking into account all of the readings and ratings of all of the reviewers for each application at that site. Those applications that have been unanimously awarded high ratings at the end of Stage 2 of Tier II are then forwarded for further consideration at Tier III of the review process. At the end of Tier II, the reviewers will also identify inconsistencies, points in need of clarification, and other concerns, if any, pertaining to each application. Each applicant whose application is forwarded for further consideration at the end of Tier II will have an opportunity to respond in writing to these clarification questions and concerns.

At Tier III readers are assembled to serve as reviewers at a single site. These reviewers have served as team leaders during each of the previous Tiers of the review, and each of the original Tier I review sites are represented by one team leader at Tier III. There is only one stage of review at Tier III. The reviewers read the applications that are still under consideration and, after reading the responses to the clarification questions, they assign ratings for Significance and Feasibility, and an overall rating of "A", "B", or "C" for each application, taking into account the quality of all of the applications they have read. The reviewers compare their individual ratings of each application they have read, and through this process the reviewers identify applications that have been unanimously awarded high ratings. Those applications that have unanimously high ratings are recommended for funding. The reviewers also provide individual recommendations on an appropriate budget level for each application recommended for funding. The Secretary awards grants only to those applications the reviewers have recommended for funding at the end of Tier III. No other applications are considered for funding. In the final selection of applications for funding, the Secretary may also consider the extent to which each application demonstrates an effective response to the learning technology needs of areas with a high number or percentage of disadvantaged students or the greatest need for educational technology. In preparation for a grant award, the Secretary also may request an applicant to submit additional information after the application has been selected for funding.

The Secretary believes these procedures lead to the selection of the best applications for funding under this program.

Application Deadline

The Secretary, in order to ensure timely receipt and processing of applications, proposes the following application deadline for the FY 1997 competition and subsequent competitions.

Proposed Procedures for Submission of Applications

Applications, in order to be considered for funding under this program, must be received on or before the deadline date announced in the application notice published in the **Federal Register**. The Secretary will not consider an application for funding if it is not received by the deadline date

unless the applicant can show, in accordance with 34 CFR 75.102 (d) and (e), proof that the application was (1) sent by registered or certified mail not later than five days before the deadline date; or (2) sent by commercial carrier not later than two days before the deadline date. An applicant must show proof of mailing in accordance with 34 CFR 75.102(d) and (e). Applications delivered by hand must be received by 4:00 p.m. (Washington, D.C. time) on the deadline date. For the purposes of this competition the Secretary proposes not to apply 34 CFR 75.102(b), which requires an application to be mailed, rather than received, by the deadline date.

Paperwork Reduction Act of 1995

The proposed selection criteria contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these selection criteria to the Office of Management and Budget (OMB) for review.

Collection of Information: Technology Innovation Challenge Grants Program.

Under this program consortia are eligible to apply. Each consortium must include at least one LEA with a high percentage or number of children living below the poverty line and may include other LEAs, State educational agencies, institutions of higher education, businesses, academic content experts, software designers, museums, libraries, or other appropriate entities. The information to be collected includes a description of each proposed project, including the professional development that teachers and other educational support staff will receive in the use of technologies; the integration of acquired technologies into curriculum to enhance teaching, training, and student achievement; and a project evaluation including a dissemination strategy. The Department needs and will use the information to select, on the basis of project feasibility and significance, the highest quality applications.

All information is to be collected and reported once, as part of the application for assistance. Annual reporting and recordkeeping burden for this collection of information is estimated to average 40 hours for each response for 500 respondents, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total annual reporting and recordkeeping burden for this collection is estimated to be 20,000 hours. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education.

The Department considers comments by the public on these proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed selection criteria, selection procedures, and application procedures between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed selection criteria and procedures.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed selection criteria and procedures. Comments will be available for public inspection, during and after the comment period, in Room 606D, 555 New Jersey Avenue, NW, Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Program Authority: 20 U.S.C. 6846.

(Catalog of Federal Domestic Assistance Number 84.303A, Challenge Grants for Technology in Education)

Dated: February 21, 1997.

Marshall Smith,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 97–4768 Filed 2–25–97; 8:45 am]

BILLING CODE 4000–01–P

[CFDA No.: 84.304A]

International Education Exchange Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1997

Purpose of Program: To support international education exchange activities between the United States and eligible countries in civics and government education and economic education.

Eligible Applicants: Independent nonprofit educational organizations that—

(a) Have expertise in international achievement comparisons, and are experienced in—

(1) The development and national implementation of curricular programs in civics and government education and economic education for students from grades kindergarten through 12 in local, intermediate, and State educational agencies, in schools funded by the Bureau of Indian Affairs, and in private schools throughout the Nation with the cooperation and assistance of national professional educational organizations, colleges and universities and private sector organizations;

(2) The development and implementation of cooperative university and school-based inservice training programs for teachers of grades kindergarten through 12 using scholars from such relevant disciplines as political science, political philosophy, history, law, and economics;

(3) The development of model curricular frameworks in civics and government education and economic education;

(4) The administration of international seminars on the goals and objectives of civics and government education or economic education in constitutional democracies (including the sharing of curricular materials) for educational leaders, teacher trainers, scholars in related disciplines, and educational policymakers; and

(5) The evaluation of civics and government education or economic education programs; and

(b) Have the authority to subcontract with other organizations to carry out these provisions.

Deadline for Transmittal of Applications: May 5, 1997.

Deadline for Intergovernmental Review: July 7, 1997.

Applications Available: March 5, 1997.

Available Funds: $4,980,000.

Estimated Range of Awards: $2,290,000 to $2,690,000.

Estimated Average Size of Awards: $2,490,000.

Estimated Number of Awards: 2.

Note: The Department is not bound by any estimates in this notice.

Maximum award: In no case does the Secretary make an award greater than $2,690,000 for a single budget period of 12 months. The Secretary does not consider an application that proposes a budget exceeding this maximum amount.

Budget period: 12 months.

Project Period: Up to 48 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) the regulations in 34 CFR parts 98, 99, and 700.

PRIORITIES

Under 34 CFR 75.105(c)(3) and 20 U.S.C. 5951(c)(2)(B) the Secretary gives an absolute preference to applications that meet one of the priorities in the next two paragraphs. The Secretary funds under this competition only applications that meet one of these absolute priorities.

Absolute Priority 1—International Education Exchange Program in Civics and Government Education.

Absolute Priority 2—International Education Exchange Program in Economic Education.

To meet one of these two priorities, each applicant must propose to carry out the following activities, in either civics and government education *or* economic education:

(a) Provide eligible countries with—

(1) Seminars on the basic principles of the United States constitutional democracy and economics, including seminars on the major governmental and economic institutions and systems in the United States, and visits to such institutions;

(2) Visits to school systems, institutions of higher learning, and nonprofit organizations conducting exemplary programs in civics and government education and economic education in the United States;

(3) Home stays in United States communities;

(4) Translations and adaptations regarding the United States civics and government education and economic education curricular programs for students and teachers, and in the case of training programs for teachers translations and adaptations into forms useful in schools in eligible countries, and joint research projects in such areas;

(5) Translation of basic documents of United States constitutional government for use in eligible countries, such as *The Federalist Papers*, selected writings of Presidents Adams and Jefferson, and the Anti-Federalists, and more recent works on political theory, constitutional law and economics;

(6) Research and evaluation assistance to determine—

(i) The effects of educational programs on students' development of the knowledge, skills and traits of character essential for the preservation and improvement of constitutional democracy; and

(ii) Effective participation in and the preservation and improvement of an efficient market economy;

(b) Provide United States participants with—

(1) Seminars on the histories, economies, and governments of eligible countries;

(2) Visits to school systems, institutions of higher learning, and organizations conducting exemplary programs in civics and government education and economic education located in eligible countries;

(3) Home stays in eligible countries;

(4) Assistance from educators and scholars in eligible countries in the development of curricular materials on the history, government, and economies of such countries that are useful in United States classrooms;

(5) Opportunities to provide on-site demonstrations of United States curricula and pedagogy for educational leaders in eligible countries; and

(6) Research and evaluation assistance to determine—

(i) The effects of educational programs on students' development of the knowledge, skills, and traits of character essential for the preservation and improvement of constitutional democracy; and

(ii) Effective participation in and improvement of an efficient market economy; and

(7) Educational programs which draw upon the experiences of emerging constitutional democracies that are created and implemented for United States students; and

(c) Assist participants from eligible countries and the United States in participating in international conferences on civics and government education and economic education. The primary participants in these conferences shall be leading educators in the areas of civics and government education and economic education, including curriculum and teacher training specialists, scholars in relevant disciplines, and educational policymakers, from the United States and eligible countries. Also, provide a means for the exchange of ideas and experiences in civics and government education and economic education among political, educational, and private sector leaders of participating eligible countries.

Note: For this program, the term "eligible country" means a Central European country, an Eastern European country, Lithuania, Latvia, Estonia, Georgia, the Commonwealth of Independent States, and any country that formerly was a republic of the Soviet Union whose political independence is recognized in the United States.

Selection Criteria: The Secretary selects from the criteria in 34 CFR 700.30(e) to evaluate applications for new grants under this competition. Under 34 CFR 700.30(a), the Secretary will announce in the application package the evaluation criteria selected for this competition and the maximum weight assigned to each criterion.

For Applications or Information Contact: Dr. Ram N. Singh or Ms. Rita Foy, U.S. Department of Education, 555 New Jersey Avenue, NW, Room 610, Washington, DC 20208–5573. Telephone: (202)–219–2079. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server (at gopher://gcs.ed.gov); or on the World Wide Web (at http://gcs.ed.gov). However, the official application notice

for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 5951.

Dated: February 21, 1997.

Marshall Smith,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 97–4770 Filed 2–25–97; 8:45 am]

BILLING CODE 4000–01–P

[CFDA No. 84.039D]

Library Research and Demonstration—Demonstration of a Non-Profit Regional Social Tolerance Resource Center Operating Tolerance Tools and Prejudice Reduction Programs and Multimedia Tolerance and Genocide Exhibits; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1997

Purpose of Program: The Library Research and Demonstration Program provides grants to institutions of higher education and other public or private agencies, institutions, and organizations for research and demonstration programs related to the improvement of libraries, education in library and information science, the enhancement of library services through effective and efficient use of new technologies, and dissemination of information derived from such projects. For fiscal year (FY) 1997 the competition for new awards focuses on projects designed to meet the absolute priority specified in this notice.

Eligible Applicants: Institutions of higher education that meet the definition of eligibility under the terms of 20 U.S.C. 1141(a) and other public or private agencies, institutions, and organizations.

Deadline for Transmittal of Applications: April 30, 1997.

Deadline for Intergovernmental Review: June 30, 1997.

Applications Available: March 12, 1997.

Available Funds: $1 million.

Estimated Average Size of Awards: $1 million.

Estimated Number of Awards: One.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, and 86; and (b) the regulations in 34 CFR part 700.

Absolute Priority: For fiscal year (FY) 1997 the Appropriations Act (P.L. 104–208) specifies that $1,000,000 shall be competitively awarded to a non-profit regional social tolerance resource center operating tolerance tools and prejudice reduction programs and multimedia tolerance and genocide exhibits.

Note: The Secretary funds only applications that meet all elements of this priority.

Selection Criteria: The Secretary selects from the criteria in 34 CFR 700.30(e) to evaluate applications for new grants under this competition. Under 34 CFR 700.30(a), the Secretary announces in the application package the evaluation criteria selected for this competition and the maximum weight assigned to each criterion.

For Applications or Information Contact: Chris Dunn, U.S. Department of Education, 555 New Jersey Avenue, NW, Room 300, Washington, DC 20208–5571. Telephone (202) 219–2299. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server (at gopher://gcs.ed.gov); or on the World Wide Web (at http://gcs.ed.gov). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 1033.

Dated: February 21, 1997.

Marshall S. Smith,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 97–4769 Filed 2–25–97; 8:45 am]

BILLING CODE 4000–01–P

National Educational Research Policy and Priorities Board; Meeting

AGENCY: National Educational Research Policy and Priorities Board; Education.

ACTION: Notice of Closed Committee Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Nominating Committee of the National Educational Research Policy and Priorities Board. Notice of this meeting is required under Section 10 (a) (2) of the Federal Advisory Committee Act. This document is intended to notify the general public of the meeting.

DATE: March 14, 1997.

TIME: 1:30 to 3:00 p.m.

LOCATION: Room 100, 80 F St., N.W., Washington, D.C. 20208–7564.

FOR FURTHER INFORMATION CONTACT: Thelma Leenhouts, Designated Federal Official, National Educational Research Policy and Priorities Board, 80 F St., N.W., Washington, D.C. 20208–7564. Telephone: (202) 219–2065; fax: (202) 219–1528; e-mail: Thelma_Leenhouts@ed.gov.

SUPPLEMENTARY INFORMATION: The National Educational Research Policy and Priorities Board is authorized by Section 921 of the Educational Research, Development, Dissemination, and Improvement Act of 1994. The Board works collaboratively with the Assistant Secretary for the Office of Educational Research and Improvement to forge a national consensus with respect to a long-term agenda for educational research, development, and dissemination, and to provide advice and assistance to the Assistant Secretary in administering the duties of the Office.

The meeting of the Nominating Committee is closed to the public under the authority of Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. Appendix 2) and under exemptions (2) and (6) of Section 552b(c) of the Government in the Sunshine Act (Pub. L. 94–409; 5 U.S.C. 552b(c)). In preparing a slate of candidates for the position of chair, vice-chair, and members of the Executive Committee, the Committee will discuss matters that relate solely to the internal rules and practices of the Board and personal qualifications and experience of potential candidates for these positions, which would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invation of personal privacy if conducted in open session.

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b(c) will be available to the public within 14 days of the meeting.

Records are kept of all Board proceedings and are available for public inspection at the office of the National Educational Research Policy and Priorities Board, 555 New Jersey Ave., N.W., Washington, D.C. 20208–7564.

Dated: February 20, 1997.

Eve M. Bither,

Executive Director.

[FR Doc. 97–4764 Filed 2–25–97; 8:45 am]

BILLING CODE 4000–01–M

National Educational Research Policy and Priorities Board; Meeting

AGENCY: National Educational Research Policy and Priorities Board; Education.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Educational Research Policy and Priorities Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the public of their opportunity to attend.

DATE: March 21, 1997.

TIME: 8:30 a.m. to 5 p.m.

LOCATION: Room 100, 80 F St., N.W., Washington, D.C. 20208–7564.

FOR FURTHER INFORMATION CONTACT: Thelma Leenhouts, Designated Federal Official, National Educational Research Policy and Priorities Board, 80 F St., N.W., Washington, D.C. 20208–7564. Telephone: (202) 219–2065; fax: (202) 219–1528; e-mail: Thelma_Leenhouts@ed.gov.

SUPPLEMENTARY INFORMATION: The National Educational Research Policy and Priorities Board is authorized by Section 921 of the Educational Research, Development, Dissemination, and Improvement Act of 1994. The Board works collaboratively with the Assistant Secretary for the Office of Educational Research and Improvement to forge a national consensus with respect to a long-term agenda for educational research, development, and dissemination, and to provide advice and assistance to the Assistant Secretary in administering the duties of the Office.

The agenda for March 21 will cover the adoption of proposed by-laws and a proposed workplan; election of officers for 1997–99; the approval of standards for the conduct and evaluation of research, and for assessing performance on contracts, grants, and cooperative agreements, as well as standards for reviewing and designating exemplary and promising programs. A final agenda will be available from the Board's office on March 14.

Records are kept of all Board proceedings and are available for public inspection at the office of the National Educational Research Policy and Priorities Board, 555 New Jersey Ave., N.W., Washington, D.C. 20208–7564.

Dated: February 20, 1997.

Eve M. Bither,

Executive Director.

[FR Doc. 97–4765 Filed 2–25–97; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Record of Decision for the Tank Waste Remediation System, Hanford Site, Richland, WA

AGENCY: Department of Energy.

ACTION: Record of decision.

SUMMARY: This Record of Decision addresses actions by the U.S. Department of Energy (DOE) to manage and dispose of radioactive, hazardous, and mixed waste within the Tank Waste Remediation System (TWRS) program at the Hanford Site in southeastern Washington State. DOE, in cooperation with the Washington State Department of Ecology (Ecology), issued a Final Environmental Impact Statement (EIS) entitled "Tank Waste Remediation System, Hanford Site, Richland, Washington, Final Environmental Impact Statement" (TWRS EIS) (DOE/EIS–0189, August 1996). The Final EIS evaluates alternatives for the management and disposal of mixed, radioactive, and hazardous waste currently stored or projected to be stored in 177 underground storage tanks and approximately 60 active and inactive miscellaneous underground storage tanks associated with the Hanford Site's tank farm operations, as well as the management and disposal of approximately 1,930 cesium and strontium capsules currently stored at the Hanford Site.

Based on the environmental impact analysis of the Final EIS and after evaluating costs, regulatory compliance requirements, technical uncertainties, worker and public health and safety, and public, agency, National Research Council, and Tribal Nation comments, DOE has decided to implement the preferred alternative identified in the Final EIS for retrieval, treatment, and disposal of tank waste the, "Phased Implementation alternative" and to defer the decision on disposition of cesium and strontium capsules.

The Phased Implementation alternative was selected because it provides a balance among short-and long-term environmental impacts, meets all regulatory requirements, addresses the technical uncertainties associated with remediation, and provides the flexibility necessary to accommodate future changes in the remediation plans in response to new information and technology development.

While carrying out this decision, DOE will continually evaluate new information relative to the tank waste remediation program. DOE will also conduct periodic independent scientific and technical expert reviews, which DOE believes are essential to the success of the TWRS program. Further, DOE intends to conduct formal evaluations of new information relevant to the tank waste remediation program at three key points over the next eight years under its National Environmental Policy Act (NEPA) regulations (10 CFR 1021.314), with an appropriate level of public involvement, to ensure that DOE stays on a correct course for managing and remediating the tank waste. Various informal reviews also will be conducted during this period.

DOE has decided to defer action on the cesium and strontium capsules to further evaluate potential beneficial uses of the capsules and study potential long-term environmental impacts. The capsules will continue to be managed in the Hanford Site Waste Encapsulation and Storage Facility. DOE will complete an evaluation for potential future uses of the capsules within two years and will issue a Cesium and Strontium Management Plan that will address alternatives for beneficial uses. If no future uses are found and DOE determines that the capsules should be disposed of, DOE will select an alternative for disposal of the capsules and supplement this Record of Decision.

ADDRESSES: Addresses of DOE Public Reading Rooms and Information Repositories where the Final EIS, Record of Decision, and other relevant information are available for public review are listed at the end of this Record of Decision. The Final EIS and Record of Decision are also available for review on the Internet at www.hanford.gov/eis/twrseis.htm and on the DOE NEPA Web page (http://tis-nt.eh.doe.gov/nepa).

FOR FURTHER INFORMATION: Requests for copies of the Record of Decision or further information on the Final EIS or Record of Decision should be directed to Carolyn Haass, DOE Tank Waste Remediation System EIS NEPA Document Manager, U.S. Department of Energy, Richland Operations Office, P.O. Box 1249, Richland, WA 99352. Ms. Haass may be contacted by telephone at (509) 372–2731. Information on the DOE NEPA process may be requested from Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue S.W., Washington, D.C. 20585. Ms. Borgstrom may be contacted by telephone at (202) 586–4600, or by leaving a message at (800) 472–2756.

SUPPLEMENTARY AGENCY INFORMATION:

Purpose and Need for Action

This Record of Decision addresses actions by DOE to manage and dispose of radioactive, hazardous, and mixed waste within the Tank Waste Remediation System (TWRS) program at the Hanford Site in southeastern Washington State. The waste includes approximately 212 million liters (56 million gallons) of waste stored or to be stored in underground storage tanks at the Hanford Site. DOE also will manage the cesium and strontium salts contained in approximately 1,930 capsules currently stored at the Site and, if they are determined to be waste, will dispose of the capsules. The tank waste and cesium and strontium capsules currently pose a low short-term risk to human health and the environment; however, storage costs are high, and the potential for an accident resulting in large releases of radioactive and chemical contaminants will increase as the facilities age.

DOE must implement long-term actions to safely manage and dispose of the tank waste, associated miscellaneous underground storage tanks, and the cesium and strontium capsules (if the cesium and strontium are determined to be waste) to permanently reduce potential risk to human health and the environment. These actions also are needed to ensure compliance with all applicable Federal and Washington State requirements regarding the management and disposal of radioactive, hazardous, and mixed waste.

Alternatives Considered in the Final EIS

The following describes the alternatives considered in the Final EIS and a discussion of their advantages and disadvantages.

In order to compare the alternatives for both the high- and low-activity fractions of the waste, vitrification was used as a representative technology to conduct the EIS analysis. DOE currently plans to implement parts of the Phased Implementation alternative through a privatization initiative whereby private companies will perform certain aspects of the remediation in an effort to use competition within the marketplace to bring new ideas and concepts to waste remediation and reduce project costs. Under current plans, the selected private companies will have the responsibility to treat the high-level waste using vitrification, and will have the option to immobilize the low-activity waste by either vitrification or other similar immobilization methods provided that the final waste form meets regulatory requirements. (DOE has issued contracts to two companies to design tank waste treatment facilities—both companies had proposed vitrifying low-activity waste.)

Tank Waste Alternatives Considered

Phased Implementation (Preferred Alternative)

The Phased Implementation alternative was identified in the Final EIS as the Preferred Alternative. Under the Phased Implementation alternative, the tank waste would continue to be safely stored until the waste is retrieved from the tanks for treatment and disposal by implementing a demonstration phase (Phase I) to verify that the treatment processes will function effectively and then by implementing a full-scale production phase (Phase II).

During Phases I and II, continued operations of the tank farm system and actions to address safety and regulatory compliance issues would be performed and would include:

- Upgrading tank farm infrastructure, including waste transfer, instrumentation, ventilation, and electrical systems;
- Monitoring tanks and equipment to support waste management and regulatory compliance requirements;
- Combining compatible waste types, interim stabilization of single-shell tank waste, continuing waste characterization, removing pumpable liquid from single-shell tanks, transferring newly generated waste from ongoing Site activities to double-shell tanks, operating the 242–A Evaporator and the Effluent Treatment Facility, and performing mitigative actions to resolve tank safety issues;
- Using rail or tanker truck systems to transport waste to the tank farms;
- Completing construction of and operating the new replacement cross-site transfer system to facilitate regulatory compliant waste transfers from 200 West to 200 East Area and continue operating the existing transfer pipeline system until the replacement system is operational; and
- Installing and operating an initial tank waste retrieval system to improve the capacity to consolidate double-shell tank waste and support mitigation of safety issues.

Phase I activities (Part A, development activities; Part B demonstration) activities would last for approximately 10 years and would include:

- Constructing demonstration-scale facilities to produce vitrified low-activity waste and vitrified high-level waste for future disposal;
- Installing and operating tank retrieval systems to retrieve selected waste (primarily liquid waste) for separations and immobilization, and selected tank waste for high-level waste vitrification;
- Transferring liquid waste to receiver tanks and transferring selected waste for high-level waste processing directly to the high-level waste facility;
- Performing separations to remove selected radionuclides (e.g., cesium) from the low-activity waste stream;
- Storing separated high-level waste at the treatment facilities or in the Canister Storage Building pending future high-level waste treatment;
- Returning a portion of the sludge, strontium, and transuranic waste from separations processes to the double-shell tanks for future retrieval and treatment during Phase II;
- Vitrifying the low-activity waste and high-level waste; and
- Transporting the low and high activity wastes to onsite interim storage facilities.

Phase II (full-scale production) activities would begin after completion of Phase I, last for approximately 30 years and would include:

- Constructing full-scale facilities to vitrify low-activity waste and vitrify high-level waste;
- Installing and operating tank retrieval systems to retrieve waste from all single-shell tanks, double-shell tanks, and miscellaneous underground storage tanks;
- Pretreating the waste by sludge washing and enhanced sludge washing followed by separations of the liquid and solids;
- Performing separations to remove selected radionuclides from the low-activity waste feed stream and transferring the waste to the high-level waste vitrification facility;
- Vitrifying the high-level waste stream and the low-activity waste stream;
- Packaging the high-level waste in canisters for onsite interim storage and future shipment to a national geologic repository; and
- Placing the immobilized low-activity waste in containers and placing the containers in onsite near-surface disposal facilities.

DOE also would continue to characterize the tank waste and perform technology development activities to reduce uncertainties associated with remediation, evaluate emerging technologies, and resolve regulatory compliance issues.

The principal advantages of the Phased Implementation alternative are that it provides for retrieval of the waste, separation of the high- and low-activity waste constituents and immobilization of the waste. Separations processes would reduce the volume of high-level waste and eliminate the bulk of the contaminants in the low-activity waste stream. This alternative would permanently isolate the wastes from humans and the environment to the greatest extent practicable and provide for protection of public health and the environment by disposing of the bulk of the radionuclides offsite in a national geologic repository and isolating the low-activity waste through immobilization and disposal in onsite facilities. By using a phased approach, DOE will obtain additional information concerning the uncertainties associated with waste characteristics and the effectiveness of the retrieval, separations, and treatment technologies prior to constructing and operating full-scale facilities. Lessons learned from the demonstration phase, ongoing waste characterization, and technology development activities would be applied to Phase II, which may substantially improve the operating efficiency of the second phase and reduce construction and operating costs.

The principal disadvantage of this alternative is that it would involve slightly higher short-term impacts than the in situ and combination alternatives, though lower than the continued management alternatives. Short-term impacts include potential health impacts during Phases I and II from occupational, operational, and transportation accidents and radiation exposures to workers during normal operations. In addition, this alternative would disturb shrub-steppe habitat and may cause a short-term strain on public services during construction activities. This alternative would also cost more than the in situ alternatives.

Other Tank Waste Alternatives Considered

The Final EIS analyzed nine other alternatives for the tank waste. All of the alternatives considered include continuing the current tank farm operations to maintain the tanks and associated facilities until they are no longer needed for waste management. All of the alternatives (except No Action) include upgrading tank farm systems as identified for the Phased Implementation alternative. The following are the other alternatives addressed.

1. No Action

Perform minimum activities required for safe and secure management of the Hanford Site's tank waste with the current tank farm configuration during a 100-year period. This alternative would provide for continued storage and monitoring of tank waste. No construction or remediation activities would be performed under the No Action alternative.

The principal advantage of this alternative is that the short-term environmental impacts would be lower than other alternatives analyzed (except operational accidents which would be high due to the assumed 100-year operating period). The cost estimated for this alternative would be lower than most other alternatives. The degree of technical uncertainty associated with this alternative is low because it is a continuation of ongoing activities. Selection of this alternative would also allow time to develop new waste remediation technologies.

The principal disadvantage of this alternative is that it would result in the highest long-term environmental impacts. Because no action would be taken to immobilize or isolate the waste, the contaminants in the waste would migrate to the groundwater in a relatively short period of time, resulting in contamination of the groundwater far above accepted safe levels and drinking water standards. Persons consuming this contaminated groundwater would have a significant risk of contracting cancer. In addition, this alternative would not meet waste disposal laws, regulations, and policies. This alternative eventually would result in continued deterioration of the structural integrity of the tanks and an increased risk that an earthquake would cause a catastrophic release of tank contents to the environment and the potential for a large number of fatalities. Because all of the waste would remain in the tanks in an unstabilized form, there would be a significant human health risk to inadvertent intruders into the waste after any loss of administrative control of the Site.

2. Long-Term Management

Perform minimum activities required for safe and secure management of the Hanford Site's tank waste during the 100-year administrative control period. This alternative is similar to the No Action alternative, except that the waste transfer system would be upgraded and the double-shell tanks would be replaced twice during the assumed 100-year administrative control period to prevent the potential leakage of large volumes of liquid to the environment from the double-shell tanks. No waste remediation would be performed under this alternative.

The principal advantage of this alternative is the same as for the No Action alternative except that leaching of contaminants into the groundwater from the double-shell tanks would be delayed by 100 years due to the tank replacement program.

The principal disadvantages of this alternative are the same as for the No Action alternative except that the long-term impacts to the groundwater would be slightly lower than the No Action alternative.

3. In Situ Fill and Cap

Retrieve and evaporate liquid waste from the double-shell tanks, fill single- and double-shell tanks with gravel, fill miscellaneous tanks and ancillary equipment with grout, and cover the tank farms with a low permeability earthen surface barrier, disposing of all tank waste onsite.

The principal advantages of this alternative are that the short-term environmental impacts (accident fatalities, radiation exposures, and shrub-steppe habitat disturbance) would be low and the estimated cost would be lower than for all other alternatives. The degree of technical uncertainty associated with this alternative is low because it involves applying common technology, which has a high probability of achieving its projected level of effectiveness for most tanks.

The principal disadvantages of this alternative are that it would have relatively high long-term environmental impacts due to contaminants leaching into the groundwater where they could expose persons who might consume the groundwater, and it would not meet waste disposal laws, regulations, or policies. Because the actions taken for this alternative involve isolation but not immobilization of the waste, the contaminants would migrate to the groundwater over a long period of time and result in significant long-term impacts on public health and the environment. In addition, this alternative may not be feasible for those tanks that generate high levels of flammable gases because of the potential for sparks causing a fire in the tanks while filling with gravel. Other types of fill material may be necessary for these tanks. Because all of the waste except the liquid waste in the double-shell tanks would remain in the tanks in an unstabilized form, there would be a significant human health risk to inadvertent intruders into the waste

after any loss of administrative control of the Site.

4. In Situ Vitrification

Retrieve and evaporate liquid waste from the double-shell tanks, fill the tanks with sand, vitrify (melt to form glass) all of the tanks in place, and cover all of the tank farms with an earthen surface barrier to dispose of all tank waste onsite. This alternative would involve constructing tank farm-confinement facilities to contain and collect the off-gasses generated during the vitrification process. The waste, tanks, and soil surrounding the tanks (including miscellaneous underground storage tanks) would be vitrified by using electricity to melt the soil and waste, which would solidify into a glass when cooled.

The principal advantages of this alternative are that the short- and long-term impacts would be relatively low. The short-term impacts such as occupational, operational, and transportation accidents would be lower because fewer personnel would be required to construct and operate the in situ vitrification systems. The long-term impacts would be low because the contaminants would be immobilized in glass, which would limit the leaching of contaminants to the groundwater.

The principal disadvantages of this alternative are that there is a high degree of technical uncertainty that the alternative would function as intended, and that, even if technically successful, would not produce a final waste form that would meet waste disposal laws, regulations, or policies. In situ vitrification has been performed on contaminated soil, but has not been used on the tank waste or at the scale needed to vitrify the large tanks.

5. Ex Situ No Separations

Retrieve waste from the single-shell, double-shell, and miscellaneous underground storage tanks, either vitrify or calcine (heat to temperatures below the melting point) the waste, and package the treated waste for interim onsite storage and eventual offsite disposal at a national geologic repository.

The principal advantages of this alternative are that the vitrification option would meet all regulatory requirements and both the vitrification and calcination options would result in disposal of all retrieved waste offsite at a national geologic repository. Because this alternative does not involve separations, the technical uncertainties are fewer than those associated with other ex situ alternatives that involve intermediate or extensive separations.

The principal disadvantages of this alternative are that the waste form (either soda-lime glass for vitrification or compacted powder for calcination) may not meet the current waste acceptance criteria at a national geologic repository and the volume of waste to be disposed of at a national geologic repository would be very large and would likely exceed the capacity of the first repository. The costs associated with disposing of all the waste at a national geologic repository make this the most expensive alternative.

6. Ex Situ Intermediate Separations

Retrieve waste from the single-shell, double-shell, and miscellaneous underground storage tanks and separate the waste into high-level and low-activity waste streams using sludge washing, enhanced sludge washing, and ion exchange, then vitrify the waste streams in separate facilities. Dispose of the low-activity waste onsite and the high-level waste offsite at a national geologic repository.

The principal advantages of this alternative are that it would meet all regulatory requirements and result in relatively low long-term impacts because the high-level waste would be disposed of offsite in a national geologic repository and the low-activity waste onsite would be immobilized and isolated in onsite disposal facilities covered with an earthen barrier.

The principal disadvantage of this alternative is that it involves a moderate level of technical uncertainty because the alternative would involve construction and operation of treatment facilities where some of the proposed technologies are first-of-a-kind or have not been demonstrated on Hanford Site tank waste. This alternative would involve a potential for higher short-term impacts than the in situ alternatives because of the nature and extent of the activities required for construction and operation of the full-scale waste treatment facilities. These impacts would include potential health impacts from occupational, operational, and transportation accidents and radiation exposures during normal operations.

7. Ex Situ Extensive Separations

Retrieve waste from the single-shell, double-shell, and miscellaneous underground storage tank waste and use a large number of complex chemical separations processes to separate the high-level waste components from the recovered tank waste. Vitrify the waste streams in separate facilities and dispose of the low-activity waste onsite and the high-level waste offsite at a national geologic repository.

The principal advantages of this alternative are that it would meet all regulatory requirements and, due to the extensive separations processes, would result in the smallest volume of high-level waste for offsite disposal. Due to the extent of the separations processes, the low-activity waste that would remain onsite would have lower radioactive contaminant concentrations than the other ex situ alternatives.

The principal disadvantages of this alternative are that it involves the highest degree of technical uncertainty and highest treatment cost among the ex situ alternatives because of the numerous complex separations processes. This alternative would involve slightly higher short-term impacts than the in situ and combination alternatives, though lower short-term impacts than the continued management alternatives. These impacts include potential health impacts from occupational, operational, and transportation accidents and radiation exposures during normal operations.

8. and 9. Ex Situ/In Situ Combination 1 (Alternative 8) Ex Situ/In Situ Combination 2 (Alternative 9)

Retrieve tank waste (approximately 50 percent of the waste volume for the Combination 1 alternative and 30 percent for the Combination 2 alternative based on long-term risks the contents of the various tanks pose to human health and the environment); separate the retrieved waste into high-level and low-activity waste streams using an intermediate level of separations; then vitrify the waste streams in separate facilities. Dispose of the low-activity waste onsite and the high-level waste at an offsite national geologic repository. Waste in tanks not selected for retrieval would be remediated identical to the In Situ Fill and Cap alternative.

The principal advantage of these alternatives is that they offer the opportunity to lower the remediation cost by remediating the waste in selected tanks based on waste characteristics and contribution to post-remediation risk. The waste that provides the greatest long-term potential human health risks would be remediated. The Combination 2 alternative would have lower remediation costs than the Combination 1 alternative because a smaller volume of waste would be processed. These alternatives would result in short-term impacts (occupational, operational, and transportation accidents and shrub-steppe habitat disturbance) that are generally lower than those for the ex situ alternatives because smaller facilities and fewer personnel would be required to process a smaller volume of waste.

The principal disadvantages of these alternatives are that they would not meet waste disposal laws, regulations, and policies. The ex situ portion of these alternatives would have the same technical uncertainties as the Ex Situ Intermediate Separations alternative. The in situ portion of these alternatives would result in higher long-term impacts than the ex situ alternatives because the waste disposed of in situ would leach contaminants into the groundwater over a long period of time and expose persons who might consume the groundwater. The Combination 2 alternative would leave more waste disposed of in situ and result in higher long-term impacts than the Combination 1 alternative.

Environmentally Preferable Alternative—Tank Waste

Identifying environmental preferences among alternatives for the tank waste remediation program requires consideration of the short-term human health and environmental impacts, long-term human health and environmental impacts, and the associated uncertainties in the impact assessment process, including technology performance. There are alternatives that would result in low short-term impacts but relatively high long-term impacts, and identifying the environmentally preferable alternative(s) requires judgment concerning these impacts. Comparing short-term human health impacts with long-term human health impacts is complicated by the fact that short-term impacts can be estimated with a greater degree of certainty than long-term human health risks.

In making these comparisons, DOE considered that most estimated short-term impacts involve risks to workers during remediation that are voluntary and can be reduced by applying appropriate worker protection measures. In contrast, the estimated long-term impacts are involuntary in nature because they would result from inadvertent exposure of future populations to contaminant releases.

The In Situ Vitrification alternative would have lower human health and environmental impacts than the other alternatives, if this technology functioned adequately. This alternative would result in the lowest potential short-term human health impacts, other than the In Situ Fill and Cap alternative, and the lowest long-term human health and environmental impacts. However, in situ vitrification has never been performed at the scale necessary to remediate the Hanford tank waste and there is a high degree of technical uncertainty associated with this alternative. Even with extensive technology research and testing, it may not be feasible to develop this technology to the extent that it would function adequately. If this alternative did not function as designed, the long-term impacts on groundwater and future users of the groundwater would be higher. While the In Situ Fill and Cap alternative would result in the lowest short-term impacts, it also would have significant long-term impacts on the groundwater and future users of the groundwater.

On balance, the ex situ alternatives are environmentally preferable to in situ alternatives because they provide for the permanent isolation of contaminants from the human environment. Among the ex situ alternatives, Phased Implementation is environmentally preferable because it offers the best potential to reduce technology risks and uncertainties relevant to both short-term and long-term impacts, while also providing for treatment and disposal of tank wastes to the greatest extent technically and economically practicable.

Cesium and Strontium Capsules Alternatives Considered

For the purposes of analyzing impacts in the TWRS EIS, it was assumed that the cesium and strontium capsules will remain in the Waste Encapsulation and Storage Facility at the Hanford Site until ready for final disposition. The Waste Encapsulation and Storage Facility is being isolated from B Plant, which previously provided waste handling and utility support. B Plant is scheduled for deactivation.

No Action

No Action was identified in the Final EIS as the preferred alternative and includes the continued storage of the capsules in the Hanford Site Waste Encapsulation and Storage Facility for 10 years. The cesium and strontium capsules are currently classified as byproduct material and are therefore available for beneficial uses. If beneficial uses cannot be found, the capsules may be subject to management and disposal actions as high-level waste.

The principal advantage of the No Action alternative is that it allows DOE to evaluate potential commercial and medical uses for the cesium and strontium capsules rather than foreclosing these options by implementing a disposal alternative. This alternative also provides an opportunity for further study of long-term environmental impacts. DOE would reevaluate the preferred alternative after a determination is made on the potential for future use of cesium and strontium capsules.

The principal disadvantage of this alternative is that it would not result in the near-term disposal of the capsules. The high costs of storing the capsules would continue. The cost and impacts of disposal would be delayed until some time in the future, if appropriate uses for the capsules are not developed.

Onsite Disposal

Overpack the cesium and strontium capsules in canisters and dispose of them onsite in a newly constructed shallow drywell disposal facility.

The principal advantage of this alternative is that it is the only alternative that would allow near-term disposal of the capsules because it would not rely on the construction of a national geologic high-level waste repository, which may not be available until after the year 2015.

The principal disadvantage of this alternative is that it would not meet the requirements of the Resource Conservation and Recovery Act for hazardous waste or DOE policy for disposal of readily retrievable high-level waste. The capsules would be disposed of in a near-surface facility where they would be more accessible to inadvertent human intrusion until the cesium and strontium decayed to non-radioactive elements.

Overpack and Ship

Overpack the cesium and strontium capsules into canisters, place the canisters into Hanford Multi-Purpose Canisters for interim storage, and store the packaged capsules onsite pending offsite disposal at a national geologic repository.

The principal advantage of this alternative is that it would provide for offsite disposal of the capsules in compliance with all regulatory requirements.

The principal disadvantage of this alternative is that the capsules may not meet waste acceptance criteria at a national geologic repository.

Vitrify With Tank Waste

Remove capsule contents, vitrify with the high-level tank waste, and dispose of offsite at a national geologic repository.

The principal advantages of this alternative are that it would meet all regulatory requirements and the currently planned waste acceptance requirements for a national geologic repository. This alternative is dependent

on selecting one of the tank waste alternatives that includes a high-level waste vitrification facility, which would be used to vitrify the cesium and strontium.

Environmentally Preferable Alternative—Cesium and Strontium Capsules

All of the alternatives for remediation of the cesium and strontium capsules are estimated to result in low environmental impacts. There would be no occupational fatalities or increased incidences of cancer or fatal chemical exposures associated with normal operations. There would be no or low adverse impacts on surface waters or groundwater, soils, air quality, transportation networks, noise levels, visual resources, socioeconomic conditions, resource availability, or land use. The No Action, Overpack and Ship, and Vitrify with Tank Waste alternatives would have slightly lower impacts on shrub-steppe habitats than the Onsite Disposal alternative and a slightly lower risk of a fatal accident. Assuming that the capsules would meet waste acceptance criteria at a national geologic repository the Overpack and Ship alternative would result in slightly lower impacts than the other alternatives and is therefore the environmentally preferable alternative.

Decision

Tank Waste

Description of Alternative Selected

DOE has decided to implement the Phased Implementation alternative for the tank waste. The Phased Implementation alternative strikes an appropriate balance among potential short- and long-term environmental impacts, stakeholder interests, regulatory requirements and agreements, costs, managing technical uncertainties, and the recommendations received from other interested parties.

While carrying out this decision, DOE will continually evaluate new information relative to the tank waste remediation program. DOE also intends to conduct formal evaluations of new information relative to the tank waste remediation program at three key points over the next eight years under its NEPA regulations (10 CFR 1021.314), with an appropriate level of public involvement, to ensure that DOE stays on a correct course for managing and remediating the waste.

As remediation proceeds in the coming years, DOE will learn more about management and remediation of the tank waste and ways to protect public and worker health and the environment. Within this time frame, DOE will obtain additional information on the effectiveness of retrieval technologies, characteristics of the tank wastes, effectiveness of waste separation and immobilization techniques, and more definitive data on the costs of retrieval, separations, and immobilization of the waste. Formal reevaluations will incorporate the latest information on these topics. DOE will conduct these formal evaluations of the entire TWRS program at the following stages: (1) before proceeding into Privatization Phase I Part B (scheduled for May 1998); (2) prior to the start of hot operations of Privatization Phase I Part B (scheduled for December 2002/December 2003); and (3) before deciding to proceed with Privatization Phase II (scheduled for December 2005). In conducting these reviews, DOE will seek the advice of independent experts from the scientific and financial community, such as the National Academy of Sciences which will focus on the expected performance and the costs of waste treatment. DOE has established a TWRS Privatization Review Board consisting of Senior DOE representatives to provide on-going assistance and interactive oversight of the review of Part A deliverables and discussions with the contractors.

Informal evaluations also will be conducted as the information warrants. These formal and informal evaluations will help DOE to determine whether previous decisions need to be changed.

The Phased Implementation approach allows DOE to start remediating waste earlier than previously planned. With this approach, retrieval and processing of waste will begin on a small scale so that systems can be improved as knowledge is gained. This approach also permits DOE to continue research and development in critical areas, such as improved robotic retrieval systems, that may result in improved methods to reduce tank leaks during retrieval, and methods to remove residual waste that is difficult to retrieve.

The components of the demonstration phase (Phase I) will include: (1) continuing to safely manage the tank waste; (2) constructing and operating demonstration facilities; (3) collecting additional information through tank waste and vadose zone characterization; and (4) performing demonstrations of technologies that have the potential to reduce uncertainties associated with the TWRS program.

Continuing to safely manage the tank farms includes replacement of certain waste transfer piping and routine maintenance activities for tank farm instrumentation, ventilation, and electrical systems. Ongoing activities will include conducting environmental and safety related monitoring, removing pumpable liquids from the single-shell tanks, mitigating flammable gas safety hazards, and transferring currently stored waste and newly generated waste using the replacement cross-site transfer system, rail cars, and tanker trucks. DOE also plans to upgrade certain instrumentation, tank ventilation, and electrical system to upgrade the regulatory compliance status of the current facilities. The environmental impacts of these actions were not assessed in the TWRS EIS because the activities to be performed had not been sufficiently defined. DOE will evaluate the impacts of these actions in future NEPA analyses.

The demonstration phase, which will last approximately 10 years, includes the retrieval and treatment of a portion of the waste from the double-shell and single-shell tanks. The waste will be separated into low-activity waste and high-level waste through physical and chemical processes and then treated in demonstration-scale facilities. Vitrified high-level waste will be placed in interim storage at the Canister Storage Building pending future disposal at a national geologic repository. Immobilized low-activity waste will be prepared for future onsite disposal in existing grout vaults and similarly designed disposal facilities.

During the demonstration phase, DOE will conduct many activities to reduce the uncertainties associated with certain aspects of the project. For example, DOE will obtain extensive operational and cost data on a variety of issues by retrieving waste for treatment and constructing and operating the demonstration-scale facilities. DOE also will obtain more detailed information on the characteristics of the tank waste and potential impacts on groundwater by continuing to collect data through the existing tank waste and vadose zone characterization programs. Further, DOE will conduct a project known as the Hanford Tanks Initiative that will provide data on single-shell tank residual characteristics, single-shell tank retrieval technologies, tank residual removal technologies, and tank closure technologies. In addition, DOE will further investigate technologies that have the potential to reduce the uncertainties of the TWRS project, including evaluating alternative tank fill material for use during closure, demonstrating the effectiveness and efficiency of waste retrieval with sluicing technology, and evaluating a variety of other technologies through DOE's complex-wide technology development programs. DOE also will prepare appropriate further NEPA documentation before making decisions on closure of the tank farms. This documentation will address the final disposition of the tanks, associated equipment, soils, and groundwater, and will integrate tank farm closure with tank waste remediation and other remedial action activities.

Phase II of the Phased Implementation alternative will begin after Phase I and will last approximately 30 years. Phase II will consist of continuing to safely manage the tank waste and constructing and operating full-scale facilities to treat the remainder of the tank waste. The tank waste will be retrieved and separated into low-activity waste and high-level waste. The low-activity waste will be immobilized and disposed of onsite in near-surface disposal facilities. The high-level waste will be vitrified, temporarily stored onsite, and transported offsite for disposal in a national geologic repository. DOE will use the lessons learned from the demonstration phase and the information obtained from further characterization and technology development activities to optimize operating efficiencies during Phase II and reduce construction and operating costs. DOE will continue to evaluate the path forward for the tank waste remediation program as additional data and technology development activities provide information relative to key technical and regulatory issues.

DOE currently plans to implement parts of this alternative through a privatization initiative whereby private companies will perform certain aspects of the remediation in an effort to use competition within the marketplace to bring new ideas and concepts to waste remediation and reduce project costs. The goal of privatization is to streamline the TWRS mission, transfer a share of the responsibility, accountability, and liability for successful performance to industry, improve performance, and reduce costs without sacrificing worker and public safety or environmental protection. On September 25, 1996, DOE issued contracts to two companies to initiate the design process for Phase I, Part A. Any of the contractors authorized to proceed to start Part B is anticipated to follow the same general approach described in the EIS for Phase I, Part B of the Phased Implementation alternative, including separating the waste into low-activity waste and high-level waste streams, vitrifying the high-level waste, and using high-temperature processes to immobilize low-activity waste. Both contractors' current plans include vitrifying low-activity waste upon approval to proceed with Phase I, Part B.

Before issuing these contracts DOE independently evaluated the environmental data and analyses submitted by the contractors and prepared a confidential environmental critique of the potential environmental impacts in accordance with DOE NEPA regulation 10 CFR 1021.216. After issuing the contracts, DOE prepared a publicly available environmental synopsis, based on the critique, to document the consideration given to environmental factors and to record that the relevant environmental consequences of reasonable alternatives have been evaluated in the selection process. This evaluation showed that the two proposals would have similar overall environmental impacts and that the impacts would be less than or approximately the same as the impacts described for Phase I of the Phased Implementation alternative. The environmental synopsis has been filed with the Environmental Protection Agency and is available at the DOE Public Reading Rooms and Information Repositories listed at the end of this Record of Decision. DOE will require the selected contractors to submit further environmental information and analysis and will use the additional information, as appropriate, to assist in the NEPA compliance process, including a determination under 10 CFR 1021.314 of the potential need for future NEPA analysis.

Basis for Selection

DOE has determined that through the many years of research and development throughout the DOE complex and specific studies on Hanford Site tank waste remediation, the technical uncertainties have been reduced to a manageable level. DOE has determined that the risks associated with proceeding with remediation are less than the risks of future releases of contaminants to the groundwater and of accidents in unremediated tanks that are deteriorating structurally. The cost of continuing to manage the unremediated tank waste facilities is high.

DOE has determined that it is necessary to retrieve the waste from the tanks to meet regulatory requirements, avoid future long-term releases to the groundwater that would threaten human health and the environment, and reduce health impacts to potential inadvertent intruders into the waste if administrative control of the Site were lost. An intermediate level of separating the waste into low-activity waste and high-level waste was selected because of the high disposal costs of alternatives with low levels of separation and the high degree of technical uncertainty associated with alternatives with extensive levels of separations. To address the remaining technical uncertainties that exist with the tank waste remediation program, the phased implementation approach was selected to provide the flexibility necessary to make midcourse adjustments to the remediation plans based on future characterization data, technology development, and technical and cost data developed during Phase I.

The Phased Implementation alternative provides for the permanent isolation of the waste from humans and the environment to the greatest extent practicable and protection of public health and the environment. A high percentage of the radionuclides will be disposed of offsite in a national geologic repository, which provides a high degree of permanent isolation of the most hazardous waste. Releases of contaminants to the groundwater at the Hanford Site will be reduced to the greatest extent practicable. The waste disposed of onsite will be isolated from humans and the environment by immobilizing the low-activity waste and placing it in near-surface disposal facilities covered with an earthen surface barrier.

The Phased Implementation alternative provides a balance among key factors that influenced the evaluation of the alternatives; short-term impacts to human health and the environment, long-term impacts to human health and the environment, managing the uncertainties associated with the waste characteristics and treatment technologies, costs, and compliance with regulatory requirements. It also provides a balance between the need to proceed with remediation and the potential advantages of delaying remediation to incorporate future technology developments. This alternative allows DOE to meet all regulatory requirements and reflects the values and concerns of many stakeholders.

Mitigation Measures

This decision adopts all practicable measures to avoid or minimize adverse environmental impacts that may result from the Phased Implementation alternative. These measures many of which are routine, include the following.

- All DOE nuclear facilities will be designed, constructed, and operated in compliance with the comprehensive set of DOE or commercial requirements that have been established to protect public health and the environment. These

requirements encompass a wide variety of areas, including radiation protection, facility design criteria, fire protection, emergency preparedness and response, and operational safety requirements;

- Measures will be taken to protect construction and operations personnel from occupational hazards and minimize occupational exposures to radioactive and chemical hazards;
- Emergency response plans will be developed to allow rapid response to potentially dangerous unplanned events;
- Water and other surface sprays will be used to control dust emissions, especially at borrow sites, gravel or dirt haul roads, and during construction earthwork;
- Areas for new facilities will be selected to minimize environmental impacts to the extent practicable;
- Pollution control or treatment will be used to reduce or eliminate releases of contaminants to the environment and meet regulatory standards;
- Extensive environmental monitoring systems will be implemented to continually monitor potential releases to the environment;
- All newly disturbed areas will be recontoured to conform with the surrounding terrain and revegetated with locally derived native plant species consistent with Sitewide biological mitigation plans;
- Historic, prehistoric, and cultural resource surveys will be performed for any undisturbed areas to be impacted;
- Potential impacts to shrub-steppe habitat and cultural resources will be among the factors considered in a NEPA analysis to support the site selection process for facilities and earthen borrow sites; and
- Consultation with Tribal Nations and government agencies will be performed throughout the planning process to address potential impacts to shrub-steppe habitat, religious sites, natural resources, and medicinal plants.

Mitigation measures will be refined and presented in the Tank Waste Remediation Mitigation Action Plan. Tribal Nations and agencies will be consulted, as appropriate, during preparation of the Mitigation Action Plan.

Cesium and Strontium Capsules

DOE has decided to defer the decision on the disposition of the cesium and strontium capsules for up to two years. In effect, DOE will implement the No Action alternative until a final disposition decision is made and implemented. The encapsulated cesium and strontium have potential value as commercial and medical irradiation or heat sources, and implementing disposal alternatives would foreclose options for these applications. DOE is evaluating the potential for commercial and medical uses. In addition, DOE is considering mixing the cesium with surplus plutonium; the cesium would serve as a radiation barrier and be immobilized with the plutonium. Mixing the cesium with the plutonium would enhance nuclear materials security by making future use of the plutonium by unauthorized persons very hazardous and difficult. DOE will reevaluate the decision on the disposition of the capsules after determinations are made on the potential for future use of cesium and strontium. DOE is preparing a Cesium and Strontium Management Plan that will address alternatives for beneficial uses of the capsules prior to final disposition. If DOE decides not to use the cesium and strontium for any of these purposes, one of the alternatives for permanent disposal of the capsules will be selected and DOE will supplement this Record of Decision. Before making such a decision, DOE intends to further study disposal alternatives to resolve uncertainties and better understand long-term impacts, as recommended by the National Research Council (see Appendix).

Comments on the Draft EIS and Agency Responses

DOE and Ecology received comments on the Draft EIS from 102 individuals, organizations, agencies, or Tribal Nations including the Washington State Department of Wildlife, Oregon State Department of Energy, Nez Perce Tribe, Yakama Indian Nation, and the Confederated Tribes of the Umatilla Indian Reservation. All comments received were addressed in the Final EIS, Volume Six, Appendix L, and revisions to the Final EIS were made, as appropriate, to address applicable comments. A complete copy of all comments received on the Draft EIS is available in each of the DOE Public Reading Rooms and Information Repositories at the locations listed at the end of this Record of Decision.

Comments Received After Publication of the Final EIS and DOE Responses

DOE received comments from the Washington State Department of Fish and Wildlife on the Final EIS and comments from the National Research Council on the Draft EIS after publication of the Final EIS. A summary of these comments and DOE's responses is attached as an appendix to this Record of Decision. These comments were considered in the preparation of this Record of Decision.

DOE Public Reading Rooms and Information Repositories

- University of Washington, Suzzallo Library, Government Publications Room, Seattle, WA 98185. (206) 685–9855, Monday–Thursday, 9 a.m. to 8 p.m.; Friday and Saturday, 9 a.m. to 5 p.m.
- Gonzaga University, Foley Center, E. 502 Boone, Spokane, WA 99258. (509) 328–4220 ext. 3829, Monday–Thursday, 8 a.m. to midnight, Friday, 8 a.m. to 9 p.m.; Saturday, 9 a.m. to 9 p.m.; Sunday, 11 a.m. to midnight.
- U.S. Department of Energy Reading Room, Washington State University, Tri-Cities Campus, 100 Sprout Road, Room 130W, Richland, WA 99352, (509) 376–8583, Monday–Friday, 10 a.m. to 4 p.m.
- Portland State University, Bradford Price Millar Library, Science and Engineering Floor, SW Harrison and Park, Portland, OR 97207, (503) 725–3690, Monday–Friday, 8 a.m. to 10 p.m.; Saturday, 10 a.m. to 10 p.m.; Sunday, 11 a.m. to 10 p.m.
- U.S. Department of Energy, Headquarters, Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6020, Monday–Friday, 9 a.m. to 4 p.m.

A copy of the Record of Decision is also available via the Internet at www.hanford.gov/eis/twrseis.htm and http://tis-nt.eh.doe.gov/nepa.

Issued in Washington, DC, this day, February 20, 1997.

Alvin Alm,

Assistant Secretary for Environmental Management.

Appendix—Comments Received After Publication of the Final EIS

The U.S. Department of Energy (DOE) received comments and recommendations from the National Research Council and the Washington State Department of Fish and Wildlife after publication of the Final Environmental Impact Statement (EIS). The following is a summary of these comments and DOE's responses.

National Research Council Comments

On March 4, 1996, DOE requested that the National Research Council (Council), Committee on Remediation of Buried and Tank Waste, review the Tank Waste Remediation System (TWRS) Draft EIS. DOE received the Council's comments and recommendations regarding the Draft EIS on September 6, 1996 (after the Final EIS had been published) in a report entitled "The Hanford Tanks: Environmental Impacts and Policy Choices". Although this report was issued too late to be considered in the Final EIS, DOE did consider the Council's comments in the preparation of this Record of Decision.

DOE generally agrees with the comments and recommendations made by the Council. Because several other commentors on the Draft EIS identified similar concerns, many of the Council's comments and recommendations were incorporated in the Final EIS prior to receipt of the Council's report. DOE believes the Record of Decision reflects stakeholder values regarding the need for action, provides a balance among short- and long-term environmental impacts, meets regulatory requirements and agreements, and addresses technical uncertainties, while also accommodating, to the extent possible, the underlying concern of the Council regarding the need for phased decision making.

The following is a summary of the National Research Council's comments and DOE's responses.

Comment 1: Uncertainties, both stated and unstated, concerning the Hanford wastes, the environment, and the remediation processes are found throughout the DEIS. Significant uncertainties exist in the areas of technology, costs, performance, regulatory environment, future land use, and health and environmental risks. Among the issues that remain uncertain are:

- Effectiveness in practice of technologies to remove and treat waste from tanks,
- Costs of operations and offsite waste disposal,
- Future policy and regulatory environment,
- Characterization of tank wastes,
- Relation between tank waste removal, remediation of the surrounding environment, and ultimate land use at the site, and
- Long-term risks associated with various alternatives for treating and processing the tank wastes, both in relation to residues left on site and risks transferred offsite when processed wastes are moved to a national geologic repository.

The preferred Phased Implementation alternative presented in the DEIS does not adequately address all of the uncertainties that make it difficult to decide how to complete remediation of the tanks. During Phase I, cesium and technetium, the most troublesome elements in a vitrifier, are to be removed from the high-level waste that is sent to the pilot vitrification plant, potentially limiting the value of information obtained from the pilot plant operations. This may also delay a decision on the final waste form for these elements.

Plans for building a pilot plant should proceed, but in the context of a phased decision strategy that does not preclude processing of wastes other than the double-shell tank supernatant or producing waste forms other than the glass currently planned.

Response 1: DOE agrees with the Council that there are substantial uncertainties associated with the tank waste remediation program. In response to similar comments, DOE revised the EIS to enhance the discussion of uncertainties, including the relevance of the uncertainties in the evaluation of alternatives. The Final EIS provides an extensive discussion on uncertainties in Appendix K, which includes DOE's detailed evaluation of the uncertainties and impacts associated with the tank waste remediation program alternatives. In light of the uncertainties related to the remediation of tank waste, DOE has committed to reevaluate the program as DOE continues to learn from these activities to ensure that DOE will stay on a correct course for managing the tank wastes.

The Council placed particular emphasis on recommending the use of a "phased decision strategy" because of the technical uncertainties in tank waste management. DOE has decided to implement the Phased Implementation alternative, which DOE believes will achieve many of the goals of the phased decision strategy recommended by the Council. DOE believes that the many years of technology evaluations throughout the DOE Complex have reduced the uncertainties to a manageable level, and the risks of proceeding with remediation are less than the risks of further releases of contaminants from the tanks and the potential for accidents in unremediated tanks. In addition, the cost of continuing to manage the tank waste in facilities that have exceeded their design life are high. DOE believes the Phased Implementation alternative provides adequate flexibility to accommodate changes in the tank waste remediation program as additional information is developed. Responses to the Council's other comments, below, provide additional detail on how DOE intends to reduce the technical uncertainties while proceeding with the Phased Implementation alternative.

Phase I of the Phased Implementation alternative includes both low-activity and high-level waste treatment and immobilization. Any radionuclides separated from the low-activity waste feed stream, including cesium and technetium, will be vitrified in the high-level waste facility. This will provide important information on the performance of the separations process and of vitrification of troublesome elements like cesium and technetium.

By performing Phase I of the Phased Implementation alternative and proceeding with other technology development projects and tank waste characterization, the uncertainties associated with the tank waste program will be reduced further. Initiatives that DOE is pursuing to reduce uncertainties in support of the TWRS program include:

- The Hanford Tanks Initiative, which will provide data on characterization of tank residuals, technologies for waste retrieval, technologies for removing tank residuals, and criteria for closing tanks;
- Completion of the tank waste characterization program, which will provide data relative to tank waste safety issues and the contents of the tanks;
- Determination of the level of contamination in the vadose zone;
- Development of a comprehensive plan to integrate tank waste remediation with tank farm closure and other remediation activities related with the TWRS program;
- Integration of TWRS program implementation with the plans for developing a national geologic repository for high-level waste;
- Demonstrations of the efficiency and effectiveness of retrieval sluicing technology to support the tank waste remediation activities; and
- Demonstrations of various tank waste separations and treatment processes.

Comment 2: The DEIS surveyed a wide range of remediation options, including strategies in which tanks with varying contents are treated differently. However, the committee believes that additional alternatives for management of the tank wastes need to be explored in parallel, using a phased decision strategy like the one outlined in this report. Such a strategy would provide flexibility in the event that specific, preferred technologies or management approaches do not perform as anticipated or that innovative waste management and remediation technologies emerge. Among additional options that should be analyzed are (1) in-tank waste stabilization methods that are intermediate between in situ vitrification and filling of the tanks with gravel, (2) subsurface barriers that could contain leakage from tanks, and (3) selective partial removal of wastes from tanks, with subsequent stabilization of

residues, using the same range of treatment technologies as in the alternatives involving complete removal of wastes.

When funding is constrained, it is more difficult to devote resources to the continued development of backup options. However, considering the uncertainty in the cost and performances of the technologies required for the preferred alternative, a time period during which funding is constrained is precisely the wrong time to drop work on alternatives that might achieve satisfactory results at a significantly lower cost. Having such alternatives available could allow remediation to proceed expeditiously, even if funding constraints prevent timely implementation of the currently preferred alternative.

Response 2: As discussed in the response to comment 1, DOE agrees that significant uncertainties exist in the tank waste remediation program and that the strategy selected needs to be flexible to respond to new information and the results of research and development efforts. Additional alternatives and refinements of alternatives need to be developed and evaluated.

The Council's report recommends a "phased decision strategy," while DOE's preferred alternative is the "Phased Implementation alternative." There are important similarities and differences between these two approaches. Under the Council's phased decision strategy, the first phase would identify and develop alternative approaches to remediate the tank waste. Decisions on alternatives for subsequent phases would be deferred until information from the first phase is evaluated. This approach has the advantage of not prematurely foreclosing options enabling DOE to further study and develop technologies and that might reduce cost and/or risk. It has the disadvantage of leaving the total cost, schedule, and final outcome highly uncertain. Under DOE's Phased Implementation alternative, the complete path forward for tank waste remediation has been determined, while recognizing that the path can be modified as new information becomes available. However, DOE has committed to conduct formal and informal reviews with the intent to mitigate the concern of making long-term decisions in the near-term.

The DOE Phased Implementation decision addresses current regulatory requirements and cleanup commitments while maintaining the flexibility necessary to modify the TWRS program if emerging information (e.g., new characterization data, technology breakthroughs, etc.) indicates there is a need to change the direction of the program. At the same time, technology development activities, such as the Hanford Tanks Initiative, will continue, in order to provide alternative paths if preferred technologies do not perform as anticipated. In addition to current programs, the Conference Report for the Energy and Water Development Appropriations Act, 1997 recommends up to $15 million in technology development activities to support the tank waste program.

Other activities, which are critical to the overall TWRS program, will be conducted by DOE throughout Phase I. These activities include single-shell tank waste retrieval, developing methods for quantifying and characterizing the waste residuals left in the tanks following retrieval, and studying the leakage rate of tank wastes during the retrieval process. Contractors will have access to technologies being developed by other DOE programs and will be able to use these technologies if appropriate.

The Final EIS evaluated possible alternatives for remediating the tank waste. There are, as the Council noted, a great number of variations or combinations of alternatives; DOE could not evaluate all such combinations in the EIS. Rather, DOE evaluated a complete range of reasonable tank waste management options, and thereby obtained adequate information for the strategic choice of direction made in this ROD. The use of alternate fill material for tank closure was not evaluated directly, but such alternatives are qualitatively within the range of alternatives analyzed in detail, and DOE was adequately informed about them for the purposes of this EIS. These alternatives will be addressed more directly in future NEPA analysis on tank closure. In this EIS, DOE considered the use of subsurface barriers as a potential mitigation measure during tank waste retrieval. Subsurface barriers were also evaluated in a Feasibility Study completed in 1995. Additional development work is being performed by DOE, and if promising new developments occur, DOE will reconsider the application of subsurface barriers for the tanks. Two alternatives for partial retrieval of the wastes that were similar to the selective partial retrieval alternative that the Council recommended be analyzed were included in the alternatives analyzed. DOE will continue to reevaluate these and other alternatives as more information becomes available.

In situ disposal of single-shell tank wastes and in-tank stabilization of tanks with residuals (not removed by retrieval) have been the subject of previous studies and were evaluated as part of the Systems Engineering Study for the Closure of Single-Shell Tanks. Alternatives for closing tanks with residual waste were evaluated in the Engineering Study of Tank Fill Alternatives for Closure of Single-Shell Tanks released in September 1996. Additional studies supporting stabilization of tanks with residual waste remaining following completion of retrieval operations are planned during Fiscal Year 1997 and Fiscal Year 1998 as part of the Hanford Tanks Initiative.

In addition to the two ex situ/in situ tank waste disposal alternatives that were evaluated in the TWRS EIS, selective partial removal of wastes from tanks, using a risk-based approach, was evaluated in the study entitled "Remediation and Cleanout Levels for Hanford Site Single-Shell Tanks" (Westinghouse Hanford Company, 1995, WHC–SD–WM–TI–711).

This Record of Decision adopts a long-term strategy that will focus efforts on achieving the ultimate TWRS remediation goals while continuing to characterize tank wastes, evaluate new technologies and improve risk assessments. DOE believes that its past studies have reduced the uncertainties enough to enable DOE to make a decision on a long-term tank waste remediation strategy. Although this approach differs from the phased decision strategy recommended by the Council, DOE intends to implement its decision in a manner that is flexible enough to accommodate appropriate mid-course corrections in the tank waste remediation strategy, based on lessons learned in the pilot studies or from other new information.

Comment 3: The scope of the DEIS also has significant limitations. Because the DEIS does not address remediation of the tanks themselves and associated environmental contamination, the alternatives it considers for tank waste remediation are not defined well enough. In addition, the connections between tank remediation alternatives and other cleanup activities at the Hanford Site are not taken into account. Because tank waste remediation alternatives are analyzed and evaluated in isolation from other geographically-related contamination at the Hanford Site, information about risks and costs in the DEIS is difficult to place in a proper perspective.

Response 3: DOE agrees with the Council's observation that there is a need to integrate remediation of the tank waste with future tank closure decisions and other geographically related remedial actions at the Hanford Site. The Final EIS addresses tank farm closure and other geographically related contamination and remediation activities to the extent possible with current information and to the extent necessary for DOE to make decisions concerning tank waste remediation. The EIS presents (1) information relative to closure to provide the public and decision makers with information on how decisions made now may affect future decisions on closure; (2) information on which alternatives would preclude the future selection of clean closure for the tank farms; and (3) information on cumulative impacts, including the effects of other site activities. This information provides a context for understanding the strategic decisions, now ripe, that are the focus of this EIS. To support the analysis, DOE used closure of a landfill as a representative closure scenario for each alternative, thus providing for a meaningful comparison of the alternatives. DOE intends to prepare a comprehensive plan to integrate tank waste remediation with tank farm closure activities and other Hanford Site remediation programs.

Comment 4: Decisions regarding tank remediation must consider risk, cost, and technical feasibility. Where risks are involved, care should be taken to present a range of potential risks, including expected or most likely estimates as well as the upper-bound estimates presented in the DEIS. While upper-bound estimates may give confidence that actual impacts will not exceed those presented in the DEIS from a worst-case perspective, the inherent uncertainties in risk assessments can distort the comparison of alternatives. This is of particular concern when the upper-bound estimates are derived from a cascade of parameters, much of which was also derived on an upper-bound basis.

While the committee recognizes the utility of quantitative risk assessment in the comparison of remedial alternatives, the limitations of analysis must be underscored. Given the complexity of the Hanford tank farms, many of the potential uncertainties cannot be measured, quantified, or expressed through statistically derived estimates. According to the 1996 National Research Council report Understanding Risk, the 1996 U.S. Environmental Protection Agency report Proposed Guidelines for Carcinogen Risk Assessment, and a recent draft report by the Commission on Risk Assessment and Risk Management, characterization of risk should be both qualitative and quantitative. In this case, qualitative information should include a range of informed views on the risks and the evidence that supports them, the risk likelihood, and the magnitude of uncertainty. Such evaluations of risk should be based on deliberative scientific processes that clarify the concerns of interested and affected parties to prevent avoidable errors, provide a balanced understanding of the state of knowledge, and ensure broad participation in the decision-making process.

Response 4: DOE agrees with these comments and has modified the EIS accordingly in response to similar comments on the Draft EIS received during the public comment period. For example, DOE believes that characterization of the risk should be quantitative when possible and qualitative when parameters are uncertain by more than an order of magnitude. The Final EIS presents the "expected", or "nominal" ranges of risk and upper-bound estimates, and includes (in Appendix E) detailed analysis of uncertainties.

Comment 5: It should be expected that the environmental regulations governing the tank wastes, and the Hanford Site in general, will change over the time during which waste management and environmental remediation occur. DOE should work with the appropriate entities to ensure that future regulatory changes and the future selection of tank remediation approaches are on convergent paths. The development, testing, and analysis of alternatives during the first phase should continue unconstrained by current regulatory requirements and should examine currently untested technologies.

Response 5: DOE agrees that ongoing dialogue with the regulators is necessary to making sound tank waste management decisions. DOE continues to work with the Federal and State regulatory authorities and with the stakeholders to share evolving information regarding impacts and technologies. Toward that end, DOE developed the reasonable alternatives to be analyzed in the EIS on a scientific and engineering basis, then evaluated the alternatives for compliance with regulations. Only four of the ten alternatives addressed in the EIS could be implemented consistent with existing Federal and State regulations. The Record of Decision, however, selects a compliant approach.

Comment 6: Concerning the management and disposal of the cesium and strontium capsules and of the miscellaneous underground storage tanks, the committee found that the DEIS lacks enough substantive information for an evaluation of the proposed remediation strategies. Over 99 percent of the tank wastes is in the single-shell and double-shell tanks, and that is where the greatest potential for health and environmental risk exists. However, the extremely high concentration of radioactivity and the nature of the materials in the capsules necessitate a more thorough discussion of their treatment, disposal, and environmental impact. There are serious deficiencies in the attention given to the long-term changes in the chemical and isotopic composition of the cesium and strontium capsules. The large number and wide distribution of the miscellaneous underground storage tanks make a more complete discussion of their management necessary.

Response 6: DOE agrees with the Council that there is not enough substantive information regarding the cesium and strontium capsules to make a long-term decision on their final disposition. DOE also wants to evaluate potential beneficial uses of the capsules and has decided to defer any disposition of the capsules. In the meanwhile, a Cesium and Strontium Management Plan is currently being prepared by DOE that will address alternatives for beneficial uses of the capsules prior to final disposition. As part of the plan, DOE will continue to collect and analyze information regarding the capsules to reduce uncertainties and better understand long-term impacts, and to ensure that the long-term decision is appropriate.

With regard to the miscellaneous underground storage tanks, DOE believes, based on currently available information, that the waste contained in the miscellaneous underground storage tanks is similar to the waste contained in the single-shell tanks. Because the miscellaneous underground storage tanks represent a small percentage (0.5 percent) of the overall waste volume, the potential long-term impacts posed by the miscellaneous underground storage tanks are within the range of impacts calculated for the single-shell tanks and double-shell tanks. The short-term and long-term impacts associated with the miscellaneous underground storage tanks for activities such as waste retrieval and transfer were analyzed in the EIS.

Comment 7: The proper approach to decision making for tank farm cleanup is to use a phased decision strategy in which some cleanup activities would proceed in the first phase while

important information gaps are filled concurrently to define identified remediation alternatives more clearly, and possibly to identify new and better ones. As part of this strategy, periodic independent scientific and technical expert reviews should be conducted so that deficiencies may be recognized and midcourse corrections be made in the operational program.

Response 7: DOE agrees with the Council that periodic independent scientific and technical expert reviews are essential to the success of the TWRS program. While carrying out the current decisions, DOE will continually evaluate new information relative to the tank waste remediation program. DOE also intends to conduct formal evaluations of new information relative to the tank waste remediation program at three key points over the next eight years under its NEPA regulations (10 CFR 1021.314), with an appropriate level of public involvement, to ensure that DOE will stay on a correct course for managing and remediating the waste. As remediation proceeds in the coming years, DOE will learn more about management and remediation of the tank waste and ways to protect public and worker health and the environment. Within this time frame, DOE will obtain additional information on the effectiveness of retrieval technologies, characteristics of the tank wastes, effectiveness of waste separation and immobilization techniques, and more definitive data on the costs of retrieval, separations, and immobilization of the waste. These formal reevaluations will incorporate the latest information on these topics. DOE will conduct these formal evaluations of the entire TWRS program at the following stages: (1) before proceeding into Privatization Phase I Part B (scheduled for May 1998); (2) prior to the start of hot operations of Privatization Phase I Part B (scheduled for December 2002/December 2003); and (3) before deciding to proceed with Privatization Phase II (scheduled for December 2005). In conducting these reviews, DOE will seek the advice of independent experts from the scientific and financial community, such as the National Academy of Sciences which will focus on performance criteria and the costs of waste treatment. DOE has established a TWRS Privatization Review Board consisting of Senior DOE representatives to provide on-going assistance and interactive oversight of the review of Part A deliverables and discussions with the contractors.

Informal evaluations also will be conducted as the information warrants. These formal and informal evaluations will help DOE to determine whether previous decisions need to be changed.

Washington State Department of Fish and Wildlife Comment

Comment: The Washington State Department of Fish and Wildlife recommends that the following language be included in the Record of Decision:

"The site selection of the precise location of remediation facilities for the selected alternative shall be subject to future supplemental NEPA analysis. This supplemental NEPA analysis shall commit to a supplemental Mitigation Action Plan. The Mitigation Action Plan and supplemental Mitigation Action Plan will be prepared in consultation with the Washington State Department of Fish and Wildlife and the U.S. Fish and Wildlife Service, with input from the Hanford Site's Natural Resource Trustee Council."

"Impacts to State priority shrub-steppe habitat would be one of the evaluation criteria used in site selection. The site selection process would include the following hierarchy of measures:

- Avoid priority shrub-steppe habitat to the extent feasible by locating or configuring project elements in pre-existing disturbed areas.
- Minimize project impacts to the extent feasible by modifying facility layouts and/or altering construction timing."

"Compensatory mitigation measures for the loss of shrub-steppe habitat shall be identified and implemented in the supplemental NEPA analysis and Mitigation Action Plan."

Response: DOE believes that the following approach satisfies the substance of these comments.

The EIS (Section 5.20) describes both mitigation measures that are integral parts of all of the alternatives (Section 5.20.1) and further mitigation measures that could be implemented when indicated or appropriate (Section 5.20.2). In selecting the preferred alternative DOE has committed to all of the mitigation measures in Section 5.20.1, which include measures to restore newly disturbed areas. As the State requested, the Record of Decision commits to conducting NEPA analysis for site selection of facilities.

DOE intends to implement those further measures described in Section 5.20.2 as may be necessary to mitigate potential impacts on priority shrub-steppe habitat, and will consider the potential for such impacts as a factor in the site selection process for TWRS facilities. The site selection process will include the following hierarchy of measures: (1) avoid undisturbed shrub-steppe areas to the extent feasible; (2) minimize impacts to the extent feasible; (3) restore temporarily disturbed areas; (4) compensate for unavoidable impacts by replacing habitat; and (5) manage critical habitat on a Sitewide basis.

DOE believes that mitigation of impacts to habitats of special importance to the ecological health of the region is most effective when planned and implemented on a sitewide basis. Recognizing this, DOE is preparing a sitewide biological management plan to protect these resources. Under this sitewide approach, the potential impacts of all projects would be evaluated and appropriate mitigation would be developed based on the cumulative impacts to the ecosystem. Mitigation to reduce the ecological impacts from TWRS remediation would be performed in compliance with the sitewide biological management plan. Mitigation would focus on disturbance of contiguous, mature sagebrush-dominated shrub-steppe habitat. Compensation (habitat replacement) would occur where DOE deems appropriate. Specific mitigation ratios, sites, and planting strategies (e.g., plant size, number, and density) for TWRS facilities and operations would be defined in the TWRS Mitigation Action Plan, which would be revised for each specific TWRS facility siting decision. The Mitigation Action Plan would be prepared in consultation with the Washington State Department of Fish and Wildlife, the U.S. Fish and Wildlife Service, and Tribal Nations, with input from the Hanford Site's Natural Resources Trustees Council. DOE will make the Mitigation Action Plan publicly available before taking action that is the subject of a mitigation commitment.

[FR Doc. 97–4696 Filed 2–25–97; 8:45 am]
BILLING CODE 6450–01–P

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

SUMMARY: The Energy Information Administration (EIA) is soliciting comments concerning the proposed three year clearance with no changes to the forms EIA–800–804, 807, 810–814, 816, 817, 819M, and 820 of EIA's Petroleum Supply Reporting System.

DATES: Written comments must be submitted on or before April 28, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below of your intention to do so as soon as possible.

ADDRESSES: Send comments to Michael Conner, Energy Information Administration, EI–421, Forrestal Building, U.S. Department of Energy, Washington, DC 20585, (202) 586–1795, e-mail mconner@eia.doe.gov, and FAX (202) 586–5846.

FOR FURTHER INFORMATION: Requests for additional information or copies of the form and instructions should be directed to Michael Conner at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. No. 93–275) and the Department of Energy Organization Act (Pub. L. No. 95–91), the Energy Information Administration is obliged to carry out a central, comprehensive, and unified energy data and information program. As part of this program, EIA collects, evaluates, assembles, analyzes, and disseminates data and information related to energy resource reserves, production, demand, and technology, and related economic and statistical information relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

The Energy Information Administration, as part of its continuing effort to reduce paperwork and respondent burden (required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13)), conducts a presurvey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing reporting forms. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Also, EIA will later seek approval by the Office of Management and Budget (OMB) for the collections under Section 3507(h) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13, Title 44, U.S.C. Chapter 35).

The Petroleum Supply Reporting System collects data necessary for determining the supply and disposition of crude oil, finished petroleum products, and natural gas liquids. These data are published by the Energy Information Administration in the Weekly Petroleum Status Report, Petroleum Supply Monthly, and the Petroleum Supply Annual. Respondents to the surveys are producers of oxygenates, operators of petroleum refining facilities, blending plants, bulk terminals, crude oil and product pipelines, natural gas plant facilities, tanker and barge operators, and oil importers.

II. Current Actions

The Energy Information Administration will request a three year clearance with no changes to the existing collection forms.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of responses. (If the notice covers more than one form, add "Please indicate to which form(s) your comments apply.")

General Issues

A. Is the proposed collection of information necessary, taking into account its accuracy, adequacy, and reliability, and the agency's ability to process the information it collects in a useful and timely fashion.

B. What enhancements can EIA make to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can data be submitted in accordance with the due date specified in the instructions?

C. EIA allows for respondents to report manually or by using the Petroleum Electronic Data Reporting Option (PEDRO) for all forms except the EIA–807, EIA–819M, and EIA–820. EIA believes that reporting using PEDRO takes less time than manual reporting. Estimated public reporting burden for the collections are listed below. For those forms that utilize PEDRO, two estimates are provided: the first is for an average report prepared manually and the second is for an average report submitted using PEDRO. The burden estimates are: EIA–800, 1 hour 15 minutes (manual submission) and 1 hour (PEDRO submission); EIA–801, 45 minutes and 30 minutes; EIA–802, 45 minutes and 30 minutes; EIA–803, 30 minutes and 15 minutes; EIA–804, 1 hour 15 minutes and 1 hour; EIA–807, 1 hour for weekly reports from October through March, and 30 minutes for monthly reports from April through September; EIA–810, 3 hours 45 minutes and 2 hours; EIA–811, 1 hour 45 minutes and 1 hour; EIA–812, 2 hours 15 minutes and 1 hour 30 minutes; EIA–813, 1 hour 30 minutes and 45 minutes; EIA–814, 2 hours and 1 hour 15 minutes; EIA–816, 45 minutes and 30 minutes; EIA–817, 1 hour 45 minutes and 1 hour; EIA–819M, 30 minutes; and EIA–820, 2 hours. Burden includes the total time, effort, or financial resources expended to generate, maintain, retain, or disclose or provide the information including: (1) reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

Please comment on (1) the accuracy of our estimate and (2) how the agency could minimize the burden of the collection of information, including the use of automated collection techniques or other forms of information technology.

D. What are the estimated (1) total dollar amount annualized for capital and start-up costs, and (2) recurring annual dollar amount of operation, maintenance, and purchase of service costs associated with this data collection? The estimates should take into account the costs associated with generating, maintaining, and disclosing or providing the information. Estimates should not include purchases of equipment or services made as part of customary and usual business practices, or the cost of any burden hours for completing the form. EIA estimates that there are no additional costs other than those that the respondent incurs in keeping the information for its own uses.

E. Do you know of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, the data element(s), and the methods of collection.

As a Potential User

A. Can you use data at the levels of detail indicated on the form?

B. For what purpose would you use the data? Be specific.

C. Are there alternate sources of data and do you use them? If so, what are their deficiencies and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, D.C. February 20, 1997.

Lynda T. Carlson,

Director, Office of Statistical Standards, Energy Information Administration.

[FR Doc. 97–4694 Filed 2–25–97; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. CP97–246–000]

ANR Pipeline Company; Notice of Application

February 20, 1997.

Take notice that on February 14, 1997, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed an application pursuant to Sections 7(c) of the Natural Gas Act and Part 157 of the Commission's Regulations for authorization to utilize temporary work spaces and for any other authorization deemed necessary associated with a pipeline replacement project in Kendall County, Illinois, all as more fully set forth in the application on file with the Commission and open to public inspection.

ANR states, that in order to satisfy U.S. Department of Transportation safety regulations, it proposes to replace both a 0.27 mile and 0.29 mile line segment of its main line system due to increased population density in the area. ANR states that in order to make the replacement it will have to utilize work areas which may not have been included in the scope of the original authorization to construct the facilities. Therefore, ANR requests the temporary use of work space and any other authorizations deemed necessary by the Commission in order to make the replacement. ANR states that the construction will be done under the authority of Section 2.55 of the Commission's Regulations, which authorizes replacement within the existing right-of-way.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 13, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in any subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for ANR to appear or to be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–4673 Filed 2–25–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER97–1170–000]

Bangor Hydro Electric Company; Notice of Filing

February 20, 1997.

Take notice that on December 31, 1996, Bangor Hydro Electric Company tendered for filing a Pro Forma Open Access Transmission Tariff. Bangor Hydro states that this submittal is to remove higher voltage network facilities from its tariff.

Any Person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 27, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4721 Filed 2–25–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–408–018]

Columbia Gas Transmission Corporation; Notice of Compliance Filing

February 20, 1997.

Take notice that on February 14, 1997, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective on February 1, 1997.

On December 31, 1996, as revised on January 17, 1997, Columbia filed revised tariff sheets in Docket No. RP95–408, et al. that, inter alia, would implement lower settlement rates pending Commission action on the November 22, 1996 settlement in this docket, contingent upon customers being subject to a surcharge in the event the settlement is not approved or implemented. The Federal Energy Regulatory Commission (Commission) issued its order on Columbia's filings on January 29, 1997 (78 FERC ¶ 61,071), which accepted the revised tariff sheets but which required that Columbia file revised tariff sheets setting forth the existing rates which any customer that does not agree to the surcharge provision may pay until the settlement is acted upon by the Commission.

Columbia states that the instant filing is being made in compliance with that order. The revised tariff sheets herein indicate they are "Collection Rates" and contain a statement that they are applicable to customers not wanting to be subject to the surcharge condition associated with paying the Settlement Rates. These tariff sheets reflect the rates that were in effect in the billing month preceding February 1, 1997.

Columbia states that copies of its filing have been mailed to all parties in this proceeding, firm and interruptible customers, and affected state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–4676 Filed 2–25–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–252–000]

East Tennessee Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

February 20, 1997.

Take notice that on February 14, 1997, East Tennessee Natural Gas Company (East Tennessee), tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume 1, the following revised tariff sheet, to be effective on March 1, 1997:

Tenth Revised Sheet No. 4

East Tennessee is filing the proposed tariff sheet pursuant to its Rate Schedule LMS–MA, which requires East Tennessee to reflect its Daily Demand Service (DDS) rate changes in the DDS rates of its upstream transporter, Tennessee Gas Pipeline Company (Tennessee).

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–4679 Filed 2–25–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP96–341–003 and CP94–327–005]

Koch Gateway Pipeline Company; Notice of Compliance Filing

February 20, 1997.

Take notice that on February 18, 1997, Koch Gateway Pipeline Company (Koch) tendered for filing the following revised tariff sheets in its FERC Gas Tariff, Fifth Revised Volume No. 1, to be effective October 1, 1996:

2nd Substitute Original Sheet No. 719

Koch states that this tariff sheet is filed to comply with the Federal Energy Regulatory Commission's (Commission) "Order Accepting Tariff Filing Subject to Conditions" issued February 3, 1997 in Docket Nos. RP96–341 and CP94–327.

Koch states that a copy of this filing is being served upon all parties on the official service list created by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–4678 Filed 2–25–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER97–253–000]

Northern Border Pipeline Company; Notice of Petition for Limited Waiver of Tariff Provisions

February 20, 1997.

Take notice that on February 14, 1997, Northern Border Pipeline Company (Northern Border) petitioned the Federal Energy Regulatory Commission (Commission) for a limited waiver of Northern Border's FERC Gas Tariff, to the extent necessary, to allow Northern Border to waive an imbalance penalty incurred by two of its shippers.

Any Person desiring to be heard or to make any protest with reference to said application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission Rules of Practice and Procedure. All such motions or protest must be filed on or before February 27, 1997. Protests will be considered by it in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 97–4680 Filed 2–25–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–51–004]

Panhandle Eastern Pipe Line Company; Notice of Filing

February 20, 1997.

Take notice that on February 14, 1997, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing its compliance filing to report the operating experience under Rate Schedule GPS (Gas Parking Service) for the twelve months ended December 31, 1996 in compliance with Ordering Paragraph (D) of the Commission's Order dated June 4, 1996 in Docket No. RP96–51–000, 75 FERC ¶ 61,255 (1996).

Panhandle states that copies of this filing are being served on all parties to the proceedings in Docket No. RP96–51–000.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before February 27, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–4677 Filed 2–25–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–241–000]

Transcontinental Gas Pipe Line Company; Notice of Request Under Blanket Authorization

February 20, 1997.

Take notice that on February 11, 1997, Transcontinental Gas Pipe Line Company (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP97–241–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct, own, and operate a new sales tap, located in Delaware County, Pennsylvania, to Tosco Refining Company (Tosco), a refiner of crude oil products, under Transco's blanket certificate issued in Docket No. CP82–426–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Transco proposes to construct, own, and operate a sales tap to Tosco consisting of a 6-inch valve assembly, a meter station with two 6-inch meter runs, and other appurtenant facilities, located in Delaware County, Pennsylvania. Transco states Tosco will construct, or cause to be constructed, appurtenant facilities to enable it to receive gas from Transco at such point and move the gas to Tosco's refinery facilities.

Transco asserts the new sales will be used by Tosco to receive up to 24,000 Mcf of gas per day from Transco on a capacity release, secondary firm or interruptible basis. Transco declares upon completion of the sales tap, they will commence transportation service to Tosco or its suppliers pursuant to Transco's Rate Schedules FT, FT–R, or IT and Part 284(G) of the Commission's Regulations. Transco states the addition of the sales tap will have no significant impact on their peak day or annual deliveries, and is not prohibited by Transco's FERC Gas Tariff.

Transco states the estimated total cost of their proposed facilities to be approximately $375,000, which Tosco will reimburse Transco for all costs associated with such facilities.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–4672 Filed 2–25–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–236–0073]

Williston Basin Interstate Pipeline Company; Notice of Interim Refund

February 20, 1997.

Take notice that on November 1, 1996, Williston Basin Interstate Pipeline Company (Williston Basin) filed its Report of the Interim refund and the amount of the refund broken out to show principal and interest.

Williston Basin states that the total refund amount distributed to customers is $6,038,687.05.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before February 27, 1997. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–4675 Filed 2–25–97; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2009–000–NC]

North Carolina Power; Notice of Scoping Meetings Pursuant to the National Environmental Policy Act of 1969

February 20, 1997.

Virginia Electric and Power Company operating in Virginia as Virginia Power and in North Carolina as North Carolina Power (NCP) is the licensee for the Roanoke Rapids and Gaston Project, FERC No. 2009. The license for the project expires on January 31, 2001.

On May 23, 1995, NCP held the first stage consultation meeting for the project. The purpose of the meeting was to identify resource issues to be addressed during the relicensing process. Studies were initiated in January 1996 and are currently ongoing.

During 1996, NCP determined that an Applicant Prepared Environmental Assessment (APEA) would facilitate the relicensing process, which was generally supported by the resource agencies and interested parties. Federal Energy Regulatory Commission (FERC) approval to conduct the APEA process was granted on December 13, 1996. As part of the APEA process, NCP has prepared a Scoping Document I (SDI), which provides information on the scoping process, APEA schedule, background information, environmental issues, and proposed project alternatives. The issues contained in SDI are based on agency and public comments at the May 23, 1995, and other meetings.

The purpose of this notice is to: (1) advise all parties as to the proposed scope of the environmental analysis, including cumulative effects, and to seek additional information pertinent to this analysis; and (2) advise all parties of their opportunity for comment.

Scoping Process

The Commission's scoping objectives are to:

- identify significant environmental issues;
- determine the depth of analysis appropriate to each issue;
- identify the resource issues not requiring detailed analysis; and
- identify reasonable project alternatives.

The purpose of the scoping process is to identify significant issues related to the proposed action and to determine what issues should be addressed in the APEA document to be prepared pursuant to the National Environmental Policy Act of 1969 (NEPA). The document, SDI, will be circulated to enable appropriate federal, state, and local resource agencies, developers, Indian tribes, nongovernmental organizations (NGO's), and other interested parties to effectively participate in and contribute to the scoping process. SDI provides a brief description of the proposed action, project alternatives, the geographic and temporal scope of a cumulative effects analysis, and a list of preliminary issues.

Scoping Meetings

NCP and FERC staff will conduct two scoping meetings. All interested individuals, organizations, and agencies are invited to attend and assist in identifying the scope of environmental issues that should be analyzed in the APEA NEPA document.

The public scoping meeting will be held on March 13, 1997, from 7:00 p.m. to 11:00 p.m. at the Kirkwood F. Adams Community Center, 1100 Hamilton St. Roanoke Raids, NC.

The agency scoping meeting will be held on March 13, 1997, from 9:00 a.m. to 5:00 p.m., at the offices of North Carolina Power, 1040 Roanoke Avenue, Roanoke Rapids, NC. For more details, interested parties should contact Ken Baker, (804) 273–3257, prior to the meeting date.

Objectives

At the scoping meetings, the NCP and FERC staff will: (1) summarize the environmental issues tentatively identified for analysis in the NEPA document; (2) solicit from the meeting participants all available information, especially quantified data, on the resources at issue, and (3) encourage statements from experts and the public on issues that should be analyzed in the NEPA document. Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying the issues to be addressed.

Meeting Procedures

The meetings will be recorded by a stenographer and become a part of the formal record of the Commission proceeding on the Roanoke Raids Project. Individuals presenting statements at the meetings will be asked to identify themselves for the record.

Concerned parties are encouraged to offer verbal guidance during public meetings. Speaking time allowed for individuals will be determined before each meeting, based on the number of persons wishing to speak and the approximate amount of time available for the session, but all speakers will be provided at least 5 minutes to present their views.

All those attending the meeting are urged to refrain from making any communications concerning the merits of the project to any member of the Commission staff outside of the established process for developing the record as stated in the record of the proceeding.

Persons choosing not to speak but wishing to express an opinion, as well as speakers unable to summarize their positions within their allotted time, may submit written statements for inclusion in the public record no later than April 14, 1997.

All filings should contain an original and 8 copies. Failure to file an original and 8 copies may result in appropriate staff not receiving the benefit of your comments in a timely manner. See 18 CFR 4.34(h). In addition, commenters *may* submit a copy of their comments on a 3½-inch diskette formatted for MS–DOS based computers. In light of our ability to translate MS–DOS based materials, the text need only be submitted in the format and version that it was generated (i.e., MS Word, WordPerfect 5.1/5.2, ASCII, etc.). It is not necessary to reformat word processor generated text to ASCII. For Macintosh users, it would be helpful to save the documents in Macintosh word processor format and then write them to files on a diskette formatted for MS–DOS machines. All comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, and should clearly show the following captions on the first page: Roanoke Rapids Project, FERC No. 2009.

Further, interested persons are reminded of the Commission's Rules of Practice and Procedures, requiring parties or intercederers (as defined in 18 CFR 385.2010) to file documents on each person whose name is on the official service list for this proceeding. See 18 CFR 4.34(b).

Based on all written comments and a Scoping Document II (SDII) may be issued. SDII will include a revised list of issues, based on the scoping sessions.

For further information regarding the APEA scoping process, please contact Ed Crouse, Federal Energy Regulatory Commission, Office of Hydropower Licensing, 888 First Street, NE, Washington, DC, 20426 at (202) 219–2794.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–4674 Filed 2–25–97; 8:45 am]

BILLING CODE 6717–01–M

Western Area Power Administration

Proposal To Extend Electric Power Resource Commitments to Contractors of the Salt Lake City Area Integrated Projects by Application of the Energy Planning and Management Program Power Marketing Initiative

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposal.

SUMMARY: In 1995, the Department of Energy, Western Area Power Administration (Western) completed an environmental impact statement (EIS), DOE/EIS–0182, on its Energy Planning and Management Program (Program). Western published a Final Rule adopting the Program on October 20, 1995 (10 CFR Part 905). The Program has two major components: a requirement that all long-term, firm electrical power contractors prepare integrated resource plans (IRP) or small customer plans; and a Power Marketing Initiative (PMI) in which these contractors will receive an extension of a major portion of the resources available at the time the contracts expire. The Record of Decision (ROD) stated that Western would implement the requirements for customers to prepare IRPs and small customer plans immediately, but that application of the PMI would be done on a project-specific basis. Western now proposes to apply the PMI to the long-term, firm power contracts of the Salt Lake City Area Integrated Projects (SLCA/IP).

DATES: Western will accept written comments on or before May 27, 1997. The times and locations of four information/comment meetings will be announced in a subsequent notice in the **Federal Register**.

ADDRESSES: Comments may be submitted to: Mr. David Sabo, Western Area Power Administration, Colorado River Storage Project Manager, P.O. Box 11606, Salt Lake City, UT 84147–0606.

SUPPLEMENTARY INFORMATION: Western first proposed the Program on April 19, 1991 (56 FR 16093). The goals of the Program were to encourage efficient energy use by Western's long-term, firm power customers by requiring integrated resource planning and to extend Western's firm power resource commitments as contracts expire. Western published its notice of intent to prepare an EIS on the Program in the **Federal Register** on May 1, 1991 (56 FR 19995).

President Bush signed the Energy Policy Act (EPAct) into law on October 24, 1992. Section 114 of EPAct amended Title II of the Hoover Power Plant Act of 1984 to require the preparation of IRPs by Western's customers. Western adjusted its proposed Program to fully incorporate the provisions of this law.

A notice of proposed rulemaking for the Program was published in the **Federal Register** on August 9, 1994 (59 FR 40543), with seven public information/comment forums held at various locations during September 1994. In the August 9 Notice, Western estimated that initially 98 percent of SLCA/IP resources available at the end of the term of existing contracts would be extended.

In the Final rule, Western stated that application of the PMI including length of resource extension and the amount of resources extended would be determined through a project specific process later.

Under the PMI, existing firm power sales commitments were to be extended for 20 years beyond the existing termination date. A commitment of not less than 96 percent of the hydroelectric power resource determined to be available to the customers was to be extended, and a power resource pool of up to 4 percent of the power from these customers would be created.

The resource pool would be used for allocations to new customers and contingencies. The rule stated that a more precise decision on how resource pools would be used would be made by Western later. Western's rule further stated that the percentage of existing commitments extended for the other projects would be determined later. It also stated that the application of the PMI for the "Salt Lake City Area Integrated Projects Marketing Plan would be determined following completion of the separate National Environmental Policy Act of 1969 (NEPA) process currently under way." That NEPA process is the SLCA/IP Electric Power Marketing EIS. The final EIS was published in January 1996, and the ROD was published in October 1996.

Western proposes to apply the PMI, (10 C.F.R. 905.31 through 905.37), to the SLCA/IP. This includes, among other things, a proposal to extend 96 percent of the SLCA/IP contractors' entitlement of long-term, firm Federal resources as of September 30, 2004, for an additional 20 years. Western proposes that an initial resource pool of up to 4 percent of available Federal resources be created for new customers to encourage customer development of new technologies for conservation or renewable resources and for contingencies. Western's analysis shows that a resource pool of 4 percent of available resources should be adequate to provide potential new customers with a fair share entitlement of Federal resources. Fair share amounts of capacity and energy will be offered to new customers meeting the requirements established in the Post-89 Marketing Criteria and to qualifying Indian tribes within the SLCA/IP marketing area. Indian tribes need not have utility status to qualify for an allocation. In addition to the adjustment in long-term firm resources in 2004, resource commitments may be reduced on October 1, 2009, and October 1, 2014, upon 2 years written notification. These resource adjustments would provide an additional amount of power for the same purposes as the 2004 adjustment.

Adjustments may also be made in resource allocations at any time to reflect changes in dam operations and/or water conditions upon 5 years notification.

Western is seeking comments on the appropriateness of the length of extension offered and on what percentage of the SLCA/IP resource should be extended to the SLCA/IP long-term, firm power customers. In addition Western requests comments on the uses that should be made of the electrical power resource pool that will be created. Following the public comment period, Western will analyze the comments received and publish its policy regarding extension of resource commitments in the **Federal Register**.

NEPA COMPLIANCE: Western will comply with NEPA through preparation of appropriate NEPA documentation of the impacts of the proposal.

DETERMINATION UNDER EXECUTIVE ORDER 12866: DOE has determined that this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget (OMB) is required.

Issued in Washington, DC on February 19, 1997.

Joel K. Bladow,

Assistant Administrator.

[FR Doc. 97–4693 Filed 2–25–97; 8:45 am]

BILLING CODE 6450–01–P

Proposed 2004 Power Marketing Plan

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed plan.

SUMMARY: The Western Area Power Administration's (Western) Sierra Nevada Customer Service Region (Sierra Nevada Region) has developed a Proposed 2004 Power Marketing Plan (Proposed Plan). The Proposed Plan provides for marketing power from Central Valley Project (CVP) and Washoe Project powerplants after the year 2004. Western currently markets about 1,580 megawatts (MW) of CVP power under long-term contracts to 80 preference customers in northern and central California. Western also markets 3.65 MW of Washoe Project power. On December 31, 2004, all of Western's long-term CVP power sales contracts will expire, along with Contract 14–06–200–2948A (Contract 2948A) with the Pacific Gas and Electric Company (PG&E) for the sale, interchange and transmission of electric capacity and energy. Western has developed the Proposed Plan to define the products and services to be offered, and the eligibility and allocation criteria that will lead to allocations of CVP and Washoe Project power beyond the year 2004. This **Federal Register** notice initiates the Administrative Procedure Act process that gives the public an opportunity to participate in administrative rulemaking for marketing of this power by Western after the year 2004, and requests public comment.

DATES: On April 8, 1997, beginning at 10 a.m., Western will hold a public information forum on the Proposed Plan. At the information forum, Western representatives will present the Proposed Plan and respond to questions from the public. On April 24, 1997, beginning at 1 p.m., Western will hold a public comment forum to receive oral and written comments on the Proposed Plan. Each forum will be held at the Sierra Nevada Regional Office, 114 Parkshore Drive, Folsom, California. Oral or written comments may be presented at the public comment forum. A transcript of oral comments made at this forum will be available from the court reporter. Written comments on the Proposed Plan will be accepted from the date of publication of this **Federal Register** notice through May 27, 1997.

ADDRESSES: Written comments may be hand-delivered, mailed, or faxed to the address provided below. Comments must be received by 5 p.m. PDT or postmarked on May 27, 1997 to assure consideration. Inquiries and written comments regarding the Proposed Plan should be directed to: James C. Feider, Regional Manager, Western Area Power Administration, Sierra Nevada Region, 114 Parkshore Drive, Folsom, CA 95630–4710, (916) 353–4418, (916) 985–1931 FAX.

All documentation developed or retained by Western for the purpose of developing the Proposed Plan will be available for inspection and copying at the address below.

FOR FURTHER INFORMATION CONTACT: Zola M. Jackson, Power Marketing Manager, Western Area Power Administration, Sierra Nevada Region, 114 Parkshore Drive, Folsom, CA 95630–4710, (916) 353–4421.

After all public comments have been considered, Western will publish a Final 2004 Power Marketing Plan (Final Plan) in the **Federal Register**.

SUPPLEMENTARY INFORMATION:

Authorities

The Sierra Nevada Region developed this Proposed Plan in accordance with its power marketing authorities in the Federal Reclamation laws, the Act of June 17, 1902 (32 Stat. 388), the Act of August 4, 1939 (53 Stat. 1187); the Act of April 8, 1935 (49 Stat. 115), the Act of June 22, 1936 (49 Stat. 1622), the Act of August 26, 1937 (50 Stat. 844), the Act of October 17, 1940 (54 Stat. 1198), the Act of December 22, 1944 (58 Stat. 887), Act of October 14, 1949 (63 Stat. 852), the Act of September 26, 1950 (64 Stat. 1036), the Act of August 12, 1955 (69 Stat. 719), the Act of August 1, 1956 (70 Stat. 775), the Act of June 3, 1960 (74 Stat. 156), the Act of October 23, 1962 (76 Stat. 1173), the Act of September 2, 1965 (79 Stat. 615), the Act of August 4, 1977 (91 Stat. 565), and the Act of July 16, 1984, including all acts amendatory and/or supplementary to the above listed.

Development of the Proposed Plan

Western is developing the Proposed Plan to define: (1) the products and services to be offered, and (2) the criteria for allocating power resources to be marketed under contracts that will replace those expiring on December 31, 2004.

Development of the Proposed Plan was initiated with a series of three informal public information meetings held on November 17, 1995, March 7, 1996, and May 13, 1996. These meetings began informal discussions to identify pertinent issues and possible marketing options, including products and services and eligibility and allocation criteria, to be included in the Proposed Plan. During the informal process, Western evaluated several options for marketing power after termination of existing contracts. Western's proposal provides each customer a right to customize its power allocation from Western. This will provide a customer the flexibility to optimize the use of Western power.

Western is also proposing to offer a resource extension to existing customers and to offer a portion of the resource to new customers. Western believes its Proposed Plan provides a balance between existing and new customers, while meeting its contractual obligations that continue beyond 2004.

As explained in the DATES section of this notice, Western will hold public information and comment forums on the Proposed Plan. After consideration of all public comments, Western will publish notice of the Final Plan in the **Federal Register**. With that notice, Western will also announce its decisions regarding power resource extensions to existing customers and call for applications for new allocations. The deadline for receipt of applications will be set forth in the call for applications. Western will then consider the applications, determine which applications meet the requirements of the Final Plan, and exercise its discretion provided by law in allocating the power to eligible applicants. Proposed and final allocations will subsequently be published in the **Federal Register**.

To implement the Proposed Plan, the level of power resources to be marketed must be determined. Determining levels of power resources to be marketed and subsequently entering into contracts for the delivery of related products and services could be a major Federal action with potentially significant impacts on the human environment. Therefore, an Environmental Impact Statement (EIS) process was initiated on the 2004 Power Marketing Program with a **Federal Register** notice published at 58 FR 42536 and 43105, on August 10 and 13, 1993, respectively, in compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, et seq.), as amended, and associated implementing regulations. Following several public meetings, a draft EIS was prepared. The draft EIS described the environmental consequences of a range of reasonable marketing plan alternatives and identified no significant impacts. A **Federal Register** notice was published on May 24, 1996 (61 FR 26174) announcing that the draft EIS was available for public review and comment. Also, Western held a public hearing on June 13, 1996 to receive formal comments on the draft EIS, with a July 31, 1996 deadline for receipt of written comments. A final EIS is expected to be completed by March 1997, and a Record of Decision is tentatively scheduled to be published in April 1997. The Final Plan will incorporate decisions made as a result of the findings of the final EIS.

The schedule for the Proposed Plan was developed to recognize Western's responsibility to its customers to provide: (1) necessary planning time (approximately 5 years after final contract commitments) for customers to acquire new power resources should their allocation of CVP power change; (2) sufficient time for Western's Sierra Nevada Region or its customers to negotiate contracts for control area services, third-party transmission, and supplemental power supplies; and (3) time to meet with each customer to design a product/service package prior to the customer making a final commitment.

The Proposed Plan also incorporates the intent of the Final Rule for the Energy Planning and Management Program (EPAMP) (10 CFR part 905), published by Western on October 20, 1995 at 60 FR 54151. The EPAMP Final Rule became effective on November 20, 1995. EPAMP implements Section 114 of the Energy Policy Act of 1992, and requires Western's customers to prepare Integrated Resource Plans (IRP). The Power Marketing Initiative (PMI) of EPAMP provides a framework for extending a major portion of the power available at the time current contracts expire to existing customers, and for establishing project-specific resource pools. During the public process for EPAMP, it was determined that application of the PMI to the CVP would be evaluated during the 2004 Power Marketing Plan public process.

Background

The CVP is a large water and power system, initially authorized by Congress in 1935, which covers approximately one-third of the State of California. Legislatively defined purposes set the priorities for the CVP as: (1) river regulation; (2) improvement of navigation; (3) flood control; (4) irrigation; (5) domestic uses; and (6) power. In addition, the CVP Improvement Act of 1992 added fish and wildlife habitat as a priority to the list of CVP purposes.

The CVP power facilities include 11 powerplants with a maximum operating capability of about 2,044 MW, and an estimated average annual generation of 4.6 million megawatthours (MWh). The U.S. Department of the Interior, Bureau of Reclamation (Reclamation) operates the water control and delivery system and all of the powerplants with the exception of the San Luis Unit, which is operated by the State of California for Reclamation. Western markets and transmits the power available from the CVP.

Western owns the 94 circuit-mile Malin-Round Mountain 500-kilovolt (kV) transmission line (an integral section of the Pacific Northwest-Pacific Southwest Intertie (Pacific Intertie)), 803 circuit miles of 230-kV transmission line, 7 circuit miles of 115-kV transmission line and 44 miles of 69-kV and below transmission line. Western also has part ownership in the 342-mile California-Oregon Transmission Project (COTP). Some of Western's existing customers have no direct access to Western's transmission lines and receive service over transmission lines owned by other utilities.

Western has historically combined output from CVP hydroelectric facilities with supplemental power from a number of other power resources. This has enabled Western to enhance the CVP power resources and to market an amount of firm power to its customers that would not be available solely from CVP facilities in all years. A portion of this supplemental power has been transmitted over the COTP and Pacific Intertie.

The Washoe Project was authorized by Congress in 1956 and is a separate project from the CVP. The Washoe Project, located in west-central Nevada and east-central California, was designed to regulate runoff from the Truckee and Carson rivers and to enhance irrigation; water drainage; municipal, industrial, and fisheries uses; and provide flood protection; fish and wildlife habitat; and recreation. The Washoe Project includes Prosser Creek Dam and reservoir; Stampede Dam, reservoir, and powerplant; Marble Creek Dam; and Pyramid Lake Fishway. The Stampede Powerplant, located in Sierra County, California, was completed in 1987, and has a maximum operating capability of 3.65 MW with an estimated annual generation of 10,000 MWh. Sierra Pacific Power Company (SPPC) owns and operates the only transmission system available for distribution of power generated at the Stampede Powerplant.

History of Central Valley Project Power Allocations

Power was first generated in the CVP at the Shasta Powerplant in 1944. Formal allocations of 450 MW of CVP power were first made in 1952. In 1964, with the addition of the Trinity River Division facilities, allocations to preference customers were increased to 925 MW. In 1967, under terms of Contract 2948A, power imports over the Pacific Intertie (Northwest imports) were incorporated along with provisions for load level increases up to 985 MW in 1975 and up to 1,050 MW in 1980.

Later in 1980, the load level was increased by 102 MW to 1,152 MW. This increase in allocations was accomplished under the 1981 Power Marketing Plan (47 FR 4139) dated January 28, 1982. New customers received 26 MW of nonwithdrawable power and 42 MW of withdrawable power for a total of 68 MW, with 4 MW of withdrawable power left unallocated. Also, diversity power allocations of 30 MW were made to those customers who could shed load during Sierra Nevada Region's system simultaneous peak.

During the same time period, SMUD challenged Western's right to meld the costs of Northwest imports into CVP power rates charged to SMUD. In a 1983 settlement, it was agreed that SMUD would pay the melded CVP power rates; SMUD's electric service contract, due to expire in 1994, would be extended to 2004; and SMUD would have the right to purchase 100 MW of peaking capacity through 2004. Further, SMUD would have the right to purchase a portion of the power to be marketed from 2005 to 2014.

Under the 1994 Power Marketing Plan (57 FR 45782 and 58 FR 34579) dated October 5, 1992 and June 28, 1993, respectively, existing customers with contracts expiring in 1994 were allocated 501 MW, and approximately 8 MW was allocated to new customers.

In addition to the power marketed in the 1994 Power Marketing Plan, total power under existing contracts includes approximately 910 MW of long-term firm power, 100 MW of peaking capacity, and 60 MW of withdrawable power, for a total of about 1,580 MW. See Appendix A of this notice for Existing Customers' CRD Amounts.

On November 30, 1993, the National Defense Authorization Act (NDA Act) was signed into law. This act provides that, for a 10-year period, the CVP electric power allocations to military installations in the State of California which have been closed or approved for closure shall be reserved for sale through long-term contracts to preference entities which agree to use such power to promote economic development at the military installations closed or approved for closure. On December 1, 1994, Western published the final NDA Act procedures developed to fulfill the requirements of section 2929 of the NDA Act (59 FR 61604). To date, about 42 MW of long-term firm power and about 9 MW of withdrawable power under contract to military installations being closed has been converted to NDA Act power.

History of Washoe Project (Stampede Powerplant) Allocations

Pursuant to Final Allocation of Stampede Powerplant Power (50 FR 43456) dated October 25, 1985, Western allocated all the energy generated at Stampede Powerplant in excess of that needed to serve project use (Lahontan Fish Hatchery and Marble Bluff Fish Facility) to Truckee-Donner Public Utility District. Because Truckee-Donner was unable to obtain transmission service, it was unable to enter into a contract with Western to receive Stampede energy. In 1988, Western rescinded the allocation of Stampede energy to Truckee-Donner and marketed Stampede energy to SPPC under short-term agreements.

In 1990, Western began conducting a bidding process for the sale of Stampede energy, giving priority to preference entities. Since no preference entity met the bidding criteria, SPPC continued to purchase Stampede energy under short-term agreements.

In April 1994, Western executed agreements with SPPC and the Fish and Wildlife Service (F&WS) which established a mechanism to provide project use service to the F&WS facilities. These agreements also provide Western the option to market and transmit all energy, in excess of that which is required to provide project use service, outside of SPPC's control area.

Regulatory Procedure Requirements

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601, et seq.), each agency, when required to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. Western has determined that (1) this rulemaking relates to services offered by Western and therefore is not a rule within the purview of the Act, and (2) an allocation of power from Western would not cause an adverse economic impact to such entities. The requirements of this Act can be waived if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. By his execution of this **Federal Register** notice, Western's Administrator certifies that no significant economic impact on a substantial number of small entities will occur.

Environmental Compliance

In compliance with NEPA (42 U.S.C. 4321, et seq.), Council on Environmental Quality NEPA implementing regulations (40 CFR parts 1500–1508), and DOE NEPA implementing regulations (10 CFR part 1021), Western completed an environmental impact statement on EPAMP. The Record of Decision was published in the **Federal Register** on October 12, 1995 (60 FR 53181). Additionally, as described in the Supplementary Information Section of this notice, Western and the Environmental Protection Agency announced the availability of Western's draft EIS on the 2004 Power Marketing Program in **Federal Register** notices published on May 24, 1996 (61 FR 26174 and 26178, respectively). The draft EIS described the environmental consequences of a range of reasonable marketing plan alternatives and identified no significant impacts. The Proposed Plan falls within the range of alternatives considered. This NEPA review will assure all environmental effects related to Western's Proposed Plan have been identified and analyzed.

CVP and Washoe electrical capacity and energy to be marketed is influenced by available reservoir storage and water releases controlled by Reclamation within the CVP in California. Pursuant to Title 34 of Public Law 102–575, the CVP Improvement Act of 1992, Reclamation is preparing a Programmatic Environmental Impact Statement (PEIS) addressing improvements to fish and wildlife habitat stipulated in Public Law 102–575, and potential changes in CVP operations and water allocations to meet those obligations. The draft PEIS may result in modifications to CVP facilities and operations that would affect the timing and quantity of electric power generated by the CVP. Such changes may, in turn, affect electric power products and services to be marketed by Western. This Proposed Plan is designed to accommodate these changes. Western is a cooperating agency in Reclamation's PEIS.

Review Under the Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520, Western has received approval from the Office of Management and Budget (OMB) for the collection of customer information in this rule, under control number 1910–1200.

Determination Under Executive Order 12866

DOE has determined that the Proposed Plan is not a significant regulatory action because it does not meet the criteria of Executive Order 12866 (58 FR 51735). Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by OMB is required.

Proposed 2004 Power Marketing Plan

This Proposed Plan addresses: (1) the power to be marketed after 2004; (2) the terms and conditions under which the power will be marketed; and (3) the criteria to determine who will receive an allocation.

Within broad statutory guidelines and operational constraints of the CVP, Western has wide discretion as to whom and on what terms it will contract for the sale of Federal power as long as preference is accorded to statutorily defined public bodies. Power must be sold in such a manner as will encourage the most widespread use at the lowest possible rates consistent with sound business principles.

I. Acronyms and Definitions

As used herein, the following acronyms and terms, whether singular or plural, shall have the following meanings:

Administrator: The Administrator of Western Area Power Administration.

Allocation: An offer to an entity to purchase power from Western.

Allocation Criteria: Conditions applied to all applicants seeking an allocation.

Allottee: A preference entity receiving an allocation or power resource extension.

Ancillary Services: Those services necessary to support the transfer of electricity while maintaining reliable operation of the transmission provider's transmission system in accordance with good utility practice. Ancillary services are generally described in Federal Energy Regulatory Commission Order No. 888, Docket Nos. RM95–8–000 and RM94–7–001, issued April 24, 1996.

Base Resource: CVP and Washoe Project power output and existing power purchase contracts extending beyond 2004 determined by Western to be available for marketing, exclusive of project use and First Preference entitlements.

Capacity: The electrical capability of a generator, transformer, transmission circuit or other equipment.

Central Valley Project (CVP): A multipurpose Federal water development project extending from the Cascade Range in northern California to the plains along the Kern River south of the City of Bakersfield.

Contract Principles: Provisions made part of the electric service contracts which include the General Power Contract Provisions.

Contract Rate of Delivery (CRD): The maximum amount of capacity made available to a preference customer for a period specified under a contract.

Curtailable Power: Power which may be curtailed on a real-time scheduling basis at Western's sole discretion under certain conditions.

Custom Product: A combination of products and services, excluding provisions for load growth, made available by Western per customer request, utilizing the customer's Base Resource and supplemental purchases made by Western at customer expense.

Customer: An entity with a contract and receiving electric service from Western's Sierra Nevada Region.

Diversity Power: Power made available because of the diversity of customers' peak demands at the time of Sierra Nevada Region's peak demand.

Eligibility Criteria: Conditions that must be met to qualify for an allocation.

Energy: Measured in terms of the work it is capable of doing over a period of time; electric energy is usually measured in megawatthours.

Energy Planning and Management Program (EPAMP): Western-wide program developed to encourage customer energy planning (60 FR 54151, dated October 20, 1995).

Existing Customer: A preference customer with a contract to purchase firm power, offered under a previous allocation process or marketing plan, that extends through December 31, 2004.

Extension CRD: Existing customer's CRD exclusive of Diversity and Curtailable Power, peaking/excess capacity, and NDA Act Power not used for military loads.

Final Plan: Western's Final 2004 Power Marketing Plan.

Firm: A type of product and/or service that is available to a customer at the times it is required.

First Preference Customer/Entity: A preference customer and/or a preference entity (an entity qualified to use, but not using preference power) within a county of origin (Trinity, Calaveras and Tuolumne) as specified under the Trinity River Division Act (69 Stat. 719) and the New Melones Act of the Flood Control Act of 1962 (76 Stat. 1180).

General Power Contract Provisions (GPCP): Standard terms and conditions which are included in electric service contracts.

Integrated Resource Plan (IRP): A process and framework within which the costs and benefits of both demand and supply-side resources are evaluated to develop the least total cost mix of utility resource options.

Kilowatt (kW): The electrical unit of capacity that equals one thousand watts.

Load Factor: The ratio of the average load in kW supplied during a designated period to the peak or maximum load in kW occurring in that period.

Long-Term: A designation for a contractual period of time greater than 5 years.

Marketing Area: The area which generally encompasses northern and central California extending from the Cascade Range to the Tehachapi Mountains and west-central Nevada.

Megawatt (MW): The unit by which the rate of production of electricity is

often measured; one megawatt equals one million watts.

NDA Act: Section 2929 of the National Defense Authorization Act, Public Law 103–160, 107 Stat. 1547, 1935 (1993), which provides that, for a 10-year period, the CVP electric power allocations to military installations in the State of California which have been closed or approved for closure shall be reserved for sale through long-term contracts to preference entities which agree to use such power to promote economic development at the military installations closed or approved for closure.

NDA Act Power: Power allocated in accordance with the NDA Act Procedures (59 FR 61604, dated December 1, 1994), which provide for NDA Act power allocations.

Peaking: The operation of electric powerplants for brief periods when demand for electricity is greatest.

Power: Capacity and energy.

Power Marketing Initiative (PMI): A component of Western's EPAMP providing criteria regarding certain Western power marketing programs.

Preference: The requirements of Reclamation law which provide that preference in the sale of Federal power shall be given to municipalities and other public corporations or agencies and also to cooperatives and other nonprofit organizations financed in whole or in part by loans made pursuant to the Rural Electrification Act of 1936 (Reclamation Project Act of 1939, section 9(c), 43 U.S.C. 485h(c)).

Project Use: Power as defined by Reclamation law and/or used to operate CVP and Washoe Project facilities.

Proposed Plan: Western's Proposed 2004 Power Marketing Plan.

Reclamation law: Refers to a series of Federal laws with a lineage dating back to the turn of the century. Viewed as a whole, these laws create the framework under which Western markets power.

Sierra Nevada Region: The Sierra Nevada Customer Service Region of Western Area Power Administration.

Unbundled: Electric service that is separated into its components and offered for sale with separate rates for each component.

Washoe Project: A Federal water project located in the Lahontan Basin in west-central Nevada and east-central California.

Western: Western Area Power Administration, United States Department of Energy, a Federal power marketing administration responsible for marketing the surplus generation from Federal hydroelectric multipurpose projects pursuant to Reclamation law and the DOE Organization Act (91 Stat. 565, 42 U.S.C. 7101, et seq.).

Withdrawable: Power that may be withdrawn under certain conditions.

II. Marketable Power Resource

The primary purpose of the CVP and Washoe Project is water control and delivery. The water control system consists of storage reservoirs that provide daily, seasonal, and annual flow regulation, and smaller regulating reservoirs for diverting water and smoothing upstream dam and powerplant releases. Power generated from these resources depends on hydrology and water operation requirements. Some of the power generated is used for project use to operate pumping and fishery facilities. Currently, project use power is metered at 181 locations in northern and central California and Nevada.

Expected CVP generation (energy and capacity) for 2005 and beyond will vary annually, monthly, and daily, based on hydrology and other constraints that govern CVP operations. CVP generation is available at generator bus and must be adjusted for project use, maintenance, reserves, transformation losses, and certain ancillary services before a Base Resource is available for marketing. Transmission losses will be pursuant to the terms of a transmission service agreement. The power resources will also be adjusted for First Preference customers as described in this Proposed Plan.

The following Table provides estimates of CVP power resources and adjustments before any power resources are available to customers beyond 2004:

TABLE A.—ESTIMATED CVP POWER RESOURCES AND ADJUSTMENTS

Power resources/adjustment	Range/value
Annual energy generation	2,400,000–8,600,000 MWh.
Monthly energy generation	100,000–1,100,000 MWh.
Monthly capacity	1,100–1,900 MW.
Annual project use	670,000–1,670,000 MWh.
Monthly project use	10,000–180,000 MWh.
Monthly project use (on peak)	30–230 MW.
Monthly maintenance	0–300 MW.
Reserves	5% of monthly capacity.
CVP transmission and transformation losses from the generator bus to a 230-kV load bus	1.8% (as of 1995).

All of the power resource adjustments and variables mentioned above will influence the amount of Base Resource available to customers. During some critically dry months, purchases may be required to meet project use and only a minimal amount of Base Resource will be available during such months. The useability of the Base Resource for meeting customers" loads will be directly related to a customer's ability to integrate this power resource into their power resource mix.

Western proposes to include any power available from existing power purchase contracts with terms extending beyond 2004 in the Base Resource. Currently, Western has a contract with Portland General Electric Company for 65 MW at a 40 percent minimum load factor that has a final termination date of October 15, 2015.

Western also proposes to market part of the 3.65 MW available from the Washoe Project with the CVP power resource on an annual basis. Energy from the Washoe Project, which is estimated to be about 10,000 MWh annually, is currently being provided to F&WS Lahontan National Fish Hatchery and Marble Bluff Fish Facility. These F&WS facilities are project use loads of the Washoe Project and have first call on the power resources from the Washoe Project. All costs associated with providing F&WS project use service are, by law, nonreimbursable, and are not included in the Washoe Project energy rates. Energy in excess of the F&WS needs will be sold under the Final Plan.

Western will continue to make every effort to provide the Washoe Project power resource to F&WS. F&WS is currently using approximately 50 percent of Washoe Project generation, and the same percentage of costs is considered nonreimbursable. Western expects that F&WS loads will increase, reducing the amount of power resource to be integrated with the CVP as well as the cost to be repaid from power revenues.

III. Products and Services

Western proposes to market its Base Resource alone or in combination with the option to purchase a Custom Product. The Custom Product will be in addition to the optional purchase described in Section IV.A.2. All costs incurred by Western in providing additional services to customers will be paid by those customers. The degree to which Western continues to purchase power will depend on customer requirements and Federal authorities. All products will be subject to operational requirements and constraints of the CVP, transmission availability, and purchase limitations.

Each allottee will be allocated a portion of the Base Resource. Following execution of a contract pursuant to the Final Plan, Western will work with each individual allottee to determine the best use of the Base Resource for that allottee. All allottees will be required to commit to the Base Resource no later than December 31, 1999.

Upon request, Western will develop a Custom Product for any allottee. A Custom Product may include use of the Base Resource as firm power, ancillary services, reserves, etc., or may include Western purchasing additional resources, including firming energy, to provide some of these services. Final commitments to a Custom Product must be made by December 31, 2001, for a period of no less than five (5) years of service. Thereafter, the Custom Product will be offered for periods of one (1) year or more.

Any unused power resource available will be marketed under terms and conditions and for periods of time determined by Western. Products and services from unused power resources may be made available on a monthly, weekly, daily, hourly, or nonfirm basis.

Western may offer unused First Preference power, subject to withdrawal on a pro-rata basis, upon six (6) months written notice.

Western proposes to establish and to manage an exchange program to allow all customers to fully and efficiently use their power allocation. Any power allocated by Western to a customer that cannot be used on a real-time basis due to that customer's load profile must first be offered under this program to other customers or Western. Western will not be obligated to exchange or to purchase any surplus power from the customers on its own behalf. If the surplus power is not exchanged with other customers or purchased by Western under this program, it may be offered to others, giving priority to preference entities.

IV. Proposed Resource Extension and Resource Pool Allocation

On December 31, 2004, Western's long-term CVP power sales contracts for 1,580,230 kilowatts (kW) will expire. This Proposed Plan addresses the eligibility for and allocation of CVP and Washoe Project power after these contracts expire. When allocating power under the Final Plan, Western proposes to apply the principles of the Power Marketing Initiative (PMI) of the Energy Planning and Management Program. In accordance with the PMI, Western proposes to set aside a portion of its available power resource for new allocations. Based on Western's evaluation of potential new loads, Western proposes to initially provide 96 percent of its available power resource to existing customers and to establish a resource pool for new allocations with the remaining 4 percent. An additional incremental resource pool of up to 2 percent is proposed for 2014. When calculating the 96 percent resource extension for existing customers, only CRD classified as Extension CRD will be considered. Also, no extensions will be greater than an existing customer's load. Extension CRD amounts are set forth in Appendix A. Contractual extensions to First Preference customers are subject to specific legislation and are addressed in Section VI.

A. Extension for Existing Customers

Western proposes that existing customers will have a right to purchase a percentage of the Base Resource based on the ratio of each existing customer's Extension CRD to the total of all existing customers" Extension CRD under the terms of this Section. However, for the period from 2005 through 2014, Western is proposing that SMUD will have a right to purchase 360/1,152 of the Base Resource, as referenced in the settlement agreement with SMUD, Contract DE–MS65–83WP59070, dated April 15, 1983. All other existing customers will have a right to purchase the remaining amount of the Base Resource, after it is adjusted to accommodate SMUD's rights and the resource pool. After 2014, SMUD's right to purchase the Base Resource will be adjusted to reflect the ratio of SMUD's Extension CRD (currently 361 MW) to the total of all existing customers" Extension CRD. SMUD's rights will also be adjusted by 4 percent and up to an additional 2 percent to accommodate the resource pool.

Due to the diversity among existing customers' loads, including SMUD, existing customers' total Extension CRD exceeds the 1,152 MW referenced in the SMUD settlement agreement. Western's proposal will result in SMUD receiving a proportionately greater share of the Base Resource than other existing customers if the total Extension CRD remains at a level greater than 1,152 MW. Therefore, Western is also proposing that through 2014, all existing customers, excluding SMUD, be given the option to have Western purchase an additional increment of power, on a pass-through-cost basis, equal to the amount of power unavailable to them as a result of application of the 360/1,152 ratio. Existing customers must commit to the optional purchase for an annual or greater period.

After 2014, each existing customer, including SMUD and those customers that receive a new allocation under the Final Plan, will have a right to purchase a pro-rata amount of the Base Resource, adjusted for the incremental resource pool, based on their long-term purchase right to the Base Resource.

Western proposes the following extension formulas to determine existing customers' purchase right to the Base Resource. Application of these formulas will also determine each existing customer's right to the optional purchase. Examples of the formulas are provided in Appendix B. This calculation may be further adjusted for First Preference customers.

1. For the period 2005 through 2014, existing customers purchase right to an extension resource will be calculated as follows:

$$\text{a. SMUD's purchase right} = \frac{360}{1{,}152} \times BR$$

$$\text{b. Other existing customers purchase rights} = \frac{A}{B} \times ABR$$

Where:

A = Lesser of individual existing customer's Extension CRD as of December 31, 2001; or 104 percent of their maximum demand during CY 1997 through 2000. Western reserves the right to adjust the value of "A" when it is determined that the maximum demand is not reflective of an existing customer's load.

B = The sum of all values for "A".

BR = Base Resource available.

ABR = Adjusted Base Resource

$$= \left[BR - \left(\frac{360}{1{,}152} \times BR \right) \right] \times (100\% - RP\%).$$

RP% = Resource pool percentage.

2. Existing customer's (excluding SMUD) right to the optional purchase will be calculated as follows:

$$\text{individual existing customer's optional purchase} = \frac{A}{B} \times TOP$$

Where:

TOP = Total Optional Purchase

$$= \left(\frac{360}{1{,}152} - \frac{361}{C} \right) \times BR \times (100\% - RP\%).$$

A = Lesser of individual existing customer's Extension CRD as of December 31, 2001; or 104 percent of their maximum demand during CY 1997 through 2000. Western reserves the right to adjust the value of "A" when it is determined that the maximum demand is not reflective of an existing customer's load.

B = The sum of all values for "A".

BR = Base Resource available.

RP% = Resource pool percentage.

C = The sum of all existing customers', including SMUD, Extension CRD.

Western and SMUD have been negotiating an agreement whereby SMUD would waive its rights to the 360/1,152 ratio in return for additional services through 2004. If such an agreement is reached, these formulas will be appropriately adjusted.

3. For the period 2015 through 2024, the rights of all existing customers, including SMUD and customers receiving a new allocation from the initial resource pool under the Final Plan, will have a right to a resource extension equal to their pro-rata share of the Base Resource. To determine a customer's pro-rata share, each customer's percentage will first be adjusted based on the change in SMUD's percentage described earlier in this Section. All customers' percentages, including SMUD, will then be adjusted to accommodate the incremental resource pool as determined by Western, up to 2 percent.

B. Resource Pool Allocations:

Western proposes to establish a resource pool by reserving a portion of the power available after 2004 for allocation to eligible new and existing customers. Western will apply the following to determine resource pool allocations.

1. Resource Pool Amount: The resource pool will initially consist of up to 4 percent of the power resources available after 2004. This power will be subject to the terms and conditions specified in an electric service contract. An incremental resource pool is also proposed in the year 2014. The proposed incremental resource pool will consist of up to 2 percent of the power resources available after 2014, plus a portion of the resource that becomes available from adjusting SMUD's percentage. That portion will be equal to what SMUD would have been required to contribute to the initial resource pool. SMUD will also be subject to the 2 percent resource pool adjustment. Allocations for the incremental resource pool will be determined through a separate public process at a later date.

Western will, at its discretion, allocate a percentage of the initial resource pool to individual applicants that meet the eligibility criteria. This allocation percentage will be multiplied by the resource pool percentage to determine the applicant's percentage of the power resource. Allocations from the resource pool are separate from the resource extension.

2. General Eligibility Criteria: The following general eligibility criteria will be applied to all applicants seeking an allocation under the Final Plan.

a. Applicants must meet the preference requirement under section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), as amended and supplemented.

b. Applicants must be located within Sierra Nevada Region's Marketing Area. (Map of Marketing Area available upon request.)

c. Applicants that require power for their own use must be ready, willing, and able to receive and use Federal power.

d. Applicants that provide retail electric service must meet the requirements of Section IV.B.2.c above, and must require the power for electric service to their customers, not for resale to others.

e. Applicants must submit an application in response to the notice calling for applications issued by Western in the **Federal Register** in conjunction with the Final Plan. That notice will include the deadline for receipt of those applications.

f. Native American applicants must be a Native American tribe as defined in the Indian Self Determination Act of 1975 (25 U.S.C. 450b, as amended).

g. Applicants must have a load of 1 MW or greater. Western will normally not allocate amounts less than 1 MW; however, smaller allocations may be considered, provided Western can aggregate the applicant's load with other loads to schedule and deliver an aggregated 1 MW.

3. General Allocation Criteria: The following general allocation criteria will be applied to all applicants seeking an allocation under the Final Plan.

a. Allocations will be made in amounts as determined solely by Western in exercise of its discretion under Reclamation law.

b. Allocations under the Final Plan will be available to new qualified applicants and to existing customers whose Extension CRD set forth in Appendix A is not more than 15 percent of their peak load in CY 1996 and not more than 10 MW.

c. The maximum amount of capacity used to determine a resource pool allocation will be the applicant's peak demand during CY 1996 or the amount requested, whichever is less, rounded up to the nearest 100 kW.

d. An allottee will have the right to buy power from Western only upon the execution of an electric service contract between Western and the allottee, and satisfaction of all conditions in that contract.

e. A customer receiving power from the initial resource pool will be subject to the incremental resource pool adjustment in 2014.

V. General Criteria and Contract Principles

Western proposes to apply the following criteria and contract principles to all new and/or existing customers' contracts, except that certain criteria may not apply to First Preference customers' contracts, under the Final Plan:

A. Electric service contracts shall be executed within six (6) months of a contract offer, unless otherwise agreed to in writing by Western.

B. Percentages shall be subject to adjustment in the future as provided for in the Final Plan and the electric service contract.

C. All power supplied by Western will be delivered pursuant to a scheduling arrangement.

D. All power will be provided on a take-or-pay basis. A commitment must be made to take-or-pay for the service as of the date set forth in the contract. All costs associated with the products and services provided, including ancillary services and optional purchases, will be passed on to the customer(s) using the product or service.

E. Western will offer a contract amendment to existing customers and a new contract to new allottees to implement the Final Plan. Contract amendments and contracts shall require commitments to the Base Resource by the customer on or before December 31, 1999, and the optional purchase, as well as the Custom Product, on or before December 31, 2001. This will allow for power resources and products to be developed prior to final commitment by the customer.

F. Withdrawable power marketed under the Final Plan will be subject to withdrawal on a pro-rata basis upon six (6) months written notice, as determined by Western.

G. Upon request, Western shall assist each allottee and existing customer in obtaining third-party transmission arrangements for delivery of power allocated under the Final Plan; nonetheless, each entity is ultimately responsible for obtaining its own delivery arrangements beyond the CVP transmission system.

H. Contracts entered into under the Final Plan shall provide for Western to furnish electric service effective January 1, 2005 through December 31, 2024.

I. Specific products and services may be provided for periods of time as agreed to in the electric service contract.

J. Contracts entered into as a result of the Final Plan shall incorporate Western's standard provisions for power sales contracts, IRP, and GPCP.

K. Contracts will include a clause that allows Western to reduce or rescind a customer's power from Western upon six (6) months notice if Western determines that the customer is not using this power to serve its own loads, except as otherwise specified in Section III.

L. Any power not under contract may be allocated by the Administrator at any time, at the Administrator's sole discretion, or sold as deemed appropriate by Western.

M. Contracts will include a clause providing for Western to adjust the customers' percentage of the resource for the incremental resource pool.

VI. First Preference Entitlement and Allocation

The Trinity River Division Act (69 Stat. 719) and the New Melones Act of the Flood Control Act of 1962 (76 Stat. 1180) specified that contracts for the sale and delivery of the additional electric energy available from the CVP power system as a result of the construction of the plants authorized by these acts and their integration into the CVP system shall be made in accordance with preferences expressed in Federal Reclamation laws. These acts also provided that a first preference of 25 percent of the additional energy shall be given, under Reclamation law, to preference customers in the counties of origin (Trinity and Tuolumne and Calaveras) for use in those counties who are ready, able and willing to enter into contracts for the energy.

In order to meet the requirements of these acts, Western published the Final Withdrawal Procedures at 51 FR 7702 on March 5, 1986. The Final Plan will supersede the Final Withdrawal Procedures.

Western proposes to calculate and allocate the Maximum Entitlements of First Preference Customers (MEFPC), which is the maximum amount of energy available to First Preference customers/entities, in accordance with the following:

A. The MEFPC will be calculated separately for the New Melones Project, Calaveras and Tuolumne counties, and the Trinity River Division, Trinity County, (First Preference Projects), to determine the 25 percent of the additional energy made available to the CVP as a result of the construction of each of these projects. Since the acts do not specify the basis for calculating the 25 percent of additional energy, Western proposes that a previous 20-year average historical generation or actual years of data available, whichever time period is less, be used to determine the MEFPC. Based on the most current information available, this calculation would result in an estimated MEFPC of 95,766 MWh available to the CVP as a result of construction of the New Melones Project and an estimated MEFPC of 288,285 MWh available to the CVP as a result of construction of the Trinity River Division. The MEFPC will be

recalculated every five (5) years, with the initial recalculation pertaining to this Proposed Plan being completed by December 31, 2002.

B. Upon recalculation, if the MEFPC from a First Preference Project is 10 percent above or below the currently effective MEFPC from that First Preference Project, the MEFPC will be adjusted to reflect that increase or decrease. Western will notify the affected First Preference customer(s) at least six (6) months prior to an adjustment being made to the MEFPC. Upon request, and at its discretion, Western may make purchases necessary to compensate for any power loss experienced by a First Preference customer due to recalculation of the MEFPC. The costs for all purchases made on behalf of a First Preference customer(s) will be passed on to that First Preference customer(s).

C. An allocation made to a First Preference customer under the Final Plan will be based on the power requirements of that First Preference customer. The sum of allocations, including losses, shall not exceed the MEFPC from each First Preference Project, or a county of origin's share of the MEFPC, except as allowed under Section VI.G below.

D. Following execution of a contract amendment or contract pursuant to the Final Plan, Western will work with each First Preference customer/entity to identify its power requirements and the best use of the First Preference entitlement for that First Preference customer. Each First Preference customer/entity may elect one of the options set forth below.

1. *Full Requirements:* Power requirements (capacity and energy), adjusted for project use and transformation and transmission losses from the generation bus to the First Preference customer delivery point, will be at the Base Resource rates. Western will provide the First Preference customer full requirements up to its right to the MEFPC. Adjustment for transmission losses shall include losses for CVP transmission and third-party transmission. The contract between the First Preference customer and Western will include the appropriate losses and the load factor to be used to calculate the First Preference customer's maximum capacity and energy.

2. *Percentage:* A portion of the MEFPC will be converted to a percentage of the Base Resource. This option will be served on a take-or-pay basis. Each First Preference customer selecting this percentage allocation option will also be subject to the following:

a. A commitment to this option must be made no later than December 31, 2001. If a commitment is not made by December 31, 2001, the full requirements option will be deemed chosen.

b. This option will be applied in a manner similar to that of the other customers receiving a power allocation from the CVP.

c. The percentage allocation made to each First Preference customer under the Final Plan will be applied to the power resource which has been adjusted for project use and transformation and transmission losses from the generation bus to the First Preference customer delivery point, rounded up to the nearest 100 kW. Adjustment for transmission losses shall include losses for CVP transmission and third-party transmission.

d. The percentage calculation will be based on a First Preference customer's load profile for the most recent 12 months preceding the percentage calculation.

e. A First Preference customer may request an increase in its percentage allocation by notifying Western in writing at least seven (7) months in advance of the month in which the increase is to become effective (increases in percentages are effective the first day of a month).

E. A First Preference entity may exercise its rights to use a portion of the MEFPC by providing written notice to Western at least eighteen (18) months prior to the anniversary date of the First Preference Project located in its county. Anniversary date means the successive fifth year anniversary of the date the Secretary of the Interior declared the availability of power from the powerplants in the counties of origin. New applications for services to begin on January 1, 2005 under this Proposed Plan must be received eighteen (18) months prior to January 1, 2002 (i.e., July 1, 2000) for Trinity County and eighteen months prior to April 5, 2002 (i.e., October 5, 2000) for Calaveras and Tuolumne counties. Other anniversary years applicable to this Proposed Plan are 2007, 2012, 2017, and 2022.

F. If the request(s) of First Preference customers/entities for power, including adjustments for project use and losses, becomes greater than the MEFPC from that county's First Preference Project, then Western will allocate the remaining MEFPC to the First Preference customer(s)/entity(ies) first making a request for a power allocation.

G. Power allocated to First Preference customers/entities in Tuolumne and Calaveras counties will be subject to the following additional conditions:

1. Tuolumne and Calaveras counties shall each be entitled to one-half of the New Melones Project MEFPC.

2. If First Preference customers in either Tuolumne County or Calaveras County are not using their county's full one-half share, and a First Preference customer/entity in the other county requests power in an amount exceeding that county's one-half share, then Western will allocate the unused power, on a withdrawable basis, to the requesting First Preference customer/entity. Such power may be withdrawn for use by a First Preference customer/entity in the county not using its full one-half share upon six (6) months written notice from Western.

H. Trinity County is currently the sole recipient of the Trinity River Division's First Preference rights.

I. For planning purposes, First Preference customers may be required to provide forecasts and other information required by Western as set forth in the electric service contract.

J. The general criteria and contract principles set forth in Sections V.A, C, and F through J of this Proposed Plan will apply to First Preference customers.

VII. Transmission Service

The Federal Energy Regulatory Commission (FERC) issued two closely related final rules. The first rule, Order No. 888, issued April 24, 1996 (Docket Nos. RM95–8–000 and RM94–7–001), requires public utilities owning, controlling, or operating transmission lines to file nondiscriminatory open access tariffs that offer others the same transmission service they provide themselves. The second rule, Order No. 889, issued April 24, 1996 (Docket No. RM95–9–000), requires public utilities to implement standards of conduct and an Open Access Same-time Information System (OASIS) to share information about available transmission capacity. Western has agreed to follow the spirit and intent of FERC Orders 888 and 889. Therefore, Western proposes to provide transmission services separately from power services. Sierra Nevada Region's transmission capability will be offered as a separate unbundled service to all preference customers receiving power pursuant to the Final Plan. Each customer will have an option to purchase transmission sufficient to deliver the maximum amount of power it receives under the Final Plan. Surplus transmission will be available to all preference customers, as well as to other entities.

Issued in Washington, DC on February 19, 1997.

Joel K. Bladow,

Assistant Administrator.

APPENDIX A.—EXISTING CUSTOMERS' CRD AMOUNTS

Existing customers	CRD [1] (as of proposed plan publication date) (kW)	Extension CRD [1 2] (CRD less excluded types of power) [3 4] (kW)
Air Force—Beale	21,575	21,575
Air Force—McClellan	12,000	12,000
Air Force—Onizuka	1,500	1,500
Air Force—Travis	12,651	12,651
Air Force—Travis / David Grant Medical Center	4,000	4,000
Air Force—Travis Wherry Housing	1,400	1,400
Alameda, City of	21,145	21,145
Arvin-Edison Water Storage District	30,000	30,000
Avenal, City of	622	622
Banta-Carbona Irrigation District	3,700	3,700
Bay Area Rapid Transit District	4,000	4,000
Biggs, City of	4,200	4,200
Broadview Water District	500	500
Byron-Bethany Irrigation District	2,200	2,200
Calaveras Public Power Agency	7,000	.....
California State University, Sacramento—Nimbus	40	40
Castle Joint Powers Authority	3,000	.....
Cawelo Water District	500	500
Corrections—California State Prison-Sacramento	2,300	2,300
Corrections—Deuel Vocational Institute	1,700	1,700
Corrections—Northern California Youth Center	1,700	1,700
Corrections—Sierra Conservation Center	3,000	.....
Corrections—Vacaville Medical Facility	1,800	1,800
Defense Logistics Agency—Sharpe Facility	4,000	4,000
Defense Logistics Agency—Tracy Facility	3,800	3,800
Delano-Earlimart Irrigation District	987	987
East Bay Municipal Utility District	1,965	1,965
East Contra Costa Irrigation District	2,000	2,000
East Contra Costa Irrigation District, P.P. #3	500	500
Energy—Lawrence Berkeley National Laboratory	11,000	11,000
Energy—Lawrence Livermore National Laboratory	16,711	16,711
Energy—Site 300	2,500	2,500
Energy—Stanford Linear Accelerator Center	47,403	38,403
Glenn-Colusa Irrigation District	3,343	3,343
Gridley, City of	9,400	9,400
Healdsburg, City of	3,241	3,241
James Irrigation District	987	987
Kern-Tulare Water District	987	987
Lassen Municipal Utility District	3,000	3,000
Lindsay-Strathmore Irrigation District	987	987
Lodi, City of	13,236	13,236
Lompoc, City of	5,197	5,197
Lower Tule River Irrigation District	1,965	1,965
Modesto Irrigation District	10,805	10,805
NASA—Ames Research Center	80,000	80,000
NASA—Moffett Federal Airfield	5,009	.....
Navy—Concord Weapons Station	2,398	2,398
Navy—Dixon Radio Station	915	915
Navy—Lemoore Air Station	18,000	18,000
Navy—Mare Island Shipyard	6,000	6,000
Navy—Oakland Army Base	2,275	2,275
Navy—Oakland Supply Center	7,000	7,000
Navy—Stockton Communications Station	3,700	3,700
Navy—Treasure Island Station	4,000	4,000
Palo Alto, City of	175,000	175,000
Parks & Recreation, California Department of—Folsom	100	100
Parks Reserve Forces Training Area	500	500
Patterson Water District	2,000	2,000
Plumas-Sierra Rural Electric Cooperative	25,000	25,000
Provident Irrigation District	750	750
Rag Gulch Water District	500	500
Reclamation District 2035	1,600	1,600

APPENDIX A.—EXISTING CUSTOMERS' CRD AMOUNTS—Continued

Existing customers	CRD [1] (as of proposed plan publication date) (kW)	Extension CRD [1 2] (CRD less excluded types of power) [3 4] (kW)
Redding, City of	116,000	116,000
Roseville, City of	69,000	69,000
Sacramento Municipal Utility District[5]	361,000	361,000
Sacramento Municipal Utility District	100,000	.....
San Juan Water District	1,000	1,000
San Luis Water District-Fittje	3,250	3,250
San Luis Water District-Kaljian	3,400	3,400
Santa Clara, City of	216,532	136,532
Santa Clara Valley Water District	987	987
Shasta Lake, City of	11,450	11,450
Sonoma County Water Agency	1,500	1,500
Terra Bella Irrigation District	987	987
Trinity County Public Utilities District	17,000	.....
Tuolumne Public Power Agency	7,000	.....
Turlock Irrigation District	3,941	3,941
Ukiah, City of	8,773	8,773
University of California, Davis	14,682	14,682
West Side Irrigation District	2,000	2,000
West Stanislaus Irrigation District	5,200	5,200
Westlands Water District, Assumed Point of Delivery	6,684	6,684
Westlands Water District, Pumping Plant #7–1	3,200	3,200
Westlands Water District, Pumping Plant #6–1	1,850	1,850
Temporarily unallocated NDA Act power	5,500	5,500
	1,580,230	1,349,221

Notes:

[1] CRD temporarily laid off and reallocated to other existing customers is reflected in this Appendix A, under both CRD and Extension CRD, as being returned to the existing customer who received the original allocation.

[2] The Extension CRD will be reduced if an existing customer is not using its full CRD (based on the peak demand experienced during CY 1997 through 2000).

[3] Exclusions are Diversity and Curtailable Power, peaking/excess capacity, First Preference entitlements, and NDA Act power not used for military loads.

[4] May be adjusted for conversion from project use power to preference power due to Federal facility transfers to existing project use customers.

[5] Sacramento Municipal Utility District's Extension CRD will be 360,000 kW if the 360/1,152 ratio is used for resource extension purposes.

Appendix B—Examples of Existing Customers' Resource Extension Proposal 2005 Through 2014

Assumptions:

- An existing customer with an Extension CRD of 100 MW.
- Base Resource after 2004 is 1000 MW.
- Sum of all existing customers' Extension CRD is 1,349 MW.
- Initial resource pool is 4%.
- Incremental resource pool is 2%.
- All amounts are rounded.

1. For the period 2005 through 2014, an existing customer's percentage right to a resource extension will be calculated as follows:

$$\text{SMUD's purchase rights} = \frac{360}{1{,}152} \times BR$$

$$\text{Existing 100 MW customer's purchase rights} = \frac{A}{B} \times ABR$$

Where:

A=Lessor of individual existing customer's (excluding SMUD) Extension CRD as of December 31, 2001; or 104 percent of their maximum demand during CY 1997 through 2000. Western reserves the right to adjust the value of "A" when it is determined that the maximum demand is not reflective of an existing customer's load.

B=The sum of all values for "A".

BR=Base Resource available.

ABR=Adjusted Base Resource

$$= BR - \left(\frac{360}{1{,}152} \times BR\right) \times (100\% - RP\%).$$

RP%=Resource pool percentage.

Calculation:

SMUD's purchase rights=
(360/1,152)×BR
(360/1,152)×1,000
0.3125×1,000
312.5 MW

Existing 100 MW customer's purchase rights=
(A/B)×ABR
(100/988)×ABR
0.101×660
67 MW

ABR=
{BR–[(360/1,152)×BR]}×(100%–RP%)
{1,000–[(360/1,152)×1,000]}×(100%–4%)
[1,000–(0.3125×1,000)]×96%
(1,000–312.5)×96%
687.5×96%
660 MW

2. Existing customer's (excluding SMUD) rights to the optional purchase will be calculated as follows:

$$\text{individual existing customer optional purchase} = \frac{A}{B} \times TOP$$

Where:

A = Lessor of individual existing customer's Extension CRD as of December 31, 2001; or 104 percent of their maximum demand during CY 1997 through 2000. Western reserves the right to adjust the value of "A" when it is determined that the maximum demand is not reflective of an existing customer's load.

B = The sum of all values for "A".

C = The sum of all existing customers', including SMUD, Extension CRD.

BR = Base Resource available.

RP% = Resource pool percentage.

TOP = Total optional purchase

$$= \left(\frac{360}{1{,}152} - \frac{361}{C}\right) \times BR \times (100\% - RP\%).$$

Calculation:

Individual existing 100 MW customer's optional purchase=
(A/B × TOP
(100/988) × TOP
0.101 × 43.1
4.4 MW

TOP=
{[(360/1,152) – (361/1,349)] × BR} × (100% – RP%0)
{[(360/1,152) – (361/1,349)] × 1,000} × (100% – 4%)
[(.3125 – 0.2676) × 1,000] × 96%
(0.0449 × 1,000) × 96%
44.9 × 96%
43%

[FR Doc. 97–4695 Filed 2–25–97; 8:45 am]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00469; FRL–5588–8]

Pesticide Applicator Certification and Training; Renewal of Pesticide Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that the following Information Collection Request (ICR) is coming up for renewal. This ICR, Certification of Pesticide Applicators (40 CFR part 171), ICR No. 0155.05, OMB No. 2070–0029, will expire on June 30, 1997. Before submitting the renewal packages to the Office of Management and Budget (OMB), EPA is soliciting comments on specific aspects of the collection as described below.

DATES: Comments must be submitted on or before April 28, 1997.

ADDRESSES: Submit written comments identified by the docket control number OPP–00469 and ICR number 0155.05 by mail to: Public Response Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments directly to the OPP docket which is located in Room 1132 of Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number OPP–00469 and ICR number 0155.05. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this document may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit III. of this document.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the Virginia address given above from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Ellen Kramer, Policy and Special Projects Staff, Office of Pesticide Programs, Environmental Protection Agency, Mail Code (7506C), 401 M St., SW., Washington, DC 20460, Telephone: (703) 305-6475, e-mail: kramer.ellen@epamail.epa.gov. Copies of the complete ICR and accompanying appendices may be obtained from the OPP docket at the above address or by contacting Ellen Kramer at the telephone number or address listed above.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document and the ICR are available from the EPA home page at the Environmental Sub-Set entry for this document under "Regulations" (http://www.epa.gov/fedrgstr/).

I. Information Collection Requests

EPA is seeking comments on the following Information Collection Request (ICR).

Title: Certification of Pesticide Applicators (40 CFR Part 171). ICR No.

0155.05. OMB No. 2070-0029. Renewal. Current expiration date: June 30, 1997.

Affected entities: Parties affected by this information collection are pesticide applicators who require certification to apply restricted use pesticides, and States, Indian tribes, and Federal Agencies with EPA-approved certification plans.

Abstract: The Federal Insecticide, Fungicide, and Rodenticide Act allows a pesticide to be classified as "restricted use" if the pesticide meets certain toxicity criteria. Restricted use pesticides, because of their potential to harm people or the environment, may be applied only by a certified applicator or someone under the direct supervision of a certified applicator. In order to become a certified applicator, a person must meet certain standards of competency. The primary mechanism for certifying pesticide applicators is State certification plans approved by EPA. 40 CFR part 171 establishes the criteria for State and EPA-administered certification plans. In addition, these regulations establish criteria for certification plans from Federal agencies or Indian tribes who wish to develop their own programs in lieu of using State certification programs.

The recordkeeping and reporting requirements in these regulations allow the Agency to ensure that restricted use pesticides are used only by or under the direct supervision of properly trained and certified applicators, and to monitor the application of restricted use pesticides.

Burden Statement: Small entities are affected by this information collection activity as the regulations apply to individuals who are certified applicators. However, the records required of pesticide applicators and their employees are minimal and would generally be kept for the applicator's own use even in the absence of this regulation. The information is to be retained for 2 years and is only made available upon request by State or EPA authorized officials. States supply information through annual reports on the status of certified applicators, enforcement of restricted use pesticides, and any significant changes in the plan.

The annual respondent burden for this program is estimated to average 5 hours for pesticide dealer recordkeeping, 3.5 hours for certified applicator recordkeeping, 10 minutes for completing applicator certification forms, and 150 hours for State annual reports, including time for: reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection.

Any Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are contained in 40 CFR part 9.

II. Request for Comments

EPA solicits comments to:

(i) Evaluate whether the proposed collections of information described above are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

(ii) Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.

(iii) Enhance the quality, utility, and clarity of the information to be collected.

(iv) Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

Send comments regarding these matters, or any other aspect of these information collections, including suggestions for reducing the burdens, to the docket under ADDRESSES listed above.

List of Subjects

Environmental protection and Information collection requests.

Dated: February 14, 1997.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 97–4623 Filed 2–25–97; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5694–2]

Agency Information Collection Activities: Proposed Collection; Comment Request; Notification of Episodic Releases of Oil and Hazardous Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Notification of Episodic Releases of Oil and Hazardous Substances, EPA ICR Number 1049.07, OMB Control Number 2050–0046, expiring June 30, 1997. Before submitting the ICR renewal package to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before April 28, 1997.

ADDRESSES: Comments should be submitted in triplicate to the following address: Office of Emergency and Remedial Response (5201G), Attention: Superfund Docket Clerk, Docket Number 102RQ–ER, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460, (703) 603–9232. Materials relevant to this rulemaking are contained in Public Docket No. 102RQ–ER. This docket is located at 1235 Jefferson Davis Highway (ground floor), Arlington, VA. Dockets may be inspected, by appointment only, from 9:00 a.m. to 4:00 p.m., Monday through Friday. A reasonable fee may be charged for copying docket material.

FOR FURTHER INFORMATION CONTACT: Lynn Beasley, (703) 603–9086. Facsimile number: (703) 603–9104. Electronic address: beasley.lynn@epamail.epa.gov. Note that questions but not comments will be accepted electronically.

SUPPLEMENTARY INFORMATION:

Affected Entities: Entities potentially affected by this action are those persons in charge of a facility or vessel that has released a reportable quantity or more of a hazardous substance into the environment or that has discharged oil into U.S. waters, causing a sheen, violating applicable water quality standards, or causing a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

Title: Notification of Episodic Releases of Oil and Hazardous Substances, EPA ICR Number 1049.07, OMB Control Number 2050–0046, expiring June 30, 1997.

Abstract: This ICR addresses the reporting and record keeping activities required to comply with the release notification requirements for hazardous substances and oil specified in section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, and section 311 of the Clean Water Act (CWA). These reporting requirements are codified at 40 CFR parts 110, 117, and 302. This ICR renews the collection activity previously approved under OMB No. 2050–0046 and applies to the period

July 1, 1997 through June 30, 2000. Estimates of the burden placed on industry to comply with the release notification requirements are presented annually.

CERCLA section 103(a) and CWA section 311 require the person in charge of a facility or vessel to immediately notify the National Response Center (NRC) of hazardous substance releases into the environment and oil discharges into U.S. waters. The regulated community is expected to:

- Gather necessary release data, such as the time, quantity, and source of the release;
- Brief the facility manager;
- Consult with the environmental compliance expert;
- Report the release to the NRC using a toll-free telephone number, a facsimile number, or a telex number; and
- Keep a log of release data such as the time, date, and circumstance of the release. (This information is expected, but not required under the regulations).

There are no record keeping requirements specified under CERCLA section 103(a), CWA section 311, or their implementing regulations. The person in charge of the facility or vessel, however, may elect to maintain a log detailing the time, date, and circumstances associated with the reported release. The purpose of maintaining a log of reported releases is to track correspondence with response authorities and to document compliance with release notification requirements under CERCLA and the CWA. Because the respondent will probably perform this activity, burden and cost estimates associated with record keeping are included in the ICR.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. For this ICR, EPA would like to solicit comments to:

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The current ICR assumes that notification requires approximately two person-hours for releases of hazardous substances and oil, including one hour of technical personnel time and one hour of managerial time. Although neither CERCLA nor CWA require that records of releases be kept, a facility would probably keep a log of any calls made to government organizations. The burden associated with internal record keeping is estimated at one technical hour and one clerical hour per release; a ratio of one-tenth managerial hour to each hour of clerical time is also assumed.

The estimated costs of completing the episodic release reports required under CERCLA and the CWA are a function of the time expended by industrial personnel and the hourly rates for the appropriate labor categories. The number of burden hours is the same for the renewal ICR as for the current ICR. The unit cost estimates for each category of activities are based upon a managerial wage rate of $38.72 per hour, a technical wage rate of $28.37 per hour, and a clerical wage rate of $17.48 per hour. These wage rates, from the Bureau of Labor Statistics, are the same as those used in the notice for renewal of the Spill Prevention and Control Countermeasure ICR (61 FR 15246, April 5, 1996). They include wages and salaries, benefit costs including paid leave, supplemental pay, insurance, retirement and savings, legally required benefits, severance pay, and supplemental unemployment benefits and overhead costs, calculated in December, 1995 dollars.

BURDEN HOURS AND UNIT COST PER RESPONDENT ACTIVITY AND ANNUAL BURDEN HOURS AND COSTS INCURRED BY A TYPICAL RESPONDENT

Collection activity	Management ($38.72/hr)	Technical ($28.73/hr)	Clerical $17.48/hr	Total burden hours	Unit cost
Initial Telephone Call	1.0	1.0	0	2.0	$67.09
Record keeping	0.1	1.0	1.0	2.1	49.72
Annual Burden for a Typical Release	1.1	2.0	1.0	4.1	116.81

Past release reports were used to project future release reports. The next exhibit shows the projected annual release reports, burden hours, and costs under the current ICR. Projections were based on the conservative use of assumptions and methodologies that tend to err on the side of over predicting the number of releases.

ESTIMATED ANNUAL BURDEN HOURS AND COSTS

Type of release	Collection activity	Number of reportable releases/year	Unit burden hours	Unit cost	Total burden hours	Annual cost (Thousand $)
All CERCLA Hazardous Substances	Telephone Notification	6,519	2.0	$67.09	13,038	$437
	Record keeping	6,519	2.1	49.72	13,690	324
Oil	Telephone Notification	22,685	2.0	67.09	45,307	1,522
	Record keeping	22,685	2.1	49.72	47,639	1,128
Total Aggregate Releases	Telephone Notification	29,204	2.0	67.09	58,408	1,959
	Record keeping	29,204	2.1	49.72	61,329	1,452
Annual Total		29,204	4.1	116.81	119,737	3,411

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: February 13, 1997.

Stephen D. Luftig,

Director, Office of Emergency and Remedial Response.

[FR Doc. 97–4752 Filed 2–25–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5685–9]

Agency Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following proposed and/or continuing Information Collection Requests (ICRs) to the Office of Management and Budget (OMB). Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collections as described below.

DATES: Comments must be submitted on or before April 28, 1997.

ADDRESSES: Written comments should be sent to: Docket A–91–60, Central Docket Section, South Conference Room 4, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460. Interested persons may make a copy of the ICR without charge from the docket. The docket is open between 8 a.m. and 4 p.m. on weekdays. The telephone number is (202) 260–7549, and the fax number is (202) 260–4400. To expedite review of comments, a second copy of the comments should be sent to Mavis Sanders, Stratospheric Protection division, Mail Code 6205J, EPA, 401 M Street, Washington, DC 20460. Overnight mail should be sent to our 501–3rd Street, NW, Washington, DC 20001 street address.

FOR FURTHER INFORMATION CONTACT: Mavis Sanders at (202) 233–9737, or fax (202) 233–9665.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action include manufacturers, distributors, retailers, importers, and recyclers/reclaimers that manufacture, sell or distribute products made with or containing class I or class II substances.

Title: Protection of Stratospheric Ozone: Labeling, Final Rulemaking under Title VI of the Clean Air Act Amendments of 1990, OMB Control No. 2060–0342, Expiration Date: 9/30/97.

Abstract: The Office of Air and Radiation (OAR) promulgated regulations on February 11, 1993, and a subsequent amendment on January 19, 1995, that became effective as of October 1, 1995. Pursuant to the enactment of the reauthorized Paperwork Reduction Act (PRA), labeling requirements are no longer exempt from review under the PRA. OAR is submitting this renewal ICR relative to the requirements in effect on October 1, 1995, in compliance with the reauthorized PRA.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9. The regulations require that all containers of class I and II substances, products containing class I substances, and products manufactured with class I substances be labeled. The required warning must state: "WARNING: Contains (Manufactured with) [insert name of substance], a substance which harms public health and environment by destroying the ozone in the upper atmosphere." Labels must be applied when a product enters into interstate commerce or is imported into the U.S. Exceptions are available under a variety of circumstances including:

- Those products manufactured prior to May 15, 1993, do not need to be labeled.
- Those products where a component product made with a class I substance is sold to another party and incorporated into another product do not need to bear the warning label.
- Those products manufactured by a company that achieved a 95% reduction over its 1990 use of methyl chloroform and CFC–113 used as solvents (if petitioned before May 15, 1994) are exempt from bearing the warning label.
- Incidental uses of class I substances are exempt.
- Products that are manufactured with class I substances, where those substances are destroyed at the end of the process, are exempt from labeling.
- Waste containing a class I substance and bound for discard is exempt.
- Spare parts manufactured with a class I substance and sold to a distributor or a repairperson, to be used for repair purposes, are exempt from the label pass-through requirement.
- Products repaired using a class I substance do not need to be labeled.
- Products containing trace quantities of class I impurities resulting from inadvertent production, unreacted feedstock, or process agents are exempt.

The EPA would like to solicit comments to:

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: EPA estimates the projected hour burden of the renewed information collection is an annual total of 3024 hours. In comparison with the original labeling ICR, this estimate of hourly burden reflects a 40% reduction in the number of manufacturers that use a class I substance in their manufacturing process. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: February 14, 1997.

Paul Stolpman,

Office Director, Office of Air Programs.

[FR Doc. 97–4754 Filed 2–24–97; 8:45 am]

BILLING CODE 6560–50–P

[OPPTS–00207; FRL–5587–5]

Agency Information Collection Activities; Request for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the information collection described below. The ICR is a continuing ICR entitled "Toxic Substances Control Act (TSCA) Section 8(a) Chemical-Specific Rules," EPA ICR No. 1198.05, OMB No. 2070-0067, which relates to reporting requirements found at 40 CFR part 704, subpart B. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9.

DATES: Written comments must be submitted on or before April 28, 1997.

ADDRESSES: Submit three copies of all written comments to: TSCA Document Receipts (7407), Room E-G99, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202-260-7099. All comments should be identified by administrative record number AR-171 and ICR number 1198.05. This ICR is available for public review at, and copies may be requested from, the docket address and phone number listed above.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the administrative record number AR-171 and ICR number 1198.05. No confidential business information (CBI) should be submitted through e-mail. Electronic comments on this document may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit III. of this document.

FOR FURTHER INFORMATION CONTACT: For general information contact: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202–554–1404, TDD: 202–554–0551, e-mail: TSCA-Hotline@epamail.epa.gov. For technical information contact Keith Cronin, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202–260–8157, Fax: 202–260–1096, e-mail: cronin.keith@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document and the ICR are available from the EPA home page at the Environmental Sub-Set entry for this document under "Regulations"(http://www.epa.gov/fedrgstr/).

I. Background

Entities potentially affected by this action are persons who manufacture, process or import, or who propose to manufacture, process or import, chemical substances and mixtures. For the collection of information addressed in this notice, EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

(iii) Enhance the quality, utility, and clarity of the information to be collected.

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

II. Information Collections

EPA is seeking comments on the following Information Collection Request.

Title: Toxic Substances Control Act (TSCA) Section 8(a) Chemical-Specific Rules, EPA ICR No. 1198.05, OMB No. 2070-0067. Expires August 31, 1997.

Abstract: TSCA section 8(a) authorizes the Administrator of EPA to promulgate rules that require persons who manufacture, import or process chemical substances and mixtures, or who propose to manufacture, import or process chemical substances and mixtures, to maintain such records and submit such reports to EPA as may be reasonably required. Any chemical covered by TSCA for which EPA or another Federal agency has a reasonable need for information and which cannot be satisfied via other sources is a proper potential subject for a chemical-specific TSCA section 8(a) rulemaking. Information that may be collected under TSCA section 8(a) includes, but is not limited to, chemical names, categories of use, production volume, byproducts of chemical production, existing data on deaths and environmental effects, exposure data, and disposal information. Generally, EPA uses chemical-specific information under TSCA section 8(a) to evaluate the potential for adverse human health and environmental effects caused by the manufacture, importation, processing, use or disposal of identified chemical substances and mixtures. Additionally, EPA may use TSCA section 8(a) information to assess the need or set priorities for testing and/or further regulatory action. To the extent that reported information is not considered confidential, environmental groups, environmental justice advocates, state and local government entities and other members of the public will also have access to this information for their own use.

Responses to the collection of information are mandatory (see 40 CFR part 704, subpart B). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden Statement: The burden to respondents for complying with this ICR is estimated to total 275 hours per year with an annual cost of $15,745. These totals are based on an average burden of approximately 69 hours per response for an estimated four respondents making one response annually. These estimates include the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and

disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

III. Public Record

A record has been established for this action under docket control number "OPPTS-00207" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE-B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:
oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this action, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ADDRESSES at the beginning of this document.

List of Subjects

Environmental protection and Information collection requests.

Dated: February 11, 1997.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 97–4777 Filed 2–25–97; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5694–3]

Effluent Guidelines Plan Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has obtained approval in U.S. District Court to modify a Consent Decree covering the Agency's Effluent Guidelines Program. The modified Decree extends deadlines for several rulemaking projects described in the 1996 Effluent Guidelines Plan.

FOR FURTHER INFORMATION CONTACT: Eric Strassler, Engineering and Analysis Division (4303), Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460; telephone 202–260–7150. E-mail:
strassler.eric@epamail.epa.gov

SUPPLEMENTARY INFORMATION: EPA published its 1996 Effluent Guidelines Plan on October 7, 1996 (61 FR 52582). The Plan described the Effluent Guidelines Program and listed regulations that the Agency was developing or intended to develop. As mentioned in the Plan, several of these regulation projects are required by a Consent Decree in *Natural Resources Defense Council et al v. Browner* (D.D.C. 89–2980, January 31, 1992 (the "Consent Decree"). Table 1 in the Plan listed deadlines for the rules, with a footnote explaining that EPA was discussing extensions to the deadlines with the Natural Resources Defense Council (NRDC). See 61 FR 52583.

EPA and NRDC have agreed on revised deadlines and related adjustments for several of the rules listed in the Plan, and have obtained Court approval of modifications to the Decree. An unopposed motion to modify the Decree was filed in U.S. District Court for the District of Columbia on January 31, 1997, and the motion was approved by District Judge Royce C. Lamberth on February 4, 1997. In addition to extending several deadlines, the modifications allow the Agency to merge two ongoing rules, Metal Products and Machinery Phases 1 and 2, into a single project. The modified dates are listed in the following table.

MODIFICATIONS TO EFFLUENT GUIDELINES DEADLINES

Category	Proposal	Final action
Centralized Waste Treatment (proposed 1/27/95, 60 FR 5464)	.....	8/15/99
Pharmaceutical Manufacturing (proposed 5/2/95, 60 FR 21592)	.....	4/98
Industrial Laundries	9/97	6/99
Transportation Equipment Cleaning	1/98	2/00
Landfills and Incinerators	11/97	11/99

MODIFICATIONS TO EFFLUENT GUIDELINES DEADLINES—Continued

Category	Proposal	Final action
Metal Products and Machinery (Phase 1 proposed 5/30/95, 60 FR 28209)	10/00	12/02

EPA and NRDC signed a related Settlement Agreement stating the Agency's intent to take final action on air emission standards for pharmaceutical production, under Section 112 of the Clean Air Act, jointly with the Pharmaceutical Manufacturing Effluent Guidelines in April 1998. A separate notice describing this action was published on February 21, 1997 at 62 FR 8012.

The parties also agreed on revised deadlines for completion of four Preliminary Studies, which the Agency uses to support decisions on selecting industries for additional rulemaking. The deadlines for the studies are as follows:

Chemical Formulators and Packagers: April 1997.
Feedlots: 1998.
Urban Stormwater: 1998.
Airport De-Icing: 1999.

EPA and NRDC are continuing negotiations on deadlines for other rules covered by the Decree.

Dated: February 19, 1997.

Tudor T. Davies,

Director, Office of Science and Technology.

[FR Doc. 97–4756 Filed 2–25–97; 8:45 am]

BILLING CODE: 6560–50–P

[OPP–00471; FRL–5589–5]

EPA's Interim Approach to Implementation of the 1996 Food Quality Protection Act; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing its interim approach to implementation of the new food safety requirements of the Food Quality Protection Act through a Pesticide Registration (PR) Notice 97-1. Interested parties may request this document as described in the ADDRESSES unit of this notice.

ADDRESSES: PR Notice 97-1 is available by mail from the Policy and Special Projects Staff, Mail Code 7506C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 1120, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–7102, e-mail:
jones.jim@epamail.epa.gov.

FOR FURTHER INFORMATION CONTACT: By mail: Jane Hopkins, Policy and Special Projects Staff (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 1113, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–7102, e-mail:
hopkins.jane@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document and the PR notice are available from the EPA home page at the Environmental Sub-Set entry for this document under "Regulations" (http:// www.epa.gov/fedrgstr/).

EPA is announcing its interim approach to implementing the new food safety requirements of the Food Quality Protection Act (FQPA), enacted in August 1996. Until permanent policies can be developed, this interim guidance will enable EPA to make sound, timely pesticide regulatory decisions that meet the stringent standards of the new law, including specific safety findings for infants and children.

The FQPA calls for additional scientific analyses which have not routinely been a part of EPA's pesticide risk assessment procedures, such as consideration of risks from chemicals that share a common mechanism of toxicity, potential endocrine effects, and combined exposures from dietary and nondietary sources.

The interim measures will allow the Agency to act on pending pesticide applications while promoting sound protective decisions that are consistent with current scientific knowledge, available data, and reasonable assumptions. As more data become available and new knowledge emerges, the Agency's approach will be flexible enough to incorporate them. The notice also explains what EPA's priorities will be for review of pesticide applications under the interim guidance. EPA will give highest priority to reveiw of requests for pesticide uses to deal with emergency conditions. EPA also will give priority to reduced risk and biological pesticides.

This **Federal Register** notice announces the availability of the PR Notice and instructs registrants on how to obtain it.

Lists of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: February 13, 1997.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 97–4619 Filed 2–25–97; 8:45 am]

BILLING CODE 6560–50–F

[AD–FRL–5694–8]

Industrial Combustion Coordinated Rulemaking Advisory Coordinating Committee Notice of Upcoming Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Industrial Combustion Coordinated Rulemaking (ICCR) Federal Advisory Committee notice of upcoming meeting.

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, section 9(c), EPA gave notice of the establishment of the ICCR Federal Advisory Committee (hereafter referred to as the Coordinating Committee) in the **Federal Register** on August 2, 1996 (61 FR 40413).

The public can follow the progress of the ICCR through attendance at meetings (which will be announced in advance) and by accessing the Technology Transfer Network (TTN), which serves as the primary means of disseminating information about the ICCR.

DATES: The next meeting of the Coordinating Committee is scheduled for March 19 and 20, 1997. Further information on the Coordinating Committee may be obtained by accessing the TTN.

ADDRESSES: The Coordinating Committee meeting on March 19 and 20, 1997 will be held at the Hotel Inter-Continental, 505 North Michigan Avenue, Chicago, Illinois (312–944–4100).

INSPECTION OF DOCUMENTS: Docket. Minutes of the meetings, as well as other relevant materials, will be available for public inspection at U.S. EPA Air and Radiation Docket and Information Center, Docket No. A–96–17. The docket is open for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday except for Federal holidays, at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (6102), 401 M Street SW, Washington, DC 20460; telephone: (202) 260–7548. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Fred Porter or Sims Roy, U.S. Environmental Protection Agency, Emission Standards Division, Combustion Group (MD–13), Research Triangle Park, NC 27711, telephone numbers (919) 541–5251 and 541–5263, respectively.

SUPPLEMENTARY INFORMATION:

Technology Transfer Network (TTN)

The TTN is one of the EPA's electronic bulletin boards. The TTN can be accessed through the Internet or directly by modem. Through the Internet, the TTN may be accessed at:
TELNET: ttnbbs.rtpnc.epa.gov
FTP: ttnftp.rtpnc.epa.gov
WWW: ttnwww.rtpnc.epa.gov
When accessing the WWW site, select TTN BBS Web from the first menu, then select Gateway to TTN Technical Areas from the second menu, and finally, select ICCR-Industrial Combustion Coordinated Rulemaking from the third menu.

By modem, dial (919) 541–5742 for up to a 14,400 bits-per-second information transfer connection. After logging on to the system, select Gateway to the TTN Technical Areas from the menu and then select ICCR-Industrial Combustion Coordinated Rulemaking from the next menu. Access to the TTN through Telnet will look the same as if you had dialed by modem, so these instructions should be followed for a Telnet connection.

Access to the TTN through FTP is a streamlined approach for downloading files, but is only useful, if the desired filenames are known.

If more information on the TTN is needed, call the help desk at (919) 541–5384.

All Coordinating Committee meetings will be announced in the **Federal Register**. Work Group meetings will be announced on the TTN. Individuals interested in Work Group meetings, or any aspect of the ICCR for that matter, should access the TTN on a regular basis for information.

Two copies of the Coordinating Committee charter are filed with appropriate committees of Congress and the Library of Congress and are available upon request to the Docket (ask for item #I–B–1). The purpose of the Coordinating Committee is to assist EPA in the development of regulations to control emissions of air pollutants from industrial, commercial, and institutional combustion of fuels and non-hazardous solid wastes. The Coordinating Committee will attempt to develop recommendations for national emission

standards for hazardous air pollutants (NESHAP) implementing section 112 and solid waste combustion regulations implementing section 129 of the Act, and may review and make recommendations for revising and developing new source performance standards (NSPS) under section 111 of the Act. The recommendations will cover boilers, process heaters, industrial/commercial and other incinerators, stationary internal combustion engines, and stationary combustion turbines.

The lists of Coordinating Committee and Work Group members are available from the TTN for the purpose of giving the public the opportunity to contact members to discuss concerns or information they would like to bring forward during the ICCR process.

The next meeting of the Coordinating Committee will be held March 19 and 20, 1997 in Chicago, Illinois at the Hotel Inter-Continental located at 505 North Michigan Avenue, Chicago, Illinois from about 8:30 a.m. to about 6:00 p.m. on both days; an evening session may be held on March 19, if necessary, to ensure completion of the agenda. The agenda for this meeting will include reports from the Work Groups on their progress and planning, discussion of data gathering efforts to support the ICCR, and a discussion of direction and guidance from the Coordinating Committee to the Work Groups. This meeting will also be open to the public, and an opportunity will be provided for the public to offer comments and address the Coordinating Committee.

It is anticipated that the next meeting of the Coordinating Committee, following the meeting in March, will be May 21 and 22, 1997 in Research Triangle Park, North Carolina.

Dated: February 20, 1997.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 97–4757 Filed 2–25–97; 8:45 am]

BILLING CODE 6560–50–P

[OPP–30430; FRL–5589–3]

Certain Companies; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications and an amendment of an application to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by March 28, 1997.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30430] and the file symbols to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will be accepted on disks in Wordperfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–30430]. No "Confidential Business Information" (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submission can be found below in this document.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Biopesticides and Pollution Prevention Division (7501W), Attn: (Regulatory Action Leader named in each registration), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person: Contact the Regulatory Action Leader named in each registration at the following office location, telephone number, and e-mail address.

Regulatory Action Leader	Office location/telephone number	Address
Denise Greenway,	Rm. CS51B6, (703–308–8263); e-mail: greenway.denise@epamail.epa.gov.	Environmental Protection Agency Westfield Building North Tower, 2800 Crystal Drive Arlington, VA 22202
Teung Chin,	Rm. CS51B6, (703–308–1259); e-mail: chin.teung@epamail.epa.gov.	-Do-

SUPPLEMENTARY INFORMATION: EPA received applications and an amendment of an application as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

I. Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 275–RRE. Applicant: Abbott Laboratories, Dept. 28R, Bldg., A1, 1401 Sheridan Road, North Chicago, IL 60064–4000. Product name: Retain Plant Growth Regulator Soluble Powder. Biological Plant Regulator. Active ingredient: Aminoethoxyvinylglycine at 15 percent. Proposed classification/Use: None. For use on apples and pears. (D. Greenway)

2. File Symbol: 275–IO. Applicant: Abbott Laboratories. Product name: ABG-3097 Plant Growth Regulator Soluble Powder. Biological Plant Regulator. Active ingredient: Aminoethoxyvinylglycine at 86 percent. Proposed classification/Use: None. For nonfood greenhouse use. (D. Greenway)

3. File Symbol: 275–II. Applicant: Abbott Laboratories. Product name: ABG-3097 Technical Powder. Biological Plant Regulator. Active ingredient: Aminoethoxyvinylglycine at 86 percent. Proposed classification/Use: None. For formulation into end-use products for apples and pears, and for nonfood greenhouse uses. (D. Greenway)

4. File Symbol: 59174–U. Applicant: Appropriate Technology, Inc., 3601 Garden Brook, Dallas, TX 75234. Product name: Plant Extract 620. Plant Regulator/Nematicide. Active ingredient: Plant extract at 100 percent. Proposed classification/Use: None. For manufacturing use only. (T. Chin)

5. File Symbol: 59174–E. Applicant: Appropriate Technology, Inc. Product name: Sincocin. Plant Regulator/Nematicide. Active ingredient: Plant extract at 0.56 percent. Proposed classification/Use: None. For food/feed and ornamental crops. (T. Chin)

II. Amended Product Containing a New Active Ingredient

EPA issued a notice, published in the **Federal Register** of May 10, 1994 (59 FR 24151; FRL–4770–4), which announced that Appropriate Technology, Inc., 3601 Garden Brook, Dallas, TX 75234, had submitted an application to register the pesticide product Agrispon Technical, (File Symbol 59174–G) containing the active ingredient plant extract at 0.56 for manufacturing use to be formulated into end-use products and for use on food, ornamentals, and forestry. The registrant later amended (File Symbol 59174–G), which was represented as a Technical in the **Federal Register**, and is now an end-use product called "Agrispon" still at 0.56 percent of the chemical for use on feed/food and ornamental crops. (T. Chin)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

A record has been established for this notice under docket number [OPP–30430] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division at the address provided from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. It is suggested that persons interested in reviewing the application file, telephone this office at (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: February 7, 1997.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 97–4629 Filed 2–25–97; 8:45 am]

BILLING CODE 6560–50–F

[OPP–66236; FRL 5587–8]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by August 25, 1997 orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery, telephone number and e-mail: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This notice announces receipt by the Agency of requests to cancel some 22 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000004–00201	Benomyl Lawn Fungicide Granules	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000016–00131	Dragon Benomyl Wettable	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
000241–00332	Tri-5 Herbicide	Trifluralin (α,α,α-trifluro-2,6-dinitro-*N*,*N*-dipropyl-p-toluidine) (Note: α = alpha)
000352 WA–91–0021	DuPont Glean Fertilizer Compatible Herbicide	2-Chloro-*N*-(((4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino)carbonyl)
000352 WA–91–0022	Harmony Extra Herbicide	Methyl 3-(((((4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino)carbonyl)
		Methyl 2-(((((4-methoxy-6-methyl-1,3,5-triazin-2-yl)methylamino)
000352 WA–91–0023	Express Herbicide	Methyl 2-(((((4-methoxy-6-methyl-1,3,5-triazin-2-yl)methylamino)
000352 WA–91–0024	DuPont Finesse Herbicide	2-Chloro-*N*-(((4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino)carbonyl) Methyl 2-(((((4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino)carbonyl)
000352 WA–94–0015	DuPont Ally Herbicide	Methyl 2-(((((4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino)carbonyl)
000432–00770	Foliafume XK Insecticide	Pyrethrins Rotenone
002792–00034	APL-Luster 245 with Scald Inhibitor	Diphenylamine
002792–00044	No Scald DPA Powder No. 31	Diphenylamine
003125–00375	Salute 4EC Herbicide	Trifluralin (α,α,α-trifluro-2,6-dinitro-*N*,*N*-dipropyl-p-toluidine) (Note: α = alpha) 1,2,4-Triazin-5(4*H*)-one, 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-
004816–00661	Dog Dip E.C.	Rotenone Cube Resins other than rotenone
007969 TX–96–0002	Slam	1-Naphthyl-*N*-methylcarbamate
052200–00003	Greensward Team & Fertilizer	Trifluralin (α,α,α-trifluro-2,6-dinitro-*N*,*N*-dipropyl-p-toluidine) (Note: α = alpha) *N*-Butyl-*N*-ethyl-α,α,α-trifluoro-2,6-dinitro-p-toluidine (Note: α = alpha)
052200–00004	Greensward Premium Team + Fertilizer	Trifluralin (α,α,α-trifluro-2,6-dinitro-*N*,*N*-dipropyl-p-toluidine) (Note: α = alpha) *N*-Butyl-*N*-ethyl-α,α,α-trifluoro-2,6-dinitro-p-toluidine (Note: α = alpha)
055392–00001	Manna Pro Rabon Mineral Block	2-Chloro-1-(2,4,5-trichlorophenyl)vinyl dimethylphosphate
056228 IL–89–0006	Compound DRC-1339 98% Concentrate	3-Chloro-p-toluidine hydrochloride
056228 IN–90–0003	Compound DRC-1339 98% Concentrate	3-Chloro-p-toluidine hydrochloride
056228 LA–93–0020	Compound DRC-1339 98% Concentrate	3-Chloro-p-toluidine hydrochloride
056228 TX–94–0012	Compound DRC-1339 Concentrate-Feedlots	3-Chloro-p-toluidine hydrochloride
062719–00200	B and G Dursban 2E Insecticide	*O*,*O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl)phosphorothioate

Unless a request is withdrawn by the registrant within 180 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 180–day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000004	Bonide Products Inc., 2 Wurz Ave., Yorkville, NY 13495.
000016	Dragon Corp., Box 7311, Roanoke, VA 24019.
000241	American Cyanamid Co., Agri Research Div - U.S. Regulatory Affairs, Box 400, Princeton, NJ 08543.
000352	E. I. Du Pont De Nemours & Co, Inc., Barley Mill Plaza, Walker's Mill, Wilmington, DE 19880.
000432	Agrevo Environmental Health, 95 Chestnut Ridge Rd., Montvale, NJ 07645.
002792	Elf Atochem N.A. Inc., Decco Division, 1713 S. California Ave, Monrovia, CA 91017.
003125	Bayer Corp., Agriculture Division, 8400 Hawthorn Rd., Box 4913, Kansas City, MO 64120.
004816	Agrevo Environmental Health, 95 Chestnut Ridge Rd., Montvale, NJ 07645.
007969	BASF Corp., Agricultural Products, Box 13528, Research Triangle Park, NC 27709.
052200	Tyler Enterprises Inc., Rt. 53 South Box 365, Elwood, IL 60421.
055392	Manna Pro Corp., 7711 Carondelet Ave, Ste 800, St Louis, MO 63105.
056228	U.S. Department of Agriculture, Animal & Plant Health Inspection Service, 4700 River Rd., Unit 152, Riverdale, MD 20737.
062719	DowElanco, 9330 Zionsville Rd., 308/3E, Indianapolis, IN 46268.

III. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before August 25, 1997. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** (56 FR 29362) June 26, 1991; [FRL 3846–4]. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: February 11, 1997.

Linda A. Travers,

Director, Program Management and Support Division, Office of Pesticide Programs.

[FR Doc. 97–4775 Filed 2–25–97; 8:45 am]

BILLING CODE 6560–50–F

[PF–713; FRL–5589–2]

Bayer Corporation; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the filing of a pesticide petition proposing the establishment of a regulation for residues of imidacloprid in or on cereal grain, sweet corn, safflower and soybeans. The notice contains a summary of the petition prepared by the petitioner, Bayer Corporation.

DATES: Comments, identified by the docket number [PF–713], must be received on or before March 28, 1997.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132 CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202. Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF–713]. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit II of this document.

Information submitted as comments concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis H. Edwards, Jr., Product Manager (PM) 19, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail address: Rm. 207, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)–305–6386; e-mail: edwards.dennis@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition (PP) 6F4765 pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, as amended, 21 U.S.C. 346a(d), by the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170, 110 Stat. 1489) from Bayer Corporation ("Bayer"), 8400 Hawthorn Rd., P.O. Box 4913, Kansas City, MO 64120–0013 proposing to amend 40 CFR 180.472 by establishing tolerances for inadvertent or indirect residues of the insecticide, imidacloprid: 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine and its metabolites containing the 6-chloro-pyridinyl moiety in or on cereal grain [grain 0.05 parts per million (ppm), forage (2.0 ppm), stover (0.3 ppm), hay (6.0 ppm), and straw (3.0 ppm)], sweet corn (0.05 ppm), legume vegetables (0.3 ppm) [and foliage thereof (2.5 ppm)], and safflower seed (0.05 ppm). The nature of the imidacloprid residue in plants and livestock is adequately understood. The analytical method for determining residues is a common moiety method for imidacloprid and its metabolites containing the 6-chloro-pyridinyl moiety using oxidation, derivatization, and analysis by capillary gas chromatography with a mass-selective detector. These tolerances would allow for a 1–month plant back interval for these crops following normal application of imidacloprid-containing products.

EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

As required by section 408(d) of the FFDCA, as recently amended by the FQPA, Bayer Corporation included in

the petition a summary of the petition and authorization for the summary to be published in the **Federal Register** in a notice of receipt of the petition. The summary represents the views of Bayer Corporation; EPA is in the process of evaluating the petition. As required by section 408(d)(3) EPA is including the summary as a part of this notice of filing. EPA may have made minor edits to the summary for the purpose of clarity.

I. Petition Summary

Imidacloprid is a broad-spectrum insecticide with excellent systemic and contact toxicity characteristics which is used primarily for sucking insects.

A. Plant Metabolism and Analytical Method

The metabolism of imidacloprid in plants is adequately understood for the purposes of these tolerances. The residues of concern are combined residues of imidacloprid and its metabolites containing the 6-chloro-pyridinyl moiety, all calculated as imidacloprid. The analytical method is a common moiety method for imidacloprid and its metabolites containing the 6-chloropyridinyl moiety using a permanganate oxidation, silyl derivatization, and capillary GC-MS selective ion monitoring. This method has successfully passed a petition method validation in EPA labs. There is a confirmatory method specifically for imidacloprid and several metabolites utilizing GC/MS and HPLC-UV which has been validated by the EPA as well. Imidacloprid and its metabolites are stable for at least 24 months in the commodities when frozen.

B. Magnitude of the Residue

Field rotational crop studies were conducted in three states where soil was treated with imidacloprid at a rate of 0.3 lbs active ingredient per acre (ai/A) (1x). After 30 days, rotational crops were planted, grown to maturity, and harvested at appropriate times. Residue levels in cereal grain, sweet corn (K+CWHR), and safflower seed were <0.05 ppm. Maximum residues were 1.81 ppm in cereal grain forage, 0.26 ppm in cereal grain stover, 2.7 ppm in cereal grain straw, 0.22 ppm in legume vegetables, and 2.33 ppm in legume vegetable foliage. These residue data support tolerances of 0.05 ppm for cereal grain, sweet corn (K+CWHR), and safflower seed; 2.0 ppm for cereal grain forage; 0.3 ppm for cereal grain stover; 6.0 ppm for cereal grain hay; 3.0 ppm in cereal grain straw; 0.3 ppm in legume vegetables; and 2.5 ppm for the foliage of legume vegetables. No processing studies were submitted with this petition, however, available data would indicate that tolerances on corn meal (0.05 ppm), soybean meal (0.5 ppm) and a time-limited tolerance on safflower meal (0.5 ppm) could be considered. The registrant has committed to provide data to support these processed commodities. CBTS has concluded that existing poultry meat and egg tolerances are adequate to support the proposed new uses of imidacloprid.

C. Toxicological Profile of Imidacloprid

1. *Acute toxicity.* The acute oral LD_{50} values for imidacloprid technical ranged from 424 to 475 milligrams per kilogram of body weight (mg/kg bwt) in the rat. The acute dermal LD_{50} was greater than 5,000 milligrams per kilogram (mg/kg) in rats. The 4–hour rat inhalation LC_{50} was >69 milligrams per cubic meter (mg/m^3) air (aerosol). Imidacloprid was not irritating to rabbit skin or eyes. Imidacloprid did not cause skin sensitization in guinea pigs.

2. *Genotoxicity.* Extensive mutagenicity studies conducted to investigate point and gene mutations, DNA damage and chromosomal aberration, both using *in vitro* and *in vivo* test systems show imidacloprid to be non-genotoxic.

3. *Reproductive and developmental toxicity.* A two-generation rat reproduction study gave a no-observed-effect level (NOEL) of 100 ppm (8 mg/kg/bwt). Rat and rabbit developmental toxicity studies were negative at doses up to 30 mg/kg/bwt and 24 mg/kg/bwt, respectively.

4. *Subchronic toxicity.* Ninety-day (90–day) feeding studies were conducted in rats and dogs. The NOEL's for these tests were 14 mg/kg bwt/day (150 ppm) and 5 mg/kg bwt/day (200 ppm) for the rat and dog studies respectively.

5. *Chronic toxicity/oncogenicity.* A 2–year rat feeding/carcinogenicity study was negative for carcinogenic effects under the conditions of the study and had a NOEL of 100 ppm (5.7 mg/kg/bwt in male and 7.6 mg/kg/bwt female) for noncarcinogenic effects that included decreased body weight gain in females at 300 ppm and increased thyroid lesions in males at 300 ppm and females at 900 ppm. A 1–year dog feeding study indicated a NOEL of 1,250 ppm (41 mg/kg/bwt). A 2–year mouse carcinogenicity study that was negative for carcinogenic effects under conditions of the study and that had a NOEL of 1,000 ppm (208 mg/kg/day).

Imidacloprid has been classified under "Group E" (no evidence of carcinogenicity) by EPA's OPP/HED's Reference Dose (RfD) Committee. There is no cancer risk associated with exposure to this chemical. The reference dose (RfD) based on the 2–year rat feeding/carcinogenic study with a NOEL of 5.7 mg/kg/bwt and 100–fold uncertainty factor, is calculated to be 0.057 mg/kg/bwt. The theoretical maximum residue contribution (TMRC) from published uses is 0.008358 mg/kg/bwt/day utilizing 14.7% of the RfD.

6. *Endocrine effects.* The toxicology database for imidacloprid is current and complete. Studies in this database include evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following short- or long-term exposure. These studies revealed no primary endocrine effects due to imidacloprid.

7. *Mode of action.* Imidacloprid exhibits a mode of action different from traditional organophosphate, carbamate, or pyrethroid insecticides. Imidacloprid acts by binding to the nicotinergic receptor sites at the postsynaptic membrane of the insect nerve. Due to this novel mode of action, imidacloprid has not shown any cross resistance to registered alternative insecticides and is a valuable tool for use in IPM or resistance management programs.

D. Aggregate Exposure

Imidacloprid is a broad-spectrum insecticide with excellent systemic and contact toxicity characteristics with both food and non-food uses. Imidacloprid is currently registered for use on various food crops, tobacco, turf, ornamentals, buildings for termite control, and cats and dogs for flea control. Those potential exposures are addressed below:

1. *Dietary.* The EPA has determined that the reference dose (RfD) based on the 2–year rat feeding/carcinogenic study with a NOEL of 5.7 mg/kg/bwt and 100–fold uncertainty factor, is calculated to be 0.057 mg/kg/bwt. As published in the **Federal Register** of December 13, 1995 (60 FR 64006)(FRL–4990–5) and June 12, 1996 **Federal Register** (61 FR 2674)(FRL–5367–8) (petition to establish tolerances on leafy green vegetables (PP 5F4522/R2237)), the TMRC from published uses is 0.008358 mg/kg/bwt/day utilizing 14.7% of the RfD for the general population. For the most highly exposed subgroup in the population, non-nursing infants (< 1 year old), the TMRC for the published tolerances is 0.01547 mg/kg/day. This is equal to 27.1% of the RfD. Therefore, Bayer believes that dietary exposure from the existing uses including the currently proposed inadvertent or indirect residue tolerances will not exceed the RfD for any subpopulation (including infants and children).

2. *Water.* Although the various imidacloprid labels contain a statement that this chemical demonstrates the properties associated with chemicals detected in groundwater, Bayer is not aware of imidacloprid being detected in any wells, ponds, lakes, streams, etc. from its use in the United States. In studies conducted in 1995, imidacloprid was not detected in 17 wells on potato farms in Quebec, Canada. In addition, groundwater monitoring studies are currently underway in California and Michigan. Therefore, Bayer believes that contributions to the dietary burden from residues of imidacloprid in water would be inconsequential.

3. *Non-occupational*— a. *Residential turf.* Bayer has conducted an exposure study to address the potential exposures of adults and children from contact with imidacloprid treated turf. The population considered to have the greatest potential exposure from contact with pesticide treated turf soon after pesticides are applied are young children. Margins of safety (MOS) of 7,587 to 41,546 for 10–year–old children and 6,859 to 45,249 for 5–year–old children were estimated by comparing dermal exposure doses to the imidacloprid no observable effect level of 1,000 mg/kg/day established in a 15–day dermal toxicity study in rabbits. The estimated safe residue levels of imidacloprid on treated turf for 10–year–old children ranged from 5.6 to 38.2 g/cm^2 and for 5–year–old children from 5.1 to 33.5 g/cm^2. This compares with the average imidacloprid transferable residue level of 0.080 g/cm^2 present immediately after the sprays have dried. These data indicate that children can safely contact imidacloprid-treated turf as soon after application as the spray has dried.

b. *Termiticide.* Imidacloprid is registered as a termiticide. Due to the nature of the treatment for termites, exposure would be limited to that from inhalation and was evaluated by EPA's Occupational and Residential Exposure Branch's (OREB) and Bayer. Data indicate that the Margins of Safety for the worst case exposures for adults and infants occupying a treated building who are exposed continuously (24 hours/day) are 8.0×10^7 and 2.4×10^8, respectively—and exposure can thus be considered negligible.

c. *Tobacco smoke.* Studies have been conducted to determine residues in tobacco and the resulting smoke following treatment. Residues of imidacloprid in cured tobacco following treatment were a maximum of 31 ppm (7 ppm in fresh leaves). When this tobacco was burned in a pyrolysis study only 2 percent of the initial residue was recovered in the resulting smoke (main stream plus side stream). This would result in an inhalation exposure to imidacloprid from smoking of approximately 0.0005 mg per cigarette. Using the measured subacute rat inhalation NOEL of 5.5 mg/m^3, it is apparent that exposure to imidacloprid from smoking (direct and/or indirect exposure) would not be significant.

d. *Pet treatment.* Human exposure from the use of imidacloprid to treat dogs and cats for fleas has been addressed by EPA's OREB who have concluded that due to the fact that imidacloprid is not an inhalation or dermal toxicant and that while dermal absorption data are not available, imidacloprid is not considered to present a hazard via the dermal route.

4. *Cumulative effects.* No other chemicals having the same mechanism of toxicity are currently registered, therefore, Bayer believes that there is no risk from cumulative effects from other substances with a common mechanism of toxicity.

E. Safety Determinations

1. *U.S. population in general.* Using the conservative exposure assumptions described above and based on the completeness and reliability of the toxicity data, Bayer concludes that total aggregate exposure to imidacloprid from all current uses including those currently proposed will utilize little more than 15% of the RfD for the U.S. population. EPA generally has no concerns for exposures below 100% of the RfD, because the RfD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. Thus, Bayer concludes that there is a reasonable certainty that no harm will result from aggregate exposure to imidacloprid residues.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of imidacloprid, the data from developmental studies in both rat and rabbit and a two-generation reproduction study in the rat have been considered. The developmental toxicity studies evaluate potential adverse effects on the developing animal resulting from pesticide exposure of the mother during prenatal development. The reproduction study evaluates effects from exposure to the pesticide on the reproductive capability of mating animals through two generations, as well as any observed systemic toxicity.

FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post- natal effects and the completeness of the toxicity database. Based on current toxicological data requirements, the toxicology database for imidacloprid relative to pre- and post-natal effects is complete. Further for imidacloprid, the NOEL of 5.7 mg/kg/bwt from the 2–year rat feeding/carcinogenic study, which was used to calculate the RfD (discussed above), is already lower than the NOELs from the developmental studies in rats and rabbits by a factor of 4.2 to 17.5 times. Since a 100–fold uncertainty factor is already used to calculate the RfD, Bayer surmises that an additional uncertainty factor is not warranted and that the RfD at 0.057 mg/kg/bwt/day is appropriate for assessing aggregate risk to infants and children.

Using the conservative exposure assumptions described above, EPA has concluded that the TMRC from use of imidacloprid from published uses is 0.008358 mg/kg/bwt/day utilizing 14.7% of the RfD for the general population. For the most highly exposed subgroup in the population, non-nursing infants (< 1 year old), the TMRC for the published tolerances is 0.01547 mg/kg/day. This is equal to 27.1% of the RfD. Therefore, Bayer concludes that dietary exposure from the existing uses including the currently proposed tolerances will not exceed the RfD for any subpopulation (including infants and children).

F. Other Considerations

The nature of the imidacloprid residue in plants and livestock is adequately understood. The residues of concern are combined residues of imidacloprid and it metabolites containing the 6-chloropyridinyl moiety, all calculated as imidacloprid. The analytical method is a common moiety method for imidacloprid and its metabolites containing the 6-chloropyridinyl moiety using a permanganate oxidation, silyl derivatization, and capillary GC-MS selective ion monitoring. There is an additional confirmatory method available. Imidacloprid and its metabolites have been shown to be stable for at least 24 months in frozen storage.

G. International Tolerances

No CODEX Maximum Residue Levels (MRL's) have been established for residues of Imidacloprid on any crops at this time.

II. Public Record

EPA invites interested persons to submit comments on this notice of

filing. Comments must bear a notification indicating the docket control number [PF–713].

A record has been established for this notice under docket numbers [PF–713] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and record keeping requirements.

Dated: February 10, 1997.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–4627 Filed 2–25–97; 8:45 am]
BILLING CODE 6560–50–F

[PF–706; FRL–5585–7]

Bioxy, Inc.; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing.

SUMMARY: This notice announces the filing of a pesticide petition proposing the exemption from the requirement of a tolerance for sodium chlorite residues in or on meat and meat byproducts of cattle, sheep, hogs, goats, horses, and poultry when applied as a bactericide for the generation of chlorine dioxide in livestock drinking water.

DATES: Comments, identified by the docket control number PF–706, must be received on or before, March 28, 1997.

ADDRESSES: By mail, submit written comments to Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. In person, bring comments to Rm. 1132, CM #2. 1921 Jefferson Davis Highway, Arlington, VA 22202.

Comments and data may also be submitted electronically be sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by docket control number PF–706. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit II. of this document.

Information submitted as comments concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a,.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Vivian A. Turner, Acting Product Manager (PM) 32, Registration Division (7505C), Rm., 237, Crystal Mall #2, Jefferson Davis Highway, Arlington, VA. 703–305–7460. e-mail: turner.vivian@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition (PP 6F4783) from Bioxy, Inc. proposing, pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, (FFDCA) 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing an exemption from tolerance for residues of sodium chlorite and its hydrolysis by-product, chlorine dioxide, in or on meat and meat byproducts of cattle, sheep, goats, horses and poultry when such residues result from the use of sodium chlorite to generate the bactericide, chlorine dioxide, in poultry drinking water and livestock drinking water at a concentration of up to 18.34 parts per million (ppm). The proposed analytical method is ultraviolet spectrophotometric analysis. Pursuant to the section 408(d)(2)(A)(i) of the FFDCA, as amended, Bioxy, Inc. has submitted the following summary of information, data and arguments in support of their pesticide petition. This summary was prepared by Bioxy, Inc. and EPA has not fully evaluated the merits of the petition. EPA edited the summary to clarify that the conclusions and arguments were the petitioner's and not necessarily EPA's and to remove certain extraneous material.

I. Petition Summary

This section has been arranged to provide a justification for this tolerance exemption and a summary of available data.

The request is to exempt from the requirement of a tolerance, residues of sodium chlorite and its hydrolysis product, chlorine dioxide, in or on meat and meat byproducts of cattle, sheep, hogs, goats, horses, and poultry, and milk and eggs when such residues result from the use sodium chlorite to generate the bactericide, chlorine dioxide in poultry drinking water and livestock drinking water.

EPA has exempted sodium chlorite from the requirement of a tolerance when used as a seed-soak treatment of the raw agricultural commodities (RACs) crop group Brassica (cole) leafy vegetables and radishes (40 CFR 180.170). Sodium chlorate is chemically similar to sodium chlorite, and sodium chlorate is exempt from the requirement of a tolerance when used as a defoliant, desiccant, or fungicide on various RACs (40 CFR 180.1020). Chlorine gas is exempted from the requirement of a tolerance when used pre- or post-harvest in solution on all RACs (40 CFR 180.1095). Calcium hypochlorite is exempted from the requirement of a tolerance when used harvest or postharvest on all RACs and in or on grapes when used as a fumigant

postharvest by means of a chlorine generator pad (40 CFR 180.1054). The Agency has determined previously (as stated in the proposal for exemption from the requirement of a tolerance for calcium hypochlorite chlorine gas in the **Federal Register** of January 11, 1991 (56 FR 1153; FRL–3686–5), that there is no reasonable expectation that residues of these compounds will remain in eggs, meat, milk or poultry in accordance with 40 CFR 180.3. The residues which do remain are not of toxicological significance.

A. Residue Chemistry

Residues of sodium chlorite are not expected in livestock because it converts to chlorine dioxide in the drinking water and is consumed by biological activity. Because sodium chlorite is highly reactive with minerals, bacteria and other contaminants, the reaction is complete within a few minutes consuming most, if not all of the sodium chlorite.

Because there are many active Federal pesticide registrations for sodium chlorite and chlorine dioxide as well as existing tolerance exemptions for both compounds, the Agency has determined that the residue chemistry for these compounds is understood.

Adequate analytical methodology is available through spectrophotometric analysis to determine the amounts of sodium chlorite in livestock drinking water.

B. Toxicological Profile

The acute and chronic toxicity of sodium chlorite and chlorine dioxide have been tested extensively. Adverse effects are not expected when used in the proposed manner.

C. Aggregate Exposure

There are no established U.S. tolerances for sodium chlorite or chlorine dioxide; however, there are several tolerance exemptions for theses compounds. The addition to aggregate exposure or sodium chlorite or chlorine dioxide as described in this petition is minimal.

The estimated non-occupational exposure to sodium chlorite and chlorine dioxide has been evaluated based on its proposed use pattern. The potential for non-occupational exposure under the proposed use to the general population is unlikely. Sodium chlorite and its hydrolysis product, chlorine dioxide, is proposed to be used only on poultry and livestock farms and is not to be used in or around the home.

There is no maximum contaminant level for residues of sodium chlorite in drinking water; however, there is a proposed maximum residual disinfectant level (MRDL) for chlorine dioxide of 0.8 milligrams per liter (mg/L) and a MRDL goal of 0.3 mg/L. The MRDL was part of a proposed EPA rulemaking on disinfectants on drinking water on July 29, 1994; however, this rule is not yet finalized.

D. Cumulative Effects

Sodium chlorate is chemically similar to sodium chlorite, and sodium chlorate is exempt from the requirements of a tolerance when used as a defoliant, desiccant, or fungicide on various RACs (40 CFR 180.1020). Chlorine gas is exempted from the requirement of a tolerance when used preharvest or postharvest in solution on all RACs (40 CFR 180.1095). Calcium hypochlorite is exempted from the requirement of a tolerance when used preharvest or postharvest on all RACs and in or on grapes when used as a fumigant postharvest by means of a chlorine generator pad (40 CFR 180.1054). The agency has determined previously that there is no reasonable expectation that residues of these compounds will remain in eggs, meat, or poultry in accordance with 40 CFR 180.3. The residues which do remain are not of toxicological significance.

E. Safety Determination

Because sodium chlorite and chlorine dioxide are not expected to accumulate in poultry or livestock tissues and their food byproducts, exposure to the U.S. population and the subgroup infants and children does not pose a significant risk. In addition, chlorine dioxide (the byproduct from the reaction during the proposed use of sodium chlorite) is already present in many municipal drinking water systems, therefore, the exposure to any chlorine dioxide that may be present in animal food products as a result of the proposed use is not expected to cause any additional risk to the general population and the subgroup of infants and children.

F. International Tolerances

The petitioner understands that there are no current established Maximum Residue Levels for sodium chlorite or chlorine dioxide.

II. Public Record

Interested persons are invited to submit comments on the this notice of filing. Comments must bear a notation indicating the docket control number, PF–706.

A record has been established for this notice under docket control number PF–706 including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:
opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

List of Subjects

Environmental Protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 13, 1997.

Peter Caulkins,

Acting Director, Registration Division, Office Pesticide Programs.

[FR Doc. 97–4626 Filed 2–25–97; 8:45 am]
BILLING CODE 6560–50–F

[PF–711; FRL–5589–1]

Good Bugs Inc.; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of a regulation for an exemption from the requirement of a tolerance for residues of the microbial pesticide *Pseudomonas fluorescens* PRA-25 in or on peas, snapbeans, sweet corn, and supersweet

corn. The summary of the petition published in this notice was proposed by the petitioner Good Bugs Inc.

DATES: Comments, identified by the docket number [PF-711], must be received on or before, March 28, 1997.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. In person, bring comments to Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by docket number [PF-711]. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit II. of this document.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Teung F. Chin, Regulatory Action Leader, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 5th floor CS #1, 2800 Crystal Drive, Arlington, VA, 703–308–1259, e-mail: chin.teung@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition (PP 7G4803) from Good Bugs, Inc., P.O. Box 939, New Glarus, WI 53574, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for residues of the microbial pesticide, *Pseudomonas fluorescens* PRA-25 in or on the raw agricultural commodities peas, snap beans, sweet corn and supersweet corn.

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Good Bugs, Inc. has submitted the following summary of information, data and arguments in support of their pesticide petition. This summary was prepared by Good Bugs, Inc. and EPA has not fully evaluated the merits of the petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary was not clear that it reflected the conclusion of the petitioner and not necessarily EPA.

I. Petition Summary

A. Proposed Use Practices

Seed treatment with *Pseudomonas fluorescens* PRA-25 will be at the rate of 2 oz. per 100 lbs. of seed for snap beans, 3 oz. per 100 lbs of seed for peas and snap beans and 4.5 oz. per 100 lbs. of seed for supersweet corn. Application is one time only, prior to planting. In Wisconsin, 5 acres of peas will be treated in 1997, 50 acres in 1998 and 200 acres in 1999, 5 acres of snap beans will be treated in 1997, 50 acres in 1998, and 200 acres in 1999; 5 acres of sweet corn will be treated in 1997, 50 in 1998, and 200 in 1999; 5 acres of supersweet corn will be treated in 1997, 50 acres in 1998, and 200 acres in 1999. In Minnesota, 5 acres of peas will be treated in 1997, 50 acres in 1998, and 200 acres in 1999; 5 acres of snap beans will be treated in 1997, 50 acres in 1998, and 200 acres in 1999; 5 acres of sweet corn will be treated in 1997, 50 acres in 1998, and 200 acres in 1999; 5 acres of supersweet corn will be treated in 1997, 50 acres in 1998, and 200 acres in 1999. In Illinois, 5 acres of peas will be treated in 1997, 50 acres in 1998, and 200 acres in 1999; 5 acres of sweet corn will be treated in 1997, 50 acres in 1998, and 200 acres in 1999; 5 acres of supersweet corn will be treated in 1997, 50 acres in 1998, and 200 acres in 1999. In Washington, 5 acres of peas will be treated in 1997, 50 acres in 1998, and 200 acres in 1999. The product is to be applied to the seeds in the planter box immediately before planting.

B. Product Identity/Chemistry

1. *Pseudomonas fluorescens* PRA-25 was originally isolated from the rhizosphere of a pea plant in Wisconsin. Strain PRA-25 is a gram negative, rod shaped, aerobic, non spore forming bacterium. A fluorescent pigment (pyroverdin) is produced on King's Medium B. The strain was identified as a member of the *Pseudomonas fluorescens/putida* group using gas chromatography fatty acid (GC-FAME) analysis. GC-FAME and Biolog analysis was used to identify strain PRA-25 as *Pseudomonas fluorescens* (Trevisan)Migula Biotype B (=biovar II). Biovar II includes *Pseudomonas marginalis* pathogens as well as saprophytes (Bergey's Manual), so a potato rot assay was conducted. The known soft-rot pathogen *Erwinia* carotovora was included as a check treatment. Strain PRA-25 did not rot potatoes. Good Bugs, Inc. concludes that *Pseudomonas fluorescens* PRA-25 is a saprophytic member of *Pseudomonas fluorescens* biovar II.

2. *Pseudomonas fluorescens* PRA-25 will be used as a seed treatment and does not grow systemically in the plant. Good Bugs does not anticipate residues at the time of harvest. Good Bugs, Inc., therefore, believes a method to determine residues is not necessary.

3. An analytical method for detecting and measuring the levels of *Pseudomonas fluorescens* PRA-25 is not needed because the use as a seed treatment will not leave residues on the harvested crop. *Pseudomonas fluorescens* is a common contaminant of raw and refrigerated milk, meat, fish, and cheese. All biovars of *Pseudomonas fluorescens* appear to be readily isolated from foodstuff.

C. Mammalian Toxicological Profile

Good Bugs, Inc. states that the Acute Oral Limit Toxicity Testing of *Pseudomonas fluorescens* PRA-25 showed no evidence of toxicity or pathogenicity in rats dosed once by oral gavage with strain PRA-25. Normal weight gains were observed in all test animals during the observation period. No lesions were observed in any test animal.

Waivers for genotoxicity, reproductive and developmental toxicity, subchronic toxicity and chronic toxicity are requested. This testing is not generally required for microbial pesticides and Good Bugs, Inc. believes that the lack of toxicity along with the lack of exposure does not warrant such testing.

D. Aggregate Exposure

1. *Dietary exposure. Pseudomonas fluorescens* is a ubiquitous bacterium that is commonly associated with soil, water, plant roots and leaves, meat, fish, and dairy products. Good Bugs, Inc. believes that no additional exposure to food or drinking water is anticipated by using *Pseudomonas fluorescens* PRA-25 as a seed treatment.

2. Non-dietary exposure such as lawn care, topical insect repellents, etc. is not anticipated since this microbial pesticide does not have these uses.

3. Occupational exposure will be mitigated through the use of proper personal protective equipment.

E. Cumulative Exposure

Biological control agents of this type generally work by out competing disease organisms, thus, not having a toxic mode of action that can be shared. Other exposure can occur since other strains of *Pseudomonas fluorescens* are registered as microbial pesticides. Good Bugs, Inc. believes that human exposure from use of *Pseudomonas fluorescens* PRA-25 as a seed treatment is expected to be negligible.

F. Safety Determination

Good Bugs, Inc. believes that the safety of the U.S. population and that of infants and children will not be adversely affected by the use of *Pseudomonas cepacia* PRA-25 as a vegetable seed treatment. Strain PRA-25 is a naturally occurring strain originally isolated from the rhizosphere of a pea.

G. Existing Tolerances

1. Tolerance exemptions have been granted for other strains of *Pseudomonas fluorescens.*

2. International tolerance exemptions have been granted for other strains of Pseudomonas fluorescens.

II. Public Record

Interested persons are invited to submit comments on the notice of filing. Comments must bear a notation indicating the document control number, [PF-711].

A record has been established for this notice under docket number [PF-711] including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

List of subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 11, 1997.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 97–4630 Filed 2–25–97; 8:45 am]

BILLING CODE 6560–50–F

[PF–701; FRL–5585–2]

Rhone-Poulenc Ag Company; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing.

SUMMARY: This notice announces the filing of a pesticide petition proposing the establishment of a tolerance for residues of isoxaflutole in or on field corn. This notice contains a summary of the petition prepared by the petitioner, Rhone-Poulenc Ag Company.

DATES: Comments, identified by the docket control number [PF–701], must be received on or before, March 28, 1997.

ADDRESSES: By mail, submit written comments to Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. In person, bring comments to Rm. 1132, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF–701]. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit II of this document.

Information submitted as a comments concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Joanne Miller, Product Manager (PM) 23, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC. Office location, telephone number and e-mail address: Rm. 237, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, 703–305–6224, e-mail: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition (PP 6F4664) from Rhone-Poulenc Ag Company, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for the combined residues of the herbicide isoxaflutole [5-cyclopropyl-4-(2-methylsulfonyl-4-trifluoromethyl benzoyl) isoxazole] and its metabolites 1-(2-methylsulfonyl-4-trifluoromethylphenyl)-2-cyano-3-cyclopropylpropan-1,3-dione and 2-methylsulphonyl-4-trifluoromethyl benzoic acid, calculated as the parent compound, in or on the raw agricultural commodity field corn at 0.20 parts per million (ppm), field corn, fodder, at 0.50 ppm, field corn, forage at 1.0 ppm; and

establishing a tolerance for combined residues of the herbicide isoxaflutole [5-cyclopropyl-4-(2-methylsulfonyl-4-trifluoromethyl benzoyl)isoxazole] and its metabolite 1-(2-methylsulfonyl-4-trifluoromethylphenyl)-2-cyano-3-cyclopropylpropan-1,3-dione, calculated as the parent compound, in or on the liver of cattle, goat, hogs, horses, poultry and sheep at 0.40 ppm, meat byproducts (except liver) of cattle, goat, hogs, horses, and sheep at 0.2 ppm and milk at 0.02 ppm. The proposed analytical method is gas chromatography. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petitions. Additional data may be needed before EPA rules on the petitions.

As required by section 408(d) of the FFDCA, as recently amended by the Food Quality Protection Act (FQPA) Rhone-Poulenc included in the petition a summary of the petition and authorization for the summary to be published in the **Federal Register** in a notice of receipt of the petition. The summary represents the views of Rhone-Poulenc; EPA is in the process of evaluating the petition. As required by section 408(d)(3) EPA is including the summary as a part of this notice of filing. EPA may have made minor edits to the summary for the purpose of clarity.

I. Petition Summary

A. Isoxaflutole Uses

Isoxaflutole is the first compound in a new class of isoxazole herbicides. Weeds found resistant to other herbicides are not cross resistant to isoxaflutole. The unique mode of action, which disrupts pigment biosynthesis in susceptible plants, of isoxaflutole provides excellent selective control for a wide spectrum of grass and broadleaf weeds at low use rates.

Isoxaflutole will be used on field corn to control broadleafs (including Kochia, lambsquarters, mallow, mustard, nightshade, pigweed, ragweed, smartweed, velvetleaf, and waterhemp); grasses (including barnyardgrass, cupgrass, foxtails, Panicum and wild proso millet).

Isoxaflutole will be applied in either conventional, conservation tillage, or no-till crop management systems and may be applied either pre-plant, pre-plant incorporated or preemergence for use in field corn production. The product controls emerging weeds and also has postemergent burn-down activity to small exposed weeds. Application rates for isoxaflutole alone range from 0.035 to 0.14 pounds active ingredient per acre dependent on soil texture. Combinations of isoxaflutole with up to one-half rates of other herbicides improves control of several annual grasses and dramatically reduces total herbicide volume usage in comparison with current agronomic practices. Applications can be made up to 14 days before planting field corn in either conventional or no-till situations. Isoxaflutole is formulated as a 75 percent water dispersible granule and will be marketed under the trade name of "BALANCE".

B. Isoxaflutole Safety

Rhone-Poulenc Ag Company has submitted 41 separate toxicology studies in support of tolerances for isoxaflutole. According to Rhone-Poulenc, isoxaflutole is not acutely toxic and produces minimal skin and eye irritation. Further, isoxaflutole is not genotoxic, teratogenic nor a reproductive toxin.

The following mammalian toxicity studies have been conducted to support the tolerance of isoxaflutole:

A rat acute oral study with an LD_{50} of greater than 5,000 milligrams/kilogram (mg/kg).

A rabbit acute dermal LD_{50} of greater than 2,000 mg/kg.

A rat acute inhalation of LC_{50} of greater than 5.23 milligram/litre (mg/L).

A primary eye irritation study in the rabbit which showed minimal irritation.

A primary dermal irritation study in the rabbit which showed minimal irritation.

A primary dermal sensitization study in the guinea pig which showed no sensitization.

An acute neurotoxicity study conducted in rats administered a single dose at 0, 125, 500 or 2,000 mg/kg with a no observed effect level (NOEL) of 2,000 mg/kg (limit dose) and no treatment-related effects at any dose.

A 90–day subchronic neurotoxicity study in rats administered at dose levels of 0, 25, 250 or 750 milligrams/kilogram of body weight per day (mg/kg bwt/day) with NOEL of 750 mg/kg/day. This dose is also the Lowest Effect Level (LEL) for non-neurotoxic effects based on a significant decrease in mean body weight gain.

A 12–month feeding study in dogs administered at levels of 0, 240, 1,200, 12,000 or 30,000 ppm with NOEL of 1,200 ppm based on slight changes in liver and kidney weights in the absence of any associated histopathological changes.

A 24–month chronic feeding/oncogenicity study in rats administered at levels of 0.5, 2, 20 or 500 mg/kg bwt/day) with an overall NOEL of 2.0 mg/kg/day based on non-neoplastic changes in the cornea, sciatic nerve, thigh muscle, thyroid and liver observed at 20 mg/kg/day. An increased incidence of hepatocellular adenomas and carcinomas was observed at 500 mg/kg bwt/day for males and females. In addition, most of the 500 mg/kg/day males with liver tumors also had follicular cell adenomas in the thyroid.

An oncogenicity study in mice administered 0, 25, 500 and 7,000 ppm with a NOEL of 25 ppm based on a slight effect on liver weight and body weight gain at the LEL of 500 ppm. An increased incidence of hepatocellular adenomas and carcinomas was observed at 7,000 ppm in both sexes. Increased liver weight, non-neoplastic cellular changes in the liver, and amyloidosis in the duodenum, ileum, jejunum, kidneys, heart ventricle, mesenteric lymph node, and thyroid were also observed at 7,000 ppm.

A developmental toxicity study in rats administered at doses of 0, 10, 100 or 500 mg/kg bwt/day on gestation days 6 through 15 with a maternal NOEL of 100 mg/kg/day based on salivation and lower body weight, body weight gain and food consumption observed at 500 mg/kg/day and a fetal NOEL of 10 mg/kg/day based on growth retardation and increased incidences of vertebral and rib anomalies and subcutaneous edema observed at 100 mg/kg/day.

A developmental toxicity study in rabbits administered at levels of 0, 5, 20 or 100 mg/kg bwt/day on gestation days 6 through 19 with a maternal NOEL of 20 mg/kg/day based on no weight gain and decreased food consumption observed at 100 mg/kg/day and fetal NOEL of 5 mg/kg/day based on growth retardation and increased incidences of rib and vertebral anomalies noted at 20 mg/kg/day.

A 2 generation reproduction study in rats fed at dose levels of 0, 0.5, 2, 20 or 500 mg/kg bwt/day with a NOEL for postnatal development and parental toxicity of 2 mg/kg/day based on increased liver weight and hepatocellular hypertrophy in F0 and F1 adults and a slightly lower viability index for F1 pups at 20 mg/kg/day. No adverse effects on mating or fertility indices and gestation, live birth or weaning indices were noted in any generation.

Mutagenicity—Ames Assay. Negative with and without metabolic activation.

Mouse lymphoma. Negative with and without metabolic activation.

In-vivo Mouse Micronucleus Assay. Negative.

In-vitro Cytogenetics Human Lymphocyte Assay. Negative in the presence and absence of metabolic activation.

A metabolism study in the rat which demonstrates that the majority of the total radioactivity (TRR) is excreted within 24 to 48 hours through the urine and feces. Isoxaflutole is metabolized primarily via hydrolysis to the 1-(2-methylsulfonyl-4-trifluoromethylphenyl)-2-cyano-3-cyclopropylpropan-1,3-dione (RPA 202248) followed by either reduction of the cyanonitrile group to form RPA 205834 or further hydrolysis to 2-methylsulphonyl-4-trifluoromethyl benzoic acid (RPA 203328). The RPA 202248 is the major metabolite excreted while RPA 203328 is the most polar. Thus, the acute oral toxicity and mutagenic potential of these two metabolites were assessed.

In the acute oral toxicity studies, RPA 203328 had an oral LD_{50} greater than 5,000 mg/kg while RPA 202248 had an oral LD_{50} greater than 2,000 mg/kg in fasted rats. At 5,000 mg/kg, RPA 202248 produced 40 percent mortality in both male and female rats. In Ames assays, both RPA 202248 and RPA 203328 were found to be devoid of mutagenic activity in the absence and presence of metabolic activation.

In the 28-day rat study, RPA 203328 was administered continuously in the diet at levels of 0, 150, 500, 5,000, and 15,000 ppm (10 rats/sex/group). No mortalities or treatment-related clinical signs were observed during the study. No effects were observed on body weight, food consumption, hematology, clinical chemistry, urinalysis, or ophthalmoscopy. Further, no changes in organ weight or histopathology were noted at any level. The NOEL of 15,000 ppm is equivalent to 1,120 mg/kg/day in males and 1,270 mg/kg/day in females.

C. Chronic Dietary Effects

Based upon all available data, the lowest NOEL of 2.0 mg/kg/day was observed in the chronic rat study. Using this NOEL and a safety factor of 100, a theoretical Reference Dose (RfD) of 0.02 mg/kg/day is obtained. The only pending registration for isoxaflutole is for use in/on field corn. A chronic dietary risk assessment using the maximum residue limits proposed in this petition, and a 100 percent crop treated shows that this use represents 1.8, 4.8, 5.3, and 3.3 percent of the RfD for the whole U.S. population, for non-nursing infants less than 1 year old, for children aged 1 to 6 years, and for children aged 7 to 12 years, respectively. Realizing that isoxaflutole is likely to achieve only a 25 percent market share at maturity, less than 1.5 percent of the RfD is reached for all segments of the population. Thus, Rhone-Poulenc believes that the anticipated dietary exposure to isoxaflutole is well below the theoretical RfD of 0.02 mg/kg/day and is negligible for all segments of the population including infants and children.

Isoxaflutole presents a minimal acute hazard. The acute oral NOEL is at least 1,000–fold higher than lowest chronic NOEL of 2 mg/kg/day indicating that acute exposure is unlikely to constitute any significant dietary risk. Further, as field corn is generally not directly consumed, no significant acute dietary exposure is likely to occur.

D. Aggregate Exposure

The FQPA of 1996 lists three other potential sources of exposure to the general population that must be addressed. These are pesticides in drinking water, exposure from non-occupational sources, and the potential cumulative effect of pesticides with similar toxicological modes of action. These exposures for isoxaflutole are discussed below.

1. *Drinking water.* There is no established maximum contaminant level (MCL) or health advisory level (HAL) for isoxaflutole nor its primary metabolite, 1-(2-methylsulphonyl-4-trifluoromethylphenyl)-2-cyano-3-cyclopropane-1,3-dione. In the field dissipation study, the half-life for isoxaflutole was up to 3.0 days and for 1-(2-methylsulphonyl-4-trifluoromethylphenyl)-2-cyano-3-cyclopropane-1,3-dione was 16 days under actual field conditions. Residues were only found in the uppermost depths (above 12 inches). Based upon the data generated by this study, isoxaflutole and its primary metabolite have a low potential for reaching groundwater. Under actual use conditions, neither compound is expected to be present at toxicologically significant concentrations in ground water due to the low application rate (maximum use rate 0.14 lbs. per acre) and the low acute toxicity of each compound. Therefore, Rhone-Poulenc does not anticipate the presence of isoxaflutole residues in drinking water.

2. *Non-occupational exposure.* Isoxaflutole is being proposed for use on field corn only at this time. Thus, non-occupational exposure to isoxaflutole via dermal or inhalation routes does not exist and dietary exposure is the only consideration for risk assessment purposes.

3. *Common mechanism of action.* No other pesticides have been identified which inhibit 4-HPPDase. The thyroid and liver tumors observed with isoxaflutole in the rodent studies are most likely indirectly related to a significant induction of the hepatic microsomal enzymes PROD, BROD, and UDPGT. While hepatic microsomal enzyme induction in rodents is likely to be produced by many other pesticides, there is no data to indicate that these effects would be cumulative with any other pesticide. Considering the rapid elimination of isoxaflutole in the animal metabolism study, the effects associated with isoxaflutole are unlikely to be cumulative with any other compound. Further, considering the known sensitivity of the rat to the development of thyroid lesions in response to an imbalance of thyroid hormones and rodents to the development of liver tumors in response to the induction of microsomal enzymes, occurrence of these tumors via these mechanisms in rodent studies have little if any practical relevance for human cancer or risk assessment. Epidemiological studies support the position that neither thyroid tumors observed in rats due to an imbalance of thyroid hormones or liver tumors observed in rodents exposed to inducers of microsomal enzyme activity are likely to occur in humans.

Therefore, only the potential risks associated with exposure to isoxaflutole are considered for this assessment.

E. Determination of Safety for Infants and Children

Developmental toxicity (delayed ossification and rib and vertebral anomalies) were observed in the developmental toxicity studies. The NOELs were 10 mg/kg/day in rats and 5 mg/kg/day in rabbits. In a 2-generation reproduction study, pups from the high dose group of 500 mg/kg/day had significantly lower weights and a slightly lower viability index for both F1 and F2 litters and corneal lesions for F2 litters. Parental systemic toxicity for this dose group consisted of lower weight gain and food consumption, corneal lesions, increased liver weight, and hepatocellular hypertrophy. In addition, a slightly lower viability index was noted for F1 pups from the 20 mg/kg/day dose group but not for F2 pups. Parental systemic toxicity at 20 mg/kg/day included increased liver weight and hepatocellular hypertrophy.

Considering the conservative exposure assumptions in setting the tolerances and the dietary risk assessment assuming 100 percent crop treated, less than 5.5 percent of the RfD is utilized for non-nursing infants,

children 1 to 6 years old, and children 7 to 12 years old. No non-occupational sources of exposure exist for isoxaflutole. Therefore, based upon the completeness and reliability of the toxicity data and the conservative exposure assessment, Rhone-Poulenc believes that there is a reasonable certainty that no harm will result to infants and children from exposure to the residues of isoxaflutole and no additional uncertainty factor is warranted.

F. Estrogenic Effects

No evidence of estrogenic or androgenic effects were noted in any study. No adverse effects on mating or fertility indices and gestation, live birth, or weaning indices were noted in the 2-generation rat reproduction study. An imbalance of thyroid hormones related to the induction of UDPGT was noted in rats. However, considering species differences in the half-life of thyroid hormones in rodent versus primates (12 to 24 hours in rat compared to 5 to 9 days in humans) and differences in the responsiveness of thyroid cells to TSH, thyroid hormone levels in humans are unlikely to be affected by the extremely low levels of isoxaflutole residues that might be present in food. Therefore, Rhone-Poulenc believes that isoxaflutole is not likely to cause any endocrine effects in most species including humans.

G. Chemical Residue

The nature of the residue of isoxaflutole in plants and animals is considered understood. In plants, the metabolism proceeds through the hydrolysis of the isoxazole ring to form the primary degradate, 1-(2-methylsulphonyl-4-trifluoromethylphenyl)-2-cyano-3-cyclopropane-1,3-dione, and further hydrolysis yields the second metabolite, 2-methylsulphonyl-4-trifluromethyl benzoic acid. In animals the metabolic pathway is very similar and the metabolites formed are primarily the 1-(2-methylsulphonyl-4-trifluoromethylphenyl)-2-cyano-3-cyclopropane-1,3-dione with two other toxicologically insignificant minor degradates.

An analytical method is available for detecting and measuring levels of isoxaflutole in field corn with a limit of quantitation of 0.01 ppm. The method involves hydrolysis of isoxaflutole to a methyl ester for gas chromatography analysis.

A total of 32 field corn trials were conducted in 13 different states. The maximum residues were 0.88 ppm in forage, 1.1 ppm in silage, 0.40 ppm in fodder and 0.11 ppm in grain. Based on these data, the proposed tolerance levels are adequate to cover residues likely to be present from the proposed use of isoxaflutole. Isoxaflutole residues do not appear to concentrate in corn processed commodities. Therefore, no food additive tolerances are being proposed for these processed commodities.

In animal feeding studies, quantifiable residues in the cow were observed only in liver (up to 0.8 ppm), kidney (up to 0.2 ppm) and milk (up to 0.03 ppm) at the 46 ppm (10X) dietary burden level. No residues were observed in fat or muscle. In poultry, quantifiable residues were observed only in the liver (up to 0.6 ppm) at the highest dose level of 1.8 ppm (10X dietary burden). No residues of isoxaflutole nor its primary metabolite, 1-(2-methylsulphonyl-4-trifluoromethylphenyl)-2-cyano-3-cyclopropane-1,3-dione, were observed in eggs, meat, fat or muscle. Based on these data and the expected (1X) dietary burden in animal feed, the proposed tolerance levels are adequate to cover residues likely to be present in animal tissues resulting from the corn feed items of the animal's diet.

II. Public Record

EPA invites interested persons to submit comments on this notice of filing. Comments must bear a notification indicating the docket control number [PF–701].

A record has been established for this notice under docket control numbers [PF–701] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

Authority: 21 U.S.C. 346a.

List of Subjects

Environmental Protection, Administrative practice and procedure, Agricultural commodities, Pesticide and pest, Reporting and recordkeeping requirements.

Dated: February 11, 1997.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–4628 Filed 2–25–97; 8:45 am]

BILLING CODE 6560–50–F

[OPP–00468; FRL–5587–4]

Pesticide Product Label System; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of the new Pesticide Product Label System on CD ROM which supersedes and replaces the Compact Label File on microfiche.

FOR FURTHER INFORMATION CONTACT: By mail: BeWanda Alexander, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Rm. 700N, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5259.

ADDRESSES: For specific address and price information, refer to Unit II. of this document.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Pesticide Product Label System (PPLS), a software product developed by EPA's Office of Pesticide Programs (OPP), contains images of registered pesticide product labels submitted by pesticide registrants and accepted by OPP since 1971.

The label images have been indexed by company, product, and date. The retrieval program allows the user to search by registration number, which is a combination of company number and product number. Searches can be conducted based on partial numbers if the complete number is unknown. Search results are displayed in full screen format and single or multiple pages can be printed.

II. Ordering Information

The CD ROM collection is available as an ongoing subscription from: The National Technical Information Service (NTIS), ATTN: Order Desk, 5285 Port Royal Road, Springfield, VA 22161, Telephone: (703) 487-4630. Approximate annual cost for the new base set each year and three quarterly updates is $640; outside U.S., Canada, and Mexico, $1,280. Price for base set of about 25 CDs is $388; outside U.S., Canada, and Mexico $776. Each update includes a new index CD and a labels CD, price is $84 each. When requesting the PPLS from NTIS, use the Order Number PB97-594040.

Dated: February 12, 1997.

Linda A. Travers,

Director, Program Management and Support Division, Office of Pesticide Programs.

[FR Doc. 97–4776 Filed 2–25–97; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Submitted to OMB for Review and Approval

February 20, 1997.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before March 28, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to dconway@fcc.gov and Timothy Fain, OMB Desk Officer, 10236 NEOB 725 17th Street, N.W., Washington, DC 20503 or fain_t@a1.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 3060–0035.

Title: Application for Renewal of Auxiliary Broadcast License.

Form No.: FCC 313–R.

Type of Review: Revision of a previously approved collection.

Respondents: Businesses or others for profit.

Number of Respondents: 50.

Estimate Hour Per Response: 30 minutes per response.

Total Annual Burden: 25 hours.

Needs and Uses: FCC 313–R is used by licensees of remote pickup and low power stations that are not broadcast licensees (e.g., cable operators, network entities, international broadcast services, motion picture producers and television producers) to renew their auxiliary broadcast license. Statutory authority for this collection of information is contained in Section 307 of the Communications Act. It is also required by 47 CFR 73.3500 and 73.3539. The Commission intends to revise the application to include a place for the applicant to provide an Internet address and a Taxpayer Identification Number. The Internet address will provide the FCC with another media of contacting the applicant with questions about their application and the Taxpayer Identification Number is required to comply with the Debt Collection Improvement Act of 1996. The anti-drug statement has been added to the items the applicant certifies to when signing the application. The Certificate of Renewal at the bottom of the application has been removed because the Certificate of Renewal is computer generated on laser printer and is no longer needed. The Commission has received OMB approval for electronic filing of the data collected on this form in connection with a generic renewal form for all Wireless Telecommunications Bureau Services, FCC form 900. The burden will be adjusted accordingly once this new form has been implemented and frequency of use has been determined.

As a result of Part 101 becoming effective August 1, 1996, Part 74 licensees (television auxiliary and aural studio link) are no longer required to use this form to renew their licenses. The number of respondents in this category was extremely low and since the estimate of number of respondents can vary in the remaining services, the number of respondents is not being revised. Additionally, the Commission adopted a Report and Order, MM Docket No. 96–90, extending the license terms of all broadcast licenses to 8 years, which will reduce the frequency of filing this information.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–4708 Filed 2–25–97; 8:45 am]

BILLING CODE 6712–01–P

[CC Docket No. 92–237]

FCC Announces North American Numbering Council Meeting

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On February 21, 1997, the Commission released a public notice announcing the March 11 meeting of the North American Numbering Council (NANC) and the Agenda for the meeting. The intended effect of this action is to make the public aware of this meeting of the NANC and its Agenda.

FOR FURTHER INFORMATION CONTACT: Linda Simms, Administrative Assistant of the NANC, (202) 418–2330. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, 2000 M Street, NW, Suite 235, Washington, D.C. 20054. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released: January 21, 1997.

The North American Numbering Council (NANC) will hold a meeting on Tuesday, March 11, 1997. The meeting will be held at 9:30 A.M. EST at the Federal Communications Commission,

1919 M Street, NW, Room 856, Washington, DC.

This notice of the March 11, 1997 NANC meeting is being published in the **Federal Register** less than 15 calendar days prior to the meeting due to modifications to the meeting schedule of the NANC. This statement complies with the General Services Administration Management Regulations implementing the Federal Advisory Committee Act. *See* 41 CFR § 101–6.1015(b)(2).

The above meeting will be open to members of the general public. The FCC will attempt to accommodate as many people as possible. Admittance, however will be limited to the seating available. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Linda Simms, at the address under **FOR FURTHER INFORMATION CONTACT**, stated above.

Agenda

1. Report from NANC Working Groups.
2. Other Business.

Federal Communications Commission.

Geraldine A. Matise,

Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 97–4844 Filed 2–25–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Notice; Open Meeting of the Board

TIME AND DATE: 9:00 a.m. Wednesday, March 5, 1997.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

STATUS: The entire meeting will be open to the public.

MATTER TO BE CONSIDERED DURING PORTIONS OPEN TO THE PUBLIC:

- Mission Regulation—Proposed Rule.
- Affordable Housing Program Application Approvals.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Rita I. Fair,

Managing Director.

[FR Doc. 97–4864 Filed 2–24–97; 11:45 am]

BILLING CODE 6725–01–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Orion International Freight Forwarders, Inc., 1670 NW 94th Avenue, Miami, FL 33172. Officers: Juan R. Cobo, President; Pedro L. Bocchini, Director.

AAA International Freight Forwarding Group, Inc., 8366 Northwest 66th Street, Miami, FL 33166. Officers: Carlos Mendez, President; Miriam Muniz, Vice President.

Dated: February 20, 1997.

Joseph C. Polking,

Secretary.

[FR Doc. 97–4664 Filed 2–25–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 21, 1997.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. Patriot Bank Corp, Pottstown, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Patriot Bank, Pottstown, Pennsylvania.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Coal City Corporation, Chicago, Illinois; and Manufacturers National Corporation, Chicago, Illinois, to acquire U.S. Bancorp, Inc., Lansing, Illinois, and thereby acquire U.S. Bank, Lansing, Illinois.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Community Financial Corp., Olney, Illinois; to acquire 100 percent of the voting shares of American Bancshares, Inc., Highland, Illinois; and thereby indirectly acquire American Bank of Illinois in Highland, Highland, Illinois.

Board of Governors of the Federal Reserve System, February 20, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–4699 Filed 2-25-97; 8:45 am]

BILLING CODE 6210-01-F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 12, 1997.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Pinnacle Financial Services, Inc., St. Joseph, Michigan; to acquire Indiana Federal Corporation, Valparaiso, Indiana, and thereby indirectly acquire 100 percent of the voting shares of Indiana Federal Bank for Savings, Valparaiso, Indiana, and thereby operate a savings association pursuant to § 225.25(b)(9); 100 percent of the voting shares of IndFed Mortgage Company, Valparaiso, Indiana, and thereby engage in community development activities, pursuant to § 225.25(b)(6); 100 percent of the voting shares of IFB Investment Services, Inc., Valparaiso, Indiana, and thereby act as investment or financial advisor, pursuant to § 225.25(b)(4), and provide securities brokerage services, pursuant to § 225.25(b)(15); and 33.33 percent of Forrest Holdings, Inc., and its wholly owned subsidiary, Forrest Financial Corporation, both of Lisle, Illinois, and thereby engage in leasing, pursuant to § 225.25(b)(5).

Board of Governors of the Federal Reserve System, February 20, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–4698 Filed 2-25-97; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of a Meeting of the National Bioethics Advisory Commission (NBAC), Genetics Subcommittee

SUMMARY: Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of the third meeting of the subcommittee on genetics of the National Bioethics Advisory Commission. The subcommittee members will continue addressing issues on genetics. The meeting is open to the public and opportunities for statements by the public will be provided.

DATE: Wednesday, March 5, 1997, 8:00 a.m. to 4:00 p.m.

LOCATION: The subcommittee will meet at the National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, Conference Room 6, Bethesda, Maryland 20892.

SUPPLEMENTARY INFORMATION: The President established the National Bioethics Advisory Commission (NBAC) by Executive Order 12975 on October 3, 1995. The mission of the NBAC is to advise and make recommendations to the National Science and Technology Council and other entities on bioethical issues arising from the research on human biology and behavior, and in the applications of that research including clinical applications.

Tentative Agenda

The subcommittee will continue discussion of tissue sampling. Discussions will include what tissue samples are; how they are collected and stored; the decisions involved in donation; differences in beliefs and attitudes; international concerns; and other related issues.

Public Participation

The meeting is open to the public with attendance limited by the availability of space. Members of the public who wish to present oral statements should contact the Deputy Executive Director of the NBAC by telephone, fax machine, or mail as shown below as soon as possible, prior to the meeting. The Chair of the subcommittee will reserve time for presentations by persons requesting an opportunity to speak. The order of speakers will be assigned on a first come first serve basis. Individuals unable to make oral presentations are encouraged to mail or fax their comments to the NBAC at least two business days prior to the meeting for distribution to the subcommittee members and inclusion in the record.

Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact NBAC staff at the address or telephone number listed below as soon as possible.

FOR FURTHER INFORMATION CONTACT: Ms. Henrietta D. Hyatt-Knorr, National Bioethics Advisory Commission, MSC–7508, 6100 Executive Boulevard, Suite 3C01, Rockville, Maryland 20892–7508, telephone 301–402–4242, fax number 301–480–6900.

Dated: February 20, 1997.

Henrietta D. Hyatt-Knorr,

Deputy Executive Director, National Bioethics Advisory Commission.

[FR Doc. 97–4692 Filed 2–25–97; 8:45 am]

BILLING CODE 4160–17–P

Administration for Children and Families

Office of Community Services; Statement of Organization, Functions, and Delegations of Authority

This Notice amends Part K, Chapter K of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (DHHS), Administration for Children and Families (ACF) as follows: Chapter KG, The Office of Community Services (OCS) (56 FR 42342) as last amended, August 27, 1991. This reorganization will establish a Division of Tribal Services in the Office of Community Services. Amend Chapter KG as follows:

1. KG.00 Mission. Delete this section in its entirety and replace with the following:

KG.00 Mission. The Office of Community Services (OCS) advises the Secretary, through the Assistant Secretary for Children and Families, on matters relating to community programs to promote economic self-sufficiency. The Office is responsible for administering programs that serve low-income and needy individuals and address the overall goal of personal responsibility and achieving and maintaining self-sufficiency. It administers the Community Services Block Grant, Social Services Block Grant, and the Low Income Home Energy Assistance Block Grant programs. The Office administers the Family Violence Program. It administers a variety of discretionary grant programs that foster family stability, economic security, responsibility and self-support, promote and provide services to homeless and low-income individuals,

and develop new and innovative approaches to reduce welfare dependency, as well as the Tribal Temporary Assistance for Needy Families (TANF) and Job Opportunities and Basic Skills Training (JOBS) programs.

2. KG.10 Organization. Delete this section in its entirety and replace it with the following:

KG.10 Organization. The Office of Community Services is headed by a Director who reports directly to the Assistant Secretary for Children and Families and consists of:

Office of the Director (KGA)

Division of State Assistance (KGB)

Division of Community Discretionary Programs (KGC)

Division of Community Demonstration Programs (KGD)

Division of Energy Assistance (KGE)

Division of Tribal Services (KGF)

3. KG.20 Functions. Add the following Paragraph F:

F. Division of Tribal Services is responsible for assisting in implementation and coordination of ongoing consultation with tribal governments and, where appropriate, state and federal agencies regarding issues relating to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104–193 (the Act) and related legislation. It is also responsible for development of regulations and guidelines and for providing leadership, policy direction, technical assistance and coordination of tribal services programs. Performs inter and intra-agency liaison functions in all areas such as Child Support Enforcement, Child Care, Child Welfare, Foster Care, Low Income Home Energy Assistance, and Family Violence to promote family stability, economic security, responsibility and self-support for Native Americans. It is responsible for conducting program reviews to ensure compliance with the Act, regulations and policy directives. It is responsible for activities related to tribal data collection reporting requirements relating to the programs.

Dated: February 21, 1997.

Olivia A. Golden,

Principal Deputy Assistant Secretary for Children and Families.

[FR Doc. 97–4758 Filed 2–25–97; 8:45 am]

BILLING CODE 4184–01–P

Food and Drug Administration

Product, Establishment, and Biologics License Applications, Refusal to File; Meeting of Oversight Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the meeting of its standing oversight committee in the Center for Biologics Evaluation and Research (CBER) that conducts a periodic review of CBER's use of its refusal to file (RTF) practices on product license applications (PLA's), establishment license applications (ELA's), and biologics license applications (BLA's). CBER's RTF oversight committee examines all RTF decisions that occurred during the previous quarter to assess consistency across CBER offices and divisions in RTF decisions.

DATES: The meeting will be held on April 8, 1997.

FOR FURTHER INFORMATION CONTACT: Joy A. Cavagnaro, Center for Biologics Evaluation and Research (HFM–5), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–0379.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 15, 1995 (60 FR 25920), FDA announced the establishment and first meeting of CBER's standing oversight committee. As explained in the notice, the importance to the public health of getting new biological products on the market as efficiently as possible has made improving the biological product evaluation process an FDA priority. CBER's managed review process focuses on specific milestones or intermediate goals to ensure that a quality review is conducted within a specified time period. CBER's RTF oversight committee continues CBER's effort to promote the timely, efficient, and consistent review of PLA's, ELA's, and BLA's.

FDA regulations on filing PLA's, ELA's, and BLA's are found in 21 CFR 601.2 and 601.3. A sponsor who receives an RTF notification may request an informal conference with CBER, and thereafter may ask that the application be filed over protest, similar to the procedure for drugs described under 21 CFR 314.101(a)(3).

CBER's standing RTF oversight committee consists of senior CBER officials, a senior official from FDA's Center for Drug Evaluation and Research, and FDA's Chief Mediator and Ombudsman. Meetings will ordinarily be held once a quarter to review all of the RTF decisions. The purpose of such a review is to assess the consistency within CBER in rendering RTF decisions. If there are no RTF decisions to review, however, the meeting may be cancelled. Publication of any meeting cancellation will be made only as time permits.

Because the committee's deliberations will deal with confidential commercial information, all meetings will be closed to the public. The committee's deliberations will be reported in the minutes of the meeting. Although those minutes will not be publicly available because they will contain confidential commercial information, summaries of the committee's deliberations, with all such confidential commercial information omitted, may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. If, following the committee's review, an RTF decision changes, the appropriate division within CBER will notify the sponsor.

Dated: February 18, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–4731 Filed 2–25–97; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[Document Identifier: HCFA–855]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Provider/Supplier Enrollment Application; *Form No.:* HCFA–855; *Use:* This information is needed to enroll providers/suppliers by identifying them, verifying their qualifications and eligibility to participate in Medicare, and to price and pay their claims; *Frequency:* Other (Initial Application/recertification); *Affected Public:* Business or other for profit, not for profit institutions, and federal government; *Number of Respondents:* 165,000; *Total Annual Responses:* 165,000; *Total Annual Hours:* 370,000.

To obtain copies of the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: February 21, 1997.

Edwin J. Glatzel,

Director, Management Analysis and Planning Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 97–4759 Filed 2–25–97; 8:45 am]

BILLING CODE 4120–03–P

National Institutes of Health

National Cancer Institute and the Food and Drug Administration: Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Scientific and Commercial Development of Soluble Tat Peptide Analogs for the Inhibition of HIV Transcription and Viral Replication

AGENCY: National Institutes of Health and the Food and Drug Administration, PHS, DHHS.

ACTION: Notice.

SUMMARY: The National Cancer Institute (NCI) and the Food and Drug Administration (FDA), wherein the participation of the FDA is contingent on resolution of any apparent conflict of interest issues, seek a company that can collaboratively pursue the pre-clinical and clinical development of Soluble Tat Peptide Analogs for the Inhibition of HIV Transcription and Viral Replication. The National Cancer Institute, Laboratory of Molecular Virology (LMV) and the Food and Drug Administration, Center for Biologics, Laboratory of Immunochemistry, have established that particular Soluble Tat Peptide Analogs can inhibit the transcription and replication of the Human Immunodeficiency Virus in vitro. The selected sponsor will be selected as a CRADA partner for the co-development of this agent with the National Cancer Institute and the Food and Drug Administration for the co-development of this agent with the NCI and with the FDA, wherein the participation of the FDA is contingent on resolution of any apparent conflict of interest issues.

ADDRESSES: Questions about this opportunity may be addressed to Jeremy A. Cubert, M.S., J.D., Office of Technology Development, NCI, 6120 Executive Blvd. MSC 7182, Bethesda, MD 20892–7182, Phone: (301) 496–0477, Facsimile: (301) 402–2117, from whom further information may be obtained. The Government has filed a patent application related to this CRADA opportunity. For further information on licensing this patent application (DHHS ref. no. E–059–96/0) contact Cindy Fuchs, J.D., NIH Office of Technology Transfer, 6011 Executive Blvd., Suite 325, Rockville, MD 20852, Phone: (301) 496–7735 (ext. 232); Facsimile: (301) 402–0220.

DATES: In view of the important priority of developing new agents for the treatment of infectious disease and related malignancies, interested parties should notify this office in writing no later than April 28, 1997. Respondents will then be provided an additional 30 days for the filing of formal proposals.

SUPPLEMENTARY INFORMATION:

"Cooperative Research and Development Agreement" or "CRADA" means the anticipated joint agreement to be entered into by NCI pursuant to the Federal Technology Transfer Act of 1986 and amendments (including 104 P.L. 133) and Executive Order 12591 of October 10, 1987 to collaborate on the specific research project described below.

The Government is seeking a pharmaceutical company which, in accordance with the requirements of the regulations governing the transfer of agents in which the Government has taken an active role in developing (37 CFR 404.8), can further develop the subject compounds through Federal Food and Drug Administration approval and to a commercially available status to meet the needs of the public and with the best terms for the Government. The government has applied for a patent application directed to Inhibition of HIV Transcription and Viral Replication Using Soluble Tat Peptide Analogs. Licenses to intellectual property rights related to this opportunity are available from the National Institutes of Health, Office of Technology Transfer and may be necessary to continue development of the technology.

The tat gene encodes an 86 amino acid protein with a number of identified domains including an N-terminus, a cysteine rich, a core domain and a basic domain. Tat, through the core region, has been shown to interact with and stabilize the TFIID basal transcription factor and TFIIA preinitiation complex. Mutations within the core domain of Tat significantly decrease both gene expression and viral replication. National Cancer Institute ("NCI") and Food and Drug Administration ("FDA") studies have been directed at synthesis of Tat peptide analogs to compete with wild-type Tat in vivo. The NCI and FDA synthesized soluble peptide analogs of the HIV–1 Tat protein. These peptide analogs inhibit transactivation of HIV, viral replication and formation of viral particles. The peptide analogs compete with Tat in down-regulating Tat transactivation and induce a ninety percent reduction of viral particles from infected cells in vitro. The inhibitory peptide analogs are not toxic in vitro.

The Laboratory of Molecular Virology, Division of Basic Sciences, NCI and the Laboratory of Immunochemistry, Division of Transfusion and Transmitted Diseases, FDA are interested in establishing a CRADA with a company to assist in the continuing development of these peptide analogs, wherein the participation of the FDA is contingent on resolution of any apparent conflict of interest issues. The Government will provide all available expertise and information to date and will jointly pursue pre-clinical and clinical studies as required, giving the company full access to existing data and data developed pursuant to CRADA. The successful company will provide the necessary scientific, financial and organizational support to establish clinical efficacy and possible commercial status of the subject compounds.

The expected duration of the CRADA will be two (2) to five (5) years.

The role of the National Cancer Institute and Food and Drug

Administration, wherein the participation of the FDA is contingent on resolution of any apparent conflict of interest issues, includes the following:

1. Determine the stability, half-life, and distribution of the Tat peptides upon delivery into cells.
2. Determine the mechanism of the Tat peptide inhibition.
3. Determine the inhibitory effect of peptides on human "primary" T-lymphocytic and monocytic cells infected with various HIV–1 clades (subtypes A, G, O, M).
4. Determine the inhibitory effect of peptide derivatives on Kaposi's sarcoma primary cells.
5. Determine the effective dose of Tat peptide analogs in combination with other anti-retroviral drugs.
6. Conduct in vivo testing of appropriate compounds and/or peptide analogs.
7. Evaluate in vivo test results.
8. Prepare manuscripts for publication.

The role of the collaborator, includes the following:

1. Synthesize soluble organic compounds using peptide mimetics to mimic the inhibitory activity of the soluble analogs.
2. Determine the mechanism of the Tat peptide inhibition.
3. Establish a suitable non-invasive peptide delivery system for the preclinical and animal model studies.
4. Determine the effective dose of Tat peptide analogs in combination with other anti-retroviral drugs.
5. Determine the stability, half-life, and distribution of the Tat peptides upon delivery into cells.
6. Conduct in vivo testing of appropriate compounds and/or peptide analogs.
7. Evaluate in vivo test results.
8. Develop vehicle for delivery of compounds to patients.
9. Conduct pre-clinical and clinical trials of appropriate candidate compounds and/or peptide analogs.
10. Prepare manuscripts for publication.

Criteria for choosing the collaborator include its demonstrated experience and commitment to the following:

1. The aggressiveness of the development plan, including the appropriateness of milestones and deadlines for preclinical and clinical development.
2. Scientific expertise in and demonstrated commitment to the development of drug delivery systems.
3. Experience in preclinical and clinical drug development.
4. Experience and ability to produce, package, market and distribute pharmaceutical products.
5. Experience in the monitoring, evaluation and interpretation of the data from investigational agent clinical studies under an IND.
6. A willingness to cooperate with the NCI and FDA in the collection, evaluation, publication and maintaining of data from pre-clinical studies and clinical trials regarding the subject compounds.
7. Provision of defined financial and personnel support for the CRADA to be mutually agreed upon.
8. An agreement to be bound by the DHHS rules involving human and animal subjects.
9. Scientific expertise in and demonstrated commitment to the treatment of HIV infection and related disorders.
10. Provisions for equitable distribution of patent rights to any CRADA inventions. Generally the rights of ownership are retained by the organization which is the employer of the inventor, with (1) an irrevocable, nonexclusive, royalty-free license to the Government and (2) an option for the collaborator to elect an exclusive or nonexclusive license to Government owned rights under terms that comply with the appropriate licensing statutes and regulations.

Dated: February 7, 1997.

Thomas D. Mays,

Director, Office of Technology Development, OD, NCI.

[FR Doc. 97–4742 Filed 2–25–97; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health (NIH)

Notice of a Meeting of the Office of AIDS Research Advisory Council

Pursuant to Public Law 92–463, notice is hereby given of the Fourth meeting of the Office of AIDS Research Advisory Council (OARAC) on Friday, March 14, 1997, at the National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, Sixth Floor, Conference Room 6. The meeting will be open to the public from 8:30 am to 3:30 pm.

The Office of AIDS Research is responsible for the planning, coordination, and evaluation of the NIH AIDS research program. The OARAC was established to advise the Director of the OAR regarding these activities.

The agenda of the open meeting will include: The FY 1998 budget request for NIH AIDS research; presentation of the NIH Implementation Plan in response to the Report of the NIH AIDS Research Program Evaluation Task Force; an update on the NIH Panel to Define Principles of Therapy of HIV Infection; an update on the Prevention Science Working Group; and presentations regarding the new initiatives in AIDS vaccine research.

In accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C. and section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, the meeting will be closed to the public from 3:45 p.m. until adjournment for discussions of which the premature disclosure could impede implementation of recommendations.

Copies of the meeting agenda and the roster of council members will be furnished upon request by Jeannette R. De Lawter, Program Analyst, Office of AIDS Research, National Institutes of Health, Building 31, Room 4B54, 9000 Rockville Pike, Bethesda, MD 20892, Phone (301) 402–3357, Fax (301) 402–3360. Any individual who requires special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mrs. De Lawter no later than March 6.

Dated: February 21, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–4735 Filed 2–25–97; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2) notice is hereby given of advisory committee meetings of the National Cancer Institute.

The meetings will be open to the public as indicated below, with attendance by the public limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Cynthia Morgan, Committee Management Specialist, at (301) 496–5708 in advance of the meetings.

A portion of the meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4), 552b(c)(6), and 552(c)(9)(B), Title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual programs and for discussion of issues pertaining to programmatic areas and/or NCI personnel. These discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning the individuals associated with the programs, including consideration of personnel qualifications and performance, the competence of individual investigators and similar matters, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy and premature disclosure of recommendations which would inhibit the final outcome and subsequent implementation of recommendations.

The Committee Management Office, National Cancer Institute, National Institutes of Health, Executive Plaza North, Room 630E, 6130 Executive Boulevard, MSC 7410, Rockville, Maryland 20892–7410, (301) 496–5708 will provide summaries of the meetings and rosters of the committee members, upon request.

Committee Name: Board of Scientific Counselors, National Cancer Institute Basic Sciences Subcommittee B.
Date: March 2, 1997.
Place: Hyatt Regency Bethesda, One Bethesda Metro Court, Bethesda, MD 20814.
Closed: 9 p.m. to 10 p.m.
Agenda: To discuss administrative confidential reports pertaining to laboratories in the Division of Basic Sciences.
Contact Person: Florence Farber, Ph.D., Executive Secretary, National Cancer Institute, NIH, Executive Plaza North, Room 643G, 6130 Executive Boulevard, MSC 7410, Bethesda, MD 20892–7410, (301) 496–2378.

Committee Name: Joint Meeting, National Cancer Institute Board of Scientific Advisors and Board of Scientific Counselors, National Cancer Institute.
Date: March 3, 1997.
Place: Conference Room 10, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.
Open: 8:30 p.m. to 11 a.m.
Agenda: Report of the Director, NCI; Congressional Update; Concept Review.
Contact Person: Paulette S. Gray, Ph.D., Executive Secretary, National Cancer Institute, NIH, Executive Plaza North, Room 600, 6130 Executive Blvd., MSC 7405, Bethesda, MD 20892–7405, (301) 496–4218.

Committee Name: National Cancer Institute Board of Scientific Advisors.
Date: March 3, 1997.
Place: Conference Room 10, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.
Open: 11 a.m. to 12:30 p.m.
Agenda: Discussion of revised cancer centers guidelines and present status of paylines.
Contact Person: Paulette S. Gray, Ph.D., Executive Secretary, National Cancer Institute, NIH, Executive Plaza North, Room 600, 6130 Executive Blvd., MSC 7405, Bethesda, MD 20892–7405, (301) 496–4218.

Committee Name: Joint Meeting, Board of Scientific Counselors, National Cancer Institute, Clinical Sciences and Epidemiology Subcommittee A, Basic Sciences Subcommittee B.
Date: March 3, 1997.
Place: Conference Room 6, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

Closed: 11:00 am to 12:30 pm.
Agenda: Discussion of intramural review.
Contact Person: Robert Hammond, Ph.D., Executive Secretary, National Cancer Institute, NIH, Executive Plaza North, Room 643G, 6130 Executive Boulevard, MSC 7410, Bethesda, MD 20892–7410, (301) 496–2378.

Committee Name: Advisory Committee to the Director, National Cancer Institute.
Date: March 3, 1997.
Place: Conference Room 6, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.
Open: 12:30 pm to 1:45 pm.
Agenda: NCI Director's charge to the committee and discussion of function and status of various groups reporting their recommendations to the committee.
Contact Person: Susan J. Waldrop, Executive Secretary, National Cancer Institute, NIH, Federal Building, Room 312, 7550 Wisconsin Avenue, MSC 9010, Bethesda, MD 20892–9010, (301) 496–1458.

Committee Name: National Cancer Institute Board of Scientific Advisors.
Date: March 3, 1997.
Place: Conference Room 10, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.
Open: 12:45 pm to adjournment approximately 6:00 pm.
Agenda: Integration of BSA and Extramural Divisional interests; RFA Concept Reviews.
Contact Person: Paulette S. Gray, Ph.D., Executive Secretary, National Cancer Institute, NIH, Executive Plaza North, Room 600, 6130 Executive Blvd., MSC 7405, Bethesda, MD 20892–7405, (301) 496–4218.

Committee Name: Board of Scientific Counselors, National Cancer Institute, Clinical Sciences and Epidemiology Subcommittee A.
Date: March 3, 1997.
Place: Conference Room 6, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.
Closed: 1:45 pm to approximately 3:30 pm.
Agenda: To discuss administrative confidential reports pertaining to laboratories in the Division of Cancer Epidemiology and Genetics and the Division of Clinical Sciences.
Contact Person: Robert Hammond, Ph.D., Executive Secretary, National Cancer Institute, NIH, Executive Plaza North, Room 643G, 6130 Executive Boulevard, MSC 7410, Bethesda, MD 20892–7410, (301) 496–2378.

Committee Name: Board of Scientific Counselors, National Cancer Institute Basic Sciences Subcommittee B.
Date: March 3, 1997.
Place: Conference Room 7, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.
Closed: 1:45 pm to 6:00 pm.
Agenda: To discuss administrative confidential site visit reports.
Contact Person: Florence Farber, Ph.D., Executive Secretary, National Cancer Institute, NIH, Executive Plaza North, Room 643G, 6130 Executive Boulevard, MSC 7410, Bethesda, MD 20892–7410, (301) 496–2378.

Committee Name: National Cancer Institute Board of Scientific Advisors.
Date: March 4, 1997.
Place: Conference Room 10, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.
Open: 8:30 am to adjournment at approximately 12:00 pm.
Agenda: Status Report: Cancer Control Program Review; RFA Concept Reviews.
Contact Person: Paulette S. Gray, Ph.D., Executive Secretary, National Cancer Institute, NIH, Executive Plaza North, Room 600, 6130 Executive Blvd., MSC 7405, Bethesda, MD 20892–7405, (301) 496–4218.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle and the intramural research review cycle.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: February 21, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–4736 Filed 2–25–97; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Heart, Lung, and Blood Institute Special Emphasis Panel (SEP) meeting:

Name of SEP: Homing Determinants in Hematopoietic Stem/Progenitor Cells.
Date: March 20–21, 1997.
Time: 8:00 p.m.
Place: Holiday Inn Chevy Chase, 5522 Wisconsin Avenue, Chevy Chase, Maryland 20815.
Contact Person: Carl A. Ohata, Ph.D., Two Rockledge Center, Room 7198, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0297.
Purpose/Agenda: To review and evaluate grant applications.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: February 21, 1997.
LaVerne Y. Stringfield,
Committee Management Officer, NIH.
[FR Doc. 97–4737 Filed 2–25–97; 8:45 am]
BILLING CODE 4140–01–M

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings:

Purpose/Agenda: To review and evaluate grant applications.
Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.
Dates of meeting: March 31, 1997.
Time: 9:30 a.m.
Place of meeting: Hyatt Regency, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Thomas D. Sevy, M.S.W., 6000 Executive Blvd, Suite 409, Bethesda, MD 20892–7003, 301–443–6107.
The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
(Catalog of Federal Domestic Assistance Program No. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; National Institutes of Health)

Dated: February 21, 1997.
LaVerne Y. Stringfield,
Committee Management Officer, NIH.
[FR Doc. 97–4738 Filed 2–25–97; 8:45 am]
BILLING CODE 4140–01–M

National Institute of Dental Research; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Dental Research Special Emphasis Panel (SEP) meetings:

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Review of R01 (97–24).
Dates: March 4, 1997.
Time: 12:00 noon.
Place: National Institutes of Health, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (Teleconference).
Contact person: Dr. George Hausch, Chief, Office of Review, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.
Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Contract Review (97–39).
Dates: March 4, 1997.
Time: 2:00 p.m.
Place: National Institutes of Health, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (Teleconference).
Contact person: Dr. George Hausch, Chief, Office of Review, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.
Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Review of Contract (97–38).
Dates: March 5, 1997.
Time: 2:00 p.m.
Place: National Institutes of Health, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (Teleconference).
Contact person: Dr. George Hausch, Chief, Grants Review Section, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.
Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Review of R44 Grant (97–28).
Dates: March 10, 1997.
Time: 11:00 a.m.
Place: National Institutes of Health, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (Teleconference).
Contact person: Dr. George Hausch, Chief, Grants Review Section, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.
Purpose/Agenda: To evaluate and review grant applications and/or contract proposals. This notice is being published less than fifteen days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Review of R44 Grant (97–22).
Dates: March 28, 1997.
Time: 9:00 a.m.
Place: National Institutes of Health, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (Teleconference).
Contact Person: Dr. George Hausch, Chief, Grants Review Section, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.
Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Review of R03 Grant (97–33).
Dates: April 1, 1997.
Time: 10:00 a.m.
Place: National Institutes of Health, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892 (Teleconference).
Contact Person: Dr. Philip Washko, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.
Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Review of R01 & R03 (97–25).
Dates: April 8, 1997.
Time: 1:00 p.m.
Place: National Institutes of Health, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892 (Teleconference).
Contact Person: Dr. Paul Washko, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.
Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Review of R13s (97–21).
Dates: April 11, 1997.
Time: 11:30 p.m.
Place: National Institutes of Health, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (Teleconference).
Contact person: Dr. George Hausch, Chief, Office of Review, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.
Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Review of PO1 (97–18).
Dates: April 14–15, 1997.
Time: 8:30 a.m.
Place: Bethesda Ramada, 8300 Wisconsin Ave., Bethesda, MD 20814.
Contact person: Dr. George Hausch, Chief, Grants Review Section, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.
Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Review of R13s (97–34).
Dates: April 22, 1997.
Time: 10:00 a.m.
Place: National Institutes of Health, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (Teleconference).
Contact person: Dr. Paul Washko, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.
Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.
The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
(Catalog of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research)

Dated: February 21, 1997.
LaVerne Y. Stringfield,
Committee Management Officer, NIH.
[FR Doc. 97–4739 Filed 2–25–97; 8:45 am]
BILLING CODE 4140–01–M

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following advisory committee meeting of the National Institute of General Medical Sciences Special Emphasis Panel:

Committee Name: Determinants of Individual Responsiveness to Drugs.
Dates: March 25, 1997.
Time: 8:00 a.m.–until conclusion.
Place: Union Station Hotel, 1001 Broadway, Nashville, Tennessee 37203.
Contact Person: Irene Eskstrand, Ph.D., Scientific Review Administrator, NIGMS, Office of Scientific Review, 45 Center Drive, Room 2AS–25K, Bethesda, MD 20892–6200, 301–594–0943.
Purpose: To review and evaluate program project applications.
This meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and the discussions of these could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences: 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support [MBRS].)

Dated: February 20, 1997.
LaVerne Y. Stringfield,
Committee Management Officer, NIH.
[FR Doc. 97–4740 Filed 2–25–97; 8:45 am]
BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institutes of Diabetes and Digestive and Kidney Diseases:

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grant Review Committee, Subcommittee D.
Date: March 7, 1997.
Time: 8 a.m.–Adjournment.
Place: Hyatt Regency Bethesda Hotel, One Bethesda Metro Center, Bethesda, Maryland 20814.
Contact Person: Ann A. Hagan, Ph.D., Scientific Review Administrator, Natcher Building, Room 6AS–37F, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: 301–594–8886.
Purpose/Agenda: To review and evaluate research grant applications.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grant Review Committee, Subcommittee B.
Date: March 10, 1997.
Time: 8 a.m.–Adjournment.
Place: Hyatt Regency Bethesda Hotel, One Bethesda Metro Center, Bethesda, Maryland 20814.
Contact Person: Ned Feder, M.D., Scientific Review Administrator, Natcher Building, Room 6AS–25S, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: 301–594–8890.
Purpose/Agenda: To review and evaluate research grant applications.
This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grant Review Committee, Subcommittee C.
Date: March 21, 1997.
Time: 8:30 a.m.—Adjournment.
Place: Doubletree Hotel—Pentagon City, 300 Army Navy Drive, Arlington, Virginia 22202.
Contact Person: Daniel Matsumoto, Ph.D., Scientific Review Administrator, Natcher Building, Room 6AS–37B, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: 301–594–8894.
Purpose/Agenda: To review and evaluate research grant applications.
These meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health.)

Dated: February 20, 1997.
LaVerne Y. Stringfield,
Committee Management Officer, NIH.
[FR Doc. 97–4741 Filed 2–25–97; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4200–N–30]

Notice of Submission of Renewal of Information Collection Requirement to OMB

AGENCY: Office of the General Counsel, HUD.
ACTION: Notice.

SUMMARY: The proposed renewal/reinstatement of the existing information collection requirement described below is being submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The Department is soliciting public comments on the subject renewal.
DATES: Comment due date: April 28, 1997.
ADDRESSES: Interested persons are invited to submit comments regarding this renewal. Comments should refer to the proposal by name and should be sent to:
Joseph F. Lackey, Jr., OMB Desk, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.
John J. Daly, Associate General Counsel for Insured Housing, GI, HUD Building, Room 9236, 451 7th St., SW., Washington, DC 20410.
FOR FURTHER INFORMATION CONTACT: Kay Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the existing forms showing clarifications and minor changes necessary to effect the renewal and other available documents submitted to OMB may be obtained from Ms. Weaver.
SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development is submitting to OMB an information collection renewal package with respect to two guide formats (hereinafter, "the Guide") which specify the components of a legal opinion required by the Department in connection with the insurance of mortgage loans upon multifamily rental projects and health care facilities under Titles II and XI of the National Housing Act, 12 USC 1702, *et seq.*, and 12 USC 1749aaa, or in connection with the making of a capital advance under section 202 of the Housing Act of 1959, as amended. (Please note that references to section 811 of the Cranston-Gonzalez National Affordable Housing Act, as

amended, have been deleted because the Guide is no longer required in connection with that program.)

The Guide articulates those matters upon which HUD requires an opinion from private counsel as well as those matters upon which confirmations are required. The Guide also contains detailed instructions pertaining to the form as well as a format for certifications by the mortgagor as to matters particularly within the knowledge of the mortgagor upon which its legal counsel relies in rendering the opinion. The section 202 Guide format is essentially the same as the insured loan format except for some differences in terminology and program requirements.

To the extent that the Guide represents any "collection of information," the process is necessary to ensure the Department that the attorney representing the mortgagor or owner has followed the otherwise specified requirements of the Department and to ensure the Department that the attorney has exercised an acceptable degree of due diligence in representing the client and in rendering the opinion to the mortgagee and HUD. Although certain aspects of the process have been clarified in the Instructions to the Guide, the process has not changed and no substantive changes have been made the Guide itself. Further, the program coverage has been clarified, but the actual coverage has not been expanded. The extent of due diligence expected to be performed under the Guide is no different than that which HUD has required under the Guide since its approval by OMB on March 11, 1994 (OMB Number 2510–0010). Based upon the experience of HUD in using the Guide for almost three years, HUD has determined that there have been no major problems in using the Guide and that it has been received positively by virtually all of the attorneys utilizing the format. However, there are several places in the Guide and the Instructions thereto where technical corrections are necessary and where expanded Instructions are necessary to facilitate use of the Guide by private attorneys and HUD field counsel.

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed renewal of the collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

(1) The title of the information collection proposal;

(2) The office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency form number, if applicable;

(5) What members of the public will be affected by the proposal;

(6) How frequently information submission will be required;

(7) An estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response;

(8) Whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3506 of the Paperwork Reduction Act, 44 U.S.C. 3506, Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 19, 1997.

George L. Weidenfeller,

Acting General Counsel.

Proposal: Renewal or reinstatement of HUD Guide for Counsel to the Mortgagor and Renewal or reinstatement of HUD Guide for Counsel to Owner.

Office: Office of the General Counsel.

Description of the need for the information and its proposed use: Although it is questionable whether a legal opinion upon which HUD and the mortgagee rely constitutes "the collection of information," HUD is taking a conservative approach and continuing to treat its use of the Guide formats as if they are information collection to eliminate the issue at the outset. The opinion is required to provide comfort to HUD and the mortgage in multifamily rental and health care facility mortgage insurance transactions and similarly to HUD and owners in the capital advance transactions.

Form Number: None (Guide).

Respondents: Counsel to mortgagors of multifamily rental projects and health care facilities upon which the mortgage loans are insured by HUD and counsel to owners of section 202 projects which receive capital advances from HUD.

Frequency of Submission: Variable. Submitted by counsel to the mortgagor or borrower in connection with the closings of insured and direct loans.

Reporting Burden:

Number of respondents	X	Frequency of response	=	Hours per response	=	Burden hours
700		1		1		700

Total Estimated Burden Hours: 700

(Please note that this estimate is based upon an attorney preparing and completing the opinion in one hour; however, the attorney would typically perform in excess of 100 hours in representing the mortgagor or owner and performing those actions necessary to render the opinion. These numbers do not represent any significant change from the previous Guide formats which are being renewed or reinstated with certain technical corrections and clarifications which should result in slight decreases in some cases in the time required to prepare and complete the opinion.) Even though the Guide format is no longer required in connection with the 811 program, the slight decrease in activity thereunder is expected to be off-set by increases in FHA mortgage insurance activity.

Status: Renewal or reinstatement with technical corrections and clarifications (mainly to the Instructions to the Guide). (The previous Guide was approved by OMB on March 11, 1994 (OMB Number 2510–0010)).

Contact: Joseph F. Lackey, Jr. OMB, (202) 395–6880; John J. Daly, HUD, (202) 708–1274.

Dated: February 19, 1997.

For use in FHA Insured Transactions.

January 30, 1997.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FEDERAL HOUSING ADMINISTRATOR

GUIDE FOR OPINION OF MORTGAGOR'S COUNSEL

(TO BE TYPED ON FIRM LETTERHEAD)

(INSERT DATE OF ENDORSEMENT)

Re: Project Name _____
FHA Project No. _____
Location _____
Mortgagor _____

[MORTGAGEE]
[ADDRESS]

[MORTGAGEE'S ATTORNEY]
[ADDRESS]

FEDERAL HOUSING COMMISSIONER
{INSERT APPROPRIATE FIELD OFFICE ADDRESS}

Ladies and Gentlemen: We are [I am] [general/special] counsel to _____ {INSERT NAME OF MORTGAGOR} (the "Mortgagor"), a _____ {INSERT TYPE OF ENTITY} organized under the laws of the State of _____ {INSERT STATE} (the "Organizational Jurisdiction), in connection with a mortgage loan (the "Loan") in the [original/increased] principal amount of _____ Dollars ($_____) from _____ {INSERT NAME AND TYPE OF MORGAGEE} (the "Mortgagee") to the Mortgagor. The proceeds of the Loan will be used to [construct/rehabilitate/purchase/refinance] that certain [multifamily housing/hospital/extended care facility/nursing home/board and care] project (the "Project"), commonly known as _____ and located in _____ {INSERT COUNTY AND STATE} (said State to be referred to hereinafter as the "Property Jurisdiction") on the property described in Exhibit B {ATTACH LEGAL DESCRIPTION} (together with all improvements and fixtures thereon) (the "Property"). The Loan is being insured by the Federal Housing Administration (FHA), an organizational unit of the United States Department of Housing and Urban Development ("HUD"), pursuant to a commitment for insurance [of advances OR upon completion OR for refinancing] issued to Mortgagee by _____, Agent of the Federal Housing Commissioner, dated _____ [as amended by that certain letter from _____ to _____, dated _____] ("FHA Commitment"). The Loan is being funded from _____ {DESCRIBE FINANCING SOURCE, e.g., tax-exempt bonds/mortgage backed securities guaranteed by GNMA/ participation certificates, etc.} The Mortgagor has requested that we [I] deliver this opinion and has consented to reliance by Mortgagee's counsel in rendering its opinion to Mortgagee and to reliance by Mortgagee and HUD in making and insuring, respectively, the Loan and has waived any privity between Mortgagor and us [me] in order to permit said reliance by Mortgagee, counsel to Mortgagee and HUD. We [I] consent to reliance on this opinion by Mortgagee, counsel to Mortgagee, and HUD.

In our [my] capacity as [general/special] counsel to the Mortgagor, we [I] have prepared or reviewed the following:

A. The [{DESCRIBE ORGANIZATIONAL DOCUMENTS, e.g. for corporations: State certified copies of the articles of incorporation, the by-laws, the borrowing resolution, the incumbency certificate and the good standing certificate(s), fictitious Name Registration, Foreign Corporation Registration; for partnerships: certified copies of the partnership agreement and any amendments thereto, the certificate of limited partnership, and any amendments thereto, the good standing certificate (or its equivalent) if provided in the Organizational Jurisdiction, etc.}] of the Mortgagor (collectively, the "Organizational Documents");

B. The FHA Commitment [extensions and assignment(s) thereof, if any];

C. The Commitment issued by the Mortgagee and accepted by the Mortgagor, dated _____, (the "Loan Commitment");

D. The Regulatory Agreement (_____) {INSERT APPROPRIATE FORM NO.} by and between HUD and the Mortgagor, dated _____, (the "Regulatory Agreement");

E. The Note (_____) {INSERT APPROPRIATE FORM NO.} [in the original principal amount of _____ Dollars ($_____) OR in the increased principal amount of _____ Dollars ($_____) by Mortgagor in favor of Mortgagee, dated _____, (the "Note");

F. [The Mortgage OR Deed of Trust] (_____ {INSERT APPROPRIATE FORM NO.}), executed by Mortgagor for the benefit of Mortgagee, granting a security interest in the Property, dated _____, (the "Mortgage");

G. {INSERT THE NUMBER OF UCC's TO BE FILED} Uniform Commercial Code Financing Statements executed by the Mortgagor as debtor and naming the Mortgagee and HUD as secured parties or as their interests may appear, to be filed in _____, {INSERT LOCATION(S)} (the Filing Offices), upon the {DESCRIBE EVENTS} (the "Financing Statements");

H. The Security Agreement by and between Mortgagor and the Mortgagee, granting a security interest under the Uniform Commercial Code, in those items of personalty described therein, dated _____, (the "Security Agreement");

[I. {TO BE INSERTED IF THE MORTGAGE IS ON A LEASEHOLD ESTATE} The Ground Lease executed by _____ {INSERT LESSOR} as lessor and Mortgagor as lessee recorded in the land records of _____, dated _____, (the "Ground Lease").]

[J. {TO BE INSERTED FOR CONSTRUCTION/REHABILITATION LOANS} The Building Loan Agreement (2441) executed by Mortgagee and Mortgagor, dated _____, (the Building Loan Agreement").]

[K. {TO BE INSERTED FOR CONSTRUCTION/REHABILITATION LOANS} The Construction Contract [Lump Sum (2442) or Cost Plus (2442–A)] executed by _____ (the "General Contractor") and Mortgagor, dated _____ (the "Construction Contract").]

L. The Mortgagee's Certificate (2434), executed by the Mortgagee, dated _____.

M. The Mortgagor's Certificate (2433), executed by the Mortgagor, dated _____.

N. The Agreement and Certification (3305 or 3305A or 3306 or 3306A), executed by the Mortgagor, dated _____.

O. The Mortgagor's Oath (2478), executed by the Mortgagor, dated _____.

P. The Mortgagor's Opinion Certification, pertaining to factual matters relied on by us [me] in rendering this opinion, executed by the Mortgagor, dated _____, a copy of which is attached hereto as Exhibit— (the "Certification of Mortgagor").

Q. A search conducted by _____ dated _____ {no earlier than 30 days before this opinion} of the financing records of the county and Property Jurisdiction [and Organizational Jurisdiction] (the "UCC Search").

[R. A receipt from the insurance company providing flood insurance evidencing payment for the premium, date _____ (the "Flood Insurance Receipt").]

S. The Title Insurance Policy [or date-down if appropriate in a refinancing, for example] issued by _____ {acceptable company under HUD's regulations}, together with all endorsements, and naming HUD and the Mortgagee as insureds as their interests may appear, dated _____, (the "Title Policy").

[T. The following documents evidencing zoning compliance, _____, {DESCRIBE ALL DOCUMENTS FULLY} (the "Zoning Certificate").]

[U. The building permit(s) issued on _____ by] _____ (the "Building Permit").

[V. The following permits, _____, {DESCRIBE PERMITS} which are required for the operation of the project, issued by _____ on _____ ("Other Permits").]

[W. The Surveyor's Plat OR Survey showing completed project, prepared by _____, dated _____, (the "Survey").]

X. The Surveyor's Report (2457), executed by _____ dated _____, (the "Surveyor's Report").

[Y. The deferred note (1710, 1712 or 2223) executed by Mortgagor in favor of _____, dated _____, (the "Deferred Note").]

[Z. The Performance Bond (2452) and the Payment Bond (2452–A) issued by _____ (Surety) to secure payment and performance of _____ (General Contractor) and running to _____ OR the Completion Assurance Agreement (2450) executed by the General Contractor, dated _____, (the "Assurance of Completion").]

{AA. The Owner-Architect Agreement (AIA B181 with HUD Supplement) executed by _____ {INSERT DESIGN AND/OR CONSTRUCTION ARCHITECT} and Mortgagor, dated _____, (the "Owner-Architect Agreement").]

[BB. The Off-Site Bond (2479) issued by _____ (Surety) to secure the completion of off-site work by _____ (General Contractor) and running to the Mortgagee and HUD OR Escrow Agreement for Off-Site Facilities (2446) with Schedule "A" executed by _____ dated _____ (the "Assurance of Completion of Off-Site Facilitate").]

[CC. The following documents assuring water, electricity, sewer, gas, heat or other utility services (the "Assurance of Utility Services"): _____ {DESCRIBE FULLY}.]

[DD. The Contrator's and/or Mortgagor's Cost Breakdown (2328) executed by the General Contractor, dated _____, (the "Cost Breakdown").]

[EE. The Latent Defects Bond (3259) issued by _____ and securing the performance of the General Contractor and running to the Mortgagee and HUD OR Escrow executed by _____, dated _____ (the "Guarantee against Latent Defects").]

[FF. The Escrow Deposit Agreement for Incomplete On-Site Improvements (2456) with Schedule A executed by the General Contractor, dated _____, (the "On-Site Deposit Escrow").]

[GG. The Contractor's Prevailing Wage Certificate (2403–A) executed by _____, dated _____, (the "Contractor's Prevailing Wage Certificate").]

HH. The Request for Endorsement of Credit Instrument (2023) and/or Certificate of Mortgagor and Mortgagee (2455) executed by the Mortgagor and the Mortgagee, dated _____, (the "Request for Endorsement"). {MODIFY AS APPROPRIATE FOR INSURANCE UPON COMPLETION, REFINACINGS, ETC.}

[II. The Operating Deficit Escrow (2476a) executed by _____, dated _____, (the "Operating Deficit Escrow").]

[JJ. The Repair Escrow executed by _____, dated _____, (the "Repair Escrow").]

[KK. All documents executed by Mortgagor and any State or local government entity pertaining to development of the Property (the "Public Entity Agreement").]

[LL. The following documents executed or delivered in connection with the financing of the loan with the proceeds of bonds exempt from federal taxation: _____ {LIST DOCUMENTS IN ACCORDANCE WITH INSTRUCTIONS} (the "Bond Documents").]

MM. The Good Standing Certificate(s) {SEE "A" ABOVE} issued by [Organizational Jurisdiction OR Property Jurisdiction, if different], dated _____ {DATE INSERTED MUST BE WITHIN 30 DAYS OF THE DATE OF ENDORSEMENT}, (the "Good Standing Certificate").

[NN. The certificate executed by _____ {INSERT ARCHITECT OR OTHER PROFESSIONAL}, dated _____, (the "Certificate").]

OO. A search conducted by _____ dated [no earlier than 30 days before this opinion] of the public records of the federal District Court and State and local courts in: (i) the jurisdiction where the Property is located; (ii) the jurisdiction(s) where the Mortgagor is located and does business; and (iii) the jurisdiction where the general partner of the Mortgagor is organized (the "Docket Search").

Note: Numerical references in parentheses above are to FHA and HUD form numbers.

The documents listed in B through I above are referred to collectively as the "Loan Documents." The documents listed in J through OO are referred to collectively as the "Supporting Documents." The documents listed in A through OO are referred to collectively as the "Documents."

In basing the several opinions set forth in this document on "our [my] knowledge," the words "our [my] knowledge" signify that, in the course of our [my] representation of the Mortgagor, no facts have come to our [my] attention that would give us [me] actual knowledge or actual notice that any such opinions or other matters are not accurate. Except as otherwise stated in this opinion, we [I] have undertaken no investigation or verification of such matters. Further, the words "our [my] knowledge" as used in this opinion are intended to be limited to the actual knowledge of the attorneys within our [my] firm who have been involved in representing the Mortgagor in any capacity including, but not limited to, in connection with this Loan. We [I] have no reason to believe that any of the documents on which we [I] have relied contain matters which, or the assumptions contained herein, are untrue, contrary to known facts, or unreasonable.

In reaching the opinions set forth below, we [I] have assumed, and to our [my] knowledge there are no facts inconsistent with, the following:

(a) Each of the parties to the Documents, other than the Mortgagor (and any person executing any of the Documents on behalf of the Mortgagor), has duly and validly executed and delivered each such instrument, document, and agreement to be executed in connection with the Loan to which such party is a signatory, and such party's obligations set forth in the Documents are its legal, valid, and binding obligations, enforceable in accordance with their respective terms.

(b) Each person executing any of the Documents, other than the Mortgagor (and any person executing any of the Documents on behalf of the Mortgagor), whether individually or on behalf of an entity, is duly authorized to do so.

(c) Each natural person executing any of the Documents is legally competent to do so.

(d) All signatures of parties other than the Mortgagor (and any person executing any of the Documents on behalf of Mortgagor) are genuine.

(e) All Documents which were submitted to us [me] as originals are authentic; all Documents which were submitted to us [me] as certified or photostatic copies conform to the original document, and all public records reviewed are accurate and complete.

(f) All applicable Documents have been duly filed, indexed, and recorded among the appropriate official records and all fees, charges, and taxes due and owing as of this date have been paid.

(g) The parties to the Documents and their successors and/or assigns will: (i) act in good faith and in a commercially reasonable manner in the exercise of any rights or enforcement of any remedies under the Documents; (ii) not engage in any conduct in the exercise of such rights or enforcement of such remedies that would constitute other than fair and impartial dealing; and (iii) comply with all requirements of applicable procedural and substantive law in exercising any rights or enforcing any remedies under the Documents.

(h) The exercise of any rights or enforcement of any remedies under the Documents would not be unconscionable, result in a breach of the peace, or otherwise be contrary to public policy.

(i) The Mortgagor has title or other interest in each item of (i) real and (ii) tangible and intangible personal property ("Personalty") comprising the Property in which a security interest is purported to be granted under the Loan Documents [and, where Personalty is to be acquired after the date hereof, a security interest is created under the after-acquired property clause of the Security Agreement].

In rendering this opinion we [I] also have assumed that the Documents accurately reflect the complete understanding of the parties with respect to the transactions contemplated thereby and the rights and the obligations of the parties thereunder. We [I] also have assumed that the terms and the conditions of the Loan as stated in the Documents have not been amended, modified or supplemented, directly or indirectly, by any other agreement or understanding of the parties or waiver of any of the material provisions of the Documents. After reasonable inquiry of the Mortgagor, we [I] have no knowledge of any facts or information that would lead us [me] to believe that the assumptions in this paragraph are not justified.

In rendering our [my] opinion in paragraph 13, we [I] also have assumed that: (i) all Personalty in which a security interest is created under the Documents (other than accounts or goods of a type normally used in more than one jurisdiction) is located at the Property and (ii) Mortgagor's [Chief Executive Office] [only place of business] [residence] is located in _____.

After reasonable inquiry of the Mortgagor, we [I] have no knowledge of any facts or information that would lead us [me] to believe that the assumptions in this paragraph are not justified.

In rendering this opinion, we [I] have, with your approval, relied as to certain matters of fact set forth in the Certification of Mortgagor, the Good Standing Certificate(s) [and certain other specified Documents,] as set forth herein. After reasonable inquiry of the Mortgagor as to the accuracy and completeness of the Certification of Mortgagor, the Good Standing Certificate(s), [and such other Documents], we [I] have no knowledge of any facts or information that would lead us [me] to believe that such reliance is not justified.

Based on the foregoing and subject to the assumptions and qualifications set forth in this letter, it is our [my] opinion that:

{TO BE USED IN CASES WHERE ORGANIZATIONAL DOCUMENTS WERE PREPARED BY MORTGAGOR'S ATTORNEY}

1. The Mortgagor is a _____ {INSERT TYPE OF ENTITY} duly organized and validly existing under the laws of the Organizational Jurisdiction. The Mortgagor is duly qualified to do business and, based solely on the Certificate(s) of Good Standing, copy attached hereto as Exhibit [____], is in good standing under the laws of the Organizational Jurisdiction, [and is qualified to do business as a foreign _____ entity in the Property Jurisdiction based on a review of _____.]

{OR, IF THE MORTGAGOR IS A TRUST}

The Mortgagor is _____ {INSERT NAME OF THE TYPE OF TRUST} duly formed and validly existing under the laws of the Organizational Jurisdiction [, and is qualified to do business as a foreign _____ entity in the Property Jurisdiction].

{AND, IF THE GENERAL PARTNER OF A PARTNERSHIP MORTGAGOR IS AN ENTITY}

The general partner of the Mortgagor is a _____ {INSERT TYPE OF ENTITY}, duly organized, validly existing and, based solely on the Certificate(s) of Good Standing, copy attached hereto as Exhibit [____], in good standing under the laws of the Organizational Jurisdiction [and is qualified to do business as a foreign _____ {INSERT TYPE OF ENTITY} in the Property Jurisdiction].

{TO BE USED IN CASES, PRINCIPALLY REFINANCINGS, WHERE ORGANIZATIONAL DOCUMENTS WERE NOT PREPARED BY MORTGAGOR'S ATTORNEY}

1. Based solely on the Certificate(s) of Good Standing, copy attached hereto as Exhibit [____], the Mortgagor is a _____ {INSERT TYPE OF ENTITY} validly existing under the laws of the Organizational Jurisdiction and in good standing under the laws of the Organizational Jurisdiction [and is qualified to do business as a foreign _____ entity in the Property Jurisdiction.

{OR, IF THE MORTGAGOR IS A TRUST}

The Mortgagor is _____ {INSERT NAME OF THE TYPE OF TRUST} validly existing under the laws of the Organizational Jurisdiction [and is duly qualified to do business as a foreign _____ entity in the Property Jurisdiction].

{AND, IF THE GENERAL PARTNER OF A PARTNERSHIP MORTGAGOR IS AN ENTITY}

Based solely on the Good Standing Certificate(s), copy attached hereto as Exhibit [____], the general partner of the Mortgagor is a _____ {INSERT TYPE OF ENTITY}, validly existing and in good standing under the laws of _____ {INSERT STATE} [and is qualified to do business as a foreign _____ {INSERT TYPE OF ENTITY} in the Property Jurisdiction].

2. The Mortgagor has the [corporate/partnership/trust] power and authority and possesses all necessary governmental certificates, permits, licenses, qualifications and approvals to own and operate the Property and to carry out all of the transactions required by the Loan Documents and to comply with applicable federal statutes and regulations of HUD in effect on the date of the FHA Commitment.

3. The execution and delivery of the Loan Documents by or on behalf of the Mortgagor, and the consummation by the Mortgagor of the transactions contemplated thereby, and the performance by the Mortgagor of its obligations thereunder, have been duly and validly authorized by all necessary [corporate/partnership/trust] action by, or on behalf of, the Mortgagor.

4. All authorizations, consents, approvals, and permits have been obtained from, appropriate actions have been taken by, and necessary filings have been made with all necessary Organizational and Property Jurisdictions or federal courts or governmental authorities, all as disclosed on Exhibit ____, attached hereto, and as listed and set forth in Paragraph(s) 2 and ____ of this opinion [i.e. good standing certificate]. To the best of our knowledge, these represent all such authorizations, consents, approvals, permits, actions and filings that are required in connection with the execution and delivery by the Mortgagor

of the Loan Documents and the ownership [and operation] of the Property.

5. Each of the Loan Documents has been duly executed and delivered by the Mortgagor and constitute the valid and legally binding promises or obligations of the Mortgagor, enforceable against the Mortgagor in accordance with its terms, subject to the following qualifications:

(i) The effect of applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally; and

(ii) The effect of the exercise of judicial discretion in accordance with general principles of equity (whether applied by a court of law or of equity); and

(iii) Certain remedies, waivers, and other provisions of the Loan Documents may not be enforceable, but, subject to the qualifications set forth in this paragraph at (i) and (ii) above, such unenforceability will not preclude (a) the enforcement of the obligation of the Mortgagor to make the payments as provided in the Mortgage and Note (and HUD's regulations), and (b) the foreclosure of the Mortgage upon the event of a breach thereunder.

[6. {TO BE INSERTED WHEN ANY OR ALL OF THE LOAN DOCUMENTS ARE NOT HUD APPROVED FORMS OR WHEN HUD APPROVED FORMS HAVE BEEN REVISED OR MODIFIED IN CONNECTION WITH THE LOAN} The execution and delivery of, and the performance of the obligations under, the Loan Documents will not violate the Organizational Documents of the Mortgagor or any applicable provisions of local or State law.

[7. {INSERT FOR LOANS INVOLVING CONSTRUCTION OR REHABILITATION} To our [my] knowledge there are no proposed change(s) of law, ordinance, or governmental regulation (proposed in a formal manner by elected or appointed officials) which, if enacted or promulgated after the commencement of construction/rehabilitation, would require a modification to the Project, and/or prevent the Project from being completed in accordance with the plans and specifications, dated _____, executed by _____ {INSERT MORTGAGOR} and _____ {INSERT GENERAL CONTRACTOR}, and referred to in the Construction Contract (the "Plans and Specifications").]

[8. {INSERT IF THERE IS NO ZONING ENDORSEMENT INCORPORATED INTO THE TITLE POLICY} The attached Zoning Certificate states that the Property appears on the zoning maps of [Property jurisdiction] as being located in a _____ zone. According to the zoning ordinance of the Property Jurisdiction, the use of the Property as a _____ is a permitted use in such zone.

OR

Based solely on the Zoning Certificate, the Property may be used for _____ as a permitted use.]

[9. {USE FOR NEW CONSTRUCTION OR SUBSTANTIAL REHABILITATION IN CASES WHERE THE DEPARTMENT DOES NOT RECEIVE A CERTIFICATE DIRECTLY FROM THE PROFESSIONAL} Based solely on the Certificate, construction/rehabilitation of the Project in accordance with the Plans and Specifications will comply with all applicable land use and zoning requirements.

{USE FOR REFINANCINGS} Based solely on the Certificate, the Project complies with all applicable land use and zoning requirements.]

10. Based solely on (a) our [my] knowledge and (b) the Certification of Mortgagor, the execution and delivery of the Loan Documents will not: (i) Cause the Mortgagor to be in violation of, or constitute a default under the provisions of, any agreement to which the Mortgagor is a party or by which the Mortgagor is bound, (ii) conflict with, or result in the breach of, any court judgment, decree or order of any governmental body to which the Mortgagor is subject, or (iii) result in the creation or imposition of any lien, charge, or encumbrance of any nature whatsoever on any of the property or assets of the Mortgagor, except as specifically contemplated by the Loan Documents.

11. Based solely on (a) our [my] knowledge, (b) the Certification of Mortgagor and (c) the Docket Search; there is no litigation or other claim pending before any court or administrative or other governmental body or threatened in writing against the Mortgagor, or the Property, [{TO BE INSERTED WHEN MORTGAGOR IS NOT A SOLE-ASSET MORTGAGOR} or any other properties of the Mortgagor] [, except as identified on Exhibit _____].

12. The Mortgagor is in appropriate form for recordation in _____ {INSERT PROPER NAME OF LOCAL LAND RECORDS OFFICE} _____ {INSERT COUNTY OR CITY} of the Property Jurisdiction, and is sufficient, as to form, to create the encumbrance and security interest it purports to create in the Property.

13. Filing of the Financing Statements in the Filing Offices will perfect the security interest in the Personality of the Mortgagor located in the Project Jurisdiction, but only to the extent that, under the Uniform Commercial Code in effect in the Project Jurisdiction, a security interest in each described item or Personality can be perfected by filing. The Filing Offices are the only offices in which the Financing Statements are required to be filed in order to perfect the Mortgagee's security interest in the Personality.

14. The Loan does not violate the usury laws or laws regulating the use or forbearance of money of the Property Jurisdiction.

[15. {FOR USE ONLY IF MORTGAGOR IS A TRUST} The Mortgagor is an irrevocable trust that has a term consistent with HUD's requirements and the term of the irrevocable trust is not affected by the terms of any of the beneficiaries' interests.] [The laws of the Property Jurisdiction govern the interpretation and the enforcement of the Loan Documents notwithstanding that the Mortgagor may be formed in a jurisdiction other than the Property Jurisdiction. The Mortgagor can sue and be sued in the Property Jurisdiction without the necessity of joining any of the beneficiaries of the Mortgagor, including without limitation, a suit on the Note or a foreclosure proceeding arising under the Mortgage. Venue for any foreclosure proceeding under the Mortgage may be had in [Property jurisdiction].

[16. {USE IN CASES INVOLVING BOND FINANCING} Based solely on the opinion of _____ {INSERT BOND COUNSEL}, dated as of the date hereof and attached hereto as Exhibit _____, to the extent that any of the provisions of the Bond Documents are inconsistent with any of the provisions of the Loan Documents or Supporting Documents, the provisions of the Loan Documents or Supporting Documents shall govern.]

[17. {USE IN CASES WHERE THE DEVELOPMENT OF THE PROPERTY IS GOVERNED BY AN AGREEMENT WITH A PUBLIC ENTITY} Based upon our knowledge and the Certification of Mortgagor, there is no default under the Public Entity Agreement, and construction in accordance with the Plans and Specifications and within the time frame specified in the Construction Contract will not lead to a default under the Public Entity Agreement.]

In addition to the assumptions set forth above, the opinions set forth above are also subject to the following qualifications:

(i) The Uniform Commercial Code of the Property Jurisdiction requires the periodic filing of continuation statements with _____ [and _____] not more than _____ prior to and not later than the expiration of the _____ year period from the date of filing of the Financing Statements and the expiration of each subsequent _____year period after the original filing, in order to maintain the perfection and priority of security interests and to keep the Financing Statements in effect.

(ii) We express no opinion as to the laws of any jurisdiction other than the laws of the Property jurisdiction [and the Organizational Jurisdiction, if it is different,] and the laws of the United States of America. The opinions expressed above concern only the effect of the laws (excluding the principles of conflict of laws) of the Property Jurisdiction [and the Organizational Jurisdiction, if it is different] and the United States of America as currently in effect. We assume no obligation to supplement this opinion if any applicable laws change after the date of this opinion, or if we become aware of any facts that might change the opinions expressed above after the date of this opinion.

We [I] confirm that:

(a) based on the Organizational Documents, the name of the Mortgagor in each of the Documents and the Title Policy and FHA Commitment is the correct legal name of the Mortgagor;

(b) the legal description of the Property is consistent in the Documents wherein it appears and in Exhibit B hereto;

(c) we [I] do not have any financial interest in the Project, the Property, or the Loan, other than fees for legal services performed by us, arrangements for the payment of which has been made; and we [I] agree not to assert a claim or lien against the Project, the Property, the Mortgagor, the Loan proceeds or income of the Project;

(d) other than as counsel for the Mortgagor, we have no interest in the Mortgagor (or any principal thereof) or the Mortgagor or any other party involved in the Loan transaction and do not serve as [a director, officer or] [an] employee of the Mortgagor or the Mortgagee. We have no undisclosed interest in the subject matters of this opinion. We do not represent the mortgagee-of-record, any investing lender or investor in the loan transaction, any bridge lender involved in the loan transaction, any lender with a commitment to purchase the loan or any interest therein or any other party involved in the Project or the loan transaction;

(e) based solely on the Surveyor's Report and the Surveyor's Plat, flood insurance [is OR is not] required pursuant to 42 U.S.C. 4012a(a); [{INSERT IF FLOOD INSURANCE IS REQUIRED} Based solely on the Flood Insurance Receipt, flood insurance is in effect which satisfies the requirements of 42 U.S.C. 4012a(a);] and

(f) to our knowledge, there are no liens or encumbrances against the Property which are not reflected as exceptions to coverage in the Title Policy.

The foregoing opinions are for the exclusive reliance of [Mortgagee, its counsel] and HUD; however, they may be made available for informational purposes to, but not for the reliance of, the assigns or transferees of Mortgagee, or prospective purchasers of the Loan. We [I] acknowledge that the making, or causing to be made, of a false statement of fact in this opinion letter and accompanying materials may lead to criminal prosecution or civil liability as provided pursuant to applicable law, which may include 18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802.

Sincerely,

[Authorized Signature]

For use in HUD-Insured Transactions.

January 30, 1997.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FEDERAL HOUSING ADMINISTRATION

INSTRUCTIONS TO GUIDE FOR OPINION OF MORTGAGOR'S COUNSEL

EXPLANATORY COMMENTS

The Guide for this opinion was originally prepared in 1994 in view of changes in opinion practice as reflected by the ABA Accord and various State law bar reports on opinion letters and has been revised to reflect approximately three years experience in using the Guide. The principal purpose of this Guide remains to achieve a uniform format which can be utilized throughout the Nation and which will be familiar to HUD counsel in all jurisdictions. Such a standardized format is crucial in an era when less resources are available to the Department; however, it should be emphasized that certain limited changes can be authorized by HUD field counsel as required by local law or by the unique nature of the transaction. An effort has been made in these revised instructions to specify examples in more (but not all) of those areas where such changes can be authorized. Otherwise, the format of the Guide must be followed and is not open to negotiation. In this regard, revisions cannot be justified because of a particular Opinion having been approved by another HUD field office. The exercise of discretion by one HUD field counsel in unique circumstances cannot become the basis for any modification to the Opinion. Any requested modification must be analyzed on its own merit and in a particular context. In these explanatory comments, the document may be referred to as the "Guide" or the "Opinion," depending upon the context.

The Department regards the counsel to the Mortgagor as the crucial, central figure in the process of preparing and executing the legal and administrative documents necessary to achieve a closing where the mortgage note is endorsed for mortgage insurance by the Department. Pursuant to 24 CFR Part 24, § 24.105(p), attorneys or others in a business relationship with the Mortgagor are defined as "principals." Even though the Guide is quite different in form from its predecessor (FHA Form No. 1725), the substance is not intended to be substantially different and the revision does not in any fashion relieve the counsel to the Mortgagor of its obligations to its client, the Mortgagee and the Department. In part, these responsibilities entail the exercise of due diligence to assure the accurate and timely preparation, completion and submission of the forms required by the Department in connection with the transaction. Further, the counsel to the Mortgagor and any other attorneys involved in the transaction should be thoroughly familiar with the regulations, procedures and directives of the Department pertaining to each mortgage insurance transaction in which counsel participates. The Department takes seriously the preparation and completion of the various documents involved in the mortgage insurance process (most of which are HUD form documents) and cannot overemphasize the importance of the following:

"Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)"

With limited State law related exceptions, we expect that Mortgagor's counsel will be able to follow the Guide in rendering an Opinion and HUD field counsel should not accept Opinions that otherwise substantially or materially deviate from the Guide. Although we understand that attorneys and law firms may have evolved particular styles and forms of opinion, HUD field counsel do

not have time to negotiate each and every Opinion for stylistic changes and it is essential that the Guide be followed in both style and substance in order to ensure a timely closing. The counsel to the Mortgagor is expected to complete a draft Opinion for submission to HUD field counsel at least ten days prior to the closing along with the other closing documents. Any deviations should be specifically identified (redlined or highlighted) and discussed with field counsel at that time. Any material deviation not required by State or local law or otherwise authorized by these instructions must be brought to the attention of the Assistant General Counsel, Multifamily Mortgage Division, by field counsel along with an explanation as to the necessity for the deviation.

It was anticipated that the Guide could be utilized in connection with all types of closings: insured advances or insurance upon completion (for new construction or substantial rehabilitation); final closings (for refinancings, etc.). This has proved to be the case and, furthermore, the Guide format has been adapted and used in Transfers of Physical Assets (TPAs). However, numerous questions have been raised—particularly in cases involving Section 241 supplemental and equity loans and the various refinancing transactions under Section 223. Therefore, it is important that the correct options be selected in instances where choices are provided and that appropriate deletions or modifications be made to accommodate unique circumstances or programs. On the other hand, it should be emphasized that this does not authorize field counsel to approve changes to the Guide in cases other than where the Guide is being adapted for a special use, e.g. refinancing or equity loan transaction, TPA, etc. Furthermore, HUD has made an administrative policy decision to not require an opinion by counsel to the mortgagor for projects within the "Small Projects Mortgage Insurance Pilot Program (SPP)." A Notice will be issued defining small project and clarifying the parameters of the SMPP. The mortgagee will have the option of requiring an opinion by counsel to the mortgagor if the mortgagee so elects. It is anticipated that the Certification of the Owner will be expanded slightly for use in the SMPP to provide assurances and comfort to HUD in such cases. Otherwise, the Guide or a variation thereof should be utilized in all FHA-insured multifamily rental project and health care facility closings.

The Guide is not intended to serve as a closing checklist; therefore, HUD field counsel may update or modify existing closing checklists as necessary to meet constantly changing program needs and handbook instructions and directives. For example, many deletions from the list of Guide documents are appropriate for various types of refinancings, operating loans, equity loans, etc. whereas several additions are necessary in the case of loans for health care facilities (e.g. certificate of need), supplemental loans, and certain complex refinancings.

Brackets continue to be used in the Guide to indicate alternate language, insertions, documents, or instructions depending on the applicable facts and underlining is used to indicate blanks that must be completed.

The Guide contains some instructions and definitions and is largely self-explanatory; however, the following expanded instructions and clarifications should provide additional assistance to both private counsel and HUD counsel. The numbers and letters used below relate to the paragraph numbers and letters in the Guide unless page numbers are specifically designated.

Page 1 and Introductory Paragraph

• Letterhead and date: The Opinion must be typed on the firm letterhead and dated the date of endorsement of the mortgage note by HUD.

• Reference: Data regarding the project (name, HUD project number, and location and the name or title of the Mortgagor must be accurate and inserted in the appropriate blanks.

• Addressees: The Opinion must be delivered to HUD as well as the Mortgagee making the loan to establish the explicit right of each to rely on the Opinion. The Mortgagee's counsel may be relying on the Opinion for certain aspects of its opinion. If so, the Opinion must also be addressed to counsel to the Mortgagee. HUD is aware that recent case law has raised issues about the extent to which a mortgagee can rely upon such an opinion; therefore, this matter of reliance by the mortgagee could be clarified by the parties at the outset in jurisdictions where the issue has been raised. Regardless of case law, HUD continues to believe that this is a unique transaction where the federal interest as insurer of the mortgagee is clear from the outset and that it is as a result of the unique federal requirements that counsel to the mortgagor is retained to represent the mortgagor in such a fashion that the Opinion rendered by counsel to the mortgagor necessarily must be addressed to, and relied upon by, HUD as the insurer of the mortgagee and the mortgagee in order for the loan transaction to go forward. In cases where counsel to the mortgagee elects not to rely upon the Opinion or counsel to the Mortgagor does not wish to permit reliance by counsel to the mortgagee, the Opinion should not be addressed to and/or delivered to the mortgagee's counsel.

• Description of the Loan: The loan amount is the original principal amount of the loan being insured unless a modification is necessitated in connection with the closing.

• Source of funds for the Loan: In the second full sentence on page 2 the source of funds must be accurately identified.

List of Documents

• In General: If there are no brackets around a particular document, the document is one which is commonly used for initial endorsements for insured advances completion cases; however, it should be emphasized that it is impossible to list every document for every insured loan. Further, no attempt has been made to list all documents utilized in all types of refinancings and certain specialized programs, e.g., certificates of need and licenses for health care programs. Conversely, some documents may not be utilized in a particular transaction and should be deleted from the list in the actual Opinion. Brackets around the name of the document indicate that the document may or may not be used for every loan. If bracketed documents are not used in a particular loan transaction, then delete such documents from the list in the actual Opinion. Each document executed in connection with the loan must be listed by its correct title, showing each party executing it and its date. If documents are dated "as of" a particular date, then such phrase should be included in the description in the text. It is imperative that care must be taken to compile a list that accurately and completely reflects the transaction in the submission to HUD of the initial draft. After HUD review of the initial draft, the Opinion may have to be modified, as necessary, to satisfy HUD.

All documents executed in connection with the loan transaction must be listed regardless of whether the document is required by HUD or whether the Mortgagor is a party to the document. It should be emphasized that counsel to the Mortgagor is not assuming resuming responsibility for the content of documents that counsel does not prepare and that the Mortgagor does not execute. The review is necessary to provide assurance of consistency from document to document. The appropriate HUD or FHA form number, if applicable, must be indicated in parenthesis after each document. Please note that the Guide lists a four digit number after virtually all of the standard HUD documents. In many instances as these forms have been updated, the four digit numbers have been changed so that they are now preceded by a "9." The ultimate plan is to standardize a four digit number for each form; therefore, the four digit number has been used to avoid any need for future change.

A. Organizational Documents: All of the Organizational Documents must be reviewed and care should be taken to ensure adherence to the HUD guidelines and directives pertaining to such documents as set forth in:

1. The Instructions to HUD Form 92466 which pertains to corporate, partnership and trust mortgagors;

2. HUD Form 1732 which pertains to nonprofit corporations; and

3. HUD Notice H–95–66 which pertains to partnerships and limited liability companies (LLCs).

G. In the original version of the Guide, the requirement that HUD be named in the Financing Statements as a secured party or as its interests may appear was standardized through requiring the insertion of appropriate language in the Security Agreement. The purpose was to clarify that, under certain circumstances, HUD may assert some rights in the personalty arising under the Regulatory Agreement which would precede an assignment of the mortgage. Based upon experience to date, a decision has been made that HUD need not be so named in the Financing Statements and Security Agreement. This decision makes it more imperative that there be specificity in the UCC documentation with respect to the securitization of items such as receivables (particularly in the case of hospitals and nursing homes for example) in order to protect the interest of HUD in the securitization of personalty.

J. Building Loan Agreement: This document is a "bracketed document" which should only be used in cases involving new construction or substantial rehabilitation. Hence, the document is not required in equity loan transactions and most refinancing transactions and many supplemental loan transactions.

K. Construction Contract. See J. above.

L. Mortgagee's Certificate: It has been argued that this document is unnecessary in the context of certain insured secondary loan transactions because the form is used to document the first mortgagee's consent to the second loan. The first mortgagee would not be involved in such situations. In cases where the consent of the first lender is obtained for a second mortgage insured by HUD, a separate document (for which there is no specified format) is utilized.

The Mortgagee's Certificate is executed by the lender making the loan being insured, which in the cases at issue would be the lender making the second loan, and is one of the most significant closing documents. HUD places great reliance upon the mortgagee's certificate and considers it necessary to reveal all fees, side transactions, etc. Counsel to the Mortgagor is not responsible for the execution of the document and only needs to review the document in the capacity as counsel to the mortgagor.

M. Mortgagor's Certificate: This document may overlap somewhat with other documents as several private attorneys have indicated; nonetheless, the mortgagor's certificate is a significant document upon which HUD relies. This document and the Opinion should be dated the date of the closing.

P. Certification of Owner: Several persons have questioned whether the references in Paragraph 6 to the Public Entity Agreement and the Regulatory Agreement should be changed so that both refer instead to the Public Entity Agreement. The references should not be changed because HUD wants assurance that there will be no violations of the Regulatory Agreement as a result of events that have occurred with the passage of time.

Q. UCC searches: The UCC Search must be conducted within thirty days of closing and can be conducted by either the title insurance company, a reputable document search firm, the counsel to the Mortgagor or any other attorney licensed in the jurisdiction.

R. Flood insurance receipt: Arguments have been made that this document is not necessary in equity loan, supplemental loan and refinancing transactions. Flood plain maps change. In insuring a first or a second mortgage, it is just as significant that HUD know whether the property is located in an area where flood insurance is required and, if so, whether the insurance is in effect regardless of whether a prior HUD-insured first mortgage is in effect. HUD would not necessarily have the data on file, and it was determined that this is a matter which counsel to the mortgagor could confirm under item (e) near the end of the Guide. Note that no opinion is required, and the factual determinations necessitated by the Guide are considered within the usual duties of counsel to the mortgagor.

S. Title Insurance Policy: Currently the 1992 ALTA Format (with appropriate endorsements) is required by HUD in most jurisdictions.

T. Evidence of zoning compliance: The evidence of zoning compliance will vary depending on the circumstances. The evidence should establish that the building, if constructed according to plans and circumstances, will comply with all zoning requirements. The evidence may be in the form of a letter or certificate from the appropriate local official stating that, if the building is constructed according to the plans and specifications submitted for review, the building will comply with all zoning requirements. In refinancing cases where no construction is involved, the evidence may be in the form of a letter certifying that the existing building(s) is (are) in compliance with outstanding zoning requirements or, if not, the nonconforming variance, etc., is acceptable. If the locality has no zoning ordinance, a letter should be submitted from the chief executive stating such. In those circumstances, it may be necessary to obtain a letter from the local planning body of the county in which the project is located, that the proposed development is compatible with the county's comprehensive plan. If the zoning approval is based upon a variance or other special action, the closing may have to be delayed until the time for appeals has run. In extremely complex cases, an opinion may need to be obtained from legal counsel specializing in local zoning matters. Such letter must be attached as an exhibit and referenced in the appropriate paragraphs of the Opinion.

In cases involving refinancings, it has been suggested by some attorneys that HUD should have zoning information on hand either as a result of the closing of the first HUD-insured loan or due to periodic site reviews. HUD would not normally maintain data pertaining to local zoning law and the data with respect to the first loan would only be valid with respect to the closing date of that loan. Paragraphs 7, 8 and 9 of the Opinion contain several options with respect to local zoning law. It has also been suggested that evidence of zoning compliance should not be required in Section 241(f) equity loans. The only language applicable to Section 241(f) equity loans is the wording at the end of 9 which pertains to refinancings, viz. "Based solely on the Certificate, the Project complies with all applicable land use and zoning requirements." After considering the issue, it has been determined that a zoning certificate is not essential in Section 241(f) equity loan cases; however, the attorney for the

mortgagor will have to state: "The project complies with all applicable land use and zoning requirements." It is important that HUD be assured that there have been no changes in the land use or zoning which would adversely affect the continued use of the property as a rental housing project. In this context, we reemphasize that the attorney responsible for this matter must be licensed in the property jurisdiction.

U. Building permit(s): If no building permit is required (as would normally be the case in a pure Section 241(f) equity loan), this document is not applicable and should be deleted from the Opinion. (This would also be true with respect to occupancy permits (under V.) unless new permits are required under local law in connection with "pure" refinancing transactions.)

V. Permits required for the operation of the project: Several practitioners have argued that the documentation is unnecessary in equity loan and refinancing transactions; however, they have not indicated whether such a position would affect their wording of Paragraph 4 of the Guide. In all cases (including Section 241(f) equity loans), HUD is concerned that any permits required for the continued operation of the project be proper and in place such that an opinion can be rendered with respect to Paragraph 4. It is crucial in existing projects that HUD be assured that no new requirements have been imposed which would thwart continued operation of the project. If no such permits are required, Paragraph 4 should be amended accordingly. This is a matter which counsel to the mortgagor, as a specialist in the property jurisdiction, should be able to ascertain.

W. Surveyor's plat or survey: The survey must be signed, sealed and dated within 90 days of the closing. In a pure Section 241(f) equity loan and certain refinancing transactions, a survey would not normally be required because no new construction would have taken place and, presumably, nothing would have changed with respect to the building(s) and the site. In such situations, if there is other satisfactory evidence that no site changes have occurred, an administrative waiver would necessitate the deletion of the item from the Opinion. See X. below. If the mortgagor's attorney were to become aware of any changes, this would have to be addressed in the Opinion and a survey could be required by HUD depending upon the circumstances.

X. Surveyor's Report: Unless there is a title endorsement protecting against any encroachments, etc., there will have to be a surveyor's certificate indicating that nothing has changed since the last survey with respect to encroachments, lot line violations, construction activity, etc. HUD should not be incurring the risk of insuring any loan if there has been any action which would impair the lender's and HUD's respective positions. As an alternative to a surveyor's certificate, the mortgagor's attorney could rely upon an appropriate certificate from a qualified architect and insert appropriate language in the Opinion.

Z. Assurance of completion (bonds or agreements): This documentation (now bracketed) would not be utilized in a pure refinancing or equity loan transaction and, therefore, would only be used in cases involving some construction where the regulation pertaining to assurance of completion is applicable.

AA. Owner-Architect Agreement: This document (now bracketed like Documents J and K) should only be indicated (where the Guide indicates "{INSERT DESIGN AND/OR CONSTRUCTION ARCHITECT}") in cases involving new construction or substantial rehabilitation.

BB. Off-Site Bond or Agreement: This document should only be used in cases where off-site work is involved. As such, the document would not normally be used in pure equity loan transactions or in refinancing transactions involving no construction.

CC. Assurance of utility services: These documents do not pertain to pure Section 241(f) equity loan transactions and certain refinancing transactions and, therefore, should be deleted in those instances.

FF. Escrow Deposit for On-Site Improvements: If any such improvements are required in connection with an equity loan, supplemental loan or refinancing transaction, the form document specified should be tailored to the situation as determined by field counsel. In a situation where such an escrow is necessary, counsel to the mortgagor should modify the form as necessary and present it to field counsel for review.

GG. Contractor's Prevailing Wage Certificate: This item is no longer required in the HUD closing checklist; therefore, some attorneys have taken the position that it can be eliminated from the Opinion. HUD believes the item should be reviewed by counsel to the Mortgagor for the purpose of assuring consistency between the documents and performance under the Construction Contract to which the Mortgagor is a party.

KK. Public Entity Agreement: The references to this document and to the Regulatory Agreement in Paragraph 6 of the Certification of Mortgagor have created some confusion about whether the reference to the Regulatory Agreement should be changed to Public Entity Agreement. The two separate references were intended, and no change should be made.

LL. Bond Documents: This does not include all documents involved in the typical bond financing. It does include those principal documents such as the Prospectus, the Indenture, a sample Bond, etc. All documents executed by the Mortgagor or which establish or describe any obligations of the Mortgagor must be included.

NN. Certificate issued by architect or other professional: Normally such a document would not be necessary in the case of a pure Section 241(f) equity loan and certain refinancing transactions and should be deleted unless those circumstances mentioned under the last sentence pertaining to Document X, above, make the certificate appropriate. Note that "Certificate" is a defined term and that the Certificate can come from "an architect or other professional." Consequently, there is no form for the Certificate and HUD field counsel should defer to HUD administrators specializing in architectural and engineering matters in determining the acceptability of the Certificate.

It is referenced in Paragraph 9 of the Opinion and should not be confused with the Zoning Certificate which is also a defined term and is referenced in Paragraph 8.

OO. Docket search: The Docket Search can be conducted by either the title insurance company, a reputable document search firm, the counsel to the Mortgagor or any other attorney licensed in the jurisdiction. Arguments have been made by private counsel that such a docket search is not necessary in all transactions. One of the main purposes of the new Guide was to clearly define the work to be performed by counsel to the mortgagor. It was determined that such a search was within the scope of the fees permitted as a mortgage line item for counsel to the mortgagor. Such a search is important in the case of an existing subsidized project where matters of public record could reveal circumstances wherein it would be inadvisable for HUD to go forward with insuring another loan.

An argument has also been made that several record searches in separate jurisdictions could be necessitated in some cases and that this would cost a significant amount of money with little benefit. As the Guide was being developed, HUD was cognizant of such

a scenario; however, the benefit to HUD of establishing that the public records are clear outweighs the costs to the mortgagor of conducting such searches. In the case where a sole-asset mortgagor is being created, however, a search of the public records in the jurisdiction where the mortgagor is located (assuming a different location from the others iterated) is unnecessary. The Opinion could be amended in those instances to indicate that particular state of facts; however, all of the other searches would have to be done.

Opinions

1. This paragraph contains several options depending upon whether the Mortgagor's organizational documents were prepared by counsel rendering the Opinion and the type of mortgagor entity. Care should be taken to ensure that the correct option is selected and that the requisite information is inserted correctly. It is intended that, where the mortgagor entity or general partner of the mortgagor entity is established by counsel to the Mortgagor, no reliance on other sources is permitted and counsel must opine as to the due organization of the Mortgagor. If a Certificate of Good Standing is not available in the State, but an equivalent document is (i.e., Certificate of Existence), then the bracketed language must be revised to reflect the name/title of the equivalent document so obtained. Any Certificate of Good Standing or equivalent document issued by the applicable governmental authority must be dated no more than 30 days prior to the date of the Opinion of Mortgagor's counsel. If the Mortgagor is a foreign corporation or partnership, the Opinion must recite the review of all government approvals required to do business in the Property jurisdiction. If a Certificate of Good Standing or equivalent document cannot be obtained from the applicable governmental authority (e.g., for general partnerships, then the Mortgagor's attorney will be required to do the due diligence necessary to give the opinion or may engage other counsel to render such opinion). If the Property jurisdiction is not the State of formation for the mortgagor entity, counsel must also opine that the Mortgagor is qualified to transact business in the Property jurisdiction. Such opinion may be made solely on the basis of a certificate from the applicable governmental authorities of the Property jurisdiction, and if counsel is relying on such certificate(s), then the opinion must expressly identify those certificate(s) and they must be attached to the Opinion as an exhibit. If the Mortgagor is an individual, paragraph one should be deleted from the Opinion.

2. This paragraph provides, among other things, that the Mortgagor possesses all the necessary governmental certificates, permits, licenses, qualifications and approvals to own and operate the Property. This particular provision has generated considerable controversy—particularly where health care facilities are being constructed or substantially rehabilitated in large, urban jurisdictions having a multitude of regulatory requirements pertaining to ownership and operation. Consequently, field counsel have discretion to permit a modification in which Counsel to the Mortgagor itemizes those local governmental requirements which have been evaluated and indicates that, after due diligence inquiry and insofar as the attorney is aware, these local requirements comprise the entire universe of such requirements. The Opinion should further state that, based upon such itemized local requirements and compliance therewith (with all permits, certificates, etc. being itemized), the Mortgagor possesses the power and authority necessary to own and operate the Property and to carry out all of the transactions required by the Loan Documents and to comply with applicable federal statutes and regulations of HUD in effect on the date of the FHA commitment. In most instances involving new construction, a certificate of occupancy will not have been obtained by the time of closing. In such instances, field counsel have discretion to permit an appropriate clarification with respect to that particular instrument.

11. If the Mortgagor or any principal of the Mortgagor is involved in any litigation, all such litigation matter(s) must be disclosed in writing to HUD field counsel in order that the Department can determine whether the endorsement of the loan is possible. Note that litigation involving a principal of the Mortgagor must be disclosed. Confusion has developed when there has been litigation involving lower tiers of a partnership. If the issue cannot be resolved through reference to the definition of "principal" in the 2530 regulations, HUD field counsel should consult with HUD program administrators and determine whether the litigation should be disclosed. If the litigation involves HUD's compliance with civil rights requirements, it must immediately be brought to the attention of appropriate Fair Housing and Equal Opportunity personnel (regardless of whether a "principal" or some lesser component of the Mortgagor is the subject of the litigation). As an example, it is not uncommon for neighbors of a proposed site for a group home for persons with disabilities to harbor discriminatory attitudes toward persons with disabilities and to sue to attempt to block the establishment or operation of a group home.

13. If any UCC Financing Statements have been filed on the Personalty in conjunction with any transaction other than the Loan, they must be identified to the HUD field counsel as well as details with respect to how such Financing Statements will be terminated at the time of closings.

If the property is an elderly housing project or a health care facility of if the loan otherwise is to be secured by significant amounts of personal property, the matter should be discussed with field counsel. In the event further discussion is necessary, field counsel should contact the Assistant General Counsel, Multifamily Mortgage Division. For projects in which the personalty is mostly household appliances (e.g., refrigerators) or a limited quantity of smaller equipment, the Opinion will be limited as shown. In other instances, the Opinion may have to be expanded particularly with respect to ensuring that items such as receivables, income stream, etc. are security property.

One or more UCC searches performed not more than 30 days prior to the date of the Opinion must be made and attached to the Opinion.

15. If the Mortgagor is a trust (other than a land trust), then Paragraph 15 must be included in the Opinion. The second sentence need only be included if the trust was formed in a jurisdiction other than the Property jurisdiction.

Acceptability of Counsel

• Mortgagor's counsel must opine as to the law of the Property jurisdiction and the State of Mortgagor's organization, if different from the Property jurisdiction. HUD requires that Mortgagor's counsel be admitted to practice law in each jurisdiction in which such admission is required by the laws or ethical considerations of the bar to be able to give the opinion. If multiple jurisdictions are involved, two opinions may be required: one with respect to the organization of the Mortgagor and another with respect to the real property and loan issues. A combination of the Mortgagor's regular counsel and special local counsel may be required to satisfy this requirement. If counsel's satisfaction of these requirements is not evident from the letterhead of the firm, the field counsel should include a written explanation in

the Washington docket. In all events, each provision in the Guide must be addressed whether one or more opinions is required to do so.

Signatures

• The Opinion may be signed by an authorized person of the law firm, in that person's name.

Certification of Mortgagor

• A form of Certification of Mortgagor is attached. The form represents the minimum amount of information that should be obtained from the Mortgagor (but additions, revisions and rephrasings are acceptable so long as the Mortgagor is certifying as to factual matters and not legal conclusions). The Certification of Mortgagor must be dated the same date as the Loan Documents.

Identity of Interest

• Numerous issues have been raised with respect to the confirmation in (d) of the penultimate paragraph of the Guide. A decision was made that the attorney signing the Opinion could not have an identity of interest with the Mortgagor entity. No waivers are possible in such instance. In instances where other members of the firm have an interest in the Mortgagor entity, such interest must be disclosed and such interest must be acceptable to field counsel based upon the ethics rules of the applicable bar. Furthermore, any interest must be administratively acceptable to HUD and 2530 clearance must be obtained. In addition, there appears to be an increasing trend wherein mortgagees are insisting upon using counsel to the mortgagee to handle many aspects of the transaction even though the Opinion is being signed by a separate attorney. There have been some instances where counsel to the mortgagee have asked to represent the mortgagor in whole or in part and to provide all or a part of the Opinion. Confirmation (d) in the penultimate paragraph has been clarified to reflect the intent of HUD from the inception of the Opinion that any such representation of both parties is not permitted.

Liens

• Paragraph (f), which is in the penultimate paragraph of the Opinion, contains a statement that there are no liens or encumbrances against the Property. Several attorneys have objected to making the statement because they indicate that, at the time of closing, there may be liens that have actually not been released even though the title company has received funds and/or release documents to do so and intends to process the release after the closing. Except in cases involving the insurance of secondary loans, HUD is only authorized to insure first mortgages; consequently, there cannot be any liens and encumbrances on the property when HUD endorses the mortgage note for insurance. As a result, there cannot be any liens outstanding which would prime the insured mortgage loan. Hence, Paragraph (f) should not be changed.

Reliance on Other Opinions

• The issue of proper wording and format has probably surfaced most often in cases where counsel to the mortgagor is relying on opinions issued by other attorneys. This has occurred most often in cases involving a separate opinion for bond financing documentation, property jurisdiction vs. organizational jurisdiction, zoning, etc. In this area, it is imperative that counsel to the Mortgagor specifically reference and attach the additional opinion(s) and that such opinions track the language of the Guide as close as is practical under the circumstances. HUD field counsel should exercise discretion in this area, taking the unique circumstances into account.

For use in the Section 202, Supportive Housing for the Elderly Program

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, FEDERAL HOUSING ADMINISTRATION

GUIDE FOR OPINION OF OWNER'S COUNSEL

{TO BE TYPED ON FIRM LETTERHEAD}

{INSERT CAPITAL ADVANCE INITIAL CLOSING DATE}

Re: Project Name _____
202 Project No. _____
Location _____

[OWNER]
[ADDRESS]

FEDERAL HOUSING COMMISSIONER
{INSERT APPROPRIATE FIELD OFFICE ADDRESS}

Ladies and Gentlemen: We are [I am] [general/special] counsel to _____ {INSERT NAME OF OWNER} (the "Owner"), a _____ {INSERT TYPE OF ENTITY} organized under the laws of the State of _____ {INSERT STATE, INCLUDES THE DISTRICT OF COLUMBIA AND PUERTO RICO} (the "Organizational Jurisdiction"), in connection with a first Mortgage (Deed of Trust) and Mortgage Note ("Capital Advance") in the amount of _____ Dollars ($_____) from HUD to the Owner. Such Capital Advance is being made pursuant to a Capital Advance Agreement dated as of the date hereof, by and between HUD and the Owner and will be used to construct, rehabilitate or acquire and maintain the captioned 202 project ("Project"), commonly known as _____ and located in _____ {INSERT COUNTY AND STATE} (said State to be referred to hereinafter as the "Property Jurisdiction") on the property described in Exhibit _____ {ATTACH LEGAL DESCRIPTION} (together with all improvements and fixtures thereon) (the "Property"). The Capital Advance is being issued, pursuant to Section 202 of the Housing Act of 1959, as amended, a firm commitment dated _____ and which expires on _____ ("Commitment"). The Owner has requested that we [I] deliver this opinion and has consented to reliance by HUD in making the Capital Advance and has waived any privity between Owner and us [me] in order to permit such reliance by HUD. We [I] consent to reliance on this opinion by HUD.

In our [my] capacity as [general/special] counsel to the Owner, we [I] have prepared or reviewed the following Capital Advance Documents, Organizational Documents and Collateral Documents (will be collectively referred to as "the Documents" unless expressly limited to a group of the above referenced documents).

Note: Numerical references in parenthesis following the Documents listed below are to HUD form numbers:

CAPITAL ADVANCE DOCUMENTS:

A. BEFORE INITIAL CLOSING

1. Capital Advance Agreement (HUD 90167–CA).
2. Requisition for Disbursement of Capital Advance Funds (HUD–92403–CA).
3. Direct Deposit Sign-up Form (SF 1199A)
4. Project Rental Assistance Contracts (PRAC) documents:
   a. Part I of Agreement to Enter into PRAC (HUD 90172A–CA);
   b. Part II of Agreement to Enter into PRAC (HUD 90172B–CA);
   c. Part I of the PRAC (HUD 90173A–CA); and
   d. Part II of the PRAC (HUD 90173B–CA).

B. INITIAL CLOSING

1. Firm Commitment for Capital Advance Financing (HUD–92432–CA) [including reissued, revised or amended commitments, thereof, if any].
2. Owner's Certificate (HUD 92433–CA).

3. Evidence of Owner's Deposit (minimum capital investment) (escrow agreement, see 6(q)(1) of commitment) and ability to provide moveable furnishings and equipment not covered by capital advance, if necessary.
4. Agreement and Certification (HUD 93566–CA).
5. Mortgage Note (HUD–93432–CA).
6. Mortgage (Deed of Trust) (HUD–90165–CA).
7. Regulatory Agreement (HUD–92466–CA).
8. Use Agreement (HUD 90163–CA).
9. Owner's assurance of funds to cover costs over and above capital advance (if applicable).

ORGANIZATIONAL DOCUMENTS

(Documents regarding Organization of Non-Profit Owner)

1. Approved and certified articles of organization (Certificate of Incorporation (HUD–91732A–CA).
2. Certificate of Good Standing.
3. By-laws.
4. Incumbency Certificate.
5. Owner's I.R.S. Tax-Exemption Ruling.
6. Corporate Resolution.

COLLATERAL AND OTHER DOCUMENTS ("Collateral Documents")

1. Collateral Agreements, if any.
2. {INSERT THE NUMBER OF UCC's TO BE FILED} Uniform Commercial Code Financing Statements executed by the Owner as debtor and naming HUD as secured party as its interest may appear, to be filed in _____, {INSERT LOCATION(S)} (the Filing Offices), upon the {DESCRIBE EVENTS} (the "Financing Statements");
3. The Security Agreement by and between Owner and HUD, granting a security interest under the Uniform Commercial Code, in those items of personalty described therein, dated _____, (the "Security Agreement");
4. A search conducted by _____ dated _____ {no earlier than 30 days before this opinion} of the financing records of the county and Property Jurisdiction [and Organizational Jurisdiction] (the "UCC Search").

[5. A receipt from the insurance company providing flood insurance evidencing payment for the premium, dated _____, (the "Flood Insurance Receipt").]

6. The Title Insurance Policy issued by _____ {acceptable company under HUD's regulations}, together with all endorsements, and naming HUD as insured, dated _____, (the "Title Policy").

[7. The Surveyor's Plat OR Survey showing completed project, prepared by _____, dated _____, (the "Survey").]

8. The Surveyor's Report (HUD–92457), executed by _____, dated _____, (the "Surveyor's Report").

[9. The following documents evidencing zoning compliance _____, {DESCRIBE ALL DOCUMENTS FULLY} (the "Zoning Certificate").]

[10. The building permit(s) issued on _____, by _____ (the "Building Permit").]

[11. The following permits, _____, {DESCRIBE PERMITS} which are required for the operation of the project, issued by _____ on _____ ("Other Permits").]

12. Construction Contract:
   a. Lump Sum (HUD 92442–CA) OR Cost Plus (HUD 92442A–CA), as appropriate;
   b. Contractor's Requisition (HUD 92448); and
   c. Construction Contract, Incentive Payment (HUD 92443–CA), if applicable.

[13. The Contractor's and/or Mortgagor's Cost Breakdown (HUD 92328) executed by the General Contractor, dated _____, (the "Cost Breakdown").]

14. Assurance of Completion:
   a. Performance/Payment Bond 100% Dual-Obligee (92452–CA); OR
   b. Performance Bond (FHA 2452) and Payment Bond (FHA 2452A) and Surety Company's Telegram or Facsimile; OR
   c. Completion Assurance Agreement (HUD 92450–CA).

[15. Owner-Architect Agreement (AIA Document B181) (see attached to Capital Advance Agreement; HUD 90167–CA) and HUD Amendment (HUD 90169–CA)) executed by _____ {INSERT DESIGN AND/OR CONSTRUCTION ARCHITECT} and Owner, dated _____, (the "Owner-Architect Agreement").]

16. Real Estate Tax Exemption (if applicable).

[17. Lease (if mortgage is on leasehold) (Lease Addendum at Appendix 14 of HUD Handbook 4571.5).]

18. Land-Dispositions Contract and Deed (required only for projects in urban renewal areas).

19. Insurance and fidelity bonds:
   a. All applicable insurance policies per Property Insurance Requirements (HUD–90164–CA), including Property Insurance Schedule (HUD–92329); and
   b. Blanket Fidelity Bond.

20. Assurance of Completion of Off-site Facilities, if applicable:
   a. Off-site Bond (HUD 90177–CA); OR
   b. Escrow Agreement for Off-site Facilities (HUD 90170–CA).

21. Fair Housing
   a. FHEO Certification in Connection with the development and operation of the project (assurance of compliance with HUD regulations (HUD Form 915); and
   b. Affirmative Fair Housing Marketing Plan (HUD will determine if administratively satisfied; Exhibit 3 to PRAC).

[22. The following documents assuring water, electricity, sewer, gas, heat or other utility services (the "Assurance of Utility Services"): _____ {DESCRIBE FULLY}].

[23. The certificate executed by _____ {INSERT ARCHITECT OR OTHER PROFESSIONAL}, dated _____, (the "certificate").]

[24. A search conducted by _____ dated [no earlier than 30 days before this opinion] of the public records of the federal District Court and State and local courts in (i) the jurisdiction where the Property is located; and (ii) the jurisdiction(s) where the Owner is organized, located and does business ("Docket Search").]

[25. Additional Closing Requirements (State or local requirements).]

In basing the several opinions set forth in this document on "our [my] knowledge," the words "our [my] knowledge" signify that, in the course of our [my] representation of the Owner, no facts have come to our [my] attention that would give us [me] actual knowledge or actual notice that any such opinions or other matters are not accurate. Except as otherwise stated in this opinion, we [I] have undertaken no investigation or verification of such matters. Further, the words "our [my] knowledge" as used in this opinion are intended to be limited to the actual knowledge of the attorneys within our [my] firm who have been involved in representing the Owner in any capacity including, but not limited to, in connection with the Capital Advance. We [I] have no reason to believe that any of the documents on which we [I] have relied contain matters which, or the assumptions contained herein, are untrue, contrary to know facts, or unreasonable.

In reaching the opinions set forth below, we [I] have assumed, and to our [my] knowledge there are no facts inconsistent with, the following:

(a) Each of the parties to the Documents, other than the Owner (and any person executing any of the Documents on behalf of the Owner), has duly and validly executed and delivered each such instrument, document, and

agreement to be executed in connection with the Capital Advance to which such party is a signatory, and such party's obligations set forth in the Documents are its legal, valid, and binding obligations, enforceable in accordance with their respective terms.

(b) Each person executing any of the Documents, other than the Owner (and any person executing any of the Documents on behalf of the Owner), whether individually or on behalf of an entity, is duly authorized to do so.

(c) Each natural person executing any of the Documents is legally competent to do so.

(d) All signatures of parties other than the Owner (and any person executing any of the Documents on behalf of the Owner) are genuine.

(e) All Documents which are submitted to us [me] as originals are authentic; all Documents which were submitted to us [me] as certified or photostatic copies conform to the original document, and all public records reviewed are accurate and complete.

(f) All applicable Documents have been duly filed, indexed, and recorded among the appropriate official records, and all fees, charges, and taxes due and owing as of this date have been paid.

(g) The parties to the Documents and their successors and assigns will: (i) act in good faith and in a commercially reasonable manner in the exercise of any rights or enforcement of any remedies under the Documents; (ii) not engage in any conduct in the exercise of such rights or enforcement of such remedies that would constitute other than fair and impartial dealing; and

(iii) comply with all requirements of applicable procedural and substantive law in exercising any rights or enforcing any remedies under the Documents.

(h) The exercise of any rights or enforcement of any remedies under the Documents would not be unconscionable, result in a breach of the peace, or otherwise be contrary to public policy.

(i) The Owner has title or other interest in each item of (i) real and (ii) tangible and intangible personal property ("Personality") comprising the Property in which a security interest is purported to be granted under the Documents [and, where Personalty is to be acquired after the date hereof, a security interest is created under the after-acquired property clause of the Security Agreement].

In rendering this opinion we [I] also have assumed that the Documents accurately reflect the complete understanding of the parties with respect to the transactions contemplated thereby and the rights and the obligations of the parties thereunder. We [I] also have assumed that the terms and the conditions of the Capital Advance as stated in the Documents have not been amended, modified or supplemented, directly or indirectly, by any other agreement or understanding of the parties or waiver of any of the material provisions of the Documents. After reasonable inquiry of the Owner, we [I] have no knowledge of any facts or information that would lead us [me] to believe that the assumptions in this paragraph are not justified.

In rendering our [my] opinion in paragraph 13, we [I] also have assumed that: (i) all Personalty in which a security interest is created under the Documents (other than accounts or goods of a type normally used in more than one jurisdiction) is located at the Property and (ii) Owner's [Chief Executive Office] [only place of business] [residence] is located in _____. After reasonable inquiry of the Owner, we [I] have no knowledge of any facts or information that would lead us [me] to believe that the assumptions in this paragraph are not justified.

In rendering this opinion we [I] have, with your approval, relied as to certain matters of fact set forth in the Owner's Opinion Certificate, the Certificate of Good Standing [and certain other specified Documents,] as set forth herein. After reasonable inquiry of the Owner as to the accuracy and completeness of the Owner's Opinion Certificate, the Certificate of Good Standing, [and such other Documents], and we [I] have no knowledge of any facts or information that would lead us [me] to believe that such reliance is not justified.

Based on the foregoing and subject to the assumptions and qualifications set forth in this letter, it is our [my] opinion that:

{TO BE USED IN CASES WHERE ORGANIZATIONAL DOCUMENTS WERE PREPARED BY OWNER'S ATTORNEY}

1. The Owner is a private non-profit corporation, duly organized and validly existing under the laws of the Organizational Jurisdiction. The Owner is duly qualified to do business and, based solely on the Certificate(s) of Good Standing, copy attached hereto as Exhibit _____, is in good standing under the laws of the Organizational Jurisdiction and is qualified to do business as a foreign _____ entity in the Property Jurisdiction based on a review of _____.

2. The Owner has the corporate power and authority and possesses all necessary governmental certificates, permits, licenses, qualifications, tax exempt status and approvals to own (including the authority to borrow the proceeds of the Capital Advance, to encumber the Property with the Security Instrument, to execute the Capital Advance Documents) and operate the Property and such other assets as is necessary to carry on its business and to carry out all of the transactions contemplated by the Capital Advance Documents and Collateral Documents as of the date of this opinion and to comply with all applicable statutes and regulations of the Federal Housing Commissioner in effect on the date of the Firm Commitment.

3. The execution and delivery of the Capital Advance Documents and Collateral Documents (where applicable) by or on behalf of the Owner, and the consummation by the Owner of the transactions contemplated thereby, and the performance by the Owner of its obligations thereunder, have been duly and validly authorized by all necessary corporate action by, or on behalf of, the Owner.

4. All authorizations, consents, approvals, and permits have been obtained from, appropriate actions have been taken by, and necessary filings have been made with all necessary Organizational and Property Jurisdictions or federal courts or governmental authorities, all disclosed on Exhibit _____, attached hereto, and as listed and set forth in Paragraphs ____ of this opinion [i.e., good standing certificate]. To the best of our knowledge, these represent all such authorizations, consents, approvals, permits, actions and filings that are required in connection with the execution and delivery by the Owner of the Capital Advance Documents and Collateral Documents (where applicable) and the ownership [and operation] of the Property.

5. Each of the Capital Advance Documents and Collateral Documents (where applicable) has been duly executed and delivered by the Owner and constitute the valid and legally binding promises or obligations of the Owner, enforceable against the Owner in accordance with its terms, subject to the following qualifications:

(i) the effect of applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally;

(ii) the effect of the exercise of judicial discretion in accordance with general principles of equity (whether applied by a court of law or of equity); and

(iii) certain remedies, waivers, and other provisions of the Documents may not be enforceable, but, subject to the qualifications set forth in this paragraph at (i) and (ii) above, such unenforceability will not preclude (a) the enforcement of the obligation of the Owner to make the payments as provided in the Mortgage and Note (and HUD's regulations), and (b) the foreclosure of the Mortgage upon the event of a breach thereunder.

[6. {TO BE INSERTED WHEN ANY OR ALL OF THE LOAN DOCUMENTS ARE NOT HUD APPROVED FORMS OR WHEN HUD APPROVED FORMS HAVE BEEN REVISED OR MODIFIED IN CONNECTION WITH THE LOAN} The execution and delivery of, and the performance of the obligations under, the Capital Advance Documents and Collateral Documents (where applicable), will not violate the Organizational Documents of the Owner or the applicable provisions of local or State law.]

[7. {INSERT FOR LOANS INVOLVING CONSTRUCTION OR REHABILITATION} To our [my] knowledge there are no proposed change(s) of law, ordinance, or governmental regulation (proposed in a formal manner by elected or appointed officials) which, if enacted or promulgated after the commencement of construction/rehabilitation, would require a modification to the Project, and/or prevent the Project from being completed in accordance with the plans and specifications, dated _____, and executed by _____ {INSERT OWNER} and _____ {INSERT GENERAL CONTRACTOR}, and referred to in the Construction Contract (the "Plans and Specification").]

[8. {INSERT IF THERE IS NO ZONING ENDORSEMENT INCORPORATED INTO THE TITLE POLICY} The attached Zoning Certificate states that the Property appears on the zoning maps of [Property Jurisdiction] as being located in a _____ zone. According to the zoning ordinance of the Property Jurisdiction, the use of the Property as a _____ is a permitted use in such zone.

Based solely on the Zoning Certificate, the Property may be used for _____ as a permitted use.]

[9. { USE FOR NEW CONSTRUCTION OR SUBSTANTIAL REHABILITATION IN CASES WHERE HUD DOES NOT RECEIVE A CERTIFICATE DIRECTLY FROM THE PROFESSIONAL} Based solely on the Certificate, construction/rehabilitation of the Project in accordance with the Plans and Specifications will comply with all applicable land use and zoning requirements.]

10. Based solely upon (a) our [my] knowledge and (b) the Owner's Opinion Certification, the execution and delivery of the Capital Advance Documents and Collateral Documents (where applicable) will not: (i) cause the Owner to be in violation of, or constitute a default under the provisions of, any agreement to which the Owner is a party or by which the Owner is bound, (ii) conflict with, or result in the breach of, any court judgment, decree or order of any governmental body to which the Owner is subject, and (iii) result in the creation or imposition of any lien, charge, or encumbrance of any nature whatsoever upon any of the property or assets of the Owner, except as specifically contemplated by the Capital Advance Documents or Collateral Documents.

11. Based solely upon (a) our [my] knowledge, (b) the Owner's Opinion Certification and (c) the Docket Search; there is no litigation or other claim pending before any court or administrative or other governmental body or threatened in writing against the Owner, or the Property, [except as identified on Exhibit _____].

12. The Mortgage is in appropriate form for recordation in _____ {INSERT PROPER NAME OF LOCAL LAND RECORDS OFFICE} of _____ {INSERT COUNTY OR CITY} of the Property Jurisdiction, and is sufficient, as to form, to create the encumbrance and security interest it purports to create in the Property.

13. Filing of the Financing Statements in the Filing Offices will perfect the security interest in the Personalty of the Owner located in the Project Jurisdiction, but only to the extent that, under the Uniform Commercial Code as in effect in the Project Jurisdiction, a security interest in each described item of Personalty can be perfected by filing. The Filing Offices are the only offices in which the Financing Statements are required to be filed in order to perfect the security interest in the Personalty.

14. The Capital Advance does not violate the usury laws or laws regulating the use or forbearance of money of the Property Jurisdiction.

15. The laws of Property Jurisdiction govern the interpretation and the enforcement of the Capital Advance Documents and Collateral Documents (where applicable) notwithstanding that the Owner may be formed in a jurisdiction other than Property Jurisdiction. The Owner can sue and be sued in Property Jurisdiction, including without limitation, a suit on the Note or a foreclosure proceeding arising under the Mortgage. Venue for any foreclosure proceeding under the Mortgage may be had in Property Jurisdiction.

[16. {APPLIES TO CASES WHERE THE LAND IS BEING PURCHASED FROM A PUBLIC BODY} There is no default under the Public Entity Purchase Agreement, and construction in accordance with the Plans and Specifications and within the time frame specified in the Construction Contract will not lead to a default under the Public Entity Purchase Agreement. {RELIANCE IS PERMITTED ON THE BASIS OF KNOWLEDGE AND OWNER'S CERTIFICATE}]

[17. {APPLIES TO CASES WHERE THE PROJECT IS IN AN URBAN RENEWAL AREA} There is no default under the Land Disposition Contract between _____ and _____, dated _____ and the time within which construction must be completed under the Capital Advance Agreement is within the time specified for completion in said Land Disposition Contract.]

In addition to the assumptions set forth above, the opinions set forth above are also subject to the following qualifications:

(i) The Uniform Commercial Code of the Property Jurisdiction requires the periodic filing of continuation statements with _____ [and _____] not more than _____ prior to and not later than the expiration of the _____ year period from the date of filing of the Financing statements and the expiration of each subsequent _____ year period after the original filing, in order to maintain the perfection and priority of security interests and to keep the Financing Statements in effect.

(ii) We express no opinion as to the laws of any jurisdiction other than the laws of the Property Jurisdiction and [and the Organizational Jurisdiction, if it is different,] and the laws of the United States of America. The opinions expressed above concern only the effect of the laws (excluding the principles of conflict of laws) of the Property Jurisdiction [and the Organizational Jurisdiction, if it is different] and the United States of America as currently in effect. We assume no obligation to supplement this opinion if any applicable laws change after the date of this opinion, or if we become aware of any facts that might change the opinions expressed above after the date of this opionion.

We [I] confirm that:

(a) based on the Organizational Documents, the name of the Owner in

each of the Capital Advance Documents and Collateral Documents (where applicable) and the Title Policy and Firm Commitment is the correct legal name of the Owner;

(b) the legal description of the Property is consistent in the Documents wherein it appears and in Exhibit _____ hereto;

(c) we [I] do not have any financial interest in the Project, the Property, or the Capital Advance, other than fees for legal services performed by us, payment for which has been made; and we [I] agree not to assert a claim or lien against the Project, the Owner, the Capital Advance proceeds or income of the Project;

(d) other than as counsel for the Owner, we have no interest in the Owner or any other party involved in the Capital Advance transaction and do not serve as [a director, officer or] [an] employee of the Owner. We have no undisclosed interest in the subject matters of this opinion;

(e) based solely upon the Surveyor's Report and the Surveyor's Plat, flood insurance [is OR is not] required pursuant to 42 U.S.C. 4012a(a). [INSERT IF FLOOD INSURANCE IS REQUIRED: Based solely on the Flood Insurance Receipt, flood insurance is in effect which satisfies the requirements of 42 U.S.C. 4012a(a).]

(f) we [I]] do not represent any development team member or any other party or interest in connection with the above referenced housing project other than the Owner except for representation as the personal attorney for an individual associated with a development team member in matters not involving the housing project. If a dispute arises between the Owner and a development team member, my efforts will be directed exclusively towards serving the Owner. We [I] have submitted to HUD an Identity of Interest and Disclosure Certification; and

(g) to our knowledge, there are no liens or encumbrances against the Property which are not reflected as exceptions to coverage in the Title Policy.

The foregoing opinions are for the exclusive reliance of HUD; however, they may be made available for informational purposes to, but not for the reliance of, the assigns or transferees of the Owner, or prospective purchasers of the Project. We [I] acknowledge that the making, or causing to be made, of a false statement of fact in this opinion letter and accompanying materials may lead to criminal prosecution or civil liability as provided pursuant to applicable law, which may include 18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802.

Sincerely,

_____

[Authorized Signature]

To be used in FHA Insured Transactions.

JANUARY 30, 1997.

EXHIBIT A TO OPINION OF MORTGAGOR'S COUNSEL

CERTIFICATION OF MORTGAGOR

This Certification of Mortgagor is made the _____ day of _____, 19____, by _____, (the "Mortgagor") for reliance upon by _____ (the "Mortgagor's Counsel") in connection with the issuance of an opinion letter dated of even date herewith (the "Opinion Letter") by ("Mortgagor's Counsel") as a condition for the provision of mortgage insurance by the Department of Housing and Urban Development ("HUD") of the $_____ loan (the "Loan") from _____ (the "Mortgage") to Mortgagor. In connection with the Opinion Letter, the Mortgagor hereby certifies to Mortgagor's Counsel for its reliance, the truth, accuracy and completeness of the following matters:

1. The Organizational Documents are the only documents creating the Mortgagor or authorizing the Loan, and the Organizational Documents have not been amended or modified except as stated in the Opinion Letter.

2. The terms and conditions of the Loan as reflected in the Loan Documents have not been amended, modified or supplemented, directly or indirectly, by any other agreement or understanding of the parties or waiver of any of the material provisions of the Loan Documents.

3. All tangible personal property of the Mortgagor in which a security interest is granted under the Loan Documents [other than off-site construction materials and/or accounts or goods of a type normally used in more than one jurisdiction and/or additional collateral personality] is located at the Property (as defined in the Opinion Letter) and the Mortgagor's [Chief Executive Office] [only place of business] [residence] is located in _____.

4. The execution and delivery of the Loan Documents will not (i) cause the Mortgagor to be in violation of, or constitute a material default under the provisions of any agreement to which the Mortgagor is a party or by which the Mortgagor is bound, (ii) conflict with, or result in the breach of, any court judgment, decree or order of any governmental body to which the Mortgagor is subject, and (iii) result in the creation or imposition of any lien, charge, or encumbrance of any nature whatsoever upon any of the property or assets of the Mortgagor, except as specifically contemplated by the Loan Documents.

5. There is no litigation or other claim pending before any court or administrative or other governmental body or threatened against the Mortgagor, the Property, or any other properties of the Mortgagor [,except as identified on Exhibit [__], List of Litigation, in the Opinion Letter.]

6. There is no default under the Public Entity Agreement (as defined in the Opinion Letter) nor have events occurred which with the passage of time will result in a default under the Regulatory Agreement.

Note: All capitalized terms not defined herein shall have the meanings set forth in the Opinion Letter.

IN WITNESS WHEREOF, the Mortgagor has executed this Certification of Mortgagor effective as of the date set forth above.

MORTGAGOR:

_____

_____

_____

_____

_____

For use in the Section 202, Supportive Housing for the Elderly Program.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FEDERAL HOUSING ADMINISTRATION

INSTRUCTIONS TO GUIDE FOR OPINION OF OWNER'S COUNSEL

EXPLANATORY COMMENTS

The Guide for this opinion was originally prepared in 1994 in view of changes in opinion practice as reflected by the ABA Accord and various State law bar reports on opinion letters and has been revised to reflect approximately three years experience in using the Guide. The principal purpose of this Guide remains to achieve a uniform format which can be utilized throughout the nation and which will be familiar to HUD counsel in all jurisdictions. Such a standardized format is crucial in an era when less resources are available to the Department; however, it should be emphasized that certain limited changes can be authorized by HUD field counsel as required by local law or by the unique nature of the transaction. An effort has been made in these revised instructions to specify examples in more (but not all) of those areas where such changes can be authorized. Otherwise, the format of the Guide must be followed and is not open to negotiation. In this regard, revisions cannot be justified because of a particular Opinion having been approved by another HUD field office. The exercise of discretion by one HUD field counsel in unique circumstances cannot become the basis for any modification to the Opinion. Any requested modification must be analyzed on its own merit and in a particular context. In these explanatory comments, the document may be referred to as the "Guide" or the "Opinion," depending upon the context.

The Department regards the counsel to the Owner as the crucial, central figure in the process of preparing and executing the legal and administrative documents necessary to achieve a closing in connection with a first Mortgage (Deed of Trust) and Mortgage Note ("Capital Advance") from HUD to the Owner. Pursuant to 24 CFR 24.105(p), attorneys or others in a business relationship with the Owner are defined as "principals." Even though the Guide is quite different in form from its predecessor (HUD 90166–CA), the substance is not intended to be substantially different and the revision does not in any fashion relieve the counsel to the Owner of its obligations to its client and the Department. In part, these responsibilities entail the exercise of due diligence to assure the accurate and timely preparation, completion and submission of the forms required by the Department in connection with the transaction. Further, the counsel to the Owner and any other attorneys involved in the transaction, should be thoroughly familiar with the regulations, procedures and directives of the Department pertaining to each transaction in which counsel participates. The Department takes seriously the preparation and completion of the various documents involved in the Capital Advance Program (most of which are HUD form documents) and cannot overemphasize the importance of the following:

"Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)"

With limited state law related exceptions, we expect that Owner's counsel will be able to follow the Guide in rendering an opinion and HUD field counsel should not accept opinions that otherwise substantially or materially deviate from the Guide. Although we understand that attorneys and law firms may have evolved particular styles and forms of opinion, HUD field counsel do not have time to negotiate each and every Opinion for stylistic changes and it is essential that the Guide be followed in both style and substance in order to ensure a timely closing. The counsel to the Owner is expected to complete a draft Opinion for submission to HUD field counsel at least ten days prior to the closing along with the other closing documents. Any deviations should be specifically identified (redlined or highlighted) and discussed with field counsel at that time. Any material deviation not required by State or local law must be brought to the attention of HUD's Office of General Counsel by field counsel along with an explanation as to the necessity for the deviation.

The Guide is not intended to serve as a closing checklist; therefore, HUD field counsel may update or modify existing closing checklists as necessary to meet constantly changing program needs and handbook instructions and directives.

Brackets continue to be used in the Guide to indicate alternate language, insertions, documents, or instructions depending on the applicable facts and underlining is used to indicate blanks that must be completed.

The Guide contains some instructions and definitions and is largely self-explanatory; however, the following expanded instructions and clarifications should provide additional assistance to both private counsel and HUD counsel. The numbers and letters used below relate to the paragraph numbers and letters in the Guide unless page numbers are specifically designated.

Page 1 and Introductory Paragraph

- Letterhead and date: The Opinion must be typed on the firm letterhead and dated the date of the Capital Advance by HUD.
- Reference: Data regarding the project (name, HUD project number, and location must be accurate and inserted in the appropriate blanks.
- Addressees: The opinion must be delivered to HUD to establish the explicit right to rely on the Opinion.
- Description of the Capital Advance: The Capital Advance amount is the original principal amount of the Capital Advance unless a modification is necessitated in connection with the closing.

List of Documents

- In General: If there are no brackets around a particular document, the document is one which is commonly used for capital advance closings; however, it should be emphasized that it is impossible to list every document for every capital advance. Some documents may not be utilized in a particular transaction and should be deleted from the list in the actual Opinion. Brackets around the name of the document indicate that the document may or may not be used for every capital advance. If bracketed documents are not used in a particular capital advance transaction, then delete such documents from the list in the actual Opinion. Each document executed in connection with the Capital Advance must be listed by its correct title. It is imperative that care must be taken to compile a list that accurately and completely reflects the transaction prior to submission to HUD of the initial draft. After HUD review of the initial draft, the opinion may have to be modified, as necessary, to satisfy HUD.

All documents executed in connection with the Capital Advance must be listed regardless of whether the document is required by HUD. The appropriate HUD or FHA form number, if applicable, must be indicated in parens after each document.

All of the Documents must be reviewed. The following HUD guidelines should be followed in preparing or reviewing the Documents.

1. HUD Handbook 4571.5, Supportive Housing for the Elderly—Conditional Commitment—Final Closing, dated July 1992, should be followed. This Handbook provides copies of most of the Documents required by HUD to be used in the 202 Program Closings.

2. All 202 Owners must adopt the model Certificate of Incorporation (HUD–91732–A–CA) except for Field Counsel modifications related to State law or modifications required by the Internal Revenue Service. All other modifications must be approved by HUD.

3. The HUD field counsel have not been consistent in requiring HUD to be named in the Financing Statements as a secured party or as its interests may appear; consequently, the requirement that HUD be so named is now being standardized. This should be clarified through appropriate language in the Security Agreement. The purpose is to clarify that, under certain circumstances, HUD may assert some rights in the personalty arising under the Regulatory Agreement which would precede an assignment of the mortgage. This is desirable in the event HUD exercises some of its remedies under the Regulatory Agreement in cases where the mortgage has not been assigned to HUD. It will not be necessary for HUD to consent to every UCC termination, renewal, assignment, etc. until HUD's rights as a secured party are established. HUD is being named "as its interests

appear" so that, for example, where HUD obtains a court order, HUD will be able to establish a paramount interest in the Project income stream, and other personalty pursuant to the Regulatory Agreement.

4. UCC searches: The UCC Search can be conducted by either the title insurance company, a reputable document search firm, the counsel to the Owner or any other attorney licensed in the jurisdiction. One or more UCC searches performed not more than 30 days prior to the date of the opinion of Owner's counsel must be made and retained by the field counsel in the Capital Advance file.

5. Flood insurance receipt: Arguments have been made that this document is not necessary. Flood plain maps change. HUD must know whether the property is located in an area where flood insurance is required and, if so, whether the insurance is in effect. HUD would not necessarily have the data on file, and it was determined that this is a matter which counsel could confirm near the end of the Guide. Note that no opinion is required, and the factual determinations necessitated by the Guide are considered within the usual duties of counsel.

6. Title Insurance Policy: Currently the 1992 ALTA Format (with appropriate endorsements) is required by HUD in most jurisdictions.

7. Evidence of zoning compliance: The evidence of zoning compliance will vary depending on the circumstances. The evidence should establish that the building, if constructed according to plans and circumstances, will comply with all zoning requirements. The evidence may be in the form of a letter or certificate from the appropriate local official stating that, if the building is constructed according to the plans and specifications submitted for review, the building will comply with all zoning requirements. If the locality has no zoning ordinance, a letter should be submitted from the chief executive stating such. In those circumstances, it may be necessary to obtain a letter from the local planning body of the county in which the project is located, that the proposed development is compatible with the county's comprehensive plan. If the zoning approval is based upon a variance or other special action, the closing may have to be delayed until the time for appeals has run. In extremely complex cases, an opinion may need to be obtained from legal counsel specializing in local zoning matters. Such letter must be attached as an exhibit and referenced in the appropriate paragraphs of the Opinion.

8. Building permit(s): If no building permit is required, this document is not applicable and should be deleted from the Opinion. This would also be true with respect to occupancy permits unless new permits are required under local law.

9. Permits required for the operation of the project: Several practitioners have argued that the documentation is unnecessary. HUD is concerned that any permits required for the continued operation of the project be proper and in place such that an opinion can be rendered. If no such permits are required, the Opinion should be amended accordingly. This is a matter which counsel to the Owner, as a specialist in the property jurisdiction, should be able to ascertain.

10. Surveyor's plat or survey: The survey must be signed, sealed and dated within 90 days of the closing.

11. Surveyor's Report: There needs to be a surveyor's certificate indicating that nothing has changed since the last survey with respect to encroachments, lot line violations, construction activity, etc. As an alternative to a surveyor's certificate, the Owner's attorney could rely upon an appropriate certificate from a qualified architect and insert appropriate language in the Opinion.

12. Owner-architect Agreement: This document should only be indicated (where the Guide indicates "[Insert Design and or Construction Architect"] in cases involving new construction or substantial rehabilitation.

13. Certificate issued by architect or other professional: Normally such a document would not be necessary and should be deleted unless those circumstances mentioned under the last sentence in paragraph 11, above, make the certificate appropriate. Note that "Certificate" is a defined term and that the Certificate can come from "an architect or other professional." Consequently, there is no form for the Certificate and HUD field counsel should defer to HUD administrators specializing in architectural and engineering matters in determining the acceptability of the Certificate. It is referenced in Paragraph 9 of the Opinion and should not be confused with the Zoning Certificate which is also a defined term and is referenced in Paragraph 8.

14. Docket search: The Docket Search can be conducted by either the title insurance company, a reputable document search firm, the counsel to the Owner or any other attorney licensed in the jurisdiction.

Opinions

1. This paragraph requires an opinion regarding the organization of the Owner. Care should be taken to ensure that the requisite information is inserted correctly. Any Certificate of Good Standing or equivalent document issued by the applicable governmental authority must be dated no more than 30 days prior to the date of the Opinion of Owner's counsel. If the Property jurisdiction is not the State of formation for the Owner, counsel must also opine that the Owner is qualified to transact business in the Property jurisdiction. Such opinion may be made solely on the basis of a certificate from the applicable governmental authorities of the Property jurisdiction, and if counsel is relying on such certificate(s), then the opinion must expressly identify those certificate(s) and they must be attached to the Opinion as an exhibit.

2. This paragraph provides, among other things, that the Owner possesses all the necessary governmental certificates, permits, licenses, qualifications and approvals to own and operate the Property. Field counsel have discretion to permit a modification in which Counsel to the Owner itemizes those local governmental requirements which have been evaluated and indicates that, after due diligence inquiry and insofar as the attorney is aware, these local requirements comprise the entire universe of such requirements. The Opinion should further state that, based upon such itemized local requirements and compliance therewith (with all permits, certificates, etc. being itemized), the Owner possesses the power and authority necessary to own and operate the Property and to carry out all of the transactions required by the Documents and to comply with applicable federal statutes and regulations of HUD in effect on the date of the FHA commitment. In most instances involving new construction, a certificate of occupancy will not have been obtained by the time of closing. In such instances, field counsel have discretion to permit an appropriate clarification with respect to that particular instrument.

11. If the Owner is involved in any litigation, all such litigation matter(s) must be disclosed in writing to HUD field counsel. If the litigation involves HUD's compliance with civil rights requirements, it must immediately be brought to the attention of appropriate Fair Housing and Equal Opportunity personnel.

13. If any UCC Financing Statements have been filed on the Personalty in conjunction with any transaction other than the Capital Advance, they must be identified to the HUD field counsel as well as details with respect to how such Financing Statements will be terminated at the time of closings. One or more UCC searches performed not more than 30 days prior to the date of the Opinion must be made and attached to the Opinion.

Acceptability of Counsel

• Owner's counsel must opine as to the law of the Property jurisdiction and the State of Owner's organization, if different from the Property jurisdiction. HUD requires that Owner's counsel be admitted to practice law in each jurisdiction in which such admission is required by the laws or ethical considerations of the bar to be able to give the opinion. If multiple jurisdictions are involved, two opinions may be required: one with respect to the organization of the owner and another with respect to the real property and loan issues. A combination of the Owner's regular counsel and special local counsel may be required to satisfy this requirement. If counsel's satisfaction of these requirements is not evident from the letterhead of the firm, the counsel should include a written explanation in the Washington docket. In all events, each provision in the Guide must be addressed whether one or more opinions is required to do so.

Signatures

• The Opinion may be signed by an authorized person of the law firm, in that person's name.

Owner's Certification

• A form of Owner's Certification is attached. The form represents the minimum amount of information that should be obtained from the Owner (but additions, revisions and rephrasings are acceptable so long as the Owner is certifying as to factual matters and not legal conclusions). The Owner's Certification must be dated the same date as the Capital Advance Documents.

Identity of Interest

• Numerous issues have been raised with respect to the confirmation in (d) of the penultimate paragraph of the Guide. A decision was made that the attorney signing the Opinion could not have an identity of interest with the Owner. No waivers are possible in such instance. In instances where other members of the firm have an interest in the Owner entity, such interest must be disclosed and such interest must be acceptable to field counsel based upon the ethics rules of the applicable bar. Furthermore, any interest must be administratively acceptable to HUD and 2530 clearance must be obtained. In addition, there appears to be an increasing trend wherein FHA mortgagees are insisting upon using counsel to the mortgagee to handle many aspects of the transaction even though the Opinion is being signed by a separate attorney. There have been some instances where counsel to the mortgagee has asked to represent the mortgagor in whole or in part and to provide all or a part of the Opinion. Confirmation (d) in the penultimate paragraph has been clarified to reflect the intent of HUD from the inception of the Opinion that any such representation of both parties is not permitted.

Liens

• Paragraph (f), which is in the penultimate paragraph of the Opinion, contains a statement that there are no liens or encumbrances against the Property. Several attorneys have objected to making the statement because they indicate that, at the time of closing, there may be liens that have actually not been released even though the title company has received funds and/or release documents to do so and intends to process the release after the closing. Unless authorized by HUD, as in cases involving secondary loans, there cannot be any liens and encumbrances on the property when HUD makes a capital advance. As a result, there cannot be any liens outstanding which would prime the mortgage. Hence, Paragraph (f) should not be changed.

Reliance on Other Opinions

• The issue of proper wording and format has probably surfaced most often in cases where counsel to the Owner is relying on opinions issued by other attorneys. This has occurred most often in cases involving a separate opinion for property jurisdiction vs. organizational jurisdiction, zoning, etc. In this area, it is imperative that counsel to the Owner specifically reference and attach the additional opinion(s) and that such opinions track the language of the guide as close as is practical under the circumstances. HUD field counsel should exercise discretion in this area, taking the unique circumstances into account.

For use in the Section 202, Supportive Housing for the Elderly Program

EXHIBIT A TO OPINION OF OWNER'S COUNSEL

CERTIFICATION OF OWNER

This Certification of Owner is made the _____ day of _____, 19___, by _____, (the "Owner") for reliance upon by _____ (the "Owner's Counsel") in connection with the issuance of an opinion letter dated of even date herewith (the "Opinion Letter") by ("Owner's Counsel") as a condition for the making of a capital advance by the Department of Housing and Urban Development ("HUD") in the amount of $_____ (the "Capital Advance") to the Owner. In connection with the Opinion Letter, the Owner hereby certifies to Owner's Counsel for its reliance, the truth, accuracy and completeness of the following matters:

1. The Organizational Documents are the only documents creating the Owner or authorizing the Capital Advance, and the Organizational Documents have not been amended or modified except as stated in the Opinion Letter.

2. The terms and conditions of the Capital Advance as reflected in the Capital Advance Documents have not been amended, modified or supplemented, directly or indirectly, by any other agreement or understanding of the parties or waiver of any of the material provisions of the Capital Advance Documents.

3. All tangible personal property of the Owner in which a security interest is granted under the Capital Advance Documents [other than off-site construction materials and/or accounts or goods of a type normally used in more than one jurisdiction and/or additional collateral personality] is located at the Property (as defined in the Opinion Letter) and the Owner's [Chief Executive Office] [only place of business] [residence] is located in

4. The execution and delivery of the Capital Advance Documents will not (i) cause the Owner to be in violation of, or constitute a default under the provisions of any agreement to which the Owner is a party or by which the Owner is bound, (ii) conflict with, or result in the breach of, any court judgment, decree or order of any governmental body to which the Owner is subject, and (iii) result in the creation or imposition of any lien, charge, or encumbrance of any nature whatsoever upon any of the property or assets of the Owner, except as specifically contemplated by the Capital Advance Documents.

5. There is no litigation or other claim pending before any court or administrative or other governmental body or threatened against the Owner, the Property, or any other properties of the Owner [, except as identified on Exhibit ___, List of Litigation, in the Opinion Letter.]

6. There is no default under the Public Entity Agreement (as defined in the Opinion Letter) nor have events occurred which with the passage of time will result in a default under the Regulatory Agreement.

Note: All capitalized terms not defined herein shall have the meanings set forth in the Opinion Letter.

In Witness Whereof, the Owner has executed this Certification of Owner effective as of the date set forth above.
OWNER:

_____

_____

_____

_____

_____

[FR Doc. 97–4685 Filed 2–25–97; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Office of the Assistant Secretary; Water and Science Central Utah Project Completion Act; Uintah Unit Replacement Project

AGENCIES: The Department of the Interior (Department) and the Central Utah Water Conservancy District (District).

ACTION: Notice of availability of the Draft Environmental Impact Statement: DES 97–7.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department, and the District have issued a joint Draft Environmental Impact Statement (Draft EIS) on the Uintah Unit Replacement Project (Uintah Unit). The Draft EIS consists of a proposed action and alternatives to construct a combination of features that will develop water supplies for the Uintah Unit of the Central Utah Project in the Uinta Basin of northeastern Utah. The Draft EIS evaluates the environmental impacts of water storage reservoirs, improved diversion and distribution of water, water conservation, stabilization of high mountain lakes, instream flows, fish and wildlife mitigation and enhancement, recreation developments and land retirement.

There is a need to manage the water supply within the Uintah Unit to develop resources of the Ute Indian Tribe of the Uintah and Ouray Reservation, provide early and late season irrigation water, and provide water and facilities for environmental and recreation purposes. The proposed action and alternatives seek to meet these needs by providing storage, improved distribution of water, water conservation, instream flows, fish and wildlife enhancements, and recreation developments.

Public participation has occurred throughout the EIS process. A Notice of Intent was filed in the **Federal Register** on December 31, 1992. Since that time, open houses, public meetings, and mail-outs have been conducted to solicit comments and ideas. Any comments received throughout the process have been considered.

DATES: Written comments on the Draft EIS must be submitted or postmarked no later than April 29, 1997. Comments on the Draft EIS may also be presented verbally or submitted in writing at the public hearings to be held at the following times and locations:

- Tuesday, April 1, 1997, 1:00 p.m., Ute Tribal Auditorium, Tribal Headquarters, Fort Duchesne, Utah.
- Tuesday, April 1, 1997, 6:00 p.m., Union High School Auditorium, 135 North Union, Roosevelt, Utah.
- Wednesday April 2, 1997, 6:00 p.m., Salt Lake County Commission Chambers, Room N1101, 2001 South State Street, Salt Lake City, Utah.

The public hearings are being held to address the Draft EIS for the proposed Uintah Unit Replacement Project. In order to be included as part of the hearing record, written testimony must be submitted at the time of the hearing. Verbal testimony will be limited to 5 minutes. Those wishing to give testimony at a hearing should submit a registration form, included at the end of the Draft EIS, to the address listed below by, March 25, 1997.

ADDRESS: Comments on the Draft EIS should be addressed to: Terry Holzworth, Project Manager, Central Utah Water Conservancy District, 355 West 1300 South, Orem, Utah 84058.

FOR FURTHER INFORMATION: Additional copies of the Draft EIS, copies of the resources technical reports, Draft Feasibility Study, or information on matters related to this notice can be obtained on request from: Ms. Nancy Hardman, Central Utah Water Conservancy District, 355 West 1300 South, Orem, Utah 84058, Telephone: (801) 226–7187, Fax: (801) 226–7150.

Copies are also available for inspection at:

Central Utah Water Conservancy District, 355 West 1300 South, Orem, Utah 84058

Department of the Interior, Natural Resource Library, Serials Branch, 18th and C Streets, NW, Washington, D.C. 20240

Department of the Interior, Central Utah Project Completion Act Office, 302 East 1860 South, Provo, Utah 84606

Bureau of Indian Affairs, Uintah and Ouray Agency, 988 South 7500 East, Fort Duchesne, Utah 84026.

Dated: February 21, 1997.

Ronald Johnston,

CUPCA Program Director, Department of the Interior.

[FR Doc. 97–4753 Filed 2–25–97; 8:45 am]
BILLING CODE 4310–RK–P

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–824747.
Applicant: Zoological Society of San Diego, San Diego, CA.

The applicant requests a permit to import one female captive born Pink pigeon *(Columba mayeri)* from Jersey Wildlife Preservation Trust for the purpose of enhancement of the species through propagation.

PRT–825321.
Applicant: U.S. Fish and Wildlife Service—Ecological Services, Pierre, SD.

The applicant requests a permit to export 5 pairs Black-footed ferret *(Mustela nigripies)* carcasses to National Museums of Scotland, Edinburgh, Scotland for the purpose of enhancement of the survival of the species through scientific research.

PRT–825316.
Applicant: Wildlife Waystation, San Fernando, CA.

The applicant requests a permit to import one female captive-born tiger *(Panthera tigris)* from the Irish Seal Sanctuary, Garristown, Ireland, for the purpose of enhancement of the survival of the species through conservation education.

PRT–678845.
Applicant: Mesa Garden, Belen, NM.

The applicant requests renewal of a permit to export and sell in interstate and foreign commerce artificially propagated seeds and whole plants of tobusch fishhook cactus *(Anicistocactus tobuschi* syn. *Sclerocactus brevihamatus)*, Nellie's cory cactus *(Coryphania (=Escobaria) minima)*, Sneed pincushion cactus *(Corypantha (=Escobaria) sneedii* var. *Sneedii)*, Kuenzler hedgehog cactus *(Echinocereus fendleri* var. *Kuenzleri)*, Lloyd's hedgehog cactus *(Echinocereus lloydii)*, black lace cactus *(Echinocereus reichenbachii* var. *Albertii)*, Arizona hedgehog cactus *(Echinocereus triglochidiatus* var. *arizonicus)*, Davis green pitaya *(Echinocereus viridiflorus* var. *Davisii)*, Brady's pincushion cactus *(Pediocactus bradyi)*, Knowlton's cactus *(Pediocactus knowltonii)*, Peebles navajo *(Pediocactus Peeblesianus* var. *Peeblesianus)*, Wright's fishhook cactus *(Sclerocactus wrightiae)*, San Rafael cactus *(Pediocactus dispainii)*, for the purpose of enhancement of propagation. This notification covers activities conducted by the applicant over a five year period.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following application(s) for permits to conduct certain activities with marine mammals. The application(s) was/were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

PRT–824699.
Applicant: Luther College, Decorah, IA.

Type of Permit: Import for public display.

Name and Number of Animals: Polar Bear (*Ursus maritimus*), 1.

Summary of Activity to be Authorized: The applicant has requested a permit to import for the purpose of public display one polar bear skull found and salvaged by the Ontario Ministry of Natural Resources in 1985, and now surplus to their needs.

Source of Marine Mammals for Research/Public Display: Canada.

Period of Activity: Up to five years from issuance of a permit, if issued.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 430, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice at the above address.

Dated: February 21, 1997.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 97–4771 Filed 2–25–97; 8:45 am]
BILLING CODE 4310–55–P

Bureau of Land Management

[NV–930–1430–00; Nev-016070]

Termination of Recreation and Public Purposes (R&PP) Classification; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates R&PP Classification Nev-016070. The termination of this classification is for record-clearing purposes. The subject lands will remain segregated from all forms of appropriation under the public land laws, including the general mining laws, except for the overlapping classification for a non-competitive FLPMA sale to the City of Henderson. The patent, when issued, will convey the surface and federal mineral interest except for oil and gas.

EFFECTIVE DATE: Termination of the classification is effective upon publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Sharon DiPinto, BLM Las Vegas District Office, 4765 Vegas Drive, Las Vegas, NV 89108, 702–647–5062.

SUPPLEMENTARY INFORMATION: On November 15, 1965, R&PP Lease Nev-016070 was issued to the City of Henderson for landfill purposes. The site is no longer being used for landfill purposes and is in the process of being permanently closed. Sale of the land to the City of Henderson is in direct relation to the costs to be incurred for the remediation and closure of the site. Pursuant to the R&PP Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*), the regulation contained in 43 CFR 2091.7–1, and the authority delegated by Appendix 1 of the Bureau of Land Management Manual 1203, R&PP Classification Nev-016070 is hereby terminated in its entirety for the following described land:

Mount Diablo Meridian, Nevada

T. 21 S., R. 63 E.,
Sec. 28, S½NW¼SW¼, SW¼SW¼,
Sec. 29, S½SE¼.
Containing 140 acres.

Dated: February 19, 1997.

Michael F. Dwyer,

District Manager, Las Vegas, NV.

[FR Doc. 97–4706 Filed 2–25–97; 8:45 am]
BILLING CODE 4310–HC–P

[OR–095–07–6310–04; G7–0093]

Emergency Closure of Public Lands; Lane County, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Emergency closure of public lands and access roads in Lane County, Oregon.

SUMMARY: Notice is hereby given that certain public lands and access roads in Lane County, Oregon are temporarily closed to motor vehicle operation and shooting, from February 7, 1997 through September 30, 1997. This closure is made under the authority of 43 CFR 8364.1. The public lands affected by this emergency closure are specifically identified as follows:

Willamette Meridian, Oregon

T. 19 S., R. 5 W.,
Sec. 5: N½, S½SW¼, E½SE¼.

All roads on the public lands listed above are closed as specified above, including specifically BLM Roads Nos. 18–5–31, 19–5–5, 19–5–5.1, 19–5–5.2 and 19–5–5.3.

The following persons, operating within the scope of their official duties, are exempt from the provisions of this closure order: Bureau employees; state, local and federal law enforcement and fire protection personnel; the holders of BLM road use permits that include roads within the closure area; the purchaser of BLM timber within the closure area and its employees and subcontractors. Access by additional parties may be allowed, but must be approved in advance in writing by the Authorized Officer.

Any person who fails to comply with the provisions of this closure order may be subject to the penalties provided in 43 CFR 8360.0–7, which include a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months,

as well as the penalties provided under Oregon State law.

The public lands and roads temporarily closed to public use under this order will be posted with signs at points of public access.

The purpose of this emergency temporary closure is to protect persons from potential harm associated with use of the identified public lands for drinking parties and related reckless and/or dangerous activities, as well as to protect the public from potential harm from logging operations and related timber harvest activities.

DATES: This closure is effective from February 7, 1997 through September 30, 1997.

ADDRESSES: Copies of the closure order and maps showing the location of the closed lands and roads are available from the Eugene District Office, P.O. Box 10226 (2890 Chad Drive), Eugene, Oregon 97440.

FOR FURTHER INFORMATION CONTACT: Christine M. Walsh, South Valley Area Manager, Eugene District Office, at (541) 683–6600.

Date: February 6, 1997.

Christine M. Walsh,

South Valley Area Manager.

[FR Doc. 97–4743 Filed 2–25–97; 8:45 am]

BILLING CODE 4310–33–P

[OR–050–1150–04: GP7–0104]

Prineville District; Closure of Public Lands; Oregon

February 12, 1997.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice is hereby given that, effective immediately, the area legally described below is closed to use of all motorized vehicles (including but not limited to off-road vehicles and snowmobiles) yearlong. Also, the area legally described below is closed to use of all motorized equipment (including but not limited to chainsaws) from March 1 to August 31 annually.

Legal Description

This closure applies to the area located in Township 21 South, Range 10 East, Section 6, South half of the Southwest quarter; Section 6, Southeast quarter; Section 6, Southwest quarter of the Northeast quarter; and Section 7, North half of the Northwest quarter.

The area described above is closed to all motorized vehicle use yearlong. The area described above is closed seasonally to use of all motorized equipment from March 1 to August 31. The purpose of this closure is to protect wildlife resources. More specifically, this closure is ordered to reduce disturbance and habitat destruction to nesting pairs of great gray owl and northern goshawk within the nest stand. Great gray owl and northern goshawk (Bureau sensitive species) are extremely sensitive to disturbance within the nest stand during the time period described above. Suitable nesting habitat for these species is currently very limited within the La Pine management area. Current uses at the site jeopardize the persistence and nesting success of these species in this area. Exemptions to this closure order may be made on a case-by-case basis as approved by the authorized officer. This emergency order will be evaluated in the Urban Interface Plan Amendment to the 1989 Brothers/La Pine Resource Management Plan. The authority for this closure is 43 CFR 8364.1: Closure and restriction orders.

FOR FURTHER INFORMATION CONTACT: Sarah Nichols, Wildlife Biologist, BLM Prineville District, P.O. Box 550, Prineville Oregon 97754, telephone (541) 416–6725.

SUPPLEMENTARY INFORMATION: Violation of this closure order is punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months as provided in 43 CFR 8360.0–7.

Dated: February 12, 1997.

James G. Kenna,

Deschutes Resource Area Manager, Prineville District Office.

[FR Doc. 97–4747 Filed 2–25–97; 8:45 am]

BILLING CODE 4310–33–M

[AK–020–1430–01; F–92028]

Notice of Realty Action: Recreation and Public Purposes (R&PP) Act Classification; Alaska

AGENCY: Bureau of Land Management; Interior.

ACTION: Notice of realty action.

SUMMARY: The following public lands near Point Lay, Alaska, have been examined and found suitable for classification for lease or conveyance to the North Slope Borough under provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The North Slope Borough proposes to use the lands for a wastewater treatment plant site.

Umiat Meridian

Within sec. 36, T. 5 N., R. 45 W.

Containing 1.84 acres more or less.

The lands are not needed for Federal purposes. Conveyance is consistent with current BLM land use planning and would be in the public interest.

The patent, when issued, will be subject to: the Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of Interior; rights-of-way for ditches and canals constructed by the authority of the United States; reservations of all minerals to the United States, together with the right to prospect for, mine, and remove the minerals.

FOR FURTHER INFORMATION CONTACT: Mike Worley, Realty Specialist, Bureau of Land Management, Northern District Office, 1150 University Avenue, Fairbanks, Alaska 99709–3899 and by telephone at (907) 474–2309 or toll free 800–437–7021.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for the conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed conveyance or classification of the lands to the District Manager, Northern District Office, 1150 University Avenue, Fairbanks, Alaska 99709–3899.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the land for a wastewater treatment plant site. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a wastewater treatment plant site.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

Dated: February 18, 1997.

Dee R. Ritchie,

District Manager.

[FR Doc. 97–4713 Filed 2–25–97; 8:45 am]

BILLING CODE 1430–JA–P

Minerals Management Service

Notice and Agenda for Meeting of the Royalty Policy Committee of the Minerals Management Advisory Board

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Secretary of the Department of the Interior (Department) has established a Royalty Policy Committee, on the Minerals Management Advisory Board, to provide advice on the Department's management of Federal and Indian minerals leases, revenues, and other minerals related policies.

Committee membership includes representatives from States, Indian Tribes and allottee organizations, minerals industry associations, the general public, and Federal Departments.

At this fourth meeting, the Minerals Management Service (MMS) will be prepared to respond to questions concerning plans to implement previously approved reports.

The Committee will consider a report issued by the Appeals, Settlements, and Alternative Dispute Resolution subcommittee, as well as a report issued by the Phosphate Valuation subcommittee. Additionally, the Committee will hear status reports from all of the subcommittees that have not yet completed work.

DATES: The meeting will be held on: Friday, March 21, 1997, 8:30 a.m.–4:00 p.m.

ADDRESSES: The meeting will be held at the Embassy Suites, Denver Southeast, 7525 East Hampden Avenue, Denver, Colorado 80231, telephone number (303) 696–6644.

FOR FURTHER INFORMATION CONTACT: Mr. Michael A. Miller, Chief, Program Services Office, Royalty Management Program, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3060, Denver, CO 80225–0165, telephone number (303) 231–3413, fax number (303) 231–3362.

SUPPLEMENTARY INFORMATION: The location and dates of future meetings will be published in the **Federal Register**.

The meetings will be open to the public without advanced registration. Public attendance may be limited to the space available.

Members of the public may make statements during the meeting, to the extent time permits, and file written statements with the Committee for its consideration.

Written statements should be submitted to Mr. Michael A. Miller, at the address listed above. Minutes of Committee meetings will be available 10 days following each meeting for public inspection and copying at the Royalty Management Program, Building No. 85, Denver Federal Center, Denver, Colorado.

These meetings are being held by the authority of the Federal Advisory Committee Act, Public Law 92–463, 5 U.S.C. Appendix 1, and Office of Management and Budget Circular No. A–63, revised.

Dated: February 20, 1977.

Lucy R. Querques,

Associate Director for Royalty Management.

[FR Doc. 97–4705 Filed 2–25–97; 8:45 am]

BILLING CODE 4310–MR–P

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 15, 1997. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by March 13, 1997.

Carol D. Shull,

Keeper of the National Register.

Colorado

Larimer County

Golden High School, 710 10th St., Golden, 97000229

Florida

Indian River County

Hausmann, Theodore, Estate, 4800 16th St., Vero Beach, 97000230

Volusia County

Seminole Rest, E of FL 5, western shore of Mosquito Lagoon, Canaveral National Seashore, Oak Hill, 97000231

Kentucky

Bourbon County

Buckner, Walker, House, 1500 Cane Ridge Rd., Paris vicinity, 97000232

Franklin County

Frankfort Greenhouses, 210, 212, 216 E. Main St., Frankfort, 97000233

Louisiana

Richland Parish

Downtown Delhi Historic District, 606–708 1st St. and 115–201 Broadway, Delhi, 97000234

Mississippi

Copiah County

Crystal Springs Historic District, Roughly bounded by Independence, Pearl, Newton, and Marion Sts., Crystal Springs, 97000236

Washington County

Greenville Commercial Historic District, Roughly, Main St. from Walnut to Poplar Sts., Greenville, 97000235

Nebraska

Douglas County

Gold Coast Historic District, Roughly bounded by 36th, 40th, Jones, and Cuming Sts., Omaha, 97000237

North Carolina

Caswell County

Johnston, John, House, 1325 NC 62, N., Yanceyville vicinity, 97000238

North Dakota

Eddy County

New Rockford Bridge (Historic Roadway Bridges of North Dakota MPS), Across the James River, unnamed co. rd., jct. With ND 15, New Rockford vicinity, 97000173

McKenzie County

Fairview Lift Bridge (Historic Roadway Bridges of North Dakota MPS), Across the Yellowstone River, abandoned railroad, approximately .75 mi. S of ND 200, Cartwright vicinity, 97000239

Tennessee

Knox County

Christenberry Club Room (Knoxville and Knox County MPS), Jct. of Henegar and Shamrock Aves., SW corner, Knoxville, 97000242

Riverdale School (Knoxville and Knox County MPS), 7009 Thorngrove Pike, Knoxville vicinity, 97000243

Seven Islands Methodist Church (Knoxville and Knox County MPS), 8100 Seven Islands Rd., Knoxville vicinity, 97000244

Marshall County

Brittain, Joseph, House, Jct. of Thick and Sweeney Rds., Thick vicinity, 97000241

Sevier County

US Post Office— Sevierville, 167 Bruce St., Sevierville, 97000240

Wilson County

Hale House—Patterson Hotel, 116 Depot St., Watertown, 97000245

Utah

Wayne County

Fruita Rural Historic District, Roughly, along UT 24 from Sulphur Cr. to Hickman Natural Bridge, Torrey vicinity, 97000246.

[FR Doc. 97–4647 Filed 2–25–97; 8:45 am]

BILLING CODE 4310–70–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Title II Development Proposals; Instructions for Cooperating Sponsor Submission of FY 1996 Development Program Results Reports

Pursuant to the Agricultural Market and Transition Act of 1996, notice is hereby given that the Final Draft Guidelines for Fiscal Year 1996 P.L. 480 Title II Cooperating Sponsor Annual Results Report is being made available to interested parties for the required thirty (30) day comment period.

Individuals who wish to receive a copy of the draft guidelines should contact: Office of Food for Peace, Room 323, SA–8, Agency for International Development, Washington, D.C. 20523–0809. Contact person: Gwen Johnson, (703) 351–0110. Individuals who have questions or comments on the draft guidelines should contact David Nelson at (703) 351–0168.

The thirty day comment period will begin February 26, 1997.

Dated: February 7, 1997.

Jeanne Markunas,

Acting Director, Office of Food for Peace, Bureau for Humanitarian Response.

Draft for Comment

Instructions for Cooperating Sponsor Submission of FY 1996 Title II Development Program Annual Results Reports

I. Background

This guidance applies only to Title II development activities.

Pursuant to Section 407(f) of the Agricultural Trade Development and Assistance Act of 1954 (P.L. 480), as amended, USAID reports annually to Congress and other interested parties on the impact of Title II food aid in addressing food security. Consequently, USAID management and its field Missions, in consultation with Title II Cooperating Sponsors (CSs), are establishing core results indicators that will ensure consistency and compatibility of information and permit the USAID to demonstrate the impact of food aid resources over a planned period of time.

USAID Missions and the Office of Food for Peace (FFP) have been designated as "Operating Units" under USAID reengineering guidelines. Each is expected to submit a Results Review and Resources Request (R4) report, covering the strategic support and/or program objectives (SOs) identified in its strategic plan. (The draft BHR/FFP strategic objective for Title II Development Programs is provided in Attachment 1.) CSs are requested to contribute to the process by submitting relevant information on their Title II development program(s).

The FY 1996 Title II Annual Results Report is to be submitted to the respective field Missions and FFP. The Mission will integrate findings on complementary activities from this report into the relevant SOs in its R4 report. It will comment on those activities that are outside of the Mission's Strategic Objectives and forward the report to FFP. FFP will use the contents of the CSs' Annual Results Reports and Mission R4 reports to satisfy USAID and Congressional requirements to demonstrate the impact of food aid in addressing food security as well as to justify resource requests for the next fiscal year.

While preparation of the Title II Annual Results Report is the primary responsibility of CSs, they should consult closely with the Missions in the R4 reporting process. For countries in Africa without a USAID Missions presence, CSs should consult with the responsible REDSO. In addition to the information required in these guidelines, the Missions may, within reason, and for the purposes of their own specific information requirements, request additional information from CSs, related to results reporting and the preparation of R4s.

This Title II Annual Results Report request is consistent with the R4 guidance which has been disseminated to Missions worldwide.

II. Purpose

This Title II Annual Results Report is intended to provide meaningful results-oriented information to USAID, as well as the Congress, host governments, stakeholders, and our ultimate customers, the beneficiaries. It will assist USAID Missions and FFP to demonstrate the impact of Title II food aid on food security by serving as an important information source during Mission and FFP preparation of their R4s during the spring of 1997. The Title II Annual Results Report is to focus on the food aid activity's performance indicators and progress towards the achievement of results. It will also include a discussion of any modifications to the approved Title II activity, and a review of anticipated resource requests for FY 98. CSs are requested to follow the guidelines below to the extent possible and report as well as they can on actual performance for FY 1996 and expected results for FYs 1997, 1998 and 1999, noting linkages to USAID activities.

III. Submission Due Date and Review Process

CSs must consult with their respective Missions regarding the submission due date, which should be linked to the Mission R4 preparation schedule. However, the CS must submit one unbound copy of the Title II Annual Results Report to the BHR/FFP officer responsible for the country activity no later than April 15 (March 15 for countries without a USAID Mission presence).

If the Mission R4 has not been submitted to USAID Washington by the deadline for the Annual Results Report submission to FFP, Missions are required to forward comments on the Annual Results Report. In either document, the Mission must provide any necessary clarifications to a CS's Annual Results Report along with Mission assessments of its accuracy and completeness. For countries in Africa without a USAID presence, such as Burkina Faso, Cape Verde, the Gambia and Mauritania, REDSO assumes this responsibility.

To the extent possible, FFP will coordinate the review of the Title II Annual Results Reports with the Bureau reviews of Mission R4s.

IV. Submission Length

The Title II Annual Results Report should be thorough and concise. Reports should total no more than 10 pages for programs with two or fewer program components and no more than 18 pages for programs with three or more program components, excluding annexes. Repetition of information already presented in the relevant approved Development Activities Plan (DAP) or Previously Approved Activity (PAA) document is unnecessary. Reference to the sections in these documents where key issues are elaborated (including page number and/or section references) should be made, as appropriate.

Draft for Comment

Guidelines for FY 1996, Title II Development Program Annual Results Report

I. Overview of Title II Activities

A. Results

Briefly discuss progress to date or results achieved over the life-of-activity (FY 1996 and prior years encompassed by the currently operative DAP approval), including the role of the Section 202(e) grant (if a grant was utilized during the life of the activity), with particular emphasis on results obtained in FY 1996. Also present anticipated results for FYs 1997–99 in terms of your chosen performance indicators and/or Title II generic indicators.

A good performance assessment will (1) Describe progress over the past year relative to planned results as reflected by the objective's indicators, baselines and targets; (2) state explicitly whether progress met, exceeded or fell short of expectations toward achievement of the objective; (3) interpret significant trends and highlight differences between planned and actual performance; (4) identify reasons for performance shortfalls or greater than expected results; and, (5) indicate plans for evaluation, where contributing factors are not well understood. In cases where up-to-date performance indicator data are not available because of the timing of data collection, you should provide other evidence of progress toward achieving targets.

This part of the report should also include information on evaluation findings, customer feedback results, or other evidence of progress toward achievement of targets that supports a balanced assessment of progress for each objective.

Some examples of key questions to consider are as follows:

—What circumstances led to exceeding or falling short of expected targets? Were targets too high or too low? If so, why?

—Have key assumptions changed?

—How did customer feedback influence the CS's thinking on accomplishing the objective? Did this feedback confirm the program is on track, or are there issues which must be addressed?

—How have inter-sectoral partnering (among non-governmental organizations and governmental actors), and changes in the institutional and policy framework to stimulate community initiative influenced program management?

—What is the significance of what is being accomplished (e.g., what is the food security impact of improved water and sanitation infrastructure, service and practices for the affected 1000 households and the region or country as a whole?)

In part B below, be sure to provide a complete explanation of the status of results monitoring and when performance reports conforming to these guidelines will be submitted.

B. Monitoring, Evaluation, Audits, and Studies

1. Provide a brief update on the monitoring and evaluation system established for your program, its design and how it measured the results presented. State specifically how the baseline data were established, and whether baseline data collection is complete; how performance indicators were chosen and are being monitored; how impact indicators were chosen and are being, or will be, evaluated; and the number and general profile of personnel involved in the monitoring and evaluation effort.

Note: If relevant, attach a revised implementation schedule or monitoring and evaluation plan to serve as a modification to your approved activity.

2. List all evaluations, audits, and studies conducted during the life of the activity. State the purpose, the funding sources, the time period covered, the individuals and/or organizations involved, and the participation of Title II beneficiaries in the evaluations, audits, and studies.

3. Attach as an annex a summary of the key findings or recommendations of the evaluations, audits, or studies conducted in FY 1996 (i.e., a copy of the executive summary). Provide the status of any outstanding recommendations from FY 1996 and/or previous years, if any. If a copy of an evaluation or study has not already been submitted to BHR/FFP, please attach a copy.

C. Monetization Sales (if applicable)

This section fulfills the requirement of Regulation 11 that CSs submit an annual report on monetization and program income activities. A separate annual monetization and program income report is not necessary, as, pursuant to the authority granted him in 22 CFR 211.12 (Regulation 11), the Acting Assistant Administrator/BHR is waiving the following sentence in 22 CFR 211.5(l), "This annual report should be submitted to AID/W by December 31 of each calendar year for the fiscal year ending September 30 of that calendar year," to the extent that it conflicts with this guidance with regard to the timing of reports.

1. Discuss the FY 1996 monetization, anticipated and unanticipated effects on local, regional, or national production, and marketing of the monetized commodity or its substitutes. Note whether the timing of the sale corresponded with the agricultural crop cycle in order to obtain the best sales price.

2. Provide a detailed monetization cost and revenues analysis. The analysis should include the following: date of each commodity sale, the commodity and amount (in MT) monetized, the sales price per MT obtained, the amount in U.S. dollars of local currency generated, and a comparison of the actual sales price to estimated and actual Free alongside ship (FAS), Commodity, Insurance and Freight (CIF), and local commercial market values. When reporting this information, CSs are requested to use the worksheet provided in Attachments 2 and 3.

D. Environmental Compliance

Title II development activities will be reviewed in accordance with USAID's environmental review procedures found in Regulation 16 (22 CFR 216). USAID's Global Environmental Office is currently reviewing of FY 1997 DAPs to determine which Cooperating Sponsor activities may need to undergo an environmental review, if they have not already. Title II activities most likely to be affected by this new requirement are those involved in agricultural and physical infrastructure development. USAID and CSs recognize that guidelines and training on environmental compliance will benefit most Title II partners, and improve the environmental soundness of Title II development activities. Further guidance and clarification of procedures to ensure better furtherance of Regulation 16 will be provided by USAID. Compliance with Regulation 16 may require modifications to project designs and budgets. Cooperating Sponsors should be prepared to amend these as necessary.

If your program activities encompass agricultural and/or infrastructure development, note briefly whether and how environmental impact assessment of any kind was incorporated in the activity design and how environmental impact is currently being monitored.

II. Modifications to Activity Design

A. Follow-Up of FY 1997 Title II Review (if Applicable)

If you have not already done so, please respond to the technical and programmatic concerns raised during the FY 1997 review, as detailed in the review summary cable or FFP's letter of approval. Address the extent to which you have implemented or plan to implement the recommendations made and the resulting budgetary impact. Explain any delays in implementing recommendations.

B. Lessons Learned During Recent Activity Implementation

Based on recent progress and constraints, describe any modifications made in FY 1996 to activity design or implementation, including revisions to objectives, benchmarks, performance indicators, and the implementation schedule. In addition, explain how any modification may affect activity budgets and commodity allocations. Finally, note significant changes in your operating environment, e.g., economic, social or political developments that affected or may continue to affect performance in meeting one or more objectives.

III. Resource Analysis and Requests

(Sections A–D may be attached as an annex)

A. FY 1996 Expenditure Report and Narrative

1. Prepare a comprehensive report of actual expenditures during FY 1996. If possible, report on expenditures by Title II activity. Identify all applicable funding sources, including, for example: Section 202(e); monetization; Cooperating Sponsor contribution; other donors; and other program income such as interest, empty container sales, participant contributions, etc. Report all opening and closing balances by funding source, and compare budgeted to actual line-item expenditures. Amounts should be denominated in U.S. dollars. For local currency line items that have been translated into U.S. dollars, state the exchange rate and the date it was obtained.

2. Provide a brief explanation of significant line-item deviations from the FFP-approved budget. If there was a shortfall in funding (particularly local currency from monetization) during FY 1996, discuss the activities affected, the impact of the shortfall on the achievement of objectives, and how the shortfall was covered. Conversely, if the funds available during FY 1996 exceeded budgeted expenditures, discuss the activities affected, the impact on the achievement of objectives, and how the additional funding was or will be spent.

B. FY 1996 Monetization Pipeline Analysis

For each activity supported by Title II monetization, provide a pipeline analysis of local currency funds including: FY 1996 opening balance of funds from prior year monetizations, including interest; actual funds received from monetization sales during FY 1996; interest earned during FY 1996; total actual expenditure of local currency during FY 1996; closing balance of funds at the end of FY 1996; and the amount of reserve/bridge funding needed to support the activity until the FY 1997 monetization sale takes place. CSs are requested to report this information utilizing the worksheet(s) provided in Attachment 4.

C. FY 1996 Commodity Pipeline Analysis

Attach as an annex the FY 1996 Fourth Quarter Commodity Status and Recipient Status Report (CSR/RSR) and Loss Report, along with a summary of CSR/RSR data for the full FY 1996.

D. FY 1997, 1998 & 1999 Budget Revisions

If changes to the original FY 1997, 1998 or 1999 budgets are required or envisioned, prepare a revised comprehensive budget to serve as a modification to the approved activity. List all funding sources, actual opening balances, estimated line-item expenditures, and estimated closing balances. Also present a table showing revised commodities and tonnages by the Annual Estimate of Requirement's (AER) category for each program activity.

E. Future New Submissions

This section pertains only to DAPs/PAAs ending in FY 1997 and FY 1998:

Briefly discuss plans to submit follow-on Title II proposals for FY 98 or FY 99, including any anticipated changes in activity and/or resource requirements, discussions between your staff and the USAID Mission on planned activities, whether and/or how the activity supports one or more of the objectives under the Mission's strategic plan for the country.

For anticipated new proposals, include a table showing the commodities and tonnages, by AER category for each program activity, along with any Section 202(e) funding, that you plan to request. (This table may be included in an annex.)

[FR Doc. 97–4381 Filed 2–25–97; 8:45 am]

BILLING CODE 6116–01–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–393]

Certain Ion Trap Mass Spectrometers and Components Thereof; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed on January 24, 1997, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Finnigan Corporation, 355 River Oaks Parkway, San Jose, California 95134. A supplement to the complaint was filed on February 13, 1997. The Complaint, as supplemented, alleges a violation of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain ion trap mass spectrometers and components thereof, by reason of infringement of claims 1–20 of U.S. Letters Patent 4,540,884, and claims 1 and 12–19 of U.S. Reissue Patent 34,000.

The complainant requests that the Commission institute an investigation and, after a hearing, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Room 112, Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

FOR FURTHER INFORMATION CONTACT: Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2572.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 C.F.R. 210.10.

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on February 20, 1997, *ordered* That—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain ion trap mass spectrometers and components thereof by reason of infringement of one or more of claims 1–20 of U.S. Letters Patent 4,540,884, or one or more of claims 1, 12–19 of U.S. Reissue Patent 34,000; and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Finnigan Corporation, 355 River Oaks Parkway, San Jose, California 95134.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Bruker-Franzen Analytik GmbH, Fahrenheitstrasse 4, D–28359, Bremen 33, Germany

Bruker Instruments, Inc., Manning Park, Fortune Drive, Billerica, Massachusetts 01821

Hewlett-Packard Company, 3000 Hanover Street, Palo Alto, California 94304.

(c) Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, S.W., Room 401–Q, Washington, D.C. 20436, shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Sidney Harris is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.13 of the Commission's Rules of Practice and Procedure, 19 C.F.R. 210.13. Pursuant to §§ 201.16(d) and 210.13(a) of the Commission's Rules, 19 C.F.R. 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: February 20, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–4729 Filed 2–25–97; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 701–TA–367 (Final)]

Certain Laminated Hardwood Flooring From Canada

AGENCY: United States International Trade Commission.

ACTION: Termination of investigation.

SUMMARY: On February 4, 1997, the Department of Commerce published notice in the **Federal Register** of a negative final determination of subsidies in connection with the subject investigation (62 F.R. 5201). Accordingly, pursuant to section 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR § 207.40(a)), the countervailing duty investigation concerning certain laminated hardwood from Canada (investigation No. 701–TA–367 (Final)) is terminated.

EFFECTIVE DATE: February 4, 1997.

FOR FURTHER INFORMATION CONTACT: Olympia Hand (202–205–3182), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov* or *ftp://ftp.usitc.gov*).

Authority: This investigation is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 201.10 of the Commission's rules (19 CFR § 201.10).

Issued: February 21, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–4732 Filed 2–25–97; 8:45 am]

BILLING CODE 7020–02–P

[Investigations Nos. 731-TA-741, 742, & 743 (Final)]

Melamine Institutional Dinnerware from China, Indonesia, and Taiwan

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that the industry in the United States producing melamine dinnerware for institutional use [2] is materially injured by reason of imports from China, Indonesia, and Taiwan of melamine dinnerware, as defined by the Department of Commerce (Commerce), that have been found by Commerce to be sold in the United States at less than fair value (LTFV), and that are for institutional use.[3] [4]

The Commission further finds that the industry in the United States producing melamine dinnerware for non-institutional use [5] is not materially injured or threatened with material injury, and the establishment of such an industry in the United States is not materially retarded, by reason of LTFV imports of melamine dinnerware from China and Taiwan that are for non-institutional use. The Commission also unanimously determines that subject imports of melamine dinnerware for

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Defined as melamine dinnerware that is intended for use by institutions such as schools, hospitals, cafeterias, restaurants, nursing homes, etc.

[3] In these investigations, Commerce has defined a single class or kind of imported merchandise, consisting of all items of dinnerware (e.g., plates, cups, saucers, bowls, creamers, gravy boats, serving dishes, platters, and trays, but not including flatware products such as knives, forks, and spoons) that contain at least 50 percent melamine by weight and have a minimum wall thickness of 0.08 inch. Melamine institutional dinnerware is provided for in subheadings 3924.10.20, 3924.10.30, and 3924.10.50 of the Harmonized Tariff Schedule of the United States.

[4] Commissioner Crawford dissenting.

[5] Defined as melamine dinnerware that is generally sold to the retail sector and is intended for use by households.

non-institutional use from Indonesia are negligible.

Background

The Commission instituted these investigations effective February 6, 1996, following receipt of a petition filed with the Commission and the Department of Commerce by the American Melamine Institutional Tableware Association (AMITA).[6] The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by the Department of Commerce that imports of melamine institutional dinnerware from China, Indonesia, and Taiwan were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of September 11, 1996 (61 FR 47957). The hearing was held in Washington, DC, on January 9, 1997, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on February 18, 1997. The views of the Commission are contained in USITC Publication 3016 (February 1997), entitled "Melamine Institutional Dinnerware from China, Indonesia, and Taiwan: Investigations Nos. 731–TA–741, 742, and 743 (Final)."

Issued: February 19, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–4728 Filed 2–25–97; 8:45 am]

BILLING CODE 7020–02–P

[6] The members of AMITA are Carlisle Food Service Products (formerly known as Continental/SiLite International Co.), Oklahoma City, OK; Lexington United Corp. (National Plastics Corp.), Port Gibson, MS; and Plastics Manufacturing Co. (Sun Coast Industries, Inc.), Dallas, TX.

[Investigation Nos. 332–350 and 332–351]

Monitoring of U.S. Imports of Tomatoes Monitoring of U.S. Imports of Peppers

AGENCY: United States International Trade Commission.

ACTION: Publication of monitoring reports in 1997.

EFFECTIVE DATE: February 18, 1997.

FOR FURTHER INFORMATION CONTACT: Timothy McCarty (202–205–3324) or Lowell Grant (202–205–3312), Agriculture and Forest Products Division, Office of Industries, or William Gearhart (202–205–3091), Office of the General Counsel, U.S. International Trade Commission. Hearing impaired persons can obtain information on these studies by contacting the Commission's TDD terminal on (202–205–1810).

Background

Section 316 of the North American Free Trade Agreement (NAFTA) Implementation Act (19 U.S.C. 3381) directs the Commission to monitor imports of fresh or chilled tomatoes (HTS heading 0702.00) and fresh or chilled peppers, other than chili peppers (HTS subheading 0709.60.00), until January 1, 2009, as if a request for such monitoring had been made under section 202(d) of the Trade Act of 1974 (19 U.S.C. 2252(d)), for purposes of expediting an investigation concerning provisional relief under section 202 of the Trade Act of 1974. In response, the Commission instituted Investigation No. 332–350, Monitoring of U.S. Imports of Tomatoes (59 F.R. 1763, January 12, 1994) and Investigation No. 332–351, Monitoring of U.S. Imports of Peppers (59 F.R. 1762, January 12, 1994).

Although section 316 of the NAFTA Implementation Act does not require the Commission to publish reports on the results of its monitoring activities, the Commission has endeavored to do so in those years in which it was not conducting an investigation under other statutory authority with respect to such products. Thus, no monitoring reports were published in 1996 when the Commission conducted Investigation No. TA–201–66, Fresh Tomatoes and Bell Peppers (61 F.R. 13875, March 28, 1996), under section 202(b) of the Trade Act of 1974 (19 U.S.C. 2252(b)); and antidumping Investigation No. 731–TA 47 (Preliminary), Fresh Tomatoes from Mexico (61 F.R. 15968, April 10, 1996), under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)). The Commission made a negative injury determination in the section 201 investigation on July 2, 1996; the Commission's antidumping investigation was suspended, effective November 1, 1996, following the signing of a suspension agreement.

The Commission will publish monitoring reports, containing data for both 1996 and 1997, in September 1997.

By order of the Commission.

Issued: February 21, 1997

Donna R. Koehnke,

Secretary.

[FR Doc. 97–4733 Filed 2–25–97; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

American Olean Tile Company, Incorporated A/K/A Dal Tile Company; TA–W–31, 870 Lansdale, Pennsylvania, Et. Al.; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 26, 1996, applicable to all workers of American Olean Tile Company, Incorporated, located in Lansdale, Pennsylvania. The worker certification was subsequently amended to correct the impact date and to include worker separations that occurred at various operating facilities of American Olean Tile Company in the United States. The most recent amendment was published in the **Federal Register** on June 6, 1996 (61 FR 28898).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Findings show that Dal Tile Company merged with American Olean Tile Company prior to the Department's worker certification. Based on this information, the Department is amending the worker certification to reflect that American Olean Tile is also known as Dal Tile Company. The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports of tile.

The amended notice applicable to TA–W–31, 870 is hereby issued as follows:

All workers of American Olean Tile Company, Incorporated, also known as Dal Tile Company, Lansdale, Pennsylvania (TA–W–31, 870), who became totally or partially separated from employment on or after February 15, 1996; and all workers of American Olean Tile Company, Incorporated, also known as Dal Tile Company, at the various locations cited below, who became totally or partially separated from employment on or after January 24, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974:

TA–W–31,870A Alabama
TA–W–31,870B Arizona
TA–W–31,870C California
TA–W–31,870D Connecticut
TA–W–31,870E Florida
TA–W–31,870F Georgia
TA–W–31,870G Illinois
TA–W–31,870H Indiana
TA–W–31,870I Kentucky
TA–W–31,870J Louisiana
TA–W–31,870K Maryland
TA–W–31,870L Massachusetts
TA–W–31,870M Minnesota
TA–W–31,870N Missouri
TA–W–31,870O Nevada
TA–W–31,870P New Jersey
TA–W–31,870Q New York
TA–W–31,870R Ohio
TA–W–31,870S Oklahoma
TA–W–31,870T Pennsylvania (except Lansdale)
TA–W–31,870U Tennessee
TA–W–31,870V Texas
TA–W–31,870W Utah
TA–W–31,870X Virginia
TA–W–31,870Y Washington
TA–W–31,870Z Wisconsin

Signed at Washington, D.C. this 6th day of February 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–4723 Filed 2–25–97; 8:45 am]

BILLING CODE 4510–30–M

TA–W–31,733D, Boise Cascade Corp. Timber and Wood Products Division Boise, Idaho; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued an Amended Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on October 22, 1996, applicable to all workers of Boise Cascade Corp. located in Boise, Idaho. The notice was published in the **Federal Register** on November 6, 1996 (61 FR 57454).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The company reports that some workers at the Boise, Idaho location support production of products other than lumber and plywood produced at the certified plants (TA–W–31,733 and TA–W–31,733A–C). Accordingly, the coverage should be limited to those workers in the Timber and Wood Products Division. The Department is again amending the worker certification to provide coverage only to those support service workers of Boise Cascade Corp., Timber and Wood Products in Boise, Idaho.

The intent of the Department's certification is to include only those workers of Boise Cascade who were adversely affected by increased imports.

The amended notice applicable to TA–W–31,733D is hereby issued as follows:

All workers of Boise Cascade Corp., Timber and Wood Products Division, Boise, Idaho who became totally or partially separated from employment on or after December 7, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, D.C. this 12th day of February 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–4726 Filed 2–25–97; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–33,008]

Dudley Apparel Dudley, Georgia; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on December 9, 1996 in response to a worker petition which was filed on behalf of workers at Dudley Apparel, Dudley, Georgia.

This case is being terminated because no information is available from petitioners or company official to complete the necessary investigation. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, D.C. this 11th day of February, 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–4722 Filed 2–25–97; 8:45 am]

BILLING CODE 4510–30–M

Frank H. Fleer Corporation, TA–W–32, 435 Philadelphia, Pennsylvania, and TA–W–32,435A Mt. Laurel, New Jersey; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on July 26, 1996, applicable to workers of Frank H. Fleer Corporation located in Philadelphia, Pennsylvania. The notice was published in the **Federal Register** on August 26, 1996 (61 FR 43791).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations have occurred at the subject firm's Mt. Laurel, New Jersey location. The Mt. Laurel facility is headquarters and distribution for the cards and confectionery that was produced at the Philadelphia plant of the subject firm.

The intent of the Department's certification is to include all workers of Frank H. Fleer Corporation who were affected by increased imports. Accordingly, the Department is amending the worker certification to include the workers of Frank H. Fleer in Mt. Laurel, New Jersey.

The amended notice applicable to TA–W–32,435 is hereby issued as follows:

All workers of Frank H. Fleer Corporation, Philadelphia, Pennsylvania (TA–W–32,435) and Mt. Laurel, New Jersey (TA–W–32,435A), who became totally or partially separated from employment on or after May 23, 1995, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 21 day of February 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment. Assistance.

[FR Doc. 97–4724 Filed 2–25–97; 8:45 am]

BILLING CODE 4510–30–M

TA–W–33,164, Frigidaire Home Products Greenville, Michigan; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on February 10, 1997, in response to a worker petition which was filed on February 10, 1997 on behalf of workers at Frigidaire Home Products, Greenville, Michigan.

The petitioning group of workers is subject to an ongoing investigation for which a determination has not yet been issued (TA–W–33113). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 11th day of February, 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services Office of Trade Adjustment Assistance.

[FR Doc. 97–4727 Filed 2–25–97; 8:45 am]

BILLING CODE 4510–30–M

TA–W–32, 238, Vishay-Sprague Incorporated Sanford, Maine; Including Leased Workers of Manpower Technical Portland, Maine; and Leased Workers of Manpower Springvale, Maine; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 15, 1996, applicable to all workers of Vishay-Sprague Incorporated located in Sanford, Main. The notice was published in the **Federal Register** on June 6, 1996 (61 FR 28900).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information provided by the State shows that some employees of Manpower Technical, Portland, Maine and Manpower, Springvale, Maine were engaged in employment related to the production of solid tantalum capacitors produced by Vishay-Sprague in Sanford, Maine. Worker separations occurred at Manpower Technical and Manpower as a result of worker separations at Vishay-Sprague.

Based on these findings, the Department is amending the certification to include workers of Manpower Technical, Portland, Maine and Manpower, Springvale, Maine leased to Vishay-Sprague. The intent of the Department's certification is to include all workers of Vishay-Sprague adversely affected by imports.

The amended notice applicable to TA–W–32, 238 is hereby issued as follows:

All workers of Vishay-Sprague Incorporated, Sanford, Maine engaged in employment related to the production of solid tantalum capacitors; and leased workers of Manpower Technical, Portland, Maine and Manpower, Springvale, Maine engaged in employment related to the production of solid tantalum capacitors for Vishay-Sprague Incorporated, Sanford, Maine, who became totally or partially separated from employment on or after April 3, 1995, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 6th day of February 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–4725 Filed 2–25–97; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (97–019)]

Notice of Agency Report Forms Under OMB Review

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made submission. Accordingly, this notice announces NASA's plans to request data from grant and agreement recipients regarding the manner in which services are or will be provided by the program, the population eligible to be served by race, color, national origin, sex, disability and age, data regarding covered employment including use of bilingual public contact employees where necessary to permit effective participation by beneficiaries unable to speak or understand English, the location of existing or proposed facilities connected with the program and related information adequate for determining whether the location has or will have the effect of unnecessarily denying access to any person on the basis of prohibited discrimination, the present or proposed membership by race, color, national origin, sex, disability and age in any planning or advisory body which is an integral part of the program, and, where relocation is involved, the requirements and steps used or proposed to guard against impact on persons on the basis of race, color, national origin, disability, sex or age. This information is critical to the assessment of recipient compliance with civil right laws and NASA regulations prohibiting discrimination on the basis of race, color, national origin, disability, sex, and age in Federally assisted programs.

DATES: Written comments and recommendations on the proposal for the collection of information should be received on or before April 28, 1997.

ADDRESSES: All comments should be addressed to Mr. James A. Westbrooks, Office of Equal Opportunity Programs, Code EI, National Aeronautics and Space Administration, Washington, DC 20546–0001. All comments will become a matter of public record and will be summarized in NASA's request for OMB approval.

FOR FURTHER INFORMATION CONTACT: Dr. Marie K. Tynan, Office of the Chief Information Officer, (202) 358–1371.

Reports: NASA Form 1206.

Title: Assurance of Compliance with the National Aeronautics and Space Administration Regulations Pursuant to Nondiscrimination in Federally Assisted Programs.

OMB Number: None Assigned.

Type of Review: New Collection.

Need and Uses: NASA grant and agreement recipients will be asked to provide the requested data prior to receiving funds or any other form of Federal assistance on any new grant or agreement. This information is critical to NASA's ability to evaluate compliance by recipients of Federal assistance with NASA regulations and with NASA's ability to meet Justice Department requirements under Executive Order 12250.

Affected Public: Non-profit, businesses or other for-profit and Educational Institutions.

Estimated Number of Respondents: 814.

Responses Per Respondent: 1.

Estimated Annual Responses: 160.

Estimated Hours Per Request: 1.

Estimated Annual Burden Hours: 160.

Frequency of Report: Every five years.

Dated: February 18, 1997.

Donald J. Andreotta,

Deputy Chief Information Officer (Operations), Office of the Administrator.

[FR Doc. 97–4651 Filed 2–25–97; 8:45 am]

BILLING CODE 7510–01–M

[Notice: 97–020]

Agency Information Collection: Submission for OMB Review, Comment Request

AGENCY: National Aeronautics and Space Administration (NASA).

SUMMARY: The National Aeronautics and Space Administration has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this proposal should be received by March 28, 1997.

ADDRESSES: All comments should be addressed to Mr. Philip T. Smith, National Aeronautics and Space Administration, Code BFZ, Washington, DC 20546–0001. All comments will become a matter of public record and will be summarized in NASA's request for OMB approval.

FOR FURTHER INFORMATION CONTACT: Dr. Marie K. Tynan, Office of the Chief Information Officer, (202) 358–1371.

Title: NASA contractor Financial Management Reports.

Need and Uses: Contractors must report planned and actual costs on NASA Forms 533M/533Q so NASA can plan, monitor, and control program/project resources, evaluate contractor performance, and accurately accrue cost in the accounting system and financial statements.

Affected Public: Business or other for-profit, not-for-profit institutions.

Number of respondents: 900.

Responses Per Respondent: 12.

Annual Responses: 10,800.

Hours Per Request: 9.

Annual Burden Hours: 97,200.

Frequency of Report: Monthly and quarterly.

Dated: February 18, 1997.

Donald J. Andreotta,

Deputy Chief Information Officer (Operations), Office of the Administrator.

[FR Doc. 97–4652 Filed 2–25–97; 8:45 am]

BILLING CODE 7510–01–M

[Notice: 97–021]

Agency Information Collection: Submission for OMB Review, Comment Request

AGENCY: National Aeronautics and Space Administration (NASA).

SUMMARY: The National Aeronautics and Space Administration has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

DATES: Comments on this proposal should be received by March 28, 1997.

ADDRESSES: All comments should be addressed to Mr. Bill Comer, National Aeronautics and Space Administration, Code QS, Washington, DC 20546–0001. All comments will become a matter of public record and will be summarized in NASA's request for OMB approval.

FOR FURTHER INFORMATION CONTACT: Dr. Marie K. Tynan, Office of the Chief Information Officer, (202) 358–1371.

Title: NASA Safety Reporting System (NSRS).

Need and Uses: The NSRS form may be used by NASA employees, NASA contractor employees, and others for voluntary and confidential reporting to an independent agent any safety concerns or hazards pertaining to any NASA program or project.

Affected Public: Federal Government, Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Government, Individuals or households.

Estimated Number of Respondents: 75.

Responses Per Respondent: 1.

Estimated Annual Responses: 19.

Estimated Hours Per Request: .25.

Estimated Annual Burden Hours: 19.

Frequency of Report: As required.

Dated: February 18, 1997.

Donald J. Andreotta,

Deputy Chief Information Officer (Operations), Office of the Administrator.

[FR Doc. 97–4653 Filed 2–25–97; 8:45 am]

BILLING CODE 7510–01–M

[Notice 97–018]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Systems Research Group, Inc. of Colorado Springs, CO 80915, has applied for an exclusive license to practice the inventions described in NASA Case No. MSC–21941–1, entitled "Control System for Prosthetic Devices," NASA Case No. MSC–21941–2, entitled "Control System for Prosthetic Devices," and NASA Case No. MSC–21941–3, entitled "Control Method for Prosthetic Devices." Written objections to the prospective grant of a license should be sent to Johnson Space Center.

DATES: Responses to this notice must be received by April 28, 1997.

FOR FURTHER INFORMATION CONTACT: Hardie R. Barr, Patent Attorney, Mail Stop HA, Houston, TX 77058, telephone (281) 483–1003.

Dated: February 14, 1997.

Edward A. Frankle,

General Counsel.

[FR Doc. 97–4650 Filed 2–25–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL INDIAN GAMING COMMISSION

Fee Rates

AGENCY: National Indian Gaming Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given, pursuant to 25 CFR 514.1(a)(3), that the National Indian Gaming Commission has adopted a preliminarily annual fee rate of 0.5% (.005) for calendar year 1997. This rate shall apply to all assessable gross revenues (tier 1 and tier 2) from each class II gaming operation regulated by the Commission.

FOR FURTHER INFORMATION CONTACT: Cindy Altimus, National Indian Gaming Commission, 1441 L Street, NW, 9th Floor, Washington, DC 20005; telephone 202/632–7003; fax 202/632–7066 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act established the National Indian Gaming Commission which is charged with, among other things, regulating class II gaming on Indian lands.

The regulations of the Commission (25 CFR part 500) provide for a system of fee assessment and payment that is self-administered by the class II gaming operations. Pursuant to those regulations, the Commission is required to adopt and communicate assessment rates; the gaming operations are required to apply those rates to their revenues, compute the fees to be paid, report the revenues, and remit the fees to the Commission on a quarterly basis.

The regulations of the Commission and the rate being adopted today are effective for calendar year 1997. Therefore, all Class II gaming operations within the jurisdiction of the Commission are required to self-administer the provisions of these regulations and report and pay any fees that are due to the Commission before the end of calendar year 1997 (December 31).

Ada Deer,

Acting Chair, National Indian Gaming Commission.

[FR Doc. 97–4711 Filed 2–25–97; 8:45 am]

BILLING CODE 7565–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name and Committee Code: Special Emphasis Panel In Biological Sciences (1754).

Date and Time: Friday, March 14, 1997; 8:30 a.m.–5:00 p.m.

Place: National Science Foundation (NSF), Rm. 365, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Marcia Steinberg, Program Director, Collaborative Research at Undergraduate Institutions (C–RUI), National Science Foundation, Rm. 655, 4201 Wilson Blvd., Arlington, VA 22230. Telephone 703/306–1443.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: to review and evaluate proposals for Collaborative Research at Undergraduate Institutions as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a propriety or confidential nature, including technical information; financial data, such as salaries; and personal information under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 21, 1997.

Linda Allen-Benton,

Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.

[FR Doc. 97–4707 Filed 2–25–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Biological Sciences; (1754).

Date and Time: March 19, 1997 (7:30PM to 9:30PM) and March 20, 1997 (8:30AM to 5PM).

Place: (March 19) Holiday Inn, 3845 Veterans Memorial Highway, Ronkonkoma, NY 11779; (March 20) Biology Building, Brookhaven National Laboratory, Upton, NY, 11973.

Type of Meeting: Closed.

Contact Person: Dr. Gerald Selzer, Program Director, Division of Biological Infrastructure (DBI), Room 615, National Science Foundation, 4201 Wilson Blvd. Arlington, VA 22230, Tel: (703) 306–1469.

Purpose of Meeting: To provide advice and recommendations concerning BIO Database Activities projects.

Agenda: To review and evaluate progress report and proposal for future activities provided by the Protein Data Bank project.

Reason for Closing: The report being reviewed includes information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the report. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

Dated: February 21, 1997.

Linda Allen-Benton,

Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.

[FR Doc. 97–4712 Filed 2–25–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Human Resource Development; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Human Resource Development (#1199).

Date and Time: March 16, 1997: 7:00 to 9:00 p.m., March 17, 1997: 8:00 a.m. to 5:00 p.m., March 18, 1997: 8:00 a.m. to 4:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Rooms 310, 320, 380, 390, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Lola Rogers, Program Director, 4201 Wilson Blvd., Suite 815, Arlington, VA 22230. Telephone: 703/306–1637.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate unsolicited proposals submitted to the Implementation and Development Projects for Women and Girls Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: February 21, 1997.

Linda Allen-Benton,

Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.

[FR Doc. 97–4710 Filed 2–25–97; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–317 and 50–318]

Baltimore Gas and Electric Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–53 and DPR–69 issued to Baltimore Gas and Electric Company, for operation of the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, located in Calvert County, Maryland.

The proposed amendment revises the Technical Specifications (TSs) to reduce the minimum Reactor Coolant System (RCS) total flow rate from 370,000 gpm to 340,000 gpm; reduce the Reactor Protective Instrumentation trip setpoint for Reactor Coolant Flow—Low from greater than or equal to 95% to greater than or equal to 92% of design reactor coolant flow; adjust the reactor core thermal margin safety limit lines to reflect the reduced RCS flow rate; and reduce the lift setting range for the eight Main Steam Safety Valves (MSSVs) with the highest allowable lift setting from the current range of 935 to 1065 psig to a more restrictive range of 935 to 1050 psig. In addition to the changes to the TSs necessary to support an increased number of plugged SG tubes, reanalysis of the accident analyses affected by this change identified an Unreviewed Safety Question (USQ) associated with these changes. The USQ results from the determination that the Main Steam Line Break (MSLB) and Seized Rotor Event analyses involve an increased percentage of failed fuel cladding. Finally, three reanalyzed events (MSLB, Loss of Coolant Flow, and Boron Dilution) will require Nuclear Regulatory Commission (NRC) approval due to changes to the methodology or assumptions used to analyze these events.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment defines changes to the operating licenses for Calvert Cliffs Nuclear Power Plant, Units 1 and 2, necessary to support increased steam generator tube plugging. The effects of increased steam generator tube plugging include reduced steam generator pressure and RCS flow rate, and increased core outlet (hot leg) temperature. The Technical Specification changes necessary to account for these effects are reducing the minimum RCS total flow rate from 370,000 gpm to 340,000 gpm; reducing the Limiting Safety System Setting for reactor coolant flow trip function from greater than or equal to 95% to greater than or equal to 92% of design reactor coolant flow; revising the Reactor Core Thermal Safety Limit lines to indicate operation at the lower reactor coolant flow rate; and decreasing the maximum allowable lift settings for the eight highest set Main Steam Safety Valves from 1065 psig to 1050 psig. The Design Basis Events (DBEs) affected by these changes were reanalyzed to determine if the effects of increased steam generator tube plugging, and the associated changes to the Technical Specifications, could result in exceeding the acceptance criteria applicable to each of these events. Although it was determined that the DBE acceptance criteria would not be exceeded as a result of increased steam generator tube plugging, the analyses for the Main Steam Line Break and Seized Rotor Events indicated an increased percentage of fuel cladding failure as a result of the lower RCS total flow rate; therefore, it was determined that this activity involves a USQ.

Technical Specification 2.1.1 will be changed to establish more restrictive limits on core thermal power and reflect a lower minimum RCS flow of 340,000 gpm. Making the core thermal power limits more restrictive does not initiate a change to plant conditions that would affect other plant components. Therefore, the probability of a previously evaluated accident is not significantly increased. Additionally, the Limiting Conditions for Operation and Limiting Safety System Settings based on these limits remain adequately conservative or will be changed in the Core Operating Limits Report, as appropriate. Therefore, the consequences of a previously evaluated accident are not significantly increased.

Technical Specification 2.2 will be changed to reduce the Reactor Coolant Flow—Low reactor trip setpoint from [greater than or equal to] 95% to [greater than or equal to] 92%, thereby providing additional operating margin to this trip setpoint and the associated pre-trip alarm. Reducing this setpoint does not initiate a change to plant conditions that would affect other plant components. Therefore, the probability of a previously evaluated accident is not significantly increased.

As demonstrated by the revised Loss of Coolant Flow analysis, the proposed Reactor Coolant Flow—Low reactor trip setpoint will continue to provide adequate core protection. A trip setpoint of [greater than or equal to] 92% ensures fuel is not damaged, and the site boundary dose remains a small fraction of the 10 CFR Part 100 guidelines. Therefore, the consequences of a previously evaluated accident are not significantly increased.

Technical Specification 3.2.5.c will be changed to reduce the minimum RCS total flow rate from 370,000 gpm to 340,000 gpm. This change reduces the core heat removal rate and slightly increases the core outlet and average coolant temperatures. This change involves a USQ, as the Main Steam Line Break and Seized Rotor Event analyses have indicated an increase in the number of failed fuel pins during these events as a result of reducing the initial RCS flow rate. The probability of malfunction of equipment important to safety (i.e., fuel pin cladding) during these accidents increases. However, this malfunction is not an accident initiator. Rather, it is a consequence of an accident. Therefore, the probability of a previously evaluated accident is not significantly increased. The consequences of the Main Steam Line Break and Seized Rotor Events are not significantly increased, as the results of the analyses of these events are within the current acceptance criteria established by the NRC.

Analyses and evaluations have been performed to demonstrate that the new flow and temperature conditions are acceptable:

Fuel and core performance remain within acceptable limits. Analysis and evaluation of fuel mechanical design, core physics, parameters, fuel pin performance, fuel assembly thermal/hydraulic performance, and fuel pin corrosion all demonstrate acceptable results.

The effect of the slightly elevated core outlet and average coolant temperature on the structural integrity of the RCS is acceptable. The RCS penetration inspection program and the steam generator tube inspection program will continue to identify and repair or isolate Alloy 600 cracks prior to inservice failure of these components. The stress analysis for the reactor vessel and piping remain bounding.

The performance of control systems (i.e., feedwater, pressurizer level, and pressurizer pressure) will maintain RCS and steam generator parameters within appropriate limits by periodic adjustment, as necessary. Reactor coolant pump operation will be maintained within acceptable limits by periodic adjustment of the operating curves.

Therefore, the probability of a previously evaluated accident is not significantly increased.

Analyses and evaluations of the DBEs have been performed demonstrating that the NRC acceptance criteria for these events are met. The revised analyses and evaluations consider reduced RCS flow, increased reactor coolant temperature, and increased steam generator tube plugging conditions.

The results of analyses and evaluations of the Postulated Accidents demonstrate that the site boundary dose is within 10 CFR Part 100 guidelines and the core geometry remains coolable. Loss-of-Coolant Accident analysis results meet the acceptance criteria stipulated in 10 CFR 50.46(b).

The results of analyses and evaluations of Anticipated Operational Occurrences demonstrate that fuel parameters do not exceed the specified acceptable fuel design limits and site boundary dose is a small fraction of 10 CFR Part 100 guidelines. Primary and secondary system pressure remain below the pressure upset limits for the RCS and steam generators, respectively.

Therefore, the consequences of a previously evaluated accident are not significantly increased.

Technical Specification 4.7.1.1. will be changed to reduce the maximum allowable lift setting for the eight Main Steam Safety Valves with the highest lift setpoint. This change will place more restrictive limits on the allowable range of lift settings for these eight valves. The allowable range of lift settings for the proposed change is also allowed by current Technical Specification. Therefore, the probability of a previously evaluated accident occurring is not significantly increased.

The revised safety analyses will credit the highest lift setting for these eight valves as being 1050 psig. The more restrictive limit on the maximum lift setting is required in order to make this Technical Specification consistent with the revised safety analyses. Analyses performed assuming the proposed maximum lift setting for these valves demonstrates that secondary system pressure does not exceed 110% of the system design pressure. Therefore, the consequences of a previously evaluated accident are not significantly increased.

Therefore, operation of the facility in accordance with this amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

The proposed amendment revises limiting parameters to assure safe operation commensurate with the effects of steam generator tube plugging, and will not change the modes of operation defined in the facility license. The analysis of transients associated with steam generator malfunctions are part of the design and licensing bases. This change does not add any new equipment, modify any interfaces with any existing equipment, or change the equipments's function, or the method of operating the equipment. The proposed change does not change plant conditions in a manner which could affect other plant components. Reactor core, RCS, and steam generator parameters remain within appropriate design limits during normal operation.

Therefore, the proposed change could not cause any existing equipment to become an accident initiator.

Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

The margins of safety associated with this change are defined in the fuel and core-related analyses, the Alloy 600 stress corrosion cracking evaluation, the RCS structural evaluation, the operational evaluation, and in each of the transient and accident analyses affected by the increased steam generator tube plugging.

Reanalysis of the fuel and core-related analyses for fuel mechanical design, core physics, fuel performance, thermal hydraulics, and fuel rod corrosion verified that the fuel and core performance will remain within acceptable limits and will be bounded by the current assumptions for fuel performance in the transient and accident analyses. The Alloy 600 RCS penetration inspection program and the steam generator tube inspection program will continue to find and repair Alloy 600 cracks at the slightly elevated core exit temperature prior to any postulated inservice failure of these components. The stress analyses performed for the reactor vessel and piping remain bounding for the slightly elevated core exit

temperature. Additionally, the performance of non-safety-related control systems remains adequate to maintain RCS and steam generator parameters within appropriate operating limits. Therefore, the margins of safety associated with the physical and operational effects of this change will not be significantly reduced.

An evaluation of the affected DBEs confirmed that the established acceptance criteria for specified acceptable fuel design limits, primary and secondary system over-pressurization, 10 CFR 50.46(b), Acceptance Criteria for Emergency Core Cooling Systems for Light-Water Nuclear Power Reactors, and potential radiation dose during accidents have been completed in support of this license amendment request. The evaluation concludes that, when considering the proposed Limiting Safety System Setting for the Reactor Coolant Flow—Low trip, Limiting Conditions for Operation for RCS total flow rate, and reduced lift settings for eight Main Steam Safety Valves per unit, all applicable acceptance limits are met. Furthermore, the USQ resulting from the reduced RCS total flow rate does not represent a reduction in the margin of safety, as the site boundary dose calculated in the affected DBE analyses is within the current established radiation dose limits and the core geometry remains coolable. Therefore, the margins of safety associated with the transient and accident analyses affected by this change will not be significantly reduced.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 28, 1997 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Calvert County Library, Prince Frederick, Maryland 20678. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to S. Singh Bajwa: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC, 20037 attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated January 31, 1997, as supplemented February 13, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Calvert County Library, Prince Frederick, Maryland 20678.

Dated at Rockville, Maryland, this 20th day of February 1997.

For the Nuclear Regulatory Commission.

Alexander W. Dromerick,

Senior Project Manager, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–4701 Filed 2–25–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–331]

IES Utilities Inc., Central Iowa Power Cooperative, Corn Belt Power Cooperative, Duane Arnold Energy Center; Notice of Consideration of Approval of Application Regarding Merger

Notice is hereby given that the United States Nuclear Regulatory Commission (the Commission) is considering the issuance of an order approving under 10 CFR 50.80 an application regarding the proposed merger involving IES Industries (IESI), the parent company of IES Utilities Inc. (IESU). IESU is the licensee for the Duane Arnold Energy Center (DAEC). By letter dated September 27, 1996, IESU informed the Commission that under a merger agreement among IESI, WPL Holdings, and Interstate Power Corporation, IESI will merge with and into a WPL Holdings (WPLH), and Interstate Power Corporation will become a subsidiary of WPLH. WPLH will be renamed Interstate Energy Corporation (IEC) of which IESU would become a wholly-owned subsidiary. IESU will remain the holder of its license for DAEC. Under the merger agreement, current stockholders of IESI, WPLH, and IPC will become stockholders of IEC pursuant to a formula stipulated in the merger agreement. IESU requested the Commission's approval regarding the proposed transactions to the extent they effect an indirect transfer of control of the DAEC license, pursuant to 10 CFR 50.80. IESU would remain an electric utility as defined in 10 CFR 50.2, engaged in the generation, transmission, and distribution of electric energy for wholesale and retail sale, subject to the rate regulation of the Iowa Utilities Board and the Federal Energy Regulatory Commission.

Pursuant to 10 CFR 50.80, the Commission may approve the transfer of control of a license after notice to interested persons. Such approval is contingent upon the Commission's determination that the holder of the license following the transfer is qualified to hold the license and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders of the Commission.

For further details with respect to this proposed action, see the licensee's letter dated September 27, 1996, with the following exhibits: (A) Information to support the request for the Commission's consent. (B) A copy of the merger agreement executed among IES Industries Inc., WPL Holdings, Inc., and Interstate Power Corporation. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the local public document room located in the Cedar Rapids Public Library, 500 First Street, SE., Cedar Rapids, IA 52401.

Dated at Rockville, Maryland, this 19th day of February 1997.

Glenn B. Kelly,

Project Manager, Project Directorate III–3, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–4700 Filed 2–25–97; 8:45 am]

BILLING CODE 7590–01–P

Toledo Edison Company Centerior Service Company; and the Cleveland Electric Illuminating Company; Davis-Besse Nuclear Power Station, Unit No. 1 Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

[Docket No. 50–346]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–3, issued to the Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company (the licensee), for operation of the Davis-Besse Nuclear Power Station, Unit No. 1 located in Ottawa County, Ohio.

The proposed amendment would revise Technical Specification (TS) Section 3/4.5.2, "Emergency Core Cooling Systems, ECCS Subsystems—$T_{avg} \geq 280$ °F." Surveillance requirement (SR) 4.5.2.f would be modified to state that opening and closing of the inspection port on the watertight enclosure for the decay heat valve pit would not require this surveillance procedure to be performed. The applicable TS bases would also be changed.

The licensee's submittal is being processed as an exigent TS amendment request pursuant to 10 CFR 50.91(a)(6), as a followup to the Notice of Enforcement Discretion (NOED) issued by the Commission on February 12, 1997.

The NOED was issued under Criteria 1(a) of NUREG–1600, to avoid undesirable transients as a result of forcing compliance with a license condition and, thus, to minimize potential safety consequences and operational risks.

The licensee discovered that SR 4.5.2.f could be interpreted to require a leak test after opening and subsequent closing of the valve pit inspection port, and that the port had been opened since the last time that the SR had been performed. Because the SR had been missed, the licensee entered TS 3.0.3, which requires that the plant be shut down, and TS 4.0.3, which allows a 24-hour delay in the shutdown so that the missed SR can be performed. The licensee determined that the SR could not be performed at power, and initiated a plant shutdown in accordance with TS 3.0.3. The licensee then requested the Commission to exercise enforcement discretion, and, consistent with Commission policy, submitted the subject TS amendment request 2 days later.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Toledo Edison had reviewed the proposed change and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station (DBNPS), Unit 1 in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because the initiators regarding the large break Loss-of-Coolant Accident (LOCA) are not affected by the proposed change. Revising Surveillance Requirement 4.5.2.f has no bearing on initiating an accident previously evaluated. The flow path through the decay heat drop line also is not an accident initiator.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because the proposed change does not alter the source term, containment isolation, allowable radiological releases, or invalidate the assumptions used in evaluating radiological releases. Therefore, the radiological consequences of all accidents presented in the DBNPS Updated Safety Analysis Report (USAR) are unchanged.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because the operability requirements of Decay Heat Removal (DHR) System isolation valves DH–11 and DH–12 will continue to be adequately addressed by Surveillance Requirement 4.5.2.f. The plant will be operated in the same way as before, and no different accident initiators or failure mechanism are introduced by the proposed change. The inspection port's Kamlok coupling is included as part of the watertight enclosure vacuum leakage rate test to ensure its leak tightness. In addition, the proposed change adds a new stipulation to Surveillance Requirement 4.5.2.f that after its use, the inspection port must be verified as closed in its correct position. Thus, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Not involve a significant reduction in a margin of safety because the proposed change does not involve any new changes to the initial conditions contributing to accident severity or consequences. The inspection port's Kamlok coupling is included as part of the watertight enclosure vacuum leakage rate test to ensure its leak tightness. In addition, the proposed change adds a new stipulation to Surveillance Requirement 4.5.2.f that after its use, the inspection port must be verified as closed in its correct position. The design of the Kamlok coupling provides for quick and easy access to the inspection port, and quick and easy closure of the inspection port upon completion of inspection activities.

Consequently there are no reductions in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 28, 1997 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, Ohio 43606. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to the Director, Project Directorate III–3, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 14, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room, located at the University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 20th day of February 1997.

For the Nuclear Regulatory Commission.

Allen G. Hansen,

Project Manager, Project Directorate III–3, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–4703 Filed 2–25–97; 8:45 am]

BILLING CODE 7590–01–P

Safety-Conscious Work Environment

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is considering several strategies in addressing the need for its licensees to establish and maintain a safety-conscious work environment. As discussed herein, the Commission is evaluating the development of a standardized approach that would (1) require licensees to establish and maintain a safety-conscious work environment with clearly defined attributes; (2) establish certain indicators that may be monitored and that, when considered collectively, may provide evidence of an emerging adverse trend; and (3) outline specific remedial actions that the Commission may require when it determines that a particular licensee has failed to establish or maintain a safety-conscious work environment. Before proceeding further, the NRC is seeking comments and suggestions on the various strategies being considered.

DATES: The comment period expires May 27, 1997. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit written comments to: David Meyer, Chief, Rules Review and Directives Branch, Division of

Freedom of Information and Publication Services, Office of Administration, Mail Stop: T6D59, U. S. Nuclear Regulatory Commission, Washington, DC 20555. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm, Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW, (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 504–2741.

SUPPLEMENTARY INFORMATION:

I. Background

In May 1996, the Commission issued a policy statement on the "Freedom of Employees in the Nuclear Industry to Raise Safety Concerns Without Fear of Retaliation" [FR 24336]. This policy statement had first been published in draft in February 1995 [FR 7592], and was based on modified recommendations of the Allegation Review Team report published as NUREG–1499. The basic thrust of the policy statement was to clarify the

> * * * Commission's expectation that licensees and other employers subject to NRC authority will establish and maintain a safety-conscious work environment in which employees feel free to raise concerns both to their management and the NRC without fear of retaliation.

The Commission emphasized that problems in the work environment are most effectively prevented, identified, and resolved from within the licensee's organization, rather than by government or other outside involvement. The points of focus in the policy statement—effective processes for identifying and resolving concerns, improvements in contractor awareness, senior licensee management involvement in resolving allegations of harassment and intimidation (H&I), and employees' responsibilities in raising safety concerns—were considered generally applicable to all licensees and contractors.

While the philosophy and message of the policy statement continue to be appropriate, the findings of the Millstone Independent Review Group (MIRG) and compilation of industry-wide allegation data suggest that not all licensees are successful in maintaining a safety-conscious work environment as described in the policy statement. As discussed in NUREG–1499,

> the perception of discrimination, as viewed by those involved and other employees, may be more important than whether discrimination actually occurred in setting the tone for the work environment.

When this perception becomes widespread in a licensee's organization, it becomes exceedingly difficult for licensee management (1) to obtain the cooperation of their employees in identifying and eliminating problems adversely affecting the safety-conscious work environment, (2) to reverse the perception that raising safety concerns may cause retaliation (or that management does not welcome concerns being raised), and (3) to regain the trust and confidence of the workforce. Experience at several NRC licensed facilities suggests that additional regulatory actions may be warranted when there is evidence that the licensee may not be maintaining a safety-conscious work environment.

II. Discussion of Using a Standardized Approach to This Issue

The Commission believes that the NRC should focus more attention on, and, if possible, devise additional mechanisms to identify, the emergence of adverse trends in licensees' abilities to maintain a safety-conscious work environment.[1] While identifying these emerging trends is a difficult task, the Commission believes that the effort required will be much less than that required in "turning around" a facility where the safety-conscious work environment has already deteriorated. Moreover, if indicators can be identified that, when monitored, will provide a more timely, reliable alert to the NRC of emerging problems in a licensee's safety-conscious work environment, the Commission believes that appropriate intervention will result in a significant contribution to safety and will be well worth the effort.

Evaluating the safety consciousness of a licensee's work environment is highly subjective, and achieving reliability in such an evaluation requires careful judgment. Any one piece of data (e.g., a relatively high number of allegations made to the NRC from a given facility) can be ambiguously interpreted, and focusing on individual data to the exclusion of other information can be misleading. As discussed below, the Commission believes that judgments made in this area should be the result of periodic reviews by senior NRC management. In addition, the analyses made in this area may become more reliable and consistent if the Commission clarifies and promotes (1) a standard definition and attributes of a safety-conscious work environment; (2) criteria to be considered as indicators that a licensee's safety-conscious work environment may be deteriorating; and (3) NRC actions to be considered in dealing with situations where these criteria are not met (i.e., where signs indicate the emergence of an adverse trend).

As used in this context, a safety-conscious work environment is defined in the Commission's May 1996 Policy Statement as a work environment in which employees are encouraged to raise concerns and where such concerns are promptly reviewed, given the proper priority based on their potential safety significance, and appropriately resolved with timely feedback to employees. Attributes of a safety-conscious work environment include (1) a management attitude that promotes employee involvement and confidence in raising and resolving concerns; (2) a clearly communicated management policy that safety has the utmost priority, overriding, if necessary, the demands of production and project schedules; (3) a strong, independent quality assurance organization and program; (4) a training program that encourages a positive attitude toward safety; and (5) a safety ethic at all levels that is characterized by an inherently questioning attitude, attention to detail, prevention of complacency, a commitment to excellence, and personal accountability in safety matters.

Departures from such a safety-conscious work environment are not always easy to detect. However, certain indicators, particularly when considered collectively, may be viewed as providing evidence of an emerging adverse trend. These include: (1) Adverse findings by the Department of Labor (DOL) or NRC's Office of Investigation (OI) concluding that discrimination has occurred against employees for engaging in protected activity; (2) in particular, a DOL or OI finding that a hostile work environment existed for a licensee employee, or that senior licensee management was involved in the discrimination; (3) a significant increase in the rate (or a sustained high number) of complaints to the NRC that licensee employees are being subjected to harassment and intimidation (H&I); (4) a significant increase (or a sustained high number) of technical allegations made to the NRC, particularly if accompanied by low usage or a decrease in use of the licensee's employee concern program or other licensee channels for reporting concerns; and (5) other indications that the licensee's employee concerns program or other programs for identifying and resolving problems are ineffective. Such indications might include: delays in or absence of feedback for concerns raised to the ECP; breaches of confidentiality for concerns raised to the ECP; the lack of effective evaluation, follow-up, or corrective action for concerns raised to the ECP or findings made by the licensee's QA organization; overall licensee ineffectiveness in identifying safety issues; the occurrence of repetitive or willful violations; a licensee emphasis on cost-cutting measures at the expense of safety considerations; and/or poor communication mechanisms within or among licensee groups. In some cases, these indications may be identified during routine inspections.

The licensee's departure from a safety-conscious work environment can develop gradually over a period of years and with varying degrees of licensee management awareness. As stated above, any one of the symptoms given in the preceding paragraph, taken by itself, may not indicate deterioration in the licensee's overall safety-conscious work environment, particularly if not accompanied by overall problems in operational or safety performance.[2] Related judgments as to the need for NRC intervention should not be made in isolation. The Commission believes that such judgments, as well as the ensuing decisions on what action would be appropriate in a given situation, would be appropriate topics of discussion at the NRC's periodic Senior Management Meetings.

Once the judgment is made that a licensee's safety-conscious work environment has deteriorated, the Commission's choice of action would be based on the symptoms that led to that judgment. Under this approach, however, the Commission would identify and promote standard options for agency action rather than treating each licensee situation on a case-by-case basis. Those options might include (but would not be limited to): (1) Requiring the licensee to establish a formal employee concerns program (if one does not already exist); (2) ordering the licensee to conduct an independent survey of the environment for raising concerns, with periodic follow-up surveys to monitor progress; (3) ordering the licensee to establish an independent group for oversight of maintaining a safety-conscious work environment (similar to that prescribed by the October 24, 1996, Millstone order); or (4) mandating that the licensee establish a "holding period" policy to be applied in cases where an employee complains of being discriminated against for engaging in protected activity (additional discussion of the holding period concept is given below).

III. Establishing a Regulation on Safety-Conscious Work Environment

One strategy to standardizing the Commission's approach to this area would be to initiate a rulemaking process, in which the regulations of 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities," would be amended. The possible value of promulgating this strategy as a regulation is as follows. First, it would codify the safety-conscious work environment as a requirement, clearly linked to the licensee's safety ethic and to the overall fitness of the licensee to operate the facility. Second, such a regulation could successfully differentiate between licensees who perform well in this area and those who are cause for concern, in that prescriptive requirements would only be remedial (i.e., prescribed for those licensees who fail to establish and maintain a sufficiently safety-conscious work environment on their own efforts). Third, for those cases requiring Commission intervention in the form of issuing orders, the presence of a standardized process (i.e., as codified in a regulation or suggested in a policy statement) may result in less litigation than would result if such orders were devised and issued case by case in the absence of such a standardized approach.[3]

The Commission's experience indicates that licensees may successfully use differing methods in achieving a safety-conscious work environment, and what may be necessary for some licensees is unnecessary for others. Under the approach discussed herein, however, a regulation could be written such that, while the Commission is prepared to take decisive action where licensees have been unsuccessful, these actions are not invoked so long as licensees meet the basic criteria of a safety-conscious work environment.

Finally, while such a regulation might provide additional standardization and consistency where Commission action is necessary, the primary purpose would be to focus the licensee's attention in this area and reduce the need for Commission involvement in directing licensees' actions in this area. The intended effect of this rule would be for licensees (1) to become more aware of the importance the Commission places on establishing and maintaining a safety-conscious work environment, (2) to become more sensitive to indications of adverse trends emerging at their own facilities, and (3) to become more effective in taking actions to correct such trends and preserve the safety-conscious work environment before it deteriorates to a point that demands Commission intervention. This intention is consistent with the Commission's recognition, as presented in the May 1996 Policy Statement, that departures from a safety-conscious work environment are much more effectively corrected from within a licensee's organization than by the intervention of government or another outside agency.

IV. Inclusion in the NRC Enforcement Policy or Issuance of a Separate Policy Statement

Another strategy toward standardizing the Commission's approach to this area would be to revise NUREG–1600, "General Statement of Policy and Procedures for NRC Actions" (generally known as the NRC Enforcement Policy), to include this standardized approach. While this strategy would not be binding on licensees in the sense of requiring, by regulation, a safety-conscious work environment, it would retain most of the other advantages of codification described above. This strategy would still successfully differentiate between licensees who perform well in this area and licensees who give cause for concern; it should heighten licensee awareness of the Commission's approach to evaluating licensee performance in this area; it should make licensees more sensitive to indicators of emerging adverse trends at their facilities; and it would provide licensees the opportunity to correct such trends before the safety-conscious work environment deteriorates to a point requiring Commission intervention.

The logic of including such an approach in the NRC Enforcement Policy is that it would contain standard criteria that, after consideration, could

[1] In NUREG–1499, the Allegation Review Team provided an analysis of indications that a licensee's safety-conscious work environment may be deteriorating. Similar discussions and additional analysis appear in the September 1996 report of the Millstone Independent Review Group (MIRG).

[2] However, these symptoms may be advance indications, and any resulting decline in operational or safety performance may not emerge immediately. For this reason, the absence of operational or safety performance problems should not, by itself, be taken as assurance that the safety-conscious work environment has not deteriorated.

[3] Establishing and publishing a standardized approach clarifies the Commission's intention to respond to particular situations with particular actions. As a result of this clarification, any subsequent actions the Commission takes that are consistent with this expressed intention are less likely to be seen as arbitrary or prejudicially motivated, and therefore are less likely to be challenged. This logic is consistent with previous Commission experience in promulgating and implementing the *NRC Enforcement Policy* (NUREG–1600).

result in issuing orders to licensees. An alternative, however, would be to issue this approach in a separate Commission policy statement, to ensure that NRC monitoring of licensee performance in this area is separately administered and evaluated.

V. Explanation of the "Holding Period" Concept

Within the strategies being evaluated and discussed herein, the concept of a "holding period" warrants additional clarification. The holding period concept (sometimes also referred to as a "safe harbor" provision) was first introduced by the Allegation Review Team as a recommendation of NUREG–1499. Among other aspects, the Allegation Review Team recommended that, in applicable cases, the NRC Executive Director for Operations (or other senior NRC management) send a letter to senior licensee management reminding them of the Commission's policies on discrimination and the use of the holding period, and requesting a report to the NRC detailing the licensee's course of action. The holding period concept was carried forward to the Commission's May 1996 Policy Statement as a policy or action that a licensee might voluntarily choose to introduce; however, the Commission rejected the provision of sending a letter encouraging the licensee's use of the holding period in applicable cases. The Commission believes that several alternative strategies for mandating use of a holding period policy may merit reconsideration, particularly as an option for dealing with specific cases where a licensee's environment for raising safety concerns has significantly deteriorated.

In general, a licensee's holding period policy would provide that, when an employee complains that he or she has been discriminated against for engaging in protected activity, the licensee will maintain that employee's pay and benefits until the licensee has investigated the complaint, reconsidered the facts, negotiated with the employee, and informed the employee of a final decision on the matter. After the employee has been notified of the licensee's decision, the holding period would continue for an additional 2 weeks to allow a reasonable time for the employee to file with the DOL. If the employee files within that time, the licensee would continue the holding period until the DOL Area Office Director has made a finding based on the Area Office investigation.[4]

As discussed in NUREG–1499, the holding period is designed to minimize onsite conflict (and any associated chilling effect) generated by the perception that an employee may have been retaliated against for raising concerns. In addition, the holding period may be used to demonstrate management support for maintaining a safety-conscious work environment. As stated in the Commission's May 1996 Policy Statement:

> By this approach, management would be acknowledging that although a dispute exists as to whether discrimination occurred, in the interest of not discouraging other employees from raising concerns, the employee involved in the dispute will not lose pay and benefits while the action is being reconsidered or the dispute is being resolved.

In the past, both the staff recommendations and the Commission's policy have been to make the use of a holding period entirely voluntary. Even under the regulation or policy statement strategies discussed in Sections III and IV above, the use of a holding period (as well as other measures designed to promote a safety-conscious work environment) would be entirely voluntary for most licensees. However, in cases where the Commission determined that the licensee's safety-conscious work environment was deteriorating to the point of warranting additional NRC intervention, such a regulation or policy would provide that ordering the licensee's establishment of a holding period policy would be one of the options available at the discretion of the Commission.

Nothing in the application of such a Commission order or the resulting licensee holding period policy would mandate that a licensee employee must participate in or agree to the use of a holding period in a given case. In addition, for any case in which the Commission ordered the licensee to establish such a holding period policy, the licensee would continue to have the option as to whether a given complainant should be restored to his or her previous position, be assigned a new position, or be given administrative leave with pay and benefits. Furthermore, the Commission would continue to hold that, when a holding period policy has been established, the employer's action of not restoring a complainant to his or her previous position would not be considered an additional act of discrimination if the DOL AOD or Administrative Law Judge (ALJ) subsequently found in favor of the complainant, provided that (1) the employee had agreed to the provisions of the holding period, (2) pay and benefits were maintained, and (3) the employer restored the employee to the previous position without career prejudice upon a DOL finding of discrimination. Finally, the licensee bears responsibility for making legitimate personnel decisions, including termination or reassignment of an employee whose presence in the workplace could adversely affect safety. Neither the use of a holding period policy nor any other licensee action required by NRC order would relieve the licensee of this responsibility.[5] The function of the holding period is to counteract the chilling effect that may result when employees perceive that a fellow employee may have been terminated as the result of raising safety concerns, and thus placed at a financial disadvantage while seeking redress.

The Commission recognizes that the holding period concept has certain perceived drawbacks, as discussed by the Allegation Review Team in NUREG–1499. Some potential exists for abuse of a holding period policy, and it may be viewed as unfair to ask licensees to continue pay and benefits for employees whom the licensee believes are undeserving.[6] In addition, other factors (such as licensee down-sizing actions) may contribute to the occurrence of a significant increase in complaints of discrimination. The Commission would give these and other factors careful consideration before requiring this approach for any specific licensee.[7] However, the Commission believes that where there has been a significant failure to maintain a safety-conscious work environment, these drawbacks, including any financial burden incurred by the licensee, would be clearly offset by the benefits of instilling a general perception that senior licensee management is serious about becoming involved, reconsidering the facts, finding a resolution, and minimizing the adverse impact on the complainant during these deliberations. Where a chilling effect would otherwise have resulted from a more confrontational licensee approach, these benefits are clear; in addition, the willingness of licensee management to work toward internal resolution of such a conflict may result in financial savings (1) by avoiding lengthy, expensive litigation in the case at hand and (2) by offsetting the possibility of additional cases that may result from a chilling effect. Most importantly, the avoidance of a chilling effect may result in having safety issues identified that might not otherwise have been raised.

VI. Discussion of Alternative Strategy in Requiring a Holding Period Policy and Periodic Site Surveys

The Commission has considered an alternative strategy, in which all licensees would be required to institute a holding period policy and periodic site surveys, rather than only those licensees who perform poorly in this area. This approach would not differentiate to the same extent between those licensees who perform well in this area and those who give cause for concern. However, this approach would ensure that all licensees periodically monitor their work environments to assess the degree to which employees feel free to raise safety concerns. In addition, this approach would ensure that, for any situation in which an employee believes that he or she has been discriminated against for raising safety concerns, that employee would not be placed at a financial disadvantage (i.e., by the loss of pay and benefits) while pursuing a resolution. Under this approach, such an employee would continue to receive pay and benefits under the holding period even if the licensee had never before had such a complaint.

As stated earlier, the purpose of the holding period is to neutralize the conflict in the work environment until the dispute is resolved without presumption as to the outcome, thereby minimizing the chilling effect on the rest of the workforce. The chilling effect can arise when other employees perceive that a fellow worker has been discriminated against for engaging in protected activity, and then immediately placed at a disadvantage in pursuing a resolution by the loss of pay and benefits. By requiring all licensees to establish and implement a holding period policy, this alternative approach would attempt to offset this potential chilling effect on an industry-wide basis. Arguably, the benefits may not outweigh the costs in this approach, particularly in cases where the discrimination issue is a relatively isolated occurrence in an otherwise safety-conscious environment.

VII. Requests for Comments on the Approaches Discussed Herein

The Commission is considering various strategies that would clarify the responsibility of licensees to establish and maintain a safety-conscious work environment. The purpose of describing these strategies and posing certain questions is to illustrate the evaluation that has occurred to date, and to request public comment on the potential effectiveness of such actions, the advantages and disadvantages of the strategies described, and any suggestions on additions or deletions that would make these strategies more effective in achieving their stated purpose. Commenters should feel free to submit their responses to these questions anonymously; however, any information provided as to a commenter's background or degree of experience in this area will be helpful in analyzing and understanding the comments.

1. Should the Commission Proceed with Establishing a Standardized Approach to Ensuring That Licensees Establish and Maintain a Safety-Conscious Work Environment?

2. If Such an Approach Were Adopted, Would It Be Most Effective as: (a) A Proposed Rulemaking that Would Amend Part 50; (b) a revision to the NRC Enforcement Policy; or (c) a separately issued Commission policy statement?

3. What Additions or Deletions to the Draft Language of Such a Regulation or Policy, as Presented in Section IX, Below, Would Increase Its Effectiveness?

4. What Are the Advantages or Disadvantages of Implementing Such a Standardized Approach? (Comments are specifically requested as to whether the use of a holding period would achieve the objective of reducing the potential for a chilling effect in the work environment.)

5. What other means or indicators might the NRC use to evaluate licensee performance in this area other than the indicators mentioned in the language of Section IX, below?

6. What Would Be the Advantages or Disadvantages of Implementing the Alternative Approach to Requiring the Holding Period, as Described in Section VI, Above?

7. What Other Approaches Not Considered Here Would Be More Effective in Ensuring That Licensees Establish and Maintain a Safety-Conscious Work Environment?

VIII. Request for Regulatory Analysis Information

If a change of requirements is needed, the NRC will prepare a regulatory analysis to support any proposed or final rule. The analysis will examine the costs and benefits of regulatory alternatives available to the Commission.

The NRC requests public comment on the costs and benefits, normal business practices, new trends, and other information that should be considered in any such regulatory analysis. Comments may be submitted as indicated in the **ADDRESSES** heading.

IX. Specific Examples of Possible Language for a Regulation or Commission Policy

The NRC has developed language that may be applicable to a revision of Part 50 or (with necessary modifications) to a policy statement. This draft text reflects many of the issues as described. The NRC solicits comments on the following text, including the extent to which the text addresses the issues described. The NRC also solicits suggestions of alternative text that would address these issues.

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[4] In other words, the holding period would be in effect at least until the initial decision made under the DOL process. Under Section 211 of the Energy Reorganization Act, the DOL only provides a temporarily effective remedy to the complainant (i.e., a reinstatement of pay and benefits) after an Administrative Law Judge's (ALJ's) adverse finding that discrimination has occurred. Based on a NUREG 1499 recommendation, the Commission is considering legislation, to be developed in coordination with the DOL, in which certain adjustments would be made to the current DOL process, in that the DOL would be provided additional time to conduct a more in-depth initial investigation, and a temporarily effective remedy could be provided to the complainant based on the initial investigation. Thus, if the holding period were extended to the conclusion of the initial DOL investigation, an employee who alleged discrimination for engaging in protected activity would not be removed from pay and benefits at any point in the subsequent investigation and adjudication process, so long as the DOL continued to find in the employee's favor.

It is important to explain that the Commission is not attempting to preempt the DOL's role in providing a remedy to the complainant. The purpose of the holding period is to neutralize the conflict in the workplace until the dispute is resolved without presumption as to the outcome, thereby minimizing the chilling effect on the rest of the workforce. The chilling effect can arise, in this situation, when other employees perceive that a fellow worker has been allegedly discriminated against for engaging in protected activity, and immediately placed at a disadvantage in pursuing a resolution by the loss of pay and benefits.

[5] However, if a dispute arose as to whether the licensee had a legitimate purpose (i.e., the employee maintained that the action was based on engaging in protected activity), the licensee would still be required to maintain pay and benefits. In such a case, administrative leave with pay and benefits might be the best option.

[6] As discussed in Sections III and IV, the holding period would only be one of several options that the NRC would have at its disposal under such a regulation or policy. Based on considering the specific attributes of a particular licensee's environment, the NRC might decide that requiring the use of a site-wide employee survey, an independent third-party oversight of the licensee's employee concern program, or some other measure should be required before, after, instead of, or in conjunction with a holding period policy.

[7] To be effective, the complainant should not be required to forfeit any pay or benefits received during the holding period if the DOL subsequently found that the licensee did not discriminate against the complainant. While such an approach could be perceived as unfair to the licensee, the Commission believes that such a burden is warranted in view of the benefit to the workplace environment.

Proposed Language: Safety-Conscious Work Environment

(a) Licensees shall establish and maintain a safety-conscious work environment in which employees are encouraged to raise safety and regulatory concerns, and where such concerns are promptly reviewed, given priority based on their potential safety significance, and appropriately resolved with timely feedback to the originator of the concern. Attributes of a safety-conscious work environment include:

(1) A management attitude that promotes employee involvement and confidence in raising and resolving concerns;

(2) A clearly communicated management policy that safety has the utmost priority, overriding, if necessary, the demands of production and project schedules;

(3) A strong, independent quality assurance organization and program;

(4) A training program that encourages a positive attitude toward safety;

(5) A safety ethic at all levels that is characterized by an inherently questioning attitude, attention to detail, prevention of complacency, a commitment to excellence, and personal accountability in safety matters.

(b) When circumstances occur that could adversely impact the safety-conscious environment, or when conditions arise that indicate the potential emergence of an adverse trend in the safety-conscious work environment, the licensee shall take action as required to ensure that the safety-conscious environment is preserved. Indicators that may be considered as possible evidence of an emerging adverse trend include, but are not limited to:

(1) Adverse findings by the Department of Labor or the NRC Office of Investigation (OI) concluding that discrimination has occurred against employees for engaging in protected activity, including a finding of the existence of a hostile work environment;

(2) A significant increase in the rate (or a sustained high number) of allegations made to the NRC that licensee employees are being subjected to harassment and intimidation for engaging in protected activity;

(3) A significant increase in the rate (or a sustained high number) of allegations made to the NRC concerning matters of safety or regulatory concern, particularly if accompanied by low usage or a decrease in use of the licensee's employee concern program (ECP) or other licensee channels for reporting safety and regulatory concerns;

(4) Other indications that the licensee's ECP or other programs for identifying and resolving safety and regulatory concerns are ineffective. Such indications might include: delays in or absence of feedback for concerns raised to the ECP; breaches of confidentiality for concerns raised to the ECP; the lack of effective evaluation, follow-up, or corrective action for concerns raised to the ECP or findings made by the licensee's QA organization; overall licensee ineffectiveness in identifying safety issues; the occurrence of repetitive or willful violations; a licensee emphasis on cost-cutting measures at the expense of safety considerations; and/or poor communication mechanisms within or among licensee groups.

(c) The presence of one or more of the indicators discussed in paragraph (b) of this section may or may not, in isolation, be considered evidence of deterioration in the licensee's safety-conscious work environment. Evaluation of the licensee's safety-conscious work environment should consider these indicators in the context of the overall work environment, including the presence or absence of other indicators, and the presence or absence of related licensee safety and performance issues.

(d) If, based on a review of indicators as discussed in paragraphs (b) and (c) of this section, the Executive Director for Operations determines that the licensee has failed to establish and maintain a safety-conscious work environment as discussed in paragraph (a) of this section, the NRC at its discretion may require the licensee to take action. This action may include (but is not limited to) ordering one or more of the following:

(1) Establishment of a formal employee concerns program (if one does not already exist);

(2) Performance of an independent survey of the licensee's environment for raising safety and regulatory concerns, with periodic follow-up surveys to monitor change;

(3) Establishment of an independent group for oversight of licensee performance in establishing and maintaining a safety-conscious work environment;

(4) Establishment of a "holding period" policy, to be applied in cases where an employee of the licensee or its contractor registers a complaint of having been discriminated against for engaging in protected activity. The holding period policy requires that, when such an employee submits to the licensee a complaint that he or she has been discriminated against for engaging in protected activity, the licensee will maintain that employee's pay and benefits until the licensee has investigated the complaint, reconsidered the facts, negotiated with the employee, and informed the employee of a final decision on the matter. After the licensee has informed the employee of its final decision, the holding period of continued pay and benefits will continue for an additional 2 weeks to allow a reasonable time for the employee to file a complaint of discrimination with the DOL. If, by the end of that 2-week period, the employee has filed with the DOL a complaint of discrimination for engaging in protected activity, the licensee will maintain the holding period of continued pay and benefits until the DOL has made a finding based on its initial investigation of the employee's complaint.

(5) Additional enforcement action pursuant to Subpart B of Part 2, including civil penalties.

Dated at Rockville, Maryland, this 19th day of February, 1996.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 97–4702 Filed 2–25–97; 8:45 am]

BILLING CODE 7590–01–P

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from February 1, 1997, through February 13, 1997. The last biweekly notice was published on February 12, 1997 (62 FR 6567).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By March 28, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public

Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to (*Project Director*): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Boston Edison Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts.

Date of amendment request: January 30, 1997.

Description of amendment request: The proposed amendment would change the Updated Final Safety Analysis Report (FSAR) to include the credit for containment overpressure in the Pilgrim Nuclear Power Station net positive suction head (NPSH) analysis for the emergency core cooling pumps.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Will crediting post-LOCA [loss-of-coolant accident] wetwell airspace pressure in ECCS [emergency core cooling system] analyses involve a significant increase in the probability or consequences of an accident previously evaluated?

Chapter 14 of the FSAR contains evaluations of the design basis accidents, which include the refueling accident, the main steam line break outside primary containment, the recirculation line break inside primary containment, and the control rod drop accident. No increase in the probability of the evaluated accidents will result from crediting the post-LOCA wetwell airspace pressure because post-LOCA wetwell airspace pressure does not represent an accident initiator but is rather a byproduct of the conditions which will exist in the containment after the pipe break inside containment.

The worst radiological consequences for the Pilgrim plant are associated with the design basis LOCA which is the double guillotine failure of the recirculation system piping. The radiological analysis of this event, contained in FSAR Chapter 14, uses a TID–14844 source term and assumes a 1.5% per day leakage from the containment, which is greater than the maximum leakage allowed by the Technical Specifications. The results of this analysis are presented in Table 14.5–2 of the FSAR and indicate substantial margin when compared to 10 CFR Part 100 limits.

The radiological consequences of the design basis accident are not increased by taking credit for the post-LOCA wetwell airspace pressure. Assuming containment integrity exists, the mechanism for increasing the consequences of the accident would be an increased leakage rate caused by an increase of the average differential pressure between primary and secondary containment during the accident response. However, the NPSH analyses performed for Pilgrim, which credits the post-LOCA wetwell airspace, does not require that the differential pressure between primary and secondary containment be maintained above the minimum that exists due to the equilibrium conditions based on the suppression pool temperature. Specifically, the wetwell airspace pressure credited in the ECCS pump NPSH analyses is provided by an increase in wetwell vapor pressure and air/nitrogen partial pressure in equilibrium with increasing pool temperature with an accounting for containment initial conditions and leakage.

By crediting the post-LOCA wetwell airspace pressure in the calculation of NPSH, no requirement is created to purposely maintain a higher containment pressure than would otherwise occur; no requirement is incurred to delay operating containment heat removal equipment at the highest rate possible; no requirement is incurred to deliberately continue any condition of high containment pressure to maintain adequate NPSH; and no requirement is incurred for the purposeful addition of air/nitrogen into the containment to increase the available pressure.

Based on these reasons, the probability of accidents previously evaluated is not increased, and the consequences of the design basis accident are not increased.

(2) Will crediting post-LOCA wetwell airspace pressure create the possibility for new or different kinds of accidents?

As stated above, Chapter 14 of the Pilgrim FSAR contains evaluations of design basis accidents that include the refueling accident, the main steam line break outside primary containment, the recirculation line break inside primary containment, and the control rod drop accident. New or different types of accidents are not created by crediting the post-LOCA wetwell airspace pressure because post-LOCA wetwell airspace pressure does not represent an accident initiator but is rather a byproduct of the conditions which will exist in the containment after the pipe break inside containment.

Therefore, crediting post-LOCA wetwell airspace pressure does not create the possibility for new or different kinds of accidents from those previously analyzed.

(3) Will crediting post-LOCA wetwell airspace pressure in ECCS NPSH analyses involve a significant reduction in a margin of safety?

The integrity of the primary containment and the operation of the ECCS systems in combination limit the off-site doses to values less than those suggested in 10 CFR 100 in the event of a break in the primary system piping. In order for the ECCS pumps to meet their performance requirements, the NPSH available to the pumps throughout the accident response must meet their specific NPSH requirements. Excess NPSH margin will not improve the performance of the ECCS pumps because NPSH available must only meet NPSH requirements for the pump to operate on its pump curve and meet design expectations.

Crediting post-LOCA wetwell airspace pressure in ECCS NPSH analyses increases the NPSH available to the pumps connected to the suppression pool but limits the increase in NPSH available consistent with the bounding leakage assumptions for the containment system. The amount of post-accident pressure that is utilized in ECCS NPSH analyses is calculated in a manner such that the pressure credited represents a conservative lower bound of the pressure available. Therefore, it is expected that the NPSH margin will exceed that credited in the NPSH analyses.

Credit for wetwell airspace pressure in NPSH analyses is not required under all circumstances. If the suction strainers for the ECCS pumps remain relatively free of post-LOCA debris, adequate NPSH will be available without credit for the wetwell airspace pressure provided by the post-LOCA heatup of the air/nitrogen gas in the containment. If debris accumulates on the pump suction strainers, the NPSH available to the ECCS pumps will be decreased due to the head loss caused by the debris. Credit for the post-LOCA wetwell airspace pressure in the analyses indicates that there is adequate NPSH margin such that NPSH available will remain above NPSH required, and ECCS pump performance will meet applicable requirements. Based on the above discussion, credit for wetwell airspace pressure in ECCS NPSH analyses does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W. S. Stowe, Esquire, Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Project Director: Patrick D. Milano, Acting.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina.

Date of amendments request: November 1, 1996.

Description of amendments request: The amendments would revise the Technical Specifications (TS) to allow full implementation of the Boiling Water Reactor Owners Group (BWROG) Enhanced Option 1–A Reactor Stability Long Term Solution. In Safety Evaluation Reports (SERs) transmitted to Kevin P. Donovan, Chairman, BWROG, by letters from Robert C. Jones, Office of Nuclear Reactor Regulation, NRC, dated June 21, 1996, and September 20, 1996, the NRC staff concluded that Enhanced Option 1–A generic technical specifications described in Topical Report NEDO–32339, Supplement 4, were acceptable for referencing in license applications.

The characteristics of a reactor system most important in determining stability performance are power, core flow and power distribution. The proposed changes would delete the current limits on power and flow conditions in the technical specifications associated with the implementation of the guidance in General Electric Service Information Letter (SIL) #380, Revision 1 and the power/flow figure (Figure 3.4.1.1–1), add two new specifications on the fraction of core boiling boundary (FCBB) and the Period Based Detection System (PBDS) and relocate certain requirements pertaining to the Average Power Range Monitors (APRM) to the Core Operating Limits Report (COLR).

The current Technical Specifications for Units 1 and 2 permit single loop operation (SLO) only for a 12-hour period and there are no provisions for potential alterations of safety limits or operating limits because of SLO conditions. Approval of the amendment applications discussed above would permit SLO operation subject to the compensatory actions and requirements that address this mode of operation in the revised Technical Specifications. However, Brunswick Unit 2's License currently has a condition, 2.C.(5) that states that the reactor shall not be made critical unless both recirculation loops are in service. This License Condition also requires the plant to be placed in the hot shutdown condition within 24 hours if one recirculation loop becomes out-of-service. The License Condition also allows one or both recirculation loops to be out-of-service for the purposes of testing (not to exceed 24 hours). Whereas the License Condition would permit SLO for up to 24 hours, the current TS limit SLO to 12 hours. The License Condition was added to permit natural circulation testing as required by the startup test program but to preclude long-term SLO or operation in the natural circulation mode. The startup test program was completed many years ago for Brunswick Unit 2 and natural circulation operation is no longer allowed. The License Condition is no longer relevant and if not deleted would negate the objectives of the proposed license amendments discussed above. The licensee has submitted proposed license amendments on the same date of the subject application (i.e., November 1, 1996) to convert the Brunswick Units 1 and 2 Technical Specifications to the Improved Standard Technical Specifications (ISTS) consistent with NUREG–1433, Revision 1, "Standard Technical Specifications for General Electric Plants, BWR 4." Attachment 6 of the later application was a proposed revision of the Brunswick Unit 2 License to delete License Condition 2.C.(5). While the Notice of Consideration of Issuance of the ISTS amendments (62 FR 3719) discussed deletion of License Condition 2.C.(5), the deletion is discussed in this Notice as well, since if the subject amendment applications are approved, the License Condition would thwart the considerable effort represented by the subject amendments to finally resolve the thermal-hydraulic stability issues for Brunswick Units 1 and 2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendments allow the implementation of the Enhanced Option 1–A (E1A) long term solution to the neutronic/thermal hydraulic instability issue. Current Technical Specification restrictions on power and flow conditions, number of operating recirculation loops and operator actions implemented to reduce the probability of neutronic/thermal hydraulic instability are eliminated and new stability control requirements consistent with NEDO–32339, Supplement 4, are imposed. These requirements include restrictions on power and flow conditions and actions associated with the modified APRM flow biased scram and control rod block functions. These actions include adherence to the boiling boundary limit stability control prior to entry and during operation in the region of the power and flow operating domain which is potentially susceptible to neutronic/thermal hydraulic instability in the absence of the stability control. In addition, the proposed amendments require operator actions based upon a new Period Based Detection System (PBDS). The PBDS is designed to provide alarm indication that conditions consistent with a significant degradation in the stability performance of the reactor has occurred and the potential for imminent onset of neutronic/thermal hydraulic instability may exist.

The proposed amendments will permit operation in regions of the power and flow operating domain postulated to be susceptible to neutron/thermal hydraulic instability (i.e., Restricted and Monitored Regions). Operation in these regions does not increase the probability of occurrence of initiators and precursors of previously analyzed accidents when neutronic/thermal hydraulic instability is not possible. The proposed amendments also permit the implementation of the features of the E1A solution which prevent neutronic/thermal hydraulic instability including pre-emptive reactor scram upon entry into the region of the power and flow operating domain most susceptible to neutronic/thermal hydraulic instability (i.e., Exclusion Region). Furthermore, the E1A solution requires implementation of stability control prior to entry into a region of the power and flow operating domain which is potentially susceptible, to neutronic/thermal hydraulic instability (i.e., Restricted Region). The E1A solution prevents neutronic/thermal hydraulic instability during operation in regions of the power and flow operating domain previously excluded from operation and therefore does not significantly increase the probability of a previously analyzed accident.

Operation in the regions of the power and flow operating domain excluded by current Technical Specification 3/4.4.1.1 and Figure 3.4.1.1–1 can occur as a result of anticipated operational occurrences. The severity of these transients may increase in the absence of operator actions due to the potential occurrence of neutronic/thermal hydraulic instability as a result of operation in these regions. The proposed amendments will permit the implementation of the E1A long term solution to the stability issue. Required features of the E1A solution include adherence to a boiling boundary limit stability control prior to selection by the operator of APRM flow biased scram and control rod block function setpoints which

allow operation in a region of the power and flow operating domain potentially susceptible, in the absence of the stability control, to neutronic/thermal hydraulic instability. Upon entry, as a result of an anticipated operational occurrence, into the region most susceptible to neutronic/thermal hydraulic instability during operation with the boiling boundary limit stability control met, the pre-emptive reactor scram prevents neutronic/thermal hydraulic instability. Therefore, the consequences of an accident do not significantly increase while operating with the stability control met. After exiting the region requiring the stability control to be met, the setpoints are automatically returned to the values applicable when anticipated operational occurrences can be initiated from conditions with the stability control not met. This automatic actuation of the more conservative setpoints ensures that the pre-emptive reactor scram will prevent operation as a result of an anticipated operational occurrence in the region most susceptible to neutronic/thermal hydraulic instability should the operator not select the more conservative setpoints appropriate for operation following exit from the region requiring stability control. These required features of the E1A solution prevent operation in the region of the power and flow operating domain most susceptible to postulated neutronic/thermal hydraulic instability by pre-emptive reactor scram regardless of how the region was entered. Therefore, the proposed amendments prevent the occurrence of neutronic/thermal hydraulic instability as a consequence of an anticipated operational occurrence and do not significantly increase the consequences of any previously analyzed accident.

2. The proposed amendments do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendments eliminate restrictions on power and flow conditions and impose alternative restrictions which permit the implementation of the E1A long term stability solution. The current restrictions on the power and flow conditions do not prevent the entry into regions of the power and flow operating domain most susceptible to neutronic/thermal hydraulic instability and therefore the possibility of neutronic/thermal hydraulic instability exists in the absence of operator action. The required features of the E1A solution implement a pre-emptive scram upon entry into the region most susceptible, without operator action, to neutronic/thermal hydraulic instability. The accessible operating domain allowed by the proposed amendments is a subset of the power and flow operating domain currently allowed. Current initiators and precursors of accidents and anticipated operational occurrences can not occur with new or different initial conditions. Therefore, the proposed amendments do not create the possibility of a new or different kind of accident from that previously evaluated.

Concurrent with the implementation of the proposed amendments, a modified Flow Control Trip Reference (FCTR) card and a new Period Based Detection System (PBDS) will be installed as required by the E1A solution. The function of the FCTR card is to aid the operator in the identification of entry into regions of the power and flow operating domain potentially susceptible to neutronic/thermal hydraulic instability and to initiate a pre-emptive scram upon entry into the regions most susceptible to neutronic/thermal hydraulic instability. This is accomplished by altering the values of setpoints of the APRM flow biased scram and the control rod block functions generated by the modified FCTR card, which are existing functions of the current FCTR card. The modified FCTR card design includes components which may be susceptible to electromagnetic interference or other environmental effects. The plant specific environmental conditions (temperature, humidity, pressure, seismic, and electromagnetic compatibility) have been confirmed to be enveloped by the PBDS environmental qualification values and will be confirmed to be enveloped by the E1A FCTR card environmental qualification values prior to installation. Therefore, the potential for spurious scrams or common mode failures induced by environmental effects (e.g., electromagnetic interference) is considered negligible. The installation of the modified FCTR card will therefore not create the possibility of a new or different kind of accident from any accident previously evaluated. The function of the PBDS is to provide the operator with an indication that conditions consistent with a significant degradation in the stability performance of the reactor has occurred and the potential for imminent onset of neutronic/thermal hydraulic instability may exist. This is accomplished by the installation of a new PBDS card in the Neutron Monitoring System. The PBDS card takes inputs from individual local power range monitors and provides displays indicating alarm and status conditions to the operator in the control room. These displays can not create the possibility of a new or different kind of accident from any accident previously evaluated. The PBDS card design includes components which may be susceptible to electromagnetic interference or other environmental effects. The plant specific environmental conditions (temperature, humidity, pressure, seismic, and electromagnetic compatibility) have been confirmed to be enveloped by the PBDS environmental qualification values and will be confirmed to be enveloped by the E1A FCTR card environmental qualification values prior to installation. Therefore, the installation of the PBDS card will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendments do not involve a significant reduction in a margin of safety. The proposed amendments permit the implementation of the E1A long term solution to the stability issue. Under certain conditions, existing BWR designs are susceptible to neutronic/thermal hydraulic instability. General Design Criterion (GDC) 12 OF 10 CFR 50, Appendix A, requires thermal hydraulic instability to be prevented by design or be readily and reliably detected and suppressed. When the design of the reactor system does not prevent the occurrence of neutronic/thermal hydraulic instability, instability is an anticipated operational occurrence. GDC 10 of 10 CFR 50, Appendix A, requires that specified acceptable fuel design limits not be exceeded during anticipated operational occurrences.

Analyses performed by the BWROG indicate that neutronic/thermal hydraulic instability induced power oscillations could result in conditions exceeding the Minimum Critical Power Ratio (MCPR) Safety Limit (SL) prior to detection and suppression by the current design of the Neutron Monitoring System and Reactor Protection System. To ensure compliance with GDC 12, the BWROG developed Interim Corrective Actions (ICAs) to enhance the capability of the operator to readily and reliably detect and suppress neutronic/thermal hydraulic instability. The BWROG ICAs also provided additional guidance for monitoring local power range monitors beyond the requirements of current Technical Specification 3/4.4.1.1 to ensure adequate margin to the onset of neutronic/thermal hydraulic instability. Reliance on operator actions to comply with GDC 12 was accepted on an interim basis by the NRC pending final implementation of a long term solution to the stability issue.

The modified design of the Reactor Protection System (APRM flow biased scram) implemented with the E1A solution prevents neutron/thermal hydraulic instability. The E1A solution also requires implementation of the stability control prior to entry into a region of the power and flow operating domain which is potentially susceptible, in the absence of the stability control, to neutronic/thermal hydraulic instability. As a result, the margin to the onset of neutronic/thermal hydraulic instability provided by the existing Technical Specification requirements and BWROG ICAs recommendations is not significantly reduced by the implementation of the E1A solution. The E1A solution assures compliance with GDC 12 by the prevention of neutronic/thermal hydraulic instability and therefore precludes neutronic/thermal hydraulic instability from becoming a credible consequence of an anticipated operational occurrence. The consequences of anticipated operational occurrences and the margin to the MCPR SL will not change upon the implementation of the E1A solution. Therefore, the proposed amendments do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: Mark Reinhart (Acting).

Commonwealth Edison Company, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois.

Date of amendment request: January 20, 1997.

Description of amendment request: The proposed amendments would relocate the surveillance requirements for selected instrumentation from the Technical Specifications to licensee controlled documents because the instrumentation provides indication or an alarm only. The affected surveillance requirements are: 4.1.3.5.b, "Control Rod Scram Accumulators"; 4.5.1.d.2.c, "Emergency Core Cooling Systems—Operating"; 4.5.3.1.b, "ECCS—Suppression Chamber"; and 4.6.2.1.c, "Containment Systems—Suppression Chamber". In addition, the proposed amendments would replace TS SR 4.4.3.2.1, "Reactor Coolant System Leakage" and SR 4.5.1.d.1, "ECCS—Operating" with surveillances more appropriate to the associated LCOs and action statements. Also, the proposed amendments add an action statement to TS 3.5.1, "ECCS—Operating" regarding pressure of the ADS accumulator backup compressed gas system bottle, and delete action statements 3.5.3.c, 3.5.3.d, 3.6.2.1.c and 3.6.2.1.d regarding suppression chamber water level instrumentation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because:

The proposed change relocates instrumentation requirements, which provide no post-accident function from the Technical Specifications to the Bases, UFSAR, procedures, or other plant controlled documents. These requirements are part of routine operational monitoring and are not considered in the safety analysis. The Bases, UFSAR, procedures, and other plant controlled documents containing the relocated information will be maintained in accordance with 10 CFR 50.59. In addition to 10 CFR 50.59 provisions, the Technical Specification Bases are subject to the change control provisions in the Administrative Controls Chapter of the Technical Specifications. The UFSAR is subject to the change control provisions of 10 CFR 50.71(e), and plant procedures and other plant controlled documents are subject to controls imposed by plant administrative procedures, which endorse applicable regulations and standards. Since any changes to the Bases, UFSAR, procedures, or other plant controlled documents will be evaluated per the requirements of 10 CFR 50.59, no significant increase in the probability or consequences of an accident previously evaluated will be allowed. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Reactor Coolant Operational Leakage limits monitoring surveillance 4.4.3.2.1 has been modified to eliminate procedural details of what instrumentation/leakage detection systems to use in verifying limits. The proposed surveillance requires verification that the reactor coolant system leakage is within limits at the same frequency as the current surveillance requirement. The reactor coolant leakage detection systems operability requirements are controlled by Technical Specification 3/4.4.3.1. Since any changes to procedures describing the method of monitoring leakage will be evaluated per the requirements of 10 CFR 50.59, no significant increase in the probability or consequences of an accident previously evaluated will be allowed. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The monitoring action and the surveillance requirements added for the Automatic Depressurization System (ADS) pneumatic supply help assure the continued operability of ADS for the mitigation of accidents involving high reactor vessel pressure and the loss of the high pressure core spray system. The surveillance frequency is reasonable for the ADS supply header pressure due to the redundancy of the instrument nitrogen system, [and] several alarms [that warn] of system trouble. The ADS accumulator backup compressed gas system bottle pressure monitoring surveillance frequency and the proposed action on low bottle pressure is reasonable due to the [presence of the] ADS accumulator check valves and the [availability of the] normal ADS supply header. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The proposed change will not impose or eliminate any requirements, and adequate control of the requirements will be maintained. Thus, these changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Involve a significant reduction in the margin of safety because:

The proposed change will not reduce a margin of safety because it has no impact on any safety analysis assumption. In addition, the requirements to be transposed from the Technical Specifications to procedures, or other plant controlled documents are the same as the existing Technical Specifications. Since any future changes to these requirements in the Bases, UFSAR, procedures, or other plant controlled documents will be evaluated per the requirements of 10 CFR 50.59, no significant reduction in a margin of safety will be allowed.

Based on 10 CFR 50.92, the existing requirement for NRC review and approval of revisions to these requirements proposed for relocation does not have a specific margin of safety upon which to evaluate. However, since the proposed change is consistent with the BWR Standard Technical Specifications, NUREG–1434, approved by the NRC Staff, revising the Technical Specifications to reflect the approved level of instrumentation requirements ensures no significant reduction in the margin of safety.

The Reactor Coolant Operational Leakage limits monitoring surveillance 4.4.3.2.1 has been modified to eliminate procedural details of what instrumentation/leakage detection systems to use in verifying limits. The proposed surveillance requires verification that the reactor coolant system leakage is within limits at the same frequency as the current surveillance requirement. The reactor coolant leakage detection systems operability requirements are controlled by Technical Specification 3/4.4.3.1. Because there are no changes to either the reactor coolant leakage detection systems and the reactor coolant leakage continues to be maintained within the specified limits, at the required frequency, there is no reduction in the margin of safety.

The monitoring action and the surveillance requirements added for the Automatic Depressurization System (ADS) pneumatic supply help assure the continued operability of ADS for the mitigation of accidents involving high reactor vessel pressure and the loss of the high pressure core spray system. This helps assure ADS is maintained in a ready status. The previous TS SRs only tested the instrumentation, and did not verify the parameter remained within limits. Therefore, the margin of safety is not reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Jacobs Memorial Library, Illinois Valley Community College, Oglesby, Illinois 61348.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Robert A. Capra.

Consumers Power Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan.

Date of amendment request: January 10, 1996.

Description of amendment request: The proposed amendment would revise test requirements for the containment emergency escape airlock.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The following evaluation supports the finding that operation of the facility in accordance with the proposed change to the Technical Specifications would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not alter any plant operating conditions, operating practices, equipment design, equipment settings, or equipment capabilities. Therefore, operation of the facility in accordance with the proposed change will not involve an increase in the probability of an accident. This determination is made because the full pressure test and the seal contact check provides reasonable assurance that the Emergency Escape Airlock doors will act as designed to maintain containment integrity. Procedures are established to test seal integrity with full pressure airlock test and to verify the seal contact following the test. Acceptance criteria are established for each evolution. Failure to meet the acceptance criteria would result in corrective action to restore the Emergency Escape Airlock to the intended condition.

The proposed change defines the pressure tests required for the Emergency Escape Airlock and specifies the method used to restore the airlock door seals after full pressure testing. Due to the design of the airlock, the doors must be opened after testing. This change recognizes the practice of verifying the final integrity of the airlock by verifying door seal contact. Since the pressure test does not load the door seals in the same direction as a design basis accident, this seal contact check provides better assurance that the door is sealed than alternative pressure tests. The Emergency Escape Airlock continues to be capable of performing its design function and the consequences of those accidents previously evaluated will not increase.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change does not alter any plant operating conditions, operating practices, equipment design, equipment settings, or equipment capabilities. Therefore, operation of the facility in accordance with the proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed change requires testing of the Emergency Escape Airlock at full pressure (greater than or equal to P_a) rather than a reduced pressure between-the-seals test. This reduced pressure test is allowed by the existing Technical Specifications when the door is opened during periods when containment integrity is required. The door seal contact check and restoration will provide assurance that the Emergency Escape Airlock is capable of performing its design function after the doors are opened during recovery from full pressure testing. Implementation of these test requirements and meeting the acceptance criteria will ensure that containment integrity with respect to the Emergency Escape Airlock will be maintained. Therefore, there will be no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: John N. Hannon.

Duke Power Company, Docket Nos. 50–269, 270 and 50–287, Oconee Nuclear Station, Units 1, 2 and 3, Oconee County, South Carolina.

Date of amendment request: February 5, 1997 (TSC 96–11)

Description of amendment request: The proposed changes would reflect replacement of the existing nuclear instrumentation with an enhanced wide range nuclear instrumentation system that provides more channels and continuous coverage from the source to above the power range. As a result: (1) The various references to Intermediate Range of nuclear instrumentation would be eliminated and replaced with reference to Wide Range instrumentation; (2) the minimum number of operable Source and Wide Range Nuclear Instrumentation channels that are available and that are required to be operable in Table 3.5.1–1 would be increased; (3) the minimum power level specified in Note (c) of Table 3.5.1–1 would be changed from 10^{-10} amps on the intermediate range instrument channels to 4×10^{-4}% rated power on the wide range instrument channels; and (4) entries that specify the Wide Range Nuclear Instrumentation, the number of Required Operable Channels, reference to a new Action Statement, and Applicability would be added to Table 3.5.6–1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Will the change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed amendment to the Oconee Technical Specifications is associated with the implementation of an enhanced nuclear instrumentation system. The new Gamma Metrics system provides twice the number of channels of neutron detectors for use during both normal plant operations and post-accident monitoring. The proposed change will make Oconee's Technical Specifications consistent with a nuclear instrumentation system that meets the reliability and redundancy requirements of Regulatory Guide 1.97. Additionally, the new Technical Specifications will be more conservative in terms of stating the minimum number of operable channels required, since there are now a greater number of redundant channels available. Assuring that the nuclear instrumentation at Oconee is more reliable and more redundant, does not affect the probability of an occurrence of an accident, since this system is a monitoring system and not an accident initiator. However, these characteristics (increased reliability and redundancy) could provide additional capability to deal with the consequences of post-accident situations.

(2) Will the change create the possibility of a new or different kind of accident from any [kind of accident] previously evaluated?

No. The proposed amendment to Oconee Technical Specifications involves the implementation of an enhanced nuclear instrumentation system. By implementing a nuclear instrumentation system that meets the provisions of Regulatory Guide 1.97, Oconee's ability for neutron monitoring is enhanced during normal operations and post-accident recovery. The Source Range nuclear instrumentation system is utilized for monitoring purposes only, while the Wide Range provides a control rod withdrawal interlock based on high startup rate. The new Gamma Metrics detectors have been shown to be more reliable, accurate, and redundant than Oconee's original detectors. Therefore, changing the Oconee Technical Specifications to be consistent with the current nuclear instrumentation arrangement, as proposed in this amendment request, has no effect on the possibility of any type of accident: new, different, or previously evaluated.

(3) Will the change involve a significant reduction in a margin of safety?

No. Margin of safety is associated with confidence in the ability to maintain the fission product barriers (i.e., fuel and fuel cladding, Reactor Coolant System pressure boundary, and containment structure) to limit the level of radiation dose to the public. The proposed Technical Specifications amendment will establish operability requirements for an enhanced nuclear instrumentation system at Oconee. By implementing a more reliable and redundant nuclear instrumentation system, Oconee's post-accident monitoring capability is enhanced. Therefore, the ability to protect the public from radiation dose is further assured, and no reduction in any existing margin of safety will occur.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691.

Attorney for licensee: J. Michael McGarry, III, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20036.

NRC Project Director: Herbert N. Berkow.

Entergy Operations, Inc., et al., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi.

Date of amendment request: October 22, 1996.

Description of amendment request: The proposed amendment would revise Figure 3.4.11–1, "Minimum Reactor Vessel Metal Temperature vs. Reactor Vessel Pressure," in Limiting Condition for Operation 3.4.11, "RCS [Reactor Coolant System] Pressure and Temperature (P/T) Limits," of the Technical Specifications (TSs). The existing curve is valid only up to 10 Effective Full Power Years (EFPYs) and would be revised to be valid up to 32 EFPYs.

The proposed curves, pages 1 through 5 of Figure 3.4.11–1, have been drawn for five different EFPY periods: 16, 20, 24, 28 and 32. There are two sets of curves attached to the licensee's application. The first set of curves (Attachment 3) would replace the existing curve in TS Figure 3.4.11–1. The second set of curves (Attachment 4) are duplicates of the Attachment 3 curves except that these curves also contain detailed information used in development of the curves and would be included in the next update of the Updated Final Safety Analysis Report (UFSAR) for information.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, in its application for the proposed amendment, which is presented below:

(A) The proposed change does not significantly increase the probability or consequences of an accident previously evaluated.

Regulatory Guide 1.99, Revision 2 is currently used to prepare the pressure-temperature limit curves and is inherently conservative for Boiling Water Reactors (BWRs). [Grand Gulf Unit 1 is a BWR.] The proposed Technical Specification Figure 3.4.11–1 was prepared in accordance with the requirements of 10CFR50 [10 CFR Part 50], Appendix G [(Fracture Toughness Requirements)], and using NRC approved methodology outlined in NRC Regulatory Guide 1.99, Revision 2, "Radiation Embrittlement of Reactor Vessel Materials." Operation of the plant within the limitations of the proposed figure will ensure that the Requirements of 10CFR50 [10 CFR Part 50], Appendix G are met up to and including 32 Effective Full Power Years (EFPY) of operation. The proposed changes assure that the existing safety limits are not exceeded due to changing Reactor Vessel conditions by continued incorporation of the effect of neutron radiation embrittlement of vessel materials into the proposed curves.

The curves have also been editorially enhanced by removal of phrases used for validation of the curves. Having the phrases on the TS (Technical Specification) curves distracts from the intended purpose which is to maintain operation of the reactor to the right of the curves. Operators, in performance of their job function, do not need this information to comply with TS Limiting Condition for Operation (LCO) 3.4.11. This change also revises the curve labeling consistent with the terminology used in Table 1 of 10CFR50 [10 CFR Part 50], Appendix G. These enhancements and revisions have no impact on the operation of the plant since they are editorial in nature and do not change the technical content of the curves.

Therefore, the proposed change does not significantly increase the probability or consequences of an accident previously evaluated.

(B) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The pressure-temperature curves are controlled by the Technical Specifications and are determined using the conservative methodology in NRC Regulatory Guide 1.99, Revision 2, "Radiation Embrittlement of Reactor Vessel Materials." The proposed pressure-temperature limit curves are inherently conservative, therefore, the possibility of failure of the reactor vessel is not increased. The proposed curves establish new periods of applicability (16, 20, 24, 28, and 32 EFPY) for the current pressure-temperature limitations based on NRC methodology in Regulatory Guide 1.99 and actual fluence measurements. These limitations are appropriate up to and including 32 EFPY exposure and operation of the plant within the figure's limitations will ensure that the requirements of 10CFR50 [10 CFR Part 50], Appendix G are met for that time frame. No physical plant modifications or new operating configurations result from these changes. These changes do not adversely affect the design or operation of any system or component important to safety, rather they establish limits to assure that operations remain within acceptable safety boundaries.

The curves have also been editorially enhanced by removal of phrases used for validation of the curves. Having the phrases on the TS curves distracts from the intended purpose which is to maintain operation of the reactor to the right of the curves. Operators, in performance of their job function, do not need this information to comply with TS Limiting Condition for Operation (LCO) 3.4.11. This change also revises the curve labeling consistent with the terminology used in Table 1 of 10CFR50 [10 CFR Part 50], Appendix G. These enhancements and revisions have no impact on the operation of the plant since they are editorial in nature and do not change the technical content of the curves.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(C) The proposed change does not involve a significant reduction in a margin of safety.

The proposed curves were developed using the methodology of Regulatory Guide 1.99, Revision 2, "Radiation Embrittlement of Reactor Vessel Materials." This methodology includes an allowance for margin that is to be included in the upper-bound values of the adjusted reference temperature (ART). The proposed changes maintain the existing margins of safety by modifying the operating limits based on the most limiting of the actual reference temperature shifts. These new limits consider the most limiting pressure vessel material. The revised analysis demonstrates that the existing Technical Specification [TS] pressure-temperature limit curves are applicable for periods of 16, 20, 24, 28, and 32 EFPY. Using the methodology in NRC Regulatory Guide 1.99 Revision 2 and fluence based on actual exposure provides for additional conservatism, and therefore [,] further assures the existence of current margins of safety. The proposed pressure-temperature limit curves are inherently conservative and provide sufficient margin to ensure the integrity of the reactor vessel.

The curves have also been editorially enhanced by removal of phrases used for validation of the curves. Having the phrases on the TS curves distracts from the intended purpose which is to maintain operation of the reactor to the right of the curves. Operators, in performance of their job function, do not need this information to comply with TS Limiting Condition for Operation (LCO) 3.4.11. This change also revises the curve labeling consistent with the terminology used in Table 1 of 10CFR50 [10 CFR Part 50], Appendix G. These enhancements and revisions have no impact on the operation of the plant since they are editorial in nature and do not change the technical content of the curves.

Continuing commitment to the methodology contained in NRC Regulatory Guide 1.99, Rev. 2, will ensure that the most limiting plate or beltline weld material will be utilized in the determination of the pressure-temperature limits for any future curve changes.

Therefore, the proposed change does not result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Judge George W. Armstrong Library, 220 S. Commerce Street, Natchez, MS 39120.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., 12th Floor, Washington, DC 20005–3502.

NRC Project Director: William D. Beckner.

Entergy Gulf States, Inc., Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana.

Date of amendment request: January 10, 1997.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) for reactor pressure vessel pressure and temperature (P–T) limits to replace the curves for 2 effective full power years (EFPY) with curves for 12 EFPY. The P–T curves are used for heatup, cooldown, and inservice leak and hydrostatic testing.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Pressure-temperature (P–T) limits (RBS Technical Specifications Figure 3.4.11–1) are imposed on the reactor coolant system to ensure that adequate safety margins against nonductile or rapidly propagating failure exist during normal operation, anticipated operational occurrences, and system hydrostatic tests. The P–T limits are related to the nil-ductility reference temperature, RT_{NDT}, as described in ASME Section III, Appendix G. Changes in the fracture toughness properties of [Reactor Pressure Vessel] RPV beltline materials, resulting from the neutron irradiation and the thermal environment, are monitored by a surveillance program in compliance with the requirements of 10 CFR [Part] 50, Appendix H. The effect of neutron fluence on the nil-ductility reference temperature of pressure vessel steel is predicted by methods given in Regulatory Guide [RG] 1.99, Rev. 2.

The revised P–T limits of this amendment request were established based on adjusted reference temperatures developed in accordance with the procedures prescribed in Reg. Guide [RG] 1.99, Rev. 2, Regulatory Position C.1. Calculation of adjusted reference temperature by these procedures includes a margin term to ensure conservative, upper-bound values are used for the calculation of the P–T limits. Stress intensity factors used to compute the pressures were calculated in accordance with, and include the required safety factors given in ASME Section III, Appendix G. The limits established by the lower portion of the P–T curves, which cover the discontinuity (non-beltline) regions of the vessel (e.g., flanges, nozzles, etc.), were retained throughout this current analysis. The limits established by the lower portion of these curves do not change as they are not affected significantly by the neutron fluence.

This change is not related to any accidents previously evaluated. The proposed change will provide for approved P–T limit curves which are valid through 12 EFPY. This change will not affect any Safety Limits, Power Distribution Limits, or Limiting Conditions for Operation. The proposed change will not affect reactor pressure vessel [RPV] performance as no physical changes are involved and RBS vessel P–T limits will remain conservative in accordance with Reg. Guide [RG] 1.99, Rev. 2 and ASME Section III, Appendix G requirements. The proposed change will not cause the reactor pressure vessel [RPV] or interfacing systems to be operated outside of their design or testing limits. Also, the proposed change will not alter any assumptions previously made in evaluating the radiological consequences of accidents. The proposed change ensures that adequate margins against brittle fracture of the vessel are maintained through 12 EFPY of reactor operations. Therefore, the probability or consequences of accidents previously evaluated will not be increased by the proposed change.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change is a revision of Technical Specification Figure 3.4.11–1 to show P–T limit curves valid through 12 EFPY. The revised P–T limits have been established in accordance with applicable NRC regulations and the ASME Code. This proposed change does not involve a modification of the design of plant structures, systems, or components. The proposed change will not impact the manner in which the plant is operated as plant operating and testing procedures will not be affected by the change. The proposed change will not degrade the reliability of structures, systems, or components important to safety (ITS) as equipment protection features will not be deleted or modified, equipment redundancy or independence will not be reduced, supporting system performance will not be downgraded, the frequency of operation of ITS equipment will not be imposed. No new accident types or failure modes will be introduced as a result of the proposed change. Therefore, the proposed change does not create the possibility of a new or different kind of accident from that previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

As stated in the River Bend SER, "Appendices G and H of 10 CFR 50 describe the conditions that require pressure-temperature [P–T] limits and provide the general bases for these limits. These appendices specifically require that pressure-temperature [P–T] limits must provide safety margins at least as great as those recommended in the ASME Code, Section III, Appendix G. * * * Until the results from the reactor vessel surveillance program become available, the staff will use RG 1.99, Revision 1 [now Revision 2] to predict the amount of neutron irradiation damage. * * * The use of operating limits based on these criteria—as defined by applicable regulations, codes, and standards—will provide reasonable assurance that nonductile or rapidly propagating failure will not occur, and will constitute an acceptable basis for satisfying the applicable requirements of GDC 31."

Bases for RBS Technical Specification 3.4.11 states: "The P/T [P–T] limits are not derived from Design Basis Accident (DBA) analyses. They are prescribed during normal operation to avoid encountering pressure, temperature, and temperature rate of change conditions that might cause undetected flaws to propagate and cause nonductile failure of the RCPB, a condition that is unanalyzed. * * * Since the P/T [P–T] limits are not derived from any DBA, there are no acceptance limits related to the P/T [P–T] limits. Rather, the P/T [P–T] limits are acceptance limits themselves since they preclude operation in an unanalyzed condition."

This amendment request proposes P–T limit curves which will be valid through 12 EFPY. The proposed P–T limits were established based on adjusted reference temperatures for vessel beltline material calculated in accordance with Regulatory Position 1 of Reg. Guide [RG] 1.99, Rev. 2 and pressures calculated in accordance with ASME Section III, Appendix G requirements. Required margins and safety factors were included to ensure that conservative, upper-bound values were used in calculation of the P–T limits. The proposed change will not affect any Safety Limits, Power Distribution Limits, or Limiting Conditions for Operation. The proposed change does not represent a change in initial conditions, or in a system response time, or in any other parameter affecting the course of an accident analysis supporting the Bases of any Technical Specification. The proposed P–T limits provide adequate safety margins against brittle failure of the reactor vessel through 12 EFPY of power operations. For these reasons, the proposed changes do not involve a reduction in any margins of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, LA 70803.

Attorney for licensee: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005.

NRC Project Director: William D. Beckner.

Entergy Gulf States, Inc., Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana.

Date of amendment request: January 20, 1997.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) to allow the use of flow control spectral shift strategies to increase cycle energy; an estimated additional 30 days at full power. The request is based on a General Electric (GE) Maximum Extended Load Line Limit (MELLL) analysis for the River Bend Station.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not significantly increase the probability or consequences of an accident previously evaluated.

Abnormal operational transients or accidents analyzed in the SAR have been examined for any impact caused by MELLL operation. The limiting abnormal operation transients, including the Generator Load Rejection with No Bypass (LRNBP) event and the Feedwater Controller Failure (FWCF) maximum demand event. have been evaluated in detail. The LOCA [Loss-of-Coolant Accident], Fuel Loading Error (FLE), rod drop accident, rod withdrawal error, and the Anticipated Transient Without Scram (ATWS) analyses have also been evaluated for the effects of MELLL operation. The flow and power dependent [Minimum Critical Power Ratio] MCPR curves for off-rated and rated conditions and the [Maximum Average Planar Linear Heat Generation Rate] MAPLHGR criteria establish limits on power operation. These limits ensure that the core is operated within the assumptions and initial conditions of the transient or accident analyses. Operation within these limits will ensure that the consequences of a transient or accident remain within the acceptable limits of the analyses.

The [Average Power Range Monitor] APRM scram in the Technical Specifications [TSs] and affected rod block setpoints are revised to ensure that operation remains within the analyzed MELLL region. This restriction ensures the consequences of abnormal operation and accidents are acceptable. The probability of an accident is not affected by the proposed Technical Specification [TS] changes since no systems or equipment which could initiate an accident are affected. Therefore, the proposed changes do not significantly increase the probability or consequences of any previously evaluated accident.

2. The request does not create the possibility of occurrence of a new or different kind of accident from any accident previously evaluated.

Operation in the MELLL domain expands the current power/flow along the 121% rod line to 100% power at 75% rated core flow and improves flexibility and capacity factor. Abnormal operation transients or accidents have been evaluated and the most limiting cases have been analyzed for applicability for operation in the MELLL region. The proposed Technical Specification [TS] changes prohibit power operation outside the MELLL region and do not constitute or require any system or equipment changes that might create an accident of a different type then previously evaluated. The MAPLHGR, the power and flow dependent MCPR and [Liner Heat Generation Rate] LHGR and the revised Technical Specifications [TSs] will continue to assure that plant operation is consistent with the assumptions, initial conditions and assumed power distribution and therefore will not create a new type of accident. The proposed Technical Specification [TS] changes do not introduce any new modes of plant operation nor involve new system interactions. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previous analyzed.

3. The request does not involve a significant reduction in a margin of safety.

The proposed Technical Specifications [TSs] prohibit power operation outside the allowable MELLL region. The transients and accidents described in the SAR are evaluated for operation in the MELLL region. NEDC–32611, "MELLL Analysis for River Bend Station Reload 6 Cycle 7," shows that the OLMCPR for operation in the MELLL region is bounded by the OLMCPR established for current conditions (100% power/107% flow). The thermal limits MCPR and LHGR curves and the MAPLHGR limits establish limits on power operation and thereby ensure that the core is operated within the assumptions and initial conditions of the transient and accident analyses.

As demonstrated in the analysis provided in Attachment 4, [the proposed amendment request] operation within these limits, using the MCPR limits, LHGH limits and MAPLHGR criteria, will ensure that the margin of safety will be maintained to the same level described in the Technical Specifications Bases and the SAR and the consequences of the postulated transient or accidents are not increased. The MCPR safety limit, mechanical performance limits and overpressure limit are not exceeded during any transient or postulated accident. Therefore, the proposed Technical Specifications [TSs] to allow operation in the MELLL region do not involve a significant reduction in margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, LA 70803.

Attorney for licensee: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005.

NRC Project Director: William D. Beckner.

Maine Yankee Atomic Power Company, Docket No. 50–309, Maine Yankee Atomic Power Station, Lincoln County, Maine.

Date of amendment request: February 7, 1997.

Description of amendment request: The proposed amendment would modify Technical Specification 3.12 to require both 115 kV incoming lines to be operable when the reactor is critical; allow continued operations for up to 72 hours with one 115 kV incoming line inoperable; allow continued operations for up to 24 hours with both 115 kV incoming lines inoperable; apply the increased operability requirements described above to another affected remedial action; incorporate minor editorial changes to uniformly apply the usage of the term "operable;" and change the basis section to be consistent with the proposed changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to Specification 3.12.B do not involve a physical change to the plant or the maintenance of the plant. The proposed changes increase the operating requirements associated with the operability of the 115 kV incoming lines beyond that currently required by Technical Specifications. For those accidents previously evaluated, the more restrictive operability requirements associated with maintaining both 115 kV incoming lines operable and the more restrictive remedial action times result in increased assurance that station service power will be available when required. This increased availability will be achieved because elective maintenance on the offsite power system will be significantly restricted and the restoration of inoperable 115 kV incoming lines will be treated with greater urgency. The increased

assurance of availability will result in a decrease in the probability or consequences of these postulated accidents.

However, the more restrictive remedial action times decrease the restoration period and consequently increase the possibility that successful restoration may not be achieved, given an outage of the 115 kV power system. A unit shutdown without offsite power would then be commenced. This evolution would involve a unit shutdown without the availability of equipment such as the reactor coolant pumps, condensate pumps and main feedwater pumps. Although none of these components are credited as available for the mitigation of the consequences of accidents previously evaluated, the probability of the occurrence of certain accidents is increased without them.

Although the combination of these considerations could involve an increase in the probability of accidents previously evaluated, the increase would not be significant due to the low probability of independent failures or common cause failures of both of the 115 kV incoming lines. There is no increase in the consequences of any accident previously evaluated as a result of these proposed Technical Specification changes. The proposed Technical Specification changes are consistent with the Standard Technical Specifications approved by the NRC. The proposed changes, therefore, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed Technical Specification change does not involve a change to the physical plant or to the physical configuration of the offsite power system. The effect of the proposed change will be to increase the availability of the offsite power system when required. In addition, the proposed change will increase the possibility of a unit shutdown without offsite power operable. However, the accidents previously evaluated assume a simultaneous loss of offsite power, design basis accident and worst case single failure as part of the design basis. The proposed changes do not result in the creation of a unique operating condition or a configuration that has not been previously evaluated. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

This proposed change modifies Technical Specification 3.12 to be consistent with the Standard Technical Specifications. The proposed Technical Specification change maintains the current margin of safety which is based upon supplying power to engineered safeguards. Adequate sources of power remain available for the operation of the engineered safeguards equipment. Therefore, the proposed change would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, ME 04578.

Attorney for licensee: Mary Ann Lynch, Esquire, Maine Yankee Atomic Power Company, 329 Bath Road, Brunswick, ME 04011.

NRC Project Director: Patrick D. Milano, Acting.

Northeast Nuclear Energy Company, et al., Docket Nos. 50–245, 50–336, and 50–423, Millstone Nuclear Power Station, Unit Nos. 1, 2, and 3, New London, Connecticut.

Date of amendment request: February 3, 1997.

Description of amendment request: The licensee has proposed to revise Section 6, "Administrative Controls," of the Millstone Unit Nos. 1, 2, and 3 Technical Specifications to reflect organizational changes that have been implemented in the Nuclear Division.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

* * * The proposed changes do not involve a [significant hazards consideration] because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

No design basis accidents are affected by these proposed changes. The proposed changes are administrative in nature and are being proposed to reflect the organizational changes which become effective on February 3, 1997. The unit level responsibilities of the Executive Vice President—Nuclear are assigned to the Officers for the individual Millstone units. The site level responsibilities of the Executive Vice President—Nuclear are shared by the Senior Vice President and CNO [Chief Nuclear Officer]—Millstone and the President and Chief Executive Officer. The changes to the SORC [Site Operations Review Committee] and the three unit[s'] PORC [Plant Operations Review Committee] reflect changes in job function or job position titles only.

No safety systems are adversely affected by the proposed changes, and no failure modes are associated with the changes.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

Because there are no changes in the way plants are operated due to this administrative change, the potential for an unanalyzed accident is not created. There is no impact on plant response, and no new failure modes are introduced. These proposed administrative and editorial changes have no impact on safety limits or design basis accidents, and they have no potential to create a new or unanalyzed event. The changes to the SORC and the three unit[s'] PORC reflect changes in job function or job position titles only.

3. Involve a significant reduction in a margin of safety.

The changes do not directly affect any protective boundaries nor do they impact the safety limits for the protective boundaries. These proposed changes are administrative and editorial in nature. Therefore, there is no reduction in the margin of safety. These changes do not reduce the margin of safety provided by the PORC and the SORC review and approval of changes to the operations of the Millstone Unit Nos. 1, 2, and 3.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, CT 06385.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270.

NRC Deputy Director: Phillip F. McKee.

Northeast Nuclear Energy Company (NNECO), et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut.

Date of amendment request: February 5, 1996.

Description of amendment request: The amendment would delete a clause from Technical Specification 4.0.5.a. Specifically, this change would delete the clause "(g), except where specific written relief has been granted by the Commission pursuant to 10 CFR Part 50, Section 50.55a(g)(6)(i)." The amendment would also make the appropriate changes to the Bases section. In addition, NNECO made changes to Bases Section 3/4.7.7 and 3/4.7.8 to add design basis information and provide clarification of system design and operation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Pursuant to 10 CFR 50.92, NNECO has reviewed the proposed changes to Technical Specification 4.0.5a and Bases Section 3/4.4.10 and has concluded that the changes do not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10 CFR 50.92(c) are not compromised. The proposed changes do not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes would remove the wording "* * * (g), except where specific written relief has been granted by the Commission pursuant to 10 CFR Part 50, Section 50.55a(g)(6)(i)." The Inservice Inspection and Testing Programs are described in the technical specifications pursuant to 10 CFR 50.55a. In addition, the proposed changes, in accordance with NUREG–1431 and NUREG–1482, would provide relief to the ASME Code requirement in the interim between the time of submittal of a relief request until the NRC has issued a safety evaluation and granted relief. The changes being proposed are administrative in nature and do not affect assumptions contained in plant safety analyses, the physical design and/or operation of the plant, nor do they affect any technical specification that preserves safety analysis assumptions. Any relief from the approved ASME Section XI Code requirements will require a 10 CFR 50.59 evaluation to ensure no technical specification changes or unreviewed safety questions exist. Therefore, operation of the facility in accordance with the proposed changes would not affect the probability or consequences of an accident previously analyzed.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes would remove the wording "* * * (g), except where specific written relief has been granted by the Commission pursuant to 10 CFR Part 50, Section 50.55a(g)(6)(i)." The Inservice Inspection and Testing Programs are described in the technical specifications pursuant to 10 CFR 50.55a. In addition, the proposed changes, in accordance with NUREG–1431 and NUREG–1482, would provide relief to the ASME Code requirement in the interim between the time of submittal of a relief request until the NRC has issued a safety evaluation and granted relief. The changes being proposed are administrative in nature and will not change the physical plant or the modes of operation defined in the facility license. The changes do not involve the addition or modification of equipment nor do they alter the design or operation of plant systems. Any relief from the approved ASME Section XI Code requirements will require a 10 CFR 50.59 evaluation to ensure no technical specification changes or unreviewed safety questions exist. Therefore, operation of the facility in accordance with the proposed changes would not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in the margin of safety.

The proposed changes would remove the wording "* * * (g), except where specific written relief has been granted by the Commission pursuant to 10 CFR Part 50, Section 50.55a(g)(6)(i)." The Inservice Inspection and Testing Programs are described in the technical specifications pursuant to 10 CFR 50.55a. In addition, the proposed changes, in accordance with NUREG–1431 and NUREG–1482, would provide relief to the ASME Code requirement in the interim between the time of submittal of a relief request until the NRC has issued a safety evaluation and granted relief. The changes being proposed are administrative in nature and will not alter the bases for assurance that safety-related activities are performed correctly or the basis for any technical specification that is related to the establishment or maintenance of a safety margin. Any relief from the approved ASME Section XI Code requirements will require a 10 CFR 50.59 evaluation to ensure no technical specification changes or unreviewed safety questions exist. Therefore, operation of the facility in accordance with the proposed changes would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270.

NRC Deputy Director: Phillip F. McKee.

United States Department of Commerce, National Institute of Standards and Technology, Docket No. 50–184, NIST (formerly known as National Bureau of Standards) Test Reactor or NBSR.

Date of amendment request: January 17, 1997.

Description of amendment request: The National Institute of Standards and Technology (NIST) is planning to change the name of the Reactor Radiation Division to the NIST Center for Neutron Research to be headed by a Director. The requested amendment involves a name change only. All functions, responsibilities, and personnel remain the same. The Technical Specification references to the "Chief, Reactor Radiation Division" will be changed to Director, NIST Center for Neutron Research in Sections 7.1, 7.2, and 7.3. The Organization Chart in Figure 7.1 will also reflect this change. The Technical Specification references to the "Reactor Radiation Division" will be changed to "NIST Center for Neutron Research" in Section 7.2.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The change being proposed is a change in the title of the organization and the title of the head of the organization that directs the operation of the reactor. As noted previously, all functions, responsibilities and personnel remain the same. The staff agrees with the licensee's no significant hazards consideration and finds that the mere title changes render a negative response to the three criteria outlined in 10 CFR 50.92(c).

Local Public Document Room location: N/A.

Attorney for licensee: N/A

NRC Project Director: Seymour H. Weiss.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont.

Date of amendment request: December 10, 1996.

Description of amendment request: The proposed amendment would move fire protection requirements from the Vermont Yankee Technical Specifications to the Fire Protection Plan and the final safety analysis report (FSAR), in accordance with the guidance in NRC Generic Letters 86–10 and 88–12.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated:

The proposed changes are administrative in nature and are consistent with the guidance provided in NRC Generic Letters 86–10 and 88–12. These changes do not affect the initial conditions or precursors assumed in the FSAR safety analyses. These proposed changes also do not decrease the effectiveness of equipment relied upon to mitigate the previously evaluated accidents. Programmatic controls will continue to assure that fire protection program changes do not reduce the effectiveness of the program to achieve and maintain safe shutdown in the event of a fire.

2. The proposed amendment will not create the possibility of a new or different kind of accident from an accident previously evaluated:

The proposed changes do not modify any plant equipment, there is no reduction in fire protection requirements, there is no change in operating procedure and surveillance requirements and no reduction in administrative control or equipment reliability. Therefore, implementation of the proposed change will not affect the design function or configuration of any component, introduce any new operating scenarios, failure modes or accident initiators.

3. The proposed amendment will not involve a significant reduction in a margin of safety:

The proposed amendment does not involve a reduction to the Fire Protection Program. The fire protection requirements are simply being relocated to other controlled documents. There are no equipment modifications being proposed, only the location of fire protection requirements, which is administrative in nature.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

Attorney for licensee: R. K. Gad, III, Ropes and Gray, One International Place, Boston, MA 02110–2624.

NRC Project Director: Patrick D. Milano, Acting Director.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina.

Date of amendment request: January 10, 1997.

Brief description of amendment: The proposed change would revise Technical Specification 4.8.1.1.2 to clarify pressure testing requirements for the isolable and non-isolable portions of the diesel fuel oil piping.

Date of publication of individual notice in **Federal Register**: February 5, 1997 (62 FR 5490).

Expiration date of individual notice: March 6, 1997.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Northern States Power Company, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota.

Date of amendment request: November 6, 1996.

Description of amendment request: The proposed amendments would revise the Technical Specifications governing the cooling water system. The changes are proposed to improve plant operation based on operational experience with the vertical motor-driven cooling water pump. The changes are also proposed to incorporate information gathered by the licensee during its self-assessment Service Water System Operational Performance Inspection (SWSOPI) completed in late 1995.

Date of individual notice in the **Federal Register**: January 29, 1997 (62 FR 4338).

Expiration date of individual notice: February 28, 1997.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Northern States Power Company, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota.

Date of amendment requests: January 29, 1997.

Description of amendment requests: The proposed amendments would change the Bases for Technical Specifications and the licensing basis for the Operating Licenses relating to the cooling water system emergency intake line flow capacity. The licensee determined through testing that the emergency intake line flow capacity was less than the design value stated in the Updated Final Safety Analysis Report. The proposed changes reflect the use of operator actions to control cooling water system flow following a seismic event. The proposed changes also reclassify the intake canal for use during a seismic event, which would be an additional source of cooling water during a seismic event.

Date of individual notice in the Federal Register: February 7, 1997 (62 FR 5857).

Expiration date of individual notice: March 10, 1997. NSHC comments: February 24, 1997.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey Date of amendment request: January 31, 1997.

Brief description of amendment request: The amendment would make changes to Technical Specification (TS) 3.4.3, "Relief Valves," for Salem Unit 1, and TS 3.4.5, "Relief Valves," for Salem Unit 2, to ensure that the automatic capability of the power operated relief valves to relieve pressure is maintained when these valves are isolated by closure of the block valves.

Date of publication of individual notice in **Federal Register**: February 7, 1997 (62 FR 5861).

Expiration date of individual notice: March 10, 1997.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2: Hamilton County, Tennessee.

Date of application for amendments: October 18, 1996.

Description of amendments request: Amend Technical Specifications to permanently incorporate new requirements associated with steam generator tube inspections and repair. The requirements provide alternate steam generator tube plugging criteria at the tube support plate intersections.

Date of publication of individual notice in the **Federal Register**: February 11, 1997 (62 FR 6276).

Expiration date of individual notice: March 13, 1997.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Power Plant, Unit Nos. 1 and 2, Town of Two Creeks: Manitowoc County, Wisconsin.

Date of amendment requests: September 19, 1996, as supplemented November 18, 1996, and revised January 13 and January 27, 1997.

Description of amendment requests: The proposed amendments would change Technical Specification requirements related to the low temperature overpressure protection (LTOP) system. Specifically, the reactor coolant system (RCS) temperature below which LTOP is required to be enabled and the temperature below which one high pressure safety injection pump is required to be rendered inoperable would be changed from less than 275 degrees Fahrenheit to less than 355 degrees Fahrenheit. Additionally, the restriction of "less than the minimum pressurization temperature for the inservice pressure test as defined in Figure 15.3.1–1" would be deleted and the specific temperature limit of less than 355 degrees Fahrenheit would be specified. The setpoint for the pressurizer power-operated relief valves (PORVs) would be changed from less than or equal to 425 pounds per square inch gage (psig) to less than or equal to 440 psig to allow for instrument inaccuracies and increased margin allowed by the use of American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code Case N–514. These modified requirements for LTOP ensure that RCS materials meet the requirements of Title 10 of the Code of Federal Regulations, § 50.60, "Acceptance Criteria for Fracture Prevention Measures for Lightwater Nuclear Power Reactors for Normal Operation," (10 CFR 50.60) in accordance with 10 CFR Part 50, Appendices G and H, and in accordance with the exemption granted on January 27, 1997, which allows the use of ASME Code Case N–514 as an acceptable alternative. Finally, editorial changes would be made to rename the "Overpressure Mitigating System" to the "Low Temperature Overpressure Protection System." The September 19, 1996, application was previously noticed in the **Federal Register** on October 1, 1996 (61 FR 51308).

Date of individual notice in the **Federal Register**: February 4, 1997 (62 FR 5256).

Expiration date of individual notice: March 6, 1997. NSHC comments February 19, 1997.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Baltimore Gas and Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland.

Date of application for amendments: November 26, 1996.

Brief description of amendments: The amendments adopt Option B of 10 CFR Part 50, Appendix J to require Type B and Type C containment leakage testing to be performed on a performance-based testing schedule.

Date of issuance: February 11, 1997.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 219 and 196.

Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: January 2, 1997 (62 FR 123).

The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated February 11, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Boston Edison Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts.

Date of application for amendment: April 25, 1996, as supplemented December 23, 1996.

Brief description of amendment: The amendment will revise the definition of Operable-Operability, revise Technical Specifications (TSs) and associated Bases Section for TS 3.9.B.2 and 3.9.B.3, "Auxiliary Electrical System," TS 3.4.B.1, "Standby Liquid Control System," TSs 3.7.b.1.a, c, and e, and 3.7.b.2.a, c, and e, "Standby Gas Treatment System and Control Room High Efficiency Air Filtration System," and TSs. 4.5.F.1, "Core and Containment Cooling Systems," and delete TS 3.7.b.1.f, "Standby Gas Treatment System and Control Room High Efficiency Air Filtration System."

Date of issuance: February 10, 1997.

Effective date: February 10, 1997.

Amendment No.: 170.

Facility Operating License No. DPR–35: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: June 19, 1996 (61 FR 31172).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 10, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–

455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois.

Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois.

Date of application for amendments: August 2, 1996.

Brief description of amendments: The amendments eliminate License Condition 2.C.(16) from Facility Operating License NPF–37; License Condition 2.C.(5) from Facility Operating License NPF–66; License Condition 2.C.(6) from Facility Operating License NPF–72 and License Condition 2.C.(5) from Facility Operating License NPF–77 that require the licensee to conduct additional corrosion testing of sleeved steam generator tubes.

Date of issuance: February 12, 1997.

Effective date: Immediately, to be implemented within 30 days.

Amendment Nos.: 85 to NPF–37, 85 to NPF–66, 77 to NPF–72, and 77 to NPF–77.

Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77: The amendments revise the licenses.

Date of initial notice in **Federal Register:** September 25, 1996 (61 FR 50340).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 12, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: For Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Duke Power Company, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina.

Date of application for amendments: November 26, 1996, as supplemented December 17, 1996

Brief description of amendments: The amendments revise Technical Specification 3.8.2.1 to allow a one-time change to replace the existing 125-volt AT&T high specific gravity round cell battery banks with the conventional low specific gravity cell battery banks.

Date of issuance: February 7, 1997.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 172 and 154.

Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 13, 1996 (61 FR 65605).

The December 17, 1996, letter did not change the scope of the November 26, 1996, application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 7, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: J. Murrey Atkins Library, University of North Carolina at Charlotte, 9201 University City Boulevard, Charlotte, North Carolina 28223–0001.

Entergy Gulf States, Inc., Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana.

Date of amendment request: August 29, 1996.

Brief description of amendment: The amendment revises the Technical Requirements Manual (TRM) to change the reactor pressure vessel surveillance capsule withdrawal schedule for the River Bend Station. The first capsule will be withdrawn at 10.4 effective full power years (EFPY) rather than at 6 EFPY.

Date of issuance: February 13, 1997.

Effective date: February 13, 1997.

Amendment No.: 92.

Facility Operating License No. NPF–47. The amendment revised the Technical Requirements Manual.

Date of initial notice in **Federal Register:** October 23, 1996 (61 FR 55034) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 13, 1997.

No significant hazards consideration comments received. No.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, LA 70803.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana.

Date of amendment request: June 27, 1996.

Brief description of amendment: The amendment modifies TS 3/4.3.3.6, "Accident Monitoring Instrumentation," to reflect the Combution Engineering improved Standard Technical Specification (STS) approved and issued as NUREG–1432. This amendment revises the TS to include Accident Monitoring Instrumentation recommended in Regulatory Guide (RG) 1.97, "Instrumentation for Light-Water-Cooled Nuclear Plants to Assess Plant Conditions During and Following an Accident," Revision 3.

Date of issuance: February 12, 1997.

Effective date: February 12, 1997, to be implemented within 90 days.

Amendment No.: 122.

Facility Operating License No. NPF–38. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 3, 1996 (61 FR 40017).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 12, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana.

Date of amendment request: July 25, 1996, as supplemented by letter dated January 27, 1997.

Brief description of amendment: The amendment changes the Appendix A Technical Specifications by modifying TS 3/4.7.4, "Ultimate Heat Sink," to incorporate more restrictive fan operability requirements and lower the maximum allowed basin temperature.

Date of issuance: February 13, 1997.

Effective date: February 13, 1997.

Amendment No.: 123.

Facility Operating License No. NPF–38. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 19, 1996 (61 FR 58903).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 13, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida.

Date of application for amendments: October 30, 1996.

Brief description of amendments: These amendments revise the St. Lucie Technical Specifications to remove inconsistencies between the definition of Core Alterations and the Applicability, Action and Surveillance requirements of two specifications relating to water level and containment

isolation systems during refueling operations.

Date of Issuance: February 10, 1997.

Effective Date: February 10, 1997.

Amendment Nos.: 148 and 87.

Facility Operating License Nos. DPR–67 and NPF–16: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 4, 1996 (61 FR 64386).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 10, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954–9003.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida.

Date of application for amendment: October 28, 1996.

Brief description of amendment: The amendments consist of changes to the Technical Specifications (TS) in response to your applications, both dated October 28, 1996, regarding containment leakage tests and removal of certain component lists from the TS.

Date of Issuance: February 10, 1997.

Effective Date: February 10, 1997.

Amendment Nos.: 149 and 88.

Facility Operating License No. NPF–16: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** (61 FR 64386) December 4, 1996. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 10, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954–9003.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant Units 3 and 4, Dade County, Florida.

Date of application for amendments: December 17, 1996.

Brief description of amendments: Revision to Technical Specification (TS) 4.4.10 regarding reactor coolant pump flywheel inspection intervals.

Date of issuance: February 11, 1997.

Effective date: February 11, 1997.

Amendment Nos.: 193 and 187.

Facility Operating Licenses Nos. DPR–31 and DPR–41: Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** January 10, 1997 (62 FR 1476).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 11, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199.

Niagara Mohawk Power Corporation, Docket No. 50–220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York.

Date of application for amendment: July 16, 1996.

Brief description of amendment: The amendment changes the Technical Specifications to permit the use of 10 CFR Part 50, Appendix J, Option B, Performance-Based Containment Leakage Rate Testing in accordance with the implementation guidance in NRC's Regulatory Guide 1.163 dated September 1995.

Date of issuance: February 10, 1997.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 159.

Facility Operating License No. DPR–63: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** October 9, 1996 (61 FR 52965). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 10, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Northern States Power Company, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota.

Date of application for amendments: August 15, 1996.

Brief description of amendments: The amendments revise the containment cooling systems limiting conditions for operation technical specifications to bring them into conformance with recently completed system analyses by no longer permitting both containment spray pumps to be inoperable at the same time.

Date of issuance: February 10, 1997.

Effective date: February 10, 1997, with full implementation within 30 days.

Amendment Nos.: 125 and 117.

Facility Operating License Nos. DPR–42 and DPR–60: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 4, 1996 (61 FR 64388).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 10, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Philadelphia Electric Company, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania.

Date of application for amendments: November 25, 1996.

Brief description of amendments: These amendments revise the wording in TS Section 4.8.1.1.2.e.2 and the associated TS Bases Section 3/4.8, to remove the specific reference to the Residual Heat Removal (RHR) pump motor and its corresponding kW rating value, and replace it with wording consistent with that specified in the Improved TS (i.e., NUREG–1433, Revision 1, "Standard Technical Specifications General Electric Plants," dated April 1995).

Date of issuance: February 4, 1997.

Effective date: Both units, as of date of issuance, to be implemented within 30 days.

Amendment Nos.: 121 and 85.

Facility Operating License Nos. NPF–39 and NPF–85. The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: December 18, 1996 (61 FR 66716).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 4, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464.

Philadelphia Electric Company, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania.

Date of application for amendments: September 27, 1996.

Brief description of amendments: These amendments increase the reactor enclosure secondary containment maximum inleakage rate, and also impact secondary containment drawdown time and system flow rate assumptions, thereby, affecting charcoal filter bed efficiency and post accident dose analysis.

Date of issuance: February 11, 1997.
Effective date: Both units, as of the date of issuance, to be implemented within 30 days.
Amendment Nos.: 122 and 86.
Facility Operating License Nos. NPF–39 and NPF–85. The amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** December 4, 1996 (61 FR 64392).
The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 11, 1997.
No significant hazards consideration comments received: No.
Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464.
Philadelphia Electric Company, Docket No. 50–353, Limerick GeneratingStation, Unit 2, Montgomery County, Pennsylvania.
Date of application for amendment: December 6, 1996, as supplemented by letters dated January 15, and 28, 1997.
Brief description of amendment: This amendment modifies Technical Specification (TS) Section 2.1 and its associated TS Bases to reflect the change in the Minimum Critical Power Ratio safety limit due to the use of GE13 fuel product line and the cycle-specific analysis performed by General Electric Company (GE), for LGS, Unit 2, Cycle 5.
Date of issuance: February 12, 1997.
Effective date: As of date of issuance, to be implemented within 30 days.
Amendment No.: 87.
Facility Operating License No. NPF–85. This amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** December 23, 1996 (61 FR 67582).
The January 15, and 28, 1997, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination.
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 12, 1997.
No significant hazards consideration comments received: No.
Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464.
Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey.
Date of application for amendments: June 10, 1996, as supplemented June 24, July 1, August 13, September 20, and October 17, 1996.
Brief description of amendments: The amendments change Technical Specifications 3/4.3.3.1, "Radiation Monitoring Instrumentation," and 3/4.7.6, "Control Room Emergency Air Conditioning System," to reflect a control room design in which the common Unit 1 and Unit 2 control room envelope is supplied by 2 one hundred percent capable Control Room Emergency Air Conditioning System trains.
Date of issuance: February 6, 1997.
Effective date: Both units, as of date of issuance, to be implemented within 30 days.
Amendment Nos.: 190 and 173.
Facility Operating License Nos. DPR–70 and DPR–75. The amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** June 24, 1996 (61 FR 32468) The June 24, July 1, August 13, September 20, and October 17, 1996, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination nor expand the scope of the initial submittal as described in the initial notice.
The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 6, 1997.
No significant hazards consideration comments received: No.
Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079.
Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey.
Date of application for amendments: May 31, 1996, as supplemented December 23, 1996.
Brief description of amendments: The amendments change the Technical Specification to (1) Revise the reactor vessel level indication system action statements, (2) revise the channel calibration definition, and (3) delete a requirement to install la jumper in the auxiliary feedwater actuation logic.
Date of issuance: February 6, 1997.
Effective date: Both units, as of its date of issuance, to be implemented within 60 days.
Amendment Nos.: 191 and 174.
Facility Operating License Nos. DPR–70 and DPR–75. The amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** June 17, 1996 (61 FR 30641).
The December 23, 1996, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.
The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 6, 1997.
No significant hazards consideration comments received: No.
Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079.
Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama.
Date of amendments request: November 15, 1996.
Brief Description of amendments: The amendments replace Containment Systems TS 3.6.2.2 for the Spray Additive System, with a new Emergency Core Cooling Systems (ECCS) TS 3.5.6 for the ECCS Recirculation Fluid pH Control System.
Date of issuance: February 3, 1997.
Effective date: As of the date of issuance to be implemented prior to Mode 4 for Unit 1 following the spring 1997 refueling outage; for Unit 2 following the spring 1998 refueling outage.
Amendment Nos.: 123 and 118.
Facility Operating License Nos. NPF–2 and NPF–8: Amendments revise the Technical Specifications.
Date of initial notice in **Federal Register:** December 18, 1996 (61 FR 66718).
The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 3, 1997.
No significant hazards consideration comments received: No.
Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302.
Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio.
Date of application for amendment: August 7, 1996.
Brief description of amendment: The amendment revises Technical Specification (TS) 1.0, "Definitions," by defining a refueling interval to be [less than or equal to] 730 days; and revises TS 3/4.0, "Applicability," TS 3/4.6.2.1, "Containment Systems—Depressurization and Cooling Systems—Containment Spray System," and TS 3/4.6.3.1, "Containment Systems—Containment Isolation Valves," to reflect performing surveillance tests during a refueling interval rather than every 18 months.
Date of issuance: February 10, 1997.
Effective date: February 10, 1997, to be implemented not later than 120 days after issuance.
Amendment No.: 213.
Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** October 9, 1996 (61 FR 52970).
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 10, 1997.
No significant hazards consideration comments received: No.
Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, Ohio 43606.
Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio.
Date of application for amendment: September 12, 1996.
Brief description of amendment: The amendment revised Technical Specifications (TS) 3/4.1.3.4, "Reactivity Control Systems—Rod Drop Time," and TS 3/4.5.2, "Emergency Core Cooling Systems—Tavg [greater than or equal to] 280°F," to change the surveillance test interval from every 18 months to each refueling interval ([less than or equal to] 730 days, nominally 24 months). Additionally, the amendment removed a footnote for TS 4.5.2.b that is no longer applicable.
Date of issuance: February 11, 1997.
Effective date: February 11, 1997, to be implemented not later than 120 days over issuance.
Amendment No.: 214.
Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** October 9, 1996.
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 11, 1997.
No significant hazards consideration comments received: No.
Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 19th day of February 1997.

For the Nuclear Regulatory Commission.
Jack W. Roe,
Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–4573 Filed 2–25–97; 8:45 am]
BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Request For Public Comment

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.
Reapproval:
Rule 24b–2
SEC File No. 270–153
OMB Control No. 3235–0127

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission ("Commission") is publishing the following summary of collection for public comment.

Rule 24b–2 (17 CFR 240.25b–2) provides a procedure, whereby persons filing documents with the Commission may request confidential treatment of information contained in such documents, and may request Commission review of adverse staff determinations regarding the confidential treatment request.

Approximately 630 requests for confidential treatment are made per year. Applications pursuant to the rule are generally prepared in conjunction with the document for which confidential treatment is being requested. Based upon our review of the applications we have received, we believe that not more than 30 minutes of the time spent in preparing the entire filing may be attributed to the application required under Rule 24b–2. Thus, the total compliance burden is 315 hours. The approximate cost per hour is $100, resulting in a total cost of compliance for respondents of $31,500 per year (315 hours @$100).

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: February 19, 1997.
Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 97–4748 Filed 2–25–97; 8:45 am]
BILLING CODE 8010–01–M

[Rel. No. IC–22521; 813–152]

Partners Income Fund; Notice of Application

February 20, 1997.
AGENCY: Securities and Exchange Commission ("SEC").
ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: Partners Income Fund (the "Initial Partnership").
RELEVANT ACT SECTIONS: Order requested under section 6(b).
SUMMARY OF APPLICATION: Applicant requests an order that would amend a prior order to permit the employer of certain employees' securities companies to invest in those companies on terms no more favorable than those available to eligible employees.
FILING DATES: The application was filed on August 6, 1996 and amended on November 26, 1996.
HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 17, 1997 and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.
ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, c/o McKinsey & Company.

Inc., Park Avenue Plaza, 55 East 52nd Street, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: Mary T. Geffroy, Staff Attorney, at (202) 942–0553, or Mercer E. Bullard, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. McKinsey & Co., Inc. ("McKinsey"), a New York corporation, is, together with its majority owned subsidiaries, an internationally known business consulting and management firm that, with its affiliated companies, is engaged in various facets of the consulting business. The Initial Partnership, a general partnership organized under the laws of the State of New York, was organized by management group members of McKinsey. The Initial Partnership and other existing and future partnerships sponsored by McKinsey (collectively, the "Partnerships") are, or will be, employees' securities companies within the meaning of section 2(a)(13) of the Act and operate, or will operate, as closed-end management investment companies.

2. In an order issued on September 14, 1992 (the "Original Order"), the SEC granted the Partnerships an exemption from all provisions of the Act except sections 7, 8(a), (9), certain provisions of section 17, sections 36 through 53, and the rules and regulations relating to those sections.[1] The Initial Partnership is currently the only entity relying on the Original Order. Applicant requests that the Original Order be amended to permit McKinsey to invest in a Partnership on terms no more favorable than those on which Eligible Employees[2] may invest. Applicant states that the purpose of the Partnerships, their operation and the other relevant facts remain materially as described in the original application ("Original Application").

3. Condition 2(a) of the notice of the Original Order states that "the Partnership will not make any investment in which McKinsey is a participant * * * other than (i) as general partnership in a Partnership organized as a limited partnership, to the limited and *pro rata* extent described in the application."[3] Applicant believes that this condition could be read as prohibiting McKinsey from investing at all in general partnerships (such as the Initial Partnership) and limiting McKinsey's ability to invest in limited partnerships to 1% of capital accounts.

4. Applicant explains that, at the time of the Original Application, it was not contemplated that McKinsey would invest in the Partnerships other than as stated in condition 2(a)(i). Applicant states that McKinsey has now determined that, from time to time, it will have excess funds available for investment, and would like to be able to invest in the Initial Partnership and Subsequent Partnerships on terms no more favorable than those available to other investors therein. Applicant contends that investments by McKinsey in a Partnership should promote the community of interests among the employer and employee investors in the Partnership.

5. Applicant represents that McKinsey would invest in a Partnership only where it had determined that the Partnership's investment objective was consistent with its own investment plans for its funds. A Partnership will permit McKinsey to invest in such Partnership only if (1) The Fairness Determining Body[4] of such Partnership determines, at the time of each such investment by the McKinsey entity, that the terms of such investment are no more favorable to the McKinsey entity than to other investors and that such Partnership will be able to invest such funds in accordance with the Partnership's investment objective and policies without any material adverse effect on the other partners in such Partnership, and such Partnership will refuse to accept any such McKinsey investment to the extent such determination cannot be made; (2) the McKinsey entity proposing to make the investment sends a notice of the proposed investment and its approximate amount to the partners of such Partnership a reasonable time before the relevant deadline for partners or other Eligible Employees to invest (or, if later, the deadline to cancel an investment commitment already made); and (3) the McKinsey entity making the investment commits not to redeem any portion of its investment in a Partnership unless it has given reasonable (but not less than 7 days') notice to the other partners in such Partnership prior to the date any similar redemption notice from such other partners is due.

6. Applicant requests an order amending the Original Order to permit McKinsey to invest in a Partnership on terms no more favorable than those available to the Eligible Employees and pursuant to the same relief from the act and the rules and regulations thereunder as in the Original Order, but subject to a modification of one condition. The requested modification would be accomplished by deleting from condition 2(a) the phrase "(i) as general partner in a Partnership organized as a limited partnership, to the limited and *pro rata* extent described in the application" and replacing it with "(i) to the extent McKinsey may be a partner in a Partnership".

Applicant's Condition

Applicant agrees to comply with all of the terms and conditions of the Original Order except that condition 2(a) of the notice of the Original Order is amended and restated to read: "(i) to the extent McKinsey may be a partner in a Partnership".

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4750 Filed 2–25–97; 8:45 am]

BILLING CODE 8010–01–M

[1] See Investment Company Act Release No. 18897 and Investment Advisers Act Release No. 1323 (August 17, 1992) (notice), and Investment Company Act Release No. 18948 and Investment Advisers Act Release No. 1335 (September 14, 1992) (order). The Original Order also granted an exemption under section 206A of the Investment Advisers Act from one disclosure requirement of Form ADV.

[2] The Original Application stated that the opportunity to become a partner in the Partnerships would be offered only to "Eligible Employees" of McKinsey. Eligible Employees were defined as: (i) Directors, Principals and Administrative Shareholders, all of whom are owners of common shares of McKinsey, (ii) "retired" Directors, Principals and Administrative Shareholders subject to certain limitations, (iii) a very small number, not more than ten at any one time (*i.e.*, for all Partnerships in existence), of non-management group members responsible for administering the Partnerships and employee benefit plans for McKinsey, and (iv) a very small number of other employees (*i.e.*, for all Partnerships in existence), determined to have the degree of sophistication, access to the management of the partnerships and financial resources comparable to the individuals in clause (i).

[3] The Original Application stated that the general partner in a limited partnership generally must invest at least 1% of total positive capital account balances in each Partnership organized as a limited partnership (up to $500,000 per Partnership), and must maintain this investment at a specified level for the life of each such Partnership.

[4] The Original Application describes the Fairness Determining Body as "consisting of members of the Advisory Committee or Management Committee [as such terms are defined in the Original Application], as the case may be, of that Partnership."

[Investment Company Act Release No. 22519; 811–1149]

Pennsylvania Mutual Fund; Notice of Application

February 19, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Pennsylvania Mutual Fund.

RELEVANT ACT SECTIONS: Order requested under section 8(f).

FILING DATES: The application was filed on September 20, 1996, and amended on February 6, 1997.

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 14, 1997, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, c/o Quest Advisory Corp., 1414 Avenue of the Americas, New York, NY 10019.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Knisely, Staff Attorney, at (202) 942–0517 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a registered open-end management investment company, is organized as a business trust which is registered under the Delaware Business Trust Act. On or about January 31, 1962, applicant registered under the Act. On March 21, 1962, applicant filed a registration statement under the Securities Act of 1933 which became effective August 17, 1962, and subsequently made a public offering of its shares.

2. On April 18, 1996, applicant's trustees approved an Agreement and Plan of Merger ("Plan"), under which all of the assets and debts of the applicant would be transferred to the Pennsylvania Mutual Fund series of The Royce Fund, a Delaware business trust registered under the Act as an open-end management investment company, in exchange for shares of the Pennsylvania Mutual Fund series of The Royce Fund. Pursuant to rule 17a–8 under the Act,[1] applicant's trustees found that the Plan was in the best interests of applicant and that the interests of the existing shareholders would not be diluted as a result of the proposed reorganization.

3. As of June 27, 1996, applicant had one class of shares, consisting of 56,045,686.017 shares outstanding with a net asset value of $8.15 per share and an aggregate net asset value of $456,772,341.03.

4. Effective June 28, 1996, applicant transferred its assets to the Pennsylvania Mutual Fund series of The Royce Fund. In total, shareholders of applicant received shares of the Pennsylvania Mutual Fund series of The Royce Fund having an aggregate net asset value equal to applicant's net asset value at the time of the reorganization.

5. Expenses incurred in connection with the Plan consisted of legal fees, postage, and registration in some states and totaled $72,201.32. Pursuant to the Plan, expenses were shared by applicant and The Royce Fund in proportion to their respective assets. Accordingly, applicant paid $10,744.66 for registration and filing fees, $900.85 for postage, and $26,973.81 in legal fees. The Royce Fund incurred the balance, with expenses being allocated among the series of The Royce Fund, not including the newly-created Pennsylvania Mutual Fund series.

6. As of the date of filing of the original application, applicant had no shareholders, assets or liabilities, and was not a party to any litigation or administrative proceeding. Applicant is not presently engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

7. On June 28, 1996, applicant was a party to a Certificate of Merger filed with the State of Delaware.

[1] Rule 17a–8 provides an exemption from section 17(a) of the Act for certain reorganizations among registered investment companies that may be affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4670 Filed 2–25–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38314; File No. SR–MBSCC–96–08]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Liens on Participants' Property

February 19, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 20, 1996, the MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–MRSCC–96–08) as described in Items I, II, and III below, which items have been prepared primarily by MBSCC. On January 3, 1997, and January 14, 1997, MBSCC filed amendments to the proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change modifies MBSCC's rules to explicitly state that MBSCC has a lien on all property placed in MBSCC's possession by its participants.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MBSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change.

The text of these statements may be examined at the places specified in Item IV below. MBSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

[1] 15 U.S.C. 78s(b)(1).

[2] Letters from Julie Beyers, Associate Counsel, MBSCC (January 3, 1997, and January 14, 1997).

[3] The Commission has modified the text of the summaries prepared by MBSCC.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to modify MBSCC's rules to explicitly state that MBSCC has a lien on all property placed in its possession by its participants. Unlike other clearing organizations, MBSCC's rules do not contain specific language stating that MBSCC has such a lien.[4] However, according to MBSCC, MBSCC always intended to have a lien on all property placed in its possession by its participants. Therefore, in order to clarify this issue, the proposed rule change adds language providing MBSCC with assurances that, in the event one of its participants fails to discharge its liabilities, MBSCC will have first priority with respect to the participant's property in MBSCC's possession. The proposed rule change also revises MBSCC's rules to clarify that any cash received with respect to any deposits to MBSCC's participants fund and not yet distributed to a participant is available to MBSCC for satisfaction of participant liabilities.

MBSCC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act[5] and the rules and regulations thereunder because it will facilitate the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. MBSCC will notify the Commission of any written comments received by MBSCC.

[4] For example, the rules of the National Securities Clearing Corporation ("NSCC") and the International Securities Clearing Corporation ("ISCC") provide NSCC and ISCC with liens on property placed in their possession by their participants. The language contained in the present proposed rule change is substantially similar to the language contained in NSCC's and ISCC's respective rules. NSCC Rule 18, Section 2(f) and ISCC Rule 18, Section 3.

[5] 15 U.S.C. 78q–1(b)(3)(F).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which MBSCC consents, the Commission will:

(a) by order approve such proposed rule change or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of MBSCC. All submissions should refer to the file number SR–MBSCC–96–08 and should be submitted by March 19, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4671 Filed 2–25–97; 8:45 am]

BILLING CODE 8010–01–M

[6] 17 CFR 200.30–3(a)(12).

[(Release No. 34–38313); File No. SR–PTC–96–06]

Self-Regulatory Organizations; Participants Trust Company; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Authorize the Release of Clearing Data

February 19, 1997.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on November 22, 1996, the Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared primarily by PTC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change modifies Article VI of PTC's rules to add a new Rule 14 which authorizes PTC to release transaction and other data relating to participants obtained by PTC in the normal course of business.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to modify Article VI of PTC's rules to add a new Rule 14 which authorizes PTC to release transaction and other data relating to participants obtained by PTC in the normal course of its business. The rule will permit PTC to disclose such data to (1) regulatory, self-regulatory, other similar organizations, (2) clearing organizations which are under the oversight of the

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by PTC.

Commodity Futures Trading Commission, and (3) to other entities as may be authorized by a participant. The proposed rule change will allow PTC to participate in the National Securities Clearing Corporation's ("NSCC") Collateral Management Service ("CMS")[3] and to provide information to the CMS database regarding PTC's participants' net debit and credit balances, participants' fund deposits, including excess (deficit) amounts, and comprehensive data on underlying collateral.

PTC believes the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it sets forth PTC's responsibilities and obligations with regard to releasing participant's clearing data and facilitates PTC's participation in the CMS database by permitting PTC to provide participant information to the CMS database.

(B) Self-Regulatory Organization's Statement on Burden on Competition

PTC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments have been solicited or received. PTC will notify the Commission of any written comments received by PTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[4] The Commission believes the proposed rule change is consistent with PTC's obligation under Section 17A(b)(3)(F) because the proposal sets forth PTC's responsibilities and obligations with regard to releasing participants' clearing data and should facilitate PTC's participation in NSCC's CMS by allowing PTC to provide participant information to NSCC for use in its CMS. PTC's and its participants' participation in NSCC's CMS should help PTC and other clearing agencies to better monitor their clearing members' clearing fund, margin, and other similar required deposits that protect the clearing agencies against loss should a member default on its obligations.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing because accelerated approval will allow PTC to immediately participate in NSCC's CMS thus allowing both PTC and other clearing agency participants in the CMS to benefit from the data contained in CMS regarding common participants.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of PTC. All submissions should refer to File No. SR–PTC–96–06 and should be submitted by March 19, 1997.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–PTC–96–06) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4751 Filed 2–25–97; 8:45 am]

BILLING CODE 8010–01–M

[3] Securities Exchange Act Release No. 35809 (June 5, 1995), 60 FR 30912 [File No. SR–NSCC–95–06] (order approving proposed rule change establishing the CMS).

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 17 CFR 200.30–3(a)(12).

[Release No. 34–38318; File No. SR–SCCP–96–14]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Implementing a Collection Service for Regulatory Fees

February 20, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 6, 1997, the Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared primarily by SCCP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will permit SCCP to act as a collection agent for the National Association of Securities Dealers ("NASD") for Section 31 fees.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, SCCP included statements concerning the purpose of and statutory basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. SCCP has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

SCCP proposes to serve as a collection agent for the NASD for Section 31 fees as required in the National Securities Markets Improvement Act of 1996.[3] Section 31 fees will apply to all domestic and foreign securities listed on the NASDAQ Stock Market with the exception of convertible debt. Upon its implementation, the fee will be 1/300th of one percent based upon the aggregate dollar amount of sales transacted by or through any member other than those

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] Pub. L. 104–920, 110 Stat. 3416 (1996).

sales consummated on a securities exchange subject to last-sale reporting.

On a monthly basis, the NASD will calculate the Section 31 fees for each NASD member clearing firm based upon the transaction data submitted to the NASD's Automated Confirmation Transaction Service ("ACT"). The NASD will generate customer invoices and an invoice summary register that it will deliver to SCCP immediately following the end of each month. Upon receipt, SCCP will distribute the NASD generated invoices to NASD clearing firms that have a primary clearing relationship with SCCP. SCCP will collect each member's Section 31 fee as a part of SCCP's normal settlement process. The day following collection of the Section 31 fees, SCCP will remit a check to the NASD for the total amount collected minus a $100 service charge.

SCCP states that proposed collection procedures comply with Section 17A of the Act because it will foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not perceive any burdens on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(A) of the Act[4] requires that a clearing agency is organized and has the capacity to comply with the provisions of this title and the rule and regulations thereunder. The Commission believes that SCCP's proposed rule change is consistent with this section because the proposed rule change should facilitate the NASD in fulfilling its obligation to collect Section 31 fees under the National Securities Markets Improvement Act of 1996.

SCCP has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing because the proposal will permit SCCP to immediately begin collecting these Section 31 fees for the NASD.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at SCCP. All submissions should refer to File No. SR–SCCP–96–14 and should be submitted by March 19, 1997.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–SCCP–96–14) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4749 Filed 2–25–97; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78q–1(b)(3)(A).

[5] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice No. 2510]

Fine Arts Committee; Notice of Meeting

The Fine Arts Committee of the Department of State will meet on Saturday, March 22, 1997 at 10:00 a.m. in the John Quincy Adams State Drawing Room. The meeting will last until approximately 11:30 a.m. and is open to the public.

The agenda for the committee meeting will include a summary of the work of the Fine Arts Office since its last meeting in October 1996 and the announcement of gifts and loans of furnishings as well as financial contributions for calendar year 1996. Public access to the Department of State is strictly controlled. Members of the public wishing to take part in the meeting should telephone the Fine Arts Office by Monday, March 17, 1997, telephone (202) 647–1990 to make arrangements to enter the building. The public may take part in the discussion as long as time permits and at the discretion of the chairman.

Dated: February 7, 1997.

Gail F. Serfaty,

Vice Chairman, Fine Arts Committee.

[FR Doc. 97–4746 Filed 2–25–97; 8:45 am]

BILLING CODE 4710–38–M

[Public Notice No. 2511]

Shipping Coordinating Committee Subcommittee on Safety of Life at Sea; Working Group on Bulk Liquids and Gases; Notice of Meeting

The Working Group on Bulk Liquids and Gases (BLG) of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting at 9:30 am on Monday, March 24, 1997 in Room 6319, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, DC 20593–0001. The purpose of the meeting is to finalize preparations for the Second Session of the Subcommittee on Bulk Liquids and Gases of the International Maritime Organization (IMO) which is scheduled for April 7–11, 1997, at the IMO Headquarters in London.

The agenda items of particular interest:

a. Tanker pump-room safety.

b. Revision of the International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978 (MARPOL 73/78) regulations I/22 to 24 in the light of the probabilistic methodology for oil outflow analysis.

c. Review of Annexes I and II of MARPOL 73/78.

d. Revision of carriage requirements for carbon disulfide in the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (IBC Code).

e. Requirements for personal protection involved in transportation of cargoes containing toxic substances in oil tankers.

f. Amendments to the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk and the Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk.

g. Revision of chapter 8 of the IBC Code in the light of the revised SOLAS regulation II–2/59.

h. Evaluation of safety and pollution hazards of chemicals and preparation of consequential amendments.

i. Assessment of alternative tanker designs.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: Commander K. S. Cook, U.S. Coast Guard (G–MSO–3), 2100 Second Street, S.W., Washington, DC 20593–0001 or by calling (202) 267–1577.

Dated: February 12, 1997.

Russell A. La Mantia,

Chairman, Shipping Coordinating Committee.

[FR Doc. 97–4745 Filed 2–25–97; 8:45 am]

BILLING CODE 4710–07–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

United States Pacific Trade and Investment Policy Commission

Notice of Meeting of the Commission on United States Pacific Trade and Investment Policy

AGENCY: Commission on United States—Pacific Trade and Investment Policy/ Office of the United States Trade Representative.

ACTION: Notice that the next meeting of the Commission on United States—Pacific Trade and Investment Policy is scheduled for February 28, 1997 from 9:30 a.m. to 5:30 p.m. This meeting will be open to the public from 9:30 to 12:00, closed to the public during a working luncheon from 12:00 to 1:30 p.m. and open to the public from 1:30 to 5:30.

SUMMARY: The Commission on United States—Pacific Trade and Investment Policy will hold its next meeting on February 28, 1997 from 9:30 a.m. to 5:30 p.m. These meetings will be open to the public from 9:30 a.m. to 12:00, closed to the public during a working luncheon from 12:00 to 1:30 p.m. and open to the public from 1:30 to 5:30 p.m. These meetings will focus on finalization of the Commission's report to the Presidednt and the process for releasing the report. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code, the USTR has determined that portions of this meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States.

DATES: This meeting is scheduled for February 28, 1997, unless otherwise notified.

ADDRESSES: The meetings will be held at the U.S. Department of Commerce, 14th and Constitution Avenues, N.W., Washington, D.C., Room 6029, unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Nancy Adams, Executive Director of the Commission on United States—Pacific Trade and Investment Policy, Room 400, 600 17th Street, N.W., Washington, D.C. 20508, (202) 395–9679.

Nancy Adams,

Executive Director, Commission on United States—Pacific Trade and Investment Policy.

Charlene Barshefsky,

United States Trade Representative, Acting.

[FR Doc. 97–4937 Filed 2–24–97; 1:53 pm]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD8–97–002]

Coast Guard and Army Corps of Engineers Marine Industry Navigation Conference

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Coast Guard and the Army Corps of Engineers are sponsoring a Marine Industry Navigation Conference in Louisville, Kentucky. This notice announces the event that is open to the public.

DATES: The conference will be held on March 4 & 5, 1997 from 8:30 a.m. to 7:30 p.m. on March 4 and 8:30 a.m. to 5:00 p.m., on March 5.

ADDRESSES: The Galt House Hotel, 140 North Fourth Street, Louisville, KY 40202.

FOR FURTHER INFORMATION CONTACT: YN1 David Orzechowski or Commander Michael L. Schafersman, United States Coast Guard, Director, Western Rivers Operations, 1222 Spruce Street, St. Louis, Missouri 63103–2832. The telephone number is: (314) 539–3900 (Ext 421/396).

SUPPLEMENTARY INFORMATION: The Marine Industry Navigation Conference provides an open exchange of information, ideas and opinions on matters of mutual interest or concern to the inland marine community, the Corps of Engineers and the Coast Guard. Members of the public are invited to attend this conference. There is no charge to attend this conference, or for the handouts and printed material which will be made available to all conference attendees. Coffee and refreshments and meals during the convention (2 lunches and 1 dinner) may be purchased by conference attendees. The cost of this service will be $100 and will be collected during the registration session at the Galt House. Attendees may participate in all sessions of the conference, including attending the luncheon address, without paying for the meal service.

Proposed Conference Agenda

Monday, March 3, 1997.

5:30–7:30 p.m. (Preregistration).

Day 1—Coast Guard Topics

Tuesday, March 4, 1997.

7:00 Registration continues.

8:30 Welcome address by COL HARRY L. SPEAR, JR., Commander, Louisville Engineer District. Opening Remarks by RADM TIMOTHY W. JOSIAH; Commander, Eighth Coast Guard District; COL ALEXANDER R. JANSEN, Commander, Ohio River Division; MR. NORB WHITLOCK, American Commercial Barge Lines; MS. K. C. STANLEY-LYNN, National President, Passenger Vessel Association.

9:15 General Session: Prevention Through People.

10:00 Break.

10:30 Bridge update; Drug & Alcohol Program; Commercial and Recreation Vessel Safety Program; Coast Guard and American Waterways Operators Regional Steering Report.

11:45 Lunch: Awards; Speaker: VICE ADMIRAL R. D. HERR, Vice Commandant, U.S. Coast Guard.

1:15 Break

1:45 Panel Session Topics: Towing Industry Panel; Fire Safety on Towing Vessels; Cooperative Boarding Program; Deckhand Fatality Quality Act Team Report; New Licensing & Manning Rules; Navigation Safety; Marine Personnel Advisory Committee—Navigation Safety Advisory Committee—Towing Safety Advisory Committee—Chemical Technical Advisory Committee (handouts).

1:45 Passenger Vessel Panel Topics: Passenger Vessel Industry Update; Passenger Vessels vs. Gaming Vessels; National Streamlined Inspections Program; Local Streamlined Inspection Program; High Capacity Passenger Vessel

Contingency Drills; High Capacity Passenger Vessel Egress Quality Action Team Report.

3:45 Break

4:15 General Session: General Discussions.

4:45 Break

6:00 Round Table Discussions; Heavy Hors D'oeuvres, Cash Bar; Galt House Hotel.

Day 2—Corps of Engineers Topics

Wednesday, March 5, 1997.

7:45 Registration

8:30 Administrative Updates.

8:35 American Waterways Operators Update; The Association for the Development of Inland Navigation in America's Ohio Valley Update; Midwest Area Regional Committee 2000 Update.

9:00 Maritime Administration Study; Ohio River Mainstream Study; Missouri River Master Plan; Upper Mississippi River Study; Environmental Summit.

9:30 New Construction Update by River Segments to include innovative design. Specific Projects: Olmsted, Winfield, Lower Monongahela, Marmet, Kentucky Lock, & others.

10:00 Break.

10:30 New Construction—continued.

11:00 Lock Capacity Improvement Team Results.

11:30 Critical Operations & Maintenance; Backlog Items; Lock & Dam No. 27; Upper Tennessee River Locks; Chickamauga Lock.

12:00 Lunch: Washington, D.C. Update.

1:45 Summary of Operations & Maintenance Cost; Reduction Potential Results of Implementing Report; Industry's Involvement; Ways to Reduce Impact.

2:45 Electronic Charts, Navigation Chart Update, Vessel Traffic Service Louisville District; Digital Global Positional System Update.

3:30 Upper Mississippi River; Dredging-Preventive Maintenance.

4:00 Open discussion: COL ALEXANDER R. JANSEN and MR. NORB WHITLOCK.

Persons interested in attending the Marine Industry Navigation Conference may request registration forms or additional information on the conference activities and on events scheduled by other groups to coincide with the conference at the address provided above.

Dated: February 18, 1997.

T.W. Josiah,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 97–4767 Filed 2–25–97; 8:45 am]

BILLING CODE 4910–14–M

[CGD 97–011]

Minimum Requirements and Capabilities for Vessel Traffic Services

AGENCY: Coast Guard, DOT.

ACTION: Notice of public meeting.

SUMMARY: The Coast Guard is undertaking an effort to identify the minimum requirements and capabilities a Vessel Traffic Service (VTS) must have to serve its wide range of users and to develop criteria to identify ports requiring a VTS. This effort will form the basis for the Coast Guard to propose to Congress a viable production program for a VTS that takes advantage of available, off-the-shelf and open architecture systems that are inexpensive and easy to build and operate. The Coast Guard has invited representatives of maritime and environmental organizations and members of the public to provide input on these topics. The first public meeting on these topics was held on January 15, 1997. The most recent was held on February 11, 1997. Several additional public meetings are planned.

DATES: The Coast Guard will sponsor a public meeting to be held on February 27, 1997, from 9:00 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: For information on VTS, contact Mike Sollosi, U.S. Coast Guard Office of Vessel Traffic Management, 2100 2nd Street, SW, Washington DC. Telephone (202) 267–1539, FAX (202) 267–4826. For information on the meeting, contact Peter Johnson, Marine Board, National Academy of Sciences, 2001 Wisconsin Avenue, NW, Washington, DC. Telephone (202) 334–3157, FAX (202) 334–3789.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 97–4766 Filed 2–25–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE TREASURY

Financial Management Service

Privacy Act of 1974; System of Records

AGENCY: Financial Management Service, Treasury.

ACTION: Notice of alteration of Privacy Act system of records.

SUMMARY: The Department of the Treasury, Financial Management Service (FMS), gives notice of a proposed alteration to the system of records entitled "Debt Collection Operations System -Treasury/FMS .014,"which is subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a). The system was last published in its entirety in the **Federal Register** Vol. 60, page 56776 on November 9, 1995, and subsequently altered in the **Federal Register** Vol. 61, page 11939 on March 22, 1996.

DATES: Comments must be received no later than March 28, 1997. The proposed system of records will be effective April 7, 1997, unless FMS receives comments which would result in a contrary determination.

ADDRESS: Comments must be submitted to the Debt Management Services, Financial Management Service, 401 14th Street, SW, Room 151, Washington, DC 20227. Comments received will be available for inspection at the same address between the hours of 9a.m. and 4p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Gerry Isenberg, Debt Management Services, (202) 874–6859.

SUPPLEMENTARY INFORMATION: The Debt Collection Improvement Act of 1996 (DCIA), Pub. L. 104–134, enacted April 26, 1996, provides the Department of the Treasury (Treasury) with specific legislative authority and responsibility to collect and/or manage the collection of claims owed to the Federal Government. The DCIA also provides new government-wide debt collection tools such as administrative wage garnishment, public dissemination of delinquent debtor information, and authorizes the sale of debt to the private sector. The DCIA authorizes Treasury to collect claims, or facilitate the collection of claims, owed to States, Territories and Commonwealths of the United States, and the District of Columbia by offsetting Federal payments. Similarly, under the provisions of the DCIA, Treasury may enter into agreements with States, Territories, Commonwealths, and the District of Columbia to facilitate collection of debts owed to the Federal Government by offset of State, Territory, Commonwealth and District of Columbia payments. Finally, the DCIA bars agencies from extending Federal financial assistance in the form of a Federal loan or loan guaranty if the applicant is delinquent on a Federal claim. Consistent with the DCIA, Executive Order 13019, signed by the President on September 28, 1996, directs Treasury to promptly take steps to facilitate:

(1) Offset of Federal payments to collect delinquent child support debts being enforced by States; and

(2) Denial of Federal credit in the form of a Federal loan or loan guaranty to persons delinquent on their child support debts. FMS is the Treasury bureau responsible for the implementation of the DCIA and the Executive Order.

For the reasons set forth in the preamble, FMS proposes to alter system of records Treasury/FMS .014, "Debt Collection Operations System—Treasury/Financial Management Service", as follows:

Treasury/FMS .014

SYSTEM NAME:

Debt Collection Operations System—Treasury/Financial Management Service.

SYSTEM LOCATION:

Description of change: The words "Debt Collection Operations"are replaced with the words "Debt Management Services".

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

* * *

Description of change: The following is added at the end thereof:

"Records are also maintained on individuals who are indebted to States, Territories and Commonwealths of the United States, and the District of Columbia, including records on individuals who owe past due support which is being enforced by a State, Territory, Commonwealth or the District of Columbia."

CATEGORIES OF RECORDS IN THE SYSTEM:

Description of changes:

The word "agency" in the first sentence is replaced by "governmental entity", and the words "client agency" in the second sentence are replaced by "governmental entity".

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Description of change:

After "* * * and the Deficit Reduction Act of 1984 (Pub. L. 98–369, as amended);" insert "The Debt Collection Improvement Act of 1996 (Pub. L. 104–134,§ 31001); * * *"

PURPOSE(S):

Description of change:

The first sentence is revised to read,"The purpose of this system is to maintain records of individuals and entities that are: (1) Indebted to the Financial Management Service (FMS); (2) indebted to the various Federal Government departments and agencies and whose accounts are being serviced or collected by FMS; and (3) indebted to States, Territories and Commonwealths of the United States, and the District of Columbia (including past due child support debts being enforced by the States, Territories, Commonwealths or the District of Columbia)."

* * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * * *

Description of changes:

The words "to the U.S. Government" and "and" are removed in routine use (7). The period "." at the end of routine use (8) is replaced with a semicolon ";", and the following routine uses are added at the end thereof:

"(9) Any Federal, State, or local agency, or to the public for the purpose of collecting on a delinquent debt through the use of debt collection tools authorized under the Debt Collection Improvement Act of 1996 such as referring the debt to debt collection centers, administrative wage garnishment, public dissemination of debtor information, or selling the debt; or any other legitimate debt collection purpose;

"(10) Any Federal, State or local agency for the purpose of accounting on or reporting the status of debts for which the Federal, State or local agency has a financial or other legitimate need for the information in the performance of official duties;

"(11) Any Federal agency or its agents for the purpose of denying Federal financial assistance in the form of a loan or loan guaranty to an individual delinquent on a Federal claim, or delinquent on a child support claim referred to FMS for administrative offset; and

"(12) Any State, Territory or Commonwealth of the United States, or the District of Columbia to collect a claim owed to the Federal Government or to assist in the collection of a State, Commonwealth, Territory or District of Columbia claim pursuant to a reciprocal agreement between FMS and the State, Territory, Commonwealth or the District of Columbia."

* * * * * *

Dated: February 18, 1997.

Alex Rodriguez,

Deputy Assistant Secretary (Administration).

[FR Doc. 97–4691 Filed 2–25–97; 8:45 am]

BILLING CODE: 4810–35–F

federal register

Wednesday
February 26, 1997

Part II

Department of Commerce

International Trade Administration

19 CFR Part 351
Countervailing Duties; Proposed Rule

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 351

[Docket No. 950306068–6185–03]

RIN 0625–AA45

Countervailing Duties

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of proposed rulemaking and request for public comments.

SUMMARY: The Department of Commerce ("the Department") proposes to establish regulations to conform the Department's existing countervailing duty regulations to the Uruguay Round Agreements Act, which implemented the results of the Uruguay Round multilateral trade negotiations. In addition to conforming changes, the Department has sought to issue regulations that: (1) Where appropriate and feasible, translate the principles of the implementing legislation into specific and predictable rules, thereby facilitating the administration of these laws and providing greater predictability for private parties affected by these laws; (2) simplify and streamline the Department's administration of countervailing duty proceedings in a manner consistent with the purpose of the statute and the President's regulatory principles; and (3) codify certain administrative practices determined to be appropriate under the new statute and under the President's Regulatory Reform Initiative.

DATES: Written comments will be due on April 28, 1997.

ADDRESSES: Address written comments to Robert S. LaRussa, Acting Assistant Secretary for Import Administration, Central Records Unit, Room 1870, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW, Washington, DC 20230. Comments should be addressed: Attention: Proposed Regulations/Uruguay Round Agreements Act—Countervailing Duties. Each person submitting a comment is requested to include his or her name and address, and give reasons for any recommendation.

FOR FURTHER INFORMATION CONTACT: Jennifer A. Yeske at (202) 482–0189 or Penelope Naas at (202) 482-3534.

SUPPLEMENTARY INFORMATION:

Background

This notice, which deals with countervailing duty ("CVD") methodology, constitutes part of a larger process of developing regulations under the Uruguay Round Agreements Act ("URAA"). The process began when the Department took the unusual step of requesting advance public comments in order to ensure that, at the earliest possible stage, we could consider and take into account the views of the private sector entities that are affected by the antidumping ("AD") and CVD laws. Following an extension of the comment period, on May 11, 1995, the Department published interim-final rules that dealt with a limited number of new or revised procedures resulting from the URAA. On February 8, 1996, the Department published proposed rules ("APO Regulations") that, among other things, revised procedures relating to administrative protective orders in AD and CVD proceedings. Finally, on February 27, 1996, the Department published proposed rules dealing with AD and CVD procedures and AD methodology ("AD Proposed Regulations").[1]

In these proposed regulations, the Department has continued to be guided by the objectives described in the AD Proposed Regulations. Specifically, these objectives are: (1) Conformity with the statutory amendments made by the URAA; (2) the elaboration through regulation of certain statements contained in the Statement of Administrative Action ("SAA");[2] and (3) consistency with President Clinton's Regulatory Reform Initiative and his directive to identify and eliminate obsolete and burdensome regulations.

In the case of CVD methodology, the Department's existing "regulations" consist largely of the proposed regulations published in 1989 ("1989 Proposed Regulations").[3] Because the Department never issued final rules, the 1989 Proposed Regulations were not binding on the Department or private parties. Nevertheless, to some extent both the Department and private parties relied on the 1989 Proposed Regulations as a restatement of the Department's CVD methodology as it existed at the time. Thus, notwithstanding statutory amendments made by the URAA and subsequent developments in the Department's administrative practice, the 1989 Proposed Regulations still serve as a point of departure for any new regulations dealing with CVD methodology.

As described in the AD Proposed Regulations, we have consolidated the AD and CVD regulations into a single part 351. For the most part, the regulations contained in this notice constitute subpart E of part 351. We anticipate that the consolidation of the AD and CVD regulations will make the regulations easier to use and, by reducing their sheer size, will make the regulations more accessible to the non-expert.

Comments—In General

The Department wishes to emphasize that the regulations contained in this notice are *proposed* regulations only. While they reflect our best judgment at this time regarding the appropriate style and content of regulations dealing with CVD methodology, we remain open-minded on the various issues raised herein. Therefore, we are very interested in receiving public comment on these proposed regulations. We have found the dialogue that commenced with the advance notice to be extremely useful, and we hope and expect that it will continue.

Comments—Format and Number of Copies

Each person submitting a comment should include his or her name and address, and give reasons for any recommendation. To facilitate their consideration by the Department, comments regarding these proposed regulations should be submitted in the following format: (1) Identify each comment by reference to the section and/or paragraph of these proposed regulations to which the comment pertains;[4] (2) begin each comment on a separate page; (3) concisely state the issue identified and discussed in the comment; and (4) provide a brief summary of the comment (a maximum of 3 sentences) and label this section "summary of the comment."

To help simplify the processing and distribution of comments, the Department encourages the submission of documents in electronic form accompanied by an original and two copies in paper form. We request that documents filed in electronic form be on DOS formatted 3.5" diskettes and prepared in either WordPerfect format or a format that the WordPerfect program can convert and import into WordPerfect. Please submit comments on a separate file on the diskette and identify each comment in the manner described in the preceding paragraph.

Comments received on diskette will be made available to the public on the Internet at the following address: http://www.ita.doc.gov/import_admin/records/.

In addition, the Department will make comments available to the public on 3.5" diskettes, with specific instructions for accessing compressed data, at cost, and paper copies will be available for reading and photocopying in Room B–099 of the Central Records Unit. Any questions concerning file formatting, document conversion, access on the Internet, or other file requirements should be addressed to Andrew Lee Beller, Director of Central Records, (202) 482–0866.

Explanation of the Proposed Rules

Section 351.102

These proposed regulations add several definitions to § 351.102. Many of these definitions are identical (or virtually identical) to definitions contained in § 355.41 of the 1989 Proposed Regulations, and some are based on definitions contained in the Illustrative List of Export Subsidies ("Illustrative List") annexed to the Agreement on Subsidies and Countervailing Measures ("SCM Agreement"). However, a few definitions warrant comment.

The definition of *firm* is based on § 355.41(a) of the 1989 Proposed Regulations, but an additional clause has been added to clarify that the purpose of this term is to serve as a shorthand expression for the recipient of an alleged subsidy. While other terms could be used, the use of the term "firm" in this manner has become an accepted part of CVD nomenclature.

Similarly, *government-provided* is used as a shorthand adjective to distinguish the act or practice being analyzed as a possible countervailable subsidy from the act or practice being used as a benchmark. As made clear in the regulation, the use of "government-provided" does not mean that a subsidy must be provided directly by a government.

Loan is defined to include forms of debt financing other than what one normally considers as a "loan," such as bonds, overdrafts, etc. Again, this definition is intended as a shorthand expression in order to avoid repetitive use of more cumbersome phrases, such as "loans or other debt instruments."

In this regard, the Department considered codifying its approach with respect to so-called "hybrid instruments," financial instruments that do not readily fall into the basic categories of grant, loan, or equity. In the 1993 steel determinations, *see Certain Cold-Rolled Carbon Steel Flat Products from Austria (General Issues Appendix)*, 58 FR 37062, 37254 ("*GIA*"), the Department developed a hierarchical approach for categorizing hybrid instruments, an approach that was sustained in *Geneva Steel* v. *United States*, 914 F. Supp. 563 (Ct. Int'l Trade 1996). However, notwithstanding this judicial imprimatur, the Department has relatively little experience with hybrid instruments. Therefore, although the Department has no present intention of deviating from the approach set forth in the *GIA*, the codification of this approach in the form of a regulation would be premature at this time.

Section 351.501

Section 351.501 restates very generally the subject matter of subpart E. To be a bit more specific, the arrangement of subpart E is as follows. After dealing with the specificity of domestic subsidies in § 351.502, §§ 351.503 through 351.512 deal with the identification and measurement of various general types of subsidy practices. Sections 351.513 through 351.519 focus on export subsidies, incorporating the appropriate standards from the Illustrative List. Section 351.520 deals with general export promotion activities of governments. Sections 351.521 through 351.523 deal with import substitution subsidies (currently designated as "Reserved"), certain agricultural subsidies, and upstream subsidies, respectively. Section 351.524 sets forth rules regarding the calculation of an *ad valorem* subsidy rate and the attribution of a subsidy to a product. Finally, §§ 351.525 through 351.527 contain rules regarding program-wide changes, transnational subsidies, and the tax consequences of benefits, respectively.

The last sentence of § 351.501 acknowledges that subpart E does not address every possible type of subsidy practice. However, the same sentence provides that in dealing with alleged subsidies that are not expressly covered by these regulations, the Secretary will be guided by the underlying principles of the Act and subpart E.

In this regard, the Act and the SCM Agreement serve to eliminate much of the confusion and controversy surrounding the necessary elements of a countervailable subsidy. First, under section 771(5)(B) of the Act and Article 1.1(a) (1) and (2) of the SCM Agreement, there must be a financial contribution that a government provides either directly or indirectly, or an income or price support in the sense of Article XVI of GATT 1994. Although the precise parameters will have to be determined on a case-by-case basis, this element provides a framework for analysis that was previously missing.

Second, under section 771(5)(B) and Article 1.1(b) of the SCM Agreement, the financial contribution (or income or price support) must confer a benefit. Although the concept of a "benefit to the recipient" is not new to U.S. CVD law, in some cases the meaning of this concept had become obscured. The new law clarifies this concept and eliminates any possibility of confusing the "benefit" of a subsidy with the "effect" of a subsidy. In particular, section 771(5)(E) of the Act and Article 14 of the SCM Agreement, through their description of the various standards (or "benchmarks") used to identify and measure the benefits attributable to different types of subsidy practices, make clear that a benefit is conferred when a firm pays less for its "inputs" than it otherwise would pay in the absence of the government-provided input or earns more than it otherwise would earn. For example, when the amount that a firm pays on a government-provided loan is less than what the firm "would pay on a comparable commercial loan that the (firm) could actually obtain on the market," the firm's cost of borrowing money is reduced. *See* section 771(5)(E)(ii) of the Act. Similarly, when a firm sells its goods to the government and "such goods are purchased for more than adequate remuneration," the firm's revenues are increased beyond what it would otherwise earn. *See* section

[1] The prior notices published by the Department as part of its URAA rulemaking activity are: (1) Advance Notice of Proposed Rulemaking and Request for Public Comments (*Antidumping Duties; Countervailing Duties; Article 1904 of the North American Free Trade Agreement*), 60 FR 80 (Jan. 3, 1995); (2) Advance Notice of Proposed Rulemaking; Extension of Comment Period (*Antidumping Duties; Countervailing Duties; Article 1904 of the North American Free Trade Agreement*), 60 FR 9802 (Feb. 22, 1995); (3) Interim Regulations; Request for Comments ((*Antidumping and Countervailing Duties*), 60 FR 25130 (May 11, 1995); (4) Proposed Rule; Request for Comments (*Antidumping and Countervailing Duty Proceedings: Administrative Protective Order Procedures; Procedures for Imposing Sanctions for Violation of a Protective Order*), 61 FR 4826 (Feb. 8, 1996); (5) Notice of Proposed Rulemaking and Request for Public Comments (*Antidumping Duties; Countervailing Duties*), 61 FR 7308 (February 27, 1996); (6) Extension of Deadline to File Public Comments on Proposed Antidumping and Countervailing Duty Regulations and Announcement of Public Hearing (*Antidumping Duties; Countervailing Duties*), 61 FR 18122 (April 24, 1996); and Announcement of Opportunity to File Public Comments on the Public Hearing of Proposed Antidumping and Countervailing Duty Regulations (*Antidumping Duties; Countervailing Duties*), 61 FR 28821 (June 6, 1996).

[2] See, *Statement of Administrative Action accompanying H.R. 5110* (H.R. Doc. No. 316, Vol. 1, 103d Cong., 2d Sess. (1994)).

[3] See Notice of Proposed Rulemaking and Request for Public Comments (*Countervailing Duties*), 54 FR 23366 (May 31, 1989).

[4] If a comment does not pertain to a particular proposed regulation, please clearly identify the comment as "Other," followed by a brief description of the issue to which the comment pertains; *e.g.*, "Other—Infrastructure."

771(5)(E)(iv) of the Act. In neither instance need the Department do more than apply the test enumerated by the statute in order to find that a benefit has been conferred.

In this regard, when we talk about a firm paying less for its inputs than it otherwise would pay (or receiving more revenues than it otherwise would earn), we are referring to the lower price it pays to acquire the thing provided by the government, *i.e.*, money, a good, or a service. We do not mean to suggest, as has sometimes been argued, that one must consider the overall impact of government actions on a firm in determining whether a particular government action confers a benefit. Neither the statute nor the SCM Agreement supports such an analysis.

For example, assume that a government puts in place new environmental requirements that require a firm to purchase new equipment to adapt its facilities. Assume also that the government provides the firm with subsidies to purchase that new equipment, but the subsidies do not fully offset the total increase in the firm's costs; *i.e.*, the net effect of the new environmental requirements and the subsidies leaves the firm with costs that are higher than they previously were.

In this situation, section 771(5B)(D) of the Act, which deals with one form of non-countervailable subsidy, makes clear that a subsidy exists. Section 771(5B)(D) treats the imposition of new environmental requirements and the subsidization of compliance with those requirements as two separate actions. A subsidy that reduces a firm's cost of compliance remains a subsidy (subject, of course, to the statute's remaining tests for countervailability), even though the overall effect of the two government actions, taken together, may leave the firm with higher costs.

Thus, if there is a financial contribution and a firm pays less for an input than it otherwise would pay in the absence of that financial contribution (or receives revenues beyond the amount it otherwise would earn), that is the end of the inquiry insofar as the benefit element is concerned. The Department need not consider how a firm's behavior is altered when it receives a financial contribution that lowers its input costs or increases its revenues.

If there were any doubt on this score, section 771(5)(C) of the Act eliminates it by clarifying that the "benefit" and the "effect" of a subsidy are two different things. While, as stated above, there must be a benefit in order for a subsidy to exist, section 771(5)(C) expressly provides that the Department "is not required to consider the effect of a subsidy in determining whether a subsidy exists." This message is driven home by the SAA at 256, which states that "the new definition of subsidy does not require that Commerce consider or analyze the effect (including whether there is any effect at all) of a government action on the price or output of the class or kind of merchandise under investigation or review."

As stated above, a benefit exists where a firm pays less for an input than it otherwise would pay in the absence of the financial contribution (or receives revenues beyond the amount it otherwise would earn). By the same token, where a firm does not pay less for an input than it otherwise would pay (or its revenues are not increased) as a result of a financial contribution, it would be very difficult to contend that a benefit exists. However, we have not closed our minds here and we would welcome comment on this issue.

Finally, under section 771(5)(A) of the Act and Article 1.2 of the SCM Agreement, a subsidy must be specific in order to be countervailable. The "specificity test" is discussed in more detail below, but we note here that by clarifying the purpose of the specificity test and the manner in which it is to be applied, the URAA, the SAA and the SCM Agreement should serve to reduce the volume of litigation concerning this heavily litigated issue.

Regarding the coverage of subpart E, we should note two topics that are not addressed by these regulations: indirect subsidies (with the exception of upstream subsidies) and privatization. The topic of "indirect subsidies" refers generally to situations where a government provides a financial contribution through a private body, and involves the application of section 771(5)(B)(iii) of the Act. Several comments were received on this topic, including particular suggestions regarding the possible contents of a regulation. Although the issues raised by the commenters are important ones, we are not addressing them at this time. We note that the legislative history clearly calls for the Department to proceed on a case-by-case basis. See SAA at 255–56. Our decision not to address these comments serves, in part, to preserve this flexibility and discretion, and allows us the opportunity to request comments specifically pertaining to the factors we should consider in making our case-by-case determinations.

The topic of privatization typically involves situations where ownership of a government-owned firm is transferred to a private entity. Privatization raises the question of the extent to which previously bestowed subsidies which are allocated over time remain countervailable after the privatization, and involves the application of section 771(5)(F) of the Act, the new section in the URAA addressing this subject.

In these proposed regulations, we have not included a provision dealing with privatization. However, we are evaluating whether a regulation on this topic is appropriate. Therefore, in the discussion that follows, we describe and discuss certain issues that we believe are raised by section 771(5)(F). We begin with a review of the methods we have used to date for addressing prior subsidies and privatization. We then turn to the new legislation.

Agency Practice

Although there were earlier administrative precedents, the recent history of the privatization issue began in January 1993, with the Department's final CVD determinations in the *Lead and Bismuth* cases (see, in particular, *Certain Hot-rolled Lead and Bismuth Carbon Steel Products from the United Kingdom*, 58 FR 6237). In those determinations, the Department ruled that the sale of a firm (or a "productive unit" of a firm), even if at arm's length, does not alter the countervailability of previously bestowed subsidies. The Department reasoned that it "does not examine the impact of subsidies on particular assets or tie the benefit level of subsidies to changes in the company under investigation. Therefore, it follows that when a company sells a productive unit, the sale does nothing to alter the subsidies enjoyed by that productive unit." *Id.*, at 6240.

In the July 1993 final CVD determinations in the *Certain Steel* cases, the Department modified the approach taken in the *Lead and Bismuth* cases. The Department concluded that once a subsidy is bestowed, the Act precludes a reevaluation of the amount or countervailability of a subsidy based on subsequent events, such as a change in the ownership of a firm. The Department stated: "Accordingly, whether subsidies convey a demonstrable competitive benefit upon recipients, in the year of receipt or any subsequent year, is irrelevant—the statute embodies the irrebutable presumption that subsidies confer a countervailable benefit upon goods produced by their recipients." The Department further ruled that "a private party purchasing all or part of a government-owned company (*e.g.*, a productive unit) can repay prior subsidies on behalf of the company as part or all of the sales price." *GIA* at 37262. Put differently, a portion of previously bestowed subsidies might not "travel to a new home" depending on the price paid for a firm by the buyer.

To determine the amount of previously bestowed subsidies that pass through to the privatized firm, the Department developed a repayment method. Under that method, the Department determines the amount of subsidies repaid based on a ratio of the privatized firm's subsidies to the firm's net worth over a period of time. Subsidies that are not repaid continue to benefit the merchandise produced by the privatized firm. *Id.*, at 37263. Only non-recurring subsidies (*i.e.*, subsidies allocated over time) are included in the pass through and repayment calculations.

New Law

In June, 1994, the U.S. Court of International Trade ("CIT") overturned the Department's determinations in the *Lead and Bismuth* cases. In *Inland Steel Bar Co.* v. *United States*, 858 F. Supp. 179, *rev'd*, 86 F.3d 1174 (Fed. Cir. 1996) ("*Inland*"), and *Saarstahl AG* v. *United States*, 858 F. Supp. 187, *rev'd*, 78 F.3d 1539 (Fed. Cir. 1996) ("*Saarstahl*"), the CIT declared the Department's privatization methodology to be unlawful "to the extent it states previously bestowed subsidies are passed through to a successor company sold in an arm's length transaction." This decision meant that if a firm is privatized in an arm's length transaction, previously bestowed subsidies are extinguished.

When the CIT issued its decisions in *Inland* and *Saarstahl*, the Administration and Congress were in the process of drafting, under "fast track" procedures, H.R. 5110, the bill that ultimately would become the URAA. As of June 1994, the draft CVD legislation did not contain any provisions that dealt expressly with the issue of privatization, and no such provisions were contemplated. However, following the CIT's decisions, a new provision was added that became section 771(5)(F) of the Act.

As enacted, section 771(5)(F) provides as follows:

> *Change in ownership.*—A change in the ownership of all or part of a foreign enterprise or the productive assets of a foreign enterprise does not by itself require a determination by the (Department) that a past countervailable subsidy received by the enterprise no longer continues to be countervailable, even if the change in ownership is accomplished through an arm's length transaction.

The SAA at 928 offered the following explanation of section 771(5)(F):

> Section 771(5)(F) provides that a change in the ownership of "all or part of a foreign enterprise" (*i.e.*, a firm or a division of a firm) or the productive assets of a firm, even if accomplished through an arm's-length transaction, does not by itself require Commerce to find that past countervailable subsidies received by the firm no longer continue to be countervailable. For purposes of section 771(5)(F), the term "arm's-length transaction" means a transaction negotiated between unrelated parties, each acting in its own interest, or between related parties such that the terms of the transaction are those that would exist if the transaction had been negotiated between unrelated parties.
>
> Section 771(5)(F) is being added to clarify that the sale of a firm at arm's length does not automatically, and in all cases, extinguish any prior subsidies conferred. Absent this clarification, some might argue that all that would be required to eliminate any countervailing duty liability would be to sell subsidized productive assets to an unrelated party. Consequently, it is imperative that the implementing bill correct and prevent such an extreme interpretation.
>
> The issue of the privatization of a state-owned firm can be extremely complex and multifaceted. While it is the Administration's intent that Commerce retain the discretion to determine whether, and to what extent, the privatization of a government-owned firm eliminates any previously conferred countervailable subsidies, Commerce must exercise this discretion carefully through its consideration of the facts of each case and its determination of the appropriate methodology to be applied.

In addition to this passage in the SAA, the Senate Report on the URAA stated as follows:

> The Committee believes that this provision serves the important purpose of making clear that the sale of a firm at "arm's length" does not automatically extinguish any previously-conferred subsidies. New section 771(5)(F) stands in contrast to such an interpretation, which would result in an end to the countervailability of prior subsidies otherwise allocable to the merchandise. The sale of subsidized goods or assets to an unrelated party should not in and of itself permit the avoidance of duties. The Commerce Department should continue to have the discretion to determine whether, and to what extent (if any), actions such as the "privatization" of a government-owned company actually serve to eliminate such subsidies. It is the Committee's expectation that Commerce will exercise this discretion carefully and make its determination based on the facts of each case, developing a methodology consistent with the principles of the countervailing duty statute.
>
> S. Rep. No. 412, 103d Cong., 2d Sess. 92 (1994).

Approach Under the New Law

Based on our reading of section 771(5)(F) and the legislative history of that provision, we believe that the new law overturns the approach adopted by the CIT in *Inland* and *Saarstahl*, *i.e.*, that an arm's length transaction, in and of itself, is sufficient to extinguish prior subsidies. We would further note that in March, 1996, the Court of Appeals for the Federal Circuit reversed the CIT's decision, holding that "the [CIT] erred in holding that as a matter of law a subsidy cannot be passed through during an arm's length transaction" (*Saarstahl, AG* v. *United States*, 78 F.3d 1539, 1544). Hence, under the pre- and post-URAA statute, the Department's position is that even if a privatization is accomplished by means of an arm's length transaction, previously bestowed subsidies are not automatically, and in all cases, extinguished.

By the same token, it has been suggested that the language in the SAA and the Senate Report directing Commerce to consider "the facts of each case" in determining whether and to what extent privatization of a government-owned firm eliminates any previously conferred subsidies may preclude an approach whereby all prior subsidies would automatically, and in all cases, be passed through to the privatized company.

Instead of establishing automatic rules in determining the extent to which prior subsidies pass through or are extinguished by privatization, a more flexible approach would be to examine a broad array of factors specific to the individual case. This may include examining the circumstances surrounding the privatization transaction, as well as the impact of prior subsidies on current market conditions.

Having said this, however, we do not believe that Congress intended that the Department's privatization determinations be made on an *ad hoc* basis. As stated in the Senate Report, it was expected that the Department would develop "a methodology consistent with the principles of the countervailing duty statute." S. Rep. No. 412, 103d Cong., 2d Sess. 92 (1994). Thus, the question to which we now turn is what facts would be relevant to determining the effect that a change in ownership has on previously bestowed subsidies.

One starting point for consideration of the appropriate approach under the new law is the method previously adopted by the Department. As discussed above, we have recognized that privatization has some impact on previously bestowed subsidies and have employed a repayment formula to determine the extent to which those subsidies pass through to the privatized firm. We have indicated in recent cases our position

that the repayment method is permissible under the new law (see, in particular, Certain Hot-rolled Lead and Bismuth Carbon Steel Products from the United Kingdom; Final Results of Countervailing Duty Administrative Review, 61 FR 58377, 58379. Some have questioned the Department's method for calculating the amount of repayment. For example, in computing the share of the sales price that repays past subsidies, the Department averages several years data on subsidies and the net worth of the firm.

- Should this average be weighted to give greater weight to the years immediately preceding the privatization? Or, should the average be abandoned and replaced with information on subsidies and net worth at the time of privatization?
- Are there other ways of determining whether repayment has occurred (*e.g.*, whether repayment must be made by the firm as opposed to the purchasers of the firm) and are there more accurate means of calculating such repayment?

Besides the facts that are relevant to the repayment method discussed above, there may be a number of considerations that should be evaluated in determining the extent to which previously bestowed subsidies are extinguished or passed through by means of privatization. For example, while the new statutory provision rules out the possibility that an arm's length transaction, in and of itself, is sufficient to extinguish past subsidies in all cases, it leaves open the question of what importance (if any) we should assign to the fact that a privatization does or does not occur at arm's length.

- Should the arm's length criterion alter the extent to which the Department considers previously bestowed subsidies to be countervailable with respect to merchandise produced by the privatized firm? Under the methodology currently applied by the Department, the presence or absence of an arm's length transaction does not affect our repayment calculation.
- In situations where the privatization transaction is not an arm's length transaction, is it more likely that prior subsidies pass through to the privatized company, or that a larger amount of the prior subsidies pass through? What factors would determine the extent, if any, to which prior subsidies pass through?
- Is it necessary for a privatization to be an arm's length transaction before the Department could even consider that previously bestowed subsidies are extinguished by the privatization? Conversely, if the privatization transaction is not at arm's length, should the Department even consider that any previously bestowed subsidies could have been extinguished?
- Under what circumstances and what privatization techniques does the transaction give rise to new subsidies to the purchasers? Would these new subsidies be in addition to any prior subsidies that pass through to the purchaser?

In addition to considering whether the privatization is an arm's length transaction, there may be other circumstances of the privatization transaction relevant to determining the extent to which previously bestowed subsidies pass through to the privatized firm. For example, it has been argued that when the privatization process occurs in a competitive market setting, the purchasers may be paying the full value of the company, including the current value of any previously bestowed subsidies.

- Can a competitive market setting, in and of itself, extinguish past subsidies? Under what circumstances would this occur?
- What elements might give rise to a competitive market setting and what is the relevance of those elements in determining the extent to which prior subsidies are passed through.
- Is it important to look at the nature of the auction, public stock offering, or other type of sale of the firm, including the number of bidders? Where there are few bidders, would it be important to consider whether the privatizing government placed restriction on who could purchase the company (*e.g.*, whether certain classes of buyers were precluded from participating)?
- Is it important that the privatization be carried out in an open, transparent manner? What elements might be important to this consideration?
- What role should independent valuations of the firm (*e.g.*, valuations by independent auditors) play? What if the winning bid for the firm being privatized was less than the value established in independent assessments?
- Given that equity markets may be more advanced in some countries than in others, should the Department account for the effect of the state of market development on the competitive bid process?
- Does the method of payment matter? For example, if the seller accepts debt or vouchers as payment for the privatized firm, should that be viewed differently than accepting cash?

Beyond these circumstances relating to the mechanics of the privatization transaction are events leading up to the privatization. These might include actions taken by the government to make the firm more attractive to potential purchasers. For example, the government might forgive debt owed to it by the firm in order to "clean up the balance sheet." Or, the government may undertake the expense of closing certain inefficient operations and sell off only the more modern plants.

- Are these types of actions taken in anticipation of privatization relevant to a determination of whether subsidies pass through to the privatized firm?
- Should such actions be separated from what would otherwise be considered "prior" subsidies in determining the extent to which subsidies pass through or are extinguished?

Similarly, the government may impose post-privatization restrictions on the privatized firm. For example, the new owners may be required to produce particular goods or services, to operate in particular locations, to purchase particular supplies from particular suppliers, to retain a certain number of workers or to undertake a certain level of investment in the privatized firm. Or, government restrictions on the privatized firm may take the form of a "golden share" whereby the government retains the right to make decisions about the certain specified operations of the firm, although ownership and control has otherwise passed to the new owners.

- Should these types of conditions on the sale be considered in determining whether, and the extent to which, prior subsidies pass through?

It has also been argued that certain government-owned companies benefit from government preferences, be it through low, government-guaranteed input prices or preferential access to government-controlled credit.

- Should the Department be concerned with whether the privatized firm will continue to benefit from such preferences? Or, would it be necessary for the government to eliminate the preferences before privatization?

Finally, the issue has been raised that in the privatization scenarios typically encountered by the Department, excess global capacity exists because one or more foreign governments have created or maintained productive assets that would not exist in the absence of government subsidization. Because of this, some would argue, even if the buyer of a firm pays a market price, the prior subsidies to the privatized company result in an unfairly low price being received for the firm.

- In a situation where subsidies have led to the creation of excess capacity (thereby lowering the market price for the firm being privatized), are those facts relevant to determining whether and to what extent the prior subsidies pass through to the privatized firm?
- How would the Department determine that excess global capacity has been created? How would excess capacity be defined and measured?
- It has also been argued that if excess capacity created by subsidies is relevant to the issue of privatization, then reductions to capacity made possible by subsidies should also be relevant. What relevance should the nature of the subsidy (*i.e.*, whether it contributes to or reduces capacity) have in determining whether and to what extent prior subsidies pass through to the privatized firm?

Conclusion

These lines of inquiry are consistent with section 771(5)(F) and with the recognition in the SAA, at 928, that the privatization issue "can be extremely complex and multifaceted."

In addition, it is consistent with the emphasis in both the SAA and the Senate Report on the importance of considering the facts of individual cases. We wish to emphasize that our list is not meant to be all-inclusive and we invite commenters to offer their views on other factors they consider to be relevant. Also, commenters should explain how these factors would be incorporated into a framework for analyzing privatizations and calculating subsidies to privatized firms.

We further invite comment on whether we should attempt to promulgate a final rule on the topic of privatization and what that rule might look like. Regarding the latter question, commenters are invited to address whether precise formulae should be used to determine the extent to which, if any, prior subsidies pass through or whether a case-by-case approach integrating some or all of the considerations identified in this preamble should be adopted. Commenters may want to address whether a formulaic approach could be developed that would be sufficiently comprehensive to account for special circumstances, or whether a formulaic approach would be undesirably rigid. Commenters may also want to address the consequences of the uncertainty resulting from a case-by-case approach.

In conclusion, we would like to repeat that the Department is carefully considering whether to issue a final regulation on the subject of privatization. To that end, the foregoing discussion is intended to stimulate, rather than foreclose, further thinking on this topic. We appreciate the comments that have been submitted on this topic thus far, and the fact that we may not have identified a particular suggestion should not be construed as an indication that we have rejected the suggestion.

Section 351.502

Section 351.502 deals with the "specificity" of domestic subsidies. Unlike its predecessor, § 355.43 of the 1989 Proposed Regulations, § 351.502 does not contain a "general" specificity test. This is due to the fact that section 771(5A) of the Act and the SAA provide much more detail and clarity regarding the application of the "specificity test" than did the prior statute and its legislative history. Thus, on the subject of specificity, there are far fewer interpretative gaps for the Department to fill in than there were in 1989, and, thus, less need for regulations. Accordingly, § 351.502 deals with certain aspects of the specificity test that are not addressed expressly in the statute or the SAA.

Paragraph (a) is based on § 355.43(b)(8) of the 1989 Proposed Regulations, and continues to provide that the Secretary will not consider a subsidy as being specific merely because it is limited to the agricultural sector. Instead, as under prior practice, the Secretary will find an agricultural subsidy to be countervailable only if it is specific within the agricultural sector; *e.g.*, a subsidy is limited to livestock, or livestock receives disproportionately large amounts of the subsidy. *See Lamb Meat from New Zealand*, 50 FR 37708, 37711 (1985).

One commenter suggested that the Department should abandon the special specificity rule for agricultural subsidies, citing the fact that under section 771(5B)(F) of the Act and Article 13(a) of the WTO Agreement on Agriculture, so-called "green box" agricultural subsidies are non-countervailable. With respect to this comment, we note that the Department's application of the specificity test to agricultural subsidies was upheld in *Roses, Inc.* v. *United States*, 774 F. Supp. 1376 (Ct. Int'l Trade 1991). In light of this judicial affirmance, and given the absence of any indication that Congress intended to change the Department's practice or overturn *Roses*, we are retaining the special specificity rule for agricultural subsidies.

Paragraph (b) is based on § 355.43(b)(7) of the 1989 Proposed Regulations, and continues to provide that the Secretary will not consider a subsidy as being specific merely because it is limited to small or small- and medium-sized firms. As in the case of the special specificity rule for agricultural subsidies, there is no indication that Congress intended to alter this aspect of the Department's specificity practice.

Paragraph (c) provides that the Secretary will not regard disaster relief as a specific subsidy if the relief constitutes general assistance available to anyone in the affected area. Although paragraph (c) has no counterpart in the 1989 Proposed Regulations, the rule contained in paragraph (c) has been part of the Department's specificity practice since *Certain Steel Products from Italy*, 47 FR 39356, 39360 (1982), in which the Department stated that "[d]isaster relief is not selective in the same manner as other regional programs since there is no predetermination of eligible areas and no part of the country and no industry, is excluded from eligibility in principle." However, before declaring a subsidy to be non-specific under paragraph (c), the Department would have to be satisfied that the subsidy in question was, in fact, *bona fide* disaster relief. *See Certain Steel Products from Italy*, 58 FR 37327, 37332 (1993).

The Department received several comments regarding the issue of specificity, most of which had to do with the specificity of domestic subsidies. For ease of discussion, we have divided these comments up by sub-issue.

Purpose of the specificity test

Some commenters requested that the Department restate in the regulations the policy rationale behind the specificity test. According to these commenters, the underlying purpose of the specificity test is to identify those domestic subsidies that confer a competitive advantage and thereby distort international trade. Other commenters pointed out that the new statute expressly states that the Department is not required to examine the effects of a subsidy or establish that the subsidy has any effect at all. These commenters, citing the reference to the *Carlisle* decision in the SAA, maintain that the sole purpose of the specificity test is to "winnow out those foreign subsidies which are truly broadly available and widely used throughout the economy." SAA at 259–260, citing *Carlisle Tire & Rubber Co.* versus *United States*, 564 F. Supp. 834 (Ct. Int'l Trade 1983).

In our view, the language from the SAA cited above makes the purpose of

the specificity test abundantly clear. Given the clarity of the SAA on this point, the authoritative nature of the SAA (*see* section 102(d) of the URAA), and our general reluctance to issue regulations that merely repeat the statute or the SAA, we do not consider it appropriate to issue a regulation that restates the purpose of the specificity test.

Use of Presumptions

Two commenters suggested that in applying the specificity test, the Department should employ certain presumptions. One commenter maintained that the Department should presume that domestic subsidy programs are specific, and that the burden should be on respondent interested parties to prove otherwise. The second commenter stated that, for each domestic subsidy program under investigation, the Department should request information concerning applications and approvals made since the inception of the program. In the absence of such information, according to this commenter, the Department should presume that the foreign government in question exercises discretion in the administration of the program, and that the program is specific. Similarly, when the Department is analyzing newly instituted programs with few users, it should employ a rebuttable presumption that the program is specific. Both commenters made the point that information regarding the distribution of program benefits normally is not available to a petitioner prior to the filing of a petition.

Other commenters argued that there is no legal basis for making such presumptions. With respect to *de facto* specificity, for example, the SAA states that the Department is obligated to "seek and consider" information relevant to each of the four factors listed in section 771(5A)(D)(iii) of the Act. SAA at 261. One of these commenters also asserted that a petitioner alleging that a subsidy is specific should be required to provide a reasonable amount of information supporting the allegation.

As was true under the old law, a petitioner that includes a domestic subsidy in a petition must provide reasonably available information supporting the specificity allegation. *See* section 702(c) of the Act. On the other hand, the Department recognizes that because detailed information regarding the distribution of program benefits usually is either not published or is not widely available, it often is not reasonably available to a petitioner at the time a petition is filed. Therefore, in deciding whether to include alleged domestic subsidies in its investigation, the Department carefully considers the information the petitioner has put forward, the reasons why more information may not be available, and any arguments the petitioner makes regarding the specificity of the program. Because the types of allegations and information available will vary from case-to-case, it is not possible to state a general rule for accepting or rejecting specificity allegations. However, we believe that the threshold we have used in the past for including alleged subsidies in CVD investigations has been sufficient to ensure that all potentially countervailable subsidies are investigated. We intend to continue employing this initiation threshold.

Where domestic subsidy programs are included in an investigation, the Department will not presume the program is specific. Instead, the Department will seek in its questionnaire all of the information necessary to apply the specificity test according to section 771(5A)(D) of the Act. Based on its analysis of the information provided in the questionnaire responses, verification, and other information that may be collected, the Department will make the necessary specificity determination. If a respondent refuses to provide the information requested by the Department to conduct its specificity analysis, the Department may draw adverse inferences in the application of the "facts available." *See* section 776(b) of the Act. However, the use of an adverse inference in these situations is not the same thing as relying on a rebuttable presumption.

Sequential Analysis

Some commenters argued that the Department should codify the "sequential approach" to specificity. Under the sequential approach, as reflected in the 1989 Proposed Regulations, if a subsidy was *de jure* specific or met any one of the enumerated *de facto* specificity factors, further analysis was unnecessary and was not undertaken. In support of their position, these commenters emphasized the language contained in both section 771(5A)(D)(iii) of the Act and the SAA that a subsidy will be considered specific "if one or more" of the factors exist. SAA at 261. Furthermore, these commenters noted, the SAA and the legislative history of the URAA make clear that the specificity test was intended to be generally consistent with the Department's previous practice, a practice that included the sequential approach. SAA at 259; S. Rep. No. 412, 103d Cong., 2d Sess. 93–94 (1994). Finally, these commenters cited the legislative history of the North American Free Trade Agreement (NAFTA) as endorsing the sequential approach.

In opposition to this view, other commenters maintained that the sequential approach contradicts the SAA, because the SAA states that the Department will "seek and consider information relevant" to all four of the *de facto* specificity factors. SAA at 261. Moreover, these commenters maintained, the language in the SCM Agreement requires that all of the *de facto* specificity factors be considered and that any specificity determination "shall be clearly substantiated on the basis of positive evidence." Articles 2.1(c) and 2.4 of the SCM Agreement.

We believe that the Act and the SAA are sufficiently clear that, with the exception of the government discretion factor, the Department may find a domestic subsidy to be specific based on the presence of a single *de facto* specificity factor. Therefore, while the Department will continue its practice of collecting information regarding each of the four *de facto* specificity factors, our analysis of the issue will stop if the Secretary determines that a single factor justifies a finding of specificity. As for the SCM Agreement, none of the provisions cited precludes a finding of specificity based on the presence of a single factor.

In this regard, however, the Department does not agree that a finding of specificity automatically may be based solely on the fact that some measure of discretion may have been exercised in the administration of a subsidy program. Indeed, such an approach would be inconsistent with the purpose of the specificity test, as articulated in *Carlisle*. If a subsidy program is broadly available and widely used and there is no evidence of dominant or disproportionate use, the mere fact that government officials may have exercised discretion in administering the program is insufficient to justify a finding of specificity. SAA at 261.

Based on our experience in administering the CVD law, some measure of administrative discretion exists in the operation of almost every alleged subsidy program. At the most basic level, an administrator of a program typically must exercise judgment (*i.e.*, discretion) in evaluating the facts of an application for a subsidy to determine whether the applicant qualifies for the subsidy. If we were to find specificity based simply on the exercise of this type of discretion, the other *de facto* factors would become practically meaningless, because virtually every subsidy program in the world could be declared specific on the basis of the discretion factor alone. This would produce the very sort of absurd results warned against in *Carlisle*.

As indicated in the SAA at 261, the discretion factor is generally more valuable as an analytical tool that enhances the analysis of the other *de facto* specificity factors and criteria. For example, in the case of a new subsidy program for which there have been few applicants and few recipients, the Department must make a judgment as to the likely future distribution of benefits under the program. The manner in which authorities have exercised their discretion in the early days of a new program would inform the Department in making this type of judgment. *See* SAA at 261.

Purposeful Government Action

Some commenters, citing such cases as *Saudi Iron and Steel Co. (Hadeed)* v. *United States*, 675 F. Supp. 1362, 1367 (Ct Int'l Trade 1987), maintained that a finding of specificity does not require a finding of targeting or some other sort of purposeful government action that limits the number of subsidy program beneficiaries. In a similar vein, they cited the statute and its legislative history for the proposition that the fact that program usage may be limited by the "inherent characteristics" of the thing being provided by the government should be deemed irrelevant. SAA at 262; S. Rep. No. 412, 103d Cong., 2d Sess. 94 (1994). Finally, these same commenters argued that the Department should analyze the availability and use of a subsidy in the context of the economy as a whole and not in the context of the universe of potential subsidy recipients.

Other commenters insisted that the Department must look behind the distribution of subsidy benefits and explore the reasons why the use of a subsidy may be limited. According to these commenters, "purposeful government action" should be critical to a finding of specificity.

In our view, the SAA and other legislative history make it very clear that the Department does not need to find "targeting" or "purposeful government action" to conclude that a domestic subsidy is specific. *See* SAA at 262 ("[E]vidence of government intent to target or otherwise limit benefits would be irrelevant in a *de facto* specificity analysis."). Except in the special circumstances described in section 771(5A), *i.e.*, where respondents request the Department to take into account the extent of economic diversification in the jurisdiction of the granting authority or the length of time during which the program has been in operation, the Department is not required to explain why the users of a subsidy may be limited in number. Thus, for example, the fact that users may be limited due to the inherent characteristics of what is being offered would not be a basis for finding the subsidy non-specific. SAA at 262; S. Rep. No. 412, 103d Cong., 2d Sess. 94 (1994).

Characteristics of a "Group"

Citing *PPG Industries, Inc.* v. *United States*, 978 F.2d 1232, 1240–41 (Fed. Cir. 1992) (*"PPG II"*), several commenters argued that to be consistent with judicial precedent, the Department must examine the "actual make-up" of a group of beneficiaries when performing a specificity analysis. According to these commenters, if a group of recipients does not share similar characteristics, but, instead, consists of companies in a variety of industries, the Department cannot conclude that the subsidy in question is limited to a "group of industries." Moreover, nothing in the Act or the SAA requires the Department to ignore the characteristics of the group receiving the benefits from an alleged subsidy program.

Other commenters argue that the Department can identify a "group" of subsidy recipients without regard to any shared characteristics of the individual group members. According to these commenters, a proper understanding of what may constitute a specific "group of industries" flows directly from the *Carlisle* purpose of the specificity test; namely, that subsidy recipients should be considered a specific group unless the recipient industries are numerous and distributed very broadly throughout the economy. Moreover, these commenters maintain that the Department has on several occasions found subsidy programs specific even when the "group" of recipients have not shared common characteristics. *Steel Wheels from Brazil* 54 FR 15523, 15526 (1989); *Cold-Rolled Carbon steel Flat-Rolled Products from Korea*, 49 FR 47284, 47287 (1984).

We disagree with the first set of comments. In determining whether a subsidy is *de jure* or *de facto* specific, the Department is not required to evaluate the actual make-up of those firms that are eligible for, or actually receive, a subsidy.

With respect to *PPG II*, assuming *arguendo* that it is relevant under the new law, we note that the decision upheld the Department's determination of the non-specificity of a program. To put *PPG II* in its proper context, it is necessary to understand the facts presented in the underlying CVD case. In that case, there were numerous enterprises that used the FICORCA program being investigated. Therefore, when looked at in terms of the number of enterprises, the actual recipients were not limited. However, this conclusion says nothing as to whether the number of industries that received FICORCA benefits was limited. To answer this question, the Department (and the court) correctly focussed on the makeup of the users. If the numerous enterprises that received benefits had comprised a limited number of industries, then FICORCA would have been specific. However, because the users represented numerous and diverse industries, FICORCA was found not to be specific. We see no basis in *PPG II* or in the language of section 771(5A)(D) of the Act for imposing a requirement that the limited users also share similar characteristics. Moreover, we believe that such a requirement would undermine the purpose of the specificity test as articulated in the SAA.

Integral Linkage

Section 355.43(b)(6) of the 1989 Proposed Regulations provided that, for purposes of applying the specificity test, the Department would consider two or more subsidy programs as a single program if the Secretary determined that the programs were "integrally linked." Section 355.43(b)(6) also set forth factors to be considered in making this determination.

Although the Department did not receive any comments, pro or con, regarding the integral linkage test, we have decided not to incorporate § 355.43(b)(6) into these regulations. Questions of integral linkage were relatively rare, and when they did arise, we did not find the factors set forth in § 355.43(b)(6) particularly helpful.

However, the fact that we are not recodifying § 355.43(b)(6) does not mean that we never would consider two or more ostensibly separate subsidy programs as constituting a single program for specificity purposes, although we anticipate that the circumstances leading to such a combination of programs will seldom arise. In situations where the subsidy programs have the same particular purpose (*e.g.*, to promote technological innovation), bestow the same type of benefits (*e.g.*, long-term loans or tax credits), and confer similar levels of benefits on similarly situated firms, treating the programs as a single

program may be appropriate. However, when an interested party believes that two or more programs should be considered in combination for purposes of the Department's specificity analysis, it will have the burden of identifying the relevant programs and providing information and documentation regarding their purposes and types and levels of benefit.

Section 351.503

Section 351.503 deals with the benefit attributable to the most basic type of subsidy, a grant. Paragraph (a), which is based on § 355.44(a) of the 1989 Proposed Regulations, provides that in the case of a grant, a benefit exists in the amount of a grant. Paragraph (b), which is based on § 355.48(b)(1) of the 1989 Proposed Regulations, sets forth the rule for determining when a firm is considered to have received a subsidy provided in the form of a grant.

Paragraph (c) deals with the allocation of the benefit to a particular time period. Although paragraph (c) is based on § 355.49 of the 1989 Proposed Regulations, it also contains certain changes in approach that merit comment.

Which Grants Are Allocated Over Time

Paragraph (c) retains the distinction between "recurring" and "non-recurring" grants. *See* § 355.49(a) of the 1989 Proposed Regulations. Paragraph (c)(1) provides that the Secretary will allocate a recurring grant to the year in which the subsidy is considered as having been received, a practice usually referred to as "expensing." Paragraph (c)(2) provides that, with one exception (discussed below), the Secretary will allocate non-recurring grants over time.

Paragraph (c)(3) contains a test for distinguishing between recurring and non-recurring grants, and is based on the standard applied by the Department in the *GIA*. Under this standard, if a benefit is exceptional or requires express government approval, the Department will consider it as non-recurring. As explained in the *GIA*:

> Under the modified test, we are attempting to analyze the frequency and "automaticity" with which a benefit is provided. "Exceptional" benefits are those types of benefits which are not received on a regular and predictable basis; the recipient cannot expect to receive the benefits on an ongoing basis from review period to review period. The element of "government approval" relates to the issue of whether the program provides benefits automatically, essentially as an entitlement, or whether it requires a formal application and/or specific government approval prior to the provision of each yearly benefit. The approval of benefits under the latter type of program cannot be assumed and is not automatic. The receipt of a benefit after merely filling out the appropriate forms (*e.g.*, tax benefits) or, after initial qualification for yearly benefits under a program (*e.g.*, some types of price support programs), would meet the automaticity part of the test.

Id. If a grant is not non-recurring under this standard, the Department will treat it as a recurring grant.

In these proposed regulations, we have codified the standard contained in the *GIA* for distinguishing between recurring and non-recurring benefits. However, we continue to consider whether there might be a better standard for distinguishing between these two types of benefits. An important purpose of the recurring/non-recurring test is to reduce the burden on the Department and interested parties by limiting the amount of information requested on subsidies bestowed prior to the period of investigation or review. However, the Department is increasingly facing arguments regarding its application of the standard described in the *GIA*. At some point, the burden of applying the *GIA* standard may well outweigh the benefits. Therefore, we particularly invite comments on this issue. We note that the Department has considered other options in the past including: (1) Developing a list of the types of subsidies that would be allocated and those that would be expensed; (2) allocating any grant-like benefit that exceeds 0.50 percent (discussed below); and (3) allocating only those grant-like subsidies that are tied to the purchase of fixed assets. *See* Memorandum from Staff to Joseph Spetrini, Acting Assistant Secretary for Import Administrations and Barbara R. Stafford, Deputy Assistant Secretary for Investigations, dated May 17, 1993, regarding Countervailing Duty Investigations of Certain Steel Products, How to Make the Expense vs. Allocate Decision; Investigations, C–100–004, Public Document. Regarding the first option, *i.e.*, development of a list of the types of subsidies that would be allocated and those that would be expensed, the Department has given examples of the two types of subsidies in the preamble to § 355.49(a)(2) of the 1989 Proposed Regulations and in the *GIA* at 37226.

The 0.50 Percent Test and the Expensing of Small Grants

Although the Department normally will allocate non-recurring grants over time, paragraph (c)(2)(ii) retains (with some stylistic changes) the so-called 0.50 percent test. *See* § 355.49(a)(3)(i) of the 1989 Proposed Regulations; *GIA* at 37226. Under this test, the Department will expense non-recurring grants received under a particular subsidy program to the year of receipt if the total amount of such grants is less than 0.50 percent *ad valorem*, as calculated under § 351.525.

The Department considers this test to be an important part of its efforts to simplify CVD proceedings and to reduce the burdens on all parties involved. By expensing small non-recurring grants to the year of receipt, the Department avoids the need to: (1) Collect, analyze, and verify the data needed to allocate such grants over time; and (2) keep track of the allocation calculations for minuscule subsidies from year to year. If considered only in the context of a single case, the burdens imposed by this activity may not appear to be particularly onerous. However, when considered across all investigations and administrative reviews, the cumulative burden becomes considerable.

Certain commenters have argued that the 0.5 test should be applied on an aggregated basis; *i.e.*, that non-recurring subsidies should be expensed only when the total of benefits under all programs is less than 0.5 percent. In their view, this would prevent foreign governments from evading countervailing duties by awarding "small" benefits under numerous programs.

To address this concern, we have written § 351.503(c)(2)(ii) to say that the Secretary will "normally" expense non-recurring grants received under a program if the grants are less than 0.5 percent. Thus, although we intend to continue to apply the 0.5 percent rule on a program basis, we have given ourselves the flexibility to take a different approach in situations where petitioners are able to point to clear evidence that the foreign government has deliberately structured its subsidy programs so as to reduce the exposure of its exporters to countervailing duties.

The Time Period Over Which Non-Recurring Grants Are Allocated

Once the Department has determined that a grant is non-recurring, it will calculate the amount of subsidy to be assigned to a particular year according to the formula described in paragraph (c)(4). The formula is the same one that appeared in § 355.49(b)(1) of the 1989 Proposed Regulations. We note that comments were received recently on this formula. We have not addressed those comments here, but intend to do so for the final regulations.

As described below, we have made changes in the methods used to determine certain variables used in the formula. In a departure from past

practice, paragraph (c)(2) provides that the Secretary will allocate a non-recurring grant over the number of years corresponding to a firm's AUL, a term that is defined in paragraph (c)(4)(ii) as the average useful life of a firm's productive assets. Before describing how the Department will calculate a firm-specific AUL, we first should discuss why we are changing our practice.

Selection of the AUL Method

It has often been suggested that there is no single correct method for determining the number of years over which a subsidy should be allocated. For example, in paragraph 2 of its *Guidelines on Amortization and Depreciation*, BISD 32S/154 (1984–85) ("*Guidelines*"), the Tokyo Round Committee on Subsidies and Countervailing Measures stated: "Financial and accounting theory and practice do not provide any single acceptable method of determining the appropriate time-period over which subsidies should be allocated." Similarly, in the *Subsidies Appendix* annexed to *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina*, 49 FR 18016, 18018 (1984), the Department stated that "[t]here are no economic or financial rules that mandate the choice of an allocation period."

In addition, there has been little guidance from Congress on this issue. The legislative history of the Trade Agreements Act of 1979 refers to the selection of "a reasonable period based on the commercial and competitive benefit to the recipient as a result of the subsidy," S. Rep. No. 249, 96th Cong., 1st Sess. 86–87 (1979), and reliance on "generally accepted accounting principles." H.R. Rep. No. 317, 96th Cong., 1st Sess. 74–75 (1979); H.R. Doc. No. 153, Pt. II, 96th Cong., 1st Sess. 433 (1979). However, this advice does not of itself supply concrete answers, particularly in light of the fact that, as suggested above, generally accepted accounting principles do not provide rules for allocating subsidies over time.

Against this conceptual and legal background, in the *Subsidies Appendix*, the Department chose the so-called "IRS tables method" of selecting an allocation period. Under this method, the Department allocated a subsidy over the number of years corresponding to the average useful life of a firm's renewable physical assets (equipment), as set forth in the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (Rev. Proc. 77–10, 1977–1, C.B. 548 (RR–38). Subsequently, the Department codified this method in § 355.49(b)(3) of the 1989 Proposed Regulations. At the time, the Department believed that the IRS tables method offered "consistency and predictability," although the Department expressed a willingness to consider other approaches. *See* 54 FR at 23376–77.

The IRS tables method has not been a subject of controversy in the vast majority of CVD proceedings in which the Department has used that method. However, in those proceedings where one or more parties did challenge the IRS tables method, the Department has been unable to successfully defend that method in court. Beginning with *British Steel Corp.* v. *United States*, 632 F. Supp. 59, 68 (1986), and continuing up to *Usinor Sacilor* v. *United States*, 893 F. Supp. 1112 (1995), the CIT repeatedly has struck down the use of the IRS tables method. In addition, in *United States—Imposition of Countervailing Duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in France, Germany and the United Kingdom*, SCM/185, Nov. 15 1994 (Unadopted), a panel convened pursuant to the Tokyo Round Subsidies Code found fault with the IRS tables method as applied by the Department. The common theme of these adverse decisions appears to be that because the IRS tables method is not a company-specific approach, it fails to adequately reflect the benefit of a subsidy to a particular firm.

While we do not necessarily agree with the reasoning of these decisions, the inability of the IRS tables method to pass judicial muster undermines the consistency and predictability that are the most attractive features of that method. Pending a resolution of this issue by the U.S. Court of Appeals for the Federal Circuit, which could be a long time in coming, every determination by the Department relying on the IRS tables method would be vulnerable to litigation, a process that is expensive and time-consuming not only for the Department, but also for the private parties that the CVD law is intended to serve.

Accordingly, the Department has determined to abandon the IRS tables method. In identifying a replacement method, one obvious consideration is that the method must relate sufficiently to the "commercial and competitive benefit to the recipient as a result of the subsidy," the phrase from the legislative history to which the courts, rightly or wrongly, have assigned great significance. It is also important that the method must be sufficiently administrable so as not to impose undue burdens on private parties and the Department.

With these criteria in mind, we have considered alternatives to the IRS tables method that have been suggested in comments submitted as part of this rulemaking, as well as in past and pending litigation. *See, e.g., Final Results of Redetermination Pursuant to Court Remand on General Issue of Allocation* in *British Steel plc.* v. *United States*, Consol. Ct. No. 93–09–00550–CVD (Ct. Int'l Trade June 30, 1995) ("*British Steel Remand*"). The principal alternatives are: (1) Company-specific average useful life of productive assets; (2) company-specific average maturity of long-term debt; (3) company-specific weighted-average use of funds; and (4) the IRS tables as a rebuttable presumption.

We have chosen the first alternative, the company-specific average useful life of productive assets, or "AUL." First, we believe that the AUL method will be more administrable and predictable than the other alternatives, because, as discussed in more detail below, it should be easily calculable from a firm's accounting records. With respect to the long-term debt alternative, based on our experience, many of the firms that we investigate do not have access to long-term debt financing (except possibly as a result of government support). Therefore, as a practical matter, this alternative would frequently lead us to use non-company-specific, surrogate measures of life of debt. With respect to the use of funds alternative, this alternative appears unduly complicated, requiring both private parties and the Department to calculate multiple allocation periods, including a company-specific AUL, and then take a weighted-average of those figures. Finally, with respect to using the IRS tables as a rebuttable presumption, this alternative likely would waste the time of private parties and the Department in arguments over whether or not the allocation period called for by the IRS tables had been effectively "rebutted" by a firm's own AUL.

Second, the AUL method has been recognized internationally as a reasonable method of determining the appropriate time period over which subsidies should be allocated. As stated in ¶ 5.1 of the *Guidelines*, "[w]hile the benefit of a grant (that is, elimination of financial obligations the recipient company would otherwise incur) has no exact correlation to the life of any assets purchased with the grant, allocating the grant over the average life of renewable physical assets is one generally practical, fair, and consistent method of allocation." Although the *Guidelines* are no longer in effect due to the termination of the Tokyo Round

Subsidies Code, we consider it significant that the United States and its major trading partners went on record as endorsing the AUL method as an acceptable method of determining an allocation period for subsidies.

Finally, we note that the Department's use of company-specific AUL was recently affirmed in *British Steel PLC* v. *United States*, 929 F. Supp. 426 (Ct. Int'l Trade 1996).

Calculation of a Company-Specific AUL

Paragraph (c)(4)(ii) describes the manner in which the Department will calculate a company-specific AUL. Normally, firms will not calculate their "actual" AUL in the normal course of business, and requiring firms to calculate this figure for purposes of a CVD proceeding could pose an extremely onerous burden on firms with thousands of individual assets. Therefore, what is needed is a calculation method that results in reasonable reporting requirements, while at the same time produces a reasonable estimate of a firm's actual AUL.

We believe that paragraph (c)(4)(ii) achieves these dual objectives. Under paragraph (c)(4)(ii), a firm's AUL will be calculated by dividing the firm's depreciable productive assets by the firm's average annual charge to accumulated depreciation. As indicated in the second sentence of paragraph (c)(4)(ii), this calculation will be based on data covering a period considered appropriate by the Secretary. Because this is a new method with which the Department has little experience, we are reluctant to provide more detail at this time in the form of a regulation. Instead, we intend to include detailed instructions in our CVD questionnaires concerning the calculation of an AUL. Once we have gained more experience with this method, we may add additional detail to the regulation.

We should note, however, that we currently intend to include in our initial CVD questionnaires a request that a firm calculate its average AUL over a period of ten years, a period that would include the period of investigation and the nine preceding years. Based on the results of this calculation, the firm then would provide information on its non-recurring subsidies for a time period corresponding to the average AUL it calculated. For example, if a firm calculated that its average AUL for the ten-year period described above was 15 years, the firm would provide data on its subsidies for the period of investigation and the 14 preceding years. If the investigation results in a CVD order, the AUL will be recalculated for non-recurring subsidies received after the period on investigation ("POI") based on updated information. For example, if a non-recurring grant is received in the third year after the original POI, the allocation period for that subsidy would be the average AUL for the year that subsidy is received and the nine previous years.

As in the case of any other piece of data included in a response to a CVD questionnaire, a firm's calculation of its AUL would be subject to verification by the Department and comment by parties to the proceeding.

As set forth in the third sentence of paragraph (c)(4)(ii), the Secretary will attempt to exclude fixed assets that are not depreciable (such as land or construction in progress) and assets that have been fully depreciated and that are no longer in service. However, assets that are in service would be included even if they have been fully depreciated.

In addition, it may be necessary to make normalizing adjustments for factors that may distort the calculation of an AUL. Again, we are not in a position at this time to provide additional detail in the regulation itself, because the types of adjustments necessary likely will vary based on the facts of a particular case. However, certain obvious normalizing adjustments that come to mind are situations in which a firm may have charged an extraordinary write-down of fixed assets to depreciation due, or where the economy of the country in question can be characterized as hyperinflationary.

Finally, there may be situations in which an AUL cannot be calculated in the manner described above (assets divided by depreciation). For example, if a firm's depreciation is not based on an estimate of the actual useful life of its assets, the calculation described above would not be a reasonable method of calculating AUL. Similarly, AUL could not be calculated in this manner if the firm does not use straightline depreciation and additions to the firm's asset pool are irregular and uneven. Indeed, there may be cases where there is no reasonable method of calculating a *company-specific* AUL. In such cases, the Department will consider, among other things, any alternative calculation methods for AUL offered by parties to the proceeding, including the IRS table method previously used by the Department. Such alternative methods will not be limited to those that are company-specific.

In addition, we should note that because petitioners may not be in a position to calculate a potential respondent's AUL at the time a petition is filed, petitioners may not know how many years back they can go in alleging countervailable subsidies. To provide more certainty to petitioners, the Department will accept the period specified in the IRS tables for purposes of making subsidy allegations in a petition.

Calculation of the Benefit Stream

Paragraph (c)(4)(iii) deals with the selection of a discount rate. Consistent with the *GIA* at 37227, paragraph (c)(4)(iii)(B) provides that, in the case of an uncreditworthy firm, the Secretary will use as a discount rate an interest rate with a "risk premium" included.

Section 351.504

Section 351.504 deals with loans and other forms of debt financing. Paragraph (a) deals with the identification and measurement of the benefit attributable to a loan. Paragraph (a)(1) tracks the general standard set forth in section 771(5)(E)(ii) of the Act, which directs the Department to use a "comparable commercial loan that the recipient could actually obtain on the market" as the benchmark for determining whether a government-provided loan confers a benefit. Additionally, paragraph (a)(1) restates the Department's current practice, as reflected in § 355.44(b)(8) of the 1989 Proposed Regulations, that in making this comparison the Secretary normally will seek to compare effective interest rates rather than nominal rates. "Effective interest rates" are intended to take account of the actual cost of the loan, including the amount of any fees, commissions, compensating balances, government charges (such as stamp taxes) or penalties paid in addition to the "nominal" interest. However, the Department intends that, if effective rates are not available, the Secretary will compare nominal rates or, as a last resort, nominal to effective rates, as under current practice. If the "loan" is a bond (*see* definition of "loan" in § 351.102), the Department normally will treat the yield on the bond as the effective interest rate.

Paragraphs (a)(2) and (a)(3) elaborate on the criteria for selecting the benchmark. As the reader quickly will ascertain, the criteria contained in paragraphs (a)(2) and (a)(3) are much more general (and, thus, much more flexible) than the detailed hierarchies contained in § 355.44(b) of the 1989 Proposed Regulations. The Department seldom used these hierarchies, because, in practice, the required information was seldom available.

Paragraph (a)(2) sets out the criteria the Department will normally consider

in selecting a comparable commercial loan. We received the following comments relating to this issue: (1) If the Department modifies its current benchmark hierarchies, any new hierarchies or benchmark selection criteria should take account of the maturity and corresponding level of risk associated with the government-provided loan being analyzed; (2) requiring *identical* financing is impractical and undermines the Department's discretion; (3) in the case of foreign currency loans, which typically are long-term in nature, the Department's selection of a comparable loan should be based explicitly on the comparable currency, and should only be based on the domestic currency in certain unique situations; and (4) the Department should make clear its policy of selecting as its benchmark a loan that was taken out (or could have been taken out) at the same point in time as the government-provided loan.

With respect to these comments, we agree that a comparable commercial loan used as a benchmark should represent a financial instrument that is similar to the government-provided loan and that was taken out (or could have been taken out) at the same point in time. We believe that this type of approach will ensure a reasonable comparison, because the comparable loan will exhibit the same basic characteristics of maturity, risk, and currency denomination that are embodied in the allegedly subsidized financing. In addition, we agree with the commenter that recommended that the Department specify the time period from which it will select comparable financing. See paragraphs (a)(2)(iii) and (a)(2)(iv). With respect to those comments suggesting refinements to the benchmark hierarchies contained in the 1989 Proposed Regulations, as explained above, we have discarded those hierarchies in favor of a more flexible approach. However, we believe that our new approach is consistent with the objectives underlying the comments.

Several commenters suggested that loans under a government program, even if the program is not specific, should not be considered "commercial" loans. We agree with these commenters, and have incorporated their suggestion into paragraph (a)(2)(ii). We note, however, that we do not equate a "loan provided under a government program" with a "loan from a government-owned bank." Consistent with § 355.44(b)(9) of the 1989 Proposed Regulations, which is discussed further below in connection with paragraph(a)(6)(ii), the Secretary normally will consider loans from government-owned banks as commercial loans.

The commenters disagreed over the selection of a comparable commercial loan in the case of a suspension agreement, some commenters arguing that special rules should be used in the case of a suspension agreement, because: (1) a suspension agreement is forward-looking, and (2) the use of a retrospective benchmark undermines the utility of a suspension agreement.

We agree that a suspension agreement is forward-looking, but we do not believe that this fact requires special rules governing the selection of comparable commercial loans. Typically, in its administration of a suspended investigation, the Department will monitor developments in commercial benchmarks outside of the normal administrative review process. This monitoring activity ensures that the commercial benchmarks used are timely. *See Roses and Other Cut Flowers From Colombia; Miniature Carnations From Colombia*, 61 FR 9429 (March 8, 1996).

Paragraph (a)(3) addresses the requirement that the comparable loan be one that the firm "could actually obtain on the market," and reflects a change in practice for short-term loans. As described in § 355.44(b)(3) of the 1989 Proposed Regulations, the Department has used national average interest rates to determine the benefit from government-provided short-term loans. However, at the time the 1989 Proposed Regulations were promulgated, the Department announced that it would consider using company-specific benchmarks for short-term loans. Based upon our experience in the interim, and especially because of the ability to computerize our loan calculations, we have concluded that we have the capability to use company-specific benchmarks. Moreover, we believe that company-specific benchmarks provide a more accurate measure of the benefit, if any, to a recipient of a government-provided short-term loan. Therefore, paragraph (a)(3)(i) states a preference for using company-specific benchmarks for both short-and long-term loans. Under paragraph (a)(3)(ii), we normally would use national averages only in the event that the firm did not take out any comparable commercial loans during the relevant period.

One commenter argued that a benchmark hierarchy for short-term loans should emphasize company-specific rates and should rely on country-wide rates only as a last resort. In response to these comments, another commenter argued that mandating the use of company-specific rates has no basis in the statute and may be inappropriate in cases involving a large number of companies.

We disagree that there is no basis in the statute for using company-specific benchmarks for short-term loans. To the contrary, we see the use of company-specific benchmarks as being more consistent with the requirement that the benefit be determined by looking at a loan (or loans) the firm actually could obtain. In large cases, *e.g.*, cases with numerous respondents, it may become necessary to use a national average rate, If so, paragraph (a)(3)(i) provides sufficient flexibility to do so.

Paragraph (a)(3)(iii) deals with the long-term loans to firms considered to be uncreditworthy. In a change from the practice described in § 355.44(b)(6)(iv) of the 1989 Proposed Regulations, paragraph (a)(3)(iii) describes a new method for calculating the benchmark the Department will use in identifying and measuring the benefit attributable to a government-provided long-term loan received by an uncreditworthy firm.

The new method is based explicitly on the notion that when a lender makes a loan to a company that is considered to be uncreditworthy (as opposed to a safer, creditworthy company) the lender faces a higher probability that the borrower will default on repayment of the loan. As a consequence of this higher probability of default, the lender will charge a higher interest rate. The calculation described in paragraph (a)(3)(iii) captures the increased probability of default by adjusting upward the rate of interest a creditworthy company would pay in the country in question.

In making this adjustment, the Department is not proposing to calculate the probability that a particular uncreditworthy firm will default on a particular loan. Such a calculation would require extensive data and analysis, and any conclusion would be highly speculative. Instead, similar to the method the Department has used since 1984, we are proposing to rely on information regarding the U.S. debt market. In particular, we have used the weighted average one-year default rate for speculative grade bonds between 1970 and 1994, as reported by Moody's Investor Service. This average default rate is 4.3 percent. This rate is reflected indirectly in the formula, which is based on the probability that these risky loans will be repaid (*i.e.*, 1—.043 = .957).

Although the uncreditworthy benchmark we adopted in 1984 and included in the 1989 Proposed Regulations has not been controversial, we believe that the method we are

proposing here offers a more accurate measure of risk involved in lending to firms with little or no access to commercial bank loans. By adjusting the interest rate that a healthy, low-risk company would pay in the country in question upward to account for the greater likelihood of default by an uncreditworthy borrower, we capture more precisely the speculative nature of loans to uncreditworthy companies and the premium they would have to pay the lender to assume that risk.

Paragraph (a)(4) sets forth the standard for determining when a firm is uncreditworthy. Paragraph (a)(4)(i) is based on § 355.44(b)(6)(i) of the 1989 Proposed Regulations, but has been modified to clarify the analysis the Department intends to undertake in determining whether a company is creditworthy. In § 355.44(b)(6)(i) of the 1989 Proposed Regulations we stated that the Secretary would deem a firm uncreditworthy if that "firm did not have sufficient revenues or resources to meet its costs and fixed financial obligations in the three years prior to the year in which the firm and the government agreed upon the terms of the loan." We have replaced this statement with an explanation of what we mean by "uncreditworthiness." Specifically, we will find a company to be uncreditworthy if information available at the time the government-provided loan is made indicates that the firm could not have obtained long-term financing from conventional commercial sources. In this context, "conventional commercial sources" is meant to refer to bank loans and non-speculative grade bond issues. Hence, uncreditworthy companies are those that would be forced to resort to other sources, such as junk bonds, to raise funds. The Department will make its creditworthiness finding based on the information described in paragraphs (a)(5)(ii) (A), (B), (C), and (D), which are unchanged from the comparable paragraphs in § 355.44(b)(6) of the 1989 Proposed Regulations.

Paragraph (a)(4)(ii) is based on the last sentence of § 355.44(b)(6)(i) of the 1989 Proposed Regulations. However, the word "normally" has been replaced by the phrase "In the case of firms not owned by the government * * *." Also, the term "government-provided guarantee" replaces "explicit government guarantee." With respect to the first change, the deletion of "normal ly" reflects the Department's consistent practice considering commercial financing to a firm to be dispositive evidence of a firm's creditworthiness only if the firm is privately-owned. With respect to the second change, this is intended to indicate that the Department will consider the circumstances surrounding the financing as a whole, instead of relying on one factor in determining whether the financing shows that the firm is creditworthy.

Paragraphs (a)(4)(iii) and (a)(6)(i) are based on §§ 355.44(b)(6) (ii) and (iii) of the 1989 Proposed Regulations. Paragraph (a)(4)(iii) states that the Secretary will ignore current and prior countervailable subsidies in determining whether a firm is uncreditworthy. In other words, the Secretary will not attempt to adjust a firm's financial data for current and prior subsidies in making a creditworthiness determination. Paragraph (a)(6)(i) continues to require a specific allegation before the Secretary will consider the uncreditworthiness of a firm.

Paragraph (a)(5) deals with long-term variable rate loans, and codifies a methodology set forth in the *GIA*. Under paragraph (a)(5)(i), the year in which the terms of the government-provided loan are set establishes the reference point for comparing the government-provided variable-rate loan with the comparable commercial variable-rate loan. If the interest rate on the government-provided loan is lower than the interest rate on the comparable commercial loan, a benefit exists. If the interest rate on the government-provided loan is the same or higher, no benefit exists. The rationale for basing the decision on the first-year interest rate differential is that the interest rate spread, if any, in that year generally will apply throughout the life of the loan. Paragraph (a)(5)(ii) recognizes that there may be situations where the method described in paragraph (a)(5)(i) is not appropriate and provides the Department with the discretion to modify that method. For example, there may be no comparable commercial variable-rate loan to use for comparison purposes or the repayment structure of the government-provided variable-rate loan may be such that the simple interest rate comparison described in paragraph (a)(5)(i) would not yield an accurate measure of the benefit.

Paragraph (a)(6)(ii) establishes an evidentiary standard for investigations of loans extended by government-owned banks, and is based on § 355.44(b)(9) of the 1989 Proposed Regulations. *See also* paragraph (a)(2)(ii), discussed above. In this regard, some commenters argued that the Department should investigate all loans from government-owned, or government-supported, banks, and that the Department should abandon its requirement that evidence be presented that such loans were provided under a specific government program. According to the commenters, because this type of information is not reasonably available to petitioners, the burden of proving that a company has not received subsidized loans from a government-owned bank should be shifted to respondent interested parties. In addition, these commenters argued that the Department should consider financing provided by a bank that is partially funded by the government to be countervailable even in the absence of a particular government program.

In response, one commenter argued that the Department should continue to require reasonable evidence that loans from government-owned banks are provided at government direction or from government funds and on subsidized terms. According to this commenter, the adoption of a looser approach would create a *per se* rule that the lending practices of government-owned banks are in and of themselves suspect. Additionally, shifting the burden of proof to respondents to show that such loans are not countervailable would be a violation of the "positive evidence" approach outlined in Article 2.4 of the SCM Agreement and the "substantial evidence" requirement of section 516A(b)(1)(B) of the Act.

Under our past practice, we have distinguished between government-owned banks that are operated to meet special financing needs and commercial banks that are government-owned. For the former (*i.e.*, special purpose banks such as national development banks), petitioners are asked to provide information reasonably available to them to show that loans being provided by such banks are specific and that the interest being charged is not at commercial rates. For the latter (*i.e.*, commercial banks that are government-owned), we have additionally requested that petitioners provide reasonably available information that the loans in question are something more than mere commercial loans. In particular, we request information suggesting that such loans are being provided at the direction of the government or with funds provided by the government.

We believe this approach is appropriate because we have no basis to presume that loans given under the commercial operations of government-owned banks confer a subsidy. Moreover, we do not believe that our request for this additional information places an unreasonable burden on petitioners; they need only provide reasonably available information that the government-owned bank, for example, administers government loan programs that could be the source of the loan in question.

Thus, with the exception of special purpose banks (as discussed above), we agree with the commenters who argued that the Department should investigate loans from a government-owned bank only when a petitioner provides information suggesting that such loans are being provided at the direction of the government or with funds provided by the government. Accordingly, paragraph (a)(6)(ii) reaffirms the Department's prior approach with respect to government-owned banks.

Paragraph (b) sets forth a rule regarding the point in time at which the benefit from a loan arises, and is based on § 355.48(b)(3) of the 1989 Proposed Regulations. The second sentence of paragraph (b) addresses loans with special characteristics, such as loans with preferential grace periods. In the case of these types of loans, we do not believe that it is appropriate to wait until the end of the grace period to begin assigning subsidy amounts, because the longer the grace period, the greater the subsidy benefit and the greater the time before countervailing duties can be assessed.

Paragraph (c) deals with the allocation of the benefits of a government-provided loan to a particular time period. While paragraph (c) is based, in part, on § 355.49 of the 1989 Proposed Regulations, it contains several changes.

Paragraph (c)(1) provides that the benefit of a short-term loan will be allocated (expensed) to the year(s) in which the firm is due to make interest payments on the loan. This approach, which essentially treats short-term loans as recurring subsidies, is consistent with longstanding Department practice.

Paragraph (c)(2) deals with situations in which the benefit of a government-provided loan stems solely from the concessionary interest rate of the loan, not from any differences in repayment terms. Where this is the case, there is no need to engage in the complicated calculations called for by § 355.49(c) of the 1989 Proposed Regulations. Instead, as paragraph (c)(2) provides, the annual benefit can be determined by simply calculating, for each year in which the loan is outstanding, the difference in interest payments between the government-provided loan and the comparison loan. The last sentence of paragraph (c)(2) restates the principle reflected in § 355.49(c)(2) of the 1989 Proposed Regulations that the amount of the subsidy conferred by a government-provided loan never can exceed the amount that would have been calculated if the loan had been given as a grant.

Paragraph (c)(3) deals with situations where both the government-provided loan and the comparison loan are long-term, fixed-interest loans, but where the two loans have dissimilar grace periods or maturities, or where the repayment schedules have different shapes (*e.g.*, declining balance versus annuity style). Because a firm may derive a benefit from special repayment terms, in addition to any benefit derived from a concessional interest rate, for these loans we will continue to calculate what was described as the "grant equivalent" in § 355.49(c) of the 1989 Proposed Regulations. However, instead of adopting the loan allocation formula from the 1989 Proposed Regulations, we intend to use the grant allocation formula described in § 351.503(c) (except that the allocation period will be the life of the government-provided loan). The elimination of the old loan formula reflects our desire to streamline methodologies, where possible. Moreover, by timing the receipt of the benefit from these types of loans to the year in which the government-provided loan was received (*see* § 351.504(b)), the old loan formula becomes unnecessary, because its primary purpose was to begin assigning annual subsidy amounts in the year after the receipt of the loan.

Paragraph (c)(4) sets forth the method of calculating an annual benefit for government-provided variable-rate loans, and is little changed from § 355.49(d) of the 1989 Proposed Regulations.

Several commenters suggested that instead of using the life of the loan as the allocation period for long-term loans, the Department should use the same allocation period as used for other types of non-recurring subsidies. Given that, as discussed above, the Department has adopted the AUL method for non-recurring grants, if the Department were to adopt this suggestion it would mean allocating the benefit of a long-term loan over the average useful life of a firm's renewable assets.

For the following reasons, we have not adopted this suggestion. First, as part of our streamlining effort, we are not, as a general matter, calculating grant equivalents. Therefore, our new methodology does not lend itself to allocating loan subsidies over any period other than the life of the loan. Moreover, while ¶ 4.2 of the *Guidelines* recognizes that the allocation of the benefit of a long-term loan over the life of assets is a reasonable method, ¶ 4.1 recognizes that allocation over the life of the loan is also a reasonable method. In addition, the life-of-the-loan method imposes less of a burden on private parties and Department staff than other alternatives, because it is a comparatively easy matter to determine the life of a loan. The Department's longstanding practice of allocating a long-term loan benefit over the life of the loan has been relatively non-controversial and litigation-free, and we are reluctant to change this practice absent a persuasive demonstration that an alternative method is superior to existing practice. In this instance, we do not believe that such a demonstration has been made.

Paragraph (d) sets forth a method for calculating the annual benefit attributable to a long-term interest-free loan, the obligation for repayment of which is contingent upon subsequent events, such as the achievement of a particular profit level by the firm. Paragraph (d) is based on § 355.49(f) of the 1989 Proposed Regulations, and continues to provide that the Secretary will treat any outstanding balance on one of these types of loans as an interest-free, short-term loan (using a short-term loan benchmark), and will expense any benefit(s) to the year(s) in which interest would have been paid on the short-term loan.

Section 351.505

Section 351.505 deals with loan guarantees. Paragraph (a)(1) sets forth the general rule for identifying and measuring the benefit attributable to a government-provided loan guarantee, and conforms to the new standard contained in section 771(5)(E)(iii) of the Act.

One commenter argued that in choosing a comparable commercial loan by which to identify and measure the benefit attributable to a government-provided loan guarantee, the Department should use a loan with a comparable commercial guarantee. This same commenter also recommended that the Department continue the approach described in § 355.44(c)(2) of the 1989 Proposed Regulations. Under this practice, if the government was the owner of the firm and it was normal commercial practice in the country for owners or shareholders to provide loan guarantees comparable to the government-provided guarantee, the Department did not consider the government-provided guarantee as giving rise to a benefit. In response, one commenter argued that the Department's practice in this regard is inconsistent with the government's involvement in the transaction in that, unless a subsidy was being provided, the firm would have obtained the loan through a commercial guarantor.

We agree that in determining whether a government-provided loan guarantee

confers a benefit, the Department should determine whether it is a normal commercial practice in the country in question for a private owner, or parent company, to guarantee a loan. We have drafted paragraph (a)(2) accordingly. A government-provided guarantee should not be considered countervailable if it is given by the government in its capacity as owner (*i.e.*, not under a government guarantee program used by government-owned and privately-owned companies) and if private owners normally provide guarantees in the same circumstances. For example, if the government directly guaranteed the debt of a company it owned, it would fall upon the respondent to demonstrate that private shareholders in that country also would normally guarantee the debt of the companies in which they own shares. Where a government-owned holding company guarantees the debt of its subsidiaries, the respondent would need to show that it is normal commercial practice for non-government-owned corporations to guarantee the debt of their subsidiaries. In addition, the respondent would need to demonstrate sufficient internally-generated resources to serve as guarantor of the debt. Where the government or a government-owned holding company guaranteed the debt of an "uncreditworthy" company it owned (*see* § 351.504(a)(4) regarding uncreditworthy companies), the respondent would need to provide evidence that private owners would also guarantee the debt of uncreditworthy companies they own.

The Department normally will not consider whether the behavior of a government owner/guarantor represents normal commercial practice unless a respondent provides adequate supporting information. Such information can include statements by independent sources such as financial or banking experts, tax experts or academics in the field of business. Absent such a demonstration, the Department will identify and measure the benefit from a government-provided loan guarantee by comparing the guaranteed loan to a comparable commercial loan in the same manner as under § 351.504. In addition, to conform to new section 771(5)(E)(iii) of the Act, paragraph (a)(1) provides that the Department will adjust for any difference in the guarantee fees. Therefore, we do not agree with the first comment that we should decide which loans are comparable on the basis of the comparability of the loan guarantees.

Paragraphs (b) and (c) deal, respectively, with the time at which the benefit from a loan guarantee is considered to have been received and the allocation of the benefit to a particular time period. Both paragraphs essentially apply the methodology for loans set forth in paragraphs (b) and (c) of § 351.504.

Section 351.506

Section 351.506 deals with equity infusions. Paragraph (a) deals with the identification and measurement of the benefit attributable to a government-provided equity infusion. Like § 355.44(e) of the 1989 Proposed Regulations, paragraph (a) is divided into two methodological tracks, the choice of methodology depending on whether or not there are actual private investor prices to serve as a benchmark for shares of a firm purchased by a government. However, paragraph (a)(1) retains the existing preference for private investor prices as a benchmark.

Actual Private Investor Prices Available

Paragraph (a)(2) contains rules for analyzing equity infusions when actual private investor prices are available, the first methodological track, and is largely based on § 355.44(e)(1) of the 1989 Proposed Regulations. Under § 355.44(e)(1), the first question in analyzing an equity infusion was whether, at the time of the infusion, there was a market price for newly-issued equity. If so, and if the shares purchased on the market were in the same form as the shares purchased by the government, the Department determined the amount of the benefit by comparing the price paid by government for its shares with the market price. In an exceptional situation, however, the Department could find the volume of a firm's traded shares to be so low as to preclude the use of those shares as a benchmark.

Paragraph (a)(2) is not intended to alter any of these basic principles. It does, however, elaborate on them in two respects. First, it addresses the use of prices of shares that are not in the same form as the shares provided to the government as benchmarks. Second, it permits the Department to use as a benchmark the market price of publicly-traded shares that the firm had previously issued.

The Department considered these last two issues in the 1993 steel determinations. With regard to the use of shares that are not identical to the shares being purchased by the government, the Department determined that in appropriate circumstances, shares with similar characteristics can be compared. *See GIA* at 37252. The CIT subsequently upheld the principle of relying on a similar form of equity where the same form of equity does not exist. *Geneva Steel* v. *United States*, 914 F. Supp. at 580 (1996).

With respect to secondary market shares, in the *GIA* at 37250, the Department explained that its practice was to "resort to the use of secondary market share prices in instances where private investors did not purchase new shares from the firm at the same time they were issued to the government." The Department reaffirmed this practice, holding that, "(a)s long as the market price benchmark at the time of the infusion has not been shown to be deficient or tainted * * * a government equity infusion must be determined to be made on an equityworthy basis whenever the government purchases shares at (the secondary market) price." *Id.* at 37251. This practice, too, has been sustained by the courts. *Geneva Steel* v. *United States*, 914 F. Supp. at 581 (1996).

The URAA did not modify these general principles. Section 771(5)(E)(i) states that a benefit shall normally be treated as conferred if, in the case of an equity infusion, "the investment decision is inconsistent with the usual investment practice of private investors, including the practice regarding the provision of risk capital, in the country in which the equity infusion is made." Market-determined share prices, when available and useable, provide the best gauge as to the usual investment practice of private investors, including practices regarding the provision of risk capital.

Therefore, under paragraph (a)(2)(i)(A), an equity infusion confers a benefit if the price paid by the government for newly-issued equity is more than the price paid by private investors for newly-issued equity of the same (or similar) form. For example, if a government pays $10 per share for newly-issued shares in a firm, and private investors pay $5 per share for the same shares, a benefit exists in the amount of $5 per share ($10 − $5 = $5).

If there is no private investor price for newly-issued equity, under paragraph (a)(2)(i)(B), an equity infusion confers a benefit if the price paid by the government for newly-issued equity is less than the market-determined price, at such time as permits a reasonable comparison, of previously issued publicly-traded shares of the same (or similar) form. We continue to believe that market prices should be preferred as benchmarks, because such prices incorporate private investors' perceptions of a firm's future earning potential and worth.

In this regard, however, we intend that in applying this private investor standard, the amount of shares purchased by private investors must be sufficiently significant so as to provide an appropriate benchmark. *See* paragraph (a)(2)(iii). For an example of a situation where the Department found sufficient private participation to warrant use of the prices paid by private investors as the benchmark, *see Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Italy*, 60 FR 31922, 31994 (1995). Also, the use of a "similar" share as the basis of the benchmark neither precludes nor requires a price adjustment for differences in the types of shares. However, under paragraph (a)(2)(iv), the Department intends to make the adjustment when it is appropriate and reasonably quantifiable. For an example of an adjustment to account for differences in the types of shares, see *Certain Atlantic Groundfish from Canada*, 51 FR 10047 (1986).

Two commenters, citing *AIMCOR* v. *United States*, 871 F. Supp. 447 (Ct. Int'l Trade 1994) ("*AIMCOR I*"), stated that the Department should "clarify" its equity methodology so as to preclude the use of previously issued, publicly-traded shares as benchmarks. These commenters claim that merely because a company has previously issued publicly-traded shares does not imply that the company could obtain fresh equity capital on the same terms from reasonable private investors. They claim that the Department's use of the price of outstanding shares is flawed because it recognizes neither the concept of earnings dilution (*i.e.*, the fact that newly-issued shares dilute the claims attributable to previously issued shares) nor the difference between replacement cost and market value. Finally, they argue that the Department's current methodology does not take into account differences between "hybrid" equity-like instruments issued to the government and previously issued equity instruments that do not have "hybrid" features.

With respect to these comments, paragraph (a)(2)(i) reflects a distinction between the *AIMCOR I* problem, where the ownership rights conferred upon the private shareholders differed from the ownership rights conferred upon the government, and the question of whether the publicly-traded price of previously issued shares is an adequate proxy for the price of newly-issued shares. Paragraph (a)(2)(i) recognizes the *AIMCOR I* problem by requiring that the Department use the same or "similar" shares for its benchmark, and by permitting the Department to make an adjustment for differences between the shares used as the benchmark and the government-provided equity.

As for the use of secondary market prices, the Department believes that it can improve the accuracy of the secondary market price benchmark by altering the timing of the calculation. In particular, we are proposing to use secondary market prices in the period immediately following a government equity infusion. We believe use of these prices will allow us to capture private investors' perceptions as to what the newly infused capital will allow the firm to achieve, and also will enable us to measure any dilution of ownership. In our view, paragraph (a)(2)(iv) is sufficiently flexible so as to permit the Department to calculate a benchmark based on prices paid during a time period that will permit a reasonable comparison with the government equity infusion. However, we are particularly interested in public comments on this issue.

Actual Private Investor Price Not Available

One of the most difficult methodological problems confronted by the Department in its administration of the CVD law involves the analysis of government-provided equity infusions in situations where there is no market benchmark price. This problem typically arises in the case of firms that are wholly owned by the government. Since 1982, the Department has dealt with this problem by categorizing firms as either "equityworthy" or "unequityworthy." As set forth in § 355.44(e)(2) of the 1989 Proposed Regulations, an equityworthy firm was one that showed "an ability to generate a reasonable rate of return within a reasonable period of time." An unequityworthy firm did not show such an ability. If the Department found that a firm was equityworthy, the Department would declare a government-provided equity infusion in the firm to be not countervailable. The Department would not consider whether, notwithstanding the general financial health of a firm, an excessive price was paid for government-provided equity. Conversely, if the Department found a firm to be unequityworthy, the Department would declare a government-provided equity infusion in the firm to be countervailable without further analysis.

In these regulations, we have retained the equityworthy/unequityworthy distinction. Thus, under paragraph (a)(3), if actual private investor prices are not available under paragraph (a)(2), the Secretary will determine whether the firm in question was equityworthy. Paragraph (a)(4) sets forth the standard the Secretary will apply in determining equityworthiness, and is virtually identical to § 355.44(e)(2) of the 1989 Proposed Regulations.

This distinction between equityworthy and unequityworthy firms has certain administrative advantages. However, as applied by the Department in the past, it was, to some extent, a rather simplistic approach to a complex problem. This point was driven home by the decision in *AIMCOR, Alabama Silicon, Inc.* v. *United States*, 912 F. Supp. 549 (Ct. Int'l Trade 1995) ("*AIMCOR II*"), in which the court ruled that, because of restrictions imposed on certain "Class E" shares, the government's purchase of those shares was inconsistent with commercial considerations, notwithstanding the fact that the firm in question was equityworthy. As stated previously by the court in *AIMCOR I*, "[w]here a company is equity-worthy, as here, it does not necessarily follow that the purchase of stock from that company will be consistent with commercial considerations." 871 F. Supp. at 454.

While we do not necessarily agree with the court's resolution of the factual issue in *AIMCOR II* (*i.e.*, whether the purchase of Class E shares was inconsistent with commercial considerations), we do agree with the basic principle articulated by the court. Put in terms of the new statute, where a company is equityworthy, it does not necessarily follow that the purchase of stock from that company will be consistent with the usual investment practice of private investors. Accordingly, paragraph (a)(5) provides that if the Secretary finds a firm to be equityworthy, the Secretary will conduct a further examination to determine whether the particular investment was consistent with usual investment practice. Our intent here is not to conduct a further analysis if the government has purchased common shares in a firm. Instead, we will conduct a further analysis in situations, like *AIMCOR I*, in which the government has purchased shares to which special conditions or restrictions are attached.

Thus far, we have been discussing firms determined by the Department to be equityworthy. However, unequityworthy firms present the same problem: just as the Department's practice has oversimplified government-provided equity to equityworthy companies, it has also oversimplified government-provided equity to unequityworthy companies because it assumes that the shares purchased by the government are worthless. We have reconsidered this practice, adopted in the 1993 steel determinations, and have

proposed in these regulations an approach that is consistent with our general rule for equity which directs that consistency with the usual investment practice will normally be determined by reference to the price a private investor would pay for the shares.

This new approach, reflected in paragraph (a)(6)(i), provides that if the Secretary determines that a firm is unequity-worthy, the Secretary normally will measure the benefit conferred by a government equity infusion by estimating the price that a reasonable private investor would have paid for the shares purchased by the government. If the price paid by the government exceeds this estimated price, the amount of the benefit will be the difference between the two prices. In estimating the price that a reasonable private investor would have paid, the Secretary will rely only on information and analysis that existed at the time of the equity infusion, because this is the information that would have been available to a reasonable private investor.

At this time, we have not been able to develop a method for calculating the price that a reasonable private investor would have paid for the shares purchased by the government. Among the methods we have considered is an options pricing model, in which possible future returns would be valued using a standard pricing formula for equity call options. To use such a model, we would need to develop estimates for the underlying value of the option and the volatility of expected returns. We would especially welcome comments on the use of such a model for estimating share prices or any alternative methods.

It has long been recognized that the ideal approach to equity infusions in unequityworthy firms would be to estimate the price that a private investor would have paid for shares purchased by the government. *See* Holmer *et al., Identifying and Measuring Subsidies Under the Countervailing Duty Law: An Attempt at Synthesis*, in *The Commerce Department Speaks on Import Administration and Export Administration 1984* (Practising Law Institute 1984), at 444. This approach, which we will refer to as the "constructed private investor price" method ("CPIP"), corresponds most closely to the preferred methodology. However, in the past, the CPIP method has been rejected as impractical. *Id.*

Upon further consideration, we have concluded that before rejecting the CPIP method as impractical, we first should attempt to use it in actual cases. Our conclusion is reinforced by the fact that while our prior practice may not be unreasonable as a legal matter, it is even more reasonable to rely on a methodology that recognizes that, at least in some cases, shares of an unequityworthy firm may have some value.

We recognize that there may be instances in which the information necessary to estimate what a reasonable private investor would have paid simply does not exist or does not provide an appropriate basis for making such an estimate. Therefore, paragraph (a)(6)(ii) provides an alternative method for measuring the benefit conferred by an equity infusion in an unequityworthy firm. Under this alternative method, the Secretary would allocate the equity infusion to two or more years in accordance with paragraph (c)(2) (discussed below), and would adjust the amount allocated to a particular year by the amount of subsequent after-tax returns achieved in that year by the firm in question. The reason for accounting for subsequent returns is that under our preferred methodology, we are attempting to account for the reasonable private investor's expectations, at the time of the equity infusion in question, regarding a firm's future returns. If available information does not allow us to estimate those expected returns, the best proxy is the actual return earned on the investment. While this approach lacks the conceptual purity of the CPIP method, we believe it is preferable to the grant methodology, which treats *all* equity infusions in *all* unequityworthy firms as automatically worthless.

Although several comments were filed on our methodology for government-provided equity in unequityworthy companies, they fell into one of two camps. One group called for the Department to codify the grant methodology adopted in the 1993 steel cases. These commenters pointed to the fact that the grant methodology has been upheld by the CIT in *British Steel plc* v. *United States*, 879 F.Supp. 1254, 1309 (Ct. Int'l Trade 1995). *See also, Usinor Sacilor* v. *United States*, 893 F.Supp. 1112, 1125–26 (Ct. Int'l Trade 1995). They further maintained that this practice is consistent with the new law.

The other group of commenters urged the Department to return to the methodology it employed prior to the 1993 steel investigations, the so-called "rate of return shortfall" ("RORS") methodology. In their view, the RORS methodology offers the best proxy for determining the amount by which the government overpaid for its shares. These commenters also cited to a GATT Panel Report that, in their view, squarely rejected the grant methodology. (*See United States—Imposition of Countervailing Duties on Certain Hot-rolled Lead and Bismuth Carbon Steel Products Originating in France, Germany and the United Kingdom*, SCM/185 (Nov.15, 1994) (unadopted).

Although the CIT has upheld the grant methodology for government-provided equity to unequityworthy firms, *AIMCOR I* led us to review our equity methodology in its entirety. We concluded that a finding of "equityworthiness" or "unequityworthiness" is not by itself a sufficient basis for measuring the benefit conferred by government-provided equity. Specifically, a finding that a firm is equityworthy does not mean that the government paid the price a private investor would have paid for the particular shares in question. Similarly, a finding that a firm is unequityworthy does not mean that a private investor would have paid nothing for the shares purchased by the government. Merely because the government could not expect a reasonable rate of return given the price it paid for its shares, it does not follow that the expected return on the investment is zero. In this respect, we believe that the grant methodology, like the RORS methodology it replaced, does not adequately account for the expectation held by the reasonable private investor, at the time of the infusion, of the company's future rate of return.

The methodology we have proposed in these regulations for both equityworthy and unequityworthy firms reflects our goal of determining the price a private investor would have paid in either an equityworthy or unequityworthy situation. We believe this approach is preferable to RORS because it attempts to use information available at the time of the government's equity purchase regarding the firm's expected return to calculate the price the government should have paid for the shares it purchased. Moreover, where a CPIP cannot be determined, we believe that the alternative methodology proposed in paragraph (a)(6)(ii) is a better reflection of the benefit conferred on an unhealthy (*i.e.*, unequityworthy) firm receiving government-provided equity than the RORS methodology. This is because, given our finding that the firm is unequityworthy, the best prediction we can make is that the value of the shares is zero. Our prediction may be wrong, and paragraph (a)(6)(ii) allows us to take into account the return we were not able to predict, but the prediction we make of a zero-share price is the best estimate we can make based on information that would have been

available to investors at the time the government made its equity purchase. Moreover, we believe that our willingness to take into account the return actually earned by the government addresses the concern raised by the GATT Panel.

Paragraph (a)(7) deals with allegations regarding equity infusions, and is based on § 355.44(e)(3) of the 1989 Proposed Regulations. In our view, § 355.44(e)(3) has not posed an undue burden on petitioners nor prevented the filing of meritorious allegations. However, it does ensure that allegations will consist of something more than a mere statement that a government owns a firm in whole or in part.

Paragraph (b) provides that the Secretary normally will consider the benefit from an equity infusion to have been received as of the date on which the firm received the infusion.

Paragraph (c) deals with the allocation of the benefit to particular years and provides in (c)(1) a general rule that the Secretary will normally allocate the benefit of an equity infusion over the same allocation period that would be used for a non-recurring grant.

Paragraph (c)(2) provides that where the Secretary has measured the benefit by reference to actual or constructed private investor prices (and, thus, has calculated a premium that can be viewed as a grant), the Secretary will allocate the benefit as if it were a non-recurring grant, using the methodology set forth for such grants in § 351.503(c)(2). This approach is consistent with § 355.49(a)(3)(i) of the 1989 Proposed Regulations, which also required that equity infusions be treated as grants if a market-determined price was used to identify and measure the benefit.

Paragraph (c)(3) applies to equity infusions in unequityworthy firms in situations where the Secretary cannot use the CPIP method under paragraph (a)(6)(i). Paragraph (c)(2) also provides for the allocation of the equity infusion as if it were a non-recurring grant, but references the fact that the Secretary will adjust the allocated amount in accordance with paragraph (a)(6)(ii).

Section 351.507

Section 351.507 deals with assumptions or forgiveness of debt. Paragraph (a), which deals with the identification and measurement of the benefit attributable to government-provided debt assumptions or forgiveness, is little changed from § 355.44(k) of the 1989 Proposed Regulations. Paragraph (b) describes when the benefit from debt assumption or forgiveness will be deemed to have been received. Paragraph (c) provides that the Secretary will normally treat the benefit from debt assumption or forgiveness as a non-recurring grant for allocation purposes. However, where the government is assuming interest under certain narrowly-drawn circumstances, the interest assumption will be treated as a reduced-interest loan and allocated according to the loan allocation rules. Although it has undergone some refinement, this exception is consistent with the policy articulated by the Department in the 1993 steel determinations.

Section 351.508

Section 351.508 deals with subsidy programs that provide a benefit in the form of relief from direct taxes. ("Direct tax" is defined in § 351.102.) The most common form of a direct tax is an income tax, and the subsidy programs most frequently encountered are those that provide special income tax exemptions, deductions or credits. With respect to the benefit provided by these types of programs, paragraph (a)(1) of § 351.509 retains the standard set forth in § 355.44(i)(1) of the 1989 Proposed Regulations; *i.e.*, a benefit exists to the extent that the taxes paid by a firm as the result of a program are less than the taxes the firm would have paid in the absence of the program. *See* 1989 Proposed Regulations, 54 FR at 23372, and cases cited therein.

Another type of direct tax program is the deferral of direct taxes owed. Although § 355.44(i)(1) included tax deferrals with exemptions and remissions of direct taxes, the Department has consistently used a different methodology for identifying and measuring the benefits of deferrals, treating deferrals as government-provided loans. Therefore, consistent with our practice, paragraph (a)(2) directs that the loan methodology described in § 351.504 will be applied to direct tax deferrals. Normally, deferrals of one year or less will be treated as short-term loans, while multi-year deferrals will be treated as short-term loans rolled over on the anniversary date(s) of the deferral.

Although the Department did not receive any private sector comments regarding direct tax subsidy programs, the Department has identified one aspect of its practice that might warrant modification. In the case of special accelerated depreciation allowances, a firm typically experiences tax savings in the early years of an asset's life and tax increases in the latter years of the asset's life. In the past, the Department has focused on the tax savings, but has not acknowledged the later tax increases. The Department is considering adopting a methodology that accounts for both the early tax savings and the later tax increases by calculating the net present value of the expected tax savings at the outset of the accelerated depreciation period. Before doing so, however, the Department would like to obtain the views of the private sector. We are also seeking private sector views on how the direct tax methodology should address losses, including loss carryforwards and treatment of losses under accelerated depreciation. Therefore, on these matters in particular, we encourage public comment.

Paragraph (b) of § 351.508 deals with the question of when the benefit from a direct tax subsidy is considered to have been received by a firm, and is based on § 355.48(b)(4) of the 1989 Proposed Regulations. As under current practice, the Secretary will consider the benefit from a tax exemption, deduction, or credit to have been received as of the date when the recipient firm can calculate the amount of the benefit, which normally will be when the firm files its tax return. In the case of a tax deferral of one year or less, the Secretary normally will consider the benefit to have been received when the deferred tax becomes due. For a multi-year deferral, the benefit is received on the anniversary date(s) of the deferral.

Paragraph (c) deals with the allocation of the benefits of direct tax subsidies to particular time periods. As under current practice, the Department normally will allocate such benefits to the year in which the benefits are considered to have been received under paragraph (b).

Section 351.509

Section 351.509 deals with programs that provide full or partial exemptions from, and deferrals of, indirect taxes or import charges. ("Indirect tax" and "Import charge" are defined in § 351.102). However, § 351.509 deals only with programs that potentially would be considered import substitution subsidies or domestic subsidies under section 771(5A)(C) or section 771(5A)(D) of the Act, respectively. Sections 351.516–518 deal with programs that potentially would be considered export subsidies under section 771(5A)(B) of the Act because they provide for an exemption or rebate of indirect taxes or import charges when a product is exported.

Paragraph (a)(1) of § 351.509 is based on § 355.44(i)(2) of the 1989 Proposed Regulations, and continues to provide that a benefit exists to the extent that the taxes or import charges paid by a firm as the result of a program are less than

the taxes the firm would have paid in the absence of the program. As in the case of direct taxes under § 351.508, deferrals of indirect taxes and import charges will be treated under paragraph (a)(2) as government-provided loans. Normally, deferrals of one year or less will be treated as short-term loans, while multi-year deferrals will be treated as short-term loans rolled over on the anniversary date(s) of the deferral.

Paragraph (b) of § 351.509 is based on § 355.48(b)(6) of the 1989 Proposed Regulations, and continues to provide that the Secretary will consider the benefit from a full or partial exemption of indirect taxes or import charges to have been received as of the date when the recipient firm otherwise would have had to pay the tax or charge. In the case of deferrals of one year or less, the Secretary normally will consider the benefit to have been received when the deferred amount becomes due. For multi-year deferrals, the benefit is received on the anniversary date(s) of the deferral.

Paragraph (c) deals with allocation to a particular time period, and provides that the Secretary normally will allocate (expense) to the year of receipt the benefits attributable to the types of subsidy programs covered by § 351.509.

Section 351.510

Section 351.510 deals with the provision of goods and services. As explained below, we have designated paragraph (a) as "[Reserved]" in order to first acquire some experience with the relevant statutory provision before codifying our methodology in the form of regulations. Paragraph (b) is based on § 355.48(b)(2) of the 1989 Proposed Regulations, and continues to provide that the benefit from a government-provided good or service is considered to be received when the firm pays, or is due to pay, for the good or service. Paragraph (c), which also is consistent with existing practice, provides that the Secretary will expense the benefit of a government-provided good or service to the year of receipt.

Adequate Remuneration

Prior to the URAA, section 771(5)(A)(ii)(II) of the Act provided that the provision of goods or services constituted a subsidy if such provision was "at preferential rates." Now, under section 771(5)(E)(iv) of the Act, a subsidy exists if such provision is "for less than adequate remuneration." Under section 771(5)(E) of the Act, the adequacy of remuneration is to be determined

> * * * in relation to prevailing market conditions for the good or service being provided * * * in the country which is subject to the investigation or review. Prevailing market conditions include price, quality, availability, marketability, transportation, and other conditions of purchase or sale.

One commenter suggested that we provide guidance in the regulations concerning how the Department intends to identify and measure adequate remuneration. Other commenters debated whether the Department is required to define adequate remuneration as the price that would exist absent government intervention in the marketplace. At this time, however, we are reluctant to go beyond the terms of the statute and the SAA. Instead, we intend to apply this new standard on a case-by-case basis. Once we have gained sufficient experience in actual cases, a codification of methodology may be appropriate. However, for the time being, we have designated paragraph (a) as "[Reserved]."

We should note, however, that while "adequate remuneration" has replaced "preferential" as the standard, we do not believe this precludes us from continuing to apply certain preferentiality-based analyses we have used in the past. *See Pure Magnesium and Alloy Magnesium from Canada*, 57 FR 30946, 30949 (1992); and *Certain Fresh Cut Flowers from the Netherlands*, 52 FR 3301, 3302 (1987). There is no indication that Congress intended to change our practice with respect to government-provided goods and services such as electricity, water, or natural gas; *i.e.*, goods and services provided to a wide variety of users by a government-owned company that is usually the sole provider of the good or service.

We note further that where adequate remuneration is being ascertained by reference to the prices of goods (or services) imported into the country in question, we would propose to use the amount actually paid for the import. Hence, if the price of the imported good included antidumping or countervailing duties imposed by the country in question, we would use the price inclusive of those duties for comparison purposes. Absent the imposition of antidumping/countervailing duties by the country in question, however, we would not adjust the import prices to reflect alleged subsidies or dumping.

Infrastructure

We received several comments regarding the special specificity test for government-provided infrastructure set forth in § 355.43(b)(4) of the 1989 Proposed Regulations. Although the commenters suggested different modifications to this test, they all used § 355.43(b)(4) as a starting point.

Unlike the prior statute, section 771(5) of the Act, as amended by the URAA, expressly mentions government-provided infrastructure. However, it does so not in the context of specificity, but in the context of "financial contribution," one of the prerequisites for a subsidy. Specifically, section 771(5)(D)(iii) of the Act, which implements Article 1.1(a)(1)(iii) of the SCM Agreement, provides that the term "financial contribution" includes the provision of "goods or services, other than general infrastructure." In other words, the provision of "general infrastructure" does not constitute a "financial contribution," and, thus, does not constitute a subsidy.

In light of the change in the statute, the countervailability of infrastructure depends on the definition of "general infrastructure." However, we have no experience in applying this definition, and we are uncertain regarding the extent to which the principles reflected in § 355.43(b)(4) remain useful analytical tools for distinguishing potentially countervailable "infrastructure" from non-countervailable "general infrastructure." Therefore, we are not issuing regulations on infrastructure at this time. Instead, we will apply the statutory definition on a case-by-case basis.

Section 351.511

Section 351.511 deals with the purchase of goods. Section 771(5)(E)(iv) of the Act provides that the purchase of goods by a government can confer a benefit if the goods are purchased "for more than adequate remuneration." As discussed above in connection with the provisions of goods or services, the Department does not have any experience in applying an adequate remuneration standard. In addition, while government procurement was potentially a countervailable subsidy prior to the URAA, allegations of procurement subsidies were extremely rare. Thus, we do not even have experience on such matters as the "timing" of procurement subsidies or the allocation of such subsidies to a particular time period.

Therefore, given our lack of experience with procurement subsidies in general, and the adequate remuneration standard in particular, we are not issuing regulations concerning the government purchase of goods. Instead, we have designated Section 351.511 as "[Reserved]."

In this regard, however, one commenter that suggested a regulation regarding government procurement stated that any such regulation should cover the government procurement of services. Although, for the reasons stated above, we are not promulgating a regulation on government procurement at this time, we should note that under section 771(5)(D)(iv) of the Act and Article 1.1(a)(1)(iii) of the SCM Agreement, only government procurement of goods is identified as a financial contribution.

Section 351.512

Section 351.512 deals with worker-related subsidies. Under paragraph (a), which is based on § 355.44(j) of the 1989 Proposed Regulations, the Department will continue to identify and measure the benefit of government-provided assistance to workers based on the extent to which such assistance relieves a firm of an obligation it otherwise normally would incur.

One commenter argued that the Department should clarify that worker assistance is countervailable only when the assistance relieves a firm of an existing *contractual or statutory* obligation. Such a clarification would prevent what this commenter considered to be an erroneous determination in *Certain Steel Products from Germany*, 58 FR 38318 (1993); *GIA* at 37256–57. In that case, the Department countervailed the Member State-funded portion of Article 56(2)(b) early retirement aid based on its conclusion that the government's contribution was likely to have an effect on the outcome of labor negotiations between steel producers and their workers. A different commenter, however, endorsed the Department's determination and the method used by the Department to measure the amount of the subsidy.

The Department disagrees with the proposal of the first commenter, because, in certain circumstances, the relief from an obligation that is not "binding" in a contractual or statutory sense nonetheless may provide a benefit to a firm that is readily identifiable and measurable. On the other hand, the Department is not prepared to codify the particular approach used in *Certain Steel Products from Germany*. Given the limited alternatives available in that case, we consider the approach used therein to be reasonable. At the same time, we acknowledged in the determination that the approach used was somewhat speculative, and we stated that we would consider further refinements in the future, particularly as part of any administrative review requested. However, because no such review was requested, we have not had the benefit of private sector comments, other than the two comments described above. Moreover, the determination remains the subject of litigation.

Nevertheless, we may deal with this issue in more detail in the final regulations. Therefore, we invite public comment on this issue in particular.

Paragraph (b) deals with the timing of worker-related subsidies. Most subsidies of this type are provided in the form of cash payments (grants), and paragraph (b) provides that the Secretary will consider the subsidy to have been received by the firm as of the date on which the payment is made that relieves the firm of the obligation it normally would incur. Paragraph (c) deals with the allocation of worker-related subsidies to a particular time period, and essentially treats these types of subsidies as recurring grants to be allocated (expensed) to the year of receipt.

Section 351.513

Section 351.513 contains a standard for determining when a subsidy is an export subsidy, as opposed to a domestic or import substitution subsidy. Consistent with section 771(5A)(B) of the Act, § 351.513 expands the definition of an export subsidy.

In particular, § 351.513 would overturn the practice described in *Extruded Rubber Thread from Malaysia*, 57 FR 38472 (1992). In that case, the Malaysian Government considered 12 criteria in evaluating whether a particular company should receive "pioneer" status. Two of these criteria addressed the export potential of a product or activity. In addition, in certain situations, companies had to agree to export commitments. In analyzing this program, the Department examined the number of criteria being applied with respect to a particular company. If one or more of the criteria applied by the Government included favorable prospects for export, but the export criteria did not carry preponderant weight, the Department did not consider the award of pioneer status to constitute an export subsidy. However, under the new standard contained in § 351.513, if exportation or anticipated exportation was either the sole or one of several criteria for granting pioneer status to a firm, we would consider any benefits provided under the program to the firm to be export subsidies.

This expanded definition of export subsidy is not intended to include situations where exportation or anticipated exportation is one of many criteria for awarding benefits under a program, but the firm in question has qualified to receive the benefits under non-export-related criteria. In these circumstances, the Department would not treat the subsidy to that firm as an export subsidy.

Section 351.514

Section 351.514 corresponds to paragraph (c) of the Illustrative List, and deals with preferential internal transport and freight charges on export shipments. Paragraph (a)(1) restates the general principle that a benefit exists to the extent that a firm pays less for the transport of goods destined for export than it would for the transport of goods destined for domestic consumption. In addition, paragraph (a)(2), which is based on § 355.44(g)(2) of the 1989 Proposed Regulations, provides that the Secretary will not consider a benefit to exist if differences in charges are the result of an arm's length transaction or are commercially justified.

Paragraph (b) provides that the Secretary will consider the benefit to have been received as of the date on which the firm pays or, in the absence of payment, was due to pay the transport or freight charges. Paragraph (c) provides that the Secretary will allocate (expense) the benefit to the year in which the benefit is received.

Section 351.515

Section 351.515 deals with the government provision of goods or services on favorable terms or conditions to exporters. Like its predecessor, § 355.44(h) of the 1989 Proposed Regulations, § 351.515 is based on paragraph (d) of the Illustrative List, and reflects the changes to paragraph (d) made as part of the Uruguay Round. Paragraph (a) contains the standard for determining the existence and amount of the benefit attributable to these types of subsidy programs. As paragraph (a)(2) makes clear, in determining whether the domestically sourced input is being provided on more favorable terms than are commercially available on world markets, the Department will add to the world market price delivery charges to the country in question. In our view, delivered prices offer the best measure of prices that are commercially available to exporters in that country. Furthermore, it has been suggested that commercially available prices in world markets may include dumped or subsidized prices and we invite comment on this issue. Paragraphs (b) and (c) contain rules regarding the timing of benefit receipt and the

allocation of the benefit to a particular time period, respectively.

One commenter argued that the Department should provide that all export subsidy payments are prohibited *per se* under the SCM Agreement and U.S. law, and that nothing in paragraph (d) permits them. According to this commenter, in the past, foreign governments have claimed an exception to paragraph (d) for practices that protect domestic markets while promoting subsidized exports of agricultural and manufactured goods. The example cited was the European Community ("EC") program providing "export restitution" payments or "export refunds" on durum wheat, the primary agricultural product used in the production of pasta. The commenter stated that these refunds were prohibited because paragraph (d) applied only to the "provision" of goods and/or services, not export payments, and that the Department's regulations should clearly prohibit export "payments."

This argument is identical to one put forth by petitioners in the 1985 administrative review on *Iron Construction Castings from India*, 55 FR 50747, 50748 (1990). In that case, India's International Price Reimbursement Scheme ("IPRS") provided payments to castings exporters, refunding the difference between the price of raw materials purchased domestically and the price exporters otherwise would have paid on the world market. The Department refused to examine whether the IPRS met the criteria for non-countervailability under the exception in item (d) and countervailed the IPRS payments in their entirety.

Exporters and importers challenged the Department's determination, and, in its decision in *Creswell Trading Co.* v. *United States*, 783 F. Supp. 1418 (1992), the CIT remanded the case to the Department with instructions to analyze the consistency of the IPRS with item (d). The Federal Circuit discussed this decision with approval in connection with an appeal from a second CIT decision in this same case. *See Creswell Trading Co.* v. *United States*, 15 F. 3d 1054 (1994). Therefore, based on the above judicial precedent, we must disagree with the commenter that paragraph (d) does not apply to programs where a government reimburses an exporter for the difference between a higher domestic price for an input and a lower price that the exporter would have paid on the world market, as opposed to providing the input itself.

Also consistent with the Federal Circuit's decision in *Creswell*, where a program exists that provides inputs for exported goods at a lower price than is available for inputs for use in the production of goods for domestic consumption, the burden will be on respondents to provide evidence that the lower price reflects the price that is commercially available on world markets.

Section 351.516

Section 351.516 deals with the remission or rebate upon export of indirect taxes. ("Indirect tax" is defined in § 351.102.) Section 351.516 is consistent with longstanding U.S. practice, *see Zenith Radio Corp.* v. *United States*, 437 U.S. 443 (1978), and is based on paragraph (g) of the Illustrative List. Paragraph (g) deals with indirect taxes, such as value added taxes, and provides that the remission or rebate of such taxes constitutes an export subsidy only if the amount of the remittance or rebate is excessive; *i.e.*, if it exceeds the amount of indirect taxes levied on like products sold for domestic consumption. For example, if a government imposes a $5 tax on a widget sold for domestic consumption and provides a $10 rebate if the same type of widget is exported, an export subsidy exists in the amount of $5. However, a corollary of paragraph (g) is that the exemption or non-excessive remission upon export of indirect taxes does not constitute a subsidy. *See* note 1 of the SCM Agreement.

Paragraph (b) provides that the benefit from an excessive rebate of indirect taxes is deemed to be received on the date of exportation. Paragraph (c) provides that the Secretary will expense these types of subsidies to the year of receipt.

Section 351.517

While § 351.516 deals with the exemption or remission of indirect taxes in general, § 351.517 deals with the exemption, remission, or deferral of prior-stage cumulative indirect taxes. ("Prior-stage indirect tax" and "cumulative indirect tax" are defined in § 351.102.) Section 351.517 is based on paragraph (h) of the Illustrative List, and reflects certain changes made to paragraph (h) as part of the Uruguay Round negotiations. Section 351.517 is intended to be consistent with paragraph (h) and the *Guidelines on Consumption of Inputs in the Production Process* (Annex II to the SCM Agreement).

Section 351.17 is drafted to address separately exemptions, remissions and deferrals of prior stage cumulative indirect taxes. Paragraph (a)(1) deals with exemptions and states that where inputs are exempt from prior stage cumulative indirect taxes, a benefit exists to the extent that the exemption extends to inputs not consumed in the production of the exported product, making normal allowance for waste. ("Consumed in the production process" is defined in § 351.102.) Where a benefit exists, it is equal to the amount of the taxes the firm would otherwise pay on inputs not consumed in the production of the exported product.

Paragraph (a)(2) addresses remissions of indirect taxes and states that a benefit exists to the extent that the amount remitted exceeds the amount of prior stage cumulative indirect taxes paid on inputs that are consumed in the production of the exported product, making normal allowance for waste. Where a benefit exists, paragraph (a)(2) sets forth a general rule to the effect that the amount of the benefit normally will equal the difference between the amount remitted and the amount of prior stage cumulative indirect taxes on inputs that are consumed in the production of the exported product. However, paragraph (a)(2) further directs, based on Annex II to the SCM Agreement, that the Secretary may consider the entire amount of a remission of prior-stage cumulative taxes to be a benefit if the Secretary determines that the foreign government has not examined the actual inputs in order to confirm which inputs are consumed in the production of exported products and in what amounts, and the taxes that are imposed and paid on those inputs. This qualification is essentially a modified version of the Department's "linkage test," a test upheld in *Industrial Fasteners Group, American Importers Ass'n* v. *United States*, 710 F.2d 1576 (Fed. Cir. 1983).

Paragraph (a)(3) deals with the amount of the benefit attributable to a deferral of prior-stage cumulative indirect taxes. Consistent with footnote 59 to the SCM Agreement, the first sentence of paragraph (a)(3) provides that a deferral does not give rise to a benefit if the government charges appropriate interest on the taxes deferred. Otherwise, the second sentence of paragraph (a)(3) provides that the Secretary will determine the amount of benefit by treating the tax deferral as if it were a government-provided loan in the amount of the taxes deferred. Normally, deferrals of one year or less will be treated as short-term loans, while multi-year deferrals will be treated as short-term loans rolled over on the anniversary date(s) of the deferral.

Paragraph (b) deals with the time of receipt of the benefit. Paragraph (b)(1) provides that in the case of a tax exemption, the benefit is received as of the date on which the tax otherwise would have been due. Paragraph (b)(2) provides that in the case of a tax remission, the benefit arises as of the date of exportation. Paragraphs (b)(3) and (b)(4) address deferrals, stating that the Secretary will normally treat the benefit as having been received when the tax would otherwise be due, for a deferral of one year or less, or on the anniversary date(s) of the deferral for multi-year deferrals. Paragraph (c) deals with the allocation of the benefit to a particular time period, and provides that the Secretary will allocate (expense) the benefit from an exemption, remission, or deferral of prior-stage cumulative indirect taxes to the year of receipt.

Section 351.518

Section 351.518 deals with the remission or drawback of import charges. Section 351.518 generally is consistent with prior Department practice, but contains some revisions to reflect changes made to paragraph (i) of the Illustrative List during the Uruguay Round negotiations. Section 351.518 is intended to be consistent with paragraph (i), the *Guidelines on Consumption of Inputs in the Production Process*, and the *Guidelines in the Determination of Substitution Drawback Systems as Export Subsidies* (Annex III to the SCM Agreement).

Paragraph (a)(1) reflects the longstanding principle that governments may remit or drawback import charges levied on imported inputs when the finished product is exported. However, if the amount remitted or drawnback exceeds the amount of import charges levied, a benefit exists.

Paragraph (a)(2) deals with so-called "substitution drawback." Under a substitution drawback system, a firm may substitute domestic inputs for imported inputs without losing its eligibility for drawback. However, a benefit exists if the amount drawnback exceeds the amount of import charges levied on imported inputs, or if the export of the finished product does not occur within a reasonable time (not to exceed two years) of the import of the inputs.

Paragraph (a)(3) deals with the calculation of the amount of benefit attributable to an excessive remission or drawback of import charges. Paragraph (a)(3)(i) sets forth the general rule that the amount of the benefit equals the difference between the amount remitted or drawnback and the amount of import charges levied initially on the imported inputs for which the remission or drawback is claimed. For example, assume that a firm imports widgets to produce gizmos, and pays $2 in import duties per widget. If, when the firm exports finished gizmos, the firm receives $5 in drawback, the benefit equals $3 ($5 − $2=$3).

However, paragraph (a)(3)(ii) provides that in certain circumstances, the Secretary may consider the amount of the benefit to equal the amount of the remission or drawback. Paragraph (a)(3)(ii) provides for a "linkage" test, and is essentially identical to § 351.517(a)(2)(ii). See discussion of § 351.517(a)(2)(ii), above.

Paragraph (b) provides that the Secretary normally will consider the benefit to have been received as of the date of exportation. Paragraph (c) provides that the Secretary normally will allocate this benefit to the year in which it is received.

Section 351.519

Section 351.519 deals with export insurance. Paragraph (a), which deals with the benefit attributable to export insurance, is based on paragraph (j) of the Illustrative List. Paragraph (a) differs from the section of the 1989 Proposed Regulations dealing with export insurance, § 355.44(d). First, to reflect changes made to the Illustrative List during the Uruguay Round, the word "manifestly" has been deleted.

Second, § 355.44(d) required that an export insurance program must have exhibited losses for a five-year period before the Secretary would consider the program a countervailable subsidy. We have not included the five-year loss requirement in these regulations, because, depending on how an export insurance program is structured, it may be evident earlier than five years that premiums will be inadequate to cover the long-term operating costs and losses of the program. On the other hand, where the program is structured in such a way that expected premiums can cover expected long-term operating costs and losses, we anticipate that we will continue to apply the five-year rule. For example, we would continue to apply the five-year rule to programs like the Israeli Exchange Insurance Scheme. With respect to this program, we originally determined that it was structured so as to be self-balancing in the sense that it could reasonably be expected to break even over the long term. *See Potassium Chloride from Israel*, 49 FR 36122, 36214 (1984). Therefore, we did not find a countervailable subsidy despite losses in the early years of the program. However, after observing losses for five years, we concluded that the premiums charges were inadequate, and we determined that the scheme conferred a countervailable benefit.

Finally, § 355.44(d)(1) stated that the Department would take into account income from other insurance programs operated by the entity in question. We have reconsidered this policy, and, although we do not have much experience in this regard, have concluded that this requirement may be overly restrictive. For example, there may be instances where the insuring entity operates on a commercial basis, except for the export insurance function that may be specifically underwritten by the government. In such a situation, it would be inappropriate to take into account the insuring company's income from other insurance programs.

Section 351.520

Section 351.520 continues and codifies the Department's practice with respect to certain types of government export promotion activities. As the Department has observed in the past, most countries, including the United States, maintain general export promotion programs. As long as these programs provide only general information services, such as information concerning export opportunities or government advocacy efforts on behalf of a country's exporters, they do not confer a benefit for purposes of the CVD law. However, if, for example, such activities promoted a specific product or provided financial assistance to a firm, a benefit could exist under one of the other provisions of subpart E.

Section 351.521

Section 771(5A)(C) of the Act defines an "import substitution subsidy" as "a subsidy that is contingent upon the use of domestic goods over imported goods, alone or as 1 of 2 or more conditions." As stated in the Senate Report, "the category of import substitution subsidies is a new one that is neither part of the 1979 Subsidies Code nor included in current law." S. Rep. No. 412, 103rd Cong., 2d Sess. 93 (1994). Under the new law, import substitution subsidies are automatically considered to be specific.

Two domestic parties commented that the Department should state in its regulations that import substitution subsidies include subsidies that are contingent "in law or in fact" upon the use of domestic over imported goods. The quoted language is included in the export subsidy definition in section 771(5A)(B) of the Act, but does not

appear in the import substitution subsidy definition in section 771(5A)(C) of the Act. One of the parties argued that similar language should be included in a regulatory definition of import substitution subsidy to avoid a "potential loophole" for *de facto* import substitution subsidies.

We agree with these commenters that the statute does not expressly state that import substitution subsidies include those that are contingent "in law or in fact" upon the use of domestic over imported goods. On the other hand, however, the plain language of section 771(5A)(C) does not limit the definition of import substitution subsidies to only those subsidies that are contingent "in law" upon the use of domestic goods.

Because of the Department's lack of experience in dealing with this new category of subsidies, we are not issuing a regulation at this time on this particular point. Instead, we intend to develop our practice regarding import substitution subsidies on a case-by-case basis. However, the omission at this time of explicit "in law or in fact" language from these regulations should not be construed as an indication that the Department believes that section 771(5A)(C) applies only to *de jure* import substitution measures.

Section 351.522

Certain Agricultural Subsidies

Section 771(5B)(F) of the Act implements provisions of the WTO Agreement on Agriculture regarding the noncountervailable status of certain "domestic support measures." Under Annex 2 of the Agreement on Agriculture, domestic support measures that meet the policy-specific criteria and conditions of Annex 2 are exempt from Member countries' commitments to reduce subsidies. In addition, Article 13(a) of the Agreement on Agriculture directs that these subsidies, commonly referred to as "green box" subsidies, will be noncountervailable during the nine-year implementation period described in Article 1(f) of the Agreement on Agriculture.

In accordance with section 13(a) of the Agreement, section 771(5B)(F) of the Act provides that the Secretary will treat as noncountervailable domestic support measures that (1) are provided with respect to products listed in Annex 1 of the Agreement on Agriculture, and (2) that the Secretary "determines conform fully to the provisions of Annex 2" of that Agreement. To implement section 771(5B)(F), § 351.522 sets out the criteria the Secretary will consider in determining whether a particular domestic support measure conforms fully to the provisions of Annex 2.

One commenter argued that the regulations should require the Secretary to consider whether or not an alleged green box subsidy has trade distorting effects. Further, the commenter noted that the SAA enumerates certain U.S. programs that meet the green box criteria. According to the commenter, the regulations should explicitly treat as noncountervailable a foreign program that is similar to an enumerated U.S. program. This same commenter also argued that the list of eight types of direct payments to producers included in Annex 2 is illustrative, not exclusive. The commenter stated that the regulations should provide "precise, objective and even-handed" criteria for determining whether a particular subsidy is a green box subsidy. A second commenter disputed the suggestion that the regulations should include a list of agricultural programs that the Secretary automatically would consider as noncountervailable. According to this commenter, there is no basis in the statute for automatically exempting particular programs from the CVD law. Instead, this commenter argued, the Department should assess whether particular programs meet the green box criteria on a case-by-case basis.

The Department believes there is little to be gained from enumerating in the regulations specific types of programs that would qualify automatically as green box subsidies. Annex 2 of the Agreement provides explicit criteria that a program must meet to receive green box status, and § 351.522 reflects the plain language of these criteria. Consistent with section 771(5B)(F) of the Act and the Agreement on Agriculture, paragraph (a) of § 351.522 provides that the Secretary will treat as noncountervailable a subsidy provided to an agricultural product listed in Annex 1 of the Agreement if the subsidy fully conforms to both the basic criteria of subparagraphs (a) and (b) of paragraph 1 of Annex 2 and the relevant policy-specific criteria and conditions set out in paragraphs 2 through 13 of that Annex.

In this regard, we received two comments concerning the so-called "peace clause" in the Agreement on Agriculture. Specifically, Articles 13 (b) and (c) of that Agreement require WTO Member countries to exercise "due restraint" in initiating CVD proceedings on agricultural subsidies provided by a Member whose total non-green box agricultural subsidies (both domestic and export) are within that Member's reduction commitments. *See* SAA at 67–69. The obligation to exercise "due restraint" exists only during the "implementation period," defined in Article 1(f) of the Agreement on Agriculture.

One commenter argued that the Department's regulations should ensure that the Department exercises due restraint by not self-initiating CVD investigations on products that benefit from subsidies described in Articles 13 (b) and (c). A second commenter argued that the Department should interpret the due restraint clause narrowly.

We do not believe that a regulation is necessary on this particular point. The Department understands the due restraint requirement to entail a commitment to refrain from self-initiating CVD investigations, and the Department will administer the statute accordingly.

Green Light Subsidies in General

Under section 771(5B), which implements Article 8 of the SCM Agreement, certain domestic subsidies and domestic subsidy programs are treated as noncountervailable, notwithstanding the fact that they are specific under section 771(5A)(D) of the Act. There are three categories of these so-called "Green Light" subsidies: (1) Research subsidies (*see* section 771(5B)(B) of the Act); (2) subsidies to disadvantaged regions (*see* section 771(5B)(C) of the Act); and (3) subsidies for adaptation of existing facilities to new environmental requirements (*see* section 771(5B)(D) of the Act). Although at this time we are not promulgating regulations regarding Green Light subsidies, we received many comments concerning this category of subsidies, and we address those comments here.

The noncountervailable status of these Green Light subsidies can be established in two ways. First, a WTO Member country can notify a subsidy program to the WTO SCM Committee in accordance with Article 8.3 of the SCM Agreement. Once notified, section 771(5B)(E) provides that a Green Light subsidy program "shall not be subject to investigation or review" by the Department. However, an exception to this rule exists in situations where a member country has successfully challenged in the WTO a claim for Green Light status. In the event of a successful challenge, section 751(g) and section 775 of the Act establish mechanisms for promptly including the subsidy or subsidy program in an existing CVD proceeding should there be reason to believe that merchandise subject to the proceeding may be benefiting from the subsidy or subsidy program.

The second method for obtaining Green Light status involves situations where a subsidy program has not been notified to the SCM Committee. In the case of a subsidy given under a non-notified program, the subsidy is noncountervailable if the Secretary determines in a CVD investigation or review that the subsidy satisfies the relevant Green Light criteria contained in subparagraphs (B), (C) or (D) of section 771(5B). However, the Secretary must determine that the subsidy satisfies *all* of the relevant criteria before a given subsidy will be treated as noncountervailable. *See* section 771(5B)(A) of the Act; SAA at 266. Moreover, as discussed in the SAA, in investigations and reviews of non-notified subsidies, the burden will be on the party claiming Green Light status to present evidence demonstrating that a particular subsidy meets all of the relevant criteria. SAA at 266. In addition, under section 771(5B)(A) of the Act, Green Light status may be claimed only in proceedings involving merchandise imported from a WTO Member country.

In accordance with the Administration's commitment in the SAA, the Department intends to strictly construe the various Green Light provisions to "limit the scope of the provision(s) to only those situations which clearly warrant non-countervailable treatment." SAA at 265. Thus, the Department "will not limit its analysis * * * to a narrow review of the technical criteria of Article 8 of the SCM Agreement, but will analyze all aspects of the subsidy program and its implementation to ensure that the purposes and terms of Article 8 have been respected." SAA at 267.

Under the transition rules set forth in section 291 of the URAA, the new law applies to investigations and administrative reviews initiated on the basis of post-January 1, 1995 requests. As with other issues that arise in such investigations and reviews, the Department will consider claims for Green Light treatment as parties present such claims to the Department. A Department determination that a particular subsidy received by a firm is a Green Light subsidy would not necessarily mean that the Department would find the entire program under which the subsidy is provided satisfies all of the applicable Green Light criteria in all cases.

Certain commenters suggested that the Department "incorporate fully" in the regulations the discussion of Green Light subsidies contained in the SAA. We do not believe this is necessary. As discussed above, our general approach to the drafting of these regulations has been to avoid simply repeating the language of the statute and/or the SAA.

Investigation of Notified Subsidies

One commenter, noting the text of section 771(5B)(E), suggested that the Department should refrain from investigating notified subsidy programs. According to the commenter, a failure to "screen out" notified subsidies prior to the initiation of an investigation would result in a waste of Departmental resources and unnecessary burdens on foreign governments.

In response, several commenters argued that if there is any ambiguity regarding whether a subsidy alleged by a petitioner does, in fact, qualify as a notified Green Light subsidy, the Department should include the subsidy in its CVD investigation or review to determine whether it qualifies for a Green Light exemption. One example given by these commenters is a situation where a petitioner presents evidence that a subsidy program has been modified subsequent to its notification to the SCM Committee. These commenters also suggested that it may simply be unclear whether an alleged subsidy is the same as the notified subsidy, in which case the Department should include the alleged subsidy in the investigation to make this determination.

In replying to these comments, we note that section 771(5B)(E) of the Act and the SAA make clear that if a subsidy program has been notified under Article 8.3 of the SCM Agreement, any challenge regarding its eligibility for Green Light treatment, whether due to later modification or otherwise, must be made through the review procedures under the WTO rather than in the context of a CVD proceeding. As described above, Commerce may not initiate a CVD investigation or review of a notified subsidy program (which appears to benefit subject merchandise) unless informed by USTR that a violation has been determined under the procedures of Article 8.

However, the identity of a subsidy is a different matter. If there is a legitimate question as to whether a subsidy alleged in a petition is, in fact, a subsidy that has been notified under Article 8.3, the Department will include the subsidy in a CVD investigation or review in order to resolve the identity of the subsidy in question. If a party claiming Green Light status demonstrated that the alleged subsidy had been notified, that would be the end of the analysis, and the Department would not inquire further as to the subsidy's conformance with the applicable Green Light criteria. If the party failed to establish that the alleged subsidy program had been notified, then the Department would analyze the subsidy's eligibility for Green Light status in the same manner as for any other non-notified subsidy.

Nevertheless, the Department is not promulgating a regulation concerning this issue at this time. While the manner in which the Department would proceed in the situation described appears fairly straightforward, our lack of experience in administering the new Green Light provisions leaves open the possibility that questions of interpretation will arise that cannot be foreseen at this time.

Policy for Investigating Non-Notified Subsidies

One commenter argued that the Department should adopt a regulation providing that, whenever a petition includes a potential Green Light subsidy that has not been notified under Article 8.3, the Department will conduct a full investigation to determine whether the subsidy meets the relevant requirements of section 771(5B). This commenter and others emphasized that the regulations also should include the SAA's express requirement that the party claiming Green Light status has the burden of presenting evidence demonstrating compliance with all of the relevant criteria for any particular subsidy category. *See* SAA at 266.

While we do not disagree with the policy espoused, we do not believe that this policy must be codified in the regulations. As discussed above, the statute and the SAA are clear that in investigations and reviews of subsidies that have not been notified under Article 8.3 of the SCM Agreement, the party claiming Green Light status has the burden of presenting evidence demonstrating that a particular subsidy meets all of the relevant criteria for noncountervailable status.

Alleged Green Light Subsidies not Used During the Period of Investigation or Review

Although this issue was not raised by any of the commenters, the Department believes that, in an investigation or a review of a CVD order or suspended investigation, the Department should not consider claims for Green Light status if the subject merchandise did not benefit from the subsidy during the period of investigation or review. Instead, consistent with the Department's existing practice, the Green Light status of a subsidy should be considered only in an investigation or review of a time period where the

subject merchandise did receive a benefit from the subsidy. However, the Department does not believe that a regulation is needed to clarify this issue.

Research Subsidies

Prior to the enactment of the URAA, the Department treated assistance provided by a government to finance research and development ("R&D") as noncountervailable if the R&D results were (or would be) made available to the public, including the U.S. competitors of the recipient of the assistance. This policy, sometimes referred to as the public availability test, was described by Commerce in § 355.44(l) of the 1989 Proposed Regulations. One commenter argued that the Department should reaffirm the public availability test.

The Department has not retained the public availability test in these regulations. We believe that the objectives served by the public availability test are better met by applying the criteria listed in section 771(5B)(B) of the Act and Article 8.2(a) of the SCM Agreement.

Another commenter argued that, in determining whether a given research subsidy falls within the 75 and 50 percent maximum allowed under section 771(5B)(B), the Department should base its analysis on the total costs incurred over the duration of the project in question. Under this reasoning, the Department would not countervail a subsidy if the 75 or 50 percent maximum was exceeded during the year under investigation or review, provided that the applicable threshold "is not exceeded over the life of the project." This commenter further argued that, if the Department determined that the applicable threshold was exceeded over the life of the project, only the amount of subsidy in excess of the relevant "maximum" should be countervailed.

Several commenters challenged these arguments. First, they argued that the Department should evaluate the 75 and 50 percent maxima based on the costs already incurred at the time of the relevant investigation or administrative review, and not on the basis of expected costs over the lifetime of the project. Second, these commenters argued that, if the Department determined that the applicable threshold had been exceeded, the entire benefit—not just the excess over the relevant threshold—should be countervailed. According to these commenters, the SAA states clearly that all of the relevant criteria must be met for a given program to receive Green Light status, and that a failure to meet all relevant criteria would result in the "entire subsidy" being countervailable in full. *See* SAA at 266.

The Department agrees in part with the first commenter, and in part with the latter commenters. With respect to the proper frame of reference for determining whether a given research subsidy has exceeded the 75 or 50 percent maximum, section 771(5B)(B)(iii)(II) of the Act instructs the Department to base its analysis on "the total eligible costs incurred over the duration of a particular project." Thus, it would be improper for the Department to limit its analysis to only those costs incurred as of the time period covered by an investigation or administrative review. The Department agrees, however, that if, over the duration of a project, the subsidy exceeds the 75 or 50 percent threshold, the entire amount of the subsidy is countervailable, not merely the excess. Also, if it is indisputable at the outset of the project that the relevant threshold will be exceeded, the entire amount of the subsidy is countervailable.

Subsidies to Disadvantaged Regions

One commenter suggested that the Department should clarify that the Green Light category regarding subsidies to disadvantaged regions is not limited to subsidies provided by national governments, but also includes subsidies granted by subnational levels of government, such as states or provinces. This commenter further argued that, in determining whether a subsidy provided by a state or province to a disadvantaged region meets the criteria of section 771(5B)(C) of the Act, the Department should assess the criteria within the framework of the subnational government's jurisdiction.

In response, other commenters argued that the Department should assess the Green Light criteria in relation to the investigated country as a whole, not just in relation to the jurisdiction of the subsidizing government if that government is at the subnational level. According to these commenters, the statute and the SAA instruct the Department to evaluate the relevant Green Light criteria in relation to the "average for the country subject to investigation or review."

We agree with the first commenter that the Green Light categories include subsidies granted by governments at the subnational level, and that, in the case of the regional category, the Department should assess the relevant criteria in relation to the jurisdiction of the granting authority. In discussing the language in section 771(5B)(C)(ii) of the Act regarding the "average for the country subject to investigation or review," the SAA explains that, where a CVD proceeding involves a member of a customs union, the term "country" shall be defined in accordance with the structure of the regional assistance program. SAA at 264. For example, if the Department were to investigate a product from Luxembourg, the term "country" would refer to the EC as a whole if the subsidy being investigated was received under an EC regional assistance program. Thus, the SAA indicates that the Department should make its determinations based on averages for the jurisdiction granting the regional assistance subsidy. Although the Department is not promulgating a regulation on this point, the Department intends to adopt this approach as a matter of practice.

Subsidies for Adaptation of Existing Facilities to New Environmental Requirements

One commenter argued that, with respect to the Department's criteria for Green Light environmental subsidies described in section 771(5B)(D) of the Act, the Department should treat as noncountervailable those subsidies given to upgrade existing facilities to environmental standards that are higher than the minimum standards imposed by law or regulation. According to this commenter, "[g]overnments should be allowed the flexibility to encourage higher environmental standards than the minimum required by law when government shares the additional costs of achieving the higher environmental standards."

Several commenters dispute this suggestion, claiming that section 771(5B)(D)(i) specifically limits Green Light status for environmental subsidies to those that are "provided to promote the adaptation of existing facilities to new environmental *requirements* * * *." According to these commenters, the Department has no authority to broaden the scope of environmental subsidies eligible for Green Light treatment.

Although we acknowledge that governments should have the flexibility to encourage higher environmental standards, the Department agrees with the latter commenters. As noted above, section 771(5B)(D)(i) provides that noncountervailable environmental subsidies are those that are "provided to promote the adaptation of existing facilities to new environmental *requirements* that are imposed by statute or by regulation * * *." According to the SAA, "strict application of these requirements is essential in order to limit the scope of the provision to only those situations which clearly warrant non-countervailable treatment." SAA at 267. Given the clear language of the statute and the SAA, the Department believes that subsidies given to upgrade existing facilities to environmental standards in excess of legal requirements are countervailable.

Section 351.523

Section 351.523 deals with the identification and measurement of upstream subsidies. Because the URAA did not significantly amend the corresponding statutory provision, section 771A of the Act, § 351.523 is based largely on § 355.45 of the 1989 Proposed Regulations, except for the deletion of language that merely repeats the statute. However, we have made one change that reflects a change in practice regarding the identification and measurement of the competitive benefit bestowed by an upstream subsidy. Before turning to that change, we note that we have adopted certain new terminology in § 351.523(a). Specifically, we have replaced "control" with "cross ownership." *See* § 351.524(b)(6) for an explanation of "cross ownership."

Regarding "competitive benefit" and upstream subsidies, § 351.523 sets forth the standard for determining whether a competitive benefit exists. In this regard, section 771A(b)(1) of the Act provides that a competitive benefit exists when

> * * * the price for the (subsidized) input product is lower than the price that the manufacturer or producer of merchandise which is the subject of a countervailing duty proceeding would otherwise pay for the product in obtaining it from another seller in an arms-length transaction.

In addition, section 771A(b)(2) of the Act provides that when the Secretary has determined in a previous proceeding that a countervailable subsidy is paid or bestowed on the comparison input product, the Department "may (A) where appropriate, adjust the price that the manufacturer or producer of merchandise which is the subject of such proceeding would otherwise pay for the product to reflect the effects of the countervailable subsidy, or (B) select in lieu of that price a price from another source."

In the past, as reflected in § 355.45(d) of the 1989 Proposed Regulations, the Department preferred to base its comparisons upon the price charged for unsubsidized inputs produced by other producers in the same country as the producer of the subject merchandise. If the Department had determined in a prior CVD proceeding that a countervailable subsidy had been bestowed in the subject country on the comparison input, the Department's next preferred alternative was to adjust the price of the input product to reflect the subsidy. As a final alternative, the Department could select a "world market price for the input product." The Department interpreted the phrase "world market price" broadly to include (1) actual prices charged for the input product by producers located in other countries, and (2) average import prices. Additionally, because the statute did not preclude, for comparison purposes, the use of prices of subsidized, imported inputs, the Department had determined that it would be "inappropriate to exclude all subsidized producers, even assuming that we could identify them." *Circular Welded Non-Alloy Steel Pipe From Venezuela; Final Determination*, 57 FR 42964, 42967–68 (1992).

We have revised our approach regarding "competitive benefit" in the following manner. Under paragraph (c)(1)(i), we will rely first upon the actual price charged or offered for an unsubsidized input product, regardless of whether the producer of that input is located in the same country as the producer of the subject merchandise. Upon further reflection, we see no justification for distinguishing between input products based on the country of production. Section 771A(b)(1) of the Act merely requires the Department to compare the price paid for the subsidized input product to the price that the producer "would otherwise pay for the product in obtaining it from another seller in an arms-length transaction." The price that the producer "would otherwise pay" could include the actual price paid by the producer of subject merchandise to an unrelated supplier or a bid offered by an unrelated supplier, regardless of the location of that supplier.

If actual prices or offers for unsubsidized inputs are not available, we have concluded that it is preferable to rely upon an average of publicly available prices for unsubsidized inputs from different countries or some other surrogate price deemed appropriate by the Department. *See* paragraph (c)(1)(ii). Only if there are no prices for unsubsidized inputs available from any source will we adjust the price of the comparison input product to reflect a countervailable subsidy. In such a case, under paragraph (c)(1)(iii), we first will rely upon the actual price that the producer of the subject merchandise otherwise would pay for the input product adjusted to reflect the subsidy, regardless of the country in which the input product is produced. If such a price is not available, under paragraph (c)(1)(iv), the Department would use an average price for the input product from different countries adjusted to reflect the subsidy or some other adjusted surrogate price. Only when no adjustable price is available (*e.g.*, the only available price is a published price reflecting an average of both subsidized and non-subsidized prices), would we rely upon the price of a subsidized input. *See* paragraph (c)(1)(v).

We believe that the approach described in the preceding paragraph better reflects the overall purpose of the upstream subsidies provision, which is to account, when appropriate, for upstream subsidies provided on input products used in the production or manufacture of subject merchandise. The language of section 771A itself does not express a preference regarding the selection of a comparison input price, and grants the Department wide latitude in determining when to adjust the price of the comparison product to reflect known countervailable subsidies. However, parts of the legislative history underlying the Trade and Tariff Act of 1984, which added section 771A to the Act, support a preference for using the price of an unsubsidized input, and that the Department should make adjustments for subsidies only when there is no price for unsubsidized inputs. *See, e.g.*, 130 Cong. Rec. S13970 (daily ed. Oct. 9, 1984) (statement of Sen. Dole). Although, as described above, we are revising our practice regarding the identification and measurement of a competitive benefit, the preference for using the price of unsubsidized inputs also was reflected in the Department's earlier practice. *See, e.g., Agricultural Tillage Tools from Brazil*, 50 FR 24270, 24273 (1985).

In the hierarchy described above for selecting the price that the producer otherwise would pay for the input, we intend to use subsidized prices only when unsubsidized prices are not available. In determining whether a price is subsidized, we will rely primarily on CVD findings made by the United States or the investigating authorities of other countries in the recent past (*i.e.*, within the past five years).

One other clarification in paragraph (c) is that in determining whether there is a competitive benefit, the Department will adjust prices upward to account for delivery charges (*i.e.*, c.i.f.). Although the statute does not specify the precise basis for calculating a benchmark price for the input product, section 771A(b)(1) does require the use of the price that the manufacturer or producer of the subject merchandise "would otherwise pay." In

our view, this requires the use of a price that represents a commercial alternative to the producer of the subject merchandise, and f.o.b. prices do not provide a measurement of the commercial alternative to the downstream producer. *See Non-Alloy Steel Pipe from Venezuela*, 57 FR at 42967 (1992).

Several outside parties commented on the upstream subsidies provision. One commenter argued that when using a world market price as a benchmark, the Department should rely upon an average of all publicly available export prices, including U.S. export prices. In response, several domestic parties argued that the world market price should equal the weighted-average landed price of the input product within the country under investigation. These commenters added that the price should also include all delivery expenses. Finally, other domestic parties suggested a hierarchy that would apparently not include any averaged prices from the world market, but instead would be limited to (1) actual prices paid by the producer of the subject merchandise to domestic or third-country suppliers, or (2) information regarding prices from such suppliers. We believe the above explanation adequately addresses the concerns raised by these comments.

Section 351.524

Section 351.524 deals with the calculation of the *ad valorem* subsidy rate and the attribution of a subsidy to a particular product. While § 351.524 is based roughly on § 355.47 of the 1989 Proposed Regulations, it contains changes that reflect further refinements in the Department's practice since 1989.

Paragraph (a) deals with the calculation of the *ad valorem* subsidy rate, and continues to provide that the Secretary will calculate the rate by dividing the amount of the subsidy benefit by the sales value of the product or products to which the subsidy is attributed. For example, if a firm receives an untied domestic subsidy for which the benefit is $100 and the firm's total sales were $1,000, the ad valorem subsidy rate would be 10 percent ($100 ÷ $1,000 = 10 percent).

The second and third sentences of paragraph (a) deal with the basis on which the Secretary will determine the sales value of a product. The Department's longstanding practice has been to determine sales value for products that are exported on an F.O.B. (port) basis in order to correspond to the basis on which the Customs Service assesses duties. However, in the *GIA*, the Department announced that it would begin using sales values as recorded in a firm's financial statements. The Department did so in the belief that this approach would be more accurate, would reduce the burden on the firms involved, and would allow the Department to account for the fact that shipping expenses might be subsidized. However, in order to ensure that the Customs Service collected the correct amount of duties based on an F.O.B. (port) basis, the Department found it necessary to adjust the calculated *ad valorem* subsidy rate based on a ratio of the invoice value of exports to the United States to the F.O.B. value of exports to the United States. In the end, only one of the respondents in the 1993 steel investigations had the information needed to calculate this ratio. Therefore, for all other firms in those cases, the Department wound up using its traditional F.O.B. (port) methodology.

Because the Department's experiment with a different basis was not successful, in the second sentence of paragraph (a) we have reverted to our standard practice of determining sales value on an F.O.B. (port) basis in the case of products that are exported. In the case of products that are sold for domestic consumption, we would determine sales value on an F.O.B. factory basis. While this method imposes a bit more work on firms than does a method that relies on booked values, we believe that the burden can be mitigated by relying on aggregate figures and reasonable allocations of those figures across markets (*e.g.*, subtracting total freight and insurance expenses, expenses that usually are maintained in ledgers that are separate from sales information).

In addition, there is no compelling reason for allocating subsidy benefits over sales values that include freight and other shipping costs. Although there may be rare instances where the "shipping" component of a transaction is subsidized, the Department can deal with those instances on a case-by-case basis. Accordingly, the third sentence of paragraph (a) provides that the Secretary may make appropriate adjustments to the *ad valorem* subsidy rate to account for "shipping" subsidies.

Paragraph (b) deals with the attribution of a subsidy to a particular product. Paragraphs (b)(2) through (b)(7) set forth general rules of attribution that the Secretary will apply to a given factual situation. We have taken this approach because, depending on the facts, several of the different rules may come into play at the same time. If we tried to account for all the possible permutations in advance, we would wind up with an extremely lengthy set of rules that might prove to be unduly rigid.

On the other hand, we appreciate that there needs to be a certain degree of predictability as to how the Department will attribute subsidies. We believe that the rules set forth in paragraph (b) are sufficiently precise so that parties can predict with a reasonable degree of certainty how the Department will attribute subsidies to particular products in a given factual scenario. In this regard, the Department's intent is to apply these rules in an harmonious manner.

With respect to the attribution rules themselves, they are consistent with the concept of "benefit" described in § 351.501, *i.e.*, that a benefit is conferred when a firm pays less than it otherwise would pay in the absence of the government-provided input or when a firm receives more revenue than it otherwise would earn. In light of this, subsidies should be attributed, to the extent possible, to those products for which costs are reduced (or revenues increased). *See, e.g.*, H.R. Rep. No. 317, 96th Cong., 1st Sess. 74–75 (1979) ("[W]ith regard to subsidies which provide an enterprise with capital equipment or a plant * * * the net amount of the subsidy should be * * * assessed in relation to the products produced with such equipment or plant. * * *.").

This principle of attributing a subsidy to an affected cost (or revenue) center is embodied in the Department's longstanding practice concerning the "tying" of subsidies. *See, e.g.*, § 355.47 of the 1989 Proposed Regulations. As discussed below, there are various ways in which a subsidy can be tied. However, regardless of the method, the Department attributes a subsidy to the product or products to which it is tied. In this regard, one can view an "untied" subsidy as a subsidy that is tied to all products produced by a firm.

Paragraphs (b)(2) through (b)(7) set forth rules that the Department will apply to different types of tying situations. For example, paragraph (b)(2) contains an attribution rule regarding export subsidies. Because an export subsidy is, by definition, tied to the exportation, paragraph (b)(2) provides that the Secretary will attribute an export subsidy only to products exported by a firm.

As noted above, the Department intends to apply paragraphs (b)(2) through (b)(7) consistently with each other. As an example, assume that a government provides an export subsidy on exports of widgets to Country X. Here, three attribution rules come into play. Under paragraph (b)(2), the subsidy would be attributed to products exported by a firm. Under paragraph (b)(4), the subsidy would be attributed to products sold by a firm to Country X. Under paragraph (b)(5), the subsidy would be attributed to widgets sold by a firm. Putting the three rules together, the subsidy in this example would be attributed to a firm's exports of widgets to Country X.

The rules set forth in paragraphs (b)(5) and (b)(6) warrant additional explanation because of the special nomenclature that is being used. In all other sections of these regulations, the term "firm" is used to describe the recipient of the subsidy. *See* § 351.102. However, for purposes of certain attribution rules, where we are describing how subsidies will be attributed within firms, "firm" is too broad. Therefore, for purposes of paragraphs (b)(5) and (b)(6), we are using the term "corporation." In so doing, we are not intending to limit the application of these rules to firms that are organized as corporations. However, based on our experience, most of the firms we investigate are organized as corporations. Therefore, our use of the term "corporation" makes these attribution rules as clear as possible. If a respondent is not organized as a corporation, we will address any attribution issues covered by the rules in paragraphs (b)(5) and (b)(6) based on the facts of that case.

Paragraph (b)(5) sets out our rules regarding product tying. Paragraph (b)(5)(i) states our longstanding general rule that where a subsidy is tied to production of a particular product, the subsidy will be attributed to that product. Paragraph (b)(5)(ii) provides an exception to this general rule, which is also consistent with our past practice. Under this exception, if an input product is produced within the same corporation, subsidies tied to the input product will be attributed to sales of both the input and the downstream products. It is important to note that the Department intends to limit this exception to situations where production of the input and downstream product occur within the same corporation. If they are produced by companies that are separately incorporated—even if there is "cross ownership" between those separately incorporated companies (as discussed further below)—the Department will follow the general tying rule in paragraph (b)(5)(i). Consequently, petitioners alleging that subsidies to a separately incorporated input producer also benefit the downstream product should file their allegation in accordance with § 351.523(a) (upstream subsidies).

Paragraph (b)(6) deals with situations where cross ownership exists between corporations. For example, cross ownership exists where corporation A owns corporation B (or *vice versa*), or where A and B are both owned by corporation C. Cross ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross ownership will exist where there is a controlling ownership interest (*i.e.*, majority voting ownership) between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) may also result in cross ownership. Specifically, if the remaining shares are widely held, then a large minority voting interest interest would be sufficient to find cross ownership. (Situations where cross ownership exists by virtue of common government ownership are addressed further below.)

The term "cross ownership" as it is used here clearly differs from "affiliation," as that term is defined in section 771(33) of the Act. "Affiliation" describes a wide range of business relationships, while cross ownership describes a much narrower range of relationships. In limiting our attribution rules to situations where there is cross ownership, we are not reading "affiliated" out of the CVD law. Indeed, we intend to include in our questionnaires a request for respondents to identify all affiliated parties. Also, persons affiliated with companies that shipped during the period of investigation will not be entitled to request a new shipper review under section 751(a)(2)(B) of the Act. However, we do not believe that affiliation alone provides a sufficient basis for attributing subsidies received by one corporation to products produced and sold by another affiliated corporation. Instead, we have chosen to focus on cross ownership, as described above, because where cross ownership exists one corporation can use or direct the individual assets of the other corporation in essentially the same ways it can use its own assets. Where the interests of the two parties have merged to this degree, we believe it is reasonable to presume that subsidies to one corporation may also benefit another corporation. Paragraph (b)(6) reflects this. However, where cross ownership does not exist, we will not make this presumption. Nor do we intend to investigate subsidies to affiliated parties unless cross ownership exists or other information indicates that such subsidies may indeed benefit the merchandise being produced by the corporation being investigated.

Paragraph (b)(6) begins by stating a general rule, which is followed by three exceptions to that rule deriving from the presumption described above. Paragraph (b)(6)(i) states that the Secretary will normally attribute a subsidy received by a corporation to the products produced by that corporation. Hence, for example, if corporation A receives a subsidy, then that subsidy will normally be attributed to the production of corporation A.

However, under paragraph (b)(6)(ii), if two (or more) corporations with cross ownership produce the same merchandise, then subsidies received by either or both of those corporations will be attributed to the combined sales of the two corporations. Thus, for example, if corporation A and corporation B are both owned by corporation C and both A and B produce widgets, benefits to A and B will be combined to determine the subsidy and the subsidy will be attributed to the combined production of A and B.

Paragraph (b)(6)(iii) addresses a second instance where subsidies received by one corporation are attributed to sales of another corporation with cross ownership. This is where the subsidy is received by a holding company. Under paragraph (b)(6)(iii), such subsidies will normally be attributed to the consolidated sales of the holding company. However, if the Department determines that the holding company is merely serving as a conduit for government-provided funds to one (or more) of the holding company's subsidiaries, then the subsidy will be attributed to the production of that subsidiary. Analogous to this situation is the situation where a government provides a subsidy to a non-producing subsidiary (*e.g.*, a financial subsidiary) and there are no conditions on how the money is to be used. Consistent with our treatment of subsidies to holding companies, we would attribute a subsidy to a non-producing subsidiary to the consolidated sales of the corporate group that includes the non-producing subsidiary. *See Certain Steel from Belgium*, 58 FR 37273, 37282 (1993).

Finally, paragraph (b)(6)(iv) addresses situations where a corporation producing another product receives subsidies. In this instance, the Department will determine whether the corporation receiving the subsidy transfers it to the corporation producing the subject merchandise. For example, subsidies may be transferred between corporations with cross ownership through loans or other financial

transactions. However, as discussed above, where the subsidies are allegedly transferred through the purchase of inputs from an input supplier with cross ownership, that situation will be addressed under § 351.523 (upstream subsidies).

Although cross ownership is broadly defined, permitting us to include corporations under common government ownership, we expect that common government ownership will not normally be viewed as cross ownership. Instead, we intend to continue our longstanding practice of treating most government-owned corporations as the government itself, and not as corporations that transfer subsidies received from the government to other government-owned corporations through loans or other financial transactions. For example, where a government-owned corporation producing the product under investigation purchases electricity from a government-owned utility, a subsidy is conferred if the utility does not receive adequate remuneration. Nothing in paragraph (b)(6)(iv) is meant to require the Department to determine that the government-owned utility is receiving subsidies which it then transfers to the producer of the product under investigation. The situations where we would normally expect to treat common government ownership as cross ownership are: (1) Upstream subsidy allegations (*see* § 351.523(a)(1)(ii)(A)); (2) government-owned corporations producing the same product (*see* § 351.524(b)(6)(ii)); and (3) government-owned corporations producing different products (*see* § 351.524(b)(6)(iv)) where the corporations are under the control of the same ministry or within a corporate group containing producers of similar products.

Although the rules described in paragraphs (b)(2)–(b)(7) of § 351.524 deal with tying, § 351.524 does not contain a definition of "tied." In the past, the Department has described this concept in a variety of ways. For example, in Appendix 2 to *Certain Steel Products from Belgium*, 47 FR 39304, 39317 (1982), the Department stated that "a grant is 'tied' when the intended use is known to the subsidy giver and so acknowledged prior to or concurrent with the bestowal of the subsidy." In the preamble to the 1989 Proposed Regulations, 54 FR at 23374, the Department stated that a "tied" subsidy benefit is "*e.g.*, a benefit bestowed specifically to promote the production of a particular product."

Given the wide variety of factual scenarios that the Department has encountered in the past, and is likely to encounter in the future, we are reluctant to promulgate an all-encompassing definition of "tied." Moreover, the absence of a definition of "tied" has not proven to be a problem in practice, and Annex IV to the SCM Agreement, which refers to "tied" subsidies in paragraph 3, also lacks a definition of this term. Therefore, for the present time, we intend to apply the term "tied" on a case-by-case basis. We would, however, welcome comments regarding what factors are relevant to the Department's determination of whether benefits are tied.

Virtually every comment submitted on attribution-related issues included a reference to the fungibility of money. Certain commenters argued that because money is fungible, the Department should not allow subsidies to be tied to particular products or to particular export markets. In their view, the only distinction that should be made is between export and domestic subsidies. Other commenters invoked the fungibility principle in support of their position that untied capital infusions to companies with multinational production should be attributed to worldwide sales of the firm.

While we agree with these commenters that money is fungible, we do not believe that the fungibility principle is useful for purposes of attributing subsidies. For example, according to the fungibility principle, there should be no distinction between export and domestic subsidies. Yet, this agency's consistent and non-controversial practice over the past 16 years has been to attribute export subsidies to exported products and domestic subsidies to all products sold. Over time, we also have adopted the practices of attributing: (1) Subsidies that can be tied to particular markets to products sold to those markets; (2) subsidies that can be tied to particular products to those products; (3) subsidies to companies with multinational production to production occurring in the jurisdiction of the subsidizing government; and (4) subsidies to corporate entities to the specific entities that receive the subsidies, absent a showing that the subsidies are transferred elsewhere within the corporate family. While we have characterized these as exceptions to the principle of the fungibility of money, the exceptions have become more prevalent than the rule insofar as attribution of subsidies is concerned. Therefore, while we do not reject fungibility, we do not believe that it should guide our attribution decisions.

This having been said, we would note that the rules we have proposed are entirely consistent with the court ruling most often cited in connection with the fungibility principle, *British Steel Corp. v. U.S.*, 605 F. Supp. 286, 293–96 (Ct. Int'l Trade 1985) ("*British Steel*"). In *British Steel*, the issue being addressed by the court was whether funds provided by the government to cover redundancy and closure costs of British Steel Corporation conferred a benefit on the company's ongoing production:

> In plaintiffs' view, funds provided to shut down excess capacity and eliminate unnecessary jobs are for purposes that are the very antithesis of "manufacture, production or export," and thus are not countervailable under any circumstances.

Id. Commerce had taken a position contrary to this view, stating that the government's payments made "the recipient more efficient and relieve[d] it of significant financial burdens."

Presented with the same facts and arguments today, we would take the same position. The fact that the funds were given for the purpose of closing down facilities would not render the funds non-countervailable. This is because the costs that are affected when the government provides funds to close down facilities are the input costs of the ongoing operation, the operation that would bear those costs in the absence of the government payments. Hence, consistent with the attribution principles described above, those subsidies would properly be attributed to the ongoing production and sales of the recipient and not to the activities that had been closed down.

The court also addressed the Department's practice of attributing the benefit of untied subsidies (*i.e.*, the same redundancy and closure payments) to all merchandise produced by the recipient. Plaintiffs had characterized this practice as being based on the fungibility principle, and argued that application of the fungibility principle did not yield an accurate measure of the subsidy conferred on the subject merchandise. The court upheld Commerce's practice that untied subsidies benefit all products on a *pro rata* basis. This same practice is reflected in § 351.524(b)(3) of these regulations.

Therefore, we see the attribution rules we have proposed as being consistent with past practice, even where fungibility has been at issue. Moreover, we believe that these rules provide the best measure of the level of countervailable subsidies being conferred on the subject merchandise, because they match the subsidy with the activity or cost center experiencing the cost saving (or revenue increase).

Regarding the attribution of capital infusions received by companies with multinational production, certain commenters urged the Department to return to its pre-1993 policy of treating such subsidies as benefitting all of the recipient's sales. Other commenters sought codification of the 1993 policy, which established a rebuttable presumption that domestic subsidies are tied to domestic production.

Section 351.524(b)(7) reflects our continued position, based upon our past administrative experience, that

> * * * the government of a country normally provides subsidies for the general purpose of promoting the economic and social health of that country and its people, and for the specific purposes of supporting, assisting or encouraging domestic manufacturing or production and related activities (including, for example, social policy activities such as the employment of its people).

GIA at 37231. Moreover, a government normally will not provide subsidies to firms that refuse to use them as the government wants, and firms receiving subsidies will not use them in a way that would contravene the government's purposes, as they otherwise risk losing future subsidies. Consistent with this, § 351.524(b)(7) states that we normally will attribute subsidies to merchandise produced within the jurisdiction of the granting authority. However, where a respondent can demonstrate that the subsidy is tied to foreign production, the subsidy will be attributed to merchandise produced by the foreign facility.

Although the proposed rule is similar to the practice the Department adopted in 1993, there are some differences. First, the rule is not stated as a rebuttable presumption. Instead of showing that subsidies are not tied to domestic production, respondents will instead have to demonstrate that the subsidies are tied to foreign production. We believe that this shift in emphasis will bring our practice with respect to multinational companies more in line with the other attribution rules that require evidence of tying, as opposed to evidence that a subsidy is not tied. Second, where a respondent can demonstrate that a subsidy is tied to foreign-produced merchandise, the subsidy will not be countervailable. *See* § 351.526 (transnational subsidies). This result is similar to the result under the practice adopted in 1993; *i.e.*, subsidies that were found not tied to domestic production were attributed to worldwide sales. By using worldwide sales, the CVD rate was reduced just as it will be reduced when subsidies are tied to foreign production and foreign production is not included in the denominator used to calculate the *ad valorem* CVD rate.

Finally, we note that nothing in paragraph (b)(7) is intended to imply that the Department is considering calculating regional subsidy rates; *i.e.*, different CVD rates for imports originating in different subnational jurisdictions.

Section 351.525

Section 351.525 deals with program-wide changes, and is almost identical to § 355.50 of the 1989 Proposed Regulations.

Section 351.526

Section 351.526 is based on § 355.44(o) of the 1989 Proposed Regulations, and provides that so-called "transnational subsidies" are not countervailable. Subsidies of this type include situations where (1) The government of one country provides foreign aid that ultimately is received by a firm located in the donee country, or (2) funds are provided by an international lending or development institution, such as the World Bank.

Section 355.44(o) contained a paragraph (o)(2) which essentially duplicated what is now section 701(d) of the Act, a provision that deals with subsidies to international consortia. In light of our decision to avoid regulations that merely repeat the statute, § 351.526 merely references, but does not repeat, section 701(d).

Section 351.527

Section 351.527 is based on § 355.46(b) of the 1989 Proposed Regulations, and provides that the Secretary will ignore the secondary tax consequences of a subsidy. For example, the Secretary would not reduce the benefit of a countervailable grant because the grant is treated as revenue for income tax purposes.

Classification

E.O. 12866

This proposed rule has been determined to be significant under E.O. 12866.

Regulatory Flexibility Act

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if promulgated as final, would not have a significant economic impact on a substantial number of small entities. The Department does not believe that there will be any substantive effect on the outcome of AD and CVD proceedings as a result of the streamlining and simplification of their administration. With respect to the substantive amendments implementing the Uruguay Round Agreements Act, the Department believes that these regulations benefit both petitioners and respondents without favoring either, and, therefore, would not have a significant economic effects. As such, an initial regulatory flexibility analysis was not prepared.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. This proposed rule does not contain any new reporting or recording requirements subject to the Paperwork Reduction Act.

There are three separate collections of information contained in this rule. Each is currently approved by the Office of Management and Budget. The *Petition Format for Requesting Relief Under U.S. Antidumping Laws*, OMB Control No. 0625–0105, is estimated to impose an average public reporting burden of 40 hours. The information submitted is used to assess the petitioner's allegations of unfair trade practices and to determine whether an investigation is warranted. The information requested relates to the existence of sales at less than fair value and injury to the affected U.S. industry. Second, the *Format for Petition Requesting Relief Under the Countervailing Duty Law* is approved under OMB Control No. 0625–0148. This format is used to elicit the information required by the Tariff Act of 1930, as amended, and its implementing regulations, for the initiation of a countervailing duty investigation. Specifically, the *Format* requests information about the imported product, a description of the alleged subsidies to the imported product, and the extent to which the domestic industry is being injured by the imported product. Finally, OMB Control No. 0625–0200, *Antidumping and Countervailing Duties, Procedures for Initiation of Downstream Product Monitoring*, provides for the filing of a petition requesting the review of a "downstream" product. A downstream product is one that has incorporated as a component part, a part that is covered by a U.S. antidumping or countervailing duty finding. To be eligible to file a

petition, the petitioner must produce a product like the component part or the downstream product. It is estimated to require 15 hours per petition.

These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to the Department of Commerce (see **ADDRESSES**) or to OMB Desk Officer, New Executive Office Building, Washington, DC. 20503.

E.O. 12612

This proposed rule does not contain federalism implications warranting the preparation of a Federalism Assessment.

List of Subjects in 19 CFR Part 351

Administrative practice and procedure, Antidumping, Business and industry, Cheese, Confidential business information, Countervailing duties, Investigations, Reporting and recordkeeping requirements.

Dated: February 18, 1997.

Robert S. LaRussa

Acting Assistant Secretary for Import Administration.

For the reasons stated, it is proposed that the proposed rule published at 61 FR 7308 on February 27, 1996, adding a new 19 CFR part 351, is further amended as follows:

PART 351—COUNTERVAILING AND ANTIDUMPING DUTIES

1. The authority citation for part 351 is proposed to continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1202 note, 1303 note, 1671 et. seq., and 3538.

§ 351.102 [Amended]

2. Section 351.102 (Definitions) is amended by adding the following definitions in alphabetical order to read as follows:

* * * * *

Consumed in the production process. Inputs "consumed in the production process" are inputs physically incorporated, energy, fuels and oil used in the production process and catalysts which are consumed in the course of their use to obtain the product.

Cumulative indirect tax. "Cumulative indirect tax" means a multi-staged tax levied where there is no mechanism for subsequent crediting of the tax if the goods or services subject to tax at one stage of production are used in a succeeding stage of production.

* * * * *

Direct tax. "Direct tax" means a tax on wages, profits, interests, rents, royalties, and all other forms of income, a tax on the ownership of real property, or a social welfare charge.

* * * * *

Export insurance. "Export insurance" includes, but is not limited to, insurance against increases in the cost of exported products, nonpayment by the customer, inflation, or exchange rate risks.

Firm. For purposes of subpart E (Identification and Measurement of Countervailable Subsidies), "firm" means any individual, partnership, corporation, association, organization, or other entity, and is used to refer to the recipient of an alleged countervailable subsidy.

Government-provided. "Government-provided" is used as a shorthand expression to refer to an act or practice that is alleged to be a countervailable subsidy. The use of the term "government-provided" is not intended to preclude the possibility that a government may provide a countervailable subsidy indirectly in a manner described in section 771(5)(B)(iii) of the Act (indirect financial contribution).

Import charge. "Import charge" means a tariff, duty, or other fiscal charge that is levied on imports, other than an indirect tax.

* * * * *

Indirect tax. "Indirect tax" means a sales, excise, turnover, value added, franchise, stamp, transfer, inventory, or equipment tax, a border tax, or any other tax other than a direct tax or an import charge.

Loan. "Loan" means a loan or other form of debt financing, such as a bond.

Long-term loan. "Long-term loan" means a loan, the terms of repayment for which are greater than one year.

* * * * *

Prior-stage indirect tax. "Prior-stage indirect tax" means an indirect tax levied on goods or services used directly or indirectly in making a product.

* * * * *

Short-term loan. "Short-term loan" means a loan, the terms of repayment for which are one year or less.

3. A new subpart E is added to 19 CFR part 351, to read as follows:

Subpart E—Identification and Measurement of Countervailable Subsidies

Sec.

351.501 Scope.
351.502 Specificity of domestic subsidies.
351.503 Grants.
351.504 Loans.
351.505 Loan guarantees.
351.506 Equity.
351.507 Debt forgiveness.
351.508 Direct taxes.
351.509 Indirect taxes and import charges (other than export programs).
351.510 Provision of goods or services.
351.511 Purchase of goods. [Reserved]
351.512 Worker-related subsidies.
351.513 Export subsidies.
351.514 Internal transport and freight charges for export shipments
351.515 Price preferences for inputs used in the production of goods for export.
351.516 Remission upon export of indirect taxes.
351.517 Exemption, remission or deferral upon export of prior-stage cumulative indirect taxes.
351.518 Remission or drawback of import charges upon export.
351.519 Export insurance.
351.520 General export promotion.
351.521 Import substitution subsidies. [Reserved]
351.522 Certain agricultural subsidies.
351.523 Upstream subsidies.
351.524 Calculation of *ad valorem* subsidy rate and attribution of subsidy to a product.
351.525 Program-wide changes.
351.526 Transnational subsidies.
351.527 Tax consequences of benefits.

Subpart E—Identification and Measurement of Countervailable Subsidies

§ 351.501 Scope.

The provisions of this subpart E set forth rules regarding the identification and measurement of countervailable subsidies. Where this subpart E does not expressly deal with a particular type of alleged subsidy, the Secretary will identify and measure the subsidy, if any, in accordance with the underlying principles of the Act and this subpart E.

§ 351.502 Specificity of domestic subsidies.

(a) *Agricultural subsidies.* The Secretary will not regard a subsidy as being specific under section 771(5A)(D) of the Act solely because the subsidy is limited to the agricultural sector (domestic subsidy).

(b) *Subsidies to small- and medium-sized businesses.* The Secretary will not regard a subsidy as being specific under section 771(5A)(D) of the Act solely because the subsidy is limited to small firms or small- and medium-sized firms.

(c) *Disaster relief.* The Secretary will not regard disaster relief as being specific under section 771(5A)(D) of the Act if such relief constitutes general assistance available to anyone in the area affected by the disaster.

§ 351.503 Grants.

(a) *Benefit.* In the case of a grant, a benefit exists in the amount of the grant.

(b) *Time of receipt of benefit.* In the case of a grant, the Secretary will consider a benefit as having been received as of the date on which the firm received the grant.

(c) *Allocation of benefit to a particular time period.*—(1) *Recurring grants.* The Secretary will allocate (expense) a recurring grant to the year in which the subsidy is received (*see* paragraph (b) of this section).

(2) *Non-recurring grants.*—(i) *In general.* The Secretary will allocate a non-recurring grant over the number of years corresponding to a firm's AUL (*see* paragraph (c)(4) of this section).

(ii) *Exception.* The Secretary will normally allocate (expense) non-recurring grants received under a particular subsidy program to the year in which the subsidies are received if the total amount of such grants is less than 0.50 percent of all sales of the firm in question during the same year, or, in the case of an export subsidy program, 0.50 percent of the export sales of the firm in question during the same year.

(3) *"Recurring" versus "non-recurring."* The Secretary will consider a grant as "non-recurring" if the grant is exceptional in the sense that the recipient of the grant cannot expect to receive additional grants under the same subsidy program on an ongoing basis from year to year; or the government must approve the provision of the grant each year. If a grant does not satisfy the standard for a non-recurring grant under the preceding sentence, the Secretary will consider the grant as "recurring."

(4) *Process for allocating non-recurring grants over time.*—(i) *In general.* For purposes of allocating a non-recurring grant over time and determining the annual subsidy amount that should be assigned to a particular year, the Secretary will use the following formula:

$$A_k = \frac{y/n + [y - (y/n)(k-1)]d}{1+d}$$

Where

A_k=the amount of the benefit allocated to year k,

y=the face value of the grant (*see* paragraph (a) of this section,

n=the AUL (*see* paragraph (c)(4)(ii) of this section),

d=the discount rate (*see* paragraph (c)(4)(iii) of this section, and

k=the year of allocation, where the year of receipt=1 and $1 < k < n$.

(ii) *AUL.* The term "AUL" means the average useful life of a firm's productive assets. Normally, the Secretary will calculate a firm's AUL by dividing the average gross book value of the firm's depreciable productive fixed assets (for a period considered appropriate by the Secretary) by the firm's average annual charge to accumulated depreciation. In calculating a firm's AUL, the Secretary will attempt to exclude fixed assets that are not depreciable (*e.g.*, land or construction in progress) and assets that have been fully depreciated and are no longer in service. In addition, the Secretary may make a normalizing adjustment to account for such factors as an extraordinary write-down in the value of fixed assets or hyperinflation.

(iii) *Selection of a discount rate.*—(A) *In general.* The Secretary will select a discount rate based upon data for the year in which the government and the firm agreed on the terms for receiving the grant. The Secretary will use as a discount rate the following, in order of preference:

(1) The cost of long-term, fixed-rate loans of the firm in question, excluding any loans that the Secretary has determined to be countervailable subsidies;

(2) The average cost of long-term, fixed-rate loans in the country in question; or

(3) A rate that the Secretary considers to be most appropriate.

(B) *Exception for uncreditworthy firms.* In the case of a firm considered by the Secretary to be uncreditworthy (*see* § 351.504(a)(4)), the Secretary will use as a discount rate the interest rate described in § 351.504(a)(3)(iii).

§ 351.504 Loans.

(a) *Benefit.*—(1) *In general.* In the case of a loan, a benefit exists to the extent that the amount a firm pays on the government-provided loan is less than the amount the firm would pay on a comparable commercial loan(s) that the firm could actually obtain on the market. *See* section 771(5)(E)(ii) of the Act. In making the comparison called for in the preceding sentence, the Secretary normally will rely on effective interest rates.

(2) *"Comparable commercial loan" defined.*—(i) *"Comparable" defined.* In selecting a loan that is "comparable" to the government-provided loan, the Secretary normally will place primary emphasis on similarities in the structures of the loans (*e.g.*, fixed interest rate v. variable interest rate), the maturities of the loans (*e.g.*, short-term v. long-term), and the currencies in which the loans are denominated.

(ii) *"Commercial" defined.* In selecting a "commercial" loan, the Secretary normally will use a loan taken out by the firm from a commercial lending institution or a debt instrument issued by the firm in a commercial market. Also, the Secretary will treat a loan from a government-owned bank as a commercial loan, unless there is evidence that the loan from a government-owned bank is provided at the direction of the government or with funds provided by the government. However, the Secretary normally will not consider a loan provided under a government program to be a commercial loan for purposes of selecting a loan to compare to a government-provided loan.

(iii) *Long-term loans.* In selecting a comparable loan, if the government-provided loan is a long-term loan, the Secretary normally will use a loan the terms of which were established during, or immediately before, the year in which the terms of the government-provided loan were established.

(iv) *Short-term loans.* In making the comparison required under paragraph (a)(1) of this section, if the government-provided loan is a short-term loan, the Secretary normally will use an annual average of the interest rates on comparable commercial loans during the period of investigation or review. However, if the Secretary finds that interest rates fluctuated significantly during the period of investigation or review, the Secretary will use the most appropriate interest rate based on the circumstances presented.

(3) *"Could Actually Obtain on the Market" defined.*—(i) *In general.* In selecting a comparable commercial loan that the recipient "could otherwise obtain on the market," the Secretary normally will rely on the actual experience of the firm in question in obtaining comparable commercial loans.

(ii) *Where the firm has no comparable commercial loans.* If the firm did not take out any comparable commercial loans during the period referred to in paragraph (a)(2)(iii) or (a)(2)(iv) of this section, the Secretary may use a national average interest rate for comparable commercial loans.

(iii) *Exception for uncreditworthy companies.* If the Secretary finds that a firm that received a government-provided long-term loan was uncreditworthy, as defined in paragraph (a)(4) of this section, the Secretary will calculate the interest rate to be used in making the comparison called for by paragraph (a)(1) of this section according to the following formula:

$$i_b = [(1+i_f)/0.957] - 1$$

Where

i_b=the benchmark interest rate for uncreditworthy companies;

i_f=the long-term interest rate that would be paid by creditworthy companies.

(4) *Uncreditworthiness defined.*—(i) *In general.* The Secretary will consider a firm to be uncreditworthy if the Secretary determines that, based on information available at the time of the government-provided loan, the firm could not have obtained long-term loans from conventional commercial sources. The Secretary will determine uncreditworthiness on a case-by-case basis, and may examine, among other factors, the following:

(A) The receipt by the firm of comparable commercial long-term loans;

(B) The present and past financial health of the firm, as reflected in various financial indicators calculated from the firm's financial statements and accounts;

(C) The firm's recent past and present ability to meet its costs and fixed financial obligations with its cash flow; and

(D) Evidence of the firm's future financial position, such as market studies, country and industry economic forecasts, and project and loan appraisals prepared prior to the agreement between the lender and the firm on the terms of the loan.

(ii) *Significance of long-term commercial loans.* In the case of firms not owned by the government, the receipt by the firm of long-term commercial loans, unaccompanied by a government-provided guarantee, will constitute dispositive evidence that the firm is not uncreditworthy.

(iii) *Significance of prior subsidies.* In determining whether a firm is uncreditworthy, the Secretary will ignore current and prior subsidies received by the firm.

(iv) *Discount Rate.* When the creditworthiness of a firm is being considered in connection with the allocation of non-recurring grants (or benefits treated as non-recurring grants (*e.g.*, equity)), the Secretary will rely on information available in the year in which the government agrees to provide the grant.

(5) *Long-term variable rate loans.*—(i) *In general.* In the case of a long-term variable rate loan, the Secretary normally will make the comparison called for by paragraph (a)(1) of this section by relying on a comparable commercial loan with a variable interest rate. The Secretary then will compare the variable interest rates on the comparable commercial loan and the government-provided loan for the year in which the terms of the government-provided loan were established. If the comparison shows that the interest rate on the government-provided loan was equal to or higher than the interest rate on the comparable commercial loan, the Secretary will not consider the government-provided loan as having conferred a benefit. If the comparison shows that the interest rate on the government-provided loan was lower, the Secretary will consider the government-provided loan as having conferred a benefit, and, if the other criteria for a countervailable subsidy are satisfied, will calculate the amount of the benefit in accordance with paragraph (c)(4) of this section.

(ii) *Exception.* If the Secretary is unable to make the comparison described in paragraph (a)(5)(i) of this section, the Secretary may modify the method described in that paragraph.

(6) *Allegations.*—(i) *Allegation of uncreditworthiness required.* Normally, the Secretary will not consider the uncreditworthiness of a firm absent a specific allegation by the petitioner that is supported by information establishing a reasonable basis to believe or suspect that the firm is uncreditworthy.

(ii) *Government-owned banks.* The Secretary will not investigate a loan provided by a government-owned commercial bank absent a specific allegation that is supported by information establishing a reasonable basis to believe or suspect that:

(A) The government-owned bank provided the loan at the direction of the government or with funds provided by the government; and

(B) A benefit exists within the meaning of paragraph (a)(1) of this section.

(b) *Time of receipt of benefit.* In the case of loans described in paragraphs (c)(1), (c)(2), and (c)(4) of this section, the Secretary normally will consider a benefit as having been received as of the date on which the firm is due to make a payment on the government-provided loan. In the case of a loan described in paragraph (c)(3) of this section, the Secretary normally will consider the benefit as having been received in the year in which the firm receives the proceeds of the loan.

(c) *Allocation of benefit to a particular time period.*—(1) *Short-term loans.* The Secretary will allocate (expense) the benefit from a short-term loan to the year(s) in which the firm is due to make interest payments on the loan.

(2) *Long-term fixed-rate loans with concessionary interest rates.* Except as provided in paragraph (c)(3) of this section, the Secretary normally will calculate the subsidy amount to be assigned to a particular year by calculating the difference in interest payments for that year; *i.e.*, the difference between the interest paid by the firm in that year on the government-provided loan and the interest the firm would have paid on the comparison loan. However, in no event may the present value (in the year of receipt of the loan) of the amounts calculated under the preceding sentence exceed the principal of the loan.

(3) *Long-term fixed-rate loans with different repayment schedules.*—(i) *Calculation of present value of benefit.* Where the government-provided loan and the loan to which it is compared under paragraph (a) of this section are both long-term, fixed-interest rate loans, but have different grace periods or maturities, or where the shapes of the repayment schedules differ, the Secretary will determine the total benefit by calculating the present value, in the year in which the loan was received, of the difference between the amount that the firm is to pay on the government-provided loan and the amount that the firm would have paid on the comparison loan. In no event may the total benefit calculated under the preceding sentence exceed the principal of the loan.

(ii) *Calculation of annual benefit.* With respect to the benefit calculated under paragraph (c)(3)(i) of this section, the Secretary will determine the portion of that benefit to be assigned to a particular year by using the formula set forth in § 351.503(c)(4)(i) (grants) and the following parameters:

A_k=the amount countervailed in year k,
y=the present value of the benefit (*see* paragraph (c)(3)(i) of this section),
n=the number of years in the life of the loan,
d=the interest rate on the comparison loan selected under paragraph (a) of this section, and
k=the year of allocation, where the year of receipt=1.

(4) *Long-term variable interest rate loans.* In the case of a government-provided long-term variable-rate loan, the Secretary normally will determine the amount of the benefit attributable to a particular year by calculating the difference in payments for that year; *i.e.*, the difference between the amount paid by the firm in that year on the government-provided loan and the amount the firm would have paid on the comparison loan. However, in no event may the present value (in the year of receipt of the loan) of the amounts calculated under the preceding sentence exceed the principal of the loan.

(d) *Contingent liability interest-free loans.* In the case of a long-term, interest-free loan, the obligation for repayment of which is contingent upon subsequent events, the Secretary normally will treat any balance on the loan outstanding during a year as an interest-free, short-term loan in accordance with paragraphs (a)(4), (b), and (c)(1) of this section.

§ 351.505 Loan guarantees.

(a) *Benefit.*—(1) *In general.* In the case of a loan guarantee, a benefit exists to the extent that the amount a firm pays on the loan with the government-provided guarantee is less than the amount the firm would pay on a comparable commercial loan absent the government-provided guarantee, after adjusting for any difference in guarantee fees. *See* section 771(5)(E)(iii) of the Act. The Secretary will select a comparable commercial loan in accordance with § 351.504(a) (loans).

(2) *Government acting as owner.* In situations where a government, acting as the owner of a firm, provides a loan guarantee to that firm, the guarantee does not confer a benefit if the Secretary finds that it is a normal commercial practice in the country in question for shareholders to provide guarantees to their firms under similar circumstances and on comparable terms.

(b) *Time of receipt of benefit.* In the case of a loan guarantee, the Secretary normally will consider a benefit as having been received as of the date on which the firm is due to make a payment on the loan subject to the government-provided loan guarantee.

(c) *Allocation of benefit to a particular time period.* In allocating the benefit from a government-provided loan guarantee to a particular time period, the Secretary will use the methods set forth in § 351.504(c) regarding loans.

§ 351.506 Equity.

(a) *Benefit.*—(1) *In general.* In the case of a government-provided equity infusion, a benefit exists to the extent that the investment decision is inconsistent with the usual investment practice of private investors, including the practice regarding the provision of risk capital, in the country in which the equity infusion is made. *See* section 771(5)(E)(i) of the Act. In determining whether an investment decision is inconsistent with usual investment practice, the Secretary normally will compare the price paid by the government for the equity it purchased to the price that a private investor in the country would pay for the same (or similar) form of equity.

(2) *Private investor prices available.* (i) *In general.* The Secretary will consider an equity infusion as being inconsistent with usual investment practice (*see* paragraph (a)(1) of this section) if the price paid by the government for newly-issued equity is greater than, in order of preference:

(A) The price paid by private investors for the same (or similar) form of newly-issued equity; or

(B) The publicly-traded market price for previously issued equity of the same (or similar) form as the newly-issued equity.

(ii) *Timing of private investor prices.* In selecting a private investor price under paragraph (a)(2)(i) of this section, the Secretary will rely on sales of equity made at such time as, in the Secretary's judgment, permits a reasonable comparison to the newly-issued equity purchased by the government.

(iii) *Significant private sector participation required.* The Secretary will not use private investor prices under paragraph (a)(2)(i) of this section if the Secretary concludes that private investor purchases of newly-issued equity, or private investor trading in previously issued equity, is not significant.

(iv) *Adjustments for "similar" form of equity.* Where the Secretary uses private investor prices for a form of equity that is similar to the newly-issued equity purchased by the government (*see* paragraph (a)(2)(i) of this section), the Secretary, where appropriate, will adjust the prices to reflect the differences in the forms of equity.

(3) *Private investor prices unavailable.* If private investor prices are not available under paragraph (a)(2) of this section, the Secretary will determine whether the firm that received the government-provided equity was equityworthy or unequityworthy at the time of the equity infusion (*see* paragraph (a)(4) of this section). If the Secretary determines that the firm was equityworthy, the Secretary will apply paragraph (a)(5) of this section to determine whether the equity infusion was inconsistent with the usual investment practice of private investors. A determination by the Secretary that the firm was unequityworthy will constitute a determination that the equity infusion was inconsistent with usual investment practice of private investors, and the Secretary will apply paragraph (a)(6) of this section to measure the benefit, if any, attributable to the equity infusion.

(4) *Equityworthiness.*—(i) *In general.* The Secretary will consider a firm to have been equityworthy if the Secretary determines that, from the perspective of a reasonable private investor examining the firm at the time the government-provided equity infusion was made, the firm showed an ability to generate a reasonable rate of return within a reasonable period of time. In making this determination, the Secretary may examine the following factors, among others:

(A) Current and past indicators of the firm's financial health calculated from the firm's statements and accounts, adjusted, if appropriate, to conform to generally accepted accounting principles;

(B) Future financial prospects of the firm, including market studies, economic forecasts, and project or loan appraisals prepared at the time of, or prior to, the government-provided equity infusion in question;

(C) Rates of return on equity in the three years prior to the government equity infusion; and

(D) Equity investment in the firm by private investors.

(ii) *Significance of prior subsidies.* In determining whether a firm was equityworthy, the Secretary will ignore current and prior subsidies received by the firm.

(5) *Benefit to equityworthy firm.* If the Secretary determines that a firm was equityworthy, the Secretary will examine the details of the particular equity infusion in question to determine whether the investment was inconsistent with usual investment practice of private investors. If the Secretary determines that the investment was inconsistent with usual investment practice, the Secretary will determine the amount of the benefit conferred on a case-by-case basis.

(6) *Benefit to unequityworthy firm.*—(i) *Constructed private investor price.* If the Secretary determines that a firm was unequityworthy, the Secretary normally will measure the benefit conferred by a government-provided equity infusion by estimating, based on information and analysis available at the time of the equity infusion, the price that a reasonable private investor would have paid for the equity purchased by the government. If the price paid by the government for newly-issued equity was greater than this price, the benefit will be based on the difference between the two prices.

(ii) *Constructed private investor price unavailable.* If the Secretary determines that information is not available, or does not provide an appropriate basis, for calculating the price that a reasonable private investor would have paid (*see* paragraph (a)(6)(i) of this section), the Secretary will measure the benefit conferred by an equity infusion in an unequityworthy firm by adjusting the amount of the infusion allocated to a particular year under paragraph (c)(3) of this section by the amount of

subsequent after-tax returns achieved in that year.

(7) *Allegations.* The Secretary will not investigate an equity infusion in a firm absent a specific allegation by the petitioner which is supported by information establishing a reasonable basis to believe or suspect that the firm received an equity infusion that provides a countervailable benefit within the meaning of paragraph (a) of this section.

(b) *Time of receipt of benefit.* In the case of a government-provided equity infusion, the Secretary normally will consider the benefit to have been received as of the date on which the firm received the equity infusion.

(c) *Allocation of benefit to a particular time period.*—(1) *In general.* The benefit conferred by an equity infusion shall be allocated over the same time period as a non-recurring grant. *See* § 351.503(c)(2).

(2) *Allocation where private investor prices used.* Where the Secretary determines the amount of the benefit conferred by an equity infusion by using private investor prices (*see* paragraph (a)(2) of this section) or the price that a reasonable private investor would have paid (*see* paragraph (a)(6)(i) of this section), the Secretary will allocate the benefit as if it were a non-recurring grant (*see* § 351.503(c)(2)).

(3) *Allocation where private investor prices not used.* Where the Secretary is unable to use private investor prices (*see* paragraph (a)(2) of this section) or the price that a reasonable private investor would have paid (*see* paragraph (a)(6)(i) of this section), the Secretary will allocate the full amount of the equity infusion as if it were a non-recurring grant (*see* § 351.503(c)(2)). The amount so allocated to a particular year will be subject to adjustment under paragraph (a)(6)(ii) of this section.

§ 351.507 Debt forgiveness.

(a) *Benefit.* In the case of an assumption or forgiveness of a firm's debt obligation, a benefit exists equal to the amount of the principal and/or interest (including accrued, unpaid interest) that the government has assumed or forgiven. In situations where the entity assuming or forgiving the debt receives shares in a firm in return eliminating or reducing the firm's debt obligation, the Secretary will determine the existence of a benefit under § 351.506 (equity infusions).

(b) *Time of receipt of benefit.* In the case of a debt or interest assumption or forgiveness, the Secretary normally will consider the benefit as having been received as of the date on which the debt or interest was assumed or forgiven.

(c) *Allocation of benefit to a particular time period.*—(i) *In general.* The Secretary will treat the benefit determined under paragraph (a) of this section as a non-recurring grant, and will allocate the benefit to a particular year in accordance with § 351.503(c)(2)(grants).

(ii) *Exception.* Where an interest assumption is tied to a particular loan and where a firm can reasonably expect to receive the interest assumption at the time it applies for the loan, the Secretary will normally treat the interest assumption as a reduced-interest loan and allocate the benefit to a particular year in accordance with § 351.504(c)(loans).

§ 351.508 Direct taxes.

(a) *Benefit.*—(1) *Exemption or remission of taxes.* In the case of a program that provides for a full or partial exemption or remission of a direct tax (*e.g.*, an income tax), or a reduction in the base used to calculate a direct tax, a benefit exists to the extent that the tax paid by a firm as a result of the program is less than the tax the firm would have paid in the absence of the program.

(2) *Deferral of taxes.* In the case of a program that provides for a deferral of direct taxes, a benefit exists to the extent that appropriate interest charges are not collected. Normally, a deferral of direct taxes will be treated as a government-provided loan in the amount of the tax deferred, according to the methodology described in § 351.504.

(b) *Time of receipt of benefit.* In the case of a full or partial exemption or remission of a direct tax, the Secretary normally will consider the benefit as having been received as of the date on which the recipient firm became capable of calculating the amount of the benefit. Normally, this date will be the date on which the firm filed its tax return. In the case of a tax deferral of one year or less, the Secretary normally will consider the benefit as having been received as of the date on which the deferred tax becomes due. In the case of a multi-year deferral, the Secretary normally will consider the benefit as having been received on the anniversary date(s) of the deferral.

(c) *Allocation of benefit to a particular time period.* The Secretary normally will allocate (expense) the benefit of a full or partial exemption, remission, or deferral of a direct tax to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.509 Indirect taxes and import charges (other than export programs).

(a) *Benefit.*—(1) *Exemption or remission of taxes.* In the case of a program, other than an export program, that provides for the full or partial exemption or remission of an indirect tax or an import charge, a benefit exists to the extent that the taxes or import charges paid by a firm as a result of the program are less than the taxes the firm would have paid in the absence of the program.

(2) *Deferral of taxes.* In the case of a program, other than an export program, that provides for a deferral of indirect taxes or import charges, a benefit exists to the extent that appropriate interest charges are not collected. Normally, a deferral of indirect taxes or import charges will be treated as a government-provided loan in the amount of the taxes deferred, according to the methodology described in § 351.504.

(b) *Time of receipt of benefit.* In the case of a full or partial exemption or remission of an indirect tax or import charge, the Secretary normally will consider the benefit as having been received at the time the recipient firm otherwise would be required to pay the indirect tax or import charge. In the case of the deferral of an indirect tax or import charge of one year or less, the Secretary normally will consider the benefit as having been received as of the date the deferred tax becomes due. In the case of a multi-year deferral, the Secretary normally will consider the benefit as having been received on the anniversary date(s) of the deferral.

(c) *Allocation of benefit to a particular time period.* The Secretary normally will allocate (expense) the benefit of a full or partial exemption, remission, or deferral described in paragraph (a) of this section to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.510 Provision of goods or services.

(a) *Benefit.* [Reserved]

(b) *Time of receipt of benefit.* In the case of the provision of a good or service, the Secretary normally will consider a benefit as having been received as of the date on which the firm pays, or in the absence of payment was due to pay, for the government-provided good or service.

(c) *Allocation of benefit to a particular time period.* In the case of the provision of a good or service, the Secretary will allocate (expense) the benefit to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.511 Purchase of goods. [Reserved]

§ 351.512 Worker-related subsidies.

(a) *Benefit.* In the case of a program that provides assistance to workers, a benefit exists to the extent that the assistance relieves a firm of an obligation that it normally would incur.

(b) *Time of receipt of benefit.* In the case of assistance provided to workers, the Secretary normally will consider the benefit as having been received by the firm as of the date on which the payment is made that relieves the firm of the relevant obligation.

(c) *Allocation of benefit to a particular time period.* Normally, the Secretary will allocate (expense) the benefit from assistance provided to workers to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.513 Export subsidies.

The Secretary will consider a subsidy to be an export subsidy if the Secretary determines that eligibility for, approval of, or the amount of, a subsidy is contingent upon actual or anticipated exportation or export earnings. In applying this section, the Secretary will consider a subsidy to be contingent upon actual or anticipated exportation or export earnings if receipt of the subsidy is, in law or in fact, tied to actual or anticipated export performance, alone or as one of two or more factors.

§ 351.514 Internal transport and freight charges for export shipments.

(a) *Benefit.*—(1) *In general.* In the case of internal transport and freight charges on export shipments, a benefit exists to the extent that the charges paid by a firm for transport or freight with respect to goods destined for export are less than what the firm would have paid if the goods were destined for domestic consumption. The Secretary will consider the amount of the benefit to equal the difference in amounts paid.

(2) *Exception.* For purposes of paragraph (a)(1) of this section, a benefit does not exist if the Secretary determines that:

(i) Any difference in charges is the result of an arm's length transaction between the supplier and the user of the transport or freight service; or

(ii) The difference in charges is commercially justified.

(b) *Time of receipt of benefit.* In the case of internal transport and freight charges for export shipments, the Secretary normally will consider the benefit as having been received by the firm as of the date on which the firm paid, or in the absence of payment was due to pay, the charges.

(c) *Allocation of benefit to a particular time period.* Normally, the Secretary will allocate (expense) the benefit from internal transport and freight charges for export shipments to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.515 Price preferences for inputs used in the production of goods for export.

(a) *Benefit.* (1) *In general.* In the case of the provision by governments or their agencies, either directly or indirectly through government-mandated schemes, of imported or domestic products for use in the production of exported goods, a benefit exists to the extent that the Secretary determines that the terms or conditions on which the products are provided are more favorable than the terms or conditions applicable to the provision of like or directly competitive products for use in the production of goods for domestic consumption. The amount of the benefit will equal the difference between the amount that a firm paid for inputs used in the production of export products and the amount the firm would have paid for like or directly competitive products for use in the production of goods for domestic consumption.

(2) *Exception.* A benefit will not exist under paragraph (a)(1) of this section if the Secretary determines that the terms or conditions relating to the provision of products for use in the production of exported goods are not more favorable than those commercially available on world markets to exporters in the country in question. For purposes of the preceding sentence, the Secretary normally will compare the price charged for the domestically sourced input to the delivered price of the imported input in order to determine whether the domestically sourced input is being provided on more favorable terms or conditions than those available on world markets.

(3) *Commercially available.* For purposes of paragraph (a)(2) of this section, "commercially available" means that the choice between domestic and imported products is unrestricted and depends only on commercial considerations.

(b) *Time of receipt of benefit.* In the case of a benefit described in paragraph (a)(1) of this section, the Secretary normally will consider the benefit to have been received as of the date on which the firm paid, or in the absence of payment was due to pay, for the product.

(c) *Allocation of benefit to a particular time period.* Normally, the Secretary will allocate (expense) benefits described in paragraph (a)(1) of this section to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.516 Remission upon export of indirect taxes.

(a) *Benefit.* In the case of the remission upon export of indirect taxes, a benefit exists to the extent that the Secretary determines that the amount remitted exceeds the amount levied with respect to the production and distribution of like products when sold for domestic consumption.

(b) *Time of receipt of benefit.* In the case of the remission upon export of an indirect tax, the Secretary will consider the benefit as having been received as of the date of exportation.

(c) *Allocation of benefit to a particular time period.* Normally, the Secretary will allocate (expense) the benefit from the remission upon export of indirect taxes to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.517 Exemption, remission or deferral upon export of prior-stage cumulative indirect taxes.

(a) *Benefit.*—(1) *Exemption of prior-stage cumulative indirect taxes.* In the case of a program that provides for the exemption of prior-stage cumulative indirect taxes on inputs used in the production of an exported product, a benefit exists to the extent that the exemption extends to inputs that are not consumed in the production of the exported product, making normal allowance for waste. If the Secretary determines that the exemption of prior-stage cumulative indirect taxes confers a benefit, the Secretary normally will consider the amount of the benefit to be the prior-stage cumulative indirect taxes that otherwise would have been paid on the inputs not consumed in the production of the exported product, making normal allowance for waste.

(2) *Remission of prior-stage cumulative indirect taxes.* In the case of a program that provides for the remission of prior-stage cumulative indirect taxes on inputs used in the production of an exported product, a benefit exists to the extent that the amount remitted exceeds the amount of prior-stage cumulative indirect taxes paid on inputs that are consumed in the production of the exported product, making normal allowance for waste. If the Secretary determines that the remission of prior-stage cumulative indirect taxes confers a benefit, the Secretary normally will consider the

amount of the benefit to be the difference between the amount remitted and the amount of the prior-stage cumulative indirect taxes on inputs that are consumed in the production of the export product, making normal allowance for waste. Notwithstanding the preceding sentence, the Secretary will consider the entire amount of the remittance to confer a benefit, unless the Secretary determines that:

(i) The government in question has in place and applies a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts, and the system or procedure is reasonable, effective for the purposes intended, and is based on generally accepted commercial practices in the country of export; or

(ii) If the government in question does not have a system or procedure in place, where the system or procedure is not reasonable, or where the system or procedure is instituted and considered reasonable, but is found not to be applied or not to be applied effectively, the government in question has carried out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product.

(3) *Deferral of prior-stage cumulative indirect taxes.* In the case of a program that provides for a deferral of prior-stage cumulative indirect taxes on an exported product, a benefit does not exist if the government charges appropriate interest on the taxes deferred. If the Secretary determines that a benefit exists, the Secretary normally will treat the deferral as if it were a government-provided loan in the amount of the tax deferred, according to the methodology described in § 351.504.

(b) *Time of receipt of benefit.* In the case of the exemption, remission, or deferral of prior-stage cumulative indirect taxes, the Secretary normally will consider the benefit as having been received:

(1) In the case of an exemption, as of the date of exportation;

(2) In the case of a remission, as of the date of exportation;

(3) In the case of a deferral of one year or less, as of the date on which the deferred tax was due; and

(4) In the case of a multi-year deferral, as of the anniversary date(s) of the deferral.

(c) *Allocation of benefit to a particular time period.* The Secretary normally will allocate (expense) the benefit of the exemption, remission, or deferral of prior-stage cumulative indirect taxes to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.518 Remission or drawback of import charges upon export.

(a) *Benefit.*—(1) *In general.* In the case of the remission or drawback of import charges upon export, a benefit exists to the extent that the Secretary determines that the amount of the remission or drawback exceeds the amount of import charges on imported inputs consumed in the production of the exported product, making normal allowances for waste.

(2) *Substitution drawback.* "Substitution drawback" involves a situation in which a firm uses a quantity of home market inputs equal to, and having the same quality and characteristics as, the imported inputs as a substitute for them. Substitution drawback does not necessarily result in the conferral of a benefit. However, a benefit exists if the Secretary determines that:

(i) The import and the corresponding export operations both did not occur within a reasonable time period, not to exceed two years; or

(ii) The amount drawnback exceeds the amount of the import charges levied initially on the imported inputs for which drawback is claimed.

(3) *Amount of the benefit from remission or drawback.*—(i) *In general.* If the Secretary determines that the remission or drawback, including substitution drawback, of import charges confers a benefit under paragraph (a)(1) or (a)(2) of this section, the Secretary normally will consider the amount of the benefit to be the difference between the amount of import charges remitted or drawnback and the amount levied initially on the imported inputs for which remission or drawback was claimed.

(ii) *Exception.* Notwithstanding paragraph (a)(3)(i) of this section, the Secretary will consider the entire amount of a remission or drawback to confer a benefit, unless the Secretary determines that:

(A) The government in question has in place and applies a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts, and the system or procedure is reasonable, effective for the purposes intended, and is based on generally accepted commercial practices in the country of export; or

(B) If the government in question does not have a system or procedure in place, where the system or procedure is not reasonable, or where the system or procedure is instituted and considered reasonable, but is found not to be applied or not to be applied effectively, the government in question has carried out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product.

(b) *Time of receipt of benefit.* In the case of the remission or drawback of import charges, the Secretary normally will consider the benefit as having been received as of the date of exportation.

(c) *Allocation of benefit to a particular time period.* The Secretary normally will allocate (expense) the benefit of the remission or drawback of import charges to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.519 Export insurance.

(a) *Benefit*—(1) *In general.* In the case of export insurance, a benefit exists if the premium rates charged are inadequate to cover the long-term operating costs and losses of the program.

(2) *Amount of the benefit.* If the Secretary determines under paragraph (a)(1) of this section that premium rates are inadequate, the Secretary normally will calculate the amount of the benefit as the difference between the amount of premiums paid by the firm and the amount received by the firm under the insurance program during the period of investigation or review.

(b) *Time of receipt of benefit.* In the case of export insurance, the Secretary normally will consider the benefit as having been received in the year in which the difference described in paragraph (a)(2) of this section occurs.

(c) *Allocation of benefit to a particular time period.* The Secretary normally will allocate (expense) the benefit from export insurance to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.520 General export promotion.

In the case of export promotion activities of a government, a benefit does not exist if the Secretary determines that the activities consist of general informational activities that do not promote particular products over others.

§ 351.521 Import substitution subsidies. [Reserved]

§ 351.522 Certain agricultural subsidies.

The Secretary will treat as noncountervailable domestic support measures that are provided to certain agricultural products (*i.e.*, products listed in Annex 1 of the WTO Agreement on Agriculture) and that the Secretary determines conform to the criteria of Annex 2 of the WTO Agreement on Agriculture. *See* section 771(5B)(F) of the Act. The Secretary will determine that a particular domestic support measure conforms fully to the provisions of Annex 2 if the Secretary finds that the measure:

(a) Is provided through a publicly-funded government program (including government revenue foregone) not involving transfers from consumers;

(b) Does not have the effect of providing price support to producers; and

(c) Meets the relevant policy-specific criteria and conditions set out in paragraphs 2 through 13 of Annex 2.

§ 351.523 Upstream subsidies.

(a) *Investigation of upstream subsidies*—(1) *In general.* Before investigating the existence of an upstream subsidy (*see* section 771A of the Act), the Secretary must have a reasonable basis to believe or suspect that all of the following elements exist:

(i) A countervailable subsidy, other than an export subsidy, is provided with respect to an input product;

(ii) One of the following conditions exist:

(A) There is cross ownership between the supplier of the input product and the producer of the subject merchandise;

(B) The price for the subsidized input product is lower than the price that the producer of the subject merchandise otherwise would pay another seller in an arm's length transaction for an unsubsidized input product; or

(C) The government sets the price of the input product so as to guarantee that the benefit provided with respect to the input product is passed through to producers of the subject merchandise; and

(iii) The *ad valorem* countervailable subsidy rate on the input product, multiplied by the proportion of the total production costs of the subject merchandise accounted for by the input product, is equal to, or greater than, one percent.

(b) *Input product.* For purposes of this section, "input product" means any product used in the production of the subject merchandise.

(c) *Competitive benefit*—(1) *In general.* In evaluating whether a competitive benefit exists under section 771A(b) of the Act, the Secretary will determine whether the price for the subsidized input product is lower than the benchmark input price. For purposes of this section, the Secretary will use as a benchmark input price the following, in order of preference:

(i) The actual price paid by, or offered to, the producer of the subject merchandise for an unsubsidized input product, including an imported input product;

(ii) An average price for an unsubsidized input product, including an imported input product, based upon publicly available data;

(iii) The actual price paid by, or offered to, the producer of the subject merchandise for a subsidized input product, including an imported input product, that is adjusted to account for the countervailable subsidy;

(iv) An average price for a subsidized input product, including an imported input product, based upon publicly available data, that is adjusted to account for the countervailable subsidy; or

(v) An unadjusted price for a subsidized input product.

(2) *Use of delivered prices.* The Secretary will use a delivered (*e.g.*, c.i.f.) price whenever the Secretary uses the price of an imported input product under paragraph (c)(1) of this section.

(d) *Significant effect*—(1) *Presumptions.* In evaluating whether an upstream subsidy has a significant effect on the cost of manufacturing or producing the subject merchandise (*see* section 771A(a)(3) of the Act), the Secretary will multiply the *ad valorem* countervailable subsidy rate on the input product by the proportion of the total production cost of the subject merchandise that is accounted for by the input product. If the product of that multiplication exceeds five percent, the Secretary will presume the existence of a significant effect. If the product is less than one percent, the Secretary will presume the absence of a significant effect. If the product is between one and five percent, there will be no presumption.

(2) *Rebuttal of presumptions.* A party to the proceeding may present information to rebut these presumptions. In evaluating such information, the Secretary will consider the extent to which factors other than price, such as quality differences, are important determinants of demand for the subject merchandise.

§ 351.524 Calculation of ad valorem subsidy rate and attribution of subsidy to a product.

(a) *Calculation of ad valorem subsidy rate.* The Secretary will calculate an *ad valorem* subsidy rate by dividing the amount of the benefit allocated to the period of investigation or review by the sales value during the same period of the product to which the Secretary attributes the subsidy under paragraph (b) of this section. Normally, the Secretary will determine the sales value of a product on an F.O.B. (port) basis (if the product is exported) or on an F.O.B. (factory) basis (if the product is sold for domestic consumption). However, if the Secretary determines that countervailable subsidies are provided with respect to the movement of a product from the port or factory to the place of destination (*e.g.*, freight or insurance costs are subsidized), the Secretary may make appropriate adjustments to the *ad valorem* subsidy rate to account for such subsidies.

(b) *Attribution of a subsidy to a product*—(1) *In general.* In attributing a subsidy to one or more products, the Secretary will apply the rules set forth in paragraphs (b)(2) through (b)(7) of this section.

(2) *Export subsidies.* The Secretary will attribute an export subsidy only to products exported by a firm.

(3) *Domestic subsidies and import substitution subsidies.* The Secretary will attribute a domestic subsidy or an import substitution subsidy to all products sold by a firm, including products that are exported.

(4) *Subsidies tied to a particular market.* If a subsidy is tied to sales to a particular market, the Secretary will attribute the subsidy only to products sold by the firm to that market.

(5) *Subsidies tied to a particular product.*—(i) *In general.* If a subsidy is tied to the production or sale of a particular product, the Secretary will attribute the subsidy only to that product.

(ii) *Exception.* If a subsidy is tied to the production or sale of an input product produced within the same corporation that produces the downstream product, then a subsidy which is tied to the input product will be attributed to the input and downstream products produced by that corporation.

(6) *Corporations with Cross Ownership.*—(i) *In general.* The Secretary normally will attribute a subsidy to the products produced by the corporation that received the subsidy.

(ii) *Corporations producing the same product.* If two (or more) corporations with cross ownership produce the same product, the Secretary will attribute the subsidies received by either or both corporations to the products produced by both corporations.

(iii) *Holding companies.* If the firm that received a subsidy is a holding company, the Secretary will attribute the subsidy to the consolidated sales of the holding company. However, if the

Secretary finds that the holding company merely served as a conduit for the transfer of the subsidy from the government to a subsidiary of the holding company, the Secretary will attribute the subsidy to products sold by the subsidiary.

(iv) *Transfer of subsidy between corporations with cross ownership producing different products.* If a corporation producing non-subject merchandise received a subsidy and transferred the subsidy to a corporation with cross ownership, the Secretary will attribute the subsidy to products sold by the recipient of the transferred subsidy.

(7) *Multinational firms.* If the firm that received a subsidy has production facilities in two or more countries, the Secretary will attribute the subsidy to products produced by the firm within the jurisdiction of the government that granted the subsidy. However, if the subsidy is tied to production by a facility outside of that jurisdiction, the Secretary will attribute the subsidy to products produced by that facility.

§ 351.525 Program-wide changes.

(a) *In general.* The Secretary may take a program-wide change into account in establishing the estimated countervailing duty cash deposit rate if:

(1) The Secretary determines that subsequent to the period of investigation or review, but before a preliminary determination in an investigation (*see* § 351.205) or a preliminary results of an administrative review or a new shipper review (*see* §§ 351.213 and 351.214), a program-wide change has occurred; and

(2) The Secretary is able to measure the change in the amount of countervailable subsidies provided under the program in question.

(b) *Definition of program-wide change.* For purposes of this section, "program-wide change" means a change that:

(1) Is not limited to an individual firm or firms; and

(2) Is effectuated by an official act, such as the enactment of a statute, regulation, or decree, or contained in the schedule of an existing statute, regulation, or decree.

(c) *Effect limited to cash deposit rate.*—(1) *In general.* The application of paragraph (a) of this section will not result in changing an affirmative determination to a negative determination or a negative determination to an affirmative determination.

(2) *Example.* In a countervailing duty investigation, the Secretary determines that during the period of investigation a countervailable subsidy existed in the amount of 10 percent *ad valorem.* Subsequent to the period of investigation, but before the preliminary determination, the foreign government in question enacts a change to the program that reduces the amount of the subsidy to a *de minimis* level. In a final determination, the Secretary would issue an affirmative determination, but would establish a cash deposit rate of zero.

(d) *Terminated programs.* The Secretary will not adjust the cash deposit rate under paragraph (a) of this section if the program-wide change consists of the termination of a program and:

(1) The Secretary determines that residual benefits may continue to be bestowed under the terminated program; or

(2) The Secretary determines that a substitute program for the terminated program has been introduced and the Secretary is not able to measure the amount of countervailable subsidies provided under the substitute program.

§ 351.526 Transnational subsidies.

Except as otherwise provided in section 701(d) of the Act (subsidies provided to international consortia), a subsidy does not exist if the Secretary determines that the funding for the subsidy is provided:

(a) By a government of a country other than the country in which the recipient firm is located, or

(b) By an international lending or development institution.

§ 351.527 Tax consequences of benefits.

In calculating the amount of a benefit, the Secretary will not consider the secondary tax consequences of the benefit.

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federal register

Wednesday
February 26, 1997

Part III

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals; February 1, 1997

This report is submitted in fulfillment of the requirement of Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93–344). Section 1014(e) requires a monthly report listing all budget authority for the current fiscal year for which, as of the first day of the month, a special message had been transmitted to Congress.

This report gives the status, as of February 1, 1997, of seven deferrals contained in the first special message for FY 1997. This message was transmitted to Congress on December 4, 1996.

Rescissions

As of February 1, 1997, no rescission proposals had been transmitted to the Congress.

Deferrals (Attachments A and B)

As of January 1, 1997, $3,486 million in budget authority was being deferred from obligation. Attachment B shows the status of each deferral reported during FY 1997.

Information From Special Messages

The special message containing information on the rescission proposals and deferrals that are covered by this cumulative report is printed in the editions of the **Federal Register** cited below:

61 FR 66172, Monday, December 16, 1996

Franklin D. Raines,

Director.

Attachments

ATTACHMENT A.—STATUS OF FY 1997 DEFERRALS

[In millions of dollars]

	Budgetary resources
Deferrals proposed by the President	3,544.3
Routine Executive releases through January 1, 1997 (OMB/Agency releases of $58.3 million.)	−58.3
Overturned by the Congress.	
Currently before the Congress	3,486.0

BILLING CODE 3110–01–P

ATTACHMENT B
Status of FY 1997 Deferrals - As of February 1, 1997
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 2-1-97
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund and international Fund for Ireland	D97-1	1,258,292		12-4-96	200				1,258,092
Foreign military financing program	D97-2	1,412,375		12-4-96					1,412,375
Foreign military financing loan program	D97-3	60,000		12-4-96					60,000
Foreign military financing direct loan financing account	D97-4	540,000		12-4-96					540,000
Agency for International Development									
International disaster assistance, Executive	D97-5	147,800		12-4-96	5,090				142,710
DEPARTMENT OF STATE									
Other									
United States emergency refugee and migration assistance fund	D97-6	118,486		12-4-96	53,000				65,486
SOCIAL SECURITY ADMINISTRATION									
Limitation on administrative expenses	D97-7	7,365		12-4-96					7,365
TOTAL, DEFERRALS		3,544,318	0		58,290			0	3,486,028

02/03/97

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[FR Doc. 97–4720 Filed 2–25–97; 8:45 am]

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federal register

Wednesday
February 26, 1997

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 91, et al.
Special Flight Rules in the Vicinity of Grand Canyon National Park; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 93, 121, and 135

[Docket No. 28537; Amendment Nos. 91–253, 93–73, 121–262, 135–66]

RIN 2120–AF93

Special Flight Rules in the Vicinity of Grand Canyon National Park

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: On December 31, 1996, the FAA published a final rule that codifies the provisions of Special Federal Aviation Regulation (SFAR) No. 50–2, Special Flight Rules in the Vicinity of Grand Canyon National Park (GCNP); modifies the dimensions of the GCNP Special Flight Rules Area; establishes new and modifies existing flight-free zones; establishes new and modifies existing flight corridors; establishes reporting requirements for commercial sightseeing companies operating in the Special Flight Rules Area; prohibits commercial sightseeing operations during certain time periods; and limits the number of aircraft that can be used for commercial sightseeing operations in the GCNP Special Flight Rules Area. This action delays the effective date for 14 CFR Sections 93.301, 93.305, and 93.307 of the final rule and reinstates portions of and amends the expiration date of SFAR No. 50–2. This action does not affect or delay the implementation of the curfew, aircraft restrictions, reporting requirements or the other portions of the rule.

DATES: Effective date: The effective date of May 1, 1997, for 14 CFR Sections 93.301, 93.305, and 93.307, is delayed until 0901 UTC January 31, 1998. SFAR No. 560–2 is reinstated and amended effective 0901 UTC May 1, 1997. SFAR No. 50–2, Sections 2, 3, 6, 6, 7 and 8 are removed effective 0901 UTC May 1, 1997.

Comments must be received on or before March 24, 1997.

ADDRESSES: Comments should be mailed, in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 28537, 800 Independence Avenue, SW., Washington, DC 20591. Comments may be sent electronically to the Rules Docket by using the following Internet address nprmcmts@mail.faa.dot.gov. Comments must be marked Docket No. 28537. Comments may be examined in the Rules Docket in Room 915G on weekdays between 8:30 a.m. and 5:00 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Neil Saunders, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is a final rule, and was not preceded by notice and public procedure, comments are invited on the rule. This rule will become effective on the date specified in the DATES section. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required.

History

On December 31, 1996, the FAA published three concurrent actions (a final rule, a Notice of Proposed Rulemaking [NPRM], and a Notice of Availability of Proposed Commercial Air Tour Routes) in the **Federal Register** (62 FR 69301) as part of an overall strategy to reduce further the impact of aircraft noise on the park environment and to assist the National Park Service (NPS) in achieving its statutory mandate imposed by Public Law 100–91. The final rule amends part 93 of the Federal Aviation Regulations and adds a new subpart to codify the provisions of SFAR No. 50–2, modifies the dimensions of the GCNP Special Flight Rules Area; establishes new and modifies existing flight-free zones; reestablishes new and modifies existing flight corridors; and establishes reporting requirements for commercial sightseeing companies operating in the Special Flight Rules Area. In addition, to provide further protection for park resources, the final rule prohibits commercial sightseeing operations in the Zuni and Dragon corridors during certain time periods, and places a temporary limit on the number of aircraft that can be used for commercial sightseeing operations in the GCNP Special Flight Rules Area. These provisions become effective on May 1, 1997.

An NPRM, Notice No. 96–15, proposing to establish noise limitations for certain aircraft operating in the vicinity of GCNP was also published with a comment period that closes on March 31, 1997.

Finally, a Notice of Availability of proposed Commercial Air Tour Routes for the GCNP was published with a 30-day comment period that closed on January 31, 1997. This Notice requested comment on the proposed new or modified existing air tour routes, which complement the final rule affecting the Special Flight Rules in the Vicinity of GCNP.

Petitions

By petition dated January 15, 1997, the Aircraft Owners and Pilots Association requested that the FAA reconsider the rule because of its perceived negative impact on the general aviation community and the fact that general aviation traffic does not contribute to the issues addressed by the final rule.

On January 30, 1997, the Clark County Department of Aviation, et al., filed a petition seeking reconsideration and/or a stay of effectiveness of the implementation of the Toroweap/Shinumo Flight-Free Zone that will bar the use of the current "Blue 1" commercial air tour route until the FAA has taken adequate steps to assure the availability of an adequate alternative for Las Vegas based air tour operators.

On January 31, 1997, the Grand Canyon Air Tour Coalition (Coalition) requested a stay of the effective date arguing that the necessary pilot training and certification could not be reasonably and safely completed prior to the May 1, 1997, effective date. The petition also alleged that discontinuing and limiting existing tour routes as of May 1, 1997, would disrupt the travel plans of a substantial portion of GCNP visitors, and air tour operators would be forced to dishonor contractual obligations based on material printed prior to August 1996. (This administrative action is separate from but interrelated to a Petition for Review filed by the Coalition in the Court of Appeals for the District of Columbia Circuit, *Grand Canyon Air Tour Coalition* v. *FAA*, (Case No. 97–1003)).

On February 18, 1997, the Grand Canyon Trust, et. al., (Trust) filed a request with the FAA opposing the Coalition's request for stay of the final rule and urged the FAA to deny the Coalition's request. The Trust argued that the Coalition has not presented valid grounds to support its stay request.

Even though the specific Petitions filed with the FAA focus on different aspects of the operating environment within the Park, the underlying concepts of the three Petitions are similar in nature. All three administrative Petitions are concerned with the air tour route structure or its implementation.

In support of the requests for a stay of the effective date, the Petitions have alleged several economic and safety concerns. The economic concerns are inextricably tied with the implementation of the new routes in the Park. As will be discussed below, if the implementation of the new routes is delayed, the economic concerns are, at a minimum, also delayed. In essence, the safety concerns stem from the Petitioners' position that there is not enough time to train and certify all operators and pilots for operations on the new Grand Canyon routes that are scheduled to be in place on May 1, 1997, and that this would create an inherently unsafe situation in the Grand Canyon. The FAA strongly disagrees with this assertion that implementing the new routes effective May 1, 1997, would be unsafe. Even though the FAA is committed to achieving the substantial restoration of natural quiet in the Park as soon as possible, safety is, and always will be, paramount. To that end, the FAA has been preparing to take dramatic steps to alleviate any potential problems that could adversely affect the safety in the Park on May 1, 1997, by arranging for additional inspectors to be available for the operators to complete the training on the new routes prior to the May 1, 1997, effective date. The FAA would never permit an unsafe situation to take place at the Grand Canyon.

While the FAA has been diligently working toward a May 1, 1997, implementation date for the entire rule, the Agency has also been reviewing comments concerning proposed routes and working toward the establishment of these routes. During the process of establishing the new routes in response to the final rule, the FAA has met with aviation users, Park users, and Native Americans. Several new and innovative ideas were offered by those groups. Many of these creative ideas suggest alternatives to both the existing environment at the Park and the proposed environment that could significantly improve the operating situation in both the environmental and operational arenas. These new suggestions have not yet been adequately explored, but are deserving of further investigation and analysis. Additional time would afford the FAA and the Department of the Interior (DOI) an opportunity to review these new ideas. In addition, the FAA is committed to a continued working relationship with the affected Native American tribal units, and the FAA intends to complete consultation with the affected Native American tribes concerning these new route suggestions pursuant to Section 106 of the National Historic Preservation Act. Although the FAA is fully prepared to implement the new route structure on May 1, 1997, as originally proposed, it would be extremely difficult to accommodate the new proposals now being discussed by that date.

The FAA has consulted with the DOI concerning the new suggestions received by the FAA and the need for further consultation. The DOI reexamined the situation at the Park and concluded that the implementation of the curfew as required by the final rule on May 1, 1997, will, on its own, be a significant step to achieving the substantial restoration of natural quiet in the Park. The subsequent implementation of the new air tour route structure, together with the proposal of quiet technology, will form the basis for the next step towards the substantial restoration of natural quiet. The DOI and the FAA have determined that additional time would be beneficial to permit the further exploration of these new ideas submitted by the affected and interested parties, and that a delay in the effective date of the implementation of the new routes in the Park is warranted. Therefore, to permit continued discussions on, and possible changes to, the proposed new routes and to permit further consultation with the Native American tribes, the FAA has determined to delay the effective date of the expansion of the flight-free zones and minimum altitudes as stated in 14 CFR Sections 93.301, 93.305 and 93.307 to January 31, 1998. The effective date of May 1, 1997, for all the other aspects of the rule, i.e., the curfew, aircraft limitations, and reporting requirements, will remain unchanged.

Since the FAA is delaying certain portions of the final rule, as stated above, SFAR 50–2 must be reinstated, and certain portions of the SFAR be extended. The continuation of the SFAR is vital to maintain the existing environmental and safety benefits. Specifically, the FAA finds it necessary to amend Section 9 of the reinstated SFAR 50–2 to extend the provisions of Sections 1, 4, and 5, (i.e., the Special Flight Rules Area, the flight-free zones and the minimum flight altitudes) until January 31, 1998. The termination of SFAR 50–2 Sections 1, 4, and 5 will coincide with the delayed effective date of 14 CFR Sections 93.301, 93.305, and 93.307.

On May 1, 1997, the provisions of the final rule that are unaffected by the pending route structure will go into effect. These provisions consist of the curfew, aircraft limitations, and reporting requirements, and are continued in 14 CFR Sections 93.303, 93.309, 93.311, 93.313, 93.315, 93.316, and 93.317. To avoid redundancy and confusion the FAA also finds it necessary to remove certain sections of SFAR 50–2 effective May 1, 1997. Sections 2, 3, 6, 7, and 8 will be removed on May 1, 1997 to coincide with the implementation of the above referenced sections of the final rule contained in part 93.

Further Consultation and Review

As mentioned above, during the comment period on the new routes, the FAA received many insightful and cogent comments on the proposed route structure. Consultation with the Native American representatives also produced several useful and valid alternate operational schemes. Many of these ideas received from the comments and through the consultations are innovative and may prove to be quite beneficial for both the safety and the environmental arenas. A good example of this concerns the direction of air tour traffic in the eastern side of the Park, e.g. in the Dragon Corridor. The FAA's preliminary view that traffic should operate in a clockwise direction is being revisited, based on comments from the air tour operators as well as from NPS. With new considerations given by the operators, the existing direction of traffic operations, ie., counterclockwise, may be the more safe and environmentally sound decision.

The FAA has determined that the responses to the proposed routes should be further analyzed prior to implementation of airspace changes. Therefore, in light of the comments and additional information received, the FAA will reexamine the proposed route structure in relation to the operating environment in the Park. The FAA expects to revisit the proposed route structure and incorporate several of the above mentioned ideas. Involvement of the interested and affected parties will be crucial in this process.

Notice and Comment

As is explained below, this final rule is being issued without prior notice and comment because of the time constraints. The FAA spent the month of January and most of February receiving and reviewing comments on the proposed routes and consulting with the various affected parties. Had the FAA not received the valuable information on the route structure that it did, the FAA would have been able to transmit the data on the proposed routes to the proper charting authorities

(the National Ocean Service [NOS]), and an aeronautical chart would have been available by at least April 1, 1997, that would have been used by the operators for training and navigational purposes. To have the appropriate chart produced by April 1, the FAA would have had to forward the charting data to NOS by February 21, 1997. However, once the FAA started to receive the relevant information from the commenters, the Agency had to make a determination as to whether to proceed with the proposed routes so as to have the routes and the complete Grand Canyon final rule effective and implemented on May 1, or whether to take additional time to analyze the comments and possibly develop a better and more comprehensive route structure that would not go into effect until after the busy summer tourist season.

Further, officials of the Park and NPS had suggested alterations and refinements in the route structure that have the potential to produce noise reduction benefits. They have requested the opportunity to explore these new options with the FAA. Both the FAA and the DOI believe that all these suggested changes could produce a significantly better rule for both the Park users and the aviation operators. Additional time is needed, however, to review, analyze, and implement these route changes, which, again, would preclude a May 1, 1997, effective date.

To permit what the FAA and the DOI believe will culminate in a better overall route structure, the FAA has decided not to send the originally proposed routes to NOS for charting, but to analyze the new ideas with the expectation of creating better routes. Due to the specific and strict requirements of NOS for the charting preparation time, any further alteration to the route structure, such as the ones suggested by DOI and interested parties, make it impossible to meet the charting date necessary for a May 1 effective date. A delay in the charting data to NOS would mean that NOS would not have been able to produce the charts by April 1 and, consequently, operators would not have been able to train their pilots by May 1. Essentially, therefore, any delay in sending the data to NOS results in an equivalent delay of the effective date. With the goal to produce the best routes possible, the FAA determined that it would be contrary to the public interest to implement the originally proposed routes when better alternatives might be available as a result of the comments received and the consultations with DOI and others.

Moreover, past experience has demonstrated that the training of pilots on new routes during a peak tourist season could be unsafe. At the Park, the peak season extends approximately from May through October. To eliminate the potential for unsafe operations within the Park, the FAA further determined that the training should take place in the Park when the volume of air traffic traditionally decreases, i.e., after the summer tourist season. For that reason, the FAA is delaying the effective date of the new airspace and route structure until January 31, 1998, to give the operators sufficient time to train their pilots adequately and safely after the close of the busy summer season. Therefore, the FAA finds that there is sufficient justification under 5 U.S.C. 553(b) to issue this rule without notice and an opportunity for comment. However, while there is not sufficient time to allow prior notice and comments concerning the FAA decision to delay the May 1 effective date, we invite comments concerning any other aspect of this notice, including the new implementation date of January 31, 1998.

Economic Evaluation

In promulgating the final rule for Special Flight Rules in the Vicinity of the GCNP, the FAA prepared a cost-benefit analysis of the rule. The delay in the implementation of 14 CFR Sections 93.301 and 93.307 will not affect that assessment. The delay in the implementation of Section 93.305 will be cost-relieving.

Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended, FAA completed a final regulatory flexibility analysis of the final rule. The delay in the implementation of 14 CFR Sections 93.301, 93.305, and 93.307 will not have an effect on that analysis.

Federalism Implications

The amendment set forth herein will not have substantial direct effects on the States, or the relationship between the national Government and the State, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this amendment does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

14 CFR Part 91

Aircraft, Airmen, Air traffic control, Aviation safety, Noise control, Reporting and recordkeeping requirements.

14 CFR Part 93

Air traffic control, Airports, Navigation (Air), Reporting and recordkeeping requirements.

14 CFR Part 121

Aircraft, Airmen, Aviation safety, Charter flights, Safety, Transportation.

14 CFR Part 135

Air taxis, Aircraft, Airmen, Aviation safety.

Adoption of Amendments

Accordingly, the Federal Aviation Administration (FAA) amends 14 CFR parts 91, 93, 121, and 135 as follows:

PARTS 91, 121 AND 135 [AMENDED]

1. The authority citation for part 91 continues to read as follows:

Authority: 49 USC 106(g), 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506–46507, 47122, 47508, 47528–47531.

2. The authority citation for part 121 continues to read as follows:

Authority: 49 USC 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

3. The authority citation for part 135 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

SFAR No. 50–2 [Reinstated]

4. In parts 91, 121, and 135, Special Federal Aviation Regulation No. 50–2 is reinstated.

5. In parts 91, 121, and 135, Special Federal Aviation Regulation No. 50–2, Section 2, 3, 6, 7, and 8 are removed.

6. In parts 91, 121, and 135, Special Federal Aviation Regulation No. 50–2, Section 9 is revised to read as follows:

SFAR 50–2—Special Flight Rules in the Vicinity of the Grand Canyon National Park, AZ

* * * * *

Section 9. *Termination date.* Sections 1. Applicability, Section 4, Flight-free zones, and Section 5. Minimum flight altitudes, expire on 0901 UTC, January 31, 1998.

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

7. The authority citation for part 93 continues to read as follows:

Authority: 49 USC 106(g), 40103, 40106, 40109, 40113, 44502, 44514, 44701, 44719, 46301.

The effective date of May 1, 1997, for new §§ 93.301, 93.305, and 93.307 to be added to 14 CFR Chapter I is delayed until 0901 UTC, January 31, 1998.

Issued in Washington, DC, on February 21, 1997.

Barry L. Valentine,

Acting Administrator.

[FR Doc. 97–4824 Filed 2–21–97; 3:49 pm]

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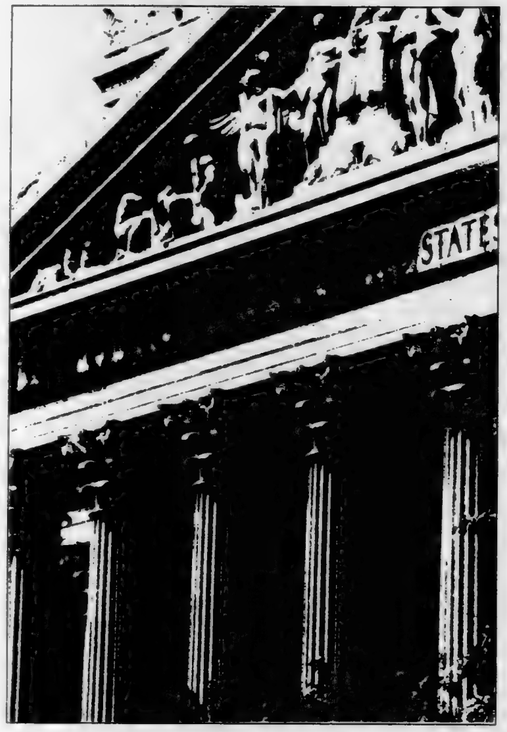

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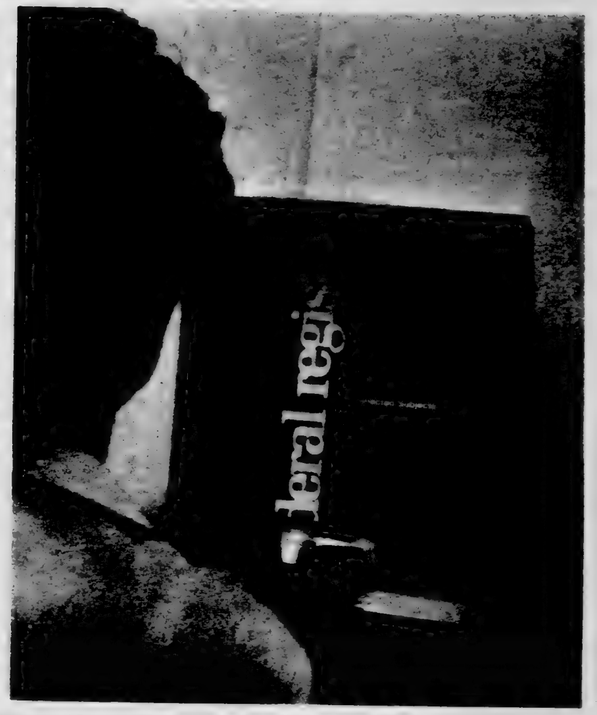

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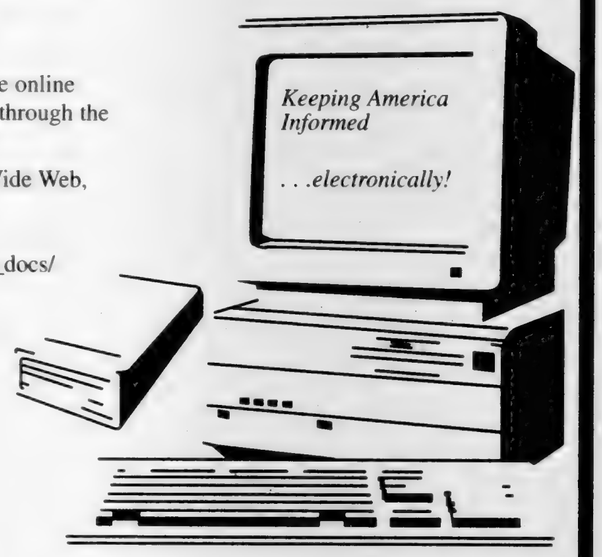

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 97–007–1]

Change in Disease Status of the Netherlands Because of Hog Cholera

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations by removing The Netherlands from the list of countries free from hog cholera. We are taking this action based on reports we have received from The Netherlands that an outbreak of hog cholera has occurred in The Netherlands. As a result of this action, there will be additional restrictions on the importation of pork and pork products into the United States from The Netherlands, and the importation of swine from The Netherlands will be prohibited.

DATES: Interim rule effective February 21, 1997. Consideration will be given only to comments received on or before April 28, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–007–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–007–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. John Cougill, Staff Veterinarian, Animal Products Program, National Center for Import and Export, VS, APHIS, Suite 3B05, 4700 River Road Unit 39, Riverdale, MD 20737–1231, (301) 734–3399; or e-mail: jcougill@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation into the United States of specified animals and animal products in order to prevent the introduction of various animal diseases, including rinderpest, foot-and-mouth disease, African swine fever, hog cholera, and swine vesicular disease. These are dangerous and destructive communicable diseases of ruminants and swine. Section 94.9 of the regulations restricts the importation into the United States of pork and pork products from countries where hog cholera is known to exist. Section 94.10 of the regulations, with certain exceptions, prohibits the importation of swine which originate in or are shipped from or transit any country in which hog cholera is known to exist. Sections 94.9(a) and 94.10(a) of the regulations provide that hog cholera exists in all countries of the world except for certain countries listed in those sections.

Prior to the effective date of this interim rule, The Netherlands was included in the lists in §§ 94.9(a) and 94.10(a). The Netherlands has reported that an outbreak of hog cholera has occurred in that country. After reviewing the reports submitted by The Netherlands, APHIS has determined to remove The Netherlands from the list of countries free of hog cholera.

Therefore, we are amending §§ 94.9(a) and 94.10(a) by removing The Netherlands from the list of countries declared to be free of hog cholera. As a result of this action, the importation of swine from The Netherlands is prohibited, and pork and pork products from The Netherlands will not be eligible for entry into the United States unless the pork or pork products are cooked or cured and dried in accordance with the regulations.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the introduction of hog cholera into the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

The United States has been notified that an outbreak of hog cholera has occurred in The Netherlands. Hog cholera is a contagious viral disease of swine. The impact of an outbreak for U.S. swine producers would be economically damaging, as described in a recent APHIS study ("Costs of a Potential Hog Cholera Outbreak," C. Matthew Rendleman, May 9, 1994). In that study, a range of scenarios was set forth, from infection of herds in a single State to a nationwide outbreak. Potential costs to producers, consumers, and taxpayers were estimated to range from $34 million to $5.4 billion in 1992 dollars.

The Netherlands has only been recognized free of hog cholera since August 1996 (61 FR 40292–40293, Docket No. 96–014–2, which was published on August 2, 1996 and effective on August 19, 1996). Consequently, any effects of that rule change on pork imports from The Netherlands would have had little time to develop. Moreover, even with hog cholera free status, inspection and certification procedures were required to ensure that pork imports originating in The Netherlands were not commingled with pork from neighboring countries having swine vesicular disease.

In 1995, the year before The Netherlands was declared free of hog cholera, U.S. pork imports from The Netherlands were valued at $14.5 million (less than 2 percent of the total value of all U.S. pork imports that year). No live swine or fresh pork were imported from The Netherlands in 1995.

Removing The Netherlands from the list of countries free of hog cholera is not expected to significantly affect U.S. entities, large or small. The value of pork products imported by the United States from The Netherlands is expected to be much the same as it was before The Netherlands acquired hog cholera free status 6 months ago.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 is amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

§ 94.9 [Amended]

2. In § 94.9, paragraph (a) is amended by removing the phrase "The Netherlands,".

§ 94.10 [Amended]

3. In § 94.10, paragraph (a) is amended by removing the phrase "The Netherlands,".

Done in Washington, DC, this 21st day of February 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–4932 Filed 2–26–97; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 935

[No. 97–12]

Restrictions on Advances to Non-Qualified Thrift Lenders

AGENCY: Federal Housing Finance Board.

ACTION: Interim rule with request for comments.

SUMMARY: The Board of Directors of the Federal Housing Finance Board (Finance Board) is amending its regulations on advances to members that are not qualified thrift lenders to implement certain changes made by the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA). Among other things, the EGRPRA broadened the universe of assets that a savings association may use in meeting its qualified thrift lender (QTL) requirement. Non-savings association members are not directly subject to the QTL requirement, although their ability to obtain advances is restricted if they do not meet the QTL requirement. The amendments should prove beneficial to many non-savings association members by allowing them to report increases in their levels of qualified thrift investments and, in some cases, satisfy the QTL requirement. Because certain of the items authorized by EGRPRA to be included in the QTL calculation are not separately identified on a non-savings association member's published financial reports, such as a call report, the Federal Home Loan Banks (Banks) have no readily available source from which to obtain or verify that information. To allow the Banks to include the newly authorized items when conducting their annual QTL calculation of their non-savings association members, the Finance Board has determined that the Banks may rely on a certification from their members of any relevant QTL financial information that is not available from published financial reports. Because the Banks must complete the annual QTL calculations for calendar year 1996 no later than April 15, 1997, the Finance Board is issuing this rule as an interim final rule. As the certification process raises a number of questions about how best the Banks can determine the QTL status of their non-savings association members, and because the Office of Thrift Supervision (OTS) is in the process of a rulemaking relating to the EGRPRA amendments, the Finance Board has determined to solicit comments on the interim final rule for a period of 30 days.

DATES: The interim rule is effective on February 27, 1997. Comments must be received by March 31, 1997.

ADDRESSES: Mail comments to Elaine L. Baker, Executive Secretary, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Steven P. Wojtaszek, Financial Analyst, Financial Research Division, Office of Policy, (202) 408–2863, or Neil R. Crowley, Senior Attorney, Office of General Counsel, (202) 408–2990, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Background

Historically, membership in the Federal Home Loan Bank System (System) had been comprised predominantly of savings associations, which tended to concentrate their investments in residential mortgage loans. In 1987, Congress established the QTL test, which required savings associations to maintain 60 percent of their assets in instruments related to domestic residential real estate or manufactured housing. Competitive Equality Banking Act of 1987, Public Law 100–86, section 104(c), 101 Stat. 571–573 (August 10, 1987). Among other things, a savings association that failed the QTL test was limited in the amount of advances that it could receive from its Bank. *Id.* section 105. In 1989, Congress authorized commercial banks and credit unions, institutions that historically had not been so concentrated in residential mortgage lending, to become members of the System. Financial Institutions Reform, Recovery , and Enforcement Act of 1989 (FIRREA), Public Law 101–73, section 704(a), 103 Stat. 415 (August 9, 1989),

codified at 12 U.S.C. 1424(a). FIRREA also limited the amount of advances that such non-savings association members could obtain from their Bank, and imposed a 30 percent System-wide limit on the aggregate amount of advances that could be outstanding to such non-QTL members. 12 U.S.C. 1430(e).

As a general matter, the QTL test now requires a savings association to maintain 65 percent or more of its portfolio assets in certain designated instruments, which are characterized as "qualified thrift investments." The QTL test requires one to determine an institution's "actual thrift investment percentage" (ATIP), which is obtained by dividing the institution's "qualified thrift investments" by its "portfolio assets." The QTL test applies directly only to savings associations, and OTS, as the principal federal regulator of savings associations, determines their QTL compliance. The QTL test does not apply to commercial banks, credit unions, or insurance companies, although if such institutions become members of the System their ability to obtain advances is restricted if they do not meet the QTL test. 12 U.S.C. 1430(e). The Banks are required to determine the ATIP for each non-savings association member at least annually, between January 1 and April 15, based on financial information as of December 31 of the prior calendar year. 12 CFR 935.13(a)(3).

In EGRPRA (Public Law 104–208, 110 Stat. 3009, September 30, 1996), Congress made it easier for all members to achieve QTL compliance by broadening the universe of "qualified thrift investments" that may be included in calculating an institution's ATIP. Those changes could benefit non-savings association members by allowing them to increase their ATIP, possibly to the point of satisfying the QTL test. Even those members that do not meet the QTL requirement should benefit from the amendments because an increase in their ATIP should allow them to obtain a greater amount of advances based on their existing level of Bank stock. Under the amendments made by EGRPRA, a member now may include without limit as "qualified thrift investments" the full amount of its loans for educational purposes, loans to small businesses, and loans made through credit cards or credit card accounts. In addition, institutions may include an increased amount of consumer loans, subject to certain aggregate limits. For purposes of the EGRPRA amendments, the director of OTS is required to define the terms "small business," "small business loans," and "credit card," which the OTS has done by means of an interim final rule. 61 FR 60179 (November 27, 1996), to be codified at, 12 CFR 560.3.

Although EGRPRA clearly specifies the types of additional assets that may be included as qualified thrift investments (and OTS has defined small business loans), the Banks cannot readily incorporate those items into their annual QTL calculations because the call reports of the commercial bank and credit union members, and the comparable reports of insurance company members, do not separately identify those items. The absence of these QTL items from the available regulatory financial reports of the non-savings association members complicates the Banks' annual task of determining the ATIP for those members. As a consequence of the additional items added by EGRPRA, the number of elements within the QTL calculation for which the Banks lack accurate and readily available data has increased, which introduces a greater element of uncertainty into the accuracy of the Banks' QTL determinations. This is not so much of a concern with respect to savings association members because OTS routinely examines the associations for QTL compliance, and the Finance Board and the Banks can rely on those OTS determinations. With respect to the non-savings association members, however, the principal federal regulators do not conduct examinations for QTL compliance and the Banks cannot look to those regulators as a source for the required QTL information.

For example, a commercial bank's outstanding credit card loans are separately stated on its Report of Condition and Income (Call Report), but its education loans and small business loans (at least as defined for QTL purposes) are not separately identified. Although the Call Report includes information about small business loans, that information does not correspond to the information that the Banks require when making the annual QTL calculations for their non-savings association members. The OTS regulation defines the term "small business loans" by incorporating the definitions from the Small Business Act and its implementing regulations promulgated by the Small Business Administration (SBA). Thus, for QTL purposes, a small business loan is one made to a "small business." Under the SBA regulations, a "small business" is an entity the gross receipts of which (or the number of its employees) fall below certain thresholds specified by SBA. By comparison, the Call Report defines a small business loan based on the size of the loan, not the size of the borrowing entity. Thus, the Banks' use of the "small business loan" information that is available from the Call Report likely will overstate the amount of "small business loans" that are eligible to be used in deter mining a commercial bank member's QTL status. The same problem exists with respect to the reports submitted by credit union and insurance company members, neither of which separately identify the amount of loans meeting the SBA definition of small business loans.

This disparity between the statutory requirements of the QTL test and the information that is readily available to the Banks is not limited to the items added by EGRPRA. For example, the QTL test includes within a member's "portfolio assets" certain government, agency, and other debt securities with specified maturities (from two to five years), none of which is separately identified by maturity on the published financial statements. Similarly, the QTL test includes within a member's "qualified thrift investments" certain construction loans related to one-to four-family residential properties, 50 percent of residential mortgage loans sold during a calendar quarter, 200 percent of affordable housing-related loans, and 200 percent of service facility loans, none of which is separately identified on the available reports.

The Finance Board believes that non-savings association members can benefit from the newly authorized qualified thrift investments, and that it is appropriate to allow the Banks to incorporate the new classes of investments into their ATIP calculations for the calendar year ending December 31, 1996. Of supervisory concern to the Finance Board, however, is how best to ensure that the Banks conduct their annual QTL determinations consistently with Section 10(e) of the Federal Home Loan Bank Act (Bank Act), 12 U.S.C. 1430(e). The Finance Board believes that it would be imprudent for the Banks to confer QTL status on non-savings association members that cannot demonstrate that their qualified thrift investments actually include the claimed amount of the newly authorized investments.

One means of ensuring this result would be through an examination process. The Finance Board believes that it has the authority, under Sections 2A(a)(3), 2B(a), and 22, of the Bank Act, 12 U.S.C. 1422a(a)(3), 1422b(a), and 1442(a), to examine, or to require the Banks to request an examination of, individual members if necessary to ensure that the Banks operate in compliance with the law. The Finance

Board believes, however, that the more reasonable and efficient approach is to allow the Banks to obtain that information from their members. As a matter of practice, some Banks already obtain from their members information regarding certain QTL items that are not separately identified on the published financial reports. For example, some Banks obtain all QTL-related financial data from the member and use the published financial reports, such as a Call Report, to confirm the general accuracy of the information. Other Banks calculate a member's ATIP as a service to their members using the most recently published financial reports and either obtain any additional data from the member or estimate it from other known sources.

Accordingly, through this interim final rule the Finance Board will allow the Banks to accept from their non-savings association members supplemental QTL information that does not appear in the published financial statements. The chief executive officer (CEO) of the member must certify to the Bank that the information is accurate and complete as of the date provided. The Finance Board believes that such an arrangement strikes an appropriate balance between its need to ensure that the Banks base their QTL calculations on accurate financial information, and the practice of allowing the Banks to manage their own business. To allow the Banks to make use of the newly authorized QTL categories prior to the April 15, 1997, deadline for their QTL calculations, the Finance Board has determined to issue this rule as an interim final rule, but also is soliciting comments on the specific provisions of the rule. The Finance Board appreciates that OTS may yet revise the QTL definitions established through its recent interim rule, and intends to monitor the OTS rulemaking proceeding. The Finance Board anticipates that it will make corresponding changes to its advances regulation should the OTS further amend the QTL regulation in any material respect.

II. Description of the Interim Final Rule

The interim rule amends the definitions of "actual thrift investment percentage," "Qualified Thrift Lender," and "Qualified Thrift Lender test," in the Finance Board's advances regulation, 12 CFR 935.1, to delete references to OTS regulations that no longer exist. The interim rule also amends the Finance Board's advances regulations, 12 CFR 935.13(a)(3), to direct the Banks to use the financial information from the call report (which term is defined to include the published financial reports submitted by credit union and insurance company members) as the primary source for QTL determinations. In those cases in which not all of the information needed to perform an accurate QTL calculation is included in the call report, the Bank may accept other information submitted by the member, provided that the CEO of the member certifies in writing that the information is accurate and complete as of the relevant date. As it appears to have been the practice of some Banks to obtain the required financial information for the QTL calculation from their members and then compare that information to the call report, the rule allows the Banks to continue to obtain information from their members as the first step in the process, provided that any information not in the call report must be subject to the same certification requirement. By requiring the formality of a certification from the CEO the Finance Board believes that the Banks will have sufficient assurance that the information on which they conduct their determinations is accurate, which is the minimum effort required to ensure compliance with the Bank Act.

The Finance Board does not intend to require the Banks to obtain a CEO certification from every non-savings association member as a matter of course. Such a certification is necessary only when a member wishes the Bank to include in its annual ATIP calculation qualified thrift investments or portfolio assets that do not appear in its published financial reports. If a member has no such investments or assets, then the Bank need not require a certification from the member. Similarly, if a member has a portfolio of small business loans or education loans, but the inclusion of those items in the calculation would not materially change the member's ATIP, then a member could elect not to provide a certification. If a member were to have a substantial portfolio of education loans, for example, but only minor investment in small business loans, the member could opt to certify the number of education loans and omit, or indicate a zero balance, for the category of small business loans. The Finance Board specifically requests public comment on the certification process, as well as the content and format for the certification.

III. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601, *et seq.*, the Banks are not "small entities." *Id.* 601(6). As the interim final rule would apply only to the Banks, it does not impose any additional regulatory requirements on small entities of the type contemplated by the RFA. Thus, in accordance with the provisions of the RFA, the Board of Directors of the Finance Board hereby certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities. *Id.* 605(b).

IV. Paperwork Reduction Act

The Finance Board has submitted to the Office of Management and Budget (OMB) an analysis of the collection of information contained in § 935.13 of the interim rule, described more fully in the **SUPPLEMENTARY INFORMATION.** The Banks will use the information collection to determine whether a non-savings association member satisfies the statutory QTL requirement. Only Bank members that meet the QTL standards may maintain unrestricted access to long-term Bank advances. *See* 12 U.S.C. 1430(e). Responses are required to obtain or retain a benefit. *See id.* The Finance Board will maintain the confidentiality of information obtained from respondents pursuant to the collection of information as required by applicable statute, regulation, and agency policy.

Likely respondents and/or recordkeepers will be non-savings association members of a Bank. Potential respondents are not required to respond to the collection of information unless the regulation collecting the information displays a currently valid control number assigned by OMB. *See* 44 U.S.C. 3512(a).

The estimated annual reporting and recordkeeping hour burden is:	
a. Number of respondents	4,272
b. Total annual responses	4,272
Percentage of these responses collected electronically	0
c. Total annual hours requested	3,930
d. Current OMB inventory	0
e. Difference	3,930
The estimated annual reporting and recordkeeping cost burden is:	
a. Total annualized capital/startup costs	0
b. Total annual costs (O&M)	0
c. Total annualized cost requested	$126,660
d. Current OMB inventory	0
e. Difference	$126,000

The Finance Board has submitted the collection of information to OMB for review in accordance with section 3507 of the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3507. Comments regarding the collection of information may be submitted in writing to the Finance Board at the address above, and to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Federal Housing Finance Board, Washington, DC 20503 by March 31, 1997.

V. Other Procedural Requirements

The interim final rule does not meet the criteria for a "significant regulatory action" under Executive Order 12866.

The Finance Board has determined that the notice and comment procedure ordinarily required by the Administrative Procedure Act (APA) is not required in this instance. The APA authorizes agencies to waive the notice and comment procedures when the agency "for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(3)(B). The Finance Board has determined that compliance with the APA procedure in this instance would be impracticable, unnecessary, and contrary to the public interest because it effectively would deny the Banks the opportunity to incorporate the newly authorized QTL investments into their annual QTL calculations for the current year. As described in the **SUPPLEMENTARY INFORMATION**, the Banks must calculate the QTL ratio of each non-savings association member between January 1 and April 15 of each year. If the Finance Board were to observe the notice and comment procedures, it is unlikely that the Finance Board could promulgate a final rule sufficiently in advance of the April 15 deadline for the Banks to incorporate its provisions into their current QTL calculations. Nonetheless, because the Finance Board believes that public comments aid in effective rulemaking, it will accept written comments on the interim rule until March 31, 1997.

The Finance Board also has determined that the 30-day delay of the effectiveness provisions of the APA may be waived in these circumstances. Section 553(d) of the APA permits waiver of the 30-day delayed effective date requirement, among other things, where a substantive rule relieves a restriction, or otherwise for good cause found by the agency. As with the APA notice and comment procedures, described above, the Finance Board finds that there is good cause for making the interim rule effective on February 27, 1997, because it will allow the Banks to take advantage of the EGRPRA's amendments in calculating the QTL ratios for the current year. Moreover, the absence of accurate call report information about the categories of newly authorized QTL assets impairs the ability of the Banks to implement the EGRPRA's amendments, which problem is remedied by the interim rule. By eliminating a practical impediment to the implementation of the QTL amendments the interim rule relieves a restriction that might otherwise prevent the Banks from realizing the benefits intended by Congress.

List of Subjects in 12 CFR Part 935

Credit, Federal home loan banks.

Accordingly, the Board of Directors of the Federal Housing Finance Board hereby amends title 12, chapter IX, part 935 of the Code of Federal Regulations, as follows:

PART 935—ADVANCES

1. The authority citation for part 935 continues to read as follows:

Authority: 12 U.S.C. 1422b(a)(1), 1426, 1429, 1430, 1430b, and 1431.

2. Section 935.1 is amended by republishing the introductory text and revising the definitions for "Actual thrift investment percentage", "Qualified Thrift Lender", and "Qualified Thrift Lender test" to read as follows:

§ 935.1 Definitions

As used in this part:

* * * * *

Actual thrift investment percentage or *ATIP* has the same meaning as used in section 10(m)(4) of the Home Owners' Loan Act (12 U.S.C. 1467a(m)(4)), except that the ATIP will be calculated and applied for purposes of this part to all members of the Banks, whether or not they are savings associations.

* * * * *

Qualified Thrift Lender or *QTL* means the term as defined in section 10(m)(1) of the Home Owners' Loan Act (12 U.S.C. 1467a(m)(1)). A non-savings association member which meets the QTL test as applied by the Banks will be treated as a QTL for purposes of this part.

Qualified Thrift Lender test or *QTL test* means the asset test described in section 10(m) of the Home Owners' Loan Act (12 U.S.C. 1467a(m)), except that the QTL test will be applied for purposes of this part to all members of the Banks, whether or not they are savings associations.

* * * * *

3. In § 935.13, paragraph (a)(3) is revised to read as follows:

§ 935.13 Restrictions on advances to members that are not qualified thrift lenders

(a) Restrictions on advances to non-QTL members. * * *

(3)(i) A Bank shall calculate each non-savings association member's ATIP at least annually, between January 1 and April 15, based upon financial data as of December 31 of the prior calendar year. The Bank may, in its discretion, calculate a member's ATIP more frequently than annually.

(ii) In determining a non-savings association member's annual ATIP, a Bank shall use the financial information from the member's December 31 call report as the primary source of information. A Bank making ATIP determinations more frequently than annually shall use the member's most recent call report. If any information necessary for determining the member's ATIP is not separately identified on a member's call report, the Bank may rely on a written certification provided by the member as to the dollar amount and composition of those other assets that meet the definitions of "qualified thrift investments" or "portfolio assets." Notwithstanding the preceding two sentences, a Bank may, at its option, accept a certification from a non-savings association member as to the dollar amount and composition of all assets that meet the definitions of "qualified thrift investments" or "portfolio assets." In any case in which a Bank relies on a certification from a non-savings association member as to its level of "qualified thrift investments" or "portfolio assets," the certification must be in writing and signed by the chief executive officer of the member.

(iii) As used in this section, the term "call report" shall include:

(A) With respect to a commercial bank, the annual or quarterly "Report of Condition and Income" submitted to its appropriate Federal banking agency;

(B) With respect to a credit union, the quarterly or semi-annual call report submitted to the National Credit Union Administration; and

(C) With respect to an insurance company, its National Association of Insurance Commissioners annual regulatory filing.

* * * * *

Dated: February 6, 1997.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairperson.

[FR Doc. 97–4795 Filed 2–26–97; 8:45 am]

BILLING CODE 6725–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–11–AD; Amendment 39–9948; AD 97–05–04]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Model A320–111, –211, and –231 series airplanes, that currently requires replacing the existing standby generator control unit (GCU) with a new improved standby GCU. That action was prompted by reports of improper functioning of the standby GCU. This amendment requires replacement of the GCU on addition affected airplanes. For some airplanes, it also will require that a wiring modification be accomplished prior to replacement of the GCU. The actions specified by this AD are intended to prevent such improper functioning of the GCU, which could result in the loss of the standby emergency generation system.

DATES: Effective April 3, 1997.

The incorporation by reference of certain publications, as listed in the regulations, is approved by the Director of the Federal Register as of April 3, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 91–01–01, amendment 39–6845 (55 FR 51895, December 18, 1990), which is applicable to certain Airbus Model A320–111, –211, and –231 series airplanes, was published in the **Federal Register** on October 23, 1996 (61 FR 54963). The action proposed to supersede AD 91–01–01 to continue to require replacement of the existing standby GCU with an improved standby GCU. The action also proposed to require the identical replacement to be accomplished on additional airplanes. In addition, for some airplanes, the action proposed that a wiring modification be accomplished prior to replacement of the GCU.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Support for the Proposal

Both commenters support the proposed AD.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 106 Airbus Model A320 series airplanes of U.S. registry that will be affected by this AD. Of this number, 18 were previously subject to the requirements of AD 91–01–01, and the remaining 88 are the airplanes that have been added to the AD applicability by this action.

The replacement of the GCU that is required by this AD takes approximately 1.5 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $450 per airplane. Based on these figures, the cost impact of this required action on U.S. operators is estimated to be $57,240 for the entire affected fleet (or $540 per airplane). However, based on the effective date and the compliance time established by AD 91–01–01, the FAA assumes that the 18 airplanes that were previously subject to that AD already have completed the required replacement of the GCU. Therefore, the future cost impact of the replacement action is only $47,520 (for the 88 airplanes that have been added to the applicability of the AD).

For airplanes on which the modification of the wiring assembly is required, it will take approximately 8.5 work hours to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this action on U.S. operators of those airplanes is estimated to be $510 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the new requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6845 (55 FR 51895, December 18, 1990), and by adding a new airworthiness directive

(AD), amendment 39–9948, to read as follows:

97–05–04 Airbus Industrie: Amendment 39–9948. Docket 96–NM–11–AD. Supersedes AD 91–01–01, Amendment 39–6845.

Applicability: Model A320 series airplanes; on which a generator control unit (GCU) having part number (P/N) 520915 has not been installed, or on which Airbus Modification 21052 (reference Airbus Service Bulletin A320–24–1022) and Airbus Modification 21736 (reference Airbus Service Bulletin A320–24–1035) have not been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the standby emergency generation system, which provides necessary back-up capability when both main generators fail, accomplish the following:

Note 2: Airbus Service Bulletin A320–24–1035 and Airbus Service Bulletin A320–24–1022 refer to Vickers Service Bulletin No. 520754–24–01 as an additional source of specific procedural information.

(a) For Model A320–111, –211, and –231 series airplanes; having serial numbers 003 through 058, inclusive, 060 through 067, inclusive, 069 through 072, inclusive, 074 through 083, inclusive, and 085: Within 150 days after January 28, 1991 (the effective date of AD 91–01–01, amendment 39–6845), remove one generator control unit (GCU) identified as 1XE part number (P/N) 520754, and install a modified GCU identified as 1XE, P/N 520915, in accordance with Airbus Service Bulletin A320–24–1035, Revision 1, dated February 27, 1990, or Revision 2, dated June 24, 1994. Following installation, perform an operational test of the emergency generation system, emergency GCU from the centralized fault display system, and the static inverter, in accordance with the service bulletin.

(b) For airplanes not subject to paragraph (a) of this AD: Within 150 days after the effective date of this AD, accomplish either paragraph (b)(1) or (b)(2) of this AD, as applicable.

Note 3: Replacement of the GCU accomplished prior to the effective date of this AD in accordance with Airbus Service Bulletin A320–24–1035, Revision 1, dated February 27, 1990, is considered acceptable for compliance with the actions specified in this paragraph.

(1) For airplanes equipped with GCU 1XE having P/N 520754: Replace the GCU 1XE, having P/N 520754, in zone 125 of the avionics compartment, with a modified GCU 1XE, having P/N 520915, in accordance with Airbus Service Bulletin A320–24–1035, Revision 2, dated June 24, 1994. Prior to further flight following accomplishment of the replacement, perform an operational test of the affected components in accordance with that service bulletin.

(2) For airplanes equipped with GCU 1XE having P/N 520738: Accomplish the requirements of paragraphs (b)(2)(i) and (b)(2)(ii) of this AD:

(i) Modify the wiring in relay box 103VU, the wiring in power center AC/DC emergency 106VU, and the wiring between 103VU and 106VU, in accordance with Airbus Service Bulletin A320–24–1022, Revision 1, dated February 27, 1990.

Note 4: Modification accomplished prior to the effective date of this AD in accordance with Airbus Service Bulletin A320–24–1022, dated June 16, 1989, is considered acceptable for compliance with this paragraph.

(ii) After modifying the wiring, replace the GCU 1XE, having P/N 520738, located in the nose gear well in zone 125, with a modified GCU 1XE, having P/N 520915, in accordance with Airbus Service Bulletin A320–24–1035, Revision 2, dated June 24, 1994. Prior to further flight following accomplishment of the replacement, perform an operational test of the affected components in accordance with that service bulletin.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The actions shall be done in accordance with the following Airbus Service Bulletins, which contain the specified lists effective pages:

Service bulletin number and date	Page No.	Revision level shown on page	Date shown on page
A320–24–1035, Revision 1, February 27, 1990	1, 2	1	February 27, 1990.
	3, 4	Original	October 20, 1989.
A320–24–1035, Revision 2, June 24, 1994	1–4	2	June 24, 1994.
A320–24–1022, Revision 1, February 27, 1990	1, 5, 6, 13, 14, 19–21	1	February 27, 1990.
	2–4, 7–12, 15–18, 22	Original	June 16, 1989.

The incorporation by reference of the service documents listed above is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on April 3, 1997.

Issued in Renton, Washington, on February 20, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–4715 Filed 2–26–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–NM–116–AD; Amendment 39–9949; AD 97–05–05]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dornier Model 328–100 series airplanes, that requires ■

one-time check of the clearance between certain braces that connect the wings to the fuselage and the frame to which the top fairing is attached; and modification of the frame's Z-profile if the clearance is insufficient to prevent the braces from coming in contact with the frame. In addition, this amendment requires a one-time check of these braces to detect damage or wear; and repair, if necessary. This amendment is prompted by a report indicating that insufficient clearance between these braces and the frame could result in wear and consequent breaking of the braces. The actions specified by this AD are intended to prevent failure of these braces, which could result in unstable movement of the wings in relation to the fuselage and adversely affect the aerodynamic characteristics of the wings.

DATES: Effective April 3, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 3, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Connie Beane, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2796; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 series airplanes was published in the **Federal Register** on December 13, 1996 (61 FR 65492). That action proposed to require a check of the clearance between the diagonal braces on the left and right wings and the frame to which the top fairing is attached; and modification of the frame's Z-profile if there is not a certain minimum clearance between each brace and the frame. In addition, that action also proposed to require a check of these braces to detect damage or wear resulting from contact between each brace and the frame.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 5 Dornier Model 328–100 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $1,200, or $240 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–05–05—Dornier: Amendment 39–9949. Docket 96–NM–116–AD.

Applicability: Model 328–100 series airplanes having serial numbers 3005 through 3014 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the diagonal braces that connect the left and right wings to the fuselage, which could result in unstable movement of the wings and adversely affect the aerodynamic characteristics of the wings, accomplish the following:

(a) Within 90 days after the effective date of this AD, perform the actions required by paragraphs (a)(1) and (a)(2) of this AD.

(1) Check the clearance between the diagonal braces that connect the left and right wings to the fuselage and the Z-profile of the frame to which the top fairing is attached, in accordance with Dornier Service Bulletin SB–328–53–051, dated August 16, 1994.

(i) If the clearance meets or exceeds the minimum limits specified in the service bulletin, no further action is required by paragraph (a)(1) of this AD.

(ii) If the clearance is less than the minimum limits specified in the service bulletin, prior to further flight, modify the Z-profile of the frame to which the top fairing is attached, in accordance with the service bulletin.

(2) Check each diagonal brace for damage or wear, in accordance with the service bulletin.

(i) If no damage or wear is detected, no further action is required by paragraph (a)(2) of this AD.

(ii) If any damage or wear is detected, prior to further flight, repair the diagonal brace in accordance with a method approved by the Manager Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The actions shall be done in accordance with Dornier Service Bulletin SB–328–53–051, dated August 16, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on April 3, 1997.

Issued in Renton, Washington, on February 20, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–4717 Filed 2–26–97; 8:45 am]

BILLING CODE 4910–13–U

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Futures and Option Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is issuing a Supplemental Order authorizing members of the Montreal Exchange ("Exchange") designated for relief under Commission rule 30.10 ("Exchange Member" or "Member") to solicit and accept orders from U.S. customers for otherwise permitted transactions [1] on all non-U.S. exchanges where such Members are authorized by the regulations of the Montreal Exchange to conduct futures business for customers.

This Supplemental Order is issued pursuant to Commission rule 30.10, which permits the Commission to grant an exemption from certain provisions of Part 30 of the Commission's regulations, and the Commission's Order dated March 14, 1989, granting relief under rule 30.10 to designated members of the Montreal Exchange.

EFFECTIVE DATE: February 27, 1997.

FOR FURTHER INFORMATION CONTACT: Jane C. Kang, Esq., or Robert H. Rosenfeld, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone: (202) 418–5430.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Supplemental Order:

Supplemental Order Permitting Members of the Montreal Exchange Designated for Relief Under Commission Rule 30.10 to Solicit and to Accept Orders from U.S. Customers for Otherwise Permitted Transactions on All Non-U.S. Exchanges Where Such Members Are Authorized by Exchange Regulations to Conduct Futures Business for Customers

On March 14, 1989, the Commission issued an Order granting relief under rule 30.10 to designated members of the Montreal Exchange, 54 FR 11179 (March 17, 1988) ("Original Order"). The Original Order limited the scope of permissible brokerage activities undertaken by designated Montreal Exchange members on behalf of U.S. customers to transactions "on or subject to the rules of the Exchange." 54 FR at 11811 (condition (1)(c)). Subsequently, however, the Commission has issued rule 30.10 orders which did not include this limitation.[2]

By letter dated March 26, 1996, the Montreal Exchange petitioned the Commission to revise the Original Order to permit designated members of the Montreal Exchange to solicit or accept orders from U.S. foreign futures and options customers for all otherwise permitted transactions on all non-U.S. exchanges [3] where Exchange Members are authorized by Exchange regulations to conduct futures and options business for customers, subject to the Montreal Exchange's and Members' continued compliance with the terms of the Original Order and such other conditions as may be imposed by the Commission.[4] The Exchange further represented that it would carry out its compliance, surveillance, and rule enforcement activities with respect to solicitations and acceptances of orders by designated Montreal Exchange members of U.S. customers for otherwise permitted transactions on all non-U.S. markets where such Members are authorized by Exchange regulations to conduct futures and options business for U.S. customers.

Upon due consideration and for the reasons stated in the Original Order, the Commission has determined to issue this Supplemental Order permitting Montreal Exchange members designated for rule 30.10 relief to solicit and to accept orders from U.S. foreign futures and options customers for otherwise permitted transactions in commodity futures and commodity options (including options on futures) on or subject to the rules of any exchange where such Montreal Exchange Members are authorized by Exchange regulations to conduct options and futures business for customers, other than a contract market designated as such pursuant to section 5 of the CEA,

[1] Relief under this Supplemental Order extends only to those products falling within the jurisdiction of the Commodity Exchange Act ("CEA" or "Act") and remains subject to existing product restrictions under the CEA and Commission regulations and procedures thereunder related to stock indices and foreign government debt (*see* CEA section 2(a)(1)(B)(v) and Securities and Exchange Commission rule 3a12–8).

[2] In 1989 the Commission issued a series of rule 30.10 orders authorizing firms designated by the U.K. Securities and Investments Board and certain U.K. "Self-Regulating Organisations" to conduct brokerage activities for U.S. customers on any non-U.S. exchange designated under U.K. law. *See* 54 FR 21599, 21600 (May 19, 1989) (SIB), 54 FR 21604, 21605 (May 19, 1989) (Association of Futures Brokers and Dealers ("AFBD")), 54 FR 21609, 21610 (May 19, 1989) (The Securities Association ("TSA")), and 54 FR 21614, 21615 (May 19, 1989) (Investment Management Regulatory Organisation). The AFBD and TSA subsequently merged to form the Securities and Futures Association, which became the successor organization for rule 30.10 purposes. *See* 56 FR 14017 (April 5, 1991).

The Commission also has issued similar supplemental relief to the Sydney Futures Exchange, *see* 58 FR 19209 (April 13, 1993), and to the New Zealand Futures and Options Exchange, *see* 61 FR 64985 (December 10, 1996).

[3] The term "non-U.S. exchange" refers to a foreign board of trade which is defined in Commission rule 1.3(ss), 17 CFR § 1.3(ss) as: Any board of trade, exchange or market located outside the United States, its territories or possessions, whether incorporated or unincorporated, where foreign futures or foreign options transactions are entered into.

Thus, contracts that are traded on a market that has been designated as a contract market pursuant to section 5 of the CEA are not within the scope of this Order.

[4] Letter dated March 26, 1996, from Johanne Dupont, Legal Counsel to the Montreal Exchange, to Ms. Jane Kang, CFTC Division of Trading and Markets ("March 26, 1996 Request").

undertaken by such Members from a location in Quebec.

The expanded rule 30.10 relief provided under this Supplemental Order, however, is contingent on the Montreal Exchange's and Exchange Members' continued compliance with the Original Order and their compliance with the following conditions:

(1) The Montreal Exchange will carry out its compliance, surveillance and rule enforcement activities with respect to solicitations and acceptance of orders by designated Exchange Members of U.S. customers for options and futures business on all non-U.S. exchanges listed in Article 7452 of the Exchange rules to the same extent that it conducts such activities in regard to Exchange business;

(2) It will cooperate with the Commission with respect to any inquiries concerning any activity which is the subject of this Supplemental Order, including sharing the information specified in Appendix A to the Part 30 rules, 17 CFR Part 30, on an "as needed" basis on the same basis as set forth in the Original Order;

(3) Each Montreal Exchange Member firm confirmed for relief under the Original Order seeking to engage in activities which are the subject of this Supplemental Order must agree to provide the books and records related to such activities required to be maintained under the applicable Exchange regulations and laws in effect in Quebec on the same basis as set forth in the Original Order.[5]

Furthermore, the Commission seeks to ensure that the funds of U.S. foreign futures and options customers will be subject to consistent protection irrespective of whether the Montreal Exchange Member effects trades directly on the Montreal Exchange (where under the terms of the Original Order Exchange Members are required to maintain a separate account in a manner consistent with the provisions of rule 30.7)[6] effects trades on another foreign futures and options exchange of which the Montreal Exchange firm is a member, or trades through the intermediation of a foreign exchange member. Accordingly, the expanded relief permitting Montreal Exchange Member firms to engage in foreign futures and options transactions for U.S. customers other than on the Montreal Exchange under this Supplemental Order will be contingent upon compliance by the Exchange Member firm with the following additional conditions:

(4) Foreign futures and options exchanges on which the Montreal Exchange Member firm may engage in transactions on behalf of U.S. customers are those non-U.S. exchanges identified in Article 7452 of the Exchange rules, provided however, that Exchange Members may not engage in any transactions on behalf of U.S. customers on an exchange designated as a contract market under section 5 of the CEA;

(5) The Montreal Exchange Member firm will continue to comply with the terms of the Original Order with respect to transactions effected for U.S. customers on the Montreal Exchange;[7]

(6) With respect to transactions effected on any other non-U.S. futures and options exchange on behalf of U.S. customers, whether by the Montreal Exchange Member directly as a clearing member of such other exchange or through the intermediation of one or more intermediaries, the Montreal Exchange Member complies with paragraphs (6) 1 or 2 below:

1. a. must maintain in a separate account or accounts money, securities and property in an amount at least sufficient to cover or satisfy all of its current obligations to U.S. customers denominated as the foreign futures or foreign options secured amount;

b. may not commingle such money, securities and property with the money, securities or property of the Member, with any proprietary account of such Member and may not use such money, securities and property to secure or guarantee the obligations of, or extend credit to, the Member or any proprietary account of the Member;

c. may deposit together with the secured amount required to be on deposit in the separate account or accounts referred to in paragraph (6)1. a. above, money, securities or property held for or on behalf of non-U.S. customers of the Member for the purpose of entering into foreign futures and options transactions. In such a case, the amount that must be deposited in such separate account or accounts must be no less than the greater of (1) the foreign futures and foreign options secured amount required by paragraph (6)1. a. above, plus the amount that would be required to be on deposit if all such customers (including non-U.S. customers) were subject to such requirement, or (2) the foreign futures and foreign options secured amount required by paragraph (6)1. a. above, plus the amount required to be held in a separate account or accounts for or on behalf of such non-U.S. customers pursuant to any applicable law, rule, regulation or order, or any rule of any self-regulatory organization;

d. the separate account or accounts referred to in paragraph (6)1. a. above must be maintained under an account name that clearly identifies them as such, with any of the following depositories:

(1) another person registered with the Commission as a futures commission merchant ("FCM") or a firm exempted from FCM registration pursuant to CFTC rule 30.10;

(2) the clearing organization of any foreign board of trade;

(3) any member and/or clearing member of such foreign board of trade; or

(4) a bank or trust company which any of the depositories identified in (1)–(3) above may use consistent with the applicable laws and rules of the jurisdiction in which the depository is located; and

e. the separate account or accounts referred to in paragraph (6)1. a. may be deemed a good secured amount depository only if the Member obtains and retains in its files for the period required by applicable law and Exchange regulations a written acknowledgement from such separate account depository that:

(1) it was informed that such money, securities or property are held for or on behalf of customers of the Member; and

(2) it will ensure that such money, securities or property will be held and treated at all times effectively in accordance with the provisions of this paragraph; and, *provided further*, that the Member assures itself that such separate account depository will not pass on such money, securities or property to any other depository unless the Member has assured itself that all such other separate account depositories will treat such funds in a manner consistent with the procedures described in this paragraph (6)1 herein;[8] or,

2. must set aside funds constituting the entire secured amount requirement in a separate account as set forth in Commission rule 30.7, 17 C.F.R. § 30.7, and treat those funds in the manner described by that rule.

The expanded rule 30.10 relief provided by this Supplemental Order also is contingent upon the Montreal Exchange's and Montreal Exchange Members' continued compliance with the Original Order and the enumerated conditions above.

This Supplemental Order is issued based on the information provided to the Commission as set forth herein, including the letter dated March 26, 1996, from the Montreal Exchange. Any changes or material omissions may require the Commission to reconsider the authorization granted in this Supplemental Order.

Further, if experience demonstrates that the continued effectiveness of this Order in general, or with respect to a particular Member, would be contrary to public policy or the public interest, or that the systems in place for the exchange of information or other circumstances do not warrant continuation of the exemptive relief granted herein, the Commission may condition, modify, suspend, terminate, withhold as to a specific Member, or otherwise restrict the exemptive relief granted in this Order, as appropriate, on its own motion. If necessary, provisions will be made for servicing existing client positions.

List of Subjects in 17 CFR Part 30

Commodity futures, Commodity options, Foreign futures.

Accordingly, 17 CFR Part 30 is amended as set forth below:

PART 30—FOREIGN FUTURES AND FOREIGN OPTIONS TRANSACTIONS

1. The authority citation for Part 30 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6, 6c and 12a, unless otherwise noted.

2. Appendix C to Part 30 is amended by adding the following citation under the existing entry for Firms designated by the Montreal Exchange to read as follows:

Appendix C to Part 30–Foreign Petitioners Granted Relief From the Application of Certain of the Part 30 Rules Pursuant to § 30.10

* * * * *

Firms designated by the Montreal Exchange.

* * * * *

FR date and citation: February 27, 1997, 62 FR.

* * * * *

Issued in Washington, D.C. on February 21, 1997.

Jean Webb,

Secretary of the Commission.

[FR Doc. 97–4865 Filed 2–26–97; 8:45 am]

BILLING CODE 6351-01-P

[5] Montreal Exchange member firms which currently operate under the Original Order will be deemed to have consented to condition (3) by effecting transactions pursuant to this Supplemental Order. Exchange members which apply for confirmation of rule 30.10 relief subsequent to the issuance of this Supplementary Order must submit representations to the Commission consistent with condition (3) of this Order.

[6] *See* paragraph (2)(f) of the Original Order.

[7] *See* CFTC Advisory No. 87–4, Foreign Futures and Options: Compliance and Operational Questions and Answers, November 18, 1987, *reprinted in Comm. Fut. L. Rep.* (CCH) ¶ 23,975.

[8] This proviso is intended to ensure that the originating Member makes reasonable inquiries and understands prior to the initiation of a trade the conditions under which its customers' funds will be held at *all* subsequent depositories, so that it may determine whether it may count a particular intermediary or clearing house as a good separate account depository for purposes of this Order or must alternatively set aside funds in the manner set forth in paragraph (6)2. The Member initially would discuss with its immediate intermediary broker whether funds will be transferred to any subsequent depositories and determine the conditions under which such funds would be treated. Compliance with this condition would be satisfied by the Member obtaining relevant information or assurances from appropriate sources such as, for example, the immediate intermediary broker, exchanges or clearinghouses, exchange regulators, banks, attorneys or regulatory references.

This requirement is intended to ensure that funds provided by U.S. customers for foreign futures and options transactions, whether held at a U.S. FCM under rule 30.7(c) or a firm exempted from registration as an FCM under CFTC rule 30.10, will receive equivalent protection at all intermediaries and exchange clearing organizations. Thus, for example, an exchange that does not segregate customer from firm obligations and firms which trade on such exchanges and which do not arrange to comply otherwise with any of the procedures described in paragraph (6) would not be deemed an acceptable separate account. Specifically, such exchange or firms could not provide a valid and binding acknowledgement to a rule 30.10 exempted firm.

This provision is not intended to create a duty on a rule 30.10 firm that it audit any intermediaries for continued compliance with the undertakings it has obtained based on discussions with those relevant intermediaries. It is intended to make clear that firms must engage in a due diligence inquiry before customer funds are sent to another intermediary and take appropriate action (*i.e.*, set aside funds) in the event that it becomes aware of facts leading it to conclude that customer funds are not being handled consistent with the requirements of Commission rules or relevant rule 30.10 order by any subsequent intermediary or clearing house.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 232

[Release Nos. 33–7394; 34–38319; 35–26672; 39–2346; IC–22522]

RIN 3235–AG96

Adoption of Updated EDGAR Filer Manual

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission is adopting an updated edition of the EDGAR Filer Manual and is providing for its incorporation by reference into the Code of Federal Regulations.

EFFECTIVE DATE: The amendment to 17 CFR Part 232 (Regulation S–T) will be effective on March 10, 1997. The new edition of the EDGAR Filer Manual (Release 5.20) will be effective on March 10, 1997. The incorporation by reference of the EDGAR Filer Manual is approved by the Director of the Federal Register as of March 10, 1997.

FOR FURTHER INFORMATION CONTACT: In the Office of Information Technology, David T. Copenhafer at (202) 942–8800; for questions concerning investment company filings, Ruth Armfield Sanders, Senior Counsel, Division of Investment Management, at (202) 942–0591; and for questions with respect to documents subject to review by the Division of Corporation Finance, Margaret R. Black at (202) 942–2940.

SUPPLEMENTARY INFORMATION: The Commission today announces the adoption of an updated EDGAR Filer Manual ("Filer Manual"), which sets forth the technical formatting requirements governing the preparation and submission of electronic filings through the Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system.[1] Compliance with the provisions of the Filer Manual is required in order to assure the timely acceptance and processing of filings made in electronic format. Filers should consult the Filer Manual in conjunction with the Commission's rules governing mandated electronic filing when preparing documents for electronic submission.[2]

In this update, several submission types have been added to accommodate electronic submission of certain investment company filings. Specifically, new EDGAR submission types "40–17F1" and "40–17F2" have been added to accommodate the filing of Forms N–17F–1[3] and N–17F–2;[4] submission type "N–23C–2," to accommodate filings under Rule 23c–2(b);[5] and submission types "N–23C3A," "N–23C3B," and "N–23C3C," to accommodate the filing of Form N–23C–3,[6] pursuant to Rule 23c–3.[7]

With respect to documents subject to review by the Division of Corporation Finance, two additional submission types have been added to accommodate more completely the electronic submission of filings made pursuant to Rule 462(b)[8] under the Securities Act of 1933.[9]

[1] The Filer Manual originally was adopted on April 1, 1993, and became effective on April 26, 1993. Release No. 33–6986 (April 1, 1993) (58 FR 18638). The most recent update to the Filer Manual was adopted in Release No. 33–7351 (October 2, 1996) [61 FR 52283], and became effective on October 7, 1996.

[2] See Release Nos. 33–6977 (February 23, 1993) (58 FR 14628), IC–19284 (February 23, 1993) (58 FR 14848), 35–25746 (February 23, 1993) (58 FR 14999), and 33–6980 (February 23, 1993) (58 FR 15009) for a comprehensive treatment of the rules adopted by the Commission governing mandated electronic filing. See also Release No. 33–7122 (December 19, 1994) (59 FR 67752), in which the Commission made the EDGAR rules final and applicable to all domestic registrants and adopted minor amendments to the EDGAR rules; Release No. 33–7351, in which the Commission adopted the most recent update to the Filer Manual; and Release No. 33–7369 (December 5, 1996) (61 FR 65440), in which the Commission proposed additional minor technical amendments to the EDGAR rules.

[3] 17 CFR 274.21 (certificate of accounting of securities and similar investments in the custody of management investment companies filed pursuant to Rule 17f–1).

[4] 17 CFR 274.220 (certificate of accounting of securities and similar investments in the custody of management investment companies filed pursuant to Rule 7f–2).

[5] 17 CFR 240.23c–2(b) (notice by closed-end investment companies of intention to call or redeem their own securities).

[6] 17 CFR 274.221 (notification of periodic repurchase offer).

[7] 17 CFR 240.23c–3. Submission type "N–23C3A" is to be used for filings made pursuant to Rule 23c–3(a) only; "N–23C3B," Rule 23c–3(b) only; and "N–23C3C," Rule 23c–3(a) and (b).

[8] 17 CFR 230.462(b).

[9] 15 U.S.C. 77a *et seq.* The new submission types are: S–4MEF (for use in connection with registration statements filed on Form S–4 (17 CFR 239.25) and F–4MEF (for use in connection with registration statements on Form F–4 (17 CFR

Continued

Rule 301 of Regulation S–T also is being amended to provide for the incorporation by reference of the Filer Manual into the Code of Federal Regulations, which incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. The revised Filer Manual and the amendment to Rule 301 will be effective on March 10, 1997.

Paper copies of the updated Filer Manual may be obtained at the following address: Public Reference Room, U.S. Securities and Exchange Commission, Mail Stop 1–2, 450 Fifth Street, N.W., Washington D.C. 20549. Electronic format copies will be available on the EDGAR electronic bulletin board. Copies also may be obtained from Disclosure Incorporated, the paper and microfiche contractor for the Commission, at (800) 638–8241.

Since the Filer Manual relates solely to agency procedure or practice, publication for notice and comment is not required under the Administrative Procedure Act.[10] It follows that the requirements of the Regulatory Flexibility Act[11] do not apply.

The effective date for the updated Filer Manual and the rule amendment is March 10, 1997. In accordance with the Administrative Procedure Act 5 U.S.C. 553(d)(3), the Commission finds that there is good cause to establish an effective date less than 30 days after publication of these rules. The EDGAR system is scheduled to be upgraded to Release 5.20 on March 8, 1997. The Commission believes that it is necessary to coordinate the effectiveness of the updated Filer Manual with the scheduled system upgrade in order to avoid confusion to EDGAR filers.

Statutory Basis

The amendment to Regulation S–T is being adopted under Sections 6, 7, 8, 10, and 19(a) of the Securities Act of 1933,[12] Sections 3, 12, 13, 14, 15, 23, and 35A of the Securities Exchange Act of 1934,[13] Section 20 of the Public Utility Holding Company Act of 1935,[14] Section 319 of the Trust Indenture Act of 1939,[15] and Sections 8, 30, 31, and 38 of the Investment Company Act.[16]

239.34). All other submission types used for Rule 462(b) filings were added to the EDGAR system in November 1995. See Release No. 33–7241 (November 13, 1995) (60 FR 57682).

[10] 5 U.S.C. 553(b)

[11] 5 U.S.C. 601–612.

[12] 15 U.S.C. 77f, 77g, 77h, 77j and 77s(a).

[13] 15 U.S.C. 78c, 78l, 78m, 78n, 78o, 78w and 78*ll*.

[14] 15 U.S.C. 79t.

[15] 15 U.S.C. 77sss.

[16] 15 U.S.C. 80a–8, 80a–29, 80a–30 and 80a–37.

List of Subjects in 17 CFR Part 232

Incorporation by reference; Investment companies; Registration requirements; Reporting and recordkeeping requirements; Securities.

Text of the Amendment

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

1. The authority citation for Part 232 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79t(a), 80a–8, 80a–29, 80a–30 and 80a–37.

2. Section 232.301 is revised to read as follows:

§ 232.301 EDGAR Filer Manual.

Electronic filings shall be prepared in the manner prescribed by the EDGAR Filer Manual, promulgated by the Commission, which sets out the technical formatting requirements for electronic submissions. The March 1997 edition of the EDGAR Filer Manual: Guide for Electronic Filing with the U.S. Securities and Exchange Commission (Release 5.20) is incorporated into the Code of Federal Regulations by reference, which action was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Compliance with the requirements found therein is essential to the timely receipt and acceptance of documents filed with or otherwise submitted to the Commission in electronic format. Paper copies of the EDGAR Filer Manual may be obtained at the following address: Public Reference Room, U.S. Securities and Exchange Commission, Mail Stop 1–2, 450 5th Street, N.W., Washington, D.C. 20549. They also may be obtained from Disclosure Incorporated by calling (800) 638–8241. Electronic format copies are available through the EDGAR electronic bulletin board. Information on becoming an EDGAR E-mail/electronic bulletin board subscriber is available by contacting CompuServe Inc. at (800) 848–8199.

Dated: February 21, 1997.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–4797 Filed 2–26–97; 8:45 am]

BILLING CODE 8010–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[AD–FRL–5691–3]

Clean Air Act Final Interim Approval of Operating Permits Program; South Coast Air Quality Management District, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final interim approval.

SUMMARY: The EPA is promulgating interim approval of the Operating Permits Program submitted by the California Air Resources Board on behalf of the South Coast Air Quality Management District (South Coast or District), for the purpose of complying with federal requirements for an approvable state program to issue operating permits to all major stationary sources, and to certain other sources.

DATES: The final interim approval of the South Coast program is effective on March 31, 1997.

ADDRESSES: Copies of the District's submittals and other supporting information used in developing the final interim approval and direct final interim approval are available for inspection (docket number CA–SC–96–1–OPS) during normal business hours at the following location: U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Ginger Vagenas (telephone 415–744–1252), Mail Code AIR–3, U.S. Environmental Protection Agency, Region IX, Air Division, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

Title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act (the Act), and implementing regulations at 40 Code of Federal Regulations (CFR) Part 70 require that states develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of Part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a federal program. On July 1, 1996, EPA promulgated the part 71 regulations that govern EPA's implementation of a federal operating permits program in a state or tribal jurisdiction. See 61 FR 34202. On July 31, 1996, EPA published a notice at 61 FR 39877 listing those states whose part 70 operating permits programs had not been approved by EPA and where a part 71 federal operating permit program was therefore effective. In that notice EPA stated that part 71 is effective in the South Coast. The EPA also stated its belief that it would promulgate interim approval of the South Coast part 70 program prior to the deadline for sources to submit permit applications under part 71. Today's action cancels the applicability of a part 71 federal operating permits program in the District. The part 71 application deadline contained in the July 31, 1996 notice is now superseded by the South Coast part 70 application deadlines.

On August 29, 1996, EPA published a notice of direct final rulemaking (NDFR) in which it promulgated direct final interim approval of the operating permits program for the South Coast Air Quality Manangement District. See 61 FR 45330. The notice stated that if EPA recieved adverse comment, it would withdraw the final action. On the same date, EPA published a notice of proposed rulemaking (NPR) that would serve as a proposal for interim approval, if EPA were to receive adverse comments on the direct final rule. See 61 FR 45379. The NDFR identified several deficiencies in the District program and proposed that the South Coast make specified changes to correct those deficiencies as a condition of full approval.

EPA received four letters addressing the NDFR, three of which contained adverse comments. The Agency published a notice on November 4, 1996, withdrawing its direct final rule. See 61 FR 56631.

The majority of comments received by EPA were directed toward questions of program implementation, rather than the action EPA proposed to take on the District program. In this document, EPA is responding to those comments that relate to the interim approval action, along with certain other issues raised during the public comment period. The EPA has addressed all of the comments received on the proposal in a separate "Response to Comments" document contained in the docket at the Regional Office. After considering the comments, EPA has affirmed that the changes proposed in the NDFR are necessary. In this final interim approval, EPA has not therefore modified the list of changes ("interim approval issues") that was set forth in section II.B. of the NDFR.

The EPA's NDFR also proposed approval, under section 112(l), of South Coast's mechanism for accepting delegation of section 112 standards as promulgated. The EPA did not receive public comment on this proposed action for the District program.

II. Final Action and Implications

A. Analysis of State Submission

South Coast's title V program was submitted by the California Air Resources Board (CARB) on December 27, 1993. The South Coast submittal included the following implementing and supporting regulations: Regulation XXX—Title V Permits; Rule 204—Permit Conditions; Rule 206—Posting of Permit to Operate; Rule 210—Applications; Rule 301—Permit Fees; Rule 518—Hearing Board Procedures for Title V Facilities; and Rule 219—Equipment not Requiring a Written Permit Pursuant to Regulation II. The EPA found the program to be incomplete on March 4, 1994 because it lacked permit application forms. On March 6, 1995, the District submitted its forms and EPA deemed the program complete on March 30, 1995. On February 10, 1995, the District adopted a rule to implement title IV. EPA deemed the South Coast acid rain program acceptable on March 29, 1995 (see 60 FR 16127) and on April 11, 1995, it was submitted to EPA as part of the District's title V program. On August 11, 1995, the District amended the regulatory portion of its submittal. On September 26, 1995, EPA received from CARB, on behalf of the District, the revised Regulation XXX, revised Rule 518—Variance Procedures for Title V Facilities, and a new rule, Rule 518.1—Permit Appeal Procedures for Title V Facilities. Additional materials were received on April 24, 1996, including draft revised application forms, a demonstration of adequacy of the District's group processing provisions, and several additional rules, including the following, which are relied upon to implement the title V program: Rule 219—Equipment not Requiring a Written Permit Pursuant to Regulation II, adopted August 12, 1994 (supersedes previously submitted version); Rule 301—Permit Fees, adopted October 13, 1995 (supersedes previously submitted version); and Rule 441—Research Operations, adopted May 5, 1976. In conjunction with its evaluation of the South Coast's title V operating permits program, EPA reviewed all of the rules, including Regulations XX and XIII, submitted by the District. While EPA is not specifically approving rules not directly relied upon to implement part 70 as part of the District's operating permits program, changes to these rules will be reviewed by EPA to ensure implementation of the part 70 program is not compromised. See the technical support document (TSD) for a complete listing of rules submitted by the District.

On May 6, 1996 application completeness criteria were received and on June 5, 1996 revised application forms were received. The District submitted a demonstration that shows South Coast will permit 60% of its title V sources and 80% of emissions attributable to title V sources within three years of program approval along with a sample of facility permit application on May 23, 1996. Finally, on July 29, 1996, the District submitted revised application forms and completeness criteria.

Enabling legislation for the State of California and the Attorney General's legal opinion were submitted by CARB for all districts in California and therefore were not included separately in South Coast's submittal. The South Coast submission now contains a Governor's letter requesting source category-limited interim approval, District implementing and supporting regulations, and all other program documentation required by § 70.4.

On August 29, 1996, EPA proposed interim approval of the South Coast title V operating permits program in accordance with § 70.4(d), on the basis that the program "substantially meets" part 70 requirements.

The analysis of the District submittal given in the August 29th action is supplemented by the discussion of public comments made on the NDFR. The analysis in the NDFR document remains unchanged and will not be repeated in this final document. The program deficiencies that were identified in the NDFR must be corrected for the South Coast to have a fully approvable program. These program deficiencies, or interim approval issues, are enumerated in II.B. of the August 29, 1996 NDFR.

B. Public Comments and Responses

The EPA received comments on the NDFR for the South Coast program from four interested parties. Many of the comments are discussed below. Comments that are not addressed in this notice are addressed in a separate "Response to Comments" document

contained in the docket (CA–SC–96–1–OPS).

1. Insignificant Activities

Under part 70, if an activity has been classified as "insignificant," an applicant need not include it in its application, except that activities that are insignificant based upon size or production rate must be listed. In order to be considered insignificant, an activity should have relatively low emissions. Such activities may not be subject to any applicable requirement under the Act, with the exception of certain generically applicable requirements, which, by their nature, need not always be addressed in a permit on a unit specific basis. The most common of such requirements are the broadly applicable opacity standards. In addition, as specified by 70.5(c), applications may not omit information needed to determine the applicability of, or to impose, any applicable requirement. The applicant is required to certify its compliance status with respect to any requirements that apply to insignificant activities, and the permit must contain terms and conditions that will ensure compliance with any requirements that apply to insignificant activities. The South Coast program meets these criteria, with the exception that some of the listed activities do not appear to qualify as "insignificant."

One commenter urged EPA to accept the submittal of Rule 219 as sufficient documentation of insignificant activities and asked that EPA not impose new requirements on the District. A second commenter disagreed that part 70 requires the District to provide supporting criteria to justify its list of insignificant activities. This commenter interprets § 70.4(b)(2) as requiring the submittal of criteria only to the extent that such criteria are available. The commenter believes that the development of criteria to justify the inclusion of each and every activity on the list submitted by the permitting authority is not required.

As noted in the proposal, EPA believes that many of the activities on the South Coast list appear to be appropriately treated as "insignificant." The Agency does not anticipate that sweeping changes to the list will be necessary. However, EPA does believe that there are items on South Coast's list that could emit significant amounts of pollutants and/or could be subject to unit-specific (non-general) applicable requirements and are therefore not appropriately treated as insignificant. EPA is requiring that for full approval, South Coast must demonstrate that the activities on its list are insignificant. EPA agrees that such a demonstration would not necessarily entail the development of criteria to justify each and every activity on the list. However, EPA disagrees with the assertion that criteria need only be submitted "where available." This qualifier is not in the rule. The rule simply requires the submittal of criteria to justify insignificant activities lists. EPA is interpreting this reasonably to require the submittal of criteria only where there is a question about the appropriateness of a listed activity. EPA will work with the District to identify these areas and thereby reduce the justification burden that would be imposed by a literal reading of § 70.4(b)(2).

The District must revise the list to ensure that no activity on the list emits significant amounts of pollutants or will be subject to a unit-specific requirement. In some cases, this may require removing some items from the list completely. Another option is to add emissions cutoffs or size limitations to items on the list to ensure that the listed activities emit relatively low quantities of pollutants and that the listed activities are below any applicability thresholds for non-general applicable requirements.

2. De Minimis Significant Permit Revisions

Two commenters expressed their support for the District's provisions for the de minimis significant permit revision track, which can be used to process NSPS and NESHAP modifications, establishment of or changes to case-by-case emissions limitations, and changes to permit conditions that the source has assumed to avoid an applicable requirement, providing the change does not result in emissions increases greater than 5.5 tons per year (tpy) of VOC, HAPs, or PM10; 7.3 tpy of NO_x; 11 tpy of SO_x; and 40 tpy of CO. EPA identified these provisions as interim approval issues.

Part 70 requires that title I modifications (including NSPS and NESHAP modifications), establishment of or changes to case-by-case emissions limitations, and changes to permit conditions that the source has assumed to avoid an applicable requirement be treated as significant permit revisions. (See §§ 70.7(e)(2)(I)(*3*),(*4*), and (*4*)(*A*)). As such, these changes are subject to EPA and public review. In the latter two cases, this requirement is independent of any changes in emissions. By defining "de minimis significant permit revisions" to include these changes, the District has excluded them from public review. EPA does not believe there is any basis for an interpretation of the regulation that would allow for the exclusion of public review of these changes.

In expressing its support for the South Coast de minimis significant permit revisions provisions, one commenter paraphrased EPA's discussion of a different aspect of the District's regulation. The commenter said "[a]s EPA points out in the preamble, requiring full public participation procedures for modifications that result in emissions increases below the levels specified in Regulation XXX would be unworkable and would dilute attention that should be focused on more significant changes."

Part 70 requires all title I modifications, including modifications subject to major new source review (NSR), to be processed as significant permit revisions. Under the Clean Air Act, the size of the emissions increase that triggers NSR varies with the attainment status of the area. For example, a 40 ton per year increase of VOC would trigger major NSR in a moderate ozone nonattainment area. Because the South Coast is an extreme ozone non-attainment area (the only one in the country), any increase of NO_x or VOC is subject to major NSR.

The South Coast included in its rule provisions allowing modifications that result in cumulative (over the 5 year term of the permit) emissions increases of up to 40 pounds per day (about 7.3 tons per year) of NO_x and 30 pounds per day (about 5.5 tons per year) of increases of VOC to be processed without a public comment period. EPA proposed to approve this provision of the South Coast program because it believes that requiring full participation for major NSR modifications that result in emissions increases below the District's cut-off levels would be unworkable. EPA did not receive adverse comment on this aspect of the proposal.

In paraphrasing EPA's discussion regarding major NSR, the commenter attempts to extend EPA's reasoning on the NSR question to the other "gatekeepers" (NSPS and NESHAP modifications, establishment of or changes to case-by-case emissions limitations, and changes to permit conditions that the source has assumed to avoid an applicable requirement) in the rule. EPA notes that, unlike the NSR major modification triggers, the other gatekeepers are implemented in the same way throughout the country. Every other permitting authority in the United States and every other title V source in the United States is subject to these

requirements. EPA finds no basis for applying a different standard to the South Coast.

3. Reporting and Periodic Monitoring

One commenter stated that where reporting requirements are not specified or are specified as less frequently than every six months, those requirements should be deemed sufficient for title V purposes. Another said that existing monitoring and reporting requirements are sufficient to assure compliance with applicable requirements. Both of these commenters stated that where District rules or permits do not impose specific monitoring requirements this was done based on a determination that monitoring was not necessary, and that no new monitoring should be imposed.

Part 70 requires the submittal of reports of required monitoring at least every six months. (See § 70.6(a)(3)(iii)(A).) This requirement is in addition to the reporting requirements in existing rules and regulations. However, where this is redundant with reports required by applicable rules and regulations, it may be possible for one report to satisfy more than one reporting requirement. In order to meet the minimum part 70 requirements, the report would have to be submitted at least every 6 months, it would have to include clear identification of deviations from permit requirements and it would have to be certified by the responsible official. If these requirements are met by existing reporting requirements, there is no need to require a facility to submit the same report twice.

The periodic monitoring requirements of part 70 are set forth at § 70.6(a)(3)(i). This provision requires that the permit contain "periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit. * * *" If the applicable requirement does not require periodic monitoring, the permitting authority must add it to the title V permit. EPA has previously explained that periodic monitoring need not be added where doing so would not make an appreciable difference in the ability of the permit to assure compliance. An example of this would be where a boiler is subject to an SO2 limit and is required to fire only on natural gas. In this case, a requirement that the source keep records of fuel use would meet the source's obligation to do periodic monitoring. Another example is the case of insignificant activities subject to generally applicable SIP limits, as discussed in White Paper #2.[1]

4. Compliance Certification Language

South Coast Rule 3003(c) requires that the responsible official certify that, based on information and belief formed after reasonable inquiry, the statements and information contained in the submitted document are true, accurate, and complete. The District's application forms include the following certification language: "* * * I have personally examined and am familiar with the statements and information submitted in this document and all of its attachments. * * * Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the following statements and information are to the best of my knowledge true, accurate and complete."

One commenter stated that "[i]t appears the current compliance certification language goes beyond the best efforts required by California (sic) White Paper 1."[2] The commenter feels that it is unrealistic to expect this level of personal knowledge on the part of responsible officials at very large sources covered by title V. The commenter proposes that the following language be deleted from the first paragraph of the certification: "and that I have personally examined, and am familiar with, the statements and information submitted in this document and all of its attachments."

EPA's White Paper 1 addresses one narrow aspect of the compliance certification. The guidance provides that companies are not federally required to reconsider previous applicability determinations as part of their inquiry in preparing part 70 permit applications. Although it does not appear that the District's compliance certification language would require such reconsideration, EPA notes that nothing in EPA guidance or part 70 would constrain the District from doing so.

EPA finds the compliance certification provisions of the South Coast program to be consistent with the requirements of part 70 and EPA guidance.

[1] On March 5, 1996, EPA's Office of Air Quality Planning and Standards issued "White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program."

[2] On July 10, 1995, EPA's Office of Air Quality Planning and Standards issued "White Paper for Streamlined Development of Part 70 Permit Applications."

5. Timing of EPA Action on District Program

Two commenters suggested that EPA defer any action to grant interim approval to the South Coast title V program. One of the commenters requested that EPA delay action until resolution of their issues is achieved. The other commenter noted that, given the District's plans to amend Regulation XXX in the near future, it may be appropriate for EPA to delay action on the South Coast title V program.

EPA has a statutory obligation to take action on title V programs within one year of the submittal of a complete title V program. The year has elapsed and part 71 is currently effective in the District. If EPA's approval of the District's program is further delayed, sources will be required to submit part 71 applications. EPA will continue to work with the District and with the regulated community to resolve implementation issues. When the District amends its part 70 program, EPA will take action on the submittal as quickly as possible.

C. Final Action

1. Title V Operating Permits Program

The EPA is promulgating interim approval of the operating permits program submitted by the California Air Resources Board on behalf of the South Coast Air Quality Management District on December 27, 1993 as supplemented by additional materials as referenced in II.A of this document. The areas in which the South Coast program is deficient and requires corrective action prior to full approval are set out in II.B. of the NDFR. See 61 FR 45333; August 29, 1996.

This interim approval, which may not be renewed, extends until March 29, 1999. During this interim approval period, the South Coast is protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a Federal operating permits program in the District. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of this interim approval, as does the 3-year time period for processing the initial permit applications.

If the District fails to submit a complete corrective program for full approval by September 28, 1998, EPA will start an 18-month clock for mandatory sanctions. If the South Coast then fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA

will be required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that the District has corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator finds a lack of good faith on the part of the District, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determines that the District has come into compliance. In any case, if, six months after application of the first sanction, the District still has not submitted a corrective program that EPA has found complete, a second sanction will be required.

If EPA disapproves the South Coast's complete corrective program, EPA will be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the District has submitted a revised program and EPA has determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator finds a lack of good faith on the part of District, both sanctions under section 179(b) shall apply after the expiration of the 18-month period until the Administrator determines that the District has come into compliance. In all cases, if, six months after EPA applies the first sanction, the District has not submitted a revised program that EPA has determined corrects the deficiencies, a second sanction is required.

In addition, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period if the District has not timely submitted a complete corrective program or EPA has disapproved its submitted corrective program. Moreover, if EPA has not granted full approval to the District program by the expiration of this interim approval, EPA must promulgate, administer and enforce a Federal permits program for the South Coast upon interim approval expiration.

The scope of the part 70 program approved in this notice applies to all part 70 sources (as defined in the approved program) within the South Coast Air Quality Manangement District, except any sources of air pollution over which an Indian Tribe has jurisdiction. *See, e.g.*, 59 FR 55813, 55815–18 (Nov. 9, 1994). The term "Indian Tribe" is defined under the Act as "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." *See* section 302(r) of the CAA; *see also* 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

2. Program for Delegation of Section 112 Standards as Promulgated

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that a state's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is also promulgating approval under section 112(l)(5) and 40 CFR 63.91 of South Coast's program for receiving delegation of section 112 standards that are unchanged from the federal standards as promulgated and that apply to sources covered by the part 70 program. California Health and Safety Code section 39658 provides for automatic adoption by CARB of section 112 standards upon promulgation by EPA. Section 39666 of the Health and Safety Code requires that districts then implement and enforce these standards. Thus, when section 112 standards are automatically adopted pursuant to section 39658, South Coast will have the authority necessary to accept delegation of these standards without further regulatory action by the District. The details of this mechanism and the means for finalizing delegation of standards will be set forth in an implementation agreement between South Coast and EPA. This program applies to both existing and future standards but is limited to sources covered by the part 70 program.

III. Administrative Requirements

A. Docket

Copies of the South Coast Air Quality Management District's submittals and other information relied upon for the final interim approval, including public comments on the proposal from four different parties, are contained in docket number CA–SC–96–1–OPS maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this final interim approval. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated today does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under state or local law, and imposes no new federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

D. Small Business Regulatory Enforcement Fairness Act

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2) of the APA as amended.

E. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

List of Subjects in 40 CFR Part 70

Environmental protection, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements, Administrative practice and procedure, Air pollution control.

Dated: February 7, 1997.

Felicia Marcus,

Regional Administrator.

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, et seq.

2. Appendix A to part 70 is amended by adding paragraph (dd) to the entry for California to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

California

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(dd) *South Coast Air Quality Management District:* submitted on December 27, 1993 and amended on March 6, 1995, April 11, 1995, September 26, 1995, April 24, 1996, May 6, 1996, May 23, 1996, June 5, 1996 and July 29, 1996; approval effective on March 31, 1997.

* * * * *

[FR Doc. 97–4887 Filed 2–26–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 95–72; Notice 2]

RIN 2127–AF75

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices and Associated Equipment

AGENCY: National Highway Traffic Safety Administration, (NHTSA), DOT.

ACTION: Termination of rulemaking.

SUMMARY: This document terminates rulemaking under which NHTSA had asked for comments on whether the performance and installation of front and rear fog lamps should be regulated by Motor Vehicle Safety Standard No. 108. Although commenters supported a rule in principle, they pointed out the lack of an acceptable and harmonized reference upon which Federal requirements could be based. In response to these comments, the SAE has established a Fog Lamp Task Force to develop an internationally-acceptable fog lamp standard, on which a Federal standard could be based. NHTSA is terminating rulemaking so that the agency can actively participate in a cooperative effort to develop a fog lamp standard.

FOR FURTHER INFORMATION CONTACT: Rich Van Iderstine, Office of Safety Performance Standards, NHTSA, (Phone: 202–366–5275; FAX 202–366–4329).

SUPPLEMENTARY INFORMATION: On October 26, 1995, NHTSA proposed amendments to Standard No. 108, the Federal motor vehicle safety standard on lighting, which were intended to harmonize the Standard's geometric visibility requirements for signal lamps and rear side marker color with those of the United Nation's Economic Commission for Europe (ECE) (60 FR 54833). With the international harmonization of standards in mind, the agency also sought comments on whether the performance and installation of front and rear fog lamps ought to be regulated by Standard No. 108.

Twenty-four comments were received in response to the notice, 12 of which commented specifically on the issue of fog lamps. These commenters were Truck Safety Equipment Institute, Chrysler Corporation, Advocates for Highway and Auto Safety, Mercedes-Benz of North America, Porsche Cars North America, Ichikoh Industries, Groupe de Travail Bruxelles (GTB), Hella, Volvo Cars of North America, Volkswagen of America, Wisconsin Department of Transportation, and American Automobile Manufacturers Association. All supported Federal regulation of fog lamps. Some American commenters pointed out the existence of vastly differing State laws, and the benefit of simplicity that a Federal pre-emptive standard would bring. Several European commenters recommended that NHTSA adopt the provisions of ECE R48 governing fog lamps. However, others cautioned that there is no generally satisfactory industry standard nor government regulation anywhere that could form the basis of a suitable Federal motor vehicle safety standard.

Many urged that any Federal standard for fog lamps should be one that is harmonized with the standards of Japan and the ECE. Vehicle and lighting manufacturers, concerned about the lack of an acceptable standard, recommended that the Society of Automotive Engineers (SAE), in conjunction with GTB and interested participants from around the world, develop a harmonized standard that could be used by national governments. In the aftermath of these comments, in April 1996, SAE established a Fog Lamp Task Force that will undertake this effort, recognizing that its existing requirements need to be modified to adequately address all fog lamp issues.

NHTSA has decided to terminate its rulemaking on fog lamps. The agency believes that it is appropriate for it to actively participate in the cooperative effort to develop fog lamp standards. Future agency rulemaking in this area will be based on NHTSA's assessment of the success of this cooperative effort.

The agency's termination covers fog lamps only. NHTSA is continuing its analysis of the comments on geometric visibility and rear side marker lamp color.

Issued on: February 24, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–4940 Filed 2–26–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961107312–7021–02; I.D. 022197A]

Fisheries of the Exclusive Economic Zone Off Alaska; Offshore Component Pollock in the Aleutian Islands Subarea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason adjustment; request for comments.

SUMMARY: NMFS issues an inseason adjustment prohibiting directed fishing for pollock by vessels catching pollock for processing by the offshore component in the Aleutian Islands subarea (AI) of the Bering Sea and Aleutian Islands management area (BSAI). This adjustment is necessary to prevent the underharvest of pollock by vessels catching pollock for processing by the offshore component in the AI of the BSAI.

DATES: 2400 hrs, Alaska local time (A.l.t.), February 23, 1997, until 2400 hrs, A.l.t., December 31, 1997. Comments must be received at the

following address no later than 1630, A.l.t., March 10, 1997.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or be delivered to the fourth floor of the Federal Building, 709 West 9th Street, Juneau, AK.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(c)(3)(iii), the allowance of the pollock total allowable catch apportioned for vessels catching pollock for processing by the offshore component in the AI was established by the Final 1997 Harvest Specifications for Groundfish of the BSAI (62 FR 7168, February 18, 1997) as 16,835 metric tons (mt).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the allowance of the pollock total allowable catch apportioned for vessels catching pollock for processing by the offshore component in the AI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 14,835 mt, and is setting aside the remaining 2,000 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the offshore component in the AI.

Current information shows the catching capacity of vessels catching pollock for processing by the offshore component is in excess of 10,400 mt per day. In accordance with § 679.23(e) and except as provided in § 679.23(e)(2)(ii), directed fishing for pollock by vessels catching pollock for processing by the offshore component in the AI of the BSAI is scheduled from 1200 hrs, A.l.t., January 26, 1997, through 1200 hrs, A.l.t., April 15, 1997, and from 1200 hrs, A.l.t. September 1, 1997, through 1200 hrs, A.l.t., November 1, 1997, or until the TAC is reached, whichever occurs first.

Section 679.23(b) specifies that the time of all openings and closures of fishing seasons other than the beginning and end of the calendar fishing year is 1200 hrs, A.l.t. The Regional Administrator has determined that the remaining portion of the allocation to the offshore component would be underharvested if a 1200 hrs closure were allowed to occur.

NMFS, therefore, in accordance with § 679.25(a)(1)(i), is adjusting the season for pollock by vessels catching pollock for processing by the offshore component in the AI subarea of the BSAI by closing directed fishing at 2400 hrs, A.l.t., February 23, 1997. NMFS is taking this action to prevent the underharvest of the pollock allocation to vessels catching pollock for processing by the offshore component in the AI of the BSAI as authorized by § 679.25(a)(2)(i)(C). In accordance with § 679.25(a)(2)(iii), NMFS has determined that closing directed fishing at 2400 hrs, A.l.t, on February 23, 1997, is the least restrictive management adjustment to harvest the pollock allocated to vessels catching pollock for processing by the offshore component in the AI of the BSAI and will allow other fisheries to continue in noncritical areas and time periods.

The Assistant Administrator for Fisheries, NOAA, finds for good cause that providing prior notice and public comment or delaying the effective date of this action is impracticable and contrary to the public interest. Without this inseason adjustment, the pollock allocation for vessels catching pollock for processing by the offshore component in the AI of the BSAI would be underharvested, resulting in an economic loss of more than 3 million dollars. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until March 10, 1997.

Classification

This action is required by § 679.25 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 21, 1997.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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Proposed Rules

Federal Register
Vol. 62, No. 39
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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN 3150–AF 55

Revision of Fee Schedules; 100% Fee Recovery, FY 1997

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend the licensing, inspection, and annual fees charged to its applicants and licensees. The proposed amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), which mandates that the NRC recover approximately 100 percent of its budget authority in Fiscal Year (FY) 1997 less amounts appropriated from the Nuclear Waste Fund (NWF). The amount to be recovered for FY 1997 is approximately $462.3 million.

DATES: The comment period expires March 31, 1997. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure only that comments received on or before this date will be considered. Because OBRA–90 requires that NRC collect the FY 1997 fees by September 30, 1997, requests for extensions of the comment period will not be granted.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Docketing and Services Branch. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:45 am and 4:15 pm Federal workdays. (Telephone 301–415–1678). Copies of comments received may be examined at the NRC Public Document Room at 2120 L Street, NW. (Lower Level), Washington, DC 20555–0001. For information on submitting comments electronically, see the discussion under Electronic Access in the Supplementary Information Section.

The agency workpapers that support these proposed changes to 10 CFR parts 170 and 171 may be examined at the NRC Public Document Room at 2120 L Street, NW. (Lower Level), Washington, DC 20555–0001.

FOR FURTHER INFORMATION CONTACT: C. James Holloway, Jr., Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone 301–415–6213.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Proposed Action.
III. Section-by-Section Analysis.
IV. Electronic Access.
V. Environmental Impact: Categorical Exclusion.
VI. Paperwork Reduction Act Statement.
VII. Regulatory Analysis.
VIII. Regulatory Flexibility Analysis.
IX. Backfit Analysis.

I. Background

Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), enacted November 5, 1990, requires that the NRC recover approximately 100 percent of its budget authority, less the amount appropriated from the Department of Energy (DOE) administered NWF, for FYs 1991 through 1995 by assessing fees. OBRA–90 was amended in 1993 to extend the NRC's 100 percent fee recovery requirement through FY 1998.

The NRC assesses two types of fees to recover its budget authority. First, license and inspection fees, established in 10 CFR part 170 under the authority of the Independent Offices Appropriation Act (IOAA), 31 U.S.C. 9701, recover the NRC's costs of providing individually identifiable services to specific applicants and licensees. Examples of the services provided by the NRC for which these fees are assessed are the review of applications for the issuance of new licenses, approvals or renewals, and amendments to licenses or approvals. Second, annual fees, established in 10 CFR part 171 under the authority of OBRA–90, recover generic and other regulatory costs not recovered through 10 CFR part 170 fees.

On April 12, 1996 (61 FR 16203), the NRC published its final rule establishing the licensing, inspection, and annual fees necessary for the NRC to recover approximately 100 percent of its budget authority for FY 1996, less the appropriation received from the Nuclear Waste Fund. Several changes to the fees assessed for FY 1996 were adopted by the NRC. These changes were highlighted in the final rule (61 FR 16203; April 12, 1996) and bear on the approach for establishing annual fees set forth in this proposed rule.

II. Proposed Action

The NRC is proposing to amend its licensing, inspection, and annual fees to recover approximately 100 percent of its FY 1997 budget authority, including the budget authority for its Office of the Inspector General, less the appropriations received from the NWF and the General Fund. For FY 1997, the NRC's budget authority is $476.8 million, of which $11.0 million has been appropriated from the NWF. In addition, $3.5 million has been appropriated from the General Fund for activities related to commercial vitrification of waste stored at the Department of Energy Hanford, Washington, site. The FY 1997 appropriation statute states that the $3.5 million appropriated for regulatory reviews and other activities pertaining to waste stored at the Hanford, Washington, site shall be excluded from license fee revenues notwithstanding 42 U.S.C. 2214. Therefore, NRC is required to collect approximately $462.3 million in FY 1997 through 10 CFR part 170 licensing and inspection fees and 10 CFR part 171 annual fees.

The total amount to be recovered for FY 1997, and therefore the total fees, is the same as the amount estimated for recovery for FY 1996. However, the distribution of the total amount to be collected between the two types of fees is different. The NRC estimates that approximately $96 million would be recovered in FY 1997 from fees assessed under 10 CFR part 170 and other receipts compared to $120.5 million in FY 1996. The remaining $366.3 million in FY 1997 would be recovered through the 10 CFR part 171 annual fees. Because the 10 CFR part 170 fees and other offsetting receipts for FY 1997 is below the estimate for FY 1996, annual fees must increase. The lower estimate for 10 CFR part 170 fees plus other changes cause an 8.2 percent increase in FY 1997 annual fees compared to FY

1996. These changes are more fully explained in Section B. The following examples illustrate the changes in annual fees.

	FY 1996 annual fee	FY 1997 proposed annual fee
Class of Licensees:		
Power reactors	$2,746,000	$2,972,000
Nonpower reactors	52,800	57,200
High enriched uranium fuel facility	2,403,000	2,600,000
Low enriched uranium fuel facility	1,179,000	1,276,000
UF_6 conversion facility	597,800	647,000
Uranium mills	57,000	61,600
Typical materials licenses:		
Radiographers	13,000	14,000
Well loggers	7,500	8,200
Gauge users	1,600	1,700
Broad scope medical	21,700	23,500

Because the final FY 1997 fee rule will be a "major" final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC's fees for FY 1997 would become effective 60 days after publication of the final rule in the **Federal Register**. The NRC will send a bill for the amount of the annual fee upon publication of the FY 1997 final rule to reactors and major fuel cycle facilities. For these licensees, payment would be due on the effective date of the FY 1997 rule. Those materials licensees whose license anniversary date during FY 1997 falls before the effective date of the final FY 1997 final rule will be billed during the anniversary month of the license and continue to pay annual fees at the FY 1996 rate in FY 1997. Those materials licensees whose license anniversary date falls on or after the effective date of the FY 1997 final rule would be billed at the FY 1997 revised rates during the anniversary month of the license and payment would be due on the date of the invoice.

A. Amendments to 10 CFR Part 170: Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services

The NRC proposes three amendments to 10 CFR part 170 and one change in practice under part 170. These amendments would not change the underlying basis for the regulation—that fees be assessed to applicants, persons, and licensees for specific identifiable services rendered. The amendments also comply with the guidance in the Conference Committee Report on OBRA–90 that fees assessed under the Independent Offices Appropriation Act (IOAA) recover the full cost to the NRC of identifiable regulatory services each applicant or licensee receives.

First, the NRC is proposing to amend § 170.11 of the Commission's fee regulations to add an exemption provision for those amendments to materials portable gauge licenses referencing NUREG 1556 that would change only the name of the Radiation Safety Officer (RSO). This proposed change is consistent with the proposed regulatory approach outlined in draft NUREG–1556, Volume 1, entitled "Consolidated Guidance About Materials Licenses, Program-Specific Guidance About Portable Gauge Licenses" issued October 3, 1996, for public comment. No amendment fees would be assessed for the amendments to portable gauge licenses because the regulatory program proposed in the final NUREG–1556, Volume 1, would include commitments from the licensee concerning RSO qualifications and if those commitments are included in the amendment application, then a technical review is not required. The NRC expects NUREG 1556 to be finalized before the final fee rule becomes effective. If not, then this proposed change will not be included in the final fee regulation.

Second, the NRC proposes that the two professional hourly rates established in FY 1996 in § 170.20 be revised based on the FY 1997 budget. These proposed rates would be based on the FY 1997 direct FTEs and that portion of the FY 1997 budget that either does not constitute direct program support (contractual services costs) or is not recovered through the appropriation from the NWF or the General Fund. These rates are used to determine the part 170 fees. The NRC is proposing to establish a rate of $131 per hour ($233,055 per direct FTE) for the reactor program. This rate would be applicable to all activities whose fees are based on full cost under § 170.21 of the fee regulations. A second rate of $125 per hour ($222,517 per direct FTE) is proposed for the nuclear materials and nuclear waste program. This rate would be applicable to all materials activities whose fees are based on full cost under § 170.31 of the fee regulations. In the FY 1996 final fee rule, these rates were $128 and $120 respectively.

The two rates are based on cost center concepts adopted in FY 1995 (60 FR 32225; June 20, 1995) and used for NRC budgeting purposes. In implementing cost center concepts, all budgeted resources are assigned to cost centers to the extent they can be distinguished. These costs include all salaries and benefits, contract support, and travel that support each cost center activity.

Third, the NRC proposes to adjust the current part 170 licensing and inspection fees in §§ 170.21 and 170.31 for applicants and licensees to reflect both the changes in the revised hourly rates and the results of the review required by the Chief Financial Officers (CFO) Act. To comply with the requirements of the CFO Act, the NRC has evaluated historical professional staff hours used to process a licensing action (new license and amendment) for those materials licensees whose fees are based on the average cost method (flat fees). This review also included new license and amendment applications for import and export licenses.

Evaluation of the historical data shows that the average number of professional staff hours needed to complete materials licensing actions should be increased in some categories and decreased in others to reflect the costs incurred in completing the licensing actions. Thus, the revised average professional staff hours reflect the changes in the NRC licensing review program that have occurred since FY 1995. The proposed licensing fees are based on the revised average professional staff hours needed to process the licensing actions multiplied by the proposed nuclear materials professional hourly rate for FY 1997 of $125 per hour. The data for the average number of professional staff hours needed to complete licensing actions were last updated in FY 1995 (60 FR 32218; June 20, 1995). For new materials licenses, the proposed licensing fees for FY 1997 are increased in approximately 70 percent of the categories, while the proposed fees for materials amendments would increase in over 60 percent of the categories.

In addition to the above rule changes, the NRC is clarifying how it would recover the costs of post-implementation reviews of changes licensees make without prior NRC review; for example, changes under §§ 50.54, 50.59 and 70.32. The NRC is announcing here that licensees would be billed for post-implementation review of these changes under §§ 170.21 and 170.31, beginning with the effective date of the FY 1997 final fee rule. There will be no change in how fees are assessed for any pre-implementation interactions, including any review prior to licensee submissions, between NRC and licensees. As in the past, any pre-implementation interaction should not

be fee bearing. It is noted the NRC plans to inform reactor licensees in the near future that their submittals under § 50.54 (a), (p) and (q) should not ask for pre-implementation reviews; instead, licensees are required to perform their analyses, implement their changes (if the analyses show that the changes do not degrade plans the NRC has already approved), and make their submittals under the relevant subsection of § 50.54. The NRC will then verify that the changes are in compliance with § 50.54.

In summary, the NRC is proposing to:

(1) Revise the two 10 CFR part 170 hourly rates;

(2) Revise the licensing (application and amendment) fees assessed under 10 CFR part 170 in order to comply with the CFO Act's requirement that fees be revised to reflect the cost to the agency of providing the service;

(3) Add a provision to the regulations exempting from 10 CFR part 170 fees certain amendments to materials portable gauge licenses issued in accordance with NUREG–1556; and

(4) Charge under part 170 for post-implementation quality assurance plan, safeguards contingency plan and emergency plan changes

B. Amendments to 10 CFR part 171: Annual Fees for Reactor Operating Licenses, and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by NRC

The NRC proposes six amendments to 10 CFR part 171. First, the NRC proposes to amend § 171.13 to revise the language to indicate that if the NRC is unable to publish a fee rule with an effective date within the current fiscal year, then the NRC would continue to assess fees on the same basis as the previous fiscal year. The NRC believes that it will be able to publish an effective fee rule within a current fiscal year as it has done since FY 1991. However, as a contingency the NRC believes the rule should be amended to permit NRC to meet the requirements of OBRA–90 in the case that unforeseen events prevent NRC from publishing a new rule during a fiscal year.

Second, the NRC proposes to amend §§ 171.15 and 171.16 to revise the annual fees for FY 1997 to recover approximately 100 percent of the FY 1997 budget authority, less fees collected under 10 CFR part 170 and funds appropriated from the NWF and the General Fund. In the FY 1995 final rule, the NRC stated that it would stabilize annual fees as follows. Beginning in FY 1996, the NRC would adjust the annual fees only by the percentage change (plus or minus) in NRC's total budget authority unless there was a substantial change in the total NRC budget authority or the magnitude of the budget allocated to a specific class of licensees. If either case occurred, the annual fee base would be recalculated (60 FR 32225; June 20, 1995). The NRC also indicated that the percentage change would be adjusted based on changes in 10 CFR part 170 fees and other adjustments as well as on the number of licensees paying the fees.

In the FY 1996 final rule, the NRC stabilized the annual fees by establishing the annual fees for all licensees at a level of 6.5 percent below the FY 1995 annual fees. In this FY 1997 proposed rule, the NRC intends to follow the same method as used in FY 1996. Because the total amount estimated for recovery through fees in FY 1997 is identical to the amount to be recovered in FY 1996, establishing new baseline fees is not warranted for FY 1997. While the total amount collected is the same, the distribution between part 170 and 171 fees would change. In FY 1996, 26% was estimated to be collected from 10 CFR part 170 fees. This decreases to 21% in FY 1997. Therefore, to recover 100 percent of the budget, 10 CFR part 171 annual fees must increase in FY 1997 compared to FY 1996. The NRC is establishing the FY 1997 annual fees for all licensees at a level of 8.2 percent above the FY 1996 annual fees. The 8.2 percent increase results primarily from a reduction in the amount of the budget recovered for 10 CFR part 170 fees, a reduction in other offsetting adjustments, and reduction in the number of licensees paying annual fees. In addition, the NRC has made adjustments to recognize that all fees billed in a fiscal year are not collected in that year. Table I shows the total budget and amounts of fee billed and collected for FY 1996 and FY 1997.

TABLE I.—CALCULATION OF THE PERCENTAGE CHANGE TO THE FY 1996 ANNUAL FEES

[Dollars in millions]

	FY96	FY97
Total Budget	$473.3	$476.8
Less NWF	−11.0	−11.0
Less General Fund (Hanford Tanks)	.....	−3.5
Total Fee Base	462.3	462.3
Less Part 170 Fees	114.5	96.0
Less other receipts	[1] 6.0	.....
Part 171 Fee Collections Required	341.8	366.3
Part 171 Billing Adjustments: [2]	.....	.....
Small Entity Allowance	4.9	5.0
Unpaid FY 1997 bills	.....	3.0
Payments from prior year bills	.....	2.0
Subtotal	4.9	6.0
Total Part 171 Billing	346.7	372.3

[1] $6 million in excess collections from FY 1995 were available to reduce FY 1996 annual fees.

[2] These adjustments are necessary to ensure that the "billed" amount results in the required collections. Positive amounts indicate amounts billed that will not be collected in FY 1997.

As shown in Table I, the total amount of annual fees to be billed in FY 1997 is $25.6M ($372.3–$346.7) or 7.4 percent higher than the amount that was to be billed in annual fees in FY 1996. The NRC notes that the reduction in the estimates of 10 CFR part 170 fees for FY 1997 is primarily in the areas relating to the review of applications for reactor operating licenses and the review of standard plant applications. In addition, for the first time the estimates take into consideration an allowance for bad debt by estimating billings in the fiscal year that are not projected to be collected in that fiscal year and collections received in the current fiscal year as a result of billings from a prior fiscal year. These adjustments to the annual fees will allow the NRC to come closer to meeting its obligation to recover approximately 100 percent of its budget authority through the assessment of fees.

In addition to changes in 10 CFR part 170 fees and other adjustments, the number of licensees to pay fees in FY 1997 has decreased compared to FY 1996. This decrease in the number of licensees paying fees causes annual fees to increase by an additional 0.8 percent. For example, the Haddam Neck power reactor has ceased operations and the fuel has been permanently removed from the reactor. Therefore, the utility will pay only a partial annual fee in FY 1997. In addition, Massachusetts is expected to become an Agreement State in FY 1997 and approximately 425 NRC licenses will be transferred to Massachusetts. These licenses are projected to pay only one half of the annual fee.

Third, an annual fee is proposed in § 171.16(d), fee Category 1.E., for each certificate of compliance issued to the United States Enrichment Corporation (USEC) on November 26, 1996, to operate the two gaseous diffusion plants (GDPs) located at Paducah, Kentucky and at Piketon, Ohio. The NRC intends to assume regulatory jurisdiction over the two plants from the U.S. Department of Energy (DOE) on March 3, 1997.

Fourth, Footnote 1 of 10 CFR 171.16(d) would be amended to provide for a waiver of annual fees for FY 1997 for those materials licensees, and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses before October 1, 1996, and permanently ceased licensed activities entirely by September 30, 1996. All other licensees and approval holders who held a license or approval on October 1, 1996, are subject to FY 1997 annual fees. This change is being made in recognition of the fact that since the final FY 1996 rule was published in April 1996, some licensees have filed requests for termination of their licenses or certificates with the NRC. Other licensees have either called or written to the NRC since the FY 1996 final rule became effective requesting further clarification and information concerning the annual fees assessed. The NRC is responding to these requests as quickly as possible. However, the NRC was unable to respond and take action on all such requests before the end of the fiscal year on September 30, 1996. Similar situations existed after the FY 1991–1995 rules were published, and in those cases, the NRC provided an exemption from the requirement that the annual fee is waived only when a license is terminated before October 1 of each fiscal year.

Fifth, the NRC is proposing to amend the proration provisions in § 171.17 for reactor and materials licensees. The reactor provision in § 171.17(a) would be revised to reflect the changes in 10 CFR part 50 relating to the decommissioning of power reactors which became effective August 28, 1996 (61 FR 39278). The materials provision would be amended to recognize that licenses transferred to an Agreement State as a result of a new Agreement are effectively terminated by the NRC, for annual fee purposes, on the date that the Agreement with the State becomes effective.

Sixth, § 171.19 would be amended to update fiscal year references and to credit the partial payments made by certain licensees in FY 1997 either toward their total annual fee to be assessed or to make refunds, if necessary. This section would also be amended to modify the annual fee billing schedule for materials licenses terminated and new materials licenses issued during the fiscal year.

The NRC will send a bill to reactors and major fuel cycle facilities for the amount of the annual fee upon publication of the FY 1997 final rule. For these licensees, payment will be due on the effective date of FY 1997 rule. Those materials licensees whose license anniversary date during FY 1997 falls before the effective date of the final FY 1997 rule will be billed during the anniversary month of the license and continue to pay annual fees at the FY 1996 rate in FY 1997. Those materials licensees whose license anniversary date falls on or after the effective date of the final FY 1997 rule would be billed, at the FY 1997 revised rates, during the anniversary month of the license and payment would be due on the date of the invoice.

The proposed amendments to 10 CFR part 171 do not change the underlying basis for 10 CFR part 171; that is, charging a class of licensees for NRC costs attributable to that class of licensees. The proposed changes are consistent with the NRC's FY 1995 final rule indicating that, for the period FY 1996–1999, the expectation is that annual fees would be adjusted by the percentage change (plus or minus) to the NRC's budget authority adjusted for NRC offsetting receipts and the number of licensees paying annual fees.

III. Section-by-Section Analysis

The following analysis of those sections that would be amended by this proposed rule provides additional explanatory information. All references are to Title 10, Chapter I, U.S. Code of Federal Regulations.

Part 170

Section 170.11 Exemptions

This section would be amended to add a new paragraph indicating that amendments to materials portable gauge licenses issued in accordance with NUREG 1556 that change only the name of the Radiation Safety Officer (RSO) would be exempt from amendment fees. This change is consistent with the recent Business Process Redesign (BPR) initiative and NUREG–1556, Volume 1, issued for public comment October 3, 1996 (61 FR 51729). No amendment fees would be assessed for the amendments issued in accordance with NUREG 1556 to portable gauge licenses because the regulatory program would include commitments from the licensee concerning RSO qualifications and if those commitments are included in the amendment application then there would be no technical review conducted by the NRC. The NRC expects NUREG 1556 to be finalized before the final fee rule becomes effective. If not, then this proposed change will not be included in the final fee regulation.

Section 170.20 Average Cost per Professional Staff-Hour

This section would be amended to establish two professional staff-hour rates based on FY 1997 budgeted costs—one for the reactor program and one for the nuclear material and nuclear waste program. Accordingly, the NRC reactor direct staff-hour rate for FY 1997 for all activities whose fees are based on full cost under § 170.21 would be $131 per hour, or $233,055 per direct FTE. The NRC nuclear material and nuclear waste direct staff-hour rate for all materials activities whose fees are based on full cost under § 170.31 would be $125 per hour, or $222,517 per direct FTE. The rates are based on the FY 1997 direct FTEs and NRC budgeted costs that are not recovered through the appropriation from the NWF or the General Fund. The NRC has continued the use of cost center concepts established in FY 1995 in allocating certain costs to the reactor and materials programs in order to more closely align budgeted costs with specific classes of licensees. The method used to determine the two professional hourly rates is as follows:

1. Direct program FTE levels are identified for both the reactor program and the nuclear material and waste program.

2. Direct contract support, which is the use of contract or other services in support of the line organization's direct program, is excluded from the calculation of the hourly rate because the costs for direct contract support are charged directly through the various categories of fees.

3. All other direct program costs (i.e., Salaries and Benefits, Travel) represent "in-house" costs and are to be allocated by dividing them uniformly by the total number of direct FTEs for the program. In addition, salaries and benefits plus contracts for general and administrative support are allocated to each program based on that program's salaries and benefits. This method results in the following costs which are included in the hourly rates.

TABLE II.—FY 1997 BUDGET AUTHORITY TO BE INCLUDED IN HOURLY RATES

[Dollars in millions]

	Reactor program	Materials program
Salary and Benefits	$155.3	$48.4
Allocated Agency Management and Support	42.5	13.2
Subtotal	197.8	61.6
General and Administrative Support (G&A):		
Program Travel and Other Support	9.6	2.5
Allocated Agency Management and Support	72.1	22.4
Subtotal	81.7	24.9
Less offsetting receipts	.1	
Total Budget Included in Hourly Rate	279.4	86.5
Program Direct FTEs	1,196.9	388.7
Rate per Direct FTE	233,055	222,517
Professional Hourly Rate	131	125

Dividing the $279.4 million budget for the reactor program by the number of reactor program direct FTEs (1196.9) results in a rate for the reactor program of $233,055 per FTE for FY 1997. Dividing the $86.5 million budget for the nuclear materials and nuclear waste program by the number of program direct FTEs (388.7) results in a rate of $222,517 per FTE for FY 1997. The Direct FTE Hourly Rate for the reactor program would be $131 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE ($233,055) by the number of productive hours in one year (1776 hours) as indicated in the revised OMB Circular A–76, "Performance of Commercial Activities." The Direct FTE Hourly Rate for the materials program would be $125 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE ($222,517) by the number of productive hours in one year (1776 hours). The FY 1997 rate is slightly higher than the FY 1996 rate due in part to the Federal pay raise given to all Federal employees in January 1996.

Section 170.21 Schedule of Fees for Production and Utilization Facilities, Review of Standard Reference Design Approvals, Special Projects, Inspections and Import and Export Licenses

The NRC is proposing to revise the licensing and inspection fees in this section, which are based on full-cost recovery, to reflect FY 1997 budgeted costs and to recover costs incurred by the NRC in providing licensing and inspection services to identifiable recipients. The fees assessed for services provided under the schedule are based on the professional hourly rate, as shown in § 170.20, for the reactor program and any direct program support (contractual services) costs expended by the NRC. Any professional hours expended on or after the effective date of the final rule will be assessed at the FY 1997 hourly rate for the reactor program, as shown in § 170.20. The fees in § 170.21 for the review of import and export licensing, facility Category K, would be adjusted for FY 1997 to reflect both the increase in the hourly rate and the revised average professional staff hours needed to process certain types of licensing actions.

For those applications currently on file and pending completion, footnote 2 of § 170.21 would be revised to provide that professional hours expended up to the effective date of the final rule will be assessed at the professional rates in effect at the time the service was rendered. For topical report applications currently on file that are still pending completion of the review, and for which review costs have reached the applicable fee ceiling established by the July 2, 1990 rule, the costs incurred after any applicable ceiling was reached through August 8, 1991, will not be billed to the applicant. Any professional hours expended for the review of topical report applications, amendments, revisions, or supplements to a topical report on or after August 9, 1991, are assessed at the applicable rate established by § 170.20.

Section 170.31 Schedule of Fees for Materials Licenses and Other Regulatory Services, Including Inspections and Import and Export Licenses

The licensing and inspection fees in this section, which are based on full-cost recovery, would be modified to recover the FY 1997 costs incurred by the NRC in providing licensing and inspection services to identifiable recipients. The fees assessed for services provided under the schedule would be based on both the professional hourly rate as shown in § 170.20 for the materials program and any direct program support (contractual services) costs expended by the NRC. Licensing fees based on the average time to review an application ("flat" fees) would be adjusted to reflect both the revised average professional staff hours needed to process a licensing action (new license and amendment) and the increase in the professional hourly rate from $120 per hour in FY 1996 to $125 per hour in FY 1997.

As previously indicated, the CFO Act requires that the NRC conduct a biennial review of fees and other charges imposed by the agency for its services and revise those charges to reflect the costs incurred in providing the services. Consistent with the CFO Act requirement, the NRC has completed its most recent review of license fees assessed by the agency. The review focused on the flat fees that are charged to nuclear materials users for licensing actions (new licenses and amendments). The full cost license and inspection fees (e.g., for fuel cycle facilities) and annual fees were not included in this biennial review because the hourly rate for full cost fees and the annual fees are reviewed and updated annually in order to recover 100 percent of the NRC budget authority.

To determine the licensing flat fees for materials licensees and applicants, the NRC uses historical data to determine the average number of professional hours required to perform a licensing action for each license category. These average hours are multiplied by the proposed materials program professional hourly rate of $125 per hour for FY 1997. The review indicated that the NRC needed to

modify the average number of hours on which the current licensing flat fees are based in order to recover the cost of providing licensing services. The average number of hours required for licensing actions was last reviewed and modified in 1995 (60 FR 32218; June 20, 1995). Thus the revised hours used to determine the proposed fees for FY 1997 reflect the changes in the licensing program that have occurred since that time. For new licenses, the proposed fees for FY 1997 are increased in approximately 70 percent of the fee categories, while the proposed fees for amendments have increased in over 60 percent of the fee categories.

The "flat" fees in § 170.31 for the review of import and export licensing applications have increased from FY 1996 as a result of the increase in the hourly rate and the results of the biennial review. The proposed licensing "flat" fees are applicable to fee categories 1.C and 1.D; 2.B and 2.C; 3.A through 3.P; 4.B through 9.D, 10.B, 15.A through 15.E and 16. Applications filed on or after the effective date of the final rule would be subject to the fees in this proposed rule.

The amounts of the materials licensing "flat" fees were rounded off so that the amounts would be de minimis and the resulting flat fee would be convenient to the user. Fees that are greater than $1,000 but are less than $100,000 are rounded to the nearest $100. Fees that are greater than $100,000 are rounded to the nearest $1,000. Fees under $1,000 are rounded to the nearest $10.

For those licensing, inspection, and review fees that are based on full-cost recovery (cost for professional staff hours plus any contractual services), the materials program hourly rate of $125, as shown in § 170.20, would apply to those professional staff hours expended on or after the effective date of the final rule.

In addition to the above rule changes, the NRC is clarifying how it would recover the costs of post-implementation reviews of changes licensees make without prior NRC review; for example, changes under §§ 50.54, 50.59 and 70.32. The NRC is announcing here that licensees would be billed for post-implementation reviews of these changes under §§ 170.21 and 170.31, beginning with the effective date of the FY 1997 final fee rule. There will be no change in how fees are assessed for any pre-implementation interactions including any review prior to licensee submissions, between the NRC and licensees. As in the past, any pre-implementation interaction will not be fee-bearing. It is noted that the NRC plans to inform reactor licensees in the near future that their submittals under § 50.54(a), (p) and (q) should not ask for pre-implementation reviews; instead, licensees are required to perform their analyses, implement their changes (if the analyses show that the changes do not degrade plans the NRC has already approved), and make their submittals under the relevant subsection of § 50.54. The NRC will then verify that the changes are in compliance with § 50.54.

Part 171

Section 171.13 Notice

The language in this section would be revised to indicate that in the unlikely event the NRC is unable to publish a fee rule with an effective date within the current fiscal year, then the NRC would continue to assess fees at the same rates as the previous fiscal year. The NRC believes that it will be able to publish an effective fee rule within a current fiscal year as it has done since FY 1991 when 100 percent fee recovery was initiated. However, the possibility exists that the NRC might be unable to establish fees for a current fiscal year through the notice and comment process. Therefore, as a contingency plan for meeting the requirement of OBRA–90, the NRC is proposing to amend § 171.13 to indicate that if the NRC is unable to promulgate a final fee rule within a current fiscal year, then fees would continue to be assessed at the same rates as the previous fiscal year. The NRC will continue to work diligently to publish the fee rules at the earliest possible time during the fiscal year.

Section 171.15 Annual Fee: Reactor Operating Licenses

The annual fees in this section would be revised as described below. Paragraphs (a), (b), (c) (1), (c)(2), (e), and (f) would be revised to comply with the requirement of OBRA–90 that the NRC recover approximately 100 percent of its budget for FY 1997.

Paragraph (b) would be revised in its entirety to establish the FY 1997 annual fee for operating power reactors and to change fiscal year references from FY 1996 to FY 1997. The fees would be established by increasing FY 1996 annual fees (prior to rounding) by 8.2 percent. In the FY 1995 final rule, the NRC stated it would stabilize annual fees by adjusting the annual fees only by the percentage change (plus or minus) in NRC's total budget authority and adjustments based on changes in 10 CFR part 170 fees as well as in the number of licensees paying the fees. The first adjustment to the annual fees using this method occurred in FY 1996 when all annual fees were decreased 6.5 percent below the FY 1995 annual fees. The activities comprising the base FY 1995 annual fee and the FY 1995 additional charge (surcharge) are listed in paragraphs (b) and (c) for convenience purposes.

With respect to Big Rock Point, a smaller, older reactor, the NRC proposes to grant a partial exemption from the FY 1997 annual fees similar to FY 1996 based on a request filed with the NRC in accordance with § 171.11.

Each operating power reactor, except Big Rock Point, would pay an annual fee of $2,972,000 in FY 1997.

Paragraph (e) would be revised to show the amount of the FY 1997 annual fee for nonpower (test and research) reactors. In FY 1997, the proposed fee of $57,200 is 8.2 percent above the FY 1996 level. The NRC will continue to grant exemptions from the annual fee to Federally-owned and State-owned research and test reactors that meet the exemption criteria specified in § 171.11(a)(2).

Paragraph (f) would be revised to change fiscal year date references.

Section 171.16 Annual Fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals, and Government Agencies Licensed by the NRC

Section 171.16(c) covers the fees assessed for those licensees that can qualify as small entities under NRC size standards. The NRC will continue to assess two fees for licensees that qualify as small entities under the NRC's size standards. In general, licensees with gross annual receipts of $350,000 to $5 million pay a maximum fee of $1,800. A second or lower-tier small entity fee of $400 is in place for small entities with gross annual receipts of less than $350,000 and small governmental jurisdictions with a population of less than 20,000. No change in the amount of the small entity fees is being proposed because the small entity fees are not based on the budget but are established at a level to reduce the impact of fees on small entities. The small entity fees are shown in the proposed rule for convenience. A materials licensee may pay a reduced annual fee if the licensee qualifies as a small entity under the NRC's size standards and certifies that it is a small entity using NRC Form 526.

Section 171.16(d) would be revised to establish the FY 1997 annual fees for materials licensees, including

Government agencies, licensed by the NRC. These fees were determined by increasing the FY 1996 annual fees (prior to rounding) by 8.2 percent.

In addition, an annual fee is proposed in § 171.16(d), fee Category 1.E., for each Certificate of Compliance issued to the USEC on November 26, 1996, to operate the two gaseous diffusion plants (GDPs) located at Paducah, Kentucky, and at Piketon, Ohio. The NRC announced its intent to issue the compliance certificates to USEC on September 19, 1996 (61 FR 49360). The NRC intends to assume regulatory jurisdiction over the two plants from DOE on March 3, 1997. Because the two plants have been certified in FY 1997, the NRC is proposing to establish an annual fee of $2,600,000 for each of these two facilities. The NRC methodology for determining annual fees for major fuel facilities was explained in the FY 1995 final fee rule published in the **Federal Register** on June 20, 1995 (60 FR 32234). As indicated in the **Federal Register**, the methodology can be applied to determine annual fees for new licenses or certificates. The NRC has applied the methodology to the USEC facilities and has concluded that the relative weighted safety and safeguards factors for these facilities is similar to a high enriched uranium facility. Therefore, the NRC is proposing to establish the annual fee for each USEC uranium enrichment facility at $2,600,000, the same as that for a high enrichment facility (fee category 1.A.(1)(a)). Because the certifications would be in effect for the last six months of FY 1997, the NRC would assess one-half of the annual fee or $1,300,000 to USEC for each certificate for the last half of FY 1997.

The amount or range of the FY 1997 annual fees for all materials licensees is summarized as follows:

MATERIALS LICENSES ANNUAL FEE RANGES

Category of license	Annual fees
Part 70—High enriched fuel facility.	$2,600,000.
Part 70—Low enriched fuel facility.	1,276,000.
Part 40—UF_6 conversion facility.	647,000.
Part 40—Uranium recovery facilities.	22,300 to 61,600.
Part 30—Byproduct Material Licenses.	490 to 23,5001.[1]
Part 71—Transportion of Radioactive Material.	1,000 to 78,700.
Part 72—Independent Storage of Spent Nuclear Fuel.	282,000.

[1] Excludes the annual fee for a few military "master" materials licenses of broad-scope issued to Government agencies, which is $420,000.

Footnote 1 of 10 CFR 171.16(d) would be amended to provide a waiver of the annual fees for materials licensees, and holders of certificates, registrations, and approvals, who either filed for termination of their licenses or approvals or filed for possession only/storage only licenses before October 1, 1996, and permanently ceased licensed activities entirely by September 30, 1996. All other licensees and approval holders who held a license or approval on October 1, 1996, are subject to the FY 1997 annual fees.

Section 171.17 Proration

The NRC is proposing to amend the proration provisions in § 171.17 for reactor and materials licenses. Paragraph (a) would be amended to reflect the changes in 10 CFR part 50 relating to the decommissioning of power reactors which became effective August 28, 1996 (61 FR 39278). Reactor annual fees would be prorated based on the requirements of § 50.82(a)(2) that upon docketing of the certifications for permanent cessation of operations and permanent removal of fuel from the reactor vessel or when a final legally effective order to permanently cease operations has come into effect, the 10 CFR Part 50 license no longer authorizes operation of the reactor or emplacement or retention of fuel into the reactor vessel. Previously the proration of reactor annual fees was based on the date of issuance of the possession only license (POL).

Paragraph (b) would be amended to recognize that materials licenses transferred to a new Agreement State are considered terminated by the NRC for annual fee purposes, on the date that the Agreement with the State becomes effective. The State of Massachusetts is expected to become an Agreement State in FY 1997 and approximately 425 licenses will be transferred to the State on the effective date of the Agreement. The NRC would assess the annual fees for those licenses being transferred to the State of Massachusetts using the current proration provisions of § 171.17(b) whereby the licenses would be considered terminated on the effective date of the Agreement with Massachusetts.

New licenses issued during FY 1997 would receive a prorated annual fee in accordance with the current proration provision of § 171.17. For example, those new materials licenses issued during the period October 1 through March 31 of the FY will be assessed one-half the annual fee in effect on the anniversary date of the license. New materials licenses issued on or after April 1, 1997, will not be assessed an annual fee for FY 1997. Thereafter, the full annual fee is due and payable each subsequent fiscal year on the anniversary date of the license. Beginning June 11, 1996, (the effective date of the FY 1996 final rule), affected materials licensees will be subject to the annual fee in effect on the anniversary date of the license. Affected licensees who are not sure of the anniversary date of their materials license should check the original issue date of the license.

Section 171.19 Payment

Paragraph (b) would be revised to give credit for partial payments made by certain licensees in FY 1997 toward their FY 1997 annual fees. The NRC anticipates that the first, second, and third quarterly payments for FY 1997 will have been made by operating power reactor licensees and some large materials licensees before the final rule becomes effective. Therefore, the NRC would credit payments received for those quarterly annual fee assessments toward the total annual fee to be assessed. The NRC would adjust the fourth quarterly bill to recover the full amount of the revised annual fee or to make refunds, as necessary. Payment of the annual fee is due on the date of the invoice and interest accrues from the invoice date. However, interest will be waived if payment is received within 30 days from the invoice date.

Paragraph (c) would be revised to update fiscal year references. Paragraph (d) would be revised to modify the billing schedule for terminated materials licenses and new materials licenses. Licenses subject to the annual fee that are terminated during the fiscal year but prior to the anniversary month of the license will be billed upon termination for the fee in effect at the time of the billing. New licenses subject to the annual fee will be billed in the month the license is issued or in the next available monthly billing for the fee in effect on the anniversary date of the license. Thereafter, annual fees for new licenses will be assessed in the anniversary month of the license.

As in FY 1996, the NRC would continue to bill annual fees for most

materials licenses on the anniversary date of the license (licensees whose annual fees are $100,000 or more will continue to be assessed quarterly). The annual fee assessed will be the fee in effect on the license anniversary date. This proposed rule applies to those materials licenses in the following fee categories: 1.C. and 1.D.; 2.A.(2) through 2.C.; 3.A. through 3.P.; 4.A. through 9.D., and 10.B. For annual fee purposes, the anniversary date of the materials license is considered to be the first day of the month in which the original materials license was issued. For example, if the original materials license was issued on June 17 then, for annual fee purposes, the anniversary date of the materials license is June 1 and the licensee would continue to be billed in June of each year for the annual fee in effect on June 1. Materials licensees with anniversary dates in FY 1997 before the effective date of the FY 1997 final rule will be billed during the anniversary month of the license and continue to pay annual fees at the FY 1996 rate in FY 1997. Those materials licensees with license anniversary dates falling on or after the effective date of the FY 1997 final rule would be billed, at the FY 1997 revised rates, during their anniversary month of their license and payment would be due on the date of the invoice.

During the past six years many licensees have indicated that, although they held a valid NRC license authorizing the possession and use of special nuclear, source, or byproduct material, they were either not using the material to conduct operations or had disposed of the material and no longer needed the license. In response, the NRC has consistently stated that annual fees are assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material. Whether or not a licensee is actually conducting operations using the material is a matter of licensee discretion. The NRC cannot control whether a licensee elects to possess and use radioactive material once it receives a license from the NRC. Therefore, the NRC reemphasizes that the annual fee will be assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material. To remove any uncertainty, the NRC issued minor clarifying amendments to 10 CFR 171.16, footnotes 1 and 7 on July 20, 1993 (58 FR 38700).

IV. Electronic Access

Comments on the proposed rule may be submitted through the Internet by addressing electronic mail to INTERNET:SECY@NRC.GOV. Comments may also be submitted electronically, in either ASCII text or WordPerfect format (version 5.1 or later), by calling the NRC Electronic Rulemaking Bulletin Board (BBS) on FEDWORLD.

The BBS is an electronic information system operated by the National Technical Information Service of the Department of Commerce. The purpose of this BBS is to facilitate public participation in the NRC regulatory process, particularly rulemakings. This proposed rulemaking is available for review and comment on the BBS. The BBS may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via the Internet.

The NRC rulemaking bulletin board (rulemaking subsystem) on FEDWORLD can be accessed directly by using a personal computer and modem, and dialing the toll free number 1–800–303–9672.

Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT–100 terminal emulation, the NRC rulemaking subsystem can then be accessed by selecting the "Rules Menu" option from the "NRC Main Menu." For further information about options available for NRC at FEDWORLD consult the "Help/Information Center" from the "NRC Main Menu." Users will find the "FEDWORLD Online User's Guides" particularly helpful.

The NRC subsystem on FEDWORLD also can be accessed by a direct dial phone number for the main FEDWORLD BBS at 703–321–3339, or by using Telnet via Internet: fedworld.gov. Using the 703 number to contact FEDWORLD, the NRC subsystem will be accessed from the main FEDWORLD menu by selecting the "Regulatory, Government Administration and State Systems," then selecting "Regulatory Information Mall." At that point, a menu will be displayed that has the option "U.S. Nuclear Regulatory Commission" that will take you to the NRC Online main menu. The NRC Online area also can be accessed directly by typing "/go nrc" at a FEDWORLD command line. If you access NRC from FEDWORLD's main menu, you may return to FEDWORLD by selecting the "Return to FEDWORLD" option from the NRC Online Main Menu. However, if you access NRC at FEDWORLD by using NRC's toll-free number, you will have full access to all NRC systems, but you will not have access to the main FEDWORLD system.

If you contact FEDWORLD using Telnet, you will see the NRC area and menus, including the "Rules Menu." Although you will be able to download documents and leave messages, you will not be able to write comments or upload files. If you contact FEDWORLD using File Transfer Program (FTP), all files can be accessed and downloaded, but uploads are not allowed, and all you will see is a list of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is available. There is a 15-minute time limit for FTP access.

Although FEDWORLD can be accessed through the World Wide Web as well, like FTP, that mode only provides access for downloading files and does not display the NRC "Rules Menu."

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301–415–5780; e-mail AXD3@nrc.gov.

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental impact assessment has been prepared for the proposed regulation. By its very nature, this regulatory action does not affect the environment, and therefore, no environmental justice issues are raised.

VI. Paperwork Reduction Act Statement

This proposed rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

VII. Regulatory Analysis

With respect to 10 CFR part 170, this proposed rule was developed pursuant to Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines the Commission took into account guidance provided by the U.S. Supreme Court on March 4, 1974, in its decision of *National Cable Television Association, Inc.* v. *United States*, 415 U.S. 36 (1974) and *Federal Power Commission* v. *New England Power Company*, 415 U.S. 345 (1974). In these decisions, the Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the "value to the recipient" of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia: *National Cable Television Association* v. *Federal Communications Commission*, 554 F.2d 1094 (D.C. Cir. 1976); *National Association of Broadcasters* v. *Federal Communications Commission*, 554 F.2d 1118 (D.C. Cir. 1976); *Electronic Industries Association* v. *Federal Communications Commission*, 554 F.2d 1109 (D.C. Cir. 1976) and *Capital Cities Communication, Inc.* v. *Federal Communications Commission*, 554 F.2d 1135 (D.C. Cir. 1976). These decisions of the Courts enabled the Commission to develop fee guidelines that are still used for cost recovery and fee development purposes.

The Commission's fee guidelines were upheld on August 24, 1979, by the U.S. Court of Appeals for the Fifth Circuit in *Mississippi Power and Light Co.* v. *U.S. Nuclear Regulatory Commission*, 601 F.2d 223 (5th Cir. 1979), *cert. denied*, 444 U.S. 1102 (1980). The Court held that—

(1) The NRC had the authority to recover the full cost of providing services to identifiable beneficiaries;

(2) The NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act and with applicable regulations;

(3) The NRC could charge for costs incurred in conducting environmental reviews required by NEPA;

(4) The NRC properly included the costs of uncontested hearings and of administrative and technical support services in the fee schedule;

(5) The NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and

(6) The NRC's fees were not arbitrary or capricious.

With respect to 10 CFR part 171, on November 5, 1990, the Congress passed Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90) which required that for FYs 1991 through 1995, approximately 100 percent of the NRC budget authority be recovered through the assessment of fees. OBRA–90 was amended in 1993 to extend the 100 percent fee recovery requirement for NRC through FY 1998. To accomplish this statutory requirement, the NRC, in accordance with § 171.13, is publishing the proposed amount of the FY 1997 annual fees for operating reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed source and devices and QA program approvals, and Government agencies. OBRA–90 and the Conference Committee Report specifically state that—

(1) The annual fees be based on the Commission's FY 1997 budget of $476.8 million less the amounts collected from Part 170 fees and the funds directly appropriated from the NWF to cover the NRC's high level waste program and the general fund related to commercial vitrification of waste at the Department of Energy Hanford, Washington site.

(2) The annual fees shall, to the maximum extent practicable, have a reasonable relationship to the cost of regulatory services provided by the Commission; and

(3) The annual fees be assessed to those licensees the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment.

10 CFR Part 171, which established annual fees for operating power reactors effective October 20, 1986 (51 FR 33224; September 18, 1986), was challenged and upheld in its entirety in *Florida Power and Light Company* v. *United States*, 846 F.2d 765 (D.C. Cir. 1988), *cert. denied*, 490 U.S. 1045 (1989).

The NRC's FY 1991 annual fee rule was largely upheld by the D.C. Circuit Court of Appeals in *Allied Signal* v. *NRC*, 988 F.2d 146 (D.C. Cir. 1993).

VIII. Regulatory Flexibility Analysis

The NRC is required by the Omnibus Budget Reconciliation Act of 1990 to recover approximately 100 percent of its budget authority through the assessment of user fees. OBRA–90 further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

This proposed rule establishes the schedules of fees that are necessary to implement the Congressional mandate for FY 1997. The proposed rule results in an increase in the annual fees charged to all licensees, and holders of certificates, registrations, and approvals. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as Appendix A to this proposed rule. The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) was signed into law on March 29, 1996. The SBREFA requires all Federal agencies to prepare a written compliance guide for each rule for which the agency is required by 5 U.S.C. 604 to prepare a regulatory flexibility analysis. Therefore, in compliance with the law, Attachment 1 to the Regulatory Flexibility Analysis (Appendix A to this document) is the small entity compliance guide for FY 1997.

IX. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and that a backfit analysis is not required for this proposed rule. The backfit analysis is not required because these proposed amendments do not require the modification of or additions to systems, structures, components, or the design of a facility or the design approval or manufacturing license for a facility or the procedures or organization required to design, construct or operate a facility.

List of Subjects

10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, registrations, approvals, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR parts 170 and 171.

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

1. The authority citation for part 170 continues to read as follows:

Authority: 31 U.S.C. 9701, 96 Stat. 1051; sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–4381, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205, Pub. L. 101–576, 104 Stat. 2842, (31 U.S.C. 901).

2. In § 170.11, paragraph (a)(11) is added to read as follows:

§ 170.11 Exemptions.

(a) * * *

(11) Materials portable gauge licenses issued in accordance with NUREG–1556 that are amended to change only the name of the Radiation Safety Officer. This exemption does not apply to those materials portable gauge licenses that

also authorize possession and use of nuclear materials for other activities.

* * * * *

3. Section 170.20 is revised to read as follows:

§ 170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects, part 55 requalification and replacement examinations and tests, other required reviews, approvals, and inspections under §§ 170.21 and 170.31 that are based upon the full costs for the review or inspection will be calculated using the following applicable professional staff-hour rates:

Reactor Program (§ 170.21 Activities).	$131 per hour.
Nuclear Materials and Nuclear Waste Program (§ 170.31 Activities).	125 per hour.

4. In § 170.21, the introductory text, Category K, and footnotes 1 and 2 to the table are revised to read as follows:

§ 170.21 Schedule of fees for production and utilization facilities, review of standard referenced design approvals, special projects, inspections and import and export licenses.

Applicants for construction permits, manufacturing licenses, operating licenses, import and export licenses, approvals of facility standard reference designs, requalification and replacement examinations for reactor operators, and special projects and holders of construction permits, licenses, and other approvals shall pay fees for the following categories of services.

SCHEDULE OF FACILITY FEES

[see footnotes at end of table]

Facility categories and type of fees	Fees[1 2]
. . . . .	.
K. Import and export licenses:	
Licenses for the import and export only of production and utilization facilities or the export only of components for production and utilization facilities issued pursuant to 10 CFR part 110:	
1. Application for import or export of reactors and other facilities and exports of components which must be reviewed by the Commissioners and the Executive Branch, for example, actions under 10 CFR 110.40(b):	
Application—new license	$8,100
Amendment	$8,100
2. Application for export of reactor and other components requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a) (1)–(8):	
Application—new license	$5,000
Amendment	$5,000
3. Application for export of components requiring foreign government assurances only:	
Application—new license	$2,900
Amendment	$2,900
4. Application for export of facility components and equipment not requiring Commissioner review, Executive Branch review, or foreign government assurances:	
Application—new license	$1,300
Amendment	$1,300
5. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require in-depth analysis or review:	
Amendment	$190

[1] Fees will not be charged for orders issued by the Commission pursuant to § 2.202 of this chapter or for amendments resulting specifically from the requirements of these types of Commission orders. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., §§ 50.12, 73.5) and any other sections now or hereafter in effect regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. Fees for licenses in this schedule that are initially issued for less than full power are based on review through the issuance of a full power license (generally full power is considered 100 percent of the facility's full rated power). Thus, if a licensee received a low power license or a temporary license for less than full power and subsequently receives full power authority (by way of license amendment or otherwise), the total costs for the license will be determined through that period when authority is granted for full power operation. If a situation arises in which the Commission determines that full operating power for a particular facility should be less than 100 percent of full rated power, the total costs for the license will be at that determined lower operating power level and not at the 100 percent capacity.

[2] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect at the time the service was provided. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for any topical report, amendment, revision or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20. In no event will the total review costs be less than twice the hourly rate shown in § 170.20.

. . . . . .

5. Section 170.31 is revised to read as follows:

§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.

Applicants for materials licenses, import and export licenses, and other regulatory services and holders of materials licenses, or import and export licenses shall pay fees for the following categories of services. This schedule includes fees for health and safety and safeguards inspections where applicable.

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees[1]	Fee[2 3]
1. Special nuclear material:	
A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U–235 in unsealed form or 200 grams or more of U–233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only:	
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI):	
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers:[4]	
Application—New license	$580.
Amendment	$390.
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1A:[4]	
Application—New license	$780.
Amendment	$300.
E. Licenses or certificates for construction and operation of a uranium enrichment facility	
Application	$125,000.
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
2. Source material:	
A. (1) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, refining uranium mill concentrates to uranium hexafluoride, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode:	
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
(2) Licenses that authorize the receipt of byproduct material, as defined in section 11e(2) of the Atomic Energy Act, from other persons for possession and disposal except those licenses subject to fees in Category 2.A.(1)	
License, renewal, amendment	Full Cost.
Inspections	Full Cost.
(3) Licenses that authorize the receipt of byproduct material, as defined in section 11e(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(1)	
License, renewal, amendment	Full Cost.
Inspections	Full Cost.
B. Licenses which authorize the possession, use and/or installation of source material for shielding:	
Application—New license	$130.
Amendment	$290.
C. All other source material licenses:	
Application—New license	$3,700.
Amendment	$580.
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application—New license	$3,900.
Amendment	$550.
B. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application—New license	$1,600.
Amendment	$580.
C. Licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 170.11(a)(4). These licenses are covered by fee Category 3D	
Application—New license	$7,100.
Amendment	$650.
D. Licenses and approvals issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material. This category includes licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 170.11(a)(4)	
Application—New license	$2,000.
Amendment	$440.
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units):	
Application—New license	$1,100.
Amendment	$390.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2,3]
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes	
Application—New license	$2,000.
Amendment	$450.
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes	
Application—New license	$4,700.
Amendment	$760.
H. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of Part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter:	
Application—New license	$2,800.
Amendment	$1,000.
I. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter:	
Application—New license	$4,500.
Amendment	$1,100.
J. Licenses issued pursuant to subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter:	
Application—New license	$1,800.
Amendment	$310.
K. Licenses issued pursuant to subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter:	
Application—New license	$1,000.
Amendment	$350.
L. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution:	
Application—New license	$5,600.
Amendment	$780.
M. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for research and development that do not authorize commercial distribution:	
Application—New license	$1,900.
Amendment	$640.
N. Licenses that authorize services for other licensees, except:	
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and	
(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C:	
Application—New license	$2,100.
Amendment	$510.
O. Licenses for possession and use of byproduct material issued pursuant to part 34 of this chapter for industrial radiography operations:	
Application—New license	$4,400.
Amendment	$700.
P. All other specific byproduct material licenses, except those in Categories 4A through 9D:	
Application—New license	$750.
Amendment	$350.
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material:	
License, renewal, amendment.	
Full Cost Inspections	Full Cost.
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application—New license	$2,600.
Amendment	$540.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2,3]
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application—New license	$2,300.
Amendment	$230.
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies:	
Application—New license	$3,600.
Amendment	$850.
B. Licenses for possession and use of byproduct material for field flooding tracer studies:	
License, renewal, amendment	Full Cost.
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material:	
Application—New license	$6,600.
Amendment	$1,000.
7. Medical licenses:	
A. Licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$3,600.
Amendment	$400.
B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$3,900.
Amendment	$740.
C. Other licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$1,800.
Amendment	$460.
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities:	
Application—New license	$590.
Amendment	$410.
9. Device, product, or sealed source safety evaluation:	
A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution:	
Application—each device	$3,700.
Amendment—each device	$610.
B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices:	
Application—each device	$2,200.
Amendment—each device	$1,100.
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution:	
Application—each source	$940.
Amendment—each source	$630.
D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel:	
Application—each source	$480.
Amendment—each source	$160.
10. Transportation of radioactive material:	
A. Evaluation of casks, packages, and shipping containers:	
Approval, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
B. Evaluation of 10 CFR Part 71 quality assurance programs:	
Application—Approval	$350.
Amendment	$640.
Inspections	Full Cost.
11. Review of standardized spent fuel facilities:	
Approval, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
12. Special projects: [5]	
Approvals and preapplication/licensing activities	Full Cost.
Inspections	Full Cost.
13. A. Spent fuel storage cask Certificate of Compliance:	
Approvals	Full Cost.
Amendments, revisions, and supplements	Full Cost.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
Reapproval	Full Cost.
B. Inspections related to spent fuel storage cask Certificate of Compliance	Full Cost.
C. Inspections related to storage of spent fuel under § 72.210 of this chapter	Full Cost.
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities pursuant to 10 CFR parts 30, 40, 70, and 72 of this chapter:	
Approval, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
15. Import and Export licenses:	
Licenses issued pursuant to 10 CFR part 110 of this chapter for the import and export only of special nuclear material, source material, tritium and other byproduct material, heavy water, or nuclear grade graphite.	
A. Application for export or import of high enriched uranium and other materials, including radioactive waste, which must be reviewed by the Commissioners and the Executive Branch, for example, those actions under 10 CFR 110.40(b). This category includes application for export or import of radioactive wastes in multiple forms from multiple generators or brokers in the exporting country and/or going to multiple treatment, storage or disposal facilities in one or more receiving countries.	
Application—new license	$8,100.
Amendment	$8,100.
B. Application for export or import of special nuclear material, source material, tritium and other byproduct material, heavy water, or nuclear grade graphite, including radioactive waste, requiring Executive Branch review but not Commissioner review. This category includes application for the export or import of radioactive waste involving a single form of waste from a single class of generator in the exporting country to a single treatment, storage and/or disposal facility in the receiving country.	
Application—new license	$5,000.
Amendment	$5,000.
C. Application for export of routine reloads of low enriched uranium reactor fuel and exports of source material requiring only foreign government assurances under the Atomic Energy Act.	
Application—new license	$2,900.
Amendment	$2,900.
D. Application for export or import of other materials, including radioactive waste, not requiring Commissioner review, Executive Branch review, or foreign government assurances under the Atomic Energy Act. This category includes application for export or import of radioactive waste where the NRC has previously authorized the export or import of the same form of waste to or from the same or similar parties, requiring only confirmation from the receiving facility and licensing authorities that the shipments may proceed according to previously agreed understandings and procedures.	
Application—new license	$1,300.
Amendment	$1,300.
E. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require in-depth analysis, review, or consultations with other agencies or foreign governments.	
Amendment	$190.
16. Reciprocity:	
Agreement State licensees who conduct activities under the reciprocity provisions of 10 CFR 150.20	
Application (initial filing of Form 241)	$1,100.
Revisions	$200.

[1] *Types of fees*—Separate charges, as shown in the schedule, will be assessed for preapplication consultations and reviews and applications for new licenses and approvals, issuance of new licenses and approvals, amendments and certain renewals to existing licenses and approvals, safety evaluations of sealed sources and devices, and certain inspections. The following guidelines apply to these charges:

(a) *Application fees.* Applications for new materials licenses and approvals; applications to reinstate expired, terminated or inactive licenses and approvals except those subject to fees assessed at full costs, and applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20, must be accompanied by the prescribed application fee for each category, except that:

(1) Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category; and

(2) Applications for licenses under Category 1E must be accompanied by the prescribed application fee of $125,000.

(b) *License/approval/review fees.* Fees for applications for new licenses and approvals and for preapplication consultations and reviews subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12 (b), (e), and (f).

(c) *Renewal/reapproval fees.* Applications subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(d).

(d) *Amendment/Revision Fees.*

(1) Applications for amendments to licenses and approvals and revisions to reciprocity initial applications, except those subject to fees assessed at full costs, must be accompanied by the prescribed amendment/revision fee for each license/revision affected. An application for an amendment to a license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories in which case the amendment fee for the highest fee category would apply. For those licenses and approvals subject to full costs (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14), amendment fees are due upon notification by the Commission in accordance with § 170.12(c).

(2) An application for amendment to a materials license or approval that would place the license or approval in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for the new category.

(3) An application for amendment to a license or approval that would reduce the scope of a licensee's program to a lower fee category must be accompanied by the prescribed amendment fee for the lower fee category.

(4) Applications to terminate licenses authorizing small materials programs, when no dismantling or decontamination procedure is required, are not subject to fees.

(e) *Inspection fees.* Inspections resulting from investigations conducted by the Office of Investigations and nonroutine inspections that result from third-party allegations are not subject to fees. The fees assessed at full cost will be determined based on the professional staff time required to conduct the inspection multiplied by the rate established under § 170.20 plus any applicable contractual support services costs incurred. Inspection fees are due upon notification by the Commission in accordance with § 170.12(g).

[2] Fees will not be charged for orders issued by the Commission pursuant to 10 CFR 2.202 or for amendments resulting specifically from the requirements of these types of Commission orders. However, fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections now or hereafter in effect) regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9A through 9D.

[3] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For those applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect at the time the service was provided. For applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20. The minimum total review cost is twice the hourly rate shown in § 170.20.

[4] Licensees paying fees under Categories 1A, 1B, and 1E are not subject to fees under Categories 1C and 1D for sealed sources authorized in the same license except in those instances in which an application deals only with the sealed sources authorized by the license. Applicants for new licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application fee for fee Category 1C only.

[5] Fees will not be assessed for requests/reports submitted to the NRC:

(a) In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter, or does not involve an unreviewed safety issue;

(b) In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety or environmental issue, or to assist NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

(c) As a means of exchanging information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts.

PART 171—ANNUAL FEES FOR REACTOR OPERATING LICENSES, AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

6. The authority citation for part 171 continues to read as follows:

Authority: Sec. 7601, Pub. L. 99–272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100–203, 101 Stat. 1330, as amended by Sec. 3201, Pub. L. 101–239, 103 Stat. 2106 as amended by sec. 6101, Pub. L. 101–508, 104 Stat. 1388, (42 U.S.C. 2213); sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201(w)); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 2903, Pub. L. 102–486, 106 Stat. 3125, (42 U.S.C. 2214 note).

7. Section 171.13 is revised to read as follows.

§ 171.13 Notice.

The annual fees applicable to an operating reactor and to a materials licensee, including a Government agency licensed by the NRC, subject to this part and calculated in accordance with §§ 171.15 and 171.16, will be published as a notice in the **Federal Register** as soon as is practicable but no later than the third quarter of FY 1997 and 1998. The annual fees will become due and payable to the NRC in accordance with § 171.19 except as provided in § 171.17. Quarterly payments of the annual fees of $100,000 or more will continue during the fiscal year and be based on the applicable annual fees as shown in §§ 171.15 and 171.16 of the regulations until a notice concerning the revised amount of the fees for the fiscal year is published by the NRC. If the NRC is unable to publish a final fee rule that becomes effective during the current fiscal year, then fees would be assessed based on the rates in effect for the previous fiscal year.

8. In § 171.15, paragraphs (a), (b), (c) introductory text, (c)(1), (c)(2), (e), and (f) are revised to read as follows:

§ 171.15 Annual fees: Reactor operating licenses.

(a) Each person licensed to operate a power, test, or research reactor shall pay the annual fee for each unit for which the person holds an operating license at any time during the Federal FY in which the fee is due, except for those test and research reactors exempted in § 171.11 (a)(1) and (a)(2).

(b) The FY 1997 uniform annual fee for each operating power reactor which must be collected by September 30, 1997, is $2,972,000. This fee has been determined by adjusting the FY 1996 annual fee upward by 8.2 percent. In the FY 1995 final rule, the NRC stated it would stabilize annual fees by adjusting the annual fees only by the percentage change (plus or minus) in NRC's total budget authority and adjustments based on changes in 10 CFR part 170 fees as well as on the number of licensees paying the fees. The first adjustment to the annual fees using this method occurred in FY 1996 when all annual fees were decreased 6.5 percent below the FY 1995 annual fees. The FY 1995 annual fee was comprised of a base annual fee and an additional charge (surcharge). The activities comprising the base FY 1995 annual fee are as follows:

(1) Power reactor safety and safeguards regulation except licensing and inspection activities recovered under 10 CFR part 170 of this chapter.

(2) Research activities directly related to the regulation of power reactors.

(3) Generic activities required largely for NRC to regulate power reactors, e.g., updating part 50 of this chapter, or operating the Incident Response Center.

(c) The activities comprising the FY 1995 surcharge are as follows:

(1) Activities not attributable to an existing NRC licensee or class of licensees; e.g., reviews submitted by other government agencies (e.g., DOE) that do not result in a license or are not associated with a license; international cooperative safety program and international safeguards activities; low-level waste disposal generic activities; uranium enrichment generic activities; and

(2) Activities not currently assessed under 10 CFR Part 170 licensing and inspection fees based on existing Commission policy, e.g., reviews and inspections conducted of nonprofit educational institutions, and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act.

* * * * *

(e) The FY 1997 annual fees for licensees authorized to operate a nonpower (test and research) reactor licensed under part 50 of this chapter,

except for those reactors exempted from fees under § 171.11(a), are as follows:

Research reactor	$57,200
Test reactor	$57,200

(f) For FY 1997 and FY 1998, annual fees for operating reactors will be calculated and assessed in accordance with § 171.13.

9. In § 171.16, the introductory text of paragraph (c) and paragraphs (c)(1), (c)(4), (d), and (e) are revised to read as follows:

§ 171.16 Annual Fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals and Government agencies licensed by the NRC.

* * * * *

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification, the licensee may pay reduced annual fees for FY 1997 as follows:

Small businesses not engaged in manufacturing and small not-for-profit organizations (gross annual receipts)	Maximum annual fee per licensed category
$350,000 to $5 million	$1,800
Less than $350,000	400
Manufacturing entities that have an average of 500 employees or less:	
35 to 500 employees	1,800
Less than 35 employees	400
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population):	
20,000 to 50,000	1,800
Less than 20,000	400
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Less:	
35 to 500 employees	1,800
Less than 35 employees	400

(1) A licensee qualifies as a small entity if it meets the size standards established by the NRC (See 10 CFR 2.810).

* * * * *

(4) For FY 1997, the maximum annual fee a small entity is required to pay is $1,800 for each category applicable to the license(s).

(d) The FY 1997 annual fees for materials licensees and holders of certificates, registrations or approvals subject to fees under this section are shown below. The FY 1997 annual fees, which must be collected by September 30, 1997, have been determined by adjusting upward the FY 1996 annual fees by 8.2 percent. In the FY 1995 final rule, the NRC stated it would stabilize annual fees by adjusting the annual fees only by the percentage change (plus or minus) in NRC's total budget authority and adjustments based on changes in 10 CFR part 170 fees as well as on the number of licensees paying the fees. The first adjustment to the annual fees using this method occurred in FY 1996 when all annual fees were decreased 6.5 percent below the FY 1995 annual fees. The FY 1995 annual fee was comprised of a base annual fee and an additional charge (surcharge). The activities comprising the FY 1995 surcharge are shown for convenience in paragraph (e) of this section.

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC

[See footnotes at end of table]

Category of materials licenses	Annual fees [1 2 3]
1. Special nuclear material:	
A. (1) Licenses for possession and use of U–235 or plutonium for fuel fabrication activities.	
(a) Strategic Special Nuclear Material:	
Babcock & Wilcox SNM–42	$2,600,000
Nuclear Fuel Services SNM–124	2,600,000
(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel:	
Combustion Engineering (Hematite) SNM–33	1,276,000
General Electric Company SNM–1097	1,276,000
Siemens Nuclear Power SNM–1227	1,276,000
Westinghouse Electric Company SNM–1107	1,276,000
(2) All other special nuclear materials licenses not included in Category 1.A.(1) which are licensed for fuel cycle activities	
(a) Facilities with limited operations:	
B&W Fuel Company SNM–1168	508,000
(b) All Others:	
General Electric SNM–960	345,000
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI)	282,000
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers	1,300
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1.A.(2)	3,000
E. Licenses or certificates for the operation of a uranium enrichment facility	2,600,000
2. Source material:	
A. (1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride	647,000
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.	
Class I facilities [4]	61,600
Class II facilities [4]	34,800
Other facilities [4]	22,300
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2.A.(2) or Category 2.A.(4)	45,200

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees [1 2 3]
(4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(2)	8,000
B. Licenses which authorize only the possession, use and/or installation of source material for shielding	490
C. All other source material licenses	8,700
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution	16,600
B. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution	5,600
C. Licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized pursuant to part 40 of this chapter when included on the same license. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 171.11(a)(1). These licenses are covered by fee Category 3D	11,200
D. Licenses and approvals issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material. This category includes licenses issued pursuant to §§ 32.72, 32.73 and 32.74 to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 171.11(a)(1). This category also includes the possession and use of source material for shielding authorized pursuant to part 40 of this chapter when included on the same license	4,400
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units)	3,200
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	3,800
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	19,600
H. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter	5,000
I. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter	8,900
J. Licenses issued pursuant to subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter	3,800
K. Licenses issued pursuant to subpart B of part 31 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter	3,200
L. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution	12,300
M. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for research and development that do not authorize commercial distribution	5,500
N. Licenses that authorize services for other licensees, except:	
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and	
(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C	6,100
O. Licenses for possession and use of byproduct material issued pursuant to part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized pursuant to part 40 of this chapter when authorized on the same license	14,000
P. All other specific byproduct material licenses, except those in Categories 4A through 9D	1,700
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material	[5] 102,000
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	14,400

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees[1][2][3]
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	7,700
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies	8,200
B. Licenses for possession and use of byproduct material for field flooding tracer studies	13,200
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material	14,700
7. Medical licenses:	
A. Licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license	10,300
B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license[9]	23,500
C. Other licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license[9]	4,700
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities	1,800
9. Device, product, or sealed source safety evaluation:	
A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution	7,200
B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices	3,700
C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution	1,600
D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel	780
10. Transportation of radioactive material:	
A. Certificates of Compliance or other package approvals issued for design of casks, packages, and shipping containers.	
Spent Fuel, High-Level Waste, and plutonium air packages	[6] N/A
Other Casks	[6] N/A
B. Approvals issued of 10 CFR part 71 quality assurance programs	
Users and Fabricators	78,700
Users	1,000
11. Standardized spent fuel facilities	[6] N/A
12. Special Projects	[6] N/A
13. A. Spent fuel storage cask Certificate of Compliance	[6] N/A
B. General licenses for storage of spent fuel under 10 CFR 72.210	282,000
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities pursuant to 10 CFR parts 30, 40, 70, and 72	[7] N/A
15. Import and Export licenses	[8] N/A
16. Reciprocity	[8] N/A
17. Master materials licenses of broad scope issued to Government agencies	420,000
18. Department of Energy:	
A. Certificates of Compliance	[10]1,166,000
B. Uranium Mill Tailing Radiation Control Act (UMTRCA) activities	1,961,000

[1] Annual fees will be assessed based on whether a licensee held a valid license with the NRC authorizing possession and use of radioactive material during the fiscal year. However, the annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses prior to October 1, 1996, and permanently ceased licensed activities entirely by September 30, 1996. Annual fees for licensees who filed for termination of a license, downgrade of a license, or for a POL during the fiscal year and for new licenses issued during the fiscal year will be prorated in accordance with the provisions of § 171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1.A.(1). are not subject to the annual fees of Category 1.C and 1.D for sealed sources authorized in the license.

[2] Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of parts 30, 40, 70, 71, or 72 of this chapter.

[3] For FY 1998, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 and will be published in the **Federal Register** for notice and comment.

[4] A Class I license includes mill licenses issued for the extraction of uranium from uranium ore. A Class II license includes solution mining licenses (in-situ and heap leach) issued for the extraction of uranium from uranium ores including research and development licenses. An "other" license includes licenses for extraction of metals, heavy metals, and rare earths.

[5] Two licenses have been issued by NRC for land disposal of special nuclear material. Once NRC issues a LLW disposal license for byproduct and source material, the Commission will consider establishing an annual fee for this type of license.

[6] Standardized spent fuel facilities, parts 71 and 72 Certificates of Compliance, and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to the users of the designs, certificates, and topical reports.

[7] Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are licensed to operate.

[8] No annual fee is charged because it is not practical to administer due to the relatively short life or temporary nature of the license.

[9] Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions who also hold nuclear medicine licenses under Categories 7B or 7C.

[10] This includes Certificates of Compliance issued to DOE that are not under the Nuclear Waste Fund.

(e) The activities comprising the FY 1995 surcharge are as follows:

(1) LLW disposal generic activities;

(2) Activities not attributable to an existing NRC licensee or classes of licensees; e.g., international cooperative safety program and international safeguards activities; support for the Agreement State program; site decommissioning management plan (SDMP) activities and

(3) Activities not currently assessed under 10 CFR part 170 licensing and inspection fees based on existing law or Commission policy, e.g., reviews and inspections conducted of nonprofit educational institutions and Federal agencies; activities related to decommissioning and reclamation and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act.

* * * * *

10. In § 171.17, introductory text, paragraphs (a), (b) introductory text, and (b)(1) are revised to read as follows:

§ 171.17 Proration.

Annual fees will be prorated for NRC licensees as follows:

(a) *Reactors.* The annual fee for reactors (power and nonpower) that are subject to fees under this part and are granted a license to operate on or after October 1 of a Fiscal Year is prorated on the basis of the number of days remaining in the fiscal year. Thereafter, the full fee is due and payable each subsequent fiscal year. Licensees who have requested amendment to withdraw operating authority permanently during the fiscal year will be prorated based on the number of days during the fiscal year the license was in effect before docketing of the certifications for permanent cessation of operations and permanent removal of fuel from the reactor vessel or when a final legally effective order to permanently cease operations has come into effect.

(b) *Materials licenses (including fuel cycle licenses).* (1) *New licenses and terminations.* The annual fee for a materials license that is subject to fees under this part and issued on or after October 1 of the FY is prorated on the basis of when the NRC issues the new license. New licenses issued during the period October 1 through March 31 of the FY will be assessed one-half the annual fee for that FY. New licenses issued on or after April 1 of the FY will not be assessed an annual fee for that FY. Thereafter, the full fee is due and payable each subsequent FY. The annual fee will be prorated for licenses for which a termination request or a request for a POL has been received on or after October 1 of a FY on the basis of when the application for termination or POL is received by the NRC provided the licensee permanently ceased licensed activities during the specified period. Licenses for which applications for termination or POL are filed during the period October 1 through March 31 of the FY are assessed one-half the annual fee for the applicable category(ies) for that FY. Licenses for which applications for termination or POL are filed on or after April 1 of the FY are assessed the full annual fee for that FY. Materials licenses transferred to a new Agreement State during the FY are considered terminated by the NRC, for annual fee purposes, on the date that the Agreement with the State becomes effective; therefore, the same proration provisions will apply as if the licenses were terminated.

* * * * *

11. In § 171.19, paragraphs (b), (c), and (d) are revised to read as follows:

§ 171.19 Payment.

* * * * *

(b) For FYs 1997 and FY 1998, the Commission will adjust the fourth quarterly bill for operating power reactors and certain materials licensees to recover the full amount of the revised annual fee. If the amounts collected in the first three quarters exceed the amount of the revised annual fee, the overpayment will be refunded. All other licensees, or holders of a certificate, registration, or approval of a QA program will be sent a bill for the full amount of the annual fee on the anniversary date of the license. Payment is due on the invoice date and interest accrues from the date of the invoice. However, interest will be waived if payment is received within 30 days from the invoice date.

(c) For FYs 1997 and 1998, annual fees in the amount of $100,000 or more and described in the **Federal Register** notice pursuant to § 171.13 must be paid in quarterly installments of 25 percent as billed by the NRC. The quarters begin on October 1, January 1, April 1, and July 1 of each fiscal year.

(d) For FYs 1997 and 1998, annual fees of less than $100,000 must be paid as billed by the NRC. As established in FY 1996, materials license annual fees that are less than $100,000 are billed on the anniversary of the license. The materials licensees that are billed on the anniversary date of the license are those covered by fee categories 1.C. and 1.D.; 2.A.(2) through 2.C.; 3.A. through 3.P.; 4.B. through 9.D.; and 10.B. For annual fee purposes, the anniversary date of the license is considered to be the first day of the month in which the original license was issued by the NRC. Beginning June 11, 1996, the effective date of the FY 1996 final rule, licensees that are billed on the license anniversary date will be assessed the annual fee in effect on the anniversary date of the license. Materials licenses subject to the annual fee that are terminated during the fiscal year but prior to the anniversary month of the license will be billed upon termination for the fee in effect at the time of the billing. New materials licenses subject to the annual fee will be billed in the month the license is issued or in the next available monthly billing for the fee in effect on the anniversary date of the license. Thereafter, annual fees for new licenses will be assessed in the anniversary month of the license.

Dated at Rockville, Maryland, this 19th day of February, 1997.

For the Nuclear Regulatory Commission.

Ronald M. Scroggins,

Acting Chief Financial Officer.

Appendix A to This Proposed Rule—Regulatory Flexibility Analysis for the Amendments to 10 CFR Part 170 (License Fees) and 10 CFR Part 171 (Annual Fees)

I. Background

The Regulatory Flexibility Act of 1980, as amended, (5 U.S.C. 601 *et seq.*) establishes as a principle of regulatory practice that agencies endeavor to fit regulatory and informational requirements, consistent with

applicable statutes, to a scale commensurate with the businesses, organizations, and government jurisdictions to which they apply. To achieve this principle, the Act requires that agencies consider the impact of their actions on small entities. If the agency cannot certify that a rule will not significantly impact a substantial number of small entities, then a regulatory flexibility analysis is required to examine the impacts on small entities and the alternatives to minimize these impacts.

To assist in considering these impacts under the Regulatory Flexibility Act (RFA), first the NRC adopted size standards for determining which NRC licensees qualify as small entities (50 FR 50241; December 9, 1985). These size standards were clarified November 6, 1991 (56 FR 56672). On April 7, 1994 (59 FR 16513), the Small Business Administration (SBA) issued a final rule changing its size standards. The SBA adjusted its receipts-based size standards levels to mitigate the effects of inflation from 1984 to 1994. On November 30, 1994 (59 FR 61293), the NRC published a proposed rule to amend its size standards. After evaluating the two comments received, a final rule that would revise the NRC's size standards as proposed was developed and approved by the SBA on March 24, 1995. The NRC published the final rule revising its size standards on April 11, 1995 (60 FR 18344). The revised standards became effective May 11, 1995. The revised standards adjusted the NRC receipts-based size standards from $3.5 million to $5 million to accommodate inflation and to conform to the SBA final rule. The NRC also eliminated the separate $1 million size standard for private practice physicians and applied a receipts-based size standard of $5 million to this class of licensees. This mirrored the revised SBA standard of $5 million for medical practitioners. The NRC also established a size standard of 500 or fewer employees for business concerns that are manufacturing entities. This standard is the most commonly used SBA employee standard and is the standard applicable to the types of manufacturing industries that hold an NRC license.

The NRC used the revised standards in the final FY 1995 and FY 1996 fee rules and proposes to continue their use in this FY 1997 proposed rule. The small entity fee categories in § 171.16(c) of this proposed rule reflect the changes in the NRC's size standards adopted in FY 1995. A new maximum small entity fee for manufacturing industries with 35 to 500 employees was established at $1,800 and a lower-tier small entity fee of $400 was established for those manufacturing industries with less than 35 employees. The lower-tier receipts-based threshold of $250,000 was raised to $350,000 to reflect approximately the same percentage adjustment as that made by the SBA when they adjusted the receipts-based standard from $3.5 million to $5 million. The NRC believes that continuing these actions for FY 1997 will reduce the impact of annual fees on small businesses. The NRC size standards are codified at 10 CFR 2.810.

Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), requires that the NRC recover approximately 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund, for Fiscal Years (FY) 1991 through 1995 by assessing license and annual fees. OBRA–90 was amended in 1993 to extend the 100 percent recovery requirement for NRC through 1998. For FY 1991, the amount for collection was approximately $445.3 million; for FY 1992, approximately $492.5 million; for FY 1993 about $518.9 million; for FY 1994 about $513 million; for FY 1995 about $503.6 million; for FY 1996 about $462.3 million and the amount to be collected in FY 1997 is approximately $462.3 million.

To comply with OBRA–90, the Commission amended its fee regulations in 10 CFR parts 170 and 171 in FY 1991 (56 FR 31472; July 10, 1991) in FY 1992, (57 FR 32691; July 23, 1992) in FY 1993 (58 FR 38666; July 20, 1993) in FY 1994 (59 FR 36895; July 20, 1994) in FY 1995 (60 FR 32218; June 20, 1995) and in FY 1996 (61 FR 16203) based on a careful evaluation of over 1,000 comments. These final rules established the methodology used by NRC in identifying and determining the fees assessed and collected in FYs 1991–1996.

The NRC indicated in the FY 1995 final rule that it would attempt to stabilize annual fees as follows. Beginning in FY 1996, it would adjust the annual fees only by the percentage change (plus or minus) in NRC's total budget authority unless there was a substantial change in the total NRC budget authority or the magnitude of the budget allocated to a specific class of licensees, in which case the annual fee base would be recalculated (60 FR 32225; June 20, 1995). The NRC also indicated that the percentage change would be adjusted based on changes in the 10 CFR part 170 fees and other adjustments as well as an adjustment for the number of licensees paying the fees. As a result, the NRC is proposing to establish the FY 1997 annual fees for all licensees at 8.2 percent above the FY 1996 annual fees. Because the total amount to be recovered through fees in FY 1997 is identical to the amount estimated for recovery in FY 1996, the NRC believes that establishing new baseline fees for FY 1997 is not warranted.

Public Law 104–121, the Contract with America Advancement Act of 1996 was signed into law on March 29, 1996. Title III of the law is entitled the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The SBREFA has two purposes. The first is to reduce regulatory burdens imposed by Federal agencies on small businesses, nonprofit organizations and governmental jurisdictions. The second is to provide the Congress with the opportunity to review agency rules before they go into effect. Under this legislation, the NRC fee rule, published annually, is considered a "major" rule and therefore must be reviewed by Congress and the Comptroller General before the rule becomes effective. Section 312 of the Act provides that for each rule for which an agency prepared a final regulatory flexibility analysis, the agency shall prepare a guide to assist small entities in complying with the rule. A regulatory flexibility analysis is prepared for the proposed and final NRC fee rules as implemented by 10 CFR part 170 and 171 of the Commission's regulations. Therefore, in compliance with the law, Attachment 1 to this Regulatory Flexibility Analysis is the small entity compliance guide for FY 1997.

II. Impact on Small Entities

The comments received on the proposed FY 1991–1996 fee rule revisions and the small entity certifications received in response to the final FY 1991–1996 fee rules indicate that NRC licensees qualifying as small entities under the NRC's size standards are primarily those licensed under the NRC's materials program. Therefore, this analysis will focus on the economic impact of the annual fees on materials licensees.

The Commission's fee regulations result in substantial fees being charged to those individuals, organizations, and companies that are licensed under the NRC materials program. Of these materials licensees, about 20 percent (approximately 1,400 licensees) have requested small entity certification in the past. In FY 1993, the NRC conducted a survey of its materials licensees. The results of this survey indicated that about 25 percent of these licensees could qualify as small entities under the current NRC size standards.

The commenters on the FY 1991–1994 proposed fee rules indicated the following results if the proposed annual fees were not modified:

—Large firms would gain an unfair competitive advantage over small entities. One commenter noted that a small well-logging company (a "Mom and Pop" type of operation) would find it difficult to absorb the annual fee, while a large corporation would find it easier. Another commenter noted that the fee increase could be more easily absorbed by a high-volume nuclear medicine clinic. A gauge licensee noted that, in the very competitive soils testing market, the annual fees would put it at an extreme disadvantage with its much larger competitors because the proposed fees would be the same for a two-person licensee as for a large firm with thousands of employees.
—Some firms would be forced to cancel their licenses. One commenter, with receipts of less than $500,000 per year, stated that the proposed rule would, in effect, force it to relinquish its soil density gauge and license, thereby reducing its ability to do its work effectively. Another commenter noted that the rule would force the company and many other small businesses to get rid of the materials license altogether. Commenters stated that the proposed rule would result in about 10 percent of the well-logging licensees terminating their licenses immediately and approximately 25 percent terminating their licenses before the next annual assessment.
—Some companies would go out of business. One commenter noted that the proposal would put it, and several other small companies, out of business or, at the very least, make it hard to survive.
—Some companies would have budget problems. Many medical licensees commented that, in these times of slashed reimbursements, the proposed increase of the existing fees and the introduction of additional fees would significantly affect their budgets. Another noted that, in view of the cuts by Medicare and other third party carriers, the fees would produce a hardship and some facilities would experience a great deal of difficulty in meeting this additional burden.

Over the past five years, approximately 2,900 license, approval, and registration terminations have been requested. Although some of these terminations were requested because the license was no longer needed or licenses or registrations could be combined, indications are that other termination requests were due to the economic impact of the fees.

The NRC continues to receive written and oral comments from small materials licensees. These commenters previously indicated that the $3.5 million threshold for small entities was not representative of small businesses with gross receipts in the thousands of dollars. These commenters believe that the $1,800 maximum annual fee represents a relatively high percentage of gross annual receipts for these "Mom and Pop" type businesses. Therefore, even the reduced annual fee could have a significant impact on the ability of these types of businesses to continue to operate.

To alleviate the continuing significant impact of the annual fees on a substantial number of small entities, the NRC considered alternatives, in accordance with the RFA. These alternatives were evaluated in the FY 1991 rule (56 FR 31472; July 10, 1991) in the FY 1992 rule (57 FR 32691; July 23, 1992), in the FY 1993 rule (58 FR 38666; July 20, 1993); in the FY 1994 rule (59 FR 36895; July 20, 1994); in the FY 1995 rule (60 FR 32218; June 20, 1995) and in the FY 1996 rule (61 FR 16203; April 12, 1996). The alternatives considered by the NRC can be summarized as follows.

—Base fees on some measure of the amount of radioactivity possessed by the licensee (e.g., number of sources).
—Base fees on the frequency of use of the licensed radioactive material (e.g., volume of patients).
—Base fees on the NRC size standards for small entities.

The NRC has reexamined the FY 1991–1996 evaluations of these alternatives. Based on that reexamination, the NRC continues to believe that establishment of a maximum fee for small entities is the most appropriate option to reduce the impact on small entities.

The NRC established, and is proposing to continue for FY 1997, a maximum annual fee for small entities. The RFA and its implementing guidance do not provide specific guidelines on what constitutes a significant economic impact on a small entity. Therefore, the NRC has no benchmark to assist it in determining the amount or the percent of gross receipts that should be charged to a small entity. For FY 1997, the NRC will rely on the analysis previously completed that established a maximum annual fee for a small entity and the amount of costs that must be recovered from other NRC licensees as a result of establishing the maximum annual fees.

The NRC continues to believe that the 10 CFR part 170 license fees (application and amendment), or any adjustments to these licensing fees during the past year, do not have a significant impact on small entities. In issuing this proposed rule for FY 1997, the NRC concludes that the 10 CFR part 170 materials license fees do not have a significant impact on a substantial number of small entities and that the 10 CFR part 171 maximum annual small entity fee of $1,800 be continued.

By maintaining the maximum annual fee for small entities at $1,800, the annual fee for many small entities is reduced while at the same time materials licensees, including small entities, pay for most of the FY 1997 costs attributable to them. The costs not recovered from small entities are allocated to other materials licensees and to operating power reactors. However, the amount that must be recovered from other licensees as a result of maintaining the maximum annual fee is not expected to increase significantly. Therefore, the NRC is continuing, for FY 1997, the maximum annual fee (base annual fee plus surcharge) for certain small entities at $1,800 for each fee category covered by each license issued to a small entity.

While reducing the impact on many small entities, the Commission agrees that the maximum annual fee of $1,800 for small entities, when added to the part 170 license fees, may continue to have a significant impact on materials licensees with annual gross receipts in the thousands of dollars. Therefore, as in FY 1992–1996, the NRC is proposing to continue the lower-tier small entity annual fee of $400 for small entities with relatively low gross annual receipts. The lower-tier small entity fee of $400 also applies to manufacturing concerns, and educational institutions not State or publicly supported, with less than 35 employees. This lower-tier small entity fee was first established in the final rule published in the **Federal Register** on April 17, 1992 (57 FR 13625) and now includes manufacturing companies with a relatively small number of employees.

III. Summary

The NRC has determined the 10 CFR part 171 annual fees significantly impacts a substantial number of small entities. A maximum fee for small entities strikes a balance between the requirement to collect 100 percent of the NRC budget and the requirement to consider means of reducing the impact of the fee on small entities. On the basis of its regulatory flexibility analyses, the NRC concludes that a maximum annual fee of $1,800 for small entities and a lower-tier small entity annual fee of $400 for small businesses and not-for-profit organizations with gross annual receipts of less than $350,000, small governmental jurisdictions with a population of less than 20,000, small manufacturing entities that have less than 35 employees and educational institutions that are not State or publicly supported and have less than 35 employees reduces the impact on small entities. At the same time, these reduced annual fees are consistent with the objectives of OBRA–90. Thus, the proposed fees for small entities maintain a balance between the objectives of OBRA–90 and the RFA. Therefore, the analysis and conclusions established in the FY 1991–1996 rules remain valid for this proposed rule for FY 1997. In compliance with Public Law 104–121, a small entity compliance guide has been prepared by NRC and is shown as Attachment 1 to this Regulatory Flexibility Analysis.

Attachment 1 to Appendix A

U.S. Nuclear Regulatory Commission, Small Entity Compliance Guide, Fiscal Year 1997

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NRC Definition of Small Entity
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Introduction

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires all Federal agencies to prepare a written guide for each "major" final action as defined by the Act. The NRC's fee rule published annually to comply with the Omnibus Budget Reconciliation Act of 1990 (OBRA–90) which requires the NRC to collect approximately 100 percent of its budget authority each year through fees meets the thresholds for being considered "major" under the SBREFA. Therefore, in compliance with the law, this small entity compliance guide has been prepared for FY 1997. The purpose of this guide is to assist small entities in complying with the NRC fee rule.

This guide is designed to aid NRC materials licensees. The information provided in this guide may be used by licensees to determine whether they qualify as a small entity under NRC regulations and are therefore eligible to pay reduced FY 1997 annual fees assessed under 10 CFR part 171. Licensees who meet NRC's size standards for a small entity must complete NRC Form 526 in order to qualify for the reduced annual fee. NRC Form 526 will accompany each annual fee invoice mailed to materials licensees. The completed form, along with the appropriate small entity fee payment copy of the invoice, should be mailed to the U.S. Nuclear Regulatory Commission, License Fee and Accounts Receivable Branch, PO Box 954514, St. Louis, MO 63195–4514.

The NRC, in compliance with the Regulatory Flexibility Act of 1980 (RFA), has established separate annual fees for those materials licensees who meet the NRC's size standards for small entities. These size standards, developed in consultation with the Small Business Administration, were revised by the NRC effective May 11, 1995. The small entity size standards are found in 10 CFR 2.810 of the NRC's regulations. To comply with the RFA, the NRC has established two tiers of small entity fees. These fees are found in 10 CFR 171.16(c) of the fee regulations.

NRC Definition of Small Entity

The NRC has defined small entity in consultation with the Small Business Administration. The definition is codified in NRC's regulations at 10 CFR 2.810. Under the NRC regulation, small entities are:

1. Small business—a for-profit concern that provides a service or a concern not engaged in manufacturing with average gross receipts of $5 million or less over its last 3 completed fiscal years;

2. Manufacturing industry—a manufacturing concern with an average number of 500 or fewer employees based upon employment during each pay period for the preceding 12 calendar months;

3. Small organization—a not-for-profit organization which is independently owned and operated and has annual gross receipts of $5 million or less;

4. Small governmental jurisdiction—a government of a city, county, town, township, village, school district or special district with a population of less than 50,000;

5. Small educational institution—an educational institution supported by a qualifying small governmental jurisdiction, or one that is not state or publicly supported and has 500 or fewer employees.[1]

NRC Small Entity Fees

The NRC has established two tiers of small entity fees for licensees that qualify under the NRC's size standards. Currently, these fees are as follows:

	Maximum annual fee per licensed category
Small Business Not Engaged in Manufacturing and Small Not-For Profit Organizations (Gross Annual Receipts):	
$350,000 to $5 million	$1,800
Less than $350,000	400
Manufacturing entities that have an average of 500 employees or less:	
35 to 500 employees	1,800
Less than 35 employees	400
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population):	
20,000 to 50,000	1,800
Less than 20,000	400
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Less:	
35 to 500 employees	1,800
Less than 35 employees	400

To pay a reduced annual fee, a licensee must use NRC Form 526, enclosed with the fee bill, to certify that it meets NRC's size standards for a small entity. About 1,400 licensees certify each year that they qualify as a small entity under the NRC size standards and pay a reduced annual fee.

[1] An educational institution referred to in the size standards is an entity whose primary function is education, whose programs are accredited by a nationally recognized accrediting agency or association, who is legally authorized to provide a program of organized instruction or study, who provides an educational program for which it awards academic degrees, and whose educational programs are available to the public.

Approximately 900 licensees pay the small entity fee of $1,800 while 500 licensees pay the lower-tier small entity fee of $400.

Instructions for Completing NRC Form 526

1. File a separate NRC Form 526 for each annual fee invoice received.

2. Complete all items on NRC Form 526 as follows:

a. The license number and invoice number must be entered exactly as they appear on the annual fee invoice.

b. The Standard Industrial Classification (SIC) Code should be entered if it is known.

c. The licensee's name and address must be entered as they appear on the invoice. Name and/or address changes for billing purposes must be annotated on the invoice. Correcting the name and/or address on NRC Form 526 or on the invoice does not constitute a request to amend the license. Any request to amend a license are to be submitted to the respective licensing staffs in the NRC Regional or Headquarters Offices.

d. Check the appropriate size standard under which the licensee qualifies as a small entity. Check one box only. Note the following:

(1) The size standards apply to the licensee, not the individual authorized users listed in the license.

(2) Gross annual receipts as used in the size standards includes all revenue in whatever form received or accrued from whatever sources, not solely receipts from licensed activities.

(3) A licensee who is a subsidiary of a large entity does not qualify as a small entity.

(4) The owner of the entity, or an official empowered to act on behalf of the entity, must sign and date the small entity certification.

3. The NRC sends invoices to its licensees for the full annual fee, even though some entities qualify for reduced fees as a small entity. Licensees who qualify as a small entity and file NRC Form 526, which certifies eligibility for small entity fees may pay the reduced fee, which for a full year is either $1,800 or $400, for each fee category shown on the invoice depending on the size of the entity. Licensees granted a license during the first six months of the fiscal year and licensees who file for termination or for a possession only license and permanently cease licensed activities during the first six months of the fiscal year pay only 50 percent of the annual fee for that year. Such an invoice states the "Amount Billed Represents 50% Proration." This means the amount due from a small entity is not the prorated amount shown on the invoice but rather one-half of the maximum annual fee shown on NRC Form 526 for the size standard under which the licensee qualifies resulting in a fee of (either $900 or $200) for each fee category billed instead of the full annual fee of $1,800 or $400.

4. A new small entity form is required to be filed with the NRC each fiscal year in order to qualify for reduced fees for that fiscal year. Because a licensee's "size," or the size standards, may change from year to year, the invoice reflects the full fee and a new form must be completed and returned for the fee to be reduced to the small entity fee.

LICENSEES WILL NOT BE ISSUED A NEW INVOICE FOR THE REDUCED AMOUNT. The completed form, the payment of the appropriate small entity fee, and the "Payment Copy" of the invoice should be mailed to the U.S. Nuclear Regulatory Commission, License Fee and Accounts Receivable Branch, P.O. Box 954514, St. Louis, MO 63195–4514.

5. Questions regarding fee bills may be posed orally or in writing. Please call the licensing fee staff at 301–415–7554 or write to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Office of the Chief Financial Officer.

[FR Doc. 97–4704 Filed 2–26–97; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 94–97; Notice 2]

RIN 2127–AF40

Federal Motor Vehicle Safety Standards; Roof Crush Resistance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise the test procedures in Standard No. 216, *Roof Crush Resistance*, to make them more suitable to testing vehicles with highly sloped roofs or raised roofs. The current test procedure is intended to test the strength of the roof over the driver. It involves lowering a large test plate, inclined forward at a five degree angle, to an initial contact point near the leading edge of the roof. However, when the procedure is performed on certain rounded, aerodynamically-shaped roofs that may themselves slope at more than five degrees, small differences in test plate angle result in considerable variability in the location of the initial contact point, thus reducing the repeatability of the test results. Similarly, for vehicles with raised, irregularly shaped roofs (such as some converted vans), the initial contact point may not be above the driver, but on the raised rear portion of the roof, behind the driver.

This proposal addresses these problems by specifying the use of a smaller test plate for use on vehicles on which the use of the current larger test plate would result in an initial contact point behind the driver. The rearward edge of the smaller test plate will be

over the front occupant compartment, so the initial contact point will be in that area.

This proposal also changes the test procedure to align either test plate with the front of the roof, thus ensuring engagement of the vehicle's A-pillar.

DATES: *Comment Date:* Comments must be received by April 28, 1997.

If adopted, the proposed amendments would become effective, and compliance required, 180 days following publication of the final rule.

ADDRESSES: Comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. (Docket Room hours are 9:30 a.m.–4 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: The following persons by mail at the National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, DC 20590:

For non-legal issues:

Dr. William R. S. Fan, Office of Crashworthiness Standards, NPS–11, telephone (202) 366–4922, facsimile (202) 366–4329, electronic mail "bfan@nhtsa.dot.gov".

For legal issues:

Mr. Paul Atelsek, Office of the Chief Counsel, NCC–20, telephone (202) 366–2992, facsimile (202) 366–3820, electronic mail "patelsek@nhtsa.dot.gov".

Comments on this proposal must be sent to the docket and not to the contact persons.

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I. Background

Federal Motor Vehicle Safety Standard (FMVSS) No. 216, *Roof Crush Resistance*, is intended to assure that vehicles have sufficient structural strength in the passenger compartment roof to resist crushing during rollover crashes. The test procedure involves securing the vehicle on a rigid horizontal surface, placing a test plate on the roof, and applying 1.5 times the unloaded vehicle weight (up to a maximum of 22,240 N, or 5,000 pounds, for passenger cars) to the test plate. The vehicle passes if the roof prevents the test plate from moving downward more than 127 mm (5 inches).

The test procedure is designed to test the primary structural member supporting the roof over the front seats. That member is generally the A-pillar.

In order to test the A-pillar, the test plate, which is 762 mm (30 inches) wide by 1,829 mm (72 inches) long, is oriented in a way so that the initial contact point is at the top of the A-pillar. Its 1,829 mm dimension is parallel to the vertical plane through the longitudinal centerline of the vehicle, and tilted forward at a five degree angle. Its 762 mm dimension is tilted outward at a 25 degree angle so that its outboard side is lower than its inboard side. So oriented, the test plate is lowered until it contacts the vehicle. After the initial contact point is determined, the test plate is moved, maintaining its orientation, so that the initial contact point touches the underside of the test plate along the test plate's longitudinal centerline, 254 mm (10 inches) rearward of the centerline's forwardmost point. The test plate is then pushed downward in a direction perpendicular to its lower surface until a load of 1.5 times the unloaded vehicle weight (up to a maximum of 22,240 N, or 5,000 pounds, for a passenger car) has been applied.

Although, as noted above, the intent underlying this test procedure is to load the area at the top of the A-pillar, the combined effect of the test plate and procedures and certain roof configurations may be the testing of other areas of the roof. Neither NHTSA nor the industry envisioned these configurations when the current test procedure was promulgated. In response to the problems created by these configurations, two members of the industry have petitioned the agency to modify the test procedure.

II. Petitions

A. Recreation Vehicle Industry Association (RVIA)

RVIA, which represents small business van conversion manufacturers, is concerned that contoured or raised roof structures on certain second stage van conversions cannot be tested using the current test procedure. With only a five degree incline of the test plate, the initial contact point at the leading edge of the roof is supposed to be 254 mm (10 inches) behind the forwardmost edge of the test plate. However, for some raised roofs, the initial contact point will be several inches behind the leading edge of the roof due to the roof geometry. This results in testing the raised roof structure (which is generally relatively weak) instead of the A-pillar over the front seats. Vehicles with these problem configurations include raised roof conversions of the Plymouth Voyager, Dodge Caravan, Chrysler Town & Country, Chevrolet Astro, and GMC Safari minivans.

To address this situation, RVIA petitioned NHTSA to allow vans, motor homes and other multipurpose passenger vehicles, trucks, and buses that have raised roofs, to be tested in accordance with the test procedures in Standard No. 220, *School Bus Rollover Protection*. Standard No. 220 uses a larger test plate and distributes the same load evenly over the entire surface of the roof and all its supporting pillars, rather than concentrating the load on either side of the roof over the front seat.

In making this request, RVIA reasoned that, since the modified vehicles would have met Standard No. 216 requirements prior to modification of their roofs, the A-Pillar strength would have been demonstrated. The Standard No. 220 test procedure could then be used to test the strength of the entire modified vehicle roof. There would be no need to repeat the Standard No. 216 test.

B. Ford Petition

Ford is concerned that some Ford models with aerodynamic, rounded, roof designs result in initial contact points that are so far back on the roof that the front edge of the test plate is several inches behind the A-pillar when it is positioned as specified in the Standard. This occurs because the roofs slope longitudinally at an angle greater

than 5 degrees at their leading edge. Consequently, the roofs are loaded somewhere behind the A-pillar.

In addition, Ford states that the long sloping roofs make repeatable testing difficult. The initial contact point is highly variable and dependent on the specific roof design. The initial contact point can move several inches if the plate angle or the level of the floor on which the test vehicle is placed are off by as little as one degree. This could lead to substantial differences in test results.

Ford believes that the test procedures are contradictory. S6.2 of the standard says to "[o]rient the test device as shown in Figure 1 * * *", which shows the test plate in contact with the front corner of the roof, inclined longitudinally at an angle of 5 degrees. At the same time, S6.2(d) of the rule specifies that the initial contact point be 254 mm (10 inches) from the front edge of the test plate. Thus, there is a conflict between the specifications in S6.2(d) and Figure 1 in the regulatory text for certain vehicles with highly sloped roofs.

Ford believes NHTSA has not resolved this apparent conflict in a way that is in accordance with the initial intent underlying the standard, which is to load the front corner of the roof. NHTSA issued an October 3, 1980 letter of interpretation stating that the test plate should be positioned in accordance with the language of the regulatory text of S6.2(b), even if the leading edge of the test plate will not be forward of the A-pillar and the roof's leading edge, as depicted in the figure. Ford has followed this interpretation even though it believes that this approach does not test the actual resistance of the roof to being crushed in crashes.

Ford petitioned NHTSA to amend Standard No. 216 to specify that the leading edge of the test plate should always be one inch forward of the leading edge of the roof. To accomplish this, Ford suggested the following language to replace S6.2(d):

> The initial contact point, or center of the initial contact area, is on the longitudinal centerline of the device. A plane perpendicular to the lower surface of the test device and 25 mm rearward of the front edge of the lower surface passes through the rearmost point of the opening in the body structure for the windshield.

Ford also petitioned NHTSA to amend the test procedure to specify that all vehicles be tested with the body sills, rather than the chassis, mounted on the rigid surface, and that all roof rack components that could interfere with initial contact between the test plate and the roof be removed prior to testing.

III. Agency Request for Comments

In a request for comments published December 27, 1994, NHTSA granted the RVIA and Ford petitions, but expressed reservations about the solutions suggested by the petitioners. The details of NHTSA's reaction to the petitions can be seen in that 1994 document (59 FR 66504), and will merely be summarized here.

In response to the RVIA's petition to use the test procedures of Standard No. 220 for raised roof vehicles, NHTSA expressed concern that adopting RVIA's approach would trade off increased roof crush protection for rear seat occupants with diminished protection for front seat occupants. Because most deaths and injuries in these vehicles are to front seat occupants, and RVIA submitted no data to quantify the trade-offs in protection, NHTSA wanted to conduct research to examine them. In addition, NHTSA was concerned that the roof strength in the area of the A-pillars might be affected by raised roof conversions, thus compromising the basis for the original manufacturer's certification under Standard No. 216.

In response to Ford's petition to position the leading edge of the test plate one inch forward of the leading edge of the roof, NHTSA observed that consistent positioning of the test plate over the front of the roof would not ensure that area of the roof would be tested. This would occur because Ford's suggested language retained the 5 degree angle of tilt (a detailed explanation is given below). In addition, NHTSA was concerned that Ford's suggested positioning could reduce the stringency of the test for some vehicles.

The agency requested public comment on the changes requested in the petitions. Specifically, NHTSA requested relevant test data, and recommendations for other ways to address aerodynamically sloped and raised roofs, including changes in the orientation, size, and shape of the test plate.

IV. Comments on the Petitions

A total of 11 comments were received by the agency in response to the notice. Five passenger vehicle manufacturers (Ford, General Motors, Mercedes-Benz, Volkswagen, and Volvo), a second-stage manufacturer (S & S Coach Company), two trade associations (American Automobile Manufacturers Association (AAMA) and RVIA), a group of concerned citizens, and two safety organizations (Advocates for Highway and Auto Safety (Advocates) and MCR/LRI Inc. Liability Research Group (MCR/LRI Inc.)) submitted comments. These comments are summarized below, grouped according to the similarity of their positions on the issues.

A. Comments on the RVIA Petition and the Suitability of Standard No. 220 Test Procedures for Raised Roof Vehicles

1. Passenger Vehicle Manufacturers and AAMA

Ford did not support or oppose the RVIA recommendation, but it did comment on the appropriateness of Standard No. 216 and 220 test procedures for testing the raised roofs of conversion vans. Ford stated that Standard No. 220 may be more practicable for the low volume roof modifications addressed by RVIA. In addition, Ford expressed concern that van converters who supply vehicles for drivers and passengers with disabilities may not be able to certify compliance with Standard No. 216. According to Ford, the simplified test for school buses in Standard No. 220 may make certification more practicable for those converters.

Some commenters suggested that, rather than adopt a separate test procedure for raised roof vehicles, the agency could modify the Standard No. 216 test procedure to make it more suitable for these vehicles. Ford suggested increasing the allowable deflection to reflect the added space between the raised roof and occupants in vehicles with raised roofs. Volkswagen agreed that raised roof vehicles should be tested using Standard No. 216 rather than Standard No. 220. It also suggested three different methods for modifying the procedures to accommodate raised roof vehicles: (1) test with the raised roof removed and the test plate applied to the supporting structure, (2) exclude the measured roof crush of the raised roof from the 127 mm (5 inch) displacement, and (3) measure the 127 mm (5 inch) displacement into the passenger compartment starting from where the test plate reaches the inner roof.

2. Second Stage Manufacturers and RVIA

RVIA commented that several states require Standard No. 220-type testing to certify ambulance conversions purchased and licensed by their states. They enclosed a November 1, 1994 document from the General Services Administration (Federal Specifications for Ambulances, KKK–A–1822D) specifying this test for use by all Federal agencies when procuring ambulances.

In response to the agency's request for data to show that RVIA's suggested amendment would not reduce the stringency of the test, and that A-pillar strength is retained after the roof is cut out during a conversion, RVIA commented that they were in the midst of conducting new tests and would submit their results to the docket. The agency has not yet received any data from RVIA, but will consider these data if and when they become available.

S&S Coach Company, a final stage manufacturer of funeral coaches, submitted a petition for consideration to exclude from Standard No 216 funeral coaches having a gross vehicle weight rating (GVWR) of 2,722 kilograms (6000 pounds) or less. They stated that the current test procedure makes it impossible to test the front edge of the roof. They believe that these vehicles have very little risk of rollover because they are produced in small numbers, are primarily in urban use, and operate at slow speeds.

3. Safety Advocacy Groups

MCR/LRI Inc. stated that the petitioners should provide data to show the maximum force experienced by the roof in realistic, injury-producing rollovers in their vehicles. In addition, before any amendment is made in the current requirements of Standard No. 216, MCR/LRI Inc. said that RVIA should provide data to show that the suggested amendment does not degrade the rollover safety of their vehicles.

Advocates stated that the NHTSA should reject RVIA's request for exclusion from the test requirements of Standard No. 216. Advocates agrees with NHTSA's concerns that compliance before the roof is cut out does not necessarily mean that the original roof would still comply after modification, and that the Standard No. 220 procedures do not assure frontal compartment protection.

Advocates urged NHTSA to require raised roof vehicles to meet the Standard No. 220 requirements, in addition to those of Standard No. 216, because raised roof vehicles can carry a full complement of passengers in the front and rear compartments, necessitating protection for both areas.

B. Comments on the Ford Petition, and Test Plate Orientation and Size

1. Passenger Vehicle Manufacturers and AAMA

Ford buttressed its petition by presenting test results from three test facilities with which they contracted to test four 1994 Ford Taurus sedans using the current Standard No. 216 test procedure. The plate placement was highly variable, resulting in different roof strength measurements for each Taurus tested at the different test facilities. Data on the variability of plate placement were submitted to the docket and Ford stated that it would submit its test results after analyzing the data.

GM, Volvo, and Mercedes-Benz generally supported the amendment suggested by Ford to the Standard No. 216 procedure, while Volkswagen remained neutral. Although Ford's test procedure does not provide for the consistent placement of the plate and the same contact point, GM believed that in most cases, the test plate would contact the front portion of the roof prior to reaching 127 mm (5 inches) of crush. In addition, GM stated that Ford's suggested test plate positioning would eliminate an "edge condition," which can result in concentrated loading over a small area of the roof.

There was some disagreement among the manufacturers over whether NHTSA should consider changing test plate angles, although they all agreed that data would be needed to support such a change. GM suggested that, if NHTSA's test procedure is intended to simulate loading in rollover crashes, the agency should consider changes in the plate angles to accommodate the range of vehicle designs. GM supports a NHTSA study of the appropriateness of the current test plate angles.

Ford opposed changing the test plate size, shape, or angle. Ford stated that crash data should be used to verify that any new angles are more representative of real-world rollover crashes. Ford also stated that the current test plate size adequately represents the ground surface contact area in rollover accidents, and reducing that size would probably require strengthening of long roofs, due to the more concentrated loading.

Mercedes-Benz also opposed test plate angle changes. Assuming that NHTSA might propose higher plate angles, Mercedes-Benz stated that changing the direction of the loading might make the test more stringent, necessitating a redesign of the roof pillars to respond to the more horizontal loading.

Although it is not directly relevant to its petition, Ford also believes some methods used by test facilities to tie-down vehicles pre-stress the pillars and the roof and reduce the measured roof strength. As more data become available, Ford plans to direct the agency's attention to further changes needed in the Standard No. 216 test procedure.

AAMA also supported the Ford suggestion, but suggested a slight change in the language of Ford's suggested amendment. It thought that some persons might misinterpret Ford's phrase "opening in the body structure for the windshield" to mean the edge of the depression in the metal roof panels into which the edge of the windshield is mounted. Ford confirmed to the AAMA that it intended to refer to the edge of the metal roof panels and windshield, AAMA suggested the following language for the test procedure in Standard 216 for S6.2(d):

> The initial contact point, or center of the initial contact area, is on the longitudinal centerline of the device. A line normal to the lower surface of the test device and through a point on its longitudinal centerline and 25 mm rearward of the front edge passes through the rear edge of the visible exterior surface of the windshield.

Volkswagen neither supported nor opposed the amendment suggested by Ford, because it had experienced no difficulty with the procedures. However, it urged that any amendment of Standard No. 216 be flexible and not limited in its suitability to test different vehicle roof configurations.

Ford and the AAMA both urged adoption of the Ford suggestion in order to achieve harmonization between Standard No. 216 and Transport Canada's CMVSS No. 216.

Five consumers commented that the Ford suggestion would provide better protection for all passengers and drivers.

2. Safety Advocacy Groups

MCR/LRI Inc. stated that the petitioners should submit data to show that the force on the roof in their amendment is realistic and that there would not be a degradation in the rollover safety of new vehicles if the Ford recommendation were accepted.

MCR/LRI Inc. also stated that minor amendments to Standard No. 216 are unlikely to achieve an adequate level of roof crush protection. Their analysis of 50 rollover accident cases showed that the roof was substantially distorted in all cases. They concluded that the head and neck injuries almost certainly occurred inside the vehicle as a consequence of roof crush. MCR/LRI stated that the current Standard No. 216 test improperly takes advantage of the strength imparted by the windshield, because in virtually all rollovers, the windshield fails, resulting in a 75 percent drop in roof strength.

Instead, MCR/LRI urged NHTSA to require the Standard No. 208, *Occupant crash protection*, rollover test with specific head and neck injury criteria,

and maximum levels of roof intrusion. It suggested compliance be demonstrated by a drop test or optionally using head and neck injury criteria in a drop test.

Like MCR/LRI, Advocates thought that the modifications to the current Standard No. 216 test procedure would not be sufficient. It agreed that a modified angle and smaller test plate may result in a more stringent test, but it was not certain that any manipulation of the test plate angles would generate the desired result because of the radical slope of a number of current roof designs. Advocates also stated that there are no data to indicate what forces an A-pillar should withstand, and in which direction it should withstand them, in real-world crashes.

Advocates considered the Standard No. 216 test to be outdated and inadequate. It was concerned that the proposed modifications will be in lieu of a dynamic roof strength test that it believes the agency should adopt. In a dynamic rollover test, Advocates asserted that required roof loads should be much higher than the 1.5 times unloaded vehicle weight now used in the static test, because rollover crashes are known to involve much higher loads. Advocates was also concerned that there are no criteria governing permissible injury levels associated with the test requirements in either Standards 216 or 220.

Although it was not directly related to the petitions, Advocates opposed the exclusion of vehicles between 2,722 and 4,536 kilograms (6,000 and 10,000 pounds) GVWR from the purview of this rule. Advocates commented that this group includes small school buses, which carry many young passengers. Advocates stated that excluding these vehicles is not a responsible stance for an agency charged with protecting and enhancing public safety in passenger vehicles.

V. NHTSA Research on the Proposed Test Procedure

A. Passenger Cars

Based on the comments to the notice, the agency decided to test two passenger cars using the current Standard No. 216 test procedure, and a modified test procedure based on the Ford recommendation. Because the Ford Taurus was one of the vehicles mentioned in Ford's petition, it was chosen as one of the vehicles to be tested by the agency.

The other passenger car tested was the Dodge Neon. The Dodge Neon had the highest roof slope among approximately 30 passenger cars surveyed by the agency. NHTSA concluded that if a revised test procedure is suitable for a contoured roof such as that in the Dodge Neon, and if it is at least as stringent as the current test procedure, then that test would be suitable for all passenger vehicles that are currently being produced.

Both the left and right sides of each vehicle's roof were tested. Standard No 216 only requires testing one side of the roof per vehicle, so there is a slight possibility that the deformation caused by the first test affected the results of the second test. However, the amount of roof crush and the area contacted by the test plate were so small that NHTSA judged that the integrity of the roof structure on the other side of the vehicle was not altered by the first test. NHTSA requests comment on this judgment.

The left side was tested using the current Standard No. 216 test plate placement procedure and the right side was tested using a modified test plate positioning procedure that moved the plate forward until the plate's front edge was vertically flush with the forwardmost point of the exterior roof including trim of the windshield (Figure 1 of the proposed rule). This is a slight modification to the Ford suggested procedure in that the test plate is not positioned relative to the rearmost windshield opening, but rather to the forwardmost point of the exterior roof including trim.

Although NHTSA used a test plate placement procedure slightly different from the one Ford suggested, the agency believes that its procedure still addresses Ford's concerns relating to consistent placement of the test plate for repeatability and concentrated loading when the plate leading edge is behind the leading edge of the roof. Placement of the test plate leading edge at the forwardmost point of the roof prevents the leading edge of the plate from being placed several inches rearward of the A-pillars, where it would penetrate into the roof. Under Ford's suggested test plate placement procedure, the leading edge of the plate may penetrate the roof if a line connecting the rearmost points on either side of the windshield edge of the roof is more than 25 mm (1 inch) behind the forwardmost point on the roof, which is usually located at the longitudinal centerline of the vehicle.

The force-deflection curves generated by the current and modified test plate placement procedures for the Ford Taurus and Dodge Neon are available in the docket. For the Ford Taurus, up to approximately 10 mm (0.4 inches) of roof crush, the force does not build up when using the current Standard No. 216 test procedure. After this point, the slope of the traces (which correlates with roof stiffness) under the two procedures are about the same. Once 40 mm (1.57 inches) of crush is reached, the modified and current test procedures produce almost identical force-deflection results. Total roof deflection was about 54 mm (2.1 inches) under both the procedures, at 22,240 N (5,000 pounds) of applied plate load.

The results from the Dodge Neon roof crush tests showed almost identical force-deflection characteristics in the current and modified test procedures up to 46 mm (1.8 inches) of crush. At 46 mm (1.8 inches), the currently prescribed test procedure reached 1.5 times the unloaded vehicle weight of the tested vehicle. Under the modified test procedure, the load requirement was reached after about 54 mm (2.1 inches), indicating a 17 percent increase in the roof crush. The required load limits were reached within the specified roof deflection limits (127 mm, or 5 inches) for both vehicles, under both the current and modified test procedures.

Roof crush results from the Taurus and Neon vehicles indicate that the modified procedure could be adopted by the agency without any appreciable reduction in test stringency. NHTSA concludes that the 17 percent extra crush under the modified test procedure on the Dodge Neon is not appreciable because it represents a displacement of only 8 mm (0.3 inches), but requests comment on this assessment. The modified test procedure would alleviate the ambiguous language in current Standard No. 216, and it would position the test plate more consistently.

B. Raised Roof Converted Van Tests

To compare the stringency of the Standard Nos. 216 and 220 roof crush procedures when applied to raised roof vehicles, the agency tested a 1992 Chevy Astro Van with a raised roof in accordance with the modified Standard No. 216 test procedure, and compared the test results with the test results of an altered 1994 GMC Safari van tested in accordance with Standard No. 220 test procedures. The agency obtained the Safari Van test data from a test report produced by General Testing Laboratories, Inc., for Mark III Industries. Although the two vehicles were not identical, they are both "L/M" class vans produced by GM and the raised roofs in each were very similar in style. The roofs were cut out behind the B-pillar. This, according to a RVIA representative, is the predominant method used by alterers in converting vans to recreational vehicles. This method is preferred because the roof bows are not removed at the B-pillar, thus helping to retain the roof support over the front occupant compartment.

For purposes of the modified test, the roof over the front occupant compartment was defined as the roof area between a transverse vertical plane passing through a point 162 mm (6.4 inches) rearward of the seating reference point (SgRP) of the driver seat and a transverse vertical plane passing through the forwardmost point on the roof including trim. NHTSA requests comment on the appropriateness of this definition.

The data from the 1994 GMC Safari van showed the force and deflection of the roof at an applied load 1.5 times the unloaded vehicle weight in a Standard No. 220 type test (the test report is available in the docket). The test plate covered the entire roof and was controlled by 4 hydraulic rams, one at each corner. The initially horizontal plate was lowered until the plate contacted the roof at two points. A load was applied. When 1.5 times the unloaded vehicle weight was reached, the maximum deflection was 51 mm (2 inches) at the left front corner of the test plate. Standard No. 220 specifies a maximum deflection of 130 mm (5.12 inches).

The agency conducted its own test using a modified Standard No. 216 test procedure and recorded the force-deflection characteristics on a 1992 Chevy Astro van with a raised roof very similar to the 1994 Safari van tested using the Standard No. 220 procedure. The test report for the test conducted by NHTSA is also available in the docket. The test plate was oriented in the same manner as in passenger car tests using the modified test procedure (forward edge of the plate flush with the forwardmost exterior roof point along the longitudinal centerline of the vehicle). The test plate loaded the roof initially at the highest point on the raised roof, which was behind the B-pillar and above the original roof by about 178 mm (7 inches). Roof crush was continued for approximately 533 mm (21 inches) of crush, recording the force-deflection characteristics over that entire distance.

The force-deflection trace from the modified Standard No. 216 test (available in the docket) shows that 1.5 times the unloaded vehicle weight was reached after 51 mm (2 inches) of roof crush at the initial point of contact. After an additional 51 mm of roof crush, the roof was loaded through other contact points forward of the initial point of contact. The crushing of the roof continued until the plate contacted another point on the roof over the front occupant compartment. This trace shows the force vs. displacement curve for the entire crushing sequence of the roof. After a total crush of approximately 173 mm (6.8 inches), the plate reached the original roof structure prior to conversion, and the load at that point was 35,000 N (7,870 pounds). The force peaked at 45,000 N (10,120 pounds) when the total roof crush was about 211 mm (8.3 inches), and then force level dropped to about 42,000 N (9,450 pounds) as the roof was crushed to 285 mm (11.2 inches).

The results of the Standard No. 216 and Standard No. 220 tests were then compared to determine whether the Standard No. 220 test was as stringent as the Standard No. 216 procedure and tested the appropriate areas of the roof for proper crush strength. Both vehicles reached 1.5 times the unloaded vehicle weight at approximately 51 mm (2 inches) roof crush.

The raised roof reached a higher test load (30,700 N, or 6,900 pounds, compared to 26,700 N, or 6,000 pounds) with less crush of the roof during the Standard No. 220 type test mainly because of the difference in the area of contact between the roof and the test plate in the two test procedures. The test plate load in the Standard No. 220 test procedure was distributed over a larger roof area and thus enlisted more support pillars in developing the load. Moreover, the test did not preferentially crush the roof over the front occupant compartment.

Therefore, the Standard No. 220 test procedure appears to be slightly less stringent than the procedure in Standard No. 216. A similar raised roof developed a higher load under the Standard No. 220 procedure than under the Standard No. 216 procedure. Therefore, because the load requirements are essentially the same under the two test procedures, a roof would more easily sustain load and pass the test under the Standard No. 220 procedure. The Standard No. 220 test also does not test the integrity of the front roof structure as well as Standard No. 216, which concentrates on the roof over the front seat occupants.

VI. Agency Response to the Comments

A. Issues Related to the RVIA Petition

The agency does not consider the Standard No. 220 test easier to administer than the Standard No 216 test, as posited by Ford. Moreover, the total cost for a Standard No. 220 test is slightly higher than that for a Standard No. 216 test. Therefore, the agency disagrees with Ford's rationale for using the Standard No. 220 test procedure.

The agency has examined the applicability of the Standard No. 220 test procedure for roof crush resistance of raised roof vehicles. Standard No. 220 and 216 test results were compared to determine the applicability of a 220-type test. Results reveal that a 220-type test will be less stringent when compared to the Standard No. 216 test when the test plate is positioned to apply the load over the front occupant compartment.

Volkswagen's and Ford's suggestion for excluding the crushing of the raised roof portion from the 127 mm (5 inch) limitation in the standard was investigated by the agency, as detailed in the van tests above. NHTSA concluded that, if the plate is placed over the front occupant compartment and A-pillar, where roof integrity is most important, the proposed test criteria could be considered as stringent (in terms of providing the same level of occupant safety) as the current test criteria. Therefore, the agency tentatively agrees with Ford and Volkswagen that allowable roof crush for added-on roofs under Standard No. 216 could be increased to reflect the added space between the original roof and the raised roof.

Unfortunately, NHTSA can see no practical way to determine the pre-alteration position of the original roof. The original roof is no longer present, so no measurements can be made between it and the added-on roof. In addition, the original roof may have compound curves, making the precise determination of its former location relative to the initial contact point on the added-on roof difficult. Although NHTSA is not proposing to modify the test procedure to account for it at this time, the agency specifically request comment on possible methods for taking this increased head room into account. If the commenters suggest a suitable method, NHTSA may include such a modification in the final rule. NHTSA also requests comment on how or whether the test procedure should address the tinted glass panels, or sunroofs that some vehicles have over the front occupant compartment.

The agency disagrees with S&S Coach Company that funeral coaches should be excluded from normal Standard No. 216-type testing. The agency believes that these vehicles are driven at a normal range of speeds most of the time and could be exposed to the risk of rollover, just as other passenger vehicles on the highway. Since some of these vehicles have raised roofs, they would be subject to the amended test procedure used for raised roof vans. However, the load requirements would

be the same as for unmodified vehicles, whether passenger cars, multi-purpose passenger vehicles, trucks, or buses.

Although the agency would welcome data on roof loads experienced by vehicles in "realistic, injury-producing rollovers", which MCR/LRI suggested was necessary, NHTSA is not aware of any such data. NHTSA believes that such data would be difficult if not impossible to generate because, due to the inherent complexity of rollovers and injury causation, it is difficult to determine precisely the role of roof crush in causing head/neck injury.

B. Issues Related to the Ford Petition

Regarding Ford and the AAMA's request that NHTSA consider harmonization of the roof crush standard, NHTSA does not believe that is an appropriate step at this time. There is no UN/ECE equivalent with which NHTSA can harmonize. Further, the Canadian CMVSS No. 216's reference to "the left front or the right front portion of the vehicle's roof structure" is not sufficiently specific to meet the objectivity requirements that apply to all FMVSSs. It would also not provide the repeatability that Ford desires.

NHTSA already tests with roof racks removed, as Ford suggested in its petition. In a September 21, 1992 interpretation letter, NHTSA stated that the agency would conduct its compliance testing for Standard No. 216 with roof-mounted accessories such as roof racks removed, because the purpose of the test is to measure the strength of the roof, not the strength of roof mounted accessories. Further, conducting the test with roof mounted accessories in place could influence the positioning of the test device. Although this issue has been addressed by interpretation, NHTSA is adding a sentence to the regulatory text to make it explicit in the CFR.

GM urged that the agency conduct a study to determine the appropriateness of the current test plate angles. Preliminary studies have been conducted by the agency with an alternative plate angle of zero degrees with respect to the longitudinal axis and fifteen degrees with respect to the lateral axis of the plate. However, these studies do not provide a sufficient basis for modifying the plate angle or size requirements in the test procedures.

The agency welcomes any data Ford submits on pre-stressing of the A-pillar and roof due to the tie-down method used in Standard No. 216. However, since Ford is not sure that the tie-down method is a problem and no other manufacturer has brought the matter to the agency's attention, the agency will not pursue this matter until Ford submits more data. NHTSA notes that modification of the tie-down method, if necessary, can probably be addressed by a change in the compliance test procedure and would not require an amendment to the standard.

Regarding Mercedes-Benz's contention that the plate angles should not change, the agency agrees that a test with a higher plate angle would be more stringent because it would stress the A-pillar in a more lateral direction. However, without changing the plate angles or size, the initial contact point will not change. If the initial contact point is too far behind the A-pillar, the load will be transferred primarily through the B-pillar, instead of the A-pillar, and thus not test roof strength in the area over the front occupant compartment. Nevertheless, the agency is taking the conservative approach of not proposing changes in test plate angles at this time because it prefers to accumulate more data on the effect of different plate angles. Until these data are developed by or supplied to the agency, the agency will defer proposing modifications of the load limits and plate angles and sizes. NHTSA requests any available data on this subject.

NHTSA agrees with Volkswagen's suggestion that any amendment of Standard No. 216 be flexible and applicable to different vehicle roof configurations. It is always the intent of the agency to develop test procedures for its rules that are uniformly applicable to all vehicles, irrespective of their design configuration.

NHTSA agrees with MCR/LRI Inc. that there should be some data showing that the Ford recommendation does not reduce the stringency of the regulatory requirements. In order to assure that the stringency of the standard is maintained, the agency conducted comparison tests using the current test procedure and the proposed test procedure.

Like MCR/LRI, the agency is concerned about rollover safety and head and neck injuries resulting from roof crush. However, NHTSA questions whether the head/neck injuries in MCR/LRI's case study of 50 rollover crashes are solely caused by excessive roof crush. Correlation of roof distortion with injury is not sufficient evidence to conclude that reduced roof intrusion alone would have prevented head/neck injuries.

The agency disagrees with MCR/LRI's contention that the current Standard No. 216 test improperly takes advantage of the strength imparted by the windshield. NHTSA recognizes that the windshield is, for engineering purposes, an integral part of the structures that manufacturers use to strengthen the roof. In view of this, the windshield should not be separated from the roof greenhouse structure during a roof crush test. While the windshields failed in the very severe rollover crashes selected by MCR/LRI, resulting in diminished roof crush resistance, the agency does not agree that the test procedure should reflect these unusually severe rollover crashes. All of the crashes that MCI/LRI selected resulted in serious to fatal head or neck injuries, while less than five percent of non-ejected occupants in all rollover crashes receive such injuries. The windshield probably contributes to roof crush resistance in more representative, less severe, rollover crashes, and the strength it imparts should be counted in the consistent minimum level of roof strength that the standard ensures.

The agency agrees with Advocates and MCR/LRI that it has not found sufficient data to propose a different plate angle and size for all vehicles at present. However, Standard No. 216's compliance test data show that roof contact area is generally very small, especially for late model year vehicles. The table "FMVSS 216 Data Compilation" in the docket shows that in most cases less than 100 square inches of roof are crushed. In view of this, a smaller test plate would be sufficient for roof crush testing of a majority of production vehicles. NHTSA requests comment on this issue, and specifically on the size of the small test plate.

The agency is not planning an upgrade of Standard No. 216 to a dynamic test at this time. Instead, this rulemaking is only amending Standard No. 216 test procedure to the extent necessary to remove the ambiguity of test plate placement for testing and the controversy of testing raised roof vehicles, while maintaining the stringency of the current test requirement. NHTSA would welcome any submissions of data supporting an upgrade of Standard No. 216 to include a dynamic test procedure and/or to include a rollover injury criteria. However, the agency is not planning to make them a part of this rulemaking.

NHTSA disagrees with Advocates that there is any gap in its safety standards concerning rollover safety for school buses. Standard No. 220's roof crush requirements apply to *all* school buses, even those between 2,722 and 4,536 kilograms (6,000 and 10,000 pounds). Therefore, these vehicles, by virtue of their intended purpose, are covered by the appropriate roof crush requirements. Further, the agency is also not convinced that the safety problem due to roof crush in vehicles which have a GVWR rating above 2,722 kilograms (6,000 pounds) necessitates any change in Standard No. 216 at this time.

VII. Proposed Test Procedure and Requirements

A. Description of Proposal

NHTSA is proposing to modify the test plate size and placement to fulfill the original intent underlying Standard No. 216, and reduce test variability. A summary of the proposed changes to the requirements and test procedures follows:

(1) For all vehicles without raised roof structures, the requirements and test procedures would remain the same, except that the initial placement of the leading edge of the test plate would be flush with the forwardmost edge of the roof. This change would ensure engagement of the A-pillars.

(2) For vehicles with a raised or altered roof, the test plate size might vary depending upon the position of the raised roof relative to the front occupant compartment. The current large test plate would be placed in position with its lower surface touching the initial contact point. If the initial contact point is on any portion of raised or altered roof rearward of the front occupant compartment, then a small test plate (610 mm by 610 mm, or 24 inches by 24 inches) is used for testing instead. Because the 5 degree plate angle is so low, initial contact of a large test plate with the raised roof to the rear of the front occupant compartment would be most likely to occur on vehicles whose raised or altered roof is completely located to the rear of the front occupant compartment. The performance requirement would be the same as when testing with the large test plate. The small test plate would have to reach a load of 1.5 times the unloaded vehicle weight within 127 mm (5 inches) of displacement.

A small test plate is needed in this particular situation to assure that the roof over the front occupant compartment in the area of the A-pillars is tested. Otherwise, the large plate might test only the roof to the rear of the front occupant compartment. In addition, NHTSA wants to make sure that the roof modification process does not significantly affect the original strength of the front roof structure. Therefore, it would be appropriate to use a smaller test plate to evaluate only the front roof strength for vehicles (mostly van conversions) where the roof to the rear of the front occupant compartment may have been compromised during the conversion. Conversely, it would be appropriate to test a raised roof which is located, in part, over the front occupant compartment, even if some raised roof to the rear were also subsequently crushed.

The size of the smaller plate must be large enough so that the plate edges do not penetrate the roof. Based on its measurement of nine late model year minivans, NHTSA believes that a test plate of 610 mm by 610 mm (24 inches by 24 inches) would be sufficient. In nearly all the tests, a much smaller area than the size of the proposed small plate was crushed (see Table "FMVSS 216 Data Compilation," in the docket). However, the agency is not proposing to use a smaller plate for all tests because it does not have sufficient data to determine the appropriateness of a smaller test plate for all roof crush tests. NHTSA requests comment on whether the proposed plate size is appropriate.

B. Explanation of NHTSA's Selection of the Proposed Test Procedure and Requirements

Because the agency's testing indicates that the Standard No. 220 test procedure is less stringent than the modified Standard No. 216 test procedure, NHTSA did not adopt RVIA's recommendation to use it. Nevertheless, NHTSA believes that using the modified Standard No. 216 test procedure for testing conversion vans and other such vehicles would address RVIA's and Ford's concerns. The use of the modified procedure also accommodates the belief expressed by the safety groups that the roof strength should not be degraded when part of the roof is cut out and replaced by a raised roof.

Ford's main concern is the variability in the initial contact point inherent in existing test procedures in Standard No. 216. Because of the five degree angle of the larger plate, some vehicles with aerodynamic roof designs could have an initial contact point with the test plate rearward of the A-pillar area, even though the original intent underlying the standard was to test the roof area in the vicinity of the joint of the A-pillar and front header and side rail components.

This concern would be partly addressed by the modified Standard No. 216 procedure. By consistently placing the forward edge of the test plate flush with the forwardmost edge of the roof, the leading edge of the plate would not penetrate into the softer parts of the roof, but would be aligned with the supports for the front occupant compartment. This should assure engagement of the A-pillar in most cases. On some vehicles with highly curved roofs, the initial contact point could still be behind and inboard of the A-pillar area, but at least the plate will contact the A-pillar area after the roof has been depressed a short distance.

However, by itself, realigning the plate would not be sufficient to address RVIA's concern and ensure engagement of the appropriate area on all raised roof vehicles. This is because a raised roof may be so high that the A-pillar area would never be engaged before the permissible plate travel is reached. Therefore, NHTSA is proposing to adopt a smaller test plate (610 mm by 610 mm, or 24 inches by 24 inches) for use with vehicles which have altered/raised roof structures located rearward of the front passenger compartment that would make initial contact with the current test plate. This would assure that, for most vehicles, the test plate would contact the front roof only. The choice of test plate is based on whether initial contact is with the roof over the front occupant compartment.

VIII. Changes to the Regulatory Text

Substantial changes to the regulatory text are being proposed, although the substance of the regulation remains largely the same. To accommodate the insertion of a definitions paragraph (customarily located at the beginning of NHTSA's standards), all subsequent paragraphs, i.e., those beginning with S4, would need to be renumbered. S4 (former "requirements") would become S5. S5 (former "test device") would become S6. S6 (former "test procedure") and all of its subparagraphs would become S7 and subparagraphs. The definitions paragraph would be designated S4. By better segregating the requirements and the test procedures between S5 and S7, it is possible to eliminate the redundant statement of parallel test procedures under the former S6.3. Figure 1 would be revised to reflect the new plate positioning procedure.

In addition, a number of clarifying minor changes were made to the regulatory text. A sentence was added to the test procedures to explicitly specify that non-structural components such as roof racks would be removed prior to testing. This was already the agency's interpretation of the current test procedure.

IX. Proposed Lead Time

The proposed amendments to Standard No. 216 are not likely to impose any additional costs on vehicle manufacturers and converters, although NHTSA requests comments on this issue. The amended test procedures

provide for repeatable testing that follows the original intent of the standard. For most vehicles, the test would be essentially the same as it is now. Even for those vehicles for which use of a smaller test plate would be specified, the same or similar equipment is used for testing.

The agency is not proposing the five year lead time requested by Ford. This action is being taken at Ford's request and, to the extent that test plate placement differs from the current procedures, it should make compliance with the standard easier for all vehicles, since engagement of the A-pillars is assured.

Consequently, the amended rule would become effective, and compliance would be required, on 180 days following the publication of the final rule. However, manufacturers may voluntarily comply with this rule earlier.

X. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." This action has been determined to be "non-significant" under the Department of Transportation's regulatory policies and procedures. The proposed amendments would not impose any new requirements but simply clarify existing test procedures and allow them to be applied consistently to the intended area of the roof on all vehicles. Therefore, the impacts of the proposed amendments would be so minor that a full regulatory evaluation is not required.

B. Regulatory Flexibility Act

NHTSA has also considered the impacts of this notice under the Regulatory Flexibility Act. I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. As explained above, the rule would not impose any new requirements but would instead clarify the test procedures and allow them to be applied to the areas of the roof to which they were originally intended. It would not have any effect on the price of new vehicles purchased by small entities.

C. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (P.L. 96–511), there are no requirements for information collection associated with this proposed rule.

D. Executive Order 12612 (Federalism)

NHTSA has analyzed this proposal in accordance with the principles and criteria contained in E.O. 12612, and has determined that this proposed rule would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

E. Civil Justice Reform

This proposed rule would not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

XI. Submission of Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

Comments must not exceed 15 pages in length (See 49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. See 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, it is proposed that 49 CFR Part 571 be amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 of Title 49 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.216 would be amended as follows:

a. S4 is revised.

b. S5 is revised.

c. S6 is revised, and S6.1, S6.2, 6.3 and S6.4 are removed.

d. S7, S7.1, S7.2, S7.3, and S7.4 are added.

e. Figure 1 at the end of the section is revised.

The additions and revisions would read as follows:

§ 571.216 Standard No. 216; roof crush resistance

* * * * *

S4. *Definitions.*

Altered roof means a roof that has had all or part of the original roof removed and replaced by a roof that is higher than the original roof.

Raised roof means, with respect to a roof which includes an area that protrudes above the surrounding exterior roof surface, that protruding area of roof.

Roof over the front occupant compartment means the roof area between a transverse vertical plane passing through a point 162 mm rearward of the SgRP of the designated left front outboard seating position and a transverse vertical plane passing through the forwardmost point on the exterior surface of the roof, including trim, that lies in the longitudinal vertical plane passing through the vehicle's longitudinal centerline.

S5. *Requirements.*

(a) *Passenger Cars.* Passenger cars shall meet the requirements of this paragraph. When the larger test device, described in S6, is used to apply a force in Newtons equal to 1.5 times the unloaded vehicle weight of the vehicle, measured in kilograms and multiplied by 9.8 or 22,240 Newtons, whichever produces the lower force, to either side of the forward edge of a vehicle's roof in accordance with the procedures of S7, the test device shall not move more than 127 millimeters, measured in accordance with S7.4. Both the left and right front portions of the vehicle's roof structure shall be capable of meeting the requirements, but a particular vehicle need not meet further requirements after being tested at one location.

(b) *Multipurpose passenger vehicles, trucks, and buses with a GVWR of 2,722 kilograms or less that do not have raised or altered roofs.* Multipurpose passenger vehicles, trucks, and buses with a GVWR of 2,722 kilograms or less that do not have raised or altered roofs shall meet the requirements of this paragraph. When the larger test device, described in S6, is used to apply a force in Newtons equal to 1.5 times the unloaded vehicle weight, measured in kilograms and multiplied by 9.8, to either side of the forward edge of a vehicle's roof in accordance with the procedures of S7, the test device shall not move more than 127 mm, measured in accordance with S7.4. Both the left and right front portions of the vehicle's roof structure shall be capable of meeting the requirements, but a particular vehicle need not meet further requirements after being tested at one location.

(c) *Multipurpose passenger vehicles, trucks and buses with a GVWR of 2,722 kilograms or less that have raised roofs or altered roofs.*

(1) Multipurpose passenger vehicles, trucks and buses with a GVWR of 2,722 kilograms or less having raised roofs or altered roofs shall meet the requirements of this paragraph. When the larger test device (or the smaller test device, when specified by paragraph (c)(2)), described in S6, is used to apply a force in Newtons equal to 1.5 times the unloaded vehicle weight of the vehicle, measured in kilograms and multiplied by 9.8, to either side of the forward edge of a vehicle's roof, in accordance with the procedures of S7, the device shall not move more than 127 millimeters, measured in accordance with S7.4. Both the left and right front portions of the vehicle's roof structure shall be capable of meeting the requirements, but a particular vehicle need not meet further requirements after being tested at one location.

(2) For vehicles on which the initial contact point of the larger test device, when oriented as specified in paragraph S7.2, is with the raised roof to the rear of the front occupant compartment, the smaller test device described in S6 is used for testing instead of the larger test device.

S6. *Test device.* The larger test device is a rigid unyielding block with its lower surface formed as a flat rectangle 762 millimeters by 1,829 millimeters. The smaller test device is a rigid unyielding block with its lower surface formed as a flat square 610 millimeters by 610 millimeters.

S7. *Test procedure.* Each vehicle shall be capable of meeting the requirements of S5 when tested in accordance with the following procedure.

S7.1 Place the sills or the chassis frame of the vehicle on a rigid horizontal surface, fix the vehicle rigidly in position, close all windows, close and lock all doors, and secure any convertible top or removable roof structure in place over the passenger compartment. Remove roof racks or other non-structural components.

S7.2 Orient the test device as shown in Figure 1, so that—

(a) Its longitudinal axis is at a forward angle (in side view) of 5° below the horizontal, and parallel to the vertical plane through the vehicle's longitudinal centerline;

(b) Its transverse axis is at an outboard angle, in the front view projection, of 25° below the horizontal (note: if using the smaller test device, the longitudinal and transverse axes will be of the same length);

(c) Its lower surface is tangent to the surface of the vehicle;

(d) The initial contact point, or center of the initial contact area, is on the longitudinal centerline of the lower surface of the test device; and

(e) The midpoint of the forward edge of the lower surface of the test device is tangent to the transverse vertical plane passing through the forwardmost point on the exterior surface of the roof, including trim, that lies in the longitudinal vertical plane passing through the vehicle's longitudinal centerline.

S7.3 Apply force so that the test device moves in a downward direction perpendicular to the lower surface of the test device at a rate of not more than 13 millimeters per second until reaching the force level specified in S5. Complete the test within 120 seconds. Guide the test device so that throughout the test it moves, without rotation, in a straight line with its lower surface oriented as specified in S7.2(a) through S7.2(b).

S7.4 Measure the distance that the test device moved, i.e., the distance between the original location of the lower surface of the test device and its location as the force level specified in S5 is reached.

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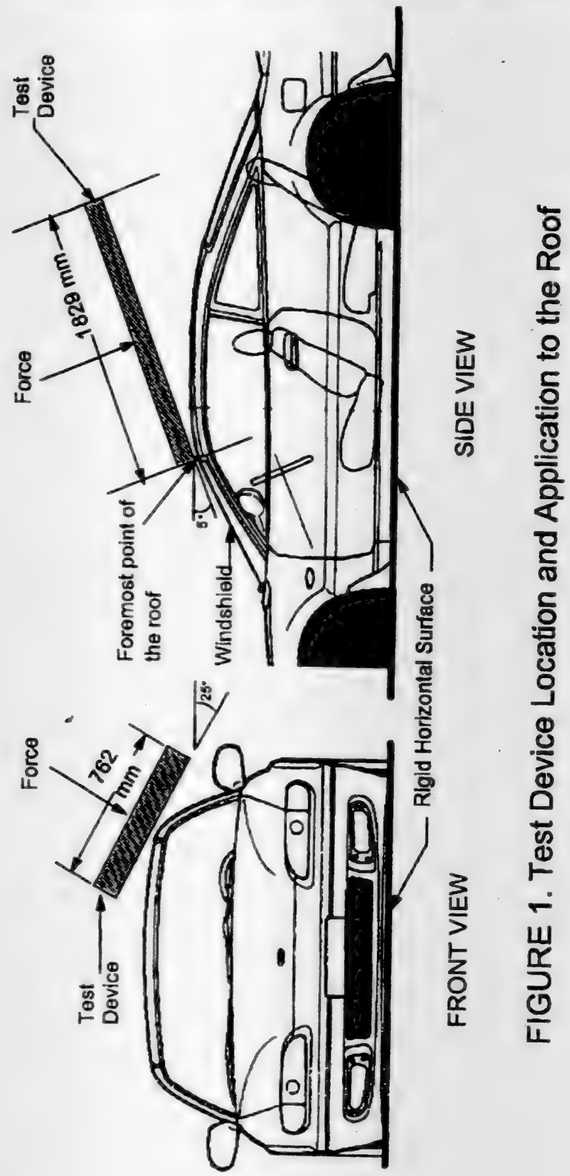

FIGURE 1. Test Device Location and Application to the Roof

Issued on: February 21, 1997.

James Hackney,

Director, Office of Crashworthiness Standards.

[FR Doc. 97–4762 Filed 2–26–97; 8:45 am]

BILLING CODE 4910–59–C

49 CFR Part 571

[Docket No. 74–14; Notice 113]

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for comments.

SUMMARY: This document solicits public comments on a petition from U. S. Senator Dirk Kempthorne to amend the provisions in the agency's automatic occupant protection standard concerning the use of unbelted as well as belted dummies in testing air bag-equipped vehicles. The petition asks that the agency impose a moratorium on testing with unbelted dummies. The petition was submitted in response to the deaths of young children and of drivers, primarily short-statured women, as a result of air bag deployments in low speed crashes. The petitioner believes that the necessity of meeting the unbelted test requirement is adversely affecting current air bag designs and causing these deaths. The petitioner also believes that the requirement is preventing vehicle manufacturers from optimizing air bag designs for belted occupants.

The agency has concluded that section 2508 of the Intermodal Surface Transportation Efficiency Act of 1991 precludes it from eliminating the unbelted test requirement.

However, since the agency is interested in all potential solutions to the air bag deaths and since the agency can recommend legislative changes to Congress, the agency is seeking public comment on the benefits and disbenefits of eliminating the unbelted test.

DATES: Comments must be received by March 31, 1997.

ADDRESSES: Comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. (Docket Room hours are 9:30 a.m.–4:00 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT:

For information about air bags and related rulemakings: Visit the NHTSA web site at "http://www.nhtsa.dot.gov" and select 11AIR BAGS: Information about air bags."

For non-legal issues: Clarke Harper, Chief, Light Duty Vehicle Division, NPS–11, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–2264. Fax: (202) 366–4329.

For legal issues: J. Edward Glancy, Office of Chief Counsel, NCC–20, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–2992. Fax: (202) 366–3820.

SUPPLEMENTARY INFORMATION:

Introduction

Air bags have been installed in millions of cars and light trucks. As of the end of model year 1996, driver air bags had been installed in over 56,000,000 vehicles and passenger air bags in over 27,000,000 vehicles. As of the end of calendar year 1996, air bags had saved the lives of over 1,700 occupants, almost two-thirds of them unbelted. However, they had also caused the deaths of 35 young children and 20 adults,[1] primarily in low speed crashes in which the other occupants of the vehicles involved in the crashes have either not been injured or received only minor injuries. All but one of the adults were drivers and a majority of them were short-statured women.

The reports of air bag-related deaths and injuries contrast sharply with the expectations for air bags. The Department's initial interest in air bags arose in the late 1960's as researchers observed that air bags offered a means of increasing crash protection for unbelted occupants. Despite vigorous efforts to promote the use of the safety belts that Federal regulation had recently required in all passenger cars, the rate of safety belt use was hovering around 10 percent. With such a low level of use, the safety belt was providing very little of its expected benefits. Beginning in 1969, under Secretary John Volpe, the Department explored the potential of air bags and other measures, such as crash padding and automatic safety belts, that needed no occupant action. A series of rulemaking actions followed, all of them focussing on ways to provide automatic protection. The air bag was always a leading candidate to provide this protection, but it was not specifically required during the regulatory actions of the 1970's and 1980's.

The current occupant protection requirements trace back to 1984, when Secretary Elizabeth Dole issued performance requirements for automatic restraints (i.e., automatic belts or air bags). In a final rule amending Federal Motor Vehicle Safety Standard (FMVSS) No. 208, Occupant Crash Protection (49 CFR 571.208), the Department required that the front outboard designated seating positions in passenger cars be equipped with automatic occupant protection (i.e., either automatic belts or air bags) instead of (or in addition to) manual lap and shoulder belts. (49 Fed. Reg. 28962; July 17, 1984).[2] For vehicles equipped with air bags, the Standard specifies two crash tests for determining whether the vehicles comply with the standard's injury criteria. Both tests involve crashing a vehicle into a barrier at speeds up to 30 mph. One crash uses unbelted anthropomorphic test dummies, while the other uses belted dummies. The unbelted crash test ensures that the vehicle provides effective "automatic protection," i.e., protection that meets injury criteria "by means that require no action by vehicle occupants," in keeping with the standard's original goal of providing protection to unbelted occupants.

In order to satisfy the injury criteria in a 30 mph unbelted test, an air bag must deploy very quickly. Even so, the automatic protection requirements do not specify a particular level of force. The amount of force is a function of a number of factors and air bag design features; it is also affected by the extent to which an air bag is designed to exceed the Standard's performance requirements. Further, the Standard affords substantial flexibility about how air bags perform in circumstances other than those specified in the test procedure, such as low-speed crashes and crashes with out-of-position occupants.

In the 1984 decision, the Department expressly recognized that commenters had raised issues about potential risks associated with air bags, but noted that there were technological means available for addressing those risks. The Final Regulatory Impact Analysis (FRIA) identified a variety of possible technological solutions to those risks, including dual level inflation systems of several types and measures such as changes in the shape and size of the bag, in aspiration, and in inflation techniques.

The development of air bags after the 1984 decision on automatic protection occurred at the same time as a significant increase in safety belt use. From a very low 14 percent in 1984, safety belt use increased rapidly in the late 1980's, reaching 59 percent by 1991,

[1] The figure of 20 is based on information that NHTSA has developed through NHTSA's Special Crash Investigation program and is not a census. Studies of Fatal Accident Reporting System (FARS) data are underway to obtain a more precise figure.

[2] In 1987, the agency issued a final rule extending the automatic occupant protection requirements to light trucks (i.e., vans, pickup trucks and sport utility vehicles). (52 Fed. Reg. 44898; November 23, 1987)

and stands at 68 percent[3] today according to State-reported surveys.[4]

The primary reason for the rapid increase in the rate of safety belt use in the late 1980's was the enactment of State safety belt use laws. No State had a safety belt use law in effect at the time of the 1984 decision. The number rose quickly thereafter as a result of the concerted efforts of a large number of groups including State and federal safety authorities, consumer groups, motor vehicle manufacturers, and the insurance industry. The number of States with safety belt use laws in effect rose to 8 by the end of 1985, 22 by the end of 1986 and 28 by the end of 1987. All of the dozen most populous States had laws in effect by the end of 1988[5]. Forty-nine States now have belt use laws.[6]

The decisive move toward air bags occurred in 1991, as safety belt use was approaching 60 percent. The vehicle manufacturers had begun installing driver air bags in large numbers by model year 1990 and were discussing plans for fleetwide installation of air bags, including passenger air bags, within a few years. It appeared that air bags had won out over automatic belts as a means of providing automatic protection. Accordingly, in Section 2508(a)(1) of the Intermodal Transportation Efficiency Act of 1991 (ISTEA), codified at 49 U.S.C. § 30127(b), Congress directed NHTSA to amend Standard No. 208 to provide that the "automatic occupant protection" in passenger cars and light trucks shall be "an inflatable restraint," (i.e., an air bag). ISTEA mandated that air bags be installed in 95 percent of passenger cars in model year 1997 and in 100 percent of cars in model year 1998 and thereafter. For light trucks, it mandated installation of air bags in 80 percent of model year 1998 vehicles and 100 percent of model year 1999 and later vehicles.

ISTEA did not change the compliance tests for air bags. Section 2508(a)(1) specified inflatable restraints "complying with the occupant protection requirements under section 4.1.2.1 of such Standard." At the time ISTEA was adopted, section S4.1.2.1 of FMVSS No. 208 required vehicles covered by that section to comply with subsections (a), (b), and either (c)(1) or (c)(2). (Virtually all auto manufacturers have chosen to certify their vehicles under subsection (c)(2), rather than (c)(1)). Section S4.1.2.1(a) provided that at each front outboard designated seating position, a vehicle must meet certain frontal crash protection requirements "by means that require no action by vehicle occupants." In other words, compliance was required to be demonstrated in an unbelted test. Section S4.1.2.1(c)(2) provided that the vehicle must meet these frontal crash protection requirements through the use of manual seat belts provided with the vehicle "in addition to the means that require no action by the vehicle occupant."

Agency Actions To Eliminate Air Bag Deaths

Reports of fatal injuries to young children and drivers in low speed crashes led the agency to make an extensive effort to obtain and analyze the data necessary to understand the source of the problem and to evaluate potential solutions. Since these data were not otherwise available from industry or any other outside source, the agency conducted its own series of tests to address these issues.

On November 22, 1996, NHTSA announced its comprehensive strategy for addressing the problems of air bag deaths. In addition to public information and education efforts, and recommendations to the States to adopt more effective safety belt use laws, the agency outlined an array of rulemaking actions it would take shortly. Pursuant to that announcement, the agency subsequently took the actions described below.

To address the safety of vehicles already on the road, the agency proposed to authorize motor vehicle dealers and repair businesses to deactivate air bags upon the request of vehicle owners who were informed of the pros and cons of such deactivation. (62 FR 831; January 6, 1997) The same proposal would also apply to vehicles produced during the next several model years. This proposal is intended to address the problems of families who need to have young children in the front seat for medical monitoring purposes, as well as other persons who could be harmed by a functioning air bag. The agency strongly believes that children and other vulnerable persons should not be put at risk. The air bag technology currently chosen to meet the unbelted test presents such a risk. Although the agency is not legally authorized to eliminate the test, it has proposed temporary changes to the testing requirements that would permit significant depowering. The agency took several other actions that would affect vehicles produced during the next several model years. It issued a final rule requiring vehicles made on or after February 25, 1997, to be equipped with new, attention-getting labels that clearly warn consumers about the potential dangers associated with air bags. (61 FR 60206; November 27, 1996) It issued another final rule extending, until September 1, 2000, a provision allowing manufacturers the option of putting a manual cut-off switch for the passenger air bag in vehicles with no rear seat or with a rear seat too small for rear-facing child restraints. (62 FR. 798; January 6, 1997)

The agency also proposed two temporary options that would permit or facilitate the depowering of current air bags. (62 FR 807; January 6, 1997) For the unbelted crash test requirement, the first option would replace the existing "60 g's" chest injury criterion with a less stringent "80 g's" criterion. The second option would convert the unbelted crash test requirement from a test of complete vehicles in barrier crashes, to a sled test using an unbelted dummy seated in a body buck and a standardized 125 millisecond crash pulse. That crash pulse is based on a November 1996 submission from the American Automobile Manufacturers Association. Comments on the deactivation and depowering proposals were due February 5, 1997.

Agency Actions to Increase U.S. Belt Use Rates

As the agency noted in its depowering proposal, NHTSA is participating with vehicle manufacturers, air bag suppliers, insurance companies and safety organizations in a coalition effort to address the adverse effects of air bags by increasing the use of safety belts and child seats. Substantial benefits could be obtained from achieving higher safety belt use rates. If the safety belt use rate were 75 percent in potentially fatal crashes instead of the current level of 52.6 percent, an additional 4,000 lives would be saved annually.

On January 23, 1997, the President issued a memorandum directing the Department to work with the Congress, the States, and other concerned persons, including representatives of the automobile and insurance industries, and safety and consumer groups, and within 45 days (March 9, 1997) submit a plan to the President for increasing safety belt use nationwide.

The President specified that the plan shall address, among other things, the State laws that require the use of seatbelts, assistance from the Department of Transportation to improve those laws, and a comprehensive education campaign on behalf of the public and private sector to help the public understand the need to wear seatbelts.

Agency Announcement of Public Workshop on Smart Air Bags

Finally, with respect to the longer term, NHTSA announced that it would conduct a public workshop concerning smart air bags. (62 Fed. Reg. 2996; January 21, 1997) The purpose of the workshop was to foster a constructive dialogue with the industry, consumer groups and other parties concerning issues related to mandating the introduction of reliable "smart" air bags that either suppress deployment or modulate the level of deployment under circumstances in which full deployment might cause serious injury. In addition to "smart" technology, the workshop addressed other air bag technologies that could reduce the risk of air bag injuries but that have not been employed in current air bag designs. It also explored the question whether amendments to the standard are needed that could prove counterproductive in the long term or whether suitable technology can be installed under the current standard, as some air bag suppliers have suggested. The workshop was held February 11–12, 1997, in Washington, D.C.

Petition for a Moratorium on the Unbelted Test Requirement

Out of concern about the deaths caused by air bags, Senator Dirk Kempthorne sent the agency a letter, dated December 4, 1996, petitioning the agency to commence rulemaking to establish an immediate moratorium on the unbelted test requirement.

In support of his petition, the Senator said in his letter:

> This unbelted standard was developed when few Americans used seat belts. Now 49 states require seat belts to be worn, and nearly 70% of Americans use them. In providing protection to those adults who choose not to obey seat belt laws, we are jeopardizing the lives of our children, as well as small women. That is an unacceptable policy choice.

He argued that, in the absence of the unbelted test requirement, air bags could be developed that "could improve the performance of air bags for belted occupants, provide significant protection for unbelted occupants, and, most importantly, significantly reduce injuries to children."

Senator Kempthorne amplified his views about the need for, and possible benefits of, his requested amendment during the January 9 Senate hearing. He argued that NHTSA's proposals do not go far enough:

> I agree that depowering is required, but unless the administration acts on my proposal, both smart and depowered air bags must still protect adult males who refuse to wear their seat belt. That still puts children and women at risk * * *. [T]he Administration even today insists that adults not wearing seat belts should be protected at the expense of children and women. While 49 States require seat belts to be used, this Federal policy says, in essence, law breakers who don't wear seat belts will be protected, but maybe at the cost of the children. Seat belts provide the primary protection in all types of crashes. Air bags are intended to provide supplemental protection in car accidents * * * Air bags should supplement seat belts, not replace them. Federal highway safety policy should acknowledge and recognize individual responsibility.

In closing, he listed the benefits he anticipated from that his proposed moratorium. He stated that the moratorium:

> [O]ne, will make air bags live up to [their] rightful supplemental safety responsibility.
> Number two, will increase safety for two-thirds of the American people who obey the law and wear seat belts.
> Number three, will get safer bags into cars faster.
> Number four, will better protect women and senior citizens.
> Number five, will minimize chances of children being killed.

Views of Other Participants in the Senate Hearing

Statements by Committee members and witnesses during the Senate hearing on January 9 illustrate the range of views and arguments regarding the unbelted test requirement. Support for elimination of the requirement was expressed by the President of the American Automobile Manufacturers Association and the President of the Association of International Automobile Manufacturers.

Expressing his personal views, the Chairman of the National Transportation Safety Board said:

> Federal regulations and NHTSA's recent proposal to depower air bags * * * still require that vehicle test procedures be based on unrestrained occupants. In essence, air bags are being designed, because of certification testing requirements, primarily to protect unbelted, rather than belted occupants, even though the air bags are being promoted as supplemental restraints systems and the majority of motor vehicle occupants now use seat belts. Air bag regulatory standards, based on unrestrained occupants, are no longer appropriate.

He suggested that air bag performance certification testing should be based primarily on belted occupants.

Mr. Robert Sanders, representing the Parents' Coalition for Air Bag Warnings, a group composed of parents of young children killed by air bags, did not explicitly address the issue of the unbelted test requirement. However, Mr. Sanders, himself a parent of a child killed by an air bag, questioned some of the same arguments used in support of eliminating the requirement:

> This problem is not a problem with the regulators. It's also not a problem with the safety standard. The safety standard 208 * * * does not say that they [the vehicle manufacturers] can't make a bag that has less power. They can have a bag that has a lot of power when it is needed, for an adult, and less power when it's not needed, for a child or for an unbelted occupant. And it is a fact that GM successfully designed such a system in the mid 70's.
>
> They [the vehicle manufacturers] are saying that the Federal government safety standard compels us to make a bag that's dangerous for children. Therefore, please change the safety standard.
>
> There's nothing wrong with the safety standard * * *. They had the capability to comply with 208 and simultaneously make a bag that was safe and effective for all sizes of occupants.

Additional concerns about eliminating the unbelted test requirement were raised by several other participants:

- U.S. Senator Richard Bryan asked whether a moratorium on the unbelted test requirement might be equivalent to "no standard" at all for air bag performance.
- Joan Claybrook, President of Public Citizen, suggested that the existing standard does not force vehicle manufacturers to produce air bags that pose a risk to young children and women in low speed crashes. She said that manufacturers have the flexibility under the Standard to use dual level inflators based on crash severity. In low speed crashes, there would be a low level of inflation and in high speed

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[3] Belt use among fatally injured front seat occupants of cars and light trucks is lower, approximately 37 percent, based on 1995 FARS data. The lowness of this rate reflects a number of factors, including the belt use rate by motorists in general and the effectiveness of belt use in preventing fatal injury. A more useful belt use rate is the rate among occupants involved in potentially fatal crashes. Those crashes include all fatal crashes as well as all crashes in which there would have been a fatality but for belt use. The use rate in potentially fatal crashes is slightly over 50 percent.

[4] Some State surveys are limited to passenger cars. The agency's latest National Occupant Protection Use Survey, a probability-based study of safety belt use in all vehicle types, indicates a current use rate of 58 percent. Another survey will be conducted in 1997.

[5] The burst of legislative activity after the 1984 decision was not coincidental. The 1984 decision provided that the automatic protection requirements would be rescinded if the Secretary of Transportation determined by April 11, 1989 that State safety belt use laws meeting specified conditions had been passed by a sufficient number of States to cover two-thirds of the U.S. population. That date passed without such a determination having been made.

[6] In ISTEA, the Congress also provided that States that failed to adopt mandatory safety belt use laws would have a percentage of their Federal-aid highway construction funds transferred to their highway safety programs.

crashes, an appropriately higher level of inflation.

• Ricardo Martinez, Administrator of NHTSA, noted that of the approximately 1,700 persons whose lives had been saved by air bags, an estimated 1,200 of them were unbelted.

Recent Agency Statements About the Unbelted Test Requirement

During the Senate hearing on January 9, Senator Kempthorne asked the agency to provide its views regarding its legal authority to eliminate the unbelted test requirement. In a letter dated January 13, 1997, the agency responded to the Senator, concluding that it lacked such authority. The agency pointed out the following:

> In section 2508(a)(1) of that statute, which is currently codified at 49 U.S.C. 30127(b), Congress directed NHTSA to amend FMVSS No. 208 "to provide that the automatic occupant protection for the front outboard designed seating positions [of certain vehicles] shall be an inflatable restraint complying with the occupant protection requirements under section 4.1.2.1 of such Standard." Thus, each vehicle must have an air bag that provides "automatic occupant protection." If the unbelted test were eliminated from FMVSS No. 208, such that vehicles only had to satisfy the performance requirements of the standard with the manual belts attached, there would be no way to ensure that the air bags would in fact provide "automatic" protection to front seat occupants.[7]

NHTSA's January 13 letter to the Senator noted that, as part of its analysis of the air bag problem and its efforts to identify the best solutions, the agency considered whether eliminating the unbelted test requirement would be advisable, putting aside the issue of legal authority. At that time, the agency concluded that elimination was unnecessary. NHTSA decided that other measures would enable vehicle manufacturers to depower air bags to an extent that would eliminate much of the risk to belted occupants and children and that the agency's other regulatory solutions (deactivation, enhanced labels, cut-off switches, and smart air bags) would address the remaining risk. Additional depowering appeared undesirable, given the associated trade-offs. As the agency stated in its January 13 letter:

> Our research indicated that depowering air bags in the range of 20–35 percent would reduce the risk to children without significantly increasing the risk that the bags would be too weak to protect occupants in high-speed crashes. Our tests indicated that depowering beyond that level produced little additional benefit for children, and markedly increased the risk for larger occupants. The amendment we proposed on January 6, 1997, will enable the manufacturers to depower their air bags by the 20–35 percent that seems to present the best balance for the safety of all occupants.
>
> Nevertheless, the agency recognized that there might come a point at which dropping the unbelted test might become appropriate for reasons other than additional depowering. As NHTSA noted in its depowering proposal:
>
> > The agency recognizes that, at some point, belt use might rise to a point at which retention of the unbelted test requirements might no longer be appropriate. The agency notes that belt use in Australia is over 95 percent, and averages 93 percent in Canada. However, as noted above, the belt use among fatally injured vehicle occupants is less than 40 percent.
>
> (62 FR 807, at 824)
>
> The level of safety belt use is an essential factor in evaluating the effects of eliminating the unbelted test, since there is little doubt that most if not all vehicles now on the market can comply with the injury criteria by means of safety belts alone. Thus, if the unbelted test were deleted and no other tests were added to regulate the performance of air bags, the vehicle manufacturers would be free to install air bags that afford no protection to either belted or unbelted occupants. In effect, the standard would no longer regulate the level of protection afforded to unbelted occupants. This would be a fundamental departure from the original concept of the standard, which was to protect unbelted occupants as well as belted occupants.

Agency Decision To Request Public Comment

NHTSA has decided to seek public comment on its tentative conclusions about the appropriateness of dropping the unbelted test requirement under the current circumstances, and the factual issues presented by the request for a moratorium. Given the importance of the underlying problem and the interest in eliminating the unbelted test requirement expressed by participants in the Senate hearing, the agency believes that it would be beneficial to obtain public comments analyzing the benefits and disbenefits of eliminating the unbelted test requirement. NHTSA is seeking as much detailed technical data as possible in support of any comments. Although the agency currently lacks the authority to take that action, it could ask Congress to adopt the necessary legislation.

To help frame the issues relevant to the merits of eliminating the unbelted test, the agency has drawn the following arguments from the information submitted to it:

Arguments for eliminating the unbelted test:

(1) A vehicle safety standard should not benefit some occupants by means that cause harm to others. The rule should be: "First, do no harm."

(2) To the extent that the need to satisfy the injury criteria of Standard No. 208 in an unbelted test results in air bags that are causing injuries in low-speed crashes, the standard needs to be changed.

(3) The increase in national belt use rate to 68 percent has made the unbelted test requirement obsolete.

(4) Air bags ought to be designed for the benefit of those who obey the law and use their safety belts.

(5) Air bags are intended to be supplemental safety devices and ought to be optimized for the benefit of belted occupants, and thus save increased numbers of those occupants.

Arguments against eliminating the unbelted test:

(1) The unbelted test requirement does not require manufacturers to install air bags that cause deaths in low speed crashes. Technology such as dual level inflators, higher deployment thresholds and smart air bags have the potential to prevent deaths in low speed crashes, while preserving the ability of air bags to protect occupants in higher speed crashes.

(2) In the short run, the agency's depowering proposal will allow manufacturers to achieve the same goals sought by proponents of eliminating the unbelted test requirement, while retaining some protection for unbelted occupants.

(3) Thirty-two percent of front seat occupants—and 50 percent of occupants in potentially fatal crashes—do not wear safety belts. The air bag is the primary protection for these people, not merely supplemental protection.

(4) If the unbelted test requirement were eliminated, with no compensatory changes, future air bags might be less protective than current ones, even for belted occupants. If air bags were depowered too much, they would not provide adequate protection at higher speeds or for larger occupants, whether belted or unbelted.

(5) Without the unbelted test, the performance of air bags would not be regulated. The manufacturers would be free to reduce the power of air bags to any level the market would permit. Safety decisions like this are too critical to be left to the marketplace.

[7] A more detailed analysis of this legal issue has been prepared by NHTSA and placed in the docket for this proceeding.

Questions for Commenters

1. What would the benefit of eliminating the unbelted test requirement be compared to the projected benefits of the agency's proposed options to allow depowering of air bags? Would eliminating the unbelted test requirement allow greater depowering than adoption of the 80g option? The sled test option? Would greater depowering have benefits or disbenefits?

2. What changes would the manufacturers make in response to the elimination of the unbelted test requirement? How long would it take to implement those changes? Would manufacturers respond differently to eliminating the unbelted test requirement than they would if the agency adopted the 80g option? The sled test option?

3. How and to what extent could air bags be made more effective for belted occupants in the absence of an unbelted test requirement? Would these changes affect the performance of air bags in protecting unbelted occupants?

4. Given current belt use rates, should Federal law continue to require automatic protection for unbelted occupants? If so, should the required level of protection be the same as for belted occupants? Should the ISTEA air bag mandate be repealed to allow manufacturers to provide automatic protection by automatic safety belts?

5. Is there a level of safety belt usage at which it would be appropriate to no longer require protection for unbelted occupants? If so, what level?

6. If the unbelted test requirement were eliminated, should that elimination be coupled with simultaneous compensatory changes to the injury criteria or to the test requirements, or both, to ensure the continued protective value of air bags? Changes might take the form of making the existing criteria more stringent, adding additional criteria, or both. If compensatory changes are desirable, what changes should be made? What level of protectiveness should be required for belted occupants? For unbelted occupants?

7. Would the effects of eliminating the unbelted test requirement be different for driver air bags versus passenger air bags? Have the design changes that the vehicle manufacturers have been making to driver air bags significantly reduced the problem of driver deaths caused by air bags? For unbelted drivers? For belted drivers?

8. If the unbelted test requirement were eliminated, should such elimination be permanent or temporary? If temporary, for how long should it be suspended? Should it be reinstated after smart air bags are required?

9. Would any potential harm from eliminating the unbelted test fall disproportionately on groups who tend to have lower belt use rates and higher crash rates, such as young drivers? Would the belts designed to protect belted occupants be less effective for unbelted occupants?

10. What should the role of the Federal government be with respect to the design of air bags so as to minimize air bag deaths in low speed crashes? Should government merely point out potential ways of avoiding such consequences and let the marketplace decide whether they should be implemented, or should it mandate features that will minimize the risk?

11. If the unbelted test were to be deleted through legislation, should that action be coupled with measures to secure the enactment of stronger safety belt use laws or other measures to increase safety belt use?

Submission of Comments

Interested persons are invited to submit comments. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will mail the postcard back.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

(Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50)

Issued on February 24, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–4985 Filed 2–24–97; 4:51 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 022197B]

RIN 0648–AI82

Fisheries Off West Coast States and in the Western Pacific; Commercial and Recreational Pacific Salmon Fishery Amendment 12; Pacific Coast Groundfish Fishery Amendment 10

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of amendments to fishery management plans; request for comments.

SUMMARY: NMFS announces that the Pacific Fishery Management Council (Council) has submitted Amendment 12 to the Fishery Management Plan for Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California (Salmon FMP) and Amendment 10 to the Pacific Coast Groundfish Fishery Management Plan (Groundfish FMP) for Secretarial review. Amendment 12 would allow retention, but not sale, of salmon bycatch by groundfish trawl vessels under a monitoring program that meets certain guidelines; would specify Endangered Species Act (ESA) standards as management objectives for salmon species listed under the ESA; and would update the Salmon FMP,

with no change in the FMP's management objectives. Amendment 10 would allow retention, but not sale, of salmon bycatch by groundfish trawl vessels under a monitoring program that meets certain guidelines.

DATES: Comments on Amendments 12 and 10 must be received on or before April 28, 1997.

ADDRESSES: Comments on Amendments 12, 10, or supporting documents should be sent to Mr. William Stelle, Administrator, Northwest Region, NMFS, Sand Point Way NE, BIN C15700, Seattle, WA 98115–0070; or to Ms. Hilda Diaz-Soltero, Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213.

Copies of Amendments 12 and 10, the Environmental Assessment (EA)/ Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA) are available from Larry Six, Executive Director, Pacific Fishery Management Council, 2130 SW Fifth Ave., Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140, Rodney McInnis at 310–980–4040, or the Pacific Fishery Management Council at 503–326–6352.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each Regional Fishery Management Council submit any fishery management plan (FMP) or plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or amendment, immediately publish a notice that the FMP or amendment is available for public review and comment. NMFS will consider the public comments received during the comment period in determining whether to approve the FMP or amendment.

Amendment 12 to the Pacific Coast Salmon FMP and Amendment 10 to the Groundfish FMP would authorize rulemaking to allow retention of salmon bycatch by groundfish trawl vessels under an appropriate monitoring program. Amendment 12 to the Salmon FMP would also incorporate NMFS ESA standards as management objectives for salmon species listed under the ESA, and update the Salmon FMP, without changing the existing FMP's management objectives.

The portion of the amendment regarding ESA standards is necessary to bring the Salmon FMP into compliance with the March 1996 Biological Opinion issued under section 7 of the ESA regarding the impacts of the Pacific Coast salmon fishery on salmon stocks listed under the ESA. The update of the Salmon FMP merely combines into one document the operative language of the 1984 framework FMP and its amendments. Changes to management objectives to comply with the ESA and the update of the salmon FMP will result in minor modifications to the salmon regulations. A proposed rule to implement those modifications will be issued shortly.

NMFS welcomes comments on the proposed FMP amendments through the end of the comment period. NMFS will consider the public comments received during the comment period in determining whether to approve the proposed amendments. A proposed rule to implement Amendment 12 to the Salmon FMP has been submitted for Secretarial review and approval. NMFS expects to publish and request public review and comment on this rule in the near future. Public comments on the proposed rule must be received by the end of the comment period on the amendments to be considered in the approval/disapproval decision on the amendments. All comments received by the end of the comment period for the amendments, whether specifically directed to the amendments or the proposed rule, will be considered in the approval/disapproval decision on the amendments.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 21, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–4871 Filed 2–26–97; 8:45 am]

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Notices

Federal Register

Vol. 62, No. 39

Thursday, February 27, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 21, 1997.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 *and* to Department Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6204 or (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Business Cooperative Service

Title: Rural Economic Development Loan and Grant Program.

OMB Control Number: 0570–New.

Summary: Information collected includes application for loans and grants as well as work plans, scope of work, performance reports and financial status reports.

Need and Use of the Information: The information is used to select projects and to make sure the funds are used for the intended purpose.

Description of Respondents: Not-for-profit institutions; Business or other for-profit.

Number of Respondents: 180.

Frequency of Responses: Recordkeeping; Reporting: On occasion, Annually.

Total Burden Hours: 7,005.

Rural Housing

Title: Community Facility Loan and Grant Program and Water and Waste Loan and Grant Program.

OMB Control Number: 0575–0015.

Summary: Information collected includes application for Federal assistance and budget, expense, contract and inspection information.

Need and Use of the Information: The information is used to determine applicant/borrower, eligibility project feasibility, and to ensure borrowers operate on a sound basis and use loan and grant funds for authorized purposes.

Description of Respondents: Not-for-profit institutions; Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 9,511.

Frequency of Responses: Recordkeeping; Reporting: On occasion, Annually.

Total Burden Hours: 270,789.

Farm Service Agency

Title: Upland Cotton Domestic User/ Exporter Agreement and Payment Program.

OMB Control Number: 0560–0136.

Summary: To participate in this program, exporters and domestic users must sign an agreement with CCC. A name and address file of program participants is maintained. This information is collected when the participant submits CCC–1045. *Need and Use of the Information:* The information is necessary to establish eligibility for payments of domestic users and exporters of US upland cotton and to accurately determine the level of payments authorized under this program.

Description of Respondents: Business or other for-profit.

Number of Respondents: 300.

Frequency of Responses: Recordkeeping; Reporting: On occasion; When payment rate is in effect.

Total Burden Hours: 2,750.

Forest Service

Title: Fuelwood and Post Assessment in Selected States.

OMB Control Number: 0596–0009.

Summary: the Forest and Rangeland Renewable Resources Research Act of 1978 as amended by the Energy Security Act of 1980 requires the Secretary of Agriculture to make and keep current a comprehensive survey and analysis of the present and prospective conditions of forest and range lands.

Need and Use of the Information: The collection is needed to estimate the production and consumption of residential fuelwood and posts in individual states.

Description of Respondents: Individuals or households; Business or other for-profit.

Number of Respondents: 2,940.

Frequency of Responses: Reporting: On occasion; Annually.

Total Burden Hours: 201.

Rural Housing Service

Title: 7 CFR 1910–A, Receiving and Processing Applications.

OMB Control Number: 0575–0134.

Summary: Information collected includes business organization, farm training and experience, credit tests from commercial lenders and a legal description of real estate.

Need and Use of the Information: The collection of information is required to ensure that the direct farm loan programs are being administered in accordance with applicable laws and regulations and that loans are made to applicants who have reasonable prospects for repaying their loans.

Description of Respondents: Farms; Individuals or households; Business or other for-profit; State, Local and Tribal Government.

Number of Respondents: 24,000.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 80,568.

Larry Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 97–4933 Filed 2–26–97; 8:45 am]

BILLING CODE 3410–01–M

Forest Service

South Quartzite Salvage Timber Sale Analysis, White River National Forest; Garfield County, CO

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The U.S. Department of Agriculture, Forest Service will prepare an Environmental Impact Statement to disclose effects of alternative decisions it may make to harvest dead Engelmann spruce and associated road construction within the South Quartzite Salvage Timber Sale Planning area, on the Rifle Ranger District of the White River National Forest.

DATES: Written comments concerning the scope of the analysis should be received on or before April 14, 1997.

ADDRESSES: Send written comments to Veto J. LaSalle, Forest Supervisor, White River National Forest, PO Box 948, 9th and Grand Ave., Glenwood Springs, Colorado 81602. Mr. LaSalle is the Responsible Official for this EIS.

FOR FURTHER INFORMATION CONTACT: Robert W. Currie, Project Coordinator, Holy Cross Ranger District, 24747 U.S. Highway 24, PO Box 190, Minturn, CO 81645, (970) 827–5715.

SUPPLEMENTARY INFORMATION: On May 16, 1996 the White River National Forest released a Draft Environmental Assessment for the proposed action and alternatives to that proposed action under Public Law 104–19. Based on comments received from members of the public, the Interdisciplinary Team has determined that the proposed action and alternatives to that action represent an inventoried roadless area entry. Therefore, an Environmental Impact Statement is required as per Forest Service Handbook 1909.15, Section 20.6. The proposed action proposes to harvest approximately 4.0 to 5.0 million board feet from approximately 1,280 acres of dead Engelmann spruce using a combination of ground-based (approximately 110 acres) and helicopter yarding (approximately 1,180 acres) and to construct approximately 0.9 miles of new specified road.

The proposed action is consistent with governing programmatic management direction contained in the *Rocky Mountain Regional Guide* and FEIS for Standards and Guidelines (1983) and in the Final EIS and *Land and Resource Management Plan for the White River National Forest* (LMP, 1984). The LMP allocated the proposed timber sale area to semi-primitive motorized and semi-primitive non-motorized use and allows for timber harvest. The site-specific environmental analysis provided by the EIS will assist the Responsible Official in determining which improvements are needed to meet the following objectives: Reduce natural fuel loadings and to provide wood products for the nation and opportunities for timber related jobs. Alternative will be carefully examined for their potential impacts on the physical, biological, and social environments so that tradeoffs are apparent to the decisionmaker.

Public participation will be fully incorporated into preparation of the EIS. The first step is the scoping process, during which the Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies, and other individuals or groups who may be interested in or affected by the proposed action. This information will be used in preparing the EIS. No public meetings are planned for this project. Public comments received during initial scoping and those raised during public review of the Draft Environmental Assessment for this project will be incorporated into this EIS. Individuals who have provided comments during initial scoping, on the Draft Environmental Assessment, and those who provide comments on this EIS will receive copies of the Draft EIS for their review.

Preliminary issues include the potential effects of proposed actions on the following elements of the biological, physical, and social environments: wildlife and wildlife habitat, recreation resource values, roadless area resource values, and watershed health resources. The direct, indirect, cumulative, short-term, and long-term aspects of impacts on national forest lands and resources, and those of connected or related effects off-site, will be fully disclosed.

Preliminary alteratives include the proposed action (described above) and No Action, which in this case is deferring treatment of the area until the future. A third preliminary alternative could be analyzed which would harvest approximately 6.0 to 7.0 million board feet of approximately 2,500 acres of dead Engelmann spruce using a combination of ground-based and helicopter yarding and to construct approximately 3.0 miles of new specified road. Additional alternatives may be developed after the significant issues are clarified and management objectives are fully defined. The Responsible Official will be presented with a range of feasible and practical alternatives.

Permits and licenses required to implement the proposed action will, or may, include the following: consultation with U.S. Fish and Wildlife Service for compliance with Section 7 of the Endangered Species Act, review from the Colorado Division of Wildlife, and clearance from the Colorado State Historic Preservation Office.

The Forest Service predicts the draft environmental impact statement will be filed during the fall of 1997 and the final environmental impact statement during the spring of 1998.

The Forest Service will seek comments on the draft environmental impact statement for a period of 45 days after its publication in the **Federal Register**. Comments will then be summarized and responded to in the final environmental impact statement.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statement must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the DEIS stage but that are not raised until after completion of the Final EIS may be waived or dismissed by the courts. City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when they can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

Dated: February 19, 1997.

Gregory A. Kuyumjian,

Acting Forest Supervisor.

[FR Doc. 97–4839 Filed 2–26–97; 8:45 am]

BILLING CODE 3410–BW–M

Natural Resources Conservation Service

Proposed Changes in the NRCS National Handbook of Conservation Practices for Review and Comment

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture.

ACTION: Notice of availability of proposed changes in the NRCS National Handbook of Conservation Practices for review and comment.

SUMMARY: It is the intention of NRCS to issue a series of new or revised conservation practice standards in its National Handbook of Conservation Practices. These standards include Contour Buffer Strips (332), Filter Strips (393A), Tree/Shrub Pruning (660A), Riparian Forest Buffer (391A), and Manure Transfer (634). NRCS State Conservationist' s who choose to adopt these practices for use within their state will incorporate them into Section IV of their Field Office Technical Guide (FOTG). Some of these practices may be used in conservation systems that treat highly erodible land or on land determined to be wetland.

DATES: Comments will be received on or before April 28, 1997.

FOR FURTHER INFORMATION CONTACT: Submit individual inquiries in writing to Gary Nordstrom, Director, Ecological Sciences Division (ECS), Natural Resources Conservation Service (NRCS), P.O. Box 2890, Room 6154–S, Washington, DC 20013–2890.

Single copies of these standards are available from NRCS–ECS in Washington, DC. Copies are also available electronically from the NRCS server at Fort Worth, Texas. The name of the server is ftp.ftw.nrcs.usda.gov. Practice standards appear as files in /pub/nhcp/pending. Practice code numbers are used as file names in this subdirectory. These standards are available as MS Word 6.0 files. They should be downloaded from the FTP server as binary files.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 requires the NRCS to make available for public review and comment proposed revisions to conservation practice standards used to carry out the highly erodible land and wetland provisions of the law. For the next 60 days the NRCS will receive comments relative to the proposed changes. Following that period a determination will be made by the NRCS regarding disposition of those comments and a final determination of change will be made.

Gary R. Nordstrom,

Director, Ecological Sciences Division, Natural Resources Conservation Service.

[FR Doc. 97–4945 Filed 2–26–97; 8:45 am]

BILLING CODE 3410–16–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Arizona Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Arizona Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 5:00 p.m. on Friday, March 14, 1997, at the U.S. District Court Building, 7th Floor Hearing Room, 230 North First Avenue, Phoenix, Arizona 85025. The purpose of the meeting is to hold a factfinding forum on employment.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Manuel Pena, 602–254–3407, or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 14, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–4799 Filed 2–26–97; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Texas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Texas Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 6:00 p.m. on Saturday, April 5, 1997, at the Townes Hall Auditorium, the University of Texas School of Law, 727 E. 26th Street, Room 2–114, Austin, Texas 78705. The purpose of the meeting is to hold a public consultation on affirmative action and admissions practices and policies in Texas institutions of higher education, post *Hopwood* v. *Texas.*

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Adolph Canales, 214–653–6779 or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 14, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–4800 Filed 2–26–97; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–820]

Certain Compact Ductile Iron Waterworks Fittings and Glands From the People's Republic of China; Termination of Antidumping Duty New Shipper Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of termination of antidumping duty new shipper administrative review.

SUMMARY: On April 26, 1996, the Department of Commerce (the Department) published in the **Federal Register** (61 FR 18568) the notice of initiation of the administrative review of the antidumping duty order on Certain Compact Ductile Iron Waterworks Fittings and Glands (CDIW) from the People's Republic of China (PRC). We are terminating this review based on 776(b) of the Tariff Act of 1930 as

amended by the Uruguay Round Agreements Act (the Act) as a result of evidence on the record which indicates that the respondent in these proceedings failed to cooperate by omitting from submissions certified as being complete and accurate, information material to determining its eligibility for new shipper status.

EFFECTIVE DATE: February 27, 1997.

FOR FURTHER INFORMATION CONTACT: Paul M. Stolz, Office of Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230, telephone: (202) 482–4474.

SUPPLEMENTARY INFORMATION:

Background

On April 1, 1996, Beijing M Star Pipe Corporation (BMSP), an interested party, requested a new shipper administrative review of the antidumping duty order on CDIW for the period August 1, 1995 through February 29, 1996, pursuant to 751(a)(2)(B) of the Act. Section 751(a)(2)(B) of the Act defines new shippers as exporters and producers who demonstrate in their request for review that they: (1) did not export the subject merchandise to the United States during the POI; and (2) are not affiliated with any exporter or producer who did export the subject merchandise to the United States during that period, including those not examined during the investigation.

In its request for review, BMSP certified the following as complete and accurate: (1) that BMSP, under its current or former name, did not export CDIW from the PRC to the United States during the original period of investigation (POI), February 1, 1992 through July 31, 1992; (2) that BMSP's only affiliation with another PRC company or enterprise is with Beijing Cheng Hong Foundry, which did not export CDIW during the POI; and (3) that BMSP had no affiliations with any person, corporation or enterprise which exported CDIW from the PRC during the POI. Based on these certifications, on April 26, 1996, the Department published in the **Federal Register** (61 FR 18568) the notice of initiation of that administrative review.

On December 3, 1996, counsel for the domestic industry placed evidence on the record indicating that BMSP is affiliated with persons and/or entities which shipped subject merchandise to the United States during the period of investigation (POI) and argued that, based on this evidence, BMSP is not eligible for review as a new shipper. In particular, the domestic industry provided information showing that Beijing Metals and Minerals Import and Export Corporation, Beijing, China (BMMC) exported subject merchandise to the United States during the POI and that certain senior company officials are presently employed by both BMSP and BMMC.

Respondent does not dispute these facts. In fact, respondent admits in its January 24, 1997 submission that shared management between BMSP and BMMC does exist. Significantly, in a footnote to its submission, BMSP states that "BMSP acknowledges that it previously misstated the lack of shared managers or officers with any other Chinese exporter." This statement is in direct contradiction to BMSP's certified questionnaire response of May 28, 1996 in which it states "[n]either does BMSP have any relationship with any other producers or exporters of the subject merchandise, including by way of sharing managers or officers." In short, BMSP has now apprised the Department of, and the record clearly shows, a material omission or inaccuracy in BMSP's earlier certified submissions.

At issue here is BMSP's eligibility for a new shipper review. This is a new procedure designed to allow new shippers an opportunity for a review ahead of the normal review cycle. The Department is cognizant of the potential for abuse of this procedure and seeks to ensure that it is only used where appropriate. Certifications are critical to the Department's ability to distinguish between legitimate and illegitimate new shipper requests. The Department must rely on the accuracy of the parties' representations in deciding to initiate this type of review. Moreover, the Department attaches great importance to receiving accurate and complete submissions and requires parties to certify these submissions to ensure accuracy and completeness.

The domestic industry argues that the Department should apply a margin to BMSP based on facts available because BMSP failed to disclose that BMSP and BMMC share common management. Section 776 of the Act authorizes the department to apply facts available, inter alia, when a respondent withholds information which significantly impedes a proceeding. In this case, BMSP provided certified submissions that were clearly inaccurate—it stated that BMSP had no relationship with any PRC entity which exported CDIW during the POI, including by way of sharing managers of officers, when in fact BMSP had knowledge that BMSP shares high-level managers with BMMC. Plainly, BMSP's inaccurate representation and omission of highly material information regarding the issue of eligibility for the new shipper review calls into question the reliability of BMSP's total response in this proceeding and, in these circumstances, warrants the use of adverse facts available.

Section 776(b) provides that when a party to the proceeding has failed to cooperate by not acting to the best of its ability to comply with requests for information, the Department may use an inference that is adverse. Given the importance of receiving accurate and complete information in proceedings we conduct, we have determined to apply adverse facts available pursuant to 775(b) by finding BMSP ineligible for a new shipper review.

This notice is published in accordance with section 353.22(h)(9)(i) of the Department's regulations (19 CFR 353.22.(h)(9)(i)).

Dated: February 14, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–4926 Filed 2–26–97; 8:45 am]

BILLING CODE 3510–DS–M

[A–570–820]

Certain Compact Ductile Iron Waterworks Fittings and Glands (CDIW) From the People's Republic of China: Termination of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of termination of antidumping duty administrative review.

SUMMARY: On September 2, 1994, the Department of Commerce (the Department) published in the **Federal Register** (59 FR 45664) the notice of initiation of the administrative review of the antidumping duty order on certain compact ductile iron waterworks fittings and gland (CDIW) from the People's Republic of China (PRC). We are terminating this review as a result of the withdrawal by Star Pipe Products, Inc. (Star Pipe) of its request for the review. The petitioner in this proceeding, the U.S. Waterworks Fittings Producers Council, had requested an administrative review of the same period of sales made by China National Metal Products Import & Export Corporation (CMP). However, on the basis of a court remand, CMP was subsequently, retroactively, excluded from the antidumping duty order. As a result we terminated the review of CMP on December 29, 1994 as published in the **Federal Register** (60 FR 2078). Star Pipe was the only other interested party that requested this review.

EFFECTIVE DATE: February 27, 1997.

FOR FURTHER INFORMATION CONTACT: Paul M. Stolz, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–4474.

SUPPLEMENTARY INFORMATION:

Background

On September 29, 1994, Star Pipe, an interested party, requested an administrative review of the antidumping duty order on CDIW from the PRC for the period February 18, 1993 through August 31, 1994, pursuant to 751(1)(B) of the Tariff Act of 1930 as amended by the Uruguay Round Agreements Act. On September 2, 1995, the Department published in the **Federal Register** (59 FR 45664) the notice of initiation of that administrative review. Star Pipe withdrew its request for review on January 17, 1997, pursuant to 19 CFR 353.22(a)(5). The petitioner in this proceeding, the U.S. Waterworks Fittings Producers Council, had requested an administrative review of the same period of sales made by China National Metal Products Import & Export Corporation (CMP). However, on the basis of a court remand, CMP was subsequently, retroactively, excluded from the antidumping duty order. *See Certain CDIW Fittings and Glands from the PRC: Notice of Court Decision; Exclusion From the Application of the Antidumping Duty Order, in Part; Termination of Administrative Review in Part; and Amended Final Determination and Order* (60 FR 2078). Although Star Pipe is now withdrawing its request beyond the 90 day time limit set forth in 19 CFR 353.22(a)(5), the Department has the discretion to extend said time limit if the Department decides it is reasonable to do so. Since Star Pipe was the only other interested party that requested this review, the Department considers it reasonable to terminate this review. Therefore, the Department is terminating this review.

This notice is published in accordance with § 353.22(a)(5) of the Department's regulations (19 CFR 353.22.(a)(5)).

Dated: February 19, 1997.

Jeffrey P. Bialos,

Principal Deputy Assistant Secretary for Import Administration.

[FR Doc. 97–4927 Filed 2–26–97; 8:45 am]

BILLING CODE 3510–DS–M

[A–475–818]

Certain Pasta From Italy: Initiation of New Shipper Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("the Department") has received a request to conduct a new shipper administrative review of the antidumping duty order on certain pasta from Italy. In accordance with 19 CFR 353.22(h), we are initiating this administrative review.

EFFECTIVE DATE: February 27, 1997.

FOR FURTHER INFORMATION CONTACT: John Brinkmann or Greg Thompson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–5288 or 482–3003, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

SUPPLEMENTARY INFORMATION:

Background

The Department has received a request, pursuant to section 751(a)(2)(B) of the Act, and in accordance with 19 CFR 353.22(h), for a new shipper review of the antidumping duty order on certain pasta from Italy, which has a July anniversary date.

Initiation of Review

In accordance with section 751(a)(2)(B) of the Act and 19 CFR 353.22(h)(6), we are initiating a new shipper review of the antidumping duty order on certain pasta from Italy. We intend to issue the final results of review not later than 270 days from the date of publication of this notice.

The standard period of review (POR) in a new shipper review initiated following the semiannual anniversary month is the six months preceding the semiannual anniversary month. However, the Department may expand the standard POR to cover the first exportation of a new shipper. *See Certain Compact Ductile Iron Waterworks Fittings and Glands From the People's Republic of China*, 61 FR 18568, (April 26, 1996). Therefore, the POR for this review has been expanded to include the semiannual anniversary month.

Antidumping duty proceeding	Period to be reviewed
Italy: Certain Pasta, A–475–818:	
GSA, S.r.l	07/01/96–1/31/97

We will instruct the U.S. Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by the company listed above, in accordance with 19 CFR 353.22(h)(4).

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b).

This initiation and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 353.22(h).

Dated: February 20, 1997.

Richard W. Moreland,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 97–4928 Filed 2–26–97; 8:45 am]

BILLING CODE 3510–DS–P

[A–583–815]

Certain Welded Stainless Steel Pipe From Taiwan, Antidumping Duty Administrative Review; Time Limit

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limit.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the final results of the third administrative review of the antidumping duty order on welded stainless steel pipe from Taiwan. The review covers one manufacturer/exporter of the subject merchandise to the United States, Ta Chen Stainless Pipe Company, Ltd., and the period

December 1, 1994 through November 30, 1995.

EFFECTIVE DATE: February 27, 1997.

FOR FURTHER INFORMATION CONTACT: Robert M. James at (202) 482–5222 or John Kugelman at (202) 482–0649, AD/CVD Enforcement Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: The Department initiated this administrative review on February 1, 1996 (61 FR 3670). On September 12, 1996, we extended the time limit for the preliminary results of administrative review. See Notice of Extension of Time Limits, 61 FR 48126. On January 10, 1997, we published in the **Federal Register** the preliminary results of this administrative review (62 FR 1435).

Because it is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act of 1994, the Department is extending the time limit for completion of the final results until July 8, 1997. See Memorandum from Joseph A. Spetrini to Robert S. LaRussa, on file in Room B–099 of the Main Commerce Building. The deadline for the final results of review will now be July 8, 1997 (*i.e.*, 180 days after the publication of our preliminary results).

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended.

Dated: February 18, 1997.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 97–4929 Filed 2–26–97; 8:45 am]

BILLING CODE 3510–DS–P

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 97–001. *Applicant:* University of California, San Diego, Scripps Institute of Oceanography, 7835 Trade Street, San Diego, CA 92121. *Instrument:* (8) Directional Waverider Buoys. *Manufacturer:* Datawell bv, The Netherlands. *Intended Use:* The article is intended to be used in support of ongoing and proposed research on the evolution of directional wave spectra across the continental shelf and near complex bathymetric features. *Application accepted by Commissioner of Customs:* January 3, 1997.

Docket Numbers: 97–002, 97–003 and 97–006. *Applicant:* Brigham and Women's Hospital, Harvard Medical School, 75 Francis Street, Boston, MA 02115. *Instrument:* (3) Digital Sleep Recorders, Model Vitaport 2. *Manufacturer:* TEMEC Instruments BV, The Netherlands. *Intended Use:* The instruments will be used to record sleep patterns, circadian rhythms and pulmonary functions for studies of the effects of melatonin on sleep disturbances induced by misalignment of the sleep-wake cycle and endogenous circadian phase. *Applications accepted by Commissioner of Customs:* January 8, 1997 and January 16, 1997.

Docket Number: 97–004. *Applicant:* Brooklyn College of the City University of New York, Environmental Sciences Laboratory, 2900 Bedford Avenue, Brooklyn, NY 11210. *Instrument:* Electron Microscope, Model JEM–2010. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument will be used to study the physico-chemical properties of inorganic particulates in the environment. It will be used to determine the morphology, elemental composition, crystal structure, long/short range ordering, microcrystalline structure and d-spacing of crystallographic planes. *Application accepted by Commissioner of Customs:* January 10, 1997.

Docket Number: 97–005. *Applicant:* Massachusetts Institute of Technology, Center for Space Research, 77 Massachusetts Avenue, Cambridge, MA 02139. *Instrument:* Digital Sleep Recorder, Model Vitaport 2. *Manufacturer:* TEMEC Instruments BV, The Netherlands. *Intended Use:* The article is intended to be used for studies of the effects of microgravity on the human body, especially sleep functions, circadian rhythm changes and pulmonary function. *Application accepted by Commissioner of Customs:* January 14, 1997.

Docket Number: 97–007. *Applicant:* University of Oklahoma, Purchasing Department, 660 Parrington Oval, Room 321, Norman, OK 73019. *Instrument:* CO_2/Far-Infrared Laser System. *Manufacturer:* Edinburgh Instruments, Ltd., United Kingdom. *Intended Use:* The instrument will be used for studies of narrow-gap semiconductor quantum wells and superlattices to obtain the highest quality cyclotron resonance spectra for analysis to obtain electronic properties. In addition, the instrument will be used for educational purposes in the courses Research for Doctor's Dissertation and Research for Master's Thesis. *Application accepted by Commissioner of Customs:* January 17, 1997.

Docket Number: 97–008. *Applicant:* University of Colorado, Institute for Arctic and Alpine Research, 1560 30th Street, Boulder, CO 80309–0450. *Instrument:* Mass Spectrometer, Model OPTIMA. *Manufacturer:* Micromass, United Kingdom. *Intended Use:* The instrument will be used for measuring the stable isotopic composition (primarily carbon and oxygen) of natural materials such as calcium carbonate sediments, atmospheric gases, natural waters and organic matter. Projects in which the instrument will be used involve around the general theme of understanding the patterns and causes of climate change. A primary use will be the analysis of calcium carbonate coral reef materials. In addition, the instrument will be used for educational purposes in graduate classes in isotope geochemistry. *Application accepted by Commissioner of Customs:* January 24, 1997.

Docket Number: 97–009. *Applicant:* Georgia Institute of Technology, School of Earth and Atmospheric Sciences, 221 Bobby Dodd Way, Atlanta, GA 30332–0340. *Instrument:* Mass Spectrometer, Model OPTIMA. *Manufacturer:* Micromass, United Kingdom. *Intended Use:* The instrument will be used for studies of plant and soil samples, water samples, rock and mineral samples and atmospheric gas samples which will be taken from the natural environment and the fossil record and designed to provide information about research topics related to past climate environment and present-day nutrient cycling. The objectives of the studies include successful analysis of the carbon, oxygen and hydrogen isotope composition of the samples mentioned, with the final step of analysis being measurement of the gas upon the instrument. *Application accepted by Commissioner of Customs:* January 29, 1997.

Docket Number: 97–010. *Applicant:* Stanford University, Department of Pediatrics, 300 Pasteur Drive, Stanford, CA 94304–5119. *Instrument:* Ambulatory Recorder, Model Embla. *Manufacturer:* Flaga hF. Medical Service, Iceland. *Intended Use:* The article is intended to be used for recording physiological signals from human infants to assess the sleep development and the circadian rhythm development of infants. The objective of these studies will be to describe the basic physiological processes which in turn will lead to a better understanding of factors related to Sudden Infant Death Syndrome. *Application accepted by Commissioner of Customs:* February 4, 1997.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–4930 Filed 2–26–97; 8:45 am]

BILLING CODE 3510–DS–P

Intent To Revoke Countervailing Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Intent to Revoke Countervailing Duty Orders.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its intent to revoke the countervailing duty orders listed below. Domestic interested parties who object to revocation of this order must submit their comments in writing not later than the last day of March 1997.

EFFECTIVE DATE: February 27, 1997.

FOR FURTHER INFORMATION CONTACT: Cameron Cardozo or Maria MacKay, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke a countervailing duty order if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by the Department's regulation (at 19 CFR 355.25(d)(4)), we are notifying the public of our intent to revoke the countervailing duty orders listed below, for which the Department has not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months.

In accordance with section 355.25(d)(4)(iii) of the Department's regulations, if no domestic interested party (as defined in sections 355.2 (i)(3), (i)(4), (i)(5), and (i)(6) of the regulations) objects to the Department's intent to revoke the order pursuant to this notice, and no interested party (as defined in section 355.2(i) of the regulations) requests an administrative review in accordance with the Department's notice of opportunity to request administrative review, we shall conclude that the countervailing duty order is no longer of interest to interested parties and proceed with the revocation. However, if an interested party does request an administrative review in accordance with the Department's notice of opportunity to request administrative review, or a domestic interested party does object to the Department's intent to revoke pursuant to this notice, the Department will not revoke the order.

Countervailing Duty Orders:		
Chile	Standard Carnations (C–337–601)	03/19/87 52 FR 8635
France	Brass Sheet and Strip (C–427–603)	03/06/87 52 FR 6996
Iran	Raw Pistachios (C–507–501)	03/11/86 51 FR 8344
Israel	Oil Country Tubular Goods (C–508–601)	03/06/87 52 FR 6999

Opportunity to Object

Not later than the last day of March 1997, domestic interested parties may object to the Department's intent to revoke these countervailing duty orders. Any submission objecting to a revocation must contain the name and case number of the order and a statement that explains how the objecting party qualifies as a domestic interested party under sections 355.2 (i)(3), (i)(4), (i)(5), or (i)(6) of the Department's regulations.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, D.C. 20230.

This notice is in accordance with 19 CFR 355.25(d)(4)(i).

Dated: February 20, 1997.

Jeffrey P. Bialos,

Principal Deputy Assistant Secretary for Import Administration.

[FR Doc. 97–4931 Filed 2–26–97; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

[I.D. 021997F]

Marine Mammals; Permits No. 1019 (P619) and 838 (P535)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications for amendment.

SUMMARY: Notice is hereby given that the following permittees have requested an amendment: Dr. Catherine Schaeff, Department of Biology, American University, 4400 Massachusetts Avenue, NW, Washington, D.C. 20016, permit No. 1019; and Dr. Stephen J. Insley, National Zoological Park, Smithsonian Institution, Washington, D.C. 20008, permit No. 838.

DATES: Written comments must be received on or before March 31, 1997.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

(P619) - Regional Administrator, Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432;

(P535) - Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0070.

Written data or views, or requests for a public hearing on this request should

be submitted to the Director, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on these particular amendment requests would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the applications to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The amendments to permit no. 1019, issued on November 11, 1996 (61 FR 55134) and permit no. 835, as amended, June 3, 1996 (61 FR 29741) are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Permit no. 1019 authorizes the permit holder to import gray whale samples from Canada and Mexico. The permit holder requests authorization to import Southern right whale samples from South America, South Africa and Australia for genetic analyses.

Permit no. 838 authorizes the permit holder to mark and tag up to 100 fur seals, tissue sample up to 60 adult males and 20 mothers and 20 offspring, and to inadvertently harass up to 150 fur seals over a 4-year period. The Holder requests authorization to: Sample an additional 40 male seals; inadvertently harass an additional 100 seals during vocal playback experiments; and extend the permit through December 31, 1997.

Dated: February 21, 1997.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–4872 Filed 2–26–97; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of an Import Restraint Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in El Salvador

February 21, 1997

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending a limit.

EFFECTIVE DATE: February 27, 1997.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

In a Memorandum of Understanding (MOU) dated February 6, 1997, the Governments of the United States and El Salvador agreed to increase the 1997 limit for Categories 352/652.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 59864, published on November 25, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act, the Uruguay Round Agreement on Textiles and Clothing and the MOU dated February 6, 1997, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 2, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 19, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in El Salvador and exported during the twelve-month period beginning on January 1, 1997 and extending through December 31, 1997.

Effective on February 27, 1997, you are directed to increase the limit for Categories 352/652 to 10,000,000 dozen[1], as provided for under the Uruguay Round Agreements Act, the Uruguay Round Agreement on Textiles and Clothing and a Memorandum of Understanding dated February 6, 1997 between the Governments of the United States and El Salvador.

The guaranteed access level for Categories 352/652 remain unchanged.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–4791 Filed 2–26–97; 8:45 am]

BILLING CODE 3510–DR–M

[1] The limit has not been adjusted to account for any imports exported after December 31, 1996.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Availability of Funds for Technical and Administrative Support for the National Service Leader Schools Program

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability of funds.

SUMMARY: The Corporation for National Service (the Corporation) announces the availability of up to $350,000 to provide assistance in developing and implementing a National Service Leader Schools (NSLS) program. The NSLS program will recognize outstanding middle and high schools providing community service and service learning opportunities to students. Under this new program, the Corporation intends to (1) Work with local communities and experts to identify standards for model community service and service learning programs in middle and high schools; (2) offer opportunities for all schools to meet those standards and receive recognition for doing so; and (3) provide awards to a select group of leader schools, recognized at the State and national levels.

The successful applicant organization will assist in the design of the program; conduct outreach and promote the activity; set up and work with a group of qualified individuals to define appropriate standards; and work with schools, local school districts, and States to select and recognize programs.

DATES: Application materials will be available beginning March 10, 1997. Applications must be received by the Corporation at the address listed below by 3:00 p.m. Eastern Standard Time on April 18, 1997. Applications may not be submitted by facsimile.

ADDRESSES: Interested organizations may request application materials by writing to the Corporation for National Service, Attn: Patricia Holliday, 1201 New York Avenue NW., Washington, DC 20525, or by facsimile at (202) 565–2777.

FOR FURTHER INFORMATION CONTACT: For further information, contact Patricia Holliday at (202) 606–5000, ext. 187. This notice may be requested in an alternative format for the visually impaired.

SUPPLEMENTARY INFORMATION:

Background

The Corporation is a federal government corporation that encourages Americans of all ages and backgrounds to engage in community-based service. This service addresses the nation's educational, public safety, environmental, and other human needs to achieve direct and demonstrable results. In supporting service programs, the Corporation fosters civic responsibility, strengthens the ties that bind us together as a people, and provides educational opportunity for those who make a substantial commitment to service.

Pursuant to the National and Community Service Act of 1990, as amended, 42 U.S.C. 12501, *et seq.*, the Corporation may "support innovative and model programs." Under this authority, the Corporation intends to support a National Service Leader Schools (NSLS) program that will (1) Identify standards for model community service and service learning programs in middle and high schools; (2) offer opportunities for schools to meet those standards and receive recognition for doing so; and (3) make awards to several schools at State and national levels. To accomplish this, the Corporation will enter into a cooperative agreement with an organization selected in accordance with this notice. Through this notice, the Corporation invites applications from interested organizations to assist in the development and implementation of the NSLS program, working closely with staff at the Corporation.

Organizations Eligible to Apply

Public agencies, non-profit organizations, institutions of higher education, Indian tribes, and for-profit companies are eligible to apply. Pursuant to the Lobbying Disclosure Act of 1995, 2 U.S.C. § 1611, an organization described in section 501(c)(4) of the Internal Revenue Code of 1986, 26 U.S.C. § 501(c)(4), that engages in lobbying activities is not eligible to apply.

Purpose and Scope of the National Service Leader Schools Program

The purpose of this program is to encourage community service and service learning programs at middle and high schools across the country. To this end, the NSLS program will recognize, at various levels, outstanding schools and will assist other schools in adopting outstanding programs and practices. This program is national in scope and will involve the participation of experts in the field as well as State and local stakeholders, including State Educational Agencies, State Commissions on National and Community, schools, and school districts.

Activities under this Cooperative Agreement

The successful applicant will work with representatives of local schools and other experts in education to develop a set of criteria to be used in selecting leader schools, with possible considerations including the extent to which schools: (1) Incorporate service-learning into their mission and curriculum; (2) emphasize both service and learning; (3) foster service activities that benefit both those serving and those served; (4) involve students, faculty, administrators, parents, and other community members.

The successful applicant will assist in designing a selection process that effectively utilizes State agencies, schools, and other community resources. The Corporation anticipates that schools would initially self-select to be recognized as leader schools, and that a limited number of leader schools would also be selected for special recognition at the State or national level. Recognition at the State or national level may include the funding of scholarships to particularly noteworthy individuals.

The successful applicant will assist in developing an effective process, utilizing State Educational Agencies or State Commissions, through which information about the NSLS program is disseminated to other schools and school districts within a State.

The Corporation anticipates that it will be substantially involved in carrying out the NSLS program, with the successful applicant providing administrative and technical support during all phases of the program. The Corporation's involvement will include approval of the final program design and implementation plan prepared by the successful applicant. The Corporation expects that the project period will be June 1, 1997, through May 31, 1998, with the possibility of renewal subject to performance, continuing need, and the availability of funds.

Selection Criteria

The Corporation will initially determine whether the organization is eligible and whether the application contains the information required in the application materials. After this initial screening, the Corporation will assess applications based on the criteria listed below (in descending order of importance):

1. The applicant's organizational experience and capacity to carry out the activities described in this notice;
2. The quality of the applicant's proposed plan of operation, including a description of how and when the applicant plans to meet each objective of the program;
3. The quality of key personnel the applicant plans to use in carrying out the NSLS program;
4. The extent to which (a) The budget is adequate to support the NSLS program and (b) proposed costs are reasonable in relation to the objectives of the NSLS program.

Dated: February 21, 1997.

Barry W. Stevens,

Acting General Counsel, Corporation for National and Community Service.

[FR Doc. 97–4942 Filed 2–26–97; 8:45 am]

BILLING CODE 6050–28–P

Presidio Leadership Center

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability of customized leadership training.

SUMMARY: The Corporation for National Service's Presidio Leadership Center invites organizations operating national service programs supported by the Corporation to request customized leadership training.

DATES: Organizations may request customized leadership training at any time following publication of this notice.

ADDRESSES: Responses to this notice should be sent to Lisa Spinali, Presidio Leadership Center, P.O. Box 29995, Building 386, The Presidio of San Francisco, CA 94129. Facsimile: (415) 561–5955.

FOR FURTHER INFORMATION CONTACT: Lisa Spinali at (415) 561–5950, ext. 115. This notice may be requested in an alternative format for the visually impaired.

SUPPLEMENTARY INFORMATION: The Corporation for National Service is a federal government corporation that engages Americans of all ages and backgrounds in community-based service. This service addresses the nation's educational, public safety, environmental, and other human needs to achieve direct and demonstrable results. In supporting national service programs, the Corporation fosters civic responsibility, strengthens the ties that bind us together as a people, and provides educational opportunity for those who make a substantial commitment to service. The Corporation supports several types of national service, including: AmeriCorps*State/National, AmeriCorps*VISTA, AmeriCorps*National Civilian Community Corps; Learn and Serve America (K–12 and Higher Education); and the National Senior Service Corps (Retired Senior Volunteer Program, Foster Grandparent Program, Senior Companion Program).

The Corporation provides training and technical assistance to national service programs in a variety of areas and uses the Presidio Leadership Center (PLC) for leadership training. The PLC currently provides an executive-level training program (the National Service Executive program) open to leaders of Corporation-funded programs by application only. The purpose of this notice is to make available the leadership training resources of the PLC to more national service programs by offering the opportunity for a limited number of programs to receive customized training at the PLC. The PLC is also prepared to accommodate requests to provide customized training at locations other than the PLC.

Portions of the National Service Executive program curriculum—such as facilitative leadership, meeting skills management, situational leadership, building collaborative teams, customer service, managing change, and the use of different assessment instruments as a means of individual leadership development—are most appropriate for customized assistance. Training sessions could range from one to five days in length depending on the number of topics included. Topics and length of time necessary may need to be adjusted based upon the objectives for the training identified by the requestor.

The PLC will incur its fixed costs associated with curriculum design and trainers. However, the requester will be responsible for trainer travel and lodging costs (for training sessions conducted at locations other than the PLC) and the cost of any necessary materials (*i.e.*, handbooks, assessment instruments, etc.). The Corporation encourages requesters to involve individuals who have already been trained by the PLC (*i.e.*, National Service Executive Program alumni and AmeriCorps Leaders) as a means of reducing costs.

The PLC is committed to achieving the greatest impact possible through its limited resources, and therefore must exercise substantial discretion in acting on requests for this assistance. The PLC is particularly interested in providing training sessions for participants across all program streams within a State or a region, or for multiple similar programs within a State or region.

Interested national service programs should make their request in writing to the PLC, describing: (1) The type of training requested; (2) the type of national service program or programs operated by the requesting or co-sponsoring organizations; (3) the preferred time frame; (4) the ability to cover necessary costs; and (5) the expected number and background of participants.

The Corporation will consider requests for customized leadership training as they are received, taking into consideration the following factors:

1. Achieving balance across program type and geographical area.
2. Number of participants.
3. Breadth of participating programs and organizations.
4. Constraints on the PLC's resources.
5. Non-duplication of training and technical assistance otherwise available.

Dated: February 21, 1997.

Barry W. Stevens,

Acting General Counsel.

[FR Doc. 97–4943 Filed 2–26–97; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 97–09]

36(b) Notification

AGENCY: Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSAA/COMPT/FPD, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 97–09, with attached transmittal, policy justification and sensitivity of technology pages.

Dated: February 24, 1997.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Honorable Newt Gingrich
Speaker of the House of Representatives, Washington, D.C. 20515–6501

Dear Mr. Speaker: Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 97–09, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to the Taipei Economic and Cultural Representative Office (TECRO) in the United States for defense articles and services estimated to cost $95 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Thomas G. Rhame,

Lieutenant General, USA Director.

Attachments

Transmittal No. 97–09

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

(i) *Prospective Purchaser:* Taipei Economic and Cultural Representative Office (TECRO) in the United States.

(iii) *Total Estimated Value:*

Major Defense Equipment*	$77 million.
Other	18 million.
Total	95 million.

* as defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description of Articles or Services Offered:* Fifty-four HARPOON missiles with containers, spare and repair parts, support equipment, publications, U.S. Government and contractor technical assistance and other related elements of logistics support.

(iv) *Military Department:* Navy (LFV).

(v) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None.

(vi) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Annex attached.

(vii) *Date Report Delivered to Congress:* February 14, 1997.

Policy Justification

Taipei Economic and Cultural Representative Office (TECRO) in the United States—HARPOON Missiles

The Taipei Economic and Cultural Representative Office (TECRO) in the United States has requested the purchase of 54 HARPOON missiles with containers, spare and repair parts, support equipment, publications, U.S. Government and contractor technical assistance and other related elements of logistics support. The estimated cost is $95 million.

This sale is consistent with United States law and policy, as expressed in Public Law 96–8.

The recipient will use these missiles to maintain an anti-surface warfare capability on its 1052 KNOX class ships leased from the U.S. Navy. The recipient will have no difficulty using this equipment.

The sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be McDonnell Douglas Aerospace, St. Louis, Missouri. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this sale will not require the assignment of any additional U.S. Government personnel or contractor representatives in-country.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

Transmittal No. 97–09

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex—Item No. vi

(vi) *Sensitivity of Technology:*

1. The HARPOON missile contains sensitive technology and has the following classified components, including applicable technical and equipment documentation and manuals:

a. Guidance Section Components
b. Missile Characteristics and Performance Data

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification. Moreover, the benefits to be derived from this sale, as outlined in the Policy Justification, outweigh the potential damage that could result if the sensitive technology were revealed to unauthorized persons.

[FR Doc. 97–4863 Filed 2–26–97; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

Proposed Collection; Comment Request

AGENCY: Headquarters Air Force Materiel Command.

ACTION: Notice.

In compliance with Section 35–6 (c)(2)(A) of the Paperwork Reduction Act of 1995, currently approved public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by April 28, 1997.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Headquarters Air Force Materiel Command, 4375 Chidlaw Road, Suite 6, Wright-Patterson AFB, OH 45433–5006, Attn: Capt Andy Roake, Chief, Community Relations Division.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and collection instruments, please write to the above address, or call the Headquarters Air Force Materiel Command (HQ AFMC) Community Relations Division at (937) 257–7618.

Title, Associated Form, and OMB Number: Good Neighbor Survey, OMB Number 0701–0131.

Needs and Uses: The information collection instrument is necessary to provide: (a) the general public an instrument to interface with Air Force Materiel Command Community Relations Divisions located at 14 installations across the United States; (b) individual AFMC Public Affairs Offices feedback about the ongoing, perceived relationship between their base and individuals in surrounding communities; and (c) HQ AFMC a tool to measure the overall impact of its community relations programs and help plan future activities.

Affected Public: General population civilian, active-duty, and retired military individuals.

Annual Burden Hours: 56 Hours.

Number of Respondents: 700 per annum.

Responses per Respondent: 1.

Average Burden per Respondent: .08 hour.

Frequency: One time.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are individuals expressing their perceptions about the ongoing relationship between their communities and AFMC bases at 14 locations across the United States. The information obtained will be used to assess the effectiveness of current community relations activities and plan future efforts, to ensure that all AFMC installations maintain their "Good Neighbor" status accordingly.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 97–4899 Filed 2–26–97; 8:45 am]

BILLING CODE 3910–01–P

Department of the Navy, DoD

Notice of Closed Meeting of the Board of Visitors to the United States Naval Academy

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.2), notice is hereby given that a special committee of the Board of Visitors to the United States Naval Academy will meet on February 27, 1997, at the United States Naval Academy, Annapolis, MD, at 8:30 a.m. This meeting will be closed to the public.

The purpose of the meeting is to make such inquiry as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. During this meeting inquiries will relate to the internal personnel rules and practices of the Academy, may involve ongoing criminal investigations, and include discussions of personal information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, the Under Secretary of the Navy has determined in writing that the special committee meeting shall be closed to the public because the meeting will be concerned with matters outlined in section 552(b)(2), (5), (6), and (7) of title 5, United States Code. Due to a delay in Administrative Processing the normal 15 days notice requirement could not be met.

FOR FURTHER INFORMATION CONCERNING THIS MEETING CONTACT: Lieutenant

Commander Adam S. Levitt, U.S. Navy, Secretary to the Board of Visitors, Office of the Superintendent, United States Naval Academy, Annapolis, MD 21402–5000, telephone number (410) 293–1503.

Dated: February 24, 1997.

Donald E. Koenig, Jr.,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 97–4935 Filed 2–26–97; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Director, Information Resources Management Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 28, 1997.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Resources Management Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 21, 1997.

Gloria Parker,

Director, Information Resources Management Group.

Office of Postsecondary Education

Type of Review: Extension.
Title: Directory of Teacher Shortage Subject Areas for the Federal Perkins Loan Program.
Frequency: Annually.
Affected Public: Individuals or households; Not-for-profit institutions; Federal Government; State, local or Tribal Gov't, SEAs or LEAs.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 57.
Burden Hours: 2,127.
Abstract: The Higher Education Act (HEA) of 1992 (Pub. L. 201–325) enacted provisions for Federal Perkins Loan borrowers to have their loans canceled when they teach in any field of expertise that is determined by the State education agency to have a shortage in certain subject areas.

[FR Doc. 97–4821 Filed 2–26–97; 8:45 am]

BILLING CODE 4000–01–P

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Director, Information Resources Management Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 31, 1997.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: February 21, 1997.

Gloria Parker,

Director, Information Resources Management Group.

Office of Postsecondary Education

Type of Review: Revision.
Title: Fiscal Operations Report and Application to Participate in Federal Perkins Loan, Federal Supplemental Educational Opportunity Grant, and Federal Work-Study Programs.
Frequency: Annually.
Affected Public: Business or other for-profit; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 4,800.
Burden Hours: 80,298.
Abstract: This application data will be used to compute the amount of funds needed by each institution during the 1998–99 Award Year. The Fiscal Operations Report data will be used to assess program effectiveness, account for funds expended during the 1996–97 Award Year, and as part of the institutional funding process.

Office of the Under Secretary

Type of Review: New.
Title: Congressionally Mandated Study of Migrant Student Participation in Title I Schoolwide Programs.
Frequency: One Time.
Affected Public: State, local or Tribal Government, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 1,315.
Burden Hours: 1,498.
Abstract: Congress required a study of services to migrant children in schoolwide projects. This study uses school surveys, case studies, and document reviews to meet that requirement. A final report will be submitted to Congress in December 1997.

[FR Doc. 97–4822 Filed 2–26–97; 8:45 am]

BILLING CODE 4000–01–P

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; ED.

ACTION: Notice of Partially Closed Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a) (2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the open portions of the meeting.

DATE: March 6–8, 1997.

TIME: *March 6*—Achievement Levels Committee, 3:00 P.M.—5:00 P.M., (closed); Nominations Committee, 3:00 P.M.—5:00 P.M. (closed) and 7:00 P.M.—9:00 P.M., (closed); Executive Committee, 5:00 P.M.—6:00 P.M. (open); 6:00 P.M.—7:00 P.M., (closed). *March 7*—full Board, 8:30 A.M.—10:00 A.M., (open); Subject Area Committees #1 and #2 in joint session, 10:00 A.M.—12:30 P.M., (open); Design and Methodology Committee and Reporting and Dissemination Committee, 10:00 A.M.—11:00 A.M., (open); Design and Methodology Committee and Reporting and Dissemination Committee in joint session, 11:00 A.M.—12:30 P.M. (open); Full Board 12:30 P.M.—2:45 P.M. (closed), 2:45 P.M.—4:00 P.M. (open). *March 8*—Full Board, 9:00 A.M.—11:45 A.M., (open), 11:45 A.M.—12:00 Noon, (closed).

LOCATION: The Francis Marion Hotel; 387 King Street; Charleston, South Carolina.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street, N.W., Washington, D.C. 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving America's Schools Act of 1994) (Pub. L. 103–382).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

On March 6, from 3:00—5:00 P.M., there will be a closed meeting of the Achievement Levels Committee. The Committee will discuss results of the current 1996 science level-setting activities and review the current analysis of data and proposed exemplar items. This meeting must be conducted in closed session because references will be made to specific items from the assessment and premature disclosure of the information presented for review would be likely to significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption (9)(B) of Section 552b(c) of Title 5 U.S.C. The Nominations Committee will meet in closed session from 3:00 P.M.–5:00 P.M. and 7:00 P.M.–9:00 P.M. These sessions must be closed because the committee will be considering qualifications of nominees for appointment to Board membership. The review and subsequent discussion of this information will touch upon matters that relate solely to the internal rules and practices of an agency and would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of Section 552b(c) of Title 5 U.S.C.

Also on March 6, the Executive Committee will meet in a partially closed session. During the open portion of the meeting, 5:00 P.M.—6:00 P.M., the Committee will hear an update on the NAEP redesign policies and review the proposed schedule of assessments. The Committee will then meet in closed session from 6:00 P.M.—7:00 P.M. to discuss the development of cost estimates for NAEP and future contract initiatives. This portion of the meeting must be closed because public disclosure of this information would likely have an adverse financial affect on the NAEP program. The discussion of this information would be likely to significantly frustrate implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption (9)(B) of Section 552b(c) of Title 5 U.S.C.

On March 7, the full Board will convene in open session at 8:30 A.M. The agenda for this session of the full Board meeting includes approval of the agenda, the Executive Director's Report, a presentation on assessment in South Carolina, and an update on NAEP. Between 10:00 A.M. and 12:30 P.M. there will be a joint meeting (open) of Subject Area committees #1 and #2. In this joint meeting, the Committees will discuss the status of the 1997 assessments, upcoming item reviews for 1998, and various assigned issues related to NAEP redesign.

The Design and Methodology Committee and the Reporting and Dissemination Committee will each meet in open session from 10:00 A.M.–11:00 A.M. The Design and Methodology Committee will formally approve technical design changes to be implemented in the 1998 assessment and discuss issues pertaining to the redesign of NAEP.

The Reporting and Dissemination Committee will discuss the plan for the

release of the 1996 NAEP Science Report Card, review the release of the Mathematics Report Card, and have an update on the TIMSS–NAEP link.

The Design and Methodology Committee and the Reporting and Dissemination Committee will then meet jointly in open session from 11:00 A.M.–12:30 P.M. to discuss sampling and reporting of students with disabilities and limited English proficiency, oversampling and reporting of private schools in 1998 state NAEP, and working definitions of market basket, standard, and comprehensive reports.

The full Board will reconvene in closed session, beginning at 12:30 P.M., to hear a briefing on the 1996 NAEP Science Report, and to have a presentation on and discussion of science achievement levels. This part of the meeting must be conducted in closed session because references will be made to specific items from the assessment and premature disclosure of the information presented for review would be likely to significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption (9)(B) of Section 552b(c) of Title 5 U.S.C. From 2:45 P.M. until 4:00 P.M., the meeting will be open to the public. During this portion of the meeting, the Board will take action on science achievement levels and hear the highlights of committee discussions on redesign issues.

On March 8, the full Board will meet from 9:00 A.M. until adjournment at approximately 12:00 noon. From 9:00 A.M. until 11:45 A.M., the Board will meet in open session to hear reports on redesign issues and committee reports. These committees are—Subject Areas #1 and #2 (combined), Achievement Levels, Reporting and Dissemination and Design and Methodology (individually and combined), and Executive.

From 11:45 A.M. until 12:00 noon, the Board will meet in closed session to hear the report of the Nominations Committee. This session must be closed because the Board will be considering qualifications of nominees for appointment to Board membership. The review and subsequent discussion of this information will touch upon matters that relate solely to the internal rules and practices of an agency and would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of Section 552b(c) of Title 5 U.S.C.

The public is being given less than fifteen days notice of this meeting because of delays in the receipt of data necessary to the closed session deliberations of the Committees and the full Board.

Summaries of the activities of the closed sessions and related matters, which are informative to the public and consistent with the policy of section 5 U.S.C. 552b(c), will be available to the public within 14 days of the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 825, 800 North Capitol Street, N.W., Washington, D.C., from 8:30 A.M. to 5:00 P.M.

Date:

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 97–4941 Filed 2–26–97; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Department of Energy, Los Alamos National Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos National Laboratory.

DATES: Tuesday, March 11, 1997: 6:30 p.m.–9:30 p.m.; 8:00 p.m. to 8:15 p.m. (public comment session).

ADDRESSES: New Mexico Highlands University (Ask for the Sala De Madrid), Las Vegas, New Mexico.

FOR FURTHER INFORMATION CONTACT: Ms. Ann DuBois, Los Alamos National Laboratory Citizens' Advisory Board Support, Northern New Mexico Community College, 1002 Onate Street, Espanola, NM 87352, (800) 753–8970, or (505) 753–8970, or (505) 262–1800.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: Tuesday, March 11, 1997.

6:30 p.m.—Call to Order and Welcome
7:00 p.m.—Old Business
8:00 p.m.—Public Comment
8:15 p.m.—New Business
9:30 p.m.—Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ms. Ann DuBois, at (800) 753–8970. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Herman Le-Doux, Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87185–5400.

Issued at Washington, DC, on February 24, 1997.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 97–4842 Filed 2–26–97; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site-Specific Advisory Board, Fernald

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Fernald.

DATES: Saturday, March 15, 1997, 8:30 a.m.–12:30 p.m.; (public comment session: 12:15 p.m.–12:30 p.m.).

ADDRESSES: The Alpha Building, 10967 Hamilton Cleves Highway, Harrison, Ohio.

FOR FURTHER INFORMATION CONTACT: John S. Applegate, Chair of the Fernald Citizens Task Force, P.O. Box 544, Ross, Ohio 45061, or call the Fernald Citizens Task Force office (513) 648–6478.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of future use, cleanup levels, waste disposition and cleanup priorities at the Fernald site.

Tentative Agenda

8:30 a.m.—Call to Order
8:30–8:45— Chair's Remarks and New Business
8:45–9:15—Report of Transportation and Natural Resources Committees
9:15–10:15—Update on Silos; Results of the Independent Review Team
10:15–10:30—Break
10:30–11:30—Budget and Schedule Issues Planning
11:30–12:15—Discussion of GAO Report
12:15–12:30—Opportunity for Public Input
12:30 p.m.—Adjourn

A final agenda will be available at the meeting, Saturday, March 15, 1997.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Board chair at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official, Gary Stegner, Public Affairs Officer, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to John S. Applegate, Chair, the Fernald Citizens Task Force, P.O. Box 544, Ross, Ohio 45061 or by calling the Task Force message line at (513) 648–6478.

Issued at Washington, DC, on February 24, 1997.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 97–4843 Filed 2–26–97; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. RP97–5–003]

Algonquin Gas Transmission Company; Notice of Compliance Filing

February 21, 1997.

Take notice that on February 18, 1997, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheet to become effective April 1, 1997:

Sub First Revised Sheet No. 714

Algonquin states that this filing is made in compliance with Order No. 587–B, Standards for Business Practices of Interstate Natural Gas Pipelines issued on January 30, 1997 in Docket No. RM96–1–003 by incorporating by reference into its Tariff the Electronic Delivery Mechanism Standards promulgated by the Gas Industry Standards Board and adopted by the Commission in Order No. 587–B.

Algonquin states that copies of this filing were mailed to all customers of Algonquin and interested state commissions, and all parties on the RP97–5–000 service list.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before March 11, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4815 Filed 2–26–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES97–24–000]

American REF–FUEL Company of Hempstead; Notice of Application

February 21, 1997.

Take notice that on February 21, 1997, American REF–FUEL Company of Hempstead (Hempstead) filed an application, under § 204 of the Federal Power Act, seeking authorization to assume an obligation as a guarantor in connection with the issuance of long-term series 1997 Bonds (1997 Bonds) in an aggregate principal amount of $246,805,000 by the Town of Hempstead Industrial Development Agency (Agency).

The 1997 Bonds are being issued to refund all outstanding bonds issued by the Agency in 1985. Pursuant to a Lease Guaranty and Security Agreement, Hempstead has guaranteed the payment of the principal of, premium, if any, and interest on the 1997 Bonds. Hempstead's payment obligation is, however, limited to the amount that Hempstead is required to make as lease payments under the Lease Agreement between Hempstead and the Agency. Hempstead has also pledged, assigned, and granted a security interests to Chase Manhattan Bank, as Trustee, in all of Hempstead's right, title and interest in the Service Agreement, Energy Purchase Agreement, and the Company Support Agreement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 3, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4816 Filed 2–26–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP 96–403–003]

ANR Pipeline Company; Notice of Proposed Reconciliation

February 21, 1997.

Take notice that on February 10, 1997, ANR Pipeline Company (ANR) tendered for filing a proposed reconciliation of its Viking Transportation Costs with Viking revenues recovered in base rates as required by Commission order in Docket No. RP96–403, *et al.* issued December 12, 1996. In addition, ANR proposes that the over-collection of Viking costs in base rates for the period November 1, 1995 through October 31, 1996 be refunded in Docket No. RP94–43–000 pursuant to a final determination by the Commission in that proceeding. ANR proposes to accrue interest on such over-collections which will be taken into account in determining lawful refunds at the conclusion of the rate case.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4812 Filed 2–26–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–213–004]

Columbia Gas Transmission Corporation; Notice of Amendment to Application

February 21, 1997.

Take notice that on February 18, 1997, Columbia Gas Transmission Corporation (Columbia), a Delaware corporation, having its principal place of business at 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed an abbreviated application pursuant to Section 7(c) of the Natural Gas Act, to amend its application for a certificate of public convenience and necessity previously filed with the Commission on February 28, 1996, in Docket No. CP96–213–000, and amended June 7, 1996 in Docket No. CP96–213–001 for its Market Expansion Project as supplemented on March 18, 1996, April 30, 1996, August 9, 1996.

Columbia's February 28, 1996 application sought a certificate of public convenience and necessity authorizing construction to provide 506,795 dekatherms per day (dth/d) of additional daily firm entitlements to its customers over a three-year period beginning in 1997. Specifically, Columbia sought authority to: (i) increase the performance capabilities of certain existing storage fields; (ii) construct and operate, upgrade, and replace certain natural gas facilities; (iii) abandonment certain natural gas facilities and certain base storage gas; and (iv) such other authorizations and/or waivers as may be deemed necessary to implement Columbia's Project.

On January 16, 1997 the Commission issued a Preliminary Determination On Non-Environmental Issues, which determined that a certificate of public convenience a necessity should be issued to Columbia authorizing it to construct and operate the Expansion Project facilities, subject to the environmental review of the proposal and the issuance of the final order.

By this amendment Columbia now proposes to refine certain of its facility construction proposals. Columbia also proposes one additional measurement construction project and two additional abandonments, the details of which are set forth in this second amendment. The facility modifications are the result of further detailed design analysis of the proposed projects by Columbia's engineering staff. Columbia represents that the modifications do not represent a significant change in any of the design or operating aspects of Columbia's Market Expansion Project nor will there be a material impact on the overall project costs or the rolled-in rate impact of the project costs.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 14, 1997, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4802 Filed 2–26–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–250–000]

NorAm Gas Transmission Company; Notice of Request Under Blanket Authorization

February 21, 1997.

Take notice that on February 14, 1997, NorAm Gas Transmission Company (NGT) 1600 Smith Street, Houston, Texas 77002, filed in the above docket a request pursuant to Sections 157.205 and 157.211 of the Regulations (18 CFR Sections 157.205 and 157.211) under its blanket certificate in Docket Nos. CP82–384–000 and CP82–384–001 to construct and operate certain facilities in Arkansas to deliver gas to ARKLA, a distribution division of NorAm Energy Corp., all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, NGT proposes to construct and operate a new 1-inch domestic delivery tap on NGT's Line AM–22 in Hot Springs County, Arkansas to provide service to ARKLA. NGT will own and operate the tap.

NGT states that the estimated volumes to be delivered through the above facilities are 730 MMBtu annually and 2 MMBtu on a peak day. The facilities will be constructed at an estimated cost of $1,750, which ARKLA will reimburse NGT for all costs.

NGT states that it will transport gas to ARKLA and provide service under its tariff, that the volumes delivered are within ARKLA's certificated entitlement and NGT's tariff does not prohibit the addition of new delivery points. NGT states that it has sufficient capacity to accomplish the deliveries without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity is deemed to be authorized effective on the day after the time allowed for filing a protest.

If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4806 Filed 2–26–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–248–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

February 21, 1997.

Take notice that on February 14, 1997, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP97–248–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to install and operate a new delivery tap in Fillmore County, Minnesota, under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern proposes to install and operate the proposed delivery tap, consisting of a hot tap and valve, to accommodate natural gas deliveries to UtiliCorp United Inc. (UCU) for redelivery to Forest Resource Center. Northern states that UCU will install, own, and operate all facilities located downstream of Northern's tap. UCU/Northern states, has requested the new delivery tap to provide service to FRC's nature camp located near Lanesboro, Minnesota. The estimated volumes delivered to UCU at the FRC delivery tap will be 600 MMBtu peak day and 5,600 MMBtu annually. The estimated cost for delivery tap installation is $15,000 and UCU will reimburse Northern the installation costs.

Northern states that the proposed delivery tap is not prohibited by its existing tariff and that it has sufficient capacity to accomplish deliveries without detriment or disadvantage to its other customers. The proposed delivery tap will not have an effect on Northern's peak day and annual deliveries and the total volumes delivered will not exceed total volumes authorized prior to this request.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4805 Filed 2–26–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–4–003]

Panhandle Eastern Pipe Line Company; Notice of Compliance Filing

February 21, 1997.

Take notice that on February 18, 1997, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet to be effective April 1, 1997:

Sub First Revised Sheet No. 339

Panhandle asserts that the purpose of this filing is to comply with the Commission's Order No. 587–B, Standards for Business Practices of Interstate Natural Gas Pipelines issued on January 30, 1997 in Docket No. RM96–1–003 by incorporating by reference into its Tariff the Electronic Delivery Mechanism Standards promulgated by the Gas Industry Standards Board and adopted by the Commission in Order No. 587–B.

Panhandle states that copies of this filing are being served on all affected customers, applicable state regulatory agencies and parties to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before March 11, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4814 Filed 2–26–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES97–13–001]

South Carolina Electric & Gas Company; Notice of Amended Application

February 21, 1997.

Take notice that on February 13, 1997, South Carolina Electric & Gas Company (SCG&E) filed an amendment to its application in Docket No. ES97–13–000, under § 204 of the Federal Power Act. By letter dated December 26, 1997, (77 FERC ¶ 61,198), SCG&E was authorized to issue unsecured short-term notes, from time to time, in an aggregate principal amount of not more than $200 million outstanding at any one time during the period January 1, 1997 through December 31, 1998 with a final maturity date no later than 12 months from the date of issuance. SCG&E now requests that the authorization be amended to raise the limit on short-term borrowings from $200 million to $250 million.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before February 27, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the

protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4807 Filed 2–26–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–247–000]

Tennessee Gas Pipeline Company; Notice of Request Under Blanket Authorization

February 21, 1997.

Take notice that on February 14, 1997, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP97–247–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations (18 CFR 157.205, 157.212) under the Natural Gas Act (NGA) for authorization to operate existing delivery point facilities constructed under the authorization of Section 311 of the Natural Gas Policy Act of 1978 (NGPA) in Hart and Marion Counties, Kentucky, for Part 284 transportation services by Tennessee, under Tennessee's blanket certificate issued in Docket No. CP82–413–000, pursuant to Section 7 of the NGA, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee proposes to operate the existing facilities, which were installed in 1996 and consist of 2 hot taps and approximately 320 feet of 12-inch piping at the Monroe SMS Delivery Point in Hart County and 2 hot taps and measurement facility at the Calvary Delivery Point in Marion County to make deliveries of gas transported under Tennessee's Part 284 blanket certificate. It is asserted that the proposal would enable Tennessee to fully utilize the facilities for all transportation under Section 311 of the NGPA and Section 7 of the NGA and would increase the transportation options of customers on Tennessee's system.

It is stated that the proposal is not prohibited by Tennessee's existing tariff and would have no adverse impact on Tennessee's peak day or annual deliveries. It is further stated that Tennessee has sufficient capacity to accommodate the proposed changes without detriment or disadvantage to Tennessee's existing customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4804 Filed 2–26–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–3–003]

Texas Eastern Transmission Corporation; Notice of Compliance Filing

February 21, 1997.

Take notice that on February 18, 1997, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheet to be effective April 1, 1997:

Sub First Revised Sheet No. 681

Texas Eastern asserts that the purpose of this filing is to comply with the Commission's Order No. 587–B, Standards for Business Practices of Interstate Natural Gas Pipelines issued on January 30, 1997 in Docket No. RM96–1–003 by incorporating by reference into its Tariff the Electronic Delivery Mechanism Standards promulgated by the Gas Industry Standards Board and adopted by the Commission in Order No. 587–B.

Texas Eastern states that copies of this filing were served on firm customers of Texas Eastern, interested state commissions, current interruptible customers and all parties on the service list.

Any person desiring protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before March 11, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4808 Filed 2–26–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–255–000]

TransColorado Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

February 21, 1997.

Take notice that on February 18, 1997, TransColorado Gas Transmission Company (TransColorado) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to become effective March 20, 1997:

Second Revised Sheet No. 103
First Revised Sheet No. 113
First Revised Sheet No. 200
First Revised Sheet No. 262
Original Sheet Nos. 263 and 264

TransColorado states that the above tariff sheets are being filed to implement a negotiated/recourse rate program for TransColorado's transportation services as contemplated by the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulations of Negotiated Transportation Services of Natural Gas Pipelines issued January 31, 1996 at Docket Nos. RM95–6–000 and RM96–7–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4819 Filed 2–26–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–6–003]

Trunkline Gas Company; Notice of Compliance Filing

February 21, 1997.

Take notice that on February 18, 1997, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet to be effective April 1, 1997:

Sub Original Sheet No. 242A

Trunkline asserts that the purpose of this filing is to comply with the Commission's Order No. 587–B, Standards for Business Practices of Interstate Natural Gas Pipelines issued on January 30, 1997 in Docket No. RM96–1–003 by incorporating by reference into its Tariff the Electronic Delivery Mechanism Standards promulgated by the Gas Industry Standards Board and adopted by the Commission in Order No. 587–B.

Trunkline states that copies of this filing are being served on all affected customers, applicable state regulatory agencies and parties to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rule and Regulations. All such protests must be filed on or before March 11, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4817 Filed 2–26–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–245–000]

Williams Natural Gas Company; Notice of Request Under Blanket Authorization

February 21, 1997.

Take notice that on February 14, 1997, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in the above docket, a request pursuant to Sections 157.205 and 157.212(a) and 157.216(b) of the Commission's Regulations, for authorization to relocate and replace the Heartland Cement Company (Heartland) meter and regulatory setting, and, after the relocation, to abandon by sale to Heartland approximately 950 feet of 6-inch lateral pipeline, all located in Montgomery County, Kansas, under the authorization issued to WNG in Docket No. CP82–479–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is file with the Commission and open to public inspection.

WNG states that the projected volume of delivery is not expected to exceed the current delivered volume. The estimated cost of construction is $56,154. WNG states that this change is not prohibited by an existing tariff and that it has sufficient capacity to accomplish the deliveries specified without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity is deemed to be authorized effective on the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4803 Filed 2–26–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER90–225–027, et al.]

Chicago Energy Exchange of Chicago, et al.; Electric Rate and Corporate Regulation Filings

February 21, 1997.

Take notice that the following filings have been made with the Commission:

1. Chicago Energy Exchange of Chicago, DC Tie, Inc., Energy Resource Marketing, Inc., IGI Resources, Inc., Enerconnect, Inc., and LS Power Marketing, Inc.

[Docket Nos. ER90–225–027, ER91–435–021, ER94–1580–009, ER95–1034–006, ER96–1424–002, and ER96–1947–002 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On February 10, 1997, Chicago Energy Exchange of Chicago filed certain information as required by the Commission's April 19, 1990, order in Docket No. ER90–225–000.

On February 3, 1997, DC Tie, Inc. filed certain information as required by the Commission's July 11, 1991, order in Docket No. ER94–435.

On February 10, 1997, Energy Resource Marketing, Inc. filed certain information as required by the Commission's September 30, 1994, order in Docket No. ER94–1580–000.

On February 10, 1997, IGI Resources, Inc. filed certain information as required by the Commission's July 11, 1995, order in Docket No. ER95–1034–000.

On February 10, 1997, Enerconnect, Inc. filed certain information as required by the Commission's June 10, 1996, order in Docket No. ER96–1424–000.

On January 30, 1997, LS Power Marketing, Inc. filed certain information as required by the Commission's August

5, 1996, order in Docket No. ER96–1947–000.

2. Northern Indiana Public Service Company

[Docket No. ER97–458–001]

Take notice that on January 31, 1997, Northern Indiana Public Service Company tendered for filing its revised compliance filing of the Power Sales Tariff.

Comment date: March 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. NXIS, LLC

[Docket No. ER97–778–000]

Take notice that on February 7, 1997, NXIS, LLC tendered for filing an amendment in the above-referenced docket.

Comment date: March 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Louisville Gas & Electric Company

[Docket No. ER97–1356–000]

Take notice that on January 22, 1997, Louisville Gas and Electric Company tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Midcon Power Services Corp. under Rate GSS.

Comment date: March 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Detroit Edison Company

[Docket No. ER97–1366–000]

Take notice that on February 13, 1997, Detroit Edison Company tendered for filing an amendment in the above-referenced docket.

Comment date: March 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Northern Indiana Public Service Company

[Docket No. ER97–1507–000]

Take notice that on January 31, 1997, Northern Indiana Public Service Company tendered for filing its Transaction Report for short-term transactions for the fourth quarter of 1996 pursuant to the Commission's order issued January 10, 1997 in Docket No. ER96–2775–000.

Comment date: March 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Southern California Edison Company

[Docket No. ER97–1524–000]

Take notice that on January 31, 1997, Southern California Edison Company tendered for filing a Notice of Cancellation of FERC Rate Schedule No. 344, FERC Rate Schedule No. 248.30, and all supplements thereto.

Comment date: March 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Duquesne Light Company

[Docket No. ER97–1536–000]

Take notice that on February 3, 1997, Duquesne Light Company (Duquesne) tendered for filing a Service Agreement between Duquesne and Electric Clearinghouse, Inc.

Comment date: March 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Duquesne Light Company

[Docket No. ER97–1537–000]

Take notice that on February 3, 1997, Duquesne Light Company (Duquesne) tendered for filing a Service Agreement between Duquesne and Wisconsin Electric Power Company.

Comment date: March 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Duquesne Light Company

[Docket No. ER97–1538–000]

Take notice that on February 3, 1997, Duquesne Light Company (Duquesne) tendered for filing a Service Agreement between Duquesne and the Michigan Companies.

Comment date: March 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Duquesne Light Company

[Docket No. ER97–1540–000]

Take notice that on February 3, 1997, Duquesne Light Company (Duquesne) tendered for filing a Service Agreement between Duquesne and American Electric Power Company, Inc.

Comment date: March 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Duquesne Light Company

[Docket No. ER97–1541–000]

Take notice that on February 3, 1997, Duquesne Light Company (Duquesne) tendered for filing a Service Agreement between Duquesne and American Electric Power Company, Inc.

Comment date: March 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Duquesne Light Company

[Docket No. ER97–1542–000]

Take notice that on February 3, 1997, Duquesne Light Company (Duquesne) tendered for filing a Service Agreement between Duquesne and the Michigan Companies.

Comment date: March 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Louisville Gas and Electric Company

[Docket No. ER97–1570–000]

Take notice that on February 6, 1997, Louisville Gas and Electric Company, tendered for filing copies of service agreements between Louisville Gas and Electric Company and PanEnergy Power Services Corp. under Rate GSS.

Comment date: March 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Louisville Gas and Electric Company

[Docket No. ER97–1574–000]

Take notice that on February 6, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing a Service Agreement between LG&E and Morgan Stanley Capital Group under LG&E's Rate Schedule GSS.

Comment date: March 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. New York State Electric & Gas Corporation

[Docket No. ER97–1575–000]

Take notice that on February 7, 1997, New York State Electric & Gas Corporation (NYSEG), filed Service Agreements between NYSEG and Southern Energy Trading and Marketing, Inc. and TransCanada Energy Ltd., (Customers). These Service Agreements specify that the Customers have agreed to the rates, terms and conditions of the NYSEG open access transmission tariff filed on July 9, 1996 in Docket No. OA96–195–000.

NYSEG requests waiver of the Commission's sixty-day notice requirements and an effective date of February 8, 1997 for the Service Agreements. NYSEG has served copies of the filing on The New York State Public Service Commission and on the Customers.

Comment date: March 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Idaho Power Company

[Docket No. ER97–1576–000]

Take notice that on February 7, 1997, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission Service Agreements under Idaho Power Company FERC Electric Tariff No. 5, Open Access Transmission Tariff, between each of the following entities and Idaho Power Company: The Power Company of America, L.P.; Enron Power Marketing, Inc.; Washington Water Power; Aquila Power Corporation; Citizens Lehman Power Sales.

Comment date: March 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Idaho Power Company

[Docket No. ER97–1577–000]

Take notice that on February 7, 1997, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission a Service Agreement under Idaho Power Company FERC Electric Tariff, Second Revised, Volume No. 1 between Okanogan PUD and Idaho Power Company and a second Service Agreement under Idaho Power Company FERC Electric Tariff, Second Revised, Volume No. 1 between McMinnville Water & Light and Idaho Power Company.

Comment date: March 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. South Carolina Electric & Gas Company

[Docket No. ER97–1578–000]

Take notice that on February 5, 1997, South Carolina Electric & Gas Company (SCE&G), submitted service agreements establishing Commonwealth Edison (CE); East Kentucky Power Cooperative (EKPC); Florida Power & Light Company (FPL); The Power Company of America, L.P. (PCA); and WPS Energy Services, Inc. (WPS) as customers under the terms of SCE&G's Negotiated Market Sales Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreement. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon CE, EKPC, FPL, PCA, and WPS and the South Carolina Public Service Commission.

Comment date: March 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Illinois Power Company

[Docket No. ER97–1579–000]

Take notice that on February 6, 1997, Illinois Power Company ("Illinois Power"), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing non-firm transmission agreements under which Union Electric will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of January 9, 1997.

Comment date: March 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. San Diego Gas & Electric Company

[Docket No. ER97–1580–000]

Take notice that on February 6, 1997, San Diego Gas & Electric Company (SDG&E), tendered for filing a Notice of Termination for the Coordination Agreement (Agreement) between SDG&E and Associated Power Services, Inc., (SDG&E Rate Schedule FERC No. 111). Termination of the Agreement is to be effective as of the 13th day of February 1997. SDG&E request waiver of the applicable notice requirements.

Copies of this filing were served upon the Public Utilities Commission of the State of California and PanEnergy Trading and Market Services, L.L.C.

Comment date: March 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Virginia Electric and Power Company

[Docket No. ER97–1581–000]

Take notice that on February 6, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing unexecuted Service Agreements between Virginia Electric and Power Company and (1) Federal Energy Sales, Inc., (2) Consumers Power Company dba Consumers Energy Company and The Detroit Edison Company (the Michigan Companies), and (3) Illinova Power Marketing under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994, as revised on December 31, 1996. Under the tendered Service Agreements Virginia Power agrees to provide services to (1) Federal Energy Sales, Inc., (2) the Michigan Companies, and (3) Illinova Power Marketing under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission, the North Carolina Utilities Commission, and the Michigan Public Service Commission.

Comment date: March 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Southwestern Public Service Company

[Docket No. ER97–1582–000]

Take notice that on February 6, 1997, Southwestern Public Service Company (Southwestern), tendered for filing a proposed amendment to its rate schedule for service to Central Valley Electric Cooperative, Inc. (Central Valley).

The proposed amendment reflects two new delivery points for service to Central Valley.

Comment date: March 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Delmarva Power & Light Company

[Docket No. ER97–1583–000]

Take notice that on February 10, 1997, Delmarva Power & Light Company (Delmarva), tendered for filing service agreements providing for firm point-to-point transmission service to Duke/Louis Dreyfus pursuant to Delmarva's open access transmission tariff.

Delmarva states that a copy of the filing was provided to Duke/Louis Dreyfus.

Comment date: March 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Delmarva Power & Light Company

[Docket No. ER97–1584–000]

Take notice that on February 10, 1997, Delmarva Power & Light Company (Delmarva), tendered for filing service agreements providing for firm point-to-point transmission service to the City of Dover pursuant to Delmarva's open access transmission tariff.

Delmarva states that copies of the filing were provided to the City of Dover and its agent, Duke/Louis Dreyfus.

Comment date: March 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. American Electric Power Service Corporation

[Docket No. ER97–1585–000]

Take notice that on February 7, 1997, The American Electric Power Service Corporation (AEPSC), tendered for filing an executed service agreement with Tennessee Valley Authority under the AEP Companies' Power Sales Tariffs. The Power Sales Tariff was accepted for filing effective October 1, 1995, and has been designated AEP Companies' FERC Electric Tariff First Revised Volume No. 2. AEPSC requests waiver of notice to permit the Service Agreement to be made effective for service billed on and after January 10, 1997.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: March 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Boston Edison Company

[Docket No. ER97–1586–000]

Take notice that on February 10, 1997, Boston Edison Company (Boston Edison), tendered for filing a Service Agreement under Original Volume No. 8, FERC Order 888 Tariff (Tariff) for Green Mountain Power Corporation (Green Mountain). Boston Edison requests that the Service Agreement become effective as of February 1, 1997.

Edison states that it has served a copy of this filing on Green Mountain and the Massachusetts Department of Public Utilities.

Comment date: March 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Florida Power & Light Company

[Docket No. ER97–1587–000]

Take notice that on February 10, 1997, Florida Power & Light Company (FPL), tendered for filing proposed service agreements with Wisconsin Electric Power Company for Non-Firm transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed service agreements be permitted to become effective on March 1, 1997.

FPL states that this filing is in accordance with Part 35 of the Commission's regulations.

Comment date: March 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4912 Filed 2–26–97; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER97–1177–000, et al.]

Global Energy Services, LLC, et al.; Electric Rate and Corporate Regulation Filings

February 20, 1997.

Take notice that the following filings have been made with the Commission:

1. Global Energy Services, LLC

[Docket No. ER97–1177–000]

Take notice that on January 31, 1997, Global Energy Services, LLC tendered for filing an amendment in the above-referenced docket.

Comment date: March 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. MG Electric Power, Inc., Vitol Gas and Electric, L.L.C., Cenerprise, Alliance Strategies Incorporated, Wickford Energy Marketing, L.C., PennUnion Energy Services, LLC, USGen Power Services, L.P.

[Docket Nos. ER93–839–004, ER94–155–016, ER94–1402–011, ER95–1381–005, ER95–1415–002, ER95–1511–004, and ER95–1625–007 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On January 28, 1997, MG Electric Power, Inc,. filed certain information as required by the Commission's October 19, 1993, order in docket No. ER93–839–000.

On February 11, 1997, Vitol Gas and Electric, L.L.C. filed certain information as required by the Commission's January 14, 1994, order in docket No. ER94–155–000.

On February 4, 1997, Cenerprise filed certain information as required by the Commission's December 7, 1994, order in docket No. ER94–1402–000.

On February 11, 1997, Alliance Strategies Incorporated filed certain information as required by the Commission's August 25, 1995, order in docket No. ER94–1381–000.

On February 11, 1997, Wickford Energy Marketing, L.C. filed certain information as required by the Commission's October 25, 1995, order in docket No. ER94–1415–000.

On January 13, 1997, PennUnion Energy Services, LLC filed certain information as required by the Commission's September 11, 1995, order in docket No. ER95–1511–000.

On February 3, 1997, USGen Power Services, L.P. filed certain information as required by the Commission's December 13, 1995, order in docket No. ER95–1625–000.

3. Midcon Power Services Corp., Coastal Electric Services Company, Citizens Lehman Power Sales, Kimball Power Company, DuPont Power Marketing, Inc. USGen Power Services, L.P., Coral Power, L.L.C.

[Docket No. ER94–1329–010, ER94–1450–013, ER94–1685–011, ER95–232–009, ER95–1441–008 ER95–1625–008, and ER96–25–005, (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On January 30, 1997, Midcon Power Services Corp. filed certain information as required by the Commission's August 11, 1994, order in Docket No. ER94–1329–000.

On January 30, 1997, Coastal Electric Services Company filed certain information as required by the Commission's September 29, 1994, order in Docket No. ER94–1450–000.

On January 30, 1997, Citizens Lehman Power Sales filed certain information as required by the Commission's February 2, 1995, order in Docket No. ER94–1685–000.

On January 13, 1997, Kimball Power Company filed certain information as required by the Commission's February 1, 1995, order in Docket No. ER95–232–000.

On January 31, 1997, Dupont Power Marketing, Inc. filed certain information as required by the Commission's August 30, 1995, order in Docket No. ER95–1441–000.

On February 3, 1997, USGen Power Services, L.P. filed certain information as required by the Commission's December 13, 1995, order in Docket No. ER95–1625–000.

On January 31, 1997, Coral Power, L.L.C. filed certain information as required by the Commission's December 6, 1995, order in Docket No. ER96–25–000.

4. Utility 2000 Energy Corp. Wilson Power & Gas Smart, Inc., Utility Trade Corp., Energy Transfer Group, L.L.C., Global Petroleum Corp., South Carolina Electric & Gas Company

[Docket No. ER95–187–007, ER95–751–008, ER95–1382–006, ER96–280–004, ER96–359–006, and ER96–1085–001 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On January 13, 1997, Utility 2000 Energy Corp. filed certain information as required by the Commission's December 29, 1994, order in Docket No. ER95–187–000.

On January 13, 1997, Wilson Power & Gas Smart, Inc. filed certain information as required by the Commission's April 24, 1994, order in Docket No. ER95–751–000.

On January 13, 1997, Utility Trade Corp. filed certain information as required by the Commission's August 25, 1995, order in Docket No. ER95–1382–000.

On January 15, 1997, Energy Transfer Group, L.L.C. filed certain information as required by the Commission's January 29, 1996, order in Docket No. ER96–280–000.

On February 4, 1997, Global Petroleum Corp. filed certain information as required by the Commission's December 20, 1995 order in Docket No. ER96–359–000.

On February 3, 1997, South Carolina Electric & Gas Company filed certain information as required by the Commission's May 13, 1996, order in Docket No. ER96–1085–000.

5. Kansas City Power & Light Company

[Docket No. ER97–1263–000]

Take notice that on January 16, 1997, Kansas City Power & Light Company (KCPL) tendered for filing a Service Agreement dated December 18, 1996, between KCPL and WPS Energy Services Inc. KCPL proposes an effective date of December 18, 1996, and requests wavier of the Commission's notice requirement. This Agreement provides for the rates and charges for Non-Firm Transmission Service between KCPL and WPS Energy Services Inc.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order 888 in Docket No. OA96–4–000.

Comment date: March 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. TPC Corporation

[Docket No. ER97–1457–000]

Take notice that on January 29, 1997, TPC Corporation tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 1.

Comment date: March 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Consolidated Edison Company of New York, Inc.

[Docket No. ER97–1508–000]

Take notice that on January 31, 1997, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing proposed supplements to its Rate Schedule FERC No. 92 and FERC No. 96.

The proposed supplement No. 11 to Rate Schedule FERC No. 96 increases the rates and charges for electric delivery service furnished to public customers of the New York Power Authority (NYPA) by $10,899,000 annually based on the 12-month period ending March 31, 1998.

The proposed supplement No. 10 to Rate Schedule FERC No. 96, applicable to electric delivery service to NYPA's non-public, economic development customers, and the proposed supplement No. 6 to Rate Schedule FERC No. 92, applicable to electric delivery service to commercial and industrial economic development customers of the County of Westchester Public Utility Service Agency (COWPUSA) or the New York City Public Utility Service (NYCPUS), increase the rates and charges for the service by $50,000 annually based on the 12-month period ending March 31, 1998.

The proposed increases are a part of a Company-wide general electric rate change application which Con Edison filed to implement rates for the third year of a multi-year rate plan previously approved by the New York Public Service Commission (NYPSC) and which is pending before the NYPSC.

Although the proposed supplements bear a nominal effective date of April 1, 1997, Con Edison will not seek permission to make these effective until the effective date, estimated to be April 1, 1997, of the rate changes, if any, authorized by the NYPSC.

A copy of this filing has been served on NYPA, COWPUSA, NYCPUS, and the New York Public Service Commission.

Comment date: March 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Kansas City Power & Light Company

[Docket No. ER97–1527–000]

Take notice that on February 3, 1997, Kansas City Power & Light Company (KCPL), tendered for filing, as an initial rate schedule a Service Agreement for Firm Transmission Service (FTS) for a wholesale transaction with Duke/Louis Dreyfus. This Service Agreement is pursuant to the compliance filing to FERC Order No. 888 in Docket No. OA96–4–000.

Comment date: March 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Duquesne Light Company

[Docket No. ER97–1543–000]

Take notice that on February 3, 1997, Duquesne Light Company (Duquesne), tendered for filing proposed changes in its Rate Schedule FPC No. 11. The proposed changes extend the period for giving notice of termination under the Municipal Resale Service contract and add an explicit stranded cost provision.

The changes are necessary to allow the Borough of Pitcairn, Pennsylvania (Pitcairn), Duquesne's jurisdictional customer under the rate schedule, to give notice of termination on May 3, 1997. Because the amendment will constitute a "new" contract under Order 888, the amendment also contains an explicit stranded cost provision that will apply if Pitcairn gives notice to terminate the contract prior to 2005. Copies of the filing were served upon Pitcairn and the Pennsylvania Public Utility Commission.

Comment date: March 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. PECO Energy Company

[Docket No. ER97–1552–000]

Take notice that on February 3, 1997, PECO Energy Company (PECO), filed a Service Agreement dated January 27, 1997 with DuPont Power Marketing, Inc. (DUPONT) under PECO's FERC Electric Tariff Original Volume No. 5 (Tariff). The Service Agreement adds DUPONT as a customer under the Tariff.

PECO requests an effective date of January 27, 1997, for the Service Agreement.

PECO states that copies of this filing have been supplied to DUPONT and to the Pennsylvania Public Utility Commission.

Comment date: March 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Union Electric Company

[Docket No. ER97–1553–000]

Take notice that on February 3, 1997, Union Electric Company, tendered for filing a proposal for providing a sharing credit to its Wholesale Electric Service Customers, the Cities of California, Centralia, Farmington, Fredericktown, Hannibal, Kahoka, Kirkwood, Linneus, Marceline, Owensville, Perry, Rolla, and St. James, Missouri; Citizens Electric Corporation; City of Jackson, Missouri.

Said credit follows a credit to the Company's Missouri retail customers and is being applied to the Company's wholesale customers following Section 2 of said Wholesale Electric Service Agreements (and Item 3 for the City of Jackson).

Copies of the filing were served upon the public utility's jurisdictional customers and the Missouri Public Service Commission.

Comment date: March 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Otter Tail Power Company

[Docket No. ER97–1554–000]

Take notice that on February 4, 1997, Otter Tail Power Company (OTP), tendered for filing a transmission service agreement between itself and Otter Tail Power Wholesale Marketing (OTP Wholesale Marketing). The agreement establishes OTP Wholesale Marketing as a customer under OTP's transmission service tariff (FERC Electric Tariff, Original Volume No. 7).

OTP respectfully requests an effective date sixty days after filing. OTP is authorized to state that OTP Wholesale Marketing joins in the requested effective date.

Copies of the filing have been served on the Minnesota Public Service Commission, North Dakota Public Service Commission, and the South Dakota Public Utilities Commission.

Comment date: March 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Kansas City Power & Light Company

[Docket No. ER97–1555–000]

Take notice that on February 4, 1997, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated January 10, 1997, between KCPL and Sonat Power Marketing L.P. (Sonat). KCPL proposes an effective date of January 10, 1997, and requests waiver of the Commission's notice requirement. This Agreement provides for the rates and charges for Non-Firm Transmission Service between KCPL and Sonat.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order No. 888 in Docket No. OA96–4–000.

Comment date: March 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Florida Power Corporation

[Docket No. ER97–1556–000]

Take notice that on February 4, 1997, Florida Power Corporation (Florida Power), tendered for filing a service agreement providing for service to PanEnergy Trading and Market Services, L.L.C. (PanEnergy) pursuant to its open access transmission tariff (the T–6 Tariff). Florida Power requests that the Commission waive its notice of filing requirements and allow the agreement to become effective on February 5, 1997.

Comment date: March 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Ohio Edison Company, Pennsylvania Power Company

[Docket No. ER97–1557–000]

Take notice that on February 4, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, Service Agreements with The Cleveland Electric Illuminating Company and The Toledo Edison Company pursuant to Ohio Edison System's Power Sales Tariff. These Agreements are designed to permit power transactions under that Tariff.

Comment date: March 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Central Illinois Public Service Company

[Docket No. ER97–1558–000]

Take notice that on February 4, 1997, Central Illinois Public Service Company ("CIPS"), submitted Service Agreements establishing Electric Energy, Inc., Sonat Power Marketing L.P., Tennessee Valley Authority and Wabash Valley Power Association, Inc. as new customers under the terms of CIPS' Coordination Sales Tariff CST–1 ("CST–1 Tariff").

CIPS requests an effective date of January 6, 1997, for the four service agreements and the revised Index of Customers. Accordingly, CIPS requests waiver of the Commission's notice requirements. Copies of this filing were served upon the four customers and the Illinois Commerce Commission.

Comment date: March 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company, West Texas Utilities Company

[Docket No. ER97–1559–000]

Take notice that on February 4, 1997, Central Power and Light Company (CPL), Public Service Company of Oklahoma (PSO), Southwestern Electric Power Company (SWEPCO) and West Texas Utilities Company (WTU) (collectively, the Companies) each tendered for filing Service Agreements establishing Entergy Power Marketing Corp., City of Garland, Texas, WPS Energy Services, Tenaska, Inc., and NGTS Energy Services as customers under the terms of each Company's CSRT–1 Tariff.

The Companies request an effective date of January 6, 1997, for each of the service agreements and, accordingly, seek waiver of the Commission's notice requirements. Copies of this filing were served on the five customers, the Arkansas Public Service Commission, the Louisiana Public Service Commission, the Oklahoma Corporation Commission and the Public Utility Commission of Texas.

Comment date: March 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Western Resources, Inc.

[Docket No. ER97–1560–000]

Take notice that on February 4, 1997, Western Resources, Inc., tendered for filing non-firm transmission agreements between Western Resources and The Empire District Electric Company, Southern Energy Trading and Marketing, Inc., Aquila Power Corporation, and Duke/Louis Dreyfus L.L.C. Western Resources states that the purpose of the agreements is to permit non-discriminatory access to the transmission facilities owned or controlled by Western Resources in accordance with Western Resources' open access transmission tariff on file with the Commission. The agreements are proposed to become effective as follows: The Empire District Electric Company, January 27, 1997; Southern Energy Trading and Marketing, Inc., January 24, 1997; Aquila Power Corporation, January 16, 1997; Duke/Louis Dreyfus L.L.C., January 30, 1997.

Copies of the filing were served upon The Empire District Electric Company, Southern Energy Trading and Marketing, Inc., Aquila Power Corporation, and Duke/Louis Dreyfus L.L.C., and the Kansas Corporation Commission.

Comment date: March 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Niagara Mohawk Power Corporation

[Docket No. ER97–1561–000]

Take notice that on February 4, 1997, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and Delmarva Power & Light Company. This Transmission Service Agreement specifies that Delmarva Power & Light Company has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and Delmarva Power & Light Company to enter into separately scheduled transactions under which NMPC will provide transmission service for Delmarva Power & Light Company as the parties may mutually agree.

NMPC requests an effective date of January 28, 1997. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and Delmarva Power & Light Company.

Comment date: March 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Ogden Martin Systems of Fairfax, Inc.

[Docket No. ER97–1562–000]

Take notice that on February 4, 1997, Ogden Martin Systems of Fairfax, Inc. ("Ogden Fairfax"), tendered for filing with the Federal Energy Regulatory Commission an Amendment to its Rate Schedule No. 1 accepted by the Commission on January 11, 1988 in Docket No. ER88–48–000. The changes made to the rates, terms and conditions of service result in a decrease in the payment by Virginia Electric Power Company ("Virginia Power") for energy. Ogden Fairfax also requests waiver of the 60-day notice period so that the Amendment may be accepted effective December 1, 1996.

Copies of this filing have been served on Virginia Power and on the Virginia State Corporation Commission.

Comment date: March 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Louisville Gas and Electric Company

[Docket No. ER97–1564–000]

Take notice that on February 5, 1997, Louisville Gas and Electric Company, tendered for filing copies of service agreements between Louisville Gas and Electric Company and Midcon Power Services Corp. under Rate GSS.

Comment date: March 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. MidAmerican Energy Company

[Docket No. ER97–1565–000]

Take notice that on February 6, 1997, MidAmerican Energy Company (MidAmerican), 106 East Second Street, Davenport, Iowa 52801, filed with the Commission Non-Firm Transmission Service Agreements with Sonat Power Marketing L.P. (Sonat) dated January 10, 1997, and Illinois Power Company (Illinois Power) dated January 13, 1997, entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of January 10, 1997, for the Agreement with Sonat, and January 13, 1997 for the Agreement with Illinois Power, and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on Sonat, Illinois Power, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: March 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Interstate Power Company

[Docket No. ER97–1567–000]

Take notice that on February 7, 1997, Interstate Power Company (IPW), tendered for filing a Transmission Service Agreement between IPW and Wisconsin Power and Light (WPL). Under the Transmission Service Agreement, IPW will provide firm point-to-point transmission service to WPL.

Comment date: March 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Interstate Power Company

[Docket No. ER97–1568–000]

Take notice that on February 7, 1997, Interstate Power Company (IPW), tendered for filing a Transmission Service Agreement between IPW and The Power Company of America, L.P. Under the Transmission Service Agreement, IPW will provide non-firm point-to-point transmission service to The Power Company of America, L.P.

Comment date: March 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Louisville Gas and Electric Company

[Docket No. ER97–1569–000]

Take notice that on February 6, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing a Service Agreement between LG&E and South Carolina Electric & Gas Company under LG&E's Rate Schedule GSS.

Comment date: March 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Amoco Energy Trading Corporation

[Docket No. ER97–1571–000]

Take notice that on February 3, 1997, Amoco Energy Trading Corporation (AETC), tendered for filing its Request to Revise FERC Electric Rate Schedule No. 1.

The purpose of this filing is to revise AETC's Rate Schedule consistent with the Commission's current policy concerning transactions between a power marketer and corporate affiliates of the power marketer. Because AETC is not affiliated with a public utility, the proposed revision to AETC's Rate Schedule deletes the existing prohibition on affiliate sales.

Comment date: March 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Central Illinois Public Service Company

[Docket No. ER97–1572–000]

Take notice that on February 5, 1997, Central Illinois Public Service Company (CIPS), submitted four service agreements, dated between January 20, 1997 and January 24, 1997, establishing the following as customers under the terms of CIPS' Open Access Transmission Tariff: American Municipal Power-Ohio, Inc., Coastal Electric Services Company, Southern Energy Trading and Marketing, Inc. and VTEC Energy, Inc.

CIPS requests an effective date of January 20, 1997 for these service agreements. Accordingly, CIPS requests waiver of the Commission's notice requirements. Copies of this filing were served upon the foregoing customers and the Illinois Commerce Commission.

Comment date: March 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER97–1573–000]

Take notice that on February 6, 1997, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed Supplement No. 20 to add five (5) new Customers to the Standard Generation Service Rate Schedule under which Allegheny Power offers standard generation and emergency service on an hourly, daily, weekly, monthly or yearly basis. Allegheny Power requests a waiver of notice requirements to make service available as of February 5, 1997, to American Electric Power Service Corporation, Atlantic City Electric Company, PECO Energy Company—Power Team, Potomac Electric Power Company, and Wisconsin Electric Power Company.

Copies of the filing have been provided to the Public Utilities

Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: March 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4913 Filed 2–26–97; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 11077–014]

Alaska Power and Telephone Company; Notice of Availability of Environmental Assessment

Februry 21, 1997.

An environmental assessment (EA) is available for public review. The EA is for an application to amend the Goat Lake Hydroelectric Project. The application is to modify the project by extending the access road to the bottom of the Skagway River Valley, relocating the powerhouse to the west side of the river, extending the transmission line, realigning the penstock route, and deleting the 125-foot-long spillway and burying the siphon. The EA finds that approval of the application would not constitute a major federal action significantly affecting the quality of the human environment. The Goat Lake Project is located on Pitchfork Falls, near the town of Skagway, Alaska.

The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA can be viewed in the Public Reference Branch, Room 1C–1, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

For further information, please contact the project manager, Ms. Rebecca Martin, at (202) 219–2650.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4811 Filed 2–26–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–687–000]

Iroquois Gas Transmission System, L.P.; Notice of Availability of the Environmental Assessment for the Proposed Athens Compressor Station Project

February 21, 1997.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) that discusses the environmental impacts of the construction and operation of the facilities proposed in the Athens Compressor Station Project in the above referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the project, with appropriate mitigating measures would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA addresses the construction and operation by Iroquois Gas Transmission System, L.P. (Iroquois) of 9,500 horsepower of compression at the proposed Athens Compressor Station in Greene County, New York.

The purpose of the compressor station is to provide additional firm transportation capacity of up to 30 million cubic feet per day of natural gas to two shippers.

The EA has been placed in the public files of the FERC and is available for inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First St., NE., Room 2A–1, Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, state, and local agencies, public interest groups, interested individuals, newspapers, libraries, adjacent landowners, and parties to this proceeding. A limited number of additional copies are available from the above address.

Any party wishing to comment on the EA may do so. Written comments must be received by March 21, 1997, reference Docket No. CP96–687–000, and be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your comments considered.

Additional information about the proposed project is available from Paul McKee in the Commission's Office of External Affairs at (202) 208–1088.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4801 Filed 2–26–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. 2299–037]

Turlock Irrigation District and Modesto Irrigation District; Notice of Availability of Environmental Assessment

February 21, 1997.

An environmental assessment (EA) is available for public review. The EA is for an application for an amendment of license for the new Don Pedro Project. The amendment of license application concerns changes to project transmission lines, including the addition of a section of existing transmission line within the project boundary. The EA finds that approval of the application would not constitute a major federal action significant affecting the quality of the human environment. The New Don Pedro Project is located in Tuolumne County, California.

The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA are available for review at the Commission's Reference and Information Center, Room 2–A, 888 First Street, NE. Washington, DC 20426. Copies can also be obtained by calling the project manager, Jon Cofracesco at (202) 219–0079.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4810 Filed 2–26–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP97–168–000 and CP97–169–000]

Alliance Pipeline L.P.; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Alliance Pipeline Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings and Site Visit

February 21, 1997.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an Environmental Impact Statement (EIS) that will address the environmental impacts of the construction and operation of approximately 887 miles of natural gas transmission pipeline, seven compressor stations, metering and delivery facilities, and other appurtenant facilities proposed in the Alliance Pipeline Project.[1] This EIS will be used by the Commission in its decision-making process to determine whether to approve the project.

Summary of the Proposed Project

Alliance Pipeline L.P. (Alliance) wants to build new natural gas pipeline transmission facilities in North Dakota, Minnesota, Iowa and Illinois with an initial capacity to transport 1.3 billion cubic feet per day of natural gas from Canada to interconnections with existing natural gas pipeline systems in the Chicago, Illinois area. Alliance requests Commission authorization, in Docket No. CP97–168–000, to construct and operate the following facilities:

- 887 miles of 36-inch-diameter mainline pipeline extending from the border of the United States (U.S.) and Canada near Sherwood, Renville County, North Dakota, to a point near Joliet, Will County, Illinois. Of the 887-mile-long mainline, about 324 miles would be in North Dakota, 252 miles would be in Minnesota, 189 miles would be in Iowa, and 122 miles would be in Illinois.
- Seven new compressor stations with a total of 320,000 horsepower (hp) of compression:

—Towner Compressor Station (40,000 hp) in McHenry County, North Dakota.
—Wimbledon Compressor Station (40,000 hp) in Barnes County, North Dakota.
—Fairmount Compressor Station (40,000 hp) in Richland County, North Dakota.
—Olivia Compressor Station (40,000 hp) in Renville County, Minnesota.
—Albert Lea Compressor Station (40,000 hp) in Freeborn County, Minnesota.
—Manchester Compressor Station (40,000 hp) in Delaware County, Iowa.
—Tampico Compressor Station (80,000 hp) in Whiteside County, Illinois.

- Five new meter stations located in Grundy and Will Counties, Illinois, and a new measurement and pressure control station located in Grundy County, Illinois.
- A total of 1.1 mile of 36-inch-diameter pipeline connecting Alliance's proposed meter stations with existing natural gas pipeline facilities in Grundy and Will Counties, Illinois.
- Associated pipeline facilities, including 47 mainline block valves, seven internal tool launchers/receivers, and permanent access roads for access to compressor stations and valves. Communication and electric service facilities associated with the compressor stations may also be required.

In addition, Alliance requests in Docket No. CP97–169–000 a Presidential Permit authorizing construction, operation and maintenance of facilities at the International Border for the importation of natural gas. These facilities would consist only of the portion of the mainline extending across the border and will be evaluated in the EIS as part of the facilities described above.

In connection with the facilities proposed by Alliance, a natural gas liquids (NGL) extraction plant would be constructed near Morris, Illinois by Aux Sable Liquid Products L.P. The purpose of the NGL plant would be to extract ethane and other natural gas liquids that may be present in Alliance's gas stream. For the purpose of comprehensive environmental review, the NGL extraction plant will be included within the scope of the EIS.

Alliance also plans to construct a 982-mile-long natural gas pipeline system in Canada extending from gas production areas in western Canada to the U.S./Canadian border where it would connect with Alliance's proposed facilities in the U.S. However, environmental review of the Canadian portion of the project will not be included in our EIS.

The location of the project facilities is shown in appendix 1.

Land Requirements for Construction

Construction of the Alliance Pipeline Project facilities would affect a total of about 13,312 acres. Of this total, about 11,313 acres would be disturbed by construction of the pipeline. Approximately 814.1 miles (90 percent) of the new pipeline be installed parallel to various existing pipeline rights-of-way occupied by other pipelines. Alliance's pipeline would deviate from the existing rights-of-way in several locations to avoid environmental or engineering constraints or reduce the total length of new pipeline required. Alliance would generally use a right-of-way width for construction of 105 feet, with provisions for extra temporary work areas for waterbody, highway and railroad crossings, additional topsoil storage, and pipe and equipment yards.

Following construction and restoration of the right-of-way and temporary work spaces, Alliance would retain a 60-foot-wide permanent pipeline right-of-way. Existing land uses on the remainder of the disturbed areas, as well as most land uses on the permanent right-of-way, would be allowed to continue following construction. Total land requirements for the permanent right-of-way would be about 6,449 acres.

The extra work areas and aboveground facilities, including compressor and meter stations, internal tool launchers/receivers, and permanent access roads would affect approximately 1,999 acres of land during construction. Mainline valves would be built within or adjacent to the permanent right-of-way. No locations have been identified for the communication and electrical service facilities.

The NGL extraction plant would be located on a 100-acre parcel currently occupied by an abandoned synthetic natural gas plant owned by Northern Illinois Gas Company.

The EIS Process

The National Environmental Policy ACt (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. The EIS we are preparing will give the Commission the information to do that. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping." The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EIS. All comments received are considered during the preparation of the EIS. We encourage state and local government representatives to notify their constituents of this proposed action and encourage them to comment.

[1] Alliance Pipeline L.P.'s applications were filed with the Commission under Sections 3 and 7 of the Natural Gas Act and Part 157 of the Commission's regulations on December 24, 1996.

Currently Identified Environmental Issues

The EIS will discuss impacts that could occur as a result of the construction and operation of the proposed project. We have already identified a number of issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Alliance. These issues are listed below. Keep in mind that this is a preliminary list. The list of issues may be added to, subtracted from, or changed based on your comments and our analysis.

- Soils.

—Temporary and permanent impacts on prime farmland soils.
—Mixing of topsoil and subsoil during construction.
—Compaction of soil by heavy equipment.
—Impacts on drain tiles and irrigation systems.
—Erosion control and restoration of the right-of-way.

- Water Resources.

—Crossing of 616 waterbodies, canals and drainages.
—Crossing of 11 rivers or canals 100 feet wide or greater, including the James, Chippewa, Minnesota, Bois de Sioux, Wapsipinicon, Mississippi, Rock, Fox and Des Planes rivers, and the Illinois and Michigan Canals.
—Potential for erosion and sediment transport to the waterbodies.
—Effect of construction on groundwater and surface water supplies.
—Impact on wetlands.

- Biological Resources.

—Effect on wildlife and fisheries habitats.
—Effect on federally listed endangered and threatened species.

- Cultural Resources.

—Impact on historic and prehistoric sites.
—Native American and tribal concerns.

- Socioeconomics.

—Effect of the construction workforce on demands for services in surrounding areas.
—Impact on property values.

- Land Use.

—Impact on crop production and grazing.
—Impact on residential areas.
—Effect on public lands and special use areas, including: Rural Economic and Community Development Services areas, a state game refuge, and several proposed segments of the North Country National Scenic Trail in North Dakota; a National Waterfowl Production Area, Seven Mile Creek County Park, East Minnesota River State Game Refuge, Sakatah Singing Hills River State Trail, and Lyle-Austin Wildlife Management Area in Minnesota; Price Wildlife Habitat in Iowa; and Camp Hauberg, Hennepin Canal Parkway State Park, Fox River Natural Area, and Illinois and Michigan Canal National Heritage Corridor and State Trail in Illinois.
—Impact on future land uses.
—Visual effect of the aboveground facilities on surrounding areas.

- Air Quality and Noise.

—Impact on local air quality and noise environment during construction.
—Impact on local and regional air quality and local noise environment from operation of new compressor stations and the NGL extraction plant.

- Reliability.

—Assessment of hazards associated with natural gas pipelines, and natural gas liquids extraction operations.

- Cumulative Impact.

—Assessment of the combined effect of the proposed project with other projects, including other natural gas transmission lines, which have been or may be proposed in the same region and similar time frames.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be presented in a Draft EIS which will be mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service lists for these proceedings. A 45-day comment period will be allotted for review of the Draft EIS. We will consider all comments on the Draft EIS and revise the document, as necessary, before issuing a Final EIS. The Final EIS will include our response to all comments received.

Public Participation and Scoping Meetings

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations and routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Reference Docket Nos. CP97–168–000 and CP97–169–000.
- Send two copies of your comments to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.
- Label *one* copy for the attention of the Environmental Review and Compliance Branch, PR–11.1.
- Please mail your comments so that they will be received in Washington, DC on or before March 28, 1997.

In addition to or in lieu of sending written comments, you are invited to attend one of the four public scoping meetings being held in the project area. Meetings will be held at the following times and locations:

March 17, 1997
7:00 pm—Chieftain Motor Lodge, (701) 652–3131, Highway 281, Carrington, North Dakota

March 18, 1997
7:00 pm—Mankato Civic Center, (507) 389–3000, One Civic Center Plaza, Mankato, Minnesota

March 19, 1997
7:00 pm—Falcon Civic Center, (319) 334–2606, 1305 5th Avenue, N.E., Independence, Iowa

March 20, 1997
7:00 pm—Days Inn, (815) 875–3371, (formerly Lincoln Inn), 2238 North Main Street, Princeton, Illinois

The purpose of the scoping meetings is to obtain information from state and local governments and from the public. Federal agencies have formal channels for participating in the process as cooperating agencies (including separate meetings, where appropriate). Federal agencies are expected to file their written comments directly with the FERC and not use the scoping meetings for this purpose.

Alliance will be present at the scoping meetings to describe their proposal. Interested groups and individuals are encouraged to attend the meetings and present oral comments on the environmental issues which they believe should be addressed in the Draft EIS. A transcript will be made of the meetings and the comments will be made part of the Commission's record in this proceeding.

We are asking a number of federal agencies to indicate whether they wish to cooperate with us in the preparation of the EIS. These agencies may choose to participate once they have evaluated the proposal relative to their agencies' responsibilities. The list of agencies is provided in appendix 2.[2]

On the above dates we will also be conducting limited site visits to the project area in the vicinity of each scoping meeting location. Anyone interested in participating in the site visit may contact the Commission's Office of External Affairs, identified at the end of this notice, for more details and must provide their own transportation.

Becoming an Intervenor

In addition to involvement in the EIS scoping process, you may want to become an official party to the proceedings, known as an "intervenor." Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties on the Commission's service lists for these proceedings. If you want to become an intervenor, you must file a Motion to Intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 3).

The date for filing of timely motions to intervene in these proceedings has passed, having ended January 29, 1997. Therefore, parties now seeking to file late interventions must show good cause, as required by Section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. However, you do not need intervenor status to have your scoping comments considered.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested and/or potentially affected by the proposed project.

Anyone offering scoping comments will be automatically kept on our environmental mailing list for this project. If you do not want to offer comments at this time but still want to keep informed and receive copies of the Draft and Final EISs, please return the Environmental Mailing List Information (appendix 4). If you do not return the card you will be taken off the mailing list.

Additional information about the proposed project is available from Paul McKee in the Commission's Office of External Affairs at (202) 208–1088.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4914 Filed 2–26–97; 8:45 am]

BILLING CODE 6717–01–M

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, Room 2A, or call (202) 208–1371. Copies of the appendices were 2A, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

Notice of Plan To Provide Additional Recreation Facilities

February 21, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Filing: Plan to Provide Additional Recreation Facilities.

b. Project Name and No: Mottville Hydroelectric Project, FERC Project No. 401–019.

c. Date Filed: July 19, 1996.

d. Licensee: Indiana Michigan Power Company.

e. Location: St. Joseph River in St. Joseph County, Michigan near Mottville.

f. Filed pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

g. Licensee Contact: William Vineyard, Associate Manager, Fossil and Hydro, Operations, American Electric Power Service Corporation, 1 Riverside Plaza, Columbus, Ohio 43215–2373, (614) 223–1702.

h. FERC Contact: Steve Naugle, (202) 219–2805.

i. Comment Date: March 31, 1997.

j. Description of the filing: The licensee proposes to add the following recreation improvements at the project: (1) reservoir and tailwater boat launch facilities, a parking area, and associated road and pathway extensions at Mottville Canoe Park; and (2) parking and picnic areas and fishing access at the project powerhouse.

k. This notice also consists of the following standard paragraphs: B, C1, D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4809 Filed 2–26–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP–97–225–000]

Williams Natural Gas Company; Notice of Technical Conference

February 21, 1997.

In the Commission's order issued on February 7, 1997,[1] in the above-captioned proceeding, the Commission held that the filing raises issues for which a technical conference is to be convened.

The conference to address the issues has been scheduled for Tuesday, March 11, 1997 at 10:00 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

[1] 78 FERC ¶61,112 (1997).

All interested persons and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4818 Filed 2–26–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5695–6]

Air Pollution Control; Proposed Actions on Clean Air Act Grants to the Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed determination with request for comments and notice of opportunity for public hearing.

SUMMARY: The U.S. EPA has made a proposed determination that a reduction in expenditures of non-Federal funds for the Ventura County Air Pollution Control District (APCD) in Ventura, California is the result of a non-selective reduction in expenditures. This determination, when final, will permit Ventura County APCD to keep the financial assistance awarded to it by EPA for FY–96 under section 105(c) of the Clean Air Act (CAA).

DATES: Comments and/or requests for a public hearing must be received by EPA at the address stated below by March 31, 1997.

ADDRESSES: All comments and/or requests for a public hearing should be mailed to: Sara Bartholomew, Grants and Program Integration Office (AIR–8), Air Division, U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105–3901; FAX (415) 744–1076.

FOR FURTHER INFORMATION CONTACT: Sara Bartholomew, Grants and Program Integration Office (AIR–8), Air Division, U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105–3901 at (415) 744–1250.

SUPPLEMENTARY INFORMATION: Under the authority of Section 105 of the CAA, EPA provides financial assistance (grants) to the Ventura County APCD, whose jurisdiction includes Ventura County in southern California, to aid in the operation of its air pollution control programs. In FY–96, EPA awarded the Ventura County APCD $1,398,500, which represented approximately 22% of Ventura's budget.

Section 105(c)(1) of the CAA, 42 U.S.C. 7405(c)(1), provides that "[n]o agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for recurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year. In order for [EPA] to award grants under this section in a timely manner each fiscal year, [EPA] shall compare an agency's prospective expenditure level to that of its second preceding year." EPA may still award financial assistance to an agency not meeting this requirement, however, if EPA, "after notice and opportunity for public hearing, determines that a reduction in expenditures is attributable to a non-selective reduction in the expenditures in the programs of all Executive branch agencies of the applicable unit of Government." CAA Section 105(c)(2). These statutory requirements are repeated in EPA's implementing regulations at 40 CFR section 35.210(a).

In its FY–96 Section 105 application, which EPA reviewed in early 1996, the Ventura County APCD projected expenditures of non-Federal funds for recurrent expenditures (or its maintenance of effort (MOE)) of $4,905,690. This projected MOE was not sufficient to meet the MOE requirements of the CAA, i.e. it was not equal to or greater than the MOE for the previous year (FY–95), which was $4,928,948 according to the Financial Status Report (FSR) for FY–95. Furthermore, in January of 1997 the Ventura County APCD submitted to EPA the FSR for FY–96, which shows that the actual FY–96 MOE was $4,588,325. This amount represents a shortfall of $340,623 from the MOE for FY–95. In order for the Ventura County APCD to be eligible to keep its FY–96 grant, EPA must make a determination under § 105(c)(2).

The Ventura County APCD is a single-purpose agency whose primary source of funding is emission fee revenue. It is the "unit of Government" for § 105(c)(2) purposes. The reason for the lower MOE level in FY–96 is a series of efficiencies that Ventura County APCD has implemented. Ventura has provided to Region 9 documentation which shows that it has been able to reduce its administrative expenditures in its programs through cost saving measures which do not affect the performance of its air programs or reduce its expenditures for substantive environmental program activities. For example, Ventura has reduced indirect costs paid to the County by $95,000 and reduced the need for outside contracts by $70,000 by getting weather forecast information free from the Internet. These cost saving measures were taken not because fee revenues had declined, but because Ventura wanted to operate more efficiently.

Fee revenues in Ventura APCD are, however, projected to decrease significantly over the next few years because emissions will decrease. In order to avoid a future shortfall in revenue, Ventura has taken the savings generated by the efficiencies and placed them in a savings or dedicated reserve account. This account is dedicated to support only the District's air program, and would be used to cover shortfalls in meeting its MOE requirement in future years, as needed.

Consistent with the 105 program requirements, Ventura will not use federal funds to supplant local funds that are currently available for the program. The district will continue to operate its program at its current level as long as the fee revenues continue at their present pace. If the revenues drop, the district will tap the savings or reserve account to supplement fee revenue losses.

In summary, Ventura County APCD's MOE reductions resulted from a series of efficiency measures and the district has created a strategy to offset projected future loss of fee revenues with current savings. EPA proposes to determine that the Ventura County APCD's lower FY–96 MOE level meets the Section 105(c)(2) criteria as resulting from a non-selective reduction of expenditures. Pursuant to 40 CFR Section 35.210, this determination will allow the Ventura County APCD to keep the funds received from EPA for FY–96.

This notice constitutes a request for public comment and an opportunity for public hearing as required by the Clean Air Act. All written comments received by March 31, 1997 on this proposal will be considered. EPA will conduct a public hearing on this proposal only if a written request for such is received by EPA at the address above by March 31, 1997.

If no written request for a hearing is received, EPA will proceed to the final determination. While notice of the final determination will not be published in the **Federal Register**, copies of the determination can be obtained by sending a written request to Sara Bartholomew at the above address.

Dated: February 11, 1997.

David P. Howekamp,

Director, Air and Toxics Division, U.S. EPA, Region 9.

[FR Doc. 97–4891 Filed 2–26–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5695–5]

Acid Rain Program: Notice of Draft Written Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft written exemptions.

SUMMARY: The U.S. Environmental Protection Agency is issuing draft written exemptions from Acid Rain permitting and monitoring requirements to 2 utility units at 2 plants in accordance with the Acid Rain Program regulations (40 CFR part 72). Because the Agency does not anticipate receiving adverse comments, the exemptions are also being issued as a direct final action in the notice of written exemptions published elsewhere in today's **Federal Register**.

DATES: Comments on the exemptions proposed by this action must be received on or before March 31, 1997 or 30 days after publication of a similar notice in a local newspaper.

ADDRESSES: *Administrative Records.* The administrative record for the exemptions, except information protected as confidential, may be viewed during normal operating hours at the following location: EPA Region 4, 100 Alabama St., SW, Atlanta, Georgia. *Comments.* Send comments to: Winston Smith, Director, Air, Pesticides and Toxics Management Division (address above).

Submit comments in duplicate and identify the exemption to which the comments apply, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of the unit covered by the exemption.

FOR FURTHER INFORMATION CONTACT: R. Scott Davis, EPA Region 4, (404) 562–9127.

SUPPLEMENTARY INFORMATION: If no significant, adverse comments are timely received, no further activity is contemplated in relation to these draft written exemptions and the exemptions issued as a direct final action in the notice of written exemptions published elsewhere in today's **Federal Register** will automatically become final on the date specified in that notice. If significant, adverse comments are timely received on any exemption, that exemption in the notice of written exemptions will be withdrawn. Because the Agency will not institute a second comment period on this notice of draft written exemptions, any parties interested in commenting should do so during this comment period.

For further information and a detailed description of the exemptions, see the information provided in the notice of written exemptions elsewhere in today's **Federal Register**.

Dated: February 14, 1997.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 97–4892 Filed 2–26–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5695–4]

Acid Rain Program: Notice of Direct Final Written Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of written exemptions.

SUMMARY: The U.S. Environmental Protection Agency is issuing, as a direct final action, written exemptions from the Acid Rain permitting and monitoring requirements to 2 utility units at 2 plants in accordance with the Acid Rain Program regulations (40 CFR part 72). Because the Agency does not anticipate receiving adverse comments, the exemptions are being issued as a direct final action.

DATES: Each of the exemptions issued in this direct final action will be final on April 8, 1997 or 40 days after publication of a similar notice in a local newspaper, whichever is later, unless significant, adverse comments are received by March 31, 1997 or 30 days after publication of a similar notice in a local newspaper, whichever is later. If significant, adverse comments are timely received on any exemption in this direct final action, that exemption will be withdrawn through a notice in the **Federal Register**.

ADDRESSES: *Administrative Records.* The administrative record for the exemptions, except information protected as confidential, may be viewed during normal operating hours at the following location: EPA Region 4 Library, Atlanta Federal Center, 100 Alabama St., SW, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: R. Scott Davis, EPA Region 4,(404) 562–9127.

SUPPLEMENTARY INFORMATION: All public comment received on any exemption in this direct final action on which significant, adverse comments are timely received will be addressed in a subsequent issuance or denial of exemption based on the relevant draft exemption in the notice of draft written exemptions that is published elsewhere in today's **Federal Register** and that is identical to this direct final action.

Under the Acid Rain Program regulations (40 CFR 72.8), utilities may petition EPA for an exemption from Phase II permitting requirements for units that are retired prior to the issuance of a Phase II Acid Rain permit. Units that are retired prior to the deadline for continuous emissions monitoring system (CEMS) certification may also petition for an exemption from monitoring requirements.

While the exempt retired units have been allocated allowances under 40 CFR part 73, units exempted under 40 CFR 72.8 must not emit any sulfur dioxide or nitrogen oxides on or after the date the units are exempted, and the units must not resume operation unless the designated representative submits an application for an Acid Rain permit and installs and certifies its monitors by the applicable deadlines.

EPA is issuing written exemptions from Phase II permitting requirements and monitoring requirements, effective from January 1, 1997, through December 31, 2001, to the following retired units:

Avon Park unit 2 in Florida, operated by Florida Power Corporation. The designated representative for Avon Park is W. Jeffrey Pardue.

Cane Run unit 3 in Kentucky, operated by Louisville Gas and Electric Company. The designated representative for Cane Run is Chris Hermann.

Dated: February 14, 1997.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 97–4893 Filed 2–26–97; 8:45 am]

BILLING CODE 6560–50–P

[OPPTS–140252; FRL–5590–6]

Access to Confidential Business Information by ICF International, Incorporated

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, ICF International, Incorporated (ICF), of Fairfax, Virginia and Washington, DC, for access to information which has been submitted to EPA under sections 4, 5, and 6 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than March 14, 1997.

FOR FURTHER INFORMATION CONTACT: Susan Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under contract number 68–D5–0147, contractor ICF, of 9300 Lee Highway, Fairfax, VA, and 1850 K St., NW., Suite 1000, Washington, DC, will assist the Office of Pollution Prevention and Toxics (OPPTS) in the evaluation of joint PMN and Section 612 Clean Air Act requirements. The evaluation will analyze risk factors on intrinsic hazards, exposure, and use patterns of the alternatives on new and existing chemicals.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–D5–0147, ICF will require access to CBI submitted to EPA under sections 4, 5, and 6 of TSCA to perform successfully the duties specified under the contract. ICF personnel will be given access to information submitted to EPA under sections 4, 5, and 6 of TSCA. Some of the information may be claimed or determined to be CBI.

In a previous notice published in the **Federal Register** of November 1, 1991 (56 FR 56216; FRL–3999–6), under contract number 6–D8–0116, ICF was authorized for access to CBI submitted to EPA under all sections of TSCA.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, and 6 of TSCA that EPA may provide ICF access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters, ICF's site located at 9300 Lee Highway, Fairfax, VA and 1850 K St., NW, Washington, DC. Before access to TSCA CBI is authorized at ICF's site, EPA will approve ICF's security certification statements to ensure that the facilities are in compliance with the manual.

ICF will be authorized access to TSCA CBI at its facilities under the EPA *TSCA Confidential Business Information Security Manual*. Upon completing review of the CBI materials, ICF will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract may continue until September 30, 2000.

ICF personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Access to confidential business information.

Dated: February 20, 1997.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 97–4882 Filed 2–26–97; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–140253; FRL–5590–7]

Access to Confidential Business Information by Science Applications International Corp.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Science Applications International Corporation (SAIC), of McLean, Virginia, access to information which has been submitted to EPA under sections 4, 5, 8, and 12 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than March 14, 1997.

FOR FURTHER INFORMATION CONTACT: Susan Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under contract number 68–D4–0098, contractor SAIC, of 1710 Goodridge Drive, McLean, VA, will assist the Office of Pollution Prevention and Toxics (OPPTS) in reviewing industry data for chemical composition, production volume, and toxicological effects to identify and reduce regulatory barriers to innovation in developing and commercializing new chemicals.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–D4–0098, SAIC will require access to CBI submitted to EPA under sections 4, 5, 8, and 12 of TSCA to perform successfully the duties specified under the contract. SAIC personnel will be given access to information submitted to EPA under sections 4, 5, 8, and 12 of TSCA. Some of the information may be claimed or determined CBI.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 8, and 12 of TSCA that EPA may provide SAIC access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters.

Clearance for access to TSCA CBI under this contract may continue until September 30, 1997.

SAIC personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Access to confidential business information.

Dated: February 20, 1997.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 97–4883 Filed 2–26–97; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5695–7]

Proposed Administrative Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act; In re: Old Southington Landfill Superfund Site; Southington, Connecticut

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed relocation response cost agreement and request for public comment.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to enter into a cost recovery settlement agreement to address claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 *et seq*. Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. The settlement is intended to resolve liability under CERCLA of the Town of Southington, Connecticut for costs incurred or to be incurred by EPA in relocation of residences located on the Old Southington Landfill Superfund Site in Southington, Connecticut.

DATES: Comments must be provided on or before March 31, 1997.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Mailcode RCH, Boston, Massachusetts 02203, and should refer to: Agreement for Payment of Relocation Response Costs Re: Old Southington Landfill Superfund Site, Southington, Connecticut, U.S. EPA Docket No. CERCLA–I–97–1013.

FOR FURTHER INFORMATION CONTACT: Marcia J. Lamel, U.S. Environmental Protection Agency, J.F.K. Federal Building, Mailcode SES, Boston, Massachusetts 02203, (617) 565–3435.

SUPPLEMENTARY INFORMATION: In accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. § 9601 et seq., notice is hereby given of a proposed cost recovery settlement agreement under section 122(h) of CERCLA concerning the Old Southington Landfill Superfund Site in Southington, CT. The settlement was approved by EPA Region I, subject to review by the public pursuant to this Notice. The Town of Southington, Connecticut has executed a signature page committing it to participate in the settlement. Under the proposed settlement, the Town of Southington will pay $400,000 to the EPA Hazardous Substance Superfund to fund the cost of relocation of residences located on the Old Southington Landfill Superfund Site. Relocation of the residences is necessary in order to implement remedial action selected by EPA in a Record of Decision issued on September 22, 1994. The selected interim remedy for limited source control includes constructing a cap over the Site and removing all residential and commercial structures from the Site. EPA believes the settlement is fair and in the public interest.

EPA is entering into this agreement under the authority of CERCLA Section 122(h) which provides EPA with authority to consider, compromise, and settle a claim under Section 107 of CERCLA for costs incurred by the United States if the claim has not been referred to the U.S. Department of Justice for further action. The U.S. Department of Justice has given written approval of this settlement. EPA will receive written comments relating to this settlement for thirty (30) days from the date of publication of this Notice.

A copy of the proposed administrative settlement may be obtained in person or by mail from Marcia J. Lamel, U.S. Environmental Protection Agency, JFK Federal Building, Mailcode SES, Boston, Massachusetts 02203, (617) 565–3435.

The Agency's response to any comments received will be available for public inspection with the Docket Clerk, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Mailcode RCH, Boston, Massachusetts (U.S. EPA Docket No. CERCLA–I–97–1013).

Dated: February 13, 1997.

Linda M. Murphy,

Director of the Office of Site Remediation and Restoration.

[FR Doc. 97–4888 Filed 2–26–97; 8:45 am]

BILLING CODE 6560–50–P

[OPPTS–44636; FRL–5589–8]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of test data on pharmacokinetics and subchronic toxicity of n-butyl acetate (CAS No. 123–86–4). The pharmacokinetics test is the last study in a neurotoxicity testing program conducted in rats which was required under an enforceable testing consent agreement/order issued by EPA under section 4 of the Toxic Substances Control Act (TSCA). The subchronic toxicity test is a 13–week study, also in rats, which was conducted and submitted to EPA voluntarily. Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under 40 CFR 790.60, all TSCA section 4 enforceable consent agreements/orders must contain a statement that results of testing conducted pursuant to testing enforceable consent agreements/orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for the pharmacokinetics of n-butyl acetate were submitted by the Chemical Manufacturers Association (CMA) on behalf of the following sponsors: Aristech Chemical Company, BP Chemicals, Inc., Hoechst Celanese Corporation, Shell Oil Company, Vista Chemical Company, BASF Corporation, Eastman Chemical Company, Rhone-Poulenc, Inc., and Union Carbide Corporation. The report was submitted pursuant to a TSCA section 4 enforceable testing consent agreement/order at 40 CFR 799.5000. EPA received the data on January 24, 1997. The submission includes a final report entitled "The In Vivo Pharmacokinetics of n-Butyl Acetate in Rats after Intravenous Administration." This chemical is used as a solvent for coatings, as a process solvent, and for other miscellaneous solvent uses.

Test data for the subchronic toxicity of n-butyl acetate were submitted by the Chemical Manufacturers Association Oxo Process Panel on behalf of the following sponsors: Aristech Chemical Corporation, BASF Corporation, BP Chemicals, Inc., Eastman Chemical Company, Hoechst Celanese Chemical Group, Inc., Shell Chemical Company, and Union Carbide Corporation. EPA received the data on January 6, 1997. The submission is entitled "A Thirteen-Week Subchronic Inhalation Toxicity Study of n-Butyl Acetate in the Rat."

EPA has initiated its review and evaluation process for this data submission. At this time, the Agency is unable to provide any determination as to the completeness of the submission.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS–44636). This record includes a copy of all studies reported in this notice. The record is available for inspection from 12 noon to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Nonconfidential Information Center (also known as the TSCA Public Docket Office), Rm. B–607 Northeast Mall, e-mail address: oppt.ncic@epamail.epa.gov., 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

List of Subjects

Environmental protection, Test data.

Dated: February 18, 1997.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 97–4880 Filed 2–26–97; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–44637; FRL–5589–9]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of test data on cyclohexane (CAS No. 110–82–7). These data were submitted pursuant to an enforceable testing consent agreement/order issued by EPA under section 4 of the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under 40 CFR 790.60, all TSCA section 4 enforceable consent agreements/orders must contain a statement that results of testing conducted pursuant to testing enforceable consent agreements/orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for cyclohexane were submitted by the Cyclohexane Panel of the Chemical Manufacturers Association (CMA) on behalf of the following test sponsors, which comprise the CMA Cyclohexane Panel: Chevron Chemical Company, CITGO Refining Chemicals Inc., E.I. du Pont de Nemours Company, Huntsman Corporation, Koch Industries Inc., Phillips Petroleum Company, and Sun Company, Inc. The report was submitted pursuant to a TSCA section 4 enforceable testing consent agreement/order at 40 CFR 799.5000 and was received by EPA on January 21, 1997. The submission includes a final report entitled "Inhalation Developmental Toxicity Study of Cyclohexane in Rats." This chemical is found in a number of consumer products including spray paint and spray adhesives. It is also available as a laboratory solvent.

EPA has initiated its review and evaluation process for this data submission. At this time, the Agency is unable to provide any determination as to the completeness of the submission.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS–44637). This record includes a copy of the study reported in this notice. The record is available for inspection from 12 noon to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Nonconfidential Information Center (also known as the TSCA Public Docket Office), Rm. B–607 Northeast Mall, e-mail address: oppt.ncic@epamail.epa.gov., 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

List of Subjects

Environmental protection, Test data.

Dated: February 18, 1997.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 97–4881 Filed 2–26–97; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by FCC For Extension Under Delegated Authority 5 CFR 1320 authority, Comments Requested

February 21, 1997.

SUMMARY The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c)ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

The FCC is reviewing the following information collection requirements for possible 3-year extension under delegated authority 5 CFR 1320, authority delegated to the Commission by the Office of Management and Budget (OMB).

DATES: Written comments should be submitted on or before April 28, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0506.

Title: Application for FM Broadcast Station License.

Form Number: 302-FM.

Type of Review: Extension of currently approved collection.

Respondents: Businesses or other for-profit, state, local or tribal government.

Number of Respondents: 750.

Estimated time per response: 4 hours (0.167–0.5 hours respondent; 0–0.5 hours for an attorney; 3.25 hours for a consulting engineer).

Total annual burden: 439 hours.

Needs and Uses: Licensees and permittees of FM broadcast stations are required to file FCC Form 302–FM to obtain a new or modified station license, and/or to notify the Commission of certain changes in the licensed facilities of these stations. The Commission will be adding the antenna registration information that was approved by OMB under control number 3060–0714 to this form. The data is used by FCC staff to confirm that the station has been built to terms specified in the outstanding construction permit, and to update FCC station files. Data is then extracted from FCC 302–FM for inclusion in the subsequent license to operate the station.

OMB Approval Number: 3060–0029.

Title: Application for TV Broadcast Station License.

Form Number: 302-TV.

Type of Review: Extension of currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents: 77.

Estimated time per response: 20 hours (1.5 hours respondent/18.5 hours consulting engineer).

Total annual burden: 113 hours.

Needs and Uses: Licensees and permittees of TV broadcast stations are required to file FCC Form 302–TV to obtain a new or modified station license, and/or to notify the Commission of certain changes in the licensed facilities of these stations. The Commission will be adding the antenna registration information that was approved by OMB under control number 3060–0714 to this form. The data is used by FCC staff to confirm that the station has been built to terms specified in the outstanding construction permit, and to update FCC station files. Data is then extracted from FCC 302–TV for inclusion in the subsequent license to operate the station.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–4911 Filed 2–26–97; 8:45 am]

BILLING CODE 6712–01–F

Public Information Collection Requirement Submitted to Office of Management and Budget (OMB) for Review

February 21, 1997.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, 44 U.S.C. Section 3507. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, Room 10236, NEOB, Washington, D.C. 20503, (202) 395–0651. For further information, contact Dorothy Conway, Federal Communications Commission, (202) 418–0217.

Please note: The Commission has requested emergency review of this collection by February 28, 1997, under the provisions of 5 CFR Section 1320.13.

Federal Communications Commission.

OMB Control No.: 3060–0536.

Title: Rules and Requirements for Telecommunications Relay Services (TRS) Interstate Cost Recovery.

Form No.: FCC Form 431.

Action: Revised Collection.

Respondents: Business or other for-profit entities.

Estimated Annual Burden: 5000 respondents; 3.1 hours per response (avg.); 15593 hours total annual burden.

Needs and Uses: Title IV of the Americans with Disabilities Act of 1990 (ADA) requires the Commission to ensure that telecommunications relay services are available, to the extent possible, to individuals with hearing and speech disabilities in the United States. To fulfill this mandate, the Commission adopted rules that require the provision of TRS service beginning July 26, 1993. The Commission set minimum standards for TRS providers and established a shared-funding mechanism (TRS Fund) for recovering the costs of providing interstate TRS. The Commission also appointed the National Exchange Carrier Association (NECA) the TRS Fund administrator, and directed NECA to establish a non-paid, voluntary advisory committee to monitor cost recovery matters.

The Commission's rules require all carriers providing interstate telecommunications services to contribute to the TRS Fund. The amount contributed is the product of the carrier's gross interstate revenues for the previous year and a contribution factor determined annually by the Commission. Contributions are calculated in accordance with a TRS Fund Worksheet which is prepared each year by the Commission and published in the Federal Register. Payments from the fund are made to eligible TRS providers and are designed to cover the reasonable costs incurred in providing interstate TRS service. The TRS Fund administrator files a proposed payment formula and estimated fund requirements with the Commission each year, and this payment formula is subject to Commission approval. See 47 CFR § 64.601-64.608 for rules and requirements governing telecommunications relay services. On December 17, 1996, the Commission's Common Carrier Bureau released an order approving the contribution factor for the April 1997 through March 1998 contribution period and the 1997 TRS Fund Worksheet (FCC Form 431) and also making several revisions to the form.

The foregoing estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the burden estimates or any other aspect of the collection of information including suggestions for reducing the burden to the Federal Communications Commission, Records Management Division, Paperwork Reduction Project, Washington, DC 20554.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–4910 Filed 2–26–97; 8:45 am]

BILLING CODE 6712–01–F

Sixth Meeting of the WRC–97 Advisory Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the next meeting of the WRC–97 Advisory Committee will be held on Wednesday, March 5, 1997 at the Federal Communications Commission. The purpose of the meeting is to continue preparations for the 1997 World Radiocommunication Conference.

DATES: March 5, 1997; 9:30 am–11:30 am.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Room 856, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Crystal Foster, FCC International Bureau, Satellite and Radiocommunication Division, at (202) 418–0749.

SUPPLEMENTARY INFORMATION:

1. The Federal Communications Commission (FCC) established the Advisory Committee for the 1997 World Radiocommunication Conference to provide advice, technical support and recommendations relating to the preparation of recommended United States proposals and positions for the 1997 World Radiocommunication Conference (WRC–97). In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the sixth meeting of the WRC–97 Advisory Committee.

2. This meeting will continue reviewing the work of the Advisory Committee. The draft conference proposals developed by the Committee's Ad Hoc and Informal Working Groups (IWGs) will be considered for approval.

3. The WRC–97 Advisory Committee has an open membership. All interested parties are invited to participate in the Advisory Committee and to attend its meetings. Further information regarding the WRC–97 Advisory Committee is available on the World Wide Web at: http://www.fcc.gov/ib/wrc97/.

4. The proposed agenda for the sixth meeting is as follows:

Agenda—Sixth Meeting of the WRC–97 Advisory Committee

Federal Communications Commission, 1919 M Street, N.W., Room 856, Washington, D.C. 20554

March 5, 1997; 9:30 a.m.–11:30 a.m.

1. Opening Remarks
2. Approval of Agenda
3. Administrative Matters & Approval of Minutes
4. Update on NTIA Radiocommunication Conference Subcommittee
5. Reports on Significant International Meetings
6. Reports from the Chairs of the Informal and Ad Hoc Working Groups & Consideration/Approval of Draft Proposals
7. Advisory Committee Schedule
8. Other Business

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 97–4908 Filed 2–26–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

FEDERAL REGISTER NUMBER: *97–0357.*

PREVIOUSLY ANNOUNCED DATE & TIME:

Tuesday, February 11, 1997 at 10:00 a.m.

MEETING CLOSED TO THE PUBLIC

This meeting was rescheduled for Thursday, February 13, 1997, to convene following the open meeting.

Thursday, February 13, 1997

The open and executive sessions were cancelled.

DATE & TIME: *Tuesday, March 4, 1997 at 10:00 a.m.*

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: *Thursday, March 6, 1997 at 10:00 a.m.*

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.
Lenora B. Fulani for President—Statement of Reasons (LRA #451).
Advisory Opinion 1996–46: Socialist Workers Party ("SWP") and SWP National Campaign Committee by counsel, Michael Krinsky and Michael Ludwig.
Advisory Opinion 1997–02: Representatives David E. Skaggs and Ray LaHood by counsel, Jan Witold Baran and Robert F. Bauer.
Final Rules Implementing the Debt Collection Improvement Act of 1996.
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Mary W. Dove,

Administrative Assistant.

[FR Doc. 97–5072 Filed 2–25–97; 3:02 pm]

BILLING CODE 6715–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1155–DR]

California; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of California (FEMA–1166–DR), dated January 4, 1997, and related determinations.

EFFECTIVE DATE: February 1, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Ronald Bearse of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of John Swanson as Federal Coordinating Officer for this disaster.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James L. Witt,

Director.

[FR Doc. 97–4921 Filed 2–26–97; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1155–DR]

California; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of California, (FEMA–1155–DR), dated January 4, 1997, and related determinations.

EFFECTIVE DATE: February 14, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of California, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 4, 1997:

The counties of Kings and San Luis Obispo for Individual Assistance, Hazard Mitigation and Public Assistance. Federal assistance to replace trees is not eligible.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 97–4922 Filed 2–26–97; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1154–DR]

Idaho; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Idaho, (FEMA–1154–DR), dated January 4, 1997, and related determinations.

EFFECTIVE DATE: February 11, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Idaho, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 4, 1997:

The counties of Benewah and Kootenai for Hazard Mitigation and Categories C, D, E, F, and G under the Public Assistance program. Federal assistance to replace trees is not eligible. (These counties have already been designated for Individual Assistance and Categories A and B under the Public Assistance program).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–4920 Filed 2–26–97; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1158–DR]

Minnesota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Minnesota (FEMA–1158–DR), dated January 16, 1997, and related determinations.

EFFECTIVE DATE: February 11, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Minnesota, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 16, 1997:

FEMA will provide reimbursement for the costs of equipment, contracts, and personnel overtime that are required to clear one lane in each direction along snow emergency routes (or select primary roads in those communities without such designated roadways), and routes necessary to allow the passage of emergency vehicles to hospitals, nursing homes, and other critical facilities for the counties of Hubbard, McLeod, Meeker, Sibley, Sherburne, Stearns, Todd, Waseca, and Wright.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–4916 Filed 2–26–97; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1153–DR]

Nevada; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Nevada (FEMA–1153–DR), dated January 3, 1997, and related determinations.

EFFECTIVE DATE: February 5, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Curt Musgrave of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Warren Pugh as Federal Coordinating Officer for this disaster.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 97–4919 Filed 2–26–97; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1160–DR]

Oregon; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Oregon, (FEMA–1160–DR), dated January 23, 1997, and related determinations.

EFFECTIVE DATE: February 14, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Oregon, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 23, 1997:

The counties of Coos, Douglas and Lane for Individual Assistance and Hazard Mitigation.

Lake County for Individual Assistance (already designated for Public Assistance and Hazard Mitigation).

(Catalog of Federal Domestic Assistance No. 83.516, DisasterAssistance.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 97–4918 Filed 2–26–97; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1159–DR]

Washington; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Washington (FEMA–1159–DR), dated January 17, 1997, and related determinations.

EFFECTIVE DATE: February 11, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Washington, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 17, 1997:

The county of Clark for Individual Assistance (already designated for Public Assistance and Hazard Mitigation).

The counties of Douglas and Franklin for Public Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–4915 Filed 2–26–97; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1159–DR]

Washington; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Washington (FEMA–1159–DR), dated January 17, and related determinations.

EFFECTIVE DATE: February 11, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective February 10, 1997.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–4917 Filed 2–26–97; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 19, 1997.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Mr. O. H. Deshotels, Jr., Kaplan, Louisiana; to acquire an additional 2.9 percent, for a total of 12.6 percent, of the voting shares of Coastal Commerce Bancshares, Inc., Kaplan, Louisiana, and thereby indirectly acquire Kaplan State Bank, Kaplan, Louisiana.

Board of Governors of the Federal Reserve System, February 21, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–4828 Filed 2–26–97; 8:45 am]

BILLING CODE 6210–01–F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 24, 1997.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. AmeriBancShares, Inc., Wichita Falls, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of AmeriBancShares of Delaware, Wilmington, Delaware, and thereby indirectly acquire American National Bank, Wichita Falls, Texas.

2. AmeriBancShares of Delaware, Inc., Wilmington, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of American National Bank, Wichita Falls, Texas.

Board of Governors of the Federal Reserve System, February 21, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–4829 Filed 2–26–97; 8:45 am]

BILLING CODE 6210–01–F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies That are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 13, 1997.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Shoreline Financial Corporation, Benton Harbor, Michigan; to acquire SJS Bancorp, Inc., St. Joseph, Michigan, and thereby indirectly acquire SJS Federal Savings Bank, St. Joseph, Michigan, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y and in insurance agency and underwriting activities pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 21, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–4830 Filed 2–26–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RETIREMENT THRIFT SUPERVISION INVESTMENT BOARD

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Retirement Thrift Investment Board.

TIME AND DATE: 9:00 a.m., March 10, 1997.

PLACE: National Finance Center, First Floor, Conference Room 6, USDA/NFC Building No. 350, NASA Space Facility, 13800 Old Gentilly Road, New Orleans, Louisiana.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the February 10, 1997, Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Briefings by National Finance Center and Board staff on:
   a. National Finance Center;
   b. Thrift Savings Plan system replacement effort;
   c. Thrift Savings Plan improvements;
   d. Capability maturity model;
   e. Software methodology;
   f. Project tracking and controls;
   g. Service Office enhancements;
   h. Local area network; and
   i. Thrift Savings Plan costs.

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs (202) 942–1640.

Dated: February 24, 1997.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 97–5013 Filed 2–25–97; 11:37 am]

BILLING CODE 6760–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95P–0110]

The Food and Drug Administration's Development, Issuance, and Use of Guidance Documents

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a document entitled "Good Guidance Practices" (GGP's), which sets forth the agency's policies and procedures for the development, issuance, and use of guidance documents. Issues relating to FDA's development and issuance of guidance documents were raised in a citizen petition submitted by the Indiana Medical Devices Manufacturers Council, Inc. (IMDMC) (see Docket No. 95P–0110). In an effort to improve its guidance document procedures, FDA has adopted the GGP's described and included in this notice.

DATES: Although the agency already has begun to follow the procedures set forth in the GGP's, the GGP's will not be fully implemented until FDA's proposal to amend its regulations in part 10 (21 CFR part 10) to clarify that advisory opinions and guidelines do not bind the agency (57 FR 47314, October 15, 1992) is finalized and in effect.

FOR FURTHER INFORMATION CONTACT: Margaret M. Dotzel, Office of Policy (HF–22), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3360.

SUPPLEMENTARY INFORMATION: The IMDMC petition requested that FDA control the initiation, development, and issuance of guidance documents by written procedures that assure the appropriate level of meaningful public participation. In response to the petition, FDA agreed to take steps to improve the agency's guidance document procedures. In the **Federal Register** of March 7, 1996 (61 FR 9181), FDA published a notice, which set forth its proposal on how best to improve its guidance document procedures and solicited comment on these and additional ideas for improvement (the March 7 Notice). On April 26, 1996, the agency held a public meeting to further discuss these issues (the April 26 public meeting). The comment period for the March 7 Notice closed on June 5, 1996. This notice: (1) Sets forth the agency's position on how it will proceed in the future with respect to guidance document development, issuance, and use; and (2) includes the agency's GGP's, which set forth the agency's policies and procedures for developing, issuing, and using guidance documents.

I. Definition of Guidance

In the March 7 Notice, FDA provided the following definition for guidance documents:

[T]he term "guidance documents" means: (1) Documents prepared for FDA review staff and applicants/sponsors relating to the processing, content, and evaluation/approval of applications and relating to the design, production, manufacturing, and testing of regulated products; and (2) documents prepared for FDA personnel and/or the public that establish policies intended to achieve consistency in the agency's regulatory approach and establish inspection and enforcement procedures. Guidance documents do not include agency reports, general information provided to consumers, documents relating to solely internal FDA procedures, speeches, journal articles and editorials, media interviews, warning letters, or other communications or actions taken by individuals at FDA or directed to individual persons or firms.

A number of the comments submitted in response to the March 7 Notice suggested alternative definitions for "guidance document." One comment suggested that the term include all internal documents intended to direct activities of FDA staff. Another suggested that a guidance document be defined as any document or other communication that in effect announces a regulatory expectation to a broad audience. And yet another suggested that a guidance document be defined as any statement that may substantively impact a regulatory evaluation or determination.

Documents relating to internal procedures, warning letters, information directed at individuals or individual firms, and speeches, journal articles, editorials, media interviews, press materials, agency reports, and general information documents provided to consumers are not guidance documents. FDA disagrees with suggestions for a definition of guidance documents that would effectively broaden the scope of the term "guidance document" to include such documents. Definitions such as "any document that announces a regulatory expectation," "any statement that may substantively impact a regulatory evaluation or determination," or "any agency-issued writing that establishes methods of compliance" would include some or all of these excluded documents. A definition such as "all internal documents that direct activities of FDA staff" would include all documents relating to internal FDA procedures, even if they have no bearing on the regulated industry. Accordingly, FDA is rejecting these suggestions.

In the GGP document, attached to this notice, the agency is using the same basic definition as set forth in the March 7 Notice, with minor revisions to clarify what is and is not in the universe of guidance documents. It provides:

The term "guidance documents" includes documents prepared for FDA staff, applicants/sponsors, and the public that (1) relate to the processing, content, and evaluation/approval of submissions; (2) relate to the design, production, manufacturing, and testing of regulated products; (3) describe the agency's policy and regulatory approach to an issue; or (4) establish inspection and enforcement policies and procedures. "Guidance documents" do not include documents relating to internal FDA procedures, agency reports, general information documents provided to consumers, speeches, journal articles and editorials, media interviews, press materials, warning letters, or other communications directed to individual persons or firms.

Despite the agency's reluctance to broaden the definition of guidance, the agency is sensitive to the concern expressed during the April 26 public meeting and in the comments that too narrow a definition might permit agency employees to use documents or communications such as speeches, editorials, or journal articles to announce regulatory expectations without following the GGP's discussed herein. Although FDA employees should be able to respond to questions about how an established policy applies

to a specific situation or to questions about areas that lack established policy, the agency should not use these other means of communication to release guidance. The GGP's explicitly state that when the agency is first communicating new or different regulatory expectations not readily apparent from the applicable statute or regulations to a broad public audience, the GGP's and officially-designated guidance document procedures should be followed. As part of the agency's effort to monitor the use of guidance documents (see section III. of this document), the agency will spot check its staff to ensure that "unofficial" guidance documents or other means (such as speeches) are not being used to first transmit to a broad public audience new or different regulatory expectations that are not readily apparent from the applicable statute or regulations.

II. Nomenclature

In the March 7 Notice, FDA suggested that a standardized nomenclature for guidance might help the public better understand the nature and legal effect of guidance documents and might help to eliminate any confusion regarding which documents are guidance. Both the discussion at the April 26 public meeting and comments submitted to the docket indicated overwhelming support for a standardized nomenclature for guidance documents. Nevertheless, some comments cautioned the agency not to elevate form over substance. Moreover, there was no real consensus on what the standardized nomenclature should be.

Some comments suggested that the nomenclature be based on the intended use of the guidance, (e.g., compliance guidance versus 510(k) review guidance); others suggested that it be based on the intended user (e.g., guidance for industry versus guidance for reviewers). A number of comments suggested that FDA differentiate guidance documents on the basis of their type or function (e.g., educational, interpretive, and descriptive or premarket review, compliance/enforcement, and educational). Some comments even suggested that the distinction be drawn on the basis of what procedure is used to develop the guidance.

Specific suggestions included calling all guidance either "guidance documents" or "compliance policy guides" or calling all guidance either "guidelines" or "recommendations." A number of comments suggested using an umbrella term (such as guidance or guideline) together with additional identifying information, such as the Center producing the document, the intended users, and the industrial, regulatory, or professional activities to which the document applies.

After considering these comments and the universe of guidance documents, the agency has decided that all guidance documents should include the following: (1) The umbrella term "guidance;" (2) information that identifies the Center or Office producing the document; and (3) the regulatory activity to which the document applies and/or the intended users of the document. The agency anticipates that, in practice, the majority of guidance documents will be called "compliance guidance," "guidance for industry," or "guidance for FDA reviewers/staff." The agency believes that this approach incorporates a number of the suggestions made during the April 26 public meeting and in the comments and ensures that guidance document nomenclature is uniform and informative (i.e., by identifying the producing Center or Office and the regulatory activity to which and/or the persons to whom the document applies).

One comment suggested that, as an additional means of ensuring uniformity and clarity, FDA should use a consistent format with headed paper for all guidance documents. Given the diversity of guidance documents and the subjects that they address, the agency believes that it would be difficult to use a consistent format. The agency believes, however, that the benefit that might be achieved from a consistent format could be achieved, more easily, by using a standardized cover sheet for all guidance. Therefore, the GGP's include a standardized cover sheet that should be used as a model for all future guidance documents.

Existing Guidance. In response to the agency's request for comment on what to do with existing guidance documents if a standardized nomenclature is adopted, most comments suggested that FDA update the nomenclature as documents are revised. In the meantime, it was suggested that the agency create an interim method of cross-referencing the older documents with the new nomenclature. One comment suggested that the agency agree to undertake the review and revision of all existing guidance within some specified period of time. Specifically, the comment suggested a "managed review" approach pursuant to which the agency would set progressive goals, with a defined percentage of the documents to be reviewed for nomenclature changes within a specified period of time (e.g., 25 percent per year for 4 years).

FDA agrees with the majority of comments, which suggested that the best approach would be to update the nomenclature of existing guidance documents as they are revised. In the meantime, when the agency publishes its comprehensive list of guidance (see section V. of this document), it will list guidance documents under the issuing Center or Office and, where possible, will separate guidance documents by their intended users and/or the regulatory activities to which they apply.

The agency will not undertake a "managed review" of all existing guidance documents pursuant to which the agency would review a defined percentage of documents for nomenclature changes within a specified period of time. While the agency agrees that guidance documents should be reviewed and updated as appropriate, the agency does not agree that the expenditure of resources for what may be mere name changes is warranted, particularly when those resources could be applied more productively to the development of new guidance documents. Over the past year, the Centers and Offices have been taking stock of their guidance documents and have been identifying obsolete guidance documents as well as those needing updates or revisions. Moreover, as set forth in section IV. of this document, the agency is providing the public an opportunity to identify guidance documents that need to be reviewed/updated. Thus, the agency believes that it is taking steps to ensure that any necessary updates and revisions to guidance documents will be made.

III. Effect of Guidance Documents

The March 7 Notice described the legal effect of guidance documents. Specifically, it stated that a guidance document is not binding on the agency or the public; rather, it represents the agency's current thinking on a certain subject. Most of the participants at the April 26 public meeting and the comments to the March 7 Notice agreed that guidance documents should not be binding. There was significant support for including a statement of the nonbinding effect of guidance on each guidance document and for education (particularly of FDA employees) regarding the legal effect of guidance. A number of comments suggested that the agency monitor FDA employees to ensure that they are not applying guidance as binding.

Nonbinding effect of guidance. Although most comments agreed with the agency's position that guidance should not be binding on the public, a number did argue that FDA should be required to follow its own guidance (i.e., should not be able to require more than is stated in guidance documents). One comment argued that FDA's position about the nonbinding nature of guidance is inconsistent with its own part 10 regulations.

The only binding requirements are those set forth in the statute and FDA's regulations. Under the Administrative Procedure Act (§ 10.40(d)), in order to bind the public, FDA must (with limited exceptions) follow the notice and comment rulemaking process. Moreover, the principle that guidance documents are binding on FDA is inconsistent with *Community Nutrition Institute* v. *Young*, 818 F.2d 943 (D.C. Cir. 1987), which calls into question FDA's procedures for issuing advisory opinions and guidelines that purport to bind the agency and thereby constrain the agency's discretion. In fact, consistent with the D.C. Circuit's decision in *CNI*, FDA proposed to revise its part 10 regulations to clarify that advisory opinions and guidelines do not bind the agency (57 FR 47314). The agency expects to publish that final rule shortly.[1] The GGP's will not be fully implemented until that final rule is in effect.

Although guidance documents cannot legally bind FDA or the public, the agency recognizes the value of guidance documents in providing consistency and predictability. A company wants assurance that if it chooses to follow a guidance document, FDA generally will find it to be in compliance with the statute and regulations. Moreover, FDA issues guidance to its staff so that they will apply the statute and regulations in a consistent manner. With these principles in mind, FDA's decisionmakers will take steps to ensure that their staff do not deviate from guidance documents without appropriate justification and without first obtaining concurrence from a supervisor. This practice will provide assurance to companies that choose to follow a guidance, yet will not legally bind the agency or its decisionmakers to a guidance document.

The statement of nonbinding effect. In the March 7, 1996 Federal Register Notice, FDA proposed to include language such as the following in each guidance document:

> Although this guidance document does not create or confer any rights for or on any person and does not operate to bind FDA or the public it does represent the agency's current thinking on * * *.

A number of comments suggested changes to the proposed statement. Some of the recommended changes reflect the comments' position that guidance is binding. Others apparently seek to clarify that approaches other than those set forth in the guidance are permitted if the applicable statutory or regulatory requirements are met. Finally, a number of the comments opined that the statement alone would not ensure the public a real opportunity to rely on alternate methods to comply with the statute and regulations.

As set forth above, FDA disagrees with the concept that guidance documents are binding. In response to the comments regarding flexibility in complying the statute and regulations, FDA is changing the statement to read:

> This guidance document represents the agency's current thinking on * * *. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

In addition, as part of GGP's, the agency is providing an opportunity for discussion regarding alternate methods of complying with the applicable statute and regulations.

Absence of Mandatory Language. Because guidance documents are not binding, the GGP's provide that mandatory words such as "shall," "must," "require" and "requirement" should not be used unless they are being used to describe or discuss a statutory or regulatory requirement. The GGP's further provide that, prior to issuance, all new guidance documents should be reviewed to ensure that mandatory language has not been used.

Education. In the March 7 Notice, FDA recognized the importance of educating both agency employees and the public regarding the nonbinding nature of guidance. Comments to the March 7 Notice agreed that education is an important step in assuring that guidance is not applied as a binding requirement. The comments suggested that FDA's GGP's include a section that describes the legal effect of guidance.

As part of its GGP's, FDA will provide all current and new FDA employees involved in the development, issuance, or application of guidance documents a copy of the GGP's, which include a section that describes the legal effect of guidance. FDA will direct these employees to review the GGP's and will provide additional training that describes, in more detail, how to develop and use guidance documents.

For purposes of educating the public, the comments suggested education through mailings and public service announcements in trade journals and newsletters. FDA agrees that it is important to take advantage of opportunities to educate the public about the legal effect of guidance. The GGP's and the statement of the nonbinding effect of guidance that will be included in all future guidance documents and on the list of guidance documents (see section V. of this document) should help to educate the public about the legal effect of guidance. In addition, as part of the GGP's, FDA is encouraging its employees to state and explain the effect of guidance when speaking in public about guidance documents. The agency believes that public education efforts will be most effective if targeted to specific discussions of guidance documents.

Monitoring. A number of the participants at the April 26 public meeting and a number of the comments to the March 7 Notice suggested that FDA monitor and evaluate the agency's performance in not applying guidance as binding. The agency agrees that it is important to monitor the agency's use of guidance. Therefore, as a part of GGP's, the Centers and Offices will monitor the development and issuance of guidance documents to ensure that GGP's are being followed. In addition, they will spot-check the use of guidance documents to ensure that they are not being applied as binding requirements and the use of documents and communications that are not defined as guidance, such as warning letters and speeches, to ensure that they are not being used to initially express new regulatory expectations to a broad public audience.

Three years after the GGP's have been implemented, the agency will convene a working group to review whether they have improved the agency's development and use of guidance documents. The working group will determine whether the GGP's are ensuring: (1) Appropriate public participation in the development of guidance, (2) that guidance documents are readily available to the public, and (3) that guidance documents are not being applied as binding requirements. The working group will review the results of the Center and Office monitoring efforts as well as the number and results of appeals relating to guidance documents.

IV. Development/Public Input

In the March 7 Notice, FDA committed to implementing an agency-wide practice of soliciting or accepting

[1] One comment asked FDA to retain § 10.45(d) (21 CFR 10.45(d)) and establish that the agency regards guidance documents as final agency action. FDA believes that this issue is more appropriately addressed in the final rule pertaining to the revisions to the part 10 regulations.

public input in connection with the development of guidance documents. FDA sought comment on a proposed three-tiered system, which encompassed a different approach to public comment for each of the three tiers. For the proposed Tier 1 documents, FDA would notify the public of its intent to issue a guidance and solicit comment before issuing that guidance. In addition, where appropriate (e.g., when complex scientific issues are raised), FDA might also hold a public meeting or workshop to discuss the guidance or could involve advisory committees in the development process. For the proposed Tier 2 documents, FDA would notify the public after it issues the guidance and solicit comment at that time. For the proposed Tier 3 documents, FDA would regularly notify the public of new guidance that recently has been issued and would not specifically solicit comment, but would accept comment.

FDA suggested that whether a guidance would be in Tier 1, 2, or 3 would depend on a number of factors. For example, Tier 1 guidance might be guidance that represents a significant change, is novel or controversial, or raises complex issues about which FDA would like to have significant public input; Tier 2 guidance might be guidance that merely states FDA's current practices or does not represent a significant or controversial change; Tier 3 guidance might be guidance directed largely to FDA's own staff and that has a limited effect on the public.

In the March 7 Notice, the agency opined that an approach such as the three-tiered one would allow it to make public input genuinely meaningful. The agency did not (and does not) want to make a commitment to extensive public participation in the development of large numbers of guidance documents and then find itself unable to issue needed guidance promptly.

Most of the speakers at the April 26 public meeting and many of the comments to the March 7 Notice did not support the agency's proposed three-tiered approach. The major criticisms were that it is too complicated, would not provide sufficient public participation, and would not sufficiently focus on public participation before a decision to issue guidance is made and before a proposed guidance is drafted. Some comments suggested changes to the tiers; others suggested completely different approaches.

Specific Criticism of the Proposed Three-Tiered Approach. A number of the comments on the March 7 Notice opined that FDA's proposed three-tiered approach would be too complex. Many thought that the proposed approach would make the classification itself a separate burden on the agency. Moreover, some thought that the agency's determination of "significance" would be problematic. For example, what might appear insignificant to the agency could be significant to the public.

Many of the comments stated that the three-tiered approach would not provide adequate public participation—particularly with respect to Tier 3. In addition, a number of comments criticized FDA's approach for focusing too much on revision of guidance that has already been drafted. These comments noted the importance of allowing participation at the earliest stages of the development process.

One comment opined that because guidance documents are used to explain interpretations of existing requirements, there is no need for an opportunity to comment. Rather, users should be encouraged to provide informal feedback at any time. If all of the public's comments are negative, FDA should consider rewriting the guidance.

Finally, one comment noted that FDA should not use the term "tier" because it will lead to confusion with the current "tier" system for device section 510(k) submissions.

Suggested Alternatives to the Three-Tiered Approach. Many of the comments agreed with a tiered approach, but suggested different ways of deciding which documents fall into each tier. A number suggested distinguishing between "educational documents," "interpretive documents," and "descriptive documents." Some suggested distinguishing between "significant public interest documents," "general public interest documents," and "FDA interest only documents." Others suggested looking at whether the documents: (1) Represent a significant change in policy, a complex issue, or are new and have wide applicability; (2) involve no significant or controversial changes; or (3) affect only FDA staff and have no effect on the public. A number of comments thought it important for FDA to look at the impact the guidance document has on the industry.

A comparable number of comments disagreed with a tiered approach. For example, one comment suggested that any agency statement having the potential for compliance or enforcement consequences must be subject to notice and comment rulemaking. Product specific guidance (e.g., bioequivalence protocols or biopharmaceutical guidance) alone could be excepted, provided the guidance is binding on FDA and industry unless a clearly demonstrated public health safety issue arises.

Some comments suggested that all guidance be available for comment before issuance through publication in the **Federal Register** (although an abbreviated procedure could be employed). Under this approach, a reasonable amount of time, at least 60 days, would be allowed for submission of comments.

One comment suggested that advanced public comment always be required except when it would not be in the public interest to wait for advanced public comment. The latter guidance documents would undergo comment after issuance.

Several comments recommended that the agency try processes other than soliciting comment from the public after a guidance document has been drafted. For example, some suggested that the agency employ a negotiated guidance development process, patterned after negotiated rulemaking. Another comment recommended creation of an internal task force to evaluate the agency's management procedures for ensuring consistency in the application of statutes and regulations, identifying interpretations of how to apply the statutes and regulations, and determining when the interpretations should be formed into guidance documents. Another recommended creation of a joint agency-industry committee to coordinate the development, promulgation, issuance, and overall management of guidance documents.

At least one comment suggested that FDA experiment with different models to determine how best to solicit public input in the long run.

In response to the agency's request for comment on how to treat the comments that are submitted for guidance documents, some suggested that all comments be available for public review; others said that it is inappropriate for the general public to have access to comments by named individuals regarding certain issues. Several comments indicated that comments need not be in the public docket. Rather, it would be sufficient to have them sent to the Center or Office issuing the guidance. Most of the comments agreed that it was important that the agency commit that all comments received will be considered, and not just filed.

FDA's Approach. FDA disagrees with many of the suggested alternatives because they fail to recognize that the agency does not have unlimited resources to dedicate to the development of guidance documents.

As set forth in the March 7 Notice, if FDA commits to a development process that is akin to rulemaking, it will not be able to issue many guidance documents. Moreover, what guidance documents could be issued, could not be issued promptly.

FDA disagrees with other suggested alternatives because they appear to be even more complex than FDA's proposed three-tiered approach. For example, under one approach FDA would have to determine whether a document is "educational," "interpretive," or "descriptive" before deciding what type of public participation should go into the development process. There is overlap between these different types of guidance documents and would likely be disagreement over the appropriate categorization of a guidance document. Under another suggested approach, FDA would have to look at whether a guidance is of "significant public interest," "general public interest," or "FDA only interest." The latter would require very subjective determinations. Moreover, it is doubtful that many guidance documents would fall outside of the category of "significant public interest."

Nevertheless, FDA agrees with some of the criticisms to its proposed three-tiered approach and believes that many of the comments were constructive. As set forth below, FDA is revising its proposed approach to public input to: (1) Simplify it; (2) increase public participation; and (3) ensure that public participation will be at the earliest stages of the process. Moreover, FDA will not use the term "tier" in differentiating the degree of public participation.

As part of its GGP's, FDA will adopt a two-level approach. Level 1 documents generally will include guidances directed primarily to applicants/sponsors or other members of the regulated industry that set forth first interpretations of statutory or regulatory requirements, changes in interpretation or policy that are of more than a minor nature, unusually complex scientific issues, and highly controversial issues. Level 2 guidance documents will include all other guidances.

For Level 1 guidance, the agency will solicit public input prior to implementation, unless: (1) There are public health reasons for immediate implementation; (2) there is a new statutory requirement, executive order, or court order that requires immediate implementation and guidance is needed to help effect such implementation; or (3) the guidance is presenting a less burdensome policy that is consistent with the public health. In the latter situations, the agency will solicit public input upon issuance/implementation. When the agency determines that even greater public participation is warranted, for example when there are highly controversial or unusually complex new scientific issues, the agency may hold a public workshop to discuss a draft guidance document. In these situations, the agency may also present a draft of the guidance document to an advisory panel.

In an effort to help ensure that public participation will occur at the earliest stages of the guidance development process, the agency is implementing policies pursuant to which the public will have an opportunity to suggest areas for guidance development or revision and to suggest drafts of guidance documents for adoption by the agency. (See "Proposing New Guidance," below.) Through these processes, the agency often will solicit input prior to its decision to issue a guidance and/or prior to the development of a draft.

In addition, FDA may solicit or accept early input on the need for new or revised guidance or assistance on the development of particular guidance documents from individual nongovernmental groups such as consumer groups, trade associations, patient groups, and public interest groups. The agency may participate in meetings with these various parties to obtain each party's views on priorities for developing guidance documents. The agency may also hold meetings and workshops to obtain input from each interested party on the development or revision of guidance documents in a particular FDA subject area.

Comments submitted for Level 1 documents will be submitted to the public docket and will be available to the public for review. The agency will review all comments, but in issuing a final guidance, need not specifically address every comment. The agency will make changes to a guidance document in response to comments as appropriate.

For Level 2 guidance, the agency will provide an opportunity for public comment upon issuance. Unless otherwise indicated, the guidance will be implemented upon issuance. The agency will make changes to Level 2 guidance if comments indicate that such changes are appropriate. Comments submitted for Level 2 guidance documents will be sent directly to the issuing Center or Office. Each guidance will identify the Center or Office to which such comments should be sent. The Center or Office will review all comments and will make changes to the guidance in response to such comments, as appropriate.

For all guidance documents—Levels 1 and 2—comments will be accepted at any time. Guidance will be revised in response to comments, as appropriate. These comments will be submitted to the issuing Center or Office identified in the guidance document.

Public Notification of Proposed/New Guidance Documents. In the March 7 Notice, the agency solicited comment regarding what approach would best ensure that the public is kept apprised of new guidance document developments. Comments responding to the question regarding how best to notify the public and solicit input on proposed or new guidance suggested a variety of vehicles including the **Federal Register**, the world wide web (WWW), the trade press, trade associations/organizations, public workshops, and grassroots meetings.

In an effort to ensure that notice is provided both electronically and by hard copy, the agency will be providing notice both in the **Federal Register** and on the FDA WWW home page. FDA has established a home page on the WWW at "http://www.fda.gov". Each of the Centers and the Office of Regulatory Affairs also have established home pages, which are linked to the FDA home page. These Center and Office home pages can be accessed directly or by going through the FDA home page. Guidance document notices and/or drafts will be posted on the FDA home page or will be accessible from there.

The availability of all new guidance documents, both Levels 1 and 2, will be posted on the appropriate FDA WWW home page as each guidance is issued. Notices of availability of Level 1 guidance documents will appear in the **Federal Register** when each new guidance is issued. If several new Level 1 guidance documents are being issued at the same time, a single **Federal Register** notice may be issued for all of those new documents. The agency will issue **Federal Register** notices of all new Level 2 guidance documents on a quarterly basis.

Proposing New Guidance. A number of comments on the March 7 Notice suggested that it is more important for the agency to ensure adequate public participation in the process that leads to the development of a guidance document than in the process following the agency's development of a draft guidance. These comments urged the agency to provide a mechanism for the public to recommend subjects for new guidance or drafts of proposed new

guidance documents. One comment suggested utilizing a "Guidance Proposal Policy" pursuant to which FDA employees or the public would propose topics for guidance and the proposals would be reviewed and approved/not approved by FDA management. Another comment suggested that a central location, such as a guidance document calendar, be designated for industry to propose new guidance development and to learn of new development activities. One comment suggested that the Centers and Offices solicit comments about the need for guidance through a **Federal Register** notice. Finally, one suggested that possible topics for development of guidance be published in the agency's annual regulatory agenda.

The agency agrees that it is important to provide for the public's involvement in the process that leads to the development of a draft guidance document. As part of its GGP's, therefore, the agency is instituting procedures for involving the public in decisions to develop or revise guidance documents and prioritize the development and revision of guidance documents. The agency will accomplish this in two ways. First, as a part of its GGP's, the agency will, on a semiannual basis, publish (in the **Federal Register** and on the FDA WWW home page), possible topics for guidance document development during the next year. At that time, FDA will solicit input from the public regarding these and additional ideas for new guidance documents or guidance document revisions or priorities. The purpose of publishing this "guidance document agenda" is to encourage the public to participate in the process that leads to the development of guidance documents. The agency will not be bound by the list of possible topics—i.e., it will not be required to issue every guidance document on the list and it will not be precluded from issuing guidance documents that are not included on the list.

The second way that the agency will involve the public in decisions to develop, revise, or prioritize guidance documents will be to include, as part of its GGP's, a "Guidance Proposal Policy." The "Guidance Proposal Policy" will provide the public an opportunity to propose topics for new or revised guidance or to propose draft guidance documents. The guidance proposal policy not only provides the public a meaningful opportunity to participate in the prioritization and development of guidance documents, it also allows the agency to take advantage of outside expertise and resources.

Review and Revision of Guidance Documents. A number of comments to the March 7 Notice suggested that the agency establish periodic review of guidance documents at predetermined intervals and create mechanisms for the public and agency personnel to suggest earlier review. Several comments suggested that a policy should be adopted whereby if a guidance document cannot be reviewed and revised within a reasonable time (e.g., 3 years), it should be deemed obsolete. At least one comment objected to the sunset concept.

FDA agrees that it would be valuable to periodically review and, where appropriate, revise all guidance documents. As a practical matter, guidance documents are regularly used by FDA and thereby undergo an informal review process. The agency's current workload will not permit it to commit to formal strict review/revision deadlines without diverting resources from other tasks. The agency does not think it is in the public's best interest for guidance documents that have not been reviewed or revised within some certain period of time to be deemed obsolete. The result would be to eliminate many current, valuable guidance documents. The agency believes that the guidance proposal policy will help to keep the agency apprised of potentially outdated guidance documents. Thus, as part of its GGP's, the agency is recommending review of existing guidance regularly and when appropriate (e.g., when there are significant changes in the statute or regulations), but it is not adopting a policy whereby certain guidance documents automatically are deemed obsolete with the mere passage of time.

Other Quality Control Measures. A number of the comments suggested additional quality control measures to help improve the quality of guidance. For example, one suggested that the agency adopt a uniform sign-off policy whereby each guidance document has concurrence at least at the level of an Office director. Others suggested that FDA employ other standard elements such as clearly marking superseded and superseding documents, identifying the underlying statutory and regulatory requirements, including a glossary of terminology, cross-referencing other relevant agency publications, and incorporating the following information: Relevant dates (issuance, effective, implementation, review, withdrawal, expiration), status (under development, draft, final), tier, revision history, superseded/superseding documents, available appeals mechanisms, draft number, and a summary/description of the document.

FDA agrees that many of the above standard elements would help to ensure uniformity throughout the agency and to make the documents more useful to the public. The agency thinks that it is important to include the issuance date of a guidance, its status (e.g., draft), and, where applicable, the date of the document's last revisions. When a guidance document supersedes another document, it also is important to identify the document that the new guidance is superseding. In addition, superseded documents that remain available for historical purposes should be stamped or otherwise identified as superseded.

Finally, as part of GGP's, the agency is implementing a uniform sign-off policy that directs that, at a minimum, all Level 1 guidance documents receive the sign-off of an Office Director and Level 2 guidance receive the sign-off of a Division Director. The Office of the Chief Counsel (OCC) will review and sign off on Level 1 guidance documents that set forth new legal interpretations and any other guidance documents that the Office Directors (or other issuing officials) determine should have (OCC) review. The Office of Policy (OP) will review and sign off on Level 1 guidance documents that constitute significant changes in agency policy and any other guidance documents that the Office Directors (or other issuing officials) determine should have OP review.

V. Dissemination/Availability to Public

In the March 7 Notice, FDA solicited comment on how best to provide the public access to guidance documents. FDA's Centers and Offices currently use a variety of mechanisms to make guidance documents available to the public. Nevertheless, many of the comments stated that there is room for improvement in FDA's current access programs.

Guidance Document Lists. In the March 7 Notice, the agency expressed its intent to ensure that all current guidance documents are included on a list and that the public is aware that the list exists. FDA solicited comment on how best to make the list available—electronically, on the established FAX information systems, or in the **Federal Register**.

Most comments were in favor of one centralized system (with the individual Centers and Offices keeping copies as well); most agreed that the centralized system must include one electronic method and one hard copy method; some urged use of the **Federal Register** because it is available electronically and by hard copy.

As part of its GGP's, FDA will make a comprehensive list of all guidance documents available on the FDA WWW home page and in the **Federal Register**. The WWW list will be updated continuously. The **Federal Register** list will be published annually and updated quarterly. The quarterly update will list all new guidance documents issued during that quarter and all guidance documents that have been withdrawn during that quarter. The list will include the name of each guidance document, the guidance's issuance/revision dates, and information on how to obtain copies of all of the guidance documents included on the list. The list will be organized by Center and Office and should group guidance documents by their intended users or the regulatory activities to which they apply.

Guidance Documents. In the March 7 Notice, the agency sought comment on the agency's current systems for providing access to the actual guidance documents. Specifically, the agency asked whether the current systems provide adequate access, whether it would be feasible to rely principally on the FAX systems and electronic methods—such as the WWW—or whether hard copies are necessary.

Comments submitted to the docket suggested that improvements could be made to FDA's current access systems. For example, some comments suggested that there were difficulties in using the FAX-ON-DEMAND systems. Others complained that the current systems were not kept up to date.

The Centers and Offices each will retain responsibility for maintaining a comprehensive, current set of their guidance documents and making those guidance documents available to the public. All guidance documents made available by the Centers and Offices should be included on the comprehensive list. To the extent feasible, guidance documents will be made available electronically (e.g., on the WWW). The Centers and Offices will make all guidance documents available in hard copy upon request.

VI. Appeals

In the March 7 Notice, FDA emphasized the importance of an effective appeals mechanism to ensure that there will be full and fair reconsideration and review of how guidance documents are being applied. The agency expressed its belief that an effective appeals process would protect against guidance documents being applied as binding requirements.

Comments submitted to the docket and presentations at the April 26 public meeting indicated that the issue of appeals may not be an appropriate way to address this issue. According to these comments, if the agency involves the public in the development of guidance and takes steps to ensure that its employees do not apply guidance as binding requirements, there would be fewer appeals relating to guidance documents. Nevertheless, a number of comments stated that the public is not sufficiently aware of the agency's current appeals processes and/or that the agency's current appeals processes are not adequate.

The agency agrees that improving the development and use of guidance documents should limit the need for appeals. Nevertheless, the agency believes that an effective appeals mechanism is needed for those times when someone believes the GGP's may not have been followed or the GGP's fail to achieve their purpose. The agency has appeals mechanisms in place. However, there is a lack of knowledge regarding their existence and a lack of clarity about how they work—both of which likely contribute to the criticism that they are inadequate. Accordingly, the agency is including, in its GGP's, a section that describes the appeals mechanisms relating to guidance.

As a general matter, a person with a dispute involving a guidance document can appeal a decision by going up the Center and Office chains of command, which are described in the GGP's. The Office of the Chief Mediator and Ombudsman (the Ombudsman) may be asked to become involved if the matter is not resolved by going up the chain of command, little progress is being made going up the chain of command, or a person does not know where to begin an appeal. The GGP's provide information regarding the Office of the Ombudsman and provide Center- and Office-specific information regarding telephone and/or mail contacts for questions on appeals.

The text of the GGP's document is set forth below.

Dated: February 18, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

Good Guidance Practices

I. Purpose

This "Good Guidance Practices" (GGP's) document sets forth FDA's general policies and procedures for developing, issuing, and using guidance documents. The purpose of this document is to help ensure that agency guidance documents are developed with adequate public participation, that guidance documents are readily available to the public, and that guidance documents are not applied as binding requirements. The agency wants to ensure uniformity in the development, issuance, and use of guidance documents.[1]

II. Definition

The purposes of guidance documents are to: (1) Provide assistance to the regulated industry by clarifying requirements that have been imposed by Congress or issued in regulations by FDA and by explaining how industry may comply with those statutory and regulatory requirements and (2) provide specific review and enforcement approaches to help ensure that FDA's employees implement the agency's mandate in an effective, fair, and consistent manner. Certain guidance documents provide information about what the agency considers to be the important characteristics of preclinical and clinical test procedures, manufacturing practices, and scientific protocols. Others explain FDA's views on how one may comply with the relevant statutes and regulations and how one may avoid enforcement actions.

The term "guidance documents" includes documents prepared for FDA staff, applicants/sponsors, and the public that: (1) Relate to the processing, content, and evaluation/approval of submissions; (2) relate to the design, production, manufacturing, and testing of regulated products; (3) describe the agency's policy and regulatory approach to an issue; or (4) establish inspection and enforcement policies and procedures. "Guidance documents" do not include documents relating to internal FDA procedures, agency reports, general information documents provided to consumers, speeches, journal articles and editorials, media interviews, press materials, warning letters, or other communications directed to individual persons or firms.

III. Legal Effect of Guidance Documents

Guidance documents do not themselves establish legally enforceable rights or responsibilities and are not legally binding on the public or the agency. Rather, they explain how the agency believes the statutes and regulations apply to certain regulated activities. However, because a guidance document represents the agency's current thinking on the subject addressed in the document, FDA's decisionmakers will take steps to ensure that their staff do not deviate from the guidance document without appropriate justification and appropriate supervisory concurrence.

Alternative methods that comply with the relevant statute or regulations are acceptable. If a regulated company or person wishes or chooses to use an approach other than that set forth in a guidance document, FDA will, upon request, discuss with that company or person alternative methods of complying with the applicable statutes and regulations.

[1] This document represents the agency's current practices for developing, issuing, and using guidance documents. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. Individual FDA Centers or Offices may have additional/more detailed procedures to implement the general principles set forth herein.

FDA encourages industry to discuss

otherwise available. The notice of availability

changes to the guidance in response to

FDA encourages industry to discuss alternative approaches with the agency before implementing them to avoid unnecessary or wasteful expenditures of resources.

IV. Application of GGP'S

FDA staff involved in the development, issuance, and application of guidance documents are expected to adhere to these GGP's. Documents and other means of communication excluded from the definition of guidance should not be used to initially communicate new or different regulatory expectations not readily apparent from the applicable statute or regulations to a broad public audience. Whenever such regulatory expectations are first communicated to a broad public audience, these GGP's should be followed. This does not limit the agency's ability to respond to questions as to how an established policy applies to a specific situation or to questions about areas that may lack established policy. However, such questions may signal the need to develop guidance in that area.

V. Procedures for Developing Guidance Documents

FDA has adopted a two-level approach to the development of guidance documents. The procedures for developing a guidance document will depend on whether that guidance document is a "Level 1" guidance or a "Level 2" guidance. Level 1 guidance documents generally include guidances directed primarily to applicants/sponsors or other members of the regulated industry that set forth first interpretations of statutory or regulatory requirements, changes in interpretation or policy that are of more than a minor nature, unusually complex scientific issues, or highly controversial issues. Level 2 guidance documents include all other guidance documents.

Development of Level 1 Guidance Documents. For Level 1 guidance documents, the agency will solicit public input prior to implementation, unless: (1) There are public health reasons for immediate implementation; (2) there is a new statutory requirement, executive order, or court order that requires immediate implementation and guidance is needed to help effect such implementation; or (3) the guidance is presenting a less burdensome policy that is consistent with public health. In the latter situations, the agency will solicit public input upon issuance/implementation.

For Level 1 guidance, the agency will, at a minimum, solicit public input by (1) issuing a notice of availability of a draft of the guidance in the **Federal Register** and indicating its availability on the appropriate FDA world wide web (WWW) home page[2], and (2) posting the draft on the appropriate FDA WWW home page or making the draft otherwise available. The notice of availability will provide information regarding how to obtain a copy of the draft guidance; hard copies of the draft will be available upon request. The agency may use one **Federal Register** notice of availability to solicit public input on several different draft guidance documents. For Level 1 guidance documents, the agency also may hold a public workshop to discuss a draft and/or present a draft to an advisory panel when, for example, there are highly controversial or unusually complex new scientific issues.

Because the agency recognizes that it is important to solicit input prior to its decision to issue a guidance and also, perhaps, during the development of a draft of a Level 1 guidance, the agency is implementing various practices to obtain input at the earliest stages of Level 1 guidance document development. For example, these GGP's provide that the public will have an opportunity to comment on and suggest areas for guidance development or revision and to submit draft guidances for possible adoption by the agency. (See the "Guidance Document Agenda" and "Guidance Proposal Policy" set forth below.)

In addition, FDA may solicit or accept early input on the need for new or revised guidance or assistance in the development of particular guidance documents from individual nongovernmental groups such as consumer groups, trade associations, patient groups, and public interest groups. The agency may participate in meetings with these various parties to obtain each party's views on priorities for developing guidance documents. The agency may also hold meetings and workshops to obtain input from each interested party on the development or revision of guidance documents in a particular FDA subject area.

Comments submitted on draft Level 1 guidance documents will be submitted to the docket identified in the **Federal Register** notice and on the appropriate FDA WWW home page. All comments will be available to the public for review. The agency will review all comments, but in issuing the guidance, need not specifically address every comment. The agency will make changes to the guidance document in response to comments, as appropriate.

Development of Level 2 Guidance Documents. For Level 2 guidance, the agency will provide an opportunity for public comment upon issuance. Unless otherwise indicated, the guidance will be implemented upon issuance.[3] The availability of new Level 2 guidance documents should be posted on the appropriate FDA WWW home page as each guidance is issued. Each quarter, the agency will publish a list in the **Federal Register** of all new Level 2 guidance documents.

Comments submitted for Level 2 guidance documents will be sent directly to the issuing Center or Office. Each guidance will identify the Center or Office to which such comments should be sent. The Center or Office will review all comments. The agency will make changes to the guidance in response to comments, as appropriate.

Comments on Guidance Documents In Use. For all guidance documents—Levels 1 and 2—comments will be accepted at any time. Comments on the guidance documents in use should be submitted to the issuing Center or Office identified in the guidance. Guidance will be revised in response to such comments, as appropriate.

Sign-off Policy. All drafts of Level 1 guidance documents that are being made available for public comment will receive the sign-off of at least an Office Director in a Center or the Office of Regulatory Affairs equivalent. All final versions of Level 1 guidance documents will receive the sign-off of at least an Office Director in a Center or the Office of Regulatory Affairs equivalent. The Office of the Chief Counsel (OCC) will review and sign off on Level 1 guidance documents that set forth new legal interpretations and any other guidance documents that the Office Directors (or other issuing officials) determine should have OCC review. The Office of Policy (OP) will review and sign off on Level 1 guidance documents that constitute significant changes in agency policy and any other guidance documents that the Office Directors (or other issuing officials) determine should have OP review. All Level 2 guidance documents will receive the sign-off of an official at the Division Director level or higher. The agency employees with sign-off authority should ensure that these GGP's have been followed whenever a guidance document is issued. If GGP's were not followed, the person with sign-off authority should withdraw the guidance document and reissue it in accordance with GGP's.

Guidance Document Agenda. On a semiannual basis, the agency will publish in the **Federal Register** and on the FDA WWW home page possible topics for guidance document development or revision during the next year. At that time, the agency will specifically solicit input from the public regarding these and additional ideas for new guidance documents or guidance document revisions or priorities. The agency is not bound by the list of possible topics—i.e., it is not required to issue every guidance document on the list and it is not precluded from issuing guidance documents that are not included on the list.

"Guidance Proposal Policy." If a member of the public wishes to propose one or more topics for new guidance or guidance revisions or to propose one or more draft guidance documents for adoption by FDA, that person should submit the proposal to the Centers or Offices with responsibility for overseeing the regulatory activity to which the guidance document would apply. The submission should include a statement regarding why new or revised guidance is necessary.

If the Center or Office agrees that the proposed topic should be covered by a guidance document, it will develop a guidance document in accordance with these GGP's. If the Office or Center agrees that a guidance document should be updated/revised, it will develop a revision in accordance with these GGP's. If the submitter has proposed a draft of the guidance document that the agency agrees can form the basis for a guidance document, the agency will follow the GGP's for issuing and implementing a guidance document based on that proposed draft.

Review and Revision of Guidance Documents. The agency intends to review existing guidance documents on a regular basis. As part of the "Guidance Proposal Policy," members of the public may request review or revision of a particular guidance document on the basis that it is no longer current. Such requests should be accompanied by an explanation of why the guidance is out of date and how it should be revised. The agency will review such requests to determine if the guidance document at issue needs to be updated/revised. The Agency will, when appropriate, update or revise that guidance document in accordance with these GGP's. In addition, when significant changes are made to the statute or regulations, the agency will, on its own initiative, review and, as appropriate, revise guidance documents relating to that changed statute or regulation.

VI. Standard Elements

Nomenclature. All guidance documents will include: (1) The umbrella term "guidance," (2) information that identifies the Center or Office producing the document, and (3) the regulatory activity to which and/or the persons to whom the document applies. In practice, the majority of guidance documents issued in the future will be called "compliance guidance," "guidance for industry," or "guidance for FDA reviewers/staff."

Statement of Nonbinding Effect. All guidance documents will include language such as the following:

This guidance document represents the agency's current thinking on * * *. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Absence of Mandatory Language. Because guidance documents are not binding, mandatory words such as "shall," "must," "require" and "requirement" are inappropriate unless they are being used to describe or discuss a statutory or regulatory requirement. Before a new guidance is issued, it should be reviewed to ensure that mandatory language has not been used.

Other Standard Elements. Each guidance document will include the dates of issuance and latest revision. Documents that are being made available for comment should include a "draft" notation. When a guidance supersedes another guidance document, the new guidance document will identify the document that it is superseding. Superseded documents that remain available for historical purposes should be stamped or otherwise identified as superseded. All guidance documents should include a cover sheet that is modeled after the samples attached to this document.

The agency will update existing guidance documents (to include these standard elements) as they are revised.

VII. FDA Implementation of GGP's

Education. All current and new FDA employees involved in the development, issuance, or application of guidance documents will be provided a copy of and directed to review the agency's GGP's. The Centers and Offices will conduct additional training of employees involved in the development and use of guidance documents that will describe in more detail how to develop and use guidance documents under these GGP's. This training will emphasize the principles set forth in section III., above, regarding the legal effect of guidance documents.

The agency also will educate the public about the legal effect of guidance. These GGP's and the statement of the nonbinding effect of guidance that will be included in every future guidance document and on the comprehensive list of guidance documents (discussed in section VIII. below) should help to educate the public about the legal effect of guidance. FDA staff should take the opportunity to state and explain the legal effect of guidance when speaking to the public about guidance documents.

Monitoring. FDA will monitor agency employees' use of guidance documents. As part of this process, the Centers and Offices will monitor the development and issuance of guidance documents to ensure that these GGP's are being followed. In addition, they will spot-check the use of guidance documents to ensure that they are not being applied as binding requirements. Finally, the Centers and Offices will spot-check the use of documents and communications that are not defined as guidance, such as warning letters and speeches, to ensure that these documents are not being used to initially express a new regulatory expectation to a broad public audience.

Three years after these GGP's have been implemented, the agency will convene a working group to review whether these GGP's have been successful in achieving the agency's goal in issuing them. The working group will determine whether the GGP's are ensuring: (1) Appropriate public participation in the development of guidance, (2) that guidance documents are readily available to the public, and (3) that guidance documents are not being applied as binding requirements. The working group will review the results of the Center and Office monitoring efforts as well as the number and results of appeals relating to the development and/or use of guidance documents.

VIII. Dissemination/Availability to Public

Lists of Guidance Documents. A comprehensive list of all current guidance documents will be maintained on the FDA WWW home page. New guidance documents should be added to the list within 30 days of issuance. The agency will publish the comprehensive list in the **Federal Register** annually. Each quarter, the agency will publish a **Federal Register** notice that lists all guidance documents that were issued during that quarter and all guidance documents that have been withdrawn.

The guidance document lists will include the name of each guidance document, the document's issuance/revision dates, and information on how to obtain copies of the document. The lists will be organized by Center and Office and should group guidance documents by their intended users and/or the regulatory activities to which they apply. The list also will include (properly identified) draft documents being made available for public comment.

Guidance Documents. The Centers and Offices each will retain responsibility for maintaining a comprehensive set of their guidance documents and making those guidance documents available to the public. All guidance documents made available by a Center or Office should be included on the comprehensive list. To the extent feasible, guidance documents will be made available electronically (e.g., on the WWW). The Centers and Offices will make all guidance documents available in hard copy, upon request.

IX. Appeals

These GGP's should improve the agency's development and use of guidance documents. Nevertheless, an effective appeals mechanism is needed for those times when the GGP's may not have been followed or the GGP's fail to achieve their purpose. FDA intends to provide an opportunity for appeal to a person who believes that GGP's were not followed in issuing a particular guidance document or who believes that a guidance document has been treated as a binding requirement.

As a general matter, a person with a dispute involving a guidance document should begin with the supervisor of the person issuing or applying the guidance document. If the issue cannot be resolved at that level, the matter should be brought to the next level. This process would continue on up the chain of command.[4] If a matter is unresolved at the level of the Center Director, or if little progress is being made going through the chain of command, the Office of the Chief Mediator and Ombudsman (the Ombudsman) may be asked to become involved.[5] The Office of the Ombudsman can be reached at 301–827–3390.

The chains of command for such appeals generally are as follows:

Center for Drug Evaluation and Research (CDER)

-Reviewer/Project Manager
-Branch Chief/Team Leader/Supervisory Project Manager
-Division Director
-Office Director

[2] FDA has established a home page on the WWW at "http://www.fda.gov". Each of the Centers and the Office of Regulatory Affairs also have established home pages, which are linked to the FDA home page. These Center- or Office-specific home pages can be accessed directly or through the FDA home page. Guidance document notices and/or drafts will be posted on the FDA home page or will be accessible from there.

[3] The agency may, at the discretion of the issuing Office, solicit comment before implementing a Level 2 guidance document.

[4] This general agency-wide process for appealing decisions is described in FDA's regulations (21 CFR 10.75).

[5] The Ombudsman reports directly to and acts on behalf of the FDA Commissioner in investigating and resolving issues and problems that affect products under FDA's jurisdiction. The office was created to investigate industry complaints about FDA's regulatory processes, identify deficiencies in those processes, respond to problems affecting a product under FDA's jurisdiction, and ensure that FDA policy is fairly and evenly applied throughout the agency. The Ombudsman also mediates disputes or issues between FDA and the regulated industry that have not been resolved through other means.

-Deputy Center Director
-Center Director

In addition, CDER has its own Ombudsman in the Office of the Center Director (301–594–5443) to help assist with appeals and dispute resolution. Additional information about this office can be found on the CDER home page at "http://www.fda.gov/cder".

Center for Biologics Evaluation and Research (CBER)

-Reviewer/Consumer Safety Officer
-Branch Chief/Laboratory Chief
-Division Director
-Office Director
-Associate Director
-Deputy Center Director
-Center Director

In addition, CBER has its own Ombudsman in the Office of the Center Director (301–827–0379) who handles appeals and dispute resolution.

Center for Veterinary Medicine (CVM)

-Reviewer
-Division Director
-Office Director
-Deputy Center Director
-Center Director

In addition, CVM has procedures in place to handle appeals of written decisions on issues involving science or policy. These procedures, which may apply to certain guidance document appeals, are outlined in a staff manual guide (#1240.3130). For additional assistance regarding the appeals process in CVM, persons can contact the Associate Director for Policy at 301–827–0139.

Center for Devices and Radiological Health (CDRH)

-Reviewer/Consumer Safety Officer
-Branch Chief/Team Leader
-Division Director
-Office Director
-Deputy Center Director
-Center Director

Questions related to the CDRH appeals process may be answered by the Division of Small Manufacturer's Assistance at 800–638–2041 or 301–443–6597. Questions may also be faxed to 301–443–8818.

Center for Food Safety and Applied Nutrition (CFSAN)

-Reviewer/Consumer Safety Officer
-Division Director
-Office Director
-Deputy Center Director
-Center Director

In CFSAN, the Industry Activities staff at 202–205–5251 is the contact point for appeals and will direct inquiries relating to appeals of guidance documents to the appropriate CFSAN office.

Office of Regulatory Affairs (ORA)

-Field Investigator/Field Inspector
-Supervisor/Team Leader
-Branch Chief
-District Director
-Regional Director

The Regional Directors report to the Associate Commissioner for Regulatory Affairs.

In addition, FDA's District Offices and resident posts nationwide have a variety of small business representatives, public affairs specialists, and others who can respond to questions from outside the agency regarding appeals. A listing of FDA's offices is found in the blue pages of local telephone directories and on FDA's home page at "http://www.fda.gov". Questions related to an appeal of guidance documents in ORA may be answered by the Division of Compliance Policy, which can be reached at 301–827–0420.

If it is unclear which Center or Office produced a guidance document or a person does not know where to begin an appeal, the Office of the Ombudsman handles jurisdictional questions and is available to refer those outside the agency to the appropriate place.

In summary, appeals regarding guidance documents can be made either by going up the chain of command, using specific Center or Office procedures, or going directly to the Office of the Ombudsman.

BILLING CODE 4160–01–F

Sample Cover Sheet for
Draft Guidance Documents

Guidance for Industry

FDA Approval of New Uses for Product XX

DRAFT GUIDANCE

This guidance document is being distributed for comment purposes only.

Draft released for comment on: _____.

Comments and suggestions regarding this draft document should be submitted by _____, 1997, to _____. For questions regarding this draft document, contact _____.

U.S. Department of Health and Human Services
Food and Drug Administration
Center for XX
Date

Advisory Committees; Notice of

Administration, 1401 Rockville Pike, deliberations, 1:30 p.m. to 5:30 p.m.;

Sample Cover Sheet for
Final Guidance Documents

Guidance for Industry

FDA Approval of New Uses for Product XX

U.S. Department of Health and Human Services
Food and Drug Administration
Center for XX
Date

[FR Doc. 97–4852 Filed 2–25–97; 8:45 am]
BILLING CODE 4160–01–C

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETINGS: The following advisory committee meetings are announced:

Blood Products Advisory Committee

Date, time, and place. March 13, 1997, 8 a.m., and March 14, 1997, 8:30 a.m., Quality Suites Hotel—Shady Grove, Potomac Rooms I, II, and III, Three Research Ct., Rockville, MD.

Type of meeting and contact person. Open committee discussion, March 13, 1997, 8 a.m. to 10:30 a.m.; open public hearing, 10:30 a.m. to 11:30 a.m., unless public participation does not last that long; open committee discussion, 11:30 a.m. to 2 p.m.; open public hearing, 2 p.m. to 2:30 p.m., unless public participation does not last that long; open committee discussion, 2:30 p.m. to 4:30 p.m.; open public hearing, 4:30 p.m. to 5 p.m., unless public participation does not last that long; open committee discussion, 5 p.m. to 5:30 p.m.; open committee discussion, March 14, 1997, 8:30 a.m. to 10 a.m.; closed committee discussion, 10 a.m. to 10:30 a.m.; Linda A. Smallwood, Office of Blood Research and Review (HFM–350), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3514, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Blood Products Advisory Committee, code 12388. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness, and appropriate use of blood products intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before March 7, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On the morning of March 13, 1997, the committee will discuss nucleic acid testing of plasma pools. In the afternoon, the committee will hear an informational report on the reinvention of the Biologics License Application (BLA) for blood products and have a discussion on the topic of patient notification. On March 14, 1997, the committee will review the final report of the site visit of the Laboratory of Plasma Derivatives, Division of Hematology, Office of Blood Research and Review, Center for Biologics Evaluation and Research.

Closed committee discussion. On March 14, 1997, the committee will discuss confidential and personal privacy information relevant to the scientific site visit report. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Anesthetic and Life Support Drugs Advisory Committee

Date, time, and place. March 24 and 25, 1997, 8:30 a.m., Holiday Inn—Gaithersburg, Grand Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Type of meeting and contact person. Open public hearing, March 24, 1997, 8:45 a.m. to 9:15 a.m., unless public participation does not last that long; closed presentation of data, 9:15 a.m. to 1:30 p.m.; closed committee deliberations, 1:30 p.m. to 5:30 p.m.; open public hearing, March 25, 1997, 8:45 a.m. to 9:15 a.m., unless public participation does not last that long; closed presentation of data, 9:15 a.m. to 1:30 p.m.; closed committee deliberations, 1:30 p.m. to 5 p.m.; Karen Somers, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Anesthetic and Life Support Drugs Advisory Committee, code 12529. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the field of anesthesiology and surgery.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before March 14, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Closed presentation of data. The committee will hear trade secret and/or confidential commercial information relevant to pending investigational new drugs (IND's) and new drug applications (NDA's). This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Closed committee deliberations. The committee will review trade secret and/or confidential commercial information relevant to pending IND's and NDA's. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of the meeting(s) shall be at least 1 hour

long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, deliberation to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (a)(2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: February 24, 1997

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–4959 Filed 2–26–97; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 97D–0041]

The Small Entity Compliance Guide On: Regulations to Restrict the Sale and Distribution of Cigarettes and Smokeless Tobacco in Order to Protect Children and Adolescents; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a revised compliance guide entitled, "The Small Entity Compliance Guide On: Regulations to Restrict the Sale and Distribution of Cigarettes and Smokeless Tobacco in Order to Protect Children and Adolescents (21 CFR Part 897)." The revised compliance guide is intended to help small entities comply with the final rule restricting the sale and distribution of cigarettes and smokeless tobacco in order to protect children and adolescents. This action is being taken under the Small Business Regulatory Enforcement Fairness Act.

DATES: Comments may be submitted at any time.

ADDRESSES: The revised compliance guide entitled "The Small Entity Compliance Guide On: Regulations to Restrict the Sale and Distribution of Cigarettes and Smokeless Tobacco in Order to Protect Children and Adolescents (21 CFR Part 897)" is available on the Internet at "http://www.fda.gov/", or a paper copy may be ordered free of charge by calling 1–800–FDA–4KIDS. Submit written comments on the revised compliance guide to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. The revised compliance guide and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Anne M. Kirchner, Office of Policy (HF–23), Food and Drug Administration, 5600 Fishers Lane, rm. 14–72, Rockville, MD 20857, 301–827–0867.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 28, 1996 (61 FR 44396), FDA issued a final rule to restrict the sale and distribution of cigarettes and smokeless tobacco in order to protect children and adolescents. The final rule covers three general classes of nicotine-containing products: Cigarettes, cigarette tobacco, and smokeless tobacco. The final rule applies to manufacturers, distributors, and retailers who make, distribute, or sell such products.

Beginning on February 28, 1997, Federal regulation will prohibit retailers from selling cigarettes, cigarette tobacco, or smokeless tobacco to persons under the age of 18, and will require retailers to verify the age of all customers under the age of 27 by checking a photographic identification for date of birth. Under the current schedule, starting August 28, 1997, the remaining provisions of the rule will be effective, except for the sponsorship provision, which will be effective on August 28, 1998.

Under the Small Business Regulatory Enforcement Act (Pub. 104–121), FDA is announcing the availability of the revised compliance guide which is intended to help small businesses comply with the requirements of the new rule. An earlier version of the compliance guide was previously available on the Internet and in paper form. The agency believes that the rulemaking process provided ample opportunity to comment on issues concerning all the underlying regulatory provisions of the rule. However, FDA is soliciting comments on the guide itself and may amend the guide periodically as a result of comments received. The agency is making available at this time a revised compliance guide which covers all of the access restrictions even though it is the photographic identification for date of birth requirement that becomes effective first. Therefore, in submitting comments, persons should consider the implementation dates of the provisions described in the guide.

Dated: February 20, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–4793 Filed 2–26–97; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Special Project Grants and Cooperative Agreements; Maternal and Child Health Services; Federal Set-Aside Program; Comprehensive Hemophilia Centers, Genetic Services, and Maternal and Child Health Improvement Projects

AGENCY: Health Resources and Services Administration (HRSA).

ACTION: Notice of availability of funds.

SUMMARY: The HRSA announces that approximately $10.2 million in fiscal year (FY) 1997 funds will be available for grants and cooperative agreements for the following activities: Maternal and Child Health (MCH) Special Projects of Regional and National Significance (SPRANS), including genetic disease testing, counseling and information services; and special MCH improvement projects (MCHIP) which contribute to the health of mothers, children, and children with special health care needs (CSHCN). All awards will be made under the program authority of section 502(a) of the Social Security Act, the MCH Federal Set-Aside Program. Within the HRSA, SPRANS grants are administered by the Maternal and Child Health Bureau (MCHB). Grants for SPRANS research and training are being announced in a separate notice. No new SPRANS hemophilia program grants will be funded in FY 1997.

Of the approximately $52.1 million available for SPRANS genetics and MCHIP activities in FY 1997, about $10.2 million will be available to support approximately 63 new and competing SPRANs renewal projects, at a cost of about $161,900 per project. The actual amounts available for awards and their allocation may vary depending on unanticipated program requirements and the volume and quality of applications. Awards are made for grant periods which generally run from 1 to 5 years in duration. Funds for grants under the MCH Federal Set-Aside Program are appropriated by Public Law 104–208.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The MCH Block Grant Federal Set-Aside Program addresses issues related to the Healthy People 2000 objectives of improving maternal, infant, child and adolescent health and developing service systems for children with special health care needs. Potential applicants may obtain a copy of Healthy People 2000 (*Full Report:* Stock No. 017–001–00474–0) or Healthy People 2000 (*Summary Report:* Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office Washington, DC 20402–9325 (telephone: 202–512–1800).

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children.

ADDRESSES: Federal Register notices and application guidance for MCHB programs are available on the World Wide Web via the Internet at address: http://www.os.dhhs.gov/hrsa/mchb. Click on the file name you want to download to your computer. It will be saved as a self-extracting (Macintosh or) WordPerfect 5.1 file. To decompress the file once it is downloaded, type in the file name followed by a <return>. The file will expand to a WordPerfect 5.1 file.

For applicants for SPRANS grants and cooperative agreements who are unable to access application materials electronically, a hard copy (Revised PHS form 5161–1, approved under OMB clearance number 0937–0189) may be obtained from the HRSA Grants Application Center. Requests should specify the category or categories of activities for which an application is requested so that the appropriate forms, information and materials may be provided. The Center may be contacted by: Telephone Number: 1–888–300–HRSA, FAX Number: 301–309–0579, E-mail Address: HRSA.GAC@ix.netcom.com. Completed applications should be returned to: Grants Management Officer, HRSA Grants Application Center, 40 West Gude Drive, Suite 100, Rockville, Maryland 20850. Please indicate the appropriate CFDA # for the application being submitted (see table below).

DATES: Potential applicants are invited to request application packages for the particular program category in which they are interested, and to submit their applications for funding consideration. Deadlines for receipt of applications differ for the several categories of grants. These deadlines are as follows:

MCH FEDERAL SET-ASIDE COMPETITIVE GRANTS AND COOPERATIVE AGREEMENTS FOR GENETIC SERVICES, AND MATERNAL AND CHILD HEALTH IMPROVEMENT PROJECTS ANTICIPATED DEADLINE, AWARD, FUNDING, AND PROJECT PERIOD INFORMATION, BY CATEGORY FY 1997

CFDA No.	Funding source/category	Application deadline	Est. number of awards	Est. amounts available	Project period
Category 1: Grants					
93.110(A)	Genetic Services	April 28, 1997	21	$ 3.6 million	3 years.
93.110(F)	Integrated Services for CSHCN	May 16, 1997	8–10	900,000	3–4 years.
93.110(I)	State Fetal/Infant Mortality Review Support Centers.	May 13, 1997	5	600,000	3 years.
93.110(U)	Data Utilization and Enhancement for State/Community Infrastructure Building and Managed Care.	June 30, 1997	15–17	1 million	1–3 years.
Category 2: Cooperative Agreements					
93.110(C)	Managed Care Policy and CSHCN	April 11, 1997	1	375,000	4 years.
93.110(G)	Partnership for Information and Communications.	April 15, 1997	5	1.1 million	5 years.
93.110(M)	Health, Mental Health and Safety for Schools	June 3, 1997	1	200,000	4 years.
93.110(N)	Partners in Program Planning for Adolescent Health.	June 17, 1997	1	100,000	up to 5 years.
93.110(P)	Health and Safety in Child Care Settings	June 3, 1997	1	175,000	3 years.
93.110(O)	SIDS/OID Program Support Center	April 18, 1997	1	350,000	5 years.

Applications will be considered to have met the deadline if they are either: (1) Received on or before the deadline date, or (2) postmarked on or before the deadline date and received in time for orderly processing. Applicants should request a legibly dated receipt from a commercial carrier or the U.S. Postal Service, or obtain a legibly dated U.S. Postal Service postmark. Private metered postmarks will not be accepted as proof of timely mailing. Late applications will be returned to the applicant.

FOR FURTHER INFORMATION CONTACT: Requests for technical or programmatic information should be directed to the contact persons identified below for each category covered by this notice. Requests for information concerning business management issues should be directed to: Sandra Perry, Grants Management Officer (GMO), Maternal and Child Health Bureau, 5600 Fishers Lane, Room 18–12, Rockville, Maryland 20857, telephone: 301–443–1440.

SUPPLEMENTARY INFORMATION:

Program Background and Objectives

Section 502 of the Social Security Act, as amended by the Omnibus Budget Reconciliation Act (OBRA) of 1989, requires that 12.75 percent of amounts appropriated for the Maternal and Child Health Services Block Grant in excess of $600 million are set aside by the Secretary of Health and Human Services (HHS) for special Community Integrated Service Systems (CISS) projects authorized under Section 501(a)(3) of the Act. Of the remainder of the total appropriation, Section 502(a) of the Act requires that 15 percent of the funds be retained by the Secretary to support (through grants, contracts, or otherwise) special projects of regional and national significance, research, and training with respect to maternal and child health and children with special health care needs (including early intervention training and services development); for genetic disease testing, counseling, and information development and dissemination programs; for grants (including funding for comprehensive hemophilia diagnostic treatment centers) relating to hemophilia without regard to age; and for the screening of newborns for sickle cell anemia, and other genetic disorders and follow-up services. The MCH SPRANS set-aside was established in 1981. Support for projects covered by this announcement will come from the SPRANS set-aside.

Availability of FY 1997 funds for MCH research and training grants is being announced separately from other SPRANS grants this year in order to help potential applicants better distinguish among very large numbers of SPRANS categories and subcategories. No new SPRANS hemophilia program grants will be funded in FY 1997.

Eligible Applicants

Any public or private entity, including an Indian tribe or tribal organization (as defined at 25 U.S.C. 450b), is eligible to apply for grants or cooperative agreements for project categories covered by this announcement. As noted in the FUNDING CATEGORIES section below, based on the subject matter of particular categories or subcategories, applications may be encouraged from or preference for funding given to applicants with a specified area of expertise.

Funding

Two categories of SPRANS awards are open for competition in FY 1997: (1) grants; and (2) cooperative agreements.

Category 1: Grants

Grants in the following 4 subcategories will be awarded in FY 1997:

Subcategory 1.1: Genetic Services (CFDA #93.110A)

- Narrative Description of this Competition: The purpose of these grants is to improve the quality, availability, accessibility, and utilization of genetic services as an integral component of comprehensive maternal and child health care. Grants will be awarded competitively to support projects on priority topics specified below.
- Estimated Amount of this Competition: $3.6 million.
- Number of Expected Awards: 21.
- Funding Priorities and/or Preferences: Priority topics for projects include: (1) Genetics in primary care; (2) genetic services networks; (3) comprehensive care for Cooley's Anemia; (4) genetic services for populations with ethnocultural barriers to care; (5) comprehensive care for infants with Sickle Cell disease identified through State newborn screening programs; and (6) genetics in managed care.
- Application Deadline: April 28, 1997.
- Contact Person: Jane Lin-Fu, M.D., telephone: 301–443–1080.

Subcategory 1.2: Integrated Services for Children with Special Health Care Needs (CFDA #93.110F)

- Narrative Description of this Competition: The purpose of this competition is to demonstrate innovative and nationally replicable models of community-based services in two areas: (1) Reduction of barriers to service integration for young children with special health care needs and their families. Funded activities will demonstrate successful community approaches for resolving Federal Interagency Coordinating Council (FICC) identified barriers to community services for young children with disabilities and their families. Projects will demonstrate and make recommendations on replicable community-wide strategies in one or more of the following areas: (a) Coordination of program eligibility requirements; (b) coordinated financing of services; (c) shared data and information systems; and (d) coordination of early intervention services with the medical home. All models are expected to involve substantive coordination and participation with medical/health homes and the broad system of community services required by Part H of the Individuals with Disabilities Education Act (IDEA).

(2) Promoting the accessibility of "medical homes" (i.e., ongoing source of health/medical care) for CSHCN and their families through family/professional partnerships. Funded activities will support partnership arrangements between families and community health providers/managed care organizations, and demonstrate that these partnerships can be used to establish or expand quality primary and specialty care and supportive services through collaborative working relationships with other health, mental health, education, social services, and ancillary networks.

- Estimated Amount of this Competition: $900,000.
- Number of Expected Awards: 8–10.
- Funding Priorities and/or Preferences: Proposals must be developed, implemented, and demonstrated at the community level and in partnership with community programs. Preference will be given to public and private community-based providers and programs; community/State agency partnerships; and community coalitions. Special consideration will be given to established community coalitions with existing projects and models related to this competition, including the member communities of the "Communities Can" coalition, a national coalition of public/private community partnerships serving CSHCN. (A list of member communities is included in the application kit.) For area (2), preference for funding will be given to managed care companies and community-based organizations serving culturally diverse, underserved populations.
- Evaluation Criteria: See CRITERIA FOR REVIEW; applications will be reviewed, in addition, on the basis of the extent to which they: (a) demonstrate substantive involvement of the medical home; (b) show evidence of substantive family/professional partnership in all aspects of the project; (c) show potential for national dissemination and replication; (d) show evidence of partnership with the broad early intervention community; and (e) leverage the resources of other local, state, and federally funded initiatives.
- Application Deadline: May 16, 1997.
- Contact Person: Bonnie Strickland, Ph.D., or Diana Denboba, telephone: 301–443–2370.

Subcategory 1.3: State Fetal/Infant Mortality Review Support Centers (CFDA #93.110I)

- Narrative Description of this Competition: This initiative is designed to support State MCH agencies, or their designees, to stimulate and promote Fetal and Infant Mortality Review Programs in communities in order to enhance needs assessment and quality improvement efforts. Projects will support training and technical assistance activities that would be targeted to the particular needs within the State. State centers would work collaboratively with the national center located at the American College of Obstetricians and Gynecologists.
- Estimated Amount of this competition: $600,000.
- Number of Expected Awards: 5.
- Funding Priorities and/or Preferences: Preference for funding will be given to Title V programs or their designees.
- Evaluation Criteria: See CRITERIA FOR REVIEW; application guidance materials will specify final criteria.
- Application Deadline: May 13, 1997.
- Contact Person: Ellen Hutchins, Sc.D., telephone: 301–443–9534.

Subcategory 1.4: Data Utilization and Enhancement for State/Community Infrastructure Building and Managed Care (CFDA #93.110U)

- Narrative Description of this Competition: The purpose of these grants is to enable State MCH and CSHCN programs to enhance the use of qualitative and quantitative analytic methods in local problem solving for MCH populations. Awards are intended to supplement or complement existing data utilization activities and to foster and strengthen continuing collaboration among State and local public health agencies, private sector efforts and academic institutions. This initiative is specifically designed to assist States, local communities, and supporting entities in the following categories: (1) Developing, adapting and integrating a sentinel model and system to assess the benefits and risks to the health status of children and families resulting from State and private sector health, welfare reform and, specifically, managed care efforts in terms of quantitative and qualitative measures focused upon needs assessments, outcome measures, systems performance, quality, efficacy, effectiveness and efficiency; (2) analyzing the economic implications of maternal and child health programs with the objective of augmenting the capacity of State and local policy staff to use, interpret and conduct economic assessments; and (3) enhancing the use of information technologies in State and local MCH/CSHCN programs and agencies.
- Estimated Amount of this Competition: $1 million.
- Number of Expected Awards: 15–17.

Funding Priorities and/or Preferences: Special consideration will be given to proposals seeking to identify and track emerging issues resulting from health care structural, financial, and demographic changes (e.g., health care and welfare reform, managed care waivers, population income shifts, etc.).

- Evaluation Criteria: See CRITERIA FOR REVIEW; application guidance will specify final criteria.
- Application Deadline: June 30, 1997.
- Contact Person: Russ Scarato, telephone: 301–443–0701.

Category 2: Cooperative Agreements

Cooperative agreements in 6 subcategories will be awarded in FY 1997.

It is anticipated that substantial Federal programmatic involvement will

be required in these cooperative agreements. This means that after award, awarding office staff provide technical assistance and guidance to, or coordinate and participate in, certain programmatic activities of award recipients beyond their normal stewardship responsibilities in the administration of grants. Federal involvement may include, but is not limited to, planning, guidance, coordination and participation in programmatic activities. Periodic meetings, conferences, and/or communications with the award recipient are held to review mutually agreed upon goals and objectives and to assess progress. Details on the scope of Federal programmatic involvement in cooperative agreements included in this Notice, consistent with HRSA grants administration policy, are included in the application guidance kit for each cooperative agreement subcategory.

Subcategory 2.1: Managed Care Policy and CSHCN (CFDA #93.110C)

• Narrative Description of this Competition: This cooperative agreement will support a national policy center to implement strategic planning to assure the availability and accessibility of comprehensive, community-based, culturally competent, and family-centered care to CSHCN and their families in a managed care environment. The center supported by this agreement will advance the state of the art and foster the ability of leaders in the field to interact. It will: (1) Analyze existing national epidemiologic studies of CSHCN (currently defined as children who have or are at increased risk for chronic physical, developmental, behavioral, or emotional conditions and who also require health and related services of a type or amount beyond that required by children generally); (2) monitor access to necessary medical, health and related services for CSHCN who are privately insured, underinsured or uninsured, in consultation with State and community providers, Medicaid agencies and families; and (3) support analyses of the work of national workgroups addressing critical issues for CSHCN in areas such as quality of care, cost and utilization of services, and provider networks; (4) analyze the impact on CSHCN of legislative and policy changes at the national, state and local levels; and (5) utilize the full range of available data and information to make recommendations for the successful integration of managed care into the community system of services for CSHCN and their families.

• Estimated Amount of this Competition: $375,000.
• Number of expected Awards: 1.
• Funding Priorities and/or Preference: Preference will be given to organizations with proven national experience and an existing infrastructure for policy analysis at the national level on issues related to chronic care in the emerging managed care system.
• Application Deadline: April 11, 1997.
• Contact Person: Irene Forsman, M.S., R.N. 301–443–9023.

Subcategory 2.2: Partnership for Information and Communications (PIC) (CFDA #93.110G)

• Narrative Description of this Competition: The PIC program enhances communication between the MCHB and governmental, professional and private organizations representing leaders and policy makers concerned with issues related to maternal and child health. It facilitates dissemination of new maternal and child health related information to these policy and decision makers and provides those individuals and organizations with a means of communicating issues directly to the Maternal and Child Health program and to each other. Presently, this program consists of organizations representing State Title V programs; State legislators; private business, particularly self-insured businesses; philanthropic organizations; municipal health policy makers; county health policy makers; parent organizations; and other national membership organizations.
• Estimated Amount of this Competition: $1.1 million.
• Number of Expected Awards: 5.
• Funding Priorities and/or Preferences: For FY 1997, preference for funding will be given to national membership organizations representing State Governors and their staffs; State Health Officers; nonprofit and for-profit managed care organizations; and coalitions of organizations promoting the health of mothers and infants.
• Application Deadline: April 15, 1997.
• Contact Person: Stuart Swayze, M.S.W., telephone: 301–443–2917.

Subcategory 2.3: Health, Mental Health and Safety for Schools (CFDA #93.110M)

• Narrative Description of this Competition: This cooperative agreement, a collaborative effort by HRSA and the Centers for Disease Control and Prevention, will support a process that will result in development of advisory guidelines for assuring basic health and safety in Kindergarten-12 grade school settings. The standards will be developed through a consensus process, which relies upon exchanges among groups of experts in specific topical areas to determine the state of the science and art. The guidelines will consolidate the best features of the array of guidelines, recommendations, and standards presently in existence. They will be made available to the field as a model for State health and education agencies and school districts to adopt or adapt. This initiative is based upon the process used to develop the National Health and Safety Performance Standards: Guidelines for Out of Home Child Care, which are currently helping States and communities to determine appropriate child care settings. As with the Child Care guidelines, this initiative is expected to be a collaborative effort among those organizations concerned with health, safety and schools.
• Estimated Amount of this Competition: $200,000.
• Number of Expected Awards: 1.
• Funding Priorities and/or Preferences: Preference for funding will be given to organizations which have credibility in the education community and the capacity to address all aspects of health services, health education, and injury and violence prevention in the school environment.
• Application Deadline: June 3, 1997.
• Contact Person: Stephanie Bryn, M.Ph., telephone: 301–443–3513.

Subcategory 2.4: Partners in Program Planning for Adolescent Health (CFDA #93.110N)

• Narrative Description of this Competition: This cooperative agreement is part of a process to involve organizations having an historic interest in adolescent health in developing the programming of HRSA's Office of Adolescent Health (OAH). The OAH will collaborate with these organizations in seeking policy guidance from and providing programmatic information to their memberships. Organizations currently receiving support under this program are the American Medical Association, the American Psychological Association, the American Bar Association, and the National Association of Social Workers. This competition will allow for expansion of this collaboration.
• Estimated Amount of this Competition: $100,000.
• Number of Expected Awards: 1.
• Funding Priorities and/or Preferences: For FY 1997, preference for funding will be given to national membership organizations representing the professional discipline of nursing.

Other professional disciplines may be the focus of future competitions.
• Application Deadline: June 17, 1997.
• Contact Person: Trina Menden Anglin, M.D., Ph.D., telephone: 301–443–4026.

Subcategory 2.5: Health and Safety in Child Care Settings (CFDA #93.110P)

• Narrative Description of this Competition: This cooperative agreement supports the development and implementation of State-based programs to expand the number of public (public health nurses, nurse practitioners, physicians, nutritionists, dentists, mental health providers, and others) and private sector (managed care supported outreach staff and others) health professionals trained to serve as health care consultants to child care programs. This project will serve as a national model; it is an outgrowth of the MCHB-sponsored National Health and Safety Performance Standards: Guidelines for Out-of-Home Child Care Programs and will support promotion of healthy development and increased access to preventive health services and safe physical environments for all children.
• Estimated Amount of this Competition: $175,000.
• Number of Expected Awards: 1.
• Application Deadline: June 3, 1997.
• Contact Person: Jane Coury, telephone: 301–443–4566.

Subcategory 2.6: SIDS and Other Infant Death Program Support Center (CFDA #93.110O)

• Narrative Description of this Competition: This cooperative agreement will fund population-based activities (e.g., systems analysis, epidemiology, health promotion) in support of development of community-based services to reduce as much as possible the risk of Sudden Infant Death Syndrome (SIDS) and other infant deaths, to appropriately support families when an infant death does occur, and will analyze standardized information about infant deaths in the hope of discovering factors which can be ameliorated to reduce the risk of a future infant death. Particular program elements will include risk reduction, peer support programs, services for hard to reach populations, and monitoring and reporting on SIDS and other infant deaths. The awardee will identify commonalities among processes addressing fatal events in the MCH population and determine if and how these activities could be combined to allow a more coherent approach to addressing community mortality and morbidity.
• Estimated Amount of this Competition: $350,000.
• Number of Expected Awards: 1.
• Application Deadline: April 18, 1997.
• Contact Person: Paul Rusinko, telephone: 301–443–2115.

Special Concerns

In keeping with the goals of advancing the development of human potential, strengthening the Nation's capacity to provide high quality education by broadening participation in MCHB programs of institutions that may have perspectives uniquely reflecting the Nation's cultural and linguistic diversity, and increasing opportunities for all Americans to participate in and benefit from Federal public health programs, HRSA will place a funding priority on projects from Historically Black Colleges and Universities (HBCU) or Hispanic Serving Institutions (HSI) in all categories and subcategories in this notice for which applications from academic institutions are encouraged. This is in conformity with the Federal Government's policies in support of White House Initiatives on Historically Black Colleges and Universities (Executive Order 12876) and Educational Excellence for Hispanic Americans (Executive Order 12900). An approved proposal from a HBCU or HSI will receive a 0.5 point favorable adjustment of the priority score in a 4 point range before funding decisions are made.

Evaluation Protocol

A maternal and child health discretionary grant project, including any SPRANS project, is expected to incorporate a carefully designed and well planned evaluation protocol capable of demonstrating and documenting measurable progress toward achieving the project's stated goals. The protocol should be based on a clear rationale relating the grant activities, the project goals, and the evaluation measures. Wherever possible, the measurements of progress toward goals should focus on health outcome indicators, rather than on intermediate measures such as process or outputs. A project lacking a complete and well-conceived evaluation protocol as part of the planned activities may not be funded.

Project Review and Funding

Within the limit of funds determined by the Secretary to be available for the activities described in this announcement, the Secretary will review applications for funds under the specific project categories in the FUNDING CATEGORIES section above as competing applications and may award Federal funding for projects which will, in her judgment, best promote the purpose of title V of the Social Security Act; best address achievement of Healthy Children 2000 objectives related to maternal, infant, child and adolescent health and service systems for children at risk of chronic and disabling conditions; and otherwise best promote improvements in maternal and child health.

Criteria for Review

The criteria which follow are used, as pertinent, to review and evaluate applications for awards under all SPRANS grants and cooperative agreement project categories announced in this notice. Further guidance regarding review criteria is supplied in application materials, which will specify final criteria.
—The quality of the project plan or methodology.
—The extent to which the project will contribute to the advancement of maternal and child health and/or improvement of the health of children with special health care needs;
—The extent to which the project is responsive to policy concerns applicable to MCH grants and to program objectives, requirements, priorities and/or review criteria for specific project categories, as published in program announcements or guidance materials.
—The extent to which the estimated cost to the Government of the project is reasonable, considering the anticipated results.
—The extent to which the project personnel are well qualified by training and/or experience for their roles in the project and the applicant organization has adequate facilities and personnel.
—The extent to which, insofar as practicable, the proposed activities, if well executed, are capable of attaining project objectives.
—The adherence of the project's evaluation plan to the requirements of the EVALUATION PROTOCOL.
—The extent to which the project will be integrated with the administration of the Maternal and Child Health Services block grants, State primary care plans, public health, and prevention programs, and other related programs in the respective State(s).
—The extent to which the application is responsive to the special concerns

and program priorities specified in this notice.

Funding of Approved Applications

Final funding decisions for SPRANS grants and cooperative agreements are the responsibility of the Director, MCHB. In considering scores for the ranking of approved applications for funding, preferences may be exercised for groups of applications, e.g., applications from geographical areas without previously funded projects in a particular category vs. applications from areas with previously funded projects. Within any category of approved projects, special consideration may be given, i.e., the score of an individual project may be favorably adjusted, if the project addresses specific priorities or categorical areas identified as meriting special consideration.

Public Health System Reporting Requirements

This program is subject to the Public Health System Reporting Requirements (approved under OMB No. 0937–0195). Under these requirements, the community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental applicants are required to submit the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the Federal application receipt due date:

(a) A copy of the face page of the application (SF 525).

(b) A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State and local health agencies.

Executive Order 12372

The MCH Federal set-aside program has been determined to be a program which is not subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs.

The OMB Catalog of Federal Domestic Assistance number is 93.110.

Dated: February 20, 1997.

Ciro V. Sumaya,

Administrator.

[FR Doc. 97–4796 Filed 2–26–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Office of Surface Mining Reclamation and Enforcement Advisory Board

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Office of Surface mining Reclamation and Enforcement Advisory Board; Notice of renewal.

SUMMARY: This notice is published in accordance with section 14(b)(1) of the Federal Advisory Committee Act (FACA) 5 U.S.C. App. (1988). Following consultation with the Administrator of the General Services Administration, notice is hereby given that the Secretary of the Interior is renewing the charter of an advisory committee known as the Office of Surface Mining Reclamation and Enforcement Advisory Board.

The purpose of the Advisory Board is to provide a forum to discuss a variety of regulatory and reclamation issues of concern to the public, primacy States which regulate surface coal mining, Indian tribes, environmental groups, coal mine region residents, industry, the Congress, and other State and Federal agencies.

The Secretary of the Interior will appoint members to the Advisory Board that represent a cross section of those who are interested in and directly affected by regulatory and reclamation activities. OSM will carefully monitor membership to ensure that there is a balance among those interests affected by the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.).

FOR FURTHER INFORMATION CONTACT: Norman J. Hess, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone 202–208–2635.

Certification

I hereby certify that the renewal of the charter of the Office of Surface Mining Reclamation and Enforcement Advisory Board is necessary and in the public interest in connection with the performance of duties imposed on the Department of the Interior by the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

Dated: February 10, 1997.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 97–4788 Filed 2–26–97; 8:45 am]

BILLING CODE 4310–05–M

Fish and Wildlife Service

Notice of Decision and Availability of Decision Documents on the Issuance of Permits for Incidental Take of Threatened and Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of decision and availability of a Record of Decision on the issuance of a permit for incidental take of threatened and endangered species.

SUMMARY: This notice advises the public that a decision on the application for an incidental take permit by the State of Washington Department of Natural Resources, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), has been made and that the Record of Decision is available upon request.

FOR FURTHER INFORMATION CONTACT: William Vogel or Craig Hansen, U.S. Fish and Wildlife Service, or Steve Landino, National Marine Fisheries Service at the Pacific Northwest Habitat Conservation Plan Program, 3704 Griffin Lane SE, Suite 102, Olympia, Washington 98501–2192; (360) 753–9440.

SUPPLEMENTARY INFORMATION:

Decision

The U.S. Fish and Wildlife Service's decision is to adopt the Preferred Habitat Conservation Plan Alternative, issue a permit authorizing incidental take of listed species, and agree to the unlisted species provisions in the Implementation Agreement, as described in the final Environmental Impact Statement. In the future, should any of the currently unlisted species that use the habitat types that occur within the West-side Planning Units (including the Olympic Experimental State Forest) subsequently become listed, the Washington Department of Natural Resources may request that those species be added to the incidental take permit. This decision is based on a thorough review of the alternatives and their environmental consequences. By adopting the preferred alternative with its assurances that the mitigation program and enforcement measures will be implemented, all practicable means to avoid or minimize harm have been adopted.

Rationale for Decision

The decision to issue the permit and sign the Implementation Agreement was made because the Habitat Conservation Plan proposed by the Washington Department of Natural Resources to comply with the Endangered Species Act, as well as its legal and constitutional mandates as the trustee manager of State timber lands, meets the statutory criteria for issuance of an incidental take permit under section 10 of the Act, as well as the Fish and Wildlife Service's trust responsibility to Native American Tribes. The Proposed Habitat Conservation Plan Alternative specifically addresses listed species throughout the planning area and riparian habitat management which captures the majority of species that might inhabit the planning units west of the Cascade Crest, including anadromous salmonids which are a resource subject to the Fish and Wildlife Service's trust responsibility. Furthermore, the Proposed Habitat Conservation Plan Alternative provides management goals for all forest types throughout the planning area, and associated species, as well as special habitat management for habitats such as large trees, caves, talus slopes, wetlands, oak woodlands, down logs, and standing snags in the planning units west of the Cascade Crest.

The permit was granted only after the Fish and Wildlife Service determined that the permit was applied for in good faith, that all permit issuance criteria were met, including the requirement that granting the permit would not jeopardize the continued existence of the species, and that the permit is consistent with the purposes and policies set forth in the Endangered Species Act of 1973, as amended.

Dated: February 20, 1997.

Donald V. Friberg,

Regional Director, Region 1, Portland, Oregon.

[FR Doc. 97–4836 Filed 2–26–97; 8:45 am]

BILLING CODE 4310–55–P

Geological Survey

Request for Public Comments on Proposed Information Collection to be Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposed information collection described below will be submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). Copies of the proposed collection instrument may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made within 60 days directly to the Bureau Clearance Officer, U.S. Geological Survey, 208 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192. Telephone 703–648–7313.

Specific public comments are requested as to:

1. Whether the collection of information is necessary for the proper performance of the functions on the bureaus, including whether the information will have practical utility;

2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

3. The quality, utility, and clarity of the information to be collected; and

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: "The National Atlas of the United States of America".

OMB approval number: New Collection.

Abstract: Potential customers of electronic national atlas products will be asked questions that provide (1) potential uses of these products; (2) type of personal computer used: (3) current method of acquiring atlas-type information; (4) demographic information; and (5) personal expectations from the products. Survey questionnaires will be distributed by mail in a return postage-paid format. Focus groups will be held at various locations across the United States and could include prototype product testing. Customer information gathered from the questionnaires and focus groups will be used to evaluate "The National Atlas of the United States of America" products and to make development adjustments based on customer responses. The proposed collection is limited in scope to the National Atlas products and the capability of the products to meet customer needs. The USGS intends to develop a cooperative research and development agreement with private industry to assist in product development and to provide an additional avenue for product distribution.

Bureau form number: None.

Frequency: An estimated 2–3 surveys and 5–8 focus groups per year to evaluate potential customer segments and reactions.

Description of respondents: Owners of powerful home personal computers, some with Internet access—potentially the general public, libraries, and schools.

Estimated completion time: Varies depending on the mechanism used: Approximately 0.25 hour (15 minutes) per survey and 1 hour per focus group session.

Annual responses: Approximately 1,000 survey and 100 focus group responses.

Annual burden hours: 350.

Bureau clearance officer: John Cordyack, 703–648–7313.

Dated: February 20, 1997.

Jack Fischer,

Associate Division Chief for Operations.

[FR Doc. 97–4903 Filed 2–26–97; 8:45 am]

BILLING CODE 4310–31–M

Federal Geographic Data Committee (FGDC); Application Notice Establishing the Closing Date for Transmittal of Applications Under the FGDC National Spatial Data Infrastructure (NSDI) Framework Demonstration Projects Program for Fiscal Year (FY) 1997

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice inviting applications for competitive cooperative agreement awards for fiscal year 1997.

SUMMARY: The purpose of the FGDC National Spatial Data Infrastructure (NSDI) Framework Demonstration Projects Program (FDPP) is to facilitate and provide resources for the development and implementation of the NSDI framework concept. Under this FY 1997 program announcement, applications are to be directed towards projects that test a full range of information content; technical, operational, and business contexts; and institutional interactions of the framework concept. These projects should demonstrate the sustained ability, over a geographic area, to supply data to the greater geospatial data community from locally available data sources through the implementation of the framework process.

In addition, these projects should provide practical examples of framework implementation, suggest innovative alternative approaches to accomplish framework goals and indicate topics for future research and development. Applicants are being sought who are establishing long-term organizational structures, and cooperative arrangements with other organizations in sustained efforts to

build, maintain, and disseminate framework data.

Outcomes of these projects will include the establishment of operational framework sites that will provide testbeds on policies and practices for the framework process. The projects also will serve as examples of framework implementation and as starting points for future framework research and development.

Applications may be submitted by State and local government agencies, educational institutions, private firms, private foundations, and Federally acknowledged or state-recognized Native American tribes or groups. Each project must be collaborative and involve two or more organizations. The FGDC encourages the collaboration of Federal agencies in these projects, however, Federal agencies may not lead a FDPP project nor submit proposals. The USGS intends to award approximately 7 cooperative agreements with funds totaling $460,000 during fiscal year 1997. Funds requested for a specific project shall not exceed $65,000. Participants are expected to cost-share no less than 100% of the amount of funding received from the Federal government. Authority for this program is contained in the Organic Act of March 3, 1879, 43 U.S.C. 31 and Executive Order 12906.

DATES: The program announcement is expected to be available on or about March 7, 1997. Applications must be received on or before May 16, 1997.

ADDRESSES: Copies of Program Announcement No. 1434–HQ–97–PA–00023 may be obtained by writing to Tammy Fanning, U.S. Geological Survey, Office of Acquisition and Federal Assistance, Mail Stop 205B, 12201 Sunrise Valley Drive, Reston, Virginia 20192. Requests may also be made by facsimile to (703) 648–7901. Confirmation by telephone at (703) 648–7372 is recommended.

FOR FURTHER INFORMATION CONTACT: Tammy Fanning, U.S. Geological Survey, Office of Acquisition and Federal Assistance, Mail Stop 205B, 12201 Sunrise Valley Drive, Reston, Virginia 20192; voice telephone number (703) 648–7363; facsimile telephone number (703) 648–7901.

SUPPLEMENTARY INFORMATION: Applications of digital geospatial data vary greatly, but users have a recurring need for a few common themes of data. The framework concept outlined in the report "Development of a National Digital Geospatial Data Framework" (April, 1995) proposes a means by which the geospatial data community can work together to produce and maintain commonly needed data for national, regional, state, and local analyses. The report and additional information about the framework are available from the FGDC Secretariat. The materials can be retrieved from the Committee's World Wide Web page at http://www.fgdc.gov, or by contacting the committee by mail at the U.S. Geological Survey, 590 National Center, Reston, Virginia 20192; by Internet at gdc@usgs.gov; by facsimile at (703) 648–5755; or by voice telephone at (703) 648–5514.

Within the geospatial data community, multi-agency, and multi-sector partnership are being established in local and regional areas to collaboratively leverage resources and funding, and coordinate data collection, utilization, and access. The framework builds on these activities by providing a basic information content, and the technical, operational, and business contexts by which a distributed, collaborative data collection and maintenance effort for the nation would operate. The framework information content consists of geodetic control, digital orthoimagery, elevation, transportation, hydrography, governmental units, and cadastral data categories.

While the framework concept is well received by the geospatial data community, questions remain as to its practical implementation, and the modifications in approach that will occur as the community evolves. This program is a means by which the FGDC facilities, and provides resources for the development, and implementation of the NSDI Framework concept.

This program will fund the development of institutions and technology needed for framework operations. Proposals should be from geographic areas where multiple parties have data to share for at least a subset of the framework data content. Project activities may include establishment of the following institutional roles: evaluating, developing and implementing technical standards; coordinating data creation, maintenance, and dissemination for a geographic area; ensuring updates of framework data from local data contributions; developing data quality certification policies; and ensuring data integration among themes, and geographic areas. Technical development and applications may include the following: permanent feature-based identification; the support of multiple resolution data; mechanisms for maintaining the user's data investment when updating their data holding from the framework; processes for gathering and evaluating user satisfaction to the framework; and the evaluation of methods for implementing metadata (including data quality information), required for the framework data.

(Catalog of Federal Domestic Assistance (FDAC) Program Number 15.808).

Geological Survey, Research and Data Acquisition.

Dated: February 21, 1997.

Richard E. Witmer,

Acting Chief, National Mapping Division.

[FR Doc. 97–6904 Filed 2–26–97; 8:45 am]

BILLING CODE 4310–31–M

Bureau of Indian Affairs

Notice of Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8. Pursuant to 25 CFR 83.9(a), notice is hereby given that the Biloxi, Chitimacha Confederation of Muskogees, Inc., 1112 Daisy Street, Houma, Louisiana 70363 (BCCM), has filed a letter of intent to be considered for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. This letter was received by the Bureau of Indian Affairs (BIA) on October 24, 1995, and was signed by members of the group's governing body.

This petitioner was part of the United Houma Nation, Inc. (UHN), which received a proposed finding December 22, 1994 (59 245:66118–66119). In response, this portion of the UHN has requested that it be considered separately from the UHN. The BCCM has received an extension until May 13, 1997, to respond to the proposed finding. After receipt of the BCCM response to the proposed finding, the BIA will issue an amended proposed finding, which will be published in the **Federal Register**.

Under §§ 83.9(a) and 83.10(i) of the Federal regulations, the petitioner may then respond to the amended proposed finding, and interested and informed third parties may submit factual and/or legal arguments in support of or in opposition to the group's petition and the proposed finding. The comment period will end 180 days from the date of publication of the amended proposed finding pertaining to the Biloxi, Chitimacha Confederation of Muskogees, Inc. in the **Federal Register**. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions must be provided to the petitioner and the BIA simultaneously. The petitioner will have a 60-day period in which to respond to such submissions prior to a final determination regarding the petitioner's status.

Under § 83.10(h), a report summarizing the evidence upon which the UHN proposed finding was based is available upon written request to the BIA. The petition may be examined by appointment in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, MS–4603–MIB, 1849 C Street, NW., Washington, DC 20240. Phone: (202) 208–3592.

Dated: February 11, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–4838 Filed 2–26–97; 8:45 am]

BILLING CODE 4310–02–P

Proposed Finding for Federal Acknowledgment of the Cowlitz Indian Tribe

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of proposed finding.

SUMMARY: Pursuant to 25 CFR 83.10(h), notice is hereby given that the Assistant Secretary—Indian Affairs (Assistant Secretary) proposes to acknowledge that the Cowlitz Indian Tribe, PO Box 2547, 1417 15th Avenue No. 5, Longview, WA 98632–8594, exists as an Indian tribe within the meaning of Federal law. This notice is based on a determination that the tribe satisfies all of the criteria set forth in 25 CFR 83.7 as modified by 25 CFR 83.8, and, therefore, meets the requirements for a government-to-government relationship with the United States.

DATES: As provided by 25 CFR 83.10(i), any individual or organization wishing to challenge the proposed finding may submit arguments and evidence to support or rebut the evidence relied upon. This material must be submitted within 180 calendar days from the date of publication of this notice. As stated in the regulations, 25 CFR 83.10(i), interested and informed parties who submit arguments and evidence to the Assistant Secretary must also provide copies of their submissions to the petitioner.

ADDRESSES: Comments on the proposed finding and/or request for a copy of the report of evidence should be addressed to the Office of the Assistant Secretary, 1849 C Street, NW., Washington, DC 20240, Attention: Branch of Acknowledgment and Research. Mailstop 4603—MIB.

FOR FURTHER INFORMATION CONTACT: Holly Reckord, Chief, Branch of Acknowledgment and Research, (202) 208–3592.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary by 209 DM 8.

The petitioner consists of descendants of the historical Lower Cowlitz Indians and Upper Cowlitz, or Cowlitz Klickitat, Indians of southwestern Washington. Its members are descendants specifically of the Lower Cowlitz Indians who were represented in 1855 at the Chehalis River Treaty negotiations held between several American Indian tribes of southwest Washington and Federal officials, and of the Upper Cowlitz band which was subsequently amalgamated with the Lower Cowlitz band. Although the Lower Cowlitz refused to sign the Chehalis River Treaty, their participation in the negotiations constitutes unambiguous Federal acknowledgment of the tribe's sovereignty. The petitioner thus meets the requirements of § 83.8 as having unambiguous previous Federal acknowledgment and has been considered under the modifications of § 83.7 that are prescribed by § 83.8. The date of the treaty negotiations, March 2, 1855, has been used as the date of latest Federal acknowledgment for purposes of this finding to enable the petitioner to proceed under the provisions of § 83.8. Because the petitioner had already completed documentation of the petition before the present regulations became effective, it was not necessary to determine if there was a later date of unambiguous Federal acknowledgment for purposes of this evaluation under the 1994 regulations.

The Federal acknowledgment regulations confirm that it is historically valid for tribes to have combined and functioned together as a unit. Under the regulations in 25 CFR part 83, tribes which combined because of historical circumstances may be acknowledged in so far as the group resulting from the amalgamation continued to function as a single tribal unit. The petitioner is an example of a group which has evolved from linguistically distinct and politically independent bands which combined. In reaching this determination, the Assistant Secretary—Indian Affairs took fully into account the historical circumstances surrounding the petitioner's development and the impact of Federal policy in combining the Salish-speaking Lower Cowlitz, the métis descendants of the Lower Cowlitz, and the Sahaptin-speaking Upper Cowlitz into a single entity for administrative purposes between the 1860's and the 1920's.

Since 1855, the Cowlitz Indians have continued to reside in a traditionally dispersed residential pattern along the Cowlitz River valley. The residential locations of the individual subgroups today remain similar to those described by observers in the mid-19th century and by BIA Special Agent Charles Roblin's 1919 Schedule of Unenrolled Indians in western Washington. The tribal entity as defined by Federal policy was identified in BIA documents from the 1860's through the 1880's, from 1904 through the 1930's, and since 1950. The umbrella tribal organization was also regularly identified as an American Indian entity by newspaper accounts from the period 1912–1939, and 1950 to the present. The component settlements comprising the umbrella tribal organization were described by local residents and local historians from the 1890's through the 1960's. Additionally, throughout this period, county vital records and articles in local newspapers regularly described individuals, families, and component settlements as "of the Cowlitz Tribe." Therefore, we conclude that the petitioner meets criterion 83.7(a) as modified by criterion 83.8(d).

As a result of the historical circumstances surrounding the petitioner's development, the modern Cowlitz Indian Tribe (CIT) is a two-level tribal community in which there is comparatively intense community within defined subgroups and a looser community encompassing the overall membership. It is significant that the modern situation does not represent a post-World War II dispersal of a once tightly-knit and more closely related group, but the continuation of a long-standing historical pattern. The subgroups have interacted in consistent ways and similar patterns at least since the formation of the formal Cowlitz Tribal Organization in 1912.

Genealogical relationships within the subgroups remain comparatively close: Within each subgroup, today's adults ordinarily share a set of grandparents. Within the Cowlitz as a whole, the majority of the adult membership shares at least one set of great-grandparents. Throughout the late 19th and early 20th centuries large proportions of people known as Cowlitz married non-Indians, and assimilated into the dominant

society. However, more than half of those who remained continued until the 1920's a pattern of matrimonial endogamy among Upper Cowlitz, Lower Cowlitz, and Cowlitz métis, and patterned out-marriages with other Indian groups. It is this group who remained who constitute the ancestry of today's petitioner.

The active involvement of individuals in the CIT tribal entity has traditionally been, and still is, connected to, and in some cases subordinate to, involvement in subgroup activities. There is also evidence that some individuals, with either the active or tacit support of other family members, became involved in the CIT's Tribal Council activities to ensure that the Tribal Council addressed the interests of their own subgroup.

Viewed in the light of the requirement in 83.1 that the criterion for community be "understood in the context of the history, geography, culture, and social organization of the group," we find that the historical development of the Cowlitz Indian Tribe (CIT) has resulted in a two-level community structure, in which community is stronger at the level of the subgroup and looser, but still extant, at the level of the tribe as a whole. The BIA found social interaction indicative of community through a combination of evidence of weak but consistent interaction among subgroups, and strong interaction within all of the subgroups of the Cowlitz Indian Tribe. There is thus sufficient evidence of community among all subgroups within the Cowlitz Indian Tribe. Thus, we conclude that the petitioner meets criterion 83.7(b) as modified by § 83.8(d), which requires a showing that the group constitutes a distinct, cohesive community at present.

As a consequence of the nature of the historical development of the Cowlitz entity, the interaction among the Cowlitz subgroups at the tribal level is primarily political in nature: the subgroups do not have separate formal leadership, while there is communication and interaction between members of the different subgroups. People within one subgroup know who within another subgroup is an effective political contact or communications liaison. The subgroups form a single political system, with no signs of considering breaking away, despite the presence of conflicts.

The evidence presented indicated that the Cowlitz Indians have had an unbroken sequence of named leadership since the Chehalis River Treaty Council in 1855. Leaders came from both the Lower Cowlitz band and Upper Cowlitz bands until 1912, and after that from the combined Cowlitz Tribal Organization (now CIT). From 1904 through 1934, evidence of continuous political leadership includes the smooth shifting of leadership from the federally-recognized chieftainship and political influence of Atwin Stockum and Captain Peter, to a council of elected offi cers. This organization held meetings attended by a significant portion of the voting members of the tribe almost annually from 1912 through 1939, and from 1950 through the present.

The Cowlitz Tribal Organization was not exclusively a claims organization, although it pursued claims. It did not develop in response external events such as the movement to enroll outsiders at Quinault or Thomas Bishop's Northwestern Indian Federation. Neither did it result from the making of the Roblin Roll by the BIA. Rather, the Cowlitz tribe existed prior to these events and the formal Cowlitz tribal organization operated independently of these external events. In fact, Roblin's 1919 Report showed that the Cowlitz were one of only two unenrolled Washington Indian groups whom he identified as a tribe. Additionally, for the period from 1912 through 1950, the existence of an externally named leadership, along with evidence for the continuation of structured political activity and influence under § 83.8(d)(3) for the overall membership within the loosely-integrated community, was supplemented by considerable evidence of informal leadership exercised within the component subgroups by non-elected elders.

The evidence also indicated that throughout the period since 1855, the named leaders were identified by knowledgeable external authorities, primarily Federal officials, as exercising a sufficient amount of political influence or authority within the overall membership to meet criterion 83.7(c), which is intended to establish continuous tribal political existence. Evidence from BIA documentation was ample for this purpose for the period through the late 1930's, and there was also sufficient evidence for the more recent period. In 1953, the BIA notified the Cowlitz Tribe of Indians (CTI), through its elected leader, of the pending western Washington termination legislation. In 1964, the council and some of the general membership became involved in a dispute concerning the approval of an attorney contract for pursuing claims litigation under the 1946 Indian Claims Commission (ICC) Act. While there is no evidence that the dispu tants aligned themselves along factional lines, the disputes were perceived by Federal officials as a threat to the leadership's stability, indicating that the membership exerted influence on the formally elected leadership.

In 1967, an informally functioning executive committee which had developed under the 1950 constitution of the CTI was expanded by resolution of the general membership at the annual meeting into a formal tribal council. The Tribal Council was then incorporated into the 1974 constitutional revision, which also was adopted by vote of the general membership. However, the annual membership, or General Council, meetings have remained the primary political center. There are political strains over its role *vis-a-vis* that of the Tribal Council and rivalries between the elected leadership of the General Council and that of the Tribal Council. In addition, there was considerable evidence of informal leadership during the period 1950–1973 by community elders.

The 1973/1974 decisions concerning enrollment qualifications have continued to have political impact until the present day.

Some family groups with Yakima-enrolled close relatives maintain that they remain active in the Tribal Council to protect their membership status. The 1/16 Cowlitz blood-quantum provision continued to provoke membership-eligibility disputes within the general membership and within the Tribal Council as recently as the early 1990's.

The Tribal and General Councils have responded to demands from the general membership to broaden the focus of Cowlitz Indian Tribe activities beyond claims and Federal acknowledgment, and to intervene in other matters of concern to the general membership, or of concern to particular extended families or socially-defined categories within the general membership. This process provided evidence for continuous functioning by leaders, leaders' influence on the membership, members' influence on the policies of the governing body, and acknowledgment of leaders by followers under § 83.8(d)(3). Therefore, we conclude that the petitioner meets criterion 83.7(c) as modified by criterion 83.8(d).

The petitioning group has provided a copy of its governing document, which describes its membership criteria. Thus, we conclude that the petitioner meets criterion 83.7(d).

The petitioner's members descend from the Lower Cowlitz band as it existed at the time of the Chehalis River treaty negotiations in 1855, from métis descendants of Lower Cowlitz women who had married French-Canadian

employees of the Hudson's Bay Company prior to 1855, from the Upper Cowlitz and Lower Cowlitz bands as enumerated by the Federal Government's Office of Indian Affairs (OIA) in 1878, and from persons enumerated as Cowlitz Indians on the BIA's 1919 Schedule of Unenrolled Indians in Western Washington prepared by special agent Charles Roblin.

The present membership also descends from individuals identified as Cowlitz Indians in pre-1855 Roman Catholic Church records, persons identified as Cowlitz Indians in public vital records, and from individuals identified as Cowlitz Indians on BIA allotment records (for Indian homesteads, public domain allotments, and Yakima Reservation allotments) and in affidavits filed with the BIA between 1911 and 1918 in connection with applications for adoption and allotment on the Quinault Reservation.

Previous acknowledgment decisions have allowed for the movement of families between bands and tribes, as well as the formal or informal merger of bands and tribes. The amalgamation of the Lower Cowlitz and Upper Cowlitz, and the association of non-Cowlitz métis families with the Cowlitz Indians in the society which developed at the Hudson's Bay Company settlement on Cowlitz Prairie prior to the 1855 date of prior unambiguous Federal acknowledgment, fall within these parameters. The process by which a limited number of non-Cowlitz métis families became associated with the Cowlitz Indians was carefully analyzed by the BIA. It was concluded that descent from such associated métis families constituted descent from the historical tribe within the meaning of criterion 83.7(e) Thus we conclude that the petitioner meets criterion 83.7(e).

The constitution of the Cowlitz Indian Tribe prohibits dual enrollment. This provision is enforced. The BIA found no evidence that a substantial proportion of the petitioner's membership was enrolled in any other Federally acknowledged tribe. Therefore, we find that the petitioner meets criterion 83.7(f).

No evidence was found that the petitioner or its members are the subject of congressional legislation which has expressly terminated or forbidden the Federal relationship. Therefore, we find that the petitioner meets criterion 83.7(g).

Based on this preliminary factual determination, we conclude that the Cowlitz Indian Tribe should be granted Federal acknowledgment under 25 CFR part 83.

As provided by 25 CFR 83.10(h) of the revised regulations, a report summarizing the evidence, reasoning, and analyses that are the basis for the proposed decision will be provided to the petitioner and interested parties, and is available to other parties upon written request. Comments on the proposed finding and/or requests for a copy of the report of evidence should be addressed to the Office of the Assistant Secretary, Bureau of Indian Affairs, 1849 C Street, NW., Washington, DC 20240, Attention; Branch of Acknowledgment and Research, Mailstop 4603—MIB. Third parties must simultaneously supply copies of their comments to the petitioner in order for them to be considered by the Department of the Interior.

During the response period, the Assistant Secretary shall provide technical advice concerning the proposed finding and shall make available to the petitioner in a timely fashion any records used for the proposed finding not already held by the petitioner, to the extent allowable by Federal law (83.10(j)(1)). In addition, the Assistant Secretary shall, if requested by the petitioner or any interested party, hold a formal meeting for the purpose of inquiring into the reasoning, analyses, and factual bases for the proposed finding. The proceedings of this meeting shall be on the record. The meeting record shall be available to any participating party and become part of the record considered by the Assistant Secretary in reaching a final determination (83.10(j)(2)).

If third party comments are received during the regular response period, the petitioner shall have a minimum of 60 days to respond to these comments. This period may be extended at the Assistant Secretary's discretion if warranted by the nature and extent of the comments (83.10(k)).

At the end of the response periods the Assistant Secretary shall consider the written arguments and evidence submitted during the response periods and issue a final determination. The Assistant Secretary shall eonsult with the petitioner and interested parties to determine an equitable time frame for preparation of the final determination and notify the petitioner and interested parties of the date such consideration begins. The Assistant Secretary may conduct any necessary additional research and may request additional information from the petitioner and third parties. A summary of the final determination will be published in the **Federal Register** within 60 days from the date on which the consideration of the written arguments and evidence rebutting or supporting the proposed finding begins, as provided in 25 CFR 83.10(l)(2).

Dated: February 12, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–4837 Filed 2–26–97; 8:45 am]

BILLING CODE 4310–02–P

Sac and Fox Nation of Missouri Liquor and Beer Act

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. § 1161, as interpreted by the Supreme Court in Rice v. Rehner, 463 U.S. 713 (1983). I certify that the Sac and Fox Nation of Missouri Liquor and Beer Act was duly adopted by Resolution R–53–96 of the Sac and Fox Nation of Missouri Tribal Council on September 27, 1996. The ordinance provides for the regulation, sale, possession and use of alcoholic liquor and beer within the Tribe's jurisdiction.

DATES: This ordinance is effective as of February 27, 1997.

FOR FURTHER INFORMATION CONTACT: Jerry Cordova, Office of Tribal Services, 1849 C Street, N.W., MS 4603 MIB, Washington, D.C. 20240–4001; telephone (202) 208–4401.

SUPPLEMENTARY INFORMATION: The Sac and Fox Nation of Missouri Liquor and Beer Ordinance shall read as follows:

Sac and Fox Liquor and Beer Act

Section 1. Title and Purpose

This Title shall be known as the Sac and Fox Liquor and Beer Act ("Act"). This law is enacted to regulate the sale and distribution of liquor and beer products on all properties under the jurisdiction of the Sac and Fox Nation of Missouri, and to generate revenue to fund needed tribal programs and services.

Section 2. Authority

This Act is enacted pursuant to Article V (f) and (i) of the Constitution of the Sac and Fox Nation of Missouri in Kansas and Nebraska and the Act of August 15, 1953 (Pub. L. 83–277, 67 Stat. 588, 18 U.S.C. § 1161).

Section 3. Definitions

Unless otherwise required by the context, the following words and

phrases shall have the designated meanings:

(a) "Nation" or "Tribe" shall mean the Sac and Fox Nation of Missouri in Kansas and Nebraska.

(b) "Tribal Council" shall mean the Tribal Council of the Sac and Fox Nation of Missouri as constituted by Article IV of the Constitution of the Sac and Fox Nation of Missouri in Kansas and Nebraska.

(c) "Commission" shall mean the Sac and Fox Liquor and Beer Control Commission established pursuant to Section 201 of this Act.

(d) "Sac and Fox Indian Country" shall mean Indian Country as defined by 18 U.S.C. § 1151 subject to the jurisdiction of the Sac and Fox Nation of Missouri, including but not limited to, any lands and waters held in trust by the Federal Government within the jurisdiction of the Sac and Fox Nation of Missouri.

(e) "Sale" shall mean the transfer, exchange or barter, in any or by any means whatsoever, for a consideration, by any person, association, partnership, or corporation, of liquor or beer products.

(f) "Wholesale Price" shall mean the established price for which liquor and beer products are sold to the Sac and Fox Nation of Missouri or any Operator by the manufacturer or distributor, exclusive of any discount or other reduction.

(g) "Alcohol" is that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is produced by the fermentation or distillation of grain, starch, molasses or sugar, or other substances including all dilutions and mixtures of this substance.

(h) "Liquor" shall mean the four varieties of liquor, commonly referred to as alcohol, spirits, wine, and beer in excess of 5% percent of alcohol, and all fermented, spirituous, vinous or malt liquor or any other intoxicating liquid, solid, semi-solid or other substance patented or not, containing alcohol, spirits, wine, or beer in excess of 5% percent of alcohol, and intended for oral consumption.

(i) "Beer" shall mean any beverage obtained by the alcohol fermentation of an infusion or decoction of pure hops, or pure extract of hops, and malt and sugar in pure water containing not more than 5% percent of alcohol by weight.

(j) "Liquor Outlet" shall mean a tribally licensed retail sale business selling liquor within the Sac and Fox Indian Country, including all related and associated facilities under the control of the Licensee. Moreover, where a Licensee's business is carried on as part of the operation of an entertainment or recreation facility, the "Liquor Outlet" shall be deemed to include the entire entertainment or recreation facility and associated areas.

(k) "Beer Outlet" shall mean a tribally licensed retail sale business selling beer within the Sac and Fox Indian Country, including all related and associated facilities under the control of the Licensee. Moreover, where a Licensee's business is carried on as part of the operation of an entertainment or recreation facility, the "Beer Outlet" shall be deemed to include the entire entertainment or recreation facility and associated areas.

(l) "Operator" or "Licensee" shall mean any person twenty-one (21) years of age or older, properly licensed by the Nation to operate a liquor and/or beer outlet.

Chapter One—Prohibition

Section 101. General Prohibition

It shall be unlawful to buy, sell, give away, consume, furnish, or possess any liquor or beer or product containing alcohol for ingestion by human beings, or to appear or be found in a place where liquor or beer are sold and/or consumed except as allowed by the Sac and Fox Liquor and Beer Act and regulations promulgated thereunder.

Section 102. Possession for Personal Use

Possession of liquor or beer for personal use by persons over the age of 21 years shall, unless otherwise prohibited by Federal or tribal law or regulation, be lawful within the Sac and Fox Indian Country, so long as such liquor or beer was lawfully purchased from an establishment duly licensed to sell such beverages, whether on or off the Sac and Fox Indian Country and consumed within a private residence or location, or at a location or facility specifically licensed for the public consumption of liquor or beer.

Chapter Two—Licensing

Section 201. Licensing of Liquor and Beer Outlets

The Tribal Council shall be the Liquor and Beer Control Commission. The Commission is empowered to:

(a) Administer this Act by exercising general control, management, and supervision of all liquor and beer sales, places of sale and sales outlets as well as exercising all powers necessary to accomplish the purposes of this Act.

(b) Adopt and enforce rules and regulations in furtherance of the purpose of this Act and in the performance of its administrative functions.

Section 202. Application for Liquor and Beer Outlet Licenses

(a) Application. Any person twenty-one (21) years of age and older, may apply to the Commission for a liquor and/or beer outlet license.

(b) Licensing Requirements. The person applying for such permit must make a showing once a year, and must satisfy the Commission that:

(1) he/she is a person of good moral character;

(2) he/she has never been convicted of violating any of the laws prohibiting the traffic in any spirituous, vinous, fermented or malt liquors, or of any of the gambling laws of the Nation, state, or any other tribe or state of the United States, within three (3) years immediately preceding the date of his/her petition;

(3) he/she has not violated the laws commonly called "prohibition laws";

(4) he/she has not had any permit or license to sell non-intoxicating liquors revoked by any governmental authority within the previous twelve (12) months.

(c) Processing of Application. The Commission's Secretary shall receive and process applications and be the official representative of the Nation and Commission in matters relating to receipt of applications, liquor and beer excise tax collections and related matters. If the Commission or its authorized representative is satisfied that the applicant is suitable and a responsible person, the Commission or its authorized representative may issue a license for the sale of liquor and/or beer products.

(d) Application Fee. Each application shall be accompanied by an application fee to be set by regulation of the Commission.

(e) Discretionary Licensing. Nothing herein shall be deemed to create a duty or requirement to issue a license. Issuance of licenses is discretionary upon the Commission's determination of the best interests of the Sac and Fox Nation, and the license grants a privilege, but not a property right, to sell liquor and/or beer within the jurisdiction of the Sac and Fox Nation at the licensed outlet(s).

Section 203. Liquor and Beer Outlet Licenses

(a) Upon approval of an application, the Commission shall issue the applicant a liquor and/or beer outlet license, valid for one year from the date of issuance, which shall entitle the Operator to establish and maintain only the type of outlet being permitted. This license shall not be transferrable. The Licensee must properly and publicly display the license in the place of business. It shall be renewable at the discretion of the Commission by the submission of the Licensee of a subsequent application form and payment of application fee as provided in Section 202(d).

Section 204. Other Business by Operator

An Operator may conduct another business simultaneously with managing a liquor and/or beer outlet; PROVIDED, if such other business is in any manner affiliated or related to the liquor and/or beer outlet it must be approved by majority vote of the Commission prior to initiation. Said other business may be conducted on the same premise as a liquor and/or beer outlet, but the Operator shall be required to maintain separate books of account for the other business.

Section 205. Revocation of Operator's License

(a) Failure of an Operator to abide by the requirements of this Act and any additional regulations or requirements imposed by the Commission will constitute grounds for revocation of the Operator's license as well as enforcement of the penalties provided in Section 601 of this Act.

(b) Upon determining that any person licensed by the Sac and Fox Nation to sell liquor or beer is, for any reason, no longer qualified to hold such license or reasonably appears to have violated any terms of the license or tribal regulations, including failure to pay taxes when due and owing, or have been found by any forum of competent jurisdiction, including the Commission, to have violated the terms of a tribal or state license or of any provision of this Act, the Chairperson of the Commission shall immediately serve written notice upon the Licensee directing that he/she show cause within ten days why his or her license should not be revoked or restricted. The notice shall state the grounds relied upon for the proposed revocation or restriction.

(c) If the Licensee fails to respond to the notice within ten (10) days of service, the Chairperson may issue an order revoking the license or placing such restrictions on the license as the Chairperson deems appropriate, effective immediately. The Licensee may, within the 10 day period, file with the Office of the Chairperson a written response and request for hearing before the Commission.

(d) At the hearing, the Licensee may present evidence and argument directed at the issue of whether or not the asserted grounds for the proposed revocation or restriction are in fact true, and whether such grounds justify the revocation or modifications of the license. The Nation may present other evidence as it deems appropriate.

(e) The Commission after considering all of the evidence and arguments, shall issue a written decision either upholding the license, revoking the license or imposing some lessor penalty (such as a temporary suspension or a fine), and such decision shall be final and conclusive.

(f) The Commission's final decision, upon posting a bond with the Court sufficient to cover the Commission's final hearing assessment or ruling, may be appealed by Licensee to the Sac and Fox Court. Any findings of fact of the Commission are conclusive upon the Court unless clearly contrary to law. The purposes of Court review are not to substitute the Court's finding of facts or opinion for the Commission's, but to guarantee due process of law. If the Court should rule for the appealing party, the Court may order a new hearing giving such guidance for the conduct of such as it deems necessary for a fair hearing. No damage or monies may be awarded against the Commission, its members, nor the Nation and its agents and employees in such an action.

Chapter Three—Liquor and Beer Sales and Transportation

Section 301. Sales by Liquor and Beer Wholesalers and Transport of Liquors and Beers Upon Sac and Fox Indian Country

(a) Right of Commission to Scrutinize Suppliers. The Operator of any licensed outlet shall keep the Commission informed, in writing, of the identity of the suppliers and/or wholesalers who supply or are expected to supply liquor and/or beer stocks to the outlet(s). The Commission may, at its discretion, limit or prohibit the purchases of said stock from a supplier or wholesaler for the following reasons: non-payment of Tribal taxes; bad business practices; or sale of unhealthy supplies. A ten day notice of stopping purchases ("Stop Purchase Order") will be given by the Commission whenever purchases from a supplier are to be discontinued unless there is a health emergency, in which case the Stop Purchase order may take effect immediately.

(b) Freedom of Information from Suppliers. Operators shall in their purchase of stock and in their business relations with suppliers cooperate with and assist the free flow of information and data to the Commission from suppliers relating to the sales and business arrangements between the suppliers and Operators. The Commission may, at its discretion, require the receipts from the suppliers of all invoices, bills of lading, billings or other documentary receipts of sales to the Operators. All records shall be kept according to Section 302(g) of this Act.

Section 302. Sales by Retail Operators

(a) Commission Regulations. The Commission shall adopt regulations which shall supplement these laws and facilitate their enforcement. These regulations shall include prohibitions on sales to minors, where liquor and/or beer may be consumed, persons not allowed to purchase liquor and/or beer, hours and days when outlets may be open for business, and other appropriate matters and controls.

(b) Sales to Minors. No person shall give, sell, or otherwise supply liquor and/or beer to any person under twenty-one (21) years of age either for his or her own use or for the use of his or her parents or for the use of any other person.

(c) Consumption of Liquor and/or Beer upon Licensed Premises. No Operator shall permit any person to open or consume liquor or beer on his or her premises or any premises adjacent thereto and in his or her control until the Commission allows the consumption of liquor and/or beer and identifies where liquor and/or beer may be consumed on Sac and Fox Indian Country.

(d) Conduct on Licensed Premises.

(1) No Operator shall be disorderly, boisterous, or intoxicated on the licensed premises or on any public premises adjacent thereto which are under his or her control, nor shall he or she permit any disorderly, boisterous, or intoxicated person to be thereon; nor shall he or she use or allow the use of profane or vulgar language thereon.

(2) No Operator shall permit suggestive, lewd, or obscene conduct or acts on his or her premises. For the purpose of this section, suggestive, lewd or obscene acts or conduct shall be those acts or conduct identified as such by the laws of the Nation and/or of the State of Kansas.

(e) Employment of Minors. No person under the age of twenty-one (21) years of age shall be employed in any service in connection with the sale or handling of liquor, either on a paid or voluntary basis.

(f) Operator's Premises Open to Commission Inspection. The premises of all Operators, including vehicles used in connection with liquor and/or beer sales, shall be open during business hours and at all other reasonable times

to inspection by the Commission or its designated representatives.

(g) Operator's Records. The originals or copies of all sales slips, invoices, and other memoranda covering all purchases of liquor and/or beer by Operators shall be kept on file in the retail premises of the Operator purchasing the sale for at least five (5) years after each purchase, and shall be filed separately and kept apart from all other records, and as nearly as possible, shall be filed in consecutive order and each month's records kept separate so as to render the same readily available for inspection and checking. All canceled checks, bank statements and books of accounting covering or involving the purchase of liquor and/or beer, and all memoranda, if any, showing payment of money for liquor and/or beer other than by check, shall be likewise preserved for availability for inspection and checking.

(h) Records Confidential. All records of the Commission showing the purchase of liquor by any individual or group shall be confidential and shall not be inspected except by members of the Commission or its authorized representatives.

(i) Conformity with State Law. Operators shall comply with the State of Kansas liquor and beer laws to the extent required by 18 U.S.C. § 1161. However, the Nation shall have the fullest jurisdiction allowed under Federal law over the sale of liquor and beer products, and related products or activities, within the boundaries of Sac and Fox Indian Country.

Section 303. Transportation through the Reservation not Affected

Nothing herein shall pertain to the otherwise lawful transportation of liquor or beer through the Sac and Fox Indian Country by persons remaining upon public highways and where such beverages are not delivered or sold or offered for sale to anyone within the Sac and Fox Indian Country.

Chapter Four—Taxation and Audits

Section 401. Excise Tax Imposed upon Distribution of Liquor

(a) General Taxing Authority. The Commission shall have authority, as provided by Tribal law, to assess and collect tax on sales of liquor and beer products to the consumer or purchaser. The tax shall be collected and paid to the Commission upon all liquor and beer products sold within the jurisdiction of the Nation. The Tribal Council may establish differing tax rates for any given class of merchandise, which shall be paid prior to the time of retail sale and delivery thereof.

(b) Added to Retail Price. An excise tax, to be set by the Tribal Council, on the wholesale price shall be added to the retail selling price of liquor and beer products sold to the ultimate consumer or purchaser. All taxes paid pursuant to this Act shall be conclusively presumed to be direct taxes on the retail consumer precollected for the purposes of convenience and facility only.

(c) Within 72 hours after receipt of any liquor or beer by any wholesaler or retailer subject to this Act, a tribal tax stamp shall be securely affixed thereto denoting the tribal tax thereon. Retailers or sellers of liquor and/or beer within the Nation's jurisdiction may buy and sell or have in their possession only liquor and/or beer which have the tribal tax stamp affixed to each package.

Section 402. Audits and Inspection

(a) All of the books and other business records of the outlet shall be available for inspection and audit by the Commission or its authorized representative during business hours and at all other reasonable times.

(b) Bond for Excise Tax. The excise tax together with reports on forms to be supplied by the Commission, shall be remitted to the Commission on a monthly basis unless otherwise specified in writing by the Commission. The Operator shall furnish a satisfactory bond to the Commission in an amount to be specified by the Commission guaranteeing his or her payment of excise taxes.

Chapter Five—Liability, Insurance and Sovereign Immunity

Section 501. Liability for Bills

The Nation and the Commission shall have no legal responsibility for any unpaid bills owed by a liquor and/or beer outlet to a wholesale supplier or any other person.

Section 502. Tribal Liability and Credit

(a) Unless explicitly authorized by tribal statute, Operators are forbidden to represent or give the impression to any supplier or person with whom he or she does business that he or she is an official representative of the Nation or the Commission authorized to pledge tribal credit or financial responsibility for any of the expenses of his or her business operation. The Operator shall hold the Nation and the Commission harmless from all claims and liability of whatever nature. The Commission shall revoke an Operator's outlet license(s) if said outlet(s) is not operated in a businesslike manner or if it does not remain financially solvent or does not pay its operating expenses and bills before they become delinquent.

(b) Insurance. The Operator shall maintain at his or her expense adequate insurance covering liability, fire, theft, vandalism, and other insurable risks. The Commission may establish as a condition of any license, the required insurance limits and any additional coverage deemed advisable, proof of which shall be filed with the Commission.

Section 503. Sovereign Immunity Preserved

Nothing in this statute shall be construed as a waiver or limitation of the sovereign immunity of the Sac and Fox Indian Nation or its agencies, nor their officers or employees.

Chapter Six—Violations-Penalties

Section 601. Violations-Penalties

(a) Any person who violates this Act or elicits, encourages, directs or causes to be violated these laws shall be guilty of an offense and subject to a fine. Failure to have a current, valid or proper license shall not constitute a defense to an alleged violation of the licensing laws or regulations. The Sac and Fox Nation Court system will have jurisdiction over the proceeding.

1. Any person convicted of committing any violation of this Act shall be subject to punishment of up to one year imprisonment and/or a fine not to exceed Five Thousand Dollars ($5,000.00).

2. Additionally, any person upon committing any violation of any provision of this Act may be subject to a civil action for trespass, and upon having been determined by the Court to have committed the violation, shall be found to have trespassed upon the lands of the Sac and Fox Nation, and shall be assessed such damages as the Court deems appropriate in the circumstances.

3. Any person suspected of having violated any provision of this Act shall, in addition to any other penalty imposed hereunder, be required to surrender any liquor or beer in such person's possession to the officer making the arrest or complaint. The surrendered beverages, if previously unopened, shall only be returned upon a finding by the Court after trial that the individual committed no violation of this Act.

4. Any Operator who violates the provisions set forth herein shall forfeit all of the remaining stock in the outlet(s). The Commission shall be empowered to seize forfeited products.

5. Any stock, goods or other items subject to this Act that have not been registered, licensed, or taxes paid shall be contraband and subject to immediate confiscation by the Commission or its employees or agents, PROVIDED, that within 15 days of the seizure the Commission shall cause to be filed an action against such property alleging the reason for the seizure or confiscation, and upon proof, the Court shall order the property forfeited and vested in the Sac and Fox Nation of Missouri.

Chapter Seven—Miscellaneous Provisions

Section 701. Severability

If any provision of this Act in its application to any person or circumstance is held invalid, the remainder of the Act and its application to other persons or circumstances is not affected.

Section 702. Effective Date

This Act shall become effective upon publication of the Secretary of the Interior's certification notice in the **Federal Register**.

Dated: February 20, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–4944 Filed 2–26–97; 8:45 am]

BILLING CODE 4310–22–P

Bureau of Land Management

[AK–962–1410–00–P; AA–9299]

Notice for Publication; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(h)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(1), will be issued to Calista Corporation for approximately 36.8 acres. The lands involved are in the vicinity of Nunivak Island, Alaska.

Seward Meridian, Alaska

T. 2 N., R. 104 W.,
Sec. 36.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Anchorage Daily News*. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until March 31, 1997 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Patricia A. Baker,

Land Law Examiner, ANCSA Team, Branch of 962 Adjudication.

[FR Doc. 97–4835 Filed 2–26–97; 8:45 am]

BILLING CODE 4310–66–P

[WY–921–41–5700; WYW104027]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW104027 for lands in Big Horn County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW104027 effective November 1, 1996, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: February 18, 1997.

Pamela J. Lewis,

Chief, Leasable Minerals Section.

[FR Doc. 97–4902 Filed 2–26–97; 8:45 am]

BILLING CODE 4310–22–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Meeting

March 11, 1997 Board of Directors Meeting

TIME AND DATE: Tuesday, March 11, 1997, 1:00 PM (OPEN Portion); 1:30 PM (CLOSED Portion).

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, N.W., Washington, D.C.

STATUS: Meeting OPEN to the Public from 1:00 PM to 1:30 PM; Closed portion will commence at 1:30 PM (approx.).

MATTERS TO BE CONSIDERED:

1. President's Report
2. Approval of December 10, 1996 Minutes (Open Portion)
3. Meeting schedule through December, 1997

FURTHER MATTERS TO BE CONSIDERED: (Closed to the Public 1:30 PM).

1. Finance Project in Russia
2. Insurance Project in Bangladesh
3. Pending Major Projects
   Finance Project in Venezuela
4. Approval of December 10, 1996 Minutes (Closed Portion)

CONTACT PERSON FOR INFORMATION: Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Dated: February 25, 1997.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 97–5043 Filed 2–25–97; 2:30 pm]

BILLING CODE 3210–01–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Stipulation Pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended

Notice is hereby given that a proposed Stipulation in the bankruptcy proceeding entitled *In re Crafts Precision Industries, Inc.*, Chapter 11 Cash No. 95–14257 (JNF) (Bankr. D. Mass), was lodged on January 31, 1997, with the United States Bankruptcy Court for the District of Massachusetts. The proposed Stipulation resolves a Proof of Claim filed by the United States in the bankruptcy proceeding, on behalf of the Environmental Protection Agency. The Proof of Claim was passed on an obligation of Crafts Precision Industries, Inc. ("Crafts") pursuant to a consent decree, entered by the United States District Court for the District of New Hampshire on December 8, 1994, in *United States* v. *OK Tool Co., Inc.*, No. 94–517(b) (D.N.H.). The consent decree related to Craft's liability, under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 *et seq.*, in connection with the Savage Municipal Well Superfund Site in Milford, New Hampshire. The Stipulation provides

that EPA's claim will be an allowed general unsecured claim in the amount of $1,306,500. The dividend on this unsecured claim will be paid according to the plan of reorganization that has been approved in the bankruptcy proceeding.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Stipulation. Any comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, 950 Pennsylvania Avenue, Washington, D.C. 20530–0001, and should refer to *In re Crafts Precision Industries, Inc.*, Chapter 11 Case No. 95–14257 (JNF) (Bankr. D. Mass.) (DOJ Ref # 90–11–3–970B).

The proposed Stipulation may be examined at EPA Region 1, One Congress Street, Boston Massachusetts (contact Rona Gregory, 617–565–3051); and the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 614–0892. A copy of the proposed Stipulation may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $2.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–4833 Filed 2–26–97; 8:45 am]

BILLING CODE 4410–15–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

In accordance with Department of Justice policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in the action entitled *United States of America* v. *ElectroSound Group, Inc., First Holbrook Company, Genco Auto Electric, Inc., Red Ground Company, and Red Ground Corporation*, No. CV–97–728 (E.D.N.Y.), was lodged on February 12, 1997 with the United States District Court for the Eastern District of New York. The proposed Consent Decree resolves the claims by the United States under the Comprehensive Environmental Response, Compensative, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9601–9675, on behalf of the U.S. Environmental Protection Agency against the above-named defendants for operable unit 1 at the Site. These claims are for recovery of response costs incurred and to be incurred by the United States in connection with operable unit 1 of the Goldisc Recordings Superfund Site ("Site") in the Town of Islip, Suffolk County, New York and for injunctive relief to require performance of the remedy selected by the United States Environmental Protection Agency (the "EPA") for operable unit 1 at the Site.

The Consent Decree provides for the performance of the remedy (except for institutional controls) by ElectroSound; the provision of access to the Site by Red Ground Company, Red Ground Corporation, and ElectroSound; the implementation of institutional controls by Red Ground Company and Red Ground Corporation; the payment by Genco of $108,000 of EPA's past costs; and the payment by ElectroSound and the First Holbrook Company of $300,000 of EPA's past response costs and $22,000 of EPA's future response cost with respect to the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530, and should refer to *United States of America* v. *ElectroSound Group, Inc., First Holbrook Company, Genco Auto Electric, Inc., Red Ground Company, and Red Ground Corporation*, No. CV–97–728 (E.D.N.Y.), DOJ Ref. No. 90–11–2–898B.

The proposed Consent Decree and appendices may be examined at the Office of the United States Attorney, 1 Pierrepont Plaza, 14th Floor, Brooklyn, New York 11201; the Region II Office of the Environmental Protection Agency 290 Broadway, New York, New York 10007–1866; and the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, telephone (202) 624–0892. A copy of the proposed Consent decree and appendices may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $21.00 (25 cents per page reproduction costs) made payable to Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–4877 Filed 2–26–97; 8:45 am]

BILLING CODE 4410–15–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 C.F.R. 50.7 and 42 U.S.C. 9622(d)(2), notice is hereby given that a proposed consent decree in *United States* v. *International Fastener Research Corporation, et al.*, Civil Action No. 97–0164, was lodged with the United States District Court for the Western District of Pennsylvania on January 27, 1997. A complaint was filed simultaneously with the lodging of the consent decree.

The proposed consent decree pertains to the Bollinger Steel Superfund Site ("Site"), located in the Borough of Ambridge, Beaver County, Pennsylvania. It resolves the claims of the plaintiff, the United States of America, filed against defendants, International Fastener Research Corporation; WKM Liquidating Partnership; the David Weisz Marital Trust Established Under the Will of Emanuel David Weisz, Deceased; the David Weisz Residuary Trust Established Under the Will of Emanuel David Weisz, Deceased; the Richard Miller Marital Deduction Trust of 1989; the Richard Miller Testamentary Trust; the Kleeman Family Trust; E. Stanley Kleeman; Sylvia Kleeman; Leslie Ima; Leonard Miller; Jay H. Grodin; Sylvia Weisz; the Estate of David Weisz, aka Emanuel David Weisz, Deceased; Stanley Kleeman Inc.; The David and Sylvia Weisz Family Foundation; WKM Investments; Matson Manufacturing Company; WKM Realty; and the L.A. Mart pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*

The consent decree requires the defendants to make a total payment of $475,000 in response costs in two installments and to relinquish any claims they may have against the United States. The consent decree also includes covenants not to sue by the United States under Sections 106 and 107 of CERCLA, 42 U.S.C. 9601 *et seq.*, and Section 7003 of the Resource Conservation and Recovery Act ("RCA"), 42 U.S.C. 6973, and provides the defendants with contribution protection.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *International Fastener Research Corporation, et al.*, Civil Action No. 97–0164, DOJ Ref. #90–11–2–738D. Commentors may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA.

The proposed consent decree may be examined at the Office of the United States Attorney, Western District of Pennsylvania, 633 United States Post Office & Court House, 7th Avenue & Grant Street, Pittsburgh, Pennsylvania 15219; the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy of the body of the proposed consent decree, please refer to the referenced case and enclose a check in the amount of $11.75 (25 cents per page reproduction costs), for each copy. The check should be made payable to the Consent Decree Library.

Joel M. Gross,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–4878 Filed 2–26–97; 8:45 am]

BILLING CODE 4410–15–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR § 50.7, and 42 U.S.C. 9622, notice is hereby given that on February 18, 1997, a proposed Consent Decree in *United States* v. *Landfill & Resource Recovery, Inc.*, Civil No. 97–078ML, was lodged with the United States District Court for the District of Rhode Island. The proposed Consent Decree concerns the response to the release and threatened release of hazardous substances at the Landfill & Resource Recovery, Inc. Site located in North Smithfield, Rhode Island, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended. The settlers are owners or operators of the Site as well as generators and transporters of hazardous substances disposed of at the Site.

Under the terms of the Consent Decree, Avnet, Inc., Boston Edison Company, CCL Custom Manufacturing, Inc., General Dynamics Corporation, Olin Corporation, Polaroid Corporation, Stanley Bostich, Inc., The Dexter Corporation, United Dominion Industries, Inc., Waste Management, Inc., Landfill & Resource Recovery, Inc., Truk-Away of RI, Inc., Charles Wilson and David Wilson will complete the remedial action for the Site. In addition, these settlers agree to pay the United States $675,000 and the State of Rhode Island $200,000 for past costs incurred at the Site, to pay oversight costs to be incurred by the United States, to pay $200,000 to the Department of Interior ("DOI") for damages to natural resources under the joint trusteeship of DOI and the State, to pay $400,000 in satisfaction of the United States' claims under 42 U.S.C. 9606(b)(1), for violations of a unilateral administrative order, and to implement a supplemental environmental project in the amount of $525,000 to purchase wetlands or related property or conservation easements within the Blackstone River Valley National Heritage Corridor. The two other settlers, J. Scott Cannon and J. Robert Cannon, have paid $60,000 to the United States to satisfy the governments' claims for past and future response costs. The Cannons' payment is based on the financial condition of the parties.

The Department of Justice will receive for a period of thirty days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Landfill & Resource Recovery, Inc.*, D.J. Ref. 90–11–2–449B.

The proposed Consent Decree may be examined at the Region 1 Office of the Environmental Protection Agency, One Congress Street, Boston, Massachusetts and at the Environmental Enforcement Section Document Center, 1120 G Street, NW., 4th Floor, Washington, DC 200052 (20) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $35.75 (25 cents per page reproduction cost, excluding all appendices) or $48.75 (25 cents per page reproduction cost, excluding appendices A, J and K) made payable to Consent Decree Library.

Bruce S. Gelber,

Deputy Section Chief, Environmental Enforcement Section.

[FR Doc. 97–4834 Filed 2–26–97; 8:45 am]

BILLING CODE 4410–15–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA")

In accordance with Departmental policy, 28 C.F.R. 50.7, 38 FR 19029, and 42 U.S.C. 9622(d) notice is hereby given that a proposed consent decree in *United States* v. *Niagara Mohawk Power Corp.*, Civil Action No. 97–CV–136, was lodged on January 31, 1997 with the United States District Court for the Northern District of New York. The Consent Decree addresses the hazardous waste contamination at the Niagara Mohawk Power Corporation Superfund Site (the "Site") in the City of Saratoga Springs, Saratoga County, New York. The Consent Decree requires Niagara Mohawk Power Corporation ("NMPC") to implement the remedial action selected by the Environmental Protection Agency in the Record of Decision dated September, 1995. Additionally, NMPC is required to reimburse the United States $874,080.04, in U.S. EPA past costs at the Site and pay EPA's oversight costs at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Niagara Mohawk Power Corp.*, DOJ Ref. #90–11–3–1570.

The proposed consent decree may be examined at the office of the United States Attorney, 231 James T. Foley Courthouse, 445 Broadway, Albany, New York 12207; Region II; Office of the Environmental Protection Agency, 290 Broadway, New York, New York 10007; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street,

N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $26.25 for the Consent Decree and $41.50 for the attachments to the Consent Decree (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce Gelber,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–4874 Filed 2–26–97; 8:45 am]

BILLING CODE 4410–15–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 C.F.R. 50.7, and 42 U.S.C. 9622(d), notice is hereby given that a proposed Consent Decree in *United States and the State of Oregon* v. *Teledyne Wah Chang Albany*, No. 97–169–RE, (D. Ore.), was lodged on January 31, 1997, with the United States District Court for the District of Oregon. with regard to the Defendant, the Consent Decree resolves a claim filed by the United States on behalf of the United States Environmental Protection Agency ("EPA") pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 *et seq.*

The United States entered into the Consent Decree in connection with the Teledyne Wah Chang Site ("the Site"), located in Millersburg, Oregon. The Consent Decree provides that the Defendant will reimburse the United States $154,000 for response costs incurred and to be incurred at the Site. Further, the Defendant will be required to implement remedial actions set forth in two Records of Decision for the Site, at an estimated cost of $7.5 million, and to reimburse EPA for its costs of overseeing the remedial work. The Site is an operating producer of zirconium and hafnium metals.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States and the State of Oregon* v. *Teledyne Wah Chang Albany*, DOJ Ref. #90–11–2–558.

The proposed Consent Decree may be examined at the office of the United States Attorney, 888 Southwest 5th Avenue, Suite 1000, Portland, Oregon, 97204–2024; the Region 10 office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy refer to the referenced case and enclose a check in the amount of $18.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–4873 Filed 2–26–97; 8:45 am]

BILLING CODE 4410–15–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; National Medical Practice Knowledge Bank

Notice is hereby given that, on January 3, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Allegheny-Singer Research Institute has filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in names of certain members. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: NCR Corporation, Parallel Systems, El Segundo, CA, formerly doing business at AT&T Corporation, GIS, Large Systems Solutions Division, El Segundo, CA; NCR Corporation, Human Interface Technology Center, Atlanta, GA, formerly doing business as AT&T Corporation, GIS, Human Interface Technology Center, Atlanta, GA; AT&T Corporation, Business Markets Division, Washington, DC, formerly doing business as AT&T Business Communications Services, Holmdel, NJ; and Allegheny University of the Health Sciences formerly doing business as The Medical College of Pennsylvania and Hahnemann University, Philadelphia, PA. The name under which these parties will operate is the National Medical Practice Knowledge Bank. The general area of planned activity is to conduct cooperative research concerning multimedia information access, retrieval and associated software technologies.

No other changes have been made in either the membership or planned activities of the National Practice Knowledge Bank. Membership in the Bank remains open, and the Bank intends to file additional written notifications disclosing all changes in membership.

On November 17, 1995, Allegheny Singer Research Institute filed its original notification on behalf of the National Medical Practice Knowledge Bank. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 15, 1996 (61 FR 6038). The last notification was filed with the Department on December 19, 1995, and was published in the **Federal Register** on May 14, 1996 (61 FR 6038).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–4875 Filed 2–26–97; 8:45 am]

BILLING CODE 4410–11–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Network Management Forum

Notice is hereby given that, on December 9, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Network Management Forum ("the Forum") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new members to the venture are as follows: Empresa Brasiletra De Telecommunicacoes S/A–EMBRATEL, Rio De Janeiro, BRAZIL; Informix Software, Inc., Menlo Park, CA; and Lucent Technologies, Holmdel, NJ are Corporate Members. 3Com Corporation, Santa Clara, CA; Data Kinetics Ltd., Ottawa, Ontario, CANADA; Harris Corporation, Melbourne, FL; Nera AS, Kokstad, Bergen, NORWAY; Netro Corp., Santa Clara, CA; Octel Communications Corp., OR-Yehuda, ISRAEL; Syndesis Limited, Richmond Hill, Ontario, CANADA; and TONEX, Inc., Santa Monica, CA are Associate Members. General Atlantic Partners, Greenwich, CT; INRIA Lorraine, Botanique, Villers-Les-Nancy, FRANCE; International Center for Object Technology, Conroe, TX; K.C. Software, Cincinnati, OH; and Open-Vision Telecom Consulting, Kanata, Ontario, CANADA are Affiliate Members.

No other changes have been made, since the last notification filed with the Department, in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Forum intends to file additional written notifications disclosing all changes in membership.

On October 21, 1988, the Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 8, 1988 (53 Fed. Reg. 49615).

The last notification was filed with the Department on September 9, 1996. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 4, 1996 (61 FR 56709).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–4876 Filed 2–26–97; 8:45 am]

BILLING CODE 4410–11–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petrotechnical Open Software Corporation ("POSC")

Notice is hereby given that, on January 29, 1997, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Petrotechnical Open Software Corporation ("POSC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following additional parties have become new non-voting members of POSC: XOX Corporation, St. Paul, MN; and Japanese National Oil Company, Tokyo, JAPAN.

No other changes have been made in either the membership or planned activity of POSC.

On January 14, 1991, POSC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 7, 1991, (56 FR 5021).

The last notification was filed with the Department on October 22, 1996. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on November 29, 1996, (61 FR 60726).

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 97–4832 Filed 2–25–97; 8:45 am]

BILLING CODE 4410–11–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—United Technologies Corporation & Pratt, Whitney, Government Engines & Space Propulsion Division

Notice is hereby given that, on January 15, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), United Technologies, Pratt & Whitney, Government Engines & Space Propulsion Division ("P&W"), an unincorporated operating unit of United Technologies Corporation ("UTC"), has filed written notification on behalf of UTC and its participating business units, simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notification was filed for the purpose of limiting recovery of plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties are UTC, Hartford, CT (acting through United Technologies Research Center, East Hartford, CT and Pratt & Whitney GESP, West Palm Beach, FL); SKF USA, Inc., Jamestown, NY (acting through its MRC Bearings Division); Saint-Gobain/Norton Industrial Ceramics Corporation, Worcester, MA (acting through its Norton Advanced Ceramics Division); and the University of Florida, Gainsville, FL (acting through its office of Engineering Research). The parties entered into a Collaboration Agreement effective November 27, 1996 to engage in cooperative research and development in the area of affordable large silicon nitride rolling elements, including, without limitation, the experimental building, finishing, assembly and testing of models, prototypes and equipment, and the development of materials and processes.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–4831 Filed 2–26–97; 8:45 am]

BILLING CODE 4410–11–M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated October 21, 1996, and published in the Federal Register on November 14, 1996, (61 FR 58423), Cambridge Isotope Lab, 50 Frontage Road, Andover, Massachusetts 01810, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below.

Drug	Schedule
Amphetamine (1100)	II
Methamphetamine (1105)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
Cocaine (9041)	II
Codeine (9050)	II
Oxycodone (9143)	II
Benzoylecgonine (9180)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Fentanyl (9801)	II

DEA has considered the factors in 21 U.S.C. § 823(a) and determined that the registration of Cambridge Isotope Lab to manufacture the listed controlled substances is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. § 823 and 28 C.F.R. §§ 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: February 6, 1997.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–4898 Filed 2–26–97; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated March 27, 1996, and published in the **Federal Register** on April 4, 1996, (61 FR 15119), Ganes Chemicals, Inc., Industrial Park Road, Pennsville, New Jersey 08070, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below.

Drug	Schedule
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2550)	II
Methadone (9250)	II
Methadone-intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II

DEA has considered the factors in 21 U.S.C. § 823(a) as well as information provided by other bulk manufacturers, and determined that the registration of Ganes Chemicals, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. § 823 and 28 C.F.R. §§ 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: February 21, 1997.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–4895 Filed 2–26–97; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated October 21, 1996, and published in the **Federal Register** on November 14, 1996, (61 FR 58424), Norac Company, Inc., 405 S. Motor Avenue, Azusa, California 91702, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of tetrahydrocannabinols (7370), a basic class of controlled substance listed in Schedule I.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Norac, Company, Inc. to manufacturer tetrahydrocannabinols is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. § 823 and 28 C.F.R. §§ 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated February 6, 1997.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–4897 Filed 2–26–97; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated October 21, 1996, and published in the **Federal Register** on November 14, 1996, (61 FR 58424), Nycomed, Inc., 33 Riverside Avenue, Rensselaer, New York 12144, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of meperidine (9230), a basic class of controlled substance listed in Schedule II.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Nycomed, Inc. to manufacture meperidine is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. § 823 and 28 CFR §§ 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: February 7, 1997.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–4896 Filed 2–26–97; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated July 31, 1996, and published in the **Federal Register** on August 8, 1996, (61 FR 41427), U.S. Drug Testing, Inc., 10410 Trademark Street, Rancho Cucamonga, California 91730, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Heroin (9200)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Phencyclidine (7471)	II
1–Piperidinocyclohexanecarbonitrile (8603)	II
Benzoylecgonine (9180)	II
Morphine (9300)	II

DEA has considered the factors in 21 U.S.C. 823(a), as well as information provided by other bulk manufacturers, and determined that the registration of U.S. Drug Testing, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. 823 and 28 C.F.R. 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–4894 Filed 2–26–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning two proposed extension information collections: (1) the Notice of Final Payment or Suspension of Compensation Benefits (LS–208) and (2) Request for Earnings Information (LS–426).

Copies of the proposed information collection requests can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before April 28, 1997. The Department of Labor is particularly interested in comments which:

* evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* enhance the quality, utility and clarity of the information to be collected; and

* minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Ms. Margaret Sherrill, U.S. Department of Labor, 200 Constitution Ave., N.W., Room S–3201, Washington, D.C. 20210, telephone (202) 219–7601. (This is not a toll-free number.), Fax 202–219–6592.

SUPPLEMENTARY INFORMATION:

I. Background

Under Section 14(g) of the Longshore and Harbor Workers Compensation Act (LHWCA), the employer or its insurance carrier must file a report of the compensation paid to a claimant at the time final payment is made. The Act requires that the form must be filed within sixteen days of the final payment of compensation with the District Director in the compensation district in which the injury occurred. The form requests information regarding the beginning and ending dates of compensation payments, compensation rates, reason payments were terminated and types and amount of compensation payments. Filing of the report is mandatory as failure to do so is subject to a civil penalty.

II. Current Actions

The Department of Labor (DOL) seeks extension of approval to collect this information in order to carry out its responsibility to notify Office of Workers' Compensation Programs (OWCP) District Offices that payment of compensation benefits has been stopped or suspended in a case. The report is required by law. If the report were not filed, our offices would have no way to determine whether payments have been suspended in a case and therefore would not be able to effectively manage the case file and verify that the injured worker had received all benefits that he/she is entitled to receive under the Act.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Notice of Final Payment or Suspension of Compensation Benefits.

OMB Number: 1215–0024.

Agency Numbers: LS–208.

Affected Public: Business or other for-profit.

Total Respondents: 500.

Frequency: On occasion.

Total Responses: 28,000.

Average Time Per Response for Reporting: 15 minutes.

Estimated Total Burden Hours: 7,000.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintenance): $700.

I. Background

Pursuant to Section 8 of the LHWCA, injured employees shall receive compensation in an amount equal to 66 and two-thirds percent of their average weekly wage. Form LS–426 is used to verify the average weekly wage of an injured employee to determine if the correct compensation rate is being paid. Pursuant to Section 10 of the Act, the average weekly wage of the injured employee may be determined by using those wages earned in the occupation which the injury occurred or wages earned in different occupations. Depending on whether similar or other employment is involved, the average weekly wage will be determined under either Section 10 (a), (b), or (c) of the Act.

II. Current Actions

The Department of Labor seeks extension of approval to collect this information to assure that injured workers are paid at the proper compensation rate. The form benefits the injured worker. It provides a simple method for him/her to provide the OWCP with prior earnings information. If the information were not collected, injured workers would not be paid the proper compensation rate in all cases.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Request for Earnings Information.

OMB Number: 1215–0112.

Affected Public: Individuals or households.

Total Respondents: 1,900.

Frequency: On occasion.

Total Responses: 1,900.

Average Time Per Response for Reporting: 15 minutes.

Estimated Total Burden Hours: 475.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $665.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection requests; they will also become a matter of public record.

Dated: February 21, 1997.

Cecily A. Rayburn,

Director, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 97–4790 Filed 2–26–97; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL COUNTERINTELLIGENCE CENTER

Privacy Act of 1974; Establishment of a New System of Records

AGENCY: National Counterintelligence Center (NACIC).

ACTION: Proposed establishment of a new Privacy Ace system of records.

SUMMARY: The National Counterintelligence Center (NACIC) proposes to establish a new system of records entitled the National Counterintelligence Center System of Records. Federal Agencies are required by the Privacy Act of 1974 and Office of Management and Budget Circular A–

130, Transmittal Memorandum No. 2, July 15, 1994, to publish notice in the **Federal Register** of proposed systems of records.

DATES: The proposed new system of records will become effective without further notice 40 days after publication in the **Federal Register** unless modified by a subsequent notice to incorporate comments received from the public. Although the Privacy Act requires only that the portion of the system which describes the "routine uses" of the system be published for comment, NACIC invites comment on all portions of this notice. Comments must be received by the contact person listed below on or before April 8, 1997.

FOR FURTHER INFORMATION WRITE: Information and Privacy Coordinator, Executive Secretariat Office, National Counterintelligence Center, 3W01 NHB, Washington, DC 20505.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act, 5 U.S.C. 552a, NACIC proposes to establish a new system of records to be maintained at the NACIC Office. The purpose of this notice is to announce the creation and character of the systems of records maintained by NACIC. NACIC was established under the authority of the National Counterintelligence Policy Board (NACIPB), in accordance with Presidential Decision Directive/NSC-24 "US Counterintelligence Effectiveness," dated May 3, 1994. During 1994, in the wake of the Aldrich Ames espionage investigation, President Clinton ordered a review of the overall effectiveness of US counterintelligence (CI).That review resulted in the establishment of a new CI policy and coordination apparatus for the US CI community. PDD/NSC-24 eliminated the National Advisory Group for Counterintelligence (NAG/CI) policy structure under the Director of Central Intelligence (DCI) and established the National Counterintelligence Policy Board (NACIPB) to function as the primary body for addressing national CI policy issues. In addition, the directive established NACIC for the purpose of coordinating national level CI activities. Although located at CIA Headquarters, NACIC is neither a CIA entity, nor is it part of the DCI reporting structure. Rather, NACIC is an autonomous CI entity that reports to the NACIPB and the National Security Council. NACIC, however, does work in close coordination with the DCI's staff and the CIA's Counterintelligence Center (CIA/CIC). NACIC's staff of employees is currently drawn from counterintelligence and security professionals from the FBI, CIA, NSA, the Department of Defense, and the Department of State. Each individual serves on a rotational basis from his/her own agency, with most serving a two year tour. Organizationally, NACIC consists of the Offices of the Director and Deputy Director and three subordinate offices: the Executive Secretariat Office (ESO), the Program Integration Office (PIO) and the Threat Assessment Office (TAO).

It should be noted that as a result of its policy coordination role, NACIC's main concern is with coordination of national level CI activities, not individuals. As a result, individuals mentioned in many of NACIC's records are not clearly identified by name and address.

ESO serves as the secretariat to the NACIPB, the National Counterintelligence Operations Board (NACOB), and their working groups. It coordinates national strategic CI planning efforts by the NACIPB and serves as the contact with CIA's Community Management Staff (CMS) on administrative, logistical, security, and finance matters.

The PIO provides strategic guidance and assesses the effectiveness of CI operations; sponsors seminars and conferences; and establishes and chairs working groups comprised of representatives from federal agencies. PIO's Community Training Branch is responsible for facilitating the development of organizing, and implementing training for the CI community and for private industry. In some cases these have been joint efforts with federal agencies or with private organizations. In addition to publishing its unclassified quarterly newsletter, "Counterintelligence News and Developments," the Training Branch Publishes brochures and reports developed by its Awareness Working Group.

The TAO serves as the focal point for facilitating the production of national-level, foreign intelligence threat assessments; developing and disseminating information relating to foreign intelligence threats; coordinating assessment of damage to US interests resulting from espionage cases; and providing CI community-wide analytic support. TAO's National Needs branch is the Customer Service Branch of NACIC. It serves as a point of contact for non-CI federal agencies, generates products for their use and also for use throughout the CI community. For example, catalog lists are maintained indicating which agencies have conducted threat assessments on various countries or issues, thus saving another agency the expense of conducting its own threat assessment analysis. TAO's Analysis Branch prepares CI community-coordinated threat assessments. In some cases, the assessments are tailored to satisfy an agency's specific concern. In other cases they are conducted in response to a specific incident or activity.

Statement of General Routine Uses

The following routine uses apply to, and are incorporated by reference into each system of records maintained by NACIC. It should be noted that the blanket routine uses of the records are published below only once in the interest of simplicity, economy and to avoid redundancy before the individual record system notices begin.

1. Routine Use-Law Enforcement: In the event that a system of records maintained by NACIC to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statue or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency whether Federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

2. Routine Use—Disclosure When Requesting Information: a record from a system of records maintained by this component may be disclosed as a routine use to a Federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, if necessary, to obtain information relevant to a component decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

3. Routine Use-Disclosure of Requested Information: A record from a system of records maintained by this component may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

4. Routine Use—Congressional: Inquiries from a system of records maintained by this component may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

5. Routine Use—Disclosures Required by International Agreements: A record from a system of records maintained by this component may be disclosed to foreign law enforcement, security, investigatory, or administrative authorities in order to comply with requirements imposed by, or to claim rights conferred in, international agreements and arrangements including those regulating the stationing and status in foreign countries of Department of Defense military and civilian personnel.

6. Routine Use-Disclosure to the Department of Justice for Litigation: A record from a system of records maintained by this component may be disclosed as a routine use to any component of the Department of Justice for the purpose of representing any officer, employee or member of this component in pending or potential litigation to which the record is pertinent.

7. Routine Use—Disclosure of Information to the General Services Administration: A record form a system of records maintained by this component may be disclosed as a routine use to the General Services Administration (GSA) for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

8. Routine Use-Disclosure of Information to the National Archives and Records Administration (NARA): A record from a system of records maintained by this component may be disclosed as a routine use to the National Archives and Records Administration (NARA) for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

9. Routine Use-Disclosure to the Merit Systems Protection Board: A record from a system of records maintained by this component may be disclosed as a routine use to the Merit Systems Protection Board, including the Office of the Special Counsel for the purpose of litigation, including administrative proceedings, appeals special studies of the civil service and other merit systems, review of OPM or component rules and regulation, investigation of alleged or possible prohibited personnel practices; including administrative proceedings involving any individual subject of investigation, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

10. Routine Use—Counterintelligence Purposes: A record from a system of records maintained by this component may be disclosed as a routine use outside the US Government for the purpose of counterintelligence activities authorized by U.S. Law or Executive Order or for the purpose of enforcing laws which protect the national security of the United States.

NACIC–1

SYSTEM NAME:

National Counterintelligence System of Records

SYSTEM LOCATION:

National Counterintelligence Center, 3 WO1 NHB, Washington, D.C. 20505

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A. Individuals who are of foreign intelligence or foreign counterintelligence interest and relate in any manner to foreign intelligence threats to US national and economic security.

B. Applicants for, and current and former personnel of NACIC.

C. Individuals associated with NACIC administrative operations or services including pertinent functions such as training, contractors and pertinent persons related thereto.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Director's Correspondence: Correspondence whose contents relates to NACIC's mission, policies, or programs; and correspondence whose contents relates to routine, administrative, or facilitative matters.

2. NACIC Chronoligical Files: Copies of outgoing correspondence, memoranda, and other records signed by the Director, the Deputy Director, and NACIC Office Chiefs.

3. Public Relations Files: Speeches or public statements made by the Director and Deputy Director.

4. NACIC Staff Meeting Records, agendas, minutes, and "staff meeting highlights."

5. Progress Reports: six month progress reports submitted to the National Counterintelligence Policy Board outlining activities and accomplishments of the NACIC.

6. Compromised Names Database. The purpose of the database is to notify US intelligence community personnel whose names were potentially compromised as a result of espionage or other foreign intelligence collection activity. NACIC reviews pertinent reports to determine documents that were possibly passed in a particular case and then reviews those documents for names. The database contains the names of persons potentially compromised, date of the memo sent to the person or their employer informing them, the document number of where the person's name came from, document title, and document date.

7. Chronological Files of the PIO: Copies of correspondence, memoranda, and other records generated by PIO and its branches in assessing the effectiveness of CI operations, maintained for reference purposes.

8. Publications, Training Materials and Regional Seminars Records Maintained by PIO's Community Training Branch: Letters of acceptance, enrollment forms, thank you letters, list of attendees, list of speakers, notes, case studies, syllabus, training packet, magazine or newspaper articles, and other records used either for course development purposes or to facilitate the presentation of seminars.

9. Personnel Files: Individual personnel folders of staff employees, consultants and contract employee files consisting of papers documenting personnel actions; performance appraisals; correspondence; training documents; travel documents; contracts; justifications; memoranda; and administrative material. (Many of these files are maintained on a temporary basis while the individuals are detailed to the NACIC. Upon their return to their home agency, their file is returned with them.)

10. Freedom of Information Act (FOIA)/Privacy Act (PA) Requests and Legal Fields: Files created in response for information under the FOIA/PA, consisting of the original request, a copy of the reply thereto, and all related supporting files which may include the official file copy of requested record or copy thereof; files created in response to administrative appeals for release of information denied by the NACIC, consisting of the appellant's letter, a copy of related supporting documents; FOIA/PA Control Files and Report Files; Files relating to an individual's request to amend a record pertaining to the individual as provided for under 5 U.S.C. 552a(d)(2), 552a(d)(3), and to any civil action brought by the individual against NACIC as provided under 5 U.S.C. 552a(g); Privacy Act Report files of recurring reports and one-time information requirements relating to agency implementation including biennial reports to the Office of Management and Budget, and Report on New Systems.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Federal Records Act of 1950 Title 44, United States Code, Chapter 31, Section 3101; and Title 36, Code of Federal Regulations, Chapter XII, require Federal agencies to insure that adequate and proper records are made and preserved to document the organization, functions, policies, decisions, procedures and transactions and to protect the legal and financial rights of the Federal Government.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(See Statement of General Routing Uses)

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files are maintained in computerized form and hard copy form. Computerized form may be stored in memory, on disk storage, on computer tape, or on a computer printed listing.

RETRIEVABILITY:

Names are retrievable by automated word or hand search. NACIC will not permit any organization, public or private, outside the NACIC to have direct access to NACIC files. All searches on the NACIC data base and hard files will be performed on site, within NACIC space, by NACIC personnel.

SAFEGUARDS:

Records and databases are maintained in a restricted area within NACIC and are accessed only by NACIC personnel. All employees are checked to insure they have recent background investigations prior to being assigned to NACIC and are cautioned about divulging confidential information or any information contained in NACIC files. Failure to abide by these provisions may violate certain statutes providing maximum severe penalties of a ten thousand-dollar fine or 10 years imprisonment, or both. Employees who resign or retire are also cautioned about divulging information acquired in their jobs. Registered mail is used to transmit routine hard copy records. Highly classified records are hand carried by employee personnel. Highly classified or sensitive privacy information, which is electronically transmitted between NACIC and other offices, is transmitted in encrypted form to prevent interception.

RETENTION AND DISPOSAL:

Records evaluated as historical and permanent will be transferred to the National Archives after established retention periods and administrative needs of the NACIC have elapsed.

SYSTEM MANAGER(S) AND ADDRESS:

Information and Privacy Coordinator, Executive Secretariat Office, National Counterintelligence Center, 3W01 NHB, Washington, D.C. 20505.

RECORD ACCESS PROCEDURES:

A request for access to a record from the system shall be made in writing with the envelope and the letter clearly marked "Privacy Access Request". Include in the request your full name, complete address, date of birth, place of birth, notarized signature, and other identifying data you may wish to furnish to assist in making a proper search of NACIC records. A request for access to records must describe the records sought in sufficient detail to enable NACIC personnel to locate the system of records containing the record with a reasonable amount of effort. Whenever possible, a request for access should describe the nature of the record sought, and the date of the record or the period in which the record was compiled. The requester will also provide a return address for transmitting the information. Requests for access must be addressed to the Information and Privacy Coordinator, Executive Secretariat Office, National Counterintelligence Center, 3W01 NHB, Washington, D.C. 20505.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should also direct their request to the Information and Privacy Coordinator, Executive Secretatiatat Office, National Counterintelligence Center, 3W01 NHB, Washington, DC. 20505.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Notice is hereby given that NACIC intends to exempt, from certain provisions of the Act, those systems of records which are (A) specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and (B) are in fact, properly classified pursuant to such Executive Order. (5 U.S.C. 552(b)(1), as amended by Public Law 93–502) In addition, pursuant to authority granted in section (j) of the Privacy Act (5 U.S.C. 552a (j)) the Director of NACIC has determined (C) to exempt from notification under subsections (e)(4)(G) and (f)(1) those portions of each and all systems of records which have been exempted from individual access under subsection (j), in those cases where the Information and Privacy Coordinator, determines after advice by responsible components, that confirmation of the existence of a record may jeopardize intelligence sources and methods. In such cases the NACIC may choose to neither confirm nor deny the existence of the record and may advise the individual that there is no record which is available to him pursuant to the Privacy Act of 1974.

Michael Waguespack,

Director, National Counterintelligence Center.

[FR Doc. 97–4853 Filed 2–26–97; 8:45 am]

BILLING CODE 6310–02–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting; Public Hearing in Maine: Marine Accident

In connection with its investigation of the ramming of the Portland Bridge at Portland, Maine, by the Liberian Tank Ship JULIE N on September 27, 1996, the National Transportation Safety Board will convene a public hearing at 9:00 a.m., (local time) on March 13, 1997, at the Sheraton Tara Hotel, 363 Maine Mall Road, South Portland, Maine 04106. For more information, contact Pat Cariseo, Office of Public Affairs, Washington, D.C. 20594, telephone (202) 314–6100.

Dated: February 25, 1997.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 97–5001 Filed 2–25–97; 10:48 am]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–237 and 50–249]

Commonwealth Edison Company; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–19 and DPR–25, issued to Commonwealth Edison Company (ComEd, the licensee) for operation of the Dresden Nuclear Power Station, Units 2 and 3, located in Grundy County, Illinois.

The proposed amendment would change Technical Specifications (TS) 3.7.K, "Suppression Chamber," and 3.8.C, "Ultimate Heat Sink," to restore the maximum allowable water temperature for the Containment Cooling Service Water inlet and the Suppression Pool. This change is required to restore the capability to operate the facility during the warmer months of the year.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because of the following:

The proposed License Amendment presents the results of new safety analyses which were performed using revised values for certain system and equipment performance parameters that more accurately reflect the Dresden Station design. The changes restore operating limits on the Ultimate Heat Sink and Suppression Pool average water temperature consistent with their design and which will permit operation of the facility during the warmer months of the year. The proposed changes directly effect the initial conditions assumed in the safety analyses for the plant, however new analyses demonstrate that the facility will continue to respond in a manner consistent with the existing safety analyses. The methods for demonstrating the adequacy of the existing design are proposed for change and the amendment details the basis for acceptance of the new methods and parameters proposed.

No substantive physical changes to the facility are proposed. The plant will continue to operate in a manner consistent with its original design and the consequences of previously analyzed accidents are not significantly affected by this proposed License Amendment.

The proposed changes do not effect systems which are contributors to initiating events for previously evaluated accidents and therefore, the probability of any accident previously evaluated is not increased by the proposed amendment.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

The proposed license amendment for Dresden Station does not create the possibility of a new or different kind of accident than previously evaluated for Dresden Station. The proposed changes merely present and incorporate the results of new analyses which demonstrate the ability of the facility to operate consistent with the safety analyses. No substantive physical changes to the facility are proposed. No substantially new modes of operation have been identified or are introduced by the proposed changes. The changes to plant procedures which are required to support the proposed change are consistent with the operating practices and procedures currently used at the facility.

Based on this, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Involve a significant reduction in the margin of safety because:

The proposed license amendment does not significantly effect the margin of safety. The proposed changes merely incorporate new analysis methods and results into the design basis for the facility, as well as restore the limits on UHS [ultimate heat sink] average water temperature and Suppression Pool maximum average water temperature to the limits which have historically existed at the facility. The water temperature limits are changed to permit continued operation of the facility during the warmer months of the year. The new analyses performed include these higher water temperature limits as initial conditions, and utilize new methods and more representative system parameters than existed in previously utilized analytical models of the effected plant systems. The new methods of analysis include modeling of the containment pressure following certain postulated limiting design basis accidents in a time-dependent manner to permit realistic determination of actual pressures which would be expected, as well as the use of improved flow and heat transfer models for determining heat removal rates. An improved representation of actual post-shutdown reactor decay heat is also incorporated into the new analyses.

The new analyses demonstrate that with the proposed changes to the Technical Specifications and the more realistic representation of system parameters, Dresden Station will operate in a manner consistent with the previously existing safety analyses. The proposed changes to the way in which the facility is modeled provide additional margin with regard to some key post-accident parameters, such as postulated Peak Clad Temperature which is demonstrated to be reduced significantly.

Based on operation of the facility consistent with its historical limits, consistent with the limits of the existing safety analyses results, the improved realism and more representative models of actual postulated plant conditions, and the resulting improvements in key post-accident safety limits, this change does not significantly effect the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 31, 1997 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a

petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Robert A. Capra: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 17, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450.

Dated at Rockville, Maryland, this 21st day of February 1997.

For the Nuclear Regulatory Commission.

Robert M. Pulsifer,

Project Manager, Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–4855 Filed 2–26–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–336]

Northeast Nuclear Energy Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Northeast Nuclear Energy Company (the licensee) to withdraw its October 24, 1995, application for proposed amendment to Facility Operating License No. DPR–65 for the Millstone Nuclear Power Station, Unit No. 2, located in New London, Connecticut.

The proposed amendment would have revised the Technical Specifications to defer the next required surveillance to inspect steam generator tubes, from October 20, 1996, to the next refueling outage or no later than October 20, 1997, whichever is earlier.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on November 27, 1995 (60 FR 58402). However, by letter dated February 4, 1997, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated October 24, 1995, as supplemented March 7, 1996, and the licensee's letter dated February 4, 1997, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Dated at Rockville, Maryland, this 19th day of February 1997.

For the Nuclear Regulatory Commission.

Daniel G. McDonald,

Senior Project Manager Special Projects Office—Licensing Office of Nuclear Reactor Regulation.

[FR Doc. 97–4856 Filed 2–26–97; 8:45 am]

BILLING CODE 7590–01–P

Northeast Utilities; Notice of Document Availability and Public Meeting

On January 31, 1997, the U.S. Nuclear Regulatory Commission (NRC) received from Northeast Nuclear Energy Company (NNECO), the licensee for the Millstone Nuclear Power Station, its comprehensive plan for resolving employee safety concerns. The plan is in response to an NRC Order. On October 24, 1996, the Director of the Office of Nuclear Reactor Regulation sent an Order to NNECO requiring: (1) A comprehensive plan for resolving the Millstone station employees' safety concerns; and (2) an independent third-party oversight of NNECO's implementation of this plan. Copies of NNECO's Comprehensive Plan pertaining to the employee safety concerns program are available at the Waterford Public Library, ATTN: Mr. Vincent Juliano, 49 Rope Ferry Road, Waterford, Connecticut, and the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut.

The NRC will hold a public meeting regarding the comprehensive plan for resolving the Millstone station employees' safety concerns. The meeting will be held in the near future at the Waterford Town Hall in Waterford, Connecticut. The meeting will be open to public attendance and will be transcribed. The NRC has elected to hold such a public meeting because of the public's interest.

The structure of the public meeting shall be as follows:

NRC opening remarks
Members of the public comments and questions
NRC closing remarks
Meeting concludes

The purpose of this public meeting is to obtain comments from members of the public for NRC staff use in evaluating NNECO's comprehensive plan addressing employee safety concerns. The staff will not offer any preliminary views on its evaluation of the comprehensive plan. The public meeting will be chaired by a senior NRC official who will limit presentations to the above subject.

A meeting notice will be issued stating the date and time of the meeting.

Dated at Rockville, Maryland, this 19th day of February 1997.

For the Nuclear Regulatory Commission.

Helen N. Pastis,

Senior Project Manager, Special Projects Office—Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 97–4854 Filed 2–26–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–362]

Southern California Edison Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–15 issued to Southern California Edison Company (the licensee) for operation of the San Onofre Nuclear Generating Station (SONGS), Unit No. 3 located in San Diego County, California.

The proposed amendment would defer implementation of Surveillance Requirement 3.3.5.6 of Technical Specification 3.3.5, "Engineered Safety Features Actuation System (ESFAS) Instrumentation" for the 30 subgroup relays identified in Attachment C of the licensee's February 18, 1997, letter to no later than the upcoming SONGS Unit 3 Cycle 9 refueling outage (currently scheduled to begin on April 12, 1997).

The exigent circumstances for this TS amendment request exist because it would avoid an undesirable transient associated with an unnecessary plant shutdown and this would minimize potential safety consequences and operational risks associated with such action. In the event of a planned or unplanned shutdown of Unit 3, prior to the Cycle 9 refueling outage, testing in accordance with Surveillance Requirement 3.3.5.6 will be completed prior to increasing in Modes from that shutdown.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change would defer completion of Surveillance Requirement (SR) 3.3.5.6 of Technical Specification (TS) 3.3.5 for 30 Emergency Safety Feature Actuation System (ESFAS) subgroup relays until the Unit 3, Cycle 9 refueling outage.

Operation of the facility would remain unchanged as a result of the proposed change and no assumptions or results of any accident analyses are affected. Based on other surveillance testing, the response time margin available for these subgroup relays, results of response time testing on Unit 2 relays, and the history of no failures since the 1989 to 1993 time period, the capability of these ESFAS subgroup relays to perform their specified safety function has been demonstrated and they are operable.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change would defer completion of SR 3.3.5.6 of TS 3.3.5 for 30 ESFAS subgroup relays until the Unit 3, Cycle 9 refueling outage.

Operation of the facility would remain unchanged as a result of the proposed change. No equipment change or operating procedure change is being made. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change would defer completion of SR 3.3.5.6 of TS 3.3.5 for 30 ESFAS subgroup relays until the Unit 3, Cycle 9 refueling outage. Based on other surveillance testing, the response time margin available for these subgroup relays, and results of testing on Unit 2 relays, the capability of these ESFAS subgroup relays to perform their specified safety function has been demonstrated and they are operable. Therefore, this proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 31, 1997 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Main Library, University of California, P.O. Box 19557, Irvine, California 92713. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to William H. Bateman, Director, Project Directorate IV–2: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to T.E. Oubre, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 18, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room, located at the Main Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 21st day of February 1997.

For the Nuclear Regulatory Commission.

Mel B. Fields,

Project Manager, Project Directorate IV–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–4857 Filed 2–26–97; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request; Standard Form 87

AGENCY: Office of Personnel Management.

ACTION: Proposed collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for a clearance of an information collection. Standard Form 87, Fingerprint Chart, is completed by applicants for Federal positions throughout the Government. OPM uses the information to conduct checks of the Federal Bureau of Investigation (FBI) fingerprint files as required by Executive Order 10450, Security Requirements for Government Employment, issued April 27, 1953, or required or authorized under other authority.

It is estimated that 250,000 individuals will respond annually for a total burden of 20,833 hours. To obtain copies of this proposal please contact James M. Farron at (202) 418–3208 or by E-mail to jmfarron@opm.gov.

DATES: Comments on this proposal should be received by March 31, 1997.

ADDRESSES: Send or deliver comments to—

Richard A. Ferris, Office of Personnel Management, Investigations Service, 1900 E. Street NW., Room 5416, Washington, DC 20004

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

Office of Personnel Management.

James B. King,

Director.

[FR Doc. 97–4841 Filed 2–26–97; 8:45 am]

BILLING CODE 6325–01–M

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Application for Hospital Insurance Benefits; OMB 3220–0082 Under Section 7(d) of the Railroad Retirement Act (RRA), the Railroad Retirement Board (RRB) administers the Medicare program for persons covered by the railroad retirement system. The RRB uses Form AA–6, Employee Application for Medicare; Form AA–7, Spouse/Divorced Spouse Application For Medicare; and Form AA–8, Widow/Widower Application for Medicare; to obtain the information needed to determine whether individuals who have not yet filed for benefits under the RRA are qualified for Medicare payments provided under Title XVIII of the Social Security Act. Completion is required to obtain a benefit. One response is requested of each respondent.

The RRB proposes a minor editorial change to Forms AA–6, AA–7 and AA–8 to incorporate language required by the Paperwork Reduction Act of 1995. The RRB estimates that 180 Form AA–6's, 50 Form AA–7's, and 10 Form AA–8's are completed annually. The completion time for all three forms is estimated at 8 minutes.

ADDITIONAL INFORMATION OR COMMENTS: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 97–4905 Filed 2–26–97; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Eaton Vance Corp., Non-voting Common Stock, $0.625, Par Value) File No. 1–8100

February 21, 1997.

Eaton Vance Corp. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the Boston Stock Exchange, Inc. ("BSE").

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, the non-voting common stock is listed on the New York Stock Exchange, Inc. ("NYSE"), and an application on Form 8–A for registration of the Company's non-voting common stock on the NYSE was declared effective by the Commission on August 15, 1996. The Company does not see any particular advantage in the dual trading of its securities and believes that dual listing would fragment the market for its securities. Also, the Company cannot justify the expense of being listed on two exchanges and thereby, wishes to withdraw from the BSE.

Any interested person may, on or before March 14, 1997, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–4861 Filed 2–26–97; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22523; 812–10424]

HVA Money Market Fund, Inc. and Hartford U.S. Government Money Market Fund, Inc.; Notice of Application

February 21, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: HVA Money Market Fund, Inc. ("HVA Fund") and Hartford U.S. Government Money Market Fund, Inc. ("U.S. Government Fund").

RELEVANT ACT SECTIONS: Order requested under section 17(b) of the Act granting an exemption from section 17(a).

SUMMARY OF APPLICATION: Applicants request an order to permit the HVA Fund to acquire substantially all of the assets of the U.S. Government Fund (together, the "Funds"). Because of certain affiliations, the Funds may not rely on rule 17a–8 under the Act.

FILING DATES: The application was filed on November 8, 1996 and amended on February 10, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 18, 1997, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: c/o ITT Hartford Group, Inc., Hartford Plaza, Hartford, Connecticut 06115.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Knisely, Staff Attorney, at (202) 942–0517, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. The HVA Fund is a Maryland corporation registered under the Act as an open-end, diversified management investment company. Shares of the HVA Fund are sold to separate accounts of Hartford Life Insurance Company ("Hartford Life") and ITT Hartford Life and Annuity Insurance Company ("Hartford Life and Annuity") to fund benefits under variable annuity contracts and variable insurance policies issued by Hartford Life and Hartford Life and Annuity.

2. The U.S. Government Fund is a Maryland corporation registered under the Act as an open-end, diversified management investment company. Shares of the U.S. Government Fund are sold to separate accounts of Hartford Life.

3. The HVA Fund has sold shares to the following separate accounts: Hartford Life Separate Account One, Hartford Life and Annuity Separate Account One, Hartford Life Separate Account Two, and Hartford Life DC Variable Account I (the "Variable Annuity Separate Accounts"), which are separate accounts established to receive and invest premiums paid under variable annuity contracts issued by Hartford Life and/or Hartford Life and Annuity; and variable life separate accounts of Hartford Life.

4. The U.S. Government Fund currently sells its shares only to Hartford Life Separate Account Two and Hartford Life DC Variable Account I, two of the Variable Annuity Separate Accounts.

5. The variable insurance policies and variable annuity contracts offered through the separate accounts are referred to collectively as, "Contracts." Owners of Contracts ("Contractowners") offered through Hartford Life Separate Account Two and Hartford Life DC Variable Account I may choose to have Contract value allocated to sub-accounts of such accounts. These sub-accounts invest in shares of the Funds.

6. Hartford Fire Insurance Company is a wholly-owned subsidiary of ITT Hartford Group, Inc. ("ITT Hartford"). Hartford Life is a wholly-owned subsidiary of Hartford Fire Insurance Company. Hartford Life and Annuity is a wholly-owned subsidiary of Hartford Life. The Hartford Investment Management Company (the "Adviser") is registered under the Investment Advisers Act of 1940 and serves as investment adviser to the Funds.

7. Pursuant to the Agreement and Plan of Reorganization (the "Plan"), applicants propose that the U.S. Government Fund will transfer all of its existing assets to the HVA Fund. In consideration thereof, the HVA Fund agrees (a) to assume and pay all of the obligations and liabilities of the U.S. Government Fund to the extent that they exist on or after the closing date (as defined below) of the reorganization and (b) to deliver to the U.S. Government Fund full and fractional shares of common stock of the HVA Fund equal to that number of full and fractional shares of the U.S. Government Fund then outstanding as determined based on the relative net asset value per share of the funds as of the close of the New York Stock Exchange on the last business day immediately preceding the reorganization (the "Closing Date"). At the Closing Date, the U.S. Government Fund will liquidate and distribute *pro rata* to its shareholders the HVA Fund shares received pursuant to the reorganization.

8. The reorganization will also require the consolidation of the corresponding sub-accounts of the Variable Annuity Separate Accounts. Hartford Life will carry out this consolidation on the Closing Date immediately after the completion of the HVA Fund's acquisition of the U.S. Government Fund, by issuing units of interest in the HVA Fund sub-accounts on a *pro rata* basis to owners of Contracts who, prior to the reorganization, owned units in the U.S. Government Fund sub-accounts, in exchange for their units of the disappearing sub-accounts. Although this "exchange" would be nothing more than a bookkeeping exercise, applicants believe that it conceivably could be considered to involve the issuance of new units of the HVA Fund sub-accounts in exchange for the assets of the U.S. Government Fund sub-accounts. The number of full and fractional units of interest of the HVA Fund sub-accounts to be issued will be determined by dividing the aggregate value of the HVA Fund shares issued to the U.S. Government Fund sub-account, by the unit value of the HVA Fund sub-account computed on the Closing Date using the valuation methods set forth in the above-noted separate accounts' current prospectuses.

9. The boards of directors of the Funds (the "Boards") have determined that the interests of existing Contractowners indirectly invested in the Funds will not be diluted under the Plan and that the reorganization would be in the best interests of the funds and their shareholders. In addition, the directors of the U.S. Government Fund noted, in particular, (a) potential benefits of the reorganization to shareholders of the U.S. Government Fund and Contractowners with Contract values allocated to Hartford Life DC Variable Account I and Hartford Life Separate Account Two; (b) the compatibility of investment objectives, policies, restrictions, and investment holdings of the U.S. Government Fund and the HVA Fund; (c) the terms and conditions of the Plan which might affect the price of outstanding shares of the U.S. Government Fund or interests of Contractowners indirectly invested therein; and (d) direct or indirect costs to be incurred by the U.S. Government Fund or shareholders thereof or Contractowners who have indirectly invested thereon (all of which will be borne by Hartford Life or Hartford Life and Annuity). Finally, applicants note that the larger aggregate net assets resulting from the reorganization should enable the combined entities to realize significant benefits associated with economies of scale, increased investment opportunities, and enhanced portfolio diversification and liquidity.

10. The Boards, including a majority of those directors who are not "interested persons" (as defined in the Act), unanimously approved the Plan on October 22, 1996. The Plan is subject to the approval of shareholders of the U.S. Government Fund, and a special meeting of the shareholders is scheduled to be held on June 17, 1997.

11. Applicants agree not to make any material changes to the Plan that affect the application without the prior approval of the Commission. Applicants also will not waive, amend, or modify any provision of the Plan that is required by state or federal law in order to effect the reorganization.

Applicants' Legal Analysis

1. Section 17(a)(1) of the Act, in relevant part, prohibits any affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, from knowingly selling any security or other property to that company. Section 17(a)(2) of the Act generally prohibits the persons described above, acting as principals, from knowingly purchasing any security or other property from the registered investment company.

2. Section 2(a)(3) of the Act defines the term "affiliated person" of another person, in relevant part, as: (a) any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of such other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such person; and (c) any person directly or indirectly controlling, controlled by, or under common control with, such other person.

3. Rule 17a–8 under the Act exempts from section 17(a) mergers, consolidations or purchases or sales of substantially all of the assets involving registered investment companies which may be affiliated persons, or affiliated persons of affiliated persons, solely by reason of having a common investment adviser, common directors and/or common officers.

4. ITT Hartford (through the separate accounts) technically owns 100% of the shares of each Fund. ITT Hartford therefore may be an affiliated person of each Fund and the Funds may each be "second-tier" affiliates of one another. Moreover, the Funds may be direct affiliates of each other if they are considered under the "common control" of ITT Hartford. Because of these potential affiliations, the Funds may not be able to rely on rule 17a–8. In addition, the separate accounts cannot rely on rule 17a–8 because they do not have boards of directors/trustees to make the findings required by rule 17a–8.

5. Section 17(b) of the Act provides that the Commission may, upon application, grant an order exempting any transaction from the prohibitions of section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of the registered investment company concerned and with the general purposes of the Act.

6. Applicants believe that the terms of the proposed reorganization as set forth in the Plan, including the consideration to be paid and received, are reasonable and fair and do not involve overreaching on the part of any person concerned. Applicants also believe that the proposed reorganization of the Funds is consistent with the investment policies of the Funds as recited in their registration statements and with the general purposes of the Act.

7. Applicants submit that the terms of the proposed reorganizations, including the consideration to be paid and received, are reasonable and fair to the applicable separate accounts, including the sub-accounts investing in the Funds and to shareholders and Contractowners invested therein, and do not involve overreaching on the part of any person concerned. Furthermore, the proposed reorganizations will be consistent with the policies of the separate accounts as recited in their registration statements

and with the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4858 Filed 2–26–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26673]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

February 21, 1997.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 17, 1997, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Southwestern Electric Power Company, et al. (70–8987)

Southwestern Electric Power Company ("SWEPCO"), 428 Travis Street; Shreveport, Louisiana 71156, Public Service Company of Oklahoma ("PSO"), 212 E. 6th Street, Tulsa, Oklahoma 74119, and West Texas Utilities Company ("WTU" and, collectively with SWEPCO and PSO, the "Applicants"), 301 Cypress Street, Abilene, Texas 79601, each an electric utility subsidiary of Central and South West Corporation, a registered holding company, have filed an application under sections 9(a) and 10 of the Act and rule 54 thereunder.

The Applicants propose to lease to nonaffiliated third parties excess space in the Applicants' respective office buildings and other properties owned or leased by the Applicants, but not currently used in the normal course of their operations.

The properties to be leased shall include the following types of properties: office space in buildings currently owned or leased by the Applicants; area or local offices, which typically consist of less than 10,000 square feet; service centers which include office and warehouse facilities and which typically consist of less than 20,000 square feet; district or division offices, which typically consist of less than 25,000 square feet; excess capacity in the Applicants' training facilities; miscellaneous facilities which are being held for future use or sale and which typically consist of less than 10,000 square feet; and other improved and unimproved land.

All rental payments from nonaffiliated third parties for excess space are, and in the future will be, accounted for as rent from property devoted to electric operations for the Applicants that own the relevant building or property.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4859 Filed 2–26–97; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22524; International Release No. 1057; 812–10278]

Randgold and Exploration Company Limited, Inc.; Notice of Application

February 21, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: Randgold and Exploration Company Limited, Inc.

RELEVANT ACT SECTIONS: Applicant seeks an order under sections 2(b) (9) and 3(b)(2) of the Act, or alternatively, under section 6(c) granting an exemption from all provisions of the Act.

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it controls certain companies, notwithstanding that it owns less than 25% of the voting securities of these companies, and declaring that applicant is primarily engaged in a business other than that of investing, reinvesting, owning, holding, or trading in securities. In the alternative, applicant seeks an order exempting it from all provisions of the Act.

FILING DATES: The application was filed on July 26, 1996, and amended on November 12, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 18, 1997, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 5 Press Avenue, Johannesburg 2025, P.O. Box 82291, Southdale 2135, South Africa.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a South African corporation, is a foreign private issuer whose common shares are listed on the Johannesburg Stock Exchange. Applicant is engaged in the gold mining and exploration business in Africa. Applicant has a current market capitalization of over R985 million (US $229 million) and reported net earnings of R35 million (US $8 million) for the last four fiscal quarters ended June 30, 1996. Applicant, together with its direct subsidiaries, has over 160 employees worldwide and just over 40,000 employees worldwide if employees of the Controlled Companies (as hereinafter defined) are included. Substantially all of its employees are engaged in applicant's business of gold mining and exploration. Applicant and its Controlled Companies produce more than 50 metric tons (1.6 million ounces) of gold per year, making Randgold one of the world's top ten gold producers.

2. Applicant has four direct subsidiaries (the "Direct Subsidiaries"), each of which is engaged in the gold mining and exploration businesses: Randgold Resources Limited, a majority-owned (90%) subsidiary, TGME, majority-owned (75%) subsidiary, First Westgold, a fully-owned subsidiary, and Rand Mines Windhoek, a fully-owned subsidiary. Applicant also has substantial assets (the "Direct Assets") owned directly or by a fully-owned subsidiary consisting primarily of mineral rights located in southern Africa. The Direct Subsidiaries and Direct Assets as a group account for approximately 45% of applicant's total assets.

3. Applicant also has a cash position of R86 million (US $19 million), and R123 million (US $27 million) held in short-term commercial instruments in South Africa, accounting for 7% and 10% of applicant's total assets, respectively.[1] Applicant's short-term investments are comprised of short-term commercial instruments for which a highly liquid market exists.

4. Applicant also owns minority interests in eight companies, either directly or through fully-owned subsidiaries, all of which are engaged in the gold mining business: Blyvooruitzicht (10.5% common and 11.1% of outstanding options), D.R.D. (23.1% common and 21.6% preferred, giving 23% of the total voting control of D.R.D., and 16.5% of outstanding options), Harmony (18.1% common), E.R.P.M. (14.7% common), Grootvlei (19.8% common), Stilfontein (10% common), Buffelsfontein (6.8% common), and West Wits (3.5% common, 40.3% preferred, and 40.3% of the outstanding options). Through Harmony, applicant also owns 25% of the common stock of Unisel, and through a fully-owned subsidiary (Rand Mines Windhoek), owns a 10% interest in a joint venture named Navachab. Unisel and Navachab also are engaged in the gold mining business. Unisel (but not Navachab), along with the eight companies referred to above in which applicant owns a minority interest, are referred to herein as the "Controlled Companies." To its knowledge, applicant is the largest stockholder of each of the Controlled Companies.[2]

5. Applicant has the direct or indirect power to appoint all of the directors of the Controlled Companies. At the instance of applicant, each Controlled Company has in place a board of directors made up of ten individuals, with each director serving a staggered three year term. For each Controlled Company's board, applicant selects eight directors, seven of whom are "inside" directors of applicant's board of directors and one of whom is an "outside" director of applicant's board of directors. Each Controlled Company also has two members of its own management team that sit on its board, both of whom are hired and selected by applicant.

6. Applicant has entered into service agreements with each of the Controlled Companies, each with substantially similar terms pursuant to which applicant derived R26 million during the last four fiscal quarters (27% of total revenues). Under the agreements, applicant provides specialized strategic, managerial, financial, information systems, legal, secretarial, and human resources services to the Controlled Companies. Previously, such services were provided to the Controlled Companies under management agreements with applicant that required payments based upon a percentage of gold sales, capital expenditures, and other items regardless of the actual cost of services provided by applicant. The new service agreements set prices for the services to be rendered by applicant based upon their actual cost. Amounts due under the service agreements are paid in cash. Applicant and the Controlled Companies entered into the new arrangement in order to provide operational and financial flexibility to the Controlled Companies to the belief that this will allow each Controlled Company to maximize efficiency and profits rather than to reduce ultimate control by applicant.

7. Dividends generally are not paid on the shares of the Controlled Companies. Applicant has received an aggregate of R3 million (US $666,000) in dividends from shares of the Controlled Companies in the last four fiscal quarters.

8. Applicant also has minority interests in three additional companies which applicant does not control. These interests in the aggregate total less than 3% of applicant's total assets.

Applicant's Legal Analysis

1. Applicant seeks an order under section 3(b)(2) of the Act declaring that it is primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities and, therefore, is not an investment company as defined in the Act. Applicant also seeks an order under section 2(a)(9) declaring that it controls the Controlled Companies even though it owns less than 25% of their voting securities. In the alternative, applicant seeks an order under section 6(c) of the Act exempting it from all provisions of the Act.

2. Under section 3(a)(3) of the Act, an issuer is an investment company if it "is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40% of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis." Section 3(a) defines "investment securities" to include all securities except Government securities, securities issued by employees' securities companies, and securities issued by majority-owned subsidiaries of the owner which are not investment companies. Applicant assumes for purposes of the application that its short-term investments are investment securities under section 3(a)(3) of the Act. Under this assumption, approximately 52% of applicant's total assets (exclusive of cash) are, or could be, deemed to be investment securities. Accordingly, applicant may be deemed to be an investment company within the meaning of section 3(a)(3).

3. Section 3(b)(2) provides that, notwithstanding section 3(a)(3), the Commission may issue an order declaring an issuer to be primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities either directly, through majority-owned subsidiaries, or through controlled companies conducting similar types of businesses. Applicant believes that it meets the requirements of section 3(b)(2) because it is primarily engaged in the business of a natural resources group focused on gold, through its wholly-owned or majority-owned subsidiaries, or through companies which it controls. Because applicant owns less than 25% of the voting securities of the Controlled Companies, however, a determination under section

[1] Applicant states that such large cash and liquid investment positions are customary for South African gold mining companies because it is deemed imprudent within the industry to finance exploration and new mines through debt and, consequently, such expenditures are funded through cash or equity.

[2] While applicant believes it is the largest shareholder of each of the Controlled Companies, it cannot be certain because most shareholdings are held by nominees and local law does not require disclosure of ultimate beneficial ownership of large holdings.

2(a)(9) that applicant controls the Controlled Companies is a prerequisite to the ultimate determination of applicant's investment company status.

4. Section 2(a)(9) defines "control" as the power to exercise a controlling influence over the management or policies of a company. That section creates a presumption that owners of 25% or less of a company's voting securities do not control such company. This presumption may be rebutted by evidence of control.

5. Applicant argues that a finding of control under section 2(a)(9) is warranted for the following reasons:

a. Applicant has complete control over the nomination process for each of the Controlled Companies' board of directors. Each board meets four times per year, and one of "applicant's directors" chairs all meetings of these boards. Decisions made by the board of directors of each Controlled Company generally require a majority vote.

b. Each Controlled Company also has a monthly "management meeting" at which at least three of "applicant's directors" are present, one of whom is responsible for chairing the meeting.

c. Applicant's control over the Controlled Companies is demonstrated by its practice of causing these companies to acquire contiguous mines and/or mineral rights to integrate with a given Controlled Company's operations. These acquisitions are negotiated by applicant on behalf of the acquiring Controlled Company and it directs the due diligence efforts. Applicant also negotiates and approves all major supply agreements for the Controlled Companies.

d. Applicant also requires the Controlled Companies to submit annual strategic plans in its prescribed format for applicant's approval, as well as detailed monthly management reports. At least weekly, management of the Controlled Companies and officers of applicant hold discussions regarding the status of various affairs at the Controlled Companies and miscellaneous operational issues.

6. Applicant states that its hands-on involvement in the affairs of the Controlled Companies is consistent with the background, training, experience and expertise of applicant's officers and directors in the gold, natural resources and related sectors. Applicant believes that it has effective control of the Controlled Companies' management, strategy and operations. Applicant asserts that its structure reflects, among other things, the manner in which South African gold mining companies tend to spread risk, as well as the laws and business customs of South Africa. Accordingly, applicant believes that it controls the Controlled Companies within the meaning of section 2(a)(9) of the Act.

7. In determining whether applicant is "primarily engaged" in a non-investment company business under section 3(b)(2), the Commission considers the following factors: (a) the issuer's historical development; (b) its public representations or policy; (c) the activities of its officers and directors; (d) the nature of its present assets; and (e) the sources of its present income.[3]

a. *Historical Development.* Applicant is the successor to a line of companies that have been in existence since 1893 and that had their origin in the operation of gold mines. Historically, applicant managed its business much the same as most South African gold holding companies did, i.e., through detailed and extremely strict management contracts. Applicant terminated these agreements in favor of the less restrictive serviced agreement arrangement described above. Applicant believes (and has already seen initial positive results) that the new arrangement will allow each Controlled Company to become more efficient and maximize its profits. Applicant asserts that today it exercises the same effective control over all of its constituent companies through representation on the Controlled Companies' boards of directors or cross-directorships as it has in the past. Applicant also argues that its relatively large holdings of short-term investment securities is a standard practice in the industry because it is deemed too speculative to take on debt to finance exploration activities. For example, the use of gold properties as collateral for any loan makes the value of such collateral dependent upon the price of gold, which in turn makes such loans difficult and expensive to obtain.

b. *Public Representations of Policy.* Applicant states that it does not hold itself out as an "investment company" within the meaning of the Act, and has never been a registered investment company (or subject to any analogous regulatory scheme). Applicant has consistently held itself out as a gold mining and exploration business in all its communications with shareholders and the public.

c. *Activities of Officers and Directors.* Applicant states that its management, on the whole, spends substantially all of its time actively involved in the gold mining and exploration business. Of applicant's fourteen directors, only one director, the Finance Director, spends any meaningful amount of time (less than 5%) monitoring applicant's securities holdings and cash management activities. The bulk of such duties consists of supervising the activities of an outside investment bank which has been entrusted with investing applicant's cash. Each of applicant's executive directors has substantial experience in applicant's gold mining and exploration business, rather than any background in investing or portfolio management. Applicant is represented by its directors and officers of all of the boards of directors of the Direct Subsidiaries and Controlled Companies. In those companies, applicant's directors and officers dominate management's strategic decision making and play a leading role in other essential operational functions.

d. *Nature of Assets.* As of June 30, 1996, applicant had total assets of R1211 (US $282 million).[4] For purposes of analysis under section 3(b)(2), 45% of applicant's total assets were operating assets attributable to its Direct Subsidiaries and Direct Assets, and 35% of applicant's total assets were attributed to its Controlled Companies.[5]

e. *Sources of Income.* In applicant's four fiscal quarters ending June 30, 1996, applicant derived approximately 14% of its revenues and 4% of its net income from its Direct Subsidiaries, Direct Assets, service agreements and other operations.[6] Revenues from the service agreements alone accounted for 7.7% of its revenues and 3.6% of its net income over such period. In the same period, applicant derived approximately 68% of its revenues and 23% of its net income from Controlled Companies. In that same period, applicant derived 18% of its revenues and 69% of its net income from extraordinary items, including cancellation of the management agreements and the sale of shares of Controlled Companies.[7] The expected effect of the cancellation of the management contracts will be to reduce fees from Controlled Companies by approximately 56%. Applicant expects, however, a corresponding reduction of costs due to the restructuring that occurred. The immediate net effect of the change was the payment to applicant of termination fees under the agreements, which fees are included in extraordinary income as described above. While revenues from applicant's Direct Subsidiaries, Direct Assets, service agreements and other operations, and dividends from Controlled Companies' stock are a substantial portion of applicant's total revenue, they account for a significantly smaller portion of applicant's net income. This largely reflects (a) the strategy of applicant and its Controlled Companies to retain earnings for future operations and growth, rather than to distribute earnings to shareholders in the form of dividends, (b) the fact that gold sales made directly by applicant are relatively small in relation to applicant's total activities, which consist largely of exploration properties, and (c) the fact that virtually all of applicant's expenses relate to the activities of its Direct Subsidiaries and its Direct Assets.

8. In the alternative to exemptive relief under section 3(b)(2), applicant requests an order under section 6(c) exempting applicant from all provisions of the Act and the rules and regulations thereunder. Section 6(c) authorizes the Commission to issue a conditional or unconditional exemption from any provision of the Act or rule thereunder if the exemption is "necessary or appropriate in the public interest" and is "consistent with the protection of investors and the purposes fairly intended by the policy and provisions of [the Act]." Applicant states that it was structured for valid economic and legal reasons and not with the Act in mind. Consequently, applicant believes that it would be inappropriate and detrimental to applicant and its shareholders to be treated as an investment company and made subject to the Act. Furthermore, applicant believes that it is not the type of company and does not engage in the activities the Act was designed to regulate. Accordingly, applicant submits that the requested exemption is necessary and appropriate in the public interest, is consistent with the protection of investors, and is consistent with the purposes of the Act.

[3] *Tonopah Mining Company of Nevada*, 26 S.E.C. 426, 427 (1947).

[4] The methods used in the valuation of applicant's assets were in accordance with section 2(a)(41) under the Act.

[5] The remaining 20% of total assets are made up of 7% in cash and cash equivalents, 10% in short-term investments, and 3% in traditional investment securities.

[6] All figures used in the determination of net income are based upon equity accounting methods pursuant to which the revenues and income of the Controlled Companies are included in applicant's revenues and income in proportion to applicant's equity interests in such companies.

[7] Applicant states that the extraordinary items described above were generally not present during the prior two periods ended June 30, 1995, and June 30, 1994, and applicant believes that during those periods revenues from Direct Subsidiaries, Direct Assets, other operations and Controlled Companies would account for the majority of applicant's revenues and net income.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4860 Filed 2–26–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–83821; File No. SR–NASD–97–06]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Scope of the Uniform Practice Code

February 21, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] notice is hereby given that on February 20, 1997, the NASD Regulation, Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend Rule 11100 of the Uniform Practice Code ("Code") of the National Association of Securities Dealers, Inc. ("NASD" or "Association"), to clarify the scope of the Code and the exception for transactions settled through a clearing agency. Below is the text of the proposed rule change. Proposed new language is in italics.

11100. Scope of Uniform Practice Code

(a) All over-the-counter secondary market transactions in securities *(including restricted securities, as defined in Rule 144(a)(3) under the Securities Act of 1933)* between members, *including the rights and liabilities of the members participating in the transaction, and those operational procedures that affect the day-to-day business of members* shall be subject to the provisions of this Code except:

(1) transactions in securities between members which are compared, cleared or settled through the facilities of a registered clearing agency, *except to the extent that the rules of the clearing agency provide that rules of other organizations shall apply.*

* * * * *

II. Self-Regulatory Organizations Statement of the Purpose of and Statutory Basis for, the proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The Code provides detailed requirements for many procedures and practices related to the operational aspects of members' securities business, including requirements for deliveries, payments, dividends, rights, interest, exchange of confirmations, assignments, powers of substitution, computation of interest, due bills, transfer fees, "when, as and if issued" trading, "when, as and if distributed" trading, market to market, buy-ins, close-outs, accounts transfers, settlement of syndicate accounts, etc.

The introductory language in paragraph (a) of Rule 11100 states the general standard that "all over-the-counter secondary market transactions in securities between members shall be subject to the provisions of this Code. * * *" The focus of the language only on "transactions in securities" does not encompass those provisions of the current Code that address the rights and liabilities of the members participating in the transaction and provide procedures that are not related to securities transactions, e.g., the setting of ex-dates and the transfer of customer accounts. In addition, the exception in subparagraph (a)(1) of Rule 11100 for securities transactions cleared through a registered clearing agency does not address the situation where the rules of the clearing agency require compliance with the rules of the applicable market. In this latter case, the clearing agency exception is technically not available since the clearing agency requires that

[1] 15 U.S.C. § 78s(b)(1).

[2] The proposed rule change was originally filed on January 29, 1997. The NASD subsequently submitted Amendment No. 1 that removed certain unnecessary text. This document provides notice of the proposed rule change as amended. Letter from Suzanne E. Rothwell, Associate General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated February 20, 1997.

the Code or the rules of the relevant market apply to the transaction. Finally, since the SEC's adoption of Rule 144A in 1991, members have inquired as to whether the Code is applicable to transactions in restricted securities.

In order to provide clarity on the applicability of the Code, NASD Regulation is proposing to amend the Code to expand the introductory language of paragraph (a) of Rule 11100 to state that:

(i) the application of the Code to secondary market transactions in securities includes the regulation of the "rights and liabilities of the members participating in the transaction";

(ii) the Code also applies to "those operational procedures that affect the day-to-day business of members";[3] and

(iii) the securities transactions covered by the Code include transactions in "restricted securities, as defined in Rule 144(a)(3) under the Securities Act of 1933."

As a result of this change, secondary market transactions in restricted securities that are not in a depository will be required to comply with the Code's operational procedures. In this connection, NASD Regulation is also clarifying the securities sold offshore pursuant to the exemption from registration provided by Regulation S are considered to be subject to the requirements of the Code when those securities are traded in the U.S. after the expiration of the restricted period. It is not believed any change to the Code is necessary with respect to this clarification, as the Code clearly applies to all registered and unregistered secondary securities market transactions between members, which would include securities formerly sold in a Regulation S transaction.

In addition, NASD Regulation is proposing to amend subparagraph (a)(1) of Rule 11100 to clarify that the exception for transactions in securities between members that are compared, cleared or settled through the facilities of a registered clearing agency does not apply where the rules of the clearing agency provide that the rules of other organizations shall apply.

NASD Regulation believes that these changes will make clear the broad scope and applicability of the Code and permit members to look to the Code for guidance regarding transactions settled through a clearing agency, where the clearing agency has adopted a rule directing that the rules of the governing market apply to the transaction.

(b) NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[4] in that the proposed rule change clarifies the application of the Uniform Practice Code to establishing the liabilities of parties to a transaction, to restricted securities, to the operational procedures that affect the day-to-day business of members, and to transactions settled through a clearing agency where the rules of the clearing agency direct that the rules of the governing market apply to the transaction. NASD Regulation believes the proposed rule change is consistent with the Association's obligations to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities and, in general, in the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–97–06 and should be submitted by March 20, 1997.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4862 Filed 2–26–97; 8:45 am]

BILLING CODE 8010–01–M

[3] This language is drawn from Article XV, Section 1 of the NASD By-Laws which authorizes the Association to adopt the Uniform Practice Code which states that the adoption of such a Code is for the purpose that "the transaction of day-to-day business by members may be simplified and facilitated * * *."

[4] 15 U.S.C. § 78o–3.

[5] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2925; Amendment #2]

California; Declaration of Disaster Loan Area

In accordance with a notice from the Federal Emergency Management Agency, dated February 14, 1997, the above-numbered Declaration is hereby amended to include Kings and San Luis Obispo Counties in the State of California as a disaster area due to damages caused by severe storms, flooding, and mud and landslides beginning on December 28, 1996 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous county of Santa Barbara in the State of California may be filed until the specified date at the previously designated location. Any counties contiguous to the above-named counties and not listed herein have been previously declared.

All other information remains the same, i.e., the termination date for filing applications for physical damage is March 5, 1997, and for loans for economic injury the deadline is October 6, 1997.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: February 19, 1997.

Herbert L. Mitchell

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 97–4925 Filed 2–26–97; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster Loan Area 2928; Amendment 1]

Oregon; Declaration of Disaster Loan Area

In accordance with a notice from the Federal Emergency Management Agency, dated February 14, 1997, the above-numbered Declaration is hereby amended to include the Counties of Coos, Douglas, Lake, and Lane in the State of Oregon as a disaster area due to damages caused by winter storms, land and mudslides, and flooding beginning on December 25, 1996 and continuing through January 6, 1997.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Benton, Harney, Lincoln, and Linn in the State of Oregon may be filed until the specified date at the previously designated location. Any counties contiguous to the above-named counties and not listed herein have been previously declared.

All other information remains the same, i.e., the termination date for filing applications for physical damage is March 24, 1997, and for loans for economic injury the deadline is October 23, 1997.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: February 19, 1997.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 97–4924 Filed 2–26–97; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster Loan Area 2927; Amendment 2]

Washington; Declaration of Disaster Loan Area

In accordance with notices from the Federal Emergency Management Agency, dated February 6 and 11, 1997, the above-numbered Declaration is hereby amended to include the Counties of Asotin, Clark, Jefferson, Pend Oreille, and Whatcom in the State of Washington as a disaster area due to damages caused by winter storms, land and mudslides, and flooding. This Declaration is further amended to establish the incident period for this disaster as beginning on December 26, 1996 and continuing through February 10, 1997.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Garfield in the State of Washington and Columbia in the State of Oregon may be filed until the specified date at the previously designated location. Any counties contiguous to the above-named counties and not listed herein have been previously declared.

All other information remains the same, i.e., the termination date for filing applications for physical damage is March 18, 1997, and for loans for economic injury the deadline is October 17, 1997. The economic injury number for the State of Oregon is 935600.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: February 19, 1997.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 97–4923 Filed 2–26–97; 8:45 am]

BILLING CODE 8025–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Proposed Out-of-Basin Diversion Policy and Protocol; Public Hearing

AGENCY: Susquehanna River Basin Commission.

ACTION: Public hearing on addition to comprehensive plan.

SUMMARY: The Susquehanna River Basin Commission will hold a public hearing in conjunction with its regular meeting on March 20, 1997. This hearing will be for the purpose of receiving public comments on the inclusion of the proposed Out-of-Basin Diversion Policy and Protocol in the Commission's *Comprehensive Plan for Management and Development of the Water Resources of the Susquehanna River Basin.*

Under Section 3.10 of the Susquehanna River Basin Compact, Public Law 91–575, 84 Stat. 1509 *et seq.*, the Commission must review and approve all diversions of water from the Susquehanna River Basin. Up to this time, the Commission has adopted no formal policy position or statement on how it will evaluate proposed diversions, but has relied on positions articulated in past docket decisions. This policy establishes the principles that the Commission will consider in the approval of diversions and adds a protocol describing how those principles will be applied. Written comments will also be accepted and made a part of the hearing record.

DATES: The public hearing will be held on March 20, 1997, beginning at approximately 9:00 a.m. Written comments on the proposed policy should be submitted by March 20, 1995.

ADDRESSES: The public hearing will be held at the Best Western Country Cupboard Inn, Rt. 15 North, Lewisburg, Pa.. Copies of the entire policy statement and protocol may be obtained upon request to the Commission at 1721 N. Front Street, Harrisburg, Pa. 17102–2391, (717)238–0423.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel/Secretary, SRBC, 717–238–0423.

Dated: February 21, 1997.

Richard A. Cairo,

General Counsel/Secretary.

[FR Doc. 97–4938 Filed 2–26–97; 8:45 am]

BILLING CODE 7040–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Free Trade Area of the Americas; Notice and Request for Views

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of opportunity to provide views on U.S. objectives for the free trade area of the Americas.

SUMMARY: The Trade Policy Staff Committee is issuing this notice to request advice and information useful in the preparation for the meeting of Western Hemisphere trade ministers, to be held on May 16, 1997 in Belo Horizonte, Brazil. At the Summit of the Americas, leaders of the Western Hemisphere agreed that countries should conclude negotiation of a "Free Trade Area of the Americas" by 2005. The trade ministers were asked to oversee the negotiation.

DATES: In order to receive full consideration, comments must be received no later than: March 24, 1997. This will make them timely for consideration as U.S. positions for the Ministerial meeting are developed. Any comments, however brief, would be welcome. The U.S. Government will continue to welcome advice as work on the FTAA proceeds.

ADDRESSES: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, 600 17th Street, NW, Room 501, Washington, D.C. 20508.

FOR FURTHER INFORMATION CONTACT: Karen James Chopra (202) 395–5190.

SUPPLEMENTARY INFORMATION:

Background

The 34 democratically-elected leaders of the Western Hemisphere gathered at the first Summit of the Americas in Miami in December 1994. At the Summit, leaders agreed that countries should conclude negotiation of a "Free Trade Area of the Americas" (FTAA) by 2005 and make concrete progress towards that goal by 2000. They directed their trade ministers to oversee the process of constructing the FTAA.

The first Western Hemisphere Trade Ministerial was held in Denver in June 1995. The United States Trade Representative and the other 33 Ministers in the Hemisphere responsible for trade agreed to the Denver "Joint Declaration." This advanced the Summit of the America's objective of establishing the FTAA by 2005. The Denver Declaration adopted a set of principles and created a work program to prepare for negotiation of the FTAA—including the establishment of seven working groups. Four more working groups were created at the second Western Hemisphere Trade Ministerial, which was held in Cartagena, Colombia in March 1996. The eleven working groups established to date are: Investment, Standards and Technical Barriers to Trade, Subsidies/Anti-dumping/Countervailing Duties, Smaller Economies, Government Procurement, Intellectual Property Rights, Services, Competition Policy, Sanitary and Phytosanitary (SPS) Measures, Customs Procedures and Rules of Origin, and Market Access.

In the Cartagena "Joint Declaration", the Ministers mandated that Vice Ministers make recommendations on when and how to launch the FTAA negotiations and on the approach to negotiations. Also, concrete proposals on near-term practical steps toward hemispheric economic integration (e.g. business facilitation actions) are to be reported to the Ministers at the next Ministerial. The Ministers provided overall guidance to further the FTAA process and another detailed plan of work for the eleven working groups. Copies of the Miami, Denver and Cartagena Declarations can be found on the Internet at: http://www.ustr.gov/index.html.

The third Western Hemisphere Trade Ministerial will take place on May 16 in Belo Horizonte, Brazil. Ministers have requested that Vice Ministers prepare recommendations on how and when to launch the negotiations to construct the FTAA.

Key Issues

To make preparations for the Belo Horizonte Ministerial as relevant as possible, the U.S. Government is seeking advice and views from the public. Any views on the FTAA process are welcome, but of particular interest would be input on the following issues:

- What should U.S. objectives be for the FTAA process as a whole, and what should we seek to achieve at the next meeting in Belo Horizonte to make progress towards that objective?
- What major issues are not currently addressed adequately by international disciplines that could be addressed in the FTAA?
- Are there particular advantages/disadvantages to negotiating or implementing certain agreements or codes affecting either specific sectors (e.g. telecommunications) or disciplines (e.g. investment) before the FTAA negotiations are completed in the year 2005?
- What concrete steps toward economic integration would most benefit U.S. interests overall or the interests of specific industries or groups?
- What impediments are most detrimental to the U.S. companies doing business and how can hemispheric disciplines remove them?
- Has your company or organization experienced particular problems in the region of which the U.S. Government should be aware as it goes through the FTAA process?
- To what extent have the subregional arrangements (Mercosur, Andean Pact, Central American Common Market, Caribbean Community) affected your interests in or exports to Latin America and the Caribbean?
- What measures should the ministers consider to ensure that private sector advice from throughout the Hemisphere is received and incorporated into the FTAA process?
- Do you have any concrete proposals for near-term practical steps toward hemispheric economic integration (e.g. business facilitation actions)?

Written Comments: All written comments should be addressed to: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, 600 17th Street, NW, Room 501, Washington, D.C. 20508.

All submissions must be in English and should conform to the information requirements of 15 CFR 2003.

A party must provide ten copies of its submission, which must be received at USTR no later than March 24, 1997. If the submission contains business confidential information, ten copies of a non-confidential version must also be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, any submissions containing business confidential information must be clearly marked "confidential" at the top and bottom of the cover page (or letter) and of each succeeding page of the submission. The version that does not contain confidential information should also be clearly marked, at the top and bottom of each page, "public version" or "non-confidential."

Written comments submitted in connection with this request, except for information granted "business confidential" status pursuant to 15 CFR 2003.6, will be available for public inspection shortly after the filing deadline. Inspection is by appointment only with the staff of the USTR Public Reading Room and can be arranged by calling (202) 395–6186.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 97–4936 Filed 2–26–97; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–97–10]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before March 5, 1997.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9–9–9–NPRM–CMTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Fred Haynes (202) 267–3939 or Angela Anderson (202) 267–9681 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on February 21, 1997.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28813.
Petitioner: Keith Campbell.
Sections of the FAR Affected: 14 CFR 119.67(a)(1).
Description of Relief Sought: To permit the petitioner to serve as Director of Operations of Reeve Aleutian Airways even though he does not hold an airline transport pilot certificate.

Docket No.: 28816.
Petitioner: Grant Murray.
Sections of the FAR Affected: 14 CFR 119.67(a)(1) and 119.71(a).
Description of Relief Sought: To permit the petitioner to continue to serve as Director of Operations for Eagle Jet Charter, Inc. without holding an airline transport pilot certificate.

[FR Doc. 97–4847 Filed 2–26–97; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meeting on Training and Qualifications

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss training and qualification issues.

DATES: The meeting will be held on March 12 at noon.

ADDRESSES: The meeting will be held at the Regional Airlines Association, Third floor, 1200 19th St., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Regina L. Jones, (202) 267–9822, Office of Rulemaking, (ARM–100) 800 Independence Avenue, SW Washington, DC 20591.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee (ARAC) to discuss training and qualification issues. This meeting will be held March 12, 1997, at noon, at the Regional Airlines Association. The agenda for this meeting will include progress reports from The Air Carrier Pilot Pay for Training Working Group and the Air Carrier Minimum Flight Time Requirements Working Group.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present statements to the committee at any time. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listing device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on February 19, 1997.

Thomas Toula,

Executive Director for Training and Qualifications, Aviation Rulemaking Advisory Committee.

[FR Doc. 97–4848 Filed 2–26–97; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc.; Joint Special Committee 190/Eurocae Working Group 52; DO–178 Software Consideration

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Joint Special Committee 190/EUROCAE Working Group (WG) 52 meeting to be held March 11–13, 1997, starting at 9:00 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, N.W., Washington, D.C. 20036.

The agenda will include the following: (1) Chairman's Opening Remarks and General Introductions; (2) Review and Approval of Agenda; (3) Establish Structure and Organization of the Committee; (4) Review Proposed Terms of Reference, RTCA Paper No. 039–97/SC190–002; (5) Identify Goals, Develop Work Program, and Determine Milestones; (6) Assign Tasks; (7) Other Business; (8) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, D.C. 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 20, 1997.

Janice L. Peters,

Designated Official.

[FR Doc. 97–4849 Filed 2–26–97; 8:45 am]

BILLING CODE 4910–13–M

[Application #97–02–C–00–FCA]

Notice of Intent to Rule on Application, Passenger Facility Charge (PFC) Glacier Park International Airport; Submitted by the Flathead Municipal Airport Authority, Kalispell, Montana

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Glacier Park International Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before March 31, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: David P. Gabbert, Manager; Helena Airports District Office, HLN–ADO; Federal Aviation Administration; FAA Building, Suite 2; 2725 Skyway Drive; Helena, MT, 59601.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Monte M.

Eliason, Airport Manager, at the following address: Flathead Municipal Airport Authority, 4170 Highway 2 East, Kalispell, Montana 59901.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Glacier Park International Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. David P. Gabbert, (406) 449–5271; Helena Airports District Office, HLN–ADO; Federal Aviation Administration; FAA Building, Suite 2; 2725 Skyway Drive; Helena, MT 59601. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (#97–02–C–00–FCA) to impose and use PFC revenue at Glacier Park International Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On February 19, 1997, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Flathead Municipal Airport Authority, Glacier Park International Airport, Kalispell, Montana, was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 3, 1997.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed Charge effective date: June 1, 1997.

Proposed charge expiration date: December 31, 2017.

Total requested for use approval: $8,249,680.00.

Brief description of proposed project: Terminal area expansion—Building construction; Terminal area expansion—Site work and road work.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: Air Taxi Operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue S.W., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Glacier Park International Airport.

Issued in Renton, Washington on February 19, 1997.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 97–4850 Filed 2–26–97; 8:45 am]

BILLING CODE 4910–13–M

Federal Railroad Administration

Notice of Safety Bulletin

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of safety bulletin.

SUMMARY: The FRA is issuing Safety Bulletin 97–2 addressing a recommended safety practice to stop trains on heavy descending grades of 2 percent or greater by initiating an emergency application of the train's air brakes whenever the train speed exceeds the maximum authorized speed by five miles per hour or more.

FOR FURTHER INFORMATION CONTACT: Doug Taylor, Staff Director, Operating Practices Division, Office of Safety Assurance and Compliance, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone 202–632–3346).

SUPPLEMENTARY INFORMATION:

Background

Preliminary investigatory findings following the January 12, 1997, derailment of a run-away Union Pacific Railroad Company (UP) freight train on a 2.2 percent descending grade at Hayden, California, indicate that when the train reached a speed of 11 miles per hour above its maximum authorized speed, the engineer initiated an emergency application of the train's air brakes. Following the emergency brake application, the train continued to accelerate out of control and derailed at the entrance switch to a controlled siding.

FRA has studied this accident and compared it with another run-away freight train derailment that occurred on the Cajon Subdivision of the Burlington Northern Santa Fe Railway (BNSF) four miles west of Summit, California, on February 1, 1996. Following that derailment, the BNSF implemented a "five mile per hour rule." The railroad's rule requires that if a freight train exceeds the maximum authorized speed by five miles per hour while descending the grade on the Cajon Pass between Summit and Baseline, the train must be stopped by using an emergency application of the train's air brake system. The UP initiated a similar rule at 24 locations on their system following the January 12, 1997, Hayden, California, derailment.

While FRA does not approve of train operations at any speed above the maximum allowable speed established by Federal regulations or by railroad rule, FRA does support the initiatives taken by both the BNSF and UP to address the situation described here. FRA continues to believe that properly maintained equipment and proper instruction on train handling techniques, that adequately cover normal and emergency operating procedures on heavy grades, would prevent nearly all situations in which a train would be exceeding the allowable speed. However, if a simple, easy to implement practice could help prevent run-away trains, whatever the cause of the excessive train speed, that practice should be encouraged.

The suggested practice provides an additional measure of safety since it reduces the uncertainty inherent in "judgement calls" as to when to initiate emergency action when descending a heavy grade. The recommendation, based on UP's and BNSF's "five mile per hour rule" reduces the possibility that train speed will increase to a point where escalating energy levels prohibit stopping the train's momentum even with the retarding force generated by an emergency train brake application.

Recommendation

In recognition of the difficulty or impossibility of stopping a train on a heavy grade once a critical train speed is attained, FRA strongly recommends that railroads take the following safety precautions:

1. On descending grades of 2 percent or more, a train must be stopped, using an emergency application of the train's air brakes, if the train's speed reaches 5 miles per hour more than the train's maximum authorized speed.

2. After the train has stopped:

a. a sufficient number of hand brakes must be applied to secure the train;

b. once secured, the train must be inspected and no further train movement will be made until authorized by a designated railroad employee.

3. The railroad must conduct an immediate investigation into the cause of the incident and initiate appropriate corrective action.

4. Event recorder data must be routinely inspected to ensure full understanding and compliance with this rule.

Issued in Washington, D.C. on February 24, 1997.

Bruce M. Fine,

Associate Administrator for Safety.

[FR Doc. 97–4939 Filed 2–26–97; 8:45 am]

BILLING CODE 4910–06–P

Maritime Administration

[Docket No. M–029]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before April 28, 1997.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, Chief, Division of Statistical Analysis, Office of Statistical and Economic Analysis, Maritime Administration, MAR–451, Room 8107, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2277 or fax 202–366–8886. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: EUSC/Parent Company.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0511.

Form Number: None.

Expiration Date of Approval: April 30, 1997.

Summary of Collection of Information: The collection consists of an inventory of information regarding Foreign register vessels owned by Americans. Specifically, this information consists of responses from vessel owners verifying or correcting vessel ownership, data and characteristics found in commercial publications.

Need and Use of the Information: The verification of information on vessels that could be vital in a national or international emergency is essential to the logistical support planning by MARAD's Office of National Security Plans and the Logistics Plans Division of the Office of the Chief of Naval Operations. The information will be used for contingency planning for sealift requirements primarily as a source of ships to move essential oil and bulk cargoes in support of the national economy.

Description of Respondents: Foreign register American vessel owners which complete the information collection and return it to the Maritime Administration.

Annual Responses: 92.

Annual Burden: 46 hours.

Comments: Send all comments regarding this information collection to Joel C. Richard, Department of Transportation, Maritime Administration, MAR–120, Room 7210, 400 Seventh Street, SW., Washington, DC 20590. Send comments regarding whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected.

By Order of the Maritime Administrator.

Dated: February 20, 1997.

Joel C. Richard,

Secretary.

[FR Doc. 97–4851 Filed 2–26–97; 8:45 am]

BILLING CODE 4910–81–P

Surface Transportation Board

[STB Finance Docket No. 33360]

Southern Pacific Transportation Company; Trackage Rights Exemption; Union Pacific Railroad Company

Union Pacific Railroad Company (UP) has agreed to grant overhead trackage rights to Southern Pacific Transportation Company (SP) over trackage known as the Port of Brownsville Lead Track, extending from the SP connection at milepost 3.21 to milepost 9.36, and over trackage from milepost 7.60 to milepost 7.90 at the connection to the Port of Brownsville trackage, a total distance of approximately 6.45 miles near Brownsville, TX. The trackage rights will result in improved and more efficient train operations and will eliminate rail traffic congestion in downtown Brownsville.

The transaction was scheduled to be consummated on or after February 14, 1997.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33360, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423.[1] In addition, a copy of each pleading must be served on Joseph D. Anthofer, Esq., 1416 Dodge Street, #830, Omaha, NE 68179.

Decided: February 20, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–4869 Filed 2–26–97; 8:45 am]

BILLING CODE 4915–00–P

HOUSE OF REPRESENTATIVES

Designation of Agent To Receive Child Support and Alimony Orders and Process Pursuant to Sec. 362 of Pub. L. 104–193

AGENCY: U.S. House of Representatives.

ACTION: Notice: Designation of Agent.

SUMMARY: Pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193, Sec. 362), the United States House of Representatives designates the Office of General Counsel for the House to receive orders and accept service of process in matters relating to child support or alimony.

ADDRESSES: Such orders and process shall be directed to: Office of General Counsel, U.S. House of Representatives, 219 Cannon Building, Washington, DC 20515, (202) 225–9700.

Authority: 42 U.S.C. § 659, as amended by Sec. 362, Pub. L. 104–193, 110 Stat. 2105.

Dated: February 21, 1997.

Robin H. Carle,

Clerk, U.S. House of Representatives.

[FR Doc. 97–4820 Filed 2–26–97; 8:45 am]

BILLING CODE 0000–00–0

[1] Due to the Board's scheduled relocation on March 16, 1997, any filings made after March 16, 1997, must be filed with the Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423–0001.

UNITED STATES INFORMATION AGENCY

Training Programs for Czech Republic, Romania, Slovakia, and Bulgaria

ACTION: Notice; Request for proposals.

SUMMARY: The Office of Citizen Exchanges of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to develop training programs for the Czech Republic, Romania, Slovakia, and Bulgaria.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program cited above is provided through the Fulbright-Hays Act.

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

ANNOUNCEMENT TITLE AND NUMBER: All communications with USIA concerning this announcement should refer to the above title and reference number E/P–97–27.

DEADLINE FOR PROPOSALS: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on Friday, April 11, 1997. Faxed documents will not be accepted, nor will documents postmarked April 11, 1997 but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline.

Program activities should begin after June 15, 1997.

FOR FURTHER INFORMATION CONTACT: The Office of Citizen Exchange, E/PE, Room 216, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, telephone: 202–619–5319, fax: 202–619–4350, e-mail address: {cminer@usia.gov} to request a Solicitation Package containing more detailed award criteria, required application forms, and standard guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

TO DOWNLOAD A SOLICITATION PACKAGE VIA INTERNET: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

TO RECEIVE A SOLICITATION BY FAX ON DEMAND: The entire Solicitation Package may be received via the Bureau's "Grants Information Fax on Demand System", which is accessed by calling 202/401–7616. Please request a "Catalog" of available documents and order numbers when first entering the system.

Please specify USIA Program Officer Christina Miner on all inquiries and correspondences. Interested applicants should read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

SUBMISSIONS: Applicants must follow all instructions given in the Solicitation Package. The original and eight copies of the application should be sent to: U.S. Information Agency, Ref.: E/P–97–27, Office of Grants Management, E/XE, Room 326, 301 4th Street, S.W., Washington, D.C. 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

Diversity Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal.

SUPPLEMENTARY INFORMATION: Diminished resources have forced USIA to limit the scope of this announcement; regrettably, proposals for countries and themes other than the ones described below will not be eligible for consideration. USIA is interested in proposals in the following areas and countries:

Czech Republic: Projects that will strengthen civic culture by focusing on the training of NGOs to work with national and local governments as well as with local communities to propose and implement solutions to environmental problems.

Romania: Projects should focus on court management procedures which need to be modernized and rationalized in order to meet modern democratic standards and the complex array of market economy-related issues. The activities should focus on information dissemination, training court personnel and upgrading court procedures.

Slovakia: Projects should focus on the free-flow of information for Slovak libraries. Objectives of the project would be to introduce practical use of new technologies and new library services for citizens. There is particular interest in assisting the parliamentary library to become a source of information about the parliament and lawmaking for the whole country and not just a research service for its members. In addition, Slovak partners should include the librarian's association and leading university and public libraries, particularly Bratislava's University Library.

Bulgaria: Proposals should focus on the management of media as a business: station management, newsroom management, advertising, marketing, personnel, and public relations.

Exchange and training programs supported by institutional grants should operate at two levels: they should enhance institutional relationships; and they should offer practical and comparative information to individuals to assist them with their professional responsibilities. Strong proposals usually have the following characteristics: an existing partner relationship between an American organizations and a host-country institution; a proven track record of conducting program activity; cost sharing from American or in-country sources, including donations of air fares, hotel and housing costs; experienced staff with language facility; and a clear, convincing plan showing how permanent results will be accomplished as a result of the activity funded by the grant. USIA wants to see tangible forms of time and money contributed to the project by the prospective grantee institution, as well as funding from third party sources.

Note: Research projects or projects limited to technical issues are not eligible for support nor are film festivals or exhibits. Exchange programs for students or faculty or proposals that request support for the development of university curricula or for degree-based programs are also ineligible under this RFP. Proposals to link university departments or to exchange faculty and/or students are funded by USIA's Office of Academic Programs (E/A) under the University Affiliation Program and should not be submitted in response to this RFP.

Guidelines

1. All grant proposals must clearly describe the type of persons who will participate in the program as well as the process by which participants will be selected. Note that participants should be professionals and not members of university faculties. In the selection of all foreign participants, USIA and USIS post retain the right to nominate participants and to approve or reject participants recommended by the program institution. Programs must also comply with J–1 visa regulations.

2. Programs that include internships in the U.S. should provide letters tentatively committing host institutions to support the internships. Letters of commitment from the hosts of study tour site visits should also be included, iff applicable.

3. Applicants are encouraged to consult with USIS offices regarding program content and partner institutions before submitting proposals. Award-receiving applicants will be expected to maintain contact with the USIS post throughout the grant period.

Proposal Budget

Please refer to the Solicitation Package for complete budget instructions.

Applicants must submit a detailed line item budget based on specific instructions in the Program and Budget Guidelines of the Proposal Submission Instructions. Proposals for less than $117,000 will receive preference. Proposals with strong cost-sharing will be given priority.

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

The following project costs are eligible for consideration for funding:

1. International and domestic air fares; visas; transit costs; ground transportation costs.

2. Per Diem. For the U.S. program, organizations have the option of using a flat $140/day for program participants or the published U.S. Federal per diem rates for individual American cities. For activities outside the U.S., the published Federal per diem rates must be used. NOTE: U.S. escorting staff must use the published Federal per diem rates, not flat rate.

3. Interpreters. If needed, interpreters for the U.S. program are provided by the U.S. State Department Language Services Division. Typically, a pair of simultaneous interpreters is provided for every four visitors. USIA grants do not pay for foreign interpreters to accompany delegations from their home country. Grant proposal budgets should contain a flat $140/day per diem for each Department of State interpreter, as well as home-program-home air transportation of $400 per interpreter plus any U.S. travel expenses during the program. Salary expenses are covered centrally and should not be part of an applicant's proposed budget.

4. Book and cultural allowance. Participants are entitled to and escorts are reimbursed a one-time cultural allowance of $150 per person, plus a participant book allowance of $50. U.S. staff do not get these benefits.

5. Consultants. May be used to provide specialized expertise or to make presentations. Daily honoraria generally do not exceed $250 per day. Subcontracting organizations may also be used, in which case the written agreement between the prospective grantee and subcontractor should be included in the proposal.

6. Room rental, which generally should not exceed $250 per day.

7. Materials development. Proposals may contain costs to purchase, develop, and translate materials for participants.

8. One working meal per project. Per capita costs may not exceed $5–8 for a lunch and $14–20 for a dinner, excluding room rental. The number of invited guests may not exceed participants by more than a factor of two-to-one.

9. A return travel allowance of $70 for each participant which is to be used for incidental expenditures incurred during international travel.

10. All USIA-funded delegates will be covered under the terms of a USIA-sponsored health insurance policy. The premium is paid by USIA directly to the insurance company.

11. Other costs necessary for the effective administration of the program, including salaries for grant organization employees, benefits, and other direct and indirect costs per detailed instructions in the application package.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels for USIA officers for advisory review. All eligible proposals will be reviewed by the program office, as well as the USIA Office of East European and NIS Affairs and the USIA posts overseas, where appropriate. Proposals may be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should respond to the program requirements of the RFP.

2. *Program planning and ability to achieve objectives:* Program objectives should be stated clearly and precisely and should reflect the applicant's expertise in the subject area and the region. Goals should be reasonable and attainable. A detailed agenda and relevant work plan should demonstrate how objectives will be achieved. A timetable indicating when major program tasks will be undertaken should be provided. The substance of seminars, presentations, consulting, internships, and itineraries should be spelled out in detail. Responsibilities of in-country partners should be clearly described.

3. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

4. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. The narrative should demonstrate proven ability to handle logistics. Proposal should reflect the institution's expertise in the subject area and knowledge of the country.

6. *Follow-on Activities:* Proposals should provide a plan for continued follow-up activity (without USIA support) which ensures that USIA supported programs are not isolated events.

7. *Project Evaluation:* Proposals should include a plan and methodology to evaluate the project's success, both as the activities unfold and at the end of the program. USIA recommends that the proposal include a draft survey questionnaire and/or plan for use of another measurement technique (such as a focus group) to link outcomes to original project objectives. Award-receiving organizations/institutions will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

8. *Cost-effectiveness/cost sharing:* The overhead and administrative components of the proposal, including salaries, honoraria, and subcontracts for services, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: February 24, 1997.

Dell Pendergrast,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 97–4845 Filed 2–26–97; 8:45 am]

BILLING CODE 8230–01–M

Summer Institute for EFL Educators From Francophone and Lusophone Sub-Saharan Africa

ACTION: Notice; Request for Proposals.

SUMMARY: The Office of Academic Programs, Academic Exchanges Division, Africa Branch of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. Accredited, post-secondary educational institutions meeting the provisions described in IRS regulation 26 CFR 1.501(c)(3)–1 may apply to develop a Summer Institute for English-as-a-Foreign-Language (EFL) Educators from Francophone and Lusophone Sub-Saharan Africa. The Summer Institute will provide a six-week academic training/development program in English-as-a-Foreign-Language for 16 teacher trainers/educators and supervisors/inspectors of secondary schools selected from sixteen French and Portuguese-speaking countries of Sub-Saharan Africa.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program cited above is provided through the Fulbright-Hays Act.

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

ANNOUNCEMENT TITLE AND NUMBER: All communications with USIA concerning this announcement should refer to the above title and reference number E/AEA–97–02.

DEADLINE FOR PROPOSALS: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Thursday, April 3, 1997. Faxed documents will not be accepted, nor will documents postmarked April 3, 1997, but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline.

The Summer Institute for EFL Educators should be programmed to encompass about 45 days and should begin between June 15, 1997, and July 13, 1997, depending on the host institution's academic calendar. No funds may be expended until a grant agreement is signed with USIA's Office of Contracts.

FOR FURTHER INFORMATION CONTACT: The Office of Academic Programs, Academic Exchanges Division, Africa Branch (E/AEA), Ann J. Martin, Program Officer, Room 232, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547, phone: 202–619–5371, fax: 202–619–6137, or e-mail: amartin@usia.gov to request a Solicitation Package containing more detailed award criteria, required application forms, and standard guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

TO DOWNLOAD A SOLICITATION PACKAGE VIA INTERNET: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read the information provided before downloading.

TO RECEIVE A SOLICITATION PACKAGE BY FAX: The entire solicitation package may be requested via the Bureau's Grants Information "Fax on Demand" System which is accessed by calling 202/401–7616. The 'Table of Contents' containing document order numbers should be the first document requested.

Please specify USIA Program Officer Ann J. Martin on all inquiries and correspondence. Interested applicants should read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

SUBMISSIONS: Applicants must follow all instructions given in the Solicitation Package. The original and 7 copies of the application should be sent to: U.S. Information Agency, Ref.: E/AEA–97–02, Office of Grants Management, E/XE, Room 326, 301 4th Street, SW., Washington, DC 20547.

DIVERSITY GUIDELINES: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal.

SUPPLEMENTARY INFORMATION:

Program Overview

The Bureau of Educational and Cultural Affairs of the United States Information Agency (USIA) solicits proposals for a Summer Institute for English-as-a-Foreign-Language (EFL) Educators from Francophone and Lusophone Sub-Saharan Africa. The Summer Institute will provide a six-week academic training/development program in English-as-a-Foreign-Language, incorporating a U.S. cultural and educational experience, for 16 teacher trainers/educators and supervisors/inspectors of secondary schools selected from sixteen French and Portuguese-speaking countries of Sub-Saharan Africa. Subject to availability of funds, one grant will be awarded to conduct the 1997 Institute.

USIA asks for detailed proposals from U.S. institutions of higher education which have an acknowledged reputation in the field of training teachers of English-as-a-foreign-language, special expertise in handling cross-cultural programs, and experience with educational systems in Sub-Saharan Africa and African educators.

Note: Applicant organizations should demonstrate a proven record (at least four years) of experience in international exchange.

The general objective in the Institute is to support and encourage the upgrading of the teaching of English at secondary school level in French and Portuguese-speaking African countries. The specific objectives of the 1997 Institute are to develop skills of training, supervising, and evaluating teachers of EFL; to explore ways to introduce and/or adapt current EFL teaching methods and materials to local conditions in African countries, and to foster leadership capabilities.

Guidelines

The proposal should be designed to support the following specific activities:

(a) A five-week academic program with emphasis on developing the capacities of teacher trainers/educators and supervisors/inspectors to train, supervise, and evaluate teachers of EFL; to introduce and/or adapt current EFL teaching methods and materials to local conditions in African countries; and to assume leadership roles in their national EFL education systems. Detailed academic objectives are set forth in the Solicitation Package.

(b) Cultural activities facilitating interaction among the African participants, American students, faculty, and administrators and the local community to promote mutual understanding between the people of the United States and the people of African countries, planned with the five-week academic program.

(c) A one-week, escorted, cultural and educational tour of Washington, D.C., complementing and reinforcing the academic material.

(d) Follow-on communication among participants and the U.S. institution to continue exchanges of ideas developed during the Institute.

(e) Assistance to participants to select, purchase and ship EFL materials, to use in follow-on activities and training projects in their home countries.

Participants will be selected by USIA, based on nominations from USIA offices overseas. Minimum qualifications for all participants will be the equivalent of BA/BS degrees from their national education systems. Participants will enter the United States on J-visas, using IAP–66 forms issued by USIA offices in the home country.

The U.S. institution should plan to conduct an initial needs assessment of participants and should be prepared to adjust program emphasis as necessary to respond to participants' concerns for EFL education. Specific areas to address in the five-week academic program follow:

1. New/current EFL teaching methodologies and approaches (theory and practice).
2. Comprehensive coverage of classroom pedagogical issues and classroom management skills (including special focus on large classes).
3. Teacher observation and evaluation practices.
4. Designing and conducting in-service training programs and workshops for teachers.
5. Leadership training.
6. The introduction and/or adaptation of existing EFL materials to local conditions in African countries and general materials development procedures.
7. Development of local/regional professional EFL associations.
8. Introduction to Internet (WWW and e-mail) for professional networking and development.

Few participants will have visited the United States previously. In view of this, an initial orientation to the host institution community and an introduction to U.S. society and system of education should be considered an integral part of the Institute.

Management of the academic program, the cultural tour and on-site arrangements will be the responsibility of the Institute grantee. The host institution is responsible for arrangements for lodging, food, maintenance and local travel for participants while at the host institution and in Washington. USIA will arrange participants' international travel. USIA will provide the host institution with participants' curricula vitae and travel itineraries and will be available to offer guidance throughout the Institute.

Proposed Budget

Applicants must submit a comprehensive line-item budget for the entire program. There must be a summary budget as well as a breakdown reflecting both the administrative budget and the program budget. For better understanding or further clarification, applicants may provide separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding. The cost to USIA for the Summer Institute for EFL Educators from Francophone and Lusophone Africa should not exceed $95,000. Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Allowable costs for the program include the following:

(1) Instructional costs (for example: instructors' salaries, honoraria for outside speakers, educational course materials);

(2) Lodging, meals, and incidentals for participants;

(3) Expenses associated with cultural activities planned for the group of participants (for example: tickets, transportation);

(4) Administrative costs as necessary.

Proposals should maximize cost-sharing through private sector support as well as institutional direct funding contributions.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the program office, as well as the USIA Office of African Affairs and the USIA post overseas, where appropriate. Proposals may be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program idea: Proposal should exhibit quality, rigor, and appropriateness of proposed syllabus to the academic objectives of the Institute. Proposal should demonstrate effective use of community and regional resources to enhance the cultural and educational experiences of participants.

2. Program planning: Relevant work plan and detailed calendar should demonstrate substantive undertakings and logistical capacity. Plan and calendar should adhere to the program overview and guidelines described above.

3. Institutional capacity: Proposed personnel and institutional resources should be adequate and appropriate to achieve a substantive academic EFL program and effective cross-cultural communication with African participants. Proposals should show evidence of strong on-site administrative capabilities with specific discussion of how logistical arrangements will be undertaken.

4. Multiplier effect/impact: Proposed program should contribute to long-term, mutual understanding and sharing of information about Africa among Americans, as well as to the understanding and knowledge of the U.S. among the African participants.

5. Support of diversity: Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity. Program administrators should strive for diversity among Institute staff, university students, and the host community who interact with participants.

6. Ability to achieve program objectives: Teaching objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

7. Institution's record/ability: Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. Follow-on activities: Proposals should provide a plan for continued follow-on activity (without USIA support) which ensures that USIA supported programs are not isolated events.

9. Project evaluation: Proposals should include a plan to evaluate the Summer Institute's success, both as the activities unfold and at the end of the program.

10. Cost-effectiveness: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. Cost-sharing: Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding.

Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: February 24, 1997.

Dell Pendergrast,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 97–4846 Filed 2–26–97; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Rehabilitation; Notice of Availability of Annual Report

Under Section 10(b) and Section 13 of Public Law 92–463 (Federal Advisory Committee Act), notice is hereby given that the Veterans' Advisory Committee on Rehabilitation Annual report for Fiscal Year 1995 has been issued.

The report summarizes activities of the Group relative to VA's rehabilitation program. It is available for inspection at two locations:

Federal Documents Section, Exchange and Gift Division, LM 632, Library of Congress, Washington, DC 20540

and

Department of Veterans Affairs, Vocational Rehabilitation and Counseling Service (28), 1800 G St. N.W., Room 501, Washington, DC 20420

Dated February 19, 1997.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 97–4827 Filed 2–26–97; 8:45 am]

BILLING CODE 8320–01–M

VA Innovations in Nursing Advisory Committee; Notice of Meeting

As required by section 10(a)(2) of the Federal Advisory Committee Act, the Department of Veterans Affairs (VA) hereby gives notice that the second meeting of the VA Innovations in Nursing Advisory Committee will be held March 3–4, 1997, in Room C7 at VA Headquarters, 810 Vermont Avenue, NW, Washington, DC. The March 3, 1997, session will convene at 9:00 a.m. and adjourn at 4:30 p.m. The March 4, 1997, session will convene at 8:00 a.m. and adjourn at 3:00 p.m.

The purpose of the committee is to study and formulate recommendations to the Under Secretary for Health on how VA can generally promote and support health care innovations in which nurses play key leadership and clinical roles and which promote VHA's reengineering efforts.

On March 3, the Committee will explore issues that impact on innovations in nursing. On March 4, the Committee will realign strategies to identify existing and potential innovations in nursing as well as barriers which impede innovations.

The meeting is open to the public. Public comment may be offered from 3:00 p.m. until 3:30 p.m. on March 3, 1997. Those who plan to attend or who have questions concerning the meeting should contact the Designated Federal Official for the Committee, Charlotte F. Beason, Ed.D., RN, at (202) 273–8422.

Dated: February 19, 1997.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 97–4825 Filed 2–26–97; 8:45 am]

BILLING CODE 8320–01–M

Veterans' Advisory Committee on Rehabilitation; Notice of Meeting

The Department of Veterans Affairs gives notice that a meeting of the Veterans' Advisory Committee on Rehabilitation, authorized by 38 U.S.C., Section 3121, will be held on March 11, 12, and 13, 1997, in Washington, DC. The committee will meet from 9 a.m. to 4:30 p.m. on March 11 and 12, and from 9 a.m. to 12 noon on March 13, 1997. The meeting will take place at the Department of Veterans Affairs Central Office, Room 230, 810 Vermont Avenue, NW, Washington, DC. The purpose of the meeting will be to review the administration of veterans' rehabilitation programs and to provide recommendations to the Secretary.

On Tuesday, the Committee will discuss the progress of the reengineering plan for VA's Vocational Rehabilitation and Counseling Program. On Wednesday, the Committee will hold a joint meeting with the Committee on Prosthetics and Special Disabilities Programs. On Friday, the Committee will hold a planning session and discuss future projects of the Committee.

The meeting is open to the public. Those wishing to attend should contact Theresa Boyd at 202–273–7412 prior to March 7, 1997.

Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before or within 10 days after the meeting. Oral statements will be heard at 3:30 p.m. on March 12, 1997.

Dated: February 19, 1997.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 97–4826 Filed 2–26–97; 8:45 am]

BILLING CODE 8320–01–M

federal register

Thursday
February 27, 1997

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 201, 330, and 358
Over-the-Counter Human Drugs; Proposed Labeling Requirements; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 201, 330, and 358

[Docket Nos. 96N–0420, 92N–454A, 90P–0201, and 95N–0259]

RIN 0910–AA79

Over-The-Counter Human Drugs; Proposed Labeling Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to establish a standardized format for the labeling of over-the-counter (OTC) drug products. FDA has determined that because the design and format of labeling information varies considerably among OTC drug products, consumers often have difficulty reading and understanding the information presented on OTC drug product labeling. The proposal is intended to enable consumers to better read and understand OTC drug product labeling and to apply this information to the safe and effective use of OTC drug products. This document supersedes the agency's proposed rule regarding the use of interchangeable terms, published in the **Federal Register** of March 4, 1996 (hereinafter referred to as the March 1996 proposal), and responds to the comments that were submitted to FDA as a result of that proposal (Docket No. 92N–454A). Accordingly, this document formally withdraws the March 1996 proposal. Finally, this proposal would preempt State and local rules that establish different or additional format or content requirements.

DATES: Submit written comments by June 27, 1997. Submit written comments on the information collection requirements by March 31, 1997.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Submit written comments on the information collection requirements to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, ATTN: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Diana M. Hernandez, Center for Drug Evaluation and Research, Division of OTC Drug Products (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

I. Introduction

Under the Federal Food, Drug, and Cosmetic Act (the act), OTC drug products must be safe and effective in order to be marketed. The agency is conducting a comprehensive review of these drug products, which are available to consumers without a prescription. As a result of this review, the agency has required specific language to be included in the labeling of many OTC drug products, describing the uses, directions, warnings, drug interaction precautions, active ingredients, and other information, so that consumers can use these products safely and effectively.

As a result of escalating health care costs and the increasing availability of OTC drug products, some of which were once available only by prescription, more consumers are engaging in self-medication. Thus, it is increasingly important that consumers read and understand the information on drug product labeling.

On January 6, 1993, the agency issued final regulations to help consumers read and understand the information on food product labeling (58 FR 2079). The new regulations, which provide for a standardized graphic presentation for food nutrients, were issued in response to the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) (Pub. L. 101–535, November 8, 1990). The 1990 amendments directed the Secretary of Health and Human Services to issue implementing regulations to:

> * * * require the required information to be conveyed to the public in a manner which enables the public to readily observe and comprehend such information and to understand its relative significance in the context of a total daily diet.

(Section 2(b)(1)(A) of the 1990 amendments)

This new, standardized format allows the consumer to judge the significance of the level of a particular nutrient in a particular food in the context of the total daily diet.

FDA believes it is equally important for consumers to be able to make reasoned decisions about the drugs they take. On August 24, 1995 (60 FR 44182), FDA proposed a comprehensive program to increase the distribution and quality of easy to read and easy to understand written information about prescription drugs to patients. Recently enacted legislation provides that various private entities will work to transform these goals into a satisfactory program. FDA is now proposing to improve the way that information on the labeling of OTC drug products is communicated.

The design, format, and placement of required labeling information varies considerably among OTC drug products. As a result, consumers often have difficulty finding, reading, and understanding this labeling information. Modifying and simplifying the manner in which the information is presented can improve the legibility and understandability of OTC drug product labeling. FDA is, therefore, proposing to establish a standardized format for the labeling of all marketed OTC drug products. This action is intended to enable consumers to better read and understand OTC drug product labeling and to apply this information to the safe and effective use of OTC drug products.

The agency is proposing five types of labeling changes for OTC drug products. First, the proposal would require that OTC drug product labeling include standardized headings and subheadings presented in a standardized order, as well as standardized graphical features such as the Helvetica type style, minimum standards for type size, leading (i.e., space between two lines of text), kerning (spacing between letters), upper and lower case letters, and graphical highlights.

Second, the proposal would permit manufacturers, packers, or distributors to delete specific terms, referred to for purposes of this rulemaking as "connecting terms," that are currently required in OTC drug product labeling. Holders of approved new drug applications (NDA's), antibiotic drug applications, and abbreviated new drug and antibiotic drug applications (referred to collectively in this document as "marketing applications") who wish to delete a "connecting term" in their labeling would also be permitted to delete the "connecting term" in accordance with 21 CFR 314.70. Typically, such terms are found within quotation marks in OTC drug monographs and in specific regulations. Deletion of these terms would only be permitted where deletion would not change the meaning of the information. Deletion of these terms would not be required but, rather, would be permitted as needed to simplify the presentation of labeling information (which is usually presented in a lengthy paragraph format), so that manufacturers, packers, distributors, or applicants can comply with the proposed, easier to read format.

Third, the proposal would expand the list of "interchangeable terms" found in the current regulations (§ 330.1(i) (21 CFR 330.1(i))), to facilitate the use of more concise, easier to understand

statements on the labeling of OTC drug products. Expanding the list of interchangeable terms would provide manufacturers, packers, distributors, or applicants with a broader choice of terms for a particular statement on the labeling. This proposed rule addresses the same interchangeable terms (as well as additional interchangeable terms) that were proposed on March 4, 1996 (61 FR 8450). Thus, this proposal formally withdraws the March 1996 proposal.

Fourth, the proposal would amend specific warning language required under current monographs and regulations (the pregnancy-nursing warning, the "keep out of reach of children" warning, and the overdose/accidental ingestion warning (§§ 201.63, 201.314(a) and (g)(1) (21 CFR 201.63, 201.314(a) and (g)(1)), and 330.1(g)) to make the warnings easier to understand and more concise.

Finally, in order to ensure that OTC drug product labeling is easier to read and understand, and to ensure the safe and effective use of OTC drug products, FDA is proposing to preempt State and local rules that establish different or additional format or content requirements than those in this proposed rule. The agency believes that such State and local requirements for OTC drug labeling would undermine the agency's objectives of ensuring the safe and effective use of OTC drug products through the use of a uniform easy-to-read format for all OTC drug product labeling.

II. Regulatory Scheme for OTC Drug Product Labeling

A. Current Statutory and Regulatory Requirements

The act and FDA's implementing regulations require specific information on the labeling of all OTC drug products. FDA regulations, including OTC drug monograph regulations, require information on the labeling of OTC drug products by product type (e.g., antacid, bronchodilator). Additionally, manufacturers, distributors, and packers may place the information required under OTC drug monographs in any format and order, as long as the information complies with the appropriate monograph and other applicable regulations. OTC drug products marketed under a marketing application must be labeled in accordance with the labeling approved in the application. As a result, the format of required labeling information varies considerably among OTC drug products.

Under section 502 of the act (21 U.S.C. 352), a drug is misbranded if the labeling does not contain: The name and place of business of the manufacturer, packer, or distributor and a statement of the quantity of contents in terms of weight, measure, or numerical count (section 502(b)); the established name, if any, of the drug, and the established name of each active ingredient if the drug is fabricated from two or more ingredients (section 502(e)); and adequate directions for use and adequate warnings against unsafe use (section 502(f)). In addition, a drug is misbranded if its labeling is false or misleading in any particular (section 502(a)), or if it is dangerous to health when used in the dosage or manner, or with the frequency or duration prescribed, recommended, or suggested in the labeling (section 502(j)).

The act also addresses the prominence and conspicuousness of drug product labeling. Section 502 of the act states that:

> A drug * * * shall be deemed to be misbranded—
>
> * * * * * * *
>
> (c) If any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

FDA has implemented the general labeling requirements under section 502 of the act in part 201 of the regulations (21 CFR part 201). Section 201.1 sets forth requirements with respect to the name and place of business of the manufacturer, packer, or distributor. Section 201.5 defines adequate directions for use as "directions under which the layman can use a drug safely and for the purposes for which it is intended." Adequate directions include a statement of all the manufacturer's intended uses of the drug (frequently termed "Indications"), quantity of dose, route or method of administration, and the frequency, duration, and timing of administration (§ 201.5). Section 201.10 sets forth requirements for ingredient information required by section 502(e) of the act.

Section 201.17 sets forth requirements concerning the location of expiration dating, which is required under the current good manufacturing practice (CGMP) regulations (§ 211.137 (21 CFR 211.137)). Section 201.18 requires a lot number "capable of yielding the complete manufacturing history of the package." A related CGMP regulation (§ 211.132 (21 CFR 211.132)) that applies to most OTC drug products requires a labeling statement alerting consumers to certain tamper-resistant packaging features (§ 211.132(c)).

Sections 201.60 through 201.62 define and set forth requirements for the principal display panel of OTC drug product labeling. The principal display panel is defined as the part of a label that is most likely to be displayed, presented, shown, or examined under customary conditions of display for retail sale. The information required to be on the principal display panel includes a statement of identity of the drug and the net quantity of contents of a drug. The statement of identity must include the established name of the drug, as well as the pharmacological category or principal intended action of the drug. If the drug is a mixture and has no established name, its general pharmacological actions or its principal intended actions must be stated (§ 201.61(b)). Under § 330.1(c)(1) (21 CFR 330.1(c)(1)), the statement of identity of a drug covered by an OTC drug monograph shall be the term or phrase used in the applicable monograph.

Under section 502(e)(3) of the act, the established name of a drug is generally derived from its official title in an official compendium. When the established name for a single or a multiple ingredient drug product is stated in terms of the active ingredient(s), the active ingredient(s) will appear on the principal display panel. However, when a multiple ingredient product does not have an established name, the active ingredients are not required to be placed on the principal display panel (§ 201.61(b)), but may be prominently placed on the back or side panel in accordance with section 502(e) of the act and §§ 201.10 and 201.15. Under § 330.1(j), the agency recommends that the labeling of a product contain the quantitative amount of each active ingredient, expressed in terms of the dosage unit stated in the directions for use (e.g., tablet, teaspoonful).

Current regulations also address the format of OTC drug product labeling, but do not require a specific print size or print style. For example, implementing regulations in § 201.15 describe a number of situations in which the agency considers information on a drug product's label as lacking the prominence and conspicuousness required by section 502(c) of the act. For example, a statement may lack the prominence and conspicuousness required by section 502(c) of the act by reason of, among others, "[s]mallness or style of type in which such word,

statement, or information appears, insufficient background contrast, obscuring designs or vignettes, or crowding with other written, printed, or graphic matter" (§ 201.15(a)(6)).

Section 201.61(c) requires that the statement of identity of an OTC drug product shall be in boldface type on the principal display panel, in a size reasonably related to the most prominent printed matter on such panel, and in lines generally parallel to the base on which the package rests as it is designed to be displayed. In some instances, the agency has required that warnings for certain OTC bronchodilator drug products shall appear in boldface type (§ 341.76(c)(6)(i) and (c)(6)(ii) (21 CFR 341.76(c)(6)(i) and (c)(6)(ii))).

In the **Federal Register** of March 13, 1995 (60 FR 13590), the agency issued final regulations (part 328 (21 CFR part 328)) that require the principal display panel of all alcohol-containing OTC drug products intended for oral ingestion to state the percentage of alcohol present in a product. Section 328.50(d) specifies that this information must appear in a size "reasonably related to the most prominent printed matter on the panel or label on which it appears * * *." This requirement is based on the agency's belief that consumers, especially those who wish to avoid or limit alcohol ingestion, need to be able to readily determine the alcohol content of OTC drug products at the time of purchase (60 FR 13590 at 13592).

Section 330.1(g) currently requires that the labeling of all OTC drugs contain the warning: "Keep this and all drugs out of the reach of children" and requires that drugs contain specific language outlining procedures to follow in case of accidental overdose for drugs administered orally, and in case of accidental ingestion for drugs administered topically or rectally. Sections 201.63 and 330.2 (21 CFR 330.2) require a warning for persons who are pregnant, or are breast feeding a baby, on the labeling of all OTC drugs intended for systemic absorption.

In addition to the warnings required under OTC drug monographs, the agency has specific warning requirements for certain ingredients in OTC drug products. Some examples are the Reye's syndrome warning for OTC aspirin and aspirin-containing drug products in § 201.314(h) and the warnings for water-soluble gums and related ingredients in § 201.319. These regulations mandate specifically worded warning statements for drugs containing sodium, mineral oil, wintergreen oil, ipecac syrup, acetophenetidin, salicylates, OTC drugs intended for minor sore throats, and guar gum, and address safety concerns associated with these ingredients and conditions. (See, e.g., §§ 201.64, 201.302, 201.303, 201.308, 201.309, 201.314, 201.315, and 201.319.) For example, § 201.315 requires in certain circumstances the following warning for OTC products intended for the temporary relief of minor sore throats:

"Warning—Severe or persistent sore throat or sore throat accompanied by high fever, headache, nausea, and vomiting may be serious. Consult physician promptly. Do not use more than 2 days or administer to children under 3 years of age unless directed by physician."

The agency has issued other warnings and caution statements for certain ingredients in OTC drugs in part 369 (21 CFR part 369) as "interpretative statements." These warnings and cautions are "suggested," because manufacturers are not required to use the specific text of the warnings on their products. These warnings are based on safety considerations associated with the ingredients to which they apply. Products that do not contain a similar warning to those suggested in part 369 are deemed to be misbranded under section 502(f) of the act.

The important warning information, as well as the other required or recommended labeling information, does not appear in the same location, in the same sequence, or in the same print size in the labeling of OTC drug products. The agency has determined that consumers would be able to use OTC drug products more effectively if this information appeared with sufficient prominence (at or above a specified minimum print size) and in a uniform location in the labeling of all OTC drug products. Such labeling uniformity is a major goal of this proposal.

B. Requirements for Labeling of Drugs Covered by an OTC Monograph

In addition to being subject to the general and specific labeling requirements, OTC drugs marketed under a final OTC drug monograph are subject to specific labeling requirements contained in the monograph. The general criteria for establishing adequate labeling for OTC drugs under a monograph are set forth in § 330.10(a)(4)(v) (21 CFR 330.10(a)(4)(v)). Under these criteria, labeling of OTC drugs must be clear and truthful, not misleading, and must state the intended uses, warnings, side effects, and adverse reactions associated with a product in "such terms as to render them likely to be read and understood by the ordinary individual, including individuals of a low reading comprehension level, under customary conditions of purchase and use."

The labeling requirements established in OTC drug monographs cover various categories of drug information, including the statement of identity, indications, directions, warnings, and drug interaction precautions. However, the specific information required to appear under these categories varies according to the therapeutic class, active ingredients covered by the monograph, and safety concerns. In addition, the labeling information is not required to appear in the same location, in the same sequence, or in the same print size. Thus, the format varies among drug products covered by the same OTC drug monographs. This proposal is intended to provide a uniform format so that consumers will be able to use OTC drug products more safely and effectively.

In the **Federal Register** of May 1, 1986 (51 FR 16258), FDA amended its policy (known as the exclusivity policy) for the labeling of OTC drug products (§ 330.1(c)) to allow the use of alternate, industry provided terminology in the "indications" section of OTC drug product labeling. The rule established three alternatives for stating the indications for use in OTC drug product labeling. The label and labeling of OTC drug products are required to contain, in a prominent and conspicuous location, either: (1) The specific wording on indications for use established under an OTC drug monograph, which may appear within a boxed area designated "APPROVED USES;" (2) other wording describing such indications for use that is truthful and not misleading, which shall neither appear within a boxed area nor be designated "APPROVED USES;" or (3) the approved monograph language on indications, which may appear within a boxed area designated "APPROVED USES," plus alternative language describing indications for use that is truthful and not misleading, which shall appear elsewhere in the labeling. The rule states that all required OTC drug labeling other than indications for use (e.g., statement of identity, and warnings) must appear in the specific wording established under an OTC drug monograph where exact language has been established and identified by quotation marks in an applicable monograph or by regulation (§ 330.1(c)(vi)).

C. Requirements for Labeling of Drugs Not Marketed Under an OTC Drug Monograph or a Marketing Application

Some OTC drug products are not currently marketed under an approved marketing application or a final OTC drug monograph. Many of these OTC drug products will become the subject of final monographs and, as discussed in section VI. of this document, they will then be subject to the labeling and format requirements in this proposed rule. Other products in this category that are, or become, the subject of pending marketing applications, would be required to submit labeling with their application in compliance with this rule.

III. The Need for Improved Labeling Design for OTC Drug Products

The labeling requirements for OTC drug products set forth specific wording for the information presented (e.g., directions for use, warnings, etc.) to consumers to ensure the safe and effective use of OTC drug products. FDA has examined representative examples of currently marketed OTC drug product labeling and has found that the design and format of labeling information varies considerably among these products. The agency has determined that consumers would have less difficulty reading and understanding the information if the labeling included uniform headings and subheadings presented in a standardized order, utilizing a minimum type size and other graphical features, and if certain required information could be made more concise.

While some manufacturers of OTC drug products have taken significant steps to improve the presentation of information on OTC drug product labeling, many of these products still have labeling that is difficult to read. In addition, consumers often have difficulty comparing the labeling on different products and deciding which product to purchase, because the information is not presented in the same format.

The agency has determined that a standardized format for OTC drug product labeling would improve legibility and understandability and enable consumers to become more familiar with the type and location of specific important labeling information, thus increasing consumer knowledge about the safe and effective use of OTC drug products. A standardized format would also improve the ability of consumers to compare products, thereby helping consumers select the appropriate product to meet their needs.

In reaching this determination, the agency has considered the increased use of OTC drug products in the marketplace and the changing patterns of use of these products by consumers. The agency also has considered comments that it has received from consumers expressing their concerns with the legibility and understandability of OTC drug product labeling. Additionally, the agency has reviewed literature studies that confirm consumers' concerns with current OTC drug product labeling. These studies recommend ways to improve legibility and understandability, discuss the importance of adherence to the "directions for use" and "warnings" sections of the labeling, and report on preventable adverse drug reactions from OTC drug products.

In the August 16, 1995 (60 FR 42578), **Federal Register** notice the agency sought comment on to what extent OTC drug labeling influences consumer judgements and behavior. No data or comments were submitted in response to this request. The agency also conducted a review of the literature on this issue. Although there is voluminous literature on the effects of labels on a variety of consumer products, there is little information about the influence of label variations regarding OTC drug products. Because the agency believes that this information is important and relevant to this proposed rule, the agency again seeks comment or submission of data or research relating to OTC drug labeling and its influence on consumer behavior and comprehension of label information.

During the comment period the agency intends to conduct research on the revised format compared to existing labeling. This research will focus on consumer reading and comprehension of the information from the revised format, compared to existing labeling. It will also examine consumers' reading of OTC drug labels under a variety of conditions for a variety of consumers (e.g., at various literacy levels). It will also examine the impact of new OTC label designs on comprehension of the intended messages. The research will also explore consumer judgments about OTC drug products for the intended population. Additionally, the agency intends to collect data relevant to overall judgments of the relative value of revisions in the OTC drug labeling format. The agency intends to seek public comment on the results relevant to the development of standardized format and content requirements prior to finalizing these provisions. After this rule becomes final, the agency intends to examine the consumer behavioral effects and the public health impact of imposed OTC drug labeling.

A. Changing Patterns of OTC Drug Use

OTC drug products are readily available and may be used without medical supervision. In recent years, more potent drugs have been switched from prescription to OTC status (e.g., cimetidine, naproxen sodium, ketoprofen, nicotine polacrilex, nicotine transdermal system, and minoxidil topical) and new uses have been approved for certain OTC drugs (e.g., acid reducer claims for several drug products, and hair growth claims for topical minoxidil). This trend of switching from prescription to OTC status is expected to increase in the future as the safety profile of many drug products becomes more established. Additionally, consumers are becoming more actively involved in their own health care. As a result, consumers are more likely to practice self-diagnosis and self-medication with OTC drug products. Thus, it is increasingly important that OTC drug product labeling provide consumers with uniform and understandable information for the safe and effective use of these products.

One important factor contributing to the increased use of OTC drug products has been rising health care costs. Hospital charges, physician fees, and the costs of prescription medications and other health-related products and services are higher and have risen faster than the associated costs of self-medication with OTC drug products. Today, four times as many health problems are treated by consumers with OTC drug products instead of seeing a physician, and 60 to 95 percent of all illnesses are initially treated with some form of self-care, including self-medication with OTC drug products (Ref. 1). Although 60 percent of the medications purchased by consumers in the United States are OTC, these purchases account for less than 2 percent of the U.S. health-care dollar, making it likely that, as a low-cost alternative, OTC drug use will continue to grow (Ref. 1).

Another significant factor contributing to the increased use of all drugs, including OTC drug products, is the advancing age of many consumers. The elderly comprise 12 to 17 percent of the population but consume about 30 percent of all medications (Ref. 1). The elderly are projected to consume as much as 50 percent of all medications by the year 2000 (Ref. 1).

B. Difficulties With Current Labeling

Although significant strides have been made in improving the legibility and understandability of OTC drug product labeling, there are still many products with labeling that is difficult to read. The agency has received numerous reports from consumers, health

professionals, patient advocacy organizations, literacy experts, and others stating their concerns about current OTC drug product labeling. Reports in the literature document similar concerns (Refs. 2 and 3).

Type size, letter and line spacing, contrast, print and background color, and type style are all factors that contribute to poor legibility of information (Refs. 3, 4, and 5). A recent study examined the effects of type size (vertical letter height) and horizontal letter compression on the legibility of OTC drug product labeling in persons 60 years of age and older (Ref. 3). The subjects were tested using three marketed OTC analgesics. The researchers found that a significant number of the elderly population could not adequately see the print on certain OTC product labels due in part to the small type sizes and high degree of horizontal compression (Ref. 3). Another study evaluated the visual acuity needed to read 25 marketed OTC drug product labels (Ref. 2) The authors found that the majority of labels required a visual acuity much greater than what is considered normal (Ref. 2). Another study found that 26.2 percent of the test subjects indicated difficulty reading print on product labels, even though over 90 percent of those tested reported always or sometimes reading the label (Ref. 6).

Visual acuity alone, however, is not the only consideration, because persons with normal vision report having trouble reading OTC drug product labeling (Ref. 3). Much of the informational text in OTC drug product labeling is specifically required by regulation and, on many products, the required text may be extensive. The information is often presented in a paragraph format that is unappealing to the eye and may cause the reader to lose interest.

In contrast, warnings in outline layout may have greater eye appeal, be easier to process, and be more effective than warnings in paragraph form (Ref. 7). An outline format may provide the reader with spatial cues as to the organization of the text and is likely to increase attention to the message (Ref. 7). Without the modifications presented in this proposed rule, it would be extremely difficult to organize labeling text to provide the spacial cues necessary to increase the appeal and visibility of the messages.

C. Problems With Adherence and Preventable Adverse Drug Reactions

OTC drug products are safe and effective when used as directed in the labeling. However, because of the changing patterns of OTC drug use, the potential for adverse drug reactions and misuse of OTC drug products is increasing. Although much of the data on the incidence of adverse drug reactions, including hospital or physician visits due to these reactions, does not distinguish between prescription and OTC drugs, inappropriate use of drug therapy generally is a major concern (Refs. 6, 8, and 9). Studies indicate that the elderly sometimes take OTC drug products for the wrong reasons (Ref. 10). This misuse has been attributed to the lack of information or misinformation from various sources (Refs. 3 and 11).

Additionally, the possibility of adverse drug interactions has increased because more new medications (as a result of prescription-to-OTC switches) are now available OTC and there are new OTC combination drug products for multiple symptoms. Consumers may not be aware that a particular prescription drug product that they are taking is in the same drug class as an OTC drug product that they are also taking. For example, a number of nonsteroidal anti-inflammatory drugs (NSAID) are marketed both as high-dose prescription anti-inflammatory arthritis treatments as well as lower dose OTC pain relievers/fever reducers. Patients who self-medicate with an OTC analgesic who are also taking a prescription NSAID place themselves at risk for NSAID-induced gastrointestinal problems (Ref. 12). Making OTC drug product labeling information easier to read and understand could ensure that patients become aware of this important information and avert potential problems.

D. FDA's Requests for Public Comment

During the past several years, many consumers have written to FDA to express concern about the legibility and understandability of OTC drug product labeling. Many individuals, especially the elderly, are concerned with small print size, print style, and lack of color contrast. Consumers stated that poor labeling legibility may cause them to select an improper dose, and, thus, may result in unsafe or ineffective use of the product. Consumers have also submitted comments to FDA about the print size of OTC drug product labeling in response to various OTC drug product rulemakings.

Additionally, the agency received a citizen petition requesting that FDA adopt regulatory standards for the size and style of print used for OTC drug product labeling. In response to consumer comments and the citizen petition, the agency published two requests for public comments in the **Federal Register** that related to the legibility and understandability of OTC drug product labeling. In addition, in an effort to solicit more information and views on specific aspects of OTC drug product labeling design that would improve communication to consumers, FDA held a public hearing on September 29, 1995. A discussion of the citizen petition, requests for comment, and the public hearing follows.

1. Citizen Petition and March 6, 1991, Request for Comments

Pharmacists Planning Service, Inc., petitioned FDA (Docket No. 90P–0201) to adopt regulatory standards for optimum size and style of print used for OTC drug product labeling. The petition stated that regulatory standards are needed to maximize readability of the print for persons with deteriorating vision, and because most people (especially the elderly) are unable to read the small print that currently appears on some OTC drug product labeling.

The petition requested that FDA adopt regulatory standards for the following reasons: (1) Medication misuse and abuse are serious and costly problems to patients, health providers, health care insurance plans, and Federal, State, and local governments; (2) prescription drugs continue to be switched to OTC status along with their attendant side effects and cautions on use; (3) OTC drugs are marketed in containers of all shapes and sizes, and the labeling bears instructions, cautions, and side effects associated with their use; and (4) most people, particularly the elderly, are unable to read the small print, which often includes vital information.

The petition also stated that:

> more than 240,000 older adults were hospitalized due to adverse drug reactions, mixing OTC drugs, which are available through sources other than a qualified health professional, and through lack of medical/pharmaceutical information on the proper method of administration of these medications.

The petition asserted that FDA regulatory standards could result in a $10 billion savings in hospital costs.

In response to this petition, and in an effort to determine what further steps needed to be taken, FDA published a notice to seek public comments on the feasibility of regulatory standards for the print size and style of OTC drug product labeling (hereinafter referred to as the March 1991 notice) (56 FR 9363, March 6, 1991). FDA also requested comments on whether any new labeling requirements would have a substantial economic impact on manufacturers.

FDA requested specific comments on the following issues:

(1) Are current print, sizes, types, colors, contrasts, and backgrounds of OTC drug product labeling adequate in providing readable information for individuals with normal eyesight and for those with poor or deteriorating eyesight?

(2) Should there be a mandatory minimum print size or other readability standard and, if so, what should it be? If the answer is yes, should this be established through a regulation or a guideline?

(3) Should a package insert or larger carton be mandatory if a minimum print size standard is implemented and, because of package size, the manufacturer is unable to meet the specifications?

(4) What impact would a Federal legibility/readability regulation have on State laws that relate to "slack-fill?"

(5) What relevant data are available and what studies have been performed to determine optimum print size, background, and contrast for package products?

(6) What adverse effects have been documented that are associated with the inability or failure to read labels on OTC drug products?

(7) Will the Nonprescription Drug Manufacturers Association's (NDMA's) guidelines be effective and have a positive impact on labeling and, if so, are these guidelines adequate so that a Federal regulation or guideline is not needed?

FDA received 57 comments on the March 1991 notice (see Docket No. 90P–0201). About half of these comments were from consumers and favored larger or more readable print. Congressional representatives, professional organizations, manufacturers, health professionals, health departments, universities, a nursing home, a hospital, and a trade association expressed strong support for new FDA regulations. In contrast, a professional organization, a trade association, and several OTC drug product manufacturers preferred limited regulation or guidelines.

Some comments attached studies or documents on readability. One document discussed the loss of visual acuity with increased age, and concluded that size, color, and background of OTC product labeling are important. One study involving 36 students and 29 elderly subjects concluded that the results showed that labeling of small bottles need not be restricted to bottle surface area, but can be incorporated on wings and tags attached to the label.

One comment, which favored voluntary guidelines, included a number of suggestions concerning inserts, slack-fill laws, and larger packages. The comment submitted a publication that analyzed print size and style used in publications and listed 30 suggested guidelines for print, including type selection, size, line leading, proportional spacing, line width, columns, paragraphing, etc. The comment also submitted parts of a text that discussed legibility, color, surface, spatial arrangement, and position of printing.

NDMA, a trade group representing manufacturers of OTC drug products, agreed that efforts should be made to enhance labeling legibility, and submitted several references dealing with print size and style. NDMA stated that it had established a Special Task Force on Label Readability and had distributed guidelines to its membership as part of industry's voluntary program to enhance readability of OTC drug product labeling. NDMA also stated that it had held a briefing session for the entire industry, which was open to the public, to explain and help implement the guidelines.

NDMA stated that its guidelines provide for enhanced readability of OTC drug product labeling by addressing improvements in print size, type, style, colors, contrasts, and backgrounds. NDMA's guidelines, in 1991, recommended a minimum of 4.5 point type, where package size and copy requirements prohibit larger print. (These guidelines were revised in 1995, however, to recommended 6 point type, with 4.5 type as an absolute minimum in very small packages where space does not allow 6 point type.) NDMA claimed, however, that it is unreasonable to assume that all labeling can be made easily readable to all persons with poor or deteriorating eyesight.

NDMA also stated that there is a need for national uniformity in slack-fill laws because multiple State laws could be inconsistent or contradictory with each other and with Federal requirements for print size.

One comment submitted an investigative survey of consumers' ability to read OTC drug product labeling printed with the minimum type sizes recommended by NDMA's guidelines. According to the comment, the survey demonstrates that a significant proportion of the adult population over 20 years of age is not able to read OTC drug product labeling with 4.5 point minimum type size, and that only 48 percent of the public who currently purchase OTC medications are able to read labels with the 4.5 point minimum type size. People over 51 years of age have the most trouble reading labels with the 4.5 point type size—only 32 percent were able to read it—and only 63 percent of people under age 51 were able to read the labels.

The comment asserted that although 80 percent of all those surveyed were able to read 6 point reverse type size (which was NDMA's suggested minimum type size for white print on colored background), only 68 percent of the people over 51 were able to read the 6 point reverse type size. Thus, the comment recommended that FDA not accept NDMA's guidelines on minimum type size until further research and testing of consumers' ability to read labels are completed.

2. Public Hearing and August 16, 1995, Request for Comments

In an effort to solicit more information and views on specific aspects of OTC drug product labeling design that would improve the communication of labeling information to consumers, FDA published a notice in the **Federal Register** (August 16, 1995 (60 FR 42578)), announcing a public hearing on OTC drug product labeling issues. The notice stated that the hearing would address consumer use, legibility and consumer comprehension of OTC drug product labeling, OTC drug product labeling design features, and behavioral issues. The notice requested comments from the public about whether FDA should set standards for type size, color, contrast, type style, spacing, white space, uppercase and lowercase letters, and boldface letters.

FDA stated in the notice that a standardized format would help consumers know what information to look for and where to find it. The agency requested comments on the communication benefits that a uniform, standardized OTC drug product labeling format would provide to consumers. The agency also requested comments about what features should be made consistent on a standardized labeling format (e.g., order of information, major headings or subheadings for information, the use of lines or boxes around information, and certain labeling statements).

Recognizing that proposing a standardized format could necessitate revisions to many of the existing monographs, FDA published a subsequent notice in the **Federal Register** of September 14, 1995 (60 FR 47752), requesting comments on the process that should be followed by FDA to ensure that any revisions would be

completed in an efficient and expedient manner.

The public hearing was held on September 29, 1995, and included presentations from 22 panelists including representatives from government agencies, universities, industry associations, consumer associations, and corporations. The agency accepted written comments on the notice and the docket until October 30, 1995. Following the public hearing, the agency's Nonprescription Drugs Advisory Committee held a public meeting to further discuss OTC drug labeling issues. (Transcripts of the Advisory Committee meeting are available from the Freedom of Information Staff (HFI–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.) A summary of the presentations made at the public hearing and the comments submitted in response to the notice follows:

a. *NDMA's comments.* NDMA supported FDA's initiative to improve OTC drug product labeling, and stated that:

> [b]y establishing mandatory standard headings and subheadings and a mandatory standard order for these headings, simplifying warnings, reducing duplicative and complex wording, and assuring a label that will be uniform throughout the United States, FDA can help to reduce label clutter and promote greater consumer use of label information.

NDMA recommended that FDA adopt uniform headings and subheadings for "mandatory information" pertaining to active ingredients, actions, uses, directions, and warnings, and that FDA adopt a standardized order for these headings and subheadings. NDMA also recommended that FDA combine contraindications, warnings, precautions, adverse reactions, and other similar information under one general heading titled "Warnings." In addition, NDMA recommended that the following subheadings be included under the "Warning" heading: Complete contraindications; warnings that depend upon a doctor's advice based on the physical condition of the consumer; warnings that relate to pregnancy and nursing, concurrently taking other drugs, or dietary restrictions; in-use precautions; warnings for topical products; and warnings concerning the use of the terms "doctor" or "health professional."

NDMA recommended a 6 point or greater type size, or 4.5 point as an "absolute minimum." NDMA also recommended the use of bullet points, but did not support mandatory pictograms. NDMA endorsed FDA's current practice of not requiring symbols or pictograms but rather permitting their voluntary use in addition to required warning language. In addition, NDMA recommended that FDA make available an expanded list of alternative words and phrases for OTC labeling terminology.

NDMA also recommended that FDA mandate a uniform national system because multiple State laws could be inconsistent or contradictory with each other and with Federal requirements. NDMA stated that dual, national and State labeling regulations, could confuse the public, undermine the credibility and effectiveness of FDA, create costly and burdensome barriers to interstate commerce, and expose companies to potential product liability suits. NDMA stated that "[n]ational uniformity is consistent with principles of federalism and will prevent the prospect of fifty 'mini-FDA's' applying a plethora of differing and inconsistent standards that would hinder implementation of FDA's own regulatory scheme."

Finally, NDMA urged FDA not to amend any monographs for OTC drug ingredients as part of this rulemaking because "to do so would lengthen the regulatory process and possibly undermine support for a prompt and efficient relabeling process."

b. *Other comments.* Other comments from individuals, drug companies, and professional associations generally supported FDA's efforts to improve the legibility and understandability of OTC drug product labeling, and most comments supported FDA's recommendation for a standardized format. Many comments endorsed NDMA's recommendations. Most comments did not support a monograph-by-monograph review of OTC drug products to determine what labeling revisions should be made.

Several comments supported the use of color, boxed warnings, pictorials, high contrast, and symbols. Some comments stated that specifying font size is not enough, and that FDA should specify stroke width, color, letter-line spacing, types of fonts, line height, and compression. Other comments recommended that FDA propose standards for the frequency of words, sentence length, and word length. One comment recommended that ornate typefaces, italics, and capitalization of entire words should be prohibited, and that FDA should establish clear standards for leading, contrast, and substrate (i.e., material and finish of the label).

Several comments provided suggestions on how to address the readability and legibility concerns of the elderly population. One comment requested that a bold black box containing the drug's expiration date, lot number, and other important information, such as major drug interactions or warnings, be prominently displayed in the labeling of OTC drug products. One comment stated that, although larger type is preferable, the legibility of text in small copy can be enhanced by using highlighted words, delineation, and paragraphing, without actually increasing text size. The comment stated that the stronger the contrast between the color of the text and the color of the background, the easier it is for the elderly to read the text.

One comment recommended 12 point type as the smallest type size for elderly people. Because the comment recognized that 12 point type is not possible for many OTC drug product labels, the comment urged FDA to consider a sliding scale of typeface sizes based on the size of the product package. One comment stated that 48 percent of adults are not able to read the 4.5 point type, and recommended that the type be at least 6 point.

Several comments asserted that OTC drug product labeling needs to be simplified, so that adults with a low reading comprehension will be able to understand the information. One comment stated that FDA should require a consumer mailing address on all OTC drug product labels so that consumers can write to the company with questions. The comment stated that FDA should not require a toll free phone number because it would be an unreasonable cost burden for small companies.

A comment submitted on behalf of the Uniform Code Council, administrator of the Universal Product Code (U.P.C.), stated that if FDA were to mandate a smaller U.P.C. symbol, it would make product scanning more difficult and would require product manufacturers to relabel at an enormous cost.

A comment from the Cosmetic, Toiletry, and Fragrance Association (and endorsed by NDMA) stated that cosmetic drugs that do not bear dosage limitations should not be required to list active ingredients before the inactive ingredients. The comment contended that the names of most of the active ingredients contained in such products do not have any meaning to most consumers, except in specific situations where those consumers have been advised by a doctor to avoid a specific ingredient or want to do so for other reasons. The comment stated, however, that even in those situations, such consumers are accustomed to examining the list of ingredients to look for that ingredient.

IV. Efforts to Improve the Design of OTC Drug Product Labeling

A. FDA Efforts

On August 17, 1995, FDA met with NDMA, at NDMA's request, to discuss proposed labeling changes for OTC drug products. At this meeting, NDMA representatives presented a proposal for text simplification (i.e., the use of words understood by persons of low comprehension, and a reduction in the number of words through text consolidation) of the pregnancy-breast feeding warning and the drug interaction precaution statement for OTC drug monograph ingredients.

In February 1996, FDA conducted a focus group study to investigate participant's perceptions of risks and benefits of prescription and OTC drugs (Ref. 13). The study looked specifically at how the participants react to different wording, claims, and statements contained in prescription and OTC drug product labeling. In addition, the study looked at the format and order of the information contained in the labeling. Participants confirmed that it would be beneficial to emphasize side effects and warnings, either by using bullets, bold type, block lettering, or larger type. Although there was no consensus about the best placement order for the information, the participants agreed that "simple" directions would be beneficial. In addition, participants stated that they wanted labeling information to be in "plain English" so they could better understand what the ingredients were, and how the drug works. Participants stated that this increased knowledge would help to alleviate their concerns of any health risk from taking the drug.

B. States' Efforts

In addition to FDA's efforts, the State of California has taken steps to improve the readability of OTC drug product labeling. On September 12, 1990, the Governor of the State of California signed a bill (AB 2713) to amend the Health and Safety Code regarding the labeling of OTC drug products. Section 1 of the bill states that printed materials on labels and notices packaged with OTC drug products may be difficult to read, presenting a potential danger to the health and safety of customers.

Section 2 of the bill adds the following to the State's Health and Safety Code: (1) Manufacturers of nonprescription drugs that are sold in the State of California shall evaluate and may modify the labeling of nonprescription drugs to maximize the readability and clarity of label information, in both the cognitive and visual sense; (2) NDMA shall report on a quarterly basis to, and seek advice periodically from, the California State Department of Health Services, consumer groups, health professionals, and drug manufacturers regarding the progress made by the nonprescription drug industry with respect to the readability and clarity of labeling information; and (3) the Director of the California State Department of Health Services shall report to the legislature regarding the progress made by the nonprescription drug industry with respect to the readability and clarity of labeling information. The effective period of the bill has now lapsed.

C. Industry Efforts

NDMA has taken steps to improve OTC drug product labeling. NDMA endorsed the California legislation and, recognizing the difficulty in reading OTC drug product labeling, appointed a task force on labeling to: (1) Explore the issues associated with label readability, and (2) evaluate the need and opportunity to make labels more easily read and understood by the public. The task force made recommendations on options to achieve such labeling, including type-size, print, style, color, contrast, package inserts, and special larger size packages.

NDMA has also worked with FDA in an effort to improve the legibility of OTC drug product labeling. NDMA issued "Label Readability Guidelines" that identify specific technical factors that can be addressed to improve the readability of OTC drug product labels. These guidelines cover major elements of readability pertaining to layout and design (e.g., information placement, hyphenation, uppercase/lowercase letters, paragraphs) and typography and printing (e.g., type size and style, contrast, printing process, color). The guidelines state that no single factor can determine readability by itself because the total effect of all factors must be considered. Because OTC drug product labeling is still difficult to read and understand, despite the voluntary guidelines, NDMA has urged FDA to adopt new regulations.

FDA has also worked individually with a number of companies in their efforts to improve labeling readability and understandability.

V. Description of the Proposed Rule

The proposed rule would establish a standardized labeling format for all OTC drug products and require manufacturers to revise the format and content of current OTC drug product labeling. The proposed rule would not, however, apply to the format or content of the principal display panel. The proposed rule would establish Federal preemption of State and local laws, rules, regulations, or other requirements for OTC drug product labeling content or format that are different from or in addition to those required by FDA. As proposed, this preemption would not include statutory or common law causes of action in tort, based on the format or content of OTC drug product labeling. The agency is, however, specifically requesting comment on several aspects of the scope of the preemptive effect of this regulation.

A. Scope

The proposed format and general content requirements would apply to OTC drug products that are the subject of a pending marketing application, OTC drug products marketed under an existing final OTC drug monograph, and OTC drug products marketed under an approved marketing application. The proposed requirements would also apply to marketed products pending under the monograph review process when the applicable monograph is finalized.

The proposed rule would not apply to any drug labeled as being homeopathic and which is also listed in the Homeopathic Pharmacopeia of the United States (H.P.U.S.). The labeling of such products is addressed in FDA's Compliance Policy Guide 7132.15, "Conditions Under Which Homeopathic Drugs May Be Marketed."

As discussed in section II. of this document, OTC drug products marketed under a final OTC drug monograph are subject to the specific labeling requirements contained in the monograph (21 CFR part 330). The agency is proposing that where an OTC drug product is the subject of an applicable final monograph or regulation that contains content and format requirements that conflict with proposed § 201.66, then the format and content requirements in § 201.66 must be followed. For example, where a final monograph states that the indications for use must be listed under the heading "Indications," such a monograph provision would be superseded by proposed § 201.66(c)(3) requiring that indications for use must be listed under the heading "Uses."

In the January 15, 1997, **Federal Register** (62 FR 2218), the agency issued a final rule requiring a specific warning statement in the labeling of drug products in solid dosage form that contain iron or iron salts as an active

ingredient. Although the agency currently is not aware of any marketed OTC drug products that would require such a statement, the agency recognizes that there may be conflicts with the provisions set forth in this proposed rule and the iron final rule. Conforming amendments regarding iron-containing drug products would be proposed and finalized prior to the implementation of the provisions set forth in this proposed rule.

B. Definitions

Proposed § 201.66(b) would define "active ingredient" as:

> any component that is intended to furnish pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease, or to affect the structure or any function of the body of humans or other animals. The term includes those components that may undergo chemical change in the manufacture of the drug product and be present in the drug product in a modified form intended to furnish the specified activity or effect.

This definition is consistent with the definition of active ingredient in § 210.3(b)(7) for the CGMP regulations.

As set forth in section 502(e)(3) of the act, proposed § 201.66(b) would define "established name" of a drug or active ingredient as the applicable official name designated under section 508 of the act (21 U.S.C. 358), or, if there is no designated official name and the drug or active ingredient is recognized in an official compendium, the official title of the drug or active ingredient in such compendium, or if there is no designated official name and the drug or active ingredient is not recognized in an official compendium, the common or usual name of the drug or active ingredient.

Proposed § 201.66(b) would define "ingredient" as any substance in the drug product, whether added to the formulation as a single substance or in admixture with other substances. This definition is consistent with the definition of ingredient in § 201.10(b).

C. Content Requirements

As discussed in sections II.A. and II.B. of this document, the act and implementing regulations require that certain information (such as the established name of the active ingredients, the statement of identity, adequate directions for use, and adequate warnings against unsafe use) appear in OTC drug product labeling. OTC drug monographs require that specific information be included in the labeling of OTC drug products, depending on the therapeutic class and active ingredients covered by the monograph. The agency has also issued regulations that require specific OTC drug products to bear certain warnings. Drugs marketed under an approved marketing application must the labeled in accordance with the labeling approved in that application.

Because the content and format of OTC drug product labeling varies depending on the drug product, consumers often have difficulty finding, reading, and understanding the information. As discussed in section III. of this document, the agency has solicited comments from industry in order to develop a standardized format that would facilitate the readability and understandability of the information presented in OTC drug product labeling. Based on these comments and other information currently available to the agency, the agency is proposing, in § 201.66(c)(1) through (c)(7), that the outside container or wrapper of the retail package (or the immediate container label if there is no outside container or wrapper) of OTC drug products contain the labeling information required in final OTC drug monographs or in approved marketing applications in the order listed in paragraphs (c)(1) through (c)(7), with the appropriate headings and subheadings listed below. The agency is also proposing that the interchangeable terms and the connecting terms listed in proposed § 330.1(i) and (k) shall apply both to the OTC drug monographs set forth in part 331 *et seq.*, and to the OTC drug product labeling requirements provided in part 201. In the case of OTC drugs marketed under a new drug or antibiotic drug application, the use of the these terms to change approved labeling, and the use of the proposed format to change approved labeling, would have to be accomplished in accordance with § 314.70.

Proposed § 201.66(c)(1) would require the section heading **"Active Ingredient (In Each [insert type of dosage unit]):"** or **"Active Ingredients (In Each [insert type of dosage unit]):"**, followed immediately by the established name of each active ingredient. For example, the heading would read, **"Active Ingredient (In Each Tablet):"**. Other dosage units could include capsule, suppository, or per 5 milliliter (mL) dose or per teaspoon. For other products marketed without discrete dosage units (e.g., most topicals), the section heading would read **"Active Ingredient" or "Active Ingredients"**. The quantity, proportion, or concentration of each ingredient per dosage unit, if contained in or if required to appear in the labeling, would appear after the established name of each active ingredient. The agency believes that specifying the amount or concentration of active ingredient per dosage unit would provide consumers with information they need to understand how much active ingredient is contained within each unit in the package. This information would allow consumers to make better product comparisons and to have greater information regarding proper dosing, thereby ensuring safe and effective use.

Section 502(e) of the act requires that drug product labeling contain the established name of each active ingredient for drugs fabricated from two or more ingredients. OTC products that are fabricated from two or more ingredients are not currently required to contain a statement of the quantity of each active ingredient unless the product contains one of the ingredients specifically listed in section 502(e)(1) of the act. Current regulations recommend that the labeling of OTC drug products contain the quantitative amount of each active ingredient per dosage unit in the "Directions for Use" section of the labeling (§ 330.1(j)). Given the customary conditions under which most consumers of OTC drugs must make a product selection decision, the agency believes that the quantity of each active ingredient within a dosage unit should appear prominently on the labeling. In order for consumers to distinguish among products within a pharmacological category, and select the appropriate product to meet their needs, such information is essential and therefore may be required under sections 201, 502, 505, 507, and 701 of the act (21 U.S.C. 321, 352, 355, 357, and 371). The agency specifically invites comments from the public on this point.

Proposed § 201.66(c)(2) would require that all OTC drug product labeling include the heading **"Purpose:"** or **"Purposes:"**, followed by an accurate statement of the general pharmacological category(ies) or the principal intended action(s) of the drug, or, where the drug consists of more than one ingredient, the general pharmacological categor(ies) or the principal intended action(s) of each active ingredient. The information contained after the **"Active Ingredient(s)"** and **"Purpose"** heading would be required to be consistent with the information provided in the applicable OTC drug monographs.

For products that contain more than one active ingredient, the information would be required to be presented in such a way as to make it obvious to the reader which active ingredients are associated with each purpose listed. The proposed rule would require that the **"Active Ingredient"** heading and information be presented immediately adjacent and to the left of the **"Purpose"** heading and information (proposed § 201.66(d)(5)). The agency is also proposing that where there is more than one active ingredient, the active ingredients be listed in alphabetical order (proposed § 201.66(d)(5)).

An example of how labeling requirements proposed in § 201.66(c)(1) and (c)(2) would appear follows:

Active Ingredients (In Each Tablet):	**Purpose:**
Chlorpheniramine Maleate 2 mg	Antihistamine
Dextromethorphan 15 mg	Cough suppressant
Pseudoephedrine HCl 30 mg	Nasal decongestant

In the example, there are three active ingredients, listed in alphabetical order, followed by the amount of each ingredient per dosage unit, and the purpose for each active ingredient. The purpose is presented in such a way as to make it obvious to the reader which active ingredients are associated with each purpose listed.

Section 201.64 (to become effective on April 22, 1997) will require that OTC drug products intended for oral ingestion that contain 5 milligrams or more of sodium per single recommended dose, state the sodium content per dosage unit on the labeling. Section 201.64(b) will require that the sodium content per dosage unit be listed on a separate line after the heading "Sodium Content" as the last statement in the ingredients section. In the **Federal Register** of April 22, 1996 (61 FR 17807), the agency proposed similar provisions for the labeling of products containing more than specified amounts of calcium, magnesium, and potassium, per single dose.

The agency requests comment on the presentation of this information within the proposed labeling format. For example, information regarding the quantity of sodium, calcium, magnesium, and potassium, could be listed under the heading entitled "Dietary Information." Alternatively, this information could be listed under the heading "Other Information," discussed below. The agency recognizes that the placement of this information within the proposed labeling format may require a conforming amendment to § 201.64. FDA intends to include dietary information on the various formats that will be tested during the comment period.

Proposed § 201.66(c)(3) would require that all OTC drug product labeling include the section heading **"Use:"** or **"Uses:"**, followed by the indication(s) for the drug product. An example of how this would appear on the labeling is as follows: **"Use:** Aids in the prevention of dental cavities" (§ 355.50(b)). Another example would be:

Uses: For the temporary relief of these cold symptoms
- * sneezing
- * nasal congestion, stuffiness
- * runny nose
- * cough

Proposed § 201.66(c)(4) would require that all OTC drug product labeling include the heading **"Warning:"** or **"Warnings:"**, followed by one or more of the specific warning subheadings (proposed § 201.66(c)(4)(i) through (c)(4)(viii)), if applicable.

Proposed § 201.66(c)(4)(i) would require, where appropriate, the subheading **"Warning:"** or **"Warnings:"**, followed by any specific warnings that are required for certain products. Such warnings are currently required to appear as the first warning(s) under the heading **"Warnings"**, such as the Reye's syndrome warning for aspirin and aspirin-containing drug products that reads "WARNING: Children and teenagers should not use this medicine for chicken pox or flu symptoms before a doctor is consulted about Reye syndrome, a rare but serious illness reported to be associated with aspirin" (§ 201.314(h)(1) and (h)(2)). This section would also require that, where appropriate, the subject of the warning be specified in the subheading before the word **"Warning"**, for example, **"Allergy Warning:"** and **"Alcohol Warning:"** for certain OTC analgesics.

Proposed § 201.66(c)(4)(ii) would require, where appropriate, the words **"Do Not Use:"**, followed by any contraindications for the use of the product. These contraindications are "absolute" and are intended specifically for situations where consumers are urged not to use the product unless a prior diagnosis has been established by a physician or for situations in which consumers are urged not to use the product under any circumstances regardless of whether a doctor or health professional is consulted. "Absolute" contraindications under this subheading would include the need for a diagnosis of asthma prior to the use of an OTC bronchodilator drug product, monoamine oxidase inhibitor interactions, or allergies to active or inactive ingredients when there is no specific allergy warning heading. For example, this subheading would contain the following for OTC bronchodilator drug products (§ 341.76(c)(1)): **"Do Not Use:** this product unless a diagnosis of asthma has been made by a doctor." And this subheading would contain the following statement for a nasal decongestant drug product: **"Do Not Use:** this product if you are now taking a prescription monoamine oxidase inhibitor (MAOI) (certain drugs for depression, psychiatric or emotional conditions, or Parkinson's disease), or for 2 weeks after stopping the MAOI drug. * * * " (§ 341.80(c)(1)(D)). Another example, for eyewash drug products, would be, **"Do Not Use:"** followed by the warning "Obtain immediate medical treatment for all open wounds in or near the eyes" (§ 349.78(c)(2)).

Proposed § 201.66(c)(4)(iii) would require, where appropriate, the words **"Ask a Doctor Before Use"** immediately followed by one or more specific warning subheadings (proposed § 201.66(c)(4)(iii)(A) through (c)(4)(iii)(C)), as appropriate. These specific warnings are intended for situations where consumers should not use the product until a doctor is consulted. Warnings under this heading

include those that contain phrases such as "unless directed by a doctor," "without first consulting your doctor," and "except under the advice and supervision of a doctor."

Proposed § 201.66(c)(4)(iii)(A) would require, where appropriate, the words **"If You Have:"**, followed by any warnings for persons with certain preexisting conditions (excluding pregnancy, which is discussed under proposed § 201.66(c)(4)(vi) and warnings for use in persons experiencing certain symptoms). Examples of preexisting conditions that would be included are disease states or conditions, such as **"If You Have:** heart disease, high blood pressure, thyroid disease, diabetes, or difficulty in urination due to enlargement of the prostate gland" (§ 341.80(c)(1)(i)(C)). This example, when presented under the proposed format, would appear as follows:

Ask a Doctor Before Use:
If You Have:
* Heart disease
* High blood pressure
* Thyroid disease
* Diabetes
* Difficulty in urination due to enlargement of the prostate gland

Proposed § 201.66(c)(4)(iii)(B) would require, where appropriate, the words **"If You Are:"**, followed by any drug/drug interaction warnings and drug/food interaction warnings. An example of when this warning would be used is:

Ask a Doctor Before Use:
If You Are:
* Taking sedatives or tranquilizers
* On a sodium restricted diet

Proposed § 201.66(c)(4)(iii)(C) would require, as an alternative, and where appropriate, the words **"If You:"**, followed by a combination of the warnings in paragraphs (c)(4)(iii)(A) and (c)(4)(iii)(B) of this section. For example, this heading would be appropriate if there is only one disease state or condition and one drug/drug interaction or drug/food interaction. An example is:

Ask a Doctor Before Use:
If You:
* Have kidney disease
* Are taking other drugs

Proposed § 201.66(c)(4)(iv) would require, where appropriate, the words **"When Using This Product:"**, followed by the side effects that the consumer may experience, and the substances or activities to avoid while using the product (for example, alcohol, operating machinery, or driving a car). An example is:

When Using This Product:
* Use caution when driving a motor vehicle or operating machinery

Proposed § 201.66(c)(4)(v) would require, where appropriate, the words **"Stop Using This Product If:"** followed by any signs of toxicity and other serious reactions that would necessitate the immediate discontinuation of use of the product, followed by the words **"Ask a doctor. These may be signs of a serious condition."** An example is:

Stop Using This Product If:
* Nervousness, dizziness, or sleeplessness occurs.

Ask a doctor. These may be signs of a serious condition.

The last two sentences would be required to be highlighted by bold type and indented under the **"Stop Using This Product If:"** heading. Alternatively, if there is only one sign of toxicity or serious reaction, this statement would read:

Stop Using This Product If: * * *
Ask a doctor. This may be a sign of a serious condition.

Proposed § 201.66(c)(4)(vi) would provide that any required warnings that do not fit within one of the categories of warnings listed in proposed 201.66(c)(4)(i) through (c)(4)(v), (c)(4)(vii), and (c)(4)(viii) must appear as a separate subsection, without a heading or subheading, after the information appearing under proposed § 201.66(c)(4)(v). For example, a "For external use only" warning would appear after the information in the **"Stop Using This Product If:"** section.

Proposed § 201.66(c)(4)(vii) would require, where appropriate, the warning statement for women who are pregnant or breast-feeding a baby, as set forth in § 201.63 and as amended in this proposal. The agency is proposing to amend the pregnancy-nursing section heading and warning statement in response to comments submitted by NDMA (see Docket No. 95N–0259) and to make the warning more concise and understandable. The revised warning statement in § 201.63 would state "If pregnant or breast-feeding, ask a health professional before use." The revised section heading would state "Pregnancy-breast feeding warning."

Proposed § 201.66(c)(4)(viii) would require, where appropriate, the "keep out of reach of children" warning and the accidental overdose or ingestion warning, as set forth in §§ 201.314(a) and (g)(1), 330.1(g), and as amended in this proposal. The agency is proposing to amend the "keep out of reach of children" and the accidental overdose or ingestion warning statements to make them more concise and understandable.

Furthermore, the agency is proposing to delete the recommendation to contact a poison control center because poison control centers do not exist in every State, and thus are not always accessible to all consumers. Instead, the revised recommendation reflects the idea that consumers generally may receive advice on overdose situations by contacting other medical professionals who may be more readily available to the consumer.

The revised overdose warning statements in § 330.1(g) would state: "The labeling of drugs used by oral administration shall also state: 'In case of overdose, get medical help right away.'" If required, the labeling for all drugs used topically, rectally or vaginally, and not intended for oral ingestion, shall state: "If swallowed, get medical help right away." However, for the specific category of topical drugs that are intended for oral use, the agency recognizes that the statement "If swallowed, get medical help right away," may be confusing to consumers who might think that any swallowing of the product during normal use may be dangerous. Therefore, to clarify to consumers that excessive amounts of the product should not be swallowed, labeling of topical drugs which are intended for oral use shall state, "If more than used for * * * is accidentally swallowed, get medical help right away" (see final rule for OTC anticaries drug products, 61 FR 52285 at 52286, October 7, 1996). The agency is also proposing to amend § 201.314(a) and (g)(1) to conform to this new, more concise, overdose warning.

The revised "keep out of reach of children" warning statements in §§ 201.314(a) and (g)(1), and 330.1(g) would state: **"Keep out of reach of children."** The agency is proposing to require this statement to be in bold print.

The agency also intends to revise §§ 369.20 and 369.21 to conform to these revised warning statements at or before the time that this proposed rule is finalized.

Proposed § 201.66(c)(5) would require that all OTC drug product labeling include the word **"Directions:"**, followed by the appropriate directions for use. The proposal would require that the directions conform with the appropriate final OTC drug monograph or the approved application.

Proposed § 201.66(c)(6) would require, where appropriate, that OTC drug product labeling include the heading **"Other Information:"** followed by additional information that is not included under proposed § 201.66(c)(1) through (c)(5), but is required by or is optional under an applicable OTC drug monograph or is required under an approved marketing application. If included, this information would be required to immediately follow the "Directions" for use section on the label. An example of such required labeling, for pediculicide drug products, is the statement required by § 358.650(e) that describes different types of lice. Another example of such optional labeling is in the monograph for anticaries fluoride treatment rinses (§ 355.50(f)(1)), which permits, but does not require, the statement:

Other Information:
* The combined daily use of a fluoride preventative treatment rinse and a fluoride toothpaste can help reduce the incidence of dental cavities.

Proposed § 201.66(c)(7) would require that the labeling for all OTC drug products that are also cosmetics (as defined by section 201(i) of the act) include the words **"Other Ingredients:"** or **"Inactive Ingredients:"**, followed by the cosmetic and/or inactive ingredients that are required to be stated on the label under § 701.3 (21 CFR 701.3). Current § 701.3(d) provides that "[w]here a cosmetic product is also a drug, the declaration shall first declare the active drug ingredients as required under section 502(e) of the act, and shall then declare the cosmetic ingredients." The new standardized format would list the active ingredients before the "Other Ingredients" or "Inactive Ingredients," but separated by the other required labeling information (i.e., "Purpose(s)," "Use(s)," "Warning(s)," and "Direction(s)").

Although many manufacturers, packers, and distributors voluntarily include a list of inactive ingredients on the labeling of OTC drug products, OTC drug products (that are not also cosmetics) are not currently required to list inactive ingredients on their labeling. In order to standardize the location of this information (if included), FDA is proposing that for OTC drug products that are not also cosmetics, the labeling must include the words "Inactive Ingredients:", followed by the inactive ingredients.

FDA has also received a citizen petition (96P–0318, CP1) requesting that existing regulations be changed to require placement of expiration dating on the immediate container of OTC drug products in a visible location so that the

date is legible throughout the use of the product and to adequately adapt the expiration dating to the way consumers use the products, particularly for drug products distributed in tubes. FDA is seeking public comment on whether current regulations should be revised to require expiration dating to appear in a specific location with specific legibility requirements on both the outer and immediate container packaging, especially for products marketed in tubes.

D. Format Requirements

The act and current regulations do not establish a standardized format for OTC drug product labeling. In addition, the agency has determined that some OTC drug product labeling may be difficult to read and understand. The agency understands the need for a flexible application of graphical techniques to achieve an acceptable level of readability for OTC drug product labeling. However, in order to ensure that labeling information is conveyed in a manner that enables the public to readily notice and comprehend such information, the agency is proposing to set minimal standards and requirements for certain key graphic elements of the format of OTC drug product labeling (except for the labeling on the principal display panel). Type size, letter and line spacing, contrast, print and background color, and type style are all factors that may contribute to poor readability and low comprehension of information (Refs. 3, 4, and 5). To provide further assistance to industry, the agency may, in the future, issue a guidance document to provide additional useful guidance on labeling format. The agency is proposing to revise the labeling format as follows:

Proposed § 201.66(d)(1) would require that all headings and subheadings must be in upper and lower case letters, and must be highlighted by bold type that prominently distinguishes the headings and subheadings from other information. FDA is also proposing to permit the use of shading or other color contrast to highlight headings and subheadings. FDA is proposing to require upper and lower case letters because the agency has tentatively determined that words in all upper case letters are harder to read. Consequently, the agency is also proposing to amend other regulations that explicitly require the use of all upper case letters (see §§ 201.63(e), 201.319(b), and 358.650(d)(1)). At the time of publication of the final rule, the agency intends to revise other labeling information that is required to appear in all capital letters to conform with the proposed requirement for the use of upper and lower case letters. FDA would not permit the use of "reverse type" (i.e., white or neutral color type on a darker color background) as a form of highlighting because this type of graphic technique is known to have poorer readability than regular type.

The agency is proposing to require that a horizontal line separate each section of information under the major headings listed in § 201.66(c)(1) through (c)(7). For example, a thin hairline would follow the active ingredient/purpose, warnings, directions, other information, etc. The agency believes that horizontal lines will distinctively separate each section of important information to make it more conspicuous and easier to read.

Proposed § 201.66(d)(2) would require that the letter height or type size for headings and subheadings in proposed § 201.66(c)(1) through (c)(7) shall be no smaller than 6 point type. The agency is also proposing that the letter height or type size for all other OTC drug product labeling information (including, but not limited to, information on the outside container or wrapper, the immediate container label (if different), and the package insert (if any)) also shall be no smaller than 6 point type. The proposed minimum 6 point type requirement would not apply to the manufacturer's name and address or the labeling on the principal display panel. The format and content requirements for the principal display panel are set forth under §§ 201.60 and 201.62. The agency requests comments on whether FDA should establish minimum type size requirements for the principal display panel.

Based on the data and comments discussed in section III. of this document, FDA believes that the minimum type size requirements would benefit a substantial number of consumers who have difficulty reading the labeling on OTC drug products. The agency is, however, specifically requesting comment on whether to require that a package insert, or similar accompanying material, printed in a larger point size (such as 10 point type), be included with every OTC drug product. This requirement would help ensure the safe and effective use of OTC drug products by segments of the population (such as the elderly) who may be unable to read 6 point type.

In addition, the agency does not believe that the proposed minimum type size would require applicants, manufacturers, packers, or distributors to increase the size of OTC drug product containers.

The agency is proposing to allow manufacturers, packers, or distributors to delete specific "connecting terms" (that do not change the meaning of the information) that are currently required in OTC drug product labeling. Holders of approved marketing applications who wish to delete a "connecting term" in their labeling may do so in accordance with § 314.70. The ability to delete these terms would permit applicants, manufacturers, packers, and distributors to format their labeling to fit more legible information into the proposed bulleted format. Thus, FDA believes that the deletion of "connecting terms" would in a number of instances compensate for the increased demands on label space that may result from the increased minimum type size.

FDA recognizes that there may be some containers and packages that may not be able to accommodate 6 point type, even with the new proposed format. The agency believes, however, that the available surface area of the labeling on a number of these products could be increased without changing the size of the current container or package. For example, the labels affixed to some bottled drug products may be lengthened and widened to increase the surface area of the label without changing the size of the container. Also, the agency believes that the information presented on boxed drug products can, in some instances, be rotated 90 degrees in order to accommodate the proposed minimum type size without changing the dimensions of the package. The agency expects manufacturers, packers, distributors, and applicants to take all possible steps to increase the available surface area of the labeling, without changing the size of the container or package, in order to accommodate the proposed type size. In addition, the agency is specifically inviting comment on whether it should require manufacturers, packers, distributors, and applicants to use alternative packaging designs, such as extending a single side panel of a package, to increase available labeling space.

The agency also requests comment on whether to require a performance standard for the labeling on containers and packages that may be too small to accommodate 6 point type, and on the important elements such a performance standard should contain. A performance standard would use performance-based measuring techniques, rather than precise minimum requirements on the size, appearance, and format of a product's labeling, to ensure that the labeling is readable and understandable. For example, a performance standard could involve measuring a label's readability based on a validated test of visual acuity (e.g., whether x number of persons with y visual acuity can read the labeling when it is z inches from the eye under specified or controlled lighting conditions).

Proposed § 201.66(d)(3) would require that all headings, subheadings, and information set forth in proposed § 201.66(c)(1) through (c)(7) shall be legible and clearly presented. The proposal would permit the use of shading or color contrast in order to increase the prominence and conspicuousness of the text. Shading or color contrast, however, would not be permitted to highlight or emphasize specific text or portions of text unless otherwise provided in an approved marketing application, final monograph, or an applicable regulation (e.g., current requirements for bold print in §§ 341.76 and 341.80, and requirement for box and red letters in § 201.318(c)(1)).

The proposal would require that the headings, subheadings, and information be presented in the Helvetica type style, which is an easy-to-read type style, and would require at least 1 point leading for the headings, subheadings, and information set forth in proposed § 201.66(c)(1) through (c)(7). The proposal also specifies, as a minimal kerning requirement, that letters should not touch. FDA believes that setting minimal requirements for upper and lower case type styles, leading, and kerning would enhance the readability of the proposed 6 point type.

Proposed § 201.66(d)(4) would require the use of bullet points to distinguish each piece of information found under each heading and subheading. For example, if there is more than one "use" for an OTC drug product, then the information required under the section heading "Uses" would be set off by a bulleted point before each unique piece of information. If more than one bulleted phrase is placed on the same horizontal line, the end of one bulleted phrase would be required to be separated from the beginning of the next bulleted phrase by at least two square em's (i.e., two squares of the size of the letter "M"). The agency is not proposing to specify a graphical icon for bulleted points. The proposed rule would not require the inactive ingredients or other cosmetic ingredients (proposed § 201.66(c)(7)) to be set off by bullet points.

Proposed § 201.66(d)(6) would require that the general labeling information required under the heading "Warnings" shall be continuous and not separated in any way, in order to increase the readability of this important information. For example, where the required labeling information is presented on two panels, the warning section shall be contained as a whole on one panel and not divided such that some information is on one panel and the rest is on another panel.

The agency is maintaining its current policy regarding the voluntary use of symbols and pictograms (see pregnancy-nursing warning, at 47 FR 54750, December 3, 1982 (§ 201.63(a)). The agency currently permits the voluntary use of symbols and pictograms, but does not permit symbols or pictograms to be used as a substitute for a required warning; they may only be used in addition to it. The agency, however, would not permit the use of a symbol or pictogram that is confusing or misleading, e.g., one that directs attention away from required labeling information or one that is ambiguous or could easily be misunderstood by consumers.

Examples of prototype OTC drug product labeling are attached in Appendix A. Example 1 demonstrates the general format and style contemplated by the proposed rule, including the proposed headings and subheadings, in the order proposed, as well as the proposed type style, hairlines, and bolding. Example 2 depicts OTC drug labeling for chlorpheniramine maleate, based on the applicable monograph, using the format and content specifications set forth in the proposed rule. The headings are presented in 8 point type, which is larger than the minimum type size proposed by the agency. The information is presented using an ordinary package size for this type of product. Example 3 depicts OTC drug labeling for a combination cough/cold product, based on the applicable monographs, using the proposed format and content specifications. Example 4 demonstrates how the same information shown in Example 3 can be presented directly on the package label for an 8 ounce bottle of syrup.

Examples 5 and 6 depict OTC drug labeling for a topical acne product and for a stannous fluoride product, respectively, based on the applicable monographs and using the format and content specification set forth in this proposed rule. The information is presented using an ordinary package size for each of these products.

Example 7 demonstrates OTC drug labeling for a chlorpheniramine maleate product, based on the applicable monograph, using the proposed amendment to the "exclusivity policy" set forth in § 330.1(c)(2) and described in Section V.I. of this document. Note that the approved information from the monograph is surrounded by a hairline forming a box and that the boxed area is entitled "FDA Approved Information." The additional information in this example is optional.

Example 8 demonstrates OTC drug labeling for a combination cough/cold product, based on the applicable monographs, using the proposed content and format specifications, except that the "Directions" section is presented before the "Warnings" section, and the directions for use are highlighted. The agency specifically requests comment on the order of appearance of the "Directions" and "Warnings" sections, as well as whether to require highlighting of the information contained in the "Directions" section.

Example 9 demonstrates OTC drug labeling for a chlorpheniramine maleate product, based on applicable monographs, using the proposed content and format specifications, except that the order is different than that proposed. The agency specifically requests comments on this, and other alternative for the order of information.

Each of these examples also makes use of proposed § 330.10(i) and (k) by deleting certain "connecting terms" and by substituting certain "interchangeable terms" as would be permitted by this proposed rule.

Finally, the agency is proposing that the new format will not apply to the product's immediate container, unless the product is sold without an outer package or wrapper. The agency believes that were it to require the proposed labeling format, and the information that would be presented within that format, to appear on the immediate container of all marketed OTC drug products, many products as currently marketed could not conform with the proposed requirements. The agency does not intend to require applicants, manufacturers, packers, and distributors to increase the container size of their products in order to conform to the proposed new format.

The agency recognizes, however, that dual labeling of products that are sold with outer packages or wrappers is beneficial because consumers may discard the outer package. For that reason, the agency is proposing that the letter height or type size for all other OTC drug product labeling information (except for the principal display panel) be no smaller than 6 point type. Thus, important information that is required to appear on the immediate containers of OTC drug products will be more legible to the consumer. The agency invites specific comment on whether additional elements of the proposed

new format, such as certain required headings, presentation of information in a standardized order, or the use of a bullet point format, should also be required for the immediate container labels of all OTC drug products.

E. Location

Proposed § 201.66(e) provides that the labeling information required under § 201.66(c)(1) through (c)(7) must be the first information that appears on the back or side panel of the outside container or wrapper of the retail package (or the immediate container label if there is no outside container or wrapper) of all marketed OTC drug products. FDA is specifying the location of this important information in order to enable consumers to become knowledgeable about OTC drugs and familiar with the type and location of specific information on OTC drug product labeling. Increased knowledge and familiarity with important information would help to ensure the safe and effective use of OTC drug products.

The agency is requiring that this labeling information appear in a uniform location in order to facilitate consumer familiarity with OTC drug product labeling information. Although current regulations require that the "statement of identity" and "net quantity of contents" appear on the "principal display panel" (see §§ 201.60, 201.61, 201.62)), important warning information does not appear in a uniform location in the labeling of various OTC drug products (as discussed in section III. of this document).

F. Exemptions and Deferrals

Some requirements in proposed § 201.66 may be inapplicable or impracticable for certain products. For example, it may be impracticable for a product, because of its attributes, to meet all of the labeling format requirements. Under proposed § 201.66(f), manufacturers, packers, distributors, or applicants may submit written requests to FDA to be exempted from one or more specific requirements in proposed § 201.66(a) through (e). Requests for exemptions would be required to be submitted in the form of a citizen petition under 21 CFR 10.30 of this chapter and should be clearly identified on the envelope as a "Request for Exemption from § 201.66 (OTC Labeling Format)." The request for exemption would be required to include documentation that demonstrates why the requirements are inapplicable or impracticable for this product. Such requests would be required to include documentation that demonstrates that the manufacturer has used all other graphical techniques to enhance readability, and has complied with as many of the format requirements in proposed § 201.66 as practicable. The agency seeks comment on whether there are particular types of products or packages that should be granted a regulatory exemption or should be required to meet a performance standard.

In addition, FDA on its own initiative may, based on the particular circumstances presented, exempt or defer any or all of the requirements set forth in these sections.

G. Interchangeable Terms

At the public hearing held by FDA on September 29, 1995, several comments, including NDMA comments, recommended that FDA consider amending its regulations to permit the use of synonyms that would promote greater comprehension among people with low or moderate literacy skills (see Docket No. 95N–0259). In response to these requests, the agency is proposing to amend current § 330.1(i) to include additional terms that may be used interchangeably in any of the labeling established for OTC drug products (including the OTC drug product labeling regulations in part 201, and parts 331 through 358), provided such use does not alter the meaning of the labeling that has been established and identified in an applicable monograph or by regulation. The proposal would not permit the titles of the headings and subheadings specified by the agency in proposed § 201.66(c)(1) through (c)(7) to be changed through the use of interchangeable terms, through the deletion of connecting terms, or in any other manner.

These interchangeable terms would be cross-referenced in proposed § 201.66(g). Expanding the current list of interchangeable terms would permit the formulation of easier to understand and more concise messages on the labeling of OTC drug products.

Because the part of speech (i.e., adjectives, nouns, adverbs, verbs, etc.) is not always the same for words that can be used in different ways, the contextual message conveyed by using certain substituted words may dramatically change the overall meaning of the labeling statement. Consequently, when using any interchangeable word, the meaning must not be changed.

Although these additional terms are based primarily on NDMA's recommendations, the agency is proposing some additional terms that were not included on NDMA's list of recommended terms. In addition, FDA is not proposing all of NDMA's suggestions in this proposal. One example of an NDMA recommendation that FDA is not proposing is NDMA's recommendation that the word "call" should be proposed as an interchangeable term with the current word "contact." The agency, however, is proposing "ask" instead of "call" because FDA does not want to limit other forms of "contact" (i.e., visit, or see).

Another example of an NDMA recommendation that FDA is not including in this proposal is the recommended phrase "use only on skin" as an interchangeable term with the current phrase "for external use only." The agency is not proposing this phrase because it is not interchangeable for topical ophthalmic or vaginal products. In addition, the phrase could be confusing for products intended to be used on cuts or abrasions.

In the March 1996 proposal, FDA proposed to amend § 330.1(i) to provide for interchangeable terms for the phrases "unless directed by a doctor" or "except under the advice and supervision of a physician." Labeling information about not using an OTC drug product under these circumstances appears in different OTC drug monographs in different language, but conveys the same message (see, for example, §§ 341.76(c)(2), 331.30(c)(1) and (c)(4) through (c)(7), 349.75(c)(2), 341.72(c)(3) and (c)(4), 346.50(c)(7)(ii), 341.72(c)(6)(i) through (c)(6)(iii), 358.750(c)(2)(ii), (c)(3), and (c)(4)). In addition, the phrase "unless directed by a doctor" has been used more recently and most frequently. The agency determined that all of these phrases could be interpreted in the same way (e.g., "* * * unless a doctor tells you") and that this simpler phrase may be better understood by consumers than some of the other phrases. Thus, the agency proposed to amend § 330.1(i) to include the phrase "unless a doctor tells you" as an alternative for these other phrases where they appear in the labeling of OTC drug products.

The proposal also stated that, in a few instances, the words "or your child's doctor" would be permitted as part of this phrase. The agency requested comments on whether it would be preferable to say "your" child's doctor or "the" child's doctor, or whether it does not make any difference which wording is used.

FDA received three comments supporting the proposal. NDMA recommended that FDA reconsider its proposal to adopt "unless a doctor tells you" because NDMA stated that the phrase was "colloquial, awkward and incomplete in its instructional intent." (See Docket No. 92N–454A.) Another comment also urged FDA not to adopt the phrase "unless a doctor tells you," because the phrase could lead to ambiguity and confusion. The comments alternatively recommended that FDA adopt the phrases "unless told to do so by a doctor," "unless you first ask a doctor," "without checking with a doctor," or "without asking a doctor."

NDMA also recommended that FDA not adopt the phrase "your doctor" or "your child's" doctor because "it is limiting and should be dropped in favor of 'a doctor' or 'the child's doctor'." NDMA recommended that FDA adopt this broader language because a designated caretaker may administer an OTC drug product in the absence of a parent. Finally, NDMA recommended that FDA permit interchangeable terms defined in the OTC drug review to also be interchangeable with the same terms found in marketing applications.

Another comment recommended that for OTC drug products intended for use in conditions involving the feet (e.g., athletes foot, corns, calluses, etc.) the term "podiatrist" be added as an allowable interchangeable alternative to "doctor" or "physician" because many consumers consult their podiatrist rather than their usual doctor or physician for foot related conditions.

Because this proposed rule addresses the same interchangeable terms (as well as additional interchangeable terms), this proposed rule responds to the comments submitted to Docket No. 92N–454A. Therefore, the agency is, with this notice, formally withdrawing the March 1996 proposal.

FDA has carefully considered the comments and is proposing that the current terms, "unless directed by a doctor" and "except under the advice and supervision of a physician" be interchangeable with "unless told to do so by a doctor." In addition, the agency is proposing that the phrases "before a doctor is consulted," "without first consulting your doctor," or "consult your doctor before * * *" may be interchanged with "unless first told to do so by [the child's doctor] a doctor." The agency agrees with NDMA's comment that "a doctor" or "the child's doctor" is preferable to "your doctor" or "your child's doctor."

The agency disagrees with the comment that recommended that the term "podiatrist" be interchangeable with "doctor" or "physician" for OTC drug products intended for use in conditions involving feet (e.g., athlete's foot, corns, callouses, etc.). The agency does not believe that "podiatrist" would be an appropriate substitution for "physician" for all OTC drug products intended for use involving feet. Because the agency has determined that there may be specific limited instances where the term "or podiatrist" may be appropriate, however, current regulations do provide that "or podiatrist" may be used in addition to the word "doctor" when a wart remover product is labeled with the specific indication found in § 358.150(b)(2).

FDA agrees with NDMA's recommendation that FDA permit interchangeable terms defined in the OTC Drug Review to be interchangeable with the same terms found in approved marketing applications for OTC drug products. Applicants or holders of approved marketing applications for OTC drug products who wish to include an interchangeable term in their labeling would be required, however, to include the interchangeable term in the marketing application or supplemental application in accordance with § 314.70.

The agency recognizes that a large percentage of OTC drug products are purchased at retail stores where a pharmacist is present. FDA also recognizes that pharmacists are knowledgeable about OTC drug products and are trained to counsel and give advice about these products. Although the agency is not proposing the terms "doctor" and "pharmacist" as interchangeable terms, the agency believes the phrase "doctor or pharmacist," as in "Ask your doctor or pharmacist," may be appropriate guidance on OTC drug product labeling for certain products. The agency seeks comment on whether the phrase "or pharmacist" should be included on OTC drug labeling and, if so, on what section of the labeling, and for which products.

H. Connecting Terms

OTC drug product regulations currently contain statements or clauses that are in quotation marks. Information that is presented in a monograph in quotation marks is required to appear in the labeling exactly as it appears in the monograph (except to the extent an interchangeable term may apply). In order for these statements or clauses to fit into the new format, including the required minimum type size, certain words within the quotation marks may have to be deleted. Therefore, proposed § 330.1(k) includes a list of connecting terms that may be deleted from the labeling of OTC drug products required under OTC drug product regulations, including monograph regulations, when labeling is revised to comply with § 201.66, and when such deletion does not alter the meaning of the OTC drug product labeling requirements.

The agency is proposing to permit manufacturers, packers, or distributors to delete these connecting terms because these terms generally do not affect the meaning of the labeling, but are required in current regulations to ensure that sentences are grammatically correct. Holders of approved marketing applications who wish to delete a "connecting term" from their labeling may delete the "connecting term" in accordance with § 314.70. The agency is proposing this approach to simplify language and to enhance readability for consumers. In addition, the deletion of such connecting words would enable the currently required OTC drug product labeling language to fit into the new format without revising all of the current regulations. These connecting terms would be cross-referenced in proposed § 201.66(g). Manufacturers who choose to delete these connecting terms in the manner described would still be deemed to be using the exact monograph language where monograph language is specified in quotation marks. The agency recognizes that the proposed list does not include all connecting words that could be deleted and invites comment on additional terms.

I. "FDA Approved Information" Designation

The agency is also proposing to amend § 330.1(c)(2) regarding the use of the designation "APPROVED USES" or other similar designation when a manufacturer, packer, or distributor utilizes the exact language as it appears in an applicable monograph or regulation to state the indications for use. Section 330.1(c), in its present form, allows manufacturers some flexibility in describing the indications for use that are established in applicable monographs or regulations (§ 330.1(c)(2)(i) to (c)(2)(iii)). All other required OTC labeling, including required warnings, must be stated in the exact language established and identified (by quotation marks) in an applicable monograph or regulation (§ 330.1(c)(2)(vi)). Manufacturers, packers, or distributors who choose to delete connecting terms or use interchangeable terms in the manner described in this proposal would still be deemed to be using the exact monograph language where monograph language is specified in quotation marks. The agency is not proposing to change these elements of its "exclusivity policy" (see 51 FR 16258).

The agency is, however, proposing to amend § 330.1(c)(2) to make it

consistent with the labeling format proposed in this notice. Specifically, the agency would continue to invite manufacturers, packers, or distributors to use the exact language of a monograph or applicable regulation to describe the indications for use. Manufacturers, packers, or distributors who use such exact language to describe the indications for use would have the option of placing a box around all labeling information that has been established in an applicable final monograph or regulation, and to designate the boxed area, "FDA Approved Information." To be consistent with the standardized format being proposed, no other designation would be permitted, and the designation would appear in bold text with upper and lower cases letters (rather than in upper case letters). Manufacturers, packers, or distributors would not be permitted to use a boxed area around the "Uses" heading, but would be required to put a box around all of the information that is established in an applicable final monograph or regulation.

Manufacturers, packers, or distributors would also continue to have the option of using other truthful and nonmisleading statements to describe the indications for use, subject to the provisions of sections 301(d) (21 U.S.C. 331(d)), 502, and 505(a) of the act. As in the existing regulation, labeling that uses other truthful and nonmisleading statements to describe the indications for use could not be boxed and could not contain the "FDA Approved Information" designation (see § 330.1(c)(2)(ii)).

The agency recognizes that while it may be limiting the manner in which a manufacturer, packer, or distributor can make use of the boxed labeling technique, the agency is also proposing additional interchangeable terms and connecting terms. The agency believes that these proposed interchangeable terms and connecting terms would provide manufacturers, packers, and distributors more flexibility in using exact language (where exact language has been established or identified by quotation marks in an applicable monograph or regulation) to describe the indications for use. Therefore, manufacturers, packers, and distributors would have more opportunities to make use of the "FDA Approved Information" designation and box.

The agency is also considering whether it should instead take the step of deleting altogether the provisions for boxed labeling in § 330.1(c)(2). The agency seeks comment on this point.

J. Preemption

1. Need for Federal Regulation and Preemption

FDA has tentatively determined that to ensure that OTC drug product labeling conveys all material information to the consumer, and that the labeling conveys this information in a manner that is likely to be read and understood by the consumer, State and local rules that would establish different or additional format or content requirements than those in this proposed rule should be preempted.

The agency believes that a standardized format, and a single set of rules regarding the appearance and content of OTC drug labeling, will significantly improve the ability of consumers to read and understand OTC drug labeling. The agency expects that as consumers become familiar with the format, they will more readily recognize and focus on important information contained in the labeling regarding the use of the product. NDMA, the primary trade association representing nonprescription drug manufacturers, likewise has reached the conclusion that by establishing "a label that will be uniform throughout the United States, FDA can help to reduce label clutter and promote greater consumer use of label information."

With the number and variety of drug products available OTC, it is the norm that consumers face a range of choices when selecting an OTC drug product. However, all OTC products within the same pharmacological class or with the same principal intended drug action are not identical. Thus, uniformity will allow consumers to easily compare various OTC drug products, without having to take into account potentially confusing, and even misleading, differences in format or style. By helping consumers to easily and meaningfully distinguish among drug products, the agency believes it will increase the likelihood that consumers will select appropriate products for their needs.

A single format for all drug products, wherever sold, will minimize confusion while enhancing the readability and understandability of OTC drug labeling. Within a short period of time after implementation of the final rule, consumers will become familiar with the revised format and will be able to use it similarly to the way that they now use nutritional labeling on foods.

State and local requirements for OTC drug labeling format or content that differ from or add to those established by the proposed rule would interfere with FDA's proposed method and objectives. The proposed regulations are intended to allow consumers to glance at virtually any OTC drug product labeling anywhere in the country and find information in a format they recognize, presented in a manner that is easily read and understood. Consequently, the likelihood of safe and effective use of OTC drug products would be increased. A State or local requirement that differs from the proposed rule with respect to any of the standard format elements could frustrate the basis and purposes of the proposed regulations.

For example, changing the order in which required information must appear, or the size or graphic "look" of the area in which drug information will be contained, could confuse consumers and limit the intended effectiveness of the proposed format. Even if each State required only one small variation in the format, the resulting 50 different requirements throughout the country could undermine the goals the agency believes may be achieved through a uniform OTC drug labeling format.

In addition to the need for OTC label standardization and the adverse effect State and local requirements would have on it, State and local requirements could impose additional economic and distributional burdens on industry that ultimately would be borne by consumers. State requirements at variance with the Federal law would force manufacturers to develop unique sets of labeling or stop altogether the supply of OTC drug products to the residents of the jurisdiction involved. Moreover, were manufacturers required to tailor their products to different jurisdictions, they would likely face increased printing and distribution costs, leading to higher OTC drug prices for consumers and, therefore, more limited access for some consumers to safe and effective drugs.

The imposition of different or additional State or local labeling requirements could also make it difficult for some products to fit all of the FDA required labeling information within the proposed format, and may cause more products to have to seek an exemption from the new format.

Finally, the agency has tentatively determined that State or local interests in regulating OTC drug product labeling format or content would be modest when compared to the benefits of a national program. The agency to date has found little evidence to suggest that States or localities have a significant interest in controlling the format or content of OTC drug labeling. Moreover, the agency has tentatively determined that the benefits of clear, concise, and consistent information that all consumers will receive as a result of this regulation would ordinarily outweigh the value of unique or unusual informational requirements for State or local consumers.

In sum, the agency has tentatively determined that for most consumers there are no inherent differences between States that would justify a need for different State regulation. Implementation of specialized rules could come at the expense of nationally uniform OTC drug labeling, and could ignore other national interests and priorities addressed by the proposed rule.

2. Scope of Proposed Preemption

The agency is proposing to preempt only those State and local requirements that would directly threaten the national uniformity sought to be achieved by the proposed rule, or otherwise directly interfere with the attainment of the agency's objectives outlined in this proposed rule. The agency has tentatively determined that State or local laws, regulations, or rules that establish or continue in effect additional or different requirements with respect to any of the elements of format or content addressed in the proposed rule could have a deleterious effect on the goals sought in this proposed rule. Thus, under the proposed preemption provision, a State or locality may not establish or continue in effect requirements different from or in addition to the agency's requirements with respect to the format (including headings, subheadings, order, boxing or title, lines and spacing, type size, color and contrast, and other format requirements in the proposed rule) or the content of OTC drug labeling. The agency also intends the preemption to apply to requirements that a State or locality may view as improving an agency requirement, such as requiring a larger minimum type size than 6 point and other minimum standards for graphical features. States or localities would similarly be prohibited from requiring more (or less) spacing between lines or letters, or requiring that the information appear in a different order or with different subheadings, or that additional information be included.

As proposed, the scope of this preemption would exclude statutory or common law causes of action in tort, based on the format or content of OTC drug product labeling. Because there may be situations in which information about potential harm from an OTC drug product may not be available to FDA until after an individual consumer may have been harmed, the agency does not want to preclude compensation through tort actions in all cases related to OTC drug product labeling. The agency specifically seeks comment on this exclusion.

The agency recognizes that in rare instances a State or local government may find a compelling need to issue a law, regulation, or ordinance relating to the format or content of OTC drug labeling. For example, there may be certain populations of patients in defined areas of the country who may be more sensitive to a particular aspect of an OTC drug product, and who would need to be warned of that aspect in order to ensure the safe and effective use of the product. Accordingly, the proposed rule contains a procedure for States and local governments to petition for an exemption from the preemption.

Finally, the agency specifically seeks comment on whether State or local warning statements that are different from, or that would be in addition to, those required by FDA should be preempted by this rule.

3. Legal Authority for Federal Preemption

The preemption doctrine is rooted in the Supremacy Clause of the United States Constitution (U.S. Const., Art. VI, Cl. 2). Under the Supremacy Clause of the Constitution, State law may be preempted by Federal law in a number of ways (U.S. Const., Art. VI, Cl. 2.). Congress may preempt State law by so stating in express terms (*Jones* v. *Rath Packing Co.*, 430 U.S. 519 (1977). Section 521 of the act (21 U.S.C. 360k), for example, contains an express preemption provision applicable to devices.

Federal preemption may also be based on any of several "implied preemption" principles. First, preemption may be found "where the scheme of federal regulation is sufficiently comprehensive to make reasonable the inference that Congress 'left no room' for supplementary state regulation" (*Hillsborough County* v. *Automated Medical Laboratories, Inc.*, 471 U.S. 707, 713 (1985), quoting *Rice* v. *Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)), or where "the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject" (*Rice*, 331 U.S. at 230; see *Hines* v. *Davidowitz*, 312 U.S. 52 (1941)).

Federal preemption may also be found where Federal law conflicts with State law. Such conflict may be demonstrated either where "compliance with both federal and state [law] is a physical impossibility" (*Florida Lime and Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132, 142–143 (1963)), or where State law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress" (*Hines*, 312 U.S. at 67).

State law is also preempted if it interferes with the methods by which a Federal law is designed to reach its goals. (See *Int'l Paper Co.* v. *Ouellette*, 479 U.S. 481, 494 (1987); *Michigan Canners & Freezers Ass'n* v. *Agricultural Marketing & Bargaining Bd.*, 467 U.S. 461, 477–478 (1984).)

A statutorily authorized regulation may preempt a State or local law under any of these implied preemption theories. (See *City of New York* v. *FCC*, 486 U.S. 57, 63–64 (1988); *Louisiana Public Service Comm'n* v. *FCC*, 476 U.S. 355, 368–369 (1986).) That is, "federal regulations have no less preemptive effect than federal statutes." (See *Fidelity Federal Savings & Loan Association* v. *de la Cuesta*, 458 U.S. 141, 153–154 (1982).) Thus, a federal agency, acting within the scope of its delegated authority, may preempt State or local laws that conflict with or frustrate the purposes of the agency's regulations. (See *City of New York*, 486 U.S. at 64.) In addition, an agency may, under certain circumstances, determine that its authority over an area of regulation is exclusive and expressly preempt State regulation in that area. *Id.* If the agency's choice to preempt "represents a reasonable accommodation of conflicting policies that were committed to the agency's care by statute [the regulation will stand unless] it appears from the statute or its legislative history that the accommodation is not one that Congress would have sanctioned." (See *United States* v. *Shimer*, 367 U.S. 374, 383 (1961).)

FDA's proposed regulations are within the scope of its delegated authority. (See section VII. of this document, "Legal Authority.") Furthermore, conflicts between State and local OTC labeling laws, with different or additional requirements than those of the Federal law, justify FDA's preemption of such laws. Although Congress did not expressly preempt State law in this area, the agency's action is appropriate because different or additional State and local laws would significantly interfere with both the goals of Federal law and the methods by which the Federal law is designed to achieve those goals.

Conflicting State and local laws for OTC drug labeling could undermine the agency's objectives to ensure greater legibility and comprehension of OTC drug labeling and to help ensure safe and effective use of OTC drug products.

Although States and localities may have an interest in developing their own requirements in the area of OTC drug product labeling, the agency has tentatively determined that the national standard set forth in this proposal is tailored to meet the agency's goal of ensuring safe and effective use of OTC drug products, and that the need for a national standard outweighs the interests of individual States and localities.

VI. Proposed Implementation Plan

The agency is proposing the following implementation plan for the proposed labeling format and content provisions. This proposed implementation plan is intended to minimize the economic impact on the regulated industry, while providing consumers with the benefit of more readable and understandable OTC drug product labeling at the earliest reasonable date. The proposed implementation plan provides implementation dates that vary according to the regulatory status of the particular OTC drug product. A product whose labeling does not comply with the proposed format and content provisions on or after the applicable implementation date would be liable to regulatory action.

The agency generally provides an implementation date of 1 year after the date of publication of the final monograph in the **Federal Register** for the use of labeling prescribed under a final OTC drug monograph (monograph labeling provisions). Accordingly, the agency is proposing that the implementation date for the new labeling format and content provisions for OTC final monographs, published on or after the effective date of the final rule based on this proposal, would be the implementation date for the applicable final OTC monograph. However, the agency encourages manufacturers, packers, and distributors of products pending under the monograph review process to voluntarily implement the new labeling format when they print new labels.

Because the labeling changes for information required under the final monograph and these new labeling format changes would be effective at the same time, manufacturers would only need to make one label printing to incorporate final monograph information into the new labeling format. In addition, implementation of the provisions of the final rule would be less burdensome because the agency and the industry will have gained information and experience from the planning, preparing, and printing of labeling in the new format for other products covered by either marketing applications or existing final monographs at the time of publication of the final rule. Accordingly, less time should be required for firms to bring OTC drug products pending under the monograph review process into compliance with the new labeling format requirements.

For an OTC combination product for which one component is pending under monograph review and another component is the subject of a final OTC drug monograph on or after the effective date of the final rule based on this proposal, the agency is proposing that the implementation date for the new labeling format and content provisions would be the earlier of 2 years after the effective date of the final rule based on this proposal or the effective date of the final OTC drug monograph applicable to the component under review. For an OTC combination drug product for which more than one component is pending under the OTC drug monograph review on or after the effective date of the final rule based on this proposal, the agency is proposing that the implementation date of the new format and content provisions would be the date on which any one of the components first becomes the subject of an effective OTC drug monograph.

For an OTC drug product that is the subject of a pending marketing application on or after the effective date of the final rule based on this proposal, the agency is proposing that the implementation date would be immediately (concurrent with initial product marketing) upon approval of the application. Manufacturers of such products would submit draft labeling in the proposed new format for review as part of the application.

For an OTC product with a low level of distribution (i.e., products with annual sales of less than $25,000), the agency is proposing that manufacturers comply with the new labeling format and content requirements within 3 years of the effective date of the final rule based on this proposal.

For all other OTC drug products, including those products marketed under a final OTC drug monograph, or an approved application, before the effective date of the final rule based on this proposal, the agency is proposing an implementation date of 2 years after the effective date of the final rule based on this proposal. By the applicable implementation date, applicants would be required to submit to FDA necessary changes in their product's labeling that would bring the product's labeling into compliance with the new standardized format requirements. The agency is proposing these dates to provide manufacturers with sufficient time to design and print new labeling and deplete existing stocks of products with old labeling.

Labeling changes to OTC drug products marketed pursuant to a marketing application would be made in accordance with § 314.70. Section 314.70(b) requires that FDA approve a supplement for a labeling change, prior to marketing any product with the labeling change, except for changes described in § 314.70(c)(2) or (d). Under § 314.70(c)(2), a supplement must be submitted at the time the change is made, and does not require agency preapproval if the change, among other things, is to add or strengthen a contraindication, warning, precaution, adverse reaction, or statement on overdose, or to add or strengthen an instruction about dosage and administration that is intended to increase the safe use of the product, or to delete a false or misleading indication or claim. Under § 314.70(d) a supplement is not required for a change in labeling concerning, among others, the description of the drug product, how it is supplied, or for an editorial or similar minor change in the labeling. Instead, the change need only be described in the next annual report. Products that are marketed pursuant to an OTC drug monograph are not required to submit labeling to the agency.

The agency intends to work closely with sponsors of products that switch from prescription only status to OTC status prior to the implementation of the final rule on incorporating the new format and content requirements into the products' labeling. With respect to products currently marketed OTC pursuant to a marketing application, the agency is interested in receiving comment on whether changes made pursuant to the provisions set forth in this proposed rule should be made under § 314.70(b), (c), or (d).

The agency intends to make the final rule based on this proposal effective 30 days after the date of its publication in the **Federal Register**.

The proposed rule would not apply to any homeopathic drug products which are listed in the H.P.U.S. The labeling of such products is addressed in FDA's Compliance Policy Guide 7132.15 entitled "Conditions Under Which Homeopathic Drugs May Be Marketed."

VII. Legal Authority

FDA's legal authority to modify and simplify the manner in which certain information is presented in OTC drug product labeling derives from sections

201, 502, 505, 507, and 701 of the act. Regulating the order, appearance, and format of OTC drug product labeling is consistent with the agency's authority to ensure that drug labeling convey all material information to the consumer (21 U.S.C. 321(n) and 352(a)), and that the labeling communicate this information in a manner that is "likely to be read and understood by the ordinary individual under customary conditions of purchase and use" (21 U.S.C. 352(c)). Regulating the content of OTC drug product labeling is consistent with FDA's authority to ensure that the products are safe and effective for use (sections 201(n) and (p), 502, 505, and 507 of the act).

More specifically, the act authorizes FDA to regulate the marketing of drug products, including drugs composed wholly or partly of any antibiotic drug, to ensure that they are safe and effective for their intended uses (sections 201(p), 505(d), and 507 of the act). A major element of FDA's authority to ensure the safe and effective use of drug products is through FDA's review, approval, and monitoring of drug product labeling. Determinations about safety and effectiveness are to be made with respect to the conditions prescribed, recommended, or suggested in the labeling (sections 201(p) and 505(d) of the act).

Under section 505(d) and (e), FDA also must refuse to approve a new drug application, and may withdraw approval for a product, if the product's labeling is false or misleading in any particular. Moreover, under section 502(a) of the act, a drug product is deemed to be misbranded if its labeling is false or misleading in any particular. In determining whether the labeling of a drug is false or misleading, the agency must take into account not only the representations or suggestions made in the labeling, but also the extent to which the labeling fails to reveal material facts about the consequences that may result when the product is used according to its labeling or under the customary or usual conditions of use (section 201(n) of the act).

The act also provides that a drug product is misbranded, and liable to regulatory action, if:

> any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.
>
> (Section 502(c))

Implementing regulations in § 201.15 describe a number of situations in which the agency considers information on a drug product's label as lacking the prominence and conspicuousness required by section 502(c) of the act. For example, a labeling statement may lack the prominence and conspicuousness required by section 502(c) of the act by reason of, among others, "[s]mallness or style of type in which such word, statement, or information appears, insufficient background contrast, obscuring designs or vignettes, or crowding with other written, printed, or graphic matter" (§ 201.15(a)(6)).

The agency may also take regulatory action to ensure that OTC drug products contain "adequate directions for use" and "adequate warnings" against unsafe or dangerous uses (section 502(f) of the act).

Finally, section 701(a) of the act authorizes FDA to issue regulations for the efficient enforcement of the act (see *Weinberger* v. *Hynson, Westcott and Dunning, Inc.*, 412 U.S. 609 (1973); see also *National Association of Pharmaceutical Mfrs.* v. *FDA*, 637 F.2d 877 (2d Cir. 1981); *National Confectioners Association* v. *Califano*, 569 F.2d 690 (D.C. Cir. 1978)).

The agency has tentatively concluded that a standardized format, with certain content requirements, for OTC drug products is necessary to fulfill the requirements of the act that information required to appear on the label or labeling of an OTC drug product be placed with such conspicuousness and prominence (as compared with other printed matter) as to render it likely to be read by the ordinary individual under customary conditions of use (section 502(c) of the act), and that the information be presented in a manner designed to communicate all material facts about the safe and effective use of the product to the consumer (section 502(a) of the act). The proposed regulations are also consistent with the agency's authority to ensure that OTC drug products are labeled with directions for use and warning statements that are adequate to guide the consumer in the safe and effective use of these products (section 502(f) of the act).

The currently available information, as summarized in section III. of this document, supports the conclusion that a standardized format and certain content requirements for all OTC drug products would help minimize the potential for consumers to be confused or misled when comparing products within the same pharmacologic class. As the number and variety of drug products available OTC continues to increase, consumers "under customary conditions of use" are frequently presented with a range of seemingly similar products. Given the complexity of the information contained on the label of an OTC drug, a standardized format and certain content requirements are necessary in order for the consumer to readily and meaningfully compare OTC drug products.

Finally, the agency believes that a standardized format and certain content requirements are essential to help ensure that consumers are able to recognize and understand important information about an OTC drug's proper use, its contraindications, and the adverse effects and safety hazards associated with its use. As discussed in greater detail in section III. of this document, many consumers have complained that OTC drug labels are difficult to understand and, among other things, that the print size on the labels is too small.

Thus, the agency's authority to ensure that material facts regarding the safe and effective use of an OTC drug product are adequately presented to the consumer derives directly from the agency's authority under sections 201, 502, 505, and 507 of the act. These provisions, combined with the agency's authority under section 701(a) of the act to issue regulations for the efficient enforcement of the act, authorize FDA to issue regulations to ensure that the information necessary to the safe and effective use of an OTC drug product is presented to consumers, and that this information is easily readable, readily understandable, and is not confusing or misleading.

VIII. The Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Therefore, in accordance with 44 U.S.C. 3506(c)(2)(B) and 5 CFR part 1320, FDA is providing below the title, description, and respondent description of the information collection contained in this proposal, along with an estimate of the resulting annual collection of information burden. This estimate includes the time needed for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for proper performance of FDA's

functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Over-the-Counter Human Drugs; Proposed Labeling Requirements.

Description: FDA's legal authority to modify and simplify the manner in which certain information is presented in OTC drug product labeling derives from sections 201, 502, 505, 507, and 701 of the act. Regulating the order, appearance, and format of OTC drug product labeling is consistent with FDA's authority to ensure that drug labeling convey all material information to the consumer (21 U.S.C. 321(n) and 352(a)), and that labeling communicate this information in a manner that is "likely to be read and understood by the ordinary individual under customary conditions of purchase and use" (21 U.S.C. 352(c)).

FDA is proposing to amend its regulations governing labeling requirements for human drug products to establish a standardized, more readable format for the labeling of all marketed OTC drug products. The proposed regulation merely standardizes the format for presenting information that is already required to be on the labeling.

The proposed format labeling changes present a one-time burden for manufacturers of OTC drug products marketed under new drug applications. Those manufacturers would have to submit a supplement detailing the labeling changes to be made by the manufacturer to comply with the format requirements. This burden is reflected in the chart below.

Other proposed labeling changes do not constitute collections of information because they provide for disclosure of information supplied by FDA. To enhance readability, proposed §§ 201.63, 201.314, 201.319, and 358.650 modify specific warnings or directions, proposed § 330.1(i) and (k) provide terms that may be used interchangeably in the labeling of OTC drug products and terms that may be deleted from the labeling, and proposed § 201.66(c) specifies words to be used in headings and subheadings on the labeling of the drug products. The proposed regulation specifies the wordings of the required disclosures. These labeling requirements provide for "public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public" and are, therefore, exempt from OMB review under 5 CFR 1320.3(c)(2).

Proposed § 201.66(d), which requires that the information be displayed in a certain format, is not included in the burden estimate because it is not a collection of information within the meaning of 5 CFR 1320.3.

To avoid double-counting, certain provisions in this proposal have not been included in the burden estimate because they merely cross-reference information collection requirements contained in other regulations. For example, proposed §§ 201.66(f) and (i) do not appear in the burden estimate table. Provisions that merely continue existing labeling requirements, such as proposed § 201.66(c), also have not been included in the burden estimate for this proposal.

Description of Respondents: Persons and businesses, including small businesses and manufacturers.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
314.70	350	1	1,050	2	2,100
314.60(a)	350	1	30	2	60
314.97	20	1	102	2	204
314.96(a)	20	1	70	2	140
Total					2,504

[1] There are no capital costs or operating and maintenance costs associated with this collection.

The agency has submitted a copy of the proposed rule to OMB for its review and approval of this information collection. Interested persons are requested to send comments regarding this information collection to the Office of Information and Regulatory Affairs, OMB (address above).

IX. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

X. Executive Order 12612: Federalism

FDA has examined the effects of this proposal on the relationship between the Federal Government and the States, as required by Executive Order 12612 on "Federalism." The agency concludes that preemption of State or local rules that establish requirements for OTC drug labeling format and content that would be in addition to, or would differ from, Federal law is consistent with this Executive Order.

Section 3(b) of Executive Order 12612 recognizes that Federal action limiting the discretion of State and local governments is appropriate "where constitutional authority for the action is clear and certain and the national activity is necessitated by the presence of a problem of national scope." The constitutional basis for FDA's authority to regulate the safety and effectiveness of OTC drugs is well established. Congress' decisions to vest in FDA the responsibility to establish a regulatory scheme over these products demonstrates Congress' view that the safety and effectiveness of these products is an issue of national scope.

Executive Order 12612 expressly contemplates preemption when there is a conflict between the exercise of State and Federal authority under Federal statute (section 4(a)). Moreover, section 4(b) of the Executive Order authorizes preemption of State law in the Federal rulemaking context when there is "firm and palpable evidence compelling the conclusion that the Congress intended to delegate to the * * * agency the authority to issue regulations preempting State law." State and local laws and regulations that would impose different or additional requirements for OTC drug labeling format or content would undermine the agency's goal of ensuring that OTC drug labeling is easy to read and understand. The agency believes that a consistent format will enable consumers to find the information on OTC drug labeling and will ensure that it meets minimal standards to ensure legibility. Additionally, national consistency in OTC labeling information will ensure that labeling uses language that most consumers can understand, and will facilitate comparisons among like products. A fundamental purpose of the proposed rule is to help ensure the safe and effective use of OTC drug products. The agency believes that the readability and understandability of OTC drug labeling is directly related to the safe and effective use of these products.

Executive Order 12612 requires that Federal preemption be restricted to the minimum level necessary to achieve the objectives of the statute under which the regulations are issued (section 4(c)). The proposed regulation is narrowly drawn and focuses on OTC drug labeling format and content. The proposed regulations set forth a procedure for States and local governments to petition the agency for an exemption from preemption.

As required by the Executive Order, States and local governments will be given, through this notice and proposed rulemaking, an opportunity to participate in the proceedings to preempt State and local laws (section 4(e)). In addition, under the Order, the appropriate officials and organizations representing the States will be consulted before this proposed action is implemented (section 3(a)).

The agency concludes that the policy proposed in this document has been assessed in light of the principles, criteria, and requirements in Executive Order 12612; that this policy is not inconsistent with that Order; that this policy will not impose additional costs or burdens on the States; and that this policy will not affect the ability of States to discharge traditional State governmental functions.

XI. Analysis of Impacts

A. Background and Purpose

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities.

Title II of the Unfunded Mandates Reform Act (Pub. L. 104–4) requires that agencies prepare a written statement and economic analysis before proposing any rule that may result in an annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 (adjusted annually for inflation).

The agency believes that this proposed rule is consistent with the principles set out in the Executive Order and in these two statutes. The purpose of this proposed rule is to establish a standardized format for the labeling of all OTC drug products so that the labeling will be easier to read and understand, and will provide consistent information in like situations. The proposed rule is intended to help ensure the safe and effective use of OTC drug products.

B. Qualitative Description of Benefits

Variability and numerous weaknesses in the presentation of critical safety and effectiveness information in OTC drug product labeling make it difficult for consumers to select the most appropriate product and to use the product safely and effectively. For consumers to benefit from such information, this information must be easy to find, readable, readily understood, noted, and acted upon. Yet, despite the critical role of this information, OTC drug product labeling is often presented in small print using a crowded layout with minimal white space. The proposed rule sets forth a minimum standard for type size, leading, and kerning, and standards for type style, and other graphical features. The proposed rule also sets forth standardized headings and subheadings, and a standardized order for information.

At least two implicit benefits will flow from this proposed labeling format. First, an easy to read, standardized labeling format will help ensure that consumers select the right product to meet their needs. The lack of uniform presentation of information currently found on OTC drug product labeling makes product comparisons difficult. Consumers are faced with a number of choices for purchase decisions and can find it difficult to determine which product is right for them, based on their symptoms and their personal health situation. With this new format consumers can more readily and easily determine whether a product contains ingredients that they need or should take. Facilitating product comparisons will reduce market inefficiencies that can result from suboptimal purchases, inappropriate price-quality relationships, and competitive inefficiencies. It can also reduce consumer search and transaction costs and, concomitantly, increase the ability to select products consistent with individual needs.

Because health care costs are increasing and increasing numbers of products are switching from prescription to OTC products, more patients are relying on self-diagnosis and self-treatment. Consequently, the proposed rule will benefit consumers by allowing them to make more appropriate choices for self-treatment, and reduce the trial-and-error approach to self-medication. This can lead to decreased overall health care costs resulting from reduced visits to the doctor or hospital for treatment.

Second, the easy to read, standardized format will directly benefit consumers by helping ensure the safe and effective use of the product. Using the product as labeled can reduce the frequency of the adverse drug experiences associated with OTC drug products. Although the frequency of such events have not been quantified, it can be presumed that enabling consumers to make better choices and more easily understand the information will lead to fewer OTC adverse drug experiences.

The agency is not aware of any definitive studies that could be used to quantify such benefits. In the **Federal Register** of August 16, 1995 (60 FR 42578), the agency sought written comments addressing quantitative measures of benefits, to aid in the assessment of the costs and benefits of enhanced OTC drug product labeling. Little useful data was submitted in response to this request. The agency, again, requests submission of this data to help evaluate the overall benefits to the public health of having OTC drug labeling that is easy to read and easy to understand.

C. Nature of the Economic Impact

This rule will require the redesign of OTC drug labels in accordance with a predetermined schedule of effective dates. FDA acknowledges the substantial cost of preparing label revisions for thousands of products, as the procedures for each change involve

numerous levels of review and verification, in addition to needed technical production supplies and activities. This analysis, however, finds that, while substantial, a large part of these costs cannot be attributed to the proposed rule, because standard business procedures compel a periodic redesign of most OTC labels. The cost impact of the rule therefore is largely dictated by the agency's required implementation dates. For example, many firms already redesign labels within a 2-year period. These firms would incur little added cost from a rule that allowed a 2-year implementation period. Even if a firm typically redesigned its labeling only every 4 years, half of its labeling would, on average, be replaced within a 2-year period. Thus, this firm would need to accelerate redesign for only one-half of its products. Moreover, even those products whose redesign would have to be accelerated would, on average, lose only one-half of their expected lifetimes. Accordingly, to calculate the incremental cost of this rule, FDA counted only the value that would be lost due to the attenuation of the labeling's useful life, after accounting for those design changes that would have resulted from standard business practice. FDA calculated this cost as the product of the estimated number of products affected, the estimated number of years of lost labeling life, and the estimated lost value of a year of labeling life. Derivations for these variables are discussed below.

1. Number of Products Affected

Once the rule has become fully effective, a new OTC drug product labeling design would be required for each stock keeping unit (individual products, packages and sizes), commonly termed SKU's. Although the agency is unaware of any fully comprehensive data base that provides reliable counts of the number of SKU's that are regulated OTC drugs, A. C. Nielsen (Nielsen), a recognized provider of market research business information and analysis, maintains product data from a sample of 4,000 retail outlets selected to represent the geographical and retail characteristics of the U.S. OTC market. FDA used this data base as a primary source for estimating the size of the affected OTC drug market. According to this source, in 1995 OTC drug products accounted for $18.7 billion in sales in grocery stores, drug stores, and mass merchandise outlets. These sales figures exclude categories of OTC items not ordinarily regulated as OTC drug products such as vitamins, facial make-up, and nutritional supplements, but include product categories that may or may not be regulated as OTC drug products depending on the ingredients and/or product claims, such as some lotions, shampoos, and deodorants. To estimate and refine the count of items covered, FDA allocated the products in Nielsen's inventory into review categories based on their monograph review status. Because there are so few products subject to marketing applications relative to monograph review, it was believed this approach would not significantly bias the allocation. This categorization indicated that OTC drug products that are regulated under the monograph review process accounted for almost 30,000 brand name SKU's. The breakdown of these branded SKU's by monograph review status is as follows: 10,910 are under a final monograph, 8,241 are scheduled to become final within the next 2 years, and the remaining 8,488 after 3 years. (There is some uncertainty with the number "8,488" because the Neilsen coverage of products that have sunscreens is incomplete.)

FDA's estimate of the number of SKU's for private label store brands is much less certain, because the Nielsen data base did not provide adequate information for this purpose. Instead, FDA based its estimate on the number of private label store brands likely to be carried by individual retail outlets, multiplied by the number of such outlets in the United States. FDA assumed that only larger retail firms have the resources necessary to compete in the OTC drug product market with their own store label. As shown in Table 2, nearly 400 firms were found likely to market private label brands, including those that operate supermarkets, drug stores, and proprietary stores, with more than 9 establishments, and the very largest mass merchandising firms. According to the Nielsen data, firms that relabel generic OTC drug products carry from 55 to 280 different SKU's, with an average of 135 SKU's per firm. Since large retail stores would compete across more product categories than individual generic relabelers, FDA assumed that such retailers would carry from 100 to 400 SKU's, depending on their size, as displayed in the third column of Table 2. Multiplying the average number of private label store brand SKU's per firm type by the number of retailers adds 71,000 private label SKU's to the branded count. Assuming the same regulatory status distribution as for branded SKU's, FDA estimated that 40 percent of the 71,000 private label SKU's, or 28,400, are currently covered under final OTC drug monographs, 21,300 are scheduled to become final within the next 2 years, and the remainder after 3 years.

TABLE 2.—ESTIMATE OF PRIVATE LABEL SKU'S

Kind of Business	No. of Firms[1]	No. of SKU's[2]	Total SKU's	Average Sales/Firm ($Mil.)[1]
Supermarket				
10–24 establishments	148	100	14,800	133
25–49 establishments	45	150	6,750	380
50–99 establishments	35	200	7,000	750
100 establishments or more	37	350	12,950	4,187
Drug Store				
10–24 establishments	54	150	8,100	48
25–49 establishments	16	200	3,200	121
50–99 establishments	11	350	3,850	144
100 establishments or more	23	400	9,200	1,851
Proprietary Store				
10–24 establishments	5	100	500	12
25–49 establishments	4	150	600	(*)
50–99 establishments	1	200	200	(*)
100 establishments or more	1	350	350	(*)
Discount or Mass Merchandising				
10–24 establishments	8			122
25–49 establishments	3			299
50–99 establishments	5			2,160
100 establishments or more	10	350	3,500	8,661
Total affected	390		71,000	

[1] Source: U.S. Department of Commerce, 1992 Census of Retail Trade, Establishment and Firm Size, Table 3.
(*) Withheld to avoid disclosing data for individual companies.
[2] Estimate.

While the proposed rule would affect all OTC drug products covered under monographs, the implementation dates for labeling changes will vary according to regulatory status. Those products currently covered by a final drug monograph or marketing application, or about 39,400 SKU's, would be affected within 2 years of publication of this final rule. A second group of up to 29,550 SKU's could be affected by the final rule, depending on the timing of the publication of their final OTC drug monographs. Monographs for the remaining 29,788 SKU's are assumed to become final only after publication of this rule. Since products marketed under these OTC drug monographs would require labeling changes regardless of this rule, no costs were assigned to this latter group of products. Table 3 presents FDA's estimates of the number of SKU's for each respective regulatory status.

TABLE 3.—NUMBER OF ESTIMATED SKU'S BY REGULATORY STATUS

	Brand name	Private	Total
Final	10,910	28,400	39,310
Final by 1998	8,241	21,300	29,541
Remaining	8,488	21,300	29,788
Total	27,639	71,000	98,639

2. Cost of a Labeling Redesign

In the August 16, 1995, **Federal Register** notice announcing the September 29, 1995, public hearing, FDA requested economic data on the cost to design OTC drug product labeling, but received only one written comment with quantitative data. The agency obtained other estimates of labeling costs, but they vary widely and generally include the cost of redesigning the principal display panel (PDP) as well as the labeling affected by this proposal. Estimates of the average cost to redesign, including the cost of redesigning the PDP, ranged from $2,700 to $10,000 per SKU for branded products, and from $500 to $1,500 per SKU for private label products. (These costs included the drafting of language, art work, review, and implementation.) If the PDP accounts for 50 percent of the cost to redesign branded products, the average cost to redesign the labeling of the branded products affected by this proposal would be $1,350 to $5,000 per SKU. These high volume, nationally marketed, brand name OTC drug products, make up a small portion of the total number of OTC drug products, but the majority of the sales. For this analysis, FDA assumed that 20 percent of the SKU's affected by this proposal will be branded products, with incremental redesign costs of $1,350 to $5,000, and the remainder of the SKU's will have incremental costs ranging from $500 to $1,500 per SKU. Using the midpoints of the incremental redesign cost ranges, the average incremental cost to redesign OTC drug product labeling, weighted for type of product, is $1,500 per SKU.

Several industry comments indicated that most companies redesign OTC drug product labeling periodically, as part of standard business practice. Some companies redesign OTC drug product labeling more than once a year, while others redesign every 3 to 6 years. With the proposed 2-year implementation period, firms that normally redesign labeling every 2 years or less should incur no incremental costs as a result of this proposed rule.

3. Methodology

To calculate the economic impact on industry, FDA made the following assumptions:

Frequent labeling redesigns and the cost of printing labeling are part of the cost of doing business in the OTC drug product industry. As standard business practice, the labeling for 20 percent of the SKU's affected by the proposal are redesigned at least every 2 years; for the remainder of the SKU's, 50 percent are redesigned every 3 years and 50 percent are redesigned every 6 years.

In any given year, the number of OTC drug products requiring redesign are evenly distributed over the labeling life. For example, if the average life of a labeling design is 3 years, one-third of the products are redesigned in year one, one-third in year two, and one-third in year three. Moreover, in any given year, the expected return from the labeling design is constant (straight line depreciation of the labeling's value).

As a result, the economic impact of requiring OTC drug product labeling redesign can be measured as the lost value of the existing labeling designs. FDA estimated this loss as the amortized cost, using a discount rate of 7 percent, of the number of years of labeling use lost.

The above assumptions imply that 20 percent of the SKU's will incur no incremental costs, because their labeling would normally be redesigned within the proposed rule's 2-year implementation period. For the remaining SKU's, the loss will range from 1 to 4 years of the remaining usefulness of the design. The calculation of the economic impact (EI) was prepared in two steps and summed: First, for labeling designs with a 3-year expected life and second, for labeling designs with a 6-year expected life.

4. Total Incremental Cost

Table 4 presents estimates of the incremental costs of this rule under alternative implementation periods. The estimates are shown for products currently covered under a final OTC drug monograph and for OTC drug products expected to be covered under a final OTC drug monograph as of the time the final rule is published. The cost to industry would range from $1.4 million for a 5-year implementation period to $43.2 million for the 1-year period. The shorter implementation periods are associated with higher costs because firms lose a greater part of a label's useful life. With a 2-year implementation period, the cost to industry would be $11.3 million for final OTC drug monographs and $8.5 million for OTC drug monographs under review, for a total cost of $19.8 million. Actual costs for the set of OTC drug monographs under review will depend on the number of SKU's affected by each monograph and the timing of the respective publication dates.

TABLE 4.—TOTAL INCREMENTAL COSTS OF LABELING CHANGE FOR AFFECTED SKU'S ($ MILLION)

Years to Implement	Final Monographs	Monographs Under Review (final by 1998)	Total Cost
1	24.7	18.5	43.2
2	11.3	8.5	19.8
3	5.0	3.7	8.7
4	2.5	1.9	4.4
5	0.8	0.6	1.4

To reduce the economic impact on small entities, the proposed rule would allow an additional year for individual OTC drug products having sales of less than $25,000 per year. According to the Nielsen data, this extension applies to about 40 percent of the OTC drug products, but accounts for only about 1 percent of retail sales. (To calculate costs for the 40 percent, it was assumed that the labeling design for half of the SKU's had a 3-year expected life, and the other half, a 6-year life.) With this extension and a 2-year implementation period, the cost to industry would be about $14.2 million, almost a 30 percent reduction in the economic burden (Table 5).

TABLE 5.—SMALL BUSINESS ALTERNATIVES ($ MILLION)

Years to Implement	Small Business Extension		
	Total Costs	1 Year	2 Year
1	43.2	28.6	23.1
2	19.7	14.2	12.0
3	8.7	6.5	5.1
4	4.3	2.9	2.2
5	1.4	0.7	0.7

D. Small Business Impact

1. Need For, and Objectives of the Rule

Variability in the design, format, and placement of required labeling information may cause difficulties for consumers in both finding and reading information on OTC drug product labeling regarding safe and effective use. For consumers to benefit from having information, they must not only have ready access to the information, but it must also be readable and readily understandable. If information is not processed or is ignored because of factors affecting readability, such as small print size or crowded format, it cannot provide the expected benefits that would result from safe and effective use.

The purpose of this proposed rule is to establish a standardized format for the labeling of all OTC drug products so that the labeling will be easier to read, have uniform presentation of information, and consistent information in like situations. The proposed rule is intended to help ensure the safe and effective use of OTC drug products.

2. Types of Small Entities Affected

OTC drug product manufacturers and those entities that engage in the relabeling of OTC drug products would be required to revise product labeling. Census data provide aggregate industry statistics on the number of manufacturers for Standardized Industrial Classification Code 2834 Pharmaceutical Preparations by establishment size, but do not distinguish between manufacturers of prescription and OTC products. According to the U.S. Small Business Administration (SBA) designations for this industry, however, over 92 percent of the roughly 700 establishments and over 87 percent of the 650 firms are small. (Because census size categories do not correspond to the SBA designation of 750 employees, these figures are based on 500 employees.)

IMS data on manufacturers of OTC drug products were also analyzed as an alternative method for estimating the number of small entities affected. Roughly 400 firms were identified as manufacturers of OTC products covered by IMS. Using the SBA size designation of 750 employees, 31 percent of the firms are large, 46 percent are small, and size data were not available for another 23 percent. Therefore, from 184 to 276 of the affected manufacturing firms would be considered small.

The agency is uncertain of the number of entities that relabel OTC products under private label store brands, but estimates that about 400 retail firms will need to relabel. (See Table 2.) These large retail stores offering private labels have average sales well above the SBA designations for small businesses.

3. Projected Reporting, Recordkeeping, and Other Compliance Requirements

This regulation would affect the information content and format associated with OTC drug product labeling. Firms that manufacture or relabel OTC drug products will need to change the information panel for each affected product. Since the agency has coordinated these requirements with labeling changes conducted in the normal course of business, many of these costs will be mitigated. Those OTC drug products that are marketed under a marketing application would need to submit revised labeling to the agency in accordance with § 314.70. This is a standard procedure that companies routinely follow for OTC drug product labeling changes. The proposed rule would not require new reporting and recordkeeping activities. Therefore, no additional professional skills are necessary.

4. Alternatives and Steps to Minimize the Impact on Small Entities

The proposed rule would require affected entities to change the information panel for affected OTC drug products. Among the steps the agency is taking to minimize the impact on small entities are: (1) To provide enough time for implementation to enable entities to use up existing labeling stock, (2) to provide sufficient time to coordinate a substantial proportion of the labeling changes with routine industry-initiated labeling changes, (3) to provide a mechanism for applying for an exemption or a deferral (when the requirements are judged inapplicable or impracticable), and (4) to provide an additional year to comply for individual OTC drug products having sales of less than $25,000 per year. Allowing 1 additional year for OTC drug products with sales of less than $25,000 per year reduces total industry costs by $5.5 million. While this last provision to extend the compliance time is targeted primarily at small entities, it provides flexibility for a substantial number of individual OTC drug products (about 40 percent), and the impact on overall retail sales would be negligible (less than 1 percent). The agency believes that the above actions provide substantial flexibility and reductions in cost for small entities.

The agency considered but rejected a voluntary labeling scheme, as previous industry efforts have been unsuccessful in achieving both a uniform format and an acceptable minimum print size for a majority of products in a timely manner. Further, a voluntary program would not provide relief to industry for conflicting labeling requirements at the State level.

The agency considered alternative implementation periods as options for all affected entities and for small entities. Industry costs for these implementation options are presented above in Tables 4 and 5, respectively. The agency selected a 2-year implementation period for all affected products. This reduces costs from $43 million (for a 1-year period) to $20 million. In order to further reduce the economic burden for small entities, the agency provided one additional year for low volume products. This alternative reduces total industry costs to $14 million. The agency believes that its approach provides significant reduction in cost while meeting the agency objective of achieving a standardized labeling format for a majority of products in a timely manner.

The agency considered but rejected revising all monographs on an individual basis because this approach would not achieve a standardized labeling format for a majority of products in a timely manner.

This analysis shows that this rule is not economically significant under Executive Order 12866 and that the agency has undertaken important steps to reduce the burden to small entities. Nevertheless, some small entities may incur significant impacts. Thus, this economic analysis, together with other relevant sections of this document, serves as the agency's initial regulatory flexibility analysis, as required under the Regulatory Flexibility Act. Finally, this analysis shows that the Unfunded Mandate Reform Act does not apply to the proposed rule because it would not result in an annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million.

XII. Request for Comments

Interested persons may, on or before June 27, 1997, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

XIII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

(1) Holt, G. A., and E. Hall, "The Self-Care Movement," *in* "Handbook of Nonprescription Drugs," 9th ed., American Pharmaceutical Association, Washington, 1990.

(2) Holt, G. A., et al., "OTC Labels: Can Consumers Read and Understand Them?" *American Pharmacy*, NS30:51–54, 1989.

(3) Watanabe, R. K., "The Ability of the Geriatric Population to Read Labels on Over-the-Counter Medication Containers," *Journal of the American Optometric Association*, 65:32–37, 1994.

(4) Wilkins, A. J., and M. I. Nimmo-Smith, "The Clarity and Comfort of Printed Text," *Ergonomics*, 30:1705–2020, 1987.

(5) Kalsher, M. J., et al., "Enhancing the Perceived Readability of Pharmaceutical Container Labels and Warnings: The Use of Alternative Designs and Pictorials," Proceedings of the Human Factors and Ergonomics Society 38th Annual Meeting, 1994.

(6) Landress, H. J., and M. A. Morck, "Prevalence and Risk of Medication

Mismanagement by the Elderly," *Journal of Florida Medical Association*, 71:261–266, 1984.

(7) Desaulniers, D. R., "Layout, Organization, and the Effectiveness of Consumer Product Warnings," *Human Factors Prospectives on Warnings*, Kenneth R. Laughery, Michael S. Wogalter, and Stephen L. Young (editors), the Human Factors and Ergonomics Society, pages 26–30, 1994.

(8) Manasse, H. R., "Medication Use in an Imperfect World," ASHP Research and Education Foundation, 1989.

(9) Caranasos, G. J., R. B. Stewart, and L. E. Cluff, "Drug-Induced Illness Leading to Hospitalization," *Journal of the American Medical Association*, 228:713–717, 1974. Quoted in J. E. Fincham, "Over-the-Counter Drug Use and Misuse by the Ambulatory Elderly: A Review of the Literature," *Journal of Geriatric Drug Therapy*, 1:3–21, 1987.

(10) Fincham, J. E., "Over-the-Counter Drug Use and Misuse by the Ambulatory Elderly: A Review of the Literature," *Journal of Geriatric Drug Therapy*, 1:3–21, 1987.

(11) Lumpkin, J. R., et al., "A Shopping Orientation Based Prescription for the Treatment of OTC Medication Misuse Among the Elderly," *Health Marketing Quarterly*, 8:95–118, 1990.

(12) Meckstroth, S., M. Scheartz, and N. Arawal, "NSAIDs—Safety Implications of Over-the-Counter Availability," *Drug Safety*, 7:221–244, 1992.

(13) Macro International Inc., "Women's Health Study Focus Groups Report," presented to the U.S. Food and Drug Administration on March 26, 1996.

List of Subjects

21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 330

Over-the-counter drugs.

21 CFR Part 358

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, the proposed rule to amend 21 CFR 330.1 (61 FR 8450, March 4, 1996) is withdrawn, and it is proposed that 21 CFR parts 201, 330, and 358 be amended to read as follows:

PART 201—LABELING

1. The authority citation for 21 CFR part 201 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 508, 510, 512, 530–542, 701, 704, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 358, 360, 360b, 360gg–360ss, 371, 374, 379e); secs. 215, 301, 351, 361 of the Public Health Service Act (42 U.S.C. 216, 241, 262, 264).

2. Section 201.63 is amended by revising the section heading, the first sentence in paragraph (a), and the warning statement in paragraph (e) to read as follows:

§ 201.63 Pregnancy breast-feeding warning.

(a) The labeling for all over-the-counter (OTC) drugs that are intended for systemic absorption, unless specifically exempted, shall contain a general warning under the heading "Warning" (or "Warnings" if it appears with additional warning statements) as follows: "If pregnant or breast-feeding, ask a health professional before use."

* * *

* * * * *

(e) * * *

"IT IS ESPECIALLY IMPORTANT NOT TO USE" (SELECT "ASPIRIN" OR "CARBASPIRIN CALCIUM," AS APPROPRIATE) "DURING THE LAST 3 MONTHS OF PREGNANCY UNLESS SPECIFICALLY DIRECTED TO DO SO BY A DOCTOR BECAUSE IT MAY CAUSE PROBLEMS IN THE UNBORN CHILD OR COMPLICATIONS DURING DELIVERY."

3. New § 201.66 is added to subpart C to read as follows:

§ 201.66 Format and content requirements for over-the-counter (OTC) drug product labeling.

(a) *Scope.* This section sets forth the format and content requirements for the labeling of OTC drug products. Where an OTC drug product is the subject of an applicable final monograph or regulation that contains content and format requirements that conflict with this section, then the content and format requirements in this section must be followed.

(b) *Definitions.* The following definitions of terms apply to this section:

(1) *Act* means the Federal Food, Drug, and Cosmetic Act (secs. 201 *et seq.* (21 U.S.C. 321 *et seq.*)).

(2) *Active ingredient* means any component that is intended to furnish pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease, or to affect the structure or any function of the body of humans or other animals. The term includes those components that may undergo chemical change in the manufacture of the drug product and be present in the drug product in a modified form intended to furnish the specified activity or effect.

(3) *Established name of a drug or active ingredient* means the applicable official name designated under section 508 of the act, or, if there is no designated official name and the drug or active ingredient is recognized in an official compendium, the official title of the drug or active ingredient in such compendium, or, if there is no designated official name and the drug or active ingredient is not recognized in an official compendium, the common or usual name of the drug or active ingredient.

(4) *FDA* means the Food and Drug Administration.

(5) *Ingredient* means any substance in the drug product, whether added to the formulation as a single substance or in admixture with other substances.

(c) *Content requirements.* The outside container or wrapper of the retail package, or the immediate container label if there is no outside container or wrapper, of all marketed OTC drug products shall contain the labeling information required in the applicable final OTC drug monograph or in the labeling of an approved marketing application of an OTC drug product, in the order listed in paragraphs (c)(1) through (c)(7) of this section, under the appropriate headings and subheadings listed therein. The headings and subheadings shall be highlighted by bold type.

(1) "Active Ingredient (In Each [insert type of dosage unit]):" or "Active Ingredients (In Each [insert type of dosage unit]):", followed by the established name of the active ingredient(s) and, if contained in or if required to appear in the labeling, the quantity or proportion of each active ingredient per dosage unit. For products marketed without discrete dosage units (e.g., most topicals), the section heading shall read "Active Ingredient:" or "Active Ingredients:", followed by the established name of the active ingredient(s) and, if contained in or if required to appear in the labeling, the quantity or proportion of each active ingredient;

(2) "Purpose:" or "Purposes:", followed by an accurate statement of the general pharmacological category(ies) or the principal intended action(s) of the drug or, where the drug consists of more than one ingredient, the general pharmacological categor(ies) or the principal intended action(s) of each active ingredient;

(3) "Use:" or "Uses:", followed by the indication(s) for the specific drug product;

(4) "Warning:" or "Warnings:", followed by one or more of the following specific warning subheadings, if applicable:

(i) "Warning:", followed by any specific warnings that are required for certain products (such as Reye's syndrome for drug products containing salicylates (§ 201.314(h)(1))). Where appropriate, the subject of the warning must be specified in the heading before the word "Warning" (such as "Allergy Warning:" or "Alcohol Warning:");

(ii) "Do Not Use:", followed by any contraindications for use with the product. These contraindications are "absolute" and are intended specifically for situations where consumers should not use the product unless a prior diagnosis has been established by a physician or where consumers should not use the product under any circumstances regardless of whether a doctor or health professional is consulted; or

(iii) "Ask a Doctor Before Use", immediately followed by one or more of the following specific warning subheadings, as appropriate. These specific warnings are intended only for situations where consumers should not use the product until a doctor is consulted:

(A) "If You Have:", followed by any warnings for persons with certain preexisting conditions (excluding pregnancy) and warnings for persons experiencing certain symptoms;

(B) "If You Are:", followed by any drug/drug interaction warnings and drug/food interaction warnings; or

(C) "If You:", followed by a combination of the warnings listed in paragraphs (c)(4)(iii)(A) and (c)(4)(iii)(B) of this section;

(iv) "When Using This Product:", followed by the side effects that the consumer may experience, and the substances or activities to avoid while using the product;

(v) "Stop Using This Product If:", followed by any signs of toxicity and other serious reactions that would necessitate immediately discontinuing use of the product, followed by the words: "Ask a doctor. These may be signs of a serious condition" (highlighted by bold type) or "Ask a doctor. This may be a sign of a serious condition." (highlighted by bold type));

(vi) Any required warnings that do not fit within one of the categories of warnings listed in paragraphs (c)(4)(i) through (c)(4)(v), (c)(4)(vii), and (c)(4)(viii) of this section;

(vii) The pregnancy-breast feeding warning set forth in § 201.63 of this part; or

(viii) The "Keep out of reach of children" warning and the overdose/accidental ingestion warning, as set forth in § 330.1(g) of this chapter;

(5) "Directions:", followed by the directions for use;

(6) "Other Information:", followed by additional information that is not included under paragraphs (c)(1) through (c)(5) of this section, but is required by or is optional under an applicable OTC drug monograph or is included in the labeling of an approved marketing application for an OTC drug product, where appropriate. If included, this information must immediately follow the "Directions" for use section;

(7) "Other Ingredients:" or "Inactive Ingredients:", followed by the cosmetic and/or inactive ingredients, as appropriate.

(d) *Format requirements.* All required labeling information for OTC drug products, except for the labeling on the principal display panel, shall be printed in accordance with the following specifications:

(1) All headings and subheadings set forth in paragraphs (c)(1) through (c)(7) of this section shall use only upper and lower case letters and shall be highlighted by bold type that prominently distinguishes the headings and subheadings from other information. In addition, shading or color contrast may be used to highlight headings and subheadings. Reverse type is not permitted as a form of highlighting. A horizontal line shall separate each section of information under the major headings listed in paragraphs (c)(1) through (c)(7) of this section;

(2) The letter height or type size for headings and subheadings set forth in paragraphs (c)(1) through (c)(7) of this section and all other required OTC drug product labeling shall be no smaller than 6 point type, except for the manufacturer's name and address;

(3) All headings, subheadings, and information set forth in or required under paragraphs (c)(1) through (c)(7) of this section shall be legible and clearly presented. The headings, subheadings, and information shall be presented only in the Helvetica type style. At least 1 point leading (i.e., space between two lines of text) shall be used for the headings, subheadings, and information set forth in or required under paragraphs (c)(1) through (c)(7) of this section, and letters shall not touch. Shading or color contrasts may be used to increase the prominence and conspicuousness of the text, but shall not be used to highlight or emphasize specific text or portions of text unless otherwise provided in an approved marketing application, final monograph, or an applicable regulation (e.g., current requirements for bold print in §§ 341.76, 341.80 of this chapter, and requirement for box and red letters in § 201.318(c)(1));

(4) Each unique labeling requirement for OTC drug product information listed under the headings and subheadings in paragraphs (c)(1) through (c)(6) of this section shall be preceded by a bullet point. If more than one bulleted phrase is placed on the same horizontal line, the end of one bulleted phrase shall be separated from the beginning of the next bulleted phrase by at least two square em's (i.e., two squares of the size of the letter "M");

(5) The heading and information required under paragraph (c)(1) of this section shall appear immediately adjacent and to the left of the heading and information required under paragraph (c)(2) of this section. Where there is more than one active ingredient, the active ingredients shall be listed in alphabetical order; and

(6) All information required under the general heading "Warnings" shall be presented in one continuous space and shall not be separated in any way on the labeling.

(e) *Location.* All information required under paragraphs (c)(1) through (c)(7) of this section shall be the first information that appears on the back or side panel of the outside container or wrapper of the retail package, or the immediate container label if there is no outside container or wrapper, of all marketed OTC drug products.

(f) *Exemptions and deferrals.* FDA on its own initiative or in response to a written request from any manufacturer, packer, distributor, or applicant, may exempt or defer, based on the particular circumstances presented, or on more specific requirements set forth in this section on the basis that the requirement is inapplicable or impracticable. Requests for exemptions shall be submitted in the form of a citizen petition under § 10.30 of this chapter, and should be clearly identified on the envelope as a "Request for Exemption from 21 CFR 201.66 (OTC Labeling Format)." Such requests shall include documentation which demonstrates why a requirement of this section is inapplicable to or impracticable for the labeling of the OTC drug product, and which demonstrates that the manufacturer, packer, distributor, or applicant has complied with as many of the format requirements in this section as practicable, including the use of all other graphical techniques to enhance readability.

(g) *Interchangeable terms and connecting terms.* The terms listed in § 330.1(i) of this chapter may be used interchangeably in the labeling of OTC drug products, provided such use does not alter the meaning of the labeling that has been established and identified in an applicable monograph or by regulation. The terms listed in § 330.1(k) of this chapter may be deleted from the labeling of OTC drug products when the

labeling is revised to comply with this section, provided such deletion does not alter the meaning of the labeling that has been established and identified in an applicable monograph or by regulation. The terms listed in § 330.1(i) and (k) of this chapter shall not be used to change in any way the specific headings and subheadings required under paragraph (c)(1) through (c)(7) of this section.

(h) *Preemption.* No State or local governing entity may establish or continue in effect any law, rule, regulation, or requirement for OTC drug product labeling format or content that is different from, or in addition to, that required by FDA. This paragraph is not intended to preempt statutory and common law causes of action in tort.

(i) *Requests for exemption from preemption.* A State or local governing entity may request an exemption from preemption upon petition under § 10.30 of this chapter. A petition for an exemption shall contain a detailed explanation of why an exemption should be granted, and include supporting documentation and data justifying the need for an exemption.

(j) An OTC drug product that fails to comply with the format and content requirements in this section is liable to regulatory action.

4. Section 201.314 is amended by revising the first two sentences in paragraph (a) and paragraph (g)(1) to read as follows:

§ 201.314 Labeling of drug preparations containing salicylates.

(a) The label of any oral drug preparation intended for sale without prescription and which contains any salicylate ingredient (including aspirin, salicylamide, other salicylates, and combinations) must bear a conspicuous warning statement in heavy block type on clearly contrasting background, such as: "Warning—Keep out of reach of children" (highlighted in bold type). "In case of overdose, get medical help right away." * * *

* * * * *

(g)(1) The label of any drug containing more than 5 percent methyl salicylate (wintergreen oil) should bear a conspicuous warning such as: "Warning: Do not use otherwise than as directed. 'Keep out of reach of children' (highlighted in bold type). The labeling of drugs shall also state as follows: For drugs used by oral administration, "In case of overdose, get medical help right away;" for drugs used topically and not inteded for oral ingestion, If swallowed, get medical help right away."

* * * * *

5. Section 201.319 is amended by revising paragraph (b) to read as follows:

§ 201.319 Water-soluble gums, hydrophilic gums, and hydrophilic mucilloids (including, but not limited to agar, alginic acid, calcium polycarbophil, carboxymethylcellulose sodium, carrageenan, chondrus, glucomannan ((B-1,4 linked) polymannose acetate), guar gum, karaya gum, kelp, methylcellulose, plantago seed (psyllium), polycarbophil tragacanth, and xanthan gum) as active ingredients; required warnings and directions.

* * * * *

(b) Any drug products for human use containing a water-soluble gum, hydrophilic gum, or hydrophilic mucilloid as an active ingredient in an oral dosage form when marketed in a dry or incompletely hydrated form as described in paragraph (a) of this section are misbranded within the meaning of section 502 of the Federal Food, Drug, and Cosmetic Act unless their labeling bears the following warnings and directions:

"'Warnings' (highlighted in bold type): Taking this product without adequate fluid may cause it to swell and block your throat or esophagus and may cause choking. Do not take this product if you have difficulty in swallowing. If you experience chest pain, vomiting, or difficulty in swallowing or breathing after taking this product, seek immediate medical attention;" and

"'Directions' (highlighted in bold type):" (Select one of the following, as appropriate: "Take" or "Mix") "this product (child or adult dose) with at least 8 ounces (a full glass) of water or other fluid. Taking this product without enough liquid may cause choking. See warnings."

* * * * *

PART 330—OVER-THE-COUNTER (OTC) HUMAN DRUGS WHICH ARE GENERALLY RECOGNIZED AS SAFE AND EFFECTIVE AND NOT MISBRANDED

6. The authority citation for 21 CFR part 330 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

7. Section 330.1 is amended by revising paragraphs (c)(1), (c)(2)(i), and (c)(2)(ii), by removing the first three sentences in paragraph (g) and adding two sentences in their place, and by revising, paragraph (i), and by adding new paragraph (k) to read as follows:

§ 330.1 General conditions for general recognition as safe, effective, and not misbranded.

* * * * *

(c)(1) The product is labeled in compliance with chapter V of the Federal Food, Drug, and Cosmetic Act (the act) and subchapter C *et seq.* of this chapter, including the format and content requirements set forth in § 201.66 of this chapter. An OTC drug product that is not in compliance with chapter V and subchapter C, including § 201.66, is liable to regulatory action. For purposes of § 201.61(b) of this chapter, the statement of identity of the product shall be the term or phrase used in the applicable monograph established in this part.

(2)(i) The label and labeling of the product contain in a prominent and conspicuous location the labeling describing the product information that has been established in an applicable final monograph. At the option of the manufacturer, this labeling may be designated "FDA Approved Information." If the designation "FDA Approved Information" is used, the product labeling information that has been established and identified by quotation marks in an applicable monograph or by regulation (e.g., § 201.63 of this chapter)).

(ii) At the option of the manufacturer, as an alternative to the requirements of paragraph (c)(2)(i) of this section, the label and labeling of the product may contain in the "Uses" section, other truthful and nonmisleading statements describing only those indications for use that have been established in an applicable monograph, subject to the provisions of section 502 of the act relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act. Such product labeling information shall not be boxed and shall not contain the statement provided in paragraph (c)(2)(i) of this section.

* * * * *

(g) The labeling for all drugs contains the general warning: "Keep out of reach of children (highlighted in bold type)." The labeling of drugs shall also state as follows: For drugs used by oral administration, "In case of overdose, get medical help right away;" for drugs used topically, rectally, or vaginally and not intended for oral ingestion, "If swallowed, get medical help right away;" for drugs used topically and intended for oral use, "If more than used for * * * is accidentally swallowed, get medical help right away." * * *

* * * * *

(i) The following terms may be used interchangeably in any of the labeling for OTC drug products provided such use does not alter the meaning of the labeling that has been established and identified in an applicable monograph or by regulation.

(1) "Aggravate(s)" or "makes(s) * * * worse".
(2) "Ask" or "consult" or "contact".
(3) "Asking" or "consulting".
(4) "Assistance" or "help" or "aid".
(5) "Avoid contact with eyes" or "do not get into eyes".
(6) "Avoid inhaling" or "do not inhale".
(7) "Before a doctor is consulted" or "without first consulting your doctor" or "consult your doctor before * * *" or "unless first told to do so by a doctor".
(8) "Clean" or "cleanse".
(9) "Consulting" or "advising".
(10) "Continue(s)" or "persist(s)" or "do(es) not go away" or "last(s)".
(11) "Discard" or "throw away".
(12) "Discontinue * * *" or "stop * * *" or "quit * * *".
(13) "Doctor" or "physician".
(14) "Exceed" or "use more than" or "go beyond".
(15) "Exceed recommended dosage" or "use more than directed".
(16) "Excessive" or "too much".
(17) "Give to" or "use in".
(18) "Immediately" or "right away" or "directly".
(19) "Immediately" or "as soon as".
(20) "Immediately following * * *" or "right after".
(21) "Improve(s)" or "get(s) better" or "make(s) better".
(22) "Indication(s)" or "Use(s)".
(23) "Instill" or "put in (quantity) drop by drop".
(24) "Is (are) accompanied by" or "you also have" (in context only) or "occur(s) with".
(25) "Is persistent" or "continues" or "does not go away" or "lasts".
(26) "Lung" or "pulmonary".
(27) "Medication" or "drug".
(28) "Not to exceed" or "not more than".
(29) "Obtain(s)" or "get(s)".
(30) "Perforation of" or "hole in".
(31) "Persistent" or "that does not go away" or "that continues" or "that lasts".
(32) "Presently" or "now".
(33) "Take" or "use".
(34) "Tend(s) to recur" or "come(s) back".
(35) "To avoid contamination" or "avoid contamination" or "do not contaminate".
(36) "Unless directed by a [the child's] doctor" or "except under the advice of a [the child's] doctor" or "unless told to do so by a [the child's] doctor".
(37) "Worsen(s)" or "get(s) worse" or "make(s) worse".

* * * * *

(k) The following connecting terms may be deleted from the labeling of OTC drug products provided such deletion does not alter the meaning of the labeling that has been established and identified in an applicable monograph or by regulation:

(1) "And".
(2) "As may occur with".
(3) "Associated with".
(4) "Consult a doctor".
(5) "Discontinue use".
(6) "Due to".
(7) "If this occurs".
(8) "Or".
(9) "Occurring with".
(10) "Such as".
(11) "While taking this product".
(12) "Within".
(13) "Unless directed by a doctor".

PART 358—MISCELLANEOUS EXTERNAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

8. The authority citation for 21 CFR part 358 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

9. Section 358.650 is amended in paragraph (d)(1) by revising the information in the brackets to read as follows:

§ 358.650 Labeling of pediculicide drug products.

* * * * *

(d) * * *

(1) * * * [sentence in boldface type].

* * * * *

Dated: December 20, 1996.

David A. Kessler,

Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

Note: The following Appendix will not appear in the Annual Code of Federal Regulations.

BILLING CODE 4160-01-F

Appendix A.—Examples of Prototype OTC Drug Poducts Labeling

Example 1

Example of Proposed Headings*

Active Ingredient (In Each Tablet) **Purpose**
xxxxxxxxxx **Xmg** xxxxxxxxx

Use:
- xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

Warnings

Do Not Use:
- xxxxxxxxxxxxxxxxxxxx

Example 3

Cough/Cold Product Labeling Using Proposed Specifications*
[Based on applicable monographs]

Active Ingredients (In Each Tablet) — **Purposes**
Chlorpheniramine Maleate 2 mg ..... Antihistamine
Dextromethorphan 15 mg ..... Cough Suppressant
Pseudoephedrine Hydrochloride 30 mg ..... Nasal Decongestant

Uses: for the temporary relief of these cold symptoms
• sneezing • runny nose • nasal congestion, stuffiness • cough

Warnings

Do Not Use: this product if you are now taking a prescription monoamine oxidase inhibitor (MAOI) (certain drugs for depression, psychiatric or emotional conditions, or Parkinson's disease), or for 2 weeks after stopping the MAOI drug. If you are uncertain whether your prescription drug contains an MAOI, ask a health professional.

Ask a Doctor Before Use

If You Have:
• heart disease • excessive phlegm (mucous) • glaucoma
• high blood pressure • thyroid disease • diabetes
• a breathing problem such as emphysema or chronic bronchitis
• difficulty in urination due to enlargement of the prostate gland
• persistent or chronic cough such as occurs with smoking, asthma, or emphysema
• cough with fever, rash, or persistent headache

If You Are: taking sedatives or tranquilizers

When Using This Product:
• marked drowsiness may occur
• alcohol, sedatives, and tranquilizers may increase the drowsiness effect
• avoid alcoholic beverages
• use caution when driving a motor vehicle or operating machinery
• excitability may occur, especially in children

Stop Using This Product If:
• nervousness, dizziness, or sleeplessness occurs
• cough is accompanied by fever, rash, or persistent headache
• nasal congestion does not improve in 7 days

Ask a doctor. These may be signs of a serious condition.

If pregnant or breast-feeding, ask a health professional before use.

Keep out of reach of children. In case of overdose, get medical help right away.

Directions:
• Do not exceed recommended dosage.
• Adults and children over 12 years of age: Take 2 tablets every 6 hours as needed. Do not take more than 8 tablets in 24 hours.
• Children under 12 years of age: Ask a doctor.

* Note: Headings are in 6 point type, text is in 6 point type

Example 4

Cough/Cold Product Labeling Using Proposed Specifications*
[Based on applicable monographs]

Active Ingredients (In Each 5ml = 1 teaspoonful) — **Purpose**
Chlorpheniramine Maleate 2 mg ..... Antihistamine
Dextromethorphan 15 mg ..... Cough Suppressant
Pseudoephedrine Hydrochloride 30 mg ..... Nasal Decongestant

Uses: for the temporary relief of these cold symptoms
• sneezing • runny nose • nasal congestion, stuffiness • cough

Warnings

Do Not Use: this product if you are now taking a prescription monoamine oxidase inhibitor (MAOI) (certain drugs for depression, psychiatric or emotional conditions, or Parkinson's disease), or for 2 weeks after stopping the MAOI drug. If you are uncertain whether your prescription drug contains an MAOI, ask a health professional.

Ask a Doctor Before Use

If You Have:
• heart disease • excessive phlegm (mucous) • glaucoma
• high blood pressure • thyroid disease • diabetes
• a breathing problem such as emphysema or chronic bronchitis
• difficulty in urination due to enlargement of the prostate gland
• persistent or chronic cough such as occurs with smoking, asthma, or emphysema
• cough with fever, rash, or persistent headache

If You Are: taking sedatives or tranquilizers

When Using This Product:
• marked drowsiness may occur
• alcohol, sedatives, and tranquilizers may increase the drowsiness effect
• avoid alcoholic beverages
• use caution when driving a motor vehicle or operating machinery
• excitability may occur, especially in children

Stop Using This Product If:
• nervousness, dizziness, or sleeplessness occurs
• cough is accompanied by fever, rash, or persistent headache
• nasal congestion does not improve in 7 days

Ask a doctor. These may be signs of a serious condition.

If pregnant or breast-feeding, ask a health professional before use.

Keep out of reach of children. In case of overdose, get medical help right away.

Directions:
• Do not exceed recommended dosage.
• Adults and children over 12 years of age: Take 2 teaspoonsful every 6 hours as needed. Do not take more than 8 teaspoonsful in 24 hours.
• Children under 12 years of age: Ask a doctor.

Cough/Cold Syrup

* Note: Headings are in 6 point type, text is in 6 point type

Example 5

Topical Acne Product Labeling Using Proposed Specifications*
[Based on applicable monograph]

Active ingredients — **Purpose**
Resorcinol 2% ..... Acne Medication Cream
Sulfur 5%

Uses:
- for the treatment of acne
- dries up acne pimples
- helps prevent new acne blemishes

Warnings

Do Not Use: on broken skin or apply to large areas of the body

When Using This Product:
- do not get into eyes
- using other topical acne medications at the same time or right after using this product may increase dryness or irritation of the skin. Only one medication should be used unless directed by a doctor
- apply to affected areas only

Stop Using This Product If: excessive skin irritation develops or increases **Ask a doctor. This may be a sign of a serious condition.**

For external use only.

Keep out of reach of children. If swallowed, get medical help right away.

Directions:
- Clean the skin throughly before applying drug.
- Cover the entire affected area with a thin layer one to three times daily.
- Because excessive drying of the skin may occur, start with one application daily, then gradually increase to two to three times daily if needed or as directed by a doctor.
- If bothersome drying or peeling occurs, reduce application to once a day or every other day.

* Note: Headings are in 6 point type, text is in 6 point type

Example 6

Stannous Flouride Product Labeling Using Proposed Specifications*
[Based on applicable monograph]

Active ingredient — **Purpose**
Stannous Flouride 0.4% ..... Anticavity Flouride Preventive Treatment Gel

Use: Aids in the prevention of dental decay.

Warnings

Keep out of reach of children. If more than used for brushing is accidentally swallowed, get medical help right away.

Directions:
- Adults and children 6 years of age and older: Use once a day after brushing your teeth with a toothpaste.
- Apply the gel to your teeth and brush thoroughly.
- Allow the gel to remain on your teeth for 1 minute and then spit out.
- Do not **swallow the gel**.
- Do not **eat** or drink for 30 minutes after brushing.
- Instruct children under 12 years of age in good rinsing habits (to minimize swallowing).
- Supervise children as necessary until capable of using without supervision.
- Children under 6 years of age: Consult a dentist or doctor.

Other information:
- This is a flouride preventive treatment gel, not a toothpaste.
- Read directions carefully before using.
- The product may produce surface staining of the teeth.
- Adequate tooth brushing may prevent these stains which are not harmful or permanent and may be removed by your dentist.
- The combined daily use of a flouride preventive treatment gel and a flouride toothpaste can help reduce the incidence of dental cavities.

Inactive ingredients: Anhydrous glycerin, (names of other inactive ingredients listed in order of predominance in the product)

* Note: Headings are in 6 point type, text is in 6 point type

Example 7

Chlorpheniramine Maleate Product Labeling Using Proposed Specifications*
[Based on applicable monograph]

FDA Approved Information:

Active Ingredient (In Each Tablet)	Purpose
Chlorpheniramine Maleate 4 mg	Antihistamine

Uses: for the temporary relief of these symptoms of hay fever
▶ sneezing ▶ runny nose ▶ itchy, watery eyes

Warnings

Ask a Doctor Before Use
If You Have:
▶ glaucoma
▶ a breathing problem such as emphysema or chronic bronchitis
▶ difficulty in urination due to enlargement of the prostate gland
If You Are:
▶ taking sedatives or tranquilizers
When Using This Product:
▶ marked drowsiness may occur
▶ alcohol, sedatives, and tranquilizers may increase the drowsiness effect
▶ avoid alcoholic beverages
▶ use caution when driving a motor vehicle or operating machinery
▶ excitability may occur, especially in children

If pregnant or breast-feeding, ask a health professional before use.
Keep out of reach of children. In case of overdose, get medical help right away.

Directions:

Adults and children over 12 years:	Take 1 tablet every 4 to 6 hours as needed. Do not take more than 6 tablets in 24 hours.
Children 6 to under 12 years:	Take 1/2 tablet every 4 to 6 hours as needed. Do not take more than 3 tablets in 24 hours.
Children under 6 years:	Ask a doctor.

Inactive Ingredients:

Questions: 1-800-555-1234

123456789

* Note: Headings are in 6 point type, text is in 6 point type

Example 8

Cough/Cold Product Labeling Using Proposed Specifications*
Except that Directions are Listed Before Warnings
[Based on applicable monographs]

Active Ingredients (In Each Tablet)	Purposes
Chlorpheniramine Maleate 2 mg	Antihistamine
Dextromethorphan 15 mg	Cough Suppressant
Pseudoephedrine Hydrochloride 30 mg	Nasal Decongestant

Uses: for the temporary relief of these cold symptoms
• sneezing • runny nose • nasal congestion, stuffiness • cough

Directions:
• Do not exceed recommended dosage.
• Adults and children over 12 years of age: Take 2 tablets every 6 hours as needed. Do not take more than 8 tablets in 24 hours.
• Children under 12 years of age: Ask a doctor.

Warnings

Do Not Use: this product if you are now taking a prescription monoamine oxidase inhibitor (MAOI) (certain drugs for depression, psychiatric or emotional conditions, or Parkinson's disease), or for 2 weeks after stopping the MAOI drug. If you are uncertain whether your prescription drug contains an MAOI, ask a health professional.
Ask a Doctor Before Use
If You Have:
• heart disease • excessive phlegm (mucous) • glaucoma
• high blood pressure • thyroid disease • diabetes
• a breathing problem such as emphysema or chronic bronchitis
• difficulty in urination due to enlargement of the prostate gland
• persistent or chronic cough such as occurs with smoking, asthma, or emphysema
• cough with fever, rash, or persistent headache
If You Are: taking sedatives or tranquilizers
When Using This Product:
• marked drowsiness may occur
• alcohol, sedatives, and tranquilizers may increase the drowsiness effect
• avoid alcoholic beverages
• use caution when driving a motor vehicle or operating machinery
• excitability may occur, especially in children
Stop Using This Product If:
• nervousness, dizziness, or sleeplessness occurs
• cough is accompanied by fever, rash, or persistent headache
• nasal congestion does not improve in 7 days
Ask a doctor. These may be signs of a serious condition.
If pregnant or breast-feeding, ask a health professional before use.
Keep out of reach of children. In case of overdose, get medical help right away.

* Note: Headings are in 6 point type, text is in 6 point type

Example 9

Chlorpheniramine Maleate Product Labeling Using Proposed Specifications*
Except that the Order is Different
[Based on applicable monograph]

Uses: for the temporary relief of these symptoms of hay fever
▶ sneezing ▶ runny nose ▶ itchy, watery eyes

Directions:

Adults and children over 12 years:	Take 1 tablet every 4 to 6 hours as needed. Do not take more than 6 tablets in 24 hours.
Children 6 to under 12 years:	Take 1/2 tablet every 4 to 6 hours as needed. Do not take more than 3 tablets in 24 hours.
Children under 6 years:	Ask a doctor.

Warnings

Ask a Doctor Before Use
If You Have:
▶ glaucoma
▶ a breathing problem such as emphysema or chronic bronchitis
▶ difficulty in urination due to enlargement of the prostate gland

If You Are:
▶ taking sedatives or tranquilizers

When Using This Product:
▶ marked drowsiness may occur
▶ alcohol, sedatives, and tranquilizers may increase the drowsiness effect
▶ avoid alcoholic beverages
▶ use caution when driving a motor vehicle or operating machinery
▶ excitability may occur, especially in children

If pregnant or breast-feeding, ask a health professional before use.
Keep out of reach of children. In case of overdose, get medical help right away.

Active Ingredient (In Each Tablet)	Purpose
Chlorpheniramine Maleate 4 mg	Antihistamine

* Note: Headings are in 8 point type, text is in 6 point type

[FR Doc. 97–4596 Filed 2–26–97; 8:45 am]
BILLING CODE 4160–01–C

federal register

Thursday
February 27, 1997

Part III

The President

Proclamation 6973—American Red Cross Month, 1997

Federal Register
Vol. 62, No. 39
Thursday, February 27, 1997

Presidential Documents

Title 3—

The President

Proclamation 6973 of February 24, 1997

American Red Cross Month, 1997

By the President of the United States of America

A Proclamation

Founded over a century ago by Clara Barton, the American Red Cross has evolved from a branch of the International Red Cross into a uniquely American institution, serving our Nation in peace and in war, and through countless natural disasters. Since the Spanish-American War, when the first volunteers brought emergency first-aid and news from home to wounded soldiers, generations of Americans have followed in this grand tradition of service.

Today, in communities across our Nation, a million and a half volunteers stand ready to help their neighbors at a moment's notice. Last year, Red Cross paid and volunteer staff assisted disaster victims across the country by opening more than 3,200 shelters and giving comfort to 172,000 people. The Red Cross also reached 16 million Americans through health and safety courses, including HIV and AIDS education and community outreach programs; collected more than 6 million units of lifesaving blood to keep our national blood supply ready, strong, and safe; and provided immediate counseling and support to the bereaved families of the victims of TWA Flight 800 and ValuJet Flight 592.

Overseas, American Red Cross workers provided emergency communications for our troops in Bosnia; worked with foreign Red Cross societies to rebuild the lives of civilian refugees in places such as the former Yugoslavia and Rwanda; and provided personnel, financial aid, and gifts of goods and services to the victims of international disasters and armed conflicts in every corner of the globe.

Since 1881, the size, scope, and complexity of major disasters have placed an ever-greater demand on the resources of the Red Cross. Yet, the generosity of our citizens has enabled the American Red Cross to continue to fulfill its humanitarian mission, providing assistance to those in need and easing suffering around the world. We must continue this tradition, and, in the spirit of service, support this voluntary agency because it truly belongs to all Americans. Each of us can help keep the American Red Cross strong through our donations of time, money, and blood.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America and Honorary Chairman of the American Red Cross, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim March 1997 as American Red Cross Month. I urge all the people of the United States to support the humanitarian work of their local Red Cross chapters by volunteering and participating in Red Cross blood drives.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of February, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-first.

William J. Clinton

[FR Doc. 97-5040
Filed 2-26-97; 8:45 am]
Billing code 3195-01-P

federal register

Thursday
February 27, 1997

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 39

Airworthiness Directives; Pratt & Whitney Canada PT6 Series Turboprop Engines; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–01; Amendment 39–9936; AD 97–04–12]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Canada PT6 Series Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Pratt & Whitney Canada (PWC) PT6 series turboprop engines. This action requires a one-time visual inspection of compressor bleed-off valves (BOVs) to determine if an affected supplier's code number is on the cover; and, if so, this AD requires the removal of the bleed valve cover assembly from the compressor bleed valve housing assembly and inspection of the cotter pin and the guide shaft pin. If the cotter pin or guide shaft pin is not acceptable, this AD requires modifying the compressor BOV or replacing it with a serviceable part. This amendment is prompted by reports of two malfunctions of compressor BOVs that resulted in inflight engine power reduction. The actions specified in this AD are intended to prevent engine power reduction due to malfunction of the compressor BOV, which could result in a forced landing and loss of the aircraft.

DATES: Effective March 14, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 14, 1997.

Comments for inclusion in the Rules Docket must be received on or before April 28, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–ANE–01, 12 New England Executive Park, Burlington, MA 01803–5299.

The service information referenced in this AD may be obtained from Pratt & Whitney Canada, 1000 Marie-Victorin, Longueuil, Quebec, Canada J4G 1A1; telephone (514) 677–9411, fax (514) 647–3620. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Diane Cook, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7134, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: Transport Canada, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain Pratt & Whitney Canada (PWC) PT6 series turboprop engines installed on single engine aircraft. Transport Canada advises that it has received reports of two malfunctions of compressor bleed-off valves (BOVs) on PWC PT6A–25C series engines, resulting in inflight engine power reduction. The investigation revealed that the cause of the compressor BOV malfunction was broken cotter pins. The debris from the cotter pins interfered with the movement of the BOV piston, which resulted in the BOV remaining in the closed position. The cotter pins broke due to stress loading from the guide shaft pin, which was improperly installed and loose. Further investigation indicates the compressor BOVs from the two malfunctions are from the same supplier. All BOVs produced from this supplier, which is approximately 1,000 compressor BOVs since January 1995, are the suspect population. The compressor BOVs are common to all PWC PT6 series engine models. This condition, if not corrected, could result in engine power reduction due to malfunction of the compressor BOV, which could result in a forced landing and loss of the aircraft.

Pratt & Whitney Canada has issued the following Service Bulletins (SBs): 14251, Revision 1, dated December 2, 1996; 13287, Revision, dated December 2, 1996; 12134, Revision 1, dated December, 1996; 4204, dated December 10, 1996, Original; 3344, Revision 1, dated December 3, 1996; and 1538, Revision 3, dated December 2, 1996. The SBs describe procedures for visually inspecting BOVs to determine if the affected supplier's code number (No.) is on the cover. If the code No. is present, the SB describes the procedures for the removal of the bleed valve cover assembly from the bleed valve housing assembly, the inspection of the cotter pin and the guide shaft pin, the installation of a new compressor valve cover assembly if necessary, the reassembly of the bleed valve cover assembly to the bleed valve assembly, and the reidentification of the bleed valve assembly. Transport Canada classified these SBs as mandatory and issued Emergency AD CF–96–24, which is applicable to all PT6A engines installed in single engine aircraft, in order to assure the airworthiness of these engines in Canada.

This engine model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design registered in the United States, the proposed AD would require, within 100 hours time in service after the effective date of this AD, but no later than April 2, 1997, a one-time visual inspection of compressor BOVs to determine if the affected supplier's code No. 8070, is on the cover. No further action is required if code No. 8070 is not on the cover, or if the compressor BOV has been marked with the reidentification "RE71" adjacent to the part number. If code No. 8070 is found and the compressor BOV has not been marked for reidentification, this AD requires inspecting the cotter pin for any wear indications and the guide shaft pin for any movement described in the applicable SB. If the cotter pin or guide shaft pin is not acceptable, this AD requires, prior to further flight, modifying the compressor BOV or replacing it with a serviceable part. If the conditions of the cotter pin and the guide shaft pin are acceptable, this AD requires the replacement of the cotter pin, and the reidentification of the bleed valve assembly in accordance with the PW SB. The calendar end-date of April 2, 1997, was determined based upon safety considerations and parts availability. The actions would be required to be accomplished in accordance with the SBs described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–ANE–01." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–04–12 Pratt & Whitney Canada: Amendment 39–9936. Docket 97–ANE–01.

Applicability: Pratt & Whitney Canada (PWC) PT6 series turboprop engines manufactured after January 1, 1995, or any PT6 series engines that have had their compressor bleed-off valve (BOV) changed after January 1, 1995, and which are installed in single-engine aircraft including, but not limited to the following aircraft: Air Tractor AT, Ayres Turbo Thrush Commander, Cessna 208 Caravan, Argo Aircraft G169B, Embraer EMB–312 Tucano, Frakes AF–CAT, Pilatus PC–6, PC–7, PC–9, and PC–12, Schweitzer AG–CAT, Aerospatiale Socata TBM–700, and Raytheon (Beech) T–34C.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent engine power reduction due to malfunction of the compressor BOV, which could result in a forced landing and loss of the aircraft, accomplish the following:

(a) Within 100 hours time in service (TIS) after the effective date of this AD, but no later than April 2, 1997, perform a visual inspection of compressor BOVs to determine if the affected supplier's code number (No.) 8070, is on the cover, in accordance with the following PWC Service Bulletins (SBs), as applicable: 14251, Revision 1, dated December 2, 1996; 13287, Revision 1, dated December 2, 1996; 12134, Revision 1, dated December 2, 1996; 4204, dated December 10, 1996, Original; 3344, Revision 1, dated December 3, 1996; and 1538, Revision 3, dated December 2, 1996.

(b) No further action is required if code No. 8070 is not on the cover of the compressor BOV, or if the compressor BOV has been marked with the reidentification "RE71" adjacent to the part number.

(c) For compressor BOVs with code No. 8070 and no reidentification "RE71" marking, prior to further flight remove and inspect the cotter pin for any wear indications and inspect the guide shaft pin for any movement in accordance with the applicable SB listed in paragraph (a) of this AD.

(1) If the cotter pin or guide shaft pin is not acceptable in accordance with the applicable SB listed in paragraph (a) of this AD, prior to further flight, modify the compressor BOV in accordance with the applicable SB listed in paragraph (a) of this AD, or replace it with a serviceable part.

(2) If the cotter pin and the guide shaft pin are acceptable in accordance with the applicable SB listed in paragraph (a) of this AD, prior to further flight, replace the cotter pin with a serviceable part.

(d) Assemble and install the compressor bleed valve cover assembly on the housing assembly and reidentify the bleed valve assembly with "RE71" in accordance with the applicable SB listed in paragraph (a) of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(g) The actions required by this AD shall be accomplished in accordance with the following PWC SBs:

Document No.	Pages	Revision	Date
14251	1–9	1	December 2, 1996.
Total pages: 9.			
13287	1–11	1	December 2, 1996.
Total pages: 11.			
12134	1–8	1	December 2, 1996.
Total pages: 8.			
4204	1–11	Original ..	December 10, 1996.
Total pages: 11.			
3344	1–11	1	December 3, 1996.
Total pages: 11.			
1538	1–9	3	December 2, 1996.
Total pages: 9.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney Canada, 1000 Marie-Victorin, Longueuil, Quebec, Canada J4G 1A1; telephone (514) 677–9411, fax (514) 647–3620. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on March 14, 1997.

Issued in Burlington, Massachusetts, on February 18, 1997.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 97–4993 Filed 2–26–97; 9:21 am]

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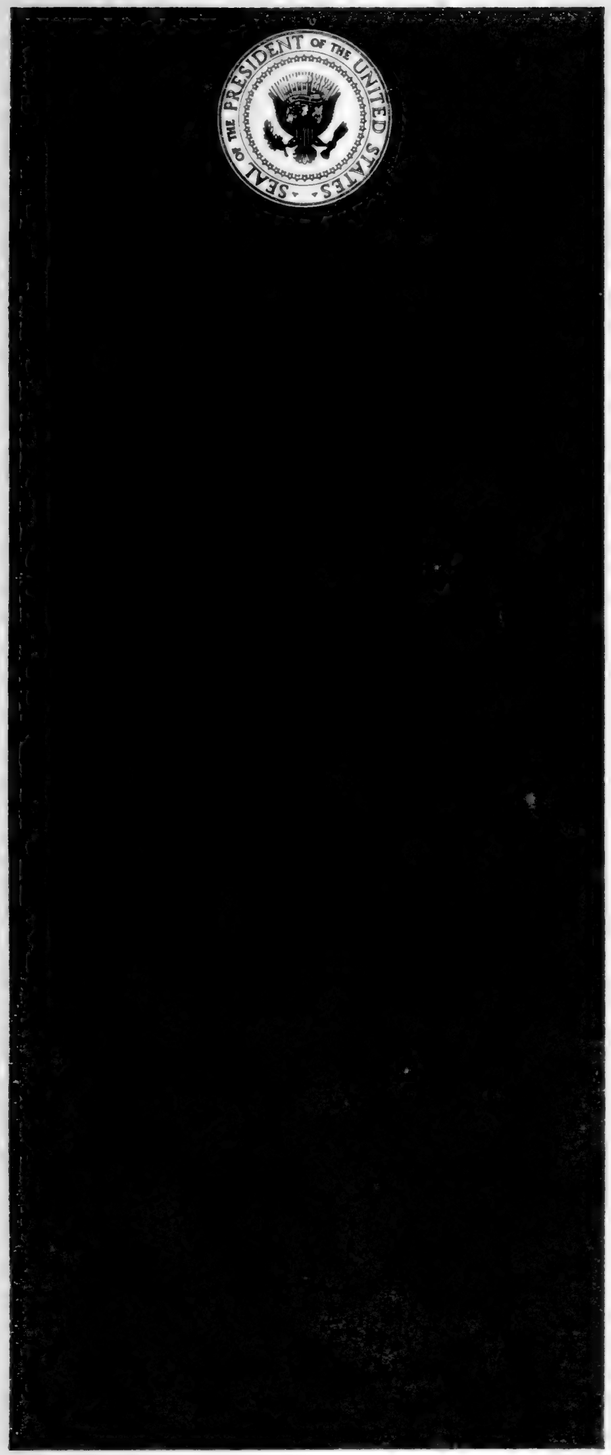

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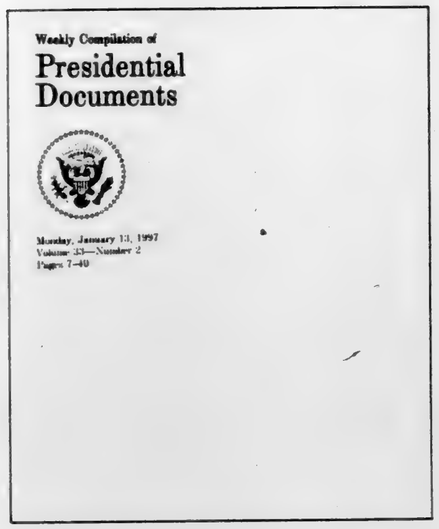

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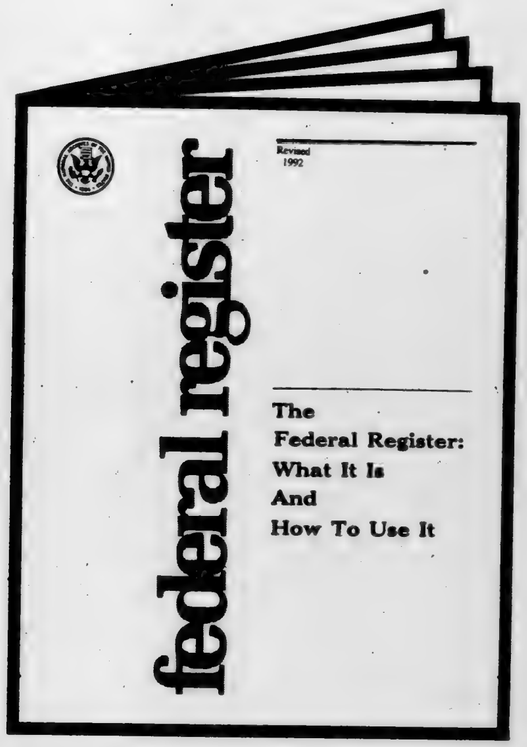

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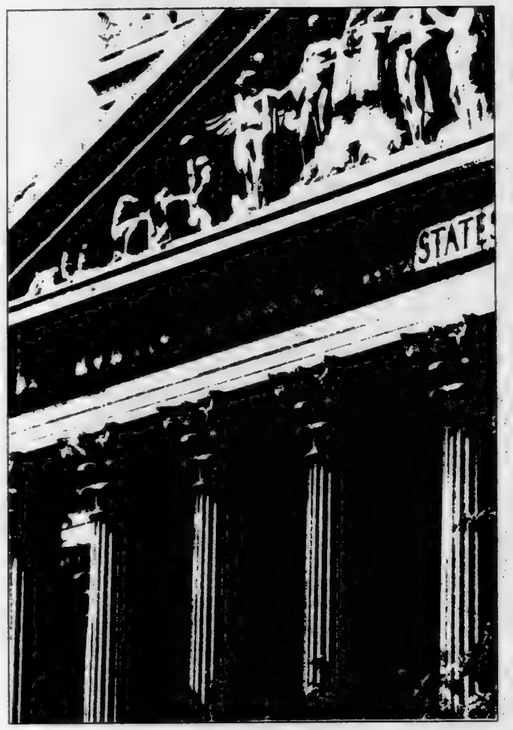

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Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Federal Register
Vol. 62, No. 40
Friday, February 28, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 999

[Docket No. FV96–999–3C]

Peanuts Marketed in the United States; Changes in Handling and Disposition Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Correction to final rule.

SUMMARY: This document contains a correction to the final regulations published Thursday, January 9, 1997, (FR Doc. 97–283) (62 FR 1249). The rule eliminated several requirements covering the disposition of inedible peanuts and relaxed for 1996 and subsequent crop peanuts several sections regulating the handling and disposition of domestic and foreign-produced peanuts marketed in the United States.

EFFECTIVE DATE: January 14, 1997.

FOR FURTHER INFORMATION CONTACT: Tom Tichenor, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–6862, fax (202) 720–5968. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491; fax (202) 720–5698.

SUPPLEMENTARY INFORMATION:

Background

The final rule that is subject to this correction changed several requirements covering disposition of inedible peanuts. In the import regulation (7 CFR Part 999.600), the definition of Negative aflatoxin content on page 1270, incorrectly includes a reference to 25 or less parts per billion (ppb) aflatoxin content for inedible quality peanuts. The final rule removed the 25 ppb level from various other provisions of the domestic and import regulations but inadvertently left that designation in the import regulation's definition of the term negative to aflatoxin. That term only is applied to those peanut lots determined to contain 15 or less ppb aflatoxin content. This correction brings the definition of the term Negative to aflatoxin in the import regulation into conformity with the same term used in the two domestic peanut regulations, as required by law.

Correction of Publication

Accordingly, final regulations published January 9, 1997, FR Doc. 97–283, § 999.600, paragraph (a)(10), on page 1270, first column is corrected to read as follows:

§ 999.600 [Corrected]

(a) * * *

(10) *Negative aflatoxin content* means 15 parts per billion (ppb) or less for peanuts which have been certified as meeting edible quality grade requirements.

* * * * *

Dated: February 21, 1997.

Sharon Bomer Lauritsen,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 97–4969 Filed 2–27–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

8 CFR Parts 3, 103, 212, 235, 236, 242, 287, 292, 292a

[EOIR No. 113F; A.G. Order No. 2070–97]

RIN 1125–AA14

Executive Office for Immigration Review; List of Free Legal Services Providers

AGENCY: Executive Office for Immigration Review, Justice.

ACTION: Final rule.

SUMMARY: This final rule transfers the responsibility for maintaining the list of organizations providing free legal services in immigration proceedings from the Immigration and Naturalization Service (INS) to the Executive Office for Immigration Review (EOIR), Office of the Chief Immigration Judge, and amends the regulations by permitting attorneys who provide free legal services to indigent aliens to apply to be included on the list. The rule also amends the regulations by transferring appellate jurisdiction from the Associate Commissioner for Examinations, INS, to the Board of Immigration Appeals for appeals from decisions on applications to be included on the list of free legal services providers and from decisions on removals from such a list. Finally, this rule will further implementation of section 604(d)(4) of the recently enacted Illegal Immigration Reform and Immigrant Responsibility Act of 1996 by requiring that the list of free legal services providers maintained by the Chief Immigration Judge include a list of persons who have indicated their availability to represent aliens in asylum proceedings on a *pro bono* basis.

EFFECTIVE DATE: March 31, 1997.

FOR FURTHER INFORMATION CONTACT: Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, telephone (703) 305–0470.

SUPPLEMENTARY INFORMATION: On August 5, 1996, the Executive Office for Immigration Review published a proposed rule in the **Federal Register** (61 FR 40552) amending 8 CFR parts 3 and 292a by transferring the responsibility for maintaining the list of entities that will provide free legal services in immigration proceedings from INS to EOIR, Office of the Chief Immigration Judge. This list of organizations and attorneys, qualified pursuant to this rule, who can represent aliens in immigration proceedings before the Board of Immigration Appeals and the Immigration Courts is given to aliens who are parties in immigration proceedings in an Immigration Court. This rule amends the present regulation by permitting attorneys who provide free legal services to indigent aliens to apply to be included on the list of free legal services providers.

In response to the above rulemaking, EOIR received two comments. One commenter noted that there may be areas where Immigration Courts are

located but where no organizations or attorneys are available to represent aliens on a *pro bono* basis. The commenter suggested that the Immigration Courts should also maintain lists of private attorneys who regularly practice before each of the Courts. Such lists could be distributed to aliens in need of counsel, and any licensed attorney would be able to place his or her name on the lists.

However, EOIR has promulgated this rule in order to enhance the opportunities for *indigent* aliens to find *free* legal counsel by providing them with a list of organizations and attorneys who are willing to represent them on a *pro bono* basis. Moreover, the statutory basis to formulate and maintain such lists requires that the lists be maintained for this purpose. *See* 8 U.S.C. 1252(b)(2). Therefore, this suggestion will not be adopted.

The same commenter also inquired as to whether an attorney must accept a certain number of *pro bono* cases in order to be included on the list of free legal services providers, and whether an attorney would be prohibited from accepting any cases, or a certain percentage of cases, for a fee. EOIR does not believe it is necessary or advisable to require an attorney to accept a specific number or percentage of cases on a *pro bono* basis in order to be included on the list of free legal services providers. Nor will an attorney included on the list be precluded from accepting cases for a fee. An attorney included on the list may continue serving a wide range of paying clients as long as he or she agrees to represent indigent aliens on a *pro bono* basis. However, if it comes to EOIR's attention that an attorney who is included on the list is not, in fact, accepting cases on behalf of indigent aliens on a *pro bono* basis, the regulation provides that the Chief Immigration Judge, or his or her designee, may remove the attorney's name from the list after giving the attorney notice and an opportunity to answer. Moreover, this issue is subject to further review if necessary to eliminate any abuses.

The other commenter expressed concern that the proposed rule provided that only an organization that has on its staff, or retains at no expense to the alien, an attorney who is available to render free legal services, or a bar association that provides a referral service of attorneys who render *pro bono* assistance, may apply to be included on the list of free legal services providers, while organizations other than bar associations that provide referral services for indigent aliens could not apply to be included on the list. The commenter therefore suggested that the rule be amended to include additional organizations that provide referral services for indigent aliens.

While the purpose of this regulation is to enhance the opportunities for indigent aliens to find free legal counsel by expanding the list of organizations and attorneys who are willing to represent them on a *pro bono* basis, EOIR also recognizes the need to ensure that only organizations with bona fide referral services be included on the list. Therefore, the rule has been amended to allow organizations that operate referral services to apply to be on the list and to allow the Chief Immigration Judge to exercise his or her discretion in ruling on such applications.

Finally, this rule furthers implementation of section 604(d)(4) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104–208, by having the list of free legal services providers maintained by the Chief Immigration Judge include a list of persons who have indicated their availability to represent aliens in asylum proceedings on a *pro bono* basis.

Although the rule requires that an organization or attorney file an application requesting to be placed on the list of free legal services providers, there is no specific application form being used for this request at the present time. Further, any organization that is on the current list of free legal services providers will not need to apply at this time to be included on the new list. All organizations on the current list will be contacted by the Office of the Chief Immigration Judge, or his or her designee, to determine if they intend to remain on the list and to verify identifying information, such as address and telephone number. Any organizations that cannot be reached will not be included on the new list.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. The Attorney General has determined that this rule is not a significant regulatory action under Executive Order No. 12866, and accordingly this rule has not been reviewed by the Office of Management and Budget. This rule has no Federalism implications warranting the preparation of a Federalism Assessment in accordance with section 6 of Executive Order No. 12612. The rule merits the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order No. 12988.

List of Subjects

8 CFR Part 3

Administrative practice and procedure, Immigration, Lawyers, Organizations and functions (Government agencies), Reporting and recordkeeping requirements.

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of Information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 235

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 236

Administrative practice and procedure, Aliens, Immigration.

8 CFR Part 242

Administrative practice and procedure, Aliens.

8 CFR Part 287

Immigration, Law enforcement officers.

8 CFR Part 292

Administrative practice and procedure, Immigration, Lawyers, Reporting and recordkeeping requirements.

8 CFR Part 292a

Aliens, Legal services.

Accordingly and under the authority of 8 U.S.C. 1103, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

1. The authority citation for part 3 continues to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1103, 1252 note, 1252b, 1362; 28 U.S.C. 509, 510, 1746; Sec. 2, Reorg. Plan No. 2 of 1950, 3 CFR 1949–1953 Comp., p. 1002.

2. Section 3.1 is amended by adding a new paragraph (b)(11) to read as follows:

§ 3.1 General authorities.

* * * * *

(b) * * *

(11) Decisions on applications from organizations or attorneys requesting to be included on a list of free legal services providers and decisions on removals therefrom pursuant to § 3.65.

* * * * *

Subpart D [Added and Reserved]

3. Subpart D is added and reserved.

4. A new Subpart E is added to read as follows:

Subpart E—List of Free Legal Services Providers

Sec.
3.61 List.
3.62 Qualifications.
3.63 Applications.
3.64 Approval and denial of applications.
3.65 Removal of an organization or attorney from list.

Subpart E—List of Free Legal Services Providers

§ 3.61 List.

(a) The Chief Immigration Judge shall maintain a current list of organizations and attorneys qualified under this subpart which provide free legal services. This list, which shall be updated not less than quarterly, shall be provided to aliens in immigration proceedings. The Chief Immigration Judge may designate an employee or employees to carry out his or her responsibilities under this subpart. Organizations and attorneys may be included on the list of free legal services providers if they qualify under one of the following categories:

(1) Organizations recognized under § 292.2 of this chapter that meet the qualifications set forth in § 3.62(a) and whose representatives, if any, are authorized to practice before the Board and Immigration Courts;

(2) Organizations not recognized under § 292.2 of this chapter that meet the qualifications set forth in § 3.62(b);

(3) Bar associations that meet the qualifications set forth in § 3.62(c); and

(4) Attorneys, as defined in § 1.1(f) of this chapter, who meet the qualifications set forth in § 3.62(d).

(b) The listing of an organization qualified under this subpart is not equivalent to recognition under § 292.2 of this chapter.

§ 3.62 Qualifications.

(a) *Organizations recognized under § 292.2.* An organization that is recognized under § 292.2 of this chapter that seeks to have its name appear on the list of free legal services providers maintained by the Chief Immigration Judge must have on its staff:

(1) An attorney, as defined in § 1.1(f) of this chapter; or

(2) At least one accredited representative, as defined in § 292.1(a)(4) of this chapter, who is authorized to practice before the Board and Immigration Courts.

(b) *Organizations not recognized under § 292.2.* An organization that is not recognized under § 292.2 of this chapter that seeks to have its name appear on the list of free legal services providers maintained by the Chief Immigration Judge must declare that:

(1) It is established in the United States;

(2) It provides free legal services to indigent aliens; and

(3) It has on its staff, or retains at no expense to the alien, an attorney, as defined in § 1.1(f) of this chapter, who is available to render such free legal services by representation in immigration proceedings.

(c) *Bar associations.* A bar association that provides a referral service of attorneys who render *pro bono* assistance to aliens in immigration proceedings may apply to have its name appear on the list of free legal services providers maintained by the Chief Immigration Judge. Any other organization that provides such a referral service may also apply to have its name appear on the list of free legal services providers, and may, in the sole discretion of the Chief Immigration Judge, be included on the list.

(d) *Attorneys.* An attorney, as defined in § 1.1(f) of this chapter, who seeks to have his or her name appear on the list of free legal services providers maintained by the Chief Immigration Judge must declare in his or her application that he or she provides free legal services to indigent aliens and that he or she is willing to represent indigent aliens in immigration proceedings *pro bono*. An attorney under this section may not receive any direct or indirect remuneration from indigent aliens for representation in immigration proceedings, although the attorney may be regularly compensated by the firm or organization with which he or she is associated.

§ 3.63 Applications.

(a) *Generally.* In order to qualify to appear on the list of free legal services providers maintained by the Chief Immigration Judge under this subpart, an organization or attorney must file an application requesting to be placed on the list. This application must be filed with the Office of the Chief Immigration Judge, along with proof of service on the Court Administrator of the Immigration Court having jurisdiction over each locality where the organization or attorney provides free legal services. Each submission must be identified by the notation "Application for Free Legal Services Providers List" on the envelope, and must also indicate if the organization or attorney is willing to represent indigent aliens in asylum proceedings.

(b) *Organizations recognized under § 292.2.* An organization that is recognized under § 292.2 of this chapter must submit a declaration signed by an authorized officer of the organization which states that the organization complies with all of the qualifications set forth in § 3.62(a).

(c) *Organizations not recognized under § 292.2.* An organization that is not recognized under § 292.2 of this chapter must submit a declaration signed by an authorized officer of the organization which states that the organization complies with all of the qualifications set forth in § 3.62(b).

(d) *Attorneys.* An attorney must:

(1) Submit a declaration that states that:

(i) He or she provides free legal services to indigent aliens;

(ii) He or she is willing to represent indigent aliens in immigration proceedings *pro bono;* and

(iii) He or she is not under any order of any court suspending, enjoining, restraining, disbarring, or otherwise restricting him or her in the practice of law; and

(2) Include the attorney's bar number, if any, from each bar of the highest court of the state, possession, territory, or commonwealth in which he or she is admitted to practice law.

(e) *Changes in addresses or status.* Organizations and attorneys referred to in this subpart are under a continuing obligation to notify the Chief Immigration Judge, in writing, within ten business days, of any change of address, telephone number, or qualifying or professional status. Failure to notify the Chief Immigration Judge of any such change may result in the name of the organization or attorney being removed from the list.

§ 3.64 Approval and denial of applications.

The Court Administrator of the Immigration Court having jurisdiction over each locality where an organization or attorney provides free legal services shall forward a recommendation for approval or denial of each application submitted by the organization or attorney, and the reasons therefor, to the Chief Immigration Judge. The Chief Immigration Judge shall have the authority to approve or deny an application submitted by an organization or an attorney pursuant to § 3.63. If an application is denied, the

organization or attorney shall be notified of the decision in writing, at the organization's or attorney's last known address, and shall be given a written explanation of the grounds for such denial. A denial must be based on the failure of the organization or attorney to meet the qualifications and/or to comply with the procedures set forth in this subpart. The organization or attorney shall be advised of its, his or her right to appeal this decision to the Board of Immigration Appeals in accordance with § 3.1(b) and § 103.3(a)(1)(ii) of this chapter.

§ 3.65 Removal of an organization or attorney from list.

(a) *Involuntary removal.* If the Chief Immigration Judge believes that an organization or attorney included on the list of free legal services providers no longer meets the qualifications set forth in this subpart, he or she shall promptly notify the organization or attorney in writing, at the organization's or attorney's last known address, of his or her intention to remove the name of the organization or attorney from the list. The organization or attorney may submit an answer within 30 days from the date the notice is served. The organization or attorney must establish by clear, unequivocal, and convincing evidence that the organization's or attorney's name should not be removed from the list. If, after consideration of any answer submitted by the organization or attorney, the Chief Immigration Judge determines that the organization or attorney no longer meets the qualifications set forth in this subpart, the Chief Immigration Judge shall promptly remove the name of the organization or attorney from the list of free legal service providers, the removal of which will be reflected in the next quarterly update, and shall notify the organization or attorney of such removal in writing, at the organization's or attorney's last known address. Organizations and attorneys shall be advised of their right to appeal this decision to the Board of Immigration Appeals in accordance with § 3.1(b) and § 103.3(a)(1)(ii) of this chapter.

(b) *Voluntary removal.* Any organization or attorney qualified under this subpart may, at any time, submit a written request to have its, his or her name removed from the list of free legal service providers. Such a request shall be honored, and the name of the organization or attorney shall promptly be removed from the list, the removal of which will be reflected in the next quarterly update.

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

5. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552(a); 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR 1982 Comp. p. 166; 8 CFR part 2.

§ 103.1 [Amended]

6. Section 103.1 is amended by removing and reserving paragraph (f)(3)(iii)(U).

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

7. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1227, 1228, 1252; 8 CFR part 2.

§ 212.6 [Amended]

8. In § 212.6, paragraph (d)(1) is amended in the third sentence by removing the word "programs" and adding "provided by organizations and attorneys" in its place and by revising the reference to "part 292a of this chapter" to read "part 3 of this chapter".

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

9. The authority citation for part 235 continues to read as follows;

Authority: 8 U.S.C. 1101, 1103, 1182, 1183, 1201, 1224, 1225, 1226, 1227, 1228, 1252.

§ 235.6 [Amended]

10. In § 235.6, paragraph (a) is amended in the fourth sentence by removing the word "programs" and adding "provided by organizations and attorneys" in its place and by revising the reference to "part 292a of this chapter" to read "part 3 of this chapter".

PART 236—EXCLUSION OF ALIENS

11. The authority citation for part 236 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1224, 1225, 1226, 1362.

§ 236.2 [Amended]

12. In § 236.2, paragraph (a) is amended in the third sentence by removing the word "programs" and adding "provided by organizations and attorneys" in its place and by revising the reference to "part 292a of this chapter" to read "part 3 of this chapter".

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

13. The authority citation for part 242 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1251, 1252, 1252 note, 1252a, 1252b, 1254, 1362; 8 CFR part 2.

§ 242.1 [Amended]

14. In § 242.1, paragraph (c) is amended in the fourth sentence by removing the word "programs" and adding "provided by organizations and attorneys" in its place and by revising the reference to "part 292a of this chapter" to read "part 3 of this chapter".

§ 242.2 [Amended]

15. In § 242.2, paragraph (c)(2) is amended in the third sentence by removing the word "programs" and adding "provided by organizations and attorneys" in its place and by revising the reference to "part 292a of this chapter" to read "part 3 of this chapter".

16. In § 242.2, paragraph (d) is amended in the fourth sentence by removing the word "programs" and adding "provided by organizations and attorneys" in its place and by revising the reference to "part 292a of this chapter" to read "part 3 of this chapter".

§ 242.16 [Amended]

17. In § 242.16, paragraph (a) is amended in the first sentence by removing the word "programs" and adding "providing by organizations and attorneys" in its place and by revising the reference to "part 292a of this chapter" to read "part 3 of this chapter".

§ 242.24 [Amended]

18. In § 242.24, paragraph (g) is amended in the first and second sentences by revising the phrase "found on the free legal services list" to read "or attorney found on the list of free legal services providers maintained in accordance with part 3 of this chapter".

PART 287—FIELD OFFICERS; POWERS AND DUTIES

19. The authority citation for part 287 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1225, 1226, 1251, 1252, 1357; 8 CFR part 2.

§ 287.3 [Amended]

20. In § 287.3, the sixth sentence is amended by removing the word "programs" and adding "provided by organizations and attorneys" in its place and by revising the reference to "part 292a of this chapter" to read "part 3 of this chapter".

PART 292—REPRESENTATION AND APPEARANCES

21. The authority citation for part 292 continues to read as follows:

Authority: 8 U.S.C. 1103, 1252b, 1362.

22. Section 292.22 is amended by revising the first sentence in paragraph (a) introductory text to read as follows:

§ 292.2 Organizations qualified for recognition; requests for recognition; withdrawal of recognition; accreditation of representatives; roster.

(a) *Qualifications of organizations.* A non-profit religious, charitable, social service, or similar organization established in the United States and recognized as such by the Board may designate a representative or representatives to practice before the Service alone or the Service and the Board (including practice before the Immigration Court). * * *

* * * * *

PART 292a—[REMOVED]

23. Part 292a is removed.

Dated: February 24, 1997.

Janet Reno,

Attorney General.

[FR Doc. 97–5039 Filed 2–27–97; 8:45 am]

BILLING CODE 4410–30–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–35–AD; Amendment 39–9951; AD 97–05–07]

RIN 2120–AA64

Airworthiness Directives; Lockheed Model 382 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Lockheed Model 382 series airplanes, that currently requires a revision to the Airplane Flight Manual to require takeoff operation in accordance with revised performance data. That AD also requires installation of certain valve housings for the propeller governor on the outboard engines. This amendment revises the applicability of the existing AD to remove certain airplanes. This amendment also revises references to a certain replacement part number of a valve housing. The actions specified by this AD are intended to ensure that the airplane maintains adequate thrust decay characteristics in the event of critical engine failure during takeoff.

DATES: Effective April 4, 1997.

The incorporation by reference of Lockheed Airplane Flight Manual Supplement 382–16, dated August 11, 1993, as listed in the regulations, was approved previously by the Director of the Federal Register as of August 10, 1994 (59 FR 35236, July 11, 1994).

ADDRESSES: The service information referenced in this AD may be obtained from Lockheed Aeronautical Systems Support Company (LASSC), Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7367; fax (404) 305–7348.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 95–12–05, amendment 39–9255 (60 FR 28715, June 2, 1995), which is applicable to certain Lockheed Model 382 series airplanes, was published in the **Federal Register** on February 21, 1996 (61 FR 6579). The action proposed to supersede AD 95–12–05 to continue to require the previous revision to the Airplane Flight Manual to require takeoff operation in accordance with revised performance data. The action also proposed to continue to require the installation of certain valve housings for the propeller governor on the outboard engines. The action also proposed to revise the applicability of the existing AD to remove certain airplanes, and to revise references to a certain replacement part number of a valve housing.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

Support for the Proposal

The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 112 Model 382 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 18 airplanes of U.S. registry will be affected by this proposed AD.

The actions that are currently required by AD 95–12–05 take approximately 8 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $90,000 per airplane. Based on these figures, the cost impact on U.S. operators of the actions currently required is estimated to be $1,628,640, or $90,480 per airplane.

Since this new AD only revises certain information and part numbers, it will impose no new costs to the affected operators.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator will accomplish those actions in the future if this AD were not adopted. However, the FAA has been advised that the only U.S. operator of the affected Lockheed Model 382 series airplanes has already equipped half of its fleet (9 airplanes) with the valve housing assembly that is required by this AD. Therefore, the future economic cost of this AD on U.S. operators is now only $814,320.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3)

will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9255 (60 FR 28715, June 2, 1995), and by adding a new airworthiness directive (AD), amendment 39–9951, to read as follows:

97–05–07 Lockheed: Amendment 39–9951. Docket 96–NM–35–AD. Supersedes AD 95–12–05, Amendment 39–9255.

Applicability: Model 382, 382E, and 382G series airplanes; equipped with a servo-type valve housing assembly having part number 714325–3 or –7 installed on any outboard engine; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the airplane maintains adequate thrust decay characteristics in the event of critical engine failure during takeoff, accomplish the following:

(a) Within 60 days after August 10, 1994 (the effective date of AD 94–14–09, amendment 39–8961), revise the Limitations and Performance Data Sections of the FAA-approved Airplane Flight Manual (AFM) to include information specified in Lockheed Airplane Flight Manual Supplement 382–16, dated August 11, 1993, and operate the airplane accordingly thereafter. The requirements of this paragraph may be accomplished by inserting AFM Supplement 382–16 into the AFM.

(b) Within 12 months after the effective date of this AD, replace the servo-type valve housing assemblies having part number 714325–3 or –7 with a governor assembly control number 577888 on the propeller governors installed on the outboard engines, in accordance with Lockheed Document SMP–515C, Card No. CO–135. Replacement of these assemblies with governor assembly control numbers 577888, constitutes terminating action for the requirements of paragraph (a) of this AD; once the replacement is accomplished, the AFM revision may be removed.

Note 2: Propeller governors with servo-type valve housing assemblies having part number 714325–3 or –7 may be retained or replaced with a governor assembly control number 577888 for use on the inboard engine positions.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The AFM revision shall be done in accordance with Lockheed Airplane Flight Manual Supplement 382–16, dated August 11, 1993. This incorporation by reference was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of August 10, 1994 (59 FR 35236, July 11, 1994). Copies may be obtained from Lockheed Aeronautical Systems Support Company (LASSC), Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on April 4, 1997.

Issued in Renton, Washington, on February 21, 1997:

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–4946 Filed 2–27–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

[OH–239; Amendment Number 73]

Ohio Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Ohio regulatory program (hereinafter referred to as the "Ohio program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of regulatory changes to implement the remining standards of the Federal Energy Policy Act of 1992. The amendment is intended to revise the Ohio program to be consistent with the corresponding Federal regulations as amended on November 27, 1995. (60 FR 58480).

EFFECTIVE DATE: February 28, 1997.

FOR FURTHER INFORMATION CONTACT: George Rieger, Field Branch Chief, Appalachian Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, PA 15220, Telephone: (412) 937–2153.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Background information on the Ohio program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning conditions of approval and program amendments can be found at 30 CFR 935.11, 935.15, and 935.16.

II. Submission of the Proposed Amendment

By letter dated July 23, 1996, (Administrative Record No. OH–00) Ohio submitted a proposed amendment to its program pursuant to SMCRA. Ohio submitted the proposed amendment at its own initiative. The Ohio amendment proposes to implement the remining standards of the Federal Energy Policy Act of 1992 and the corresponding Federal regulations as amended on November 27, 1995. (60 FR 58480). OSM announced receipt of the proposed amendment in the August 26, 1996, **Federal Register** (61 FR 43696) and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on September 25, 1996. However, a complete description of certain amendments concerning permit application requirements and revegetation time frames was inadvertently omitted from that notice. Also, Ohio submitted corrections to its proposed amendments by letter dated October 4, 1996, (Administrative Record No. OH–2168–07). Therefore, OSM announced these items in the October 18, 1996, **Federal Register** (61 FR 54375) and reopened the public comment period until November 4, 1996. On January 23, 1997, Ohio submitted additional changes (Administrative Record No. OH–2168–12) as a result of discussions with OSM.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment. Revisions not specifically discussed below concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

A. Revisions to Ohio Regulations That Are Substantively Identical to the Corresponding Federal Regulations

1. OAC 1501:13–1–02 Definitions.

(a) New paragraph (OOO) "Lands eligible for remining" has been added to mean those lands that would otherwise be eligible for expenditures under section 1513.37 of the Revised Code.

(b) New paragraph (JJJJJJ) "Unanticipated event or conditions" has been added to mean (as used in 1501:13–5–01 of the Administrative Code) an event or condition related to prior mining activity which arises from a surface coal mining and reclamation operation on lands eligible for remining and was not contemplated in the applicable permit.

The proposed changes are found to be substantively identical to the corresponding Federal Regulations at 30 CFR 701.5.

2. OAC 1501:13–5–01 Review, public participation, and approval or disapproval of permit applications and permit terms and conditions.

(a) New paragraph (D)(7) has been added to provide that subsequent to the effective date of this rule, the prohibitions of paragraph (D)(3) of this section regarding the issuance of a new permit, shall not apply to any violation that occurs after that date; is unabated; and results from an unanticipated event or condition that arises from a surface coal mining and reclamation operation on lands that are eligible for remining under a permit issued pursuant to OAC 1501:13–4–12(L) and held by the person making application for the new permit.

(b) New paragraph (D)(7)(D) provides that for permits issued under OAC 1501:13–4–12(L), an event or condition shall be presumed to be unanticipated for the purposes of this paragraph if it: arose after permit issuance; was related to prior mining; and was not identified in the permit.

(c) New paragraph (E)(19) and subparagraphs (A), (B), and (C), are added to require that, for operations which will include remining areas under 1501:13–4–12(L) of the Administrative Code, the application includes (A) Lands eligible for remining; (B) an identification of the potential environmental and safety problems related to prior mining activity which could reasonably be anticipated to occur at the site; and (C) mitigation plans to sufficiently address these potential environmental and safety problems so that reclamation as required by the applicable requirements of Chapter 1513 of the Revised Code can be accomplished. Additionally, a semicolon and the word "and" are added at the end of paragraph (E)(18).

The proposed changes are found to be substantively identical to the corresponding Federal regulations at 30 CFR 773.15(b) and (c)(13).

3. OAC 1501:13–9–15 Revegetation.

Paragraph (F)(2) is revised, and subparagraph (F)(2)(A) is added, to provide that the required period of extended responsibility on lands eligible for remining shall be not less than two full years for permits issued pursuant to the requirements of OAC 1501:13–4–12 and renewals thereof.

The Director finds that these revisions are substantively identical to portions of the corresponding Federal regulations at 30 CFR 816 and 817.116(c)(2)(i) and (ii).

B. Revisions to Ohio Regulations That Are Not Substantively Identical to the Corresponding Federal Regulations

1. OAC 1501:13–4–12 Requirements for permits for special categories of mining.

(a) New paragraph (L) has been added to include the requirements for any person who submits a permit application to conduct a surface coal mining operation on lands eligible for remining. The requirements of paragraph (L) shall apply until September 30, 2004, or any later date authorized by federal law. The permit application must include: (1) A description of the proposed lands eligible for remining and a demonstration, to the satisfaction of the Chief, how such lands meet the eligibility requirements specified by Revised Code Section 1513.37; (2) Identification, to the extent not otherwise addressed in the permit application, of any potential environmental and safety problems related to the prior mining activity at the site which could be reasonably expected to occur. This identification shall be based on a due diligence investigation which shall include visual observations at the site, a record review of past mining at the site, and environmental sampling tailored to current site conditions; and (3) A description, with regard to potential environmental and safety problems identified in paragraph (2), of the mitigative measures that will be taken to ensure that the applicable reclamation requirements of Revised Code Chapter 1513 and these rules can be met.

The federal regulation at 30 CFR 785.25(b) requires that the remining application permit be made in accordance with the requirements of subchapter G, which are the permitting requirements. The Ohio rule at OAC 1501:13–4–12(L) does not include this requirement, however, OAC 1501:13–4–12(A) does require all special categories of mining to comply with the general permitting requirements of OAC 1501:13–4, therefore the Director finds that the proposed change at paragraph (L) is no less effective than the corresponding Federal regulations at 30 CFR 785.25 (b) and (c) when read in conjunction with OAC 1501:13–4–12(A).

(b) The Director also finds that paragraphs (L)(1) and (L)(3) are substantively identical to 30 CFR 785.25(a) and (b)(2), respectively. Paragraph (L)(2) is nearly identical to 30 CFR 785.25(b)(1) except that Ohio did

not include the word "review" in OAC 1501:13–4–12(L)(2) when describing the evaluation of past mining at the site that is required during the permitting process. 30 CFR 785.25(b)(1) requires a record review of past mining at the site. Ohio has addressed this item by including the word "review" in the version of OAC 1510:13–4–12(L)(2) that was officially filed through the Ohio rule promulgation process with the Ohio Legislative Service Commission on January 16, 1997. Ohio provided a copy of this letter to OSM on January 23, 1997. Therefore the amendment is found to be as effective as 30 CFR 785.25(b)(1) based on this revision.

2. OAC 1501:13–9–15 Revegetation.

(a) Ohio's revegation performance standards for lands eligible for remining generally cross-reference the performance standards for previously undisturbed lands, thus, to avoid confusion, Ohio deleted the references to "five years" for the period of responsibility. While the period of responsibility will remain five years for most mining operations, the deletions are consistent with the change in 30 CFR 816/817.116(c)(2)(i) which allows remining operations to have a shorter period of responsibility. Affected paragraphs and subparagraphs are: (F)(3), (F)(3)(a), (G)(3)(a), (I)(6), (J)(1)(b), (F)(4)(d), (H)(2), (L)(2), and (M)(4).

(b) Subparagraph (H)(2) is further amended by adding the words "and hay crops also meet, at a minimum, the ground cover standards of paragraph (G)(3)(B) during the last year of the period of extended responsibility." The current rule could have been interpreted to allow cropland with hay as the approved crop to only meet productivity requirements without a ground cover. Ohio is adding a ground cover requirement on cropland when hay is the required crop. While the federal rules at 30 CFR 816.116(b)(2) only require a success standard approved by the regulatory authority for cropland, the Director finds the success standard to be consistent with the revegetation requirements of 30 CFR 816/817.111.

(c) Paragraph (L) is amended by deleting the words "undeveloped land" from the revegetation success standards for forest land, fish and wildlife habitat and other postmining land uses that have woody vegetation. Specific revegetation success standards for undeveloped land are provided under in OAC 1510:13–9–15(M). OSM previously approved Ohio's program amendment #67 to change OAC 1501:13–9–17(B)(2) to allow undeveloped land as a post mining land use only if the pre-mining land use was undeveloped. That amendment also eliminated OAC 1501:13–9–17(D)(8) which provided that proposals for a post mining land use of undeveloped land would be treated as if the post mining land use were forest land/fish and wildlife habitat. Therefore, including undeveloped land with the forest land/fish and wildlife land use revegetation standards in OAC 1501:13–9–15(L) is no longer necessary. The deletion of "undeveloped land" in paragraph (L) is consistent with the earlier deletion that was approved by OSM on July 27, 1994 (59 FR 38123, 38124). Thus, the Director finds that this deletion is not inconsistent with 30 CFR 816./817.116(b).

(d) New paragraph (O) is added to include revegetation standards for areas eligible for remining in each land use category. New subparagraph (1)(A) includes standards for revegetation of pasture and grazing lands and requires that for Phase II bond release, revegetation standards for remined lands are the same as those for previously unmined lands as required by paragraph (G)(2) of this rule. For Phase III bond release, however, new subparagraph (1)(B) requires that remined lands in this category must have ground cover equal to or exceeding seventy percent cover and be adequate to control erosion with no single area with less than thirty percent cover exceeding the lesser of three thousand square feet or .3 percent of the land affected.

New subparagraph (2)(A) includes standards for revegetation of agricultural cropland, other than prime farmland, and requires that for Phase II bond release, revegetation standards for remined lands are the same as those for previously unmined lands as required by paragraph (G)(2) of this rule. New subparagraph (2)(B) includes for Phase III bond release, crop yield data must at a minimum equal the average county yield for any year of the responsibility period except the first year and, hay crops also must have ground cover equal to or exceeding seventy percent cover and be adequate to control erosion with no single area with less than thirty percent cover exceeding the lesser of three thousand square feet or .3 percent of the land affected.

New subparagraph (3)(A) includes standards for revegetation of industrial, residential, or commercial land use, other than commercial forest land, and requires that for Phase II bond release, revegetation standards for remined lands are the same as those for previously unmined lands as required by paragraph (G)(2) of this rule. For Phase III bond release, however, new subparagraph (3)(B) requires that remined lands in this category must have ground cover equal to or exceeding seventy percent cover and be adequate to control erosion with no single area with less than thirty percent cover exceeding the lesser of three thousand square feet or .3 percent of the land affected.

New subparagraph (4)(A) includes standards for revegetation of forest land, fish and wildlife habitat, or other land which requires the establishment of woody vegetation, and requires that for Phase II bond release, revegetation standards for remined lands are the same as those for previously unmined lands as required by paragraph (L)(1) of this rule. For Phase III bond release, however, new subparagraph (4)(B) requires that remined lands in this category must meet the requirements of paragraph (L)(2) of this rule except that, of the minimum countable trees per acre, eighty (80) percent have been in place for at least two (2) years, on each acre on which trees or shrubs are to be planted.

New subparagraph (5)(A) includes standards for revegetation of undeveloped land and requires that for determining success of revegetation and for Phase II bond release, revegetation standards for remined lands are the same as those for previously unmined lands as required by paragraph (M)(1), (2) and (3) of this rule. For Phase III bond release, however, new subparagraph (5)(B) requires that remined lands in this category must meet the requirements of paragraph (M)(3) of this rule except that the herbaceous ground cover on areas not planted with trees or shrubs must have ground cover equal to or exceeding seventy percent cover and be adequate to control erosion with no single area with less than thirty percent cover exceeding the lesser of three thousand square feet or .3 percent of the land affected.

New subparagraph (6)(A) includes standards for revegetation of recreational areas where herbaceous vegetation comprises the ground cover, and requires that for Phase II bond release, revegetation standards for remined lands are the same as those for previously unmined lands as required by paragraph (G)(2) of this rule. For Phase III bond release, however, new subparagraph (6)(B) requires that remined lands in this category must have ground cover equal to or exceeding seventy percent cover and be adequate to control erosion with no single area with less than thirty percent cover exceeding the lesser of three thousand square feet or .3 percent of the land.

New subparagraph (6)(C) includes standards for revegetation of recreation areas which require the planting of woody vegetation, and requires that for Phase II bond release, revegetation standards for remined lands are the same as those for previously unmined lands as required by paragraph (L)(1) of this rule. For Phase III bond release, new subparagraph (6)(D) requires that remined lands must meet the same requirements of paragraph (L)(2) of this rule which pertain to previously unmined lands in this category.

The proposed rules discussed above pertaining to Phase II bond release for each appropriate land use category for remined areas are the same rules that Ohio applies for Phase II bond release for previously unmined areas. The proposed rules in (O)(1)(B), (O)(2)(B), (O)(3)(B), (O)(5)(B) and (O)(6)(B) pertaining to Phase III bond release for each appropriate land use category require ground cover to equal or exceed 70 percent and adequately control erosion in the last year of the extended responsibility period on remining sites. The corresponding Federal rule at 816.116(b)(5) requires the vegetative ground cover shall be not less than the ground cover existing before redisturbance and shall be adequate to control erosion. The Federal rule does not specify required percentages of ground cover. The question is whether or not 70 percent cover is adequate, especially if the ground cover was greater than 70 percent before remining. To evaluate the adequacy of the proposed rule it is necessary to look at the entire Ohio rule as it pertains to revegetation success standards. Ohio's general requirements in OAC 1501:13–9–15(B)(3) and (4) require vegetation to be at least equal in extent of cover to the natural vegetation of the area; and control surface erosion. When OAC 1501:13–9–15(O) is considered in conjunction with these provisions of the Ohio rule, the proposed success standards for remining meet the requirements of the Federal rule at 30 CFR 816.116(b)(5). Therefore, in the rare case of an area being eligible for remining having greater than 70 percent ground cover before remining, the mining operator would be held to the general requirements of OAC 1501:13–9–15(B)(3) & (4) that vegetation be at least equal to the natural vegetation of the area and capable of controlling surface erosion. Additionally, the requirements that ground cover meet or exceed 70 percent in the last year of the period of extended responsibility is consistent with the Federal rule at 30 CFR 816.116/817.116(c)(2)(ii).

The Director finds that Ohio's proposed rules listed above are no less effective than the corresponding Federal Regulations at 30 CFR 816.116 and 30 CFR 817.116.

The following non-substantive changes are also proposed by Ohio:

(d) Paragraph (M) is further amended by separating the first sentence into two items with the second item being labeled as (1) and re-numbering the subsequent items accordingly. No word changes were made to these items.

(e) Definitions of "abatement plan", "base line pollution load", "best available technology economically achievable", "pollution abatement area", "pre-existing discharge", and "remining NPDES permit" are relocated from OAC 1501:13–4–15 to OAC 1501:13–1–02, without revision, and remaining paragraphs in both sections are re-lettered accordingly.

C. Revisions to Ohio's Regulations With No Corresponding Federal Regulations

1. OAC 1501:13–4–08 Hydrologic map and cross-sections.

New paragraph (A)(15) has been added to include in the hydrologic map any land determined to be eligible for remining.

2. OAC 1501:13–4–10 Uniform color code and map symbols.

New paragraph (A)(6) has been added to include any area determined to be eligible for remining shall have its perimeter designated with a dashed black line and the areas therein clearly labeled "Remine".

3. OAC 1501:13–4–15.

(a) The title of this section is changed from "Authorization to conduct coal mining on previously mined areas" to "Authorization to conduct coal mining on pollution abatement areas".

While there are no direct Federal counterparts to these revisions, the Director finds that they are not inconsistent with SMCRA or its corresponding Federal regulations, and do not render the State program any less effective than the federal regulations.

IV. Summary and Disposition of Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. Because no one requested an opportunity to speak at a public hearing, no hearing was held. Comments were received from the Ohio Historic Preservation Office in a letter dated September 13. The commenter stated that ongoing coordination with the Ohio Historical Preservation Office is necessary to address preservation concerns. The Director notes that OAC 1501:13–4–01(B) requires coordination of review and issuance of permits with other federal or state laws which includes the National Historic Preservation Act of 1966 and that OAC 1501:13–5–01(A)(3) requires that a written notification of a permit application, renewal or revision be sent to all federal, state and local governmental agencies that have an interest in the area of the proposed operations. There are no remining operations that are not included in the permit application process. The program amendment does not propose to change any coordination that currently exists between OHPO and DMR concerning review of cultural and historical resources. Additionally, the commenter was concerned that remining permit applications will not be reviewed by Ohio to determine if the proposed permit area is included within an area designated as unsuitable for mining. The Director disagrees with the commenter. Pursuant to OAC 1501:13–5–01(E)(4), all mining applications, including remining sites, cannot be approved if the proposed permit area is included within an area designated unsuitable for coal mining operations.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(I), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Ohio program. The U.S. Army Corps of Engineers responded that the changes were satisfactory. No other comments were received.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Ohio proposed to make in this amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

V. Director's Decision

Based on the above finding(s), the Director approves the proposed amendment as submitted by Ohio on July 23, 1996, and revised on October 4, 1996 and January 23, 1997. The Director is approving the proposed regulations with the understanding that they be promulgated in a form identical to that submitted to OSM. Any differences between these regulations and the State's final regulations will be

processed as a separate amendment subject to public review at a later date.

The Federal regulations at 30 CFR Part 935, codifying decisions concerning the Ohio program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 7, 1997.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 935—OHIO

1. The authority citation for part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 935.15 is amended by adding paragraph (eeee) to read as follows:

§ 935.15 Approval of regulatory program amendments.

* * * * *

(eeee) The following rules, as submitted to OSM on August 26, 1996, and revised on October 4, 1996, and January 23, 1997, are approved effective February 28, 1997:

OAC 1501:13–1–02 (000) and (JJJJJJ)	Definitions.
OAC 1501:13–4–08 (A)(15)	Hydrologic map and cross sections.
OAC 1501:13–4–10 (A)(6)	Uniform color code and map symbols.
OAC 1501:13–4–12 (L)	Requirements for permits for special categories of mining.
OAC 1501:13–4–15 (deletion of (B))	Authorization to conduct coal mining on pollution abatement areas.
OAC 1501:13–5–01 (D)(7), (D)(7)(D), (E)(19) and (E)(19) (A), (B) and (C).	Review, public participation, and approval or disapproval of permit applications and permit terms and conditions.
OAC 1501:13–9–15 (F)(2), (F)(2)(A), (F)(3), (F)(3)(a), (F)(4)(d), (G)(3)(a), (H)(2), (I)(6), (J)(1)(b), (L), (L)(2), (M)(4), (O), and (O) (1) through (6).	Revegetation.

[FR Doc. 97–5038 Filed 2–27–97; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–5693–8]

Clean Air Act (Act) Approval and Promulgation of State Implementation Plans; Prevention of Significant Deterioration (PSD); Louisiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Correction.

SUMMARY: This document contains a correction to the direct final rule concerning the State of Louisiana PSD increments for PM–10 (particulate matter 10 micrometers or less in diameter) published Tuesday, October 15, 1996 (61 FR 53639). In the October 15, 1996, **Federal Register** document, Section I.8.a of Regulation Louisiana Administrative Code 33:III. Chapter 5, Section 509, effective February 20, 1995, was erroneously cited as Section E.8.a.

EFFECTIVE DATE: February 28, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Samuel R. Mitz at (214) 665–8370.

SUPPLEMENTARY INFORMATION: On page 53642, the third column, under § 52.970(c)(69)(i)(A), paragraph (A) is corrected to read:

(A) Revisions to Regulation Louisiana Administrative Code 33:III.Chapter 5, Section 509, effective February 20, 1995: Section B. Definitions: Baseline Date; Section B. Definitions: Net Emissions Increase; Section D. Ambient Air Increments; Section I.8.a.; Section K.2; and Section P.4.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and, is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (P.L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Authority: 42 U.S.C. 7401–7671q.

Dated: February 11, 1997.

Jerry Clifford,

Acting Regional Administrator.

[FR Doc. 97–4964 Filed 2–27–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 52 and 81

[ME47–1–6996a; A–1–FRL–5693–5]

Approval and Promulgation of Air Quality Implementation Plans; Maine, and Redesignation of Hancock and Waldo Counties; Maine

AGENCY: Environmental Protection Agency (USEPA or Agency).

ACTION: Direct final rule.

SUMMARY: EPA is approving two requests from the State of Maine: approval of the Maine 1990 base year inventory into the Maine State Implementation Plan (SIP), referred to as the SIP revision; and a redesignation request by the State of Maine for the Hancock and Waldo counties marginal nonattainment area, referred to as the redesignation request. These actions are being taken in accordance with the Clean Air Act (CAA or the Act). The first request will establish the 1990 base year ozone emission inventories of volatile organic compounds (VOC) and oxides of nitrogen (NOx) emissions for the classified ozone nonattainment areas in Maine. The second request will redesignate the Hancock and Waldo counties marginal ozone nonattainment area from nonattainment to attainment. The second request also contains a 1993 attainment emissions inventory that will satisfy Hancock and Waldo counties requirement for a 1993 periodic inventory. A detailed rationale for the two approvals is set forth in **SUPPLEMENTARY INFORMATION.**

DATES: This action is effective on April 29, 1997, unless adverse or critical comments are received by March 31, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection (mail code CAA), U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA; the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: For the base year inventory, Robert McConnell, (617) 565–9266, and for the Hancock and Waldo counties redesignation request Richard P. Burkhart, (617)–565–3578.

SUPPLEMENTARY INFORMATION:

I. Summary of SIP Revision

Summary

The EPA today is approving SIP revisions submitted by the State of Maine, under sections 110 and 182 of the Act. These revisions consist of the establishment of the 1990 base year ozone emission inventories for the ozone nonattainment areas in Maine. These SIP revisions have been found by EPA to meet the EPA's approval criteria for emission inventories.

Supplementary Information on SIP Revision

Maine submitted 1990 base year emission inventories for the ozone nonattainment areas in the State in final form on July 25, 1995. This portion of this document is divided into three parts:

I. Background Information
II. Summary of SIP Revision
III. Final Action

I. Background

Emission Inventory

Under the CAA as amended in 1990, States have the responsibility to inventory emissions contributing to nonattainment of a National; Ambient Air Quality Standard (NAAQS), to track these emissions over time, and to ensure that control strategies are being implemented that reduce emissions and move areas towards attainment. The CAA requires ozone nonattainment areas designated as moderate, serious, severe, and extreme to submit a plan within three years of 1990 to reduce VOC emissions by 15 percent within six years after 1990. The baseline level of emissions, from which the 15 percent reduction is calculated, is determined by adjusting the base year inventory to exclude biogenic emissions and to exclude certain emission reductions not creditable towards the 15 percent. The 1990 base year emissions inventory is the primary inventory from which the periodic inventory, the Reasonable Further Progress (RFP) projection inventory, and the modeling inventory are derived. Further information on these inventories and their purpose can be found in the "Emission Inventory Requirements for Ozone State Implementation Plans," U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, March 1991. A copy of this guidance is available from EPA at the regional office listed in the address section of this document. The base year inventory may also serve as part of

statewide inventories for purposes of regional modeling in transport areas. The base year inventory plays an important role in modeling demonstrations for areas classified as moderate and above.

The air quality planning requirements for marginal to extreme ozone nonattainment areas are set out in section 182 (a)–(e) of title I of the CAA. The EPA has issued a General Preamble describing the EPA's preliminary views on how the agency intends to review SIP revisions submitted under title I of the Act, including requirements for the preparation of the 1990 base year inventory (see 57 FR 13502 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). In this action EPA will rely on the General Preamble's interpretation of the CAA, and the reader should refer to the General Preamble for a more detailed discussion of the interpretations of title I advanced in today's rule and the supporting rationale.

Those States containing ozone nonattainment areas classified as marginal to extreme are required under section 182(a)(1) of the CAA to submit a final, comprehensive, accurate, and current inventory of actual ozone season, weekday emissions from all sources within 2 years of enactment (November 15, 1992). This inventory is for calendar year 1990 and is denoted as the base year inventory. It includes both anthropogenic and biogenic sources of volatile organic compound (VOC), nitrogen oxides (NO_X), and carbon monoxide (CO). The inventory is to address actual VOC, NO_X, and CO emissions for the area during a peak ozone season, which is generally comprised of the summer months. All stationary point and area sources, as well as mobile sources within the nonattainment area, are to be included in the compilation. Available guidance for preparing emission inventories is provided in the General Preamble (57 FR 13498, April 16, 1992).

II. Analysis of State Submission

A. Procedural Background

The Act requires States to observe certain procedural requirements in developing emission inventory submissions to the EPA. Section 110(a)(2) of the Act provides that each emission inventory submitted by a State must be adopted after reasonable notice and public hearing.[1] Final approval of the inventory will not occur until the State revises the inventory to address public comments. Changes to the inventory that impact the 15 percent reduction calculation and require a revised control strategy will constitute a SIP revision. EPA created a "de minimis" exception to the public hearing requirement for minor changes. EPA defines "de minimis" for such purposes to be those in which the 15 percent reduction calculation and the associated control strategy or the maintenance plan showing, do not change. States will aggregate all such "de minimis" changes together when making the determination as to whether the change constitutes a SIP revision. The State will need to make the change through the formal SIP revision process, in conjunction with the change to the control measure or other SIP programs.[2] Section 110(a)(2) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

The State of Maine held several public hearings on its ozone emission inventories, the last of which occurred on June 28, 1995. The inventories were submitted to the EPA as a SIP revision on July 25, 1995, by cover letter from the Governor's designee. The inventories had originally been submitted to the EPA in December of 1992. At that time, they were reviewed by the EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR part 51, Appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). The inventories were found to be complete except for the public hearing requirement. The EPA determined that for inventories that had not met the public hearing requirement, a finding of completeness would be made contingent upon the State fulfilling the public hearing requirement.[3] The submittal was found to be complete contingent upon the State fulfilling the public hearing requirement, and a letter dated February 24, 1993, was forwarded to the State indicating the completeness of the submittal. The re-submittal of the Maine base year emission inventories in July of 1995, and the accompanying documentation that the inventories had been subject to a public hearing, have fulfilled this obligation.

The EPA Region I Office has compared the final Maine emission inventories with the deficiencies noted in the various comment letters sent by EPA to the DEP and concluded that Maine has adequately addressed the issues raised by the EPA.

B. Emission Inventory Review

Section 110(k) of the CAA sets out provisions governing the EPA's review of SIP submissions, including base year emission inventory submittals in order to determine approval or disapproval under section 182(a)(1) (*see* 57 FR 13565–66 (April 16, 1992)). The EPA is approving the Maine ozone base year emission inventories submitted to the EPA in final form on July 25, 1995, based on the Level I, II, and III review findings. This section outlines the review procedures performed to determine if the base year emission inventory is acceptable or should be disapproved.

The Level I and II review process is used to determine that all components of the base year inventory are present. The review also evaluates the level of supporting documentation provided by the State and assesses whether the emissions were developed according to current EPA guidance.

The Level III review process is outlined here and consists of 10 points that the inventory must include. For a base year emission inventory to be acceptable it must pass all of the following acceptance criteria:

1. An approved Inventory Preparation Plan (IPP) was provided and the Quality Assurance (QA) program contained in the IPP was performed and its implementation documented.
2. Adequate documentation was provided that enabled the reviewer to determine the emission estimation procedures and the data sources used to develop the inventory.
3. The point source inventory must be complete.
4. Point source emissions must have been prepared or calculated according to the current EPA guidance.
5. The area source inventory must be complete.
6. The area source emissions must have been prepared or calculated according to the current EPA guidance.
7. Biogenic emissions must have been prepared according to current EPA guidance or another approved technique.

[1] Also Section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

[2] Memorandum from John Calcagni, Director, Air Quality Management Division, and William G. Laxton, Director, Technical Support Division, to Regional Air Division Directors, Region I-X, "Public Hearing Requirements for 1990 Base-Year Emission Inventories for Ozone and Carbon Monoxide Nonattainment Areas," September 29, 1992, a copy of which is available from EPA Region I.

[3] Memorandum from John Calcagni, Director, Air Quality Management Division, to Regional Air Division Directors, Regions I–X, "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (ACT) Deadlines" October 28, 1992, a copy of which is available from EPA Region I.

8. The method (e.g., Highway Performance Modeling System or a network transportation planning model) used to develop vehicle miles travelled (VMT) estimates must follow EPA guidance, which is detailed in the document, "Procedures for Emission Inventory Preparation, Volume IV: Mobile Sources", U.S. Environmental Protection Agency, Office of Mobile Sources and Office of Air Quality Planning and Standards, Ann Arbor, Michigan, and Research Triangle Park, North Carolina, December 1992, a copy of which is available from EPA Region I.

9. The MOBILE model was correctly used to produce emission factors for each of the vehicle classes.

10. Non-road mobile emissions were prepared according to current EPA guidance for all of the source categories.

The base year emission inventory will be approved if it passes Levels I, II, and III of the review process. Detailed Level I and II review procedures can be found in "Quality Review Guidelines for 1990 Base Year Emission Inventories," U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC, July 27, 1992. Level III review procedures are specified in EPA memoranda.[4]

Maine's base year emission inventories meets each of these ten criteria. Documentation of the EPA's evaluation, including details of the review procedure, is contained within the technical support document prepared for the Maine 1990 base year inventories, which is available to the public as part of the docket supporting this action.

III. Final Action on SIP Revision

Maine has submitted a complete inventory containing point, area, biogenic, on-road mobile, and non-road mobile source data, and accompanying documentation. Emissions from these sources are presented in the following table:

VOC

[Ozone seasonal emissions in tons per day]

NAA	Area source emissions	Point source emissions	On-road mobile emissions	Non-road mobile emissions	Biogenic	Total emissions
Portland	31.80	9.65	49.87	7.40	197.60	296.32
Lewiston-Auburn	14.95	2.29	20.92	3.74	122.70	164.60
Knox & Lincoln Co	4.85	0.86	6.43	1.09	68.00	81.22
Hancock & Waldo Co	7.18	1.93	8.85	1.32	216.40	235.69

NO_X

[Ozone Seasonal Emissions in Tons Per Day]

NAA	Area source emissions	Point source emissions	On-road mobile emissions	Non-road mobile emissions	Biogenic	Total emissions
Portland	6.13	19.38	62.47	4.41	NA	92.39
Lewiston-Auburn	3.08	4.49	24.36	2.28	NA	34.24
Knox & Lincoln Co	0.92	2.79	7.23	0.69	NA	11.63
Hancock & Waldo Co	1.11	5.49	11.12	0.96	NA	18.68

CO

[Ozone Seasonal Emissions in Tons Per Day]

NAA	Area source emissions	Point source emissions	On-road mobile emissions	Non-road mobile emissions	Biogenic	Total emissions
Portland	7.12	6.05	463.71	40.38	NA	517.26
Lewiston-Auburn	3.57	2.35	183.86	20.48	NA	210.26
Knox & Lincoln Co	1.26	0.06	46.88	6.20	NA	54.40
Hancock & Waldo Co	2.03	1.76	64.54	7.03	NA	75.36

Maine has satisfied all of the EPA's requirements for providing a comprehensive, accurate, and current inventory of actual ozone precursor emissions for its ozone nonattainment areas. The inventories are complete and approvable according to the criteria set out in the November 12, 1992 memorandum from J. David Mobley, Chief Emission Inventory Branch, TSD to G. T. Helms, Chief Ozone/Carbon Monoxide Programs Branch, AQMD. In today's final action, the EPA is fully approving the SIP 1990 base year ozone emission inventories submitted by Maine to the EPA for the Portland, Lewiston-Auburn, Knox and Lincoln Counties, and Hancock and Waldo Counties nonattainment areas as meeting the requirements of sections 182(a)(1) and 172(c)(3) of the CAA.

The EPA has reviewed these requests for revision of the federally approved SIP for conformance with the provisions of the Clean Air Act Amendments. The EPA has determined that this action conforms with those requirements.

[4] Memorandum from J. David Mobley, Chief, Emissions Inventory Branch, to Air Branch Chiefs, Region I–X, "Final Emission Inventory Level III Acceptance Criteria," October 7, 1992; and memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, to Regional Air Division Directors, Region I–X, "Emission Inventory Issues," June 24, 1993. All of these memoranda are available from EPA Region I.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, in relation to relevant statutory and regulatory requirements.

IV. Summary of Redesignation Request

Background

The Hancock and Waldo Counties (hereafter H-W) ozone nonattainment area is designated nonattainment for ozone and is classified as marginal (56 FR 56694). On May 13, 1996 Maine submitted a requests to have the H-W area redesignated to attainment. The H-W area had been granted a one-year extension of its attainment date (60 FR 33351).

Requirements for Redesignation

Under section 107(d)(3)(E) of the Act, the following five criteria must be met for an ozone nonattainment area to be redesignated to attainment:

1. The area must meet the ozone NAAQS.
2. The area must meet applicable requirements of section 110 and Part D of the Act.
3. The area must have a fully approved SIP under section 110(k) of the Act.
4. The area must show that its experienced improvement in air quality is due to permanent and enforceable measures, including the SIP and any applicable Federal requirements.
5. The area must have a fully approved maintenance plan under section 175A of the Act, including contingency measures.

EPA's Evaluation of Maine's Redesignation Request and Maintenance Plan for the H–W Area

Criterion 1: The area must meet the ozone NAAQS.

EPA's Evaluation: The area met the ozone standard with the 1993–1995 ozone data. The area continues to meet the ozone standard with preliminary 1996 data. The ozone data are complete and in the Aerometric Information Retrieval System (AIRS) for the McFarland Hills ozone monitoring site in Acadia National Park. That site has an expected exceedance rate per year of 0.3. The standard is an expected exceedance rate less than or equal to 1 (40 CFR Part 50 Appendix H).

An additional ozone monitoring site was begun on top of Cadillac Mountain in the park in 1995. That site began monitoring on July 25, 1996. As stated in Appendix A "When one adjusts for the late start up, this site has a complete year of data; therefore giving it an expected exceedance rate of 1.0," which is attainment. In 1996 the preliminary data show no exceedance at either site. The State will continue to monitor in this area in accordance with 40 CFR part 58. All ozone data for this area are available in AIRS and can be obtained from EPA Region I.

Criteria 2 and 3 are similar and will be discussed together.

Criterion 2: The area must meet applicable requirements of section 110 and Part D.

EPA's Evaluation: EPA's redesignation policy requires an area to meet all requirements in section 110 and Part D of the Clean Air Act.

Criterion 3: The area must have a fully approved SIP under section 110(k) of the Act.

EPA's Evaluation: In order to meet this criteria, all applicable SIP elements must be approved into Maine's SIP for the H–W area.

Specific Elements

Section 110: General Requirements for Implementation Plans

Section 110(a)(2) of the Act lists the elements to be included in each SIP after adoption by the State and reasonable notice and public hearing. The elements include, but are not limited to, provisions for establishment and operation of appropriate devices, methods, systems, and procedures necessary to monitor ambient air quality; regulation of the modification or construction of stationary sources, including provisions for Part C (PSD) and D (NSR) preconstruction permit programs, criteria for stationary source emission control measures, monitoring, and reporting, provisions for modeling, and provisions for public and local agency participation. For purposes of redesignation, the H–W area SIPs were reviewed to ensure that all requirements under the Act were satisfied. EPA has determined that the individual SIPs are consistent with the requirements of section 110 of the Act.

Part D: General Provisions for Nonattainment Areas

Before any of the marginal nonattainment counties may be redesignated as attainment, they must fulfill the applicable requirements of Part D. Under Part D, an area's classification determines the requirements to which it is subject. Subpart 1 of Part D sets forth the basic nonattainment requirements applicable to all nonattainment areas. Subpart 2 of Part D establishes additional requirements for ozone nonattainment areas classified under table 1 of section 181(a). As described in the General Preamble, specific requirements of Subpart 2 may override Subpart 1's general provisions, (57 FR 13501 (April 16, 1992)). The H–W area is classified as marginal nonattainment and is in the Ozone Transport Region (OTR). Therefore, in order to be redesignated, the State must meet the applicable requirements of Subpart 1 of Part D—specifically sections 172 and 176, as well as the applicable requirements of Subpart 2 of Part D, except for OTR requirements.

Section 172 Requirements

The H–W redesignation request has satisfied all of the relevant submittal requirements under section 172 necessary for the area to be redesignated to attainment.

Section 172(c)(3) requires submission and approval of a comprehensive, accurate, and current inventory of actual emissions. The requirement was superseded by the inventory requirement in section 182(a)(1). The MEDEP submitted such an inventory on July 26, 1995. This inventory is being approved by EPA in this document.

Section 172(c)(5) requires permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. The Maine NSR rules were approved by EPA on Feb. 14, 1996 (61 FR 5690).

Section 176 Conformity Requirements

EPA has previously interpreted the conformity requirements as not being applicable requirements for purposes of evaluating redesignation requests (60 FR 62748; December 7, 1995).

Subpart 2 Section 182 Requirements (Additional Requirements)

The H–W area is classified as marginal nonattainment. Therefore, Part D, Subpart 2, section 182(a) requirements apply. In accordance with guidance presented in the Shapiro memorandum,[5] the requirements that were due prior to the submission of the requests to redesignate the area must be fully approved into the SIP before the requests to redesignate the area to attainment can be approved. Those requirements are discussed below:

[5] Memorandum from Michael H. Shapiro, Acting Assistant Admin. for Air and Radiation, to Regional Air Directors, "State Implementation Plan (SIP) Requirements for Areas Submitting Requests . . . on or After November 15, 1992," dated Sep 17, 1993, and available from EPA Region I.

(1) 1990 Base Year Inventory

The 1990 base year emission inventory was submitted to EPA on July 26, 1995 and found complete on July 26, 1995, and is being approved in this document.

(2) Permit Program

The Maine NSR rules were approved by EPA on Feb. 14, 1996 (61 FR 5690). An interim approval of Maine's Title V permit program was published (61 FR 49289). Final approval will be published soon.

(3) RACT Fix-Ups

Pursuant to the Section 182(a)(2)(A) RACT fix-up requirement, Maine submitted regulations for fixed roof petroleum tanks, bulk gasoline terminals, and paper coating sources which were approved by EPA on February 2, 1992 (57 FR 3946). In addition, the state submitted capture efficiency test procedures which were approved by EPA on March 22, 1993 (58 FR 15281). Thus, Maine has fulfilled the RACT fix-up requirement.

(4) Periodic Inventory

In the H–W redesignation request, the State of Maine has supplied a 1993 inventory for VOC and NO_X as part of its redesignation request. This inventory will also fulfill the required 1993 periodic inventory for Hancock and Waldo counties specified in CAA Section 182(3)(A).

(5) Emission Statements

The emission statements for Maine were approved by EPA on Jan. 10, 1995 (60 FR 2524).

(6) Offset Requirements

Section 182(a)(4) requires all major new sources or modifications in a marginal nonattainment area within the OTR to achieve offsetting reductions of precursors at a ratio of at least 1.1 to 1.0. Section 184 raises the ratio to 1.15 to 1, within the OTR. The Maine NSR rules were approved by EPA on Feb. 14, 1996 with an offset ratio of 1.15 to 1 (61 FR 5690).

Section 184 OTR Requirements

In a previous rulemaking (61 FR 53174, Oct. 19, 1996), EPA stated that since OTR requirements are regional in nature and EPA can sanction an area separately for failure to submit or failure to implement OTR requirements, these OTR measures would not be a requirement for redesignations. In sum, redesignation to attainment will not remove the requirements for Maine to adopt and implement any outstanding section 184 measures in the Hancock and Waldo Counties area.

NO_X RACT Requirements

The H–W area received a wavier from NO_X RACT requirements (60 FR 66748).

Criterion 4: The area must show that its experienced improvement in air quality is due to permanent and enforceable measures.

EPA's Evaluation: The redesignation request has shown that, through fully adopted and implemented, permanent and enforceable state and federal measures, the area's air quality has improved. The request also shows that the meteorology for the period 1989 to 1995 was not unusual.

Several permanent and enforceable control measures have been put into place in the H–W area the most effective of which is the Federal Motor Vehicle Control Program. Decrease in transported ozone has also been a major factor in the improved air quality of this region. Since 1992 other programs have also been implemented in Maine, such as Non-CTG VOC RACT, Stage I gasoline vapor recovery on smaller stations, and reformulated gasoline.

Criterion 5: The area must have a fully approved maintenance plan under section 175A of the Act, including contingency measures.

EPA's Evaluation: The state of Maine chose 1993 to be its attainment year inventory and per EPA requirements must show maintenance out to 2006. The ME submittal (Table 2) shows a decrease trend in both VOC and NO_X emissions from 1993 to 2006, and none of the intermediate years have emissions above the 1993 base line.

TABLE 2.—MAINTENANCE INVENTORY FOR H–W AREA

[Summary of H–W VOC Emissions (tons per summer day)]

Sector	1993 attain	1996 proj.	2006 proj.
Area	5.9	5.6	6.0
Point	1.4	1.4	1.5
Mobile	8.3	7.9	6.7
Totals	15.7	14.9	14.2

[Summary of H–W NO_X Emissions (tons per summer day)]

Sector	1993 attain	1996 proj.	2006 proj.
Area	0.5	0.5	0.5
Point	5.7	5.8	5.1
Mobile	11.0	10.3	9.3
Totals	17.3	16.7	14.9

The above tables show that the level of total emissions in the attainment year, 1993, are not exceeded in either the interim year, 1996, or the final year, 2006. Note, the totals may not add-up due to rounding. The state submittal shows that intermediate years also remain below the 1993 baseline.

Contingencies for Approval

Sections 107(d)(3)(E)(iv) and 175A(d) of the Act require states to include contingency provisions to correct promptly any NAAQS violations that occur after redesignation. At a minimum the state must continue to implement all SIP ozone measures in place before redesignation.

EPA's Evaluation: Maine will continue to implement its ozone SIP. The Maine request listed several possible contingency measures for the H–W area. These include: Accelerated vehicle retirement, consumer product rules on adhesives, clean-fuel fleet programs, employee commute options, marine vessel loading, pesticide application controls, rule effectiveness improvements, Stage II gasoline vapor recovery, and Transportation Control Measures (TCM's).

If the H–W area were to violate the ozone NAAQS, the MEDEP would adopt the contingency measure that would be most appropriate to minimize future violations of the NAAQS.

V. Final Action on Redesignation Request

EPA is approving the redesignation request.

VI. Procedural Background

The Agency has reviewed the request for revision of the Federally-approved State implementation plan, and the request for redesignation for conformance with the provisions of the 1990 amendments enacted on November 15, 1990.

The EPA is publishing these actions without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision and the redesignation request should adverse or critical comments be filed. This action will be effective April 29, 1997 unless, by March 31, 1997, adverse or critical comments are received.

If the EPA receives such comments, the action to which those comments are relevant will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action(s). All public

comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on the action. Any parties interested in commenting on these actions should do so at this time. If no such comments are received, the public is advised that these actions will be effective April 29, 1997.

Nothing in these actions should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan or redesignations. Each request for revision to the State implementation plan or redesignation shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

VII. Administrative Requirements

A. Executive Order 12866

These actions have been classified as a Table 3 actions for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted these regulatory actions from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Agency certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the air quality planning status of a geographical area and does not impose any regulatory requirements on sources. The Agency certifies that the approval of the redesignation request will not affect a substantial number of small entities.

C. Unfunded Mandates

Under Sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval actions promulgated do not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) of the Regulatory Flexibility Act as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 29, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).) EPA encourages interested parties to comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: February 3, 1997.

John P. DeVillars,

Regional Administrator, Region I.

For the reasons set out in the preamble title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.1036 is added to subpart U to read as follows:

§ 52.1036 Emission inventories.

(a) The Governor's designee for the State of Maine submitted 1990 base year emission inventories for the Knox and Lincoln Counties area, the Lewiston and Auburn area, the Portland area, and the Hancock and Waldo Counties area on July 25, 1995 as a revision to the State Implementation Plan (SIP). The 1990 base year emission inventory requirement of section 182(a)(1) of the Clean Air Act, as amended in 1990, has been satisfied for these areas.

(b) The inventory is for the ozone precursors which are volatile organic compounds, nitrogen oxides, and carbon monoxide. The inventory covers point, area, non-road mobile, on-road mobile, and biogenic sources.

(c) The Knox and Lincoln Counties nonattainment area is classified as moderate. The Lewiston and Auburn nonattainment area is classified as moderate and consists of Androscoggin and Kennebec Counties. The Portland nonattainment area is classified as moderate and consists of Cumberland, Sagadahoc and York Counties. The Hancock and Waldo Counties nonattainment area is classified as attainment.

(d) The Governor's designee for the State of Maine submitted 1993 periodic year emission inventories for the Hancock and Waldo Counties area on May 13, 1996 as a revision to the State Implementation Plan (SIP). The 1993 periodic year emission inventory requirement of section 182(3)(A) of the Clean Air Act, as amended in 1990, has been satisfied for the Hancock and Waldo counties area.

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.320 the "Maine-Ozone" table is amended by revising the entry for "Hancock County and Waldo County Area" to read as follows:

§ 81.320 Maine.

* * * * *

MAINE—OZONE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Hancock County and Waldo County Area:				
Hancock County	Apr. 29, 1997	Attainment.		
Waldo County	Apr. 29, 1997	Attainment.		

[1] This date is November 15, 1990, unless otherwise noted.

[FR Doc. 97–4963 Filed 2–27–97; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 63

[AD–FRL–5695–9]

RIN 2060–AD93

National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution (Stage I)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule: amendments.

SUMMARY: The EPA is promulgating, as a direct final rule, amendments to the "National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution (Stage I)" (the "Gasoline Distribution NESHAP"). These amendments implement a proposed settlement agreement with the American Petroleum Institute noticed for comment on November 15, 1996 regarding improvements in the screening equations for determining applicability of the Gasoline Distribution NESHAP. This action also addresses some clarifications to the NESHAP that were requested by other parties. These clarifications do not change the level of the standards or the intent of the NESHAP promulgated in 1994.

In the proposed rules section of this **Federal Register**, the EPA is proposing a rule that is identical to this direct final rule. If significant, adverse comments are received on the proposed rule by the due date (see **DATES** section below), this direct final rule will be withdrawn and all such comments will be addressed in a subsequent final rule based on the proposed rule. If no significant, adverse comments are timely received on the proposed rule, then the direct final rule remains effective upon publication, and no further action is contemplated on the parallel proposal published today.

DATES: This rule is effective April 14, 1997, unless adverse comments are received by March 31, 1997. If adverse comments are received, the EPA will publish timely notice in the **Federal Register** withdrawing the direct final rule.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (Act), judicial review of NESHAP is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of these direct final amendments. Under section 307(b)(2) of the Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

ADDRESSES: *Docket.* Docket No. A–92–38, category VIII 1997 Amendments, containing information considered by the EPA in developing the final amendments, is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, except for Federal holidays, at the EPA's Air and Radiation Docket and Information Center, room M1500, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460; telephone (202) 260–7548. A reasonable fee may be charged for copying. This docket also contains information considered by the EPA in proposing and promulgating the original Gasoline Distribution NESHAP.

FOR FURTHER INFORMATION CONTACT: For information concerning applicability and rule determinations, contact the appropriate EPA regional or Office of Enforcement and Compliance Assurance (OECA) representative:

Region I: Greg Roscoe, Air Programs Enforcement Office Chief, U.S. EPA, Region I, JFK Federal Building (SEA), Boston, MA 02203, Telephone number (617) 565–3221

Region II: Kenneth Eng, Air Compliance Branch Chief, U.S. EPA, Region II, 290 Broadway, New York, NY 10007, Telephone number (212) 637–4080, Fax number (212) 637–3998

Region III: Walter K. Wilkie, U.S. EPA, Region III (3AT12), 841 Chestnut Building, Philadelphia, PA 19107, Telephone number (215) 566–2150, Fax number (215) 566–2114

Region IV: Lee Page, U.S. EPA, Region IV (AR–4), 100 Alabama Street, SW, Atlanta, GA 30303–3104, Telephone number (404) 562–9131, Fax number (404) 562–9095

Region V: Howard Caine (AE–17J), U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, Telephone number (312) 353–9685, Fax number (312) 353–8289
Region VI: Sandra A. Cotter (6EN–AT), U.S. EPA, Region VI (6PD–R), 1445 Ross Avenue, Dallas, TX 75202–2733, Telephone number (214) 665–7347, Fax number (214) 665–7446
Region VII: Bill Peterson, U.S. EPA, Region VII, 726 Minnesota Avenue, Kansas City, KS 66101, Telephone number (913) 551–7881
Region VIII: Heather Rooney, U.S. EPA, Region VIII (8ART–AP), 999 18th Street, Suite 500, Denver, CO 80202–2405, Telephone number (303) 312–6971, Fax number (303) 312–6826
Region IX: Christine Vineyard, U.S. EPA, Region IX (Air-4), 75 Hawthorne Street, San Francisco, CA 94105, Telephone number (415) 744–1197
Region X: Chris Hall, Office of Air Quality (OAQ–107), U.S. EPA, Region X, 1200 Sixth Avenue, Seattle, WA 98101–9797, Telephone number (206) 553–1949 or (800) 424–4372 x1949
OECA: Julie Tankersley, U.S. EPA, Office of Enforcement and Compliance Assurance (2223A), 401 M Street, SW, Washington, DC 20460, Telephone number (202) 564–7002, Fax number (202) 564–0050.

For information concerning the analyses performed in developing the final rule amendments, contact Mr. Stephen Shedd, Waste and Chemical Processes Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number (919) 541–5397 or fax number (919) 541–0246.

SUPPLEMENTARY INFORMATION: An electronic version of these final amendments and the proposal preamble is available for download from the EPA Technology Transfer Network (TTN), a network of electronic bulletin boards developed and operated by the Office of Air Quality Planning and Standards. The TTN provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a phone call. Dial (919) 541–5742 for data transfer of up to 14,400 bits per second. If more information on the operation of the TTN is needed, contact the systems operator at (919) 541–5384. The TTN is also available on the Internet (access: http://ttnwww.rtpnc.epa.gov).

The information presented in this preamble is organized as follows:

I. Background and Summary of Action
II. Summary of and Rationale for Rule Changes
A. Improvement of Emission Estimation Screening Equations
B. Clarifications
1. Excess Emissions Reports
2. Definition of Bulk Gasoline Terminal
3. Potential to Emit and Federal Enforcement
4. Demonstration of Compliance
5. Oxygenated Gasoline
6. Reporting Emissions Inventories
III. Administrative Requirements
A. Paperwork Reduction Act
B. Executive Order 12866
C. Regulatory Flexibility
D. Unfunded Mandates Reform Act
E. Regulatory Review
F. Submission to Congress and the General Accounting Office

I. Background and Summary of Action

On December 14, 1994 (59 FR 64303), the EPA promulgated the "National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution (Stage I)" (the "Gasoline Distribution NESHAP"). The Gasoline Distribution NESHAP regulates all hazardous air pollutants (HAP) emitted from new and existing bulk gasoline terminals and pipeline breakout stations that are major sources of HAP emissions or are located at sites that are major sources of HAP emissions. The regulated category and entities affected by this action include:

Category	Examples of regulated pentities
Industry	Bulk gasoline terminals. Pipeline breakout stations.

This table is not intended to be exhaustive but, rather, provides a guide for readers regarding entities likely to be interested in the revisions to the regulation affected by this action. To determine whether your facility is regulated by this action, you should carefully examine all of the applicability criteria in 40 CFR 63.420. If you have questions regarding the applicability of this action to a particular entity, consult the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

On March 29, 1995, the American Petroleum Institute (API), a trade association having members who own or operate facilities potentially subject to the Gasoline Distribution NESHAP, submitted a Petition for Administrative Stay and for Reconsideration of the Gasoline Distribution NESHAP. After lengthy negotiations with API, the EPA provided notice and requested public comment on a proposed settlement in the **Federal Register** on November 15, 1996 (61 FR 58547). No comments were received on the proposed settlement during the 30-day comment period. The EPA also issued a guidance memorandum (available on the TTN and in the docket), "Guidance Concerning Notifications Required by December 16, 1996 Under Gasoline Distribution NESHAP (40 CFR Part 63, Subpart R)," Bruce Jordan to EPA Regional Offices, November 21, 1996, clarifying the notification requirements for major sources that plan to be an area source by the first substantive compliance date of the rule, December 15, 1997.

As a result of the settlement agreement, the EPA has made modifications to the screening equations in the promulgated rule to make them more useful to facilities attempting to demonstrate that they are area sources, and therefore not subject to the control requirements of the NESHAP. These modifications are discussed in detail in Section II.A of this notice.

In response to requests by other parties, the EPA has also made several clarifications to the final NESHAP, as discussed in Section II.B of this notice, that are not a direct result of the settlement agreement. First, the language of the rule has been revised to clarify that the requirement for an excess emissions report applies to all affected facilities whether or not they have a continuous monitoring system. Second, the definition for *bulk gasoline terminal* has been inserted directly into the rule instead of cross-referencing the definition in the new source performance standards for bulk terminals. Third, the term "federally enforceable" has been replaced with the term "limitations on potential to emit" (PTE) to accommodate any eventual outcome of the EPA's current consideration of PTE issues. Fourth, the requirement that compliance be demonstrated upon the EPA's request has been clarified to include the calculations and assumptions used for the applicability screening equations. Fifth, the EPA has clarified the intended meaning of the term "reformulated or oxygenated gasoline containing methyl tert-butyl ether (MTBE)" as used in defining the parameter "CF" for the applicability screening equations. Sixth, the EPA has clarified that there is no requirement to submit emissions inventory documentation that a facility is not a major source to the Administrator for approval. These emissions inventory documents need only be maintained at the facility and provided upon request.

II. Summary of and Rationale for Rule Changes

A. Improvement of Emission Estimation Screening Equations

The final Gasoline Distribution NESHAP provides two options for facilities to obtain area source status for this rule and thus not be subject to the control requirements of this major source standard. These options are the use of an emission screening equation or performance of an HAP emissions inventory for the facility. The emissions inventory provision is currently implemented outside the provisions of this rule and approved by the permitting authority. The screening equation option allows facilities to use a specified equation in the 1994 final rule to determine their area source status under this rule, as long as they are in compliance with the equation parameters and the recordkeeping and reporting requirements in the rule. These screening equations were developed to provide facilities with a way of determining whether they are a major source without obtaining an area source determination outside the provisions of this rule.

The 1994 final rule contains two screening equations in § 63.420 (one for use by bulk gasoline terminals and one for pipeline breakout stations) to make an estimation of the total HAP emissions from the major gasoline operations at the facility. The equations identify facilities that have the potential to emit (PTE) less than 10 tons per year (tpy) of a single HAP or less than 25 tpy of a combination of HAP, which are the criteria for area sources. Since the equations in the final rule included only gasoline storage and transfer operations, the rule did not allow the equations to be used by facilities that have HAP emissions from other products (such as distillates) or that emit HAP from gasoline operations not accounted for in the equations.

The API, as part of the settlement, requested that the EPA incorporate additional modifications to those changes made to the screening equations before the 1994 promulgation in order to make the equations more useful to facilities attempting to demonstrate that they are area sources within the structure of the rule. The API said that the "other" HAP emissions not considered in the equation are routinely very low, and virtually every bulk gasoline terminal has such HAP emission sources. (The API's comments were directed toward bulk terminals, but they can be applied to also cover pipeline breakout stations.) As a result, they felt that the equation, as promulgated, had very little utility as a means of screening for rule applicability. The EPA reviewed API's supporting information and agreed that the utility of the screening equations needed to be improved.

The EPA and API investigated the development of a factor or expression to account for "other" HAP emission sources at marketing facilities. These other HAP sources consist of activities not already accounted for in the screening equations (i.e., sources other than gasoline storage vessels, gasoline loading racks and cargo tanks, and gasoline vapor leaks from equipment components). HAP emission sources not arising directly from the storage and handling of gasoline occur routinely in this source category, and include distillate fuel, additive tanks, wastewater storage/handling tanks, cleaning/degassing of tanks, subsurface recovery (and other remedial actions), service station tank bottoms storage, sample handling/laboratory activities, and pipeline transmix (interface) storage (i.e., transmix with no gasoline content). Gasoline mixtures in storage tanks, such as transmix containing gasoline, are considered to be "gasoline" in the emission screening equations and also in the standards.

The EPA agreed that the utility of the equations would be further enhanced by including a factor to account for these other HAP emission sources (OE). However, the EPA believed that it was necessary to limit the percentage of total facility HAP emissions that a facility could claim from other emission sources because such sources are most likely not currently permitted or subject to current enforceable limits on emissions, are part of another source category ["Organic Liquids Distribution (Non-Gasoline)"] that has yet to be studied, or are collocated at other facilities (refineries, chemical plants, military bases) and not the primary source of emissions. The API surveyed some of its member companies and concluded that HAP emissions from other sources at gasoline bulk terminals are low, ranging from 0.1 to 3.5 tons/yr. Based on this information, API suggested limiting the OE value to 5 percent of total facility HAP emissions. The EPA agrees with API that limiting the value of OE to 5 percent is appropriate to represent typical facilities in this source category. If a facility finds that OE contributes more than 5 percent of its total HAP emissions, then the facility fits into a combination of source categories and must use the emissions inventory approach to determine HAP emissions and the applicability of the Gasoline Distribution NESHAP.

Since the screening equations were originally and continue to be normalized, or set equal to "1," to determine area source status, OE should thus be divided by either 10 or 25 (the tpy cutoffs defining a major source) to be incorporated into the equation. The API suggested, and the EPA agreed, that OE (in tpy) should be normalized by dividing by 25 (or multiplying by 0.04), since the OE factor will be calculated from a variety of emission sources and these emissions will most likely be composed of a combination of HAP, rather than a single HAP. Additionally, since the allowable value is small (5 percent of total facility HAP emissions), the resulting environmental effect from adding this parameter to an equation designed for screening purposes is expected to be small.

B. Clarifications

1. Excess Emissions Reports

The EPA was requested after promulgation to clarify whether the owner or operator of a pipeline breakout station needs to submit the excess emissions report required under § 63.428(h), even though the facility is not required to install a continuous monitoring system (CMS) in conjunction with the operation of a control device. The commenter also asked whether the information to be included in such a report would be limited to that indicated in § 63.428(h)(4) (late repairs of leaking equipment), and whether the required reporting frequency would be semiannual or quarterly.

The final rule promulgated in 1994, in § 63.428(h) (1) through (4), specifies information that must be included in excess emissions reports submitted by bulk gasoline terminals and pipeline breakout stations. In summary, there are four elements of information required to be included in the excess emissions report as excess emissions. They are:

(1) Exceedances or failures to maintain the monitored operating parameter value of the vapor processor,

(2) Failures to take steps to assure that reloadings of nonvapor-tight gasoline cargo tanks will not occur,

(3) Reloadings of nonvapor-tight gasoline cargo tanks before vapor tightness documentation on those tanks is obtained by the facility, and (4) certain information on equipment leaks for which no repair was attempted within 5 days or completed within 15 days after detection. The section also states that the excess emissions report is to be filed as required under § 63.10(e)(3) of CFR part 63, subpart A (General Provisions). Section

63.10(e)(3)(i) specifies that an "excess emissions and continuous monitoring system performance report and/or a summary report" shall be submitted by each owner or operator of an affected source required to install a CMS. Also, if the CMS data are to be used for compliance and the source experienced excess emissions, quarterly reporting is required. [(§ 63.10(e)(3)(i)(C)].

The EPA believes that this question may have arisen due to the different characteristics of bulk terminals versus pipeline breakout stations, and the different elements of information specified for the reports in § 63.428 and § 63.10. Items (1) through (3) required under § 63.428 are primarily intended to refer to activities at a bulk terminal, where the loading of gasoline cargo tanks will be controlled with a vapor processor combined with a vapor tightness (test and repair) program for the cargo tanks. However, item (1) would also apply to pipeline breakout stations that elect to install a control device and CMS for storage vessel emission control in response to § 63.427(c) and § 60.112b(a)(3). In that case, the report required from sources "required to install a CMS" under § 63.10(e)(3)(i) would be appropriate for pipeline breakout stations. However, for most breakout pipeline breakout stations, only item (4) pertaining to the repair of equipment leaks is applicable.

The EPA's intent in the final rule [as described in the preamble to the 1994 promulgated standards (59 FR 64316)] was to require a semiannual report under § 63.428(g) and § 63.10(e)(3) for bulk terminals and pipeline breakout stations, with this frequency increasing to quarterly in the event that any specified excess emissions occur that are listed in § 63.428(h)(1) through (4). Section 63.10(e)(3)(i)(C) requires the quarterly reporting frequency to be followed until a facility's request to reduce the frequency is approved.

In summary, all bulk terminals and pipeline breakout stations are required to submit this report, and each facility should include the information pertinent to its own situation. The initial reporting frequency is semiannual, but will increase to quarterly if excess emissions are experienced. The EPA reviewed the language of the rule and found that the rule needed revision to clarify this approach. Today's action revises the language of the rule to clarify and make more explicit the EPA's original intent that the requirement for an excess emissions report applies to all affected bulk terminals and pipeline breakout stations with or without a CMS.

2. Definition of Bulk Gasoline Terminal

In the 1994 promulgated rule, several terms were defined in § 63.421 through cross-referencing with definitions already provided in the Act; in 40 CFR 60, subparts A, K, Ka, Kb, and XX; and in 40 CFR 63, subpart A. One term intended to be defined in this way was "bulk gasoline terminal." The definition for bulk gasoline terminal (as included in 40 CFR 60, subpart XX) is as follows:

Bulk gasoline terminal means any gasoline facility which receives gasoline by pipeline, ship or barge, and has a gasoline throughput greater than 75,700 liters per day. Gasoline throughput shall be the maximum calculated design throughput as may be limited by compliance with an enforceable condition under Federal, State or local law and discoverable by the Administrator and any other person.

The approach of cross-referencing the definition of one of the affected sources apparently created confusion, possibly because a definition for "pipeline breakout station" was explicitly included in § 63.421. In order to lessen the confusion, and to clearly specify that the Agency intended to apply the same facility definition to bulk terminals as was used in the bulk terminal NSPS, the definition is being inserted directly into subpart R under § 63.421. This change does not create new requirements in the rule, but merely makes more explicit the EPA's intent concerning the definition of a bulk gasoline terminal.

3. Potential To Emit and Federal Enforcement

The EPA is also replacing the term "federally enforceable" as a condition for some of the emission screening equation parameters with the term "limitations on potential to emit" (PTE). The purpose of this change is not to make any substantive decision regarding the PTE issues that are currently under review by the Agency, but rather to recognize that those issues exist and to minimize any confusion regarding how those issues should be dealt with in the interim as they relate to the Gasoline Distribution NESHAP. The EPA believes that using the term "limitations on potential to emit" will eliminate the need for subsequent amendments to this rule as it relates to PTE issues. PTE is defined in § 63.2 Definitions, of the General Provisions of subpart A of part 63, and the term "limitations on potential to emit" has been added to the list of definitions in § 63.421.

As discussed in the February 29, 1996 (61 FR 7718) Gasoline Distribution final rule amendments, the EPA is considering a number of options regarding the requirements on potential to emit limits, in response to the *National Mining* court decision. In addition, the EPA created a 2-year transition period (January 1995 until January 1997) during which the EPA will recognize limitations on PTE, so long as those limits are enforceable as a practical matter. In a policy memorandum (available on the TTN and in the docket), "Extension of January 25, Potential to Emit Transition Policy," John S. Seitz and Robert I. Van Heuvelen to EPA Regional Offices, August 27, 1996, the EPA has extended this transition period for 18 months until July 31, 1998, which is later than the December 15, 1997 control equipment compliance date for all MACT source categories, including the Gasoline Distribution NESHAP. Accordingly, for the critical applicability date[1] for the Gasoline Distribution NESHAP, the EPA wishes to clarify that State-enforceable limits that are enforceable as a practical matter will be treated by the EPA as acceptable limitations on potential to emit. If, as a result of the PTE rulemaking, a decision is made that yields a requirement that PTE limitations must be federally enforceable for some or all sources, an appropriate transition period will be given to allow time for such sources to obtain federally enforceable limits.

4. Demonstration of Compliance

Section § 63.420(f) of the final rule requires an owner or operator to demonstrate compliance with any provision of the rule to which the facility is subject, upon request by the EPA. The rule has been amended to clarify that this demonstration also needs to be made, upon request, for the parameters and assumptions used in performing calculations for the applicability screening equations. This change does not impose any new requirements, but has been made to eliminate any chance for ambiguity in interpreting this rule provision.

[1] Affected sources must either be in full compliance with the major source emission standards in the Gasoline Distribution NESHAP or have been determined to be an area source no later than December 15, 1997. Additionally, each affected source was required to submit an initial notification by December 16, 1996 if it is (1) a major source, (2) a major source on December 16, 1996 and plans to be an area source by December 15, 1997, or (3) using one of the emission screening equations in § 63.420. These latter major sources (no. 3) must include in the notification a non-binding description of and a schedule for the actions that are planned to achieve area source status [§ 63.428(a)].

5. Oxygenated Gasoline

The emission screening equations in § 63.420 of the final rule use the parameter "CF" to account for the higher HAP content of the modified gasolines that are marketed to comply with Federal and State ozone and carbon monoxide control programs. These *reformulated* and *oxygenated* gasolines, in addition to other formula changes, contain significant levels of oxygenate, frequently the HAP methyl tert-butyl ether (MTBE), which supplies oxygen in the combustion process to reduce the amount of carbon monoxide emitted in tailpipe exhaust. The higher CF factor of 1.0 for these gasolines that use MTBE as an oxygenate, versus a CF factor of 0.161 for "normal" gasolines, reflects the fact that the overall HAP content of reformulated and oxygenated gasolines using MTBE as an oxygenate is significantly higher than the HAP content of normal gasoline.

The definitions given in § 63.421 for reformulated and oxygenated gasolines cross-reference existing definitions already codified at 40 CFR 80.2(ee) and 40 CFR 80.2(rr), respectively. The CFR defines *oxygenated gasoline* as "gasoline which contains a measurable amount of oxygenate." However, this definition may not adequately distinguish oxygenated gasoline from normal gasoline. The reason is that, in addition to its use as an oxygenate, MTBE is often used in generally smaller concentrations to boost the octane rating of normal gasoline. Although the MTBE present in these gasolines is generally minimal, the EPA was concerned that even these small amounts could be construed as qualifying a gasoline as "oxygenated." The EPA's intent was not to specify the higher CF factor for normal gasolines with minor amounts of MTBE, but only for those gasolines with a sufficient quantity of MTBE to create a substantially higher HAP content than found in normal gasolines.

Section 211(k) of the Act specifies a minimum oxygen content for reformulated gasolines of 2.0 percent by weight, while EPA guidelines issued in response to section 211(m) recommend a minimum oxygen content of 2.7 percent by weight for oxygenated gasolines. The EPA's final regulations to implement the reformulated gasoline program, promulgated on February 16, 1994 (59 FR 7716), specify a minimum allowable per-gallon oxygen content for reformulated gasoline of 1.5 weight percent when the standards are being achieved on an average basis. In order to include all of the allowable modified fuels in the CF factor definition, the same oxygen content of 1.5 weight percent is being used in these rule amendments as the cutoff defining these high-HAP gasolines. Since reformulated and oxygenated gasolines are frequently oxygenated using MTBE, this minimum oxygen content was converted to MTBE volume percent. Based on the molecular composition and density of MTBE and a typical density for gasoline, the value of 1.5 percent oxygen by weight was calculated to be equivalent to 7.6 percent MTBE by volume (available in the docket). Since this value is not inconsistent with the existing definitions for reformulated and oxygenated gasolines, but only specifies a minimum gasoline MTBE content, the promulgated definitions for "reformulated gasoline" and "oxygenated gasoline" are being retained in the rule. The two definitions for the term CF have been amended to incorporate this minimum MTBE content.

The EPA emphasizes that this change merely clarifies the Agency's intent in specifying a higher CF value for reformulated and oxygenated gasolines that use MTBE as an oxygenate. The higher CF factor of 1.0 is intended to be used in the screening equations by those facilities that handle gasoline blended with significant amounts (7.6 volume percent or more) of MTBE. The 1.0 factor should *not* be used by facilities that handle only gasoline having trace amounts of MTBE. The change has no effect on the control programs that require the marketing of these fuels, nor does it change or add any reporting, recordkeeping, or testing requirements for affected facilities.

6. Reporting Emissions Inventories

The owner or operator of a stationary source in this category is allowed to use methods other than the emission screening equations (typically an emissions inventory) to establish that the facility is not a major source, provided that he or she "has documented and recorded to the Administrator's satisfaction that the facility is not a major source, or is not [collocated with] a major source" [40 CFR 63.420(a)(2) and (b)(2)]. Some confusion has been expressed as to whether these documents must in all cases be submitted to the Administrator for approval prior to December 16, 1996 as an alternative to the results of the screening equation or whether it is appropriate to maintain these records at the facility. This action clarifies that there is no requirement to submit these emissions inventory type documents for approval either prior to or after December 16, 1996, and that these documents may be maintained at the facility. However, the owner or operator is required [§ 63.420(f)], "upon request," to demonstrate compliance with all of the applicability provisions, including this determination that the facility is not a major source.

III. Administrative Requirements

A. Paperwork Reduction Act

The information collection requirements of the previously promulgated NESHAP were submitted to and approved by the Office of Management and Budget (OMB). A copy of this Information Collection Request (ICR) document (OMB control number 2060–0325) may be obtained from Ms. Sandy Farmer, Information Policy Branch, Environmental Protection Agency, 401 M Street, S.W. (mail code 2136), Washington, DC 20460, or by calling (202) 260–2740.

Today's amendments to the Gasoline Distribution NESHAP have no impact on the information collection burden estimates made previously. No additional certifications or filings were promulgated. Therefore, the ICR has not been revised.

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether a regulation is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The criteria set forth in section 1 of the Order for determining whether a regulation is a significant rule are as follows:

(1) Is likely to have an annual effect on the economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government communities;

(2) Is likely to create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Is likely to materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Is likely to raise novel or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The Gasoline Distribution NESHAP promulgated on December 14, 1994 was treated as a "significant regulatory action" within the meaning of the Executive Order. An estimate of the cost and benefits of the NESHAP was prepared at proposal as part of the background information document

(BID). This estimate was updated in the BID for the final rule to reflect comments and changes made in developing the final rule. The amendments issued today have no impact on the estimates in the final BID. Pursuant to the terms of Executive Order 12866, it has been determined that this action is a "non-significant regulatory action" within the meaning of the Executive Order. As such, this action was not submitted to OMB for review.

C. Regulatory Flexibility

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. When the Agency promulgated the Gasoline Distribution NESHAP, it analyzed the potential impacts on small businesses, discussed the results of this analysis in the **Federal Register**, and concluded that the promulgated regulation would not result in financial impacts that significantly or differentially stress affected small companies. Since today's action imposes no additional impacts, the EPA has determined that these amendments will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act, signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, the EPA must select the most cost effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that today's action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. Therefore, the requirements of the Unfunded Mandates Reform Act do not apply to this action.

E. Regulatory Review

In accordance with sections 112(d)(6) and 112(f)(2) of the Act, this regulation will be reviewed 8 years from the date of promulgation. This review may include an assessment of such factors as evaluation of the residual health risk, any overlap with other programs, the existence of alternative methods of control, enforceability, improvements in emission control technology and health data, and the recordkeeping and reporting requirements.

F. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the EPA submitted a report containing the final amendments and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the amendments in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Petroleum bulk stations and terminals, Reporting and recordkeeping requirements.

Dated: February 21, 1997.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 63 of chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Section 63.420 is amended by revising the equation and the terms "CF" "CE", "Q" and "EF" in paragraph (a)(1), and by adding the term "OE" to the list in paragraph (a)(1) to read as follows:

§ 63.420 Applicability.

(a) * * *

(1) * * *

$$E_T = CF[0.59(T_F)(1-CE)+0.17(T_E)+0.08(T_{ES})+0.038(T_I)+8.5\times10-6(C)+KQ]+0.04(OE)$$

* * * * *

CF=0.161 for bulk gasoline terminals and pipeline breakout stations that do not handle any reformulated or oxygenated gasoline containing 7.6 percent by volume or greater methyl tert-butyl ether (MTBE), OR

CF=1.0 for bulk gasoline terminals and pipeline breakout stations that handle reformulated or oxygenated gasoline containing 7.6 percent by volume or greater MTBE;

CE=control efficiency limitation on potential to emit for the vapor processing system used to control emissions from fixed-roof gasoline storage vessels (value should be added in decimal form (percent divided by 100)];

* * * * *

Q=gasoline throughput limitation on potential to emit or gasoline throughput limit in compliance with paragraphs (c), (d), and (f) of this section (liters/day);

* * * * *

EF=emission rate limitation on potential to emit for the gasoline cargo tank loading rack vapor processor outlet emissions (mg of total organic compounds per liter of gasoline loaded);

OE=other HAP emissions screening factor for bulk gasoline terminals or pipeline breakout stations (tons per year). OE equals the total HAP from other emission sources not specified in parameters in the equations for E_T or E_P. If the value of 0.04(OE) is greater than 5 percent of either E_T or E_P, then paragraphs (a)(1) and (b)(1) of this section shall not be used to determine applicability; * * *

* * * * *

3. Section 63.420 is amended in paragarph (b)(1) by revising the equation and the text following the equation to read as follows:

§ 63.420 Applicability.

* * * * *

(b) * * *

(1) * * *

$$E_P = CF[6.7(T_F)(1-CE)+0.21(T_E)+0.093(T_{ES})+0.1(T_I)+5.31\times10^{-6}(C)]+0.04(OE);$$

where:

EP=emissions screening factor for pipeline breakout stations,

and the definitions for CF, T_F, CE, T_E, T_{ES}, TI, C, and OE are the same as provided in paragraph (a)(1) of this section; or

* * * * *

4. Section 63.420 is amended by revising paragraph (f) to read as follows:

§ 63.420 Applicability.

* * * * *

(f) Upon request by the Administrator, the owner or operator of a bulk gasoline terminal or pipeline breakout station subject to the provisions of any paragraphs in this section including, but not limited to, the parameters and assumptions used in the applicable equation in paragraph (a)(1) or (b)(1) of this section, shall demonstrate compliance with those paragraphs.

* * * * *

5. Section 63.421 is amended by adding in alphabetical order definitions for "bulk gasoline terminal" and "limitation(s) on potential to emit" to read as follows:

§ 63.421 Definitions.

* * * * *

Bulk gasoline terminal means any gasoline facility which receives gasoline by pipeline, ship or barge, and has a gasoline throughput greater than 75,700 liters per day. Gasoline throughput shall be the maximum calculated design throughput as may be limited by compliance with an enforceable condition under Federal, State or local law and discoverable by the Administrator and any other person.

* * * * *

Limitation(s) on potential to emit means limitation(s) limiting a source's potential to emit as defined in § 63.2 of subpart A of this part.

* * * * *

6. Section 63.428 is amended by revising paragraphs (g) introductory text and (h) introductory text to read as follows:

§ 63.428 Reporting and recordkeeping.

* * * * *

(g) Each owner or operator of a bulk gasoline terminal or pipeline breakout station subject to the provisions of this subpart shall include in a semiannual report to the Administrator the following information, as applicable:

* * * * *

(h) Each owner or operator of a bulk gasoline terminal or pipeline breakout station subject to the provisions of this subpart shall submit an excess emissions report to the Administrator in accordance with § 63.10(e)(3), whether or not a CMS is installed at the facility. The following occurrences are excess emissions events under this subpart, and the following information shall be included in the excess emissions report, as applicable:

* * * * *

[FR Doc. 97-4885 Filed 2-27-97; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 180

[PP-5F4578/R2277A; FRL-5590-4]

RIN 2070-AB78

Glufosinate Ammonium; Tolerances for Residues

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA is correcting the table under § 180.473, paragraph (c) to reflect the tolerance for residues of glufosinate ammonium on corn, field, forage as stated in the petition submitted by AgrEvo USA Co.

DATES: This correction is effective on February 5, 1997.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne Miller, Product Manager (PM) 23, Registration Division, (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-305-7830, e-mail: miller.joanne@epamail.epa.gov.

In FR Doc. 97-2838, appearing at page 5333 in the issue for Wednesday, February 5, 1997, on page 5338, in § 180.473, in the table to paragraph (c), the entry for "corn, field, forage," is corrected as follows:

§ 180.473 Glufosinate ammonium; tolerances for residues.

* * * * *

Commodity	Parts per million	Expiration
*	* * *	*
Corn, field, forage	4.0	July 13, 1999
*	* * *	*

List of Subjects in Part 180

Environmental protection.

Dated: February 18, 1997.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97-4624 Filed 2-27-97; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3800

[WO-660-4120-02-24 1A]

RIN 1004-AC40

Mining Claims Under the General Mining Laws; Surface Management

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Land Management (BLM) is amending its surface management regulations at 43 CFR subpart 3809. The final rule requires submission of financial guarantees for reclamation of all hardrock mining operations greater than casual use, increases the types of financial instruments acceptable to satisfy the requirement for a financial guarantee, and amends the noncompliance section of the regulations to require the filing of plans of operations by operators who have a record of noncompliance. In addition, the final rule removes section 3809.1-8 on existing operations, which is no longer applicable, because all activities that were in operation in 1980 and continue in operation have now complied with this section.

EFFECTIVE DATE: March 31, 1997.

ADDRESSES: Inquiries or suggestions should be sent to the Solid Minerals Group at Director (320), Bureau of Land Management, Room 501 LS, 1849 C Street, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Richard Deery, (202) 452-0350.

SUPPLEMENTARY INFORMATION: On July 11, 1991 (56 FR 31602), BLM published a proposed rule to require submission of financial guarantees for reclamation for all hardrock mining operations greater than casual use, to designate additional financial instruments that would satisfy the requirement for a financial guarantee, and to amend the noncompliance section of the regulations to require the filing of plans of operations by operators who have a record of noncompliance. The extended 90-day comment period expired on October 9, 1991. The BLM received 218 comments on the proposed rule, including 3 citizen-petitions with numerous signatures. Of these comments, 58 were from public interest groups, 51 were from business entities or associations, 22 were from government agencies, and 135 were from individuals, not including the petitions. All of the comments were

carefully considered in developing this final rule.

Three basic points of view as to the proposed rule emerged in the comments. First, a number of comments dealt with the adequacy of the bond levels, self-certification, and the number of financial instruments acceptable under the rule. The comments stated that the bond levels set in the proposed rule were too low, and that BLM should require full cost bonding for both notices and plans of operation. Those expressing concern regarding self-certification and the number of financial instruments believe the proposed rule could lead to less security. Others simply objected to self-bonding in any form. Second, mining associations and some individuals agreed that the proposed rules were necessary, but argued that the $5,000 bond for notice level operations is excessive. Third, many of the individuals argued that the proposal discriminates against small miners and would force them out of business, if implemented.

In response to the comments regarding bond levels, BLM has amended the rule to require bonds for 100 percent of the amount that would be needed to pay for reclamation by a third-party contractor using equipment from an off-site location. This will ensure that, if the bonded party fails to perform its reclamation responsibilities, BLM will have access to adequate funds through these financial guarantee arrangements to reclaim the lands, and thereby protect the interest of the public, including Federal taxpayers. Calculation of the amount is at the operator's expense, and must be certified by a third-party professional engineer registered to practice in the State in which the operations are proposed. However, this engineer's certification is not required when the requirement for a financial guarantee is met by providing evidence of an instrument held or approved by a State agency.

The comments suggesting that the bonds were insufficient also raised several other issues. For example, they asserted that the rule did not contain detailed reclamation and bond release language. Detailed guidance on reclamation is beyond the scope of this rule. However, the final rule addresses concerns about bond release in section 3809.1–9(m), as discussed below. Under the subpart 3809 regulations, further guidance on the standards for reclamation and bond release will be dealt with on a case-by-case basis at the time a notice provided for under section 3809.1–3 or a plan of operations provided for under section 3809.1–4 is received and reviewed, and would be covered as part of the review of reclamation measures incorporated into the notice or plan.

The majority of the individual comments objected to the $5,000 minimum bond required for a notice level operation. They stated that the $5,000 self-certification would be an unnecessary regulation, because reclamation of any damage caused by small miners occurs naturally during the first winter. Those who identified themselves as recreational miners considered the proposal to be unfair, because it requires too great an expenditure. Many individual comments opposed the $5,000 financial guarantee, arguing that even self-certification would be burdensome and force small miners and prospectors out of business. Two individual comments favored the proposal, citing firsthand experience of the environmental impact of small mining operations.

The proposed rule was drafted with the assumption that notice-level operators likely would use the full 5 acres allowed and certify the existence of the full $5,000 guarantee for the entire acreage at the $1,000 per acre exploration level cap. The final rule requires the financial guarantee to cover 100 percent of the estimated costs of reclamation, with the minimum acceptable amount being $1,000 for each acre or fraction thereof disturbed.

Specific Comments

In the following portion of the preamble, comments will be discussed as they relate to various specific sections of the rule.

Section 3809.0–5 Definitions

This section of the proposed rule would have added definitions for the terms "exploration operations" and "mining operations," and redesignated the other paragraphs to accommodate these additions. These proposed definitions were to be used to differentiate between the maximum guarantee amounts ordinarily to be required. However, since the rule has been changed elsewhere in accordance with public comments to require financial guarantees to cover 100 percent of the estimated costs of reclamation for all operations other than casual use, these definitions are no longer needed. Therefore, the proposed revisions to section 3809.0–5 are omitted in the final rule.

Section 3809.0–9 Information Collection

This section codifies the note that appeared at the beginning of Group 3800, and revises it to comply with current OMB regulations. A notice of BLM's request for approval of the information collections in subparts 3802 and 3809 was published in the **Federal Register** on March 5, 1996. Three comments responded to the notice, two within the public comment period. Two of the comments supported the information collection. A third objected to perceived redundancies in the information collection proposal. The supposed repetitiveness was only apparent; similar information is to be collected under each of two subparts covered by the request, but will not be collected twice for the same operation. The comment also seemed to treat the notice as pertaining to a proposed rule rather than in part to existing regulations, and objected to provisions dealing with aircraft operations in subpart 3802, arguing that BLM lacked jurisdiction. However, BLM managers do in fact manage aircraft landing areas in wilderness study areas under subpart 3802. These comments did not lead to changes in the information collection. The estimated public reporting burden is estimated to be 16 hours per response for notices and 32 hours per response for plans of operations.

Section 3809.1–9 Financial Guarantees

This section states clearly that obtaining a bond or other financial guarantee is a prerequisite to operating on an unpatented mining claim under a notice or plan of operations. It lists the types of guarantees that are acceptable, and requires that they cover the entire estimated cost of reclamation. It requires that operators report their financial guarantees to BLM and include certain enumerated information with the report. The section also provides for partial release under the guarantees when phases of reclamation are completed, and states the consequences of default or bond deficiency.

A new paragraph (a) has been added to this section in the final rule to make it clear that initiating operations under a notice or conducting operations under a plan of operations without a required financial guarantee is prohibited by regulation. Among other remedies available to the government, such conduct may be prosecuted under section 303(a) of the Federal Land Policy and Management Act (FLPMA), which provides criminal penalties for the knowing and willful violation of the regulations.

Proposed paragraph (a) is redesignated as (b) in the final rule. This paragraph, as proposed, removed language from the current regulations

exempting notice level operations from posting a financial guarantee. One comment observed that almost any normal mining activity exceeds the definition of casual use in subpart 3809 and implied that the paragraph excepting casual use from bonding requirements serves no use. No change is made in the final rule as a result of this comment. Much exploratory activity that does not require a notice to be submitted can and does take place on public lands, whether on mining claims or not: for example, exploratory activity that does not require mechanized earth-moving equipment or explosives.

Section 3809.1–9(c). Proposed paragraph (b), which has been redesignated as paragraph (c) in the final rule, would have: (1) Required certification of a financial guarantee, (2) established a guarantee amount of $5,000, (3) allowed a choice of financial instruments, (4) provided that the guarantee may be met by providing evidence of a State-held bond, (5) required the certification to accompany the filed notice, (6) permitted the authorized officer to return incomplete notices for failure to have the certification, (7) required the funds to remain available until the authorized officer has absolved the operator of reclamation responsibilities, and (8) held the operator to the reclamation standards in section 3809.1–3(d).

A number of comments addressed the various proposed requirements in this paragraph of the proposed rule.

(1) Certification of a financial guarantee.

Two comments suggested that a better course of action would be for the BLM to have the guarantee in hand rather than a certification that a guarantee exists. They cited a perceived tendency for small operators who commit violations to leave the vicinity or not restart operations on public lands, because many miners only have one operation in their lifetime and the possibility of not being able to obtain a financial guarantee for future operations is not a credible deterrent. They also cite the high cost of prosecutions.

We acknowledge the potential for such problems. The model for this proposal is the self-certification system used in administering State requirements for automobile insurance. Citizens do not customarily hand the policy to the State, but certify that it has been obtained and is available for use. Failure to have the insurance brings the imposition of penalties by the State. Notices and plans of operation will be required to contain the social security number of the operator or the employer identification number of operators or agents. Ultimately, however, the mining claimant will be responsible for the activity on the mining claim.

There will be a lower administrative cost using the certificate system since collecting the actual financial instruments necessarily would require funding for the administrative overhead to accept, sort, and process the instruments, and maintain facilities for secure storage. Second, the sanctions for noncompliance can be severe, and can in appropriate cases include criminal penalties authorized by Section 303(a) of FLPMA for knowing and willful violations of these regulations. These sanctions will be used against operators who abandon operations after committing violations.

This rule also incorporates the maximum penalties provided for in the Sentencing Reform Act of 1989 (18 U.S.C. 3571 *et seq.*). Penalty provisions such as those in FLPMA that provide for up to a year in jail or a fine of $1,000 for violators are classified as Class A misdemeanors under 18 U.S.C. 3571, and the Sentencing Reform Act provides for fines for Class A misdemeanors of up to $100,000 for individuals and $200,000 for organizations.

(2) The guarantee amount of $5,000.

This provision of the proposed rule generated the largest number of comments. Many stated that the proposed $5,000 guarantee would be excessive, burdensome, discriminatory, and damaging to small operators. On the other hand, other comments stated that the amount was insufficient for complete reclamation.

In drafting the proposed rule, it was assumed that notice level operators would use the full 5 acres allowed and be bonded for the same at the proposed exploration level cap, which was $1,000 per acre. Many comments suggested that financial guarantee requirements should be based on actual acreage disturbed. This suggestion has been adopted in the final rule. The final rule requires bonding sufficient to cover 100 percent of the estimated costs of reclamation with a $1,000 minimum rate for each acre disturbed. The minimum acceptable amount will be $1,000 if the area disturbed is less than one acre.

(3) Allowing for a choice of financial instruments.

Individual and industry association comments generally approved of the option to choose the financial instrument. Environmental groups expressed reservations as to the use of instruments with greater associated risk, such as mortgages on mining properties and liens on equipment. We acknowledge the increased risk associated with these types of instruments. In response, the rule has been amended to remove the provision for the use of mortgages on mining property and first liens on equipment.

One comment suggested that whatever financial instrument is approved, it must be redeemable by the Secretary. For plan level operations, the suggestion is a logical extension of the BLM holding the guarantee. The rule has been amended to incorporate this change for plan-level operations. For notice-level activities, this would be an unnecessary administrative burden on the operator and the authorized officer. The authorized officer does not hold the guarantee for notice-level activities, but rather the certification. If the comment were adopted in the final rule, operators would be required to get the instrument released by the authorized officer, creating an unnecessary administrative burden. Therefore, the comment is not adopted for notice-level activities.

(4) The guarantee may be met by providing evidence of a State-held bond.

This continues the provisions of the existing regulations.

(5) The certification is required to accompany the filed notice.

(6) The authorized officer may return incomplete notices for failure to have the certification.

One comment observed that nothing in the regulations requires the notice to be complete and that the notice does not have to be approved, adding that the provision regarding the notice should be modified to create a completeness review or a notice approval process. The comment observed that the situation renders the return of the notice irrelevant. As a clarification and to achieve the same purpose as the return of a notice submitted without a financial guarantee certificate, the final rule incorporates language at section 3809.1–9(a) stating that conducting operations under either a plan or a notice prior to submission of the appropriate financial guarantee is prohibited. Section 3809.3–2 on noncompliance has been amended by adding paragraph (f) to set forth the penalties contained in the statute for those who commit prohibited acts. For notices filed after the effective date of the regulations, the certification set out in paragraph (c) of this section must accompany the notice. For existing notices on file with BLM that cover active ongoing operations predating the effective date of this rule (including operations suspended due to weather), no certification is required until a new notice is filed. For existing notices on file with BLM, the claimant or operator will have to provide the certification before initiating operations.

(7) The funds are required to remain available until the authorized officer has absolved the operator of reclamation responsibilities.

As discussed below, in response to comments, a procedure for phased release or reduction of bonds as reclamation phases are completed has been included in section 3809.1–9(m) of the final rule.

(8) The operator is held to the reclamation standards in section 3809.1–3(d).

Among the general comments were several statements that BLM should develop "clear reclamation standards" and, as a Federal agency, should take the lead in "defining performance standards." The BLM currently has regulations at 43 CFR 3809.1–3(d) and 3809.1–5(c) that govern reclamation standards. Reexamination of their adequacy is beyond the scope of this rule.

Section 3809.1–9(d). This paragraph was paragraph (c) in the proposed rule, and has been redesignated as (d) in the final rule. In the final rule, this provision requires the certification for notice-level operations to include the name, home address, home and office phone number, and social security or employer identification number of the operator, mining claimant, or its agent. It requires the operator, mining claimant, or its agent to make various statements about the financial guarantee as part of the certification, including: (1) That the mining claimant or operator for whom the individual is submitting the certification is responsible for the reclamation; (2) that the financial guarantee exists in the required amount, and its location; (3) that the guarantee will be delivered on demand within 45 days; (4) a statement acknowledging that surrender of the guarantee does not absolve the operator, mining claimant, or agent, from responsibility and does not release or waive any claim BLM may have under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 *et seq.*, or any other applicable statutes, or any regulations; and (5) a statement acknowledging that failure to have the guarantee as certified, or failure to provide the guarantee upon demand by the authorized officer may result in prosecution under the appropriate Federal statutes.

Many of the comments that generally objected to the proposed rule also objected to the content of this certification, suggesting that it assumed all operators were guilty until proven innocent. The purpose of the regulation is, however, to create a set of known standards by which to judge the performance of the notice-level operator with respect to having and maintaining the financial guarantee. Because BLM is not now requiring notice operators to supply the guarantee itself to BLM, but only to certify its existence, it is important that the operator understands fully and acknowledges his or her obligations in this regard.

One comment stated that 45 days (plus an additional 45 days, if authorized) was too long a period of time for the Government to wait for the guarantee. The time period is retained in the final rule because some instruments allowed under the rule may take time to be liquidated.

One statement observed that there was some confusion in determining the responsible party in the proposed language. The purpose of the provision is to designate a responsible party. That party may be a representative of a corporate operator. If an individual can speak for the corporation in filing a notice and a guarantee, then the same individual can bind the company to do the reclamation.

Proposed section 3809.1–9(d), redesignated as (e) in the final rule, requires each of the statements included with the certification to be initialed and dated. Failure to initial each statement will result in return of the certificate. One comment stated that this was unnecessary and that the signing and the dating of the entire certificate should suffice. Another comment noted that this procedure was overly bureaucratic. Section 3809.1–9(e) is retained in the final rule, because these separate acknowledgments will serve to establish the knowledge and legal accountability of mining claimants and operators who will be permitted under the regulations to self-certify that they have adequate financial guarantees.

Proposed section 3809.1–9(e), redesignated as (f) in the final rule, has been amended for clarification to limit its application to notice-level operators.

Proposed paragraphs (f) and (g) of section 3809.1–9, redesignated as (g) and (h) in the final rule, would have required the plan-level operator to post a bond, and required the authorized officer to set the amount at a level sufficient to pay for reclamation if the plan-level operator fails to perform the work. However, the bond requirements for exploration and mining would have been limited to $1,000 and $2,000 per acre, respectively, except that operators in noncompliance with submitted plans of operations and notices would have been required to post 100 percent bonds.

Numerous comments opposed the provisions for bond caps in the proposed rule. Many stated that the caps were far too low. One comment stated that they were too high. Another stated that there should be no bonds required of operators who do not have a record of noncompliance.

The BLM has reviewed the bonding requirements proposed in light of the comments and has decided to amend the bond amounts based on these comments. The financial guarantee requirements in the rule have been amended to require the guarantee to cover 100 percent of the estimated costs of reclamation. The final rule also states the minimum amount required for a financial guarantee, $1,000 per acre for notice-level activities and $2,000 per acre for plan-level activities. The role for financial guarantees required and held by BLM will be to ensure that money sufficient to cover full reclamation costs is available.

Proposed section 3809.1–9(h) would have required those portions of operations utilizing cyanide or other leach solutions to be bonded at 100 percent. Several comments said that the failure to include vat leach and other facilities storing or receiving solutions containing cyanide or other leach solutions in this section was improper. One comment considered the entire proposal onerous and objected to the inclusion of other leach solutions. Other comments suggested that this section be made discretionary. These comments are resolved by changes made elsewhere in the final rule, which requires all plan-level operations to be covered by 100 percent financial guarantees. A separate specific 100 percent bonding requirement for cyanide and similar operations is therefore no longer necessary—it is subsumed in the general requirement. Accordingly, this paragraph has been removed in the final rule.

Section 3809.1–9(i), as proposed, would have allowed the authorized officer to review and accept or reject any of the types of financial instruments offered by the plan level operator, including first lien security interests on mining equipment. Several comments questioned the use of this instrument, as well as first mortgages and first deeds of trust, as too risky. Upon reflection, we agree. The provisions for allowing such instruments as guarantees have been removed in the final rule. However, this paragraph has been amended in the final rule to make clear that, for purposes of the financial guarantee requirements of this section, BLM will honor the financial guarantees chosen by the affected State, if the BLM finds that the instrument held by the State provides the same guarantee as that required by the final rule.

Section 3809.1–9(j) allows for review of operations conducted under an approved plan of operations and readjustment of the financial guarantee. The final rule allows the operator to submit a new (and less expensive, if available) form of guarantee subject to the approval of the authorized officer. This was generally supported by the comments.

Section 3809.1–9(k) allows the use of traditional instruments and expands the list to include a large number of non-traditional instruments. Most of the comments that addressed this provision generally supported it, some suggesting that second mortgages should be added to the list. One comment suggested that any instrument acceptable to the State should be acceptable to BLM. So long as the State holds the instrument the BLM will not intervene, but for security interests to be held by the United States, acceptable instruments are limited to those listed in the regulations. One comment suggested that taking a first mortgage on a mining property might lead to difficulties and potential liability risk to the United States from with hazardous materials. Upon reflection, we agree. Therefore, mortgages and liens on real property will not be acceptable as financial guarantees under this final rule.

Some comments generally disapproved of this expansion of possible security instruments, stating that there appeared to be no problem in getting traditional surety bonds. Contrary to this view, it appears that there may be a problem for the smaller operator. These same comments also took exception to the use of instruments that might not be entirely liquid and which upon liquidation may not cover the full amount. While the list of acceptable instruments is expanded to include State and municipal bonds, the final rule also incorporates changes to ensure that the security provided at the time required is not reduced by market fluctuations in the value of government-issued and commercial securities. The BLM has determined that the risk associated with expanding the range of choice of security instruments is acceptable. Whatever additional risk may be involved is offset, at least somewhat, by the amendment requiring that financial guarantees be equal to an independent professional engineer's estimate of reclamation costs. It is important to recall, in this connection, that the financial guarantee and the duty to reclaim are backed up by criminal penalties, and by the provision that the operator is not free of liability if the guarantee is cashed in and found insufficient.

By irrevocable letter of credit, section 3809.1–9(k)(3) means a letter of credit, such as described in 43 CFR 3104.1(c)(5), that identifies the Secretary of the Interior as sole payee with full authority to demand immediate payment in case of default. It must be subject to automatic renewal for periods of not less than 1 year if the mining claimant or operator fails to notify the proper BLM office of its nonrenewal and replacement by other suitable financial guarantee before the originally stated or any extended expiration date. Such letters of credit must also provide that they can be forfeited and collected by the authorized officer if not replaced by other suitable financial guarantee before their expiration date.

Section 3809.1–9(l) continues the current practice of accepting blanket statewide and nationwide bonds found in the existing regulations. This provision was generally supported in some comments, and generally opposed, without stated rationale, in others. No change is made in the final rule. Failure to reclaim will lead to forfeiture of an appropriate portion of the statewide or nationwide bond and could result in the loss of the ability to obtain any future bonds.

Section 3809.1–9(m) covers reclamation and bond release. Two comments suggested that BLM allow for bond reduction as reclamation steps are completed. Upon reflection, we agree.

Section 3809.1–9(m) in the final rule includes a procedure for phased release or reduction of bonds as reclamation phases are completed, as suggested in the comments. A guarantee will not be released until successful revegetation has been demonstrated. Limitations are also placed on release of financial guarantees in order to protect water quality.

Paragraphs (n) through (p) of section 3809.1–9, were added to the final rule based on public comment. They describe the procedures used by BLM to collect financial guarantees in order to carry out or contract for any needed reclamation not performed by the operator or mining claimant. These sections are being incorporated in the final rule to ensure a degree of uniformity in the procedures used by the various offices of the BLM in the collection and use of financial guarantees, and to complete the logical sequence of events encouraging reclamation.

Section 3809.1–9(n) of the proposed rule, redesignated as paragraph (q) in the final rule, covers release of the operator from the financial guarantee or a portion thereof upon patenting of a mining claim. One comment suggested requiring all portions of the patented claim not then being mined to be reclaimed and the part still being mined to be covered by the State requirements prior to title transfer. Such requirements would be unnecessary, because most States have mining and reclamation programs that require reclamation of private lands, including lands obtained through patents from the United States. As elsewhere, references to the mining claimant have been added in this paragraph to make it consistent with other provisions in the final rule.

Section 3809.3–1. This proposed section added a requirement in paragraph (b) for the State Director to review the list of appropriate and legal financial instruments available in the State and to publish it on a yearly basis. No significant comments were noted. However, this section has been amended editorially for purposes of brevity and clarity in the final rule.

Section 3809.3–2(e). This proposed section explained what is meant by a record of noncompliance, imposed mandatory BLM-held bonding on operators with a record of noncompliance, made State-held bonds unacceptable for those with records of noncompliance, and allowed the BLM to require all existing and subsequent notice-level operations by such an operator to be conducted only under a plan. It also allowed the State Director to determine the length of time that an operator will be held to the mandatory plan provisions (not less than 1 year and not more than 3 years).

One comment objected to the proposed language stating that financial guarantees held by the State would not be acceptable and would result in the double bonding of operators by the State and the BLM. We acknowledge this possibility, but additional security is justified when operators have compiled a record of noncompliance. No change to accommodate this comment is made in the final rule.

Two comments stated that provisions of section 3809.3–2(e) do not allow for due process. One suggested alternative language that incorporated "due process" while the other suggested that the language of the existing section (e) would be more balanced in protecting the due process rights, because it uses "may" rather than "shall." The rule applies to an operator who ignores a notice of noncompliance. The appeals section of the existing regulations (not amended in this rule) includes opportunity for appeal at two levels, State Director and Interior Board of

Land Appeals. This provides sufficient protection of a party's due process rights.

One comment stated that the language in the proposed section would allow an operator to move across a State line and start with a clean record. This result was not intended in the proposed rule, and nothing in the rule requires such a narrow reading. The BLM's recordkeeping system allows proscriptions imposed in one State to be maintained BLM-wide.

One comment suggested alternative language to define when an operator has compiled a record of noncompliance and to provide additional clarity to the rule:

1. To make it clear that operators who establish a record of noncompliance will be considered in active noncompliance until the necessary actions required by the notice of noncompliance have been completed;

2. To include a 30-day time frame for the conversion of existing notices to plans;

3. To include 90-day deadlines for the filing of the mandatory financial guarantees with the authorized officer, specifying that failure to provide the guarantee will result in the withdrawal of all existing plan approvals;

4. To provide that BLM will approve no new or additional plans or plan amendments of operators who have established a record of noncompliance and who remain in active noncompliance;

5. To extend the prohibition to proprietors, partners, principals, managers, directors, or officers of the operator in active noncompliance who are responsible for the continuing noncompliance.

Another comment suggested that an operator who has a record of noncompliance should be denied all additional approvals until all prior reclamation commitments have been satisfied and all costs incurred by the surety companies or the government have been reimbursed.

The suggestion that would have BLM bar an operator or mining claimant in noncompliance, and its responsible affiliates, from obtaining new or additional approvals has not been adopted in the final rule. The BLM will study this suggestion further and may propose such a change in a future rulemaking. With limited modifications to the suggested language, the remaining suggestions are adopted, so that proposed section 3809.3–2(e) is revised in the final rule.

Section 3809.3–2(f) is added merely to reiterate the penalties contained in Section 303 of FLPMA for those who violate the regulations of subpart 3809. In response to a comment that discussed the weakness of the proposed language authorizing the return of incomplete notices, a new paragraph 3809.1–9(a) is being added to prohibit the conduct of operations without posting the appropriate financial guarantees. Then, to notify the public of the penalties associated with the violation of the regulations in subpart 3809, and to codify the penalties contained in FLPMA, the noncompliance section is also amended by adding paragraph (f). This paragraph incorporates the maximum penalties provided for in the Sentencing Reform Act of 1984 (18 U.S.C. 3571 *et seq.*), in order to bring the rule into compliance with law, and to avoid the misleading impression created by the current regulations that penalties are limited to the minimal amounts provided for in FLPMA. Penalty provisions such as those in FLPMA that provide for up to a year in jail or a fine of $1,000 for violators are classified as Class A misdemeanors under 18 U.S.C. 3561, and the Sentencing Reform Act provides for fines for Class A misdemeanors of up to $100,000 for individuals and $200,000 for organizations. As noted in the rule, the Sentencing Reform Act also authorizes the imposition of alternative fines based upon a doubling of the pecuniary gain to the defendant or loss to other persons resulting from a violation.

The principal author of this final rule is Richard Deery of the Solid Minerals Group, assisted by Ted Hudson of the Regulatory Management Group, BLM.

Compliance With the National Environmental Policy Act

It is hereby determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4332(2)(C)) is required. It has been determined that this final rule is . categorically excluded from further environmental review pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1, Item 1.10. This item states that "Policies, directives, regulations, and guidelines of an administrative, financial, legal, technical, or procedural nature * * *" are categorically exempt. Because this rule addresses financial guarantees, we believe that it falls into this category, thereby obviating any further review under NEPA. It has also been determined that the proposal would not significantly affect the 10 criteria for exceptions listed in 516 DM 2, Appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, "categorical exclusions" means a category of actions that do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

Compliance With Executive Order 12866

This rule has been reviewed under Executive Order 12866. The Department of the Interior has found, based on the economic analysis contained in a Determination of Effects of Rule that is available for inspection in the office of the Solid Minerals Group at the address given in **ADDRESSES**, above, that this document is not likely to result in an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

The current surface management regulations at 43 CFR subpart 3809 provide for 3 levels of activity involving surface use of public lands for mineral exploration and mining: (1) Casual use, causing no noticeable surface disturbance, which does not require notification to BLM of the activity; (2) notice-level activity, exceeding the threshold of casual use but not disturbing more than 5 acres per calendar year, which requires a notice to BLM before proceeding but no BLM approval or operator financial guarantee; (3) plan-level activity, disturbing more than 5 acres annually, which requires a plan approved by BLM, full NEPA compliance, and, since 1990, full cost financial guarantees.

Except for Arizona, Nevada, Alaska, and Utah, the public lands States all require some bonding for notice-level mining and mineral exploration activities. Under this rule, BLM will accept these State bonds in satisfaction of the Federal bonding requirement in most circumstances for notice-level activities—most operations at this level are bonded at "full cost bonding" under State laws. It follows that this rule will have an effect on notice-level activities in primarily the four States mentioned above. The effects on activities in these States cannot be assigned to specific localities within the States, and are presumed to be distributed evenly throughout each State for purposes of this analysis.

BLM expects that corporate operators will use nationwide or statewide financial instruments, and that individual and other small operators will use project-specific financial instruments. The total economic effect of this rule is projected to be $17.10 million. The Determination of Effects includes details on how BLM reached this conclusion.

The benefits attributable to this rule result from avoiding future costs through mandatory bonding. While these savings are not predictable in the strict benefit-cost analysis sense, we discuss them here. Primarily, savings will be derived from marginal activities with limited capitalization being postponed or not carried out, and failures will not occasion reclamation costs to the public. Remaining operations would be financially stronger and less likely to fail, and if bonds are in place, public costs of failure will be minimized. Other savings will be caused by the discouraging of illegal activities or non-mining industrial activities that are sometimes disguised as mining on public lands. The bonding requirement will tend to reduce the initiation of such activities and pay for costs of cleanup.

The final rule will not adversely affect the ability of the mineral industry to compete in the world marketplace, nor should it affect investment or employment factors locally. Major corporations, large-scale companies with world-wide operations and lines of credit with commercial banks can easily absorb any additional financial responsibility created by the rule.

"Junior companies," large limited partnerships or wholly-owned domestic subsidiaries of venture capital-based mining companies, many of which are based in Canada, tend to grow or merge into smaller major corporations, or to fail. Generally regarded as risk takers, they are often found in frontier areas and are willing to acquire properties overlooked or discarded by majors. Their options for complying with the rule will range from resorting to established lines of credit to posting company assets as collateral to internal cash flows. The amended dollar amounts for notices in the final rule will benefit these operators by encouraging them to minimize surface disturbance and reduce the amount of reclamation liability.

Individuals and other small operators will have the fewest options for funding financial guarantees: operating cash flows, individual or company assets. The likely effect of this rule will be to limit the number of notice-level operations for each such operator at any one time. They may elect to restrict activities under a notice to only the most promising mineral prospects or to attempt to option out the property to a junior or major company with a lease agreement that includes a clause requiring the lessee to obtain and maintain the necessary financial guarantee with BLM.

Compliance With Regulatory Flexibility Act

The Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the final rule will not have a significant economic impact on a substantial number of small entities. The reasons for this determination are stated here and may also be found in the Determination of Effects cited above.

For the purposes of this analysis, a small entity is considered to be an individual, small firm, or partnership at arm's length from the control of any parent companies. The juniors and majors (not considered small entities), as discussed in the previous paragraphs, and entities under their direct control, have access to lines of credit and internal corporate cash flows that are not available to small entities.

The economic effect on these small operators will be either to require them to acquire a financial guarantee for each new notice or avoid new operations on claims for which they do not acquire a financial guarantee. Since small entities often hold several properties, the practical effect will be the elimination of new activities on certain claims, especially the marginal ones, and the removal of some properties from their inventory of holdings, or else operators will attempt to lease the claim to a junior or major company that has the financial resources to post financial guarantees. Therefore, the short-term impact of this rule on small entities will be to curtail some of their prospective notice-level activities.

Compliance With Executive Order 12630

The Department certifies that this final rule does not represent a governmental action capable of interference with constitutionally protected property rights. It does not provide for the taking of any property rights or interests. Therefore, as required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property

Compliance With Paperwork Reduction Act

The information collection requirement(s) contained in this rule have been approved by the Office of Management and Budget for approval as required by 44 U.S.C. 3501 *et seq.*, and assigned clearance number 1004–0176.

Compliance With Unfunded Mandates Reform Act

BLM has determined that this rule is not significant under the Unfunded Mandates Reform Act of 1995, because it will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Further, this rule will not significantly or uniquely affect small governments.

Compliance With Executive Order 12988

The Department has determined that this rule meets the applicable standards provided in sections 3(a) and 2(b)(2) of Executive Order 12988.

List of Subjects in 43 CFR Part 3800

Administrative practice and procedure, Environmental protection, Intergovernmental affairs, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds, Wilderness areas.

For the reasons stated in the preamble, and under the authorities cited below, Part 3800, Subchapter C, Chapter II, Title 43 of the Code of Federal Regulations is amended as set forth below.

Dated: February 24, 1997.

Sylvia V. Baca,

Assistant Secretary of the Interior.

1. The authority citation for part 3800 is revised to read as follows:

Authority: 16 U.S.C. 351; 16 U.S.C. 460y–4; 30 U.S.C. 22; 31 U.S.C. 9701; 43 U.S.C. 154; 43 U.S.C. 299; 43 U.S.C. 1201; 43 U.S.C. 1740; 30 U.S.C. 28k.

Subpart 3809—Surface Management

2. The authority citation for 43 CFR subpart 3809 is removed.

3. Section 3809.0–9 is added to read as follows:

§ 3809.0–9 Information collection.

(a) The collections of information contained in subpart 3809 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0176. BLM will use the information in regulating and monitoring mining and exploration operations on public lands. Response to requests for information is

mandatory in accordance with 43 U.S.C 1701 *et seq.* The information collection approval expires December 31, 1999.

(b) Public reporting burden for this information is estimated to average 16 hours per response for notices and 32 hours per response for plans of operations, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer (783), Bureau of Land Management, Washington, D.C. 20240, and the Office of Management and Budget, Attention Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, referring to information collection clearance number 1004–0176.

§ 3809.1–8 [Removed]

4. Section 3809.1–8 is removed.

5. Section 3809.1–9 is revised to read as follows:

§ 3809.1–9 Financial guarantees.

(a) No operator or claimant shall—

(1) Initiate operations under a notice without providing the authorized officer certification of the existence of the appropriate financial guarantee as required by paragraph (c) through (f) of this section; or

(2) Conduct operations under a plan of operations without providing the authorized officer with the appropriate financial guarantee as required by paragraphs (g) through (j) of this section.

(b) No financial guarantee is required for operations that constitute casual use under § 3809.1–2.

(c) No operations conducted under a notice in accordance with § 3809.1–3 shall be initiated until the operator or mining claimant provides to the authorized officer a certification that a financial guarantee exists to ensure performance of reclamation in accordance with the requirements of § 3809.1–3(d). Each certification must be accompanied by a calculation of reclamation costs of the proposed activities covered by the notice, as if third party contractors were performing the reclamation after the site is vacated by the operator. This calculation must be certified at the operator's or mining claimant's expense by a third party professional engineer registered to practice within the State in which the activities are proposed. However, when the requirement for a financial guarantee is met by providing evidence of an instrument held by a State agency as provided in this paragraph, the certificaton of costs by a third party professional engineer is not required. The financial guarantee must be sufficient to cover 100 percent of the estimate of the costs of reclamation, as calculated above, required by State and Federal laws and regulations, and may be in any of the forms described in paragraphs (k) and (l) of this section. In calculating the amount of the financial guarantee, each acre of disturbance or fraction thereof shall require not less than $1,000. The financial guarantee may also be met by providing evidence of an appropriate instrument held or approved by a State agency pursuant to State law or regulations so long as the instrument is equivalent to that required by this section, is redeemable by the Secretary, acting by and through BLM, and covers the same area covered by the notice. The certification must accompany the notice submitted to the proper BLM office having jurisdiction over the land in which the claim or project area is located. Failure to submit a complete certification will render the notice incomplete and it will be returned by the authorized officer. The financial guarantee covered by the certification must be available, until replaced by another adequate financial guarantee with the concurrence of the authorized officer or until released by the authorized officer, for the performance of such reclamation as required by § 3809.1–3. Such reclamation shall also include all reasonable measures identified as the result of the consultation required by the authorized officer under § 3809.1–3(c). If there is a material change in any financial guarantee on which the operator or mining claimant's certification is based, the operator or mining claimant must submit an amended certification to the authorized officer within 45 days after the material change occurs.

(d) The certification submitted by the operator, mining claimant, or its authorized agent, for any operations conducted under a notice, shall include:

(1) The name, home address, office and home telephone numbers, and social security number or employer identification number of the operator, mining claimant, or authorized agent;

(2) A statement that the mining claimant or operator for whom the individual is submitting the certification will be responsible for the required reclamation;

(3) A statement that the authorized officer will be notified at the completion of reclamation operations to arrange for a final inspection;

(4) A statement that the financial guarantee in the amount of the estimated reclamation costs, as calculated under § 3809.1–9(c), or $1,000 per acre or fraction thereof of disturbance as described in the attached notice, whichever is greater, exists, followed by a complete description of the financial guarantee and its location;

(5) A statement that the financial guarantee in the amount of the estimated reclamation costs, as calculated under § 3809.1–9(c), or $1,000 per acre or fraction thereof of disturbance, whichever is greater, will be delivered to the authorized officer within 45 days of a demand for its surrender, following failure to complete reclamation, unless an additional period of time not to exceed 45 days is granted in writing by the authorized officer;

(6) A statement acknowledging that surrender of the financial guarantee will not release the operator, mining claimant, or authorized agent from responsibility to ensure completion of the reclamation should the amount of the guarantee be insufficient to complete all required reclamation;

(7) A statement acknowledging that release of the requirement to maintain the financial guarantee does not release or waive any claim the Bureau of Land Management may have against any person under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 *et seq.*, or any other applicable statutes or any applicable regulations; and

(8) A statement acknowledging that non-existence of the financial guarantee or the failure to provide the guarantee upon demand for its surrender by the authorized officer may result in prosecution under 18 U.S.C. 1001, 43 U.S.C. 1733, or other appropriate authorities.

(e) Each statement required by paragraph (d) of this section to be included with the certification must be initialed and dated by the individual submitting the certification. Failure to initial all statements will result in the certification and the notice being returned as incomplete by the authorized officer.

(f) At any time, the authorized officer may require the notice-level operator or mining claimant to demonstrate the existence of the guarantee set out in the certification described in paragraph (c) of this section.

(g) Each operator or mining claimant who conducts operations under an approved plan of operations shall furnish to the authorized officer a financial guarantee in an amount specified by the authorized officer. In determining the amount of the guarantee, the authorized officer shall consider the estimated cost of reasonable stabilization and reclamation of areas disturbed, including the cost to the BLM of conducting the reclamation, using either contract or government personnel.

(h) For activities conducted under a plan of operations, the financial guarantee must be sufficient to cover 100 percent of the costs of reclamation required by State and Federal statutes and regulations and calculated as if third party contractors were performing the reclamation after the site is vacated by the operator. This calculation must be certified at the operator's or mining claimant's expense by a third party professional engineer registered to practice within the State in which the activities are proposed, but when the requirement for a financial guarantee is met by providing evidence of an instrument held or approved by a State agency, the certification of costs by a third party professional engineer will not be required. This calculation must be agreed to by the authorized officer. In no case shall the financial guarantee be less than $2,000 per acre or fraction thereof.

(i) In lieu of requiring the financial guarantee as provided in paragraph (g) of this section, the authorized officer may accept evidence of an existing financial guarantee under State law or regulations, if it is redeemable by the Secretary, acting by and through the authorized officer, and held or approved by a State agency for the same area covered by the plan of operations, upon determining that the instrument held or approved by the State provides the same guarantee as that required by this section, regardless of the type of financial instruments chosen by the State. The operator or mining claimant proposing a plan of operations may offer for the approval of the authorized officer any of the financial instruments listed in paragraphs (k) and (l) of this section. The authorized officer may reject any of the submitted financial instruments, but will do so by decision in writing, with a complete explanation of the reasons for the rejection, within 30 days of the offering. If the State makes a demand against the financial guarantee, thereby reducing the available balance, the operator or mining claimant must replace the amount of reduced financial guarantee with another financial guarantee instrument acceptable under this subpart.

(j) In the event that an approved plan is modified in accordance with 3809.1–7, the authorized officer will review the initial financial guarantee for adequacy and, if necessary, require the operator or mining claimant to adjust the amount of the financial guarantee to cover the estimated cost of reasonable stabilization and reclamation of areas disturbed under the plan as modified. Operators or mining claimants with an approved financial guarantee may request the authorized officer to accept a replacement financial instrument at any time after the approval of an initial instrument. The authorized officer shall review the offered instrument for adequacy and may reject any offered instrument, but will do so by a decision in writing, with a complete explanation of the reasons for the rejection, within 30 days of the offering.

(k) Provided that the State Director has determined that it is a legal financial instrument within the State where the operations are proposed, the financial guarantee may take the form of any of the following:

(1) Surety bonds, including surety bonds arranged or paid for by third parties.

(2) Cash in an amount equal to the required dollar amount of the financial guarantee, to be deposited and maintained in a Federal depository account of the United States Treasury by the authorized officer.

(3) Irrevocable letters of credit from a bank or financial institution organized or authorized to transact business in the United States.

(4) Certificates of deposit or savings accounts not in excess of the maximum insurable amount as set by the Federal Deposit Insurance Corporation.

(5)(i) Any instrument listed in paragraph (k)(5)(i)(A) or (B) of this section having a market value of not less than the required dollar amount of the financial guarantee and maintained in a Securities Investors Protection Corporation insured trust account by a licensed securities brokerage firm for the benefit of the Secretary of the Interior, acting by and through the authorized officer.

(A) Negotiable United States Government, State and Municipal securities or bonds.

(B) Investment-grade rated securities having a Standard and Poor's rating of AAA or AA or an equivalent rating from a nationally recognized securities rating service.

(ii) Notwithstanding the provision in paragraph (c) of this section that an operator or mining claimant conducting operations under a notice need only provide the authorized officer with a certification of the existence of the required financial guarantee, and notwithstanding the provision in paragraph (g) of this section that an operator or mining claimant conducting operations under an approved plan of operations must furnish the required financial guarantee to the authorized officer, any operator or mining claimant who chooses to use the instruments permitted under this paragraph (k)(5) in satisfaction of such provisions, must provide the authorized officer, prior to the initiation of such operations and by the end of each quarter of the calendar year thereafter, a certified statement describing the nature and market value of the instruments maintained in that account, and including any current statements or reports furnished by the brokerage firm to the operator or mining claimant concerning the asset value of the account.

(iii) The operator or mining claimant must review the market value of the account instruments by no later than December 31 of each year to ensure that their market value continues to be not less than the required dollar amount of the financial guarantee. When the market value of the account instruments has declined by more than 10 percent of the required dollar amount of the financial guarantee, the operator or mining claimant must, within 10 days after its annual review or at any time upon the written request of the authorized officer, provide additional instruments, as defined in paragraphs (k)(5)(i)(A) and (B), to the trust account so that the total market value of all account instruments is not less than the required dollar amount of the financial guarantee. The operator or mining claimant must send a certified statement to the authorized officer within 45 days thereafter describing the actions taken by the operator or mining claimant to raise the market value of its account instruments to the required dollar amount of the financial guarantee. The operator or mining claimant must include copies of any statements or reports furnished by the brokerage firm to the operator or mining claimant documenting such an increase.

(iv) Whenever, on the basis of a review conducted under paragraph (k)(5)(iii) of this section, the operator or mining claimant ascertains that the total market value of its trust account instruments exceeds 110 percent of the required dollar amount of the financial guarantee, the operator or mining claimant may request and the authorized officer will authorize a written release of that portion of the account that exceeds 110 percent of the required financial guarantee, if the operator or mining claimant is in compliance with the terms and

conditions of its notice or approved plan of operations.

(l) In place of the individual financial guarantee on each separate operation, a blanket financial guarantee covering statewide or nationwide operations may be furnished at the option of the operator or mining claimant, if the terms and conditions are determined by the authorized officer to be sufficient to comply with the regulations in this subpart.

(m) When all or any portion of the reclamation has been completed in accordance with a notice submitted pursuant to § 3809.1–3 or an approved plan of operations, the operator or mining claimant may notify the authorized officer that such reclamation has occurred and may request a reduction in the financial guarantee or BLM approval of the adequacy of the reclamation, or both. Upon any such notification, the authorized officer will promptly inspect the reclaimed area with the operator. The authorized officer will notify the operator, in writing, whether the financial guarantee can be reduced, the reclamation is acceptable, or both. The authorized officer may reduce the financial guarantee by an appropriate amount, not to exceed 60 percent of the total estimated costs of reclamation as calculated in accordance with paragraph (c) or (h) of this section, if the authorized officer determines that a portion of the reclamation has been completed in accordance with applicable requirements, including, but not limited to, requirements for backfilling, regrading, establishment of drainage control, and stabilization and neutralization of leach pads, heaps, leach-bearing tailings, and similar facilities. The authorized officer will not release that portion of the financial guarantee equal to 40 percent of the total estimated costs of reclamation until the area disturbed by operations has been revegetated to establish a diverse, effective, and permanent vegetative cover, and until any effluent discharged from the area has met, without violations and without the necessity for additional treatment, applicable effluent limitations and water quality standards for not less than 1 full year. Any such release of the financial guarantee does not release or waive any claim BLM may have against any person under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9601 *et seq.*, or under any other applicable statutes or any applicable regulations.

(n) If an operator or mining claimant refuses or is unable to conduct reclamation as provided in the reclamation measures incorporated into its notice or approved plan of operations or the regulations in this subpart, if the terms of the notice or decision approving a plan of operation are not met, or if the operator or mining claimant defaults on the conditions under which the financial guarantee rests, the authorized officer shall take the following action to require the forfeiture of all or part of a financial guarantee for any area or portion of an area covered by the financial guarantee:

(1) Send written notification by certified mail, return receipt requested, to the operator or mining claimant that provided the financial guarantee, and the surety on the financial guarantee, if any, and the State agency holding the financial guarantee, if any, informing them of the decision to require the forfeiture of all or part of the financial guarantee. The notification must include the reasons for the forfeiture and the amount to be forfeited. The amount shall be based on the estimated total cost of achieving the reclamation plan requirements for the area or portion of the area affected, including the administrative costs of the Bureau of Land Management.

(2) In the written notification, advise the operator or mining claimant and surety, if applicable, of the conditions under which forfeiture may be avoided. Such conditions may include, but are not limited to——

(i) Written agreement by the operator, mining claimant, or another party to perform reclamation operations in accordance with a compliance schedule which meets the conditions of the notice or decision approving a plan of operations and the reclamation plan, and a demonstration that such party has the ability to satisfy the conditions; or

(ii) Written permission from the authorized officer to a surety to complete the reclamation, or the portion of the reclamation applicable to the bonded phase or increment, if the surety can demonstrate an ability to complete the reclamation in accordance with the reclamation measures incorporated in a notice or approved plan of operations.

(o) In the event the operator or mining claimant fails to meet the requirements of the written notification provided under paragraph (n) of this section, the authorized officer will—

(1) Proceed immediately to collect the forfeited amount as provided by applicable laws for the collection of defaulted bonds or other debts if actions to avoid forfeiture have not been taken, or if an appeal has not been filed under § 3809.4, or if such appeal is filed and the decision appealed is confirmed.

(2) Use funds collected from financial guarantee forfeiture to implement the reclamation plan, or portion thereof, on the area or portion of the area to which bond coverage applies.

(p)(1) In the event the estimated amount forfeited is insufficient to pay for the full cost of reclamation, the operator or mining claimant is liable for the remaining costs. The authorized officer may complete or authorize completion of reclamation of the bonded area and may recover from the operator or mining claimant all costs of reclamation in excess of the amount forfeited.

(2) In the event the amount of financial guarantee forfeited was more than the amount necessary to complete reclamation, the unused funds shall be returned, within a reasonable amount of time, by the authorized officer to the party from whom they were collected.

(q) When a mining claim is patented, the authorized officer will release the operator or mining claimant from the portion of the financial guarantee that applies to operations within the boundaries of the patented land. The authorized officer shall release the operator or mining claimant from the remainder of the financial guarantee, including the portion covering approved means of access outside the boundaries of the mining claim, when the operator or mining claimant has completed acceptable reclamation. However, existing access to patented mining claims, if across Federal lands, shall continue to be regulated under the approved plan and shall include a financial guarantee. The provisions of this paragraph do not apply to patents issued on mining claims within the boundaries of the California Desert Conservation Area (see § 3809.6).

6. Section 3809.3–1 is amended by revising paragraph (b) to read as follows:

§ 3809.3–1 Applicability of State law.

* * * * *

(b) Each State Director will publish a notice identifying all legal financial guarantees that may be accepted by any authorized officer under his or her jurisdiction, after consultation with the appropriate State authorities to determine which of the financial instruments in § 3809.1–9(k) are allowable under State law to satisfy the financial assurance requirements relating to the reclamation requirements of that State. This list will be updated annually.

* * * * *

7. Section 3809.3–2 is amended by revising paragraph (e) and adding paragraph (f) to read as follows:

§ 3809.3–2 Noncompliance.

* * * * *

(e) An operator or mining claimant who compiles a record of noncompliance is one who has been served with a notice of noncompliance, whose response period has passed, and who has not commenced the actions required by the authorized officer within the time frames set forth in the notice of noncompliance. An operator or mining claimant with a record of noncompliance will continue in noncompliance status until the actions required in the notice of noncompliance have been completed. Any operator or mining claimant with a record of noncompliance must submit a plan of operations within 30 days under § 3809.1–9 of this subpart for all existing and subsequent operations that would otherwise be conducted pursuant to a notice under § 3809.1–3 of this subpart. Operators or mining claimants with a record of noncompliance will be required to post financial guarantees with the authorized officer under § 3809.1–9 within 90 days after notification for all existing disturbance for which said operators or mining claimants are responsible. Failure to post such financial guarantees within the prescribed 90 days will result in the withdrawal of approval of all existing plans of operation, except that the authorized officer may approve actions proposed by an operator with a record of noncompliance to resolve the cause of the noncompliance or to protect public safety or health or prevent further unnecessary or undue environmental degradation. Financial guarantees held by a State will not be acceptable for purposes of this section, and the calculation must be certified at the operator's or mining claimant's expense by a third party professional engineer registered to practice within the State in which the activities are proposed, and agreed to by the authorized officer. The requirements of this paragraph continue in force until the operator or mining claimant has come into and remained in compliance with them and the regulations of this subpart for a period of not less than 1 calendar year but not more than 3 calendar years. The duration of the requirement will be determined by the State Director.

(f)(1) Any person constituting an operator, mining claimant, or its authorized agent, who knowingly and willfully violates any provision of this subpart is subject to arrest and trial by a United States magistrate and, if convicted, shall be subject to a fine of not more than $100,000, or the alternate fine provided for in the applicable provisions of 18 U.S.C. 3571, or imprisoned for no more than twelve months, or both.

(2) Any organization constituting an operator, mining claimant, or its authorized agent, that knowingly and willfully violates any provision of this subpart is subject to criminal prosecution and, if convicted, shall be subject to a fine of not more than $200,000, or the alternative fine provided for in the applicable provisions of 18 U.S.C. 3571.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 90–6; FCC 96–56]

Amendment of Part 22 of the Commission's Rules To Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and To Modify Other Cellular Rules

AGENCY: Federal Communications Commission.

ACTION: Further memorandum opinion and order on reconsideration.

SUMMARY: In this *Memorandum Opinion and Order on Reconsideration*, the Commission denies the petitions for reconsideration and petitions for partial reconsideration of the Commission's *Third Report and Order and Memorandum Opinion and Order on Reconsideration* 57 FR 53446, November 10, 1992 in this Docket.

FOR FURTHER INFORMATION CONTACT: Ramona Melson, Commercial Wireless Division, Wireless Telecommunications Bureau, (202) 418–7240.

SUPPLEMENTARY INFORMATION: This *Further Memorandum Opinion and Order on Reconsideration* in CC Docket No. 90–6, adopted on February 13, 1996 and released on January 31, 1997, is available for inspection and copying during normal business hours in the FCC Reference Center, Room 575, 2000 M Street N.W, Washington, D.C. The complete text may also be purchased from the Commission's copy contractor, International Transcription Service, Inc. 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, (202) 857–3800. Synopsis of *Further Memorandum Opinion and Order on Reconsideration*

I. Introduction

1. By these actions, we respond to petitions for reconsideration and partial reconsideration of the *Third Report and Order on Reconsideration and Memorandum Opinion and Order on Reconsideration* 58 FR 27213, May 7, 1993 in this docket. Applicants Against Lottery Abuses (AALA) and the Committee for Effective Cellular Rules (CECR) have filed petitions for reconsideration of the *Third Report and Order*, 58 FR 27213, May 7, 1993 and Cellular Information Systems, Inc., Debtor in Possession (CIS), has filed a petition for partial reconsideration (CIS Petition) of the *Third Report and Order* 58 FR 27213, May 7, 1993. In addition, we have before us five petitions for reconsideration and three petitions for partial reconsideration of our *Memorandum Opinion and Order on Reconsideration* 58 FR 11799, March 1, 1993. We also received a request by PetroCom and Coastel for expedited action on the CIS petition (PetroCom/Coastel Request). For the reasons stated below, we deny the requests for reconsideration and partial reconsideration of the *Third Report and Order and the Memorandum Opinion and Order* 58 FR 27213, May 7, 1993. We dismiss the request for expedited action as moot.

2. As a related matter, we note that PetroCom and Coastel (collectively, "petitioners") filed petitions for review with the United States Court of Appeals for the District of Columbia Circuit challenging Sections 22.903(a) and 22.903(d)(1) of the Commission's rules. Petitioners contend, inter alia, that the Commission promulgated a consent requirement for de minimis extensions under Section 22.903(d)(1) without providing proper notice and opportunity for comment as required under the Administrative Procedure Act (APA), 5 U.S.C. § 553. On May 13, 1994, the court denied the petition with respect to petitioners' claim that proper notice and comment was not provided because another party, CIS, had already filed a petition for reconsideration with the Commission alleging similar violations and the petition had not yet been resolved. This *Further Memorandum Opinion and Order* addresses the notice and comment issues raised by the CIS petition and the comments filed by petitioners in support of the CIS petition. Other issues raised by petitioners and the court will be addressed in separate orders.

II. Background

3. The first licensee of a cellular radio system authorized on a channel block in

each cellular market is afforded a five-year "build-out" period during which it has the exclusive right to construct and operate cellular facilities on its channel block within the market. We initiated this proceeding to adopt rules for the acceptance, processing and selection of applications for new cellular systems proposing service to unserved areas. In our *First Report and Order and Memorandum Opinion and Order on Reconsideration* 56 FR 58503, November 20, 1991 in this docket, we established rules and procedures for processing and granting applications to operate cellular systems in areas as yet unserved upon expiration of the five-year "build-out" period. On the same day that we adopted the *First Report and Order* 56 FR 58503, November 20, 1991, we also adopted a *Further Notice of Proposed Rule Making* 56 FR 58529, November 20, 1991 in this docket which proposed changes to various cellular rules and requested additional comments on a number of issues, as a result of earlier comments filed in this docket and not resolved by the *First Report and Order* 56 FR 58503, November 20, 1991. On April 9, 1992, we released our *Second Report and Order* 57 FR 13646, April 17, 1992 in this docket, in which we adopted rules to determine the boundaries of Cellular Geographic Service Areas (CGSAs) by the use of a mathematical formula, with the objective of creating boundaries that would more closely approximate actual service to the public. The *Second Report and Order* 57 FR 13646, April 17, 1992 also modified the authorizations of existing cellular systems to redefine the boundaries of their CGSAs in accordance with the new standard. Our *Third Report and Order and Memorandum Opinion and Order on Reconsideration* 58 FR 27213, May 7, 1993 in this docket dealt with a variety of issues governing our licensing of cellular radio facilities, specifically those issues set forth in the *Further Notice* 56 FR 58529, November 20, 1991 not previously addressed in the *Second Report and Order* 57 FR 13646, April 17, 1992. The *Third Report and Order* 58 FR 27213, May 7, 1993 also disposed of ten petitions for reconsideration of our *First Report and Order* 56 FR 58503, November 20, 1991. Petitions for reconsideration of the *Second Report and Order* 57 FR 13646, April 17, 1992 were addressed in the 1993 *Memorandum Opinion and Order on Reconsideration* 58 FR 11799, March 1, 1993 in this docket.

III. Discussion

A. Petitions for Reconsideration of the Third Report and Order Lottery Rules

4. In the *Third Report and Order* 58 FR 27213, May 7, 1993, we adopted Sections 22.927 and 22.928 of our rules. Under these rules, an applicant or a petitioner may receive only the legitimate and prudent expenses incurred in prosecuting its application or pleading in exchange for agreeing to withdraw a mutually exclusive cellular application or a pleading. AALA argues that with a rule limiting the settlement amount that can be paid to petitioners seeking denial or dismissal of applications, the Commission should at a minimum reinstate the procedure used in the Metropolitan Statistical Area cellular licensing process for the selection and ranking of multiple selectees in cellular lotteries. AALA contends that the settlement limitations will remove all incentive for private parties to assist in checking lottery abuse. As a result, according to AALA, the rules adopted "will deter not just frivolous petitions, but those meritorious petitions that have proven helpful to the Commission in its enforcement functions." AALA argues that ranking multiple selectees is the only alternative which provides the necessary incentive for private parties, through the petition to deny process, to assist the Commission in policing lottery abuses. McCaw urges the Commission to reject AALA's proposal, because history has shown that ranking lottery winners will lead to the filing of frivolous applications "submitted by entities that figure they have nothing to lose." AALA responds to McCaw, contending that the settlement cap imposed on a would-be filer of a frivolous petition would ensure that the petitioner would have nothing to gain because "the very best such a petitioner could hope for is to break even."

5. Section 309(d) of the Communications Act provides that any party in interest may file with the Commission a petition to deny challenging the grant of an application. The petition must contain specific allegations of fact sufficient to show that the petitioner is a party in interest and that a grant of the application would be *prima facie* inconsistent with the public interest, convenience and necessity. 47 U.S.C. § 309(d). Our obligation under the Communications Act is to provide the forum and mechanism for the filing of those petitions by parties with standing. By establishing limitations on settlements, we did not intend to encourage or discourage the filing of petitions to deny. Notwithstanding limitations on settlements, we have no basis for concluding that meritorious petitions will not continue to be filed by those parties desiring corrective or appropriate action on defective or otherwise non-grantable applications. Further, our experience with lotteries has taught us that ranking applicants for initial cellular systems encourages the filing of frivolous petitions to deny. Moreover, in the future we intend to use competitive bidding to select from among mutually exclusive cellular unserved area applications filed on or after July 26, 1993, as well as most other applications for Part 22 licenses. Thus, we do not plan to make much use of lottery procedures in the future. In light of the foregoing, we deny AALA's petition.

Standards for De Minimis Extensions

6. Section 22.903(d)(1), as adopted in the *Second Report and Order* 57 FR 13646, April 17, 1992, allowed an applicant to propose Service Area Boundary (SAB) extensions into adjacent Metropolitan Statistical Areas (MSAs) or Rural Service Areas (RSAs), if such extensions were: (1) de minimis; and (2) demonstrably unavoidable for technical reasons of sound engineering design. The *Third Report and Order* 58 FR 27213, May 7, 1993 modified Section 22.903(d)(1) to allow only those extensions that meet the two foregoing requirements and that do not extend into the CGSA of any other licensee's cellular system on the same channel block (unless the other licensee consents to the extension), or into any adjacent MSA or RSA on a channel block for which the five year fill-in period has expired (i.e., into areas that are unserved and may be applied for only pursuant to the licensing process described in Section 22.949 of the Commission's rules).

7. CIS argues that the circumstances under which *de minimis* extensions are permitted under Section 22.903(d)(1) will not serve the public interest. CIS argues that the rule will make it more difficult for carriers to cover their markets and create the seamless cellular coverage the Commission has long encouraged. CIS claims that under the former version of the rule section, there was little incentive for a neighboring carrier to challenge a *de minimis* extension, unless that carrier had "specific concerns" or the extension significantly affected the market. CIS asserts that the new rule adds a layer of negotiation, and perhaps litigation, to most *de minimis* applications. Thus, CIS argues, if a licensee wants to propose a de minimis extension, it first must determine whether that extension overlaps with the adjacent carrier's CGSA and if it does, negotiate for consent to that extension. CIS contends that if consent is not forthcoming, it is possible that the carrier requesting consent will be unable to build facilities with *de minimis* extensions in that area. According to CIS, the new rule essentially treats extensions as mutually exclusive with existing or proposed CGSAs. CIS believes our adoption of Section 22.903(d)(1) is not needed if the principles underlying our mutual exclusivity rules and original *de minimis* extension rules were followed. The net result of the new rule, CIS alleges, is to favor the earlier-licensed market over the later-licensed market and to favor well-financed carriers over less financially secure carriers, because the well-financed carriers are more likely to win the "race to the border" created by the new rule. CIS also maintains that, prior to the rule revision, extensions that overlapped a neighbor's CGSA did not require consent during the first ten years of cellular licensing, whereas such consent now is required. CIS contends that requiring such consent will cause some licensees to be treated differently than others have been treated in the past, even though there has been no change in the justification underlying the Commission's published rules and policies concerning *de minimis* extensions.

8. We find that CIS's arguments are not persuasive. The cellular radio industry has matured to the point where many licensees have CGSAs that have reached the borders of their respective MSAs or RSAs. In such an environment, "border wars" may become more common. Nevertheless, our rules do not favor either earlier-licensed carriers or better-financed carriers. Rather, any licensee, regardless of when it was licensed or how well it is financed, is entitled to protection within its CGSA, and conversely, must not cause interference by extensions into the CGSAs of other licensees, unless the parties agree to accept the intrusion. It is in the interest of cellular licensees to find mutually beneficial ways to accommodate their respective needs in providing service within their respective CGSAs.

9. Our current rule requiring consent for any SAB extensions into a licensee's CGSA is consistent with our previous policies protecting a licensee's reliable service area. Prior to the adoption of our *Second Report and Order* 57 FR 13646, April 17, 1992, *de minimis* contour extensions overlapping a neighbor's CGSA did not require prior consent from the neighbor. At that time, the CGSA was the area within an MSA or RSA that an applicant for an initial cellular system intended to serve, so it was possible for contours to extend into a neighbor's CGSA without causing interference to the neighbor's reliable service area. Furthermore, (as discussed *infra* at ¶ 14), all such contour extensions were subject to a standard authorization condition that required a licensee to change frequencies or "pull back" its service area boundary, if a current or future adjacent licensee encountered interference caused by any such extension. Pursuant to the *Second Report and Order* 57 FR 13646, April 17, 1992, the CGSA now represents the actual service area. Since the CGSA now is the current, rather than planned, service area, any extension into an adjacent CGSA would amount to an incursion into that licensee's actual service area. Thus, before and after the adoption of the *Second Report and Order* 57 FR 13646, April 17, 1992, a cellular licensee's reliable service area has been protected from overlap with the reliable service areas of neighboring cellular licensees by the standard pull back condition. The changes we made in the *Third Report and Order* 58 FR 27213, May 7, 1993 allow the parties to agree to have overlapping contours without imposing the pull back requirement.

10. Therefore, we conclude that the standards set forth in Section 22.903(d)(1) of the rules concerning *de minimis* SAB extensions into adjacent MSAs and RSAs serve the public interest and are consistent with our previous policies protecting a licensee's reliable service area.

Alleged Due Process Violations and Lack of Notice Under APA

11. In its petition, CIS argues that the Commission provided no notice that Section 22.903(d)(1) would be amended by the *Third Report and Order* 58 FR 27213, May 7, 1993, and thus violated the notice and comment requirements of the Administrative Procedures Act (APA). Similarly, PetroCom and Coastel argue that the *Initial NPRM* 55 FR 4882, February 12, 1990 and the *First Report and Order* 56 FR 58503, November 20, 1991 in this proceeding stated that the Commission was adopting no new requirements affecting the extension applications of existing cellular licensees. PetroCom and Coastel claim that no reasonable reader of the Commission's *Initial NPRM* 55 FR 4882, February 12, 1990 could have inferred that the Commission would change the "*de minimis* extension regulation as it applied to existing cellular licensees."

12. In addition, CIS, PetroCom, and Coastel contend that the only reference to contour extensions applicable to licensees seeking to expand their existing system boundaries is the proposal to codify a standard authorization condition that requires a licensee to change frequencies or "pull back" its service area boundary, if a current or future adjacent licensee encounters interference caused by a *de minimis* extension. The three petitioners conclude that the Commission provided no notice that it planned to change existing policy by requiring a licensee seeking to extend its contour into a neighboring licensee's CGSA to obtain the neighboring licensee's consent to that extension. CIS also argues that the Commission did not provide a reasoned explanation for the obligations adopted in the rules. CIS alleges that, by not providing sufficient notice or a reasonable basis for the new rule, we have violated due process.

13. As CIS acknowledges, proposed rules do not have to be identical to the final adopted rules, but important changes must be a "logical outgrowth" of the proceeding. Thus, courts have taken the view that changes from the original proposals in a rule making do not require an additional round of notice and comments where the final rules represent a "logical outgrowth" of the proposals. We believe that the rule changes implemented in the *Third Report and Order* 58 FR 27213, May 7, 1993 are well grounded in our previous rules and policies, and that these changes were an outgrowth of the issues raised at the initiation of this proceeding to modify the CGSAs of existing and new cellular systems.

14. A cellular licensee's service area has been protected from the contour extensions of other licensees by a standard license condition utilized prior to the adoption of the *First Report and Order* 56 FR 58503, November 20, 1991 in this proceeding. The condition was implemented as part of the Commission's longstanding policy of protecting a cellular licensee's actual service area. Prior to the adoption of the *First Report and Order* 56 FR 58503, November 20, 1991, carriers granted a *de minimis* extension into an adjacent MSA or RSA had been subject to a standard condition requiring that the extension be "pulled back," if it caused interference to the protected service area of the adjacent MSA or RSA. The *Initial NPRM* 55 FR 4882, February 12, 1990 in this proceeding proposed to codify this standard condition and the *First Report and Order* 56 FR 58503, November 20, 1991 adopted this condition as Section 22.902(d)(4) of the rules. Thus, both

prior to and after the adoption of the *Second Report and Order* 57 FR 13646, April 17, 1992, a cellular licensee's reliable service area was protected by the standard pull back condition. A reasonable reader of the *Further Notice* 56 FR 58529, November 20, 1991 which proposed to establish the CGSA in the manner ultimately adopted in the *Second Report and Order* 57 FR 13646, April 17, 1992, could have anticipated that the Commission would continue to protect a licensee's service area from interference by other licensees.

15. We believe that the changes to Section 22.903(d)(1) reflect a logical and necessary step in redetermining the CGSA of each cellular licensee. In the *Second Report and Order* 57 FR 13646, April 17, 1992, we revised Section 22.903(a) to determine the CGSA based on a licensee's authorized service area, because the method proposed in the *Initial NPRM* 55 FR 4882, February 12, 1990 underestimated the service area boundaries. Both the *Initial NPRM* 55 FR 4882, February 12, 1990 and the *Further Notice* 56 FR 58529, November 20, 1991 in this proceeding explained that a central purpose of this proceeding was to make a licensee's CGSA more closely approximate its authorized service area.

16. The modification of a licensee's CGSA to more closely approximate its service area under Section 22.903(a) means that any non-consensual extension into a licensee's CGSA on the same channel block would constitute interference from which the licensee and its customers have a right to be protected, pursuant to Section 22.911 of our rules. Our modification of the text of Section 22.903(d)(1) regarding SAB extensions encroaching upon the CGSA of another licensee was necessitated by the change in methodology to determine the CGSA and our existing interference protection rule under Section 22.911. Thus, we modified Section 22.903(d)(1) to prohibit *de minimis* extensions into the CGSA of a carrier on the same channel block in an adjacent market without the consent of the neighboring licensee. Such changes do not violate due process, nor were the changes without notice, as CIS, Petrocom and Coastel allege.

17. CIS, PetroCom, and Coastel also assert that the *Third Report and Order* 58 FR 27213, May 7, 1993 mislabeled the Commission's modification of Section 22.903(d)(1) of its Rules as a "clarification." They claim that the modification of the referenced rule was more than a clarification, noting that the term "clarification" implies that no substantive change to the rule is being made.

18. We do not dispute that our modification of Section 22.903(d)(1) involved a revision of that rule, and we did not intend, by the language we used in the *Third Report and Order* 58 FR 27213, May 7, 1993, to suggest otherwise. The revision of Section 22.903(d)(1) simply reinforced a concept which already was stated in the introductory paragraph of Section 22.903, as revised by the *Second Report and Order* 57 FR 13646, April 17, 1992, namely, that because the method of determining the CGSA is changed to reflect a licensee's authorized service area, the CGSA is protected from interference caused by all other licensees, just as cellular licensees' service areas had been protected from interference in the past by the standard pull back condition. Once we modified the CGSA to be a licensee's authorized protected service area, no incursions into the CGSA could be allowed under our standard policy against interference, unless the carrier causing the SAB extension received consent from the affected licensee.

19. We also had to modify Section 22.903(d)(1) to prohibit extensions into an adjacent MSA or RSA for which the five-year build-out period had expired, to be consistent with our unserved area rules. Sections 22.903(d)(3)(i) through 22.903(d)(3)(iii) provided that, with respect to cellular systems proposed for unserved areas, the service area boundaries (SABs) of the proposed cells must not extend into the CGSA of any other licensee's cellular system on the same channel block, except for permissible contract extensions, or into any adjacent MSA or RSA where the five-year build-out period had expired. The same concern about interference created by SAB extensions into adjacent CGSAs that applies to unserved area applicants also applies to proposed extensions into CGSAs by existing licensees. The rights of unserved area applicants would be compromised if we allowed a licensee in an adjacent MSA or RSA to extend its service contour into the unserved area of an MSA or RSA for which the build-out period had expired without complying with the unserved area licensing procedures.

20. Therefore, we conclude that the Commission gave adequate notice for the changes the *Third Report and Order* 58 FR 27213, May 7, 1993 made in Section 22.903(d)(1) of the rules, that those changes were well grounded in our previous rules and policies, and that the changes were a logical outgrowth of the issues raised in this proceeding.

Contour Extensions During Phase I Processing

21. In the *Third Report and Order* 58 FR 27213, May 7, 1993, we modified our policies for allowing applicants for unserved areas to propose SAB extensions during Phase I of our application processing procedures for all markets in which the five-year build-out period has expired. Specifically, we determined that initial applications filed in Phase I would not be allowed to propose any extensions into adjacent MSAs or RSAs, even if those extensions were de minimis or contract extensions. In prohibiting contour extensions in these circumstances, we explained that this restriction would simplify and expedite our licensing process and would remove a possible source of litigation as to whether such extensions were permissible. We stated that applications proposing such extensions would be dismissed as defective. We added language to effectuate our policy change to Section 22.902(b)(4)(i) of the rules and appropriately revised the language of Sections 22.903(d)(3)(ii) through Sections 22.903(d)(3)(iv).

22. CECR asserts that the Commission erred in making the foregoing rule changes. CECR argues that the *First Report and Order* 56 FR 58503, November 20, 1991 clearly delineated the circumstances under which contract extensions are permissible: where a contract exists, extensions are valid, and if no contract exists, the extension application is deemed defective. Thus, claims CECR, permitting contract extensions cannot serve as a possible source of litigation. CECR also argues that former Section 22.903(d)(3)(ii) of the rules explicitly explained the situations in which unserved area applications can propose de minimis extensions, and served to eliminate any confusion over the validity of proposed extensions, thus greatly reducing the possibility for litigation.

23. We shall not revise our rules concerning SAB extensions by Phase I applicants for unserved areas. As we stated earlier, our purpose in not permitting Phase I requests for extensions was to provide a simple and expeditious means of licensing unserved area applicants in Phase I. In addition, we believe that our Phase I licensing rules should be consistently applied across all markets. Phase I of the unserved area licensing process has ended for most of the MSAs and many of the RSAs. By the end of calendar year 1995, the five-year build-out period for most RSAs will have ended. The revisions suggested by CECR only would confuse the unserved area licensing process by changing the rules after many of the markets have been subject to restricted SAB extension rules in the Phase I unserved licensing process.

24. We note that the prohibition against having SAB extensions beyond the borders of a particular MSA or RSA only applies to initial Phase I applications. Once a Phase I initial unserved area application has been granted, the licensee can file one Phase I major modification application and that application may propose *de minimis* or contract extensions. The application is not subject to competing applications. In addition, Phase II applications may propose a CGSA covering more than one cellular market, which includes *de minimis* and contract extensions. Thus, the prohibition against SAB extensions beyond the borders of a particular MSA or RSA is narrowly defined to include only initial Phase I unserved area applications.

System Information Update Maps

25. CECR asserts that the Commission erred by neglecting to recognize that System Information Update (SIU) maps are more than informational filings, because they define the rights of third parties, i.e., potential unserved area applicants. CECR argues, as it did in its petition for reconsideration of the *First Report and Order* 56 FR 58503, November 20, 1991, that the Commission should establish procedures by which interested parties may challenge SIU maps prior to the filing of unserved area applications. McCaw argues that CECR already has argued this issue unsuccessfully and has shown no reason why its argument warrants further Commission consideration. McCaw argues that this portion of CECR's petition should be dismissed as repetitive. CECR also observes that the *Third Report and Order* 58 FR 27213, May 7, 1993 provided that parties aggrieved by the licensee's depiction of its CGSA informally may request the Commission to correct the maps under Section 1.41 of the Commission's Rules. CECR contends that this procedure is illusory because the Commission has no obligation or timetable to resolve an informal challenge, and therefore can continue to license unserved areas within the challenged market during the pendency of the informal challenge. CECR also challenges on due process grounds the procedures established for challenging SIU maps, stating that they force unserved area applicants "to place their own applications at risk in order to challenge a licensee's improper SIU map." Further, CECR claims that licensees should not be allowed to base their SIU maps on cell sites that violate state law.

26. We find that CECR's arguments are not sufficiently compelling to warrant revision to our rules. Section 22.947(c) of our rules, 47 CFR § 22.947(c), requires a licensee of a cellular system to file with the Commission 60 days before the end of its five-year build out period a system information update (SIU) consisting of a full size map, a reduced map, and an exhibit showing technical data relevant to determining the system's CGSA. These materials must accurately depict the cell locations and coverage of the system at the end of the five-year build-out period. Although SIU materials, especially the maps, are required so that potential applicants may know which areas within a particular market already are served, it is important to note, as we did in the *Third Report and Order* 58 FR 27213, May 7, 1993, that the SIU maps are more in the nature of pictorial aids for potential unserved area applicants. The SIUs are not a declaration of the cellular service rights of licensees. As set forth in the *Second Report and Order* 57 FR 13646, April 17, 1992, the position of the CGSA boundaries officially will be determined by the geographical coordinates of cell sites and the authorized facilities for the relevant cells which are contained in the Commission's station license files. Further, as we stated in the Third Report and Order, these maps will not require any Commission action, since they are not submitted for approval. The manner in which the SIU maps are drawn is determined by the new mathematical formula for determining service areas set forth in Section 22.911(a) of our rules. We expect that licensees will accurately depict their CGSAs using the prescribed formula, and that errors will be the exception and not the rule.

27. It is not necessary to delay the filing, processing, and granting of unserved area applications in order to afford potential litigants the opportunity to challenge SIUs. Applicants who believe that reported adjacent CGSAs are in error or have been misdepicted may file applications, pursuant to the requirements of the unserved area rules, for areas they believe constitute at least 130 square kilometers (50 square miles), and state in their applications why they disagree with the depictions or representations of adjacent CGSAs. Once such an applicant has become a tentative selectee, if it has made a *prima facie* case that an adjacent licensee has misdepicted its CGSA, that licensee will have the burden of responding to any allegations concerning the depiction of its CGSA, and the Commission will resolve the dispute. Further, we have noted that interested parties may file informal requests for Commission action to correct SIU maps pursuant to Section 1.41 of the Rules. As to the state law concerns raised by CECR, if a licensee has constructed cellular facilities that violate relevant state law, any member of the public can notify the appropriate state authority, which then can impose appropriate sanctions.

Phase I Processing Procedures

28. In the *Third Report and Order* 58 FR 27213, May 7, 1993, we explained that, during Phase I of our processing procedures for unserved area applications, an existing licensee may file an application to expand its existing CGSA in any manner or, in the alternative, apply for a new non-contiguous CGSA in an unserved portion of its market. Either of the applications would be considered to be a single unserved area application. CECR requests that we clarify that the *Third Report and Order* 58 FR 27213, May 7, 1993 allows an existing licensee to file either an initial Phase I unserved area application to expand its existing CGSA, or an application specifying a new non-contiguous CGSA within its market, but not both. CECR's request has been rendered moot by the changes to Section 22.949(a)(1)(ii) of the rules, which became effective after the release of the *Third Report and Order* 58 FR 27213, May 7, 1993. The rule section now expressly prohibits applicants from filing more than one Phase I initial application for any cellular market.

B. Petitions for Reconsideration of the Memorandum Opinion and Order

Alleged Lack of Notice Under APA

29. The *Memorandum Opinion and Order* 58 FR 11799, March 1, 1993 in this proceeding established that interference occurs when subscriber traffic is captured in a home market by an adjacent market system, due to contour extensions into the home market's CGSA, and that cellular licensees are entitled to protection from this type of interference. A cellular licensee may continue to operate existing facilities that produce a service area boundary extension into a subsequently-authorized portion of the CGSA of another cellular system on the same channel block until the licensee of that system requests that the SAB extension be removed from its CGSA. When such a request is received, the adjacent market system operator is obligated to pull back the SAB

extensions by reducing the transmitting power or antenna height (or both) at the offending cell site locations, or obtain written consent from the other licensee to permit the SAB extension.

30. Five petitions for reconsideration and three petitions for partial reconsideration of the *Memorandum Opinion and Order* 58 FR 11799, March 1, 1993 were filed. These petitions allege, *inter alia*, that our adoption of Section 22.903(f) of the rules, 47 CFR 22.903(f), violated the notice and comment requirements for rule making proceedings under Section 553 of the APA, 5 U.S.C. § 553, and the notice and hearing provisions of Sections 309 and 316 of the Communications Act of 1934, 47 U.S.C. §§ 309 and 316, and former Section 22.100(b)(4) of the Commission's rules.

31. New Par, CIS and the Joint Petitioners claim that the Commission gave no public notice it was contemplating the rule changes incorporated in new Section 22.903(f), and therefore the Commission did not comply with Section 553 of the APA, 5 U.S.C. § 553, which requires an agency to give adequate written notice and opportunity to comment on proposals in rule making proceedings. New Par claims that the Commission provided no notice that it even was considering a change to the standard by which interference and SAB extensions would be evaluated. CIS also argues that there is no mention of the new substantive obligations imposed by Section 22.903(f) on licensees either in the *Further Notice* 56 FR 58529, the *First Report and Order* 56 FR 58503, November 20, 1991, or the *Second Report and Order* 57 FR 13646, April 17, 1992 in this proceeding.

32. New Par and the Joint Petitioners assert that prior to the adoption of Section 22.903(f), the Commission's rules concerning interference between cellular licensees provided that remedial action was required only where actual, as opposed to theoretical, electrical interference occurred. New Par argues that former Section 22.100(b)(ii) stated that the Commission "will only consider complaints of interference which significantly interrupt or degrade a radio service," and former Section 22.902(a) provided that, in the event "harmful interference" occurs that two or more cellular licensees cannot resolve themselves, the Commission may require a licensee to make system changes "necessary to avoid such interference." In contrast, New Par argues, Section 22.903(f) assumes that interference exists where licensee SABs overlap and requires the entire removal of SAB extensions without regard to whether the complaining party's service in fact has experienced a significant degradation and without regard to whether the removal of such extensions might result in harmful effects on service to the public in either licensee's market.

33. We reject petitioners' argument that our adoption of Section 22.903(f) did not comport with the notice and comment requirements of the APA. We have reasonably and consistently placed the public on notice of our intention to change the standards for measuring cellular service areas in our continuing efforts to provide seamless cellular service with the least amount of interference to licensed carriers. The matters at issue in this docket encompassed the manner in which service area contours were to be calculated and the implications for existing systems if the defined contours changed. Section 22.903(f) reflects a logical outgrowth of this debate.

34. As previously discussed (supra at ¶ 14), the *Initial NPRM* 55 FR 4882, February 12, 1990 and *Further Notice* 56 FR 58529, November 20, 1991 in this proceeding made clear that we intended to change the method by which a CGSA is determined. Ultimately, the *Second Report and Order* 57 FR 13646, April 17, 1992 established that the CGSA is the geographic area the Commission considers served by a cellular system and the area within which a cellular system is entitled to protection. A companion issue raised in evaluating the boundaries of the CGSA was the potential for interference caused by the extension of newly-redefined SABs outside a licensee's MSA or RSA into the CGSA of a neighboring cellular system on the same channel block. Based upon the comments we received, we concluded that capture of subscriber traffic is a form of interference. Thus, we were compelled to amend our rules to provide protection to cellular licensees against such interference.

Alleged Notice and Hearing Rights Under the Communications Act and the Commission's Rules

35. The Joint Petitioners and New Par contend that the Commission cannot order (or allow an adjacent licensee to require) licensees to pull back authorized contour extensions (including new SABs created by the new formula adopted in the *Second Report and Order* 57 FR 13646, April 17, 1992) without complying with the notice and hearing requirements of Sections 309 and 316 of the Communications Act and Section 22.100(b)(4) of the Commission's rules.

36. New Par argues that each SAB extension authorized by the Commission is conditioned upon the licensee not causing interference to adjacent licensees and that any action requiring a licensee to withdraw its SAB from areas where its RF signals in fact do not significantly degrade or disrupt other radio service is a modification of that licensee's authorization. According to New Par, Sections 309 and 316 of the Communications Act require the Commission to conduct a hearing to determine whether and to what extent interference exists each time it wishes to order an authorized contour extension to be "pulled back." New Par also contends that Section 22.100(b)(4) of the rules codifies the foregoing theory by providing that the Commission may order cellular system modifications to eliminate alleged interference only after notice and opportunity for hearing.

37. We reject the petitioners' argument that the Commission must comply with the notice and hearing requirements of Sections 309 and 316 of the Communications Act each time a licensee is directed to pull back authorized contour extensions. Those provisions provide for a hearing process before Commission modification of a particular license. The sections do not deprive the Commission of its authority to establish rules of general applicability to an industry through its rule making authority.

38. It is well established that licenses may be modified through rule making proceedings without affording parties an adjudicatory hearing, if the generic rules otherwise are procedurally and substantively valid. In *WBEN Inc.* v. *United States*, 396 F.2d 601 (2d Cir. 1968), *cert. denied*, 393 U.S. 914 (1968), the Court held that the Commission need not engage in evidentiary hearings required for modification of a particular license, explaining that,

> [W]hen, as here, a new policy is based upon the general characteristics of an industry, rational decision is not furthered by requiring an agency to lose itself in an excursion into detail that too often obscures fundamental issues rather than clarifies them.

Once a rule has been adopted, there is no need to hold a hearing each time that rule is applied. Our *Memorandum Opinion and Order* 58 FR 11799, March 1, 1993 makes clear that Section 22.903(f)(2)(i) allows the Commission (or an adjacent licensee) to require a licensee to "pull back" an authorized SAB extension into the adjacent licensee's CGSA. Thus, there is no need for a hearing each time Section 22.903(f)(2)(i) or its replacement, Section 22.911(d), is enforced.

39. We find that the hearing procedure under Section 22.100(b)(4) of our rules is inapplicable to rule changes made through our rule making authority. Section 22.100(b)(4) requires that interference between base stations that have been properly authorized shall be "resolved" by the licensees. The rule section also states that if the licensees cannot resolve the interference, the Commission, "after notice and opportunity for hearing," may order whatever changes in equipment or operation it deems necessary. Hearings under Section 22.100(b)(4) would be involved only if the carriers could not comply with the directive of the rule section to resolve interference problems. Such hearings would not be required between cellular licensees because cellular licensees have always been licensed on the condition that licensees must "pull back" any contour that interferes with a neighboring cellular system and Section 22.911(d) provides a specific remedy for resolving the interference problem at hand. We also observe that the Commission has been given the power recently to make changes in the frequencies, authorized power, and the times of operation of any station without conducting a hearing.

Standards for Determining Permissible SAB Extensions

40. The Joint Petitioners, New Par, Sussex, and CIS argue that the adoption of Section 22.903(f)(1) of the rules regarding capture is inconsistent with the Commission's goal of achieving nationwide seamless cellular service. New Par, Sussex, and CIS note that the *Memorandum Opinion and Order* 58 FR 11799, March 1, 1993 states that overlapping SAB contours actually promote a seamless environment and that SAB extension "pullbacks" should be used only as a last resort. CIS and Sussex argue that the new rule is contrary to basic principles of cellular system design and will restrict the ability of licensees to provide adequate coverage within their markets, thus undermining the original purpose of the Commission's de minimis extension policy. CIS claims that the rule will discourage the development of seamless cellular coverage at the borders between markets.

41. Joint Petitioners argue that Section 22.903(f) undermines the Commission's stated goals of creating a "level playing field" for all cellular licensees and devising rules and policies to encourage informal agreements between licensees to resolve boundary disputes. New Par, McCaw, and the Joint Petitioners claim that Section 22.903(f) neither requires good faith negotiations among adjacent licensees nor enables an extending licensee to rebut the presumption of interference in the form of capture of subscriber traffic. McCaw and New Par assert that the rule appears to conflict with the *Memorandum Opinion and Order*, 58 FR 11799, March 1, 1993 which states that progress toward achieving the Commission's goal of establishing "rules and policies that will lead to the efficient provision of nationwide seamless cellular service to the public" will depend in large part upon the success of informal negotiations between cellular licensees on "mutually agreeable arrangements of facilities that provide an efficient juncture between adjacent systems." New Par argues that later-licensed carriers will have the ability and incentive to force neighboring licensees to consent to otherwise unwarranted extensions, because of the earlier-licensed carrier's inability to suffer the loss of service that would result from an SAB pull-back. Joint Petitioners similarly conclude that existing operators may be forced to curtail service from previously authorized facilities "largely at the whim" of subsequent licensees.

42. New Par argues that the institution of the presumption that subscriber capture occurs in every case where an SAB overlaps with a CGSA is arbitrary and capricious and results in removing from the Commission its statutory obligation to resolve service issues consistent with the public interest. McCaw opposes the rule because it has the practical effect of precluding SAB extensions where no subscriber traffic capture actually occurs. Sussex argues that an administrative agency cannot create a presumption which operates to deny a fair opportunity to rebut it without violating the due process clauses of the Fifth and Fourteenth Amendments. Consequently, Sussex argues that the U.S. Constitution will not allow the Commission to impose an automatic requirement to remove SAB overlap without first granting the encroaching carrier the opportunity to show: (1) that there is no subscriber capture, or (2) that the capture does not result from SAB overlap.

43. McCaw and New Par recommend modifications to Section 22.903(f) as follows: (1) require licensees protesting SAB extensions to demonstrate that these extensions cause actual interference, prior to mandating system modification; and (2) continue to promote good faith negotiations of such boundary disputes on an informal basis prior to having to "pull back" authorized SAB extensions. Sprint agrees with McCaw and New Par that boundary questions should be settled with good faith negotiations on an informal basis. The Joint Petitioners also urge that Section 22.903(f)(2)(i) be modified to make rebuttable the presumption of subscriber capture, where an SAB extension has been authorized into an adjacent licensee's CGSA during the latter licensee's five-year fill-in period.

44. CIS also recommends that former Section 22.903(d)(1) of the rules, setting forth *de minimis* extension criteria, be modified to allow a contour extension when the extension is necessary to compensate for an existing extension from another cellular system. Sussex recommends that the Commission allow carriers to install cells with contour overlaps into adjacent carriers' CGSAs so long as the overlaps are *de minimis* and are necessary to provide service within the overlapping carrier's market area, regardless of whether the carrier consents to the extension. Further, Sussex argues that any conflicts arising from such overlaps be resolved through the frequency coordination process and the requirement of inter-carrier cooperation. In essence, Sussex asks that the Commission return to the means of handling contour overlap which existed before the adoption of Section 22.903(f). Radiofone opposes Sussex's solution, fearing that elimination of protection of CGSAs against intrusions from neighboring carriers would lead to "rampant interference, endless litigation and disservice to the public."

45. Before addressing the petitioners' arguments, we emphasize that a cellular licensee has an obligation to serve the public wherever demand exists within its market, and that cellular licensees therefore have a duty to negotiate with each other in good faith regarding agreements for SAB overlaps. Successful negotiations of such contracts or agreements could be offered as evidence of performance in the public interest when cellular licenses are considered for renewal, pursuant to new Section 22.940 of our Rules. Conversely, failure to serve the public due to failure to negotiate reasonable solutions to SAB overlap problems with adjoining carriers could reflect negatively on a licensee seeking renewal.

46. The language of former Section 22.903(f)(2)(i) was somewhat ambiguous, because the first sentence stated that it is "presumed" that subscriber traffic is captured if a service area boundary (SAB) of one cellular system extends into the CGSA of another operating cellular system. Nevertheless, New Par and Sussex's arguments concerning the creation of a

rebuttable presumption have been rendered moot by the removal of the presumption language in rule Section 22.903(f). The *Part 22 Rewrite Order* 59 FR 59502, November 17, 1992 transferred most of the language of former Section 22.903(f) to current rule Section 22.911(d) and changed some of the introductory language in the new rule. Section 22.911(d)(2)(i) expressly prohibits non-consensual contour extensions from one cellular system into the CGSA of another cellular system. The first sentence of Section 22.911(d)(2)(i) states: "Subscriber traffic is captured if an SAB of one cellular system overlaps the CGSA of another operating cellular system"—(emphasis added). The new rule removes any suggestion of a presumption created by the prior rule.

47. We observe that current Section 22.911(d)(2)(i) of our rules is based upon predicted service areas as defined by an expert agency and is designed to avoid litigation over the exact location of actual interference. The idea of "interference free" service areas is a constant in Part 22 of our rules. See, e.g., Sections 22.351, 22.537, 22.567, and 22.912(a) of our rules. 47 CFR 22.351, 22.537, 22.567 and 22.912(a). In order to ensure uniformity and simplicity in administering our rules, and to prevent potentially endless litigation, we must rely on objective, rather than subjective standards for the protection of services. Section 22.911(d)(2)(i) provides a simple, objective standard to determine when capture occurs, and encourages parties to reach agreement on the resulting effects of SAB overlap.

48. We also reject CIS's request that Section 22.903(d)(1) [now 22.912(a)] of the rules be modified to allow a cellular licensee to extend service contour into an adjoining market to compensate for the adjoining licensee's extension into the licensee's market. Absent agreement between the affected parties, licensees are entitled to operate in their service areas free from co-channel and first adjacent channel interference and from capture of subscriber traffic by adjacent systems on the same channel block. 47 CFR 22.911(d) (formerly 22.903(f)).

49. Our goal is to provide nationwide seamless cellular service to the public. As we indicated in the *Memorandum Opinion and Order*, 58 FR 11799, March 1, 1993 rather than require the total elimination of SAB extensions, or mandate reciprocal SAB extensions as suggested by CIS, a better result in most cases is some degree of SAB overlap between systems with the location of balanced signal strengths negotiated informally between the adjacent licensees on the same channel block. We believe informal negotiations between parties in determining mutually agreeable arrangements between adjacent systems will achieve the most expeditious and effective resolution of service boundary issues. Thus, promoting negotiation between parties eliminates possible protracted administrative and court proceedings, and provides incentives for cellular providers to come to agreement on boundary issues arising from the convergence of expanding systems. In sum, permitting market forces to drive resolution of these issues will effectuate seamless cellular service nationwide more quickly than the proposals offered by petitioners.

IV. Ordering Clause

50. Accordingly, pursuant to Sections 4(i), 303(r) and 405(a) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 405(a), *It is ordered* that the petitions for reconsideration and partial reconsideration of the *Third Report and Order and Memorandum Opinion and Order on Reconsideration* 58 FR 27213, May 7, 1993 in this docket, and the *Memorandum Opinion and Order on Reconsideration*, 58 FR 11799, March 1, 1993 *Are denied*, and the "Request to Expedite Action and Comments in Support of Cellular Information Systems, Inc." *Is dismissed* as moot.

List of Subjects in 47 CFR Part 22

Communications common carriers, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–4870 Filed 2–27–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1319

[STB Ex Parte No. 598]

Exemption of Freight Forwarders in the Noncontiguous Domestic Trade From Rate Reasonableness and Tariff Filing Requirements

AGENCY: Surface Transportation Board.

ACTION: Final rules.

SUMMARY: The Board exempts freight forwarders in the noncontiguous domestic trade from tariff filing requirements. This action eliminates an unnecessary regulatory burden and should provide freight forwarders with additional flexibility to meet the needs of their customers.

EFFECTIVE DATE: These rules are effective March 30, 1997.

FOR FURTHER INFORMATION CONTACT: James W. Greene, (202) 927–5612. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: The Board's decision adopting these regulations is available to all persons for a charge by phoning DC NEWS & DATA, INC., at (202) 289–4357.

Small Entities

The Board certifies that this rule will not have a significant economic effect on a substantial number of small entities. The rule removes an unnecessary regulatory burden and, to the extent that it affects small entities, the effect should be favorable.

Environment

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1319

Exemptions, Freight forwarders, Tariffs.

Decided: February 13, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, the Board adds a new part 1319 to title 49, chapter X, of the Code of Federal Regulations to read as follows:

PART 1319—EXEMPTIONS

Sec.

1319.1 Exemption of freight forwarders in the noncontiguous domestic trade from tariff filing requirements.

Authority: 49 U.S.C. 721(a) and 13541.

§ 1319.1 Exemption of freight forwarders in the noncontiguous domestic trade from tariff filing requirements.

Freight forwarders subject to the Board's jurisdiction under 49 U.S.C. 13531 are exempted from the tariff filing requirements of 49 U.S.C. 13702.

[FR Doc. 97–4868 Filed 2–27–97; 8:45 am]

BILLING CODE 4915–00–P

Proposed Rules

Federal Register
Vol. 62, No. 40
Friday, February 28, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1496

RIN 0560–AF09

Procurement of Processed Agricultural Commodities for Donation Under Title II, Public Law 480; Public Meeting

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Public meeting on proposed regulation.

SUMMARY: Notice is hereby given that a public meeting will be held on March 13, 1997. The purpose of the forum is for members of the U.S. Government involved in Title II of the Agricultural Trade Development and Assistance Act of 1954, (Public Law 480) to meet with the public and receive comments and suggestions with respect to the proposed regulation issued by the Commodity Credit Corporation (CCC) on February 12, 1997 (62 FR 6497). The proposed regulation would revise CCC's procedures for purchasing processed agricultural commodities donated overseas under Title II of Public Law 480, implement recent statutory changes, and adopt a simpler and more efficient procurement process.

DATES: The meeting will be held March 13, 1997 from 9:30 to 12:00.

ADDRESSES: The meeting will be held at Room 107A in the Administration Building at the U.S. Department of Agriculture in Washington, D.C. Those planning to attend the meeting should write to USDA/FSA, Procurement and Donations Division, Export Operations Branch, Rm. 5755-S, Mail Stop 0551, P.O. Box 2415, Washington D.C. 20013–2415.

FOR FURTHER INFORMATION CONTACT: Jeff Jackson, (202) 720–3995 or the FSA Homepage (http://www.fsa.usda.gov).

SUPPLEMENTARY INFORMATION: To accommodate all participants, we request that individuals planning to attend should so inform the Department in writing at the address listed above. Please indicate the company represented, if any, including the names and titles of individuals attending and whether individuals plan to present verbal comments at the meeting. Initial comments will be limited to five minutes and taken in the order in which the participants sign-in the day of the meeting.

Signed at Washington, D.C. on February 21, 1997.

Bruce R. Weber,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 97–5024 Filed 2–27–97; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–05–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model Avro 146–RJ Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all British Aerospace Model Avro 146–RJ series airplanes. This proposal would require modifying the electrical system in the equipment bay area by replacing certain cables, clamps, and fairleads. This proposal is prompted by a report indicating that the incorrect size of electrical cables were used in the generator feeder circuit between certain busbars and existing generator feeder cables. As a result, generator contactors are not compatible with generator rating requirements and can overheat. The actions specified by the proposed AD are intended to prevent possible overheating and damage to the electrical generator feeder cables, which could cause a fire or the loss of essential electrical systems.

DATES: Comments must be received by April 9, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–05–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace Regional Aircraft Limited, Avro International Aerospace Division, Customer Support, Woodford Aerodrome, Woodford, Cheshire SK7 1QR, England. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–05–AD." The

postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–05–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on all British Aerospace Model Avro 146–RJ series airplanes. The CAA advises that, in the electrical equipment bay, a design drawing error allowed the incorrect size of electrical cables to be used in the aircraft generator feeder circuit between busbars AC1 and AC2. For this reason, existing 6ANC generator feeder cables between AC1 and AC2 busbars and generator contactors are not compatible with generator rating requirements. When only one alternating current (AC) generator is on-line and the AC hydraulic pump is operating, the feeder cable could overheat and cause damage. This condition, if not corrected, could result in a possible fire or loss of essential electrical systems.

Explanation of Relevant Service Information

British Aerospace has issued Service Bulletin SB.24–113–01532A, dated March 12, 1996, and Revision 1, dated June 18, 1996, which describe procedures for replacing the existing 6ANC generator feeder cables installed between the AC1 and AC2 busbars; replacing the generator contactors with larger 4ANC size cables; and modifying existing clamps and fairleads to accommodate the larger diameter cables. This modification is identified as HCM01532A in the service bulletin.

Replacing the electrical cables and modifying the various components in the electrical equipment bay in accordance with the service bulletin will preclude possible feeder cable overheat and subsequent damage that could lead to a fire or loss of essential systems.

The CAA classified this service bulletin as mandatory and issued British airworthiness directive 006–03–96, dated March 12, 1996, in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require modifying the electrical system in the electrical equipment bay. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

The FAA estimates that 10 British Aerospace Model Avro 146–RJ series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $300 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $5,400, or $540 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace Regional Aircraft Limited, Avro International Aerospace Division (Formerly British Aerospace, plc; British Aerospace Commercial Aircraft Limited): Docket 97–NM–05–AD.

Applicability: All Model Avro 146–RJ series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the possible overheating of the feeder cable and subsequent damage, which could lead to a possible fire or loss of essential electrical systems, accomplish the following:

(a) Prior to the accumulation of 500 flight cycles after the effective date of this AD, modify the electrical system in the electrical equipment bay in accordance with British Aerospace Service Bulletin SB.24–113–01532A, dated March 12, 1996, or Revision 1, dated June 18, 1996.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 21, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–4948 Filed 2–27–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–117–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, that would have required installation of additional "EXIT" signs at the overwing emergency exits. That proposal was prompted by a report indicating that the "EXIT" signs for the overwing emergency exits, as currently installed, would not be visible to passengers during an emergency evacuation when the emergency exit doors are open. This action revises the proposed rule by expanding the applicability of the proposed rule to include additional airplanes. The actions specified by this proposed AD are intended to ensure the "EXIT" signs for overwing emergency exits are clearly visible during an evacuation.

DATES: Comments must be received by March 14, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–117–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, The Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–117–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–117–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on January 18, 1995 (60 FR 3585). That NPRM would have required installation of two additional "EXIT" signs, one above and between the left-hand overwing emergency exits, and one above and between the right-hand overwing emergency exits. That NPRM was prompted by a report indicating that the "EXIT" signs for the overwing emergency exits, as currently installed, would not be visible to passengers during an emergency evacuation when the emergency exit doors are open. That condition, if not corrected, could delay or impede the evacuation of passengers during an emergency.

Actions Since Issuance of Previous Proposal

One comment that was submitted in response to the NPRM raised questions concerning the applicability of the proposed AD. The commenter, a U.S. operator, noted that the proposal would apply to only 20 of the 40 Fokker F28 Model Mark 0100 series airplanes in its fleet. However, this operator pointed out that all 40 of its Model F28 Mark 0100 series airplanes have the same overwing emergency exit sign configuration (i.e., emergency exit signs on the covers of the operating handles), and do not have the emergency exit signs above the overwing emergency exits, was proposed by this AD. This operator also pointed out that, if the effectivity listing in Fokker Service Bulletin SBF100–33–015, Revision 1, dated March 21, 1994 (which was referenced as the appropriate source of service information in the proposal) is incorrect, then other operators' fleets also could be affected.

Based on this comment, the FAA worked in consultation with the Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, and Fokker, to determine that 20 Model F28 Mark 0100 series airplanes were excluded inadvertently from the effectivity listing of the

referenced service bulletin. Those 20 airplanes had provisions for the new exit signs incorporated during production; however, in accordance the operators' request, the airplanes were delivered with the old exit sign configuration. In light of this, those 20 airplanes are subject to the same unsafe condition addressed in the original proposal.

Accordingly, the FAA has revised the applicability and the cost impact information of this supplemental NPRM to include the additional 20 airplanes.

Conclusion

Since this change expands the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

The FAA estimates that 40 Fokker Model F28 Mark 0100 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 71 work hours per airplane to accomplish the proposed installation, and that the average labor rate is $60 per work hour. Required parts would cost approximately $1,600 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $234,400, or $5,860 per airplane.

Note: For the additional 20 airplanes that have been added to the applicability of this supplemental NPRM, the estimated work hours, above, may be overstated, since many of the steps relevant to the installation have already been accomplished during production.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Docket 94–NM–117–AD.

Applicability: Model F28 Mark 0100 series airplanes, having the following serial numbers, certificated in any category:

Serial Numbers

11244
11245
11248 through 11256 inclusive
11261
11268 through 11283 inclusive
11286
11289
11290
11291
11293
11295 through 11297 inclusive
11300
11303
11306 through 11308 inclusive
11310 through 11315 inclusive
11331
11333
11334
11337
11338
11345
11346
11349
11357
11358
11365
11366
11372
11373
11379
11380
11391
11392
11398, and
11399.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the "EXIT" signs for the overwing emergency exit are clearly visible during an evacuation, accomplish the following:

(a) Within 8 months after the effective date of this AD, install two additional "EXIT" signs, one above and between the left-hand overwing emergency exits, and one above and between the right-hand overwing emergency exits, in accordance with Fokker Service Bulletin SBF100–33–015, Revision 1, dated March 21, 1994.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 21, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–4949 Filed 2–27–97; 8:45 am]

BILLING CODE 4910–13–U

FEDERAL TRADE COMMISSION

16 CFR Part 436

Trade Regulation Rule on Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures

AGENCY: Federal Trade Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission (the "Commission") proposes to commence a rulemaking proceeding to amend its Trade Regulation Rule entitled Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures ("the Franchise Rule" or "the Rule").

On April 7, 1995, the Commission solicited comment on the Franchise Rule, as part of its periodic review of all Commission trade regulations and guides. On the basis of the record developed during the review of the Franchise Rule, the Commission proposes to commence a rulemaking to amend the Franchise Rule. The Commission is soliciting written comment, data, and arguments concerning this proposal. In addition, the Commission solicits comment on how the Commission can ensure the broadest participation by affected interests in the Rule amendment process.

DATES: Comments must be submitted on or before April 30, 1997.

ADDRESSES: Written comments should be identified as "16 CFR Part 436" and sent to Secretary, Federal Trade Commission, Room 159, Sixth Street and Pennsylvania Ave., N.W. Washington, DC 20580. To facilitate prompt and efficient review and dissemination of the comments to the public, all written comments should also be submitted, if possible, in electronic form, on either a 5¼ or a 3½ inch computer disk, with a label on the disk stating the name of the commenter and the name and version of the word processing program used to create the document. Programs based on DOS are preferred. In order for files from other operating systems to be accepted, they should be submitted in ASCII text format.

The Commission will also accept comments submitted to the following E-Mail address: "FRANPR@ftc.gov". In addition, commenters may leave a short comment on a telephone hotline number designated for this purpose: (202) 326–3573.

All comments will be placed on the public record and will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and the Commission's Rules of Practice, 16 CFR 4.11, during normal business days from 8:30 a.m. to 5:00 p.m., at the Public Reference Room, Room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W. Washington, DC 20580. In addition, comments will be placed on the Internet at the FTC's web site: http://www.ftc.gov.

FOR FURTHER INFORMATION CONTACT: Steven Toporoff, (202) 326–3135, or Myra Howard (202) 326–2047, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Part A—General Background Information

The Commission is publishing this notice pursuant to Section 18 of the Federal Trade Commission ("FTC") Act, 15 U.S.C. 57a *et seq.*, and the provisions of Part 1, Subpart B of the Commission's Rules of Practice, 16 CFR 1.7, and 5 U.S.C. 551 *et seq.* This authority permits the Commission to promulgate, modify, and repeal trade regulation rules that define with specificity acts or practices that are unfair or deceptive in or affecting commerce within the meaning of Section 5(a)(1) of the FTC Act, 15 U.S.C. 45(a)(1).

The Commission promulgated the Franchise Rule on December 21, 1978, 43 FR 59614. On April 7, 1995, the Commission published a request for comment on the Rule, 60 FR 17656 ("FR Notice"), as part of its continuing review of its trade regulation rules ("Rule Review") to determine their current effectiveness and impact. The FR Notice sought comment on the standard regulatory review questions, such as what are the costs and benefits of the Rule, what changes in the Rule would increase the Rule's benefits to consumers and how would those changes affect compliance costs, and what changes in the marketplace and new technologies may affect the Rule.

The FR Notice also sought comment on several specific issues: (1) Whether the Commission should amend the Rule by replacing the disclosures with those set forth in the revised Uniform Franchise Offering Circular ("UFOC") guidelines; (2) Whether the Commission should amend the Rule to distinguish between disclosures required for business opportunities and those required for franchises; (3) Whether the Commission should retain the conditional exemption for trade show promoters; (4) Whether the Commission should amend the Rule to require franchisors to disclose earnings information; and (5) Whether the Commission should amend the Rule to address new marketing practices (such as international franchise sales) and new technologies (such as the Internet).

In addition to soliciting written comment on these issues, Commission staff held two public workshop conferences on the Rule. Staff held the first conference on September 11–13, 1995, in Bloomington, Minnesota. The participants discussed whether there is a continuing need for the Rule, and, if so, whether the Commission could improve the Rule. Staff held the second conference in Washington, D.C., on March 11, 1996, and the participants focused on the application of the Franchise Rule to international franchise sales.[1]

The Rule Review elicited 75 written comments.[2] The comments generally express continuing support for the Rule, stating that pre-sale disclosure is a cost-effective way to disseminate material information to prospective franchisees that otherwise might be unavailable.[3] Pre-sale disclosure is also necessary to prevent fraud[4] and to reduce the level of post-sale franchise relationship disputes.[5] Most commenters state that the Rule's benefits outweigh the costs

[1] The transcript of the September 1995 Conference is cited as "[name of commenter], TR at ____;" the transcript of the March 1996 Conference is cited as "[name of commenter], TR2 at ____." For a complete list of panelists, and the abbreviations used to identify each panelist in this Advance Notice of Proposed Rulemaking ("ANPR"), see Attachments 1 and 2. The transcripts are on the public record and are available for public inspection.

[2] The commenters included franchisors, franchisees, franchisor and franchisee trade associations, state franchise and business opportunity regulators, Bar Associations, franchise consultants, academicians, and a journalist. The comments are cited as "[name of commenter], Comment [designated number], at ____." For a complete list of the commenters, and the abbreviations used to identify each commenter in this ANPR, see Attachment 3. All Rule Review comments are on the public record and are available for public inspection.

[3] *See, e.g.*, DSA, Comment 21, at 2; Commissioner McDonald, Comment 30, at 2; Rabenberg, TR at 103–06. *See also* IFA, Comment 32, at 4; Little Caesars, Comment 31, at 1; Southland Corp., Comment 37, at 2. *But see* Midgol, Comment 3, at 2; AAFD, Comment 39, at 3. Several commenters recommended that the Commission replace its Rule with the UFOC disclosure format. *See, e.g.*, IFA, Comment 32, at 2–3; Simon, Comment 36, at 3–4.

[4] *See, e.g.*, General Ryan, Comment 25, at 1; Bortner, Comment 37, at 1; NASAA, Comment 43, at 1.

[5] *See, e.g.*, ABA AT, Comment 22, at 7–8; SBA Advocacy, Comment 34, at 9; Simon, Comment 36, at 2; Shay, TR at 22–23.

imposed on consumers.[6] On the basis of the Rule Review record, the Commission has decided that the Rule serves a useful purpose. Nonetheless, the Commission seeks additional comment on possible modifications to the Rule, as discussed below.

Part B—Objectives the Commission Seeks to Achieve and Possible Regulatory Alternatives

1. Modifications to the Franchise Rule Disclosure Requirements

a. Background

The Commission wants to ensure that the Franchise Rule continues to serve a useful purpose and does not impose unnecessary regulatory burdens. Accordingly, the Commission seeks comment on whether the Rule itself or any specific provisions of the Rule no longer serve a useful purpose and should be deleted.

The Commission also recognizes that many commenters recommend that the Commission revise the Rule's disclosure requirements. In particular, these commenters suggest that the Commission replace the Rule's disclosures with those set forth in the revised UFOC guidelines.[7] They contend that the UFOC's disclosures are superior to those of the Rule, and the UFOC's format is more "user friendly."[8] This group of commenters further believes that revising the Rule to mirror the UFOC guidelines would promote a more uniform, national disclosure standard.[9] Commenters also believe that, as a practical matter, the vast majority of franchisors use the UFOC in order to comply with state registration laws. Thus, they conclude that revising the Rule would cause few franchisors to incur additional costs.[10]

A few commenters, however, oppose revising the Rule based on the UFOC guidelines model. They contend that small or regional franchisors who use the FTC format will incur significant expenses if forced to convert to a disclosure format akin to the UFOC guidelines.[11]

Some commenters also recommend that, if the Commission revises the Rule based on the UFOC guidelines disclosure requirements, it should first modify or fine-tune several of those disclosures. For example, several commenters recommend that the Commission revise the disclosure of statistics on the franchisees who have left the franchise system (Item 20 of the UFOC). They note that Item 20, as currently written, may cause franchisors to overcount franchisee closures, leading to inflated franchisee failure rates.[12] Commenters also recommend that the Commission continue to permit a three-year phase-in of audited financial statements.[13]

b. Objectives and Regulatory Alternatives

On the basis of the Rule Review record, the Commission wishes to explore further whether it should revise the Rule's disclosures based on the UFOC guidelines.[14] At the same time, the Commission recognizes that franchisors and state regulators have more than two years of experience with the revised UFOC disclosure requirements. Accordingly, in considering whether to revise the Rule based upon the UFOC model, the Commission seeks additional comment on whether any of the UFOC's required disclosures should be modified or fine-tuned.

In particular, the Commission seeks comment on whether the litigation disclosures (Item 3 of the UFOC guidelines) should be expanded to include the disclosure of lawsuits filed by franchisors against franchisees. This modification would require the broadest disclosure of lawsuits involving the franchise relationship.

Further, the Commission seeks comment on whether the disclosure of franchisee statistics (Item 20 of the UFOC guidelines) should be modified. In particular, the Commission solicits comment on whether the franchisee statistics, as required by Item 20 of the UFOC, accurately reflect franchisees' performance history and, if they do not, how could the Commission modify those disclosures to reflect such performance history more accurately? In connection with the disclosure of information concerning former and existing franchisees, the Commission also seeks comment on the use of "gag-order" provisions by franchisors that may effectively bar some franchisees from sharing their experiences with prospective franchisees. The Commission is concerned that such gag-orders may enable franchisors to circumvent the very purpose of a disclosure such as Item 20 of the UFOC—to enable prospective franchisees to learn material information about the franchise system through discussions with former and existing franchisees.

Finally, the Commission wants to ensure that the Rule does not create unreasonable barriers to entry for start-up franchisors. Accordingly, the Commission seeks comment on whether it should retain its policy of permitting a three-year phase-in of audited financial statements for new entrants.

2. Distinguishing Between Disclosure Requirements for Business Opportunities and for Franchises

a. Background

The Franchise Rule covers different types of business arrangements: package and product franchises and business opportunities. In package and product franchises, the investor sells goods or services that are associated with the franchisor's trademark and are subject to significant control by, or receive significant assistance from, the franchisor.[15] In contrast, business opportunities often do not involve a trademark. Rather, the investor typically distributes goods or services supplied by the seller or an affiliate and receives accounts or locations in which to conduct the business. Vending machine or rack display routes are typical examples of a business opportunity.

The Franchise Rule imposes identical disclosure requirements for business opportunities and franchises. In the FR Notice, the Commission sought comment on whether the Commission should distinguish between these two business formats. The Commission also asked how the Rule should define the

[6] *See, e.g.*, Dub, Comment 2, at 2; McBirney, Comment 7, at 2; ABA AT, Comment 22, at 8–9.

[7] *See, e.g.*, D'Imperio, Comment 16, at 1; ABA AT, Comment 22, at 5–6; General Ryan, Comment 25, at 1; Snap-On, Comment 27, at 1; NASAA, Comment 43, at 2; Forte Hotels, Comment 52, at 1.

[8] *See, e.g.*, Wieczorek, Comment 23, at 2; IFA, Comment 32, at 3–4; AAFD, Comment 39, at 6; CA BLS, Comment 45, at 4; Simon, TR at 211; Perry, TR at 263.

[9] *See, e.g.*, Wieczorek, Comment 23, at 1; Maxey, TR at 36.

[10] *See, e.g.*, McBirney, Comment 7, at 2; Wieczorek, Comment 23, at 1; Lewis, Comment 40, at 1; Hayden, Comment 42, at 1; CA BLS, Comment 45, at 1–2.

[11] *See* Dub, Comment 2, at 1–2; Nopar, Comment 26, at 1–2. *See also* Century 21, Comment 41, at 1.

[12] *See, e.g.*, Simon, TR at 224; Perry, TR at 263.

[13] *See, e.g.*, Wieczorek, Comment 23, at 2; IFA, Comment 32, at 4.

[14] This proposal does not contemplate preemption of state law. If the Commission were to revise its Rule based upon the UFOC disclosure requirements, there would be no change in state franchise laws. Franchisors would remain free to use either the UFOC format or the Commission's format, albeit the two formats would be substantially similar. In addition, any state modifications to the UFOC guidelines in the future would not alter the Commission's disclosure requirements, unless the Commission similarly amended its Rule.

[15] Restaurant outlets are a typical example of a package franchise, where the investor typically produces goods or services according to the franchisor's specifications. Gasoline stations are an example of a product franchise, where the investor typically gains the right to distribute the franchisor's trademarked products.

term "business opportunity" and what disclosures are relevant to the sale of business opportunities.

The commenters overwhelmingly recommend that the Commission amend the Rule to distinguish between business opportunities and franchises.[16] Commenters note that business opportunities and franchises are distinct business formats[17] and that it is confusing to use the term "franchise" to describe both formats.[18] There is no consensus, however, on how to define a business opportunity or what pre-sale disclosures are appropriate for the sale of business opportunities.

b. Objectives and Regulatory Alternatives

The Rule Review record supports amending the Rule to distinguish between disclosure requirements for business opportunities and for franchises. The record also supports amending the Rule to define precisely the term "business opportunity."

At this time, however, the Commission is not prepared to make specific recommendations on either the appropriate disclosures for business opportunities, or a definition of the term "business opportunity." During the Rule Review, the Commission received only a few comments addressing this issue. Specifically, the Commission received comments from one business opportunity purchaser,[19] one association that arguably represents the interests of some business opportunity sellers,[20] and one attorney who has represented multilevel distributors.[21] At this time, the record is insufficient on this issue.

In order to develop the record more fully on business opportunities, the Commission solicits comment on which types of business opportunities are known to engage in deceptive or fraudulent conduct and what disclosures are material to business opportunity purchasers. In addition, the Commission seeks comment on the appropriate definition of the term "business opportunity."

As a starting point in the discussion, the Commission solicits comment on the following definition of "business opportunity" contained in many Federal District Court injunctions[22] obtained by the Commission: "Business opportunity" is defined as any written or oral business arrangement, however denominated, which consists of the payment of any consideration for:

A. The right or means to offer, sell, or distribute goods or services (whether or not identified by a trademark, service mark, trade name, advertising, or other commercial symbol); and

B. More than nominal assistance to any person or entity in connection with or incident to the establishment, maintenance, or operation of a new business, or the entry by an existing business into a new line or type of business.

The Commission also solicits suggestions of alternative definitions of the term "business opportunity." Finally, the Commission seeks comment on how it can ensure greater participation by business opportunity interests in the rulemaking process.

3. Conditional Exemption for Trade Show Promoters

a. Background

Trade show promoters are jointly and severally liable for Rule violations as "franchise brokers." However, they are conditionally exempt from liability if they provide attendees at their shows with a specific consumer education notice. In the FR Notice, the Commission solicited comment on whether the Commission should retain this conditional exemption.

Several commenters, including several trade show promoters and their representatives, recommend that the Commission no longer hold trade show promoters jointly and severally liable as brokers for Rule violations. They contend that trade show promoters do not function as franchise brokers as contemplated by the Rule.[23] Further, they believe that trade show promoters lack the ability to monitor franchisor-exhibitors' sales practices at shows[24] and do not have any incentive to mislead consumers.[25] In the alternative, commenters urge the Commission to retain the conditional exemption for trade show promoters. They contend that holding trade show promoters liable as "brokers" would harm both franchisors and consumers by making it impossible for trade shows to continue in business.[26]

Other commenters recommend that the Commission revoke the conditional exemption on the grounds that trade show promoters should be held accountable for questionable advertising and sales practices made at shows they sponsor.[27] They contend that franchise show promoters should not be able to turn a "blind eye" to violations of the Franchise Rule, while indirectly profiting from such violations.[28]

b. Objectives and Regulatory Alternatives

The Commission wishes to explore further whether trade show promoters should no longer be held liable as "franchise brokers." The Rule Review record supports the view that trade show promoters do not act as brokers: they do not participate in the offer and sale of franchises, do not make sales recommendations, and do not create materials used by franchisor-exhibitors to sell franchises (such as brochures, product displays, agreements, or disclosure documents). Further, trade show promoters, as a practical matter, lack the ability to monitor franchisor-exhibitors' sales practices at their shows. Accordingly, the Commission seeks comment on whether the Commission should amend the Rule's definition of the term "franchise broker" to specifically exempt trade show promoters.

At the same time, the Commission seeks comment on whether prospective franchisees attending trade shows should readily be able to verify claims made by franchisor-exhibitors and their sales agents. Our law enforcement experience indicates that franchisors and business opportunity sellers at trade shows may make various oral or written misrepresentations or unsubstantiated earnings claims. Accordingly, the Commission solicits comment on whether a trade show sales section should be added to the Rule that would require franchisors and their sales agents to have readily available for public inspection at each trade show they attend either a specimen copy of their disclosure document or a letter

[16] *See, e.g.*, Kestenbaum, Comment 14, at 1–2; D'Imperio, Comment 16, at 1–3; Commissioner McDonald, Comment 30, at 3–4; SBA Advocacy, Comment 34, at 37–39; NASAA, Comment 43, at 2–3; Rabenberg, TR at 129; Shay, TR at 132.

[17] *See, e.g.*, DSA, Comment 21, at 2.

[18] *See, e.g.*, D'Imperio, Comment 16, at 1; DSA, Comment 21, at 2.

[19] *See* Rabenberg, Comment 28.

[20] *See* DSA, Comment 21.

[21] *See* Brooks, Comment 29.

[22] *See, e.g.*, *F.T.C.* v. *Telecommunications of America, Inc.*, Civ. No. 95–693–CIV-ORL–22 (M.D. Fla. 1995)(Stipulated Final Order for Permanent Injunction); *F.T.C.* v. *United States Business Bureau*, Civ. No. 95–6636–CIV-Ferguson (S.D. Fla. 1995)(Stipulated Final Order for Permanent Injunction); *F.T.C.* v. *Car Checkers of America*, Civ. No. 93–623 (MLP) (D. N.J. 1993)(Stipulated Final Order for Permanent Injunction).

[23] *See, e.g.*, Brownstein Zeidman, Comment 33, at 3–4; Perry, TR at 262.

[24] *See, e.g.*, Q.M. Marketing, Comment 17, at 2; Wieczorek, Comment 23, at 3; CA BLS, Comment 45, at 10.

[25] *See* Brownstein Zeidman, Comment 33, at 4. *See also* Huke, TR at 235.

[26] *See* Brownstein Zeidman, Comment 33, at 8. *See also* Gaston, Comment 46, at 1.

[27] *See, e.g.*, General Ryan, Comment 25, at 2; Commissioner McDonald, Comment 30, at 6; Bortner, Comment 37, at 3; NASAA, Comment 43, at 2.

[28] *See* Hayden, Comment 42, at 2.

from an attorney stating that, although they are covered by the Rule's definition of a franchise, they fall within one of the Rule's exclusions or exemptions. In the alternative, the Commission solicits comment on whether the Rule's definition of "personal meeting" should be modified to require all franchisors and their sales agents to have readily available for public inspection at each trade show they attend either a specimen copy of their disclosure document or a letter from an attorney stating that, although they are covered by the Rule's definition of a franchise, they fall within one of the Rule's exclusions or exemptions.

4. Earnings Disclosures

a. Background

In the FR Notice, the Commission solicited comment on whether it should modify the Rule to require franchisors to disclose earnings information. The Commission also solicited comment on the extent to which franchisors disclose financial data to prospective franchisees; the types of financial data currently available to franchisors; the costs and benefits of possible required earnings disclosures; and possible earnings disclosure formats and exemptions.

State franchise regulators, franchisees, and franchisee representatives recommend that the Commission mandate earnings disclosures. They believe that earnings information is the most material information prospective franchisees need to make an informed investment decision.[29] They also believe that franchisors already have such information and that it is deceptive for such franchisors to fail to disclose this information to prospective franchisees.[30] They also contend that disclosure of earnings information will reduce the level of false and unsubstantiated oral and written earnings claims.[31] Several commenters also contend that the franchise marketplace and competition would benefit from the free flow of earnings information.[32] Finally, commenters note that a mandatory earnings disclosure would correct the misrepresentation made by some franchisors that the Franchise Rule or the FTC prohibits the making of earnings disclosures.[33]

Franchisors generally oppose mandatory disclosure of earnings information.[34] They contend that it is impossible for the Commission to create one earnings disclosure format for all franchised businesses that will not be misleading, noting that information collected from franchisees is not uniform[35] and may be inaccurate.[36] In addition, they contend that not all franchisors have the contractual ability to gather earnings data from their franchisees.[37] These commenters are also concerned that earnings information collected from franchisees may have little predictive value to a prospective franchisee[38] and that such information may be misinterpreted as a guarantee of future performance.[39] They also believe that mandating an earnings disclosure would increase the burdens and costs on existing franchisees: franchisors may require them to submit earnings information and may subject them to increased liability for reporting inaccurate earnings information.[40] For these reasons, many commenters believe that mandating earnings disclosures would have a negative impact upon the franchisor-franchisee relationship.[41]

b. Objectives and Regulatory Alternatives

The Commission believes that consumers should have access to material information before investing in a franchise or business opportunity. The Rule Review record, however, does not support the view that a franchisor's failure to provide earnings information is necessarily deceptive or unfair. Approximately 20 percent of franchisors currently choose to make earnings disclosures.[42] Thus, in theory, prospective franchisees can find franchise systems that voluntarily disclose earnings information.[43] If prospective franchisees were to seek out such franchise systems, or demand the disclosure of such information from franchisors, ordinary market forces may compel an increasing number of franchisors to disclose earnings information voluntarily, without federal government intervention.

In addition, the Rule Review record indicates that prospective franchisees can obtain earnings information from other sources. For example, typical expenses, such as labor and rent, may be available from industry trade associations and industry trade press.[44] In addition, prospective franchisees are free to discuss earnings and other performance issues with former and existing franchisees.

Moreover, the Rule Review record does not provide a sufficient basis for the Commission to formulate an earnings disclosure that would be both useful and not misleading to prospective franchisees. Finally, mandating earnings might impose additional burdens and costs on existing franchisees. Yet, the Rule Review record is insufficient to establish that these increased burdens and costs are outweighed by benefits to prospective franchisees.

Nonetheless, the Commission believes that it is important to correct the misrepresentation made by some franchisors that the Commission or the Franchise Rule actually prohibits the disclosure of earnings information. At the same time, the Commission wants to caution prospective franchisees not to rely on unsubstantiated earnings representations. Accordingly, the Commission solicits comment on whether the Rule should be modified to require all franchisors to make the following prescribed statement in their disclosure document:

> The FTC's Franchise Rule permits a franchisor to provide you with information about the actual or potential sales, income, or profits of its outlets, provided that there is a reasonable basis for such information and the franchisor offers to provide you with written substantiation. You should not rely on any information on sales, income, or profits provided by a franchisor or its salesperson if written substantiation is not offered.

[29] *See, e.g.*, Lagarias, Comment 13, at 1–2; SBA Advocacy, Comment 34, at 55; AFA, Comment 38, at 1; AAFD, Comment 39, at 6.

[30] *See, e.g.*, Pennell, Comment 5, at 1; Brown, Comment 9, at 3–129; Lagarias, Comment 13, at 3; AFA, Comment 38, at 1.

[31] *See, e.g.*, Lagarias, Comment 13, at 2; AAFD, Comment 39, at 7; Selden, Comment 49, at 4.

[32] *See, e.g.*, ABA AT, Comment 22, at 5–6.

[33] *See, e.g.*, Lagarias, Comment 13, at 2; AFA, Comment 38, at 9; Perry, Comment 44, at 5.

[34] *See, e.g.*, Dub, Comment 2, at 4; RENN, Comment 24, at 2; Snap-On, Comment 27, at 2; IFA, Comment 32, at 14; Gaston, Comment 46, at 1.

[35] *See* U-Save Auto Rental, Comment 19, at 2; IFA, Comment 32, at 12–13; Simon, Comment 36, at 6.

[36] *See, e.g.*, Glenn, Comment 6, at 2; SRA International, Comment 8, at 3; CA BLS, Comment 45, at 13; Forseth, TR at 298; Tifford, TR at 303–04; Gaston, TR at 533.

[37] *See, e.g.*, Glenn, Comment 6, at 2; U-Save Auto Rental, Comment 19, at 3; Nopar, Comment 26, at 2; Simon, Comment 36, at 7.

[38] *See, e.g.*, Dub, Comment 2, at 4; SRA International, Comment 8, at 2; RENN, Comment 24, at 2; Nopar, Comment 26, at 4.

[39] *See, e.g.*, D'Imperio, Comment 16, at 11; Simon, Comment 36, at 5.

[40] *See, e.g.*, RENN, Comment 24, at 2; Little Caesars, Comment 31, at 2; Simon, Comment 36, at 4–5; Century 21, Comment 41, at 2; Medicap, Comment 48, at 2.

[41] *See, e.g.*, Glenn, Comment 6, at 2; SRA International, Comment 8, at 3; Simon, Comment 36, at 7; Gaston, TR at 531–32. *See also* ABA AT, Comment 22, at 11.

[42] *See, e.g.*, Bortner, Comment 37, at 3; NASAA, Comment 43, at 3.

[43] *See* Lewis, Comment 40, at Exhibit G (compilation of sales, cost, and profit information on 145 franchise systems in 70 business categories).

[44] *See, e.g.*, U-Save Auto Rental, Comment 19, at 2; RENN, Comment 24, at 1.

In addition, the Commission solicits comment on whether franchisors who do not disclose earnings information should include the following additional prescribed statement:

> This franchisor does not make any representations about sales, income, or profits. We also do not authorize our salespersons to make any such representations either orally or in writing.

5. New Marketing Practices and Technological Developments

a. Background

In the FR Notice, the Commission sought information on new marketing practices and technological developments that might have an impact on the Rule. In response, several commenters note the increase in international franchise sales by American franchisors.[45] These commenters request that the Commission clarify its position on whether the Franchise Rule applies in such circumstances. In order to develop the record on this issue, Commission staff held a one-day public workshop conference in March 1996.

The Rule Review record strongly supports modification of the Rule to clarify that international franchise sales are not within its purview. Among other factors, commenters note that: (1) the Commission did not contemplate international franchising when it promulgated the Rule;[46] (2) the disclosures required by the Franchise Rule are aimed at the domestic market;[47] (3) foreign franchise purchasers are sophisticated and do not need the Rule's protections;[48] (4) attempting to comply with the Franchise Rule in foreign sales might result in the dissemination of inaccurate or misleading information;[49] and (5) application of the Franchise Rule to international sales would unnecessarily impede competition.[50]

In addition to the international sales issue, the Commission explored whether the Rule should be modified in light of increased sales of franchises and business opportunities through the telephone and the Internet. For example, one commenter observes that the day may come when franchise sales are conducted solely via computer without any "personal meeting."[51]

The Commission also believes that two additional marketing developments warrant further comment. First, the Commission notes the increased sale of "stream of revenue" package franchises. Most often used in commercial janitorial services franchises, stream of revenue franchises involve a promise by the franchisor to provide the franchisee with accounts that will generate a certain level of income. The franchisee then selects the level of accounts desired and pays a franchise fee that varies in some proportion to the value of those accounts. The Commission believes that the offer of accounts worth a certain value suggests to the prospective franchisee a particular level of potential income, which constitutes the making of an earnings representation under the Rule.

Second, the Commission notes the increasing sale of "co-branded" franchises, in which two or more franchisors combine forces to offer a franchisee the opportunity to operate two or more trademarked franchises in one outlet. For example, an ice cream franchisor and a donuts franchisor might offer one joint franchise system. In such circumstances, the Commission is uncertain whether the franchisee is purchasing two individually trademarked franchises (and thus should receive separate disclosures from each franchisor) or is purchasing a hybrid franchise arrangement that has its own risks (and thus should receive a single unified disclosure document).[52]

b. Objectives and Regulatory Alternatives

The Commission wants to ensure that the Rule does not impose unnecessary costs and burdens without corresponding benefits to consumers. Accordingly, the Commission seeks comment on whether it should modify the Rule to clarify that the Rule does not reach the sale of franchises to be located or operated outside the United States, its territories, and possessions. The Commission also seeks comment on the appropriate language for such a modification.

The Commission also wants to ensure that consumers receive pre-sale disclosures early in the sales process. The Rule requires franchisors to provide prospective franchisees with a disclosure document at the earlier of the "time for making of disclosures"[53] or the first "personal meeting."[54] The Commission believes that the term "personal meeting," which triggers the franchisor's obligation to provide a disclosure document, may be obsolete in light of the increasing use of the telephone and the Internet to market franchises and business opportunities. The term "personal meeting" contained in the Rule was designed to reach that point in the sales process when the franchise seller engages a prospective franchisee in substantive discussion about the venture being offered. Accordingly, the Commission seeks comment on whether the Rule should be modified to replace the term "personal meeting" with a term such as "first substantive discussion." The Commission seeks comment on alternatives, as well as any costs or benefits associated with each such alternative. At the same time, the Commission seeks comment on how franchisors might be able to comply with the Rule's disclosure requirements through the Internet.

In addition, the Commission wants to ensure that franchisors and franchisees are clear about what constitutes an earnings representation that would trigger the Rule's substantiation requirements. Accordingly, the Commission seeks comment on whether it should amend the Rule's treatment of earnings representations to make explicit that the offer of a stream of revenue franchise is the making of an earnings representation that would trigger the Rule's earnings substantiation requirements.

Finally, the Commission wants to ensure that prospective franchisees receive complete and relevant disclosures. Accordingly, the Commission seeks comment on the sale of co-branded franchises. In particular, the Commission seeks information on the extent to which franchise sales involve more than one trademark. It also

[45] *See, e.g.*, IFA, Comment 32, at 15–16; Zwisler, Comment 59, at 6; Tifford, TR at 199. *See generally* Mazero, Comment 50.

[46] *See, e.g.*, Clanton, TR2 at 169; Baer, TR2 at 160–61; Wulff, TR2 at 154.

[47] *See, e.g.*, Wieczorek, Comment 60, at 3–5; Pepsico, Comment 62, at 2–3; IFA, Comment 63, at 4; Clanton, TR2 at 169.

[48] *See, e.g.*, IFA, Comment 64, at 3; Loewinger, TR2 at 85; Swartz, TR2 at 113. *See also* Mazero, Comment 50, at 33; Zwisler, Comment 59, at 3.

[49] *See, e.g.*, Friday's, Comment 58, at 1; Mazero, TR at 188. *See also* Wieczorek, Comment 60, at 3–5; Miolla, TR2 at 74–75; Ainsley, TR2 at 116.

[50] *See, e.g.*, Zeidman, TR2 at 109; Brennan, TR2 at 165; Mills, TR2 at 203.

[51] *See* Pineles, TR at 180–81.

[52] Co-branding raises a number of disclosure issues. For example, should the purchaser of a co-branded franchise receive disclosures of franchisee statistics from each individual franchisor participating in the co-branded arrangement, or should the purchaser also receive statistics on previous purchasers of the co-branded franchise. Similarly, must termination and renewal rights be consistent for each participating franchisor, or may each participating franchisor impose their own termination and renewal rights?

[53] The term "time for making of disclosures" means ten business days prior to the earlier of: (1) the execution of a franchise agreement or other agreement imposing a binding legal obligation; or (2) the payment of a fee in connection with the sale of the proposed franchise. *See* 15 CFR § 436.2(g).

[54] The term "personal meeting" means a face-to-face meeting held for the purpose of discussing the sale or possible sale of a franchise. *See* 16 CFR § 426.2(o).

solicits comment on whether there is any confusion among franchisors with respect to their disclosure obligation when joining forces to sell a co-branded franchise. The Commission also seeks comment on whether any need exists to clarify the Rule to address disclosure obligations with respect to the sale of a co-branded franchise system.

6. Alternatives to Burdensome Regulations and Enforcement

a. Background

On March 4, 1995, the White House issued a Memorandum directed at all heads of federal departments and agencies on the Regulatory Reinvention Initiative. This memorandum makes regulatory reform a top priority. Among other things, the memorandum asks agencies to learn from those affected by regulation, as well as to consider ways to promote better communication, consensus building, and a less adversarial environment between regulators and the regulated. Specifically, the memorandum asks agencies to consider if the intended goals of regulation can be achieved in a more efficient, less intrusive way, and whether private sector alternatives can better achieve the public good envisioned by the regulation.

In response to the March 4, 1995, memorandum on the Regulatory Reinvention Initiative, the Commission intends to reduce regulatory burdens, where appropriate. The Commission also intends to use the private sector as a partner in a cooperative effort to tackle deceptive and unfair trade practices where they exist. Indeed, developing partnership with industry has become vital in an age of reduced law enforcement resources. Thus, in addition to its role as a vigilant law enforcement agent, the Commission will encourage self-regulation by the private sector, where appropriate.

b. Objectives and Regulatory Alternatives

In keeping with the goals of the Regulatory Reinvention Initiative, the Commission seeks comment on whether it should develop a program to reduce or waive civil penalties for violations of the Franchise Rule under limited circumstances. In an age of decreasing resources, the Commission questions whether it should continue to use its limited resources to pursue technical or minor violations of the Franchise Rule, instead of focusing its attention on more serious violations that have caused significant consumer injury.

Accordingly, the Commission solicits comment on: (1) whether it should develop a program to reduce or waive civil penalties for technical or minor violations of the Franchise Rule; (2) under what circumstances should the Commission consider reducing or waiving civil penalties?; (3) under what circumstances would it be inappropriate for the Commission to reduce or waive a civil penalty?; and (4) what terms and conditions should accompany the waiver or reduction of a civil penalty? The Commission also seeks comments on the costs and benefits of any such program to reduce civil penalties on both franchisors and franchisees?

7. The Rulemaking Process

The Commission seeks the broadest participation by the affected interests in the rulemaking. To that end, the Commission will revise the Franchise Rule through an "open rulemaking," which will provide all affected interests numerous opportunities to submit comments and to participate in the rule amendment process.

The Commission encourages all interested parties to submit written comments. The Commission, however, recognizes that some interested parties may find it easier to submit comments through the Internet or by telephone. Accordingly, the Commission will permit comments to be filed via an E-Mail address on the Internet and through a telephone hotline number designated for this purpose.

The Commission also expects the affected interests to assist the Commission in analyzing various options and in drafting a proposed amended rule. The Commission believes that public workshop conferences to discuss the various issues involving the Rule are a productive and efficient means to develop the record and explore various alternatives. The Commission will also use public workshop conferences to assist the Commission in drafting a proposed amended rule.

a. Internet Comments

Staff will place a copy of this ANPR on the Internet at the FTC's web site: http://www.ftc.gov. In addition, the Commission will accept comments through the Internet. Accordingly, all interested parties may submit a comment through an E-Mail address designated for this purpose: "FRANPR@ftc.gov." Each comment should contain the name and address of the commenter. The Commission will place all comments on the public record and on the Internet at its web site.

b. Telephone Hotline

Parties interested in submitting a comment via telephone may do so by calling the Commission's telephone hotline number designated for this purpose: (202) 326–3573. This hotline number is intended to facilitate public comment on the rulemaking; it is not intended as a hotline number for disseminating franchise information or for receiving complaint information. The Commission requests all callers to identify themselves clearly, including their name, address, and telephone number. Staff will transcribe all messages verbatim and place them on the public record and on the Internet at the FTC's web site.

c. Public Workshop Conferences

In order to facilitate the greatest participation by the public in the rule amendment process, Commission staff will hold several public workshop conferences to discuss the issues noted above. Staff will announce a schedule of these conferences after the close of the comment period.

Part C—Request for Comments

Members of the public are invited to comment on any issues or concerns they believe are relevant or appropriate to the Commission's consideration of the proposed amendments to the Franchise Rule. The Commission requests that factual data upon which the comments are based be submitted with the comments. In addition to the issues raised above, the Commission solicits public comment on the specific questions identified below. These questions are designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted.

Questions

A. The Franchise Rule

1. Is there a continuing need for the Commission's Franchise Rule? Are there any specific Rule disclosure requirements that no longer serve a useful purpose? Should the Commission modify the Rule to delete those requirements? What would be the costs and benefits to franchisors and to prospective franchisees?

B. The UFOC Guidelines

2. Should the Commission revise the Rule based on the UFOC guidelines disclosure requirements? What would be the costs and benefits to franchisors and to prospective franchisees?

3. If the Commission revises the Rule based on the UFOC guidelines disclosure requirements, should the Commission modify the litigation disclosures (Item 3 of the UFOC) to require franchisors to disclose law suits filed by franchisors against franchisees, in addition to suits by franchisees against franchisors? What would be the costs and benefits to franchisors and to prospective franchisees?

4. If the Commission revises the Rule based on the UFOC guidelines disclosure requirements, should the Commission modify the franchisee statistics disclosures (Item 20 of the UFOC guidelines), and if so, how? What would be the costs and benefits to franchisors and to prospective franchisees?

5. To what extent do franchisors use "gag orders" to inhibit former or existing franchisees from speaking with prospective franchisees or other parties? Should the Commission modify the Rule to prohibit franchisors from using such gag order provisions and, if so, how? What alternatives would ensure that prospective franchisees can freely obtain information from former and existing franchisees about their experiences with the franchise system? What would be the costs and benefits of such alternatives?

6. Should the Commission retain the three-year phase-in of financial statements for new entrants? What alternative phase-in provisions would be appropriate? What are the costs and benefits of each alternative?

7. If the Commission uses the UFOC guidelines as a model for revising the Franchise Rule, should the Commission consider modifying or fine-tuning any of the UFOC disclosure requirements? Which ones should be modified and, if so, how? What would be the costs and benefits to franchisors and to prospective franchisees?

C. Business Opportunities

8. What types of business opportunities are common in the United States? What trade associations or other organizations represent the interests of business opportunities?

9. Are there certain types of business opportunities where purchasers are more likely to lose money than others? What are the characteristics of these loss-prone business opportunities? How can the Commission distinguish between the loss-prone business opportunities and those that are more likely to prove profitable?

10. What types of business opportunities are known to engage in fraud? How can the Commission distinguish between fraudulent business opportunities and legitimate business opportunities?

11. Should the minimum investment of $500 that triggers Franchise Rule coverage be lowered for business opportunities? If so, what should be the minimum threshold? What would be the costs and benefits of such a minimum? What would be the costs and benefits of requiring disclosures for sales that involve investments smaller than $500.

12. How should the Commission define the term "business opportunity" for Rule purposes? What characteristics distinguish selling a business opportunity from just selling goods or services? How can these characteristics be used to limit the scope of any business opportunity rule? What would be the costs and benefits of any definition offered?

13. What types of offers of assistance are crucial to a business opportunity? In seeking to define the term "business opportunity," what types of assistance should the Commission focus on? What would be the costs and benefits of such proposals?

14. Should the Commission define the term "business opportunity" as:

Any written or oral business arrangement, however denominated, which consists of the payment of any consideration for:

A. The right or means to offer, sell, or distribute goods or services (whether or not identified by a trademark, service mark, trade name, advertising, or other commercial symbol); and

B. More than nominal assistance to any person or entity in connection with or incident to the establishment, maintenance, or operation of a new business, or the entry by an existing business into a new line or type of business.

What alternative definitions of the term "business opportunity" would be appropriate? What would be the costs and benefits of each alternative?

15. What pre-sale disclosures are necessary to ensure that business opportunity purchasers receive material information necessary to make an informed investment decision? What would be the costs and benefits of each such disclosure?

16. What pre-sale disclosures are necessary to prevent fraud in the sale of business opportunities? What would be the costs and benefits of each such disclosure?

D. Trade Shows

17. Should the Commission modify the Rule to exempt trade show promoters from Rule coverage as brokers? What would be the costs and benefits of such an exemption?

18. Should the Commission modify the Rule to contain a separate trade show sales provision that would require franchisor-exhibitors, brokers, and their agents to have readily available at trade shows for public inspection either a specimen copy of their disclosure document or a letter explaining why they fall within one of the Rule's exclusions or exemptions? If so, how should the Commission define the term "available for public inspection?" What would be the costs and benefits of this proposal?

19. In the alternative, should the Commission modify the Rule's definition of "personal meeting" to require franchisor-exhibitors, brokers, and their agents to have readily available at trade shows for public inspection either a specimen copy of their disclosure document or a letter explaining why they fall within one of the Rule's exclusions or exemptions? If so, how should the Commission define the term "available for public inspection?" What other alternatives should the Commission consider to reduce the instances of deceptive sales representations at trade shows? What would be the costs and benefits of each proposal?

E. Earnings Disclosures

20. To what extent do franchisors represent that either the Rule or the Commission prohibits them from making earnings representations? Is there a need to clarify the Rule to make clear that neither the Commission nor the Rule prohibits franchisors from making earnings representations?

21. Should the Commission modify the Rule to require all franchisors to make the following prescribed statement:

The FTC's Franchise Rule permits a franchisor to provide you with information about the actual or potential sales, income, or profits of its outlets, provided that there is a reasonable basis for such information and the franchisor offers to provide you with written substantiation. You should not rely on any information on sales, income, or profits provided by a franchisor or its salespersons if written substantiation is not offered.

What alternative language would be appropriate? What would be the costs and benefits of such a disclosure?

22. Should the Commission modify the Rule to require all franchisors who do not make earnings disclosures to make the following additional prescribed disclosure:

This franchisor does not make any representations about sales, income, or profits. We also do not authorize our salespersons to make any such

representations either orally or in writing.

Would such a disclosure be interpreted to hold harmless a franchisor whose sales people routinely make unauthorized earnings representations? What alternative language would be appropriate? What would be the costs and benefits of such a disclosure?

23. Should the Commission modify the Rule's treatment of earnings representations to make explicit that the sale of "stream of revenue contracts" is the making of an earnings claim? What would be the costs and benefits of such a modification?

24. Should the Commission modify the Rule's disclosures for earnings claims in advertising? What are the costs and benefits associated with each of the disclosures for earnings claims in advertising? Does the "caution" disclosure provide any information that is not already conveyed by the other required disclosure concerning the percentage of outlets that have achieved the earnings claimed?

25. Should the Commission modify the Rule to require a disclosure for earnings claims only if a significant percentage of outlets do not achieve the earnings claimed? If so, what percentage should trigger the disclosure requirement? What would be the costs and benefits of adopting such an approach?

F. New Marketing Approaches and New Technologies

26. Should the Commission modify the Rule to clarify that the Rule does not reach the sale of franchises to be located or operated outside the United States, its territories, and possessions? If so, please provide recommended language for such a modification. What would be the costs and benefits of such a modification?

27. Should the Commission continue to use the term "personal meeting" for making disclosures in light of the use of the telephone, the Internet, and other technologies to sell franchises? Should the Commission replace the term "personal meeting" with the term "first substantive discussion?" If so, how should the term "first substantive discussion" be defined? What other term would be appropriate? What would be the costs and benefits of such a modification?

28. Should the Commission permit franchisors to comply with the Franchise Rule's disclosure obligations by posting disclosure documents on the Internet? What would be the costs and benefits to both franchisors and prospective franchisees? What aspects of the Rule (or UFOC requirements) might hinder compliance via the Internet? How might the Commission modify the Rule to protect consumers from any potentially deceptive or unfair practices that might arise from firms' efforts to comply with the Rule's disclosure provisions via the Internet?

29. To what extent do franchisors offer for sale multi-trademark franchises ("co-branded" franchises) in the United States? Do franchisors have sufficient guidance under the Rule to determine their disclosure obligations with respect to the sale of co-branded franchises? Do franchisees purchasing a co-branded franchise need additional or different disclosures than those who purchase a single-trademark franchise? Should the Commission modify the Rule to address these concerns and, if so, how? What would be the costs and benefits of any such modification?

G. Self Regulation and Alternatives to Law Enforcement

30. Should the Commission develop a program to reduce or waive civil penalties for certain violations of the Franchise Rule? Under what circumstances would it be appropriate for the Commission to waive or reduce civil penalties involving Franchise Rule violations? What terms or conditions should accompany such a waiver or reduction of civil penalties? Under what circumstances would it be inappropriate to reduce or waive civil penalties? What would be the costs and benefits of such a program on franchisors and franchisees?

H. Additional Issues

31. How can the Commission ensure the broadest participation in the rulemaking process by affected interests? How can the Commission identify affected interests, facilitate the submission of comments, and increase participation by affected interests at future public workshop conferences?

List of Subjects in 16 CFR Part 436

Advertising, Business and industry, Franchising, Trade practices.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,

Secretary.

Attachment 1—September 1995 Public Workshop Conference

Panelists

1. Harold Brown ("Brown"), Brown & Stadfeld
2. Sam Damico ("Damico"), Q.M. Marketing, Inc.
3. Connie B. D'Imperio ("D'Imperio"), Color Your Carpet, Inc.
4. Eric Ellman ("Ellman"), Direct Selling Association ("DSA")
5. Mark B. Forseth ("Forseth"), Locke Purnell Rain Harrell
6. Mike Gaston ("Gaston"), Barkley & Evergreen
7. Susan Kezios ("Kezios"), American Franchisee Association ("AFA")
8. William Kimball ("Kimball"), Iowa Coalition for Responsible Franchising
9. Warren Lewis ("Lewis"), Lewis & Trattner
10. Steven Maxey ("Maxey"), North American Securities Administrators Association, Inc. ("NASAA")
11. Joyce G. Mazero ("Mazero"), Locke Purnell Rain Harrell
12. Barry Pineles ("Pineles"), U.S. Small Business Administration ("SBA Advocacy")
13. Robert Purvin ("Purvin"), American Association of Franchisees & Dealers ("AAFD")
14. Steven Rabenberg ("Rabenberg"), Explore St. Louis
15. Matthew R. Shay ("Shay"), International Franchise Association ("IFA")
16. Neil A. Simon ("Simon"), Hogan & Hartson
17. Robin Spencer ("Spencer"), representing American Franchisee Association
18. Leonard Swartz ("Swartz"), Arthur Andersen & Co.
19. John Tifford ("Tifford"), Brownstein Zeidman & Lore
20. Ronnie Volkening ("Volkening"), The Southland Corporation
21. Dennis E. Wieczorek ("Wieczorek"), Rudnick & Wolfe
22. William J. Wimmer ("Wimmer"), Iowa Coalition for Responsible Franchising

Public Participants

1. Peter Denzen ("Denzen")
2. Bob Hessler ("Hessler"), Wendy's
3. Chris Huke, ("Huke"), SC Promotions
4. Michael Jorgensen ("Jorgensen")
5. Robert L. Perry ("Perry")
6. Brian Schnell ("Schnell"), Gray, Plant, Mooty

Attachment 2—March 1996 Public Workshop Conference

Panelists

1. Kay M. Ainsley ("Ainsley"), Ziebart International Corp.
2. John R.F. Baer ("Baer"), Keck, Mahin & Cate
3. Michael Brennan ("Brennan"), Rudnick & Wolfe
4. Joel R. Bucksberg ("Bucksberg"), HFA Inc.
5. David A. Clanton ("Clanton"), Baker & McKenzie
6. Kenneth R. Costello ("Costello"), Loeb & Loeb
7. Edward J. Fay ("Fay"), Kwik Kopy Corp.
8. Mark B. Forseth ("Forseth"), Locke Purnell Rain Harrell
9. Byron E. Fox ("Fox"), Hunton & Williams
10. Bruce Harsh ("Harsh"), International Trade Specialist, U.S. Department of Commerce
11. Arnold Janofsky ("Janofsky"), Precision Tune
12. Susan P. Kezios ("Kezios"), American Franchisee Association ("AFA")
13. Alex S. Konigsberg, QC ("Konigsberg"), Lapoint Rosenstein
14. Andrew P. Loewinger ("Loewinger"), Abraham Pressman & Bauer
15. H. Bret Lowell ("Lowell"), Brownstein Zeidman & Lore
16. John Melle ("Melle"), Office of U.S. Trade Representative
17. Raymond L. Miolla ("Miolla"), Burger King Corp.
18. Alec Papadakis ("Papadakis"), Hurt Sinisi Papadakis
19. Matthew R. Shay ("Shay"), International Franchise Association ("IFA")
20. Neil A. Simon ("Simon"), Hogan & Hartson
21. Leonard Swartz ("Swartz"), Arthur Andersen & Co.
22. Greg L. Walther ("Walther"), Outback Steakhouse International
23. Dennis E. Wieczorek ("Wieczorek"), Rudnick & Wolfe
24. Erik B. Wulff ("Wulff"), Hogan & Hartson
25. Philip F. Zeidman ("Zeidman"), Brownstein Zeidman & Lore
26. Carl Zwisler ("Zwisler"), Keck, Mahin & Cate

Public Participants

1. Jeff Brams ("Brams"), Sign-A-Rama and Shipping Connection
2. Pamella Mills ("Mills"), Baker & McKenzie

Attachment 3—Table of Commenters

Comment 1. Robert E. Mulloy, Jr. ("Mulloy")
Comment 2. Stanley M. Dub ("Dub"), Dworken & Bernstein
Comment 3. Marvin J. Migdol ("Migdol"), Nationwide Franchise Marketing Services
Comment 4. SCPromotions, Inc. ("SCPromotions")
Comment 5. R. Dana Pennell ("Pennell")
Comment 6. Robin Day Glenn ("Glenn")
Comment 7. Jack McBirney ("McBirney"), McGrow Consulting
Comment 8. SRA International ("SRA International")
Comment 9. Harold Brown ("Brown"), Brown & Stadfeld
Comment 10. Ronald N. Rosenwasser ("Rosenwasser")
Comment 11. Louis F. Sokol ("Sokol")
Comment 12. J. Howard Beales III ("Beales"), Professor, George Washington University
Comment 13. Peter Lagarias ("Lagarias")
Comment 14. Harold L. Kestenbaum ("Kestenbaum")
Comment 15. Walter D. Wilson ("Wilson"), Better Business Bureau of Central Georgia, Inc.
Comment 16. Connie B. D'Imperio ("D'Imperio"), Color Your Carpet, Inc.
Comment 17. Q.M. Marketing, Inc. ("Q.M. Marketing")
Comment 18. David Gurnick ("Gurnick"), Kindel & Anderson
Comment 19. U-Save Auto Rental ("U-Save Auto Rental")
Comment 20. The Longaberger Co. ("Longaberger")
Comment 21. Direct Selling Association ("DSA")
Comment 22. American Bar Association, Section of Antitrust Law ("ABA AT")
Comment 23. Dennis E. Wieczorek ("Wieczorek"), Rudnick & Wolfe
Comment 24. Real Estate National Network ("RENN") (representing Better Homes and Gardens Real Estate Service; Century 21 Real Estate Corp.; Coldwell Bankers Residential Group; Electronic Realty Associates ("ERA"); Realty World Corp.; Re/Max International; and The Prudential Real Estate Affiliates)
Comment 25. Attorney General Jim Ryan ("General Ryan"), State of Illinois
Comment 26. Alan S. Nopar ("Nopar"), Bosco, Blau, Ward & Nopar
Comment 27. Snap-On, Inc. ("Snap-On")
Comment 28. Steven Rabenberg ("Rabenberg"), Explore St. Louis
Comment 29. Douglas M. Brooks ("Brooks"), Martland & Brooks
Comment 30. Robert N. McDonald ("Commissioner McDonald"), Securities Commissioner, State of Maryland
Comment 31. Little Caesars ("Little Caesars")
Comment 32. International Franchise Association ("IFA")
Comment 33. Brownstein Zeidman & Lore ("Brownstein Zeidman")
Comment 34. Jere W. Glover ("Glover"), Counsel for Advocacy, U.S. Small Business Administration ("SBA Advocacy")
Comment 35. Jan Meyers ("Representative Meyers"), Chair, House Committee on Small Business
Comment 36. Neil A. Simon ("Simon"), Hogan & Hartson
Comment 37. Deborah Bortner ("Bortner"), Washington State Department of Financial Institutes, Securities Division
Comment 38. American Franchisee Association ("AFA")
Comment 39. American Association of Franchisees & Dealers ("AAFD")
Comment 40. Warren Lewis ("Lewis"), Lewis & Trattner
Comment 41. Century 21 Real Estate Corp. ("Century 21")
Comment 42. John Hayden ("Hayden")
Comment 43. North American Securities Administrators Association, Inc. ("NASAA")
Comment 44. Robert L. Perry ("Perry")
Comment 45. The State Bar of California, Business Law Section ("CA BLS")
Comment 46. Mike Gaston ("Gaston"), Barkley & Evergreen
Comment 47. The Southland Corporation ("Southland")
Comment 48. Medicap Pharmacies, Inc. ("Medicap")
Comment 49. Rochelle B. Spandorf ("Spandorf"), ABA Forum on Franchising, Andrew C. Selden ("Selden"), David J. Kaufmann ("Kaufmann")
Comment 50. Joyce G. Mazero ("Mazero"), Locke Purnell Rain Harrell
Comment 51. Mark B. Forseth ("Forseth"), Locke Purnell Rain Harrell
Comment 52. Forte Hotels ("Forte Hotels")
Comment 53. R.A. Polite ("Polite")
Comment 54. Polite (*see supra*, Comment 53)
Comment 55. Brown (*see supra*, Comment 9)
Comment 56. Wieczorek (*see supra*, Comment 23)
Comment 57. Scott Shane ("Shane"), Georgia Institute of Technology
Comment 58. Friday's
Comment 59. Carl E. Zwisler ("Zwisler"), Keck, Mahin & Cate
Comment 60. Wieczorek (*see supra*, Comment 23)
Comment 61. Enrique A. Gonzalez ("Gonzalez"), Gonzalez Calvillo Y Forastierei
Comment 62. Pepsico Restaurants International ("Pepsico")
Comment 63. IFA (*see supra*, Comment 32)
Comment 64. Atlantic Richfield Company ("ARCO")
Comment 65. David Clanton ("Clanton")
Comment 66. Leonard Swartz ("Swartz"), Arthur Andersen & Co.
Comment 67. John R.F. Baer ("Baer"), Keck, Mahin & Cate
Comment 68. Lynn Scott ("Scott")
Comment 69. Eversheds ("Eversheds")
Comment 70. Brownstein Zeidman (*see supra*, Comment 33)
Comment 71. Penny Ward ("Ward"), Baker & McKenzie
Comment 72. Matthias Stein ("Stein")
Comment 73. Byron Fox ("Fox"), Hunton & Williams
Comment 74. Papa Johns Pizza ("Papa Johns")
Comment 75. Harold L. Kestenbaum (*see supra*, Comment 14)

[FR Doc. 97–4988 Filed 2–27–97; 8:45 am]

BILLING CODE 6750–01–P

16 CFR Part 601

Proposed Notices of Rights and Duties Under the Fair Credit Reporting Act

AGENCY: Federal Trade Commission.

ACTION: Publication of proposed guidance for forms, and request for public comment.

SUMMARY: The Federal Trade Commission is publishing for public comment three notices that it is required to prescribe under recent amendments to the Fair Credit Reporting Act. Under those amendments, which become effective September 30, 1997, consumer reporting agencies will be required to provide: A summary of rights under the law to consumers; a notice of responsibilities under the law to parties who regularly furnish such agencies with consumer information, and a notice of responsibilities under the law to parties who obtain consumer reports from the agency. Under the statute, a consumer reporting agency will be in compliance with these requirements if it provides notice forms substantially similar to those prescribed by the Commission.

DATES: Comments must be received on or before March 31, 1997.

ADDRESSES: Comments should be addressed to: Office of the Secretary,

Federal Trade Commission, Room H–159, Sixth Street and Pennsylvania Avenue NW, Washington, DC 20580. Submissions should be marked "Proposed Notices of Rights and Duties under the Fair Credit Reporting Act, 16 CFR Part 601—Comment."

FOR FURTHER INFORMATION CONTACT: Clarke Brinckerhoff or William Haynes, Attorneys, Division of Credit Practices, Federal Trade Commission, Washington, DC 20580, 202–326–3224.

SUPPLEMENTARY INFORMATION:

I. Background

A major revision of the Fair Credit Reporting Act ("FCRA") was included in the Omnibus Consolidated Appropriations Act for Fiscal Year 1997 (Pub. L. 104–208), signed by the President on September 30, 1996. The revisions of the FCRA are set forth in a portion of the omnibus bill (Title II, Subtitle D, Chapter 1), the "Consumer Credit Reporting Reform Act of 1996" (CCRRA). The provisions discussed in this publication become effective on September 30, 1997.

The amended FCRA requires each consumer reporting agency ("CRA," usually a credit bureau) to provide certain notices, and mandates that the Federal Trade Commission ("Commission" or "FTC") prescribe the content of all three notices and the form of one notice.

The FCRA amendments require each CRA to provide as part of its file disclosure to consumers a written summary of consumer rights ("summary" or "consumer summary") under the FCRA ((CCRRA Section 2408(d), FCRA Section 609(c)).[1] Section 2408(d)(1) of the CCRRA adds a new Section 609(c) to the FCRA that describes the required summary of consumer rights and the FTC's mandate with respect to it. The new section specifies certain items that must be in the summary, requires the Commission to prescribe the form and content of the disclosure, and states that the provision will not take effect until the Commission has prescribed the summary.

Each CRA must also provide a notice of responsibilities under the FCRA to persons who buy consumer information from the CRA ("user notice"), and a notice of responsibilities under the FCRA to persons who regularly furnish consumer information to the CRA ("furnisher notice") (CCRRA Section 2407(b), FCRA Section 607(d)(1)). The amended law states that the "Commission shall prescribe the content of the notices" to be provided (FCRA Section 607(d)(2)).

For each of the three required disclosures, a CRA complies with the law if it provides the applicable person with a notice that is substantially similar to that prescribed by the Commission (FCRA Sections 607(d)(2) and 609(c)(3)).

II. Opportunity for Public Comment

The Commission welcomes comments related in any way to the proposed consumer summary, user notice, or furnisher notice. The Commission is particularly interested in comments in the following areas.

A. Consumer Summary

1. Balancing brevity and completeness

The statute gives conflicting guidance as to whether the summary should be brief or comprehensive. It is described as a "summary of all the rights the consumer has under" the FCRA (Section 609(c)(1)(A)) that includes "a brief description of * * * all rights of consumers" provided by that law (Section 609(c)(2)(A)). Arguably, no document that is actually a "summary"—or that constitutes a "brief description" of FCRA consumer rights—could literally include "all" of them. The proposal seeks to meet these various statutory goals by prescribing a summary that is both reasonably comprehensive and user friendly for consumers. Is the proposed notice too long in any way to be effective as a summary, and if so, how should it be abbreviated? Conversely, are there important consumer rights that are not included in the proposed form or are discussed too briefly? Please identify any specific sections of the proposed summary that are viewed as too lengthy or incomplete.

2. Statutorily-required items

Section 609(c)(2) mandates that the summary include an explanation of how the consumer may assert his or her rights, list all federal agencies with administrative authority under the FCRA in a form that will help consumers find the appropriate agency, and include specific statements concerning (1) state laws and authorities that may assist consumers, and (2) the fact that verifiable accurate information that is not outdated under Section 605 need not be removed. Are the statutorily-required items accurately and understandably presented? In what way, if any, could they be improved? Specifically, the Commission has drafted the table of federal agencies at the end of the summary to comply literally with Section 609(c)(2)(C) by including all agencies granted enforcement authority by Section 621(b)(1). Is what way, if any, could this table be shortened or made more understandable?

3. Terminology

Because the summary is a document intended to inform consumers, the proposal is written in non-technical language, to the extent it is possible to do so and also include in sufficient detail the large number of important consumer rights conferred by the FCRA. Are there sections which can be improved by simplifying the presentation to make it easier for consumers to understand? Are there sections where the language does not accurately convey the substance of the provision? How could such sections be improved?

4. Form issues

The Commission is required to "prescribe the form and content of" the consumer summary (Section 609(c)(3)) (emphasis added). The goal is to create a notice that sets forth all statutorily required items in a form that is readable, understandable, and attractive. The Commission proposes to prescribe that the text be provided on paper no smaller than 8½x11 inches in size, in type size no smaller than 12-point type (8-point for the chart of federal agencies), in a document separate from the consumer report. Generally, is there a format that would better convey the same information to consumers? If so, what is it and what costs would it entail? Is there a format that would convey the same information to consumers in a less expensive manner? If so, what is it and what cost saving would it achieve?

5. Numeric changes

The Commission realizes that some of the numbers in the notice may change over time. For example, the permissible charges for file disclosures or telephone numbers of agencies may change. Such changes will be incorporated in any revisions to the summary the Commission may prescribe from time to time. In addition, the Commission proposes that all notices issued prior to such revisions that contain accurate and updated information concerning numeric changes will be considered "substantially similar" to the prescribed notice as to those items. Is there a better way to accommodate such changes?

[1] The CRA must also provide the consumer summary to any party to whom it provides a consumer report for employment purposes (CCRRA Section 2403(b), FCRA Section 604(o)(1)(B)), and the employer must in turn provide the report and the summary to the consumer before taking adverse action against him or her (FCRA Section 604(o)(3)).

B. Furnisher Notice

1. Content of notice

The proposed notice summarizes the responsibilities imposed upon furnishers of information to CRAs by Section 623 of the FCRA. Are all statutory obligations of furnishers included? Is the presentation accurate and understandable? In what way can it be improved? Is it sufficient for the notice to refer furnishers to the complete text of the FCRA at the Internet web site maintained by the Commission, or would the notice be improved if it was expanded to add the complete text of Section 623?

2. Scope of notice

The FCRA directs the Commission to prescribe a notice setting forth the responsibilities of any party "who regularly and in the ordinary course of business furnishes (consumer) information to the agency" and requires each CRA to provide the notice to all such parties (CCRRA Section 2407(b), FCRA Section 607(d)). Two of the listed duties apply only to parties who furnish information to CRAs regularly, and thus by inference, not to occasional information providers. Would some CRAs send these notices to occasional as well as regular furnishers? If so, would addition of a reference to the duties of occasional, as well as regular, providers be helpful?

3. Terminology

The Commission's proposed notice summarizes the duties of furnishers. This summary is written in non-technical language, but with the expectation that regular providers of information to CRAs will be relatively sophisticated and will be able to understand both the language of the statute and the description of duties. Is the description of duties accurate and understandable for this audience? What improvements can be made?

C. User Notice

1. Number of Notices

The "users" of consumer reports fall into a number of categories, and the duties imposed by the FCRA vary by user category. Accordingly, CRAs could send out one notice to all users setting forth all of the user requirements of the FCRA or they could send out notices that contain only those responsibilities that pertain to the particular user. The Commission is proposing a single notice, which first specifies the general responsibilities that apply to all users of consumer reports from a CRA (Part I). The proposed notice then lists the responsibilities that are specific to certain categories of users: users of consumer reports for employment purposes (Part II); users of investigative consumer reports (Part III); users of medical information (Part IV); users of "prescreened" lists (Part V); and users who are resellers (Part VI). Should there be a single notice or multiple notices? If multiple notices are appropriate, which types of users should receive particularized notices? Can CRAs easily determine through the certifications they receive from users which portions of the proposed notice are applicable to which users?

2. Content of notice

The proposed notice discusses the principal portions of the FCRA that impose specific obligations upon all those who receive consumer reports and has included these in the six parts of the proposed notice. Are there other statutory requirements that should be included? Should additional information be included in the notice? Will the length of the notice impose substantial burdens upon CRAs? Are there ways to modify the notice to reduce this burden?

3. Terminology

The Commission expects that user notices will be sent to a wide range of users and that these persons will have varying degrees of legal sophistication. Are the duties set forth in the proposed notice clear and understandable? Can they be improved upon?

D. Timing of Distribution of Notices

With respect to the consumer summary, Section 609(c) makes clear that it must be provided every time a CRA makes a written file disclosure under the section. With respect to the furnisher and user notices, however, Section 607(d) provides no specific guidance. Is there a need for advice from the Commission about the timing of the distribution of furnisher and user notices to ensure that the documents are distributed in such a way that they are meaningful and effective? If so, when should the notices be distributed? Should the distribution of the user notice vary based on the recipient's status (*e.g.*, regular and occasional users)?

E. Impact on Small Businesses

The Commission is seeking comments on the impact that its prescription of these notices will have on small entities and for suggestions as to any ways in which the Commission can both meet its obligations under the FCRA and, if possible, lessen any burden imposed on small businesses.

The FCRA itself requires three types of notices containing specified types of information, and also specifies how one type (the consumer notices) must be distributed. Accordingly, this discussion does not cover the necessity for any of the notices or the distribution requirements for the consumer notices.

The Commission is prescribing these notices at the direction of Congress. The purpose of these notices is described in section I above. There is no requirement that the notices used be exactly as prescribed by the Commission. Rather, there is a presumption of compliance with the FCRA if notices are used that are substantially similar to those prescribed by the Commission. (FCRA Sections 607 and 609).

A search of proprietary data bases has revealed approximately 500 consumer reporting agencies that have sales of $5 million or less per year—the threshold for "small" credit reporting businesses as defined by the Small Business Administration. However, because the consumer reporting industry is dominated by a number of large companies who provide most of the information sold by smaller entities in the industry, the Commission believes that most of these 500 companies either are affiliated, or have contractual arrangements, with one of the large consumer reporting agencies in the industry. These large agencies, as well as industry trade associations, may make information about the notice requirements and the Commission's prescribed forms available to the smaller entities. The Commission's staff plans to make information about complying with the new FCRA requirements available through various means, including placing the prescribed forms on the Commission's Internet home page.

The FCRA imposes no specific record keeping or reporting requirements directly tied to the use of the notices prescribed by the Commission. In addition, there are no federal rules or regulations that conflict with or duplicate the notices prescribed by the Commission.

In these circumstances, the Commission does not believe that the prescription of the notices will have a significant economic impact upon small business. In fact, the Commission's "prescription" of these notices may lessen the burden on small businesses, since these entities can—but need not—adopt the Commission's forms and thereby avoid the risk and expense of developing their notices independently. To ensure that no significant economic impact is overlooked, however, the Commission seeks comments on this issue. The Commission also seeks

comments on possible alternatives to the language of the proposed notices to accomplish the stated objectives within the statutory framework. Specifically, what benefits and costs to consumers and businesses would result from the proposed notices? Would the proposed notices have a significant economic impact on a substantial number of small business entities? If so, explain the nature of any such impact.

F. Firm Timetable for Comments

The FTC intends to move promptly in order to allow time for (1) the staff to review and consider comments on the proposed summary and notices, (2) the agency to prescribe them in final form, and (3) the industry to prepare and use the final versions of the documents when the amendments take effect on September 30, 1997. The public should therefore anticipate no extension of the 30-day comment period.

III. Review under the Paperwork Reduction Act

The FTC has reviewed the three notices that the FCRA amendments require it to prescribe—the Summary of FCRA Rights, the Notice of User Obligations, and the Notice of Furnisher Obligations—for the purpose of determining whether the agency will "conduct or sponsor" any "collection(s) of information" as these terms are defined in the OMB regulation that implements the Paperwork Reduction Act (44 U.S.C. Chapter 35) ("PRA"), 5 C.F.R. Part 1320.

A. Conduct or Sponsor

The purpose of the PRA is to minimize the Federal paperwork burden that agencies impose on individuals, businesses, State and local governments, and others by collecting unnecessary or duplicative information. 44 U.S.C. Section 3501; 5 C.F.R. § 1320. Thus, an agency must seek and obtain clearance from OMB before it "conducts or sponsors" a "collection of information" from ten or more persons during a 12 month period. 44 U.S.C. Section 3507; 5 C.F.R. 1320.5.

The FCRA amendments require the credit reporting agencies to provide relevant parties with a Notice of User Obligations and a Notice of Furnisher Obligations that describe certain investigation, disclosure, and recordkeeping requirements. The amendments further require the FTC to prescribe the "content" of the notices. So doing will not trigger the application of the PRA. The PRA is triggered when an agency "conduct(s) or sponsor(s)" a collection of information. The investigation, disclosure, and recordkeeping requirements described in the User and Furnisher Notices are imposed by the statute and the notices merely describe the requirements of the new FCRA. Further, the requirements contained in the notices become effective on October 31, 1997, regardless of whether the FTC has provided the language for these forms by that time.

The FCRA amendments also require the Commission to prescribe the content and form of a new Summary of Consumer Rights that must be provided to consumers. Because the amended FCRA further provides that: "[n]o disclosures shall be required under this subsection [discussing the Summary of Consumer Rights] until the date on which the Federal Trade Commission prescribes the form and content of such disclosures * * *," it could be argued that the Commission's actions in prescribing the manner and content of the Summary of Consumer Rights may be considered to "require" or "cause" the disclosures to occur. Nevertheless, as discussed below, we have determined that none of these notices constitute a "collection of information."

B. Collection of Information

Because the three notices to be prescribed by the Commission contain information that must be distributed to third parties, these documents involve public disclosures that would otherwise constitute "collections of information" under the PRA. However, OMB has recognized that some disclosures do not entail the "collection of information" and are thus outside the Act's paperwork control provisions. Specifically relevant here is OMB's determination that a disclosure requirement is not a "collection of information" when the information to be disclosed is supplied by the government. 5 C.F.R. 1320.3(c)(2). In such a situation, a mandate to disclose does not impose any requirement to collect the information to be disclosed.

The information in the proposed FCRA notices will be supplied by the government. The proposed notices supply all the information that subject firms will be required to disclose. The FCRA requires credit reporting agencies to provide these (or substantially similar) notices. FCRA Sections 607(d)(2) and 609(c)(3). The latitude provided by the statute to use language other than the precise language prescribed by the FTC does not undercut this concept because the consumer reporting agencies can simply adopt these notices for distribution without any change to the language. We have concluded therefore that these notices do not fall within the definition of "collection of information" because they are "[t]he public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public * * *" 5 C.F.R. § 1320.3(c)(2). Thus, the PRA does not apply.

List of Subjects in 16 CFR Part 601

Credit, Trade practices.

Pursuant to 15 U.S.C. 1681g and 1681s, the FTC hereby proposes to add to Subchapter F of Chapter I of 16 CFR a new Part 601 to read as follows:

PART 601—SUMMARY OF CONSUMER RIGHTS, NOTICE OF USER RESPONSIBILITIES, AND NOTICE OF FURNISHER RESPONSIBILITIES UNDER THE FAIR CREDIT REPORTING ACT

Sec.

601.1 Authority and purpose.
601.2 Legal effect.
Appendix A to Part 601—Prescribed Summary of Consumer Rights
Appendix B to Part 601—Prescribed Notice of Furnisher Responsibilities
Appendix C to Part 601—Prescribed Notice of User Responsibilities

Authority: 15 U.S.C. 1681g and 1681s.

§ 601.1 Authority and purpose.

(a) *Authority.* This part is issued by the Commission pursuant to the provisions of the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*), as most recently amended by the Consumer Credit Reporting Reform Act of 1996 (Title II, Subtitle D, Chapter 1, of the Omnibus Consolidated Appropriations Act for Fiscal Year 1997), Public Law 104–208, 110 Stat. 3009–426 (Sept. 30, 1996).

(b) *Purpose.* The purpose of this part is to comply with sections 607(c) and 609(c) of the Fair Credit Reporting Act, as amended. Section 609(c)(3) directs the FTC to prescribe the form and content of a summary of consumers' legal rights under the FCRA that the amended law requires each consumer reporting agency to provide when disclosing the information in its file to consumers, and section 609(c)(4) provides that the summary need not be provided until the FTC has in fact prescribed its form and content. Section 607(d)(2) directs the FTC to prescribe the content of notices that consumer reporting agencies are required to provide to parties that supply information to, or purchase consumer reports from, the agency. These notices will set forth the responsibilities under the FCRA of all persons who furnish information to consumer reporting agencies or use information subject to the FCRA.

§ 601.2 Legal effect.

The forms prescribed by the FTC do not constitute a trade regulation rule. They carry out the directive in the statute that the FTC prescribe the summary and notices. A consumer reporting agency that provides notices substantially similar to those prescribed by the FTC will be in compliance with Section 607(d) or 609(c) of the FCRA, as applicable.

Appendix A to Part 601—Prescribed Summary of Consumer Rights

The prescribed form for this summary is as a separate document, on paper no smaller than 8½x11 inches in size, with text no less than 12-point type (8-point for the chart of federal agencies), in bold or capital letters as indicated. The form in this appendix prescribes both the content and the sequence of items in the required summary. A consumer reporting agency that is not required by law to have a toll-free number may omit the sentence inviting consumers to call that number. A summary may accurately reflect changes in numerical items that change over time (e.g., dollar amounts, or phone numbers and addresses of federal agencies), and remain in compliance.

BILLING CODE 6750–01–P

A Summary of Your Rights Under the Fair Credit Reporting Act

The Fair Credit Reporting Act (FCRA) is designed to promote accuracy, fairness, and privacy of information in the files of every "consumer reporting agency" (CRA). Most CRAs are credit bureaus that gather and sell information about you -- such as where you work and live, if you pay your bills on time, and whether you've been sued, arrested, or filed for bankruptcy -- to creditors, employers, and other businesses. The FCRA gives you specific rights in dealing with CRAs, and requires them to provide you with a summary of these rights as listed below. You can find the complete text of the FCRA, 15 U.S.C. 1681 et seq., at the Federal Trade Commission's web site (*http://www.ftc.gov*).

- **You must be told if information in your file has been used against you.** Anyone who uses information from a CRA to take action against you -- such as denying an application for credit, insurance, or employment -- must give you the name, address, and phone number of the CRA that provided the report.

- **You can find out what is in your file.** A CRA must give you all the information in your file, and a list of everyone who has requested it recently. However, you are not entitled to a "risk score" or a "credit score" that is based on information in your file. There is no charge for the report if your application was denied because of information supplied by the CRA, and if you request the report within 60 days of receiving the denial notice. You are also entitled to one free report a year if you certify that (1) you are unemployed and plan to seek employment within 60 days, (2) you are on welfare, or (3) your report is inaccurate due to fraud. Otherwise, a CRA may charge you a fee of up to eight dollars.

- **You can dispute inaccurate information with the CRA.** If you tell a CRA that your file contains inaccurate information, the CRA must reinvestigate the items (usually within 30 days) unless your dispute is frivolous. The CRA must pass along to its source all relevant information you provided. The CRA also must supply you with written results of the investigation and a copy of your report, if it has changed. If an item is altered or deleted because you dispute it, the CRA cannot place it back in your file unless the source of the information verifies its accuracy and completeness, and the CRA provides you a written notice that includes the name, address and phone number of the source.

- **Inaccurate information must be deleted.** A CRA must remove inaccurate information from its files, usually within 30 days after you dispute its accuracy. The largest credit bureaus must notify other national CRAs if items are altered or deleted. **However, the CRA is not required to remove data from your file that is accurate unless it is outdated or cannot be verified.**

- **You can dispute inaccurate items with the source of the information.** If you tell anyone -- such as a creditor who reports to a CRA -- that you dispute an item, they may not then report the information to a CRA without including a notice of your dispute. In addition, once you've notified the source of the error in writing, they may not continue to report it if it is in fact an error.

- **Outdated information may not be reported.** In most cases, a CRA may not report negative information that is more than seven years old; ten years for bankruptcies.

- **Access to your file is limited.** A CRA may provide information about you only to those who have a need recognized by the FCRA -- usually to consider an application you have submitted to a creditor, insurer, employer, landlord, or other business.

- **Your consent is required for reports that are provided to employers or that contain medical information.** A CRA may not report to your employer, or prospective employer, about you without your written consent. A CRA may not divulge medical information about you without your permission.

- **You can stop a CRA from including you on lists for unsolicited credit and insurance offers.** Creditors and insurers may use file information as the basis for sending you unsolicited offers of credit or insurance. Such offers must include a toll-free number for you to call and tell the CRA if you want your name and address excluded from future lists or offers. If you notify the CRA through the toll-free number, it must keep you off the lists for two years. If you request and complete the CRA form provided for this purpose, you can have your name and address removed indefinitely.

- **You may seek damages from violators.** You may sue a CRA or other party in state or federal court for violations of the FCRA. If you win, the defendant may have to pay damages and reimburse you for attorney fees. If you lose and the court specifically finds you sued in bad faith, you or your attorney may have to pay the defendant's fees.

You may have additional rights under state law. You may wish to contact a state or local consumer protection agency or a state attorney general to learn those rights.

If you have questions or believe your file contains errors, call our toll-free number _____

The FCRA gives several different federal agencies authority to enforce the FCRA:

FOR QUESTIONS OR CONCERNS REGARDING:	PLEASE CONTACT:
CRAs, creditors and others not listed below	Federal Trade Commission Bureau of Consumer Protection - FCRA Washington, DC 20580 • 202-326-xxxx
National banks, federal branches/agencies of foreign banks (word "National" or initials "N.A." appear in or after bank's name)	Office of the Comptroller of the Currency Compliance Management, Mail Stop 6-6 Washington, DC 20219 • 800-613-6743
Federal Reserve System member banks (except national banks, and federal branches/agencies of foreign banks)	Federal Reserve Board Division of Consumer & Community Affairs Washington, DC 20551 • 202-452-3693
Savings associations and federally chartered savings banks (word "Federal" or initials "F.S.B." appear in federal institution's name)	Office of Thrift Supervision Consumer Programs Washington, DC 20552 • 800-842-6929
Federal credit unions (words "Federal Credit Union" appear in institution's name)	National Credit Union Administration 1775 Duke Street Alexandria, VA 22314 • 703-518-6360
Banks that are state-chartered, or are not Federal Reserve System members	Federal Deposit Insurance Corporation Division of Compliance & Consumer Affairs Washington, DC 20429 • 800-934-FDIC
Air, surface, or rail common carriers regulated by former Civil Aeronautics Board or Interstate Commerce Commission	Department of Transportation Office of Financial Management Washington, DC 20590 • 202-366-1306
Activities subject to the Packers and Stockyards Act, 1921	Department of Agriculture Office of Deputy Administrator - GIPSA Washington, DC 20250 • 202-720-7051

Appendix B to Part 601 - Prescribed Notice of Furnisher Responsibilities

The appendix prescribes the content of the required notice.

NOTICE TO FURNISHERS OF INFORMATION:
OBLIGATIONS OF FURNISHERS UNDER THE FCRA

The Fair Credit Reporting Act (FCRA) has been amended to impose responsibilities on all persons who furnish information to consumer reporting agencies. These responsibilities are found in Section 623 of the FCRA. All information furnishers should become familiar with the law and may want to consult with their counsel to ensure that they are in compliance. The FCRA, 15 U.S.C. 1681 et seq., is set forth in full at the Federal Trade Commission's Internet web site (*http://www.ftc.gov*). Section 623 imposes the following duties:

General Prohibition on Reporting Inaccurate Information:

The FCRA prohibits information furnishers from providing information to a consumer reporting agency (CRA) that they know (or consciously avoid knowing) is inaccurate. However, if a furnisher clearly and conspicuously discloses an address to consumers to which disputes may be directed, the furnisher is not subject to this general prohibition. *Sections 623(a)(1)(A) and (a)(1)(C)*

Duty to Correct and Update Information:

If at any time a furnisher determines that information provided to a CRA is not complete or accurate, the furnisher must provide complete and accurate information to that agency. In addition, the furnisher must notify all CRAs that received the information of any corrections, and must thereafter report only the complete and accurate information. *Section 623(a)(2)*

Duties After Notice of Dispute from Consumer:

If a consumer notifies a furnisher, at the address specified by the furnisher for such notices, that specific information is inaccurate, and the information is in fact inaccurate, the furnisher must thereafter report the correct information to CRAs. *Section 623(a)(1)(B)*

If a consumer notifies a furnisher that the consumer disputes the completeness or accuracy of any information reported by the furnisher, the furnisher may not subsequently report that information to a CRA without providing notice of the dispute. *Section 623(a)(3)*

Duties After Notice of Dispute from Consumer Reporting Agency:

If a CRA notifies a furnisher that a consumer disputes information provided by the furnisher, the furnisher has a duty to follow certain procedures. The furnisher must:

• Conduct an investigation and review all relevant information provided by the CRA. *Sections 623(b)(1)(A) and (b)(1)(B)*

• Report the results to the CRA, and, if the investigation establishes that the information was, in fact, incomplete or inaccurate, report the results to all CRAs that received the information and that compile and maintain files on a nationwide basis. *Sections 623(b)(1)(C) and (b)(1)(D)*

• Do the above within the time period set in the FCRA for the CRA itself to review and correct any inaccuracies, which is 30 days (unless the consumer provides relevant additional information during the 30 days, in which case the time period is 45 days). *Section 623(b)(2)*

Duty to Report Voluntary Closing of Accounts:

When a consumer voluntarily closes an account, the furnisher must report this fact when it provides information to CRAs for the time period in which the account was closed. *Section 623(a)(4)*

Duty to Report Dates of Delinquencies:

If a furnisher reports information concerning a delinquent account placed for collection, charged to profit or loss, or subject to any similar action, the furnisher must, within 90 days, provide the CRA with the month and the year that the delinquency commenced so that the agency will know how long to keep the information in the consumer's file. *Section 623(a)(5)*

Appendix C to Part 601 - Prescribed Notice of User Responsibilities

The appendix prescribes the content of the required notice.

NOTICE TO USERS OF CONSUMER REPORTS: OBLIGATIONS OF USERS UNDER THE FCRA

The Fair Credit Reporting Act (FCRA) requires that this notice be sent to inform users of consumer reports of their legal obligations. The following is a summary of the responsibilities imposed by the FCRA. The FCRA, 15 U.S.C. 1681 et seq., is set forth in full at the Federal Trade Commission's Internet web site (*http://www.ftc.gov*).

I. OBLIGATIONS OF ALL USERS OF CONSUMER REPORTS

A. Users Must Have a Permissible Purpose

Congress has limited the use of consumer reports to protect consumers' privacy. All users must have a permissible purpose under the FCRA to obtain a consumer report. Section 604 of the FCRA contains a list of the permissible purposes under the law. These are:

- As permitted by order of a court or a federal grand jury subpoena. *Section 604(a)(1)*

- For any purpose if the consumer gives permission in writing. *Section 604(a)(2)*

- For the extension of credit as a result of an application from a consumer, or the review or collection of a consumer's account. *Section 604(a)(3)(A)*

- For employment purposes, including hiring and promotion decisions, where the consumer has given written permission. *Sections 604(a)(3)(B) and 604(b)*

- For the underwriting of insurance as a result of an application from a consumer. *Section 604(a)(3)(C)*

- When there is a legitimate business need, in connection with a business transaction that is initiated by the consumer. *Section 604(a)(3)(F)(i)*

- To review a consumer's account to determine whether the consumer continues to meet the terms of the account. *Section 604(a)(3)(F)(ii)*

- To determine a consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status. *Section 604(a)(3)(D)*

- For use by a potential investor or servicer, or current insurer, in a valuation of, or an assessment of, the credit or repayment risks associated with an existing credit obligation. *Section 604(a)(3)(E)*

- For use by state and local officials in connection with the determination of child support payments, or modifications and enforcement thereof. *Sections 604(a)(4) and 604(a)(5)*

In addition, creditors and insurers may obtain certain consumer report information for the purpose of making unsolicited offers of credit or insurance. The particular obligations of users of this "prescreened" information are described in Section V below.

B. Users Must Provide Certifications

Section 604(f) of the FCRA prohibits any person from obtaining a consumer report from a consumer reporting agency (CRA) unless the person certifies the permissible purpose(s) for which the report is being obtained and certifies that the report will not be used for any other purpose.

C. Users Must Notify Consumers When Adverse Actions Are Taken

The term "adverse action" is defined very broadly by Section 603 of the FCRA. "Adverse actions" include all business, credit, and employment actions affecting consumers that can be considered to have a negative impact -- such as unfavorably changing credit or contract terms or conditions, denying or canceling credit or insurance, and denying employment or promotion.

1. Adverse Actions Based on Consumer Reports

If a user takes any type of adverse action that is based at least in part on information contained in a consumer report, the user is required by Section 615 of the FCRA to notify the consumer. The notification may be done in writing, orally, or by electronic means. It must include the following:

- The name, address, and telephone number (including any toll-free telephone number) of the CRA that provided the report.

- A statement that the CRA did not make the adverse decision and cannot explain why the decision was made.

- A statement setting forth the consumer's right to obtain a free copy of the consumer report from the CRA if the consumer requests the report within 60 days.

• A statement setting forth the consumer's right to dispute directly with the CRA the accuracy or completeness of any information provided by the CRA.

2. Adverse Actions Based on Information Obtained From Third Parties Who Are Not Consumer Reporting Agencies

If a person takes an adverse action in connection with a credit transaction for personal, family, or household purposes that is based either wholly or partly upon information from a person other than a CRA, and the information is the type of consumer information covered by the FCRA, Section 615(b)(1) of the FCRA requires that the user clearly and accurately disclose to the consumer his or her right to obtain disclosure of the nature of the information that was relied upon by making a written request within 60 days of notification. The user must provide the disclosure within a reasonable period of time following the consumer's written request.

3. Adverse Actions Based on Information Obtained From Affiliates

If a person takes an adverse action involving credit, insurance, or employment based on information of the type covered by the FCRA, and this information was obtained from an entity affiliated with the user of the information by common ownership or control, Section 615(b)(2) requires the user to notify the consumer of the adverse action. The notification must inform the consumer that he or she may obtain a disclosure of the nature of the information relied upon by making a written request within 60 days of receiving the adverse action notice. If the consumer makes such a request, the user must disclose the nature of the information not later than 30 days after receiving the request. (Information that is obtained directly from an affiliated entity relating solely to its transactions or experiences with the consumer, and information obtained in a consumer report from an affiliate are not covered by Section 615(b)(2).)

II. OBLIGATIONS OF USERS WHEN CONSUMER REPORTS ARE OBTAINED FOR EMPLOYMENT PURPOSES

If information from a CRA is used for employment purposes, the user has specific duties, which are set forth in Section 604(b) of the FCRA. The user must:

• Make a clear and conspicuous written disclosure to the consumer before the report is obtained, in a document that consists solely of the disclosure, that a consumer report may be obtained.

• Obtain prior written authorization from the consumer.

• Certify to the CRA that the above steps have been followed, that the information being obtained will not be used in violation of any federal or state equal opportunity law or

regulation, and that, if any adverse action is taken based on the consumer report, a copy of the report and a summary of the consumer's rights will be provided to the consumer.

• Before taking an adverse action, provide a copy of the report to the consumer as well as the summary of the consumer's rights. (The user should receive this summary from the CRA, because Section 604(b)(1)(B) of the FCRA requires CRAs to provide a copy of the summary with each consumer report obtained for employment purposes.)

III. OBLIGATIONS OF USERS OF INVESTIGATIVE CONSUMER REPORTS

Investigative consumer reports are a special type of consumer report in which information about a consumer's character, general reputation, personal characteristics, and mode of living is obtained through personal interviews. Consumers who are the subjects of such reports are given special rights under the FCRA. If a user intends to obtain an investigative consumer report, Section 606 of the FCRA requires the following:

• The user must disclose to the consumer that an investigative consumer report may be obtained. This must be done in a written disclosure that is mailed, or otherwise delivered, to the consumer not later than three days after the date on which the report was first requested. The disclosure must include a statement informing the consumer of his or her right to request additional disclosures of the nature and scope of the investigation as described below, and must include the summary of consumer rights required by Section 609 of the FCRA. (The user should be able to obtain a copy of the notice of consumer rights from the CRA that provided the consumer report.)

• The user must certify to the CRA that the disclosures set forth above have been made and that the user will make the disclosure described below.

• Upon the written request of a consumer made within a reasonable period of time after the disclosures required above, the user must make a complete disclosure of the nature and scope of the investigation that was requested. This must be made in a written statement that is mailed, or otherwise delivered, to the consumer no later than five days after the date on which the request was received from the consumer or the report was first requested, whichever is later in time.

IV. OBLIGATIONS OF USERS OF CONSUMER REPORTS CONTAINING MEDICAL INFORMATION

Section 604(g) of the FCRA prohibits consumer reporting agencies from providing consumer reports that contain medical information for employment purposes, or in connection with credit or insurance transactions, without the specific prior consent of the consumer who is the subject of the report. In the case of medical information being sought for employment purposes, the consumer must explicitly consent to the release of the medical information in addition to authorizing the obtaining of a consumer report generally.

V. OBLIGATIONS OF USERS OF "PRESCREENED" LISTS

VII. LIABILITY FOR VIOLATIONS OF THE FCRA

V. OBLIGATIONS OF USERS OF "PRESCREENED" LISTS

The FCRA permits creditors and insurers to obtain limited consumer report information for use in connection with unsolicited offers of credit or insurance under certain circumstances. *Sections 603(l), 604(c), 604(e), and 615(d)* This practice is known as "prescreening" and typically involves obtaining a list of consumers from a CRA who meet certain preestablished criteria. If any person intends to use prescreened lists, that person must (1) before the offer is made, establish the criteria that will be relied upon to make the offer and grant credit or insurance, and (2) maintain such criteria on file for a three-year period beginning on the date on which the offer is made to each consumer. In addition, any user must provide with each written solicitation a clear and conspicuous statement that:

- Information contained in the consumer's file was used in connection with the transaction.

- The consumer received the offer because he or she satisfied the criteria for credit worthiness or insurability used to screen for the offer.

- Credit or insurance may not be extended if, after the consumer responds, it is determined that the consumer does not meet the criteria used for screening or any applicable criteria bearing on credit worthiness or insurability, or the consumer is not able to furnish required collateral.

- The consumer may prohibit the use of information in his or her file in connection with future prescreened offers of credit or insurance by contacting the notification system established by the CRA that provided the report. This statement must include the address and toll-free telephone number of the appropriate notification system.

VI. OBLIGATIONS OF RESELLERS

Section 607(e) of the FCRA requires any person who obtains a consumer report for resale to take the following steps:

- Disclose the identity of the end-user to the source CRA.

- Identify to the source CRA each permissible purpose for which the report will be furnished to the end-user.

- Establish and follow reasonable procedures to ensure that reports are resold only for permissible purposes, including procedures to obtain: (1) the identity of all end-users; (2) certifications from all users of each purpose for which reports will be used; and (3) certifications that reports will not be used for any purpose other than the purpose(s) specified to the reseller. Resellers must make reasonable efforts to verify this information.

VII. LIABILITY FOR VIOLATIONS OF THE FCRA

Failure to comply with the FCRA can result in state or federal enforcement actions, as well as private lawsuits. *Sections 616, 617, and 621.* In addition, any person who knowingly and willfully obtains a consumer report under false pretenses may face criminal prosecution. *Section 619*

By direction of the Commission.
Donald S. Clark,
Secretary.

[FR Doc. 97–4987 Filed 2–27–97; 8:45 am]
BILLING CODE 6750–01–C

ENVIRONMENTAL PROTECTION AGENCY

Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

CTG document for any NO_X sources

the requirement that a NO_X rule must, at a minimum, provide for the technologies, cost-effectiveness, and environmental impacts. EPA agrees that

At the same time, EPA is also proposing a limited disapproval of these

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 009–0028; FRL–5694–9]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) for ozone. The revisions concern the control of oxides of nitrogen (NO_X) from boilers, process heaters, and internal combustion engines. The intended effect of proposing limited approval and limited disapproval of these rules is to regulate emissions of NO_X in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this proposed rulemaking will incorporate these rules into the Federally approved SIP. EPA has evaluated these rules and is proposing a simultaneous limited approval and limited disapproval under provisions of the CAA regarding EPA actions on SIP submittals and general rulemaking authority because these revisions, while strengthening the SIP, also do not fully meet the CAA provisions regarding plan submissions and requirements for nonattainment areas.

DATES: Comments on this proposed action must be received in writing on or before March 31, 1997.

ADDRESSES: Comments may be mailed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rules and EPA's evaluation report of each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Mae Wang, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1200.

SUPPLEMENTARY INFORMATION:

Applicability

The rules being proposed for limited approval and limited disapproval are South Coast Air Quality Management District (SCAQMD) Rule 1109, Emissions of Oxides of Nitrogen from Boilers and Process Heaters in Petroleum Refineries, adopted by SCAQMD on August 5, 1988; and Rule 1110.2, Emissions from Gaseous- and Liquid-Fueled Internal Combustion Engines, adopted on December 9, 1994.

Background

On November 15, 1990, the Clean Air Act Amendments of 1990 (CAA) were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The air quality planning requirements for the reduction of NO_X emissions through reasonably available control technology (RACT) are set out in section 182(f) of the CAA. On November 25, 1992, EPA published a notice of proposed rulemaking (NPR) entitled "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO_X Supplement) which describes the requirements of section 182(f). The NO_X Supplement should be referred to for further information on the NO_X requirements and is incorporated into this document by reference.

Section 182(f) of the CAA requires States to apply the same requirements to major stationary sources of NO_X ("major" as defined in section 302 and sections 182 (c), (d), and (e)) as are applied to major stationary sources of volatile organic compounds (VOCs), in moderate or above ozone nonattainment areas. The Los Angeles-South Coast Air Basin is classified as extreme;[1] therefore this area was subject to the RACT requirements of section 182(f), section 182(b)(2), and the November 15, 1992 deadline, cited below.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC emissions (not covered by a pre-enactment control technique guidelines (CTG) document or a post-enactment CTG document) by November 15, 1992. There were no NO_X CTGs issued before enactment and EPA has not issued a CTG document for any NO_X sources since enactment of the CAA. The RACT rules covering NO_X sources and submitted as SIP revisions are expected to require final installation of the actual NO_X controls as expeditiously as practicable, but no later than May 31, 1995.

This document addresses EPA's proposed action for SCAQMD Rule 1109, Emissions of Oxides of Nitrogen from Boilers and Process Heaters in Petroleum Refineries, and Rule 1110.2, Emissions from Gaseous- and Liquid-Fueled Internal Combustion Engines. The SCAQMD adopted Rule 1109 on August 5, 1988, and the rule was submitted by the California Air Resources Board (CARB) to EPA on March 26, 1990. Rule 1110.2 was adopted on December 9, 1994, and submitted on April 13, 1995. The above rules were found to be complete on June 20, 1990, and May 2, 1995, respectively, pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51 Appendix V,[2] and are being proposed for limited approval and limited disapproval into the SIP.

Rule 1109 and Rule 1110.2 control NO_X emissions from refinery boilers and process heaters, and internal combustion (I/C) engines. NO_X emissions contribute to the production of ground level ozone and smog. These rules were adopted as part of SCAQMD's efforts to achieve the National Ambient Air Quality Standards for ozone and in response to the CAA requirements cited above. The following is EPA's evaluation and proposed action for these rules.

EPA Evaluation and Proposed Action

In determining the approvability of a NO_X rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA, and 40 CFR Part 51 (Requirements for Preparation, Adoption and Submittal of Implementation Plans). EPA's interpretation of these requirements, which forms the basis for this action, appears in the NO_X Supplement and various other EPA policy guidance documents.[3] Among these provisions is the requirement that a NO_X rule must, at a minimum, provide for the implementation of RACT for major stationary sources of NO_X emissions.

For the purposes of assisting State and local agencies in developing NO_X RACT rules, EPA prepared the NO_X Supplement to the General Preamble, cited above (57 FR 55620). In the NO_X Supplement, EPA provides guidance on how RACT will be determined for stationary sources of NO_X emissions. While most of the guidance issued by EPA on what constitutes RACT for stationary sources has been directed towards application for VOC sources, much of the guidance is also applicable to RACT for stationary sources of NO_X (see section 4.5 of the NO_X Supplement). In addition, pursuant to section 183(c), EPA has issued alternative control technique documents (ACTs) that identify alternative controls for all categories of stationary sources of NO_X. The ACT documents provide information on control technology for stationary sources that emit or have the potential to emit 25 tons per year or more of NO_X. However, the ACTs will not establish a presumptive norm for what is considered RACT for stationary sources of NO_X. In general, the guidance documents cited above, as well as other relevant and applicable guidance documents, have been set forth to ensure that submitted NO_X RACT rules meet Federal RACT requirements and are fully enforceable and strengthen or maintain the SIP.

SCAQMD Rule 1109 controls emissions of nitrogen oxides from boilers and process heaters located in petroleum refineries with rated capacities greater than 40 MBtu per hour heat input. The rule requires units to meet a 0.03 pound per million Btu heat input limit in accordance with a phased time schedule. The emission limits will strengthen the SIP, but this rule contains deficiencies which must be corrected. Those deficiencies include Executive Officer discretion in approving continuous emission monitoring equipment and test methods, insufficient records to determine compliance, and an unapprovable provision for an alternative emission control plan.

Rule 1110.2 controls NO_X, carbon monoxide (CO), and reactive organic gases (ROG) from I/C engines. The emission limits in this rule are 36 ppm for NO_X, 2000 ppm for CO, and 250 ppm for ROG. Certain types of units specifically identified in the rule may have an allowable NO_X emission limit of approximately 45 ppm. In setting these limits, the SCAQMD considered emission reductions, control technologies, cost-effectiveness, and environmental impacts. EPA agrees that the limits incorporated into SCAQMD Rule 1110.2 are consistent with the Agency's guidance and policy for making RACT determinations, and that these limits satisfy the RACT requirement. The limits of Rule 1110.2 will strengthen the SIP, but this rule contains deficiencies with respect to the requirements of the CAA and EPA regulations as interpreted in the various policy guidance documents discussed earlier. Certain existing units are not required to be in compliance until the year 2004, which is well beyond the statutory May 31, 1995 deadline, and the rule allows for Executive Officer discretion in approving continuous emission monitoring equipment and test methods for determining compliance with emission limits.

EPA has evaluated the submitted rules described above for consistency with the CAA, EPA regulations, and EPA policy, and although these rules will strengthen the SIP, they still contain deficiencies which were required to be corrected pursuant to the section 182(a)(2)(A) requirement of Part D of the CAA. A more detailed discussion of the sources controlled, the limits required, justification for why these limits satisfy RACT, and the rule deficiencies can be found in the Technical Support Document (TSD) for each rule, available from the U.S. EPA Region IX office. Because of the deficiencies, these rules are not consistent with the interpretation of section 172 of the 1977 CAA as found in the Blue Book and may lead to rule enforceability problems. As a result, these rules are not approvable pursuant to section 182(a)(2), section 182(b)(2), section 182(f) and Part D of the CAA.

For the reasons mentioned above, EPA cannot grant full approval of these rules under section 110(k)(3) and Part D. Also, because the submitted rules are not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rules under section 110(k)(3). However, EPA may grant a limited approval of the submitted rules under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is proposing a limited approval of the SCAQMD's submitted Rule 1109 and Rule 1110.2, under sections 110(k)(3) and 301(a) of the CAA as meeting the requirements of section 110(a) and Part D.

At the same time, EPA is also proposing a limited disapproval of these rules because they contain deficiencies which must be corrected in order to fully meet the requirements of section 182(a)(2), section 182(b)(2), section 182(f), and Part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: highway funding and offsets. The 18 month period referred to in section 179(a) will begin on the effective date of EPA's final limited disapproval. Moreover, the final disapproval triggers the Federal Implementation Plan (FIP) requirement under section 110(c). It should be noted that the rules covered by this NPR have been adopted by the SCAQMD and are currently in effect in the SCAQMD. EPA's final limited disapproval action will not prevent the SCAQMD or EPA from enforcing these rules.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. section 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C sections 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Limited approvals under section 110 and 301 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, it does not have a significant impact on affected small

[1] The Los Angeles-South Coast Air Basin Area retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

[2] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

[3] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); and "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988).

entities. Moreover, due to the nature of the Federal/State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410 (a)(2).

Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector or to State, local, or tribal governments in the aggregate.

Through submission of this State implementation plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Part D of the Clean Air Act. These rules may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being proposed for limited approval and limited disapproval by this action will impose no new requirements because affected sources are already subject to these regulations under State law. Therefore, no additional costs to State, local, or tribal governments or to the private sector result from this action. EPA has also determined that this proposed action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 12, 1997.

Felicia Marcus,

Regional Administrator.

[FR Doc. 97–4966 Filed 2–27–97; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Parts 52 and 81

[ME47–1–6996b; A–1–FRL–5693–6]

Approval, Maine Air Quality Implementation Plans; and Redesignation of Hancock and Waldo Counties; Maine

AGENCY: Environmental Protection Agency (USEPA or Agency).

ACTION: Proposed rule.

SUMMARY: USEPA is proposing to approve under the Clean Air Act two requests from the State of Maine: approval of the Maine 1990 base year inventory into the Maine State Implementation Plan; and a redesignation request by the State of Maine. The first request will establish the 1990 base year inventory of volatile organic compounds and oxides of nitrogen emissions for the classified ozone nonattainment areas in Maine. The second request will redesignate the Hancock and Waldo counties marginal ozone nonattainment area from nonattainment to attainment, and approve the 1993 attainment year inventory for Hancock and Waldo counties as the required 1993 periodic inventory. In the Final Rules Section of this **Federal Register**, EPA is approving the State's request as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this proposal. Any parties interested in commenting on this proposal should do so at this time.

DATES: Comments must be received on or before March 31, 1997.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection (mail code CAA), U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: For the base year inventory, Robert McConnell, (617) 565–9266, and for the Hancock and Waldo counties redesignation request Richard P. Burkhart, (617) 565–3578.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 3, 1997.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 97–4965 Filed 2–27–97; 8:45 am]

BILLING CODE 6560–60–P

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40 CFR Part 63

[AD–FRL–5696–1]

RIN 2060–AD93

National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution (Stage I)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule: Amendments.

SUMMARY: On December 14, 1994, the EPA promulgated the "National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution (Stage I)" (the "Gasoline Distribution NESHAP"), pursuant to section 112 of the Clean Air Act (Act). This action is proposing amendments to those final standards in order to implement a proposed settlement agreement with the American Petroleum Institute noticed for comment on November 15, 1996 regarding improvements in the screening equations for determining applicability of the Gasoline Distribution NESHAP. No comments were received on the noticed proposed settlement agreement. This action also proposes some clarifications to the NESHAP that were requested by other parties. Since the EPA does not anticipate receiving adverse comments or holding a public hearing, the amendments are also being issued as a direct final rule in the final rules section of this **Federal Register**. If no significant adverse comments are received by the due date (see **DATES** section below), no further action will be taken with respect to this proposal, and the direct final rule will become final on the date provided in that action.

DATES: *Comments.* Comments must be received on or before March 31, 1997 unless a hearing is requested by March 10, 1997. If a hearing is requested, written comments must be received by April 14, 1997.

Public Hearing. Anyone requesting a public hearing must contact the EPA no later than March 10, 1997. If a hearing is held, it will take place on March 14, 1997, beginning at 9:00 a.m.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket No. A–92–38 (see docket section below), room M1500, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. The EPA requests that a separate copy also be sent to Mr. Stephen Shedd, whose address is listed in the **FOR FURTHER INFORMATION CONTACT** section below.

Public Hearing. If a public hearing is held, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. JoLynn Collins, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–5671.

Docket. Docket No. A–92–38, category VIII 1997 Amendments, containing information considered by the EPA in developing the proposed amendments, is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, except for Federal holidays, at the EPA's Air and Radiation Docket and Information Center, room M1500, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460; telephone (202) 260–7548. A reasonable fee may be charged for copying. This docket also contains information considered by the EPA in proposing and promulgating the original Gasoline Distribution NESHAP.

FOR FURTHER INFORMATION CONTACT: For information concerning applicability and rule determinations, contact the appropriate EPA regional or Office of Enforcement and Compliance Assurance (OECA) representative:

Region I: Greg Roscoe, Air Programs Enforcement Office Chief, U.S. EPA, Region I, JFK Federal Building (SEA), Boston, MA 02203, Telephone number (617) 565–3221

Region II: Kenneth Eng, Air Compliance Branch Chief, U.S. EPA, Region II, 290 Broadway, New York, NY 10007, Telephone number (212) 637–4080, Fax number (212) 637–3998

Region III: Walter K. Wilkie, U.S. EPA, Region III (3AT12), 841 Chestnut Building, Philadelphia, PA 19107, Telephone number (215) 566–2150, Fax number (215) 566–2114

Region IV: Lee Page, U.S. EPA, Region IV (AR–4), 100 Alabama Street, SW, Atlanta, GA 30303–3104, Telephone number (404) 562–9131, Fax number (404) 562–9095

Region V: Howard Caine (AE–17J), U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, Telephone number (312) 353–9685, Fax number (312) 353–8289

Region VI: Sandra A. Cotter (6EN-AT), U.S. EPA, Region VI (6PD–R), 1445 Ross Avenue, Dallas, TX 75202–2733, Telephone number (214) 665–7347, Fax number (214) 665–7446

Region VII: Bill Peterson, U.S. EPA, Region VII, 726, Minnesota Avenue, Kansas City, KS 66101, Telephone number (913) 551–7881

Region VIII: Heather Rooney, U.S. EPA, Region VIII (8ART–AP), 999 18th Street, Suite 500, Denver, CO 80202–2405, Telephone number (303) 312–6971, Fax number (303) 312–6826

Region IX: Christine Vineyard, U.S. EPA, Region IX (Air-4), 75 Hawthorne Street, San Francisco, CA 94105, Telephone number (415) 744–1197

Region X: Chris Hall, Office of Air Quality (OAQ–107), U.S. EPA, Region X, 1200 Sixth Avenue, Seattle, WA 98101–9797, Telephone number (206) 553–1949 or (800) 424–4372 x1949

OECA: Julie Tankersley, U.S. EPA, Office of Enforcement and Compliance Assurance (2223A), 401 M Street, SW, Washington, DC 20460, Telephone number (202) 564–7002, Fax number (202) 564–0050.

For information concerning the analyses performed in developing the proposed amendments, contact Mr. Stephen Shedd, Waste and Chemical Processes Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number (919) 541–5397 or fax number (919) 541–0246.

SUPPLEMENTARY INFORMATION: An electronic version of the proposal preamble and the direct final rule is available for download from the EPA Technology Transfer Network (TTN), a network of electronic bulletin boards developed and operated by the Office of Air Quality Planning and Standards. The TTN provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a phone call. Dial (919) 541–5742 for data transfer of up to 14,400 bits per second. If more information on the operation of the TTN is needed, contact the systems operator at (919) 541–5384. The TTN is also available on the Internet (access: http://ttnwww.rtpnc.epa.gov).

On December 14, 1994 (59 FR 64303), the EPA promulgated the "National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution (Stage I)" (the "Gasoline Distribution NESHAP"). The Gasoline Distribution NESHAP regulates all hazardous air pollutants (HAP) emitted from new and existing bulk gasoline terminals and pipeline breakout stations that are major sources of HAP emissions or are located at sites that are major sources of HAP emissions. The regulated category and entities affected by this action include:

Category	Examples of regulated entities
Industry	Bulk gasoline terminals. Pipeline breakout stations.

This table is not intended to be exhaustive but, rather, provides a guide for readers regarding entities likely to be interested in the amendments to the regulation affected by this action. To determine whether your facility is regulated by this action, you should carefully examine all of the applicability criteria in 40 CFR 63.420. If you have questions regarding the applicability of this action to a particular entity, consult the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

The specific amendments to the promulgated Gasoline Distribution NESHAP that are being proposed are described in detail in the direct final rule located in the final rules section of this **Federal Register**. The Agency is seeking comments on these proposed amendments and on the pertinent support materials found in the docket. If no significant, adverse comments are timely received, no further activity is contemplated in relation to this proposed action, and the direct final rule in the final rules section of this **Federal Register** will automatically go into effect on the date specified in that rule. If significant adverse comments are

timely received, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule. Since the EPA will not institute a second comment period on these proposed amendments, any parties interested in commenting should do so during this comment period.

For further supplemental information, the detailed rationale, and the rule amendments, see the notice containing the direct final rule in the final rules section of this **Federal Register**.

Administrative Requirements

A. Paperwork Reduction Act

The information collection requirements of the previously promulgated NESHAP were submitted to and approved by the Office of Management and Budget (OMB). A copy of this Information Collection Request (ICR) document (OMB control number 2060–0325) may be obtained from Ms. Sandy Farmer, Information Policy Branch, Environmental Protection Agency, 401 M Street, S.W. (mail code 2136), Washington, D.C. 20460, or by calling (202) 260–2740.

Today's proposed amendments to the Gasoline Distribution NESHAP have no impact on the information collection burden estimates made previously. No additional certifications or filings are being proposed. Therefore, the ICR has not been revised.

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether a regulation is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The criteria set forth in section 1 of the Order for determining whether a regulation is a significant rule are as follows:

(1) Is likely to have an annual effect on the economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government communities;

(2) Is likely to create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Is likely to materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Is likely to raise novel or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The Gasoline Distribution NESHAP promulgated on December 14, 1994 was treated as a "significant regulatory action" within the meaning of the Executive Order. An estimate of the cost and benefits of the NESHAP was prepared at proposal as part of the background information document (BID). This estimate was updated in the BID for the final rule to reflect comments and changes made in developing the final rule. The amendments being proposed today have no impact on the estimates in the final BID. Pursuant to the terms of Executive Order 12866, it has been determined that this action is a "non-significant regulatory action" within the meaning of the Executive Order. As such, this action was not submitted to OMB for review.

C. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. When the Agency promulgated the Gasoline Distribution NESHAP, it analyzed the potential impacts on small businesses, discussed the results of this analysis in the **Federal Register**, and concluded that the promulgated regulation would not result in financial impacts that significantly or differentially stress affected small companies. This proposed rule would not have a significant impact on a substantial number of small entities because it would impose no additional impacts on small businesses beyond those analyzed in the original rulemaking and would simplify the administration of the rule for all governmental jurisdictions. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act, signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, the EPA must select the most cost effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that today's action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. Therefore, the requirements of the Unfunded Mandates Reform Act do not apply to this action.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference, Petroleum bulk stations and terminals, Reporting and recordkeeping requirements.

Dated: February 21, 1997.

Carol M. Browner,

Administrator.

[FR Doc. 97–4886 Filed 2–27–97; 8:45 am]

BILLING CODE 6560–50–P

[OPPTS–42187E; FRL–5592–1]

40 CFR Part 799

RIN 2070–AC76

Proposed Test Rule for Hazardous Air Pollutants; Extension of Comment Period on Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period on proposed test rule.

SUMMARY: EPA is extending the public comment period from March 31, 1997 to April 30, 1997 on the proposed rule to require manufacturers and processors of 21 hazardous air pollutants (HAPs) to test these substances for certain health effects. This proposed rule was published in the **Federal Register** on June 26, 1996 (61 FR 33178)(FRL–4869–1). On December 23, 1996, EPA extended the public comment period on the proposed rule from January 31, 1997 to March 31, 1997 (61 FR 67516)(FRL–5580–6).

DATES: Written comments on the proposed rule must be received by EPA on or before April 30, 1997.

ADDRESSES: Submit three copies of written comments on the proposed HAPs test rule, identified by document control number (OPPTS–42187A; FRL–4869–1) to: U.S. Environmental Protection Agency, Office of Pollution Prevention and Toxics (OPPT), Document Control Office (7407), Rm. G–099, 401 M St., SW., Washington, DC 20460.

A public version of the official rulemaking record supporting this action, excluding confidential business information (CBI), is available for inspection at the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC 20460, from 12 noon to 4 p.m., Monday through Friday, except on legal holidays.

All comments that contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this rulemaking. Persons submitting information that they believe is entitled to treatment as CBI must assert a business confidentiality claim in accordance with 40 CFR part 2. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will treat the information as non-confidential and may make it available to the public without further notice to the submitter.

Comments and data may also be submitted in electronic form by sending electronic mail (e-mail) to: oppt-ncic@epamail.epa.gov. Such comments and data must be submitted in an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by (OPPTS–42187A)(FRL–4869–1). No information claimed as CBI should be submitted through e-mail. Comments in electronic form may be filed online at many federal depository libraries.

The official record of this action, as well as the public version, will be maintained in paper form. EPA will transfer all comments received electronically into paper form and will place the paper copies in the official record. The official record is the paper record maintained at the address listed at the beginning of the "ADDRESSES" section of this notice.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Rm. ET–543B, Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 554–1404; TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

For technical information contact: Richard Leukroth, Project Manager, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, 401 M St., SW, Washington, DC, 20460; telephone: (202) 260–0321; fax: (202) 260–8850; e-mail: leukroth.rich@epamail.epa.gov.; or Gary Timm, Senior Technical Advisor, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 260–1859; fax: (202) 260–8168; e-mail: timm.gary@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The HAPs rule proposed testing, under section 4(a) of the Toxic Substances Control Act (TSCA), of: 1,1'-biphenyl, carbonyl sulfide, chlorine, chlorobenzene, chloroprene, cresols [3 isomers], diethanolamine, ethylbenzene, ethylene dichloride, ethylene glycol, hydrochloric acid, hydrogen fluoride, maleic anhydride, methyl isobutyl ketone, methyl methacrylate, naphthalene, phenol, phthalic anhydride, 1,2,4-trichlorobenzene, 1,1,2-trichloroethane, and vinylidene chloride. EPA would use the data generated under the rule to implement several provisions of section 112 of the Clean Air Act and to meet other EPA data needs and those of other Federal agencies. In the HAPs proposal, EPA solicited proposals for enforceable consent agreements (ECAs) regarding the performance of pharmacokinetics (PK) studies which would permit extrapolation from data developed from oral exposure studies to predict effects from inhalation exposure.

On October 18, 1996, EPA extended the public comment period on the proposed rule from December 23, 1996 to January 31, 1997 (61 FR 54383)(FRL–5571–3). This extension was to allow more time for the submission of proposals for ECAs on PK and adequate time for comments on the proposed rule to be submitted after the Agency has considered the ECA proposals. EPA has received several proposals for ECAs on PK. Due to the complexity of the issues raised by these proposals, the Agency extended the public comment period to March 31, 1997 (61 FR 67516, December 23, 1996) to allow more time to consider the ECAs and to finalize the test guidelines to be referenced in the proposed HAPs test rule.

In the HAPs proposed rule published on June 26, 1996 (61 FR 33178), testing would be conducted using the OPPTS harmonized guidelines that were proposed on June 20, 1996 (61 FR 31522)(FRL–5367–7). The process of developing these guidelines is proceeding at the same time as the development of the HAPs test rule. As stated in the original proposal, the OPPTS harmonization process may result in the finalization of the guidelines prior to the end of the comment period for the proposed rule. If so, EPA will publish the final guidelines used in the HAPs rule in order to allow for public comment on the applicability of the finalized guidelines to the HAPs rule.

There has been an additional delay in finalizing the guidelines. The Agency has decided to extend the comment period on the HAPs test rule to allow for the publication of the final guidelines.

In addition, the Agency anticipates responding to the submitters of proposals for ECAs on PK by no later than March 31, 1997.

Accordingly, EPA is extending the comment period on the proposed rule to April 30, 1997.

List of Subjects in 40 CFR Part 799

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: February 25, 1997.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 97–5193 Filed 2–27–97; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 382

[Docket No. R–156]

RIN 2133–AB19

Determination of Fair and Reasonable Guideline Rates for the Carriage of Bulk and Packaged Preference Cargoes on U.S.-Flag Commercial Vessels

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The regulations at 46 CFR part 382 prescribe the administrative procedures and methodology for determining fair and reasonable rates for the carriage of dry and liquid bulk and packaged preference cargoes on United States commercial cargo vessels. MARAD proposes to amend those regulations to prescribe cost averaging as the methodology used for

determining rates and to implement conforming procedural changes. MARAD also intends to request approval of a reduced information collection under these regulations.

DATES: Written comments on this rule, including information collection requirements, are requested, and must be received on or before April 29, 1997.

ADDRESSES: Comments may be mailed or otherwise delivered to the Secretary, Maritime Administration, Room 7210, Department of Transportation, 400 Seventh Street S.W., Washington, D.C. 20590. All comments will be made available for inspection during normal business hours at the address above. Commenters wishing MARAD to acknowledge receipt of comments should enclose a stamped, self-addressed envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Michael P. Ferris, Director, Office of Costs and Rates, Maritime Administration, Washington, D.C. 20590, Tel. (202) 366–2324.

SUPPLEMENTARY INFORMATION: Section 901(b)(1) of the Merchant Marine Act of 1936 (the Act), as amended (46 App. U.S.C. 1241(b)), cited as the Cargo Preference Act of 1954, requires that at least 50 percent of any equipment, materials or commodities purchased by the United States or for the account of any foreign nation without provision for reimbursement, or acquired as the result of funds or credits from the United States, shall be transported on privately owned U.S.-flag commercial vessels, to the extent that such vessels are available at fair and reasonable rates. In 1985, section 901 was amended to exclude certain programs from the application of cargo preference and to raise the U.S.-flag share to 75 percent on certain others. Upon request, MARAD provides fair and reasonable rates (also referred to as guideline rates) to U.S. shipper agencies. Section 901(b)(2) of the Act provides the authority for MARAD (by delegation from the Secretary of Transportation) to issue regulations governing the administration of section 901(b)(1). In 1989, MARAD issued regulations at 46 CFR Part 382 ("Rule"), that initially became effective on January 1, 1990. The Rule contains regulations that govern the calculation of fair and reasonable rates.

Under the current Rule, MARAD establishes fair and reasonable rates, so-called guideline rates, which apply to the waterborne portion of cargo transportation and consist of four components: (1) Operating costs; (2) capital costs; (3) port and cargo handling costs; and (4) brokerage and overhead. The operating cost component of the guideline rate for each participating bulk vessel reflects actual vessel operating costs that are based on historical data modified to the current period by utilizing escalation factors for wage and non-wage costs. All eligible annual operating costs are added together for each vessel and divided by the total number of operating days for that vessel to yield a daily operating cost. The cost is escalated to the current year and multiplied by estimated total voyage days to provide the operating cost segment for the voyage.

There is a fuel cost segment of the operating costs that MARAD calculates for each vessel on the basis of actual reported fuel consumption at sea and in port. The actual fuel consumption of each vessel is multiplied by the corresponding projected number of voyage days at sea and in port to calculate total units of fuel consumed. Current fuel prices are applied to fuel consumed to produce the fuel segment of the operating cost component. MARAD then adds the totals of the fuel and non-fuel operating cost segments to produce the operating cost component for the voyage.

The capital cost component is presently calculated individually for each participating bulk vessel and consists of an allowance for depreciation and interest, plus a reasonable return on investment. Depreciation is calculated by the straight-line method, based on a 20-year economic life and utilizing a residual value of 2.5 percent. However, if the owner acquired an existing vessel, the vessel is depreciated by the straight-line method over the remaining period of its 20-year economic life, but not fewer than 10 years. Capitalized improvements are depreciated straight-line over the remainder of the 20-year period, but not fewer than 10 years.

For the purpose of calculating interest expense, MARAD assumes that original vessel indebtedness is 75 percent of the owner's capitalized vessel cost and that principal payments are made in equal annual installments over a 20-year period. To compute the interest cost, the owner's actual interest rate is applied to the constructed outstanding debt on the vessel. Where the owner has a variable interest rate, MARAD uses the owner's rate prevailing at the time of calculation, and if there is no interest rate available, MARAD selects an appropriate interest rate.

MARAD allows a return on capital cost (investment), with two components, return on equity and return on working capital. The rate of return is based upon a five-year average of the most recent rates of return for a cross section of transportation industry companies, including maritime companies. Equity in the vessel is assumed to be the vessel's constructed net book value less constructed indebtedness. Working capital is the dollar amount necessary to cover operating and voyage expenses. The annual depreciation, interest, return on equity and return on working capital are divided by 300 operating days to determine a daily amount. The total of these elements is multiplied by estimated voyage days to determine the capital cost component used in the fair and reasonable rate calculation.

The port and cargo handling cost component of the guideline rate is determined for each voyage on the basis of the actual cargo tender terms for the commodity, load and discharge ports, and lot size. Costs used to determine the port and cargo cost component are based on the most current data from all available sources and verified from data received on completed cargo preference voyages. The brokerage and overhead component of the guideline rate is the aggregate of the cost components for operating, capital and port and cargo handling, multiplied by an 8.5 percent allowance for broker's commissions and overhead. The total of these four components is now divided by cargo tons (which cannot be less than 70 percent of the vessel's cargo deadweight) to determine the guideline rate.

Under existing regulations, whenever a vessel carries preference cargo and subsequently transports additional cargo prior to its return to the United States, MARAD reexamines the guideline rate that it calculated for the preference voyage. This reexamination may result in the recalculation of the original guideline rate, incorporating the additional voyage itinerary, costs and revenues which occurred as a result of the carriage of the additional cargo. If a vessel is scrapped or sold after discharging a preference cargo, MARAD now adjusts the guideline rate to reflect the termination of the voyage after discharge. If the rate received by the operator for the preference cargo exceeds the adjusted guideline rate for the one-way voyage, MARAD informs the shipper agency who may then require the operator to repay the difference in the ocean freight.

Advance Notice of Proposed Rulemaking

MARAD decided that revisions to the Rule may be necessary to encourage development of a modern and efficient merchant marine and to reduce government-wide cargo preference costs. As a result, on April 19, 1995, MARAD issued an Advance Notice of Proposed Rulemaking (ANPRM) (60 FR 19559), soliciting comments from the public. MARAD identified three alternative methodologies in the ANPRM, in addition to the current guideline rate methodology described above, that it is considering to reduce cargo preference costs. The three alternatives were:

Foreign Market Differential—Under this methodology, MARAD would calculate the added costs associated with owning and operating a vessel under the U.S.-flag resulting from U.S. laws and regulations and the U.S. standard of living. This procedure would identify a modern and efficient target vessel or vessels available worldwide and estimate costs under foreign ownership and under U.S. ownership, if operated in the most efficient manner practical. The resulting cost differential would be prorated over specific voyages, as cargoes are tendered, and added to the foreign bids for such voyages to determine the fair and reasonable rate for U.S.-flag operators.

Significant problems exist with this method, both in terms of economic impact on U.S.-flag ship owners and the legislative history of the Cargo Preference Act. First and foremost of these problems is the difficulty of identifying and quantifying all of the additional costs of U.S.-flag ownership. While some of these costs, including wages and benefits, are easily identified, such costs as the additional cost of meeting U.S. labor standards, safety and environmental requirements are not subject to quantification that would be undisputed. Secondly, since preference cargoes historically move between different geographic areas than commercial cargoes, a direct comparison with the "foreign market" may not be possible. Finally, the Cargo Preference Act of 1954 intended that only rates for U.S.-flag commercial vessels are to be considered in the determination of what is fair and reasonable. See Comp. Gen. B–95832 (Feb. 17, 1955) (unpublished), cited in *H.R. Rep. No. 80*, 84th Cong., 1st. Sess., 18 (1955). Accordingly, MARAD cannot employ a foreign market-based system.

Cost Averaging—A methodology utilizing vessel cost averaging would be constructed in much the same manner as the current Rule methodology, except that average vessel costs would replace individual vessel costs in the calculation of the fair and reasonable rate. There are three basic cost areas which would be the most likely candidates for averaging: Vessel operating costs, vessel capital costs, and fuel. Any one, or a combination of any of the three cost areas could be included in a cost averaging methodology.

Market Based—Under a market based methodology, a vessel operator's bid would be considered fair and reasonable if it were submitted in a competitive environment. A competitive environment would be established if there were a required number of qualified bids made by independent and non-affiliated U.S.-flag vessel operators. A market-based methodology would actually be a combination of methodologies because a cost-based determination would be made in instances where an insufficient number of independent bids were received. The cost-based rate could be determined as prescribed in the existing Rule or by use of some other methodology like those described above. A review of the legislative history of the Cargo Preference Act of 1954, indicates that adoption by MARAD of a market based methodology may require additional enabling legislation.

Comments to ANPRM

Seven sets of comments were received in response to the ANPRM. Commenters represented U.S. shipper agencies, operators and industry associations. Comments were offered in support of, and in opposition to all four alternatives, with no clear consensus. The U.S. Agency for International Development (USAID) also offered an alternative similar to *Worldscale* for use in determining guideline rates. Commenters generally supported the need for guideline rate reform and were unanimous that any methodology must encourage investment in efficient vessels.

One commenter proposed an alternative method whereby rates for U.S.-flag operators would be capped at defined comparable foreign rates plus a fixed percentage premium. Theoretically, this would be a ceiling rate, and anything less than the ceiling would be fair and reasonable by definition. The foreign rates would be based on averaged foreign rates for comparable cargoes and cargo lots for any preceding calendar year. The basis for any premium would still be the additional costs of U.S.-flag ownership and operation.

Public Meetings

After an initial review of the comments received on the ANPRM, MARAD believed it would be beneficial to meet with interested parties to explore further the need for change and potential methodologies. MARAD held two meetings. On July 12, 1995, members of the shipping community and other interested parties met with MARAD. The meeting generated considerable discussion on the topics of guideline rate alternatives and the added costs associated with owning and operating U.S.-flag vessels. Most persons present considered that an enumeration of the legal and regulatory costs imposed on U.S.-flag vessels would be very valuable. However, it was generally believed that it would be too difficult to construct a methodology accurately comparing the cost of operating under the U.S.-flag to the cost of operating under appropriate competitive foreign flags. With respect to a market based system, several attendees noted that the market should be left alone to regulate supply and demand. At the conclusion of the July 12 meeting, there was a consensus that what was needed were changes to (1) prevent abnormally high rate fixtures and (2) encourage efficiency. The averaging methodology was considered the best means to accomplish these goals.

On July 14, 1995, MARAD met on the same subject with representatives of the United States Department of Agriculture (USDA) and the United States Agency for International Development (USAID), the major government shipper agencies. Many of the same issues which arose at the July 12, 1995 meeting were discussed at this meeting. The discussion centered on the foreign market differential and cost averaging methodologies. There appeared to be support for both of these methodologies, although the shipper agencies expressed some reservations concerning specific items, e.g., are there sufficient vessels available in each category to make averaging possible and whether or not a new vessel should serve as the target vessel of a market based evaluation.

A question also arose regarding the effect that the proposed changes would have on the ability of the U.S.-flag commercial fleet to meet the preference reservations established by the cargo preference laws. Those laws currently require that 75 percent of specified preference cargoes be reserved for U.S.-flag participation. There is concern that the proposed changes would make it impossible for the commercial fleet to provide adequate availability to meet the statutory cargo reservation requirements. Although some high cost operators may be adversely affected, given current and foreseeable market conditions, sufficient U.S.-flag tonnage should be available to attain the 75 percent participation level.

As a result of MARAD's experience in determining guideline rates and the information received from the ANPRM and meetings with interested parties, MARAD is proposing to amend the Rule in order to improve the fair and reasonable rate-making process. The following is a discussion of proposed changes to 46 CFR Part 382.

Averaging

One of the principal criticisms of the existing Rule, which is based on individual vessel costs, is that it fails to provide sufficient incentives for efficient vessels to operate in the cargo preference trade. Conversely, the current methodology has not adequately controlled the rates provided to the less efficient operators. Averaging costs would provide the same operating and capital cost allowances for all vessels competing for the carriage of a specific preference cargo, creating an incentive for vessels to operate more efficiently. The resulting lower guideline rates would prevent the government from paying excessive rates for the use of less efficient (more costly) vessels, especially in times of high market rates for vessels in the trade. Accordingly, MARAD proposes that the operating costs, including fuel consumption, capital costs and speed, used in the construction of the guideline rate be averaged for all vessels within specific size categories. The averages would be computed twice a year. MARAD would calculate the averages more frequently, if necessary. The impact of the change to averaging would be a reduction in the guideline rate levels calculated for less efficient vessels and an increase in the guideline rate levels of the more efficient vessels.

Vessel Categories

In order to administer a guideline rate system based on average costs effectively and fairly, MARAD would place vessels in categories where a minimal amount of distortion is evident from cost variations that are solely based on vessel size. For example, the maintenance costs for a 15,000 DWT vessel are less than the maintenance cost of an 80,000 DWT vessel because, among other items, the 80,000 DWT vessel has more surface area to paint. In choosing size categories, MARAD examined the sizes and costs of vessels that have carried preference cargo, the number of vessels of similar size, and the cargo amounts carried on individual voyages in the preference trade. MARAD also considered the difference between vessel types (i.e., bulk carriers, tankers, tug/barges, and general cargo), and trading patterns in arriving at the proposed vessel categories. As a result, MARAD proposes that vessels be placed in four categories on the basis of CDWT. The NPRM defines CDWT as Summer DWT less a five percent allowance for fuel, stores and other capacity reductions. MARAD proposes to specify the following vessel categories:

Category I—Less than 8,000 CDWT
Category II—8,000—19,999 CDWT
Category III—20,000—34,999 CDWT
Category IV—35,000 CDWT and over

Tug/barge combinations would be included with other vessels of similar size in computing the average. Tug/barge combinations are often slower with lower per diem costs than self-propelled vessels. Vessel speed will also be averaged to place vessels and tug/barge units on a comparable basis. Since tug/barge combinations sometimes vary and costs for more tugs than barges are reported, MARAD proposes to match the costs of a single tug with a single barge based on the barge's operating history. To the extent tugs or barges are grouped in the data submission, MARAD would match classes of vessels. Cost categories would include an equal number of tugs and barges. As tug DWT is minimal and does not factor into cargo capacities, only the barge Cargo Deadweight Capacity (CDWT) would be used in determining the placement of tug/barge combinations in size categories. In the unusual case where more than one barge is towed by the same tug, the guideline would be based on the total tonnage carried.

Since speed would be averaged across vessel types, the separate weather delay factors in § 382.3(e)(6) would no longer be necessary. After reviewing actual vessel speeds on preference voyages, MARAD believes that a five percent delay factor is sufficient for all vessel types. With the weather delay factor being equalized, specific definitions to distinguish tug/barge units from other bulk vessels, including integrated tug/barge units, would no longer be necessary. Based on the above discussions, MARAD proposes to amend § 382.3(a),(b) and (e)(6) to implement cost averaging as the new guideline rate methodology.

Although other categories were suggested by commenters, MARAD believes the categories chosen best reflect the vessel size and cargo distributions of the existing U.S.-fleet serving the preference trade. Further, MARAD believes that the proposed categories better accommodate small cargo size shipments. In calculating guideline rates, MARAD will use costs from the vessel size category best suited for the size of the cargo.

Information Collection Requirements

MARAD is proposing to reduce reporting and auditing requirements to the maximum extent possible while continuing to recognize the agency's need for accurate cost and financial information. MARAD is proposing two changes to reduce the amount of data reported or the frequency of reporting. This NPRM proposes that annual operating cost data for similar vessels within a category could be provided in the aggregate on a single schedule rather than individually for each vessel. Should the operators take advantage of this option, a substantial reduction in the time and cost of operator preparation is expected to occur. This proposal would also change the filing of post voyage reports from a voyage based requirement (60 days after each voyage) to a semi-annual requirement. Semi-annual reporting with a ninety day lag time (versus 60 days) will reduce the paperwork burden on the operators. To implement these concepts, the agency proposes to amend § 382.2(b)(8) to authorize aggregate schedule filings, and amend § 382.2(c) to change post-voyage filing to a semi-annual requirement.

Two changes are also proposed to reduce the audit burden on operators, the Department of Transportation, Office of the Inspector General (OIG), and MARAD. The first proposed change would allow an operator to have its submissions certified by an independent certified public accountant (CPA). This would alleviate the need for audit by the OIG. Audits of cargo preference submissions have proven to be a significant cost both to the operators and the government. Since many operators have other ongoing audit requirements, MARAD believes that the certification of the cost submissions would reduce the burden on most operators. The second change would provide a more exact requirement for the preparation of the accounting data used for cost submissions. Currently, submissions must be prepared in accordance with Uniform Financial Reporting Requirements (46 CFR Part 232), using generally accepted accounting principles (GAAP). Part 232 allows the operator to report to MARAD using an accounting basis that is different from the one it normally uses for financial reporting, so long as GAAP is used. Since GAAP allows different accounting treatments for certain types of expense, some operators are reporting costs to MARAD in the manner most advantageous to them. The choice can have a major impact on an individual vessel's guideline rate. For example, drydocking costs, which occur on a multi-year cycle, can be accrued over the cycle (which includes more than one rate year) or expensed in the current reporting period. This interpretation has caused some problems with auditing the data, increasing costs to the operators and the government. MARAD proposes to require the operator to use the accounting treatment it already uses for its own records and audited financial statements. Accordingly, MARAD proposes to amend § 382.2(a) to provide the alternative of certification by a CPA and to amend § 382.2(d) to require the use of consistent accounting practices under GAAP.

MARAD is also proposing to make three minor reporting changes: First, the Official Coast Guard Identification Number (official number) would be used to identify a vessel. Since vessels change names but the official number always stays with the vessel, it is a better identifier. Secondly, § 382.2(b)(2) would be amended to clarify the DWT requirement as summer DWT in metric tons and eliminate the requirement for Suez and Panama Canal net register tons. The requirements for canal net register tons (CNRT) is not necessary. The original intent was to use CNRT to estimate canal tolls when calculating guideline rates, but to date no practical system has been developed for those estimations. Finally, § 382.2(b)(9) would be amended to clarify the definition of "operating day". Days spent waiting, even when the vessel is seaworthy and fully manned, in anticipation of booking a cargo or waiting for laydays to begin, have never been considered operating days for the purpose of calculating guideline rates.

Overall, MARAD estimates changes in information collection burden as follows:

Current		Proposed	
Responses	Hours	Responses	Hours
250	1,000	125	500

New Vessel Allowance

One goal of this rulemaking is to encourage newer and more efficient vessels to enter the cargo preference market. There are certain conditions which this regulation cannot affect, such as the three year waiting period before foreign-built vessels are eligible to carry preference cargo, irregular amount of cargoes available throughout the year, and depressed market conditions, which are primarily responsible for the lack of newer U.S.-flag vessels in the preference market. MARAD is proposing that newly constructed vessels, and vessels acquired prior to the fifth anniversary of their construction, receive an additional allowance for acquisition capital in the guideline rate that will continue for a period of five years after acquisition by the owner. The new vessel allowance would total ten percent of capitalized acquisition costs (reduced to a daily basis for use in the guideline rate based on a 300 day operating year) for the first year after acquisition. The amount would decline by one percentage point each subsequent year. No allowance will be included in the guideline rate after the fifth year following acquisition. MARAD believes this would offset any disincentives for newer vessel entrants in the proposed rule. Therefore, it is proposed that a new § 382.3(b)(4) be added to the rule which provides a new vessel allowance.

Seventy Percent Limitation

The current Rule provides that, for the purposes of calculating guideline rates, calculated cargo tonnage shall not be less than 70 percent of the vessel's cargo capacity. This provision was intended to protect the Government from excessive rates in cases where a lone bidder with a large vessel bids on a small cargo lot. Experience has shown, however, that the actual result has been to limit competition. The proposed system is cargo size driven in that the category of costs used in determining the guideline rate will be based on the total amount of cargo carried. For example, if 30,000 tons of cargo is booked for carriage, costs from Category III will be used to calculate the guideline rate. As such, the guideline rate for the carriage of that cargo for a 30,000 CDWT vessel would be the same as a 50,000 CDWT vessel. In such a system, the 70 percent rule is not necessary, and MARAD proposes to eliminate that restriction.

Determination of Voyage Length

One concern of the bulk operators has been the method for determining voyage length in § 382.3(e)(1). One provision requires that a voyage be calculated on a round voyage basis. Another requires adjustment of the guideline rate to reduce allowable voyage days for purposes of rate calculation if a backhaul cargo is obtained. It has been MARAD's experience that, together, these requirements discourage full participation in the bulk preference cargo trades and do not consistently provide equitable treatment in the guideline rate procedures. These requirements do not reflect how bulk operations are conducted.

In the U.S. preference trades, the majority of cargoes originate in the U.S. Gulf. As a result, vessels generally return to Gulf ports after completion of a voyage to await the next cargo opportunity. If that opportunity originates from a point of origin outside the Gulf, the vessel (1) must position for the cargo, and (2) will most likely return to the Gulf. In some instances a succeeding U.S. load opportunity will arise before the vessel returns to its original preference load port and it will divert directly to the load point for the successive cargo. In either event, a point-to-point round voyage does not occur.

Bulk operators, particularly tankers, frequently bid on a preference cargo in consideration of obtaining a backhaul cargo. If there is a realistic prospect of carrying a backhaul cargo, the operator will likely bid lower than where there is no backhaul cargo. The prospect of profitable backhauls would also encourage the participation of more U.S.-flag vessels in the preference trades, resulting in more competition and lower fixture rates. However, with the backhaul disincentive in the existing rule, the Government could lose the benefit of the operator's incentive to bid low.

Between May 1, 1990 and June 30, 1995, MARAD calculated 1,029 guideline rates. Of these, only 30 resulted in recalculations because of backhauls. Because most backhauls are marginal in nature, they usually contribute very little revenue above their costs. As a result, only five of the 30 recalculated rates resulted in calculated recapture, i.e., a reduction in payments to the operator. Compared to the total revenue generated by the voyages for which backhauls were calculated, the total recapture has amounted only to four-tenths of one percent of total gross revenue. The expected benefits of recapture are outweighed by the administrative expense, higher fixture rates, and lost competitive opportunities. For these reasons, MARAD is proposing elimination of the backhaul adjustment provision.

MARAD is proposing two changes to § 382.3(e)(1) to conform the existing method of determining voyage length with the realities of bulk preference operations. First, instead of requiring that the rate be based on a round-trip voyage, MARAD would choose the most appropriate port range for the return leg based on the practices of the owner and the prospects for subsequent employment at the load port. The second change would be to eliminate the requirement for a rate adjustment when the operator obtains a backhaul cargo.

Capital Cost Component

Five changes are being proposed within this cost category. The purpose of the proposed changes is to simplify or clarify rate calculations.

Section 382.3(b)(2)(ii) refers only to vessels with a 20-year economic life in determining the interest amount in the capital cost component of a guideline rate. In practice, many vessels have been sold, reconstructed and/or improved, and periods of economic life vary from vessel to vessel. In these instances, the various depreciation periods used to determine the guideline rate were defined in paragraph (b)(2)(I) of that section, but were not explicitly mentioned in paragraph (b)(2)(ii), Interest. To clarify paragraph (b)(2)(ii), MARAD proposes to include therein a cross reference to paragraph (b)(2)(I) with respect to the periods of depreciation to be used in determining interest expense in the guideline rate.

The second proposed change affects the method of determining depreciation. The current Rule uses a residual value of 2.5 percent of a vessel's initial book value as part of the depreciation calculation. For purposes of simplification and to conform to existing conditions for vessel scrapping, MARAD is proposing to eliminate use of the residual value in the calculation of depreciation.

The third proposed change to the capital cost calculation concerns situations where interest rates are not available for certain capitalized items. When this occurs, the rule now specifies that a "current long term rate, the Title XI [Vessel Financing] rate if available," be used in the guideline rate for determining the capital component. MARAD has found that the ten-year Treasury-bill (T-bill) rate plus one percent is an appropriate and readily available substitute. Accordingly, MARAD proposes to amend § 382.3(b)(2)(ii) to specify the ten-year T-bill rate plus one percent as the rate used in the fair and reasonable rate calculation when no interest rate is available or for vessels without mortgage debt.

The fourth proposed change also relates to the interest rate used to calculate capital costs. Section 382.3(b)(2)(ii) specifies that, when variable interest rates are part of the mortgage, the rate "at the time of the calculation * * * shall be used." To assist in the computation of more flexible guideline rates, MARAD proposes to use the interest rate in effect on the first business day of the year or the first business day on or after July 1, whichever is appropriate. Therefore, MARAD proposes to amend § 382.3(b)(2)(ii) to specify January 1 and July 1 as the dates on which the interest rates in effect would be used in lieu of variable interest rates for the calculation of fair and reasonable rates.

The final proposed change to capital costs is the provision pertaining to the return on working capital. A statement would be added to new § 382.3(b)(3) noting that the return on working capital is a voyage related capital cost element.

Port and Cargo Handling Cost Component

To conform to the proposed new averaging system, MARAD would amend § 382.3(c) to specify that port and cargo costs will be determined by vessel category.

One-Way Rates

Section 382.3(e)(1) provides for a one-way rate when a vessel is scrapped or immediately sold after discharge of the preference cargo. The term "immediately" has created some confusion. MARAD proposes to amend this paragraph by striking "immediately" and adding "and does not return to the United States as a U.S.-flag vessel." This language specifies the conditions under which MARAD considers a voyage to be one-way, will assure that an operator selling or transferring a vessel foreign is not compensated by a cargo preference program intended to promote U.S.-flag vessels.

Total Revenue Rates

On numerous occasions more than one cargo has been booked on a vessel subject to the guideline rate regulations. Also, there have been occasions when there have been multiple load and/or discharge ports. These situations often make the calculation of individual rates for particular parcels and/or destinations, as required by § 382.3(f) and (g), impossible. Accordingly, when this occurs, MARAD proposes to calculate a "Total Revenue Rate". The guideline rate would be calculated normally, but the final rate would be expressed as gross revenue for the total voyage, rather than as a rate per ton. So long as the revenue from the sum of the individual parcels does not exceed the total revenue calculated in the guideline, the individual rates would be considered fair and reasonable. Section 382.3(f) would be modified to remove the references to individual rates for separate parcels carried on the same voyage. Paragraph (g) of that section would also be modified by including language to allow the use of either a cost per ton or other measure that MARAD determines appropriate.

Administrative Practices

MARAD is also proposing to change certain of its administrative practices for prescribing guideline rates. While these changes do not necessitate actual changes in the regulations, MARAD is seeking comments with respect to its proposals. These changes will (1) allow differentiation between cargo tender terms when determining delay factors (for delays in port and days not worked) to more appropriately reflect the risk of delay inherent in the terms; (2) expand the applicability of an initial guideline rate calculation to cover most substitute vessels.

Delay Factors

Section 382.3(e)(3) includes in the calculation of voyage days in port a factor to account for delays and days not worked. It has been MARAD's practice not to differentiate between cargo tender terms in arriving at an appropriate delay factor. In reality, different cargo terms have different levels of risk of delay associated with them. For example, Free In and Out (FIO) terms have defined load and discharge rates, generally with payment of demurrage and despatch by the charterer and vessel owner, respectively, while FBT (Full Berth Terms) carry unlimited risk of delay without compensation. MARAD proposes to change its practices to provide delay factors which more appropriately reflect the risk of delay inherent in the cargo tender terms. For example, a guideline rate calculated for an FIO cargo where the tender included demurrage and despatch premiums could use the load and discharge guarantee rates included in the tender; for an FBT voyage, historical experience or current conditions may require using delay factors in the load or discharge ports.

Guideline Rate Requests

On average, MARAD calculates two guideline rates for each cargo actually fixed. This is generally the result of substitutions, voyage variations, add-on cargoes, audits and similar recalculations. It is currently MARAD's practice to provide a guideline rate when requested by a shipper agency. MARAD intends to substantially reduce the incidence of these calculations and determine only one guideline rate for each preference cargo which is based on the initially requested vessel and cargo. That guideline rate would also be applicable to all other vessels that might actually carry the cargo and for amounts plus or minus five percent of the original request, except in the case where there is a substitution of a vessel eligible to receive the "new vessel allowance" for an older vessel, or vice versa. Rates would also be recalculated, if requested, for add-on preference cargoes which increase cargo size by more than five percent. MARAD will not recalculate a rate for add-on commercial cargo.

Revised Rate Methodology

The guideline or fair and reasonable rates proposed to be established by MARAD would apply only to the waterborne portion of cargo transportation, to consist of four components: (1) Operating costs; (2) capital costs; (3) port and cargo handling costs; and (4) brokerage and overhead. The operating cost component of the fair and reasonable rate would reflect average vessel operating costs for vessels within the specified size categories previously discussed, based on the historical data submitted in accordance with § 382.2 of this rule. MARAD would modify the operating costs to the current period, utilizing escalation factors for wage and non-wage costs. To the extent vessels are time chartered or leased, operators would submit both operating and capital costs, including all capitalized costs and interest rates for vessels subject to capital leases.

All eligible annual operating costs for vessels within a category would be added together and divided by the total number of operating days for those vessels to yield a daily operating cost. The cost would be indexed to the current year and multiplied by estimated total voyage days to yield the operating cost segment for the voyage. The amount of cargo fixed would be the basis for selecting which vessel category of cost averages would be used in calculating a guideline rate.

Fuel consumption would be figured on the basis of actual reported fuel consumption at sea and in port for vessels within the same category. The average fuel consumptions of vessels in the category would be multiplied by the corresponding projected number of voyage days at sea and in port to yield total fuel consumed. MARAD would obtain from published sources current spot market fuel prices, at bunkering ports consistent with sound commercial practice, and apply them to fuel consumed to produce the fuel segment of the operating cost component. The total of the fuel and non-fuel operating cost segments would be added together to yield the operating cost component for the voyage.

The capital cost component would be based on participating vessels in the applicable size category. It would consist of an allowance for depreciation and interest and a reasonable return on investment. Depreciation would be straight-line based on a 20-year economic life. However, if the owner acquired an existing vessel, the vessel would be depreciated on a straight-line basis over the remaining period of its 20-year economic life, but not fewer than 10 years. Capitalized improvements would be depreciated straight-line over the remainder of the 20-year period, but not fewer than 10 years, commencing with the capitalization date for those improvements.

For the purpose of calculating interest expense, MARAD would assume that original vessel indebtedness is 75 percent of the owner's capitalized vessel cost and that principal payments are made in equal annual installments over the economic life of the vessel. To compute the interest cost, the owners' actual interest rates would be applied to the vessel's outstanding constructed debt, using the depreciation schedule in § 382.3(b)(2)(ii). Where the owner has a variable interest rate, the owner's rate prevailing at the time of calculation of the average capital cost component would be used. In cases where there is no interest rate available, and for operators without vessel debt, MARAD would use the ten-year T-bill rate plus one percent.

As in the existing Rule, return on investment would have two components, return on equity and return on working capital. The rate of return would be based upon a five-year average of the most recent rates of return for a cross section of transportation industry companies, including maritime companies. Equity would be assumed to be a vessel's constructed net book value less constructed principal amounts. Working capital would be voyage based and is the dollar amount necessary to cover operating and voyage expenses.

A new vessel allowance would be included in the capital component of newly built vessels and vessels acquired when five years of age or less. The new vessel allowance would be paid for the first five years following construction or acquisition. This allowance would equal ten percent of the vessel's capitalized costs during the first year following construction or acquisition, and would decline by one percentage point each of the subsequent four years. To arrive at the voyage allowance, the annual amount would be divided by 300 operating days and multiplied by estimated voyage days.

The average annual depreciation, interest, and return on equity for vessels in the category would be divided by 300 operating days to determine a daily amount. The total of these elements would be multiplied by estimated voyage days and added to the return on working capital and the new vessel allowance to determine the capital cost component used in the fair and reasonable rate calculation.

The port and cargo handling cost component would be determined for each voyage on the basis of vessels in the category and the actual cargo tender terms for the commodity, load and discharge ports, and lot size. The costs would include applicable fees for wharfage and dockage of the vessel, canal tolls, cargo loading and discharging, and all other voyage costs associated with the transportation of preference cargo. Costs used to determine the port and cargo cost component would be based on the most current data from all available sources and verified from data received on completed cargo preference or commercial voyages.

To determine the brokerage and overhead component of the fair and reasonable rate, MARAD would add the cost components for operating, capital, and port and cargo handling and multiply that sum by an 8.5 percent allowance for broker's commissions and overhead. The total of these four components, expressed as total revenue or as a rate per ton, whichever is most applicable, would be the fair and reasonable rate.

If a vessel is scrapped or sold after discharging a preference cargo, and the vessel does not return to the United States as a U.S.-flag vessel, the guideline rate would be adjusted to reflect the termination of the voyage after cargo discharge. If the rate received by the operator for the preference cargo exceeds the adjusted guideline rate for the one-way voyage, the operator would be required to repay the difference in ocean freight to the shipper agency.

In special circumstances, certain procedures prescribed in this rule may be waived, so long as the procedures adopted are consistent with the Act and with the intent of these regulations.

Rulemaking Analysis and Notices

Executive Order 12866 (Regulatory Planning and Review); DOT Regulatory Policies and Procedures; Public Law 104–121.

This rulemaking is not considered an economically significant regulatory action under Section 3(f) of E.O. 12866. It is not considered to be a major rule

for purposes of Congressional review under Public Law 104–121. It is anticipated that savings to the Government of less than $1 million per year will result. Accordingly, the program will not have an annual effect on the economy of $100 million or more. While this rule does not involve any change in important Departmental policies, it is considered significant under DOT Regulatory Policies and Procedures and E.O. 12866 because it addresses a matter of considerable importance to the maritime industry and may be expected to generate significant public interest. Accordingly, the Office of Management and Budget has reviewed this rule.

MARAD has estimated the potential economic impact of this rulemaking. To determine what effect the proposed changes would have had on guideline rates, 167 rates were recalculated for the years 1992 through 1995 using the revised methodology. This sample represented 25% to 30% of the total fixtures for each of the four years. The rate sample chosen was reflective of the operators and countries in the complete data base. For 1992 and 1993, the recalculated rates were below the original guideline rates 54% of the time. In 1994 and 1995, the ratio of recalculated rates falling below original guideline calculations rose to 60%.

The rates calculated for the sample were compared to actual cargo fixture rates to evaluate the ability of averaging to reduce program costs. The chart included below summarizes the results of the sample data. Using averaging, twelve percent of the rates in the sample were lower, while only 10 percent rose. The dollar cost reduction for the rates compared equates to about one million dollars over the period. Assuming the relationship holds constant over the remainder of the rates calculated in the period, a savings of $3.3 million could have been realized.

GUIDELINE RATE CHANGES UNDER AVERAGING METHOD COMPARISON OF HISTORICAL GUIDELINE RATES TO PROPOSAL

Year	Sample size	Preference revenue		Net savings	Direction of change	
		Original	Revised		Down	Up
1992	53	$82,929,000	$82,434,000	$495,000	5	4
1993	67	137,344,000	136,812,000	532,000	14	13
1994	36	50,607,000	50,607,000	0	0	0
1995	11	15,985,000	15,982,000	3,000	1	0
Total	167	286,865,000	285,835,000	1,030,000	20	17
Total percentage of change					12	10

The data for 1994 and 1995 also demonstrate how a bad market depresses the rates offered for preference cargoes. Even though rates calculated using the averaging method fell below the original guideline rate 60% of the time, actual fixture rates during that period were still below recalculated guidelines. This result is neither unexpected nor undesirable. In fact, it validates the category cost averaging method as being able to hold rates down in a very good market while not being responsible for pushing the rates to the level of a bad market. Even though reducing program costs is a goal of this proposed new method, it is important that rates still be fair to an efficient operator.

Federalism

The Maritime Administration has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612 and has determined that it would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Maritime Administration certifies that this regulation would not have a significant economic impact on a substantial number of small entities. There are approximately twenty-five vessel operators that participate in this program, none of which are small entities.

Environmental Assessment

This regulation does not significantly affect the environment. Accordingly, an Environmental Impact Statement is not required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act

This proposed rulemaking reduces the current requirement for the collection of information. The Office of Management and Budget (OMB) has reviewed and approved the information collection and record keeping requirements (approval number 2133–0514) in the current rule under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection. Copies of this request can be obtained from the Office of Costs and Rates.

Title of Collection: Determination of Fair and Reasonable Rates for the Carriage of Bulk Preference Cargoes (46 CFR Part 382).

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0514.

Form Number: None.

Expiration Date of Approval: 9/30/97.

Summary of Collection of Information: Two different types of data are required: Vessel Operating Costs and Capital Costs—Part 382 requires U.S.-flag vessel Operators to submit this data to MARAD on an annual basis. The costs are used by MARAD in determining fair and reasonable guideline rates for the carriage of preference cargoes on U.S.-flag vessels. Voyage costs and voyage days—(Post Voyage Report)—This information is required to be filed by a U.S.-flag operator after the completion of a cargo preference voyage.

Need and Use of the Information: The information collected is used by MARAD to calculate fair and reasonable rates for U.S.-flag vessels engaged in the carriage of preference cargoes. If the information is not collected, the fair and reasonable rates could be inaccurate thus leading to a lack of adequate protection of the government's financial interest in obtaining the lowest possible U.S.-flag cost for shipping government cargoes.

Description of Respondents: U.S.-flag vessels are owned and operated by U.S. citizens under the U.S.-flag. The vessels consist of tug/barges, dry bulk vessels, break bulk liner vessels, LASH, and tankers.

Annual Responses: 125 (total)—50 filings of vessel operating costs and capital costs from U.S. operators; 75 filings of Post Voyage Reports.

Annual Burden: 500 hours—This rule would not impose any unfunded mandates.

List of Subjects in 46 CFR Part 382

Agricultural commodities, Confidential business information, Government procurement, Loan programs—foreign relations, Maritime carriers, Reporting and recordkeeping requirements.

Accordingly, 46 CFR Chapter II is hereby proposed to be amended by revising Part 382, to read as follows:

PART 382—DETERMINATION OF FAIR AND REASONABLE RATES FOR THE CARRIAGE OF BULK AND PACKAGED PREFERENCE CARGOES ON U.S.-FLAG COMMERCIAL VESSELS

Sec.
382.1 Scope.
382.2 Data submission.
382.3 Determination of fair and reasonable rates.
382.4 Waiver.

Authority: 46 App. U.S.C. 1114, 1241(b); 49 CFR 1.66.

§ 382.1 Scope.

The regulations in this part prescribe the type of information that shall be submitted to the Maritime Administration (MARAD) by operators interested in carrying bulk and packaged preference cargoes, and the method for calculating fair and reasonable rates for the carriage of dry (including packaged) and liquid bulk preference cargoes on U.S.-flag commercial vessels, except vessels engaged in liner trades, as defined in 46 CFR 383.1, pursuant to section 901(b) of the Merchant Marine Act, 1936, as amended, 46 App. U.S.C. 1214(b).

§ 382.2 Data submission.

(a) *General.* The operators shall submit information, described in paragraphs (b) and (c) of this section, to the Director, Office of Costs and Rates, Maritime Administration, Washington, D.C. 20590. To the extent a vessel is time chartered, the operator shall also submit operating expenses for that vessel. All submissions shall be certified by the operators. A further review and certification by an independent Certified Public Accountant (CPA) is recommended. Submissions not certified by an independent CPA are subject to verification, at MARAD's discretion, by the Office of the Inspector General, Department of Transportation. MARAD's calculations of the fair and reasonable rates for U.S.-flag vessels shall be performed on the basis of cost data provided by the U.S.-flag vessel operator as specified herein. If a vessel operator fails to submit the required cost data, MARAD will not construct the guideline rate for the affected vessel, which may result in such vessel not being approved by the sponsoring Federal agency.

(b) *Required vessel information.* The following information shall be submitted not later than April 30, 1998, for calendar year 1997 and shall be updated not later than April 30 for each subsequent calendar year. In instances where a vessel has not previously participated in the carriage of cargoes described in § 382.1, the information shall be submitted not later than the same date as the offer for carriage of such cargoes is submitted to the sponsoring Federal agency, and/or its program participant, and/or its agent and/or program's agent, or freight forwarder.

(1) Vessel name and official number.

(2) Vessel DWT (summer) in metric tons.

(3) Date built, rebuilt and/or purchased.

(4) Normal operating speed.

(5) Daily fuel consumption at normal operating speed, in metric tons (U.S. gallons for tugs) and by type of fuel.

(6) Daily fuel consumption in port while pumping and standing, in metric tons (U.S. gallons for tugs), by type of fuel.

(7) Total capitalized vessel costs (list and date capitalized improvements separately), and applicable interest rates for indebtedness (where capital leases are involved, the operator shall report the imputed capitalized cost and imputed interest rate).

(8) Operating cost information, to be submitted in the format stipulated in 46 CFR 232.1, on Form MA–172, Schedule 301. Operators are encouraged to provide operating cost information for similar vessels that the operator considers substitutable within a category, as defined in § 382.3(a)(1), in the aggregate on a single schedule. Information shall be applicable to the most recently completed calendar year.

(9) Number of vessel operating days pertaining to data reported in paragraph (b)(8) of this section for the year ending December 31. For purposes of this part, an operating day is defined as any day on which a vessel or tug/barge unit is in a seaworthy condition, fully manned, and either in operation or standing ready to begin pending operations.

(c) *Required port and cargo handling information.* The port and cargo handling costs listed in this paragraph (c) shall be provided semi-annually for each cargo preference voyage terminated during the period. The report shall identify the vessel, cargo and tonnage, and round-trip voyage itinerary including dates of arrival and departure at port or ports of loading and discharge. The semi-annual periods are as follows:

Period/Due date

April 1–September 30—January 1
October 1–March 31—July 1

(1) *Port expenses.* Total expenses or fees, by port, for pilots, tugs, line handlers, wharfage, port charges, fresh water, lighthouse dues, quarantine service, customs charges, shifting expenses, and any other appropriate port expense.

(2) *Cargo expense.* Separately list expenses or fees for stevedores, elevators, equipment, and any other appropriate expenses.

(3) *Extra cargo expenses.* Separately list expenses or fees for vacuvators and/or cranes, lightering (indicate tons moved and cost per ton), grain-to-grain cleaning of holds or tanks, and any other appropriate expenses.

(4) *Canal expenses.* Total expenses or fees for agents, tolls (light or loaded), tugs, pilots, lock tenders and boats, and any other appropriate expenses. Indicate waiting time and time of passage.

(d) *Other requirements.* Unless otherwise provided, operators shall use generally accepted accounting principles and 46 CFR Part 232, Uniform Financial Reporting Requirements, for guidance in submitting cost data. Notwithstanding the general provisions in 46 CFR 232.2(c) for MARAD program participants, each operator shall submit cost data in the format that conforms with the accounting practices reflected in the operator's trial balance and, if audited statements are prepared, the audited financial statements. Data requirements stipulated in paragraph (b) of this section that are not included under those reporting instructions shall be submitted in a similar format. If the operator has already submitted to MARAD, for other purposes, any data required under paragraph (b) of this section, its submission need not be duplicated to satisfy the requirements of this part.

(e) *Presumption of confidentiality.* MARAD will initially presume that the material submitted in accordance with the requirements of this part is privileged or confidential within the meaning of the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(4). In the

event of a subsequent request for any portion of that data under the FOIA,

be constructed, at least twice yearly, consisting of vessel depreciation,

recent return of stockholders' equity for a cross section of transportation

Terms" (INCOTERMS) published by the International Chamber of Commerce

SUMMARY: The Commission solicits updated comments in this proceeding to

2. In light of the relatively long interval between release of the DRS

event of a subsequent request for any portion of that data under the FOIA, MARAD will inform the submitter of such request and allow the submitter the opportunity to comment. The submitter shall claim or reiterate its claim of confidentiality at that time by memorandum or letter, stating the basis for such assertion of exemption from disclosure, including, but not limited to, statutory and decisional authorities. The Freedom of Information Act Officer, or the Chief Counsel of MARAD, will inform the submitter of the intention to disclose any information claimed to be confidential, after the initial FOIA request, or after any appeal of MARAD's initial decision, respectively.

(Approved by the Office of Management and Budget under control number 2133–0514)

§ 382.3 Determination of fair and reasonable rate.

Fair and reasonable rates for the carriage of preference cargoes on U.S.-flag commercial vessels shall be determined as follows:

(a) *Operating cost component*—(1) *General.* An operating cost component for each category, based on average operating costs of participating vessels within a cargo size category, shall be determined, at least twice yearly, on the basis of operating cost data for the calendar year immediately preceding the current year that has been submitted in accordance with § 382.2. The operating cost component shall include all operating cost categories, as defined in 46 CFR 232.5, Form MA–172, Schedule 301, Operating Expenses. For purposes of these regulations, charter hire expenses are not considered operating costs. MARAD shall index such data yearly to the current period, utilizing the escalation factors for wage and nonwage costs used in escalating operating subsidy costs for the same period.

(2) *Fuel.* Fuel costs within each category shall be determined based on the average actual fuel consumptions, at sea and in port, and current fuel prices in effect at the time of the preference cargo voyage(s).

(3) *Vessel categories.* (i) Vessels shall be placed in categories by cargo deadweight capacities (CDWT), as follows:

Group I—under 8,000 CDWT
Group II—8,000—19,999 CDWT
Group III—20,000—34,999 CDWT
Group IV—35,000 CDWT and over

(ii) For purposes of paragraph (a)(3)(i) of this section, CDWT is defined as Summer DWT less five percent.

(b) *Capital component*—(1) *General.* An average capital cost component shall be constructed, at least twice yearly, consisting of vessel depreciation, interest, and return on equity.

(2) *Items included.* The capital cost component shall include:

(i) *Depreciation.* The owner's capitalized vessel costs, including capitalized improvements, shall be depreciated on a straight-line basis over a 20-year economic life, unless an owner purchased or reconstructed the vessel when its age was greater than 10 years old. To the extent a vessel is chartered or leased, the operator shall submit the capitalized cost and imputed interest rate. In the event these items are not furnished, MARAD will construct these amounts. When vessels more than 10 years old are acquired, a depreciation period of 10 years shall be used. Capitalized improvements made to vessels more than 10 years old shall be depreciated over a 10-year period. When vessels more than 10 years old are reconstructed, MARAD will determine the depreciation period.

(ii) *Interest.* The cost of debt shall be determined by applying the vessel owner's actual interest rate to the outstanding vessel indebtedness. MARAD shall assume that original vessel indebtedness is 75 percent of the owner's capitalized vessel cost, including capitalized improvements, and that annual principal payments are made in equal installments over the economic life of the vessel as determined in accordance with paragraph (b)(2)(i) of this section. Where an operator uses a variable interest rate, the operator's actual interest rate at the time of calculation of the average capital cost component shall be used. The ten-year Treasury bill (T-bill) rate plus one percent on the first business day of the year or the first business day on or after July 1 shall be used for operators without vessel debt and when the actual rate is unavailable.

(iii) *Return on equity.* The rate of return on equity shall be computed in the same manner as described in paragraph b)(3) of this section. For the purpose of determining equity, it shall be assumed that the vessel's constructed net book value, less outstanding constructed principal, is equity. The constructed net book value shall equal the owner's capitalized cost minus accumulated straight-line depreciation.

(3) *Return on working capital.* For each voyage a return on working capital shall be included as part of the capital cost element. Working capital shall equal the dollar amount necessary to cover 100 percent of the averaged operating costs and estimated voyage costs for the voyage. The rate of return shall be based on an average of the most recent return of stockholders' equity for a cross section of transportation companies, including maritime companies.

(4) *New vessel allowance.* Newly constructed vessels and vessels acquired during or before their fifth year of age will receive an additional allowance for acquisition capital as part of the capital cost element. For the first year following construction or acquisition by the operator, a daily amount equal to ten percent of capitalized acquisition costs, divided by 300 operating days, shall be included. This amount shall be reduced by one percent of capitalized acquisition costs each subsequent year. No allowance shall be included after the fifth year following construction or acquisition.

(5) *Voyage component.* The annual depreciation, interest, and return on equity shall be divided by 300 vessel operating days to yield the daily cost factors. Total voyage days shall be applied to the daily cost factors and totaled with the return on working capital and new vessel allowance for the voyage to determine the daily capital cost component.

(c) *Port and cargo handling cost component.* MARAD shall calculate an estimate of all port and cargo handling costs on the basis of the reported cargo tender terms. The port and cargo handling cost component shall be based on vessels in the category and the most current information available verified by information submitted in accordance with § 382.2(c), or as otherwise determined by MARAD, such as by analysis of independent data obtained from chartering agencies.

(d) *Brokerage and overhead component.* An allowance for broker's commission and overhead expenses of 8.5 percent shall be added to the sum of the operating cost component, the capital cost component, and the port and cargo handling cost component.

(e) *Determination of voyage days.* The following assumptions shall be made in determining the number of preference cargo voyage days:

(1) The voyage shall be round-trip with the return in ballast to a port or port range selected by MARAD as the most appropriate, unless the vessel is scrapped or sold after discharge of the preference cargo and does not return to the United States as a U.S.-flag vessel. In this event, only voyage days from the load port to the discharge port, including time allowed to discharge, shall be included.

(2) Cargo is loaded and discharged as per cargo tender terms interpreted in accordance with the "International Rules For the Interpretation of Trade Terms" (INCOTERMS) published by the International Chamber of Commerce.

(3) Total loading and discharge time includes the addition of a factor to account for delays and days not worked.

(4) One extra port day is included at each anticipated bunkering port.

(5) An allowance shall be included for canal transits, when appropriate.

(6) Transit time shall be based on the average speed of vessels in the category plus an additional five percent to account for weather conditions.

(f) *Determination of cargo carried.* The amount of cargo tonnage and the category of costs used to calculate the rate shall be based on the tender offer or charter party terms. In instances when separate parcels of preference cargo are booked or considered for booking on the same vessel, whether under a single program or different programs, a guideline rate shall be provided based on the combined voyage.

(g) *Total rate.* The guideline rate shall be the total of the operating cost component, the capital cost component, the port and cargo handling cost component, and the broker's commission and overhead component. The fair and reasonable rate can be expressed as total voyage revenue or be divided by the amount of cargo to be carried, as prescribed in paragraph (f) of this section, and expressed as cost per ton, whichever MARAD deems most appropriate.

§ 382.4 Waiver.

In special circumstances and for good cause shown, the procedures prescribed in this part may be waived in keeping with the circumstances of the present, so long as the procedures adopted are consistent with the Act and with the intent of this part.

By Order of the Maritime Administrator.
Dated: February 24, 1997.
Joel C. Richard,
Secretary.
[FR Doc. 97–5017 Filed 2–27–97; 8:45 am]
BILLING CODE 4910–81–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 93–25] [FCC 97–24]

DBS Public Interest Rulemaking

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; additional comments sought.

SUMMARY: The Commission solicits updated comments in this proceeding to reflect changed circumstances in the DBS industry since the release in 1993 of the Notice of Proposed Rule Making to implement section 25 of the 1992 Cable Act. Among the issues on which the Commission seeks revised public comment are how sections 312(a)(7) and 315 of the Communications Act should be applied to DBS providers, how the requirement to reserve 4–7 percent of channel capacity for non-commercial programming should be implemented, and what public interest or other requirements, if any, should be imposed on DBS providers in addition to the minimum specified requirements.

DATES: Comments must be submitted on or before March 31, 1997. Replies must be submitted on or before April 30, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John Stern, International Bureau, (202) 418–0746 or Brian Carter, International Bureau, (202) 418–2119.

SUPPLEMENTARY INFORMATION:

1. Section 25 of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act") added a new Section 335 to the Communications Act of 1934 that directed the Commission to initiate a rulemaking to impose public interest or other requirements for providing video programming on direct broadcast satellite ("DBS") service providers. On March 2, 1993, the Commission released a Notice of Proposed Rule Making seeking comment on its proposals to implement the different provisions of section 25 ("DBS Public Interest NPRM").[1] On September 16, 1993, after the Commission had received comments and reply comments in this proceeding, the United States District Court for the District of Columbia held that section 25 of the 1992 Cable Act was unconstitutional.[2] This ruling effectively froze the DBS Public Interest NPRM pending the Commission's appeal of the decision. Nearly three years later, on August 30, 1996, the United States Court of Appeals for the District of Columbia Circuit reversed the District Court and held that section 25 was constitutional.[3]

2. In light of the relatively long interval between release of the DBS Public Interest NPRM and the Court's recent decision upholding section 25, the Commission, by this public notice, seeks to update and refresh the record in this proceeding. The DBS industry has grown and changed dramatically over the last four years. Accordingly, the Commission requests new and revised comments on each of the issues raised in the DBS Public Interest Rulemaking and on any other issues relevant to implementation of section 25.

Section 25(a) of the 1992 Cable Act (47 U.S.C. 335(a)) states:

> The Commission shall, within 180 days after the date of enactment of this section, initiate a rulemaking proceeding to impose, on providers of direct broadcast satellite service, public interest or other requirements for providing video programming. Any regulations prescribed pursuant to such rulemaking shall, at a minimum, apply the access to broadcast time requirement of section 312(a)(7) and the use of facilities requirements of section 315 to providers of direct broadcast satellite service providing video programming. Such proceeding also shall examine the opportunities that the establishment of direct broadcast satellite service provides for the principle of localism under this Act, and the methods by which such principle may be served through technological and other developments in, or regulation of, such service.

3. With respect to this section of the statute we seek updated comments on issues that include but are not limited to the following: How should the requirements of sections 312(a)(7) and 315 of the Communications Act be applied to DBS providers?[4] What "public interest or other requirements", if any, should be imposed on DBS providers in addition to the minimum requirements described above? In the 1993 DBS Public Interest NPRM we tentatively proposed not to adopt additional public service requirements, based on "the flexible regulatory approach taken for DBS and its early stage of development."[5] Should the rapid deployment of the DBS industry over the last several years, including technological advances that may in the near future allow DBS providers to offer some local programming alter this conclusion? If so, how?

4. We also seek updated comments on how we should apply the separate requirements imposed by section 25(b) of the 1992 Cable Act. Section 25(b)(1) mandates that a DBS provider "reserve a portion of its channel capacity, equal to not less than 4 percent nor more than

[1] 58 FR 12917 (Mar. 8, 1993); 8 FCC Rcd 1589 (1993).

[2] *Daniels Cablevision, Inc. v. United States*, 835 F. Supp. 1 (D.D.C. 1993).

[3] *Time Warner Entertainment Co., L.P. v. FCC*, 93 F.3d 957 (D.C. Cir. 1996); *petition for rehearing pending*.

[4] See *DBS Public Interest NPRM*, 8 FCC Rcd 1589 at ¶¶ 21–28.

[5] *Id.* at ¶ 29.

7 percent, exclusively for noncommercial programming of an

should these section 25(b) provisions be interpreted and implemented?[8]

relevant documents can be obtained in the FCC Reference Center, 1919 M

Notices

7 percent, exclusively for noncommercial programming of an educational or informational nature." Among the questions we asked in our NPRM on this section were whether, and if so how, we should define the term "noncommercial" programming.[6] Pursuant to section 25(b)(3), this channel capacity must be made available, to "national educational programming suppliers, upon reasonable prices, terms, and conditions." What other entities, if any, must be afforded access to channel capacity under this provision?[7] How should the term "reasonable prices, terms, and conditions" be defined? How should these section 25(b) provisions be interpreted and implemented?[8]

5. Because DBS, as a satellite service, is likely to be delivered on a regional rather than national basis, we seek comment on the international ramifications of any public interest obligations we may adopt. Finally, we seek comment on any other issues relevant to the implementation of section 25.

6. Comments filed in response to this Public Notice should be filed on or before March 31, 1997 and replies should be filed on or before April 30, 1997. Commenters should note that while this Public Notice references the original docket number (MM Docket No. 93–25), this proceeding will be handled by the International Bureau. Copies of relevant documents can be obtained in the FCC Reference Center, 1919 M Street, NW., Room 239, Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037. For further information contact John Stern at (202) 418–0746 or Brian Carter at (202) 418–2119.

List of Subjects in 47 CFR Part 76

Equal employment opportunity, Reporting and recordkeeping requirements.

Federal Communications Commission.

William S. Caton,

Acting Secretary.

[FR Doc. 97–5090 Filed 2–27–97; 8:45 am]

BILLING CODE 6712–01–P

[6] *Id.* at ¶ 44.

[7] *Id.* at ¶ 43.

[8] *See Id.* at ¶¶ 37–51.

Notices

Federal Register

Vol. 62, No. 40

Friday, February 28, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Research, Education, and Economics

National Agricultural Research, Extension, Education, and Economics Advisory Board Meeting

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463), the United States Department of Agriculture announces a meeting of the National Agricultural Research, Extension, Education, and Economics Advisory Board.

SUPPLEMENTARY INFORMATION: The Secretary of Agriculture has asked the National Agricultural Research, Extension, Education, and Economics Advisory Board to obtain Stakeholder input on the priority issues for agricultural research, extension, education, and economics, and to establish an ongoing line of communication to the diverse stakeholder groups. The Advisory Board, which represents 30 constituent categories, as specified in the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. 104–127, 110 Stat. 1156–1184), has scheduled a Stakeholder Symposium on March 25th in Washington, D.C. The Advisory Board has broadly defined "stakeholder" within the context of its activities as follows: "any individual or group of individuals who have vested interested in, or are affected by, food and agricultural research, extension, education, and economics."

Approximately 150 individuals will participate in the Stakeholder Symposium, which represents one of several meetings being planned throughout the country to address the USDA Research, Education, and Economics (REE) draft Strategic Plans.

The March 25th Stakeholder Symposium will focus on the content of the REE Strategic Plans (i.e., plans of Agricultural Research Service (ARS), Cooperative State Research, Education, and Extension Service (CSREES), Economic Research Service (ERS), the National Agricultural Statistics Service (NASS), and REE mission area) and how well these plans contribute to the cross-cutting goals:

(1) Agricultural System that is Highly Competitive in the Global Economy,

(2) Safe and Secure Food and Fiber System,

(3) Healthy, Well-Nourished Population,

(4) Greater Harmony Between Agriculture and the Environment, and

(5) Enhanced Economic Opportunity and Quality of Life for Americans.

Stakeholder input to the Strategic Plans will be organized around the following panel sessions: (a) Plant Systems; (b) Animal Systems; (c) Nutrition, Food Quality, and Health; (d) Natural Resources and Environment; (e) Processes and New Products; (f) Markets, Trade, and Policy; and (g) Human Capacity Building.

Each panelist will present a 10-minute formal statement on the Strategic Plans and how well they support the goals for USDA research, extension, education, and economics.

The general meeting of the Advisory Board will be held March 26–27, 1997. The meeting agenda includes: a report on the findings of the Stakeholder Symposium, a discussion of activities required under the FAIR Act of 1996, and the Board's recommendations for long-term agenda items. The Advisory Board will also begin discussions for its review and recommendations to the REE Implementation and Annual Performance Plans. The Advisory Board's Executive Committee and the REE Strategic Plan Working Group will provide progress reports to the Advisory Board. The membership of the newly formed agricultural facilities "Strategic Planning Task Force" will be announced. Invited speakers will provide the Advisory Board with an overview of the USDA National Research Initiative, USDA budget outlook, and farm concentration issues.

DATES: March 25, 1997, 8:15 a.m.–7:00 p.m.; March 26, 1997, 8:30 a.m.–5:30 p.m.; and March 27, 1997, 8:30 a.m.–4:00 p.m.

PLACE: Hotel Washington, Washington Room, 15th and Pennsylvania Avenue, NW, Washington, DC.

TYPE OF MEETING: Open to the public.

COMMENTS: The public may file written comments before or after the meeting with the contact person listed below.

FOR FURTHER INFORMATION CONTACT: Deborah Hanfman, Executive Director, National Agricultural Research, Extension, Education, and Economics Advisory Board, Research, Education, and Economics Advisory Board Office, Room 3918 South, U.S. Department of Agriculture, STOP: 2255, 1400 Independence Avenue, SW, Washington, DC 20250–2255. Telephone: 202–720–3684.

Done at Washington, D.C. this 21st day of February 1997.

Catherine E. Woteki,

Acting Under Secretary, Research, Education, and Economics.

[FR Doc. 97–4968 Filed 2–27–97; 8:45 am]

BILLING CODE 3410–22–M

Animal and Plant Health Inspection Service

[Docket No. 96–098–1]

Dupont Agricultural Products; Receipt of Petition for Determination of Nonregulated Status for Genetically Engineered Soybeans

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from Dupont Agricultural Products seeking a determination of nonregulated status for soybeans designated as sublines G94–1, G94–19, and G168 derived from transformation event 260–05 that have been genetically engineered to produce high oleic acid oil. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether these soybean sublines present a plant pest risk.

DATES: Written comments must be received on or before April 29, 1997.

ADDRESSES: Please send an original and three copies of your comments to

Docket No. 96–098–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 96–098–1. You may read any comments that we receive at the address given above between 8 a.m. and 4:30 p.m., except holidays. Persons wishing to inspect comments are requested to call in advance of visiting at (202) 690–2817.

FOR FURTHER INFORMATION CONTACT: For information regarding the petition and the determination, contact Dr. Neil Hoffman, Biotechnology Permits, BBEP, APHIS, Suite 4B04, 4700 River Road Unit 147, Riverdale, MD 20737–1237, (301) 734–7612. For copies of the petition, contact Ms. Terry Fleming at (301) 734–5940.

SUPPLEMENTARY INFORMATION: Under the authority of the plant pest provisions of the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of genetically engineered organisms and products that are considered "regulated articles." The regulations in § 340.0 define a regulated article as any organism or product which is to be imported, or moved interstate, which we know or have reason to believe is a plant pest or which there is reason to believe is a plant pest, and any organism or product altered or produced through genetic engineering which is to be imported, or moved interstate, which we know or have reason to believe is a plant pest or which there is reason to believe is a plant pest, unless the organism or product has been determined to be unregulated through the regulations in part 340.

Paragraph (a) of § 340.6 provides that any person may petition us to evaluate and determine that a genetically engineered organism and its progeny should not be regulated because they do not present a plant pest risk. Dupont Agricultural Products has submitted a petition (APHIS Petition Number 96–098–1) seeking a determination of nonregulated status for soybeans designated as sublines G94–1, G94–19, and G168 derived from transformation event 260–05 that have been genetically engineered to contain the GmFad 2–1 gene, which causes a modification of the fatty acid profile of the oil. The petition states that these soybean sublines are unlikely to pose a plant pest risk and therefore should not be regulated under our regulations.

As a result of a recent court decision, we will no longer publish notices in the Federal Register announcing that we have received a petition for a determination of nonregulated status, but will instead notify the public of our decision by publishing in the Federal Register a notice of availability of the petition for public review and comment. This will occur only after we have reached a preliminary decision as to whether the petitioned soybeans are unlikely to pose a plant pest risk. Therefore, this notice announces our decision to publish in the future a notice of availability for the petition for Dupont Agricultural Products for public review and comment.

The petition is available for public review, and copies are available as indicated in the ADDRESSES section of this notice. Copies are also available by writing to the person listed under FOR FURTHER INFORMATION CONTACT.

Done in Washington, D.C., this 24th day of February 1997.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–5089 Filed 2–27–97; 8:45 am]

BILLING CODE 3410–34–P

environmental effects of noxious weed treatment on the Fernan and Wallace

DATES: Written comments and suggestions should be received no later

visit with Forest Service officials during the analysis and prior to the decision

Docket No. 96–098–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 96–098–1. A copy of the petition and any comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30p.m., Monday through Friday, except holidays. Persons wishing access to that room to inspect the petition or comments are asked to call in advance of visiting at (202) 690–2817.

FOR FURTHER INFORMATION CONTACT: Dr. Ved Malik, BSS, PPQ, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–7612. To obtain a copy of the petition, contact Ms. Kay Peterson at (301) 734–7612; e-mail: mkpeterson@aphis.usda.gov.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles."

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for determination of nonregulated status must take and the information that must be included in the petition.

On January 8, 1997, APHIS received a petition (APHIS Petition No. 97–008–01p) from Dupont Agricultural Products (Dupont) of Wilmington, DE, requesting a determination of nonregulated status under 7 CFR part 340 for high oleic acid soybean sublines G94–1, G94–19, and G168 (sublines G94–1, G94–19, and G168) derived from transformation event 260–05. The Dupont petition states that the subject soybean sublines should not be regulated by APHIS because they do not present a plant pest risk.

As described in the petition, sublines G94–1, G94–19, and G168 have been genetically engineered to contain the GmFad 2–1 gene, which causes a coordinate silencing of itself and the endogenous GmFad 2–1 gene. Suppression of the GmFad 2–1 gene in developing soybeans prevents the addition of a second double bond to oleic acid, resulting in a greatly increased oleic acid content only in the seed. The resulting oil contains an abundance of monosaturated oleic acid (82–85%), a reduced concentration of polysaturated fatty acids, and lower palmitic acid content. While the subject soybean sublines also contain the GUS and Amp marker genes, tests indicate that these genes are not expressed in the transgenic soybean plants. The added genes were introduced into meristems of the elite soybean line A2396 by the particle bombardment method, and their expression is controlled in part by gene sequences derived from the plant pathogens *Agrobacterium tumefaciens* and cauliflower mosaic virus.

Dupont's soybean sublines G94–1, G94–19, and G168 are currently considered regulated articles under the regulations in 7 CFR part 340 because they contain gene sequences derived from plant pathogenic sources. The subject soybean sublines have been evaluated in field trials conducted since 1995 under APHIS notifications. In the process of reviewing these notifications for field trials, APHIS determined that the vectors and other elements were disarmed and that the trials, which were conducted under conditions of reproductive and physical containment or isolation, would not present a risk of plant pest introduction or dissemination.

In the Federal Plant Pest Act, as amended (7 U.S.C. 150aa *et seq.*), "plant pest" is defined as "any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants." APHIS views this definition very broadly. The definition covers direct or indirect injury, disease, or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

The Food and Drug Administration (FDA) published a statement of policy on foods derived from new plant varieties in the **Federal Register** on May 29, 1992 (57 FR 22984–23005). The FDA statement of policy includes a discussion of the FDA's authority for ensuring food safety under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 201 *et seq.*), and provides guidance to industry on the scientific considerations associated with the development of foods derived from new plant varieties, including those plants developed through the techniques of genetic engineering. Dupont has begun the consultative process with FDA on the subject soybean sublines.

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the Petition for Determination of Nonregulated Status from any interested person for a period of 60 days from the date of this notice. The petition and any comments received are available for public review, and copies of the petition may be ordered (see the **ADDRESSES** section of this notice).

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. Based on the available information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of Dupont's high oleic acid soybean sublines G94–1, G94–19, and G168 derived from transformation event 260–05 and the availability of APHIS' written decision.

Authority: 7 U.S.C. 150aa–150jj, 151–167, and 1622n; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 24th day of February 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–5023 Filed 2–27–97; 8:45 am]

BILLING CODE 3410–34–P

Forest Service

Central Zone Noxious Weed Control Project; Idaho Panhandle National Forests, Kootenai and Shoshone Counties, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The USDA Forest Service will prepare an environmental impact statement (EIS) to disclose the potential environmental effects of noxious weed treatment on the Fernan and Wallace Districts (Central Zone). Treatment sites would be at various locations across the zone and are within the Coeur d' Alene Basin Ecosystem, Wallace and Fernan Ranger Districts, Idaho Panhandle National Forests, Kootenai and Shoshone Counties, Idaho.

The proposed action to control populations of noxious and undesirable weeds is designed to prevent the spread of these weeds and promote the retention and health of native and/or desirable plants within this ecosystem. The proposed action would use an integrated pest management approach to control weeds. This approach includes mechanical, biological, cultural, and chemical control. Most treatment sites are located near or along forest roads, trails, or recreation sites.

The major species considered for control include spotted knapweed (*Centaurea maculosa*), orange hawkweed (*Hieracium aurantiacum*), meadow hawkweed (*Hieracium pratense*), dalmation toadflax (*Linaria dalmatica*), Canada thistle (*Cirsium arvense*), common St. Johnswort (*Hypercium perforatum*), hound's tongue (*Cynoglossum officinale*), rush skeletonweed (*Chondrilla juncea*), leafy spurge (*Euphorbia esula*) and purple loosestrife (*Lythrum salicaria*). Other species may include common tansy (*Tanacetum vulgare*), diffuse knapweed (*Centaurea diffusa*), yellow toadflax (*Linaria vulgaris*), ox-eye daisy (*Chrysanthemum leucanthemum*), sulphur cinquefoil (*Potentilla recta*), Viper's Bugloss (*Echium vulgare*), Russian knapweed (*Centaurea repens*), musk thistle (*Carduus nutans*), and bull thistle (*Cirsium vulgare*). New invader species which are unknown at this time to occur on the zone would be a high priority for control.

This project-level EIS will tier to the Idaho Panhandle National Forests Land and Resource Management Plan (Forest Plan) (USDA Forest Service, Idaho Panhandle National Forests, September 1987), and references the Idaho Panhandle National Forests Weed Pest Management EIS, (USDA Forest Service, Idaho Panhandle National Forests, October 1989); the Bonners Ferry Ranger District Noxious Weed Management Project Final EIS (USDA Forest Service, Idaho Panhandle National Forests, September 1995), the Priest Lake Noxious Weed Control Final EIS (USDA Forest Service, Idaho Panhandle National Forests, 1997) and the St. Joe Noxious Weed Draft EIS (USDA Forest Service, Idaho Panhandle National Forests, 1996).

DATES: Written comments and suggestions should be received no later than April 14, 1997.

ADDRESSES: Submit written comments and suggestions on the proposed management activities or requests to be placed on the project mailing list to Kristen Philbrook, Project Leader, Fernan Ranger District, 2502 E. Sherman Ave., Coeur d' Alene, ID 83814.

FOR FURTHER INFORMATION CONTACT: Kristen Philbrook, EIS Team Leader, Fernan Ranger Station, (208) 769–3000.

SUPPLEMENTARY INFORMATION: The primary purposes for weed control are as follows:

(1) Prevent or limit the spread of noxious weeds that displace native vegetation in the Coeur d' Alene ecosystem;

(2) Eliminate new invaders before they become established;

(3) Prevent or limit the spread of weeds into areas containing little or no infestation in order to promote the retention and health of native and/or desirable species;

(4) Reduce weed seed sources along travel routes;

(5) Comply with Federal and State laws regulating management of noxious weeds.

Approximately 60 treatment sites have been identified across the Wallace and Fernan Ranger Districts. Infestations that are discovered would be treated within the scope of the Final EIS and Record of Decision. The Forest Plan provides guidance for management activities within the potentially affected areas through its goals, objectives, standards and guidelines, and management-area direction. The Forest Plan directs that forest pests be managed by an integrated pest management approach. The decisions to be made are what action, if any, should be taken to control weeds in the Coeur d' Alene Ecosystem, where treatment should be applied, and what types of treatment(s) should be used.

The Forest Service will consider a range of alternatives. One of these will be the "no action" alternative in which none of the proposed treatment activities would be implemented. Additional alternatives will represent the range of control methods currently available for treatment of weeds.

Public participation in an important part of the analysis and will play an important role in developing the alternatives. The mailing list for public scoping will be developed from responses to this NOI, and to a Scoping Notice sent out to interested individuals, organizations and agencies. In addition, the public is encouraged to visit with Forest Service officials during the analysis and prior to the decision. The Forest Service will also be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed actions. Comments from the public and other agencies will be used in preparation of the Draft EIS.

The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in June, 1997. At that time, the EPA will publish a Notice of Availability of the draft environmental impact statement in the **Federal Register.** The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978)). Also, environmental objections that could be raised at the draft environmental statement stage but that are not raised until after completion of the final environmental statement may be waived or dismissed by the courts (*City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 2338 (E.D. Wis. 1980)). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day scoping comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns regarding the proposed action, comments on the draft environmental impact statement should be specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the

Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

I am the responsible official for this environmental impact statement. My address is Fernan Ranger District, 2502 E. Sherman Ave. Coeur d' Alene, ID 83814.

Dated: February 18, 1997.

Susan Matthews,

District Ranger.

[FR Doc. 97–4979 Filed 2–27–97; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: March 31, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On June 28, 1996 and January 7, 1997, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (60 FR 33711 and 61 FR 964) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and service and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and service.

3. The action will result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service proposed for addition to the Procurement List.

Accordingly, the following commodities and service are hereby added to the Procurement List:

Commodities

Stand, Office Machine
7110–01–136–1563
7110–00–601–9835
7110–00–601–9849
(Requirements for GSA Zone 1 only)

Service

Temporary Administrative/General Support Services for GSA Regions 1, 2, 3, 4, 5, 6, 8, 9, 10 and National Capitol Region
(Up to 50% of the Government's requirement)

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–5044 Filed 2–27–97; 8:45 am]

BILLING CODE 6353–01–P

Committee for Purchase From People Who Are Blind or Severely Disabled

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: March 31, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Janitorial/Custodial, Buildings 2186, 5115 and 5324, Fort Campbell, Kentucky
NPA: Progressive Directions, Inc., Clarksville, Tennessee

Library Services

Minot Air Force Base, North Dakota
NPA: Minot Vocational Adjustment Workshop, Inc., Minot, North Dakota

Mail and Messenger Service

Naval Facilities Engineering Command, Southern Division, Charleston, South Carolina
NPA: Goodwill Industries of Lower South Carolina, Inc., Charleston, South Carolina

Mailroom Operation

U.S. Customs Indianapolis Center, 6026 Lakeside Boulevard, Indianapolis, Indiana
NPA: Goodwill Industries of Central Indiana, Inc., Indianapolis, Indiana

Switchboard Operation

VA Medical Center and Administration Building 21, 3600 30th Street, Des Moines, Iowa
NPA: Goodwill Industries of Central Iowa, Des Moines, Iowa

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–5045 Filed 2–27–97; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, March 7, 1997, 8:00 a.m.

PLACE: Ramada Inn, 2700 U.S. 82 East, Greenville, Mississippi 38701.

STATUS:

AGENDA

I. Approval of Agenda
II. Approval of Minutes of February 14, 1997 Meeting
III. Announcements
IV. Staff Report
V. State Advisory Committee Appointments for Alabama, Colorado, Connecticut, Idaho, Kansas, Kentucky, Massachusetts, Minnesota, and New Jersey.
VI. Future Agenda Items

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications (202) 376–8312.

Stephanie Y. Moore,

General Counsel.

[FR Doc. 97–5195 Filed 2–26–97; 2:35 p.m.]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Broadwoven Fabrics (Gray) Average Weight and Width Study.

Form Number(s): MC22T.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 945 hours.

Number of Respondents: 315.

Avg Hours Per Response: 3 hours.

Needs and Uses: The Census Bureau collects and publishes data quarterly on the production of broadwoven fabrics. Data is collected and published on the basis of square yardage produced by type of fabric. This study supplements the quarterly collection and gathers data every five years on the basis of linear yards and pounds produced. The Census Bureau conducts this survey as part of the 5-year census of manufactures. This survey provides conversion factors (from square yards to linear yards and pounds) which are used by industry and Government analysts to monitor the continuing changes in the weight and width of fabric. These factors provide a means of comparing fabric yardage produced to the volume of fiber consumed. The factors also help analysts follow changes in machinery used by the textile industry. Federal users of the survey data regularly include the Departments of Commerce, State, Labor, Treasury, and the U.S. Trade Representative under the aegis of the Committee for the Implementation of Textile Agreements (CITA). The interagency CITA uses the survey data to monitor potential market disruptions resulting from trade in gray broadwoven fabric. Additionally, the Department of Agriculture uses survey data to monitor trends affecting the demand for cotton, and the Department of Justice and the Federal Trade Commission for evaluation of anticompetitive impacts of mergers and acquisitions. Businesses and trade associations use the data to assess market trends and to project potential growth opportunities in broadwoven fabric.

Affected Public: Business or other for-profit.

Frequency: Every 5 years.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 USC, Sections 131, 193 and 224.

OMB Desk Officer: Jerry Coffey, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jerry Coffey, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: February 24, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–4958 Filed 2–27–97; 8:45 am]

BILLING CODE 3510–07–P

Foreign-Trade Zones Board

[Docket 9–97]

Foreign-Trade Zone 21, Charleston, South Carolina; Application for Subzone Status, Bayer Corporation (Rubber Chemicals), Goose Creek, South Carolina

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the South Carolina State Ports Authority, grantee of FTZ 21, requesting special-purpose subzone status for the rubber chemicals manufacturing facility of Bayer Corporation (Bayer) in Goose Creek, South Carolina. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on February 18, 1997.

The Bayer Corporation is a subsidiary of the Bayer AG (Germany), a global manufacturer of health care and life science products, chemicals and imaging systems. Its Fibers, Organics and Rubber Division operates the Goose Creek rubber chemicals manufacturing facility. (Bayer has several other manufacturing facilities in Goose Creek, but they are not included in this request.)

Bayer's rubber chemicals manufacturing plant (100,000 sq.ft./4.4 acres) is located within the Bushy Park Industrial Complex, Highway 503 in Goose Creek (Berkeley County), South Carolina. The facility (60 employees) produces rubber chemicals used in the production of a variety of industrial rubber products including tires, hoses, belts, seals and gaskets. The main products currently manufactured at the plant are benzothiazyl-2-cyclohexylsulfenamide (CBS) and benzothiazyl-2-dicyclohexylsulfenamide (DCBS), rubber chemical accelerators; 2,2'Dibenzamido diphenyldisulfide (DBD), a peptizer used to improve the mixing performance of natural rubber; and N-(1,3-dimethyl-butyl)-N'-phenyl-p-phenylene diamine (6PPD), an antidegradant to prevent ozone damage. The Bayer facilities include a new state-of-the-art plant for the production of CBS and DCBS and expanded facilities for DBD production. Some 10 to 50 percent of production is exported.

Zone procedures would exempt Bayer from Customs duty payments on foreign materials used in production for export. On domestic shipments, the company would be able to choose the duty rates that apply to the finished products (duty-free to 15.1% + $0.017/kg) instead of the rates otherwise applicable to the

foreign materials. The HTSUS categories and duty rates for the finished products are as follows:

Product	HTSUS No.	Duty rate
DBD	2930.90.2600	duty-free.
6PPD	2921.59.8090	15.1% + $0.017/kg.
CBS	2934.20.8000	13.3% + $0.026/kg.
DCBS ...	2934.20.2500	duty-free.

The HTSUS categories and duty rates for the primary foreign-sourced inputs are as follows:

Input	HTSUS No.	Duty rate
Benzoyl chloride.	2916.32.2000	7.1%.
4ADPA	2921.51.5000	15.1% + $0.017/kg.
Sodium MBT.	2934.20.2000	10.7% + $0.006/kg.
Dicyclohexylamine.	2921.30.3000	13.7% + $0.026/kg.

Foreign materials account for some 20 to 40 percent of the value of the final products. The application indicates that the savings from zone procedures will help improve the international competitiveness of the Bayer plant and will help increase exports.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is April 29, 1997. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to May 14, 1997).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce Export Assistance Center, 81 Mary St., Charleston, South Carolina 29403

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230

Dated: February 21, 1997.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–5031 Filed 2–27–97; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–570–845, A–570–846]

Notice of Final Determinations of Sales at Less Than Fair Value: Brake Drums and Brake Rotors From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATE: February 28, 1997.

FOR FURTHER INFORMATION CONTACT: Brian C. Smith or Michelle A. Frederick, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1766 and (202) 482–0186, respectively.

THE APPLICABLE STATUTE: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Rounds Agreements Act (URAA).

FINAL DETERMINATIONS: We determine that brake drums and brake rotors from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Act.

Case History

Since the amended preliminary determination in the brake drum investigation (Amended Preliminary Determination of Sales at Less Than Fair Value: Brake Drums from the People's Republic of China, 61 FR 60682 (November 29, 1996)), the following events have occurred:

The petitioner, the Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers, and all of the respondents [1] requested a hearing.

From October 1996 through January 1997, we verified the questionnaire responses of the selected respondents. In January 1997, we issued our verification reports.

Interested parties submitted additional information on surrogate values on January 9 and 10, 1997, for consideration in the final determinations. Also in January 1997, at the Department's request, we received revised computer tapes incorporating data corrections identified at the verifications from the following respondents: CAIEC, Dalian, Qingdao, Shenyang/Laizhou, Southwest, Xinchangyuan and Xinjiang.

The petitioner and all of the respondents submitted case briefs on January 21, 1997, and rebuttal briefs on January 27, 1997. The Department held a public hearing for these investigations on January 29, 1997.

Scope of the Investigations

The products covered by these two investigations are (1) certain brake drums and (2) certain brake rotors.

Brake Drums

Brake drums are made of gray cast iron, whether finished, semifinished, or unfinished, ranging in diameter from 8 to 16 inches (20.32 to 40.64 centimeters) and in weight from 8 to 45 pounds (3.63 to 20.41 kilograms). The size parameters (weight and dimension) of the brake drums limit their use to the following types of motor vehicles: automobiles, all-terrain vehicles, vans and recreational vehicles under "one ton and a half," and light trucks designated as "one ton and a half."

Finished brake drums are those that are ready for sale and installation without any further operations. Semi-finished drums are those on which the surface is not entirely smooth, and has undergone some drilling. Unfinished drums are those which have undergone some grinding or turning.

These brake drums are for motor vehicles, and do not contain in the casting a logo of an original equipment manufacturer (OEM) which produces vehicles sold in the United States (*e.g.*, General Motors, Ford, Chrysler, Honda, Toyota, Volvo). Brake drums covered in this investigation are not certified by OEM producers of vehicles sold in the United States. The scope also includes composite brake drums that are made of gray cast iron, which contain a steel

[1] The respondents in the brake drums case are: (1) China North Industries Guangzhou Corporation (CNIGC); (2) Qingdao Metal, Minerals & Machinery Import & Export Corporation (Qingdao); (3) China National Machinery Import & Export Corporation (CMC); (4) Beijing Xinchangyuan Automobile Fittings Corporation, Ltd. (Xinchangyuan); and (5) Yantai Import/Export Corporation (Yantai).

The respondents in the brake rotors case are: China National Automotive Industry Import & Export Corporation (CAIEC), Shandong Laizhou CAPCO Industry (Laizhou CAPCO) and their U.S. affiliate CAPCO International USA (CAPCO USA)(collectively CAIEC/Laizhou CAPCO); CNIGC; China North Industries Dalian Corporation (Dalian); Shenyang Honbase Machinery Co., Ltd., Lai Zhou Luyuan Automobile Fitting Co., Ltd. (collectively Shenyang/Laizhou) and their U.S. affiliates MAT Automotive, Inc., and Midwest Air Technologies, Inc. (MAT); Southwest Technical Import & Export Corporation, Yangtze Machinery Corporation (collectively Southwest), and its U.S. affiliate MMB International, Inc. (MMB); China National Machinery and Equipment Import & Export (Xinjiang) Corporation, Ltd. (Xinjiang); and Yantai.

plate, but otherwise meet the above criteria.

Brake drums are classifiable under subheading 8708.39.5010 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

Brake Rotors:

Brake rotors are made of gray cast iron, whether finished, semifinished, or unfinished, ranging in diameter from 8 to 16 inches (20.32 to 40.64 centimeters) and in weight from 8 to 45 pounds (3.63 to 20.41 kilograms). The size parameters (weight and dimension) of the brake rotors limit their use to the following types of motor vehicles: automobiles, all-terrain vehicles, vans and recreational vehicles under "one ton and a half," and light trucks designated as "one ton and a half."

Finished brake rotors are those that are ready for sale and installation without any further operations. Semi-finished rotors are those on which the surface is not entirely smooth, and has undergone some drilling. Unfinished rotors are those which have undergone some grinding or turning.

These brake rotors are for motor vehicles, and do not contain in the casting a logo of an original equipment manufacturer (OEM) which produces vehicles sold in the United States (*e.g.*, General Motors, Ford, Chrysler, Honda, Toyota, Volvo). Brake rotors covered in this investigation are not certified by OEM producers of vehicles sold in the United States. The scope also includes composite brake rotors that are made of gray cast iron, which contain a steel plate, but otherwise meet the above criteria.

Brake rotors are classifiable under subheading 8708.39.5010 of the HTSUS. Although the HTSUS subheading is provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigations

The period of these investigations (POI) comprises each exporter's two most recent fiscal quarters prior to the filing of the petition. For Southwest, the POI is June 1995–December 1995. For all other respondents, the POI is July 1995–December 1995.

Separate Rates

Each of the participating respondents in these investigations claim to be eligible for individual dumping margins. Of those, CAIEC/Laizhou CAPCO, CMC, CNIGC, Dalian, Qingdao, Southwest, Xinjiang and Yantai claim to be owned by "all the people."

The ownership structure of the remaining respondents is as follows:

(1) Shenyang/Laizhou are affiliated parties. Shenyang is owned entirely by GRI Honbase, a Hong Kong company which is U.S. owned. Laizhou is a joint venture between GRI Honbase and "all the people." The share in Laizhou owned by "all the people" is a minority share.

(2) Xinchangyuan is a joint venture between a U.S. company and a PRC company, Beijing Changyuan Automotive Parts Factory. The PRC company is the majority shareholder and is owned by "all the people."

As stated in the Final Determination of Sales at Less than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585, 22586 (May 2, 1994) (Silicon Carbide) and in the Final Determination of Sales at Less than Fair Value: Furfuryl Alcohol from the People's Republic of China, 60 FR 22544 (May 8, 1995) (Furfuryl Alcohol), ownership of a company by "all the people" does not require the application of a single rate. Accordingly, each of these respondents is eligible for separate rate consideration.

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588 (May 6, 1991) (Sparklers) and amplified in Silicon Carbide. Under the separate rates criteria, the Department assigns separate rates in nonmarket economy cases only if the respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. Absence of De Jure Control

Each of the respondents has placed on the administrative record a number of documents to demonstrate absence of *de jure* control, including laws, regulations and provisions enacted by the State Council of the central government of the PRC. Each has also submitted documents which establish that brake drums and brake rotors are not included on the list of products that may be subject to central government export constraints. In addition, the respondents Xinchangyuan and Laizhou each submitted the "Law of the People's Republic of China on Chinese-Foreign Contractual Joint Ventures" (April 13, 1988). The articles of this law authorize joint venture companies to make their own operational and managerial decisions.

In prior cases, the Department has analyzed the laws which the respondents have submitted in this record and found that they establish an absence of *de jure* control. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides With Rollers From the People's Republic of China, 60 FR 54472 (October 24, 1995) (Drawer Slides); see also Furfuryl Alcohol. We have no new information in these proceedings which would cause us to reconsider this determination.

However, as in previous cases, there is some evidence that the PRC central government enactments have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. (See Silicon Carbide and Furfuryl Alcohol.) Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by or subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses (see Silicon Carbide and Furfuryl Alcohol). These factors are not necessarily exhaustive and other relevant indicia of government control may be considered.

CAIEC/Laizhou CAPCO, CMC, Qingdao, Shenyang/Laizhou, Southwest, Xinchangyuan, Xinjiang, and Yantai asserted, and we verified, the following: (1) They establish their own export prices; (2) they negotiate contracts, without guidance from any governmental entities or organizations; (3) they make their own personnel decisions; and (4) they retain the proceeds of their export sales, use profits according to their business needs and have the authority to sell their assets and to obtain loans. In addition, the questionnaire responses submitted by the above-referenced respondents

indicate company-specific pricing during the POI which does not suggest coordination among exporters. During the verification proceedings, Department officials viewed such evidence as sales documents, company correspondence, and bank statements. This information supports a finding that there is a *de facto* absence of government control of the export functions of these companies. Consequently, we have determined that these exporters have met the criteria for the application of separate rates.

CNIGC and Dalian also claimed separate rates and provided additional documentation at verification in support of their claims that there is a *de facto* absence of government control of the export functions of their companies. However, for the final determinations, we have denied these respondents separate rates. Since the preliminary determinations, we have collected additional information which indicates that CNIGC and Dalian are still branches of the national corporation, China North Industries Corporation (NORINCO), which is controlled by the PRC government (see Comment 1 for further discussion).

China-Wide Rate

U.S. import statistics indicate that the total quantity and value of U.S. imports of brake drums and brake rotors from the PRC is substantially greater than the total quantity and value of brake drums and brake rotors reported by all PRC companies that submitted responses in both the brake drums and brake rotors cases. Given these significant discrepancies, we have no choice but to conclude that not all exporters of PRC brake drums and brake rotors responded to our questionnaire. Accordingly, we are applying in each investigation a single antidumping deposit rate—the China-wide rate—to all exporters in the PRC (other than those named above and those exporters which cooperated with our investigations but which were not selected as respondents and received separate rates), based on our presumption that those respondents who failed to show that they are entitled to separate rates are under common control by the PRC government. See, e.g., Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China, 61 FR 19026 (April 30, 1996) (Bicycles).

Facts Available

The China-wide antidumping rate is based on adverse facts available. Section 776(a)(2) of the Act provides that "if an interested party or any other person—(A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority * * * shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.'

In addition, section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of that party as the facts otherwise available. The statute also provides that such an adverse inference may be based on secondary information, including information drawn from the petition.

When multiple companies are treated as a single enterprise, the enterprise must submit a complete, consolidated response. If it fails to do so, the Department may base the margin calculation for the enterprise on the facts available. Additionally, as discussed above, those PRC exporters that have not qualified for a separate rate have been treated as a single enterprise. Because some exporters of the single enterprise failed to respond to the Department's requests for information, that single enterprise is considered to have failed to cooperate to the best of its ability. Accordingly, consistent with section 776(b)(1) of the Act, we have applied in each investigation the higher of the applicable margin from the petition or the highest rate calculated for a respondent in each proceeding as total adverse facts available. In both cases, based on our comparison of the calculated margins for the other respondents in these proceedings to the estimated margins in the petitions, we have concluded that the petition is the most appropriate record information on which to form the basis for the China-wide rate in the brake drums and brake rotors investigations.

Section 776(c) of the Act provides that where the Department relies on "secondary information," the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action (SAA), accompanying the URAA clarifies that the petition is "secondary information." See SAA at 870. The SAA also clarifies that "corroborate" means to determine that the information used has probative value. *Id.* However, where corroboration is not practicable, the Department may use uncorroborated information.

In accordance with section 776(c) of the Act, we corroborate the margins in the petition to the extent practicable. The petitioner based export prices on prices charged by U.S. distributors of brake drums and brake rotors and deducted from these prices a distributor mark-up. We compared the starting prices used by the petitioner to prices derived from U.S. import statistics and found that the similarity to the import statistics corroborated the starting prices in the petition. See Notice of Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe from South Africa, 61 FR 24271 (May 14, 1996). We found that the deduction for the distributor mark-up was sufficiently documented for purposes of corroboration by examining affidavits submitted by industry experts.

The normal value (NV) was based on factors of production employed by the petitioner to produce brake drums and brake rotors, and to the extent possible, surrogate factor values which were obtained from Indian publicly available information. When analyzing the petition, the Department examined and confirmed the accuracy of the NV data as provided in the petition by comparing the values used in the petition with values obtained from publicly available information collected in these and previous non-market economy (NME) investigations. However, in examining the factors which served as the basis for NVs calculated in the petition, the Department found that petitioner treated certain factory overhead items as direct materials. Therefore, we have recalculated NV in the petition by treating these items as part of factory overhead. In addition, we assigned an Indian surrogate value to one material for which a value based on a U.S. price was assigned previously in our NV calculations (See Margin Corroboration Memorandum from the team to Gary Taverman, dated February 12, 1997). Thus, the highest revised petition rate for brake drums is 86.02 percent. The highest revised petition rate for brake rotors is 43.32 percent.

Fair Value Comparisons

To determine if the brake drums and brake rotors from the PRC sold to the United States by the PRC exporters receiving separate rates were sold at less than fair value, we compared the "United States Price" (USP) to NV, as specified in the "United States Price" and "Normal Value" sections of this notice.

United States Price

We based USP on export price (EP) in accordance with section 772(a) of the Act, when the brake drums or brake rotors were sold directly to the first unaffiliated purchaser in the United States prior to importation and when constructed export price (CEP) methodology was not otherwise appropriate. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs to the factors of production.

Shenyang/Laizhou/MAT and Southwest/MMB both claimed that their sales are EP, not CEP, transactions and that the Department should treat their sales accordingly. However, the Department has determined that the sales of these two companies are CEP transactions (*see* Comment 14 for Shenyang/Laizhou/MAT and Comment 16 for Southwest/MMB).

We corrected the respondents' data for errors and minor omissions found at verification. For CMC, Xinjiang and Yantai, we calculated EP in accordance with our preliminary determinations. In addition, we made company-specific adjustments as follows:

1. CAIEC/Laizhou CAPCO

We calculated EP and CEP in accordance with our preliminary calculations, except that we (a) corrected credit expenses, inland freight, repacking, indirect selling expenses, and inventory carrying expenses; (b) removed credit returns from CAPCO's U.S. sales database; (c) recalculated commissions based on the verified commission rates; (d) revised brokerage and handling expenses; and (e) deducted from the U.S. price of certain sales an inspection charge based on information obtained at verification.

2. Qingdao

We calculated EP in accordance with our preliminary calculations except that we excluded U.S. sales of one product that was found to be outside the scope of the investigation.

3. Shenyang/Laizhou/MAT

We calculated EP and CEP in accordance with our preliminary calculations except that we have recalculated credit and indirect selling expenses based on information obtained at verification.

4. Southwest/MMB

We calculated EP and CEP in accordance with our preliminary calculations except that we have adjusted the gross unit price for certain U.S. sales where the price was incorrectly reported. We then recalculated the credit and indirect selling expenses to take into account revised prices.

5. Xinchangyuan

We calculated EP in accordance with our preliminary calculations except that we did not deduct foreign brokerage and handling expenses based on information derived at verification (see Comment 21 below). In addition, we excluded U.S. sales of three products that were found to be outside the scope of the investigation.

Normal Value

A. Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by the factories in the PRC which produced brake drums and/or brake rotors for the exporters. Where an input was sourced from a market economy and paid for in market economy currency, we used the actual price paid for the input to calculate the factors-based NV in accordance with our practice. See *Lasko Metal Products* v. *United States*, 437 F. 3d 1442, 1443 (Fed. Cir. 1994). We valued the remaining factors using publicly available information from India where possible. Where appropriate Indian values were not available, we used publicly available information from Indonesia.

B. Factor Valuations

The selection of the surrogate values was based on the quality and contemporaneity of the data. Where possible, we attempted to value material inputs on the basis of tax-exclusive domestic prices. Where we were not able to rely on domestic prices, we used import prices to value factors. As appropriate, we adjusted input prices to make them delivered prices. For those values not contemporaneous with the POI, we adjusted for inflation using wholesale price indices or, in the case of labor rates, consumer price indices, published in the International Monetary Fund's International Financial Statistics. For a complete analysis of surrogate values, see the Preliminary Determinations Factors Memorandum, dated October 3, 1996, and the Final Determinations Factors Memorandum, (Final Factors Memorandum) dated February 24, 1997. We have noted changes to surrogate valuation since the preliminary determinations as follows:

To value unfinished castings used in producing rotors, we used a purchase price for unfinished castings contained in the 1995–96 financial report of the Indian producer, Jayaswals Neco Limited (Jayaswals), because only this producer's financial report contained a POI purchase value for unfinished castings used to produce brake rotors that are within the scope of our investigation (see Comment 15).

To value copper, copper powder, ferromanganese, ferrosilicon, other ferrosilicon, ferrochromium, manganese, limestone, lubrication oil, adhesive tape, corrugated cartons, nails, polyethylene, fiberboard, steel angles, steel stamp, steel straps, printed and unprinted labels, instruction sheets, wood brackets, wood pallets and wood crates, we used import prices for months contemporaneous with the POI for which such data were available from Monthly Statistics of the Foreign Trade of India (Monthly Statistics). Where submitted data encompassed part of the POI but also encompassed months outside the POI, we limited our use of such data to the portion contemporaneous with the POI.

To value pig iron, steel scrap and iron scrap, we used the input-specific prices contained in the 1995–96 financial report of the Indian producer, Shivaji Works Limited (Shivaji) because Shivaji produces goods which are in the same general category as the subject merchandise (*e.g.*, products similar to what the respondents produce) and because we find that the separate line-item values for pig iron, steel scrap and iron scrap contained in Shivaji's report are more specific than the prices for these same inputs contained in the Indian publication Steel Authority of India Limited (SAIL) or in Monthly Statistics (see Comment 7).

To value steel sheet, steel strip and steel wire rod, we used POI prices from SAIL and not from Monthly Statistics (see Comment 7).

To value scrap wood, we have used a price from a 1990 U.S. government publication, Marketing Opportunities for Social Forestry Produce in Uttar Pradesh, because the price is more specific to the input than the value previously obtained from Monthly Statistics.

We could not obtain a product-specific price from India to value lug nuts for PRC companies which purchased this input from non-market economies (NME). Therefore, we used Indonesian import data covering July through November 1995 from

Indonesian Foreign Trade Statistical Bulletin (see Bicycles).

To value barge rates, we relied on information from an August 1993 cable from the U.S. consulate in India. Since the preliminary determinations, the respondents submitted new prices for coke, ball bearings and LPG gas for consideration in the final determinations. However, we have continued to rely on the values assigned to these inputs in the preliminary determinations for our final determinations (see Comment 7 and Final Factors Memorandum for further discussion).

To value factory overhead, SG&A, and profit in the brake drums and brake rotors cases, we calculated a simple average using the financial reports of Jayaswals, Kalyani Brakes Limited (Kalyani), Krishna Engineering Works (Krishna), Nagpur Alloy Castings Limited (Nagpur), and Rico Auto Industries Limited (Rico) because these companies produced both brake drums and brake rotors within the scope of these investigations during the POI. We did not use the financial reports of Ennore Foundaries Limited (Ennore), Electrosteel Castings Limited (Electrosteel), Bhagwati Autocast Limited (Bhagwati), or Shivaji in the surrogate factory overhead, SG&A, and profit percentage calculations because there was no indication in the reports or any corroborating publicly available information showing that these companies produced brake drums or brake rotors within the scope of these investigations during the POI (see Comment 5).

Where appropriate, we have removed from the surrogate overhead and SG&A calculations the excise duty amount listed in the financial reports (see Bicycles, 61 FR 19039). We also made certain adjustments to the percentages calculated as a result of reclassifying expenses contained in the financial reports.

For the Indian companies, we treated the line item labeled "stores and spares consumed" as part of factory overhead where possible and not part of materials consumed because stores and spares are not direct materials consumed in the production process. Publicly available information examined in the preliminary determination indicates that Indian accounting practices require Indian companies to record molding inputs (*i.e.*, all types of sand, bentonite, lead powder, steel pellets (if used for sand cores or molding), coal powder and waste oil) under "stores and spares consumed." Therefore, we are considering these molding inputs as indirect materials (*i.e.*, a part of factory overhead), and are not valuing them as materials. In addition to the molding materials mentioned above, based on our verification findings, we find that additional materials previously valued as direct inputs such as dextrin, parting spray, rust inhibitor, antirust, steel shot, cutting oil, cleaning agent, and dehydration oil, are in fact indirect materials not incorporated into the final product. Therefore, we have also considered these additional materials part of factory overhead (see Comment 8). We have continued to treat rustproofing oil, limestone and firewood as direct materials and valued them accordingly (see Comment 8).

We have considered the line item labeled "raw materials consumed" to include direct materials such as pig iron, steel scrap, and steel inputs, and non-steel direct inputs and not included them in factory overhead. The designation of these items is consistent with standard accounting procedures and recent determinations (see Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People's Republic of China, 61 FR 14062 (March 29, 1996) (PVA) and Bicycles). We based our factory overhead calculation on the cost of goods manufactured rather than on the cost of goods sold. We also included interest and/or financial expenses in the SG&A calculation. In addition, we only reduced interest and financial expenses by amounts for interest income if the Indian financial report noted that the income was short-term in nature (see Comment 6). Where a company did not distinguish interest income as a line item within total "other income" we used the relative ratio of interest income to total other income as reported for the Indian metals industry in the Reserve Bank of India Bulletin. (For a further discussion of other adjustments made, see Final Factors Memorandum).

Verification

As provided in section 782(i) of the Act, we verified the information submitted by all selected respondents for use in our final determinations. We used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by the respondents.

Critical Circumstances

Section 735(a)(3) of the Act provides that, in a final determination, the Department will determine whether:

(A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there would be material injury by reason of such sales, and

(B) there have been massive imports of the subject merchandise over a relatively short period.

Because there is no history of dumping and material injury by reason of dumped imports for either brake drums or brake rotors, we conducted our analysis under section 735(a)(3)(A)(ii) of the Act (importer knowledge of dumping and material injury).

1. Importer Knowledge of Material Injury

Pursuant to the URAA, and in conformance with the WTO Antidumping Agreement, the statute now includes a provision requiring the Department to determine, when relying upon section 735(a)(3)(A)(ii) to determine whether critical circumstances exist, whether the importer knew or should have known that there would be material injury by reason of the less than fair value sales. In this respect, the preliminary finding of the International Trade Commission (ITC) is instructive, especially because the general public, including importers, is deemed to have notice of that finding as published in the **Federal Register**. Thus, the Department has determined that a preliminary ITC finding of a reasonable indication of present material injury to the U.S. industry, when coupled with massive imports and a high rate of dumping by a given exporter (see Importer Knowledge of Dumping section, below) permits the conclusion that importers of the subject merchandise from such exporters knew or should have known that such imports would cause injury to the domestic industry. When the ITC has preliminarily found no reasonable indication that a U.S. industry is experiencing present material injury by reason of the dumped subject merchandise, but only a threat of such injury, the Department has determined that it is not reasonable to conclude that an importer knew or should have known that its imports would cause material injury. (See Decision Memorandum Regarding Imputed Knowledge of Material Injury.)

Because the ITC preliminarily determined that there is no reasonable indication that the U.S. brake drums industry is experiencing present material injury, but only a reasonable indication of threat of material injury, we find that the "importer knowledge of material injury" prong is not met with respect to brake drums. Therefore, we find that critical circumstances do not exist with respect to brake drums, and it is not necessary to examine the other critical circumstances criteria for this product. Because the ITC preliminarily determined that there is a reasonable indication that the U.S. brake rotors industry is, in contrast, experiencing present material injury, we determine that critical circumstances exist with respect to those exporters of brake rotors which we have determined are responsible for massive imports and high dumping margins, as described below.

2. Importer Knowledge of Dumping

In determining whether an importer knew or should have known that the exporter was selling the subject merchandise at less than fair value, the Department normally consider margins of 15 percent and 25 percent or more sufficient to impute knowledge of dumping for CEP sales and EP sales respectively.

Since the company-specific margins in the final determinations for brake drums and brake rotors are below 15 percent for CEP sales (with the exception of brake rotors sales made by Southwest) and below 25 percent for EP sales, we have not imputed importer knowledge of dumping and injury with respect to any firms except Southwest in the brake rotors investigation. Therefore, we have only analyzed the brake rotor shipment data of Southwest.

3. Massive Imports

When examining the volume and value of trade flow data, the Department typically compares the export volume for equal periods immediately preceding and following the filing of the petition. Pursuant to 19 CFR 353.16(f)(2), unless the imports in the comparison period have increased by at least 15 percent over the imports during the base period, we will not consider the imports to have been "massive." In order to determine whether there have been massive imports of brake rotors for the companies for which we have determined that there is knowledge of dumping and material injury, we compared sales from August 1995 to February 1996 (the comparison period) to sales from March 1996 to September 1996 (the base period).

In determining whether imports have been "massive," pursuant to 19 CFR 353.16(f), we will normally consider, in addition to the volume and value of imports, any seasonal trends affecting the merchandise and the share of domestic consumption accounted for by the imports. There is no indication on the record that brake rotors are a seasonal product. Also, we were unable to consider the share of U.S. consumption represented by the selected respondents, because we have insufficient information with regard to the selected respondents" market share of domestic consumption. Based on our analysis of Southwest, we determine that the increase in imports was less than 15 percent with respect to that firm. Because imports from Southwest have not been massive, we determine that critical circumstances do not exist with respect to imports of subject merchandise from this company.

4. Unexamined Respondents/China-Wide Entity

As indicated in Preliminary Critical Circumstances Determinations, 61 FR 55269 (October 25, 1996), and in the Preliminary Determinations, 61 FR 53190 (October 10, 1996), the Department does not believe it is appropriate to find critical circumstances with respect to respondents whose individual data have not been analyzed due to the Department's own administrative constraints. Therefore, we do not consider critical circumstances to exist with regard to the non-analyzed cooperative respondents in the brake rotors case.

With respect to the China-wide entity, we are imputing knowledge of dumping, based on the China-wide dumping rate. As noted above, we have determined that importers knew or should have known that there would be material injury to the U.S. brake rotors industry based on the ITC's preliminary determination of a reasonable indication of present material injury for brake rotors. In the absence of shipment data for the China-wide entity, we have determined based on the facts available, and making the adverse inference permitted under section 776(b) of the Act because this entity did not provide an adequate response to our questionnaire, that there were massive imports of brake rotors. See Preliminary Critical Circumstances Determinations, 61 FR at 55269. Furthermore, we note that the record indicates a post filing surge in U.S. brake rotor imports from the PRC which is not accounted for by the cooperating respondents. Therefore, for the China-wide entity, we determine that critical circumstances exist with respect to imports of brake rotors.

5. Conclusion

With regard to brake rotors, we find that critical circumstances exist only for companies subject to the China-wide rate.

With regard to brake drums, we find that critical circumstances do not exist.

Interested Party Comments

General Comments

Comment 1: Separate Rates—CNIGC and Dalian

The petitioner maintains that there is sufficient evidence on the record to deny CNIGC and Dalian separate rates in these cases. It points out that these respondents failed to demonstrate at verification that they were (1) not part of NORINCO, a trading company which is monitored, if not controlled, by the PRC government; (2) not part of the NORINCO Group, an organization controlled by the People's Liberation Army (PLA); and (3) independent from the Ministry of Foreign Trade and Economic Cooperation (MOFTEC), because they withheld all information concerning their relationship with MOFTEC. The petitioner further contends that the PRC government deliberately withheld information which might have revealed that CNIGC and Dalian were part of the NORINCO Group.

CNIGC and Dalian maintain that they demonstrated at verification the absence of both *de jure* and *de facto* government control over their export activities and that they have established through documentation that they are separate from NORINCO and are entitled to a separate rate. In addition, they argue that there is no information on the record that supports the claim that they are affiliated with the PRC government. Moreover, the two respondents contend that the PRC government did not fail to cooperate with the Department because they answered the Department's questions to the extent possible. However, if the Department decides that the PRC government was uncooperative, then they maintain that the Department cannot impute this lack of cooperation to CNIGC or Dalian. They cite to Notice of Court Decision; Exclusion From the Application of the Antidumping Duty Order, in Part; Termination of Administrative Review in Part; and Amended Final Determination: Certain Compact Ductile Iron Waterworks Fittings and Glands from the People's Republic of China, 60 FR 2078 (January 6, 1995) and Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers from the People's Republic or China, 58 FR 48833 (September 20, 1993) in support of their arguments.

DOC Position

The Department's NME separate rates policy is based upon a rebuttable presumption that NME entities operate under government control and do not merit separate rates. This presumption can only be overcome by a respondent's affirmative showing that it operates without *de jure* or *de facto* government control.

CNIGC and Dalian have met their affirmative evidentiary burden with respect to the Department's criteria of *de jure* control, insofar as they have provided copies of business licenses and applicable government statute granting them the right to operate as independent trading companies.

These two respondents have also provided evidence that purportedly demonstrates absence of *de facto* control. However, other evidence supports a conclusion that Dalian and CNIGC remain under the control of the national corporation, NORINCO. Dalian and CNIGC were, until 1988 and 1991, respectively, legal and operational subsidiaries of NORINCO. Although PRC law and regulations mandated the legal and operational separation of these branches from their parent, evidence on the record suggests that the two respondents have only partially severed their ties to NORINCO, and are still recognized in the PRC and overseas as branches of NORINCO.

At the Department's visit to NORINCO's Beijing office, we obtained a NORINCO brochure which identifies CNIGC and Dalian as branches of NORINCO. The brochure continued to be distributed to the public as of the time of verification in late 1996. See exhibit 3 of the NORINCO verification report, dated January 8, 1997. This is consistent with the verification finding that NORINCO still maintains an office within the headquarters of CNIGC. See CNIGC verification report dated January 8, 1997, at 6. It is also consistent with 1995 information obtained from the U.S. Department of Defense which states that "Norinco Guangzhou [CNIGC] is a leading branch of NORINCO," and with a 1996 Company Intelligence International article indicating that CNIGC is a branch of NORINCO. Thus, it appears that the *de facto* relationship between government-controlled NORINCO and its branches, including Guangzhou and Dalian, has not been entirely severed.

We note that in the instant investigation, NORINCO has not made a claim of independence from government control. Furthermore, there is evidence on the record that NORINCO is controlled by the PRC government. See, *e.g.*, organizational chart submitted to the file on October 3, 1996, describing NORINCO as under the control of the PRC's State Council, and Foreign Broadcast Information Service reports.

In view of CNIGC's and Dalian's continuing ties to NORINCO, and in the absence of a showing that NORINCO is independent from government control, the two respondents fail to overcome the presumption of *de facto* government control. Thus, we have not assigned separate rates to these companies.

Comment 2: Treatment of Non-Selected Respondents

The petitioner maintains that the Department had sufficient resources to investigate all of the responding PRC companies in these investigations. The petitioner further states that the Department should, at a minimum, request shipment data from non-selected respondents in order to determine whether critical circumstances exist for those companies, especially since U.S. import statistics indicate that massive imports of one product type (*i.e.*, brake rotors) has occurred. The petitioner cites to Bicycles in support of its argument.

Eight respondents (*i.e.*, the ten respondents except for Shenyang/Laizhou and Southwest) (hereafter referred to as "the eight respondents") state that the Department's sampling methodology is not contrary to law. However, the eight respondents claim that the Department should not impute knowledge of likelihood of material injury to U.S. importers merely because of the existence of dumping, maintaining that there is no inherent causal relationship between dumping and injury. Therefore, the eight respondents argue that the Department should find critical circumstances exist only if it determines that importers knew or should have known that there was likely to be material injury because of sales of brake drums and brake rotors at less than fair value.

DOC Position

We disagree in part with the petitioner and the respondents. In accordance with section 777A(c)(2) of the Act, given our limited resources, we had to limit the number of respondents examined in these cases in order to lessen the administrative burden on the Department, and we did so by choosing the largest exporters to the United States (see Honey and Bicycles). As for requesting shipment data from the non-selected respondents which have cooperated in these investigations, we did not do so due to the Department's own administrative constraints, which limited our ability to examine questionnaire responses or request shipment data for analysis. With respect to importer knowledge of material injury by reason of sales at less than fair value, the Department's position has changed since the preliminary determination. This decision is now based on the ITC's preliminary determination, in conjunction with massive imports and a high level of dumping. (See "Importer Knowledge of Material Injury" section of this notice and Decision Memorandum from the team to Richard W. Moreland, dated February 24, 1997).

Comment 3: Facts Available

The petitioner argues that the Department should resort to facts available and deny all of the respondents separate rates. According to the petitioner, throughout these proceedings the respondents have submitted to the Department "boiler plate" answers in response to the antidumping questionnaire, significantly revised their responses during the course of the proceedings, and requested numerous extensions of time to submit their incorrect data. In addition, the petitioner claims that the Department found a large number of errors at verification for the respondents and lists both general and respondent-specific instances upon which the Department should base an adverse facts available determination (see the petitioner's January 21, 1997, case brief, at 13–20.)

The petitioner also contends that the Department should deny separate rates to the companies under investigation because they withheld information regarding their relationship with MOFTEC, and because it could not be determined from a meeting at the Ministry of Machinery Industry and letters sent to MOFTEC whether the respondents have any relationship with any level of the PRC government. The petitioner further urges the Department to assign the China-wide rate to all of the respondents, claiming that not doing so may cause a massive diversion of shipments of the subject merchandise between PRC companies, with exports being shifted to companies assigned lower rates.

The eight respondents first contend that the petitioner erroneously equates "facts available" with "adverse assumptions." They argue that the Act has been amended so that the Department cannot automatically make an adverse inference when applying facts available, but rather must consider all evidence on the record in determining whether adverse inferences are warranted.

The eight respondents and Southwest argue that there is no instance in these proceedings that would justify the Department resorting to adverse inferences or resorting to facts available. They state that (1) there were no instances in any of the verifications in which the Department was unable to verify particular information; (2) the errors described by petitioner often were adverse to the respondents; and (3) when the Department did find errors, the Department was able to obtain and verify the correct information. Moreover, they maintain that there is no evidence that they failed to cooperate by not acting to the best of their ability to comply with Departmental requests for information or that the errors discovered during verification undermined the validity of any responses.

With respect to separate rates, all of the respondents stated that they had made adequate showings of independence.

Respondent Shenyang/Laizhou states that the Department may use facts available in making its determination if necessary information is not on the record or if a respondent: (1) Withholds requested information, (2) fails to provide requested information by the deadlines for the submission of the information, or in the form and manner requested, (3) significantly impedes an investigation, or (4) provides unverifiable information. (See Section 776 of the Act). Information that is adverse to a respondent may be used by the Department when the respondent "has failed to cooperate by not acting to the best of its ability to comply with a request for information." (See Section 776(b) of the Act). Shenyang/Laizhou notes that none of these conditions are present in its case and that although a few discrepancies were noted at verification, they were resolved during verification.

Furthermore, all respondents urge the Department to make those corrections to the corresponding databases which were brought to the attention of the Department prior to and during verification.

Lastly, all respondents address the list of verification errors noted by the petitioner as reason for facts available, arguing that while the Department verified every factor input, for those that were in error, the corrections were clerical and minor in nature. They further assert that with respect to the areas affected by these errors, there are alternative verified data on the record that allow for recalculation of the relevant factors.

DOC Position

We agree with all respondents that neither an across-the-board denial of separate rates nor an across-the-board recourse to "total" facts available is warranted in these investigations. First, regarding the petitioner's concern over the massive diversion of shipments of brake drums and rotors between exporters if the Department does not assign the China-wide rate to all exporters, the Department has established that the companies receiving separate rates in these investigations operate independently of each other and of government entities with respect to their exports of the subject merchandise. Thus, these respondents have been assigned rates based on their different cost and pricing structures. It would be a normal phenomenon that respondents with lower dumping margins would experience an increase in sales of the subject merchandise as a result of an increase in customers' demand for products with lower duty margins.

Second, we disagree with the petitioner that the other companies (*i.e.*, not including CNIGC and Dalian) in these investigations should be denied separate rates based on the facts available. The information submitted on the record by each of these companies, as well as the Department's verification findings, show that these respondents under investigation have met the qualifying criteria for separate rates (see "Separate Rates" section for further discussion). The records in these investigations affirmatively indicate the absence of *de jure* and *de facto* control by government entities over those responding companies' operations with respect to the products under investigation. In its verification, the Department found no evidence that these respondents are controlled by MOFTEC or the Ministry of Machinery Industry, or any level of the PRC government.

Third, we disagree with the petitioners depiction of the respondents' "numerous" extension requests and errors. In this instance, the number of extensions granted was not extraordinary, nor did these extensions prevent the petitioner from commenting on the responses or the Department from making its preliminary determinations.

Lastly, with respect to the errors listed by the petitioner, a review of the respondents' response revisions indicates that such revisions were not unduly extensive. We do not believe that failure to initially submit an error-free response, or the correction of these errors, should result in the use of facts available because we found no basis to conclude that these errors affect the overall integrity of the response. Moreover, in an antidumping investigation, it is not unusual to encounter errors throughout the proceeding up to the commencement of verification.

As described in Ferrosilicon from Brazil: Final Results of Antidumping Duty Administrative Review, 61 FR 59407 (November 22, 1996), errors that are not substantial do not affect the integrity of the response. In addition, the errors in question do not warrant wholesale rejection of the reported data since all such deficiencies can be corrected using verified data on the record.

Comment 4: CEP Deductions and Circumstance-of-Sale (COS) Adjustments

Southwest argues that the Department should not make adjustments to CEP transactions for indirect selling expenses, credit and profit because making an adjustment to one side of the equation without making a comparable adjustment to the other results in an unfair calculation. Alternatively, Southwest suggests that if the Department makes these adjustments to the U.S. price then the Department should make similar adjustments to NV.

The petitioner states that section 772(c)(2)(D) of the Act requires the Department to reduce CEP by the selling expenses associated with economic activity in the United States, and that the Act provides no exception for cases involving NMEs. As for making COS adjustments, the petitioner states that section 773(a)(6)(C) of the Act does not require the Department to make COS adjustments to NV unless it has been established to the satisfaction of the administering authority that such adjustments are warranted.

DOC Position

We agree with the petitioner. Section 772(d)(1) of the Act requires the Department to reduce CEP by the selling expenses associated with economic activity in the United States (see SAA at 153, Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy, 61 FR 30326 (June 14, 1996), and Bicycles at 19031. Moreover, section 772(d)(3) of the Act requires us to make a deduction for profit associated with CEP selling expenses (see SAA at 154, and Bicycles, at 19032). As for COS adjustments to NV, given the imprecise nature of the information about direct and indirect selling expenses in the record in these cases (*e.g.*, the financial reports of

Indian producers), we have no basis to conclude that such adjustments are warranted in these cases (see Bicycles at 19031).

Comment 5: Indian Producer Financial Statements

The respondents, except for Southwest, argue that the Department should only use data from financial statements of Indian producers of brake drums and brake rotors to calculate factory overhead, SG&A and profit percentages in respective investigations. In addition, the respondents maintain that the Department should only consider using data from the financial statements of Ennore, Jayaswals, Kalyani, Krishna, Nagpur, and Rico because these Indian companies produce the subject merchandise. The respondents claim that the financial reports of Electrosteel and Shivaji should not be used to derive the percentages because neither company produces the subject merchandise. Alternatively, if the Department uses financial data from Shivaji's report, then the eight respondents claim that the Department must also use Electrosteel's financial data because both companies produce grey iron castings which are similar to the subject merchandise. The respondents cite to the Notice of Final Determination of Sales at Less Than Fair Value: Melamine Institutional Dinnerware Products From the People's Republic of China, 62 FR 1708 (January 13, 1997) (Melamine), Notice of Final Determination of Sales at Less Than Fair Value: Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the Hungarian People's Republic, 52 FR 17428 (May 8, 1987), and Bicycles in support of their arguments.

The respondent Southwest maintains that all but Ennore's financial report should be used to calculate the percentages because there is no publicly available information indicating that Ennore produced the subject merchandise during the POI. It argues that a letter from Ennore (submitted on the record by other respondents) that stated that this company produces brake drum castings should be rejected as "private information."

The petitioner states that the Department should use the financial reports of Ennore, Jayaswals, Kalyani, Krishna, Nagpur, Rico and Shivaji to calculate percentages for both investigations and that the Department should calculate the percentages based on the petitioner's calculations of the data as shown in its case brief.

DOC Position

The Department disagrees with certain of the respondent's specific statements, while agreeing in general, that the companies selected for calculation of factory overhead, SG&A, and profit should reflect the Department's preference for "the most product-specific information possible from the surrogate market" as noted in Melamine. Based on publicly available information, we find that Jayaswals, Kalyani, Krishna, Nagpur and Rico produced both brake drums and brake rotors within the scope of these investigations and sold during the POI. Therefore, we are using these Indian producers' financial reports to calculate surrogate percentages for use in both investigations. We are not using the financial data of Electrosteel or Ennore because we have no publicly available information which indicates that these companies produced subject merchandise during the POI. Although the eight respondents submitted a letter from Ennore which stated that it produces brake drums, we have relied on publicly available information instead of the private correspondence as the basis for our decision because we normally prefer to rely on publicly available information and consider the contents of the correspondence files of a company, by nature, not to be publicly available information. We are not using Shivaji's financial report for these calculations because publicly available information, along with information from the U.S. consulate in India, establishes that Shivaji did not produce subject merchandise during the POI.

Comment 6: Adjustments to Indian Financial Reports' Data

The eight respondents argue that, when calculating SG&A, the Department should offset the interest and financial expenses by the amount of financial gains (*i.e.*, items such as "operating income, miscellaneous receipts, miscellaneous income, and other interest income") when calculating SG&A. They contend that adding the financial expenses to SG&A without reducing those amounts by any corresponding operating income results in imprecise and overstated selling expenses. They cite to the Notice of Final Results of Antidumping Duty Administrative Review: Frozen Concentrated Orange Juice from Brazil (Orange Juice), 55 FR 26721 (June 29, 1990) (Comment 8) in which the Department offset financial expenses with short-term operating income.

The petitioner argues that the Department should not offset financial expenses against financial gains, citing *Bicycles*, and claims that section 773(a)(7) of the Act states that an offset to NV is only required upon sufficient showing that differences exist justifying the adjustment.

DOC Position

We agree with the respondents that we should offset interest expense by the amount of short-term interest income when calculating G&A, as in Orange Juice and in accordance with Departmental practice. However, we disagree that operating income or all of miscellaneous receipts should be in the offset. We do not include in our offset long-term interest income nor short-term income from activities such as rental. Thus, we reduced interest expenses by amounts for interest income for those items identified in the financial reports as being related to short-term interest, and utilized the April 1995 Indian Reserve Bank Bulletin to allocate a portion of "other income" or "miscellaneous receipts" as short-term interest income for those companies which did not specify a breakdown of their non-operating income.

The petitioner's reliance on section 773(a)(7) of the Act and Bicycles is misplaced. Section 773(a)(7) deals with level of trade adjustments. The comment in Bicycles to which the petitioner refers deals with a circumstance-of-sale (COS) adjustment. 61 FR at 19031 (Comment 1). This adjustment is not a COS adjustment but simply a reduction in the total amount of SG&A expenses based on short-term income received by the Indian producer.

Comment 7: Surrogate Values for Certain Material Inputs

The petitioner asserts that the Department should value pig iron, steel sheet, steel wire rod and steel scrap using POI import prices from the Indian publication Monthly Statistics rather than the POI domestic prices from the Indian publication SAIL or from the financial reports of certain Indian producers because the prices in Monthly Statistics are exclusive of taxes and duties whereas the prices in SAIL and in the financial reports are not. If the Department elects not to use pig iron prices from Monthly Statistics, then the petitioner urges the Department to use Indian Iron & Steel Company Limited (IISCO) prices rather than SAIL prices for the same reason noted above. The petitioner claims that the Department should not value ball bearing cups by using prices from Indian Customs Daily Lists provided by International Data Services (IDS) because IDS data is of inferior quality and is therefore unreliable. For coke, the petitioner maintains that the article containing domestic prices submitted by all of the respondents on January 10, 1997, indicates that the prices are controlled by the Indian government and therefore should not be considered.

The eight respondents maintain that in past NME cases the Department has expressed a clear preference for using tax-exclusive domestic prices rather than import prices when valuing factors of production. In addition, they state that in previous NME cases, the Department has used SAIL data when the specificity of the steel product has been most important in valuing the factor. They cite to Drawer Slides and to the Notice of Final Results of Administrative Review: Certain Helical Spring Lock Washers from the People's Republic of China, 61 FR 41994, 41997 (August 13, 1996) in support of their argument. For ball bearing cups, the respondents maintain that the *IDS* data is publicly available information and is more specific to imports of ball bearing cups than the category of "other ball/roller bearing parts" listed in Monthly Statistics. For coke, they state that the data from Economic Times of Mumbai provide prices for coke which are contemporaneous with the POI and specific to Indian foundry industries.

DOC Position

We disagree in part with both the petitioner and the respondents. The fact that domestic prices may include taxes is not determinative when deciding which prices are preferable for use in valuing the factors of production. For pig iron, steel scrap and iron scrap, we find that the separated line item prices for each of these inputs in Shivaji's 1995–96 report are more specific than the prices contained in SAIL, Monthly Statistics or IISCO. Therefore, the prices in Shivaji's report are more reflective of prices paid for inputs used by domestic producers of castings (*i.e.*, products of the same general category as the subject merchandise). We have also removed, where possible, any taxes included in the prices obtained from Shivaji's report.

The Department normally prefers to use prices that are representative of prices in effect during the POI. For ball bearing cups, we find that the IDS data is less representative of prices in effect during the POI than the prices contained in Monthly Statistics because the IDS data, selected by the respondents, consist of a single transaction at a single port for a single customer and do not appear to be more product-specific than the Monthly Statistics data. Therefore, we have valued this input using prices from Monthly Statistics.

For coke, though the prices from Economic Times of Mumbai are POI prices, we find that these prices are clearly government administered. Since we have a POI coke value from Monthly Statistics in these investigations which is not government administered, we have used these prices to value this input.

Comment 8: Treatment of Indirect Materials

All of the respondents urge that, in calculating NV, the Department should continue to consider molding inputs as indirect materials and part of factory overhead, rather than as materials consumed. In addition, Southwest maintains that the Department should also treat dextrin, steel shot, antirust, cutting oil, cleaning agent, dehydrating oil, and rustproofing oil as indirect materials and part of factory overhead. In order for a material to be considered a direct material, Southwest argues that the material must be physically incorporated into the finished product, citing the Compendium of Statements and Standards published by the Institute of Chartered Accountants of India. Finally, Shenyang/Laizhou claims that limestone and firewood should be treated as indirect materials because they are not physically incorporated into the final product.

The petitioner did not comment on this issue.

DOC Position

We have continued to treat molding materials listed in the "Factors of Production" section of this notice as indirect materials because although these inputs are used to produce the subject merchandise, these inputs are not incorporated into the final product and are also categorized as "stores and spares consumed" based on Indian accounting standards. According to the Compendium of Statements and Standards, in order for a material to be considered as part of factory overhead, it must "assist the manufacturing process, but * * * not enter physically into the composition of the finished product." We agree that dextrin, steel shot, antirust, cutting oil, cleaning agent and dehydrating oil are indirect materials and should be treated as part of factory overhead, because the function of these materials is to "assist" in the manufacturing process and do not enter physically into the composition of the finished product. With respect to rustproofing oil, we find that this input is a direct material because it is used as a packaging material. As for limestone and firewood, we find that limestone is a direct material which is consumed during the smelting process as flux (*i.e.*, a material resulting from the production process which removes undesirable substances, like sand, from the metal bath) and that firewood is an energy input used in the production process.

Comment 9: Surrogate Value for Rustproofing Oil

Southwest claims that if the Department treats rustproofing oil as a direct material, then the Department should value it using the value of lubrication oil because other respondents, such as CAIEC/Laizhou CAPCO, use rustproofing oil for the same process. Thus, the Department should use the same surrogate value for all respondents (*i.e.*, lubrication oil).

The petitioner did not comment on this issue.

DOC Position

We disagree with Southwest. We found at the verification of Southwest's factory that it used a rustproofing oil, not lubrication oil, to coat its finished brake rotors for packaging. In contrast, although we found that CAIEC/Laizhou CAPCO used an oil to protect its brake rotors before packaging, it is clear that CAIEC/Laizhou CAPCO uses lubrication oil and not rustproofing oil. However, given that we could not obtain a surrogate value for rustproofing oil, we have used the value of lubrication oil to value this input for all respondents.

Comment 10: Foreign Inland Freight

The eight respondents maintain that the Department should not deduct an amount for foreign inland freight from EP or CEP because that expense was incurred by the factories and not by the trading companies. According to these respondents, the original places of shipment were the seaports where the suppliers delivered the merchandise for shipment to the United States. Citing Notice of Final Results of Antidumping Duty Administrative Review: Titanium Sponge from the Russian Federation, 61 FR 58525 (November 15, 1996), (Titanium Sponge from Russia), they claim that the Department should consider the seaports from which the subject merchandise was shipped to be the original places of shipment and to deduct only the movement charges incurred in transporting the merchandise from the PRC to the U.S. customers from EP and CEP. Alternatively, they maintain that if the Department does deduct the foreign inland freight from the factories to the seaports from EP and CEP, then the

Department should, at a minimum, ensure that a similar amount is

past practice. See Bicycles. As to the respondents" claim that the overhead

hundredth of a dollar often can cause significant distortions.

Based on Department practice, we examine several criteria for determining

result that MAT directs the factories, not the opposite. Therefore, the sales

In identifying appropriate Indian financial statements for valuation of

Department should, at a minimum, ensure that a similar amount is excluded from the overhead and selling expense ratios calculated for building normal value. They contend that if the overhead and selling expense ratios are derived from Indian producer financial statements wherein overhead and/or SG&A contain delivery expenses, the inclusion of such expenses in normal value with the simultaneous exclusion of such expenses from EP and CEP would constitute double-counting.

The petitioner did not comment on this issue.

DOC Position

The Department disagrees with the respondents" implied conclusion that in these investigations, the cost of transporting the subject merchandise from the factory to the PRC port of exportation should be treated as a component of the factories" total costs (*i.e.*, as a factor in the construction of normal value) instead of as a deduction from the price to the U.S. customer. While it is true that, in Titanium Sponge from Russia, the Department did not deduct factory-to-port movement charges from the U.S. starting price, and instead included "in normal value an amount for the inland freight," the circumstances in that particular case were very different from those of the instant investigations. Our normal methodology is to strip all movement charges, including all foreign inland freight, from the U.S. price being compared to NME normal value based on factors of production. The facts in these instant investigations differ from those in Titanium from the Russian Federation, wherein (1) the subject merchandise produced in an NME country was sold to an exporter located in a market economy without knowledge on the part of the producer of the United States as the ultimate destination and (2) the exporter took physical possession of the subject merchandise. Since neither of these conditions apply to these instant investigations, the comparison to Titanium from the Russian Federation is misplaced, and the Department has followed its normal methodology.

The respondents in these investigations are either (1) PRC self-exporting producers, such as Xinchangyuan or (2) PRC trading companies, such as CMC, which purchased subject merchandise from PRC producers. We are therefore deducting the surrogate value for the cost of transporting the subject merchandise from the factories to the port of exportation from the U.S. price, whether EP or CEP, in keeping with our past practice. See Bicycles. As to the respondents" claim that the overhead and/or SG&A rates applied in calculating normal value may already contain the cost of transporting the merchandise to the port as a selling expense, and that the deduction of foreign inland freight charges from the U.S. price constitutes a double-counting of expenses, we have ensured that any expense line-item which refers to "freight," "movement," "carriage," or "transportation" of goods, as well as the portion of "vehicle maintenance" and "vehicle depreciation" expenses applicable to product delivery, have been removed from the total SG&A costs and total overhead costs contained in the financial statements of Indian companies used in calculating NV.

Comment 11: Use of Exchange Rates

The eight respondents maintain that when calculating the exchange rate used in converting Indian surrogate values into U.S. dollars, the Department should use the buying exchange rates for U.S. dollars contained in Federal Exchange Bulletin, because the issue here is not how many dollars it takes to purchase one Indian rupee, but rather how many rupees are required to purchase one U.S. dollar.

The petitioner argues that the Department should not reject its use of daily Indian rupee-U.S. dollar exchange rates from the Federal Reserve Bank of Chicago and argues that there is no merit in respondents' request for the Department to abandon the use of these exchange rates in favor of simple average rates in the Federal Exchange Bulletin.

DOC Position

We agree with the petitioner. Based on Policy Bulletin 96–1: Import Administration Exchange Rate Methodology, we have used daily noon buying rates to establish the Indian rupee exchange rates used in these investigations. The daily noon buying rates are based on the rates in New York for cable transfers, which are certified by the New York Federal Reserve Bank for customs purposes, as required by section 522 of the Act. This information has been downloaded from an electronic bulletin board maintained by the Chicago Federal Reserve Bank. (See "Currency Conversion" section of this notice for further discussion).

Comment 12: Currency Conversion

The eight respondents urge the Department to round to the nearest one-thousandth of a dollar when converting Indian rupee values to U.S. dollars, because rounding to the nearest one-hundredth of a dollar often can cause significant distortions.

The petitioner did not comment on this issue.

DOC Position

We disagree with the respondents. In converting values from Indian rupees to U.S. dollars, we have derived U.S. values and rounded those values to the nearest one-hundredth, not one-thousandth, of a dollar because we do not find their use to have a significant effect on the margins.

Company-Specific Issues

Qingdao

Comment 13: Calculation of Total Material Cost

The petitioner claims that the Department did not include the cost of wire rod scrap when it calculated the total material cost for each model in the factors of production database for Changzhi Automobile Parts Factory (Changzhi), Qingdao's supplier. The petitioner urges the Department to include this factor in its calculation of total material cost.

Changzhi states that the Department correctly did not separately value wire rod scrap.

DOC Position

We agree with the petitioner. We verified that Changzhi reported a separate factor amount for wire rod scrap in the factors of production database. Therefore, for the final determination, we have valued this factor accordingly.

Shenyang/Laizhou/MAT

Comment 14: EP vs. CEP Sales Classification

Shenyang/Laizhou maintains that the Department incorrectly classified U.S. sales made prior to importation through its U.S. affiliate, MAT, as CEP transactions, and requests that the sales be reclassified as EP transactions.

The petitioner maintains that the Department should continue to treat these sales as CEP transactions.

DOC Position

We agree with the petitioner that these sales are properly treated as CEP sales. With respect to EP sales, section 772 (a) of the Act states that:

> The term "export price" means the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States . . .

Based on Department practice, we examine several criteria for determining whether sales made prior to importation through an affiliated sales agent to an unaffiliated customer in the United States are EP sales, including: (1) Whether the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer; (2) whether the sales follow customary commercial channels between the parties involved; and (3) whether the function of the U.S. selling agent is limited to that of a "processor of sales-related documentation" and a "communications link" with the unrelated U.S. buyer. Where all criteria are met, the Department has regarded the routine selling functions of the exporter as "merely having been relocated geographically from the country of exportation to the United States," and has determined the sales to be EP sales. Where all conditions are not met, the Department has classified the sales in question as CEP sales. See, e.g., Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany (LNPP from Germany), 61 FR 38166, 38174 (July 23, 1996).

In this case, the sales through MAT meet the first two criteria described above. However, with respect to the third criterion, the record evidence in this case indicates that MAT is not merely a processor of sales-related documentation nor a ministerial communication link between the factories and their unaffiliated customers. On the contrary, MAT is instrumental in determining the terms of sale. In the questionnaire responses and at verification, company officials repeatedly stated that the U.S.-based president of MAT and owner of the Shenyang and Laizhou factories is solely responsible for all production, distribution, and sales decisions. Indeed, the case brief submitted by Shenyang/Laizhou concedes that instructions regarding pricing are sent from MAT's office in the United States. See case brief at 20. We are not persuaded by the argument that the U.S.-based president of MAT directs sales activities in his role as owner of the factories rather than as president of MAT, nor by the argument that his U.S. sales activities are "simply the consequence of (the U.S.-based president of MAT) being a U.S. citizen and resident." *Id.* The fact is that the U.S.-based president of MAT operationally controls both the factories and MAT from his U.S. office, with the result that MAT directs the factories, not the opposite. Therefore, the sales through MAT are properly classified as CEP sales.

Comment 15: Surrogate Value for Purchased Unfinished Castings

Shenyang/Laizhou argues that the Department should use Laizhou's casting-related factors of production to calculate a surrogate value for castings purchased by Shenyang from unaffiliated PRC suppliers because Laizhou's valued factors for castings are more reflective of Shenyang's costs for castings if it had produced the castings itself. Alternatively, the respondent argues that the Department should derive a casting value based on the financial statements of Indian casting producers Nagpur and Jayaswals. According to the respondent, these financial statements are the only sources on the record that provide data for purchases or consumption of unfinished gray cast iron castings by producers of brake rotors.

The petitioner maintains that the Department should not value castings using the Laizhou factors of production given that there is reliable public information on the record regarding the price of input castings in India. The petitioner requests that the Department continue to use the inventory value for castings in Shivaji's financial statements as it did in the preliminary determination.

DOC Position

We disagree with the respondent that the unfinished castings purchased by Shenyang should be valued using the casting-related factors of production reported by Laizhou because, in NME cases, we value a respondent's factors based on its actual production experience during the POI. In this case, Shenyang purchased its unfinished castings during the POI and did not produce them, and thus we have valued these factors accordingly (see Notice of Final Determination of Sales at Less Than Fair Value: Coumarin from the People's Republic of China (PRC), 59 FR 66895, (Comments 4 and 5) (December 28, 1994). The Department values inputs purchased in an NME using surrogate values derived from publicly available information in a market economy of a similar stage of development. The record of this investigation includes financial statements of Indian producers of brake rotors which provide reliable surrogate values for the purchase price of input castings, and there is therefore no need to build up a casting purchase value using the factors of production reported by Laizhou.

In identifying appropriate Indian financial statements for valuation of castings, we have excluded the statements of producers which did not manufacture rotors during the POI, since castings for rotors may have significantly different prices from castings for other products. Also, we have sought data on purchases of castings from casting suppliers, since it is reasonable to assume that such castings are unfinished or at most semi-finished. We believe that purchased casting data are more reliable than casting inventoried values, which may reflect large quantities of finished castings, and also more reliable than casting consumption values, which may include large quantities of castings produced internally rather than purchased from outside suppliers. Given these criteria, the Jayaswals financial statements provide the only appropriate Indian surrogate value for unfinished castings on the record, and we have relied on that value. For a more extensive discussion of our valuation of unfinished castings, please refer to the final factors valuation memorandum.

Southwest/MMB

Comment 16: EP vs. CEP Sales Classification

The respondent maintains that sales made by its U.S. affiliate (MMB) should be considered EP and not CEP transactions because (1) the price of the merchandise is set by Southwest, not by MMB, prior to importation; (2) the customary commercial channel is to ship the merchandise directly to the customer; and (3) MMB maintains no inventory in the United States. Southwest cites to The Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Rod from France, 58 FR 68865 (December 29, 1993) (*Stainless Steel Rod*) in support of its argument.

The petitioner asserts that the Department should continue to treat these sales as CEP.

DOC Position

We disagree with Southwest. Our verification findings indicate that Southwest's sales through MMB were properly classified as CEP sales. When we requested at verification evidence that Southwest sets U.S. prices, rather than MMB, Southwest was only able to provide negotiation and sales correspondence for one customer purchase order (which covered an insufficient number of the total POI invoices of subject merchandise). Further, the only documentation Southwest provided at verification to

support its claim was documentation that it had been requested to prepare prior to verification. We find this failure to be significant, especially given that the respondent originally stated in its response that MMB is "not a mere conduit of sales by Southwest" and that MMB's salesman "negotiates the final prices with MMB's customers." (see Southwest's supplementary sales response, dated August 27, 1996, at A–2). With regard to Southwest's reference to Stainless Steel Rod, we note that unlike the U.S. affiliate in that case, MMB's sales of brake rotors do not involve a situation in which the U.S. affiliate had no flexibility to set the price (*i.e.*, price is set by the parent company). Therefore, we find no compelling evidence in Southwest's responses or in our verification findings to treat these sales as EP sales.

Comment 17: Treatment of Bartered Scrap

The petitioner argues that no adjustment for bartered steel scrap should be made because the respondent did not provide a surrogate value to the Department.

Yangtze, Southwest's supplier, claims that the Department should grant it a credit for the scrap (*i.e.*, turnings and shavings) sold or bartered by it and that a surrogate value for steel scrap is already on the record.

DOC Position

We agree with Yangtze. It is Department practice to subtract the sales revenue of by-products such as steel scrap from the production costs of the subject merchandise (see Notice of Final Determination of Sales at Less Than Fair Value: Sebacic Acid from the People's Republic of China, 59 FR 28053 (May 31, 1994). Moreover, we have a surrogate value for steel scrap on the record. Therefore, we have granted Yangtze a credit for the turnings and shavings it sold or bartered during the POI.

Comment 18: Credit Expense

Southwest maintains that if credit expenses are deducted from CEP, then the Department should use the date of the U.S. affiliate's invoice and not the date when Southwest shipped the subject merchandise from the PRC.

The petitioner maintains that the Department should use the PRC date of shipment to calculate this expense.

DOC Position

We disagree with Southwest that the Department should use the date of the U.S. affiliate's invoice to calculate credit expenses. When merchandise produced by the foreign-based exporter's affiliated factory (Yangtze) is shipped from the factory through the foreign-based exporter (Southwest) and then directly to an unaffiliated U.S. customer without entering the inventory of a U.S. affiliate (MMB), then it is the Department's standard practice to calculate credit expenses based on the date of shipment from the factory to the U.S. customer. Therefore, we have based credit expenses for this respondent on the number of days between the date of shipment to the U.S. customer and the date of payment. See Final Determination of Sales at Less Than Fair Value: Hot-Rolled Carbon Steel Flat Products from Italy, 58 FR 37152 (July 9, 1993).

Comment 19: Misreported Weights for Unfinished Castings

The petitioner maintains that Yangtze incorrectly reported the weights for all of its unfinished casting models listed in the sales and factors of production databases, and the factors for those unfinished castings.

The respondent maintains that it did not misreport the weights of its unfinished castings in the factors of production database. The respondent argues that the Department should use the reported standard weights for unfinished castings rather than the actual weights because the reported weights are reflected in its accounting records and those weights were used to allocate raw materials used in making all castings (*i.e.*, unfinished castings and finished castings). Respondent further maintains that using the actual weights rather than the standard weights would be distortive because they overstate the constructed value for each unfinished casting. Respondent cites To Notice of Final Determination of Sales at Less Than Fair Value: Minivans from Japan, 57 FR 21937 (1992) in support of its argument.

DOC Position

We disagree with the respondent. At verification, we found that the difference in weight of an unfinished casting compared to a finished casting for the same model is large in magnitude. We know that using the standard weights for allocating inputs for unfinished castings from Yangtze's accounting records distorts the actual production costs of the subject merchandise. Using the standard weights will also undervalue the factors used to produce unfinished castings and distort the actual production cost of the brake rotors, because the standard weights are lower than the actual weights. Therefore, the reasons for using standard weights in the Minivans case do not apply in this case.

If we do not take into account the actual weight of the unfinished brake rotor, then we would not be considering that there is a yield loss between a finished and unfinished product. However, in actuality, the yield loss is not as high for an unfinished product as a finished product, and therefore, the cost allocations are inaccurate as reported. Yangtze has not offered any alternative allocation methodology to account for these distortions. Furthermore, Yangtze did not even realize that its reported weights for unfinished brake rotors were based on its standard accounting system until Department officials found that the weights for unfinished brake rotors were incorrectly reported at verification.

In sum, in light of the distortive effects which would result from using Yangtze's theoretical standard weights, which bear no resemblance to the actual weights of unfinished castings, we are using the actual weights as the basis for allocation for those castings.

Comment 20: Welfare Fund

The petitioner alleges that Southwest failed to establish an absence of *de facto* or *de jure* government control because verification demonstrated that Southwest places a portion of its profits in a fund called "the public welfare fund" and claims that this fund is set up for payment of profits to the PRC government. For these reasons, the petitioner urges the Department to resort to facts available and deny Southwest a separate rate.

Southwest maintains that the Department found at verification that "the public welfare fund" is an employee welfare fund retained by the respondent.

DOC Position

We disagree with the petitioner. Southwest, like all the other respondents, is required to maintain an accounting system based on current PRC accounting standards. Included in the standard chart of accounts is an account entitled "public welfare fund." We examined the activity in this account during the POI and found that no payments were made to the PRC government. In addition, Southwest has demonstrated both a *de jure* and *de facto* absence of government control. (See "Separate Rates" section, above). Therefore, the Department sees no reason to deny Southwest a separate rate.

Yantai

Comment 21: Misreported Factors

The petitioner maintains that Laizhou Magnetic Iron Powder (MIP) Factory incorrectly reported its usage of five packing material factors for all models in the factors of production database. As a result of these errors, the petitioner urges the Department to resort to facts available for these materials.

Respondent maintains that the petitioner's request for use of facts available for Laizhou MIP's packing costs is misplaced. According to the respondent, of the six types of packing materials used by Laizhou MIP, the factory consistently and conservatively over-reported usage for five of the materials. For the sixth material, plastic bags, Laizhou MIP maintains that the magnitude of its under-reporting was less than one gram per bag.

DOC Position

We disagree for the most part with the petitioner's request that the Department utilize facts available in determining Laizhou MIP's usage of packing materials. For five of the six materials in question—cartons, nails, steel strap, pallet wood, and tape—the usages reported were found to be significantly overstated by the respondent. With respect to one packing material, plastic bags, the samples examined at verification indicate that Laizhou MIP did underreport usage by a relatively minor amount. We have corrected all of these usages using the verification findings as non-adverse facts available.

Currency Conversion

We made currency conversions into U.S. dollars based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Section 773A(a) of the Act directs the Department to convert foreign currencies based on the dollar exchange rate in effect on the date of sale of the subject merchandise, unless it is established that a currency transaction on forward markets is directly linked to an export sale. When a company demonstrates that a sale on forward markets is directly linked to a particular export sale, the Department will use the rate of exchange in the forward currency sale agreement.

Section 773A(a) also directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. Further, section 773A(b) directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this method, see Policy Bulletin 96–1: Currency Conversions, 61 FR 9434 (March 8, 1996).) Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar. The use of an adjustment period was not warranted in this case because the Indian rupee did not undergo a sustained movement.

Continuation, and Termination in Part, of Suspension of Liquidation

Brake Drums

In accordance with section 735(c) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of brake drums from the PRC, except for the exporter/producer combinations listed below, that are entered, or withdrawn from warehouse, for consumption on or after October 10, 1996, which is the date of publication of our notice of preliminary determination in the **Federal Register**:

Exporter(s)	Producer(s)
CMC	Xinchangyuan
Qingdao	Changzhi
Xinchangyuan	Xinchangyuan
Yantai	Longkou Bohai; Laizhou MIP.

With respect to the above companies, the suspension of liquidation ordered on or after October 10, 1996, will be terminated and any cash deposit or bonds will be released.

Under the Department's NME methodology, the zero rate for each exporter is based on a comparison of the exporter's U.S. price and NV based on the factors of production of a specific producer (which may be a different party). Therefore, the exclusion of the above-mentioned companies from an antidumping duty order (should one be issued) applies only to subject merchandise sold through the exporter/producer combinations noted above. Merchandise that is sold by an above-mentioned exporter but manufactured by producers not noted above for that exporter will be subject to the order, if one is issued (see Notice of Final Determination of Sales At Less Than Fair Value: Cased Pencils from the People's Republic of China, 59 FR 55625 (November 8, 1994) and Drawer Slides). Entries of such merchandise will be subject to the "China-wide" rate.

For imports of brake drums that are sold by CAIEC/Laizhou CAPCO, Hebei Metals and Machinery Import & Export Corporation, Jiuyang Enterprise Corporation, Longjing Walking Tractor Works Foreign Trade Import & Export Corporation and Shanxi Machinery and Equipment Import & Export Corporation, we are directing the Customs Service to suspend liquidation at a rate indicated below.

As stated in the preliminary determination, it would be inappropriate to assign these fully cooperative respondents a rate based on "facts available" that would also apply to PRC exporters who refused to cooperate. However, for this final determination, all of the rates determined for the selected brake drum respondents were either zero or entirely based on facts available.

We note that the Act is silent with respect to a situation in an NME investigation in which all of the rates determined for the selected respondents are either zero, *de minimis* or based on facts available. However, section 735(c)(5)(B) of the Act, which deals with the analogous "all others" determination, allows us to "use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated." The SAA at 873 explicitly recognizes that if the latter approach "results in an average that would not be reasonably reflective of potential dumping margins for non-investigated exporters or producers, Commerce may use other reasonable methods." CNIGC, the only one of the five examined companies which did not receive a *de minimis* or zero rate, became subject to a rate based on facts available because it was found not to be entitled to a separate rate, rather than due to a failure to provide data on its sales practices. Furthermore, this company's volume of sales of brake drums to the U.S. market is one of the largest in the investigation. Given the unique circumstances of this case, we do not consider that a weighted-average which includes that company's adverse facts available rate is reasonably reflective of potential

dumping margins for cooperative non-investigated exporters or producers who submitted full questionnaire responses. Therefore, in order not to give undue weight to CNIGC in determining a rate for non-examined companies which is reasonably reflective of potential dumping margins, we have assigned to these companies a rate which is the *simple* average of the dumping margins determined for the exporters and producers individually investigated.

We are also directing the Customs Service to continue to suspend liquidation of entries sold by the PRC brake drum companies subject to the China-wide rate, that are entered, or withdrawn from warehouse, for consumption on or after October 10, 1996.

The Customs Service will require a cash deposit or posting of a bond equal to the estimated duty margins by which the normal value exceeds the USP, as shown below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

BRAKE DRUMS

Manufacturer/Producer/Exporter	Weighted-average margin percentage
CMC/Xinchangyuan ..	0.00 (Excluded).
Qingdao/Changzhi	0.00 (Excluded).
Xinchangyuan/ Xinchangyuan.	0.00 (Excluded).
Yantai/Longkou Botai Machinery Company or Laizhou MIP.	0.00 (Excluded).
CAIEC/Laizhou CAPCO.	17.20.*
Hebei Metals and Machinery Import & Export Corporation.	17.20.*
Jiuyang Enterprise Corporation.	17.20.*
Longjing Walking Tractor Works Foreign Trade.	17.20.*
Import & Export Corporation Shanxi Machinery and Equipment Import & Export Corporation.	17.20.*
China-Wide Rate	86.02.

*Rate is based on the simple average of rates determined for the selected respondents.

Brake Rotors

In accordance with section 735(c) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of brake rotors from the PRC except for the exporter/producer combinations listed below, that are entered, or withdrawn from warehouse, for consumption on or after October 10, 1996:

Exporter(s)	Producer(s)
CAIEC or Laizhou CAPCO.	Laizhou CAPCO.
Shenyang or Laizhou	Shenyang or Laizhou.
Xinjiang	Zibo Botai Manufacturing Co., Ltd.

With respect to the above companies, the suspension of liquidation ordered on or after October 10, 1996, is to be terminated and any cash deposit or bonds are to be released. However, if any of the above-referenced companies sell subject merchandise which is not manufactured by the producers noted above for those companies, then those entries will be subject to the "China-wide" rate (for a full explanation, see the "Brake Drums" section above).

For imports of brake rotors that are sold by Hebei Metals and Machinery Import & Export Corporation, Jilin Provincial Machinery & Equipment Import & Export Corporation, Jiuyang Enterprise Corporation, Longjing Walking Tractor Works Foreign Trade Import & Export Corporation, Qingdao Metals, Minerals & Machinery Import & Export Corporation, Shanxi Machinery and Equipment Import & Export Corporation, Xianghe Zichen Casting Corporation and Yenhere Corporation, we have assigned these companies a weighted-average dumping margin based on the calculated margins of the selected brake rotors respondents, excluding margins which were zero, *de minimis* or based on facts available (*see* Preliminary Determinations).

Because we have determined that critical circumstances exist with respect to the PRC brake rotor companies which have received the China-wide rate, we are directing the Customs Service to continue to suspend liquidation of entries sold by these companies, that are entered, or withdrawn from warehouse, for consumption on or after July 12, 1996, which is 90 days prior to the date of publication of our notice of preliminary determination in the **Federal Register**.

The Customs Service will require a cash deposit or posting of a bond equal to the estimated duty margins by which the normal value exceeds the USP, as shown below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

BRAKE ROTORS

Manufacturer/producer/exporter	Weighted-average margin percentage
CAIEC and Laizhou CAPCO/Laizhou CAPCO.	0.00 (Excluded).
Shenyang and Laizhou/Shenyang or Laizhou.	0.00 (Excluded).
Xinjiang/Zibo Botai Manufacturing Co. Ltd.	0.00 (Excluded).
Yantai Import & Export Corporation.	3.56.
Southwest Technical Import & Export Corporation, Yangtze Machinery Corporation, and MMB International, Inc.	16.35.
.....	
Hebei Metals and Machinery Import & Export Corporation.	8.63.*
Jilin Provincial Machinery & Equipment Import & Export Corp.	8.63.*
Jiuyang Enterprise Corporation.	8.63.*
Longjing Walking Tractor Works Foreign Trade Import & Export Corporation.	8.63.*
Qingdao Metals, Minerals & Machinery Import & Export Corp..	8.63.*
Shanxi Machinery and Equipment Import & Export Corporation.	8.63.*
Xianghe Zichen Casting Corporation.	8.63.*
Yenhere Corporation	8.63.*
China-Wide Rate	43.32.

*Rate is based on the weighted-average of calculated rates that are not zero or based on facts available.

China-Wide Rate

China-Wide Rates have been assigned to brake drums and brake rotors exporters based on the revised highest petition rates. The China-Wide rate applies to all entries of subject merchandise except for entries from exporters/factories that are identified individually above under each product type.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determinations. As our final determinations are affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury, or threat of material injury, does not exist, for one or both proceedings, that proceeding or both proceedings will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist in both proceedings, the Department will issue antidumping duty orders directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

These determinations are published pursuant to section 735(d) of the Act.

Dated: February 24, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–5029 Filed 2–27–97; 8:45 am]

BILLING CODE 3510–DS–P

[A–301–602]

Certain Fresh Cut Flowers From Colombia; Notice of Final Court Decision and Amended Final Results of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final court decision and amended final results of administrative review.

SUMMARY: On September 28, 1995, the U.S. Court of Appeals for the Federal Circuit upheld the Department of Commerce's (the Department's) use of constructed value (CV) instead of third-country prices, for the purpose of determining foreign market value, and the Department's use of monthly average U.S. prices (USPs), instead of annual average USPs for the purpose of determining dumping margins. See *Floral Trade Council* v. *United States*, Slip Op., Ct. Nos. 94–1019, 94–1020 (Fed. Cir. Sept. 28, 1995). As there is now a final and conclusive court decision in this action, we are amending our final results of review in this matter and we will subsequently instruct the U.S. Customs Service to liquidate entries subject to this review.

EFFECTIVE DATE: February 28, 1997.

FOR FURTHER INFORMATION CONTACT: Mark Ross or Richard Rimlinger, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On May 17, 1990, the Department published its final results of administrative review of certain fresh cut flowers from Colombia for the period March 1, 1988 through February 28, 1989. See Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Review, 55 FR 20491 (May 17, 1990). Subsequently, a domestic association and a number of reviewed companies filed lawsuits with the United States Court of International Trade (CIT) challenging the final results. Thereafter, the CIT issued an order and opinion, remanding several issues to the Department. See *Floral Trade Council* v. *United States*, 775 F. Supp. 1492 (CIT 1991). The CIT instructed the Department to: (1) Collect actual cost data from eleven companies for which the Department had not previously requested cost data for purpose of calculating CV; (2) make a credit adjustment to CV for five companies; (3) include street vendor sales in the inland freight calculation for Floral Ltda. Exportaciones Bochica; (4) adjust USP for Dianticola Colombiana to include revenues deposited by the firm's consignment agent into a United States bank on Dianticola Colombiana's behalf; (5) correct a clerical error concerning calculation of CV for Flores el Trentino, and (6) normalize costs to account for low yields suffered by Florandia/Herrera-Camacho. The Department filed its remand results on May 5, 1992.

On April 22, 1993, the CIT issued a second remand to the Department to allow preproduction expenses incurred by Flores Condor de Colombia to be amortized. See *Floral Trade Council* v. *United States*, Slip Op. 93–57 (CIT Apr. 23, 1993). The Department filed the results of this second remand on June 14, 1993. On July 22, 1993, the CIT rendered its final judgment. See *Floral Trade Council* v. *United States*, Slip Op. 93–135 (CIT July 23, 1993). Subsequently, appeals were filed by both domestic and foreign parties.

On September 28, 1995, the U.S. Court of Appeals for the Federal Circuit upheld the Department's use of CV, instead of third-country prices, for purpose of determining foreign market value, and the Department's use of monthly average USPs, instead of annual average USPs, for purpose of determining antidumping margins. See *Floral Trade Council* v. *United States*, Slip Op., Ct. Nos. 94–1019, 94–1020 (Fed. Cir. Sept. 28, 1995).

As there is now a final and conclusive court decision in this action, we are amending our final results of review in this matter and we will subsequently instruct the U.S. Customs Service to liquidate entries subject to this review.

Amendment to Final Result of Review

Pursuant to 19 U.S.C. 1516a(e), we are now amending the final results of administrative review for certain fresh cut flowers from Colombia for the period March 1, 1988 through February 28, 1989. The revised weighted-average margins are as follows:

Company	Margin (percent)
Agricola Los Arboles	0.38
Claveles Colombianos	0.20
Combiflor	0.19
Dianticola Colombiana	2.47
Floral Ltda./Exportaciones Bochica	0.13
Florania/Herrera-Camacho	12.51
Flores Bachue	7.97
Flores Colombianas	0.13
Flores Condor de Colombia	0.00
Flores dos Hectareas	3.90
Flores el Puente	0.70
Flores de Serrezuela	0.48
Flores el Trentino	6.53
Flores la Valvanera	8.71
Jardines del Muna	16.85
Pompones Limitada	0.11
Universal Flowers	0.53

The above rates affected the weighted-average sample group margin, which will be applied to the one hundred twenty-nine firms requested only by the domestic interested party and not selected in the random sample. The new sample group rate is 3.50 percent.

Accordingly, the Department will determine and the Customs Service will assess appropriate antidumping duties on entries of the subject merchandise made by firms covered by this review of the period March 1, 1988 through February 28, 1989. Individual differences between USP and foreign market value may vary from the percentages listed above. The Department will issue appraisement instructions directly to the Customs Service.

Dated: February 20, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–5033 Filed 2–27–97; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–005]

and preliminary results of changed-circumstances antidumping duty

protective orders (APOs) of their responsibility concerning the

and anticircumvention inquiry requests. The Department intends to publish in

A–583–824 *Polyvinyl Alcohol*
E.I. du Pont de Nemours & Co.—

Surecrete, Inc.—Clarification to determine whether New Superfine

[A–588–005]

High Power Microwave Amplifiers and Components Thereof From Japan: Final Results of Changed-Circumstances Antidumping Duty Administrative Review and Revocation in Part of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of final results of changed-circumstances antidumping duty administrative review and revocation in part of antidumping duty order.

SUMMARY: On November 1, 1996, the Department of Commerce (the Department) initiated a changed circumstances antidumping administrative review of the antidumping duty order on high power microwave amplifiers (HPMAs) from Japan and issued the preliminary results of this review expressing an intent to revoke the order in part (61 FR 56512). We received no comments regarding the preliminary results. We are now revoking the order, in part, with regard to traveling wave tubes (TWTs) and klystron tubes, two components of HPMAs, based on the fact that this portion of the order is no longer of interest to domestic interested parties.

EFFECTIVE DATE: February 28, 1997.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Kris Campbell, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–3477.

SUPPLEMENTARY INFORMATION:

Background

On June 28, 1996, respondent NEC Corporation and NEC America, Inc. (NEC), requested that the Department conduct a changed-circumstances administrative review to determine whether to revoke the order partially with regard to TWTs and klystron tubes. In addition, on August 26, 1996, MCL Inc. (MCL), the petitioner in this proceeding, submitted a letter supporting NEC's request for a review and partial revocation of the order. On October 22, 1996, MCL submitted a letter requesting that the partial revocation be effective July 1, 1996.

We preliminarily determined that MCL's affirmative statement of no interest constitutes good cause for conducting a changed-circumstances review. Consequently, on November 1, 1996, we published a notice of initiation and preliminary results of changed-circumstances antidumping duty administrative review (61 FR 56512), in which we preliminarily determined to revoke this order in part. We gave interested parties an opportunity to comment on the preliminary results of this changed-circumstances review. We received no comments.

Scope of Review

The products covered by this changed-circumstances review are imports of TWTs and klystron tubes, which are components of HPMAs.

The products covered by the order are HPMAs and components thereof. High power microwave amplifiers are radio-frequency power amplifier assemblies, and components thereof, specifically designed for uplink transmission in C, X, and Ku bands from fixed earth stations to communications satellites and having a power output of one kilowatt or more. High power microwave amplifiers may be imported in subassembly form, as complete amplifiers, or as a component of higher level assemblies (generally earth stations). This merchandise is currently classifiable under item 8525.10.80 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and customs purposes. The written description remains dispositive.

Final Results of Review; Partial Revocation of Antidumping Duty Order

The lack of further interest by domestic interested parties constitutes changed circumstances sufficient to warrant partial revocation of this order. Therefore, we are partially revoking the order on HPMAs from Japan with regard to TWTs and klystron tubes, in accordance with sections 751(b) and (d) and 782(h) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 353.25 (d)(1). The revocation is effective as of July 1, 1996, consistent with MCL's request.

The Department will instruct the U.S. Customs Service (Customs) to proceed with liquidation, without regard to antidumping duties, of all unliquidated entries of TWTs and klystron tubes from Japan entered, or withdrawn from warehouse, for consumption on or after July 1, 1996, in accordance with 19 CFR 353.25(d)(5). The Department will further instruct Customs to refund with interest any estimated duties collected with respect to unliquidated entries of TWTs and klystron tubes entered, or withdrawn from warehouse, for consumption on or after July 1, 1996, in accordance with section 778 of the Act.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This changed-circumstances administrative review, partial revocation of the antidumping duty order, and notice are in accordance with sections 751(b) and (d) and 782(h) of the Act and sections 353.22(f) and 353.25(d) of the Department's regulations.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

Dated: February 20, 1997.

[FR Doc. 97–5032 Filed 2–27–97; 8:45 am]

BILLING CODE 3510–DS–P

Notice of Scope Rulings

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of scope rulings and anticircumvention inquiries.

SUMMARY: The Department of Commerce (the Department) hereby publishes a list of scope rulings and anticircumvention inquiries completed by Import Administration, between October 1, 1996, and December 31, 1996. In conjunction with this list, the Department is also publishing a list of pending requests for scope clarifications and anticircumvention inquiries. The Department intends to publish future lists within 30 days of the end of each quarter.

EFFECTIVE DATE: February 28, 1997.

FOR FURTHER INFORMATION CONTACT: Ronald M. Trentham, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–4793.

Background

The Department's regulations (19 CFR 353.29(d)(8) and 355.29(d)(8)) provide that on a quarterly basis the Secretary will publish in the **Federal Register** a list of scope rulings completed within the last three months.

This notice lists scope rulings and anticircumvention inquiries completed by Import Administration, between October 1, 1996, and December 31, 1996, and pending scope clarification

and anticircumvention inquiry requests. The Department intends to publish in April 1997 a notice of scope rulings and anticircumvention inquiries completed between January 1, 1997, and March 31, 1997, as well as pending scope clarification and anticircumvention inquiry requests.

The following lists provide the country, case reference number, requester(s), and a brief description of either the ruling or product subject to the request.

I. Scope Rulings Completed Between October 1, 1996 and December 31, 1996

Country: United Kingdom

A–412–602 *Certain Forged Steel Crankshafts*
Clarkes Crankshaft Ltd.—Open die, hand forged steel crankshafts, produced in the United Kingdom, are outside the scope of order. 10/8/96.

Country: People's Republic of China

A–570–504 *Petroleum Wax Candles*
Mervyn's, Enesco Corporation, and Midwest of Cannon Falls—Cube or square shaped candles are within the scope of the order. 12/9/96.
Enesco Corporation—A disk shaped candle (style number 9540717) and holiday novelty candles (style numbers 9180966 and style 9540237) are outside the scope of the order. 11/8/96.
Midwest of Cannon Falls—Article number 16073–2 in the shape of a pillar is outside the scope of the order. A taper (article number 16057–2) and 3 pillar candles (article #s H061141, 16105–0 and 17257–5) are within the scope of the order. 11/8/96.
Russ Berrie Company, Inc.—Wax-filled terracotta heart shaped candles are within the scope of the order. 10/24/96.

A–570–808 *Chrome-Plated Lug Nuts*
Consolidated International Automotive, Inc.—Certain decorative nickel-plated lug nuts are within the scope of the order. 12/12/96.

Country: Taiwan

A–583–508 *Porcelain-on-Steel Cooking Ware*
Cost Plus, Inc.—10 piece porcelain-on-steel fondue set is within the scope of the order. 10/30/96.

A–583–810 *Chrome-Plated Lug Nuts*
Consolidated International Automotive, Inc.—Certain decorative nickel-plated lug nuts are within the scope of the order. 12/12/96.

A–583–824 *Polyvinyl Alcohol*
E.I. du Pont de Nemours & Co.—Polyvinyl alcohol produced with U.S. origin vinyl acetate monomer is within the scope of the order. 12/19/96.

Country: Japan

A–588–055 *Acrylic Sheet from Japan*
Sumitomo Chemical Co., Ltd.—Sumielec, an acrylic based antistatic, is outside the scope of the order. 10/23/96.

A–588–056 *Melamine*
Taiyo America, Inc.—Melamine with special physical characteristics (100% of the particles are smaller than 10 microns) is within the scope of the order. 10/9/96.

A–588–802 *3½" Micro disks*
Certain web roll media are outside the scope of the order. 10/23/96.

A–588–810 *Mechanical Transfer Presses*
Combats Ltd.—Certain mechanical transfer press parts exported from Japan are outside the scope of the order. 10/1/96.

A–588–837 *Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled*
Mawkish America Company, Limited—Components for presses not built or designed to print newspapers and which cannot manipulate a roll of paper more than two pages across, are outside the scope of the order. 10/28/96.

II. Anticircumvention Rulings Completed Between October 1, 1996 and December 31, 1996

None.

III. Scope Inquiries Terminated Between October 1, 1996 and December 31, 1996

Country: People's Republic of China

A–570–504 *Petroleum Wax Candles*
Cost Plus, Inc.—Clarification to determine whether certain "beeswax candles" are within the scope of the order. Scope inquiry terminated on 12/3/96.

Country: Korea

A–580–601 *Certain Stainless Steel Cookware from the Republic of Korea*
Peregrine Outfitters Inc.—Clarification to determine whether stainless steel cooking ware is within the scope of the order. Scope inquiry terminated on 12/9/96.

Country: Japan

A–588–824 *Gray Portland Cement and Clinker*
Surecrete, Inc.—Clarification to determine whether New Superfine Cement manufactured by Nittetsu Cement Co., Ltd., is within the scope of the order. Scope inquiry terminated on 11/14/96.

IV. Anticircumvention Inquiries Terminated Between October 1, 1996 and December 31, 1996

None.

V. Pending Scope Clarification Requests as of December 31, 1996

Country: Brazil

A–351–817; C–351–818 *Certain Cut-to-Length Carbon Steel Plate*
Wirth Limited—Clarification to determine whether profile slabs produced by Companhia Siderurgica de Tubarao and imported by Wirth Limited are within the scope of the order.

Country: Germany

A–428–801 *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof*
Enkotec Company, Inc.—Clarification to determine whether the "main bearings" imported for incorporation into Enkotec Rotary Nail Machines are slewing rings and, therefore, outside the scope of the order.

Country: Singapore

A–559–801 *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof*
Rockwell International Corporation—Clarification to determine whether an automotive component known as a cushion suspension unit (or cushion assembly unit or bearing assembly) is within the scope of the order.

Country: People's Republic of China

A–570–501 *Natural Bristle Paint Brushes and Brush Heads*
Kwick Clean and Green Ltd.—Clarification to determine whether a group of bristles held together at the base with glue, which are to be used as replacable parts within the cavity of the paintbrush body, is within the scope of the order.

A–570–504 *Petroleum Wax Candles*
Enesco Corporation—Clarification to determine whether a birthday candle (style # 9500340) is within the scope of the order.
Institutional Financing Services—Clarification to determine whether red/white candles packaged as peppermint candles are holiday novelty candles and, thus, outside the scope of the order.

Sun-It Corporation—Clarification to

A–588–807 *Industrial Belts and*

SUPPLEMENTARY INFORMATION: CZESD

potential mortality of juvenile

under the authority of section 10 of the

Sun-It Corporation—Clarification to determine whether taper candles containing oil of citronella are within the scope of the order.

Ocean State Jobbers—Clarification to determine whether taper candles consisting of a blend of petroleum wax and beeswax are within the scope of the order.

Fritz Companies, Inc.—Clarification to determine whether a taper with a design depicting a painted "Christmas scene" of holly ivy and berries, item #416750, is within the scope of the order.

Hallmark Cards, Inc.—Clarification to determine whether the 399FMB5503 Formed Wax Peppermint Candy Candle is within the scope of the order.

A–570–808 *Chrome-Plated Lug Nuts*

Wheel Plus, Inc.—Clarification to determine whether imported zinc-plated lug nuts which are chrome-plated in the United States are within the scope of the order.

A–570–822 *Helical Spring Lock Washers (HSLWs)*

Shakeproof Industrial Products Division of Illinois Tool Works (SIP)—Clarification to determine whether HSLWs which are imported to the U.S. in an uncut, coil form are within the scope of the order.

Country: Taiwan

A–583–810 *Chrome-Plated Lug Nuts*

Wheel Plus, Inc.—Clarification to determine whether imported zinc-plated lug nuts which are then chrome-plated in the United States are within the scope of the order.

A–583–820 *Helical Spring Lock Washers (HSLWs)*

Shakeproof Industrial Products Division of Illinois Tool Works (SIP)—Clarification to determine whether HSLWs imported into the U.S. in an uncut, coil form are within the scope of the order.

Country: Japan

A–588–804 *Antifriction Bearings (Other Than Tapered Roller Bearings), and Parts Thereof*

Rockwell International Corporation—Clarification to determine whether an automotive component known as a cushion suspension unit (or cushion assembly unit or center bearing assembly) is within the scope of the order.

Koyo Seiko Co., Ltd.—Clarification to determine whether a cylindrical roller bearing, supposedly without a precision rating, for use as an axle bearing in cars and trucks, is within the scope of the orders.

A–588–807 *Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured*

Honda Power Equipment Manufacturing Inc. (HPE)—Clarification to determine whether certain belts HPE imports from Japan for use in manufacturing lawn tractors and riding lawn mowers are within the scope of the order.

American Honda Motor Co., Inc.(AHM)—Clarification to determine whether certain v-belts imported from Japan by AHM are within the scope of the order.

A–588–813 *Light-Scattering Instruments and Parts Thereof from Japan*

Thermo Capillary Electrophoresis, Inc.—Clarification to determine whether diode array detectors and cell flow units are within the scope of the order.

A–588–824 *Corrosion Resistant Carbon Steel Flat Products*

Drive Automotive Industries—Clarification to determine whether 2000 millimeter wide, made to order, corrosion resistant carbon steel coils are within the scope of the order.

Country: Russia

A–821–803 *Titanium Sponge*

Waldron Pacific, Inc.—Clarification to determine whether titanium tablets produced by electrolytic reduction are within the scope of the order.

VI. Pending Anticircumvention Inquiries as of September 30, 1996

Country: Kore

A–580–008 *Color Television Receivers from Korea*

International Brotherhood of Electrical Workers, the International Union of Electronic Electrical, Salaried, Machine & Furniture Workers, and the Industrial Union Department (the Unions)—Anticircumvention inquiry to determine whether Samsung Electronics Co., L.G. Electronics Inc., and Daewoo Electronics Co., are circumventing the order by shipping Korean-origin color picture tubes, printed circuit boards, color television kits, chassis, and other materials, parts and components to plants operated by related parties in Mexico where the parts are then assembled in CTVs and shipped to the U.S. Additionally, an anticircumvention inquiry to determine whether Samsung by shipping Korean-origin color picture tubes and other CTV parts to a related party in Thailand for assembly into complete CTVs prior to exportation to the U.S. is circumventing the order.

Interested parties are invited to comment on the accuracy of the list of pending scope clarification requests. Any comments should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Dated: February 21, 1997.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 97–5030 Filed 2–27–97; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 022497C]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications for a scientific research permit (P770#72), modification 4 to research permit 900 (P770#66), and modification 2 to research permit 914 (P770#67).

SUMMARY: Notice is hereby given that the Coastal Zone and Estuarine Studies Division, Northwest Fisheries Science Center, NMFS in Seattle, WA (CZESD) has applied in due form for a permit and modifications to two permits authorizing takes of endangered and threatened species for scientific research purposes.

DATES: Written comments or requests for a public hearing on any of these applications must be received on or before March 31, 1997.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Environmental and Technical Services Division, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

Written comments or requests for a public hearing should be submitted to the Chief, Environmental and Technical Services Division, Portland.

SUPPLEMENTARY INFORMATION: CZESD requests a permit and modifications to two permits under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–227).

CZESD (P770#72) requests a permit for takes of juvenile, threatened, naturally-produced and artificially-propagated, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*); juvenile, threatened, Snake River fall chinook salmon (*Oncorhynchus tshawytscha*); and juvenile, endangered, Snake River sockeye salmon (*Oncorhynchus nerka*) associated with two juvenile fish bypass studies at McNary Dam on the Columbia River. Study 1 proposes an evaluation of vertical barrier screens and outlet flow-control devices. Study 2 proposes to establish design criteria for improved wet-separator efficiency and high-velocity flume development. Based on the results from these bypass studies, guidance devices and bypass system components can be redesigned, modified, or deployed using specific configurations to enhance juvenile fish passage at hydroelectric powerhouses and subsequently, a potential improvement in downstream survival and adult returns. ESA-listed juvenile fish are proposed to be captured, anesthetized, handled, allowed to recover from the anesthetic, and released. Indirect mortalities are also requested. The permit is requested to be valid in 1997 only.

For modification 4 to permit 900 (P770#66), CZESD requests to extend the duration of the take authorization for Study 8, the Trestle Bay habitat restoration study, through December 31, 1997. Although the authorization for takes of ESA-listed species associated with this study expired on December 31, 1996, permit 900 is not due to expire until December 31, 1998. No change in the type or number of ESA-listed species to be taken for the research is requested.

For modification 2 to permit 914 (P770#67), CZESD requests an increase in the take of juvenile, threatened, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) associated with the evaluation of the effects of dissolved gas supersaturation on fish and invertebrates in Priest Rapids Reservoir and downstream from Bonneville Dam on the Columbia River and Ice Harbor Dam on the Snake River. A larger sample of ESA-listed juvenile fish is proposed to be captured, anesthetized, and examined for signs of gas bubble disease to evaluate the potential mortality of juvenile salmonids migrating through these river reaches. Associated indirect mortalities is also requested to be increased. Modification 2 to permit 914 is requested for the duration of the permit. Permit 914 expires on December 31, 1998.

Those individuals requesting a hearing on the request for a permit or any of the two permit modification requests should set out the specific reasons why a hearing would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the above application summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Dated: February 24, 1997.

Robert C. Ziobro,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–5046 Filed 2–27–97; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 022497B]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of an application for modification 8 to enhancement permit 795 (P503A).

SUMMARY: Notice is hereby given that the Idaho Department of Fish and Game in Boise, ID (IDFG) has applied in due form for modification 8 to permit 795 authorizing takes of an endangered species for enhancement purposes.

DATES: Written comments or requests for a public hearing on the modification application must be received on or before April 29, 1997.

ADDRESSES: The application and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Environmental and Technical Services Division, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

Written comments or requests for a public hearing should be submitted to the Chief, Environmental and Technical Services Division, Portland.

SUPPLEMENTARY INFORMATION: IDFG requests modification 8 to permit 795 under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–227).

For modification 8 to permit 795, IDFG (P503A) requests to release juvenile, endangered, artificially-propagated, Snake River sockeye salmon (*Oncorhynchus nerka*) from their captive propagation program into Alturas Lake in 1997. The request is consistent with the recommendations of the Stanley Basin Sockeye Technical Oversight Committee. Currently, releases of juvenile sockeye salmon from the captive propagation program is authorized in Redfish and Pettit Lakes each year. Using a third lake for juvenile sockeye salmon releases will help offset stocking limitations brought on by the natural variability of zooplankton abundance and species composition, and increase the viability of the program by providing additional spawning and rearing habitat. IDFG also request an extension of permit 795 through December 31, 1997 so that the permit may coincide with the captive propagation program annual production cycle. Permit 795 is currently set to expire on July 31, 1997. The modification is requested for the duration of the permit.

Those individuals requesting a hearing on the permit modification request should set out the specific reasons why a hearing would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the above application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Dated: February 24, 1997.

Robert C. Ziobro,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–5047 Filed 2–27–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Department of the Army

Armed Forces Epidemiological Board (AFEB)

AGENCY: Office of The Surgeon General.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a) (2) of Public Law 92–463, The Federal Advisory Committee Act, this

announces the forthcoming AFEB Meeting. The meeting will be held from 0800–1630, Thursday and Friday, April 10–11, 1997. The purpose of the meeting is to complete pending Board issues, introduce recruit training/medical issues, and to conduct an executive working session. The meeting location will be at the U.S. Marine Corps Base, Parris Island, Beaufort, South Carolina. The meeting will be open to the public, but limited by space accommodations. Any interested person may attend, appear before or file statements with the committee at the time and in the manner permitted by the committee.

FOR FURTHER INFORMATION CONTACT: COL Vicky Fogelman, AFEB Executive Secretary, Armed Forces Epidemiological Board, Skyline Six, 5109 Leesburg Pike, Room 693, Falls Church, Virginia 22041–3258, (703) 681–8012/3.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–4991 Filed 2–27–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER96–3105–000]

Boston Edison Company; Notice of Filing

February 24, 1997.

Take notice that on January 6, 1997, Boston Edison Company tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 3, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4971 Filed 2–27–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES97–23–000]

Constellation Energy Corporation; Notice of Application

February 24, 1997.

Take notice that on February 14, 1997, Constellation Energy Corporation filed an application, under § 204 of the Federal Power Act, seeking the following authorizations in connection with the proposed merger for which authority is being sought separately in Docket No. EC96–10–000:

(1) To issue short-term unsecured promissory notes, commercial paper notes, and/or medium-term notes, from time to time, in an aggregate principal amount of not more than $1 billion outstanding at any one time, on or before December 31, 1998 with maturities not more than 12 months after the date of issuance; and

(2) To assume existing short-term debt obligations of Baltimore Gas and Electric Company and Potomac Electric Power Company.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 13, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4974 Filed 2–27–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF81–7–005]

ESI Calistoga GP, Inc. and Caithness Geysers, Inc.; Notice of Amendment to Filing

February 24, 1997.

On February 21, 1997, ESI Calistoga GP, Inc. and Caithness Geysers, Inc. tendered for filing an amendment to its January 31, 1997, filing in this docket.

The amendment pertains to the ownership aspects and steam purchase agreement of the geothermal small power production facility. No determination has been made that the submittal constitutes a complete filing.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed by March 7, 1997, and must be served on the applicants. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4970 Filed 2–27–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–251–000]

Tennessee Gas Pipeline Company; Notice of Request Under Blanket Authorization

February 24, 1997.

Take notice that on February 18, 1997, Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP97–251–000, a request pursuant to Section 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 18 CFR 157.212) for authorization to modify an existing receipt point to include delivery capabilities for Bridgeline Gas Distribution L.L.C. (Bridgeline), an interstate pipeline company, under Tennessee's blanket certificate issued in Docket No. CP82–413–000, pursuant to 18 CFR Part 157, Subpart F of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee proposes to modify an existing point located on its system at approximately Mile Post 526A–2701–0.01 in Plaquemines Parish, Louisiana, to include delivery capabilities in order to effectuate the delivery of up to 5,000 dekatherms of natural gas per day for Bridgeline. It is stated that to establish this bi-directional point Tennessee will install, own, operate and maintain a 4-inch restriction plate and electronic gas measurement and will inspect Bridgeline's installation of measurement facilities. It is further stated that Bridgeline will reimburse Tennessee for the cost of this project which is approximately $18,600.

Tennessee states that the service at the bi-directional point would be provided on an interruptible basis and that: (i) volumes delivered to Bridgeline after the modification of this receipt point would not exceed the total volumes authorized prior to this request to modify the receipt point; (ii) that establishing the proposed bi-directional point is not prohibited by Tennessee's existing tariff; and, (iii) that Tennessee has sufficient capacity to accomplish receipt and deliveries at the proposed point without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4972 Filed 2–27–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–244–000]

Williams Natural Gas Company; Notice of Application

February 24, 1997.

Take notice that on February 13, 1997, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101 filed in Docket No. CP97–244–000, an application pursuant to Section 7(b) of the Natural Gas Act for an order granting permission and approval to abandon by reclamation a 4,250 horsepower skid-mounted compressor and appurtenant facilities at the Perry Compressor Station located in Noble County, Oklahoma, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, WNG seeks authority to abandon by reclaim the Perry turbine. WNG states that it will retain the station site since other facilities, which also will occupy the site, will remain in operation. WNG asserts that the cost of the proposed abandonment is $150,420 with an estimated salvage value of $1,309,303.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 17, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for WNG to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4983 Filed 2–27–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–2884–000, et al.];

Northeast Utilities Service Company, et al.; Electric Rate and Corporate Regulation Filings

February 24, 1997.

Take notice that the following filings have been made with the Commission:

1. Northeast Utilities Service Company

[Docket No. ER96–2884–000]

Take notice that on August 26, 1996, Northeast Utilities Service Company tendered for filing its summary of activity for the quarter ending June 30, 1996.

Comment date: March 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Florida Power Corporation

[Docket No. ER96–2903–000]

Take notice that on February 11, 1997, Florida Power Corporation ("FPC") tendered for filing a contract for the provision of interchange service between itself and PanEnergy Trading and Market Services, L.L.C. ("PanEnergy"). The contract provides for service under Schedule J, Negotiated Interchange Service and OS, Opportunity Sales.

FPC requests Commission waiver of the 60-day notice requirement in order to allow the contract to become effective as a rate schedule on February 12, 1997. Waiver is consistent with Commission policies because it will allow voluntary economic transactions to go forward.

Comment date: March 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. New York State Electric and Gas Corporation

[Docket No. ER96–3037–000]

Take notice that on February 14, 1997, New York State Electric and Gas Corporation tendered for filing an amendment in the above-referenced docket.

Comment date: March 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Midwest Energy, Inc.

[Docket No. ER97–628–000]

Take notice that on January 21, 1997, Midwest Energy, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: March 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. UtiliCorp United, Inc.

[Docket No. ER97–667–000]

Take notice that on February 13, 1997, UtiliCorp United, Inc. tendered for filing further amendments to its filing in this docket.

Comment date: March 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. New England Power Company

[Docket No. ER97–855–000]

Take notice that on February 13, 1997, New England Power Company submitted an amendment to its filing in this docket.

Comment date: March 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. South Carolina Electric & Gas Company

[Docket No. ER97–947–000]

Take notice that on February 10, 1997, South Carolina Electric & Gas Company tendered for filing an amendment in the above-referenced docket.

Comment date: March 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Florida Power Corporation

[Docket No. ER97–1233–000]

Take notice that on February 10, 1997, Florida Power Corporation ("Florida Power") tendered for filing an amendment to its filing of January 14, 1997, in Docket No. ER97–1233–000. The amendment requests Commission waiver of its notice requirement and requests an effective date of January 15, 1997, for agreements providing for the construction and operation of facilities for the City of Bartow, Florida.

Comment date: March 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Central Hudson Gas & Electric Corporation

[Docket No. ER97–1289–000]

Take notice that on February 7, 1997, Central Hudson Gas & Electric Corporation tendered for filing an amendment in the above-referenced docket.

Comment date: March 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Central Hudson Gas & Electric Corporation

[Docket No. ER97–1290–000]

Take notice that on February 7, 1997, Central Hudson Gas & Electric Corporation tendered for filing an amendment in the above-referenced docket.

Comment date: March 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Central Hudson Gas & Electric Corporation

[Docket No. ER97–1291–000]

Take notice that on February 7, 1997, Central Hudson Gas & Electric Corporation tendered for filing an amendment in the above-referenced docket.

Comment date: March 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Central Hudson Gas & Electric Corporation

[Docket No. ER97–1292–000]

Take notice that on February 7, 1997, Central Hudson Gas & Electric Corporation tendered for filing an amendment in the above-referenced docket.

Comment date: March 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Central Hudson Gas & Electric Corporation

[Docket No. ER97–1293–000]

Take notice that on February 7, 1997, Central Hudson Gas & Electric Corporation tendered for filing an amendment in the above-referenced docket.

Comment date: March 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Baltimore Gas & Electric Company

[Docket No. ER97–1355–000]

Take notice that on February 14, 1997, Baltimore Gas & Electric Company tendered for filing an amendment in the above-referenced docket.

Comment date: March 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Montana Power Company

[Docket No. ER97–1474–000]

Take notice that on February 5, 1997, Montana Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: March 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Florida Power & Light Company

[Docket No. ER97–1588–000]

On February 10, 1997, Florida Power & Light Company, filed Service Agreements with Electric Clearinghouse, Inc., Federal Energy Sales, Inc., South Carolina Electric & Gas Company, TransCanada Energy Ltd., The Power Company of America, L.P., Utilities Commission, City of New Smyrna Beach, Florida, Enron Power Marketing, Inc., Jacksonville Electric Authority, Orlando Utilities Commission and City of Vero Beach, Florida for service pursuant to Tariff No. 1 for Sales of Power and Energy by Florida Power & Light. FPL requests that each Service Agreement be made effective on January 10, 1997.

Comment date: March 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Pennsylvania Power & Light Company

[Docket No. ER97–1595–000]

Take notice that on February 10, 1997, Pennsylvania Power & Light Company (PP&L), filed a Service Agreement dated February 3, 1997, with Plum Street Energy Marketing, Inc. (Plum Street) under PP&L's FERC Electric Tariff, Original Volume No. 1. The Service Agreement adds Plum Street as an eligible customer under the Tariff.

PP&L requests an effective date of February 10, 1997, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Plum Street and to the Pennsylvania Public Utility Commission.

Comment date: March 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Pennsylvania Power & Light Company

[Docket No. ER97–1596–000]

Take notice that on February 10, 1997, Pennsylvania Power & Light Company (PP&L), filed a Service Agreement dated February 6, 1997 with Tosco Power, Inc. (Tosco) under PP&L's FERC Electric Tariff, Original Volume No. 1. The Service Agreement adds Tosco as an eligible customer under the Tariff.

PP&L requests an effective date of February 10, 1997, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Tosco and to the Pennsylvania Public Utility Commission.

Comment date: March 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Arizona Public Service Company

[Docket No. ER97–1597–000]

Take notice that on February 11, 1997, Arizona Public Service Company (APS), tendered for filing a Service Agreement to provide Non-Firm Point-to-Point Transmission Service under APS' Open Access Transmission Tariff filed in Compliance with FERC Order No. 888 with UtiliCorp United Inc. (UtiliCorp), Illinova Power Marketing, Inc. (Illinova) and Citizens Lehman Power Sales (Citizens).

A copy of this filing has been served on UtiliCorp, Illinova, Citizens and the Arizona Corporation Commission.

Comment date: March 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Illinois Power Company

[Docket No. ER97–1598–000]

Take notice that on February 10, 1997, Illinois Power Company ("Illinois Power"), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Northern Indiana Public Service Company will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of February 1, 1997.

Comment date: March 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Illinois Power Company

[Docket No. ER97–1599–000]

Take notice that on February 10, 1997, Illinois Power Company ("Illinois Power"), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which CNG Power Services Corporation will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of February 1, 1997.

Comment date: March 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Illinois Power Company

[Docket No. ER97–1600–000]

Take notice that on February 10, 1997, Illinois Power Company ("Illinois Power"), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which WPS Energy Services, Inc. will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of February 1, 1997.

Comment date: March 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Interstate Power Company

[Docket No. ER97–1601–000]

Take notice that on February 10, 1997, Interstate Power Company (IPW), tendered for filing a Power Sales Service Agreement between IPW Federal Energy Sales, Inc. Under the Agreement, IPW will sell Capacity & Energy to Federal Energy Sales, Inc., as agreed to by both companies.

Comment date: March 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Interstate Power Company

[Docket No. ER97–1602–000]

Take notice that on February 10, 1997, Interstate Power Company (IPW), tendered for filing a Power Sales Service Agreement between IPW and The Power Company of America, L.P. Under the Agreement, IPW will sell Capacity & Energy to The Power Company of America, L.P., as agreed to by both companies.

Comment date: March 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Wisconsin Public Service Corporation

[Docket No. ER97–1603–000]

Take notice that on February 10, 1997, Wisconsin Public Service Corporation, tendered for filing an executed service agreement with American Electric Power Service Corp. under its CS–1 Coordination Sales Tariff.

Comment date: March 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Niagara Mohawk Power Corporation

[Docket No. ER97–1604–000]

Take notice that on February 10, 1997, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and Virginia Electric and Power Company. This Transmission Service Agreement specifies that Virginia Electric and Power Company has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff filed with FERC on July 9, 1996, will allow NMPC and Virginia Electric and Power Company to enter into separately scheduled transactions under which NMPC will provide transmission service for Virginia Electric and Power Company as the parties may mutually agree.

NMPC requests an effective date of January 29, 1997. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and Virginia Electric and Power Company.

Comment date: March 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Boston Edison Company

[Docket No. ER97–1605–000]

Take notice that on February 10, 1997 Boston Edison Company (Boston Edison), tendered for filing a Service Agreement under Original Volume No. 8, FERC Order No. 888 Tariff (Tariff) for Pittsfield Generating Company (Pittsfield). Boston Edison requests that the Service Agreement become effective as of February 1, 1997.

Edison states that it has served a copy of this filing on Pittsfield and the Massachusetts Department of Public Utilities.

Comment date: March 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. South Carolina Electric & Gas Company

[Docket No. ER97–1606–000]

Take notice that on February 10, 1997, South Carolina Electric & Gas Company (SCE&G), submitted service agreements establishing Florida Power & Light Company (FPL) and WPS Energy Services, Inc. (WPS) as customers under the terms of SCE&G's Open Access Transmission Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreements. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon FPL, WPS, and the South Carolina Public Service Commission.

Comment date: March 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. Kansas City Power & Light Company

[Docket No. ER97–1607–000]

Take notice that on February 10, 1997, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated January 13, 1997, between KCPL and Southern Energy Trading and Marketing, Inc. (Southern). KCPL proposes an effective date of January 13, 1997, and requests waiver of the Commission's notice requirement. This Agreement provides for the rates and charges for Non-Firm Transmission service between KCPL and Southern.

In its filing, KCPL states that the rates included in the above-mentioned

Service Agreement are KCPL's rates and charges in the compliance filing to

Comment date: March 10, 1997, in accordance with Standard Paragraph E

Final Rule pro forma tariff (FERC Electric Tariff Original Volume No. 8,

ENVIRONMENTAL PROTECTION AGENCY

held. Any party may submit written comments regarding CARB's request by

and capricious, (B) [California] does not need such * * * standards to meet

Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order No. 888 in Docket No. OA96–4–000.

Comment date: March 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

30. Louisville Gas and Electric Company

[Docket No. ER97–1608–000]

Take notice that on February 10, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement between LG&E and MidCon Power Services Corp. under LG&E's Open Access Transmission Tariff.

Comment date: March 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

31. South Carolina Electric & Gas Company

[Docket No. ER97–1609–000]

Take notice that on February 10, 1997, South Carolina Electric & Gas Company (SCE&G), submitted a service agreement, dated January 24, 1997, establishing The Power Company of America, L.P. (PCA) as a customer under the terms of SCE&G's Open Access Transmission Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreement. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon PCA and the South Carolina Public Service Commission.

Comment date: March 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

32. Louisville Gas and Electric Company

[Docket No. ER97–1610–000]

Take notice that on February 6, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Service Agreement between LG&E and Jacksonville Electric Authority under LG&E's Rate Schedule GSS. LG&E had previously filed an unexecuted Service Agreement in this docket.

Comment date: March 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

33. Koch Energy Trading, Inc.

[Docket No. ER97–1611–000]

Take notice that on February 10, 1997, Koch Energy Trading, Inc. tendered for filing a Notice of Succession to FERC Rate Schedule No. 1 regarding name change of Koch Power Services, Inc. to Koch Energy Trading Inc.

Comment date: March 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

34. Southern California Edison Company

[Docket No. ER97–1612–000]

Take notice that on February 7, 1997, Southern California Edison Company (Edison), tendered for filing Service Agreements (Service Agreements) with Enron Power Marketing, Inc. for Firm Point-to-Point Transmission Service under Edison's Open Access Transmission Tariff (Tariff) filed in compliance with FERC Order No. 888.

Edison filed the executed Service Agreements with the Commission in compliance with applicable commission regulations. Edison also submitted a revised Sheet No. 152 (Attachment E) to the Tariff, which is an updated list of all current subscribers. Edison requests waiver of the Commission's notice requirement to permit an effective date of February 8, 1997 for Attachment E, and to allow the Service Agreements to become effective according to their terms.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: March 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

35. Portland General Electric Company

[Docket No. ER97–1613–000]

Take notice that on February 7, 1997, Portland General Electric Company (PGE), tendered for filing under PGE's Final Rule pro forma tariff (FERC Electric Tariff Original Volume No. 8, Docket No. OA96–137–000), an executed Service Agreement for Non-firm Point-to-Point Transmission Service with Arizona Public Service.

Pursuant to 18 CFR 35.11, and the Commission's Order in Docket No. PL93–2–002 issued July 30, 1993, PGE respectfully requests that the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the Service Agreement to become effective January 27, 1997.

A copy of this filing was caused to be served upon Arizona Public Service as noted in the filing letter.

Comment date: March 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

36. Portland General Electric Company

[Docket No. ER97–1614–000]

Take notice that on February 7, 1997, Portland General Electric Company (PGE), tendered for filing under PGE's Final Rule pro forma tariff (FERC Electric Tariff Original Volume No. 8, Docket No. OA96–137–000), an executed Service Agreement for Non-firm Point-to-Point Transmission Service with Enron Power Marketing, Inc.

Pursuant to 18 CFR 35.11, and the Commission's Order in Docket No. PL93–2–002 issued July 30, 1993, PGE respectfully requests that the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the Service Agreement to become effective January 31, 1997.

A copy of this filing was caused to be served upon Enron Power Marketing, Inc. as noted in the filing letter.

Comment date: March 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

37. Brennan Power Inc.

[Docket No. ER97–1630–000]

Take notice that on February 7, 1997, Brennan Power Inc. tendered for filing an application for Blanket Authorizations, Certain Waivers, and Order Approving Rate Schedule.

Comment date: March 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5007 Filed 2–27–97; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5697–7]

California State Motor Vehicle Pollution Control Standards; Opportunity for Public Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of opportunity for public hearing and public comment.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has approved amendments to its evaporative emission standards and testing procedures for passenger cars, light-duty trucks, medium-duty vehicles, and heavy-duty vehicles and engines, for all fuels except diesel fuel and natural gas, for 1996 through 1998 model years. By letter dated October 16, 1996, California requested EPA to grant a waiver of Federal preemption for these amendments pursuant to section 209(b) of the Clean Air Act (Act), 42 U.S.C. 7543(b). This notice announces that EPA has tentatively scheduled a public hearing for March 26, 1997 to consider CARB's request and to hear comments from the general public concerning CARB's request. In addition, EPA is requesting that interested parties submit written comments. Any party desiring to present oral testimony for the record at the public hearing, instead of or in addition to submitting written comments, must notify EPA by March 20, 1997. If no party notifies EPA that it wishes to testify, then no hearing will be held and EPA will consider CARB's request based on written submissions to the record.

It should be noted that these amendments are limited to California's evaporative emission test standards and testing procedures for the 1996 through 1998 model years. EPA anticipates a separate waiver request and proceeding regarding CARB's evaporative emission test procedures and standards for the 1999 model year and thereafter. Therefore, parties wishing to comment should confine the scope of their comments to issues pertaining to the 1996 through 1998 model years.

DATES: EPA has tentatively scheduled a public hearing for March 26, 1997, beginning at 10:00 a..m., if any party notifies EPA by March 20, 1997, that it wishes to present oral testimony regarding CARB's requests. By March 21, 1997, any person who plans to attend the hearing should call Mr. David Dickinson of EPA's Vehicle Programs and Compliance Division at (202) 233–9256 to determine if a hearing will be held. Any party may submit written comments regarding CARB's request by April 30, 1997.

ADDRESSES: If EPA receives a request for a public hearing, EPA will hold the public hearing announced in this notice in the first floor conference room at 501 3rd Street, NW., Washington, D.C. Parties wishing to present oral testimony at the public hearing should provide written notice to Mr. Dickinson, Vehicles Programs and Compliance Division, 401 M St., S.W. (6405J), Washington, DC 20460. In addition, written comments regarding the waiver request should be sent, in duplicate, to Mr. Dickinson at the address noted above. Copies of material relevant to the waiver request (Docket No. A–95–39) will be available for public inspection during the working hours of 8:00 a.m. to 5:30 p.m. Monday through Friday, at the U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center, Room M1500, First Floor Waterside Mall, 401 M St., S.W., Washington, DC 20460, Telephone: (202) 260–7548.

FOR FURTHER INFORMATION CONTACT: Mr. David Dickinson, Attorney/Advisor, Vehicles Programs and Compliance Division, U.S. Environmental Protection Agency, 401 M St., S.W. (6405J), Washington, DC 20460. Telephone: (202) 233–9256. E-Mail address: Dickinson.David@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background and Discussion

Section 209(a) of the Act as amended, 42 U.S.C. 7543(a), provides in part: "No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part * * * [or] require certification, inspection, or any other approval relating to the control of emissions * * * as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment."

The State of California may be exempted from the prohibitions of section 209(a) of the Act. Section 209(b) of the Act provides in part that the Administrator shall, after notice and opportunity for public hearing, waive application of the prohibitions of section 209(a) for California "if the State determines that the State standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. No such waiver shall be granted if the Administrator finds that—(A) the determination of the State is arbitrary and capricious, (B) [California] does not need such * * * standards to meet compelling and extraordinary conditions, or (C) [its] standards and accompanying enforcement procedures are not consistent with section 202(a) of (the Act)."

Once California has been granted a waiver of the application of the prohibitions of section 209(a) for its standards and accompanying enforcement procedures for a class of vehicles, it may adopt other conditions precedent to initial retail sale, titling or registration of the subject class of vehicles without the necessity of receiving further waiver of Federal preemption.

By letter dated August 21, 1995, CARB submitted to EPA a request for waiver of Federal preemption for amendments to its evaporative emission standards and test procedures. By letter dated October 16, 1996, CARB submitted a revised request for waiver of Federal preemption limiting the applicability of these amendments to the 1996 through 1998 model years. These amendments which apply to all classes of passenger cars, light-duty trucks, medium-duty vehicles, and heavy-duty vehicles and engines, except petroleum-fueled diesel vehicles and vehicles fueled by natural gas:

a. Incorporate a supplemental test procedure to help assure adequate evaporative canister purge.

b. Further align CARB's enhanced test procedures with the federal test procedures by conforming most of the differences between the two test procedures.

c. Make the enhanced test procedure applicable to the complete heavy medium-duty vehicle class (8,501–14,000 lbs., gross weight vehicle rating (GVWR)).

d. Amend the evaporative emission standard for the hot soak plus the diurnal emissions test for medium-duty vehicles which have a GVWR of 6,001–8,500 lbs. and fuel tanks equal or greater than 30 gallons from 2.0 to 2.5 grams per test.

EPA finalized its evaporative standards and test procedures on March 24, 1993 (see 58 FR 16002). EPA's new standards and test procedures are being phased-in with full compliance by 1999. In addition, on July 6, 1995, EPA issued a direct final rule designed to harmonize federal test procedures with CARB test procedures. EPA's present waiver consideration will only consider CARB's request for model years 1996–1998. Therefore, in the context of the waiver criteria set forth in section 209(b), CARB's amended standards and test procedures will be compared to

EPA's standards and test procedures for model years 1996 through 1998.

California states in its October 16, 1996 letter, referencing both its August 21, 1995 letter and recent developments, that it has determined that its amended standards are, in the aggregate, at least as protective of the public health and welfare as the applicable federal standards. Further, California, referencing its August 21, 1995 waiver request letter, states that it continues to need separate standards to meet compelling and extraordinary conditions. Finally, California, referencing its August 21, 1995 letter and its Manufacturers Advisory Correspondence (MAC) 196–05, states that its amendments are consistent with section 202(a) of the Act. Section 202(a) requires that the procedures provide sufficient lead time to permit the development and application of requisite technology, giving appropriate consideration to the cost of compliance within such period. In addition, EPA has held that section 202(a) prohibits the procedures from imposing inconsistent certification requirements such that manufacturers would be unable to demonstrate compliance with both the California and Federal requirements with the same test vehicle and using a single test sequence.

California's request will be considered according to the procedures for a waiver determination, thus an opportunity for a public hearing is being provided. Any party wishing to present testimony at the hearing and/or to submit written comments should address the following issues:

(1) Whether California's determination that its standards are at least as protective of public health and welfare as applicable Federal standards is arbitrary and capricious;

(2) Whether California needs separate standards to meet compelling and extraordinary conditions; and,

(3) Whether California's standards and accompanying enforcement procedures are consistent with section 202(a) of the Act.

II. Procedures for Public Participation

Any party desiring to make an oral statement on the record should submit ten (10) copies, if feasible, of its proposed testimony and other relevant material to Mr. Dickinson of EPA's Vehicles Programs and Compliance Division at the address listed above not later than March 24, 1997. In addition, the party should submit 25 copies, if feasible, of the planned statement to the presiding officer at the time of the hearing.

In recognition that a public hearing is designed to give interested parties an opportunity to participate in this proceeding, there are no adverse parties as such. Statements by participants will not be subject to cross-examination by other participants without special approval by the presiding officer. The presiding officer is authorized to strike from the record statements which he or she deems irrelevant or repetitious and to impose reasonable limits on the duration of the statement of any participant.

If a hearing is held, the Agency will make a verbatim record of the proceedings. Interested parties may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. Regardless of whether a public hearing is held, EPA will keep the record open until April 30, 1997. Upon expiration of the comment period, the Administrator will render a decision on CARB's request based on the record of the public hearing, if any, relevant written submissions and other information which she deems pertinent.

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest possible extent and label it as "Confidential Business Information" (CBI).

If a person making comments wants EPA to base its waiver decision in part on a submission labeled as CBI, then a nonconfidential version of the document which summarizes the key data or information should be submitted for the public docket. To ensure that proprietary information is not inadvertently placed in the docket, submissions containing such information should be sent directly to the contact person listed above and not to the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it may be made available to the public without further notice to the person making comments.

Dated: February 24, 1997.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 97–5034 Filed 2–27–97; 8:45 am]

BILLING CODE 6560–50–P

[ER-FRL–5477–8]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed February 17, 1997 Through February 21, 1997 Pursuant to 40 CFR 1506.9.

EIS No. 970060, Final EIS, AFS, ID, Priest Lake Ranger District Noxious Weed Control Project, Implementation, Idaho Panhandle National Forest, Bonner County, ID and Pend Oreille County, WA, Due: March 31, 1997, Contact: Tim Layser (208) 443–2512.

EIS No. 970061, Draft EIS, AFS, SD, Anchor Hill Mine Expansion Project in Gilt Edge Mine, Plan-of-Operations, Black Hills National Forest, SD, Due: April 14, 1997, Contact: Don Murray (605) 578–2744.

EIS No. 970062, Draft EIS, DOI, UT, Uintah Unit Replacement Project, Implementation, Central Utah Water Conservancy District, Approval of Permits, Duchesne and Uintah Counties, UT, Due: April 29, 1997, Contact: R. Terry Holzworth (801) 226–7100.

EIS No. 970063, Draft EIS, COE, CA, Upper Guadalupe River Flood Control Project, Construction, Santa Clara Valley Water District, Santa Clara County, CA, Due: April 14, 1997, Contact: Robert F. Smith (415) 977–8450.

EIS No. 970064, Final EIS, AFS, WA, Taneum/Peaches Road Access Project, Issuance of Two Temporary Permits to Plum Creek for Road Construction, Wenatchee National Forest, Cle Elum Ranger District, Kittitas County, WA, Due: March 31, 1997, Contact: Douglas Campbell (509) 674–4411.

Amended Notices

EIS No. 960576, Final EIS, AFS, WA, Huckleberry Land Exchange Consolidate Ownership and Enhance Future Conservation and Management, Federal Land and Non Federal Land, Mt. Baker-Snoqualmie National Forest, Skagit, Snohomish, King, Pierce, Kittitas and Lewis Counties, WA, Contact: Doug Schrenk (206) 888–1421. Review Period was erroneously extended to –21–97 in Published FR—02–07–97. Review Period Official ended on 1–21–97.

EIS No. 960586, Draft EIS, AFS, MT, Basin Creek Drainage, Salvage Timber and Watershed Rehabilitation, Kootenai National Forest, Three Rivers Ranger District, Lincoln County, MT, Due: March 24, 1997, Contact: Jeanne Higgins (406) 295–4693. Published FR—08–23–96—Review Period Reopened.

Dated: February 25, 1997

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–5074 Filed 2–27–97; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–5477–9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared February 10, 1997 Through February 14, 1997 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 5, 1996 (61 FR 15251).

Draft EISs

ERP No. D–BLM–K67040–CA Rating EC2, Imperial Open-Pit Heap Leach Precious Metal Mine Project, Plan of Operation, Right-of-Way Approval, Conditional-Use-Permit and Reclamation Program Approval, Imperial County, CA.

Summary: EPA expressed environmental concerns based on potential impacts to surface waters and recommendations for improved facilities design, and requested additional information regarding avoidance and mitigation of impacts to waters of the U.S., reduction of PM10 emissions, and facilities design.

ERP No. D–COE–C36074–NJ Rating EC2, Townsends Inlet to Cape May Inlet Feasbility Study, New Jersey Shore Protection Study, Storm Damage Reduction and Ecosystem Restoration, with in the Communities of Avalon, Stone Harbor and North Wildwood, Cape May County, NJ.

Summary: EPA expressed environmental concerns over the alternatives analysis, potential impacts to benthic communities and water quality from beach nourishment activities, and the potential impacts associated with this and other erosion/storm damage protection projects in New Jersey. Additional information is requested in the final EIS to address these issues.

ERP No. D–COE–G39031–LA Rating LO, Mississippi River—Gulf Outlet (MRGO) New Lock and Connecting Channels Replacement and Construction for Connection to the Mississippi River, Implementation, Orleans and St. Bernard Parishes, LA.

Summary: EPA has no objection to the selection of the Tentatively Selected Plan provided that the described mitigation measures are implemented.

ERP No. D–FHW–L40201–WA Rating EC2, US 101 Highway Aberdeen-Hoquian Corridor Project, Improvements, US Coast Guard and COE Section 404 Permit, Grays Harbor County, WA.

Summary: EPA expressed environmental concerns based on unavoidable impacts to wetlands and potential impacts to other waters of the US. Additional information is needed to clarify design specifications resulting from certain flood frequency data, and to ensure that proper stormwater management practices will be implemented to protect receiving-water quality appropriately.

ERP No. D–FTA–D54038–MD Rating EC2, Metrorail Extension—Addison Road Station to the Largo Town Center, Transportation Improvements, Prince George's County, MD.

Summary: EPA expressed environmental concerns that environmental issues have not been adequately addressed. The alternatives analysis does not adequately compare alternatives. Secondary and cumulative impacts were not fully addressed as well. Information regarding environmental justices issues was not clearly documented.

ERP No. D–IBR–K29000–CA Rating EO2, Interim South Delta Program (ISDP), Construction and Operation, Sacramento/San Joaquin Delta, Implementation, COE Section 404 Permit, Alameda, Contra Costa and San Joaquin Counties, CA.

Summary: EPA expressed environmental objections and is concerned that all of the alternatives analyzed could have significant adverse impacts on fish and aquatic resources and that, generally, the proposed project does not advance that long-term objectives of ecosystem restoration as expressed through the CALFED Long-Term Bay-Delta Program. EPA asked that alternatives be redesigned and evaluated in the context of the Long-Term Program.

ERP No. D–NAS–E12005–00 Rating EC2, Engine Technology Support, Implementation, With Emphases on Liquid Oxygen and Kerosene, Advanced Space Transportation Program, Test Sites: Marshall Space Flight Center (MSFC) in Huntsville, AL; Stennis Space Center (SSC) near Bay St. Louis, MS and Phillips Laboratory, Edwards Air Force Base, CA.

Summary: EPA expressed environmental concerns regarding wetlands, groundwater and other unresolved issues; however, these can be addressed by the requested additional information.

ERP No. DS–FHW–K40099–HI Rating EC2, Makai Boulevard Concept/Nimitz Highway Improvements, Updated Information, Construction from Keehi Interchange to Pier 16 (AWA Street) in the Kalihi-Palama District, Funding, US Coast Guard and COE Section 404 Permits, City of Honolulu and Honolulu County, HI

Summary: EPA expressed environmental concerns with the project and asked FHA to provide more information regarding the sole source aquifer, erosion and stormwater impacts to water quality, and the alternative analysis.

Final EISs

ERP No. F–BLM–K67038–NV Ruby Hill Gold Mining Operations Project, Implementation, Battle Mountain District, Plan of Operations and COE Section 404 Permit, Eureka County, NV.

Summary: EPA's concerns regarding the project's air emissions have been addressed in the FEIS, however mitigation measures remain vague. EPA supports BLM's decision to add partial backfilling to the preferred alternative and EPA urged BLM to reduce project disturbance by 120 acres.

ERP No. F–FHW–E40757–AL Eastern Pleasure Island Hurricane Evacuation Route Construction, AL–182 in Orange Beach to CR–95 near CR–20 (on the mainland) and CR–95 near CR–20 to I–10, Funding and US Coast Guard Bridge and COE Section 404 Permits Issuance, Baldwin County, AL.

Summary: EPA's review found that impacts to wetlands were of concern and that additional wetland mitigation and agency coordination was needed.

ERP No. F–FHW–E40767–FL Tampa Interstate Project, Funding, I–275 to just north of Cypress Street and I–275 from the Howard Frankland Bridge/Kennedy Boulevard ramps north to Dr. Martin Luther King, Jr. Boulevard and I–4 from I–275, Hillsborough County, FL.

Summary: EPA's review found that noise impacts to urban residents were of concern and that the affected communities and housing developments should be allowed to participate in noise abatement plans.

ERP No. F–FRC–L05206–WA Snoqualmie Falls Hydroelectric Project

(FERC Project No. 2493), Relicensing, Snoqualmie River, King County, WA.

available for review at EPA's Office of Radiation and Indoor Air located at 501

closure of the disposal system are

[FRL–5695–3]

The purpose of the analyses was to

Dated: February 19, 1997.

(FERC Project No. 2493), Relicensing, Snoqualmie River, King County, WA.

Summary: Review of the final EIS has been completed and the project found to be satisfactory. No formal comment letter was sent to the preparing agency.

ERP No. F–NPS–L61211–AK Denali National Park and Reserve, "Frontcountry" Entrance Area and Road Corridor, Development Concept Plan, AK.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

Dated: February 25, 1997.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–5075 Filed 2–27–97; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5697–5]

Guidance for the Implementation of EPA's Radiation Protection Standards for Management and Storage of Transuranic Waste at the Waste Isolation Pilot Plant ("WIPP Subpart A Guidance")

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: Pursuant to the amended Waste Isolation Pilot Plant Land Withdrawal Act (WIPP LWA), Pub. L. 102–579 as amended by Public Law 104–201, EPA is required to determine, on a biennial basis, whether the Waste Isolation Pilot Plant (WIPP) complies with 40 CFR Part 191, Subpart A, the standards for management and storage of radioactive waste. EPA has developed guidance for the implementation of the generally applicable standards of Subpart A at the WIPP to evaluate the facility's compliance with radiation dose limits to the public during the receipt and emplacement of waste, and associated activities, if the WIPP is approved for use as a disposal system. EPA is hereby announcing that a revised guidance document, known as the WIPP Subpart A Guidance, is available to the public. In developing the guidance, EPA requested and considered public comments on the draft WIPP Subpart A Guidance that was previously announced on September 5, 1996. (61 FR 46804.)

ADDRESSES: Copies of the revised WIPP Subpart A Guidance are available to the public by calling EPA's WIPP Information Line at 1–800–331–WIPP. Copies of the WIPP Subpart A Guidance and supporting materials are also available for review at EPA's Office of Radiation and Indoor Air located at 501 3rd Street, N.W., Washington, D.C. 20001; and at the following addresses in New Mexico where EPA maintains public information files for the guidance: (1) Government Publications Department of the Zimmerman Library of the University of New Mexico in Albuquerque, New Mexico (open from 8:00 a.m. to 9:00 p.m. on Monday through Thursday, 8:00 a.m. to 5:00 p.m. on Friday, 9:00 a.m. to 5:00 p.m. on Saturday, and 1:00 p.m. to 9:00 p.m. on Sunday); (2) The Fogelson Library of the College of Santa Fe, located at 1600 St. Michael's Drive, Santa Fe, New Mexico (open from 8:00 a.m. to 12:00 midnight on Monday through Thursday, 8:00 a.m. to 5:00 p.m. on Friday, 9:00 a.m. to 5:00 p.m. on Saturday, and 1:00 p.m. to 9:00 p.m. on Sunday); and (3) The Municipal Library of Carlsbad, New Mexico, located at 101 South Halegueno (open from 10:00 a.m. to 9:00 p.m. on Monday through Thursday, 10:00 a.m. to 6:00 p.m. on Friday and Saturday, and 1:00 p.m. to 5:00 p.m. on Sunday). Citizens wishing to review these materials should request to see the EPA "WIPP Subpart A Guidance File."

FOR FURTHER INFORMATION CONTACT: Betsy Forinash, U.S. Environmental Protection Agency, Office of Radiation and Indoor Air (6602J), 401 M Street, S.W., Washington, D.C. 20460; (202) 233–9310.

SUPPLEMENTARY INFORMATION: The guidance document pertains to the requirements established in the amended WIPP LWA [1] and the federal regulations at 40 CFR Part 191, Subpart A. The document does not establish new binding requirements but will guide EPA's implementation of 40 CFR Part 191, Subpart A at the WIPP. Subpart A is a generally applicable radiation protection standard that limits radiation doses to the public from management of transuranic radioactive waste at disposal facilities operated by the Department of Energy (DOE). The DOE is proposing to use the WIPP, located in Eddy County, New Mexico, as a deep geologic repository for the disposal of transuranic radioactive waste generated by nuclear defense activities. The Subpart A regulations apply to activities associated with receiving and emplacing the waste in the disposal system. (Limitations on radiation doses which may occur after closure of the disposal system are separately addressed by EPA's disposal regulations at Subparts B and C of 40 CFR Part 191, and by WIPP compliance criteria at 40 CFR Part 194.) The amended WIPP LWA requires EPA to determine, on a biennial basis, whether WIPP complies with Subpart A of 40 CFR Part 191. EPA may also conduct this determination at any other time. If EPA determines that the WIPP does not comply with the Subpart A dose standards at any time after emplacement of waste has begun, the WIPP LWA requires the DOE to submit a remedial plan to EPA describing the actions DOE will take to comply with Subpart A.

This guidance describes the application of Subpart A to activities associated with the approximately 35-year period during which packaged waste would be received at the above ground portion of the WIPP; unloaded and prepared for emplacement in the underground repository; lowered down a mechanical hoist and emplaced in the mined-out repository; and managed during the closure and decommissioning of the facility, if the WIPP is approved for use as a disposal system. During this period, the annual doses from radiation received by members of the public must not exceed the limits specified by Subpart A. The WIPP Subpart A Guidance interprets Subpart A for the WIPP and provides the Agency's recommendations for methods used to demonstrate and document compliance with the standards. The guidance also describes information DOE should report to EPA for the Agency's evaluation of the WIPP's compliance with the Subpart A dose limits.

The guidance does not establish a new radiation dose standard and does not establish binding rights or duties, but will be a non-binding guide for EPA's evaluation of the WIPP's compliance with Subpart A. In a September 5, 1996 **Federal Register** notice (61 FR 46804), EPA solicited public comment on draft WIPP Subpart A Guidance. The WIPP Subpart A Guidance now available incorporates revisions made in light of those comments. EPA will update the guidance as needed in the future to reflect changes in policy, in radiation science or in the operation of the WIPP site, or as appropriate to respond to issues raised by the public.

Dated: February 20, 1997.

Mary Nichols,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 97–5035 Filed 2–27–97; 8:45 am]

BILLING CODE 6560–60–P

[1] The 1992 WIPP Land Withdrawal Act, Pub. L. 102–579, was amended by the "Waste Isolation Pilot Plant Land Withdrawal Act Amendments," Pub. L. 104–201. The 1996 amendments were part of the National Defense Authorization Act for fiscal year 1997.

[FRL–5695–3]

Peer Review of CASTNet

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The United States Environmental Protection Agency announces the meeting of a peer review panel which is constituted to review and analyze the EPA draft report, Examination of CASTNet: Data, Results, Costs, and Implications and the accompanying Recommendations on Changes to Operational Monitoring in CASTNet and Directions for Future Atmospheric Deposition Monitoring Research. The meeting will be held on Wednesday, March 26, 1997, at the Holiday Inn Arlington at Ballston, 4610 N. Fairfax Drive, Arlington, VA 22203. The meeting will begin at 9 a.m. and adjourn by 5 p.m. The meeting is open to the public. Any member of the public who would like to comment on the draft report should contact Dr. Robert E. Menzer, Office of Research and Development (8701), USEPA, 401 M Street, SW, Washington, DC 20460, telephone 202–260–5779, Email: menzer.robert@epamail.epa.gov, for a copy of the report. Written comments should be submitted to Dr. Menzer. Members of the public who choose to make brief comments on the report at the meeting should also contact Dr. Menzer.

SUPPLEMENTARY INFORMATION: In 1986, EPA's Office of Research and Development began to operate the National Dry Deposition Network, consisting of 39 monitoring sites designed to assess the status and trends in dry deposition of sulfur and nitrogen species, primarily in the high-deposition regions in the eastern U.S. Following passage of the Clean Air Act Amendments (CAAA) of 1990, the NDDN was expanded and renamed the Clean Air Status and Trends Network (CASTNet). As of 1996, there are 51 operational sites in the network. Each site collects weekly filter pack samples which are analyzed for SO_x, NO_x, and sulfate, nitrate, and ammonium ions, as well as micrometeorological and other data.

The first systematic analyses of the resulting monitoring data were conducted beginning in the fall of 1996 by scientists at ORD's National Exposure Research Laboratory. This timing allowed the first access to quality-assured data from 1995, during which SO_x emissions decreased by 13% in response to Phase I reductions in sulfur emissions called for in the CAAA. The purpose of the analyses was to examine the performance of the monitors and to seek opportunities to increase the cost-effectiveness of the network. The analyses included reviews of the quality of the database and the costs of the individual data collection components; comparisons between deposition velocities derived from the multi-layer model using meteorological data collected on site with deposition velocities measured using an eddy correlation technique; evaluation of alternative methods of calculating deposition velocities that do not require on-site data collection; analysis of factors affecting variability in deposition velocity at two different spatial scales; exploration of the effect of reducing the number of sites on apparent regional patterns of ambient sulfur dioxide concentrations; evaluation of the ability to detect trends in ambient concentrations and deposition velocities at individual sites and groups of geographically contiguous sites; and comparisons of dry deposition estimates with wet deposition estimates from nearby wet deposition sites. The results of the analyses are presented in a draft report, Examination of CASTNet: Data, Results, Costs, and Implications. The purpose of this review is to examine the soundness of the underlying science and the appropriateness of the analytical approaches described in this document.

Beginning in FY 1998, EPA is proposing to transfer operation of CASTNet from the Office of Research and Development (ORD) to the Office of Air and Radiation (OAR). The transition from a research-oriented effort to an operational monitoring program presents an opportunity to make changes in current network operations and to assess alternative directions for future acid deposition research. The Recommendations on Changes to Operational Monitoring in CASTNet and Directions for Future Atmospheric Deposition Monitoring Research makes such recommendations to OAR and ORD, based on policy questions provided by OAR and informed by the analyses in the accompanying draft report. The other purpose of the peer review is to solicit the reviewers" advice on the reasonableness of the various proposed modifications to the CASTNet and future research directions, given the current state of data analysis and interpretation.

Dated: February 19, 1997.

Joseph K. Alexander,

Acting Assistant Administrator for Research and Development.

[FR Doc. 97–4967 Filed 2–27–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:15 a.m. on Tuesday, February 25, 1997, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate, supervisory and administrative enforcement activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Joseph H. Neely (Appointive), concurred in by Director Nicolas P. Retsinas (Director, Office of Thrift Supervision), Director Eugene A. Ludwig (Comptroller of the Currency), and Chairman Ricki Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(2), (c)(4), (c)(6), (c)(8) and (c)(9(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(4), (c)(6), (c)(8) and (c)(9)(A)(ii)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: February 25, 1997.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 97–5146 Filed 2–26–97; 11:18 am]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800

North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 202–010689–064.

Title: Transpacific Westbound Rate Agreement.

Parties: American President Lines, Ltd.; Hapag-Lloyd Container Linie GmbH; Kawasaki Kisen Kaisha, Ltd.; A.P. Moller-Maersk Line; Mitsui O.S.K. Lines, Ltd.; P&O Nedlloyd B.V.; P&O Nedlloyd Limited; Neptune Orient Container Line, Inc.; Nippon Yusen Kaisha, Ltd.; Orient Overseas Container Lin, Inc.; Sea-Land Service, Inc.

Synopsis: The proposed amendment would permit the parties to caucus and reach informal consensual agreements before or during the course of formal Agreement meetings for the purpose of reaching or presenting common positions with regard to matters brought up before the Agreement's membership.

Agreement No.: 202–011456–020.

Title: South Europe American Conference.

Parties: DSR-Senator Lines GmbH; Evergreen Marine Corporation (Taiwan) Ltd.; Italia di Navigazione, S.p.A.; A.P. Moller-Maersk Line; P&O Nedlloyd B.V.; P&O Nedlloyd Limited; Sea-Land Service, Inc.; Zim Israel Navigation Company, Ltd.; Contship Container Lines Ltd.; Lykes Bros. Steamship Co., Inc.; Transportacion Maritima Mexicana, S.A. de C.V.; Tecomar S.A. de C.V.

Synopsis: The proposed amendment would permit the parties to caucus and reach informal consensual agreements before or during the course of formal Agreement meetings for the purpose of reaching or presenting common positions with regard to matters brought up before the Agreement's membership.

Agreement No.: 232–011567.

Title: Iceland Steamship/Samskip Slot Charter Agreement.

Parties: Iceland Steamship Company Ltd. ("ISC"); Samskip hf. ("Samskip").

Synopsis: The proposed Agreement would permit Samskip to charter space aboard ISC's vessels in the trade between North Atlantic ports of the United States and Reykjavik, Iceland. The parties would also be permitted to agree upon ISC's schedule of port calls in the Agreement trade.

Dated: February 25, 1997.

By order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 97–5012 Filed 2–27–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 14, 1997.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Randall J. Hendricks, Elsie, Nebraska, and Warren Orr, North Platte, Nebraska; each to acquire an additional 26.92 percent, for a total of 50 percenteach, of the voting shares of Elsie, Inc., Elsie, Nebraska, and thereby indirectly acquire Commercial State Bank, Elsie, Nebraska.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Mary Lois Whittenburg Lockhart, as Trustee of the Grace and Roy Whittenburg Trusts, Amarillo, Texas; to acquire an additional 63.51 percent, for a total of 64.16 percent of the voting shares of Amarillo Western Bancshares, Inc., Amarillo, Texas, and thereby indirectly acquire Western National Bank, Amarillo, Texas.

Board of Governors of the Federal Reserve System, February 24, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–4990 Filed 2-27-97; 8:45 am]

BILLING CODE 6210-01-F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 24, 1997.

A. Federal Reserve Bank of Cleveland (R. Chris Moore, Senior Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. CB Bancorp, Inc., Higginsport, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The Citizens Bank, Higginsport, Ohio.

2. Commercial Bancshares Savings and Employee Stock Ownership Plan, West Liberty, Kentucky; to become a bank holding company by acquiring 32 percent of the voting shares of Commercial Bancshares, Inc., West Liberty, Kentucky, and thereby indirectly acquire Commercial Bank, West Liberty, Kentucky.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Guaranty Financial Corporation, Charlottesville, Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Guaranty Bank, Charlottesville, Virginia, the proposed successor by merger to Guaranty Savings & Loan, F.A., Charlottesville, Virginia.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Illinois Community Bank, Inc., Effingham, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Illinois Community Bank, Effingham, Illinois, which will convert from Guarantee Savings Bank, FSB.

In connection with this Illinois Community Bancorp, Effingham, Illinois, has also applied to acquire Illinois Leasing Corporation, Inc., Effingham, Illinois, and thereby engage in leasing programs, pursuant to § 225.25 (b)(5)(i) ofthe Board's Regulation Y.

D. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Eden Financial Corporation, San Angelo, Texas; to acquire 100 percent of the voting shares of The First State Bank of Rankin, Rankin, Texas.

E. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105-1579:

1. Castle Creek Capital Partners Fund-I, L.P., Castle Creek Capital, L.L.C., and Eggemeyer Advisory Corporation, all of San Diego, California; to acquire up to 14.9 percent of the voting shares of Rancho Santa Fe National Bank, Rancho Santa Fe, California, and up to 14.9 percent of the voting shares of First Community Bank of Desert, Yucca Valley, California.

Board of Governors of the Federal Reserve System, February 24, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–4989 Filed 2-27-97; 8:45 am]

BILLING CODE 6210-01-F

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, March 5, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 26, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–5121 Filed 2–26–97; 10:10 am]

BILLING CODE 6210–01–P

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 62 FR 8017, February 21, 1997.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, February 26, 1997.

CHANGES IN THE MEETING: The open meeting has been canceled.

1. The item regarding proposed technical and clarifying amendments to Regulation CC (Availability of Funds and Collection of Checks) (proposed earlier for public comment; Docket No. R–0926) was handled via notation vote.
2. The item regarding proposals concerning (a) guidelines for the use of volume-based pricing for Federal Reserve priced services and (b) volume-based fees for the automated clearing house (ACH) service was deleted from the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: February 26, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–5148 Filed 2–26–97; 11:56 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 020397 AND 021497

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
KCSN Management, L.P., Tom E. Turner, Lone Star Growers Co., G.P	97–0978	02/04/97
Cott Corporation, Mr. Stephen L. Hixon, Texas Beverage Packers, Inc	97–0990	02/04/97
TCA Cable TV, Inc., Tele-Communications, Inc., East Arkansas Cablevision, Inc	97–1036	02/04/97
Fortis AMEV N.V., Stichting Administratiekantoor ABN AMRO Holding, MeesPierson N.V	97–1044	02/04/97
Fortis AG S.A., Stichting Administratiekantoor ABN AMRO Holding, MeesPierson N.V	97–1045	02/04/97
George G. Beasley, Greenwich Street Capital Partners, L.P., WWDB (FM)	97–1046	02/04/97
Avenor, Inc., Repap Enterprises, Inc., Repap Enterprises, Inc	97–1052	02/04/97
Selfcare, Inc., American Home Products Corporation, American Cyanamid Company; A.H. Robins Company, Inc	97–1054	02/04/97
Joseph M. Field, Deseret Management Corporation, Bonneville International Corporation	97–1064	02/04/97
Deseret Management Corporation, Joseph M. Field, Entertainment Communications, Inc	97–1065	02/04/97

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 020397 AND 021497—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Peter C. Rossin, Carpenter Technology Corporation, Carpenter Technology Corporation	97-1066	02/04/97
Carpenter Technology Corporation, Peter C. Rossin, Dynamet Incorporated	97-1067	02/04/97
United States Filter Corporation, WMX Technologies, Inc., Wheelabrator EOS Inc., Wheelabrator EOS of Ohio Inc	97-1071	02/04/97
American Heritage Life Investment Corporation, Columbia Universal Corporation, Columbia Universal Corporation	97-1079	02/04/97
Harry H. Baker, Atlantic Cellular Company, L.P., Mountain Cellular, L.P	97-1084	02/04/97
Wajax Limited, Matthew G. Norton Co., Pacific North Equipment Company	97-1085	02/04/97
Western Atlas, Inc., Norand Corporation, Norand Corporation	97-1098	02/04/97
BBA Group PLC, International Aviation Teterboro, Inc., International Aviation Teterboro, Inc./IA Hangar C-1	97-2301	02/05/97
BBA Group PLC, Harvey Bennet, International Aviation Palm Beach, Inc	97-2302	02/05/97
C.H. Boehringer Sohn (a German company), Pro-Edge, Ltd., Pro-Edge, Ltd	97-0883	02/05/97
Scudder Family Voting Trust for ANI, Inc., Kenneth R. Thomson, Thomson Newspapers Inc	97-1004	02/05/97
United States Filter Corporation, United States Water Company, Inc., United States Water Company, Inc	97-1055	02/05/97
Gianluigi Aponte, Viad Corp, Premier Cruise Lines Ltd	97-1068	02/05/97
Dimon Inc., Nicholas J. McKisack, Intabex Holdings Worldwide S.A	97-1090	02/05/97
Dimon Incorporated, Tabacalera S.A., Intabex Holdings Worldwide, S.A	97-1091	02/05/97
General Electric Company, ICS Holding, Inc., ICS Holding, Inc	97-1109	02/05/97
Gleason Corporation, Hermann Pfauter GmbH & Co. KG, Hermann Pfauter GmbH & Co. KG et al	97-0528	02/06/97
Centex Corporation, Eagle Investment Group Limited Partnership, Centex Eagle Gypsum Company, LLC	97-0951	02/06/97
Cleveland Clinic Foundation, The, Lakewood Hospital Association, Lakewood Hospital Association	97-1001	02/06/97
Cleveland Clinic Foundation, The, Fairview Health System, Fairview Health System	97-1002	02/06/97
Synopsys, Inc., EPIC Design Technology, Inc., EPIC Design Technology, Inc	97-1093	02/06/97
Fry's Electronics, Inc., Tandy Corporation, Tandy Corporation	97-0904	02/07/97
Keystone Automotive Industries, Inc., Ronald G. Brown, North Star Plating Company	97-0930	02/07/97
Ronald G. Brown, Keystone Automotive Industries, Keystone Automotive Industries	97-0931	02/07/97
DAN-LOC Corporation, T&N plc (a British company), T&N Industries Inc	97-1031	02/07/97
Key Plastics, Inc., Trinova Corporation, Aeroquip Corporation	97-1057	02/07/97
CUC International, Inc., Estate of Dennis B. Haslinger, Numa Corporation	97-1058	02/07/97
PNC Bank Corp., Code, Hennessy & Simmons II, L.P., Cerex Advanced Fabrics, L.P	97-1092	02/07/97
Tower Automotive, Inc., Smith Investment Company, A.O. Smith Corporation	97-1102	02/07/97
WMX Technologies, Inc., Joseph Pezza, Planet Waste Management, Inc	97-1103	02/07/97
Ball Corporation, Harold Honickman, Brunswick Container Corporation	97-1104	02/07/97
H.I.G. Investment Group, L.P., David H. Weis, Thermal Industries, Inc	97-1115	02/07/97
Sears, Roebuck and Co., Charles P. Steinmetz, All America Holding Group, Inc	97-1117	02/07/97
Total Health Care, Inc., PacificCare Health Systems, Inc., PacificCare of Florida, Inc	97-1122	02/07/97
Worthington Industries, Inc., The McConnell Family Trust, The Gerstenslager Company	97-1123	02/07/97
The McConnell Family Trust, Worthington Industries, Inc., Worthington Industries, Inc	97-1124	02/07/97
Trelleborg AB (a Swedish Corporation), Terrence A. Friedman, Yale-South Haven, Inc.	97-1126	02/07/97
Alliance Forest Products, Inc., Kimberly-Clark Corporation, Kimberly-Clark Corporation	97-1128	02/07/97
FPL Group, Inc., Kuwait Petroleum Corporation (A Kuwait Co.), Santa Fe Geothermal, Inc	97-1129	02/07/97
James D. Bishop, Sr., Kuwait Petroleum Corporation (A Kuwait Co.), Santa Fe Geothermal, Inc	97-1130	02/07/97
Omnicon Group Inc., Clyde P. Davis, Cline, Davis & Mann, Inc	97-1131	02/07/97
Omnicon Group Inc., Morgan E. Cline, Cline, Davis & Mann, Inc	97-1132	02/07/97
Crown Cork & Seal Company, ACX Technologies, Golden Aluminum Company	97-1135	02/07/97
McKesson Corporation, Kelso Investment Associated IV, L.P., General Medical, Inc	97-1140	02/07/97
Republic Industries, Inc., Albert E. and Katherine C. Maroone, Maroone Dodge, Inc., Al Marrone Ford, Inc	97-1149	02/07/97
Republic Industries, Inc., Michael E. Maroone, Maroone Chevrolet, Inc., Maroone Isuzu, Inc	97-1150	02/07/97
Michael E. Maroone, Republic Industries, Inc., Republic Industries, Inc	97-1151	02/07/97
Leonard I. Green, Rite Aid Corporation, Rite Aid Corporation	97-1157	02/07/97
The Williams Companies, Inc., The Williams Companies, Inc., Kern River Gas Transmission Company	97-1168	02/07/97
Stewart Enterprises, Inc., John S. Dunbar, III, Dunbar Funeral Home, Inc	97-1172	02/07/97
BTR plc, Henry Burnett and Lovetta Burnett (husband-wife), Burco Utility and Railroad Supply Corporation	97-1041	02/10/97
Bank of Boston Corporation, Papa Gino's Holdings Corp., Papa Gino's Holdings Corp	97-1069	02/10/97
Fenway Partners Capital Fund, L.P., O.R.A. Corporation d/b/a Delimex, Delimix Holdings, Inc	97-1070	02/10/97
Cox Enterprises, Inc., Gaylord Entertainment Company, Gaylord Broadcasting Company, L.P	97-1146	02/10/97
Barry L. MacLean, American Acquisition Partners, Maynard Holdings, Inc	97-0979	02/11/97
Children's Hospital, Inc., Alton Ochsner Medical Foundation, New Ochsner Medical Foundation	97-1136	02/11/97
Children's Hospital, Inc., Methodist Health System Foundation, Inc., Pendleton Memorial Methodist Hospital	97-1137	02/11/97
Children's Hospital, Inc., Touro Infirmary, Touro Infirmary Hospital	97-1138	02/11/97
Hoechst Aktiengesellschaft, Cell Genesys, Inc., Cell Genesys, Inc	97-1013	02/12/97
Allegheny Health, Education and Research Foundation, Allegheny Valley Health System, Allegheny Valley Health System	97-1075	02/13/97
Loews Corporation, Capsure Holdings Corporation, Western Surety Company, Surety Bonding Company of Ameri	97-1154	02/13/97
Equity Capsure, L.P., Loews Corporation, CNA Surety Corporation	97-1155	02/13/97
Cortec Group Fund II, L.P., ATCO Products, Inc., ATCO Products, Inc	97-1165	02/13/97
Scotsman Industries, Inc., Kysor Industrial Corporation, Kysor Industrial Corporation	97-1176	02/13/97
Kuhlman Corporation, Kysor Industrial Corp. or Scotsman Industries, Inc., Kysor Industrial Corp. (Transportation Products Group)	97-1182	02/13/97
Clear Channel Communications, Inc., Hicks, Muse, Tate & Furst Equity Fund II, L.P., Chancellor Radio Broadcasting Company and Chancellor	97-0980	02/14/97
Laidlaw Inc. (A Canadian Company), Mr. John Van Der Aa, Vancom, Inc., Vancom Holding, Inc. Vancom Transportati	97-1101	02/14/97

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 020397 AND 021497—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Columbia/HCA Healthcare Corporation, Saint Luke's Hospital Association of Cleveland, Ohio, Saint Luke's Medical Center	97-1106	02/14/97
Paxton Media Group, Inc., Kenneth R. Thomson (a Canadian national), The Monroe Enquirer Journal and The Griffin Daily News	97-1112	02/14/97
Investor AB, Tessera, Inc., Tessera, Inc	97-1113	02/14/97
Franklin Quest Co., Premier Holding Company, Premier Agendas, Inc	97-1120	02/14/97
Robert R. Dyson, Aluminum Company of America, Arctek Corporation and Norcold, Inc	97-1139	02/14/97
Media General, Inc., Raycom Media, Inc., Raycom Media, Inc	97-1147	02/14/97
Raycom Media, Inc., Media General, Inc., Media General Broadcasting, Inc	97-1148	02/14/97
Mr. Jerry Whitlock, Coca-Cola Company, The, Coca-Cola Company, The	97-1160	02/14/97
Bollinger Shipyards, Inc., McDermott International, Inc., McDermott Shipbuilding, Inc	97-1161	02/14/97
Richard M. Scaife, Kenneth R. Thomson, Thomson Newspapers Inc	97-1163	02/14/97
FIMALAC et Cie, Alan Widra, Intersearch Corp., Intersearch Corp. of New York	97-1173	02/14/97
Habasit Holding AG, Globe International Inc., Globe International Inc	97-1174	02/14/97
Intel Corporation, Xircom, Inc., Xircom, Inc	97-1194	02/14/97
R. Bruce Grover/Carol Grover, Merrill Lynch & Co., Inc., American Mirrex Corporation	97-1205	02/14/97
King Pharmaceuticals, Inc., Glaxo Wellcome plc (a British company), Glaxo Wellcome plc	97-1209	02/14/97
Republic Industries, Inc., Scott R. Wagner, York Waste Disposal, Inc	97-1211	02/14/97
Scott R. Wagner, Republic Industries, Inc., Republic Industries, Inc	97-1212	02/14/97
Harbour Group Investments III, L.P., Century Spring Corporation, Century Spring Corporation	97-1214	02/14/97
The Micky Arison 1994 "B" Trust, Costa Crociere S.p.A., Costa Crociere S.p.A	97-1224	02/14/97

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 97-5018 Filed 2-27-97; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Recordkeeping/Reporting Requirements Under Emergency Review by the Office of Management and Budget (OMB)

Title: Order/Notice to Withhold Income for Child Support.

OMB No.: New.

Description: PRWORA '96 (Pub. L. 104-193), section 324, requires the Secretary of DHHS to promulgate a standardized form for use by State and Local Child Support Enforcement agencies for collection child support payments through income withholding.

Respondents: States, Puerto Rico, Guam and the District of Columbia.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Order/Notice	54	1,620	.1666	14,580

Estimated Total Annual Burden Hours: 14,580.

Additional Information

ACF is requesting that OMB grant a 180 day approval for this information collection under procedures for emergency processing by March 1, 1997. A copy of this information collection, with applicable supporting documentation, may be obtained by calling the Administration for Children and Families, Reports Clearance Officer, Larry Guerrero at (202) 401-6465.

Comments and questions about the information collection described above should be directed to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ACF, Office of Management and Budget, Paperwork Reduction Project, 725 17th Street NW., Washington, DC 20503, (202) 395-7316.

Dated: February 20, 1997.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 97-4952 Filed 2-27-97; 8:45 am]

BILLING CODE 4184-01-M

Submission for OMB Review; Comment Request

Title: Provision of Services in Interstate Child Support Enforcement: Standards Forms.

OMB No.: Reinstatement.

Description: Regulation at 45 CFR 303.7 require a State child support enforcement agency to transmit child support case information on standard interstate forms when referring a case to another State for processing. The forms promote uniformity and standardization. The existing standard interstate forms are based upon interstate child support enforcement actions filed under the Uniform Reciprocal Enforcement of Support Act (URESA). The forms associated with this information collection have been revised to be consistent with the Uniform Interstate Family Support Act (UIFSA). UIFSA is the new interstate child support enforcement model law, intended to replace URESA. UIFSA is the new interstate child support enforcement model law, intended to replace URESA. UIFSA has already replace URESA in 34 States, and under the Personal Responsibility and Work

Opportunity Reconciliation Act of 1996, Federal law mandate that all States enact UIFSA by January 1, 1998. The standard interstate forms in this information collection will assist the States in making the transition from URESA to UIFSA.

Respondents: State governments, Guam, Virgin Islands, Puerto Rico and the District of Columbia.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Transmittal No. 1	54	11,947	25 minutes	268,805.4
Transmittal No. 2	54	2,987	5 minutes	13,440.2
Transmittal No. 3	54	597	10 minutes	5,376.1
Uniform Petition	54	5,973.5	7 minutes	37,632.8
General Testimony	54	7,168	20 minutes	129,026.6
Affidavit/Paternity	54	2,987	15 minutes	40,320.8
Locate Data Sheet	54	358	5 minutes	1,612.8
Notice/Cntrl Order	54	8,960	10 minutes	80,641.7
Registration Statement	54	7,885	10 minutes	70,964.6
Estimated Total Annual Burden Hours: 647,821.				

Additional Information

Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: February 24, 1997.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 97–4953 Filed 2–27–97; 8:45 am]

BILLING CODE 4184–01–M

Food and Drug Administration

[Docket No. 97N–0040]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on a survey of the food safety practices of food processors.

DATES: Submit written comments on the collection of information by April 29, 1997.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Margaret R. Wolff, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c). To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Survey of Food Safety Practices of Food Processing Firms—New Collection

FDA is evaluating the marginal costs of requiring food processors to use Hazard Analysis and Critical Control Point (HACCP) systems. HACCP is already required for seafood processors, and FDA is considering whether to issue regulations requiring HACCP for processors of other foods under the agency's jurisdiction. The analysis of marginal costs requires information about the prevalence of specific HACCP systems and practices among food manufacturers and repackers. FDA will collect this information through an anonymous voluntary survey of a random sample of food processors. Additionally, through a series of on-site visits to selected processors, a contractor will collect information on the marginal cost of various procedures required to operate a HACCP system. The information will help the Center for Food Safety and Applied Nutrition determine the baseline level of HACCP

use from which to estimate the economic costs to the industry of mandatory HACCP regulations for foods other than seafood. FDA will use this information in tailoring any HACCP regulations that may issue so that costs and benefits of such regulations are appropriately considered.

FDA estimates the burden of this survey as follows:

ESTIMATED ANNUAL REPORTING BURDEN

Burden Element	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Part 1—Computer Assisted Telephone Interview (CATI)					
Respond to initial recruitment telephone call	1,231	1	1,231	0.2	246.2
Receive and read introductory letter, key term definitions	1,231	1	1,231	0.25	307.75
Obtain data to prepare for the telephone interview	1,231	1	1,231	0.35	430.85
Respond to telephone interview	1,231	1	1,231	0.5	615.50
Totals		1			1,600.3
Part 2—On-Site Cost Interview					
Receive initial recruitment telephone call	17	1	17	0.2	3.4
Receive and read introductory letter and materials	17	1	17	0.25	4.25
Obtain data to prepare for the site visit	17	1	17	0.5	8.5
Respond to questions during site visit	17	1	17	3.0	51.0
Followup questions	17	1	17	0.25	4.25
Total burden hours, on-site interviews					71.4

There are no capital costs or operating and maintenance costs associated with this collection of information.

The total burden hours for Part 1—CATI and Part 2—On-Site Cost Interview are 1,671.7.

The burden hour estimates are based on a pretest conducted with three focus groups.

Dated: February 20, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–4955 Filed 2–27–97; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96E–0269]

Determination of Regulatory Review Period for Purposes of Patent Extension; EXCENEL® Sterile Suspension

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for EXCENEL® Sterile Suspension and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that animal drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For animal drug products, the testing phase begins on the earlier date when either a major environmental effects test was initiated for the drug or when an exemption under section 512(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(j)) became effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the animal drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for an animal drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(4)(B).

FDA recently approved for marketing the animal drug product EXCENEL® Sterile Suspension (ceftiofur hydrochloride). EXCENEL® Sterile Suspension is indicated for the treatment and control of swine bacterial respiratory disease (swine bacterial pneumonia) associated with *Actinobacillus (Haemophilus) pleuropneumoniae, Pastureruella multocida, Salmonella choleraesuis,* and *Streptococcus suis* Type 2. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for EXCENEL® Sterile Suspension (U.S. Patent No. 4,902,683) from Pharmacia & Upjohn Co. and requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated November 21, 1996, FDA advised the Patent and Trademark Office that this animal drug product had undergone a regulatory review period and that the approval of EXCENEL® Sterile Suspension represented the first

commercial marketing of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for EXCENEL® Sterile Suspension is 900 days. Of this time, 881 days occurred during the testing phase of the regulatory review period, while 19 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 512(j) of the Federal Food, Drug, and Cosmetic Act became effective*: November 10, 1993. FDA has verified the applicant's claim that November 10, 1993, was the date that the investigational new animal drug application became effective.

2. *The date the application was initially submitted with respect to the animal drug product under section 512(b) of the Federal Food, Drug, and Cosmetic Act*: April 8, 1996. The applicant claims April 3, 1996, as the date the new animal drug application (NADA) for EXCENEL® Sterile Suspension (NADA 140–890) was initially submitted. However, a review of FDA records reveals that FDA's official acknowledgment that the NADA was sufficiently complete to begin review was a telephone call requesting that certain additional information be added to the NADA on April 8, 1996, which is considered to be the initially submitted date for the NADA.

3. *The date the application was approved*: April 26, 1996. FDA has verified the applicant's claim that NADA 140–890 was approved on April 26, 1996.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,151 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before April 29, 1997, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before August 27, 1997, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 20, 1997.

Allen B. Duncan,

Acting Associate Commissioner for Health Affairs.

[FR Doc. 97–4954 Filed 2–27–97; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94D–0259]

"Points to Consider in the Manufacture and Testing of Monoclonal Antibody Products for Human Use (1997);" Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a points to consider (PTC) document entitled "Points to Consider in the Manufacture and Testing of Monoclonal Antibody Products for Human Use (1997)." This PTC document is intended to assist sponsors and investigators engaged in monoclonal antibody product development and it includes information to submit when filing investigational new drug applications and product license applications. The document revises a 1994 document entitled "Draft Points to Consider in the Manufacture and Testing of Monoclonal Antibody Products for Human Use."

DATES: Written comments may be submitted at any time.

ADDRESSES: Submit written requests for single copies of the document entitled "Points to Consider in the Manufacture and Testing of Monoclonal Antibody Products for Human Use (1997)" to the Manufacturers Assistance and Communication Staff (HFM–42), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. The document may also be obtained by mail or fax by calling the CBER Fax Information System at 1–888–CBER–FAX or 301–827–3844.

Persons with access to the Internet may obtain the document using the World Wide Web (WWW) or bounce-back e-mail. For WWW access, connect to CBER at "http://www.fda.gov/cber/cberftp.html." For bounce back e-mail send a message to "ptc_mab@al.cber.fda.gov."

Submit written comments on the PTC document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Two copies of any comments are to be submitted, except that individuals may submit one copy. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the PTC document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Sharon A. Carayiannis, Center for Biologics Evaluation and Research (HFM–630), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–3074.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a PTC document entitled "Points to Consider in the Manufacture and Testing of Monoclonal Antibody Products for Human Use (1997)." This PTC document supersedes the document entitled "Draft Points to Consider in the Manufacture and Testing of Monoclonal Antibody Products for Human Use" announced in the **Federal Register** of August 3, 1994 (59 FR 39571), and is designed to assist sponsors and investigators engaged in monoclonal antibody product development.

The PTC revision was undertaken for reasons that include but are not limited to: (1) Facilitating initial development of monoclonal antibodies for serious and immediately life-threatening indications; (2) updating and streamlining information from the 1994 PTC document; and (3) assuring consistency with current CBER policy and International Conference on Harmonisation documents dealing with this category of products. In the revision of this document, CBER reviewed and considered all comments submitted to the docket.

The PTC document details an approach for sponsors and investigators to follow in product manufacturing and testing, preclinical and clinical studies, and the information to be provided for review and evaluation of clinical testing and licensing. This document applies to monoclonal antibodies made by traditional hybridoma technology as well as by recombinant technologies. Some of the major changes in the revised PTC document include: (1) An updated definition of a monoclonal antibody; (2) modification of the quality control, product testing, and product comparability sections; and (3) clarification of the techniques for and necessity of retrovirus testing. The section of the draft 1994 PTC document dealing with changes to be reported after product approval is not included in the 1997 PTC document because this subject is addressed in a separate rulemaking (61 FR 2739, January 29, 1996).

A new section of the document discusses abbreviated product testing for feasibility trials in serious and immediately life-threatening conditions. Other important new concepts contained in the revised PTC document are those of generic and modular virus clearance studies and the acceptability of demonstrating the removal of some contaminants by means of clearance studies, as opposed to routine testing. The concepts of generic and modular virus clearance studies and of clearance studies for some contaminants apply not only to monoclonal antibodies but also to recombinant products, as appropriate. CBER intends to update other guidance documents to reflect these studies. New concepts on abbreviated product testing for feasibility trials in serious and immediately life-threatening conditions and on generic and modular virus clearance studies do not apply to products of entirely human origin or to products that have the potential to be contaminated by human pathogens.

As with other guidance documents, FDA does not intend the PTC document to be all inclusive and cautions that not all information may be applicable to all situations. The document is intended to provide information and does not set forth requirements. Manufacturers may follow the document or may choose to use alternative procedures that are not provided in this document. If a manufacturer chooses to use alternative procedures, that manufacturer may wish to discuss the matter further with FDA to prevent expenditure of resources to generate data on activities that FDA may later determine to be unacceptable. Although this document does not create or confer any rights for or on any person and does not operate to bind FDA or the public, it does represent the agency's current thinking on the manufacture and testing of monoclonal antibody products for human use.

Interested persons may, at any time, submit to the Dockets Management Branch (address above) written comments on the PTC document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Received comments will be considered in determining whether further revision of the PTC document in warranted. Any revised version of the PTC document will be announced in the **Federal Register**.

Dated: February 20, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–5006 Filed 2–27–97; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 97F–0062]

General Electric Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that General Electric Co. has filed a petition proposing that the food additive regulations be amended to provide for the expanded safe use of triisopropanolamine as a component of phosphorous acid, cyclic butylethyl propanediol, 2,4,6-tri-*tert*-butylphenyl ester, a stabilizer for olefin polymers intended for use in contact with food.

DATES: Written comments on the petitioner's environmental assessment by March 31, 1997.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 7B4535) has been filed by General Electric Co., 1 Lexan Lane, Mt. Vernon, IN 47620–9364. The petition proposes to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe use of triisopropanolamine as a component of phosphorous acid, cyclic butylethyl propanediol, 2,4,6-tri-*tert*-butylphenyl ester, a stabilizer for olefin polymers intended for use in contact with food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before March 31, 1997, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: February 11, 1997.

George H. Pauli,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 97–4962 Filed 2–27–97; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96E–0080]

Determination of Regulatory Review Period for Purposes of Patent Extension; Olean; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of January 6, 1997 (62 FR 763).

The document announced FDA's determination of the regulatory review period for purposes of patent extension for Olean (olestra). The document was published with an error. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

In FR Doc. 97–138, appearing on page 763 in the **Federal Register** of Monday, January 6, 1997, the following correction is made: On page 763, in the third column, beginning in line 6, "Olean (U.S. Patent No. 4,005,196)" is corrected to read "Olean (U.S. Patent No. Re. 34,617)".

Dated: February 20, 1997.

Allen B. Duncan,

Acting Associate Commissioner for Health Affairs.

[FR Doc. 97–4960 Filed 2–27–97; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96E–0265]

Determination of Regulatory Review Period for Purposes of Patent Extension; REDUX™

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for REDUX™ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product REDUX™ (dexfenfluramine hydrochloride). REDUX™ is indicated for the management of obesity including weight loss and maintenance of weight loss in patients on a reduced calorie diet. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for REDUX™ (U.S. Patent No. 4,309,445) from Interneuron Pharmaceuticals, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated November 21, 1996, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of REDUX™ represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for REDUX™ is 1,613 days. Of this time, 541 days occurred during the testing phase of the regulatory review period, while 1,072 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: December 1, 1991. The applicant claims January 13, 1992, as the date the investigational new drug application (IND) for REDUX™ (IND 38,108) became effective. However, FDA records indicate that the effective date for IND 38,108 was December 1, 1991, which was 30 days after FDA receipt of the IND on November 1, 1991.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: May 24, 1993. The applicant claims May 23, 1993, as the date the new drug application (NDA) for REDUX™ (NDA 20–344) was initially submitted. However, FDA records indicate that NDA 20–344 was submitted on May 24, 1993.

3. *The date the application was approved*: April 29, 1996. FDA has verified the applicant's claim that NDA 20–344 was approved on April 29, 1996.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,322 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before April 29, 1997, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before August 27, 1997, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 18, 1997.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 97–4961 Filed 2–27–97; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETINGS: The following advisory committee meetings are announced:

Orthopedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. March 6, 1997, 8:30 a.m., and March 7, 1997, 9 a.m., Holiday Inn—Gaithersburg, Ballroom, Two Montgomery Village Ave., Gaithersburg, MD. A limited number of overnight accommodations have been reserved at the hotel. Attendees requiring overnight accommodations may contact the hotel at 301–948–8900 and reference the FDA Panel meeting block. Reservations will be confirmed at the group rate based on availability. Attendees with a disability requiring special accommodations should contact Soo Bae, KRA Corp., 301–495–1591, ext. 227. The availability of appropriate accommodations cannot be assured unless prior notification is received.

Type of meeting and contact person. Open public hearing, March 6, 1997, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 2 p.m.; closed presentation of data, 2 p.m. to 2:30 p.m.; open committee discussion, 2:30 p.m. to 5:30 p.m.; open public hearing, March 7, 1997, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 2 p.m.; William Freas or Sheila D. Langford, Center for Biologics Evaluation and Research (HFM–21), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–1289, or Jodi H. Nashman, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2036, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Orthopedic and Rehabilitation Devices Panel, code 12521. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before March 3, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On March 6, 1997, at the request of, and in conjunction with the Center for Biologics Evaluation and Research, the committee will discuss CARTICEL (autologous chondrocytes manipulated ex-vivo for structural repair, Genzyme Corp.) intended for treatment and repair of clinically significant, articular cartilage defects in the knee. On March 7, 1997, the committee will have a general discussion of study design and efficacy endpoints for clinical trials utilizing bone void fillers.

Closed presentation of data. On March 6, 1997, the sponsor will present to the committee trade secret and/or confidential commercial information relevant to the pending biologics licensing application (BLA). This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

FDA regrets that it was unable to publish this notice 15 days prior to the March 6 and 7, 1997, Orthopedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee meeting. Because the agency believes there is some urgency to bring this issue to public discussion and qualified members of the Orthopedic and Rehabilitation Devices Panel were available at this time, the Commissioner concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Neurological Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. March 14, 1997, 9:30 a.m., Corporate Bldg., conference room 020B, 9200 Corporate Blvd., Rockville, MD. A limited number of overnight accommodations have been reserved at the Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Blvd., Gaithersburg, MD. Attendees requiring overnight accommodations may contact the hotel at 800–228–9290 or 301–590–0044 and reference the FDA Panel meeting block. Reservations will be confirmed at the group rate based on availability. Attendees with a disability requiring special accommodations should contact Soo Bae, KRA Corp., 301–495–1591, ext. 227. The availability of appropriate accommodations cannot be assured unless prior notification is received.

Type of meeting and contact person. Open public hearing, 9:30 a.m. to 10:45 a.m., unless public participation does not last that long; open committee discussion, 10:45 a.m. to 3:30 p.m.; closed committee deliberations, 3:30 p.m. to 4:30 p.m.; G. Levering Keely, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8517, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Neurological Devices Panel, code 12513. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before March 3, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the

names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss and vote on a premarket approval application for a deep brain stimulator for the treatment of tremor due to Parkinson's disease and Essential Tremor.

Closed committee deliberations. FDA staff will present to the committee trade secret and/or confidential commercial information regarding present and future FDA issues. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

FDA regrets that it was unable to publish this notice 15 days prior to the March 14, 1997, Neurological Devices Panel of the Medical Devices Advisory Committee meeting. Because the agency believes there is some urgency to bring this issue to public discussion and qualified members of the Neurological Devices Panel were available at this time, the Commissioner concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Clinical Chemistry and Clinical Toxicology Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. March 20 and 21, 1997, 8 a.m., Holiday Inn—Gaithersburg, Ballroom, Two Montgomery Village Ave., Gaithersburg, MD. A limited number of overnight accommodations have been reserved at the hotel. Attendees requiring overnight accommodations may contact the hotel at 301–948–8900 and reference the FDA Panel meeting block. Reservations will be confirmed at the group rate based on availability. Attendees with a disability requiring special accommodations should contact Christie Wyatt, KRA Corp., 301–495–1591, ext. 267. The availability of appropriate accommodations cannot be assured unless prior notification is received.

Type of meeting and contact person. Open public hearing, March 20, 1997, 8 a.m. to 8:30 a.m., unless public participation does not last that long; open committee discussion, 8:30 a.m. to 9 a.m; closed presentation of data, 9 a.m. to 9:30 a.m.; open committee discussion, 9:30 a.m. to 1:30 p.m.; open public hearing, 1:30 p.m. to 2:30 p.m., unless public participation does not last that long; open committee discussion, 2:30 p.m. to 6 p.m.; open public hearing, March 21, 1997, 8 a.m. to 9:15 a.m., unless public participation does not last that long; open committee discussion, 9:15 a.m. to 6 p.m.; Sharon K. Lappalainen, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1243, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Clinical Chemistry and Clinical Toxicology Devices Panel, code 12514. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before March 7, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments. The Docket will remain open until April 3, 1997, to allow written comment from the public.

Open committee discussion. On March 20, 1997, the committee will discuss a premarket notification submission, 510(k), for an over-the-counter device for measuring fructosamine. On March 20 and 21, 1997, the committee will discuss self-monitoring and management by diabetic patients including noninvasive and invasive self-monitoring blood glucose (SMBG) systems, glucose meters and test strips. The invasive systems have revolutionized modern diabetic management. Improvements in technology and increased understanding of the benefits of tight control have been substantial during the past few years. FDA is interested in identifying mechanisms to help minimize problems associated with SMBG systems. The goal of the meeting is to solicit information and suggestions from the FDA advisory panel, professional organizations, industry, and consumers that will help: (1) Identify how patients are currently being managed; (2) determine what goals are appropriate for different groups of patients and different treatment regimens; (3) determine what device performance is needed for support of these goals; (4) discuss current technology and its performance capabilities and limitations; and (5) identify areas in which the agency, professional groups, patients, and manufacturers can work together to help achieve the various goals of glucose monitoring and contribute to increased quality patient outcomes.

Invasive SMBG systems are used by individuals to monitor their own blood glucose levels. These devices allow individuals to monitor their status on a daily basis and, if necessary, modify therapy to obtain near normal glucose homeostasis. The use of SMBG systems has, therefore, become a cornerstone for modern diabetic therapy of significant importance to many of the 13 million diabetics in the United States. Reports in the medical literature have suggested that meter and strip performance claims made by manufacturers based on premarket testing may not reflect actual use by consumers. Topics of discussion will include:

(1) Improvements which can be made in the premarket review of these products including changes, if warranted, in review criteria and their application;

(2) Identification of realistic expectations for the physician and user of these devices based on current technology, and determination of testing needed to assure product quality. Discussion will include consideration of both existing technical limitations and the potentials for changes in glucose measuring technology in the future;

(3) Improvements which could be made in premarket product testing to provide a more realistic evaluation of actual performance in the field;

(4) Possible improvements in the labeling of these devices to better reflect the expected performance in the home setting;

(5) Steps that could be taken to improve the use of quality control measures in the home setting; and

(6) Other mechanisms available to FDA or other organizations to improve the practice of blood glucose monitoring in the home.

(7) Improvements that could be made to FDA's existing guidance document entitled "Review Criteria for Assessment of Portable Blood Glucose Monitoring In Vitro Diagnostic Devices Using Glucose Oxidase, Dehydrogenase, or Hexokinase Methodology"—Draft 2/14/96. This guidance document is available through the Division of Small Manufacturer's Assistance (DSMA) at 301–443–6597, its toll free number 800–638–2041, or through DSMA Facts on Demand at 800–899–0381, DSMA Shelf Number 604.

FDA welcomes other input that will contribute to minimizing SMBG related problems.

Closed presentation of data. On March 20, 1997, the sponsor may present to the committee trade secret and/or confidential commercial information regarding the premarket notification submission. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of the meeting(s) shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, deliberation to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (a)(2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: February 25, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–5129 Filed 2–26–97; 11:04 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Application for Certification as a Federally Qualified Health Center (FQHC) (OMB No. 0915–0142); Extension and Revision

The Federally Qualified Health Center (FQHC) Look-Alike application package (OMB No. 0915–0142) was developed to certify entities as FQHC providers under Medicaid and Medicare. FQHCs receive

reasonable cost-related reimbursement under Medicaid and Medicare for a full range of primary health care services. The application for FQHC certification is divided into four components: (1) Need and Community Impact, (2) Health Services, (3) Management and Finance, and (4) Governance. Certified FQHC Look-Alikes must submit an annual recertification document with updated exhibits to retain designation as an FQHC.

In an effort to improve the procedures for certifying FQHCs, HRSA is considering revising the FQHC Look-Alike application (with parallel changes made to the recertification requirements). The revised version would update the application guidelines and exhibits to reflect current law, regulations, and practice. A revised application may also include more specific guidance on how applicants should document existing unmet need in the community.

These revisions will be developed during the next year and submitted for OMB approval in 1998. In the interim, a request for a two-year extension of OMB approval of the current forms is being submitted. Only minor technical changes have been made to the forms. Estimates of annualized hour burden are as follows:

Form name	Number of respondents	Responses per respondent	Hours per response	Total burden hours
Application	70	1	120	8,400
Recertification	231	1	20	4,620
Total	301	1	43	13,020

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Virginia Huth, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: February 10, 1997.

J. Henry Montes,

Director, Office of Policy and Information Coordination.

[FR Doc. 97–4957 Filed 2–27–97; 8:45 am]

BILLING CODE 4160–15–P

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–0525.

Alcohol and Drug Services Study (ADSS) Phase II/III—New—Phases II and III of the ADSS will continue the collection of linked information on substance abuse treatment begun in the Phase I facility level survey. Phase II involves on-site interviews with administrators at 270 treatment facilities and a a record abstraction of client-level data on 8,800 treatment clients. Phase III consists of client followup interviews to determine post-discharge substance abuse, criminal activity, employment, and other social functioning. ADSS will provide researchers, policy makers, and providers with detailed national data on the current substance abuse treatment delivery system and clients in the system. The annualized burden is shown below.

	No. of respondents	No. of responses/respondent	Avg. burden/response	Total study burden	Annualized burden
Treatment Facilities	270	1.33	1.755 hours	630 hours	126 hours
Clients	8,800	3.38	1.125 hours	29,700 hours	5,940 hours.

Drug Abuse Warning Network (DAWN)—Extension of a currently approved collection—The Drug Abuse Warning Network (DAWN) collects data on drug-related medical emergencies and deaths as reported from about 650 hospitals and medical examiners nationwide. Used by Federal, State and local agencies, this on-going data system supports efforts to identify drug abuse trends; assesses health hazards associated with substance abuse; and schedules substances under the Controlled Substances Act. The annual burden estimate is 15,972 hours as shown below:

	No.of respondents	No.of responses per respondent	Average burden per response	Gross burden hours	IR[1] reporting hours	Total adjusted burden hours
Hospitals	500	368	0.133 hrs.	24,480	10,282	14,198
Medical Examiners	150	123	0.160 hrs.	2,957	1,183	1,774

[1] There is no burden associated with reporting by Independent Reporters (IRs), therefore these hours are not included in the Total Adjusted Burden Hours.

Written comments and recommendations concerning the proposed information collections should be sent within 30 days of this notice to: Virginia Huth, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10236, Washington, D.C. 20503.

Dated: February 21, 1997.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 97–4994 Filed 2–27–97; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4200–N–32]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Chief Financial Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due:* April 29, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Erie T. Davis, Jr., CFO Management Staff, Department of Housing and Urban Development, 451 Seventh Street SW., Room 2102, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Patrick Wallis, Telephone number (202) 708–0313 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from interested persons regarding the burden estimated or any other aspect of this collection of information, including any of the following subject: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

This Notice also lists the following information:

Title of Proposal: HUD–27053, Request for Grant Payment, HUD–27053A, Request for Homeless Grant Payment, HUD–27054 LOCCS Voice Response Access Authorization.

OMB Control Number: 2535–0102.

Description of the need for the information and the proposed use: HUD/CFO decided to process requests for payments to its grant recipients through a Voice Response System after the Department of Treasury closed down its Treasury Financial Communications System—Letter of Credit (TRCS–LOC) at the end of calendar year 1990. Under Voice Response, a caller submits a payment request directly to HUD using a touch tone telephone. The caller is greeted by a "DEC–TALK Simulator" prompting the caller to enter numbers and symbols from the touch tone keypad. The above mentioned forms will be used in lieu of the SF–270, Request for Advance or Reimbursement or the TFS–5805, Request for Funds, or the FMS–5401, Payment Voucher on Letter of Credit pursuant to the requirements of Circular A–102, A–110, and TFM 6–2000. These forms impose no additional burden on the recipient except for filling out the access authorization form..Recipients will fill out these forms in order to request payment of grant funds or to designate the appropriate officials who can have access to the HUD voice activated payment system. The request for payment forms have been specially designed to help the recipient when calling in for a request of funds. These forms will be used in lieu of the SF–270, Request for Advance or Reimbursement or the SF–5805, Request for Funds. In addition, these forms will be used as an internal control feature instituted to support and safeguard Federal funds, as well as provide a service to the recipients. The voice activated payment concept is the latest in technology and provides a recipient a fast, reliable method to obtain Federal funding. This method should improve the payment process because the recipient will know before he/she hangs up the phone whether their request will be paid or who to call if there is a problem and the request was not processed by the system. All requests processed by the system will be paid by ACH within 48 hours. No duplication is involved with these forms since HUD will not require the SF–270, Request for Advance or Reimbursement. HUD is not using the SF–270, Request for Advance or Reimbursement because we wanted a custom designed form to prompt the caller to enter numbers and symbols from a touch tone keypad. The SF–270, Request for Advance or Reimbursement would not easily facilitate this type of payment method. The associated burden is the minimum needed to request payment of funds. The Voice Response System will accept request of funds from a recipient on a daily basis. However, a recipient should be using good cash management practices and request payment of HUD funds administratively close to when they have to pay their bills. Therefore, the frequency a recipient requests funds will depend upon the types of activities he or she is managing. We [HUD] do not violate the guidelines of 5 CFR 1320.6. We consulted only with the Department of Health and Human Services in February 1990, concerning their system and the costs associated with using it. This payment system will require that the latest security features be installed to deter excessive fraudulent payments. Only a limited number of authorized officials will have access to the system for updating purposes. No sensitive questions are asked. Cost to the Federal Government is based on approximately $.03 a copy for the form HUD–27054 and $.08 a copy for forms HUD–27053 and HUD–27053A to be printed and distributed (including overhead) to recipients; *Frequency:* Annually; *Affected Public: Number of Respondents:* 2,000; *Total Annual Responses:* 237,200; *Total Annual Hours:* 41,133.

Agency form numbers: HUD–27053, HUD–27053A, HUD–27054.

Members of affected public: State, Local or Tribal Governments, not-for-profit institutions.

An estimation of the total number of hours needed to prepare the information collection is 41,133, number of respondents is 2,000, frequency of response is annually and the total annual responses is 237,200.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: February 21, 1997.

William H. Eargle, Jr.,

Deputy Chief Financial Officer for Accounting.

[FR Doc. 97–5015 Filed 2–27–97; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. FR–4124–N–27]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: February 28, 1997.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2575, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: February 21, 1997.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 97–4792 Filed 2–27–97; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Western Water Policy Review Advisory Commission Meeting

AGENCY: Department of the Interior.

ACTION: Notice of open meeting.

SUMMARY: As required by the Federal Advisory Committee Act, notice is hereby given that the Western Water Policy Review Advisory Commission (Commission), established by the Secretary of the Interior under the Reclamation Projects Authorization and Adjustment Act of 1992, will hold a public water issues forum, "Indian Water 1997: Trends and Directions in Federal Water Policy" and business meeting. The purpose of this meeting is for the Commission to receive American Indian community testimony regarding water issues impacting American Indians in the 19 Western States and to meet on other Commission business.

DATES: Monday, March 17, 1997, 9:00 a.m.–5:00 p.m.; Tuesday, March 18, 1997, 8:00 a.m.–5:00 p.m.

ADDRESSES: Location: Hyatt Regency Hotel, 122 N. Second Street, Phoenix, Arizona. Copies of the agenda are available from the Western Water Policy Review Office, D–5001; P.O. Box 25007; Denver, CO 80225–0007.

FOR FURTHER INFORMATION CONTACT: The Commission Office at telephone 303–236–6211, FAX 303–236–4286, or email to rgunnarson@do.usbr.gov.

SUPPLEMENTARY INFORMATION: The seminar is being organized and hosted by the American Indian Resources Institute of Oakland, California. Room locations will be posted in the hotel lobby.

Public Participation

Seating for observers will be limited and reservations are strongly recommended. Seating may be reserved by contacting the Commission Office. Written statements may be provided in advance to the Western Water Policy Review Office, address cited under the **ADDRESSES** caption of this notice, or submitted directly at the meeting. Statements will be provided to the members prior to the meeting if received by no later than March 7, 1997. The Commission's schedule will not allow time for formal presentations by the public during the meeting.

Dated: February 24, 1997

Larry Schulz,

Administrative Officer.

[FR Doc. 97–5020 Filed 2–27–97; 8:45 am]

BILLING CODE 4310–10–M

Fish and Wildlife Service

Notice of Receipt of Application for Endangered Species Permit

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*):

Applicant: Roy S. DeLotelle, DeLotelle and Guthrie, Inc., Gainesville, Florida, PRT–825431.

The applicant requests a permit to take (capture and harass for banding, and translocation) the endangered red-cockaded woodpecker, *Picoides borealis*, throughout the species range in North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Tennessee, Arkansas, Texas, Oklahoma, Virginia, and Missouri for the purpose of enhancement of survival of the species.

Written data or comments on these applications should be submitted to: Regional Permit Biologist, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345. All data and comments must be received by March 31, 1997.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: David Dell, Permit Biologist). Telephone: 404/679–7313; Fax: 404/679–7081.

Dated: February 20, 1997.

Noreen K. Clough,

Regional Director.

[FR Doc. 97–5019 Filed 2–27–97; 8:45 am]

BILLING CODE 4310–55–P

Availability of Draft Environmental Assessment, Receipt of Application for, and Intent to Issue, Incidental Take Permit for Development of Church Facility in Cedar City, Iron County, UT

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability, receipt of application for, and intent to issue permit.

SUMMARY: The Church of Jesus Christ of Latter-Day Saints (Applicant) has applied to the Fish and Wildlife Service for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. The Applicant has been assigned permit number PRT–825570. The requested permit, which is for a period of 2 years, would authorize incidental take of the threatened Utah Prairie Dog (*Cynomys parvidens*). The proposed take would occur as a result of development of church facilities on a 6.3-acre privately-owned parcel located within Cedar City, Iron County, Utah.

The Service has prepared the Environmental Assessment for issuance of the incidental take permit. The Applicant has prepared a habitat conservation plan as part of the incidental take permit application. A determination of whether jeopardy to the species will occur, or a Finding of No Significant Impact, and/or issuance of the incidental take permit, will not be made before 30 days from the date of publication of this notice. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the permit application must be received on or before March 31, 1997.

ADDRESSES: Persons wishing to review the permit application may obtain a copy by writing to the Assistant Field Supervisor, Utah Ecological Services Field Office, U.S. Fish and Wildlife Service, 145 East 1300 South Street, Suite 404, Salt Lake City, Utah 84115. Documents will be available for public inspection by written request, or by appointment only, during business hours (8:00 AM to 4:30 PM) at the above address.

Written data or comments concerning the permit application should be submitted to the Assistant Field Supervisor, Utah Ecological Services Field Office, U.S. Fish and Wildlife Service, Salt Lake City, Utah (see **ADDRESSES** above). Please refer to permit number PRT–825570 in all correspondence regarding these documents.

FOR FURTHER INFORMATION CONTACT: Robert D. Williams, Assistant Field Supervisor or Marilet A. Zablan, Wildlife Biologist, at the above U.S. Fish and Wildlife Service office in Salt Lake City, Utah (see **ADDRESSES** above) (telephone: (801) 524–5001, facsimile: (801) 524–5021).

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of any threatened or endangered species, such as the threatened Utah Prairie Dog. However, the Service, under limited circumstances, may issue permits to take threatened or endangered wildlife species when such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened and endangered species are at 50 CFR 17.22.

Applicant

The Applicant plans to develop a 6.3-acre church facility, located in section 35 in Township 35 South, Range 11 West, Salt Lake Base and Meridian, within Cedar City, Iron County, Utah. Development is planned to include a meeting house, seminary building, parking area, and installation of associated infrastructure such as natural gas, sewer, water, electrical power, and telephone service. The construction will impact 6.3 acres of Utah Prairie Dog habitat, and the Applicant foresees an incidental take of a maximum of 22 Utah Prairie Dogs through trapping and relocation and the potential incidental take of no more than two Utah Prairie Dogs as a result of direct mortality during construction. The Applicant proposes to compensate for this habitat loss by payment of $900 per acre for each acre developed, to be used for public land management actions for Utah Prairie Dog conservation and to implement recovery actions for conservation of the Utah Prairie Dog, through contribution to the Utah Prairie Dog Conservation Fund.

A no-action alternative to the proposed action was considered, consisting of foregoing the development of the 6.3-acre area of Utah Prairie Dog habitat. The no-action alternative was rejected for reasons including loss of use of the private property, resulting in significant economic loss to the Applicant.

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et. seq.)* and the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et. seq.*)

Dated: February 24, 1997.

Terry Terrell,

Deputy Regional Director, Region 6, Denver, Colorado.

[FR Doc. 97–4995 Filed 2–27–97; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[AK–962–1410–00–P; AA–9299]

Notice for Publication; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Section 14(h)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(1), will be issued to Calista Corporation for approximately 36.8 acres. The lands involved are in the vicinity of Nunivak Island, Alaska.

Seward Meridian, Alaska

T. 2 N., R. 104 W.,
Sec. 36.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Anchorage Daily News. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until March 31, 1997 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Patricia A. Baker,

Land Law Examiner, ANCSA Team, Branch of 962 Adjudication.

[FR Doc. 97–5008 Filed 2–27–97; 8:45 am]

BILLING CODE 4310–33–P

[OR–030–07–1120–00: GP7–0107]

National Historic Oregon Trail Interpretive Center Advisory Board; Notice

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to solicit public nominations for seven seats on the Bureau of Land Management (BLM) National Historic Oregon Trail Interpretative Center Advisory Board. The Advisory Board, created in 1997 by the Secretary of the Interior, provides advice to BLM on matters pertinent to the Bureau of Land Management's responsibilities for the management of the National Historic Oregon Trail Interpretive Center. Nominations should be received 45 days from the publication date of this notice. In making appointments to the Advisory Board, the Secretary will also consider nominations made by the Governor of Oregon. The Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to establish advisory councils to provide advice on land use planning and issues related to management of lands administered by BLM. In order to reflect a fair balance of viewpoints, the membership of the National Historic Oregon Trail Interpretive Center Advisory Board must represent various interests concerned with the management of the National Historic Oregon Trail Interpretive Center. These include:

1. The Wallowa Whitman Forest Supervisor or his designee.
2. A representative from Trail Tenders, Inc.
3. A representative from the Oregon Trail Preservation Trust.
4. A representative from the business community.
5. A representative of county or local elected office.
6. Two members of public-at-large.

Individuals may nominate themselves or other but nominees must be residents of Oregon. Nominees will be evaluated

based on their demonstrated ability to analyze and interpret data and information, evaluate proposals, identify problems, and promote the use of collaborative management techniques. These include long-term planning and further development of the Interpretive Center, interagency coordination, management across jurisdictional boundaries, data sharing, information exchange, and partnerships. All nominations must be accompanied by letters of reference from represented interests or organizations, a completed background information nomination form, as well as any other information that speaks to the nominee's qualifications. The nomination period will also be announced through news releases issued by the BLM Vale District, Oregon office. Nominations for the Advisory Board should be sent to National Historic Oregon Trail Interpretive Center Advisory Board, Attention: Jonne Hower, BLM, 100 Oregon St., Vale, Oregon 97918.

DATES: All nominations should be received on or before April 15, 1997.

FOR FURTHER INFORMATION AND APPLICATION FORMS CONTACT: Jonne Hower, Bureau of Land Management, Vale District, 100 Oregon Street, Vale, OR 97918, (Telephone 541 473–3144).

Completed Nominations/Background Forms should be obtained from and returned to the same addresses listed above.

Edwin J. Singleton,

District Manager.

[FR Doc. 97–4975 Filed 2–21–97; 8:45 am]

BILLING CODE 4310–33–M

[MT–962–1020–00]

Notice of Availability for the Montana/Dakotas Standards for Rangeland Health and Guidelines for Livestock Grazing Management Supplement to the Draft Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Supplement to the Draft Environmental Impact Statement (EIS) includes additional information and documents the effects of adopting regional standards for rangeland health and guidelines for livestock grazing management on BLM-administered lands west of the Continental Divide, in Montana. The supplement discloses additional impacts not already covered in the Draft EIS from implementing the proposed alternatives on lands west of the Continental Divide. This action is proposed in accordance with revised regulations for livestock grazing on BLM-administered lands (43 CFR 4100). The proposed standards and guidelines were developed in partnership with the Butte Resource Advisory Council (RAC), and with other public input. There will be a 60-day comment period on the Draft EIS Supplement. The comment period will begin the day the EPA Notice appears in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Sandy Brooks, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107–6800, or 406–255–2929.

SUPPLEMENTARY INFORMATION: When the Montana/Dakotas Draft EIS for Standards for Rangeland Health and Guidelines for Livestock Grazing Management was issued, lands west of the Continental Divide were not included in the analysis because they are being considered as part of the Interior Columbia Basin Ecosystem Management Project (ICBEMP). However, the schedule to complete the ICBEMP has been extended, which would cause the Fallback Standards and Guidelines to automatically go into effect on August 12, 1997. By supplementing the Montana/Dakotas Draft EIS, these lands would be subject to the same consideration and analysis of alternatives as other lands in Montana/Dakotas. The record of decision signed on the Montana/Dakotas Standards and Guidelines Final EIS, will apply to lands west of the Continental Divide, in Montana. The ICBEMP decision will supersede the Montana/Dakotas Standards and Guidelines decision, for these lands, when the ICBEMP is complete. The supplement to the DEIS revises information and analysis in the Draft EIS to include BLM-administered lands west of the Continental Divide. There will be a 60-day comment period. Comments must be received by May 3, 1997. An open house will be held to exchange information with the public about the standards and guidelines supplement to the Draft EIS. The open house will be held on March 20, 1997, at the Garnet Resource Area Office, 3255 Fort Missoula Road, Missoula, Montana, from 4 p.m. to 7 p.m.

Dated: February 21, 1997.

Thomas P. Lonnie,

Deputy State Director, Division of Resources.

[FR Doc. 97–4996 Filed 2–27–97; 8:45 am]

BILLING CODE 4310–DN–P

[CO–010–07–1020–00–241A]

Northwest Colorado Resource Advisory Council Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the next meetings of the Northwest Colorado Resource Advisory Council will be held on Friday, March 14, 1997, in Grand Junction, Colorado; and Wednesday, May 14, 1997, in Steamboat Springs, Colorado.

DATES: Meetings are scheduled for Friday, March 14, 1997, and Wednesday, May 14, 1997.

ADDRESS: For further information, contact Joann Graham, Bureau of Land Management (BLM), Grand Junction District Office, 2815 H Road, Grand Junction, Colorado 81506; Telephone (970) 244–3000; TDD (970) 244–3037.

SUPPLEMENTARY INFORMATION:

Friday, March 14, 1997

This meeting will be held in the BLM District Office Conference Room, 2815 H Road, Grand Junction, Colorado.

Wednesday, May 14, 1997

This meeting will be held at the Yampa Valley Rural Electrification Building, 32 Tenth Street, Steamboat Springs, Colorado.

All meetings are scheduled to begin at 9 a.m. The March 14 meeting in Grand Junction will focus on general Council business, Council subcommittee reports, and Area Manager reports on the following topics: (1) The status of the Bang's Canyon Management Plan, (2) possible acquisition of the Naval Oil Shale Reserve, and (3) resource management conflicts in new areas proposed for wilderness designation by a group of 47 conservationists.

The agenda for the May 14 meeting in Steamboat Springs will focus on general Council business and subcommittee reports.

All Resource Advisory Council meetings are open to the public. Interested persons may make oral statements at the meetings or submit written statements following the meetings. The Grand Junction/Craig District Manager may set per-person time limits for oral statements, if needed, to allow all interested persons an opportunity to speak.

Summary minutes for the Council meeting will be maintained in the Grand Junction and Craig District Offices and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

Dated: February 24, 1997.

Richard Arcand,

Acting Grand Junction/Craig District Manager.

[FR Doc. 97–5011 Filed 2–27–97; 8:45 am]

BILLING CODE 4310–70–P

[NM–930–1310–01; NMNM 95616]

New Mexico: Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease NMNM 95616 for lands in Rio Arriba County, New Mexico, was timely filed and was accompanied by all required rentals and royalties accruing from September 1, 1996, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and has reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice.

The Lessee has met all the requirements for reinstatement of the lease as set out in Sections 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate the lease effective September 1, 1996, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

For further information contact: Gloria S. Baca, BLM, New Mexico State Office, (505) 438–7566.

Dated: February 20, 1997.

Gloria S. Baca,

Land Law Examiner.

[FR Doc. 97–5010 Filed 2–27–97; 8:45 am]

BILLING CODE 4310–FB–M

[ID–957–1430–00]

Idaho: Filing of Plats of Survey; Idaho

The plat of the following described land was officially filed in the Idaho State office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m. February 11, 1997.

The plat representing the dependent resurvey of portions of the north boundary and of the subdivisional lines, the subdivision of sections 5 and 8, and the survey of lot 2 in section 5, T. 9 S., R. 29 E., Boise Meridian, Idaho, Group No. 931, was accepted February 11, 1997.

This plat was prepared to meet certain administrative needs of the Bureau of Land Management. All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 S. Vinnell Way, Boise, Idaho, 83709–1657.

Dated: February 11, 1997.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 97–4977 Filed 2–27–97; 8:45 am]

BILLING CODE 4310–GG–M

[ID–957–1430–00]

Idaho: Filing of Plats of Survey; Idaho

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m. February 11, 1997.

The plat representing the dependent resurvey of portions of the subdivisional lines and the subdivision of sections 15 and 22, T. 12 S., R. 25 E., Boise Meridian, Idaho, Group No. 964, was accepted February 11, 1997.

This plat was prepared to meet certain administrative needs of the Bureau of Land Management. All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 S. Vinnell Way, Boise, Idaho, 83709–1657.

Dated: February 11, 1997.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 97–4978 Filed 2–27–97; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

February 25, 1997.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Theresa M. O'Malley ({202} 219–5096 ext. 143). Individuals who use a telecommunications device for the deaf (TTY/TDD) may call {202} 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ({202} 395–7316) by March 31, 1997.

The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
* Enhance the quality, utility, and clarity of the information to be collected; and
* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Pension Welfare Benefits Administration.

Title: Prohibited Transaction Exemption 77–10.

OMB Number: 1210–0081.

Frequency: On occasion.

Affected Public: Individuals or households; business or other for-profit.

Number of Respondents: 1.

Estimated Time Per Respondent: 1 hour.

Total Burden Hours: 1.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: This class exemption complements class exemption 76–1. It permits employers, unions, or another plan to lease office space from or to obtain administrative services or goods from a multiple employer plan or multiemployer plan.

Agency: Pension Welfare Benefits Administration.

Title: Prohibited Transaction Exemption 91–38.

OMB Number: 1210–0082.

Frequency: On occasion.
Affected Public: Individuals or households; business or other for-profit.
Number of Respondents: 1.
Estimated Time Per Respondent: 1 hour.
Total Burden Hours: 1.
Total Annualized capital/startup costs: 0.
Total annual costs (operating/maintaining systems or purchasing services): 0.
Description: This class exemption exempts from the prohibited transaction provisions of ERISA certain transactions between a bank collective investment fund and persons who are parties in interest with respect to a plan as long as the plan's participation in the collective investment funds does not exceed a specified percentage of the total assets in the collective investment fund.

Agency: Pension Welfare Benefits Administration.
Title: Prohibited Transaction Exemption 90–1.
OMB Number: 1210–0083.
Frequency: On occasion.
Affected Public: Individuals or households; business or other for-profit.
Number of Respondents: 1.
Estimated Time Per Respondent: 1 hour.
Total Burden Hours: 1.
Total Annualized capital/startup costs: 0.
Total annual costs (operating/maintaining systems or purchasing services): 0.
Description: This class exemption allows parties in interest of an employee benefit plan that invests in an insured pool separate account to engage in transactions with the separate account if the plan's participation in the separate account does not exceed certain limits.

Agency: Occupational Safety and Health Administration.
Title: Personal Protective Equipment for Shipyard Employment (29 CFR 1915, Subpart 1).
OMB Number: 1218–0 new.
Frequency: As needed.
Affected Public: Business or other for-profit; Federal Government; State, Local or Tribal Government.
Number of Respondents: 500.
Estimated Time Per Respondent: varies (1 hour to 17.8 hours).
Total Burden Hours: 1,540.
Total Annualized capital/startup costs: 0.
Total annual costs (operating/maintaining systems or purchasing services): 0.
Description: These requirements are intended to reduce hazards to employees through the use of personal protective equipment (PPE). They establish procedures for assessing the workplace to identify where PPE is needed, provide for training in PPE, and set minimum requirements for PPE.

Theresa M. O'Malley,
Departmental Clearance Officer.
[FR Doc. 97–5004 Filed 2–27–97; 8:45 am]
BILLING CODE 4510–23–M

Employment and Training Administration

Federal-State Unemployment Compensation Program: Unemployment Insurance Program Letters Interpreting Federal Unemployment Insurance Law

The Employment and Training Administration interprets Federal law requirements pertaining to unemployment compensation as part of its role in the administration of the Federal-State unemployment compensation program. These interpretations are issued in Unemployment Insurance Program Letters (UIPLs) to the State Employment Security Agencies (SESAs). The UIPLs described below are published in the **Federal Register** in order to inform the public.

UIPL 05–97

The Department's interpretation of several Federal requirements in a remote claimstaking environment was issued in UIPL 35–95, dated June 28, 1995 (published at 60 FR 55604, 11/1/96). Additional questions have been raised about the impact of remote initial claimstaking procedures on claims filed under the Interstate Arrangement for Combining Employment and Wages, the Unemployment Compensation for Ex-Servicemembers program, and the Extended Benefits program. Questions have also been raised regarding how States can comply with the requirement that non-citizen claimants present documentation of a satisfactory immigration status in a remote claimstaking environment. This UIPL contains information on each of these areas.

UIPL 16–97

This UIPL is being issued to correct several technical errors which the Department of Labor has identified in UIPLs 45–92, 17–95, 30–96, and 37–96. None of the changes make any change to the Department's interpretation of Federal law.

Dated: February 21, 1997.
Timothy M. Barnicle,
Assistant Secretary of Labor.

U.S. Department of Labor
Employment and Training Administration
Washington, D.C. 20210

Classification UI

Correspondence Symbol TEUPDI

Date: December 2, 1996.

Directive: Unemployment Insurance Program Letter No. 05–97
To: All State Employment Security Agencies
From: Mary Ann Wyrsch, Director, Unemployment Insurance Service
Subject: The Department of Labor's Position on Issues and Concerns Associated With the Utilization of Telephone and Other Electronic Methods of Claimstaking in the Unemployment Insurance (UI) Program.

1. *Purpose.* To advise State Employment Security Agencies (SESAs) of the Department's interpretation of Federal statues and regulations relating to telephone and other electronic methods of claimstaking.

2. *References.* Section 1137, Social Security Act (SSA); Federal-State Extended Unemployment Compensation Act; ETA Handbooks Nos. 384, 392, and 399; 20 CFR 614; 20 CFR 616; and Unemployment Insurance Program Letter (UIPL) No. 35–95.

3. *Background.* The Department's interpretation of several Federal requirements in a remote claimstaking environment was issued in UIPL No. 35–95, dated June 28, 1995. However, additional questions have been raised about the impact of remote initial claimstaking procedures on claims filed under the Interstate Arrangement for Combining Employment and Wages (Combined Wage Claims), the Unemployment Compensation for Ex-Servicemembers (UCX) program and the Extended Benefits program. Questions also have been raised regarding how States can comply with the requirement that non-citizen claimants present documentation of a satisfactory immigration status in a remote claimstaking environment. This directive includes information on each of these areas.

4. *Presentation of Alien Documentation.* Section 1137(d)(2), SSA, provides the following:

If such an individual is not a citizen or national of the United States, there must be presented either—

(A) Alien registration documentation or other proof of immigration registration from the Immigration and Naturalization Service that contains the individual's alien admission umber or alien file number * * *, or

(B) such other documents as the State determines constitutes reasonable evidence indicating a satisfactory immigration status.

UIPL No. 35–95, Section 3.A.(5) stated that "neither sections 1137(d)(2)(A) or (B), SSA, may be satisfied by information obtained by telephone (orally or IVR/VRS) or entry via a computer keyboard or touchscreen."

Upon reconsideration, the Department concludes that the requirement to present documentation from the Immigration and

Naturalization Service (INS), under Section 1137(d)(2)(A), SSA, can be satisfied by having the claimant "present" the documentation over the telephone by either using the keypad to enter data, or by reading the admission or file number from the document. This conclusion was made because it is unnecessary for a claims taker/examiner to personally inspect the INS documentation in order to obtain from the document the alien admission or file number for verification through the INS.

This change only affects how the claimant is allowed to present INS alien documentation in accordance with Section 1137(d)(2)(A), SSA. It does not otherwise affect the requirement that the SESA must require that each claimant, who has indicated noncitizenship status, establish a satisfactory immigration status in accordance with Section 1137(d)(2)(A), SSA. This change does not affect the Department's interpretation of Section 1137(d)(2)(A), SSA, as permitting a State to allow a claimant to submit a photostatic copy of the INS document(s) (containing the alien admission or file number) by mail or facsimile (FAX) transmission in lieu of viewing the original INS document(s). A photocopy or FAX of documentation *not* containing the alien admission or file number will *not* satisfy the requirements of Section 1137(d)(2)(b), SSA, because such documents cannot be verified through the INS. Such documents must be presented in person. Thus, there are three ways for a non-citizen claimant to "present" alien documentation: (1) by personally bringing to the claims office the original of the INS document containing the alien or admission numnber or other documents that the State determines constitutes reasonable evidence of a satisfactory immigration status; (2) by mailing a photocopy of, or FAXING, the INS document containing the admission or file number to the claims office; or (3) by telephoning the claims office and using the keypad to enter (or reading) the admission or file number from the INS document.

5. *Combined Wage Claim (CWC) Paying State/ UCX Wage Assignment.* Under 20 CFR 616.6(e), the paying State for a CWC is required to be the State "in which" the claim is filed, unless the claimant is ineligible on the basis of combining, in which case the paying State is the State in which the claimant was last employed in covered employment and qualifies for benefits. This provision was promulgated in 1974, 39 Federal Register 45214 (December 31, 1974), in order to change the definition of the paying State to require that most CWC claims be filed under the intrastate program. Among other reasons, this change was intended to result in greater promptness in the payment of benefits, and cost savings (because it costs more to file through the Interstate Benefit Payment Plan (IBPP) rather than intrastate), while not adversely affecting the amount of benefits for which combined wage claimants qualify.

Under 20 CFR 614.8(b)(1), UCX wages are required to be assigned to the State "in which" a first claim is filed. Thus UCX requirement is derived from 5 U.S.C. Section 8522, and, as noted in the legislative history to Public Law No. 85–848 (H.R. Rep. No. 1887, 85th Congress, 2nd Session 7; S. Rep. No. 2375, 85th Congress, 2nd Session 15), is designed to keep interstate claims to a minimum. This assures that such claims are filed as intrastate claims under the law of the State in which the claimant is filing. This prevents claimants, in an attempt to qualify for greater benefit amounts or avoid potential disqualifications, from filing their claims under the IBPP and having wages assigned or transferred to any State of their choice.

In developing remote claimstaking procedures, States have requested an interpretation of the phrase "in which", for purposes of establishing the "paying State" for CWC claims and in determining the State of UCX wage assignment, when intrastate initial claims are allowed to be filed remotely by commuters from locations outside the State. (An intrastate claim is a claim filed in a State under the law of that State.) The issue, with regard to remote intrastate claims, is whether a remote CWC or UCX claim filed by a commuter is filed in the State "in which" the claimant is physically present or the State "in which" the claims office is located.

Historically, intrastate CWC and UCX claims have been only those claims filed by individuals filing in-person in a facility in the liable/paying State. Generally, these claims are filed by individuals who reside, and have worked, in the State, and by individuals who, while residing in another State, have established a pattern of regularly commuting to work in the State. this latter category of individuals is precluded from filing against the liable State under the IBPP, except in cases where the State of residence finds that requiring such claimants to file intrastate claims in the State to which they normally commute to work would cause an undue hardship. (The use of remote claimstaking removes the hardship and allows all commuters to file directly with the State to which they normally commute.) Additionally, there are cases where some intrastate CWC and UCX claims are filed by individuals who neither reside, nor have worked, in the liable/paying State, but file their claims in-person in a facility in that State.

It is the Department's position that the procedural change from in-person to remote claimstaking should have no effect on the historical treatment of intrastate claims in the determination of benefit eligibility or for reporting purposes. Thus, where intrastate claimstaking procedures require or permit a commuter to remotely file a CWC claim, and/or a "first claim" for UCX wage assignment purposes, with a State to which (s)he commuted, that State is the State "in which" the claim is filed. Further, an intrastate CWC, or intrastate "first claim," that causes UCX wages to be assigned to the liable/paying State, may only be filed remotely from another State by individuals who have established a pattern of commuting to work in the liable/paying State.

Additionally, to ensure that remote claimstaking procedures do not adversely affect other non-resident claimants who may wish to file a claim while in another State, UCX wages are to be assigned in accordance with 20 CFR 614.8(b)(1) for UCX, and the paying State determined in accordance with 20 CFR 616.6(e) for CWC, for any claimant who is physically present in the filing State at the time the claim is filed, without regard to the claimant's State of residence or mailing address. States are not authorized to impose a residency requirement in the application of the above-referenced regulations.

6. *Application of Extended Benefits (EB) Two-Week Denial Provision.* Except for the first two weeks for which benefits are otherwise payable, 20 CFR 615.9(c) prohibits the payment of benefits pursuant to a claim filed under the IBPP from a State that is not in an EB period. Since this provision applies to interstate claims filed by individuals who reside outside the liable State, a question has been raised about whether or not the prohibition also applies to intrastate claims filed under remote claimstaking procedures by individuals residing outside the liable State.

This prohibition is specific to interstate claims filed under the IBPP. It does not apply to any intrastate claims whether the claimant is a resident or non-resident of the State. Thus, a claimant who remotely files an intrastate claim in a State that is in an EB period, regardless of whether he or she resides in that State, is not limited to two weeks of EB under 20 CFR 615.9(c).

7. *Action Required.* SESA administrators should inform appropriate staff of the Department's position as set forth in this program letter and ensure that the handling of claims filed under remote claimstaking procedures is consistent with this position.

8. *Inquiries.* Questions should be directed to the appropriate Regional Office.

U.S. Department of Labor
Employment and Training Administration
Washington, D.C. 20210

Classification UI

Correspondence Symbol TEUL

Date: February 10, 1997.

Directive: Unemployment Insurance Program Letter No. 16–97
To: All State Employment Security Agencies
From: Grace A. Kilbane, Director, Unemployment Insurance Service
Subject: Technical Changes to Unemployment Insurance Program Letters (UIPLs).

1. *Purpose.* To provide several technical changes to previously issued UIPLs.

2. *References.* UIPL 45–92, dated August 20, 1992; UIPL 17–95, dated February 28, 1995; UIPL 30–96, dated August 8, 1996; and UIPL 37–96, dated August 8, 1996.

3. *Background.* The Department of Labor interprets Federal law requirements pertaining to UI as part of its role in the administration of the Federal-State UI program. These interpretations are issued in UIPLs. This UIPL is issued to correct several technical errors which the Department has identified in four UIPLs. No Departmental interpretation of Federal law is changed by this UIPL.

4. *Technical Changes.*

a. *UIPL 45–92.* On page 23 of the Attachment I to the UIPL, in the first sentence of the third full paragraph, "new

subsection (t) of Section 3306, FUTA" is changed to "Section 401(d)(1) of P.L. 102–318".

b *UIPL 17–95.* In Item 4.b. on page 2 of the UIPL, the word "voluntarily" is substituted for "voluntary" in the quote of Section 3304(a)(18), FUTA.

In item 4.g. on page 7, first paragraph, the phrase "must be permitting the withholding Federal income tax" is changed to read "and the States must be permitting the withholding of Federal income tax". Also in item 4.g., the words "voluntary holding" in the second sentence of the third paragraph are changed to "voluntary withholding" and the words "as for payments" are changed to "for payments".

c. *UIPL 30–96.* In the second sentence of the footnote on page 2 of the UIPL, "two cases involving UC" is changed to "two cases involving UC law." This change is made because characterizing the court cases in question as "involving UC" may imply that they addressed the payment of UC. Instead, they addressed the taxing provisions of Federal UC law. These taxing provisions are, however, entwined with the issue of coverage which UIPL 30–96 addresses.

d. *UIPL 37–96.* Two changes are made to the draft language on page 13 of the UIPL relating to the intercept of food stamp overissuances. In Section 1(a) the words "child support obligations" are changed to "an uncollected overissuance of food stamps". In Section (1)(c), the word "of" is changed to "to". Also, on page 14, in the last sentence of item 10 of the UIPL, the first of the two appearances of the word "is" is deleted.

5. *Action Required.* Please alert appropriate staff of these technical changes. Pen and ink changes should be made to the above referenced UIPLs as indicated.

6 *Inquiries.* Please direct inquiries to the appropriate Regional Office.

[FR Doc. 97–5002 Filed 2–27–97; 8:45 am]

BILLING CODE 4510–30–M

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

New general Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" are listed by Volume and States:

Volume III

South Carolina
SC970035 (Feb. 28, 1997)
SC970036 (Feb. 28, 1997)

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publications in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New Jersey
NJ970002 (Feb. 14, 1997)
NJ970003 (Feb. 14, 1997)
NJ970004 (Feb. 14, 1997)
NJ970005 (Feb. 14, 1997)
NJ970007 (Feb. 14, 1997)
NJ970011 (Feb. 14, 1997)
NJ970013 (Feb. 14, 1997)
NJ970015 (Feb. 14, 1997)

Volume II

None

Volume III

Alabama
AL970007 (Feb. 14, 1997)
AL970008 (Feb. 14, 1997)
AL970052 (Feb. 14, 1997)

Volume IV

Illinois
IL970001 (Feb. 14, 1997)
IL970002 (Feb. 14, 1997)
IL970003 (Feb. 14, 1997)
IL970006 (Feb. 14, 1997)
IL970008 (Feb. 14, 1997)
IL970009 (Feb. 14, 1997)
IL970010 (Feb. 14, 1997)
IL970012 (Feb. 14, 1997)
IL970016 (Feb. 14, 1997)
IL970023 (Feb. 14, 1997)
IL970026 (Feb. 14, 1997)
IL970053 (Feb. 14, 1997)
IL970055 (Feb. 14, 1997)
IL970065 (Feb. 14, 1997)
Indiana
IN970001 (Feb. 14, 1997)
IN970002 (Feb. 14, 1997)
IN970003 (Feb. 14, 1997)
IN970004 (Feb. 14, 1997)
IN970005 (Feb. 14, 1997)
IN970006 (Feb. 14, 1997)
IN970060 (Feb. 14, 1997)
Michigan
MI970007 (Feb. 14, 1997)
Minnesota
MN970007 (Feb. 14, 1997)
MN970008 (Feb. 14, 1997)
MN970015 (Feb. 14, 1997)
MN970027 (Feb. 14, 1997)
MN970031 (Feb. 14, 1997)
MN970035 (Feb. 14, 1997)
MN970039 (Feb. 14, 1997)
MN970061 (Feb. 14, 1997)

Volume V

Arkansas
AR970027 (Feb. 14, 1997)
Louisiana
LA970004 (Feb. 14, 1997)
LA970005 (Feb. 14, 1997)
LA970009 (Feb. 14, 1997)
LA970015 (Feb. 14, 1997)
LA970018 (Feb. 14, 1997)

Volume VI

North Dakota
ND970002 (Feb. 14, 1997)
ND970019 (Feb. 14, 1997)
ND970024 (Feb. 14, 1997)
ND970027 (Feb. 14, 1997)

Volume VII

California
CA970030 (Feb. 14, 1997)
CA970049 (Feb. 14, 1997)
CA970051 (Feb. 14, 1997)
CA970052 (Feb. 14, 1997)
CA970053 (Feb. 14, 1997)
CA970058 (Feb. 14, 1997)
CA970065 (Feb. 14, 1997)
CA970068 (Feb. 14, 1997)
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CA970090 (Feb. 14, 1997)
CA970091 (Feb. 14, 1997)
CA970092 (Feb. 14, 1997)
CA970093 (Feb. 14, 1997)
CA970100 (Feb. 14, 1997)
CA970105 (Feb. 14, 1997)
CA970107 (Feb. 14, 1997)
CA970109 (Feb. 14, 1997)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the county.

The general wage determinations issued udner the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the State covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 21st day of February 1997.

John Frank,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 97–4763 Filed 2–27–97; 8:45 am]

BILLING CODE 4510–27–M

Occupational Safety and Health Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [U.S.C. 3506 (c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Occupational Safety and Health Administration is soliciting comments concerning the proposed extension of the information collection request for the Ethylene Oxide Standard 29 CFR 1910.1047. A copy of the proposed information collection request (ICR) can be obtained by contacting the employee listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before April 29, 1997. The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR–97–4, U.S. Department of Labor, Room N–2625, 200 Constitution Ave. NW., Washington, D.C. 20210, telephone (202) 219–7894.

Written comments limited to 10 pages or fewer may also be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION: Bonnie Friedman, Director, OSHA Office of Information and Public Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3647, 200 Constitution Ave., NW., Washington, DC 20210. Telephone: (202) 219–8148. Copies of the referenced information collection request are available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Vivian Allen at (202) 219–8076. For electronic copies of the Ethylene Oxide Information Collection Request contact OSHA's WebPage on Internet at http://www.osha.gov/.

SUPPLEMENTARY INFORMATION:

I. Background

The Ethylene Oxide Standard and its information collection is designed to provide protection for employees from the adverse health effects associated

with occupational exposure to ethylene oxide.

The Standard requires employers to monitor employee exposure to ethylene oxide (EtO) and provide notification to employees of their exposure to ethylene oxide. If monitoring indicates exposure above the 8-hour time weight average of one part EtO per million parts of air, or in excess of five parts of EtO per million part of air as average over sampling period of 15 minutes, then the employer is required to develop a compliance plan to reduce the exposures above these levels. Employers are required to make available medical exams to employees who are or may be exposed to EtO at or above the action level (.5 parts per million calculated as an eight hour time-weight average), without regard to the use of respirators, for at least 30 days a year. Exposure monitoring and medical records are to be retained for prescribed amounts of time, and under certain circumstances such records may be transferred to the National Institute for Occupational Safety and Health. Employers are also required to communicate the hazards associated with exposure to EtO through signs, labels, material safety data sheets and training.

II. Current Actions

This notice requests an extension of the current OMB approval of the paperwork requirements in the Ethylene Oxide Standard. Extension is necessary to provide continued protection to employees from the health effects asociated with occupational exposure to ethylene oxide.

Type of Review: Extension.

Agency: Occupational Safety and Health Administration.

Title: Ethylene Oxide.

OMB Number: 1218–0108.

Agency Number: Docket Number ICR–97–4.

Affected Public: Business or other for-profit, Federal government and State, Local or Tribal governments.

Total Respondents: 52,546.

Frequency: On occasion.

Total Responses: 166,566.

Average Time per Response: Time per response ranges from five minutes to maintain records to two hours for employee medical exams.

Estimated Total Burden Hours: 50,300.

Estimated Capital, Operation/Maintenance Burden Cost: The total cost for employers to conduct exposure monitoring, to provide medical exams, and when necessary transfer records to the National Institute of Occupational Safety and Health is $1,500,593.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: February 21, 1997.

Adam M. Finkel,

Director, Directorate of Health Standards Programs.

[FR Doc. 97–5003 Filed 2–27–97; 8:45 am]

BILLING CODE 4510–26–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 96–3 CARP SRA]

Adjustment of Rates for the Satellite Carrier Compulsory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Initiation of arbitration.

SUMMARY: The Library of Congress is announcing initiation of the 180-day arbitration period for adjustment of the rates for the satellite carrier compulsory license.

EFFECTIVE DATE: March 3, 1997.

ADDRESSES: All hearings and meetings for the satellite carrier compulsory license rate adjustment shall take place in the James Madison Memorial Building, Room 414, First and Independence Avenue, S.E., Washington, D.C. 20540.

FOR FURTHER INFORMATION CONTACT: William Roberts, Senior Attorney, or Tanya Sandros, Attorney Advisor, P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Telephone (202) 707–8380. Telefax (202) 707–8366.

SUPPLEMENTARY INFORMATION:

Background

Section 251.64 of the CARP rules, 37 C.F.R., provides that, after conclusion of the 45-day precontroversy discovery period and after the Librarian has ruled on all motions and objections filed under section 251.45, the Librarian will declare that a controversy exists regarding the adjustment of the satellite carrier compulsory license rates and announce the initiation of an arbitration proceeding. This notice fulfills the requirement of section 251.64.

By notice dated June 11, 1996, the Library announced the precontroversy discovery period for this docket and requested interested parties to file Notices of Intent to Participate. 61 FR 29573 (June 11, 1996). Subsequently, the Library adjusted the schedule, and informed the participating parties that the 180-day arbitration period would begin on March 3, 1997. Order in Docket No. 96–3 CARP SRA (October 29, 1996). The precontroversy discovery period ended on January 15, 1997, and the Library has ruled upon all motions and objections filed under section 251.45 of the CARP rules.

In accordance with section 251.6 of the CARP rules, the arbitrators have been selected for this proceeding. They are:

The Honorable John W. Cooley
The Honorable Lewis Hall Griffith, Chair
The Honorable Jeffrey S. Gulin

Initiation of Proceeding

Pursuant to section 251.64 of the CARP rules, the Library is formally announcing the existence of a controversy as to the adjustment of the satellite carrier compulsory license royalty rates, 17 U.S.C. 119(c)(3), and is initiating an arbitration proceeding under chapter 8 of title 17 to resolve adjustment of the rates. The arbitration proceeding commences on March 3, 1997, and runs for a period of 180 days; the 180 day period ends on August 29, 1997. During that time, the arbitrators shall file their written report with the Librarian in accordance with section 251.53 of the rules.

Dated: February 25, 1997.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 97–5050 Filed 2–27–97; 8:45 am]

BILLING CODE 1410–33–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 97–023]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

Copies of patent applications cited are available from the Office of Patent Counsel, Marshall Space Flight Center. Claims are deleted from the patent applications to avoid premature disclosure.

DATE: February 28, 1997.

FOR FURTHER INFORMATION CONTACT: Robert L. Broad, Jr., Patent Counsel, Marshall Space Flight Center, Mail Code CC01, Huntsville, AL 35812; telephone (205) 544–0021.

NASA Case No. MFS–30119–1: Enhanced Vacuum Arc Vapor Deposition Electrode (Vapor Directional Device).

Dated: February 21, 1997.

Edward A. Frankle,

General Counsel.

[FR Doc. 97–5005 Filed 2–27–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Thursday, March 6, 1997.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

BOARD BRIEFING:

1. Insurance Fund Report.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Requests from Federal Credit Unions to Convert to a Community Charter.
3. Charter Application from the Proposed First Combined Community Federal Credit Union.
4. Request from a Corporate Federal Credit Union for a Field of Membership amendment.
5. Final Rule: Part 704, NCUA's Rules and Regulations, Corporate Credit Unions.
6. Proposed Rule: Request for Comments on Federal Credit Union Bylaws.
7. Advance Notice of Proposed Rulemaking: Request for Comments on Interpretive Rulings and Policy Statements (IRPS).
8. Proposed Rule: Amendments to Section 701.26(b), 701.27, and 740.3(c), and addition of Part 712, NCUA's Rules and Regulations, Credit Union Service Contracts, Credit Union Service Organizations, and Advertising.

RECESS: 11:15 a.m.

TIME AND DATE: 11:30 a.m., Thursday, March 6, 1997.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Administrative Actions under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (5), (7), (8), (9)(A)(ii), and (9)(B).
3. Personal Action(s). Closed pursuant to exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 97–5194 Filed 2–26–97; 2:35 pm]

BILLING CODE 7535–01–M

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts

President's Committee on the Arts and the Humanities: Meeting XXXVII and Press Conference With Honorary Chair, Hillary Rodham Clinton

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the President's Committee on the Arts and the Humanities will be held on February 25, 1997 from 1:30 a.m. to 4:00 p.m. This meeting will convene in conjunction with a press conference at which the Honorary Chair of the President's Committee, Hillary Rodham Clinton, will release Creative America, the report to the President on the state of support for arts and culture in the United States. The press conference will take place before the meeting. Both will be held at the Library of Congress, at the Northwest Curtain and Pavilion in the Jefferson Building, 10 First Street, SE, Washington, DC. The President's Committee Meeting will be open to the public and begin at 1:30 with a statement by the Chairman regarding the Committee's objectives for 1997.

The President's Committee on the Arts and the Humanities was created by Executive Order in 1982 to advise the President, the two Endowments, and the IMS on measures to encourage private sector support for the nation's cultural institutions and to promote public understanding of the arts and the humanities.

If, in the course of discussion, it becomes necessary for the Committee to discuss non-public commercial or financial information of intrinsic value, the Committee will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b.

Any interested persons may attend as observers, on a space available basis, but seating is limited in meeting rooms and staff of the Library of Congress will need to know who will be attending.

Therefore, for this meeting, individuals wishing to attend are required to notify the staff of the President's Committee in advance at (202) 682–5409 or write to the Committee at 1100 Pennsylvania Avenue, NW, Suite 526, Washington, DC 20506.

Dated: February 24, 1997.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 97–4980 Filed 2–27–97; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL INSTITUTE FOR LITERACY

Proposed Agency Information Collection Activities; Comment Request

AGENCY: National Institute for Literacy.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et.Seq.), this notice announces an information Collection Request (ICR) by the NIFL. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before April 29, 1997.

ADDRESSES: Submit written comments to: National Institute for Literacy, 800 Connecticut Avenue, NW, Suite 200, Washington, DC 20006, Attention: Susan Green. Copies of the complete ICR and accompanying appendixes may be obtained from the above address or by contacting Susan Green at (202) 632–1509. Comments may also be submitted electronically by sending electronic mail (e-mail) to: Sgreen@nifl.gov.

All written comments will be available for public inspection at from 8:00 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

SUPPLEMENTARY INFORMATION:

Title

"Learning Disabilities Training and Dissemination Project." Application for Award to States or other entities to develop and implement methods for incorporating the products of the National Adult Literacy and Learning Disabilities (ALLD) Center into existing literacy service delivery systems for the purpose of improving services to adults with learning disabilities.

Abstract

The National Literacy Act of 1991 established the National Institute for Literacy and required that the Institute conduct basic and applied research and

demonstration on literacy; collect and disseminate information to Federal, State and local entities with respect to literacy; and improve and expand the system for delivery of literacy services. In 1993, the NIFL funded the National ALLD Center to enhance awareness about the implications of learning disabilities for literacy efforts, and to develop tools and resources to assist literacy providers better identify and serve adults with learning disabilities. The NIFL will consider applications from states and other entities to develop and implement methods for incorporating the products and services of the National ALLD Center into existing literacy service delivery systems for the purpose of improving services to adults with learning disabilities. Evaluations to determine successful applicants will be made by a panel of literacy experts using the published criteria. The Institute will use this information to make a minimum of one cooperative agreement award for a period of up to 2 years.

Burden Statement: The burden for this collection of information is estimated at 40 hours per response. This estimate includes the time needed to review instructions, complete the form, and review the collection of information.

Respondents: Governors of States and Trust Territories, State Departments of Adult Education, other public and non-profit entities.

Estimated Number of Respondents: 20.

Estimated Number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 152 hours.

Frequency of Collection: One time. Send comments regarding the burden estimate or any other aspect of the information collection, including suggestions for reducing the burden to: Susan Green, National Institute for Literacy, 800 Connecticut Ave., NW, Suite 200, Washington, DC 20006.

Request for Comments: NIFL solicits comments to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility. (ii) Evaluate the accuracy of the agency's estimates of the burden of the proposed collection of information. (iii) Enhance the quality, utility, and clarity of the information to be collected. (iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies of other forms of information technology, e.g., permitting electronic submission of responses.

Dated: February 25, 1997.

Andrew J. Hartman,

Director, NIFL.

[FR Doc. 97–5021 Filed 2–27–97; 8:45 am]

BILLING CODE 6055–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting; Corporate Culture and Transportation: A Symposium

A symposium on the effect that corporate management philosophies and practices have on transportation safety will be conducted by the National Transportation Safety Board. The symposium will be held on April 24 and 25, 1997, at the Hyatt Regency Hotel in Crystal City, Virginia. For more information, contact Julie Beal at (202) 314–6000 or fax (202) 314–6293.

February 25, 1997.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 97–5088 Filed 2–25–97; 4:27 pm]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–302]

Florida Power Corporation; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–72 issued to Florida Power Corporation, et al. (the licensee) for operation of the Crystal River Nuclear Generating Plant, Unit No. 3, located in Citrus County, Florida.

The proposed amendment would change the Crystal River Unit 3 Technical Specifications (TS) to implement 10 CFR 50, Appendix J, "Primary Reactor Containment Leakage Testing for Water-Cooled Reactors," Option B. This option allows to change from prescriptive testing requirements to performance-based testing requirements based on the leakage rate testing history of the containment and components. The proposed TS changes include revision to TS 3.6.1, 3.6.3, and addition of "Containment Leakage Rate Testing Program" to TS 5.0. The licensee did not propose any deviations from methods approved by the Commission and endorsed in the applicable regulatory guide.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The TS amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to the TS are to implement Option B of 10 CFR 50, Appendix J, at CR–3. The proposed changes will result in increased intervals between containment leakage tests based on the leakage rate testing history. The proposed changes do not involve a change to the plant design or operation and does not change the testing methodology.

NUREG–1493, "Performance-Based Containment Leak-Test Program," provides the technical basis of 10 CFR 50, Appendix J, Option B. NUREG–1493 contains a detailed evaluation of the expected leakage from containment and the associated consequences. The increased risk due to increasing the intervals between containment leakage tests was also evaluated. The NUREG used a statistical approach to determine that the increase in the expected dose to the public due to decreasing the testing frequency is extremely low. NUREG–1493 also concluded that a small increase is justifiable in comparison to the benefits from decreasing the testing frequency. The primary benefit is in the reduction in occupational radiation exposure.

(2) Does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The TS amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS amendment incorporates the performance-based testing approach authorized by 10 CFR 50 Appendix, J, Option B. Decreasing the testing frequency allowed by this change does not involve a change to plant design or operation. Safety related equipment and safety functions are not altered as a result of this change. Decreasing the testing frequency does not affect testing methodology. As a result, the proposed change does not affect any of the parameters or conditions that could contribute to the initiation of any accidents.

(3) Does not involve a significant reduction in the margin of safety.

This TS amendment does not involve a significant reduction in the margin of safety.

The proposed TS amendment does not change the methodology of the containment leakage rate testing program or program acceptance criteria. The proposed TS change does affect the frequency of containment leakage rate testing. With an increased interval between tests, a small possibility exists that an increase in leakage could go undetected for a longer period of time. Based on the operational experience at CR–3, it has been demonstrated that the leak-tightness of the containment building has consistently been significantly below the allowable leakage limit. Adequate controls are in place to ensure that required maintenance and modifications are performed.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 31, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a

hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Frederick J. Hebdon: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to A. H. Stephens, General Counsel, Florida Power Corporation, MAC–A5D, P.O. Box 14042, St. Petersburg, Florida 33733, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 17, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629.

Dated at Rockville, Maryland, this 24th day of February 1997.

For the Nuclear Regulatory Commission.

L. Raghavan,

Project Manager, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–4997 Filed 2–27–97; 8:45 am]

BILLING CODE 7590–01–P

[IA 97–011]

In the Matter of Krishna Kumar; Order Prohibiting Involvement in NRC-Licensed Activities; (Effective Immediately)

I

Krishna Kumar (Mr. Kumar) was President of Power Inspection, Inc. (PI or Licensee). PI is the holder of Byproduct License No. 37–21428–01 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 34. The License authorizes the Licensee to use iridium-192 and cobalt-60 sealed sources for the performance of industrial radiography at its facility in Wexford, Pennsylvania, as well as at temporary job sites. The License was most recently renewed on January 31, 1989, and expired on January 31, 1994. In addition, the Licensee submitted a request, dated December 30, 1993, that the license be terminated. Action on that request has been held in abeyance pending further NRC review.

In addition, PI acted as a vendor supplying services to nuclear power plants, including the performance of nondestructive testing services, such as eddy current testing. Such services were provided to the Perry and Cooper nuclear power plants in 1993.

II

On December 2 and 3, 1993, the NRC performed an inspection at the Licensee's Wexford facility of activities conducted under the License. During the inspection, the NRC found numerous violations of NRC requirements. The violations included: the failure of the Radiation Safety Officer (RSO) named on the License to perform required duties; the failure to conduct quarterly audits of all radiographers; the failure to provide the required annual refresher training to the radiographers; the failure to perform, at the required frequency, the required inspection and maintenance on the exposure device (camera) containing an iridium-192 source; the failure to perform leak tests of the sealed sources at the required frequency; the failure to promptly collect and submit film badges for processing; and the failure to maintain radiography utilization logs.

Furthermore, the NRC found during the December 1993 inspection that the utilization logs for the iridium-192 source, covering the period of July through November 1993, as well as the utilization logs for the cobalt-60 source, covering the period of July through October 1993, were also unavailable for inspection at the time of the NRC inspection on December 2, 1993.

On December 2, 1993, an NRC investigation was also initiated by the NRC Office of Investigations (OI). During its investigation, OI concluded that:

a. With respect to the vendor-related activities: (1) False Eddy Current Testing (ET) qualification certifications were deliberately generated by PI for at least three employees who performed ET examinations at Perry and Cooper nuclear power plants during 1993 and false ET qualification certification examination results and Personnel Certification Summaries were deliberately generated for four employees, and these falsifications were condoned or directed by the former President (i.e., Mr. Kumar), the former Vice President/RSO, and the former Quality Assurance Manager; and (2) three PI employees tested positive for illegal drug use prior to working at Perry and Cooper in 1993, and the former President of PI was aware of this and did not notify Perry and Cooper.

b. With respect to the materials License: (1) A minimum of 38 source utilization logs (for radiography performed) were falsely created by PI employees to satisfy questions asked during an April 1993 NRC inspection regarding the lack of utilization logs, and this activity was undertaken at the direction of the former President of PI; (2) the former President of PI knowingly failed to notify the NRC of a change of radiation safety officer in approximately August 1993; and (3) responses in PI's letter, dated July 14, 1993, to the NRC, were deliberately incomplete and inaccurate, and the former President and individual identified on PI's NRC license as the RSO were responsible for knowingly providing this false information to the NRC.

The inaccurate information provided to the NRC in the letter dated July 14, 1993, was in response to a previous Notice of Violation issued to the Licensee on June 16, 1993, for numerous violations identified during an inspection conducted in April 1993. One of the violations identified during the April 1993 inspection involved the failure to maintain personnel monitoring records for the radiographers at the facility. In the July response, signed by the former RSO (i.e., the individual identified on PI's NRC license as the RSO), the Licensee stated that records of such personnel monitoring had been misplaced at the time of the April inspection. In fact, the NRC learned, during the December 2 and 3, 1993 inspection, that Mr. Kumar knew that those records alluded to in the licensee's July 1993 response did not even exist at the time of the April inspection, since the film badges had not been processed until after the April inspection was completed.

III

Based on the above, Mr. Kumar, former President of PI, a contractor to licensees of the NRC, engaged in deliberate misconduct, a violation of 10 CFR 30.10(a)(2), by deliberately submitting in March and in October 1993 to the Cleveland Electric Illuminating Company (CEIC) and Nebraska Public Power District (NPPD), both licensees of the NRC, ET qualification certification examination results and Personnel Certification Summaries which were inaccurate. Mr. Kumar also violated 10 CFR 30.10(a)(2) by submitting on March 5, 1993, and on October 6, 1993, to each NPPD and CEIC, respectively, three inaccurate letters stating that the trustworthiness and reliability of two individuals had been established by an investigation, when Mr. Kumar knew that the individuals had used illegal substances.

In addition, Mr. Kumar, an employee of PI, a licensee of the NRC, engaged in deliberate misconduct, a violation of 10 CFR 30.10(a)(1), which caused PI to be in violation of 10 CFR 30.9(a) and 10 CFR 34.27. Specifically:

a. As a result of Mr. Kumar's direction to fabricate source utilization logs, PI violated 10 CFR 30.9(a) and 10 CFR 34.27 by maintaining a minimum of 38 inaccurate logs for radiography performed by PI; and

b. As a result of Mr. Kumar's direction, PI violated 10 CFR 30.9(a) by providing to the NRC a letter dated July 14, 1993, which contained inaccurate information relating to whether corrective actions had been taken in response to violations listed in an NRC Notice of Violation dated June 16, 1993.

The NRC must be able to rely on its licensees and their employees to comply with NRC requirements, including the requirement to provide information and maintain records that are complete and accurate in all material respects. Mr. Kumar's actions in deliberately violating NRC requirements and in causing the Licensee to be in violation of NRC requirements have raised serious doubt as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to both the NRC and NRC licensees. Moreover, given Mr. Kumar's indictment on April 28, 1988,[1] there is a pattern of record falsification which raises further doubt about Mr. Kumar's integrity and whether he can be relied upon to comply with NRC requirements.

Consequently, I lack the requisite reasonable assurance that information provided to the NRC by Mr. Kumar, or records required to be maintained by the Licensee, will be complete and accurate in all material respects if Mr. Kumar were permitted to be involved in any NRC-licensed activities. I also lack the requisite assurance that NRC-licensed activities will be conducted safely or in accordance with NRC requirements or that the health and safety of the public will be protected if Mr. Kumar were involved in NRC-licensed activities. In addition, I find that Mr. Kumar is either unable or unwilling to assure that NRC requirements are being and will be followed.

Therefore, I find that the public health, safety, and interest require that Mr. Kumar be prohibited from involvement in NRC-licensed activities for ten years from the date of this Order, and if he is currently engaged in NRC-licensed activities with another NRC licensee, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer. In addition, for a period of five years commencing after the ten-year period of prohibition, Mr. Kumar must notify the NRC of his employment or involvement in NRC-licensed activities to ensure that the NRC can monitor the status of Mr. Kumar's compliance with the Commission's requirements and his understanding of his commitment to compliance. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the misconduct described above is such that the public health, safety, and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 57, 62, 81, 103, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 30.10, 50.5, and 150.20, *It is hereby ordered, effective immediately, that:*

A. Mr. Krishna Kumar is prohibited for ten years from the date of this Order from any involvement in NRC-licensed activities. For purposes of this Order, licensed activities include the licensed activities of: (1) an NRC licensee; (2) an Agreement State licensee conducting licensed activities in NRC jurisdiction pursuant to 10 CFR 150.20; and (3) an Agreement State licensee involved in the distribution of products that are subject to NRC jurisdiction. In addition, if Mr. Kumar is currently engaged in NRC-licensed activities with another NRC licensee, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer.

B. For a period of five years, after the above ten-year period of prohibition has expired, Mr. Kumar shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.A above, provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first such notification, Mr. Kumar shall include a statement of his commitment to compliance with regulatory requirements and the basis as to why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement (OE), may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Kumar of good cause.

V

In accordance with 10 CFR 2.202, Mr. Kumar must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, D. C. 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this

[1] Mr. Kumar and PI were indicted by the United States Attorney in the Western District of Pennsylvania for fraud and false statements in connection with testing that was to be performed at the Duquesne Light Company, a licensee of the NRC. In this case, Mr. Kumar admitted that he directed falsification of eddy current test equipment calibration certifications to save PI time and money, and subsequently provided the false certificates to Duquesne Light Company.

Order, and shall set forth the matters of fact and law on which Mr. Kumar or other person adversely affected relies, and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to Mr. Kumar if the answer or hearing request is by a person other than Mr. Kumar. If a person other than Mr. Kumar requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Kumar or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Kumar or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

Dated at Rockville, Maryland this 18th day of February 1997.

For the Nuclear Regulatory Commission.

Edward L. Jordan,

Deputy Executive Director for Regulatory Effectiveness, Program Oversight, Investigations and Enforcement.

[FR Doc. 97–4999 Filed 2–27–97; 8:45 am]

BILLING CODE 7590–01–P

[IA–97–012]

In the Matter of James L. Mulkey; Order Prohibiting Involvement in NRC-Licensed Activities; (Effective Immediately)

I

James L. Mulkey (Mr. Mulkey) was employed as Vice President by Power Inspection, Inc. (PI or Licensee), and was identified on PI's NRC license as the Radiation Safety Officer (RSO) for PI. PI is the holder of Byproduct License No. 37–21428–01 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 34. The License authorizes the Licensee to use iridium-192 and cobalt-60 sealed sources for the performance of industrial radiography at its facility in Wexford, Pennsylvania, as well as at temporary job sites. The License was most recently renewed on January 31, 1989, and expired on January 31, 1994. In addition, the Licensee submitted a request, dated December 30, 1993, that the license be terminated. Action on that request has been held in abeyance pending further NRC review.

In addition, PI acted as a vendor supplying services to licensees of nuclear power plants, including the performance of nondestructive testing services, such as eddy current testing (ET). Such services were provided to the licensees of Perry and Cooper nuclear power plants in 1993.

II

On December 2 and 3, 1993, the NRC performed an inspection at the Licensee's Wexford facility of activities conducted under the License. During that inspection, the NRC found numerous violations of NRC requirements. The violations included: the failure of the RSO named on the License to perform required duties; the failure to conduct quarterly audits of all radiographers; the failure to provide the required annual refresher training to the radiographers; the failure to perform, at the required frequency, the required inspection and maintenance on the exposure device (camera) containing an iridium-192 source; the failure to perform leak tests of the sealed sources at the required frequency; the failure to promptly collect and submit film badges for processing; and the failure to maintain radiography utilization logs.

On December 2, 1993, an NRC investigation was also initiated by the NRC Office of Investigations (OI). During its investigation, OI concluded that:

a. With respect to the materials license, responses in PI's response letter dated July 14, 1993, to the NRC were deliberately incomplete and inaccurate, and the President and former RSO were responsible for providing this false information to the NRC. Specifically, the inaccurate information provided to the NRC was in response to a previous Notice of Violation issued to the Licensee on June 16, 1993, for numerous violations identified during an NRC inspection conducted in April 1993.

In a response, signed by Mr. Mulkey, to the violations listed in the June 16, 1993 Notice of Violation, the licensee stated that: (1) observations of the licensee's radiographers had been made when, in fact, the observations had not been made; (2) a ratemeter had been sent for calibration, when, in fact, the ratemeter had not been sent; (3) pocket dosimeters had been calibrated, when, in fact, the dosimeters had not been calibrated; (4) source utilization logs had been maintained, when, in fact, the logs had not been maintained; (5) personnel monitoring reports were available, when, in fact, the reports had not been available.

b. With respect to the vendor-related activities, false ET qualification certifications were deliberately generated by PI for at least three employees who performed ET examinations at Perry and Cooper nuclear power plants during 1993 and ET qualification certification examination results and Personnel Certification Summaries were generated for four employees, and these falsifications were condoned or directed by the former President, former Vice President/RSO (i.e., Mr. Mulkey), and the former Quality Assurance Manager.

In addition, Mr. Mulkey deliberately provided false information to the NRC during a December 2, 1993 telephone discussion with a representative of the NRC in that Mr. Mulkey stated he was the RSO, and that in September of 1993 he had visited the Wexford office and executed the duties of an RSO. These statements were false in that: (1) Interviews with PI employees established that Mr. Mulkey had not visited the Wexford office during 1993, and they were not aware of Mr. Mulkey performing any audits related to radiographic operations out of the Wexford office; and (2) Mr. Mulkey

indicated during the predecisional enforcement conference on October 2, 1996, that he left the position of RSO for the Wexford facility at the end of 1992 to work in Florida. However, during the conference, Mr. Mulkey also indicated that at the time he responded to the NRC in the July 14, 1993 letter, he was the RSO and was responsible for compliance with the license.

III

Based on the above, Mr. Mulkey, former Vice President and RSO of PI, a licensee of the NRC, engaged in deliberate misconduct, a violation of 10 CFR 30.10(a)(1), which caused PI to be in violation of 10 CFR 30.9(a). Specifically, as a result of Mr. Mulkey's actions, PI violated 10 CFR 30.9(a) by providing to the NRC a letter dated July 14, 1993, which contained inaccurate information relating to whether corrective actions had been taken in response to violations listed in an NRC Notice of Violation dated June 16, 1993. Mr. Mulkey also engaged in deliberate misconduct, a violation of 10 CFR 30.10(a)(2) by deliberately providing false information to the NRC during the December 2, 1993 telephone discussion with a representative of the NRC. Specifically, Mr. Mulkey stated he was the RSO, and that in September of 1993 he had visited the Wexford office and executed the duties of an RSO.

Moreover, Mr. Mulkey, an employee of PI, a contractor to licensees of the NRC, engaged in deliberate misconduct, a violation of 10 CFR 30.10(a)(2), by deliberately submitting in March and in October 1993 to the Cleveland Electric Illuminating Company (CEIC) and Nebraska Public Power District (NPPD), both licensees of the NRC, ET qualification certification examination results and Personnel Certification Summaries which were inaccurate.

The NRC must be able to rely on its licensees and their employees to comply with NRC requirements, including the requirement to provide information and maintain records that are complete and accurate in all material respects. Mr. Mulkey's actions in causing the Licensee to be in violation of NRC requirements and in deliberately violating NRC requirements have raised serious doubt as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to both the NRC and NRC licensees.

Consequently, I lack the requisite reasonable assurance that information provided to the NRC by Mr. Mulkey, or records required to be maintained by the Licensee, will be complete and accurate in all material respects if Mr. Mulkey were permitted to be involved in any NRC-licensed activities. I also lack the requisite assurance that NRC-licensed activities will be conducted safely or in accordance with NRC requirements or that the health and safety of the public will be protected if Mr. Mulkey were involved in NRC-licensed activities. In addition, I find that Mr. Mulkey is either unable or unwilling to assure that NRC requirements are being and will be followed.

Therefore, I find that the public health, safety, and interest require that Mr. Mulkey be prohibited from involvement in NRC-licensed activities for five years from the date of this Order, and if he is currently engaged in NRC-licensed activities with another NRC licensee, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the misconduct described above is such that the public health, safety, and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 57, 62, 81, 103, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 30.10, 50.5, and 150.20, *It is hereby ordered, effective immediately, that:*

A. Mr. James L. Mulkey is prohibited for five years from the date of this Order from any involvement in NRC-licensed activities. For purposes of this Order, licensed activities include the licensed activities of: (1) an NRC licensee; (2) an Agreement State licensee conducting licensed activities in NRC jurisdiction pursuant to 10 CFR 150.20; and (3) an Agreement State licensee involved in the distribution of products that are subject to NRC jurisdiction. In addition, if Mr. Mulkey is currently engaged in NRC-licensed activities with another NRC licensee, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer.

B. The first time that Mr. Mulkey engages in an NRC-licensed activity following the five year prohibition, he shall notify the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, at least five days prior to the performance of the licensed activity or his being employed to perform NRC-licensed activities (as described in A. above). The notice shall include the name, address, and telephone number of the employer or the entity where he will be involved in the NRC-licensed activity. In the notification, Mr. Mulkey shall include a statement of his commitment to compliance with regulatory requirements and the basis as to why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement (OE), may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Mulkey of good cause.

V

In accordance with 10 CFR 2.202, Mr. Mulkey must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order, and shall set forth the matters of fact and law on which Mr. Mulkey or other person adversely affected relies, and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to Mr. Mulkey if the answer or hearing request is by a person other than Mr. Mulkey. If a person other than Mr. Mulkey requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Mulkey or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Mulkey or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence, but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

Dated at Rockville, Maryland this 18th day of February 1997.

For the Nuclear Regulatory Commission.

Edward L. Jordan,

Deputy Executive Director for Regulatory Effectiveness, Program Oversight, Investigations and Enforcement.

[FR Doc. 97–4998 Filed 2–27–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–397; License No. NPF–21 EA 96–327]

In the Matter of Washington Public Power Supply System Washington Nuclear Project-2; Order Imposing Civil Monetary Penalty

I

Washington Public Power Supply System (Supply System or Licensee) is the holder of reactor operating license NPF–21 issued by the Nuclear Regulatory Commission (NRC or Commission) on April 13, 1984. The license authorizes the Licensee to operate Washington Nuclear Project 2 (WNP–2) in accordance with the conditions specified therein.

II

An inspection of the Licensee's activities was conducted June 28 through September 4, 1996. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated November 26, 1996. The Notice described the violations, including the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations.

The Licensee responded to the Notice in a letter dated December 23, 1996. In its response, the Licensee admitted that the violations had occurred but requested reconsideration of the proposed civil penalty, citing the following reasons: (1) A penalty of $50,000 would be more consistent with the purposes of the NRC's enforcement policy; (2) there was no systemic breakdown in operational activities at WNP–2; (3) additional credit should be given for corrective actions; and (4) the enforcement action placed too much emphasis on a previous surveillance-related violation.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the Licensee has not provided a basis for mitigation of the civil penalty and that the penalty proposed for the violations in the Notice should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, It is hereby ordered that:

The Licensee pay a civil penalty in the amount of $100,000 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738.

V

The Licensee may request a hearing within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, DC 20555, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, DC 20555, with a copy to the Commission's Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, TX 76055.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order (or if written approval of an extension of time in which to request a hearing has not been granted), the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

Whether, on the basis of the violations admitted by the Licensee, this Order should be sustained.

Dated at Rockville, Maryland this 14th day of February 1997.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

Appendix—Evaluation and Conclusion

On November 26, 1996 a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during an NRC inspection. The Washington Public Power Supply System (Supply System or Licensee) responded to the Notice on December 23, 1996. The Supply System admitted the violations but requested reconsideration of the amount of the civil penalty. A summary of the Licensee's reasons for a reduction in the amount of the civil penalty and the NRC's evaluation of those reasons follow:

Summary of Licensee's Request for Reconsideration and NRC Evaluation

1. The Supply System stated that, given the NRC's recognition of the Supply System's identification of most of the violations and its prompt and comprehensive corrective actions, a more appropriate regulatory message would be a penalty at the base amount of $50,000. The Supply System cited the intent of the NRC's Enforcement Policy (General Statement of Policy and Procedures for NRC Enforcement Actions, NUREG–1600) to encourage prompt identification and prompt, comprehensive correction of violations.

NRC Response: The NRC recognized that the Supply System identified most of the violations and that its corrective actions were prompt and comprehensive. In fact, as the Supply System noted in its response, the NRC characterized this as a sign of improved performance. Had the NRC considered no additional information, no civil penalty would have been assessed for these violations, in accordance with the civil penalty assessment process described in VI.B.2 of the Enforcement Policy. However, the NRC utilized its enforcement discretion, as described in Section VII.A.1 of the Enforcement Policy, to assess a civil penalty in the amount of $100,000. This section of the policy permits the NRC to assess a penalty where none might otherwise be proposed, or to increase the amount of a civil penalty, to reflect the safety or regulatory significance of the violations. In this case, the NRC utilized its discretion to propose a $100,000 civil penalty for two primary reasons. First, the Supply System had been cited in August 1995, for violations in the Supply System's surveillance requirements program as part of an escalated enforcement action (EA 95–096). The number of similar violations that occurred over a relatively short period of time in 1996 demonstrated serious weaknesses in the Supply System's surveillance requirements program and showed that the Supply System's 1995 corrective actions had not gone far enough to address these weaknesses. Secondly, the NRC utilized discretion to emphasize the fundamental importance of the surveillance program and to express its concern that, at this stage in the operation of this facility, weaknesses would exist as serious as those evidenced by the numerous violations forming the basis of this enforcement action. The NRC determined that a civil penalty larger than the $50,000 civil penalty assessed in 1995 was warranted in these circumstances and proposed a $100,000 civil penalty for this matter.

2. The Supply System stated that there was no systemic breakdown in operational activities.

NRC Response: The NRC accepts this statement, but it has little relevance to the current enforcement action. The NRC based its action on the serious weaknesses in the surveillance program at WNP–2, as evidenced by several surveillance-related violations occurring over a relatively short period of time, and the ineffectiveness of previous corrective actions to preclude recurrence. These violations were considered collectively as a Severity Level III problem in accordance with Supplement I of the Enforcement Policy. The Supply System's assertion that these violations did not represent a "systemic breakdown" in operational activities does not affect the NRC's perspective or the enforcement action. There was clearly a programmatic issue.

3. The Supply System stated that additional credit should be given for its prompt and comprehensive corrective actions.

NRC Response: As stated above, the NRC recognized that the Supply System took prompt and comprehensive corrective actions. The penalty was not based on any perceived shortcomings in the Supply System's corrective actions for the current (1996) violations. The NRC's concern about corrective actions was based on the aforementioned 1995 enforcement action (EA 95–096), in which surveillance-related violations made up part of a Severity Level III problem that resulted in a $50,000 civil penalty being assessed. In EA 95–096, issued on August 17, 1995, nine violations were considered in the aggregate as a Severity Level III problem. Violations E(1), E(2) and F of EA 95–096 involved changing operational conditions (modes) with equipment inoperable, a violation of the Technical Specifications. In the current enforcement action, the violations involved changing modes with equipment inoperable and changing modes without having conducted required surveillances. All of these violations involved the programs and processes in place to assure that equipment was operable and that required surveillances had been conducted prior to changing modes. In taking its action in 1995, the NRC specifically stated that it had limited the civil penalty to $50,000 "in recognition of the fact that you have proposed comprehensive corrective actions." Since those actions were not effective with respect to surveillance-related problems that form the basis for this enforcement action, as well as to emphasize the fundamental importance of surveillance program compliance, the NRC proposed a civil penalty ($100,000) that was larger than the civil penalty proposed for EA 95–096 ($50,000). The NRC notes that the Supply System's corrective actions for the 1995 enforcement action did not extend to its processes for assuring compliance with surveillance requirements and that, as of the occurrence of the violations in 1996, no checklist or other verification method existed to ensure that surveillances had been completed prior to changing modes, a commonly used method of verifying compliance.

4. The Supply System stated in its response that the enforcement action placed too much emphasis on the prior surveillance-related violation, noting that only one current violation was similar to a previous violation only in that it involved errors in LCO tracking prior to plant mode changes.

NRC Response: The NRC does not agree that the similarities between the 1995 and 1996 enforcement actions are limited to one example. As noted above, Violations E(1), E(2) and F in the 1995 enforcement action involved making mode changes with required equipment inoperable. In the current enforcement action, Violations A, B (with 3 examples) and C involved changing modes without having conducted required surveillances to show equipment operable. The NRC placed emphasis on this similarity, and in fact relied upon it as one of the primary reasons for utilizing enforcement discretion, to emphasize that escalated enforcement action had been taken in August 1995, less than one year prior to the current violations occurring. The NRC's expectation is that licensees who receive escalated enforcement action will take corrective action that is broad and comprehensive such that a recurrence of the violations is precluded or minimized. In this case, it was apparent that the Supply System's previous corrective actions did not address weaknesses in WNP–2's programs for assuring that surveillances were conducted and that equipment was operable prior to changing plant modes. Thus, the NRC does not agree that too much emphasis was placed on the similarities between the 1995 and 1996 enforcement actions. In addition, as discussed in response to other arguments above, the NRC exercised discretion to emphasize its concern about serious weaknesses in such a fundamental aspect of complying with plant Technical Specifications.

NRC Conclusion

The NRC concludes that its use of enforcement discretion to propose a $100,000 civil penalty was appropriate and in accordance with the Enforcement Policy's emphasis in Section VII.A.1 of assuring that the enforcement action reflects the significance of the circumstances and conveys the appropriate regulatory message. Consequently, the proposed civil penalty in the amount of $100,000 should be imposed by order.

[FR Doc. 97–5000 Filed 2–27–97; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Discount Rates for Cost-Effectiveness Analysis of Federal Programs

AGENCY: Office of Management and Budget.

ACTION: Revisions to Appendix C of OMB Circular A–94.

SUMMARY: The Office of Management and Budget revised Circular A–94 in 1992. The revised Circular specified certain discount rates to be updated annually when the interest rate and inflation assumptions used to prepare the budget of the United States Government were changed. These discount rates are found in Appendix C of the revised Circular. The updated discount rates are shown below. The discount rates in Appendix C are to be used for cost-effectiveness analysis, including lease-purchase analysis, as specified in the revised Circular. They do not apply to regulatory analysis.

DATES: The revised discount rates are effective immediately and will be in effect through February 1998.

FOR FURTHER INFORMATION CONTACT: Robert B. Anderson, Office of Economic Policy, Office of Management and Budget, (202) 395–3381.

Joseph J. Minarik,

Associate Director for Economic Policy, Office of Management and Budget.

Appendix C

(Revised February 1997)

Discount Rates for Cost-Effectiveness, Lease Purchase, and Related Analyses

Effective Dates. This appendix is updated annually around the time of the

President's budget submission to Congress. This version of the appendix is valid through the end of February, 1998. Copies of the updated appendix and the Circular can be obtained from the OMB Publications Office (202–395–7332) or in an electronic form through the OMB home page on the world-wide WEB, http://www.whitehouse.gov/WH/EOP/omb. Updates of this appendix are also available upon request from OMB's Office of Economic Policy (202–395–3381), as is a table of past years' rates.

Nominal Discount Rates. Nominal interest rates based on the economic assumptions from the budget are presented below. These nominal rates are to be used for discounting nominal flows, which are often encountered in lease-purchase analysis.

NOMINAL INTEREST RATES ON TREASURY NOTES AND BONDS OF SPECIFIED MATURITIES

[In percent]

3-year	5-year	7-year	10-year	30-year
5.8	5.9	6.0	6.1	6.3

Real Discount Rates. Real interest rates based on the economic assumptions from the budget are presented below. These real rates are to be used for discounting real (constant-dollar) flows, as is often required in cost-effectiveness analysis.

REAL INTEREST RATES ON TREASURY NOTES AND BONDS OF SPECIFIED MATURITIES

[In percent]

3-year	5-year	7-year	10-year	30-year
3.2	3.3	3.4	3.5	3.6

Analyses of programs with terms different from those presented above may use a linear interpolation. For example, a four-year project can be evaluated with a rate equal to the average of the three-year and five-year rates. Programs with durations longer than 30 years may use the 30-year interest rate.

[FR Doc. 97–4992 Filed 2–27–97; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38329; International Series Release No. 1059; File No. 600–29]

Self-Regulatory Organizations; Cedel Bank, Notice of Filing To Amend Order Exempting Cedel Bank From Registration as a Clearing Agency

February 24, 1997.

Introduction

On August 31, 1995, Cedel Bank, société anonyme, Luxembourg ("Cedel")[1] filed with the Securities and Exchange Commission ("Commission") an application on Form CA–2[2] for exemption from registration as a clearing agency pursuant to Section 17A of the Securities Exchange Act of 1934 ("Exchange Act")[3] and Rule 17Ab2–1 thereunder.[4] Notice of Cedel's application was published in the **Federal Register** on June 19, 1996.[5] On February 24, 1997, the Commission granted Cedel's application for exemption from registration as a clearing agency to permit Cedel to offer clearance, settlement, and credit support services to U.S. entities for transactions in eligible U.S. government securities.[6] The exemption is subject to certain conditions and limitations which are set forth in the Cedel exemption order.

Contemporaneously with the granting of Cedel's limited exemption from registration as a clearing agency, the Commission is publishing this notice to solicit comments from interested persons on the specific issue of whether Cedel should be permitted, without registering as a clearing agency, to offer its securities processing and collateral management services to U.S. entities for U.S. debt and equity securities in addition to U.S. government securities. The Commission seeks comment on this issue because the Commission believes that the provision of clearance, settlement, and collateral management services by a non-U.S. clearing agency for U.S. entities in U.S. debt and equity securities raises issues that were not addressed sufficiently in the Cedel notice or the comments thereto.

II. Description of the Proposal

As more fully described in the Cedel notice and the Cedel exemption order, Cedel offers to its customers international clearance and settlement, trade confirmation, securities custody, and securities lending services.[7] Cedel also offers to its customers its Global Credit Support Service ("GCSS") which is a book-entry, real-time collateral management service for cross-border securities collateralization.[8] In its application for exemption, Cedel requested that it be permitted to provide clearance and settlement, securities lending, and GCSS services for transactions involving U.S. securities, including equity and debt securities.

The comment letters regarding the Cedel notice generally indicated that the ability to provide clearance, settlement, and collateral management services for transactions involving U.S. Treasury securities ("U.S. Treasuries") appeared to be the most critical element of Cedel's proposed services. This is especially true for GCSS because U.S. Treasuries appear to be the preferred securities for use as collateral in securing international credit obligations. Commenters did not specifically discuss any unique or additional benefits to be

[1] Cedel Bank is a wholly-owned subsidiary of Cedel International. On January 1, 1995, Cedel, which was established in 1970, was converted into Cedel Bank to perform lending, clearing, and settlement activities, and a parent company, Cedel International, was created into which Cedel transferred the nonbanking subsidiaries. Cedel Bank is licensed in Luxembourg both as a bank and as a "professionnel du secteur financier" ("PSF") and is under the supervision of the Institute Monetaire Luxembourgeois ("IML"), Luxembourg's banking and securities regulatory authority. Cedel International is licensed as a non-bank PSF and also is under the supervision of the IML. The IML establishes capital and liquidity requirements, evaluates the financial condition and performance of all Luxembourg financial institutions, conducts on-site inspections, and monitors all financial institutions and their controlling companies for adherence to Luxembourg laws and regulations. On April 24, 1996, the Federal Reserve Board granted Cedel's request to establish a representative office in New York.

[2] Copies of the application for exemption are available for inspection and copying at the Commission's Public Reference Room, in File No. 600–29.

[3] 15 U.S.C. 78q–1.

[4] 17 CFR 240.17Ab2–1.

[5] Securities Exchange Act Release No. 37309 (June 12, 1996), 61 FR 31201 (Notice of filing of application for exemption from registration as a clearing agency) ("Cedel notice").

[6] Securities Exchange Act Release No. 38328 (February 24, 1997), (order approving application for exemption from registration as a clearing agency) ("Cedel exemption order"). The definition of "eligible U.S. government securities" is set forth in Section II of this notice.

[7] For a more detailed description of Cedel's clearance, settlement, and credit support services, *see* the Cedel notice, 61 FR at 31201–04.

[8] GCSS became operational on a limited basis on September 30, 1996, with four institutions participating (Bank of America, Banque Paribas, Dresdner Bank, and Salomon Brothers). Pursuant to the Cedel exemption order, eligible U.S. government securities can be included in GCSS. However, the Cedel exemption order does not permit Cedel to provide securities processing services through GCSS or otherwise for other U.S. debt or equity securities transactions involving U.S. entities.

derived from permitting Cedel to provide securities processing services for U.S. equity and debt securities in addition to U.S. Treasuries, what types of equity and debt securities should be deemed to be "U.S. debt and equity securities," or how the restrictions and conditions, such as volume limitations, should be applied with respect to such securities.

The Cedel exemption order permits Cedel to provide clearance, settlement, and collateral management services for Fedwire-eligible U.S. government securities[9] and mortgage backed pass-through securities that are guaranteed by the Government National Mortgage Association ("GNMAs")[10] (collectively, "eligible U.S. government securities"),[11] subject to certain limitations and conditions. Among other things, the Cedel exemption order limits the volume of eligible U.S. government securities that can be processed through Cedel and requires Cedel to provide the Commission with certain information to assist the Commission in ascertaining whether Cedel is in compliance with the terms of the exemption order, and information relating to the default or near default of certain Cedel customers or their affiliates.[12]

III. Proposed Modification of Exemption

A. Introduction

The Commission is further considering Cedel's request to offer its securities processing and collateral management services to U.S. entities for U.S. debt and equity securities. Accordingly, the Commission seeks comment regarding the appropriateness of permitting an unregistered non-U.S. clearing agency such as Cedel to offer clearance and settlement and other securities processing services for U.S. debt and equity securities in transactions involving U.S. entities. If it is appropriate for a non-U.S. clearing agency to provide such services, the Commission also seeks comment on the types of U.S. debt and equity securities which Cedel should be permitted to process for U.S. entities. Furthermore, the Commission seeks comment on additional conditions, such as volume limits and the methods by which such limits should be calculated, that should be included in an exemption order.

1. Appropriateness

The Commission seeks comment on whether an exemption from clearing agency registration under Section 17A of the Exchange Act is appropriate for a non-U.S. entity, and Cedel in particular, that performs clearance, settlement, and credit support services for transactions in U.S. debt and equity securities involving U.S. entities. The Commission anticipates that such an entity would substantially meet the standards established for the registration of clearing agencies[13] but cannot fully comply with all of the registration provisions because of certain organizational, operational, and jurisdictional differences.

The Commission specifically requests comment on the manner in which an unregistered non-U.S. clearing agency may be integrated into the national clearance and settlement system for U.S. equity and debt securities, and whether such integration would pose any additional or unique risks to U.S. investors or to the national clearance and settlement system. In the event a non-U.S. clearing agency may pose such risks, commenters are invited to discuss risk management controls that should be required by or for such a clearing agency. The Commission anticipates that such risk management controls would include special collateralization requirements, waivers of immunity with regard to pledged collateral, and submission to the jurisdiction of U.S. courts for such non-U.S. entity.

2. Types of Classes of Securities

If modification of Cedel's exemption order to include U.S. debt and equity securities is appropriate, the Commission seeks comment on the specific types and classes of such securities that may be encompassed by such an exemption. In particular, the Commission seeks comment as to factors to be considered in connection with such a determination. For example, should eligible securities be limited to those registered pursuant to Section 12 or Section 15(d) of the Exchange Act? Should the domicile of the issuer be a factor in such a determination? Should an exemption be limited only to those U.S. debt and equity securities for which there is a "ready market" or satisfy some liquidity standard?[14] If so, how should a ready market or such liquidity standard be defined?[15] Should covered securities be limited to those that are depository eligible at a U.S. registered clearing agency and, if so, should the exemption require an effective linkage between the U.S. and non-U.S. clearing agencies?

3. Volume Limitation and Other Conditions

As discussed in the Cedel exemption order, the Commission believes that volume limitations on the amount of securities that may be processed through Cedel are necessary to limit any potential negative effects on the national clearance and settlement system. Accordingly, the Commission seeks comment on whether five percent or another proportion of some defined market would be an appropriate limit with respect to U.S. debt and equity securities.[16] The Commission also seeks

[9] "Government securities" is defined in Section 3(a)(42) of the Exchange Act, 15 U.S.C. 78c(a)(42). Fedwire is a large-value transfer system operated cooperatively by the twelve Federal Reserve Banks that supports the electronic transfer of funds and the electronic transfer of book-entry securities.

[10] GNMAs, unlike other mortgage-backed securities such as those guaranteed by the Federal National Mortgage Association ("FNMAs") and the Federal Home Loan Mortgage Association ("FHLMCs"), are issued in certificated form and therefore cannot be transferred over Fedwire.

[11] "Eligible U.S. government securities" also includes any collateralized mortgage obligation ("CMO") whose underlying securities are Fedwire-eligible U.S. government securities or GNMA guaranteed mortgage-backed pass-through securities and which are depository eligible securities in a U.S. registered clearing agency.

[12] As more fully described in the Cedel exemption order, for purposes of the volume limitation, securities "processed through Cedel" means a security that is processed in GCSS, Cedel's tripartite repo service, Cedel's securities lending program, or Cedel's clearance and settlement system. The inclusion of the volume limitation reflects the Commission's determination to take a gradual approach toward permitting an unregistered, non-U.S. clearing agency such as Cedel to provide securities processing services to U.S. market participants. In this regard, the Commission notes that the eligible U.S. government securities covered by the Cedel exemption order trade in a market characterized by the highest level of liquidity.

[13] Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920. *See also* the Cedel exemption order, *supra* note 6.

[14] *See* note 12, *supra*.

[15] For example, under the Commission's net capital rule, a ready market is defined to include (i) a recognized established securities market in which there exists independent bona fide offers to buy and sell so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined for a particular security almost instantaneously and where payment will be received in settlement of a sale at such price within a relatively short time conforming to trade custom, or (ii) where securities have been accepted as collateral for a loan by a bank as defined in section 3(a)(6) of the Securities Exchange Act of 1934 and where the broker or dealer demonstrates to its examining authority that such securities adequately secure such loans. 17 CFR 240.15c3–1(c)(11)(i) and (ii).

[16] Pursuant to the Cedel exemption order, the average daily volume of eligible U.S. government securities processed through Cedel may not exceed 5% of the total average daily dollar value of the aggregate volume in eligible U.S. government securities. The total average daily dollar value of eligible U.S. government securities volume is derived from total daily value of securities activity through Fedwire, Government Securities Clearing Corporation, MBS Clearing Corporation, Participants Trust Company, and any other source that the Division of Market Regulation deems appropriate to reflect the aggregate volume in eligible U.S. government securities. Cedel's average daily volume is derived from the value of eligible

Continued

comment on whether there should be a concentration limit whereby Cedel would be prohibited from reaching its entire volume limit for U.S. debt and equity securities by processing transactions involving the U.S. debt or equity securities of only one or a limited number of issuers.

The Commission invites commenters to discuss any other issues that may arise or restrictions that should be imposed in connection with any modification of Cedel's exemption order to permit Cedel to offer securities processing services for U.S. debt and equity securities that have not been discussed in this notice or adequately addressed in the Cedel exemption order.

B. Fair Competition

As discussed in the Cedel notice, Section 17A of the Exchange Act requires the Commission in exercising its authority under that section to have due regard for the maintenance of fair competition among clearing agencies.[17] Therefore, the Commission invites commenters to address what the likely effect on competition and on the U.S. securities markets would be if the Commission modifies Cedel's exemption from registration as a clearing agency to permit Cedel to process U.S. debt and equity securities transactions involving U.S. entities.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing application by March 31, 1997. Such written data, views, and arguments will be considered by the Commission in deciding whether to expand Cedel's exemption from registration to include processing U.S. debt and equity securities. Persons desiring to make written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Reference should be made to File No. 600–29. Copies of the application and copying at the Commission's Public Reference Room 450 Fifth Street, N.W., Washington, D.C. 20549.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–5026 Filed 2–27–97; 8:45 am]

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U.S. government securities that are processed through Cedel involving a U.S. counterparty or its affiliate.

[17] 15 U.S.C. 781q–1(a)(2).

[18] 17 CFR 200.30–3(a)(16).

[Release No. 34–38324; File No. SR–Amex–97–07]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Disclaimer Provisions of Amex Rule 902C

February 24, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 29, 1997, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange has requested accelerated approval for the proposal. This order approves the Amex's proposal on an accelerated basis and solicits comments from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex is proposing to amend Exchange Rule 902C to include the de Jager Year 2000 Index ("Index") in the disclaimer provisions of the Rule.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In conjunction with a proposal to list and trade options on the de Jager Year 2000 Index, the Amex is proposing to amend Exchange Rule 902C to provide a disclaimer for de Jager & Company, a consulting company active in promoting awareness of the "Year 2000" problem. The Exchange's proposal to list and trade options on the Index has been given summary effectiveness treatment pursuant to Section 19(b)(3)(A) of the Act.[3]

The Amex and de Jager & Company have developed a new index called The de Jager Year 2000 Index, based entirely on shares of widely-held companies whose business is expected to benefit from the need of companies, governments, and others to address and resolve the "Year 2000" problem.[4] The "Year 2000" problem arises because most business application software programs (mainframe, client/server, and personal computer) written over the past twenty years use only two digits to specify the year, rather than four.

Therefore, on January 1, 2000, unless the software is corrected, most computers with time-sensitive software programs will recognize the year as "00" and may assume that the year is "1900." This could either force the computer to shut down or lead to incorrect calculations. The Index will be calculated and maintained by the Amex. A representative of de Jager & Company will be available to advise the Exchange when, pursuant to Exchange Rule 901C(b), the Amex substitutes stocks, or adjusts the number of stocks included in the Index, based on changing conditions in the "Year 2000" industry or in the event of certain types of corporate actions. It is anticipated that the Amex will consult with de Jager & Company on a quarterly basis to review possible candidates for removal from or inclusion in the Index.

The disclaimer, identical in content to disclaimers currently in place for Standard & Poor's Corporation ("S&P"),[5] Morgan Stanley & Co. Incorporated,[6] and Inter@ctive Enterprises L.L.C.,[7] states that de Jager & Company does not guarantee the accuracy or completeness of the Index, makes no express or implied warranties with respect to the Index, and will have no liability for any damages, claims, losses, or expenses caused by errors in the Index calculation.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general and

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 38307 (February 19, 1997) (Amex–97–04).

[4] The industries represented by these companies include: packaged software providers; computer programming consulting firms; and computer outsourcing services.

[5] See Exchange Rule 902C(c).

[6] See Exchange Rule 902C(d).

[7] See Exchange Rule 902C(e).

furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The self-regulatory organization does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filings also will be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–97–05 and should be submitted by March 21, 1997.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) thereunder.

The Commission believes that it is reasonable for de Jager & Company to be released from liability for any damages, claims, losses, or expenses related to the accuracy or completeness of the Index or caused by errors in the Index calculation. The Commission notes that de Jager & Company will not be involved, except in the limited advisory capacity described above, in the calculation or maintenance of the Index.

The Commission finds good cause to approve the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** in that this rule filing is being filed in connection with the Exchange's proposal to list and trade options on the Index, which has been given summary effectiveness treatment pursuant to Section 19(b)(3) of the Act.[8] In addition, this proposal raises no new issues as the Commission has previously approved similar proposals by the Amex to release various entities from certain liability for damages resulting from the use of their products where these entities have no active role in the trading and calculation of the index value.[9] Accordingly, the Commission believes that it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve the proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2)[10] of the Act, that the proposed rule change (File No. SR–Amex–97–05) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

[FR Doc. 97–5028 Filed 2–27–97; 8:45 am]

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[8] See *supra* note 3.

[9] See Exchange Rules 902C(c), (d), and (e).

[10] 15 U.S.C. § 78s(b)(2) (1988).

[11] 17 CFR 200.30–3(a)(12).

[Release No. 34–38328; International Series Release No. 1058; File No. 600–29]

Self-Regulatory Organizations; Cedel Bank; Order Approving Application for Exemption From Registration as a Clearing Agency

February 24, 1997.

On August 31, 1995, Cedel Bank, société anonyme, Luxembourg ("Cedel")[1] filed with the Securities and Exchange Commission ("Commission") an application on Form CA–1[2] for exemption from registration as a clearing agency pursuant to Section 17A of the Securities Exchange Act of 1934 ("Exchange Act")[3] and Rule 17Ab2–1 thereunder.[4] Notice of Cedel's application was published in the **Federal Register** on June 19, 1996.[5] Eleven comment letters were received in response to the notice of filing of the Cedel application.[6] This Order grants Cedel's application for exemption from registration as a clearing agency to permit Cedel to offer clearance, settlement, and credit support services to U.S. and non-U.S. entities for transactions in U.S. government securities subject to the conditions and limitations that are set forth below.

[1] Cedel, société anonyme (formerly the Centrale de Livaison de Valeurs Mobilières) was established in 1970. On January 1, 1995, Cedel, société anonyme was converted into Cedel Bank to perform lending, clearing, and settlement activities, and a parent company, Cedel International, was created into which Cedel transferred the nonbanking subsidiaries. Cedel Bank is a wholly-owned subsidiary of Cedel International. Cedel Bank is licensed in Luxembourg both as a bank and as a "professionnel du secteur financier" ("PSF") and is under the supervision of the Institut Monetaire Luxembourgeois ("IML"), Luxembourg's banking and securities regulatory authority. Cedel International is licensed as a non-bank PSF and also is under the supervision of the IML. The IML establishes capital and liquidity requirements, evaluates the financial condition and performance of all Luxembourg financial institutions, conducts on-site inspections, and monitors all financial institutions and their controlling companies for adherence to Luxembourg laws and regulations. On April 24, 1996, the Federal Reserve Board granted Cedel Bank's request to establish a representative office in New York.

[2] Copies of the application for exemption are available for inspection and copying at the Commission's Public Reference Room.

[3] 15 U.S.C. 78q–1.

[4] 17 CFR 240.17Ab2–1.

[5] Securities Exchange Act Release No. 37309 (June 12, 1996), 61 FR 31201 (notice of filing of application for exemption from registration as a clearing agency) ("Cedel Notice").

[6] Letters from John H. Huffstutler, Senior Vice President and Chief Regulatory Counsel, Bank of America National Trust and Savings Association (July 17, 1996); Guillaume de Beaufort, Administration Head, Paribas Capital Markets (July 18, 1996); Pierre Vermenouze, Senior Vice President, Banque et Finance Internationales (July 17, 1996); Thomson Ng, Executive Director of Operations, Fuji International Finance (HK) Limited (July 18, 1996); John Macfarlane, Managing Director, Salomon Brothers Inc (July 19, 1996); Monroe R. Sonnenborn, Managing Director, Morgan Stanley & Co. Incorporated (July 22, 1996); Jean-Marie Grenet, Operations Head, and Jimmy Hew, Deputy Operations Head, Paribas Merchant Banking Asia Limited (July 23, 1996); Lo Kit-sang, Manager, Sin Hua Bank Ltd. (July 22, 1996); Fan Jian Hua, Manager, and Zhu Wen Xiang, Chief Dealer, The Investment Company of The People's Republic of China (Singapore) Pte Ltd (July 26, 1996); Gilbert Lee and Richard Yiu Tak Shing, Bannque Nationale de Paris (July 29, 1996); and Augustine Chua, Deputy Manager, Rapobank (August 1, 1996) to Jonathan Katz, Secretary, Commission. These comment letters for File No. 600–29 are available for inspection and copying in the Commission's Public Reference Room.

I. Description of Cedel's Proposed Services [7]

A. Clearance and Settlement

Cedel currently offers to its customers international clearance and settlement of securities transactions in primary and secondary markets, trade confirmation, securities custody, and securities lending services. Cedel processes fixed income bonds such as Eurobonds, domestic and convertible bonds, money market instruments, short and medium term notes, equities, and warrants.

Cedel provides delivery-versus-payment ("DVP") settlement for securities transactions.[8] DVP settlement is made possible by the legal environment for securities custody and transfer in Luxembourg.[9] Liquidity facilities are negotiated with financial institutions to permit Cedel to extend financing to customers to meet their settlement requirements in local currencies.[10]

Cedel's presettlement trade matching service consists of a trade comparison system that allows customers in both Cedel and Euroclear [11] to compare their trade data. Incoming trade data is compared in one of four daily matching runs. Information on the status of a transaction is made available to the counterparties ninety minutes after processing of the trade data for each matching run.

Cedel operates two securities processing systems, overnight settlement processing and daytime settlement processing.[12] Overnight processing is possible because of the bridge agreement established between Cedel and Euroclear.[13] The bridge agreement facilitates the two-way exchange of counterparty data, enabling both Cedel and Euroclear to settle overnight and to provide early morning position statements. With multiple overnight processing, Cedel's customers can settle trades with Euroclear participants for same day value. Multiple overnight processing also allows "chaining" of securities transactions in and between Cedel and Euroclear.[14]

Each settlement within the overnight and daytime processing systems is distinguished by whether it is an "internal" or "external" settlement at Cedel.[15] Settlement services are performed at Cedel without notifying or instructing its securities depositories. Funds transfers necessary to settle transactions may be made to or from an account maintained at Cedel or to or from one of its correspondent banks. Because transfers or securities accepted at both Euroclear and Cedel may be settled and cleared through the bridge, Cedel treats settlements between customers of Cedel and Euroclear involving such securities as internal.

Transactions for settlement on a given day are matched at Cedel and are settled if the delivering party has unencumbered securities sufficient to make delivery [16] and the receiving party has sufficient cash and facilities to pay for the securities.[17] If either condition is not met, the transaction will fail. If securities are delivered against uncollected or borrowed funds, a collateral interest is taken in the receiving participant's securities holding within the system to secure the creditor.[18]

B. Global Credit Support Service

One of the primary reasons for Cedel's request for exemption from registration as a clearing agency is the implementation of the Global Credit Support Service ("GCSS").[19] GCSS is a book-entry, real-time collateral management service for cross-border securities collateralization. GCSS is intended to enable GSCC customers to reduce the credit risk associated with their financial exposures to counterparties by offering an efficient and safe means of monitoring exposure and by providing credit support for GCSS customers using a variety of bilateral credit support legal arrangements.[20] GCSS functions include the standard functions of an agent, such as exposure recording, asset valuation and movement, safekeeping, and reporting. GCSS interposes itself as an operational agent but does not assume any principal or decision-making role in the event of disputes between parties.

All cash and securities in GCSS are held in an omnibus account within the Cedel core clearance and settlement system. Transfers into and out of GCSS are made by book-entry transfer of securities from a GCSS customer's account or from a GCSS customer's correspondent account at Cedel to GCSS's omnibus account at Cedel.[21]

GCSS customers will inform GCSS of the level of exposure from their net counterparty positions to be covered by GCSS. This exposure level will be the basis on which GCSS will compute credit support requirements for the period.[22] Based on the size of the net exposure and the terms of the bilateral agreement between two GCSS customers, GCSS moves free of payment securities and/or cash between the parties' accounts. GCSS reports to each GCSS customer their available positions (*i.e.*, the customer's own securities and cash it has in the system that are not in use), the amounts delivered out, the amounts received, the amounts "on-transferred," [23] new credit support amounts expected in from counterparties, and new credit support amounts required.[24]

One of the more important services offered by GCSS allows customers to reuse the securities held as credit support. For those GCSS customers permitted by their counterparties to reuse assets, GCSS will enable "on-transfer" of securities. GCSS will track and value assets subjected to on-transfers and will keep records of the original and all subsequent transferrers and transferees of the asset. Where on-transfers are permitted, a position may be subdivided and on-transferred to multiple counterparites.

U.S. Treasury securities ("U.S. Treasuries") are the preferred securities for use as collateral in securing international credit obligations arising from derivatives activities or otherwise. Therefore, Cedel believes it is essential that it be able to accept U.S. Treasuries in GCSS if it is to efficiently facilitate cross-border collateralization. In part, it is the "on-transfer" or rehypothecation of U.S. government securities by or for U.S. entities in GCSS that subjects Cedel to the clearing agency registration requirements of Section 17A.[25] As a condition of the no-action position provided to Cedel in 1993, Cedel agreed not to act as an agent in facilitating repurchase agreements between Cedel customers and others with regard to U.S. Treasuries and agreed that none of the collateral services performed by Cedel would be such that the services could be interpreted as authorizing the purchase and sale of U.S. Treasuries, including repurchase agreement transactions, by Cedel's customers or affiliates using Cedel's systems.

C. Securities Lending and Borrowing Services

Under Cedel's lending and borrowing service, all customers are required to act as principal and Cedel's role is to effect the transfers for the lending or borrowing transactions by book-entry movement in the Cedel system and to monitor the associated collateral. Customers elect to participate as either "automatic" [26] or "case by case" [27] lenders or borrowers.[28] A syndicate of banks guarantees borrower performance and each borrower is required to post and maintain collateral sufficient to secure the guarantee obligation of the guarantor syndicate.[29]

D. Credit Facilities

Cedel provides four main types of credit facilities to its customers: pre-advices, technical overdraft facilities ("TOF's"), tripartite financing arrangements ("TFA's"), and unconfirmed funds facilities ("UFF"). Customers can obtain short term credit through the use of pre-advices.[30] TOFs are short-term financing facilities used to facilitate clearance of securities transactions against payment.[31] Cedel also acts as collateral agent in specifically negotiated TFAs, which provide longer term financing for

[7] A more complete description of Cedel's clearance, settlement, and credit support services, is contained in the Cedel Notice *supra* note 5.

[8] In 1995, Cedel settled over US$10 trillion worth of securities. At that time, over 75,000 instruments were eligible for settlement in the Cedel system.

[9] The Luxembourg legal framework provides for the finality of settlements on Cedel's books and the fungibility of securities deposited with Cedel.

[10] To enable it to extend such financing, Cedel maintains a US$10 billion committed revolving credit facility with a syndicate of major banks, a US$500 million commercial paper facility and approximately US$8 billion of uncommitted lines of credit available. Cedel also has a US$1.8 billion letter of credit guaranteeing transmissions across the bridge established between Cedel and the Euroclear System ("Euroclear"). In addition, Cedel can access uncommitted lines of credit with domestic lenders in each of the thirty countries where Cedel has established a settlement link to provide its customers with foreign currency settlement capabilities.

[11] Similar to Cedel, Euroclear provides clearance and settlement services for internationally traded debt and equity securities. Euroclear is operated under contract with the Euroclear Clearance System, société coopérative ("Euroclear Cooperative"), by Morgan Guaranty Trust Company of New York through its Euroclear Operations Centre in Brussels. The Euroclear Cooperatives is a Belgian cooperative corporation whose participants include international banks, brokers, and other securities professionals. See *infra* note 13.

[12] Daytime and overnight settlement processing are the same except that securities lending and borrowing services are not available to customers on an automatic basis in overnight settlement processing.

[13] The electronic bridge enables trades to be processed on a book-entry basis between Cedel and Euroclear rather than by the physical delivery of securities.

[14] Cedel's chaining system allows securities to be bought and sold many times during the day. Cedel's chaining program scans open transactions until all cash and securities resulting from same-day settlement are reemployed to settle further transactions of same-day value. Therefore, back-to-back transfers for equivalent funds may not create net payment obligations because customers can use proceeds from sales to settle purchases.

[15] An internal settlement is the settlement of a transaction between two Cedel customers where the securities being transferred are maintained by book-entry at Cedel. An external settlement is the settlement of a transaction where one of the counterparties to a transaction is not a Cedel (or Euroclear) customers or where a Cedel customer is transferring securities that are not maintained by book-entry at Cedel.

[16] The securities may be owned outright or borrowed.

[17] Acceptable cash and credit facilities for a customer include cash in its account, pre-advices of funds to be received that day, and any predetermined borrowing capacity.

[18] Because Cedel does not interpose itself between counterparties or otherwise guarantee settlement of securities transactions in its clearance and settlement system, Cedel believes its operations are essentially devoid of settlement risk to Cedel and therefore Cedel does not rely on a clearing fund or the resources of its customers.

[19] GCSS became operational on September 30, 1996 with four institutions, including Bank of America, Banque Paribas, Dresdner Bank, and Salomon Brothers.

[20] Each GCSS customer can establish the parameters of their bilateral arrangements, which are captured by GCSS. A pair of GCSS customers generally will have one agreement although GCSS can provide for multiple agreements. Each agreement will define such things as the eligible collateral, haircuts, rehypothecation authorization, frequency of exposure entry and securities valuation, and minimum transfer amounts. Eligible collateral can be selected from any of the securities or currencies accepted by Cedel. GCSS customers also may establish counterparty-specific eligibility tables to either restrict or broaden their eligibility criteria and/or haircuts.

[21] There is no requirement that a GCSS customer have an account at Cedel in order to utilize the services provided by GCSS.

[22] GCSS will operate two main daily processing cycles to provide credit support and to generate reports. GCSS customers will select which of the two cycles they will use. The cycle will provide assessments of existing credit support and required additional assets which counterparties may satisfy in the next cycle or at the latest in the same cycle on the next day.

[23] GCSS customers will indicate in their GCSS agreement whether they will permit counterparties to reuse assets. If so permitted, counterparties may then transfer within GCSS the securities they have received as credit support ("on-transfer") or remove the securities from GCSS and enter into repurchase or reverse repurchase agreements.

[24] GCSS may notify a GCSS customer of the need to bring more assets into the system to meet a shortfall in the value of credit support assets at GCSS. GCSS customers will be able to move assets to their GCSS account in several ways: by transferring eligible assets from a clearing and settlement account in Cedel during the next available Cedel processing cycle, by providing GCSS with a power of attorney to transfer assets from its clearing and settlement account at Cedel to its GCSS omnibus account at Cedel, by entering into a securities borrowing arrangement within a Cedel clearing and settlement account to obtain a loan of the required securities, or by moving eligible securities over a cross-border link into Cedel.

[25] In 1993, Cedel requested a no-action position from the Division relating to Cedel's providing clearance, settlement, and other services to participants in U.S. government securities. The Division issued a no-action letter to Cedel on September 15, 1993, stating that the staff of the Division would not recommend to the Commission that it take enforcement action if Cedel accepts U.S. Treasury debt securities maintained in book-entry form as collateral for certain obligations of Cedel's customers without registering as a clearing agency pursuant to Section 17A of the Exchange Act. The no-action letter did not extend to clearance and settlement services for Cedel customers in U.S. government securities. *Letter regarding Cedel S.A.* (September 15, 1993).

Under Section 3(a)(23) of the Exchange Act, the term "clearing agency" is defined to mean, among other things, any person, such as a securities depository, who permits or facilitates the settlement of securities transactions or the hypothecation or lending of securities without physical delivery of securities certificates. Cedel's proposal for the implementation of GCSS places Cedel within the scope of the activities of a clearing agency because GCSS could be deemed to permit or facilitate the hypothecation or lending of U.S. securities in a book-entry environment. However, the activities of GCSS are not the sole basis for considering Cedel's proposed activities to be those of a clearing agency. Cedel's proposal, which originally included the clearance and settlement of all U.S. securities involving U.S. entities, also places Cedel within the definition of clearing agency for purposes of Section 17A of the Exchange Act. Although this Order limits the exemptive relief sought by Cedel to U.S. government securities and will not include all U.S. equity and debt securities, the classification of Cedel as a clearing agency for purposes of Section 17A is not affected.

[26] As either an automatic lender or automatic borrower, a customer authorizes Cedel to lend or borrow securities upon the identification of an excess of securities in a lender's account or an insufficiency in a borrower's account.

Automatic borrowings only may occur when there is an adequate volume of eligible securities available from a lender participating in the program and the borrower is eligible to borrow under the terms of the program.

[27] Case by case borrowings are handled by Cedel in chronological sequence of receipt of instructions. As a case by case lender or as a case by case borrower, a customer is required to authorize each loan or borrowing.

[28] Cedel effects loans and borrowings for automatic lenders and automatic borrowers before it effects loans and borrowings for case by case lenders and case by case borrowers.

[29] The collateral, which can be qualifying securities or cash, is blocked in the borrower's account by Cedel for the benefit of the guarantors. Cedel monitors the collateral daily to ensure that the collateral value of the securities or cash is at all times greater than or equal to the market value of the securities loaned plus an additional percentage of the market value.

[30] Under the pre-advice service, a customer notifies Cedel that funds will be received in the customer's account on that day or the next day. On the basis of this pre-advice, Cedel will credit the amount of funds to the customer's account prior to actual receipt up to the maximum pre-advice line of credit established for the customer. During any business day, Cedel will not advance an amount that exceeds the amount of the line of credit or the collateral value of qualifying securities held in the customer's account.

[31] Under the TOF service, Cedel pays the selling customer in advance of receipt of payment by the purchasing customer. To protect itself from market and credit risk, Cedel blocks the securities in the purchasing customer's account to ensure that the purchasing customer does not remove the securities until it clears its net debit position. If the purchasing customer fails to clear its net debit position within forty-eight hours, Cedel can liquidate the customer's assets to satisfy the net debit position. In addition, Cedel is granted a lien on all securities and other assets in a participating customer's account with Cedel pursuant to a TOF agreement between Cedel and its customer to cover any additional losses which may be incurred.

customers than pre-advices and TOFs.[32] Use of a customer's UFF to finance settlements is allowed only at Cedel's discretion. If a customer's TOF or TFA is insufficient to settle all securities transactions on its account in a given settlement processing, Cedel may permit the customer to use its UFF for settlement purposes.[33]

II. Comment Letters

The Commission received eleven comment letters in response to the notice of filing of the Cedel application.[34] All were favorable towards granting Cedel an exemption from registration as a clearing agency. Each of the commenters discussed the importance of allowing U.S. Treasuries to be accepted into the Cedel system and the utility of GCSS in providing an efficient global credit risk management tool for over-the-counter collateralized derivatives activities. With regard to Cedel's proposal to offer clearance and settlement services, commenters pointed to the increased access to U.S. markets and a standardization of clearance and settlement formats that would be afforded to Cedel's customers under the exemption. Commenters also favored an exemption from registration as a means to preserve the existing commercial relationships that exist among Cedel and its customers under Luxembourg law.

Furthermore, commenters stressed that because U.S. Treasuries are the dominant and preferred class of collateral for derivatives transactions, inclusion of these securities in GCSS will increase the effectiveness and utilization of GCSS,[35] which in turn could reduce the exposure associated with under- or non-collateralized derivatives transactions conducted by U.S. and non-U.S. entities. Commenters believed that GCSS will solve many of the legal complexities and will reduce the legal uncertainties associated with cross-border collateralization. Commenters did not specifically discuss the unique or additional benefits to be derived from permitting Cedel to provide securities processing services for U.S. securities other than U.S. Treasuries.

III. Discussion

A. Statutory Standards

Section 17A of the Exchange Act directs the Commission to promote Congressional objectives to facilitate the development of a national clearance and settlement system for securities transactions.[36] Registration of clearing agencies[37] is a key element of the regulation of clearing agencies in promoting these statutory objectives. Before granting registration to a clearing agency, Section 17A(b)(3) of the Exchange Act requires that the Commission make a number of determinations with respect to the clearing agency's organization, capacity, and rules.[38] The Commission has published the standards applied by its Division of Market Regulation in evaluating applications for clearing agency registration.[39] These requirements are designed to assure the safety and soundness of the clearance and settlement system.

Section 17A(b)(1), moreover, provides that the Commission:

> * * * may conditionally or unconditionally exempt any clearing agency or security or any class of clearing agencies or securities from any provisions of [Section 17A] or the rules or regulations thereunder, if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of [Section 17A], including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds.[40]

The Commission reviews every application for exemption against the standards for clearing agency registration.[41]

B. Evaluation of Cedel's Application for Exemption

The Commission has evaluated Cedel's application and the comments received under the above standards. In this context, the Commission recognized that certain organizational, operational, and jurisdictional differences would prevent Cedel from being able to comply fully with all of the registration provisions. The evaluation also is made in the context of the conditions that the Commission will include in the exception granted in this Order.

1. Safeguarding of Securities and Funds

Sections 17A(b)(3)(A) and (F) of the Exchange Act require a clearing agency be organized and its rules be designed

[32] Generally, the TFA is an agreement between three parties, the borrower (Cedel customer), the lender (the financing bank), and the collateral agent (Cedel). Cedel may introduce lenders to borrowers but does not play a substantial role in the negotiations of TFAs. After a TFA has been negotiated, Cedel acts solely as collateral agent whereby Cedel determines the adequacy of and monitors the pledged collateral which is blocked in the borrowing customer's account with Cedel. Cedel bears no credit exposure with regard to TFAs.

[33] A customer's UFF limit is dependent to a large extent upon the financial standing of the institution. The UFF also must be collateralized. By blocking collateral against unconfirmed funds, Cedel believes that it covers the contingent risk that anticipated funds may not be received. As with TOFs and TFAs, only the actual amount of credit drawn under the UFF must be collateralized.

[34] *Supra* note 6.

[35] One commenter pointed out that the inclusion of U.S. Treasuries in Cedel's processing systems would benefit U.S. banks in their management of derivatives exposure because such banks could utilize commonly held U.S. Treasuries in GCSS rather than non-U.S. securities which would have to be purchased by U.S. banks in the market. Letter from John H. Huffstutler, Senior Vice President and Chief Regulatory Counsel, Bank of America National Trust and Savings Association, to Jonathan Katz, Secretary, Commission (July 17, 1996).

[36] 15 U.S.C. 78q–1. Section 17A(a)(1) provides:

(1) The Congress finds that—

(A) The prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership and the safeguarding of securities and funds related thereto, are necessary for the protection of investors and persons facilitating transactions by and acting on behalf of investors.

(B) Inefficient procedures for clearance and settlement impose unnecessary costs on investors and persons facilitating transactions by and acting on behalf of investors.

(C) New data processing and communications techniques create the opportunity for more efficient, effective, and safe procedures for clearance and settlement.

(D) The linking of all clearance and settlement facilities and the development of uniform standards and procedures for clearance and settlement will reduce unnecessary costs and increase the protection of investors and persons facilitating transactions by and acting on behalf of investors.

For legislative history concerning Section 17A, see, e.g., Report of Senate Comm. on Housing and Urban Affairs, Securities Acts Amendments of 1975: Report to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 4 (1975); Conference Comm. Report to Accompany S. 249, Joint Explanatory Statement of Comm. of Conference, H.R. Rep. No. 229, 94th Cong., 1st Sess., 102 (1975).

[37] "Clearing agency" is defined in Section 3(a)923) of the Exchange Act. 15 U.S.C. 78c(a)(23).

[38] 15 U.S.C. 78q–1(b)(3). See also Section 19 of the Exchange Act, 15 U.S.C. 78s, and Rule 19b–4, 17 CFR 240.19b–4, setting forth procedural requirements for registration and continuing Commission oversight of clearing agencies and other self-regulatory organizations.

[39] Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 ("Standards Release"). See also, Securities Exchange Act Release No. 20221 (September 23, 1983), 48 FR 45167 (omnibus order granting registration as clearing agencies to The Depository Trust Company, Stock Clearing Corporation of Philadelphia, Midwest Securities Trust Company, The Options Clearing Corporation, Midwest Clearing Corporation, Pacific Securities Depository, National Securities Clearing Corporation, and Philadelphia Depository Trust Company).

[40] 15 U.S.C. 78q–1(b)(1).

[41] The first exemption from clearing agency registration was granted in 1995. Clearing Corporation for Options and Securities, Securities Exchange Act Release No. 36573 (December 12, 1995), 60 FR 65076. The Commission has granted temporary registrations that included exemptions from specific Section 17A statutory requirements in a manner designed to achieve the statutory goals of Section 17A. In granting these temporary registrations it was expected that the subject clearing agencies would eventually apply for permanent clearing agency registration. See, e.g., Securities Exchange Act Release No. 25740 (May 24, 1988), 53 FR 19839 (order approving Government Securities Clearing Corporation's temporary registration as a clearing agency with a temporary exemption from compliance with Section 17A(b)(3)(C)).

to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible and to safeguard securities and funds in its custody or control or for which it is responsible.[42] The Commission believes that Cedel substantially satisfies these standards. Among other things, Cedel has established an audit committee which provides oversight of Cedel operations, financial arrangements, and performance, and acts as a link between the external auditors and the Board of Directors.[43] Cedel also maintains an internal audit department that, in conjunction with its external auditors, maintains an ongoing detailed audit program for Cedel's operations. Audit reports are issued monthly to appropriate levels of management with a complete report to the chief executive officer of Cedel.[44] The internal audit department is independent of line functions and its chief audit reports directly to the chief executive officer of Cedel.

Interal accounting controls for Cedel have been designed to provide reasonable assurance that at a minimum (i) transactions are executed in accordance with proper authorization, (ii) transactions are recorded as necessary to permit the preparation of conforming financial statements and to maintain accountability for assets, (iii) access to assets or systems for recording interests in assets is restricted only to those with specific authorization by Cedel management, and (vi) recorded asset inventories are compared with actual asset inventories at regular intervals and appropriate actions are taken with respect to any differences. The adequacy of internal accounting controls is audited annually by Cedel's external auditors. In addition, the IML has the authority to instruct the external auditors to undertake reviews of any further matters of particular interest.[45]

a. Organization and Processing Capacity. A clearing agency must be organized in a manner that effectively establishes operational and audit controls while fostering director independence.[46] Cedel's Board of Directors is kept apprised of Cedel's operations through its audit committee as well as the chief auditor from the independent internal audit department.[47] Together, Cedel's audit committee, internal audit department and various internal advisory groups provide Cedel's Board with risk assessment information and are positioned to advise the Board of the impact that new or expanded services and volume may have on Cedel's processing capacity. Accordingly, the Commission is satisfied that Cedel's organizational and processing capacity substantially satisfies the requirements of the Exchange Act as explained in the Standards Release because Cedel's internal organizational structure is reasonably designed to provide the necessary flow of information to its Board of Directors which should allow the Board to oversee Cedel's operations and management's performance to assure the operational capability and integrity of Cedel.

b. Financial Reports. According to the Standards Release, clearing agency participants that have made clearing fund contributions or have money or securities in the custody or control of a clearing agency should receive timely, audited annual financial statements. Cedel has custody of customer funds and securities. Cedel provides customers and shareholders with annual audited financial statements and company reports. The financial statements of Cedel and Cedel International, its parent, are not consolidated and are presented in accordance with European Union and Luxembourg regulatory requirements for the preparation of financial statements.[48]

c. *Financial Risk Management.* The Standards Release states that a clearing agency should establish a clearing fund and promulgate rules to assure an appropriate level of contributions in accordance with, among other things, the risks to which the clearing agency is subject for the protection of clearing agency participants and for the national system for clearance and settlement.[49]

As discussed in Section I.B above, Cedel provides DVP settlement for securities transactions which are then batched for evening or morning processing depending upon when they are received. Cedel utilizes credit facilities to avoid transaction failures but does not maintain a clearing fund. Cedel does bear risk resulting from pre-advices that are not subsequently confirmed. Although according to Cedel the number of pre-advice failures is reportedly low, such failures could become more prevalent during times of market stress when the value of collateral supporting Cedel's credit facilities could decline in excess of the exposure created by the pre-advice failure.

Cedel employs financial risk management mechanisms, including its capitalization, insurance,[50] and committed credit facilities,[51] that substantially reduce the risk of financial loss by participants and Cedel. Therefore, the Commission believes that Cedel's rules and procedures and the methods by which Cedel safeguards the financial security of its clearing

[42] 15 U.S.C. 78q–1(b)(3)(A) and (F). Although Cedel does not have "rules" that would be subject to public comment and Commission review as contemplated by Section 19 of the Exchange Act for the purposes of governing the relationship between itself and its customers, Cedal does have various operating agreements which define the rights and responsibilities of Cedel and its customers.

[43] Clearing agencies should have an audit committee which selects or makes recommendations to the Board of Directors of the clearing agency regarding the selection of the clearing agency's external auditors. The Cedal audit committee, among other things, makes such recommendations to the Board of Directors and reviews the nature and scope of work to be performed by the external auditors and the results of such work.

[44] Managers are requested to respond to any irregularities within two weeks of receipt of the audit report. All responses must include an action plan. All unresolved audit items are regularly monitored by internal audit staff until they are closed and management is required to provide regular updates to internal audit on the progress of all open items.

[45] The IML exercised this authority in connection with the 1995 reorganization of Cedel Bank and its parent, Cedel International.

[46] Standards Release, *supra* note 39, 45 FR at 41925–26.

[47] In addition, Cedel's Credit Advisory Group, Strategic Advisory Group, and User Advisory Group advise the Cedel Board with specialized insight into Cedel's operations. The Credit Advisory Group provides information to the processing of new customers and the maintenance of appropriate credit standards and controls. The Strategic Advisory Group assists in developing corporate strategy and planning. The User Advisory Group provides feedback on Cedel services and customer ratification important to setting internal service priorities and assists in new product service and development.

[48] These financial statements are required to be provided to Cedel shareholders and customers pursuant to Luxembourg law. The Standards Release also states that unaudited quarterly financial statements should be made available to clearing agency participants upon request within thirty days following the close of each fiscal quarter. Cedel has represented to the Commission that under local custom it is uncommon for Luxembourg companies to prepare unaudited quarterly financial statements for distribution to shareholders. The Commission believes that because Cedel will be reporting to its customers according to local custom and otherwise satisfies the provisions of the Standards Release that Cedel substantially meets the requirements of the Exchange Act. Some foreign issuers are already relieved from certain Exchange Act requirements concerning the reporting of financial information. *Cf.* Exchange Act Rules 12g3–2 [17 CFR 240.12g3–2], 13a–16 [17 CFR 240.13a–16], 15d–16 [17 CFR 240.15d–16] and Form 6–K [17 CFR 249.306] (provisions which exempt certain foreign issuers from Exchange Act financial reporting requirements and instead permit such foreign issuers to provide financial and other information to the Commission in accordance with the local reporting requirements of their home domicile).

[49] *Supra* note 39, 45 FR at 41929.

[50] Cedel maintains over US $400 million in insurance to cover all risks related to its operations and facilities.

[51] *Supra*, note 10.

facilities and GCSS substantially satisfies the requirements of the Exchange Act.

2. Fair Representation

Section 17A(b)(3)(C) of the Exchange Act requires that the rules of a clearing agency provide for fair representation of the clearing agency's shareholders or members and participants in the selection of the clearing agency's directors and administration of the clearing agency's affairs. This section contemplates that users of a clearing agency have a significant voice in the direction of the affairs of the clearing agency.

Cedel is wholly-owned subsidiary of Cedel International which is a privately owned entity operated for the benefit of its shareholders. Cedel's Board of Directors is the same as the Board of Directors of Cedel International. Shares of Cedel International are held by Cedel customers and under the Cedel International by-laws no shareholder is permitted to own more than five percent of Cedel International stock. Cedel International shareholders elect Board members by casting one vote for each share held, and the ultimate composition of the Board must reflect each of the three major time zones serviced by Cedel.[52] Accordingly, the Commission believes that the method in which Cedel's directors are selected and the methods utilized for customer participation adequately meets the requirements of fair representation under Section 17A(b)(3)(C) of the Exchange Act.

3. Participation Standards

Section 17A(b)(3)(B) of the Exchange Act enumerates certain categories of persons that a clearing agency's rules must authorize as potentially eligible for access to clearing agency membership and services. Section 17A(b)(4)(B) of the Exchange Act contemplates that a registered clearing agency have financial responsibility, operational capability, experience, and competency standards that are used to accept, deny, or condition participation of any participant or any category of participants enumerated in Section 17A(b)(3)(B), but that these criteria may not be used to unfairly discriminate among applicants or participants. In addition, the Exchange Act recognizes that a clearing agency may discriminate among persons in the admission to or the use of the clearing agency if such discrimination is based on standards of financial responsibility, operational capability, experience, and competence.

Under its current admissions policy, Cedel will accept as customers financial institutions that are regulated in their home market by a financial regulatory authority. Such institutions include commercial and investment banks and broker-dealers, but do not include investment companies or insurance companies.[53] Cedel excludes investment companies and insurance companies because it believes that on an international level these entities are not subject to regulation comparable to banks or broker-dealers, and that there is great variance among nations. However, investment companies, insurance companies and other market participants are afforded an opportunity to participate in Cedel through accounts with banks, broker-dealers, or custodians that are Cedel customers. In addition, under the general terms and conditions applicable to its customers, Cedel reserves the right to deny services to any applicant without disclosing the reasons of such denial to the applicant.

Although Cedel's admissions policy is relatively inclusive, it would not meet the requirements of Section 17A(b)(3)(B) of the Exchange Act with regard to participants because the policy does not provide for membership by all of the enumerated categories of persons. Nevertheless because commercial and investment banks and broker dealers are eligible for Cedel membership and because Cedel has accepted a wide range of customers based upon its standards of financial responsibility, operational capability, experience, and competence, the Commission is satisfied that Cedel's participation standards are acceptable in light of Cedel's business and legal context.

4. Dues, Fees, and Charges

Sections 17A(b)(3) (D) and (E) of the Exchange Act provide for the equitable allocation of reasonable dues, fees, and other charges among clearing agency participants and prohibits a clearing agency from imposing or fixing prices for services rendered by its participants. Fees charged by Cedel are generally usage-based and are priced in a competitive environment with other entities that offer international clearance and settlement services. Cedel does not impose any schedule of prices or fix rates or other fees for services rendered by its customers. Accordingly, the Commission is satisfied that the method by which Cedel provides for the equitable allocation of reasonable dues, fees, and other charges among its customers and its prohibitions regarding the fixing of prices of its customers substantially satisfies the Exchange Act requirements.

5. Capacity To Enforce Rules and To Discipline Participants

Section 17A(b)(3)(A) of the Exchange Act requires that a registered clearing agency be so arranged and have the capacity to enforce compliance by its participants with its rules. Furthermore, Sections 17A(b)(3) (G) and (H) require a registered clearing agency to have in place a system to discipline its participants for violations of its rules and that the procedures for applying such rules be fair and equitable.

Cedel is organized as a bank under the laws of Luxembourg and bilaterally contracts with each of its customers to provide clearance and settlement and other securities services. Cedel is not a self-regulatory organization within the meaning of the Exchange Act. In particular, Cedel does not have any disciplinary authority over its customers other than the commercial discipline of refusing to provide services to those customers that fail to satisfy the terms of their contractual arrangements with Cedel. Cedel contends that a self-regulatory structure as envisioned under the Exchange Act is incompatible with its current legal and business structure under Luxembourg law. Specifically, Cedel believes that it would be compelled to alter its clearance and settlement arrangements from its present bilateral contractual agreements with its customers and that such a change would upset and complicate the existing legal structure of international cross-border clearance and settlement of securities transactions. Moreover, Cedel believes any rules it would promulgate as a self-regulatory entity under U.S. law would have questionable application in the home markets of Cedel's international customers outside of the United States.[54]

The Commission is sensitive to the myriad of issues which could arise in connection with requiring Cedel to comply with the self-regulatory structure and obligations of a registered clearing agency. Through its review of Cedel's operational arrangements with its customers, the Commission is satisfied that the goals of Sections 17A(b)(3) (G) and (H) requiring registered clearing agencies to have in place a system to discipline its participants for violations of their rules are substantially fulfilled under Cedel's current structure and by grant of the exemption. For example, regarding the Exchange Act requirement that registered clearing agencies assure participant compliance with the clearing agencies' rules and procedures, Cedel has a strong financial incentive to have its customers adhere to Cedel's financial and operational requirements. Additionally, although Cedel does not have formal disciplinary authority over its customers, it can influence its customers' activities by its credit extension, admissions, and termination policies. Furthermore, if Cedel fails to assure adequate compliance by its customers with Cedel's financial and operational requirements or if Cedel or its customers operate in a way that endangers the safety and soundness of U.S. markets or market participants, the Commission can alter or withdraw Cedel's exemption. This is analogous to the Commission's authority to sanction registered clearing agencies for failure to assure compliance with rules of the clearing agencies.

6. Filing of Proposed Rule Changes

Section 19(b) of the Exchange Act requires registered clearing agencies to file with the Commission copies of all proposed amendments or additions to the clearing agencies' rules prior to implementation of such rule changes.[55] the Commission is vested with the authority to approve or disapprove such rule proposals in accordance with Section 19(b) of the Exchange Act, which includes a procedure to solicit public comment on proposed rule changes. Because Cedel will not be a registered clearing agency, proposed changes to its structure or operations will not be subject to the Section 19(b) process.

The relationship between Cedel and each of its customers is governed by the General Terms and Conditions Agreement ("Customer Agreement") and the Cedel Customer Handbook ("Customer Handbook"). Cedel must notify the customer in writing of any amendment to the Customer Agreement and the effective date of the amendment. Customers have the opportunity to object to the amendment in writing within ten business days of receipt of the notice of amendment. If a customer does not object in such a manner, it is deemed to have accepted the amendment. Similarly, customers also are notified of changes to Cedel's Customer Handbook ten days prior to the effective date of such changes. Any objection to a change must be in writing within ten business days of the receipt of notice and must be brought to the attention of the Cedel User Group or customer support personnel.

While these procedures are not consistent with the requirements and obligations of registered clearing agencies as self-regulatory entities as set forth in the Standards Release and Section 17A of the Exchange Act, the self-regulatory role is not compatible with Cedel's current structure. In this context, however, the Commission believes that it is important that Cedel's customers receive notice of changes to the Customer Agreement and Customer Handbook, and are provided a procedure to respond to such changes. Also, as discussed below in Section III.C of this Order, Cedel will be required to provide the Commission with current copies of its Customer Handbook and Customer Agreement and to notify the Commission of any changes thereto.

C. Scope of Exemption

This Order exempts Cedel from registration as a clearing agency under Section 17A of the Exchange Act subject to conditions which the Commission believes are necessary and appropriate for Cedel's present structure and operation.[56] The Commission believes that such action is consistent with the Exchange Act objective of promoting the safety and soundness of the national clearance and settlement system, including the goals of fostering cooperating and coordination among persons engaged in the clearance and settlement of securities transactions, facilitating the prompt and accurate clearance and settlement of securities transactions, and protecting investors and the public interest. The limitations in the exemption reflect the Commission's determination to take a gradual approach toward permitting an international non-registered clearing agency such as Cedel to provide securities processing services in U.S. government securities to U.S. market participants. At the same time, the exemption permits Cedel to provide clearance, settlement, and collateral management services to both U.S. and non-U.S. customers.

1. Securities Covered by the Exemption

In its application for exemption, Cedel requested that it be permitted to provide clearance and settlement, securities lending, and GCSS services for transactions involving all U.S. securities, including equity and debt securities.[57] As the comment letters generally indicated, the ability to provide clearance, settlement, and collateral management services for transactions involving U.S. Treasuries appears to be the most critical element of Cedel's proposed services, especially GCSS. In addition, at this time Cedel has linkages with U.S. entities necessary to provide services for transactions involving U.S. government securities, but has not yet developed the necessary linkages that would enable it to provide for clearance and settlement of all U.S. debt and equity securities.

Based on these considerations, this Order grants Cedel the authority to provide clearance, settlement, and collateral management services for (i) Fedwire-eligible U.S. government securities[58] and (ii) mortgage backed pass-through securities that are guaranteed by the Government National Mortgage Association ("GNMAs")[59] (collectively, "eligible U.S. government securities").[60] The Commission believes that this limitation is necessary and appropriate because it will facilitate operation of the GCSS system and

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[52] According to Cedel's constituency policy for the Board of Directors, three directors must be selected from North America, seven from Europe, and three Asia.

[53] Specifically, under current admissions procedures Cedel would not accept as customers investment companies or insurance companies regulated by state or federal authorities in the United States.

[54] Cedel points out in its application that conflicts of law and international comity issues would likely arise in connection with Cedel's operations where U.S. legal and regulatory requirements differ from those of Luxembourg. This situation could undermine the certainty of Cedel's operational arrangements with both U.S. and non-U.S. customers.

[55] 15 U.S.C. 78s(b)(1).

[56] Among other things, foreign sovereignty considerations may limit the Commission's ability to carry out all of its regulatory functions outside of the United States. Accordingly, the Commission notes that it does not possess the same degree of regulatory authority and control over an exempt non-domestic clearing agency such as Cedel as the Commission has with respect to a fully registered clearing agency.

[57] The Commission is of the view that the provision of clearance, settlement, and collateral management services by a foreign clearing agency for U.S. entities in U.S. debt and equity securities raises issues that were not addressed sufficiently in the Cedel Notice. Consequently, commenters may not have focused on these issues. Therefore, the Commission today is publishing a notice relating to Cedel's original proposal to solicit comments on the specific issue as to the appropriate scope of an exemption to permit Cedel to offer its securities processing and collateral management services for U.S. debt and equity securities in addition to eligible U.S. government securities. Securities Exchange Act Release No. 38329 (February 24, 1997).

[58] "Government securities" is defined in Section 3(a)(42) of the Exchange Act, 15 U.S.C. 78c(a)(42). Fedwire is a large-value transfer system operated by the Federal Reserve Banks that supports the electronic transfer of funds and the electronic transfer of book-entry securities.

[59] GNMAs, unlike other mortgage-backed securities such as those guaranteed by the Federal National Mortgage Association ("FNMAs") and the Federal Home Loan Mortgage Association ("FHLMCs"), are issued in certificated form and therefore cannot be transferred over Fedwire.

[60] "Eligible U.S. government securities" also includes any collateralized mortgage obligation ("CMO") whose underlying securities are Fedwire eligible U.S. government securities or GNMA guaranteed mortgage-backed pass through securities and which are depository eligible securities.

permit Cedel to offer securities processing services for very liquid U.S. government securities, and will provide Cedel with the opportunity to request that the exemption be broadened when it develops the necessary linkages and facilities to provide securities processing services for other U.S. securities.

2. Volume Limits

The Commission is placing a limit on the volume of eligible U.S. government securities transacted by U.S. entities or their affiliates processed through Cedel. In the Cedel Notice, the Commission proposed that the exemption include a fixed volume limit of $30 billion per day in U.S. securities transacted by U.S. entities or their affiliates processed through Cedel.[61] However, based upon the comment letters and further examination of various methods of calculating transaction volume, the Commission has determined that a flexible percentage based formula is more appropriate.[62]

Specifically, the average daily volume of eligible U.S. government securities processed through Cedel[63] may not exceed five percent of the total average daily dollar value of the aggregate volume in eligible U.S. government securities. The total average daily dollar value of eligible U.S. government securities volume will be determined semi-annually as the sum of (1) the average daily transaction value of all Fedwire eligible book-entry transfers originated on Fedwire as provided to the Commission by the Board of Governors of the Federal Reserve System, (2) the average daily value of all compared trades, less the netted value of all such compared trades, in eligible U.S. government securities as provided to the Commission by the Government Securities Clearing Corporation, (3) the average daily value of all compared trades, less the netted value of all such compared trades, plus the average daily volume of all trade-for-trade transactions (*i.e.*, trades not included in the netting system), in eligible government securities as provided by MBS Clearing Corporation, (4) the average daily gross settlement value in eligible U.S. government securities as provided to the Commission by the Participants Trust Company, and (5) the average daily dollar value of compared trades in eligible U.S. government securities from any other source that the Division deems appropriate to reflect the aggregate volume in eligible U.S. government securities.

Cedel's average daily volume will be the sum of the following amounts for the previous twelve months as determined on a rolling quarterly basis: (1) All settlements, both internal and external, within Cedel's clearance and settlement system involving a U.S. customer or its affiliate and eligible U.S. government securities; (2) each movement of eligible U.S. government securities into the GCSS system involving a U.S. customer or its affiliate; (3) each delivery of eligible U.S. government securities involving a U.S. customer or its affiliate within the GCSS system; and (4) each delivery of eligible U.S. government securities involving a U.S. customer or its affiliate out of the GCSS system. In the volume calculation, only the initial movement of collateral (the "on-leg") of such GCSS delivery or movement will be included; the return of collateral will not.

For purposes of calculating the volume limit and for purposes of Commission access to information, "affiliate" means any Cedel customer having a relationship with a U.S. entity,[64] where the U.S. entity has an arrangement on file at Cedel to prevent a settlement default or credit default in respect of such customer, or Cedel knows that the U.S. entity has another arrangement to prevent a settlement default or credit default with respect to such customer. In addition, the Commission may specifically designate Cedel customers that will be deemed affiliates for purposes of calculating Cedel's volume and for information access.

The Commission believes the volume limit is appropriate in that it is large enough to allow Cedel to conduct effective operations in processing eligible U.S. government securities transactions involving U.S. entities or their affiliates, and to allow the Commission to observe the effects of Cedel's activities on the U.S. government securities market, but is sufficiently limited so that the safety and soundness of the U.S. markets should not be materially affected if Cedel experiences financial or operational difficulties. Either upon Cedel's request or by its own initiative, the Commission may review whether the current volume limit should be modified.

3. Commission Access to Information

To facilitate the monitoring of the impact of Cedel's operation under this exemption, including compliance with the volume limit, this Order requires Cedel to provide information on a monthly basis regarding (i) the aggregate volume of eligible U.S. government securities transacted by U.S. entities or their affiliates that are processed through Cedel and (ii) the aggregate volume for all Cedel customers for transactions in eligible U.S. government securities that are processed through Cedel. Under the exemption, Cedel also is required to notify the Commission regarding material adverse changes in any account maintained by Cedel for its customers that are members or affiliates of members of a U.S. registered clearing agency.[65] Cedel also is required to respond to a Commission request for information about a U.S. customer or its affiliate about whom the Commission has financial solvency concerns.[66] The exemption also is contingent upon the execution of a satisfactory unilateral understanding between the Commission and the IML, Luxembourg's banking and securities regulatory authority, to facilitate the provision of information by Cedel to the Commission.[67] In addition to the above information, the Commission will monitor Cedel through its review of information provided to the IML by Cedel[68] and its external auditors.[69]

In addition to the foregoing arrangements for access to information, Cedel will be required to file with the Commission amendments to its application for exemption on Form CA–1 prior to the implementation of any change in Cedel's stated policies, practices, or procedures that makes the information contained in the original Form CA–1 incomplete or inaccurate in any material respect.[70] This method of notifying the Commission of proposed changes at Cedel will assist the Commission on its overall review and understanding of Cedel and its operations. In addition, Cedel will be required to notify the Commission of changes to the Customer Handbook and Customer Agreement and will provide the Commission with copies of the most current Customer Agreement and Customer Handbook and any amendments or updates thereto. Cedel also will provide the Commission with copies of Cedel's annual report of its external auditor, and any other document relating to an audit, survey, or consultant's review concerning Cedel's financial position, operations, or internal control as the Commission may reasonably request.

4. Modification of Exemption

The Commission may modify by order the terms, scope, or conditions of Cedel's exemption from registration as a clearing agency if the Commission determines that such modification is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.[71] Furthermore, the Commission may limit, suspend, or revoke this exemption if the Commission finds that Cedel has violated or is unable to comply with any of the provisions set forth in this Order if such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act for the protection of investors and the public interest.

IV. Conclusion

The Commission finds that Cedel's application for exemption from registration as a clearing agency meets the standards and requirements deemed appropriate for such an exemption including those standards set forth under Section 17A of the Exchange Act.

It is therefore ordered, pursuant to Section 19(a)(1) of the Exchange Act, that the application for exemption from registration as a clearing agency filed by Cedel Bank, société anonyme (File No. 600–29) be, and hereby is, approved subject to the conditions contained in this Order.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–5027 Filed 2–27–97; 8:45 am]

BILLING CODE 8010–01–M

[61] A similar approach was adopted by the Commission in granting an exemption from clearing agency registration to the Clearing Corporation for Options and Securities ("CCOS"). That exemptive order contained volume limitations of US$6 billion net daily settlement for government securities and US$24 billion for repurchase agreements and reverse repurchase agreements transactions calculated on an average daily basis over a 90 day period. At that time, the CCOS volume limits were designed to limit CCOS's activity to approximately 5% of the average daily dollar value of transactions in U.S. government securities and of repurchase agreements and reverse repurchase agreements involving U.S. government securities. See note 41 *supra*.

[62] Two commenters addressed the proposed volume limitations. One commenter supported the initial conditions proposed by the Commission but urged that the Commission reassess from time to time the transaction volume limitations. The commenter believed that this would allow the Commission the opportunity to monitor the performance of Cedel while ensuring the appropriateness of the levels at which those limitations have been set. Letter from Monroe R. Sonnenborn, Managing Director, Morgan Stanley & Co. Incorporated, to Jonathan Katz, Secretary, Commission (July 22, 1996). The other commenter believed that the conditions relating to the volume limitations and Commission access to information to be "reasonable actions by the Commission for achieving its objective of monitoring the safety and soundness of U.S. securities markets." Letter from John Macfarlane, Managing Director, Salomon Brothers Inc, to Jonathan Katz, Secretary, Commission (July 19, 1996).

[63] For purposes of the determination of volume limits, securities "processed through Cedel" means a security that is utilized by GCSS, Cedel's clearance and settlement system, Cedel's tripartite repo service, or Cedel's securities lending program.

The conditions and restrictions set forth in this Order will not apply to Cedel for the processing of transactions in eligible U.S. government securities where both counterparties to the transaction are not a U.S. customer or an affiliate. However, from the information to be made available to the Commission from Cedel and the IML, the Commission expects to receive information regarding all transactions in U.S. government securities processed by Cedel *i.e.*, whether or not a U.S. counterparty is involved) and will examine the effects such transactions may have on U.S. markets and U.S. market participants.

[64] For purposes of this Order, "U.S. entity" shall mean (i) any entity organized under the laws of the United States or any state or subdivision thereof that is registered or regulated pursuant to state or federal banking or securities law and shall include, without limitation, U.S. registered broker-dealers, U.S. banks (as defined by Section 3(a)(6) of the Exchange Act), and (ii) foreign branches of U.S. banks or U.S. registered broker-dealers.

[65] For purposes of the unilateral understanding with the IML discussed below, the term "material adverse changes" refers to a default in settlement for credit reasons in an account maintained by a Cedel member, a liquidation of collateral posted by a Cedel member in an account maintained by Cedel, or a limitation imposed by Cedel on any credit line of a Cedel member relating to any account maintained by such member.

[66] In addition, the Commission will be permitted to observe Cedel operations and to talk to Cedel personnel on-site if the Commission so requests.

[67] Cedel has represented to the Commission that its obligations to provide information to the Commission pursuant to this Order is not dependent upon the prior approval of the IML.

[68] Cedel is required to submit to the IML monthly balance sheets, foreign exchange position reports, and liquidity ratios. Cedel also is required to submit quarterly income statements and reports on large exposures and on the maturity structure of Cedel's assets and liabilities. See also *supra* note 1.

[69] Cedel's external auditors are required, among other things, to review Cedel's accounting and risk management systems and to assess the reliability of Cedel's periodic reports to the IML.

[70] Cedel will be required to amend its application for any proposed changes to its stated policies, practices, or interpretations as that phrase is defined in Rule 19b–4, 17 CFR 240.19b–4.

[71] The exemption provided by this Order is based upon representations by Cedel, facts contained in the Cedel application, and other information known to the Commission regarding the substantive aspects of Cedel's proposal (collectively, "representations and facts"). Any changes in the representations or facts as presented to the Commission may require a modification to the exemption. Responsibility for compliance with all applicable U.S. securities laws rests with Cedel and its customers, as appropriate. Cedel also is advised that this Order does not exempt Cedel from the anti-fraud or anti-manipulation provisions of the Exchange Act or any of the rules promulgated thereunder.

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Social Security Administration publishes a list of information collection packages submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. The information collections listed below have been submitted to OMB:

1. Physical Residual Functional Capacity Assessment; Mental Residual Functional Capacity Assessment—0960–0431. The information collected on forms SSA–4734–BK and SSA–4734 SUP is needed by the Social Security Administration to assist in the adjudication of disability claims involving physical and/or mental impairments. The forms assist the State Disability Determination Services (DDS) to evaluate impairment(s) by providing a standardized data collection format to present findings in a clear, concise and consistent manner. The respondents are State DDSs administering title II and title XVI disability programs.

Number of Responses: 1,693,425.
Frequency of Response: 1.
Average Burden Per Response: 20 minutes.
Estimated Annual Burden: 564,475 hours.

2. Letter to Employer Requesting Wage Information—0960–0138. The information collected on form SSA–L4201 is used by the Social Security Administration to determine eligibility and proper payment for Supplemental Security Income (SSI) applicants/recipients. The respondents are employers of applicants for and recipients of SSI payments.

Number of Respondents: 133,000.
Frequency of Response: 1.
Average Burden Per Response: 30 minutes.
Estimated Annual Burden: 66,500 hours.

3. State Agency Schedule for Equipment Purchases for SSA Disability Program—0960–0406. The information collected on form SSA–871 is used by the Social Security Administration to budget and account for expenditures of funds for equipment purchases by the State Disability Determination Services that administer the disability program. The respondents are State Disability Determination Services.

Number of Respondents: 54.
Frequency of Response: Annually.
Average Burden Per Response: 1 hour.
Estimated Annual Burden: 54 hours.

To receive a copy of the forms or clearance packages, call the SSA Reports Clearance Officer on (410) 965–4125 or write to her at the address listed below. Written comments and recommendations regarding the information collection(s) should be directed within 30 days to the OMB

Desk Officer and SSA Reports Clearance Officer at the following addresses:
(OMB)
Office of Management and Budget, OIRA, Attn: Laura Oliven, New Executive Office Building, Room 10230, 725 17th St., NW., Washington, D.C. 20503
(SSA)
Social Security Administration, DCFAM, Attn: Judith T. Hasche, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235

Dated: February 14, 1997

Judith T. Hasche,

SSA Reports Clearance Officer, Social Security Administration.

[FR Doc. 97–4368 Filed 2–27–97; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending February 21,1997

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–97–2138.
Date filed: February 18, 1997.
Parties: Members of the International Air Transport Association.
Subject: PTC3 Telex Mail Vote 856; Special Amending Reso 010h (Hiroshima-Guam/Saipan); Intended effective date: June 5, 1997.

Docket Number: OST–97–2139.
Date filed: February 18, 1997.
Parties: Members of the International Air Transport Association.
Subject: COMP Telex Mail Vote 855; Special Amending Reso 010g from Japan; Intended effective date: March 10, 1997.

Docket Number: OST–97–2140.
Date filed: February 18, 1997.
Parties: Members of the International Air Transport Association.
Subject: PTC AFR 0006 dated February 11, 1997; Within Africa Expedited Reso 002m; Intended effective date: March 15, 1997.

Docket Number: OST–97–2142.
Date filed: February 21, 1997.
Parties: Members of the International Air Transport Association.
Subject: PTC2 EUR–AFR 0013 dated February 11, 1997 r1–2; PTC2 EUR–AFR 0014 dated February 11, 1997 r3–22; PTC2 EUR–AFR 0015 dated February 11, 1997 r23–48; PTC2 EUR–AFR 0016 dated February 11, 1997 r–49–70; PTC2 EUR–AFR 0017 dated February 11, 1997 r–71–87; PTC2 EUR–AFR 0018 dated Feb. 11, 1997 r88–105; Minutes—PTC2 EUR–AFR 0019 dated Feb. 11, 1997; Tables—PTC2 EUR–AFR Fares 0009 dated Feb.18, 1997; PTC2 EUR–AFR Fares 0010 dated February 18, 1997; PTC2 EUR–AFR Fares 0011 dated February 18, 1997; PTC2 EUR–AFR Fares 0012 dated February 18, 1997; Europe-Africa Resolutions; Intended effective date: May 1, 1997.

Paulette V. Twine,

Chief, Documentary Services.

[FR Doc. 97–5041 Filed 2–27–97; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending February 21, 1997

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–97–2144.

Date filed: February 21, 1997.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 21, 1997.

Description: Application of Airline Management Limited, pursuant to 49 U.S.C. Section 41301 and Subpart Q of the Regulations, applies for a foreign air carrier permit to engage in charter foreign air transportation of persons and property as follows: Between any point or points in the United Kingdom and any point or points in the United States, either directly or via intermediate or beyond points in other countries, with or without stopovers; Between any point or points in the United States and any point or points not in the United Kingdom or the United States; and any other charter flights authorized pursuant to Part 212 of the Department's regulations.

Paulette V. Twine,

Chief, Documentary Services.

[FR Doc. 97–5042 Filed 2–27–97; 8:45 am]

BILLING CODE 4910–62–P

Federal Highway Administration

Revised Filing Procedures for the FHWA Rulemaking and Adjudicatory Dockets

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of docket filing procedures.

SUMMARY: The FHWA open rulemaking and adjudicatory docket files will be temporarily relocated and available for inspection and copying in Room 2200–G on the second floor of the Nassif Building within the TASC Library at 400 Seventh Street, SW., Washington, DC 20590. This temporary relocation is necessary because there will be no access to the fourth floor of the DOT Headquarters building for approximately four weeks and because the FHWA dockets are being consolidated with the DOT Docket Management System. The DOT is consolidating its nine separate docket facilities and converting from a paper-based system to an optical imaging system for more efficient storage, management, and retrieval of docketed information in order to provide better service and access to the public and to government users. The FHWA rulemaking and adjudicatory docket files that are closed will be sent to the Federal Records Center in the near future and are unavailable for retrieval during the temporary relocation of FHWA personnel to Techworld Plaza from March 7 through April 7, 1997.

DATES: Open rulemaking and adjudicatory dockets are available for inspection and copying in Room 2200–G effective March 3, 1997, until April 7, 1997. Open dockets will be available for inspection and copying in Room PL–401 beginning on April 7, 1997. Closed rulemaking and adjudicatory dockets are temporarily unavailable for inspection and copying from March 7 through April 7, 1997.

ADDRESSES: Submit all rulemaking comments and adjudicatory dockets to the U.S. DOT Dockets, Plaza Level of the Nassif Building at the U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001 between the hours of 10 a.m. and 5 p.m., e.t.

FOR FURTHER INFORMATION CONTACT: For FHWA rulemaking information: Mr. Thomas P. Holian, HCC–10, (202) 366–1383. For FHWA adjudicatory information: Mr. Steven B. Farbman, HCC–04, (202) 366–1358. Both are in FHWA's Office of the Chief Counsel. For the U.S. DOT Dockets: Ms. Paulette Twine, Documentary Services, Room PL–401, (202) 366–9329.

SUPPLEMENTARY INFORMATION: On March 15, 1995, at 60 FR 14050, the DOT issued a public meeting notice concerning the centralization and computerization of DOT dockets. On June 10, 1996, at 61 FR 29282, the Office of the Secretary of the DOT published a final rule revising filing procedures for OST dockets.

The FHWA docket transition to the centralized dockets begins on February 28, 1997. All open dockets will be available for inspection and copying in Room 2200–G within the TASC Library of the Nassif Building from 9 a.m. to 3:30 p.m., e.t., Monday through Friday, except for Federal holidays, from March 3 through April 7, 1997. All comments to open dockets should be clearly marked with the appropriate docket number and submitted to the U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001.

At this time, the U.S. DOT Dockets will accept only paper filings for an original document.

To ensure that the highest quality image is captured during the scanning process, documents must be typed double-spaced on 8½ by 11 inch white paper with dark type (not green) to provide adequate contrast for photographic reproduction. With one exception, original documents must be unbound, without tabs, to reduce possible damage during removal of pins and staples and to facilitate the use of a high-speed mechanism for automated scanning. Documents of more than one page may be clipped with a removable clip or similar device. In cases assigned by order to an Administrative Law Judge for hearing, the filing requirements with respect to tabbing and binding and the number of copies required will be set by order of the Administrative Law Judge. Filers are requested to provide one-sided original documents to speed the physical scanning process, but the software capability to sort double-sided copies is available.

Material that cannot be scanned will be given special handling and a cross-reference to this material will be noted in the docket file.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: February 24, 1997.

Jane Garvey,

Acting Administrator.

[FR Doc. 97–5022 Filed 2–27–97; 8:45 am]

BILLING CODE 4910–22–P

Surface Transportation Board

[STB Finance Docket No. 33353]

Clarkdale Arizona Central Railroad, L.C.—Acquisition and Operation Exemption—Arizona Central Railroad, Inc.

Clarkdale Arizona Central Railroad, L.C. (CACR) has filed a verified notice of exemption under 49 CFR 1150.31 to acquire approximately 38.74 miles of rail line owned by Arizona Central Railroad, Inc. (AZCR), between milepost 0 + 15 feet at Drake, AZ, to the Phoenix Cement Plant at milepost 38 + 3940.3 feet near Clarkdale, AZ (the Clarkdale Branch).[1] CACR will become a Class III rail carrier.[2] Consummation was expected to occur on or shortly after February 7, 1997. Although this notice of exemption for acquisition and operation was filed on January 29, 1997, and the exemption thus became effective on February 5, 1997, the transition could not lawfully have been consummated until February 10, 1997, at the earliest, because the related notice of exemption for continuance in control was filed on February 3, 1997, and, as a result, that exemption did not become effective until February 10, 1997.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33353, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423[3] and served on: Walter T. Merrill, Durbano & Merrill, 3340 Harrison Boulevard, Suite 200, Ogden, UT 84403.

Decided: February 19, 1997.

[1] CACR states that the Clarkdale Branch is the only rail asset owned by AZCR, although AZCR owns other assets. For liability and accounting purposes, and as part of a restructuring of the business organizations under common control, the decision was made to transfer AZCR's only rail asset to CACR. After consummation of the transaction, AZCR will no longer be a rail carrier subject to Board jurisdiction.

[2] This proceeding is related to STB Finance Docket No. 33354, wherein David L. Durbano, a noncarrier individual, has filed a notice of exemption to continue in control of CACR upon CACR's becoming a Class III rail carrier.

[3] Due to the Board's scheduled relocation on March 16, 1997, any filings made after March 16, 1997, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1925 K Street, N.W., Washington, D.C. 20423–0001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–4866 Filed 2–27–97; 8:45 am]

BILLING CODE 4915–00–P

[STB Finance Docket No. 33354]

David L. Durbano—Continuance in Control Exemption—Clarkdale Arizona Central Railroad, L.C.

David L. Durbano (Applicant) has filed a verified notice of exemption to continue in control of Clarkdale Arizona Central Railroad, L.C. (CACR), upon CACR's becoming a Class III rail carrier.

The notice stated that Applicant expected the transaction to be consummated on or after February 7, 1997. Because this notice of exemption for continuance in control was filed on February 3, 1997, however, the 7-day effective date of this notice was February 10, 1997, which was thus the earliest date consummation could lawfully occur.

This transaction is related to STB Finance Docket No. 33353, *Clarkdale Arizona Central Railroad, L.C.—Acquisition and Operation Exemption—Arizona Central Railroad, Inc.*, wherein CACR seeks to acquire 38.74 miles of rail line owned by Arizona Central Railroad, Inc. (AZCR).

Applicant controls five existing Class III rail common carriers. In addition to controlling AZCR, operating in Arizona, applicant controls: Wyoming and Colorado Railroad Company, Inc. (WYCO), operating in Wyoming; Oregon Eastern Railroad Company, Inc. (OER), operating in Oregon; Southwestern Railroad Company, Inc. (SWR), operating in New Mexico, Oklahoma, and Texas; and Cimarron Valley Railroad, L.C. (CVR), operating in Kansas, Oklahoma, and Colorado.

Applicant states that: (i) CACR will not connect with WYCO, OER, SWR, or CVR; (ii) the continuance in control is not part of a series of anticipated transactions that would connect CACR with WYCO, OER, SWR, or CVR; and (iii) the transaction does not involve any Class I carriers. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail

carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33354, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423.[1] In addition, a copy of each pleading must be served on: Walter T. Merrill, Durbano & Merrill, 3340 Harrison Boulevard, Suite 200, Ogden, UT 84403.

Decided: February 19, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–4867 Filed 2–27–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 21, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of the Public Debt (BPD)

OMB Number: 1535–0013.
Form Number: PD F 1048 and PD F 2243.
Type of Review: Extension.
Title: Application for Relief on Account of Loss, Theft or Destruction of U.S. Savings and Retirement Securities (1048); and Statement Concerning U.S. Securities (2243).
Description: PD F 1048 and PD F 2243 are used by owner(s) or others having knowledge to request substitute securities or payment of lost, stolen or destroyed securities.
Respondents: Individuals or households.
Estimated Number of Respondents: 80,000.
Estimated Burden Hours Per Response: 25 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 32,000 hours.

OMB Number: 1535–0035.
Form Number: PD F 4881.
Type of Review: Extension.
Title: Application for payment of United States Savings Bonds/Notes or Related Checks in an Amount NOT Exceeding $1,000 by the Survivor of a Deceased Owner Whose Estate is NOT Being Administered.
Description: PD F 4881 is used by survivors of deceased bond owners to apply for proceeds from bonds, or related checks.
Respondents: Individual or households.
Estimated Number of Respondents: 3,965.
Estimated Burden Hours Per Response: 25 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 991 hours.

OMB Number: 1535–0036.
Form Number: PD F 2513.
Type of Review: Extension.
Title: Application by Voluntary Guardian on Incompetent Owner of United States Savings Bonds/Notes.
Description: PD F 2513 is used by the voluntary guardian of incompetent bond owner(s) to establish the applicant's right to act on behalf of the incompetent owner.
Respondents: Individuals or households.
Estimated Number of Respondents: 7,650.
Estimated Burden Hours Per Response: 20 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 2,600 hours.

OMB Number: 1535–0064.
Form Number: PD F 1980 and PD F 2490.
Type of Review: Extension.
Title: Description of United States Savings Bonds Series HH/H (1980); and Description of United States Bonds/Notes (2490).
Description: PD F 1980 and PD F 2490 are used by an owner of United States Bonds/Notes to describe their holdings.
Respondents: Individuals or households.
Estimated Number of Respondents: 19,000.
Estimated Burden Hours Per Response: 6 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1,900 hours.
Clearance Officer: Vicki S. Thorpe, (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.
OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–4981 Filed 2–27–97; 8:45 am]

BILLING CODE 4810–40–P

Submission for OMB Review; Comment Request

February 20, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request: In order to begin the survey described below in April 1997, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by March 4, 1997. To obtain a copy of this survey, please contact the IRS Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432.
Project Number: M:SP:V 97–004G.
Type of Review: Revision.
Title: 1–900 Tax Practitioner Hotline Focus Group Interviews.
Description: The IRS is conducting a series of nine (9) focus group interviews with tax practitioners. The objective of these focus groups is to determine:

- Are they willing to pay for the 1–900 hotline service?
- What services would they be willing to pay for?
- What services would they not be willing to pay for?
- Their suggestions for alternatives to a 1–900 hotline?

Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 81.
Estimated Burden Hours Per Respondent: 3 hours.
Frequency of Response: Other.
Estimated Total Reporting Burden: 318 hours.
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–4982 Filed 2–27–97; 8:45 am]

BILLING CODE 4830–01–P

Submission for OMB Review; Comment Request

February 20, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request: In order to begin the survey described below in April 1997, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by March 4, 1997. To obtain a copy of this survey, please contact the IRS Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432.
Project Number: M:SP:V 97–005G.
Type of Review: Revision.
Title: North Florida District Problem Resolution Office Survey.
Description: Data obtained from this survey will be used to gage taxpayers' perceptions and satisfaction with the Problem Resolution Office for the North Florida District. IRS will also use the data to analyze the impact of front-line employees in the Problem Resolution Office using conflict management tools and techniques.
Respondents: Individuals or households.
Estimated Number of Respondents: 50
Estimated Burden Hours Per Respondent: 5 minutes.
Frequency of Response: Other.
Estimated Total Reporting Burden: 4 hours.
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–4983 Filed 2–27–97; 8:45 am]

BILLING CODE 4830–01–P

Submission for OMB Review; Comment Request

February 20, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request: In order to begin the survey described below in April 1997, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by March 4, 1997. To obtain a copy of this survey, please contact the IRS Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432.
Project Number: M:SP:V 97–006G.
Type of Review: Revision.
Title: E-Mail Customer Satisfaction Survey.
Description: Data obtained from this survey will be used to continuously improve the E-Mail service to taxpayers. Information on the number of customers who would have called instead of using the E-Mail process will be tracked and used to determine if this service has had an effect on the IRS toll-free workload.
Respondents: Individuals or households, Business or other for-profit.
Estimated Number of Respondents: 20,000.
Estimated Burden Hours Per Respondent: 2 minutes.
Frequency of Response: Other.
Estimated Total Reporting Burden: 667 hours.
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–4984 Filed 2–27–97; 8:45 am]

BILLING CODE 4830–01–P

Internal Revenue Service

Proposed Collection; Comment Request for Voluntary Customer Surveys To Implement E.O. 12862 Coordinated by the Office of Opinion Research on Behalf of All IRS Operations Functions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Voluntary Customer Surveys to Implement E.O. 12862 Coordinated by the Office of Opinion Research on Behalf of All IRS Operations Functions.

DATES: Written comments should be received on or before April 29, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

[1] Due to the Board's scheduled relocation on March 16, 1997, any filings made after March 16, 1997, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1925 K Street, N.W., Washington, D.C. 20423–0001.

SUPPLEMENTARY INFORMATION:

Title: Voluntary Customer Surveys to Implement E.O. 12862 Coordinated by the Office of Opinion Research on Behalf of All IRS Operations Functions.

OMB Number: 1545–1432.

Abstract: This is a generic clearance for an undefined number of customer satisfaction and opinion surveys and focus group interviews to be conducted over the next three years. Surveys and focus groups conducted under the generic clearance are used by the Internal Revenue Service to determine levels of customer satisfaction, as well as determining issues that contribute to customer burden. This information will be used to make quality improvements to products and services.

Current Actions: We will be conducting different customer satisfaction and opinion surveys and focus group interviews during the next three years than in the past. At the present time, it is not determined what these surveys and focus groups will be.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households, business or other-for-profit organizations, and farms.

Estimated Number of Respondents: 83,841.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 7,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 21, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–4950 Filed 2–27–97; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES INFORMATION AGENCY

VOA Seeks Private Sector Partners

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: The Voice of America (VOA) is the United States Government's world-wide broadcasting service and a major component of the U.S. Information Agency's (USIA) International Broadcasting Bureau. VOA has an unparalleled worldwide news gathering service, with more than 22 bureaus around the globe; it produces a wide variety of programming in English and 52 other languages, reaching about 92 million people around the globe; it has a 55-year worldwide reputation for accuracy and excellence, making it far and away the best known and respected American source of news and information in the world; its music programs have brought and now bring American popular culture to remote areas of the world; millions of people have learned English by listening the English teaching and Special English programs of VOA; many of its language services, such as the Spanish and Portuguese Services for Latin America (VOA Latin America) now work with hundreds of affiliate stations.

Like other major media enterprises, the VOA is now prepared to explore a variety of possible arrangements with telecommunications/broadcasting corporations. VOA is prepared to accept proposals for joint ventures, corporate underwriting, and other relationships designed to further its mission while reducing the expenditure of taxpayer dollars. The Agency is authorized, pursuant to 22 U.S.C. 1437, to encourage and utilize private agencies' participation, including existing American press, publishing, radio, et al., in carrying out its mission.

Accordingly, the U.S. Information Agency and its International Broadcasting Bureau are seeking private sector partners for its various VOA programs and program services. It is specifically interested in exploring proposals from companies that would like to provide financing for VOA Latin America and/or other components of VOA.

Expressions of interest should be submitted in writing by April 1, 1997, to John G. Busch, Office of Contracts, 301 4th St., S.W., Room M–22, Washington, DC 20547; telephone no. 202–205–5480; fax no. 202–205–5466; or Internet: JBUSCH@USIA.GOV. All correspondence will be considered.

Dated: February 21, 1997.

John G. Busch,

Senior Contracting Officer, Office of Contracts.

[FR Doc. 97–5025 Filed 2–27–97; 8:45 am]

BILLING CODE 8230–01–M

Corrections

Federal Register

Vol. 62, No. 40

Friday, February 28, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

PENSION BENEFIT GUARANTY CORPORATION

Request for Comment on Proposed Collection of Information Under the Paperwork Reduction Act; Locating and Paying Participants

Correction

In notice document 97–4344 appearing on page 8057 in the issue of Friday, February 21, 1997, make the following correction:

On page 8057, in the second column, in the first paragraph, in the last line, "36,610" should read "31,610".

BILLING CODE 1505-01-D

federal register

Friday
February 28, 1997

Part II

Securities and Exchange Commission

17 CFR Part 228, et al.
Revision of Holding Period Requirements in Rules 144 and 145; Revision of Rules 144 and 145 and Form 144; Offshore Offers and Sales; Delayed Pricing for Certain Registrants; Final Rule and Proposed Rules

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33–7390; File No. S7–17–95]

RIN 3235–AG53

Revision of Holding Period Requirements in Rules 144 and 145

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission is amending the holding period requirements contained in Rule 144 to permit the resale of limited amounts of restricted securities by any person after a one-year, rather than a two-year, holding period. Also, the amendments permit unlimited resales of restricted securities held by non-affiliates of the issuer after a holding period of two years, rather than three years. These changes should reduce the cost of capital, particularly for small business issuers. Parallel changes to Rule 145 also are being adopted.

EFFECTIVE DATE: The changes to §§ 230.144 and 230.145 will be effective April 29, 1997.

FOR FURTHER INFORMATION CONTACT: Elizabeth M. Murphy, Office of Chief Counsel, Division of Corporation Finance at (202) 942–2900, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: On June 27, 1995, the Commission published for comment a release proposing amendments to Rule 144,[1] the non-exclusive safe harbor from registration for resales of restricted securities and securities held by affiliates of the issuer, under the Securities Act of 1933 (the "Securities Act").[2] These proposals are being adopted today. As amended, the holding period for resales of limited amounts of restricted securities by any person has been reduced from two years to one year. The holding period for resales by non-affiliates without compliance with the provisions of the rule has been reduced from three years to two years.[3] The Commission also is adopting parallel changes to Securities Act Rule 145.[4] The revised holding periods are applicable to all securities, whether acquired before or after the effective date of the changes announced today. The Commission today also is publishing a companion release soliciting comment on additional changes to Rule 144 that would simplify the rule's operation and further modify the Rule 144 holding periods.[5]

I. Discussion

Today, for the first time since the adoption of Rule 144 in 1972,[6] the Commission is adopting amendments to shorten the holding period that must be satisfied before limited resales of restricted securities may be made by affiliates and non-affiliates in reliance upon the rule. As had been proposed, the amendments reduce that holding period from two years to one year. Also as proposed, the amendments reduce the length of the holding period that non-affiliates must hold restricted securities before making unlimited resales of such securities from three years to two years.

The Commission is adopting the shortened holding periods based on its more than 20 years of experience with Rule 144 and the favorable public comments received on the 1995 Release. Shorter holding periods should reduce the cost of capital. This particularly should benefit smaller companies, which often sell securities in private placements. A shorter holding period should lower the illiquidity discount given by companies raising capital in private placements and increase the usefulness of the Rule 144 safe harbor.

Shorter Rule 144 holding periods have been recommended by participants in the SEC Government-Business Forum on Small Business Capital Formation.[7] The Commission believes that the shorter holding periods will not diminish investor protection, since they are sufficiently long to ensure that resales under Rule 144 will not facilitate indirect public distributions of unregistered securities by issuers or affiliates.

Rule 144 provides an objective safe harbor for resales of restricted securities and control securities. Restricted securities generally are securities issued in private placements;[8] control securities are securities owned by affiliates of the issuer, however acquired. The rule provides that a person complying with its terms and conditions will not be engaged in a distribution of securities and, thus, not be an "underwriter"[9] for purposes of the Section 4(1)[10] exemption from Securities Act registration for ordinary trading transactions.[11]

The rule includes holding periods for restricted securities to establish that the holder did not purchase with a view to an unregistered public distribution. Pursuant to the amendments adopted today, all restricted securities must be held at least one year before resale, measured from the date the securities are acquired from the issuer or an affiliate. For restricted securities held between one and two years, other provisions of the rule require that current public information be available about the issuer, that limited amounts of securities be resold, that the resales be effected in ordinary brokerage transactions or directly with a market-maker, and that a notification of the resale be filed with the Commission. Under the amendments, after a two-year holding period, restricted securities may be resold by non-affiliates without compliance with any of these provisions.

At the suggestion of commenters, the Commission also is adopting parallel changes to the holding period provisions included in Securities Act Rule 145(d),[12] which governs the resale of securities received in connection with reclassifications, mergers, consolidations and asset transfers. Rule 145(c)[13] provides that any party to a transaction covered by Rule 145 (other than the issuer), or any person who is an affiliate of such party at the time the transaction is submitted for vote or consent, who publicly resells securities of the issuer acquired in connection with that transaction will be deemed to be engaged in a distribution, and therefore to be an underwriter of those securities, except where the securities are resold in accordance with Rule 145(d). The holding period requirements of Rule 145(d) correspond to the holding periods for resales in Rule 144.

The 1995 Release also requested comment on whether the holding period or other requirements in Rule 144 should be revised to address the concern that holders utilizing certain new hedging strategies may not be economically "at risk" during the holding period. This issue is addressed further by the Commission in the companion release soliciting comment on additional changes to Rule 144.[14]

II. Cost-Benefit Analysis

The Commission believes, and the public comments support the view, that reduction in the Rule 144 holding periods will reduce compliance burdens and costs without significant impact on investor protection. The Commission also believes that the action being taken will promote market efficiency, investment and capital formation by reducing the liquidity costs of holding restricted securities and reducing issuers' cost of raising capital through the sale of restricted securities.

Issuers typically must offer restricted shares at a discount relative to prices at which their unrestricted shares trade in the public markets. In recent years, this discount has generally ranged from 20–50%. The discount compensates the purchasers of the restricted shares for their inability to resell the securities before completion of the requisite holding period. Since the amendments shorten the holding period, the purchasers will demand a smaller liquidity premium and issuers will be able to sell their restricted securities at higher prices.

The actual amount by which the annual volume of restricted shares privately placed and resales of restricted securities will increase cannot be reliably predicted. The actual size of these increases will depend on the response of investors and issuers to the shortened holding period requirements.

III. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis has been prepared in accordance with Section 604 of the Regulatory Flexibility Act,[15] and relates to the adoption of amendments to Rules 144 and 145 under the Securities Act.

Reasons for, and Objectives of, Proposed Action

Rule 144 provides a safe harbor for the resale of restricted and control securities. It sets forth conditions which, if satisfied, permit persons who hold such securities to sell them publicly without registration and without being deemed underwriters. One of the conditions is that the securities must be held for a specified period of time before any sales may be made.

Rule 145 governs the offer or sale of securities received in connection with reclassifications, mergers, consolidations and asset transfers. It provides that any party to a transaction covered by the rule (other than the issuer), or any person who is an affiliate of such party at the time the transaction is submitted for vote or consent, who publicly offers or sells securities of the issuer acquired in connection with such a transaction will be deemed to be engaged in a distribution, and therefore to be an underwriter of the securities, except where the securities are resold in accordance with Rule 145(d). Rule 145(d) imposes holding periods that correspond to the holding periods for resales in Rule 144.

The Commission has determined to adopt amendments to Rules 144 and 145 to shorten the holding period requirements. The amendments to Rule 144 permit the limited resale of restricted securities after a one-year, rather than a two-year, holding period. They also permit unlimited resales of restricted securities held by non-affiliates of the issuer after a holding period of two, rather than three years.

The Commission believes that shorter holding periods should reduce the costs of capital formation, particularly for smaller companies, by reducing the illiquidity discount companies must give when raising capital in private placements. Investors will also be able to recoup their capital more quickly.

The Commission believes that the shorter holding periods will not diminish investor protection, since they are sufficiently long to ensure that resales under Rule 144 will not facilitate indirect public distributions of unregistered securities by issuers or affiliates. The amendments were recommended by small business representatives participating in the SEC Government-Business Forum on Small Business Capital Formation.

Significant Issues Raised by the Public Comments

The Commission received five requests for the Initial Regulatory Flexibility Analysis prepared in connection with the 1995 Release, and no public comments specifically addressed that analysis. The Commission received public comment, however, on the amendments to the Rule 144 and 145 holding periods. The commenters agreed that shorter holding periods should reduce the costs of capital formation and be of particular benefit to small companies, which often sell securities in private placements. At the suggestion of commenters, the Commission is soliciting comment on further changes to the holding periods in the companion proposing release.

Small Entities Subject to Requirements

The reduced holding periods will affect both small entities that issue restricted or control securities and small entities that hold such securities. The term "small business," when used with reference to an issuer, other than an investment company, is defined by Securities Act Rule 157 as an issuer whose total assets on the last day of its most recent fiscal year were $5 million or less and is engaged or proposing to engage in small business financing. An issuer is considered to be engaged in small business financing if it is conducting or proposes to conduct an offering of securities that does not exceed the dollar limitation prescribed by Section 3(b) of the Securities Act. Exchange Act Rule 0–10[16] defines small entity when used with reference to an issuer or person, other than an investment company, to mean an issuer or person that, on the last day of its most recent fiscal year, had total assets of $5,000,000 or less.[17]

The Commission is aware of approximately 1,019 Exchange Act reporting companies that currently satisfy the definition of "small business" under Rule 157 and may be affected by the reduced holding periods. The reduced holding periods also may affect small businesses that are not subject to Exchange Act reporting requirements. The Commission is unable to determine the number of such

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[1] 17 CFR 230.144. Release No. 33–7187 (June 27, 1995) [60 FR 35645] ("1995 Release"). Comment letters are available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Interested persons should refer to File No. S7–17–95.

[2] 15 U.S.C. 77a *et seq.*

[3] Conforming changes also have been made in paragraph (e)(3) of Rule 144 relating to determination of the limits on amounts resalable by pledgees, donees and trusts, reducing the period from two years to one year after the event of pledge, default, donation, or trust acquisition.

[4] 17 CFR 230.145.

[5] Release No. 33–7391 (February 20, 1997).

[6] Release No. 33–5223 (January 11, 1972) [37 FR 591].

[7] *See, e.g.*, Final Reports of the SEC Government-Business Forum On Small Business Capital Formation (June 1992, 1993, 1994 and February 1995). The Small Business Incentive Act of 1980 directs the Commission to host this annual meeting for the purpose of reviewing the "current status of problems and programs relating to small business capital formation." Pub. L. No. 96–477, Section 503, 94 Stat. 2275, 2292–93 (1980).

[8] The term "restricted securities" is defined in Rule 144(a)(3) [17 CFR 230.144(a)(3)] and includes: securities acquired from the issuer or an affiliate in a transaction or chain of transactions not involving a public offering; securities acquired from the issuer and subject to resale limitations under Regulation D [17 CFR 230.501–508] or Rule 701 [17 CFR 230.701]; securities subject to the Regulation D resale limitations and acquired in a transaction or chain of transactions not involving a public offering; securities acquired in a transaction or chain of transactions meeting the requirements of Rule 144A [17 CFR 230.144A]; and securities acquired from the issuer that are subject to the resale limitations of Regulation CE (§ 230.1001). Separate releases being issued today propose to amend the term to also include securities issued pursuant to an exemption under Securities Act Section 4(6) [15 U.S.C. 77(d)(6)] as well as equity securities of domestic issuers, and of foreign issuers where the primary market for such securities is in the United States, sold under Regulation S [17 CFR 230.901–230.904 and Preliminary Notes]. Release Nos. 33–7391 and 33–7392 (February 20, 1997).

[9] *See* Section 2(11) of the Securities Act [15 U.S.C. 77b(11)].

[10] 15 U.S.C. 77(d)(1).

[11] Section 4(1) exempts transactions by persons who are not issuers, underwriters or dealers.

[12] 17 CFR 230.145(d).

[13] 17 CFR 230.145(c).

[14] Release No. 33–7391 (February 20, 1997).

[15] 5 U.S.C. § 604.

[16] 17 CFR 240.0–10.

[17] There is no comparable definition of "person" under the Securities Act.

small businesses due to the absence of filings with the Commission by such companies.

An estimated 3,800 entities, excluding natural persons, annually file Form 144 based upon a staff review of a sample of Form 144 filings. The Commission has no basis for estimating the number of these entities that are small entities under the definition of person in Exchange Act Rule 0–10, because Form 144 does not require that such information be provided and such information is not otherwise available to the Commission.

The amendments are expected to affect favorably businesses of all sizes, but particularly small businesses, by reducing the cost of capital formation through private placements of unregistered securities and allowing investors to recoup their capital more quickly. Issuers generally must sell unregistered stock at a discount; the amount of the discount should be reduced as a result of the shortening of the holding periods.

Reporting, Recordkeeping and Other Compliance Requirements

Because of the nature of the amendments, the Commission does not expect that reporting, recordkeeping and compliance burdens will increase materially as a result of the changes. Indeed, the Commission expects that compliance burdens will decrease as a result of the reduced holding periods because sellers will not have to wait as long to resell securities in reliance on Rule 144.

Nevertheless, the Commission expects the annual volume of Form 144 filings to increase as a result of the reductions in the required holding periods and the increased incentive for issuers to raise capital through sales of unregistered securities subject to Rule 144. The Commission has no basis for reliably estimating this increased volume of filings. The average cost associated with filing a Form 144 is approximately $200 based on a compensation rate of $100 per hour and a task time of two hours per filing.

Steps Taken To Minimize Significant Economic Impact on Small Entities

The amendments adopted today will benefit issuers of all sizes since a reduction in the length of the Rule 144 and 145 holding periods will reduce issuers' cost of capital. The amendments will also benefit all holders of restricted securities, who will be able to recoup their capital more quickly pursuant to the reduced holding periods. Specific consideration was given to small businesses in the formulation of these amendments; as stated above, the amendments were recommended by small business representatives.

The Commission considered a number of significant alternatives to the amendments being adopted that might minimize the significant economic impact on small entities. One alternative was to shorten the holding periods even further. Comment is being solicited on that alternative in a release proposing changes to Rules 144, 145 and Form 144.[18] The Commission intends to give further consideration to the treatment of small entities in connection with the Rule 144 proposing release.

The Commission also considered the types of alternatives set forth in section 603 of the Regulatory Flexibility Act to minimize the economic impact of the amendments on small entities: (1) the establishment of differing reporting compliance or reporting timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the amendments, or any part thereof, for small entities. Because the amendments benefit all issuers and holders of restricted securities, differing compliance timetables for small entities would not be appropriate. Neither could the compliance requirements of the amendments be clarified or simplified further for small entities. Finally, the amendments being adopted do not use design standards, and an exemption from the amendments for small entities would not be desirable or consistent with the stated objectives of the applicable statutes.

IV. Statutory Basis

The amendments to Rule 144 and 145 are being adopted pursuant to sections 2(11), 4(1) and 19(a) of the Securities Act.

List of Subjects in 17 CFR Part 230

Reporting and recordkeeping, Securities.

Text of the Amendments

For the reasons set out above, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read in part, as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78d, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. Section 230.144 is amended by revising paragraphs (d)(1), (e)(3)(ii), (e)(3)(iii), (e)(3)(iv) and (k) to read as follows:

§ 230.144 Persons deemed not to be engaged in a distribution and therefore not underwriters.

* * * * *

(d) * * *

(1) *General rule.* A minimum of one year must elapse between the later of the date of the acquisition of the securities from the issuer or from an affiliate of the issuer, and any resale of such securities in reliance on this section for the account of either the acquiror or any subsequent holder of those securities. If the acquiror takes the securities by purchase, the one-year period shall not begin until the full purchase price or other consideration is paid or given by the person acquiring the securities from the issuer or from an affiliate of the issuer.

* * * * *

(e) * * *

(3) * * *

(ii) The amount of securities sold for the account of a pledgee thereof, or for the account of a purchaser of the pledged securities, during any period of three months within one year after a default in the obligation secured by the pledge, and the amount of securities sold during the same three-month period for the account of the pledgor shall not exceed, in the aggregate, the amount specified in paragraph (e) (1) or (2) of this section, whichever is applicable;

(iii) The amount of securities sold for the account of a donee thereof during any period of three months within one year after the donation, and the amount of securities sold during the same three-month period for the account of the donor, shall not exceed, in the aggregate, the amount specified in paragraph (e) (1) or (2) of this section, whichever is applicable;

(iv) Where securities were acquired by a trust from the settlor of the trust, the amount of such securities sold for the account of the trust during any period of three months within one year after the acquisition of the securities by the trust, and the amount of securities sold during the same three-month period for the account of the settlor, shall not exceed, in the aggregate, the amount specified in paragraph (e) (1) or (2) of this section, whichever is applicable;

* * * * *

(k) *Termination of certain restrictions on sales of restricted securities by persons other than affiliates.* The requirements of paragraphs (c), (e), (f) and (h) of this section shall not apply to restricted securities sold for the account of a person who is not an affiliate of the issuer at the time of the sale and has not been an affiliate during the preceding three months, provided a period of at least two years has elapsed since the later of the date the securities were acquired from the issuer or from an affiliate of the issuer. The two-year period shall be calculated as described in paragraph (d) of this section.

3. By amending § 230.145 by revising paragraphs (d)(2) and (d)(3) to read as follows:

§ 230.145 Reclassification of securities, mergers, consolidations and acquisitions of assets.

* * * * *

(d) * * *

(2) Such person or party is not an affiliate of the issuer, and a period of at least one year, as determined in accordance with paragraph (d) of § 230.144, has elapsed since the date the securities were acquired from the issuer in such transaction, and the issuer meets the requirements of paragraph (c) of § 230.144; or

(3) Such person or party is not, and has not been for at least three months, an affiliate of the issuer, and a period of at least two years, as determined in accordance with paragraph (d) of § 230.144, has elapsed since the date the securities were acquired from the issuer in such transaction.

* * * * *

By the Commission.

Dated: February 20, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4665 Filed 2–27–97; 8:45 am]

BILLING CODE 8010–01–P

[18] Release No. 33–7391 (February 20, 1997).

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 239

[Release No. 33–7391; File No. S7–07–97]

RIN 3235–AH13

Revision of Rule 144, Rule 145 and Form 144

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Commission proposes changes to make Rule 144, a safe harbor from the Securities Act definition of the term "underwriter," easier to understand and apply. The proposed amendments would revise the Preliminary Note to Rule 144 to restate the intent and effect of the rule, add a bright-line test to the Rule 144 definition of "affiliate," eliminate the Rule 144 manner of sale requirements, increase the Form 144 filing thresholds, include in the definition of "restricted securities" securities issued pursuant to the Securities Act Section 4(6) exemption, clarify the holding period determination for securities acquired in certain exchanges with the issuer and in holding company formations, and streamline and simplify several rule provisions. The Commission also proposes to eliminate the presumptive underwriter provisions of Rule 145. Additionally, the release solicits comment on changes to the Rule 144 holding periods that differ from those being adopted today in a companion release, elimination of the trading volume tests to determine the amount of securities that can be resold under Rule 144, and several possible regulatory approaches with respect to certain hedging activities.

DATES: Comments should be received on or before April 29, 1997.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments @ sec.gov. All comment letters should refer to File No. S7–07–97; this file number should be included in the subject line if E-mail is used. Comment letters will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters will be posted on the Commission's Internet Web Site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Elizabeth M. Murphy, Mark W. Green or Michael Hyatte, Office of Chief Counsel, Division of Corporation Finance, at (202) 942–2900, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing amendments to Rule 144,[1] Rule 145[2] and Form 144[3] under the Securities Act of 1933 ("Securities Act").[4]

I. Executive Summary

Securities Act Rule 144 provides a safe harbor for the resale of restricted and control securities.[5] The rule permits persons who hold such securities to publicly sell them without registration and without being deemed underwriters, if certain conditions are satisfied. When Rule 144 was adopted in 1972, the Commission noted that it was experimental in nature and would be rescinded or amended, as necessary, based on actual experience.[6] Since its adoption, the Commission has monitored the operation of Rule 144 and has eliminated many compliance burdens where consistent with the investor protection objectives of the Securities Act.

The Commission is continuing its efforts to improve the clarity and usefulness of Rule 144 and to eliminate unnecessary compliance burdens. In June 1995, the Commission proposed to permit limited resales of restricted securities after a one-, rather than two-year holding period, and to allow unlimited resales of such securities by non-affiliates after a two-, rather than three-year holding period ("1995 Release").[7] The proposed new holding periods are being adopted in a companion release being published today ("Adopting Release").[8]

After reviewing the comments received on the 1995 Release, the Commission staff undertook a more comprehensive review of Rule 144 to determine whether other provisions of the rule were unnecessarily restrictive or in need of updating. This Release proposes several revisions intended to make Rule 144 easier to understand and apply.

The proposals in this release would reorganize and rewrite the text of Rule 144, including the Preliminary Note, in a more succinct and straightforward fashion. The proposals also would simplify and update the rule in three main ways.[9]

First, the proposals would make it easier to determine whether a person is not an affiliate of an issuer for purposes of Rule 144 by providing a bright-line exclusion from the Rule 144 definition of affiliate. Pursuant to the proposal, all persons not subject to the provisions of Section 16[10] of the Securities Exchange Act of 1934 ("Exchange Act")[11] would be deemed not to be affiliates of an issuer for purposes of Rule 144.

Second, the proposals would eliminate the manner of sale requirements.[12] This would facilitate innovation in the methods used to resell restricted securities, such as the use of electronic bulletin boards.

Third, the threshold requirements for filing Form 144 would increase from the current 500 shares or $10,000 sale price test to a 1,000 shares or $40,000 sale price test.

Additionally, this Release solicits comment on other possible changes to Rule 144, including:

- Further revisions to the Rule 144 holding periods that would result in changes to either the one-or two-year holding periods being adopted today, or both;
- Elimination of the two trading volume tests that limit the amount of securities that may be sold in reliance on Rule 144, with the result that all sellers would rely on the percentage of shares outstanding test; and
- Several possible approaches to addressing the application of the Securities Act to hedging of restricted and other securities.

Finally, the Commission is proposing to amend Securities Act Rule 145, a Securities Act rule relating to certain significant transactions, such as mergers, to eliminate the resale limitations that are based on a "presumptive underwriter" approach.

[1] 17 CFR 230.144.

[2] 17 CFR 230.145.

[3] 17 CFR 239.144.

[4] 15 U.S.C. 77a *et seq.*

[5] Restricted securities generally are securities issued in non-public offerings; control securities are securities owned by affiliates of the issuer.

[6] Release No. 33–5223 (January 11, 1972) [37 FR 591].

[7] Release No. 33–7187 (June 27, 1995) [60 FR 35645]. Additionally, the Commission requested comment on whether Rule 144 should be revised to address new trading strategies such as equity swaps. Comment letters on the 1995 Release are available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Interested persons should refer to File No. S7–17–95.

[8] Release No. 33–7390 (February 20, 1997).

[9] In addition, the Commission proposes to codify existing staff positions regarding determination of the holding period for securities acquired solely in exchange for other securities of the same issuer and in holding company formations, as well as the treatment of securities issued pursuant to the exemption under Section 4(6) of the Securities Act [15 U.S.C. 77(d)(6)] as restricted securities.

[10] 15 U.S.C. 78p.

[11] 15 U.S.C. 78a *et seq.*

[12] The manner of sale requirements are contained in current Rule 144(f) [17 CFR 230.144(f)]. Current Rule 144(g) [17 CFR 230.144(g)], which defines the term "brokers' transactions" for purposes of Rule 144, also would be rescinded.

Instead, persons who receive securities in these transactions would be treated the same as other purchasers of securities.

II. Background

The Securities Act protects investors primarily by requiring public information about issuers to be available to investors and potential investors at the time they make decisions regarding investment in an issuer's securities. The statute thus prohibits offerings unless the securities being offered are registered with the Commission or an exemption from registration is available.

The Securities Act requires registration not only of direct distributions of securities by issuers to the public, but also indirect distributions involving the transfer of unregistered securities from issuers or affiliates to persons in non-public transactions followed by large-scale public transfers of the securities by such persons. To regulate these types of indirect distributions, the Securities Act, under certain circumstances, treats even individual investors who are not securities professionals as underwriters if they act as links in the chain through which securities move from issuers to the public.

The term "underwriter" is defined in Section 2(11) of the Securities Act[13] to mean "any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking."[14] The definition of underwriter is relevant to the "ordinary trading" exemption provided in Section 4(1) of the Securities Act,[15] which states that the registration provisions shall not apply to transactions by any person other than an issuer, underwriter or dealer.[16]

The statutory definition of underwriter does not provide a means to determine objectively whether a person purchased securities from the issuer or an affiliate with a view to distribution of the securities. Rule 144 was adopted as a non-exclusive safe harbor to set forth objective criteria that could be relied on by persons who wanted to resell restricted or control securities, but who were concerned whether they could be deemed to be engaged in a distribution, and therefore deemed to be underwriters under Section 2(11). The rule provides that a person who complies with its terms and conditions will not be engaged in a distribution of securities and, thus, not be an "underwriter" within the meaning of Section 2(11) of the Securities Act.

III. Discussion of Proposals

A. Changes to the Preliminary Note to Rule 144

The Preliminary Note to Rule 144 would be revised to better describe the two types of common transactions that raise questions as to whether a person who sells securities is acting as an underwriter (the resale of restricted securities and the resale of securities, whether or not restricted, by or on behalf of an affiliate of the issuer). It also explains that satisfaction of the criteria of Rule 144 will cause the sale of restricted or control securities to be viewed as an ordinary trading transaction rather than a "distribution" of such securities that would require registration under the Act.

The proposed Note states explicitly that if a sale of securities is made in accordance with all of the applicable provisions of Rule 144: (1) any person who sells restricted securities will be deemed not to be an underwriter for that transaction; (2) any person who sells restricted or other securities on behalf of an affiliate of the issuer will be deemed not to be an underwriter for that transaction; and (3) the purchaser receives unrestricted securities. The proposed Note also incorporates the statement in current Rule 144(j)[17] that Rule 144 is not an exclusive safe harbor and therefore does not eliminate or otherwise affect the availability of any other exemption for resales under the Securities Act.

Are there other matters that should be discussed in the Preliminary Note? Are there matters discussed in the Preliminary Note that should be removed?

B. Change to the Rule 144 Definition of "Affiliate"

Rule 144 defines an affiliate of an issuer as a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such issuer.[18] This subjective "facts and circumstances" test presents a great deal of uncertainty regarding whether a seller is an affiliate of the issuer and introduces additional regulatory complexity that is not always necessary. Issuers and sellers of securities have, therefore, asked for greater guidance in determining who is an affiliate.

Under the proposal, the same criteria used to determine those persons that are not "insiders" under Exchange Act Section 16 would be used for Rule 144. Many practitioners already use the Section 16 criteria as a guide. The Commission believes it is likely that most persons who are not officers, directors or 10% holders are not in a "control" position.[19] Therefore, the Commission proposes to add the following to the definition of affiliate in Rule 144.

A person shall be deemed not to be an affiliate for purposes of this section if the person: (i) is not the beneficial owner, directly or indirectly, of more than 10% of any class of equity securities of the issuer; (ii) is not an officer of the issuer; and (iii) is not a director of the issuer.

A note would add:

The determination of a person's beneficial ownership and whether that person is an "officer" shall be made in accordance with Rule 16a–1[20] of this chapter, regardless of whether the issuer's securities are subject to Section 16 of the Securities Exchange Act of 1934 ("Exchange Act") and regardless of whether the class of securities is registered under Section 12 of the Exchange Act.[21]

The proposal clearly excludes from the definition persons who are not executive officers, directors or 10% holders. Members of one or more of these classes may contend, nevertheless, that they are not affiliates because they are not in a "control" position. For such persons, the determination of affiliate status would be a "facts and circumstances" test.

The need for increased certainty in the definition of affiliate also was recognized by the Advisory Committee on the Capital Formation and Regulatory Processes ("Advisory Committee"). The Advisory Committee recommended an objective test for

[13] 15 U.S.C. 77(b)(11).

[14] Section 2(11) states that the term "underwriter" shall not include a person whose interest is limited to taking a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission, and uses the term "issuer" to include, in addition to an issuer, any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer.

[15] 15 U.S.C. 77(d)(1).

[16] Sections 4(3) and 4(4) of the Securities Act [15 U.S.C. 77(d)(3) and (d)(4)] provide exemptions from the registration requirements for transactions by dealers and brokers not acting as underwriters.

[17] 17 CFR 230.144(j).

[18] Rule 144(a)(1) [17 CFR 230.144(a)(1)].

[19] Unlike Section 16, the Rule 144 safe harbor would ignore whether the company has equity securities registered under Section 12 of the Exchange Act.

[20] 17 CFR 240.16a–1. The definitions of the terms "beneficial owner" and "officer" in Rule 16a–1 would be used whether or not the securities to be resold in reliance upon the Rule 144 safe harbor are equity securities registered under Section 12 of the Exchange Act.

[21] Proposed Rule 144(a)(1).

determining affiliate status as part of an overall reform package that includes registration of most securities that, under the current system, would not be registered.[22] The Advisory Committee definition would include only the following persons as affiliates: the Chief Executive Officer; inside directors; holders of 20% of the company's voting power; and holders of 10% of the voting power with at least one director representative on the board.[23] Should this definition be adopted, instead of the one proposed, even in the absence of the other reforms recommended by the Advisory Committee?

Is there a need to provide more objective guidance as to who is an affiliate for purposes of Rule 144? Is reliance on the Section 16 insider test over-inclusive or under-inclusive? Should the exclusion from the definition of affiliate include an express presumption that those persons not so excluded are affiliates? If so, should such a presumption be rebuttable?

For affiliate status based on shareholdings, is the 10% test appropriate, or should it be higher (such as 20%), or lower (such as 5%)? Should the shareholdings test be combined, at a certain level of ownership, with the ability to place persons on the board of directors? For example, as recommended by the Advisory Committee, should the safe harbor exclude only those 10% holders that also have the ability to place at least one director on the board?

Should the definition of affiliate exclude non-employee directors? Should non-employee directors be excluded from the definition only if they have less than a specified amount of shareholdings, such as 2%, 3% or 5%? If non-employee directors should be excluded from the definition of affiliate, should the exclusion apply to non-employee directors who are securities professionals? Should the exclusion apply to non-employee directors who are representatives of controlling shareholders?

Some have argued in favor of retaining a subjective test, given the varied contractual arrangements with a control feature entered into by issuers, particularly smaller companies. Should a facts and circumstances test be retained in order to reflect the different ways a control relationship can be established with an issuer?

[22] *See Report of the Advisory Committee on the Capital Formation and Regulatory Processes* (July 24, 1996) (the "Advisory Committee Report") at p. 24.

[23] *See Advisory Committee Report* at p.24.

C. Manner of Sale Requirements

Rule 144(f) requires that securities be sold in "brokers' transactions,"[24] or in transactions directly with a "market maker," as that term is defined in Section 3(a)(38) of the Exchange Act.[25] Additionally, the rule prohibits a seller from: (1) soliciting or arranging for the solicitation of orders to buy the securities in anticipation of, or in connection with, the Rule 144 transaction; or (2) making any payment in connection with the offer or sale of the securities to any person other than the broker who executes the order to sell the securities. These manner of sale restrictions do not apply to securities sold for the account of a non-affiliate of an issuer when the holding period of Rule 144(k) is met.[26]

The manner of sale requirements were intended to assure that special selling efforts and compensation arrangements usually associated with a distribution are not present in a Rule 144 sale.[27] The manner of sale requirements currently, however, appear to impose obstacles to transactions that are not distributive in nature. For example, a consequence of the manner of sale requirements is that a seller may not privately negotiate a sale of a public company's stock in reliance on Rule 144 without a broker even if the seller does not solicit the buyer's purchase of the securities, the holding period has been satisfied and the amount sold is within the volume limitations. Similarly, sellers are unable to use trading systems such as passive bulletin boards to contact potential buyers that have indicated an interest in buying the type of securities to be sold under Rule 144.[28]

When a transaction is made in accordance with the current public information, holding period, volume and notice requirements of Rule 144, the manner in which that transaction is effected does not appear to be determinative of a distribution. Therefore, it appears that the manner of sale requirements of Rule 144(f) are not necessary to satisfy the purpose of Rule 144 and are proposed to be eliminated.[29]

Removal of the manner of sale requirements would permit holders of restricted securities to solicit purchasers in a Rule 144 transaction.[30] Is it consistent with the Rule's "non-distribution" purpose to allow either transactions in which special selling efforts may be used or privately negotiated transactions? Should the manner of sale requirements be retained but modified to permit specific types of transactions other than brokers' and market makers' transactions, *e.g.*, passive bulletin board transactions?

Are there other purposes served by the manner of sale requirements that would justify retaining those requirements? For example, does the manner of sale requirement serve an important purpose by inserting a market professional as a "gatekeeper" that assures compliance with the public information, holding period, volume, and notice requirements of the rule? How will the removal of the manner of sale requirements affect participants, such as transfer agents, brokers and market makers, in Rule 144 transactions? Will transfer agents assume a greater role in determining compliance with the resale provisions?

Would the elimination of the definition of "brokers' transactions" in Rule 144(g) affect the ability of brokers to determine compliance with the exemption provided by Securities Act Section 4(4)? Would removal of the manner of sale requirements diminish security transaction transparency by encouraging more privately negotiated transactions? If so, would the markets be adversely affected, particularly for stocks of smaller companies and more thinly traded securities?

D. Notice of Sale Requirement

Rule 144(h) requires a person selling more than 500 shares or $10,000 of securities in reliance on the rule during any three-month period to file a notice on Form 144 with the Commission. The Report of the Commission's Task Force

[24] Current Rule 144(g) defines the term for purposes of Rule 144.

[25] 15 U.S.C. 78c(a)(38).

[26] The manner of sale requirements also do not apply to securities sold for the account of the estate of a deceased person or for the account of a beneficiary of such estate, provided the estate or beneficiary is not an affiliate of the issuer.

[27] Release No. 33–5186 (September 10, 1971) [36 FR 18586].

[28] The use of electronic bulletin boards has been the subject of recent no-action letters. *See Real Goods Trading Corp.* (June 24, 1996), *PerfectData Corp.* (August 5, 1996) and *The Flamemaster Corp.* (October 29, 1996).

[29] If this proposal is adopted, Form 144 also would be amended to eliminate references to the manner of sale requirements. Rule 144(g) defines the term "brokers' transactions" for purposes of Rule 144. It would also be deleted if Rule 144(f) is eliminated.

[30] Elimination of the manner of sale requirements effectively would treat resales complying with the public information, holding period, volume, and notice requirements of the rule as not constituting a "distribution" for Securities Act purposes. The Commission notes, however, that such resales under certain circumstances would be subject to the requirements of recently adopted Regulation M. 17 CFR 242.100 *et seq.* Regulation M was adopted in Release No. 34–38067 (December 20, 1996) [62 FR 520].

on Disclosure Simplification ("Task Force Report")[31] recommended that the thresholds for small business issuers be raised to 500 shares or $40,000, and that the thresholds be raised to 1,000 shares or $100,000 for other issuers.

The $10,000 limit was established in 1972. This amount, adjusted for inflation, is approximately $36,000 today. The Commission therefore believes that it is appropriate to increase the $10,000 threshold. Under the proposed requirements, Form 144 would be filed if the amount of securities to be resold in reliance upon Rule 144 during any three-month period exceeds 1,000 shares or has an aggregate sales price in excess of $40,000.

Should the share number and dollar thresholds be set at a different combination of share number and dollar amount, *e.g.*, any share number ranging between 500 and 2,000 shares and any dollar amount ranging between $10,000 and $100,000 for sales of securities of all types of issuers? Should there be a single filing threshold, and if so, which threshold should be retained, the share number or dollar amount threshold? If there were a single threshold based on share number, would 500 shares, 1,000 shares or a different share number ranging between 500 and 2,000 shares be appropriate? If there were a single threshold based on dollar amount, would a different dollar value ranging between $10,000 and $100,000 be appropriate?

The Commission is not proposing to establish different filing thresholds for sales of small business issuer securities out of concern that different standards for small business issuers and other issuers would needlessly complicate the Form 144 requirements. Should the Commission establish separate thresholds for small business and non-small business issuers, and if so, are the thresholds recommended in the Task Force Report appropriate? The Commission notes that a smaller threshold for small businesses would result in more filings by persons selling small business securities. This could be justified in that a smaller transaction can have a greater impact on a small business issuer.

E. Other Proposed Amendments to Rule 144

1. Codification of Staff Interpretive Positions

The Commission is proposing to codify a variety of staff interpretive positions regarding Rule 144 in order to make it easier to comply with the rule.

a. Holding Period—Conversions and Exchanges

First, the Commission proposes to amend the Rule 144 provision on calculating the holding period for securities acquired upon conversion of other securities of the same issuer. Rule 144 generally allows holders to count the time they held securities surrendered for conversion or exchange when counting the holding period for the securities received in the conversion or exchange, what is commonly referred to as "tacking" the holding periods.[32] This provision of Rule 144 does not state, however, whether the surrendered securities must have been convertible by their terms in order for tacking to be permitted. This silence has led to confusion by some persons regarding how to calculate their Rule 144 holding period.

Rule 144 permits tacking of holding periods in the case of securities received in a conversion because the exchange continues the shareholder's investment in that *same* issuer. Because the significant factor in this analysis is that securities of the issuer are exchanged for other securities of that issuer, the staff has taken the interpretive position that tacking is allowed whether or not the surrendered securities are convertible by their terms. The proposed amendment would clarify the application of this provision by codifying the staff's interpretive position.[33]

b. Holding Period—Holding Company Formations

Second, the proposed revisions would codify a staff position to clarify that holders can tack the Rule 144 holding period in connection with transactions effected solely for the purpose of forming a holding company.[34] Although tacking through a holding company formation appears to be contemplated by the rule, the rule does not clearly state when and how this is allowed.[35] The proposed revisions would codify a staff interpretive position by allowing for tacking in holding company formations, subject to the following conditions:

- The holding company's securities must be issued in a transaction involving an exchange of securities as part of a reorganization of the predecessor into a holding company structure;
- Holders must receive securities of the same class evidencing the same proportional interest in the holding company as they held in the predecessor; and
- Immediately following the transaction, the holding company must have no significant assets other than securities of the predecessor and its existing subsidiaries and have substantially the same assets and liabilities on a consolidated basis as the predecessor had prior to the transaction.[36]

c. Definition of Restricted Securities

Third, the proposed revisions would codify the staff position that securities acquired from the issuer pursuant to the exemption under Section 4(6) of the Securities Act should be considered "restricted securities."[37] Section 4(6) provides an exemption for non-public offerings of less than $5 million that are made only to accredited investors.[38] Because the resale status of securities received in Section 4(6)-exempt transactions should be the same as securities received in other non-public offerings, the staff has taken the interpretive position that securities sold pursuant to the Section 4(6) exemption also should be deemed to be restricted securities.[39]

2. Simplification and Streamlining

The Commission is proposing a number of revisions intended to make Rule 144 more readable and easily understood. The simplifying revisions would address the conditions to be met to satisfy the rule, the current public information requirement, the volume limitations and the holding period provisions relating to trusts and estates in addition to the proposed revisions to the Preliminary Note to Rule 144 discussed above. Current paragraph (k),[40] which applies to restricted securities held by non-affiliates for more

[31] The Task Force Report was issued in March 1996. The recommendations concerning Rule 144(h) are discussed on p. 71.

[32] Rule 144(d)(3)(ii).

[33] Proposed Rule 144(d)(3)(ii). This would codify the position taken in *Planning Research Corporation* (November 6, 1980). The provision also would state that if securities are acquired from the issuer solely in exchange (in addition to upon conversion) for other securities of the issuer, the securities so acquired are deemed to have been acquired at the same time as the securities surrendered in the exchange. This also would codify a staff interpretive position.

[34] Proposed Rule 144(d)(3)(ix).

[35] Rule 144(d)(3)(viii) [17 CFR 230.144(d)(3)(viii)].

[36] *Morgan Olmstead* (January 8, 1988).

[37] Proposed Rule 144(a)(3)(vi).

[38] The Section 4(6) exemption also requires the filing of a notice of the offering with the Commission. This notice currently is filed on Form D. In Release No. 33–7301 (June 14, 1996) [61 FR 30405], the Commission proposed to eliminate the Form D filing requirement.

[39] In Release No. 33–7392 (February 20, 1997) concerning Regulation S ("Regulation S Proposing Release"), the Commission is proposing to revise Rule 144(a)(3) [17 CFR 230.144(a)(3)] to define equity securities of domestic issuers, and of foreign issuers where the principal market for such securities is in the United States, issued pursuant to Rule 901 or 903, as restricted securities.

[40] 17 CFR 230.144(k).

than two years, would be simplified and re-designated as paragraph (g).

Current paragraph (i)[41] requires the person filing a Form 144 to have a bona fide intention to sell the securities described in the Form 144 within a reasonable period of time after that filing. The wording of this requirement is proposed to be simplified and moved into the Form 144 filing requirement.[42]

Finally, current paragraph (j),[43] which states that Rule 144 is a non-exclusive provision that does not affect the availability of any Securities Act exemption from registration for resales of securities, would be eliminated. As discussed above, the non-exclusive nature of Rule 144 is proposed to be discussed in the Preliminary Note. This would be consistent with other Commission safe harbor provisions.[44]

F. Rule 145

Securities Act Rule 145 provides that exchanges of securities in connection with reclassifications of securities, mergers or consolidations or transfers of assets that are subject to a shareholder vote constitute sales of those securities. As a result, unless an exemption is available, the offering of securities in those transactions must be registered under the Securities Act.

The rule explicitly deems persons who were affiliates of any party to the transaction to be underwriters.[45] Therefore, the Section 4(1) resale exemption is not available to these persons for resales of securities acquired in connection with transactions described in the rule. The rule provides some relief from this "presumptive underwriter" provision, however, by permitting the affiliates to resell securities received in the transaction in compliance with the holding period and other requirements of Rule 145(d).[46]

Rule 145 is the only Securities Act rule that contains a presumptive underwriter provision. The Commission believes that it may no longer be appropriate to rely on a presumptive underwriter approach when addressing the resales of securities acquired in Rule 145 transactions. Rather, it appears to be more appropriate to rely on the provisions of Rule 144 and traditional considerations in determining whether the persons covered by current Rule 145(c) are underwriters in connection with resales. The presumptive underwriter and resale provisions of Rule 145(c) and (d) are, therefore, proposed to be eliminated.

Are there some persons currently presumed to be underwriters under Rule 145 that should continue to be presumed to be underwriters? If the presumptive underwriter standard is removed, should Rule 145 still include provisions addressing the underwriter issue with respect to resales of securities acquired in Rule 145 transactions? Would it be helpful to retain a resale safe harbor in the rule for those persons who are concerned that they might be determined to be underwriters with respect to their resales? Would it be unnecessary to retain a resale safe harbor in the rule because affiliates of the surviving company would be able to rely on Rule 144 for resales in any event?

IV. Solicitation of Comment

A. Other Possible Rule 144 Changes

The Commission solicits comment on additional revisions to Rule 144 in the two sections below. After review of the public comments on these possible revisions, the Commission may choose to adopt either or both without further solicitation of public comment.

1. Rule 144 Holding Periods

Under the Rule 144 amendments being adopted today in the Adopting Release, all restricted securities must be held at least one year before resale if Rule 144 is used, with the year measured from the date the securities were purchased from the issuer or an affiliate.[47] For restricted securities held between one and two years, other provisions of the rule require current information about the issuer to be available to the market, limit the amount of securities that may be resold, require resales to be made in ordinary brokerage transactions or directly with a market-maker,[48] and require filing with the Commission of a notification of the resale on Form 144, if the amount of securities sold exceeds specified thresholds. After a two-year holding period, restricted securities may be resold by non-affiliates without compliance with any of these provisions.[49]

There was a consensus among commenters that shortened holding periods would facilitate efforts to raise capital through private placements by shrinking the discount in price attributable to illiquidity of capital during the restricted period and allowing investors to recoup their capital faster. Two commenters, however, argued that the holding period for limited resales should be shorter than the proposed one year, with one commenter suggesting a six-month period and the other suggesting a three-month period.

The holding period requirement provides an objective criterion for determining that the securities are not being sold as part of a public distribution by the issuer. As such, this holding period should be long enough to prevent circumvention of the registration requirements by assuring that the securities are not still linked to the issuer's offering, but no longer than necessary to satisfy this purpose, so as to avoid imposing unnecessary costs or placing unnecessary restraints on the flow of capital.

The Commission seeks comment on whether the Rule 144(d) holding period after which limited resales are allowed should be shortened from one year to six months.[50] Would this period be long enough to ensure that the Rule 144 resales would not be part of an unregistered public distribution? Should the further shortening be tied to some other safeguard such as a prohibition on hedging during the holding period?

Commenters favoring a six-month holding period are asked to consider

[41] 17 CFR 230.144(i).

[42] Proposed Rule 144(f).

[43] 17 CFR 230.144(j).

[44] See Preliminary Note 3 to Regulation D and Preliminary Note 3 to Rule 701.

[45] Rule 145(c) [17 CFR 230.145(c)].

[46] 17 CFR 230.145(d). The companion Adopting Release amends Rule 145(d) by shortening the requisite holding periods from two and three years to one and two years, respectively, consistent with the amendments to the Rule 144 holding periods. Persons who are effecting resales of registered securities issued in Rule 145 transactions generally fall into four categories. Rule 145(d) applies to their resales as follows: (1) Non-affiliate of acquired company who is a non-affiliate of the acquiring company after the transactions—Rule 145 (c) and (d) not applicable and securities are unrestricted; (2) Non-affiliate of acquiring company who is an affiliate of the acquiring company after the transaction—Rule 145 (c) and (d) not applicable, but Rule 144 would be, if no other exemption could be found; (3) Affiliate of acquired company who is a non-affiliate of the acquiring company after the transaction—resale may be made under Rule 145(d) (1), (2) or (3); and (4) Affiliate of acquired company who is an affiliate of the acquiring company after the transaction—Rule 145(d)(1) applies.

[47] Rule 144(d) [17 CFR 230.144(d)].

[48] This requirement is proposed to be rescinded, as discussed above.

[49] Current Rule 144(k) and proposed Rule 144(g).

[50] Other provisions of the federal securities laws may offer support for a six-month holding period. For example, it may be useful to consider the six month anti-integration standard in Regulation D, which is comprised of several rules governing the limited offer and sale of securities without registration under the Securities Act. Rule 502 of Regulation D provides that offers and sales made more than six months before the start, or after the completion, of a Regulation D offering will not be considered part of that offering. Six months also is the test used in Exchange Act Section 16 to evidence a sufficient separation between purchase and sale to make recapture of "short swing" profits unnecessary.

whether the volume limitations[51] should be made more restrictive and/or hedging activities should be proscribed or further restricted if the holding period is reduced to six months. For example, if the Commission reduced the holding period to six months, should it also reduce by one-half, one-third, one quarter or some other measure the amount of securities that could be resold in any three-month period after completion of the holding period? Should there be a correlation between the Rule 144 volume limitations and the length of the holding period (for example, for resales between six months and one year the volume would be more limited than between one year and two years)? Should the volume limitations relate to the amount of securities to be sold in a monthly, rather than quarterly, period? If so, should the monthly volume test apply only during the six to twelve month period, or through the entire Rule 144 holding period? If a monthly test is used, should Form 144 also relate to monthly rather than quarterly sales?

Would it be appropriate to tie the volume limitations to the amount of restricted and control securities owned by the seller? For example, should the rule restrict Rule 144 sales in a quarterly period to ten percent of the amount of restricted and/or control securities owned by the seller on the date of the Rule 144 sale?

Should the holding period after which non-affiliates can sell without restriction be shorter than the two-year period adopted today, *e.g.*, one year or 18 months? Assuming the newly adopted one-year holding period is not shortened further, adoption of a one-year holding period after which non-affiliates can sell without restriction would significantly simplify the rule since it would include only one measurement period. Is a one-year holding period for unrestricted resales by non-affiliates sufficient to assure that the resales are not part of an unregistered public distribution? Should such a one-year period be adopted either alone or in conjunction with also adopting a six-month period for limited resales?

Alternatively, should the holding period for limited and unrestricted Rule 144 resales be set at a different but uniform period, such as 18 months? Would such a test strike an appropriate balance between simplifying the rule and restricting resales only in those situations that raise the risk of an indirect unregistered distribution?

Further comment is solicited on a number of other variations. Should the holding period depend on the size of the company? For example, would it be appropriate to implement a shorter holding period for securities of larger companies? If a shorter period were appropriate for larger companies, should it be limited to companies eligible to use Form S–3,[52] or to companies traded on national securities exchanges? Should the period be reduced for securities of larger companies to six months, while securities of all other companies would be subject to a longer holding period, such as one year? Moreover, should different holding periods be established for debt and equity securities, such as allowing unlimited resales of debt securities after six months?

2. Rule 144(e) Volume Limitations

The volume limitations in Rule 144(e) restrict the amount of restricted or control securities that can be sold.[53] Currently, the amount of these securities, together with all sales by the seller of restricted and control securities of the same class within the preceding three month period, cannot exceed the *greater* of the following three tests:

(1) one percent of the shares or other units of the class outstanding as shown by the most recent report or statement published by the issuer;

(2) the average weekly volume of trading in such securities on all national securities exchanges and/or reported through the automated quotation system of a registered securities association during the four calendar weeks preceding the filing of Form 144, or if no Form 144 is required to be filed, the date of receipt of the order to execute the transaction by the broker or the date of execution of the transaction directly with a market maker; or

(3) the average weekly volume of trading in such securities reported through the consolidated transaction reporting system during the four week period specified in (2).

The Commission solicits comment on whether the two tests based on trading volume should be eliminated. There are two reasons why the Commission is considering this possibility. First, the trading volume tests appear to needlessly complicate the rule. Based on a review of a large number of Rule 144 transaction filings by the staff, the Commission believes that most persons selling securities under Rule 144 currently rely on the shares outstanding test because it allows sufficient shares to be sold and is easier to apply than the trading volume tests. Accordingly, it could be appropriate to simplify the rule by eliminating these tests.

Second, there is an issue as to whether the trading volume limitations are comparable between different markets because of the effect on trading volume of market structure differences between the Nasdaq market and the national securities exchanges.[54] The New York Stock Exchange has submitted a rule petition asking that this be addressed.[55] According to the New York Stock Exchange petition, these differences in market structure may mean that the Rule 144 test may not provide sufficiently comparable information to form the basis for a uniform volume test.[56]

Comment is sought on the extent to which persons use the trading volume tests to calculate the number of securities they can sell in reliance on Rule 144. If the trading volume tests are kept, should one or both of the tests be adjusted to account for differences between the Nasdaq market and the national securities exchanges to determine trading volume? Should the Nasdaq volume test be one-half of the national securities exchange volume, as the New York Stock Exchange suggested, or would some smaller adjustment serve to make the tests more comparable? Do differences in trading characteristics of securities make a simple adjustment not practicable? Commenters are asked to supply supporting data, if possible.

B. Possible Regulatory Approaches to Hedging Transactions

The 1995 Release noted that recent years have evidenced the growth of a

[51] Rule 144(e) [17 CFR 230.144(e)].

[52] 17 CFR 239.13.

[53] The staff has taken the interpretive position that offshore resales of securities under Regulation S need not be included in the calculation of the amount of securities sold under Rule 144. The Regulation S Proposing Release proposes to codify this interpretive position.

[54] See Deborah Lohse & Dave Kansas, *Big Board is Crying Foul to Regulators Over How Nasdaq Figures Daily Volume, Wall St. J.*, August 5, 1996 at C1 and *Big Board Seeks Volume Change, N.Y.T.*, July 16, 1996 at D7.

[55] The Petition for Rulemaking was filed on July 9, 1996 and is available in File No. 4–390 in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549.

[56] The petition asks the Commission to change Rule 144 and other rules with trading volume standards so that the standards would operate comparably in all markets. The petition asserts that dealer interpositioning on Nasdaq "on virtually every trade approximately doubles the reported volume of trading of shares changing hands between investors, as compared with auction markets where buyers and sellers meet directly and reported volume reflects that direct interaction as a single reported trade." The Commission has not instituted rulemaking based on the New York Stock Exchange petition. See Letter to the New York Stock Exchange regarding Petition for Rulemaking, File No. 4–390 (February 19, 1997). Commenters favoring retention of a trading volume test for Rule 144 resales may wish to address the comparability issues raised by the petition.

variety of hedging strategies in both the private and public securities markets associated with separating the bundle of rights that make up a security, including voting, price appreciation and dividend rights. [57] Through the use of equity swaps [58] and similar strategies, holders of restricted securities can retain legal title to their securities, but sell some or all of the rights associated with the securities in order to decrease or eliminate the risk that the market value of their investment will decline during a specific period of time.

The 1995 Release solicited public comment on whether it is appropriate to treat the securities underlying equity swaps as "held" in the private markets if the economic risk of the investment has been shifted. It also stated that the Commission was examining whether it may be appropriate to revise Rule 144 to reflect the economic realities of these transactions either by reintroducing the holding period tolling concept that was deleted in 1990 for periods when the holder has entered into a hedging strategy or by prohibiting risk-shifting transactions altogether during the holding period.[59] Commenters also were asked to provide their views as to the need to have a fungibility doctrine underlie Rule 144.

Several commenters argued that hedging strategies should not be restricted or prohibited during the Rule 144 holding periods, primarily because hedging strategies do not permit holders of restricted securities to shift all of the economic risks of holding the securities to another person or the public markets and do not result in any leakage of restricted stock into the public markets. Other commenters thought that holders of restricted securities should not be engaging in hedging transactions during the holding period.

Since issuance of the 1995 Release, the Commission has given further consideration to the issue of whether the entry into equity swaps and other hedging arrangements with respect to restricted securities is inconsistent with the principles underlying the registration requirements of the Securities Act and the Rule 144 safe harbor. The Commission recognizes that arguments can be made in favor of treating "short against the box" transactions and equity swaps as sales of the underlying restricted securities since these transactions typically hedge fully a holder of restricted securities against any economic risk. Without risk, there is arguably no investment intent, suggesting that the holder is more of an underwriter than an investor. At the same time, it can be argued that hedging transactions do not raise Section 5 issues because the restricted securities are not being sold into the open marketplace. Instead, only freely tradeable securities are actually redistributed to the public. Proponents of this view argue that the two types of securities are not "fungible" or interchangeable.

The economic substance of the transactions, however, gives rise to concern. For example, it is arguable that, in economic reality, a distribution occurs when a company sells unregistered restricted stock to an investor who, in turn, hedges the market risk through an equity swap with an investment bank, which then sells an equal number of securities into the market. A staff review of industry practices found that practitioners were more concerned about the Section 5 ramifications of hedging during a short period of time following acquisition of the restricted securities (typically three months) because a disposition of risk so soon after acquisition raises questions about the nature of the investment. The industry also seems less concerned about partial hedges. Partial hedges with options may raise fewer concerns because the investment bank is less likely to sell an equal number of shares into the marketplace (thereby involving less of a distribution).

The Commission requests comment on a number of possible regulatory approaches to hedging. First, it could make the Rule 144 safe harbor unavailable for persons who hedge during the restricted period. Second, independent of Rule 144, it could promulgate a rule that would define a sale for purposes of Section 5 to include specified hedging transactions. In order to hedge, a person would need an exemption from registration for the transaction or else would have to register the transaction with the Commission. Under this approach, a hedging transaction would be treated the same as a sale of the underlying security, so hedging would be constrained in the same way (*e.g.*, if an exemption is used such as Rule 144, the Rule 144 volume restrictions would apply). Third, as a variant of the first approach, it could adopt a shorter holding period (*e.g.*, three or six months) during which hedging could not occur without losing the safe harbor. After that, hedging could occur, but the underlying restricted securities would be held the remainder of the one-year holding period adopted today. Fourth, it could reintroduce a tolling provision in Rule 144 similar to the provision that was included prior to 1990. The last approach would be to maintain the status quo with no specific prohibition against hedging, relying instead upon practitioners to apply a facts and circumstances test to determine when Section 5 is implicated. Comment is solicited generally on each of the above approaches.

For purposes of a definition, the Commission is considering defining hedging to include any sale or combination of swap, option, or short sale intended to limit or eliminate the market risk of restricted or control stock. Alternatively, the Commission could use the definition of "put equivalent" position in Exchange Act Rule 16a–1(h).[60] Should the definition be expanded to include futures, contracts, "collars" or other instruments that operate similarly to a swap or option?

If the second overall approach were adopted, should all hedging be considered a sale for purposes of Section 5? If not, should only transactions like swaps and short sales of securities of the same class as the restricted securities be deemed sales because they most closely approximate a sale of the restricted securities? If options are included, should there be a difference between in-the-money options (which are likely to be exercised) and out-of-the-money options (which are less likely to be exercised)? For example, should transactions involving options be ignored if the options are sufficiently out-of-the-money (*e.g.*, 5%, 10%, 20%)? Should there be different treatment for hedging with cash settled derivative securities since their exercise does not result in any distribution of securities into the market? Should hedging a transaction be considered a sale of the underlying security only if it results in a sale of securities of the same class as the underlying security to a third party?

Since hedging can be a dynamic process, should there be a difference between the initial hedge and a subsequent "maintenance" hedge? For example, a holder of restricted securities might hedge only a portion of the market risk initially. As the value of the securities fluctuates, the holder may have to adjust the hedge by buying more put options, for example, or selling more stock short to maintain the same risk as initially envisioned. Presumably, this adjustment has less distributive aspects than the initial hedge. Should it make a difference if the security being hedged is control stock rather than restricted stock?

Should control stock be treated differently in general? It is not uncommon for individual affiliates to have a significant portion of their net worth represented by control or restricted stock. Such persons might want to diversify or limit their risk through hedging. Should the Commission adopt a rule that permits some limited hedging by these persons without raising Section 5 concerns? If such a safe harbor were crafted, should it be limited to a percentage of the affiliate's total holdings of control stock (*e.g.*, 5%, 10%, 20% or even 49%)? Is it sufficient to permit only hedging in accordance with the volume limitations of Rule 144(d)?

C. General Request for Comment

Any interested persons wishing to submit comment on any of the proposals set forth in this release are invited to do so by submitting them in triplicate to Jonathan G. Katz, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments also may be submitted electronically at the following e-mail address: rule-comments @sec.gov. All comment letters should refer to File Number S7–07–97; this file number should be included on the subject line if e-mail is used. Comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters will be posted on the Commission's Internet Web site (http://www.sec.gov). Comments are solicited from the point of view of issuers, holders of restricted and control securities, investment bankers and the investing public.

V. Cost-Benefit Analysis

The proposed amendments, if adopted, should reduce the costs of complying with the Rule 144 safe harbor requirements by making the rule easier to understand and apply. Elimination of the manner of sale requirements would result in fewer brokerage commissions being paid by persons reselling securities in reliance on the Rule 144 safe harbor, since resale transactions no longer would have to involve a broker or market-maker. The proposed increase in Form 144 filing thresholds would result in fewer filings and also reduce compliance costs.

For purposes of the Small Business Regulatory Enforcement Act of 1996, the Commission also is requesting information regarding the potential impact of the proposed rules on the economy on an annual basis. Commenters should provide empirical data to support their views.

The Commission does not believe that the proposed amendments would have an adverse effect on competition, employment, investment, productivity, innovation, market efficiency, or capital formation. In fact, the Commission believes that the proposed amendments will promote capital formation and efficient, competitive markets by enhancing investors' confidence in the integrity of the securities markets. However, the Commission requests comment on these preliminary views. The Commission encourages commenters to provide empirical data or other facts to support their views.

VI. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis has been prepared in accordance with Section 603 of the Regulatory Flexibility Act,[61] and relates to the proposed amendments to Rules 144 and 145 and Form 144 under the Securities Act.

Reasons for, and Objectives of, Proposed Action

Rule 144 provides a safe harbor for the resale of restricted and control securities. It sets forth conditions which, if satisfied, permit persons who hold such securities to publicly sell them without registration and without being deemed underwriters.

Rule 145 governs the offer or sale of securities received in connection with reclassifications, mergers, consolidations and asset transfers. It provides that any party to a transaction covered by the rule (other than the issuer), or any person who is an affiliate of such party at the time the transaction is submitted for vote or consent, who publicly offers or sells securities of the issuer acquired in connection with such a transaction will be deemed to be engaged in a distribution, and therefore to be an underwriter of the securities, except where the securities are resold in accordance with Rule 145(d). Rule 145(d) requires its own holding periods that track the holding periods for resales found in Rule 144.

Form 144 is required to be filed by persons intending to sell securities in reliance on Rule 144 if the amount of securities to be sold in any three month period exceeds 500 shares or other units or the aggregate sales price exceeds $10,000. The primary purpose of the form is to publicly disclose the proposed sale of unregistered securities by persons not deemed to be engaged in the distribution of securities.

The Commission has determined to propose amendments that would make Rule 144 easier to understand and apply. The staff has reorganized and shortened the rule to make it easier to understand and apply. In addition to codifying certain staff interpretive positions, the proposals would make the following substantive changes to Rule 144:

- Provide a bright-line exclusion from the Rule 144 definition of affiliate. Pursuant to the proposal, persons who would not be subject to the provisions of Section 16, *i.e.*, persons who are not officers, directors or 10% holders of the issuer, would be deemed not to be affiliates of an issuer for purposes of Rule 144;
- Eliminate the manner of sale requirements; and
- Increase the thresholds for filing Form 144 from the current 500 shares or $10,000 sale price test to a 1000 shares or $40,000 sale price test.

The proposals also would amend Rule 145, which relates to certain significant transactions, such as mergers, to eliminate the resale limitations that are based on a "presumptive underwriter" approach. Instead of that approach, persons who receive securities in these transactions would be treated the same as other purchasers of securities.

[57] Hedging is a risk limiting device much like buying insurance. For example, a person could hedge common stock by purchasing a put option to sell the common stock at a fixed price. If the stock value increases, the holder profits. If the stock price falls, the put option can be exercised to sell the stock at a predetermined price.

[58] Equity swaps are individually negotiated contracts, the specific terms of which may vary from agreement to agreement. One form of equity swap involves an agreement by a holder of equity securities to pay, or "swap," the return on the securities (which may include dividends as well as any change in market value) in exchange for the return on an equity index, basket of securities, or an interest-rate based cash flow.

[59] Deletion of the tolling provision in 1990 did not mean that holders could freely engage in hedging activities with respect to their restricted securities without consideration of the registration requirements. The Commission staff historically has viewed the question of whether a hedging transaction would toll the holding period as separate from the question of whether a hedging transaction was subject to Section 5 of the Securities Act. With respect to short sales "against the box," (meaning that the person sells short even though the person owns securities that can be delivered) the Division continues to take the position expressed in the 1979 Rule 144 interpretative release (Release No. 33–6099, (August 2, 1979) [44 FR 46572]) that a person who has held restricted securities for less than one year cannot effect a short sale of securities of that class and then cover the short position with restricted securities (even after expiration of the one year holding period) since the initial short sale did not qualify under Rule 144. Similarly, exchange-traded puts and calls may be used for Rule 144 sales, but in the case of restricted securities, the one-year holding period requirement of Rule 144(d) must have been satisfied by the date the put is purchased or call is sold. *See Bear Stearns & Co., Inc.*, (April 4, 1991) and Release 33–6099.

[60] 17 CFR 240.16a–1(h).

[61] 5 U.S.C. § 603.

The revision to the definition of affiliate would provide more objective guidance for issuers and sellers of securities as to the types of persons that are not affiliates for purposes of Rule 144. Elimination of the manner of sale requirements would remove obstacles to transactions that are not distributive in nature. An increase in the Form 144 filing thresholds would take into account the effects of inflation since adoption of Rule 144 in 1972.

The release solicits comment on shorter Rule 144(d) and/or 144(k) holding periods. Persons holding restricted and control stock, including small entities holding such stock, and all issuers, including small business issuers, would benefit from shortened holding periods. The release also solicits comment on elimination of the trading volume limitation in Rule 144(e). It is unlikely that this change would have a significant economic impact on persons holding restricted and control stock, including small entities owning such stock.

Legal Basis

The amendments are proposed pursuant to Sections 2(11), 4(1), 4(4) and 19(a) of the Securities Act.

Small Entities Subject to Requirements

The proposed rules will affect both small entities that issue restricted or control securities and small entities that hold such securities. When used with reference to an issuer, other than an investment company, the term "small business" is defined by Securities Act Rule 157 as an issuer whose total assets on the last day of its most recent fiscal year were $5 million or less and is engaged or proposing to engage in small business financing. An issuer is considered to be engaged in small business financing if it is conducting or proposes to conduct an offering of securities that does not exceed the dollar limitation prescribed by Section 3(b) of the Securities Act. When used with reference to an issuer or person, other than an investment company, Exchange Act Rule 0–10[62] defines small entity to mean an issuer or person that, on the last day of its most recent fiscal year, had total assets of $5,000,000 or less.[63]

The Commission is aware of approximately 1,019 Exchange Act reporting companies that currently satisfy the definition of "small business" under Rule 157 and may be affected by the proposed rules. The proposed rules also may affect small businesses that are not subject to Exchange Act reporting requirements. The Commission is unable to determine the number of such small businesses due to the absence of filings with the Commission by such companies. Comment is solicited on the number of small businesses that are not subject to Exchange Act reporting requirements that may be affected by the proposed rules.

An estimated 3,800 entities, excluding natural persons, annually file Form 144 based upon a sample study of Form 144 filings by the Commission's Office of Economic Analysis. Since the form does not require disclosure of the size of entities reselling securities in reliance on Rule 144, the Commission has no basis for estimating the number of these entities that are small entities. Comment is solicited as to the number of small entities who may rely on Rule 144 in reselling restricted or control securities if the proposed rules are adopted.

The proposals would favorably affect small businesses and small entities owning restricted or control securities of issuers by improving the usefulness of the Rule 144 safe harbor and removing unnecessary and outdated requirements.

Reporting, Recordkeeping and Other Compliance Requirements

If the change to the definition of affiliate is adopted, it is expected that fewer persons, including small entities, owning restricted and control stock of all issuers, including small issuers, will file Form 144. The reduction would result from the fact that some persons who are not officers, directors or 10% holders of an issuer presumably consider themselves to be affiliates under the current Rule 144 definition. The Commission has no basis, however, for estimating the size of this expected decrease since it does not collect any information that would provide a basis for such an estimate and such information is not otherwise available to the Commission. Comment is solicited as to how to quantify the expected decrease.

If the manner of sale requirements were eliminated, persons (including small entities) owning restricted and control stock of all issuers, including small issuers, no longer would have to sell their stock in a broker's transaction or directly with a market-maker. Those choosing to sell their stock in a transaction not involving a broker or market-maker would not incur the expense of commission fees.

Adoption of increased share number and dollar amount thresholds for filing Form 144 also is expected to decrease the number of Form 144 filings required to be made by persons (including small entities) owning restricted and control stock of all issuers, including small issuers. Based on studies by the Commission's Office of Economic Analysis, the number of Form 144 filings is expected to decrease by approximately 5% (1,339 filings) if the thresholds are increased to 1,000 shares or $40,000 in market value.

The release solicits comment on whether the thresholds should be increased as high as 2,000 shares or $100,000. It is estimated that if these higher thresholds were adopted, the number of Form 144 filings would decrease by approximately 14% (3,677 filings).

Finally, some persons (including small entities) owning stock in issuers, including small issuers, that engage in the type of transactions covered by Rule 145 would benefit from the proposed revisions since there no longer would be a presumption that persons who receive securities in these transactions are underwriters. The Commission has no basis for estimating the number of persons who may be deemed to be underwriters under the current rule that would not be determined to be underwriters if the proposed change is adopted since it does not collect any information that would provide a basis for such an estimate and such information is not otherwise available to the Commission. Comment is solicited as to how to quantify such number.

Clerical skills are necessary to complete Form 144.

Overlapping or Conflicting Federal Rules

No current federal rules duplicate, overlap or conflict with the rules and forms to be proposed, except that persons subject to the reporting requirements under Section 16 of the Securities Exchange Act of 1934 may need to file reports on Form 4 as well as Form 144 under certain circumstances.

Significant Alternatives

The Commission considered the establishment of different compliance standards for small entities owning restricted and control securities, as well as for persons owning restricted and control securities of small issuers. For example, the Commission could establish shorter holding periods or more lenient Form 144 filing requirements. Such differences, however, would be inconsistent with the purposes served by the holding period and Form 144 filing requirements and would needlessly complicate the Form 144 filing requirements. The Commission also considered the other types of alternatives set forth in section 603 of the Regulatory Flexibility Act to minimize the economic impact of the amendments on small entities: (1) the clarification, consolidation, or simplification of compliance and reporting requirements for such small entities; (2) the use of performance rather than design standards; and (3) an exemption from coverage of the proposed amendments, or any part thereof, for small entities. Because the proposed amendments would benefit all issuers and holders of restricted securities, differing compliance timetables for small entities would not be appropriate. Neither could the compliance requirements of the amendments be clarified or simplified further for small entities. Finally, the proposed amendments do not use design standards, and an exemption from the amendments for small entities would not be desirable or consistent with the stated objectives of the applicable statutes.

Solicitation of Comments

Written comments are encouraged with respect to any aspect of this Initial Regulatory Flexibility Analysis. In particular, the Commission seeks comment on: (i) the number of small entities that would be affected by the proposed rule; (ii) the expected impact of the proposals as discussed above; and (iii) how to quantify the number of small entities that would be affected by, and how to quantify the impact of, the proposed rules. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis if the proposed revisions are adopted. Persons wishing to submit written comments should file them with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. All comments received will be available for public inspection and copying at the Commission's Public Reference Room at the same address.

VII. Paperwork Reduction Act

Form 144 contains "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[64] The Commission has submitted the proposed revisions to Form 144 to the Office of Management and Budget for review in accordance with PRA procedures.[65] The title for the information collection is "Notice of Proposed Sale of Securities Pursuant to Rule 144 under the Securities Act of 1933."

As proposed to be revised, Form 144 would be filed with the Commission by persons who intend to sell securities in reliance on Rule 144 if the amount of securities to be sold during a three-month period exceeds 1,000 shares or other units or has an aggregate sales price in excess of $40,000. The proposed thresholds for filing Form 144 would be increased from existing thresholds of 500 shares or a $10,000 sale price. Form 144 may be filed electronically using the EDGAR filing system. The information is used for the primary purpose of disclosing the proposed sale of unregistered securities by persons deemed not to be engaged in the distribution of the securities. It is made publicly available. Persons reselling securities in reliance on the Rule 144 safe harbor are the likely respondents to the information required by Form 144.

An estimated 18,096 respondents are expected to file Form 144 annually for a total burden of 36,192 hours if the proposed revisions to Form 144 are adopted. This represents a decrease of 2,678 hours from the current annual burden under existing thresholds. The information collection requirements imposed by Form 144 are mandatory. The Commission may not require Form 144 filings unless the form displays a currently valid OMB control number.

The Commission solicits comment to: (i) evaluate whether Form 144, as proposed to be revised, is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, D.C. 20503, and should also send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549 with reference to File No. S7–07–97. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full affect if OMB receives it within 30 days of publication.

VIII. Statutory Basis

The amendments to Rules 144 and 145 and Form 144 are being proposed pursuant to sections 2(11), 4(1), 4(4) and 19(a) of the Securities Act.

List of Subjects in 17 CFR Parts 230 and 239

Reporting and recordkeeping, Securities.

Text of the Proposals

For the reasons set out above, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read in part, as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78d, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. Section 230.144 is amended by revising the Preliminary Note, paragraphs (a)(1), (a)(3), (b), and (c), adding notes to paragraph (c), revising paragraphs (d)(3)(ii), (d)(3)(vi), (d)(3)(vii) and (d)(3)(viii), adding paragraph (d)(3)(ix), revising the introductory text of paragraph (e)(1), revising paragraph (e)(2), removing paragraphs (f) and (g), re-designating paragraph (h) as paragraph (f), removing paragraphs (i) and (j), re-designating paragraph (k) as paragraph (g) and by revising newly designated paragraphs (f) and (g) to read as follows:

§ 230.144 Persons deemed not to be engaged in a distribution and therefore not underwriters.

Preliminary Note

The Securities Act of 1933 requires that all offers and sales of securities in interstate commerce or by use of the mails must be registered with the Commission or exempt from registration. While Section 4(1) exempts most routine trading, transactions by underwriters are not exempt. Rule 144 creates safe harbor exemptions for two common situations arising from the Act's definition of "underwriter."

First, anyone who has taken securities directly from the issuer in an unregistered

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[62] 17 CFR 240.0–10.

[63] There is no comparable definition of "person" under the Securities Act.

[64] 44 U.S.C. § 3501 *et seq.*

[65] 44 U.S.C. § 3507(d) and 5 CFR § 1320.11.

transaction and who effects a public resale in the short term may be said to be a "person who has purchased from an issuer with a view to * * * distribution," and thus an "underwriter" within the meaning of Section 2(11) of the Act. An investment banking firm that arranges with an issuer for the public sale of its securities is clearly an "underwriter" under that Section. Individual investors who are not professionals in the securities business may also be "underwriters" within the meaning of that term as used in the Act if they act as links in a chain of transactions through which securities move from an issuer to the public. Rule 144 provides an exemptive safe harbor for the resale of these "restricted securities."

Second, Section 2(11) treats persons in a relationship of control with the issuer ("affiliates") as if they were the issuer for the purpose of determining which intermediaries to the public markets are "underwriters." As a result, a public sale of an affiliate's securities ("control securities"), whether or not the securities are "restricted," is subject to the same regulatory requirements as a public offering by the issuer. Rule 144 provides an exemptive safe harbor for the resale of control securities on behalf of an affiliate of the issuer.

Rule 144 sets forth certain conditions which are intended to distinguish between a distribution and routine trading. First, adequate current public information is required to protect investors. Second, a holding period before resale is needed to assure that persons who buy restricted securities in unregistered offerings have assumed the economic risks of investment and are not acting as conduits for the issuer in an unregistered public distribution. Third, Rule 144 requires a person relying on the Rule to sell the securities in limited quantities to further demonstrate that trading is ordinary, rather than distributive.

If a sale of securities is made in accordance with all of the provisions of Rule 144, (1) any person who sells restricted securities will be deemed not to be an underwriter for that transaction; (2) any person who sells restricted or other securities on behalf of an affiliate of the issuer will be deemed not to be an underwriter for that transaction; and (3) the purchaser receives unrestricted securities.

Rule 144 is not an exclusive safe harbor. It does not affect the availability of any other exemption for resales under the Securities Act.

(a) * * *

(1) An *affiliate* of an issuer is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such issuer. A person shall be deemed not to be an affiliate for purposes of this section if the person:

(i) Is not the beneficial owner, directly or indirectly, of more than 10% of any class of equity securities of the issuer;

(ii) Is not an officer of the issuer; and

(iii) Is not a director of the issuer.

Note to paragraph (a)(1): The determination of a person's beneficial ownership and whether that person is an "officer" shall be made in accordance with § 240.16a–1 of this chapter, regardless of whether the issuer's securities are subject to Section 16 (15 U.S.C 78(p)) of the Securities Exchange Act of 1934 ("Exchange Act") and regardless of whether the class of securities is registered under Section 12 (15 U.S.C. 78*l*) of the Exchange Act.

* * * * *

(3) The term *restricted securities* means:

(i) Securities acquired directly or indirectly from the issuer, or from an affiliate of the issuer, in a transaction or chain of transactions not involving any public offering;

(ii) Securities acquired from the issuer that are subject to the resale limitations of § 230.502(d) under Regulation D or § 230.701(c);

(iii) Securities acquired in a transaction or chain of transactions meeting the requirements of § 230.144A;

(iv) Securities acquired from the issuer in a transaction subject to the conditions of Regulation CE (§ 230.1001);

(v) Equity securities of domestic issuers, and of foreign issuers where the principal market for such securities is in the United States, acquired in a transaction or chain of transactions subject to the conditions of § 230.901 or § 230.903 under Regulation S (§§ 230.901 thru 230.905 and Preliminary Notes); or

(vi) Securities acquired from the issuer that were issued pursuant to an exemption under section 4(6) (15 U.S.C. 77(d)(6)) of the Act.

(b) *Conditions to be met.* (1) Any affiliate or other person who sells restricted securities of an issuer for such person's own account shall be deemed not to be an underwriter thereof within the meaning of section 2(11) (15 U.S.C. 77(b)(11)) of the Act if all of the conditions of this section are met.

(2) Any person who sells restricted or any other securities for the account of an affiliate of the issuer of such securities shall be deemed not to be an underwriter thereof within the meaning of Section 2(11) of the Act if all of the conditions of this section are met.

(c) *Current public information.* Adequate current public information with respect to the issuer of the securities must be available. Such information will be deemed to be available only if either of the following conditions is met:

(1) *Reporting Issuers.* The issuer is, and for at least 90 days before the sale has been, subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act (15 U.S.C. 78(m) or (o)(d)) and has filed all required reports during the 12 months preceding such sale (or for such shorter period that the issuer was required to file such reports); or

(2) *Non-reporting Issuers.* If the issuer is not subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, there is publicly available the information concerning the issuer specified in paragraph (a)(5)(i) to (xiv), inclusive, and paragraph (a)(5)(xvi) of § 240.15c2–11 of this chapter, or, if the issuer is an insurance company, the information specified in Section 12(g)(2)(G)(i) of the Exchange Act.

Notes to paragraph (c): 1. With respect to paragraph (c)(1), the seller can rely upon:

(A) A statement in whichever is the most recent report, quarterly or annual, required to be filed and filed by the issuer that such issuer has filed all reports required to be filed by Section 13 or 15(d) of the Exchange Act during the preceding 12 months (or for such shorter period that the issuer was required to file such reports) and has been subject to such filing requirements for the past 90 days; or

(B) A written statement from the issuer that it has complied with such reporting requirements. Neither type of statement may be relied upon, however, if the person knows or has reason to believe that the issuer has not complied with such requirements.

2. Rule 144(c) cannot be satisfied during the first 90 days after an issuer becomes subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act.

(d) * * *

(3) * * *

(ii) *Conversions and exchanges.* If the securities sold were acquired from the issuer solely in exchange for other securities of the same issuer, the newly acquired securities shall be deemed to have been acquired at the same time as the securities surrendered for conversion or exchange, even if the securities surrendered were not convertible or exchangeable by their terms;

* * * * *

(vi) *Trusts.* Where a trust settlor is an affiliate of the issuer, securities acquired from the settlor by the trust, or acquired from the trust by the beneficiaries, shall be deemed to have been acquired when they were acquired by the settlor.

(vii) *Estates.* Where a deceased person was an affiliate of the issuer, securities held by the estate of such person or acquired from such an estate by the beneficiaries shall be deemed to have been acquired when they were acquired by the deceased person. Regardless of whether the deceased person was an affiliate of the issuer, no further holding period is required if the estate is not an affiliate of the issuer or if the securities are sold by a beneficiary of the estate who is not an affiliate.

(viii) *Rule 145(a) transactions.* The holding period for securities acquired in a transaction specified in § 230.145(a) shall be deemed to commence on the date the securities were acquired by the purchaser in such transaction, except as otherwise provided in paragraphs (d)(3)(ii) and (ix) of this section.

(ix) *Holding company formations.* Securities acquired from the issuer in a transaction effected solely for the purpose of forming a holding company shall be deemed to have been acquired at the same time as the securities of the predecessor issuer exchanged in the holding company formation where:

(A) The holding company's securities were issued in a transaction involving an exchange of securities as part of a reorganization of the predecessor into a holding company structure;

(B) Holders received securities of the same class evidencing the same proportional interest in the holding company as they held in the predecessor; and

(C) Immediately following the transaction, the holding company has no significant assets other than securities of the predecessor and its existing subsidiaries and has substantially the same assets and liabilities on a consolidated basis as the predecessor had prior to the transaction.

(e) * * *

(1) *Sales by affiliates.* If any securities are sold for the account of an affiliate of the issuer, regardless of whether those securities are restricted, the amount of securities sold, together with all sales of securities of the same class sold for the account of such person within the preceding three months, shall not exceed the greatest of:

* * * * *

(2) *Sales by persons other than affiliates.* The amount of restricted securities sold for the account of any person other than an affiliate of the issuer, together with all other sales of restricted securities of the same class sold for the account of such person within the preceding three months, shall not exceed the greatest of the amounts specified in paragraphs (e)(1)(i), (ii) or (iii) of this section, whichever is applicable.

* * * * *

(f) *Notice of proposed sale.* (1) If the amount of securities to be sold in reliance upon this section during any period of three months exceeds 1,000 shares or other units or has an aggregate sale price in excess of $40,000, three copies of a notice on Form 144 (§ 239.144 of this chapter) shall be filed with the Commission at its principal office in Washington, DC. If such securities are admitted to trading on any national securities exchange, one copy of such notice also shall be transmitted to the principal exchange on which such securities are admitted.

(2) The Form 144 shall be signed by the person for whose account the securities are to be sold and shall be transmitted for filing concurrently with either the sale of securities in reliance upon this section or the placing with a broker of an order to sell securities in reliance upon this section. Neither the filing of such notice nor the failure of the Commission to comment thereon shall be deemed to preclude the Commission from taking any action it deems necessary or appropriate with respect to the sale of the securities referred to in such notice. The person filing the notice required by this paragraph shall have a bona fide intention to sell the securities referred to therein within a reasonable time after the filing of such notice.

(g) *Termination of certain restrictions on sales of restricted securities by persons other than affiliates.* The requirements of paragraphs (c), (e) and (f) of this section shall not apply to the sale of restricted securities if:

(1) The sale is for the account of a person who is not an affiliate of the issuer at the time of the sale and who has not been an affiliate of the issuer during the three months preceding the sale; and

(2) A period of at least two years has elapsed since the later of the date the securities were acquired from the issuer or from an affiliate of the issuer. The two-year period should be calculated as described in paragraph (d) of this section.

3. By amending § 230.145 by removing paragraphs (c) and (d) and re-designating paragraph (e) as paragraph (c).

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

4. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78w(a), 78ll(d), 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q, 79t, 80a–8, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

5. By amending § 239.144 by revising paragraphs (a) and (b) to read as follows:

§ 239.144. Form 144, for notice of proposed sale of securities pursuant to § 239.144 of this chapter.

(a) Except as indicated in paragraph (b) of this section, this form shall be filed in triplicate with the Commission at its principal office in Washington, DC by each person who intends to sell securities in reliance upon § 230.144 of this chapter and shall be transmitted for filing concurrently with either the execution of a sale of securities in reliance upon § 230.144 of this chapter or the placing with a broker of an order to execute a sale of securities in reliance upon § 230.144 of this chapter.

(b) This form need not be filed if the amount of securities to be sold during any period of three months does not exceed 1,000 shares or other units and the aggregate sale price does not exceed $40,000.

* * * * *

6. By amending Form 144 (referenced in § 239.144) by revising the statement appearing under the Form title, revising the caption to Item 3(b) in the undesignated table, removing the "s" at the end of "Instructions" after Table I, removing Instruction 2 to Table I, and removing the designation number for the remaining instruction to read as follows:

Note: The text of Form 144 does not, and the amendments thereto will not, appear in the Code of Federal Regulations.

Form 144

Notice of Proposed Sale of Securities Pursuant to Rule 144 Under the Securities Act of 1933

Attention: Transmit for filing 3 copies of this form concurrently with either placing an order with a broker to execute a sale or executing a sale directly with a market maker, or at the time of executing a sale not involving a broker or market maker.

* * * * *

Item 3(b). Name and Address of Each Broker Through Whom the Securities are to be Offered or Each Market Maker who is Acquiring the Securities, if Applicable

* * * * *

Table I—Securities To Be Sold

* * * * *

Instruction if the securities were purchased and full payment therefore was not made in cash at the time of purchase, explain in the table, or in a note thereto, the nature of the consideration given. If the consideration consisted of any note or other obligation, or if payment was made in installments, describe the arrangement and state when the note or other

obligation was discharged in full or the last installment paid.

By the Commission.

Dated: February 20, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4667 Filed 2–27–97; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, 230, and 249

[Release No. 33–7392; 34–38315; File No. S7–8–97 International Series Release No. 1056]

RIN 3235–AG34

Offshore Offers and Sales

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Securities and Exchange Commission (the "Commission") is publishing for comment proposed amendments to the Regulation S safe harbor procedures. The proposed amendments relate to offshore sales of equity securities of U.S. issuers, and foreign issuers where the principal market for the securities is in the United States. The proposals are designed to stop abusive practices in connection with offerings of equity securities purportedly made in reliance on Regulation S.

DATES: Comments should be received on or before April 29, 1997.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Stop 6–9, Washington, D.C. 20549. Comment letters also may be submitted electronically to the following electronic mail address: rule-comments@sec.gov. Comment letters should refer to File No. S7–8–97; this file number should be included in the subject line if electronic mail is used. All comment letters received will be available for public inspection and copying in the Commission's public reference room, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters will be posted on the Commission's Internet Web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Paul M. Dudek, Luise M. Welby, or Walter G. Van Dorn, Jr., Office of International Corporate Finance, Division of Corporation Finance, at (202) 942–2990.

SUPPLEMENTARY INFORMATION: The Commission is proposing to revise Rule 903 [1] of Regulation S,[2] the issuer safe harbor under the Securities Act of 1933 [3] for offshore offerings of securities, to address abusive practices under the rule. The changes would apply to offshore sales of equity securities of domestic issuers, and of foreign issuers where the principal market for those securities is in the United States.[4] Further, the Commission proposes amendments to Rule 144(a)(3) [5] and a new Rule 905 to deem these equity securities to be "restricted securities," as defined in Rule 144 under the Securities Act.[6] New Rule 905 also would make clear that offshore resales under Rule 904 of restricted equity securities of covered issuers will not affect the status of these securities as restricted securities after the resale.[7] In addition, the Commission is proposing to eliminate the current requirement that reporting issuers disclose Regulation S sales of equity securities on a Form 8–K within 15 days of the transaction. In light of the longer restricted period proposed today, issuers would report these sales on a Form 10–Q on the same basis that issuers report their other unregistered sales of equity securities. Finally, the Commission is proposing additional technical and clarifying revisions to Regulation S, in part to make the rule more concise and understandable.

I. Executive Summary

The Commission constantly seeks to reduce burdens on capital formation as long as the deregulatory measures do not harm investor protection. When adopting safe harbors and other deregulatory measures, the Commission will include protections designed to minimize the risk that those measures will be abused. If abuses nevertheless occur, the Commission will make the necessary adjustments to prevent further abuse while, to the extent possible, preserving the original goals of the reform. Today, the Commission is proposing amendments to Regulation S to prevent continued abuse of the rule.

In 1990, the Commission adopted Regulation S to clarify the extraterritorial application of the registration requirements of the Securities Act. In the interests of both comity and the internationalization of the world's securities markets, the Commission believed that the registration provisions under U.S. law should not apply where the offshore placements were truly offshore. Instead, the laws of the foreign jurisdiction regulating the public offerings of securities would serve to protect investors in that market. Regulation S permits both foreign and domestic issuers to avail themselves of the safe harbors when conducting offshore placements of their securities.

Since the adoption of Regulation S in 1990, the Commission has become aware of uses of Regulation S that the rule not only did not contemplate, but in fact expressly prohibited. Some issuers, affiliates and others involved in the distribution process are using Regulation S as a guise for distributing securities into the U.S. markets without the protections of registration under Section 5 of the Securities Act. In June 1995, the Commission issued an interpretive release that listed certain problematic practices under Regulation S and requested comment on whether the Regulation should be amended to limit its vulnerability to abuse.[8]

As a result of the continuation of certain of these abusive practices and in response to the comment letters received on the Interpretive Release, the Commission is proposing to stop these abusive practices by amending Regulation S for placements of equity securities by domestic companies. In addition, although abusive practices involving the equity securities of foreign issuers are not as evident as with domestic issuers, there is equal potential for abuse where the principal trading market for those securities is in the United States. Therefore, the Commission also is proposing to amend the safe harbor procedures for placements of equity securities of foreign issuers where the principal market for those securities is in the United States. In general, the "principal market" would be in the United States if more than half of the trading in that security takes place in the United States.[9]

These Regulation S proposals would:

- classify these equity securities placed offshore under Regulation S as "restricted securities" within the meaning of Rule 144;
- align the Regulation S restricted period for these equity securities with the Rule 144 holding periods by lengthening from 40 days (currently applicable to reporting issuers) or one year (currently applicable to non-reporting issuers) to two years the period during which persons relying on the Regulation S safe harbor may not sell these equity securities to U.S. persons (unless pursuant to registration or an exemption);
- impose certification, legending and other requirements now only applicable to sales of equity securities by non-reporting issuers;
- require purchasers of these securities to agree not to engage in hedging transactions with regard to such securities unless such transactions are in compliance with the Securities Act;
- prohibit the use of promissory notes as payment for these securities; and
- make clear that offshore resales under Rule 901 or 904 of equity securities of these issuers that are "restricted securities," as defined in Rule 144, will not affect the restricted status of those securities.

The combination of these proposed amendments should prevent the sale of equity securities offshore under Regulation S in transactions that effectively result in unregistered distributions of the securities into the U.S. markets.

II. Background

Regulation S contains a general statement that the registration requirements of Section 5 of the Securities Act do not apply to offers or sales of securities that occur outside the United States, and two non-exclusive safe harbors. The first safe harbor applies to offers and sales by issuers, persons involved in the distribution process pursuant to contract ("distributors"), their affiliates, and any person acting for those persons ("issuer safe harbor").[10] The other safe harbor applies to *offshore* resales by persons other than the issuer, distributors, their affiliates (except certain officers and directors) and persons acting for them (the "offshore resale safe harbor").[11] The rule considers an offer or sale of securities that satisfies all conditions of the applicable safe harbor to be outside the United States and thus not subject to the registration requirements of Section 5. Regulation S does not provide a safe harbor for resales back into the United States of any securities sold or resold offshore, whether under Regulation S or otherwise.

The issuer safe harbor distinguishes three categories of securities offerings. The categories are based upon factors such as the jurisdiction of incorporation of the company whose securities are being sold under Regulation S, the company's reporting status under the Securities Exchange Act of 1934,[12] and the degree of U.S. market interest in the issuer's securities. "Category 1" offerings generally encompass debt and equity offerings by foreign reporting and non-reporting issuers when there is no "substantial U.S. market interest" [13] in the security to be offered. "Category 2" offerings now encompass, among other things, offshore offerings of debt and equity securities of any domestic reporting issuer, debt and equity securities of any foreign reporting issuer where there is a "substantial U.S. market interest," as well as the debt securities of any foreign non-reporting issuer where there is a "substantial U.S. market interest." "Category 3" offerings are subject to the greatest restrictions and include offshore offerings of debt and equity securities by any domestic non-reporting issuer, as well as equity securities of any foreign non-reporting issuer where there is a "substantial U.S. market interest."

All offerings under the Regulation S safe harbors are subject to two general conditions: the offer and sale must be made in an offshore transaction,[14] and the offering must not involve directed selling efforts in the United States.[15] Offers and sales made in reliance on the Category 2 and Category 3 issuer safe harbors are subject to additional restrictions that the Commission anticipated would assure that the securities came to rest offshore. These restrictions include a 40-day or one-year restricted period [16] during which persons entitled to rely on the Rule 903 safe harbor (that is, the issuer, a distributor, or any of their respective affiliates or any person acting on their behalf) cannot sell the Regulation S securities to a U.S. person [17] or to a person acting for the account of a U.S. person (other than a distributor), and still rely on the safe harbor.[18] The purpose of the restricted period is to ensure that persons relying on the safe harbor are not engaged in an unregistered, non-exempt distribution into the U.S. capital markets.[19]

The Commission based many of the safe harbor procedures incorporated into Regulation S on procedures that market participants already had developed and were the subject of no-action letters issued by the Commission's staff before the adoption of Regulation S.[20] Before 1990, offshore transactions largely involved substantial global offerings of the debt or equity securities of foreign issuers, or the debt securities of domestic issuers in the Euromarkets. Since the adoption of Regulation S, these types of offshore offerings have not resulted in widespread problematic practices.

The Commission's primary area of concern has been the use of Regulation S for sales of equity securities by domestic issuers, the area in which market participants had not developed established procedures before the adoption of Regulation S. Some U.S. issuers appear to have used the Regulation S issuer safe harbor to effect unregistered distributions of their equity securities into the United States.[21]

In response, the Commission has taken enforcement action against persons who sought to evade the registration requirements of the Securities Act through purported Regulation S offerings that were in effect U.S. distributions of securities.[22] In addition, on June 27, 1995, the Commission issued the Interpretive Release to state its views concerning these abusive practices under Regulation S. The Interpretive Release

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[1] 17 CFR 230.903.

[2] 17 CFR 230.901–230.904 and Preliminary Notes.

[3] 15 U.S.C. 77a *et seq.* (the "Securities Act").

[4] *See* Proposed Rule 902(h) for the proposed definition of "principal market in the United States."

[5] 17 CFR 230.144(a)(3).

[6] Proposed Rule 905.

[7] *Id.*

[8] Securities Act Release No. 7190 (June 27, 1995) [60 FR 35663 (July 10, 1995)] (the "Interpretive Release").

[9] *See infra* Section III.E.1. for a further discussion of the proposed definition of "principal market in the United States."

[10] Rule 903 of Regulation S [17 CFR 230.903].

[11] Rule 904 of Regulation S [17 CFR 230.904].

[12] 15 U.S.C. 78a *et seq.* (the "Exchange Act").

[13] *See* Rule 902(n) of Regulation S for the definition of "substantial U.S. market interest" [17 CFR 230.902(n)].

[14] Rule 903(a) of Regulation S [17 CFR 230.903(a)]. *See* Rule 902(i) of Regulation S for the definition of "offshore transaction" [17 CFR 230.902(i)].

[15] Rule 903(b) of Regulation S [17 CFR 230.903(b)].

[16] For debt securities issued under either Category 2 or Category 3, the restricted period is 40 days. The restricted period for equity securities sold under Category 3 is one year, instead of the shorter 40-day period under Category 2.

[17] "U.S. person" is defined under Rule 902(*o*) of Regulation S [17 CFR 230.902(*o*)].

[18] In addition to the restricted period, "Category 2" and "Category 3" offerings also must comply with certain "offering restrictions," and the requirement that distributors give certain notices when selling securities to other distributors prior to the expiration of the restricted period. *See* Rule 902(h) of Regulation S [17 CFR 230.902(h)]. In addition, offerings of equity securities under Category 3 are subject to certification, legending and other requirements that are not imposed on Category 2 offerings. *See* Rule 903(c)(2) for Category 2 offerings [17 CFR 230.903(c)(2)] and Rule 903(c)(3) for Category 3 offerings [17 CFR 230.903(c)(3)].

[19] *See* Securities Act Release No. 6863 (Apr. 24, 1990) [55 FR 18306] (the "Adopting Release") at Section III.B.

[20] See, *e.g.*, InfraRed Associates, Inc. (Sept. 13, 1985); Proctor & Gamble Co. (Feb. 21, 1985); Fairchild Camera and Instrument International Finance N.V. (Dec. 15, 1976); Raymond International Inc. (June 28, 1976); Pan-American World Airways, Inc. (June 30, 1975); The Singer Company (Sept. 3, 1974).

[21] *See, e.g.*, "Pirates' Play?", Barron's, at 17 (Jan. 7, 1997); "Storm Brewing Offshore?", Barron's, at 12 (Sept. 16, 1996); "Easy Money—How Foreign Investors Profit at the Expense of Americans," Barron's, at 31 (Apr. 29, 1996); "Rule Permitting Offshore Stock Sales Yields Deals that Spark SEC Concerns," Wall St. J., at C1 (Apr. 26, 1994); "Foreign Stock Sales: Don't Get Blindsided," Worth, at 37 (Mar. 1994).

[22] *See In re: Candies, Inc., et al.*, Securities Act Release No. 7263 (Feb. 21, 1996); *SEC v. Softpoint, Inc., et al.*, Litigation Release No. 14480 (Apr. 27, 1995). *See also U.S. v Sung and Feher*, Litigation Release No. 14500 (May 15, 1995).

described a number of abusive practices in offerings purportedly made under Regulation S and stated that such abusive practices ran afoul of the "scheme-to-evade" prohibition in Preliminary Note 2 of Regulation S,[23] would not be covered by the safe harbors, and would not be found to be an offer and sale outside the United States for purposes of the general statement under Rule 901.[24]

The Interpretive Release also asked for comments whether the Commission should amend Regulation S to impose additional restrictions on the use of the safe harbors to impede attempts to use the Regulation to evade the registration requirements of the Securities Act. The Commission received 36 comment letters in response to the Interpretive Release.[25] There was no consensus among commenters whether Regulation S should be amended and, if so, what restrictions should be imposed.

As a complement to these initiatives, the Commission also has taken, and is currently undertaking, several other actions. To deter abusive Regulation S practices while providing important information to the markets, the Commission recently adopted amendments to the Exchange Act periodic reporting forms for domestic issuers to require disclosure of unregistered equity offerings, including a current report on Form 8–K filing requirement to disclose sales made under Regulation S.[26] At the same time, by adopting amendments to Rule 3–05 of Regulation S–X, which relaxed the financial statement requirements for acquired businesses, the Commission took another step to remove unnecessary barriers to registered offerings that may cause companies to conduct unregistered offshore offerings.[27] The Commission today also is issuing three companion releases that should help alleviate concerns that the more restrictive Regulation S procedures will cut off access to capital on a cost-effective basis for smaller companies. These releases (i) adopt amendments to the Rule 144 safe harbor governing resales of restricted securities to shorten the holding period requirements, (ii) propose further revisions to Rule 144 to simplify the rule, and (iii) propose allowing delayed pricing in registered securities offerings conducted by smaller issuers so they would have more flexibility in timing registered offerings.[28]

The increasing internationalization of global securities markets, the growing use of the Internet for securities transactions, the further integration of the European and other markets through common currencies and regulatory treatments, and other recent and ongoing developments in the securities markets may make it appropriate for the Commission to re-address many facets of the territorial approach to the Securities Act that has been adopted under Regulation S. These issues arise apart from the abusive practices addressed in today's proposals. However, the Commission encourages commenters to discuss these and other matters in order to permit the Commission to evaluate whether to propose revisions to Regulation S to reflect these developments.

III. Proposed Amendments to Issuer Safe Harbor

A. Continue Safe Harbor Protection for Equity Sales

The Commission does not believe at this time that the abuses identified to date warrant precluding domestic reporting issuers from making equity offerings under Regulation S, particularly since many smaller issuers access foreign sources of capital to satisfy their financing requirements. Indeed, some of the abusive practices, such as hedging transactions, are engaged in by purchasers, and not necessarily with the knowledge or acquiescence of the issuer. Rather than make the Regulation S safe harbor unavailable for such offerings, the proposals are designed to curtail the abusive practices that have developed, while retaining for U.S. issuers the flexibility to make an offshore offering with the certainty provided by a safe harbor. Nevertheless, would it be more appropriate to end the safe harbor entirely for offshore offerings of equity securities of domestic reporting issuers, domestic non-reporting issuers, and foreign issuers where the principal market for their equity securities is in the United States?

B. Impose New Restrictions on Equity Offerings of Domestic Issuers and of Foreign Issuers Where the Principal Market for the Securities is in the United States

In light of the continuing abuses, the Commission proposes requiring compliance with the more rigorous procedures under Category 3, including a longer restricted period, for all offshore offerings of equity securities of domestic companies, and of foreign companies where the principal market for the securities is in the United States. There are five new requirements that the proposed amendments would impose on offerings of these securities by moving those offerings from Category 2 to Category 3:

1. Longer Restricted Period

The restricted period for equity securities of domestic reporting issuers, and of foreign reporting issuers whose principal market is in the United States, would be lengthened from 40 days to two years; the restricted period for equity securities of domestic non-reporting issuers, and of foreign non-reporting issuers where the principal market for the securities is in the United States, would be lengthened from one year to two years. In order to qualify for the Regulation S safe harbor for offers and sales made during the restricted period, issuers, distributors, and their affiliates must comply with the documentation requirements discussed below and any such offers and sales during this period may not be made to a U.S. person (except pursuant to registration or an exemption). Rule 903 would be further amended to clarify that registered offers and sales, or offers and sales to a U.S. person made pursuant to an exemption such as Rule 144 or 144A, are permitted in the initial distribution and during the restricted period.

As described below, the Commission is proposing that covered equity securities be defined as "restricted securities" under Rule 144. The new two-year restricted period under the issuer safe harbor would track the time period during which the securities would be subject to resale restrictions as "restricted securities" under Rule 144.

The Commission adopted the current 40-day restricted period during which the selling restrictions are applicable to protect against an indirect unregistered public offering in the United States. The practices of some companies, distributors and their affiliates, however, demonstrate that the current 40-day restricted period is far too short to achieve this goal. In some instances, they appear to have orchestrated resales in the United States following the restricted period as part of the distribution process.

Before the adoption of Regulation S, market participants generally used a 90-day period for offshore offerings of U.S. debt securities and a one-year period for offshore offerings of equity securities of domestic non-reporting issuers.[29] When the Commission initially proposed a 90-day restricted period for offshore offerings of both debt and equity securities of domestic reporting issuers, many commenters advocated a shorter 40-day restricted period. These commenters stated that the shorter period would be sufficient to protect against use of an offshore offering to make an indirect offering into the United States.[30] In the Commission's view, however, experience has not borne out the commenters' beliefs in the area of domestic equity securities. Also, the same potential for abuse exists with foreign equity securities if the principal market for the securities is in the United States.

2. Purchaser Certifications

The new procedures would require purchasers of these new Category 3 equity securities to certify that they are not U.S. persons and are not acquiring the securities for the account or benefit of a U.S. person, or that they are U.S. persons who purchased securities in a transaction that did not require registration under the Securities Act. This certification procedure should help protect against some of the sham transactions noted in the Interpretive Release where issuers or distributors "park" securities offshore with affiliates or shell entities that are actually owned by U.S. persons.

3. Purchaser and Distributor Agreements

The new procedures would require purchasers of securities to agree to resell the securities only in accordance with the registration or exemptive provisions of the Securities Act, or in accordance with Regulation S. Imposing this agreement on purchasers of the covered equity securities should help ensure that purchasers are aware of the resale restrictions applicable to the securities, particularly considering the Commission's proposal to classify these securities as restricted securities.[31]

In addition, under a new requirement proposed to be added to the current Category 3 purchaser agreement requirement,[32] purchasers of Category 3 equity securities would be required to agree not to engage in hedging transactions except in compliance with the registration or exemptive provisions of the Securities Act.[33] The proposals also would require distributors to agree to the same restrictions on hedging until the expiration of the restricted period,[34] and that all offering materials and documents used in the offering of these securities would be required, until the expiration of the restricted period, to include a statement that hedging transactions involving those securities may not be conducted except in compliance with the Securities Act.[35]

4. Legended Certificates

The proposals would require all covered issuers of equity securities to place a legend on the securities sold offshore. This legend would advise that transfer of such securities is prohibited other than in accordance with the Securities Act. Currently, the required legend for sales of equity securities of domestic non-reporting issuers is required to state that transfers of securities are prohibited except "in accordance with the provisions of this Regulation S."[36] The Commission proposes amending the current legend requirement to make clear that the rule permits transfers made in accordance with the provisions under the Securities Act.

The legend requirement would provide notice to any subsequent purchasers of the resale restrictions applicable to the securities. The Commission understands that legending equity securities of domestic reporting issuers until the expiration of the current 40-day restricted period is a common practice under Regulation S. The Commission thus believes that the addition of an express legending requirement should not impose a different or new burden. In addition, the Commission proposes amending the current legend requirement to state that hedging transactions may not be conducted except in compliance with the Securities Act.

Regulation S does not require, and the Commission is not proposing, that the legend contain specific language to describe these restrictions. Issuers and distributors should prepare such legends in a form that conveys to holders the restricted nature of the securities and that they can only be resold under Regulation S, pursuant to registration under the Act, or under an exemption. Nor is the legend requirement intended to require that securities sold under Category 3 be in certificated form. Issuers whose securities are in uncertificated form may satisfy the legend requirement by any means reasonably designed to put holders and subsequent purchasers on notice of the applicable resale restrictions. The Commission requests comment whether, if covered securities are in uncertificated form, certain forms of notice would be adequate to inform holders and subsequent purchasers of the resale restrictions. Should securities covered by the Category 3 safe harbor be required to be in certificated form? Are there alternative means of notice that

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[23] Preliminary Note 2 to Regulation S specifically states that:

In view of the objective of these rules and the policies underlying the Act, Regulation S is not available with respect to any transaction or series of transactions that, although in technical compliance with these rules, is part of a plan or scheme to evade the registration provisions of the Act. In such cases, registration under the Act is required.

[24] Interpretive Release, *supra* note 8, at Section II.

[25] These comment letters, together with a Summary of Comments prepared by Commission staff, are available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Persons seeking these materials should make reference to File No. S7–20–95.

[26] Exchange Act Release No. 37801 (Oct. 10, 1996) [61 FR 54506 (Oct. 18, 1996)]. Sales of equity securities by domestic issuers under Regulation S are required to be reported on Form 8–K within 15 days of occurrence. All other unregistered sales of equity securities by domestic issuers (*e.g.*, private placements) must be reported quarterly in the issuer's Form 10–Q and in its Form 10–K (for the last fiscal quarter).

[27] Securities Act Release No. 7355 (Oct. 10, 1996) [61 FR 54509 (Oct. 18, 1996)].

[28] Securities Act Release Nos. 7390, 7391, and 7393.

[29] *See* Securities Act Release No. 6779 (June 10, 1988)[53 FR 22661 (June 17, 1988)], which proposed Regulation S (the "Proposing Release"), at nn.10 and 11 for a discussion of the time periods that were used by market participants prior to the adoption of Regulation S.

[30] *See* Securities Act Release No. 6838 (July 11, 1989)[54 FR 30063 (July 18, 1989)], which reproposed Regulation S, at Section II.C.2.b. (the "Reproposing Release").

[31] Of course, issuers and distributors could not accept at face value certifications and agreements by purchasers and disclaim responsibility for investigation and consideration of relevant facts pertinent to the establishment of the Regulation S safe harbor. *See Re: Lee Petillon*, Adm. Proc. File 3–2393 (Nov. 30, 1972) (initial decision); *Re: The Crowell-Collier Publishing Company*, Securities Act Release No. 3825 (Aug. 12, 1957); *Regulation D Revisions*, Securities Act Release No. 6759 (Mar. 3, 1988) [53 FR 7870 (Mar. 10, 1988)] at Section B.

[32] This Category 3 purchaser agreement requirement currently is applicable only to sales of equity securities by non-reporting issuers. *See* Rule 903(c)(3)(iii)(B)(2) of Regulation S [17 CFR 230.903(c)(3)(iii)(B)(2)].

[33] Since the Commission also proposes that these securities will be deemed "restricted securities," Commission guidance under Rule 144 with regard to hedging transactions (such as short sales, and purchases and sales of put and call options) would be applicable to these securities sold under Regulation S. *See* Securities Act Release No. 7391.

[34] Under the "offering restrictions," as defined in Rule 902(h) of Regulation S, distributors are required to agree that all offers and sales prior to the expiration of the restricted period will be made either in accordance with Regulation S, pursuant to a registration of the securities under the Securities Act, or pursuant to an available exemption from registration. The proposals would expand the agreement requirement to include the proposed hedging agreement where the securities to be offered and sold are equity securities of domestic issuers, or of foreign issuers where the principal market for the security is in the United States. *See* Rule 902(h) of Regulation S [17 CFR 230.902(h)].

[35] Currently, the "offering restrictions" require certain statements to be included in all offering materials and documents (other than press releases) used in connection with offers and sales of certain securities prior to the expiration of the applicable restricted period. The required statements would include this additional statement regarding hedging where the securities to be offered and sold are equity securities of domestic issuers, or of foreign issuers where the principal market for the security is in the United States.

[36] Rule 903(c)(3)(iii)(B)(3) of Regulation S [17 CFR 230.903(c)(3)(iii)(B)(3)].

can be used for both certificated and uncertificated securities?

5. Stop Transfer Instructions

The proposals would require an issuer, by contract or a provision in its bylaws, articles, charter or comparable document, to refuse to register any transfer of securities unless made in accordance with the registration or exemptive provisions of the Securities Act, or in accordance with Regulation S. This requirement would impose on issuers a policing role similar to that which is often imposed in connection with unregistered private placements. Such a role would appear appropriate considering the abuses in this area.

Currently, the stop transfer instruction for sales of equity securities of domestic non-reporting issuers is required to state that the issuer will refuse to register any transfer of securities "not made in accordance with the provisions of this Regulation S."[37] As with the legend requirement, the Commission proposes amending the current stop transfer instruction requirement to make clear that the rule permits transfers made in accordance with the provisions under the Securities Act.

6. Request for Comment on New Requirements

Should some or all of the new requirements, including the longer restricted period, not be applied as proposed to offerings of equity securities of domestic issuers, and of foreign issuers where the principal market for the securities is in the United States? If so, which ones and why? For example, is legending equity securities of either domestic issuers or foreign issuers feasible in foreign markets? Are there other alternatives available that would achieve the same purpose? In addition to, or in lieu of, the specific documentation requirements of Category 3, should issuers be subject to an express general duty to take reasonable steps to ensure that purchasers do not resell the securities in violation of the Act, similar to that imposed by Regulation D?[38] Should satisfaction of any or all of the current specific documentation requirements of Category 3 be deemed to satisfy this express general duty?

Should the reporting status of the issuer matter, and if so, how? Should it matter whether those issuers also have a trading market for their equity securities in the United States, and if so, in what respect? Should certain classes of reporting issuers, such as those eligible for Form S–3 or F–3, be excluded from any or all of these restrictions?

Conversely, are any or all of these requirements so burdensome, either alone or with the proposals to prohibit the use of promissory notes and to classify these securities as restricted securities under Rule 144, that companies would effectively be foreclosed from relying on the Regulation S safe harbor for offshore offerings of equity securities? Would any or all of these proposed changes, either alone or with the reporting requirement for recent sales of equity securities under Regulation S (in the case of reporting companies), obviate the need for the longer restricted period? Should the restricted period be shorter than two years (*e.g.*, the current 40 days, 90 days, 180 days, 270 days or one year)? Would the classification of these securities as restricted securities within the meaning of Rule 144 eliminate the need for *any* restricted period?

7. Elimination of Form 8–K Filing Requirement

At the time the Commission adopted the existing Form 8–K 15-day reporting requirement, the Commission stated that if it extended the restricted period for sales of equity securities under Regulation S, it would consider revising the reporting requirement. As the Commission is now proposing to lengthen the restricted period for Regulation S sales, the Commission has determined to propose revising Item 701 of Regulation S–K and the relevant forms to require issuers to report Regulation S sales of equity securities only on a quarterly basis as presently required for other unregistered sales of equity securities. Comment is requested whether requiring only quarterly reporting of Regulation S sales will provide sufficiently timely disclosure if the covered equity securities are deemed "restricted securities" and thus not subject to resales under Rule 144 until at least one year after sale. Should the current Form 8–K filing requirement be continued because such securities may be resold in unlimited amounts either offshore or in the United States pursuant to Rule 144A (or another exemption)?

C. Revise Category 3 To Prohibit Payments With Promissory Notes for Domestic Equity Securities, and Foreign Equity Securities Where the Principal Market for the Securities is in the United States

In some sales purportedly made in reliance on Regulation S, the offshore purchaser has used a promissory note payable after the end of the restricted period to pay all or a portion of the purchase price of the securities. In some cases the notes are secured only by the Regulation S securities; in other cases the notes are unsecured. Some notes provide recourse to the buyer if the note is not repaid; others do not. The purchasers have resold the securities into the U.S. markets upon expiration of the 40-day restricted period and used the proceeds of the resale to repay the note. Under such an arrangement, the issuer and purchaser clearly expect a U.S. resale to provide the funds necessary to repay the note; in economic substance, the issuer is raising funds from the U.S. public markets. As noted in the Interpretive Release, this practice is inconsistent with an offshore distribution.

The proposals would revise the Category 3 safe harbor to make clear that the safe harbor is unavailable for transactions for equity securities of a domestic company, and for a foreign company where the principal market for the securities is in the United States, in which a purchaser delivers a promissory note as payment for some or all of the purchase price, or enters into an installment purchase contract relating to the sale. Comment is requested whether there should be any exceptions from the proposed prohibition to accommodate established international offering practices. Commenters favoring such exceptions are asked to describe the established practices and explain why they would not be likely to result in unregistered distributions of securities in the United States. Should there be a distinction between full and non-recourse promissory notes?

For example, could the Commission restrict the use of promissory notes without completely prohibiting their use by applying the Rule 144 standard for tolling[39] to permit promissory notes to be used under Regulation S as long as the promissory note or similar obligation or contract is by its terms required to be discharged by payment in full prior to resale of the securities by the obligor and satisfies the following conditions: the promissory note, obligation or contract must provide for

[37] Rule 903(c)(3)(iii)(B)(4) of Regulation S [17 CFR 230.903(c)(3)(iii)(B)(4)].

[38] Securities Act Rule 502(d)[17 CFR 230.502(d)].

[39] Rule 144(d)(2) [17 CFR 230.144(d)(2)].

full recourse against the purchaser of the securities, and must be secured by collateral (other than the securities purchased) having a fair market value at least equal to the purchase price of the securities purchased?[40] Given that the Commission proposes to classify these equity securities as "restricted securities" within the meaning of Rule 144, and that the holding period under Rule 144 is tolled unless promissory notes meet the above conditions, is it even necessary to amend Regulation S at all with regard to the use of promissory notes?

The Commission understands that some abusive Regulation S offerings have involved non-cash payments to the issuer other than promissory notes. Examples include the purported sale of equity securities under Regulation S in exchange for services rendered or in exchange for cancellation of a supposed pre-existing debt owed by the issuer to the offshore purchaser. The Commission requests comment on whether the Regulation S safe harbor should be available for offshore offerings of equity securities of domestic companies, and of covered foreign companies, only when cash is paid and received in the offering. Would such a requirement restrict the use of Regulation S for bona fide exchange offers? Should exchange offers be accommodated under the Regulation S safe harbor only if the securities being acquired have a readily ascertainable market value or have been outstanding for some time? Would such a requirement unnecessarily restrict the use of Regulation S for mergers and other business combination transactions?

D. Classify Domestic Equity Securities, and Foreign Equity Securities Where the Principal Market for the Securities is in the United States, as "Restricted Securities"

Regulation S does not provide any safe harbor protection for resales by purchasers of securities placed offshore under Regulation S back into the United States. Preliminary Note 6 to Regulation S specifically states that:

> Securities acquired overseas, whether or not pursuant to Regulation S, may be resold in the United States only if they are registered under the [Securities] Act or an exemption from registration is available.

In the absence of guidance from the Commission or the staff,[41] some market participants appear to view the expiration of the restricted periods under Regulation S (applicable to issuers and other distribution participants entitled to rely on the Rule 903 safe harbor) as providing a safe harbor for U.S. resales by purchasers of Regulation S securities, particularly equity securities of domestic reporting issuers. This view is not correct. Instead, such purchasers must determine whether an exemption for resales into the United States is available.

Because some of the abusive practices under Regulation S have involved activities by persons other than issuers, distributors and their affiliates (that is, investors who purchased in Regulation S offerings with a view to distributing those securities into the U.S. markets at the end of the 40-day restricted period), the Commission believes that it is appropriate to clarify the legal obligations of purchasers of securities under Regulation S. Consequently, the Commission is proposing new Rule 905, and amendments to Rule 144(a)(3), to classify equity securities of domestic issuers (both reporting and non-reporting) placed offshore under Regulation S as "restricted securities" within the meaning of Rule 144. The Commission is also proposing to so classify as "restricted securities" equity securities of foreign issuers (both reporting and non-reporting) where the principal market is in the United States. While the Commission is not aware of widespread abuses involving these foreign issuers, the potential for abuse does exist since these securities are more likely to be resold into their principal market.

By expressly defining these Regulation S securities as falling within the definition of "restricted securities" under the Rule 144 resale safe harbor, purchasers of those securities are provided with clear guidance regarding when and how those securities may be resold in the United States without registration under the Securities Act.[42] Given the concurrent adoption of shortened holding periods under Rule 144, the Commission believes that it is appropriate to harmonize the resale restrictions for all securities sold without the benefit of registration with the Commission. For purposes of resale prohibitions, an unregistered sale offshore would be treated no differently than a private sale domestically; the burdens and benefits would be equalized. Nevertheless, are there reasons why securities sold offshore should be treated differently? Instead of applying the Rule 144 holding period, should a shorter holding period apply (for example, one year or six months)? To further integrate the requirements in this area, should the Commission craft a single regulation that would contain both the requirements applicable to offshore and to domestic unregistered offerings (for example, combine Regulation S and Regulation D)?

Currently, equity securities offered and sold to non-U.S. resident employees of the issuer through an employee benefit plan governed by non-U.S. law are Category 1 transactions and thus are not subject to a 40-day restricted period regardless of the domicile of the issuer or U.S. market interest in its securities. Under proposed Rule 905, however, those equity securities when issued by domestic or covered foreign issuers would be restricted within the meaning of Rule 144. Comment is requested whether this type of equity security should be excluded from the "restricted security" classification. If so, commenters are requested to address why, if such securities were not deemed restricted, problematic practices would not develop with respect to such plans and securities.

E. Application of Proposed Changes

1. Foreign Companies Where the Principal Market for the Securities is in the United States

Although abusive practices under Regulation S have not been as evident in offerings by foreign issuers, the Commission is concerned that the economic incentives for indirect distributions and resales into the United States are the same for equity offerings

[40] These conditions are similar to those found under Rule 144 governing the computation of the Rule 144 holding period in the context of payment with promissory notes. *See* Rule 144(d)(2) [17 CFR 230.144(d)(2)].

[41] The Adopting Release did not provide further guidance in this area, other than to state in a footnote that, upon the expiration of any restricted period, the Commission would view securities sold under Regulation S (other than unsold allotments) as unrestricted. Adopting Release, *supra* note 18, at n.110. Since the adoption of Regulation S, the Commission's staff has received numerous inquiries on whether and when securities that have been sold under Regulation S may be freely resold in the United States without registration under the Securities Act. Regardless of the issuer's compliance with Regulation S when it sold the securities offshore, persons who would be considered underwriters under Section 2(11) of the Securities Act are not permitted to make unregistered public resales of these securities in the United States in reliance on the Section 4(1) exemption from registration. As the Commission stated in the Interpretive Release, *supra* note 8, at n.17:

> Public resales in the United States by persons that would be deemed underwriters under Section 2(11) of the Securities Act [15 U.S.C. 77b(11)] would not be permissible absent registration or an exemption from registration. Footnote 110 of the Adopting Release, which addresses the restricted periods, should not be read to provide otherwise.

[42] They are also put on notice that resales outside the Rule 144 safe harbor must be evaluated independently against the statutory underwriter concepts embodied in Section 2(11), regardless of the issuer's compliance with Regulation S.

of both domestic companies, and foreign companies where the principal market for the securities is in the United States (that is, the majority of the trading occurs here). Therefore, the proposed Regulation S changes would treat both similarly for each requirement. Nonetheless, is there an appropriate basis to distinguish between the two for any or all of the conditions of the proposed amendments to the safe harbors, including the "restricted securities" classification?

As noted above, the Commission proposes defining "principal market in the United States" for a security as when more than 50 percent of all trading in such class of securities took place in, on or through the facilities of securities exchanges and inter-dealer quotation systems in the United States in the shorter of the issuer's prior fiscal year or the period since the issuer's incorporation. Should the percentage be greater than 50 percent (for example, 75%) or lower (for example, 10%, 25% or 35%), so long as the United States is the largest market? Should it matter for purposes of this definition where the security is traded (for example, New York Stock Exchange, American Stock Exchange, Nasdaq-NMS, any of the regional exchanges, the OTC Bulletin Board, the "pink sheets," or any private trading system such as Instinet) and whether such market is relatively liquid or active? Commenters should explain the reasons for any distinctions between or among trading markets or mechanisms for trading.

Other possible alternatives under consideration include applying the restrictions to (i) all foreign issuers, (ii) only foreign reporting issuers, (iii) only foreign reporting issuers with a "substantial U.S. market interest" (as currently defined in Regulation S) in the class of equity securities to be offered offshore; or (iv) only foreign reporting issuers whose only equity market is in the United States. Should a different test other than trading market be used, such as percentage (e.g., 10%, 25% or 50%) of U.S. resident ownership of the company's outstanding equity securities? Should the Commission use similar percentage thresholds based on an "Average Daily Trading Volume" test, like that recently adopted in Regulation M[43] for purposes of defining "principal market in the United States?" If so, what percentage (10%, 25% or 50% of U.S. Average Daily Trading Volume as compared to total worldwide Average Daily Trading Volume), and what measurement period (three, six or 12 months, or some other period) should be used?

2. Equity Securities

As proposed, the procedures and restrictions under Category 3 and the "restricted securities" classification would apply only to offerings of equity securities. Rule 405 of Regulation C under the Securities Act defines the term "equity security" to include stock, securities convertible or exchangeable into stock, warrants, options, rights to purchase stock, and other types of equity related securities.[44] The Commission does not propose to apply the new restrictions to offerings of debt securities, since the nature of the trading markets for debt securities appear not to have facilitated abusive practices that result in a distribution of these securities into U.S. markets.

Comment is requested concerning whether any or all of the restrictions proposed for equity securities also should be applied to offerings of debt securities, and if so, whether such applicability should depend on the status of the issuer (for example, whether the issuer is foreign or domestic, reporting or non-reporting, Form S–3 or F–3 eligible)? Should it matter whether there is a trading market for any security (whether debt or equity) of the issuer in the United States, and if so, what security is traded? Are there circumstances where any such debt offering would be likely to result in an unregistered U.S. distribution? If the restrictions cover offerings of debt securities, should they be limited to certain types of debt securities, such as debt securities where the amount due is tied to the price of the issuer's common equity securities, or debt securities that are listed for trading on a U.S. securities exchange?

The Commission is aware that many Regulation S abuses have involved the use of convertible or exchangeable securities or warrants.[45] Many companies, however, legitimately offer under Regulation S either convertible or exchangeable debt securities, or warrants for common stock as a unit with other securities, to lower their costs of capital. Comment is requested as to whether all convertible or exchangeable securities or warrants of domestic issuers, and of foreign issuers where the principal market for the underlying equity securities is in the United States, should be subject to the proposed Category 3 restrictions and the "restricted securities" classification, as proposed. Are there certain types of convertible or exchangeable securities or warrants where there is minimal likelihood that such offerings will result in an unregistered U.S. distribution of either the convertible or exchangeable securities or warrants, or the equity securities underlying the convertible or exchangeable securities or warrants, and, therefore, the proposed restrictions may not be necessary?

Should it matter if the convertible or exchangeable debt security is not convertible or exchangeable for some period of time after the offering (for example, six months, one year, two years, three years)? Should they be excluded if, at the time of issuance, the securities had an effective conversion or exercise premium over a specified amount (for example, five percent, 10 percent, 20 percent, or more)?[46] If a specified conversion or exercise premium approach is used, should it matter whether such conversion or exercise rate is allowed to float in relation to the market price of the underlying security, or is set at some future point in time based upon a formula known when the security was issued? Does it matter whether the issuer of the convertible or exchangeable security or warrant, or the issuer of the underlying equity security, is a reporting company, and if so, how? Although many of the larger capitalization domestic companies issue convertible securities and warrants under Regulation S, does the Form S–3 eligibility of these companies render any carve out for their securities unnecessary? Commenters are asked to provide information on the likelihood that convertible or exchangeable securities or warrants containing particular conversion, exchange or exercise terms will be sold offshore under Regulation S under circumstances that are not likely to result in an unregistered distribution of equity securities in the United States.

[43] Securities Act Release No. 7375 (Dec. 20, 1996) [62 FR 520 (Jan. 3, 1997)].

[44] 17 CFR 230.405. Under the proposed changes, non-participating preferred stock and asset-backed securities would continue to be treated in the same manner as debt securities for purposes of the Regulation S safe harbors and the restricted security classification. *See* Rule 903(c)(4) [17 CFR 230.903(c)(4)], proposed to be redesignated as Rule 902(a).

[45] *See* "Pirates' Play?", *supra* note 21.

[46] The Commission has imposed similar standards under the Rule 144A resale safe harbor. *See* Rule 144A(d)(3)(i) [17 CFR 230.144A(d)(3)(i)]. *See also* Securities Act Release No. 6862 (Apr. 23, 1990) at nn.25 and 26 for a discussion of how the conversion or exercise premium is determined for purposes of Rule 144A. Comment is requested whether the same methods of calculations should apply under any proposed changes to Regulation S.

F. Other Possible Restrictions

1. Hedging

As discussed in the companion proposing release for Rule 144, the Commission is concerned that some hedging activity may undermine the safeguards against indirect distributions provided by Regulation S and Rule 144. If a purchaser shifts the economic risk of a transaction through short sales, swaps, or derivative securities transactions, for example, the Commission is concerned that the purchaser may not have a bona fide investment intent. This is especially true in the Regulation S area, where the Commission looks for indicia that a transaction is truly "offshore."

In the Interpretive Release, the Commission warned that a transaction may not be viewed as offshore if there is evidence that a substantial portion of the economic risk is left in or returned to the U.S. market during the restricted period. Based on discussions with market participants, there is reason to believe that hedging during the Regulation S restricted periods is still occurring.

The Commission is addressing this concern in two ways. First, the proposed changes include purchaser and distributor agreements and legends warning against inappropriate hedging, as discussed above. Second, by treating equity securities purchased from domestic and covered foreign companies as "restricted" for purposes of resale, the Commission is imposing the holding period requirement of Rule 144. Maintaining a hedge for one or two years, as opposed to 40 days, is more costly and may be impossible for many of the illiquid securities sold in abusive cases.

The companion proposing release for Rule 144 does not specifically prohibit hedging during the holding period, but asks a series of questions designed to determine whether certain types of hedging are inconsistent with the spirit of Rule 144. Should the Commission go beyond its Rule 144 approach and simply preclude any or all hedging activity during the Regulation S restricted period? Should it matter whether the hedging occurs offshore? Should specific hedging provisions apply to equity securities only? Should the size of the issuer be determinative (for example, permit more hedging with issuers eligible to file Form S–3 or F–3)? As with convertible securities, should it matter whether a derivative security is "out of the money" by a specified amount? Should there be a cap on the amount that could be hedged within the safe harbor? For example, should all or some hedging be permitted as long as the purchaser retains a majority or a substantial amount of economic risk?

2. Discounts

As evidenced by the offering practices described in the Interpretive Release, securities sold offshore at a discount from the U.S. market price are likely to be resold in the United States at the earliest possible date in order for the purchaser to realize a profit. In the Interpretive Release, the Commission requested comment as to whether it should limit the use of the safe harbor under Regulation S for offerings of common stock of domestic issuers to those sold at the market price or with a specified minimal discount.

The Commission is not proposing to amend Regulation S to require that sales of equity securities of reporting companies under Regulation S be made at a specified minimum price or to otherwise impose requirements or restrictions that are tied to the offering price of securities.[47] Although many of the abusive practices under Regulation S appear to involve significant discounts, the Commission believes there are other means to curtail such practices without mandating that safe harbor sales take place at a specific price or within a range of prices.

The Commission again requests comment on whether certain discounted offers (particularly by domestic reporting companies) should be excluded from the Regulation S safe harbor. Commenters addressing whether discounted sales should be accorded different treatment also should address how such discount should be measured (especially in the case of illiquid securities that trade infrequently, and convertible and exchangeable securities where other factors (such as interest rate and maturity) will affect the offering price of a security) and at what level of discount, if any, such different treatment should apply.

IV. Offshore Resales of Restricted and Affiliate Securities

The Commission is concerned that the more stringent requirements proposed for offshore offerings could lead to the development of abusive practices under the Rule 904 offshore resale safe harbor. Such practices could involve the private placement of equity securities in the United States by an issuer, the resale of those securities to a foreign purchaser under Rule 904, and the attempted resale of those securities back into the U.S. public markets without apparent restrictions. Without express guidance from the Commission, these holders of restricted equity securities (whether obtained under Regulation S, Regulation D, Rule 144A, or any other exemption from registration pursuant to which restricted status is designated) could mistakenly believe that a resale of securities to a foreign purchaser under Rule 904 results in such securities no longer being restricted securities.

In the Interpretive Release, the Commission stated that the offshore resale safe harbor under Rule 904 cannot be used for "washing off" resale restrictions, such as the holding period requirement for restricted securities in Rule 144. The Commission is proposing in new Rule 905 to make explicit that when restricted equity securities of any domestic issuer, or of a foreign issuer where the principal market for the equity securities is in the United States, are resold offshore under Regulation S, such securities will retain their status as restricted securities after the resale. Thus, subsequent resales of these securities by the offshore purchaser back into the United States may only take place pursuant to registration under the Securities Act, or a Securities Act exemption (for example, resales in accordance with the provisions of either Rule 144A or Rule 144).

Proposed Rule 905 would codify the Commission's view that resale restrictions applicable to equity securities of domestic issuers and foreign issuers where the principal market for the equity securities is in the United States will follow the securities in the hands of each subsequent transferee. Any purchaser of such restricted securities (including the initial sellers of such restricted securities who replace them with a repurchase of the same or fungible *restricted* securities) would be considered to have restricted securities. On the other hand, sellers of such restricted securities who replace them with a repurchase of fungible but *unrestricted* securities would not be considered to have restricted securities.[48]

Comment is requested on whether the proposed rule, either alone or with the

[47] The Commission's view as expressed in the Interpretive Release, however, remains applicable: neither the general statement under Rule 901 nor the safe harbors are intended to cover offshore offerings of such securities where the fees or discounts indicate that the transaction was intended to create a parking scheme or other scheme where the securities were merely being held offshore temporarily to evade the registration requirements of the Securities Act.

[48] This interpretation clarifies and supercedes the Commission's previous interpretation regarding "prearranged" repurchases of restricted securities set forth in the Interpretive Release, *supra* note 8.

Commission's other proposed and recently adopted initiatives, is sufficient to deter the improper use of the Rule 904 safe harbor. Should other types of restricted securities (such as debt securities) also expressly be considered restricted securities after a Regulation S resale, and if so, which ones? Should the applicability depend on the status of the issuer (for example, whether the issuer is foreign or domestic, reporting or non-reporting, Form S–3 or F–3 eligible)? Should it matter the extent to which there is a trading market for the security in the United States, and if so, how?

Should the proposed preservation of resale restrictions apply to resales of equity securities of (i) all foreign issuers, (ii) only foreign reporting issuers, (iii) only foreign reporting issuers with a "substantial U.S. market interest" (as currently defined in Regulation S) in the class of equity securities to be resold offshore; or (iv) only foreign reporting issuers whose only equity market is in the United States? Should some restricted equity securities of domestic or foreign issuers be excluded from this aspect of proposed Rule 905, such as certain types of convertible or exchangeable securities or warrants, and if so, which ones?

When restricted securities proposed to be covered by the new rule are resold under Rule 904 on a "designated offshore securities market" as defined under Regulation S,[49] is it practical for such securities to be identified to the subsequent purchaser as restricted securities under the U.S. federal securities laws (whether through legending or otherwise)? Commenters are requested to address the practical effect of offshore hedging activity involving these securities as well.

Any officer or director of the issuer who is an affiliate solely by virtue of holding such position may sell unrestricted securities offshore pursuant to Rule 904 without those securities becoming restricted securities, even if the sales exceed the volume limitations of Rule 144(e) (offshore resales of restricted securities pursuant to Regulation S are not subject to the volume limitations of Rule 144(e)). Any other affiliates, however, who decide to sell securities offshore are required to conduct such offerings under either Rule 901 or Rule 903, not Rule 904. Thus, if the securities to be sold are restricted or unrestricted equity securities of a domestic issuer, or of a covered foreign issuer, such securities will be considered restricted securities in the hands of any offshore purchaser, and may not be resold into the United States absent registration or a valid exemption.[50] Comment is requested whether this disparate treatment of different types of affiliates is appropriate. Should all unrestricted affiliate shares sold offshore be deemed restricted unless the offshore sales comply with Rule 144?

Alternatively, should the Rule 904 offshore resale safe harbor simply be made unavailable for restricted equity securities of domestic issuers and covered foreign issuers? Should the Commission make the Rule 904 safe harbor unavailable for all equity securities sold by any affiliate of the issuer? If the Rule 904 offshore resale safe harbor is not available, these securities would be able to be resold offshore under the general statement of Rule 901, but no safe harbor provisions under Regulation S would apply to such resale.

Proposed Rule 905 does not apply to other types of securities, such as debt securities of domestic issuers and equity securities of foreign issuers where the principal market for the equity securities is not in the United States. The Commission requests comment as to whether Rule 905 should apply to debt securities of domestic issuers, equity securities of foreign issuers where the principal market for the equity securities is not in the United States, or other types of securities or other types of issuers. Does the nature of offshore trading markets in various types of securities make it impracticable for such securities to remain restricted in the hands of offshore purchasers? Is there less need for concern in this area inasmuch as the likelihood of an unregistered distribution of such securities in the United States is diminished? Comment is requested on current practices in this area and the need for Commission guidance.

V. Technical and Clarifying Revisions

The Commission proposes mainly non-substantive technical and clarifying revisions to Regulation S to make the rule more concise and understandable. The principal changes include:

- Revising the captions of the three sections of the Rule 903 issuer safe harbor to refer to them as commonly known: "Category 1," "Category 2" and "Category 3";
- Revising the Rule 903 issuer safe harbors to state clearly for each category what procedures are to be followed and what securities are eligible for each category;
- Combining some definitions within Rule 902, the definition section of Regulation S, or moving certain definitions to the Rule 903 safe harbor to make the rule easier to read and understand;
- If the same terms are already defined elsewhere in the Commission's rules and regulations, deleting those definitions from Rule 902 and adding cross references to the definitions contained elsewhere; and
- Generally editing the language in the rule to make it more understandable.

Comment is requested on each of the proposed changes. Are there any other clarifying or technical changes that the Commission could make to Regulation S to make the rule more readable and understandable?

VI. Request for Comments

Any interested persons wishing to submit written comments on the proposed revisions are requested to do so by submitting them in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comment letters also may be submitted electronically to the following electronic mail address: rule-comments@sec.gov. Comments are requested on the impact of the proposals on issuers, investors, and others. Comments should specifically address any possible effects on investor protection, capital formation or market efficiency resulting from the proposals. The Commission also requests comment on whether the proposed rules, if adopted, would have an adverse impact on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments will be considered by the Commission in complying with its responsibilities under Section 23(a)[51] of the Exchange Act. Comment letters should refer to File No. S7–8–97; this file number should be included in the subject line if electronic mail is used. All comment letters received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters will be posted on the Commission's Internet Web site (http://www.sec.gov).

VII. Cost-Benefit Analysis

To assist the Commission in its evaluation of the costs and benefits that may result from the proposals, commenters are requested to provide views and empirical data relating to any costs and benefits associated with these proposals. The proposed amendments to Regulation S would impose restrictions on purchasers of equity securities of domestic issuers, and of foreign issuers where the principal market for the securities is in the United States. For example, issuers could not accept promissory notes as payment for the securities, and purchasers may have to wait a longer period of time before they could publicly resell the securities into the United States. Also, the new requirement that purchasers of certain types of equity securities sold under Regulation S provide certification of compliance with the Securities Act may impose additional recordkeeping burdens on issuers attempting to maintain records of such compliance. These restrictions may make it more difficult or costly for some issuers to raise funds through the sales of equity securities. At the same time, the Commission believes that such restrictions are necessary to deter abusive practices that may have defrauded investors of millions of dollars. The Commission believes that deterring abusive market practices will protect investors and, in the long run, promote capital formation and efficient, competitive markets.

The proposed amendments to Item 701 of Regulation S–K, Item 701 of Regulation S–B and Forms 8–K, 10–Q, 10–QSB, 10–K and 10–KSB relax the existing requirements to report unregistered sales of equity securities. As such, the Commission believes that these amendments would decrease reporting, recordkeeping and compliance burdens, while, at the same time, continuing to provide investors with sufficient information regarding changes in outstanding securities of public companies.

The Commission invites commenters to submit empirical data that will help it assess the costs and benefits of its proposals. The Commission also encourages commenters to suggest alternative ways of deterring the abusive practices cited in this release. It would be most helpful if commenters would state the reasons that a proposed alternative is preferable to the Commission's proposals and why the proposed alternative is more cost-effective. If possible, commenters should submit data that support their views.

Despite the possible increase in cost to issuers resulting from proposed new requirements such as purchaser certifications and purchaser and distributor agreements, the Commission does not believe that the proposed amendments would result in a major increase in costs or prices for investors, issuers, individual industries or consumers. The Commission believes that the proposed amendments relaxing the existing requirements to report unregistered sales of equity securities would serve to reduce issuer costs. Likewise, the Commission does not believe that the proposed amendments would have an adverse effect on competition, employment, investment, productivity, innovation, market efficiency, or capital formation. In fact, the Commission believes that the proposed amendments will promote capital formation and efficient, competitive markets by enhancing investors' confidence in the integrity of the securities markets. However, the Commission requests comment on these preliminary views. The Commission encourages commenters to provide empirical data or other facts to support their views.

Because some of the abusive practices under Regulation S have involved activities by persons other than issuers, distributors and their affiliates (that is, investors who purchased in Regulation S offerings with a view to distributing those securities into the U.S. markets at the end of the 40-day restricted period), the Commission believes that it is appropriate to clarify the legal obligations of purchasers of securities under Regulation S. By expressly defining these Regulation S securities as falling within the definition of "restricted securities" under the Rule 144 resale safe harbor, purchasers of those securities are provided with clear guidance regarding when and how those securities may be resold in the United States without violating the registration requirements of the Securities Act.[52] Given the concurrent adoption of shortened holding periods under Rule 144, as well as the ability of some purchasers in Regulation S placements to demand registration rights, the Commission does not believe that this classification will be unduly burdensome for purchasers in those offerings. To the extent that a purchaser chooses to resell the securities under the Rule 144 safe harbor, the Commission also does not believe that the requirement to file a Form 144 under certain circumstances will be unduly burdensome, particularly in light of the benefit of obtaining safe harbor protection for the resale.

The proposed amendments to Regulation S could reduce the annual amount of unregistered equity securities initially sold by issuers and the annual amount resold by the initial purchasers of those securities. The Commission requests comments on the likelihood of these effects and their size in terms of annual dollar amounts. In particular, are the proposed amendments likely to have a $100,000,000 or larger annual effect on the securities markets or the economy? If possible, commenters should provide empirical data or other facts to support their views.

VIII. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA"), pursuant to the requirements of the Regulatory Flexibility Act,[53] regarding the proposals. The proposed amendments to Regulation S are intended to stop abusive practices under Regulation S where issuers with a market for their securities in the United States conduct offshore placements of their securities pursuant to Regulation S that are in essence indirect distributions of these securities into the U.S. markets without the protections of registration under the Securities Act. Over the last several months, the Commission staff has met with numerous participants in the market for Regulation S securities. Based on the anecdotal information obtained through these discussions, it appears that many small businesses currently use Regulation S with respect to equity sales. However, there appears to be no significant alternative to the current proposals that would impose less burdens on small entities, yet forestall further abuse under Regulation S.

The proposed amendments to Item 701 of Regulation S–K, Item 701 of Regulation S–B and Forms 8–K, 10–Q, 10–QSB, 10–K and 10–KSB would relax the existing requirements to report unregistered sales of equity securities. These amendments would decrease reporting, recordkeeping and compliance burdens, while, at the same time, continuing to provide investors with sufficient information regarding

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[49] *See* Rule 902(a) of Regulation S [17 CFR 230.902(a)] for the definition of "designated offshore securities market."

[50] If these affiliates sell the securities offshore in compliance with the appropriate provisions applicable to affiliate or restricted shares under Rule 144, then those securities will be unrestricted in the hands of the offshore purchaser. In calculating the amount of securities that have been resold pursuant to Rule 144 for the purposes of the volume limitations of Rule 144(e), the staff has taken the position that restricted securities resold offshore pursuant to Regulation S need not be included—similar to the treatment of other non-Rule 144 exempt resales, such as those made pursuant to Rule 144A. The Commission is proposing an amendment to Rule 144(e)(vii) to codify that position.

[51] 15 U.S.C. 78w(a).

[52] They are also put on notice that resales outside the Rule 144 safe harbor must be evaluated independently against the statutory underwriter concepts embodied in Section 2(11), regardless of the issuer's compliance with Regulation S.

[53] 5 U.S.C. 603.

changes in outstanding securities of public companies.

There are new reporting, recordkeeping or other compliance requirements proposed as part of the proposed Regulation S rules. The Commission proposes to lengthen the restricted period during which persons relying on the Regulation S safe harbor may not publicly resell these equity securities (absent registration) to U.S. persons from 40 days or one year to two years. In addition, since covered equity securities placed offshore pursuant to Regulation S would be classified as "restricted securities" within the meaning of Rule 144, purchasers of these securities may choose to resell under the Rule 144 safe harbor, and therefore would be required to comply with the conditions of that safe harbor, including the Rule 144 holding periods. These proposals may reduce incentives to conduct equity placements under Regulation S due to a perceived reduction in the liquidity of the securities absent registration under the Securities Act or a valid exemption.

The Regulation S proposals also would impose on reporting issuers certification, legending and other requirements currently only applicable to sales of equity securities by non-reporting issuers. The purpose of these requirements is to assure that the participants in the distribution and the purchasers are aware of the restricted nature of these securities. These proposals would expand the current purchaser and distributor agreement requirements to require that they agree not to engage in hedging transactions with regard to such securities unless the transactions are in compliance with the Securities Act, and would make sure that participants in the offering are aware of and comply with these restrictions. In addition, promissory notes would be prohibited for use as payment for these securities. These last two proposals are intended to address abusive transactions involving hedging transactions and the use of promissory notes that from a practical perspective result in indirect distributions of securities into the U.S. markets without the protections of registration.[54] Although these additional purchaser requirements could increase recordkeeping and compliance burdens, in almost all instances, purchasers of securities sold pursuant to Regulation S would be non-U.S. persons. Any such additional purchaser requirements could have an indirect impact on U.S. small businesses.

Lastly, the Regulation S proposals would make clear that offshore resales under Rule 904 of equity securities of these issuers that are "restricted securities," as defined in Rule 144, will not affect the restricted status of those securities. Consequently, holders of restricted securities could not attempt to remove the restrictions by selling the securities offshore.

All of these requirements are imposed on domestic issuers, and foreign issuers with the principal market for the equity securities in the United States, regardless of size. As proposed, small businesses would be able to obtain the protections of the proposed safe harbors on the same basis as larger companies. The Commission considered yet rejected alternatives applicable to small businesses, as the Commission believes that distinctions between companies based on size would negate the beneficial effects of the proposed safeguards. The Commission seeks comment on these views. Commenters are encouraged to suggest alternatives that would be appropriate and beneficial to small businesses, and data to support any alternative approach.

The IRFA notes that the proposed amendments to Regulation S, if adopted, would affect persons that are small entities, as defined by the Commission's rules. The term "small business," as used in reference to a registrant for purposes of the Regulatory Flexibility Act, is defined by Rule 157[55] under the Securities Act as an issuer that, on the last day of its most recent fiscal year, had total assets of $5 million or less and is engaged or proposing to engage in small business financing. An issuer is considered to be engaged in small business financing if it is conducting or proposes to conduct an offering of securities which does not exceed the $5 million dollar limitation prescribed by Section 3(b) of the Securities Act. When used with reference to an issuer other than an investment company, the term also is defined in Rule 0–10[56] of the Exchange Act as an issuer that, on the last day of its most recent fiscal year, had total assets of $5 million or less. When used with respect to an investment company, the term is defined under Rule 0–10 as an investment company with net assets of $50 million or less as of the end of its most recent fiscal year.

Small entities meeting these definitions would be able to rely on the Regulation S safe harbors on the same basis as larger entities. The Commission is aware of approximately 1,019 Exchange Act reporting companies that currently satisfy the definition of "small business" under Rule 0–10. There is no reliable way of determining, however, how many non-reporting companies would be subject to the rule or how many small businesses may become subject to Commission registration and reporting obligations in the future. The Commission solicits comments regarding how to estimate the number of non-reporting issuers that may be affected by the proposed changes, together with data or assumptions to support such an approach.

The Commission estimates that over 500 Exchange Act reporting companies conduct over 750 sales pursuant to Regulation S per year and therefore would be affected by the proposals. The Commission further estimates that up to 160 of such reporting companies would meet the Regulatory Flexibility Act definition of small businesses. The total number of companies conducting Regulation S sales—including companies that are not Exchange Act reporting companies—undoubtedly would exceed the above numbers. Because no data are available as to non-reporting companies' sales due to the absence of any filings with the Commission regarding such sales, the exact number is impossible to determine. It is important to note that the Commission only recently began receiving data from reporting issuers regarding their placements of equity securities pursuant to Regulation S,[57] and therefore, does not have long-term data that would assist it in determining how many small businesses may actually rely on the Regulation S safe harbors, or may otherwise be impacted by the rule proposals. The Commission solicits comments regarding how to estimate the number of small businesses that may be affected by the proposed changes together with data or assumptions to support such an approach.

The proposed changes to Item 701 of Regulation S–B and Forms 8–K, 10–QSB and 10–KSB also would affect persons that are small businesses, as defined by the Commission's rules. The Commission expects, however, that the proposed changes would decrease

[54] *See* notes 21 and 22 and accompanying text, *supra*, for a discussion of the abusive transactions.

[55] 17 CFR 230.157.

[56] 17 CFR 240.0–10.

[57] Since November 18, 1996, sales of equity securities by domestic issuers under Regulation S are required to be reported on Form 8–K within 15 days of occurrence. This reporting requirement does not apply to any issuer who is not subject to the periodic reporting requirements under the Exchange Act, and in general does not apply to foreign issuers. *See* Exchange Act Release No. 37801, *supra* note 26.

reporting, recordkeeping and compliance burdens. The Commission estimates that up to 160 reporting companies qualifying as small businesses would be relieved of the burden of filing up to 300 additional Forms 8–K per year, thereby reducing the total annual record keeping burden by 1,500 hours. The analysis also indicates that there are no current federal rules that duplicate, overlap or conflict with the revised disclosure provisions.

While the Regulation S proposals may affect the ability of some small entities to access offshore capital, these restrictions should be sufficient to end the abusive practices under Regulation S, and forestall any further abuse, while not foreclosing the offshore market entirely for unregistered offshore offerings of equity securities. In addition, the concurrent adoption of shortened holding periods under Rule 144, coupled with the proposal to allow delayed pricing by smaller issuers in registered offerings, should help offset any adverse effect on small entities. No alternatives to the proposed rules consistent with their objectives and the Commission's statutory authority were found.

Comments are encouraged on any aspect of this analysis. A copy of the analysis may be obtained by contacting Walter G. Van Dorn, Jr., Office of International Corporate Finance, Division of Corporation Finance, Mail Stop 3–9, 450 Fifth Street, N.W., Washington, D.C. 20549.

IX. Paperwork Reduction Act

The staff has consulted with the Office of Management and Budget (the "OMB") and has submitted the proposals for review in accordance with the Paperwork Reduction Act of 1995 (the "Act").[58] Under the proposed amendments to Regulation S, if adopted, equity securities of domestic issuers, and of foreign issuers where the principal market for the equity securities is in the United States, that are issued offshore pursuant to Regulation S would be deemed "restricted securities" as defined in Rule 144 under the Securities Act. Consequently, purchasers of these securities in the offshore placement, and any subsequent purchasers, may choose to resell these securities into the U.S. markets pursuant to the conditions of the Rule 144 safe harbor for resales of restricted securities. Such conditions may include filing with the Commission a notice of proposed sale on Form 144, containing information about the issuer of the securities, the seller, the securities to be sold and the proposed manner of sale.

Prior to November 18, 1996, issuers of equity securities under Regulation S were not explicitly required to disclose such issuances in Commission filings. Since then, domestic reporting issuers of equity securities under Regulation S are required to file a Current Report on Form 8–K within 15 days of occurrence.[59] The Commission estimates that approximately 500 domestic issuers reporting under the Exchange Act conduct approximately 750 offshore offerings of equity securities pursuant to Regulation S each year. The Commission is not able to estimate the number of Regulation S sales by non-reporting companies. Assuming an average of two purchasers in each of these sales, and assuming that approximately one-half of such purchasers will choose to resell the securities under Rule 144, the Commission estimates approximately 750 additional filings on Form 144 on a yearly basis. Based on past Commission experience with Form 144 filings, the Commission estimates the total annual reporting and recordkeeping burden that will result from the collection of information to be two hours per respondent, and 1,500 hours in the aggregate on a yearly basis. Under the proposed amendments to Item 701 of Regulation S–K, Item 701 of Regulation S–B and Forms 8–K, 10–Q, 10–QSB, 10–K and 10–KSB, if adopted, the existing requirements to report unregistered sales of equity securities would be relaxed by delaying when the unregistered sale would have to be reported. Thus, the Commission believes that the proposed amendments would decrease reporting, recordkeeping and compliance burdens.

In addition, the proposed changes include the requirement that purchasers of certain types of equity securities sold under Regulation S certify that they are not U.S. persons and are not acquiring the securities for the account or benefit of a U.S. person, or that they are U.S. persons who purchased securities in a transaction that did not require registration under the Securities Act. This certification requirement also could result in a corresponding increase in recordkeeping burden on the part of issuers attempting to keep records of such certifications. The amendments also require distributors and certain purchasers of Regulation S equity securities to enter into agreements not to engage in hedging transactions with regard to those securities unless such transactions are in compliance with the Securities Act. This requirement too could result in an increase in recordkeeping burden on the part of issuers or distributors attempting to keep records of these purchase agreements. Additionally, the proposals would necessitate revised stop transfer instructions that would require an issuer, by contract or a provision in its bylaws, articles, charter or comparable document, to refuse to register any transfer of securities unless made in accordance with the registration or exemptive provisions of the Securities Act, or in accordance with Regulation S. The creation and safekeeping of the necessary documentation for such stop transfer instructions would increase issuers' recordkeeping and compliance burdens.

The Commission solicits comment on (i) whether the proposed changes in collection of information are necessary, (ii) the accuracy of the Commission's estimate of the burden of the proposed changes to the collection of information, (iii) the quality, utility and clarity of the information to be collected, and (iv) whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized.

Persons desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, D.C. 20503, and should also send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, with reference to File No. S7–8–97. The OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

X. Statutory Bases

The amendments to Regulation S are being proposed pursuant to Sections 5 and 19 of the Securities Act, as amended, and the amendments to Rule 144 are being proposed pursuant to sections 2(11), 4, 5 and 19 of the

[58] 44 U.S.C. 3501 *et seq.*

[59] This reporting requirement does not apply to any issuer who is not subject to the periodic reporting requirements under the Exchange Act, and in general does not apply to foreign issuers. *See* Exchange Act Release No. 37801, *supra* note 26.

Securities Act, as amended.[60] The amendments to Item 701 of Regulation S-B and of Regulation S-K and to Form 8–K, Form 10–QSB, Form 10–Q, Form 10–KSB, and Form 10–K are being proposed pursuant to sections 3(b), 4A, 12, 13, 14, 15, 16 and 23 of the Securities Exchange Act.

List of Subjects in 17 CFR Parts 228, 229, 230, and 249

Reporting and recordkeeping requirements, Securities.

Text of the Proposals

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

1. The authority citation for Part 228 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78w, 78*ll*, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

§ 228.701 [Amended]

2. By amending paragraph (e) of § 228.701 by removing the words "Form 8–K," and "249.308,".

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

3. The authority citation for Part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

§ 229.701 [Amended]

4. By amending paragraph (e) of § 229.701 by removing the words "Form 8–K," and "249.308,".

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

5. The authority citation for Part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78d, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 78t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

[60] 15 U.S.C. 77d, 77e and 77s.

6. Section 230.144 is amended by revising paragraphs (a)(3) and (e)(3)(vii) to read as follows:

§ 230.144 Persons deemed not to be engaged in a distribution and therefore not underwriters.

(a) * * *

(3) The term *restricted securities* means:

(i) Securities acquired directly or indirectly from the issuer, or from an affiliate of the issuer, in a transaction or chain of transactions not involving any public offering;

(ii) Securities acquired from the issuer that are subject to the resale limitations of § 230.502(d) under Regulation D or § 230.701(c);

(iii) Securities acquired in a transaction or chain of transactions meeting the requirements of § 230.144A;

(iv) Securities acquired from the issuer in a transaction subject to the conditions of Regulation CE (§ 230.1001); and

(v) Equity securities of domestic issuers, and of foreign issuers where the principal market for such securities is in the United States (as defined in § 230.902(h)), acquired in a transaction or chain of transactions subject to the conditions of § 230.901 or § 230.903 under Regulation S (§ 230.901 through § 230.905 and Preliminary Notes).

(e) * * *

(3) * * *

(vii) The following sales of securities need not be included in determining the amount of securities sold in reliance upon this section: securities sold pursuant to an effective registration statement under the Act; securities sold pursuant to an exemption provided by Regulation A (§ 230.251 through § 230.263) under the Act; securities sold in a transaction exempt pursuant to Section 4 of the Act (15 U.S.C. 77(e)) and not involving any public offering; and securities sold offshore pursuant to Regulation S (§ 230.901 through § 230.905, and Preliminary Notes) under the Act.

7. Section 230.902 is revised to read as follows:

§ 230.902. Definitions.

As used in Regulation S, the following terms shall have the meanings indicated.

(a) *Debt securities.* "Debt securities" of an issuer will be defined to include any security other than an equity security as defined in § 230.405, as well as the following:

(1) Non-participatory preferred stock, which is defined as non-convertible capital stock, the holders of which are entitled to a preference in payment of dividends and in distribution of assets on liquidation, dissolution, or winding up of the issuer, but are not entitled to participate in residual earnings or assets of the issuer; or

(2) Asset-backed securities, which are defined as the securities of a type that either:

(i) Represents an ownership interest in a pool of discrete assets, or certificates of interest or participation in such assets (including any rights designed to assure servicing, or the receipt or timeliness of receipt by holders of such assets, or certificates of interest or participation in such assets, of amounts payable thereunder), provided that the assets are not generated or originated between the issuer of the security and its affiliates; or

(ii) Is secured by one or more assets or certificates of interest or participation in such assets, and the securities, by their terms, provide for payments of principal and interest (if any) in relation to payments or reasonable projections of payments on assets meeting the requirements of paragraph (a)(2)(i) of this section, or certificates of interest or participations in assets meeting such requirements.

(3) For purposes of paragraph (a)(2) of this section, the term "assets" means securities, installment sales, accounts receivable, notes, leases or other contracts, or other assets that by their terms convert into cash over a finite period of time.

(b) *Designated offshore securities market.* "Designated offshore securities market" means:

(1) The Eurobond market, as regulated by the Association of International Bond Dealers; the Alberta Stock Exchange; the Amsterdam Stock Exchange; the Australian Stock Exchange Limited; the Bermuda Stock Exchange; the Bourse de Bruxelles; the Copenhagen Stock Exchange; the Frankfurt Stock Exchange; the Helsinki Stock Exchange; The Stock Exchange of Hong Kong Limited; the Irish Stock Exchange; the Istanbul Stock Exchange; the Johannesburg Stock Exchange; the London Stock Exchange; the Bourse de Luxembourg; the Mexico Stock Exchange; the Borsa Valori di Milan; the Montreal Stock Exchange; the Oslo Stock Exchange; the Bourse de Paris; the Stockholm Stock Exchange; the Tokyo Stock Exchange; the Toronto Stock Exchange; the Vancouver Stock Exchange; and the Zurich Stock Exchange; and

(2) Any foreign securities exchange or non-exchange market designated by the

Commission. Attributes to be considered in determining whether to designate such a foreign securities market, among others, include:

(i) Organization under foreign law;

(ii) Association with a generally recognized community of brokers, dealers, banks, or other professional intermediaries with an established operating history;

(iii) Oversight by a governmental or self-regulatory body;

(iv) Oversight standards set by an existing body of law;

(v) Reporting of securities transactions on a regular basis to a governmental or self-regulatory body;

(vi) A system for exchange of price quotations through common communications media; and

(vii) An organized clearance and settlement system.

(c) *Directed selling efforts.*

(1) "Directed selling efforts" means any activity undertaken for the purpose of, or that could reasonably be expected to have the effect of, conditioning the market in the United States for any of the securities being offered in reliance on this Regulation S (§ 230.901 through § 230.905, and Preliminary Notes). Such activity includes placement of an advertisement in a publication "with a general circulation in the United States" that refers to the offering of securities being made in reliance upon this Regulation S.

(2) Publication "with a general circulation in the United States":

(i) Is defined as any publication that is printed primarily for distribution in the United States, or has had, during the preceding twelve months, an average circulation in the United States of 15,000 or more copies per issue; and

(ii) Only the U.S. edition of any publication printing a separate U.S. edition will be deemed a publication "with a general circulation in the United States" if such publication, without consideration of its U.S. edition, would not meet the requirements of paragraph (c)(2)(i) of this section; and the U.S. edition itself meets the requirements of paragraph (c)(2)(i) of this section.

(3) The following are not "directed selling efforts":

(i) Placement of an advertisement required to be published under United States or foreign law, or under rules or regulations of a United States or foreign regulatory or self-regulatory authority, provided the advertisement contains no more information than legally required and includes a statement to the effect that the securities have not been registered under the Act and may not be offered or sold in the United States (or to a U.S. person, if the advertisement relates to an offering under Category 2 or 3 in § 230.903) absent registration or an applicable exemption from the registration requirements;

(ii) Contact with persons excluded from the definition of "U.S. person" pursuant to paragraph (l)(2)(vi) of this section or persons holding accounts excluded from the definition of "U.S. person" pursuant to paragraph (l)(2)(i) of this section, solely in their capacities as holders of such accounts;

(iii) A tombstone advertisement in any publication with a general circulation in the United States, provided:

(A) The publication has less than 20% of its circulation, calculated by aggregating the circulation of its U.S. and comparable non-U.S. editions, in the United States;

(B) Such advertisement contains a legend to the effect that the securities have not been registered under the Act and may not be offered or sold in the United States (or to a U.S. person, if the advertisement relates to an offering under Category 2 or 3 in § 230.903) absent registration or an applicable exemption from the registration requirements; and

(C) Such advertisement contains no more information than:

(*1*) The issuer's name;

(*2*) The amount and title of the securities being sold;

(*3*) A brief indication of the issuer's general type of business;

(*4*) The price of the securities;

(*5*) The yield of the securities, if debt securities with a fixed (non-contingent) interest provision;

(*6*) The name and address of the person placing the advertisement, and whether such person is participating in the distribution;

(*7*) The names of the managing underwriters;

(*8*) The dates, if any, upon which the sales commenced and concluded;

(*9*) Whether the securities are offered or were offered by rights issued to security holders and, if so, the class of securities that are entitled or were entitled to subscribe, the subscription ratio, the record date, the dates (if any) upon which the rights were issued and expired, and the subscription price; and

(*10*) Any legend required by law or any foreign or U.S. regulatory or self-regulatory authority;

(iv) Bona fide visits to real estate, plants or other facilities located in the United States and tours thereof conducted for a prospective investor by an issuer, a distributor, any of their respective affiliates or a person acting on behalf of any of the foregoing;

(v) Distribution in the United States of a foreign broker-dealer's quotations by a third-party system that distributes such quotations primarily in foreign countries if:

(A) Securities transactions cannot be executed between foreign broker-dealers and persons in the United States through the system; and

(B) The issuer, distributors, their respective affiliates, persons acting on behalf of any of the foregoing, foreign broker-dealers and other participants in the system do not initiate contacts with U.S. persons or persons within the United States, beyond those contacts exempted under § 240.15a–6 of this chapter; and

(vi) Publication by an issuer of a notice in accordance with § 230.135 or § 230.135c.

(d) *Distributor.* "Distributor" means any underwriter, dealer, or other person who participates, pursuant to a contractual arrangement, in the distribution of the securities offered or sold in reliance on this Regulation S (§ 230.901 through § 230.905, and Preliminary Notes).

(e) *Domestic issuer.* "Domestic issuer" means any issuer other than a foreign issuer (as defined in § 230.405).

(f) *Offering restrictions.* "Offering restrictions" means:

(1) Each distributor agrees in writing:

(i) That all offers and sales of the securities prior to the expiration of the restricted period specified in Category 2 or 3 in § 230.903, as applicable, shall be made only in accordance with the provisions of § 230.903 or § 230.904; pursuant to registration of the securities under the Act; or pursuant to an available exemption from the registration requirements of the Act; and

(ii) For offers and sales of equity securities of domestic issuers, and of foreign issuers where the principal market for those securities is in the United States, not to engage in hedging transactions with regard to such securities prior to the expiration of the restricted period specified in Category 2 or 3 in § 230.903, as applicable, unless in compliance with the Act; and

(2) All offering materials and documents (other than press releases) used in connection with offers and sales of the securities prior to the expiration of the restricted period specified in Category 2 or 3 in § 230.903, as applicable, shall include statements to the effect that the securities have not been registered under the Act and may not be offered or sold in the United States or to U.S. persons (other than distributors) unless the securities are registered under the Act, or an exemption from the registration

requirements of the Act is available. For offers and sales of equity securities of domestic issuers, and of foreign issuers where the principal market for those securities is in the United States, such offering materials and documents also must state that hedging transactions involving those securities may not be conducted unless in compliance with the Act. Such statements shall appear:

(i) On the cover or inside cover page of any prospectus or offering circular used in connection with the offer or sale of the securities;

(ii) In the underwriting section of any prospectus or offering circular used in connection with the offer or sale of the securities; and

(iii) In any advertisement made or issued by the issuer, any distributor, any of their respective affiliates, or any person acting on behalf of any of the foregoing. Such statements may appear in summary form on prospectus cover pages and in advertisements.

(g) *Offshore transaction.*

(1) An offer or sale of securities is made in an "offshore transaction" if:

(i) The offer is not made to a person in the United States; and

(ii) Either:

(A) At the time the buy order is originated, the buyer is outside the United States, or the seller and any person acting on its behalf reasonably believe that the buyer is outside the United States; or

(B) For purposes of:

(*1*) § 230.903, the transaction is executed in, on or through a physical trading floor of an established foreign securities exchange that is located outside the United States; or

(*2*) § 230.904, the transaction is executed in, on or through the facilities of a designated offshore securities market described in paragraph (a) of this section, and neither the seller nor any person acting on its behalf knows that the transaction has been pre-arranged with a buyer in the United States.

(2) Notwithstanding paragraph (g)(1) of this section, offers and sales of securities specifically targeted at identifiable groups of U.S. citizens abroad, such as members of the U.S. armed forces serving overseas, shall not be deemed to be made in "offshore transactions."

(3) Notwithstanding paragraph (g)(1) of this section, offers and sales of securities to persons excluded from the definition of "U.S. person" pursuant to paragraph (l)(2)(vi) of this section or persons holding accounts excluded from the definition of "U.S. person" pursuant to paragraph (l)(2)(i) of this section, solely in their capacities as holders of such accounts, shall be deemed to be made in "offshore transactions."

(h) *Principal market in the United States.* With respect to a class of equity securities, a foreign issuer has its "Principal market in the United States" if more than 50 percent of all trading in such class of securities took place in, on or through the facilities of securities exchanges and inter-dealer quotation systems in the United States in the shorter of the issuer's prior fiscal year or the period since the issuer's incorporation.

(i) *Reporting issuer.* "Reporting issuer" means an issuer other than an investment company registered or required to register under the 1940 Act that:

(1) Has a class of securities registered pursuant to Section 12(b) or 12(g) of the Exchange Act (15 U.S.C. 78*l*(b) or 78*l*(g)) or is required to file reports pursuant to Section 15(d) of the Exchange Act (15 U.S.C. 78*o*(d)); and

(2) Has filed all the material required to be filed pursuant to Section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78*o*(d)) for a period of at least twelve months immediately preceding the offer or sale of securities made in reliance upon this Regulation S (§ 230.901 through § 230.905, and Preliminary Notes) (or for such shorter period that the issuer was required to file such material).

(j) *Restricted period.* "Restricted period" means a period that commences on the later of the date upon which the securities were first offered to persons other than distributors in reliance upon this Regulation S or the date of closing of the offering, and expires a specified period of time thereafter; *provided, however,* that all offers and sales by a distributor of an unsold allotment or subscription shall be deemed to be made during the restricted period; *provided, further,* that in a continuous offering, the restricted period shall commence upon completion of the distribution, as determined and certified by the managing underwriter or person performing similar functions; *provided, further,* that in a continuous offering of non-convertible debt securities offered and sold in identifiable tranches, the restricted period for securities in a tranche shall commence upon completion of the distribution of such tranche, as determined and certified by the managing underwriter or person performing similar functions; *provided, further,* that in a continuous offering of securities to be acquired upon the exercise of warrants, the restricted period shall commence upon completion of the distribution of the warrants, as determined and certified by the managing underwriter or person performing similar functions, if requirements of § 230.903(b)(5) are satisfied.

(k) *Substantial U.S. market interest.*

(1) "Substantial U.S. market interest" with respect to a class of an issuer's equity securities means:

(i) The securities exchanges and inter-dealer quotation systems in the United States in the aggregate constituted the single largest market for such class of securities in the shorter of the issuer's prior fiscal year or the period since the issuer's incorporation; or

(ii) 20 percent or more of all trading in such class of securities took place in, on or through the facilities of securities exchanges and inter-dealer quotation systems in the United States and less than 55 percent of such trading took place in, on or through the facilities of securities markets of a single foreign country in the shorter of the issuer's prior fiscal year or the period since the issuer's incorporation.

(2) "Substantial U.S. market interest" with respect to an issuer's debt securities means:

(i) Its debt securities, in the aggregate, are held of record by 300 or more U.S. persons;

(ii) $1 billion or more of: the principal amount outstanding of its debt securities, the greater of liquidation preference or par value of its securities described in § 230.902(a)(1), and the principal amount or principal balance of its securities described in § 230.902(a)(2), in the aggregate, is held of record by U.S. persons; and

(iii) 20 percent or more of: the principal amount outstanding of its debt securities, the greater of liquidation preference or par value of its securities described in § 230.902(a)(1), and the principal amount or principal balance of its securities described in § 230.902(a)(2), in the aggregate, is held of record by U.S. persons.

(3) Notwithstanding paragraph (k)(2) of this section, substantial U.S. market interest with respect to an issuer's debt securities is calculated without reference to securities that qualify for the exemption provided by Section 3(a)(3) of the Act (15 U.S.C. 77c(a)(3)).

(l) *U.S. person.*

(1) "U.S. person" means:

(i) Any natural person resident in the United States;

(ii) Any partnership or corporation organized or incorporated under the laws of the United States;

(iii) Any estate of which any executor or administrator is a U.S. person;

(iv) Any trust of which any trustee is a U.S. person;

(v) Any agency or branch of a foreign entity located in the United States;

(vi) Any non-discretionary account or similar account (other than an estate or trust) held by a dealer or other fiduciary for the benefit or account of a U.S. person;

(vii) Any discretionary account or similar account (other than an estate or trust) held by a dealer or other fiduciary organized, incorporated, or (if an individual) resident in the United States; and

(viii) Any partnership or corporation if:

(A) Organized or incorporated under the laws of any foreign jurisdiction; and

(B) Formed by a U.S. person principally for the purpose of investing in securities not registered under the Act, unless it is organized or incorporated, and owned, by accredited investors (as defined in § 230.501(a)) who are not natural persons, estates or trusts.

(2) The following are not "U.S. persons":

(i) Any discretionary account or similar account (other than an estate or trust) held for the benefit or account of a non-U.S. person by a dealer or other professional fiduciary organized, incorporated, or (if an individual) resident in the United States;

(ii) Any estate of which any professional fiduciary acting as executor or administrator is a U.S. person if:

(A) An executor or administrator of the estate who is not a U.S. person has sole or shared investment discretion with respect to the assets of the estate; and

(B) The estate is governed by foreign law;

(iii) Any trust of which any professional fiduciary acting as trustee is a U.S. person if a trustee who is not a U.S. person has sole or shared investment discretion with respect to the trust assets, and no beneficiary of the trust (and no settlor if the trust is revocable) is a U.S. person;

(iv) An employee benefit plan established and administered in accordance with the law of a country other than the United States and customary practices and documentation of such country;

(v) Any agency or branch of a U.S. person located outside the United States if:

(A) The agency or branch operates for valid business reasons; and

(B) The agency or branch is engaged in the business of insurance or banking and is subject to substantive insurance or banking regulation, respectively, in the jurisdiction where located; and

(vi) The International Monetary Fund, the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the United Nations, and their agencies, affiliates and pension plans, and any other similar international organizations, their agencies, affiliates and pension plans.

(m) *United States.* "United States" means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.

8. Section 230.903 is revised to read as follows:

§ 230.903. Offers or sales of securities by the issuer, a distributor, any of their respective affiliates, or any person acting on behalf of any of the foregoing; conditions relating to specific securities.

(a) An offer or sale of securities by the issuer, a distributor, any of their respective affiliates, or any person acting on behalf of any of the foregoing, shall be deemed to occur outside the United States within the meaning of § 230.901 if the offer or sale shall be made in an offshore transaction, and no directed selling efforts shall be made in the United States by the issuer, a distributor, any of their respective affiliates, or any person acting on behalf of any of the foregoing.

(b) *Additional conditions.*

(1) *Category 1.* Securities in this category may be offered and sold without any conditions other than those set forth in § 230.903(a) of this section. The securities eligible for this category are:

(i) The issuer is a foreign issuer that reasonably believes at the commencement of the offering that:

(A) There is no substantial U.S. market interest in the class of securities to be offered or sold (if equity securities are offered or sold);

(B) There is no substantial U.S. market interest in its debt securities (if debt securities are offered or sold);

(C) There is no substantial U.S. market interest in the securities to be purchased upon exercise (if warrants are offered or sold); and

(D) There is no substantial U.S. market interest in either the convertible securities or the underlying securities (if convertible securities are offered or sold);

(ii) The securities are offered and sold in an overseas directed offering, which means:

(A) An offering of securities of a foreign issuer that is directed into a single country other than the United States to the residents thereof and that is made in accordance with the local laws and customary practices and documentation of such country; or

(B) An offering of non-convertible debt securities of a domestic issuer that is directed into a single country other than the United States to the residents thereof and that is made in accordance with the local laws and customary practices and documentation of such country, provided that the principal and interest of the securities (or par value, as applicable) are denominated in a currency other than U.S. dollars and such securities are neither convertible into U.S. dollar-denominated securities nor linked to U.S. dollars (other than through related currency or interest rate swap transactions that are commercial in nature) in a manner that in effect converts the securities to U.S. dollar-denominated securities.

(iii) The securities are backed by the full faith and credit of a foreign government; or

(iv) The securities are offered and sold to employees of the issuer or its affiliates pursuant to an employee benefit plan established and administered in accordance with the law of a country other than the United States, and customary practices and documentation of such country, provided that:

(A) The securities are issued in compensatory circumstances for bona fide services rendered to the issuer or its affiliates in connection with their businesses and such services are not rendered in connection with the offer and sale of securities in a capital-raising transaction;

(B) Any interests in the plan are not transferable other than by will or the laws of descent or distribution;

(C) The issuer takes reasonable steps to preclude the offer and sale of interests in the plan or securities under the plan to U.S. residents other than employees on temporary assignment in the United States; and

(D) Documentation used in connection with any offer pursuant to the plan contains a statement that the securities have not been registered under the Act and may not be offered or sold in the United States unless registered or an exemption from registration is available.

(2) *Category 2.* Securities in this category may be offered and sold provided that:

(i) The following conditions are met:

(A) The conditions set forth in § 230.903(a) are met;

(B) Offering restrictions are implemented;

(C) The offer or sale, if made prior to the expiration of a 40-day restricted period, is not made to a U.S. person or for the account or benefit of a U.S. person (other than a distributor), unless

made pursuant to registration or an exemption therefrom under the Act; and

(D) Each distributor selling securities to a distributor, a dealer, as defined in section 2(12) of the Act (15 U.S.C. 77b(12)), or a person receiving a selling concession, fee or other remuneration in respect of the securities sold, prior to the expiration of a 40-day restricted period, sends a confirmation or other notice to the purchaser stating that the purchaser is subject to the same restrictions on offers and sales that apply to a distributor; and

(ii) The securities are equity securities of reporting foreign issuers unless the principal market for those securities is in the United States, or the securities are debt securities of a reporting issuer or of a foreign issuer.

(3) *Category 3.* Securities that are not eligible for Category 1 or 2 (paragraphs (b) (1) or (2)) in this section may be offered or sold provided that the following conditions are met:

(i) The conditions set forth in § 230.903(a) are met;

(ii) Offering restrictions are implemented;

(iii) In the case of debt securities:

(A) The offer or sale, if made prior to the expiration of a 40-day restricted period, is not made to a U.S. person or for the account or benefit of a U.S. person (other than a distributor), unless made pursuant to registration or an exemption therefrom under the Act; and

(B) The securities are represented upon issuance by a temporary global security which is not exchangeable for definitive securities until the expiration of the 40-day restricted period and, for persons other than distributors, until certification of beneficial ownership of the securities by a non-U.S. person or a U.S. person who purchased securities in a transaction that did not require registration under the Act;

(iv) In the case of equity securities, if made prior to the expiration of a two-year restricted period with respect to domestic issuers and foreign issuers where the principal market for the securities is in the United States, and a one-year restricted period with respect to other issuers:

(A) The offer or sale is not made to a U.S. person or for the account or benefit of a U.S. person (other than a distributor), unless made pursuant to registration or an exemption therefrom under the Act; and

(B) The offer or sale is made pursuant to the following conditions:

(*1*) The purchaser of the securities (other than a distributor) certifies that it is not a U.S. person and is not acquiring the securities for the account or benefit of any U.S. person or is a U.S. person who purchased securities in a transaction that did not require registration under the Act;

(*2*) The purchaser of the securities agrees to resell such securities only in accordance with the provisions of this Regulation S (§ 230.901 through § 230.905, and Preliminary Notes), pursuant to registration under the Act, or pursuant to an available exemption from registration; and agrees not to engage in hedging transactions with regard to such securities unless in compliance with the Act;

(*3*) The securities of a domestic issuer, or of a foreign issuer where the principal market for the securities is in the United States, contain a legend to the effect that transfer is prohibited except in accordance with the provisions of this Regulation S, pursuant to registration under the Act, or pursuant to an available exemption from registration; and that hedging transactions involving those securities may not be conducted unless in compliance with the Act;

(*4*) The issuer is required, either by contract or a provision in its bylaws, articles, charter or comparable document, to refuse to register any transfer of the securities not made in accordance with the provisions of this Regulation S, pursuant to registration under the Act, or pursuant to an available exemption from registration; *provided, however,* that if the securities are in bearer form or foreign law prevents the issuer of the securities from refusing to register securities transfers, other reasonable procedures (such as a legend described in paragraph (b)(3)(iv)(B)(*3*) of this section) are implemented to prevent any transfer of the securities not made in accordance with the provisions of this Regulation S; and

(*5*) If the issuer is a domestic issuer, or a foreign issuer and the principal market for the equity securities is in the United States, no promissory note or other executory obligation may be received as payment for the securities, nor may an installment purchase contract be entered into; and

(v) Each distributor selling securities to a distributor, a dealer (as defined in section 2(12) of the Act (15 U.S.C. 77b(12)), or a person receiving a selling concession, fee or other remuneration, prior to the expiration of a 40-day restricted period in the case of debt securities, or a two-year restricted period in the case of equity securities, sends a confirmation or other notice to the purchaser stating that the purchaser is subject to the same restrictions on offers and sales that apply to a distributor.

(4) *Guaranteed securities.* Notwithstanding paragraphs (b)(1) through (b)(3) of this section, in offerings of debt securities fully and unconditionally guaranteed as to principal and interest by the parent of the issuer of the debt securities, only the requirements of paragraph (b) of this section that are applicable to the offer and sale of the guarantee need be satisfied with respect to the offer and sale of the guaranteed debt securities.

(5) *Warrants.* An offer or sale of warrants under Category 2 or 3 (paragraphs (b) (2) or (3)) of this section also must comply with the following requirements:

(i) Each warrant must bear a legend stating that the warrant and the securities to be issued upon its exercise have not been registered under the Act and that the warrant may not be exercised by or on behalf of any U.S. person unless registered under the Act or an exemption from such registration is available;

(ii) Each person exercising a warrant is required to give:

(A) Written certification that it is not a U.S. person and the warrant is not being exercised on behalf of a U.S. person; or

(B) A written opinion of counsel to the effect that the warrant and the securities delivered upon exercise thereof have been registered under the Act or are exempt from registration thereunder; and

(iii) Procedures are implemented to ensure that the warrant may not be exercised within the United States, and that the securities may not be delivered within the United States upon exercise, other than in offerings deemed to meet the definition of "offshore transaction" pursuant to § 230.902(g), unless registered under the Act or an exemption from such registration is available.

9. Section 230.904 is revised to read as follows:

§ 230.904. Offshore resales.

(a) An offer or sale of securities by any person other than the issuer, a distributor, any of their respective affiliates (except any officer or director who is an affiliate solely by virtue of holding such position), or any person acting on behalf of any of the foregoing, shall be deemed to occur outside the United States within the meaning of § 230.901 if the offer or sale are made in an offshore transaction, and no directed selling efforts are made in the United States by the seller, an affiliate, or any person acting on their behalf.

(b) *Additional conditions.* In addition to the conditions set forth in paragraph (a) of this section, the following requirements must be satisfied:

(1) *Resales by dealers and persons receiving selling concessions.* In the case of an offer or sale of securities of any issuer prior to the expiration of the restricted period specified in Category 2 or 3 (paragraphs (b) (2) or (3)) of § 230.903, as applicable, by a dealer, as defined in Section 2(12) of the Act (15 U.S.C. 77b(12)), or a person receiving a selling concession, fee or other remuneration in respect of the securities offered or sold:

(i) Neither the seller nor any person acting on his behalf knows that the offeree or buyer of the securities is a U.S. person; and

(ii) If the seller or any person acting on the seller's behalf knows that the purchaser is a dealer, as defined in Section 2(12) of the Act (15 U.S.C. 77b(12)), or is a person receiving a selling concession, fee or other remuneration in respect of the securities sold, the seller or a person acting on the seller's behalf sends to the purchaser a confirmation or other notice stating that the securities may be offered and sold during the restricted period only: in accordance with the provisions of this Regulation S (§ 230.901 through § 230.905, and Preliminary Notes); pursuant to registration of the securities under the Act; or pursuant to an available exemption from the registration requirements of the Act.

(2) *Resales by certain affiliates.* In the case of an offer or sale of securities of any issuer by an officer or director of the issuer or a distributor, who is an affiliate of the issuer or distributor solely by virtue of holding such position, no selling concession, fee or other remuneration is paid in connection with such offer or sale other than the usual and customary broker's commission that would be received by a person executing such transaction as agent.

10. By adding § 230.905 to read as follows:

§ 230.905 Resale limitations.

Equity securities of domestic issuers, and of foreign issuers where the principal market for such securities is in the United States, acquired from the issuer, a distributor, or any of their respective affiliates in an offshore transaction subject to the conditions of § 230.901 or § 230.903 are deemed to be "restricted securities" as defined in § 230.144. Resales of any of such restricted securities by the offshore purchaser must be made in accordance with this Regulation S (§ 230.901 through § 230.905, and Preliminary Notes), the registration requirements of the Act or an exemption therefrom. Any "restricted securities" as defined in § 230.144(a)(3) that are equity securities of domestic issuers, and of foreign issuers where the principal market for the securities is in the United States, will continue to be deemed to be restricted securities, notwithstanding that they were acquired in a resale transaction made pursuant to § 230.901 or § 230.904.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

11. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

* * * * *

12. By amending Form 8–K (referenced in § 249.308) by removing the last sentence of General Instruction B.1. and Item 9.

13. By amending Form 10–Q (referenced in § 249.308a) by revising paragraph (c) of Item 2 of Part II prior to the Instruction to read as follows:

Note: Form 10–Q does not and these amendments will not appear in the Code of Federal Regulations

Form 10–Q

* * * * *

Part II

Item 2. Changes in Securities.

* * * * *

(c) Furnish the information required by Item 701 of Regulation S–K (§ 229.701 of this chapter) as to all equity securities of the registrant sold by the registrant during the period covered by the report that were not registered under the Securities Act.

* * * * *

14. By amending Form 10–QSB (referenced in § 249.308b) by revising paragraph (c) to Item 2 of Part II prior to the Instruction to read as follows:

Note: Form 10–QSB does not and these amendments will not appear in the Code of Federal Regulations

Form 10–QSB

* * * * *

Part II

* * * * *

Item 2. Changes in Securities.

* * * * *

(c) Furnish the information required by Item 701 of Regulation S–B (§ 228.701 of this chapter) as to all equity securities of the registrant sold by the registrant during the period covered by the report that were not registered under the Securities Act.

* * * * *

15. By amending Form 10–K (referenced in § 249.310) by revising Item 5 of Part II to read as follows:

Note: Form 10–K does not and these amendments will not appear in the Code of Federal Regulations

Form 10–K

* * * * *

Part II

* * * * *

Item 5. Market for Registrant's Common Equity and Related Stockholder Matters.

Furnish the information required by Item 201 of Regulation S–K (§ 229.201 of this chapter) and Item 701 of Regulation S–K (§ 229.701 of this chapter) as to all equity securities of the registrant sold by the registrant during the period covered by the report that were not registered under the Securities Act. *Provided* that if the Item 701 information previously has been included in a Quarterly Report on Form 10–Q or 10–QSB (§ 249.308a or 249.308b of this chapter) it need not be furnished.

* * * * *

16. By amending Form 10–KSB (referenced in § 249.310b) by revising Item 5 of Part II to read as follows:

Note: Form 10–K does not and these amendments will not appear in the Code of Federal Regulations

Form 10–KSB

* * * * *

Part II

* * * * *

Item 5. Market for Common Equity and Related Stockholder Matters.

Furnish the information required by Item 201 of Regulation S–B and Item 701 of Regulation S–B as to all equity securities of the registrant sold by the registrant during the period covered by the report that were not registered under the Securities Act. *Provided* that if the Item 701 information previously has been included in a Quarterly Report on Form 10–Q or 10–QSB it need not be furnished.

* * * * *

Dated: February 20, 1997.

By the Commission.

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 97–4668 Filed 2–27–97; 8:45 am]

BILLING CODE 8010–01–P

17 CFR Parts 228, 229, 230

[Release No. 33-7393; S7-9-97]

RIN 3235-AG86

Delayed Pricing for Certain Registrants

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Securities and Exchange Commission ("Commission") is publishing for comment proposed amendments to Rule 430A under the Securities Act to permit certain smaller reporting companies to price securities on a delayed basis after effectiveness of a registration statement, if they meet specified conditions. These proposals are intended to enhance flexibility and efficiency for qualified companies, consistent with investor protection, by enabling them more easily to time their offerings to advantageous market conditions.

DATES: Comments should be submitted on or before April 29, 1997.

ADDRESSES: All comments concerning the rule proposals should be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, Mail Stop 6–9, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments also may be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File Number S7–9–97; this file number should be included on the subject line if e-mail is used. Comment letters will be available for inspection and copying in the public reference room at the same address. Electronically submitted comment letters will be posted on the Commission's Internet Web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Barbara C. Jacobs, Office of Small Business, Division of Corporation Finance, at (202) 942–2950.

SUPPLEMENTARY INFORMATION: The Commission today is proposing amendments to Rules 415,[1] 424,[2] 430A,[3] and 434[4] under the Securities Act of 1933 ("Securities Act").[5] In addition, amendments are being proposed to Items 512 and 601(b) of Regulations S–B[6] and S–K.[7]

I. Executive Summary

The Commission today is publishing for comment proposals to permit certain smaller companies, including small business issuers, to delay pricing of primary offerings after the registration statement becomes effective in order to provide them enhanced flexibility in the marketplace. By having more control over the timing of their offerings, these companies could take advantage of desired market conditions. Such flexibility could enable such companies to raise equity capital on more favorable terms or to obtain lower interest rates on debt. The proposals also would permit a company to vary certain terms of the securities being offered upon short notice,[8] in order to meet the requirements of the public securities markets. This increased flexibility could result in smaller companies raising more capital through the public markets rather than through exempt offerings conducted in the domestic and offshore markets.

There are significant regulatory constraints on the flexibility of smaller companies to time their primary offerings to avail themselves of advantageous market conditions. Under the current rules, smaller companies must coordinate the effectiveness of their registration statements with the time that they would like to offer and sell securities. They then must price the securities promptly after effectiveness, subject to the limited flexibility provided by current Rule 430A. Smaller companies may face risks associated with changing market conditions during the pendency of possible Commission staff review. Larger companies have much more flexibility because they are allowed to use "shelf" registration, which permits them to register in advance of offerings and take the securities "off the shelf" either in one offering or in segments (*i.e.*, tranches) without further staff review when market conditions are right.[9]

The Commission understands that the timing concerns of smaller companies have led some of these companies to forego registered offerings. The Commission is considering whether additional flexibility could be given to smaller companies without sacrificing investor protection. The proposals would not go so far as to extend full shelf registration to smaller companies. They would, however, permit certain smaller companies to price on a delayed basis after effectiveness, subject to important registrant and offering requirements designed to ensure that adequate company disclosure is available to the public securities markets. There would be no reduction in the information required to be disclosed or delivered to investors or in the issuer's liabilities under the federal securities laws. There would, however, be a change in the timing of delivery of information to investors, namely, information would have to be delivered to investors at least 48 hours before delivery of the confirmation of sale. This would be analogous to the preliminary prospectus delivery requirement for initial public offerings.[10]

This delayed pricing proposal is one of four Commission initiatives being issued today. Two of these releases relate to Rule 144,[11] the non-exclusive safe harbor for resales of "restricted" securities and securities held by affiliates of the issuer. The Commission is shortening the holding period requirements in Rule 144 to reduce the costs of private capital formation.[12] In addition, the Commission proposes to amend Rule 144 to simplify and clarify the rule and to codify staff interpretations.[13] Finally, the Commission is proposing amendments

[1] 17 CFR 230.415.

[2] 17 CFR 230.424.

[3] 17 CFR 230.430A. In the release adopting the Phase One Recommendations of the Task Force on Disclosure Simplification, the Commission rescinded the special filing rules for competitive bidding, recognizing that Rule 430A could be used for these purposes in accordance with staff interpretation. Release No. 33–7300 (May 31, 1996) [61 FR 30397]. Technical changes also are being proposed today to remove references to competitive bidding in paragraph (d) of current Rule 430A and to remove Item 512(c) of Regulation S–B [17 CFR 228.512(c)] and Item 512(d) of Regulation S–K [17 CFR 229.512(d)].

[4] 17 CFR 230.434.

[5] 15 U.S.C. 77a *et seq.*

[6] 17 CFR 228.601(b).

[7] 17 CFR 229.601(b).

[8] The securities would have to be described in the registration statement, but certain price-related and other terms could be omitted until the price was determined. See n. 16, below.

[9] Rule 415, the shelf registration rule, enumerates the types of offerings that may be offered on a delayed or continuous basis. Unless the securities fall within one of the provisions of Rule 415 detailing the various traditional shelf offerings, for example, securities to be offered and sold pursuant to a dividend or interest reinvestment plan, a company must be eligible to use short form registration statement Form S–3 [17 CFR 239.13] or F–3 [17 CFR 239.33].

For primary offerings on Form S–3, a company must: (1) be subject to the reporting requirements of Section 13 [15 U.S.C. 78m] or 15(d) [15 U.S.C. 78o(d)] of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. 78a *et seq.*]; (2) have filed all material required to be filed pursuant to Section 13, 14 [15 U.S.C. 77j(a)] or 15(d) for 12 calendar months immediately preceding the filing of the registration statement; (3) have filed in a timely manner all required reports; (4) have satisfied certain fixed obligations; and (5) have $75 million or more in public float. General Instruction I to Form S–3.

[10] Exchange Act Rule 15c2–8 [17 CFR 240.15c2–8].

[11] 17 CFR 230.144.

[12] Release No. 33–7390 (February 20, 1997). Under the amendments, the holding period for resales of limited amounts of securities by any person is reduced from two years to one year, and the holding period for resales by non-affiliates is reduced from three to two years.

[13] Release No. 33–7391 (February 20, 1997).

to Regulation S,[14] the Securities Act safe harbor for offshore offerings or resales, in order to curtail Regulation S abuses.[15]

II. Proposals

A. Proposed Rule 430A(e)

1. Overview and General Considerations

Current Rule 430A permits companies, if specified conditions are satisfied, to omit information concerning the public offering price, other price-related information and the underwriting syndicate from the prospectus contained in the registration statement at the time that the registration statement is declared effective.[16] Typically, this information is provided in a supplemented prospectus within fifteen business days after the effectiveness of the registration statement.[17]

The purpose of today's proposal is to provide pricing flexibility beyond that permitted by current Rule 430A. The rule would be amended to add a new paragraph providing an alternative procedure—a "delayed pricing" procedure with no fifteen day requirement.[18] To be eligible to use the new procedure, a company would have to satisfy the requirements of current Rule 430A, [19] and could omit the same information from the prospectus before pricing.[20] In addition, expanded Rule 430A would permit the company to omit the name of the managing underwriter, if any, from the registration statement that is declared effective.[21] The company ultimately would provide all omitted information in a supplemented prospectus, but would not be required to do so within any specified time period—only when it decided to price and offer the securities.[22]

To be eligible for this flexibility in timing, the company would have to satisfy the following registrant and offering requirements:

- Registrant requirements.
- The company would have to have been subject to the reporting provisions of the Exchange Act during the most recent 12 months preceding the filing of the registration statement and have filed all required reports for this period. In addition, the company would have to have filed all required reports at the time of offering and sale.
- The company would have to be a domestic issuer, except that a foreign private issuer could rely upon the rule if it had filed the same Exchange Act reports as domestic issuers.
- The company could not be an investment company registered under, or a business development company regulated under, the Investment Company Act of 1940.[23]
- The company could not be a blank check company or a company that issues penny stock.
- The company would have to have satisfied specified electronic filing provisions under the Commission's electronic filing rules.[24]
- Offering requirements
- The company would be required to file a post-effective amendment to its registration statement to: provide annual audited financial statements; furnish financial statements for probable acquisitions over the 50% materiality level and pro forma financial information; and satisfy the undertakings for updating a registration statement as required by Item 512(a) of Regulation S–K or Regulation S–B, as applicable.[25]
- Each time a prospectus was delivered, it would be accompanied by the most recent Form 10–Q[26] or 10–QSB[27] and Forms 8–K[28] (or a supplement would provide the information included in those reports). All forms of the prospectus filed with the Commission pursuant to Securities Act Rule 424 in connection with the offering as well as the Exchange Act information would be deemed part of the registration statement for liability purposes as of the date of first use. In addition, the Exchange Act information would be deemed to be a part of the prospectus as of the date of first use.
- The supplemented prospectus containing any updating information and the name of the managing underwriter(s), if any, together with any quarterly and Form 8–K information, would be delivered to any person who is expected to receive a confirmation of sale at least 48 hours before the sending of any confirmation of sale. Further, the supplemented prospectus containing any updating information and all the omitted information, along with any quarterly and Form 8–K information, would accompany or precede any confirmation of sale.

These requirements are designed to assure that investors have adequate and current disclosure available to them to be able to make informed investment decisions at the time the securities are offered and sold.

The proposed new procedure would not reduce the level of liability under the Securities Act that applies to the information on which the investment decision is based; all information delivered would be deemed to be part of the registration statement for liability purposes and a part of the prospectus as of the date of first use. Informational requirements of a final prospectus meeting the requirements of Section 10(a) of the Securities Act [29] would remain the same. [30] Further, the rule

[14] 17 CFR 230.901–904.

[15] Release No. 33–7392 (February 20, 1997).

[16] Current Rule 430A eliminates the need for pre-effective amendments to registration statements filed solely to provide this information. This information consists of information with respect to the public offering price (*e.g.*, interest rate, dividend rate, day of month of redemption), underwriting syndicate, underwriting discounts or commissions to dealers, amount of proceeds, conversion rates, call prices and other items dependent upon the offering price, delivery dates, and terms of the securities dependent upon the offering date.

As with a current Rule 430A prospectus, under the proposal a prospectus used after effectiveness but prior to pricing would have to be clearly marked on the cover page to indicate that it is subject to completion or amendment. Items 501(a)(8) of Regulation S–K [17 CFR 229.501(a)(8)] and Regulation S–B [17 CFR 228.501(a)(8)].

[17] Rule 430A(a)(3). When a supplemented prospectus is not filed within the prescribed time, a post-effective amendment to the registration statement is filed. This post-effective amendment either restarts the 15-day pricing period or contains the omitted information.

[18] Proposed Rule 430A(e). For purposes of this release, Rule 430A as it stands today is referred to as "current Rule 430A" while this proposal is referred to as "expanded Rule 430A" or "delayed pricing." Registrants not eligible to use expanded Rule 430A could continue to use current Rule 430A.

The genesis for this delayed pricing proposal is a recommendation from the Report of the Task Force on Disclosure Simplification, which was published on March 5, 1996.

[19] For example, current Rule 430A is limited to offerings of securities for cash and to registration statements that are declared effective.

[20] As with current Rule 430A, a complete description of securities would be required to be set forth in the prospectus contained in the registration statement declared effective. Item 202 of Regulation S–K [17 CFR 229.202].

Only S–3 eligible companies are permitted to register aggregate amounts of securities without allocation among classes. (General Instruction II.D of Form S–3 pertains to unallocated shelf registration statements.)

[21] Current Rule 430A permits a registration statement to be declared effective that contains a prospectus that omits information on the underwriting syndicate. Information on the managing underwriter must be disclosed. See Rule 430A(a) and Release No. 33–6714 (May 27, 1987) [52 FR 21252] at Section II.A.2. See Section II.A.2.b.1, below, for further information regarding identifying managing underwriters. Expanded Rule 430A could be used for self-underwritten offerings.

[22] In addition to supplying the omitted information, the supplemented prospectus would be updated as needed. In addition to the information expressly required in any federal securities law document, there must be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they were made, not misleading. See Securities Act Rule 408 [17 CFR 230.408] and Exchange Act Rule 12b–20 [17 CFR 240.12b–20].

[23] 15 U.S.C. 80a–1 *et seq.*

[24] These rules are generally found in Regulation S–T [17 CFR Part 232].

[25] 17 CFR 229.512(a) and 228.512(a). For purposes of this release, references to specific items of Regulation S–K [17 CFR 229.10 *et seq.*] also pertain to analogous provisions of Regulation S–B [17 CFR 228.10 *et seq.*].

[26] 17 CFR 249.308a.

[27] 17 CFR 249.308b.

[28] 17 CFR 249.308.

[29] 15 U.S.C. 77j(a).

[30] The proposal would not affect requirements concerning the age of financial statements contained in the registration statement at the time of effectiveness or the exhibits required to be filed as part of the registration statement before effectiveness. Rule 3–12 of Regulation S–X [17 CFR

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proposal is not intended to permit "generic" registration statements that contain only minimum information about a proposed offering.

The due diligence efforts performed by underwriters, accounting professionals and others play a critical role in the integrity of our disclosure system. Under the current offering process for smaller companies, ample time exists for these "gatekeepers" to carry out due diligence activities. Concerns have been raised that the expedited access to the markets that would be provided by these proposals could make it difficult for gatekeepers, particularly underwriters, to perform adequate due diligence for the smaller companies that would be eligible to use expanded Rule 430A. [31] This may be particularly true if a company is able to seek aggressive competitive bids from several underwriters in a very short time frame immediately before offering its securities. While the nature of the due diligence investigation will vary considerably from one company to another because of the nature of the company, the underwriter's or other gatekeeper's involvement with the company over time, and the type of security being offered, is due diligence practical for offerings under these proposals? Could an underwriter perform the same quality of due diligence in a much shorter period of time? If not, should reliance on underwriters' due diligence continue if it would slow down the rapid access to the capital markets for smaller companies contemplated by these proposals? Has there been a change in the role other parties play concerning smaller companies, such as analysts or rating agencies, that should be considered? Should a waiting period between the company's determination to sell its securities and the commencement of the offering be imposed to permit greater time for due diligence? The rule proposal includes a number of safeguards and comment is solicited on whether additional safeguards should be included. Commenters should address whether these safeguards would adequately address the due diligence issues.

In addition, comment is solicited as to whether all the items of information that are permitted to be omitted under current Rule 430A(a) are appropriate for an offering under expanded Rule 430A. Is additional flexibility to omit information needed? In this regard, should certain terms of preferred or debt securities, such as financial covenants, be permitted to be omitted, or would this flexibility be inappropriate for smaller issuers? [32] Is it likely that expanded Rule 430A would be used for such securities, or is it likely that only common equity would be sold under this rule? Should the new provision be limited to common equity?

2. Conditions for Use of Expanded Rule 430A

Today's proposal would permit smaller companies to delay pricing their offerings so long as they otherwise met the requirements of current Rule 430A, other than the requirement to identify the managing underwriter(s) at the time the registration statement is declared effective, and they satisfied certain registrant and offering requirements. These latter requirements would assure that investors receive accurate and current information and the liabilities of the parties remain the same.

a. Registrant Requirements

First, expanded Rule 430A would be available only to a company that has been subject to the reporting provisions of Section 13(a) or 15(d) of the Exchange Act during the most recent twelve calendar months immediately preceding the filing of the registration statement and has filed all the material required to be filed pursuant to Section 13(a), 14 or 15(d) for this period.[33] In addition, the company must have filed all such required material at the time of offering and sale.[34] This proposed condition should help assure adequate and current public information concerning these companies. Comment is solicited as to whether a shorter (*e.g.*, six months) or longer (*e.g.*, two years) reporting period would be preferable. Should expanded Rule 430A be available in initial public offerings?

Comment also is solicited as to whether there should be qualitative conditions on the use of expanded Rule 430A. For example, to use Form S–2 or Form S–3, a company must be timely as well as current in its reporting obligations.[35] In addition, a company must not have failed to pay any dividend or sinking fund installment on preferred stock or defaulted on any installment or installments of indebtedness or on any rental on one or more long-term leases.[36] Should a company using the rule be required to satisfy any of these conditions, any combination of these conditions, or all of these conditions? Are such conditions necessary, given the other protections of expanded Rule 430A?

In addition, comment is solicited as to whether there are certain significant events (*e.g.*, a company, a majority shareholder, director, or executive officer found by a court or administrative body to have violated the federal securities laws) that should disqualify a company from using delayed pricing even though the expanded Rule 430A registration statement had been declared effective? Should a company be precluded from using expanded Rule 430A if it chooses a managing underwriter that was the underwriter of securities covered by any registration statement that is the subject of any pending proceeding or examination under Section 8 of the Securities Act,[37] or was the subject of any refusal order or stop order entered thereunder within 5 years? Should a company be permitted to use expanded Rule 430A where it names a managing underwriter that is, or was, subject to a permanent injunction for federal securities law violations? Comment also is solicited as to whether a company should be precluded from using the rule if its audited financial statements contain a "going concern" opinion from its accountants.

Second, the proposal would be available to foreign private issuers only if they file the same reports under Section 13(a) or 15(d) of the Exchange Act and meet the same disclosure requirements as domestic companies.[38] This limitation appears appropriate, given that foreign private issuers can file periodic reports less frequently than domestic companies.[39] To permit smaller companies to delay pricing, there must be sufficient and current public information available in the marketplace and delivered to investors to assure investor protection. Comment is solicited as to whether there are alternative conditions that could be placed on foreign private issuers not eligible to use Form F–3 so that they could rely upon the proposals.

Third, investment companies registered under, and business development companies regulated under, the Investment Company Act of 1940 would be excluded from the use of expanded Rule 430A since these companies have special flexibility and restrictions on their securities that make delayed pricing unnecessary.[40] Comment is solicited, however, as to whether there are circumstances under which the flexibility of delayed pricing would be a useful tool for certain types of registered investment companies and business development companies.

Fourth, blank check and penny stock issuers would be ineligible to use the proposed rule, given the substantial abuses that have arisen in such offerings.[41] Are there any additional classes of issuers that should be excluded from expanded Rule 430A either because of the nature of the investment vehicle (*e.g.*, partnership or other similar programs) or potential for abuse (*e.g.*, blind pools that will not commit a material portion of the net proceeds of the offering to specified assets)? Should the same securities law violation disqualification provisions that are used in the Private Securities Litigation Reform Act of 1995 [42] preclude the use of this rule?

The final registrant condition would pertain to the Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system of the Commission. As of May 6, 1996, the Commission has required all domestic companies to file most of their documents electronically via EDGAR,[43] absent a hardship exemption. One of the advantages of EDGAR is that it facilitates the dissemination of time-sensitive information to the nation and the world in a matter of minutes, giving investors and financial markets the benefit of immediate access to the information. In September 1995, the Commission established its own Internet Web site and began to post EDGAR filings and other materials on a 24-hour delayed basis.[44]

Since the proposals would extend the flexibility of delayed pricing to companies not eligible for Form S–3, adequate and current information regarding these companies must be broadly disseminated and available to the public. As EDGAR filings help assure such dissemination, the proposals would require that the company satisfy the same two EDGAR-related eligibility requirements as for Forms S–2 and S–3.[45] First, the company must have filed all required electronic filings, including confirming electronic copies of documents submitted in paper pursuant to a hardship exemption.[46] Second, the company must have submitted all required financial data schedules.[47] In addition, to ensure that company-related information about these non-S–3 eligible companies is on the EDGAR database and thus widely disseminated, the proposals also would require that the company not have obtained a continuing hardship exemption under Rule 202(a) of Regulation S–T from the electronic filing requirements of the Commission during the 12 months immediately preceding the filing of the registration statement.[48] These EDGAR requirements would apply both at the time the registration statement is filed and the time of offer and sale.

Comment is solicited as to whether these EDGAR-related conditions are necessary to permit delayed pricing. The continuing hardship exemption condition would be limited to Rule 202(a) hardship exemptions since under this provision a registrant is not required to follow up the paper filing, which was the subject of the request, with an electronic confirming copy. If a registrant obtained a Rule 202(d) hardship exemption, however, then it would be required to file an electronic confirming copy of its paper filing within some agreed-upon period of time. Should this continuing hardship exemption condition be expanded to encompass Rule 202(d) hardship exemptions where the required electronic confirming copy was filed a significant period of time after the paper filing to which it relates? Is the one-year period for not having received a continuing hardship exemption under Rule 202(a) warranted? Or should a longer (*e.g.*, two years) or shorter (*e.g.*, six months) period be required?

b. Offering Requirements

(1) Post-Effective Amendments

In addition to the above registrant requirements, expanded Rule 430A would require the company to file a post-effective amendment to its registration statement under certain circumstances.[49] The purpose of this requirement is to assure that the staff has an opportunity to review the revised disclosure before the company proceeds with additional offerings.

Today's proposals would require the company to file a post-effective amendment to its registration statement in three circumstances. First, no later than 90 days after its fiscal year end, the company would have to file a post-effective amendment to its registration statement to update the document [50] and provide annual audited financial statements.[51] This requirement would

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210.3–12] and Item 601 of Regulation S–K [17 CFR 229.601].

As with current Rule 430A, trust indentures would not have to be filed in executed form at the time of effectiveness of the registration statement. The filing requirement may be satisfied by submission of the final form of the document to be used; the form must be complete, except that signatures and related matters could be omitted.

[31] The Commission estimates that at least 3,200 companies would qualify to use these proposals that do not qualify to use shelf registration. The average eligible company has a market capitalization of $27.5 million, assets of $80.1 million, and annual sales of $57.6 million. The median eligible company has a market capitalization of $22.3 million, assets of $27.0 million, and annual sales of $20.9 million.

[32] Under the proposal, as under current Rule 430A, the pricing terms of preferred stock that may be set by the board of directors under state law, such as the timing of an interest rate reset, could be set forth at the time of pricing.

[33] Proposed Rule 430A(e)(1)(i). The provisions of this rule would be available to a successor registrant. Proposed Instruction to Rule 430A(e) uses the same definition as General Instruction I.A.7 of Form S–3 and General Instruction I.F. of Form S–2 [17 CFR 239.12].

[34] Proposed Rule 430A(e)(1)(i). This requirement would need to be met at the time of using both the 48-hour prospectus and the pricing prospectus discussed below.

[35] General Instruction I.C. to Form S–2 and General Instruction I.A.3 of Form S–3.

[36] General Instruction I.D. to Form S–2 and General Instruction I.A.5 to Form S–3.

[37] 15 U.S.C. 77h.

[38] Proposed Rule 430A(e)(1)(ii).

[39] Under the foreign integrated disclosure system, reporting foreign private issuers file an annual report on Form 20–F [17 CFR 249.220f]. All other interim financial information required to be made public is based upon home-country rules and practices. Consequently, foreign private issuers are not required to file quarterly reports on Form 10–Q or current reports on Form 8–K in accordance with U.S. disclosure practices. Rule 13a–16 [17 CFR 240.13a–16].

[40] Proposed Rule 430A(e)(1)(iii).

[41] Proposed Rule 430A(e)(1)(iv). A "blank check" company is defined at Securities Act Rule 419(a)(2) [17 CFR 230.419(a)(2)], while "penny stock" is defined at Exchange Act Rule 3a51–1 [17 CFR 240.3a51–1].

[42] Pub. L. No. 104–67, 109 Stat. 737 (December 22, 1995). As part of the Act, Section 27A was added to the Securities Act [15 U.S.C. 77z–2] and Section 21E was added to the Exchange Act [15 U.S.C. 78u–5] to create a statutory safe harbor from private liability for certain forward-looking statements. Among other matters, the 1995 Act excludes from the safe harbor statements made by the issuer and certain persons if the statements were made within three years after the maker of the statement had been found responsible for certain securities law or related violations. See Section 27A(b)(1)(A) of the Securities Act and Section 21E(b)(1)(A) of the Exchange Act.

[43] Forms SB–1 [17 CFR 239.9] and SB–2 [17 CFR 239.10] relating only to initial public offerings may be filed in paper at the Commission's Headquarters until May 5, 1997. Release No. 33–7373 (December 16, 1996) [61 FR 67200].

[44] The Commission's Internet Web site address is http://www.sec.gov.

[45] General Instructions I.H to Form S–2 and I.A.8 to Form S–3.

[46] Proposed Rule 430A(e)(1)(v).

[47] Proposed Rule 430A(e)(1)(v). Financial data schedules are required to be submitted as exhibits to filings containing updated annual or interim financial information, other than by incorporation by reference. Item 601(c) of Regulation S–K [17 CFR 229.601(c)].

[48] Proposed Rule 430A(e)(1)(v).

[49] In contrast, Form S–3 (and F–3) registrants may incorporate by reference certain information rather than filing a post-effective amendment. These registrants do not have a requirement to file post-effective amendments in the same set of circumstances.

[50] Each post-effective amendment would contain a completely updated prospectus, which would supersede all prior prospectuses. Proposed Rule 430A(e)(2)(i).

[51] Proposed Rule 430A(e)(2)(i). This requirement would be in addition to its requirement under Section 13(a) or 15(d) to file its 10–K or 10–KSB with the Commission.

If a company changes its fiscal year end, it must file a transition report on Form 10–K where the transition period is six months or more. For transition periods of less than six months,

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assure that Commission staff has the opportunity to review information regarding the company and the offering on an annual basis and that prospectus information distributed to investors is current. Comment is solicited as to whether this safeguard is needed, and if so, whether the time frame for filing the post-effective amendment should be tied to the filing of the Form 10–K (or Form 10–KSB) so that if the registrant determines to file its Form 10–K before its due date, the post-effective amendment would be required at the same time.

Second, a company would be required to file a post-effective amendment when it was required to file audited financial statements for significant probable business acquisitions pursuant to Rule 3–05 of Regulation S–X[52] and Item 310(c) of Regulation S–B[53] and pro forma financial information.[54] Under recent amendments, this would occur where the pending acquisition exceeds the 50% significance level.[55] The post-effective amendment would be filed as soon as the acquisition was probable.[56] Again, this requirement would assure that Commission staff has the opportunity to review the information.

To the extent that the pending acquisition falls below the 50% threshold level, the company would be required by Form 8–K to file audited financial statements of each significant acquired business within 75 days of consummation of the acquisition.[57] Comment is solicited as to whether under the proposed delayed pricing procedure, a company should be required to file a post-effective amendment in addition to a Form 8–K, where the acquisition falls below the 50% significance criterion. For example, should a 20% significance test be used?

Finally, since the proposal would permit delayed pricing, the rule would require the company to furnish the undertakings for updating registration statements required by Item 512(a) of Regulation S–K or Regulation S–B, as applicable. These undertakings require a post-effective amendment to be filed in specific circumstances, and would be in lieu of the similar undertakings required by Item 512(i) of Regulation S–K for other Rule 430A offerings. These undertakings would be as follows:

- The company must file a post-effective amendment to: (1) include any updated prospectus required by Section 10(a)(3) of the Securities Act;[58] (2) reflect any facts or events that represent a fundamental change in the information set forth in the registration statement; and (3) include any new or changed material information with respect to the plan of distribution.[59]
- The company must state that each post-effective amendment "shall be deemed to be a new registration statement relating to the securities offered therein and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof."[60]
- Finally, the company must deregister by means of a post-effective amendment any securities that remain unsold at the termination of the offering.[61]

Comment is solicited as to whether these undertakings, coupled with the other conditions of the proposed rule, would assure that investors receive adequate and current information. Are there any other circumstances that should require a post-effective amendment to be filed?

As noted above, under the proposal, a company would not need to name the managing underwriter(s) in its expanded Rule 430A registration statement. Given the important role of underwriters in an offering, should a company be required to identify the underwriter in the registration statement if it is known? Should a company be required to file a post-effective amendment to its registration statement when a managing underwriter has been selected?[62] A requirement to file a post-effective amendment could help assure that underwriters have necessary time to conduct a due diligence investigation before the securities are sold. Alternatively, when a managing underwriter was selected, would a supplemented prospectus be sufficient, as proposed?[63] If only a supplemented prospectus is required, should the form of underwriting agreement be filed in a post-effective amendment that becomes effective automatically or should it be filed in a required Form 8–K?

If a change in the managing underwriter(s) occurs from that initially disclosed in the registration statement that had been declared effective, should the company be required to file a post-effective amendment, or would a supplement suffice? If only a supplement is needed either to add the managing underwriter or reflect a change in the managing underwriter, should there be a waiting period before the company can sell its securities? Should a change in the managing underwriter solely to add or delete a co-manager necessitate a post-effective amendment or a supplement? Is the term "managing underwriter" sufficiently clear based upon industry practice or should a definition be developed for delayed pricing?

(2) Delivery of Information

The final proposed delayed pricing conditions would pertain to delivery of updated company-related information. The company would be required to deliver a supplemented prospectus containing the omitted information and/or any updating information, together with its Form 10–Q or Form 10–QSB as of the end of the most recent fiscal quarter not included in the registration statement. The company also would be required to deliver all Forms 8–K filed since effectiveness of the registration statement, other than those solely relating to Item 5 of that form that are voluntary filings.[64] Instead of delivering such Exchange Act reports as separate documents at no charge, the company could elect to integrate all Exchange Act information into a single supplement to the prospectus that would include pricing and/or updated company information.[65]

This information delivery condition, which is substantially similar to that required in Form S–2,[66] would assure that potential investors receive adequate and current information about the registrant and its offering.[67] The delivered information would be deemed a part of the registration statement and the prospectus as of the date that the information is first used in the offering of securities, and thus have liability under Sections 11 and 12(a)(2) of the Securities Act.[68]

To assure that investors have time to review the information in connection with making the investment decision, a supplemented prospectus containing any updating information and the name of the managing underwriter, if any (but not necessarily the other omitted information), would have to be delivered with the Exchange Act information referenced above to potential investors at least 48 hours before sending the confirmation of sale.[69] The quarterly and Form 8–K information would be a part of the package. This would be analogous to the preliminary prospectus delivery requirement in Rule 15c2–8 for initial public offerings. Comment is solicited on whether this condition would be practicable for issuers and whether it would afford advantages to the investing public. Would these potential benefits justify the possible reduction in flexibility provided by the new procedure? If such a requirement is justified, should a longer period be required, such as five or ten business days?

Comment is solicited as to whether voluntary Item 5 Forms 8–K should be required to be delivered to each person who receives a prospectus and the other information specified by the rule. Alternatively, are there specified matters that should be required to be included in the supplemented prospectus itself rather than in the other delivered materials? Should the quarterly report to shareholders be permitted to be delivered in lieu of the Form 10–Q or Form 10–QSB if it includes the information required by those forms? If voluntary Forms 8–K are not required to be delivered, should they still be incorporated by reference into the registration statement in order to maintain liability, as would be true for Form S–3 offerings?

In this regard, companies are reminded that in addition to the information expressly required to be included in any federal securities law document, there must be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they were made, not misleading.[70] Comment is solicited as to whether there should be an express requirement for a company using delayed pricing to describe any and all material changes in the company's affairs that were not described in the updated information delivered with the prospectus.[71]

c. Additional or Alternative Conditions

Comment is solicited as to whether other conditions to delayed pricing are needed. For example, should a company be required to file a supplemented prospectus with the omitted information within a certain period of time after effectiveness of the registration statement? If the company did not price and offer its securities within this period, then a post-effective amendment could be required, as in current Rule 430A.[72] If a definite period for filing an expanded Rule 430A supplemented prospectus is needed, would three months be sufficient? Or, would a shorter (*e.g.*, one month) or longer period (*e.g.*, six months) be sufficient?

Should a minimum time period be imposed between the filing of Exchange Act reports, such as a Form 10–Q or 10–QSB or other updating information with material developments, and the offering of securities even though this information would be delivered to investors? If such a waiting period between the filing of an Exchange Act report and the offering of securities is warranted in order to assure dissemination of information to the marketplace, would a sufficient time be five business days? Alternatively, should a shorter (*e.g.*, three business days) or longer period of time (*e.g.*,

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companies have the option to file transition reports on either Form 10–Q or Form 10–K. See Exchange Act Rules 13a–10 [17 CFR 240.13a–10] and 15d–10 [17 CFR 240.15d–10]. With respect to expanded Rule 430A, a post-effective amendment would have to be filed by the due date of the transition report on Form 10–K, namely, within 90 days of the close of the transition period or the date of the determination to change the fiscal year end, whichever is later.

[52] 17 CFR 210.3–05.

[53] 17 CFR 228.310(c). Proposed Rule 430A(e)(2)(i).

[54] Article 11 of Regulation S–X [17 CFR 210.11–01 *et seq.*] and Item 310(d) of Regulation S–B [17 CFR 228.310(d)].

[55] Rule 210.01–02(w) of Regulation S–X and Rule 310(c)(2) of Regulation S–B [17 CFR 210.1–02(w) and 228.310(c)(2)]. In October 1996, the Commission adopted amendments to streamline financial statement requirements of significant acquisitions to facilitate the Securities Act registration process. Release No. 33–7355 (October 10, 1996) [61 FR 203].

[56] Within 15 days of consummation of the significant acquisition, a company must file a Form 8–K reporting the event. Pursuant to staff position, the Form 8–K need not include more recent financial statements of the acquired business if no more than two interim periods have passed since the latest balance sheet date of the previously filed financial statements. However, audited financial statements must be updated in the Form 8–K to the company's most recently completed fiscal year pursuant to Item 310(g) of Regulation S-B [17 CFR 228.310(g)] and Rule 3–12(b) of Regulation S–X [17 CFR 210.3–12(b)].

[57] Items 2 and 7 of Form 8–K. The Form 8–K would contain: an accountant's report as required by Rule 2–02 of Regulation S–X [17 CFR 210.2–02]; and an accountant's consent to having his or her opinion deemed to be a part of the expanded Rule 430A registration statement. Section II.B. below, sets forth proposed amendments to the exhibit requirements of Regulations S–K and S–B to facilitate the filing of consents.

[58] Under Section 10(a)(3) of the Securities Act [15 U.S.C. 77j(a)(3)], where a prospectus is used more than nine months after the effective date of the registration statement, the information contained therein must be of a date not more than sixteen months old. The nine-month period is calculated from the effective date of the registration statement, not of any later post-effective amendment.

[59] Item 512(a)(1) of Regulation S–K [17 CFR 229.512(a)(1)].

[60] Item 512(a)(2) of Regulation S–K [17 CFR 229.512(a)(2)].

[61] Item 512(a)(3) of Regulation S–K. Foreign issuers would be ineligible to use the proposed delayed pricing procedure unless they filed the same forms as domestic issuers, as discussed in Section II.A.2.a. As a result, paragraph (a)(4) of Item 512, which relates to foreign private issuers, would generally be inapplicable.

[62] Rule 415 at one time required a post-effective amendment to the registration statement to be filed when a managing underwriter was added or deleted. The Commission removed this requirement in Release No. 33–6423 (September 2, 1982) [47 FR 39799].

As with delayed shelf filings, a company using expanded Rule 430A could (but would not be required to) name a group of possible underwriters in the preliminary prospectus. (See n. 63, below, for when a company must identify any managing underwriter.) All of the other information required by Item 508 of Regulation S-K [17 CFR 229.508] regarding the plan of distribution would be included in the preliminary prospectus before requesting acceleration of the registration statement.

[63] As discussed below, at least 48 hours before sending any confirmation of sale, the supplemented prospectus containing any updating information along with the Exchange Act information would be required to be delivered. This supplement would have to name any managing underwriter. Proposed Rule 430A(e)(2)(iii).

[64] Rule 430A(e)(2)(ii). Exhibits that had been filed with the Commission with these reports would not have to be delivered to security holders.

A registrant using delayed pricing would not need to deliver its Form 10–K [17 CFR 249.310] or Form 10–KSB [17 CFR 249.310b], since it would be required to file a post-effective amendment to the registration statement to include a new prospectus with the new annual audited financial statements each fiscal year. Proposed Rule 430A(e)(2)(i).

[65] The complete package would have to be delivered any time the prospectus was delivered.

[66] Form S–2 does not require the delivery of Forms 8–K; it does, however, require a company to describe any and all material changes to its affairs that have occurred since the end of the fiscal year for which certified financial statements were included in the information delivered to security holders and not described in the Form 10–Q, 10–QSB or quarterly report to security holders delivered to investors. Item 11 of Form S–2.

One of the recommendations of the Commission's Task Force on Disclosure Simplification was to eliminate Form S–2/F–2, and permit smaller companies that have been timely reporting for 12 months, to deliver, along with their prospectuses, periodic reports in lieu of restating information regarding themselves in the prospectuses contained in registration statements filed on Form S–1/F–1 [17 CFR 239.31]. This recommendation may be considered at a later time. If it were implemented, it could operate together with delayed pricing to reduce the costs of registration by eliminating printing and other costs associated with the preparation of the traditional prospectus and give even greater flexibility to registrants to time their offerings with favorable market conditions.

[67] Electronic media may be used as a means of delivering this information to security holders in certain circumstances. See Release Nos. 33–7233 (October 6, 1995) [60 FR 53458] and 33–7288 (May 9, 1996) [61 FR 24644], in which the Commission expressed its views with respect to the use of electronic media for information delivery under the federal securities laws.

[68] Proposed Rule 430A(e)(3). Proposed Rule 430A(e)(3) would maintain liability on all forms of prospectus filed with the Commission pursuant to Rule 424 in connection with the offering by deeming them to be part of the registration statement at the date of first use. This would be true for the delivered Exchange Act information as well. The rule also would provide that the Exchange Act reports that are deemed to be a part of the registration statement would be a part of the prospectus as of the date of first use.

The documents also would be subject to anti-fraud liability under Securities Act Section 17(a) [15 U.S.C. 77q(a)], Exchange Act Section 10(b) [15 U.S.C. 78j(b)] and Rule 10b–5 [17 CFR 240.10b–5] thereunder.

[69] Proposed Rule 430A(e)(2)(iii). Of course, the supplemented prospectus containing any updating information and all the omitted information, including the name of the managing underwriter(s), if any, along with the quarterly and Form 8–K information, would accompany or precede any confirmation of sale. Proposed Rule 430A(e)(2)(iv).

[70] Securities Act Rule 408 and Exchange Act Rule 12b–20.

[71] This would be analogous to the Item 11 line item requirement in Form S–2, discussed above.

[72] Rule 430A(a)(3).

seven business days) be imposed? Or would any required delay significantly reduce the flexibility that the rule is designed to provide?

Another condition to assure that adequate and current information regarding the company is widely available could be to require a waiting period between the company's determination to sell its securities and the commencement of the offering. For example, a company could be required to file a Form 8–K announcing its intent to offer its securities within a specified period of time. Since the trading market for certain smaller issuers may be relatively illiquid, this condition could give the market time to respond to this news. If such a period were to be imposed, would five business days be sufficient? Or would a shorter (*e.g.*, two business days) or longer (*e.g.*, seven business days) period of time be needed? Should the length of any waiting period be tied to the average daily trading volume of the company so that a longer waiting period could be required if the company has a low average daily trading volume, and thus less liquidity? Should average daily trading volume for such a test be determined in a manner consistent with recently adopted Regulation M?[73] If an average daily trading volume test is incorporated into expanded Rule 430A, should a public float component also be used as in Regulation M?[74] Actively-traded companies could be excluded from any waiting period. If a waiting period is desirable, should it be structured so that an announcement of the offering could not be made more than a certain period of time before the commencement of the offering?

As proposed, the rule would not limit the number of offerings that could be done from the registration statement. Like Form S–3, the delayed offering may be done as one offering or in several tranches. Should the rule be limited to a single delayed offering? Or should some other limit be placed on the number of offerings?

The Commission recently adopted Regulation M to prevent manipulative conduct by persons interested in a securities offering. At that time, the Commission modified the application of anti-manipulation regulation to shelf-registered distributions. The Commission explained that, for purposes of Regulation M, each takedown off a shelf is to be individually examined to determine whether the offering of that tranche constitutes a distribution (*i.e.*, whether it satisfies the "magnitude" and "special selling efforts and selling methods" criteria of a distribution).[75] This position is intended to provide greater flexibility to participants in shelf-registered distributions, which for primary offerings are now limited to larger issuers.[76]

The Commission has considered the appropriate application of anti-manipulation regulation to offerings with delayed pricing under proposed Rule 430A(e). Because the proposed rule is expected to be used principally by smaller issuers, many of which are less-seasoned and can have relatively illiquid markets for their securities, the Commission proposes to require compliance with the full applicable restricted period of Regulation M prior to pricing of each offering relying on proposed Rule 430A(e). Thus, issuers and underwriters participating in an offering using delayed pricing would be subject to a restricted period of one or five business days before pricing of each tranche. Commenters are invited to provide their views on this interpretation. Is it necessary to expressly amend Rules 101 and 102 of Regulation M to incorporate this position?

Additionally, Rule 105 of Regulation M is intended to preclude manipulative short selling in anticipation of a public offering.[77] The rule prohibits the covering of a short sale with offered securities purchased from an underwriter or broker or dealer participating in the offering, if the short sale occurred during the period commencing five business days before pricing the offering. The rule excludes offerings filed under Rule 415. It is uncertain whether offerings relying on proposed Rule 430A(e) and the accompanying amendment to Rule 415 will be conducted similarly to primary offerings off the shelf by larger issuers. Accordingly, the Commission seeks comment on whether to revise Rule 105 of Regulation M to exclude offerings filed under Rule 415, other than those filed pursuant to proposed Rule 415(a)(1)(xii).

Finally, comment is solicited as to whether a company should have the market flexibility to proceed under either expanded Rule 430A or current Rule 430A so long as it includes both sets of undertakings[78] in the initial filing or in a pre-effective amendment. At the time of requesting acceleration of the registration statement, the company could advise the staff as to which rule it would use.

The conditions discussed above are intended to strike a balance between the needs of certain smaller companies to price their securities on a primary delayed basis and the needs of investors to have adequate and current information regarding these registrants available to them to be able to make informed investment decisions. Comment is solicited as to whether the foregoing conditions, taken together, accomplish this objective or whether only certain combinations of these conditions are needed. If the latter, commenters are requested to specify the combinations that would be desirable and the reasons for their views.

B. Other Proposed Amendments

Corresponding amendments to Securities Act Rules 415, 424 and 434[79] and Item 601(b) of Regulations S–K and S–B[80] also are being proposed. Securities Act Rule 415 would be amended to add a new paragraph permitting delayed pricing under Rule 430A(e).[81]

Securities Act Rule 424, which pertains to the filing of prospectuses, would be revised to add two new paragraphs (8) and (9) relating to the filing of delayed pricing prospectuses so as to facilitate access and use of the information. If a company elected to use delayed pricing, supplemented prospectuses would be filed under Rule 424(b)(8) or (b)(9). Any prospectus filed under paragraph (b)(8) would reflect information, facts, or events that would constitute a substantive change from, or addition to, the information set forth in the last form of prospectus filed with the Commission under Rule 424 or as part of the expanded Rule 430A registration statement.[82] "Substantive," as in current Securities Rule 424, refers to additions or modifications that supplement, update or correct the content and substance of the information contained in a prospectus, except for typographical, grammatical, format, and clarifying changes that do not affect an investor's understanding of the information.[83]

Also under paragraph (b)(8), a company would file any supplemented prospectus containing any updating information and the name of the managing underwriter(s), if any, that it delivers to any person, with quarterly information and Forms 8–K, who is expected to receive a confirmation of sale at least 48 hours before the sending of any confirmation of sale. Any prospectus filed under Rule 424(b)(8) would be required to be filed no later than the second business day following the date it is first used after effectiveness in connection with a public offering or sale, or transmitted by a means reasonably calculated to result in filing with the Commission by that date.[84] Comment is solicited as to whether a shorter period is needed—either one business day after first use, or on the day of first use in order for the market to have this information.

The supplemented prospectus containing any updating information and all omitted price and price-related information that was omitted from the registration statement at the time of effectiveness would be required to be filed with the Commission under Rule 424(b)(9) no later than the second business day following the earlier of the date of the determination of the offering price or the date it is first used after effectiveness in connection with a public offering or sales, or transmitted by a means reasonably calculated to result in filing with the Commission by that date.[85] This short period, which is the same as for current Rule 430A, coupled with the fact that the filing would be made via EDGAR, would facilitate prompt availability of the information to the investing public and the Commission. Comment is solicited as to whether this time frame should be shorter (*e.g.*, one business day) or longer (*e.g.*, three business days).

Comment is solicited as to whether expanded Rule 430A prospectuses, like current Rule 430A prospectuses, warrant separate classification for purposes of Rule 424. Alternatively, existing paragraphs of Rule 424 could be revised to reflect the filing of expanded Rule 430A prospectuses; however, ready identification by the Commission staff and public of these prospectuses could be hampered.

With respect to the tracking or monitoring of new delayed pricing offerings in general, would separate EDGAR submission form types for these registration statements be warranted? Currently, Rule 430A registration statements are not separately identified for purposes of EDGAR.

III. General Request for Comment

Any interested persons wishing to submit comment on any of the proposals set forth in this release are invited to do so by submitting them in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington D.C. 20549. Comments also may be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File Number S7–9–97; this file number should be included on the subject line if e-mail is used. Comments received will be available for public inspection and copying in the Commission's public reference room, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters will be posted on the Commission's Internet Web site (http://www.sec.gov). Comments are solicited from the point of view of issuers, underwriters and the investing public.

IV. Cost-Benefit Analysis

To assist the Commission in evaluating the costs and benefits that may result from these proposals, commenters are requested to submit their views and empirical data relating to any costs and benefits associated with these proposals. It is anticipated that expanded Rule 430A, if adopted, could facilitate the capital-raising efforts of smaller companies that meet certain conditions by permitting them to delay pricing their offerings after the registration statement becomes effective so as to take advantage of favorable market conditions. Such flexibility could enable such companies to raise equity capital on more advantageous terms or to obtain lower interest rates on debt. In addition, issuers would be able to vary certain terms of the securities being offered upon short notice, enabling them to more efficiently meet the competitive requirements of the public securities markets.

There would be certain costs associated with expanded Rule 430A, but they should be more than offset by its benefits. A company would be required to file a post-effective amendment to its registration statement at least annually until the offering is terminated. In addition, a company would be required to deliver its most recent Form 10–Q and non-voluntary Forms 8–K to investors along with its supplemented prospectus. This updated information could either be included in the supplemented prospectus itself or be set forth in separate documents that are delivered along with the prospectus. As noted in the release, the supplemented prospectus containing any updating information and the name of the managing underwriter(s), if any, along with the quarterly and Form 8–K information, would be delivered to any person who is expected to receive a confirmation of sale at least 48 hours before the sending of any confirmation of sale. These costs are necessary safeguards to the use of the rule in order to assure investor protection. The benefits of pricing flexibility should outweigh these costs.

The Commission is aware that many companies that may want to use delayed pricing may also be subject to state regulation. It is possible that the full benefits of this rule may not be available unless some modifications to state regulation are made.

Over 1,700 companies filed registration statements for securities offerings on Forms S–1, SB–2, and S–11 in 1996. Approximately half of these companies would have qualified for expanded Rule 430A if the rule had been in effect at that time. Of those companies that would not have qualified under the rule, 99% were disqualified because they were making their initial public offering ("IPO").

Based on an analysis of 100 non-IPO securities offerings, the Commission estimates that 860 companies would have met the proposed eligibility criteria for expanded Rule 430A in

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[73] 17 CFR 242.100 *et seq.* Release No. 34–38067 (December 20, 1996) [62 FR 520].

[74] See 17 CFR 242.101 and 102.

[75] Release No. 34–38067, 62 FR at 526.

[76] Under prior Commission interpretation, if the aggregate amount of securities registered on the shelf and the possibility of using special selling efforts existed, each takedown was deemed to be part of a single distribution, regardless of the amount of the securities sold or the manner of their sale. See Release No. 34–23611, 51 FR 33242.

[77] 17 CFR 242.105.

[78] Items 512(a) and 512(i) of Regulation S–K, respectively.

[79] One minor conforming change is being proposed to Rule 434. Paragraph (b)(2) would be amended to add a reference to Rule 430A(e) to the existing reference to Rule 430A(b).

[80] Item 601 of Regulations S–K and S–B would be amended to state that where the filing of a written consent is required with respect to material deemed to be a part of an expanded Rule 430A registration statement, the consent may be filed as an exhibit to the material that is deemed to be a part of the registration statement (*e.g.*, a Form 8–K containing financial statements for acquisitions below the 50% threshold). See Section II.A.2.b, above.

[81] Proposed paragraph (a)(1)(xii) to Rule 415. Paragraph (a)(2) of Rule 415, which provides that securities may only be registered in an amount which, at the time the registration statement becomes effective, is reasonably expected to be offered and sold within two years from the date of the registration, would be amended to add a reference to Rule 430A(e) offerings. Finally, paragraph (a)(3) of Rule 415 would be revised to add a reference to Item 512(a) of Regulation S–B, which relates to the Rule 415 undertakings. This reference was inadvertently omitted from this paragraph when Regulation S–B was adopted in 1992. Release No. 33–6949 (July 30, 1992) [57 FR 36442].

Since Rule 430A(e) would be a type of Rule 415 offering, a registrant relying on the rule would have to check the Rule 415 box on the facing page of the registration statement.

[82] Proposed paragraph (b)(8) to Rule 424. For example, where a company determined to update its prospectus supplement to include a recent developments section, it would file such supplement under proposed paragraph (b)(8) of Rule 424.

[83] Release No. 33–6714 (May 27, 1987) [52 FR 21252] at Section II.B.

[84] Proposed paragraph (b)(8) to Rule 424.

[85] Proposed paragraph (b)(9) to Rule 424. This time frame would mirror that of current Rule 430A offerings. Rule 424(b)(1).

1996. The 860 companies registered securities with an estimated offering value of $52 billion. The Commission estimates that approximately 11% of these offerings might have availed themselves of the expanded Rule 430A had it been available. This estimate is based upon the Commission's experience with the number of registrants that file Form S–3 for shelf offerings.

Expanded Rule 430A should not result in a major increase in costs or prices for consumers or individual industries; likewise, it should not have significant adverse effects on competition, investment, or innovation. However, comment is requested on these preliminary views. Commenters are asked to provide empirical data or other facts to support their views.

Comment is requested on whether the proposed rules are likely to have a $100 million or greater annual effect on the economy. Commenters should provide empirical data or other facts to support their views.

The Commission requests comment on the foregoing analysis and its preliminary views. Commenters are encouraged to provide their own analysis and views on these issues and any empirical data that would help the Commission assess the costs and benefits of these proposals. Commenters also are encouraged to suggest alternative or additional ways of providing more pricing flexibility to smaller companies, consistent with investor protection.

V. Summary of Initial Regulatory Flexibility Analysis

An Initial Regulatory Flexibility Analysis ("IRFA") has been prepared in accordance with 5 U.S.C. 603 concerning expanded Rule 430A and other amendments discussed in this release. The analysis notes that expanded Rule 430A, if adopted, would benefit certain smaller companies, including small entities, in connection with their needs to raise capital. This goal would be accomplished by giving these companies flexibility to delay pricing after their registration statement becomes effective, thus permitting them to time their offerings to advantageous market conditions.

As discussed more fully in the IRFA, the Commission is aware of approximately 1019 Exchange Act reporting companies that currently satisfy the definition of "small entity" under Securities Act Rule 157. These Exchange Act reporting companies could potentially avail themselves of expanded Rule 430A assuming that the other conditions of the rule are satisfied (*e.g.*, having reported under the Exchange Act for at least a year, not being a blank check company or penny stock issuer, etc.). It is estimated that approximately 734 of these 1019 companies would be eligible to use the rule, if adopted. There is no reliable way to determine how many of these entities will want to use expanded Rule 430A or how many businesses may become subject to reporting obligations in the future.

As noted in the IRFA, it is not anticipated that increased recordkeeping burdens would result from expanded Rule 430A. To the extent that a small entity uses expanded Rule 430A, there would be an increase in its reporting obligations since it would be required to file a post-effective amendment to its registration statement at least annually until the offering is terminated. Compliance burdens also would increase since the company would be required to deliver updated company-related information along with the supplemented prospectus. This Exchange Act information could be included in a supplement to the prospectus or delivered in separate documents along with the prospectus. In addition, the supplemented prospectus containing any updating information and the name of the managing underwriter(s), if any, along with the quarterly and Form 8–K information would be delivered to any person who is expected to receive a confirmation of sale at least 48 hours before the sending of any confirmation of sale. The IRFA also indicates that there are no current federal rules that duplicate, overlap or conflict with the rules to be amended.

As more fully discussed in the IRFA, other possible significant alternatives to the proposals were considered, including establishing different compliance or reporting requirements for small entities. These alternatives are not appropriate since they would be inconsistent with the goals of the Securities Act as they relate to the protection of investors. Another alternative would be to exempt small entities from all, or a part, of expanded Rule 430A. Small entities would benefit from the pricing flexibility from the rule so they would not want to be exempt from its coverage. To exempt small entities from certain conditions of expanded Rule 430A, for example, the requirement to file post-effective amendments under specified circumstances would be contrary to the goals of the Securities Act since investors in small entities should have the same protections as investors in larger companies. The opportunity for staff review of these post-effective amendment filings is considered to be an important safeguard to the use of the rule.

Written comments are encouraged with respect to any aspect of the IRFA. In particular, comment is solicited on the number of small entities that would be affected by the proposed rules and the determination that the proposed rules would not increase recordkeeping but would increase reporting and other compliance requirements. If commenters believe that the proposals would significantly impact a substantial number of small entities, the nature of the impact and an estimate of the extent of the impact should be provided. For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, the Commission also is requesting information regarding the potential impact of the proposed rules on the economy on an annual basis. Commenters should provide empirical data to support their views. Comments will be considered in the preparation of the Final Regulatory Flexibility Analysis if the proposed amendments are adopted. A copy of the IRFA may be obtained by contacting Barbara C. Jacobs, Division of Corporation Finance, Mail Stop 7–8, 450 Fifth Street, N.W., Washington, D.C. 20549.

VI. Paperwork Reduction Act

The staff has consulted with the Office of Management and Budget ("OMB") and has submitted the proposals for review in accordance with the Paperwork Reduction Act of 1995 ("the Act") (44 U.S.C. 3501 *et seq.*). The titles to the affected information collections are: "Form S–1," "Form SB–2," "Form S–11," "Form SB–1," "Regulation S–K," and "Regulation S–B." The specific information that must be included is explained in the forms themselves, and generally relates to the issuer and the securities being offered. The information is needed for prospective investors to make informed investment decisions.

The proposals, if adopted, would permit certain smaller companies to delay pricing of primary offerings after the registration statement becomes effective in order to provide them flexibility in the marketplace. By having more control over the timing of their offerings, these companies could take advantage of desired market conditions, thus enabling them to raise equity capital on more favorable terms or to obtain lower interest rates on debt. This increased flexibility could result in smaller issuers raising more capital through the public markets rather than through exempt offerings conducted in the domestic and offshore markets. Consequently, it is anticipated that the proposals, if adopted, would result in companies filing Forms S–1, SB–2, S–11, and SB–1 rather than making exempt offerings.

The collections of information in the four forms and two regulations are required for the registration of various securities for sale to the public. The likely respondents to each form are: (i) for Form S–1, generally all issuers registering offerings of securities under the Securities Act that are not eligible to use other forms; (ii) for Form SB–2, generally small business issuers, as defined in Rule 405 of the Securities Act, registering securities offerings under the Securities Act; (iii) for Form S–11, generally real estate companies registering offerings of securities under the Securities Act; and (iv) and for Form SB–1, generally small business issuers registering up to $10 million of securities under the Securities Act in a continuous 12-month period. While the Commission cannot estimate the number of respondents that may use expanded Rule 430A, there are approximately 1,210 Forms S–1, 471 Forms SB–2, 58 Forms S–11, and 8 Forms SB–1 filed each year.[86] If expanded Rule 430A is adopted, the estimated burden for responding to the collections of information in each form is expected to increase given the requirement to file post-effective amendments to the registration statements under the three circumstances specified. The former estimates per respondent were as follows: (i) for Form S–1, 1,267 burden hours; (ii) for Form SB–2, 877 burden hours; (iii) for Form S–11, 858 burden hours; and (iv) for Form SB–1, 711 burden hours. The new estimates per respondent are as follows: (i) for Form S–1, 1,290 burden hours; (ii) for Form SB–2, 894 burden hours; (iii) for Form S–11, 873 burden hours; and (iv) for Form SB–1, 740 burden hours. For Form S–1, this would result in an estimated per year increase burden of 27,426 hours in the aggregate. For Form SB–2, this would result in an estimated per year increase burden of 8,242 hours in the aggregate. For Form S–11, this would result in an estimated per year increase burden of 10,309 hours in the aggregate. For Form SB–1, this would result in an estimated per year increase of 236 in the aggregate. Regulations S–K and S–B will continue to show an estimated burden hour of one. The information collection requirements imposed by the forms and regulations are mandatory to the extent that a company elects to do a registered offering. The information is made publicly available. The Commission may not require a response to the collection of information if the forms and regulations do not display a currently valid OMB control number.

In accordance with 44 U.S.C. 3506(c)(2)(B), the Commission solicits comment on the following: whether the proposed changes in the collection of information is necessary; on the accuracy of the Commission's estimate of the burden of the proposed changes to the collection of information; on the quality, utility and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized.

Persons desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, D.C. 20503, and should also send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, with reference to File No. S7–9–97. The Office of Management and Budget is required to make a decision concerning the collection of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

VII. Statutory Basis for the Proposals

The foregoing amendments are proposed pursuant to Sections 6, 7, 8, 10 and 19(a) of the Securities Act.

List of Subjects in 17 CFR Parts 228, 229, and 230

Registration requirements, Reporting and recordkeeping requirements, Securities.

Text of the Proposals

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

1. The authority citation for Part 228 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78w, 78*ll*, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

2. In § 228.512 (Item 512 of Regulation S–B), remove paragraph (c) and redesignate paragraphs (d) through (f) as paragraphs (c) through (e).

3. In § 228.601, revise the second note to the Exhibit Table of Item 601(a) under paragraph (a) and amend paragraph (b)(23)(ii) by revising the heading and first sentence to read as follows:

§ 228.601 (Item 601) Exhibits.

* * * * *

Exhibit Table

* * * * *

* * * Where the opinion of the expert or counsel has been incorporated by reference or has been deemed to be a part of a previously filed Securities Act registration statement.

* * * * *

(b) * * *.

(23) Consent of experts and counsel. * * *

(ii) *Exchange Act reports.* If required to file a consent for material incorporated by reference into or deemed to be a part of a previously filed registration statement under the Securities Act, the dated and manually signed consent to the material incorporated by reference or deemed to be a part of. * * *

* * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

4. The authority citation for Part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78w, 78*ll* (d), 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

* * * * *

§ 229.512 [Amended]

5. In § 229.512 (Item 512 of Regulation S–K), remove paragraph (d) and redesignate paragraphs (e) through (j) as paragraphs (d) through (i).

6. In § 229.601, revise footnote 2 to the Exhibit Table of Item 601 and amend paragraph (b)(23)(ii) by revising the first sentence to read as follows:

§ 229.601 (Item 601) Exhibits.

* * * * *

Exhibit Table

* * * * *

[86] These estimates are based on the number of such filings made in calendar year 1996 and assume that there are no increases or decreases each year.

2. Where the opinion of the expert or counsel has been incorporated by reference or has been deemed to be a part of a previously filed Securities Act registration statement.

* * * * *

(b) * * *

(23) * * *

(ii) *Exchange Act reports.* Where the filing of a written consent is required with respect to material incorporated by reference in or deemed to be a part of a previously filed registration statement under the Securities Act, such consent may be filed as an exhibit to the material incorporated by reference or deemed to be a part of. * * *

* * * * *

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

7. The authority citation for Part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78d, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

8. By amending § 230.415 by adding paragraph (a)(1)(xii) and revising (a)(2) and (a)(3) to read as follows:

§ 230.415 Delayed or continuous offering and sale of securities.

(a) * * *

(1) * * *

(xii) Securities registered (or qualified to be registered) that are to be offered and sold on a delayed basis pursuant to § 230.430A(e) by or on behalf of the registrant, a subsidiary of the registrant or a person of which the registrant is a subsidiary.

(2) Securities in paragraphs (a)(1)(viii) through (x) and (xii) of this section may only be registered in an amount which, at the time the registration statement becomes effective, is reasonably expected to be offered and sold within two years from the initial effective date of the registration.

(3) The registrant furnishes the undertakings required by Item 512(a) of Regulation S–K (§ 229.512 of this chapter) or Regulation S–B (§ 228.512 of this chapter) as applicable.

* * * * *

9. By amending § 230.424 by adding paragraphs (b)(8) and (b)(9) before Instructions 1 and 2 to read as follows:

§ 230.424 Filing of prospectuses, number of copies.

* * * * *

(b) * * *

(8) A form of prospectus used in connection with a primary offering of securities on a delayed basis pursuant to § 230.415(a)(1)(xii) that discloses information, facts, or events that constitute a substantive change other than those covered in paragraph (b)(9) of this section shall be filed with the Commission no later than the second business day following the date it is first used after effectiveness in connection with a public offering or sales, or transmitted by a means reasonably calculated to result in filing with the Commission by that date.

(9) A form of prospectus used in connection with a primary offering of securities on a delayed basis pursuant to § 230.415(a)(1)(xii) that discloses information previously omitted from the prospectus filed as part of an effective registration statement in reliance upon § 230.430A(a) shall be filed with the Commission no later than the second business day following the earlier of the date of the determination of the offering price or the date it is first used after effectiveness in connection with a public offering or sales, or transmitted by a means reasonably calculated to result in filing with the Commission by that date.

* * * * *

10. By amending § 230.430A by removing paragraph (d) and redesignating paragraph (e) as paragraph (d) and adding paragraph (e) before the Note to read as follows:

§ 230.430A Prospectus in a registration statement at the time of effectiveness.

* * * * *

(e) A registrant that complies with all the requirements of this section other than the requirements to identify the managing underwriter(s) in the registration statement that is declared effective pursuant to paragraph (a) of this section and the fifteen business day period of paragraph (a)(3) of this section may offer and sell securities on a delayed basis if the following registrant and offering requirements are satisfied.

(1) *Registrant requirements.* (i) The registrant has been subject to the reporting provisions of Section 13(a) (15 U.S.C. 78m(a)) or 15(d) (15 U.S.C. 78o(d)) of the Exchange Act during the most recent twelve calendar months immediately preceding the filing of the registration statement and has filed all the material required to be filed pursuant to Sections 13(a), 14 (15 U.S.C. 77j(a)) or 15(d) for this period. The registrant also must have filed all material required to be filed by Sections 13(a), 14 or 15(d) at the time of first use of the prospectus supplements required by paragraphs (e)(2)(iii) and (e)(2)(iv) of this section.

(ii) The registrant is organized under the laws of the United States or any State or Territory or the District of Columbia and has its principal business operations in the United States or its territories, except that a foreign issuer, other than a foreign government, that satisfies all of the provisions of this section except for this one shall be deemed to have met the eligibility requirements of this section if such foreign issuer files the same reports with the Commission under Section 13(a) (15 U.S.C. 78m(a)) or 15(d) (15 U.S.C. 78o(d)) of the Exchange Act as domestic registrants pursuant to paragraph (e)(1)(i) of this section.

(iii) The registrant is not an investment company registered under, or a business development company regulated under, the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*).

(iv) The registrant is not a blank check company as defined in § 230.419 or a company that issues penny stock as defined in Section 3(a)(51) (15 U.S.C. 78(c)(a)(51)) of the Exchange Act and § 240.3a51–1 of this chapter.

(v) The registrant has: filed with the Commission all required electronic filings, including confirming electronic copies of documents submitted in paper pursuant to a hardship exemption; not obtained a continuing hardship exemption from electronic filing pursuant to § 232.202(a) of this chapter during the twelve months immediately preceding the filing of the registration statement; and submitted all Financial Data Schedules required by Item 601(c) of Regulation S–K or S–B (§ 229.601(c) or § 228.601(c) of this chapter), as appropriate. These requirements must be met at the time of filing the registration statement and at the time of first use of the prospectus supplements required by paragraphs (e)(2)(iii) and (e)(2)(iv) of this section.

(2) *Offering requirements.* (i) A registrant shall file a post-effective amendment to its registration statement to: provide annual audited financial statements for its latest fiscal year as required by §§ 210.3–01, 210.3–02, and 210.3–04 of this chapter no later than 90 days after the fiscal year end of the registrant; provide financial statements and pro forma information for probable acquisitions over the 50% materiality level as required by § 210.3–05 of this chapter and § 228.310 of this chapter as soon as the acquisition is probable; and satisfy any of the undertakings of Item 512(a) of Regulations S–K or S–B (§ 229.512(a) or § 228.512(a) of this chapter). Each post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein and the offering of such securities at the time shall be deemed to be the initial bona fide offering thereof. Each such post-effective amendment shall contain a completely updated prospectus that supersedes all prior prospectuses.

(ii) To each person to whom the registrant delivers its supplemented prospectus containing the omitted information and/or any updating information, the registrant also shall deliver: its Form 10–Q (§ 249.308a of this chapter) or Form 10–QSB (§ 249.308b of this chapter) for the end of the most recent fiscal quarter not reflected in the registration statement; and Forms 8–K (§ 249.308 of this chapter) filed after the effectiveness of the registration statement, other than those solely relating to Item 5 of that form that are voluntary filings. Exhibits to such forms need not be provided except upon request. In lieu of delivering the quarterly or Form 8–K information as separate documents at no charge, the registrant may elect to include this information in any prospectus supplement delivered.

(iii) The supplemented prospectus containing any updating information and the name of the managing underwriter(s), if any, along with the quarterly and Form 8–K (§ 249.308 of this chapter) information set forth in paragraph (e)(2)(ii) of this section, shall be delivered to any person who is expected to receive a confirmation of sale at least 48 hours before the sending of any confirmation of sale.

(iv) The supplemented prospectus containing any updating information and all the omitted information, including the name of the managing underwriter(s), if any, along with the quarterly and Form 8–K (§ 249.308 of this chapter) information set forth in paragraph (e)(2)(ii) of this section, shall accompany or precede any confirmation of sale.

(3) For purposes of determining liability under the Act, the following shall be deemed to be a part of the registration statement as of the date of first use in connection with an offering of securities: all forms of prospectus filed with the Commission pursuant to § 230.424(b) in connection with the offering; and all Forms 10–Q (17 CFR 249.308a), 10–QSB (17 CFR 249.308b), and 8–K (17 CFR 249.308) (other than those solely relating to Item 5 of Form 8–K that are voluntary filings) filed before the date the offering is terminated. In addition, the Forms 10–Q, 10–QSB, and Forms 8–K that are deemed to be a part of the registration statement shall also be a part of the prospectus as of the date of first use.

Instructions to Paragraph (e)

1. If the registrant is a successor registrant, it shall be deemed to have met the conditions of paragraph (e)(1) if: (a) its predecessor and it, taken together, do so, provided that the succession was primarily for the purpose of changing the state of incorporation of the predecessor or forming a holding company and that the assets and liabilities of the successor at the time of the succession were substantially the same as those of the predecessor, or (b) all predecessors met the conditions at the time of succession and the registrant has continued to do so since the succession.

2. Registrants who use Rule 430A(e) shall provide the undertakings of Item 512(a) of Regulation S-K or S-B (§§ 229.512(a) or 228.512(a) of this chapter) in lieu of those specified in Item 512(i) of Regulation S-K or S-B (§ 229.512(i) or § 228.512(i) of this chapter).

11. By amending § 230.434 by revising paragraph (b)(2) to read as follows:

§ 230.434 Prospectus delivery requirements in firm commitment underwritten offerings of securities for cash.

* * * * *

(b) * * *

(2) Such prospectus subject to completion and term sheet, together, are not materially different from the prospectus in the registration statement at the time of its effectiveness or an effective post-effective amendment thereto (including, in both instances, information deemed to be a part of the registration statement at the time of effectiveness pursuant to § 230.430A(b) or (e)); and

* * * * *

By the Commission.

Dated: February 20, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4669 Filed 2–27–97; 8:45 am]

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federal register

Friday
February 28, 1997

Part III

Federal Reserve System

12 CFR Part 225
Bank Holding Companies and Change in Bank Control (Regulation Y); Final Rule

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Reg. Y; Docket Nos. R–0935; R–0936]

Bank Holding Companies and Change in Bank Control (Regulation Y)

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board has adopted comprehensive amendments to Regulation Y that improve the competitiveness of bank holding companies by eliminating unnecessary regulatory burden and operating restrictions, and by streamlining the application/notice process. Among other revisions, the final rule incorporates a streamlined and expedited review process for bank acquisition proposals by well-run bank holding companies with a number of modifications intended to broaden and improve public notice of bank acquisition proposals, to assure that the regulatory filing is made well within the public comment period, and to better assure that proposals reviewed under the streamlined procedures do not raise issues under the statutory factors in the Bank Holding Company Act.

The final rule also implements the changes enacted in the Economic Growth and Regulatory Paperwork Reduction Act of 1996 that eliminate certain notice and approval requirements and streamline others that involve nonbanking proposals by well-run bank holding companies. The final rule also includes a reorganized and expanded regulatory list of permissible nonbanking activities and removes a number of restrictions on those activities that are outmoded, have been superseded by Board order or do not apply to insured banks that conduct the same activity.

In addition, the final rule incorporates several amendments to the tying restrictions, including removal of the regulatory extension of those restrictions to bank holding companies and their nonbank subsidiaries. A number of other changes have also been included to eliminate unnecessary regulatory burden and to streamline and modernize Regulation Y, including changes to the provisions implementing the Change in Bank Control Act and section 914 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

EFFECTIVE DATE: April 21, 1997.

FOR FURTHER INFORMATION CONTACT: Scott G. Alvarez, Associate General Counsel (202/452–3583), Diane A. Koonjy, Senior Attorney (202/452–3274), Thomas R. Corsi, Senior Attorney (202/452–3275), Lisa R. Chavarria, Attorney (202/452–3904), Satish M. Kini, Attorney (202/452–3818), Gregory A. Baer, Managing Senior Counsel (202/452–3236), Legal Division; Molly Wassom, Assistant Director (202/452–2305), Sid Sussan, Assistant Director (202/452–2638), Nicholas A. Kalambokidis, Project Manager (202/452–3830), David Reilly, Supervisory Financial Analyst (202/452–5214), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452–3544), Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC.

SUPPLEMENTARY INFORMATION:

Background and Summary of Final Action

On August 28, 1996, the Board proposed comprehensive revisions to Regulation Y designed to eliminate unnecessary regulatory burden and paperwork, improve efficiency and eliminate unwarranted constraints on credit availability while faithfully implementing the statutory requirements that form the bases for Regulation Y. (61 FR 47242 (September 6, 1996)). The Board proposed these revisions after conducting the review of its regulations required by section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 ("Riegle Act"). Regulation Y governs the corporate practices and nonbanking activities of bank holding companies, sets forth the procedures for a company to become a bank holding company and for a bank holding company to seek Federal Reserve System ("System") approval for a bank acquisition or a nonbanking proposal under the Bank Holding Company Act ("BHC Act"), implements the prohibitions on tying, implements the prior notice requirements of the Change in Bank Control Act (governing the acquisition of control of a bank or bank holding company by an individual) and section 914 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (governing appointment of senior officers and directors of certain banks and bank holding companies), and implements other provisions of law applicable to bank holding companies.

The changes proposed by the Board to Regulation Y included removal of a number of restrictions on the permissible nonbanking activities of bank holding companies, expansion and reorganization of the regulatory list of permissible nonbanking activities, streamlining of the application/notice process, revisions to the tying rules, and streamlining of the procedures governing change in bank control notices and senior executive officer and director appointments. On September 30, 1996, Congress, in the Economic Growth and Regulatory Paperwork Reduction Act of 1996 ("Regulatory Relief Act"), enacted several complementary changes to the BHC Act, primarily reducing the burden associated with seeking approval of nonbanking proposals. On October 23, 1996, the Board proposed, on an interim basis, a definition of a well-capitalized bank holding company for purposes of the procedures enacted in the Regulatory Relief Act. (61 FR 56404 (November 1, 1996)).

The Board received over 300 comments regarding its proposal. The comments reflected the views and suggestions of a wide cross-section of interested persons, including bank holding companies, community groups and representatives, trade associations, individuals, law firms, Congressional representatives, state and local government and supervisory officials, and others. The commenters enthusiastically supported the Board's proposal to establish a streamlined procedure for well-run bank holding companies to engage in nonbanking activities and make nonbanking acquisitions, to remove unnecessary or outmoded restrictions on nonbanking activities, and to expand the regulatory list of permissible nonbanking activities. Commenters also applauded the proposed amendments to the tying provisions that would enhance the ability of banking organizations to provide customer discounts on services. In addition, commenters supported the proposed streamlining of the provisions governing a change in control of state member banks and bank holding companies and the appointment of new directors and senior executive officers.

A significant number of commenters, representing primarily bank holding companies and banking industry trade associations and representatives, also strongly supported the Board's proposal to establish a streamlined procedure for well-run bank holding companies to seek System approval to acquire additional banks within certain limits. On the other hand, a large number of commenters, consisting primarily of community representatives and groups, and individuals, strongly opposed any change to the Board's current procedure

governing bank acquisitions, in general, and adoption of the Board's proposed streamlined review process, in particular.

After carefully reviewing the comments, the Board has adopted a final rule that largely incorporates the initiatives contained in its proposal. The Board has made a number of revisions in response to concerns, suggestions and information provided by commenters. In particular, the Board has changed in several respects the streamlined procedure governing bank acquisitions and has adopted a number of measures designed to broaden and improve public notice of acquisition proposals. These changes focus on assuring that interested persons will have a meaningful opportunity to provide the Board with information regarding acquisition proposals. These and other changes adopted by the Board in response to concerns and suggestions raised by commenters are discussed in more detail below.

A number of comments addressed matters that are better addressed in supervisory policy statements or guidelines governing specific activities or in the context of an individual proposal. Many other matters raised by commenters, including suggestions regarding venture capital and portfolio investment activities and the scope of a bank holding company's authority to acquire shares of investment companies under section 4(c)(7) of the BHC Act, were not addressed in the original proposal and remain under active review.

Explanation of Final Rule

A. Process for Seeking Approval of Bank and Nonbank Acquisitions

The Board's review of its current procedures for evaluating applications and notices identified two important principles that could be applied by the Board to reduce the burden associated with those procedures. One principle is that well-run bank holding companies that meet objective and verifiable measures for each of the criteria set forth in the BHC Act should be able to expect little burden or delay from the approval process unless special circumstances demonstrate that a closer review is warranted. The other principle is that the application/notice process should focus on an analysis of the effects of the specific proposal and should *not* become a vehicle for comprehensively evaluating and addressing supervisory and compliance issues that can more effectively be addressed in the supervisory process.

These principles guided the Board's decision to propose both procedural and substantive changes to the application/notice process in August 1996. In particular, the Board proposed to use the application/notice process as a gateway for identifying (and rejecting) organizations that do not have the resources or expertise to make an acquisition or conduct a particular activity, and to rely on the on-site inspection and supervisory process as the most effective way to determine if a particular organization is in fact managing its subsidiaries or conducting an approved activity in a safe and sound manner and within its authority.

In addition, the Board proposed to establish a streamlined process for reviewing proposals by well-run bank holding companies and reducing the information required to be filed for proposals that qualify for the streamlined procedure. The Board also proposed a number of other revisions that would eliminate unnecessary burden from the application/notice process, including eliminating the pre-acceptance procedure for all bank acquisition proposals, permitting public notice of an acquisition proposal to be published up to 30 days before the final regulatory filing was submitted to the System, and permitting the waiver of applications involving solely internal corporate reorganizations.

The final rule adopted by the Board incorporates these proposed changes with a number of important modifications discussed below.

1. Streamlined Procedure

The Board proposed a streamlined 15-day notice procedure for proposals by well-capitalized and well-managed bank holding companies with satisfactory or better performance ratings under the Community Reinvestment Act of 1977 ("CRA") to acquire banks and nonbanking companies within certain size limits. The Board's original proposal retained the Board's current requirements that public notice of all bank acquisitions be provided (both by newspaper and by **Federal Register**) and that the public be provided at least a 30-day opportunity to submit comments to the System regarding a proposed bank acquisition. These notice and comment provisions applied equally to proposals that qualified for the streamlined procedure and to proposals reviewed under the normal 30/60-day procedures.

Many commenters strongly supported the establishment of a streamlined procedure for proposals by well-run bank holding companies that do not raise significant issues. These commenters indicated that the current approval procedure is burdensome and costly, particularly in the case of smaller acquisitions that do not raise any significant issue under the BHC Act. Commenters stated that the current process increases the risks and costs associated with an acquisition by imposing unnecessary delay in consummating both bank and nonbank acquisition proposals. This delay also increases the potential for loss of key employees, customer relationships and franchise value. In addition, commenters argued that delay in approving clearly permissible transactions postpones the realization by the holding company and the community of the benefits of the transaction and, in the case of a nonbanking proposal, puts bank holding companies at a disadvantage in competing with unregulated entities vying for the same target company. Moreover, commenters indicated that the management, legal and other resources required to prepare an application/notice under the current procedures are significant.

These commenters agreed that a streamlined procedure would reduce regulatory burden substantially by reducing the costs to bank holding companies of preparing applications as well as the costs associated with the delay inherent in the regulatory review process. Many commenters also stated that these changes would improve the ability of bank holding companies to be competitive with unregulated entities in making nonbanking acquisitions and engaging *de novo* in permissible nonbanking activities.

Several of these commenters urged the Board to take the additional step of reducing or eliminating the public comment period for proposals by banking organizations, or permitting a safe-harbor from comments if the banking organization maintains satisfactory or better CRA performance ratings or the comment relates to a matter that was reviewed in the CRA examination. These commenters argued that neither the BHC Act nor the CRA requires that public notice be provided for bank acquisition proposals, and that comments on the CRA performance of insured institutions would be more effective if provided in the CRA examination process. These commenters also contended that the delay associated with the requirement that the Board consider all public comments under a more protracted procedure is costly and delays the ability of well-run organizations to pass on benefits of an acquisition to the affected communities. In addition, they argued that providing a safe harbor from public comments for

organizations with satisfactory or better CRA performance ratings would provide an incentive for institutions to achieve better CRA performance ratings.

On the other hand, a significant number of commenters, including various community groups, believe that the current procedures for reviewing bank acquisition proposals work well and that no change to the current process is necessary. These commenters argued that the current 30/60-day procedure strikes an important balance between the banking industry's need for regulatory action within a limited period of time and the community's need to have a meaningful opportunity to discuss with the acquiring company the potential effects of a proposed bank acquisition and participate in the System review process. These commenters also expressed concern that the revisions proposed by the Board would weaken the review process for bank acquisition proposals by reducing the attention the System would pay to certain proposals, and would erode the ability of interested members of the public to provide information to the System for consideration in an analysis of the convenience and needs factor, the CRA performance record, and other aspects of a bank acquisition proposal. In addition, a number of these commenters argued that the Board should not adopt its proposed streamlined procedure for bank acquisition proposals by well-run bank holding companies because the Regulatory Relief Act adopts streamlined procedures only for nonbanking proposals and indicates that Congress rejected applying a similar streamlined approach to reviewing bank acquisitions.

The Board believes that it is important to address the concerns of both sets of commenters. The Board believes that it is sound public policy, in addition to being consistent with the Riegle Act, that the Board revise its application/notice process to reduce any unnecessary regulatory costs and burdens associated with that process. At the same time, the Board believes that revisions to its application/notice process should not diminish the quality of its review of transactions. In addition, the Board strongly believes that public participation in the application/notice process is important because it provides the Board with useful information, in particular, information regarding the effect of transactions on the relevant communities.

As the Board noted in its original proposal, the Board reviews approximately 1,300 applications and notices each year under the BHC Act. While these proposals include some complex and large proposals, the overwhelming preponderance are relatively simple proposals that raise no issues under the statutory factors that the Board is required to consider. In more than 90 percent of the cases submitted to the System, no public comment is submitted. Currently, these cases are largely considered and approved by the Reserve Banks under delegated authority in a process that involves a pre-acceptance period of on average 25 days and final action about 30 days following the date of acceptance of a filing.

In these cases, the Board believes that there is room to revise the current review process to reduce paperwork and regulatory burden. The Board believes that this reduction in burden can be accomplished without diminishing the System's review of the statutory factors in any case or the opportunity for the public to provide information to the System that is relevant to the statutory factors. Importantly, the Board is maintaining the public notice and period for public comment that currently apply to bank acquisitions, including bank acquisitions reviewed under the streamlined procedures.

Accordingly, the final rule adopts the streamlined review process originally proposed by the Board, with several important modifications. These changes are in response to specific concerns raised by commenters and are designed to provide earlier and broader public notice of acquisition proposals, better access to regulatory filings, and to assure that the public continues to have a meaningful opportunity to provide the System with relevant information regarding proposals subject to System review. The Board believes that adoption of a streamlined process for bank acquisitions as well as all of the other revisions proposed by the Board to Regulation Y are within the authority of the Board under the current BHC Act and do not require statutory changes.

The changes to the original proposal adopted in the final rule are discussed more fully below and include the following:

* *Timing of Publication.* The regulatory filing for a bank or nonbank acquisition proposal must be made within 15 calendar days of publication of the request for comment on the proposal (as opposed to 7 days under the current procedure and 30 days under the original proposed revisions);

* *New Methods of Public Notice.* In order to make public notice available earlier, a new list of all bank and nonbank acquisition proposals subject to System review will be prepared weekly and updated every 3 days, and made available to all interested parties using three methods: by mail (on a weekly basis), through a dedicated fax-on-demand facility (available 24 hours every day), and on the Board's Internet Home Page;

* *Information Regarding Convenience and Needs.* The regulatory filing under the streamlined procedure will retain the current requirement that the filer briefly describe the proposed transaction and the parties to the transaction, and, in the case of a bank or thrift acquisition, will require (as under the current procedure) a brief discussion of the effects of the proposal on the convenience and needs of the community and of steps that are being taken by the acquiring company to address weaknesses at insured institutions that have not received at least a satisfactory CRA performance rating;

* *Convenience and Needs Standard.* In the case of a bank or thrift acquisition, the standards for qualifying for the streamlined procedure have been modified to require the acquiring bank holding company to show that the transaction is consistent with the convenience and needs standard in the BHC Act as well as requiring that the CRA performance rating of the lead insured institution and insured institutions with at least 80 percent of the assets of the acquiring bank holding company be satisfactory or better;

* *Timely Comments Require Full Consideration.* A provision has been added specifying that a proposal filed under the streamlined procedure will be reviewed under the normal 30/60 day review process if a substantive written comment is received by the System during the public comment period;

* *Guidance in Defining Substantive Comments.* A provision has been added describing generally the types of comments that would be considered substantive (this provision contemplates that the vast majority of comments that are now considered by the Board would continue to be reviewed by the Board);

* *Extensions to Obtain Filing.* A provision has been added incorporating the Board's current policy of exercising discretion, based on the facts and circumstances, to grant an extension of the public comment period of 1 to 15 days to an interested member of the public that has made a timely request for a copy of the regulatory filing on a proposal (this extension will not itself disqualify a proposal from consideration under the streamlined procedure);

* *Joint Extension Requests.* A provision has been added reflecting the Board's current policy of permitting a reasonable extension of the public comment period where the extension is jointly requested by an interested person and the applicant (for example, in order to permit completion of discussions between the applicant and the interested person); and,

* *Size Limitation.* A size limitation of $7.5 billion on any individual acquisition that may qualify for the streamlined procedures has been added as well as a limitation of 15 percent of the consolidated total capital of the acquiring company on the total consideration that may be paid in the case of the acquisition of a nonbanking company.

Under the new rule, bank and thrift acquisition proposals that meet the qualifying criteria in the regulation would be considered under a streamlined procedure that allows System action 3 business days following the close of the public comment period. This streamlined review process will allow System action on a qualifying proposal typically between 18 and 21 calendar days after the regulatory filing is made with the System. In addition, the regulatory filing required in these cases includes less paperwork than under the current procedures. Cases that are complex, or that raise an issue of first impression, issues of safety and soundness or other concerns, or that raise concerns regarding the effect of the proposal in the relevant communities will, as under the Board's current rules and policies, receive more in-depth analysis. Moreover, the Board retains the ability to notify a bank holding company for any reason that the streamlined notice procedure is not available and that the normal 30/60-day procedure must be followed.

The final rule eliminates unnecessary delay in all bank acquisition proposals by eliminating the current pre-acceptance period. Elimination of this period reduces the System review process by an average of 25 days. The function of this pre-acceptance period was to collect information regarding the specific proposal that may not be described in the original filing. The Board's experience in reviewing nonbanking proposals (which are not subject to a pre-acceptance review period) indicates that this period is not necessary and that the System is able to request and obtain additional information in a timely fashion during the normal review period that begins after acceptance of the regulatory filing. The final rule allows the System to continue to request additional information at any time and to return as incomplete any filing that does not contain the information prescribed in the regulation.

The final rule also adopts the procedures established in the Regulatory Relief Act regarding nonbanking proposals. These provisions eliminate the prior notice and approval requirements of the BHC Act for any bank holding company that meets the qualifying criteria to engage *de novo* in any nonbanking activity approved by the Board by regulation. In addition, the Regulatory Relief Act established a streamlined 12-business day review process for proposals by well-run bank holding companies to acquire a company (other than an insured depository institution) engaged in permissible nonbanking activities or to engage *de novo* in nonbanking activities approved only by order.

A company or proposal that does not qualify for the streamlined procedure would follow the current application process, which provides for Reserve Bank action within 30 days of filing and for Board action within 60 days of filing. In the event that the System determines that a proposal filed under the streamlined procedure must be reviewed under the normal 30/60-day procedure, the final rule provides that the notice filed under the streamlined procedure would be accepted under the normal procedure and the normal procedure would be deemed to have begun at the time the notice was filed under the streamlined procedure. In cases that have been shifted from the streamlined to the normal processing schedule, the Reserve Bank and the Board would determine whether information supplementing the streamlined filing is needed to address the relevant issues. As in any case, the System may request any additional information during the processing period necessary to resolve issues related to the proposal.

2. Public Participation in Review Process

a. Public Notice

The original proposal retained the current requirement for public notice of all acquisition proposals, including a full 30-day public comment period for bank acquisition proposals. As noted above, the final rule retains the current public notice requirement and 30-day public comment period for bank acquisition proposals, including proposals that qualify for the streamlined procedure. Public notice of these proposals would continue to be given through newspaper publications in the affected communities and through publication in the **Federal Register**, as required under the Board's current procedures.

The Regulatory Relief Act amended section 4 of the BHC Act to eliminate the requirement for public notice of certain nonbanking acquisition proposals by qualifying bank holding companies. The final rule implements the statutory changes enacted by the Regulatory Relief Act. Public notice of all acquisitions of insured depository institutions, including savings associations, is still required, however, and would mirror the notice requirements applicable to bank acquisition proposals. In addition, public notice would continue to be required for nonbank proposals that do not qualify for the streamlined procedures under the Regulatory Relief Act, and for any proposal that involves a new activity that has not previously been determined by the Board to be closely related to banking.

b. Steps To Improve Public Notice

In connection with its revision of the current procedures, the Board will implement three steps that are designed to improve the effectiveness and timeliness of the public notice of acquisition proposals. First, the Board will publish a new listing of all acquisition proposals submitted for System approval under the BHC Act. This new document will include all bank acquisition proposals that have been published for comment, whether submitted under the streamlined or normal procedures, as well as proposals to acquire a nonbanking company that require public notice. This new document will be updated at least weekly and will indicate the applicant and target organization, the date that the public comment period closes, and the Reserve Bank to which public comments may be sent. The new document will be a more comprehensive list of cases open to public comment than the current H–2 (which includes only application/notices that have been filed with the System and does not generally indicate proposals that have been published for comment but not yet filed), and will be more quickly available than the current H–2 (which includes a list of Board and Reserve Bank final actions and other information that often requires a longer time to assemble). This document will be available by mail.

Second, to expedite distribution of this information, the Board will make the new document available through a fax-on-demand call-in facility. This facility will be available 24 hours a day, 7 days a week, and will automatically fax a copy of the new document to any

caller. The information available on the fax call-in facility will be updated at least every three business days.

Third, the Board will make the new document available on its Internet Home Page, along with other information, including a list of actions taken by the System on applications and notices. Thus, the Board's Internet Home Page will include a list of all acquisition proposals requiring System approval under the BHC Act that have been published for public comment. This list will identify the applicant, target organization, closing date for the public comment period, and the Reserve Bank to which comments may be submitted. This information, like the fax call-in information, will be updated at least every 3 business days to reflect the addition of new proposals.

As a complement to providing broader and earlier public notice, the Board will make regulatory filings more quickly available to the public. The System expects to make the public portion of all pending applications/notices available to the public within 3 business days of filing.

c. Timing of Publication

Several commenters supported allowing an applying bank holding company to publish notice of a proposal up to 30 days in advance of filing the required application/notice for System approval. This would permit publication at a time closer to the announcement date of a proposed acquisition.

A large number of other commenters, however, suggested that permitting an applicant to publish notice 30 days before submitting an application/notice to the System would effectively deprive the public of an opportunity to comment on the information contained in the filing. These commenters were particularly concerned that this would result in less informed comments and would force commenters to express concerns relating to factors, such as the effect of the proposal on the convenience and needs of the community or CRA performance, without reviewing the plans of an applicant to address these matters or discussing these plans with the applicant.

In light of the comments, the Board has determined to adopt a revised approach that permits publication up to 15 days prior to the submission of the required filing. Under the Board's current rules, publication may occur up to 7 days prior to submission of the application. Allowing a slightly earlier publication date will allow for a shorter regulatory process in cases that meet the criteria for expedited action while at the same time assuring that the required filing will be available to the public for a significant part of the public comment period.

To address the possibility that a filing may not be submitted during the first 15 days of the public comment period, the final rule incorporates the Board's current policy that the Board may, in its discretion and based on the facts and circumstances, permit an extension of the public comment period, of an appropriate length up to 15 days, for an interested person that makes a timely request for both a copy of the required regulatory filing and additional time to file a comment regarding a proposal. In considering whether to grant a request for an extension, and the length of the extension to be granted, the Board has in the past and will continue to take into account such factors as when the proposal was announced and the regulatory filing made available to the public, when the request for the regulatory filing was made, and the specific reasons given by the requester for being unable to file a timely comment. A decision to grant an extension of the public comment period would *not* disqualify a proposal from action under the streamlined procedure.

d. Joint Requests To Extend the Comment Period

A number of commenters argued that a shortened processing period would frustrate the ability of community groups to conduct discussions with applicants in connection with a bank acquisition proposal regarding lending and other programs to help meet the convenience and needs of the community. These commenters indicated that a shorter regulatory review period would truncate the period for these discussions and potentially force premature objections to acquisition proposals, especially in situations that involve the initial entry of a banking organization into the community.

The Board believes that discussions between an insured institution and community representatives for purposes of identifying and helping to serve the banking needs of the community are appropriately and most effectively conducted throughout the year and should not be confined to the period when an acquisition proposal is under review. In the application/notice context, the Board has granted requests for an extension of the public comment period that were made jointly by an interested party and an applicant for the purpose of allowing completion of discussions regarding a matter, such as CRA performance or competitive divestitures, that is relevant to the statutory factors the Board must consider in reviewing the proposal. The final rule specifically incorporates this policy and states that a reasonable extension of the public comment period will be granted upon a joint request of an interested member of the public and the applicant. This type of extension will not disqualify an otherwise qualifying proposal from consideration under the streamlined procedure.

e. Protested Cases

The streamlined procedure proposed by the Board provided that the Board could require an applicant to follow the current 30 or 60 day procedure if the Board indicates to the applicant for any reason that the proposal does not qualify for the streamlined process. The Board also stated that it expected that proposals by well-run bank holding companies would be disqualified only sparingly and in extraordinary situations. Among the situations identified by the Board as meriting review under the normal 30/60-day procedure is the situation where a timely substantive public comment is received by the System that raises an issue that cannot be resolved by the Reserve Bank under its delegated authority.

A number of commenters argued that the Board should not disqualify a proposal from consideration under the streamlined process on the basis of a public comment regarding CRA or fair lending performance if the applicant organization's insured depository institutions have satisfactory or better CRA performance ratings or if the comment relates to a matter that was reviewed in the CRA examination process. Other commenters argued that a proposal should not be disqualified from streamlined processing if a comment is submitted that relates to information that is available to the Board outside the application process (such as HMDA data) or a matter uniquely within the Board's expertise (such as financial, managerial or competitive matters), or if the commenter has not first attempted to discuss the concerns with the acquiring organization outside the approval process.

On the other hand, a large number of community groups and representatives argued that the application/notice process provides an important opportunity for members of the public and representatives of affected communities to provide information to the System relating to the impact of a proposal on the community. These commenters argued that it is critical to preserve the ability of the public to have input into the government review process and for the Board to take a close look at proposals that raise concern in the affected community. These commenters argued that the Board should indicate in the regulation that submission of a comment would trigger the normal 30/60-day processing period.

The Board had indicated in its original proposal that the filing of a timely comment could trigger the normal review process, and has adopted the suggestion of commenters that this be specifically included in the rule. Thus, the final rule provides that the normal 30/60-day process applies in any case in which a timely substantive comment regarding a proposal is received by the System. A proposal that is considered under the normal process will be acted on as soon as the System completes its review of the proposal, which may be before expiration of the 30 or 60 day period.

The final rule provides that a comment will be considered timely if it is submitted in writing and is received by the appropriate Reserve Bank or by the Board before the expiration of the public comment period. A comment will be considered to be substantive unless the comment involves individual complaints, or raises frivolous, previously-considered or unsubstantiated claims, or irrelevant issues.[1] The Board notes that under this standard the vast majority of comments that have in the past been considered by the Board will continue to be viewed as substantive and will continue to be reviewed by the Board. A comment that is delegable will be carefully weighed in the review process by the Reserve Bank and any action taken by the Reserve Bank is subject to review by the Board. The Reserve Bank may seek additional information necessary to evaluate any delegable comment and may refer a comment for investigation to the appropriate federal banking agency or other relevant agency, if appropriate.

f. Late Comments

In its original proposal, the Board proposed to adhere to its current rules governing consideration of public comments, and to discontinue its practice of routinely considering comments, including supplemental comments filed by a timely commenter, that are filed after the close of the public comment period. The Board's Rules of Procedure currently provide that the Board is required to consider a comment involving an application or notice only if the comment is in writing and is received by the System prior to the expiration of the public comment period.

A number of commenters argued that the Board should continue routinely to consider late comments. Many of these comments focused on the potential under the original proposal that the public comment period could expire prior to the time that the regulatory filing was made and that any comment based on the regulatory filing was, therefore, likely to be late. Other commenters contended that public notice of proposals and of the closing date of the comment period is not adequate under the current rule, and, consequently, that late comments should be accepted and considered. In addition, commenters argued that the approval process is an important opportunity for the community to participate in the review of transactions that will directly affect the community, and that leeway should be given to the community to submit late comments. A number of community groups indicated that discussions with applicants, particularly applicants entering a community for the first time, often require substantial time and cannot always be completed during the public comment period.

The Board believes that the public often provides the System with important information in connection with acquisitions subject to System review. Consequently, the Board has determined to provide public notice and a significant period for public comment for all bank acquisition proposals subject to System review under the BHC Act, including proposals that qualify for the streamlined procedures.

As noted above, the Board has also taken a number of significant steps to improve the effectiveness of the public notice regarding bank acquisition proposals, including establishing a public listing focused on acquisitions that are subject to public comment and System review and making this list available by mail, Internet and fax. In addition, the Board has amended its original proposal to assure that the regulatory filing will be submitted at least 15 days prior to the expiration of the public comment period, and has reiterated its policies regarding extensions of the public comment period to accommodate joint discussions between members of the public and applicants as well as timely requests for a regulatory submission that has been filed after the start of the public comment period.

Moreover, the Board notes that the public may at any time submit comments regarding the effectiveness of an insured depository institution in meeting the convenience and needs of the community for consideration in connection with the on-site examination of the CRA performance of the institution. The CRA examination process involves a review of the actual lending performance of an institution and includes discussions by examiners with members of the public regarding the institution's performance. Comments submitted for consideration in the CRA examination process provide the most effective opportunity for the public to affect the CRA performance and CRA rating of any institution and provide a regularly re-occurring opportunity for public input.

For these reasons, the Board has determined to adhere to its established rules regarding the filing of comments on proposals subject to System review. Accordingly, the Board will not consider comments, including supplemental comments filed by a timely commenter, that are submitted after the close of the public comment period and the filing of a late comment will not disqualify a proposal from review under the streamlined procedure. The Board continues to reserve the right to consider late comments at its discretion, but expects to exercise that discretion only in extraordinary circumstances.

3. Information Requirements

For transactions that qualify for the streamlined procedure, the Board proposed to reduce substantially the information required to be filed with the System. For example, the Board proposed to eliminate the requirement that the applicant submit financial information otherwise available to the System and the requirement that the applicant provide competitive data in cases that meet the Board's and the Department of Justice's policies.

Many commenters applauded the reduction in information requirements for proposals that meet the criteria for streamlined processing. Commenters noted that the costs of preparing an application/notice are often substantial and argued that these costs are unnecessary in cases that meet objective criteria and do not raise any regulatory issue. Commenters believed that the savings would be substantial from reducing the paperwork associated with applications and notices.

A number of other commenters expressed concern that elimination of certain information requirements from the regulatory filing would reduce the

[1] The Board will develop supervisory guidance identifying the limited types of comments that may be considered under delegated authority.

ability of the System adequately to review a proposal and of commenters to assess the consequences of the proposal for the communities involved. In particular, a large number of commenters objected to eliminating the portion of the current application that requires an applicant to explain the effect of a bank acquisition on the convenience and needs of the affected communities. Commenters found this information especially helpful in understanding the effect of a proposal by an organization located outside the community to make its initial entry into the community.

The original proposal retained the requirement that applicants briefly describe the proposed transaction and the institutions involved, as well as the type of funding proposed. The final rule continues to require this information.

As an initial matter, the Board believes that very little additional information is needed to evaluate the financial, managerial and competitive factors regarding the types of non-complex proposals that qualify for streamlined processing. The System already receives, through reports and examinations, substantial information regarding the financial and managerial resources of bank holding companies and their subsidiaries. In addition, in order to qualify for the streamlined procedure, the proposal must meet objective competitive criteria designed to assure that the proposal does not raise an issue under those factors.

The Board agrees with commenters that the information regarding the effect of a proposal on the convenience and needs of affected communities currently provided by an acquiring bank holding company in its regulatory submission is new information relevant to the System's decision on the proposal that may not otherwise be available. Bank holding companies currently provide a brief description of the effects of an acquisition proposal on the convenience and needs of affected communities in the regulatory filing. The Board's experience has been that the description provided in the initial application is useful and is not burdensome. Accordingly, the Board has determined to retain the requirement that, as part of its initial filing for approval, an applicant briefly explain the effect of a proposal on the convenience and needs of the affected communities. As under the current application/notice procedure, this explanation may contain a discussion of the CRA performance record of the acquiring organization and any actions that the organization proposes to take in order to help address the credit and other banking needs of the affected communities.

In addition, the final rule requires the applicant to outline the steps the organization is taking to address weaknesses in the CRA performance of insured depository institution subsidiaries of the acquiring holding company that have received a less than satisfactory CRA performance rating. The Board currently requests this information in the application process and believes this information is important for evaluating the ability of an acquiring organization to meet the convenience and needs of communities in which a bank or savings association acquisition is proposed. A holding company may satisfy this information requirement by filing copies of information prepared for the primary federal banking supervisor of the relevant institution, other documents already prepared by the organization, or a summary of the steps taken and being implemented.

The final rule also modifies, in certain respects, the information related to the financial, managerial and competitive factors that must be provided. These changes require limited information regarding the funding of an acquisition, certain *pro forma* financial information regarding the acquiring bank holding company and financial information regarding any nonbanking company that is proposed to be acquired. In addition, limited information regarding proposed new management is requested in certain cases. The final rule also clarifies the information needed for a new principal shareholder of a bank holding company to fulfill the notice requirement of the Change in Bank Control Act in connection with a transaction that is reviewed under the streamlined procedures of section 3 of the BHC Act.

In connection with nonbanking proposals, the final rule modifies the requirement that market index information be submitted in every case in light of the fact that competition in many nonbanking activities is broad and is measured on a national or regional basis that often makes calculation of market indexes burdensome and unnecessary. The rule requires instead a brief description of the competitive effects of the proposal in the relevant market and, in markets that are local in nature, a list of major competitors. It is expected that the Board or the appropriate Reserve Bank would indicate to an applicant when market index information is necessary. Finally, the rule requires a bank holding company that seeks approval under the streamlined procedure for a nonbanking proposal to describe briefly the public benefits of the proposal.

4. Criteria To Qualify for Streamlined Procedures

Many commenters lauded the use of objective criteria for identifying proposals that would qualify for streamlined review. These commenters found reliance on criteria that identify well-run bank holding companies to be a constructive method of rewarding organizations that are well run and encouraging other organizations to take steps to meet these criteria. A significant number of commenters also generally agreed that the standards proposed by the Board would establish appropriate levels for identifying proposals that clearly meet the statutory factors that the Board must consider under the BHC Act.

As discussed below, many other commenters expressed concern that establishing a streamlined procedure based on objective criteria would result in too little analysis of proposals under the streamlined procedure. A large number of commenters also argued that it is inappropriate to rely on CRA performance ratings as qualifying criteria for the convenience and needs standard.

The Board has adopted several modifications to the qualifying criteria to address concerns raised by commenters.

a. Definition of Well-Capitalized and Well-Managed Bank Holding Companies

In connection with its interim implementation of the Regulatory Relief Act,[2] the Board proposed to define a "well-capitalized bank holding company" for purposes of determining qualification for the streamlined procedure as any bank holding company that:

* Maintains a total risk-based capital ratio of 10.0 percent or greater and a Tier 1 risk-based capital ratio of 6.0 percent or greater, on a consolidated basis both before and immediately following consummation of the proposal;

* Maintains either a Tier 1 leverage ratio of 4.0 percent or greater or, if the bank holding company has a composite examination rating of 1 or has implemented the risk-based capital measure for market risk, a Tier 1 leverage ratio of 3.0 percent or greater, on a consolidated basis both before and immediately following consummation of the proposal; and

* Is not subject to any written agreement, order, capital directive, asset maintenance requirement, or prompt corrective action directive to meet or maintain a higher capital level for any capital measure.

Commenters generally supported these levels for defining a well-capitalized bank holding company. Commenters noted that the risk-based levels parallel the level at which an insured bank is considered to be well-capitalized for purposes of various provisions of federal law.

Most commenters that addressed these requirements agreed that the leverage ratio can be an inexact measure of capital adequacy for many bank holding companies, particularly for holding companies that engage in significant nonbanking activities or for bank holding companies that have significant trading portfolios and fee-generating off-balance sheet activities. Accordingly, a number of commenters requested that the Board eliminate or further reduce the leverage requirement. Large domestic banking organizations contended that the arguments for adopting a lower leverage ratio for defining a well-capitalized bank holding company than is used in defining a well-capitalized bank—namely that the leverage ratio is an inexact measure in certain situations—also militate for elimination of the leverage ratio. Foreign banks in particular assert that adoption of a leverage requirement would violate the principle of national treatment and would exclude strong and well-capitalized foreign banking organizations from the streamlined procedure because a leverage ratio is not required under the Capital Accord developed by the Basle Committee on Banking Regulations and Supervisory Practices ("Basle Capital Accord") and, consequently, is not applicable to banks in many foreign countries.

Smaller bank holding companies, on the other hand, argued that the leverage ratio should be applicable to all organizations equally. These organizations argued that eliminating or adopting a lower leverage standard would create an advantage for large organizations in making acquisitions.

The Board believes that, in the limited context of determining the qualifying criteria for the streamlined procedure, reliance on the risk-based capital ratios is sufficient. As noted above, the risk-based levels adopted are the same levels required in defining a well-capitalized bank.

The final rule does not establish a minimum leverage ratio for a bank holding company to qualify for the streamlined procedures because, as noted above and in the Board's original proposal, the leverage ratio is an inexact measure in certain situations. The Board has thus determined to apply a definition that applies equally to all organizations, regardless of size, origin or composition of balance sheet. The Board retains the ability to disqualify any organization from using the streamlined procedure if any financial or other factor, including the organization's leverage ratio, indicates that a closer review of the proposal is appropriate. The leverage ratio continues to be a criterion in defining whether an insured depository institution subsidiary of the holding company is well-capitalized.

To qualify for the streamlined procedure, a bank holding company must meet the risk-based capital levels on a consolidated basis. The Board generally will not apply these definitions to intermediate-tier bank holding companies involved in the transaction. The procedure allows the Board to notify a bank holding company that it should follow the normal 30/60-day procedure if the System has concern about the financial strength of an intermediate-tier bank holding company that, for example, is itself an operating company or that contains significant debt.

Several commenters argued that the Board should adopt a process for granting exceptions to the capital requirements where the applicant can demonstrate that capital ratios do not adequately indicate the financial strength of the organization. In light of the other changes that have been adopted, the Board does not believe that a special exceptions process is necessary or appropriate. The capital criteria are based on internationally accepted risk-based standards, and are for the limited purpose of identifying companies that qualify for a streamlined review process. Banking organizations that do not qualify under these criteria are still permitted to make acquisitions and engage in permissible nonbanking activities by following the normal 30/60 review process. As noted above, the standard of 10 percent total risk-based capital and 6 percent Tier 1 risk-based capital applies to all organizations, including foreign banking organizations, seeking to take advantage of the streamlined procedures. In its request for comment, the Board specifically requested comment on ways in which the qualifying criteria should be defined for foreign banking organizations in order to assure national treatment of foreign banking organizations under the streamlined procedures. Based on these comments, the final rule includes a number of provisions specifically applicable to foreign banking organizations.

Several commenters argued that, for purposes of determining whether a foreign banking organization meets the capital levels necessary to qualify for the streamlined procedure, a foreign banking organization should be permitted to use the definition of capital adopted by the home country of the foreign banking organization. For foreign banking organizations from countries that have adopted capital standards in all respects consistent with the Basle Capital Accord, the Board generally agrees that this permits the least burdensome approach to applying equivalent standards. Accordingly, the final rule provides that, for purposes of determining whether a foreign banking organization meets the capital ratios described above for a well-capitalized bank holding company, a foreign banking organization may use the capital terms and definitions of its home country provided that those standards are consistent in all respects with the Basle Capital Accord. If the home country has not adopted those standards, the foreign banking organization may use the streamlined procedures if it obtains from the Board a prior determination that its capital is equivalent to the capital that would be required of a U.S. banking organization for these purposes.

The Regulatory Relief Act provides that, for purposes of determining qualification for the streamlined procedures for nonbanking proposals, U.S. branches and agencies of foreign banking organizations are considered banks and must meet the capital and managerial standards applicable to U.S. banks. The Board recognizes that branches and agencies are a part of the foreign banking organization and that capital is not allocated separately to a branch or agency. Accordingly, for purposes of determining the qualification for the streamlined procedures, the final rule deems the capital ratios of U.S. branches and agencies of foreign banking organizations to be the same as the capital level of the foreign banking organization.

For purposes of determining whether a foreign banking organization meets the managerial definition for the streamlined procedures, the final rule requires that: (1) The largest U.S. branch, agency or depository institution controlled by the foreign bank have

[2] The Board specifically requested comment on the definition of well-capitalized bank holding company in connection with enactment of the Regulatory Relief Act. Because the definition is contained in Regulation Y, the Board considered comments regarding that proposed definition in connection with this overall revision of Regulation Y.

received at least a "satisfactory" composite examination rating from its U.S. banking supervisor; (2) U.S. branches, agencies and depository institutions representing at least 80 percent of the U.S. risk-weighted assets controlled by the foreign banking organization at such offices have received at least a "satisfactory" composite examination rating from the U.S. banking supervisors; and (3) the overall rating of the foreign banking organization's combined U.S. operations is at least "satisfactory." Further, no branch, agency or depository institution may have received one of the two lowest composite ratings at its most recent examination. In addition, as with domestic bank holding companies, no U.S. branch, agency or insured depository institution may be subject to an asset maintenance agreement with its chartering or licensing authority. Under the final rule, the System may disqualify any banking organization, including a foreign banking organization, from using the streamlined procedure for any appropriate reason, including if information from the primary supervisor of a domestic bank or home country supervisor for a foreign bank indicates that a more in-depth review of proposals involving that organization is warranted.

The final rule also retains the requirement that, in order to qualify for the streamlined procedure for bank acquisition proposals, a foreign banking organization must meet the home country supervision and information sufficiency requirements of the BHC Act.

Several commenters requested clarification of the types of supervisory actions that would disqualify a bank holding company from using the streamlined procedures. In this regard, the Regulatory Relief Act provides that, for purposes of the streamlined nonbanking procedures contained in that Act, a bank holding company may not be subject to certain types of administrative enforcement proceedings. The final rule clarifies that a bank holding company may not use the streamlined procedures for any nonbanking proposal or any bank acquisition proposal if any formal order, including a cease and desist order, written agreement, capital directive, asset maintenance agreement or other order or directive, is outstanding or any formal administrative action is pending against the bank holding company or any of its insured depository institutions. The System may, if appropriate, require a bank holding company to follow the normal 30/60-day procedure if an informal action, such as a memorandum of understanding or supervisory letter, pending against the bank holding company or any affiliate indicates that a more in-depth review is appropriate.

The Regulatory Relief Act permits exclusion of recently acquired insured depository institutions under certain circumstances in determining whether a bank holding company is well-managed. This exclusion has been adopted in the final rule for purposes of determining a bank holding company's qualification for the streamlined procedures for bank acquisition proposals as well as for nonbanking proposals.

The Regulatory Relief Act also permits the Board to adjust the level of insured depository institutions that must meet the well-managed definition for purposes of the streamlined nonbanking procedures, so long as the level adopted by the Board is consistent with safety and soundness and the purposes of the BHC Act. For purposes of the streamlined nonbanking procedures, the Board had proposed that the parent bank holding company, the lead insured depository institution and insured depository institutions controlling at least 80 percent of the insured depository institution assets of the holding company be well-managed (rather than 90 percent as in the Regulatory Relief Act). In addition, no insured depository institution controlled by the bank holding company (other than a recently acquired institution, subject to the limitations discussed above) may have received one of the 2 lowest composite examination ratings.

As noted above, commenters addressing this issue were largely in favor of this definition. The Board believes that, in the limited context of determining the availability of the streamlined procedures, the definition proposed and adopted in the final rule, and in particular, the level of insured depository institutions that must be well-managed, will adequately identify organizations that merit a more in-depth review and is a definition that is consistent with safety and soundness and the purposes of the BHC Act. The Board notes that the Board retains the authority and discretion to require any organization to follow the normal procedures if appropriate.

b. Competitive Criteria

A few commenters suggested that the Board amend the competitive criteria by eliminating or raising the qualifying threshold levels of the Herfindahl-Hirschman Index ("HHI"), by increasing or eliminating the market share test, and by allowing a bank holding company to meet the competitive criteria after making divestitures. The Board has determined not to change its formulation of the competitive standard for the streamlined procedures.

The competitive criteria proposed and adopted by the Board reflect the HHI thresholds above which a bank acquisition proposal comes under close scrutiny by the Department of Justice ("DOJ") under the DOJ's Horizontal Merger Guidelines as applied to bank acquisitions, and by the Board under its existing delegation rules. In conducting a competitive analysis, both the Board and the courts have found the resulting market share to be an important indicator of the competitive effects of a proposal. Finally, divestitures to address competitive issues are not a normal event and typically indicate a transaction that requires an evaluation of information and factors beyond what may be accomplished in a streamlined procedure.

c. Convenience and Needs

Many commenters objected to the use of the CRA examination rating as a measure of whether a proposal would meet the convenience and needs of the communities affected by a bank acquisition proposal. These commenters argued that CRA performance ratings are often outdated, are as a rule too high and, at best, represent an average of an institution's overall performance. These commenters also argued that reliance on CRA ratings would amount to a safe-harbor for virtually all institutions, and would represent a step that Congress considered and rejected in adopting the Regulatory Relief Act. In addition, commenters objected that use of these criteria would eliminate an in-depth review of the convenience and needs standard in all but protested cases. Commenters also objected to permitting an organization with up to 20 percent of its assets in institutions with unsatisfactory CRA performance ratings to take advantage of streamlined procedures.

Other commenters argued that CRA ratings provide the most reliable indicator of an institution's record of helping to meet the credit and other banking needs of the institution's existing communities and represent a strong indicator of the institution's willingness and ability to meet the banking needs of new communities. Several of these commenters also contended that reliance on CRA performance ratings as a criterion for streamlined processing of acquisition proposals would encourage organizations to meet and maintain satisfactory performance levels.

After review of the comments, the Board has determined to amend the criteria for qualifying for the streamlined procedure. The criteria adopted require that the record show that the proposal is consistent with the convenience and needs standard under the BHC Act and that the acquiring organization have satisfactory or outstanding performance ratings under the CRA at its lead insured depository institution and insured institutions representing at least 80 percent of the organization's banking assets.

As noted above, the Board has determined to retain the portion of the current regulatory filing in which the applicant describes the effect of the proposal on the convenience and needs of the affected communities. The System would evaluate this information as well as other information available to the System, including CRA performance ratings, in determining whether a proposal meets the convenience and needs factor in connection with the System's review of the proposal. The Board continues to believe that the CRA performance rating is a valuable and important measure of the record and ability of an applicant to meet the convenience and needs of a community, and the Board would, as currently, give significant weight to that performance record in the streamlined process.

The Board believes that it may adopt the streamlined procedures as amended without any statutory changes to the BHC Act. The provisions under consideration by Congress in connection with the Regulatory Relief Act would have taken additional steps, including eliminating any public notice and opportunity for comment on bank acquisition proposals and eliminating consultation with the primary supervisor for the banks involved in the transaction.

d. Size

The Board proposed to limit to 35 percent of the acquiring holding company's assets the aggregate amount of bank and nonbanking assets that may be acquired during a 12-month period using the streamlined procedures. This aggregate limit would be calculated by reference to transactions approved under the streamlined procedure and would not include transactions that are reviewed under the normal 30/60-day process.

Several commenters argued that the 35 percent asset test would allow very significant proposals by large bank holding companies to be considered under the streamlined procedures, including mergers among institutions that rank among the ten largest banking organizations in the United States. These commenters contended that transactions that are large in absolute terms always require in-depth agency review.

A few other commenters argued, on the other hand, that it was important to assure that the streamlined procedures are available to acquisition proposals by large bank holding companies because acquisitions by these institutions allow the benefits of reduced regulatory costs to be shared by a larger number of consumers. These commenters suggested that the Board expand the size criteria in various ways.

Still other commenters argued that the size restriction would disproportionately limit transactions by small bank holding companies. These commenters contended that a higher limit should be established for small organizations because the objective criteria proposed by the Board are particularly effective in identifying transactions that would not raise statutory issues for small bank holding companies.

In addition to these comments, the Board considered that the Regulatory Relief Act applies a limit on nonbanking acquisitions of 10 percent of the acquiring bank holding company's assets, unless the Board finds that a higher limit is consistent with safety and soundness and the purposes of the BHC Act. The Regulatory Relief Act also includes a limit of 15 percent of the holding company's consolidated Tier 1 capital on the gross consideration that may be paid by a bank holding company in a nonbanking acquisition that is reviewed under the streamlined procedures contained in that Act.

In view of these comments and enactment of the Regulatory Relief Act, the Board has made two amendments to the size criterion originally proposed. First, the Board has adopted an absolute limit of $7.5 billion to the size of an individual acquisition that may be reviewed under the streamlined procedures. This limit would require an in-depth review—on the basis of size alone—of any combination between organizations within approximately the one-hundred largest bank holding companies or involving nonbanking companies with a significant amount of assets.

The second change to the size criterion involves adoption of a limit on the gross consideration that may be paid in a nonbanking acquisition by a bank holding company under the streamlined process. As noted above, this limit was included in the Regulatory Relief Act. The Board believes that, in the context of a nonbanking acquisition, a measure based on consideration paid often represents a better test of the potential impact of a proposal on the financial resources of the acquiring organization than a test based on the amount of assets acquired because nonbanking acquisitions often involve the purchase of expertise and fee-based businesses that do not involve significant assets.

As noted above, the Regulatory Relief Act adopted a limit of 10 percent of assets on the size of any individual nonbanking acquisition that may occur under the streamlined procedures. The Regulatory Relief Act allows the Board, by regulation, to adopt an asset size limit that exceeds the 10 percent limit if the Board determines that a different percentage is consistent with safety and soundness and the purposes of the BHC Act.

The Board has determined to adopt its proposed 35 percent limit. The size limit adopted by the Board takes account of the aggregate size of all acquisitions—both bank and nonbank acquisitions—reviewed under the streamlined procedures over a period of time that approximates the supervisory examination schedule for most banking organizations. This aggregate limit allows better monitoring of the overall growth of an organization than does an individual transaction limit. As noted above, the Board has also adopted an absolute limit of $7.5 billion on any individual acquisition that may be reviewed under the streamlined procedure, as well as a limit on the amount of consideration that may be paid in a nonbanking acquisition. The Board has also retained the ability to require review of any transaction using the normal 30/60-day process if warranted for safety and soundness or other reasons. The Board believes that, in view of these other limitations, the aggregate 35 percent size limit is consistent with safety and soundness and the purposes of the BHC Act.

The Board has determined not to raise the size of its proposed exception from the growth limit for smaller bank holding companies. The Board proposed to permit a qualifying bank holding company to make acquisitions without regard to the 35 percent of asset limitation so long as the total assets of the bank holding company remained below $300 million on a *pro forma* basis. The Board believes that it is important to monitor rapid growth in the relative size of an organization and that an examination rating may not accurately reflect the financial and managerial strength of an organization that has grown significantly since the last examination was conducted. The Board also notes that a significant

number of acquisitions by smaller bank holding companies that exceed the growth limit are likely to continue to qualify for the normal 30-day delegated action procedure.

e. Notice to Primary Bank Supervisor

In the case of the acquisition of a bank, the BHC Act requires that the primary supervisor for the bank to be acquired be given 30 calendar days in which to submit comments on the transaction. A similar provision was enacted in the Regulatory Relief Act that requires 30 days notice to be given to the Director of the Office of Thrift Supervision of a proposal by a bank holding company to acquire a savings association.

Financial, managerial, legal, safety and soundness, and other concerns that are known to the primary bank supervisor generally are shared with the System through ongoing arrangements for sharing supervisory information. Similarly, the System and the Office of Thrift Supervision regularly coordinate efforts and share information. Consequently, in practice, the primary supervisor generally allows the notice period regarding an application to expire without filing comments.

To implement this statutory requirement, the final rule requires the appropriate Reserve Bank to provide notice of each bank acquisition proposal to the primary supervisor for the relevant banks and of each savings association acquisition to the Director of OTS. The final rule allows the System to act on any proposal that qualifies for the streamlined procedure even though the period for obtaining comments from the primary supervisor has not expired. The final rule provides, however, that the System's action is subject to revocation if the primary supervisor objects to a transaction within the relevant notice period. Because bank acquisition proposals may not be consummated for at least 15 days after System action—which is the minimum post-approval period permitted by statute to allow DOJ review of a bank acquisition—it is expected that the notice period for the primary supervisor will expire prior to consummation of a bank acquisition proposal. In the case of thrift acquisitions, the OTS is working with the Board to streamline the comment process.

5. Preacceptance Review Period

The Board proposed to eliminate the current period prior to acceptance of a regulatory filing regarding a bank acquisition proposal during which the Reserve Bank reviews the informational sufficiency of the filing. Instead, the Board proposed to accept immediately any submission that contains the information specified in the rule for the proposed type of transaction. This change eliminates a pre-acceptance period that typically averages 25 days.

While commenters were generally in favor of this change, a number of commenters objected that elimination of the pre-acceptance period would reduce the ability of the System to obtain information needed to evaluate properly the merits of a proposal. The Board disagrees. The elimination of the pre-acceptance period does not in any way diminish the ability of the System at any time to request, or the responsibility of the applicant/notificant to provide, additional relevant information needed to evaluate a proposal. In addition, the Board has retained the right to return as incomplete any submission that does not contain the information specified in the regulation or appropriate form.

The Board had previously eliminated a similar pre-acceptance period that applied to nonbanking acquisitions. The Board's experience with elimination of the pre-acceptance period for nonbanking acquisitions has indicated that a similar period is not necessary for bank acquisition proposals.

6. Hart-Scott-Rodino Act

One commenter expressed concern whether bank and nonbanking acquisitions approved under the Board's streamlined procedures would be exempt from the notification requirements of section 7A of the Clayton Act. Section 7A of the Clayton Act, as added by the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (15 U.S.C. 18A) ("HSR Act"), requires that persons contemplating certain mergers and acquisitions provide notice of the transaction to the Federal Trade Commission ("FTC") and the DOJ. The HSR Act, however, specifically provides an exemption from these filing requirements for transactions that require agency approval under section 3 of the BHC Act (*i.e.*, the acquisition of shares or control of a bank or bank holding company). In addition, the HSR Act provides an exemption for transactions that require agency approval under section 4 of the BHC Act (*i.e.*, the acquisition by a bank holding company of a nonbanking company) if the acquiring company provides to the FTC and DOJ copies of all information filed with the Board.

The Board believes that the streamlined procedures under Regulation Y continue to satisfy the requirement for an exemption from the HSR Act for both bank and nonbanking acquisitions. The streamlined procedures represent a more streamlined procedure for obtaining System approval for the acquisition of a bank or bank holding company under section 3 or the acquisition of a nonbanking company under section 4 of the BHC Act. As provided in the HSR Act, bank holding companies would continue to be required to file with the DOJ and FTC the information submitted to the Board in connection with a nonbanking acquisition. The staff of the DOJ and FTC have informally agreed with this position.

7. Conditional Approval

The Board has authority to impose conditions in connection with its action on any proposal, and has in fact imposed conditions that address safety and soundness, CRA, conflicts of interest, and competitive issues in a number of prior cases. The final rule incorporates this policy in order to make clear that this authority is available in connection with action on any case, including a case that qualifies for the streamlined procedure.

8. Waiver Process

The Board's current regulation permits bank holding companies to seek a waiver of the application filing requirement under the BHC Act for transactions that involve the acquisition of stock of a bank for an instant in time as part of a bank-to-bank merger reviewed by another federal banking agency under the Bank Merger Act. The Board proposed three changes to this portion of the regulation. First, the Board proposed to reduce the period for its review of waiver requests to 10 days from 30 days. Second, the Board proposed to specify in the regulation the information that must be provided with a waiver request. Third, the Board proposed to make the waiver process available for certain internal corporate reorganizations.

Commenters discussing this proposal generally supported these changes. Several commenters suggested that the Board make waivers automatic and eliminate the filing and review requirement altogether. Another commenter argued, on the other hand, that the Board should not allow the waiver of any application and should require application filings in every case.

The Board continues to believe that the waiver process represents a sensible reduction in duplication of regulatory review of proposals that are subject to review under identical standards in two different federal statutes. Accordingly, the Board has determined to retain the waiver process with the changes proposed. The Board believes that a 10-day review process is adequate and necessary to allow the System to identify any aspect of the proposal that may have a material effect on the bank holding company or otherwise fall outside the purview of the federal banking agency that is reviewing the merits of the underlying transaction.

The Board also believes that, as a general matter, corporate reorganizations (such as the formation of a wholly owned intermediate-tier holding company, the merger of wholly owned holding companies, and the transfer of a bank from one part of an organization to another part of the same organization) do not generally require agency review. In each case, the bank holding company already has System approval to control and operate the banks involved in the transaction. In these cases, the Board agrees with commenters that a waiver should be automatic. The supervisory process provides the Board with ample authority and opportunity to address concerns that may arise from internal corporate reorganizations. Accordingly, the Board has adopted its proposal to extend the waiver process to internal corporate reorganizations and has made these waivers available without any filing requirement.[3]

9. Small Bank Holding Company Policy Statement

As published in the proposed revision to Regulation Y, the Board's policy statement on one-bank holding companies was revised to generalize its applicability beyond the formation of a bank holding company to include acquisitions by qualifying small bank holding companies, to reduce the burden in the applications process, to incorporate previously informal policies that evolved since the original publication of the statement, and to remove obsolete language. Specifically, the Board proposed to permit small bank holding companies whose subsidiary banks are well managed and well-capitalized and whose proposals result in parent company debt to equity of less than 1.0:1, to be eligible for streamlined processing. These companies would also be permitted to pay dividends under certain conditions that are more clearly defined than in the existing statement. Proposals involving higher parent company leverage or a bank in less-than-satisfactory condition would be subjected to a focused review of the parent-level debt servicing ability, or other issue presented, under the Board's normal procedures. These organizations would also be restricted from paying dividends until their leverage was reduced to a 1.0:1 level and the organization is otherwise in satisfactory condition.

The final statement incorporates several changes that further reduce burden and make the policy statement more consistent with the general revisions to Regulation Y. It also incorporates suggestions from commenters and further clarifies the statement.

The major substantive change eliminates a disparity between larger and smaller bank holding companies in qualifying for the Board's streamlined procedures. The final statement incorporates the requirement that, to qualify for the new streamlined procedure, banks controlling 80 percent of the organization must be well-managed and well-capitalized, as opposed to the requirement in the previous version of the statement that all banks meet these criteria.

To address concern about the availability of the streamlined procedures to small bank holding companies that have not yet received an inspection rating, the final rule permits any unrated bank holding company, including a small bank holding company, to be eligible for streamlined processing as long as its subsidiary bank(s) are well-capitalized and well-rated and the bank holding company obtains a determination from the System that the company qualifies for the streamlined procedures.

Several commenters urged the Board to raise the $150 million size limit to qualify as a small bank holding company. The Board has determined not to raise this level at this time. The Board is concerned that an increase in the availability of higher levels of debt without consolidated capital requirements would raise overall risks to the banking system, including increased risk to the Bank Insurance Fund, without sufficient offsetting public benefits.

The statement was also reformatted to make it more understandable and several technical and conforming changes have been adopted.

10. One-Bank Holding Company Formations

The Board proposed a number of modifications to the streamlined notice procedure governing proposals by existing shareholders of a bank to establish a bank holding company. To qualify for this procedure under current rules, the shareholders of the bank must acquire at least 80 percent of the shares of the new bank holding company in substantially the same proportion as the shareholders' bank ownership, all shareholders must certify that the shareholders are not subject to any supervisory or administrative action, and the bank holding company must identify the shareholders of the new bank holding company.

The Board proposed to reduce the percentage of the bank holding company that must be owned by shareholders of the bank from 80 to 67 percent and to require only the principal shareholders (*i.e.*, shareholders owning in excess of 10 percent of the bank holding company) to certify that they are not subject to any supervisory or administrative action. In addition, the Board proposed to eliminate the publication requirement for this category of bank holding company formation because no publication is required for these transactions under the Riegle Act and because no regulatory purpose is served by requiring publication of these transactions, which represent only a corporate reorganization.

Only two commenters addressed these proposed revisions. Both supported the revisions and stated that the changes would help reduce unnecessary burden on individuals forming small bank holding companies. Accordingly, the Board has adopted the proposed changes in the final rule.

B. Explanation of Proposed Changes to the Nonbanking Provisions

1. General Review and Updating of Nonbanking Activities

Section 4(c)(8) of the BHC Act generally provides that a bank holding company may engage in, or acquire shares of a company engaged in, activities that the Board has determined, after notice and opportunity for comment, "to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." The Board may make this determination by order or by regulation. The Board has to date determined by regulation that 24 activities are "closely related to banking" and has determined by individual order that a number of additional activities are also "closely related to banking."

Once the Board has determined—either by regulation or by order—that an activity is "closely related to banking," the Board need not make that determination again in subsequent cases. Review of subsequent cases is limited to determining whether the

[3] Under the final rule, the waiver process is not available for transactions by a holding company that is organized in mutual form or for transactions that occur outside the United States. These cases typically raise a variety of issues that require review in the application/notice process.

conduct of the nonbanking activity by the applying bank holding company would result in public benefits that outweigh the potential adverse effects (the "proper incident" test).

The list of nonbanking activities contained in Regulation Y (the "laundry list") is intended to serve the purpose of providing a convenient and detailed list of most of the activities that the Board has found to be closely related to banking and therefore permissible for bank holding companies. The Regulation Y laundry list also designates the activities that may be approved by the Reserve Banks under delegated authority, although the Board has delegated authority for Reserve Banks to act on proposals involving a number of activities approved by order during intervals between modifications of Regulation Y.

The Board has adopted its proposed reorganization and revision of the list of permissible nonbanking activities contained in Regulation Y. Commenters generally agreed that reorganizing the list into categories of functionally related activities would make the list easier to understand and make it easier for bank holding companies to obtain approval to engage in related activities. The Board intends that this new organization of the laundry list permit a bank holding company to obtain approval at one time to engage in all of the activities on the laundry list, all activities listed in a functional category, or, at the holding company's choosing, any specific activity within a category.

As explained above, the Board has also amended Regulation Y to incorporate the changes enacted in the Regulatory Relief Act that eliminate the prior approval requirement for well-run bank holding companies that propose to engage *de novo* in nonbanking activities that have been permitted by regulation. This change will significantly reduce regulatory burden and improve the ability of well-run bank holding companies to respond quickly to changes in the marketplace by eliminating the requirement that these companies obtain System approval prior to commencing *de novo* an activity permitted by regulation. This change will also permit a well-run bank holding company, without any prior notice or Board approval, to commence immediately any activity that is currently on the laundry list, any activity that has been added to the regulatory list of permissible activities in this final rule, and any new activity that is added to the regulatory laundry list in the future, provided that the bank holding company meets the qualifying criteria at the time the nonbanking activity is commenced. A bank holding company that does not qualify under the final rule may file a notice seeking approval to engage in any or all activities contained on the laundry list, as reorganized in this final rule.

The Board has also adopted a streamlined procedure for well-run bank holding companies to obtain System approval to make nonbanking acquisitions that fall within the size limits noted above. This streamlined procedure is also available for proposals to engage *de novo* in nonbanking activities that have been permitted only by order.

As explained more fully below, the Board has amended the regulatory list of permissible activities to include nonbanking activities that previously have been determined by order to be closely related to banking. Among the activities that have been included are: (1) Riskless principal transactions; (2) private placement services; (3) foreign exchange trading for a bank holding company's own account; (4) dealing and related activities in gold, silver, platinum and palladium; (5) employee benefits consulting; (6) career counseling services; (7) asset management, servicing and collection activities; (8) acquiring and resolving debt-in-default; (9) printing and selling checks; and (10) providing real-estate settlement services.

In addition, the Board has broadened the scope of permissible derivatives and foreign exchange activities to assure that bank holding companies may conduct these activities to the same degree as banks. As explained below, the final rule also removes several restrictions on these activities that apply to bank holding companies but do not apply to banks that conduct these activities.

2. Removal of Restrictions Governing Permissible Activities

The Board has determined to remove a significant number of restrictions currently contained in the regulation that are outmoded, have been superseded by Board order, or do not apply to insured depository institutions that conduct the same activity. The removal of these restrictions from the regulation does not affect the Board's determination that each activity contained on the laundry list is so closely related to banking as to be a proper incident thereto. A detailed discussion of the restrictions that have been removed is contained in subsections (3), (5) and (6), or the section below explaining "Restrictions Removed from Permissible Nonbanking Activities.".

The Board has determined to grant relief from these conditions to all bank holding companies authorized to conduct each activity, without the need for a specific filing by any individual bank holding company. Henceforth, a bank holding company authorized to conduct an activity on the revised laundry list may conduct that activity subject to the limitations retained in this final rule and to other applicable laws. This relief extends only to the restrictions described as being removed in subsections (3), (5) or (6), or the section below explaining "Restrictions Removed from Permissible Nonbanking Activities." In particular, the relief does not extend to commitments or conditions that relate to the financial resources of a particular bank holding company or its subsidiaries, or to commitments or conditions that relate to the risk management polices of the organization, periods for divestiture of impermissible assets or shares, or other commitments or conditions that are not discussed in subsections (3), (5), or (6) or the section below explaining "Restrictions Removed from Permissible Nonbanking Activities." Bank holding companies that have committed to comply with restrictions not described in those sections as being removed may in writing request a determination that the condition or commitment is no longer appropriate.

In granting this relief, the Board notes that some of the conditions removed from activities on the Regulation Y laundry list involve restrictions imposed under other laws and regulations, such as the federal securities laws or the Commodity Exchange Act. The Board's action does not relieve any bank holding company of its obligation to conduct each activity in accordance with relevant state and federal law governing the activity. Other restrictions that have been removed describe good business practice but are not required to define the lawful scope of permissible activity. The Board will continue through the inspection process to monitor carefully the conduct of nonbanking activities by individual bank holding companies and reserves the right to impose any condition on the nonbanking activities or operations of any bank holding company as appropriate to assure that the activity is conducted in a safe and sound manner and within the authority granted by the Board.

3. Revision of Policy Statement Governing Investment Advisory Activities

The Board proposed to remove four restrictions contained in its 1972 interpretive rule regarding the investment advisory activities of bank holding companies with respect to mutual funds and other investment companies. These restrictions prohibit a bank holding company from:

* Owning any shares of a mutual fund advised by the bank holding company;
* Lending to a mutual fund advised by the bank holding company;
* Accepting shares of a mutual fund that the holding company advises as collateral for any loan to a customer for the purpose of purchasing those mutual fund shares; and
* Serving as an investment adviser to an investment company or mutual fund that has a name that is similar to, or a variation of, the name of the bank holding company or any of its subsidiary banks.

These restrictions are intended to ensure that a bank holding company does not control a mutual fund in violation of the Glass-Steagall Act, as well as to mitigate potential conflicts of interests and the potential for customer confusion about the uninsured nature of investment company shares. The Board had previously removed a prohibition on a bank holding company purchasing, as a fiduciary, shares of a mutual fund advised by the holding company as well as restrictions contained in a staff letter (the "Sovran letter") on the sale of mutual funds by employees of a holding company and its affiliates.

As the Board noted in its proposal, existing statutory provisions appear adequate to address concerns about the ownership of shares of a mutual fund by the bank holding company. In particular, the investment limitations of section 4 of the BHC Act appear adequate to mitigate potential conflicts of interests that could result from removal of the investment restriction and limit the ability of a bank holding company to acquire more than 5 percent of the voting shares of or to control a mutual fund it advises.

Removal of the two lending restrictions would permit bank holding companies and their affiliates to make certain loans to the extent permissible under applicable federal or state law. For example, federal law permits insured banks, within limits, to make loans to a mutual fund advised by the bank, and the federal securities laws govern the extension of credit by any broker/dealer to a customer to purchase shares of a mutual fund. The System expects that extensions of credit by the holding company to a mutual fund or to a customer who uses the shares as collateral for the loan would be done on a safe and sound basis.

The Board proposed to replace the fourth restriction with a provision permitting similar names so long as: (1) The investment company name is not identical to that of the holding company or an affiliated insured depository institution; (2) the investment company name does not include the term "bank,"; and (3) the holding company or investment company discloses to customers in writing the role of the holding company as an adviser to the investment company and that shares of the investment company are not federally insured and are not obligations of or guaranteed by any insured depository institution. The SEC permits an investment company to have a name similar to that of an insured depository institution provided that the investment company makes a number of disclosures that advise customers that the investment company is not federally insured or guaranteed by the insured depository institution.[4]

Many commenters strongly supported these proposed revisions. Commenters stated that these changes would remove restrictions addressed more directly by other provisions of law and would allow bank holding companies to compete on a more equal basis with other investment advisors. Several commenters urged the Board to allow an investment company advised by a bank holding company to have a name identical to that of the bank holding company so long as the name is not identical to that of any subsidiary bank of the holding company. These commenters also contended that the Board's disclosure requirements in this area are duplicative and therefore should be eliminated. A small number of other commenters objected that the Board's proposal would cause increased confusion among customers regarding the nature of uninsured investment products.

After review of the comments, the Board believes that the proposed revisions to the interpretive rule are appropriate, and has adopted the revisions as proposed. The revised name restriction will allow increased flexibility in the marketing of investment companies advised by bank holding companies, and enhance the ability of bank holding companies to compete with other bank and nonbank-affiliated investment advisers. At the same time, the limitation on identical names and on the use of the word "bank," when coupled with the disclosure requirements, should substantially mitigate the potential for customer confusion about the uninsured nature of investment company shares.

The Board believes that the disclosure requirements also continue to be appropriate to address the potential for customer confusion in situations in which the holding company or its affiliates advise a mutual fund and the sale of the mutual fund shares is not covered by the disclosure provisions of the Interagency Statement on Retail Sales of Nondeposit Investment Products. The disclosure requirements are increasingly proving to be an effective method for addressing potential customer confusion and do not appear to be onerous.

4. Procedures for Determining the Permissibility of Nonbanking Activities

The Board has adopted two provisions to Regulation Y to ease the burden associated with determining the authorization and scope of permissible nonbanking activities. First, the regulation specifically reflects the fact that the Board may, on its own initiative, begin a proceeding to find that an activity is permissible for bank holding companies, as the Board did in the case of many of the earlier nonbanking activities. As required by the BHC Act, the Board would provide public notice that it is considering the permissibility of a given activity and would provide an opportunity for public comment.

The Board expects to consider amending the laundry list, for example, as new activities are authorized for banks, as experience with a narrowly defined activity indicates that the activity should be more broadly defined, or as developments occur in technology or the marketplace for financial products and services. The System will actively track market developments as well as decisions that authorize banks to conduct new activities and evaluate adding these activities to the laundry list even if an individual request has not yet been made to engage in these activities.

Several commenters urged the Board to add a provision limiting the processing period for evaluating proposals regarding the permissibility of a particular new activity, much as the Board has proposed for determining the scope of a currently permissible activity. On the other hand, other commenters argued that the Board should seek public comment on all proposals involving the permissibility of new activities or the scope of currently permissible nonbanking activities.

The BHC Act, as amended by the Regulatory Relief Act, requires that the

[4] Letter of May 13, 1993, [1993 Transfer Binder] Fed. Sec. L. Rep. (CCH) Paragraph 76,683.

Board provide notice and opportunity for public comment prior to determining that an activity is closely related to banking. The Regulatory Relief Act eliminated the requirement that the Board provide an opportunity for a formal hearing regarding the permissibility of an activity. The final rule reflects both of these statutory actions. In particular, the final rule retains the provision currently in Regulation Y for public notice and opportunity for comment in connection with consideration of the permissibility of a new activity, and eliminates the requirement for a hearing. The Board retains discretion to order a formal or informal hearing regarding the permissibility of an activity where a hearing may be useful in resolving disputes of fact regarding an activity. Because of the complexity of many of the issues raised in determining the permissibility of a new activity, the Board has determined not to establish a specific limit on the time for evaluating these proposals.

The Board has amended the regulation to establish a streamlined procedure outside the application process through which any bank holding company or other interested person may request an advisory opinion from the Board that a particular variation on an activity is permissible under an existing authorization and is not deemed to be a new activity. The Board would issue an advisory opinion within 45 days, and make this opinion available and applicable to all similarly situated bank holding companies. At the time the Board reviews an activity, the Board would determine whether it is appropriate to permit bank holding companies to engage in this activity without additional approval (as, for example, a variation of one or more previously authorized activities) or to require bank holding companies to obtain approval prior to conducting the activity (because, for example, the activity does not fall within a previously approved activity or category or involves special risks or concerns). As noted above, well-run bank holding companies may, without prior Board approval, engage *de novo* in any activity added to the regulatory laundry list.

Commenters agreed that these two procedures should make it easier for bank holding companies to participate in marketplace developments in permissible nonbanking activities. In addition, these procedures will eliminate a number of applications that are currently filed by bank holding companies that are uncertain about the scope of permissible activities.

5. Nonbanking Activities That Are Incidental to a Permissible Activity

The Board has adopted its proposal to permit a subsidiary of a bank holding company engaged in financial data processing or management consulting activities, as an incidental activity, to derive up to 30 percent of its annual revenue from nonfinancial data processing or management consulting services, respectively. Commenters discussing this aspect of the proposal strongly supported this proposal and contended that bank holding companies engaged in data processing and management consulting activities have substantial expertise in these areas that allow them safely and soundly to provide these services involving nonfinancial data or nonfinancial customers. In addition, several commenters argued that bank holding companies currently are at a competitive disadvantage in providing data processing and management consulting services and in hiring employees because of the strict limitations tying these services to financial data and financial consulting.

A number of commenters argued that the Board should permit a greater amount of incidental activity, some arguing for no limit. Two commenters argued, on the other hand, that bank holding companies should not be permitted to engage in any nonfinancial data processing because the commenters believed that the benefits of access to the Federal discount window and the payments system and the unique products that banks can provide combine to give bank holding companies and banks an unfair advantage in competing with nonfinancial firms to provide nonfinancial products and services, including firms owned by women and minorities.

After considering the comments, the Board has adopted the revisions to the data processing and management consulting provisions as proposed. The Board believes that these revisions are necessary to allow bank holding companies to compete effectively in providing financial data processing and management consulting services.

The strict limitations on providing non-financial data processing and management consulting activities that were previously applied to bank holding companies inhibit the ability of bank holding companies effectively to compete with other providers who often combine financial and nonfinancial products. In a number of recent cases reviewed by the Board, for example, the record has indicated that it is common practice for a software provider to integrate financial data processing software and nonfinancial data processing software in the same package. Similarly, commenters indicated that it is common for management consultants to provide advice on general matters in connection with providing advice on financial, accounting and similar matters. The strict limitations have also reduced the ability of bank holding companies to attract the most qualified employees—who often have expertise, clients, proprietary rights, and interests—that span financial and nonfinancial matters.

The Board believes that its proposed limit—30 percent of the revenue derived from permissible financial data processing activities, and 30 percent of the revenue derived from permissible financial management consulting services, respectively—represents a reasonable level of incidental activity that assures that the bank holding company is significantly involved in financial data processing or management consulting.[5] The Board does not believe that this limited participation will permit bank holding companies an unfair competitive advantage over other providers of data processing or management consulting services. As the Board and the industry gain experience in data processing and management consulting activities, the Board will review and adjust the level of incidental activities as appropriate.

6. Expanded Exception for Acquisitions of Lending Assets in the Ordinary Course of Business

The Board proposed to revise the regulatory language permitting a bank holding company, without additional approval, to acquire lending assets from a third party in the ordinary course of business. The Board currently permits a bank holding company, without additional approval, to acquire assets of an office of another company related to making, acquiring or servicing loans so long as the bank holding company and the transaction meet certain qualifications. Among the qualifications are that the assets relate to consumer or mortgage lending, and that the acquired assets represent the lesser of $25 million or 25 percent of the consumer lending, mortgage banking or industrial banking assets of the acquiring bank holding company. The office must also be

[5] In the data processing area, this 30 percent basket would not include revenue derived from the use of excess capacity or the sale of general purpose hardware that is currently permitted in accordance with the Board's regulation and policies governing those activities.

located in the geographic area served by the bank holding company.

The Board has revised this provision in three ways. First, since the Board no longer limits the geographic scope of its approval to engage in nonbanking activities, this restriction has been removed. Second, the scope of the exception has been broadened to permit the acquisition of assets related to any lending activity. Third, the threshold limits have been raised to permit the acquisition of assets representing up to the lesser of $100 million or 50 percent of the lending assets of the bank holding company.

Commenters generally favored the modifications proposed by the Board for expanding the scope and size of transactions that could be conducted in the ordinary course of business under this exception. The proposed broadening of the exception would eliminate an unnecessary approval requirement and paperwork for transactions that are relatively small and represent the ordinary course of business.

7. Consummation Period for Certain Proposals

The Board had originally proposed to eliminate the requirement that a bank holding company exercise its authority to engage *de novo* in a nonbanking activity within one year of receiving System approval. While several commenters expressed support for this approach, the final rule does not include a specific provision adopting this change for two reasons. First, since the date of the original proposal, the Regulatory Relief Act eliminated altogether the prior approval requirement for well-run bank holding companies that choose to engage *de novo* in nonbanking activities permissible by regulation. This statutory change eliminates a substantial portion of the cases that would have benefitted by the proposal to eliminate the consummation period. Second, the Board may, without any regulatory change, adjust the consummation period on a case-by-case basis. The Board believes this is a more appropriate approach in cases that do not qualify for the statutory exception in the Regulatory Relief Act.

C. Explanation of the Restrictions Removed From Permissible Nonbanking Activities

As noted above, the Board has removed restrictions contained in the current regulation that are outmoded, have been superseded by Board order or would not apply to an insured depository institution conducting the same activity. The limitations that remain are necessary to establish a definition of the permitted activity or to prevent circumvention of another statute, such as the Glass-Steagall Act. The following discussion explains, by functional group of activities, the restrictions that the Board has eliminated as well as certain limitations that the Board has retained. In several areas, the Board expects to develop supervisory policy statements to address potential adverse effects that may be associated with certain activities. The Board may seek comment on those supervisory policy statements as appropriate.

1. Extending Credit and Servicing Loans

Lending activities are already broadly defined and contain no restrictions. Permissible lending activities include the types of lending activities that were previously listed by way of example in Regulation Y, such as lending activities conducted by consumer, mortgage, commercial, factoring, and credit card companies. Removal of those specific examples from the proposed rule was intended to make clear that making, acquiring, brokering and servicing all types of loans or extensions of credit are considered permissible lending activities, and elimination of these examples from the final rule does not diminish the scope of the activity or the permissibility of those examples of lending activities. Nevertheless, at the request of a number of commenters, factoring has been re-included as an example of a permissible lending activity.

2. Activities Related to Extending Credit

A new category has been added authorizing activities that the Board determines to be usual in connection with making, acquiring, brokering or servicing loans or other extensions of credit. Without limiting the scope of this activity, the category lists a number of activities that the Board has previously determined are related to credit extending activities, including, by way of example, credit bureau, collection agency, appraisal, asset management, check guarantee, and real-estate settlement activities.

Restrictions governing disclosures to customers, tying, preferential treatment of customers of affiliates, disclosure of confidential customer information without customer consent and similar restrictions previously contained in Regulation Y have been removed from these activities. These restrictions do not apply to banks that conduct these activities and, to the extent these restrictions are appropriate, supervisory guidance on the conduct of the activity will be developed.

Several commenters requested that the Board eliminate all restrictions governing the acquisition of debt in default, in particular, the requirement that the period for disposing of shares or assets securing debt in default be calculated as of the date the defaulted debt is acquired. The Board believes the three restrictions adopted in the regulation are necessary to define the scope of the activity and to assure that the activity remains the acquisition of debt rather than an impermissible acquisition of securities or other assets. The requirement regarding the calculation of the period for disposing of the underlying shares or assets subjects the activity to the same limitations that apply under the terms of the BHC Act to the acquisition of shares or assets in satisfaction of a debt-previously-contracted. During this period, the holding company may divest the property or, as in the case of any debt that has been previously contracted, restructure the debt.

3. Leasing Personal or Real Property

The changes to the leasing provision have been adopted as proposed. Specifically, the regulation removes a number of restrictions from the two types of leasing activities permissible for bank holding companies, full-payout leasing and high residual value leasing,[6] including the following restrictions:

- The lease must serve as the functional equivalent of an extension of credit (permissible high residual value leasing may not be the functional equivalent of an extension of credit);
- The property must be acquired only for a specific leasing transaction;
- Leased property must be re-leased or sold within 2 years of the end of each lease;
- The maximum lease term may not exceed 40 years; and
- No leased property may be held for more than 50 years.

Commenters favored removal of these restrictions and noted that removal of these restrictions from the regulation would permit bank holding companies

[6] A full-payout lease is the functional equivalent of an extension of credit and relies primarily on rental payments and tax benefits to recover the cost of the leased property and related financing costs. High residual value leasing may involve significant reliance on the expected residual value of the leased property—on average, under 50 percent, but in some cases, up to the full original cost of leased property—to recoup the cost of the leased property and related financing costs. Under the current regulation, bank holding companies may provide full-payout leases for any type of personal property or real property, and may make high residual value leases only for personal property.

greater flexibility to acquire property in quantity in the expectation of leasing activities and would allow more flexibility in selling or re-leasing property at the expiration of a lease. It is expected that supervisory guidance would be developed to address potential issues arising from removal of the restrictions.

The provision limiting to 100 percent of the initial acquisition cost the amount of reliance that may be placed on the residual value of leased personal property has also been removed. This limit does not apply to national bank leasing activities. While commenters favored removal of the requirement that the estimated residual value of real property be limited to 25 percent of the value of the property at the time of the initial lease, this restriction was retained in order to distinguish real property leasing from real estate development and investment activities.

Two other requirements were retained: (1) That the lease be non-operating, and (2) that the initial lease term be at least 90 days. These requirements were developed in the course of litigation regarding the leasing activities of national banks, and were relied on by the courts in distinguishing bank leasing activities from general property rental and real estate development businesses. The requirement that a lease be non-operating is also a statutory requirement limiting the high residual value leasing activities of national banks.

The regulation has been modified at the request of commenters to clarify that, as a general matter, the requirement that a lease be *non-operating* means that the bank holding company may not itself (or through a subsidiary) repair, operate, maintain or service the equipment or property being leased during the lease term. The Board has applied this interpretation since 1974 in order to help distinguish bank holding company leasing activities from general commercial activities. A more detailed definition of a nonoperating lease in the automobile rental context, which was developed in litigation and adopted by the courts, has also been retained. The regulation provides that, in either case, a bank holding company is permitted to arrange for a third party to provide these repair and other services in connection with a lease.

4. Operating Nonbank Depository Institutions

This category permits ownership of a savings association and an industrial loan company. The proposed regulation retains the restrictions in the BHC Act that the institution not be operated as a "bank" for purposes of the BHC Act[7] and that the activities of the institution conform to the relevant statutory provisions of the BHC Act. As noted above, by the terms of the Regulatory Relief Act, the operation of a savings association requires prior System approval.

5. Trust Company Functions

The current regulation limits the deposit-taking and lending activities of trust companies. These limitations are already encompassed in the requirement in the BHC Act that the trust company not be a "bank" for purposes of the BHC Act and have, therefore, been deleted from the regulation.

6. Financial and Investment Advisory Activities

Like the initial proposal, the final rule groups together all investment and financial advisory activities and broadly permits acting as investment or financial adviser to any person, without restriction. Without limiting the breadth of the advisory authority, the rule also lists specific examples of certain types of investment or financial advice, counseling and related services that previously had been separately authorized. These examples are:

* Advising an investment company and sponsoring, organizing and managing a closed-end investment company;
* Furnishing general economic information and forecasts;
* Providing financial advice regarding mergers and similar corporate transactions;
* Providing advice regarding commodities and derivatives transactions; and
* Providing consumer educational courses and providing tax-planning and tax-preparation.

The final rule removes the few restrictions that have in the past been imposed by the Board on financial and investment advisory activities. These restrictions do not apply to banks that provide investment advisory services.

Specifically, the final rule removes the restriction that discretionary investment advice be provided only to institutional customers, thereby allowing bank holding companies to manage retail customer accounts outside of the trust department of an affiliated bank (to the extent otherwise permitted by law). This activity would continue to be governed by the fiduciary principles in relevant state law. Moreover, the final rule permits bank holding companies to provide retail customers with investment advice concerning derivatives transactions and to provide discretionary investment advice regarding derivatives transactions to institutional or retail customers as an investment adviser, commodity trading advisor, or otherwise. This includes providing discretionary investment advice to any person regarding contracts relating to financial or nonfinancial assets. The conduct of these activities would, of course, be subject to the requirements of applicable law, including applicable state and federal laws governing fiduciary activities or advisory activities.

The final rule permits bank holding companies to engage in any combination of permissible nonbanking activities listed in Regulation Y. Accordingly, bank holding companies may provide financial and investment advice (including discretionary investment advice) together with permissible agency transactional services, investment or trading transactions as principal, or any other listed activities. Supervisory guidance may be developed, as needed, to address conflicts of interest that may arise from providing certain services in combination.

The final rule also deletes restrictions in the areas of tax-planning, tax-preparation and consumer counseling services that prohibited bank holding companies from promoting specific products and services and from obtaining or disclosing confidential customer information without the customer's consent. These restrictions do not apply to banks that engage in these activities.

The commenters addressing this activity strongly supported the consolidation of the various advisory activities, the expansion of permissible advisory activities, and the removal of existing restrictions imposed by the Board on these activities. These commenters argued that the provision of all types of financial and investment advice is within the expertise of banking organizations and, therefore, closely related to banking.

Several commenters requested further guidance on the scope of permissible advisory activities and urged the inclusion of examples of additional specific types of advisory activities, such as advisory activities related to real estate, in order to clarify the permissibility of these activities. Other commenters requested clarification that the use of examples did not imply that advisory activities that are omitted from the list of examples are not permissible.

[7] The BHC Act contains an exception from the definition of "bank" for industrial loan companies and savings associations that meet requirements listed in the BHC Act.

As noted above and in the original proposal, the final rule includes any investment or financial advisory activity without restriction. The examples included in the final rule are not intended in any way to limit the scope of the financial and investment advisory activity. The examples are illustrative rather than exclusive examples of permissible advisory activities, and have been retained to recognize that certain advisory activities have been specifically approved under other provisions of Regulation Y and continue to be permissible.

Some commenters suggested revisions to the proposal's description of certain examples. In response to these comments, the final rule clarifies that the provision regarding advice on mergers, acquisitions and other transactions includes "other similar transactions." At the suggestion of several commenters, the final rule has been revised to clarify the permissibility of providing investment advice regarding transactions with respect to any transactions in foreign exchange, swaps and similar transactions, commodities, and forwards contracts, futures, options, options on futures, and similar instruments.

Several commenters noted that there currently is uncertainty regarding the jurisdiction of the CFTC over some transactions involving foreign exchange. The final rule is not affected by the scope of CFTC jurisdiction. The Board intends that references to transactions "in foreign exchange" throughout the regulation include transactions in foreign exchange, options on foreign exchange, futures on foreign exchange, options on futures on foreign exchange, swaps in foreign exchange, and similar foreign exchange-related instruments. A bank holding company must, of course, comply with the rules of any other federal or state agency to the extent that the bank holding company conducts an activity subject to that agency's jurisdiction, as determined by the relevant statute, agency rule or court decision.

7. Agency Transactional Services for Customer Investments

The final rule reorganizes into a single functional category the various transactional services that a bank holding company may provide as agent. This category includes securities brokerage activities, private placement activities, riskless principal activities, execution and clearance of derivatives contracts, foreign exchange execution services, and other transactional services.

a. Securities Brokerage Activities

The current regulation differentiates between securities brokerage services provided alone (*i.e.*, discount brokerage services) and securities brokerage services provided in combination with investment advisory services (*i.e.*, full-service brokerage activities). The final rule permits securities brokerage without distinguishing between discount and full-service brokerage activities.

Under the current regulation, bank holding companies providing full-service brokerage services must make certain disclosures to customers regarding the uninsured nature of securities and may not disclose confidential customer information without the customer's consent. These requirements were deleted in the proposal.

The Board sought comment on whether elimination of these restrictions from the regulation would lead to adverse effects, including customer confusion about the uninsured nature of non-deposit investment products sold through bank holding companies. Several commenters opposed the elimination of the disclosure requirements in the regulation, contending that the interagency policy statement and SEC regulations are not providing adequate consumer protection. A number of commenters, however, supported the elimination of the disclosure requirements in the regulation on the basis that these requirements were duplicative of requirements contained in the interagency policy statement and SEC regulations.

The final rule deletes the disclosure requirements. The disclosure requirements—along with a number of other requirements that specifically address the potential for customer confusion, training requirements, suitability requirements and other matters—are already contained in an interagency policy statement that governs the sale of securities and other non-deposit investment products on bank premises as well as in rules adopted by the SEC. In addition, similar disclosure requirements are required by the Board's policy statement governing the sale by bank holding companies of shares of mutual funds and other investment companies that the bank holding company advises.

Recent supervisory experience indicates that banking organizations and their affiliates, in general, are becoming more effective in implementing the regulatory disclosure requirements and that customers are becoming increasingly aware that investment products purchased at banking organizations and their affiliates are not federally insured. Moreover, the Board and the SEC have adequate supervisory authority to ensure that bank holding companies comply with the regulatory disclosure requirements. To the extent that disclosures to customers are appropriate in areas not covered by the regulatory policy statements or SEC regulations, the Board will consider whether to develop supervisory guidance, on an interagency basis where appropriate.

b. Riskless Principal Activities

The Board recently reduced the restrictions that govern riskless principal activities.[8] The restrictions that were retained were designed to ensure that bank holding companies do not avoid the Glass-Steagall Act provisions by classifying underwriting and dealing activities as riskless principal activities. The restrictions that the proposal retained prohibit:

* Selling bank-ineligible securities at the order of a customer who is the issuer or in a transaction in which the bank holding company has an agreement to place the securities of the issuer;
* Acting as riskless principal in any transaction involving a bank-ineligible security for which the bank holding company or an affiliate makes a market;
* Acting as riskless principal for any bank-ineligible security carried in the inventory of the bank holding company or any affiliate; and
* Acting as riskless principal on behalf of any U.S. affiliate that engages in bank-ineligible securities underwriting or dealing activities or any foreign affiliate that engages in securities underwriting or dealing activities outside the U.S.

The Board requested comment on whether these restrictions, and in particular the second and third restrictions, are necessary to assure compliance with the Glass-Steagall Act. The majority of commenters discussing the riskless principal activity argued for the deletion of all four restrictions, contending that none of the restrictions are necessary to ensure that a nonbanking subsidiary does not engage in underwriting or dealing through its riskless principal transactions and that any concern in this regard would be addressed by a requirement that the subsidiary not hold itself out as a dealer with respect to any security. Several commenters noted that the restrictions would prohibit riskless principal

[8] *The Bank of New York Company, Inc.*, 82 Federal Reserve Bulletin 748 (1996).

transactions on behalf of a section 20 affiliate even if this affiliate was not the underwriter or dealer for the security in question. These commenters maintained that this would put bank holding companies with section 20 affiliates at a competitive disadvantage.

Several commenters also suggested that the Board permit riskless principal transactions in the primary market generally. Some of these commenters specifically urged the Board to allow bank holding companies to act as riskless principal for the sale of commercial paper in the primary market because commercial paper tends to have short maturities.

The final rule retains the requirement that riskless principal transactions be conducted in the secondary market. The Board has determined, however, to eliminate all but two restrictions in the final rule. The final rule retains the first proposed restriction, which prohibits a bank holding company from using its riskless principal authority to sell bank-ineligible securities at the order of a customer who is the issuer or in a transaction in which the bank holding company has an agreement to place the securities of the issuer. This restriction, as well as the requirement that the transactions be conducted in the secondary market, is designed to distinguish riskless principal activities from private placement and underwriting or dealing activities. This classification of riskless principal transactions does not prevent bank holding companies from engaging pursuant to other authority in permissible private placement activities or in underwriting and dealing activities, both of which permit transactions in the primary market and with an issuer.

The Board has also determined to revise the second restriction to focus on transactions involving a bank-ineligible security for which the bank holding company or any affiliate acts as underwriter (during the underwriting period and for 30 days thereafter) or dealer. This revision narrows the scope of the restriction while addressing the Board's concern that a nonbanking subsidiary not use its riskless principal authority to engage in underwriting or dealing activities. As modified, this provision also addresses the concerns covered by the third and fourth restrictions. Consequently, the final rule deletes the last two restrictions in the proposal.

c. Private Placement Activities

The Board proposed to add private placement activities to the laundry list, using the definition of private placement activities adopted by the SEC and the federal securities laws. The proposal removed all but one restriction that had been imposed by Board order on the conduct of this activity. That restriction prohibits a bank holding company from purchasing for its own account securities that it is placing and from holding in inventory unsold portions of securities it is attempting to place.

Among the restrictions that the proposal removes from the conduct of private placement activities are prohibitions on:

* Extending credit that enhances the marketability of a security being placed;
* Lending to an issuer for the purposes of covering the funding lost through the unsold portion of securities being placed;
* Lending to the issuer for the purpose of repurchasing securities being placed;
* Acquiring securities through an account for which the bank holding company has fiduciary authority;
* Providing advice to any purchaser regarding a security the bank holding company is placing; and
* Placing securities with any non-institutional investors (the SEC rules allow sales to institutional investors and up to 35 non-institutional investors).

None of these restrictions have been applied to national banks that conduct private placement activities.

The Board sought comment on whether any of these restrictions must be retained to address potential adverse effects, including potential conflicts of interest or customer confusion, or to assure fulfillment of fiduciary duties. The commenters discussing private placement activities strongly supported the removal of these restrictions from private placement activities.

Several comments urged the Board, however, not to adopt the definition of private placement in the federal securities statutes, contending that such definition is too restrictive. The final rule, as the proposal, defines private placement in accordance with the Securities Act of 1933 (1933 Act) and the rules of the SEC. For purposes of including private placement activities on the laundry list, the Board believes it is reasonable to look to the definition of private placement adopted by the SEC, the primary federal regulator of securities activities, and the distinctions the SEC has drawn between private placement and underwriting or dealing activities. This definition does not limit bank holding companies from seeking to engage in other securities activities pursuant to Board order.

One commenter also requested that the definition of private placement be broadened to include private resales of securities to institutional buyers and private placements of securities of registered investment companies. The final rule would permit private resales of privately placed securities if the transaction is conducted in accordance with the requirements of the 1933 Act and the rules of the SEC, the bank holding company acts only as agent for such private resales by third parties, and the bank holding company neither purchases for its own account securities that it is placing nor holds in inventory unsold portions of securities it is attempting to place. This would not include acting as a dealer with respect to resales of privately placed securities, an activity that bank holding companies may seek to engage in pursuant to Board order. Similarly, the final rule would permit bank holding companies to act as agent for the private placement of securities issued by any company, including an investment company, to the extent that these private placements are conducted in accordance with the requirements of the 1933 Act and the SEC rules and the Board's restrictions on purchasing or inventorying such securities.

Some commenters also recommended that the Board remove the prohibition on a bank holding company purchasing or repurchasing the securities it places. Several of these commenters contended that such purchases should be permissible if the company made the decision to purchase the securities for its own account simultaneously with or after, and separate from, the decision to engage in the private placement. One commenter maintained that a company engaged in private placement activities should be permitted to invest in the securities being placed so long as it had a *bona fide* expectation of and made a *bona fide* effort in placing the securities. The final rule retains the proposal's restriction on purchasing or repurchasing the securities that are privately placed. The Board believes this restriction is appropriate to prevent a bank holding company from classifying as private placement activities its securities underwriting activities, which are governed by the Glass-Steagall Act and the Board's section 20 decisions.

The final rule does not contain a limitation on the amount of a particular issue of securities that a company may place with an affiliate. As the Board noted when it first authorized a bank holding company to place securities with an affiliate, banks privately place securities with affiliates and no particular supervisory problem appears to have arisen from these investments.[9] The Board continues to recognize the increased potential for certain conflicts of interests if affiliates purchase a substantial portion of an issue of securities placed by an affiliate. In this regard, insured depository institutions that purchase securities privately placed by an affiliate must comply with section 23B of the Federal Reserve Act as well as the limitations in the Glass Steagall-Act relating to the purchase of investment securities. The Board expects that nonbank affiliates that purchase these securities will do so in accordance with appropriate internal policies and procedures.

d. Futures Commission Merchant Activities

i. In General

The current regulation authorizes bank holding companies to execute and clear derivatives on certain financial instruments on major exchanges, subject to a number of restrictions. The Board has, by order, broadened this authority in two key respects. First, the Board has by order permitted bank holding companies to execute and clear derivative contracts on a broad range of nonfinancial commodities. Second, the Board has permitted bank holding companies to clear derivative contracts without simultaneously providing execution services, and to provide execution services without also providing clearing services. Commenters strongly favored modification of the current regulation to reflect these Board orders.

As noted above, the final rule removes the restriction in the current regulation prohibiting a bank holding company from providing foreign exchange transactional services in the same subsidiary that provides advice regarding foreign exchange. Banks are not subject to this restriction. The final rule also would permit a bank holding company to perform permissible futures commission merchant ("FCM") activities through a section 20 subsidiary.

The final rule permits a nonbanking subsidiary to act as an FCM regarding any exchange-traded futures contract and options on a futures contract based on a financial or nonfinancial commodity. The final rule also deletes the restriction that a bank holding company not act as an FCM on any exchange unless the rules of the exchange have been reviewed by the Board. All U.S. commodities exchanges are supervised by the CFTC and a review by the Federal Reserve System of the rules of an exchange, whether domestic or foreign, would not be the most effective method for addressing the safety of conducting FCM activities on the exchange. A more effective method for addressing the risks of FCM activities—whether on domestic or foreign exchanges—is through the on-site inspection and supervision of the risk management systems of the bank holding company. Accordingly, the Board would use the supervisory process, which includes regular inspections of the holding company and its affiliates, to address concerns about the effectiveness of the holding company's risk management systems.

The final rule removes several other requirements, including that the FCM subsidiary:

* Time stamp all orders and execute them in chronological order;
* Not trade for its own account;
* Not extend margin credit to customers; and
* Maintain adequate capital.

The CFTC has not found it necessary to prohibit FCMs from trading for their own account, and removal of that restriction from the Board's regulation allows an FCM affiliated with a bank holding company to compete on the same basis as an FCM not affiliated with a holding company. Experience has not indicated that the affiliation of an FCM with a bank holding company itself increases the risks or conflicts that could arise from the combination of FCM and proprietary trading activities. Conduct in the other areas listed above is addressed in rules of the CFTC or the relevant self-regulatory organizations, which are applicable to any FCM.

Like the initial proposal, the final rule retains the requirements of the current regulation that a bank holding company conduct its FCM activities through a separately incorporated subsidiary (*i.e.*, not through the parent bank holding company). The proposal retained the requirement of the current regulation that the subsidiary not become a member of an exchange that requires the parent bank holding company also to become a member of the exchange. The purpose of this restriction was to limit the bank holding company's exposure to contingent obligations under the loss sharing rules of exchange clearinghouses in order to preserve the holding company's ability to serve as a source of strength to its subsidiary insured depository institutions. The Board invited comment, however, on whether this restriction was appropriate and on whether the Board's concern could be addressed more effectively by an alternative restriction, such as a requirement that the parent bank holding company not provide a guarantee of non-proprietary trades conducted by an FCM subsidiary.

Most commenters that discussed FCM activities supported the alternative restriction as sufficient to address a bank holding company's potential exposure to contingent obligations under loss sharing rules of clearinghouses and to establish clear parameters for a bank holding company's involvement on an exchange or clearing association. Four commenters suggested that bank holding companies be given the option of choosing which restriction is more suitable to business conducted on a particular exchange. If a choice must be made between a prohibition against membership or against a guarantee of non-proprietary trades, these commenters generally preferred the latter, noting that holding company membership is a prerequisite on a number of exchanges for receiving reductions in fees or other benefits.

Based on its experience and a review of the comments, the Board has determined that an alternative restriction that prohibits the parent bank holding company from guaranteeing or otherwise becoming liable for non-proprietary trades conducted by or through its FCM subsidiary more effectively addresses the Board's concern about a parent bank holding company's exposure to an exchange's or clearinghouse's loss sharing rules than the current provision limiting the holding company's membership on an exchange. This alternative restriction effectively protects the parent bank holding company from potential exposure from customer trades and open-ended contingent liability under loss sharing rules while recognizing that most exchanges require a parent to guarantee proprietary trades. Accordingly, the final rule revises the regulation to prohibit the parent bank holding company from guaranteeing or otherwise becoming liable to an exchange or clearinghouse for trades other than those conducted by the subsidiary for its own account or for the account of an affiliate. The final rule eliminates the existing prohibition on an FCM subsidiary becoming a member of an exchange that requires the parent bank holding company also to become a member.

Other commenters requested confirmation that an FCM subsidiary may, as an incidental activity, provide various futures-related financing to customers, such as financing to cover margin obligations. Lending is a

[9] *J.P. Morgan & Company Inc.*, 76 Federal Reserve Bulletin 26, 28 (1990)

permissible activity for bank holding companies, and the final rule would not prohibit permissible lending activities in combination with FCM activities. This permits an FCM owned by a bank holding company to compete on the same terms with an FCM that is not affiliated with a bank holding company. The Board notes, however, that some exchanges prohibit FCMs from providing margin financing, and CFTC rules require full capitalization for any extensions of credit to customers. An FCM controlled by a bank holding company must continue to abide by the rules of the CFTC and any exchange on which the FCM is a member or trades.

Several commenters requested clarification that the authority for an FCM subsidiary to become a member of an exchange included authority to open an office in the country were the exchange is located. In addition, several commenters requested clarification that the expanded FCM activities permitted under Regulation Y also would be permitted under the Board's Regulation K.

Regulation Y currently provides, and the final rule continues to provide, that a nonbanking company permitted under section 4(c)(8) of the BHC Act to engage in a nonbanking activity may open offices outside the United States to conduct that same activity unless the bank holding company has not received approval to conduct the activity outside the United States. A bank holding company that currently has authority to engage in FCM activities on a geographically limited basis may, if it qualifies for the streamlined procedures, conduct these activities *de novo* outside the U.S. through direct offices of its 4(c)(8) affiliate without further approval. The scope of FCM and other activities that fall under Regulation K will be considered by the Board in connection with its review of Regulation K.

ii. Clearing-Only Activities

The Board has by order permitted bank holding companies to clear trades that the FCM has not executed itself, and the final rule incorporates this activity in the laundry list. The proposal retained two restrictions currently imposed by Board order. These restrictions: (1) Prohibit the clearing subsidiary from serving as the primary or qualifying clearing firm for a customer; and (2) require the clearing subsidiary to have a contractual right to decline to clear any trade that the subsidiary believes poses unacceptable risks (a so-called "give-up" agreement).

The Board adopted these restrictions to ensure that the clearing subsidiary of a bank holding company could limit its exposure to traders that execute trades themselves or through third parties. In particular, these restrictions prevent a bank holding company from clearing trades executed by exchange locals or market makers. In 1991, the Board rejected a proposal by a bank holding company to engage in clearing trades for exchange locals and market makers because of concerns about the inability of the bank holding company to monitor and control its credit exposures during the trading day. The Board found that the activity was closely related to banking, but believed that the potential adverse effects of conducting the activity outweighed the potential public benefits.[10]

The Board sought comment on whether these two restrictions on the conduct of clearing-only activities by bank holding companies should be retained. The Board also invited comment on whether and how bank holding companies are able to monitor and limit adequately the potential exposure from conducting these activities.

Commenters who discussed FCM activities strongly supported the removal of these two restrictions on clearing-only activities in favor of the Board relying on on-site examination and supervision of a clearing subsidiary's risk management systems for monitoring and managing its credit exposures. Commenters maintained that the Board's restrictions are not necessary in light of the risk management tools currently available to clearing firms. They contended that clearing firms can effectively monitor and limit their potential credit exposures through various risk management procedures, including: establishment of trading limits for each customer; adjustment of such limits based on market conditions and ongoing credit evaluations; monitoring of customer market risk, trading exposure and compliance with trading limits; assessment and collection of initial and maintenance performance bond or margin; and payment of gains and collection of losses associated with open positions through a mark-to-market process on both an intra-day and end-of-day basis.

Commenters explained that all exchanges provide clearing members with complete information regarding trades cleared through that member's account at the end of the trading day, which thereby limits a clearing FCM's exposure to a client to the trading transactions on that day. Commenters noted that technological improvements have enabled a growing number of exchanges to develop systems that collect and report intra-day trade matching information. Commenters also noted that, in many markets, a clearing firm can, pursuant to exchange rules or contractual arrangements, advise an executing broker that it will not accept further trades of that customer. In agreements with customers, clearing brokers also typically reserve the right to liquidate a customer's position if the required margin is not posted promptly. Commenters added that potential exposure is further mitigated by various exchange rules relating to position limits, and large trading position reporting. In addition, commenters contended that oversight by the CFTC or the SEC, which includes capital, reporting, performance bond and margin, and recordkeeping requirements, assists in monitoring the management of risks associated with acting as a primary clearing firm, including clearing trades executed by exchange locals and market makers.

In light of these comments, the final rule deletes the proposal's restrictions relating to primary clearing or qualifying firm activities and customer "give-up" agreements.[11] Examiners will assess and supervise FCM policies, procedures and practices relating to clearing-only activities, taking into consideration the nature of the FCM's clients, the particular exchanges through with the subsidiary provides clearing services, and the related risks involved. It is expected that the Board would develop supervisory guidance on management of risks involved in clearing-only activities.

e. Other Transactional Services

The proposal added a provision allowing a bank holding company to provide transactional services for customers involving any derivative or foreign exchange transaction that a bank holding company is permitted to conduct for its own account. Commenters supported the inclusion of these activities on the regulatory laundry list. Inclusion of this activity is not intended to limit the securities brokerage, FCM, private placement or riskless principal activities permitted under the final rule.

[10] *Stichting Prioriteit ABN AMRO Holding*, 77 Federal Reserve Bulletin 189 (1991).

[11] A commenter requested that the Board clarify in the regulation that the securities brokerage activity permitted in Regulation Y encompasses clearing apart from executing trades in securities. Both the current and final rule permit securities brokerage activities broadly, including executing-without-clearing and clearing-without-executing trades in securities. The final rule specifies this.

Several commenters suggested that the scope of this provision be expanded to include acting as a broker with respect to forward contracts based on financial and nonfinancial commodities, regardless of whether the bank holding company could invest in or trade such instrument as principal. The commenters contended that providing brokerage services, as agent, to customers with respect to forward contracts on either financial or nonfinancial commodities should not be dependent on whether the bank holding company may take a principal position in the contract. In view of these comments, the final rule clarifies that a bank holding company may act as a broker with respect to forward contracts based on a financial or nonfinancial commodity that also serves as the basis for an exchange-traded futures contract. This permits a bank holding company to act as agent in a forward contract that involves the same commodities and assessment of risk that underlay the permissible FCM activities of bank holding companies without extending this authority to forward contracts for the delayed sale of commercial products (such as automobiles, consumer products, etc.) or real estate.

Several commenters requested that acting as a commodity pool operator ("CPO"), including acting as the general partner of a partnership that invests in commodities as well as futures and options on financial and nonfinancial commodities, be added to the list of permissible activities. The commenters noted that the Board recently permitted by order a bank holding company to act as a CPO, subject to a number of limitations.[12] Although some proposals to act as a CPO may involve a combination of permissible activities, certain proposals raise supervisory issues and open-end pool structures may raise Glass-Steagall Act issues. In addition, some proposals raise questions about the proper treatment of the CPO's interest in the commodity pool for capital adequacy purposes.[13] These issues can be evaluated more effectively on a case-by-case basis through the application review process. Accordingly, the Board has determined not to add acting as a CPO as a separate activity on the laundry list at this time.

8. Investment or Trading Transactions as Principal

The final rule, as the proposal, incorporates decisions by the Board that permit bank holding companies broadly to invest as principal in derivatives on financial and nonfinancial commodities. The proposal would allow a bank holding company to invest or trade as principal in a derivative contract on a financial or nonfinancial commodity or index of commodities, so long as any one of three conditions is met:

* The underlying asset is a permissible investment for state member banks;
* The derivative contract requires cash settlement; or
* The derivative contract allows for assignment, termination or offset prior to expiration and the bank holding company makes every reasonable effort to avoid delivery.

Some commenters were concerned that the proposal as worded would not include trading as principal in derivatives based on or linked to bank ineligible securities, such as certain equity index swaps or equity index futures contracts, an activity that the Board has approved by order. The final rule clarifies that a bank holding company may trade as principal a derivatives contract on an index of rates, prices or the value of any financial or nonfinancial asset or group of assets, so long as the contract requires cash settlement. This does not include acting as a dealer in options based on indexes of bank-ineligible securities when the options are traded on securities exchanges. These options are securities for purposes of federal securities laws and are bank-ineligible securities for purposes of the Glass-Steagall Act.[14] Similarly, activities authorized by this rule do not include acting as a dealer in any other instruments that are bank-ineligible securities for purposes of section 20. Thus, dealing in securities, including acting as a market-maker, specialist or registered options trader on an exchange, would be governed by the Board's orders regarding bank-ineligible securities underwriting and dealing activities. Under the final rule, the three alternative conditions would not apply to derivative contracts based on an index, but would apply to all other derivative contracts.

Several commenters suggested that an additional alternative be added that permits trading as principal in a derivative contract that involves an asset that is a permissible investment for a national bank or for a bank holding company. The final rule adopts a provision that would include any other instruments approved by the Board.

In addition, some commenters requested clarification that the alternative conditions apply only to a bank holding company's trading activities and not to investments for the company's own account. Other commenters maintained that trading for a bank holding company's own account should not be viewed as a nonbanking activity subject to section 4(c)(8) but as a servicing activity under section 4(c)(1)(C) of the BHC Act.

Bank holding companies have increasingly proposed to acquire companies engaged in, or to engage through an existing subsidiary in, derivatives trading and investment activities that would be beyond the scope of investment or trading activities encompassed within the bank servicing exemption.[15] The addition of proprietary trading activities to the regulation clarifies the permissibility of this activity as a separate business activity.

The final rule, as the proposal, also includes authority that the Board has previously granted by order permitting bank holding companies to buy, sell and store gold, silver, platinum and palladium bullion, coins, bars and rounds. To enable the regulation to remain current with relevant regulatory pronouncements regarding the permissible activities of banks, several commenters suggested that the proposed list of metals be expanded to include copper (recently permitted for national banks) and any other permissible investments for national banks or bank holding companies. In view of these comments, the final rule adds copper and includes any other metal approved by the Board.

Some commenters requested that the Board add to the regulatory laundry list underwriting and dealing to a limited extent in certain municipal revenue bonds, one-to-four family mortgage-related securities, consumer receivable securities, and commercial paper because the Board, by order, has permitted these activities. Several commenters also urged the Board to add accepting delivery of commodities to the list of activities because national banks may take delivery of physical commodities by warehouse receipt or "pass-through delivery" to another party when hedging financial exposures

[12] *See The Bessemer Group, Incorporated*, 82 Federal Reserve Bulletin 569 (1996).

[13] For example, the limitations in the case cited above included a requirement to consolidate, for regulatory capital purposes, the assets and liabilities of subsidiary partnerships for which a wholly owned subsidiary of the bank holding company would serve as a general partner. The subsidiary partnerships were to employ leverage (including margin debt and short sales) in making investments.

[14] *See Swiss Bank Corporation*, 82 Federal Reserve Bulletin 685 n. 8 (1996).

[15] *E.g., Swiss Bank Corporation*, 81 Federal Reserve Bulletin 185 (1995).

arising from otherwise permissible activities. The final rule does not expand the laundry list to include these activities because these activities raise issues involving risk management policies and procedures that are more appropriately addressed through the application review process.

In this regard, the Board believes that, at this time, all proposals to engage *de novo* or to make an initial acquisition of a company engaged in corporate debt and/or equity securities underwriting and dealing activities should be reviewed under the normal procedures, and not under the streamlined procedures. This will allow the System to conduct a review of the risk-management systems of the bank holding company in connection with the initial entry of a bank holding company into this activity. Bank holding companies that have already received Board approval to engage in these broad securities activities may acquire companies engaged in these activities if the bank holding company and the proposed acquisition qualify for the streamlined procedure, unless the System notifies the company that the normal procedure should be used.

9. Management Consulting and Counseling Activities

The current regulation authorizes bank holding companies to provide management consulting services on any matter to any depository institution or affiliate of a depository institution. The rule has been expanded in two respects. First, bank holding companies may provide management consulting services regarding financial, economic, accounting, or audit matters to any company. These are financial activities that are directly related to the activities and expertise of bank holding companies. Commenters discussing this issue agreed that this activity is closely related to banking for purposes of section 4(c)(8) of the BHC Act.

Second, for the reasons explained above, the final rule permits a bank holding company to derive up to 30 percent of its management consulting revenue from management consulting services provided to any customer on any matter. As noted above, commenters discussing this activity strongly supported this provision as necessary to permit bank holding companies to attract and retain the most qualified personnel, and to compete effectively against unregulated companies that offer a broad array of management consulting services to customers of bank holding companies. For the reasons explained above, the Board has determined not to raise the 30 percent limit on this basket of permitted incidental activities at this time, and will monitor the scope and nature of these activities.

Two restrictions have been retained governing interlocks with and investments in client companies. While several commenters argued for removal of these restrictions, the Board continues to believe that these limits are necessary in the context of management consulting arrangements in order to ensure that a bank holding company does not exercise control over a client company through a management consulting contract and to prevent conflicts of interest. These restrictions do not limit the ability of a bank holding company to provide management consulting services to an affiliate, which is a servicing activity permitted under section 4(c)(1)(C) of the BHC Act.

10. Support Services

This category includes courier services (other than armored car services) and printing checks and related documents. Both services are included in the laundry list as they were authorized by the Board, without change.

11. Insurance Agency and Underwriting Activities

The insurance provisions reflect the detailed restrictions on insurance activities of bank holding companies specified in the BHC Act. The current regulation has not been changed. Several commenters urged the Board to take a variety of steps to authorize broader insurance activities. The Board will continue to consider these suggestions in light of the specific terms of the BHC Act.

12. Community Development Activities

The current regulation permits bank holding companies to make equity and debt investments in corporations and projects designed primarily to promote community welfare. The Board has adopted its proposal clarifying that this activity includes providing advisory and related services to community development programs. The Board has permitted these advisory services by order.

13. Money Orders, Savings Bonds and Traveler's Checks

The current regulation limits the sale and issuance of money orders and similar consumer payment instruments to instruments with a face value of less than $1,000. The Board has by order authorized this activity for payment instruments of any face amount. Accordingly, the limitation on the face amount of these instruments has been removed.

14. Data Processing Activities

The current regulation broadly authorizes bank holding companies to provide data processing and data transmission services by any technological means so long as the data processed or furnished are financial, banking, or economic. The final rule clarifies that a bank holding company may render advice to anyone on processing and transmitting banking, financial and economic data.

The following two restrictions on permissible data processing activities have been deleted:

* All data processing services must be provided pursuant to a written agreement with the third party that describes and limits the services; and
* Data processing facilities must be designed, marketed and operated for processing and transmitting financial, banking, or economic data.

As explained above, the data processing activity has also been revised to permit bank holding companies to derive up to 30 percent of their data processing revenues from processing and transmitting data that are not financial, banking, or economic. As explained above, most commenters addressing this activity strongly supported all of these changes and, in particular, the proposal to permit the conduct of some nonfinancial data processing activities as an incident to financial data processing activities.

D. Changes to Tying Restrictions

The Board has adopted significant amendments to its rules regarding tying arrangements. The amendments remove Board-imposed tying restrictions on bank holding companies and their nonbank subsidiaries; create exceptions from the statutory restriction on bank tying arrangements to allow banks greater flexibility to package products with their affiliates; and establish a safe harbor from the tying restrictions for certain foreign transactions. These amendments are designed to enhance competition in banking and nonbanking products and allow banks and their affiliates to provide more efficient and lower-cost service to customers.

Section 106 of the BHC Act Amendments of 1970 contains five restrictions intended to prohibit anti-competitive behavior by banks: Two prohibit tying arrangements; two prohibit reciprocity arrangements; and one prohibits exclusive dealing arrangements.[16] The tying restrictions, which have the greatest effect on industry practices, prohibit a bank from restricting the availability or varying the consideration for one product or service (the "tying product") on the condition that a customer purchase another product or service offered by the bank or by any of its affiliates (the "tied product"). Although section 106 applies only when a bank offers the tying product, the Board in 1971 extended these special restrictions to bank holding companies and their nonbank subsidiaries.[17]

[16] 12 U.S.C. § 1972.

Section 106 was adopted in 1970 when Congress expanded the authority of the Board to approve proposals by bank holding companies to engage in nonbanking activities. Section 106 was based on congressional concern that banks' unique role in the economy, in particular their power to extend credit, would allow them to create a competitive advantage for their affiliates in the new, nonbanking markets that they were being allowed to enter.[18] Congress therefore imposed special limitations on tying by banks—restrictions beyond those imposed by the antitrust laws. Section 106 is a broader prohibition, unlike the antitrust laws, a plaintiff in action under section 106 need not show that: (1) the seller has market power in the market for the tying product; (2) the tying arrangement has had an anti-competitive effect in the market for the tied product; or (3) the tying arrangement has had a substantial effect on interstate commerce.

The Board has authority to grant exceptions to section 106 and, in the past few years, has used its exemptive authority to allow banking organizations to package their products when doing so would benefit the organization and its customers without anti-competitive effects. For example, the Board has allowed arrangements that included discounts on brokerage services and other products based on a customer's relationship with the bank or bank holding company. The final rule would build on this recent history by permitting broader categories of packaging arrangements that also do not raise the concerns that section 106 was intended to address.

1. Rescind the Board's Regulatory Extension of the Statute

As noted above, the Board has by regulation extended the restrictions of section 106 to bank holding companies and their nonbank subsidiaries as if they were banks. This extension was adopted at the same time that the Board approved by regulation the first laundry list of nonbanking activities under section 4(c)(8) of the BHC Act, apparently as a prophylactic measure addressed at potential anti-competitive practices by companies engaging in nonbanking activities.[19]

As noted in the preamble to the proposed rule, the Board has gained extensive experience with bank holding companies, their nonbank affiliates, and the markets in which they operate. Based on this experience, the Board has concluded that these nonbank companies do not possess the market power over credit or other unique competitive advantages that Congress assumed that banks enjoyed in 1970. Accordingly, the Board has decided that applying the special bank anti-tying rules to such companies is no longer justified. Any competitive problems that might arise would be isolated cases, better addressed not through a special blanket prohibition but rather through the same general antitrust laws that bind the non-bank-affiliated competitors of these entities.

Commenters discussing the tying proposal overwhelmingly supported the Board's proposal to rescind its regulatory extension of the anti-tying rules to nonbanks. Commenters noted that, in rescinding its rule, the Board would not be granting an "exception" to section 106, which never envisioned that nonbank affiliates would be covered by the special anti-tying rules applicable to banks, but rather returning the coverage of the statute to that intended by Congress. Commenters argued that the proposed rescission would benefit banking organizations and the public by permitting bank holding companies and their nonbank subsidiaries to package products and services more flexibly—particularly in packages with products and services of bank affiliates—thereby enabling the provision of more efficient and lower-cost products and services to their business and retail customers.

Commenters also generally agreed that removal of these special restrictions on bank holding companies and their nonbank subsidiaries would eliminate a competitive disadvantage by allowing them the same freedom to package products that their non-bank-affiliated competitors currently enjoy. Some of these commenters noted that the Sherman Act would continue to prohibit bank holding companies and their subsidiaries from engaging in any tying arrangement that had an anti-competitive effect.

Only two commenters opposed the Board's proposal to rescind the regulatory extension of bank anti-tying rules to nonbank affiliates.[20] One commenter, a law firm representing a nonbanking corporation, opposed the Board's proposal to free nonbank affiliates from the special tying rules applicable to banks, as well as the other proposed changes to the anti-tying regulation. This commenter stated that the proposed changes should not be adopted without a comprehensive study of their potential ramifications. The commenter also maintained that the Board's regulatory extension of the anti-tying rules to nonbank affiliates is consistent with the legislative history of section 106, which evinced concern over possible unfair business practices of nonbank affiliates as well as banks themselves. In addition, the commenter questioned whether the general antitrust laws and the nature of the competition faced by banking organizations would be adequate to prevent unfair or anti-competitive practices, and whether the proposal would produce efficiency, lower costs, and fair competition between banking and nonbanking organizations.[21]

Another law firm, representing a group of insurance industry trade associations, also opposed the Board's proposal to remove the special anti-tying rules applicable to nonbank

[17] 36 FR 10777 (June 3, 1971).

[18] See S. Rep. No. 1084, 91st Cong., 2d Sess. (1970).

[19] In recent years, the Board has enacted limited relief from the anti-tying restrictions on nonbanks within bank holding company structures. For example, the Board has permitted a nonbanking subsidiary to offer discounts on products and services based on the customer's obtaining some other product or service from that subsidiary or another nonbank affiliate. 12 CFR 225.7(b)(3). However, even with this relief, tying between a bank holding company or its nonbank subsidiary and an affiliated bank has remained restricted, as has any tying arrangement not limited to the offering of a discount.

[20] In addition, a community group generally opposed the Board's proposed changes to the tying rules on the basis of concerns about relationships between banks and their consumer finance company affiliates. These concerns focused on fair lending and equal credit opportunity, appropriate disclosure of referral fees and other matters, and compliance with various consumer lending statutes and regulations. The Board does not believe, and this commenter has provided no basis for concluding, that the anti-tying statute or regulations are intended to address or have the effect of addressing these concerns. Moreover, these concerns are already addressed by separate statutes and regulations, including the Equal Credit Opportunity Act, Home Mortgage Disclosure Act, and Real Estate Settlement Procedures Act of 1974.

[21] With respect to fair competition between banking and nonbanking organizations, the commenter asserted that banking organizations have an inherent competitive advantage from being able to conduct the business of banking. This commenter also noted the increasing concentration of resources within the banking industry itself, and indicated that the existing anti-tying rules may have contributed to the competitive vitality of the markets in which nonbank affiliates operate.

affiliates. This commenter maintained that the bank anti-tying rules should continue to apply to nonbank affiliates because these affiliates may appear to the public to be indistinguishable from the banks themselves and because the same public policy concern regarding banks' power over credit warrants the extension of the prophylactic rule for banks to entities having an affiliate relationship with banks.[22]

The Board does not believe that these concerns warrant retention of special anti-tying rules for nonbank affiliates of banks. In particular, the Board's experience as regulator and supervisor of banks, bank holding companies, and their subsidiaries provides an adequate basis for judgments about the competitive nature of markets in which banking organizations operate. Commenters have not provided evidence to the contrary or proposed specific subjects for further study. Moreover, commenters opposing the proposal have produced no evidence that the antitrust rules and the nature of the nonbanking markets in which bank affiliates operate would not be sufficient to prevent unfair or anti-competitive practices, or that the proposed liberalization of the Board's tying rules would not yield efficiencies and corresponding lower costs for customers. The Board does not believe, and commenters have provided no basis for concluding, that affiliation with a bank creates a competitive advantage warranting the application of special bank anti-tying rules to nonbank affiliates.[23] Finally, while the legislative history of section 106 may evince concern with the competitive practices of banks and their affiliates, the statute itself clearly applies only to tying by banks themselves.

For the foregoing reasons, the Board is rescinding its extension of bank anti-tying rules to bank holding companies and their nonbank subsidiaries.

2. Retain Limited Prohibition on Tying Arrangements Involving Electronic Benefit Transfer Services

In the proposed rule, the Board sought comment on whether it should retain its regulatory extension of the statute for purposes of one type of tying arrangement. Section 825(a)(3) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, signed into law on August 22, 1996, amended the Food Stamp Act of 1977 to prohibit tying the availability of electronic benefit transfer services to other point-of-sale services. Enforcement of the Food Stamp Act is assigned to the Secretary of Agriculture.[24] Banks, bank holding companies, and nonbank subsidiaries of bank holding companies were exempted from the statute, apparently because they were already restricted by section 106 (in the case of banks) and the Board's regulation (in the case of bank holding companies and their nonbank subsidiaries). Thus, unless the Board were to retain a restriction on bank holding companies and their nonbank subsidiaries, they would be the only companies not subject to a special restriction on tying of electronic benefit transfer services.

Commenters either supported or expressly did not object to this limited retention of a special anti-tying rule for electronic benefit transfer services. Commenters acknowledged that the principle of competitive equality underlying the general rescission of special anti-tying rules for nonbank entities dictated retention of the special rules in this limited context.

The Board has decided to retain this restriction.

3. Treat Inter-affiliate Tying Arrangements the Same as Intra-bank Arrangements

Section 106 contains an explicit exception (the "statutory traditional bank product exception") that permits a bank to tie any product or service to a loan, discount, deposit, or trust service offered by that bank.[25] For example, a bank could condition the use of its messenger service on a customer's maintaining a deposit account at the bank. Although the statutory traditional bank product exception appears to have been effective in preserving traditional relationships between a customer and bank, the exception is limited in an important way: it does not extend to transactions involving products offered by affiliates.

The Board has adopted a "regulatory traditional bank product exception" that generally extends the statutory exception to transactions involving affiliates. However, the Board placed two restrictions on the regulatory exception. First, the Board required that both products involved in the tying arrangement be traditional bank products. Second, the Board required that the arrangement consist of discounting the tying product rather than restricting its availability. However, as noted in the preamble to the proposed rule, Congress decided not to apply these two restrictions to the statutory traditional bank product exception for intra-bank transactions, and it is difficult to argue that inter-affiliate transactions pose any greater risk of anti-competitive behavior than those intra-bank transactions. Moreover, Congress has already extended the statutory traditional bank product exception to cover inter-affiliate transactions, without restriction, for savings associations and their affiliates.[26] For these reasons, the Board proposed eliminating the above restrictions so that any tying arrangement within a banking organization would be permissible if the tied product is a loan, discount, deposit, or trust service.

Commenters discussing this proposal overwhelmingly supported this aspect of the proposal, agreeing with the Board that there is no reason to subject inter-affiliate tying arrangements to restrictions that are not applicable to intra-bank arrangements. Three commenters raised general objections to the elimination of these restrictions. These objections were similar to those advanced against the proposed rescission of the tying rules applicable to nonbank affiliates. The Board notes that, because insurance products are not among the traditional bank products listed in the statute or the rule, this aspect of the proposal would not enhance a banking organization's ability to leverage possible market power in other product markets to engage in anti-competitive behavior in insurance markets.

A substantial number of commenters urged the Board to adopt an expanded definition of the "traditional bank products" which may be tied to other offerings under the statutory and regulatory exceptions. Some of these commenters proposed a specific list of additional products—such as foreign exchange, interest rate swaps and other derivative products, and investment advisory services—to be exempted by the rule. Other commenters proposed a more general approach for expanding this definition: for example, exempting products authorized as part of the business of banking under relevant chartering laws. Others urged the Board to exempt all but a limited set of tying arrangements from the statutory restrictions—for example, by covering only transactions where the tying product is a consumer or small business loan.[27] The Board believes that these suggestions warrant serious consideration, but intends to study this issue and provide notice and seek comment before adopting any changes not suggested in the proposed rule.

For the foregoing reasons, the Board has decided to adopt the extension of the traditional bank product exception as proposed.

4. Extend the Expanded Regulatory "Traditional Bank Product" Exception to Reciprocity Arrangements

As noted above, section 106 prohibits not only tying arrangements but also reciprocity arrangements (conditioning the availability of or varying the consideration for one product on the providing of another by the customer).[28] Like the tying prohibition, the prohibition on reciprocity arrangements contains an exception intended to preserve traditional banking relationships. The exception provides that a bank may condition the availability of a product or service on the customer's providing to the bank some product or service "related to and usually provided in connection with" a loan, discount, deposit, or trust service.[29] The Board noted in the proposed rule that it had received only one request to extend this exception, and commenters confirmed that these types of reciprocity arrangements are not common in the industry.

Like the statutory traditional bank product exception to the tying prohibition, this exception to the reciprocity prohibition does not apply to inter-affiliate transactions, and, in the proposed rule, the Board proposed to extend the statutory exception for traditional banking relationships to cover such inter-affiliate transactions. For reasons similar to those advanced with respect to the extension of the statutory exception for tying arrangements, most commenters discussing this aspect of the proposal strongly supported the extension of permitted reciprocity arrangements, while a small number of commenters opposed this aspect of the proposal. The opposing comments did not raise any objections specific to reciprocity arrangements.

For the foregoing reasons, and because the Board does not believe that inter-affiliate reciprocity arrangements pose any greater anti-competitive threat than similar intra-bank arrangements permitted by Congress, the Board is adopting substantially as proposed the extension of the statutory exception for certain reciprocity arrangements. The Board has decided to make technical changes to the proposed exception to make clear that the regulatory exception is co-extensive with the statutory exception.

5. Coverage of Foreign Transactions Under Section 106

In response to a request that the Board clarify whether section 106 restricts foreign transactions, the Board sought comment on whether it should establish a "safe harbor" with respect to some set of foreign transactions. In particular, the Board sought comment on whether the safe harbor should define "foreign transactions" according to the location of the customer, the location of the market where any potential anti-competitive effects would occur, or some other factor.

Federal legislation is presumed to apply only within the territorial jurisdiction of the United States, unless the legislation clearly expresses a contrary intent on the part of Congress. No such intent is evident in section 106.[30] However, determining whether a series of transactions has sufficient connection to the United States to trigger section 106 can be a difficult process. The proposed safe harbor was intended to provide certainty with respect to a defined set of transactions. Thus, the proposed safe harbor was not intended to be an interpretation of section 106, as some transactions outside the safe harbor may not be covered by the statute.

Commenters addressing this issue overwhelmingly supported the creation of a safe harbor. Commenters argued that a safe harbor would provide needed certainty to banking organizations operating abroad and permit these organizations to compete with foreign firms. One commenter noted that U.S. banks sometimes cannot participate in lending syndicates dominated by foreign banks because the loan agreement contains conditions that would violate section 106. Furthermore, in some countries it is customary for a financial advisor or credit provider to link services in formulating proposals and a U.S. bank's inability to do so places it at a competitive disadvantage.

In terms of how the safe harbor would be defined, commenters strongly urged that the locus of the customer be determinative. Commenters uniformly rejected any test based on the locus of any anti-competitive effects, on two grounds. First, such a test assumes that there will be anti-competitive effects from the tying arrangements, which is by definition true in the case of a Sherman Act violation but not necessarily true in the case of a violation of the *per se* prohibition on tying in section 106. Second, determining where a transaction has its effect can be a difficult process yielding no clear answer, and the test would therefore leave substantial uncertainty in terms of compliance.

Some commenters also urged the Board to exempt transactions to finance projects located outside the United States and transactions with foreign branches of U.S. companies.

A small number of commenters objected generally to this proposed change to the tying rules without providing any specific reason why a safe harbor for foreign transactions should not be adopted. One commenter maintained that a safe harbor was not necessary because relevant case law had provided sufficient clarity and certainty with respect to this question.

For the reasons advanced by commenters, the Board is adopting a "safe harbor" from the anti-tying rules for transactions with corporate customers that are incorporated or otherwise organized, and have their principal place of business, outside the United States, or with individuals who are citizens of a foreign country and are not resident in the United States. However, the safe harbor would not protect tying arrangements where the

[22] This commenter also advanced several arguments for not rescinding these rules with respect to packaged offerings that include insurance products, specifically: (1) That such packaging arrangements may violate state insurance laws that prohibit insurance agents from offering rebates on the sale of insurance products; and (2) that permitting insurance premium payments as part of a discount package may similarly violate state anti-rebate and insurance advertising laws, and could result in customer confusion and a conflict with the Interagency Statement on Retail Sales of Nondeposit Investment Products. The commenter also argued that the proposal could enable banks to coerce customers to purchase insurance in order to obtain a loan, and that permitting a combination of insured deposit and uninsured investment products in a single package could obscure the differences between these products and produce confusion among customers of banking organizations.

[23] The Board also notes that these commenters have not provided any reason to conclude that an increased concentration of resources in the banking industry itself warrants an extension of anti-tying rules to the nonbanking markets in which bank affiliates operate.

Other matters raised by commenters also provide no basis for extending the special bank anti-tying rules to nonbank affiliates. The Board does not believe that the rescission of this extension or other aspects of the proposed rule would preempt state laws regarding insurance or other matters. Furthermore, concerns about possible customer confusion are effectively addressed through more direct means such as the Interagency Statement on Retail Sales of Nondeposit Investment Products. The Board also notes that section 106 would continue to prohibit banks from using their power over credit to induce customers to purchase insurance products.

[24] 104 Pub. L. 193, 110 Stat. 2105; 7 U.S.C. § 2016(i)(11).

[25] 12 U.S.C. 1972(1)(A).

[26] 12 U.S.C. 1464(q)(1)(A).

[27] Some commenters also suggested that the Board issue interpretations to clarify the scope of the statutory list of four traditional bank products.

[28] 12 U.S.C. 1972(1)(C) and (D).

[29] 12 U.S.C. 1972(1)(C).

[30] *See Gushi Bros. Co.* v. *Bank of Guam*, 28 F.3d 1535, 1542–43 (9th Cir. 1994).

customer is a U.S.-incorporated division of a foreign company. Furthermore, the safe harbor would not shelter a transaction from other antitrust laws if they were otherwise applicable.

The Board agrees with commenters that some transactions with U.S. persons may be so foreign in nature, because of the location of either the project that is the subject of the transaction or the customer's office that is entering into the transaction, that they do not raise the competitive concerns that section 106 or the antitrust laws were designed to address. The Board also believes, however, that many such foreign-based transactions do have competitive implications in the United States—for example, where a U.S. corporation seeks financing for a project abroad, and the bank seeks to tie this financing to an affiliate's U.S. securities underwriting services—and the Board does not believe that commenters have provided an adequate and clear basis for excluding such transactions from any "safe harbor" for foreign transactions with U.S. persons.

6. Technical Changes

The Board also is adopting a definition of "bank" for purposes of the anti-tying rules to clarify that any exemptions afforded to banks generally also would be applicable to credit card and other limited purpose institutions and to United States branches and agencies of foreign banks.[31]

E. Other Changes

1. Filings Under the Change in Bank Control Act

The final rule, as the proposal, reorganizes, clarifies, and simplifies the portion of Regulation Y that implements the Change in Bank Control Act ("CIBC Act"). The final rule attempts to harmonize the scope and procedural requirements of the Board's regulation implementing the CIBC Act with those of the other federal banking agencies and to reduce any unnecessary regulatory burden.

In particular, the final rule reduces regulatory burden by reducing from two to one the number of times a person must receive permission under the CIBC Act to acquire shares of the same state member bank or bank holding company. Specifically, the final rule eliminates the current requirement that all persons who have received authorization to control in excess of 10 percent, but less than 25 percent, of the voting shares of a member bank or bank holding company file a second notice before acquiring control of 25 percent or more of the voting shares of the institution.

The Board has determined that this new rule will apply to any person who *currently* controls 10 percent (but less than 25 percent) of the shares of a state member bank or bank holding company with Board approval under the CIBC Act, unless the approval granted to the person specifically limited the amount of shares that the person may control or the person is otherwise notified in writing by the System that additional approval is required. In future cases in which a person appears to have sufficient financial resources to acquire more than 10 percent, but less than 100 percent of the shares of a bank, the System may limit the approval granted on a case-by-case basis by requiring further review of the financial resources of the person as appropriate.

Commenters that discussed the CIBC Act proposal supported the proposed revisions. In particular, these commenters endorsed the elimination of the requirement to file a second notice to the Board upon exceeding 25 percent ownership of a member bank or bank holding company when a prior notice to acquire in excess of 10 percent had been filed and approved by the Board.

Commenters also supported the proposal to clarify certain terms used in the CIBC Act portion of the rule. The final rule adds definitions of key terms to clarify the scope of the regulation. In particular, the final rule defines the terms *acting in concert* and *immediate family*, and includes specific presumptions of concerted action, to clarify the rule and to provide guidance to acquirors. In addition, the final rule incorporates current Board practice that the acquisition of a loan in default that is secured by voting securities of a state member bank or bank holding company is presumed to be an acquisition of the underlying securities.

The final rule also reduces regulatory burden on persons whose ownership percentages increase as the result of an action outside the control of the person, such as a redemption of voting securities by the issuing bank or a sale of shares by a third party. In these situations, the proposal would permit the person affected by the bank or third party action to file a notice within 90 calendar days *after* the transaction occurs, provided that the acquiring person does not reasonably have advance knowledge of the triggering transaction.

In addition, the final rule provides for more flexible timing for newspaper announcements of filings under the CIBC Act by permitting notificants to publish the announcement up to 15 calendar days before submitting the filing. The newspaper notice requirement also is modified to eliminate the requirement that the notice include a statement of the percentage of shares proposed to be acquired.

Finally, the final rule adds a new section reflecting the stock loan reporting requirements in section 205 of the Federal Deposit Insurance Corporation Improvement Act as amended by section 2226 of the Regulatory Relief Act. Before the passage of the Regulatory Relief Act, all financial institutions were required to file reports documenting credit outstanding by the institution and its affiliates when the credit was secured by 25 percent or more of any class of voting securities of an insured depository institution. The Regulatory Relief Act limits this requirement to credit outstanding by foreign banks and their affiliates.

One commenter suggested that the Board require any person participating in a proxy solicitation to obtain prior approval under the CIBC Act and urged broadening the definition of persons who would be deemed to be acting in concert (and thus required to join in a CIBC Act filing) to include persons soliciting proxies. This commenter also suggested that the institution that is the target of a proxy solicitation be granted standing as a party to a CIBC Act filing, be furnished copies of all filings, and be permitted to submit comments.

The Board has not adopted these suggestions. The Board has long held, and a federal court has agreed, that the CIBC Act is not automatically triggered by the formation of a group for the purpose of acquiring proxies for voting shares and that private parties do not have legal standing to challenge agency action under the CIBC Act.[32] The final rule provides for public notice of all CIBC Act filings (unless immediate or expeditious action is required) and permits any private party to submit comments for Board consideration. This approach is in keeping with the purpose of the CIBC Act, which is to permit the federal banking agencies to review changes in the ownership of banks and bank holding companies and is not intended to be a mechanism for private

[31] One commenter urged that the safe harbor for combined-balance discounts be clarified by specifying that products offered by an affiliate of the bank may be included as eligible products. The Board notes that the proposed and final rule refer to "products specified by the bank", and do not contain any limitation with respect to the entity offering the product.

[32] *See Citizen First Bancorp, Inc.* v. *Harreld*, 559 F.Supp. 867 (1982).

parties to frustrate contested acquisitions.

2. Notices of Changes in Directors and Senior Executive Officers

In addition to the BHC Act and the CIBC Act, Regulation Y implements section 914 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, which requires a state member bank or bank holding company (together, "regulated institutions") to give prior notice to the System before changing directors or senior executive officers under certain circumstances. The final rule has been modified in light of amendments to section 914 enacted by the Regulatory Relief Act and in cooperation with the staffs of the other federal financial institutions supervisory agencies, in an attempt to develop uniform procedures for requiring and reviewing section 914 notices.

As amended, section 914 no longer requires prior notice from regulated institutions chartered for less than two years or regulated institutions that underwent a change in control within two years. Accordingly, provisions in the proposed rule relating to these circumstances as triggering a section 914 notice have been deleted from the final rule.

Section 914 also was amended by the Regulatory Relief Act to permit the System to extend the 30-day prior notice period for an additional period not to exceed 60 days. The Board expects to continue to process most section 914 notices within 30 days and the final rule retains the 30-day prior notice period. In special circumstances, such as an incomplete administrative record, the final rule permits the System to extend the prior notice period for an additional 60 days as provided in section 914 after notifying the regulated institution or individual filing the notice of the extension and the reason for not processing the notice within 30 days.

In all waiver requests, the final rule continues to require that all information required to be filed under the rule be provided within the time period specified by the System. The final rule also adopts the System's current practice of granting individuals who are not proposed by management and who are elected as new directors of regulated institutions an automatic waiver of the 30-day prior notice requirement in order to serve immediately as board members. To qualify for an automatic waiver, the individual must also provide the System with all information required to be filed under the rule within two business days after the individual's election. The System may issue a notice of disapproval within 30 days after a waiver request is granted or the election of an individual serving pursuant to an automatic waiver.

One commenter argued that the automatic waiver procedures should require an individual to resign as a director after a notice of disapproval has been issued by the System. While disapproval would require the individual to resign as a director, the final rule does not incorporate the suggestion because the System has sufficient enforcement authority under applicable law to remove a disapproved director from the board.

The final rule also makes other changes, such as modifications to the appeal procedure for a disapproved notice, that are intended to clarify the proposed rule.

3. Other Changes

The Board received three comments requesting that the Board expand its proposed presumption exempting testamentary trusts from the definition of "company" so as to exempt inter vivos (or living) trusts. Inter vivos trusts are trusts that are established by individuals during their lifetime to facilitate estate planning. The Board, on a case-by-case basis, has applied criteria similar to the criteria proposed in Regulation Y in determining whether an inter vivos trust is a "company" for purposes of the BHC Act. Accordingly, the final rule has been expanded to presume that an inter vivos trust is exempt from the definition of "company" if the trust meets the criteria in the final rule and is not otherwise found to be a business trust or company. The final rule also amends the time limit in which a trust must terminate to reflect that the BHC Act permits certain trusts to extend for 25 years.

The final rule also reduces from 30 to 15 the number of days notice required before a large stock redemption by a bank holding company, permits small bank holding companies to make stock redemptions without prior notice if the holding company meets certain leverage and capital requirements, and permits bank holding companies to take account of intervening new issues of stock in computing when a stock redemption notice must be filed.

In addition, the final rule adopts the changes enacted in the Regulatory Relief Act to the period for divesting certain shares acquired in satisfaction of a debt previously contracted. These changes permit the Board to extend the divestiture period, under certain circumstances, to a period of up to 10 years.

Moreover, the final rule deletes the provisions implementing section 2(g)(3) of the BHC Act, which have been repealed by the Regulatory Relief Act. The Board has also deleted references in Regulation Y to limitations on asset growth imposed on certain institution by the Competitive Equality Banking Act of 1987 (Pub. L. 100–86, 101 Stat 552) because these limitations were removed by section 2304 of the Regulatory Relief Act.

Finally, the final rule adopts the proposed definitions of "class of voting securities" and "immediate family" and includes several other technical changes.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, the Board is required to conduct an analysis of the effect on small institutions of the revisions to Regulation Y. As of September 30, 1996, the number of bank holding companies totalled 5,250.[33] The following chart provides a distribution, based on asset size, for those companies.

Asset size category (M=million)	Number of bank holding companies	Percent of bank holding company assets
Less than $150M ..	3,874	[34]5.2
$150M–$300M	677	3.2
Greater than $300M	699	91.6

The comprehensive revision to Regulation Y is intended to eliminate unnecessary burden for all bank holding companies, including smaller banking organizations. Included in the revision are expedited application/notice procedures with minimal information requirements for well-rated and well-run bank holding companies. The vast majority of bank holding companies would qualify to use the streamlined procedures, and it is estimated that more than 50 percent of the applications/notices reviewed by the Federal Reserve System during 1995 would have qualified for the new streamlined procedures. The revisions also include a reorganization and streamlining of the regulatory laundry list of permissible nonbanking activities,

[33] Financial top-tier domestic bank holding companies. Excludes middle-tier bank holding companies, and foreign bank holding companies that are not required to file a Y–9 report with the Federal Reserve System.

[34] Bank holding companies with consolidated assets of less than $150 million are not required to file financial regulatory reports on a consolidated basis. Assets for this group are estimated based on reports filed by the parent companies and subsidiaries.

the removal of unnecessary and outmoded regulatory restrictions, and a waiver of filing requirements for bank acquisitions that are in-substance bank-to-bank mergers. These changes apply to all bank holding companies and will be particularly helpful to small bank holding companies.

The revisions include a number of other changes applicable to smaller organizations in particular. These changes include a special exception for small bank holding companies with assets of less than $300 million from the aggregate size limit applying to the use of the expedited application procedures, an update of the small bank holding company policy statement that applies to bank holding companies with assets of less than $150 million and reduces burden for qualifying small bank holding companies, reduction of the thresholds for qualification for streamlined formation of new bank holding companies, reduction in the filing requirements under the Change in Bank Control Act, and addition of a new exception for small bank holding companies from the prior approval requirements regarding stock redemption proposals. These and the other changes described above are explained in more detail in the Supplementary Information portion of this document.

The Board expects that the final rule will result in a significant reduction in regulatory filings, in the paperwork burden and processing time associated with regulatory filings, and in the costs associated with complying with the regulation, thereby improving the ability of all bank holding companies, including small organizations, to conduct business on a more cost-efficient basis.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 3506; 5 CFR part 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, the following information collections unless it displays a currently valid OMB control number. The OMB control numbers are indicated below.

The collection of information requirements in this regulation are found in 12 CFR 225.11, 12 CFR 225.12, 12 CFR 225.14, 12 CFR 225.17, 12 CFR 225.23, 12 CFR 225.24, 12 USC 1817(j) and 1831(i), 12 CFR 225.73, 12 CFR 225.4, and 12 CFR 225.3(a). This information is required to evidence compliance with the requirements of the Bank Holding Company Act, the Change in Bank Control Act and provisions of the Federal Deposit Insurance Act. The respondents are for-profit financial institutions and other corporations, including small businesses, and individuals.

The Board received no comments that specifically addressed burden estimates.

The streamlining of applications to acquire banks and nonbanking companies by institutions that meet the qualifying criteria should result in a significant reduction in burden for respondents that file the Application for Prior Approval To Become a Bank Holding Company, or for a Bank Holding Company To Acquire an Additional Bank or Bank Holding Company (FR Y–3; OMB No. 7100–0171). Approximately 196 respondents file the FR Y–3 annually pursuant to section 3(a)(1) of the Bank Holding Company Act (Act) and 303 respondents file annually the FR Y–3 pursuant to section 3(a)(3) and 3(a)(5) of the Act. The current burden per response is 48.5 hours and 59.0 hours, respectively, for a total estimated annual burden of 27,383 hours. Under the rule, it is estimated that at least 50 percent of these respondents, or a total of 249 respondents for both types of applications, would meet the criteria to qualify for the filing of a streamlined application. The average number of hours per response for proposed applications of each type is estimated to decrease to 2.5 hours. Therefore the total amount of annual burden is estimated to be 14,343.5 hours. Based on an hourly cost of $50, the annual cost to the public under the revision is estimated to be $717,175, which represents an estimated cost reduction of $651,975 from the estimated annual cost to the public of $1,369,150 under the current rule.

The final rule should result in a significant reduction in regulatory burden by eliminating the prior review and approval requirements for well-run bank holding companies to engage *de novo* in nonbanking activities that are permissible by Board regulation; streamlining the application process to engage *de novo* in nonbanking activities that are permissible only by Board order and to acquire nonbanking companies; and permitting bank holding companies to obtain approval at one time to engage in a preauthorized list of nonbanking activities. Thus, respondents that file the Application for Prior Approval To Engage Directly or Indirectly in Certain Nonbanking Activities (FR Y–4; OMB No. 7100–0121) will experience a significant reduction in costs. Approximately 362 respondents file the FR Y–4 annually to meet application requirements, and 114 respondents file to meet notification requirements. The current burden per response is 59.0 hours and 1.5 hours, respectively, for a total estimated annual burden of 21,529 hours. Under the rule it is estimated that at least 50 percent of these respondents would meet the criteria to qualify either for elimination or for the filing of a streamlined application, representing 181 applications and 57 notifications. The average number of hours per response for the required post-consummation notice is 0.5 hours and for the required streamlined notice is 1.5 hours. Therefore the total amount of annual burden is estimated to be 11,121.5 hours. Based on an hourly cost of $50, the annual cost to the public under the revision is estimated to be $556,075, which represents an estimated cost reduction of $520,375 from the current estimated annual cost to the public of $1,076,450 under the current rule.

The elimination of the requirement that a person who has already received Board approval under the Change in Bank Control Act obtain additional approvals to acquire additional shares of the same bank or bank holding company should result in a significant reduction in burden for respondents that file the Notice of Change in Bank Control (FR 2081; OMB No. 7100–0134). Approximately 300 respondents file the FR 2081 annually to meet the notification requirements of change in control, 280 respondents file to meet the requirements for notice of a change in director or senior executive officer, and 1000 respondents file to meet requirements to report certain biographical and financial information. The current burden per response for each requirement is 30.0 hours, 2.0 hours, and 4.0 hours, respectively, for a total estimated annual burden of 13,560 hours. Under the rule it is estimated that 50 percent fewer notifications of change in control will be filed for an annual total of 150 responses. The estimated number of filings to meet the other two requirements and the estimated average hours per response for each requirement remains unchanged. Therefore the total amount of annual burden is estimated to be 9,060 hours. Based on an hourly cost of $20, the total annual cost to the public under the revision is estimated to be $181,200, which represents an estimated cost reduction of $90,000 from the current estimated annual cost to the public of $271,200 under the current rule.

The allowance for bank holding companies to take account of intervening new issues of stock in computing when a stock redemption notice must be filed and the exemption provided to small bank holding companies that meet certain leverage and capital requirements should result in a significant reduction in burden for respondents that file the Notice of Proposed Stock Redemption (FR 4008; OMB No. 7100–0131). Approximately 50 respondents file the FR 4008 annually. The current burden per response is 15.5 hours, for a total estimated annual burden of 775 hours. Under the rule it is estimated that 50 percent fewer notifications will be filed for an annual total of 25 responses and the estimated average hours per response remains unchanged. Therefore the total amount of annual burden is estimated to be 387.5 hours. Based on an hourly cost of $30, the total annual cost to the public under the revision is estimated to be $11,625, which represents a cost reduction of $11,625 from the current estimated cost to the public of $23,250 under the current rule.

The streamlining of application requirements are not expected to change the ongoing annual burden associated with the Application for a Foreign Organization to Become a Bank Holding Company (FR Y–1f; OMB No. 7100–0119). Approximately 2 respondents file the FR Y–1f annually. The current burden per response is 77 hours for a total estimated annual burden of 144 hours. Based on an hourly cost of $20, the annual cost to the public is estimated to be $3,080.

All information contained in these collections of information are available to the public unless the respondent can substantiate that disclosure of certain information would result in substantial competitive harm or an unwarranted invasion of personal privacy or would otherwise qualify for an exemption under the Freedom of Information Act.

The Federal Reserve has a continuing interest in the public's opinions of our collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100–0196), Washington, DC 20503.

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding Companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Board amends 12 CFR part 225 as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(l), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. Subpart A is revised to read as follows:

Subpart A—General Provisions

Sec.

225.1 Authority, purpose, and scope.
225.2 Definitions.
225.3 Administration.
225.4 Corporate practices.
225.5 Registration, reports, and inspections.
225.6 Penalties for violations.
225.7 Exceptions to tying restrictions

Subpart A—General Provisions

§ 225.1 Authority, purpose, and scope.

(a) *Authority.* This part [1] (Regulation Y) is issued by the Board of Governors of the Federal Reserve System (*Board*) under section 5(b) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(b)) (*BHC Act*); sections 8 and 13(a) of the International Banking Act of 1978 (12 U.S.C. 3106 and 3108); section 7(j)(13) of the Federal Deposit Insurance Act, as amended by the Change in Bank Control Act of 1978 (12 U.S.C. 1817(j)(13)) (*Bank Control Act*); section 8(b) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)); section 914 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. 1831i); section 106 of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972); and the International Lending Supervision Act of 1983 (Pub. L. 98–181, title IX). The BHC Act is codified at 12 U.S.C. 1841, *et seq.*

(b) *Purpose.* The principal purposes of this part are to:

(1) Regulate the acquisition of control of banks by companies and individuals;

(2) Define and regulate the nonbanking activities in which bank holding companies and foreign banking organizations with United States operations may engage; and

(3) Set forth the procedures for securing approval for these transactions and activities.

[1] Code of Federal Regulations, title 12, chapter II, part 225.

(c) *Scope*—(1) *Subpart A* contains general provisions and definitions of terms used in this regulation.

(2) *Subpart B* governs acquisitions of bank or bank holding company securities and assets by bank holding companies or by any company that will become a bank holding company as a result of the acquisition.

(3) *Subpart C* defines and regulates the nonbanking activities in which bank holding companies and foreign banking organizations may engage directly or through a subsidiary. The Board's Regulation K governs certain nonbanking activities conducted by foreign banking organizations and certain foreign activities conducted by bank holding companies (12 CFR part 211, International Banking Operations).

(4) *Subpart D* specifies situations in which a company is presumed to control voting securities or to have the power to exercise a controlling influence over the management or policies of a bank or other company; sets forth the procedures for making a control determination; and provides rules governing the effectiveness of divestitures by bank holding companies.

(5) *Subpart E* governs changes in bank control resulting from the acquisition by individuals or companies (other than bank holding companies) of voting securities of a bank holding company or state member bank of the Federal Reserve System.

(6) *Subpart F* specifies the limitations that govern companies that control so-called nonbank banks and the activities of nonbank banks.

(7) *Subpart G* prescribes minimum standards that apply to the performance of real estate appraisals and identifies transactions that require state certified appraisers.

(8) *Subpart H* identifies the circumstances when written notice must be provided to the Board prior to the appointment of a director or senior officer of a bank holding company and establishes procedures for obtaining the required Board approval.

(9) *Appendix A* to the regulation contains the Board's Risk-Based Capital Adequacy Guidelines for bank holding companies.

(10) *Appendix B* contains the Board's Capital Adequacy Guidelines for measuring leverage for bank holding companies and state member banks.

(11) *Appendix C* contains the Board's policy statement governing small bank holding companies.

(12) *Appendix D* contains the Board's Capital Adequacy Guidelines for measuring tier 1 leverage for bank holding companies.

(13) *Appendix E* contains the Board's Capital Adequacy Guidelines for measuring market risk of bank holding companies.

§ 225.2 Definitions.

Except as modified in this regulation or unless the context otherwise requires, the terms used in this regulation have the same meaning as set forth in the relevant statutes.

(a) *Affiliate* means any company that controls, is controlled by, or is under common control with, another company.

(b)(1) *Bank* means:

(i) An insured bank as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)); or

(ii) An institution organized under the laws of the United States which both:

(A) Accepts demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others; and

(B) Is engaged in the business of making commercial loans.

(2) *Bank* does not include those institutions qualifying under the exceptions listed in section 2(c)(2) of the BHC Act (12 U.S.C. 1841(c)(2)).

(c)(1) *Bank holding company* means any company (including a bank) that has direct or indirect control of a bank, other than control that results from the ownership or control of:

(i) Voting securities held in good faith in a fiduciary capacity (other than as provided in paragraphs (e)(2)(ii) and (iii) of this section) without sole discretionary voting authority, or as otherwise exempted under section 2(a)(5)(A) of the BHC Act;

(ii) Voting securities acquired and held only for a reasonable period of time in connection with the underwriting of securities, as provided in section 2(a)(5)(B) of the BHC Act;

(iii) Voting rights to voting securities acquired for the sole purpose and in the course of participating in a proxy solicitation, as provided in section 2(a)(5)(C) of the BHC Act;

(iv) Voting securities acquired in satisfaction of debts previously contracted in good faith, as provided in section 2(a)(5)(D) of the BHC Act, if the securities are divested within two years of acquisition (or such later period as the Board may permit by order); or

(v) Voting securities of certain institutions owned by a thrift institution or a trust company, as provided in sections 2(a)(5)(E) and (F) of the BHC Act.

(2) Except for the purposes of § 225.4(b) of this subpart and subpart E of this part, or as otherwise provided in this regulation, *bank holding company* includes a foreign banking organization. For the purposes of subpart B of this part, *bank holding company* includes a foreign banking organization only if it owns or controls a bank in the United States.

(d)(1) *Company* includes any bank, corporation, general or limited partnership, association or similar organization, business trust, or any other trust unless by its terms it must terminate either within 25 years, or within 21 years and 10 months after the death of individuals living on the effective date of the trust.

(2) *Company* does not include any organization, the majority of the voting securities of which are owned by the United States or any state.

(3) *Testamentary trusts exempt.* Unless the Board finds that the trust is being operated as a business trust or company, a trust is presumed not to be a company if the trust:

(i) Terminates within 21 years and 10 months after the death of grantors or beneficiaries of the trust living on the effective date of the trust or within 25 years;

(ii) Is a testamentary or *inter vivos* trust established by an individual or individuals for the benefit of natural persons (or trusts for the benefit of natural persons) who are related by blood, marriage or adoption;

(iii) Contains only assets previously owned by the individual or individuals who established the trust;

(iv) Is not a Massachusetts business trust; and

(v) Does not issue shares, certificates, or any other evidence of ownership.

(4) *Qualified limited partnerships exempt.* Company does not include a qualified limited partnership, as defined in section 2(o)(10) of the BHC Act.

(e)(1) *Control* of a bank or other company means (except for the purposes of subpart E of this part):

(i) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of voting securities of the bank or other company, directly or indirectly or acting through one or more other persons;

(ii) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of the bank or other company;

(iii) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the bank or other company, as determined by the Board after notice and opportunity for hearing in accordance with § 225.31 of subpart D of this part; or

(iv) Conditioning in any manner the transfer of 25 percent or more of the outstanding shares of any class of voting securities of a bank or other company upon the transfer of 25 percent or more of the outstanding shares of any class of voting securities of another bank or other company.

(2) A bank or other company is deemed to control voting securities or assets owned, controlled, or held, directly or indirectly:

(i) By any subsidiary of the bank or other company;

(ii) In a fiduciary capacity (including by pension and profit-sharing trusts) for the benefit of the shareholders, members, or employees (or individuals serving in similar capacities) of the bank or other company or any of its subsidiaries; or

(iii) In a fiduciary capacity for the benefit of the bank or other company or any of its subsidiaries.

(f) *Foreign banking organization* and *qualifying foreign banking organization* have the same meanings as provided in § 211.21(n) and § 211.23 of the Board's Regulation K (12 CFR 211.21(n) and 211.23).

(g) *Insured depository institution* includes an insured bank as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)) and a savings association.

(h) *Lead insured depository institution* means the largest insured depository institution controlled by the bank holding company as of the quarter ending immediately prior to the proposed filing, based on a comparison of the average total risk-weighted assets controlled during the previous 12-month period by each insured depository institution subsidiary of the holding company.

(i) *Management official* means any officer, director (including honorary or advisory directors), partner, or trustee of a bank or other company, or any employee of the bank or other company with policy-making functions.

(j) *Nonbank bank* means any institution that:

(1) Became a bank as a result of enactment of the Competitive Equality Amendments of 1987 (Pub. L. 100–86), on the date of enactment (August 10, 1987); and

(2) Was not controlled by a bank holding company on the day before the enactment of the Competitive Equality Amendments of 1987 (August 9, 1987).

(k) *Outstanding shares* means any voting securities, but does not include securities owned by the United States or by a company wholly owned by the United States.

(l) Person includes an individual, bank, corporation, partnership, trust, association, joint venture, pool,

syndicate, sole proprietorship, unincorporated organization, or any other form of entity.

(m) *Savings association* means:

(1) Any federal savings association or federal savings bank;

(2) Any building and loan association, savings and loan association, homestead association, or cooperative bank if such association or cooperative bank is a member of the Savings Association Insurance Fund; and

(3) Any savings bank or cooperative that is deemed by the director of the Office of Thrift Supervision to be a savings association under section 10(l) of the Home Owners Loan Act.

(n) *Shareholder*—(1) *Controlling shareholder* means a person that owns or controls, directly or indirectly, 25 percent or more of any class of voting securities of a bank or other company.

(2) *Principal shareholder* means a person that owns or controls, directly or indirectly, 10 percent or more of any class of voting securities of a bank or other company, or any person that the Board determines has the power, directly or indirectly, to exercise a controlling influence over the management or policies of a bank or other company.

(o) *Subsidiary* means a bank or other company that is controlled by another company, and refers to a direct or indirect subsidiary of a bank holding company. An indirect subsidiary is a bank or other company that is controlled by a subsidiary of the bank holding company.

(p) *United States* means the United States and includes any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, and the Virgin Islands.

(q)(1) *Voting securities* means shares of common or preferred stock, general or limited partnership shares or interests, or similar interests if the shares or interest, by statute, charter, or in any manner, entitle the holder:

(i) To vote for or to select directors, trustees, or partners (or persons exercising similar functions of the issuing company); or

(ii) To vote on or to direct the conduct of the operations or other significant policies of the issuing company.

(2) *Nonvoting shares.* Preferred shares, limited partnership shares or interests, or similar interests are not *voting securities* if:

(i) Any voting rights associated with the shares or interest are limited solely to the type customarily provided by statute with regard to matters that would significantly and adversely affect the rights or preference of the security or other interest, such as the issuance of additional amounts or classes of senior securities, the modification of the terms of the security or interest, the dissolution of the issuing company, or the payment of dividends by the issuing company when preferred dividends are in arrears;

(ii) The shares or interest represent an essentially passive investment or financing device and do not otherwise provide the holder with control over the issuing company; and

(iii) The shares or interest do not entitle the holder, by statute, charter, or in any manner, to select or to vote for the selection of directors, trustees, or partners (or persons exercising similar functions) of the issuing company.

(3) *Class of voting shares.* Shares of stock issued by a single issuer are deemed to be the same class of voting shares, regardless of differences in dividend rights or liquidation preference, if the shares are voted together as a single class on all matters for which the shares have voting rights other than matters described in paragraph (o)(2)(i) of this section that affect solely the rights or preferences of the shares.

(r) *Well-capitalized*–(1) *Bank holding company.* In the case of a bank holding company,[2] *well-capitalized* means that:

(i) On a consolidated basis, the bank holding company maintains a total risk-based capital ratio of 10.0 percent or greater, as defined in Appendix A of this part;

(ii) On a consolidated basis, the bank holding company maintains a Tier 1 risk-based capital ratio of 6.0 percent or greater, as defined in Appendix A of this part; and

(iii) The bank holding company is not subject to any written agreement, order, capital directive, or prompt corrective action directive issued by the Board to meet and maintain a specific capital level for any capital measure.

(2) *Insured depository institution.* In the case of an insured depository institution, *well-capitalized* means that the institution maintains at least the capital levels required to be "well-capitalized" under the capital adequacy regulations or guidelines applicable to the institution that have been adopted by the appropriate federal banking agency for the institution under section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o).

[2] For purposes of this subpart and subparts B and C of this part, a bank holding company with consolidated assets under $150 million that is subject to the Small Bank Holding Company Policy Statement in Appendix C of this part will be deemed to be "well-capitalized" if the bank holding company meets the requirements for expedited/waived processing in Appendix C.

(3) *Foreign banks*—(i) *Standards applied.* For purposes of determining whether a foreign banking organization qualifies under paragraph (r)(1) of this section:

(A) A foreign banking organization whose home country supervisor, as defined in § 211.21 of the Board's Regulation K (12 CFR 211.21), has adopted capital standards consistent in all respects with the Capital Accord of the Basle Committee on Banking Supervision (Basle Accord) may calculate its capital ratios under the home country standard; and

(B) A foreign banking organization whose home country supervisor has not adopted capital standards consistent in all respects with the Basle Accord shall obtain a determination from the Board that its capital is equivalent to the capital that would be required of a U.S. banking organization under paragraph (r)(1) of this section.

(ii) *Branches and agencies.* For purposes of determining, under paragraph (r)(1) of this section, whether a branch or agency of a foreign banking organization is well-capitalized, the branch or agency shall be deemed to have the same capital ratios as the foreign banking organization.

(s) *Well-managed*—(1) *In general.* A company, insured depository institution, or branch or agency of a foreign banking organization is *well-managed* if:

(i) At its most recent inspection or examination or subsequent review by the appropriate federal banking agency for the company or institution, the company or institution received:

(A) At least a satisfactory composite rating; and

(B) At least a satisfactory rating for management and for compliance, if such a rating is given; or

(ii) In the case of a company or insured depository institution that has not received an examination rating, the Board has determined, after a review of the managerial and other resources of the company or depository institution, that the company or institution qualifies for the streamlined procedures in this subpart, and subparts B and C of this part.

(2) *Foreign banking organizations.* A foreign banking organization shall qualify under this paragraph if the combined operations of the foreign banking organization in the United States have received at least a satisfactory composite rating at the most recent annual assessment.

§ 225.3 Administration.

(a) *Delegation of authority.* Designated Board members and officers and the

Federal Reserve Banks are authorized by the Board to exercise various functions prescribed in this regulation and in the Board's Rules Regarding Delegation of Authority (12 CFR part 265) and the Board's Rules of Procedure (12 CFR part 262).

(b) *Appropriate Federal Reserve Bank.* In administering this regulation, unless a different Federal Reserve Bank is designated by the Board, the appropriate Federal Reserve Bank is as follows:

(1) For a bank holding company (or a company applying to become a bank holding company): the Reserve Bank of the Federal Reserve district in which the company's banking operations are principally conducted, as measured by total domestic deposits in its subsidiary banks on the date it became (or will become) a bank holding company;

(2) For a foreign banking organization that has no subsidiary bank and is not subject to paragraph (b)(1) of this section: the Reserve Bank of the Federal Reserve district in which the total assets of the organization's United States branches, agencies, and commercial lending companies are the largest as of the later of January 1, 1980, or the date it becomes a foreign banking organization;

(3) For an individual or company submitting a notice under subpart E of this part: The Reserve Bank of the Federal Reserve district in which the banking operations of the bank holding company or state member bank to be acquired are principally conducted, as measured by total domestic deposits on the date the notice is filed.

§ 225.4 Corporate practices.

(a) *Bank holding company policy and operations.* (1) A bank holding company shall serve as a source of financial and managerial strength to its subsidiary banks and shall not conduct its operations in an unsafe or unsound manner.

(2) Whenever the Board believes an activity of a bank holding company or control of a nonbank subsidiary (other than a nonbank subsidiary of a bank) constitutes a serious risk to the financial safety, soundness, or stability of a subsidiary bank of the bank holding company and is inconsistent with sound banking principles or the purposes of the BHC Act or the Financial Institutions Supervisory Act of 1966, as amended (12 U.S.C. 1818(b) *et seq.*), the Board may require the bank holding company to terminate the activity or to terminate control of the subsidiary, as provided in section 5(e) of the BHC Act.

(b) *Purchase or redemption by bank holding company of its own securities*—(1) *Filing notice.* Except as provided in paragraph (b)(6) of this section, a bank holding company shall give the Board prior written notice before purchasing or redeeming its equity securities if the gross consideration for the purchase or redemption, when aggregated with the net consideration paid by the company for all such purchases or redemptions during the preceding 12 months, is equal to 10 percent or more of the company's consolidated net worth. For the purposes of this section, "net consideration" is the gross consideration paid by the company for all of its equity securities purchased or redeemed during the period minus the gross consideration received for all of its equity securities sold during the period.

(2) *Contents of notice.* Any notice under this section shall be filed with the appropriate Reserve Bank and shall contain the following information:

(i) The purpose of the transaction, a description of the securities to be purchased or redeemed, the total number of each class outstanding, the gross consideration to be paid, and the terms and sources of funding for the transaction;

(ii) A description of all equity securities redeemed within the preceding 12 months, the net consideration paid, and the terms of any debt incurred in connection with those transactions; and

(iii) (A) If the bank holding company has consolidated assets of $150 million or more, consolidated *pro forma* risk-based capital and leverage ratio calculations for the bank holding company as of the most recent quarter, and, if the redemption is to be debt funded, a parent-only *pro forma* balance sheet as of the most recent quarter; or

(B) If the bank holding company has consolidated assets of less than $150 million, a *pro forma* parent-only balance sheet as of the most recent quarter, and, if the redemption is to be debt funded, one-year income statement and cash flow projections.

(3) *Acting on notice.* Within 15 calendar days of receipt of a notice under this section, the appropriate Reserve Bank shall either approve the transaction proposed in the notice or refer the notice to the Board for decision. If the notice is referred to the Board for decision, the Board shall act on the notice within 30 calendar days after the Reserve Bank receives the notice.

(4) *Factors considered in acting on notice.* (i) The Board may disapprove a proposed purchase or redemption if it finds that the proposal would constitute an unsafe or unsound practice, or would violate any law, regulation, Board order, directive, or any condition imposed by, or written agreement with, the Board.

(ii) In determining whether a proposal constitutes an unsafe or unsound practice, the Board shall consider whether the bank holding company's financial condition, after giving effect to the proposed purchase or redemption, meets the financial standards applied by the Board under section 3 of the BHC Act, including the Board's Capital Adequacy Guidelines (Appendix A of this part) and the Board's Policy Statement for Small Bank Holding Companies (Appendix C of this part).

(5) *Disapproval and hearing.* (i) The Board shall notify the bank holding company in writing of the reasons for a decision to disapprove any proposed purchase or redemption. Within 10 calendar days of receipt of a notice of disapproval by the Board, the bank holding company may submit a written request for a hearing.

(ii) The Board shall order a hearing within 10 calendar days of receipt of the request if it finds that material facts are in dispute, or if it otherwise appears appropriate. Any hearing conducted under this paragraph shall be held in accordance with the Board's Rules of Practice for Formal Hearings (12 CFR part 263).

(iii) At the conclusion of the hearing, the Board shall by order approve or disapprove the proposed purchase or redemption on the basis of the record of the hearing.

(6) *Exception for well-capitalized bank holding companies.* A bank holding company is not required to obtain prior Board approval for the redemption or purchase of its equity securities under this section provided:

(i) Both before and immediately after the redemption, the bank holding company is well-capitalized;

(ii) The bank holding company is well-managed; and

(iii) The bank holding company is not the subject of any unresolved supervisory issues.

(c) *Deposit insurance.* Every bank that is a bank holding company or a subsidiary of a bank holding company shall obtain Federal Deposit Insurance and shall remain an *insured bank* as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)).

(d) *Acting as transfer agent, municipal securities dealer, or clearing agent.* A bank holding company or any nonbanking subsidiary that is a "bank," as defined in section 3(a)(6) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(6)), and that is a transfer agent of securities, a municipal securities dealer, a clearing agency, or a participant in a clearing agency (as those terms are defined in section 3(a) of the Securities Exchange Act (15 U.S.C. 78c(a)), shall be subject to §§ 208.8 (f)–(j) of the Board's Regulation H (12 CFR 208.8 (f)–(j)) as if it were a state member bank.

(e) *Reporting requirement for credit secured by certain bank holding company stock.* Each executive officer or director of a bank holding company the shares of which are not publicly traded shall report annually to the board of directors of the bank holding company the outstanding amount of any credit that was extended to the executive officer or director and that is secured by shares of the bank holding company. For purposes of this paragraph, the terms "executive officer" and "director" shall have the meaning given in § 215.2 of Regulation O (12 CFR 215.2).

(f) *Suspicious activity report.* A bank holding company or any nonbank subsidiary thereof, or a foreign bank that is subject to the BHC Act or any nonbank subsidiary of such foreign bank operating in the United States, shall file a suspicious activity report in accordance with the provisions of § 208.20 of the Board's Regulation H (12 CFR 208.20).

§ 225.5 Registration, reports, and inspections.

(a) *Registration of bank holding companies.* Each company shall register within 180 days after becoming a bank holding company by furnishing information in the manner and form prescribed by the Board. A company that receives the Board's prior approval under subpart B of this part to become a bank holding company may complete this registration requirement through submission of its first annual report to the Board as required by paragraph (b) of this section.

(b) *Reports of bank holding companies.* Each bank holding company shall furnish, in the manner and form prescribed by the Board, an annual report of the company's operations for the fiscal year in which it becomes a bank holding company, and for each fiscal year during which it remains a bank holding company. Additional information and reports shall be furnished as the Board may require.

(c) *Examinations and inspections.* The Board may examine or inspect any bank holding company and each of its subsidiaries and prepare a report of their operations and activities. With respect to a foreign banking organization, the Board may also examine any branch or agency of a foreign bank in any state of the United States and may examine or inspect each of the organization's subsidiaries in the United States and prepare reports of their operations and activities. The Board shall rely, as far as possible, on the reports of examination made by the primary federal or state supervisor of the subsidiary bank of the bank holding company or of the branch or agency of the foreign bank.

§ 225.6 Penalties for violations.

(a) *Criminal and civil penalties.* (1) Section 8 of the BHC Act provides criminal penalties for willful violation, and civil penalties for violation, by any company or individual, of the BHC Act or any regulation or order issued under it, or for making a false entry in any book, report, or statement of a bank holding company.

(2) Civil money penalty assessments for violations of the BHC Act shall be made in accordance with subpart C of the Board's Rules of Practice for Hearings (12 CFR part 263, subpart C). For any willful violation of the Bank Control Act or any regulation or order issued under it, the Board may assess a civil penalty as provided in 12 U.S.C. 1817(j)(15).

(b) *Cease-and-desist proceedings.* For any violation of the BHC Act, the Bank Control Act, this regulation, or any order or notice issued thereunder, the Board may institute a cease-and-desist proceeding in accordance with the Financial Institutions Supervisory Act of 1966, as amended (12 U.S.C. 1818(b) *et seq.*).

§ 225.7 Exceptions to tying restrictions.

(a) *Purpose.* This section establishes exceptions to the anti-tying restrictions of section 106 of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1971, 1972(1)). These exceptions are in addition to those in section 106. The section also restricts tying of electronic benefit transfer services by bank holding companies and their nonbank subsidiaries.

(b) *Exceptions to statute.* Subject to the limitations of paragraph (c) of this section, a bank may:

(1) *Extension to affiliates of statutory exceptions preserving traditional banking relationships.* Extend credit, lease or sell property of any kind, or furnish any service, or fix or vary the consideration for any of the foregoing, on the condition or requirement that a customer:

(i) Obtain a loan, discount, deposit, or trust service from an affiliate of the bank; or

(ii) Provide to an affiliate of the bank some additional credit, property, or service that the bank could require to be provided to itself pursuant to section 106(b)(1)(C) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972(1)(C)).

(2) *Safe harbor for combined-balance discounts.* Vary the consideration for any product or package of products based on a customer's maintaining a combined minimum balance in certain products specified by the bank (eligible products), if:

(i) The bank offers deposits, and all such deposits are eligible products; and

(ii) Balances in deposits count at least as much as nondeposit products toward the minimum balance.

(3) *Safe harbor for foreign transactions.* Engage in any transaction with a customer if that customer is:

(i) A corporation, business, or other person (other than an individual) that:

(A) Is incorporated, chartered, or otherwise organized outside the United States; and

(B) Has its principal place of business outside the United States; or

(ii) An individual who is a citizen of a foreign country and is not resident in the United States.

(c) *Limitations on exceptions.* Any exception granted pursuant to this section shall terminate upon a finding by the Board that the arrangement is resulting in anti-competitive practices. The eligibility of a bank to operate under any exception granted pursuant to this section shall terminate upon a finding by the Board that its exercise of this authority is resulting in anti-competitive practices.

(d) *Extension of statute to electronic benefit transfer services.* A bank holding company or nonbank subsidiary of a bank holding company that provides electronic benefit transfer services shall be subject to the anti-tying restrictions applicable to such services set forth in section 7(i)(11) of the Food Stamp Act of 1977 (7 U.S.C. 2016(i)(11)).

(e) For purposes of this section, *bank* has the meaning given that term in section 106(a) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1971), but shall also include a United States branch, agency, or commercial lending company subsidiary of a foreign bank that is subject to section 106 pursuant to section 8(d) of the International Banking Act of 1978 (12 U.S.C. 3106(d)), and any company made subject to section 106 by section 4(f)(9) or 4(h) of the BHC Act.

3. Subpart B is revised to read as follows:

Subpart B—Acquisition of Bank Securities or Assets

Sec.
225.11 Transactions requiring Board approval.
225.12 Transactions not requiring Board approval.
225.13 Factors considered in acting on bank acquisition proposals.
225.14 Expedited action for certain bank acquisitions by well-run bank holding companies.
225.15 Procedures for other bank acquisition proposals.
225.16 Public notice, comments, hearings, and other provisions governing applications and notices.
225.17 Notice procedure for one-bank holding company formations.

Subpart B—Acquisition of Bank Securities or Assets

§ 225.11 Transactions requiring Board approval

The following transactions require the Board's prior approval under section 3 of the Bank Holding Company Act except as exempted under § 225.12 or as otherwise covered by § 225.17 of this subpart:

(a) *Formation of bank holding company.* Any action that causes a bank or other company to become a bank holding company.

(b) *Acquisition of subsidiary bank.* Any action that causes a bank to become a subsidiary of a bank holding company.

(c) *Acquisition of control of bank or bank holding company securities.*

(1) The acquisition by a bank holding company of direct or indirect ownership or control of any voting securities of a bank or bank holding company, if the acquisition results in the company's control of more than 5 percent of the outstanding shares of any class of voting securities of the bank or bank holding company.

(2) An acquisition includes the purchase of additional securities through the exercise of preemptive rights, but does not include securities received in a stock dividend or stock split that does not alter the bank holding company's proportional share of any class of voting securities.

(d) *Acquisition of bank assets.* The acquisition by a bank holding company or by a subsidiary thereof (other than a bank) of all or substantially all of the assets of a bank.

(e) *Merger of bank holding companies.* The merger or consolidation of bank holding companies, including a merger through the purchase of assets and assumption of liabilities.

(f) *Transactions by foreign banking organization.* Any transaction described in paragraphs (a) through (e) of this section by a foreign banking organization that involves the acquisition of an interest in a U.S. bank or in a bank holding company for which application would be required if the foreign banking organization were a bank holding company.

§ 225.12 Transactions not requiring Board approval.

The following transactions do *not* require the Board's approval under § 225.11 of this subpart:

(a) *Acquisition of securities in fiduciary capacity.* The acquisition by a bank or other company (other than a trust that is a company) of control of voting securities of a bank or bank holding company in good faith in a fiduciary capacity, unless:

(1) The acquiring bank or other company has sole discretionary authority to vote the securities and retains this authority for more than two years; or

(2) The acquisition is for the benefit of the acquiring bank or other company, or its shareholders, employees, or subsidiaries.

(b) *Acquisition of securities in satisfaction of debts previously contracted.* The acquisition by a bank or other company of control of voting securities of a bank or bank holding company in the regular course of securing or collecting a debt previously contracted in good faith, if the acquiring bank or other company divests the securities within two years of acquisition. The Board or Reserve Bank may grant requests for up to three one-year extensions.

(c) *Acquisition of securities by bank holding company with majority control.* The acquisition by a bank holding company of additional voting securities of a bank or bank holding company if more than 50 percent of the outstanding voting securities of the bank or bank holding company is lawfully controlled by the acquiring bank holding company prior to the acquisition.

(d) *Acquisitions involving bank mergers and internal corporate reorganizations*—(1) *Transactions subject to Bank Merger Act.* The merger or consolidation of a subsidiary bank of a bank holding company with another bank, or the purchase of assets by the subsidiary bank, or a similar transaction involving subsidiary banks of a bank holding company, if the transaction requires the prior approval of a federal supervisory agency under the Bank Merger Act (12 U.S.C. 1828(c)) and does not involve the acquisition of shares of a bank. This exception does not include:

(i) The merger of a nonsubsidiary bank and a nonoperating subsidiary bank formed by a company for the purpose of acquiring the nonsubsidiary bank; or

(ii) Any transaction requiring the Board's prior approval under § 225.11(e) of this subpart.

The Board may require an application under this subpart if it determines that the merger or consolidation would have a significant adverse impact on the financial condition of the bank holding company, or otherwise requires approval under section 3 of the BHC Act.

(2) *Certain acquisitions subject to Bank Merger Act.* The acquisition by a bank holding company of shares of a bank or company controlling a bank or the merger of a company controlling a bank with the bank holding company, if the transaction is part of the merger or consolidation of the bank with a subsidiary bank (other than a nonoperating subsidiary bank) of the acquiring bank holding company, or is part of the purchase of substantially all of the assets of the bank by a subsidiary bank (other than a nonoperating subsidiary bank) of the acquiring bank holding company, and if:

(i) The bank merger, consolidation, or asset purchase occurs simultaneously with the acquisition of the shares of the bank or bank holding company or the merger of holding companies, and the bank is not operated by the acquiring bank holding company as a separate entity other than as the survivor of the merger, consolidation, or asset purchase;

(ii) The transaction requires the prior approval of a federal supervisory agency under the Bank Merger Act (12 U.S.C. 1828(c));

(iii) The transaction does not involve the acquisition of any nonbank company that would require prior approval under section 4 of the BHC Act (12 U.S.C. 1843);

(iv) Both before and after the transaction, the acquiring bank holding company meets the Board's Capital Adequacy Guidelines (Appendixes A, B, C, D, and E of this part);

(v) At least 10 days prior to the transaction, the acquiring bank holding company has provided to the Reserve Bank written notice of the transaction that contains:

(A) A copy of the filing made to the appropriate federal banking agency under the Bank Merger Act; and

(B) A description of the holding company's involvement in the transaction, the purchase price, and the source of funding for the purchase price; and

(vi) Prior to expiration of the period provided in paragraph (d)(2)(v) of this section, the Reserve Bank has not informed the bank holding company that an application under § 225.11 is required.

(3) *Internal corporate reorganizations.* (i) Subject to paragraph (d)(3)(ii) of this section, any of the following transactions performed in the United States by a bank holding company:

(A) The merger of holding companies that are subsidiaries of the bank holding company;

(B) The formation of a subsidiary holding company; [1]

(C) The transfer of control or ownership of a subsidiary bank or a subsidiary holding company between one subsidiary holding company and another subsidiary holding company or the bank holding company.

(ii) A transaction described in paragraph (d)(3)(i) of this section qualifies for this exception if:

(A) The transaction represents solely a corporate reorganization involving companies and insured depository institutions that, both preceding and following the transaction, are lawfully controlled and operated by the bank holding company;

(B) The transaction does not involve the acquisition of additional voting shares of an insured depository institution that, prior to the transaction, was less than majority owned by the bank holding company;

(C) The bank holding company is not organized in mutual form; and

(D) Both before and after the transaction, the bank holding company meets the Board's Capital Adequacy Guidelines (Appendixes A, B, C, D, and E of this part).

(e) *Holding securities in escrow.* The holding of any voting securities of a bank or bank holding company in an escrow arrangement for the benefit of an applicant pending the Board's action on an application for approval of the proposed acquisition, if title to the securities and the voting rights remain with the seller and payment for the securities has not been made to the seller.

(f) *Acquisition of foreign banking organization.* The acquisition of a foreign banking organization where the foreign banking organization does not directly or indirectly own or control a bank in the United States, unless the acquisition is also by a foreign banking organization and otherwise subject to § 225.11(f) of this subpart.

[1] In the case of a transaction that results in the formation or designation of a new bank holding company, the new bank holding company must complete the registration requirements described in § 225.5.

§ 225.13 Factors considered in acting on bank acquisition proposals.

(a) *Factors requiring denial.* As specified in section 3(c) of the BHC Act, the Board may not approve any application under this subpart if:

(1) The transaction would result in a monopoly or would further any combination or conspiracy to monopolize, or to attempt to monopolize, the business of banking in any part of the United States;

(2) The effect of the transaction may be substantially to lessen competition in any section of the country, tend to create a monopoly, or in any other manner be in restraint of trade, unless the Board finds that the transaction's anti-competitive effects are clearly outweighed by its probable effect in meeting the convenience and needs of the community;

(3) The applicant has failed to provide the Board with adequate assurances that it will make available such information on its operations or activities, and the operations or activities of any affiliate of the applicant, that the Board deems appropriate to determine and enforce compliance with the BHC Act and other applicable federal banking statutes, and any regulations thereunder; or

(4) In the case of an application involving a foreign banking organization, the foreign banking organization is not subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country, as provided in § 211.24(c)(1)(ii) of the Board's Regulation K (12 CFR 211.24(c)(1)(ii)).

(b) *Other factors.* In deciding applications under this subpart, the Board also considers the following factors with respect to the applicant, its subsidiaries, any banks related to the applicant through common ownership or management, and the bank or banks to be acquired:

(1) *Financial condition.* Their financial condition and future prospects, including whether current and projected capital positions and levels of indebtedness conform to standards and policies established by the Board.

(2) *Managerial resources.* The competence, experience, and integrity of the officers, directors, and principal shareholders of the applicant, its subsidiaries, and the banks and bank holding companies concerned; their record of compliance with laws and regulations; and the record of the applicant and its affiliates of fulfilling any commitments to, and any conditions imposed by, the Board in connection with prior applications.

(3) *Convenience and needs of community.* The convenience and needs of the communities to be served, including the record of performance under the Community Reinvestment Act of 1977 (12 U.S.C. 2901 *et seq.*) and regulations issued thereunder, including the Board's Regulation BB (12 CFR part 228).

(c) *Interstate transactions.* The Board may approve any application or notice under this subpart by a bank holding company to acquire control of all or substantially all of the assets of a bank located in a state other than the home state of the bank holding company, without regard to whether the transaction is prohibited under the law of any state, if the transaction complies with the requirements of section 3(d) of the BHC Act (12 U.S.C. 1842(d)).

(d) *Conditional approvals.* The Board may impose conditions on any approval, including conditions to address competitive, financial, managerial, safety and soundness, convenience and needs, compliance or other concerns, to ensure that approval is consistent with the relevant statutory factors and other provisions of the BHC Act.

§ 225.14 Expedited action for certain bank acquisitions by well-run bank holding companies.

(a) *Filing of notice*—(1) *Information required and public notice.* As an alternative to the procedure provided in § 225.15, a bank holding company that meets the requirements of paragraph (c) of this section may satisfy the prior approval requirements of § 225.11 in connection with the acquisition of shares, assets or control of a bank, or a merger or consolidation between bank holding companies, by providing the appropriate Reserve Bank with a written notice containing the following:

(i) A certification that all of the criteria in paragraph (c) of this section are met;

(ii) A description of the transaction that includes identification of the companies and insured depository institutions involved in the transaction [2] and identification of each banking market affected by the transaction;

[2] If, in connection with a transaction under this subpart, any person or group of persons proposes to acquire control of the acquiring bank holding company for purposes of the Bank Control Act or § 225.41, the person or group of persons may fulfill the notice requirements of the Bank Control Act and § 225.43 by providing, as part of the submission by the acquiring bank holding company under this subpart, identifying and biographical information required in paragraph (6)(A) of the Bank Control Act (12 U.S.C. 1817(j)(6)(A)), as well as any financial or other information requested by the Reserve Bank under § 225.43.

(iii) A description of the effect of the transaction on the convenience and needs of the communities to be served and of the actions being taken by the bank holding company to improve the CRA performance of any insured depository institution subsidiary that does not have at least a satisfactory CRA performance rating at the time of the transaction;

(iv) Evidence that notice of the proposal has been published in accordance with § 225.16(b)(1);

(v)(A) If the bank holding company has consolidated assets of $150 million or more, an abbreviated consolidated *pro forma* balance sheet as of the most recent quarter showing credit and debit adjustments that reflect the proposed transaction, consolidated *pro forma* risk-based capital ratios for the acquiring bank holding company as of the most recent quarter, and a description of the purchase price and the terms and sources of funding for the transaction;

(B) If the bank holding company has consolidated assets of less than $150 million, a *pro forma* parent-only balance sheet as of the most recent quarter showing credit and debit adjustments that reflect the proposed transaction, and a description of the purchase price, the terms and sources of funding for the transaction, and the sources and schedule for retiring any debt incurred in the transaction;

(vi) If the bank holding company has consolidated assets of less than $300 million, a list of and biographical information regarding any directors or senior executive officers of the resulting bank holding company that are not directors or senior executive officers of the acquiring bank holding company or of a company or institution to be acquired;

(vii) For each insured depository institution whose Tier 1 capital, total capital, total assets or risk-weighted assets change as a result of the transaction, the total risk-weighted assets, total assets, Tier 1 capital and total capital of the institution on a *pro forma* basis; and

(viii) The market indexes for each relevant banking market reflecting the *pro forma* effect of the transaction.

(2) *Waiver of unnecessary information.* The Reserve Bank may reduce the information requirements in paragraph (a)(1)(v) through (viii) of this section as appropriate.

(b)(1) *Action on proposals under this section.* The Board or the appropriate Reserve Bank shall act on a proposal submitted under this section or notify the bank holding company that the transaction is subject to the procedure in § 225.15 within 5 business days after the close of the public comment period. The Board and the Reserve Bank shall not approve any proposal under this section prior to the third business day following the close of the public comment period, unless an emergency exists that requires expedited or immediate action. The Board may extend the period for action under this section for up to 5 business days.

(2) *Acceptance of notice in event expedited procedure not available.* In the event that the Board or the Reserve Bank determines after the filing of a notice under this section that a bank holding company may not use the procedure in this section and must file an application under § 225.15, the application shall be deemed accepted for purposes of § 225.15 as of the date that the notice was filed under this section.

(c) *Criteria for use of expedited procedure.* The procedure in this section is available only if:

(1) *Well-capitalized organization*—(i) *Bank holding company.* Both at the time of and immediately after the proposed transaction, the acquiring bank holding company is well-capitalized;

(ii) *Insured depository institutions.* Both at the time of and immediately after the proposed transaction:

(A) The lead insured depository institution of the acquiring bank holding company is well-capitalized;

(B) Well-capitalized insured depository institutions control at least 80 percent of the total risk-weighted assets of insured depository institutions controlled by the acquiring bank holding company; and

(C) No insured depository institution controlled by the acquiring bank holding company is undercapitalized;

(2) *Well-managed organization.* (i) *Satisfactory examination ratings.* At the time of the transaction, the acquiring bank holding company, its lead insured depository institution, and insured depository institutions that control at least 80 percent of the total risk-weighted assets of insured depository institutions controlled by the holding company are well-managed;

(ii) *No poorly managed institutions.* No insured depository institution controlled by the acquiring bank holding company has received 1 of the 2 lowest composite ratings at the later of the institution's most recent examination or subsequent review by the appropriate federal banking agency for the institution;

(iii) *Recently acquired institutions excluded.* Any insured depository institution that has been acquired by the bank holding company during the 12-month period preceding the date on which written notice is filed under paragraph (a) of this section may be excluded for purposes of paragraph (c)(2)(ii) of this section if :

(A) The bank holding company has developed a plan acceptable to the appropriate federal banking agency for the institution to restore the capital and management of the institution; and

(B) All insured depository institutions excluded under this paragraph represent, in the aggregate, less than 10 percent of the aggregate total risk-weighted assets of all insured depository institutions controlled by the bank holding company;

(3) *Convenience and needs criteria*—(i) *Effect on the community.* The record indicates that the proposed transaction would meet the convenience and needs of the community standard in the BHC Act; and

(ii) *Established CRA performance record.* At the time of the transaction, the lead insured depository institution of the acquiring bank holding company and insured depository institutions that control at least 80 percent of the total risk-weighted assets of insured institutions controlled by the holding company have received a satisfactory or better composite rating at the most recent examination under the Community Reinvestment Act;

(4) *Public comment.* No comment that is timely and substantive as provided in § 225.16 is received by the Board or the appropriate Reserve Bank other than a comment that supports approval of the proposal;

(5) *Competitive criteria*—(i) *Competitive screen.* Without regard to any divestitures proposed by the acquiring bank holding company, the acquisition does not cause:

(A) Insured depository institutions controlled by the acquiring bank holding company to control in excess of 35 percent of market deposits in any relevant banking market; or

(B) The Herfindahl-Hirschman index to increase by more than 200 points in any relevant banking market with a post-acquisition index of at least 1800; and

(ii) *Department of Justice.* The Department of Justice has not indicated to the Board that consummation of the transaction is likely to have a significantly adverse effect on competition in any relevant banking market;

(6) *Size of acquisition*—(i) *In general*—(A) *Limited Growth.* Except as provided in paragraph (c)(6)(ii) of this section, the sum of the aggregate risk-weighted assets to be acquired in the proposal and the aggregate risk-weighted assets acquired by the acquiring bank holding company in all other qualifying transactions does not exceed 35 percent of the consolidated risk-weighted assets of the acquiring bank holding company. For purposes of this paragraph *other qualifying transactions* means any transaction approved under this section or § 225.23 during the 12 months prior to filing the notice under this section; and

(B) *Individual size limitation.* The total risk-weighted assets to be acquired do not exceed $7.5 billion;

(ii) *Small bank holding companies.* Paragraph (c)(6)(i)(A) of this section shall not apply if, immediately following consummation of the proposed transaction, the consolidated risk-weighted assets of the acquiring bank holding company are less than $300 million;

(7) *Supervisory actions.* During the 12-month period ending on the date on which the bank holding company proposes to consummate the proposed transaction, no formal administrative order, including a written agreement, cease and desist order, capital directive, prompt corrective action directive, asset maintenance agreement, or other formal enforcement action, is or was outstanding against the bank holding company or any insured depository institution subsidiary of the holding company, and no formal administrative enforcement proceeding involving any such enforcement action, order, or directive is or was pending;

(8) *Interstate acquisitions.* Board-approval of the transaction is not prohibited under section 3(d) of the BHC Act;

(9) *Other supervisory considerations.* Board approval of the transaction is not prohibited under the informational sufficiency or comprehensive home country supervision standards set forth in section 3(c)(3) of the BHC Act; and

(10) *Notification.* The acquiring bank holding company has not been notified by the Board, in its discretion, prior to the expiration of the period in paragraph (b)(1) of this section that an application under § 225.15 is required in order to permit closer review of any financial, managerial, competitive, convenience and needs or other matter related to the factors that must be considered under this part.

(d) *Comment by primary banking supervisor*—(1) *Notice.* Upon receipt of a notice under this section, the appropriate Reserve Bank shall promptly furnish notice of the proposal and a copy of the information filed pursuant to paragraph (a) of this section to the primary banking supervisor of the insured depository institutions to be acquired.

(2) *Comment period.* The primary banking supervisor shall have 30 calendar days (or such shorter time as agreed to by the primary banking supervisor) from the date of the letter giving notice in which to submit its views and recommendations to the Board.

(3) *Action subject to supervisor's comment.* Action by the Board or the Reserve Bank on a proposal under this section is subject to the condition that the primary banking supervisor not recommend in writing to the Board disapproval of the proposal prior to the expiration of the comment period described in paragraph (d)(2) of this section. In such event, any approval given under this section shall be revoked and, if required by section 3(b) of the BHC Act, the Board shall order a hearing on the proposal.

(4) *Emergencies.* Notwithstanding paragraphs (d)(2) and (d)(3) of this section, the Board may provide the primary banking supervisor with 10 calendar days' notice of a proposal under this section if the Board finds that an emergency exists requiring expeditious action, and may act during the notice period or without providing notice to the primary banking supervisor if the Board finds that it must act immediately to prevent probable failure.

(5) *Primary banking supervisor.* For purposes of this section and § 225.15(b), *the primary banking supervisor* for an institution is:

(i) The Office of the Comptroller of the Currency, in the case of a national banking association or District bank;

(ii) The appropriate supervisory authority for the State in which the bank is chartered, in the case of a State bank;

(iii) The Director of the Office of Thrift Supervision, in the case of a savings association.

(e) *Branches and agencies of foreign banking organizations.* For purposes of this section, a U.S. branch or agency of a foreign banking organization shall be considered to be an insured depository institution. A U.S. branch or agency of a foreign banking organization shall be subject to paragraph (c)(3)(ii) of this section only to the extent it is insured by the Federal Deposit Insurance Corporation in accordance with section 6 of the International Banking Act of 1978 (12 U.S.C. 3104).

§ 225.15 Procedures for other bank acquisition proposals.

(a) *Filing application.* Except as provided in § 225.14, an application for the Board's prior approval under this subpart shall be governed by the provisions of this section and shall be filed with the appropriate Reserve Bank on the designated form.

(b) *Notice to primary banking supervisor.* Upon receipt of an application under this subpart, the Reserve Bank shall promptly furnish notice and a copy of the application to the primary banking supervisor of each bank to be acquired. The primary supervisor shall have 30 calendar days from the date of the letter giving notice in which to submit its views and recommendations to the Board.

(c) *Accepting application for processing.* Within 7 calendar days after the Reserve Bank receives an application under this section, the Reserve Bank shall accept it for processing as of the date the application was filed or return the application if it is substantially incomplete. Upon accepting an application, the Reserve Bank shall immediately send copies to the Board. The Reserve Bank or the Board may request additional information necessary to complete the record of an application at any time after accepting the application for processing.

(d) *Action on applications*—(1) *Action under delegated authority.* The Reserve Bank shall approve an application under this section within 30 calendar days after the acceptance date for the application, unless the Reserve Bank, upon notice to the applicant, refers the application to the Board for decision because action under delegated authority is not appropriate.

(2) *Board action.* The Board shall act on an application under this subpart that is referred to it for decision within 60 calendar days after the acceptance date for the application, unless the Board notifies the applicant that the 60-day period is being extended for a specified period and states the reasons for the extension. In no event may the extension exceed the 91-day period provided in § 225.16(f). The Board may, at any time, request additional information that it believes is necessary for its decision.

§ 225.16 Public notice, comments, hearings, and other provisions governing applications and notices.

(a) *In general.* The provisions of this section apply to all notices and applications filed under § 225.14 and § 225.15.

(b) *Public notice*—(1) *Newspaper publication*—(i) *Location of publication.* In the case of each notice or application submitted under § 225.14 or § 225.15, the applicant shall publish a notice in a newspaper of general circulation, in

the form and at the locations specified in § 262.3 of the Rules of Procedure (12 CFR 262.3);

(ii) *Contents of notice.* A newspaper notice under this paragraph shall provide an opportunity for interested persons to comment on the proposal for a period of at least 30 calendar days;

(iii) *Timing of publication.* Each newspaper notice published in connection with a proposal under this paragraph shall be published no more than 15 calendar days before and no later than 7 calendar days following the date that a notice or application is filed with the appropriate Reserve Bank.

(2) **Federal Register** *notice. (i) Publication by Board.* Upon receipt of a notice or application under § 225.14 or § 225.15, the Board shall promptly publish notice of the proposal in the **Federal Register** and shall provide an opportunity for interested persons to comment on the proposal for a period of no more than 30 days;

(ii) *Request for advance publication.* A bank holding company may request that, during the 15-day period prior to filing a notice or application under § 225.14 or § 225.15, the Board publish notice of a proposal in the **Federal Register**. A request for advance **Federal Register** publication shall be made in writing to the appropriate Reserve Bank and shall contain the identifying information prescribed by the Board for **Federal Register** publication;

(3) *Waiver or shortening of notice.* The Board may waive or shorten the required notice periods under this section if the Board determines that an emergency exists requiring expeditious action on the proposal, or if the Board finds that immediate action is necessary to prevent the probable failure of an insured depository institution.

(c) *Public comment*—(1) *Timely comments.* Interested persons may submit information and comments regarding a proposal filed under this subpart. A comment shall be considered timely for purposes of this subpart if the comment, together with all supplemental information, is submitted in writing in accordance with the Board's Rules of Procedure and received by the Board or the appropriate Reserve Bank prior to the expiration of the latest public comment period provided in paragraph (b) of this section.

(2) *Extension of comment period*—(i) *In general.* The Board may, in its discretion, extend the public comment period regarding any proposal submitted under this subpart.

(ii) *Requests in connection with obtaining application or notice.* In the event that an interested person has requested a copy of a notice or application submitted under this subpart, the Board may, in its discretion and based on the facts and circumstances, grant such person an extension of the comment period for up to 15 calendar days.

(iii) *Joint requests by interested person and acquiring company.* The Board will grant a joint request by an interested person and the acquiring bank holding company for an extension of the comment period for a reasonable period for a purpose related to the statutory factors the Board must consider under this subpart.

(3) *Substantive comment.* A comment will be considered substantive for purposes of this subpart unless it involves individual complaints, or raises frivolous, previously-considered or wholly unsubstantiated claims or irrelevant issues.

(d) *Notice to Attorney General.* The Board or Reserve Bank shall immediately notify the United States Attorney General of approval of any notice or application under § 225.14 or § 225.15.

(e) *Hearings.* As provided in section 3(b) of the BHC Act, the Board shall order a hearing on any application or notice under § 225.15 if the Board receives from the primary supervisor of the bank to be acquired, within the 30-day period specified in § 225.15(b), a written recommendation of disapproval of an application. The Board may order a formal or informal hearing or other proceeding on the application or notice, as provided in § 262.3(i)(2) of the Board's Rules of Procedure. Any request for a hearing (other than from the primary supervisor) shall comply with § 262.3(e) of the Rules of Procedure (12 CFR 262.3(e)).

(f) *Approval through failure to act*—(1) *Ninety-one day rule.* An application or notice under § 225.14 or § 225.15 shall be deemed approved if the Board fails to act on the application or notice within 91 calendar days after the date of submission to the Board of the complete record on the application. For this purpose, the Board acts when it issues an order stating that the Board has approved or denied the application or notice, reflecting the votes of the members of the Board, and indicating that a statement of the reasons for the decision will follow promptly.

(2) *Complete record.* For the purpose of computing the commencement of the 91-day period, the record is complete on the latest of:

(i) The date of receipt by the Board of an application or notice that has been accepted by the Reserve Bank;

(ii) The last day provided in any notice for receipt of comments and hearing requests on the application or notice;

(iii) The date of receipt by the Board of the last relevant material regarding the application or notice that is needed for the Board's decision, if the material is received from a source outside of the Federal Reserve System; or

(iv) The date of completion of any hearing or other proceeding.

(g) *Exceptions to notice and hearing requirements.*

(1) *Probable bank failure.* If the Board finds it must act immediately on an application or notice in order to prevent the probable failure of a bank or bank holding company, the Board may modify or dispense with the notice and hearing requirements of this section.

(2) *Emergency.* If the Board finds that, although immediate action on an application or notice is not necessary, an emergency exists requiring expeditious action, the Board shall provide the primary supervisor 10 days to submit its recommendation. The Board may act on such an application or notice without a hearing and may modify or dispense with the other notice and hearing requirements of this section.

(h) *Waiting period.* A transaction approved under § 225.14 or § 225.15 shall not be consummated until 30 days after the date of approval of the application, except that a transaction may be consummated:

(1) Immediately upon approval, if the Board has determined under paragraph (g) of this section that the application or notice involves a probable bank failure;

(2) On or after the 5th calendar day following the date of approval, if the Board has determined under paragraph (g) of this section that an emergency exists requiring expeditious action; or

(3) On or after the 15th calendar day following the date of approval, if the Board has not received any adverse comments from the United States Attorney General relating to the competitive factors and the Attorney General has consented to the shorter waiting period.

§ 225.17 Notice procedure for one-bank holding company formations.

(a) *Transactions that qualify under this section.* An acquisition by a company of control of a bank may be consummated 30 days after providing notice to the appropriate Reserve Bank in accordance with paragraph (b) of this section, provided that all of the following conditions are met:

(1) The shareholder or shareholders who control at least 67 percent of the shares of the bank will control, immediately after the reorganization, at least 67 percent of the shares of the holding company in substantially the same proportion, except for changes in shareholders' interests resulting from the exercise of dissenting shareholders' rights under state or federal law;[3]

(2) No shareholder, or group of shareholders acting in concert, will, following the reorganization, own or control 10 percent or more of any class of voting shares of the bank holding company, unless that shareholder or group of shareholders was authorized, after review under the Change in Bank Control Act of 1978 (12 U.S.C. 1817(j)) by the appropriate federal banking agency for the bank, to own or control 10 percent or more of any class of voting shares of the bank;[4]

(3) The bank is adequately capitalized (as defined in section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o));

(4) The bank received at least a composite "satisfactory" rating at its most recent examination, in the event that the bank was examined;

(5) At the time of the reorganization, neither the bank nor any of its officers, directors, or principal shareholders is involved in any unresolved supervisory or enforcement matters with any appropriate federal banking agency;

(6) The company demonstrates that any debt that it incurs at the time of the reorganization, and the proposed means of retiring this debt, will not place undue burden on the holding company or its subsidiary on a *pro forma* basis;[5]

(7) The holding company will not, as a result of the reorganization, acquire control of any additional bank or engage in any activities other than those of managing and controlling banks; and

(8) During this period, neither the appropriate Reserve Bank nor the Board objected to the proposal or required the filing of an application under § 225.15 of this subpart.

[3] A shareholder of a bank in reorganization will be considered to have the same proportional interest in the holding company if the shareholder interest increases, on a *pro rata* basis, as a result of either the redemption of shares from dissenting shareholders by the bank or bank holding company, or the acquisition of shares of dissenting shareholders by the remaining shareholders.

[4] This procedure is not available in cases in which the exercise of dissenting shareholders' rights would cause a company that is not a bank holding company (other than the company in formation) to be required to register as a bank holding company. This procedure also is not available for the formation of a bank holding company organized in mutual form.

[5] For a banking organization with consolidated assets, on a *pro forma basis*, of less than $150 million (other than a banking organization that will control a *de novo* bank), this requirement is satisfied if the proposal complies with the Board's policy statement on small bank holding companies (Appendix C of this part).

(b) *Contents of notice.* A notice filed under this paragraph shall include:

(1) Certification by the notificant's board of directors that the requirements of 12 U.S.C. 1842(a)(C) and this section are met by the proposal;

(2) A list identifying all principal shareholders of the bank prior to the reorganization and of the holding company following the reorganization, and specifying the percentage of shares held by each principal shareholder in the bank and proposed to be held in the new holding company;

(3) A description of the resulting management of the proposed bank holding company and its subsidiary bank, including:

(i) Biographical information regarding any senior officers and directors of the resulting bank holding company who were not senior officers or directors of the bank prior to the reorganization; and

(ii) A detailed history of the involvement of any officer, director, or principal shareholder of the resulting bank holding company in any administrative or criminal proceeding; and

(4) *Pro forma* financial statements for the holding company, and a description of the amount, source, and terms of debt, if any, that the bank holding company proposes to incur, and information regarding the sources and timing for debt service and retirement.

(c) *Acknowledgment of notice.* Within 7 calendar days following receipt of a notice under this section, the Reserve Bank shall provide the notificant with a written acknowledgment of receipt of the notice. This written acknowledgment shall indicate that the transaction described in the notice may be consummated on the 30th calendar day after the date of receipt of the notice if the Reserve Bank or the Board has not objected to the proposal during that time.

(d) *Application required upon objection.* The Reserve Bank or the Board may object to a proposal during the notice period by providing the bank holding company with a written explanation of the reasons for the objection. In such case, the bank holding company may file an application for prior approval of the proposal pursuant to § 225.15 of this subpart.

4. Subpart C is revised to read as follows:

Subpart C—Nonbanking Activities and Acquisitions by Bank Holding Companies

Sec.

225.21 Prohibited nonbanking activities and acquisitions; exempt bank holding companies.
225.22 Exempt nonbanking activities and acquisitions.
225.23 Expedited action for nonbanking proposals by well-run bank holding companies.
225.24 Procedures for other nonbanking proposals.
225.25 Hearings, alteration of activities, and other matters.
225.26 Factors considered in acting on nonbanking proposals.
225.27 Procedures for determining scope of nonbanking activities.
225.28 List of permissible nonbanking activities.

Subpart C—Nonbanking Activities and Acquisitions by Bank Holding Companies

§ 225.21 Prohibited nonbanking activities and acquisitions; exempt bank holding companies.

(a) *Prohibited nonbanking activities and acquisitions.* Except as provided in § 225.22 of this subpart, a bank holding company or a subsidiary may not engage in, or acquire or control, directly or indirectly, voting securities or assets of a company engaged in, any activity other than:

(1) Banking or managing or controlling banks and other subsidiaries authorized under the BHC Act; and

(2) An activity that the Board determines to be so closely related to banking, or managing or controlling banks as to be a proper incident thereto, including any incidental activities that are necessary to carry on such an activity, if the bank holding company has obtained the prior approval of the Board for that activity in accordance with the requirements of this regulation.

(b) *Exempt bank holding companies.* The following bank holding companies are exempt from the provisions of this subpart:

(1) *Family-owned companies.* Any company that is a "company covered in 1970" (as defined in section 2(b) of the BHC Act), more than 85 percent of the voting securities of which was collectively owned on June 30, 1968, and continuously thereafter, by members of the same family (or their spouses) who are lineal descendants of common ancestors.

(2) *Labor, agricultural, and horticultural organizations.* Any company that was on January 4, 1977, both a bank holding company and a labor, agricultural, or horticultural organization exempt from taxation

under section 501 of the Internal Revenue Code (26 U.S.C. 501(c)).

(3) *Companies granted hardship exemption.* Any bank holding company that has controlled only one bank since before July 1, 1968, and that has been granted an exemption by the Board under section 4(d) of the BHC Act, subject to any conditions imposed by the Board.

(4) *Companies granted exemption on other grounds.* Any company that acquired control of a bank before December 10, 1982, without the Board's prior approval under section 3 of the BHC Act, on the basis of a narrow interpretation of the term *demand deposit* or *commercial loan*, if the Board has determined that:

(i) Coverage of the company as a bank holding company under this subpart would be unfair or represent an unreasonable hardship; and

(ii) Exclusion of the company from coverage under this part is consistent with the purposes of the BHC Act and section 106 of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1971, 1972(1)). The provisions of § 225.4 of subpart A of this part do not apply to a company exempt under this paragraph.

§ 225.22 Exempt nonbanking activities and acquisitions.

(a) *Certain de novo activities.* A bank holding company may, either directly or indirectly, engage *de novo* in any nonbanking activity listed in § 225.28(b) (other than operation of an insured depository institution) without obtaining the Board's prior approval if the bank holding company:

(1) Meets the requirements of paragraphs (c) (1), (2), and (6) of § 225.23;

(2) Conducts the activity in compliance with all Board orders and regulations governing the activity; and

(3) Within 10 business days after commencing the activity, provides written notice to the appropriate Reserve Bank describing the activity, identifying the company or companies engaged in the activity, and certifying that the activity will be conducted in accordance with the Board's orders and regulations and that the bank holding company meets the requirements of paragraphs (c) (1), (2), and (6) of § 225.23.

(b) *Servicing activities.* A bank holding company may, without the Board's prior approval under this subpart, furnish services to or perform services for, or establish or acquire a company that engages solely in servicing activities for:

(1) The bank holding company or its subsidiaries in connection with their activities as authorized by law, including services that are necessary to fulfill commitments entered into by the subsidiaries with third parties, if the bank holding company or servicing company complies with the Board's published interpretations and does not act as principal in dealing with third parties; and

(2) The internal operations of the bank holding company or its subsidiaries. Services for the internal operations of the bank holding company or its subsidiaries include, but are not limited to:

(i) Accounting, auditing, and appraising;

(ii) Advertising and public relations;

(iii) Data processing and data transmission services, data bases, or facilities;

(iv) Personnel services;

(v) Courier services;

(vi) Holding or operating property used wholly or substantially by a subsidiary in its operations or for its future use;

(vii) Liquidating property acquired from a subsidiary;

(viii) Liquidating property acquired from any sources either prior to May 9, 1956, or the date on which the company became a bank holding company, whichever is later; and

(ix) Selling, purchasing, or underwriting insurance, such as blanket bond insurance, group insurance for employees, and property and casualty insurance.

(c) *Safe deposit business.* A bank holding company or nonbank subsidiary may, without the Board's prior approval, conduct a safe deposit business, or acquire voting securities of a company that conducts such a business.

(d) *Nonbanking acquisitions not requiring prior Board approval.* The Board's prior approval is not required under this subpart for the following acquisitions:

(1) *DPC acquisitions.* (i) Voting securities or assets, acquired by foreclosure or otherwise, in the ordinary course of collecting a debt previously contracted (DPC property) in good faith, if the DPC property is divested within two years of acquisition.

(ii) The Board may, upon request, extend this two-year period for up to three additional years. The Board may permit additional extensions for up to 5 years (for a total of 10 years), for shares, real estate or other assets where the holding company demonstrates that each extension would not be detrimental to the public interest and either the bank holding company has made good faith attempts to dispose of such shares, real estate or other assets or disposal of the shares, real estate or other assets during the initial period would have been detrimental to the company.

(iii) Transfers of DPC property within the bank holding company system do not extend any period for divestiture of the property.

(2) *Securities or assets required to be divested by subsidiary.* Voting securities or assets required to be divested by a subsidiary at the request of an examining federal or state authority (except by the Board under the BHC Act or this regulation), if the bank holding company divests the securities or assets within two years from the date acquired from the subsidiary.

(3) *Fiduciary investments.* Voting securities or assets acquired by a bank or other company (other than a trust that is a company) in good faith in a fiduciary capacity, if the voting securities or assets are:

(i) Held in the ordinary course of business; and

(ii) Not acquired for the benefit of the company or its shareholders, employees, or subsidiaries.

(4) *Securities eligible for investment by national bank.* Voting securities of the kinds and amounts explicitly eligible by federal statute (other than section 4 of the Bank Service Corporation Act, 12 U.S.C. 1864) for investment by a national bank, and voting securities acquired prior to June 30, 1971, in reliance on section 4(c)(5) of the BHC Act and interpretations of the Comptroller of the Currency under section 5136 of the Revised Statutes (12 U.S.C. 24(7)).

(5) *Securities or property representing 5 percent or less of a company.* Voting securities of a company or property that, in the aggregate, represent 5 percent or less of the outstanding shares of any class of voting securities of a company, or that represent a 5 percent interest or less in the property, subject to the provisions of 12 CFR 225.137.

(6) *Securities of investment company.* Voting securities of an investment company that is solely engaged in investing in securities and that does not own or control more than 5 percent of the outstanding shares of any class of voting securities of any company.

(7) *Assets acquired in ordinary course of business.* Assets of a company acquired in the ordinary course of business, subject to the provisions of 12 CFR 225.132, if the assets relate to activities in which the acquiring company has previously received Board approval under this regulation to engage.

(8) *Asset acquisitions by lending company or industrial bank.* Assets of an office(s) of a company, all or substantially all of which relate to making, acquiring, or servicing loans if:

(i) The acquiring company has previously received Board approval under this regulation or is not required to obtain prior Board approval under this regulation to engage in lending activities or industrial banking activities;

(ii) The assets acquired during any 12-month period do not represent more than 50 percent of the risk-weighted assets (on a consolidated basis) of the acquiring lending company or industrial bank, or more than $100 million, whichever amount is less;

(iii) The assets acquired do not represent more than 50 percent of the selling company's consolidated assets that are devoted to lending activities or industrial banking business;

(iv) The acquiring company notifies the Reserve Bank of the acquisition within 30 days after the acquisition; and

(v) The acquiring company, after giving effect to the transaction, meets the Board's Capital Adequacy Guidelines (Appendix A of this part), and the Board has not previously notified the acquiring company that it may not acquire assets under the exemption in this paragraph.

(e) *Acquisition of securities by subsidiary banks*—(1) *National bank.* A national bank or its subsidiary may, without the Board's approval under this subpart, acquire or retain securities on the basis of section 4(c)(5) of the BHC Act in accordance with the regulations of the Comptroller of the Currency.

(2) *State bank.* A state-chartered bank or its subsidiary may, insofar as federal law is concerned, and without the Board's prior approval under this subpart:

(i) Acquire or retain securities, on the basis of section 4(c)(5) of the BHC Act, of the kinds and amounts explicitly eligible by federal statute for investment by a national bank; or

(ii) Acquire or retain all (but, except for directors' qualifying shares, not less than all) of the securities of a company that engages solely in activities in which the parent bank may engage, at locations at which the bank may engage in the activity, and subject to the same limitations as if the bank were engaging in the activity directly.

(f) *Activities and securities of new bank holding companies.* A company that becomes a bank holding company may, for a period of two years, engage in nonbanking activities and control voting securities or assets of a nonbank subsidiary, if the bank holding company engaged in such activities or controlled such voting securities or assets on the date it became a bank holding company. The Board may grant requests for up to three one-year extensions of the two-year period.

(g) *Grandfathered activities and securities.* Unless the Board orders divestiture or termination under section 4(a)(2) of the BHC Act, a "company covered in 1970," as defined in section 2(b) of the BHC Act, may:

(1) Retain voting securities or assets and engage in activities that it has lawfully held or engaged in continuously since June 30, 1968; and

(2) Acquire voting securities of any newly formed company to engage in such activities.

(h) *Securities or activities exempt under Regulation K.* A bank holding company may acquire voting securities or assets and engage in activities as authorized in Regulation K (12 CFR part 211).

§ 225.23 Expedited action for certain nonbanking proposals by well-run bank holding companies.

(a) *Filing of notice*—(1) *Information required.* A bank holding company that meets the requirements of paragraph (c) of this section may satisfy the notice requirement of this subpart in connection with the acquisition of voting securities or assets of a company engaged in nonbanking activities that the Board has permitted by order or regulation (other than an insured depository institution) [1], or a proposal to engage *de novo*, either directly or indirectly, in a nonbanking activity that the Board has permitted by order or by regulation, by providing the appropriate Reserve Bank with a written notice containing the following:

(i) A certification that all of the criteria in paragraph (c) of this section are met;

(ii) A description of the transaction that includes identification of the companies involved in the transaction, the activities to be conducted, and a commitment to conduct the proposed activities in conformity with the Board's regulations and orders governing the conduct of the proposed activity;

(iii) If the proposal involves an acquisition of a going concern:

(A) If the bank holding company has consolidated assets of $150 million or more, an abbreviated consolidated *pro forma* balance sheet for the acquiring bank holding company as of the most recent quarter showing credit and debit adjustments that reflect the proposed transaction, consolidated *pro forma* risk-based capital ratios for the acquiring bank holding company as of the most recent quarter, a description of the purchase price and the terms and sources of funding for the transaction, and the total revenue and net income of the company to be acquired;

(B) If the bank holding company has consolidated assets of less than $150 million, a *pro forma* parent-only balance sheet as of the most recent quarter showing credit and debit adjustments that reflect the proposed transaction, a description of the purchase price and the terms and sources of funding for the transaction and the sources and schedule for retiring any debt incurred in the transaction, and the total assets, off-balance sheet items, revenue and net income of the company to be acquired;

(C) For each insured depository institution whose Tier 1 capital, total capital, total assets or risk-weighted assets change as a result of the transaction, the total risk-weighted assets, total assets, Tier 1 capital and total capital of the institution on a *pro forma* basis;

(iv) Identification of the geographic markets in which competition would be affected by the proposal, a description of the effect of the proposal on competition in the relevant markets, a list of the major competitors in that market in the proposed activity if the affected market is local in nature, and, if requested, the market indexes for the relevant market; and

(v) A description of the public benefits that can reasonably be expected to result from the transaction.

(2) *Waiver of unnecessary information.* The Reserve Bank may reduce the information requirements in paragraphs (a)(1) (iii) and (iv) of this section as appropriate.

(b)(1) *Action on proposals under this section.* The Board or the appropriate Reserve Bank shall act on a proposal submitted under this section, or notify the bank holding company that the transaction is subject to the procedure in § 225.24, within 12 business days following the filing of all of the information required in paragraph (a) of this section.

(2) *Acceptance of notice if expedited procedure not available.* If the Board or the Reserve Bank determines, after the filing of a notice under this section, that a bank holding company may not use

[1] A bank holding company may acquire voting securities or assets of a savings association or other insured depository institution that is not a bank by using the procedures in § 225.14 of subpart B if the bank holding company and the proposal qualify under that section as if the savings association or other institution were a bank for purposes of that section.

the procedure in this section and must

(2) *Permissible activity.* (i) The Board

cease and desist order, capital directive

the procedure in this section and must file a notice under § 225.24, the notice shall be deemed accepted for purposes of § 225.24 as of the date that the notice was filed under this section.

(c) *Criteria for use of expedited procedure.* The procedure in this section is available only if:

(1) *Well-capitalized organization*—(i) *Bank holding company.* Both at the time of and immediately after the proposed transaction, the acquiring bank holding company is well-capitalized;

(ii) *Insured depository institutions.* Both at the time of and immediately after the transaction:

(A) The lead insured depository institution of the acquiring bank holding company is well-capitalized;

(B) Well-capitalized insured depository institutions control at least 80 percent of the total risk-weighted assets of insured depository institutions controlled by the acquiring bank holding company; and

(C) No insured depository institution controlled by the acquiring bank holding company is undercapitalized;

(2) *Well-managed organization*—(i) *Satisfactory examination ratings.* At the time of the transaction, the acquiring bank holding company, its lead insured depository institution, and insured depository institutions that control at least 80 percent of the total risk-weighted assets of insured depository institutions controlled by such holding company are well-managed;

(ii) *No poorly managed institutions.* No insured depository institution controlled by the acquiring bank holding company has received 1 of the 2 lowest composite ratings at the later of the institution's most recent examination or subsequent review by the appropriate federal banking agency for the institution.

(iii) *Recently acquired institutions excluded.* Any insured depository institution that has been acquired by the bank holding company during the 12-month period preceding the date on which written notice is filed under paragraph (a) of this section may be excluded for purposes of paragraph (c)(2)(ii) of this section if:

(A) The bank holding company has developed a plan acceptable to the appropriate federal banking agency for the institution to restore the capital and management of the institution; and

(B) All insured depository institutions excluded under this paragraph represent, in the aggregate, less than 10 percent of the aggregate total risk-weighted assets of all insured depository institutions controlled by the bank holding company;

(3) *Permissible activity.* (i) The Board has determined by regulation or order that each activity proposed to be conducted is so closely related to banking, or managing or controlling banks, as to be a proper incident thereto; and

(ii) The Board has not indicated that proposals to engage in the activity are subject to the notice procedure provided in § 225.24;

(4) *Competitive criteria*—(i) *Competitive screen.* In the case of the acquisition of a going concern, the acquisition, without regard to any divestitures proposed by the acquiring bank holding company, does not cause:

(A) The acquiring bank holding company to control in excess of 35 percent of the market share in any relevant market; or

(B) The Herfindahl-Hirschman index to increase by more than 200 points in any relevant market with a post-acquisition index of at least 1800; and

(ii) *Other competitive factors.* The Board has not indicated that the transaction is subject to close scrutiny on competitive grounds;

(5) *Size of acquisition*—(i) *In general*—(A) *Limited growth.* Except as provided in paragraph (c)(5)(ii) of this section, the sum of aggregate risk-weighted assets to be acquired in the proposal and the aggregate risk-weighted assets acquired by the acquiring bank holding company in all other qualifying transactions does not exceed 35 percent of the consolidated risk-weighted assets of the acquiring bank holding company. For purposes of this paragraph, "other qualifying transactions" means any transaction approved under this section or § 225.14 during the 12 months prior to filing the notice under this section;

(B) *Consideration paid.* The gross consideration to be paid by the acquiring bank holding company in the proposal does not exceed 15 percent of the consolidated Tier 1 capital of the acquiring bank holding company; and

(C) *Individual size limitation.* The total risk-weighted assets to be acquired do not exceed $7.5 billion;

(ii) *Small bank holding companies.* Paragraph (c)(5)(i)(A) of this section shall not apply if, immediately following consummation of the proposed transaction, the consolidated risk-weighted assets of the acquiring bank holding company are less than $300 million;

(6) *Supervisory actions.* During the 12-month period ending on the date on which the bank holding company proposes to consummate the proposed transaction, no formal administrative order, including a written agreement, cease and desist order, capital directive, prompt corrective action directive, asset maintenance agreement, or other formal enforcement order is or was outstanding against the bank holding company or any insured depository institution subsidiary of the holding company, and no formal administrative enforcement proceeding involving any such enforcement action, order, or directive is or was pending; and

(7) *Notification.* The bank holding company has not been notified by the Board, in its discretion, prior to the expiration of the period in paragraph (b) of this section that a notice under § 225.24 is required in order to permit closer review of any potential adverse effect or other matter related to the factors that must be considered under this part.

(d) *Branches and agencies of foreign banking organizations.* For purposes of this section, a U.S. branch or agency of a foreign banking organization shall be considered to be an insured depository institution.

§ 225.24 Procedures for other nonbanking proposals.

(a) *Notice required for nonbanking activities.* Except as provided in § 225.22 and § 225.23, a notice for the Board's prior approval under § 225.21(a) to engage in or acquire a company engaged in a nonbanking activity shall be filed by a bank holding company (including a company seeking to become a bank holding company) with the appropriate Reserve Bank in accordance with this section and the Board's Rules of Procedure (12 CFR 262.3).

(1) *Engaging de novo in listed activities.* A bank holding company seeking to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity listed in § 225.28 shall file a notice containing a description of the activities to be conducted and the identity of the company that will conduct the activity.

(2) *Acquiring company engaged in listed activities.* A bank holding company seeking to acquire or control voting securities or assets of a company engaged in a nonbanking activity listed in § 225.28 shall file a notice containing the following:

(i) A description of the proposal, including a description of each proposed activity, and the effect of the proposal on competition among entities engaging in each proposed activity in each relevant market with relevant market indexes;

(ii) The identity of any entity involved in the proposal, and, if the notificant proposes to conduct the activity through an existing subsidiary, a description of the existing activities of the subsidiary;

(iii) A statement of the public benefits that can reasonably be expected to result from the proposal;

(iv) If the bank holding company has consolidated assets of $150 million or more:

(A) Parent company and consolidated *pro forma* balance sheets for the acquiring bank holding company as of the most recent quarter showing credit and debit adjustments that reflect the proposed transaction;

(B) Consolidated *pro forma* risk-based capital and leverage ratio calculations for the acquiring bank holding company as of the most recent quarter; and

(C) A description of the purchase price and the terms and sources of funding for the transaction;

(v) If the bank holding company has consolidated assets of less than $150 million:

(A) A *pro forma* parent-only balance sheet as of the most recent quarter showing credit and debit adjustments that reflect the proposed transaction; and

(B) A description of the purchase price and the terms and sources of funding for the transaction and, if the transaction is debt funded, one-year income statement and cash flow projections for the parent company, and the sources and schedule for retiring any debt incurred in the transaction;

(vi) For each insured depository institution whose Tier 1 capital, total capital, total assets or risk-weighted assets change as a result of the transaction, the total risk-weighted assets, total assets, Tier 1 capital and total capital of the institution on a *pro forma* basis; and

(vii) A description of the management expertise, internal controls and risk management systems that will be utilized in the conduct of the proposed activities; and

(viii) A copy of the purchase agreements, and balance sheet and income statements for the most recent quarter and year-end for any company to be acquired.

(3) *Engaging in or acquiring company to engage in unlisted activities.* A bank holding company seeking to engage *de novo* in, or to acquire or control voting securities or assets of a company engaged in, any activity not listed in § 225.28 shall file a notice containing the following:

(i) Evidence that the proposed activity is so closely related to banking or managing or controlling banks as to be a proper incident thereto, or, if the Board previously determined by order that the activity is permissible for a bank holding company to conduct, a commitment to comply with all the conditions and limitations established by the Board governing the activity; and

(ii) The information required in paragraphs (a)(1) or (a)(2) of this section, as appropriate.

(b) *Notice provided to Board.* The Reserve Bank shall immediately send to the Board a copy of any notice received under paragraphs (a)(2) or (a)(3) of this section.

(c) *Notice to public*—(1) *Listed activities and activities approved by order*—(i) In a case involving an activity listed in § 225.28 or previously approved by the Board by order, the Reserve Bank shall notify the Board for publication in the **Federal Register** immediately upon receipt by the Reserve Bank of:

(A) A notice under this section; or

(B) A written request that notice of a proposal under this section or § 225.23 be published in the **Federal Register**. Such a request may request that **Federal Register** publication occur up to 15 calendar days prior to submission of a notice under this subpart.

(ii) The **Federal Register** notice published under this paragraph shall invite public comment on the proposal, generally for a period of 15 days.

(2) *New activities*—(i) *In general.* In the case of a notice under this subpart involving an activity that is not listed in § 225.28 and that has not been previously approved by the Board by order, the Board shall send notice of the proposal to the **Federal Register** for publication, unless the Board determines that the notificant has not demonstrated that the activity is so closely related to banking or to managing or controlling banks as to be a proper incident thereto. The **Federal Register** notice shall invite public comment on the proposal for a reasonable period of time, generally for 30 days.

(ii) *Time for publication.* The Board shall send the notice required under this paragraph to the **Federal Register** within 10 business days of acceptance by the Reserve Bank. The Board may extend the 10-day period for an additional 30 calendar days upon notice to the notificant. In the event notice of a proposal is not published for comment, the Board shall inform the notificant of the reasons for the decision.

(d) *Action on notices*—(1) *Reserve Bank action*—(i) *In general.* Within 30 calendar days after receipt by the Reserve Bank of a notice filed pursuant to paragraphs (a)(1) or (a)(2) of this section, the Reserve Banks shall:

(A) Approve the notice; or

(B) Refer the notice to the Board for decision because action under delegated authority is not appropriate.

(ii) *Return of incomplete notice.* Within 7 calendar days of receipt, the Reserve Bank may return any notice as informationally incomplete that does not contain all of the information required by this subpart. The return of such a notice shall be deemed action on the notice.

(iii) *Notice of action.* The Reserve Bank shall promptly notify the bank holding company of any action or referral under this paragraph.

(iv) *Close of public comment period.* The Reserve Bank shall not approve any notice under this paragraph (d)(1) of this section prior to the third business day after the close of the public comment period, unless an emergency exists that requires expedited or immediate action.

(2) *Board action*—(i) *Internal schedule.* The Board seeks to act on every notice referred to it for decision within 60 days of the date that the notice is filed with the Reserve Bank. If the Board is unable to act within this period, the Board shall notify the notificant and explain the reasons and the date by which the Board expects to act.

(ii) *Extension of required period for action*—(A) *In general.* The Board may extend the 60-day period required for Board action under paragraph (d)(2)(i) of this section for an additional 30 days upon notice to the notificant.

(B) *Unlisted activities.* If a notice involves a proposal to engage in an activity that is not listed in § 225.28, the Board may extend the period required for Board action under paragraph (d)(2)(i) of this section for an additional 90 days. This 90-day extension is in addition to the 30-day extension period provided in paragraph (d)(2)(ii)(A) of this section. The Board shall notify the notificant that the notice period has been extended and explain the reasons for the extension.

(3) *Requests for additional information.* The Board or the Reserve Bank may modify the information requirements under this section or at any time request any additional information that either believes is needed for a decision on any notice under this section.

(4) *Tolling of period.* The Board or the Reserve Bank may at any time extend or toll the time period for action on a notice for any period with the consent of the notificant.

§ 225.25 Hearings, alteration of activities, and other matters.

(a) *Hearings*—(1) *Procedure to request hearing.* Any request for a hearing on a

notice under this subpart shall comply with the provisions of 12 CFR 262.3(e).

(2) *Determination to hold hearing.* The Board may order a formal or informal hearing or other proceeding on a notice as provided in 12 CFR 262.3(i)(2). The Board shall order a hearing only if there are disputed issues of material fact that cannot be resolved in some other manner.

(3) *Extension of period for hearing.* The Board may extend the time for action on any notice for such time as is reasonably necessary to conduct a hearing and evaluate the hearing record. Such extension shall not exceed 91 calendar days after the date of submission to the Board of the complete record on the notice. The procedures for computation of the 91-day rule as set forth in § 225.16(f) apply to notices under this subpart that involve hearings.

(b) *Approval through failure to act.* (1) Except as provided in paragraph (a) of this section or § 225.24(d)(4), a notice under this subpart shall be deemed to be approved at the conclusion of the period that begins on the date the complete notice is received by the Reserve Bank or the Board and that ends 60 calendar days plus any applicable extension and tolling period thereafter.

(2) *Complete notice.* For purposes of paragraph (b)(1) of this section, a notice shall be deemed complete at such time as it contains all information required by this subpart and all other information requested by the Board or the Reserve Bank.

(c) *Notice to expand or alter nonbanking activities*—(1) *De novo expansion.* A notice under this subpart is required to open a new office or to form a subsidiary to engage in, or to relocate an existing office engaged in, a nonbanking activity that the Board has previously approved for the bank holding company under this regulation, only if:

(i) The Board's prior approval was limited geographically;

(ii) The activity is to be conducted in a country outside of the United States and the bank holding company has not previously received prior Board approval under this regulation to engage in the activity in that country; or

(iii) The Board or appropriate Reserve Bank has notified the company that a notice under this subpart is required.

(2) *Activities outside United States.* With respect to activities to be engaged in outside the United States that require approval under this subpart, the procedures of this section apply only to activities to be engaged in directly by a bank holding company that is not a qualifying foreign banking organization, or by a nonbank subsidiary of a bank holding company approved under this subpart. Regulation K (12 CFR part 211) governs other international operations of bank holding companies.

(3) *Alteration of nonbanking activity.* Unless otherwise permitted by the Board, a notice under this subpart is required to alter a nonbanking activity in any material respect from that considered by the Board in acting on the application or notice to engage in the activity.

(d) *Emergency savings association acquisitions.* In the case of a notice to acquire a savings association, the Board may modify or dispense with the public notice and hearing requirements of this subpart if the Board finds that an emergency exists that requires the Board to act immediately and the primary federal regulator of the institution concurs.

§ 225.26 Factors considered in acting on nonbanking proposals.

(a) *In general.* In evaluating a notice under § 225.23 or § 225.24, the Board shall consider whether the notificant's performance of the activities can reasonably be expected to produce benefits to the public (such as greater convenience, increased competition, and gains in efficiency) that outweigh possible adverse effects (such as undue concentration of resources, decreased or unfair competition, conflicts of interest, and unsound banking practices).

(b) *Financial and managerial resources.* Consideration of the factors in paragraph (a) of this section includes an evaluation of the financial and managerial resources of the notificant, including its subsidiaries and any company to be acquired, the effect of the proposed transaction on those resources, and the management expertise, internal control and risk-management systems, and capital of the entity conducting the activity.

(c) *Competitive effect of de novo proposals.* Unless the record demonstrates otherwise, the commencement or expansion of a nonbanking activity *de novo* is presumed to result in benefits to the public through increased competition.

(d) *Denial for lack of information.* The Board may deny any notice submitted under this subpart if the notificant neglects, fails, or refuses to furnish all information required by the Board.

(e) *Conditional approvals.* The Board may impose conditions on any approval, including conditions to address permissibility, financial, managerial, safety and soundness, competitive, compliance, conflicts of interest, or other concerns to ensure that approval is consistent with the relevant statutory factors and other provisions of the BHC Act.

§ 225.27 Procedures for determining scope of nonbanking activities.

(a) *Advisory opinions regarding scope of previously approved nonbanking activities*—(1) *Request for advisory opinion.* Any person may submit a request to the Board for an advisory opinion regarding the scope of any permissible nonbanking activity. The request shall be submitted in writing to the Board and shall identify the proposed parameters of the activity, or describe the service or product that will be provided, and contain an explanation supporting an interpretation regarding the scope of the permissible nonbanking activity.

(2) *Response to request.* The Board shall provide an advisory opinion within 45 days of receiving a written request under this paragraph.

(b) *Procedure for consideration of new activities*—(1) *Initiation of proceeding.* The Board may, at any time, on its own initiative or in response to a written request from any person, initiate a proceeding to determine whether any activity is so closely related to banking or managing or controlling banks as to be a proper incident thereto.

(2) *Requests for determination.* Any request for a Board determination that an activity is so closely related to banking or managing or controlling banks as to be a proper incident thereto, shall be submitted to the Board in writing, and shall contain evidence that the proposed activity is so closely related to banking or managing or controlling banks as to be a proper incident thereto.

(3) *Publication.* The Board shall publish in the **Federal Register** notice that it is considering the permissibility of a new activity and invite public comment for a period of at least 30 calendar days. In the case of a request submitted under paragraph (b) of this section, the Board may determine not to publish notice of the request if the Board determines that the requester has provided no reasonable basis for a determination that the activity is so closely related to banking, or managing or controlling banks as to be a proper incident thereto, and notifies the requester of the determination.

(4) *Comments and hearing requests.* Any comment and any request for a hearing regarding a proposal under this section shall comply with the provisions of § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)).

§ 225.28 List of permissible nonbanking activities.

(a) *Closely related nonbanking activities.* The activities listed in paragraph (b) of this section are so closely related to banking or managing or controlling banks as to be a proper incident thereto, and may be engaged in by a bank holding company or its subsidiary in accordance with the requirements of this regulation.

(b) *Activities determined by regulation to be permissible*—(1) *Extending credit and servicing loans.* Making, acquiring, brokering, or servicing loans or other extensions of credit (including factoring, issuing letters of credit and accepting drafts) for the company's account or for the account of others.

(2) *Activities related to extending credit.* Any activity usual in connection with making, acquiring, brokering or servicing loans or other extensions of credit, as determined by the Board. The Board has determined that the following activities are usual in connection with making, acquiring, brokering or servicing loans or other extensions of credit:

(i) *Real estate and personal property appraising.* Performing appraisals of real estate and tangible and intangible personal property, including securities.

(ii) *Arranging commercial real estate equity financing.* Acting as intermediary for the financing of commercial or industrial income-producing real estate by arranging for the transfer of the title, control, and risk of such a real estate project to one or more investors, if the bank holding company and its affiliates do not have an interest in, or participate in managing or developing, a real estate project for which it arranges equity financing, and do not promote or sponsor the development of the property.

(iii) *Check-guaranty services.* Authorizing a subscribing merchant to accept personal checks tendered by the merchant's customers in payment for goods and services, and purchasing from the merchant validly authorized checks that are subsequently dishonored.

(iv) *Collection agency services.* Collecting overdue accounts receivable, either retail or commercial.

(v) *Credit bureau services.* Maintaining information related to the credit history of consumers and providing the information to a credit grantor who is considering a borrower's application for credit or who has extended credit to the borrower.

(vi) *Asset management, servicing, and collection activities.* Engaging under contract with a third party in asset management, servicing, and collection [2] of assets of a type that an insured depository institution may originate and own, if the company does not engage in real property management or real estate brokerage services as part of these services.

(vii) *Acquiring debt in default.* Acquiring debt that is in default at the time of acquisition, if the company:

(A) Divests shares or assets securing debt in default that are not permissible investments for bank holding companies, within the time period required for divestiture of property acquired in satisfaction of a debt previously contracted under § 225.12(b); [3]

(B) Stands only in the position of a creditor and does not purchase equity of obligors of debt in default (other than equity that may be collateral for such debt); and

(C) Does not acquire debt in default secured by shares of a bank or bank holding company.

(viii) *Real estate settlement servicing.* Providing real estate settlement services.[4]

(3) *Leasing personal or real property.* Leasing personal or real property or acting as agent, broker, or adviser in leasing such property if:

(i) The lease is on a nonoperating basis; [5]

(ii) The initial term of the lease is at least 90 days;

(iii) In the case of leases involving real property:

(A) At the inception of the initial lease, the effect of the transaction will yield a return that will compensate the lessor for not less than the lessor's full investment in the property plus the estimated total cost of financing the property over the term of the lease from rental payments, estimated tax benefits, and the estimated residual value of the property at the expiration of the initial lease; and

(B) The estimated residual value of property for purposes of paragraph (b)(3)(iii)(A) of this section shall not exceed 25 percent of the acquisition cost of the property to the lessor.

(4) *Operating nonbank depository institutions*—(i) *Industrial banking.* Owning, controlling, or operating an industrial bank, Morris Plan bank, or industrial loan company, so long as the institution is not a bank.

(ii) *Operating savings association.* Owning, controlling, or operating a savings association, if the savings association engages only in deposit-taking activities, lending, and other activities that are permissible for bank holding companies under this subpart C.

(5) *Trust company functions.* Performing functions or activities that may be performed by a trust company (including activities of a fiduciary, agency, or custodial nature), in the manner authorized by federal or state law, so long as the company is not a bank for purposes of section 2(c) of the Bank Holding Company Act.

(6) *Financial and investment advisory activities.* Acting as investment or financial advisor to any person, including (without, in any way, limiting the foregoing):

(i) Serving as investment adviser (as defined in section 2(a)(20) of the Investment Company Act of 1940, 15 U.S.C. 80a–2(a)(20)), to an investment company registered under that act, including sponsoring, organizing, and managing a closed-end investment company;

(ii) Furnishing general economic information and advice, general economic statistical forecasting services, and industry studies;

(iii) Providing advice in connection with mergers, acquisitions, divestitures, investments, joint ventures, leveraged buyouts, recapitalizations, capital structurings, financing transactions and similar transactions, and conducting financial feasibility studies; [6]

(iv) Providing information, statistical forecasting, and advice with respect to any transaction in foreign exchange, swaps, and similar transactions,

[2] Asset management services include acting as agent in the liquidation or sale of loans and collateral for loans, including real estate and other assets acquired through foreclosure or in satisfaction of debts previously contracted.

[3] For this purpose, the divestiture period for property begins on the date that the debt is acquired, regardless of when legal title to the property is acquired.

[4] For purposes of this section, real estate settlement services do not include providing title insurance as principal, agent, or broker.

[5] The requirement that the lease be on a nonoperating basis means that the bank holding company may not, directly or indirectly, engage in operating, servicing, maintaining, or repairing leased property during the lease term. For purposes of the leasing of automobiles, the requirement that the lease be on a nonoperating basis means that the bank holding company may not, directly or indirectly: (1) Provide servicing, repair, or maintenance of the leased vehicle during the lease term; (2) purchase parts and accessories in bulk or for an individual vehicle after the lessee has taken delivery of the vehicle; (3) provide the loan of an automobile during servicing of the leased vehicle; (4) purchase insurance for the lessee; or (5) provide for the renewal of the vehicle's license merely as a service to the lessee where the lessee could renew the license without authorization from the lessor. The bank holding company may arrange for a third party to provide these services or products.

[6] Feasibility studies do not include assisting management with the planning or marketing for a given project or providing general operational or management advice.

commodities, and any forward contract, option, future, option on a future, and similar instruments;

(v) Providing educational courses, and instructional materials to consumers on individual financial management matters; and

(vi) Providing tax-planning and tax-preparation services to any person.

(7) *Agency transactional services for customer investments—(i) Securities brokerage.* Providing securities brokerage services (including securities clearing and/or securities execution services on an exchange), whether alone or in combination with investment advisory services, and incidental activities (including related securities credit activities and custodial services), if the securities brokerage services are restricted to buying and selling securities solely as agent for the account of customers and do not include securities underwriting or dealing.

(ii) *Riskless principal transactions.* Buying and selling in the secondary market all types of securities on the order of customers as a "riskless principal" to the extent of engaging in a transaction in which the company, after receiving an order to buy (or sell) a security from a customer, purchases (or sells) the security for its own account to offset a contemporaneous sale to (or purchase from) the customer. This does not include:

(A) Selling bank-ineligible securities[7] at the order of a customer that is the issuer of the securities, or selling bank-ineligible securities in any transaction where the company has a contractual agreement to place the securities as agent of the issuer; or

(B) Acting as a riskless principal in any transaction involving a bank-ineligible security for which the company or any of its affiliates acts as underwriter (during the period of the underwriting or for 30 days thereafter) or dealer.[8]

(iii) *Private placement services.* Acting as agent for the private placement of securities in accordance with the requirements of the Securities Act of 1933 (1933 Act) and the rules of the Securities and Exchange Commission, if the company engaged in the activity does not purchase or repurchase for its own account the securities being placed, or hold in inventory unsold portions of issues of these securities.

(iv) *Futures commission merchant.* Acting as a futures commission merchant (FCM) for unaffiliated persons in the execution, clearance, or execution and clearance of any futures contract and option on a futures contract traded on an exchange in the United States or abroad if:

(A) The activity is conducted through a separately incorporated subsidiary of the bank holding company, which may engage in activities other than FCM activities (including, but not limited to, permissible advisory and trading activities); and

(B) The parent bank holding company does not provide a guarantee or otherwise become liable to the exchange or clearing association other than for those trades conducted by the subsidiary for its own account or for the account of any affiliate.

(v) *Other transactional services.* Providing to customers as agent transactional services with respect to swaps and similar transactions, any transaction described in paragraph (b)(8) of this section, any transaction that is permissible for a state member bank, and any other transaction involving a forward contract, option, futures, option on a futures or similar contract (whether traded on an exchange or not) relating to a commodity that is traded on an exchange.

(8) *Investment transactions as principal—(i) Underwriting and dealing in government obligations and money market instruments.* Underwriting and dealing in obligations of the United States, general obligations of states and their political subdivisions, and other obligations that state member banks of the Federal Reserve System may be authorized to underwrite and deal in under 12 U.S.C. 24 and 335, including banker's acceptances and certificates of deposit, under the same limitations as would be applicable if the activity were performed by the bank holding company's subsidiary member banks or its subsidiary nonmember banks as if they were member banks.

(ii) *Investing and trading activities.* Engaging as principal in:

(A) Foreign exchange;

(B) Forward contracts, options, futures, options on futures, swaps, and similar contracts, whether traded on exchanges or not, based on any rate, price, financial asset (including gold, silver, platinum, palladium, copper, or any other metal approved by the Board), nonfinancial asset, or group of assets, other than a bank-ineligible security,[9] if:

(*1*) A state member bank is authorized to invest in the asset underlying the contract;

(*2*) The contract requires cash settlement; or

(*3*) The contract allows for assignment, termination, or offset prior to delivery or expiration, and the company makes every reasonable effort to avoid taking or making delivery; and

(C) Forward contracts, options,[10] futures, options on futures, swaps, and similar contracts, whether traded on exchanges or not, based on an index of a rate, a price, or the value of any financial asset, nonfinancial asset, or group of assets, if the contract requires cash settlement.

(iii) *Buying and selling bullion, and related activities.* Buying, selling and storing bars, rounds, bullion, and coins of gold, silver, platinum, palladium, copper, and any other metal approved by the Board, for the company's own account and the account of others, and providing incidental services such as arranging for storage, safe custody, assaying, and shipment.

(9) *Management consulting and counseling activities—(i) Management consulting.* (A) Providing management consulting advice:[11]

(*1*) On any matter to unaffiliated depository institutions, including commercial banks, savings and loan associations, savings banks, credit unions, industrial banks, Morris Plan banks, cooperative banks, industrial loan companies, trust companies, and branches or agencies of foreign banks;

(*2*) On any financial, economic, accounting, or audit matter to any other company.

(B) A company conducting management consulting activities under this subparagraph and any affiliate of such company may not:

[7] A bank-ineligible security is any security that a State member bank is not permitted to underwrite or deal in under 12 U.S.C. 24 and 335.

[8] A company or its affiliates may not enter quotes for specific bank-ineligible securities in any dealer quotation system in connection with the company's riskless principal transactions; except that the company or its affiliates may enter "bid" or "ask" quotations, or publish "offering wanted" or "bid wanted" notices on trading systems other than NASDAQ or an exchange, if the company or its affiliate does not enter price quotations on different sides of the market for a particular security during any two-day period.

[9] A bank-ineligible security is any security that a state member bank is not permitted to underwrite or deal in under 12 U.S.C. 24 and 335.

[10] This reference does not include acting as a dealer in options based on indices of bank-ineligible securities when the options are traded on securities exchanges. These options are securities for purposes of the federal securities laws and bank-ineligible securities for purposes of section 20 of the Glass-Steagall Act, 12 U.S.C. 337. Similarly, this reference does not include acting as a dealer in any other instrument that is a bank-ineligible security for purposes of section 20. A bank holding company may deal in these instruments in accordance with the Board's orders on dealing in bank-ineligible securities.

[11] In performing this activity, bank holding companies are not authorized to perform tasks or operations or provide services to client institutions either on a daily or continuing basis, except as necessary to instruct the client institution on how to perform such services for itself. See also the Board's interpretation of bank management consulting advice (12 CFR 225.131).

(*1*) Own or control, directly or indirectly, more than 5 percent of the voting securities of the client institution; and

(*2*) Allow a management official, as defined in 12 CFR 212.2(h), of the company or any of its affiliates to serve as a management official of the client institution, except where such interlocking relationship is permitted pursuant to an exemption granted under 12 CFR 212.4(b) or otherwise permitted by the Board.

(C) A company conducting management consulting activities may provide management consulting services to customers not described in paragraph (b)(9)(i)(A)(*1*) of this section or regarding matters not described in paragraph (b)(9)(i)(A)(*2*) of this section, if the total annual revenue derived from those management consulting services does not exceed 30 percent of the company's total annual revenue derived from management consulting activities.

(ii) *Employee benefits consulting services.* Providing consulting services to employee benefit, compensation and insurance plans, including designing plans, assisting in the implementation of plans, providing administrative services to plans, and developing employee communication programs for plans.

(iii) *Career counseling services.* Providing career counseling services to:

(A) A financial organization[12] and individuals currently employed by, or recently displaced from, a financial organization;

(B) Individuals who are seeking employment at a financial organization; and

(C) Individuals who are currently employed in or who seek positions in the finance, accounting, and audit departments of any company.

(10) *Support services—(i) Courier services.* Providing courier services for:

(A) Checks, commercial papers, documents, and written instruments (excluding currency or bearer-type negotiable instruments) that are exchanged among banks and financial institutions; and

(B) Audit and accounting media of a banking or financial nature and other business records and documents used in processing such media.[13]

(ii) *Printing and selling MICR-encoded items.* Printing and selling checks and related documents, including corporate image checks, cash tickets, voucher checks, deposit slips, savings withdrawal packages, and other forms that require Magnetic Ink Character Recognition (MICR) encoding.

(11) *Insurance agency and underwriting—(i) Credit insurance.* Acting as principal, agent, or broker for insurance (including home mortgage redemption insurance) that is:

(A) Directly related to an extension of credit by the bank holding company or any of its subsidiaries; and

(B) Limited to ensuring the repayment of the outstanding balance due on the extension of credit[14] in the event of the death, disability, or involuntary unemployment of the debtor.

(ii) *Finance company subsidiary.* Acting as agent or broker for insurance directly related to an extension of credit by a finance company[15] that is a subsidiary of a bank holding company, if:

(A) The insurance is limited to ensuring repayment of the outstanding balance on such extension of credit in the event of loss or damage to any property used as collateral for the extension of credit; and

(B) The extension of credit is not more than $10,000, or $25,000 if it is to finance the purchase of a residential manufactured home[16] and the credit is secured by the home; and

(C) The applicant commits to notify borrowers in writing that:

(*1*) They are not required to purchase such insurance from the applicant;

(*2*) Such insurance does not insure any interest of the borrower in the collateral; and

(*3*) The applicant will accept more comprehensive property insurance in place of such single-interest insurance.

(iii) *Insurance in small towns.* Engaging in any insurance agency activity in a place where the bank holding company or a subsidiary of the bank holding company has a lending office and that:

(A) Has a population not exceeding 5,000 (as shown in the preceding decennial census); or

(B) Has inadequate insurance agency facilities, as determined by the Board, after notice and opportunity for hearing.

(iv) *Insurance-agency activities conducted on May 1, 1982.* Engaging in any specific insurance-agency activity[17] if the bank holding company, or subsidiary conducting the specific activity, conducted such activity on May 1, 1982, or received Board approval to conduct such activity on or before May 1, 1982.[18] A bank holding company or subsidiary engaging in a specific insurance agency activity under this clause may:

(A) Engage in such specific insurance agency activity only at locations:

(*1*) In the state in which the bank holding company has its principal place of business (as defined in 12 U.S.C. 1842(d));

(*2*) In any state or states immediately adjacent to such state; and

(*3*) In any state in which the specific insurance-agency activity was conducted (or was approved to be conducted) by such bank holding company or subsidiary thereof or by any other subsidiary of such bank holding company on May 1, 1982; and

(B) Provide other insurance coverages that may become available after May 1, 1982, so long as those coverages insure against the types of risks as (or are otherwise functionally equivalent to) coverages sold or approved to be sold on May 1, 1982, by the bank holding company or subsidiary.

(v) *Supervision of retail insurance agents.* Supervising on behalf of insurance underwriters the activities of retail insurance agents who sell:

(A) Fidelity insurance and property and casualty insurance on the real and personal property used in the operations of the bank holding company or its subsidiaries; and

(B) Group insurance that protects the employees of the bank holding company or its subsidiaries.

[12] *Financial organization* refers to insured depository institution holding companies and their subsidiaries, other than nonbanking affiliates of diversified savings and loan holding companies that engage in activities not permissible under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1842(c)(8)).

[13] See also the Board's interpretation on courier activities (12 CFR 225.129), which sets forth conditions for bank holding company entry into the activity.

[14] *Extension of credit* includes direct loans to borrowers, loans purchased from other lenders, and leases of real or personal property so long as the leases are nonoperating and full-payout leases that meet the requirements of paragraph (b)(3) of this section.

[15] *Finance company* includes all non-deposit-taking financial institutions that engage in a significant degree of consumer lending (excluding lending secured by first mortgages) and all financial institutions specifically defined by individual states as finance companies and that engage in a significant degree of consumer lending.

[16] These limitations increase at the end of each calendar year, beginning with 1982, by the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics.

[17] Nothing contained in this provision shall preclude a bank holding company subsidiary that is authorized to engage in a specific insurance-agency activity under this clause from continuing to engage in the particular activity after merger with an affiliate, if the merger is for legitimate business purposes and prior notice has been provided to the Board.

[18] For the purposes of this paragraph, activities engaged in on May 1, 1982, include activities carried on subsequently as the result of an application to engage in such activities pending before the Board on May 1, 1982, and approved subsequently by the Board or as the result of the acquisition by such company pursuant to a binding written contract entered into on or before May 1, 1982, of another company engaged in such activities at the time of the acquisition.

(vi) *Small bank holding companies.* Engaging in any insurance-agency activity if the bank holding company has total consolidated assets of $50 million or less. A bank holding company performing insurance-agency activities under this paragraph may not engage in the sale of life insurance or annuities except as provided in paragraphs (b)(11) (i) and (iii) of this section, and it may not continue to engage in insurance-agency activities pursuant to this provision more than 90 days after the end of the quarterly reporting period in which total assets of the holding company and its subsidiaries exceed $50 million.

(vii) *Insurance-agency activities conducted before 1971.* Engaging in any insurance-agency activity performed at any location in the United States directly or indirectly by a bank holding company that was engaged in insurance-agency activities prior to January 1, 1971, as a consequence of approval by the Board prior to January 1, 1971.

(12) *Community development activities*—(i) *Financing and investment activities.* Making equity and debt investments in corporations or projects designed primarily to promote community welfare, such as the economic rehabilitation and development of low-income areas by providing housing, services, or jobs for residents.

(ii) *Advisory activities.* Providing advisory and related services for programs designed primarily to promote community welfare.

(13) *Money orders, savings bonds, and traveler's checks.* The issuance and sale at retail of money orders and similar consumer-type payment instruments; the sale of U.S. savings bonds; and the issuance and sale of traveler's checks.

(14) *Data processing.* (i) Providing data processing and data transmission services, facilities (including data processing and data transmission hardware, software, documentation, or operating personnel), data bases, advice, and access to such services, facilities, or data bases by any technological means, if:

(A) The data to be processed or furnished are financial, banking, or economic; and

(B) The hardware provided in connection therewith is offered only in conjunction with software designed and marketed for the processing and transmission of financial, banking, or economic data, and where the general purpose hardware does not constitute more than 30 percent of the cost of any packaged offering.

(ii) A company conducting data processing and data transmission activities may conduct data processing and data transmission activities not described in paragraph (b)(14)(i) of this section if the total annual revenue derived from those activities does not exceed 30 percent of the company's total annual revenues derived from data processing and data transmission activities.

5. Subpart D is amended as follows:

§ 225.31 [Amended]

(A) Section 225.31, paragraph (d)(2)(ii), is amended by removing the words "as defined in 12 CFR 206.2(k)"; and

§ 225.32 [Removed]

(B) Section 225.32 is removed.

6. Subpart E is revised to read as follows:

Subpart E—Change in Bank Control

Sec.

225.41 Transactions requiring prior notice.
225.42 Transactions not requiring prior notice.
225.43 Procedures for filing, processing, publishing, and acting on notices.
225.44 Reporting of stock loans.

Subpart E—Change in Bank Control

§ 225.41 Transactions requiring prior notice.

(a) *Prior notice requirement.* Any person acting directly or indirectly, or through or in concert with one or more persons, shall give the Board 60 days' written notice, as specified in § 225.43 of this subpart, before acquiring control of a state member bank or bank holding company, unless the acquisition is exempt under § 225.42.

(b) *Definitions.* For purposes of this subpart:

(1) *Acquisition* includes a purchase, assignment, transfer, or pledge of voting securities, or an increase in percentage ownership of a state member bank or a bank holding company resulting from a redemption of voting securities.

(2) *Acting in concert* includes knowing participation in a joint activity or parallel action towards a common goal of acquiring control of a state member bank or bank holding company whether or not pursuant to an express agreement.

(3) *Immediate family* includes a person's father, mother, stepfather, stepmother, brother, sister, stepbrother, stepsister, son, daughter, stepson, stepdaughter, grandparent, grandson, granddaughter, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, the spouse of any of the foregoing, and the person's spouse.

(c) *Acquisitions requiring prior notice*—(1) *Acquisition of control.* The acquisition of voting securities of a state member bank or bank holding company constitutes the acquisition of control under the Bank Control Act, requiring prior notice to the Board, if, immediately after the transaction, the acquiring person (or persons acting in concert) will own, control, or hold with power to vote 25 percent or more of any class of voting securities of the institution.

(2) *Rebuttable presumption of control.* The Board presumes that an acquisition of voting securities of a state member bank or bank holding company constitutes the acquisition of control under the Bank Control Act, requiring prior notice to the Board, if, immediately after the transaction, the acquiring person (or persons acting in concert) will own, control, or hold with power to vote 10 percent or more of any class of voting securities of the institution, and if:

(i) The institution has registered securities under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l); or

(ii) No other person will own, control, or hold the power to vote a greater percentage of that class of voting securities immediately after the transaction.[1]

(d) *Rebuttable presumption of concerted action.* The following persons shall be presumed to be acting in concert for purposes of this subpart:

(1) A company and any controlling shareholder, partner, trustee, or management official of the company, if both the company and the person own voting securities of the state member bank or bank holding company;

(2) An individual and the individual's immediate family;

(3) Companies under common control;

(4) Persons that are parties to any agreement, contract, understanding, relationship, or other arrangement, whether written or otherwise, regarding the acquisition, voting, or transfer of control of voting securities of a state member bank or bank holding company, other than through a revocable proxy as described in § 225.42(a)(5) of this subpart;

(5) Persons that have made, or propose to make, a joint filing under sections 13 or 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78n), and the rules promulgated thereunder by the Securities and Exchange Commission; and

(6) A person and any trust for which the person serves as trustee.

(e) *Acquisitions of loans in default.* The Board presumes an acquisition of a loan in default that is secured by voting securities of a state member bank or bank holding company to be an acquisition of the underlying securities for purposes of this section.

(f) *Other transactions.* Transactions other than those set forth in paragraph (c) of this section resulting in a person's control of less than 25 percent of a class of voting securities of a state member bank or bank holding company are not deemed by the Board to constitute control for purposes of the Bank Control Act.

(g) *Rebuttal of presumptions.* Prior notice to the Board is not required for any acquisition of voting securities under the presumption of control set forth in this section, if the Board finds that the acquisition will not result in control. The Board shall afford any person seeking to rebut a presumption in this section an opportunity to present views in writing or, if appropriate, orally before its designated representatives at an informal conference.

[1] If two or more persons, not acting in concert, each propose to acquire simultaneously equal percentages of 10 percent or more of a class of voting securities of the state member bank or bank holding company, each person must file prior notice to the Board.

§ 225.42 Transactions not requiring prior notice.

(a) *Exempt transactions.* The following transactions do not require notice to the Board under this subpart:

(1) *Existing control relationships.* The acquisition of additional voting securities of a state member bank or bank holding company by a person who:

(i) Continuously since March 9, 1979 (or since the institution commenced business, if later), held power to vote 25 percent or more of any class of voting securities of the institution; or

(ii) Is presumed, under § 225.41(c)(2) of this subpart, to have controlled the institution continuously since March 9, 1979, if the aggregate amount of voting securities held does not exceed 25 percent or more of any class of voting securities of the institution or, in other cases, where the Board determines that the person has controlled the bank continuously since March 9, 1979;

(2) *Increase of previously authorized acquisitions.* Unless the Board or the Reserve Bank otherwise provides in writing, the acquisition of additional shares of a class of voting securities of a state member bank or bank holding company by any person (or persons acting in concert) who has lawfully acquired and maintained control of the institution (for purposes of § 225.41(c) of this subpart), after complying with the procedures and receiving approval to acquire voting securities of the institution under this subpart, or in connection with an application approved under section 3 of the BHC Act (12 U.S.C. 1842; § 225.11 of subpart B of this part) or section 18(c) of the Federal Deposit Insurance Act (Bank Merger Act, 12 U.S.C. 1828(c));

(3) *Acquisitions subject to approval under BHC Act or Bank Merger Act.* Any acquisition of voting securities subject to approval under section 3 of the BHC Act (12 U.S.C. 1842; § 225.11 of subpart B of this part), or section 18(c) of the Federal Deposit Insurance Act (Bank Merger Act, 12 U.S.C. 1828(c));

(4) *Transactions exempt under BHC Act.* Any transaction described in sections 2(a)(5), 3(a)(A), or 3(a)(B) of the BHC Act (12 U.S.C. 1841(a)(5), 1842(a)(A), and 1842(a)(B)), by a person described in those provisions;

(5) *Proxy solicitation.* The acquisition of the power to vote securities of a state member bank or bank holding company through receipt of a revocable proxy in connection with a proxy solicitation for the purposes of conducting business at a regular or special meeting of the institution, if the proxy terminates within a reasonable period after the meeting;

(6) *Stock dividends.* The receipt of voting securities of a state member bank or bank holding company through a stock dividend or stock split if the proportional interest of the recipient in the institution remains substantially the same; and

(7) *Acquisition of foreign banking organization.* The acquisition of voting securities of a qualifying foreign banking organization. (This exemption does not extend to the reports and information required under paragraphs 9, 10, and 12 of the Bank Control Act (12 U.S.C. 1817(j) (9), (10), and (12)) and § 225.44 of this subpart.)

(b) *Prior notice exemption.* (1) The following acquisitions of voting securities of a state member bank or bank holding company, which would otherwise require prior notice under this subpart, are not subject to the prior notice requirements if the acquiring person notifies the appropriate Reserve Bank within 90 calendar days after the acquisition and provides any relevant information requested by the Reserve Bank:

(i) Acquisition of voting securities through inheritance;

(ii) Acquisition of voting securities as a *bona fide* gift; and

(iii) Acquisition of voting securities in satisfaction of a debt previously contracted (DPC) in good faith.

(2) The following acquisitions of voting securities of a state member bank or bank holding company, which would otherwise require prior notice under this subpart, are not subject to the prior notice requirements if the acquiring person does not reasonably have advance knowledge of the transaction, and provides the written notice required under section 225.43 to the appropriate Reserve Bank within 90 calendar days after the transaction occurs:

(i) Acquisition of voting securities resulting from a redemption of voting securities by the issuing bank or bank holding company; and

(ii) Acquisition of voting securities as a result of actions (including the sale of securities) by any third party that is not within the control of the acquiror.

(3) Nothing in paragraphs (b)(1) or (b)(2) of this section limits the authority of the Board to disapprove a notice pursuant to § 225.43(h) of this subpart.

§ 225.43 Procedures for filing, processing, publishing, and acting on notices.

(a) *Filing notice.* (1) A notice required under this subpart shall be filed with the appropriate Reserve Bank and shall contain all the information required by paragraph 6 of the Bank Control Act (12 U.S.C. 1817(j)(6)), or prescribed in the designated Board form.

(2) The Board may waive any of the informational requirements of the notice if the Board determines that it is in the public interest.

(3) A notificant shall notify the appropriate Reserve Bank or the Board immediately of any material changes in a notice submitted to the Reserve Bank, including changes in financial or other conditions.

(4) When the acquiring person is an individual, or group of individuals acting in concert, the requirement to provide personal financial data may be satisfied by a current statement of assets and liabilities and an income summary, as required in the designated Board form, together with a statement of any material changes since the date of the statement or summary. The Reserve Bank or the Board, nevertheless, may request additional information, if appropriate.

(b) *Acceptance of notice.* The 60-day notice period specified in § 225.41 of this subpart begins on the date of receipt of a complete notice. The Reserve Bank shall notify the person or persons submitting a notice under this subpart in writing of the date the notice is or was complete and thereby accepted for processing. The Reserve Bank or the Board may request additional relevant information at any time after the date of acceptance.

(c) *Publication*—(1) *Newspaper Announcement.* Any person(s) filing a notice under this subpart shall publish, in a form prescribed by the Board, an announcement soliciting public comment on the proposed acquisition. The announcement shall be published in a newspaper of general circulation in the community in which the head office of the state member bank to be acquired is located or, in the case of a proposed acquisition of a bank holding company, in the community in which its head office is located and in the community in which the head office of each of its subsidiary banks is located. The announcement shall be published no earlier than 15 calendar days before the filing of the notice with the appropriate Reserve Bank and no later than 10 calendar days after the filing date; and the publisher's affidavit of a publication shall be provided to the appropriate Reserve Bank.

(2) *Contents of newspaper announcement.* The newspaper announcement shall state:

(i) The name of each person identified in the notice as a proposed acquiror of the bank or bank holding company;

(ii) The name of the bank or bank holding company to be acquired, including the name of each of the bank holding company's subsidiary banks; and

(iii) A statement that interested persons may submit comments on the notice to the Board or the appropriate Reserve Bank for a period of 20 days, or such shorter period as may be provided, pursuant to paragraph (c)(5) of this section.

(3) **Federal Register** *announcement.* The Board shall, upon filing of a notice under this subpart, publish announcement in the **Federal Register** of receipt of the notice. The **Federal Register** announcement shall contain the information required under paragraphs (c)(2)(i) and (c)(2)(ii) of this section and a statement that interested persons may submit comments on the proposed acquisition for a period of 15 calendar days, or such shorter period as may be provided, pursuant to paragraph (c)(5) of this section. The Board may waive publication in the **Federal Register**, if the Board determines that such action is appropriate.

(4) *Delay of publication.* The Board may permit delay in the publication required under paragraphs (c)(1) and (c)(3) of this section if the Board determines, for good cause shown, that it is in the public interest to grant such delay. Requests for delay of publication may be submitted to the appropriate Reserve Bank.

(5) *Shortening or waiving notice.* The Board may shorten or waive the public comment or newspaper publication requirements of this paragraph, or act on a notice before the expiration of a public comment period, if it determines in writing that an emergency exists, or that disclosure of the notice, solicitation of public comment, or delay until expiration of the public comment period would seriously threaten the safety or soundness of the bank or bank holding company to be acquired.

(6) *Consideration of public comments.* In acting upon a notice filed under this subpart, the Board shall consider all public comments received in writing within the period specified in the newspaper or **Federal Register** announcement, whichever is later. At the Board's option, comments received after this period may, but need not, be considered.

(7) *Standing.* No person (other than the acquiring person) who submits comments or information on a notice filed under this subpart shall thereby become a party to the proceeding or acquire any standing or right to participate in the Board's consideration of the notice or to appeal or otherwise contest the notice or the Board's action regarding the notice.

(d) *Time period for Board action*—(1) *Consummation of acquisition* —(i) The notificant(s) may consummate the proposed acquisition 60 days after submission to the Reserve Bank of a complete notice under paragraph (a) of this section, unless within that period the Board disapproves the proposed acquisition or extends the 60-day period, as provided under paragraph (d)(2) of this section.

(ii) The notificant(s) may consummate the proposed transaction before the expiration of the 60-day period if the Board notifies the notificant(s) in writing of the Board's intention not to disapprove the acquisition.

(2) *Extensions of time period.* (i) The Board may extend the 60-day period in paragraph (d)(1) of this section for an additional 30 days by notifying the acquiring person(s).

(ii) The Board may further extend the period during which it may disapprove a notice for two additional periods of not more than 45 days each, if the Board determines that:

(A) Any acquiring person has not furnished all the information required under paragraph (a) of this section;

(B) Any material information submitted is substantially inaccurate;

(C) The Board is unable to complete the investigation of an acquiring person because of inadequate cooperation or delay by that person; or

(D) Additional time is needed to investigate and determine that no acquiring person has a record of failing to comply with the requirements of the Bank Secrecy Act, subchapter II of Chapter 53 of Title 31, United States Code.

(iii) If the Board extends the time period under this paragraph, it shall notify the acquiring person(s) of the reasons therefor and shall include a statement of the information, if any, deemed incomplete or inaccurate.

(e) *Advice to bank supervisory agencies.* (1) Upon accepting a notice relating to acquisition of securities of a state member bank, the Reserve Bank shall send a copy of the notice to the appropriate state bank supervisor, which shall have 30 calendar days from the date the notice is sent in which to submit its views and recommendations to the Board. The Reserve Bank also shall send a copy of any notice to the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision.

(2) If the Board finds that it must act immediately in order to prevent the probable failure of the bank or bank holding company involved, the Board may dispense with or modify the requirements for notice to the state supervisor.

(f) *Investigation and report.* (1) After receiving a notice under this subpart, the Board or the appropriate Reserve Bank shall conduct an investigation of the competence, experience, integrity, and financial ability of each person by and for whom an acquisition is to be made. The Board shall also make an independent determination of the accuracy and completeness of any information required to be contained in a notice under paragraph (a) of this section. In investigating any notice accepted under this subpart, the Board or Reserve Bank may solicit information or views from any person, including any bank or bank holding company involved in the notice, and any appropriate state, federal, or foreign governmental authority.

(2) The Board or the appropriate Reserve Bank shall prepare a written report of its investigation, which shall contain, at a minimum, a summary of the results of the investigation.

(g) *Factors considered in acting on notices.* In reviewing a notice filed under this subpart, the Board shall consider the information in the record, the views and recommendations of the appropriate bank supervisor, and any other relevant information obtained during any investigation of the notice.

(h) *Disapproval and hearing*—(1) *Disapproval of notice.* The Board may disapprove an acquisition if it finds adverse effects with respect to any of the factors set forth in paragraph 7 of the Bank Control Act (12 U.S.C. 1817(j)(7)) (*i.e.*, competitive, financial, managerial, banking, or incompleteness of information).

(2) *Disapproval notification.* Within three days after its decision to issue a notice of intent to disapprove any proposed acquisition, the Board shall notify the acquiring person in writing of the reasons for the action.

(3) *Hearing.* Within 10 calendar days of receipt of the notice of the Board's intent to disapprove, the acquiring person may submit a written request for a hearing. Any hearing conducted under this paragraph shall be in accordance with the Rules of Practice for Formal Hearings (12 CFR part 263). At the conclusion of the hearing, the Board shall, by order, approve or disapprove the proposed acquisition on the basis of the record of the hearing. If the acquiring person does not request a hearing, the notice of intent to disapprove becomes final and unappealable.

§ 225.44 Reporting of stock loans.

(a) *Requirements.* (1) Any foreign bank or affiliate of a foreign bank that has credit outstanding to any person or group of persons, in the aggregate, which is secured, directly or indirectly, by 25 percent or more of any class of voting securities of a state member bank, shall file a consolidated report with the appropriate Reserve Bank for the state member bank.

(2) The foreign bank or its affiliate also shall file a copy of the report with its appropriate Federal banking agency.

(3) Any shares of the state member bank held by the foreign bank or any affiliate of the foreign bank as principal must be included in the calculation of the number of shares in which the foreign bank or its affiliate has a security interest for purposes of paragraph (a) of this section.

(b) *Definitions.* For purposes of paragraph (a) of this section:

(1) *Foreign bank* shall have the same meaning as in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

(2) *Credit outstanding* includes any loan or extension of credit; the issuance of a guarantee, acceptance, or letter of credit, including an endorsement or standby letter of credit; and any other type of transaction that extends credit or financing to the person or group of persons.

(3) *Group of persons* includes any number of persons that the foreign bank or any affiliate of a foreign bank has reason to believe:

(i) Are acting together, in concert, or with one another to acquire or control shares of the same insured depository institution, including an acquisition of shares of the same depository institution at approximately the same time under substantially the same terms; or

(ii) Have made, or propose to make, a joint filing under section 13 or 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78n), and the rules promulgated thereunder by the Securities and Exchange Commission regarding ownership of the shares of the same insured depository institution.

(c) *Exceptions.* Compliance with paragraph (a) of this section is not required if:

(1) The person or group of persons referred to in that paragraph has disclosed the amount borrowed and the security interest therein to the Board or appropriate Reserve Bank in connection with a notice filed under § 225.41 of this subpart, or another application filed with the Board or Reserve Bank as a substitute for a notice under § 225.41 of this subpart, including an application filed under section 3 of the BHC Act (12 U.S.C. 1842) or section 18(c) of the Federal Deposit Insurance Act (Bank Merger Act, 12 U.S.C. 1828(c)), or an application for membership in the Federal Reserve System; or

(2) The transaction involves a person or group of persons that has been the owner or owners of record of the stock for a period of one year or more; or, if the transaction involves stock issued by a newly chartered bank, before the bank is opened for business.

(d) *Report requirements.* (1) The consolidated report shall indicate the number and percentage of shares securing each applicable extension of credit, the identity of the borrower, and the number of shares held as principal by the foreign bank and any affiliate thereof.

(2) A foreign bank, or any affiliate of a foreign bank, shall file the consolidated report in writing within 30 days of the date on which the foreign bank or affiliate first believes that the security for any outstanding credit consists of 25 percent or more of any class of voting securities of a state member bank.

(e) *Other reporting requirements.* A foreign bank, or any affiliate thereof, that is supervised by the System and is required to report credit outstanding that is secured by the shares of an insured depository institution to another Federal banking agency also shall file a copy of the report with the appropriate Reserve Bank.

§ 225.51 [Removed]

7. Subpart F is amended by removing § 225.51.

8. Subpart G is amended by revising the heading to read as follows:

Subpart G—Appraisal Standards for Federally Related Transactions

9. Subpart H, consisting of §§ 225.71 through 225.73, is revised to read as follows:

Subpart H—Notice of Addition or Change of Directors and Senior Executive Officers

Sec.

225.71 Definitions.
225.72 Director and officer appointments; prior notice requirement.
225.73 Procedures for filing, processing, and acting on notices; standards for disapproval; waiver of notice.

Subpart H—Notice of Addition or Change of Directors and Senior Executive Officers

§ 225.71 Definitions.

(a) *Director* means a person who serves on the board of directors of a regulated institution, except that this term does not include an advisory director who:

(1) Is not elected by the shareholders of the regulated institution;

(2) Is not authorized to vote on any matters before the board of directors or any committee thereof;

(3) Solely provides general policy advice to the board of directors and any committee thereof; and

(4) Has not been identified by the Board or Reserve Bank as a person who performs the functions of a director for purposes of this subpart.

(b) *Regulated institution* means a state member bank or a bank holding company.

(c) *Senior executive officer* means a person who holds the title or, without regard to title, salary, or compensation, performs the function of one or more of the following positions: president, chief executive officer, chief operating officer, chief financial officer, chief lending officer, or chief investment officer. *Senior executive officer* also includes any other person identified by the Board or Reserve Bank, whether or not hired as an employee, with significant influence over, or who participates in, major policymaking decisions of the regulated institution.

(d) *Troubled condition* for a regulated institution means an institution that:

(1) Has a composite rating, as determined in its most recent report of examination or inspection, of 4 or 5 under the Uniform Financial Institutions Rating System or under the

Federal Reserve Bank Holding Company Rating System;

(2) Is subject to a cease-and-desist order or formal written agreement that requires action to improve the financial condition of the institution, unless otherwise informed in writing by the Board or Reserve Bank; or

(3) Is informed in writing by the Board or Reserve Bank that it is in troubled condition for purposes of the requirements of this subpart on the basis of the institution's most recent report of condition or report of examination or inspection, or other information available to the Board or Reserve Bank.

§ 225.72 Director and officer appointments; prior notice requirement.

(a) *Prior notice by regulated institution.* A regulated institution shall give the Board 30 days' written notice, as specified in § 225.73, before adding or replacing any member of its board of directors, employing any person as a senior executive officer of the institution, or changing the responsibilities of any senior executive officer so that the person would assume a different senior executive officer position, if:

(1) The regulated institution is not in compliance with all minimum capital requirements applicable to the institution as determined on the basis of the institution's most recent report of condition or report of examination or inspection;

(2) The regulated institution is in troubled condition; or

(3) The Board determines, in connection with its review of a capital restoration plan required under section 38 of the Federal Deposit Insurance Act or subpart B of the Board's Regulation H, or otherwise, that such notice is appropriate.

(b) *Prior notice by individual.* The prior notice required by paragraph (a) of this section may be provided by an individual seeking election to the board of directors of a regulated institution.

§ 225.73 Procedures for filing, processing, and acting on notices; standards for disapproval; waiver of notice.

(a) *Filing notice*—(1) *Content.* The notice required in § 225.72 shall be filed with the appropriate Reserve Bank and shall contain:

(i) The information required by paragraph 6(A) of the Change in Bank Control Act (12 U.S.C. 1817(j)(6)(A)) as may be prescribed in the designated Board form;

(ii) Additional information consistent with the Federal Financial Institutions Examination Council's Joint Statement of Guidelines on Conducting Background Checks and Change in Control Investigations, as set forth in the designated Board form; and

(iii) Such other information as may be required by the Board or Reserve Bank.

(2) *Modification.* The Reserve Bank may modify or accept other information in place of the requirements of § 225.73(a)(1) for a notice filed under this subpart.

(3) *Acceptance and processing of notice.* The 30-day notice period specificd in § 225.72 shall begin on the date all information required to be submitted by the notificant pursuant to § 225.73(a)(1) is received by the appropriate Reserve Bank. The Reserve Bank shall notify the regulated institution or individual submitting the notice of the date on which all required information is received and the notice is accepted for processing, and of the date on which the 30-day notice period will expire. The Board or Reserve Bank may extend the 30-day notice period for an additional period of not more than 60 days by notifying the regulated institution or individual filing the notice that the period has been extended and stating the reason for not processing the notice within the 30-day notice period.

(b) *Commencement of service*—(1) *At expiration of period.* A proposed director or senior executive officer may begin service after the end of the 30-day period and any extension as provided under paragraph (a)(3) of this section, unless the Board or Reserve Bank disapproves the notice before the end of the period.

(2) *Prior to expiration of period.* A proposed director or senior executive officer may begin service before the end of the 30-day period and any extension as provided under paragraph (a)(3) of this section, if the Board or the Reserve Bank notifies in writing the regulated institution or individual submitting the notice of the Board's or Reserve Bank's intention not to disapprove the notice.

(c) *Notice of disapproval.* The Board or Reserve Bank shall disapprove a notice under § 225.72 if the Board or Reserve Bank finds that the competence, experience, character, or integrity of the individual with respect to whom the notice is submitted indicates that it would not be in the best interests of the depositors of the regulated institution or in the best interests of the public to permit the individual to be employed by, or associated with, the regulated institution. The notice of disapproval shall contain a statement of the basis for disapproval and shall be sent to the regulated institution and the disapproved individual.

(d) *Appeal of a notice of disapproval.* (1) A disapproved individual or a regulated institution that has submitted a notice that is disapproved under this section may appeal the disapproval to the Board within 15 days of the effective date of the notice of disapproval. An appeal shall be in writing and explain the reasons for the appeal and include all facts, documents, and arguments that the appealing party wishes to be considered in the appeal, and state whether the appealing party is requesting an informal hearing.

(2) Written notice of the final decision of the Board shall be sent to the appealing party within 60 days of the receipt of an appeal, unless the appealing party's request for an informal hearing is granted.

(3) The disapproved individual may not serve as a director or senior executive officer of the state member bank or bank holding company while the appeal is pending.

(e) *Informal hearing.* (1) An individual or regulated institution whose notice under this section has been disapproved may request an informal hearing on the notice. A request for an informal hearing shall be in writing and shall be submitted within 15 days of a notice of disapproval. The Board may, in its sole discretion, order an informal hearing if the Board finds that oral argument is appropriate or necessary to resolve disputes regarding material issues of fact.

(2) An informal hearing shall be held within 30 days of a request, if granted, unless the requesting party agrees to a later date.

(3) Written notice of the final decision of the Board shall be given to the individual and the regulated institution within 60 days of the conclusion of any informal hearing ordered by the Board, unless the requesting party agrees to a later date.

(f) *Waiver of notice*—(1) *Waiver requests.* The Board or Reserve Bank may permit an individual to serve as a senior executive officer or director before the notice required under this subpart is provided, if the Board or Reserve Bank finds that:

(i) Delay would threaten the safety or soundness of the regulated institution or a bank controlled by a bank holding company;

(ii) Delay would not be in the public interest; or

(iii) Other extraordinary circumstances exist that justify waiver of prior notice.

(2) *Automatic waiver.* An individual may serve as a director upon election to the board of directors of a regulated institution before the notice required under this subpart is provided if the individual:

(i) Is not proposed by the management of the regulated institution;

(ii) Is elected as a new member of the board of directors at a meeting of the regulated institution; and

(iii) Provides to the appropriate Reserve Bank all the information required in § 225.73(a) within two (2) business days after the individual's election.

(3) *Effect on disapproval authority.* A waiver shall not affect the authority of the Board or Reserve Bank to disapprove a notice within 30 days after a waiver is granted under paragraph (f)(1) of this section or the election of an individual who has filed a notice and is serving pursuant to an automatic waiver under paragraph (f)(2) of this section.

* * * * *

10. Section 225.125 is amended by revising paragraphs (f) and (g) to read as follows:

§ 225.125 Investment adviser activities

* * * * *

(f) In the Board's opinion, the Glass-Steagall Act provisions, as interpreted by the U.S. Supreme Court, forbid a bank holding company to sponsor, organize, or control a mutual fund. However, the Board does not believe that such restrictions apply to closed-end investment companies as long as such companies are not primarily or frequently engaged in the issuance, sale, and distribution of securities. A bank holding company should not act as investment adviser to an investment company that has a name similar to the name of the holding company or any of its subsidiary banks, unless the prospectus of the investment company contains the disclosures required in paragraph (h) of this section. In no case should a bank holding company act as investment adviser to an investment company that has either the same name as the name of the holding company or any of its subsidiary banks, or a name that contains the word "bank."

(g) In view of the potential conflicts of interests that may exist, a bank holding company and its bank and nonbank subsidiaries should not purchase in their sole discretion, in a fiduciary capacity (including as managing agent), securities of any investment company for which the bank hoiding company acts as investment adviser unless, the purchase is specifically authorized by the terms of the instrument creating the fiduciary relationship, by court order, or by the law of the jurisdiction under which the trust is administered.

* * * * *

§ 225.145 [Amended]

11. Section 225.145, paragraph (a) the fifth sentence is amended by removing the words "increasing their assets at an annual rate exceeding 7 percent during any 12-month period after August 10, 1988," and the last sentence by removing "225.51 and".

12. Appendix C is revised to read as follows:

Appendix C to Part 225—Small Bank Holding Company Policy Statement

Policy Statement on Assessment of Financial and Managerial Factors

In acting on applications filed under the Bank Holding Company Act, the Board has adopted, and continues to follow, the principle that bank holding companies should serve as a source of strength for their subsidiary banks. When bank holding companies incur debt and rely upon the earnings of their subsidiary banks as the means of repaying such debt, a question arises as to the probable effect upon the financial condition of the holding company and its subsidiary bank or banks.

The Board believes that a high level of debt at the parent holding company impairs the ability of a bank holding company to provide financial assistance to its subsidiary bank(s) and, in some cases, the servicing requirements on such debt may be a significant drain on the resources of the bank(s). For these reasons, the Board has not favored the use of acquisition debt in the formation of bank holding companies or in the acquisition of additional banks. Nevertheless, the Board has recognized that the transfer of ownership of small banks often requires the use of acquisition debt. The Board, therefore, has permitted the formation and expansion of small bank holding companies with debt levels higher than would be permitted for larger holding companies. Approval of these applications has been given on the condition that small bank holding companies demonstrate the ability to service acquisition debt without straining the capital of their subsidiary banks and, further, that such companies restore their ability to serve as a source of strength for their subsidiary banks within a relatively short period of time.

In the interest of continuing its policy of facilitating the transfer of ownership in banks without compromising bank safety and soundness, the Board has, as described below, adopted the following procedures and standards for the formation and expansion of small bank holding companies subject to this policy statement.

1. Applicability of Policy Statement

This policy statement applies only to bank holding companies with *pro forma* consolidated assets of less than $150 million that: (i) are *not* engaged in any nonbanking activities involving significant leverage [1] and (ii) do *not* have a significant amount of outstanding debt that is held by the general public.

While this policy statement primarily applies to the formation of small bank holding companies, it also applies to existing small bank holding companies that wish to acquire an additional bank or company and to transactions involving changes in control, stock redemptions, or other shareholder transactions. [2]

2. Ongoing Requirements

The following guidelines must be followed on an ongoing basis for all organizations operating under this policy statement.

A. Reduction in parent company leverage: Small bank holding companies are to reduce their parent company debt consistent with the requirement that all debt be retired within 25 years of being incurred. The Board also expects that these bank holding companies reach a debt to equity ratio of .30:1 or less within 12 years of the incurrence of the debt. [3] The bank holding company must also comply with debt servicing and other requirements imposed by its creditors.

B. Capital adequacy: Each insured depository subsidiary of a small bank holding company is expected to be well-capitalized. Any institution that is not well-capitalized is expected to become well-capitalized within a brief period of time.

C. Dividend restrictions: A small bank holding company whose debt to equity ratio is greater than 1.0:1 is not expected to pay corporate dividends until such time as it reduces its debt to equity ratio to 1.0:1 or less and otherwise meets the criteria set forth in §§ 225.14(c)(1)(ii), 225.14(c)(2), and 225.14(c)(7) of Regulation Y. [4]

[1] A parent company that is engaged in significant off-balance sheet activities would generally be deemed to be engaged in activities that involve significant leverage.

[2] The appropriate Reserve Bank should be contacted to determine the manner in which a specific situation may qualify for treatment under this policy statement.

[3] The term *debt*, as used in the ratio of debt to equity, means any borrowed funds (exclusive of short-term borrowings that arise out of current transactions, the proceeds of which are used for current transactions), and any securities issued by, or obligations of, the holding company that are the functional equivalent of borrowed funds.

The term *equity*, as used in the ratio of debt to equity, means the total stockholders' equity of the bank holding company as defined in accordance with generally accepted accounting principles. In determining the total amount of stockholders' equity, the bank holding company should account for its investments in the common stock of subsidiaries by the equity method of accounting.

Ordinarily the Board does not view redeemable preferred stock as a substitute for common stock in a small bank holding company. Nevertheless, to a limited degree and under certain circumstances, the Board will consider redeemable preferred stock as equity in the capital accounts of the holding company if the following conditions are met: (1) The preferred stock is redeemable only at the option of the issuer and (2) the debt to equity ratio of the holding company would be at or remain below .30:1 following the redemption or retirement of any preferred stock. Preferred stock that is convertible into common stock of the holding company may be treated as equity.

[4] Dividends may be paid by small bank holding companies with debt to equity at or below 1.0:1 and otherwise meeting the requirements of §§ 225.14(c)(1)(ii), 225.14(c)(2), and 225.14(c)(7) if the dividends are reasonable in amount, do not

Continued

Small bank holding companies formed before the effective date of this policy statement may switch to a plan that adheres to the intent of this statement provided they comply with the requirements set forth above.

3. Core Requirements for All Applicants

In assessing applications or notices by organizations subject to this policy statement, the Board will continue to take into account a full range of financial and other information about the applicant, and its current and proposed subsidiaries, including the recent trend and stability of earnings, past and prospective growth, asset quality, the ability to meet debt servicing requirements without placing an undue strain on the resources of the bank(s), and the record and competency of management. In addition, the Board will require applicants to meet the following requirements:

A. Minimum down payment: The amount of acquisition debt should not exceed 75 percent of the purchase price of the bank(s) or company to be acquired. When the owner(s) of the holding company incurs debt to finance the purchase of the bank(s) or company, such debt will be considered acquisition debt even though it does not represent an obligation of the bank holding company, unless the owner(s) can demonstrate that such debt can be serviced without reliance on the resources of the bank(s) or bank holding company.

B. Ability to reduce parent company leverage: The bank holding company must clearly be able to reduce its debt to equity ratio and comply with its loan agreement(s) as set forth in paragraph 2A above.

Failure to meet the criteria in this section would normally result in denial of an application.

4. Additional Application Requirements for Expedited/Waived Processing

A. Expedited notices under §§ 225.14 and 225.23 of Regulation Y: A small bank holding company proposal will be eligible for the expedited processing procedures set forth in §§ 225.14 and 225.23 of Regulation Y if the bank holding company is in compliance with the ongoing requirements of this policy statement, the bank holding company meets the core requirements for all applicants noted above, and the following requirements are met:

i. The parent bank holding company has a *pro forma* debt to equity ratio of 1.0:1 or less.

ii. The bank holding company meets all of the criteria for expedited action set forth in §§ 225.14 or 225.23 of Regulation Y.

B. Waiver of stock redemption filing: A small bank holding company will be eligible for the stock redemption filing exception for well-capitalized bank holding companies contained in § 225.4(b)(6) if the following requirements are met:

i. The parent bank holding company has a *pro forma* debt to equity ratio of 1.0:1 or less.

ii. The bank holding company is in compliance with the ongoing requirements of this policy statement and meets the requirements of §§ 225.14(c)(1)(ii), 225.14(c)(2), and 225.14(c)(7) of Regulation Y.

William W. Wiles,

Secretary of the Board.

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adversely affect the ability of the bank holding company to service its debt in an orderly manner, and do not adversely affect the ability of the subsidiary banks to be well-capitalized. It is expected that dividends will be eliminated if the holding company is (1) not reducing its debt consistent with the requirement that the debt to equity ratio be reduced to .30:1 within 12 years of consummation of the proposal or (2) not meeting the requirements of its loan agreement(s).

federal register

Friday
February 28, 1997

Part IV

The President

Notice of February 27, 1997—Continuation of the National Emergency Relating to Cuba and of the Emergency Authority Relating to the Regulation of the Anchorage and Movement of Vessels

Federal Register
Vol. 62, No. 40
Friday, February 28, 1997

Presidential Documents

Title 3—

The President

Notice of February 27, 1997

Continuation of the National Emergency Relating to Cuba and of the Emergency Authority Relating to the Regulation of the Anchorage and Movement of Vessels

On March 1, 1996, by Proclamation 6867, I declared a national emergency to address the disturbance or threatened disturbance of international relations caused by the February 24, 1996, destruction by the Government of Cuba of two unarmed U.S.-registered civilian aircraft in international airspace north of Cuba. In July 1995, the Government of Cuba demonstrated a ready and reckless use of force against U.S. registered vessels that entered into Cuban territorial waters that resulted in damage and injury to persons on board. In July 1996, the Government of Cuba stated its intent to forcefully defend its sovereignty against any U.S.-registered vessels or aircraft that might enter Cuban territorial waters or airspace while involved in a memorial flotilla and peaceful protest. Since these events, the Government of Cuba has not demonstrated that it will refrain from the future use of reckless and excessive force against U.S. vessels or aircraft that may engage in memorial activities or peaceful protest north of Cuba. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Cuba and the emergency authority relating to the regulation of the anchorage and movement of vessels set out in Proclamation 6867.

This notice shall be published in the **Federal Register** and transmitted to the Congress.

William J. Clinton

THE WHITE HOUSE,
February 27, 1997.

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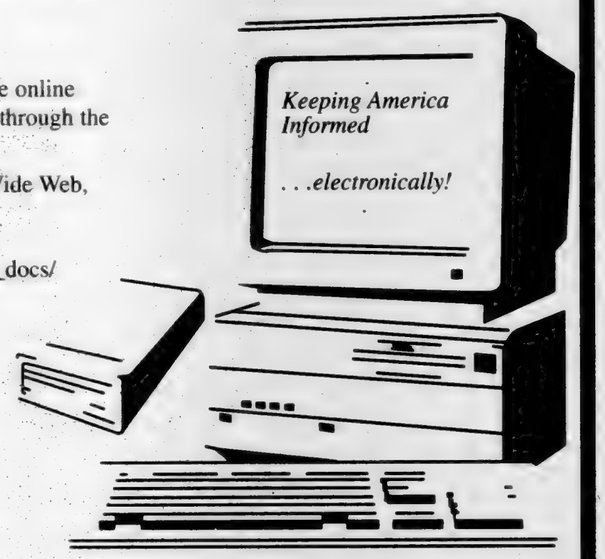

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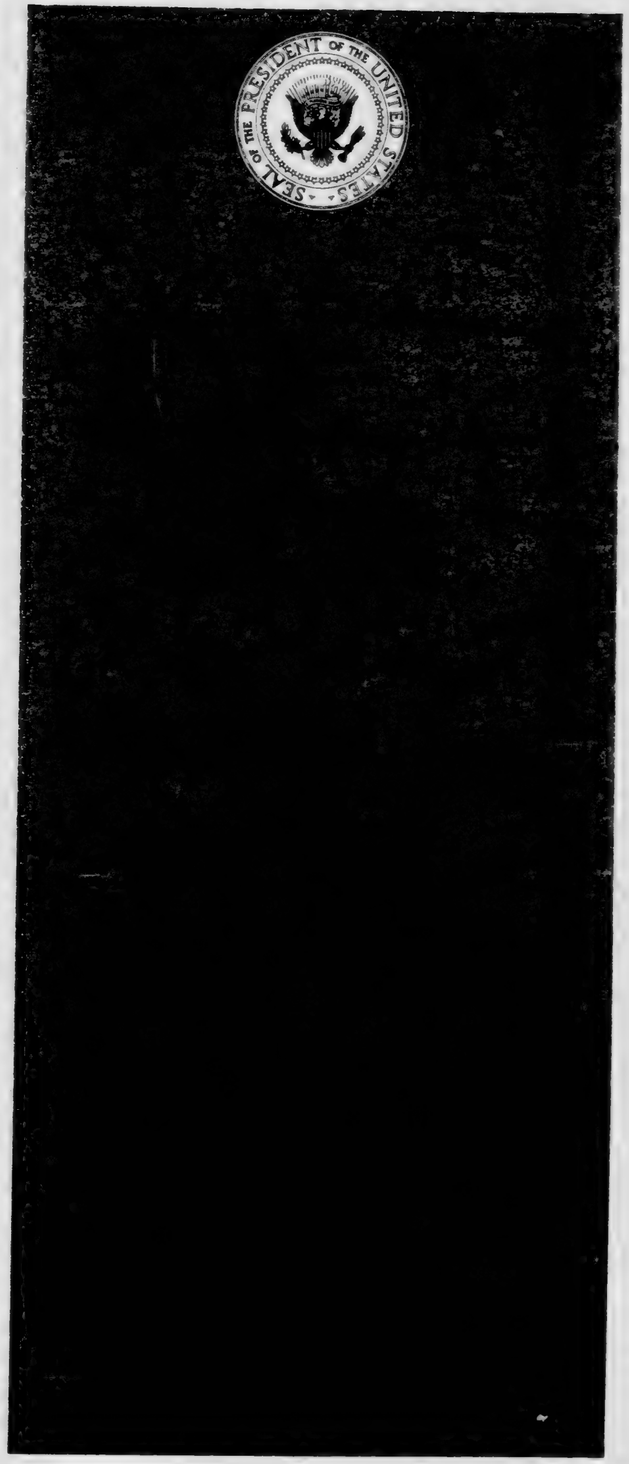

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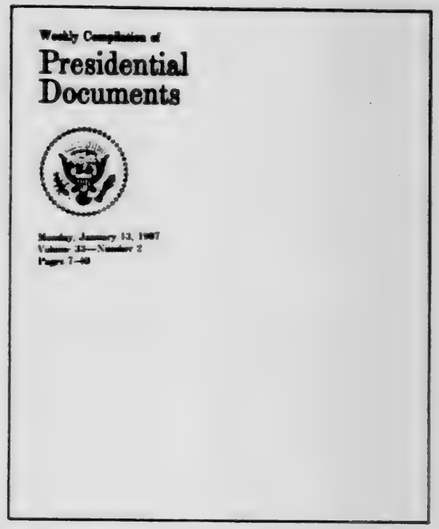

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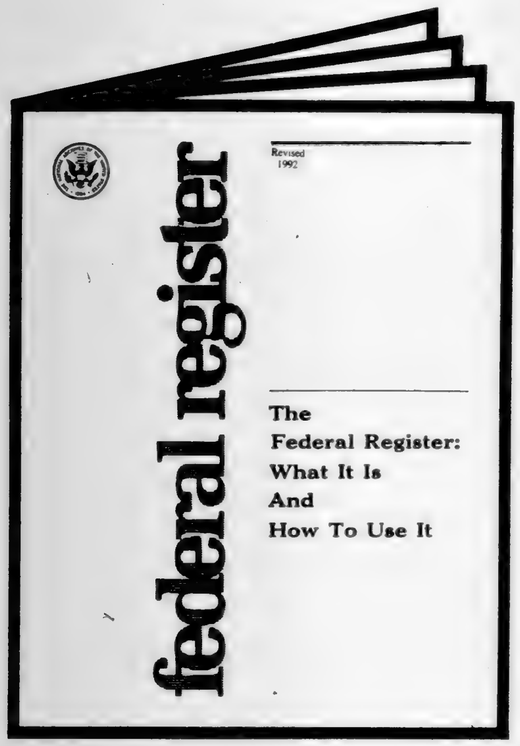

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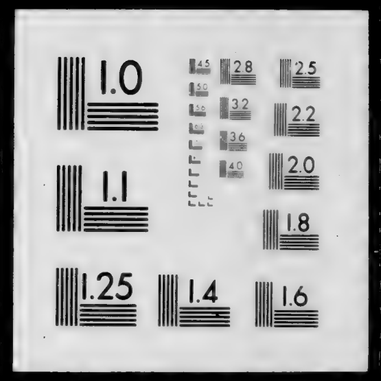

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Title 3—

The President

Order of February 26, 1997

Designation Under Executive Order 12958

Pursuant to the provisions of section 1.4 of Executive Order 12958 of April 17, 1995, entitled "Classified National Security Information," I hereby designate the following additional official to classify information originally as "Top Secret":

The Chair, President's Commission on Critical Infrastructure Protection.

The Chair of the President's Commission on Critical Infrastructure Protection, established under Executive Order 13010 of July 15, 1996, shall exercise the authority to classify information originally as "Top Secret" during the existence of the Commission.

Any delegation of this authority shall be in accordance with section 1.4(c) of Executive Order 12958.

This order shall be published in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
February 26, 1997.

[FR Doc. 97–5308
Filed 2–28–97; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 62, No. 41
Monday, March 3, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Parts 1910, 1941, 1943, 1945, and 1980

RIN 0560–AE87

Implementation of the Direct and Guaranteed Loan Making Provisions of the Federal Agricultural Improvement Act of 1996

AGENCY: Farm Service Agency, Rural Housing Service, Rural Business-Cooperative Service, and Rural Utilities Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This action is being taken to implement provisions of the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act), which affect the making of direct and guaranteed farm credit program loans of the Farm Service Agency (FSA), formerly administered by the Farmers Home Administration (FmHA). This action is required by the 1996 Act, provisions of which were effective upon enactment or 90 days after enactment. The intended effect is to complement provisions of the 1996 Act and improve FSA's direct and guaranteed farm credit loan making function.

DATES: Effective March 24, 1997. Comments must be submitted by May 2, 1997.

ADDRESSES: Submit written comments to the Director, Farm Credit Programs Loan Making Division, Farm Service Agency, Stop 0522, Post Office Box 2415, Washington, D.C. 20013–2415.

FOR FURTHER INFORMATION CONTACT: Steven R. Bazzell, Senior Loan Officer, Farm Service Agency. Telephone: 202–720–3889; facsimile: 202–690–1117; or e-mail: sbazzell@wdc.fsa.usda.gov

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule was determined significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule since the Farm Service Agency (FSA) is not required by 5 U.S.C. 553, or any other provision of law, to publish a notice of proposed rulemaking to effect these administrative changes. See section 663(d) of the 1966 Act.

The Unfunded Mandate Reform Act of 1995

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA) Pub. L. 104–4, established requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, FSA generally must prepare a written statement, including a cost-benefit analysis, for the proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FSA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objective of the rule.

This rule contains no Federal mandates (under regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of section 202 and 205 of the UMRA.

Environmental Evaluation

This action has no significant impact on the quality of the environment, and therefore, neither an Environmental Assessment nor an Environmental Impact Statement is required.

Executive Order 12778

This interim rule has been reviewed under Executive Order 12778, Civil Justice Reform. In accordance with this rule, (1) all State and local laws and regulations that are in conflict with this rule will be preempted, (2) no retroactive effect will be given to this rule, and (3) administrative proceedings in accordance with the agency procedures, or those regulations published by the Department of Agriculture to implement the provisions of the National Appeals Division as mandated by the Department of Agriculture Reorganization Act of 1994 (7 CFR parts 11 and 780), must be exhausted before bringing suit in court challenging action taken under this rule, unless those regulations specifically allow bringing suit at an earlier time.

For reasons set forth in the Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983) the programs within this rule are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Paperwork Reduction Act

This interim rule does not impose any new information collection or recordkeeping requirements; however, the provisions of the 1996 Act do eliminate the need for some information previously collected and result in a revision to the number of estimated respondents from whom information will be collected. Therefore, the Agency is revising the information collection currently approved in support of the Direct Farm Ownership Loan program regulations under the Office of Management and Budget (OMB) control number 0560–0157 and the Application for Direct Loan Assistance under OMB control number 0560–1067. The Agency will publish a **Federal Register** notice in the near future requesting comments for a 60-day period regarding revisions resulting from the 1996 Act; increases or decreases in program activity; and, changes to the estimated responses per respondent and estimated average hours per response. OMB emergency clearance has been obtained to allow continued use of the affected regulations and forms under OMB control number 0560–0173.

Discussion of the Interim Rule

The 1996 Act required certain provisions to be implemented no later

than 90 days from April 4, 1996, the date of enactment. Section 374 of the Consolidated Farm and Rural Development Act (CONACT) as added by section 649 of the 1996 Act, requires streamlined compliance certifications for applicants and borrowers. Implementation of this section does not require a regulatory change; instead, the Agency will revise the loan application to implement section 374. The other specific changes to the loan making provisions of the FSA farm credit programs are discussed by loan program as follows:

Operating Loan (OL) Program

Subject to the limitations discussed below in the "transition rule," the 1996 Act restricts direct OL eligibility to farmers and ranchers who meet the definition of a beginning farmer or rancher, but who have operated a farm or ranch for 5 year or less, or who have not previously received direct OL loans in more than 6 different years, and who have not had a CONACT debt forgiven through a write down or write off under section 353 of the CONACT, a compromise, adjustment, reduction, or charge-off of a debt or claim under section 331 of the CONACT, payment of a loss on a guaranteed loan under section 357 of the CONACT, or through the discharge of any portion of a debt as a result of bankruptcy. This restriction applies to all parties who have executed a promissory note. The 1996 Act did stipulate that borrowers who obtained a write-down on a direct or guaranteed loan under section 353 of the CONACT would remain eligible for direct and guaranteed OL loans to pay farm and ranch annual operating expenses, which includes family subsistence expenses. A transition rule provides that if on April 4, 1996, a farmer or rancher had received direct OL loans in 4 or more previous years, the applicant is eligible for new direct OL loans for 3 additional years. The 4 or more previous years' OL loans may have been received in non-consecutive years. The new direct OL loans may also be made to the applicant in non-consecutive years. The loan repayment term and the time that a loan is outstanding are not considerations. In establishing the 5 years of experience, the 1996 Act specifically states that Rural Youth loans do not qualify as the operation of a farm or ranch. However, the Agency has never considered the recipient of a Youth Loan as a farm operator for establishing experience levels and this provision represents no change in regulatory procedures. The 1996 Act does specifically state that Youth Loans do not count against the recipient with regard to the OL eligibility time limits. A minor clarification has been added to state that Youth Loan purposes may be broader than regular operating loan purposes. For direct and guaranteed OL loans, the 1996 Act has changed the definition of a beginning farmer to eliminate the restriction that applicants may not own farm or ranch property that is greater than 25 percent of the median farm size. Direct OL loan purposes have been narrowed to eliminate non-farm enterprise, recreation, pollution abatement and control, small business, and solar energy as explicit loan purposes. The special beginning farmer or rancher operating loan assistance provisions have been removed because sections 318 and 310F of the CONACT were repealed by the 1996 Act. In addition, the prior statutory provision that required the Agency to extend additional direct annual operating loans to borrowers in default on loans with the Agency has been effectively eliminated. Debt refinancing under the direct OL loan program is still an eligible loan purpose but is now restricted under the 1996 Act, as follows: Applicants are eligible for refinancing with direct OL funds providing they have had direct or guaranteed OL loans refinanced 4 times or less, and they meet one of the following two conditions: (1) The applicant is an existing direct loan borrower who has suffered a qualifying loss because of a disaster declared by the President or designated by the Secretary, or (2) is an applicant refinancing a debt owed to a non-USDA creditor. The direct loan borrower referred to in (1) above may be indebted for any type of direct loan under the CONACT. The restriction on the number of times that OL loans may be refinanced will have little impact since the Agency very rarely "refinances" its own loans, which involves obtaining a new promissory note and obligating new funds. A lender who refinances a borrower's direct OL loan with an Agency loan guarantee will receive a 95-percent guarantee on the total unpaid amount of the direct loan refinanced. Borrowers participating in Agency's down payment farm ownership loan program will also receive 95-percent guarantees on their guaranteed FO or OL loans. The 1996 Act directs the Agency to use the current definition of war found in 38 U.S.C. section 101(12) to determine eligibility for veteran's preference. This change makes veterans of the Persian Gulf War eligible for preferential funding when there is a shortage of funds. Farmers and ranchers must comply with the catastrophic risk protection insurance (CAT) requirement by either obtaining at least the CAT coverage level on economically significant crops, or waiving their eligibility for emergency crop loss assistance in connection with the uninsured crop. However, FSA direct emergency (EM) loss loan assistance is not considered emergency crop loss assistance for the purposes of implementing this statutory provision. In addition, chattel property acquired with direct OL loans must be covered by general hazard insurance at the tax or cost depreciated value of the property, whichever is less. Real estate serving as primary security must also be covered by insurance in accordance with 7 CFR part 1806, subpart A. A transition provision in section 2002 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 authorizes making and guaranteeing OL and EM loans as in effect prior to the date of enactment of the 1996 Act to a loan applicant less than 90-days delinquent on that date that had already submitted an application for the loan.

Farm Ownership (FO) Program

The 1996 Act restricts direct FO eligibility to an applicant who has at least 3 years experience operating a farm or ranch and who either (1) meets the Agency's regulatory definition of a beginning farmer or rancher, or (2) has never received a direct FO loan, or (3) has not had a direct FO loan outstanding for more than 10 years before the new direct FO loan would be closed. In establishing the 3 years of experience, the 1996 Act specifically states that rural Youth loans do not qualify as the operation of a farm or ranch. However, as with the direct OL loan program, this is not a departure from previous Agency regulations on establishing experience levels. The 1996 Act contains a transition rule for existing borrowers, which allows (1) borrowers who, on April 4, 1996, the date of enactment of the 1996 Act, had a direct FO loan outstanding for less than 5 years to receive additional direct FO loans for 10 more years from April 4, 1996; and (2) 5 additional years for borrowers who had a direct FO loan outstanding for 5 or more years on April 4, 1996. The 1996 Act has changed the definition of a beginning farmer to raise the maximum amount of farm or ranch property that may be owned from 15 to 25 percent of the median farm size in which the property is located. However, the Agency will continue to use the mean rather than the median farm size in this definition since median farm sizes are unavailable in the Census of Agriculture. The scope of direct FO loan purposes has been reduced by eliminating debt refinancing, pollution abatement and control, non-farm enterprises, non-fossil energy systems, and recreation uses and facilities as explicit loan purposes. Guaranteed FO loan purposes mirror the changes in the direct FO program, with the exception that refinancing remains as eligible guaranteed FO loan purpose. In fact, the 1996 Act provides a 95-percent, as opposed to the normal 90-percent maximum, guarantee of unpaid principal and interest when the loan purpose is to refinance direct loan debts owned to the Agency. Hazard insurance is required by the 1996 Act as a direct FO loan condition. The FO applicant must provide evidence that hazard insurance has been obtained on any real estate improvements securing an FO loan. Farmers and ranchers must also comply with the catastrophic risk protection insurance (CAT) requirement by either obtaining at least the CAT coverage level on economically significant crops, or waiving their eligibility for emergency crop loss assistance in connection with the uninsured crop. FSA direct emergency (EM) loss loan assistance is not considered emergency crop loss assistance for the purposes of implementing this statutory provision. The 1996 Act allows the Agency to provide a four percent minimum interest rate to direct FO borrowers who obtain at least 50 percent of their real estate financing needs from a private creditor, with or without an FSA loan guarantee. The Agency's regulations establish a minimum of four percent in accordance with the 1996 Act, with the intention that the Agency will adjust the rate periodically to reflect budgetary constraints and overall demand for direct FO loan funds. The 1996 Act stipulates that the Agency use the current definition of war found in 38 U.S.C. section 101(12) to determine eligibility for veteran's preference. This extends preferential treatment to veterans of the Persian Gulf war when there is a shortage of funds. Guaranteed FO loans made to eligible applicants participating in the Down payment Loan program will have their loans guaranteed at the rate of 95 percent.

Emergency (EM) Loan Program

Rather than the previous statutory requirement for crop insurance to have covered crops affected by a disaster as a result of which an EM loan is sought, hazard insurance now must have covered property on which a farmer or rancher is seeking an EM physical loss loan. The minimum level of coverage must have been at the tax or cost depreciated value, whichever is less. Farmers and ranchers must also comply with the catastrophic risk protection insurance (CAT) requirement by either obtaining at least the CAT coverage level on economically significant crops, or waiving their eligibility for emergency crop loss assistance in connection with the uninsured crop. FSA direct EM loss loan assistance is not considered emergency crop loss assistance for the purposes of implementing this statutory provision. The test for credit threshold has been reduced from $300,000 to $100,00, which requires applicants with EM requests of greater than $100,000 to apply at a minimum of three commercial lenders to ensure that private credit, with or without an FSA loan guarantee, is unavailable. The maximum level of EM principal indebtedness has been reduced from $500,000 per qualified natural disaster to a total outstanding principal indebtedness of $500,000 per borrower. The financing of non-farm enterprises is no longer an eligible EM loan purpose. The procedure for appraising an EM applicant's agricultural assets to establish the security value has been changed. The Agency was previously required to use the higher of two market values for collateral valuation purposes. The first appraisal reflected the market value of the property 1 day before the State Governor's request to the Secretary for an EM disaster designation, while the second value reflected the market value 1 year and 1 day before the State Governor's request to the Secretary. The Agency will now use the market value 1 day before the first day of the disaster's incidence period.

List of Subjects

7 CFR Part 1910

Application processing, Loan programs-agriculture.

7 CFR Part 1941 and 1943

Applicant eligibility, Beginning farmers and ranchers, Loan programs-agriculture.

7 CFR Part 1945

Disaster assistance, Loan programs-agriculture.

7 CFR Part 1980

Beginning farmers and ranchers, Loan guarantees, Loan programs-agriculture.

For the reasons set forth in the preamble, 7 CFR chapter XVIII is amended as follows:

PART 1910—GENERAL

1. The authority citation for part 1910 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; and 42 U.S.C. 1480.

Subpart A—Receiving and Processing Applications

§ 1910.1 [Amended]

2. Section 1910.1 is amended by removing the last sentence of paragraph (a).

§ 1910.3 [Amended]

3. Section 1910.3 is amended in paragraph (c) by:

a. Removing the third sentence; and

b. Removing the words "type entity as set out in FmHA loan making regulations" in the ninth sentence.

§ 1910.4 [Amended]

4. Section 1910.4 is amended by:

a. Removing paragraph (b)(19);

b. Redesignating paragraphs (b)(20) through (b)(23) as (b)(19) through (b)(22), respectively; and

c. Removing the words "and the Acquisition/Leasing of Agency Acquired Farmland" from the title and from the first sentence of paragraph (f).

5. Section 1910.10 is amended by revising paragraph (a)(1) to read as follows:

§ 1910.10 Preference.

(a) * * *

(1) Veteran's preference is given to any person applying for an RH, FO, SW, or OL loan who has been honorably discharged, including clemency discharges, or released from the active forces of the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard, and who served during a period of war, as defined in 38 U.S.C. 101(12).

* * * * *

PART 1941—OPERATING LOANS

6. The authority citation for part 1941 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989.

§ 1941.4 [Amended]

7. Section 1941.4 is amended by:

a. Adding the words "Except for OL loan purposes," at the beginning of paragraph (e) in the definition of "Beginning farmer or rancher,"

b. Removing the number "15" and adding the number "25" in its place in the first sentence of paragraph (e) of the definition of "Beginning farmer or rancher,"

c. Removing the third sentence from the definition of "Cosigner;"

d. Removing the words "and nonfarm" from the introductory text of paragraph (d) of the definition of a "Family farm,"

e. Removing the second sentence from the definition of a "Farm;"

f. Removing all of the text before the semi-colon that follows the word "debts" in paragraph (b) of the definition of a "Feasible plan;"

g. Removing the third sentence from the definition of a "Financially viable operation;"

h. Removing the second sentence from the definition of "Nonfarm enterprise"; and

i. Removing the definition of a "Recreation enterprise."

8. Section 1941.12 is amended by adding new paragraphs (a)(8), (a)(9), (a)(10), (a)(11), (b)(9), (b)(10), (b)(11), and (b)(12) to read as follows:

§ 1941.12 Eligibility requirements.

* * * * *

(a) * * *

(8) Meet the definition of a beginning farmer or rancher, but have operated a farm or ranch for 5 years or less, or the applicant, or anyone who will execute the promissory note, has not had direct OL loans closed in more than 6 different years prior to the year in which the new direct OL loan is closed. Youth Loans are not counted as direct OL loans for the purpose of this paragraph.

(9) *Transition rule.* An applicant is eligible for new direct OL loans for 3 additional years if as of April 4, 1996, the applicant, or anyone who will execute the promissory note, had direct OL loans closed in 4 or more separate years prior to the year in which the new direct OL loan is closed. The 4 previous years' direct OL loans, as well as the 3 additional years of new direct OL loans, may be in non-consecutive years.

(10) Have not caused the Agency a loss by receiving debt forgiveness on all or a portion of any direct or guaranteed loan made under the authority of the Consolidated Farm and Rural Development Act (CONACT) by debt-write down, write-off, compromise under the provisions of section 331 of the CONACT, adjustment, reduction, charge-off or discharge in bankruptcy or through any payment of a guaranteed loss claim under the same circumstances. Notwithstanding the restrictive provisions of this paragraph, applicants who received a write-down under section 353 of the CONACT may receive direct and guaranteed OL loans to pay annual farm and ranch operating expenses, which includes family subsistence if the applicant meets all other eligibility requirements.

(11) Not be delinquent on any direct or guaranteed loan made under the provisions of the CONACT. Notwithstanding the provisions of this paragraph, an operating loan may be made or guaranteed under the provisions of subtitle B of the CONACT as in effect on April 3, 1996, if the applicant was less than 90-days delinquent on April 4, 1996, and had submitted an application prior to April 5, 1996.

(b) * * *

(9) Have at least one member of the business entity who meets the definition of a beginning farmer or rancher, but has operated a farm or ranch for 5 years or less. Also, the applicant, or anyone who will execute the promissory note, must not have had direct OL loans closed in more than 6 different years prior to the year in which the new direct OL loan is closed. Youth Loans are not counted as direct OL loans for the purpose of this paragraph.

(10) *Transition rule.* An applicant is eligible for new direct OL loans for 3 additional years if as of April 4, 1996, the applicant, or anyone who will execute the promissory note, had direct OL loans closed in 4 or more separate years prior to the year in which the new direct OL is closed. The 4 previous years' OL loans, as well as the 3 additional years of new direct OL loans, may be in non-consecutive years.

(11) Have not caused the Agency a loss by receiving debt forgiveness on all or a portion of any direct or guaranteed loan made under the authority of the Consolidated Farm and Rural Development Act (CONACT) by debt-write down, write-off, compromise under the provisions of section 331 of the CONACT, adjustment, reduction, charge-off or discharge in bankruptcy or through any payment of a guaranteed loss claim under the same circumstances. Notwithstanding the restrictive provisions of this paragraph, applicants who received a write-down under section 353 of the CONACT may receive direct and guaranteed OL loans to pay annual farm and ranch operating expenses, which includes family subsistence if the applicant meets all other eligibility requirements.

(12) Not be delinquent on any direct or guaranteed loan made under the provisions of the CONACT. Notwithstanding the provisions of this paragraph, an operating loan may be made or guaranteed under the provisions of subtitle B of the CONACT as in effect on April 3, 1996, if the applicant was less than 90-days delinquent on April 4, 1996, and had submitted an application prior to April 5, 1996.

* * * * *

§§ 1941.14 and 1941.15 [Removed and Reserved]

9. Sections 1941.14 and 1941.15 are removed and reserved.

10. Section 1941.16 is revised to read as follows:

§ 1941.16 Loan purposes.

An applicant who obtained a write-down under direct or guaranteed loan authorities is restricted to the purposes listed under paragraphs (c), (g) and (h) of this section. All other eligible applicants may only request OL funds for any of the following purposes:

(a) Payment of costs associated with reorganizing a farm or ranch to improve its profitability.

(b) Purchase of livestock, including poultry, and farm or ranch equipment, including quotas and bases, and cooperative stock for credit, production, processing or marketing purposes.

(c) Payment of annual operating expenses, examples of which include, but are not exclusively limited to feed, seed, fertilizer, pesticides, farm or ranch supplies, cooperative stock, and cash rent.

(d) Payment of costs associated with land and water development for conservation or use purposes.

(e) Payment of loan closing costs.

(f) Payment of costs associated with complying with Federal or State-approved standards under the Occupational Safety and Health Act of 1970 (29 U.S.C. 655 and 667). This purpose is limited to applicants who demonstrate that compliance with the standards will cause them substantial economic injury.

(g) Payment of training costs required or recommended by the Agency.

(h) Payment of farm, ranch, or home needs, including family subsistence. A portion of the loan is available to the borrower for use outside of a supervised bank account. This portion is the lesser of:

(1) 10 percent of the OL loan;

(2) $5,000; or

(3) The amount needed to meet the subsistence needs of the family for a 3-month period.

(i) Refinancing debts if the applicant has had direct or guaranteed OL loans refinanced (refinanced does not mean restructured) 4 times or less and one of the following conditions is met:

(1) The need for refinancing was caused by a qualifying disaster declared by the President or designated by the Secretary; or

(2) The debts to be refinanced are owned to a non-USDA creditor.

§ 1941.17 [Amended]

11. Section 1941.17 is amended by removing paragraphs (a) and (f), and by redesignating paragraphs (b) through (e) as (a) through (d), respectively.

12. Section 1941.32 is revised to read as follows:

§ 1941.32 Catastrophic Risk Protection (CAT) insurance requirement.

Applicants must comply with the CAT insurance requirement no later than loan closing by either:

(1) Obtaining at least the CAT level of coverage, if available, for each crop of economic significance as defined by the Federal Crop Insurance Corporation, or,

(2) By waiving eligibility of emergency crop loss assistance in connection with the uninsured crop. FSA emergency (EM) loss loan assistance is not considered emergency crop loss assistance for the purpose of the crop insurance waiver on the uninsured crop.

Subpart B—Closing Loans Secured by Chattels

13. Section 1941.88 is amended by:

a. Removing the introductory text;

b. Removing paragraph (c);

c. Redesignating paragraph (a) and (b) as (b) and (c), respectively;

d. Amending paragraph (d) by removing all of the text between the words "Borrowers" and "should" located in the first sentence; and

e. Adding a new paragraph (a); and revising redesignated paragraph (c) to read as follows:

§ 1941.88 Insurance.

(a) *Catastrophic Risk Protection (CAT) insurance requirement.* Applicants must obtain at least the CAT level of crop insurance of coverage for each crop of economic significance, as defined by the Federal Crop Insurance Corporation, if such coverage is offered. The applicant can meet this requirement by either:

(1) Obtaining at least the CAT level of coverage or,

(2) Waiving eligibility for emergency crop loss assistance in connection with the uninsured crop. EM loss loan assistance is not considered emergency crop loss assistance for purposes of this waiver.

* * * * *

(c) *Chattels and real estate.* Chattel property that secures OL loans must be covered by hazard insurance unless the Agency determines that coverage is not readily available or the benefit of the coverage is more than its cost. When insured, chattel property must at least be covered at its tax or cost depreciated value, whichever is less. Real property must be covered by general hazard and flood insurance in accordance with subparts A and B of part 1806 of this chapter.

* * * * *

PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

14. The authority citation for part 1943 continues to read as follows:

Authority: 5 U.S.C. 301; and 7 U.S.C. 1989.

Subpart A—Direct Farm Ownership Loan Policies, Procedures and Authorizations

§ 1943.4 [Amended]

15. Section 1943.4 is amended by:

a. Removing "A beginning farmer" and adding "Except for OL loan purposes, a beginning farmer" in its place at the beginning of paragraph (e) of the definition of "Beginning farmer or rancher;"

b. Removing the number "15" and adding the number "25" in its place in the first sentence of paragraph (e) of the definition of "Beginning farmer or rancher;"

c. Removing the third sentence from the definition of "Cosigner;"

d. Removing the words "and nonfarm" from the introductory text of paragraph (d) of the definition of a "Family farm."

e. Removing the second sentence from the definition of "Farm."

f. Removing all the text to the end of the sentence following the word "debts" in paragraph (b) of the definition of a "Feasible plan;" and

g. Removing the second sentence of the definition of "Nonfarm enterprise."

16. Section 1943.12 is amended by:

a. Removing the words "and operating" and the parenthetical text "(1 year's complete production and marketing cycle within the last 5 years)" from paragraph (a)(3);

b. Removing the words "and operating" and the parenthetical text "(1 year's complete production and marketing cycle within the last 5 years)" from paragraph (b)(4)(ii); and

c. Adding new paragraphs (a)(8), (a)(9), (a)(10), (a)(11), (b)(8), (b)(9), (b)(10) and (b)(11) to read as follows:

§ 1943.12 Farm ownership loan eligibility requirements.

* * * * *

(a) * * *

(8) Have operated a farm or ranch for at least 3 years and satisfy at least one of the following conditions:

(i) Meet the definition of a beginning farmer or rancher.

(ii) The applicant, or anyone who will execute the promissory note, has not had direct FO loans outstanding for more than a total of 10 years prior to the date that the new FO loan is closed.

(iii) Have never received a direct FO loan.

(9) *Transition rule.* This applies to applicants with direct FO loans outstanding on April 4, 1996.

(i) If the applicant, or anyone who executed the promissory note, had direct FO loans outstanding for less than 5 years, the applicant is eligible for new direct FO loans through April 4, 2006.

(ii) If the applicant, or anyone who executed the promissory note, had direct FO loans outstanding for 5 years or more, those parties are eligible for new direct FO loans through April 4, 2001.

(10) Have not caused the Agency a loss by receiving debt forgiveness on all or a portion of any direct or guaranteed loan made under the authority of the Consolidated Farm and Rural Development Act (CONACT) by debt-write down, write-off, compromise provisions of section 331 of the CONACT, adjustment, reduction, charge-off or discharge in bankruptcy or through any payment of a guaranteed loss claim under the same circumstances.

(11) Not be delinquent on any direct or guaranteed loan made under the provisions of the CONACT.

(b) * * *

(8) Have one or more members, constituting a majority interest in the business entity, who have operated a farm or ranch for at least 3 years and who satisfy one of the following conditions:

(i) Meet the definition of a beginning farmer or rancher.

(ii) The applicant, or anyone who will execute the promissory note, has not had direct FO loans outstanding for more than a total of 10 years prior to the date that the new FO loan is closed.

(iii) Have never received a direct FO loan.

(9) *Transition rule.* This applies to business entity applicants with direct FO loans outstanding on April 4, 1996.

(i) If the applicant, or anyone who executed the promissory note, had direct FO loans outstanding for less than 5 years, the applicant is eligible for new direct FO loans through April 4, 2006.

(ii) If the applicant, or anyone who executed the promissory note, had direct FO loans outstanding for 5 years or more, those parties are eligible for new direct FO loans through April 4, 2001.

(10) Have not caused the Agency a loss by receiving debt forgiveness on all or a portion of any direct or guaranteed loan made under the authority of the Consolidated Farm and Rural Development Act (CONACT) by debt-write down, write-off, compromise provisions of section 331 of the CONACT, adjustment, reduction, charge-off or discharge in bankruptcy or through any payment of a guaranteed loss claim under the same circumstances.

(11) Not be delinquent on any direct or guaranteed loan made under the provisions of the CONACT.

* * * * *

17–18. Section 1943.16 is revised to read as follows:

§ 1943.16 Loan purposes.

Loan funds may only be used to:

(a) Acquire or enlarge a farm or ranch. Examples of items that the Agency may authorize the use of FO funds for include, but are not limited to, the purchase of easements, the applicant's portion of land being subdivided, purchase of cooperative stock, appraisal and survey fees, and participation in special FO loan programs of this subpart. Down payments are authorized as a loan purpose subject to the following:

(1) A deed is obtained and the transaction is properly documented by debt and security instruments.

(2) Any prior liens meet the FO security requirements for the Agency's junior lien position.

(3) For contract purchases, purchase contracts must properly obligate the buyer and seller to fulfill the terms of the contract, provide the buyer with possession, control and beneficial use of the property, and entitle the buyer to marketable title upon fulfillment of the contract terms. The deed must be held in trust by a bonded agent until transferred to the buyer. Upon buyer's default, the seller must give the Agency written notice of the default and a reasonable opportunity to cure the default. Any sums advanced by the Agency must be repaid by the borrower.

(b) Make capital improvements. Examples of items that the Agency may authorize the use of FO funds for include, but are not limited to, the construction, purchase and improvement of farm dwellings, service buildings, and facilities that can be made fixtures to the real estate.

(c) Promote soil and water conservation and protection. Examples include the correction of well-defined, hazardous environmental conditions, and the construction or installation of tiles, terraces, and waterways.

(d) Pay closing costs.

§ 1943.17 [Amended]

19. Section 1943.17 is amended by removing paragraphs (a)(4) and (a)(5).

20. Section 1943.18 is amended by revising paragraph (b)(2) and adding a new paragraph (c) to read as follows:

§ 1943.18 Rates and terms.

* * * * *

(b) * * *

(2) The farm business plan shows that installments at the higher rate, along with other debts, cannot be paid during the period of the plan.

* * * * *

(c) *Interest rate with joint financing.* When the applicant obtains financing from a private lender equivalent to 50 percent or more of the total funds needed, the interest rate on the direct FO loan will be fixed at a rate determined by the Agency Administrator but at not less than 4 percent for the term of the loan. The current rate is available in FSA offices.

§ 1943.19 [Amended]

21. Section 1943.19 is amended by:

a. Removing the word "refinanced" from the first sentence in paragraphs (a)(1) and (d)(3); and

b. Removing the words "or refinanced" from the first sentence in paragraph (b)(1).

§ 1943.23 [Amended]

22. Section 1943.23 is amended by:

a. Removing the words "or nonfarm enterprise" from the first sentence of paragraph (g)(1); and

b. Removing paragraphs (g)(3) and (g)(4).

23. Section 1943.24 is amended by:

a. Removing the words "nonfarm enterprise facility or" from the third sentence of paragraph (a);

b. Removing the words ", including any nonfarm enterprise," from the first sentence in paragraph (b)(1);

c. Removing paragraph (b)(1)(iv);

d. Removing the words "and any nonfarm enterprise" from the first sentence of paragraph (c);

e. Removing paragraph (d)(3) and (d)(4);

f. Redesignating paragraph (d)(2) as (d)(3);

g. Removing paragraph (f);

h. Redesignating paragraphs (g) through (k) as (f) through (j), respectively; and

i. Revising paragraph (d)(1) and adding a new paragraph (d)(2) to read as follows:

§ 1943.24 Special requirements.

* * * * *

(d) * * *

(1) Insurance must be obtained on any property acquired with, or serving as primary security on an FO loan in accordance with subpart A of part 1806 of this chapter.

(2) Applicants must comply with the catastrophic risk protection insurance (CAT) requirement by either:

(i) Obtaining at least the available CAT level of coverage for each crop of economic significance, as defined by the Federal Crop Insurance Corporation, or

(ii) Waiving eligibility for emergency crop loss assistance in connection with the uninsured crop. FSA emergency (EM) loss loan assistance is not considered emergency crop loss assistance for the purpose of the crop insurance waiver on the uninsured crop.

* * * * *

24. Section 1943.25 is amended by revising paragraph (b) to read as follows:

§ 1943.25 Options planning and appraisals.

* * * * *

(b) Farm business plans will be completed as provided in subpart B of part 1924.

* * * * *

25. Section 1943.54 is amended by removing the third sentence from the definition of "Cosigner."

PART 1945—EMERGENCY

26. The authority citation for part 1945 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989, and 42 U.S.C. 1480.

§ 1945.154 [Amended]

27. Section 1945.154 is amended by removing the third sentence from the definition of "Cosigner," and by removing the second sentence from the definition of a "Nonfarm enterprise."

§ 1945.156 [Amended]

28. Section 1945.156 is amended by removing "$300,000" from paragraphs (b)(2)(i) introductory text and (b)(2)(ii) introductory text and adding "$100,000" in its place.

29. Section 1945.162 is amended by:

a. Redesignating paragraphs (a) through (m) as paragraphs (b) through (n), respectively; and

b. Adding a new paragraph (a) to read as follows:

§ 1945.162 Eligibility requirements.

* * * * *

(a) *Debt forgiveness.* EM applicants are ineligible if they have caused the Agency a loss by receiving debt forgiveness on all or a portion of any direct or guaranteed loan made under the authority of the Consolidated Farm and Rural Development Act (CONACT) by debt-write down, write-off, compromise provisions of section 331 of the CONACT, adjustment, reduction, charge-off or discharge in bankruptcy or through any payment of a guaranteed loss claim under the same circumstances. Further, the EM applicant must not be delinquent on any direct or guaranteed loan made under the provisions of the CONACT.

* * * * *

30. Section 1945.163 is amended by revising paragraph (e) to read as follows:

§ 1945.163 Determining qualifying losses, eligibility for EM loan(s) and the maximum amount of each.

* * * * *

(e) *EM loan limit.* The loan will be limited to the amount necessary to restore the farm to its pre-disaster condition; however, this amount cannot exceed the lesser of the sum of the maximum production loss (paragraph (a)(2)(x) of this section) and the maximum physical loss (paragraph (b) of this section) or $500,000 total outstanding EM debt per borrower. The maximum principal amount of total EM debt that any one individual, business entity, or individual member of a business entity may have outstanding is $500,000.

* * * * *

§ 1945.166 [Amended]

31. Section 1945.166 is amended by:

a. Removing the comma after the word "family" in the first sentence of paragraph (a)(1) and adding the word "and" in its place;

b. Removing the comma after the word "farm" in the first sentence of paragraph (a)(1) and adding the word "credit" in its place;

c. Removing the phrase "and non-farm enterprise credit, whichever is the lesser" in the first sentence of paragraph(a)(1);

d. Removing the entire second sentence of paragraph (a)(1);

e. Removing the paragraph (b)(5); and

f. Removing paragraph (c)(3) and redesignating paragraph (c)(4) as (c)(3).

32. Section 1945.167 is amended by:

a. Revising the section heading;

b. Removing paragraphs (a) and (i);

c. Redesignating the remaining paragraphs as (c) through (j), respectively and;

d. Adding new paragraphs (a) and (b) to read as follows:

§ 1945.167 Insurance, loan limitations and special provisions.

(a) EM loan funds cannot be used for physical loss purposes unless that physical property lost was covered by general hazard insurance at the time that the damage caused by the natural disaster occurred. The level of coverage in effect at the time of the disaster must have been the tax or cost depreciated value, whichever is less. Chattel property must also have been covered at the tax or cost depreciated value, whichever is less, when such insurance was readily available.

(b) Applicants must comply with the CAT insurance requirement no later than loan closing by either:

(1) Obtaining at least the CAT level of coverage, if available, for each crop of economic significance as defined by the Federal Crop Insurance Corporation, or,

(2) By waiving eligibility for emergency crop loss assistance in connection with the uninsured crop. FSA EM loan assistance is not considered emergency crop loss assistance for the purpose of the crop insurance waiver on the uninsured crop.

* * * * *

33. Section 1945.169 is amended by revising paragraph (1) to read as follows:

§ 1945.169 Security.

* * * * *

(1) Crop insurance. If crop insurance is obtained, an assignment of indemnity is required. When payment of the insurance premium is not required until after harvest, crops may be released to make the payment. If a loss claim is paid to the borrower, the premium will be first deducted by the insurance carrier before making security releases.

* * * * *

34. Section 1945.175 is amended by:

a. removing paragraph (c)(3);

b. redesignating paragraph (c)(4) as paragraph (c)(3); and

c. revising paragraph (c)(2) and (c)(3) to read as follows:

§ 1945.175 Options, planning and appraisals.

* * * * *

(c) * * *

(2) The appraised value of assets securing EM loans is established as of the day before the beginning of the incidence period of the qualifying disaster.

(3) Chattel appraisals will be completed on Form FmHA 1945–15, "Value Determination Worksheet (EM loans only)," when chattels are taken as security. The property which will serve as security will be described in sufficient detail so it can be identified. Sources such as livestock market reports and publications reflecting values of farm machinery and equipment will be used as appropriate. Chattels owned by the applicant, and nonfarm chattel property offered as security (such as planes, house trailers, boats, etc.) will be appraised at the present market value only. Chattels that the applicant/borrowers did not own on the dates set forth in paragraphs (c)(2) (i) and (ii) of this section will be appraised at the present market value only.

* * * * *

PART 1980—GENERAL

35. The authority citation for part 1980 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; and 42 U.S.C. 1480.

Subpart A—General

§ 1980.20 [Amended]

36. Section 1980.20 is amended in the introductory text of paragraph (a) by adding "The Farm Service Agency loan guarantee limit is 90 percent unless otherwise stated in subpart B of this part." after the fourth sentence.

37. Section 1980.106 is amended in paragraph (b) by:

a. Adding the words "Except for OL loans," to the beginning of paragraph (5) of the definition of a "Beginning farmer or rancher;"

b. Removing the number "15" and adding the number "25" in its place in the first sentence of paragraph (5) of the definition of a "Beginning farmer or rancher;"

c. Removing the third sentence from the definition of "Cosigner;"

d. Removing the second sentence of the definition of "Nonfarm enterprise;" and

e. Revising the definition of "Veteran" to read as follows:

§ 1980.106 Abbreviations and definitions.

* * * * *

(b) * * *

Veteran. One who has been honorably discharged, including clemency discharges, or release from the active forces of the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard, and who served during a period of war, as defined in 38 U.S.C. 101(12).

38. Section 1980.108 is amended by revising paragraph (a)(3)(ii) to read as follows:

§ 1980.108 General provisions.

(a) * * *

(3) * * *

(ii) Applicants must either:

(1) Obtain at least the CAT level of crop insurance coverage, if available, for each crop of economic significance, as defined by the Federal Crop Insurance Corporation, or,

(2) Waive eligibility for emergency crop loss assistance in connection with the uninsured crop. FSA EM loss loan assistance is not considered emergency crop loss assistance for purposes of this waiver.

* * * * *

39. Section 1980.119 is amended by revising paragraph (d) to read as follows:

§ 1980.119 Lender's sale or assignment of guaranteed loan.

* * * * *

(d) *Retention of unguaranteed portion of loan.* Lenders must retain at least 10 percent of the loan from the unguaranteed portion, except that when the loan guarantee exceeds 90 percent,

the lender must retain the total unguaranteed portion of the loan.

* * * * *

40. Section 1980.174 is added to read as follows:

§ 1980.174 Percentage of guarantee.

(a) A 95-percent loan guarantee will be provided in the following situations:

(1) When the sole loan purpose of a guaranteed OL or FO loan is to refinance a direct FSA farm credit program loan.

(2) When the purpose of an FO loan guarantee is to participate in the down payment loan program.

(3) When a guaranteed OL is made to a farmer or rancher who is participating in the down payment loan program. The guaranteed OL must be made during the period that a borrower has a direct FO loan outstanding for acquiring a farm or ranch.

(4) When a guaranteed OL or FO loan is requested for multiple purposes and only a portion of the loan is used to refinance a direct FSA farm credit program loan, in which case a weighted percentage of guarantee is provided.

(b) Guarantees issued to CLP lenders are never at a guarantee rate of less than 80 percent.

41–43. Section 1980.175 is amended by:

a. Revising introductory text of paragraph (b);

b. Removing paragraph (d)(7);

c. Redesignating paragraphs (d)(2) through (d)(6) as (d)(3) through (d)(7), respectively;

d. Revising paragraphs (c)(1), (c)(2) and (d)(1); and adding a new paragraph (d)(2); and

e. Removing all the words between "Borrowers" and "should" in the first sentence of paragraph (i)(3); to read as follows:

§ 1980.175 Operating loans.

* * * * *

(b) The applicant, and anyone who will execute the promissory note, has not caused the Agency a loss by receiving debt forgiveness on all or a portion of any direct or guranteed loan made under the authority of the Consolidated Farm and Rural Development Act (CONACT) by debt write-down, write-off, compromise under the provisions of section 331 of the CONACT, adjustment, reduction, charge-off or discharge in bankruptcy or through any payment of a guaranteed loss claim under the same circumstances. Notwithstanding the restrictive provisions of this paragraph, applicants who received a write-down under section 353 of the CONACT may receive direct and guaranteed OL loans to pay annual farm and ranch operating expenses, which includes family subsistence if the applicant meets all other eligibility requirements. Further, the applicant, and anyone who will execute the promissory note, cannot be delinquent on any direct or guaranteed loan made under the provisions of the CONACT. Notwithstanding the provisions of this paragraph, an operating loan may be made or guaranteed under the provisions of subtitle B of the CONACT as in effect on April 3, 1996, if the applicant was less than 90-days delinquent on April 4, 1996, and had submitted an application prior to April 5, 1996.

* * * * *

(c) *Loan purposes*—(1) *Loan note guarantee.* Loan funds may only be used for the following purposes:

(i) Payment of costs associated with reorganizing a farm or ranch to improve its profitability.

(ii) Purchase of livestock, including poultry, and farm or ranch equipment, including quotas and bases, and cooperative stock for credit, production, processing or marketing purposes.

(iii) Payment of annual farm or ranch operating expenses, examples of which include feed, seed, fertilizer, pesticides, farm or ranch supplies, cash rent, family subsistence, and other farm and ranch needs.

(iv) Payment of costs associated with land and water development for conservation or use purposes.

(v) Refinancing indebtedness incurred for any authorized OL loan purpose, when the lender and loan applicant can demonstrate the need to refinance.

(vi) Payment of loan closing costs.

(vii) Payment of costs associated with complying with Federal or State-approved standards under the Occupational Safety and Health Act of 1970 (29 U.S.C. 655 and 29 U.S.C. 667). This purpose is limited to applicants who demonstrate that compliance with the standards will cause them substantial economic injury.

(viii) Payment of training costs required or recommended by the approval official.

(2) *Contract of guarantee—line of credit.* Lines of credit may be advanced for the following purposes:

(i) Payment of annual operating expenses, family subsistence, and purchase of feeder animals.

(ii) Payment of current annual operating debts advanced by other creditors. Under no circumstances can carry-over operating debts be refinanced.

(d) Loan limitations. (1) No applicant or any individual who executes a promissory note may receive an additional guaranteed OL if a combination of guaranteed or direct OL loans were received (closed) in more than 15 previous years. *Transition rule:* If a borrower was indebted for a direct or guaranteed OL loan on October 28, 1992, and had any combination of direct or guaranteed OL loans closed in 10 or more prior calendar years, eligibility to receive new guaranteed OL loans is extended for 5 additional years from October 28, 1992, and the years need not run consecutively. However, in the case of a line of credit, each year in which an advance is made after October 28, 1992, counts toward the 5 additional years.

(2) Real estate improvements and repairs can be made only when the loan applicant owns the property, or the loan applicant has a lease that either ensures use of the improvement or repair over its useful life or provides fair compensation for the unused economic life.

* * * * *

§ 1980.176 [Removed and Reserved]

44. Section 1980.176 is removed and reserved.

45. Section 1980.180 is amended by removing paragraphs (d)(4) and (d)(5); and by revising paragraph (c) to read as follows:

§ 1980.180 Farm ownership loans.

* * * * *

(c) Loans are authorized only to:

(1) Acquire or enlarge a farm or ranch. Examples of items that the Agency may authorize the use of FO funds for include, but are not limited to, providing down payments, purchasing easements or the loan applicant's portion of land being subdivided, and participating in special FO loan programs of this subpart. In the case of a contract purchase, purchase contracts must properly obligate the buyer and seller to fulfill the terms of the contract, provide the buyer with possession, control and beneficial use of the property, and entitle the buyer to marketable title upon fulfillment of the contract terms. The deed must be held in trust by a bonded agent until transferred to the buyer. Upon buyer's default, seller must give the Agency written notice of the default and a reasonable opportunity to cure the default. Any sums advanced by the Agency must be repaid by the borrower.

(2) Make capital improvements provided the loan applicant owns the farm, Or has either a lease to ensure use of the improvement over its useful life or that compensation will be received for any remaining economic life. Examples of items that the Agency may authorize the use of FO funds for include, but are not limited to, the construction, purchase, and improvement of farm dwellings, service buildings and facilities that can be made fixtures to the real estate.

(3) Promote soil and water conservation and protection. Examples include the correction of well-defined, hazardous environmental conditions, and the construction or installation of tiles, terraces and waterways.

(4) Pay closing costs, including but not limited to purchasing stock in a cooperative, and appraisal and survey fees.

(5) Refinancing indebtedness incurred for authorized loan purposes, provided the lender and loan applicant demonstrate the need to refinance the debt.

* * * * *

Signed at Washington, D.C., on February 19, 1997.

Dallas R. Smith,

Acting Under Secretary for Farm and Foreign Agricultural Services.

Jill Long Thompson,

Under Secretary for Rural Development.

[FR Doc. 97–4840 Filed 2–28–97; 8:45 am]

BILLING CODE 3410–05–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–32–AD; Amendment 39–9952; AD 97–05–08]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Boeing Model 727 series airplanes. This action requires repetitive pre-modification inspections to detect cracks in the forward support fitting of the number 1 and number 3 engines; and repair, if necessary. This AD also provides for an optional high frequency eddy current (HFEC) inspection, and, if possible, modification of the fastener holes; and various follow-on actions. Accomplishment of these optional actions would constitute terminating action for the repetitive pre-modification inspections. This amendment is prompted by reports indicating that fatigue cracks were found in the forward support fitting of the number 1 and number 3 engines. The actions specified in this AD are intended to detect and correct such fatigue cracking, which could result in failure of the support fitting and consequent separation of the engine from the airplane.

DATES: Effective March 18, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 18, 1997.

Comments for inclusion in the Rules Docket must be received on or before May 2, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–32–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Walter Sippel, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227–2774; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received several reports of cracks found in the forward support fitting of the number 1 and number 3 engines on Boeing Model 727 series airplanes. In two of these incidents, the cracks emanated from the large fastener holes next to the side of the fuselage. In a third incident, a fitting was cracked almost completely through. In other incidents, cracks were found at a small distance inboard from the fuselage side. The cracking has been attributed to fatigue, which was caused by corrosion pitting damage on the surfaces of the fastener holes in the fittings. These conditions, if not detected and corrected in a timely manner, could result in failure of the support fitting and consequent separation of the engine from the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 727–54A0010, Revision 4, dated January 30, 1997, which describes the following procedures:

1. Performing repetitive visual inspections to detect cracks of the upper and lower flanges, and the vertical web of the forward support fitting of the number 1 and number 3 engines;

2. Performing repetitive high frequency eddy current (HFEC) inspections to detect cracks of the forward flange of the support fitting adjacent to the collars of two fasteners of the number 1 and number 3 engines;

3. Performing repetitive detail visual inspections to detect cracks of the upper and lower flanges adjacent to six fasteners of the number 1 and number 3 engines;

4. Repairing the cracked forward support fitting; and

5. Performing a HFEC inspection to detect cracks of the fastener holes in the forward support fitting of the number 1 and number 3 engines, and, if possible, modification of the fastener holes; and various follow-on actions. (These follow-on actions include installation of fasteners, repetitive HFEC inspections, and repair of cracked forward support fittings.) The modification involves oversizing the fastener holes until the HFEC does not detect any cracks. Accomplishment of this HFEC inspection, modification, and follow-on actions will eliminate the need for the repetitive pre-modification inspections, as described in items 1 though 3.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 727 series airplanes of the same type design, this AD is being issued to detect and correct fatigue cracking of the forward support fitting, which could result in failure of the support fitting and consequent separation of the engine from the airplane. This AD requires repetitive pre-modification inspections to detect cracks of the forward support fitting of the number 1 and number 3 engines; and repair, if necessary. This AD also provides for an optional HFEC inspection, and, if possible, modification of the fastener holes; and various follow-on actions. Accomplishment of these optional actions constitutes terminating action for the repetitive pre-modification inspections. The actions are required to be accomplished in accordance with the service bulletin described previously.

Differences Between the AD and the Relevant Service Information

Operators should note that, although the service bulletin specifies that the manufacturer must be contacted for disposition of certain conditions, this AD requires the repair of those conditions to be accomplished in accordance with method approved by the FAA.

Interim Action

This AD is considered interim action. The FAA is considering further rulemaking action to supersede this AD to require an HFEC inspection to detect cracks of the fastener holes in the forward support fitting of the number 1 and number 3 engines, and, if possible, modification of the fastener holes; and various follow-on actions. Accomplishment of these actions will constitute terminating action for the repetitive pre-modification inspections required by this AD action. However, the FAA's planned compliance time for these actions is sufficiently long so that prior notice and time for public comment will be practicable.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–32–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–05–08 BOEING: Amendment 39–9952. Docket 97–NM–32–AD.

Applicability: All Model 727 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking, which could result in failure of the support fitting and consequent separation of the engine from the airplane, accomplish the following:

(a) Within 100 days or within 600 flight cycles after the effective date of this AD, whichever occur first, accomplish paragraph (a)(1), (a)(2), and (a)(3) of this AD, in accordance with Boeing Service Bulletin 727–54A0010, Revision 4, dated January 30, 1997.

(1) Perform a visual inspection to detect cracks of the upper and lower flanges, and the vertical web of the forward support fitting of the number 1 and number 3 engines, in accordance with Part 1—Pre-Modification Inspections of the Accomplishment Instructions of the service bulletin.

(2) Perform a high frequency eddy current (HFEC) inspection to detect cracks of the forward flange of the support fitting adjacent to the collars of two fasteners of the number 1 and number 3 engines, in accordance with Part 1—Pre-Modification Inspections of the Accomplishment Instructions of the service bulletin.

(3) Perform a detailed visual inspection to detect cracks of the upper and lower flanges adjacent to six fasteners of the number 1 and number 3 engines, in accordance with Part 1—Pre-Modification Inspections of the Accomplishment Instructions of the service bulletin.

(b) If no crack is detected during the inspections required by paragraph (a) of this AD, repeat those inspections thereafter at intervals not to exceed 100 days or 600 flight cycles, whichever occurs first.

(c) If any crack is detected during any inspection required by paragraph (a) of this AD, prior to further flight, repair the forward support fitting in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(d) Accomplishment of the actions specified in paragraphs (d)(1) and (d)(2) of this AD in accordance with Boeing Service Bulletin 727–54A0010, Revision 4, dated January 30, 1997, constitutes terminating action for the requirements of paragraphs (a) and (b) of this AD.

(1) Perform a HFEC inspection to detect cracks of the fastener holes in the forward support fitting of the number 1 and number 3 engines, and, if possible, modify the fastener holes, in accordance with Part II—Fastener Hole Modification of the Accomplishment Instructions of the service bulletin.

(i) If the modification (i.e., a fastener installed in a hole with no cracks) was accomplished at all eight holes, no further action is required by paragraph (d)(1) of this AD.

(ii) If the modification was not accomplished at all eight holes because of the continued detection of cracking, prior to further flight, repair the forward support fitting in accordance with a method approved by the Manager, Seattle ACO.

(2) Prior to the accumulation of 3,000 flight cycles or 24 months, whichever occurs first, following accomplishment of paragraph (d)(1) of this AD, perform a HFEC inspection to detect corrosion or cracks of the modified forward support fitting of the number 1 and number 3 engines, in accordance with Part III—Post-Modification Inspections of the Accomplishment Instructions of the service bulletin.

(i) If no crack or corrosion is detected, prior to further flight, install the fasteners wet with a sealant in accordance with the service bulletin. Repeat the HFEC inspection required by paragraph (d)(2) of this AD thereafter at intervals not to exceed 3,000 flight cycles or 24 months, whichever occurs first.

(ii) If any crack or corrosion is detected, prior to further flight, repair the forward support fitting in accordance with a method approved by the Manager, Seattle ACO.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The inspections and modifications shall be done in accordance with Boeing Service Bulletin 727–54A0010, Revision 4, dated January 30, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite700, Washington, DC.

(h) This amendment becomes effective on March 18, 1997.

Issued in Renton, Washington, on February 21, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–4947 Filed 2–28–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–SW–17–AD; Amendment 39–9950; AD 97–05–06]

RIN 2120–AA64

Airworthiness Directives; Schweizer Aircraft Corporation and Hughes Helicopters, Inc. Model 269A, 269A–1, 269B, and TH–55A Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Schweizer Aircraft Corporation and Hughes Helicopters, Inc. Model 269A, 269A–1, 269A–2, and 269B helicopters, that currently requires initial and repetitive inspections of the main rotor thrust bearing (bearing) for bearing rotational roughness, corrosion, inadequate lubrication, physical damage, or excessive zinc chromate paste or moisture. This amendment requires the same initial and repetitive inspections required by the existing AD, but would extend the retirement life for certain bearings, and would remove the Model 269A–2 helicopter from, and add the Model TH–55A helicopters to the applicability of this AD. This amendment is prompted by an FAA analysis of service information issued by the manufacturer that extends the retirement life for certain bearings. The actions specified by this AD are intended to prevent failure of the bearing, loss of the main rotor, and subsequent loss of control of the helicopter.

DATES: Effective April 7, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 7, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Schweizer Aircraft Corporation, P.O. Box 147, Elmira, New York 14902. This information may be examined at the FAA, Office of the Assistant Chief Counsel, Room 663, 2601 Meacham Blvd., Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Ray O'Neill, Aerospace Engineer, Airframe and Propulsion Branch, New York Aircraft Certification Office, FAA, New England Region, 10 5th Street, Valley Stream, New York 11581, telephone (516) 256–7505, fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 68–21–05, Amendment 39–672 (33 FR 15543, October 19, 1968), which is applicable to Model 269A helicopters, serial numbers (S/N) 0011 through 0979 (except Model TH–55A helicopters), Model 269A–1 helicopters, S/N 0001 through 0041, Model 269A–2 helicopter, S/N 0001, and Model 269B, S/N 0001 through 0370, as revised by Amendment 39–1055 (35 FR 12532, August 6, 1970), was published in the **Federal Register** on June 17, 1996 (61 FR 30548). That action proposed to require the same initial and repetitive inspections required by the existing AD (inspections of the main rotor thrust bearing (bearing) for bearing rotational roughness, corrosion, inadequate lubrication, physical damage, or excessive zinc chromate paste or moisture), but would extend the retirement life for certain bearings, and would remove the Model 269A–2 helicopter from, and add the Model TH–55A helicopters to the applicability of this AD.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed, except for editorial changes and changes to paragraph (a) that more specifically state the actions that are required for those bearings having less than 300 hours time-in-service. The FAA has determined that these changes will neither increase the economic burden on any operator nor expand the scope of the AD.

The FAA estimates that 500 helicopters of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per helicopter to accomplish the required

actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $1,890 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,185,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 106(g), 40113, and 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–1055 (35 FR 12532, August 6, 1970), and Amendment 39–672 (33 FR 15543, October 19, 1968) and by adding a new airworthiness directive (AD), Amendment 39–9950, to read as follows:

AD 97–05–06 SCHWEIZER AIRCRAFT CORPORATION AND HUGHES HELICOPTERS, INC.: Amendment 39–9950. Docket No. 94–SW–17–AD. Supersedes AD 68–21–05, Amendment 39–1055 and Amendment 39–672.

Applicability: Model 269A helicopters, serial numbers (S/N) 0011 through 1109, Model 269A–1 helicopters, S/N 0001 through 0041, Model 269B, S/N 0001 through 0444, and Model TH–55A, with main rotor thrust bearing, part number (P/N) 269A5050–50, –51, or –73, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (g) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required within 25 hours time-in-service (TIS) after the effective date of this AD, unless accomplished previously.

To prevent failure of the main rotor thrust bearing (bearing), loss of the main rotor, and subsequent loss of control of the helicopter, accomplish the following:

(a) From available helicopter records, determine the TIS of the appropriate bearing, part number (P/N) 269A5050–50, P/N 269A5050–51, or P/N 269A5050–73.

(1) If the TIS on the bearing, P/N 269A5050–50 or –51, equals or exceeds 300 hours TIS, replace the bearing with an airworthy bearing before further flight.

(2) If the TIS on the bearing, P/N 269A5050–50 or –51, equals or exceeds 275 hours TIS, and is less than 300 hours TIS, replace the bearing with an airworthy bearing within the next 25 hours TIS.

(3) If the TIS on the bearing, P/N 269A5050–50 or –51, is less than 275 hours TIS, replace the bearing with an airworthy bearing on or before 300 hours TIS.

(b) Inspect bearing, P/N 269A5050–50 or –51, for rotational roughness, corrosion, inadequate lubrication, physical damage, moisture or inadequate drainage due to build-up of zinc chromate paste in accordance with Step II, paragraph b of Schweizer Service Notice (SSN) No. N–59, dated October 9, 1968.

(1) If bearing rotational roughness, corrosion, inadequate lubrication, physical damage, moisture or inadequate drainage due to build-up of zinc chromate paste is found, replace the bearing with an airworthy bearing.

(2) If no bearing rotational roughness, corrosion, lack of lubrication, physical damage, moisture or inadequate drainage due to build-up of zinc chromate paste is found, thereafter, inspect the bearing in accordance with this paragraph upon attaining an additional 150 hours TIS.

(3) For replacement bearings, inspect in accordance with this paragraph upon attaining 150 hours TIS, unless the bearing reaches its 300 hour TIS retirement life limit prior to this inspection.

(c) For bearing, P/N 269A5050–73:

(1) Inspect the bearing for corrosion, rust, freedom of rotation, looseness, binding, nicks, burrs, cracks and lubrication. Thereafter, inspect the bearing at intervals not to exceed 600 hours TIS.

(2) As necessary, repack the bearing cavity in accordance with Schweizer Aircraft Corporation CKP–C–41 "Installation Instructions For 269 Series Helicopters, SA–269K–057–1 Main Rotor Thrust Bearing Kit," dated June 9, 1994.

(d) This AD establishes a retirement life of 300 hours TIS for bearings, P/Ns 269A5050–50 and –51 and a retirement life of 3,000 hours TIS for bearing, P/N 2695050–73. However, bearings, P/Ns 269A5050–50 and –51, with at least 275 hours TIS but less than 300 hours TIS, need not be retired until or before the accumulation of an additional 25 hours TIS.

(e) Inspect the thrust bearing nut (nut), P/N 269A1306–5, for corrosion and physical damage and determine whether the nut has been modified in accordance with Step III of SSN No. N–59, dated October 9, 1968.

(1) If corrosion or physical damage is found, replace the nut with an airworthy nut that has been modified in accordance with Step III of SSN No. N–59, dated October 9, 1968.

(2) If the nut has not been modified, modify the nut in accordance with Step III of SSN No. N–59, dated October 9, 1968.

(f) Inspect the interior of the main rotor mast (mast) for corrosion, physical damage, foreign materials, moisture or inadequate drainage due to a buildup of zinc chromate paste and determine whether the mast has been modified in accordance with Step II of SSN No. N–59, dated October 9, 1968 to install a drain hole.

(1) If corrosion or physical damage is found, replace the mast with an airworthy mast that has been modified in accordance with Step III of SSN No. N–59, dated October 9, 1968.

(2) If the interior of the mast has foreign materials, moisture or inadequate drainage due to a buildup of zinc chromate paste, clean the area with a suitable solvent in accordance with Step II of SSN No. N–59, dated October 9, 1968.

(3) If the mast has not been modified, modify the mast in accordance with Step III of SSN No. N–59, dated October 9, 1968.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, New York Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York Aircraft Certification Office.

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(i) The inspections, modifications, and replacements shall be done in accordance with Schweizer Service Notice No. N–59, dated October 9, 1968 and Schweizer Aircraft Corporation CKP–C–41 "Installation Instructions For 269 Series Helicopters, SA–269K–057–1 Main Rotor Thrust Bearing Kit," dated June 9, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Schweizer Aircraft Corporation, P.O. Box 147, Elmira, New York 14902. Copies may be inspected at the FAA, Office of the Assistant Chief Counsel, Room 663, 2601 Meacham Blvd., Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(j) This amendment becomes effective on April 7, 1997.

Issued in Fort Worth, Texas, on February 20, 1997.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 97–4951 Filed 2–28–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Docket No. 96–ACE–23]

Amendment to Class E Airspace, York, NE

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This rule amend the Class E airspace area at York Municipal Airport, York, Nebraska. The effect of this rule is to provide additional controlled airspace for aircraft executing Standard Instrument Approach Procedures (SIAP) at the York Municipal Airport.

EFFECTIVE DATE: 0901 UTC March 27, 1997.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Operations Branch, ACE–530C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on January 6, 1997 (62 FR 607). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, was received within the comment period, the regulation would become effective on March 27, 1997. No adverse comments were received, and thus this notice confirms that this final rule will become effective on that date.

Issued in Kansas City, MO, on February 13, 1997.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 97–5054 Filed 2–28–97; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 97–ASO–3]

Amendment to Class E Airspace; Mayport NS Mayport, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the Class E4 airspace description at Mayport NS Mayport, FL, to reflect the part time status of the Class E4 airspace. The control tower is not open continuously at Mayport NAS. Therefore, a reference to effective days and times in the airspace description is necessary to reflect the part time status of the airspace. The effective days and times will be continuously published in the Airport/Facility Directory.

EFFECTIVE DATE: 0901 UTC, May 22, 1997.

FOR FURTHER INFORMATION CONTACT: Benny L. McGlamery, Operations Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

History

The control tower at Mayport NAS, FL, is not open continuously. The Class D airspace description for Mayport NS Mayport, FL, reflects the part time status of the Class D airspace. Since the Class E4 airspace is an extension to the Class D airspace, the status of the class E4 airspace is the same as the Class D airspace. Therefore, a reference to days and times must be added to the Class E4 airspace description to reflect its status as part time. The effective days and times will be continuously published in the Airport/Facility Directory. This action will have a positive impact on the users of the airspace in the vicinity of Mayport NAS by accurately reflecting the part time status of the airspace. This rule will become effective on the date specified in the **DATES** section. Since this action makes a technical amendment to the Class E4 airspace, which has a positive impact on users of the airspace in the vicinity of the airport, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies the Class E4 airspace description at Mayport NS Mayport, FL, to reflect the part time status of the Class E4 airspace. The effective days and times will be continuously published in the Airport/Facility Directory.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation

Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6004 Class E airspace areas designated as an extension to a Class D or E surface area.

* * * * *

ASO FL E4 Mayport NS Mayport, FL [Revised]

Mayport NAS, FL
(Lat. 30°23'31" N, long. 81°25'23" W)
Mayport (Navy) TACAN
(Lat. 30°23'19" N, long. 81°25'23" W)

That airspace extending upward from the surface within 3.2-miles each side of the Mayport (Navy) TACAN 035° radial extending from the 4.2-mile radius of Mayport NAS to 5 miles northeast of the TACAN. This Class E airspace is effective during the days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on February 10, 1997.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 97–5063 Filed 2–23–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 746

[Docket No. 961015286–6286–01]

RIN 0694–AB43

Exports to Cuba; Support for the Cuban People

AGENCY: Bureau of Export Administration.

ACTION: Final rule.

SUMMARY: On October 6, 1995, President Clinton announced several changes to the administration of the Cuban embargo intended to promote democratic change in Cuba. Accordingly, this final rule amends the Export Administration Regulations by introducing a licensing review policy for the approval, on a case-by-case basis, of certain exports to human rights organizations, news bureaus, and individuals and non-governmental organizations engaged in activities that promote democratic activity in Cuba.

EFFECTIVE DATE: March 3, 1997.

FOR FURTHER INFORMATION CONTACT: Bruce Cromack, Office of Strategic Trade and Foreign Policy Controls, Bureau of Export Administration, Telephone: (202) 482–5537.

SUPPLEMENTARY INFORMATION:

Background

On October 6, 1995 the President announced new measures designed to improve enforcement of the U.S. embargo against Cuba and to increase support for the Cuban people. The measures would permit U.S. persons to engage in new categories of transactions with eligible Cuban entities, providing increased support for the Cuban people by facilitating communications, and supporting human rights and democratic activities. This rule is consistent with the Cuban Democracy Act of 1992 and the Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect, to the extent permitted by law, the provisions of the EAA and the EAR in Executive Order 12924 of August 19, 1994, as extended by the President's notice of August 15, 1995 (60 FR 42767) and notice of August 14, 1996 (61 FR 42527).

Rulemaking Requirements

1. This final rule has been determined to be significant for purposes of E.O. 12866.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694–0021 and 0694–0088. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Submit comments to Hillary Hess, Office of Exporter Services, Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 746

Embargoes, Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, part 746 of the Export Administration Regulations (15 CFR Parts 730–774) is amended as follows:

PART 746—[AMENDED]

1. The authority citation for 15 CFR part 746 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 6004; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 15, 1995 (60 FR 42767, August 17, 1995); and Notice of August 14, 1996 (61 FR 42527).

2. Section 746.2 is amended by adding paragraph (b)(4) to read as follows:

§ 746.2 Cuba.

* * * * *

(b) * * *

(4) Applications for licenses may be approved, on a case-by-case basis, for certain exports to Cuba intended to provide support for the Cuban people, as follows:

(i) Applications for licenses for exports of certain commodities and software may be approved to human rights organizations, or to individuals and non-governmental organizations that promote independent activity intended to strengthen civil society in Cuba when such exports do not give rise to U.S. national security or counter-terrorism concerns. Examples of such commodities include fax machines, copiers, computers (e.g., 486-level/CTP of 24.8 MTOPS or less), business/office software, document scanning equipment, printers, typewriters, and other office or office communications equipment. Applicants may donate or sell the commodities or software to be exported. Reexport to other end-users or end-uses is not authorized.

(ii) Commodities and software may be approved for export to U.S. news bureaus in Cuba whose primary purpose is the gathering and dissemination of news to the general public. In addition to the examples of commodities and software listed in paragraph (b)(4)(i) of this section, certain telecommunications equipment necessary for the operation of news organizations (e.g., 33M bit/s data signaling rate or less) may be approved for export to U.S. news bureaus.

* * * * *

Dated: February 26, 1997.

Sue E. Eckert,

Assistant Secretary for Export Administration.

[FR Doc. 97–5169 Filed 2–28–97; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 93F–0028]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 3,6-bis(4-chlorophenyl)-2,5-dihydro-pyrrolo[3,4-c]pyrrole-1,4-dione (C.I. Pigment Red 254) as a colorant in polymers intended for use in contact with food. This action is in response to a petition filed by Ciba-Geigy Corp.

DATES: Effective March 3, 1997; written objections and requests for a hearing by April 2, 1997.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard H. White, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3094.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 17, 1993 (58 FR 14402), FDA announced that a food additive petition (FAP 3B4349) had been filed by Ciba-Geigy Corp., 315 Water St., Newport, DE 19804–2434 (currently c/o Keller and Heckman, 1001 G St. NW., suite 500 West, Washington, DC 20001). The petition proposed to amend the food additive regulations in § 178.3297 *Colorants for polymers* (21 CFR 178.3297) to provide for the safe use of 3,6-bis(4-chlorophenyl)-2,5-dihydro-pyrrolo[3,4-c]pyrrole-1,4-dione (C.I. Pigment Red 254) as a colorant in polymers intended for use in contact with food.

In its evaluation of the safety of this food additive, FDA reviewed the safety of the additive and the chemical impurities that may be present in the additive resulting from its manufacturing process. Although the additive itself has not been shown to cause cancer, it may contain minute amounts of polychlorinated biphenyls (PCB's), which are carcinogenic impurities resulting from the manufacture of the additive. Residual amounts of reactants, manufacturing aids, and their constituent impurities, and byproducts, such as PCB's, are commonly found as contaminants in chemical products, including food additives.

I. Determination of Safety

Under the so-called "general safety clause" of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the food additive is safe for that use. FDA's food additive regulations (21 CFR 170.3(i)) define safe as "a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use."

The food additives anticancer, or Delaney, clause of the act (21 U.S.C. 348(c)(3)(A)) provides that no food additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal. Importantly, however, the Delaney clause applies to the additive itself and not to the impurities in the additive. That is, where an additive itself has not been shown to cause cancer, but contains a carcinogenic impurity, the additive is properly evaluated under the general safety clause using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the food additive (*Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984)).

II. Safety of the Petitioned Use of the Additive

FDA estimates that the petitioned use of the food additive, 3,6-bis(4-chlorophenyl)-2,5-dihydro-pyrrolo[3,4-c]pyrrole-1,4-dione (C.I. Pigment Red 254), will result in exposure to no greater than 0.2 parts per billion (ppb) of the food additive in the daily diet (3 kilograms (kg)) or an estimated daily intake (EDI) of 0.6 micrograms (µg) per person per day (µg/person/day) (Ref. 1).

FDA does not ordinarily consider chronic toxicological studies to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Ref. 2), and the agency has not required such testing here. However, the agency has reviewed the available toxicological data (acute toxicity and mutagenicity studies) on the additive and concludes that the small dietary exposure resulting from the proposed use of the additive is safe.

FDA has evaluated the safety of this additive under the general safety clause, considering all available data and using risk assessment procedures to estimate the upper-bound limit of lifetime human risk presented by PCB's, carcinogenic chemicals that may be present as impurities in the additive. This risk evaluation of PCB's has two aspects: (1) Assessment of the worst-case exposure to these impurities from the proposed use of the additive; and (2) extrapolation of the risk observed in the animal bioassays to the conditions of worst-case exposure to humans.

A. PCB's

FDA has estimated the hypothetical worst-case exposure to PCB's from the petitioned use of the food additive as a colorant in polymers to be less than 1×10^{-4} parts per trillion of the daily diet (3 kg), or 0.3 picograms (pg)/person/day (Ref. 3). The agency used data from a carcinogenesis bioassay on PCB's, conducted by Norback and Weltman (Ref. 4), to estimate the upper-bound limit of lifetime human risk from exposure to these chemicals resulting from the proposed use of the food additive (Ref. 5). The results of the bioassay on a PCB mixture (Aroclor 1260) demonstrated that the material was carcinogenic for male and female rats under the conditions of the study. The test material caused significantly increased incidence of hepatocellular tumors in both female and male rats.

Based on the estimated worst-case exposure to PCB's of 0.3 pg/person/day, FDA estimates that the upper-bound limit of lifetime human risk from the use of the subject additive is less than 7.5×10^{-13}, or 8 in 10 trillion (Refs. 6 and

7). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to PCB's is likely to be substantially less than the potential worst-case exposure, and therefore, the upper-bound limit of lifetime human risk would be less. Thus, the agency concludes that there is a reasonable certainty that no harm from exposure to PCB's would result from the proposed use of the additive.

B. Need for Specifications

The agency has also considered whether specifications are necessary to control the amount of PCB's present as impurities in the additive. The agency finds that specifications are not necessary for the following reasons: (1) Because of the low levels at which PCB's may be expected to remain as impurities following production of the additive, the agency would not expect these impurities to become components of food at other than extremely low levels; and (2) the upper-bound limit of lifetime human risk from exposure to these impurities, even under worst-case assumptions, is very low, less than 8 in 10 trillion.

III. Conclusion on Safety

FDA has evaluated the data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of the additive as a colorant in polymers in contact with food is safe, that the food additive will achieve its intended technical effect, and that the regulations in § 178.3297 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IV. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

V. Objections

Any person who will be adversely affected by this regulation may at any time on or before April 2, 1997, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum dated September 15, 1993, from the Chemistry Review Branch (HFS–247) to the Indirect Additives Branch (HFS–216), concerning "FAP 3B4349 (MATS #678, M2.1)—Ciba-Geigy Corp. (CG)—Irgazin DPP Red BO (Cromophtal DPP Red BP) as a colorant in all polymers. Submission dated 10–29–92."

2. Kokoski, C. J., "Regulatory Food Additive Toxicology," in *Chemical Safety Regulation and Compliance*, edited by F. Homburger and J. K. Marquis, S. Karger, New York, NY, pp. 24–33, 1985.

3. Memorandum dated February 21, 1995, from the Chemistry Review Branch (HFS–247) to the Indirect Additives Branch (HFS–216), concerning "FAP 3B4349 (MATS #678, M2.7)—Ciba-Geigy Corp. (CG)—Irgazin DPP Red BO (Cromophtal DPP Red BP) as a colorant in all polymers. Submission dated 8–31–94."

4. Norback, D. H., and R. H. Weltman, "Polychlorinated Biphenyl Induction of Hepatocellular Carcinoma in the Sprague-Dawley Rat," *Environmental Health Perspectives*, 60:97–105, 1985.

5. Gaylor, D. W., and R. L. Kodell, "Linear Interpolation Algorithm for Low Dose Risk Assessment of Toxic Substances," *Journal of Environmental Pathology and Toxicology*, 4:305–312, 1980.

6. Memorandum, Report of the Quantitative Risk Assessment Committee, August 18, 1995.

7. Memorandum dated October 11, 1996, from the Quantitative Risk Assessment Committee (HFS–16) to the Indirect Additives Branch (HFS–216) concerning "Clarification of QRAC Memorandum of August 18, 1995, re FAPs 9B4158 and 3B4349."

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 178.3297 is amended in the table in paragraph (e) by alphabetically adding a new entry under the headings "Substances" and "Limitations" to read as follows:

§ 178.3297 Colorants for polymers.

* * * * *

(e) * * *

Substances	Limitations
3,6-Bis(4-chlorophenyl)-2,5-dihydro-pyrrolo[3,4-c]pyrrole-1,4-dione (C.I. Pigment Red 254, CAS Reg. No. 84632–65–5)	For use only at levels not to exceed 1 percent by weight of polymers. The finished articles are to contact food only under conditions of use B through H, described in Table 2 of § 176.170(c) of this chapter.

Dated: February 5, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–5077 Filed 2–28–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–97–002]

RIN 2115–AE46

Special Local Regulations: Intracoastal Waterway, St. Augustine, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the "Blessing of the Fleet" ceremony. The event will be held from 11 a.m. to 3 p.m. Eastern Standard Time (EST) on March 23, 1997. The regulated area includes those waters between the Bridge of Lions and the Fish Island Marina Daybeacon #2 in the Matanzas River, St. Augustine, Florida. The anticipated concentration of participant and spectator vessels will create an unusual hazard on the navigable waters. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: This rule becomes effective 9 a.m. EST and terminates at 3 p.m. EST on Sunday, March 23, 1997.

FOR FURTHER INFORMATION CONTACT: Ensign G. Watson, Project Officer, Coast Guard Group Mayport Florida, (904) 247–7398.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impractical. The information to hold the event was not received until January 17, 1997, leaving insufficient time to publish proposed rules prior to the event or to provide a delayed effective date.

Discussion of Regulations

The event requiring this regulation is a "Blessing of the Fleet" ceremony. There will be 150 participating vessels in single file, parade style, transiting the Intracoastal Waterway from the Bridge of Lions south to Daybeacon number #2, and returning north to the Bridge of Lions. Approximately ten spectator craft are expected. The total number of vessels in the regatta area creates an extra hazard to the safety of life on the navigable waters.

The regulated area includes those waters between the Bridge of Lions and the Fish Island Marina Daybeacon #2, LLNR 35420, position 29–52.15N, 081–18.12W, in the Matanzas River, St. Augustine, Florida. Datum: NAD 1983. The event requires that vessel traffic control be implemented within the area of the Intracoastal Waterway between the Bridge of Lions and Daybeacon number #2. This regulation provides that entry into the regulated area, by other than parade participants or spectator craft, is prohibited, unless authorized by the Patrol Commander. After termination of the "Blessing of the Fleet" ceremony, all vessels may resume normal operations.

Spectator craft will be allowed to enter the regulated area; however, vessel mooring, anchoring, and movement restrictions will be directed by Coast Guard and local law enforcement officials.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The regulation will only be in effect for a total of 5 hours on the date of the ceremony.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

The Coast Guard certifies under section 605 (b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities because the regulation will be in effect for a total of 5 hours in a limited area of the Intracoastal Waterway in St. Augustine.

Collection of Information

These regulations contain no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this rule under paragraph 2.B.2 of Commandant Instruction M16475.1B, (as revised by 59 FR 38654, July 29, 1994). In accordance with that instruction, specifically section 2.B.4 and 2.B.5, this action has been environmentally assessed (EA completed), and the Coast Guard has concluded that this event will not significantly affect the quality

of human environment. An environmental assessment and finding of no significant impact have been prepared and are available for copying and inspection.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Temporary Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46.

2. A new temporary section 100.35T–97–002 is added to read as follows:

§ 100.35T–97–002 Intracoastal Waterway; St. Augustine, FL.

(a) *Regulated area.* The regulated area is located in the waters of the Matanzas River, Intracoastal Waterway, St. Augustine, Florida. Its northern boundary is formed by a line, perpendicular to the centerline of the Matanzas River, drawn from Fish Island Marina Daybeacon #2, LLNR 35420, position 29–52.15N, 081–18.12W, near the entrance of the San Sebastian River, to the East bank of the Matanzas River. The eastern boundary is formed by the eastern bank of the Matanzas River. The western boundary begins where the Bridge of Lions meets the west bank of the Matanzas River and runs along the west bank of the river to 29–52.34N, 081–18.13W, and then to 29–52.20N, 081–18.09W at the southeast end of the regulated area. All coordinates reference Datum: NAD 1983.

(b) *Special local regulations.* (1) Entry into this regulated area, by other than parade participants or spectator craft, is prohibited, unless authorized by the Patrol Commander. After termination of the "Blessing of the Fleet" ceremony, all vessels may resume normal operations.

(2) Spectator craft will be allowed to enter the regulated area; however, vessel mooring, anchoring, and movement restrictions will be directed by Coast Guard and local law enforcement officials.

(c) *Effective date.* This regulation becomes effective at 9 a.m. EST and terminates at 3 p.m. EST, on March 23, 1997.

Dated: February 13, 1997.

J.W. Lockwood,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 97–5064 Filed 2–28–97; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 110

[CGD01–96–012]

RIN 2115–AA98

Special Anchorage Area: Special Anchorage Great Kills Harbor, Staten Island, New York; Special Anchorage Sheepshead Bay, Brooklyn, New York

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the special anchorage regulations for Great Kills Harbor, Staten Island, New York, and Sheepshead Bay, Brooklyn, New York. The regulations are amended to remove the language that required federal mooring permits for individual mooring locations in these special anchorage areas.

EFFECTIVE DATE: April 2, 1997.

FOR FURTHER INFORMATION CONTACT: LT John W. Green, Waterways Oversight Branch, Coast Guard Activities, New York (212) 668–7906.

SUPPLEMENTARY INFORMATION:

Regulatory History

On March 20,1996, the Coast Guard published a notice of proposed rulemaking (NPRM) in the **Federal Register** (61 FR 11356). The Coast Guard received one hundred fifty comments on the proposals. A public hearing was requested but was not held since the written comments clearly expressed the views of the commenters and oral presentations would not aid the rulemaking process.

Background and Purpose

An area designated as a special anchorage provides for vessels 65 feet and under to anchor within specified boundaries without exhibiting anchor lights. Approximately a decade ago, Captain of the Port New York administered approximately 2,500 mooring locations annually in approximately nine special anchorages. As the size of the boating public grew, the burden of administering these mooring locations became increasingly difficult. Several years ago, Captain of the Port New York discontinued the administration of individual recreational mooring locations in all special anchorages, except for anchorages in Great Kills Harbor and Sheepshead Bay. Due to budget constraints and the Presidential mandate to streamline the federal government, Captain of the Port New York discontinued entirely the discretionary procedure of issuing permits for mooring locations. This rule amends existing regulations to reflect that mooring permits are no longer issued by the Coast Guard for the Great Kills Harbor and Sheepshead Bay anchorages. Although mooring permits are no longer issued by the Captain of the Port, vessels may still anchor or use a mooring buoy without displaying lights. Vessel owners interested is using these anchorages in the 1997 boating season may contact: Thomas Rozinski, Deputy Counsel, New York City Department of Parks and Recreation, The Arsenal, Central Park, New York, NY 10021.

Discussion of Comments

One hundred fifty comments objected to the Coast Guard discontinuing the issuance of mooring permits in the Great Kills Harbor special anchorage. No comments were received objecting to the Coast Guard discontinuing the issuance of mooring permits in Sheepshead Bay.

Comments were received from three yacht clubs in Great Kills Harbor and one hundred forty of their members and from seven individuals not specifically allied with the three yacht clubs. These persons stated that the transfer of responsibility for issuing permits to the Borough of Staten Island or other entity would result in chaos on the water, and the cost of a mooring permit to be increased beyond the reach of the vessel owners holding permits. On yacht club stated that there may be a loss of membership and possible dissolution of the club due to the increase in the cost of permits. The Coast Guard considered these comments and forwarded them to the New York City Department of Parks and Recreation. The Coast Guard believes that the municipality will regulate the moorings in an orderly manner and in the best interests of its constituents. Concerns over the costs of future permits should be addressed to New York City Department of Parks and Recreation at the address provided in the Background and Purpose section above.

Various persons suggested that the Coast Guard charge a fee, or extend the term of the permit to two or three years to offset the Coast Guard's expenses in issuing permits. The Coast Guard considered these comments. The decision to no longer issue mooring permits was based on the belief that, similar to the arrangement in the rest of the country, local governments, rather than the federal government, are the appropriate entities to issue local mooring permits. The Coast Guard believes it is inappropriate for the Coast Guard to continue to administer the moorings and charge increased fees to compensate for the cost of administering the system.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This rule does not affect the status of the special anchorage areas in Great Kills Harbor or Sheepshead Bay, but merely reflects that the Captain of the Port of New York mooring permit procedures are no longer applicable and that mooring permits will no longer be issued by the Coast Guard. This proposal will not be significant because the boating public retains the ability to use the anchorages, and will be able to do so without obtaining a Federal mooring permit. The Coast Guard expects that the New York City Parks and Recreation Department will act in the interest of the boating public and will carefully consider the economic impact of their actions on vessel owners.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. "Small entities" may include (1) small business and not-for-profit organizations that are independently owned and operated and are not dominant in their field and (2) governmental jurisdictions with populations of less than 50,000.

For reasons set forth in the Regulatory Evaluation and Discussion of Comments sections, the Coast Guard certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that it is categorically excluded from further analysis and documentation requirements under the National Environmental Policy Act (NEPA). This determination was made in accordance with agency procedures and policy for categorical exclusions published in pagragrah 2.B.2.e. (34)(a) of Commandant Instruction M16475.1B (as revised by 59 FR 38654, July 29, 1994). A Categorical Exclusion Determination and Environmental Analysis Checklist are included in the docket.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Regulation

For reasons set out the preamble, the Coast Guard amends 33 CFR 110.60 as follows:

PART 110—[AMENDED]

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in it are also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.60 is amended by revising the note following paragraph (r–1) and paragraph (x)(4) to read as follows (table 110.60(x)(4) and figure 110.60(x)(4) following paragraph (x)(4) remain unchanged):

§ 110.60 Port of New York and vicinity.

* * * * *

(r–1) * * *

Note: The special anchorage area is principally for use by yachts and other recreational craft. A temporary float or buoy for marking the location of the anchor of a vessel at anchor may be used. Fixed mooring piles or stakes are prohibited. Vessels shall be anchored so that no part of the vessel comes within 50 feet of the marked channel.

* * * * *

(x) * * *

(4) *Captain of the Port Regulations.* In Sheepshead Bay, New York, Western, Northern, and Southern Special Anchorage Areas, the following applies:

(i) Two anchors shall be used. The anchor minimum weight and minimum chain size shall be as shown in table 110.60(x)(4) and the anchor shall be placed as shown in figure 110.60(x)(4).

(ii) The area is principally for vessels used for a recreational purpose.

* * * * *

Dated: February 11, 1997.

J.L. Linnon,

Commander, First Coast Guard District.

[FR Doc. 97–5065 Filed 2–28–97; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 117

[CGD8–97–001]

RIN 2115–AE47

Drawbridge Operation Regulations; Gulf Intracoastal Waterway, Louisiana

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule removes the regulations for the East Park Avenue and East Main Street Bridges across the Gulf Intracoastal Waterway, mile 57.6 and 57.7 at Houma, Terrebonne Parish, Louisiana. These drawbridges have been replaced by high level fixed bridges and the drawbridge regulations are no longer necessary.

DATES: This rule is effective on April 2, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. David M. Frank, Bridge Administration Branch, (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Mr. David Frank, Project Officer and Lieutenant Commander J. A. Wilson, Project Attorney.

Background and Purpose

The East Park Avenue and East Main Street drawbridges were replaced by high level fixed bridges in November of 1996. Since the drawbridges are no longer at these locations, there is no longer a need for the drawbridge operation regulation. This rule is being published without an opportunity for notice and comment because the bridges regulated in 33 CFR 117.451(c) have been replaced and these regulations are no longer necessary. For this reason, the Coast Guard finds good cause why notice and comment are unnecessary under 5 U.S.C. § 553(b)(2)(B) and why, in accordance with 5 U.S.C. § 553(d)(3),

this rule may be made effective in less than 30 days after its publication in the **Federal Register**.

Regulatory Evaluation

This rule is not major under Executive Order 12291 and not significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C 601 et seq.), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). This rule will have no impact on either vehicular or navigational traffic. Because it expects the impact of this final rule to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that it will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1 (series), this proposal is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 117

Bridges.

Regulation

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

§ 117.451 [Amended]

2. In § 117.451, paragraph (c) is removed and paragraph (d), (e), and (f) are redesignated paragraphs (c), (d), and (e) respectively.

Dated: January 30, 1997.

T.W. Josiah,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 97–5173 Filed 2–28–97; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD08–97–003]

RIN 2115–AE47

Drawbridge Operation Regulation; Inner Harbor Navigation Canal, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: Notice is hereby given that the Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the Seabrook Railroad bascule span drawbridge across the Inner Harbor Navigation Canal, mile 4.5 in New Orleans, Orleans Parish, Louisiana. This deviation requires that the draw open on signal except that between the hours of 8 a.m. and noon and between the hours of 1 p.m. and 5 p.m. on weekdays only from April 7, 1997 through May 2, 1997, the draw need not open for the passage of vessels. Presently, the draw is required to open on signal. This closure is necessary for structural repair of the roadway support which has been damaged as a result of a vessel allision. The draw of the bridge may be open between noon and 1 p.m. to pass navigation.

DATES: The deviation is effective from 8 a.m. on April 7, 1997 through 5 p.m. on May 2, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Phil Johnson, Bridge Administration Branch, Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130–3396, telephone number (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The Seabrook (Southern railroad) bascule span drawbridge across the Inner Harbor Navigation Canal, mile 4.5 in New Orleans, has a vertical clearance of one foot above high tide in the closed to navigation position and unlimited clearance in the open to navigation position. Navigation on the waterway consist of tugs with tows, including crane barges, jack-up boats, oil industry crew vessels, fishing vessels, sailing vessels, and other recreational craft. The Port of New Orleans requested a temporary deviation from the normal operation of the bridge so that repairs to the concrete roadway support may be made.

Dated: January 30, 1997.

T.W. Josiah,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 97–5175 Filed 2–28–97; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5696–4]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Spence Farm Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region II announces the deletion of the Spence Farm site in Ocean County, New Jersey from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR Part 300, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of New Jersey have determined that responsible parties have implemented all appropriate response actions required. Moreover, EPA and the State of New Jersey have determined that remedial actions conducted at the site to date remain protective of public health, welfare, and the environment.

EFFECTIVE DATE: March 3, 1997.

ADDRESSES: Comprehensive information on this site is available for viewing at the Site Administrative Record Repository located at: New Egypt Library, 10 Evergreen Road, New Egypt, NJ 08533, Contact: Barbara Rothlein, Phone: (609) 758–7888.

Hours: Monday (10 am to 5 pm and 7 to 9 pm)
Tuesday (10 am to 5 pm)
Wednesday (1 to 5 pm)
Thursday (1 to 5 pm and 7 to 9 pm)
Friday (10 am to 5 pm)
Saturday (10 am to 1 pm).

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Gowers, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway, 19th Floor, New York, New York 10007–1866, (212) 637–4413.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is:

Spence Farm Site in Ocean County, New Jersey.

A Notice of Intent to Delete for this site was published October 25, 1996 (61 FR 55260). The closing date for comments on the Notice of Intent to Delete was November 25, 1995. EPA received no comments and therefore has not prepared a Responsiveness Summary.

The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund)—financed remedial actions. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL in the unlikely event that conditions at the site warrant such action. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: February 10, 1997.

William J. Muszynski,

Acting Regional Administrator.

40 CFR Part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp. p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp. p. 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to Part 300 is amended by removing the Site "Spence Farm, Plumstead Township, New Jersey".

[FR Doc. 97–5037 Filed 2–28–97; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 300

[FRL–5696–3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Pijak Farm Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region II announces the deletion of the Pijak Farm site in Ocean County, New Jersey from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR Part 300, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of New Jersey have determined that responsible parties have implemented all appropriate response actions required. Moreover, EPA and the State of New Jersey have determined that remedial actions conducted at the site to date remain protective of public health, welfare, and the environment.

EFFECTIVE DATE: March 3, 1997.

ADDRESSES: Comprehensive information on this site is available for viewing at the Site Administrative Record Repository located at: New Egypt Library, 10 Evergreen Road, New Egypt, NJ 08533; *Contact:* Barbara Rothlein; *Phone:* (609) 758–7888; *Hours:* Monday (10 am to 5 pm and 7 to 9 pm), Tuesday (10 am to 5 pm), Wednesday (1 to 5 pm), Thursday (1 to 5 pm and 7 to 9 pm), Friday (10 am to 5 pm), Saturday (10 am to 1 pm).

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Gowers, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway, 19th Floor, New York, New York 10007–1866, (212) 637–4413.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is:

Pijak Farm Site in Ocean County, New Jersey.

A Notice of Intent to Delete for this site was published October 25, 1996 (61 FR 55260). The closing date for comments on the Notice of Intent to Delete was November 25, 1995. EPA received no comments and therefore has not prepared a Responsiveness Summary.

The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund)—financed remedial actions. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL in the unlikely event that conditions at the site warrant such action. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: February 10, 1997.

William J. Muszynski,

Acting Regional Administrator.

40 CFR Part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp. p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp. p. 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to Part 300 is amended by removing the Site "Pijak Farm, Plumstead Township, New Jersey."

[FR Doc. 97–5036 Filed 2–28–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7660]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street, SW., Room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 et seq., unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 et seq. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Executive Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Executive Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region I				
Connecticut: Granby, town of, Hartford County.	090125	September 27, 1973, Emerg.; February 15, 1980, Reg.; March 3, 1997, Susp.	March 3, 1997	March 3, 1997.
Region II				
New Jersey: South River, borough of, Middlesex County.	340280	June 18, 1974, Emerg.; June 4, 1980, Reg.; March 3, 1997, Susp.	.....do	Do.
New York:				
Canandaigua, town of, Ontario County	360598	June 15, 1973, Emerg.; April 17, 1978, Reg.; March 3, 1997, Susp.	.....do	Do.
Gouverneur, village of, St. Lawrence County.	360699	July 22, 1975, Emerg.; November 2, 1984, Reg.; March 3, 1997, Susp.	.....do	Do.
Windham, town of, Greene County	361401	December 5, 1980, Emerg.; June 1, 1988, Reg.; March 3, 1997, Susp.	.....do	Do.
Region V				
Illinois: Aurora, city of, DuPage and Kane Counties.	170320	April 9, 1973, Emerg.; June 15, 1979, Reg.; March 3, 1997. Susp.	.....do	Do.
Region IV				
Georgia:				
Gray, city of, Jones County	130237	May 29, 1975, Emerg.; May 21, 1982, Reg.; March 17, 1997, Susp.	March 17, 1975 ..	March 17, 1997
Hawkinsville, city of, Pulaski County	130155	July 15, 1975, Emerg.; August 15, 1990, Reg.; March 17, 1997, Susp.	.....do	Do.
Jones County, unincorporated areas ...	130434	November 10, 1987, Emerg.; September 1, 1990, Reg.; March 17, 1997, Susp.	.....do	Do.
Monroe County, unincorporated areas	130138	July 29, 1987, Emerg.; September 1, 1990, Reg.; March 17, 1997, Susp.	.....do	Do.
Pulaski County, unincorporated areas	130378	June 25, 1990, Emerg.; August 15, 1990, Reg.; March 17, 1997, Susp.	.....do	Do.
Worth County, unincorporated areas ...	130196	March 10, 1995, Emerg.; March 17, 1997, Reg.; March 17, 1997, Susp.	.....do	Do.
Mississippi: Pearl, city of, Rankin County ...	280145	May 15, 1974, Emerg.; December 15, 1982, Reg.; March 17, 1997, Susp.	.....do	Do.
Region VI				
Oklahoma:				
Cleveland County, unincorporated areas.	400475	June 8, 1987, Emerg.; June 1, 1989, Reg.; March 17, 1997, Susp.	.....do	Do.
Lexington, city of, Cleveland County	400043	September 26, 1975, Emerg.; December 2, 1980, Reg.; March 17, 1997, Susp.	.....do	Do.
Moore, city of, Cleveland County	400044	April 18, 1974, Emerg.; December 2, 1980, Reg.; March 17, 1997, Susp.	.....do	Do.
Noble, town of, Cleveland County	400045	October 2, 1975, Emerg.; July 2, 1981, Reg.; March 17, 1997, Susp.	.....do	Do.
Norman, city of, Cleveland County	400046	August 23, 1974, Emerg.; November 1, 1979, Reg.; March 17, 1997, Susp.	.....do	Do.
Oklahoma City, city of, Cleveland County.	405378	March 19, 1971, Emerg.; July 14, 1972, Reg.; March 17, 1997, Susp.	.....do	Do.
Slaughterville, town of, Cleveland County.	400539	December 27, 1990, Emerg.; April 15, 1992, Reg.; March 17, 1997, Susp.	.....do	Do.
Region VII				
Missouri:				
Marshall, city of, Saline County	290403	March 24, 1975, Emerg.; November 4, 1988, Reg.; March 17, 1997, Susp.	.....do	Do.
Region VIII				
Colorado:				
Calhan, town of, El Paso	080192	March 12, 1976, Emerg.; March 18, 1986, Reg.; March 17, 1997, Susp.	.....do	Do.
Ramah, town of, El Paso	080066	November 19, 1975, Emerg.; August 5, 1986, Reg.; March 17, 1997, Susp.	.....do	Do.
Region X				
Idaho:				
Bellevue, city of, Blaine County	160021	May 29, 1975, Emerg.; August 1, 1978, Reg.; March 17, 1997, Susp.	.....do	Do.
Blaine County, unincorporated areas ...	165167	May 14, 1971, Emerg.; March 16, 1981, Reg.; March 17, 1997, Susp.	.....do	Do.

State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Hailey, city of, Blaine County	160022	May 28, 1974, Emerg.; April 17, 1978, Reg.; March 17, 1997, Susp.	.....do	Do.
Ketchum, city of, Blaine County	160023	May 9, 1974, Emerg.; June 15, 1978, Reg.; March 17, 1997, Susp.	.....do	Do.
Sun Valley, city of, Blaine County	160024	September 6, 1974, Emerg.; April 17, 1978, Reg.; March 17, 1997, Susp.	.....do	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Issued: February 25, 1997.

Craig S. Wingo,

Deputy Associate Director, Mitigation Directorate.

[FR Doc. 97–5267 Filed 2–28–97; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–50; RM–8768]

Radio Broadcasting Services; Nikiski, AK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 227C2 to Nikiski, Alaska, as that community's first local aural transmission service, in response to a petition filed by Willliam J. Glynn, Jr. See 61 FR 14042, March 29, 1996. Coordinates used for Channel 227C2 at Nikiski are 60–35–40 and 151–20–00. With this action, the proceeding is terminated.

DATES: Effective April 7, 1997. The window period for filing applications on Channel 227C2 at Nikiski, Alaska, will open on April 7, 1997, and close on May 8, 1997.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the window application filing process for Channel 227C2 at Nikiski, Alaska, should be addressed to the Audio Services Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 96–50, adopted February 14, 1997, and released February 21, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alaska is amended by adding Nikiski, Channel 227C2.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–5183 Filed 2–28–97; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 96–168; RM–8836]

Radio Broadcasting Services; Weaverville, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 266A to Weaverville, California, in lieu of previously proposed Channel 299A, as that community's second local FM transmission service, in response to a petition for rule making filed on behalf of Terry L. Dunning. See 61 FR 43032, August 20, 1996. The allotment of Channel 266A at Weaverville negates a conflict with applications filed for Channel 296C3 at Shasta Lake City, California, and is in conformity with the Commission's policy of attempting to resolve conflicts between rulemaking petitions and later-filed FM applications. See Conflicts Between Applications and Petitions for Rulemaking to Amend the FM Table of Allotments, 58 FR 38536, July 19, 1993. With this action, the proceeding is terminated.

DATES: Effective April 7, 1997. The window period for filing applications on Channel 266A at Weaverville, California, will open on April 7, 1997, and close on May 8, 1997.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the window application filing process for Channel 266A at Weaverville, California, should be addressed to the Audio Services Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 96–168, adopted February 14, 1997, and released February 21, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Channel 266A at Weaverville.

Federal Communications Commission

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–5184 Filed 2–28–97; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 94–78; RM–8472 and RM–8525]

Radio Broadcasting Services; Cloverdale, Montgomery, and Warrior, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: This document denies a petition for reconsideration filed by William P. Rogers that appeals the *Report and Order*, 60 FR 65021 (December 18, 1995), in this proceeding insofar as it did not accept Rogers' counterproposal to allot Channel 254A to Florence, Alabama. The *Report and Order* was affirmed because Rogers' counterproposal did not provide 100 percent city-grade coverage of Florence, as required by Section 73.315(a) of the Commission's Rules.

EFFECTIVE DATE: March 3, 1997.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order*, MM Docket No. 94–78, adopted February 14, 1997, and released February 21, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., 2100 M Street NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–5191 Filed 2–28–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Part 239

[DFARS Case 96–D011]

Defense Federal Acquisition Regulation Supplement; Automatic Data Processing Equipment Leasing Costs

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove references to an obsolete Federal Acquisition Regulation (FAR) cost principle pertaining to automatic data processing equipment (ADPE) leasing costs, and to remove corresponding contractor documentation and Government oversight requirements.

DATES: Effective date: March 3, 1997.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before May 2, 1997, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Sandra G. Haberlin, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 96–D011 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra G. Haberlin, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This interim DFARS rule supplements the interim FAR rule published as Item I of Federal Acquisition Circular 90–44 on December 31, 1996 (61 FR 79287). The FAR rule deleted the cost principle at FAR 31.205–2, Automatic Data Processing Equipment Leasing Costs. The cost principle was incorporated into the FAR when ADPE was an emerging technology, had limited applications, and was a substantial cost element on Government contracts. In the current technological environment, however, where ADPE hardware costs are no longer such a significant expense and computer systems have become ubiquitous in the workplace, the detailed scrutiny previously required under FAR 31.205–2 is no longer considered necessary.

This interim DFARS rule removes references to FAR 31.205–2, and removes corresponding contractor documentation and Government oversight requirements in Subpart 239.73, Acquisition of Automatic Data Processing Equipment by DoD contractors.

B. Regulatory Flexibility Act

This interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the FAR or DFARS cost principles. Therefore, an initial regulatory flexibility analysis has not been performed. Comments are invited from small entities concerning the affected DFARS subpart also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 96–D011 in correspondence.

C. Paperwork Reduction Act

This rule reduces, by 106,006 hours, the information collection requirements previously approved by the Office of Management and Budget under Clearance Number 0704–0341.

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish this interim rule prior to affording the public an opportunity to comment. This action is necessary because the cost principle, Automatic Data Processing Equipment Leasing Costs, was deleted from the FAR on December 31, 1996. It is necessary that a DFARS rule be published expeditiously to remove references to the obsolete cost principle, and to remove corresponding contractor documentation and Government oversight requirements. However, comments received in response to the publication of this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Part 239

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 239 is amended as follows:

1. The authority citation for 48 CFR Part 239 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 239—ACQUISITION OF INFORMATION TECHNOLOGY

2. The title of Part 239 is revised to read as set forth above.

3. Section 239.7300 is revised to read as follows:

239.7300 Scope of subpart.

This subpart prescribes approval requirements for automatic data processing equipment (ADPE) purchased by contractors for use in performing DoD contracts.

4. Section 239.7301 is amended by revising paragraph (a) to read as follows:

239.7301 Applicability.

(a) This subpart applies when the contractor purchases ADPE and title will pass to the Government.

* * * * *

5. Section 239.7302 is amended by revising the introductory text of paragraph (b) and paragraph (b)(1) to read as follows:

239.7302 Approvals and screening.

* * * * *

(b) If the contractor proposes acquiring ADPE subject to 239.7301, and the unit acquisition cost is $50,000 or more—

(1) The contracting officer shall require the contractor to submit, through the administrative contracting officer, the documentation in 239.7303.

* * * * *

6. Section 239.7303 is revised to read as follows:

239.7303 Contractor documentation.

Contracting officers may tailor the documentation requirements in paragraphs (a) through (d) of this section.

(a) *List of existing ADPE and an analysis of its use.* (1) List of each component identified by manufacturer, type, model number, location, date of installation, and how acquired (lease, purchase, Government-furnished). Identify those acquired specifically to perform a Government contract.

(2) Reliability and usage data on each component for the past 12 months.

(3) Identification of users supported by each component, including how much time each user requires the component and the related contract or task involved.

(b) *List of new ADPE needed and reasons why it is needed.* (1) Estimates of the new equipment's useful life.

(2) List of tasks the new equipment is needed for and why, including estimated monthly usage for each major task or project.

(3) Anticipated software and telecommunications requirements.

(c) *Selection of computer equipment.* (1) If the acquisition is competitive—

(i) List sources solicited and proposals received;

(ii) Show how the evaluation was performed; and

(iii) Provide an explanation if the selected offer is not the lowest evaluated offer.

(2) If the acquisition is not competitive, state why.

(d) *Cost.* State the ADPE cost.

239.7304, 239.7305, and Table 39–1 [Removed]

7. Sections 239.7304 and 239.7305 and Table 39–1 are removed.

[FR Doc. 97–5143 Filed 2–28–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[I.D. 022197C]

Atlantic Tuna Fisheries; Fishery Closure

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS has determined that landings of Atlantic bluefin tuna (ABT) since January 1, 1997 and continued high catch rates warrant an interim closure of the ABT Angling category. Therefore, the Angling category fishery for school, large school, and small medium ABT is closed in all areas until further notice.

EFFECTIVE DATE: The closure of the Angling category is effective 11:30 p.m. local time on March 2, 1997, until the effective date of any reopening, which will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: John Kelly, 301–713–2347, or Mark Murray-Brown, 508–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) governing the harvest of ABT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285. Section 285.22 subdivides the U.S. quota recommended by the International Commission for the Conservation of Atlantic Tunas among the various domestic fishing categories.

NMFS is required, under 285.20(b)(1), to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the catch of ABT will equal the quota and publish a **Federal Register** announcement to close the applicable fishery.

On February 21, 1997, NMFS amended the regulations governing the Atlantic bluefin tuna (ABT) fisheries to provide authority for NMFS to close and/or reopen all or part of the Angling category in order to provide for equitable distribution of fishing opportunities throughout the species range. The regulatory amendments were necessary to increase the geographic and temporal scope of data collection from the scientific monitoring quota established for the United States. Additionally, the authority for interim closures facilitates a more equitable geographic and temporal distribution of fishing opportunities for all fishermen in the Angling category, thus furthering domestic management objectives for the Atlantic tuna fisheries.

Angling Category Closure

NMFS has received information from the State of North Carolina that approximately 13 mt of school, large school, and small medium ABT have been measured during dockside interviews conducted through February 16, 1997. It is estimated that dockside intercepts account for 43 percent of angler trips. Therefore, NMFS estimates that 30 mt of school, large school, and small medium ABT have been landed.

Regulations allow that, upon determining that variations in seasonal distribution, abundance, or migration patterns of ABT, or that the catch rate in one area may preclude anglers in an another area from a reasonable opportunity to harvest a portion of the quota, NMFS may close all or part of the Angling category, and may reopen it at a later date if NMFS determines that ABT have migrated into an identified area. In determining the need for any such temporary or area closure, NMFS considers the following factors:

(A) The usefulness of information obtained from catches of a particular geographic area of the fishery for biological sampling and monitoring the status of the stock;

(B) The current year catches from the particular geographic area relative to the catches recorded for that area during the preceding 4 years;

(C) The catches from the particular geographic area to date relative to the entire category and the likelihood of closure of that entire category of the fishery if no allocation is made;

(D) The projected ability of the entire category to harvest the remaining amount of Atlantic bluefin tuna before the anticipated end of the fishing season.

It is essential for domestic and international management purposes that NMFS collect complete information from the bluefin fishery and stocks from as wide a geographic range and for as many months during the year as possible. Extensive information on the 1997 winter fishery has been collected. Therefore, an interim closure of the entire Angling category fishery at this time would allow for increased monitoring activities once the bluefin have migrated further north, where fishing has not yet begun, and the fishery is reopened.

Current year catches cannot be compared to landings of the last 4 years, because it was not until 1995 that an Angling category winter fishery began to develop and not until 1996 that NMFS began to monitor these Angling category landings through the Large Pelagic Survey and through state assistance. In 1996, the Angling category subquotas for large school/small medium bluefin and for school bluefin off Delaware and states south were filled prematurely, due to high catch rates early in the season in southern areas, thus reducing fishing opportunities further north, even for school bluefin. While the final 1997 annual quota for the Angling category of ABT has not yet been established (the 1996 allocation was 243 mt), if the current harvest rate continues, it is possible that a significant portion of the entire Angling category quota might be taken prior to the time that the species migrates north to the eight other states in which there is a recreational fishery for bluefin. Because it is relatively early in the fishing season, and given catch rates over the past few years, it is reasonable to expect that Angling category fishermen will harvest the remaining quota before the end of the season.

Given current catch rates, the public interest in an equitable distribution of catch among fishermen in the Angling category, and the need for scientific data from throughout the species' range, NMFS has decided to close the Angling category fishery for school, large school, and small medium bluefin tuna in all areas. Therefore, retaining, possessing, or landing any school, large school or small medium ABT under the Angling category quota must cease at 11:30 p.m. local time on March 2, 1997.

NMFS may reopen the fishery when it is determined that the bluefin have migrated further north and will publish that effective date in the **Federal Register**. In 1995 and 1996, bluefin tuna were observed to leave North Carolina waters in April. Historically, school bluefin tuna arrive off of Virginia in May and move northward through the mid-Atlantic region during the summer feeding migration. Determination of migration shall be based on catch reports from anglers fishing for other large pelagic species such as yellowfin tuna and anglers fishing for bluefin tuna under the catch and release program. Dockside intercepts from the Marine Recreational Fishing Statistics Survey and logbook reports filed by commercial fishermen shall also be used to document the migration to northern areas.

Anglers may continue to fish for school, large school and small medium ABT, measuring 27 inches (69 cm) to less than 73 inches (119 cm) total curved fork length under the NMFS tag and release program (50 CFR 285.27). Additionally, pending attainment of the annual quota for trophy fish, large medium or giant ABT (73 inches (119 cm) total curved fork length or greater) may still be landed under the Angling category subject to the trophy fish limit of one per vessel per year. Such large medium or giant ABT must be reported to the nearest NMFS enforcement office as required under § 285.24. In North Carolina, trophy fish must be reported to the Coast Guard at 919–995–6403 or to NMFS Enforcement at 919–808–2393. Anglers should verify that the trophy category remains open by calling the NMFS 24–hour Information Line at 301–713–1279 prior to each fishing trip.

Classification

This action is taken under 50 CFR 285.20(b) and 50 CFR 285.22 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.*

Dated: February 25, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–5155 Filed 2–26–97; 12:34 pm]

BILLING CODE 3510–22–F

50 CFR Part 648

[Docket No. 970214031–7031–01; I.D. 011697C]

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 16

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement measures contained in Framework Adjustment 16 to the Northeast Multispecies Fishery Management Plan (FMP). This rule prohibits the use of all gillnets capable of catching Northeast multispecies during the periods in which the harbor porpoise time/area closures are in effect unless the gillnet meets certain specifications. The intent of this action is to restrict the use of small mesh pelagic gillnets, which are currently exempt from the multispecies regulations, to avoid increasing the risk of harbor porpoise entanglements but still allow a traditional bait fishery to continue by specifying the size and method of deployment of the gear.

EFFECTIVE DATE: April 2, 1997.

ADDRESSES: Copies of Amendment 7 to the Northeast Multispecies Fishery Management Plan (Amendment 7), its regulatory impact review (RIR) and the final regulatory flexibility analysis (FRFA) contained with the RIR, its final supplemental environmental impact statement (FSEIS), and Framework Adjustment 16 documents are available upon request from Paul Howard, Executive Director, New England Fishery Management Council (Council), 5 Broadway, Saugus, MA 01906-1097.

FOR FURTHER INFORMATION CONTACT: Richard A. Pearson, NMFS, Fishery Policy Analyst, 508-281-9279.

SUPPLEMENTARY INFORMATION:

Background

Regulations governing the Northeast Multispecies fishery prohibit sink gillnet vessels from fishing in defined areas of the Gulf of Maine (GOM) during certain time periods based on the historic bycatch of harbor porpoise in that fishery.

Framework Adjustment 9 to the FMP (60 FR 19364, April 18, 1995) prohibited any fishery using small mesh gear capable of catching multispecies unless the fishery qualified for an exemption based on a finding that it had less than 5 percent bycatch of regulated species. This had the effect of prohibiting small

mesh pelagic gillnets in the harbor porpoise time/area closures even though the regulation was unrelated to harbor porpoise protection.

Amendment 7 to the FMP (61 FR 27710, May 31, 1996) exempted pelagic gillnets, including the small mesh pelagic gear used in the bait fishery, from the multispecies management measures, because the gear type has virtually no bycatch of multispecies. The Council's intent was, and still is, to allow vessels to fish for bait with certain pelagic nets, and to exempt pelagic drift gillnets used to catch swordfish, tunas, and sharks with large mesh in offshore fisheries that are not managed by the Council. The unintended consequence of the measure in Amendment 7 pertaining to gillnets was that there were no restrictions on the size, use, and deployment of small mesh pelagic gillnets in the harbor porpoise time/area closures even though certain types of small mesh gillnets are capable of entangling harbor porpoise.

In the GOM, small mesh pelagic gillnets are either anchored or fished on the surface of the water and are used seasonally by tuna and lobster fishermen to collect herring, menhaden, mackerel, and whiting for bait. Periods of highest use overlap both in time and area with the harbor porpoise closures. Although, at this time, harbor porpoise bycatch in small mesh pelagic gillnets does not appear to be a significant problem, NMFS and the Council are specifying the size and characteristics of these nets and their method of deployment because the gear is currently unrestricted and has accounted for harbor porpoise entanglements. The intent of this action is to avoid any increased risk of entanglement but still allow for the prosecution of traditional bait fisheries.

Regulatory Provisions

This rule extends the time and area closures implemented to reduce entanglements of harbor porpoise in the GOM to all gillnets capable of catching multispecies with the following exception: vessels may fish with a single pelagic gillnet, not longer than 300 ft (91.44 m) and not greater than 6 ft (1.83 m) deep, with a maximum mesh size of 3 inches (7.62 cm); the net must be attached to the boat, fished in the upper two-thirds of the water column, and marked with the owner's name and vessel identification number.

These restrictions apply to all pelagic gillnets capable of catching multispecies deployed in any of the harbor porpoise time/area closures. Gillnets used to capture highly migratory species, that are incapable of capturing multispecies finfish, are not restricted by this action.

A 1990 gillnet survey indicates that approximately 200 vessels occasionally use pelagic gillnets primarily to harvest bait. The cost and availability of bait in the tuna and lobster fisheries may increase as a result of this action, but these costs will probably be offset by lower enforcement costs due to the enforceability of the measure as the net must be attached to the vessel and tended at all times. According to comments received at public meetings, vessels should still be able to capture enough bait to meet their requirements.

The Council considered information, views and comments made at Marine Mammal Committee meetings held on April 2, 1996, May 12, 1996, and July 30, 1996, and at three Council meetings, on April 17, 1996, June 5, 1996, and July 17, 1996. Documents summarizing the Council's proposal, the biological analyses upon which this decision was based, and potential economic impacts were available for public review 5 days prior to the final meeting as required under the framework adjustment process. Written comments were accepted up to and during the August 20, 1996, Council meeting in Danvers, MA.

Comments and Responses

Comments on the action were received at several meetings from individuals representing the International Wildlife Coalition, Maine Department of Marine Resources, East Coast Tuna Association, and the Massachusetts Netters Association. Fishermen's concerns centered chiefly on a possible alteration in fishing practices, while all groups supported the specifications for net length, mesh size, deployment and gear marking.

Comment : Several groups and a number of individuals were concerned about the net tending requirement. Nets are often anchored to the bottom and are left unattended if an opportunity such as a giant bluefin tuna presents itself. Because of this, an individual representing the tuna industry stated that it would be very inconvenient to attach the net to the vessel, although it would still be possible to prosecute both fisheries. Greater concern was expressed by individuals representing the lobster industry, since lobstermen fishing for bait with pelagic gillnets anchor their nets on the bottom and leave them to check traps before returning to haul the net.

Response: Harbor porpoise are present in significant numbers inshore in the northern GOM during the summer and early fall months. Given that both tuna and lobster fisheries are fishing for the same prey species as harbor porpoise and that their fishing season and the presence of porpoise overlap, the possibility for entanglement is likely, particularly without any restrictions on bait nets. Although the porpoise bycatch in such nets appears to be low at this time, the restrictions provided for in this action would enhance protection in areas where they are most susceptible to entanglement. The requirement that the net be attached to the vessel and its size essentially guarantees that vessel operators would be aware of any marine mammal interactions. Restricting the use of baitnets to small pelagic gillnets in the harbor porpoise closure areas also addresses the dilemma of enforcing the porpoise measures for one type of gillnet while exempting another that may be fished in much the same manner.

Adherence to Framework Procedure Requirements

The Council considered public comment prior to making its recommendation to the Administrator, Northeast Region, NMFS, under the provisions for abbreviated rulemaking in this FMP. The Council requested publication of these management measures as a final rule after considering the required factors stipulated under the framework measures in the FMP, 50 CFR 648.90, and has provided supporting analyses for each factor considered. NMFS concurs.

Classification

Public meetings held by the Council to discuss the management measures implemented by this rule provided prior notice and opportunity for public comment to be heard and considered. The Council's Marine Mammal Committee discussed the framework adjustment at public meetings on April 2, 1996, May 21, 1996, and July 30, 1996, and at the Multispecies (Groundfish) Committee meetings held on April 11, 1996, and April 13, 1996. Therefore, the Assistant Administrator for Fisheries, NOAA, finds there is good cause under 5 U.S.C. 553(b)(B) to waive the requirement to provide prior notice or an opportunity for public comment as such procedures are unnecessary.

As prior notice and an opportunity for public comment are not required to be provided for this rule by 5 U.S.C. 553, or any other law, the analytical requirement of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are applicable. Nevertheless, this action does not significantly increase the impact beyond the scope of impact on small entities already analyzed, discussed, and described in Amendments 5 and 7 to the FMP.

This final rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 21, 1997.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.2, the definition for "Gillnet gear capable of catching multispecies" is added in alphabetical order to read as follows:

§ 648.2 Definitions.

* * * * *

Gillnet gear capable of catching multispecies means all gillnet gear except pelagic gillnet gear specified at § 648.81(f)(2)(ii) and pelagic gillnet gear that is designed to fish for and is used to fish for, or catch, tunas, swordfish and sharks.

* * * * *

3. In § 648.14, paragraph (a)(89) is revised and paragraph (c)(11) is added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(89) Fish with, set, haul back, possess on board a vessel, unless stowed in accordance with § 648.23(b), or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the EEZ portion of the areas, and for the times, specified in § 648.87(a) and (b), except as provided in § 648.81(f)(2)(ii) and in § 648.87(b)(1)(i), or unless authorized in writing by the Regional Administrator.

* * * * *

(c) * * *

(11) Enter, fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from, or be in the areas, and for the times, described in § 648.87(a) and (b), except as provided in § 648.81(d), (f)(2), (g)(2), and (h)(2), and in § 648.87(b)(1)(i).

* * * * *

4. In § 648.81, paragraph (f)(2)(ii) is revised to read as follows:

§ 648.81 Closed areas.

* * * * *

(f) * * *

(2) * * *

(ii) That are fishing with or using exempted gear as defined under this part, excluding mid-water trawl gear and pelagic gillnet gear capable of catching multispecies, except vessels may fish with a single pelagic gillnet, not longer than 300 ft and not greater than 6 ft deep, with a maximum mesh size of 3 inches, provided the net is attached to the boat, is fished in the upper two-thirds of the water column and is marked with the owner's name and vessel identification number, and provided there is no other gear on board capable of catching multispecies finfish; or

* * * * *

5. In § 648.87, the section heading and paragraph (a) and paragraph (b) heading and introductory text are revised to read as follows:

§ 648.87 Gillnet requirements to reduce harbor porpoise takes.

(a) *Areas closed to sink gillnets and other gillnets capable of catching multispecies.* Sections 648.81(f) through (h) set forth closed area restrictions to reduce the take of harbor porpoise consistent with the harbor porpoise mortality goals.

(b) *Additional areas closed to sink gillnets and other gillnets capable of catching multispecies.* All persons owning or operating vessels in the EEZ portion of the areas and for the times specified in paragraphs (b)(1) and (2) of this section, must remove all of their sink gillnets and other gillnet gear capable of catching multispecies, and may not use, set, haul back, fish with, or possess on board (unless stowed in accordance with the requirements of § 648.23(b)), a sink gillnet or other gillnet gear capable of catching multispecies except for a single pelagic gillnet as described in § 648.81(f)(2)(ii); and all persons owning or operating vessels issued a limited access multispecies permit must remove all of their gillnet gear capable of catching multispecies and may not use, set, haul back, fish with, or possess on board (unless stowed in accordance with the requirements of § 648.23(b)), a gillnet capable of catching multispecies in the areas and for the time specified in paragraphs (b)(1) and (2) of this section, except for a single pelagic gillnet as described in § 648.81(f)(2)(ii).

* * * * *

[FR Doc. 97-4907 Filed 2-28-97; 8:45 am]
BILLING CODE 3510-22-F

50 CFR Part 679

[Docket No. 961107312-7021-02; I.D. 022697A]

Fisheries of the Exclusive Economic Zone Off Alaska; Offshore Component Pollock in the Aleutian Islands Subarea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure; inseason adjustment.

SUMMARY: NMFS is opening directed fishing for pollock by vessels catching pollock for processing by the offshore component in the Aleutian Islands subarea (AI) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to fully utilize the total allowable catch (TAC) of pollock in that area.

DATES: The modification is effective 1200 hrs, Alaska local time (A.l.t.), February 26, 1997, until 2400 hrs, A.l.t., February 27, 1997. Comments must be received at the following address no later than 1630 hrs, A.l.t., March 17, 1997.

FOR FURTHER INFORMATION CONTACT: Mike Sloan, 907-581-2062.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20 (c)(3)(iii), the allowance for the pollock TAC apportioned for vessels catching pollock for processing by the offshore component in the AI was established by the Final 1997 Harvest Specifications for Groundfish (62 FR 7168, February 18, 1997) as 16,835 metric tons (mt). The Administrator, Alaska Region, NMFS (Regional Administrator), has established a directed fishing allowance of 14,835 mt, and set aside the remaining 2,000 mt as bycatch to support other anticipated groundfish fisheries. The fishery for pollock by vessels catching pollock in the AI of the BSAI was closed to directed fishing under § 679.20(d)(1)(iii) on February 23, 1997, in order to reserve amounts anticipated to be needed for incidental catch in other fisheries. This action was

filed at the Office of the Federal Register on February 21, 1997, and scheduled for publication in the **Federal Register** on February 27, 1997.

NMFS has determined that as of February 24, 1997, 7,835 mt remain in the directed fishing allowance. Therefore, NMFS is terminating the previous closure and is opening directed fishing for pollock by vessels catching pollock for processing by the offshore component in the AI of the BSAI effective 1200 hrs, A.l.t., February 26, 1997.

In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Current information shows the catching capacity of vessels catching pollock for processing by the offshore component is in excess of 5,500 mt per day.

Section 679.23(b) specifies that the time of all openings and closures of fishing seasons other than the beginning and end of the calendar fishing year is 1200 hrs, A.l.t. The Regional Administrator has determined that the remaining portion of the allocation to the offshore component would be underharvested if a 1200–hrs closure were allowed to occur.

In accordance with § 679.25(a)(1)(i), NMFS is adjusting the season for pollock by vessels catching pollock for processing by the offshore component in the AI of the BSAI. NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the offshore component in the AI at 2400 hrs, A.l.t., February 27, 1997.

NMFS is taking this action to prevent the underharvest of the pollock allocation to vessels catching pollock for processing by the offshore component in the AI of the BSAI as authorized by § 679.25(a)(2)(i)(C). In accordance with § 679.25(a)(2)(iii), NMFS has determined that closing the season at 2400 hrs, A.l.t., on February 27, 1997, is the least restrictive management adjustment to harvest the pollock allocated to vessels catching pollock for processing by the offshore component in the AI of the BSAI and will allow other fisheries to continue in noncritical areas and time periods.

The Assistant Administrator for Fisheries, NOAA, finds for good cause that providing prior notice and public comment or delaying the effective date of this action is impracticable and contrary to the public interest. Without this inseason adjustment, the pollock allocation for vessels catching pollock for processing by the offshore component in the AI of the BSAI would be underharvested, resulting in an economic loss of more than 1.5 million dollars. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until March 13, 1997.

All other closures remain in full force and effect.

Classification

This action is taken under § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 26, 1997.

Gary Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–5170 Filed 2–26–97; 2:35 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 41
Monday, March 3, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1131

[DA–97–01]

Milk in the Central Arizona Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; suspension.

SUMMARY: This document invites written comments on a proposal to suspend indefinitely certain provisions of the Central Arizona Federal milk marketing order. This rule would continue a suspension that eliminates the requirement that a cooperative association that operates a manufacturing plant ship at least 50 percent of its receipts to other handler pool plants to maintain pool status of its manufacturing plant. United Dairymen of Arizona, a cooperative association that represents nearly all of the producers who supply milk to the Central Arizona market, has requested continuation of the suspension. The cooperative association asserts that the suspension is necessary to prevent the uneconomical and inefficient movement of milk.

DATES: Comments must be submitted on or before March 18, 1997.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456. Advance, unofficial copies of such comments may be faxed to (202) 690–0552 or e-mailed to OFB_FMMO_Comments@usda.gov. Reference should be given to the title of action and docket number.

FOR FURTHER INFORMATION CONTACT: Clifford M. Carman, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9368, e-mail address: CMCarman@usda.gov.

SUPPLEMENTARY INFORMATION: The Department is issuing this proposed rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. If adopted, this proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a "small business" if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. For the purposes of determining which dairy farms are "small businesses," the $500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most "small" dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500 employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees. This rule would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Interested parties are invited to submit comments on the probable regulatory and informational impact of this proposed rule on small entities. Also, parties may suggest modifications of this proposal for the purpose of tailoring their applicability to small businesses.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act, the suspension of the following provision of the order regulating the handling of milk in the Central Arizona marketing area is being considered for an indefinite period beginning April 1, 1997:

In § 1131.7(c), the words "50 percent or more of", "(including the skim milk and butterfat in fluid milk products transferred from its own plant pursuant to this paragraph that is not in excess of the skim milk and butterfat contained in member producer milk actually received at such plant)", and "or the previous 12-month period ending with the current month."

All persons who want to submit written data, views or arguments about the proposed suspension should send two copies of their views to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 15th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 15 days because a longer period would not provide the time needed to complete the required procedures before the requested suspension is to be effective.

All written submissions made pursuant to this notice will be made

available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed rule would continue to suspend certain provisions of the Central Arizona order for an indefinite period beginning April 1, 1997. The proposed suspension would continue to remove the requirement that a cooperative association which operates a manufacturing plant in the marketing area must ship at least 50 percent of its milk supply during the current month or the previous 12-month period ending with the current month to other handlers' pool plants to maintain the pool status of its manufacturing plant.

The order permits a cooperative association's manufacturing plant, located in the marketing area, to be a pool plant if at least 50 percent of the producer milk of members of the cooperative association is physically received at pool plants of other handlers during the current month or the previous12-month period ending with the current month.

Continuation of the current suspension was requested by United Dairymen of Arizona (UDA), a cooperative association that represents nearly all of the dairy farmers who supply the Central Arizona market. UDA contends that the continued pool status of their manufacturing plant would be threatened if the suspension is not continued. UDA states that the same marketing conditions that warranted the suspension for the past two years still exist. UDA maintains that members who increased their milk production to meet the projected demands of fluid handlers for distribution into Mexico continue to suffer the adverse impact of the collapse of the Mexican peso. Absent a suspension, UDA projects that costly and inefficient movements of milk would have to be made to maintain pool status of producers who have historically supplied the market and to prevent disorderly marketing in the Central Arizona marketing area.

Accordingly, it may be appropriate to suspend the aforesaid provisions beginning April 1, 1997, for an indefinite period.

List of Subjects in 7 CFR Part 1131

Milk marketing orders.

The authority citation for 7 CFR Part 1131 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Dated: February 24, 1997.

Richard M. McKee,

Director, Dairy Division.

[FR Doc. 97–5114 Filed 2–28–97; 8:45 am]

BILLING CODE 3410–02–P

Rural Utilities Service

7 CFR Part 1717

RIN 0572–AB26

Settlement of Debt Owed by Electric Borrowers

AGENCY: Rural Utilities Service.

ACTION: Proposed rule.

SUMMARY: The Administrator of the Rural Utilities Service (RUS) hereby proposes to establish policies and standards for the settlement of debts and claims owed by rural electric borrowers. In addition to proposing policies and standards for debt settlement, the rule proposes RUS policy on subsequent loans to borrowers whose debt has been restructured.

DATES: Written comments must be received by RUS or carry a postmark or equivalent by May 2, 1997.

ADDRESSES: Written comments should be addressed to Monte Heppe, Jr., Director, Program Support and Regulatory Analysis, U.S. Department of Agriculture, Rural Utilities Service, Stop 1522, 1400 Independence Ave. SW., Washington, DC 20250–1522. RUS requires, in hard copy, a signed original and 3 copies of all comments (7 CFR 1700.30(e)). Comments will be available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Mr. Blaine D. Stockton, Jr., Assistant Administrator—Electric, U.S. Department of Agriculture, Rural Utilities Service, Stop 1560, 1400 Independence Avenue, SW., Washington, DC 20250–1560. Telephone: 202–720–9545.

SUPPLEMENTARY INFORMATION: This regulatory action has been determined to be significant for the purposes of Executive Order 12866, Regulatory Planning and Review, and therefore has been reviewed by the Office of Management and Budget (OMB). The Administrator of the Rural Utilities Service (RUS) has determined that a rule relating to the RUS electric loan program is not a rule as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and, therefore, the Regulatory Flexibility Act does not apply to this proposed rule. The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment. This proposed rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A Notice of Final Rule titled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts RUS electric loans and loan guarantees from coverage under this Order. This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this proposed rule meets the applicable standards provided in Sec. 3 of the Executive Order.

The program described by this rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850 Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325.

Background

On April 4, 1996, P.L. 104–127 amended section 331(b) of the Consolidated Farm and Rural Development Act (Con Act) to extend to RUS loans and loan guarantees the Secretary of Agriculture's authority to compromise, adjust, reduce, or charge-off debts or claims owed to the government (collectively, debt settlement). The amendment also extended to the security instruments, leases, contracts, and agreements administered by RUS, the Secretary's authority to adjust, modify, subordinate, or release the terms of those documents. The Secretary of Agriculture, in 7 CFR 2.47, has delegated authority under section 331(b) to the Administrator of RUS, with respect to loans made or guaranteed by RUS.

This proposed regulation proposes the policies, standards, and procedures the Administrator would use in settling (restructuring) debts and claims owed by rural electric borrowers.

Section 1717.1202 General Policy

This section proposes general policies for settling debts and claims. Four general policies are proposed:

1. Wherever possible, all debt and claims will be collected in full in accordance with its terms.

2. The rule by itself contains nothing that modifies or forgives debt or claims owed by a borrower. Any debt settlement will require the explicit written approval of the Administrator.

3. The Administrator's authority to settle debts and claims will apply to cases where a borrower is unable to pay its debts and claims in accordance with their terms, and where settlement will maximize the recovery of debts and claims owed to the government.

4. The Administrator will consider several factors in structuring debt settlements and determining the amount of debt recovery that is possible. Among those factors are the Rural Electrification Act of 1936, the National Energy Policy Act of 1992, the policies and regulations of the Federal Energy Regulatory Commission (FERC), and other market and nonmarket forces that affect competition in the electric utility industry and, in particular, the rural electric segment of the industry.

Section 1717.1203 Relationship Between RUS and Department of Justice

The Administrator is required to notify the Attorney General whenever the Administrator intends to use his or her settlement authority. The Attorney General retains the authority under existing law to settle debts and claims against a borrower that is in bankruptcy or is otherwise involved in litigation with the government. In addition, any debt or claim that has been referred in writing to the Attorney General would not be settled under the Administrator's own authority.

Section 1717.1204 Policies and Conditions Applicable to Settlements

This section proposes specific policies, standards, and conditions applicable to debt settlements. These are in addition to the general principles proposed in § 1717.1202. The specific policies, standards, and conditions include the following:

- Documentation, analyses, and other actions would be required of the borrower to demonstrate that it is unable to pay its debts or claims in accordance with their terms, or that it will be unable to meet such obligations sometime within the 24 months following the borrower's application for relief, and that such default is likely to continue beyond the 24-month period.
- RUS could contract with an independent consultant of its choice to provide an analysis of the efficiency and effectiveness of the borrower's organization and operations, and those of its member systems in the case of a power supply borrower. The borrower (and its member systems in the case of a power supply borrower) could be required to share in the costs of the consultant. The scope of work of the independent consultant, reporting relationships, and the consultant's access to the borrower's records and staff are spelled out in § 1717.1204(b)(3).
- Debt settlement measures that could be used under proposed § 1717.1204 would include, but not be limited to, reamortization of debt; extension of debt maturity; reduction in the interest rate charged; forgiveness of interest accrued, penalties, and the government's cost of collection; and with the concurrence of the Under Secretary for Rural Development, forgiveness of loan principal. They would also include restructuring a borrower's obligations under a loan guaranteed by RUS, by RUS acquiring and restructuring the guaranteed loan, by restructuring the loan guarantee obligation and/or the borrower's reimbursement obligations, or by other means, subject to any consents or approvals required by the third party lenders.
- The borrower or the independent consultant could be required to solicit competitive bids for the borrower's system. The Administrator could use the competitive bids received as a basis for requiring the sale of all or part of the borrower's system as a condition of settlement of the borrower's debt. The Administrator could also consider the bids in evaluating alternative settlement measures.
- The Administrator would not grant debt relief unless similar relief, on a pro rata basis, is granted by other secured creditors of the borrower, or they provide other benefits or value to the restructuring. Unsecured creditors would also be expected to contribute to the restructuring. If it is not possible to obtain the expected contributions from other creditors, the Administrator could proceed to settle a borrower's debt if that would maximize recovery by the government and would not result in material benefits accruing to other creditors at the expense of the government.
- The Administrator could consider several methods for determining the value of a borrower's assets. In no case would the Administrator settle a debt or claim for less than the value (after considering collection costs) of the borrower's system and other collateral securing the debt or claim. In the case of a power supply borrower, the value of the wholesale power contracts between the borrower and its member systems would be considered. The valuation of the wholesale power contracts would take into account, among other matters, the rights of the government, and/or third parties, to assume the rights and obligations of the borrower under such contracts, to charge reasonable rates for service provided under the contracts, and to otherwise enforce the contracts in accordance with their terms.
- The Administrator would consider the rates charged for electric service by the borrower and, in the case of a power supply borrower, by its members, taking into account, among other factors, the practices of the Federal Energy Regulatory Commission (FERC), as adapted to the cooperative structure of borrowers, and, where applicable, FERC treatment of any investments by co-owners in projects jointly owned by the borrower.
- The Administrator would consider whether a settlement is favorable to the government in comparison with what can be recovered by enforced collection procedures.
- Before any settlement is approved, the borrower would be required to obtain all approvals required of regulatory bodies that are needed for the borrower to fulfill its obligations under the settlement.
- As a condition of debt settlement, the borrower, and in the case of a power supply borrower, its members, would be required to implement changes in management, operations, and performance if requested by the Administrator. The borrower could be required to undertake a corporate restructuring and/or sell a portion of its plant, facilities, or other assets. The borrower could also be required to replace senior management and/or hire outside experts acceptable to the Administrator. This could include a commitment by the borrower's board of directors to restructure and/or obtain new members on the board. The borrower could be required to accept controls on general funds, as well as on any investments, loans or guarantees, notwithstanding any limitations on RUS' control rights in the borrower's loan documents or RUS regulations. Certain actions could also be required of the borrower to perfect and protect the government's lien on cash deposits, securities, and other assets. In the case of a power supply borrower, the borrower could be required to obtain credit support as well as pledges and action plans from its members regarding changes in operations, management, and organizational structure to reduce the member's operating costs, improve their efficiency, and/or expand their markets and revenues.
- As a condition of debt settlement, a borrower could be required to convey some or all of its assets to the government.
- Finally, RUS will require that the borrower warrant and agree that no

bonuses or similar extraordinary compensation has been or will be provided, for reasons related to the settlement of government debt, to any officer or employee of the borrower or to other persons or entities identified by RUS. RUS may impose such other terms and conditions of debt settlement as RUS deems to be in the government's interests.

Section 1717.1205 Waiver of Existing Conditions on Borrowers

This section would allow the Administrator to waive or otherwise reduce conditions and requirements imposed on a borrower by its loan documents if the Administrator determines that that would enhance the recovery of debt by the government. Such waivers and reductions might include a variety of actions, but could not include the debt settlement measures proposed in paragraph (c) of § 1717.1204, which would be subject to all of the requirements of § 1717.1204.

Section 1717.1206 Loans Subsequent to Settlement

Under this section, in considering any loan request subsequent to a debt settlement, the Administrator would presume that credit support for the full amount of the requested loan is needed. The credit support could be in a number of forms, provided that they are acceptable to the Administrator.

Section 1717.1207 RUS Obligations Under Loan Guarantees

This section would clarify that RUS' obligations under loan guarantee commitments to the Federal Financing Bank (FFB) and other lenders are not affected by the proposed rule. For example, if RUS settles a guaranteed loan of the FFB, RUS' obligation under its guarantee to the FFB to make up any shortfall in payments on that loan would remain in force.

Section 1717.1208 Government's Rights Under Loan Documents

This section would clarify that the proposed rule does not limit, modify, or otherwise affect the rights of the government under the loan documents executed with borrowers, or under law or equity.

Information Collection and Recordkeeping Requirements

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) RUS is requesting comments on the information collection incorporated in this proposed rule.

Comment on this information collection must be received by May 2, 1997.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) The accuracy of the agency's estimate of the burden of the proposed collection of information; (c) Ways to enhance the quality, utility and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Dawn Wolfgang, Program Support and Regulatory Analysis, U.S. Department of Agriculture, Rural Utilities Service, Ag Box 1522, 1400 Independence Avenue, SW., Washington, DC 20250–1522. Telephone: 202–720–0812. FAX: 202–720–4120. E-mail: dwolfgan@rus.usda.gov.

Title: 7 CFR 1717 subpart Y, Settlement of Debt Owed by Electric Borrowers.

Type of request: New information collection.

Abstract: The information collection required by this proposed rule stems from passage of Pub. L. 104–127, which amended section 331(b) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*) to extend to RUS loans and loan guarantees the Secretary of Agriculture's authority to settle debts. Only those electric borrowers that are unable to fully repay their debts to the government and who apply to RUS for relief will be affected by this proposed information collection.

The proposed collection will require only that information which is essential for determining the need for debt settlement, the amount of debt the borrower can repay, the future scheduling of debt repayment, and the range of opportunities for enhancing the amount of debt that can be recovered. The information to be collected will be similar to that which any prudent lender would require to determine whether debt settlement is required and the amount of relief that is needed. Since the need for relief is expected to vary substantially from case to case, so will the required information collection.

Estimate of burden: Public reporting burden for this collection of information is estimated to average 3,000 hours per response.

Respondents: Businesses, including not for profit cooperatives and others.

Estimated number of respondents each year: 2.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 6,000 hours.

Copies of this information collection can be obtained from Dawn Wolfgang, Program Support and Regulatory Analysis, Rural Utilities Service. Phone: 202–720–0812.

Send comments regarding this information collection requirement to the Office of Information and Regulatory Affairs, Office of Management and Budget, ATTN: Desk Officer, USDA, Room 10102 New Executive Office Building, Washington, DC 20503, and to Dawn Wolfgang, Program Support and Regulatory Analysis, U.S. Department of Agriculture, Rural Utilities Service, 1400 Independence Ave, SW, Ag Box 1522, Washington, DC 20250–1522.

Comments are best assured of receiving fullest consideration if OMB receives them within 30 days of publication in the **Federal Register**.

All comments will become a matter of public record.

List of Subjects in 7 CFR Part 1717

Administrative practice and procedure, Claims, Electric power, Electric utilities, Intergovernmental relations, Investments, Lien accommodation, Lien subordination, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

For reasons explained in the preamble, RUS proposes to amend 7 CFR chapter XVII by amending part 1717 as follows:

PART 1717—POST-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

1. The authority citation for part 1717 is revised to read as follows:

Authority: 7 U.S.C. 901–950b, 1981; Pub. L. 99–591, 100 Stat. 3341–16; Pub. L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*), unless otherwise noted.

2. Subparts T through X are added and reserved and subpart Y is added to read as follows:

Subpart T—[Reserved]

Sec.
1717.950—1717.999 [Reserved]

Subpart U—[Reserved]

Sec.
1717.1000—1717.1049 [Reserved]

Subpart V—[Reserved]

Sec.
1717.1050—1717.1099 [Reserved]

Subpart W—[Reserved]

Sec.
1717.1100—1717.1149 [Reserved]

Subpart X—[Reserved]

Sec.
1717.1150—1717.1199 [Reserved]

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Sec.
1717.1200 Purpose and scope.
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Subpart U—[Reserved]

§§ 1717.1000—1717.1049 [Reserved]

Subpart V—[Reserved]

§§ 1717.1050—1717.1099 [Reserved]

Subpart W—[Reserved]

§§ 1717.1100—1717.1149 [Reserved]

Subpart X—[Reserved]

§§ 1717.1150—1717.1199 [Reserved]

Subpart Y—Settlement of Debt

§ 1717.1200 Purpose and scope.

(a) Section 331(b) of the Consolidated Farm and Rural Development Act (Con Act), as amended on April 4, 1996 by Public Law 104–127 (7 U.S.C. 1981), grants authority to the Secretary of Agriculture to compromise, adjust, reduce, or charge-off debts or claims arising from loans made or guaranteed under the Rural Electrification Act of 1936, as amended (RE Act). Section 331(b) of the Con Act also authorizes the Secretary of Agriculture to adjust, modify, subordinate, or release the terms of security instruments, leases, contracts, and agreements entered into or administered by the Rural Utilities Service (RUS). The Secretary, in 7 CFR 2.47, has delegated authority under section 331(b) of the Con Act to the Administrator of the RUS, with respect to loans made or guaranteed by RUS.

(b) This subpart sets forth the policy and standards of the Administrator of RUS with respect to the settlement of debts and claims arising from loans made or guaranteed to rural electric borrowers under the RE Act. Nothing in this subpart limits the Administrator's authority under section 12 of the RE Act.

§ 1717.1201 Definitions.

Terms used in this subpart that are not defined in this section have the meanings set forth in 7 CFR part 1710. In addition, for the purposes of this subpart:

Attorney General means the Attorney General of the United States of America.

Claim means any claim of the government arising from loans made or guaranteed under the RE Act.

Con Act means the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*).

Debt means outstanding debt of a rural electric borrower (including principal, accrued interest, penalties, and the government's costs of debt collection) owed to the government and arising from loans made or guaranteed under the RE Act.

Enforced collection procedures means any procedures available to the Administrator for the collection of debt that are authorized by law, in equity, or under the borrower's loan documents or other agreements with RUS.

Loan documents means the mortgage (or other security instrument acceptable to RUS), the loan contract, and the promissory note entered into between the borrower and RUS.

RE Act means the Rural Electrification Act of 1936, as amended (7 U.S.C. 901–950b).

Restructure means to settle a debt or claim.

Settle means to reamortize, adjust, compromise, reduce, or charge-off debt or claims owed to the government by rural electric borrowers.

§ 1717.1202 General policy.

(a) It is the policy of the Administrator that, wherever possible, all debt owed shall be collected in full in accordance with the terms of the borrower's loan documents.

(b) Nothing in this subpart by itself modifies, reduces, waives, or eliminates any obligation of a borrower under its loan documents. Any such modifications regarding the debt owed by a borrower may be granted under the authority of the Administrator only by means of the explicit written approval of the Administrator in each case.

(c) The Administrator's authority to settle debts and claims will apply to cases where a borrower is unable to pay its debts and claims in accordance with their terms, and where settlement will maximize the recovery of debts and claims owed to the government.

(d) In structuring settlements and determining the amount of debt recovery that is possible, the Administrator will consider, among other factors, the RE Act, the National Energy Policy Act of 1992 (Public Law 102–486, 106 Stat. 2776), the policies and regulations of the Federal Energy Regulatory Commission, and other market and nonmarket forces as to their effects on competition in the electric utility industry and on rural electric systems in particular.

§ 1717.1203 Relationship between RUS and Department of Justice.

(a) The Attorney General will be notified by the Administrator whenever the Administrator intends to use his or her authority under section 331(b) of the Con Act to settle a debt or claim.

(b) If a claim has been referred in writing to the Attorney General, the Administrator will not use his or her own authority to settle the claim.

§ 1717.1204 Policies and conditions applicable to settlements.

(a) *General.* Settlement of debts and claims shall be subject to the policies, requirements, and conditions set forth in this section and in § 1717.1202.

(b) *Need for debt settlement.* (1) The Administrator will not settle any debt or claim unless the Administrator has determined that the borrower is unable to meet its financial obligations under its loan documents according to the terms of those documents, or that the borrower will not be able to meet said obligations sometime within the period of 24 months following the borrower's application for relief, and such default is likely to continue beyond the 24 month period. The determination of a borrower's ability to meet its financial obligations will be based on analyses and documentation by RUS of the borrower's historical, current, and projected costs, revenues, cash flows, assets, and other factors that may be relevant on a case by case basis.

(2) The borrower must provide to RUS, in form and substance satisfactory to RUS, an in-depth analysis supporting the borrower's contention that it is unable or will not be able to meet its financial obligations as described in paragraph (b)(1) of this section. The analysis must include:

(i) An explanation and analysis of the causes of the borrower's inability to meet its financial obligations;

(ii) A thorough review and analysis of the opportunities available or potentially available to the borrower to reduce administrative overhead and other costs, improve efficiency and effectiveness, and expand markets and revenues, including but not limited to opportunities for sharing services, merging, and/or consolidating. In the case of a power supply borrower, the study shall include such opportunities among the members of the borrower;

(iii) Documentation of the actions taken, in progress, or planned by the borrower (and its member systems, if applicable) to take advantage of the opportunities cited in paragraph (b)(2)(ii) of this section; and

(iv) Other analyses and documentation prescribed by RUS on a case by case basis.

(3) RUS may require that an independent consultant provide an analysis of the efficiency and effectiveness of the borrower's organization and operations, and those of its member systems in the case of a power supply borrower. The following conditions will apply:

(i) RUS will select the independent consultant taking into account, among other matters, the consultant's experience and expertise in matters relating to electric utility operations, finance, and restructuring;

(ii) The contract with the consultant shall be to provide services to RUS on such terms and conditions as RUS deems appropriate. The consultant's scope of work may include, but shall not be limited to, an analysis of the following:

(A) How to maximize the value of the government's collateral, such as through mergers, consolidations, or sales of all or part of the collateral;

(B) The viability of the borrower's system, taking into account such matters as system size, service territory and markets, asset base, physical condition of the plant, operating efficiency, competitive pressures, industry trends, and opportunities to expand markets and improve efficiency and effectiveness;

(C) The feasibility and the potential benefits and risks to the borrower and the government of corporate restructuring, including aggregation and disaggregation;

(D) In the case of a power supply borrower, the retail rate mark-up by member systems and the potential benefits to be achieved by member restructuring through mergers, consolidations, shared services, and other alliances;

(E) The quality of the borrower's management, management advisors, consultants, and staff;

(F) Opportunities for reducing overhead and other costs, for realizing economies through marketing, and for improving the borrower's existing and prospective contractual arrangements for the purchase and sale of power and the operation of plant and facilities; and

(G) The accuracy and completeness of the borrower's analysis provided under paragraph (b)(2) of this section;

(iii) RUS and, as appropriate, other creditors, will determine the extent to which the borrower and third parties (including the members of a power supply borrower) will be required to participate in funding the costs of the independent consultant;

(iv) The borrower will be required to make available to the consultant all corporate documents, files, and records, and to provide the consultant with access to key employees. The borrower will also normally be required to provide the consultant with office space convenient to the borrower's operations and records; and

(v) All analyses, studies, opinions, memoranda, and other documents and information produced by the independent consultant shall be provided to RUS on a confidential basis for consideration in evaluating the borrower's application for debt settlement. Such documents and information may be made available to the borrower and other appropriate parties if authorized in writing by RUS.

(4) The borrower may be required to employ a temporary or permanent manager acceptable to the Administrator, to manage the borrower's operations to ensure that all actions are taken to avoid or minimize the need for debt settlement. The employment could be on a temporary basis to manage the system during the time the debt settlement is being considered, and possibly for some time after any debt settlement, or it could be on a permanent basis.

(c) *Debt settlement measures.* (1) If the Administrator determines that debt settlement is appropriate, the debt settlement measures the Administrator will consider under this subpart with respect to direct, insured, or guaranteed loans include, but are not limited to, the following:

(i) Reamortization of debt;

(ii) Extension of debt maturity, provided that the weighted average life of the restructured debt shall not exceed the weighted average of the expected remaining useful lives of the assets pledged as security for said debt;

(iii) Reduction of the interest rate charged on the borrower's debt, provided that the interest rate on any portion of the restructured debt shall not be reduced to less than 5 percent;

(iv) Forgiveness of interest accrued, penalties, and costs incurred by the government to collect the debt; and

(v) With the concurrence of the Under Secretary for Rural Development, forgiveness of loan principal.

(2) In the event that RUS has, under section 306 of the RE Act, guaranteed loans made by the Federal Financing Bank or other third parties, the Administrator may restructure the borrower's obligations by acquiring and restructuring the guaranteed loan, by restructuring the loan guarantee obligation, by restructuring the borrower's reimbursement obligations, or by such means as the Administrator deems appropriate, subject to such consents and approvals, if any, that may be required by the third party lender.

(d) *Debt owed by other creditors.* The Administrator will not grant relief on debt owed to the government unless similar relief, on a pro rata basis, is granted with respect to other secured debt owed by the borrower, or the other secured creditors provide other benefits or value to the debt restructuring. Unsecured creditors will also be expected to contribute to the restructuring. If it is not possible to obtain the expected contributions from other creditors, the Administrator may proceed to settle a borrower's debt if that will maximize recovery by the government and will not result in material benefits accruing to other creditors at the expense of the government.

(e) *Competitive bids for system assets.* If requested by RUS, the borrower or the independent consultant provided for in paragraph (b)(3) of this section shall solicit competitive bids from potential buyers of the borrower's system or parts thereof. The bidding process must be conducted in consultation with RUS and use standards and procedures acceptable to RUS. The Administrator may use the competitive bids received as a basis for requiring the sale of all or part of the borrower's system as a condition of settlement of the borrower's debt. The Administrator may also consider the bids in evaluating alternative settlement measures.

(f) *Valuation of system.* (1) The Administrator will consider the value of the borrower's system, including, in the case of a power supply borrower, the wholesale power contracts between the borrower and its member systems. The valuation of the wholesale power contracts shall take into account, among other matters, the rights of the government, and/or third parties, to assume the rights and obligations of the borrower under such contracts, to charge reasonable rates for service provided under the contracts, and to otherwise enforce the contracts in accordance with their terms. In no case will the Administrator settle a debt or claim for less than the value (after considering collection costs) of the borrower's system and other collateral securing the debt or claim.

(2) RUS may use such methods, analyses, and assessments as the Administrator deems appropriate to determine the value of the borrower's system.

(g) *Rates.* The Administrator will consider the rates charged for electric service by the borrower and, in the case of a power supply borrower, by its members, taking into account, among other factors, the practices of the Federal Energy Regulatory Commission (FERC), as adapted to the cooperative structure of borrowers, and, where applicable, FERC treatment of any investments by co-owners in projects jointly owned by the borrower.

(h) *Collection action.* The Administrator will consider whether a settlement is favorable to the government in comparison with the amount that can be recovered by enforced collection procedures.

(i) *Regulatory approvals.* Before the Administrator will approve a settlement, the borrower must provide satisfactory evidence that it has obtained all approvals required of regulatory bodies that are needed to implement rates or other provisions of the settlement, or that are needed in any other way for the borrower to fulfill its obligations under the settlement.

(j) *Conditions regarding management and operations.* As a condition of debt settlement, the borrower, and in the case of a power supply borrower, its members, will be required to implement those changes in structure, management, operations, and performance deemed necessary by the Administrator. Those changes may include, but are not limited to, the following:

(1) The borrower may be required to undertake a corporate restructuring and/or sell a portion of its plant, facilities, or other assets;

(2) The borrower may be required to replace senior management and/or hire outside experts acceptable to the Administrator. Such changes may include a commitment by the borrower's board of directors to restructure and/or obtain new membership to improve board oversight and leadership;

(3) The borrower may be required to agree to:

(i) Controls by RUS on the general funds of the borrower, as well as on any investments, loans or guarantees by the borrower, notwithstanding any limitations on RUS' control rights in the borrower's loan documents or RUS regulations; and

(ii) Requirements deemed necessary by RUS to perfect and protect its lien on cash deposits, securities, equipment, vehicles, and other items of real or non-real property; and

(4) In the case of a power supply borrower, the borrower may be required to obtain credit support from its member systems, as well as pledges and action plans by the members to change their operations, management, and organizational structure (e.g., shared services, mergers, or consolidations) in order to reduce operating costs, improve efficiency, and/or expand markets and revenues.

(k) *Conveyance of assets.* As a condition of a settlement, a borrower may be required to convey some or all its assets to the government.

(l) *Additional conditions.* The borrower will be required to warrant and agree that no bonuses or similar extraordinary compensation has been or will be provided, for reasons related to the settlement of government debt, to any officer or employee of the borrower or to other persons or entities identified by RUS. The Administrator may impose such other terms and conditions of debt settlement as the Administrator determines to be in the government's interests.

§ 1717.1205 Waiver of existing conditions on borrowers.

Pursuant to section 331(b) of the Con Act, the Administrator, at his or her sole discretion, may waive or otherwise reduce conditions and requirements imposed on a borrower by its loan documents if the Administrator determines that such action will contribute to enhancement of the government's recovery of debt. Such waivers or reductions in conditions and requirements under this section shall not include the exercise of any of the debt settlement measures set forth in § 1717.1204(c), which are subject to all of the requirements of § 1717.1204.

§ 1717.1206 Loans subsequent to settlement.

In considering any future loan requests from a borrower whose debt has been restructured (settled), it will be presumed that credit support for the full amount of the requested loan will be required. Such support may be in a number of forms, provided that they are acceptable to the Administrator on a case by case basis. They may include, but need not be limited to, equity infusions and guarantees of debt repayment, either from the applicant's members (in the case of a power supply borrower), or from a third party.

§ 1717.1207 RUS obligations under loan guarantees.

Nothing in this subpart affects the obligations of RUS under loan guarantee commitments it has made to the Federal Financing Bank or other lenders.

§ 1717.1208 Government's rights under loan documents.

Nothing in this subpart limits, modifies, or otherwise affects the rights of the government under loan documents executed with borrowers, or under law or equity.

Dated: February 24, 1997.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 97–5137 Filed 2–28–97; 8:45 am]

BILLING CODE 3410–15–P

Animal and Plant Health Inspection Service

9 CFR Parts 92 and 130

[Docket No. 95–057–2]

Importation of Pet Birds

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; withdrawal.

SUMMARY: We are withdrawing a proposed rule that would have made several changes to the regulations for importing pet birds into the United States. We are withdrawing the proposed rule after considering the comments we received following the publication of the proposed rule.

FOR FURTHER INFORMATION CONTACT: Dr. Tracye R. Butler, Staff Veterinarian, Import-Export Animals, National Center for Import-Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231, (301) 734–5097.

SUPPLEMENTARY INFORMATION:

Background

On August 21, 1996, we published in the **Federal Register** (61 FR 43188–43193, Docket No. 95–057–1) a proposal to amend the regulations in 9 CFR part 92 by removing the requirement for veterinary inspection at the port of entry for all pet birds imported from Canada, including pet birds of U.S. origin that

have been in Canada. We also proposed to remove the requirement that such birds may only be imported through a designated port. For pet birds of Canadian origin, we proposed to add the requirement that the birds be accompanied by a veterinary health certificate issued by Agriculture Canada. We also proposed to allow pet birds imported from countries other than Canada to be maintained under home quarantine for 30 days rather than be quarantined for 30 days at a facility operated by the U.S. Department of Agriculture (USDA). For pet birds of U.S. origin, we proposed to allow microchip implants as a form of permanent identification. We also proposed to amend the regulations in 9 CFR part 130, concerning user fees, to reflect our proposal that pet birds imported from any country could now undergo home quarantine, and should be charged the appropriate user fee for home quarantine services. We proposed these actions in order to facilitate the importation of pet birds, while continuing to provide protection against the introduction of communicable diseases into the United States.

We solicited comments concerning our proposal for 60 days ending October 21, 1996. We received 16 comments by that date. They were from veterinarians, humane organizations, environmental interest groups, raptor breeders and associations, and falconers. Ten of the comments supported the proposed rule, but requested minor changes, mostly concerning special considerations in the importation of raptors from Canada. The remainder of the comments opposed the proposed rule, expressing concerns regarding allowing home quarantine for pet birds imported from countries other than Canada and removing the requirement for veterinary inspection at the port of entry for pet birds imported from Canada. Specifically, commenters said that most pet bird owners would not necessarily recognize the signs of disease in their pet birds under home quarantine, that home quarantine would not include any tests for disease or precautionary medication (as is administered when a pet bird undergoes quarantine at a USDA-operated facility), and that the proposal did not include adequate provisions to ensure that pet bird owners comply with the home quarantine requirements. Commenters were also concerned that removing veterinary inspection at the port of entry for pet birds from Canada would increase the opportunities for exotic birds to be smuggled illegally into the United States.

After considering all the comments we received, we have concluded that it is necessary to reexamine the need for relieving restrictions on the importation of pet birds and the disease risks associated with the importation of pet birds into the United States. Therefore, we are withdrawing the August 21, 1996, proposed rule referenced above. The concerns and recommendations of all the commenters will be considered if any new proposed regulations regarding the importation of pet birds are developed.

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 26th day of February 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–5161 Filed 2–28–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–126–AD]

RIN 2120–AA64

Airworthiness Directives; Construcciones Aeronauticas, S.A. (CASA) Model CN–235 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain CASA Model CN–235 series airplanes. This proposal would require a one-time inspection to detect fatigue cracking in the area of the center wing-to-fuselage attachment fitting, and repair, if necessary. This proposal also would require installation of a reinforcing plate in the attachment area of that fitting. This proposal is prompted by a report from the manufacturer indicating that, during full-scale fatigue testing, fatigue cracks were detected in this area. The actions specified by the proposed AD are intended to prevent fatigue cracking, which consequently could reduce the structural integrity of this area.

DATES: Comments must be received by April 10, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–126–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Greg Dunn, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2799; fax (206) 227–1149

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number96–NM–126–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No.96–NM–126–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Dirección General de Aviación (DGAC), which is the airworthiness authority for Spain, recently notified the FAA that an unsafe condition may exist on certain CASA Model CN–235 series airplanes. The DGAC advises that it has received a report from the manufacturer indicating that, during full-scale fatigue testing, fatigue cracks were detected on the test article in the area of the center wing-to-fuselage attachment fitting. This condition, if not prevented, could reduce the structural integrity of this area.

Explanation of Relevant Service Information

CASA has issued Service Bulletin SB–235–53–20, Revision 2, dated June 9, 1994 (for non-military airplanes), and Service Bulletin SB–235–53–20M, Revision 1, dated November 27, 1995 (for military airplanes). Both service bulletins describe procedures for installing a reinforcing plate in the attachment area of the center wing-to-fuselage attachment fitting. Installation of the reinforcing plate will preclude the development of fatigue cracking in the attachment area.

The DGAC classified CASA Service Bulletin SB–235–53–20 as mandatory and issued Spanish airworthiness directive 03/94, dated August 1994, in order to assure the continued airworthiness of these airplanes in Spain.

FAA's Conclusions

This airplane model is manufactured in Spain and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a one-time inspection to detect cracking in the area where the center wing-to-fuselage attachment fitting is located, and repair, if necessary. The proposed AD also would require installation of a reinforcing plate in the attachment area of the center wing-to-fuselage attachment fitting, after inspection and any necessary repairs have been accomplished. The installation of the reinforcing plate would be required to be accomplished in accordance with the applicable service bulletin described previously.

Differences Between the Proposed Rule and the Applicable Service Bulletin

Operators should note that this proposed AD would require that a one-time visual inspection be conducted immediately prior to the installation of the reinforcing plate. Any necessary repairs would be required to be accomplished in a manner approved by the FAA. CASA Service Bulletins SB–235–53–20 and SB–235–53–20M do not provide for procedures for conducting such an inspection or necessary repairs.

The FAA has determined that, due to the safety implications and consequences associated with fatigue cracking in this area, any such cracking must be repaired prior to further flight and the installation of the reinforcing plate.

Cost Impact

The FAA estimates that 2 CASA Model CN–235 series airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 25 work hours per airplane to accomplish the proposed actions, at an average labor rate of $60 per work hour. Required parts would cost approximately $645 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operator is estimated to be $4,290, or $2,145 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Construcciones Aeronauticas, S.A. Casa: Docket 96–NM–126–AD.

Applicability: Model CN–235 series airplanes; as listed in CASA Service Bulletin SB–235–53–20, Revision 2, dated June 9, 1994 (for non-military airplanes); and Service Bulletin SB–235–53–20M, Revision 1, dated November 27, 1995 (for military airplanes); certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking in the area of the center wing-to-fuselage attachment fitting, which consequently could reduce the structural integrity of this area, accomplish the following:

(a) For non-military airplanes: Prior to the accumulation of 17,000 total landings, accomplish the actions specified in paragraphs (a)(1), (a)(2), and (a)(3) of this AD:

(1) Remove all parts and other items in the area of the center wing-to-fuselage attachment fitting, in accordance with Paragraph 2.B. ("Removal") of the Accomplishment Instructions of CASA Service Bulletin SB–235–53–20, Revision 2, dated June 9, 1994.

(2) After all parts and other items have been removed in accordance with paragraph (a)(1) of this AD, conduct a visual inspection, using a magnifier of at least 10x magnitude, to detect fatigue cracking in this area (ref: Figure 1, Sheet 1, of the service bulletin). If any cracking is detected, prior to further flight and prior to installing the reinforcing plate in accordance with paragraph (a)(3) of this AD, repair in a manner approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(3) Install a reinforcing plate having CASA part number (P/N) 35–25010–0101 in the attachment area of the center wing-to-fuselage attachment fitting, in accordance with the service bulletin.

(b) For military airplanes: Prior to the accumulation of 15,000 total landings, accomplish the actions specified in paragraphs (b)(1), (b)(2), and (b)(3) of this AD:

(1) Remove all parts and other items in the area of the center wing-to-fuselage attachment fitting, in accordance with Paragraph 2.B. ("Removal") of the Accomplishment Instructions of CASA Service Bulletin SB–235–53–20M, Revision 1, dated November 27, 1995.

(2) After all parts and other items have been removed in accordance with paragraph (b)(1) of this AD, conduct a visual inspection, using a magnifier of at least 10x magnitude, to detect fatigue cracking in this area (ref: Figure 1, Sheet 1, of the service bulletin). If any cracking is detected, prior to further flight and prior to installing the reinforcing plate in accordance with paragraph (b)(3) of this AD, repair in a manner approved by the Manager, Standardization Branch, ANM–113, FAA.

(3) Install a reinforcing plate having CASA part number (P/N) 35–25010–0101 in the attachment area of the center wing-to-fuselage attachment fitting, in accordance with the service bulletin.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 25, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–5160 Filed 2–28–97; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–CE–24–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Britten-Norman Ltd. BN–2A and BN–2A Mk 111 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 75–24–07 R1, which currently requires repetitively inspecting the left-hand (LH) rudder bar assembly for cracks and loose fasteners on certain Pilatus Britten-Norman Ltd. BN–2A and BN–2A Mk 111 series airplanes, and replacing any cracked part. The Federal Aviation Administration's policy on aging commuter-class aircraft is to eliminate certain repetitive short-interval inspections when improved parts or modifications are available. The proposed action would require inspecting the LH rudder bar assembly, determining the wall thickness of the slider tube unit, modifying the rudder bar assembly by replacing the LH slider tube with a new strengthened slider tube unit as terminating action for the repetitive inspections that are currently required by AD 75–24–07 R1. The actions specified in the proposed AD are intended to prevent failure of the pilot's rudder bar assembly, which, if not detected and corrected, could result in loss of control of the airplane.

DATES: Comments must be received on or before May 5, 1997.

ADDRESSES: Submit comments on the proposal in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96-CE-24-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Pilatus Britten-Norman Ltd., Bembridge, Isle of Wight, United Kingdom PO35 5PR; telephone 44–1983 872511; facsimile 44–1983 873246. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Rodriguez, Program Officer, Brussels Aircraft Certification Division, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; telephone (322) 508.2715; facsimile (322) 230.6899; or Mr. S. M. Nagarajan, Project Officer, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 96-CE-24-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96-CE-24-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has determined that reliance on critical repetitive inspections on aging commuter-class airplanes carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections. In determining what inspections are critical, the FAA considers (1) the safety consequences if the known problem is not detected during the inspection; (2) the probability of the problem not being detected during the inspection; (3) whether the inspection area is difficult to access; and (4) the possibility of damage to an adjacent structure as a result of the problem.

These factors have led the FAA to establish an aging commuter-class aircraft policy that requires incorporating a known design change when the change could replace a critical repetitive inspection. With this policy in mind, the FAA recently conducted a review of existing ADs that apply to certain Pilatus Britten-Norman Ltd. (PBN) BN–2A and BN–2A Mk 111 series airplanes. Assisting the FAA in this review were (1) Pilatus Britten-Norman Ltd.; (2) the Regional Airlines Association (RAA); (3) the Civil Aviation Authority of the United Kingdom; and, (4) several operators of the affected airplanes.

From this review, the FAA has identified Airworthiness Directive 75–24–07 R1, Amendment 39–4571, as one that should be superseded with a new AD that would require a modification eliminating the need for short-interval and critical repetitive inspections. AD 75–24–07 R1 currently requires repetitively inspecting the LH rudder bar assembly for cracks and loose fasteners on certain PBN BN–2A and BN–2A Mk 111 series airplanes, and replacing any cracked part.

Related Service Information

Pilatus Britten-Norman, Ltd. has issued Service Bulletin (SB) No. BN–2/SB. 111, Issue: 1, dated October 25, 1977 and SB BN–2/SB.56, Issue 2, dated February 13, 1978 which specifies procedures for installing Modification NB/M/948 which is a new, strengthened LH slider tube unit that does not require the repetitive inspection of AD 75–24–07 R1.

FAA's Determination

Based on its aging commuter-class aircraft policy and after reviewing all available information, the FAA has determined that AD action should be taken to eliminate the repetitive short-interval inspections required by AD 75–24–07 R1, Amendment 39–4571, and to prevent failure of the LH rudder bar assembly, which, if not detected and corrected, could result in loss of control of the airplane.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other PBN BN–2A and BN–2A Mk 111 series airplanes of the same type design, the proposed AD would supersede AD 75–24–07 R1 with a new AD that would require:

(1) Inspecting for cracks in the LH rudder bar assembly using a dye penetrant method, and measuring the thickness of the slider tube to determine the applicability of the proposed action, either .056-inch (17 gauge) or .036-inch (20 gauge),

(2) Repetitively inspecting for cracks until the accumulation of a determined number of landings, then accomplishing Modification NB/M/948 by installing a new, strengthened central piller/slider tube assembly, part number (P/N) NB–45–A1–2975, and

(3) If cracks are found during any inspection, prior to further flight, accomplish Modification NB/M/948 by installing P/N NB–45–A1–2975.

The proposed actions would be accomplished in accordance with Pilatus SB No. BN–2/SB. 111, Issue: 1, dated October 25, 1977, and Pilatus SB No. BN–2/SB.56, Issue 2, dated February 13, 1978.

Proposed Compliance Time

For airplanes equipped with the thinner (20 gauge) slider tubes, the proposed AD would require accomplishing the modification upon the total accumulation of 2,500 landings, or within the next 500 landings after the effective date of the proposed action, whichever occurs later; and for airplanes equipped with the thicker (17 gauge) slider tubes, the proposed AD would require accomplishing the modification within the next 500 landings after the effective date of the proposed action or upon the total accumulation of 5,000 landings, whichever occurs later.

Note: If the operator has not recorded the number of landings, they can be figured by calculating 3 landings per 1 hour time-in-service.

Cost Impact

The FAA estimates that 109 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 15 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $560 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $159,140 or $1,460 per airplane. The FAA has no way to determine the number of affected owners/operators who may have accomplished the proposed action and therefore must assume that none of the affected owners/operators of the affected airplanes have accomplished the proposed action.

The Proposed Action's Impact Utilizing the FAA's Aging Commuter Class Aircraft Policy

The intent of the FAA's aging commuter airplane program is to ensure safe operation of commuter-class airplanes that are in commercial service without adversely impacting private operators. Of the approximately 109 airplanes in the U.S. registry that would be affected by the proposed AD, the FAA has determined that approximately 30 percent are operated in scheduled passenger service by 11 different operators. A significant number of the remaining 70 percent are operating in other forms of air transportation such as air cargo and air taxi.

The average utilization of the fleet for those airplanes in commercial commuter service is approximately 20 to 40 landings per week with approximately 3 landings per 1 hour TIS per week. Based on these figures, operators of commuter-class airplanes involved in commercial operation would have to accomplish the proposed modification within approximately 3 to 5 calendar months after the proposed AD would become effective. For private owners, who typically operate their airplanes between 100 to 200 landings per year, this would allow 12 to 25 years before the proposed modification would be mandatory.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT

Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for part 39 continues to read as follows:

PART 39—AIRWORTHINESS DIRECTIVES

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD), 75–24–07 R1, Amendment 39–4571, and by adding a new AD to read as follows:

Pilatus Britten-Norman: Docket No. 96–CE–24–AD; Supersedes AD 75–24–07 R1, Amendment 39–4571.

Applicability: BN–2A and BN–2A Mk 111 airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished. For operators who have not kept records of the landings of the airplane, use 3 landings per 1 hour time-in-service (TIS).

To prevent failure of the left-hand (LH) rudder bar assembly, which, if not detected and corrected, could result in loss of control of the airplane, accomplish the following:

(a) Within the next 500 landings after the effective date of this AD, inspect the LH rudder bar unit for cracks (using a dye penetrant method), and measure the thickness/gauge of the LH slider tube in accordance with paragraph 1. of the ACTION Inspection section of Pilatus Britten-Norman (PBN) Service Bulletin (SB) No. BN–2/SB.111, Issue 1, dated October 25, 1977 or paragraphs 1 through 3 in the ACTION section of PBN BN–2/SB.56, Issue 2, dated February 13, 1978.

(1) If no cracks are visible, accomplish the following in accordance with paragraph 3a. and 3b. of the ACTION Inspection section of PBN SB No. BN–2/SB.111, dated October 25, 1977:

(i) For airplanes that have slider tubes with 17 gauge metal (.056-inch thick), continue to inspect the LH rudder bar assembly for cracks every 500 landings and,

(ii) Upon the total accumulation of 5,000 landings or within the next 500 landings after the effective date of this AD, whichever occurs later, accomplish Modification NB/M/948 by installing a new, strengthened slider tube unit, part number (P/N) NB–45-A1–2975, in accordance with the ACTION Rectification section of PBN SB BN–2/SB.111, dated October 25, 1977.

(iii) For airplanes that have slider tubes with 20 gauge metal (.036-inch) continue to inspect the LH rudder bar assembly for cracks every 250 landings and,

(iv) Upon the total accumulation of 2,500 landings or within the next 500 landings after the effective date of this AD, whichever occurs later, accomplish Modification NB/M/948 by installing a new, strengthened slider tube unit, part number (P/N) NB–45-A1–2975, in accordance with the ACTION Rectification section of PBN SB BN–2/SB.111, dated October 25, 1977.

(2) If cracks are visible during any inspection required by this AD, prior to further flight, accomplish Modification NB/M/948 in accordance with the ACTION Rectification section of PBN SB BN–2/SB.111, dated October 25, 1977.

(b) Accomplishing Modification NB/M/948 using P/N NB–45-A1–2975 at any time prior to the required number of accumulated landings in paragraphs (a)(1)(ii) and (iv) of this AD is terminating action for the repetitive inspections.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Division, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; or the Manager, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Division or the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Brussels Aircraft Certification Division or the Small Airplane Directorate.

(e) All persons affected by this directive may obtain copies of the document referred to herein upon request to Pilatus Britten-Norman Ltd., Bembridge, Isle of Wight, United Kingdom PO35 5PR; telephone 44–1983 872511; facsimile 44–1983 873246; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment supersedes AD 75–24–07 R1, Amendment 39–4571.

Issued in Kansas City, Missouri, on February 24, 1997.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–5157 Filed 2–28–97; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 97–AEA–04]

Proposed Establishment of Class E Airspace; Warren, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish Class E airspace at Warren, PA. The development of a new Standard Instrument Approach Procedure (SIAP), Helicopter Point In Space Approach, based on the Global Positioning System (GPS) and serving Warren General Hospital Heliport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations to the heliport. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before April 10, 1997.

ADDRESSES: Send comments on the proposed rule in triplicate to: Manager, Operations Branch, AEA–530, Docket No. 97–AEA–04, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430. The official docket may be examined in the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Operations Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Operations Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–AEA–04". The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace extending upward from 700 feet above the surface (AGL) at Warren, PA. A GPS 314 Point in Space SIAP has been developed to serve Warren General Hospital Heliport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for IFR operations at the helistop. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace extending upward from 700 feet above the surface are published in Paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA E5 Warren, PA [New]

Warren General Hospital Heliport, PA
Point In Space Coordinates
(Lat. 41°50'03" N., long. 79°08'11" W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Point In Space serving Warren General Hospital Heliport.

* * * * *

Issued in Jamaica, New York, on February 20, 1997.

James K. Buckles,

Acting Manager, Air Traffic Division, Eastern Region.

[FR Doc. 97–5051 Filed 2–28–97; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 97–AEA–07]

Proposed Establishment of Class E Airspace; Frostburg, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish Class E airspace at Frostburg, PA. The development of a new Standard Instrument Approach Procedure (SIAP), Helicopter Point In Space Approach based on the Global Positioning System (GPS), and Serving Punxsutawney Area Hospital Heliport, has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations to the heliport. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before April 15, 1997.

ADDRESSES: Send comments on the proposed rule in triplicate to: Manager, Operations Branch, AEA–530, Docket No. 97–AEA–07, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430. The official docket may be examined in the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building, #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Operations Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace

Specialist, Operations Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal.
Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–AEA–07". The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace extending upward from 700 feet above the surface (AGL) at Frostburg, PA.A GPS 039 Point In Space Approach has been developed for Punxsutawney Area Hospital Heliport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this approach and for IFR operations to the heliport. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace extending upward from 700 feet above the surface are published in Paragraph 6005 of FAA Order Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA E5 Frostburg, PA [New]

Punxsutawney Area Hospital Heliport, PA
Point In Space Coordinates
(Lat. 40°57'04" N., long. 79°01'24" W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Point In Space serving Punxsutawney Area Hospital Heliport, excluding that portion that coincides with the Punxsutawney, PA Class E airspace area.

* * * * *

Issued in Jamaica, New York, on February 19, 1997

James K. Buckles,

Acting Manager, Air Traffic Division, Eastern Region.

[FR Doc. 97–5052 Filed 2–28–97; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 97–AEA–11]

Proposed Establishment of Class E Airspace; Kittanning, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish Class E airspace at Kittanning, PA. The development of a new Standard Instrument Approach Procedure (SIAP), Helicopter Point In Space Approach, based on the Global Positioning System (GPS), and serving Armstrong County Memorial Hospital Heliport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for instrument Flight Rules (IFR) operations to the airport. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before April 10, 1997.

ADDRESSES: Send comments on the proposed rule in triplicate to: Manager, Operations Branch AEA–530, docket No. 97–AEA–11, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430. The official docket may be examined in the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Operations Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Operations Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal.
Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–AEA–11". The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistance Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace extending upward from 700 feet above the surface (AGL) at Kittanning, PA. A GPS 039 Point In Space Approach has been developed to serve Armstrong County Memorial Hospital Heliport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this approach and for IFR operations to the heliport. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace extending upward from 700 feet above the surface are published in Paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration purposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

AEA PA E5 Kittanning, PA [New]

Armstrong County Memorial Hospital Heliport, PA
Point In Space Coordinates
(Lat. 40°47'49" N., long 79°34'18" W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Point In Space serving Armstrong County Memorial Hospital Helistop.

* * * * *

Issued in Jamaica, New York, on February 19, 1997.

James K. Buckles,

Acting Manager, Air Traffic Division, Eastern Region.

[FR Doc. 97–5053 Filed 2–28–97; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 97–AEA–09]

Proposed Establishment of Class E Airspace; Donora, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish Class E airspace at Donora, PA. The Development of a new Standard Instrument Approach Procedure (SIAP), Helicopter Point In Space Approach based on the Global Positioning System (GPS), and serving Monongahela Valley Hospital Heliport, has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations to the heliport. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before April 10, 1997.

ADDRESSES: Send comments on the proposed rule in triplicate to: Manager, Operations Branch, AEA–530, Docket No. 97–AEA–09, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430. The official docket may be examined in the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

An informal docket may also be examined during normal business hours in the Operations Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT:

Mr. Francis T. Jordan, Jr., Airspace Specialist, Operations Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–AEA–09". The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace extending upward from 700 feet above the surface (AGL) at Donora, PA.A GPS 349 Point In Space Approach has been developed to serve the Monogahela Valley Hospital Heliport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this approach and for IFR operations to the heliport. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace extending upward from 700 feet above the surface are published in Paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1)— is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA E5 Donora, PA [New]

Monongahela Valley Hospital Heliport, PA
Point In Space Coordinates
(Lat. 40°10'26" N, long. 79°54'29" W)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Point In Space serving Monongahela Valley Hospital Heliport, excluding that portion that coincides with the Monongahela, PA Class E airspace and the Pittsburgh PA Class E airspace area.

* * * * *

Issued in Jamaica, New York, on February 20, 1997.

James K. Buckles,

Acting Manager, Air Traffic Division, Eastern Region.

[FR Doc. 97–5055 Filed 2–28–97; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 97–AWP–7]

Proposed Revocation of Class E Airspace; Goffs, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revoke the Class E airspace areas at Goffs, CA. This action is being taken because these airspace areas are presently described within the Bullhead City, AZ, Class E airspace area. The intended effect of this action is to revoke the controlled airspace since the purpose and requirements for these airspace areas no longer exist at Goffs, CA.

DATES: Comments must be received on or before March 31, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Operations Branch, AWP–530, Docket No. 97–AWP–7, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business at the Office of the Manager, Operations Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT:

William Buck, Airspace Specialist, Operations Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6556.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–AWP–7." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Operations Branch. Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with the rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Operations Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) revoking the Class E airspace areas at Goffs, CA. This proposed action is taken because the Class E airspace areas at Goffs, CA, are presently described within the Class E airspace areas at Bullhead City, CA. The intended effect of this action is to revoke controlled airspace since the purpose and requirements for these airspace areas no longer exist at Goffs, CA. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be removed subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace.

* * * * *

AWP CA E5 Goffs North, CA [Removed]

AWP CA E5 Goffs South, CA [Removed]

* * * * *

Issued in Los Angeles, California, on February 11, 1997.

Leonard A. Mobley,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 97–5056 Filed 2–28–97; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 97–AEA–17]

Proposed Amendment to Class E Airspace; Bedford, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Bedford, PA. The development of new Standard Instrument Approach procedures (SIAP) at Bedford County Airport based on the Global Positioning System (GPS) has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for instrument flight rules (IFR) operations at the airport.

DATES: Comments must be received on or before March 25, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, AEA–530, Docket No. 97–AEA–17, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Operations Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Operations Branch, AEA–530 F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written date views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to airspace Docket No. 97–AEA–17." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace area at Bedford, PA. A GPS RWY 14 SIAP and a GPS RWY 32 SIAP has been developed for the Bedford County Airport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate these SIAPs and for IFR operations at the airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace Designation listed in this document would be published subsequently in the order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA E5 Bedford, PA [Revised]

Bedford County Airport, Bedford, PA
(Lat. 40°05'07" N., long. 78°30'44" W.)
St. Thomas VORTAC, PA
(Lat. 39°56'00" N., long. 77°57'03" W.)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Bedford County Airport and within 4 miles each side of the St. Thomas VORTAC 286° radial extending from 12.2 miles west of the VORTAC to the 10-mile radius of the airport, excluding that portion which overlies the Altoona, PA Class E airspace area and the Somerset, PA Class E airspace area.

* * * * *

Issued in Jamaica, New York, on February 12, 1997.

James K. Buckles,

Acting Manager, Air Traffic Division, Eastern Region.

[FR Doc. 97–5057 Filed 2–28–97; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 97–AWP–8]

Proposed Amendment of Class E Airspace; Willcox, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Willcox, AZ. An airspace review of the Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 21/3 at Cochise County Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Cochise County Airport, Willcox, AZ.

DATES: Comments must be received on or before March 21, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Operations Branch, AWP–530, Docket No. 97–AWP–8, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Operations Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: William Buck, Airspace Specialist, Operations Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15300 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6556.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–AWP–8." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Operations Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Operations Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class E airspace area at Willcox, AZ. An airspace review of the GPS SIAPs at Cochise County Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS RWY 21/3 SIAP at Cochise County Airport, Willcox, AZ. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP AZ E5 Willcox, AZ [Revised]

Cochise County Airport, AZ
(Lat. 32°14'39" N, long. 109°53'38" W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Cochise County Airport and within 5 miles each side of the 225° bearing from the Cochise County Airport extending from the 6.5-mile radius to 14.5 miles southwest of the Cochise County Airport and within 5.5 miles southeast and 4.5 miles northwest of the 055° bearing from the Cochise County Airport extending from the 6.5-mile radius to 14.5 miles northeast of the Cochise County Airport.

* * * * *

Issued in Los Angeles, California, on February 13, 1997.

Sabra W. Kaulia,

Assistant Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 97–5178 Filed 2–28–97; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 97–ANM–3]

Proposed Amendment of Class E Airspace; Salt Lake City, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the Salt Lake City, Utah, Class E airspace. This action is necessary to fully contain aircraft, holding at WAATS Intersection, within controlled airspace. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before March 25, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, ANM–530, Federal Aviation Administration, Docket No. 97–ANM–3, 1601 Lind Avenue S.W., Renton, Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: James Riley, ANM–532.2, Federal Aviation Administration, Docket No. 97–ANM–3, 1601 Lind Avenue S.W., Renton, Washington 98055–4056; telephone number (206) 227–2537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in

developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal.
Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–ANM–3." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Operations Branch, ANM–530, 1601 Lind Avenue S.W., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace at Salt Lake City, Utah, to fully contain aircraft, holding a WAATS Intersection, within controlled airspace. Currently, there is a possibility that aircraft holding at WATTS intersection, at certain altitudes, would be operating outside controlled airspace. This amendment would correct that situation. The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM UT E5 Salt Lake City, UT [Revised]

Salt Lake City International Airport, UT
(Lat. 40°47'13" N, long. 111°58'08" W)

That airspace extending upward from 700 feet above the surface bounded by a line beginning at lat. 41°00'00" N, long. 111°45'03" W, thence south along long. 111°45'03" W, to lat. 40°22'30" N, thence southeast to lat. 40°10'20" N, long. 111°35'03" W, thence southwest to lat. 40°03'30" N, long. 111°48'33" W, thence northwest to lat. 40°43'00" N, long. 112°22'03" W, thence north along long. 112°22'03" W, to lat. 41°00'00" N, thence east long lat. 41°00'00" N, to the point of beginning; that airspace extending upward from 1,200 feet above the surface bounded on the north by lat. 41°00'00" N, on the east by long. 111°25'33" W, thence south to lat. 40°11'00" N, thence east to lat. 40°11'00" N, long, 110°15'00" W, thence southwest to lat. 39°33'00" N, long. 110°55'00" W, thence southwest to lat. 39°04'00" N, long, 112°27'30" W, thence northwest to lat. 39°48'00" N, long, 112°50'00" W, thence west via lat. 39°48'00" N, to the east edge of Restricted Area R–6402A, and on the west by the east edge of Restricted Area R–6402A, Restricted Area R–6402B and Restricted Area R–6406A and long. 113°00'03" W; excluding the portion within the Price, UT and the Delta, UT, airspace areas; that airspace east of Salt Lake City extending upward from 11,000 feet MSL bounded on the northwest by the southeast edge of V–32, on the southeast by the northwest edge of V–235, on the southwest by the northeast edge of V–101 and on the west by long. 111°25'33" W; excluding that airspace within the Evanston, WY, 1,200-foot Class E airspace area; that airspace southeast of Salt Lake City extending upward from 13,500 feet MSL bounded on the northeast by the southwest edge of V–484, on the south by the north edge of V–200 and on the west by long. 111°25'33" W; excluding the portion within Restricted Area R–6403 and the Bonneville, UT Class E airspace area.

* * * * *

Issued in Seattle, Washington, on February 11, 1997.

Glenn A. Adams III,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 97–5181 Filed 2–28–97; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–AAL–14]

Proposed Modification of Colored Federal Airway Amber 15 (A–15), AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify Colored Federal Airway A–15 due to the decommissioning and subsequent removal of the Oliktok, AK, Nondirectional Beach (NDB) from the National Airspace System (NAS).

DATES: Comments must be received on or before April 17, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AAL–500, Docket No. 96–AAL–14, Federal Aviation Administration, 222 West 7th Avenue, #14, Anchorage, AK 99533.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Bil Nelson, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.
Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96–AAL–14." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, Attention: Airspace and Rules Division, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 of the Code of Federal Aviation Regulations part 71 (14 CFR part 71) to modify Colored Federal Airway A–15 due to the decommissioning and subsequent removal of the Oliktok, AK, NDB from the NAS by the United States Air Force on July 10, 1996. The FAA is taking this action to redefine Airway A–15 by removing that portion of the route beyond the Put River, AK, NDB. Colored Federal airways are published in paragraph 6009(c) of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Colored Federal airway listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6009(c)—Amber Federal Airways

* * * * *

A–15 [Revised]

From Ethelda, BC, Canada, NDB via Nichols, AK, NDB; Sumner Strait, AK, NDB; Coghlan Island, AK, RBN; Haines, AK, RBN; Burwash, YT, Canada, RBN; Nabesna, AK, NDB; to Delta Junction, AK, NDB. From Chena, AK, NDB via Chandalar Lake, AK NDB; Put River, AK, NDB. The airspace within Canada is excluded (Joins Canadian Jet Route J–502).

* * * * *

Issued in Washington, DC, on February 21, 1997.

Jeff Griffith,

Program Director for Air Traffic Airspace Management.

[FR Doc. 97–5070 Filed 2–28–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 7, 10, 145, 173, 174, 181, 191

[RIN 1515–AB95]

Drawback

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This document extends the period of time within which interested members of the public may submit written comments on proposed amendments to the Customs Regulations regarding drawback for an additional 30 days. The proposed amendments would revise the regulations to implement the extensive and significant changes to the drawback law contained in the Customs modernization portion of the North American Free Trade Agreement Implementation Act; change some administrative procedures involving manufacturing and unused merchandise drawback; and generally simplify and improve the editorial clarity of the regulations.

DATES: Comments must be received on or before April 24, 1997.

ADDRESSES: Comments (preferably in triplicate) must be submitted to U.S. Customs Service, ATTN: Regulations Branch, Franklin Court, 1301 Constitution Avenue, NW., Washington, D.C. 20229, and may be inspected at the Regulations Branch, 1099 14th Street, NW., Suite 4000, Washington, D.C. All comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between 9:00 a.m. and 4:30 p.m. on normal business days at the latter address above.

FOR FURTHER INFORMATION CONTACT: Paul Hegland, Office of Regulations and Rulings, (202–482–7040).

SUPPLEMENTARY INFORMATION:

Background

Customs published a document in the **Federal Register** on January 21, 1997 (62 FR 3082), inviting the public to comment on proposed amendments to its regulations regarding drawback. Specifically, the document would revise the regulations to implement the extensive and significant changes to the drawback law contained in the Customs modernization portion of the North American Free Trade Agreement Implementation Act; change some administrative procedures involving manufacturing and unused merchandise drawback; and generally simplify and improve the editorial clarity of the regulations.

A trade association comprised of many members has submitted a request to extend the period of time for comments on the proposed rule for an additional 30 days (until April 24, 1997), in order to have ample time to disseminate to its membership the proposed regulations, review them, meet to discuss changes, and then to prepare a uniform association position in this regard.

Customs believes under the circumstances that this request has merit. Accordingly, the period of time for the submission of comments is being extended as requested.

Dated: February 26, 1997.

John A. Durant,

Acting Assistant Commissioner, Office of Regulations and Rulings.

[FR Doc. 97–5145 Filed 2–28–97; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S–052]

RIN 1218–AB55

Exit Routes (Means of Egress)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Informal public hearing; reopening of written comment period.

SUMMARY: This notice schedules an informal public hearing regarding the notice of proposed rulemaking which OSHA issued on September 10, 1996 (61 FR 47712), concerning a proposed revision of the Agency's General Industry standards for Means of Egress (Subpart E of Part 1910). This notice also reopens the comment period for written responses to the proposed rule.

DATES: Notices of intention to appear at the informal public hearing must be postmarked by April 1, 1997. Hearing participants requesting more than 10 minutes for their presentations, and participants who will submit documentary evidence at the hearing, must submit the full text of their testimony and all documentary evidence to the Docket Office, postmarked no later than April 14, 1997. Written comments on the proposed standard must also be postmarked by April 14, 1997. The hearing will be held in Washington, D.C. and is scheduled to begin on April 29, 1997.

ADDRESSES: Comments, notices of intention to appear at the informal public hearing, testimony, and documentary evidence are to be submitted in quadruplicate to: Docket Office, Docket S–052; Room N2625; U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Ave., NW., Washington, DC. 20210 (Telephone: 202–219–7894).

Written comments, notices of intention to appear, testimony, and all other material related to the development of this proposed standard will be available for inspection and copying in the Docket Office, Room N2625, at the above address.

The hearing will be held in C5521, Seminar Room #4, of the U.S. Department of Labor (Frances Perkins Building), 200 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, Office of Information and Consumer Affairs, U.S. Department of Labor, Occupational Safety and Health Administration, Room N3647; 200 Constitution Avenue NW., Washington, DC 20210 (202–219–8148, FAX 202–219–5986).

SUPPLEMENTARY INFORMATION:

I. Background

On September 10, 1996, OSHA published a notice in the **Federal Register** (61 FR 47712) that proposed to revise Subpart E of Part 1910, Means of Egress. The purpose of the proposed revision was to rewrite the existing requirements of Subpart E in plain English so they would be more understandable to employers, employees, and others who use them. The proposal did not intend to change the regulatory obligations of employers or the safety and health protections provided to employees.

Although OSHA recognized that some portions of Subpart E may warrant updating, the Agency did not propose to update the requirements of Subpart E at this time. Instead, the proposal focused on rewriting the existing requirements in order to be easier to read, understand, and use. Toward this goal, the proposal used performance-oriented requirements where possible, reorganized the text to keep subject matter consistent, removed internal inconsistencies, and eliminated duplicate requirements. Additionally, OSHA proposed to change the name of Subpart E from "Means of Egress" to "Exit Routes."

OSHA also proposed two alternative plain English versions of the revision to Subpart E. The first version was organized in the traditional OSHA regulatory format. The second version used a question and answer format. OSHA invited interested parties to comment on the content and effectiveness of the proposed changes and on the plain English version of Subpart E that they preferred. The Agency established a comment period of 60 days for interested parties to submit written comments and to request a hearing on the proposed revision to Subpart E.

II. Response to Proposed Revision of Subpart E

The Agency received a total of 59 written comments in response to the proposed revision of Subpart E. A vast majority of the commenters supported the concept of rewriting the existing requirements of Subpart E in "plain English," even though many of these commenters suggested various means of improving the revision to Subpart E. A large majority of commenters also preferred the "traditional" format rather than the "question and answer" format. These commenters believe that the "question and answer" format may be appropriate for an appendix, but that the "traditional" format is clearer, makes it easier to locate answers to specific questions, and is easier to follow and understand.

Two of the commenters, the National Fire Protection Association (Ex. 5: 18) and Hallmark Cards (Ex.5: 51), requested a hearing in order to allow for a dialogue among life safety professionals; to have greater public involvement in the rulemaking process; and, to facilitate a full discussion of certain important issues.

Accordingly, OSHA has decided to schedule an informal public hearing in order to facilitate a full discussion of the proposed revision, and to address certain important issues resulting from the comments.

OSHA is scheduling a hearing only in Washington, DC. The hearing will commence on Tuesday, April 29, 1997. The Agency is also reopening the rulemaking record for Subpart E until April 1, 1997, to receive additional written comments on the proposed revision.

III. Hearing Issues

1. Most of the commenters suggested that OSHA either adopt, in total, the latest edition of the National Fire Protection Association (NFPA) Life Safety Code (NFPA–101); reference NFPA–101 for specific ways of meeting the performance requirements of the proposed standard; or, state in the regulatory text of the standard, or in the appendix to the standard, that compliance with NFPA–101 meets the requirements of the OSHA Subpart E standard. Should OSHA utilize one of these approaches? If so, how should the Agency implement the approach, especially with respect to periodic future revisions of NFPA–101? For example, if OSHA adopted a specific edition of NFPA–101, such as the 1994 edition, then the Subpart E provisions would not keep pace with future editions of NFPA–101. On the other hand, OSHA cannot actually adopt NFPA–101 as an OSHA standard without specifying a particular edition because of delegation restraints. OSHA is required to conduct rulemaking to update its standards, and this requirement would apply to any future changes to NFPA–101 if it were to be adopted as an OSHA standard.

2. One commenter strongly asserted that OSHA should base its standard on the model building codes, such as the Building Officials and Code Administrators International (BOCA) Code or the International Conference of Building Officials (ICBO) Code, rather than the NFPA Life Safety Code.

Many of the same issues apply here as those discussed above with regard to adopting NFPA–101. OSHA would like to receive information and testimony regarding the role of model building codes in the revision to Subpart E, including how, and if, the Agency should utilize these codes in the final rule.

3. Several commenters expressed concern that the performance-oriented nature of the proposed requirements may result in compliance problems. OSHA is interested in receiving comments as to whether some of the proposed requirements are so performance-oriented that they would not be easily enforced. Also, could some of the proposed provisions be interpreted in ways that would be inconsistent with previous interpretations relied on by OSHA or other authorities?

4. There were differing views regarding OSHA's proposed provisions dealing with exit capacity and the number of exits considered to be adequate for a workplace building. Some commenters supported the Agency's performance-oriented approach because they believe that OSHA standards should contain only general criteria for exit routes and that the more specific criteria pertaining to the number of exits and the capacity of exits are more appropriately enforced through local building and fire codes.

Other commenters opposed OSHA's approach because they believe that some of the proposed provisions are too general. These commenters suggested that OSHA reinstate more definitive criteria with respect to the number of exits and exit capacity for different types of workplaces.

OSHA requests information, comments, and testimony concerning the most appropriate and effective means of addressing exit capacity and the number of exits that need to be available in the broad array of workplaces covered by the OSHA standard, whether the workplace is a tower, single story building, or multistory building.

5. Several commenters disagreed with OSHA's proposed requirements for exit signs because the proposed version does not specify minimum physical characteristics for exit signs. These commenters contend that the requirements are too general and would create compliance problems for employers. Should OSHA retain specific criteria for exit signs? If so, what criteria should OSHA use?

6. Similarly, some commenters believe that the revised requirements for exit illumination are also too general and would result in compliance problems for employers. Should OSHA include specific criteria for the illumination of exits and exit signs?

7. Although OSHA has attempted to rewrite Subpart E in order to clarify and simplify requirements, are there provisions or terms that are still too technical or difficult to understand? If so, please identify the provision or term and suggest a recommended action.

8. OSHA did not intend the proposed revision of Subpart E to impose any compliance obligations on employers beyond those imposed by existing Subpart E. Did OSHA achieve that goal, or would employers following the proposed revision be required to change their current practices in any way? If so, which proposed requirements would impose new obligations and how would they do so?

9. Do any of the proposed requirements provide greater safety and health protections for employees? If yes, which requirements do so and how would they provide additional protection to employees?

10. Do any of the proposed requirements present technological feasibility problems for affected employers? If yes, which requirements do so and what problems do they present?

OSHA invites comments and testimony on these issues and any other issues pertaining to the proposed revision of Subpart E.

Public Participation

Interested persons are requested to submit written data, views, and arguments concerning the proposal of September 10, 1996, and the additional issues raised in this document. These comments must be postmarked by April 14, 1997, and submitted in quadruplicate to the Docket Office, Docket No. S–052 Room N2625, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Washington, DC. 20210.

All written comments received within the specified comment period will be made a part of the record and will be available for public inspection and copying at the above Docket Office address.

Notice of Intention To Appear at the Informal Hearing

Pursuant to section 6(b)(3) of the Occupational Safety and Health Act, an opportunity to submit oral testimony concerning the issues raised by the

proposed standard will be provided at an informal public hearing to be held in Washington, DC. on April 29, 1997, and extending through May 1, 1997, depending on the number of persons intending to participate in the hearing.

The hearing will commence at 9:30 a.m. on April 29, 1997, in C5521, Seminar Room #4, of the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC. 20210.

All persons desiring to participate in the hearing must file in quadruplicate a notice of intention to appear, postmarked on or before April 1, 1997. The notice of intention to appear, which will be available for inspection and copying at the OSHA Docket Office (Room N2625), telephone (202) 219–7894, must contain the following information:

1. The name, address, and telephone number of each person to appear;
2. The capacity in which the person will appear;
3. The approximate amount of time required for the presentation;
4. The issues that will be addressed;
5. A brief statement of the position that will be taken with respect to each issue; and,
6. Whether the party intends to submit documentary evidence and, if so, a brief summary of it.

The notice of intention to appear shall be mailed to: Docket Office, Docket S–052, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC. 20210; telephone (202) 219–7894.

A notice of intention to appear also may be transmitted by facsimile to (202) 219–5046 (Attention: Docket S–052), by the same date, provided the original and 3 copies are sent to the same address and postmarked no more than 3 days later.

Filing of Testimony and Evidence Before the Hearing

Any party requesting more than 10 minutes for a presentation at the hearing, or who will submit documentary evidence, must provide in quadruplicate, the complete text of the testimony, including any documentary evidence to be presented at the hearing. One copy shall not be stapled or bound and be suitable for copying. These materials must be provided to the Docket Office at the address above and be postmarked no later than April 14, 1997.

Each such submission will be reviewed in light of the amount of time requested in the notice of intention to appear. In those instances when the information contained in the submission does not justify the amount of time requested, a more appropriate amount of time will be allocated and the participant will be notified of that fact prior to the informal public hearing.

Any party who has not substantially complied with this requirement may be limited to a 10 minute presentation, and may be requested to return for questioning at a later time.

Any party who has not filed a notice of intention to appear may be allowed to testify for no more than 10 minutes as time permits, at the discretion of the Administrative Law Judge, but will not be allowed to question witnesses.

Notice of intention to appear, testimony, and evidence will be available for copying at the Docket Office at the address above.

Conduct and Nature of the Hearing

The hearing will commence at 9:30 a.m. on April 29, 1997. At that time, any procedural matters pertaining to the proceeding will be resolved.

The nature of an informal rulemaking hearing is established in the legislative history of section 6 of the Occupational Safety and Health Act and is reflected by OSHA's rules of procedure for hearings (29 CFR 1911.15(a)). Although the presiding officer is an Administrative Law Judge, and limited questioning by persons who have filed notices of intention to appear is allowed on crucial issues, the proceeding is informal and legislative in type. The Agency's intent, in essence, is to provide interested persons with an opportunity to make effective oral presentations that can proceed expeditiously in the absence of procedural restraints that impede or protract the rulemaking process.

Additionally, since the hearing is primarily for information gathering and clarification, it is an informal administrative proceeding rather than one of an adjudicative nature.

The technical rules of evidence, for example, do not apply. The regulations that govern hearings and the pre-hearing guidelines to be issued for this hearing will ensure fairness and due process and also facilitate the development of a clear, accurate, and complete record. Those rules and guidelines will be interpreted in a manner that furthers that development. Thus, questions of relevance, procedure, and participation generally will be decided so as to favor development of the record.

The hearing will be conducted in accordance with 29 CFR Part 1911. It should be noted that § 1911.4 specifies that the Assistant Secretary may, upon reasonable notice, issue alternative procedures to expedite proceedings or for other good cause.

The hearing will be presided over by an Administrative Law Judge who makes no decision or recommendation on the merits of OSHA's proposal. The responsibility of the Administrative Law Judge is to ensure that the hearing proceeds at a reasonable pace and in an orderly manner. The Administrative Law Judge, therefore, will have all of the powers necessary and appropriate to conduct a full and fair informal hearing as provided in 29 CFR 1911, including the powers:

1. To regulate the course of the proceedings;
2. To dispose of procedural requests, objections, and comparable matters;
3. To confine the presentations to the matters pertinent to the issues raised;
4. To regulate the conduct of those present at the hearing by appropriate means;
5. At the Judge's discretion, to question and permit the questioning of any witness and to limit the time for questioning; and,
6. At the Judge's discretion, to keep the record open for a reasonable, stated time (known as the post-hearing comment period) to receive written information and additional data, views, and arguments from any person who has participated in the oral proceedings.

OSHA recognizes that there may be interested persons who, through their knowledge of safety or their experience in the subject matter of this proceeding, would wish to endorse or support certain provisions in the proposed standard. OSHA welcomes such supportive comments in order that the record of this rulemaking will present a balanced picture of the public response on the issues involved.

Signed at Washington, DC. this 26th day of February 1997.

Gregory R. Watchman,

Acting Assistant Secretary of Labor.

[FR Doc. 97–5176 Filed 2–28–97; 8:45 am]

BILLING CODE 4510–26–P

Mine Safety and Health Administration

30 CFR Parts 56, 57, 62, 70, and 71

RIN 1219–AA53

Health Standards for Occupational Noise Exposure

AGENCY: Mine Safety and Health Administration, (MSHA) Labor.

ACTION: Proposed rule; change of dates for hearings.

SUMMARY: Due to a scheduling conflict, MSHA is changing the dates of two of the public hearings announced in the **Federal Register** on February 6, 1997 (62 FR 5554).

DATES: The public hearings are scheduled to be held at the following locations on the dates indicated:

May 6, 1997—Beaver, West Virginia (Beckley)
May 8, 1997—St. Louis, Missouri
May 13, 1997—Denver, Colorado
May 15, 1997—Las Vegas, Nevada
May 28, 1997—Atlanta, Georgia
May 30, 1997—Washington, DC

Each hearing will last from 9:00 a.m. to 5:00 p.m., but will continue into the evening if necessary.

The record will remain open after the hearings until June 20, 1997.

ADDRESSES: The hearings will be held at the following locations:

May 6, 1997, National Mine Health & Safety Academy, Auditorium, 1301 Airport Road, Beaver, West Virginia (Beckley) 25813.
May 8, 1997, Harley Hotel, North Ballroom, 3400 Rider Trail South, St. Louis, Missouri 63134.
May 13, 1997, Four Points Sheraton Hotel, Mount Evans Room, 3535 Quebec Street, Denver, Colorado 80207.
May 15, 1997, Bourbon Street Hotel, 120 E. Flamingo Road, Las Vegas, Nevada 89109.
May 28, 1997, Holiday Inn Airport, 5010 Old National Highway, Atlanta, Georgia 30349.
May 30, 1997, Department of Labor, Frances Perkins Building, Auditorium, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, phone 703–235–1910.

SUPPLEMENTARY INFORMATION: On December 17, 1996, MSHA published in the **Federal Register** (61 FR 66348) a proposed rule to revise the Agency's existing health standards for occupational noise. On February 6, 1997, MSHA published in the **Federal Register** (62 FR 5554) a notice extending the comment period to April 21, 1997. In that same notice, the Agency announced public hearings and stated that the rulemaking record will close on June 16, 1997.

Due to a scheduling conflict, MSHA is changing the dates of the Atlanta, Georgia and Washington, DC hearings. The Agency has learned that the American Industrial Hygiene Association (AIHA) and the American Conference of Governmental Industrial Hygienists (ACGIH) will be holding their joint annual "Conference and Exposition" the week of May 17–23, 1997. MSHA believes that many members of the AIHA and ACGIH will be interested in attending the Agency's hearings on occupational noise exposure, including several members of the Agency's staff working on the noise proposal. Therefore, the Agency has changed the hearing for Atlanta, Georgia to May 28, 1997, and the hearing for Washington, DC to May 30, 1997. To allow for the submission of posthearing comments, the record would remain open until June 20, 1997.

Dated: February 24, 1997.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 97–5073 Filed 2–28–97; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–97–005]

RIN 2115–AE46

Special Local Regulations; Charleston to Bermuda Sailboat Race, Charleston, SC

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish temporary special local regulations for the Charleston to Bermuda Sailboat Race. The race would start on May 11, 1997, between the hours of 11 a.m. and 3 p.m. Eastern Daylight Time (EDT) near Waterfront Park on the Charleston Peninsula, and would transit out to sea by the South, Mount Pleasant, and Fort Sumter Ranges in Charleston Harbor. The nature of the event and the closure of portions of Charleston Harbor creates an extra or unusual hazard on the navigable waters of Charleston Harbor, Charleston, SC. These regulations are necessary for the safety of life on the navigable waters during the event.

DATES: Comments must be received on or before April 2, 1997.

ADDRESSES: Comments may be mailed to Commander, U.S. Coast Guard Group Charleston, 196 Tradd Street, Charleston, SC 29401, or may be delivered to the Operations Office at the same address between 7:30 a.m. and 3:30 p.m. Monday through Friday, except federal holidays. The telephone number is (803) 724–7621.

FOR FURTHER INFORMATION CONTACT: ENS M.J. DaPonte, Project Manager, Coast Guard Group Charleston, SC at (803) 724–7621.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD07–97–005) and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons desiring acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in the view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Project Manager at the address under **ADDRESSES**. If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at the time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The proposed regulations are needed to provide for the safety of life during the start of the Charleston to Bermuda Sailboat Race. These proposed regulations are intended to promote safe navigation in Charleston Harbor immediately before, during, and immediately after the start of the race by controlling the traffic entering, exiting, and traveling within the regulated area. The anticipated concentration of commercial traffic, spectator vessels, and participating vessels associated with the race poses a safety concern which is addressed in these proposed special local regulations.

The proposed regulations would not permit the entry or movement of spectator vessels and other non-participating vessel traffic between the starting area at the southern end of Commercial Anchorage Area D (33 CFR 110.173), and the entrance to the Charleston Harbor jetties on Saturday, May 11, 1997, from 10 a.m. to 3 p.m. EDT. These proposed regulations would permit the movement of spectator vessels and other non-participants within the regulated area before the start of the race, and after the last participant clears the Charleston Harbor jetties at the discretion of the Coast Guard Patrol Commander.

Regulatory Evaluation

This proposal is not a major significant regulatory action under section 3(f) of executive order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. The proposed regulations would last for only 5 hours on May 11, 1997.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small Entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

The Coast Guard expects the economic impact of this proposal to be minimal, and certifies under 5 U.S.C. 605(b) that this proposal, if adopted, would not have a significant impact on a substantial number of small entities. The regulated area would be in effect for only 5 hours in a limited area of Charleston harbor.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

Federalism

The Coast Guard has analyzed this proposal in accordance with the principals and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has reviewed this action and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2(34)(h) of Commandant Instruction M16475.1B. A written Categorical Exclusion Determination will be prepared and included as part of the final rule.

List of Subjects in 33 CFR Part 1009

Marine safety, Navigation (water), Reporting and record keeping requirements, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46.

2. A new section 100.725 is added to read as follows:

§ 100.725 Charleston to Bermuda Sailboat Race; Charleston Harbor, Charleston, SC.

(a) Definitions:

(1) Regulated area. The regulated area includes all waters of Charleston Harbor, Charleston, SC and the Atlantic Ocean within the following points:

Point	Latitude	Longitude
A	32°47'06" N.	079°55'25" W, then to
B	32°47'06" N.	079°55'05" W, then to
C	32°46'00" N.	079°55'00" W, then to
D	32°45'41" N.	079°54'37" W, then to
E	32°45'41" N.	079°51'54" W, then to
F	32°44'30" N.	079°50'35" W, then to
G	32°43'24" N.	079°48'16" W, then to
H	32°43'02" N.	079°48'30" W, then to
I	32°44'14" N.	079°50'51" W, then to
J	32°45'25" N.	079°52'04" W, then to
K	32°45'25" N.	079°55'00" W, then to
L	32°45'41" N.	079°55'22" W, thence back to point A.

All coordinates referenced use datum: NAD 83.

(2) Coast Guard Patrol Commander. The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Charleston, SC.

(b) *Special local regulations.* (1) No person or vessel may enter, transit, or remain in the regulated area unless participating in the event or authorized by the Coast Guard Patrol Commander.

(2) The Coast Guard Patrol Commander may delay, modify, or cancel the race as conditions or circumstances require. The Coast Guard Patrol Commander shall monitor the start of the race with the race committee, to allow for a window of opportunity for the race participants to depart the harbor with minimal interference with inbound or outbound commercial traffic.

(3) Spectator and other non-participating vessels may follow the participants out to sea while maintaining a minimum distance of 500 yards behind the last participant, at the discretion of the Patrol Commander. Upon the transit of the last race participant past the outermost boundary of the Charleston jetties, all vessels may resume normal operations.

(c) *Effective Date.* This section is effective at 10 a.m. and terminates at 3 p.m. EDT on May 11, 1997.

Dated: February 20, 1997.

J.W. Lockwood,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 97-5066 Filed 2-28-97; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD08-96-056]

RIN 2115-AE47

Drawbridge Operation Regulation; Industrial Seaway Canal, MS

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a change to the regulation governing the operation of the double leaf bascule span drawbridge on Lorraine-Cowan Road, across the Industrial Seaway Canal, mile 11.3, near Handsboro, Harrison County, Mississippi. Growing industry and commercial retail development in the area over the past few years has increased vehicular traffic on Lorraine-Cowan Road. As a result, traffic has become unreasonably delayed during bridge openings that occur when local residents are enroute to work and school. This change in drawbridge operating regulations would provide relief for congested vehicular traffic during these periods and still provide for the reasonable needs of navigation. Mariners would have the benefit of one less closure period of the bridge to marine traffic per day than occurs under present operating regulations.

DATES: Comments must be received on or before May 2, 1997.

ADDRESSES: Comments should be mailed to Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130-3396, or may be delivered to Room 1313 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Phil Johnson, Bridge Administration Branch, at the address given above, telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested parties are invited to participate in the proposed rulemaking by submitting written views, comments, or arguments. Persons submitting comments should include their names and addresses, identify the bridge and give reasons for concurrence with or any recommended change in this proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Eighth Coast Guard District at the address under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If it is determined that the opportunity for oral presentations will aid in the implementation of this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

The Commander, Eighth Coast Guard District, will evaluate all comments received and determine a course of final action of this proposal. The proposed regulation may be changed in the light of comments received.

Drafting Information

The drafters of this regulation are Mr. Phil Johnson, project officer, and LCDR Jim Wilson, project attorney.

Discussion of Proposed Rules

Vertical clearance of the Lorraine-Cowan Road bridge across the Industrial Seaway Canal in the closed to navigation position is 29 feet above mean high water and 31 feet above mean low water. Navigation on the waterway consists of tugs with tows, commercial fishing vessels and recreational craft.

Data submitted by the Harrison County Board of supervisors shows that, based on five weekdays in a one week period, from Monday, October 7, 1996 through Friday, October 11, 1996, the average number of vehicles which crossed the bridge from 6:30 a.m. to 8:30 a.m. was 2,527 per day. The average number of vehicles which crossed the bridge on weekdays from 4:30 p.m. to 6 p.m. was 2,300 per day. Data taken over a 12 month period from October 1, 1995 through September 30, 1996 shows that the total number of vessels which required an opening of the bridge on weekdays between 6:30 a.m. and 8:30 a.m. was 97 vessels. The total number of vessels requiring an opening of the bridge on weekdays between the hours of 4:30 p.m. and 6 p.m. was 33 vessels.

Reduced to a monthly rate, the above data reflects the fact that on average, 50,540 vehicles cross and 8 vessels pass each month during the morning period and 46,000 vehicles cross and 3 vessels pass each month during the afternoon period.

Considering the few vessels that pass the bridge during the proposed regulated periods, and the fact that the proposal includes discontinuance of the one-hour noon closure, vessel operators will be able to adjust their arrival times at the bridge to avoid the temporary closure periods with very little inconvenience or added expense.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of the order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory polices and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under paragraph 2.B.2.g(5). of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g); section 117.255 also issued under the authority of Pub. L. 102-587, 106 Stat. 5039.

2. Section 117.680 is revised to read as follows:

§ 117.680 Industrial Seaway Canal

The draw of the Lorraine-Cowan Road Bridge across the Industrial Seaway Canal, mile 11.3, need not be opened from 6:30 a.m. to 8:30 a.m. and from 4:30 p.m. to 6 p.m., Monday through Friday, except Federal holidays.

Dated: February 3, 1997.

T.W. Josiah,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 97-5174 Filed 2-28-97; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 36, 51, 61 and 69

[CC Docket Nos. 96–45, 96–262, and 96–98; DA 97–333]

Implementation of the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Request for comment; extension of comment period.

SUMMARY: The Common Carrier Bureau of the Federal Communications Commission here extends time for parties to comment on issues raised by its January 9, 1997 Staff Analysis of economic cost computer models submitted in connection with several pending proceedings implementing the Telecommunications Act of 1996. The Public Notice setting the original comment deadlines was published in the **Federal Register** on February 5, 1997 (62 FR 5373).

DATES: Comments in response to the Public Notice are due February 18, 1997 [1], and replies are due February 24, 1997.

ADDRESSES: Commenters must file an original and four copies of their comments with the Office of the Secretary, Federal Communications Commission, Room 222, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: David A. Konuch, 202–418–0199 or Brad Wimmer, 202–418–1847.

SUPPLEMENTARY INFORMATION: Released: February 12, 1997.

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 97–4909 Filed 2–28–97; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 97–71, RM–8920]

Radio Broadcasting Services; Chatom and Grove Hill, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Capital Assets, Inc., permittee of Station WFOW(FM), Channel 291C3, Chatom, Alabama, requesting the reallotment of Channel 291C3 to Grove Hill, Alabama, and modification of the authorization for Station WFOW(FM) to specify Grove Hill as its community of license, pursuant to the provisions of Section 1.420(i) of the Commission's Rules. Coordinates used for Channel 291C3 at Grove Hill are 31–48–20 and 87–38–07.

DATES: Comments must be filed on or before April 14, 1997, and reply comments on or before April 29, 1997.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Capital Assets, Inc., Attn: Bennie E. Hewett, President, 311 Green Street, NE., Suite 211, Gainesville, GA 30501.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–71, adopted February 14, 1997, and released February 21, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–5182 Filed 2–28–97; 8:45 am]

BILLING CODE 6712–01–P

[1] Note: This document was received at the Office of the Federal Register on February 24, 1997.

47 CFR Part 73

[MM Docket No. 97–70, RM–9020]

Radio Broadcasting Services; El Reno, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Fred R. Morton, Jr., seeking the allotment of Channel 293A to El Reno, OK, as the community's first local FM transmission service. Channel 293A can be allotted to El Reno in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.5 kilometers (7.8 miles) west, at coordinates 35–32–18 NL; 98–05–26 WL, to avoid a short-spacing to Stations KGOU, Channel 292A, Norman, OK, and KYQQ, Channel 293C, Arkansas City, KS.

DATES: Comments must be filed on or before April 14, 1997, and reply comments on or before April 29, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Fred R. Morton, Jr., 5103 North Cherry, Lawton, OK 73505 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–70, adopted February 14, 1997, and released February 21, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–5185 Filed 2–28–97; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 97–68, RM–8999]

Radio Broadcasting Services; Hayfield, VA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Vixon Valley Broadcasting requesting the allotment of Channel 263A at Hayfield, Virginia, as the community's first local aural transmission service. Channel 263A can be allotted to Hayfield consistent with the minimum distance separation requirements of the Commission's Rules with a site restriction of 12.9 kilometers (18.0 miles) north in order to avoid short-spacing conflicts with the licensed operation of Stations WBIG(FM), Channel 262B, Washington, DC, and WQPO(FM), Channel 264B, Harrisonburg, Virginia. The coordinates for Channel 263A at Hayfield are 39–20–59 and 78–18–14.

DATES: Comments must be filed on or before April 14, 1997, and reply comments on or before April 29, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Victor A. Michael Jr., President, Vixon Valley Broadcasting, c/o Magic City Media, 1912 Capitol Avenue, Suite 300, Cheyenne, Wyoming 82001 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–68, adopted February 14, 1997, and released February 21, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–5186 Filed 2–28–97; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 97–74, RM–9011]

Radio Broadcasting Services; Colstrip, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Windy Valley Broadcasting proposing the allotment of Channel 229A to Colstrip, Montana, as that community's first local service. The coordinates for Channel 229A are 45–53–00 and 106–37–36.

DATES: Comments must be filed on or before April 14, 1997, and reply comments on or before April 29, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Victor A. Michael Jr., President, Windy Valley Broadcasting, c/o Magic City Media, 1912 Capitol Avenue, Suite 300, Cheyenne, Wyoming 82001.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–74, adopted February 14, 1997, and released February 21, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–5187 Filed 2–28–97; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 97–73, RM–9012]

Radio Broadcasting Services; Snow Hill, MD

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by James D. Sleeman proposing the allotment of Channel 266A at Snow Hill, Maryland, as that community's first local broadcast service. The coordinates for Channel 266A are 38–09–17 and 75–19–17. There is a site restriction 6.9 kilometers (4.3 miles) east of the community.

DATES: Comments must be filed on or before April 14, 1997, and reply comments on or before April 29, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: James D. Sleeman, 125 Chester Avenue, Annapolis, Maryland 21403.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–73, adopted February 14, 1997, and released February 21, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–5188 Filed 2–28–97; 8:45 am]

BILLING CODE 6712–01–P

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47 CFR Part 73

[MM Docket No. 97–72; RM–9017]

Radio Broadcasting Services; Mullins and Briarcliffe Acres, SC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Atlantic Broadcasting Co., Inc., proposing the reallotment of Channel 296C2 from Mullins to Briarcliffe Acres, South Carolina, and the modification of Station WWSK(FM)'s license accordingly. Channel 296C2 can be allotted to Briarcliffe Acres in compliance with the Commission's minimum distance separation requirements with a site restriction of 25.7 kilometers (16 miles) northwest at petitioner's presently authorized site. The coordinates for Channel 296C2 at Briarcliffe Acres are North Latitude 33–56–14 and West Longitude 78–57–53.

DATES: Comments must be filed on or before April 14, 1997, and reply comments on or before April 29, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Gary S. Smithwick, Esq., Smithwick & Belendiuk, P.C., 1990 M Street, NW., Suite 510, Washington, DC 20036 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–72, adopted February 14, 1997, and released February 21, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–5189 Filed 2–28–97; 8:45 am]

BILLING CODE 6712–01–P

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47 CFR Part 73

[MM Docket No. 97–69, RM–9007]

Radio Broadcasting Services; Idalou, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Fred R. Morton, Jr. requesting the allotment of Channel 299A at Idalou, Texas, as the community's second local FM service. Channel 299A can be allotted to Idalou in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.5 kilometers (0.9 miles) north in order to avoid a short-spacing conflict with the licensed operation of Station KPOS(FM), Channel 297C2, Post, Texas. The coordinates for Channel 299A at Idalou are 33–40–34 and 101–41–01.

DATES: Comments must be filed on or before April 14, 1997, and reply comments on or before April 29, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Fred R. Morton, Jr., 5103 North Cherry, Lawton, Oklahoma 73505 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–69, adopted February 14, 1997, and released February 21, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–5190 Filed 2–28–97; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 62, No. 41
Monday, March 3, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Opportunity for Designation in the Denver (CO) and East Indiana (IN) Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA), USDA.

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations will end not later than triennially and may be renewed. The designations of Denver Grain Inspection (Denver) and East Indiana Grain Inspection, Inc. (East Indiana), will end August 31, 1997, according to the Act. GIPSA is asking persons interested in providing official services in the Denver and East Indiana areas to submit an application for designation.

DATES: Applications must be postmarked or sent by telecopier (FAX) on or before April 1, 1997.

ADDRESSES: Applications must be submitted to USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, 1400 Independence Avenue, S.W., Washington, DC 20250–3604. Applications may be submitted by FAX on 202–690–2755. If an application is submitted by FAX, GIPSA reserves the right to request an original application. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services. GIPSA designated Denver, main office located in Commerce City, Colorado, and East Indiana, main office located in Muncie, Indiana, to provide official inspection services under the Act on September 1, 1994.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act. The designations of Denver and East Indiana end on August 31, 1997.

Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the States of Colorado, Nebraska, and Wyoming, is assigned to Denver.

The entire State of Colorado.

In Nebraska:

Bounded on the North by the northern Scotts Bluff County line; the northern Morrill County line east to Highway 385;

Bounded on the East by Highway 385 south to the northern Cheyenne County line; the northern and eastern Cheyenne County lines; the northern and eastern Deuel County lines;

Bounded on the South by the southern Deuel, Cheyenne, and Kimball County lines; and

Bounded on the West by the western Kimball, Banner, and Scotts Bluff County lines.

Goshen, Laramie, and Platte Counties, Wyoming.

Denver's assigned geographic area does not include the following grain elevators inside Denver's area which have been and will continue to be serviced by the following official agency: Hastings Grain Inspection, Inc.: Farmers Coop, and Big Springs Elevator, both in Big Springs, Deuel County, Nebraska.

Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the States of Indiana and Ohio, is assigned to East Indiana.

In Indiana:

Bounded on the North by the northern Lagrange and Steuben County lines;

Bounded on the East by the eastern Steuben, De Kalb, Allen, Adams, Jay, Randolph, Wayne, and Union County lines;

Bounded on the South by the southern Union and Fayette County lines; the eastern Rush County line south to State Route 244; State Route 244 west to the Rush County line; and

Bounded on the West by the western Rush and Henry County lines; the southern Madison County line west to State Route 13; State Route 13 north to State Route 132; State Route 132 northwest to Madison County; the western and northern Madison County lines; the northern Delaware County line; the western Blackford County line north to State Route 18; State Route 18 west to County Highway 900E; County Highway 900E north to Huntington County; the southern Huntington and Wabash County lines; the western Wabash County line north to State Route 114; State Route 114 northwest to State Route 19; State Route 19 north to Kosciusko County; the western and northern Kosciusko County lines; the western Noble and Lagrange County lines.

Darke County, Ohio.

The following grain elevator, located outside of the above contiguous geographic area, is part of this geographic area assignment: Payne Cooperative Association, Payne, Paulding County, Ohio (located inside Lima Grain Inspection Service, Inc.'s, area).

Interested persons, including Denver and East Indiana, are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the Denver and East Indiana geographic areas is for the period beginning September 1, 1997, and ending August 31, 2000. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: February 14, 1997

Neil E. Porter

Director, Compliance Division

[FR Doc. 97–4934 Filed 2–28–97; 8:45 am]

BILLING CODE 3410–EN–F

Natural Resources Conservation Service

Notice of Proposed Change to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Alabama

AGENCY: Natural Resources Conservation Service (NRCS) in Alabama, U.S. Department of Agriculture.

ACTION: Notice of availability of proposed changes in Section IV of the FOTG of the NRCS in Alabama for review and comment.

SUMMARY: It is the intention of NRCS in Alabama to issue a new conservation practice standard Agrichemical Handling Facility, (Code 190); and a revised conservation practice standard Waste Storage Facility, (Code 313) in Section IV of the FOTG.

DATES: Comments will be received on or before April 2, 1997.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to Ronnie D. Murphy, State Conservationist, Natural Resources Conservation Service (NRCS), 665 Opelika Road, P.O. Box 311, Auburn, AL 36830. Copies of the practice standards will be made available upon written request.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days the NRCS in Alabama will receive comments relative to the proposed changes. Following that period a determination will be made by the NRCS in Alabama regarding disposition of those comments and a final determination of change will be made.

Dated: February 19, 1997.

Robert N. Jones,

Deputy State Conservationist, Natural Resources Conservation Service, Auburn, Alabama.

[FR Doc. 97–4900 Filed 2–28–97; 8:45 am]

BILLING CODE 3411–29–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Colorado Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Colorado Advisory Committee to the Commission will convene at 8:30 a.m. and adjourn at 9:00 p.m. on Thursday, March 27, 1997, at the Lincoln Center, 417 W. Magnolia Street, Fort Collins, Colorado 80521. The purpose of the meeting is to hold a forum on civil rights issues in Fort Collins.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Joseph F. Arcese, 303–556–3139, or John Dulles, Director of the Rocky Mountain Regional Office, 303–866–1400 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 21, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–5093 Filed 2–28–97; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Oklahoma Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Oklahoma Advisory Committee to the Commission will convene at 8:00 a.m. and adjourn at 5:00 p.m. on March 26, 1997, at the Clarion Hotel, 4345 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105. The purpose of the meeting is to hold a community forum on how to file various civil rights complaints.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 21, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–5094 Filed 2–28–97; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with January anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received a request to revoke one antidumping duty order in part.

EFFECTIVE DATE: March 3, 1997.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 353.22(a) and 355.22(a)(1994), for administrative reviews of various antidumping and countervailing duty orders and findings with January anniversary dates. The Department also received a timely request to revoke in part the antidumping duty order on brass sheet and strip from Canada.

Initiation of Reviews

In accordance with sections 19 CFR 353.22(c) and 355.22(c), we are

initiating administrative reviews of the following antidumping and countervailing duty orders and findings. The Department is not initiating an administrative review of any exporters and/or producers who were not named in a review request because such exporters and/or producers were not specified as required under section 353.22(a)(19 CFR 353.22(a). We intend to issue the final results of these reviews not later than January 31, 1998.

Antidumping duty proceedings	Period to be reviewed
Canada: Brass Sheet and Strip:	
A–122–601 ..... Wolverine Tube (Canada) Inc.	1/1/91–12/31/96
France: Anhydrous Sodium Metasilicate (ASM):	
A–427–098 ..... Rhone-Poulenc, S.A.	1/1/96–12/31/96
France: Stainless Steel Wire Rods:	
A–427–811 ..... Imphy, S.A. Ugine-Savoie	1/1/96–12/31/96
Japan: Color Picture Tubes:	
A–588–609 ..... Mitsubishi Electric Corporation	1/1/96–12/31/96
South Korea: Certain Welded Stainless Steel Pipe:	
A–580–810 ..... Pusan Steel Pipe Co., Ltd. Sammi Metal Products Co., Ltd. LG Metals Hyundai Pipe Co., Ltd. SeAH Steel	1/1/96–12/31/96
The People's Republic of China: Potassium Permanganate:	
A–570–001 ..... Zunyi Chemical Factory	1/1/96–12/31/96

Countervailing Duty Proceeding

None.

If requested within 30 days of the date of publication of this notice, the Department will determine whether antidumping duties have been absorbed by an exporter or producer subject to any of these reviews if the subject merchandise is sold in the United States through an importer which is affiliated with such exporter or producer.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b) and 355.34(b).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 353.22(c)(1) and 355.22(c)(1).

Dated: February 21, 1997.

Joseph A. Spetrini,

Deputy Assistant Secretary for Group III.

[FR Doc. 97–5227 Filed 2–28–97; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

[I.D. 022197D]

Marine Mammals; Permit No. 1021 (P532C)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for amendment.

SUMMARY: Notice is hereby given that Texas A&M University, Galveston, TX 77551, has requested an amendment to permit no. 1021.

DATES: Written comments must be received on or before April 2, 1997.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432 (813/570–5301); and

Director, Southwest Fisheries Science Center, NMFS, P.O. Box 271, La Jolla, CA 92038–0271 (619/546–7067).

Written data or views, or requests for a public hearing on this request should be submitted to the Director, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject amendment to permit no. 10231, issued on December 17, 1996 (61 FR 67998) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit no. 1021 authorizes the permit holder to carry out two research projects: (1) conduct level B harassment and remote biopsy sampling on a variety of cetaceans in the Gulf of Mexico, and capture, tag and release small *Delphinid*, attach the video camera/data logger package and/or satellite-linked time-depth recorders to 15 sperm whales; and (2) import specimens materials from all species of cetacea and pinnipedia (except walrus) on a worldwide basis.

The permit holder requests authorization to include an additional research project that includes taking up to 30 Weddell seals (*Leptonychotes weddellii*) annually for a 3-year period on McMurdo Sound, Antarctica. Animals will be captured, instrumented with a small video system and data logger and released. Animals will be anesthetized for attachment of instruments and catheters placed percutaneously into a blood vessel. For stomach temperature, a temperature telemeter pill will be inserted down the animal's esophagus while it is anesthetized. The study will address what behavioral and energetic adaptations enable Weddell seals to forage in the Antarctic fast-ice environment.

Dated: February 24, 1997.

Ann L. Hochman,

Acting Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–5117 Filed 2–28–97; 8:45 am]

BILLING CODE 3510–22–F

CONSUMER PRODUCT SAFETY COMMISSION

Submission for OMB Review; Comment Request—Safety Standard for Omnidirectional Citizens Band Base Station Antennas

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the **Federal Register** of October 25, 1996 (61 FR 55278), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek extension of approval of the collection of information in the Safety Standard for Omnidirectional Citizens Band Base Station (16 CFR Part 1204). By publication of this notice, the Commission announces that it has submitted to the Office of Management and Budget a request for reinstatement of approval of that collection of information without change through April 30, 2000.

The Safety Standard for Omnidirectional Citizens Band Base Station Antennas establishes performance requirements for omnidirectional citizens band base station antennas to reduce unreasonable risks of death and injury which may result if an antenna contracts overhead power lines while being erected or removed from its site. Certification regulations implementing the standard require manufacturers, importers and private labelers of antennas subject to the standard to test antennas for compliance with the standard, and to maintain records of that testing.

The records of testing and other information required by the certification regulations allow the Commission to determine that antennas subject to the standard comply with its requirements. This information would also enable the Commission to obtain corrective actions if omnidirectional citizens band base station antennas failed to comply with the standard in a manner which creates a substantial risk of injury to the public.

Additional Information About the Request for Extension Of Approval of a Collection of Information

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Safety Standard for Omnidirectional Citizens Band Base Station Antennas, 16 CFR Part 1204.

Type of request: Reinstatement of approval without change.

General description of respondents: Manufacturers, importers, and private labelers of omnidirectional citizens band base station antennas.

Estimated number of respondents: 7.

Estimated average number of hours per respondent: 220 per year.

Estimated number of hours for all respondents: 1,540 per year.

Comments: Comments on this request for reinstatement of approval of a collection of information should be sent within 30 days of publication of this notice to Victoria Wassmer, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395–7340. Copies of the request for reinstatement of approval of a collection of information and supporting documentation are available from Robert E. Frye, Director, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0416, extension 2264.

Dated: February 25, 1997.

Sayde E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 97–5168 Filed 2–28–97; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by March 10, 1997. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before May 2, 1997.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer: Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 7th & D Streets, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Written comments regarding the regular clearance and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronic mailed to the internet address #FIRB@ed.gov, or should be faxed to 202–708-9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202)708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 3506 (c)(2)(A) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Group, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 25, 1997.

Gloria Parker,

Director, Information Resources Management Group.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Applications for Competitive Review to Provide Financial Assistance to Increase Educational Opportunities for Alaska Natives.

Abstract: The information is needed to determine the quality of proposed services to increase educational opportunities and address needs of Alaska natives.

Additional Information: This form will be used by States and local educational agencies who will apply under the Alaska Native Education Program. The information is needed to determine the quality of proposed services to increase educational opportunities and address the academic needs of Alaska Natives. The Department will use the information to make grant awards.

An emergency review is requested by March 10 due to delayed funding authorization for this program and to allow sufficient time for potential applicants to respond prior to schools closing in early May as well as making awards on a timely schedule. If applications are not accepted prior to that time, valuable startup time will be lost and educational equipment and supplies will not be available for students at the beginning of the school year in August.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 81.

Burden Hours: 1,620.

[FR Doc. 97–5096 Filed 2–28–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Floodplain Statement of Findings for Site Investigation Activities at the Oak Ridge K–25 Site Area of Responsibility

AGENCY: Department of Energy (DOE).

ACTION: Floodplain statement of findings.

SUMMARY: This is a Floodplain Statement of Findings for Site Investigation Activities at the Oak Ridge K–25 Site, Roane County, Tennessee, in accordance with 10 CFR part 1022, Compliance with Floodplain/Wetlands Environmental Review Requirements. DOE proposes to conduct site investigations and preliminary engineering activities within the boundaries of the Oak Ridge K–25 Site as required under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), underground storage tank (UST) regulations or other regulations and directives. Some site investigation activities may occur within 100-year or 500-year floodplain of streams at the plant. DOE has prepared a floodplain assessment describing the possible effects, alternatives, and measures designed to avoid or minimize potential harm to floodplains or their flood storage potential. DOE will allow 15 days of public review after publication of the Statement of Findings before implementation of the proposed action.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. Sleeman, Director, Environmental Restoration Division (EW–91), DOE Oak Ridge Operations Office, Post Office Box 2001, Oak Ridge, TN 37831, Telephone: (423) 576–3534, Facsimile: (423) 576–6074.

FOR FURTHER INFORMATION ON GENERAL DOE FLOODPLAIN ENVIRONMENTAL REVIEW REQUIREMENTS, CONTACT: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, Telephone: (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: A Notice of Floodplain Involvement was published in the **Federal Register** on October 4, 1993, (58 FR 51624) and subsequently a floodplain assessment was prepared. The floodplain assessment covers a variety of intrusive and nonintrusive preliminary engineering and site investigation methods and techniques that may be used at one or more sites at the Oak Ridge K–25 Site. These activities include (as detailed in the October 4, 1993, notice), but are not limited to: "(a) sampling of air, surface water, groundwater, sediments, surface and deeper soils; sampling of terrestrial and aquatic biota; and measurement of meteorological characteristics; (b) drilling of boreholes to obtain soil/geological samples (some of the boreholes would be completed as groundwater monitoring wells); digging soil test pits by hand or backhoe; (d) taking a variety of nonintrusive surveys (such as radiological surveys); (e) taking intrusive surveys (such as with soil penetrometers and similar devices); and (f) conducting underground tests (such as aquifer pump, tracer geophysical log, vertical seismic profile, and seismic tests)."

Alternatives considered in the assessment were (1) no action, (2) prohibition of site investigation activities in floodplains, and (3) restricting site investigation activities to outside the floodplain when practicable alternatives exist, i.e., data quality would not be compromised. Only a few sampling locations, such as those needed for surface and sediment samples, and a minimal number of boreholes or wells and soil test pits are expected to be in floodplains. Most of the activities addressed by the floodplain assessment will result in no measurable impact on floodplain cross-sections or flood stage, and thus do not increase the risk of flooding. Those activities that are identified from site-specific data as possibly impacting negatively upon the floodplain (e.g., installation of flumes and construction of access roads) may require separate floodplain assessments and the implementation of mitigative measures, e.g., construction during low precipitation periods, prompt stabilization and restoration of affected areas, minimizing vegetation removal, and the use of mats and wide-tracked vehicles. Alternatively, DOE may opt to omit the activity or relocate the activity to an alternate site. Site investigation activities addressed in the floodplain assessment conform to applicable floodplain protection standards.

Issued in Oak Ridge, TN on February 11, 1997.

James L. Elmore,

Alternate National Environmental Policy Act Compliance Officer.

[FR Doc. 97–5123 Filed 2–28–97; 8:45 am]

BILLING CODE 6450–01–P

Floodplain Statement of Findings for Site Investigation Activities at the Oak Ridge Y–12 Plant Area of Responsibility

AGENCY: Department of Energy (DOE).

ACTION: Floodplain statement of findings.

SUMMARY: This is a Floodplain Statement of Findings for Site Investigation Activities at the Oak Ridge Y–12 Plant, Anderson County, Tennessee, in accordance with 10 CFR part 1022, Compliance with Floodplain/Wetlands Environmental Review Requirements. DOE proposes to conduct site investigations and preliminary engineering activities within the boundaries of the Oak Ridge Y–12 Plant as required under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), underground storage tank (UST) regulations or other regulations and directives. Some site investigation activities may occur within 100-year or 500-year floodplain of streams at the plant. DOE has prepared a floodplain assessment describing the possible effects, alternatives, and measures designed to avoid or minimize potential harm to floodplains or their flood storage potential. DOE will allow 15 days of public review after publication of the Statement of Findings before implementation of the proposed action.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. Sleeman, Director, Environmental Restoration Division (EW–91), DOE Oak Ridge Operations Office, Post Office Box 2001, Oak Ridge, TN 37831, Telephone: (423) 576–3534, Facsimile: (423) 576–6074

FOR FURTHER INFORMATION ON GENERAL DOE FLOODPLAIN ENVIRONMENTAL REVIEW REQUIREMENTS, CONTACT: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, Telephone: (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: A Notice of Floodplain Involvement was published in the **Federal Register** on October 4, 1993, (58 FR 51624) and subsequently a floodplain assessment was prepared. The floodplain assessment covers a variety of intrusive and nonintrusive preliminary engineering and site investigation methods and techniques that may be used at one or more sites at the Oak Ridge Y–12 Plant Site. These activities include (as detailed in the October 4, 1993, notice), but are not limited to: "(a) sampling of air, surface water, groundwater, sediments, surface and deeper soils; sampling of terrestrial and aquatic biota; and measurement of meteorological characteristics; (b) drilling of boreholes to obtain soil/geological samples (some of the boreholes would be completed as groundwater monitoring wells); digging soil test pits by hand or backhoe; (d) taking a variety of nonintrusive surveys (such as radiological surveys); (e) taking intrusive surveys (such as with soil penetrometers and similar devices); and (f) conducting underground tests (such as aquifer pump, tracer geophysical log, vertical seismic profile, and seismic tests)."

Alternatives considered in the assessment were (1) no action, (2) prohibition of site investigation activities in floodplains, and (3) restricting site investigation activities to outside the floodplain when practicable alternatives exist, i.e., data quality would not be compromised. Only a few sampling locations, such as those needed for surface and sediment samples, and a minimal number of boreholes or wells and soil test pits are expected to be in floodplains. Most of the activities addressed by the floodplain assessment will result in no measurable impact on floodplain cross-sections or flood stage, and thus do not increase the risk of flooding. Those activities that are identified from site-specific data as possibly impacting negatively upon the floodplain (e.g., installation of flumes and construction of access roads) may require separate floodplain assessments and the implementation of mitigative measures, e.g., construction during low precipitation periods, prompt stabilization and restoration of affected areas, minimizing vegetation removal, and the use of mats and wide-tracked vehicles. Alternatively, DOE may opt to omit the activity or relocate the activity to an alternate site. Site investigation activities addressed in the floodplain assessment conform to applicable floodplain protection standards.

Issued in Oak Ridge, TN on February 11, 1997.

James L. Elmore,

Alternate National Environmental Policy Act Compliance Officer.

[FR Doc. 97–5122 Filed 2–28–97; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats.

DATES: Thursday, March 6, 1997—6:00 pm-9:30 pm.

ADDRESSES: Westminster City Hall (Lower-level Multi-purpose Room), 4800 West 92nd Avenue, Westminster, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, EM SSAB-Rocky Flats, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021, phone: (303) 420–7855, fax: (303) 420–7579.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

(1) The Board will have a discussion with Dr. Alice Stewart, a well-known researcher in the field of the effects of human exposure to low-level radiation. Dr. Stewart's career has included studies of the effects of x-rays on pregnant women and studies of workers at the University of Birmingham's School of Medicine in England.

(2) The Board will hear from Don Hancock, a community activist from New Mexico, on some of the concerns of nearby residents regarding radioactive waste disposal at the Waste Isolation Pilot Plant (WIPP) outside of Carlsbad, New Mexico. The Department of Energy currently plans to bury waste from Rocky Flats as well as several other Federal sites at WIPP. Mr. Hancock will discuss community concerns about transportation of these materials to New Mexico as well as concerns about the disposal site itself.

(3) The Board will consider a recommendation from one of its committees regarding an assessment of the integrating management contract from Rocky Flats.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855. Hours of operation for the Public Reading Room are 9:00 am and 4:00 pm on Monday through Friday. Minutes will also be made available by writing or calling Deb

Thompson at the Board's office address or telephone number listed above.

Issued at Washington, DC on February 26, 1997.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 97–5126 Filed 2–28–97; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah Gaseous Diffusion Plant.

DATES: Thursday, March 20, 6:00 p.m.–9:00 p.m.

ADDRESSES: West Kentucky Technical School (cafeteria), 5200 Blandville Road, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: Carlos Alvarado, Site-Specific Advisory Board Coordinator, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (502) 441–6804.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: Updates on the Federal Facility Agreement, the membership drive, a Financial Committee Report, a Background on the Process of Documents, the Proposed Budget, and the 10-Year Plan.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Carlos Alvarado at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information and Reading Room at 175 Freedom Boulevard, Highway 60, Kevil, Kentucky between 8:00 a.m. and 5:00 p.m. on Monday through Friday, or by writing to Carlos Alvarado, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, or by calling him at (502) 441–6804.

Issued at Washington, DC on February 26, 1997.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 97–5127 Filed 2–28–97; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site-Specific Advisory Board, Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site.

DATES AND TIMES: Monday, March 24, 1997: 6:00 p.m.–6:30 p.m. (Joint Meeting of Issues-based Committee Chairs), 6:30 p.m.–7:00 p.m. (Public Comment Session), 7:00 p.m.–9:00 p.m. (Subcommittee Meetings) Tuesday, March 25, 1997: 8:30 a.m.–4:00 p.m.

ADDRESSES: Monday, March 24, 1997: Radisson Riverfront Hotel, 1 Tenth Street, Augusta, Georgia. Tuesday, March 25, 1997: Savannah River Site Administration Building 703–41A, Road 1, Aiken, South Carolina.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Public Accountability Specialist, Environmental Restoration and Solid Waste Division, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29802 (803) 725–5374.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

Monday, March 24, 1997

6:00 p.m. Joint meeting of issues-based subcommittee chairs
6:30 p.m. Public comment session (5-minute rule)
7:00 p.m. Subcommittee meetings
9:00 p.m. Adjourn

Tuesday, March 25, 1997

8:30 a.m.
- Approval of minutes, agency updates (~ 15 minutes)
- Public comment session (5-minute rule) (~ 30 minutes)
- Election of officers (~ 15 minutes)
- Risk management & future use subcommittee report (~ 30 minutes)
- Environmental restoration and waste management subcomittee report (~ 1 hour)

12:00 p.m.
- Lunch

1:00 p.m.
- Nuclear materials management subcommittee report (~ 30 minutes)
- Administrative subcommittee report (~ 30 minutes)
- Removal considerations and membership elections
- Recommendation review (~ 1 hour)
- Update/review of board home page (~ 15 minutes)
- Spent fuel forum update (~ 10 minutes)
- Outreach subcommittee report (~ 10 minutes)
- National Dialogue/SSAB Chair Meeting discussion (~ 10 minutes)

4:00 p.m.
- Adjourn

If necessary, time will be allotted after public comments for items added to the agenda, and administrative details. A final agenda will be available at the meeting Monday, March 24, 1997.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information

Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday except Federal holidays. Minutes will also be available by writing to Gerri Flemming, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29802, or by calling her at (803) 725–5374.

Issued at Washington, DC on February 26, 1997.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 97–5130 Filed 2–28–97; 8:45 am]

BILLING CODE 6450–01–P

Office of Energy Research

Energy Research Financial Assistance Program Notice 97–11: Human Genome Program—Ethical, Legal, and Social Implications

AGENCY: U.S. Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Health and Environmental Research (OHER) of the Office of Energy Research (ER), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications in support of the Ethical, Legal, and Social Implications (ELSI) subprogram of the Human Genome Program (HGP). The HGP is a coordinated, multi disciplinary, directed research effort aimed at obtaining a detailed understanding of the human genome at the molecular level. This particular research notice invites research grants that address ethical, legal, and social implications from the use of information and knowledge resulting from the HGP.

DATES: Preapplications referencing Program Notice 97–11 should be received by April 17, 1997. Formal applications submitted in response to this notice must be received by 4:30 p.m., E.D.T., July 10, 1997, to permit timely consideration for awards in Fiscal Year 1998.

ADDRESSES: Preapplications referencing Program Notice 97–11 should be sent to Dr. Daniel W. Drell, Health Effects and Life Sciences Research Division, ER–72, Office of Health and Environmental Research, Office of Energy Research, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290. Formal applications referencing Program Notice 97–11 should be forwarded to: U.S. Department of Energy, Office of Energy Research, Grants and Contracts Division, ER–64, 19901 Germantown Road, Germantown, MD, 20874–1290. ATTN: Program Notice 97–11. This address also must be used when submitting applications by U.S. Postal Service Express Mail or any commercial mail delivery service, or when hand carried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. Daniel W. Drell, Health Effects and Life Sciences Research Division, ER–72, Office of Health and Environmental Research, Office of Energy Research, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, phone: (301) 903–6488 or E-mail: daniel.drell@oer.doe.gov.

SUPPLEMENTARY INFORMATION: The DOE encourages the submission of applications that will address, analyze, or anticipate ELSI issues arising from advances in the scientific understanding of genetically influenced susceptibilities/sensitivities, complex or multi-genic characteristics and conditions, and human polymorphisms. This may include research on privacy and confidentiality issues (as well as ownership and commercialization issues) arising from the creation, use, maintenance, and disclosure of genetic information relevant to such complex or multi-genic conditions. This may also include research on the privacy implications of the development of HGP materials, resources, databases and technologies, as well as the privacy implications of the use of genetic information obtained in the workplace. Issues to be examined may also include (but are not limited to) implications of advances in the genetic characterization of complex traits and susceptibility/sensitivity genes and the impacts of advances in knowledge about polygenic conditions for individuals and communities potentially faced with these impacts (e.g. courts, schools, etc).

Applications should demonstrate knowledge of the relevant literature, and should include detailed plans for the gathering and analysis of factual information and the associated ethical, legal, and social implications. All applications should include, where appropriate, detailed discussion of human subjects protection issues; e.g., storage of, manipulation of, and access to data. Provisions to ensure the inclusion of women, minorities, and potentially disabled individuals must be described, unless specific exclusions are scientifically necessary and justified in detail. All proposed research applications should address the issue of efficient dissemination of results to the widest appropriate audience. All applications should include letters of agreement to collaborate from potential collaborators; these letters should specify the contributions the collaborators intend to make if the application is accepted and funded.

The DOE also solicits applications for the preparation and dissemination of educational materials in any appropriate medium that will enhance understanding of the ethical, legal, and social aspects of the HGP among the public or specified groups; a particular interest of this notice is Institutional Review Boards (IRBs) and genome investigators who work with patients. This may include (but is not limited to) implications of disease predispositions, susceptibility genes, increased knowledge of polygenic conditions, informed consent issues or Human Genome Project materals- and resources-development and dissemination projects (e.g. the creation of a human DNA library, etc.). If an educational effort for a specific group is proposed, the value to the Human Genome Program of that group or community should be explained in detail. In addition, the DOE encourages applications for the support of novel and innovative conferences focusing on the concerns addressed in this notice (e.g. susceptibility/sensitivity genes, polymorphisms, and education of IRBs and investigators).

Educational and conference applications should demonstrate awareness of the relevant literature, and include detailed plans for the accomplishment of project goals. In applications that propose the production of series for broadcast, audio-visuals or other educational materials, the DOE requests that samples of previous similar work by the producers and writers be submitted along with the application. In applications for the support of educational activities, the DOE requests inclusion of a plan for assessment of the effectiveness of the proposed activities. For conference applications, a detailed and largely complete roster of speakers is necessary. At the completion of the conference, a summary or report is required. Educational and conference applications must also demonstrate awareness of the need to reach the widest appropriate audience, and not be focused exclusively on a local community or group.

Possible outcomes of these research and/or educational efforts may include (but are not limited to): model guidelines for research practices for studies of polygenic conditions and susceptibility genes; consensus documents on implications or significance of the genetic bases for

complex conditions; privacy and confidentiality studies of genetic information pertinent to complex conditions; model policies for genetic information about polygenic conditions for various settings (e.g. the workplace); exploration of worker/workplace issues; and materials for IRBs.

In all applications, a clear description of expected products or "deliverables" should be included, as well as a time line for their production and dissemination. In the absence of tangible products, rigorous assessments must be included to facilitate evaluation of progress.

DOE does not encourage applications dealing with issues consequent to the initiation or implementation of genetic testing protocols. Also, DOE does not encourage survey-based research, unless a compelling case is made that this methodology is critical to address an issue of uncommon significance. For applications which propose the development of college-level curricula, DOE requests both detailed justification of the need for external support, beyond normal departmental and college resources, evidence of commitment from the parent department or college, and a dissemination plan. Applications for the writing of scholarly publications or books should include justifications for the relevance of the publications or book to the goals of the Human Genome Project as well as discussion of the estimated readership and impact. DOE ordinarily will not provide unlimited support for a funded program and thus strongly encourages the inclusion of plans for transition to self-sustaining status.

The dissemination of materials and research data in a timely manner is essential for progress towards the goals of the DOE Human Genome Program. The OHER requires the timely sharing of resources and data. Applicants should, in their applications, discuss their plans for disseminating research results and materials that may include, where appropriate, publication in the open literature, wide-scale mailings, etc. Once OHER and the applicant have agreed upon a distribution plan, it will become part of the award conditions. Funds to defray the costs of disseminating results and materials are allowable; however, such requests must be sufficiently detailed and adequately justified. Applicants should also provide timelines projecting progress toward achieving proposed goals.

Potential applicants are strongly encouraged to submit a brief preapplication that consists of two to three pages of narrative describing the research project objectives and methods of accomplishment. These will be reviewed relative to the scope and research needs of the DOE's Human Genome Program. Principal investigator address, telephone number, FAX number and E-mail address are required parts of the preapplication. A response to each preapplication discussing the potential program relevance of a formal application generally will be communicated within 20 days of receipt. ER's preapplication policy for submitting preapplications can be found on ER's Grants and Contracts Web Site at: http:/www.er.doe.gov/production/grants/preapp.html.

It is anticipated that approximately $1,500,000 will be available for grant awards in this area during FY 1998, contingent upon availability of appropriated funds. Multiple year funding of grant awards is expected, and is also contingent upon availability of funds. Previous awards have ranged from $50,000 per year up to $500,000 per year with terms from one to three years; most awards average about $200,000 per year for two or three years. Similar award sizes are anticipated for new grants. Applications will be subjected to formal merit review (peer review) and will be evaluated against the following evaluation criteria which are listed in descending order of importance codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project.
2. Appropriateness of the Proposed Method or Approach;
3. Competency of Applicant's personnel and Adequacy of Proposed Resources;
4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and an agency's programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers will often be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

To provide a consistent format for the submission, review and solicitation of grant applications submitted under this notice, the preparation and submission of grant applications must follow the guidelines given in the Application Guide for the Office of Energy Research Financial Assistance Program 10 CFR Part 605. Access to ER's Financial Assistance Application Guide is possible via the World Wide Web at: http:/www.er.doe.gov/production/grants/grants.html.

DOE policy requires that potential applicants adhere to 10 CFR 745 "Protection of Human Subjects", or such later revision of those guidelines as may be published in the **Federal Register**.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, DC, on February 25, 1997.

John Rodney Clark,

Associate Director, for Resource Management, Office of Energy Research.

[FR Doc. 97–5131 Filed 2–28–97; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. RP97–165–001]

Alabama-Tennessee Natural Gas Company; Notice of Compliance Filing

February 25, 1997.

Take notice that on February 19, 1997, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee) tendered for filing the tariff sheets listed in Appendix B to the filing, to be effective June 1, 1997.

Alabama-Tennessee states that the tariff sheets are submitted in compliance with Order No. 587 and the Commission's order issued on January 30, 1997 (78 FERC ¶61,075).

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protests must be filed on or before March 12, 1997. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5103 Filed 2–28–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–252–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

February 25, 1996.

Take notice that on February 19, 1997, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, TX 77251–1478, filed in the above docket, a request pursuant to Sections 157.205 and 157.211(a)(2) of the Commission's Regulations, for authorization to operate as a jurisdictional facility, a 2-inch tap and 2-inch meter station placed in service under Section 311(a) of the Natural Gas Act and Section 284.3(c) of the Commission's Regulations. Koch Gateway makes such requests, under its blanket certificate issued in Docket No. CP82–430, and pursuant to Section 7 of the Natural Gas Act and Section 284.3(c) of the Commission's Regulations. Koch Gateway makes such requests, under its blanket certificate issued in Docket No. CP82-430, and pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is file with the Commission and open to public inspection.

Koch Gateway states that the proposed certification of facilities will enable Koch Gateway to provide transportation services under its blanket transportation certificate through an existing meter station serving Entex Inc. (Entex), a Local Distribution Company, in Jasper County, TX. Koch Gateway further states it will operate the proposed facilities in compliance with 18 CFR, part 157, Subpart F, and the proposed activities will not affect Koch Gateway's ability to serve its other existing customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity is deemed to be authorized effective on the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5097 Filed 2–28–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–253–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

February 25, 1997.

Take notice that on February 19, 1997, Koch Gateway Pipeline Company (Koch), P.O. Box 1478 Houston, Texas, 77251–1478 filed in Docket No. CP97–253–000 a request pursuant to Sections 157.205, and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for approval and permission to construct and operate various facilities for Westlake Polymers (Westlake), an end-user, under the blanket certificate issued in Docket No. CP82–430–000, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Koch states that it proposes to install (1) a two-inch delivery tap, 200 feet of two-inch pipeline and a two-inch meter station, (2) a two-inch delivery tap, 4,200 feet of four-inch pipeline and a two-inch meter station, (3) a six-inch delivery tap, 2,110 feet of eight-inch pipeline and a six-inch and four-inch meter station located in Calcasieu Parish Louisiana. Koch states that the service to the proposed taps will be interruptible. Koch asserts that Westlake's estimated peak day requirement for the three taps is 45,000 MMBtu with an average day requirement of 13,000 MMBtu.

Any person or the Commission's Staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5098 Filed 2–28–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–261–000]

Northwest Pipeline Corporation; Notice of Request Under Blanket Authorization

February 25, 1997.

Take notice that on February 21, 1997, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed a request with the Commission in Docket No. CP97–261–000, pursuant to Sections 157.205, and 157.211 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to operate existing delivery point facilities for delivery of natural gas directly to Ash Grove Cement Company (Ash Grove) instead of Intermountain Gas Company (Intermountain) as authorized in blanket certificate issued in Docket No. CP82–433–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest proposes to operate the existing Idaho Portland Cement delivery point facilities for transportation deliveries directly to Ash Grove, an end-user, instead of to Intermountain, a local distribution company, that is currently serving Ash Grove.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5099 Filed 2–28–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ER97–504–002 and OA97–32–000]

Pacific Northwest Generating Cooperative; Notice of Filing

February 25, 1997.

Take notice that on January 28, 1997, Pacific Northwest Generating Cooperative tendered for filing its response to the Commission's order issued on January 13, 1997 in the above-referenced dockets.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 7, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5100 Filed 2–28–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER97–1615–000]

Portland General Electric Company; Notice of Filing

February 25, 1997.

Take notice that on February 7, 1997, Portland General Electric Company (PGE), tendered for filing under PGE's Final Rule pro forma tariff (FERC Electric Tariff Original Volume No. 8, Docket No. OA96–137–000), an executed Service Agreement for Non-firm Point-to-Point Transmission Service with Puget Sound Power & Light Company.

Pursuant to 18 CFR 35.11, and the Commission's Order in Docket No. PL93–2–002 issued July 30, 1993, PGE respectfully requests that the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the Service Agreement to become effective January 24, 1997.

A copy of this filing was caused to be served upon Puget Sound Power & Light Company as noted in the filing letter.

Any person desiring to be heard or to protest said application, should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 10, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5101 Filed 2–28–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT97–4–000]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

February 25, 1997.

Take notice that on February 20, 1997, Williams Natural Gas Company (WNG) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet to be effective March 22, 1997:

Fourth Revised Sheet No. 221

WNG states that this filing is being made to update WNG's tariff in compliance with 18 CFR Part 250.16(b)(1), which requires an interstate natural gas pipeline to report any changes which occur to the list of operating personnel and facilities shared by the interstate natural gas pipeline and its marketing or brokering affiliates.

WNG states that a copy of its filing was served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5102 Filed 2–28–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP97–220–003 and RP89–183–071]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

February 25, 1997.

Take notice that on February 20, 1997, Williams Natural Gas Company (WNG), tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, Second Substitute Third Revised Sheet Nos. 8C and 8D, with the proposed effective date of February 1, 1997.

WNG states that on December 31, 1996, it filed, pursuant to Article 14 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1, its first quarter 1997 report of take-or-pay buyout, buydown and contract reformation costs and gas supply related transition costs, and the application or distribution of those costs and refunds. Revisions were made January 13, 1997 and January 21, 1997 to revise Schedule 4 of the original filing to reflect certain customers' January MDTQ's which were not finalized at the time of the filings.

WNG states that the instant filing is being made at a customer's request to show its regulated and nonregulated business as separate line items. All other aspects of WNG's December 31, filing are unchanged.

WNG states that a copy of its filing was served on all participants listed on the service lists maintained by the Commission in the dockets referenced above and on all of WNG's jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 381.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5104 Filed 2–28–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–254–000]

Williams Natural Gas Company; Notice of Filing of Penalty Revenue Report

February 25, 1997.

Take notice that on February 18, 1997, Williams Natural Gas Company (WNG) tendered for filing a report of the amount of penalty revenue collected by WNG pursuant to the provisions of Article 9.5 of the General Terms and Conditions of its FERC Gas Tariff during Periods of Daily Balancing (PODB) occurring in January and February, 1996, and the proposed distribution of such revenue.

WNG states that as a result of severe weather conditions and resulting high demand for gas in its major market areas, WNG imposed two PODBs pursuant to Article 9.3 of its tariff during the 1995–96 winter heating season. These periods were January 19 and 20, 1996 and January 31 through February 4, 1996. Penalties were imposed for overruns of MDTQ and MDWQ, depletion of gas in storage, under receipts at receipt points and over deliveries at delivery points as provided in Article 9.5 of WNG's tariff. As a result, WNG has collected $3,169,881 in penalty revenues through November 30, 1996. WNG proposes to refund these penalty revenues plus accrued interest ($90,398 through November 30, 1996) to non-offending parties as shown herein.

WNG states that a copy of its filing was served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before March 4, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5105 Filed 2–28–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–256–000]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

February 25, 1997.

Take notice that on February 20, 1997, Williams Natural Gas Company (WNG) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to be effective March 22, 1997:

First Revised Sheet No. 227B
First Revised Third Revised Sheet No. 228
First Revised Second Revised Sheet No. 229

WNG states that this filing is being made to modify Article 9.2, Scheduling, of the General Terms and Conditions of its tariff to provide a higher level of scheduling priority for secondary receipt or delivery points which are located on the same line segment as the primary receipt or delivery points under the shipper's service agreement. The proposed change would, of course, be applicable to both original capacity holders and released capacity holders.

WNG states that a copy of its filing was served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5106 Filed 2–28–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–257–000]

Williams Natural Gas Company; Notice of Cash-Out Report

February 25, 1997.

Take notice that on February 20, 1997, Williams Natural Gas Company (WNG) tendered for filing, pursuant to Article 9.7(d) of the General Terms and Conditions of its FERC Gas Tariff, its report of costs and revenue related to cash-outs for the period October 1, 1995 through September 30, 1996.

WNG states that pursuant to the cash-out mechanism in Article 9.7(a)(iv) of WNG's FERC Gas Tariff, Shippers are given the option of resolving their imbalances by the end of the calendar month following the month in which the imbalance occurred by cashing-out such imbalances at 100% of the spot market price applicable to WNG as published in the first issue of Inside FERC's Gas Market Report for the month in which the imbalance occurred. Net monthly imbalances that are not resolved by the end of the second month following the month in which the imbalance occurred and that exceeded the tolerance specified in Article 9.7(b) are cashed-out at a premium or discount from the spot price according to the schedules set forth in Article 9.7(c). Consistent with its filings in Docket Nos. RP95–132 and RP96–145, WNG is filing its report of costs and revenue related to cash-outs.

WNG states that a copy of its filing was served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before March 4, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5107 Filed 2–28–97; 8:45 am]

BILLING CODE 6717–01–M

Federal Energy Regulatory Commission

[Docket No. EG97–33–000, *et al.*]

Habibullah Coastal Power (Private) Company, et al.; Electric Rate and Corporate Regulation Filings

February 25, 1997.

Take notice that the following filings have been made with the Commission:

1. Habibullah Coastal Power (Private) Company

[Docket No. EG97–33–000]

Take notice that on February 6, 1997, Habibullah Coastal Power (Private) Company (Applicant) 1st and 2nd Floors, Nacon House, 270 Montana Din Muhammed Wafai Road, Narachi 74200, Pakistan, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant, a Pakistan private unlimited liability company, intends to own certain generating facilities in Pakistan. These facilities will consist of a 140 MW (gross) electric generating facility located in Quetta, Balochistan Province, Pakistan, including three gas turbine units and related interconnection facilities.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adquacy or accuracy of the application.

2. CMS Electric Marketing Company

[Docket No. ER96–2350–004]

Take notice that on February 11, 1997, CMS Eclectic Marketing Company tendered for filing a Notice of Succession.

The Notice of Succession results from the sale of all of CMS Electric Marketing Company's assets to CMS Marketing, Services and Trading Company.

Comment date: March 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. New York State Electric & Gas Corporation

[Docket No. ER96–2464–000]

Take notice that New York State Electric & Gas Corporation ("NYSEG") on February 7, 1997, tendered for filing pursuant to Section 35.13 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35.13, an agreement with Delmarva Power & Light Company ("Delmarva") as an amendment to and a complete substitute for, a rate schedule filed on July 18, 1996, the consideration of which has been deferred by the FERC. The agreement provides a mechanism pursuant to which the parties can enter into separatedly scheduled transactions under which NYSEG will sell to Delmarva and Delmarva will purchase from NYSEG either capacity and associated energy or energy only as the parties may mutually agree.

NYSEG requests that the agreement become effective on February 8, 1997, so that the parties may, if mutually agreeable, enter into separately scheduled transactions under the agreement. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the NEW York State Public Service Commission and Delmarva.

Comment date: March 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. PanEnergy Trading and Market Services, L.L.C.

[Docket No. ER96–2921–001]

Take notice that on February 7, 1997, PanEnergy Trading and Market Services, L.L.C. tendered for filing FERC Rate Schedule No. 1.

Comment date: March 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Unocal Corporation

[Docket No. ER97–262–000]

Take notice that on February 4, 1997, Unocal Corporation tendered for filing an amendment in the above-referenced docket.

Comment date: March 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Toledo Gas Company

[Docket No. ER97–455–001]

Take notice that on January 27, 1997, Toledo Gas Company tendered for filing its compliance filing in the above-referenced docket.

Comment date: March 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Illinois Power Company

[Docket No. ER97–1138–000]

Take notice that on February 14, 1997, Illinois Power Company ("Illinois Power"), 500 South 27th Street, Decatur, Illinois, 62525, tendered for filing corrections to the firm and/or non-firm transmission service agreements filed in the above dockets.

It has come to IP's attention that Section 3 of the Firm Transmission Service Agreements incorrectly referred to Section 9 of IP's open access tariff as opposed to Section 17.3, and that Section 2 of the non-firm transmission service agreements incorrectly referred to Section 10 of the tariff, rather than Section 18.2. By this filing, IP corrects these agreements.

Comment date: March 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Niagara Mohawk Power Corporation

[Docket No. ER97–1369–000]

Take notice that on February 14, 1997, Niagara Mohawk Power Corporation tendered for filing an amendment in the above-referenced docket.

Comment date: March 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Soyland Power Cooperative, Inc.

[Docket No. ER97–1475–000]

Take notice that on February 11, 1997, Soyland Power Cooperative, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: March 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Northeast Utilities Service Company

[Docket No. ER97–1530–000]

Take notice that on January 30, 1997, Northeast Utilities Service Company tendered for filing its summary of activity under the Systems Companies Tariff No. 7 for the quarter ending December 31, 1996.

Comment date: March 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Premier Enterprises, LLC

[Docket No. ER97–1563–000]

Take notice that on February 5, 1997, Premier Enterprises, LLC tendered for filing a Notice of Succession changing its name from Premier Enterprises, Inc. to Premier Enterprises, LLC, effective January 1, 1997.

Comment date: March 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Northern States Power Company (Minnesota Company)

[Docket No. ER97–1616–000]

Take notice that on February 10, 1997, Northern States Power Company, Minnesota (NSP) tendered for filing of Supplement No. 1 to the Municipal Interconnection and Interchange agreement between NSP and the City of Kasson, Minnesota. NSP has requested an effective date of February 11, 1997 from the Commission.

A copy of the filing was served upon each of the parties named in the Service List.

Comment date: March 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Northern States Power Company (Minnesota Company)

[Docket No. ER97–1617–000]

Take notice that on February 10, 1997, Northern States Power Company (Minnesota) (NSP) tendered for filing a Supplement No. 1 to the Oakdale Project Ownership and Operating Agreement and Oakdale Substation Service Agreement (Supplement) dated June 3, 1996, between NSP and the City of North St. Paul (City). NSP files this agreement on behalf of City and itself.

This Supplement changes the procedures between the Parties for certain maintenance activities. NSP requests the Commission accept this Agreement for filing effective March 1, 1997.

Comment date: March 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Delmarva Power & Light Company

[Docket No. ER97–1618–000]

Take notice that on February 10, 1997, Delmarva Power & Light Company (Delmarva) tendered for filing a service agreement providing for non-firm point-to-point transmission service from time to time to Vitol Gas & Electric LLC pursuant to Delmarva's open access transmission tariff. Delmarva asks that the Commission set an effective date for the service agreement of February 10, 1997, the date on which it was filed.

Comment date: March 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Delmarva Power & Light Company

[Docket No. ER97–1619–000]

Take notice that on February 10, 1997, Delmarva Power & Light Company (Delmarva) tendered for filing a service agreement providing for non-firm point-to-point transmission service from time to time to CNG Power Services Corp. pursuant to Delmarva's open access transmission tariff. Delmarva asks that the Commission set an effective date for the service agreement of February 10, 1997, the date on which it was filed.

Comment date: March 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Delmarva Power & Light Company

[Docket No. ER97–1620–000]

Take notice that on February 10, 1997, Delmarva Power & Light Company (Delmarva) tendered for filing a service agreement providing for non-firm point-to-point transmission service from time to time to Southern Energy Trading and Marketing, Inc. pursuant to Delmarva's open access transmission tariff. Delmarva asks that the Commission set an effective date for the service agreement of February 10, 1997, the date on which it was filed.

Comment date: March 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Columbia Energy Services Corporation

[Docket No. ER97–1621–000]

Take notice that on February 10, 1997, Columbia Energy Services Corporation (CES) tendered for filing with the Federal Energy Regulatory Commission CES's Rate Schedule No. 1, which permits CES to make wholesale power sales at market-based rates.

Comment date: March 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Allegheny Power Service Corp., on behalf of Monongahela Power Company, The Potomac Edison Company, and West, and Penn Power Company (Allegheny Power)

[Docket No. ER97–1622–000]

Take notice that on February 10, 1997, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Supplement No. 11 to add American Electric Power Service Corporation and Wisconsin Electric Power Company to Allegheny Power Open Access Transmission Service Tariff which has been submitted for filing by the Federal Energy Regulatory Commission in Docket No. OA96–18–000. The proposed effective date under the Service Agreements is February 6, 1997.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: March 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Commonwealth Edison Company

[Docket No. ER97–1623–000]

Take notice that on February 7, 1997, Commonwealth Edison Company (ComEd) submitted for filing two Service Agreements establishing CNG Power Services Corporation (CNG), and Union Electric Company (UE), as non-firm transmission customers under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd also submits for filing nine Service Agreements for various firm transactions with Sonat Power Marketing LP (Sonat), and one Service Agreement for a firm transaction with Duke/Louis Dreyfus L.L.C. (D/LD), under the terms of ComEd's OATT.

ComEd requests an effective date of January 8, 1997, for the non-firm service agreements with CNG and UE; an effective date of January 9, 1997, for the firm service agreements dated January 9, 1997 with Sonat; and effective date of January 10, 1997 for the two firm service agreements dated January 10, 1997 with Sonat; an effective date of January 13, 1997, for the four firm service agreements dated January 13, 1997 with Sonat; an effective date of January 14, 1997, for the two firm service agreements dated January 14, 1997 with Sonat; and an effective date of January 15, 1997 for the firm service agreement with D/LD, and accordingly seeks waiver of the Commission's requirements.

Copies of this filing were served upon WEPCO, PSE&G, and the Illinois Commerce Commission.

Comment date: March 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Cinergy Services, Inc.

[Docket No. ER97–1624–000]

Take notice that on February 10, 1997, Cinergy Services, Inc. (Cinergy) tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Equitable Power Services Company.

Cinergy and Equitable Power Services Company are requesting an effective date of February 1, 1997.

Comment date: March 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Tucson Electric Power Company

[Docket No. ER97–1625–000]

Take notice that on February 7, 1997, Tucson Electric Power Company tendered for filing three (3) service agreements for transmission service under Part II of its Open Access Transmission Tariff filed in Docket No. OA96–140–000. The agreements are as follows:

1. Service Agreement for Firm Point-to-Point Transmission Service with PacifiCorp dated December 26, 1996.

2. Service Agreement for Firm Point-to-Point Transmission Service with

Tucson Electric Power Company, Contracts & Wholesale Marketing dated December 26, 1996.

3. Service Agreement for Non-Firm Point-to-Point Transmission Service with Tucson Electric Power Company, Contracts & Wholesale Marketing dated February 7, 1997.

Copies of the filing were served upon each of the parties to the service agreements.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Sierra Pacific Power Company

[Docket No. ER97–1626–000]

Take notice that on February 11, 1997, Sierra Pacific Power Company (Sierra) tendered for filing Service Agreements (Service Agreements) with the following entities for Non Firm Point-to-Point Transmission Service under Sierra's Open Access Transmission Tariff (Tariff):

Arizona Public Service Company

1. Enron Power Marketing, Inc.
2. Idaho Power Company
3. PacifiCorp
4. PanEnergy Trading & Marketing Services, L.L.C.
5. Southern Trading And Marketing, Inc.

Sierra filed the executed Service Agreements with the Commission in compliance with Section 14.4 of the Tariff and applicable Commission Regulations. Sierra also submitted revised Sheet No. 148 (Attachment E) to the Tariff, which is an updated list of all current subscribers. Sierra requests waiver of the Commission's notice requirements to permit and effective date of February 11, 1997 for Attachment E, and to allow the Service Agreements to become effective according to their terms.

Copies of this filing were served upon the Public Service Commission of Nevada, the Public Utilities Commission of California and all interested parties.

Comment date: March 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Wisconsin Power and Light Co.

[Docket No. ER97–1627–000]

Take notice that on February 10, 1997, Wisconsin Power and Light Company (WP&L) tendered for filing Form of Service Agreements for Customers who have signed WP&L's Final Order pro forma transmission tariff submitted in Docket No. OA96–20–000. The customers are Aquila Power Corporation, Enron Power Marketing, Inc., MidCon Power Services Corp., NorAm Energy Services, Inc., and Valero Power Services Company. The customers previously signed earlier versions of WP&L's transmission tariffs.

WP&L requests an effective date of July 9, 1996, and accordingly seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: March 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Northeast Utilities Service Co.

[Docket No. ER97–1628–000]

Take notice that on February 10, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement with CMS Marketing, Services & Trading Co (CMS MST) under the NU System Companies' System Power Sales/Exchange Tariff No. 6.

NUSCO states that a copy of this filing has been mailed to CMS MST.

NUSCO requests that the Service Agreement become effective April 1, 1997.

Comment date: March 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Boston Edison Company

[Docket No. ER97–1629–000]

Take notice that on February 10, 1997, Boston Edison Company (Boston Edison), tendered for filing a Service Agreement and Appendix A under Original Volume No. 6, Power Sales and Exchange Tariff (Tariff) for Baltimore Gas & Electric (Baltimore). Boston Edison requests that the Service Agreement become effective as of February 1, 1997.

Edison states that it has served a copy of this filing on Baltimore and the Massachusetts Department of Public Utilities.

Comment date: March 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Northeast Utilities Service Company

[Docket No. ER97–1631–000]

Take notice that on February 13, 1997, Northeast Utilities Service Company (NUSCO) tendered for filing a Service Agreement with AIG Trading Corp. (AIG) under the NU System Companies' Sales for Resale, Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to AIG.

NUSCO requests that the Service Agreement become effective February 1, 1997.

Comment date: March 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Carolina Power & Light Company

[Docket No. ER97–1632–000]

Take notice that on February 13, 1997, Carolina Power & Light Company (Carolina) tendered for filing an executed Service Agreement between Carolina and the following Eligible Entity: Morgan Stanley Capital Group Inc. (MSCG). Service to the Eligible Entity will be in accordance with the terms and conditions of Carolina's Tariff No. 1 for Sales of Capacity and Energy.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: March 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Public Service Company Of Colorado

[Docket No. ER97–1635–000]

Take notice that on February 13, 1997, Public Service Company of Colorado tendered for filing a Service Agreement for Non-Firm Transmission Service between Public Service Company of Colorado and Public Service Company of New Mexico. Public Service states that the purpose of this filing is to provide Non-Firm Transmission Service in accordance with its Open Access Transmission Service Tariff. Public Service requests that this filing be made effective January 17, 1997.

Comment date: March 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. Public Service Company Of Colorado

[Docket No. ER97–1636–000]

Take notice that on February 13, 1997, Public Service Company of Colorado tendered for filing a Service Agreement for Non-Firm Transmission Service between Public Service Company of Colorado and Platte River Power Authority. Public Service states that the purpose of this filing is to provide Non-Firm Transmission Service in accordance with its Open Access Transmission Service Tariff. Public Service requests that this filing be made effective January 17, 1997.

Comment date: March 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

30. Public Service Company of Colorado

[Docket No. ER97–1637–000]

Take notice that on February 13, 1997, Public Service Company of Colorado tendered for filing a Service Agreement for Non-Firm Transmission Service between Public Service Company of Colorado and Aquila Power Corporation. Public Service states that the purpose of this filing is to provide Non-Firm Transmission Service in accordance with its Open Access Transmission Service Tariff. Public Service requests that this filing be made effective January 17, 1997.

Comment date: March 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

31. Central Louisiana Electric Company, Inc.

[Docket No. ER97–1638–000]

Take notice that on February 13, 1997, Central Louisiana Electric Company, Inc., ("CLECO") tendered for filing a service agreement under which Central Louisiana Electric Company, Inc. ("CLECO") as transmission provider, will provide non-firm point-to-point transmission service to Vitol Gas and Electric ("Vitol") under its point-to-point transmission tariff.

CLECO states that a copy of the filing has been served on Vitol.

Comment date: March 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

32. PECO Energy Company

[Docket No. ER97–1639–000]

Take notice that on February 13, 1997, PECO Energy Company (PECO) tendered for filing a Service Agreement dated February 6, 1997 with Citizens Lehman Power Sales (Citizens Lehman) under PECO's FERC Electric Tariff Original Volume No. 5 (Tariff). The Service Agreement adds Citizens Lehman as a customer under the Tariff.

PECO requests an effective date of February 6, 1997, for the Service Agreement.

PECO states that copies of this filing have been supplied to Citizens Lehman and to the Pennsylvania Public Utility Commission.

Comment date: March 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

33. Louisville Gas and Electric Company

[Docket No. ER97–1641–000]

Take notice that on February 13, 1997, Louisville Gas and Electric Company (LG&E), by letter dated February 10, 1997, tendered for filing a Non-firm Point-to-Point Transmission Service Agreement between LG&E and Consumers Power Company dba Consumers Energy Company and Detroit Edison Company under LG&E's Open Access Transmission Tariff.

Comment date: March 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

34. Louisville Gas and Electric Company

[Docket No. ER97–1642–000]

Take notice that on February 13, 1997, Louisville Gas and Electric Company (LG&E), by letter dated February 10, 1997, tendered for filing a Service Agreement between LG&E and Consumers Power Company dba Consumers Energy Company and The Detroit Edison Company under LG&E's Rate Schedule GSS.

Comment date: March 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

35. Louisville Gas and Electric Company

[Docket No. ER97–1644–000]

Take notice that on February 11, 1997, Louisville Gas and Electric Company tendered for filing copies of a service agreement between Louisville Gas and Electric Company and PanEnergy Power Services under Rate GSS.

Comment date: March 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

36. Louisville Gas and Electric Company

[Docket No. ER97–1645–000]

Take notice that on February 11, 1997, Louisville Gas and Electric Company tendered for filing copies of service agreements between Louisville Gas and Electric Company and Federal Energy Corp. under Rate GSS.

Comment date: March 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

37. Louisville Gas and Electric Company

[Docket No. ER97–1646–000]

Take notice that on February 11, 1997, Louisville Gas and Electric Company tendered for filing copies of a service agreement between Louisville Gas and Electric Company and MidCon Power Services Corp. under Rate GSS.

Comment date: March 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

38. Illinois Power Company

[Docket No. ER97–1647–000]

Take notice that on February 11, 1997, Illinois Power Company (Illinois Power) tendered for filing firm and non-firm transmission agreements under which Vitol Gas & Electric LLC will take transmission service pursuant to its open access transmission tariff. The agreements are based on the form of Service Agreement to Illinois Power's tariff.

Comment date: March 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

39. Illinois Power Company

[Docket No. ER97–1648–000]

Take notice that on February 11, 1997, Illinois Power Company ("Illinois Power"), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Power Company of America will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of February 1, 1997.

Comment date: March 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

40. Central Illinois Public Service Company

[Docket No. ER97–1649–000]

Take notice that on February 11, 1997, Central Illinois Public Service Company (CIPS) submitted a service agreement, dated February 4, 1997, establishing the Tennessee Valley Authority (TVA) as a customer under the terms of CIPS' Open Access Transmission Tariff.

CIPS requests an effective date of February 4, 1997 for the service agreement. Accordingly, CIPS requests waiver of the Commission's notice requirements. Copies of this filing were served upon TVA and the Illinois Commerce Commission.

Comment date: March 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

41. The United Illuminating Company

[Docket No. OA97–521–000]

Take notice that on January 31, 1997, The United Illuminating Company ("UI") tendered for filing its Policy Implementing the FERC Standards of Conduct contained in Section 37.4 of the Commission's regulations, 18 CFR 37.4, in compliance with the Commission's Order No. 889, 61 Fed. Reg. 21,737 (May 10, 1996), FERC Stats. & Regs. ¶ 31,037 (1996), *reh'g pending*, and the Commission's order in *The United Illuminating Co., et al.*, Notice of Extension of Time, Docket Nos. OA96–157–000 et al. (December 16, 1996).

Comment date: March 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the

Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5140 Filed 2–28–97; 8:45 am]

BILLING CODE 6717–01–P

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: February 24, 1997, 62 FR 8237.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: February 26 1997, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Number and Company have been added to the Agenda scheduled for the February 26, 1997 meeting.

Item No.	Docket No. and company
CAG–7	RP97–137–000, Southern Natural Gas Company.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5268 Filed 2–27–97; 11:50 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders; Week of January 20 Through January 24, 1997

During the week of January 20 through January 24, 1997, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy.

The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except Federal holidays. They are also available in *Energy Management: Federal Energy Guidelines,* a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: February 21, 1997.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 17

Week of January 20 through January 24, 1997

Appeals

Cascade Scientific, Inc., 1/23/97, VFA–0257

Cascade Scientific, Inc., filed an Appeal from a determination issued to it by the Richland Operations Office (Richland). In its Appeal, Cascade asserted that Richland improperly withheld unit price figures from a document requested pursuant to the FOIA. The DOE determined that Richland had correctly applied Exemption 4 to the unit price figures and the Appeal was denied.

Refund Applications

Department of the Navy, RF272–00464
U.S. Army Engineer District, RF272–77326
Charleston Naval Shipyard, RF272–77502
Accounting & Finance Office, 1/23/97, RF272–78004

The DOE dismissed Applications for Refund filed by four elements of the Department of Defense (DOD). The DOE noted that the Defense Logistics Agency had already received a refund for the total DOD consumption of domestic petroleum products during the refund period.

Ward Transport, Inc./William R. Ward, 1/23/97, RK272–04007

William R. Ward submitted an Application for a Supplemental Refund in the crude oil refund proceeding. As the former owner of the original Applicant, Ward Transport, Inc., Mr. Ward sought supplemental refund monies due to the corporation despite the fact that he sold the entire capital stock of the firm in 1989. After reviewing the purchase agreement, the DOE determined that Mr. Ward had not retained the right to receive a refund based on the corporation's refined product purchases when he sold the capital stock. Accordingly, Mr. Ward's Application for Supplemental Refund was denied.

Department of Veteran Affairs, 1/23/97, RR272–00111

The DOE denied a Motion for Reconsideration filed by a group of States from a Decision and Order granting a refund to a Department of Veterans Affairs (Veterans) medical center. The DOE rejected the States' argument that Veterans' status as a Federal agency was a bar to a crude oil refund. The DOE also rejected the States' argument that the purchases specified in the Veterans' Applications had already formed the basis for an earlier refund.

Land Paving Company, 1/21/97, RR272–00274

DOE denied a Motion for Reconsideration of a prior crude oil refund decision. The DOE found that the refund should go to the debtor in possession of the applicant company in a pending chapter 11 bankruptcy proceeding, rather than to either the estate of the owner of the firm or to a related firm.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Clark Oil Dealer	RF342–274	
E.D. Fee Transfer, Inc., E.D. Fee Transfer, Inc	RG272–387, RR272–261	1/23/97
Gulf Stream Lumber Co	RK272–01037	1/21/97
Halifax County, et al	RF272–86421	1/23/97
J.J. Carter & Son of Nashville, et al	RK272–03252,	1/21/97

Dismissals

The following submissions were dismissed.

Name	Case No.
Lee Britton Clark	RF342–93

[FR Doc. 97–5124 Filed 2–28–97; 8:45 am]

BILLING CODE 6450–01–P

Notice of Issuance of Decisions And Orders During the Week of January 27 Through January 31, 1997

Office of Hearings and Appeals

During the week of January 27 through January 31, 1997, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: February 21, 1997.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 18

Week of January 27 through January 31, 1997

Appeals

Consolidated Edison Company of New York, Inc., 1/28/97, VFA–0006

The DOE denied an appeal of a utility from a determination of its liability to the Uranium Enrichment Decontamination and Decommissioning Fund established under the Energy Policy Act of 1992. The DOE determined that the utility was properly assessed for separative work it purchased in leasing uranium from the DOE and for separative work used to enrich excess uranium the utility provided to its nuclear fuel fabricator.

Ezra A. Beattie, Sr., 1/28/97, VFA–0247

The DOE denied a Freedom of Information Act (FOIA) Appeal filed by Ezra A. Beattie, Sr. Beattie sought information concerning a particular Office of the Inspector General (IG) investigation. The OHA found that the IG's withholding of the identities of individuals who had provided information to the IG was appropriate under FOIA Exemptions 6 and 7(C).

Eugene Maples, 1/31/97, VFA–0258

Eugene Maples filed an Appeal from a determination issued by the Office of Inspector General (OIG) on November 25, 1996. The determination released information Mr. Maples had requested but deleted all personal names in that information under Exemptions 6 and 7(C). The DOE determined that not all of the names deleted were eligible for withholding under these Exemptions, because some of them were of persons who were neither the focus of the OIG's investigation nor witnesses. Therefore, the DOE granted the Appeal in part, and remanded the matter to the OIG to determine whether any of the names withheld could be released.

Request for Exception

Lepiers' Inc., 11/28/97, VEE–0034

LePiers' Inc., filed an Application for Exception from the requirement that it file Form EIA–782B, entitled "Resellers/Retailers' Monthly Petroleum Products Sales Report." The DOE found that exception relief was not warranted in this case, because LePiers' was not experiencing a special hardship, inequity or unfair distribution of burdens as a result of the requirement that it file the Form. Consequently, the DOE concluded that the Application for Exception filed by LePiers' should be denied.

Personnel Security Hearing

Personnel Security Hearing, 11/28/97, VSO–0101

A Hearing Officer issued an Opinion regarding the eligibility of an individual to maintain an access authorization. The DOE Personnel Security Division alleged that the individual: (1) Deliberately misrepresented in a personnel security interview his use of marijuana and problems with prescription drugs; and (2) used, or experimented with drugs or other controlled substance. The DOE alleged that this conduct tends to show that the individual is not honest, reliable, or trustworthy. The Hearing Officer determined that the individual did not deliberately falsify information in a personnel security interview. However, the Hearing Officer also determined that the individual used an illegal drug and abused prescription medication, which indicated that he is not honest, reliable or trustworthy. Accordingly, the Hearing Officer recommended that the individual's access authorization not be restored.

Refund Applications

Oivind Lorentzen Shipping As, 11/27/97, RG272–613

The DOE denied an Application for Refund filed on behalf of Oivind Lorentzen Shipping AS in the crude oil refund proceeding. The basis for the denial was the finding that the estimation method used by the firm to determine its petroleum product purchases during the refund period was not reasonable.

Wells Cargo, Inc., 11/28/97, RR272–124

Wells Cargo, Inc., filed a Motion for Reconsideration in the Supart V crude oil overcharge refund proceeding. The Office of Hearings and Appeals had previously rescinded the firm's crude oil refund because the firm had waived the right to receive such a refund by participating as a Surface Transporter in the Stripper Well refund proceeding. The firm requested that the Office of Hearings and Appeals reconsider that rescission, contending that it should have been able to claim refunds in the Subpart V refund proceeding that it could not have claimed in the Stripper Well refund proceeding. The OHA found no merit in this argument, stating that this very position had already been clearly considered and rejected by the Temporary Emergency Court of Appeals. Accordingly, Wells Cargo's Motion was denied.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Chatham Memorial Hospital	RJ272–33	1/28/97
Crude Oil Supple Ref Dist	RB272–00099	1/27/97
Dorothy and Harriet Davis	RK272–03695	1/30/97
D. R. and H. C. Davis	RK272–03933	
D. R. and H. C. Davis	RC272–00359	
Dorothy and Harriet Davis	RC272–00360	
Edwards Bros., Inc.	RA272–76	1/30/97
Farm Gas Coop. Assoc. et al	RG272–13	1/30/97
Medford Corporation	RJ272–34	1/29/97
Texaco Inc./William Penry	RF321–21089	1/30/97
Joanna Penry	RF321–21090	
Thelma E. McKee et al	RK272–01600	1/30/97
WHS, Inc	RF272–89499	1/30/97

Dismissals

The following submissions were dismissed.

Name	Case No.
Arawak Paving Co., Inc	RR272–00280
Harold & J. E. Layton	RR272–00277
Marietta Cooperative Oil Co	RG272–648
Personnel Security Hearing	VSO–0092
Personnel Security Hearing	VSO–0110
Poe Asphalt Paving, Inc	RR272–00278
Sankey Construction, Inc	RR272–00279
Varig Airlines	RG272–626

[FR Doc. 97–5125 Filed 2–28–97; 8:45 am]
BILLING CODE 6450–01–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

DATE AND TIME: Tuesday, March 11, 1997, at 2:00 P.M. (Eastern Time).

PLACE: Conference Room on the Ninth Floor of the EEOC Office Building, 1801 "L" Street, N.W., Washington, D.C. 20507.

STATUS: Part of the Meeting will be open to the public and part of the Meeting will be closed.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Votes, and
2. Commissioners' presentations on recently announced Task Forces:
   - A. Assessing Priority Charge Handling System
   - B. Litigation Strategy
   - C. Best Employer Practices

Closed Session

Litigation Authorization: General Counsel Recommendations

Note: Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.) Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTD) at any time for information on these meetings.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663–4070.

Dated: February 26, 1997.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 97–5275 Filed 2–27–97; 12:17 pm]
BILLING CODE 6750–06–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission

February 24, 1997.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments May 2, 1997.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications Commissions, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 3060–0536.

Title: Rules and Requirements for Telecommunications Relay Services (TRS) Interstate Cost Recovery.

Form No.: FCC Form 431.

Type of Review: Extension.

Respondents: Business or other for-profit entities.

Number of Respondents: 5000 respondents.

Estimate Hour Per response: 3.1 hours per response (avg.).

Total Annual Burden: 15,593 hours.

Needs and Uses: Title IV of the Americans with Disabilities Act of 1990 (ADA) requires the Commission to ensure that telecommunications relay services are available, to the extent possible, to individuals with hearing and speech disabilities in the United States. To fulfill this mandate, the Commission adopted rules that require the provision of TRS service beginning July 26, 1993. The Commission set minimum standards for TRS providers and established a shared-funding mechanism (TRS Fund) for recovering the costs of providing interstate TRS. The Commission also appointed the National Exchange Carrier Association (NECA) the TRS Fund administrator, and directed NECA to establish a non-paid, voluntary advisory committee to monitor cost recovery matters.

The Commission's rules require all carriers providing interstate telecommunications services to contribute to the TRS Fund. The amount contributed is the product of the carrier's gross interstate revenues for the previous year and a contribution factor determined annually by the Commission. Contributions are calculated in accordance with a TRS Fund Worksheet which is prepared each year by the Commission and published in the **Federal Register**. Payments from the fund are made to eligible TRS providers and are designed to cover the reasonable costs incurred in providing interstate TRS service. See 47 CFR Sections 64.601.64.608 for rules and requirements governing telecommunications relay services.

OMB Approval Number: 3060–0104.

Title: Temporary Permit to Operate a Part 90 Radio Station.

Form No.: FCC 572.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit; Individuals or households; State or Local Governments; Non-profit institutions.

Number of Recordkeepers: 2,000.

Estimated Time Per Response: 6 minutes (.10).

Total Annual Burden: 200 hours.

Needs and Uses: FCC Rules require that applicants complete FCC Form 572 if they wish to have immediate authorization to operate 2-way radio equipment already authorized in Part 90 radio services. This form is required by the Communications Act, International Treaties and FCC Rules 47 CFR Parts 1.922, and 1.925, 90.119, 90.159, 90.437 and 90.657.

OMB Approval Number: 3060–0025.

Title: Application for Restricted Radiotelephone Operator Permit—Limited Use.

Form No.: FCC 755.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals.

Number of Respondents: 1,000.

Estimated Time Per Response: 20 minutes (.33).

Total Annual Burden: 330 hours.

Needs and Uses: In accordance with the Communications Act, applicants must possess certain qualifications in order to qualify for a radio operator license. The data will be used to identify the individuals to whom the license is issued and to confirm that the individual possesses the required qualifications for the license. Applicants using this form are not eligible for employment in the United States but need an operator permit because they hold an Aircraft Pilot Certificate which is valid in the U.S. and need to operate aircraft radio stations; or they hold an FCC radio station license and will use the permit for operation of that particular station.

The number of respondents has been increased from 800 to 1,000, attributed to a re-evaluation of receipts. The form is being revised to add a space for the applicant to provide an Internet address. This will provide an additional option of reaching the applicant should the FCC have any questions concerning the application. The drug certification is being incorporated into the certification text prior to applicant signature and the requirement to check a "yes/no" block eliminated. The request for applicant's mailing address "state" is being changed to "state/country" to accomodate foreign mailing addresses. The Commission will redact the applicant birthdate from information available for public view.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–5091 Filed 2–28–97; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting; Sunshine Act Notice: Correction

FEDERAL REGISTER CITATION OF PREVIOUS NOTICE: 62 FR 8742, February 26, 1997.

This notice corrects an earlier notice which was published at 62 FR 8742, on February 26, 1997.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9:00 a.m. Wednesday, March 5, 1997.

PLACE: Board Room, Second Floor, Federal Housing Finance Board,1777 F Street, NW., Washington, DC 20006.

STATUS: The entire meeting will be open to the public.

MATTERS TO BE CONSIDERED DURING PORTIONS OPEN TO THE PUBLIC:

- Mission Regulation—Proposed Rule.
- Affordable Housing Program Application Approvals.
- Financial Management Policy.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Rita I. Fair,

Managing Director.

[FR Doc. 97–5264 Filed 2–27–97; 11:27 am]
BILLING CODE 6725–01–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Sanpo Unyu Co., Ltd., 145 105th Avenue, SE, Suite 31, Bellevue, WA 98004, Officers: Kazuo Nakagawa, President; Yoshiya Ono, Managing Director

Data Freight Corporation, 1650 NW 94th Avenue, Miami, FL 33172, Officer: Mark D. Leverett, President.

Dated: February 25, 1997.

Joseph C. Polking,

Secretary.

[FR Doc. 97–5078 Filed 2–28–97; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the

assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 27, 1997.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Alliance Bancorp of New England, Inc., Vernon, Connecticut; to become a bank holding company by acquiring 100 percent of the voting shares of Tolland Bank, Tolland, Connecticut.

B. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. Harris Financial MHC, Harrisburg, Pennsylvania; to acquire 100 percent of the voting shares of Harris Financial Inc., Harrisburg, Pennsylvania, and thereby indirectly acquire Harris Savings Bank, Harrisburg, Pennsylvania.

In connection with this application, Harris Financial, Inc. also has applied to become a bank holding company.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Texas Financial Bancorporation, Inc., Minneapolis, Minnesota, and Delaware Financial Bancorporation, Inc., Wilmington, Delaware; to acquire 100 percent of the voting shares of Austin County Bancshares, Inc., Bellville, Texas, and thereby indirectly acquire Austin County Bancshares-Delaware, Wilmington, Delaware, and Austin County State Bank, Bellville, Texas.

Board of Governors of the Federal Reserve System, February 25, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–5118 Filed 2-28-97; 8:45 am]

BILLING CODE 6210-01-F

Change in Bank Control Notices; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 97-4154) published on pages 7783 abd 7784 of the issue for Thursday, February 20, 1997.

Under the Federal Reserve Bank of Minneapolis heading, the entry for TCF Financial Corporation, Minneapolis, Minnesota, is revised to read as follows:

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. TCF Financial Corporation, Minneapolis, Minnesota; to acquire TCF Minnesota Financial Services, Inc., Minneapolis, Minneosta, and thereby engage in holding record title to mortgages securing loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Comments on this application must be received by March 14, 1997.

Board of Governors of the Federal Reserve System, February 25, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–5120 Filed 2-28-97; 8:45 am]

BILLING CODE 6210-01-F

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 17, 1997.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. Keystone Financial Inc., Harrisburg, Pennsylvania; to acquire Financial Trust Services Company, Carlisle, Pennsylvania,and thereby engage in providing trust services to affiliated bank subsidiaries, pursuant to § 225.25(b)(3) of the Board's Regulation Y, and thereby indirectly acquire Financial Trust Life Insurance Company, Phoenix, Arizona, and thereby engage in providing credit related life insurance to affiliated bank loan customers, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

B. Federal Reserve Bank of Cleveland (R. Chris Moore, Senior Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. F.N.B. Corporation, Hermitage, Pennsylvania, and Southwest Banks, Inc., Naples, Florida; to engage in accounts receivable financing (factoring), pursuant to § 225.25(b)(1) of the Board's Regulation Y.

C. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Stichting Prioriteit ABN AMRO Holding, Amsterdam, The Netherlands, Stichting Administratiekantoor ABN AMRO Holding, Amsterdam, The Netherlands, ABN AMRO Holding N.V., Amsterdam, The Netherlands, and ABN AMRO Bank N.V., Amsterdam, The Netherlands; to acquire Citicorp Futures Corporation, New York, New York, and thereby indirectly acquire Citifutures Limited, London, England, and Citicorp Futures Limited, Singapore, and thereby engage in acting as a futures commission merchant (FCM) in the execution and clearing of financial futures contracts and options on futures contracts, pursuant to § 225.25(b)(17) of the Board's Regulation Y; in providing investment advice as an FCM or commodity trading advisor (CTA), pursuant to § 225.25(b)(18), in acting as an FCM in the execution and clearance of futures and options on futures contracts based on bonds or other debt instruments, certain commodities, and stock, bond, or commodity indices, and providng investment advice with respect to such contracts, pursuant to ABN AMRO, 83 Fed. Res. Bull. (1997)(order dated Dec. 11, 1996); and in providing execution-only or clearing-only services with respect to financial and non-financial futures and options on futures contracts, pursuant to Citicorp, 81 Fed. Res. Bull. 164 (1995).

D. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. Community First Bankshares, Inc., Fargo, North Dakota; to engage *de novo* through its subsidiary, Community First Financial, Inc., Fargo, North Dakota, in permissible nonbanking activities of making and servicing loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 25, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–5119 Filed 2-28-97; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request Proposed Projects

Title: Early Head Start Evaluation.

OMB No.: 0970–0143.

Description: The Head Start Reauthorization Act of 1994 established a special initiative creating funding for services for families with infants and toddlers. In response the Administration on Children, Youth and Families (ACYF) designated the Early Head Start (EHS) program. In September 1995, ACYE awarded grants to 68 local programs to serve families with infants and toddlers. ACYF awarded grants to an additional 75 local programs in September 1996.

EHS programs are designated to produce outcomes in four domains: (1) child development, (2) family development, (3) staff development, and (4) community development. The Reauthorization required that this new initiative be evaluated. To study the effect of the initiative, ACYE awarded a contract through a competitive procurement to Mathematica Policy Research, Inc. (MPR) with a subcontract to Columbia University's Center for Young Children and Families. The evaluation will be carried out from October 1, 1995 through September 30, 2000. Data collection activities that are the subject to this Federal Register notice are intended for the second phase of the EHS evaluation.

The sample for the child and family assessments will be approximately 3,400 families who include a pregnant women or a child under 12 months of age, in 17 EHS study sites. Each family will be randonly assigned to a treatment group or a control group. The sample for the child care assessments will include the primary child care provider for the focal child in each of the 3,400 study sample families. The surveys and assessments will be conducted through computer-assisted telephone and personal interviewing, pencil and paper self-administered questionnaires, structured observations and videotaping. All data collection instruments have been designed to minimize the burden on respondents by minimizing interviewing and assessment time. Participation in the study is voluntary and confidential.

The information will be used by government managers, Congress and others to identify the features and evaluate the effectiveness of the EHS program.

Respondents: Applicants to the Early Head Start program and child care providers for Early Head Start families and control group families.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
24-Month Parent Interview, Child Assessment, and Videotaping Protocol	1,412	1	2.5	3,530
Parent Services Follow-Up Interview:				
12-Month Follow-Up	1,475	1	1	1,475
18-Month Follow-Up	1,412	1	1	1,412
24-Month Follow-Up	1,365	1	1	1,365
36-Month Follow-Up	1,334	1	1	1,334
Child Care Provider Interview:				
Child Care Centers	408	1	.25	102
Center Directors	408	1	.17	69
Direct Provider	408	1	.17	69
Classroom Staff	119	1	.5	60
Family Child Care	26	1	.17	4
Providers	172	1	.5	86
Family Provider	38	1	.17	6
Assistants				
Relative Care Providers:				
Relative Provider				
Assistants				
Child Care Provider Observation Protocol:				
Child Care Centers	408	1	2	816
Family Child Care	119	1	2	238
Providers	172	1	2	344
Relative Care Providers				
Estimated Total Annual Burden Hours: 10,910				

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: February 25, 1997.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 97–5147 Filed 2–28–97; 8:45 am]

BILLING CODE 4184–01–M

Food and Drug Administration

[Docket No. 97M–0052]

Surgical Dynamics, Inc., a Division of United States Surgical Corp.; Premarket Approval of Ray Threaded Fusion Cage (TFC)™ With Instrumentation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Surgical Dynamics, Inc., a division of United States Surgical Corp., Norwalk, CT, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the Ray Threaded Fusion Cage (TFC)™ with instrumentation. After reviewing the recommendation of the Orthopedic and Rehabilitation Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of October 29, 1996, of the approval of the application.

DATES: Petitions for administrative review by April 2, 1997.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Samie M. Niver, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2036.

SUPPLEMENTARY INFORMATION: On June 14, 1995, Surgical Dynamics, Inc., a division of United States Surgical Corp., Norwalk, CT 06856, submitted to CDRH an application for premarket approval of the Ray TFC™ with instrumentation. This device is an intervertebral body fusion device. It is indicated for use with autogenous bone graft in patients with degenerative disc disease (DDD) at one or two levels from L2 to S1. These DDD patients may also have up to Grade I spondylolisthesis at the involved level(s). The Ray TFC™ is to be implanted via an open posterior surgical approach. DDD is defined as back pain of discogenic origin with degeneration of the disc confirmed by history and radiographic studies. These patients should be skeletally mature and have had 6 months of nonoperative therapy.

On May 23, 1996, the Orthopedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On October 29, 1996, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under 21 CFR part 12 of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under 21 CFR 10.33(b). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before April 2, 1997, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: January 16, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 97–5076 Filed 2–28–97; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of December 1996:

Name: National Advisory Council on Nurse Education and Practice

Date and Time: April 17–18, 1997, 8:30 a.m.

Place: Spring Room, Silver Spring Holiday Inn, 8777 Georgia Avenue, Silver Spring, Maryland 20910.

The meeting is open to the public with the exception of the period from approximately 8:30 a.m. until 9:30 a.m. on April 18, when grant applications will be reviewed.

Agenda: Updates on and discussion of Agency, Bureau and Division activities, and the legislative and budget status of programs; overview of the national nursing workforce; review of nurse practitioner workforce trends, implications and options for the future; review of nursing informatics workgroup recommendations for a national agenda.

Anyone wishing to obtain a roster of members, minutes of meeting or other relevant information should write or contact Ms. Elaine G. Cohen, Acting Executive Secretary, National Advisory Council on Nurse Education and Practice, Health Resources and Services Administration, Parklawn Building, Room 9–36, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–5786.

Agenda Items are subject to change as priorities dictate.

Dated: February 25, 1997.

J. Henry Montes,

Director, Office of Policy and Information Coordination, HRSA.

[FR Doc. 97–5071 Filed 2–28–97; 8:45 am]

BILLING CODE 4160–15–P

Office of Inspector General

Publication of the OIG Model Compliance Plan for Clinical Laboratories

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice.

SUMMARY: This **Federal Register** notice sets forth the recently issued model compliance plan for clinical laboratories developed by the Office of Inspector General in cooperation with, and input from, several provider groups and industry representatives. Many providers and provider organizations have expressed an interest in better protecting their operations from fraud through the adoption of compliance plans. We believe the development of this initial model compliance plan for clinical laboratories will serve as a positive step towards promoting a higher level of ethical and lawful conduct throughout the health care industry.

FOR FURTHER INFORMATION CONTACT: Joel J. Schaer, Office of Counsel to the Inspector General, (202) 619–0089.

SUPPLEMENTARY INFORMATION: The creation of model compliance plans has become a major initiative of the Office of Inspector General (OIG) in its effort to engage the private health care community in the fight to combat fraud and abuse. In developing these compliance plans, the OIG continues to work closely with the Health Care Financing Administration and various sectors of the health care industry.

The clinical laboratory model compliance plan represents the OIG's initial effort to develop such a plan for use by the industry. The plan considers elements of the Federal Sentencing Guidelines and policy guidance given to major independent laboratories through corporate integrity agreements. Specifically, this model plan recommends that clinical laboratories implement a number of substantive changes, such as developing better requisition forms and policies that promote the physician's right to order only medically necessary tests.

Adoption of the clinical laboratory model compliance plan set forth below, and future model compliance plans for other health care providers, will be voluntary. All future models will be similarly structured, that is, substantive policy recommendations resulting from our investigations and civil settlements combined with the elements of the Federal Sentencing Guidelines.

A reprint of the OIG model compliance plan follows.

MODEL COMPLIANCE PLAN FOR CLINICAL LABORATORIES

Introduction

The Office of Inspector General (OIG) of the Department of Health and Human Services (HHS) and other Federal agencies charged with responsibility for enforcement of Federal law have emphasized the importance of voluntarily developed and implemented compliance plans. In recent years, the OIG has been asked to supply guidance as to the elements of a model compliance plan. The purpose of this issuance, therefore, is to respond to those requests by providing some guidance to health care providers that supply clinical laboratory testing services for Medicare and Medicaid beneficiaries. Like other compliance plan models that will be issued for other areas of the health care community, this guidance is based upon the OIG's experience in fraud investigations of clinical laboratories, the Health Care Financing Administration's (HCFA) regulations and guidelines, requirements imposed on clinical laboratories in corporate integrity agreements negotiated by the OIG, and input from the clinical laboratory industry.

The government, especially the OIG, has a zero tolerance policy towards fraud and abuse and will use its extensive statutory authorities to reduce fraud in Medicare and other federally funded health care programs. Compliance plans offer the health care provider an opportunity to participate in a nationwide effort to reduce fraud and abuse in our national health care programs. The OIG believes that through a partnership with the private sector, significant reductions in fraud and abuse can be accomplished. Compliance plans offer a vehicle to achieve that goal.

This information is being supplied to assist laboratory providers in crafting and refining their own compliance plans. Elements of these guidelines can be used by all laboratories, regardless of size, to establish a compliance program. We are not suggesting that all laboratories must implement all of the compliance elements discussed in this document, nor do we suggest that a laboratory that does not incorporate all of these elements will be at a disadvantage when under the scrutiny of the OIG or other governmental agency. Rather, these guidelines represent the government's suggestions on how to correct and prevent fraudulent activity, and they can be tailored to fit the individual needs and financial realities of any clinical laboratory, be it an independent national laboratory, a hospital laboratory, or a small, regional laboratory. We expect variations reflecting the specific factual context in which each individual laboratory operates.

This model compliance plan focuses on topic areas recently addressed in corporate integrity agreements with several players in the laboratory industry. Consequently, this model laboratory compliance plan is not all inclusive as to subject matter. We recognize that laboratories are accountable for complying with far more laws, regulations and guidelines than we have tried to cover in this model, and we believe that laboratories implementing compliance plans should address any and all areas where abuse may be prevalent in the industry. For example, the OIG suggests that laboratory compliance programs should include training on topics such as, the anti-kickback act, Stark self-referral issues and CLIA requirements. Depending on the nature of its business, a laboratory also may need to add specific measures covering areas such as ESRD testing and billing, which is governed by rules and regulations and which has been subject to abuse by many companies. Ultimately, each company bears the responsibility for

determining the appropriate topic areas and measures to be included in its compliance program.

We see this model compliance plan as a dynamic document, and therefore, one that may be modified or expanded as we gather more information and knowledge about best practices and successful compliance plans. Through this document, we are attempting to provide guidance and structure to assist providers as they attempt to comply with our civil, criminal and health care laws. All providers should be aware that the development and implementation of compliance programs can raise a host of sensitive and complex legal issues. Nothing stated herein should substitute for or be used in lieu of legal advice from competent, experienced counsel. In addition, it should be noted that implementing a compliance program will not provide a laboratory with immunity from criminal, civil or administrative prosecution, but it may be a relevant factor in negotiations with the Office of Inspector General.

Compliance Plan Elements

Every laboratory adopting a compliance plan should develop a program and policies that ensure that the plan is implemented and enforced. Compliance plans that are merely cosmetic are not effective and, in the long run, may harm the laboratory. The OIG suggests that the comprehensive compliance program should include, at a minimum, the following elements: (1) Written standards of conduct for employees; (2) the development and distribution of written policies that promote the laboratory's commitment to compliance and that address specific areas of potential fraud, such as billing, marketing and claims processing; (3) the designation of a chief compliance officer or other appropriate high-level corporate structure or official who is charged with the responsibility of operating the compliance program; (4) the development and offering of education and training programs to all employees; (5) the use of audits and/or other evaluation techniques to monitor compliance and ensure a reduction in identified problem areas; (6) the development of a code of improper/illegal activities and the use of disciplinary action against employees who have violated internal compliance policies or applicable laws or who have engaged in wrongdoing; (7) the investigation and remediation of identified systemic and personnel problems; (8) the promotion of and adherence to compliance as an element in evaluating supervisors and managers; (9) the development of policies addressing the non-employment or retention of sanctioned individuals; (10) the maintenance of a hotline to receive complaints and the adoption of procedures to protect the anonymity of complainants; and (11) the adoption of requirements applicable to record creation and retention. These compliance program elements are spelled out in greater detail below.

A. Written Procedures and Policies

Laboratory compliance plans should require the development and distribution of written compliance policies. These policies should be developed under the supervision and direction of the chief compliance officer or the equivalent and should, at a minimum, be provided to all individuals who are affected by the specific policy at issue. One convenient method of achieving this goal and maintaining policies is to create a three-ring compliance policy notebook. This format permits the filing of new and amended or revised compliance policies and ensures that affected individuals have easy access to the laboratory's written policies.

1. Standards of Conduct

Laboratories should develop standards of conduct for all employees which clearly delineate the policies of the laboratory with regard to fraud, waste and abuse and adherence to all guidelines and regulations governing federally funded health care programs. These standards should be made available to and understandable by all employees (e.g., translated into other languages, if necessary) and regularly updated as the policies and regulations of these programs are modified.

2. Medical Necessity

Laboratory compliance plans should ensure that claims are only submitted to federally funded health care programs for services that the laboratory has reason to believe are medically necessary. Upon request, a laboratory should be able to provide documentation, such as requisition forms containing diagnosis codes, supporting the medical necessity of a service the laboratory has provided and billed to a Federal program. We recognize that laboratories do not and cannot treat patients or make medical necessity determinations. However, there are steps that such facilities can and should take to help maximize the likelihood that they only bill federally funded health care programs for tests that meet the reimbursement rules for those programs.

As a preliminary matter, the OIG recognizes that physicians must be able to order any tests, including screening tests, that they believe are appropriate for the treatment of their patients. However, we believe that physicians must be made aware that Medicare will only pay for tests that meet the Medicare definition of "medical necessity" and that Medicare may deny payment for a test that the physician believes is appropriate, such as a screening test, but which does not meet the Medicare definition of medical necessity. The laboratories themselves are in a unique position to deliver this information to their physician clients.

In our opinion, laboratories can and should advise physicians that when they instruct the laboratory to seek Medicare reimbursement for tests ordered, they should only order those tests that they believe are medically necessary for the diagnosis and treatment of their patients. We recommend that laboratories implement the following steps through their compliance plans or some other appropriate mechanism to help ensure, as best they can, that the claims they submit to federally funded health care programs meet the appropriate program requirements:

a. *Requisition Design:* Each laboratory (or laboratory company) should standardize its noncustomized test offerings and use common, uniform requisition forms that emphasize physician choice and encourage doctors to order, to the extent possible, only those tests that they believe are appropriate for each patient. In addition, the requisition forms should require physicians to document the need for each test ordered by inserting a diagnosis code for each such test. With respect to chemistry tests, requisition forms should be designed to require physicians to order such tests individually (i.e., separately) unless: (1) the test is specifically part of a CPT or HCPCS defined automated multichannel test series (e.g., 80002–80019, G0058–G0060 which will be amended to G0095–G0098); (2) the test is part of a CPT-defined "clinically relevant test grouping" such as an organ or disease panel or profile (e.g., 80050–80099); or (3) the test is part of a profile that has been customized at the request of the physician. In addition, a printed statement should appear on every requisition form reiterating that when ordering tests for which Medicare reimbursement will be sought, physicians (or other individuals authorized by law to order tests) should only order tests that are medically necessary for the diagnosis or treatment

of a patient, rather than for screening purposes.

b. *Notices to Physicians:* All laboratories should provide all of their clients with annual written notices that set forth: (1) The Medicare medical necessity policy; (2) the individual components of every laboratory profile that includes a multichannel chemistry test or other automated multiple test result (e.g., 80002–80019, G0058–G0060); (3) the CPT or HCPCS codes that the laboratory uses to bill the Medicare program for each such profile; (4) the Medicare National Limitation Amount for each CPT or HCPCS code used to bill Medicare for each profile and its components; and (5) a description of how the laboratory will bill Medicare for each profile. If the laboratory engages a physician clinical consultant, the notice also should provide the phone number of the physician clinical consultant and advise of his or her availability to discuss appropriate testing and test ordering.

In addition to the general notices above, laboratories offering clients the opportunity to create customized profiles should provide all clients who request customized profiles with annual notices that: (1) Explain the Medicare reimbursement paid for each component of each such profile; (2) encourage physicians who are ordering tests for which Medicare reimbursement will be sought to order only tests that are medically necessary for each patient; (3) inform physicians that using a customized profile may result in the ordering of tests for which Medicare may deny payment; and (4) inform physicians that the OIG takes the position that a physician who orders medically unnecessary tests for which Medicare reimbursement is claimed may be subject to civil penalties. Once again, if the laboratory engages a physician clinical consultant, the notice also should provide the phone number of the physician clinical consultant and advise of his or her availability to discuss appropriate testing and test ordering.

c. *Physician Acknowledgments:* Laboratories that agree to customize profiles in response to physician requests should require such requesting physicians to sign a Physician Acknowledgment. By signing the Physician Acknowledgment, the physician would affirm that: (1) The physician has requested the creation of a custom profile that includes the tests listed on the acknowledgment; (2) the physician has been informed of the reimbursement amount that Medicare (and where appropriate, Medicaid) will pay for each test included in each customized profile; (3) the physician understands that when ordering tests for which Medicare reimbursement will be sought, the physician should only order those tests which the physician believes are medically necessary for each patient; (4) the physician knows that using a customized profile may result in the ordering of tests for which Medicare or other federally funded health care programs may deny payment; (5) the physician will order individual tests or a less inclusive profile when not all of the tests included in the customized profile are medically necessary for an individual patient; (6) the physician has been informed that the OIG takes the position that a physician who orders medically unnecessary tests may be subject to civil penalties; and (7) if appropriate, the physician is aware that the laboratory makes available the services of a clinical consultant to assist the physician in ensuring that appropriate tests are ordered.

d. *Test Utilization Monitoring:* The OIG believes that laboratories can and should take the steps described above to help ensure that physicians will make a determination and document the medical necessity of tests billed to the Medicare program. We also believe that there are steps laboratories can take to determine whether physicians are being encouraged to order medically unnecessary tests. The OIG believes that a laboratory which has reason to believe that its clients are ordering medically unnecessary tests has a duty to determine why that behavior has occurred. More importantly, if the laboratory discovers that it has in some way caused that behavior, we believe the laboratory has the duty to correct the cause.

Recognizing that there may be other ways to do so, the OIG suggests the following methodology for monitoring test utilization and detecting ordering abuses. We suggest that laboratories retain and analyze test utilization data from year to year, by CPT or HCPCS code, for the top 30 tests they perform for Medicare beneficiaries. Laboratories could do this by keeping track of the number of tests performed by CPT or HCPCS code or of the number of claims submitted to Medicare for each test. The laboratories would then compute the percentage growth in claims submitted for each of the top 30 tests from one year to the next. We believe that if a test's utilization grew more than 10 percent, the laboratory should undertake a reasonable inquiry to ascertain the cause of such growth. If the laboratory determines that the increase in test utilization occurred for a benign reason, such as the acquisition of a new laboratory facility, then the laboratory need not take any action. However, if the laboratory determines that the increase in utilization was caused by the use of basic chemistry profiles or some other action on the part of the facility, the laboratory should take any steps that it deems reasonably necessary to address the issue and to insure that fraud is not being committed.

3. Billing

Laboratory compliance policies should ensure that all claims for testing services submitted to Medicare or other federally funded health care programs are accurate and correctly identify the services ordered by the physician (or other individual authorized by law to order tests) and performed by the laboratory.

a. *Selection of CPT or HCPCS Codes:* Laboratory compliance policies should ensure that the CPT or HCPCS code that is used to bill Medicare or Medicaid accurately describes the service that was ordered and performed. Laboratories should choose only the code that most accurately describes the ordered and performed test. To ensure code accuracy, laboratories may wish to include a requirement that the codes be reviewed by individuals with technical expertise in laboratory testing before such codes are approved for claims submissions. The OIG views intentional up coding (i.e., the selection of a code to maximize reimbursement when such code is not the most appropriate descriptor of the service) as raising false claims issues. If a laboratory continues to have questions about code selection, even after review by technical experts, the facility should direct its questions to its Medicare carrier or intermediary.

b. *Selection of ICD–9CM Codes:* At the direction of the Health Care Financing Administration (HCFA), Medicare carriers and intermediaries have established lists of tests that must be accompanied by diagnostic information to establish medical necessity before Medicare coverage will be assumed ("limited coverage policy"). Such diagnostic information may be submitted either through the use of ICD–9CM codes or a narrative description. Laboratory compliance policies should direct that laboratories will only submit diagnostic information obtained from the test ordering physician. Laboratories should not: (1) Use diagnostic information provided by the physician from earlier dates of service (other than standing orders, as discussed below at paragraph (4)); (2) use "cheat sheets" that provide diagnostic information that has triggered reimbursement in the past; (3) use

computer programs that automatically insert diagnosis codes without receipt of diagnostic information from the physician; or (4) make up diagnostic information for claims submission purposes. Laboratories should: (1) Contact the ordering physician to obtain diagnostic information in the event that the physician has failed to provide such information; (2) provide services and diagnostic information supplied pursuant to a standing order executed in connection with an extended course of treatment; and (3) accurately translate narrative diagnoses obtained from the physician to ICD–9CM codes. Where diagnostic information is obtained from a physician or the physician's staff after receipt of the specimen and the requisition form, documentation of the receipt of such information should be created and maintained.

c. *Tests Covered by Claims for Reimbursement:* Laboratory compliance policies should ensure that the laboratory only submits claims for tests that were both ordered and performed. If a laboratory receives a specimen without a test order or with an ambiguous test order that is subject to multiple interpretations, the facility should check with the doctor to determine what tests he or she wanted performed before submitting a claim for reimbursement to Medicare. Thus, if the laboratory performed a test that the doctor did not order, the laboratory will not erroneously bill for that test. Similarly, if a laboratory cannot perform an ordered test due to, for example, a laboratory accident or insufficient quantities of specimen, the laboratory should not submit a claim to Medicare. The OIG considers the submission of a claim for tests that were either not ordered or were not performed to be a potential false claim.

d. *Billing of Automated Multichannel Chemistry Tests:* Laboratory compliance policies should ensure that the laboratory bills Medicare appropriately for automated multichannel chemistry tests. All tests appearing on HCFA's most recent list of automated multichannel chemistry tests should be billed using the appropriate CPT (80002–80019) or HCPCS (G0058–G0060) codes. Tests appearing on this list should not be billed individually unless only one such analyte test is ordered and performed.

e. *Billing of Calculations:* Since the OIG views compliance programs as a check and balance system to reduce error and improve quality, laboratory compliance policies should ensure that the laboratory does not bill for both calculations (e.g., calculated LDLs, T7s, indices, to name only a few) and the tests that are performed to derive such calculations. In many situations, physicians are not offered a choice about whether to receive such calculations, nor are they aware of the practice of some laboratories to bill Medicare for such calculations in addition to the underlying tests, as the physicians themselves are only billed for the underlying tests. At the current time, the OIG views billing for both the calculations and the underlying tests to be double billing which may subject a laboratory to criminal or civil penalties.

4. Reliance on Standing Orders

Although standing orders are not prohibited in connection with an extended course of treatment, too often in the past they have led to fraudulent and abusive practices. Laboratories must be vigilant about this and take appropriate steps to prevent abuse. Thus, while laboratory compliance plans can permit the use of standing orders executed in connection with an extended course of treatment, the compliance plan should require the laboratory to monitor existing standing orders to ensure their continuing validity. We suggest that, consistent with State law requirements, a laboratory should contact all nursing homes from which the laboratory has received such standing orders and request that they confirm in writing the validity of all current standing orders. In addition, in accordance with State law, laboratories should verify standing orders relied upon at draw stations with the physician, physician's office staff, or such other persons authorized by law to order tests who have provided the standing orders to the laboratory. With respect to End Stage Renal Disease (ESRD) patients, at least once annually, laboratories should contact each ESRD facility or unit to request confirmation in writing of the continued validity of all existing standing orders.

5. Compliance with Applicable HHS OIG Fraud Alerts

The HHS OIG periodically issues fraud alerts setting forth activities believed to raise legal and enforcement issues. Laboratory compliance plans should require that any and all fraud alerts issued by the OIG are carefully considered by the legal staff, chief compliance officer, or other appropriate personnel. Moreover, the compliance plans should require that a laboratory cease and correct any conduct criticized in such a fraud alert, if applicable to laboratories, and take reasonable action to prevent such conduct from recurring in the future. If appropriate, a laboratory should take the steps described in Section G regarding investigations, reporting and correction of identified problems.

6. Marketing

Laboratory compliance plans should require honest, straightforward, fully informative and non-deceptive marketing. It is in the best interests of patients, physicians, laboratories and Medicare alike that physicians fully understand the services offered by the laboratory, the services that will be provided when tests are ordered, and the financial consequences for Medicare, as well as other payers, for the tests ordered. Accordingly, laboratories that market their services should ensure that their marketing information is clear, correct, non-deceptive and fully informative.

7. Prices Charged Physicians for Profiles

Laboratories are paid for their services by a variety of payers in addition to Medicare and other federally funded health care programs. Such payers often include health insurers, other health care providers, and physicians. The prices that laboratories charge, particularly to physicians and especially for profiles, raise compliance issues that should be addressed in a laboratory's written compliance policies. Such compliance policies should ensure that as tests are included in or added to profiles, the price for the enhanced profile increases and the overall price for the profile is never below cost. Laboratories that do not increase the price to a doctor for an enhanced profile or that charge below cost for an enhanced profile and then bill Medicare or another federally funded health care program the full third-party price for the profile components will be risking false claims and kickback enforcement actions.

8. Retention of Records

Compliance programs should ensure that all records required either by Federal or State law or by the compliance plan are created and maintained. One of the best ways to confirm that a compliance plan is effective is through reports that reflect results. The creation of such documents will reach this goal, but it may also raise a variety of legal issues, such as patient privacy and confidentiality. These issues are best discussed with legal counsel.

9. Compliance As An Element of a Performance Plan

To ensure that corporate integrity rises to the level of importance required of laboratories participating in Medicare or other federally funded health care programs, compliance programs should require that the promotion of and adherence to compliance be an element in evaluating the performance of managers and supervisors. They, along with other employees, should be periodically trained in new compliance policies and procedures. In addition, all managers and supervisors involved in the sale, marketing, or billing of laboratory services, and those who oversee phlebotomists should: (1) Discuss with all supervised employees the compliance policies and legal requirements applicable to their function; (2) inform all supervised personnel that strict compliance with these policies and requirements is a condition of employment; and (3) disclose to all supervised personnel that the laboratory will take disciplinary action up to and including termination for violation of these policies or requirements. In addition to making performance of these duties an element in evaluations, the compliance officer or laboratory management may also choose to include in the laboratory's compliance plan a policy that managers and supervisors may be sanctioned for failure to adequately instruct their subordinates or for failing to detect non-compliance with applicable policies and legal requirements, where reasonable diligence on the part of the manager or supervisor would have led to the discovery of any problems or violations and given the laboratory the opportunity to correct them earlier.

B. Designation of a Compliance Officer (or Equivalent)

Every laboratory compliance plan should require the designation of a chief compliance officer or an equivalent (e.g., committee). This individual should be responsible for developing compliance policies and standards, overseeing and monitoring the company's compliance activities, and achieving and maintaining compliance. The individual should be delegated sufficient authority by the Board of Directors (or other governing body) to undertake and comply with these responsibilities and should have open access to senior management and the governing body. Further, the chief compliance officer should develop and distribute to appropriate individuals all written compliance policies and procedures. These policies and procedures should be readily understandable by all employees (e.g., translated into other languages, if necessary) and at a minimum, should address the issues discussed herein.

C. Education and Training

Laboratory compliance programs should require compliance and ethics training for all employees, especially personnel involved in billing, sales, marketing and specimen collection and/or test ordering. Such training should emphasize the company's commitment to compliance with all laws, regulations and guidelines of Federal and State programs. Training should be conducted at least annually and repeated at regularly scheduled times, using a variety of teaching methods and where appropriate, languages to ensure that all employees fully comprehend the implications of failing to comply with the laboratory's compliance plan and all applicable health care program requirements. The training and education program should cover the laboratory's compliance policies and should reinforce the fact that strict compliance with the law and laboratory policies is a condition of employment. Employees should be informed that failure to comply may result in disciplinary action, including termination. Training of sales and marketing personnel should highlight the prohibition against offering remuneration in return for referrals, and the fact that the laboratory will take appropriate disciplinary action up to and including termination for violations of the laws or failure to report a potential violation by another employee, supervisor or outside contractor or provider.

In addition to compliance and ethics training, we believe that laboratory compliance plans also should address the need for periodic continuing education, which may be required by law or regulation for certain laboratory personnel, such as phlebotomists and laboratory technicians. Continuing education programs of this type will help ensure a knowledgeable and more productive staff.

Laboratory compliance programs should leave no doubt in the minds of employees and others who are associated with the provider about the company's commitment to compliance with all laws, regulations and guidelines governing federally funded health care programs. Compliance should be one of the company's most important priorities. In addition to the compliance and ethics training and continuing education programs, a simple way to re-emphasize this message is to post in common work areas and other prominent places accessible to all employees a notice clearly reminding employees of the laboratory's commitment to compliance with all laws and regulations.

D. Communication

1. Access to the Compliance Officer

An open line of communication between the compliance officer and his or her staff is critical to the successful implementation and operation of a compliance program. If fraud and abuse is going to be reduced, there should be an open door, complete anonymity, non-retribution policy available to all employees to encourage communication. Working with or through the legal department can clarify the gray areas of interpretation of Medicare and Medicaid guidelines and regulations, but in all cases, the laboratory should encourage employees not to guess, but to ask if there is confusion or a question. Where appropriate, awards for reporting violations should be available.

2. Hotline

There are many vehicles for developing a line of communication between the employee and the compliance office. Hotlines, e-mails, and written memoranda are examples of just a few. We suggest that laboratories make available to all employees a hotline telephone number which can be used to anonymously report suspected misconduct. Laboratories using a hotline should post in common work areas notices describing the hotline and providing the telephone number. Matters reported through the hotline that suggest violations of compliance policies or legal requirements should be investigated immediately to determine their veracity.

E. Auditing and Monitoring

The OIG will be critical of compliance plans and programs that exist on paper but are not earnestly implemented or enforced. In addition to education and training programs, policies, and notices, a successful compliance program should require the thorough monitoring of its implementation and regular reporting to senior executives and members of the Board of Directors. Although many monitoring techniques are available, an effective tool to ensure enforcement is the performance of regular, periodic audits of the laboratory's operations, with particular attention paid to billing, sales, marketing, notices and disclosures to physicians, requisition forms, pricing, and activities of phlebotomists and others involved in the ordering of laboratory services. Such audits should be designed and implemented to ensure compliance with the laboratory's

compliance policies, the laboratory's compliance plan, and all applicable Federal and State laws. In addition, auditing should address issues related to contracts, competitive practices, marketing materials, CPT/HCPCS coding and billing, test information, reporting and record keeping.

Quality assurance and zero tolerance of fraud and abuse should be the goal of the compliance division, and we believe that auditing is a good tool to use to reach that goal. Compliance audits should be conducted in accordance with pre-established comprehensive audit procedures and should include, at a minimum: (1) On-site visits; (2) interviews with personnel involved in management, operations, billing, sales, marketing, and other related activities; (3) reviews of written materials and documentation used by the laboratory; and (4) trend analysis studies. Formal audit reports should be prepared and submitted to the chief compliance officer and the Board of Directors or other governing body to ensure that laboratory management is aware of the results and can take whatever steps necessary to correct past problems and deter them from recurring. We suggest that the audit or other analytical reports specifically identify areas where corrective actions are needed. In certain cases, subsequent audits or studies would be advisable to ensure that the recommended corrective actions have been implemented and are successful.

F. Disciplinary Actions

A viable compliance program must include the initiation of corrective and/or disciplinary action against individuals who have failed to comply with the laboratory's compliance policies and/or Federal or State laws or who have otherwise engaged in wrongdoing that has the potential of impairing the laboratory's status as a reliable, honest, trustworthy provider. The compliance program should include a written policy statement setting forth the degrees of disciplinary actions that can be imposed upon employees for failing to comply with the company's code of conduct, company policies, and the law. Employees must be advised and convinced that disciplinary action will be taken, and punishments enforced, for a discipline policy to have the required deterrent effect.

G. Corrective Action

1. Investigating, Reporting and Correcting Identified Problems

a. *Investigation:* Violations of a laboratory's compliance program, failures to comply with Federal and/or State law, and other types of misconduct threaten a laboratory's status as a reliable, honest and trustworthy provider capable of participating in federally funded health care programs. Consequently, laboratory compliance programs should require that when the chief compliance officer or others involved in management of a laboratory learn of potential violations or misconduct, they promptly investigate the matter to determine whether a material violation has in fact occurred, so that if a violation has occurred, management can take steps to rectify it, report it to the government if necessary, and make any appropriate payments to the government. Depending on the nature of the allegations, the investigation into allegations of wrongdoing or misconduct will probably include interviews and review of relevant documents, such as submitted claims, test requisition forms, and laboratory test reports. Some laboratories may wish to engage outside auditors or counsel to assist them with the investigation.

If an investigation of an alleged violation is undertaken and the compliance officer believes the integrity of the investigation may be at stake because of the presence of employees under investigation, the employee(s) allegedly involved in the misconduct probably should be removed from his/her current work activity until the investigation is completed. In addition, the laboratory should take steps to prevent the destruction of documents or other evidence relevant to the investigation. Once an investigation is completed, if disciplinary action is warranted, it should be immediate and imposed in accordance with the company's written standards of disciplinary action.

b. *Reporting:* If management receives credible evidence of misconduct from any source and, after appropriate investigative inquiry, has reasonable grounds to believe that the misconduct either: (a) Violates criminal law, or (b) constitutes a material violation of the civil law, rules and regulations governing federally funded health care programs, then the laboratory should report the existence of the misconduct to the OIG as soon as possible. The OIG recommends that the laboratory give notice to the OIG of this type of misconduct within sixty (60) days after receipt of the credible evidence of misconduct. Such prompt reporting will demonstrate the laboratory's good faith and willingness to work with the government to correct and remedy the problem.

When reporting misconduct to the government, a laboratory should give the OIG any evidence relating to the misconduct that the laboratory has, including evidence disclosed to the laboratory from another source. The laboratory then should continue to investigate the reported violation, and once finished, should notify DOJ and the OIG of the outcome of the investigation, including a description of the effect of the misconduct on the operation of federally funded health care programs or their beneficiaries. If the investigation ultimately reveals that criminal activity may have occurred, the appropriate State or Federal authorities should be notified immediately. As discussed below, the laboratory should also take appropriate corrective action, including prompt restitution of any damages to the government and the imposition of appropriate disciplinary action.

c. *Corrective Action:* If the investigation reveals that misconduct did occur, corrective actions should be immediately initiated. For instance, if the investigation reveals that the laboratory has received overpayments, the laboratory should make prompt restitution of such sums to the appropriate federally funded health care program. Failure to repay the overpayment immediately could be interpreted as an intentional attempt to hide the overpayment from the government. For that reason, laboratory compliance programs and written policies and procedures should emphasize that monies to which the laboratory had no legal entitlement in the first place may not be legally retained and must be returned immediately. In addition to making prompt restitution and taking corrective action, the laboratory should take whatever disciplinary action is necessary to cure the problems identified by the investigation and prevent it from happening again.

2. Non-Employment or Retention of Sanctioned Individuals

Compliance programs should prohibit the employment of individuals who have been convicted of a criminal offense related to health care or who are listed by a Federal agency as debarred, excluded or otherwise ineligible for participation in federally funded health care programs. In addition, until resolution of such criminal charges or proposed debarment or exclusion, individuals who are charged with criminal offenses related to health care or proposed for exclusion or debarment should be removed from direct responsibility for or involvement in any federally funded health care program. If resolution results in conviction, debarment or exclusion of the individual, the laboratory should terminate its employment of that individual or company.

Conclusion

These basic recommended elements coupled with other published regulations and guidelines are the foundation for a comprehensive compliance plan for clinical laboratories. On advice from in-house counsel and senior management, clinical laboratories should add to or modify these elements to better reflect the corporate structure of the laboratory, its mission, and its employee composition. The OIG believes that by implementing an effective compliance plan, a laboratory will achieve better quality control of claims submission and reduce the risk of future criminal and civil liabilities.

Dated: February 24, 1997.

June Gibbs Brown,

Inspector General.

[FR Doc. 97–5192 Filed 2–28–97; 8:45 am]

BILLING CODE 4150–04–P

National Institutes of Health

Notice of Meeting of the Advisory Committee on Blood Safety and Availability

Pursuant to Pub. L 92–463, notice is hereby given of the meeting of the Advisory Committee on Blood Safety and Availability, Department of Health and Human Services, March 20–21, 1997. This meeting will be held at the National Institutes of Health, Warren G. Magnuson Clinical Center, Jack Masur Auditorium, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 8:30 a.m. on March 20 to adjournment on March 21. On March 20, the Committee will discuss hepatitis C virus (HCV) infection, its occurrence following blood transfusion, other epidemiology of HCV infection and appropriate ways of approaching the public health aspects of this infection. On March 21, the Committee will address multiple aspects of the theoretical possibility that Creutzfeldt-Jakob disease (CJD) can be transmitted by blood transfusion. For each topic, a time will be set aside for the public to comment. Prospective speakers should notify the Executive Secretary for this meeting of their wish to present and should plan for no more than 5 minutes of comments.

Contact: Paul R. McCurdy, M.D. Acting Executive Secretary, Advisory Committee on Blood Safety and Availability, Director, Blood Resources Program, DBDR–MSC–7950, NHLBI, NIH, Bethesda, Maryland 20892–7950. Phone: 301/435–0065; Fax 301/480–1060; E–Mail: paul—mccurdy@nih.gov.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Dated: February 25, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–5164 Filed 2–28–97; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Cancer Institute Initial Review Group:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: Subcommittee H—Clinical Trials Subcommittee.

Date: April 8–9, 1997.

Time: 8 a.m.

Place: Buffalo Marriott, 1340 Millersport Highway, Amherst, New York 14221.

Contact Person: John L. Meyer, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, 6130 Executive Blvd. Room 611C, Bethesda, Md 20892, Telephone: 301–496–7721.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussion could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower, 93.399, Cancer Control)

Dated: February 25, 1997.

LaVerne Y. Springfield,

Committee Management Officer, NIH.

[ER Doc. 97–5166 Filed 2–28–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel (SEP) meetings:

Name of SEP: NIAMS Supplemental (Teleconference).

Date: March 18, 1997.

Time: 11:00 a.m.–12:30 p.m.

Place: Natcher Building, 45 Center Drive, Rm 5AS–25U.

Contact Person: Aftab A. Ansari, Ph.D., Natcher Building, 45 Center Drive, Rm 5AS–25U, Bethesda, Maryland 20892–6500, Telephone: 301–594–4952.

Name of SEP: NIAMS Program Project.

Date: April 1, 1997.

Time: 8:30 a.m.–adjournment.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Contact Person: Aftab A. Ansari, Ph.D., Natcher Building, 45 Center Drive, Rm 5AS–25U, Bethesda, Maryland 20892–6500, Telephone: 301–594–4952.

Purpose/Agenda: To evaluate and review research grant applications.

These meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussion of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. [93.846, Project Grants in Arthritis, Musculoskeletal and Skin Diseases Research], National Institutes of Health, HHS)

Dated: February 25, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–5163 Filed 2–28–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

Agenda Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: March 17, 1997.

Time: 11 a.m.

Place: Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Shirley H. Maltz, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: March 18, 1997.

Time: 3 p.m.

Place: Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Emeline M. Otey, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–4868.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: February 25, 1997.

LeVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–5165 Filed 2–28–97; 8:45 am]

BILLING CODE 4140–01–M

Chairpersons, Board of Scientific Counselors for Institutes, Centers and Divisions at the National Institutes of Health, Notice of Meeting

Notice is hereby given of a meeting scheduled by the Deputy Director for Intramural Research at the National Institutes of Health with the Chairpersons of the Boards of Scientific Counselors. The Boards of Scientific Counselors are an advisory group to the Scientific Directors of the Intramural Research Programs at the NIH. This meeting will take place 10 a.m. to 4 p.m. on June 23, 1997, at the NIH, 9000 Rockville Pike, Bethesda, MD, Building 1, Room 151. The meeting will include a discussion of policies and procedures that apply to the regular review of NIH intramural scientists and their work, with special emphasis on clinical research.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Audrey Boyle at the Office of Intramural Research, NIH, Building 1, Room 114, Telephone (301) 496–1921 or Fax (301) 402–4273 in advance of the meeting.

Dated: February 14, 1997.

Ruth Kirschstein,

Deputy Director, NIH.

[FR Doc. 97–5167 Filed 2–28–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4123–N–03]

Public Housing/Section 8 Moving to Work Demonstration Program; Extension of Application Deadline

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: On December 18, 1996, HUD published a notice inviting public housing agencies and Indian housing authorities to submit applications for the Public and Indian Housing/Section 8 Moving to Work demonstration program ("MTW"). The December 18, 1996 notice set an application submission deadline for MTW of March 18, 1997.

This notice extends the MTW application submission deadline from March 18, 1997 to May 19, 1997. The deadline is being extended to give public housing agencies and Indian housing authorities the time necessary to adequately prepare their applications, and, in particular, to allow sufficient time for a thorough and constructive planning process, including a public hearing. This notice also provides clarification on several provisions of the December 18, 1996 notice.

Except for the extension of the application submission deadline made by this notice, and subject to the clarifications made by this notice, all of the requirements of the December 18, 1996 notice remain in effect.

EFFECTIVE DATE: March 3, 1997.

FOR FURTHER INFORMATION CONTACT: Stephen I. Holmquist, Policy Development Advisor, or Beth M. Cooper, Program Analyst, Office of Public and Indian Housing, Room 4116, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone (202) 708–0713. For hearing or speech impaired persons, this number may be accessed via TTY by contacting the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

(1) General

The Public and Indian Housing/Section 8 Moving to Work demonstration program ("MTW") offers public housing agencies and Indian housing authorities (HAs) the opportunity to design and test innovative housing and self-sufficiency strategies for low-income families by permitting HAs to combine funds from several HUD programs into a single pool and by exempting HAs from existing public and Indian housing and Section 8 certificate and voucher program rules, as approved by HUD.

HUD is authorized to select up to 30 HAs that administer the public and Indian housing and Section 8 programs to participate in MTW, which was authorized by section 204 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104–134, 110 Stat. 1321). The statutory purposes of MTW are to give HAs the flexibility to design and test various approaches for providing and administering housing assistance that reduce cost and achieve greater cost effectiveness; provide work incentives to promote resident self-sufficiency; and increase housing choices for low-income families.

To achieve these goals, each selected HA will have considerable flexibility in determining how to use Federal funds, as long as the HA meets specified criteria. Furthermore, the selected HAs will be permitted to combine funds from the public and Indian housing operating and modernization programs, and from the Section 8 tenant-based rental assistance program, for uses which meet the purposes of the demonstration. Funds used in the demonstration (whether combined or not) are generally not subject to statutory and regulatory requirements of the public and Indian housing and Section 8 programs.

On December 18, 1996 (61 FR 66855), HUD published a notice inviting applications for MTW. That notice described the application submission requirements and the criteria to be used by HUD in evaluating applications. It also established an application submission deadline of March 18, 1997.

(2) Clarifications

Several provisions of the December 18, 1996 notice require clarification, as follows:

(a) For HA's that are not subject to PHMAP because they only administer the Section 8 program, HUD will determine the HA's score for evaluation criterion 1, "HA Management Performance", using objective criteria that assess HA management capability based on relative performance in meeting the requirements of the Section 8 program;

(b) The December 18, 1996 notice advised HAs to assume a 3-year term for their MTW plans. HUD expects that the actual term of each HA's demonstration will be stated in the MTW Agreement negotiated between HUD and the HA following the HA's selection for MTW. No MTW proposal will be implemented until the MTW Agreement is executed. HUD invites HAs to state and justify, in their proposed MTW schedules, the minimum period of time which they believe is necessary to implement their MTW plans;

(c) The December 18, 1996 notice recognized that HA plans might not be finalized by the application deadline, and requested that HAs identify any outstanding issues and the process and schedule for resolving those issues. In other words, HUD does not expect all MTW plans to be ready for implementation at the time HAs are selected for MTW. Rather, at this stage of the demonstration, HUD expects an HA's MTW plan to be conceptually and analytically sound in that it identifies local needs and explains how the HA believes its assets and resources can be deployed to most effectively and efficiently address those needs. In scoring applications under evaluation criterion 3, "Quality and Feasibility of MTW Plan", HUD will reward plans that demonstrate an HA's capacity to operate in a deregulated program environment, where the HA has broad discretion to use Federal funds flexibly and creatively based on its understanding of local conditions. The level of detail provided in an HA's plan will help HUD to assess the HA's capacity in that regard. At the same time, HUD encourages HA's to be creative and to make full use of the broad local discretion that this demonstration permits. Accordingly, HAs should provide as much detail as they can at this point. HUD seeks a wide variety of approaches in making selections for MTW, and does not expect plans that are highly innovative (in that they depart significantly from current program rules) to have as much detail as plans that are less innovative. However, as the December 18, 1996 notice provided, where a plan lacks detail, HUD does expect an HA to describe the process and schedule by which the HA will resolve the outstanding issues.

(3) Extension of Submission Deadline

For several reasons, HUD has found that it is in the best interests of the demonstration to allow HAs additional time to prepare their applications. Because the notice appeared in the **Federal Register** during the winter holiday season, some HAs were not aware that it had been published until several weeks after the application period had already begun to run. Further, HUD has concluded that additional time would be helpful so that HAs can give proper notice of and hold the required public hearing, and to otherwise conduct a thorough and constructive planning process in their communities. Most importantly, HUD recognizes that the degree of programmatic innovation which MTW allows, and which HUD hopes to encourage through this demonstration program, may require a level of deliberation and analysis that the original 90-day application period does not permit. Extending the deadline will give HAs more time to conduct this process, resulting in higher-quality applications and a more valuable demonstration program.

Dated: February 25, 1997.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

[FR Doc. 97–5298 Filed 2–27–97; 2:41 pm]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Preparation of a Habitat Conservation Plan and Environmental Impact Statement on a Permit To Incidentally Take Threatened and Endangered Species in Association With the Clark County Multiple Species Conservation Plan in Clark County, NV

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent and public scoping meeting.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has been notified by Clark County (County), Nevada, that the County, and certain cities within the County, intend to prepare a Clark County Multiple Species Conservation Plan (Multi-Species Conservation Plan) to conserve species and their habitats throughout the County. The Multi-Species Conservation Plan would be prepared pursuant to the Endangered Species Act of 1973, as amended (Act). The proposed Multi-Species Conservation Plan would identify those actions necessary to maintain the viability of natural habitats in the County for approximately 225 species residing in those habitats, including five species listed as endangered (Peregrine Falcon, *Falco peregrinus*; Southwestern Willow Flycatcher, *Empidonax trailli extimus*; Moapa Dace, *Moapa coriacea*; Woundfin, *Plagopterus argentissimus*; Virgin River Chub, *Gila seminuda* ssp.). The Multi-Species Conservation Plan would treat all of the approximately 75 proposed covered species as listed and all covered species would be subject to the standards set forth in section 10(a)(1)(B) of the Act, and 50 CFR 17.22 and 17.32. In addressing the habitat needs of the covered species the Multi-Species Conservation Plan would benefit other species utilizing the same habitats. In addition, the Multi-Species Conservation Plan would establish a process to assure the maintenance of the viability of natural habitats for approximately 150 other species and to eventually extend coverage to those species. It would function as a multiple species conservation plan that could establish the basis for maintaining the viability of the remaining natural ecosystems throughout the County.

If the Multi-Species Conservation Plan is approved by the Service, the Service would authorize incidental take of the listed species covered by the plan through the issuance of a section 10(a)(1)(B) permit. The Multi-Species Conservation Plan, coupled with an Implementation Agreement which includes prelisting provisions, would form the basis for an incidental take permit for additional species if these species become listed.

DATES: A public scoping meeting will be held from 7 to 9 p.m. on March 11, 1997, in the Cafeteria at the Clark County Government Center, 500 S. Grand Central Parkway, 6th Floor, Las Vegas, Nevada 89155–8270, to identify potential issues and alternatives for the Clark County Multiple Species Conservation Plan and Environmental Impact Statement.

Interested persons are encouraged to attend the public meeting to identify and discuss issues and alternatives that should be addressed in the Environmental Impact Statement. The proposed agenda for the public scoping meeting includes a summary of the proposed action, status of and threats to subject species, tentative issues, concerns, opportunities, and alternatives. Identified issues of concern include effects of plan implementation on the fish and wildlife resources of Clark County, land use and activities on public and private lands, growth, and social and economic health of the County.

Persons attending the Scoping Meeting will have an opportunity to present their comments and suggestions regarding the scope of issues to be addressed in the Environmental Impact Statement. Submittal of independent written comments is encouraged.

Written comments related to the scope and content of the Multi-Species Conservation Plan and Environmental Impact Statement should be received by the Service at the address below by April 2, 1997.

ADDRESSES: Information, comments, or questions related to the preparation of the Multi-Species Conservation Plan and Environmental Impact Statement should be submitted to U.S. Fish and Wildlife Service, State Supervisor, 4600 Kietzke Lane, Suite 125C, Reno Nevada 89502–5055.

FOR FURTHER INFORMATION CONTACT: Persons wishing to review background material may obtain it by contacting the Clark County Desert Conservation Plan Administrator, Clark County Government Center, 500 S. Grand Central Parkway, 6th Floor, P.O. Box 558270, Las Vegas, Nevada 89155–8270. Documents also will be available for public inspection by appointment during normal business hours (8 a.m. to 5 p.m. Monday–Friday) at the above address or by telephone (702–455–3536).

SUPPLEMENTARY INFORMATION: On July 11, 1995, the Service issued a 10(a)(1)(B) incidental take permit effective August 1, 1995, to Clark County, the Cities of Las Vegas, North Las Vegas, Boulder City, Henderson, Mesquite, and the Nevada Department of Transportation for the Clark County Desert Conservation Plan (Desert Conservation Plan), a habitat conservation plan for the Mojave Desert Tortoise, a species listed as threatened by the Service in 1990. The Desert Conservation Plan provides for conservation measures for the desert tortoise in the County and for incidental take consistent with the long-term viability of the species in this portion of its range.

The Desert Conservation Plan includes provisions for a proactive approach to conservation planning for multiple species in the County. The specified intent of this approach was to reduce the likelihood of future listing of plants and wildlife as threatened or endangered. While the proposed Multi-Species Conservation Plan is the direct outgrowth of provisions of the Desert Conservation Plan, it will not replace or modify the approved Desert Conservation Plan. The Multi-Species Conservation Plan will provide stand-alone conservation measures for species included in the plan. Implementation of the conservation measures in the Multi-Species Conservation Plan is anticipated to be a cooperative effort among the County, the Cities of Las Vegas, North Las Vegas, Boulder City, Henderson, and Mesquite, the Service, the Bureau of Land Management, U.S. Forest Service, National Park Service, Nevada Division of Wildlife, and other Federal and State land managers and regulators.

Environmental review of the Multi-Species Conservation Plan will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), National Environmental Policy Act regulations (40 CFR parts 1500–1508), other appropriate regulations, and Service procedures for compliance with those regulations. This notice is being furnished in accordance with section 1501.7 of the National Environmental Policy Act to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the Environmental Impact Statement.

Dated: February 24, 1997.

Thomas J. Dwyer,

Acting Regional Director, Region 1, Portland, Oregon

[FR Doc. 97–5135 Filed 2–28–97; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Indian Affairs

Tribal Consultation on Indian Education Topics

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of tribal consultation meetings.

SUMMARY: Notice is hereby given that the Bureau of Indian Affairs (BIA) will conduct consultation meetings to obtain oral and written comments concerning potential issues in Indian Education Programs. The potential issues which will be set forth in a tribal consultation booklet to be issued prior to the meetings are as follows:

1. Facilities Operation and Maintenance—Tribal Priority Allocation
2. Facilities Operation and Maintenance Formula Modifications
3. Office of Indian Education Programs Draft Strategic Plan
4. Other Consultation Items
5. Displacement Costs for Schools Converting to Grant Status
6. Indian School Equalization Program: Ongoing Study
7. Office of Indian Education Programs: Draft School Technology Plan
8. Revisions to IASA/Goals 2000 Consolidated State Plan
9. Executive Order 13021 of October 19, 1996—Tribal Colleges and Universities

DATES: April 10, 15, 16, 17, 18, 22, 23, 24, 25, 1997 for all locations listed. Several dates and locations were scheduled to coincide with meetings of various Indian education organizations. All meetings will begin at 9:00 a.m. and continue until 3:00 p.m. (local time) or until all meeting participants have an opportunity to make comments.

MEETING SCHEDULE

Date	Location	Local contact	Phone numbers
Apr. 10, 1997	New Orleans, LA	LaVonna, Weller	(703) 235–3233
Apr. 15, 1997	Phoenix, AZ	Angelita Felix	(520) 562–3557
Apr. 16, 1997	Albuquerque, NM	Ben Atencio	(505) 766–3034
Apr. 17, 1997	Anchorage, AK	Robert Pringle	(907) 271–4115
Apr. 18, 1997	Billings, MT	Larry Parker	(406) 247–7953
Apr. 22, 1997	Oklahoma City, OK	Joy Martin	(405) 945–6051
Apr. 23, 1997	Gallup, NM	Andrew Tah	(520) 283–2221
Apr. 23, 1997	Portland, OR	John Reimer	(503) 872–2745
Apr. 24, 1997	Cloquet, MN	Terry Portra	(612) 373–1090
Apr. 24, 1997	Rapid City, SD	Cherie Farlee	(605) 964–8722
Apr. 25, 1997	Sacramento, CA	Fayetta Babby	(916) 979–2560

Written comments should be mailed, to be received, on or before June 2, 1997, to the Bureau of Indian Affairs, Office of Indian Education Programs, MS–3512–MIB, OIE–32, 1849 C. Street, NW, Washington, D.C. 20240, Attn: Joann Sebastian Morris: or, may be hand delivered to Room 3512 at the same address. Comments may also be telefaxed to (202) 273–0030.

FOR FURTHER INFORMATION CONTACT: Dr. James Martin or Goodwin K. Cobb III at the above address or call (202) 208–3550.

SUPPLEMENTARY INFORMATION: The meetings are a follow-up to similar meetings conducted by the OIEP/BIA since 1990. The purpose of the consultation, as required by 25 U.S.C. 2010(b), is to provide Indian tribes, school boards, parents, Indian organizations and other interested parties with an opportunity to comment on potential issues raised during previous consultation meetings or being considered by the BIA regarding Indian education programs. A consultation booklet for the April meetings is being distributed to Federally recognized Indian Tribes, Bureau Area and Agency Offices and Bureau-funded schools. The booklets will also be available from local contact persons and at each meeting.

Dated: February 24, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–5162 Filed 2–28–97; 8:45 am]

BILLING CODE 4310–02–P

Bureau of Land Management

[WY–930–1610–00]

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the Decision Record and Finding of No Significant Impact for the management of Big Cedar Ridge Fossil Plant Area in Washakie County, Wyoming.

SUMMARY: The decision record for the Big Cedar Ridge Fossil Plant Area outlines management for 1,550 acres in the Bighorn Basin Resource Area of the Worland District, amends the 1988 Resource Management Plan (RMP) for the former Washakie Resource Area, and designates an Area of Critical Environmental Concern (ACEC) on 260 acres, where fossil plants are concentrated.

The general management objective and emphasis within the Big Cedar Ridge Fossil Plant Area will be for scientific research, public education, recreation, and protection of the fossil resources.

The BLM will also pursue withdrawal of the public lands from entry under the mining laws to prohibit the staking of mining claims on 260 acres of BLM-administered public lands where fossils are concentrated. This action constitutes an amendment to the Washakie RMP.

In addition, an ACEC is designated on the same 260 acres. This ACEC designation constitutes an amendment to the Washakie RMP and will take effect at the end of a 60-day public comment period.

EFFECTIVE DATES: Comments on the Big Cedar Ridge Fossil Plant proposed ACEC should be sent to the BLM's Worland District Office at P.O. Box 119, Worland, Wyoming 82401, within 60 days of the publication date of this notice.

FOR FURTHER INFORMATION CONTACT: Margy Tidemann, Editorial Assistant, Bureau of Land Management, at the address cited above or at 307–347–5100.

SUPPLEMENTARY INFORMATION: The fossil concentration areas at Big Cedar Ridge, discovered in 1990 by Dr. Scott Wing of the Smithsonian Institution, meet the relevance and importance criteria for ACEC designation. The plants form a complete late Cretaceous-age vegetative community that was buried in-place by volcanic ash about 72 million years ago. The flora, consisting of flowering plants, ferns, palms, and conifer trees, preserves a true instant in time, highlighting relationships between the ancient landscape and its vegetation. Paleobotanists have already been able to establish plant, soil, and topographic associations. This is possibly the oldest site in the world where such associations are seen. Excavations in 1992 resulted in the identification of over 100 new plant species. Scientists have also been able to distinguish at least five different types of insect predation which took place on the flora of Big Cedar Ridge.

As described in the decision record for the area, a detailed activity or implementation plan will be developed for the 260-acre fossil concentration areas. These areas will be routinely monitored and any needed management changes will be made to insure that resource damage does not occur.

The 260-acre fossil concentration areas will be managed primarily for research, public education, and fossil interpretation, as well as hobby (noncommercial) collection of fossils.

Surface-disturbing activities that are not related to research, public education, interpretation, or hobby collection of fossils will be prohibited in the 260-acre fossil concentration areas.

As required, further environmental analyses will be conducted on any future site-specific activity or implementation planning to be done in the Big Cedar Ridge area. This would include opportunities for public comment.

Any detailed activity planning that may be conducted in the Big Cedar Ridge area will consider needs for site-specific mitigation of surface-disturbing activities for things like locating trails, roads, exhibits, and facilities to enhance public education.

Dated: February 19, 1997.

Alan R. Pierson,

State Director.

[FR Doc. 97–5086 Filed 2–28–97; 8:45 am]

BILLING CODE 4310–22–P

Bureau of Land Management

[AK–910–07–1310–00–NPR–A]

Notice of Scoping Meetings on an Integrated Activity Plan (IAP)/Environmental Impact Statement (EIS) for the National Petroleum Reserve—Alaska (NPR–A)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of scoping meetings.

SUMMARY: The Bureau of Land Management (BLM) is announcing scoping meetings for its IAP/EIS for approximately 4.6 million acres in northeastern NPR–A. The IAP/EIS will address long-term management strategies for several natural resources that are present in the area. Potential issues that the IAP/EIS may address include, but are not limited to, wildlife resources (terrestrial and aquatic) protection; mineral resource development (including oil and gas leasing); subsistence resources and activities and possible impacts on subsistence from various management alternatives; access; recreation; visual resources; threatened and endangered species; and historic, cultural, soil, water, and vegetation resources. Potential management actions and activities that may be considered in the IAP/EIS and that may have environmental and subsistence impacts for the area include mineral material extraction, leasable mineral exploration and development, recreation, commercial development, modification of the existing Special Areas, and identification of any new areas for additional resource protection. These public scoping meetings will provide an opportunity for the public to contribute ideas and information about the resources of the area and how they should be managed. Translators will be present at meetings in Barrow, Atqasuk, and Nuiqsut.

DATES: The BLM will hold public scoping meetings according to the following schedule:

1. March 17, 1997, Barrow, Alaska, North Slope Borough Assembly Room, 7:30 p.m.
2. March 18, 1997, Atqasuk, Alaska, Community Center, 7:30 p.m.

3. March 19, 1997, Nuiqsut, Alaska, Kisik Community Center, 7:30 p.m.

4. March 25, 1997, Anchorage, Alaska, BLM Campbell Tract Facility training room, 6881 Abbott Loop Road, 6–9 p.m.

5. March 27, 1997, Fairbanks, Alaska, Noel Wien Public Library, 1215 Cowles Street, 5–9 p.m.

FOR MORE INFORMATION CONTACT: For information about the Anchorage meeting, contact Rob McWhorter at (907) 271–3664 or Ed Bovy at (907) 271–3318 at the BLM's Alaska State Office, 222 W. 7th Avenue, Anchorage, Alaska 99513. For information on all the other meetings, contact the Public Affairs Office at (907) 474–2231 at the BLM's Northern District Office, 1150 University Avenue, Fairbanks, Alaska 99709.

Sally Wisely,

Associate State Director, Alaska.

[FR Doc. 97–5136 Filed 2–28–97; 8:45 am]

BILLING CODE 4310–JA–P

Bureau of Land Management

[CA–360–1430–01; CACA 7618]

Public Land Order No. 7248; Revocation of Secretarial Order Dated April 20, 1922; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a Secretarial Order dated April 20, 1922, in its entirety as to the remaining 489.56 acres of lands withdrawn for the Bureau of Land Management's Power Site Classification No. 29. The lands are no longer needed for this purpose, and the revocation is necessary to facilitate a pending land exchange under Section 206 of the Federal Land Policy and Management Act of 1976. Of the 489.56 acres being revoked, 329.56 acres are temporarily closed to surface entry and mining by a pending land exchange. These lands have been and will continue to be open to mineral leasing. The remaining 160 acres were conveyed out of public ownership in 1926. Since they were not conveyed subject to Section 24 of the Federal Power Act, the revocation insofar as it affects the 160 acres is a record clearing action only.

EFFECTIVE DATE: June 3, 1997.

FOR FURTHER INFORMATION CONTACT: Kathy Gary, BLM California State Office (CA–931.5), 2135 Butano Drive, Sacramento, California 95825; 916–979–2858.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), is it ordered as follows:

1. The Secretarial Order dated April 20, 1922, which established Power Site Classification No. 29, is hereby revoked in its entirety as to the following described lands:

Mount Diablo Meridian

(a) Pending Exchange Lands.

T. 31 N., R. 8 W.,
Sec. 4, lot 13 (originally described as SW¼SW¼);
Sec. 8, lots 1 and 4, and NW¼NE¼.
T. 32 N., R. 8 W.,
Sec. 30, lots 9, 10, 11, 16, and 17 (originally described as SE¼NE¼ and SE¼).

(b) Record Clearing Land.

T. 32 N., R. 8 W.,
Sec. 32, NW¼.

The areas described aggregate 489.56 acres in Trinity county.

2. At 10 a.m. on June 3, 1997 the lands described in paragraph 1(a) will be available for exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716 (1988).

3. The land described in paragraph 1(b) was conveyed out of public ownership in 1926. Therefore, the revocation insofar as it affects that land is a record clearing action only.

4. The lands described in paragraph 1(a) have been open to mining under the provisions of the Mining Claims Rights Restoration Act of 1955, 30 U.S.C. 621 (1988). However, since this act applies only to lands withdrawn for power purposes, the provisions of the act are no longer applicable. These lands have been and continue to be open to mineral leasing.

5. The State of California, with respect to the lands described in paragraph 1(a), has a preference right for public highway rights-of-ways or material sites for a period of 90 days from the date of publication of this order, and any location, entry, selection, or subsequent patent shall be subject to any rights granted the State as provided by the Act of June 10, 1920, Section 24, as amended, 16 U.S.C. 818 (1988).

Dated: February 7, 1997.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–5092 Filed 2–28–97; 8:45 am]

BILLING CODE 4310–40–M

[WY–985–97–0777–00; WYW139860]

Notice of Realty Action; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Classification of public land for recreation and public purposes, Natrona County, Wyoming.

SUMMARY: The following public land has been examined and found suitable for classification for lease only to the Town of Midwest, Wyoming under the Recreation and Public Purposes (R&PP) Act, as amended (43 U.S.C. 869 *et seq.*).

Sixth Principal Meridian

T. 40 N., R. 79 W.,
Sec. 25, SE¼, SW¼, NW¼, SW¼SE¼NW¼, NE¼, NW¼SW¼, NW¼NE¼, SW¼.
Containing 20 acres, more or less.

The Town of Midwest proposes to use the land that currently has an existing cooling pond located on it for recreational uses, including development of a portion of the pond for scuba diving activities. The lease of these lands under the Recreation and Public Purpose Act is consistent with the Platte River Resource Management Plan.

COMMENTS: For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease or the classification of the lands to the Area Manager, Platte River Resource Area, P.O. Box 2420, Mills, WY 82644. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this Notice in the **Federal Register**. Upon publication of this Notice in the **Federal Register**, the lands will be segregated from all forms of appropriations under the public land laws, including the general mining laws, except for lease under the Recreation and Public Purpose Act and leasing under the mineral leasing laws.

SUPPLEMENTARY INFORMATION: Detailed information concerning this action is available for review at the Bureau of Land Management, Platte River Resource Area Office, 815 Connie Street, Mills, WY 82644.

Dated: February 20, 1997.

Mike Karbs,

Area Manager.

[FR Doc. 97–5084 Filed 2–28–97; 8:45 am]

BILLING CODE 4310–22–M

National Park Service

Jimmy Carter National Historic Site; Notice of Advisory Commission Meeting

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Jimmy Carter National Historic Site Advisory Commission will be held at 8:30 a.m. to 4:00 p.m. at the following location and date.

DATES: March 20–21, 1997.

LOCATION: The Carter Presidential Library, One Coppenhill, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Boyles, Superintendent, Jimmy Carter National Historic Site, Route 1 Box 800, Andersonville, Georgia 31711, (912) 924–0343.

SUPPLEMENTARY INFORMATION: The purpose of the Jimmy Carter National Historic Site Advisory Commission is to advise the Secretary of the Interior or his designee on achieving balanced and accurate interpretation of the Jimmy Carter National Historic Site.

The members of the Advisory Commission are as follows:

Dr. Steven Hochman
Dr. James Sterling Young
Dr. Donald B. Schewe
Dr. Henry King Stanford
Dr. Barbara Fields, Director, National Park Service, Ex-Officio member

The matters to be discussed at this meeting include the status of park development and planning activities. This meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file with the commission a written statement concerning the matters to be discussed. Written statements may also be submitted to the Superintendent at the address above. Minutes of the meeting will be available at Park Headquarters for public inspection approximately 4 weeks after the meeting.

Dated: February 24, 1997.

Daniel W. Brown,

Acting Regional Director, Southeast Region.

[FR Doc. 97–5133 Filed 2–28–97; 8:45 am]

BILLING CODE 4310–70–M

Agenda for the February 12, 1997 Public Meeting for the Advisory Commission for the San Francisco Maritime National Historical Park; Public Meeting, Fort Mason Center, Building F, 10:00 AM–12:30 PM

10:00 AM Welcome—Neil Chaitin, Chairman
Opening Remarks—Neil Chaitin, Chairman, William G. Thomas, Superintendent
Approval of Minutes—October 17, 1996 meeting
10:15 AM Update—General Management Plan, William G. Thomas, Superintendent
10:35 AM Review—Programmatic Agreement between the Park, the State Historic Preservation Officer, and the Advisory Council on Historic Preservation, regarding historical compliance issues within the Draft General Management Plan of 1996. Stephen Canright, Curator of History and/or Frank Willis, Denver Service Center.
11:05 AM Update—Haslett Warehouse Building Plan, William G. Thomas, Superintendent
11:20 AM Status—Condition of Ships/Inspection Procedures, Wayne Boykin, Ships Manager
WAPAMA—Condition Status, Wayne Boykin, Ships Manager
—Army Corps of Engineers, Bay Model Visitor Center, Status of Docking Agreement, William G. Thomas, Superintendent, Representative, Army Corps of Engineers
12:00 PM Public comments and questions
12:15 PM Election of Officers
12:30 PM Agenda items/Date for next meeting
12:45 PM Adjournment

William G. Thomas,

Superintendent.

[FR Doc. 97–5134 Filed 2–28–97; 8:45 am]

BILLING CODE 4310–70–P

Bureau of Reclamation

Operating Criteria and 1997 Annual Plan of Operations for Glen Canyon Dam

AGENCY: Bureau of Reclamation, Interior.

ACTION: Adoption of operating criteria and 1997 annual plan of operations.

SUMMARY: Pursuant to the Grand Canyon Protection Act of 1992, the Bureau of Reclamation (Reclamation) is required to prepare formal Operating Criteria and an Annual Plan of Operations following completion of an audit by the General Accounting Office (GAO) and the Record of Decision (ROD) on the Operation of Glen Canyon Dam. The GAO audit was completed on October 2. 1996, and the Glen Canyon Dam Operation ROD was signed on October 9, 1996. Draft copies of the proposed Operating Criteria and the 1997 Annual Plan of Operations were distributed to Governors of the Colorado River Basin States, the Upper Colorado River Commission, appropriate Federal agencies, Indian Tribes, representatives of academic and scientific communities, environmental organizations, the recreation industry, contractors for the purchase of federal power produced at Glen Canyon Dam, and others interested in Colorado River operations.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Moore, Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102; telephone: 801–524–3702.

SUPPLEMENTARY INFORMATION: The Operating Criteria specify the requirements for an annual report of operations under the Grand Canyon Protection Act, a periodic review of Operating Criteria, and details regarding operational constraints. These constraints include maximum, minimum, and daily fluctuation flow rates, maximum ramp rates, emergency exception criteria, flood frequency reduction measures, habit maintenance flows, and beach/habitat building flows.

The 1997 Annual Plan of Operations reflects the operation of Glen Canyon Dam consistent with the Operating Criteria. Monthly releases are expected to vary between 600,000 acre-feet and 1,500,000 acre-feet and daily fluctuations will likely vary between 6,000 cfs/day and 8,000 cfs/day depending on monthly release volumes. The revised maximum daily flow rate of 25,000 cfs and the maximum upramp rate of 4,000 cfs/hr. will be placed into effect following signing of these documents by the Secretary of the Interior. The following paragraphs contain the final text of the Operating Criteria and the 1997 Plan of Operations for Glen Canyon Dam.

Operating Criteria: These Operating Criteria are promulgated according to section 1804 of Public Law 102–575, the Grand Canyon Protection Act of 1992. They are to control the operation of Glen Canyon Dam, constructed under the authority of the Colorado River Storage Project Act. These Operating Criteria are separate and apart from the Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs prepared according to the Colorado River Basin Project Act of 1968.

1. Annual Report: As required in the Grand Canyon Protection Act, a report shall be prepared and submitted to Congress annually. This report will describe the operation of Glen Canyon Dam for the preceding water year and the expected operation for the upcoming water year. The annual plan of operations shall include such detailed rules and quantities as are required by the Operating Criteria contained herein. It shall provide a detailed explanation of the expected hydrologic conditions for

the Colorado River immediately below Glen Canyon Dam.

2. Review of Criteria: The Secretary of the Interior shall review these Operating Criteria as the result of actual operating experiences to determine if the Operating Criteria should be modified to better accomplish the purposes of the Grand Canyon Protection Act. Such a review shall be made at least every 5 years in consultation with the appropriate Federal agencies, Governors of the Colorado River Basin States, Indian Tribes, representatives of academic and scientific communities, environmental organizations, the recreation industry and contractors for the purchase of Federal power produced at Glen Canyon Dam.

3. Specific Operational Constraints: The plan of operations will follow the description of the preferred alternative (Modified Low Fluctuating Flow) in the Operation of Glen Canyon Dam Final Environmental Impact Statement and its Record of Decision. The specific criteria are as follows:

Minimum Releases—8,000 cfs between 7 a.m. and 7 p.m. and 5,000 cfs at night.

Maximum Releases—25,000 cfs. Several circumstances warrant exception to this restriction. These are the Beach/Habitat Building Flows and the Habitat Maintenance Flows (both described below) and the release of large volumes of water to avoid spills or floodflow releases from Glen Canyon Dam. These latter releases would most likely result from high snowmelt runoff into Lake Powell; if such high releases above 25,000 cfs are required, they shall be made at constant daily flow rates.

Allowable Daily Flow Fluctuations—5,000 cfs/24 hours for monthly release volumes less than 600,000 acre feet; 6,000 cfs/24 hours for monthly release volumes of 600,000 to 800,000 acre feet; and 8,000 cfs/24 hours for monthly release volumes over 800,000 acre feet.

Maximum Ramp Rates—4,000 cfs/hour when increasing, and 1,500 cfs/hour when decreasing.

Emergency Exception Criteria—Normal powerplant operations will be altered temporarily to respond to emergencies. These changes in operations typically would be of short duration (usually less than 4 hours) and would be the result of emergencies at the dam or within the interconnected electrical system. Examples of system emergencies include:

- Insufficient generating capacity.
- Transmission system; overload, voltage control, and frequency.
- System restoration.
- Humanitarian situations (Search and rescue).

Flood Frequency Reduction Measures—The frequency of unanticipated flood flows in excess of 45,000 cfs will be reduced to no more than 1 year in 100 years as a long-term average. This will be accomplished initially through the Annual Operating Plan process and eventually by raising the height of the spillway gates at Glen Canyon Dam 4.5 feet.

Habitat Maintenance Flows—Habitat maintenance flows are high, steady releases within powerplant capacity (33.200 cfs) not to exceed 14 days in March, although other months will be considered under the Adaptive Management Program. Actual powerplant release capacity may be less 33,200 cfs under low reservoir conditions. These flows will not be scheduled when projected storage in Lake Powell on January 1 is greater than 19,000,000 acre feet, and typically would occur when annual releases are at or near the minimum objective release of 8,230,000 acre-feet. Habitat maintenance flows differ from beach/habitat-building flows because they will be within powerplant capacity, and will occur nearly every year when the reservoir is low.

Beach/Habitat-Building Flows—These controlled floods will occur as described in the EIS (steady flow not to exceed 45,000 cfs, duration not to exceed 14 days, up-ramp rates not to exceed 4,000 cfs/hours, and down-ramp rates not to exceed 1,500 cfs/hour) except instead of conducting them in years in which Lake Powell storage is low on January 1, they will be accomplished by utilizing reservoir releases in excess of powerplant capacity required for dam safety purposes. Such releases are consistent with the 1956 Colorado River Storage Project Act, the 1968 Colorado River Basin Project Act, and the 1992 Grand Canyon Protection Act.

1997 Annual Plan of Operations: Under the most probable inflow conditions in water year 1997, Glen Canyon Dam is expected to release about 14.1 million acre-feet through the Grand Canyon to Lake Mead. This is about 5.9 million acre-feet greater than the minimum objective release and is the result of high snowpack conditions throughout the Colorado River basin. Lake Powell is expected to fill in July.

Monthly release volumes from Glen Canyon Dam during 1997 are expected to range from 600,000 acre-feet to 1,500,000 acre-feet. Projected daily allowable fluctuations therefore will be 6,000 cfs or 8,000 cfs (see criteria). With the projected monthly release volumes, it is likely that peak daily releases will exceed 20,000 cfs during the months of February through July, when monthly release volumes are at their highest for the year. Minimum releases of 5,000 cfs at night and 8,000 cfs during the day and ramping rates of 4,000 cfs/hr increasing and 1,500 cfs/hr decreasing will be followed. All of the above is outlined in the Record of Decision implementing the preferred alternative of the Glen Canyon Dam Environmental Impact Statement.

With current projected monthly release volumes, daily releases will exceed 20,000 cfs during the months of February through July, when monthly release volumes are at their highest for the year. Releases above 25,000 cfs will be made as steady flows. Since there are concerns for possible modifications of the environmental restoration in the Grand Canyon accomplished last year with the beach/habitat building flow, monitoring of the impacts of this spring's releases will be an important objective of the Grand Canyon Monitoring and Research Center and may result in fluctuating flows to aid in this effort.

Every measure will be taken to prevent a powerplant bypass this spring in order to preserve the environmental enhancement accomplished by the beach/habitat building flow test in April 1996. Water year 1997 had a January 1, 1997, Lake Powell storage content greater than 19 million acre-feet; therefore a beach/habitat maintenance flow of powerplant capacity is not planned.

This plan in prepared in conformance with Section 1804(c)(1)(A) of the GCPA. Any changes to the plan would require reconsultation in accordance with this Act.

The draft Operating Criteria and the 1997 Annual Plan of Operations were discussed at a consultation meeting held on November 21, 1996, with the Transition Work Group, which includes many of the same people who received draft copies.

Dated: February 14, 1997.

Eluid L. Martinez,

Commissioner, Bureau of Reclamation.

[FR Doc. 97–5144 Filed 2–28–97; 8:45 am]

BILLING CODE 4310–94–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

International Development Cooperation Agency

Notice of Public Information Collections Submitted to OMB for Review

SUMMARY: Agency for International Development (AID) has submitted the following information collection to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for AID, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503. Copies of submission may be obtained by calling (202) 516–1743.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–0552.

Form Number: N/A.

Title: Financial Status Report.

Type of Submission: Renew.

Purpose: U.S.A.I.D. wants to require grant and cooperative agreement recipients who work in multiple countries in Eastern Europe and the New Independent States to provide expenditure reports by country. USAID/ENI has stated in the "remarks" section of SF–269 or SF–269A, or other applicable approved financial report form that "For assistance programs in Eastern Europe or the New Independent States which cover programs in more than one country, recipients shall specify the amount of the total Federal share which was expended for each country * * *" The USAID/ENI has sought a clear deviation to the statute of the Office of Budget and Management in accordance with the 22 CFR 226.4. The information are being collected so that USAID will know how much of its funds are being spent for each country in order to report to Congress, the Office of Management and Budget and other requesters. Also, the reporting requirements are necessary to assure that USAID funds are expended in accordance with statutory requirements and USAID policies.

Annual Report Burden:

Respondents: 1,000

Annual responses: 320

Total Annual Responses: 5120

Dated: February 20, 1997.

Willette Smith,

Acting Chief, Information Support Services Division, Office of Administrative Services, Bureau of Management.

[FR Doc. 97–5085 Filed 2–28–97; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF JUSTICE

Office of Inspector General

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under emergency review; regional information sharing system member agency survey.

The Department of Justice, Office of the Inspector General, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by March 30, 1997. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information and Regulatory Affairs, Attention: Ms. Victoria Wassmer, 202–395–5871, Department of Justice Desk Officer, Washington, DC 20530.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to John Antonelli (phone number and address listed below). If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact John Antonelli, 202–616–4666, Office of the Inspector General, Audit Division, U.S. Department of Justice, Suite 5000, 1425 New York Avenue, NW, Washington, DC 20005.

Overview of this information collection:

(1) Type of information collection: New collection.

(2) The title of the form/collection: Regional Information Sharing System Member Agency Survey.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection: None. Office of the Inspector General, Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract. Primary: federal, state, and local law enforcement agencies. Other: None. This collection will gather information for an Inspector General's audit and will help determine user satisfaction with Regional Infor.nation Sharing Systems.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 150 respondents with an average 1 hour per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 150 hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: February 25, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–5108 Filed 2–28–97; 8:45 am]

BILLING CODE 4410–18–M

Office of Community Oriented Policing Services

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; Survey protocol: COPS MORE (Making Officer Redeployment Effective) '95.

The Department of Justice, Office of Community Oriented Policing Services submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this information collection is requested by March 8, 1997, and is only valid for 180 days. The Department of Justice is also using this notice to seek public comments for 60 days until May 2, 1997.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to OMB, Office of Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC, 20530. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC, 20530. Additionally, comments may be submitted to DOJ via facsimile to 202–514–1590. Written comments may also be submitted to Stacy Curtis, Social Science Analyst, Office of Community Oriented Policing Services, 1100 Vermont Avenue, N.W., Washington, D.C. 20530, or via facsimile at (202) 616–5998.

Written comments and suggestions from the public and affected agencies should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) enhance the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: New collection.

(2) Title of the Form/Collection: Survey Protocol: COPS MORE (Making Officer Redeployment Effective) '95.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form: COPS 18/01. Office of Community Oriented Policing Services, U.S. Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: State, local and tribal law enforcement agencies that received a COPS MORE '95 grant and that were selected to participate in a phone survey. COPS MORE (Making Officer Redeployment Effective) '95 provided grant monies to selected law enforcement agencies that submitted grant applications requesting financial assistance for the purchase of equipment, hiring of civilians, and provision of overtime resulting in the redeployment of law enforcement officers to community oriented policing activities. The 1994 Crime Bill states that grants for equipment, technology, and support systems may not be awarded in FY 1998–2000 unless the Attorney General has certified that grants awarded in fiscal years 1995–1997 have resulted in an increase in the number of officers deployed in community policing. The survey in consideration covers all areas necessary to determine the effectiveness of COPS MORE '95 in meeting the above criteria.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: Survey Protocol: COPS MORE (making Officer Redeployment Effective) '95: Approximately 200 respondents, at 1.25 hours per response (including record-keeping).

(6) An estimate of the total public burden (in hours) associated with the collection: Approximately 250 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: February 25, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–5113 Filed 2–28–97; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a proposed consent decree embodying a partial settlement in *United States* v. *Allied-Signal, Inc.*, Civil Action No. 93–6490 MRP, was lodged on February 18, 1997, with the United States District Court for the Central District of California. The decree resolves the liability of the settling defendants for reimbursement of response costs incurred pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9601 *et seq.*, by the United States Environmental Protection Agency ("EPA") at the North Hollywood Operable Unit ("NHOU") of the San Fernando Valley Basin Superfund Site ("SFVB"), in the greater Los Angeles area. The settling defendants and third-party defendants, AlliedSignal, Inc.; Hawker Pacific, Inc.; Los Angeles By-Products Company, Inc.; California Car Hikers Service; Gordon N. and Peggy M. Wagner; Joseph W. Basinger; Parker-Hannifin Corporation; Inchcape, Inc.; Crown Disposal Company, Inc.; Western Waste Industries, Inc.; Browning-Ferris Industries, Inc.; E.I. DuPont De Nemours, Inc.; HR Textron, Inc.; AVX Filters Corporation; Price Pfister, Inc.; Nupla Corporation; Herman and Isabel Benjamin; and the Benjamin Family Trust, have agreed to pay a total of $4,812,500 to the United States to resolve their liability for past and future NHOU response costs and past SFVB Basin-wide costs through April 30, 1992.

The consent decree includes a covenant not to sue under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606, 9607, and under Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6973.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to United States v. Allied-Signal, Inc., DOJ Ref. #90–11–3–1149. Commenters may request a public hearing in the affected area, pursuant to Section 7003(d) of RCRA, 42 U.S.C. § 6973(d).

The proposed consent decree may be examined at the office of the United States Attorney, Central District of California, Federal Building, Room 7516, 300 North Los Angeles Street, Los Angeles, California 90012; the Region IX Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105; and at the Consent Decree Library, 1120 "G" Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 "G" Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $23.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel Gross

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–5154 Filed 2–28–97; 8:45 am]

BILLING CODE 4410–15–M

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act and the Rivers and Harbors Act

In accordance with Departmental Policy, 28 CFR § 50.7, notice is hereby given that a consent decree in *United States of America* v. *Fina Oil and Chemical Company, Belaire Consulting Inc., Grace Drilling Company, Brown Water Marine Service, Inc., and Loyd W. Richardson Construction Corporation*, No. H–93–0691 (S.D. Tex.) and *United States of America* v. *Fina Oil and Chemical Company*, No. H–93–4012 (S.D. Tex.), was lodged with the United States District Court for the Southern District of Texas on February 20, 1997.

The proposed consent decree would resolve the United States allegations in these two enforcement actions: (1) that the Defendants have violated Section 301(a) of the Clean Water Act ("CWA"), 33 U.S.C. § 1311(a), and Section 10 of the Rivers and Harbors Act ("RHA"), 33 U.S.C. § 403, by propwashing and otherwise damaging approximately 37.5 acres of seagrass habitat in the Laguna Madre near Corpus Christi, Texas; and (2) that Fina has violated Section 10 of the RHA, 33 U.S.C. § 403, by continuing to maintain a wellhead and associated structures in the Laguna Madre after Fina's permit to do so was revoked by the U.S. Army Corps of Engineers.

The proposed consent decree would: (1) require Fina to restore the 37 acres of seagrass meadows damaged during the installation of the wellhead, (2) require Fina to create an additional 37 acres of seagrass meadows to mitigate for the past lost ecological value of the damaged seagrass meadows, (3) require the non-Fina Defendants to contribute towards the cost of the restoration and mitigation projects, and (4) require the Defendants to pay civil penalties totaling $2.28 million. As part of this settlement, the Corps' revocation of Fina's RHA permit would be vacated, and compliance with that permit would be enforceable under this Consent Decree.

The Department of Justice will accept written comments relating to the proposed consent decree for thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Attention: Scott J. Jordan, Environmental Defense Section, P.O. Box 23986, Washington, DC 20026–3986, and should refer to *United States* v. *Fina Oil and Chemical Company*, DJ Reference No. 90–5–1–6–486.

The proposed consent decree may be examined at either the Clerk's Office, United States District Court, Southern District of Texas, 515 Rusk Street, Houston, Texas 77002, or at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. Requests for a copy of the consent decree may be mailed to the Consent Decree Library at the above address, and must include a check in the amount of $12.75.

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environment and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 97–5152 Filed 2–28–97; 8:45 am]

BILLING CODE 4410–15–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a proposed Consent Decree in *United States of America* v. *David Bowen Wallace, et al.*, Civil Action No. 3–93CV0838–P (consolidated with No. C:93–CV–0841–G) among the United States, the State of Texas, CTU of Delaware, Inc. ("CTU"), and the United Technologies Corporation ("UTC") was lodged on February 18, 1997, with the United States District Court for the Northern District of Texas, Dallas Division.

On April 30, 1992, the United States and the State of Texas filed Complaints under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA") against more than seventy defendants, including CTU and UTC, for reimbursement of response costs incurred and to be incurred by the United States and the State of Texas for response actions related to the release or threatened release of hazardous substances at the Bio-Ecology Superfund Site ("Site") in Grand Prairie, Texas. The remediation of the Site was successfully completed in April 1993.

Under the proposed Consent Decree, CTU and UTC have agreed to pay the EPA Hazardous Substances Superfund $1,600,000 or 14% of the $11,201,300 in response costs incurred at the Site. The Consent Decree resolves the liability of CTU and UTC subject to the reservations of rights set forth in the Consent Decree. As part of the Consent Decree, CTU and UTC have agreed to dismiss any remaining counterclaims against the United States, including those against EPA. When the payment by CTU and UTC is combined with the payments already received from previous settlement agreements, the United States will have recovered $10,642,842 or 95% of the total response costs at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States of America* v. *David Bowen Wallace et al.*, DOJ No. 90–11–3–204A.

The proposed Consent Decree may be examined at the Office of the United States Attorney, United States Courthouse, 1100 Commerce Street, Room 16G28, Dallas, Texas 75242; the Region VI Office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in

the amount of $7.00 (25 cents per page), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–5153 Filed 2–28–97; 8:45 am]

BILLING CODE 4410–15–M

[F.C.S.C. Meeting Notice No. 4–97]

Foreign Claims Settlement Commission, Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date and Time: Monday, March 10, 1997, 11:00 a.m.

Subject Matter: Consideration of Proposed Decisions on claims against Albania.

Status: Open

Subject matter not disposed of at the scheduled meeting may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6029, Washington, DC 20579. Telephone: (202) 616–6988.

Dated at Washington, DC, February 25, 1997.

Judith H. Lock,

Administrative Officer.

[FR Doc. 97–5226 Filed 2–26–97; 8:45 am]

BILLING CODE 4410–01–P

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Extension of existing collection; Affidavit of support.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" from May 2, 1997.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: *Extension of a currently approved collection.*

(2) Title of the Form/Collection: Affidavit of Support.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form I–134. Office of Examinations, Adjudications, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households. The information collected is used to determine whether the applicant for benefit will become a public charge if admitted to the United States.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 44,000 responses at 20 minutes (.333) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 14,652 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–616–7600, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: February 24, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–5109 Filed 2–28–97; 8:45 am]

BILLING CODE 4410–18–M

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Request OMB emergency approval; Application for asylum and withholding of removal.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on February 11, 1997 at 62 FR 6270, allowing for a 60-day public comment period. The INS cannot wait for the 60-day comment period to close since the effective date for implementation of the revised Form I–589 is April 1, 1997. No comment have been received by the Immigration and Naturalization Service. The proposed information collection is published to obtain comments from the public and affected agencies. OMB approval has been requested by March 7, 1997. If granted, the emergency approval is only valid for 180 days. A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Immigration and Naturalization Service, Director, Policy Directives and Instructions Branch, Richard Sloan (202–616–7600).

Comments and questions about the ICR listed below should be forwarded to the Office of Information and Regulatory Affairs, Attention: Ms: Debra Bond, 202–395–7316, Department of Justice Desk Officer, Room 10235, Office of Management and Budget, Washington, DC 20503.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: *Revision of a currently approved collection.*

(2) Title of the Form/Collection: Application for Asylum and Withholding of Removal.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form I–589. Office of International Affairs, Asylum Division, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households. The information collected is used by the INS and EOIR to access eligibility of persons applying for asylum and withholding of deportation.

(5) An estimate of the total number of respondents and the amount of times estimated for an average respondent to respond: 80,000 responses at three and one half (3.5) hours per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 280,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–616–7600, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Office, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: February 24, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–5110 Filed 2–28–97; 8:45 am]

BILLING CODE 4410–18–M

Agency Information Collection Activities:

Proposed Collection; Comment Request

ACTION: Extension of existing collection; medical certification for disability exceptions.

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on December 26, 1996 at 61 FR 68056, utilizing emergency review in addition to allowing a 60-day comment period. No comments were received by the Immigration and Naturalization Service. The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until [April 2, 1997]. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to OMB, Office of Information and Regulatory Affairs, Attention: OMB Desk Officer for the Immigration and Naturalization Service, Office of Management and Budget, Room 10235, Washington, DC 20530 (202–395–7316). Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW., Washington, DC 20530. Additionally comments may be submitted to DOJ via facsimile to 202–514–1534.

Written comments and suggestions from the public should address one or more of the following four points.

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumption used;

(3) Enhance the quality, utility, and clarity of the information to be collected, and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of Responses.

Overview of this information collection:

(1) Type of Information Collection: Extension of a currently approved collection.

(2) Title of the Form/Collection: Medical Certification for Disability Exceptions.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form N–648. Adjudications Division, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households. These medical certifications, executed by licensed health care providers, will be used to support an applicant's clam to an exception of the literacy and history/government knowledge requirements found in section 312 of the Immigration and Nationality Act.

(5) As estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 300,000 respondents at 3 hours per response.

(6) An estimate of the total public burden (in hour) associated with the collection: 900,000 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information management and Security Staff, Justice Management Division, Suite 850, Washington Center,

1001 G Street, N.W., Washington, DC 20530.

Dated: February 24, 1997.

Robert B. Briggs,

Department Clearance Officer,

[FR Doc. 97–5113 Filed 2–28–97; 8:45 am]

BILLING CODE 4410–18–M

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Extension of existing collection; Reengineered foreign students pilot program.

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on December 10, 1996 at 61 FR 65082, utilizing emergency review in addition to allowing a 60-day comment period. No comments were received by the Immigration and Naturalization Service. The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until April 2, 1997. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Information and Regulatory Affairs, Attention: OMB Desk Officer for the Immigration and Naturalization Service, Office of Management and Budget, Room 10325, Washington, DC 20530 (202–395–7316). Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW., Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to 202–514–1534.

Written comments and suggestions from the public should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this Information Collection:

(1) Type of Information Collection: *Extension of a currently approved collection.*

(2) Title of the Form/Collection: Reengineered Foreign Students Pilot Program.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: No agency form number. Office of Examinations—Adjudications Division, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Not-for-profit institutions, Business or other for-profit. The INS and the United States Information Agency (USIA) are initiating a pilot project to test a prototype of a reengineered Foreign Student and School Program as mandated under Subtitle D, Section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. The pilot effort will test an administrative process to use a computer-supported notification and reporting process from schools to the INS regarding foreign students and exchange visitors through the duration of their status in the United States.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 50 respondents at 60 hours per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 3,000 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: February 24, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–5112 Filed 2–28–97; 8:45 am]

BILLING CODE 4410–18–M

ESTIMATED ANNUAL REPORTING BURDEN

5 CFR section	Annual Number of respondents	Frequency per response	Total annual responses	Hours per response (average)	Total hours
1201 and 1209	9,000	1	9,000	.5	4,500

MERIT SYSTEMS PROTECTION BOARD

Agency Information Collection Activities; Proposed Collection

AGENCY: Merit Systems Protection Board.

ACTION: Notice.

SUMMARY: The U.S. Merit Systems Protection Board (MSPB) is requesting a one-year extension of approval of its optional appeal form, Optional Form 283 (Rev. 10/94) from the Office of Management and Budget (OMB) under section 3506 of the Paperwork Reduction Act of 1995. The appeal form is currently displayed in 5 CFR Part 1201, Appendix I, and on the MSPB Web Page at http://www.gpo.gov/mspb/index.htm.

In this regard, we are soliciting comments on the public reporting burden. The reporting burden for the collection of information on this form is estimated to vary from 20 minutes to one hour per response, with an average of 30 minutes, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

In addition, the MSPB invites comments on (1) Whether the proposed collection of information is necessary for the proper performance of MSPB's functions, including whether the information will have practical utility; (2) the accuracy of MSPB's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

DATES: Comments must be received on or before May 2, 1997.

ADDRESSES: Copies of the appeal form may be obtained from Arlin Winefordner, Merit Systems Protection Board, 1120 Vermont Ave., NW., Washington, DC 20419 or by calling (202) 653–7200. Comments concerning the paperwork burden should also be addressed to Mr. Winefordner.

Dated: February 25, 1997.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 97–5139 Filed 2–28–97; 8:45 am]

BILLING CODE 7400–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 97–025]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Structure and Evolution of the Universe Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science Advisory Committee, Structure and Evolution of the Universe Subcommittee.

DATES: Monday, March 24, 1997, 8:30 a.m. to 5:00 p.m., and Tuesday, March 25, 1997, 8:30 a.m. to 5:00 p.m.

ADDRESSES: Goddard Space Flight Center, Bldg. 26, Conference Room 212, Greenbelt Road, Greenbelt, MD 20771.

FOR FURTHER INFORMATION CONTACT: Dr. Alan N. Bunner, Code SA, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0364.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Status of Ongoing Missions
—Structure and Evolution of Universe (SEU) Strategic Planning
—Plans and Concepts for Future Missions
—Development of SEU Technology "Roadmap"
—Discussion of President's FY 1998 NASA Budget

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: February 25, 1997.

Leslie M. Nolan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 97–5172 Filed 2–28–97; 8:45 am]

BILLING CODE 7510–01–M

[Notice (97–024)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Global Dynamics International, Inc., of Ann Arbor, MI 48108, has applied for a partially exclusive license to practice the invention described in NASA Case No. MSC–22532–1, entitled "Adaptive Speech Recognition System and Method," which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Johnson Space Center.

DATE: Responses to this notice must be received by May 2, 1997.

FOR FURTHER INFORMATION CONTACT: James M. Cate, Patent Attorney, Lyndon B. Johnson Space Center, Mail Stop HA, Houston, TX 77058–3696, telephone (281) 483–1001.

Dated: February 21, 1997.

Edward A. Frankle,

General Counsel.

[FR Doc. 97–5171 Filed 2–28–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities Under OMB Review

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) named below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 2, 1997.

FOR FURTHER INFORMATION OR A COPY CONTACT: Marijean Brown at NCUA (703) 518–6413.

SUPPLEMENTARY INFORMATION:

Title: Community Development Revolving Loan Program for Credit Unions, Application for Technical Assistance (OMB Control No. 3133–0137). This is a request for an extension of a currently approved information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on December 23, 1996. No comments were received.

Send comments including suggestions for reducing the burden to the following addresses: Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., Washington, DC 20503, Attn: Desk Officer Alexander Hunt and NCUA, 1775 Duke St., Alexandria, VA 22314–3428, Attn: Marijean Brown. Please refer to OMB Control No. 3133–0137.

By the National Credit Union Administration Board on February 26, 1997.

Becky Baker,

Secretary of the Board.

[FR Doc. 97–5202 Filed 2–28–97; 8:45 am]

BILLING CODE 7535–01–U

POSTAL RATE COMMISSION

[Parcel Classification Reform Docket No. MC97–2]

Notice of Request for Changes in Domestic Mail Classification Schedule Provisions and Rates for Parcel Services and Order Instituting Proceedings

Issued February 24, 1997.

Before Commissioners: Edward J. Gleiman, Chairman; H. Edward Quick, Jr., Vice Chairman; George W. Haley; W.H. "Trey" LeBlanc III.

Notice is hereby given that on February 21, 1997, the United States Postal Service filed a Request with the Postal Rate Commission pursuant to § 3623 of the Postal Reorganization Act, 39 U.S.C. §§ 101 et seq., for a recommended decision on proposed changes in the Domestic Mail Classification Schedule (DMCS). The proposed revisions also include proposed new rates and fees. The Request includes attachments and is supported by the testimony of 13 witnesses and 46 library references. It is on file in the Commission Docket Room and is available for inspection during the Commission's regular business hours.

Contents of the Filing

The Service's Request incorporates significant changes in mail classification affecting parcels in the following subclasses of Standard Mail: Single Piece, Regular, Enhanced Carrier Route, Parcel Post, and Bound Printed Matter. The following summarizes the proposed classification changes on a subclass-by-subclass basis:

Single Piece

- Introduction of a parcel return service with rates below those currently applicable to returned single pieces.
- Introduction of a new forwarding service.

Regular Presort and Enhanced Carrier Route

- Establishment of a surcharged rate category for parcel-shaped items.

Parcel Post

- Re-introduction of a charge for bulky, lighter-weight parcel post.
- Adoption of an increase in the maximum permissible parcel size.
- Introduction of discounts for BMC presort and origin BMC entry.
- Introduction of discounts for DSCF entry combined with five-digit presort.
- Introduction of a discount for destination delivery unit entry.

Bound Printed Matter

- Adoption of an increase in the maximum weight limit.

The Postal Service Request also proposes changes that would apply across several different mail classifications. For all categories of Standard Mail weighing 16 ounces or more, the Service proposes:

- Introduction of prebarcode discounts; and
- Introduction of a delivery confirmation service using barcoded peel-off labels.

The Service also proposes the introduction of bulk rates tied to electronically-transmitted information for users of the Insurance special service who send First-Class, Priority, Parcel Post, Bound Printed Matter, Special, and Library Mail. Finally, the Service requests establishment of surcharges for hazardous medical materials and other mailable hazardous materials contained in First-Class, Priority, Express Mail, Standard Single Piece, Regular, Enhanced Carrier Route, and Parcel Post parcels.

In addition to proposed changes in mail classification, the Postal Service Request incorporates proposed adjustments in current postal rates and fees. The Service proposes revisions in Parcel Post rates to reflect revisions in transportation and processing cost information, and in the DBMC discounts available for Parcel Post to reflect current cost data. The Service also proposes to increase the fee for the pickup service available for Express Mail, Priority Mail, and Parcel Post.

Effect on Net Revenue

Unlike the Postal Service's earlier classification reform requests in Docket Nos. MC95–1 and MC96–2, its proposal in this docket is not intended to have a neutral effect on its overall net revenue. The Postal Service estimates that if its proposals in this docket were in effect throughout FY 1997, they would increase system revenues by $90.8 million while decreasing system costs by $35.4 million, for a net increase in system revenue of $126.2 million. USPS–T–1 at 7.

Cost and Roll-Forward Methodologies

In the past, interim Postal Service filings used the same base year and test year that were used in the most recent omnibus rate proceeding. This provided a consistent basis for comparing the cost and revenue effects of proposed interim changes with the cost and revenue effects of the general rate and classification schedules in place. In this interim filing, evaluation of the Postal Service's proposed changes is complicated by use of a base year (FY 1995) and a test year (FY 1997) that were not used to evaluate the rate and classification schedules emanating from Docket Nos. R94–1, MC95–1 and MC96–2. The Service's filing also develops base year costs solely by the methods that the Postal Service uses in its own Cost and Revenue Analysis Report (CRA). It does not follow the Commission's approved costing methods as far as practical, as the Postal Service's filing did in Docket No. MC93–1, nor does it describe and explain its departures from them, as the Postal Service's filing did in the last omnibus rate proceeding, Docket No. R94–1. Direct Testimony of Richard Patelunas on Behalf of the United States Postal Service, USPS–T–5, at 5–8.

Proposed DMCS Provisions

The Postal Service's Request proposes changes in the current Domestic Mail Classification Schedule (DMCS), which was extensively revised as the result of the first mail classification reform proceeding, Docket No. MC95–1. The DMCS is codified at 39 CFR Part 3001, Subpart C, Appendix A. In Attachment A to its Request, the Postal Service displays the changes it proposes in the version of the DMCS currently in effect.[1] These proposed revisions accompany this Notice as Attachment A.

Proposed Rate and Fee Schedules

In Attachment B to its Request, the Postal Service displays changes it proposes to the various rate and fee schedules currently in effect. Most of these proposed rate and fee changes correspond to the revisions the Postal Service proposes in the DMCS; however, some of the proposed changes would adjust rates or fees for current mail classifications on the basis of estimated cost changes or other rationales. These changes occur in rates for the Parcel Post subclass and the fee for the Pickup service available for Express Mail, Priority Mail, and Parcel Post. The Postal Service's requested changes in rates and fees accompany this Notice as Attachment B.

Intervention

Participation in Commission proceedings generally takes the form of either full intervention or limited participation. See sections 20 and 20a of the Commission rules of practice [39 CFR § 3001.20 and .20a]. For those wishing to express their views informally, without incurring the obligations that attach to the other two forms of participation, commenter status is available. See section 20b [39 CFR § 3001.20b]. Those wishing to be heard in this matter as either a full intervenor or limited participant are directed to file a written notice of intervention in conformance with section 20(b) or 20a(a), identifying the status they intend to assume and affirmatively stating how actively they expect to participate. In addition, intervenors are requested to provide a telephone number, facsimile number, and e-mail address, if available. [See proposed Special Rule 3A, infra.]

Notices of intervention should be sent to the attention of Margaret P. Crenshaw, Secretary of the Commission, 1333 H Street, NW, Suite 300, Washington, D.C. 20268–0001, and are to be filed on or before March 18, 1997. Commenter status does not require a notice of intervention.

[1] Proposed changes in the DMCS unrelated to the Postal Service's Request in this proceeding are pending in Commission Docket Nos. MC96–2, MC96–3, and MC97–1.

Representation of the General Public

In conformance with section 3624(a) of title 39, the Commission designates W. Gail Willette, Director of the Office of the Consumer Advocate (OCA), to represent the interests of the general public in this proceeding. Pursuant to this designation, Ms. Willette will direct the activities of Commission personnel assigned to assist her and, when requested, will supply their names for the record. Neither Ms. Willette nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding.

Special Rules of Practice

The Commission proposes conducting this proceeding pursuant to the special rules of practice set forth in Attachment C. These rules reflect the special rules implemented in Docket Nos. MC96–2 and MC96–3, with two exceptions. The proposed special rules shorten the time for providing certain pleadings and answers to discovery from 14 days to 12 days, and eliminate provisions allowing for voluntary, alternative service of documents by electronic filing. In conducting its experiment with the electronic filing of case-related documents, the Commission observed a number of functional problems, some of which remain unresolved. Consequently, the Commission suspended the filing of documents by e-mail, effective February 4, 1997. *See* Secretary's Notice to Intervenors, February 4, 1997, appended hereto as Attachment D. However, participants who are capable of filing documents as word processing files stored on diskettes may avail themselves of an alternative method of filing them with the Commission, together with a reduced number of paper copies. See Special Rule of Practice 3.B.

Initial Prehearing Conference: Date, Location, and Agenda

The Commission will convene a prehearing conference at 2:00 p.m. on Thursday, March 20, 1997, in the Commission's hearing room at 1333 H Street, N.W., Suite 300, Washington, D.C. The Commission asks that persons attending the conference be prepared to discuss procedural and scheduling matters pertinent to the Service's filing.

Participants are to file a notice of issues they would like to raise for consideration at the prehearing conference. Suggestions need not be limited to procedural matters, but may include substantive issues to the extent that considering them at this stage might expedite the proceeding. An agenda incorporating participants' suggestions will be distributed at the beginning of the prehearing conference.

Docket Room Operations

Documents may be filed with the Commission's docket section Monday through Friday between 8 a.m. and 5 p.m. Questions about docket room operations should be directed to Ms. Peggie Brown (at 202–789–6847) or Ms. Joyce Taylor (at 202–789–6846).

It is ordered:

1. The Commission will sit en banc in this proceeding.
2. Notices of intervention shall be filed no later than March 18, 1997.
3. A prehearing conference will be held Thursday, March 20, 1997 at 2:00 p.m. in the Commission's hearing room.
4. Participants are to file notices of issues they intend to raise at the prehearing conference by March 18, 1997.
5. Comments on the proposed special rules of practice set out in Attachment C should be filed by March 18, 1997.
6. W. Gail Willette, Director of the Commission's Office of the Consumer Advocate, is designated to represent the interest of the general public in this proceeding.
7. The Secretary shall cause this Notice and Order to be published in the **Federal Register**.

By the Commission.

Margaret P. Crenshaw,

Secretary.

Requested Changes in the Domestic Mail Classification Schedule

In this Request, the Postal Service asks the Commission to recommend certain changes in the Domestic Mail Classification Schedule (DMCS). The changes requested herein alter the DMCS recommended by the Commission on November 29, 1978, adopted by decision of the Governors and implemented by resolution of the Board of Governors on April 3, 1979, effective April 15, 1979, and as amended from time-to-time, most recently by the decision of the Governors approving the Recommended Decision of the Commission on Nonprofit Regular Standard Mail, Nonprofit Enhanced Carrier Route Standard Mail, Nonprofit Periodicals and Within County Periodicals, Docket No. MC96–2, as implemented by resolution of the Board of Governors adopted on August 5, 1996, effective October 6, 1996. The current DMCS (which is published in part at 39 CFR Part 3001, subpart C, appendix A, and in part as Attachment B to the Decision of the Governors of the United States Postal Service On Recommended Decision of the Postal Rate Commission on Nonprofit Standard Mail, Nonprofit Enhanced Carrier Route Standard Mail, Nonprofit Periodicals, and Within County Periodicals, Docket No. MC96–2 (61 Fed. Reg. 42,464)), is incorporated by reference in this Request.

Proposed additions to text of the classification schedule are underlined; proposed deletions are in brackets. The changes in the DMCS requested by the Postal Service are as follows:

EXPEDITED MAIL CLASSIFICATION SCHEDULE

* * * * *

170 RATES AND FEES

171 Express Mail. The rates for Express Mail are set forth in the following rate schedules:

	Schedule
a. Same Day Airport	121
b. Custom Designed	122
c. Next Day Post Office-to-Post Office	123
d. Second Day Post Office-to-Post Office	123
e. Next Day Post Office-to-Addressee	123
f. Second Day Post Office-to-Addressee	123

172 Hazardous Medical Materials and Other Mailable Hazardous Materials Surcharges. Express Mail containing hazardous medical materials or other mailable hazardous materials, as defined by the Postal Service, must meet the preparation requirements of the Postal Service and is subject to one or both surcharges.

* * * * *

FIRST-CLASS MAIL CLASSIFICATION SCHEDULE

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220 DESCRIPTION OF SUBCLASSES

221 Letters and Sealed Parcels Subclass

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221.5 Hazardous Medical Materials and Other Mailable Hazardous Materials Surcharges. Letters and

Sealed Parcels subclass mail containing hazardous medical materials or other mailable hazardous materials, as defined by the Postal Service, must meet the preparation requirements of the Postal Service and is subject to one or both surcharges.

* * * * *

223 Priority Mail

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223.8 Hazardous Medical Materials and Other Mailable Hazardous Materials Surcharges. Priority Mail containing hazardous medical materials or other mailable hazardous materials, as defined by the Postal Service, must meet the preparation requirements of the Postal Service and is subject to one or both surcharges.

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STANDARD MAIL CLASSIFICATION SCHEDULE

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320 DESCRIPTION OF SUBCLASSES

321 Subclasses Limited to Mail Weighing Less than 16 Ounces

321.1 Single Piece Subclass

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321.15 Hazardous Medical Materials and Other Mailable Hazardous Materials Surcharges. Single Piece subclass mail containing hazardous medical materials or other mailable hazardous materials, as defined by the Postal Service, must meet the preparation requirements of the Postal Service and is subject to one or both surcharges.

321.2 Regular Subclass

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321.25 Residual Shape Surcharge. Regular subclass mail is subject to a surcharge if it is not letter-, card-, or flat-shaped.

321.26 Hazardous Medical Materials and Other Mailable Hazardous Materials Surcharges. Regular subclass mail containing hazardous medical materials or other mailable hazardous materials, as defined by the Postal Service, must meet the preparation requirements of the Postal Service and is subject to one or both surcharges.

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321.3 Enhanced Carrier Route Subclass

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321.37 Residual Shape Surcharge. Enhanced Carrier Route subclass mail is subject to a surcharge if it is not letter-, card-, or flat-shaped.

321.38 Hazardous Medical Materials and Other Mailable Hazardous Materials Surcharges. Enhanced Carrier Route subclass mail containing hazardous medical materials or other mailable hazardous materials, as defined by the Postal Service, must meet the preparation requirements of the Postal Service and is subject to one or both surcharges.

321.4 Nonprofit Subclass

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321.45 Hazardous Medical Materials and Other Mailable Hazardous Materials Surcharges. Nonprofit subclass mail containing hazardous medical materials or other mailable hazardous materials, as defined by the Postal Service, must meet the preparation requirements of the Postal Service and is subject to one or both surcharges.

321.5 Nonprofit Enhanced Carrier Route Subclass

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321.57 Hazardous Medical Materials and Other Mailable Hazardous Materials Surcharges. Nonprofit Enhanced Carrier Route subclass mail containing hazardous medical materials or other mailable hazardous materials, as defined by the Postal Service, must meet the preparation requirements of the Postal Service and is subject to one or both surcharges.

322 Subclasses Limited to Mail Weighing 16 Ounces or More

322.1 Parcel Post Subclass

322.11 Definition. The Parcel Post subclass consists of Standard Mail weighing 16 ounces or more that is not mailed under sections *322.2*, 322.3, 323.1, or 323.2.

[322.12 Basic Rate Category. The basic rate category applies to all Parcel Post subclass mail not mailed under sections 322.13 or 322.14.]

322.12 Description of Rate Categories

322.121 Inter-BMC Rate Category. Inter-BMC Parcel Post rates apply to all Parcel Post not mailed under sections 322.122, 322.123, 322.124, or 322.125.

322.122 Intra-BMC Rate Category. Intra-BMC rates apply to Parcel Post mail originating and destinating within a designated BMC or auxiliary service facility service area, Alaska, Hawaii or Puerto Rico.

322.123 Destination Bulk Mail Center (DBMC) Rate Category. DBMC rates apply to Parcel Post mail prepared as prescribed by the Postal Service in a mailing of at least 50 pieces deposited at a designated destination BMC, auxiliary service facility, or other equivalent facility, as prescribed by the Postal Service.

322.124 Destination Sectional Center Facility (DSCF) Rate Category. DSCF rates apply to Parcel Post mail prepared as prescribed by the Postal Service in a mailing of at least 50 pieces sorted to five digits as prescribed by the Postal Service and entered at a designated destination processing and distribution center or facility, or other equivalent facility, as prescribed by the Postal Service.

322.125 Destination Delivery Unit (DDU) Rate Category. DDU rates apply to Parcel Post mail prepared as prescribed by the Postal Service in a mailing of at least 50 pieces, and deposited at a designated destination delivery unit, or other equivalent facility, as prescribed by the Postal Service.

322.13 [Reserved]

[400.0202 Bulk

Bulk parcel post mail is fourth-class parcel post mail consisting of properly prepared and separated single mailings of at least 300 pieces or 2000 pounds. Pieces weighing less than 15 pounds and measuring over 84 inches in length and girth combined are not mailable as bulk parcel post. Provision for mailing nonidentical pieces is set forth in section 400.046.]

[322.14 Destination BMC Rate Category. Parcel Post subclass mail is eligible for destination BMC rates if it is included in a mailing of at least 50 pieces deposited at the destination BMC, auxiliary service facility, or other equivalent facility, as prescribed by the Postal Service.]

322.14 Bulk Mail Center (BMC) Presort Discounts

322.141 Machinable BMC Presort Discount. The machinable BMC presort discount applies to machinable Inter-BMC Parcel Post mail that is prepared as prescribed by the Postal Service in a mailing of 50 or more pieces, deposited at a facility authorized by the Postal Service, and sorted to destination BMCs, as prescribed by the Postal Service.

322.142 Nonmachinable BMC Presort Discount. The nonmachinable BMC presort discount applies to nonmachinable Inter-BMC Parcel Post mail that is prepared as prescribed by the Postal Service in a mailing of 50 or more pieces, deposited at a facility authorized by the Postal Service, and sorted to destination BMCs, as prescribed by the Postal Service.

322.143 Origin Bulk Mail Center (OBMC) Discount. The Origin BMC Parcel Post discount applies to Inter-BMC Parcel Post mail that is prepared as prescribed by the Postal Service in a mailing of at least 50 pieces, deposited at the origin BMC, and sorted to destination BMCs, as prescribed by the Postal Service.

[322.15 Intra-BMC Discount. Basic rate category Parcel Post subclass mail is eligible for the intra-BMC discount if it originates and destinates within the same BMC or auxiliary service facility service area, Alaska, Hawaii or Puerto Rico.]

322.15 *Barcoded Discount. The barcoded discount applies to Inter-BMC, Intra-BMC, and DBMC Parcel Post mail that is entered at designated facilities, bears a barcode prescribed by the Postal Service, is prepared as prescribed by the Postal Service in a mailing of at least 50 pieces, and meets all other preparation and machinability requirements of the Postal Service.*

322.16 Oversized Parcel Post

322.161 Excessive Length and Girth. Parcel Post pieces exceeding 108 inches in length and girth combined, but not greater than 130 inches in length and girth combined, are mailable, provided that such pieces constitute no more than 10 percent of the total number of Parcel Post pieces mailed as a part of a single mailing. If mailable, such pieces are subject to the applicable rates for the 70 pound weight increment.

322.162 Balloon Rate. Parcel Post pieces exceeding 84 inches in length and girth combined and weighing less than 15 pounds are subject to a rate equal to that for a 15 pound parcel for the zone to which the parcel is addressed.

322.1[6]*7* Nonmachinable Surcharge. [Basic rate category Parcel Post subclass mail] *Inter-BMC Parcel Post* that does not meet machinability criteria prescribed by the Postal Service is subject to a nonmachinable surcharge.

322.1[7]8 Pickup Service. Pickup service is available for Parcel Post [subclass] mail under terms and conditions prescribed by the Postal Service.

322.19 Hazardous Medical Materials and Other Mailable Hazardous Materials Surcharges. Parcel Post mail containing hazardous medical materials or other mailable hazardous materials, as defined by the Postal Service, must meet the preparation requirements of the Postal Service and is subject to one or both surcharges.

322.2 *Bulk Parcel Post*

Bulk parcel post mail is Parcel Post mail consisting of properly prepared and separated single mailings of at least 300 pieces or 2000 pounds. Pieces weighing less than 15 pounds and measuring over 84 inches in length and girth combined are not mailable as bulk parcel post.

322.3 Bound Printed Matter Subclass

322.31 Definition. The Bound Printed Matter subclass consists of Standard Mail weighing at least 16 ounces, but not more than [10]*15* pounds, which:

* * * * *

322.35 Barcoded Discount. The barcoded discount applies to Single-Piece and Bulk Rate Bound Printed Matter that is entered at designated facilities, bears a barcode prescribed by the Postal Service, is prepared as prescribed by the Postal Service in a mailing of at least 50 pieces, and meets all other preparation and machinability requirements of the Postal Service.

323 Subclasses With No 16-Ounce Limitation

323.1 Special Subclass

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322.15 Barcoded Discount. The barcoded discount applies to Single Piece and Level B Presort Special subclass mail that is entered at designated facilities, bears a barcode prescribed by the Postal Service, is prepared as prescribed by the Postal Service in a mailing of at least 50 pieces, and meets all other preparation and machinability requirements of the Postal Service.

323.2 Library Subclass

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323.23 *Barcoded Discount. The barcoded discount applies to Library subclass mail that is entered at designated facilities, bears a barcode prescribed by the Postal Service, is prepared as prescribed by the Postal Service in a mailing of at least 50 pieces, and meets all other preparation and machinability requirements of the Postal Service.*

323.24 Hazardous Medical Materials and Other Mailable Hazardous Materials Surcharges. Library subclass mail containing hazardous medical materials or other mailable hazardous materials, as defined by the Postal Service, must meet the preparation requirements of the Postal Service and is subject to one or both surcharges.

330 PHYSICAL LIMITATIONS

331 Size

Except as provided in 322.161, Standard Mail may not exceed 108 inches in length and girth combined. Additional size limitations apply to individual Standard Mail subclasses. The maximum size for mail presorted to carrier route in the Enhanced Carrier Route and Nonprofit Enhanced Carrier Route subclasses is 14 inches in length, 11.75 inches in width, and 0.75 inch in thickness. For merchandise samples mailed with detached address cards, the carrier route maximum dimensions apply to the detached address cards and not to the samples.

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350 DEPOSIT AND DELIVERY

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353 Forwarding and Return

353.1 Single Piece, Regular, Enhanced Carrier Route, Nonprofit and Nonprofit Enhanced Carrier Route Subclasses (section 321)

Undeliverable-as-addressed Standard Mail mailed under section 321 will be returned on request of the mailer, or forwarded and returned on request of the mailer. Undeliverable-as-addressed combined First-Class and Standard pieces will be returned as prescribed by the Postal Service. *Except as provided in Schedule SS–21*, [T]the Single Piece Standard rate is charged for each piece receiving return only service. *Except as provided in Schedule SS–22*, [C]charges for forwarding-and-return service are assessed only on those pieces which cannot be forwarded and are returned. *Except as provided in Schedules SS–21 and SS–22*, [T]the charge for those returned pieces is the appropriate Single Piece Standard rate for the piece plus that rate multiplied by a factor equal to the number of section 321 Standard pieces nationwide that are successfully forwarded for every one piece that cannot be forwarded and must be returned.

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360 ANCILLARY SERVICES

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362 Single Piece, Parcel Post, Bound Printed Matter, Special, and Library Subclasses

Single Piece, Parcel Post, Bound Printed Matter, Special, and Library subclass mail will receive the following additional services upon payment of the appropriate fees:

Service	Schedule
a. Certificates of mailing	SS–4
b. COD	SS–6
c. Insured mail	SS–9
d. Special delivery	SS–17
e. Special handling	SS–18
f. Return receipt (merchandise only).	SS–16
Merchandise return	SS–20

Service	Schedule
h. Delivery Confirmation (excluding Single-Piece).	PSS–7

Insurance, special delivery, special handling, and COD services may not be used selectively for individual pieces in a multi-piece [Parcel Post subclass] *Standard Mail* mailing unless specific methods approved by the Postal Service for ascertaining and verifying postage are followed.

363 Regular and Nonprofit

Regular and Nonprofit subclass mail will receive the following additional services upon payment of the appropriate fees:

Service	Schedule
a. Bulk Parcel Return Service	SS–21
b. Shipper-Paid Forwarding	SS–22

370 RATES AND FEES

The rates and fees for Standard Mail are set forth as follows:

	Schedule
a. Single Piece subclass	321.1
b. Regular subclass	321.2
c. Enhanced Carrier Route subclass.	321.3
d. Nonprofit subclass	321.4
e. Nonprofit Enhanced Carrier Route subclass.	321.5
f. Parcel Post subclass	
[Basic]*Inter-BMC*	322.1A
Intra-BMC	322.1B
Destination BMC	322.1[B]*C*
Destination SCF	322.1D
Destination Delivery Unit	322.1E
g. Bound Printed Matter subclass	
Single Piece	322.3A
Bulk and Carrier Route	322.3B
h Special subclass	323.1
i. Library subclass	323.2
j. Fees	1000

380 AUTHORIZATIONS AND LICENSES

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383 Parcel Post Subclass

A mailing fee as set forth in Rate Schedule 1000 must be paid once each year by mailers of Destination BMC, *Destination SCF or Destination Delivery Unit* rate category mail in the Parcel Post subclass.

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CLASSIFICATION SCHEDULE SS–4—CERTIFICATE OF MAILING

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4.03 Other Services

4.030 The following services, if applicable to the *sub*class of mail, may be obtained in conjunction with mail sent under this classification schedule upon payment of the applicable fees:

	Classification schedule
a. Parcel airlift	SS–13
b. Special delivery	SS–17
c. Special handling	SS–18
d. Delivery confirmation	SS–7

* * * * *

CLASSIFICATION SCHEDULE SS–6—COLLECT ON DELIVERY SERVICE

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6.06 Other Services

6.060 The following services, if applicable to the *sub*class of mail, may be obtained in conjunction with mail sent under this classification schedule upon payment of the applicable fee:

	Classification schedule
a. Registered mail, if sent as First-Class.	SS–14
b. Restricted delivery	SS–15
c. Special delivery	SS–17
d. Special handling	SS–18
e. Delivery confirmation	SS–7

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CLASSIFICATION SCHEDULE SS–7—DELIVERY CONFIRMATION

7.01 Definition

7.010 Delivery confirmation service provides confirmation to the mailer that an article was delivered or that a delivery attempt was made.

7.02 Description of Service

7.020 Delivery confirmation is available for a fee for Parcel Post, Bound Printed Matter, Special, and Library subclass mail.

7.021 Delivery Confirmation service may be requested at the time of mailing only.

7.022 Mail for which Delivery Confirmation is requested must meet the preparation and barcoding requirements of the Postal Service.

7.023 Matter for which delivery confirmation is requested must be deposited in a manner specified by the Postal Service.

7.03 Fees

7.030 The fees for delivery confirmation service are set forth in Rate Schedule SS–7.

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CLASSIFICATION SCHEDULE SS–9—INSURED MAIL

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9.02 Description of Service

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9.021 *Availability*

9.0210 *Retail* [Insured] *insurance* [mail service] is available for mail sent under the following classification schedules:

a. First-Class Mail, if containing matter which may be mailed as Standard Mail

b. Single Piece, Parcel Post, Bound Printed Matter, Special, and Library [Standard M] *subclass mail.*

9.0211 Bulk insurance service is available for mail entered in bulk at designated facilities and in a manner prescribed by the Postal Service and sent under the following classification schedules:

a. First-Class Mail, if containing matter that may be mailed as Standard Mail,

b. Parcel Post, Bound Printed Matter, Special, and Library subclass mail

* * * * *

9.023 *Coverage*

9.0230 Retail insurance provides indemnity for the actual value of the article at the time of mailing.

9.0231 Bulk insurance provides indemnity for the lesser of (1) the actual value of the article at the time of mailing, or (2) the wholesale cost of the contents to the sender.

9.024 Accountability and Recordkeeping

9.0240 For retail insurance, the mailer is issued a receipt for each item mailed. For items insured for more than $50, a receipt of delivery is obtained by the Postal Service.

9.0241 For items insured for more than $50, a notice of arrival is left at the mailing address when the first attempt at delivery is unsuccessful.

9.0242 Bulk insurance bears endorsements and identifiers prescribed by the Postal Service. Bulk insurance mailers must meet the documentation requirements of the Postal Service.

9.025 *Claims*

9.0250 For retail insurance, a [A] claim for complete loss may be filed by the mailer only. A claim for damage or for partial loss may be filed by either the mailer or addressee.

9.0251 For bulk insurance, all claims must be filed by the mailer.

[9.026]

9.0252 A claim for damage or loss on a parcel sent merchandise return (SS–20) may only be filed by the purchaser of the insurance.

[9.027]

9.0253 Indemnity claims for insured mail must be filed within a specified period of time from the date the article was mailed. [9.028 Additional copies of the original mailing receipt may be obtained by the mailer, upon payment of the applicable fee set forth in Rate Schedule SS–9.]

9.03 Deposit of Mail

9.030 *Retail and bulk* Insured mail must be deposited [in a manner] as specified by the Postal Service.

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9.05 Other Services

9.050 The following services, if applicable to the *sub*class of mail, may be obtained in conjunction with mail sent under this classification schedule upon payment of the applicable fees:

	Classification schedule
a. Parcel Airlift	SS–13
b. Restricted delivery (for items insured for more than $50).	SS–15
c. Return receipt (for items insured for more than $50).	SS–16
d. Special delivery	SS–17
e. Special handling	SS–18
f. Merchandising return (shippers only).	SS–20
g. Delivery confirmation	SS–7

* * * * *

CLASSIFICATION SCHEDULE SS–13—PARCEL AIRLIFT (PAL)

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13.07 Other Services

13.070 The following services, if applicable to the *sub*class of mail, may be obtained in conjunction with mail sent under this classification schedule upon payment of the applicable fees:

	Classification schedule
a. Certificate of mailing	SS–4
b. Insured mail	SS–9
c. Restricted delivery (if insured for more than $[25]50).	SS–15
d. Return receipt (if insured for more than $[25] 50).	SS–16
e. Special delivery (if mailed for delivery within the 48 contiguous states).	SS–17
Special handling	SS–18

* * * * *

CLASSIFICATION SCHEDULE SS–18—SPECIAL HANDLING

* * * * *

18.06 Other Services

18.060 The following services, *if applicable to the subclass of mail,* may be obtained in conjunction with mail sent under this classification schedule upon payment of the applicable fees:

	Classification schedule
a. COD mail	SS–6
b. Insured mail	SS–9
c. Parcel airlift	SS–13
Merchandise return (shippers only).	SS–20
e. Delivery confirmation	SS–7

* * * * *

CLASSIFICATION SCHEDULE SS–21—BULK PARCEL RETURN SERVICE

21.01 Definition

21.010 Bulk Parcel Return Service provides a method whereby high-volume parcel mailers may have undeliverable-as-addressed machinable parcels returned to designated postal facilities for pickup by the mailer at a predetermined frequency prescribed by the Postal Service or delivered by the Postal Service in bulk in a manner and frequency prescribed by the Postal Service.

21.02 Description of Service

21.020 Bulk Parcel Return Service is available only for the return of machinable parcels, as defined by the Postal Service, initially mailed under the following Standard Mail subclasses: Regular and Nonprofit.

21.03 Requirements of the Mailer

21.030 Mailers must receive authorization from the Postal Service to use Bulk Parcel Return Service.

21.031 To claim eligibility for Bulk Parcel Return Service at each facility through which the mailer requests Bulk Parcel Return Service, the mailer must demonstrate receipt of a prescribed minimum number of returned machinable parcels at a given delivery point in the previous postal fiscal year or must demonstrate a high likelihood of receiving the prescribed minimum number of returned parcels in postal fiscal year for which the service is requested.

21.032 Payment for Bulk Parcel Return Service is made through advance deposit account, or as otherwise specified by the Postal Service.

21.033 Mail for which Bulk Parcel Return Service is requested must bear endorsements prescribed by the Postal Service.

21.034 Bulk Parcel Return Service mailers must meet the documentation and audit requirements of the Postal Service.

21.04 Other Services

21.040 The following services may be purchased in conjunction with Bulk Parcel Return Service:

	Classification schedule
Address Correction Service	SS–1
Certificate of Mailing	SS–4
Shipper-Paid Forwarding	SS–22

21.05 Fee

21.050 The fee for Bulk Parcel Return Service is set forth in Rate Schedule SS–21.

21.06 Authorizations and Licenses

21.060 A permit fee as set forth in Rate Schedule 1000 must be paid once each calendar year by mailers utilizing Bulk Parcel Return Service.

21.061 The Bulk Parcel Return Service permit may be canceled for failure to maintain sufficient funds in an advance deposit account to cover postage and fees on returned parcels or for failure to meet the specifications of the Postal Service.

CLASSIFICATION SCHEDULE SS–22—SHIPPER-PAID FORWARDING

22.01 Definition

22.010 Shipper-Paid Forwarding provides a method whereby mailers may have undeliverable-as-addressed machinable parcels forwarded at Standard Mail Single Piece rates for up to one year from the date that the addressee filed a change-of-address order. If the parcel, for which Shipper-Paid Forwarding is elected, is returned, the mailer will pay the appropriate Standard Mail Single Piece rate, or the Bulk Parcel Return Service fee, if that service was elected.

22.02 Description of Service

22.020 Shipper-Paid Forwarding is available only for the forwarding of machinable parcels, as defined by the Postal Service, initially mailed under the following Standard Mail subclasses: Regular and Nonprofit.

22.03 Requirements of the Mailer

22.030 Shipper-Paid Forwarding is available only in conjunction with automated Address Correction Service in Schedule SS–1.

22.031 Mail for which Shipper-Paid Forwarding is purchased must meet the

preparation requirements of the Postal Service.

22.032 Payment for Shipper-Paid Forwarding is made through advance deposit account, or as otherwise specified by the Postal Service.

22.033 Mail for which Shipper-Paid Forwarding is requested must bear endorsements prescribed by the Postal Service.

22.04 Other Services

22.040 The following services may be purchased in conjunction with Shipper-Paid Forwarding:

	Classification schedule
a. Certificate of Mailing	SS–4
b. Bulk Parcel Return Service	SS–21

22.05 Applicable Rates

22.050 Except as provided in Schedule SS–21, Standard Mail Single Piece rates, set forth in Rate Schedule 321.1, apply to pieces forwarded or returned in connection with Shipper-Paid Forwarding.

GENERAL DEFINITIONS, TERMS AND CONDITIONS

* * * * *

2000 Delivery of Mail

* * * * *

2030 Forwarding and Return

* * * * *

2033 Applicable Provisions. The provisions of sections 150, 250, 350 and 450 *and schedules SS–21 and SS–22* apply to forwarding and return.

* * * * *

6000 Mailable Matter

* * * * *

6030 Maximum Size and Weight Standards

Where applicable, the maximum size and weight standards for each class or *subclass* of mail are set forth in sections 130, 230, *322.16,* 330 and 430. Additional limitations may be applicable to specific subclasses, and rate and discount categories as provided in the eligibility provisions for each subclass or category.

Requested Changes in the Rate and Fee Schedules

In conjunction with the requested changes in the Domestic Mail Classification Schedule (DMCS) set forth in Attachment A, the Postal Service also is requesting that the Commission recommend corresponding changes in the attendant rate and special service fee schedules.

Rate schedules were last amended in part by the decision of the Governors approving the Recommended Decision of the Commission on Nonprofit Regular Standard Mail, Nonprofit Enhanced Carrier Route Standard Mail, Nonprofit Periodicals and Within County Periodicals, Docket No. MC96–2, as implemented by resolution of the Board of Governors adopted on August 5, 1996, effective October 6, 1996. The rate schedules attached to that decision, published at 61 Fed. Reg. 42,464 and the rate and fee schedules published at 39 CFR Part 3001, subpart C, appendix A, and published at 61 Fed. Reg. 10,220, are incorporated by reference in this Request.

Unless otherwise indicated, proposed additions to the text of the schedules are underlined; proposed deletions are in brackets. The requested changes in the rate and fee schedules are as follows:

EXPRESS MAIL RATE SCHEDULES 121, 122, AND 123

[Dollars]

Weight Not Exceeding (Pounds)	Schedule 121 Same Day Airport Service	Schedule 122 Custom Designed	Schedule 123 Next Day Second Day PO to PO	Schedule 123 Next Day and Second Day PO to Addressee

* * * * *

SCHEDULES 121, 122, AND 123 NOTES

* * * * *

2. Add [$4.95] *$7.75* for each pickup stop.

3. Add [$4.95] *$7.75* for each Custom Designed delivery stop.

4. Add $0.50 per-piece for hazardous medical materials and $1.00 per-piece for other mailable hazardous materials.

FIRST-CLASS MAIL RATE SCHEDULE 221 LETTERS and SEALED PARCELS [12]

* * * * *

SCHEDULE 221 NOTES:

* * * * *

[12] Add $0.50 per-piece for hazardous medical materials and $1.00 per-piece for other mailable hazardous materials.

FIRST-CLASS MAIL RATE SCHEDULE 223 PRIORITY MAIL SUBCLASS (in dollars)

* * * * *

SCHEDULE 223 NOTES:

* * * * *

2. Add [$4.95] *$7.75* for each pickup stop.

* * * * *

6. Add $0.50 per-piece for hazardous medical materials and $1.00 per-piece for other mailable hazardous materials.

STANDARD MAIL RATE SCHEDULE 321.1 SINGLE PIECE SUBCLASS [3]

* * * * *

SCHEDULE 321.1 NOTES:

* * * * *

[3] Add $0.50 per-piece for hazardous medical materials and $1.00 per-piece for other mailable hazardous materials.

STANDARD MAIL RATE SCHEDULE 321.2A REGULAR SUBCLASS Presort Category 1 [4]

Letter Size

* * * * *

Non-Letter Size [3]

* * * * *

SCHEDULE 321.2A NOTES:

* * * * *

[3] Residual shape surcharge $0.10 per-piece.

[4] Add $0.50 per-piece for hazardous medical materials and $1.00 per-piece for other mailable hazardous materials.

STANDARD MAIL RATE SCHEDULE 321.2B REGULAR SUBCLASS Automation Category 1 [10]

* * * * *

SCHEDULE 321.2B NOTES

* * * * *

[10] Add $0.50 per-piece for hazardous medical materials and $1.00 per-piece for other mailable hazardous materials.

STANDARD MAIL RATE SCHEDULE 321.3

Enhanced Carrier Route Subclass 1 [6]

Letter Size

* * * * *

Non-Letter Size [5]

* * * * *

SCHEDULE 321.3 NOTES

* * * * *

[5] Residual Shape Surcharge: $0.10 per piece.

[6] Add $0.50 per-piece for hazardous medical materials and $1.00 per-piece for other mailable hazardous materials.

STANDARD MAIL RATE SCHEDULE 321.4A NONPROFIT SUBCLASS

Presort Categories 1 [3] (Full rates)

* * * * *

SCHEDULE 321.4A NOTES

* * * * *

[3] Add $0.50 per-piece for hazardous medical materials and $1.00 per-piece for other mailable hazardous materials.

STANDARD MAIL RATE SCHEDULE 321.4B NONPROFIT SUBCLASS

Automation Categories 1 [10] (Full Rates)

* * * * *

SCHEDULE 321.4B NOTES

* * * * *

[10] Add $0.50 per-piece for hazardous medical materials and $1.00 per-piece for other mailable hazardous materials.

STANDARD MAIL RATE SCHEDULE 321.5 NONPROFIT ENHANCED CARRIER ROUTE SUBCLASS 1 [5]

* * * * *

SCHEDULE 321.5 NOTES

* * * * *

[5] Add $0.50 per-piece for hazardous medical materials and $1.00 per-piece for other mailable hazardous materials.

Replace Rate Schedules 322.1A and 322.1B with proposed Rate Schedules 322.1A, 322.1B, 322.1C, 322.1D and 322.1E.

STANDARD MAIL RATE SCHEDULE 322.1A PARCEL POST SUBCLASS INTER-BMC RATES

[Dollars]

Weight (pounds)	Zones 1 & 2		Zone 3		Zone 4		Zone 5		Zone 6		Zone 7		Zone 8	
	Proposed	Current	Proposed	Current	Proposed	Current	Proposed	Current	Proposed	Current	Proposed	Current	Proposed	Current
2	2.95	2.63	2.95	2.79	2.95	2.87	2.95	2.95	2.95	2.95	2.95	2.95	2.95	2.95
3	3.48	2.76	3.61	3.00	3.86	3.34	3.95	3.68	3.95	3.95	3.95	3.95	3.95	3.95
4	3.73	2.87	3.97	3.20	4.31	3.78	4.68	4.68	4.95	4.95	4.95	4.95	4.95	4.95
5	3.86	2.97	4.31	3.38	4.74	4.10	5.19	5.19	5.84	5.56	5.95	5.95	5.95	5.95
6	3.99	3.07	4.62	3.55	5.12	4.39	5.67	5.67	6.90	6.90	7.75	7.75	7.95	7.95
7	4.11	3.16	4.82	3.71	5.48	4.67	6.11	6.11	7.51	7.51	9.15	9.15	9.75	9.75
8	4.24	3.26	5.01	3.85	5.81	4.91	6.53	6.53	8.08	8.08	9.94	9.94	11.55	11.55
9	4.33	3.33	5.19	3.99	6.12	5.16	6.92	6.92	8.62	8.62	10.65	10.65	12.95	12.95
10	4.45	3.42	5.36	4.12	6.40	5.38	7.29	7.29	9.12	9.12	11.31	11.31	14.00	14.00
11	4.54	3.49	5.53	4.25	6.67	5.59	7.63	7.63	9.59	9.59	11.93	11.93	15.05	15.05
12	4.64	3.57	5.68	4.37	6.91	5.79	7.96	7.96	10.03	10.03	12.52	12.52	16.10	16.10
13	4.73	3.64	5.81	4.47	7.16	5.98	8.26	8.26	10.45	10.45	13.07	13.07	17.15	17.15
14	4.82	3.71	5.97	4.59	7.38	6.16	8.55	8.55	10.84	10.84	13.59	13.59	18.20	18.20
15	4.90	3.77	6.10	4.69	7.58	6.34	8.82	8.82	11.22	11.22	14.08	14.08	19.25	19.25
16	4.98	3.83	6.23	4.79	7.78	6.50	9.09	9.09	11.58	11.58	14.55	14.55	20.30	20.30
17	5.07	3.90	6.34	4.88	7.97	6.66	9.33	9.33	11.92	11.92	15.00	15.00	21.35	21.35
18	5.14	3.95	6.46	4.97	8.14	6.81	9.58	9.58	12.24	12.24	15.42	15.42	22.40	22.40
19	5.23	4.02	6.58	5.06	8.31	6.95	9.80	9.80	12.55	12.55	15.83	15.83	23.25	23.25
20	5.29	4.07	6.68	5.14	8.46	7.08	10.01	10.01	12.84	12.84	16.21	16.21	23.84	23.84
21	5.36	4.12	6.80	5.23	8.61	7.21	10.23	10.23	13.12	13.12	16.59	16.59	24.41	24.41
22	5.43	4.18	6.89	5.30	8.75	7.34	10.43	10.43	13.39	13.39	16.94	16.94	24.98	24.98
23	5.50	4.23	7.01	5.39	8.88	7.47	10.62	10.62	13.66	13.66	17.28	17.28	25.47	25.47
24	5.55	4.27	7.10	5.46	9.02	7.58	10.80	10.80	13.90	13.90	17.60	17.60	25.97	25.97
25	5.62	4.32	7.19	5.53	9.14	7.70	10.98	10.98	14.14	14.14	17.91	17.91	26.45	26.45
26	5.68	4.37	7.28	5.60	9.26	7.81	11.15	11.15	14.37	14.37	18.21	18.21	26.91	26.91
27	5.75	4.42	7.37	5.67	9.37	7.91	11.31	11.31	14.59	14.59	18.50	18.50	27.34	27.34
28	5.80	4.46	7.46	5.74	9.48	8.02	11.47	11.47	14.81	14.81	18.78	18.78	27.77	27.77
29	5.86	4.51	7.55	5.81	9.59	8.12	11.63	11.63	15.01	15.01	19.05	19.05	28.17	28.17
30	5.92	4.55	7.63	5.87	9.69	8.21	11.78	11.78	15.20	15.20	19.30	19.30	28.57	28.57
31	5.98	4.60	7.70	5.92	9.78	8.31	11.92	11.92	15.39	15.39	19.55	19.55	28.94	28.94
32	6.03	4.64	7.79	5.99	9.88	8.40	12.06	12.06	15.58	15.58	19.79	19.79	29.30	29.30
33	6.08	4.68	7.87	6.05	9.96	8.49	12.20	12.20	15.76	15.76	20.02	20.02	29.65	29.66
34	6.14	4.72	7.93	6.10	10.05	8.57	12.32	12.32	15.94	15.94	20.24	20.24	30.00	30.00
35	6.19	4.76	8.01	6.16	10.13	8.66	12.45	12.45	16.11	16.11	20.46	20.46	30.33	30.33
36	6.24	4.80	8.07	6.21	10.21	8.75	12.58	12.58	16.27	16.27	20.66	20.66	30.64	30.64
37	6.29	4.84	8.14	6.26	10.29	8.82	12.70	12.70	16.43	16.43	20.87	20.87	30.94	30.94
38	6.34	4.88	8.22	6.32	10.36	8.91	12.81	12.81	16.57	16.57	21.07	21.07	31.24	31.24
39	6.40	4.92	8.28	6.37	10.43	8.98	12.92	12.92	16.72	16.72	21.26	21.26	31.53	31.53
40	6.44	4.95	8.35	6.42	10.51	9.05	13.04	13.04	16.86	16.86	21.44	21.44	31.81	31.81
41	6.50	5.00	8.42	6.48	10.57	9.12	13.14	13.14	17.00	17.00	21.62	21.62	32.07	32.07
42	6.54	5.03	8.48	6.52	10.63	9.19	13.24	13.24	17.14	17.14	21.79	21.79	32.33	32.33
43	6.58	5.06	8.54	6.57	10.70	9.27	13.35	13.35	17.28	17.28	21.96	21.96	32.58	32.58
44	6.63	5.10	8.59	6.61	10.75	9.33	13.44	13.44	17.41	17.41	22.12	22.12	32.83	32.83
45	6.67	5.13	8.66	6.66	10.81	9.40	13.54	13.54	17.52	17.52	22.28	22.28	33.06	33.06
46	6.72	5.17	8.72	6.71	10.88	9.46	13.63	13.63	17.65	17.65	22.44	22.44	33.30	33.30
47	6.77	5.21	8.78	6.75	10.93	9.52	13.72	13.72	17.77	17.77	22.59	22.59	33.52	33.52
48	6.81	5.24	8.84	6.80	10.98	9.59	13.82	13.82	17.88	17.88	22.74	22.74	33.73	33.73
49	6.85	5.27	8.89	6.84	11.04	9.65	13.90	13.90	17.99	17.99	22.88	22.88	33.96	33.96
50	6.89	5.30	8.94	6.88	11.09	9.70	13.99	13.99	18.10	18.10	23.02	23.02	34.15	34.15
51	6.94	5.34	9.00	6.92	11.13	9.77	14.07	14.07	18.20	18.20	23.16	23.16	34.35	34.35
52	6.98	5.37	9.06	6.97	11.19	9.82	14.15	14.15	18.31	18.31	23.29	23.29	34.54	34.54
53	7.02	5.40	9.11	7.01	11.24	9.87	14.23	14.23	18.42	18.42	23.41	23.41	34.74	34.74
54	7.06	5.43	9.17	7.05	11.28	9.93	14.31	14.31	18.51	18.51	23.54	23.54	34.92	34.92
55	7.10	5.46	9.20	7.08	11.33	9.99	14.38	14.38	18.61	18.61	23.66	23.66	35.10	35.10
56	7.15	5.50	9.27	7.13	11.37	10.04	14.45	14.45	18.70	18.70	23.79	23.79	35.27	35.27
57	7.19	5.53	9.32	7.17	11.41	10.09	14.53	14.53	18.80	18.80	23.89	23.89	35.44	35.44
58	7.23	5.56	9.36	7.20	11.45	10.14	14.60	14.60	18.89	18.89	24.01	24.01	35.60	35.60
59	7.27	5.59	9.41	7.24	11.50	10.19	14.67	14.67	18.97	18.97	24.12	24.12	35.76	35.76
60	7.31	5.62	9.46	7.28	11.54	10.25	14.74	14.74	19.07	19.07	24.22	24.22	35.92	35.92
61	7.36	5.66	9.52	7.32	11.58	10.29	14.81	14.81	19.14	19.14	24.33	24.33	36.07	36.07

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STANDARD MAIL RATE SCHEDULE 322.1A PARCEL POST SUBCLASS INTER-BMC RATES—Continued

[Dollars]

Weight (pounds)	Zones 1 & 2		Zone 3		Zone 4		Zone 5		Zone 6		Zone 7		Zone 8	
	Proposed	Current	Proposed	Current	Proposed	Current	Proposed	Current	Proposed	Current	Proposed	Current	Proposed	Current
62	7.40	5.69	9.56	7.35	11.61	10.34	14.87	14.87	19.23	19.23	24.44	24.44	36.22	36.22
63	7.42	5.71	9.61	7.39	11.65	10.39	14.93	14.93	19.31	19.31	24.53	24.53	36.37	36.37
64	7.46	5.74	9.65	7.42	11.68	10.44	15.00	15.00	19.39	19.39	24.64	24.64	36.50	36.50
65	7.50	5.77	9.70	7.46	11.72	10.48	15.06	15.06	19.46	19.46	24.73	24.73	36.64	36.64
66	7.55	5.81	9.75	7.50	11.75	10.52	15.13	15.13	19.55	19.55	24.82	24.82	36.77	36.77
67	7.59	5.84	9.79	7.53	11.78	10.57	15.18	15.18	19.62	19.62	24.92	24.92	36.91	36.91
68	7.62	5.86	9.83	7.56	11.83	10.62	15.24	15.24	19.68	19.68	25.00	25.00	37.04	37.04
69	7.66	5.89	9.87	7.59	11.86	10.66	15.30	15.30	19.76	19.76	25.10	25.10	37.15	37.15
70	7.70	5.92	9.93	7.64	11.89	10.71	15.35	15.35	19.83	19.83	25.18	25.18	37.28	37.28

SCHEDULE 322.1A NOTES
1. For nonmachinable Inter-BMC parcels, add: $1.25 per-piece.
2. For each pickup stop, add: $7.75.
3. For Origin Bulk Mail Center Discount, deduct $0.49 per-piece.
4. For Machinable BMC Presort, deduct $0.16 per-piece.
5. For Nonmachinable BMC Presort, deduct $0.21 per-piece.
6. For Barcoded Discount, deduct $0.04 per-piece.
7. See 322.16 for oversize parcel post.
8. Add $0.50 per-piece for hazardous medical materials and $1.00 per-piece for other mailable hazardous materials.

STANDARD MAIL RATE SCHEDULE 322.1B PARCEL POST SUBCLASS INTRA-BMC RATES

[Dollars]

Weight (pounds)	Local		Zones 1 & 2		Zone 3		Zone 4		Zone 5	
	Proposed	Current	Proposed	Current	Proposed	Current	Proposed	Current	Proposed	Current
2	$2.22	$2.24	$2.51	$2.31	$2.51	$2.47	$2.55	$2.55	$2.63	$2.63
3	2.30	2.31	2.73	2.44	2.74	2.68	3.02	3.02	3.36	3.36
4	2.37	2.39	2.94	2.55	2.94	2.88	3.46	3.46	4.36	4.36
5	2.45	2.45	3.14	2.65	3.14	3.06	3.78	3.78	4.87	4.87
6	2.51	2.52	3.32	2.75	3.33	3.23	4.07	4.07	5.35	5.35
7	2.57	2.58	3.49	2.84	3.50	3.39	4.35	4.35	5.79	5.79
8	2.63	2.74	3.65	2.94	3.66	3.53	4.59	4.59	6.21	6.21
9	2.69	2.69	3.80	3.01	3.81	3.67	4.84	4.84	6.60	6.60
10	2.75	2.75	3.94	3.10	3.94	3.80	5.06	5.06	6.97	6.97
11	2.80	2.80	4.08	3.17	4.08	3.93	5.27	5.27	7.31	7.31
12	2.85	2.85	4.21	3.25	4.21	4.05	5.47	5.47	7.64	7.64
13	2.90	2.91	4.32	3.32	4.32	4.15	5.66	5.66	7.94	7.94
14	2.95	2.95	4.41	3.39	4.45	4.27	5.84	5.84	8.23	8.23
15	2.99	3.00	4.49	3.45	4.55	4.37	6.02	6.02	8.50	8.50
16	3.04	3.05	4.56	3.51	4.66	4.47	6.18	6.18	8.77	8.77
17	3.09	3.09	4.65	3.58	4.77	4.56	6.34	6.34	9.01	9.01
18	3.13	3.13	4.72	3.63	4.86	4.65	6.49	6.49	9.26	9.26
19	3.17	3.17	4.81	3.70	4.95	4.74	6.63	6.63	9.48	9.48
20	3.21	3.22	4.88	3.75	5.05	4.82	6.76	6.76	9.69	9.69
21	3.25	3.25	4.94	3.80	5.14	4.91	6.89	6.89	9.91	9.91
22	3.29	3.29	5.02	3.86	5.22	4.98	7.02	7.02	10.11	10.11
23	3.33	3.33	5.08	3.91	5.30	5.07	7.15	7.15	10.30	10.30
24	3.37	3.37	5.14	3.95	5.39	5.14	7.26	7.26	10.48	10.48
25	3.42	3.41	5.20	4.00	5.47	5.21	7.38	7.38	10.66	10.66
26	3.45	3.44	5.27	4.05	5.54	5.28	7.49	7.49	10.83	10.83
27	3.49	3.48	5.33	4.10	5.61	5.35	7.59	7.59	10.99	10.99
28	3.52	3.51	5.38	4.14	5.69	5.42	7.70	7.70	11.15	11.15
29	3.56	3.55	5.45	4.19	5.76	5.49	7.80	7.80	11.31	11.31
30	3.59	3.59	5.50	4.23	5.82	5.55	7.89	7.89	11.46	11.46
31	3.63	3.62	5.56	4.28	5.89	5.60	7.99	7.99	11.60	11.60
32	3.66	3.65	5.62	4.32	5.95	5.67	8.08	8.08	11.74	11.74
33	3.69	3.69	5.67	4.36	6.02	5.73	8.17	8.17	11.86	11.86
34	3.74	3.72	5.72	4.40	6.08	5.78	8.25	8.25	12.00	12.00
35	3.77	3.75	5.77	4.44	6.14	5.84	8.34	8.34	12.13	12.13
36	3.80	3.78	5.82	4.48	6.20	5.89	8.43	8.43	12.26	12.26
37	3.83	3.81	5.88	4.52	6.26	5.94	8.50	8.50	12.38	12.38
38	3.86	3.84	5.93	4.56	6.32	6.00	8.59	8.59	12.49	12.49
39	3.90	3.88	5.98	4.60	6.38	6.05	8.66	8.66	12.60	12.60
40	3.93	3.91	6.02	4.63	6.43	6.10	8.73	8.73	12.72	12.72
41	3.96	3.94	6.06	4.66	6.48	6.16	8.80	8.80	12.82	12.82
42	3.99	3.97	6.12	4.71	6.53	6.20	8.87	8.87	12.92	12.92
43	4.02	4.00	6.16	4.74	6.58	6.25	8.95	8.95	13.03	13.03
44	4.06	4.04	6.21	4.78	6.64	6.29	9.01	9.01	13.12	13.12
45	4.09	4.06	6.25	4.81	6.69	6.34	9.08	9.08	13.22	13.22
46	4.12	4.09	6.31	4.85	6.74	6.39	9.14	9.14	13.31	13.31
47	4.15	4.12	6.36	4.89	6.79	6.43	9.20	9.20	13.40	13.40
48	4.17	4.15	6.40	4.92	6.83	6.48	9.27	9.27	13.50	13.50
49	4.20	4.18	6.44	4.95	6.88	6.52	9.33	9.33	13.58	13.58
50	4.23	4.21	6.47	4.98	6.92	6.56	9.38	9.38	13.67	13.67
51	4.26	4.24	6.53	5.02	6.98	6.60	9.45	9.45	13.75	13.75
52	4.29	4.26	6.57	5.05	7.02	6.65	9.50	9.50	13.83	13.83
53	4.32	4.29	6.60	5.08	7.07	6.69	9.55	9.55	13.91	13.91
54	4.34	4.32	6.64	5.11	7.12	6.73	9.61	9.61	13.99	13.99
55	4.38	4.35	6.68	5.14	7.16	6.76	9.67	9.67	14.06	14.06
56	4.41	4.38	6.73	5.18	7.20	6.81	9.72	9.72	14.13	14.13
57	4.44	4.40	6.77	5.21	7.24	6.85	9.77	9.77	14.21	14.21
58	4.46	4.43	6.81	5.24	7.29	6.88	9.82	9.82	14.28	14.28
59	4.49	4.46	6.85	5.27	7.33	6.92	9.87	9.87	14.35	14.35
60	4.52	4.48	6.89	5.30	7.37	6.96	9.93	9.93	14.42	14.42
61	4.55	4.52	6.94	5.34	7.41	7.00	9.97	9.97	14.49	14.49
62	4.57	4.54	6.98	5.37	7.45	7.03	10.02	10.02	14.55	14.55
63	4.60	4.57	7.01	5.39	7.49	7.07	10.07	10.07	14.61	14.61

STANDARD MAIL RATE SCHEDULE 322.1B PARCEL POST SUBCLASS INTRA-BMC RATES—Continued

[Dollars]

Weight (pounds)	Local		Zones 1 & 2		Zone 3		Zone 4		Zone 5	
	Proposed	Current	Proposed	Current	Proposed	Current	Proposed	Current	Proposed	Current
64	4.63	4.59	7.05	5.42	7.53	7.10	10.12	10.12	14.68	14.68
65	4.65	4.62	7.09	5.45	7.56	7.14	10.16	10.16	14.74	14.74
66	4.69	4.64	7.14	5.49	7.61	7.18	10.20	10.20	14.81	14.81
67	4.72	4.68	7.18	5.52	7.65	7.21	10.25	10.25	14.86	14.86
68	4.74	4.70	7.20	5.54	7.68	7.24	10.30	10.30	14.92	14.92
69	4.77	4.73	7.24	5.57	7.72	7.27	10.34	10.34	14.98	14.98
70	4.79	4.75	7.28	5.60	7.75	7.32	10.39	10.39	15.03	15.03

SCHEDULE 322.1B NOTES:
1. For Barcoded Discount, deduct $0.04 per-piece.
2. See 322.16 for oversize parcel post.
3. Add $0.50 per-piece for hazardous medical materials and $1.00 per-piece for other mailable hazardous materials.
4. For each pickup stop, add $7.75.

STANDARD MAIL RATE SCHEDULE 322.1C PARCEL POST SUBCLASS DESTINATION BMC RATES

Weight (Pounds)	Zones 1 & 2		Zone 3		Zone 4		Zone 5	
	Proposed	Current	Proposed	Current	Proposed	Current	Proposed	Current
2	$1.97	$2.10	$2.25	$2.25	$2.55	$2.30	$2.63	$2.33
3	2.12	2.22	2.61	2.44	3.02	2.74	3.36	3.00
4	2.26	2.33	2.92	2.62	3.46	3.15	4.36	3.94
5	2.40	2.42	3.14	2.79	3.78	3.45	4.87	4.40
6	2.53	2.51	3.33	2.95	4.07	3.71	5.35	4.83
7	2.64	2.60	3.50	3.09	4.35	3.97	5.79	5.22
8	2.76	2.69	3.66	3.22	4.59	4.19	6.21	5.60
9	2.85	2.76	3.81	3.35	4.84	4.42	6.60	5.95
10	2.95	2.84	3.94	3.47	5.06	4.62	6.97	6.29
11	3.04	2.91	4.08	3.59	5.27	4.82	7.31	6.59
12	3.13	2.98	4.21	3.70	5.47	5.00	7.64	6.89
13	3.21	3.05	4.32	3.79	5.66	5.17	7.94	7.16
14	3.28	3.11	4.45	3.91	5.84	5.34	8.23	7.42
15	3.35	3.17	4.55	4.00	6.02	5.51	8.50	7.67
16	3.43	3.23	4.66	4.09	6.18	5.65	8.77	7.91
17	3.50	3.29	4.77	4.18	6.34	5.80	9.01	8.13
18	3.56	3.34	4.86	4.26	6.49	5.94	9.26	8.35
19	3.62	3.41	4.95	4.34	6.63	6.07	9.48	8.55
20	3.68	3.45	5.05	4.42	6.76	6.19	9.69	8.74
21	3.74	3.50	5.14	4.50	6.89	6.31	9.91	8.94
22	3.80	3.56	5.22	4.57	7.02	6.43	10.11	9.12
23	3.85	3.61	5.30	4.65	7.15	6.55	10.30	9.30
24	3.90	3.64	5.39	4.72	7.26	6.65	10.48	9.46
25	3.95	3.69	5.47	4.78	7.38	6.77	10.66	9.62
26	4.00	3.74	5.54	4.85	7.49	6.87	10.83	9.78
27	4.05	3.79	5.61	4.91	7.59	6.96	10.99	9.92
28	4.10	3.83	5.69	4.98	7.70	7.06	11.15	10.07
29	4.14	3.87	5.76	5.05	7.80	7.16	11.31	10.21
30	4.18	3.91	5.82	5.10	7.89	7.24	11.46	10.35
31	4.22	3.96	5.89	5.15	7.99	7.33	11.60	10.48
32	4.26	4.00	5.95	5.22	8.08	7.42	11.74	10.61
33	4.30	4.04	6.02	5.27	8.17	7.50	11.86	10.73
34	4.34	4.08	6.08	5.32	8.25	7.58	12.00	10.84
35	4.39	4.11	6.14	5.38	8.34	7.66	12.13	10.96
36	4.42	4.15	6.20	5.42	8.43	7.75	12.26	11.08
37	4.46	4.19	6.26	5.47	8.50	7.81	12.38	11.19
38	4.50	4.23	6.32	5.53	8.59	7.90	12.49	11.29
39	4.53	4.27	6.38	5.57	8.66	7.96	12.60	11.39
40	4.56	4.30	6.43	5.62	8.73	8.03	12.72	11.50
41	4.60	4.35	6.48	5.66	8.80	8.09	12.82	11.59
42	4.63	4.38	6.53	5.72	8.87	8.16	12.92	11.68
43	4.66	4.40	6.58	5.76	8.95	8.23	13.03	11.79
44	4.70	4.44	6.64	5.80	9.01	8.29	13.12	11.87
45	4.74	4.47	6.69	5.85	9.08	8.36	13.22	11.96
46	4.77	4.51	6.74	5.90	9.14	8.41	13.31	12.04
47	4.80	4.55	6.79	5.94	9.20	8.47	13.40	12.13
48	4.83	4.58	6.83	5.98	9.27	8.53	13.40	12.22
49	4.86	4.61	6.88	6.02	9.33	8.59	13.58	12.29
50	4.89	4.64	6.92	6.06	9.38	8.64	13.67	12.38
51	4.91	4.68	6.98	6.10	9.45	8.70	13.75	12.45
52	4.94	4.71	7.02	6.15	9.50	8.75	13.83	12.52
53	4.97	4.73	7.07	6.19	9.55	8.80	13.91	12.60
54	5.01	4.76	7.12	6.22	9.61	8.86	13.99	12.67
55	5.04	4.79	7.16	6.25	9.67	8.91	14.06	12.74
56	5.08	4.83	7.20	6.30	9.72	8.96	14.13	12.80
57	5.09	4.86	7.24	6.34	9.77	9.01	14.21	12.88
58	5.12	4.89	7.29	6.37	9.82	9.06	14.28	12.94
59	5.14	4.92	7.33	6.41	9.87	9.10	14.35	13.01
60	5.17	4.95	7.37	6.45	9.93	9.16	14.42	13.07
61	5.20	4.99	7.41	6.48	9.97	9.20	14.49	13.14
62	5.22	5.02	7.45	6.51	10.02	9.25	14.55	13.19
63	5.25	5.04	7.49	6.55	10.07	9.29	14.61	13.25
64	5.27	5.07	7.53	6.58	10.12	9.34	14.68	13.31
65	5.30	5.10	7.56	6.62	10.16	9.38	14.74	13.37
66	5.32	5.14	7.61	6.66	10.20	9.42	14.81	13.43
67	5.36	5.17	7.65	6.69	10.25	9.47	14.85	13.48
68	5.38	5.19	7.68	6.72	10.30	9.51	14.88	13.54
69	5.41	5.21	7.72	6.74	10.34	9.56	14.91	13.59
70	5.43	5.24	7.75	6.79	10.39	9.60	14.94	13.64

1. For Barcoded Discount, deduct $0.04 per-piece.

2. See 322.16 for oversize parcel post.
3. Add $0.50 per-piece for hazardous medical materials and $1.00 per-piece for other mailable hazardous materials.
4. A fee of $85.00 must be paid each year for DBMC, DSCF, and DDU.

STANDARD MAIL RATE SCHEDULE STANDARD MAIL RATE SCHEDULE STANDARD MAIL RATE SCHEDULE

STANDARD MAIL RATE SCHEDULE 322.3A BOUND PRINTED MATTER SUBCLASS SINGLE PIECE RATES[*]

[In dollars]

			Zone 1						

2. See 322.16 for oversize parcel post.
3. Add $0.50 per-piece for hazardous medical materials and $1.00 per-piece for other mailable hazardous materials.
4. A fee of $85.00 must be paid each year for DBMC, DSCF, and DDU.

STANDARD MAIL RATE SCHEDULE 322.1D PARCEL POST SUBCLASS DESTINATION SCF RATES

[Dollars]

Weight (pounds)	DSCF Proposed
2	$1.53
3	1.61
4	1.69
5	1.77
6	1.84
7	1.90
8	1.97
9	2.02
10	2.08
11	2.13
12	2.19
13	2.24
14	2.28
15	2.32
16	2.38
17	2.42
18	2.46
19	2.50
20	2.54
21	2.58
22	2.62
23	2.66
24	2.69
25	2.73
26	2.76
27	2.80
28	2.84
29	2.87
30	2.90
31	2.92
32	2.96
33	2.99
34	3.02
35	3.06
36	3.08
37	3.11
38	3.15
39	3.17
40	3.19
41	3.23
42	3.25
43	3.28
44	3.31
45	3.35
46	3.37
47	3.40
48	3.42
49	3.45
50	3.47
51	3.49
52	3.52
53	3.54
54	3.58
55	3.61
56	3.63
57	3.65

STANDARD MAIL RATE SCHEDULE 322.1D PARCEL POST SUBCLASS DESTINATION SCF RATES—Continued

[Dollars]

Weight (pounds)	DSCF Proposed
58	3.68
59	3.70
60	3.73
61	3.75
62	3.77
63	3.80
64	3.82
65	3.85
66	3.87
67	3.91
68	3.92
69	3.95
70	3.97

SCHEDULE 322.1D NOTES:
1. See 322.16 for oversize parcel post.
2. Add $0.50 per-piece for hazardous medical materials and $1.00 per-piece for other mailable hazardous materials.
3. A fee of $85.00 must be paid each year for DBMC, DSCF, and DDU.

STANDARD MAIL RATE SCHEDULE 322.1E PARCEL POST SUBCLASS DESTINATION DELIVERY UNIT RATES

[Dollars]

Weight (pounds)	DDU Proposed
2	$1.29
3	1.34
4	1.38
5	1.43
6	1.48
7	1.51
8	1.56
9	1.59
10	1.63
11	1.67
12	1.71
13	1.74
14	1.77
15	1.80
16	1.84
17	1.84
18	1.90
19	1.93
20	1.96
21	1.99
22	2.02
23	2.05
24	2.08
25	2.10

STANDARD MAIL RATE SCHEDULE 322.1E PARCEL POST SUBCLASS DESTINATION DELIVERY UNIT RATES—Continued

[Dollars]

Weight (pounds)	DDU Proposed
26	2.13
27	2.16
28	2.20
29	2.22
30	2.24
31	2.27
32	2.29
33	2.32
34	2.34
35	2.38
36	2.40
37	2.43
38	2.46
39	2.48
40	2.50
41	2.53
42	2.55
43	2.57
44	2.61
45	2.64
46	2.66
47	2.68
48	2.71
49	2.73
50	2.76
51	2.77
52	2.80
53	2.82
54	2.86
55	2.88
56	2.90
57	2.93
58	2.95
59	2.97
60	3.00
61	3.02
62	3.04
63	3.07
64	3.09
65	3.11
66	3.13
67	3.17
68	3.19
69	3.22
70	3.23

SCHEDULE 322.1E NOTES:
1. See 322.16 for oversize parcel post.
2. Add $0.50 per-piece for hazardous medical materials and $1.00 per-piece for other mailable hazardous materials.
3. A fee of $85.00 must be paid each year for DBMC, DSCF, and DDU.

Amend Rate Schedule 322.3A as follows:

STANDARD MAIL RATE SCHEDULE 322.3A BOUND PRINTED MATTER SUBCLASS SINGLE PIECE RATES[*]

[In dollars]

Weight not over (pounds)	Local	Zone 1 & 2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
1.5	$1.11	$1.49	$1.52	$1.58	$1.66	$1.74	$1.84	$1.93
2.0	1.12	1.52	1.56	1.63	1.74	1.85	1.99	2.10
2.5	1.14	1.55	1.60	1.69	1.82	1.96	2.13	2.28
3.0	1.15	1.57	1.64	1.74	1.90	2.07	2.27	2.45
3.5	1.17	1.60	1.67	1.80	1.98	2.18	2.42	2.62
4.0	1.18	1.63	1.71	1.85	2.07	2.29	2.56	2.79
4.5	1.20	1.65	1.75	1.91	2.15	2.40	2.71	2.97
5.0	1.22	1.68	1.79	1.96	2.23	2.51	2.85	3.14
6.0	1.25	1.73	1.86	2.07	2.39	2.73	3.14	3.49
7.0	1.28	1.79	1.94	2.18	2.56	2.95	3.43	3.83
8.0	1.31	1.84	2.01	2.29	2.72	3.17	3.71	4.18
9.0	1.34	1.90	2.09	2.40	2.89	3.39	4.00	4.52
10.0	1.37	1.95	2.16	2.51	3.05	3.61	4.29	4.87
11.0	1.40	2.00	2.24	2.62	3.21	3.83	4.58	5.22
12.0	1.43	2.06	2.31	2.73	3.38	4.05	4.87	5.56
13.0	1.46	2.11	2.39	2.84	3.54	4.27	5.15	5.91
14.0	1.49	2.17	2.46	2.95	3.71	4.49	5.44	6.25
15.0	1.53	2.22	2.54	3.06	3.87	4.71	5.73	6.60

SCHEDULE 322.3A NOTES
[*]1. Includes both catalogs and similar bound printed matter.
2. For Barcoded Discount, deduct $0.04 per-piece.

STANDARD MAIL RATE SCHEDULE 322.3B BOUND PRINTED MATTER SUBCLASS BULK AND CARRIER ROUTE PRESORT RATES[1]

[Dollars]

Zone	Per-piece[3]	Carrier route[2]	Per-pound
* * * * *			

SCHEDULE 322.3B NOTES

* * * * * *

[3] For Barcoded Discount, deduct $0.04 per-piece

STANDARD MAIL RATE SCHEDULES 323.1 & 323.2 SPECIAL AND LIBRARY RATE SUBCLASSES

Schedule 323.1: Special	Rates (cents)
First Pound Not presorted[4]	
LEVEL A Presort (5-digits)[1 2]	
LEVEL B Presort (BMC)[1 3 4]	
Each additional pound through 7 pounds	
Each additional pound over 7 pounds	

Schedule 323.2: Library	Full rates (cents)
First pound	
Each additional pound through 7 pounds	
Each additional pound over 7 pounds	

SCHEDULE 323.1 NOTES:

* * * * *

[4] For Barcoded Discount, deduct $0.04 per-piece.

SCHEDULE 323.2 NOTES:

1. Add $0.50 per-piece for hazardous medical materials and $1.00 per-piece for other mailable hazardous materials.
2. For Barcoded Discount, deduct $0.04 per-piece.

* * * * *

SPECIAL SERVICES

* * * * *

SCHEDULE SS–7

Delivery Confirmation

Per piece	Fee (in addition to postage)
Manual	$0.50
Electronic	$0.25

* * * * *

SCHEDULE SS–9

Insured Mail

Liability	Fee[1] (in addition to postage)
* * * * *	

[1] For Bulk Insurance, deduct $0.40 per piece.

* * * * *

SCHEDULE SS–21

Bulk Parcel Return Service

	Fee
Per Returned Piece	$1.75

SCHEDULE 1000 FEES

* * * * *

	Fee
Parcel Post: Destination BMC, Destination SCF, and Destination Delivery Unit	85.00
* * * * *	*
Authorization to Use Bulk Parcel Return Service	85.00

SPECIAL RULES OF PRACTICE

1. Evidence

A. Case-in-chief. A participant's case-in-chief shall be in writing and shall include the participant's direct case and rebuttal, if any, to the United States Postal Service's case-in-chief. It may be accompanied by a trial brief or legal memoranda. There will be a stage providing an opportunity to rebut presentations of other participants and for the Postal Service to present surrebuttal evidence.

B. Exhibits. Exhibits should be self-explanatory. They should contain appropriate footnotes or narrative explaining the source of each item of information used and the methods employed in statistical compilations. The principal title of each exhibit should state what it contains or represents. The title may also contain a

statement of the purpose for which the exhibit is offered; however, this

B. Objections and Motions to Compel Responses to Discovery. Upon motion of

prior to the filing date for final rebuttal testimony.

Designations of written cross-

not be included in rebuttal testimony or

3. All documents filed by the

statement of the purpose for which the exhibit is offered; however, this statement will not be considered part of the evidentiary record. Where one part of a multi-part exhibit is based on another part or on another exhibit, appropriate cross-references should be made. Relevant exposition should be included in the exhibits or provided in accompanying testimony.

C. Motions to Strike. Motions to strike are requests for extraordinary relief and are not substitutes for briefs or rebuttal evidence. All motions to strike testimony or exhibit materials are to be submitted in writing at least 14 days before the scheduled appearance of the witness. Responses to motions to strike are due within seven days.

D. Designation of Evidence from other Commission Dockets. Participants may request that evidence received in other Commission proceedings be entered into the record of this proceeding. These requests should be made by motion, should explain the purpose of the designation, and should identify material by page and line or paragraph number. Absent extraordinary justification, these requests must be made at least 28 days before the date for filing the participant's direct case. If requests for designations and counter-designations are granted, the moving participant must submit two copies of the approved material to the Secretary of the Commission for inclusion in the record.

Oppositions to motions for designation and/or requests for counter-designations shall be filed within 12 days.

2. Discovery

A. General. Sections 25, 26 and 27 of the rules of practice apply during the discovery stage of this proceeding except when specifically overtaken by these special rules. Questions from each participant should be numbered sequentially, by witness.

The discovery procedures set forth in the rules are not exclusive. Parties are encouraged to engage in informal discovery whenever possible to clarify exhibits and testimony. The results of these efforts may be introduced into the record by stipulation, by supplementary testimony or exhibit, by presenting selected written interrogatories and answers for adoption by a witness at the hearing, or by other appropriate means.

In the interest of reducing motion practice, parties also are encouraged to use informal means to clarify questions and to identify portions of discovery requests considered overbroad or burdensome.

B. Objections and Motions to Compel Responses to Discovery. Upon motion of any participant in the proceeding, the Commission or the presiding officer may compel an answer to an interrogatory or request for admissions if the objection is overruled. Motions to compel should be filed within 12 days of an objection to the discovery request.

Parties who have objected to interrogatories or requests for production of documents or items which are the subject of a motion to compel shall have seven days to answer. Answers will be considered supplements to the arguments presented in the initial objection.

C. Answers to Interrogatories. Answers to discovery are to be filed within 12 days of the service of the discovery request. Answers to discovery requests shall be prepared so that they can be incorporated as written cross-examination. Each answer shall begin on a separate page, identify the individual responding, the participant who asked the question, and the number and text of the question.

Participants are expected to serve supplemental answers to update or to correct responses whenever necessary, up until the date that answers are accepted into evidence as written cross-examination. Participants filing supplemental answers shall indicate whether the answer merely supplements the previous answer to make it current or whether it is a complete replacement for the previous answer.

Participants may submit responses with a declaration of accuracy from the respondent in lieu of a sworn affidavit.

D. Follow-up Interrogatories. Follow-up interrogatories to clarify or elaborate on the answer to an earlier discovery request may be filed after the initial discovery period ends. They must be served within seven days of receipt of the answer to the previous interrogatory unless extraordinary circumstances are shown.

E. Discovery to Obtain Information Available Only from the Postal Service. Sections 25 through 27 of the rules of practice allow discovery reasonably calculated to lead to admissible evidence during a noticed proceeding with no time limitations. Generally, through actions by the presiding officer, discovery against a participant is scheduled to end prior to the receipt into evidence of that participant's direct case. An exception to this procedure shall operate when a participant needs to obtain information (such as operating procedures or data) available only from the Postal Service. Discovery requests of this nature are permissible up to 20 days prior to the filing date for final rebuttal testimony.

3. Service

A. Receipt of Documents. The Service List shall contain the name and address of up to two individuals entitled to receive copies of documents for each participant. If possible that entry will also include a telephone number and facsimile number.

B. Service of Documents. Documents shall be filed with the Commission and served upon parties in accordance with sections 9 through 12 of the Commission's rules of practice. As provided in the Secretary's Notice to Intervenors, issued February 4, 1997, participants capable of submitting documents stored on computer diskettes may use an alternative procedure for filing documents with the Commission. Provided that the stored document is a file generated in either Word Perfect 5.1 or any version of Microsoft Word, and is formatted in Arial 12 font, in lieu of the requirements of section 10 of the rules, a participant may submit a diskette containing the text of each filing simultaneously with the filing of 1 (one) printed original and 3 (three) hard copies.

C. Exceptions to general service requirements for certain documents. Designations of written cross-examination, notices of intent to conduct oral cross-examination, and notices of intent to participate in oral argument need to be served only on the Commission, the OCA, the Postal Service, and the complementary party (as applicable), as well as on participants filing a special request for service.

Discovery requests, objections and answers thereto need to be served on the Commission, the OCA, on the complementary party, and on any other participant so requesting, as provided in sections 25–27 of the rules of practice. Special requests relating to discovery must be served individually upon the party conducting discovery and state the witness who is the subject of the special request.

D. Document titles. Parties should include titles that effectively describe the basic content of any filed documents. Where applicable, titles should identify the issue addressed and the relief requested. Transmittal documents should identify the answers or other materials being provided.

4. Cross-examination

A. Written cross-examination. Written cross-examination will be utilized as a substitute for oral cross-examination whenever possible, particularly to introduce factual or statistical evidence.

Designations of written cross-examination should be served no later than three working days before the scheduled appearance of a witness. Designations shall identify every item to be offered as evidence, listing the participant who initially posed the discovery request, the witness and/or party to whom the question was addressed (if different from the witness answering), the number of the request and, if more than one answer is provided, the dates of all answers to be included in the record. (For example, "OCA-T1–17 to USPS witness Jones, answered by USPS witness Smith (March 1, 1997) as updated (March 21, 1997)." When a participant designates written cross-examination, two copies of the documents to be included shall simultaneously be submitted to the Secretary of the Commission.

The Secretary of the Commission shall prepare for the record a packet containing all materials designated for written cross-examination in a format that facilitates review by the witness and counsel. The witness will verify the answers and materials in the packet, and they will be entered into the transcript by the presiding officer. Counsel for a witness may object to written cross-examination at that time, and any designated answers or materials ruled objectionable will be stricken from the record.

B. Oral cross-examination. Oral cross-examination will be permitted for clarifying written cross-examination and for testing assumptions, conclusions or other opinion evidence. Requests for permission to conduct oral cross-examination should be served three or more working days before the announced appearance of a witness and should include (1) specific references to the subject matter to be examined and (2) page references to the relevant direct testimony and exhibits.

Participants intending to use complex numerical hypotheticals or to question using intricate or extensive cross-references, shall provide adequately documented cross-examination exhibits for the record. Copies of these exhibits should be provided to counsel for the witness at least two calendar days (including one working day) before the witness's scheduled appearance.

5. General

Argument will not be received in evidence. It is the province of the lawyer, not the witness. It should be presented in brief or memoranda. Legal memoranda on matters at issue will be welcome at any stage of the proceeding.

New affirmative matter (not in reply to another party's direct case) should not be included in rebuttal testimony or exhibits.

Cross-examination will be limited to testimony adverse to the participant conducting the cross-examination.

Library references may be submitted when documentation or materials are too voluminous reasonably to be distributed. Each party should sequentially number items submitted as library references and provide each item with an informative title. Parties are to file and serve a separate Notice of Filing of Library Reference(s). Library material is not evidence unless and until it is designated and sponsored by a witness.

NOTICE TO INTERVENORS

Beginning with MC96–2, the Postal Rate Commission embarked on an effort to experiment with the electronic filing of case-related documents. A substantial number of intervenors participated in the experiment with varying results. Some had transmission problems, some had computer hardware problems, and some had compatibility and corrupt file problems. While the Commission was able to solve or resolve most of these problems, some of them still remain. In addition, the recent overload on the Internet has made e-mail transmissions unreliable. Thus, the Commission has decided that as of today, Tuesday, February 4, 1997, it will suspend the filing of documents by e-mail.

The Commission, however, hopes to continue electronic communication and is studying new technologies in the hope that electronic communication between the Commission and intervenors will become a workable reality in the near future. Pursuant to these efforts, the Commission is adopting as a standard type font Arial 12, which is the most compatible with the Commission's current and future electronic needs.

Therefore, with respect to filings in docketed cases, parties now are advised to proceed as follows:

1. Consistent with past practices, parties choosing hard copy filing should send 1 (one) original and 24 (twenty-four) hard copies of each filing to the Commission's docket room.

2. For those with the capacity to use diskettes, diskettes will continue to be accepted at the Commission so long as the copy is typed in Arial 12 and copied in either Word Perfect 5.1 or any version of Word. If sending a diskette, the party need file only 1 (one) original and 3 (three) hard copies with the Commission. In addition, all material sent by diskette in the required format will be placed on the Commission's Home Page (www.prc.gov).

3. All documents filed by the Commission and the Office of Consumer Advocate will be served in hard copy and be placed on the Commission's Home Page. The Commission's Daily Listing of Documents Received will also be placed on the Home Page. Documents of excessive length will be zipped and downloading instructions will be included with such files.

4. For those having questions about electronic operations, the Commission's computer administrator, Brenda Lamka, can be reached at 202–789–6873.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 97–4986 Filed 2–28–97; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Twenty First Century Health, Inc., Order of Suspension of Trading

February 27, 1997.

On February 10, 1997, the Securities and Exchange Commission ("Commission") issued an Order pursuant to Section 12(k) of the Securities Exchange Act of 1934 suspending trading in the securities of Twenty First Century Health, Inc. ("TFCH") for ten days. Since then, TFCH has made several public announcements concerning the Commission's investigation and business developments at the issuer. It appears to the Commission that as a result of those new events and circumstances that there are additional and separate questions concerning the adequacy of publicly disseminated information concerning TFCH, including:

(1) The accuracy and reliability of certain press releases issued by TFCH since the first trading suspension was ordered on February 10, including: (a) the business and current customers of Modern Tea Ball Services, Inc. and a related business that TFCH announced on February 14, 1997 it intended to acquire; (b) the effectiveness and marketability of a new line of liquid colloidal nutritional supplements announced by TFCH on February 13, 1997; (c) the accuracy of TFCH's statements concerning its plans to distribute those supplements; (d) the existence, status and likelihood of success of plans to complete an initial public offering of securities by an affiliated entity that TFCH announced it planned to have underwritten by

Investors Associates, Inc., a New Jersey

additional changes to the Execution Guarantee Rule. Proposed Interpretation

covered by BEACON Rule 5 to the 1,299 automatic execution parameter unless

the requirements are addressed in separate rules. BEACON Rule 1(a) states

Investors Associates, Inc., a New Jersey broker-dealer; and

(2) The accuracy of TFCH's February 12, 1997 pubic announcement that it "welcomes" the Commission's inquiry, offers "full cooperation" and states that company officials would be able to provide the Commission with the information it requires within nine days, when Joe Davis, who is TFCH's president, Loretta Davis, who was its founder and formerly its president, and Barclay Davis, who formerly was its secretary and director but who continues to act on behalf of TFCH, have all stated through counsel that they refuse to testify in the investigation in reliance on their Fifth Amendment privileges against self-incrimination.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:00 a.m. EST, February 27, 1997, through 11:59 p.m. EST, March 12, 1997.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–5279 Filed 2–27–97; 1:41 pm]

BILLING CODE 8010–01–M

[Release No. 34–38331; File No. SR–BSE–96–10]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Amending the Execution Guarantee Rule and BEACON Rule 5

February 24, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 1, 1996, the Boston Stock Exchange, Incorporated ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. The Exchange also filed Amendment Nos. 1 and 2 on February 14 and 19, 1997, respectively, the substance of which is incorporated into this notice.[1]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

BSE proposes to amend Chapter II, Section 33, the Execution Guarantee Rule ("Execution Guarantee Rule"), and Chapter XXXIII, Section 5, the Boston Exchange Automated Communication Order-Routing Network ("BEACON System") Rule ("BEACON Rule 5").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The main purpose of the proposed rule change is to amend certain provisions of the Execution Guarantee Rule and BEACON Rule 5. The Execution Guarantee Rule was adopted to provide customers with primary market price protection on small size orders. The Exchange states that the guarantee was intended to apply to orders ranging in size from 100 shares up to and including 1,299 shares, regardless of the displayed bid or offer size at the time. Orders over 1,299 shares were not intended to receive a partial execution of 1,299 shares, but were to be handled based on prints in the primary market. The proposed rule change is designed to clarify that BSE specialists must guarantee execution on all agency market and marketable limit orders from 100 up to and including 1,299 shares. The current language of the Execution Guarantee Rule indicates that this guarantee applies "regardless of the size of the order." The Exchange is proposing to delete this phrase. The Exchange states that in drafting the original text of the rule, the phrase "regardless of the size of the order" was incorrectly stated.

The proposed rule change also eliminates the 2,500 execution guarantee for most actively traded stocks ("MATS") from the Execution Guarantee Rule. The Exchange believes that market conditions should dictate the appropriate execution size for a customer order in a given trading situation. The Exchange believes that because market conditions do not always provide a 2,500 share liquidity level in the MATS issues, it is appropriate to allow natural liquidity level in the MATS issues, it is appropriate to allow natural liquidity levels to establish price and size parameters on larger orders. In addition, the Exchange notes that it has never received a customer complaint regarding the failure of a specialist to honor the 2,500 share MATS guarantee. The Exchange believes that this is most likely because customers do not expect or receive an execution where market conditions do not so warrant and that because of this the elimination of the MATS requirement from the execution guarantee will have no impact.

The proposed rule change moves rule text covering the obligation for filling limit orders from the Interpretations and Policies section to the body of the Execution Guarantee Rule and labels it as paragraph (c). The proposed rule change also renumbers and clarifies the remaining Interpretations and Policies to the Execution Guarantee Rule. The proposed rule change clarifies proposed Interpretation and Policy .03 of the Execution Guarantee Rule regarding simultaneous orders to limit a specialist's obligation to the accumulated displayed national best bid and offer ("NBBO") size, where multiple orders are received in a short period of time, particularly in illiquid stocks. The Exchange notes that the original language was adopted prior to electronic order routing and did not anticipate the high volume of today's electronic trading environment.

The proposed rule change limits the scope of proposed Interpretation and Policy .04, which says that size will be governed by the size displayed on the Consolidated Quote System ("CQS"), to limit order executions. The Exchange states that proposed Interpretation and Policy .04 is restricted to limit orders because market orders are already addressed in proposed paragraphs (a) and (b) of the Execution Guarantee Rule.[2] The Exchange proposes two

[1] See letters from Karen A. Aluise, Assistant Vice President, BSE, to Michael Walinskas, Senior Special Counsel, Market Regulation, Commission, dated February 10, 1997 ("Amendment No. 1") and February 13, 1997 ("Amendment No. 2") respectively.

[2] Proposed paragraph (a) states that specialists will guarantee execution on all agency market and marketable limit orders from 100 up to and including 1,299 shares. Proposed paragraph (b) states that, subject to requirements of the short sale rule, all agency market orders must be filled on the basis of the CQS best bid or better on a sell order, or the CQS best offer or better on a buy order.

additional changes to the Execution Guarantee Rule. Proposed Interpretation and Policy .05, regarding adjustments in execution price, has been clarified to include all situations where a market center is experiencing system problems that result in invalid quotations in CQS, not just those quotations that can be demonstrated to be in error. Finally, under proposed Interpretation and Policy .06, specialists can obtain relief from the requirements of the remainder of the Execution Guarantee Rule [3] upon approval from three Floor Officials, rather than the current standard of requiring the approval of two floor members of the Board of Governors or the Market Performance committee. The Exchange notes that Floor Officials include floor members of the Board of Governors. The Exchange states that this change will provide a larger field from which to seek such relief, particularly where absence from the floor and conflict of interest are issues.

BEACON Rule 5 was adopted to specifically address the function of the BEACON System on the trading floor. The automatic execution function in BEACON is designed to aid specialists in the execution of customer orders. The system performs a price check and will automatically execute certain qualifying orders without the intervention of a specialist, except for potential price improvement. The 1,299 share automatic execution parameter in the current BEACON Rule 5 was selected based on the size of the execution guarantee contained in the Execution Guarantee Rule, although higher (2,500 shares) and lower (599 shares) parameters are available in certain situations.

Current BEACON Rule 5 contains three automatic execution parameters (2,500; 1,299; 599), referred to as Tiers I, II, and III. However, the Exchange states that practice has been to only utilize the 1,299 automatic execution parameter of BEACON Rule 5 for automatic execution and the Execution Guarantee Rule to address price and size of execution, manual or automatic. As a result, the proposed rule change to paragraph (a) of BEACON Rule 5 eliminates all references to Tier I, II and III stocks, thus subjecting all the stocks covered by BEACON Rule 5 to the 1,299 automatic execution parameter unless they are specifically exempted under paragraph (b). The proposed rule change to paragraph (b) of BEACON Rule 5 still allows the specialist to request a 599 automatic execution parameter under certain circumstances and takes out all references to Tier I and Tier II stocks. In addition, paragraph (a) still allows specialists to provide automatic execution parameters larger than the 1,299 minimum requirement.

The Exchange has also proposed certain technical changes to BEACON Rule 5. The automatic execution parameters will be published in the BEACON System, but not in hard copy anymore. All references to the word "guarantee" will be replaced with "automatic execution parameters" or "parameters" because hindsight has shown that the use of the word "guarantee" in regard to the required automatic execution parameter in BEACON Rule 5 has been confusing. The proposed rule change also amends paragraphs (c) and (d) of BEACON Rule 5 to eliminate all references to the "BEACON quotation", which is more closely associated with the specialist's displayed quotation, and replaces them with "BEACON reference price."

The proposed rule change, in clarifying current paragraph (c) of BEACON Rule 5, changes the BEACON reference price from the primary market best bid or offer price to the consolidated best bid or offer ("BBO") price. All market and marketable limit orders will be filled in their entirety, up to the current BEACON Rule 5 automatic execution parameter, regardless of the displayed size of the consolidated BBO. In addition, the proposed rule change to paragraph (c) of BEACON Rule 5 eliminates the last sentence of paragraph (c), which refers to bids and offers superior in price to the BEACON reference price, to reflect the incorporation of these quotations into the BEACON reference price, by changing the reference price from the primary market best bid or offer to the consolidated market best bid or offer.

The Exchange is amending paragraph (d) of BEACON Rule 5 to give specialists discretion to stop orders, which better expresses the intent of the rule. The proposed rule change accomplishes this amendment by replacing "will be 'stopped'" with "should be 'stopped'." The proposed rule change eliminates both paragraphs (e) (requiring that "stopped" order must be executed by the close of trading) and (f) (stating that principal orders will not be subject to the execution guarantee as defined in this section) of BEACON Rule 5 because the requirements are addressed in separate rules. BEACON Rule 1(a) states that only agency orders will be eligible for automatic execution in the BEACON System.

The Exchange states that this rule change will have no impact on the members or customers of the Exchange, other than to eliminate confusing, conflicting and unnecessary provisions of the Execution Guarantee Rule and BEACON Rule 5. The BEACON System automatic execution parameters and the Execution guarantee Rule execution guarantee will remain unchanged.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act [4] in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and national market system, and in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on comments on the Proposed Rule change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions

[3] The Commission notes that the proposed Interpretation and Policy .06 also amends the rule to state that the specialist can now seek relief from the remainder of the entire Execution Guarantee Rule, rather than from just the Interpretations and Policies.

[4] 15 U.S.C. 78f(b)(5).

should file six copies thereof with the

II. Self-Regulatory Organization's

C. Self-Regulatory Organization's

[Release No. 34–38323; File No. SR–DTC–

has prepared summaries, set forth in

position from one participant to

should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that my be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–BSE–96–10 and should be submitted by March 24, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–5083 Filed 2–28–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38334; File No. SR–DCC–97–01]

Self-Regulatory Organizations; Delta Clearing Corp.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Amendment of Fees Charges for Repurchase Agreements

February 24, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 5, 1997, Delta Clearing Corp. ("DCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to amend DCC's fee schedule for trades of repurchase and reverse repurchase agreement ("repos") involving U.S. Government Treasury Securities cleared through DCC.

[1] 15 U.S.C. 78s(b)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DCC included statements concerning the purpose of and statutory basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend DCC's fee schedule for the clearance of repos on U.S. Treasury Securities. The new fees will be the greater of either:

A minimum charge per ticket of $9.00 per round turn[3]; or

Term of the trade	Fee
Overnight up to fourteen days in length.	One-half (.50) basis point per million per day on all trades.
Fifteen to thirty-five days in length.	One-third (.33) basis point per million per day on all trades.
Greater than thirty-five days in length.	One-fifth (.20) basis point per million per day on all trades.

The proposed rule change complies with Section 17A(b)(3)(D) of the Act[4] which requires that the rules of a registered clearing agency provide for equitable allocation of reasonable dues, fees, and other charges for services which it provides to its participants. DCC believes the proposed rule change will result in increased utilization of its clearing services thereby resulting in more securities transactions being cleared and settled through a registered clearing agency environment.

B. Self-Regulatory Organization's Statement on Burden on Competition

DCC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[2] The Commission has modified parts of these statements.

[3] There are no other charges for bank fees,. comparison, federal pass through or money movements.

[4] 15 U.S.C. 78q–1(b)(3)(D).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by DCC, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[5] and Rule 19b–4(e)(2) thereunder.[6] At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at DCC. All submissions should refer to the File No. SR–DCC–97–01 and should be submitted by March 24, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–5082 Filed 2–28–97; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78q–1(b)(3)(A).

[6] 17 CFR 240.19b–4(e)(2).

[7] 17 CFR 200.30–3 (a)(12).

[Release No. 34–38323; File No. SR–DTC–97–01]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change Implementing the Dividend Processing Phase of the Custody Service for Certain Non-depository Eligible Securities

February 21, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 23, 1997, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–DTC–97–01) as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to implement the dividend processing phase of DTC's custody service for certain non-depository eligible securities. The Commission has already approved establishment of the basic custody service and the redemption and reorganization processing phase.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under the proposed rule change, DTC will implement the third phase of its custody service to offer to its participants dividend processing services for certain non-depository eligible securities.[4] In connection with the new service, DTC will announce, collect, and distribute dividend, interest, periodic principal, and other distributions ("dividend payments") to participants that hold securities through DTC's custody service ("custody issues").

In order to facilitate the collection of dividends on custody issues and to permit the book-entry movement of securities when a customer wishes to move his account from one participant to another, DTC proposes to register certificates held in its custody service in a second nominee name, DTC & Co., when requested to do so by a participant.[5] DTC believes that such registration is necessary in order to permit DTC, under its nominee name DTC & Co., to collect dividend payments relating to custody issues directly from paying agents.[6] Without such registration, paying agents would disburse individual dividend payments for the custody issues directly to the participant or participants' customer instead of DTC.

DTC believes that registration in its new nominee name will result in efficiencies for participants by enabling DTC to offer dividend collection and disbursement services for custody issues. DTC also believes that nominee name registration will facilitate the book-entry movement of custody issues if a customer wishes to move its position from one participant to another. Furthermore, DTC believes that registration into a second nominee name has the collateral benefit of identifying a security as a deposit that is eligible for only limited DTC custody services and not for full DTC book-entry services.

DTC believes the proposed rule change is consistent with the requirements of Section 17A of the Act[7] and the rules and regulations thereunder because it will promote the prompt and accurate clearance and settlement of securities transactions by reducing the costs and risks associated with the collection and disbursement of dividend payments. Furthermore, DTC believes that the proposed service will reduce processing expenses and labor costs for participants by establishing uniform procedures for clearance and settlement which will increase the protection of investors and persons facilitating transactions by and acting on behalf of investors.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, in the public interest, and for the protection of investors.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC has not solicited participant comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which DTC consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 37314 (July 14, 1996), 61 FR 29158 [File No. SR–DTC–96–08] (order approving a proposed rule change establishing custody service) ("July approval order"). In the July approval order, the Commission required that DTC provide the Commission with at least thirty days advance notice of the implementation of reorganization processing ("Phase II"). The July approval order also required DTC to seek the Commission's reapproval of Phase II if the manner of implementation or operation of Phase II deviated from the plan described in the original filing [File No. SR–DTC–96–08]. DTC has represented to the Commission that the manner of implementation of Phase II does not differ substantially from the plan previously submitted, and therefore, DTC plans to implement Phase II of the custody service on April 1, 1997. Letter from Lori A. Brazer, Assistant Counsel, DTC (February 4, 1997).

[3] The Commission has modified the text of the summaries submitted by DTC.

[4] For a more detailed description of the custody service, refer to the July approval order, *supra* note 2.

[5] In the July approved order, the Commission noted that securities certificates will be held in customer or firm name only and would not be transferred into DTC's nominee name utilized for regular depository eligible securities, Cede & Co. Although the basic custody service and the redemption and reorganization services phases do not require custody issues to be registered in the new DTC nominee name, participants wishing to use the dividend processing feature of the custody service for custody issues must register such custody issues in the new nominee name of DTC & Co.

[6] Letter from Lori A. Brazer, Assistant Counsel, DTC (February 4, 1997).

[7] 15 U.S.C. 78q–1.

Secretary, Securities and Exchange Commission, 450 Fifth Street, NW.

II. Self-Regulatory Organization's Statement of the Purpose of, and

withholding certifications on individual distributions sometimes requires DTC's

inquiries has declined to less than

communications relating to the

may be examined at the places specified

in Item IV below. MBSCC has prepared

Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC.

All submissions should refer to the file number SR–DTC–97–01 and should be submitted by March 24, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland

Deputy Secretary.

[FR Doc. 97–5079 Filed 2–28–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38333; File No. SR–DTC–97–02]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fees and Charges

February 24, 1997.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on February 3, 1997, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change establishes fees for DTC's Foreign Tax Withholding Service and Non-Transferable Issue Safekeeping Service and eliminates the fee DTC charges its participants for unnecessary inquiries.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Foreign Tax Withholding Service Fee

DTC's Foreign Tax Withholding Service allows DTC participants to certify to foreign-issue paying agents for DTC-eligible issues the tax-treaty and, where applicable, the tax exempt withholding rates that they are entitled to based on the tax classes of their customers.[3] DTC's participants make the certification to the foreign-issue paying agents by using the Elective Dividend Service ("EDS") which is supported by DTC's Participant Terminal System ("PTS"). This procedure eliminates the need for processing more complex and time-consuming reclamations of previously withheld taxes.[4]

According to DTC, it has expended considerable time and incurred significant legal fees to implement the Foreign Tax Withholding Service and continues to devote its resources to monitoring individual distributions to ensure that existing arrangements are processed correctly or to facilitate any special arrangements, if necessary. DTC also states that the processing of withholding certifications on individual distributions sometimes requires DTC's staff to contact the participant to obtain additional information to complete the certifications. Accordingly, the proposed rule change establishes a fee for DTC's Foreign Tax Withholding Service of $7.00 per CUSIP regardless of the number of tax classifications requested by a participant for a single CUSIP. This fee is in addition to the cash or stock dividend fee, as applicable, which is charged on a per credit basis.

(2) Non-Transferable Issue Safekeeping Fee

DTC established the Non-Transferable Issue Safekeeping Service to allow nontransferable securities to be deposited at DTC.[5] The service requires DTC's staff to periodically follow up on each nontransferable security (*i.e.*, generally, at least annually) to determine the issuer's status in its state of incorporation, to determine if the issue is again transferable, and to make the results of these inquiries available to interested participants.

According to DTC, as a result of its absorption of the Midwest Securities Trust Company, the number of nontransferable issues on DTC's books has doubled from roughly 8,000 to more than 16,000. DTC also believes that the ongoing effort and cost to carefully monitor these additional non-transferable issues should be apportioned among those holding positions in these securities. Therefore, the proposed rule change establishes a fee for DTC's Non-Transferable Issue Safekeeping Service of $.17 per CUSIP per month in addition to regular monthly long position charges for these issues.

(3) Elimination of Fees Regarding Unnecessary Dividend, Reorganization and Reconciliation Inquiries

Currently, DTC charges its participants $6.00 when a participant submits certain unnecessary inquiries for processing at DTC's Dividends, Reconciliation, and Reorganization departments. DTC classifies an inquiry as unnecessary if a participant could have obtained the information independently from automated DTC sources readily available to a participant rather than have DTC staff conduct the research. An inquiry with incomplete or inaccurate data from a participant also is considered unnecessary. Because the average daily volume of unnecessary inquiries has declined to less than twenty submissions, DTC proposes to eliminate the fee related to such unnecessary inquiries.

DTC believes the proposed rule change is consistent with the requirements of Section 17A of the Act[6] and the rules and regulations thereunder because DTC's fees will be more equitably allocated among DTC participants. DTC also believes that the proposed rule change will not affect the safeguarding of the securities and funds in DTC's custody or control or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments from DTC participants have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)[7] of the Act and pursuant to Rule 19b–4(e)(2)[8] promulgated thereunder because the proposal establishes or changes a due, fee, or other charge imposed by DTC. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–97–02 and should be submitted by March 24, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–5080 Filed 2–28–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38330; File No. SR–MBSCC–97–01]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Modification of Electronic Pool Notification Fee Schedule

February 24, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 29, 1997, the MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by MBSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change makes technical modifications to the schedule of charges for the Electronic Pool Notification ("EPN") service.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MBSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MBSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to make technical modifications to the schedule of charges for the EPN service. The EPB schedule of charges currently reflects that MBSCC charges its participants access fees for connectivity to the EPN service based on each circuit that they have to MBSCC's MetroTech facility only. However, MBSCC also charges its participants access fees for each circuit that they have to MBSCC's Water Street facility. The proposed rule change modifies the EPN schedule of charges to reflect that MBSCC charges its access fees "per circuit to MetroTech and Water Street."

The proposed rule change also makes an additional technical modification to the EPN schedule of charges to delete the reference to an AutoLink Request. AutoLink was a method to request a retransmission of previously transmitted messages. Participants no longer use AutoLink but instead use the Retransmission Request as the method to request a retransmission of previously transmitted messages.

MBSCC believes that the proposed rule change is consistent with Section 17A(b)(3)(D) of the Act[3] and the rules and regulations thereunder because it provides for the equitable allocation of reasonable dues, fees, and other charges among MBSCC's participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments have been solicited or received. MBSCC will notify the Commission of any written comments received by MBSCC.

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[2] The Commission has modified the text of the summaries prepared by DTC.

[3] For a more detailed description of the Foreign Tax Withholding Service, refer to Securities Exchange Act Release No. 3211 (April 19, 1993), 58 FR 22003 [File No. SR–DTC–92–17] (notice of filing and immediate effectiveness relating to eligibility in the foreign securities option of the existing elective dividends function).

[4] EDS was developed for issues from foreign countries that have tax treaties with the U.S. that permit the withholding of foreign taxes from distributions of foreign issues at different rates for different classes of beneficial owners. EDS enables a DTC participant to use PTS to certify the number of foreign securities credited to the participant's account as of the record date that are entitled to favorable tax treatment at source (*i.e.*, the tax exempt benefit to which the participant is entitled will be included in the payment DTC receives from the foreign payor). Without this service, many DTC participants that are entitled to favorable tax treatment find the procedures for claiming refunds so burdensome that they forgo their refund and thereby frustrate the purpose of the tax treaty.

[5] Securities Exchange Act Release No. 31673 (December 30, 1992), 58 FR 3046 [File No. SR–DTC–92–16] (order approving proposed rule change).

[6] 15 U.S.C. 78q–1.

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(e)(2).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by MBSCC.

[3] 15 U.S.C. 78q–1(b)(3)(D).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 200.30–3(a)(12).

III. Date of Effectiveness of the

SMALL BUSINESS ADMINISTRATION

of External Affairs (TEG). Notice is

Delete:

headquarters, regional and local PI/PA

Affairs, Office of Management and

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [4] and pursuant to Rule 19b–4(e)(2) [5] promulgated thereunder because the proposal changes a due, fee, or other charge imposed by MBSCC. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington. D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of MBSCC. All submissions should refer to File No. SR–MBSCC–97–01 and should be submitted by March 24, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–5081 Filed 2–28–97; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78s(b)(3)(A)(ii).
[5] 17 CFR 240.19b–4(e)(2).
[6] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Oberlin Capital, L.P. (License No. 04/04–0265); Notice of Issuance of a Small Business Investment Company License

On January 11, 1996, an application was filed by Oberlin Capital, L.P., at 702 Oberlin Road, Suite 150, Raleigh, North Carolina 27605, with the Small Business Administration (SBA) pursuant to Section 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1996)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 04/04–0265 on December 22, 1996, to Oberlin Capital, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 21, 1997.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 97–5087 Filed 2–28–97; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority

This statement amends part T of the Statement of the Organization, Functions and Delegations of Authority which covers the Social Security Administration (SSA). Chapter TE covers the Deputy Commissioner for Communications. Notice is given that Chapter TE is being amended to reflect a realignment. The Office of Regional Affairs and Special Projects (ORASP) (TEG) is being retitled as the Office of External Affairs (TEG) and functions from the Office of National Affairs (TEE) and ORASP are being merged into the retitled organization. The Office of Editorial Policy and Communications (TEC) is being abolished and its functions are being consolidated with the Office of Communications Technology (TEB) which is being retitled as the Office of Communications Policy and Technology (TEB). Notice is given that direct line authority over the Regional Public Affairs Officers is being transferred from the Office of the Deputy Commissioner, Operations (S2) to the Office of the Deputy Commissioner, Communications, Office of External Affairs (TEG). Notice is further given that the SSA Press Office function is being transferred from the Office of the Commissioner (SA) to the Deputy Commissioner, Communications (TE). The changes are as follows:

Section TE.00 The Office of the Deputy Commissioner, Communications—(Mission)

Amend to read as follows:

The Office of the Deputy Commissioner, Communications (ODCComm) is the SSA component responsible for the conduct of the Agency's national public information/public affairs (PI/PA) programs. Performs SSA Press Office function to ensure a unified and consistent message to SSA's many publics. Provides guidance and direction from a PI/PA standpoint to the development of Agency policies and decisions and assesses their potential impact on SSA's customers, stakeholders and employees. Creates, develops, facilitates, implements, oversees and evaluates all SSA communications and PI/PA activities, both internal and external. Cultivates and maintains effective working relationships with a wide range of national organizations, advocacy groups, other Federal agencies, State and local governments, the White House, and the media. Promotes full and open participation in the communications process between and among SSA's customers and stakeholders at all levels. Coordinates the non-English communications activities within SSA. Additionally, responds to high priority correspondence and public inquiries; maintains an evaluation program that measures efforts to meet the communications needs of SSA's customers, stakeholders and employees; produces PI/PA material designed to provide SSA's various audiences with timely information about Social Security programs, protections, rights and responsibilities and related issues; utilizes state-of-the-art media, methods and technology in product development and dissemination and fully supports headquarters and field employees who are directly or indirectly involved in SSA PI/PA activities nationwide.

Section TE.10 The Office of the Deputy Commissioner, Communications—(Organization)

D. The Office of Communications Technology (TEB).

Delete:

1. The Visual Graphics and Community Affairs Staff (TEB1).
2. The Audiovisual Media Operations Staff (TEB2).

Delete:

E. The Office of Editorial Policy and Communications (TEC).

Retitle:

D. The Office of Communications Technology (TEB) to the Office of Communications Policy and Technology (TEB).

G. The Office of Regional Affairs and Special Projects (TEG) to the Office of External Affairs (TEG).

Reletter:

"H" to "E".

Section TE.20 *The Office of the Deputy Commissioner, Communications*—(Functions)

D. The Office of Communications Technology (TEB).

Delete in their entirety:

1. The Visual Graphics and Community Affairs Staff (TEB1).
2. The Audiovisual Media Operations Staff (TEB2).

Delete in its entirety:

E. The Office of Editorial Policy and Communications (TEC).

Retitle and amend as follows:

D. The Office of Communications Technology (TEB) to the Office of Communications Policy and Technology (TEB). Directs the Agency's overall information and communications technology activities to ensure full public knowledge and understanding of the programs administered by SSA. Formulates SSA's measures, objectives, policies, standards and guidelines for public information programs and related communications technology applications designed to inform the general public of the provisions of the programs administered by SSA. Prepares and disseminates a wide variety of internal and external PI/PA materials ranging from program pamphlets and information packets to broadcast quality video productions. Provides direct and indirect programmatic support through the use of state-of-the-art media, methods and technology. Evaluates the quality of all information materials used within and external to SSA to ensure a uniformly high-quality product and assists in the design, development and delivery of PI/PA training in SSA.

G. The Office of Regional Affairs and Special Projects (TEG) to the Office of External Affairs (TEG). Implements PI/PA programs and activities designed to develop, enhance and preserve good working relationships with the general public and a wide variety of national organizations, advocacy groups and other governmental organizations with an interest in SSA programs. Manages SSA-wide communications initiatives through a national framework of headquarters, regional and local PI/PA delivery strategies and processes. Deals directly with SSA employees and major customer/stakeholder groups promoting a meaningful exchange of ideas, opinions and points of view. Facilitates the ongoing operational dealings between these external organizations and SSA headquarters and field components involved in local PI/PA activities. Provides operational oversight over the activities of the Regional Public Affairs Officers and all other national and local communications and public contact activities.

H. The Office of Public Inquiries (TEH)

1. The Policy, Procedures and Systems Group (TEH1)

Amend last sentence as follows:

Directs the use of surveys and analyses to increase the effectiveness of the correspondence workflow process throughout SSA.

Reletter:

"H" to "E".

Section S2D.20 *The Office of the Regional Commissioner*—(Functions)

C. The Immediate Office of the Regional Commissioner (S2D1–S2DX).

Delete from the second sentence "and external affairs"

Section SA.20 *The Office of the Commissioner*—(Functions)

C. The Immediate Office of the Commissioner (SA).

Delete from the first sentence "the Press Office,"

Dated: January 31, 1997.

Shirley S. Chater,

Commissioner of Social Security.

[FR Doc. 97–5142 Filed 2–28–97; 8:45 am]

BILLING CODE 4190–29–P

Privacy Act 1974; Computer Matching Program (Agreement for SSA/Federal Bureau of Prisons (BOP) Match of Prisoner Data, Match #1041)

AGENCY: Social Security Administration.

ACTION: Notice of Computer Matching Program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a computer matching program that SSA plans to conduct.

DATES: SSA will file a report of the subject matching program with the Committee on Governmental Affairs of the Senate, the Committee on Government Reform and Oversight of the House of Representatives and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either facsimile to (410) 966–4337 or writing to the Associate Commissioner for Program and Integrity Reviews, 860 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Program and Integrity Reviews at the above address.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by establishing the conditions under which computer matching involving the Federal Government could be performed and adding certain protection for individuals applying for or receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protection for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the Data Integrity Boards' approval of the match agreements;

(3) Furnish detailed reports about matching programs to Congress and OMB;

(4) Notify applicants and beneficiaries that their records are subject to matching; and

(5) Verify match findings before reducing, suspending, terminating or denying an individual's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: February 21, 1997.

Shirley S. Chater,

Commissioner of Social Security.

Notice of Computer Matching Program, Federal Bureau of Prisons (BOP) Data Systems With SSA

A. Participating Agencies

SSA and BOP.

B. Purpose of the Matching Program

Section 202(x)(1) of the Social Security Act (the Act), 42 U.S.C. 402(x)(1), prohibits SSA from paying old-age, survivors, and disability insurance benefits to certain confined persons, including certain prisoners under title II of the Act. Section 1611(e)(1)(A) of the Act, 42 U.S.C. 382(e)(1)(A), provides, with some exceptions, that inmates in public institutions are not eligible for payments in the Supplemental Security Income (SSI) program under title XVI of the Act. Sections 205(j)(1)(A), 205(j)(5), 1631(a)(2)(A)(iii) and 1631(a)(2)(E), 42 U.S.C., 405(j)(1)(A), 405(j)(5), 1383(g)(2)(A)(iii) and 1383(a)(2)(E) require SSA to revoke certification for payment of benefits to representative payees under certain circumstances and to investigate and monitor the performance of representative payees. The incarceration or confinement of a representative payee is a circumstance highly relevant to SSA's consideration of an individual's representative payee status under these provisions. The purpose of this matching program is to assist SSA in enforcing all of the above-referenced provisions of the Act.

C. Authority for Conducting the Matching Program

Section 202(x)(1), 202(x)(3), 205(j)(1)(A), 205(j)(5), 1611(e)(1)(A), and 1631(a)(2)(A)(iii) and 1631(a)(2)(E) of the Act.

D. Categories of Records and Individuals Covered by the Match

The Federal Bureau of Prisons will submit names and other identifying information of prisoners from its prisoner data systems. The SSA Master Files of Social Security number (SSN) holders and SSN applications contain the SSNs and identifying information for all SSN holders. The SSA Master Beneficiary Record and Supplemental Security Income Record contains beneficiary and payment information. The Master Representative Payee File contains representative payee information. SSA will match data from these record systems with BOP data as a first step in detecting certain individuals who should not be receiving Social Security or SSI benefits, either for themselves, or on behalf of others.

E. Inclusive Dates of the Match

This matching program shall become effective no sooner than 40 days after notice of the program is sent to Congress and the Office of Management and Budget, or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 97–5141 Filed 2–28–97; 8:45 am]

BILLING CODE 4190–29–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 97–008]

Agency Information Collection Activities Under OMB Review

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, the U.S. Coast Guard announces six Information Collection Requests (ICR) for renewal. These ICRs include: 1. Request for Designation and Exemption of Oceanographic Vessels; 2. Incorporation and Adoption of Industry Standards into 33 CFR & 46 CFR Subchapters; 3. Station Bill For Manned Outer Continental Shelf (OCS) Facilities; 4. Merchant Mariner License, Certificate & Document Application; National Driver Register; Criminal Record Review and Five Year Terms of Validity; 5. Self-Inspection of Fixed Outer Continental Shelf (OCS) Facilities; 6. Labeling Requirements in 33 CFR, Parts 181 and 183; 7. Boat Owner's Report, Possible Safety Defect; and 8. Alteration of Obstructive Bridges. Before submitting the ICR packages to the Office of Management and Budget (OMB), the U.S. Coast Guard is soliciting comments on specific aspects of the collections as described below.

DATES: Comments must be received on or before April 2, 1997.

ADDRESSES: Comments may be mailed to Commandant (G–SIL–2), U.S. Coast Guard Headquarters, Room 6106 (Attn: Barbara Davis), 2100 Second St., SW, Washington, DC 20593–0001, or may be hand delivered to the same address between 8:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–2326. The comments will become part of this docket and will be available for inspection and copying by appointment at the above address.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, U.S. Coast Guard, Office of Information Management, telephone (202) 267–2326.

SUPPLEMENTARY INFORMATION:

Request for Comments

The U.S. Coast Guard encourages interested persons to submit written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify this Notice and the specific ICR to which each comment applies, and give reasons for each comment. The U.S. Coast Guard requests that all comments and attachments be submitted in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. If that is not practical, a second copy of any bound material is requested. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed post card or envelope.

Interested persons can receive copies of the complete ICR by contacting Ms. Davis where indicated under **ADDRESSES.**

Information Collection Requests

1. *Title:* Request for Designation and Exemption of Oceanographic Vessels.

OMB No. 2115–0053.

Summary: The collection of information requires a written request to the Coast Guard from a master, owner, or agent of an oceanographic research vessel to be exempt from certain requirements governing the shipment, discharge, payment and personal outfitting of merchant seamen.

Need: Title 46 U.S.C. 2113, authorizes the Coast Guard to determine if certain oceanographic research vessels should be exempt from specific regulatory requirements concerning maritime safety and seamen's welfare laws.

Respondents: Owners, operators and agents of oceanographic research vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden is 10 hours annually.

2. *Title:* Incorporation and Adoption of Industry Standards into 33 CFR & 46 CFR Subchapters.

OMB No. 2115–0525.

Summary: The collection of information requires manufacturers of pressure-vacuum relief valves or safety relief valves to submit to the Coast Guard, drawings and test reports of this equipment.

Need: Under 46 CFR 162.017–162.018, Coast Guard has the authority to approve specific types of safety equipment and materials that are to be installed on commercial vessels to ensure the equipment meets the minimum levels of safety and performance.

Respondents: Manufacturers of pressure-vacuum relief valves and safety relief valves.

Frequency: On occasion.

Burden: The estimated burden is 279 hours annually.

3. *Title:* Station Bill For Manned Outer Continental Shelf (OCS) Facilities.

OMB: 2115–0542.

Summary: The collection of information requires persons in charge of manned OCS facilities to be responsible for preparing and posting station bills, which provide information to all personnel as to their duties, duty station, and signals that should be used in an emergency and during drills.

Need: Under Title 33 U.S.C., Section 146.130, manned OCS facilities are required to have posted in conspicious locations, information and special duties and duty stations of each member in case of an emergency.

Respondents: Persons in charge of manned OCS Facilities.

Frequency: On occasion.

Burden Estimate: The estimated burden is 1,834 hours annually.

4. *Title:* Merchant Mariner License, Certificate & Document Application; National Driver Register; Criminal Record Review and Five Year Terms of Validity.

OMB No. 2115–0514.

Summary: The collection of information requires merchant mariners seeking to obtain or renew their merchant marine credentials to fill out and submit to the Coast Guard several application forms, along with a consent form to have their driving record sent to the Coast Guard to be reviewed for certain driving offenses.

Need: Titles 46 U.S.C. 7101, 7302 and 7109, give Coast Guard the authority to maintain records of all merchant mariner credentials, to review the National Driver Register reports for certain driving offenses of the applicant and to perform a criminal record review of the applicant.

Respondents: Merchant Mariners.

Frequency: On Occasion.

Burden: The estimated burden is 83,328 hours annually.

5. *Title:* Self-Inspection of Fixed Outer Continental Shelf (OCS) Facilities.

OMB No. 2115–0569.

Summary: The collection of information requires an owner or operator of a fixed OCS facility to conduct annual self inspections of the facility using a check-off list and reporting form that has been developed and furnished by the U.S. Coast Guard.

Need: Under 43 U.S.C. 1333(d) and 43 U.S.C. 1348(c), the Coast Guard has the authority to promulgate regulations to provide for scheduled onsite inspection, at least once a year, of each facility on the OCS. The inspection shall include all safety equipment designed to prevent blowouts, fires, spills, or other major accidents.

Respondents: Owners and operators of fixed OCS facilities.

Frequency: Annually.

Burden Estimate: The estimated burden is 9,939 hours annually.

6. *Title:* Labeling Requirements in 33 CFR Parts 181 and 183.

OMB No. 2115–0573.

Summary: The collection of information requires manufacturers and importers of recreational boats to apply for serial numbers from the Coast Guard and to display various labels on these boats.

Need: Under Title 33 CFR, Parts 182 and 183, manufacturer or importers of recreational boats are required to obtain from the Coast Guard, a manufacturer identification code for each boat and must display various labels on these boats which provide safety information to the boating public.

Respondents: Manufacturers and importers of Recreational Boats.

Frequency: Once per boat.

Burden Estimate: The estimated burden is 377,979 hours annually.

7. *Title:* Boat Owner's Report, Possible Safety Defect.

OMB No. 2115–0611.

Summary: The collection of information requires owners of recreational boats or engines who believe their product contains a defect or fails to comply with safety standards, to report the problem by phone, send a written complaint or fill out a Boat Owner's Report form.

Need: Title 46 U.S.C. 4310(f) gives the Coast Guard the authority to require manufacturers of recreational boats and associated equipment to notify owners and to replace or repair their boats and associated equipment which fail to comply with safety standards or are found to contain defects related to safety discovered in their products.

Respondents: Owners and Manufacturers of recreational boats.

Frequency: One Time.

Burden Estimate: The estimated burden is 80 hours annually.

8. *Title:* Alteration of Obstructive Bridges.

OMB No. 2115–0614.

Summary: The collection of information requires a bridge owner, whose bridge has been found to be an unreasonable obstruction to navigation, to prepare and submit to the Coast Guard, general plans and specifications of that bridge.

Need: Under 33 U.S.C. 494, 502, 511, and 513, the Coast Guard is authorized to determine if a bridge is an unreasonable obstruction to navigation and can require the bridge owner to submit information to determine the apportionment of cost between the U.S. and the bridge owner for alteration of that bridge.

Respondents: Bridge Owners.

Frequency: On Occasion.

Burden Estimate: The estimated burden is 40 hours annually.

Dated: February 25, 1997.

J.T. Tozzi,

Rear Admiral, U.S. Coast Guard, Director of Information and Technology.

[FR Doc. 97–5069 Filed 2–28–97; 8:45 am]

BILLING CODE 4910–14–M

[CGD 97–013]

Commercial Fishing Industry Vessel Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Commercial Fishing Industry Vessel Advisory Committee (CFIVAC) will meet to discuss various issues relating to commercial vessel safety in the fishing industry. The meetings are open to the public.

DATES: The meetings of the subcommittees of CFIVAC will be held on Thursday, April 3, 1997, from 8:30 a.m. to 4 p.m. The general CFIVAC meeting will be held on April 4, 1997, from 8:30 a.m. to 4 p.m. Written material and requests to make oral presentations should reach the Coast Guard on or before March 31, 1997.

ADDRESSES: The meeting of the Subcommittee on Voluntary Standards for U.S. Uninspected Commercial Fishing Vessels by Utilizing the Application of Prevention Through People (PTP) Principles will be held in room 6103, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC. The meeting of the Subcommittee on Stability Standards for Commercial Fishing Industry Vessels will held in room 6319 at the same address. The general CFIVAC meeting will be held in room 2415 at the same address. Written material and requests to make oral presentations should be sent to Commander Adan D. Guerrero,

Commandant (G–MSO–2), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Commander Adan D. Guerrero, Executive Director of CFIVAC, or Commander Mark D. Bobal, Assistant to the Executive Director, telephone (202) 267–1181, fax (202) 267–4570.

SUPPLEMENTARY INFORMATION: Notice of these meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of April 3, 1997 Meetings

Subcommittee on Voluntary Standards Utilizing PTP

(1) Review Voluntary Standards of Uninspected Commercial Fishing Vessels found in Navigation and Vessel Inspection Circular (NVIC 5–86) to ascertain which standards should be continued as voluntary in light of the regulations in 46 CFR part 28.

(2) Assist the commercial fishing community by developing voluntary standards which minimize casualties and injuries through application of the principles of PTP.

(3) Review possible methods to develop these voluntary standards.

Subcommittee on Stability Standards

(1) Review existing stability standards for Uninspected Commercial Fishing Vessels less than 79 feet in length.

(2) Review possible stability standards to increase the safe operation of these vessels.

Agenda of April 4, 1997 Meeting

(1) Update on the International Convention of Standards of Training, Certification, and Watchkeeping (STCW) and Standards of Training, Certification, and Watchkeeping for Fishing Vessels (STCW–F).

(2) Review of commercial fishing industry vessel casualty statistics.

Procedural.

All meetings are open to the public. Due to new security procedures at Coast Guard Headquarters, visitors should use the Second Street entrance and have a current picture ID to enter the building. At the Chairperson's discretion, members of the public may make oral presentations during the meetings. Persons wishing to make oral presentations at the meetings should notify the Executive Director no later than March 31, 1997. Written material for distribution at a meeting should reach the Coast Guard no later than March 31, 1997. If a person submitting material would like a copy distributed to each member of a subcommittee in advance of a meeting, that person should submit 20 copies to the Executive Director no later than March 24, 1997.

Information on Services for Individuals with Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: February 21, 1997.

Howard L. Hime,

Acting Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 97–5067 Filed 2–28–97; 8:45 am]

BILLING CODE 4910–14–M

[CDG 97–012]

Coast Guard, DOT

Notice of Meetings

SUMMARY: The Towing Safety Advisory Committee (TSAC) and its working groups will meet to discuss various issues relating to shallow-draft inland and coastal waterway navigation and towing safety. The agenda will include working group reports and discussion of various Coast Guard programs such as Prevention Through People and Coast Guard rulemaking projects. Both meetings are open to the public.

DATES: The TSAC meeting will be held on March 26, 1997, from 8:30 a.m. to 12 p.m. The working group meetings will be held on March 25, 1997, from 9 a.m. to 4 p.m. Written material must be received on or before March 15, 1997.

ADDRESSES: The public meeting on March 26, 1997, will be held in the second floor auditorium, Robert A. Young Federal Building, 1222 Spruce St., St. Louis, MO 63103, and the working sessions on March 25, 1997, will be held in room 2.100 of the same building. Written material and requests to make oral presentations should be submitted to LTJG Patrick J. DeShon, Assistant Executive Director, Commandant (G–MSE–1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: LTJG Patrick J. DeShon, Assistant Executive Director, Commandant (G–MSE–1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, telephone (202) 267–2997, FAX (202) 267–4816.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2 § 1 *et seq.* The agenda will include discussion of the following topics:

Work Groups:

(1) Prevention Through People.

(2) Radio Technical Commission for Maritime Services standards for radar requirements.

(3) Fire suppression systems for towing vessels.

(4) Structural soundness and loading practices.

(5) Licensing.

Procedural

Attendance at both meetings is open to the public. With advance notice, and Chair's discretion, members of the public may make oral presentations during the meeting. Persons wishing to make oral presentations should notify the Assistant Executive Director, listed under **ADDRESSES**, no later than March 14, 1997. Written material may be submitted at any time for the presentation to the Committee. However, to ensure advance distribution to each Committee member, persons submitting written material are asked to provide 25 copies to the Assistant Executive Director no later than March 11, 1997.

Information on Services for the Disabled

For information on facilities or services for the disabled or to request special assistance at the meeting, contact the Assistant Executive Director as soon as possible.

Dated: February 19, 1997.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 97–5066 Filed 2–28–97; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

[Summary Notice No. PE–97–11]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before [March 20, 1997].

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket NO. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–CMT@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Fred Haynes (202) 267–3939 or Angela Anderson (202) 267–9681 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part II of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on February 24, 1997.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 24165.
Petitioner: United States Air Force.
Sections of the FAR Affected: 14 CFR 91.209(a) and (b).
Description of Relief Sought/ Disposition: To permit the petitioner to conduct helicopter night-vision flight training operations without lighted aircraft position lights.
GRANT: February 6, 1997, Exemption NO. 5891A.

Docket No.: 28225.
Petitioner: Northwest Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.709(b)(3).
Description of Relief Sought/ Disposition: To permit the petitioner to use electronic recordkeeping and electronic signatures to meet certain maintenance recordkeeping requirements.
GRANT: February 7, 1997, Exemption NO. 6575.

Docket No.: 28664.
Petitioner: Doug Myers.
Sections of the FAR Affected: 14 CFR 91.205(b)(12).
Description of Relief Sought/ Disposition: To permit certain air carriers to operate an aircraft for hire over water and beyond power-off gliding distance from shore without at least one pyrotechnic signaling device on board.
DENIAL: February 11, 1997, Exemption No. 6576.

[FR Doc. 97–5060 Filed 2–28–97; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–97–12]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before March 11, 1997.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. 28822, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–CMTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200) Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Fred Haynes (202) 267–3939 or Angela Anderson (202) 267–9681 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on February 25, 1997.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28822.
Petitioner: Lynx Air International.
Sections of the FAR Affected: 14 CFR 119.2A.
Description of Relief Sought: To permit the petitioner additional time to complete the transition from a Part 135 Air Carrier to a Part 121 Air Carrier.

[FR Doc. 97–5180 Filed 2–28–97; 8:45 am]

BILLING CODE 4910–13–M

Request for Industry Input Meeting on Type Approval of Differential Global Positioning (DGPS) Ground Stations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA requests information and assistance in exploring various methods and criteria for installation, evaluation, flight inspection, and commissioning of commercially developed Special Category I (SCAT–I) ground facilities designed to provide local area augmentation to the Global Position System (GPS) for private use instrument approach and landing procedures. The FAA will host a meeting of interested parties to provide a forum for information exchange that will assist the agency in evaluating the technical merits, efficiency, and cost effectiveness of the alternative methods under consideration. In addition, interested parties are invited to propose other methods or criteria, not identified in this notice but worthy of consideration, that may improve or expedite the installation, evaluation, flight inspection, and commissioning process. The methods identified thus far for consideration by the FAA are:

- Mathematical modeling and predictive analysis

- Bench testing
- Operational testing
- Spurious and harmonic radio frequency emission and sensitivity testing
- Flight testing

In addition to information on these or other testing methods, comments on their relative merit and benefits are welcome.

DATES: The meeting will be held on April 16–17, 1997.

ADDRESSES: The meeting will be held at the Holiday Inn Mountain View hotel, 2020 Menaul Boulevard NE., Albuquerque, New Mexico; telephone (505) 884–2511, fax (505) 881–4806. Those persons staying at the hotel must make reservations not later than March 26, 1997. Reservations should be requested as the "FAA Conference."

ATTENDANCE REPLY INSTRUCTIONS: To insure that adequate facilities are available, individuals or organizations that will attend are requested to notify the FAA of their intention to attend. Responses should be telephoned (202–267–9147) or fax (202–267–5509) to: Federal Aviation Administration, Office of the Associate Administrator for Air Traffic Services, Attn: Airway Facilities Advanced Technologies Implementation Staff, AOS–100, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: William Dixon, Airway Facilities Advanced Technologies Implementation Staff, AOS–100, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–9147; fax (202) 267–5509.

SUPPLEMENTARY INFORMATION: The evaluation and approval of DGPS ground facilities is being conducted to support implementation of Special Category I (SCAT–I) approaches. These efforts are based upon the recommendations of RTCA Special Committee 159, as documented in the Minimum Aviation System Performance Standards DGNSS Instrument Approach System: Special Category I (SCAT–I), DO–217, and the guidance provided by FAA Order 8400.11, IFR Approval for Differential Global Positioning System (DGPS) Special Category I Instrument Approaches Using Private Ground Facilities.

Issued in Washington, DC, on February 19, 1997.

Stanley Rivers,

Director, Airway Facilities Service.

[FR Doc. 97–5059 Filed 2–28–97; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc.; Joint RTCA Special Committee 180 and EUROCAE Working Group 46 Meeting; Design Assurance Guidance for Airborne Electronic Hardware

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a joint RTCA Special Committee 180 and EUROCAE Working Group 46 meeting to be held March 18–20, 1997, starting at 8:30 a.m. on March 18. (On subsequent days, meeting begins at 8:00 a.m.) The meeting will be held at the Civil Aviation Authority, Aviation House, Gatwick, UK.

The agenda will be as follows: (1) Chairman's Introductory Remarks; (2) Review and Approval of Meeting Agenda; (3) Review and Approval of Minutes of Previous Joint Meeting; (4) Leadership Team Meeting Report; (5) Review Action Items; (6) Review Issue Logs; (7) Break into Teams; (8) New Items for Consensus; (9) Other Business; (10) Establish Agenda for Next Meeting; (11) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone) (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 24, 1997.

Janice L. Peters,

Designated Official.

[FR Doc. 97–5058 Filed 2–28–97; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc., Special Committee 186; Automatic Dependent Surveillance—Broadcast (ADS–B)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 186 meeting to be held March 17–20, 1997. The Plenary Session will start at 1:00 p.m. on Monday, March 17, and will continue through Wednesday, March 19; Working Group meetings will be held on March 20. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036.

The agenda will include: (1) Chairman's Introductory Remarks/ Review of Meeting Agenda; (2) Review and Approval of Minutes of the Previous Meeting; (3) Report of Working Group Activities: a. Working Group 1 Report (Operations Working Group); b. Working Group 2 Report (Technical Working Group); c. Working Group 3 Report (CDTI Working Group); (4) Section 2 Applications Scenarios: Analysis/Simulation Results; (5) Review of Updates to Section 2 of the Draft ADS–B MASPS; (7) Review of Appendix A of the Draft ADS–B MASPS; (8) Other Business; (9) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 25, 1997.

Janice L. Peters,

Designated Official.

[FR Doc. 97–5179 Filed 2–28–97; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application (#97–02–C–00–BTM) to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Bert Mooney Airport, Submitted by the Bert Mooney Airport Authority, Butte, Montana

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Butte Mooney Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before April 2, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: David P. Gabbert, Manager; Helena Airports District Office, HLN–ADO; Federal Aviation Administration; FAA Building, Suite 2; 2725 Skyway Drive; Helena, MT, 59601.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Rick Griffith, Airport Manager, at the following address: Bert Mooney Airport Authority, 101 Airport Road, Butte, Montana 59701.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Bert Mooney Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. David P. Gabbert, (406) 449–5271; Helena Airports District Office, HLN–ADO; Federal Aviation Administration; FAA Building, Suite 2; 2725 Skyway Drive; Helena, MT 59601. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (#97–02–C–00–BTM) to impose and use PFC revenue at Bert Mooney Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On February 19, 1997, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Bert Mooney Airport Authority, Bert Mooney Airport, Butte, Montana, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 21, 1997.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: July 1, 1997.

Proposed charge expiration date: September 1, 1998.

Total requested for use approval: $473,088.00.

Brief description of proposed project: Runway 15/33 rehabilitation; Air carrier apron rehabilitation; Taxiway "A" rehabilitation.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: On demand, non scheduled Air Taxi/Commercial Operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue S.W., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Bert Mooney Airport.

Issued in Renton, Washington on February 19, 1997.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 97–5062 Filed 2–28–97; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Nashville International Airport, Nashville, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Nashville International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before April 2, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Memphis Airports District Office, 2851 Directors Cove, Suite #3, Memphis, TN 38131–0301.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to General William G. Moore, Jr., President of the Metropolitan Nashville Airport Authority at the following address: Metropolitan Nashville Airport Authority, One Terminal Drive, Suite 501, Nashville, Tennessee 37214–4114.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Metropolitan Nashville Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Charles L. Harris, Airport Program Manager, Memphis Airports District Office, 2851 Directors Cove, Suite 3, Memphis, Tennessee 38131–0301; telephone number 901–544–3495. The application may be reviewed in person at this location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC AT Nashville International Airport under provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On February 20, 1997, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Metropolitan Nashville Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 21, 1997.

The following is a brief overview of the application.

PFC application number: 97–04–C–00–BNA.

Level of the proposed PFC: $3.00.

Proposed charge effective date: March 16, 2002.

Proposed charge expiration date: March 1, 2006.

Total estimated PFC revenue: $19,500,000.

Total amount of Use approval requested in this application: $19,500,000.

Brief description of proposed project(s):

Curbside Expansion

Class or classes of air carriers which the public agency has requested not be required to collect PFCs:

Part 135 (Air Taxi) Operators

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Metropolitan Nashville Airport Authority.

Issued in Memphis, Tennessee, on February 20, 1997.

LaVerne F. Reid,

Manager, Memphis Airports District Office.

[FR Doc. 97–5061 Filed 2–28–97; 8:45 am]

BILLING CODE 4910–13–M

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from Oppenheimer Wolff & Donnelly on behalf of Gateway Western Railway Company (WB518—2/19/97), for permission to use certain data from the Board's Carload Waybill Samples. A copy of the request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 927–6196.

Vernon A. Williams,

Secretary.

[FR Doc. 97–5150 Filed 2–28–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Financial Management Service

Privacy Act of 1974; System of Records

AGENCY: Financial Management Service, Treasury.

ACTION: Notice of alteration of Privacy Act system of records.

SUMMARY: The Department of the Treasury, Financial Management Service (FMS), gives notice of a proposed alteration to the system of records entitled "Payment Records for Other than Regular Recurring Benefit Payments—Treasury/FMS .016," which is subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a). The system notice was last published in its entirety in the **Federal Register** Vol. 60, page 47435, September 12, 1995.

DATES: Comments must be received no later than April 2, 1997. The proposed alteration will be effective April 14, 1997, unless FMS receives comments which would result in a contrary determination.

ADDRESS: Comments must be submitted to Debt Management Services, Financial Management Service, 401 14th Street, SW, Room 151, Washington, DC 20227. Comments received will be available for inspection at the same address between the hours of 9 a.m. and 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Gerry Isenberg, Debt Management Services, (202) 874–6859.

SUPPLEMENTARY INFORMATION:

The Debt Collection Improvement Act of 1996 (DCIA), Pub. L. 104–134, enacted Apriment of the Treasury (Treasury) with specific legislative authority and responsibility to collect and/or manage the collection of claims owed to the Federal Government. The DCIA authorizes Treasury to collect claims, or facilitate the collection of claims, owed to States, Territories and Commonwealths of the United States, and the District of Columbia by offsetting Federal payments. Executive Order 13019, signed by the President on September 28, 1996, directs Treasury to promptly take steps to facilitate offset of Federal payments to collect delinquent child support debts being enforced by States. FMS is the Treasury bureau responsible for the implementation of the DCIA and the Executive Order.

For the reasons set forth in the preamble, FMS proposes to alter system of records Treasury/FMS .016, "Payment Records for Other than Regular Recurring Benefit Payments—Treasury/Financial Management Service." as follows:

Treasury/FMS .016

SYSTEM NAME:

Payment Records for Other than Regular Recurring Benefit Payments—Treasury/Financial Management Service.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

Description of changes:

(1) The following is inserted after the semicolon ";" and before the "and" in routine use (11); "(12) Disclose information to any State, Territory or Commonwealth of the United States, or the District of Columbia to assist in the collection of State, Commonwealth, Territory or District of Columbia claims pursuant to a reciprocal agreement between FMS and the State, Territory, Commonwealth or the District of Columbia; " ; and

(2) The "(12)" following the language inserted above is replaced with "(13)".

* * * * *

Dated: February 21, 1997.

Alex Rodriguez,

Deputy Assistant Secretary (Administration).

[FR Doc. 97–5116 Filed 2–28–97; 8:45 am]

BILLING CODE: 4810–35–F

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Minority Veterans, Notice of Meeting

The Department of Veterans Affairs (VA), in accordance with Public Law 103–446, gives notice that a meeting of the Health Care Subcommittee of the Advisory Committee on Minority Veterans will be held from Monday, March 10, 1997, to Wednesday, March 12, 1997, in Honolulu, HI. The purpose of the Advisory Committee on Minority Veterans is to advise the Secretary of Veterans Affairs on the administration of VA benefits and services for minority veterans and to assess the needs of minority veterans and evaluate whether VA compensation, medical and rehabilitation services, outreach, and other programs are meeting those needs. The Committee will make recommendations to the Secretary regarding such activities.

The Subcommittee meeting will hold at least two town hall meetings, one in Honolulu and the other on Hilo. In addition, the Subcommittee will hold a hearing where Hawaii State public health officials, VA health care and benefits officials, representatives of veterans organizations, and concerned veterans will testify on the health care needs of veterans residing in the Pacific Islands. Public meetings will be held from 9:00 a.m. to 3:30 p.m. on Monday, March 10, 1997, at the VA Regional Office, located at 300 Ala Moana Blvd., Honolulu, HI. The Committee will conduct a town hall meeting from 7:30 p.m. until 10:00 p.m. at the Pearl City High School which is located at 2100 Hookiekie Blvd., Honolulu, HI. The Subcommittee will travel to Hilo, HI, on Tuesday, March 11, 1997, where they will visit the PTSD Residential Rehabilitation Program, at 891 Ululani St., Hilo, HI, and the Hilo Vet Center, at 120 Keawe St., Suite 200, Hilo, HI. A town hall meeting is scheduled from 1:15 p.m. until 4:00 p.m. at a local high school to be announced. On Wednesday, March 12, 1997, the Subcommittee will meet with VA officials at VA facilities. All sessions will be opened to the public. It will be necessary for those wishing to attend to contact Mr. Lionel K. Parker, Jr., Department of Veterans Affairs, phone (808) 566–1000 or 1–800–827–1000, prior to March 7, 1997. Individuals or groups desiring to present oral testimony should notify Mr. Parker and provide 25 copies of their testimony at least 48 hours prior to the date testifying. The Subcommittee will also accept appropriate written comments from interested parties on issues affecting minority veterans. Such comments should be referred to the Committee at the following address: Advisory Committee on Minority Veterans, Center for Minority Veterans (OOM), U.S. Department of Veterans

Affairs, 810 Vermont Avenue, NW, Washington, DC 20420.

Dated: February 22, 1997.

By direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 97–5089 Filed 2–28–97; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 62, No. 41
Monday, March 3, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. 970129014-7014-01]

RIN 0651-XX09

Interim Guidelines for the Examination of Claims Directed to Species of Chemical Compositions Based Upon a Single Prior Art Reference

Correction

In notice document 97–3362, beginning on page 6217, in the issue of Tuesday, February 11, 1997, make the following corrections:

1. On page 6217, in the third column, under **SUPPLEMENTARY INFORMATION**, in the 22nd line, "Thereof" should read "Therefore".

2. On page 6219, in the first column, under heading no. 4, in the first paragraph, in the sixth line, "hole" should read "whole".

3. On the same page, in the second column, in the first full paragraph, in the last line, "subgenus[32]" should read "subgenus.[32]".

4. On page 6221, in the second and third columns, in footnotes 25, 28, 31, 33, 35, 38, 39, and 40, "Dillion" should read "Dillon".

5. On page 6222, in the first, second, and third columns, in footnotes 49, 50, 53, 54, and 57, "E.G." should read "E.g.".

6. On the same page, in footnote 56, the second full paragraph should begin and end with quotation marks.

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97-253-000]

Northern Border Pipeline Company; Notice of Petition for Limited Waiver of Tariff Provisions

Correction

In notice document 97–4680 appearing on page 8707 in the issue of February 26, 1997, the docket number should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP92-236-007]

Williston Basin Interstate Pipeline Company; Notice of Interim Refund

Correction

In notice document 97–4675 appearing on page 8708 in the issue of February 26, 1997, the docket number should read as set forth above.

BILLING CODE 1505-01-D

federal register

Monday
March 3, 1997

Part II

Department of Housing and Urban Development

Annual Factors for Determining Public Housing Agency Administrative Fees for the Section 8 Rental Voucher, Rental Certificate and Moderate Rehabilitation Programs; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4156–N–01]

Notice of Annual Factors for Determining Public Housing Agency Administrative Fees for the Section 8 Rental Voucher, Rental Certificate and Moderate Rehabilitation Programs

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This Notice announces the monthly per unit fee amounts for use in determining the on-going administrative fee for public housing agencies and Indian housing authorities (HAs) administering the rental voucher, rental certificate and moderate rehabilitation programs (including Single Room Occupancy and Shelter Plus Care) during Federal Fiscal Year 1997.

EFFECTIVE DATE: HUD will use the procedures in this Notice to approve year-end financial statements for HA fiscal years ending on December 31, 1996; March 31, 1997; June 30, 1997; and September 30, 1997. HAs also may use these procedures to project earned administrative fees in the annual HA budget. The procedures in this Notice apply to that portion of the HA fiscal year that coincides with the Federal Fiscal Year (FY) 1997 (i.e., from October 1, 1996, to September 30, 1997).

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Operations Division, Office of Rental Assistance, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4220, 451 Seventh Street, SW, Washington, DC 20410–8000, telephone number (202) 708–0477. Hearing or speech impaired individuals may call TTY number (202) 708–4594. (These numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and have been assigned OMB control number 2502–0348. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

I. Purpose and Substantive Description

(a) In FY 95 HUD changed the way that HA administrative fees were calculated. These new procedures were published in the **Federal Register** on January 24, 1995 (60 FR 4764). HUD also issued an administrative Notice PIH 96–22, dated April 19, 1996, providing more detailed processing instructions. The system that HUD used to determine administrative fees before FY 95 had three different rates that were applied to the Section 8 existing housing fair market rents. Under the new system implemented in FY 95, HAs were funded for pre-FY 89 funding increments at a rate of 8.2 percent of a "base amount" for the initial 600 rental vouchers and rental certificates and 7.79 percent of a "base amount" for all rental vouchers and rental certificates above 600. This same system using a "base amount" was continued in FY 96.

(b) The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (P.L. 104–204, 110 STAT. 2874) changed the method to be used in calculating HA administrative fees. The law establishes a method for calculating HA fees for the rental voucher, certificate, and moderate rehabilitation (including Single Room Occupancy and Shelter Plus Care) programs in FY 97. The law, however, reduced the percentages for FY 97 effective for the period from October 1, 1996 through September 30, 1997 to 7.5 percent of the HUD-determined "base amount" for the first 600 units in an HA's rental voucher and rental certificate programs combined, and for the first 600 units in an HA's moderate rehabilitation program, and to 7 percent of the HUD-determined "base amount" for each additional unit in these programs over 600. Furthermore, the law provides HUD may provide a decreased fee for HA-owned units. For FY 97, HUD has determined that HAs will earn an administrative fee for HA-owned rental voucher, rental certificate and moderate rehabilitation units based on 3 percent of the "base amount."

The law also made changes with respect to preliminary fees and administrative fees. Under the new law HUD may approve preliminary fees of $500 per unit for the initial funding increment for the HA, but only in the first year an HA administers a tenant-based rental voucher or rental certificate program and only for an HA that did not administer a tenant-based rental voucher or certificate program before September 26, 1996. For example, if an HA is currently administering a rental certificate program and it receives its first funding increment under the rental voucher program, the HA is not eligible to receive a preliminary fee. The law does not provide for preliminary fees for the regular moderate rehabilitation program or the moderate rehabilitation single room occupancy program or the moderate rehabilitation shelter plus care program. HUD may also approve additional administrative fees for costs incurred in assisting families who experience difficulty in obtaining appropriate housing and for extraordinary costs.

II. Applicability of HUD Notice PIH 96–22

On April 19, 1996, HUD issued a Notice (PIH 96–22) establishing the procedures for the calculation of on-going administrative fees for the rental voucher and rental certificate programs. The provisions of the HUD Notice PIH 96–22 do not apply for unit months commencing October 1, 1996. Instead, a revised administrative fee HUD Notice will be issued.

III. Method To Determine Per Unit On-Going Administrative Fee

(a) Method

A housing agency is paid an on-going administrative fee for each unit month for which a dwelling unit is covered by a housing assistance payments contract. Under the system for FY 97, the on-going administrative fee is:

- 7.5 percent of a "base amount" for the first 600 units in an HA's rental voucher and rental certificate programs combined, and for the first 600 units in an HA's moderate rehabilitation program.
- 7 percent of the "base amount" for each additional rental voucher, rental certificate, or moderate rehabilitation unit above the 600-unit threshold.

In FY 95 and FY 96, the "base amount" used by HUD was the higher of (a) the FY 1993 fair market rent for a two-bedroom unit in the HA's market area, or (b) the FY 94 fair market rent for a two-bedroom unit, but not more than 103.5 percent of the FY 93 fair market rent. The new law provides that this base amount may be adjusted in FY 97 to reflect changes in wage data or other objectively measurable data that reflect the cost of administering the program in FY 96. Accordingly, the monthly FY 97 per unit fee amounts published in this notice were derived from the new base amounts that have been adjusted to reflect average local government wages as measured by the most recent two years of Bureau of Labor Statistics data from the ES–202 series.

(b) Published Fee Amounts

HUD has attached a schedule of monthly per unit fee amounts for use by HUD and HAs when preparing and approving HA budgets and fiscal year-end financial statements. The tables are organized by the HUD-established fair market rent areas and show the monthly fee amounts an HA will earn for each unit under a housing assistance payments contract on the first day of the applicable month.

(1) Column A

The amount in this column is the monthly per unit fee amount for up to 7,200 unit months (600 units) in Federal FY 97 in an HA's rental voucher and rental certificate programs combined, and for up to 7,200 unit months (600 units) in Federal FY 97 in an HA's moderate rehabilitation program. (This amount was developed by multiplying the fee "base amount" by 7.5 percent.) For the HA's rental voucher and rental certificate programs combined, and for the HA's moderate rehabilitation program, the reimbursement is computed by multiplying the number of unit months that were under a housing assistance payments contract during Federal FY 97 by the monthly per unit fee amount in column A (up to a maximum of 7,200 unit months during Federal FY 97). The maximum number of unit months under a housing assistance payments contract in Federal FY 97 during the HA's fiscal year that this revised procedure is first implemented and for which the column A fee amount may be used, depends on the HA fiscal year end:

December 31 HA—1,800 unit months (7,200×.25 [3 months] of FY 97)
March 31 HA—3,600 unit months
June 30 HA—5,400 unit months
September 30 HA—7,200 unit months

(2) Column B

The amount in this column is the monthly per unit fee amount for any unit months in Federal FY 97 in excess of 7,200 unit months (for which a fee was calculated from column A) in the rental voucher and rental certificate programs combined, and in excess of 7,200 unit months in the moderate rehabilitation programs. This amount was developed by multiplying the HUD established fee base amount by 7 percent. For the HA's rental voucher and rental certificate programs combined, and for the HA's moderate rehabilitation program, the reimbursement is computed by multiplying the number of unit months that were under a housing assistance payments contract during Federal FY 97 that exceeds 7,200 unit months by the monthly per unit fee amount in column B). The monthly per unit fee in column B will be multiplied by the number of unit months that rental voucher, rental certificate and moderate rehabilitation units under housing assistance payments contracts during Federal FY 97 exceeds unit months for which a fee is calculated from column A.

(3) Column C

The amount in this column is the monthly per unit fee amount for HA owned units for Federal FY 97 under the rental voucher, rental certificate, or moderate rehabilitation programs. This amount was developed by multiplying a HUD established fee base by 3 percent. The monthly per unit fee amount in column C will be multiplied by the number of unit months that rental voucher, rental certificate, or moderate rehabilitation units owned by the HA are under housing assistance payments contracts during Federal FY 97.

(c) Future Year Publication Date

For subsequent fiscal years, HUD will publish an annual Notice in the **Federal Register** establishing the monthly per unit fee amounts for use in determining the on-going administrative fees for HAs operating the rental voucher, rental certificate and moderate rehabilitation programs in each metropolitan and each non-metropolitan fair market rent area for that Federal fiscal year. The annual change in the per-unit-month fee amounts will be based on changes in wage data or other objectively measurable data, as determined by HUD, that reflect the costs of administering the program.

The amounts shown on the attached schedule do not reflect the authority given to HUD to increase the fee if necessary to reflect extraordinary expenses such as the higher costs of administering small programs and programs operating over large geographic areas or expenses incurred because of difficulties some categories of families are having in finding appropriate housing. HUD will consider HA requests for such increased administrative fees. Furthermore, the amounts shown do not include preliminary fees.

IV. Other Matters

Environmental Finding

This notice is categorically excluded from the requirements of 24 CFR part 50, the HUD regulations which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). [See 24 CFR § 50.19(b)(3).] This notice does not require environmental review because it does not alter physical conditions in a manner or to an extent that would require review under NEPA or the other laws and authorities cited at § 50.4.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order. This notice pertains to the determination of administrative fees for HAs administering the rental voucher, rental certificate and moderate rehabilitation programs during Federal Fiscal Year 1997, and does not substantially alter the established roles of the Department, the States, and local governments.

Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this notice does not have potential for significant impact on family formation, maintenance, and general well-being within the meaning of the Executive Order and, thus, is not subject to review under the Order. This notice pertains to the determination of administrative fees for HAs administering the rental voucher, rental certificate and moderate rehabilitation programs during Federal Fiscal Year 1997, and does not substantially alter the requirements of eligibility for the programs involved.

Accordingly, the Department publishes the monthly per unit fee amounts to be used for determining HA administrative fees under the rental voucher, rental certificate and moderate rehabilitation programs as set forth on the schedule appended to this notice.

Dated: February 21, 1997.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–33–P

FY 1997 SECTION 8 ADMINISTRATIVE FEES

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH
PAGE 1

A L A B A M A

METROPOLITAN FMR AREAS AREA within STATE	A	B	C	Counties of FMR
Anniston, AL MSA	34.67	32.36	13.87	Calhoun
Birmingham, AL MSA	35.64	33.27	14.26	Blount, St. Clair, Jefferson, Shelby
Columbus, GA-AL MSA	33.58	31.34	13.43	Russell
Decatur, AL MSA	34.67	32.36	13.87	Morgan, Lawrence
Dothan, AL MSA	34.75	32.43	13.90	Houston, Dale
Florence, AL MSA	34.67	32.36	13.87	Lauderdale, Colbert
Gadsden, AL MSA	34.67	32.36	13.87	Etowah
Huntsville, AL MSA	36.21	33.80	14.49	Limestone, Madison
Mobile, AL MSA	36.20	33.79	14.48	Baldwin, Mobile
Montgomery, AL MSA	34.67	32.36	13.87	Autauga, Montgomery, Elmore
Tuscaloosa, AL MSA	34.96	32.63	13.98	Tuscaloosa

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES
Barbour	34.67	32.36	13.87	Bullock
Bibb	34.67	32.36	13.87	Dekalb
Dallas	34.67	32.36	13.87	Cullman
Crenshaw	34.67	32.36	13.87	Covington
Coosa	34.67	32.36	13.87	Conecuh
Coffee	34.67	32.36	13.87	Cleburne
Clay	34.67	32.36	13.87	Clarke
Choctaw	34.67	32.36	13.87	Chilton
Cherokee	34.67	32.36	13.87	Chambers
Butler	34.67	32.36	13.87	Winston
Wilcox	34.67	32.36	13.87	Washington
Walker	34.67	32.36	13.87	Tallapoosa
Talladega	34.67	32.36	13.87	Sumter
Randolph	34.67	32.36	13.87	Pike
Pickens	34.67	32.36	13.87	Perry
Monroe	34.67	32.36	13.87	Marshall
Marion	34.67	32.36	13.87	Marengo
Macon	34.67	32.36	13.87	Lowndes
Lee	34.67	32.36	13.87	Lamar
Jackson	34.67	32.36	13.87	Henry
Hale	34.67	32.36	13.87	Greene
Geneva	34.67	32.36	13.87	Franklin

34.67	32.36	13.87			
Fayette.....			34.67	32.36	13.87
34.67	32.36	13.87			

Escambia.....

Note: A = First 600 units; B = Remainder of units; C = PHA owned units.

111896

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH
PAGE 2

A L A S K A

METROPOLITAN FMR AREAS AREA within STATE	A	B	C	Counties of FMR
Anchorage, AK MSA.....	56.93	53.13	22.77	Anchorage

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES
Bristol Bay.....	59.28	55.33	23.71	Bethel.....
61.35	57.26	24.54		
Aleutian West.....	59.28	55.33	23.71	Aleutian East.....
59.28	55.33	23.71		
Yukon-Koyukuk.....	59.28	55.33	23.71	Wrangell-Petersburg.....
66.58	62.14	26.63		
Wade Hampton.....	59.28	55.33	23.71	Valdez-Cordova.....
68.00	63.47	27.20		
Southeast Fairbanks.....	48.80	45.55	19.52	Skagway-Yakutat-Angoon..
59.28	55.33	23.71		
Sitka.....	66.58	62.14	26.63	Pr.Wales-Outer Ketchikan
59.28	55.33	23.71		
Northwest Arctic.....	56.32	52.57	22.53	North Slope.....
61.35	57.26	24.54		
Nome.....	61.35	57.26	24.54	Matanuska-Susitna.....
50.39	47.04	20.16		
Lake & Peninsula.....	56.32	52.57	22.53	Kodiak Island.....
68.00	63.47	27.20		
Ketchikan Gateway.....	68.00	63.47	27.20	Kenai Peninsula.....
54.76	51.11	21.90		
Juneau.....	68.00	63.47	27.20	Haines.....
59.28	55.33	23.71		
Fairbanks North Star....	58.28	54.39	23.31	Dillingham.....
61.35	57.26	24.54		

A R I Z O N A

METROPOLITAN FMR AREAS AREA within STATE	A	B	C	Counties of FMR
Flagstaff, AZ	44.09	41.15	17.64	Coconino
Las Vegas, NV-AZ MSA	55.08	51.41	22.03	Mohave
Phoenix-Mesa, AZ MSA	40.33	37.63	16.13	Pinal, Maricopa
Tucson, AZ MSA	39.87	37.21	15.95	Pima
Yuma, AZ MSA	44.80	41.81	17.92	Yuma

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES
Cochise	35.37	33.01	14.15	Apache
34.74	32.42	13.89		
La Paz	44.88	41.89	17.95	Greenlee
35.37	33.01	14.15		
Graham	35.37	33.01	14.15	Gila
36.00	33.60	14.40		
Yavapai	44.09	41.15	17.64	Santa Cruz
36.61	34.17	14.64		
Navajo	34.74	32.42	13.89	

A R K A N S A S

METROPOLITAN FMR AREAS AREA within STATE	A	B	C	Counties of FMR
Fayetteville-Springdale-Rogers, AR MSA	33.03	30.83	13.21	Benton, Washington
Fort Smith, AR-OK MSA	33.03	30.83	13.21	Crawford, Sebastian
Jonesboro, AR MSA	33.03	30.83	13.21	Craighead
Little Rock-North Little Rock, AR MSA	36.04	33.64	14.41	Faulkner, Saline, Pulaski, Lonoke
Memphis, TN-AR-MS MSA	37.90	35.38	15.16	Crittenden

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH
PAGE 3

A R K A N S A S continued

METROPOLITAN FMR AREAS AREA within STATE	A	B	C	Counties of FMR
Pine Bluff, AR MSA	33.03	30.83	13.21	Jefferson
Texarkana, TX-Texarkana, AR MSA	33.32	31.10	13.33	Miller

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES
Ashley	33.03	30.83	13.21	Arkansas
33.03	30.83	13.21		
Cross	33.03	30.83	13.21	Desha
33.03	30.83	13.21		
Dallas	33.03	30.83	13.21	Conway
33.03	30.83	13.21		
Columbia	33.03	30.83	13.21	Cleveland
33.03	30.83	13.21		
Cleburne	33.03	30.83	13.21	Clay
33.03	30.83	13.21		
Clark	33.03	30.83	13.21	Chicot
33.03	30.83	13.21		
Carroll	33.03	30.83	13.21	Calhoun
33.03	30.83	13.21		
Bradley	33.03	30.83	13.21	Boone
33.03	30.83	13.21		
Baxter	33.03	30.83	13.21	Polk
33.03	30.83	13.21		
Poinsett	33.03	30.83	13.21	Pike
33.03	30.83	13.21		
Phillips	33.03	30.83	13.21	Perry
33.03	30.83	13.21		
Ouachita	33.03	30.83	13.21	Newton

33.03	30.83	13.21			
Nevada	33.03	30.83	13.21	Montgomery	
33.03	30.83	13.21			
Monroe	33.03	30.83	13.21	Mississippi	
33.03	30.83	13.21			
Marion	33.03	30.83	13.21	Madison	
33.03	30.83	13.21			
Logan	33.03	30.83	13.21	Little River	
33.03	30.83	13.21			
Lincoln	33.03	30.83	13.21	Lee	
33.03	30.83	13.21			
Lawrence	33.03	30.83	13.21	Lafayette	
33.03	30.83	13.21			
Johnson	33.03	30.83	13.21	Jackson	
33.03	30.83	13.21			
Izard	33.03	30.83	13.21	Independence	
33.03	30.83	13.21			
Howard	33.03	30.83	13.21	Hot Spring	
33.03	30.83	13.21			
Hempstead	33.03	30.83	13.21	Greene	
33.03	30.83	13.21			
Grant	33.03	30.83	13.21	Garland	
33.03	30.83	13.21			
Fulton	33.03	30.83	13.21	Franklin	
33.03	30.83	13.21			
Drew	33.03	30.83	13.21	Yell	
33.03	30.83	13.21			
Woodruff	33.03	30.83	13.21	White	
33.03	30.83	13.21			
Van Buren	33.03	30.83	13.21	Union	
33.03	30.83	13.21			
Stone	33.03	30.83	13.21	Sharp	
33.03	30.83	13.21			
Sevier	33.03	30.83	13.21	Searcy	
33.03	30.83	13.21			
Scott	33.03	30.83	13.21	St. Francis	

33.03	30.83	13.21			
Randolph	33.03	30.83	13.21	Prairie	
33.03	30.83	13.21			
Pope	33.03	30.83	13.21		

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH
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C A L I F O R N I A

METROPOLITAN FMR AREAS AREA within STATE	A	B	C	Counties of FMR
Bakersfield, CA MSA	47.37	44.21	18.95	Kern
Chico-Paradise, CA MSA	41.62	38.85	16.65	Butte
Fresno, CA MSA	43.31	40.42	17.32	Madera, Fresno
Los Angeles-Long Beach, CA PMSA	62.16	58.02	24.86	Los Angeles
Merced, CA MSA	40.70	37.98	16.28	Merced
Modesto, CA MSA	45.61	42.57	18.24	Stanislaus
Oakland, CA PMSA	62.16	58.02	24.86	Alameda, Contra Costa
Orange County, CA PMSA	62.16	58.02	24.86	Orange
Redding, CA MSA	43.31	40.42	17.32	Shasta
Riverside-San Bernardino, CA PMSA	49.59	46.29	19.84	Riverside, San Bernardino
Sacramento, CA PMSA	47.21	44.05	18.88	El Dorado, Sacramento, Placer
Salinas, CA MSA	53.55	49.98	21.42	Monterey
San Diego, CA MSA	55.57	51.87	22.23	San Diego
San Francisco, CA PMSA	62.16	58.02	24.86	San Mateo, San Francisco, Marin
San Jose, CA PMSA	62.16	58.02	24.86	Santa Clara
San Luis Obispo-Atascadero-Paso Robles, CA PMSA	53.80	50.22	21.52	San Luis Obispo
Santa Barbara-Santa Maria-Lompoc, CA MSA	60.69	56.64	24.28	Santa Barbara
Santa Cruz-Watsonville, CA PMSA	62.16	58.02	24.86	Santa Cruz
Santa Rosa, CA PMSA	60.63	56.59	24.25	Sonoma
Stockton-Lodi, CA MSA	45.30	42.28	18.12	San Joaquin
Vallejo-Fairfield-Napa, CA PMSA	53.96	50.36	21.59	Napa, Solano
Ventura, CA PMSA	62.16	58.02	24.86	Ventura
Visalia-Tulare-Porterville, CA MSA	40.39	37.70	16.16	Tulare
Yolo, CA PMSA	47.21	44.05	18.88	Yolo
Yuba City, CA MSA	35.72	33.34	14.29	Yuba, Sutter

NONMETROPOLITAN COUNTIES	A	B	C
Mono	39.71	37.06	15.88
Mendocino	47.52	44.36	19.01
Lassen	43.38	40.49	17.35
Kings	47.52	44.36	19.01
Imperial	44.69	41.71	17.88
Glenn	43.38	40.49	17.35
Colusa	47.52	44.36	19.01
Amador	47.52	44.36	19.01
Tuolumne	43.38	40.49	17.35
Tehama	39.71	37.06	15.88
Sierra	49.19	45.91	19.67
Plumas	53.27	49.72	21.31
Modoc	39.71	37.06	15.88
Mariposa	46.76	43.64	18.70
Lake	39.09	36.49	15.64
Inyo	45.07	42.07	18.03
Humboldt	35.95	33.56	14.38
Del Norte	35.95	33.56	14.38
Calaveras	47.52	44.36	19.01
Alpine	47.52	44.36	19.01
Trinity	39.71	37.06	15.88
Siskiyou	53.27	49.72	21.31
San Benito	39.71	37.06	15.88
Nevada	53.27	49.72	21.31

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH
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C O L O R A D O

METROPOLITAN FMR AREAS AREA within STATE	A	B	C	Counties of FMR
Boulder-Longmont, CO PMSA	47.82	44.62	19.13	Boulder
Colorado Springs, CO MSA	39.31	36.69	15.73	El Paso
Denver, CO PMSA	42.14	39.33	16.86	Arapahoe, Adams, Jefferson, Douglas, Denver
Fort Collins-Loveland, CO MSA	45.32	42.30	18.13	Larimer
Grand Junction, CO MSA	49.29	46.01	19.72	Mesa
Greeley, CO PMSA	39.08	36.47	15.63	Weld
Pueblo, CO MSA	38.92	36.33	15.57	Pueblo

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES A	B	C
Alamosa	39.00	36.40	15.60	Chaffee	43.29	40.40	17.32
Bent	33.39	31.16	13.36	Baca	33.39	31.16	13.36
Archuleta	39.00	36.40	15.60	Dolores	39.00	36.40	15.60
Delta	51.56	48.12	20.62	Custer	43.29	40.40	17.32
Crowley	33.39	31.16	13.36	Costilla	39.00	36.40	15.60
Conejos	39.00	36.40	15.60	Clear Creek	43.29	40.40	17.32
Cheyenne	33.39	31.16	13.36	Saguache	39.00	36.40	15.60
Routt	51.56	48.12	20.62	Rio Grande	39.00	36.40	15.60
Rio Blanco	49.29	46.01	19.72	Prowers	33.39	31.16	13.36
Pitkin	53.36	49.80	21.35	Phillips	33.39	31.16	13.36
Park	43.29	40.40	17.32	Ouray	51.56	48.12	20.62
Otero	33.39	31.16	13.36	Morgan	33.39	31.16	13.36
Montrose	51.56	48.12	20.62	Montezuma	39.00	36.40	15.60
Moffat	49.29	46.01	19.72	Mineral	39.00	36.40	15.60
Logan	33.39	31.16	13.36	Lincoln	33.39	31.16	13.36
Las Animas	39.00	36.40	15.60	La Plata	44.22	41.28	17.69
Lake	43.29	40.40	17.32	Kit Carson	33.39	31.16	13.36
Kiowa	33.39	31.16	13.36	Jackson	51.56	48.12	20.62
Huerfano	39.00	36.40	15.60	Hinsdale	51.56	48.12	20.62
Gunnison	51.56	48.12	20.62	Grand	51.56	48.12	20.62
Gilpin	44.80	41.82	17.92	Garfield	49.29	46.01	19.72
Fremont	43.29	40.40	17.32	Elbert	34.55	32.25	13.82
Eagle	53.36	49.80	21.35	Yuma	33.39	31.16	13.36
Washington	33.39	31.16	13.36	Teller	43.53	40.62	17.41
Summit	51.56	48.12	20.62	Sedgwick	33.39	31.16	13.36
San Miguel	53.36	49.80	21.35	San Juan	39.00	36.40	15.60

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH
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C O N N E C T I C U T

METROPOLITAN FMR AREAS FMR AREA within STATE	A	B	C	Components of
Bridgeport, CT PMSA.....	59.30	55.35	23.72	Fairfield county
towns of Bridgeport town, Easton town				Fairfield
town, Monroe town, Shelton town				Stratford
town, Trumbull town				New Haven
county towns of Ansonia town, Beacon Falls town				Derby town,
Milford town, Oxford town, Seymour town				
Danbury, CT PMSA.....	63.56	59.33	25.42	Fairfield county
towns of Bethel town, Brookfield town				Danbury town,
New Fairfield town, Newtown town				Redding town,
Ridgefield town, Sherman town				Litchfield
county towns of Bridgewater town				New Milford
town, Roxbury town, Washington town				
Hartford, CT PMSA.....	55.89	52.15	22.35	Hartford county
towns of Avon town, Berlin town				Bloomfield
town, Bristol town, Burlington town				Canton town,
East Granby town, East Hartford town				East Windsor
town, Enfield town, Farmington town				Glastonbury
town, Granby town, Hartford town				Manchester
town, Marlborough town, New Britain town				Newington
town, Plainville town, Rocky Hill town				Simsbury town,
Southington town, South Windsor town				Suffield town,
West Hartford town, Wethersfield town				Windsor town,
Windsor Locks town				Tolland county
towns of Andover town, Bolton town				Columbia town,
Coventry town, Ellington town				Hebron town,
Mansfield town, Somers town, Stafford town				Tolland town,
Vernon town, Willington town				New London
county towns of Colchester town, Lebanon town				Middlesex
county towns of Cromwell town, Durham town				East Haddam
town, East Hampton town, Haddam town				Middlefield
town, Middletown town, Portland town				Litchfield
county towns of Barkhamsted town				Harwinton
town, New Hartford town, Plymouth town				Winchester
town				Windham county
towns of Ashford town, Chaplin town				Windham town
New Haven-Meriden, CT PMSA.....	61.60	57.50	24.64	Middlesex county
towns of Clinton town, Killingworth town				New Haven
county towns of Bethany town, Branford town				Cheshire town,

East Haven town, Guilford town				Hamden town,
Madison town, Meriden town, New Haven town				North Branford
tow, North Haven town, Orange town				Wallingford
town, West Haven town, Woodbridge town				
New London-Norwich, CT-RI MSA.....	54.86	51.20	21.94	Middlesex county
towns of Old Saybrook town				Windham county
towns of Canterbury town, Plainfield town				New London
county towns of Bozrah town, East Lyme town				Franklin town,
Griswold town, Groton town, Ledyard town				Lisbon town,
Montville town, New London town				North
Stonington t, Norwich town, Old Lyme town				Preston town,
Salem town, Sprague town, Stonington town				Waterford town

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH
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C O N N E C T I C U T continued

METROPOLITAN FMR AREAS FMR AREA within STATE	A	B	C	Components of
Stamford-Norwalk, CT PMSA.....	63.56	59.33	25.42	Fairfield county
towns of Darien town, Greenwich town				New Canaan
town, Norwalk town, Stamford town				Weston town,
Westport town, Wilton town				
Waterbury, CT MSA.....	50.29	46.94	20.12	Litchfield
county towns of Bethlehem town, Thomaston town				Watertown
town, Woodbury town				New Haven
county towns of Middlebury town, Naugatuck town				Prospect town,
Southbury town, Waterbury town				Wolcott town
Worcester, MA-CT.....	52.49	48.99	21.00	Windham county
towns of Thompson town				

NONMETROPOLITAN COUNTIES non metropolitan counties	A	B	C	Towns within
Litchfield.....	52.97	49.44	21.19	Canaan town,
Colebrook town, Cornwall town, Goshen town				Kent town,
Litchfield town, Morris town, Norfolk town				North Canaan
town, Salisbury town, Sharon town				Torrington
town, Warren town				
Hartford.....	49.92	46.59	19.97	Hartland town
Windham.....	49.14	45.86	19.65	Brooklyn town,

Eastford town, Hampton town
town, Pomfret town, Putnam town, Scotland town
Killingly
Sterling town,
Woodstock town
Tolland..... 55.49 51.79 22.20 Union town
New London..... 42.59 39.75 17.04 Lyme town,
Voluntown town
Middlesex..... 59.37 55.42 23.75 Chester town,
Deep River town, Essex town
Westbrook town

D E L A W A R E

METROPOLITAN FMR AREAS AREA within STATE	A	B	C	Counties of FMR
Dover, DE MSA.....	43.89	40.96	17.56	Kent
Wilmington-Newark, DE-MD PMSA.....	51.55	48.11	20.62	New Castle

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES
Sussex.....	43.89	40.96	17.56	

D I S T . O F C O L U M B I A

METROPOLITAN FMR AREAS AREA within STATE	A	B	C	Counties of FMR
Washington, DC-MD-VA.....	63.93	59.67	25.57	District of Columbia

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH
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F L O R I D A

METROPOLITAN FMR AREAS AREA within STATE	A	B	C	Counties of FMR
Daytona Beach, FL MSA.....	43.77	40.85	17.51	Volusia, Flagler
Fort Lauderdale, FL PMSA.....	55.48	51.78	22.19	Broward
Fort Myers-Cape Coral, FL MSA.....	45.91	42.85	18.36	Lee
Fort Pierce-Port Lucie, FL MSA.....	46.51	43.42	18.61	St. Lucie, Martin
Fort Walton Beach, FL MSA.....	34.42	32.12	13.77	Okaloosa
Gainesville, FL MSA.....	39.24	36.62	15.70	Alachua
Jacksonville, FL MSA.....	41.36	38.60	16.54	St. Johns, Nassau, Duval, Clay
Lakeland-Winter Haven, FL MSA.....	36.34	33.92	14.53	Polk
Melbourne-Titusville-Palm Bay, FL MSA.....	42.10	39.30	16.84	Brevard
Miami, FL PMSA.....	59.25	55.30	23.70	Dade
Naples, FL MSA.....	47.77	44.58	19.11	Collier
Ocala, FL MSA.....	35.78	33.40	14.31	Marion
Orlando, FL MSA.....	45.60	42.56	18.24	Lake, Osceola, Orange, Seminole
Panama City, FL MSA.....	34.42	32.12	13.77	Bay
Pensacola, FL MSA.....	35.78	33.40	14.31	Santa Rosa, Escambia
Punta Gorda, FL MSA.....	44.70	41.72	17.88	Charlotte
Sarasota-Bradenton, FL MSA.....	47.92	44.73	19.17	Manatee, Sarasota
Tallahassee, FL MSA.....	38.86	36.27	15.54	Gadsden, Leon
Tampa-St. Petersburg-Clearwater, FL MSA.....	43.66	40.75	17.46	Hernando, Pasco, Hillsborough, Pinellas
West Palm Beach-Boca Raton, FL MSA.....	46.27	43.18	18.51	Palm Beach

NONMETROPOLITAN COUNTIES A	B	C	A	B	C	NONMETROPOLITAN COUNTIES
Bradford			38.03	35.50	15.21	Baker
34.42	32.12	13.77				
Glades			43.42	40.53	17.37	Gilchrist
34.42	32.12	13.77				
Franklin			34.42	32.12	13.77	Dixie
34.42	32.12	13.77				
Desoto			34.42	32.12	13.77	Columbia
34.42	32.12	13.77				
Citrus			34.42	32.12	13.77	Calhoun
34.42	32.12	13.77				
Putnam			34.42	32.12	13.77	Okeechobee
34.42	32.12	13.77				
Monroe			59.16	55.23	23.67	Madison
34.42	32.12	13.77				
Liberty			34.42	32.12	13.77	Levy
34.42	32.12	13.77				
Lafayette			34.42	32.12	13.77	Jefferson
34.42	32.12	13.77				
Jackson			34.42	32.12	13.77	Indian River
46.35	43.26	18.54				
Holmes			34.42	32.12	13.77	Highlands
34.42	32.12	13.77				
Hendry			43.42	40.53	17.37	Hardee
34.42	32.12	13.77				
Hamilton			34.42	32.12	13.77	Gulf
34.42	32.12	13.77				
Washington			34.42	32.12	13.77	Walton
34.42	32.12	13.77				
Wakulla			34.42	32.12	13.77	Union
34.42	32.12	13.77				
Taylor			34.42	32.12	13.77	Suwannee
34.42	32.12	13.77				
Sumter			34.42	32.12	13.77	

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH
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G E O R G I A

METROPOLITAN FMR AREAS AREA within STATE	A	B	C	Counties of FMR
Albany, GA MSA	33.58	31.34	13.43	Dougherty, Lee
Athens, GA MSA	34.42	32.14	13.77	Clarke, Oconee, Madison
Atlanta, GA	46.21	43.12	18.48	Clayton, Cherokee, Bartow, Barrow, Rockdale, Spalding Paulding, Newton, Henry, Gwinnett, Fulton, Forsyth Fayette, Douglas, Dekalb, Coweta, Cobb
Augusta-Aiken, GA-SC MSA	34.42	32.14	13.77	Columbia, Richmond, Mcduffie
Carroll County, GA	33.58	31.34	13.43	Carroll
Chattanooga, TN-GA MSA	37.74	35.22	15.10	Catoosa, Walker, Dade
Columbus, GA-AL MSA	33.58	31.34	13.43	Muscogee, Harris, Chattahoochee
Macon, GA MSA	34.13	31.85	13.65	Bibb, Twiggs, Peach, Jones, Houston
Pickens County, GA	33.58	31.34	13.43	Pickens
Savannah, GA MSA	35.07	32.74	14.03	Bryan, Effingham, Chatham
Walton County, GA	45.50	42.47	18.20	Walton

NONMETROPOLITAN COUNTIES A	B	C	A	B	C	NONMETROPOLITAN COUNTIES
Appling			33.58	31.34	13.43	Bacon
33.58	31.34	13.43				
Atkinson			33.58	31.34	13.43	Ben Hill
33.58	31.34	13.43				

Baldwin	33.58	31.34	13.43	Banks
Calhoun	33.58	31.34	13.43	Baker
Burke	45.50	42.47	18.20	Butts
Brooks	33.58	31.34	13.43	Bulloch
Bleckley	33.58	31.34	13.43	Brantley
Hancock	33.58	31.34	13.43	Berrien
Habersham	37.11	34.64	14.84	Hall
Grady	33.58	31.34	13.43	Greene
Glynn	33.58	31.34	13.43	Gordon
Gilmer	33.58	31.34	13.43	Glascock
Floyd	33.58	31.34	13.43	Franklin
Evans	33.58	31.34	13.43	Fannin
Elbert	33.58	31.34	13.43	Emanuel
Early	33.58	31.34	13.43	Echols
Dodge	33.58	31.34	13.43	Dooly
Dawson	33.58	31.34	13.43	Decatur
Crawford	33.58	31.34	13.43	Crisp
Colquitt	33.58	31.34	13.43	Cook

Clinch	33.58	31.34	13.43	Coffee
Chattooga	33.58	31.34	13.43	Clay
Candler	33.58	31.34	13.43	Charlton
Worth	33.58	31.34	13.43	Camden
Wilkes	33.58	31.34	13.43	Wilkinson
Whitfield	33.58	31.34	13.43	Wilcox

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH
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G E O R G I A continued

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES
White	33.58	31.34	13.43	Wheeler
Webster	33.58	31.34	13.43	Wayne
Washington	33.58	31.34	13.43	Warren
Ware	33.58	31.34	13.43	Upson
Union	33.58	31.34	13.43	Turner
Troup	33.58	31.34	13.43	Treutlen
Towns	33.58	31.34	13.43	Toombs
Tift	33.58	31.34	13.43	Thomas
Terrell	33.58	31.34	13.43	Telfair
Taylor	33.58	31.34	13.43	Tattnall
Taliaferro	33.58	31.34	13.43	Talbot
Sumter	33.58	31.34	13.43	Stewart
Stephens	33.58	31.34	13.43	Seminole
Screven	33.58	31.34	13.43	Schley
Randolph	33.58	31.34	13.43	Rabun

33.58	31.34	13.43		
Quitman	33.58	31.34	13.43	Putnam
Pulaski	33.58	31.34	13.43	Polk
Pike	33.58	31.34	13.43	Pierce
Oglethorpe	33.58	31.34	13.43	Murray
Morgan	33.58	31.34	13.43	Montgomery
Monroe	33.58	31.34	13.43	Mitchell
Miller	33.58	31.34	13.43	Meriwether
Marion	33.58	31.34	13.43	Macon
Mcintosh	33.58	31.34	13.43	Lumpkin
Lowndes	33.58	31.34	13.43	Long
Lincoln	33.58	31.34	13.43	Liberty
Laurens	33.58	31.34	13.43	Lanier
Lamar	33.58	31.34	13.43	Johnson
Jenkins	33.58	31.34	13.43	Jefferson
Jeff Davis	33.58	31.34	13.43	Jasper
Jackson	33.58	31.34	13.43	Irwin
Heard	33.58	31.34	13.43	Hart

Haralson.....	33.58	31.34	13.43

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH
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H A W A I I

METROPOLITAN FMR AREAS AREA within STATE	A	B	C	Counties of FMR
Honolulu, HI MSA.....	65.08	60.75	26.03	Honolulu

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES A B C
Hawaii.....	57.78	53.93	23.11	Maui..... 65.08 60.75 26.03
Kauai.....	65.08	60.75	26.03	

I D A H O

METROPOLITAN FMR AREAS AREA within STATE	A	B	C	Counties of FMR
Boise City, ID MSA.....	49.01	45.74	19.60	Canyon, Ada
Pocatello, ID MSA.....	39.44	36.81	15.78	Bannock

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES A B C
Adams.....	38.11	35.57	15.24	Benewah..... 39.44 36.81 15.78
Bear Lake.....	39.44	36.81	15.78	Fremont..... 42.65 39.80 17.06
Franklin.....	39.44	36.81	15.78	Elmore..... 38.11 35.57 15.24
Custer.....	42.65	39.80	17.06	Clearwater..... 39.44 36.81 15.78
Clark.....	42.65	39.80	17.06	Cassia..... 40.42 37.73 16.17

Caribou.....	39.44	36.81	15.78	Camas.....
40,42 37.73 16.17				
Butte.....	42.65	39.80	17.06	Boundary.....
39.44 36.81 15.78				
Bonneville.....	42.65	39.80	17.06	Bonner.....
39.44 36.81 15.78				
Boise.....	38.11	35.57	15.24	Blaine.....
41.84 39.05 16.74				
Bingham.....	39.44	36.81	15.78	Washington.....
38.11 35.57 15.24				
Valley.....	38.11	35.57	15.24	Twin Falls.....
40.42 37.73 16.17				
Teton.....	42.65	39.80	17.06	Shoshone.....
39.44 36.81 15.78				
Power.....	39.44	36.81	15.78	Payette.....
38.11 35.57 15.24				
Owyhee.....	38.11	35.57	15.24	Oneida.....
39.44 36.81 15.78				
Nez Perce.....	39.44	36.81	15.78	Minidoka.....
40.42 37.73 16.17				
Madison.....	42.65	39.80	17.06	Lincoln.....
40.42 37.73 16.17				
Lewis.....	39.44	36.81	15.78	Lemhi.....
42.65 39.80 17.06				
Latah.....	39.44	36.81	15.78	Kootenai.....
40.82 38.09 16.33				
Jerome.....	40.42	37.73	16.17	Jefferson.....
42.65 39.80 17.06				
Idaho.....	39.44	36.81	15.78	Gooding.....
40.42 37.73 16.17				
Gem.....	38.11	35.57	15.24	

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH
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I L L I N O I S

METROPOLITAN FMR AREAS AREA within STATE	A	B	C	Counties of FMR
Bloomington-Normal, IL MSA.....	40.80	38.08	16.32	Mclean
Champaign-Urbana, IL MSA.....	40.94	38.21	16.38	Champaign
Chicago, IL.....	58.09	54.21	23.24	Will, Mchenry, Lake, Kane, Dupage, Cook
Davenport-Moline-Rock Island, IA-IL MSA.....	41.90	39.10	16.76	Rock Island, Henry
Decatur, IL MSA.....	39.55	36.92	15.82	Macon
De Kalb County, IL.....	46.04	42.97	18.42	Dekalb
Grundy County, IL.....	59.25	55.30	23.70	Grundy
Kankakee, IL PMSA.....	39.63	37.00	15.85	Kankakee
Kendall County, Il.....	58.59	54.68	23.43	Kendall
Peoria-Pekin, IL MSA.....	45.87	42.81	18.35	Peoria, Woodford, Tazewell
Rockford, IL MSA.....	41.71	38.94	16.68	Winnebago, Ogle, Boone
St. Louis, MO-IL MSA.....	39.24	36.61	15.70	Clinton, St. Clair, Monroe, Madison, Jersey
Springfield, IL MSA.....	41.80	39.01	16.72	Sangamon, Menard

NONMETROPOLITAN COUNTIES A B C	A	B	C	NONMETROPOLITAN COUNTIES
Alexander.....	35.57	33.19	14.23	Adams.....
35.57 33.19 14.23				
Calhoun.....	35.57	33.19	14.23	Bureau.....
37.73 35.22 15.09				
Brown.....	35.57	33.19	14.23	Bond.....
35.57 33.19 14.23				

Cumberland.....	35.57	33.19	14.23	Crawford.....	
35.57 33.19 14.23					
Coles.....	35.57	33.19	14.23	Clay.....	
35.57 33.19 14.23					
Clark.....	35.57	33.19	14.23	Christian.....	
35.57 33.19 14.23					
Cass.....	35.57	33.19	14.23	Carroll.....	
35.57 33.19 14.23					
Mason.....	35.57	33.19	14.23	Marshall.....	
37.73 35.22 15.09					
Marion.....	35.57	33.19	14.23	Macoupin.....	
35.57 33.19 14.23					
Mcdonough.....	35.57	33.19	14.23	Logan.....	
35.57 33.19 14.23					
Livingston.....	35.57	33.19	14.23	Lee.....	
42.54 39.71 17.02					
Lawrence.....	35.57	33.19	14.23	La Salle.....	
42.54 39.71 17.02					
Knox.....	36.31	33.89	14.52	Johnson.....	
35.57 33.19 14.23					
Jo Daviess.....	35.57	33.19	14.23	Jefferson.....	
35.57 33.19 14.23					
Jasper.....	35.57	33.19	14.23	Jackson.....	
35.99 33.58 14.39					
Iroquois.....	35.57	33.19	14.23	Henderson.....	
35.57 33.19 14.23					
Hardin.....	35.57	33.19	14.23	Hancock.....	
35.57 33.19 14.23					
Hamilton.....	35.57	33.19	14.23	Greene.....	
35.57 33.19 14.23					
Gallatin.....	35.57	33.19	14.23	Fulton.....	
37.73 35.22 15.09					
Franklin.....	35.99	33.58	14.39	Ford.....	
35.57 33.19 14.23					
Fayette.....	35.57	33.19	14.23	Effingham.....	

35.57 33.19 14.23					
Edwards.....	35.57	33.19	14.23	Edgar.....	
35.57 33.19 14.23					
Douglas.....	35.57	33.19	14.23	De Witt.....	
35.57 33.19 14.23					
Williamson.....	35.99	33.58	14.39	Whiteside.....	
42.54 39.71 17.02					
White.....	35.57	33.19	14.23	Wayne.....	
35.57 33.19 14.23					

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH
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I L L I N O I S continued

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES
Washington	35.57	33.19	14.23	Warren
35.57 33.19 14.23				
Wabash	35.57	33.19	14.23	Vermilion
35.57 33.19 14.23				
Union	35.57	33.19	14.23	Stephenson
35.57 33.19 14.23				
Stark	37.73	35.22	15.09	Shelby
35.57 33.19 14.23				
Scott	35.57	33.19	14.23	Schuyler
35.57 33.19 14.23				
Saline	35.57	33.19	14.23	Richland
35.57 33.19 14.23				
Randolph	35.57	33.19	14.23	Putnam
37.73 35.22 15.09				
Pulaski	35.57	33.19	14.23	Pope
35.57 33.19 14.23				
Pike	35.57	33.19	14.23	Piatt
35.57 33.19 14.23				
Perry	35.57	33.19	14.23	Moultrie
35.57 33.19 14.23				
Morgan	35.57	33.19	14.23	Montgomery
35.57 33.19 14.23				
Mercer	35.57	33.19	14.23	Massac
35.57 33.19 14.23				

I N D I A N A

METROPOLITAN FMR AREAS AREA within STATE	A	B	C	Counties of FMR
Bloomington, IN MSA	35.93	33.54	14.37	Monroe
Cincinnati, OH-KY-IN	39.10	36.49	15.64	Dearborn
Elkhart-Goshen, IN MSA	35.03	32.70	14.01	Elkhart
Evansville-Henderson, IN-KY MSA	34.79	32.47	13.92	Posey, Warrick, Vanderburgh
Fort Wayne, IN MSA	36.26	33.84	14.50	Allen, Adams, Whitley, Wells, Huntington, De Kalb
Gary, IN PMSA	44.26	41.31	17.70	Porter, Lake
Indianapolis, IN MSA	40.09	37.41	16.03	Hamilton, Boone, Madison, Johnson, Hendricks, Hancock Shelby, Morgan, Marion
Kokomo, IN MSA	35.26	32.92	14.11	Howard, Tipton
Lafayette, IN MSA	38.71	36.13	15.48	Clinton, Tippecanoe
Louisville, KY-IN MSA	32.10	29.96	12.84	Clark, Scott, Harrison, Floyd
Muncie, IN MSA	33.77	31.52	13.51	Delaware
Ohio County, IN	33.77	31.52	13.51	Ohio
South Bend, IN MSA	35.69	33.30	14.28	St. Joseph
Terre Haute, IN MSA	33.77	31.52	13.51	Vermillion, Clay, Vigo

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES
Bartholomew	36.58	34.14	14.63	Blackford
33.77 31.52 13.51				
Benton	33.77	31.52	13.51	Crawford
33.77 31.52 13.51				
Cass	33.77	31.52	13.51	Carroll
33.77 31.52 13.51				
Brown	36.58	34.14	14.63	Gibson
33.77 31.52 13.51				
Fulton	33.77	31.52	13.51	Franklin
33.77 31.52 13.51				

Fountain.....		33.77	31.52	13.51	Fayette.....
33.77	31.52	13.51			
Dubois.....		33.77	31.52	13.51	Decatur.....
35.35	32.99	14.14			

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH
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I N D I A N A continued

NONMETROPOLITAN COUNTIES			A	B	C	NONMETROPOLITAN COUNTIES
A	B	C				
Daviess.....			33.77	31.52	13.51	Miami.....
33.77	31.52	13.51				
Martin.....			33.77	31.52	13.51	Marshall.....
33.77	31.52	13.51				
Lawrence.....			33.77	31.52	13.51	La Porte.....
34.96	32.62	13.98				
Lagrange.....			33.77	31.52	13.51	Kosciusko.....
33.77	31.52	13.51				
Knox.....			33.77	31.52	13.51	Jennings.....
35.35	32.99	14.14				
Jefferson.....			33.77	31.52	13.51	Jay.....
33.77	31.52	13.51				
Jasper.....			33.77	31.52	13.51	Jackson.....
35.35	32.99	14.14				
Henry.....			33.77	31.52	13.51	Greene.....
33.77	31.52	13.51				
Grant.....			33.77	31.52	13.51	White.....
33.77	31.52	13.51				
Wayne.....			33.77	31.52	13.51	Washington.....
34.72	32.41	13.89				
Warren.....			33.77	31.52	13.51	Wabash.....
33.77	31.52	13.51				
Union.....			33.77	31.52	13.51	Switzerland.....
33.77	31.52	13.51				
Sullivan.....			33.77	31.52	13.51	Steuben.....
33.77	31.52	13.51				
Starke.....			33.77	31.52	13.51	Spencer.....
33.77	31.52	13.51				
Rush.....			33.77	31.52	13.51	Ripley.....

33.77	31.52	13.51			
Randolph	33.77	31.52	13.51		Putnam
33.85	31.59	13.54			
Pulaski	33.77	31.52	13.51		Pike
33.77	31.52	13.51			
Perry	33.77	31.52	13.51		Parke
33.77	31.52	13.51			
Owen	34.24	31.96	13.70		Orange
33.77	31.52	13.51			
Noble	33.77	31.52	13.51		Newton
33.77	31.52	13.51			
Montgomery	33.77	31.52	13.51		

I O W A

METROPOLITAN FMR AREAS AREA within STATE	A	B	C	Counties of FMR
Cedar Rapids, IA MSA	40.47	37.77	16.19	Linn
Davenport-Moline-Rock Island, IA-IL MSA	41.90	39.10	16.76	Scott
Des Moines, IA MSA	41.80	39.02	16.72	Polk, Dallas, Warren
Dubuque, IA MSA	37.45	34.96	14.98	Dubuque
Iowa City, IA MSA	42.61	39.77	17.04	Johnson
Omaha, NE-IA MSA	37.21	34.73	14.88	Pottawattamie
Sioux City, IA-NE MSA	36.58	34.14	14.63	Woodbury
Waterloo-Cedar Falls, IA MSA	40.62	37.91	16.25	Black Hawk

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH
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I O W A continued

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES
A B C				
Adams	33.97	31.70	13.59	Adair
33.97	31.70	13.59		
Benton	33.97	31.70	13.59	Audubon
33.97	31.70	13.59		
Appanoose	33.97	31.70	13.59	Allamakee
33.97	31.70	13.59		
Cass	33.97	31.70	13.59	Carroll
33.97	31.70	13.59		
Calhoun	33.97	31.70	13.59	Butler
33.97	31.70	13.59		
Buena Vista	33.97	31.70	13.59	Buchanan
33.97	31.70	13.59		
Bremer	40.62	37.91	16.25	Boone
36.42	34.00	14.57		
Fayette	33.97	31.70	13.59	Emmet
33.97	31.70	13.59		
Dickinson	33.97	31.70	13.59	Des Moines
33.97	31.70	13.59		
Delaware	35.78	33.40	14.31	Decatur
33.97	31.70	13.59		
Davis	33.97	31.70	13.59	Crawford
33.97	31.70	13.59		
Clinton	35.78	33.40	14.31	Clayton
33.97	31.70	13.59		
Clay	33.97	31.70	13.59	Clarke
33.97	31.70	13.59		
Chickasaw	33.97	31.70	13.59	Cherokee
33.97	31.70	13.59		
Cerro Gordo	33.97	31.70	13.59	Cedar

	35.78	33.40	14.31		
Monona	33.97	31.70	13.59	Mitchell	
	33.97	31.70	13.59		
Mills	33.97	31.70	13.59	Marshall	
	33.97	31.70	13.59		
Marion	33.97	31.70	13.59	Mahaska	
	33.97	31.70	13.59		
Madison	33.97	31.70	13.59	Lyon	
	33.97	31.70	13.59		
Lucas	33.97	31.70	13.59	Louisa	
	33.97	31.70	13.59		
Lee	33.97	31.70	13.59	Kossuth	
	33.97	31.70	13.59		
Keokuk	33.97	31.70	13.59	Jones	
	33.97	31.70	13.59		
Jefferson	33.97	31.70	13.59	Jasper	
	33.97	31.70	13.59		
Jackson	35.78	33.40	14.31	Iowa	
	33.97	31.70	13.59		
Ida	33.97	31.70	13.59	Humboldt	
	33.97	31.70	13.59		
Howard	33.97	31.70	13.59	Henry	
	33.97	31.70	13.59		
Harrison	33.97	31.70	13.59	Hardin	
	33.97	31.70	13.59		
Hancock	33.97	31.70	13.59	Hamilton	
	33.97	31.70	13.59		
Guthrie	33.97	31.70	13.59	Grundy	
	33.97	31.70	13.59		
Greene	33.97	31.70	13.59	Fremont	
	33.97	31.70	13.59		
Franklin	33.97	31.70	13.59	Floyd	
	33.97	31.70	13.59		
Wright	33.97	31.70	13.59	Worth	
	33.97	31.70	13.59		

Winneshiek	33.97	31.70	13.59	Winnebago	
	33.97	31.70	13.59		
Webster	33.97	31.70	13.59	Wayne	
	33.97	31.70	13.59		
Washington	33.97	31.70	13.59	Wapello	
	35.71	33.32	14.28		
Van Buren	33.97	31.70	13.59	Union	
	33.97	31.70	13.59		
Taylor	33.97	31.70	13.59	Tama	
	33.97	31.70	13.59		
Story	36.90	34.43	14.76	Sioux	
	33.97	31.70	13.59		
Shelby	33.97	31.70	13.59	Sac	
	33.97	31.70	13.59		
Ringgold	33.97	31.70	13.59	Poweshiek	
	33.97	31.70	13.59		

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH
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I O W A continued

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES
Pocahontas	33.97	31.70	13.59	Plymouth
Palo Alto	33.97	31.70	13.59	Page
Osceola	33.97	31.70	13.59	O'Brien
Muscatine	33.97	31.70	13.59	Montgomery
Monroe	33.97	31.70	13.59	

K A N S A S

METROPOLITAN FMR AREAS AREA within STATE	A	B	C	Counties of FMR
Kansas City, MO-KS MSA	38.14	35.60	15.26	Johnson, Wyandotte, Miami, Leavenworth
Lawrence, KS MSA	40.71	38.00	16.28	Douglas
Topeka, KS MSA	36.84	34.39	14.74	Shawnee
Wichita, KS MSA	39.69	37.04	15.88	Butler, Sedgwick, Harvey

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES
Barber	33.77	31.52	13.51	Atchison
Anderson	33.77	31.52	13.51	Allen
Clark	33.77	31.52	13.51	Cheyenne

Cherokee	33.77	31.52	13.51	Chautauqua
Chase	33.77	31.52	13.51	Brown
Bourbon	33.77	31.52	13.51	Barton
Franklin	33.77	31.52	13.51	Ford
Finney	33.77	31.52	13.51	Ellsworth
Ellis	33.77	31.52	13.51	Elk
Edwards	33.77	31.52	13.51	Doniphan
Dickinson	33.77	31.52	13.51	Decatur
Crawford	33.77	31.52	13.51	Cowley
Comanche	33.77	31.52	13.51	Coffey
Cloud	33.77	31.52	13.51	Clay
Wallace	33.77	31.52	13.51	Wabaunsee
Trego	33.77	31.52	13.51	Thomas
Sumner	33.77	31.52	13.51	Stevens
Stanton	33.77	31.52	13.51	Stafford
Smith	33.77	31.52	13.51	Sherman
Sheridan	33.77	31.52	13.51	Seward
Scott	33.77	31.52	13.51	Saline

33.77	31.52	13.51			
Russell.....			33.77	31.52	13.51
33.77	31.52	13.51			
Rooks.....			33.77	31.52	13.51
33.77	31.52	13.51			
Rice.....			33.77	31.52	13.51
33.77	31.52	13.51			
Reno.....			33.77	31.52	13.51
33.77	31.52	13.51			
Pratt.....			33.77	31.52	13.51
33.77	31.52	13.51			

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH
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K A N S A S continued

NONMETROPOLITAN COUNTIES A	B	C	A	B	C	NONMETROPOLITAN COUNTIES
Phillips.....			33.77	31.52	13.51	Pawnee.....
33.77	31.52	13.51				
Ottawa.....			33.77	31.52	13.51	Osborne.....
33.77	31.52	13.51				
Osage.....			33.77	31.52	13.51	Norton.....
33.77	31.52	13.51				
Ness.....			33.77	31.52	13.51	Neosho.....
33.77	31.52	13.51				
Nemaha.....			33.77	31.52	13.51	Morton.....
33.77	31.52	13.51				
Morris.....			33.77	31.52	13.51	Montgomery.....
33.77	31.52	13.51				
Mitchell.....			33.77	31.52	13.51	Meade.....
33.77	31.52	13.51				
Marshall.....			33.77	31.52	13.51	Marion.....
33.77	31.52	13.51				
Mcpherson.....			33.77	31.52	13.51	Lyon.....
33.77	31.52	13.51				
Logan.....			33.77	31.52	13.51	Linn.....
33.77	31.52	13.51				
Lincoln.....			33.77	31.52	13.51	Lane.....
33.77	31.52	13.51				
Labette.....			33.77	31.52	13.51	Kiowa.....
33.77	31.52	13.51				
Kingman.....			33.77	31.52	13.51	Kearny.....
33.77	31.52	13.51				
Jewell.....			33.77	31.52	13.51	Jefferson.....
33.77	31.52	13.51				
Jackson.....			33.77	31.52	13.51	Hodgeman.....

33.77	31.52	13.51		
Haskell.....	33.77	31.52	13.51	Harper.....
33.77	31.52	13.51		
Hamilton.....	33.77	31.52	13.51	Greenwood.....
33.77	31.52	13.51		
Greeley.....	33.77	31.52	13.51	Gray.....
33.77	31.52	13.51		
Grant.....	33.77	31.52	13.51	Graham.....
33.77	31.52	13.51		
Gove.....	33.77	31.52	13.51	Geary.....
33.77	31.52	13.51		
Woodson.....	33.77	31.52	13.51	Wilson.....
33.77	31.52	13.51		
Wichita.....	33.77	31.52	13.51	Washington.....
33.77	31.52	13.51		

K E N T U C K Y

METROPOLITAN FMR AREAS AREA within STATE	A	B	C	Counties of FMR
Cincinnati, OH-KY-IN.....	39.10	36.49	15.64	Kenton, Campbell, Boone
Clarksville-Hopkinsville, TN-KY MSA.....	38.40	35.84	15.36	Christian
Evansville-Henderson, IN-KY MSA.....	34.79	32.47	13.92	Henderson
Gallatin County, KY.....	32.10	29.96	12.84	Gallatin
Grant County, KY.....	32.10	29.96	12.84	Grant
Huntington-Ashland, WV-KY-OH MSA.....	34.88	32.55	13.95	Boyd, Greenup, Carter
Lexington, KY MSA.....	35.55	33.18	14.22	Clark, Bourbon, Woodford, Scott, Madison, Jessamine
Louisville, KY-IN MSA.....	32.10	29.96	12.84	Fayette Bullitt, Oldham, Jefferson
Owensboro, KY MSA.....	32.10	29.96	12.84	Daviess
Pendleton County, KY.....	32.10	29.96	12.84	Pendleton

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH
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K E N T U C K Y continued

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES
Allen.....	32.10	29.96	12.84	Adair.....
32.10	29.96	12.84		
Bath.....	32.10	29.96	12.84	Barren.....
32.10	29.96	12.84		
Ballard.....	32.10	29.96	12.84	Anderson.....
32.70	30.52	13.08		
Henry.....	32.10	29.96	12.84	Hart.....
32.10	29.96	12.84		
Harrison.....	32.10	29.96	12.84	Harlan.....
32.10	29.96	12.84		
Hardin.....	32.10	29.96	12.84	Hancock.....
32.10	29.96	12.84		
Green.....	32.10	29.96	12.84	Grayson.....
32.10	29.96	12.84		
Graves.....	32.10	29.96	12.84	Garrard.....
32.10	29.96	12.84		
Fulton.....	32.10	29.96	12.84	Franklin.....
32.70	30.52	13.08		
Floyd.....	32.10	29.96	12.84	Fleming.....
32.10	29.96	12.84		
Estill.....	32.10	29.96	12.84	Elliott.....
32.10	29.96	12.84		
Edmonson.....	32.10	29.96	12.84	Cumberland.....
32.10	29.96	12.84		
Crittenden.....	32.10	29.96	12.84	Clinton.....
32.10	29.96	12.84		
Clay.....	32.10	29.96	12.84	Casey.....
32.10	29.96	12.84		
Carroll.....	32.10	29.96	12.84	Carlisle.....

	32.10	29.96	12.84		
Calloway	32.10	29.96	12.84	Caldwell	
	32.10	29.96	12.84		
Butler	32.10	29.96	12.84	Breckinridge	
	32.10	29.96	12.84		
Breathitt	32.10	29.96	12.84	Bracken	
	32.10	29.96	12.84		
Boyle	32.10	29.96	12.84	Bell	
	32.10	29.96	12.84		
Wolfe	32.10	29.96	12.84	Whitley	
	32.10	29.96	12.84		
Webster	32.10	29.96	12.84	Wayne	
	32.10	29.96	12.84		
Washington	32.10	29.96	12.84	Warren	
	32.10	29.96	12.84		
Union	32.10	29.96	12.84	Trimble	
	32.10	29.96	12.84		
Trigg	32.10	29.96	12.84	Todd	
	32.10	29.96	12.84		
Taylor	32.10	29.96	12.84	Spencer	
	32.10	29.96	12.84		
Simpson	32.10	29.96	12.84	Shelby	
	32.10	29.96	12.84		
Russell	32.10	29.96	12.84	Rowan	
	32.10	29.96	12.84		
Rockcastle	32.10	29.96	12.84	Robertson	
	32.10	29.96	12.84		
Pulaski	32.10	29.96	12.84	Powell	
	32.10	29.96	12.84		
Pike	32.10	29.96	12.84	Perry	
	32.10	29.96	12.84		
Owsley	32.10	29.96	12.84	Owen	
	32.10	29.96	12.84		
Ohio	32.10	29.96	12.84	Nicholas	
	32.10	29.96	12.84		

Nelson	32.10	29.96	12.84	Muhlenberg	
	32.10	29.96	12.84		
Morgan	32.10	29.96	12.84	Montgomery	
	32.10	29.96	12.84		
Monroe	32.10	29.96	12.84	Metcalfe	
	32.10	29.96	12.84		
Mercer	32.70	30.52	13.08	Menifee	
	32.10	29.96	12.84		
Meade	32.10	29.96	12.84	Mason	
	32.10	29.96	12.84		
Martin	32.10	29.96	12.84	Marshall	
	32.10	29.96	12.84		
Marion	32.10	29.96	12.84	Magoffin	
	32.10	29.96	12.84		
Mclean	32.10	29.96	12.84	Mccreary	
	32.10	29.96	12.84		

Note: A = First 600 units; B = Remainder of units; C = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH
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K E N T U C K Y continued

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES
Mccracken	32.10	29.96	12.84	Lyon
Logan	32.10	29.96	12.84	Livingston
Lincoln	32.10	29.96	12.84	Lewis
Letcher	32.10	29.96	12.84	Leslie
Lee	32.10	29.96	12.84	Lawrence
Laurel	32.10	29.96	12.84	Larue
Knox	32.10	29.96	12.84	Knott
Johnson	32.10	29.96	12.84	Jackson
Hopkins	32.10	29.96	12.84	Hickman

L O U I S I A N A

METROPOLITAN FMR AREAS AREA within STATE	A	B	C	Counties of FMR
Alexandria, LA MSA	34.22	31.94	13.69	Rapides
Baton Rouge, LA MSA	40.30	37.61	16.12	East Baton Rouge, Ascension, West Baton Rouge, Livingston
Houma, LA MSA	35.73	33.35	14.29	Terrebonne, Lafourche
Lafayette, LA MSA	40.30	37.61	16.12	St. Martin, Lafayette, St. Landry, Acadia
Lake Charles, LA MSA	34.22	31.94	13.69	Calcasieu
Monroe, LA MSA	34.22	31.94	13.69	Ouachita
New Orleans, LA	37.32	34.83	14.93	St. Tammany, St. John the Baptist, St. Charles, Plaquemines, Orleans, Jefferson St. Bernard, St. James Parish, LA
Shreveport-Bossier City, LA MSA	36.53	34.10	14.61	Bossier, Webster, Caddo

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES
Beauregard	34.22	31.94	13.69	Avoyelles
Assumption	34.22	31.94	13.69	Allen
East Carroll	34.22	31.94	13.69	De Soto
Concordia	34.22	31.94	13.69	Claiborne
Catahoula	34.22	31.94	13.69	Cameron
Caldwell	34.22	31.94	13.69	Bienville
Winn	34.22	31.94	13.69	West Feliciana
West Carroll	34.22	31.94	13.69	Washington
Vernon	34.22	31.94	13.69	Vermilion
Union	34.22	31.94	13.69	Tensas
Tangipahoa	34.22	31.94	13.69	St. Mary

St. Helena..... 34.22 31.94 13.69	34.22	31.94	13.69	Sabine.....
Richland..... 34.22 31.94 13.69	34.22	31.94	13.69	Red River.....
Pointe Coupee..... 34.22 31.94 13.69	34.22	31.94	13.69	Natchitoches.....
Morehouse..... 34.22 31.94 13.69	34.22	31.94	13.69	Madison.....
Lincoln..... 34.22 31.94 13.69	34.22	31.94	13.69	La Salle.....

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH
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L O U I S I A N A continued

NONMETROPOLITAN COUNTIES A B C	A	B	C	NONMETROPOLITAN COUNTIES
Jefferson Davis..... 34.22 31.94 13.69	34.22	31.94	13.69	Jackson.....
Iberville..... 34.22 31.94 13.69	34.22	31.94	13.69	Iberia.....
Grant..... 34.22 31.94 13.69	34.22	31.94	13.69	Franklin.....
Evangeline..... 34.22 31.94 13.69	34.22	31.94	13.69	East Feliciana.....

M A I N E

METROPOLITAN FMR AREAS FMR AREA within STATE	A	B	C	Components of
Bangor, ME MSA.....	40.42	37.72	16.17	Waldo county
towns of Winterport town				Penobscot
county towns of Bangor city, Brewer city				Eddington
town, Glenburn town, Hampden town, Hermon town				Holden town,
Kenduskeag town, Milford town				Old Town city,
Orono town, Orrington town				Penobscot
Indian I, Veazie town				
Lewiston-Auburn, ME MSA.....	39.82	37.16	15.93	Androscoggin
county towns of Auburn city, Greene town				Lewiston city,
Lisbon town, Mechanic Falls tow				Poland town,

Sabattus town, Turner town, Wales town				
Portland, ME MSA	55.65	51.93	22.26	Cumberland
county towns of Cape Elizabeth tow, Casco town				
town, Falmouth town, Freeport town				Cumberland
Gray town, North Yarmouth tow				Gorham town,
Raymond town, Scarborough town				Portland city,
cit, Standish town, Westbrook city				South Portland
Yarmouth town				Windham town,
towns of Buxton town, Hollis town				York county
town, Old Orchard Beach				Limington
Portsmouth-Rochester, NH-ME PMSA	52.27	48.79	20.91	York county
towns of Berwick town, Eliot town				
South Berwick town, York town				Kittery town,
NONMETROPOLITAN COUNTIES	A	B	C	Towns within
non metropolitan counties				
Aroostook	37.15	34.68	14.86	
Androscoggin	36.79	34.34	14.72	Durham town,
Leeds town, Livermore town				
Falls to, Minot town				Livermore
Kennebec	39.06	36.45	15.62	
Hancock	38.14	35.60	15.25	
Franklin	36.47	34.03	14.59	
Cumberland	42.55	39.71	17.02	Baldwin town,
Bridgton town, Brunswick town				
town, Harrison town, Naples town				Harpswell
tow, Pownal town, Sebago town				New Gloucester

Waldo	37.68	35.17	15.07	Belfast city,
Belmont town, Brooks town, Burnham town				
town, Freedom town, Islesboro town				Frankfort
Knox town, Liberty town, Lincolnville town				Jackson town,
Montville town, Morrill town				Monroe town,
town, Palermo town, Prospect town				Northport
town, Searsport town, Stockton Springs t				Searsmont
town, Thorndike town, Troy town, Unity town				Swanville

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH
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M A I N E continued

NONMETROPOLITAN COUNTIES non metropolitan counties	A	B	C	Towns within
Somerset	37.07	34.60	14.83	Waldo town
Sagadahoc	44.60	41.62	17.84	
Piscataquis	32.73	30.55	13.09	
Penobscot	37.68	35.17	15.07	Alton town, Argyle unorg., Bradford town, Bradley town
				Burlington town, Carmel town, Carroll plantation
				Charleston town, Chester town, Clifton town
				Corinna town, Corinth town, Dexter town, Dixmont town
				Drew plantation, East Central Penob, East Millinocket t
				Edinburg town, Enfield town, Etna town, Exeter town
				Garland town, Greenbush town, Greenfield town
				Howland town, Hudson town, Kingman unorg., Lagrange town
				Lakeville town, Lee town, Levant town, Lincoln town
				Lowell town, Mattawamkeag town, Maxfield town
				Medway town, Millinocket town, Mount Chase town
				Newburgh town, Newport town, North Penobscot un
				Passadumkeag town, Patten town, Plymouth town
				Prentiss plantatio, Seboeis plantation, Springfield town
				Stacyville town, Stetson town, Twombly unorg.
				Webster plantation, Whitney unorg., Winn town
				Woodville town
Oxford	36.47	34.03	14.59	
Lincoln	38.37	35.82	15.35	
Knox	39.00	36.40	15.60	
York	48.95	45.69	19.58	Acton town, Alfred town, Arundel town, Biddeford city
				Cornish town, Dayton town, Kennebunk town
				Kennebunkport town, Lebanon town, Limerick town
				Lyman town, Newfield town, North Berwick town
				Ogunquit town, Parsonsfield town, Saco city
				Sanford town, Shapleigh town, Waterboro town, Wells town
Washington	37.68	35.17	15.07	

M A R Y L A N D

METROPOLITAN FMR AREAS AREA within STATE	A	B	C	Counties of FMR
Baltimore, MD	46.63	43.52	18.65	Baltimore, Anne Arundel, Queen Anne's, Howard, Harford
				Carroll, Baltimore city
Columbia, MD	61.62	57.51	24.65	Columbia
Cumberland, MD-WV MSA	33.10	30.89	13.24	Allegany
Hagerstown, MD PMSA	36.58	34.14	14.63	Washington
Washington, DC-MD-VA	63.93	59.67	25.57	Montgomery, Frederick, Charles, Calvert, Prince George's
Wilmington-Newark, DE-MD PMSA	51.55	48.11	20.62	Cecil

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH
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M A R Y L A N D continued

NONMETROPOLITAN COUNTIES	A	B	C
Dorchester	35.26	32.91	14.10
33.79	31.54	13.51	
Somerset	35.26	32.91	14.10
49.80	46.48	19.92	
Kent	37.13	34.66	14.85
33.10	30.89	13.24	
Worcester	36.34	33.92	14.54
41.91	39.11	16.76	
Talbot	40.58	37.87	16.23

M A S S A C H U S E T T S

METROPOLITAN FMR AREAS FMR AREA within STATE	A	B	C	Components of
Barnstable-Yarmouth, MA MSA	62.89	58.70	25.16	Barnstable
county towns of Barnstable town, Brewster town				
Dennis town, Eastham town, Harwich town				Chatham town,
Orleans town, Sandwich town, Yarmouth town				Mashpee town,
Boston, MA-NH PMSA	62.74	58.55	25.10	Norfolk county
towns of Bellingham town, Braintree town				
town, Canton town, Cohasset town, Dedham town				Brookline
Foxborough town, Franklin town				Dover town,
Medfield town, Medway town, Millis town				Holbrook town,
Needham town, Norfolk town, Norwood town				Milton town,

town, Quincy city, Randolph town, Sharon town	Plainville
town, Walpole town, Wellesley town	Stoughton
Weymouth town, Wrentham town	Westwood town,
county towns of Acton town, Arlington town	Middlesex
Ayer town, Bedford town, Belmont town	Ashland town,
town, Burlington town, Cambridge city	Boxborough
Concord town, Everett city	Carlisle town,
town, Holliston town, Hopkinton town	Framingham
Lexington town, Lincoln town	Hudson town,
town, Malden city, Marlborough city	Littleton
Medford city, Melrose city, Natick town	Maynard town,
North Reading town, Reading town	Newton city,
Shirley town, Somerville city	Sherborn town,
Stow town, Sudbury town, Townsend town	Stoneham town,
town, Waltham city, Watertown town	Wakefield
Weston town, Wilmington town	Wayland town,
town, Woburn city	Winchester
towns of Amesbury town, Beverly city	Essex county
Essex town, Gloucester city, Hamilton town	Danvers town,
	Ipswich town,

Lynn city, Lynnfield town, Manchester town				Marblehead
town, Middleton town, Nahant town				Newbury town,
Newburyport city, Peabody city				Rockport town,
Rowley town, Salem city, Salisbury town				Saugus town,
Swampscott town, Topsfield town				Wenham town
towns of Berkley town, Dighton town				Bristol county Mansfield
town, Norton town, Taunton city				Worcester
county towns of Berlin town, Blackstone town				Bolton town,
Harvard town, Hopedale town, Lancaster town				

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH
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M A S S A C H U S E T T S continued

METROPOLITAN FMR AREAS FMR AREA within STATE	A	B	C	Components of
Milford town, Millville town				Mendon town, Southborough
town, Upton town				Suffolk county
towns of Boston city, Chelsea city				Revere city,
Winthrop town				Plymouth county
towns of Carver town, Duxbury town				Hanover town,
Hingham town, Hull town, Kingston town				Marshfield
town, Norwell town, Pembroke town				Plymouth town,
Rockland town, Scituate town				Wareham town
Brockton, MA PMSA.....	52.19	48.71	20.88	Bristol county
towns of Easton town, Raynham town				Plymouth county
towns of Abington town, Bridgewater town				Brockton city,
East Bridgewater t, Halifax town				Hanson town,
Lakeville town, Middleborough town				Plympton town,
West Bridgewater t, Whitman town				Norfolk county
towns of Avon town Fitchburg-Leominster, MA MSA.....	52.58	49.08	21.03	Worcester county
towns of Ashburnham town, Fitchburg city				

Leominster city, Lunenburg town				Gardner city,
town, Westminster town, Winchendon town				Templeton
county towns of Ashby town				Middlesex
Lawrence, MA-NH PMSA	50.41	47.05	20.16	Essex county
towns of Andover town, Boxford town				Georgetown
town, Groveland town, Haverhill city				Lawrence city,
Merrimac town, Methuen town				North Andover
town, West Newbury town				
Lowell, MA-NH PMSA	52.66	49.14	21.06	Middlesex county
towns of Billerica town, Chelmsford town				Dracut town,
Dunstable town, Groton town, Lowell city				Pepperell
town, Tewksbury town, Tyngsborough town				Westford town
New Bedford, MA MSA	45.52	42.49	18.21	Plymouth county
towns of Marion town, Mattapoisett town				Rochester town
				Bristol county
towns of Acushnet town, Dartmouth town				Fairhaven
town, Freetown town, New Bedford city				
Pittsfield, MA MSA	48.16	44.95	19.26	Berkshire county
towns of Adams town, Cheshire town				Dalton town,
Hinsdale town, Lanesborough town, Lee town				Lenox town,
Pittsfield city, Richmond town				Stockbridge
town				
Providence-Fall River-Warwick, RI-MA PMSA	51.92	48.45	20.77	Bristol county

towns of Attleboro city, Fall River city				North
Attleborough, Rehoboth town, Seekonk town				Somerset town,
Swansea town, Westport town				
Springfield, MA MSA	47.15	44.00	18.86	Hampden county
towns of Agawam town, Chicopee city				East
Longmeadow to, Hampden town, Holyoke city				Longmeadow
town, Ludlow town, Monson town				Montgomery
town, Palmer town, Russell town				Southwick
town, Springfield city, Westfield city				West
Springfield t, Wilbraham town				Franklin county
towns of Sunderland town				Hampshire
county towns of Amherst town, Belchertown town				Easthampton
town, Granby town, Hadley town				

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH
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M A S S A C H U S E T T S continued

METROPOLITAN FMR AREAS FMR AREA within STATE	A	B	C	Components of
Huntington town, Northampton city				Hatfield town,
town, South Hadley town, Ware town				Southampton
town				Williamsburg
Worcester, MA-CT.....	52.49	48.99	21.00	Hampden county
towns of Holland town				Worcester
county towns of Auburn town, Barre town				Boylston town,
Brookfield town, Charlton town				Clinton town,
Douglas town, Dudley town				East
Brookfield to, Grafton town, Holden town				Leicester
town, Millbury town, Northborough town				Northbridge
town, North Brookfield t, Oakham town				Oxford town,
Paxton town, Princeton town, Rutland town				Shrewsbury
town, Southbridge town, Spencer town				Sterling town,
Sturbridge town, Sutton town				Uxbridge town,
Webster town, Westborough town				West Boylston
town, West Brookfield to, Worcester city				

NONMETROPOLITAN COUNTIES non metropolitan counties	A	B	C	Towns within
Barnstable.....	62.89	58.70	25.16	Bourne town,
Falmouth town, Provincetown town				Truro town,
Wellfleet town				
Hampden.....	45.92	42.85	18.37	Blandford town,
Brimfield town, Chester town				Granville
town, Tolland town, Wales town				
Franklin.....	47.77	44.59	19.11	Ashfield town,
Bernardston town, Buckland town				Charlemont
town, Colrain town, Conway town				Deerfield
town, Erving town, Gill town, Greenfield town				Hawley town,
Heath town, Leverett town, Leyden town				Monroe town,
Montague town, New Salem town				Northfield
town, Orange town, Rowe town, Shelburne town				Shutesbury
town, Warwick town, Wendell town				Whately town
Dukes.....	62.89	58.70	25.16	
Berkshire.....	42.42	39.59	16.97	Alford town,
Becket town, Clarksburg town, Egremont town				Florida town,
Great Barrington t, Hancock town				Monterey town,
Mount Washington t, New Ashford town				New
Marlborough to, North Adams city, Otis town				Peru town,
Sandisfield town, Savoy town, Sheffield town				Tyringham
town, Washington town, West Stockbridge t				

				Williamstown town, Windsor town
Worcester	47.07	43.94	18.83	Athol town, Hardwick town, Hubbardston town, New Braintree town, Petersham town, Phillipston town, Royalston town, Warren town
Nantucket	62.89	58.70	25.16	
Hampshire	57.62	53.78	23.05	Chesterfield town, Cummington town, Goshen town, Middlefield town, Pelham town, Plainfield town, Westhampton town, Worthington town

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH
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M I C H I G A N

METROPOLITAN FMR AREAS AREA within STATE	A	B	C	Counties of FMR
Ann Arbor, MI PMSA	51.86	48.40	20.74	Lenawee, Washtenaw, Livingston
Benton Harbor, MI MSA	37.94	35.41	15.17	Berrien
Detroit, MI PMSA	43.52	40.62	17.41	Lapeer, Wayne, St. Clair, Oakland, Monroe, Macomb
Flint, MI PMSA	37.46	34.96	14.98	Genesee
Grand Rapids-Muskegon-Holland, MI MSA	41.08	38.34	16.43	Kent, Allegan, Ottawa, Muskegon
Jackson, MI MSA	37.61	35.11	15.05	Jackson
Kalamazoo-Battle Creek, MI MSA	39.22	36.62	15.69	Calhoun, Van Buren, Kalamazoo
Lansing-East Lansing, MI MSA	41.73	38.94	16.69	Eaton, Clinton, Ingham
Saginaw-Bay City-Midland, MI MSA	37.21	34.73	14.88	Bay, Saginaw, Midland

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Antrim	36.97	34.51	14.79	Alpena	34.48	32.18	13.79
Alger	34.48	32.18	13.79	Alcona	34.48	32.18	13.79
Cheboygan	34.48	32.18	13.79	Charlevoix	36.97	34.51	14.79
Cass	34.48	32.18	13.79	Branch	34.72	32.40	13.89
Benzie	36.97	34.51	14.79	Barry	35.93	33.54	14.37

Arenac	34.48	32.18	13.79	Baraga
Iosco	34.48	32.18	13.79	Iron
Huron	34.56	32.25	13.82	Ionia
Hillsdale	34.48	32.18	13.79	Houghton
Grand Traverse	37.21	34.73	14.88	Gratiot
Gladwin	34.48	32.18	13.79	Gogebic
Dickinson	36.97	34.51	14.79	Emmet
Crawford	34.48	32.18	13.79	Delta
Chippewa	34.48	32.18	13.79	Clare
Tuscola	36.97	34.51	14.79	Wexford
Schoolcraft	36.73	34.28	14.69	Shiawassee
St. Joseph	34.48	32.18	13.79	Sanilac
Presque Isle	34.48	32.18	13.79	Roscommon
Oscoda	34.48	32.18	13.79	Otsego
Ontonagon	34.48	32.18	13.79	Osceola
Oceana	34.48	32.18	13.79	Ogemaw
Montmorency	34.48	32.18	13.79	Newaygo
Missaukee	34.48	32.18	13.79	Montcalm

Mecosta	34.48	32.18	13.79	Menominee
Marquette	36.97	34.51	14.79	Mason
Mackinac	36.97	34.51	14.79	Manistee
Leelanau	34.48	32.18	13.79	Luce
Keweenaw	34.48	32.18	13.79	Lake
Isabella	36.97	34.51	14.79	Kalkaska

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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M I N N E S O T A

METROPOLITAN FMR AREAS AREA within STATE	A	B	C	Counties of FMR
Duluth-Superior, MN-WI MSA	36.59	34.15	14.64	St. Louis
Fargo-Moorhead, ND-MN MSA	36.97	34.50	14.79	Clay
Grand Forks, ND-MN MSA	35.33	32.98	14.13	Polk
La Crosse, WI-MN MSA	40.47	37.76	16.19	Houston
Minneapolis-St. Paul, MN-WI MSA	49.47	46.18	19.79	Carver, Anoka, Isanti, Hennepin, Dakota, Chisago, Wright Sherburne, Scott, Ramsey Washington,
Rochester, MN MSA	40.96	38.23	16.38	Olmsted
St. Cloud, MN MSA	37.69	35.18	15.08	Stearns, Benton

NONMETROPOLITAN COUNTIES A B C	A	B	C	NONMETROPOLITAN COUNTIES A B C
Faribault	33.61	31.37	13.45	Douglas
33.61 31.37 13.45				
Dodge	33.61	31.37	13.45	Crow Wing
33.61 31.37 13.45				
Cottonwood	33.61	31.37	13.45	Cook
33.61 31.37 13.45				
Clearwater	33.61	31.37	13.45	Chippewa
33.61 31.37 13.45				
Cass	33.61	31.37	13.45	Carlton
33.61 31.37 13.45				
Brown	33.61	31.37	13.45	Blue Earth
36.75 34.30 14.70				
Big Stone	33.61	31.37	13.45	Beltrami
33.61 31.37 13.45				
Becker	33.61	31.37	13.45	Aitkin
34.70 32.39 13.88				
Yellow Medicine	33.61	31.37	13.45	Winona
34.08 31.81 13.63				
Wilkin	33.61	31.37	13.45	Watonwan
33.61 31.37 13.45				
Waseca	33.61	31.37	13.45	Wadena
33.61 31.37 13.45				
Wabasha	33.61	31.37	13.45	Traverse
33.61 31.37 13.45				
Todd	33.61	31.37	13.45	Swift
33.61 31.37 13.45				
Stevens	33.61	31.37	13.45	Steele
36.67 34.23 14.67				
Sibley	34.94	32.62	13.98	Roseau
33.61 31.37 13.45				
Rock	33.61	31.37	13.45	Rice
37.77 35.25 15.11				
Renville	35.26	32.91	14.10	Redwood
33.61 31.37 13.45				
Red Lake	33.61	31.37	13.45	Pope
33.61 31.37 13.45				
Pipestone	33.61	31.37	13.45	Pine
33.61 31.37 13.45				
Pennington	33.61	31.37	13.45	Otter Tail
33.61 31.37 13.45				
Norman	33.61	31.37	13.45	Nobles
33.61 31.37 13.45				
Nicollet	35.41	33.05	14.17	Murray
33.61 31.37 13.45				
Mower	33.61	31.37	13.45	Morrison
33.61 31.37 13.45				
Mille Lacs	33.61	31.37	13.45	Meeker
35.26 32.91 14.10				
Martin	33.61	31.37	13.45	Marshall
33.61 31.37 13.45				

Mahnomen.....	33.61	31.37	13.45	Mcleod.....	
35.26	32.91	14.10			
Lyon.....	33.61	31.37	13.45	Lincoln.....	
33.61	31.37	13.45			
Le Sueur.....	34.94	32.62	13.98	Lake of the Woods.....	
33.61	31.37	13.45			
Lake.....	33.61	31.37	13.45	Lac qui Parle.....	
33.61	31.37	13.45			
Koochiching.....	33.61	31.37	13.45	Kittson.....	
33.61	31.37	13.45			
Kandiyohi.....	35.26	32.91	14.10	Kanabec.....	
33.61	31.37	13.45			

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH
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M I N N E S O T A continued

NONMETROPOLITAN COUNTIES A	B	C	A	B	C	NONMETROPOLITAN COUNTIES A	B	C
Jackson.....			33.61	31.37	13.45	Itasca.....		
33.61	31.37	13.45						
Hubbard.....			33.61	31.37	13.45	Grant.....		
33.61	31.37	13.45						
Goodhue.....			33.61	31.37	13.45	Freeborn.....		
36.67	34.23	14.67						
Fillmore.....			33.61	31.37	13.45			

M I S S I S S I P P I

METROPOLITAN FMR AREAS AREA within STATE	A	B	C	Counties of FMR
Biloxi-Gulfport-Pascagpula, MS MSA.....	33.84	31.58	13.53	Hancock,
Jackson, Harrison				
Hattiesburg, MS MSA.....	33.84	31.58	13.53	Lamar, Forrest
Jackson, MS MSA.....	39.92	37.26	15.97	Madison, Hinds,
Rankin				
Memphis, TN-AR-MS MSA.....	37.90	35.38	15.16	Desoto

NONMETROPOLITAN COUNTIES A	B	C	A	B	C	NONMETROPOLITAN COUNTIES A	B	C
Alcorn.....			33.84	31.58	13.53	Adams.....		
33.84	31.58	13.53						
Warren.....			33.84	31.58	13.53	Walthall.....		
33.84	31.58	13.53						
Union.....			33.84	31.58	13.53	Tunica.....		
33.84	31.58	13.53						
Tishomingo.....			33.84	31.58	13.53	Tippah.....		
33.84	31.58	13.53						

Tate.....	33.84	31.58	13.53	Tallahatchie.....	
33.84	31.58	13.53			
Sunflower.....	33.84	31.58	13.53	Stone.....	
33.84	31.58	13.53			
Smith.....	33.84	31.58	13.53	Simpson.....	
33.84	31.58	13.53			
Sharkey.....	33.84	31.58	13.53	Scott.....	
33.84	31.58	13.53			
Quitman.....	33.84	31.58	13.53	Prentiss.....	
33.84	31.58	13.53			
Pontotoc.....	33.84	31.58	13.53	Pike.....	
33.84	31.58	13.53			
Perry.....	33.84	31.58	13.53	Pearl River.....	
33.84	31.58	13.53			
Panola.....	33.84	31.58	13.53	Oktibbeha.....	
33.84	31.58	13.53			
Noxubee.....	33.84	31.58	13.53	Newton.....	
33.84	31.58	13.53			
Neshoba.....	33.84	31.58	13.53	Montgomery.....	
33.84	31.58	13.53			
Monroe.....	33.84	31.58	13.53	Marshall.....	
33.84	31.58	13.53			
Marion.....	33.84	31.58	13.53	Lowndes.....	
33.84	31.58	13.53			
Lincoln.....	33.84	31.58	13.53	Leflore.....	
33.84	31.58	13.53			
Lee.....	33.84	31.58	13.53	Leake.....	
33.84	31.58	13.53			
Lawrence.....	33.84	31.58	13.53	Lauderdale.....	
33.84	31.58	13.53			
Lafayette.....	33.84	31.58	13.53	Kemper.....	
33.84	31.58	13.53			
Jones.....	33.84	31.58	13.53	Jefferson Davis.....	
33.84	31.58	13.53			
Jefferson.....	33.84	31.58	13.53	Jasper.....	
33.84	31.58	13.53			
Itawamba.....	33.84	31.58	13.53	Issaquena.....	
33.84	31.58	13.53			
Humphreys.....	33.84	31.58	13.53	Holmes.....	
33.84	31.58	13.53			
Grenada.....	33.84	31.58	13.53	Greene.....	
33.84	31.58	13.53			
George.....	33.84	31.58	13.53	Franklin.....	
33.84	31.58	13.53			

Note: A = First 600 units; B = Remainder of units; C = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH
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M I S S I S S I P P I continued

NONMETROPOLITAN COUNTIES	A	B	C
Covington	33.84	31.58	13.53
Coahoma	33.84	31.58	13.53
Clarke	33.84	31.58	13.53
Choctaw	33.84	31.58	13.53
Carroll	33.84	31.58	13.53
Bolivar	33.84	31.58	13.53
Attala	33.84	31.58	13.53
Yazoo	33.84	31.58	13.53
Winston	33.84	31.58	13.53
Webster	33.84	31.58	13.53
Washington	33.84	31.58	13.53

M I S S O U R I

METROPOLITAN FMR AREAS AREA within STATE	A	B	C	Counties of FMR
Columbia, MO MSA	33.59	31.34	13.44	Boone
Joplin, MO MSA	33.39	31.16	13.36	Newton, Jasper
Kansas City, MO-KS MSA	38.14	35.60	15.26	Clay, Cass, Platte, Lafayette, Jackson, Clinton, Ray
St. Joseph, MO MSA	33.39	31.16	13.36	Andrew, Buchanan
St. Louis, MO-IL MSA	39.24	36.61	15.70	Crawford-Sullivan (part), St. Charles, Lincoln, Jefferson Franklin, St. Louis city, Warren, St. Louis
Springfield, MO MSA	33.39	31.16	13.36	Christian, Webster, Greene

NONMETROPOLITAN COUNTIES	A	B	C
Atchison	33.39	31.16	13.36
Hickory	33.39	31.16	13.36
Harrison	33.39	31.16	13.36
Gentry	33.39	31.16	13.36
Dunklin	33.39	31.16	13.36
Dent	33.39	31.16	13.36
Daviess	33.39	31.16	13.36
Dade	33.39	31.16	13.36
Cooper	33.39	31.16	13.36
Clark	33.39	31.16	13.36
Cedar	33.39	31.16	13.36
Carroll	33.39	31.16	13.36

NONMETROPOLITAN COUNTIES
Copiah
Clay
Claiborne
Chickasaw
Calhoun
Benton
Amite
Yalobusha
Wilkinson
Wayne

NONMETROPOLITAN COUNTIES
Adair
Henry
Grundy
Gasconade
Douglas
Dekalb
Dallas
Crawford
Cole
Chariton
Carter
Cape Girardeau

33.39	31.16	13.36			
Camden.....	33.39	31.16	13.36	Callaway.....	
33.39	31.16	13.36			
Caldwell.....	33.39	31.16	13.36	Butler.....	
33.39	31.16	13.36			
Bollinger.....	33.39	31.16	13.36	Benton.....	
33.39	31.16	13.36			
Bates.....	33.39	31.16	13.36	Barton.....	
33.39	31.16	13.36			

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH
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M I S S O U R I continued

NONMETROPOLITAN COUNTIES A	B	C	A	B	C	NONMETROPOLITAN COUNTIES
Barry.....	33.39	31.16	13.36	Audrain.....		
33.39	31.16	13.36				
Wright.....	33.39	31.16	13.36	Worth.....		
33.39	31.16	13.36				
Wayne.....	33.39	31.16	13.36	Washington.....		
33.39	31.16	13.36				
Vernon.....	33.39	31.16	13.36	Texas.....		
33.39	31.16	13.36				
Taney.....	33.39	31.16	13.36	Sullivan.....		
33.39	31.16	13.36				
Stone.....	33.39	31.16	13.36	Stoddard.....		
33.39	31.16	13.36				
Shelby.....	33.39	31.16	13.36	Shannon.....		
33.39	31.16	13.36				
Scott.....	33.39	31.16	13.36	Scotland.....		
33.39	31.16	13.36				
Schuyler.....	33.39	31.16	13.36	Saline.....		
33.39	31.16	13.36				
St. Francois.....	33.39	31.16	13.36	Ste. Genevieve.....		
33.39	31.16	13.36				
St. Clair.....	33.39	31.16	13.36	Ripley.....		
33.39	31.16	13.36				
Reynolds.....	33.39	31.16	13.36	Randolph.....		
33.39	31.16	13.36				
Ralls.....	33.39	31.16	13.36	Putnam.....		
33.39	31.16	13.36				
Pulaski.....	33.39	31.16	13.36	Polk.....		
33.39	31.16	13.36				
Pike.....	33.39	31.16	13.36	Phelps.....		

	33.39	31.16	13.36	
Pettis	33.39	31.16	13.36	Perry
	33.39	31.16	13.36	
Pemiscot	33.39	31.16	13.36	Ozark
	33.39	31.16	13.36	
Osage	33.39	31.16	13.36	Oregon
	33.39	31.16	13.36	
Nodaway	33.39	31.16	13.36	New Madrid
	33.39	31.16	13.36	
Morgan	33.39	31.16	13.36	Montgomery
	33.39	31.16	13.36	
Monroe	33.39	31.16	13.36	Moniteau
	33.39	31.16	13.36	
Mississippi	33.39	31.16	13.36	Miller
	33.39	31.16	13.36	
Mercer	33.39	31.16	13.36	Marion
	33.39	31.16	13.36	
Maries	33.39	31.16	13.36	Madison
	33.39	31.16	13.36	
Macon	33.39	31.16	13.36	Mcdonald
	33.39	31.16	13.36	
Livingston	33.39	31.16	13.36	Linn
	33.39	31.16	13.36	
Lewis	33.39	31.16	13.36	Lawrence
	33.39	31.16	13.36	
Laclede	33.39	31.16	13.36	Knox
	33.39	31.16	13,36	
Johnson	33.39	31.16	13.36	Iron
	33.39	31.16	13.36	
Howell	33.39	31.16	13.36	Howard
	33.39	31.16	13.36	
Holt	33.39	31.16	13.36	

•M O N T A N A

METROPOLITAN FMR AREAS AREA within STATE	A	B	C	Counties of FMR
Billings, MT MSA	45.29	42.27	18.12	Yellowstone
Great Falls, MT MSA	40.10	37.43	16.04	Cascade

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH
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M O N T A N A continued

NONMETROPOLITAN COUNTIES	A	B	C
Beaverhead	39.94	37.28	15.98
Big Horn	37.63	35.12	15.05
Wheatland	37.63	35.12	15.05
Treasure	37.63	35.12	15.05
Teton	37.14	34.66	14.86
Stillwater	37.63	35.12	15.05
Sheridan	37.14	34.66	14.86
Rosebud	37.63	35.12	15.05
Richland	37.63	35.12	15.05
Prairie	37.63	35.12	15.05
Powder River	37.63	35.12	15.05
Phillips	37.14	34.66	14.86
Park	39.94	37.28	15.98
Missoula	40.76	38.05	16.31
Meagher	39.94	37.28	15.98
Mccone	37.63	35.12	15.05
Liberty	37.14	34.66	14.86
Lake	40.76	38.05	16.31
Jefferson	39.94	37.28	15.98
Granite	39.94	37.28	15.98
Glacier	37.14	34.66	14.86
Gallatin	44.80	41.81	17.92
Fergus	37.63	35.12	15.05
Deer Lodge	39.94	37.28	15.98
Daniels	37.14	34.66	14.86
Chouteau	37.14	34.66	14.86
Carbon	37.63	35.12	15.05

NONMETROPOLITAN COUNTIES	A	B	C
Blaine	37.14	34.66	14.86
Wibaux	37.63	35.12	15.05
Valley	37.14	34.66	14.86
Toole	37.14	34.66	14.86
Sweet Grass	37.63	35.12	15.05
Silver Bow	39.94	37.28	15.98
Sanders	40.76	38.05	16.31
Roosevelt	37.14	34.66	14.86
Ravalli	40.76	38.05	16.31
Powell	39.94	37.28	15.98
Pondera	37.14	34.66	14.86
Petroleum	37.63	35.12	15.05
Musselshell	37.63	35.12	15.05
Mineral	40.76	38.05	16.31
Madison	39.94	37.28	15.98
Lincoln	46.45	43.35	18.58
Lewis and Clark	37.63	35.12	15.05
Judith Basin	37.14	34.66	14.86
Hill	37.63	35.12	15.05
Golden Valley	37.63	35.12	15.05
Garfield	37.63	35.12	15.05
Flathead	40.76	38.05	16.31
Fallon	37.63	35.12	15.05
Dawson	37.63	35.12	15.05
Custer	37.63	35.12	15.05
Carter	37.63	35.12	15.05
Broadwater	39.94	37.28	15.98

N E B R A S K A

METROPOLITAN FMR AREAS AREA within STATE	A	B	C	Counties of FMR
Lincoln, NE MSA	36.73	34.27	14.69	Lancaster
Omaha, NE-IA MSA	37.21	34.73	14.88	Washington, Sarpy, Douglas, Cass
Sioux City, IA-NE MSA	36.58	34.14	14.63	Dakota

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH
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N E B R A S K A continued

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES
Adams	33.16	30.95	13.27	Arthur
Antelope	33.16	30.95	13.27	Box Butte
Boone	33.16	30.95	13.27	Blaine
Banner	33.16	30.95	13.27	Rock
Richardson	33.16	30.95	13.27	Red Willow
Polk	33.16	30.95	13.27	Platte
Pierce	33.16	30.95	13.27	Phelps
Perkins	33.16	30.95	13.27	Pawnee
Otoe	33.16	30.95	13.27	Nuckolls
Nemaha	33.16	30.95	13.27	Nance
Morrill	33.16	30.95	13.27	Merrick
Madison	33.16	30.95	13.27	Mcpherson
Loup	33.16	30.95	13.27	Logan
Lincoln	33.16	30.95	13.27	Knox
Kimball	33.16	30.95	13.27	Keya Paha
Keith	33.16	30.95	13.27	Kearney
Johnson	33.16	30.95	13.27	Jefferson
Howard	33.16	30.95	13.27	Hooker
Holt	33.16	30.95	13.27	Hitchcock
Hayes	33.16	30.95	13.27	Harlan
Hamilton	33.16	30.95	13.27	Hall
Greeley	33.16	30.95	13.27	Grant
Gosper	33.16	30.95	13.27	Garfield
Garden	33.16	30.95	13.27	Gage
Furnas	33.16	30.95	13.27	Frontier
Franklin	33.16	30.95	13.27	Fillmore
Dundy	33.16	30.95	13.27	Dodge
Dixon	33.16	30.95	13.27	Deuel
Dawson	33.16	30.95	13.27	Dawes
Custer	33.16	30.95	13.27	Cuming
Colfax	33.16	30.95	13.27	Clay
Cheyenne	33.16	30.95	13.27	Cherry

Chase	33.16	30.95	13.27	Cedar
Butler	33.16	30.95	13.27	Burt
Buffalo	33.16	30.95	13.27	Brown
Boyd	33.16	30.95	13.27	York
Wheeler	33.16	30.95	13.27	Webster
Wayne	33.16	30.95	13.27	Valley
Thurston	33.16	30.95	13.27	Thomas
Thayer	33.16	30.95	13.27	Stanton

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH
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N E B R A S K A continued

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES
Sioux	33.16	30.95	13.27	Sherman
Sheridan	33.16	30.95	13.27	Seward
Scotts Bluff	33.16	30.95	13.27	Saunders
Saline	33.16	30.95	13.27	

N E V A D A

METROPOLITAN FMR AREAS AREA within STATE	A	B	C	Counties of FMR
Las Vegas, NV-AZ MSA	55.08	51.41	22.03	Nye, Clark
Reno, NV MSA	47.71	44.53	19.09	Washoe

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES
Churchill	48.10	44.90	19.24	Eureka
Esmeralda	48.10	44.90	19.24	Elko
Douglas	49.79	46.47	19.91	White Pine
Storey	48.10	44.90	19.24	Pershing
Mineral	48.10	44.90	19.24	Lyon
Lincoln	48.10	44.90	19.24	Lander

48.10	44.90	19.24		
Humboldt.....	48.10	44.90	19.24	Carson City.....
48.10	44.90	19.24		

N E W H A M P S H I R E

METROPOLITAN FMR AREAS FMR AREA within STATE	A	B	C	Components of
Boston, MA-NH PMSA.....	62.74	58.55	25.10	Rockingham
county towns of Seabrook town				South Hampton
town				
Lawrence, MA-NH PMSA.....	50.41	47.05	20.16	Rockingham
county towns of Atkinson town, Chester town				Danville town,
Derry town, Fremont town, Hampstead town				Kingston town,
Newton town, Plaistow town, Raymond town				Salem town,
Sandown town, Windham town				
Lowell, MA-NH PMSA.....	52.66	49.14	21.06	Hillsborough
county towns of Pelham town				
Manchester, NH PMSA.....	50.48	47.11	20.19	Rockingham
county towns of Auburn town, Candia town				Londonderry
town				Merrimack
county towns of Allenstown town, Hooksett town				Hillsborough
county towns of Bedford town, Goffstown town				Manchester
city, Weare town				
Nashua, NH PMSA.....	53.63	50.05	21.45	Hillsborough
county towns of Amherst town, Brookline town				Greenville
town, Hollis town, Hudson town				Litchfield
town, Mason town, Merrimack town				Milford town,
Mont Vernon town, Nashua city				New Ipswich
town, Wilton town				
Portsmouth-Rochester, NH-ME PMSA.....	52.27	48.79	20.91	Strafford county
towns of Barrington town, Dover city				Durham town,
Farmington town, Lee town, Madbury town				Milton town,
Rochester city, Rollinsford town				

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH
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N E W H A M P S H I R E continued

METROPOLITAN FMR AREAS FMR AREA within STATE	A	B	C	Components of
city				Somersworth
county towns of Brentwood town				Rockingham
town, Epping town, Exeter town				East Kingston
town, Hampton town, Hampton Falls town				Greenland
town, New Castle town, Newfields town				Kensington
town, Newmarket town, North Hampton town				Newington
city, Rye town, Stratham town				Portsmouth

NONMETROPOLITAN COUNTIES non metropolitan counties	A	B	C	Towns within
Carroll	44.48	41.51	17.79	
Belknap	44.25	41.30	17.70	
Hillsborough	57.00	53.20	22.80	Antrim town,
Bennington town, Deering town				Francestown
town, Greenfield town, Hancock town				Hillsborough
town, Lyndeborough town, New Boston town				Peterborough
town, Sharon town, Temple town				Windsor town
Grafton	45.68	42.63	18.27	
Coos	40.27	37.59	16.11	
Cheshire	52.50	49.00	21.00	
Sullivan	42.90	40.04	17.16	
Strafford	50.76	47.38	20.30	Middleton town,
New Durham town, Strafford town				
Rockingham	55.05	51.38	22.02	Deerfield town,
Northwood town, Nottingham town				
Merrimack	56.18	52.43	22.47	Andover town,
Boscawen town, Bow town, Bradford town				Canterbury
town, Chichester town, Concord city				Danbury town,
Dunbarton town, Epsom town, Franklin city				Henniker town,
Hill town, Hopkinton town, Loudon town				Newbury town,
New London town, Northfield town				Pembroke town,
Pittsfield town, Salisbury town				Sutton town,
Warner town, Webster town, Wilmot town				

N E W J E R S E Y

METROPOLITAN FMR AREAS AREA within STATE	A	B	C	Counties of FMR
Atlantic-Cape May, NJ PMSA	56.05	52.32	22.42	Cape May, Atlantic
Bergen-Passaic, NJ PMSA	67.88	63.36	27.15	Passaic, Bergen
Jersey City, NJ PMSA	56.57	52.80	22.63	Hudson
Middlesex-Somerset-Hunterdon, NJ PMSA	67.88	63.36	27.15	Hunterdon, Somerset, Middlesex
Monmouth-Ocean, NJ PMSA	66.45	62.01	26.58	Ocean, Monmouth
Newark, NJ PMSA	66.28	61.85	26.51	Morris, Essex, Warren, Union, Sussex

Philadelphia, PA-NJ PMSA.....	52.12	48.65	20.85	Burlington, Salem, Gloucester, Camden
Trenton, NJ PMSA.....	65.12	60.78	26.05	Mercer
Vineland-Millville-Bridgeton, NJ PMSA.....	53.88	50.29	21.55	Cumberland

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH
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N E W M E X I C O

METROPOLITAN FMR AREAS AREA within STATE	A	B	C	Counties of FMR
Albuquerque, NM MSA.....	44.84	41.86	17.94	Bernalillo, Valencia, Sandoval
Las Cruces, NM MSA.....	35.59	33.21	14.24	Dona Ana
Santa Fe, NM MSA.....	53.07	49.53	21.23	Los Alamos, Santa Fe

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Catron.....	34.16	31.88	13.66	Otero.....	34.56	32.25	13.82
Mora.....	34.16	31.88	13.66	Mckinley.....	44.13	41.19	17.65
Luna.....	34.16	31.88	13.66	Lincoln.....	34.56	32.25	13.82
Lea.....	38.15	35.61	15.26	Hidalgo.....	34.16	31.88	13.66
Harding.....	34.16	31.88	13.66	Guadalupe.....	34.16	31.88	13.66
Grant.....	34.16	31.88	13.66	Eddy.....	38.15	35.61	15.26
Debaca.....	34.16	31.88	13.66	Curry.....	34.16	31.88	13.66
Colfax.....	34.16	31.88	13.66	Cibola.....	34.16	31.88	13.66
Chaves.....	34.56	32.25	13.82	Union.....	34.16	31.88	13.66
Torrance.....	34.16	31.88	13.66	Taos.....	36.43	34.00	14.57

Socorro.....	34.56	32.25	13.82		Sierra.....	
34.56 32.25 13.82						
San Miguel.....	34.16	31.88	13.66		San Juan.....	
44.13 41.19 17.65						
Roosevelt.....	34.16	31.88	13.66		Rio Arriba.....	
34.16 31.88 13.66						
Quay.....	34.16	31.88	13.66			

N E W Y O R K

METROPOLITAN FMR AREAS AREA within STATE	A	B	C	Counties of FMR
Albany-Schenectady-Troy, NY MSA.....	45.43	42.40	18.17	Montgomery,
Albany, Schoharie, Schenectady, Saratoga				Rensselaer
Binghamton, NY MSA.....	39.65	37.00	15.86	Tioga, Broome
Buffalo-Niagara Falls, NY PMSA.....	39.08	36.48	15.63	Niagara, Erie
Dutchess County, NY PMSA.....	62.59	58.42	25.04	Dutchess
Elmira, NY MSA.....	40.37	37.67	16.15	Chemung
Glens Falls, NY MSA.....	43.01	40.14	17.20	Washington,
Warren				
Jamestown, NY MSA.....	37.39	34.90	14.96	Chautauqua
Nassau-Suffolk, NY PMSA.....	65.08	60.75	26.03	Nassau, Suffolk
New York, NY PMSA.....	56.57	52.80	22.63	Bronx, Queens,
Putnam, New York, Kings, Rockland				Richmond
Westchester County, NY.....	65.08	60.75	26.03	Westchester
Newburgh, NY-PA PMSA.....	58.14	54.27	23.26	Orange
Rochester, NY MSA.....	47.83	44.64	19.13	Ontario, Monroe,
Livingston, Genesee, Wayne, Orleans				
Syracuse, NY MSA.....	41.81	39.03	16.72	Madison, Cayuga,
Oswego, Onondaga				
Utica-Rome, NY MSA.....	38.28	35.73	15.31	Oneida, Herkimer

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH
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N E W Y O R K continued

NONMETROPOLITAN COUNTIES A B C	A	B	C	NONMETROPOLITAN COUNTIES
St. Lawrence.....	39.17	36.56	15.67	Otsego.....
38.76 36.18 15.51				
Lewis.....	41.08	38.34	16.43	Jefferson.....
43.01 40.14 17.20				
Hamilton.....	38.12	35.58	15.25	Greene.....
43.89 40.97 17.56				
Fulton.....	35.47	33.10	14.19	Franklin.....
38.12 35.58 15.25				
Essex.....	38.12	35.58	15.25	Delaware.....
38.76 36.18 15.51				
Cortland.....	43.18	40.30	17.27	Columbia.....
40.95 38.22 16.38				
Clinton.....	39.65	37.00	15.86	Chenango.....
41.49 38.72 16.59				
Cattaraugus.....	35.31	32.96	14.12	Allegany.....
35.31 32.96 14.12				
Yates.....	39.32	36.70	15.73	Wyoming.....
39.17 36.56 15.67				
Ulster.....	51.16	47.76	20.47	Tompkins.....
44.69 41.71 17.87				
Sullivan.....	46.35	43.26	18.54	Steuben.....
39.57 36.92 15.83				
Seneca.....	42.13	39.32	16.85	Schuyler.....
39.57 36.92 15.83				

N O R T H C A R O L I N A

METROPOLITAN FMR AREAS AREA within STATE	A	B	C	Counties of FMR

Asheville, NC MSA	34.38	32.09	13.75	Madison, Buncombe
Charlotte-Gastonia-Rock Hill, NC-SC MSA	37.66	35.15	15.07	Gaston, Cabarrus, Union, Rowan, Mecklenburg, Lincoln
Fayetteville, NC MSA	34.94	32.62	13.98	Cumberland
Goldsboro, NC MSA	34.38	32.09	13.75	Wayne
Greensboro--Winston-Salem--High Point, NC MSA	35.58	33.21	14.23	Davidson, Alamance, Randolph, Guilford, Forsyth, Davie Yadkin, Stokes
Greenville, NC MSA	34.38	32.09	13.75	Pitt
Hickory-Morganton, NC MSA	36.22	33.81	14.49	Alexander, Catawba, Caldwell, Burke
Jacksonville, NC MSA	34.38	32.09	13.75	Onslow
Norfolk-Virginia Beach-Newport News, VA-NC MSA	43.35	40.46	17.34	Currituck
Raleigh-Durham-Chapel Hill, NC MSA	41.07	38.33	16.43	Chatham, Franklin, Durham, Wake, Orange, Johnston
Rocky Mount, NC MSA	34.38	32.09	13.75	Edgecombe, Nash
Wilmington, NC MSA	34.38	32.09	13.75	Brunswick, New Hanover

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES A B C
Alleghany	34.38	32.09	13.75	34.38 32.09 13.75
Avery	34.38	32.09	13.75	34.38 32.09 13.75
Anson	34.38	32.09	13.75	34.38 32.09 13.75
Graham	34.38	32.09	13.75	34.38 32.09 13.75
Duplin	34.38	32.09	13.75	34.38 32.09 13.75
Craven	34.38	32.09	13.75	34.38 32.09 13.75
Cleveland	34.38	32.09	13.75	34.38 32.09 13.75
Chowan	34.38	32.09	13.75	34.38 32.09 13.75
Caswell	34.38	32.09	13.75	34.38 32.09 13.75
Camden	34.38	32.09	13.75	34.38 32.09 13.75
Beaufort	34.38	32.09	13.75	34.38 32.09 13.75
Ashe	34.38	32.09	13.75	34.38 32.09 13.75
Granville	34.38	32.09	13.75	34.38 32.09 13.75
Gates	34.38	32.09	13.75	34.38 32.09 13.75
Dare	34.38	32.09	13.75	34.38 32.09 13.75
Columbus	34.38	32.09	13.75	34.38 32.09 13.75
Clay	34.38	32.09	13.75	34.38 32.09 13.75
Cherokee	34.38	32.09	13.75	34.38 32.09 13.75
Carteret	34.38	32.09	13.75	34.38 32.09 13.75
Bladen	34.38	32.09	13.75	34.38 32.09 13.75

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH
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N O R T H C A R O L I N A continued

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES
Bertie	34.38	32.09	13.75	Scotland
34.38	32.09	13.75		
Sampson	34.38	32.09	13.75	Rutherford
34.38	32.09	13.75		
Rockingham	34.38	32.09	13.75	Robeson
34.38	32.09	13.75		
Richmond	34.38	32.09	13.75	Polk
34.38	32.09	13.75		
Person	34.38	32.09	13.75	Perquimans
34.38	32.09	13.75		
Pender	34.38	32.09	13.75	Pasquotank
34.38	32.09	13.75		
Pamlico	34.38	32.09	13.75	Northampton
34.38	32.09	13.75		
Moore	34.38	32.09	13.75	Montgomery
34.38	32.09	13.75		
Mitchell	34.38	32.09	13.75	Martin
34.38	32.09	13.75		
Macon	34.38	32.09	13.75	Mcdowell
34.38	32.09	13.75		
Lenoir	34.38	32.09	13.75	Lee
34.70	32.38	13.88		
Jones	34.38	32.09	13.75	Jackson
34.38	32.09	13.75		
Iredell	37.51	35.01	15.00	Hyde
34.38	32.09	13.75		
Hoke	34.38	32.09	13.75	Hertford
34.38	32.09	13.75		
Henderson	34.38	32.09	13.75	Haywood
34.38	32.09	13.75		
Harnett	34.38	32.09	13.75	Halifax
34.38	32.09	13.75		
Greene	34.38	32.09	13.75	Yancey
34.38	32.09	13.75		
Wilson	34.38	32.09	13.75	Wilkes
35.02	32.68	14.01		
Watauga	41.77	38.99	16.71	Washington
34.38	32.09	13.75		
Warren	34.38	32.09	13.75	Vance
34.38	32.09	13.75		
Tyrrell	34.38	32.09	13.75	Transylvania
34.38	32.09	13.75		
Swain	34.38	32.09	13.75	Surry
34.38	32.09	13.75		
Stanly	34.38	32.09	13.75	

N O R T H D A K O T A

METROPOLITAN FMR AREAS AREA within STATE	A	B	C	Counties of FMR
Bismarck, ND MSA	37.04	34.57	14.82	Morton, Burleigh
Fargo-Moorhead, ND-MN MSA	36.97	34.50	14.79	Cass
Grand Forks, ND-MN MSA	35.33	32.98	14.13	Grand Forks

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES
Grant	33.10	30.89	13.24	Golden Valley
33.10	30.89	13.24		
Foster	33.10	30.89	13.24	Emmons
33.10	30.89	13.24		
Eddy	33.10	30.89	13.24	Dunn
33.10	30.89	13.24		
Divide	33.10	30.89	13.24	Dickey

33.10	30.89	13.24			
Cavalier.....	33.10	30.89	13.24	Burke.....	
33.10	30.89	13.24			
Bowman.....	33.10	30.89	13.24	Bottineau.....	
33.10	30.89	13.24			
Billings.....	33.10	30.89	13.24	Benson.....	
33.10	30.89	13.24			
Barnes.....	33.10	30.89	13.24	Adams.....	
33.10	30.89	13.24			

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH
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N O R T H D A K O T A continued

NONMETROPOLITAN COUNTIES A	B	C	A	B	C	NONMETROPOLITAN COUNTIES
Wells.....			33.10	30.89	13.24	Ward.....
33.10	30.89	13.24				
Walsh.....			33.10	30.89	13.24	Traill.....
33.10	30.89	13.24				
Towner.....			33.10	30.89	13.24	Stutsman.....
33.10	30.89	13.24				
Steele.....			33.10	30.89	13.24	Stark.....
33.10	30.89	13.24				
Slope.....			33.10	30.89	13.24	Sioux.....
33.10	30.89	13.24				
Sheridan.....			33.10	30.89	13.24	Sargent.....
33.10	30.89	13.24				
Rolette.....			33.10	30.89	13.24	Richland.....
33.10	30.89	13.24				
Renville.....			33.10	30.89	13.24	Ransom.....
33.10	30.89	13.24				
Ramsey.....			33.10	30.89	13.24	Pierce.....
33.10	30.89	13.24				
Pembina.....			33.10	30.89	13.24	Oliver.....
33.10	30.89	13.24				
Nelson.....			33.10	30.89	13.24	Mountrail.....
33.10	30.89	13.24				
Mercer.....			33.10	30.89	13.24	Mclean.....
33.10	30.89	13.24				
Mckenzie.....			33.10	30.89	13.24	Mcintosh.....
33.10	30.89	13.24				
Mchenry.....			33.10	30.89	13.24	Logan.....
33.10	30.89	13.24				
Lamoure.....			33.10	30.89	13.24	Kidder.....

33.10 30.89 13.24

Hettinger..... 33.10 30.89 13.24

33.10 30.89 13.24

Griggs.....

Williams..... 33.10 30.89 13.24

O H I O

METROPOLITAN FMR AREAS AREA within STATE	A	B	C	Counties of FMR
Akron, OH PMSA.....	39.72	37.07	15.89	Portage, Summit
Brown County, OH.....	34.22	31.94	13.69	Brown
Canton-Massillon, OH MSA.....	34.22	31.94	13.69	Stark, Carroll
Cincinnati, OH-KY-IN.....	39.10	36.49	15.64	Hamilton, Clermont, Warren
Cleveland-Lorain-Elyria, OH PMSA.....	40.37	37.68	16.15	Ashtabula, Geauga, Cuyahoga, Medina, Lorain, Lake
Columbus, OH MSA.....	38.30	35.74	15.32	Delaware, Pickaway, Madison, Licking, Franklin, Fairfield
Dayton-Springfield, OH MSA.....	35.67	33.29	14.27	Clark, Miami, Greene, Montgomery
Hamilton-Middletown, OH PMSA.....	40.63	37.92	16.25	Butler
Huntington-Ashland, WV-KY-OH MSA.....	34.88	32.55	13.95	Lawrence
Lima, OH MSA.....	34.78	32.46	13.91	Allen, Auglaize
Mansfield, OH MSA.....	34.22	31.94	13.69	Crawford, Richland
Parkersburg-Marietta, WV-OH MSA.....	32.46	30.29	12.98	Washington
Steubenville-Weirton, OH-WV MSA.....	35.02	32.68	14.01	Jefferson
Toledo, OH MSA.....	40.13	37.46	16.05	Fulton, Wood, Lucas
Wheeling, WV-OH MSA.....	34.62	32.31	13.85	Belmont
Youngstown-Warren, OH MSA.....	34.78	32.46	13.91	Columbiana, Trumbull, Mahoning

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH
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O H I O continued

NONMETROPOLITAN COUNTIES A B C	A	B	C	NONMETROPOLITAN COUNTIES A B C
Defiance.....	35.18	32.84	14.07	Darke.....
34.22 31.94 13.69				
Coshocton.....	34.22	31.94	13.69	Clinton.....
34.22 31.94 13.69				
Champaign.....	34.22	31.94	13.69	Athens.....
34.22 31.94 13.69				
Ashland.....	34.22	31.94	13.69	Adams.....
34.22 31.94 13.69				
Marion.....	34.22	31.94	13.69	Logan.....
34.22 31.94 13.69				
Knox.....	34.22	31.94	13.69	Jackson.....
34.22 31.94 13.69				
Huron.....	34.22	31.94	13.69	Holmes.....
34.22 31.94 13.69				
Hocking.....	34.22	31.94	13.69	Highland.....
34.22 31.94 13.69				
Henry.....	35.18	32.84	14.07	Harrison.....
34.22 31.94 13.69				
Hardin.....	34.22	31.94	13.69	Hancock.....
34.30 32.01 13.72				
Guernsey.....	34.22	31.94	13.69	Gallia.....
34.22 31.94 13.69				
Fayette.....	34.22	31.94	13.69	Erie.....
35.66 33.28 14.26				
Wyandot.....	34.22	31.94	13.69	Williams.....
35.18 32.84 14.07				
Wayne.....	34.38	32.09	13.75	Vinton.....
34.22 31.94 13.69				
Van Wert.....	34.22	31.94	13.69	Union.....

38.13	35.60	15.25			
Tuscarawas			34.22	31.94	13.69
35.00	32.67	14.00			
Seneca			34.22	31.94	13.69
34.22	31.94	13.69			
Sandusky			35.66	33.28	14.26
34.22	31.94	13.69			
Putnam			34.22	31.94	13.69
34.30	32.01	13.72			
Pike			34.22	31.94	13.69
34.22	31.94	13.69			
Paulding			35.18	32.84	14.07
35.98	33.57	14.39			
Noble			34.22	31.94	13.69
34.22	31.94	13.69			
Morrow			34.22	31.94	13.69
34.22	31.94	13.69			
Monroe			34.22	31.94	13.69
34.22	31.94	13.69			
Meigs			34.22	31.94	13.69

Shelby				
Scioto				
Ross				
Preble				
Perry				
Ottawa				
Muskingum				
Morgan				
Mercer				

O K L A H O M A

METROPOLITAN FMR AREAS AREA within STATE	A	B	C	Counties of FMR
Enid, OK MSA	38.00	35.46	15.20	Garfield
Fort Smith, AR-OK MSA	33.03	30.83	13.21	Sequoyah
Lawton, OK MSA	34.38	32.09	13.75	Comanche
Oklahoma City, OK MSA	35.34	32.99	14.14	Mcclain, Logan, Cleveland, Canadian, Pottawatomie Oklahoma
Tulsa, OK MSA	34.38	32.09	13.75	Osage, Creek, Wagoner, Tulsa, Rogers

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH
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O K L A H O M A continued

NONMETROPOLITAN COUNTIES A	B	C	A	B	C
Adair			34.38	32.09	13.75
34.38	32.09	13.75			
Caddo			34.38	32.09	13.75
34.38	32.09	13.75			
Blaine			34.38	32.09	13.75
34.38	32.09	13.75			
Beaver			34.38	32.09	13.75
34.38	32.09	13.75			
Alfalfa			34.38	32.09	13.75
34.38	32.09	13.75			
Harmon			34.38	32.09	13.75
34.38	32.09	13.75			
Grant			34.38	32.09	13.75
34.38	32.09	13.75			
Garvin			34.38	32.09	13.75
34.38	32.09	13.75			
Dewey			34.38	32.09	13.75
34.38	32.09	13.75			
Custer			34.38	32.09	13.75
34.38	32.09	13.75			
Cotton			34.38	32.09	13.75
34.38	32.09	13.75			
Cimarron			34.38	32.09	13.75
34.38	32.09	13.75			
Cherokee			34.38	32.09	13.75
34.38	32.09	13.75			
Woods			34.38	32.09	13.75
34.38	32.09	13.75			
Washington			34.38	32.09	13.75

NONMETROPOLITAN COUNTIES
Carter
Bryan
Beckham
Atoka
Harper
Greer
Grady
Ellis
Delaware
Craig
Coal
Choctaw
Woodward
Washita
Tillman

34.38	32.09	13.75		
Texas	34.38	32.09	13.75	Stephens
34.38	32.09	13.75		
Seminole	34.38	32.09	13.75	Roger Mills
34.38	32.09	13.75		
Pushmataha	34.38	32.09	13.75	Pontotoc
34.38	32.09	13.75		
Pittsburg	34.38	32.09	13.75	Payne
34.38	32.09	13.75		
Pawnee	34.38	32.09	13.75	Ottawa
34.38	32.09	13.75		
Okmulgee	34.38	32.09	13.75	Okfuskee
34.38	32.09	13.75		
Nowata	34.38	32.09	13.75	Noble
34.38	32.09	13.75		
Muskogee	34.38	32.09	13.75	Murray
34.38	32.09	13.75		
Mayes	34.38	32.09	13.75	Marshall
34.38	32.09	13.75		
Major	34.38	32.09	13.75	Mcintosh
34.38	32.09	13.75		
Mccurtain	34.38	32.09	13.75	Love
34.38	32.09	13.75		
Lincoln	34.38	32.09	13.75	Le Flore
34.38	32.09	13.75		
Latimer	34.38	32.09	13.75	Kiowa
34.38	32.09	13.75		
Kingfisher	34.38	32.09	13.75	Kay
34.38	32.09	13.75		
Johnston	34.38	32.09	13.75	Jefferson
34.38	32.09	13.75		
Jackson	34.38	32.09	13.75	Hughes
34.38	32.09	13.75		
Haskell	34.38	32.09	13.75	

OREGON

METROPOLITAN FMR AREAS AREA within STATE	A	B	C	Counties of FMR
Eugene-Springfield, OR MSA	48.93	45.66	19.57	Lane
Medford-Ashland, OR MSA	48.61	45.36	19.44	Jackson
Portland-Vancouver, OR-WA PMSA	42.57	39.73	17.03	Yamhill,
Washington, Multnomah, Columbia, Clackamas				

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH
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O R E G O N continued

METROPOLITAN FMR AREAS AREA within STATE	A	B	C	Counties of FMR
Salem, OR PMSA	45.71	42.67	18.29	Marion, Polk

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES
Baker	44.42	41.46	17.77	Lincoln
	43.21	40.33	17.28	
Lake	42.41	39.58	16.96	Klamath
Josephine	46.43	43.34	18.57	Jefferson
	47.00	43.86	18.80	
Hood River	47.00	43.86	18.80	Harney
	42.41	39.58	16.96	
Grant	44.42	41.46	17.77	Gilliam
	44.42	41.46	17.77	
Douglas	46.43	43.34	18.57	Deschutes
	47.00	43.86	18.80	
Curry	46.43	43.34	18.57	Crook
	47.00	43.86	18.80	
Coos	46.43	43.34	18.57	Clatsop
	43.21	40.33	17.28	
Benton	45.31	42.29	18.12	Wheeler
	44.42	41.46	17.77	
Wasco	47.00	43.86	18.80	Wallowa
	44.42	41.46	17.77	
Union	44.42	41.46	17.77	Umatilla
	44.42	41.46	17.77	
Tillamook	43.21	40.33	17.28	Sherman
	47.00	43.86	18.80	
Morrow	44.42	41.46	17.77	Malheur
	42.41	39.58	16.96	
Linn	45.31	42.29	18.12	

P E N N S Y L V A N I A

METROPOLITAN FMR AREAS AREA within STATE	A	B	C	Counties of FMR
Allentown-Bethlehem-Easton, PA MSA	44.39	41.43	17.76	Lehigh, Carbon, Northampton
Altoona, PA MSA	38.44	35.88	15.38	Blair
Erie, PA MSA	44.16	41.21	17.66	Erie
Harrisburg-Lebanon-Carlisle, PA MSA	45.43	42.40	18.17	Cumberland, Perry, Lebanon, Dauphin
Johnstown, PA MSA	37.33	34.84	14.93	Cambria, Somerset
Lancaster, PA MSA	46.14	43.07	18.46	Lancaster
Newburgh, NY-PA PMSA	53.24	49.69	21.30	Pike
Philadelphia, PA-NJ PMSA	52.12	48.65	20.85	Bucks, Philadelphia, Montgomery, Delaware, Chester
Pittsburgh, PA PMSA	36.38	33.95	14.55	Fayette, Butler, Beaver, Allegheny, Westmoreland Washington
Reading, PA MSA	43.29	40.41	17.31	Berks
Scranton--Wilkes-Barre--Hazleton, PA MSA	35.27	32.92	14.11	Columbia, Wyoming, Luzerne, Lackawanna
Sharon, PA MSA	40.98	38.25	16.39	Mercer
State College, PA MSA	49.49	46.18	19.79	Centre
Williamsport, PA MSA	37.33	34.84	14.93	Lycoming
York, PA MSA	41.70	38.92	16.68	York

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH
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P E N N S Y L V A N I A continued

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES
Adams	41.70	38.92	16.68	Cameron
35.98 33.58 14.39				
Bradford	35.50	33.13	14.20	Bedford
34.55 32.25 13.82				
Armstrong	42.73	39.88	17.09	Mifflin
36.38 33.95 14.55				
Mc Kean	35.98	33.58	14.39	Lawrence
36.46 34.03 14.58				
Juniata	35.59	33.21	14.23	Jefferson
36.78 34.32 14.71				
Indiana	42.73	39.88	17.09	Huntingdon
34.55 32.25 13.82				
Greene	36.78	34.32	14.71	Fulton
34.55 32.25 13.82				
Franklin	39.32	36.69	15.73	Forest
35.19 32.84 14.08				
Elk	35.98	33.58	14.39	Crawford
36.46 34.03 14.58				
Clinton	35.66	33.29	14.27	Clearfield
36.78 34.32 14.71				
Clarion	35.19	32.84	14.08	Wayne
43.53 40.62 17.41				
Warren	36.46	34.03	14.58	Venango
35.19 32.84 14.08				
Union	41.62	38.84	16.65	Tioga
35.50 33.13 14.20				
Susquehanna	35.50	33.13	14.20	Sullivan
35.50 33.13 14.20				
Snyder	35.59	33.21	14.23	Schuylkill

39.71 37.06 15.88				
Potter	35.98	33.58	14.39	Northumberland
36.78 34.32 14.71				
Montour	36.78	34.32	14.71	Monroe
46.94 43.81 18.78				

R H O D E I S L A N D

METROPOLITAN FMR AREAS FMR AREA within STATE	A	B	C	Components of
New London-Norwich, CT-RI MSA	54.86	51.20	21.94	Washington
county towns of Hopkinton town, Westerly town				
Providence-Fall River-Warwick, RI-MA PMSA	51.92	48.45	20.77	Kent county
towns of Coventry town, East Greenwich tow				
				Warwick city,
West Greenwich tow, West Warwick town				
				Bristol county
towns of Barrington town, Bristol town				
				Warren town
				Washington
county towns of Charlestown town, Exeter town				
				Narragansett
town, North Kingstown to, Richmond town				
				South
Kingstown to				
				Providence
county towns of Burrillville town				
				Central Falls
city, Cranston city, Cumberland town				
				East
Providence ci, Foster town, Glocester town				
				Johnston town,
Lincoln town, North Providence t				
				North
Smithfield t, Pawtucket city, Providence city				
				Scituate town,
Smithfield town, Woonsocket city				

towns of Jamestown town	Newport county
tow, Tiverton town	Little Compton

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH
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R H O D E I S L A N D continued

NONMETROPOLITAN COUNTIES non metropolitan counties	A	B	C	Towns within
Newport	61.14	57.06	24.45	Middletown town, Newport city, Portsmouth town
Washington	46.74	43.62	18.70	New Shoreham town

S O U T H C A R O L I N A

METROPOLITAN FMR AREAS AREA within STATE	A	B	C	Counties of FMR
Augusta-Aiken, GA-SC MSA	34.42	32.14	13.77	Aiken, Edgefield
Charleston-North Charleston, SC MSA	37.26	34.78	14.90	Berkeley, Dorchester, Charleston
Charlotte-Gastonia-Rock Hill, NC-SC MSA	37.66	35.15	15.07	York
Columbia, SC MSA	37.66	35.15	15.06	Lexington, Richland
Florence, SC MSA	33.36	31.13	13.34	Florence
Greenville-Spartanburg-Anderson, SC MSA	33.36	31.13	13.34	Cherokee, Anderson, Spartanburg, Pickens, Greenville
Myrtle Beach, SC MSA	33.36	31.13	13.34	Horry
Sumter, SC MSA	33.36	31.13	13.34	Sumter

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES
Abbeville	33.36	31.13	13.34	Bamberg
Allendale	33.36	31.13	13.34	Darlington

A B C
33.36 31.13 13.34
33.36 31.13 13.34

Colleton.....	33.36	31.13	13.34		Clarendon.....
33.36 31.13 13.34					
Chesterfield.....	33.36	31.13	13.34		Chester.....
33.36 31.13 13.34					
Calhoun.....	33.36	31.13	13.34		Beaufort.....
34.04 31.76 13.62					
Barnwell.....	33.36	31.13	13.34		Orangeburg.....
33.36 31.13 13.34					
Oconee.....	33.36	31.13	13.34		Newberry.....
33.36 31.13 13.34					
Marlboro.....	33.36	31.13	13.34		Marion.....
33.36 31.13 13.34					
Mccormick.....	33.36	31.13	13.34		Lee.....
33.36 31.13 13.34					
Laurens.....	33.36	31.13	13.34		Lancaster.....
33.36 31.13 13.34					
Kershaw.....	33.36	31.13	13.34		Jasper.....
33.36 31.13 13.34					
Hampton.....	33.36	31.13	13.34		Greenwood.....
33.36 31.13 13.34					
Georgetown.....	33.36	31.13	13.34		Fairfield.....
33.36 31.13 13.34					
Dillon.....	33.36	31.13	13.34		Williamsburg.....
33.36 31.13 13.34					
Union.....	33.36	31.13	13.34		Saluda.....
33.36 31.13 13.34					

S O U T H D A K O T A

METROPOLITAN FMR AREAS AREA within STATE	A	B	C	Counties of FMR
Rapid City, SD MSA.....	35.98	33.58	14.39	Pennington
Sioux Falls, SD MSA.....	38.42	35.86	15.37	Minnehaha, Lincoln

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH
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S O U T H D A K O T A continued

NONMETROPOLITAN COUNTIES A B C	A	B	C	NONMETROPOLITAN COUNTIES
Beadle.....	34.77	32.45	13.91	Aurora.....
34.77 32.45 13.91				
Campbell.....	34.77	32.45	13.91	Butte.....
34.77 32.45 13.91				
Buffalo.....	34.77	32.45	13.91	Brule.....
34.77 32.45 13.91				
Brown.....	34.77	32.45	13.91	Brookings.....
34.77 32.45 13.91				
Bon Homme.....	34.77	32.45	13.91	Bennett.....
34.77 32.45 13.91				
Gregory.....	34.77	32.45	13.91	Grant.....
34.77 32.45 13.91				
Faulk.....	34.77	32.45	13.91	Fall River.....
34.77 32.45 13.91				
Edmunds.....	34.77	32.45	13.91	Douglas.....
34.77 32.45 13.91				
Dewey.....	34.77	32.45	13.91	Deuel.....
34.77 32.45 13.91				
Day.....	34.77	32.45	13.91	Davison.....
34.77 32.45 13.91				
Custer.....	34.77	32.45	13.91	Corson.....
34.77 32.45 13.91				
Codington.....	34.77	32.45	13.91	Clay.....
34.77 32.45 13.91				
Clark.....	34.77	32.45	13.91	Charles Mix.....
34.77 32.45 13.91				
Tripp.....	34.77	32.45	13.91	Todd.....
34.77 32.45 13.91				
Sully.....	34.77	32.45	13.91	Stanley.....

37.77	35.25	15.11		
Spink	34.77	32.45	13.91	Shannon
34.77	32.45	13.91		
Sanborn	34.77	32.45	13.91	Roberts
34.77	32.45	13.91		
Potter	34.77	32.45	13.91	Perkins
34.77	32.45	13.91		
Moody	34.77	32.45	13.91	Miner
34.77	32.45	13.91		
Mellette	34.77	32.45	13.91	Meade
34.77	32.45	13.91		
Marshall	34.77	32.45	13.91	Mcpherson
34.77	32.45	13.91		
Mccook	34.77	32.45	13.91	Lyman
34.77	32.45	13.91		
Lawrence	34.77	32.45	13.91	Lake
34.77	32.45	13.91		
Kingsbury	34.77	32.45	13.91	Jones
34.77	32.45	13.91		
Jerauld	34.77	32.45	13.91	Jackson
34.77	32.45	13.91		
Hyde	34.77	32.45	13.91	Hutchinson
34.77	32.45	13.91		
Hughes	37.77	35.25	15.11	Harding
34.77	32.45	13.91		
Hanson	34.77	32.45	13.91	Hand
34.77	32.45	13.91		
Hamlin	34.77	32.45	13.91	Haakon
34.77	32.45	13.91		
Ziebach	34.77	32.45	13.91	Yankton
34.77	32.45	13.91		
Walworth	34.77	32.45	13.91	Union
34.77	32.45	13.91		
Turner	34.77	32.45	13.91	

T E N N E S S E E

METROPOLITAN FMR AREAS AREA within STATE	A	B	C	Counties of FMR
Chattanooga, TN-GA MSA	37.74	35.22	15.10	Hamilton, Marion
Clarksville-Hopkinsville, TN-KY MSA	38.40	35.84	15.36	Montgomery
Jackson, TN MSA	35.12	32.78	14.05	Madison

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH
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T E N N E S S E E continued

METROPOLITAN FMR AREAS AREA within STATE	A	B	C	Counties of FMR
Johnson City-Kingsport-Bristol, TN-VA MSA	35.12	32.78	14.05	Carter, Sullivan, Hawkins, Washington, Unicoi
Knoxville, TN MSA	35.36	33.00	14.14	Blount, Anderson, Union, Sevier, Loudon, Knox
Memphis, TN-AR-MS MSA	37.90	35.38	15.16	Tipton, Shelby, Fayette
Nashville, TN MSA	42.01	39.20	16.80	Cheatham, Wilson, Williamson, Sumner, Rutherford, Dickson, Davidson, Robertson,

NONMETROPOLITAN COUNTIES A B C	A	B	C	NONMETROPOLITAN COUNTIES
Bedford 35.12 32.78 14.05	35.12	32.78	14.05	Houston
Hickman 35.12 32.78 14.05	35.12	32.78	14.05	Henry
Henderson 35.12 32.78 14.05	35.12	32.78	14.05	Haywood
Hardin 35.12 32.78 14.05	35.12	32.78	14.05	Hardeman
Hancock 35.12 32.78 14.05	35.12	32.78	14.05	Hamblen
Grundy 35.12 32.78 14.05	35.12	32.78	14.05	Greene
Grainger 35.12 32.78 14.05	35.12	32.78	14.05	Giles
Gibson 35.12 32.78 14.05	35.12	32.78	14.05	Franklin

Fentress 35.12 32.78 14.05	35.12	32.78	14.05	Dyer
Dekalb 35.12 32.78 14.05	35.12	32.78	14.05	Decatur
Cumberland 35.12 32.78 14.05	35.12	32.78	14.05	Crockett
Coffee 35.12 32.78 14.05	35.12	32.78	14.05	Cocke
Clay 35.12 32.78 14.05	35.12	32.78	14.05	Claiborne
Chester 35.12 32.78 14.05	35.12	32.78	14.05	Carroll
Cannon 35.12 32.78 14.05	35.12	32.78	14.05	Campbell
Bradley 35.12 32.78 14.05	35.12	32.78	14.05	Bledsoe
Benton 35.12 32.78 14.05	35.12	32.78	14.05	White
Weakley 35.12 32.78 14.05	35.12	32.78	14.05	Wayne
Warren 35.12 32.78 14.05	35.12	32.78	14.05	Van Buren
Trousdale 35.12 32.78 14.05	35.12	32.78	14.05	Stewart
Smith 37.74 35.22 15.10	35.12	32.78	14.05	Sequatchie
Scott 35.12 32.78 14.05	35.12	32.78	14.05	Roane
Rhea 35.12 32.78 14.05	35.12	32.78	14.05	Putnam
Polk 35.12 32.78 14.05	35.12	32.78	14.05	Pickett
Perry 35.12 32.78 14.05	35.12	32.78	14.05	Overton
Obion	35.12	32.78	14.05	Morgan

35.12	32.78	14.05			
Moore.....	35.12	32.78	14.05	Monroe.....	
35.12	32.78	14.05			
Meigs.....	35.12	32.78	14.05	Maury.....	
35.12	32.78	14.05			
Marshall.....	35.12	32.78	14.05	Macon.....	
35.12	32.78	14.05			
Mcnairy.....	35.12	32.78	14.05	Mcminn.....	
35.12	32.78	14.05			
Lincoln.....	35.12	32.78	14.05	Lewis.....	
35.12	32.78	14.05			
Lawrence.....	35.12	32.78	14.05	Lauderdale.....	
35.12	32.78	14.05			
Lake.....	35.12	32.78	14.05	Johnson.....	
35.12	32.78	14.05			

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH
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T E N N E S S E E continued

NONMETROPOLITAN COUNTIES A B C	A	B	C	NONMETROPOLITAN COUNTIES A B C
Jefferson.....	35.12	32.78	14.05	Jackson.....
35.12 32.78 14.05				
Humphreys.....	35.12	32.78	14.05	

T E X A S

METROPOLITAN FMR AREAS AREA within STATE	A	B	C	Counties of FMR
Abilene, TX MSA.....	33.32	31.10	13.33	Taylor
Amarillo, TX MSA.....	33.32	31.10	13.33	Potter, Randall
Austin-San Marcos, TX MSA.....	43.35	40.46	17.34	Bastrop, Williamson, Travis, Hays, Caldwell
Beaumont-Port Arthur, TX MSA.....	38.07	35.53	15.23	Orange, Jefferson, Hardin
Brazoria, TX PMSA.....	42.47	39.63	16.99	Brazoria
Brownsville-Harlingen-San Benito, TX MSA.....	33.79	31.54	13.52	Cameron
Bryan-College Station, TX MSA.....	44.53	41.56	17.81	Brazos
Corpus Christi, TX MSA.....	38.85	36.26	15.54	San Patricio, Nueces
Dallas, TX.....	44.45	41.49	17.78	Ellis, Denton, Dallas, Collin, Rockwall, Kaufman, Hunt
El Paso, TX MSA.....	36.83	34.37	14.73	El Paso
Fort Worth-Arlington, TX PMSA.....	41.41	38.65	16.56	Tarrant, Parker, Johnson, Hood
Galveston-Texas City, TX PMSA.....	38.19	35.65	15.28	Galveston
Henderson County, TX.....	33.32	31.10	13.33	Henderson
Houston, TX PMSA.....	39.32	36.70	15.73	Fort Bend,

Chambers, Waller, Montgomery, Liberty, Harris				
Killeen-Temple, TX MSA	33.32	31.10	13.33	Coryell, Bell
Laredo, TX MSA	33.32	31.10	13.33	Webb
Longview-Marshall, TX MSA	37.37	34.87	14.95	Gregg, Upshur, Harrison
Lubbock, TX MSA	33.32	31.10	13.33	Lubbock
Mc Allen-Edinburg-Mission, TX MSA	33.40	31.17	13.36	Hidalgo
Odessa-Midland, TX MSA	42.82	39.96	17.13	Midland, Ector
San Angelo, TX MSA	33.32	31.10	13.33	Tom Green
San Antonio, TX MSA	38.11	35.57	15.24	Bexar, Wilson, Guadalupe, Comal
Sherman-Denison, TX MSA	33.32	31.10	13.33	Grayson
Texarkana, TX-Texarkana, AR MSA	33.32	31.10	13.33	Bowie
Tyler, TX MSA	37.99	35.46	15.20	Smith
Victoria, TX MSA	46.17	43.08	18.47	Victoria
Waco, TX MSA	33.32	31.10	13.33	Mclennan
Wichita Falls, TX MSA	34.10	31.82	13.64	Wichita, Archer

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH
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T E X A S continued

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES
Andrews	33.32	31.10	13.33	Anderson
Colorado	33.40	31.17	13.36	Collingsworth
Coleman	33.32	31.10	13.33	Coke
Cochran	33.32	31.10	13.33	Clay
Childress	33.32	31.10	13.33	Cherokee
Castro	33.32	31.10	13.33	Cass
Carson	33.32	31.10	13.33	Camp
Callahan	33.32	31.10	13.33	Calhoun
Burnet	33.32	31.10	13.33	Burleson
Brown	33.32	31.10	13.33	Brooks
Briscoe	33.32	31.10	13.33	Brewster
Bosque	33.32	31.10	13.33	Borden
Blanco	33.32	31.10	13.33	Bee
Baylor	33.32	31.10	13.33	Bandera
Bailey	33.32	31.10	13.33	Austin

	33.40	31.17	13.36	
Armstrong	33.32	31.10	13.33	Atascosa
	33.32	31.10	13.33	
Angelina	33.32	31.10	13.33	Aransas
	33.32	31.10	13.33	
Zapata	33.32	31.10	13.33	Zavala
	33.32	31.10	13.33	
Yoakum	33.32	31.10	13.33	Young
	33.32	31.10	13.33	
Wise	33.32	31.10	13.33	Wood
	33.40	31.17	13.36	
Willacy	33.32	31.10	13.33	Winkler
	33.32	31.10	13.33	
Wheeler	33.32	31.10	13.33	Wilbarger
	33.32	31.10	13.33	
Washington	33.40	31.17	13.36	Wharton
	33.32	31.10	13.33	
Walker	33.32	31.10	13.33	Ward
	35.45	33.09	14.18	
Val Verde	33.32	31.10	13.33	Van Zandt
	33.32	31.10	13.33	
Upton	33.32	31.10	13.33	Uvalde
	33.32	31.10	13.33	
Trinity	33.32	31.10	13.33	Tyler
	33.32	31.10	13.33	
Throckmorton	33.32	31.10	13.33	Titus
	33.32	31.10	13.33	
Terrell	33.32	31.10	13.33	Terry
	33.32	31.10	13.33	
Sutton	33.32	31.10	13.33	Swisher
	33.32	31.10	13.33	
Sterling	33.32	31.10	13.33	Stonewall
	33.32	31.10	13.33	
Starr	33.32	31.10	13.33	Stephens
	33.32	31.10	13.33	

Sherman	33.32	31.10	13.33	Somervell
	33.32	31.10	13.33	
Shackelford	33.32	31.10	13.33	Shelby
	33.32	31.10	13.33	
Schleicher	33.32	31.10	13.33	Scurry
	33.32	31.10	13.33	
San Jacinto	33.32	31.10	13.33	San Saba
	33.32	31.10	13.33	
Sabine	33.32	31.10	13.33	San Augustine
	33.32	31.10	13.33	
Runnels	33.32	31.10	13.33	Rusk
	33.32	31.10	13.33	
Roberts	33.32	31.10	13.33	Robertson
	33.32	31.10	13.33	
Reeves	33.32	31.10	13.33	Refugio
	33.32	31.10	13.33	

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH
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T E X A S continued

NONMETROPOLITAN COUNTIES	A	B	C
Red River	33.32	31.10	13.33
Reagan	33.32	31.10	13.33
Presidio	33.32	31.10	13.33
Pecos	33.32	31.10	13.33
Panola	33.32	31.10	13.33
Oldham	33.32	31.10	13.33
Nolan	33.32	31.10	13.33
Navarro	33.32	31.10	13.33
Motley	33.32	31.10	13.33
Moore	33.32	31.10	13.33
Mitchell	33.32	31.10	13.33
Milam	33.32	31.10	13.33
Medina	33.32	31.10	13.33
Matagorda	33.40	31.17	13.36
Martin	33.32	31.10	13.33
Madison	33.32	31.10	13.33
Mcculloch	33.32	31.10	13.33
Loving	33.32	31.10	13.33
Live Oak	33.32	31.10	13.33
Limestone	33.32	31.10	13.33
Lee	33.32	31.10	13.33
La Salle	33.32	31.10	13.33
Lamb	33.32	31.10	13.33
Knox	33.32	31.10	13.33
Kinney	33.32	31.10	13.33
Kimble	33.32	31.10	13.33
Kent	33.32	31.10	13.33
Kendall	33.32	31.10	13.33
Jones	33.32	31.10	13.33
Jim Hogg	33.32	31.10	13.33
Jasper	33.32	31.10	13.33
Jack	33.32	31.10	13.33

NONMETROPOLITAN COUNTIES	A	B	C
Real	33.32	31.10	13.33
Rains	33.32	31.10	13.33
Polk	33.32	31.10	13.33
Parmer	33.32	31.10	13.33
Palo Pinto	33.32	31.10	13.33
Ochiltree	33.32	31.10	13.33
Newton	33.32	31.10	13.33
Nacogdoches	33.32	31.10	13.33
Morris	33.32	31.10	13.33
Montague	33.32	31.10	13.33
Mills	33.32	31.10	13.33
Menard	33.32	31.10	13.33
Maverick	33.32	31.10	13.33
Mason	33.32	31.10	13.33
Marion	33.32	31.10	13.33
Mcmullen	33.32	31.10	13.33
Lynn	33.32	31.10	13.33
Llano	33.32	31.10	13.33
Lipscomb	33.32	31.10	13.33
Leon	33.32	31.10	13.33
Lavaca	33.32	31.10	13.33
Lampasas	33.32	31.10	13.33
Lamar	33.32	31.10	13.33
Kleberg	33.32	31.10	13.33
King	33.32	31.10	13.33
Kerr	33.32	31.10	13.33
Kenedy	33.32	31.10	13.33
Karnes	33.32	31.10	13.33
Jim Wells	33.32	31.10	13.33
Jeff Davis	33.32	31.10	13.33
Jackson	33.32	31.10	13.33
Irion	33.32	31.10	13.33

Hutchinson.....	33.32	31.10	13.33	Hudspeth.....
Howard.....	33.32	31.10	13.33	Houston.....
Hopkins.....	33.32	31.10	13.33	Hockley.....
Hill.....	33.32	31.10	13.33	Hemphill.....
Haskell.....	33.32	31.10	13.33	Hartley.....
Hardeman.....	33.32	31.10	13.33	Hansford.....
Hamilton.....	33.32	31.10	13.33	Hall.....
Hale.....	33.32	31.10	13.33	Grimes.....

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH
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T E X A S continued

NONMETROPOLITAN COUNTIES A B C	A	B	C	NONMETROPOLITAN COUNTIES
Gray.....	33.32	31.10	13.33	Gonzales.....
Goliad.....	33.32	31.10	13.33	Glasscock.....
Gillespie.....	33.32	31.10	13.33	Garza.....
Gaines.....	33.32	31.10	13.33	Frio.....
Freestone.....	33.32	31.10	13.33	Franklin.....
Foard.....	33.32	31.10	13.33	Floyd.....
Fisher.....	33.32	31.10	13.33	Fayette.....
Fannin.....	33.32	31.10	13.33	Falls.....
Erath.....	33.32	31.10	13.33	Edwards.....
Eastland.....	33.32	31.10	13.33	Duval.....
Donley.....	33.32	31.10	13.33	Dimmit.....
Dickens.....	33.32	31.10	13.33	Dewitt.....
Delta.....	33.32	31.10	13.33	Deaf Smith.....
Dawson.....	33.32	31.10	13.33	Dallam.....
Culberson.....	33.32	31.10	13.33	Crosby.....

33.32	31.10	13.33				
Crockett.....			33.32	31.10	13.33	Crane.....
33.32	31.10	13.33				
Cottle.....			33.32	31.10	13.33	Cooke.....
33.32	31.10	13.33				
Concho.....			33.32	31.10	13.33	Comanche.....
33.32	31.10	13.33				

U T A H

METROPOLITAN FMR AREAS AREA within STATE	A	B	C	Counties of FMR
Kane County, UT.....	40.05	37.37	16.02	Kane
Provo-Orem, UT MSA.....	36.34	33.92	14.54	Utah
Salt Lake City-Ogden, UT MSA.....	34.46	32.16	13.79	Weber, Salt Lake, Davis

NONMETROPOLITAN COUNTIES			A	B	C	NONMETROPOLITAN COUNTIES
A	B	C				
Beaver.....			40.05	37.37	16.02	Grand.....
45.55	42.51	18.22				
Garfield.....			40.05	37.37	16.02	Emery.....
45.55	42.51	18.22				
Duchesne.....			45.55	42.51	18.22	Daggett.....
45.55	42.51	18.22				
Carbon.....			45.55	42.51	18.22	Cache.....
36.82	34.37	14.73				
Box Elder.....			36.82	34.37	14.73	Wayne.....
40.05	37.37	16.02				
Washington.....			43.35	40.46	17.34	Wasatch.....
45.55	42.51	18.22				
Uintah.....			45.55	42.51	18.22	Tooele.....
36.82	34.37	14.73				
Summit.....			47.15	44.00	18.86	Sevier.....
40.05	37.37	16.02				

Sanpete.....			40.05	37.37	16.02	San Juan.....
45.55	42.51	18.22				
Rich.....			36.82	34.37	14.73	Piute.....
40.05	37.37	16.02				
Morgan.....			45.55	42.51	18.22	Millard.....
40.05	37.37	16.02				
Juab.....			40.05	37.37	16.02	Iron.....
40.05	37.37	16.02				

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH
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V E R M O N T

METROPOLITAN FMR AREAS FMR AREA within STATE	A	B	C	Components of
Burlington, VT MSA	54.64	50.99	21.85	Chittenden county towns of Burlington city Charlotte town, Colchester town, Essex town Hinesburg town, Jericho town, Milton town, Richmond town St. George town, Shelburne town, South Burlington c Williston town, Winooski city Grand Isle county towns of Grand Isle town South Hero town Franklin county towns of Fairfax town, Georgia town St. Albans city, St. Albans town, Swanton town
NONMETROPOLITAN COUNTIES non metropolitan counties	A	B	C	Towns within
Bennington	45.05	42.05	18.02	
Addison	43.53	40.63	17.41	
Franklin	41.46	38.69	16.58	Bakersfield town, Berkshire town, Enosburg town Fairfield town, Fletcher town, Franklin town Highgate town, Montgomery town, Richford town Sheldon town
Essex	36.99	34.52	14.79	
Chittenden	50.40	47.04	20.16	Bolton town, Buels gore, Huntington town, Underhill town Westford town
Caledonia	36.99	34.52	14.79	
Windsor	47.60	44.43	19.04	
Windham	46.48	43.39	18.59	
Washington	44.57	41.60	17.83	
Rutland	48.08	44.88	19.23	
Orleans	36.99	34.52	14.79	
Orange	44.33	41.37	17.73	
Lamoille	44.73	41.74	17.89	
Grand Isle	36.99	34.52	14.79	Alburg town, Isle La Motte town, North Hero town

V I R G I N I A

METROPOLITAN FMR AREAS AREA within STATE	A	B	C	Counties of FMR
Charlottesville, VA MSA	43.97	41.04	17.59	Charlottesville city, Greene, Fluvanna, Albemarle
Clarke County, VA	35.08	32.74	14.03	Clarke
Culpeper County, VA	36.55	34.11	14.62	Culpeper
Danville, VA MSA	33.74	31.49	13.50	Danville city, Pittsylvania
Johnson City-Kingsport-Bristol, TN-VA MSA	35.12	32.78	14.05	Bristol city, Washington, Scott
King George County, VA	40.91	38.18	16.36	King George
Lynchburg, VA MSA	35.00	32.67	14.00	Bedford city, Campbell, Bedford, Amherst, Lynchburg city
Norfolk-Virginia Beach-Newport News, VA-NC MSA	43.35	40.46	17.34	Gloucester, James City, Isle of Wight, Hampton city Chesapeake city, York, Mathews, Williamsburg city Virginia Beach city, Suffolk city, Portsmouth city

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH
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V I R G I N I A continued

METROPOLITAN FMR AREAS AREA within STATE	A	B	C	Counties of FMR
Norfolk city, Newport News city Richmond-Petersburg, VA MSA Richmond city, Petersburg city Colonial Heights city, Prince George Kent, Henrico, Hanover, Goochland Chesterfield	39.33	36.70	15.73	Poquoson city, Charles City, Hopewell city, Powhatan, New Dinwiddie,
Roanoke, VA MSA Roanoke city, Roanoke, Botetourt	34.61	32.30	13.84	Salem city,
Warren County, VA	35.08	32.74	14.03	Warren
Washington, DC-MD-VA Loudoun, Fairfax, Alexandria city, Stafford Prince William, Manassas Park city Fredericksburg city, Fauquier city, Fairfax city	63.93	59.67	25.57	Arlington, Spotsylvania, Manassas city, Falls Church

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES
Alleghany	33.82	31.56	13.53	Accomack
33.74	31.49	13.50		
Floyd	33.74	31.49	13.50	Essex
33.74	31.49	13.50		
Dickenson	33.74	31.49	13.50	Cumberland
33.74	31.49	13.50		
Craig	33.74	31.49	13.50	Charlotte
33.74	31.49	13.50		
Carroll	33.74	31.49	13.50	Caroline
40.91	38.18	16.36		
Buckingham	33.74	31.49	13.50	Buchanan
33.74	31.49	13.50		
Brunswick	33.74	31.49	13.50	Bland
33.74	31.49	13.50		
Bath	33.82	31.56	13.53	Augusta
33.82	31.56	13.53		
Appomattox	33.74	31.49	13.50	Amelia
33.74	31.49	13.50		
Russell	33.74	31.49	13.50	Rockingham
35.00	32.67	14.00		
Rockbridge	33.82	31.56	13.53	Richmond
33.74	31.49	13.50		
Rappahannock	36.55	34.11	14.62	Pulaski
33.74	31.49	13.50		
Prince Edward	33.74	31.49	13.50	Patrick
33.74	31.49	13.50		
Page	33.89	31.64	13.56	Orange
36.55	34.11	14.62		
Nottoway	33.74	31.49	13.50	Northumberland
33.74	31.49	13.50		
Northampton	33.74	31.49	13.50	Nelson
33.74	31.49	13.50		
Montgomery	40.99	38.26	16.40	Middlesex
33.74	31.49	13.50		
Mecklenburg	33.74	31.49	13.50	Madison
35.87	33.47	14.35		
Lunenburg	33.74	31.49	13.50	Louisa
35.32	32.96	14.13		
Lee	33.74	31.49	13.50	Lancaster
33.74	31.49	13.50		
King William	33.74	31.49	13.50	King and Queen

33.74	31.49	13.50			
Highland.....	33.82	31.56	13.53	Henry.....	
33.89	31.64	13.56			
Halifax.....	33.74	31.49	13.50	Greensville.....	
33.74	31.49	13.50			
Grayson.....	33.74	31.49	13.50	Giles.....	
33.74	31.49	13.50			
Frederick.....	35.08	32.74	14.03	Franklin.....	
33.74	31.49	13.50			
Wythe.....	33.74	31.49	13.50	Wise.....	
33.74	31.49	13.50			
Westmoreland.....	33.74	31.49	13.50	Tazewell.....	
33.74	31.49	13.50			
Sussex.....	33.74	31.49	13.50	Surry.....	
33.74	31.49	13.50			

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH
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V I R G I N I A continued

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES
A B C				
Southampton.....	33.74	31.49	13.50	Smyth.....
33.74 31.49 13.50				
Shenandoah.....	35.08	32.74	14.03	

W A S H I N G T O N

METROPOLITAN FMR AREAS AREA within STATE	A	B	C	Counties of FMR
Bellingham, WA MSA.....	49.35	46.06	19.74	Whatcom
Bremerton, WA PMSA.....	45.92	42.86	18.37	Kitsap
Olympia, WA PMSA.....	47.44	44.27	18.97	Thurston
Portland-Vancouver, OR-WA PMSA.....	42.57	39.73	17.03	Clark
Richland-Kennewick-Pasco, WA MSA.....	40.11	37.42	16.04	Benton, Franklin
Seattle-Bellevue-Everett, WA PMSA.....	51.99	48.51	20.79	Island, Snohomish, King
Spokane, WA MSA.....	39.94	37.28	15.98	Spokane
Tacoma, WA PMSA.....	44.15	41.21	17.66	Pierce
Yakima, WA MSA.....	41.70	38.91	16.68	Yakima

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES
A B C				
Adams.....	34.13	31.85	13.65	Chelan.....
41.06 38.32 16.42				
Asotin.....	44.00	41.07	17.60	Grays Harbor.....
44.25 41.29 17.70				
Grant.....	34.13	31.85	13.65	Garfield.....
44.00 41.07 17.60				

Ferry	34.13	31.85	13.65	Douglas	
41.06	38.32	16.42			
Cowlitz	35.40	33.04	14.16	Columbia	
44.00	41.07	17.60			
Clallam	44.25	41.29	17.70	Whitman	
44.00	41.07	17.60			
Walla Walla	44.00	41.07	17.60	Wahkiakum	
41.06	38.32	16.42			
Stevens	34.13	31.85	13.65	Skamania	
41.06	38.32	16.42			
Skagit	45.12	42.11	18.05	San Juan	
46.71	43.59	18.68			
Pend Oreille	34.13	31.85	13.65	Pacific	
44.25	41.29	17.70			
Okanogan	37.39	34.90	14.96	Mason	
44.25	41.29	17.70			
Lincoln	34.13	31.85	13.65	Lewis	
41.06	38.32	16.42			
Klickitat	41.06	38.32	16.42	Kittitas	
37.39	34.90	14.96			
Jefferson	44.25	41.29	17.70		

W E S T V I R G I N I A

METROPOLITAN FMR AREAS AREA within STATE	A	B	C	Counties of FMR
Berkeley County, WV	35.26	32.90	14.10	Berkeley
Charleston, WV MSA	42.31	39.49	16.93	Kanawha, Putnam
Cumberland, MD-WV MSA	33.10	30.89	13.24	Mineral
Huntington-Ashland, WV-KY-OH MSA	34.88	32.55	13.95	Wayne, Cabell
Jefferson County, WV	35.40	33.03	14.16	Jefferson

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH
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W E S T V I R G I N I A continued

METROPOLITAN FMR AREAS AREA within STATE	A	B	C	Counties of FMR
Parkersburg-Marietta, WV-OH MSA	32.46	30.29	12.98	Wood
Steubenville-Weirton, OH-WV MSA	35.02	32.68	14.01	Hancock, Brooke
Wheeling, WV-OH MSA	34.62	32.31	13.85	Ohio, Marshall

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES
Calhoun	33.13	30.92	13.25	Braxton
32.46	30.29	12.98		
Boone	32.46	30.29	12.98	Barbour
32.46	30.29	12.98		
Wyoming	32.46	30.29	12.98	Wirt
32.46	30.29	12.98		
Wetzel	32.46	30.29	12.98	Webster
32.46	30.29	12.98		
Upshur	32.46	30.29	12.98	Tyler
32.46	30.29	12.98		
Tucker	32.46	30.29	12.98	Taylor
32.46	30.29	12.98		
Summers	32.46	30.29	12.98	Roane
33.13	30.92	13.25		
Ritchie	32.46	30.29	12.98	Randolph
32.46	30.29	12.98		
Raleigh	32.46	30.29	12.98	Preston
35.64	33.26	14.26		
Pocahontas	32.46	30.29	12.98	Pleasants
32.46	30.29	12.98		
Pendleton	32.46	30.29	12.98	Nicholas

32.46	30.29	12.98		
Morgan	32.46	30.29	12.98	Monroe
32.46	30.29	12.98		
Monongalia	35.64	33.26	14.26	Mingo
32.46	30.29	12.98		
Mercer	32.46	30.29	12.98	Mason
32.46	30.29	12.98		
Marion	35.64	33.26	14.26	Mcdowell
32.46	30.29	12.98		
Logan	32.46	30.29	12.98	Lincoln
32.46	30.29	12.98		
Lewis	32.46	30.29	12.98	Jackson
33.13	30.92	13.25		
Harrison	33.13	30.92	13.25	Hardy
32.46	30.29	12.98		
Hampshire	32.46	30.29	12.98	Greenbrier
32.46	30.29	12.98		
Grant	32.46	30.29	12.98	Gilmer
32.75	30.57	13.10		
Fayette	32.46	30.29	12.98	Doddridge
32.46	30.29	12.98		
Clay	32.46	30.29	12.98	

W I S C O N S I N

METROPOLITAN FMR AREAS AREA within STATE	A	B	C	Counties of FMR
Appleton-Oshkosh-Neenah, WI MSA	35.61	33.24	14.24	Calumet, Winnebago, Outagamie
Duluth-Superior, MN-WI MSA	36.59	34.15	14.64	Douglas
Eau Claire, WI MSA	34.17	31.89	13.67	Chippewa, Eau Claire
Green Bay, WI MSA	35.44	33.09	14.18	Brown
Janesville-Beloit, WI MSA	39.24	36.63	15.70	Rock
Kenosha, WI PMSA	43.73	40.82	17.49	Kenosha

La Crosse, WI-MN MSA	40.47	37.76	16.19	La Crosse
Madison, WI MSA	47.07	43.94	18.83	Dane

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH
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W I S C O N S I N continued

METROPOLITAN FMR AREAS AREA within STATE	A	B	C	Counties of FMR
Milwaukee-Waukesha, WI PMSA	42.29	39.47	16.92	Ozaukee, Milwaukee, Waukesha, Washington
Minneapolis-St. Paul, MN-WI MSA	49.47	46.18	19.79	St. Croix, Pierce
Racine, WI PMSA	38.63	36.05	15.45	Racine
Sheboygan, WI MSA	35.05	32.71	14.02	Sheboygan
Wausau, WI MSA	34.80	32.48	13.92	Marathon

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES A B C
Adams	34.65	32.34	13.86	Buffalo 34.09 31.82 13.64
Bayfield	34.09	31.82	13.64	Barron 34.09 31.82 13.64
Ashland	34.09	31.82	13.64	Wood 34.65 32.34 13.86
Waushara	34.09	31.82	13.64	Waupaca 34.09 31.82 13.64
Washburn	34.09	31.82	13.64	Walworth 37.43 34.93 14.97
Vilas	34.09	31.82	13.64	Vernon 34.09 31.82 13.64
Trempealeau	34.09	31.82	13.64	Taylor 34.09 31.82 13.64
Shawano	34.09	31.82	13.64	Sawyer 34.09 31.82 13.64
Sauk	34.65	32.34	13.86	Rusk 34.09 31.82 13.64
Richland	34.09	31.82	13.64	Price 34.09 31.82 13.64
Portage	34.73	32.41	13.89	Polk 34.09 31.82 13.64
Pepin	34.09	31.82	13.64	Oneida 34.09 31.82 13.64
Oconto	34.09	31.82	13.64	Monroe 34.09 31.82 13.64
Menominee	34.09	31.82	13.64	Marquette 34.09 31.82 13.64
Marinette	34.09	31.82	13.64	Manitowoc 34.09 31.82 13.64
Lincoln	34.09	31.82	13.64	Langlade 34.09 31.82 13.64
Lafayette	34.09	31.82	13.64	Kewaunee 34.09 31.82 13.64
Juneau	34.65	32.34	13.86	Jefferson 36.16 33.75 14.47
Jackson	34.09	31.82	13.64	Iron 34.09 31.82 13.64
Iowa	34.09	31.82	13.64	Green Lake 34.17 31.89 13.67
Green	34.09	31.82	13.64	Grant 34.09 31.82 13.64
Forest	34.09	31.82	13.64	Fond du Lac 35.76 33.38 14.31
Florence	34.09	31.82	13.64	Dunn 34.09 31.82 13.64
Door	34.09	31.82	13.64	Dodge 34.09 31.82 13.64
Crawford	34.09	31.82	13.64	Columbia 34.09 31.82 13.64
Clark	34.09	31.82	13.64	Burnett 34.09 31.82 13.64

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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W Y O M I N G

METROPOLITAN FMR AREAS AREA within STATE	A	B	C	Counties of FMR
Casper, WY MSA	48.52	45.29	19.41	Natrona
Cheyenne, WY MSA	40.27	37.59	16.11	Laramie

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES
Albany	32.68	30.50	13.07	Campbell
Big Horn	32.10	29.96	12.84	Fremont
Crook	32.10	29.96	12.84	Converse
Carbon	32.10	29.96	12.84	Sheridan
Platte	43.43	40.53	17.37	Park
Niobrara	32.10	29.96	12.84	Lincoln
Johnson	32.10	29.96	12.84	Hot Springs
Goshen	32.10	29.96	12.84	Weston
Washakie	32.10	29.96	12.84	Uinta
Teton	47.85	44.66	19.14	Sweetwater
Sublette	32.10	29.96	12.84	

P A C I F I C I S L A N D S

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES
Pacific Islands	63.80	59.55	25.52	

P U E R T O R I C O

METROPOLITAN FMR AREAS AREA within STATE	A	B	C	Counties of FMR
Aguadilla, PR MSA	34.93	32.60	13.97	Aguada
Municipio, Moca Municipio, Aguadilla Municipio				
Arecibo, PR PMSA	38.35	35.79	15.34	Camuy Municipio,
Arecibo Municipio, Hatillo Municipio				
Caguas, PR PMSA	34.93	32.60	13.97	Caguas
Municipio, Cidra Municipio, Cayey Municipio				
Municipio, Gurabo Municipio				San Lorenzo
Mayaguez, PR MSA	34.93	32.60	13.97	Cabo Rojo
Municipio, Anasco Municipio				
Municipio, Sabana Grande Municipio				San German
Municipio, Hormigueros Municipio				Mayaguez
Ponce, PR MSA	37.54	35.03	15.01	Yauco Municipio,
Villalba Municipio, Ponce Municipio				
Municipio, Juana Diaz Municipio				Penuelas
Municipio				Guayanilla
San Juan-Bayamon, PR PMSA	37.54	35.03	15.01	Barceloneta
Municipio, Aguas Buenas Municipio				
Municipio, Vega Baja Municipio				Yabucoa
Municipio, Trujillo Alto Municipio				Vega Alta
Municipio, Toa Alta Municipio				Toa Baja

Municipio, Rio Grande Municipio				San Juan
Municipio, Naguabo Municipio, Morovis Municipio				Naranjito
Municipio, Luquillo Municipio, Loiza Municipio				Manati
Municipio, Juncos Municipio				Las Piedras

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH
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P U E R T O R I C O continued

METROPOLITAN FMR AREAS AREA within STATE	A	B	C	Counties of FMR
Municipio, Guaynabo Municipio, Florida Municipio				Humacao
Municipio, Dorado Municipio, Corozal Municipio				Fajardo
Municipio, Ceiba Municipio, Catano Municipio				Comerio
Municipio, Canovanas Municipio				Carolina
Municipio				Bayamon

NONMETROPOLITAN COUNTIES A B C	A	B	C	NONMETROPOLITAN COUNTIES A B C
Barranquitas Municipio.. 34.93 32.60 13.97	34.93	32.60	13.97	Arroyo Municipio..... 34.93 32.60 13.97
Aibonito Municipio..... 34.93 32.60 13.97	34.93	32.60	13.97	Adjuntas Municipio..... 34.93 32.60 13.97
Vieques Municipio..... 34.93 32.60 13.97	34.93	32.60	13.97	Utuado Municipio..... 34.93 32.60 13.97
Santa Isabel Municipio.. 34.93 32.60 13.97	34.93	32.60	13.97	San Sebastian Municipio. 34.93 32.60 13.97
Salinas Municipio..... 34.93 32.60 13.97	34.93	32.60	13.97	Rincon Municipio..... 34.93 32.60 13.97
Quebradillas Municipio.. 34.93 32.60 13.97	38.35	35.79	15.34	Patillas Municipio..... 34.93 32.60 13.97
Orocovis Municipio..... 34.93 32.60 13.97	34.93	32.60	13.97	Maunabo Municipio..... 34.93 32.60 13.97
Maricao Municipio..... 34.93 32.60 13.97	34.93	32.60	13.97	Las Marias Municipio.... 34.93 32.60 13.97

Lares Municipio.....	34.93	32.60	13.97	Lajas Municipio.....
34.93 32.60 13.97				
Jayuya Municipio.....	34.93	32.60	13.97	Isabela Municipio.....
34.93 32.60 13.97				
Guayama Municipio.....	34.93	32.60	13.97	Guanica Municipio.....
34.93 32.60 13.97				
Culebra Municipio.....	34.93	32.60	13.97	Coamo Municipio.....
34.93 32.60 13.97				
Ciales Municipio.....	34.93	32.60	13.97	

V I R G I N I S L A N D S

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES
A B C				
Virgin Islands.....	50.40	47.05	20.16	

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

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FEDERAL COMMUNICATIONS 61 FR 59048 (November 20, 1996)

specific services they will provide within their assigned spectrum and over others. Thus, limiting the use as some have suggested would risk

federal register

Monday
March 3, 1997

Part III

Federal Communications Commission

47 CFR Part 1, et al.
The Wireless Communications Service;
Final Rule

8965, 61 FR 43721 (August 26, 1996). The action the Commission takes here is facilitate geographic area and spectrum segregations that may foster economies

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, 27, and 97

[GN Docket No. 96–228; FCC 97–50]

The Wireless Communications Service ("WCS")

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On February 19, 1997, the Federal Communications Commission ("Commission") adopted a Report and Order establishing rules and policies for a new Wireless Communications Service ("WCS") in the 2305–2320 and 2345–2360 MHz bands. This action is being taken pursuant to the Omnibus Consolidated Appropriations Act, 1997. The effect of this action is to make thirty megahertz of spectrum available for the provision of fixed, mobile, and radiolocation services, and satellite Digital Audio Radio Services.

EFFECTIVE DATE: March 3, 1997.

FOR FURTHER INFORMATION CONTACT: Matthew Moses or Josh Roland, Wireless Telecommunications Bureau, (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in GN Docket No. 96–228. The complete Report and Order is available for inspection and copying during normal business hours in the FCC reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, N.W., Washington, D.C. 20037. The complete Report and Order is also available on the Commission's Internet home page (http://www.fcc.gov).

Summary of the Report and Order

1. In this *Report and Order*, the Commission fulfills the Congressional mandate expressed in section 3001 of the Omnibus Consolidated Appropriations Act for 1997, Public Law 104–208, 110 Stat. 3009 (1996) ("Appropriations Act"), to reallocate and assign the use of the frequencies at 2305–2320 and 2345–2360 MHz. The Commission considers the proposals set forth in the *Notice of Proposed Rule Making* concerning amendment of the Commission's rules to establish the WCS. *See Amendment of the Commission's Rules To Establish Part 27, the Wireless Communications Service*, GN Docket No. 96–228, *Notice of Proposed Rule Making*, FCC 96–441, 61 FR 59048 (November 20, 1996) ("*NPRM*").

A. Licensing Plan for WCS

i. Permitted Services

2. In the *NPRM*, the Commission concluded that the Appropriations Act's reallocation directive means that the Commission may allocate the 2305–2320 and 2345–2360 MHz bands to any or all radio services contained in the International Table of Frequency Allocations applicable to the United States. The Commission proposed to allocate this spectrum to the fixed, mobile, and radiolocation services on a primary basis, which are all the services authorized on a primary basis for these entire bands in the International Table. The Commission also proposed to retain the current primary audio broadcasting-satellite allocation that exists in 45 of the 50 MHz of these bands (2310–2320 and 2345–2360 MHz). The Commission did not propose to change the Amateur Radio Service secondary allocation of the 2300–2310 MHz band, nor the authorization for the 2310–2360 MHz band to be used on a secondary basis by aeronautical telemetry operations.

3. The Commission noted that in its Satellite DARS *NPRM* it had requested comment on whether it should delay issuing licenses for DARS in the 2310–2320 MHz portion of the DARS allocated spectrum due to the number and type of Canadian fixed service facilities in that band. *See Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310–2360 MHz Frequency Band*, IB Docket No. 95–91, *Notice of Proposed Rule Making*, 11 FCC Rcd 1, 60 FR 35166 (July 6, 1996) ("*Satellite DARS NPRM*"). The Commission also noted that in February 1996, it had informed DARS applicants that previously unknown additional Canadian operations existed in the 2310–2360 MHz band that particularly impacted potential use of the 2345–2360 MHz portion of the band for DARS. Accordingly, the Commission requested comment on the feasibility of satellite DARS in parts of the 2305–2320 and 2345–2360 MHz bands.

4. The Commission concludes that under the totality of circumstances presented, the 2310–2320 and 2345–2360 MHz bands will be allocated on a primary basis for fixed, mobile, radiolocation, and broadcasting-satellite (sound) services without further designations. The 2305–2310 MHz band will be allocated on a primary basis for fixed, mobile except aeronautical mobile, and radiolocation services. WCS licensees themselves will determine the specific services they will provide within their assigned spectrum and geographic areas. The services that can be provided, however, will be subject to specific technical rules we adopt *infra* to prevent interference to other services. The Commission emphasizes that with the current state of technology there is a substantial risk that these rules will severely limit, if not preclude, most mobile and mobile radiolocation uses. Fixed uses will be less severely affected, but still will require equipment that will meet technical standards higher than those used for similar purposes on comparable bands, and therefore may be more costly.

5. The Commission believes that in this instance a flexible use allocation serves the public interest. Permitting a broad range of services to be provided on this spectrum will permit the development and deployment of new telecommunications services and products to consumers. Moreover, WCS licensees will not be constrained to a single use of this spectrum and, therefore, may offer a mix of services and technologies to their customers.

6. The Commission recognizes the concerns raised by commenters about the general application of flexible allocations, and it is our intent to address those concerns fully in future proceedings. In this regard, the Commission emphasizes that its decision in this instance to adopt a broadly defined service for this spectrum should not be interpreted as a finding on the merits of flexibility as general allocation policy or prejudging the merits of flexibility in any other proceeding before us. Rather, the Commission's decision here is based on the totality of the circumstances and facts particular to this proceeding, not the least of which is the short time mandated by Congress to bring this spectrum to auction. Importantly, in this particular instance the record does not convincingly demonstrate how this spectrum should be distributed among particular uses in a manner that would provide maximum benefit to the public. Specific services advocated by commenters span a wide range of potential uses, including interactive, high-speed, broadband data services, such as wireless Internet access; return links for interactive cable and broadcasting service; mobile data; satellite DARS; fixed terrestrial use; new and innovative services; radiolocation; educational applications; and wireless local loop. While individual commenters advocate specific allocations for one or more of these uses, the Commission has no clear basis in the current record to prefer some uses over others. Thus, limiting the use as some have suggested would risk precluding potentially beneficial services.

7. The Commission finds that allocating this spectrum for fixed, mobile, radiolocation, and audio broadcasting-satellite services is consistent with the international agreements governing this spectrum, the Appropriations Act, the Communications Act, and Commission precedent. The Commission notes that the Appropriations Act specifically directs the Commission to reallocate the WCS frequencies to "wireless services that are consistent with international agreements concerning spectrum allocations." *See* Appropriations Act, section 3001(a)(1). Nothing in this provision or its legislative history restricts the Commission's authority to assign or allocate this spectrum to more than one permissible use. Additionally, the Commission's allocation to more than one service is consistent with the Commission's obligations under the Communications Act. Section 303 of the Communications Act does not restrict the Commission's discretion to prescribe the nature of the service to be rendered over radio frequencies or its authority to allocate frequencies to the various classes of stations or assign spectrum to stations for more than one permissible use. With respect to allocation decisions, the courts have accorded "substantial deference" to Commission determinations.

8. Commission precedent also supports the permissibility of allocating spectrum in a manner that allows for a broad range of uses. The Commission noted in the *NPRM* that the Commission took this approach in establishing GWCS in August of 1995, where it concluded that authorizing a wide variety of services bounded only by international allocations comported with its statutory authority and served the public interest by fostering the provision of a mix of services. Because GWCS licenses have yet to be auctioned, the evidence regarding the benefits of having allocated that spectrum to all uses permitted by the Commission's international obligations is inconclusive.

9. The Commission continues to believe that such broad allocations are permitted under the Communications Act, and the Commission notes that it also recently permitted CMRS licensees to provide fixed and mobile services. *See Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services*, WT Docket No. 96–6, *First Report and Order*, 11 FCC Rcd 8965, 61 FR 43721 (August 26, 1996). The action the Commission takes here is consistent with this precedent. The Commission notes also that its service designation decision is not so broad as to allow use of the WCS frequencies for any purpose whatsoever. For example, the international allocation for part of this spectrum is for audio broadcast satellite services, and therefore satellite services will be limited to this type of satellite services.

10. The Commission disagrees specifically with those commenters who assert that allocating these frequencies for fixed, mobile, radiolocation and audio broadcasting-satellite services is an impermissible allocation by auction or otherwise inconsistent with Section 309(j). The allocation decision the Commission makes in this proceeding is based on the Commission's finding that under the circumstances presented, including the statutory deadline and the lack of a record that supports a specific allocation, this allocation to fixed, mobile, radiolocation, and audio broadcasting-satellite services comports with the public interest and with the Commission's statutory authority. Thus, the Commission's decision to allocate this spectrum in this manner is unrelated to its decision to award WCS licenses through competitive bidding.

11. In addition, the Commission disagrees with those commenters' arguments that by adopting its proposal the Commission is impermissibly delegating its authority to allocate spectrum and set technical rules to other parties. The allocation the Commission makes here is not entirely open-ended, and auction winners will be subject to strict technical rules that are necessary to prevent interference to other services and which also will likely limit the actual services they may be able to offer. As discussed *infra*, these technical rules are necessary to prevent interference. Therefore, the Commission has not delegated to private parties its responsibility to allocate spectrum and adopt appropriate technical standards.

12. The Commission also agrees with commenters such as Lucent, Motorola, Nortel and CTIA who argue that economies of scale in equipment supply are important and recognize that our decision to adopt a flexible allocation may make achieving those economies of scale more difficult. However, the Commission has taken several steps that it hopes will assist licensees in achieving economies of scale. For example, the Commission has established relatively large geographic service areas and spectrum block sizes. The Commission also is adopting licensing and auction rules designed to facilitate geographic area and spectrum aggregations that may foster economies of scale and, in developing their bidding and aggregation strategies, bidders can consider the benefits of such economies. The Commission believes that the allocation and service rules adopted herein comply with all legal requirements and, considering the totality of the circumstances, serve the public interest.

13. The Commission does not believe that the public interest will be served by prohibiting use of this spectrum for CMRS. It has been the Commission's consistent policy to actively seek to increase competition in telecommunications markets, and its decision here is consistent with that policy. Indeed, in the Omnibus Budget Reconciliation Act of 1993, Public Law 103–66, Congress ordered the transfer of a large amount of government spectrum to the Commission's jurisdiction for nongovernmental use. CMRS licensees have no reasonable basis to expect that the Commission would limit the possibility of further entry by withholding spectrum or by unnecessarily restricting the permissible uses of newly allocated spectrum. However, the Commission notes that, given the out-of-band emission limits it adopt for WCS, technology will likely severely limit, if not preclude, most mobile services on this spectrum, at least in the near term.

14. Some commenters express concern with difficulties in controlling interference. The Commission is responding to this concern by setting specific limits on field strength at the geographic boundaries between licensees and on emissions outside the assigned spectrum blocks. While the Commission recognizes that different system designs have different sensitivities to interference and cause different types and degrees of interference, the Commission believes that these limits provide a reasonable degree of predictability as to the magnitude of interfering signals one can expect from adjacent areas and spectrum blocks. However, the Commission recognizes that these out-of-band and out-of-area power limits do not by themselves ensure interference-free operation. They control primary factors that determine the amount of interference a licensee can expect from neighboring areas and blocks, but there are many other factors that affect interference that they do not control and that are not under the receiver owner's direct control. For example, the level of interference caused to a licensee's receivers from transmitters in an adjacent spectrum block may also

depend on the number of such transmitters, their location relative to the receivers, their antenna directivity and polarization, their duty cycle, and other factors. Since these factors are not regulated by the Commission, they create uncertainty about the amount of interference a licensee may receive. Licensees can reduce this uncertainty by coordinating with their neighbors, and the Commission encourages them to do so. They also can reduce the risk of interference by properly designing and engineering their receiving systems and by using technologies that reduce their receivers' susceptibility to unwanted signals. Also, bidders can reduce their exposure to interfering signals from neighboring spectrum blocks or areas by aggregating adjoining licenses in the auction or through post-auction transactions. But again the Commission emphasizes that interference-free operation is not assured by the Commission's limits. Each WCS licensee must ultimately assume responsibility for protecting its own receiving system from interference from transmitters in adjoining blocks and areas that meet the Commission's limits, and applicants should understand this before they bid for these licenses.

15. Finally, in the *NPRM*, the Commission proposed to permit amateurs to continue to use the 2305–2310 MHz band on a secondary basis. The Commission also proposed to permit continued flight test and vehicle launch use of the 2310–2320 and 2345–2360 MHz bands on a secondary basis. The Commission is adopting these proposals. The effect of this action is that amateurs and aeronautical telemetry operations will be able to continue to use these bands so long as these operations do not interfere with WCS service. In addition, the Commission updates and clarifies the frequency sharing requirements for amateur use of the 2300–2310 MHz and adjacent bands. The Commission also clarifies that footnotes US276 and US339 permit the use of various frequencies for telemetering and associated telecommand operations of launch vehicles "on a co-equal basis by Government and non-Government stations." With respect to Primosphere's request that all flight test operations be precluded from the WCS bands, the Commission finds no basis for precluding such operations on a secondary basis. The Commission makes clear that if secondary flight test operations cause harmful interference to WCS operations, they must immediately either correct the problem or cease operations. If such operations prove to be a problem, however, the Commission may re-evaluate this issue in the future.

ii. Spectrum for Each License

16. In the *NPRM*, the Commission requested comment on the appropriate amount of spectrum to be provided for each WCS license at 2.3 GHz. The Commission specifically requested comment on whether 5, 10, 15 or 30 MHz is the most suitable amount. The Commission noted that 5 MHz bandwidths would be sufficient for paging, radiolocation, dispatch, or point-to-point backbone operations. The Commission also observed that larger bandwidths, such as 10 to 15 MHz, would allow more direct competition with existing fixed and mobile service providers and may also better support some multi-channel satellite DARS. The Commission also asked for comment on whether a single 30 MHz license would offer the most effective approach for providing new two-way fixed or point-to-multipoint uses, such as interconnection with the Internet and other digital network services. Finally, the Commission requested comment on what size spectrum block could best support, in part or fully, the provision of fixed local loop services.

17. The Commission also sought comment on whether the WCS spectrum should be assigned on a paired or unpaired basis. Alternatively, the Commission requested comment on an approach where spectrum bandwidths or pairing of the spectrum are determined through the competitive bidding process. The Commission noted that the 30 MHz of spectrum could be divided into 5 MHz blocks and the amount of spectrum and the location of the spectrum (*i.e.*, contiguous or paired) for each WCS licensee could be determined through the auction process. The Commission further invited commenting parties to suggest additional alternatives for both the amount of spectrum and the size of service areas for WCS licensees. The Commission noted that the Appropriations Act requires that we conclude initial licensing of this spectrum and the collection of all bidding proceeds no later than September 30, 1997. The Commission stated its belief that licensing the WCS spectrum for service to large areas, with relatively few licenses to be awarded, would speed the WCS licensing process and the collection of bidding proceeds, consistent with the requirements of the Appropriations Act. Whatever initial licensing approach is chosen for WCS, the Commission proposed to permit spectrum and service area aggregation through the auction process, *e.g.*, the Commission would permit parties to bid for more than one license in each geographic area and for multiple areas.

18. The Commission observes that the commenting parties generally support either 5 MHz unpaired channel blocks or 10 MHz paired channel blocks, with the vast majority finding that at least 10 MHz is needed to provide certain WCS services in an efficient and competitive manner. The Commission notes, however, that the potential uses of the WCS spectrum will be greatly affected by the out-of-band emission limits, discussed in Section III.D.7 *infra*, needed to protect satellite DARS reception in the 2320–2345 MHz band. In particular, these limits will have the greatest impact on the portion of the WCS spectrum immediately adjacent to the satellite DARS band, namely, the WCS spectrum at 2315–2320 MHz and 2345–2350 MHz. In order to account for this effect in light of the overall record of this proceeding, and to minimize its impact on WCS operations generally, the Commission finds that WCS should be licensed initially as two 10 MHz channel blocks (with 5 MHz of this spectrum from the lower band paired with 5 MHz from the upper band) plus two 5 MHz blocks (those immediately adjacent to the satellite DARS spectrum). The Commission believes that this channelization will permit WCS licensees to offer a wide variety of services. For example, the record suggests that the 10 MHz channel blocks represent the minimum amount of spectrum needed to support certain data and wireless local loop services, including wireless Internet access. In addition, the Commission believes that providing for 10 MHz of spectrum on a paired basis would allow for the introduction of both one-way and two-way services and would facilitate the implementation of a variety of technologies. In the spectrum adjacent to the satellite DARS band, however, the Commission believes that WCS mobile operations may be prohibitively expensive and technologically infeasible for a substantial period of time. Also, the narrow (*i.e.*, 30 MHz) transmit and receive separation between the 2315–2320 MHz and 2345–2350 MHz bands would substantially increase the cost of equipment employing traditional frequency division duplex technology if pairing of these blocks were required. By making this spectrum available initially to WCS licensees as two 5 MHz unpaired channel blocks, the spectrum may have increased utility for satellite DARS and a variety of WCS fixed operations, especially those employing time division duplex technology. Also,

the Commission will not preclude WCS licensees from pairing this spectrum on their own initiative, whether through submission of winning bids for each block at auction or through spectrum aggregation in the aftermarket. Another advantage of this overall initial licensing approach is that the offering of only four licenses in each service area will allow the WCS auction to be completed within the timetable contemplated by the Appropriations Act. In this respect, the Commission believes that this licensing plan is superior to other options suggested by the commenters that would involve greater licensing complexity and probably greater delay. The initial channel blocks the Commission has selected are shown in the Table below.

Channel block	Frequency range
A	2305–2310 and 2350–2355 MHz.
B	2310–2315 and 2355–2360 MHz.
C	2315–2320 MHz.
D	2345–2350 MHz

19. As discussed, *infra*, the Commission also is allowing for spectrum aggregation and disaggregation, without restriction, so that parties, for example, desiring to employ technology that requires unpaired spectrum or asymmetrically paired spectrum can either disaggregate the channels initially offered or purchase additional needed amounts of spectrum in the after-market. In addition, applicants may bid on all four channel blocks in a service area and, if successful, render the type of services addressed by those commenters supporting the licensing of WCS spectrum in a single 30 MHz block. Thus, the initial offering of WCS spectrum in 5 MHz or 10 MHz blocks does not preclude the offering of services which might require a greater amount of spectrum. Further, the disaggregation flexibility afforded licensees potentially allows provision of WCS services which require less spectrum than contained in the initial blocks. In sum, initially licensing the WCS spectrum according to the channel block plan identified above and allowing for spectrum aggregation and disaggregation will permit a wide variety of applicants to provide services and satisfy the requirements of the Appropriations Act. The Commission also believes that providing for four blocks, along with our spectrum disaggregation rules, will promote the objectives of Section 309(j)(4)(C) of the Communications Act by providing for distribution of licenses and services among geographic areas and providing greater opportunity for a wide variety of applicants, including small businesses and other designated entities, than would be possible under a single 30 MHz block plan.

iii. Licensed Service Areas

20. In deciding on the appropriate service areas size for WCS licenses, the Commission must balance several factors. The Commission wishes to encourage the rapid deployment of new telecommunications technologies and services on WCS spectrum; thus, the Commission must assess the use or uses to which this spectrum is likely to be put and determine the geographic scope that would best facilitate rapid deployment thereof. In addition, the Commission believes that because this spectrum has not heretofore been used to provide commercial services and no equipment has yet been developed for use in this band, consumers would benefit if the WCS band plan enables equipment manufacturers to realize economies of scale that will translate to lower equipment costs to service providers. The Commission also recognizes that the Appropriations Act directed it to "assign the use of (WCS) frequencies by competitive bidding pursuant to section 309(j)." Appropriations Act, section 3001(a)(2). Section 309(j) of the Communications Act includes as objectives for competitive bidding the avoidance of excessive concentration of licenses and the dissemination of licenses among a wide variety of applicants. *See* 47 U.S.C. 309(j)(3)(B). In addition, the Commission is mindful of our statutory obligation to conduct the auction for WCS licenses to ensure that all proceeds are deposited by September 30, 1997, and of our experience in previous auctions, which has shown that simultaneous, multiple round auctions for a larger number of licenses are more complex and take longer to complete than similar auctions involving fewer licenses. Finally, the Commission notes that aggregation of both spectrum and service areas through the auction process has proven to be an effective method of allowing bidders to acquire the right amount of spectrum for their business needs.

21. Balancing the various factors noted above, the Commission concludes that WCS will be licensed in two ways. First, with respect to the C and D blocks, WCS will be licensed on the basis of regional areas similar to those used in our narrowband PCS rules. In WCS, however, the Commission will define the regions by aggregating EAs in the continental United States into 6 larger groupings. The Commission will refer to these service areas as Regional Economic Area Groupings (REAGs). In addition, consistent with the Commission's approach in other services, the Commission will create separate REAGs covering the five U.S. possessions, as follows: Guam and the Northern Mariana Islands (REAG # 9), Puerto Rico and the U.S. Virgin Islands (REAG # 10) and American Samoa (REAG # 11), as well as separate service areas for Alaska (REAG # 7) and Hawaii (REAG # 8). As discussed more fully *infra*, the Commission also will create a service area in the Gulf of Mexico (REAG # 12). Second, the A and B blocks will be licensed in smaller areas, by aggregating EAs into 46 areas (to be called Major Economic Areas, or MEAs) in the continental United States and an additional 6 areas covering Alaska (MEA # 47); Hawaii (MEA # 48); Guam and the Northern Mariana Islands (MEA # 49); Puerto Rico and the U.S. Virgin Islands (MEA # 50); American Samoa (MEA # 51); and the Gulf of Mexico (MEA # 52). The Commission believes that this licensing scheme satisfies the various and often conflicting positions raised by the commenters and will best accommodate our objectives under 309(j) of the Communications Act.

22. Specifically, the larger WCS license areas that the Commission will provide for in the C and D blocks will accommodate those commenters who argue that large areas will (1) encourage the rapid development and deployment of innovative service; (2) facilitate interoperability and the setting of standards; (3) allow for economies of scale that will encourage the development of low cost equipment; and (4) facilitate provision of satellite DARS services. Many commenters in this proceeding point out that WCS spectrum can be used effectively to provide wireless local loop, broadband data services and DARS services. At least with respect to these services, there may be significant economic efficiencies that could be realized—to the ultimate benefit of consumers—if these services were to be provided with nationwide scope. Licensing the C and D blocks in WCS on a REAG basis may facilitate aggregation of service areas and speed implementation of these new services.

23. In addition, a number of commenters point out that ensuring technical coordination and minimizing interference across geographic areas is very difficult when the exact nature of the services to be provided is unknown and the spectrum may be used to provide a variety of service offerings. The larger service areas in the C and D

blocks will speed and simplify the

separate service area to help meet the

involve services that would be provided

that spectrum is made available to those

safety entities, assigning the WCS

to the public safety community, costly

blocks will speed and simplify the process of interference coordination along geographic boundaries, as well as minimize transaction costs and disputes arising from interference, and facilitate implementation of services that would require roaming capabilities and easy interoperability. In addition, because equipment currently is not available for use in this band, the larger service areas in the C and D blocks also should enable manufacturers to achieve greater economies of scale in production of equipment, thus reducing its per-unit cost and allowing more rapid deployment of services to the ultimate benefit of consumers.

24. While the Commission is mindful of the desire of some parties to have large licenses, the Commission also agrees with commenters that contend that smaller businesses will have more difficulty competing in the WCS auction for licenses in the large regions. In this regard, the Commission believes that the creation of smaller MEAs in the A and B blocks (along with the large bidding credits provided for small businesses, *see infra*), will provide greater opportunities for smaller businesses to compete in an auction and participate in the provision of WCS services. The Commission further notes that, consistent with views of some commenters, these smaller service areas will: (1) Enable a larger number of entities to participate in the provision of services and result in increased competition; (2) encourage a more diverse group of service providers due to the lower costs of participating in the auction; and (3) result in broader flexibility in service offerings by WCS licensees. The Commission also believes that these smaller service areas will encourage efficiencies by making it easy for a bidder to acquire licenses for only as much area as required for its prospective service.

25. The Commission notes that some commenters support even smaller BTAs and MSAs/RSAs to facilitate participation in the WCS service by small businesses. The Commission finds that service areas based on such smaller areas might compromise its ability to complete the WCS auction within the statutorily mandated time frame. In any event, the Commission notes that in addition to the large bidding credits offered to small businesses, our provisions for partitioning and disaggregation (*see infra*) should work to provide significant opportunities to smaller businesses to participate in the provision of WCS services.

26. As noted above, two commenters, SOSCO and PetroCom, advocate licensing the Gulf of Mexico as a separate service area to help meet the growing communications needs of petroleum and natural gas providers in the area. In light of those requests, the Commission designates a separate REAG and MEA covering the Gulf of Mexico. The Commission determines that land-based license regions abutting the Gulf of Mexico will extend to the limit of the territorial waters of the United States in the Gulf, which is the maritime zone that extends approximately twelve nautical miles from the U.S. baseline. Beyond that line of demarcation, the Commission will create the Gulf of Mexico REAG and MEA, which will extend from that line outward to the broadest geographic limits consistent with international agreements (*see* maps at Appendices C and D of the *Report and Order*). The limits and coordination of signal strengths at the boundaries of the service areas meeting in the Gulf region will be the same as those that will apply for all service areas.

27. Finally, the Commission notes that several commenters argue that their suggested WCS licensed service area sizes will increase auction revenues. The Commission wishes to make clear that, consistent with section 309(j)(7)(A) of the Communications Act, the Commission has considered the communications needs of potential service providers and the American public in developing these service areas. The Commission has not considered anticipated auction revenue.

B. Use of Competitive Bidding

28. The Commission will adopt rules providing for the assignment of these frequencies through the use of competitive bidding pursuant to section 309(j). As the Commission noted in the *NPRM*, the Appropriations Act directs the Commission to assign licenses to use the 2305–2320 and 2345–2360 MHz bands through competitive bidding pursuant to Section 309(j) of the Communications Act. Section 309(j) provides that auctions may be used to award licenses among mutually exclusive applicants where the principal use of such spectrum will involve, or is reasonably likely to involve, a subscription-based service. *See* 47 U.S.C. 309(j)(1), (2). The Commission continues to believe that it is reasonable to conclude that the principal use of WCS spectrum will involve, or is reasonably likely to involve, the transmission or reception of communications signals to subscribers for compensation. While the Commission has decided to permit WCS licensees to provide a range of services, the uses of this spectrum most mentioned by commenters appear to involve services that would be provided on a subscription basis. Fixed (and radiolocation) services that could be provided include services similar to the Multichannel Multipoint Distribution Service ("MMDS"), the Location and Monitoring Service ("LMS"), Digital Termination Systems ("DTS"), Digital Electronic Messaging Service ("DEMS"), wireless local loop, and certain of the services provided by Local Multipoint Distribution Service ("LMDS"). Although it may be technologically infeasible to provide mobile services as a WCS offering in the near future due to the necessity for strict technical standards (*see infra*), services that may ultimately be provided include those similar to PCS, cellular, Specialized Mobile Radio ("SMR") and paging. All of these services currently are provided to subscribers for compensation and the Commission believes that it is reasonable to expect that WCS offerings will be provided on a similar basis. In this regard, even if a WCS licensee chooses to offer a satellite DARS service on that portion of the spectrum available for such use, the Commission believes it is likely that such service also will be offered on a subscription basis.

29. The Commission's decision today also advances the objectives contained in section 309(j) of the Communications Act. Section 309(j)(3)(A) directs the Commission to seek to promote the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays. In this regard, the Commission believes that its service and licensing rules, in conjunction with its allocation plan, will allow for and foster the development of a range of new services and technologies. These policies also will advance the objective, expressed in section 309(j)(3)(B), of promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telcos, and businesses owned by members of minority groups and women.

30. The Appropriations Act states that in making these frequencies available for competitive bidding, the Commission shall seek to promote the most efficient use of the spectrum. *See* Appropriations Act, section 3001(b)(1). As the Commission stated in the *NPRM*, the Commission believes that its competitive bidding rules will ensure

that spectrum is made available to those who value it most highly and therefore are most likely to put it to its most economically efficient use. This outcome will be further assured by the Commission's use of a simultaneous, multiple round auction that will allow applicants to aggregate spectrum and service areas into parcels of efficient size and to realize economies of scale and scope without the need for costly and time consuming post-auction transactions. In addition, as indicated above, the Commission has decided to permit the WCS licensee to provide fixed, mobile, radiolocation or satellite DARS services. The Commission believes there are significant competitive alternatives for each of these types of services that will ensure that WCS licensees have incentives to operate in an efficient and effective manner. The Commission therefore believes that there will be sufficient market incentives to promote the most efficient use of the 2305–2320 and 2345–2360 MHz bands, as required by the Appropriations Act and section 309(j)(3)(D) of the Communications Act.

C. Consideration of Public Safety Needs

31. As the Commission discussed in the *NPRM*, the Appropriations Act instructs it to take into account the needs of public safety radio services in making the WCS spectrum available through competitive bidding. Recognizing that the Appropriations Act marks the first time that Congress has specifically directed the Commission to consider the needs of public safety radio services in connection with licensing a particular spectrum band, the Commission sought comment generally on how it can best effectuate Congressional intent with regard to public safety needs as related to this spectrum. In addition, the Commission noted that in a post-enactment letter, the Chairman and Ranking Member of the House Committee on Commerce suggest that the Commission, consistent with its obligation to promote the public interest, pay particular attention to how the needs of public safety as well as commercial applicants may best be met in determining how to design this auction. The Commission referred to the recommendations made by the Public Safety Wireless Advisory Committee in its final report, and asked interested parties how our WCS rules should be fashioned so as to benefit the public safety community consistent with those recommendations. Finally, the Commission invited commenters to address a broad array of options, including making an allocation of some portion of the WCS spectrum for public safety entities, assigning the WCS spectrum with an obligation to contribute toward needs identified by the public safety community, and taking steps to encourage the use of WCS spectrum for services useful to public safety entities.

32. The Appropriations Act requires that the Commission take into account the needs of public safety radio services. Therefore, the Commission must consider the communications needs of the public safety community in assigning WCS frequencies. The record compiled in this proceeding and in the Commission's public safety proceeding demonstrates that spectrum currently allocated to public safety spectrum is inadequate to meet the public safety community's voice and data needs. In addition, this record suggests that currently allocated spectrum will not permit deployment by public safety agencies of needed advanced data and video systems. The Appropriations Act requires, however, that the use of 30 MHz of spectrum in the 2.3 GHz band be assigned by competitive bidding pursuant to section 309(j) of the Communications Act. The Commission therefore concludes that allocating a portion of the 2.3 GHz spectrum for public safety appears to be inconsistent with the Appropriations Act because, pursuant to the Commission's auction authority, the Commission is not permitted to assign spectrum to public safety applicants by competitive bidding.

33. In any case, even if spectrum were to be allocated for assignment only to public safety entities, the Commission does not believe that such an allocation would be the best way to meet those needs. The Commission notes that the WCS spectrum was not identified in the *PSWAC Final Report* as useful in meeting the public safety community's spectrum requirements. In this regard, the Commission believes that it is significant that APCO, the only public safety entity to comment in this proceeding, noted in its recent *ex parte* filing that facilitating possible public safety use of a small portion of the 2.3 GHz band for non-mission critical operations will have little or no impact on the spectrum needs identified by PSWAC. In addition, the Commission believes that it is significant that public safety entities do not currently have operations in any spectrum in or near the 2.3 GHz band. Thus, it may be more difficult for public safety entities to avail themselves of equipment economies of scale or to integrate this spectrum into their current communications systems. In addition, even if WCS spectrum were of some use to the public safety community, costly networks would still need to be constructed in order for useful services to be provided. In this regard, the Commission finds it significant that, as noted above, several commenters (both public safety entities and others) questioned whether a specific public safety allocation at 2.3 GHz would significantly assist public safety entities given the technical configuration and the financial resources that a 2.3 GHz system would require.

34. The record in this proceeding also demonstrates that public safety agencies require additional funding to enable them to migrate to new spectrum and to upgrade and purchase new equipment. In addition, the Commission notes that the *PSWAC Final Report* found, the radio systems used by the Public Safety community are laboring under increasing burdens. Equipment is old and funding for new equipment is often scarce. The *PSWAC Final Report* also found that funding for acquisition of new spectrum-efficient technologies and/or relocation to different frequency bands is likely to be a major impediment to improving Public Safety wireless systems. The *PSWAC Final Report* includes recommendations regarding the future operational requirements of public safety agencies, methods for achieving greater interoperability among agencies, the technologies that are and will be available to meet public safety requirements, and the amount of radio spectrum that will be necessary to meet these requirements. Many of these requirements can be met by the Commission's allocation of additional spectrum to public safety agencies, and the report examined alternative approaches for obtaining funding to assist public agencies in an orderly migration to new spectrum allocations and advanced technologies.

35. The Commission believes that, in order for the future needs of public safety wireless communications to be satisfied, new sources of funding will have to be devised. This is true regardless of the amount of spectrum made available for public safety. In this proceeding, the Commission has considered whether funds from the WCS auction could provide a source of funding for public safety agencies. The Commission notes, however, that section 309(j)(8)(A) requires that "all proceeds from the use of a competitive bidding system under this subsection shall be deposited in the Treasury * * *." 47 U.S.C. 309(j)(8)(A). The only exceptions to this general rule are contained in sections 309(j)(8)(B) (providing for retention of revenues as

an offsetting collection for developing

addition, the Commission notes that

the *NPRM*, opening the WCS market to

on out-of-band emissions by equipment

that have not acquired WCS spectrum.

allowing parties to decide without

an offsetting collection for developing and implementing the auction program) and 309(j)(8)(C) (providing for deposit of upfront payments in an interest-bearing account, with interest transferred to the Telecommunications Development Fund). Therefore, it appears that legislative action is required before auction revenues can be used to provide a source of funding for public safety agencies to acquire new communications technologies. It is the Commission's belief that public safety agencies would benefit greatly from such action. The Commission notes that legislation recently introduced by Senator John McCain would provide for a portion of the revenues raised from an auction of spectrum currently used by television broadcast stations operating on channels 60–69 to be earmarked for "funding State and local law enforcement and public safety agencies' mission-related radio communications capabilities." *See* S. 255, The Law Enforcement and Public Safety Telecommunications Empowerment Act, as introduced in the United States Senate on February 4, 1997, section 5(b)(1). The Commission believes that legislative approaches such as that taken in the McCain bill would substantially aid public safety agencies in their communications needs and thereby improve the safety of all Americans.

36. Though the Commission has concluded that designating 2.3 GHz spectrum for use exclusively by public safety entities is not advisable, the Commission emphasizes its continuing commitment to address public safety needs. Specifically, the Commission is considering the operational, technical and spectrum requirements of the public safety community in our Public Safety proceeding. *See The Development of Operational, Technical, and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010*, WT Docket No. 96–86, *Notice of Proposed Rule Making*, 11 FCC Rcd 12460, 61 FR 25185 (May 20, 1996). That proceeding examines what spectrum bands could be useful for meeting existing and future communications requirements, including voice, data (such as transmission of fingerprints, building floor plans and medical data), and video for surveillance monitoring. The Commission expects that additional spectrum will be made available for public safety use as a result of that proceeding, and that its decision in that proceeding will address the specific communications requirements and bands identified by PSWAC. In addition, the Commission notes that several commenters, including APCO and Motorola, reiterated the public safety community's need for 24 MHz of spectrum at UHF channels 60–69. The Commission believes that their proposal has merit and plan to give it serious consideration in our Digital Television proceeding. *See Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, MM Docket No. 87–268, *Sixth Further Notice of Proposed Rule Making*, 11 FCC Rcd 10968, 61 FR 43209 (August 21, 1996). The Commission notes that legislation recently introduced by Senator McCain would direct the Commission to allocate 24 MHz of the channel 60–69 spectrum to public safety use, *See* S. 255, *The Law Enforcement and Public Safety Telecommunications Empowerment Act, as introduced in the United States Senate on February 4, 1997*, section 4(a), and that the Administration's 1998 budget also supports such a reallocation. *See Testimony of Larry Irving, Assistant Secretary for Communications and Information, U.S. Department of Commerce, before the Subcommittee on Telecommunications, Trade and Consumer Protection of the U.S. House of Representatives Committee on Commerce, February 12, 1997*, at 24; *see also Statement by Attorney General Janet Reno on Proposal to Set Aside Communications Frequencies for Public Safety Use*, released February 6, 1997.

37. The Commission declines to adopt special provisions to benefit petroleum and natural gas providers, railway operators and operators of water supply systems. Though the Commission recognizes that these entities perform valuable public service functions, the Commission does not believe that Congress intended that they be included in the class of "public safety radio services" that the Appropriations Act directs the Commission to take into account in this proceeding. The Commission's Rules define that term to include "Local Government, Police, Fire, Highway Maintenance and Forestry-Conservation Radio Services." 47 CFR 90.15. The Commission declines to deviate from this established definition.

D. Service and Technical Rules

i. Eligibility

38. The Commission concludes that, with the exception of the foreign ownership restrictions set forth in section 310 of the Communications Act, *see* 47 U.S.C. 310, there will be no eligibility restrictions on participation in WCS. As the Commission stated in the *NPRM*, opening the WCS market to a wide range of applicants will permit and encourage entrepreneurial efforts to develop new technologies and services. The Commission also believes that, given the relatively large amount of spectrum that is available to provide services similar to those that can be operated on the WCS spectrum, providing open eligibility in this instance will not lead to excessive concentration of market power. The Commission agrees with CPI that Section 27.302 should ensure that WCS licensees are subject to all of the foreign ownership restrictions set forth in Section 310 of the Communications Act to the extent the restrictions are applicable to the particular service in question. Thus, for example, common carrier services would be subject to the restrictions in section 310(b). *See* 47 U.S.C. 310.

ii. CMRS Spectrum Cap

39. The decisional factor in whether to apply the CMRS spectrum cap to any particular service is a balancing of the potential benefits and costs. The Commission believes that, in these unique circumstances where the Commission is allocating spectrum and licensing a wholly new service pursuant to congressional directive, the potential benefits do not outweigh the potential costs. Thus the Commission will not count holdings of WCS spectrum at 2.3 GHz against the CMRS spectrum cap.

40. As the Commission noted in the *NPRM*, the CMRS spectrum cap was imposed out of concern that "excessive aggregation [of spectrum] by any one of several CMRS licensees could reduce competition by precluding entry by other service providers and might thus confer excessive market power on incumbents." *Implementation of sections 3(n) and 332 of the Communications Act*, GN Docket No. 93–252, *Third Report and Order*, 9 FCC Rcd 7988, 8101, 59 FR 59945 (November 21, 1994) ("*CMRS Third Report and Order*"). The spectrum cap is intended to promote a vigorous competitive market for the provision of commercial mobile radio services, and to ensure that each mobile service provider (*i.e.*, cellular, PCS or SMR licensee) has the opportunity to obtain sufficient spectrum to compete effectively and that no single provider is able to preclude the provision of service by effective competitors or significantly reduce the number of competitors by aggregating spectrum.

41. As discussed more fully in Section III.D.7, *infra*, because the spectrum allocated for satellite DARS is situated between the two WCS bands, limitations on out-of-band emissions by equipment operating on WCS spectrum are needed to protect against interference with sensitive satellite DARS reception. The Commission believes that the out-of-band emission limits we are adopting likely will, at least in the near term, make mobile operations in the WCS spectrum technologically infeasible. Hence, there is little likelihood that allowing an incumbent CMRS licensee to acquire enough WCS spectrum that its total CMRS and WCS spectrum holdings exceed the 45 MHz cap would have anticompetitive consequences for mobile services. Application of the CMRS spectrum cap to WCS spectrum is not necessary to guard against excessive concentration in the CMRS market or the accumulation of undue market power.

42. Conversely, even if it is technically feasible to use this spectrum for CMRS-type service, applying the cap and excluding many existing CMRS providers from acquiring WCS licenses would, the Commission believes, carry significant potential costs for consumers. With their existing base station infrastructures, CMRS licensees may be the most efficient users of WCS spectrum because economies of scope may be large in the provision of new services combined with the provision of conventional mobile voice CMRS. For example, it may be that a current CMRS licensee would be able to use its existing infrastructure to provide fixed services in the most cost efficient manner. Site acquisition and zoning approval for new facilities is both a major cost component and a major delay factor in deploying wireless systems. Facilities at existing cellular or PCS sites might accommodate additional equipment for new services or be modified to do so at a significantly lower cost than deploying a whole new cell infrastructure for the new service in a crowded environment. There may be other economies of scope in the provision of different services as well. Applying the CMRS spectrum cap to the WCS spectrum would interfere with the realization of these savings by preventing the direct participation by those entities who own the existing CMRS infrastructure, and consequently, prevent consumers from benefiting from these savings, with little off-setting benefit in competition.

43. The Commission recognizes that not applying the cap to WCS spectrum may result in some CMRS licensees acquiring spectrum and, provided that the technical obstacles noted *infra* can be overcome, that at some point these licensees may use WCS spectrum to compete against other CMRS licensees that have not acquired WCS spectrum. The Commission does not believe, however, that such a circumstance substantially risks impairing competition in the CMRS marketplace. When 30 MHz PCS systems are fully deployed with the minimum number of cells needed for competitive coverage, they will provide a large increase in capacity over what is currently available. As for the argument that regulatory parity compels application of the CMRS spectrum cap to WCS spectrum, the Commission disagrees. Whether or not the cap is applied, all CMRS providers stand on equal footing with respect to the acquisition of WCS licenses, and any entity using WCS spectrum to provide CMRS services will be regulated in the same manner as all other CMRS providers.

iii. Disaggregation and Partitioning

44. Consistent with the weight of the comments and with the Commission's recent decision to adopt the approach proposed in WT Docket No. 96–148 for broadband PCS, *See Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees; Implementation of Section 257 of the Communications Act—Elimination of Market Entry Barriers*, WT Docket No. 96–148, *Report and Order and Further Notice of Proposed Rule Making*, FCC 96–474, 62 FR 696 (January 6, 1997) ("*Partitioning and Disaggregation R&O*"), the Commission adopts its proposals for geographic partitioning and spectrum disaggregation. We will permit WCS licensees to partition their service areas into smaller geographic service areas and to disaggregate their spectrum into smaller blocks. We also conclude that the specific rules pertaining to partitioning and disaggregation in WT Docket No. 96–148 shall apply to WCS licensees. In addition, for the purposes of partitioning and disaggregation, we will require that WCS systems be designed so as not to exceed a signal level of 47 dBuV/m at the licensee's service area boundary, unless the affected adjacent service area licensees have agreed to a different signal level.

45. In WT Docket No. 96–148, the Commission decided to permit geographic partitioning by broadband PCS licensees along any service area defined by the partitioner and partitionee. *See Partitioning and Disaggregation R&O*. In addition, the Commission decided to permit spectrum disaggregation by broadband PCS licensees without restriction on the amount of spectrum to be disaggregated. The Commission concluded that allowing parties to decide without restriction the amount of spectrum to be disaggregated will encourage more efficient use of the spectrum and permit the deployment of a broader mix of service offerings, both of which will lead to a more competitive wireless marketplace. *Id.* We believe that this reasoning applies with equal force to WCS. Therefore, subject to the provisions discussed below with respect to licensees who take advantage of bidding credits, once an initial WCS license is granted, licensees will be free to partition their service areas and disaggregate their spectrum. Finally, consistent with PCS and other CMRS services, WCS licensees will be allowed to use management and operational arrangements to permit others to use portions of their spectrum and geographic service areas. The Commission wishes to emphasize that the WCS licensee must retain ultimate control over and responsibility for all operations under such arrangements.

46. The Commission concludes that any licensee will be permitted to partition its service area as long as it submits sufficient information to the Commission to maintain our licensing records. Partitioning applicants will be required to submit, as separate attachments to the partial assignment application, a description of the partitioned service area and a calculation of the population of the partitioned service area and licensed market. The partitioned service area must be defined by coordinate points at every 3 degrees along the partitioned service area agreed to by both parties, unless either (1) an FCC-recognized service area is utilized (*i.e.*, Major Trading Area, Basic Trading Area, Metropolitan Service Area, Rural Service or Economic Area) or (2) county lines are followed. These geographical coordinates must be specified in degrees, minutes and seconds to the nearest second of latitude and longitude, and must be based upon the 1927 North American Datum (NAD27). Applicants also may supply geographical coordinates based on 1983 North American Datum (NAD83) in addition to those required based on NAD27. This coordinate data should be supplied as an attachment to the partial assignment application, and maps need not be supplied. In cases where an FCC-recognized service area or county lines are being utilized, applicants need only list the specific area(s) (through use of FCC designations) or counties that make up the newly partitioned area.

47. Similarly, where WCS licensees seek to disaggregate their WCS spectrum, the Commission will not

require the disaggregating party to retain a minimum amount of spectrum. The Commission will allow disaggregating parties to negotiate channelization plans among themselves as part of their disaggregation agreements, and the Commission will continue to require that such plans provide the necessary out-of-band emission protections to third party licensees as required by our rules. The Commission is not adopting a limit on the maximum amount of spectrum that licensees may disaggregate. The Commission finds no evidence at this time that a maximum limitation for disaggregation is necessary. WCS licensees shall be permitted to disaggregate spectrum without limitation on the overall size of the disaggregation as long as such disaggregation is otherwise consistent with our rules.

48. The Commission declines to adopt RTG's proposal to provide rural telcos with a right of first refusal. Section 254 of the Telecommunications Act of 1996, Pub. L. 104–104, section 101, 110 Stat. 56 (1996), states that, in seeking to promote its goal of universal service, the Commission should ensure that consumers from all parts of the Nation, including rural areas, have access to telecommunications and information services that is comparable to service in other, more urban areas and at rates that are comparable to the rates available in urban areas. Granting rural telcos a right of first refusal would be at odds with the Commission's goals of ensuring that the largest number of entities participate in the WCS marketplace and eliminating barriers to entry for small businesses. As the Commission concluded in WT Docket No. 96–148, the Commission also believes that a right of first refusal would be difficult to administer and could discourage partitioning. *Partitioning and Disaggregation R&O.* For example, an area proposed for partitioning to a non-rural telco may intersect with an area for which a rural telco has a right of first refusal. A further problem would be uncertainty as to whether the rural telco's right of first refusal would continue after the auction winner partitioned the license area to another party. Additionally, a partitioning agreement may be part of a larger assignment transaction. If a rural telco were able to exercise a right of first refusal with respect to a partitioned area, it may not be possible to separate out the partitioning agreement to stand on its own and the entire assignment transaction could not be consummated.

49. If a WCS licensee that received a bidding credit partitions a portion of its license to an entity that would not meet the eligibility standards for a similar bidding credit, the Commission will require that the licensee reimburse the government for the amount of the bidding credit calculated on a proportional basis based upon the ratio of population of the partitioned area to the overall population of the licensed area. *See* 47 CFR 1.2110(f) and 24.717(c)(1). If a licensee that received a bidding credit partitions to an entity that would qualify for a lesser bidding credit, the Commission will require that the licensee reimburse the government for the difference between the amount of the bidding credit obtained by the licensee and the bidding credit for which the partitionee is eligible, calculated on a proportional basis based upon the ratio of population of the partitioned area. *See* 47 CFR 1.2110(f) and 24.717(c)(2). Similar provisions shall apply where a WCS licensee that receives a bidding credit seeks to disaggregate a portion of its spectrum to an entity that would not have qualified for such a bidding credit. All such unjust enrichment payments will be calculated based upon the ratio of the amount of spectrum disaggregated to the amount of spectrum retained by the original licensee. With respect to disaggregation from one licensee that qualified for a bidding credit to another licensee that would also qualify for a bidding credit, the Commission will adopt an approach similar to that adopted for partitioning.

50. Finally, to allow WCS licensees flexibility to design the types of agreements they desire, the Commission will follow its decision in WT Docket No. 96–148 to permit combined partitioning and disaggregation. For example, a party may obtain a license for a single county with only 5 MHz of WCS block A spectrum. By allowing such combined partitioning and disaggregation, we believe that the goals of providing competitive service offerings, encouraging new market entrants, and ensuring quality service to the public will be advanced. The Commission further concludes that in the event that there is a conflict in the application of the partitioning and disaggregation rules, the partitioning rules should prevail. For the purpose of applying the Commission's unjust enrichment provisions relating to bidding credits, when a combined partitioning and disaggregation is proposed, the Commission will use a combination of both population of the partitioned area and amount of spectrum disaggregated to make these *pro rata* calculations. For example, if a WCS licensee that availed itself of a bidding credit and a non-qualifying partitionee/disaggregatee were to agree on a 20 percent disaggregation of spectrum over 30 percent of the population of the licensed service area, an unjust enrichment payment of 6 percent (.20 x .30) of the bidding credit would be required.

51. The Commission also notes that these geographic partitioning and spectrum disaggregation rules, while not a substitute for licensing directly from the Commission, nevertheless will help to eliminate market entry barriers, consistent with section 257 of the Communications Act, by providing smaller, less capital-intensive areas and spectrum blocks which are more accessible by small business entities. *See* 47 U.S.C. 257.

iv. License Term

52. The WCS license term will be 10 years, with a renewal expectancy similar to that afforded PCS and cellular licensees. The Commission believes that this relatively long license term, combined with a renewal expectancy, will help to provide a stable regulatory environment that will be attractive to investors and, thereby, encourage development of this new frequency band. In the event that a WCS license is partitioned or disaggregated, any partitionee/disaggregatee will be authorized to hold its license for the remainder of the partitioner's/disaggregator's original ten-year license term, and the partitionee/disaggregatee will be required to submit the showings required at the five-year mark and with its renewal application. The Commission believes that this approach, which is similar to the partitioning provisions we recently adopted for the MDS and for current broadband PCS licensees is appropriate because a licensee, through partitioning, should not be able to confer greater rights than it was awarded under the terms of its license grant.

53. The Commission will require that a WCS licensee's renewal application include at a minimum the following showing to claim a renewal expectancy: (1) A description of current service in terms of geographic coverage and population served or links installed; (2) an explanation of the licensee's record of expansion, including a timetable for the construction of new base sites or links to meet changes in demand for service; (3) a description of the licensee's investments in its system; and (4) copies of any FCC orders finding the licensee to have violated the Communications Act or any FCC rule or policy, and a list of any pending proceedings that relate to any matter

described by the requirements for the renewal expectancy.

v. Performance Requirements

54. The Commission has concluded that, considering the unique circumstances in which WCS licenses are being awarded and the strict technical requirements necessary to prevent interference, it will adopt very flexible construction (or "build-out") requirements for WCS. Specifically, the Commission will require licensees to provide "substantial service" to their service area within 10 years. Although WCS licensees will have incentives to construct facilities to meet the service demands in their licensed service area, the Commission believes that minimum construction requirements can promote efficient use of the spectrum, encourage the provision of service to rural, remote and insular areas and prevent the warehousing of spectrum.

55. The build-out requirement that the Commission adopts today is the most liberal construction requirement adopted by the Commission to date. The Commission believes that this liberal build-out requirement is appropriate in the case of WCS for a number of reasons. First, the Commission is providing WCS licensees with the flexibility to offer a range of services using the WCS spectrum. Given the broad range of new and innovative services that the comments lead the Commission to believe might be provided over WCS spectrum, imposing strict construction requirements that would apply over the license term would be neither practical nor desirable as a means of meeting Section 309(j)'s objectives regarding warehousing and rapid deployment. Without knowing the specific type of service or services to be provided, it would be difficult to devise specific construction benchmarks. Further, given the undeveloped nature of equipment for use in this band and the technical requirements the Commission is adopting to prevent interference, the Commission is concerned that strict construction requirements might have the effect of discouraging participation in the provision of services over the WCS spectrum. It may be that a potential licensee could efficiently conduct certain operations on WCS spectrum, but must await further technological developments to do so affordably. Adopting strict construction requirements here could effectively preclude efficient uses of the spectrum. Particularly in light of the technological uncertainties associated with use of WCS spectrum to provide certain services consistent with the interference levels the Commission adopts today, the Commission believes that stringent build-out requirements are not warranted.

56. At the ten year period, the Commission will require all licensees to submit an acceptable showing to the Commission demonstrating that they are providing substantial service. Licensees failing to demonstrate that they are providing substantial service will be subject to forfeiture of their licenses. The Commission notes that in the past it has defined substantial service as "service which is sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal." *See, e.g.*, 47 CFR 22.940(a)(1)(i). For WCS, however, the Commission believes that further elaboration on this standard in the form of examples of what might constitute substantial service is useful. Thus, for a WCS licensee that chooses to offer fixed, point-to-point services, the construction of four permanent links per one million people in its licensed service area at the ten-year renewal mark would constitute substantial service. In the alternative, for a WCS licensee that chooses to offer mobile services, a demonstration of coverage to 20 percent of the population of its licensed service area at the ten-year mark would constitute substantial service. In addition, the Commission may consider such factors as whether the licensee is offering a specialized or technologically sophisticated service that does not require a high level of coverage to be of benefit to customers, and whether the licensee's operations serve niche markets or focus on serving populations outside of areas served by other licensees. These safe-harbor examples are intended to provide WCS licensees a degree of certainty as to how to comply with the substantial service requirement by the end of the initial license term. This requirement can be met in other ways, and the Commission will review licensees' showing on a case-by-case basis.

57. The Commission believes that these build-out provisions fulfill its obligations under section 309(j)(4)(B). The Commission also believes that the auction and service rules which it is adopting for WCS, together with its overall competition and universal service policies, constitute effective safeguards and performance requirements for WCS licensing. Because a license will be assigned in the first instance through competitive bidding, it will be assigned efficiently to a firm that has shown by its willingness to pay market value its willingness to put the license to its best use. The Commission also believes that service to rural areas will be promoted by its decision to allow partitioning and disaggregation of WCS spectrum.

58. Finally, the Commission reserves the right to review this liberal construction requirements in the future if we receive complaints related to section 309(j)(4)(B), or if the Commission's own monitoring initiatives or investigations indicate that a reassessment is warranted. The Commission also reserves the right to impose additional, more stringent construction requirements on WCS licenses in the future in the event of actual anticompetitive or rural service problems and if more stringent construction requirements can effectively ameliorate those problems.

vi. Regulatory Status

59. The Commission concludes that it will rely on each WCS applicant to identify in its long-form application the type of WCS service or services it will provide. Although the Commission will not presume at the outset that a WCS applicant will provide CMRS service, the Commission continues to believe, as it stated in the *NPRM*, that this approach will allow the Commission to carry out its responsibilities while imposing the least regulatory burden on the licensee. The Commission also delegates to the Wireless Telecommunications Bureau and to the International Bureau authority to develop forms appropriate to collect this data, and to monitor changes in licensee status. The predominant uses of WCS spectrum mentioned by commenters involved personal communications such as broadband voice and data transmission, including wireless local loop and wireless Internet access. If WCS spectrum is used for satellite DARS services, those services will be governed by the satellite DARS regulations currently under development in IB Docket No. 95–91.

60. The Commission's decision to permit WCS licensees to provide a variety or combination of services requires that the Commission adopt a licensing framework that authorizes WCS licensees to provide non-common carrier services as well as common carrier services. The Commission has recently increased the flexibility of licensees in other wireless services to provide both common carrier and non-common carrier services. In adopting a new application form for MDS, for example, the Commission provided applicants with the option on the new form to indicate their choice for common carrier or non-common carrier regulatory status. *Amendment of Parts 21 and 74 of the Commission's Rules*

with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service, MM Docket No. 94–131, and *Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, PP Docket No. 93–253, *Report and Order*, 10 FCC Rcd 9589, 9619, 60 FR 36524 (July 17, 1995) ("MDS and ITFS Competitive Bidding Report and Order"). For satellite services, the Commission has decided to provide all U.S.-licensed fixed satellite service systems with a choice between offering common carrier and non-common carrier services and also the opportunity to elect their regulatory classification in their applications. *Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Systems*, IB Docket No. 95–41, *Notice of Proposed Rule Making*, 10 FCC Rcd 7789, 7795–7796, 60 FR 24817 (May 10, 1995); *Report and Order*, 11 FCC Rcd 2429, 2436, 61 FR 9946 (March 12, 1996) ("*DISCO I Report and Order*"). In another proceeding, the Commission has adopted streamlined rules in part 25 for satellite services to use a simplified procedure to change licenses from non-common carrier status to common carrier status. *Streamlining the Commission's Rules and Regulations for Satellite Application and Licensing Procedures*, IB Docket No. 95–117, *Notice of Proposed Rule Making*, 10 FCC Rcd 10624, 60 FR 46252 (September 6, 1995); *Report and Order*, FCC 96–425, 62 FR 5924 (February 10, 1997) ("*Satellite Rules Report and Order*"). Finally, when the Commission implemented DBS systems under interim rules it adopted a policy to permit the dual provision of common and non-common carrier services which continues under the permanent rules. The flexible licensing framework the Commission adopts for WCS is consistent with the treatment accorded these services.

61. The Commission therefore will allow the service offering selected by a WCS licensee to determine its regulatory status. If a service offering falls within the statutory definition of common carrier, *see* 47 U.S.C. 153, the licensee will be subject to Title II and the licensing requirements of Title III of the Communications Act and the Commission's Rules. Otherwise, services provided on a non-common carriage basis will be subject to Title III and certain other statutory and regulatory requirements, depending on the specific characteristics of the service. The Telecommunications Act of 1996 provides that a telecommunications carrier will "be treated as a common carrier under this Act only to the extent that it is engaged in providing telecommunications services." 47 U.S.C. 153(44). A telecommunications service is the "offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." 47 U.S.C. 153(46). Telecommunications means "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." 47 U.S.C. 153(43). The Commission adopted these definitions in new part 51, which provides the rules governing interconnection of such carriers. *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996—CC Docket No. 96–98, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 95–185, *First Report and Order*, 11 FCC Rcd 15499, 61 FR 45476 (August 29, 1996), adopting new Rule 51.5. The U.S. Court of Appeals for the Eighth Circuit has stayed the pricing rules in the Order, pending review on the merits. *See Iowa Utilities Board v. FCC*, No. 96–3321 (8th Cir., Oct. 15, 1996). Thus, to the extent a WCS licensee is providing a service that fits within these definitions, that licensee will be subject to Title II and governed by the common carrier requirements pertinent to its services. Those requirements are set out in Part 1 and other parts of the Commission's Rules. In addition, the regulatory treatment of WCS licensees who choose to offer fixed or mobile telecommunications services will be addressed by the Commission in WT Docket No. 96–6. *See Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services*, WT Docket No. 96–6, *First Report and Order*, 11 FCC Rcd 8965, 61 FR 43721 (August 26, 1996).

62. Apart from this designation of regulatory status, the Commission will not require WCS applicants to describe the services they seek to provide. It is sufficient that an applicant indicate its choice for regulatory status in a streamlined application process. In providing guidance on this issue to MDS applicants, for example, the Commission pointed out that an election to provide service on a common carrier basis requires that the elements of common carriage be present; otherwise, the applicant must choose non-common carrier status. Of course, if an applicant is unsure of the nature of its services and their classification as common carrier services, it may submit a petition with its application or at any time request clarification and include service descriptions for that purpose.

63. The Commission also declines to require an applicant to choose between either common carrier or non-common carrier status in providing services in instances where it proposes to provide services that include elements of both common carrier and non-common carrier services. Instead, the Commission will permit both common carrier and non-common carrier services in a single license. An applicant may request both common carrier and non-common carrier status in the same application, which will result in the issuance of both authorizations in a single license. The licensee will be able to provide all WCS services anywhere within its licensed area at any time. This approach achieves efficiencies in the licensing and administrative process. The Commission notes that it has allowed certain mobile services in part 24 and part 90 to be authorized in a single license on both a common carrier and private carrier basis in order to provide services in both categories of service. *Implementation of Sections 3(n) and 332 of the Communications Act: Regulatory Treatment of Mobile Services*, GN Docket No. 93–252, *Second Report and Order*, 9 FCC Rcd 1411, 1459, 59 FR 18493 (April 19, 1994); 47 CFR § 20.9(b).

vii. Out-of-Band Emission Limits

64. In the *NPRM*, the Commission stated that, because WCS will operate in the 2305–2320 and 2345–2360 MHz bands, interference protection is required for the following adjacent operations: (1) Satellite DARS at 2320–2345 MHz, (2) Government Deep Space Network receivers at 2290–2300 MHz, and (3) Government and commercial telemetry above 2360 MHz.

65. In order to provide protection to these adjacent operations, the Commission proposed that all emissions outside of the WCS bands of operation be attenuated below the maximum spectral power density (p) within the band of operation, as follows:

(1) *For fixed operations, including radiolocation:* By a factor not less than 43 + 10 log (p) decibels ("dB") on all frequencies between 2300 and 2305 MHz and above 2360 MHz; and not less than 70 + 10 log (p) dB on all frequencies below 2300 MHz and between 2320–2345 MHz band.

(2) *For mobile operations, including radiolocation:* By a factor not less than 43 + 10 log (p) dB on all frequencies between 2300 and 2305 MHz, between 2320 and 2345 MHz, and above 2360 MHz; and not less than 70 + 10 log (p) dB on all frequencies below 2300 MHz.

(3) *For WCS satellite DARS operations:* The limits set forth in § 25.202(f) of the Commission's rules. *See* 47 CFR 25.202(f).

For fixed and mobile operations, including radiolocation, the Commission stated that the above requirements are based on peak power measurements (watts) using a resolution bandwidth of at least 1 MHz. In addition, to further protect operations in adjacent bands, the Commission proposed to require that the frequency stability of transmission within the 2305–2320 and 2345–2360 MHz bands be sufficient to ensure that the fundamental emissions remain within the authorized frequency bands.

66. Finally, in order to protect Government Deep Space Network receivers at 2290–2300 MHz, the Commission proposed to prohibit use of the 2305–2310 MHz band for airborne or space-to-Earth links. Further, the Commission proposed that WCS operations within 50 kilometers (31 miles) of 35°20′ North Latitude and 116°53′ West Longitude (coordinates of the Deep Space Network receive site) be subject to coordination. Alternatively, we requested comment on whether it would be more appropriate to require less out-of-band attenuation in the case of mobile transmitters (*i.e.*, such transmitters would be subject to only the 43 + 10 log (p) dB requirement) but require that the coordination zone be extended to 120 kilometers (75 miles). The Commission specifically requested that parties address the trade-offs with regard to lower mobile equipment costs and the additional coordination constraints imposed by this alternative.

67. Based on the record before it, the Commission finds that the WCS out-of-band limits proposed in the *NPRM* would be insufficient to protect certain sensitive operations on adjacent frequencies. While it is the Commission desire to provide WCS licensees with the maximum flexibility to provide a wide range of services, the Commission also must ensure that WCS operations do not cause harmful interference or disruption to adjacent satellite DARS reception or the operations of the Arecibo Observatory. With regard to satellite DARS reception in the 2320–2345 MHz band, the Commission concurs with those commenting parties that suggest that additional attenuation of WCS out-of-band emissions is needed to protect such operations. The Commission is therefore modifying its original proposal and will require that all emissions from WCS fixed transmitters be attenuated below the transmitter power (p) by at least 80 + 10 log (p) dB and that all emissions from WCS mobile transmitters be attenuated at least 110 + 10 log (p) dB within the 2320–2345 MHz band. In complying with these requirements, WCS equipment that uses circular polarization will be permitted to assume an allowance of 10 dB where such WCS equipment operates with opposite sense circular polarization from that used by DARS operators in the 2320–2345 MHz band.

68. In addition, the Commission clarifies that (p) is the output power of the transmitter, in watts. The Commission further clarifies that out-of-band emissions in any 1 MHz bandwidth must be attenuated by X + 10 log (p) dB below the output power of the transmitter, where X is the attenuation required for a one watt transmitter. In addition, the Commission believes that requiring the out-of-band emissions measurement to be made by setting the measurement instrument resolution bandwidth to 1 MHz would unfairly penalize WCS equipment due to the difficulty of eliminating energy outside of the 1 MHz resolution bandwidth. Therefore, for out-of-band emissions measurements the Commission believes it is appropriate to permit use of a measurement instrument resolution bandwidth of less than the reference bandwidth of 1 MHz, provided that the energy is integrated over a 1 MHz bandwidth.

69. The Commission believes that these changes will provide significantly improved interference protection to DARS from WCS operations. The Commission is aware that these out-of-band emission limits may have significant cost or service implications for WCS, especially for operations on the channels immediately adjacent to the 2320–2345 MHz band. In particular, the Commission understands that there is a substantial risk that the out-of-band emission limits it is adopting will, at least in the foreseeable future, make mobile operations in the WCS spectrum technologically infeasible. Nonetheless, the Commission finds that this level of attenuation is required in order to adequately protect satellite DARS reception from WCS transmissions. The Commission believes that WCS transmitters can meet these limits through a variety of measures, including the use of linear amplifiers, filters distributed throughout the transmitter, and spectrum shaping signal processing. In this regard, the Commission encourages potential WCS bidders and WCS equipment manufacturers to consult with one another prior to the commencement of the auction to determine what services and equipment can be economically provided on these frequencies. The Commission believes that the limits it is adopting will allow both WCS and DARS to successfully operate. The Commission also encourages and will allow WCS and DARS licensees to coordinate their operations to provide for greater or lesser protection on a mutually agreed basis. The Commission expects WCS and DARS licensees to cooperate fully to minimize the possibility of harmful interference from one service to the other.

70. With regard to satellite DARS operations in WCS spectrum and the Arecibo Observatory, the Commission finds Cornell's comments persuasive. Accordingly, satellite DARS operations will be limited to a maximum power flux density of −197 dBW/m²/4 kHz in the 2370–2390 MHz band at Arecibo, Puerto Rico. The adoption of a power flux density limit has the advantages of being readily measurable and of not needing to be adjusted if spectrum outside the 2320–2345 MHz band is employed for satellite DARS operations. Thus, the Commission does not believe that Cornell's alternative out-of-band emission limit is necessary. Instead, since the location of the satellite will be known, it is a relatively simple matter for a satellite DARS licensee to meet this requirement.

71. With regard to fixed and mobile operations, the Commission is adopting Cornell's proposed out-of-band emission limit of 70 + 10 log (p) dB for all frequencies above 2370 MHz. The Commission also believes that this out-of-band emission limit will help to protect aeronautical telemetry and associated telecommand operations in the 2360–2390 MHz band and the launch vehicle frequencies at 2370.5 and 2382.5 MHz.

72. In order to protect the Deep Space receiver site located on Fort Irwin at Goldstone, California, the Commission is prohibiting use of the 2305–2310 MHz band for airborne or space-to-Earth links. Additionally, in the 2305–2320 MHz band, the Commission is requiring that all WCS equipment meet an out-of-band emission limit of 70 + 10 log (p) on all frequencies below 2300 MHz. Finally, all WCS operations within 50 kilometers of 35°20′ North Latitude and 116°53′ West Longitude must be coordinated with the National Telecommunications and Information Administration ("NTIA").

73. In summary, the revised WCS out-of-band emission limits require that all emissions outside of WCS Blocks A, B,

C and D ("the licensed bands of operation") be attenuated below the output power (p) of each transmitter, measured in watts, as follows:

(1) *For fixed operations, including radiolocation*: By a factor not less than 80 + 10 log (p) dB on all frequencies between 2320 and 2345 MHz.

For mobile operations, including radiolocation: By a factor not less than 110 + 10 log (p) dB on all frequencies between 2320 and 2345 MHz.

For fixed and mobile operations, including radiolocation: By a factor not less than 70 + 10 log (p) dB on all frequencies below 2300 MHz and on all frequencies above 2370 MHz; and not less than 43 + 10 log (p) dB on all frequencies between 2300 and 2320 MHz and on all frequencies between 2345 and 2370 MHz that are outside the licensed bands of operation. In addition, WCS operations within 50 kilometers of Goldstone, California must be coordinated with NTIA.

(2) *For WCS satellite DARS operations*: The limits set forth in Section 25.202(f) of the Commission's Rules apply, except that satellite DARS operations are limited to a maximum power flux density of −197 dB(W/m²/4 kHz) in the 2370–2390 MHz band at Arecibo, Puerto Rico.

74. In addition, the Commission believes it desirable to permit WCS and satellite DARS licensees to voluntarily negotiate different limits if they so choose. For example, a WCS licensee could negotiate an agreement with a satellite DARS licensee that would permit the former greater out-of-band emissions in exchange for monetary compensation, or vice versa. If WCS and satellite DARS licensees negotiate different limits, then the Commission will require that the parties to the agreement maintain this information as part of their station files and disclose it to prospective assignees or transferees.

75. The Commission also agrees with the commenting parties that some in-band technical limits are needed between adjacent WCS channel block operations in order to facilitate spectrum sharing. Accordingly, the Commission is adopting an in-band emission limit that will require WCS licensees to attenuate their signals by at least 43 + 10 log (p) at the edge of their block, except between commonly held channel blocks (which require no attenuation). The Commission notes that an attenuation of 43 dB is commonly employed in other services and that it has been found there to adequately prevent adjacent channel interference. *See* 47 CFR 22.359(iii), 22.917(e), and 24.238. Furthermore, the Commission believes that the adoption of a minimum adjacent block attenuation value of 43 dB—coupled with the median field strength of 47 dBuV/m at any location on the border of a WCS service area—is the least intrusive regulation possible that will minimize harmful interference.

viii. International Coordination

76. In the *NPRM* the Commission stated that until international agreements are completed WCS operations will be required to protect existing non-U.S. operations in the 2305–2320 and 2345–2360 MHz bands and WCS operations in the border areas would be subject to coordination with those countries, as appropriate. In addition, the Commission noted that satellite DARS operations on WCS spectrum would be subject to international satellite coordination procedures. The Commission stated that parties should be aware that international coordination could be a complex and lengthy process and could vary significantly depending upon the types of WCS services that are to be provided. The Commission stressed therefore that international coordination requirements should be taken into account in developing business plans for the provision of WCS and that international coordination would be particularly important for parties contemplating the provision of WCS in border areas or the provision of satellite DARS operations.

77. The Commission reiterates that international coordination will be required for WCS operations near the United States' borders and, depending on the service and its interference potential, may also be required for non-border areas. This coordination requirement particularly may affect the implementation of satellite DARS operations in the 25 MHz of WCS spectrum being allocated to DARS on a co-primary basis with other services. Potential satellite DARS applicants should consult the February 16, 1996 letter from the FCC Satellite Engineering Branch to representatives of the current four satellite DARS applicants and responses thereto that address coordination in these bands for satellite DARS. These documents are filed in IB Docket No. 95–91, GN Docket 90–357, RM No. 8610, PP–24, PP–86, and PP–87. Use of the WCS spectrum for DARS services will be governed by the rules and regulations that will apply to the exclusive DARS spectrum between 2320–2345 MHz. These rules are expected to be adopted shortly in a Report and Order to be issued in IB Docket No. 95–91. *See Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310–2360 MHz Frequency Band*, IB Docket No. 95–91, GEN Docket No. 90–357, *Notice of Proposed Rule Making*, 11 FCC Rcd 1, 60 FR 35166 (July 6, 1995).

ix. RF Safety

78. With regard to RF safety requirements, the Commission proposed in the *NPRM* to treat WCS services and devices, operating within the 2305–2320 MHz and 2345–2360 MHz bands, in a comparable manner to other services and devices that have similar operating characteristics. The Commission noted that §§ 1.1307(b), 2.1091 and 2.1093 of our Rules list the services and devices for which an environmental evaluation must routinely be performed. *See* 47 CFR 1.1301, 1.1307(b), 2.1091, and 2.1093. The RF radiation exposure limits are set forth in 47 CFR 1.1310, 2.1091, and 2.1093, as applicable. Accordingly, the Commission proposed that an environmental evaluation for RF exposure would be required for the following WCS operations: (1) Transmitting terrestrial stations in the satellite DARS service, *e.g.*, "gap fillers"; (2) fixed operations, including base stations and radiolocation, that have an effective radiated power ("ERP") greater than 2000 watts; and (3) mobile and portable devices. The Commission invited comment on this proposal and requested suggestions for alternatives that would ensure public health with respect to exposure to RF radiation.

79. In the *NPRM*, the Commission proposed not to limit the output power of any WCS transmitter, but to require that WCS transmitters comply with our RF exposure limits. The Commission recognizes Omnipoint's concerns; however, the Commission notes that it recently adopted new, more stringent exposure limits in ET Docket No. 93–62 which apply to all frequencies between 300 kHz and 100 GHz. *See Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation*, ET Docket No. 93–62, *Report and Order*, 11 FCC Rcd 15123, 61 FR 41006 (August 7, 1996). *See also First Memorandum Opinion and Order*, ET Docket No. 93–62, 11 FCC Rcd 17512, 62 FR 3232 (January 22, 1997). When adopting these new exposure limits, the Commission considered recommendations from, *inter alia*, the Environmental Protection Agency, the Food and Drug Administration, and other federal health and safety agencies. Although Omnipoint has raised questions about the power threshold below which WCS facilities would be excluded from routinely determining compliance with the new exposure limits, the Commission has not received information in this proceeding indicating that the new exposure limits would not adequately protect public health at WCS operating frequencies.

Because all fixed, mobile, and portable transmitters are required to comply with our RF safety rules, as more specifically discussed below, the Commission believes that this decision will satisfactorily protect public health and should allay Omnipoint's concerns.

80. Specific to this proceeding, the Commission is requiring applicants desiring to use the following types of transmitters to perform routine environmental evaluations: (1) Transmitting terrestrial stations in the satellite DARS service and fixed operations, including base stations and radiolocation transmitters, when the ERP is greater than 1000 watts; (2) all portable devices; and (3) mobile devices, if the EIRP of the station, in its normal configuration, will be 1.5 watts or greater. The Commission has chosen the 1000 W ERP threshold, instead of the proposed 2000 watts, because of the flexibility in this service with respect to use, power, location, and other factors, and we believe that this power limit is appropriate for most exposure situations. This approach is consistent with the Commission's existing rules for transmitters and devices of comparable use and similar operating frequencies. The Commission will be providing guidance on acceptable methods of evaluating compliance with the Commission's exposure limits in OET Bulletin 65.

x. WCS Interference to MDS/ITFS

81. The Multipoint Distribution Service ("MDS") and the Instructional Television Fixed Service ("ITFS") operate in the 2150–2162 and 2500–2690 MHz bands. *See* 47 CFR part 21, subpart K and part 74, subpart I. After the comment period for this proceeding had closed, several parties filed *ex parte* statements expressing their concern that WCS transmissions would interfere with MDS/ITFS receiving installations. Specifically, BellSouth states that the receiver/downconverter ("downconverter") located at each MDS/ITFS customer's home is an inexpensive broadband device that receives all frequencies between 2.1 GHz and 2.7 GHz. Thus, BellSouth states that a MDS/ITFS downconverter located sufficiently close to a WCS transmitter would directly receive WCS signals that would prevent clear reception of MDS/ITFS signals. Specifically, BellSouth calculates that a WCS transmitter that radiates more than 80 watts EIRP and that is located within 300 feet (91.44 meters) of a MDS/ITFS downconverter would overload the downconverter and thus prevent the reception of MDS/ITFS programming and information services. In order to counteract this problem, BellSouth requests that the Commission limit WCS radiated power to 20 watts EIRP, unless the WCS licensee obtains an interference consent agreement from the existing MDS and ITFS licensees. BellSouth states that its proposed limit on WCS power would limit the maximum input to MDS/ITFS receivers to 12 decibels below one milliwatt (or −12 dBm), thus providing protection against receiver overload.

82. The Wireless Cable Association asserts that there currently are one million analog MDS/ITFS installations and that interference from WCS operations could cost $125,000,000 or more to cure. The National ITFS Association notes that the Commission has a long standing policy of protecting existing operations from interference caused by newly authorized services and requests that the Commission address this issue in a manner that would allow existing ITFS licensees to use the frequencies licensed to them as intended by the Commission.

83. At this time the Commission will not impose any technical restrictions on WCS licensees aimed at protecting the MDS/ITFS services. The Commission understands the concerns expressed by the MDS/ITFS licensees, and appreciates the value of the educational, entertainment and other programming provided by these services, including competition in the MVPD market. As it has repeatedly stated, it is the Commission's desire that these services continue to flourish. However, based on the record before us, the Commission is not persuaded that the operation of WCS facilities would irreparably harm the MDS and ITFS services. Without a clear sense of what particular services WCS licensees will provide, and how soon these will be operational, the interference impact of WCS operations on MDS/ITFS is unclear. Therefore the Commission believes it would be premature at this time to consider specific interference protection for MDS/ITFS. The Commission also observes that the record on this issue is incomplete in that concerns of the MDS/ITFS community were first raised in late filed *ex parte* comments and thus no potential WCS applicants have had an opportunity to respond to those comments. The Commission also notes that traditional, analog MDS/ITFS downconverters have employed an inexpensive design that has minimal frequency selectivity. Thus, even though MDS/ITFS is licensed in the 2150–2162 MHz and 2500–2690 MHz bands only, their downconverters receive all signals throughout the entire 2.1–2.7 GHz band. The Commission is aware that the MDS/ITFS industry is converting to newer, more robustly designed downconverters that have vastly improved frequency selectivity and would not receive WCS signals. Also, the digital downconverters to which the MDS/ITFS industry is expected to convert over the next several years are expected to be better designed and not subject to overloading from WCS signals. The Commission applauds these developments and does not wish to impede them. The public is served through the efficient use of available spectrum which, in turn, is facilitated by the use of receiving technology designed to provide protection from other spectrum users in the market. Thus, to the extent that the Commission may in the future, based on actual WCS operations, find it necessary to adopt an interference rule for WCS, it would protect only those MDS/ITFS downconverters installed within a year from the adoption date of this Report and Order. After that time, the Commission would expect that only more spectrally efficient downconverters would be installed by MDS/ITFS licensees. In sum, the Commission concludes that it would be improvident to adopt a requirement for WCS licensees to protect MDS/ITFS operations unless and until it has a more precise understanding about the nature and extent of problems that may actually arise.

xi. Field Strength Between Service Areas

84. In order for licensees to share spectrum along a common border, each licensee must decrease its signal level at the border so that, while it can provide acceptable communications within its licensed service area, its signal level across the border is sufficiently reduced to avoid causing interference to the neighboring system. In broadband PCS, the Commission adopted a predicted or measured median field strength of 47 dBμV/m at any location on the border of the PCS service area unless the parties agree to a higher field strength. In drafting the proposed rules in the *NPRM*, we had to assume one of the service area options that were proposed in text. We assumed a nationwide license and thus did not specifically address the issue of median field strength between initial service areas. Nevertheless, we did specifically propose requiring a maximum median field strength of 47 dBμV/m between those service areas which would be formed through geographic partitioning. The Commission shall adopt this same 47 dBμV/m maximum median field strength requirement between all service

areas, unless the parties agree to a different field strength.

xii. Additional Technical Issues

85. In addition, Sun Microsystems requests that a minimum data rate of 5 bits per hertz be required for the WCS bands. Sun Microsystems argues that setting the minimum data rate at this high level would stimulate new technologies. Sun Microsystems proposes that analog transmission on the WCS spectrum be prohibited. Sun Microsystems states that each service offering should be tiered in order to allow the largest possible number of people to afford its benefits. Sun Microsystems requests that high gain directional antenna systems (with beamwidths no greater than 2° to 3°) be required for high power use and that any omnidirectional antenna be required to use low power and 18 to 25 dB gain antennas. Finally, Sun Microsystems suggests that orthogonal coding and modulation schemes be permitted in order to allow more than one licensee to use the same spectrum simultaneously. No party commented on Sun Microsystems' proposals.

86. The Commission believes that the licensees will have a strong incentive to put the spectrum to its best use. There is nothing in the record of this proceeding that suggests that prohibiting certain technologies or requiring specific technologies is appropriate for the WCS. Accordingly, the Commission declines to adopt the technical regulations proposed by Sun Microsystems.

E. Auction Procedures

87. In the *NPRM*, the Commission proposed an auction design and pre-auction procedures for the WCS service in accordance with the Appropriations Act and the expedited schedule which it imposes. Specifically, the Commission proposed to award the WCS licenses through competitive bidding and by means of a simultaneous multiple round electronic auction. The Commission based this proposal on the need to auction the WCS licenses quickly and to promote the efficient use of the spectrum. As the Commission noted, the Appropriations Act requires it to commence the WCS auction no later than April 15, 1997 and to conduct the auction in a manner that ensures that all proceeds are deposited into the United States Treasury no later than September 30, 1997.

i. Competitive Bidding Design

88. In the *NPRM*, the Commission proposed to auction licenses to offer WCS service in conformity with the general competitive bidding rules in part 1, subpart Q of the Commission's Rules and substantially consistent with the auctions that have been employed in other wireless services. 47 CFR part 1, subpart Q. In addition, the Commission proposed certain modifications, addressed *infra*, to help speed the auction process given the deadlines imposed by the Appropriations Act.

89. The Commission adopts its proposal to employ a single simultaneous multiple round auction design for the WCS auction similar to that used in the PCS auctions. As the Commission explained in the *NPRM*, multiple round bidding will provide more information to bidders about the values of the licenses during the auction than single round bidding. With better information, bidders will have less incentive to shade their bids downward in order to avoid the "winner's curse", that is the tendency for the winner to be the bidder who most overestimates the value of the item being auctioned. The Commission also believes that multiple round bidding is likely to be fairer than single round bidding as every bidder will have the opportunity to win a license if it is willing to pay the most for it. Finally, as the Commission stated in the *NPRM*, a single simultaneous auction will facilitate any aggregation strategies that bidders may have and will provide the most information to bidders about license values at a time that they can best put that information to use.

90. In addition, the Commission adopts its proposal to require bidding for WCS licenses by electronic means only. As the Commission indicated in the *NPRM*, this decision is based on the belief that while oral outcry auctions can be simple and rapid, it is not possible to auction multiple licenses simultaneously in an oral auction. The Commission also notes that because of the potentially large value of the WCS licenses, an electronic multiple round auction will be preferable because it will permit bidders time between rounds to confer with principals and reassess their valuation models and bidding strategies. The Commission also adopts its proposal to require that bidders submit their bids electronically, rather than by telephone. Given the time constraints imposed by the Appropriations Act, as well as the recent improvements in our electronic bidding software, the Commission believes that telephonic bidding should be permitted only under exceptional circumstances, to be determined by the Wireless Telecommunications Bureau. Finally, the Commission delegates to the Wireless Telecommunications Bureau the discretion to determine whether bidding for the WCS auction will be remote or on-site.

ii. *Bidding Procedures*

91. In the *NPRM*, the Commission tentatively concluded that the WCS auction should follow the general competitive bidding procedures of part 1, subpart Q of the Commission's rules. *See* 47 CFR part 1, subpart Q. In addition, the Commission proposed to adopt specific provisions regarding certain bidding-related issues. Finally, the Commission asked interested parties to suggest the appropriate level of a minimum opening bid for the WCS license or licenses.

92. The Commission adopts the bidding procedures proposed in the *NPRM*. The WCS auction will be conducted using the general bidding procedures set forth in part 1, subpart Q of the Commission's rules, with some minor modifications designed to speed the auction in order to comply with the time constraints imposed by the Appropriations Act. Specifically, the Commission delegates to the Wireless Telecommunications Bureau the discretion to establish a minimum opening bid for the WCS licenses and to announce the minimum opening bid by public notice. As the Commission stated in the *NPRM*, a minimum opening bid will cause bidders to start bidding at a substantial fraction of the final price of the license or licenses, thus ensuring that the auction proceeds quickly and increasing the likelihood that the public receives fair market value for the license or licenses. In keeping with its obligation under the Appropriations Act to ensure that the auction proceed rapidly, the Commission also delegates to the Wireless Telecommunications Bureau the discretion to establish, raise and lower minimum bid increments in the course of the auction. *See* 47 CFR 1.2104(d). Finally, the Commission concludes that where a tie bid occurs, the high bidder will be determined by the order in which the bids were received by the Commission.

iii. *Procedural and Payment Issues*

93. In the *NPRM*, the Commission tentatively concluded that, with certain proposed modifications, subpart Q of part 1 of the Commission's rules establishing procedural and payment rules for FCC auctions generally should apply to the WCS auction. Only one commenter addressed these issues. DigiVox contends that to effectively compete in the auctions, many parties (especially small businesses) will need 90 days from the release of the final rules before FCC Forms 175 are due in order to finalize their business plans. DigiVox proposes a schedule that includes commencing the auction on May 2, 1997. As the Commission recognized in the *NPRM*, the Appropriations Act requires that the Commission "shall commence the competitive bidding" for WCS licenses no later than April 15, 1997. Although DigiVox urges an interpretation of this requirement that would allow applicants to submit their short-form applications on that date, the Commission concludes that the statute clearly requires that "bidding" commence on April 15, 1997. The Commission therefore will commence the WCS auction on April 15, 1997, and the auction will be conducted in substantial conformity with subpart Q of part 1 of the Commission's Rules. The Commission also adopts general rules regarding application and licensing procedures. *See* subpart E of new part 27.

94. *Pre-Auction Application Procedures.* In the *NPRM*, the Commission proposed that WCS applicants be required to file a short-form application (FCC Form 175) prior to the auction. *See* 47 CFR 1.2105(a). In addition, the Commission tentatively concluded that the Commission should require electronic filing of all applications for this auction. The Commission received no comments addressing this issue, and will implement this proposal. Each bidder in the WCS auction must submit a short-form application (FCC Form 175) by means of electronic filing. As the Commission stated in the *NPRM*, the Commission believes that electronic filing of applications will serve the best interests of auction participants as well as ensure that the WCS auction will be completed within the time frame mandated under the Appropriations Act. The Commission has developed user-friendly electronic filing software and Internet World Wide Web forms to give applicants the ability to easily and inexpensively file and review applications. In addition, the Commission believes that in light of the legislative deadline of April 15, 1997 for commencement of this auction, requiring electronic filing will be helpful to applicants as well as the Commission. By shortening the time required for the Commission to process applications before the auction, electronic filing will increase the lead time available to applicants to finalize their business plans and arrange necessary financing before the short-form filing deadline.

95. The Commission also proposed in the *NPRM* that an applicant's electronic submission of FCC Form 175 include a certification that the applicant is not in default on any Commission licenses and that it is not delinquent on any extension of credit from any federal agency. No commenters addressed this issue. The Commission therefore adopts this certification requirement for the WCS auction. As the Commission stated in the *NPRM*, a certification regarding defaulted licenses and delinquent payments to federal agencies will enable us to better evaluate the financial qualifications of potential bidders, because it will allow us to determine whether any bidder may later be subject to a monetary judgment or collection procedures that may impair its financial ability to provide service. In the *Second Report and Order*, we decided that we should require sufficient information on the short-form application to make a determination that "the application is not in violation of Commission Rules and that applications not meeting those requirements may be dismissed prior to the competitive bidding." *Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, PP Docket No. 93–253, *Second Report and Order*, 59 FR 22960 (May 4, 1994) ("*Second Report and Order*"). Part of this documentation necessarily includes certification that the bidder has the legal, technical, financial, and other qualifications to bid in the auction.

96. *Upfront Payment Amount.* The Commission's Part 1 Rules require the submission of an upfront payment as a prerequisite to participation in spectrum auctions. *See* 47 CFR 1.2106. In the *NPRM*, the Commission proposed to set the amount of the WCS upfront payment based on the general formula the Commission adopted in the *Second Report and Order* of $.02 per megahertz per population. In addition to seeking comment on this proposal, the Commission asked commenters to suggest alternative methods of establishing an upfront payment, and in particular, how the Commission may estimate the value of the spectrum to be auctioned. The Commission received no comments or alternative suggestions on this issue, and will therefore adopt the proposed upfront payment for the WCS auction. Given that a range of services may be provided on WCS spectrum, it is difficult to estimate the value of this spectrum. The Commission believes, however, that a $.02 per megahertz per population upfront payment will serve the twin purposes of upfront payments—to deter insincere bidding and to provide the Commission with a source of funds to satisfy any bid withdrawal or default payments—without being so high as to discourage participation in the WCS auction.

97. *Procedure For Upfront Payment.* The Commission also proposed to require bidders to deposit their upfront payments in the Commission's lock-box bank by wire transfer only by a date to be announced by public notice. No commenters addressed this issue. The Commission therefore adopts the requirement that bidders in the WCS auction deposit their upfront payment by wire transfer only. Although in the past the Commission has permitted payment by cashier's check, the Commission believes that requiring payment by wire transfer will benefit bidders by streamlining and expediting the administration of the auction. As the Commission noted in the *NPRM*, the Commission's experience has shown that verification of payments remitted by cashier's check is time-consuming and cumbersome, and requires the allotment of extra processing time prior to the start of the auction. Permitting payment by cashier's check would require that upfront payments be made at an earlier point, which would decrease applicants' lead time to pursue business plans and arrange necessary financing before the start of the auction. In addition, given the large number of financial institutions offering wire transfer services, a requirement that bidders remit their upfront payments by wire transfer will result in minimal, if any, extra cost to auction applicants. Such a cost is far outweighed by the benefit of speeding the auction process through quicker verification of payments.

98. *Down Payment and Full Payment.* In the *NPRM*, the Commission tentatively concluded that to help ensure that auction winners are able to pay the full amount of their bids, every winning bidder in the WCS auction would be required to tender a down payment sufficient to bring its total amount on deposit with the Commission up to 20 percent of its winning bid. *See* 47 CFR 1.2107(b). No commenters addressed this issue. The Commission therefore concludes that a down payment equal to 20 percent of each high bidder's total winning bids will be due within 10 business days after the issuance of a public notice announcing the winning bidder for each WCS license.

99. The Commission also proposed that a winning bidder that makes its down payment in a timely manner be required to file an FCC Form 600 long-form application and follow the long-form application procedures in § 1.2107. *See* 47 CFR 1.2107. The Commission proposed that after reviewing the

winning bidder's long-form application, and after verifying receipt of the winning bidder's 20 percent down payment, the Commission would announce the application's acceptance for filing, thus triggering the filing window for petitions to deny. The Commission also noted that given the abbreviated auction schedule contemplated by the Appropriations Act, a condensed schedule for the filing of petitions to deny would apply for the WCS auction. No commenters addressed this issue. The Commission therefore adopts these proposals governing long-form application procedures. Winning bidders that have made the necessary down payment will be required to file a modified FCC Form 600 that has been updated to provide for the Commission's decision to permit flexibility in terms of permissible uses. Finally, the Appropriations Act provides that no application for a WCS authorization may be granted earlier than seven (7) days following public notice of the acceptance for filing of such an application, and that parties will have no less than five (5) days following such public notice to file a petition to deny. *See* Appropriations Act, section 3001(c). The Commission will therefore afford parties five (5) days to file a response to any petition to deny. If, pursuant to Section 309(d) of the Communications Act, the Commission dismisses or denies any and all petitions to deny, the Commission will announce by public notice that it is prepared to award a license and the winning bidder will then have ten (10) business days to submit the balance of its winning bid. If the bidder does so, the license will be granted. If the bidder fails to submit the required down payment or the balance of the winning bid or the license is otherwise denied, the Commission will assess a default payment as discussed *infra*.

100. *Amendments and Modifications of Applications.* In the *NPRM*, the Commission stated that to encourage maximum bidder participation, applicants should be permitted to amend or modify their short-form applications as provided in § 1.2105. 47 CFR 1.2105. The Commission also noted that in the broadband PCS context, the Commission modified its rules to permit ownership changes that result when consortium investors drop out of bidding consortia, even if control of the consortium changes due to this restructuring. No commenters addressed this issue. The Commission therefore adopts the same exception to its rules prohibiting major amendments in the WCS auction.

101. *Bid Withdrawal, Default and Disqualification.* In the *NPRM*, the Commission tentatively concluded that the withdrawal, default, and disqualification rules for the WCS auction would be based upon the procedures established in the Commission's general competitive bidding rules. With regard to bids which are submitted in error, the Commission proposed to apply the guidelines which it recently fashioned to provide for relief from the bid withdrawal payment requirements under certain circumstances. *See Atlanta Trunking Associates, Inc. and MAP Wireless L.L.C. Requests to Waive Bid Withdrawal Payment Provisions, Order* 11 FCC Rcd 17189, 61 FR 25807 (May 23, 1996), *recon. pending. See also Georgia Independent PCS Corporation Request to Waive Bid Withdrawal Payment Provision, Order*, 11 FCC Rcd 13728, 61 FR 25810 (May 23, 1996), *app. rev. pending.* No commenters addressed this issue. We therefore adopt these provisions governing bid withdrawal, default and disqualification for the WCS auction.

iv. Anti-Collusion Rules

102. In the *NPRM*, the Commission tentatively concluded that the anti-collusion rules which the Commission adopted in the *Second Report and Order*, and which are codified at 47 CFR 1.2105, should apply to the WCS auction. The Commission received no comments addressing the issue of collusion. The Commission has therefore determined that these rules prohibiting collusive conduct will apply to the WCS auction.

v. Treatment of Designated Entities

103. Race- and gender-based classifications must meet exacting standards of judicial review. In *Adarand Constructors* v. *Peña*, 115 S.Ct. 2097 (1995) ("*Adarand*") the Supreme Court held that all racial classifications, whether imposed at the federal, state or local government level, must be analyzed by a reviewing court under a strict scrutiny standard of review. This standard requires such classifications to be narrowly tailored to further a compelling governmental interest. *Adarand*, 115 S. Ct. at 2113. In *United States* v. *Virginia*, 116 S.Ct. 2264 (June 26, 1996) ("*VMI*") the Supreme Court reviewed a state program containing gender classification and held it was unconstitutional under an intermediate scrutiny standard of review. This standard requires that "[p]arties who seek to defend gender-based government action must demonstrate an 'exceedingly persuasive justification' for that action." *VMI*, 116 S. Ct. at 2274 (citing *J.E.B.* v. *Alabama ex rel. T. B.*, 511 U.S. 127, 136–37 and n. 6 (1994) and *Mississippi Univ. for Women* v. *Hogan*, 458 U.S. 718, 724 (1982)). Under this test, the government must show "at least that the (challenged) classification serves 'important governmental objectives and that the discriminatory means employed' are 'substantially related to the achievement of those objectives.'" *Id.* at 2275 (quoting *Mississippi Univ. for Women* v. *Hogan*, 458 U.S. at 724 (quoting *Wengler* v. *Druggists Mutual Ins. Co.*, 446 U.S. 142, 150 (1980))). While the Supreme Court has not directly addressed constitutional challenges to federal gender-based programs since *Adarand* and *VMI*, the Commission's review of the relevant broad language in *VMI* indicates that the Court does not differentiate between federal and state official actions in its equal protection analysis. Similarly, the *Adarand* decision definitively eliminated any distinction between federal and state race-based programs in setting its strict scrutiny standard of judicial review. *Adarand*, 115 S. Ct. at 2113. Therefore, the Commission concludes that any gender-based preference maintained in the WCS auction rules would need to meet the *VMI* intermediate scrutiny standard of review.

104. The Commission believes that the record in this proceeding is insufficient to support race- and gender-based provisions that would survive judicial scrutiny. Moreover, adopting race- and gender-based provisions unsupported by a substantial record would disserve the public interest because it might result in litigation that could further delay the conduct of the auction and the award of WCS licenses, and postpone the introduction of new competition to the marketplace. The Commission therefore concludes that it should not adopt special auction provisions that are race- and gender-based.

105. While the Commission declines to establish race- and gender-based provisions for the WCS auction rules, the Commission will adopt provisions for small businesses, as suggested by several commenters. The Commission notes that nothing in the *Adarand* or *VMI* decisions calls the Commission's small business provisions into question. Moreover, by retaining small business preferences, the Commission believes that it fulfill its mandate under section 309(j) to provide increased opportunities for minority- and women-owned businesses, 47 U.S.C. 309(j)(3), because many minority- and women-owned entities are small businesses who therefore will qualify for the same special provisions that would have applied to them under the previous rules.

106. The Commission also has initiated a comprehensive rule making proceeding to gather evidence regarding market barriers to entry faced by small businesses as well as minority- and women-owned firms. *See Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses*, GN Docket No. 96–113, *Notice of Inquiry*, 11 FCC Rcd 6280, 61 FR 33066 (June 26, 1996). If a sufficient record is adduced that will support race- and gender-based provisions that will satisfy judicial scrutiny, the Commission will consider race- and gender-based provisions for future auctions. Toward this end, the Commission will continue to request bidder information on the WCS short-form filings as to minority- or women-owned status. In its analysis of the applicant pool and the auction results, the Commission will monitor whether it has accomplished substantial participation by minorities and women through the broad provisions available to small businesses. This will also assist the Commission in preparing its report to Congress on the success of designated entities in auctions. *See* 47 U.S.C. 309(j)(12)(D).

i. Special Provisions for Designated Entities

A. Bidding Credits

107. The Commission will adopt bidding credits for small businesses and will adopt a tiered bidding credit approach, as supported by several commenters. The Commission agrees with commenters that the availability of bidding credits is consistent with the Commission's obligations under section 309(j) to promote economic opportunity for a wide variety of applicants, including small businesses and businesses owned by minorities and women. The Commission believes that a tiered approach, which enhances the discounting effect of bidding credits because not all entities receive the same benefit, will encourage smaller businesses to participate in the provision of WCS services. As for the level of the credits, the Commission believes that bidding credits of 25 percent for small businesses and 35 percent for very small businesses are appropriate. These levels reflect the thresholds used in the broadband PCS auctions with a reasonable adjustment for the unavailability of installment payment plans for WCS licensees. It is difficult to accurately calculate the net present value of an installment program (which would depend on several variables including future commercial interest rates), and the Commission therefore is adjusting the broadband PCS bidding credit levels upward by ten percentage points. The Commission believes that this tiered bidding credit approach and 10 percent adjustment are reasonable and consistent with the comments. These credits are narrowly tailored to the varying abilities of businesses to access capital and also take into account that different small businesses will pursue different strategies.

B. Definition of Small Business

108. Consistent with the suggestions of many of the commenters, the Commission will generally employ the small business definitions and standards used in broadband PCS, which the Commission believes have the advantages of ready availability and familiarity to many small businesses that might be interested in this spectrum. The Commission will therefore define a "small business" as an entity with average gross revenues not exceeding $40 million for each of the preceding three years, and a "very small business" as an entity with average gross revenues not exceeding $15 million in each of the preceding three years. The Commission declines to adopt the higher revenue standard suggested by Vanguard because it does not believe that Congress, in enacting section 309(j), intended for firms with $500 million in revenue to be regarded as "small". Furthermore, adopting Vanguard's suggested standard would create severe disparities between "small businesses" in terms of capitalization and access to financing.

109. In determining whether an entity qualifies as a small business at either threshold, the Commission will consider the gross revenues of the applicant, its affiliates, and certain investors in the applicant. Specifically, the Commission will attribute the gross revenues of all controlling principals in the applicant as well as the gross revenues of affiliates of the applicant. Consistent with broadband PCS rules, the Commission will apply two notable exceptions to these attribution rules. First, the Commission determines that personal net worth is not included in the determination of eligibility for bidding as a small business. Second, the Commission agrees with CIRI that entities owned by Alaska Native Corporations and Indian Tribes are exempt from affiliation for purposes of determining eligibility of applicants for bidding credits, because of the general lack of availability of revenues from such entities for purposes of participation in WCS. This exception is consistent with treatment afforded such entities by the Small Business Administration's 8(a) program, *See* 13 CFR 124.112(c)(2)(iii), and as the Commission previously has determined, it does not believe such a provision to be affected by *Adarand*.

110. The Commission declines, however, to employ the specific control group equity requirements that the Commission adopted for broadband PCS, because the time frame for the conduct of the WCS auction is likely to be too short to allow for the creation of the type of complex financial relationships as arose in the broadband PCS context. Instead, the Commission will simply define the term "control" to include both *de jure* and *de facto* control of the applicant. However, the Commission will still require that, in order for an applicant to qualify as a small business, qualifying small business principals must maintain "control" of the applicant. The Commission also notes that while it is not imposing specific equity requirements on the small business principals, the absence of significant equity could raise questions about whether the applicant qualifies as a *bona fide* small business.

C. Unjust Enrichment

111. The Commission agrees with CIRI on the employment of an unjust enrichment restriction on the transfer of licenses acquired by small businesses, similar to that set forth in 47 CFR 24.839(d), which the Commission believes is necessary to ensure that meaningful small business participation is not thwarted by transfers of licenses to non-designated entities. To permit otherwise would severely impede the meaningful participation of designated entities because bidders could participate as small businesses with the intention not of providing service but only of profiting from the difference in the discounted auction price and the worth of the license on the resale market. To prevent unjust enrichment by small businesses transferring licenses acquired through the use of bidding credits, the Commission imposes a payment requirement on transfers of such licenses to entities that are not owned by small businesses. The Commission believes it is appropriate to conform our unjust enrichment rules for WCS to the broadband PCS unjust enrichment rules as they relate to bidding credits. These rules provide

that, during the initial license term, licensees utilizing bidding credits and seeking to assign or transfer control of a license to an entity that does not meet the eligibility criteria for bidding credits will be required to reimburse the government for the amount of the bidding credit before the transfer will be permitted. 47 CFR 24.716(d)(1). Additionally, the rules which the Commission now adopts provide that if, within the original term, a licensee applies to assign or transfer control of a license to an entity that is eligible for a lower bidding credit, the difference between the bidding credit obtained by the assigning party and the bidding credit for which the acquiring party would qualify must be paid to the United States Treasury as a condition of approval of the assignment or transfer. 47 CFR 24.716(d)(2). *See also* 47 CFR 1.2111. These provisions also will apply to WCS licensees who partition or disaggregate their licenses.

112. If a licensee that utilizes bidding credits seeks to make any change in ownership structure that would render the licensee ineligible for bidding credits, or eligible only for a lower bidding credit, the licensee must first seek Commission approval and reimburse the government for the amount of the bidding credit, or the difference between its original bidding credit and the bidding credit for which it is eligible after the ownership change, plus interest based on the rate for ten year U.S. Treasury obligations applicable on the date the license is granted. Additionally, if an investor subsequently purchases an interest in the business and, as a result, the gross revenues of the business exceed the applicable financial caps, this unjust enrichment provision will apply.

113. The amount of this payment will be reduced over time as follows: (1) A transfer in the first five years of the license term will result in a forfeiture of 100 percent of the value of the bidding credit (or, in the case of very small businesses transferring to small businesses, 100 percent of the difference between the bidding credit received by the former and the bidding credit for which the latter is eligible); (2) in year six of the license term the payment will be 80 percent; (3) in year seven the payment will be 60 percent; in year eight the payment will be 40 percent; and in year nine the payment will be 20 percent, after which there will be no required payment. These assessments will have to be paid to the U.S. Treasury as a condition of approval of the assignment, transfer, or ownership change.

D. Other Matters

114. Based upon the record in this proceeding, the Commission has determined that special provisions for rural telcos are not warranted. However, rural telcos can take advantage of the geographic partitioning and spectrum disaggregation provisions which the Commission adopts, and those rural telcos that qualify as small or very small businesses may take advantage of the Commission's tiered bidding credits. In addition, the Commission declines to afford an additional bidding credit, as suggested by DigiVox, to small businesses bidding in areas in which they hold no CMRS licenses. The Commission believes that such preferences might discourage small businesses from acquiring WCS spectrum as supplemental for CMRS services already offered in that geographic license area, which would run counter to our goal of flexible use. The Commission also declines to adopt any limit on the total number of WCS licenses for which an entity may take advantage of small business bidding credits. The Commission does not regard such limitation as necessary and generally believes that, absent a strong justification to do otherwise, the auction process should be permitted to work without constraint to allow all bidders to express their valuations of the licenses up for bid. Finally, the Commission also declines to set aside a block of licenses for auction only to designated entities because the Commission does not believe such set-asides to be necessary to ensure opportunities for participation by designated entities in light of the substantial bidding credits, as well as the partitioning and disaggregation rules the Commission is adopting.

115. The Commission also notes that its decision both to license WCS in two 10 MHz blocks and two 5 MHz blocks, and to designate MEA and REAG service areas should increase the opportunities for participation in WCS by small businesses and other designated entities. These decisions will help to ensure that the cost of obtaining WCS spectrum remains within reach of a larger number of prospective applicants than would be the case were we to offer only one or two licenses in each area. In addition, by offering licenses for smaller blocks of spectrum, the Commission will enable WCS applicants to acquire only the amount of spectrum necessary to implement their particular service plans. Such efficiencies directly benefit small businesses who may not be able to afford to acquire larger blocks of spectrum. For example, permitting bidders to acquire smaller blocks of spectrum will enable small businesses that have identified niche markets to focus their bidding and avoid paying for more spectrum than they actually need.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Parts 1, 2, 27, and 97 of title 47 of the Code of Federal Regulations are amended as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154, 303, and 309(j) unless otherwise noted.

2. Section 1.1307 is amended by revising paragraphs (b)(1) and the first sentence of paragraph (b)(2) and Table 1 in paragraph (b)(1) is amended by adding the entry for the Wireless Communications Service to read as follows:

§ 1.1307 Actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.

* * * * *

(b) * * *

(1) The exposure limits in § 1.1310 are generally applicable to all facilities, operations and transmitters regulated by the Commission. However, a determination of compliance with the exposure limits in § 1.1310 (routine environmental evaluation), and preparation of an EA if the limits are exceeded, is necessary only for facilities, operations and transmitters that fall into the categories listed in Table 1, or those specified in paragraph (b)(2) of this section. All other facilities, operations and transmitters are categorically excluded from making such studies or preparing an EA, except as indicated in paragraphs (c) and (d) of this section. For purposes of Table 1, "rooftop" means the roof or otherwise outside, topmost level or levels of a building structure that is occupied as a workplace or residence and where either workers or the general public may have access. The term "power" in column 2 of Table 1 refers to total operating power of the transmitting operation in question in terms of effective radiated power (ERP), equivalent isotropically radiated power (EIRP), or peak envelope power (PEP), as defined in § 2.1 of this chapter. For the case of the Cellular Radiotelephone Service, subpart H of part 22 of this chapter; the Personal Communications Service, part 24 of this chapter; the Wireless Communications Service, part 27 of this chapter; and covered Specialized Mobile Radio Service operations, part 90 of this chapter; the phrase "total power of all channels" in column 2 of Table 1 means the sum of the ERP or EIRP of all co-located simultaneously operating transmitters of the facility. When applying the criteria of Table 1, radiation in all directions should be considered. For the case of transmitting facilities using sectorized transmitting antennas, applicants and licensees should apply the criteria to all transmitting channels in a given sector, noting that for a highly directional antenna there is relatively little contribution to ERP or EIRP summation for other directions.

TABLE 1.—TRANSMITTERS, FACILITIES AND OPERATIONS SUBJECT TO ROUTINE ENVIRONMENTAL EVALUATION

Service (Title 47 CFR rule part)	Evaluation required if:
* * * * *	* * * * *
Wireless Communications Service (Part 27).	Total power of all channels > 1000 W ERP (1640 W EIRP)

TABLE 1.—TRANSMITTERS, FACILITIES AND OPERATIONS SUBJECT TO ROUTINE ENVIRONMENTAL EVALUATION—Continued

Service (Title 47 CFR rule part)	Evaluation required if:
* * * * *	* * * * *

(2) Mobile and portable transmitting devices that operate in the Cellular Radiotelephone Service, the Personal Communications Services, the Satellite Communications Services, the Wireless Communications Service, the Maritime Services (ship earth stations only), and covered Specialized Mobile Radio Service providers authorized under subpart H of part 22, part 24, part 25, part 27, part 80, and part 90 of this chapter are subject to routine environmental evaluation for RF exposure prior to equipment authorization or use, as specified in §§ 2.1091 and 2.1093 of this chapter.

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PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: Secs. 4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 302, 303 and 307, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations, is amended as follows:

a. Remove the existing entries for 2300–2450 MHz.

b. Add entries in numerical order for 2300–2450 MHz.

c. In the International Footnotes under heading I., add footnotes S5.150, S5.282 , S5.393, S5.394, S5.395, and S5.396 in numerical order.

d. In the International Footnotes under heading II., remove footnotes 750B, 751, 751A, and 751B.

e. Remove United States footnote US253.

f. Add United States footnotes US338 and US339 in numerical order.

g. Revise United States footnotes US276 and US328.

h. Revise Government footnote G2.

i. Add Government footnotes G120, G123 and G124 in numerical order.

The revisions and additions read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

International table			United States table		FCC use designators	
Region 1—allocation MHz	Region 2—allocation MHz	Region 3—allocation MHz	Government	Non-Government	Rule part(s)	Special-use frequencies
			Allocation MHz	Allocation MHz		
(1)	(2)	(3)	(4)	(5)	(6)	(7)
•	•	•	•	•	•	•
2300–2305 FIXED MOBILE Amateur Radiolocation	2300–2305 FIXED MOBILE RADIOLOCATION Amateur S5.394	2300–2305 FIXED MOBILE RADIOLOCATION Amateur	2300–2305 G123	2300–2305 Amateur	Amateur (97)	
2305–2310 FIXED MOBILE Amateur Radiolocation	2305–2310 FIXED MOBILE RADIOLOCATION Amateur S5.394	2305–2310 FIXED MOBILE RADIOLOCATION Amateur	2305–2310 US338 G123	2305–2310 FIXED MOBILE except aeronautical mobile RADIOLOCATION Amateur US338	WIRELESS COMMUNICATIONS (27) Amateur (97)	
2310–2320 FIXED MOBILE Amateur Radiolocation	2310–2320 FIXED MOBILE RADIOLOCATION Amateur	2310–2320 FIXED MOBILE RADIOLOCATION Amateur	2310–2320 FIXED Mobile US339 Radiolocation G2	2310–2320 BROADCASTING—SATELLITE US327 MOBILE US339 RADIOLOCATION	WIRELESS COMMUNICATIONS (27)	Digital Audio Radio Services

International table			United States table		FCC use designators	
Region 1—allocation MHz	Region 2—allocation MHz	Region 3—allocation MHz	Government	Non-Government	Rule part(s)	Special-use frequencies
			Allocation MHz	Allocation MHz		
(1)	(2)	(3)	(4)	(5)	(6)	(7)
S5.395	S5.393 S5.394 S5.396	S5.393 S5.396	S5.396 US327 US338 G120	S5.396 US338		
2320–2345	2320–2345	2320–2345	2320–2345	2320–2345 BROADCASTING—SATELLITE US327		
FIXED	FIXED	FIXED	Fixed			Digital Audio Radio Services
MOBILE	MOBILE	MOBILE	Mobile US 276	Mobile US 276 US328		
Amateur	RADIOLOCATION	RADIOLOCATION	Radiolocation G2			
Radiolocation S5.395	Amateur S5.393 S5.394 S5.396	Amateur S5.393 S5.396	S5.396 US327 US328 G120	S5.396		
2345–2360	2345–2360	2345–2360	2345–2360	2345–2360 BROADCASTING—SATELLITE US327		Digital Audio Radio Services
FIXED	FIXED	FIXED	Fixed	FIXED	WIRELESS COMMUNICATIONS (27)	
MOBILE	MOBILE	MOBILE	Mobile US339	MOBILE US339		
Amateur Radiolocation	RADIOLOCATION Amateur	RADIOLOCATION Amateur	Radiolocation G2	RADIOLOCATION		
S5.395	S5.393 S5.394 S5.396	S5.393 S5.396	S5.396 US327 G120	S5.396		
2360–2390 FIXED MOBILE	2360–2390 FIXED MOBILE	2360–2390 FIXED MOBILE	2360–2390 MOBILE US276 RADIOLOCATION G2	2360–2390 MOBILE US276		
Amateur Radiolocation	RADIOLOCATION Amateur S5.394	RADIOLOCATION Amateur	Fixed G120			
2390–2400 FIXED MOBILE	2390–2400 FIXED MOBILE	2390–2400 FIXED MOBILE	2390–2400	2390–2400 AMATEUR	AMATEUR (97) Radio Frequency Devices (15)	
Amateur Radiolocation	RADIOLOCATION Amateur S5.394	RADIOLOCATION Amateur	G122			
2400–2402 FIXED MOBILE Amateur Radiolocation S5.150 S5.282	2400–2402 FIXED MOBILE RADIOLOCATION Amateur S5.150 S5.282 S5.394	2400–2402 FIXED MOBILE RADIOLOCATION Amateur S5.150 S5.282	2400–2402 S5.150 G123	2400–2402 Amateur S5.150 S5.282	Amateur (97)	
2402–2417 FIXED MOBILE Amateur Radiolocation S5.150 S5.282	2402–2417 FIXED MOBILE RADIOLOCATION Amateur S5.150 S5.282 S5.394	2402–2417 FIXED MOBILE RADIOLOCATION Amateur S5.150 S5.282	2402–2417 S5.150 G122	2402–2417 AMATEUR S5.150 S5.282	AMATEUR (97) Radio Frequency Devices (15)	
2417–2450 FIXED MOBILE Amateur Radiolocation	2417–2450 FIXED MOBILE RADIOLOCATION Amateur	2417–2450 FIXED MOBILE RADIOLOCATION Amateur	2417–2450 Radiolocation G2	2417–2450 Amateur	Amateur (97)	

International table			United States table		FCC use designators	
Region 1—allocation MHz	Region 2—allocation MHz	Region 3—allocation MHz	Government	Non-Government	Rule part(s)	Special-use frequencies
			Allocation MHz	Allocation MHz		
(1)	(2)	(3)	(4)	(5)	(6)	(7)
S5.150 S5.282	S5.150 S5.282 S5.394	S5.150 S5.282	S5.150 S5.282 G124	S5.150 S5.282		
•	•	•	•	•	•	•

International Footnotes

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I. New "S" Numbering Scheme.

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S5.150 The following bands:
13533–13567 kHz (centre frequency 13560 kHz),
26957–27283 kHz (centre frequency 27120 kHz),
40.66–40.70 MHz (centre frequency 40.68 MHz),
902–928 MHz in Region 2 (centre frequency 915 MHz),
2400–2500 MHz (centre frequency 2450 MHz),
5725–5875 MHz (centre frequency 5800 MHz), and
24–24.25 GHz (centre frequency 24.125 GHz)
are also designated for industrial, scientific and medical (ISM) applications. Radiocommunication services operating within these bands must accept harmful interference which may be caused by these applications. ISM equipment operating in these bands is subject to the provisions of No. 1815/S15.13.

S5.282 In the bands 435–438 MHz, 1260–1270 MHz, 2400–2450 MHz, 3400–3410 MHz (in Regions 2 and 3 only) and 5650–5670 MHz, the amateur-satellite service may operate subject to not causing harmful interference to other services operating in accordance with the Table (see No. S5.43). Administrations authorizing such use shall ensure that any harmful interference caused by emissions from a station in the amateur-satellite service is immediately eliminated in accordance with the provisions of No. 2741/S25.11. The use of the bands 1260–1270 MHz and 5650–5670 MHz by the amateur-satellite service is limited to the Earth-to-space direction.

* * * * *

S5.393 *Additional allocation:* in the United States and India, the band 2310–2360 MHz is also allocated to the broadcasting-satellite service (sound) and complementary terrestrial sound broadcasting service on a primary basis. Such use is limited to digital audio broadcasting and is subject to the provisions of Resolution 528 (WARC–92).

S5.394 In the United States, the use of the band 2300–2390 MHz by the aeronautical mobile service for telemetry has priority over other uses by the mobile services. In Canada, the use of the band 2300–2483.5 MHz by the aeronautical mobile service for telemetry has priority over other uses by the mobile services.

S5.395 In France, the use of the band 2310–2360 MHz by the aeronautical mobile service for telemetry has priority over other uses by the mobile service.

S5.396 Space stations of the broadcasting-satellite service in the band 2310–2360 MHz operating in accordance with No. S5.393 that may affect the services to which this band is allocated in other countries shall be coordinated and notified in accordance with Resolution 33. Complementary terrestrial broadcasting stations shall be subject to bilateral coordination with neighboring countries prior to their bringing into use.

* * * * *

United States (US) Footnotes

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US276 Except as otherwise provided for herein, use of the bands 2320–2345 and 2360–2390 MHz by the mobile service is limited to aeronautical telemetering and associated telecommand operations for flight testing of manned or unmanned aircraft, missiles or major components thereof. The following four frequencies are shared on a co-equal basis by Government and non-Government stations for telemetering and associated telecommand operations of expendable and reusable launch vehicles whether or not such operations involve flight testing: 2332.5, 2364.5, 2370.5, and 2382.5 MHz. All other mobile telemetering uses shall be secondary to the above uses.

* * * * *

US328 In the band 2320–2345 MHz, the mobile and radiolocation services are allocated on a primary basis until a broadcasting-satellite (sound) service has been brought into use in such a manner as to affect or be affected by the mobile and radiolocation services in those service areas. The broadcasting-satellite (sound) service during implementation should also take cognizance of the expendable and reusable launch vehicle frequency 2332.5 MHz, to minimize the impact on this mobile service use to the extent possible.

* * * * *

US338 In the 2305–2310 MHz band, space-to-Earth operations are prohibited. Additionally, in the 2305–2320 MHz band, all Wireless Communications Service (WCS) operations within 50 kilometers of 35° 20″ North Latitude and 116° 53″ West Longitude shall be coordinated through the Frequency Assignment Subcommittee of the Interdepartment Radio Advisory Committee in order to minimize harmful interference to NASA's Goldstone Deep Space facility.

US339 The bands 2310–2320 and 2345–2360 MHz are also available for aeronautical telemetering and associated telecommand operations for flight testing of manned or unmanned aircraft, missiles or major components thereof on a secondary basis to the Wireless Communications Service. The following two frequencies are shared on a co-equal basis by Government and non-Government stations for telemetering and associated telecommand operations of expendable and re-usable launch vehicles whether or not such operations involve flight testing: 2312.5 and 2352.5 MHz. Other mobile telemetering uses may be provided on a non-interference basis to the above uses. The broadcasting-satellite (sound) service during implementation should also take cognizance of the expendable and reusable launch vehicle frequencies 2312.5 and 2352.5 MHz, to minimize the impact on this mobile service use to the extent possible.

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Government Footnotes

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G2 In the bands 216–225, 420–450 (except as provided by US217), 890–902, 928–942, 1300–1400, 2310–2390, 2417–2450, 2700–2900, 5650–5925, and 9000–9200 MHz, the Government radiolocation is limited to the military services.

* * * * *

G120 Development of airborne primary radars in the band 2310–2390 MHz with peak transmitter power in excess of 250 watts for use in the United States is not permitted.

* * * * *

G123 The bands 2300–2310 and 2400–2402 MHz were identified for reallocation, effective August 10, 1995, for exclusive non-Government use under Title VI of the Omnibus Budget Reconciliation Act of 1993. Effective August 10, 1995, any Government operations in these bands are on a non-interference basis to authorized non-Government operations and shall not hinder the implementation of any non-Government operations.

G124 The band 2417–2450 MHz was identified for reallocation, effective August 10, 1995, for mixed Government and non-Government use under Title VI of the Omnibus Budget Reconciliation Act of 1993.

3. Section 2.1091 is amended by revising the first sentence in paragraph (c) to read as follows:

§ 2.1091 Radiofrequency radiation exposure evaluation: mobile and unlicensed devices.

* * * * *

(c) Mobile devices that operate in the Cellular Radiotelephone Service, the Personal Communications Services, the Satellite Communications Services, the Wireless Communications Service, the Maritime Services and the Specialized Mobile Radio Service authorized under subpart H of part 22 of this chapter, part 24 of this chapter, part 25 of this chapter, part 27 of this chapter, part 80 of this chapter (ship earth station devices only) and part 90 of this chapter ("covered" SMR devices only, as defined in the note to Table 1 of § 1.1307(b)(1) of this chapter), are subject to routine environmental evaluation for RF exposure prior to equipment authorization or use if their effective radiated power (ERP) is 1.5 watts or more. * * *

* * * * *

4. Section 2.1093 is amended by revising the first sentence of paragraph (c) to read as follows:

§ 2.1093 Radiofrequency radiation exposure evaluation: portable devices.

* * * * *

(c) Portable devices that operate in the Cellular Radiotelephone Service, the Personal Communications Services, the Satellite Communications Services, the Wireless Communications Service, the Maritime Services and the Specialized Mobile Radio Service authorized under subpart H of part 22 of this chapter, part 24 of this chapter, part 25 of this chapter, part 27 of this chapter, part 80 of this chapter (ship earth station devices only), part 90 of this chapter ("covered" SMR devices only, as defined in the note to Table 1 of section 1.1307(b)(1) of this chapter), and portable unlicensed personal communication service and millimeter wave devices authorized under § 15.253, § 15.255 or subpart D of part 15 of this chapter are subject to routine environmental evaluation for RF exposure prior to equipment authorization or use. * * *

* * * * *

5. A new part 27 is added to read as follows:

PART 27—WIRELESS COMMUNICATIONS SERVICE

Subpart A—General Information

Sec.

27.1 Basis and purpose.
27.2 Permissible communications.
27.3 Other applicable rule parts.
27.4 Terms and definitions.
27.5 Frequencies.
27.6 Service areas.

Subpart B—Applications and Licenses

27.11 Initial authorization.
27.12 Eligibility.
27.13 License period.
27.14 Construction requirements; Criteria for comparative renewal proceedings.
27.15 Geographic partitioning and spectrum disaggregation.

Subpart C—Technical Standards

27.51 Equipment authorization.
27.52 RF safety.
27.53 Emission limits.
27.54 Frequency stability.
27.55 Field strength limits.
27.56 Antenna structures; air navigation safety.
27.57 International coordination.
27.59 Environmental requirements.
27.61 Quiet zones.
27.63 Disturbance of AM broadcast station antenna patterns.
27.64 Protection from interference.

Subpart D—Competitive Bidding Procedures for WCS

27.201 WCS subject to competitive bidding.
27.202 Competitive bidding mechanisms.
27.203 Withdrawal, default and disqualification payments.
27.204 Bidding application and certification procedures; prohibition of collusion.
27.205 Submission of upfront payments.
27.206 Submission of down payment and filing of long-form applications.
27.207 Procedures for filing petitions to deny against WCS long-form applications.
27.208 License grant, denial, default, and disqualification.
27.209 Designated entities; bidding credits; unjust enrichment.
27.210 Definitions.

Subpart E—Application, Licensing, and Processing Rules for WCS

27.301 Authorization required.
27.302 Eligibility.
27.303 Formal and informal applications.
27.304 Filing of WCS applications, fees, and numbers of copies.
27.305 [Reserved].
27.306 Miscellaneous forms.
27.307 General application requirements.
27.308 Technical content of applications.
27.310 Waiver of rules.
27.311 Defective applications.
27.312 Inconsistent or conflicting applications.
27.313 Amendment of applications for Wireless Communications Service (other than applications filed on FCC Form 175).
27.314 Application for temporary authorizations.
27.315 Receipt of application; applications in the Wireless Communications Service filed on FCC Form 175 and other applications in the WCS Service.
27.316 Public notice period.
27.317 Dismissal and return of applications.
27.319 Ownership changes and agreements to amend or to dismiss applications or pleadings.
27.320 Opposition to applications.
27.321 Mutually exclusive applications.
27.322 Consideration of applications.
27.323 [Reserved].
27.324 Transfer of control or assignment of station authorization.
27.325 Termination of authorization.

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

Subpart A—General Information

§ 27.1 Basis and purpose.

This section contains the statutory basis for this part of the rules and provides the purpose for which this part is issued.

(a) *Basis.* The rules for the Wireless Communications Service (WCS) in this part are promulgated under the provisions of the Communications Act of 1934, as amended, that vest authority in the Federal Communications Commission to regulate radio transmission and to issue licenses for radio stations.

(b) *Purpose.* This part states the conditions under which the 2305–2320 MHz and 2345–2360 MHz bands are made available and licensed for the provision of WCS.

(c) *Scope.* The rules in this part apply only to stations authorized under this part.

§ 27.2 Permissible communications.

Subject to the rules contained herein, fixed, mobile and radiolocation services may be provided using the 2305–2320 and 2345–2360 MHz bands. In addition, satellite digital audio radio service (DARS) may be provided using the 2310–2320 and 2345–2360 MHz bands. Satellite DARS service shall be provided in manner consistent with part 25 of this chapter.

§ 27.3 Other applicable rule parts.

Other FCC rule parts applicable to the Wireless Communications Service include the following:

(a) *Part 0.* This part describes the Commission's organization and delegations of authority. Part 0 of this chapter also lists available Commission publications, standards and procedures for access to Commission records, and location of Commission Field Offices.

(b) *Part 1.* This part includes rules of practice and procedure for license applications, adjudicatory proceedings, procedures for reconsideration and review of the Commission's actions; provisions concerning violation notices and forfeiture proceedings; competitive bidding procedures; and the environmental requirements that, if applicable, must be complied with prior to the initiation of construction.

(c) *Part 2.* This part contains the Table of Frequency Allocations and special requirements in international regulations, recommendations, agreements, and treaties. This part also contains standards and procedures concerning the marketing and importation of radio frequency devices, and for obtaining equipment authorization.

(d) *Part 5.* This part contains rules prescribing the manner in which parts of the radio frequency spectrum may be made available for experimentation.

(e) *Part 17.* This part contains requirements for construction, marking and lighting of antenna towers.

(f) *Part 25.* This part contains the requirements for satellite communications, including satellite DARS.

(g) *Part 51.* This part contains general duties of telecommunications carriers to provide for interconnection with other telecommunications carriers.

(h) *Part 68.* This part contains technical standards for connection of terminal equipment to the telephone network.

§ 27.4 Terms and definitions.

Assigned frequency. The center of the frequency band assigned to a station.

Authorized bandwidth. The maximum width of the band of frequencies permitted to be used by a station. This is normally considered to be the necessary or occupied bandwidth, whichever is greater.

Average terrain. The average elevation of terrain between 3 and 16 kilometers from the antenna site.

Effective Radiated Power (ERP) (in a given direction). The product of the power supplied to the antenna and its gain relative to a half-wave dipole in a given direction.

Equivalent Isotropically Radiated Power (EIRP). The product of the power supplied to the antenna and the antenna gain in a given direction relative to an isotropic antenna.

Fixed service. A radio communication service between specified fixed points.

Fixed station. A station in the fixed service.

Land mobile service. A mobile service between base stations and land mobile stations, or between land mobile stations.

Land mobile station. A mobile station in the land mobile service capable of surface movement within the geographic limits of a country or continent.

Land station. A station in the mobile service not intended to be used while in motion.

Mobile service. A radio communication service between mobile and land stations, or between mobile stations.

Mobile station. A station in the mobile service intended to be used while in motion or during halts at unspecified points.

National Geodetic Reference System (NGRS). The name given to all geodetic control data contained in the National Geodetic Survey (NGS) data base. (Source: National Geodetic Survey, U.S. Department of Commerce)

Radiodetermination. The determination of the position, velocity and/or other characteristics of an object, or the obtaining of information relating to these parameters, by means of the propagation properties of radio waves.

Radiolocation. Radiodetermination used for purposes other than those of radionavigation.

Radionavigation. Radiodetermination used for the purpose of navigation, including obstruction warning.

Satellite Digital Audio Radio Service (satellite DARS). A radiocommunication service in which compact disc quality programming is digitally transmitted by one or more space stations.

Wireless communications service. A radiocommunication service that encompasses fixed, mobile, satellite DARS, and radiolocation services.

§ 27.5 Frequencies.

The following frequencies are available for WCS.

(a) Two paired channel blocks are available for assignment on a Major Economic Area basis as follows:

Block A: 2305–2310 and 2350–2355 MHz; and
Block B: 2310–2315 and 2355–2360 MHz.

(b) Two unpaired channel blocks are available for assignment on a Regional Economic Area Grouping basis as follows:

Block C: 2315–2320 MHz; and
Block D: 2345–2350 MHz.

§ 27.6 Service areas.

WCS service areas are Major Economic Areas (MEAs) and Regional Economic Area Groupings (REAGs) as defined below. Both MEAs and REAGs are based on the U.S. Department of Commerce's 172 Economic Areas (EAs). See 60 FR 13114 (March 10, 1995). In addition, the Commission shall separately license Guam and the Northern Mariana Islands, Puerto Rico and the United States Virgin Islands, American Samoa, and the Gulf of Mexico, which have been assigned Commission-created EA numbers 173–176, respectively. Maps of the EAs, MEAs, and REAGs and the **Federal Register** Notice that established the 172 EAs are available for public inspection and copying at the Commercial Wireless Division Public Reference Room, room 5608, 2025 M Street, NW, Washington, DC.

(a) The 52 MEAs are composed of one or more EAs and the 12 REAGs are composed of one or more MEAs, as defined in the table below:

REAGs	MEAs	EAs
1 (Northeast)	1 (Boston)	1–3.
	2 (New York City)	4–7, 10.
	3 (Buffalo)	8.
	4 (Philadelphia)	11–12.

REAGs	MEAs	EAs
2 (Southeast)	5 (Washington)	13–14.
	6 (Richmond)	15–17, 20.
	7 (Charlotte-Greensboro-Greenville-Raleigh)	18–19, 21–26, 41–42, 46.
	8 (Atlanta)	27–28, 37–40, 43.
	9 (Jacksonville)	29, 35.
	10 (Tampa-St. Petersburg-Orlando)	30, 33–34.
	11 (Miami)	31–32.
3 (Great Lakes)	12 (Pittsburgh)	9, 52–53.
	13 (Cincinnati-Dayton)	48–50.
	14 (Columbus)	51.
	15 (Cleveland)	54–55.
	16 (Detroit)	56–58, 61–62.
	17 (Milwaukee)	59–60, 63, 104–105, 108.
	18 (Chicago)	64–66, 68, 97, 101.
	19 (Indianapolis)	67.
	20 (Minneapolis-St. Paul)	106–107, 109–114, 116.
	21 (Des Moines-Quad Cities)	100, 102–103, 117.
4 (Mississippi Valley)	22 (Knoxville)	44–45.
	23 (Louisville-Lexington-Evansville)	47, 69–70, 72.
	24 (Birmingham)	36, 74, 78–79.
	25 (Nashville)	71.
	26 (Memphis-Jackson)	73, 75–77.
	27 (New Orleans-Baton Rouge)	80–85.
	28 (Little Rock)	90–92, 95.
	29 (Kansas City)	93, 99, 123.
	30 (St. Louis)	94, 96, 98.
5 (Central)	31 (Houston)	86–87, 131.
	32 (Dallas-Fort Worth)	88–89, 127–130, 135, 137–138.
	33 (Denver)	115, 140–143.
	34 (Omaha)	118–121.
	35 (Wichita)	122.
	36 (Tulsa)	124.
	37 (Oklahoma City)	125–126.
	38 (San Antonio)	132–134.
	39 (El Paso-Albuquerque)	136, 139, 155–157.
	40 (Phoenix)	154, 158–159.
6 (West)	41 (Spokane-Billings)	144–147, 168.
	42 (Salt Lake City)	148–150, 152.
	43 (San Francisco-Oakland-San Jose)	151, 162–165.
	44 (Los Angeles-San Diego)	153, 160–161.
	45 (Portland)	166–167.
	46 (Seattle)	169–170.
7 (Alaska)	47 (Alaska)	171.
8 (Hawaii)	48 (Hawaii)	172.
9 (Guam and the Northern Mariana Islands)	49 (Guam and the Northern Mariana Islands)	173.
10 (Puerto Rico and U.S. Virgin Islands)	50 (Puerto Rico and U.S. Virgin Islands)	174.
11 (American Samoa)	51 (American Samoa)	175.
12 (Gulf of Mexico)	52 (Gulf of Mexico)	176.

(b) The Gulf of Mexico EA extends from 12 nautical miles off the U.S. Gulf coast outward into the Gulf.

Subpart B—Applications and Licenses

§ 27.11 Initial authorization.

(a) An applicant must file an application for an initial WCS authorization in each market and channel block desired. Applicants are permitted to list all markets and channel blocks in a single application where all requisite exhibits and justifications are identical.

(b) The initial WCS authorizations shall be granted for 10 megahertz of spectrum in accordance with § 27.5. Authorizations for Blocks A and B will be based on Major Economic Areas (MEAs), as shown in § 27.6. Authorizations for Blocks C and D will be based on Regional Economic Area Groupings (REAGs), as shown in § 27.6. Applications for individual sites are not required and will not be accepted, except where required for environmental assessments, in accordance with § 27.63.

§ 27.12 Eligibility.

Any entity, other than those precluded by section 310 of the Communications Act of 1934, as amended, 47 U.S.C. section 310, is eligible to hold a license under this part.

§ 27.13 License period.

Initial WCS authorizations will have a term not to exceed ten years from the date of original issuance or renewal.

§ 27.14 Construction requirements; Criteria for comparative renewal proceedings.

(a) WCS licensees must make a showing of "substantial service" in their license area within ten years of being licensed. "Substantial" service is defined as service which is sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal. Failure by any licensee to meet this requirement will result in forfeiture of the license and the licensee will be ineligible to regain it.

(b) A renewal applicant involved in a comparative renewal proceeding shall receive a preference, commonly referred to as a renewal expectancy, which is the most important comparative factor to be considered in the proceeding, if its past record for the relevant license period demonstrates that:

(1) The renewal applicant has provided "substantial" service during its past license term; and

(2) The renewal applicant has substantially complied with applicable FCC rules, policies and the Communications Act of 1934, as amended.

(c) In order to establish its right to a renewal expectancy, a WCS renewal applicant involved in a comparative renewal proceeding must submit a showing explaining why it should receive a renewal expectancy. At a minimum, this showing must include:

(1) A description of its current service in terms of geographic coverage and population served;

(2) An explanation of its record of expansion, including a timetable of new construction to meet changes in demand for service;

(3) A description of its investments in its WCS system; and

(4) Copies of all FCC orders finding the licensee to have violated the Communications Act or any FCC rule or policy; and a list of any pending proceedings that relate to any matter described in this paragraph.

(d) In making its showing of entitlement to a renewal expectancy, a renewal applicant may claim credit for any system modification applications that were pending on the date it filed its renewal application. Such credit will not be allowed if the modification application is dismissed or denied.

§ 27.15 Geographic partitioning and spectrum disaggregation.

(a) *Eligibility.* (1) Parties seeking approval for partitioning and disaggregation shall request from the Commission an authorization for partial assignment of a license pursuant to section 27.324.

(2) WCS licensees may apply to partition their licensed geographic service area or disaggregate their licensed spectrum at any time following the grant of their licenses.

(b) *Technical Standards*—(1) *Partitioning.* In the case of partitioning, requests for authorization for partial assignment of a license must include, as attachments, a description of the partitioned service area and a calculation of the population of the partitioned service area and the licensed geographic service area. The partitioned service area shall be defined by coordinate points at every 3 degrees along the partitioned service area unless an FCC recognized service area is utilized (i.e., Major Trading Area, Basic Trading Area, Metropolitan Service Area, Rural Service Area, Economic Area, or Major Economic Area) or county lines are followed. The geographic coordinates must be specified in degrees, minutes, and seconds to the nearest second of latitude and longitude and must be based upon the 1927 North American Datum (NAD27). Applicants may supply geographical coordinates based on 1983 North American Datum (NAD83) in addition to those required (NAD27). In the case where an FCC recognized service area or county lines are utilized, applicants need only list the specific area(s) (through use of FCC designations or county names) that constitute the partitioned area.

(2) *Disaggregation.* Spectrum may be disaggregated in any amount.

(3) *Combined partitioning and disaggregation.* The Commission will consider requests for partial assignment of licenses that propose combinations of partitioning and disaggregation.

(4) *Signal levels.* For purposes of partitioning and disaggregation, WCS systems must be designed so as not to exceed a signal level of 47 dBuV/m at the licensee's service area boundary, unless the affected adjacent service area licensees have agreed to a different signal level. See section 27.55.

(c) *Unjust Enrichment.*—(1) *Bidding credits.* Licensees that received a bidding credit and partition their licenses or disaggregate their spectrum to entities not meeting the eligibility standards for such a bidding credit, will be subject to the provisions concerning unjust enrichment as set forth in section 27.209(c).

(2) *Apportioning unjust enrichment payments.* Unjust enrichment payments for partitioned license areas shall be calculated based upon the ratio of the population of the partitioned license area to the overall population of the license area and by utilizing the most recent census data. Unjust enrichment payments for disaggregated spectrum shall be calculated based upon the ratio of the amount of spectrum disaggregated to the amount of spectrum held by the licensee.

(d) *License term.* The license term for a partitioned license area and for disaggregated spectrum shall be the remainder of the original licensee's license term as provided for in § 27.13.

Subpart C—Technical Standards

§ 27.51 Equipment authorization.

(a) Each transmitter utilized for operation under this part and each transmitter marketed, as set forth in § 2.803 of this chapter, must be of a type that has been authorized by the Commission under its type acceptance procedure.

(b) The Commission periodically publishes a list of type accepted equipment, entitled "Radio Equipment List, Equipment Accepted for Licensing." Copies of this list are available for public reference at the Commission's offices in Washington, DC, at each of its field offices, and may be ordered from its copy contractor.

(c) Any manufacturer of radio transmitting equipment to be used in these services may request equipment authorization following the procedures set forth in subpart J of part 2 of this chapter. Equipment authorization for an individual transmitter may be requested by an applicant for a station authorization by following the procedures set forth in part 2 of this chapter. Such equipment if approved or accepted will not normally be included in the Commission's Radio Equipment List but will be individually enumerated on the station authorization.

§ 27.52 RF safety.

Licensees and manufacturers are subject to the radio frequency radiation exposure requirements specified in sections 1.1307(b), 2.1091, and 2.1093 of this chapter, as appropriate. Applications for equipment authorization of mobile or portable devices operating under this section must contain a statement confirming compliance with these requirements for both fundamental emissions and unwanted emissions. Technical information showing the basis for this statement must be submitted to the Commission upon request.

§ 27.53 Emission limits.

(a) The power of any emission outside the licensee's bands of operation shall be attenuated below the transmitter power (p) within the licensed bands of operation by the following amounts:

(1) *For fixed operations, including radiolocation:* By a factor not less than 80 + 10 log (p) dB on all frequencies between 2320 and 2345 MHz.

(2) *For mobile operations, including radiolocation:* By a factor not less than 110 + 10 log (p) dB on all frequencies between 2320 and 2345 MHz.

(3) *For fixed and mobile operations, including radiolocation:* By a factor not less than 70 + 10 log (p) dB on all frequencies below 2300 MHz and on all frequencies above 2370 MHz; and not less than 43 + 10 log (p) dB on all frequencies between 2300 and 2320 MHz and on all frequencies between 2345 and 2370 MHz that are outside the licensed bands of operation.

(4) For the purposes of this section, radiolocation shall be classified as either a fixed or mobile service, depending upon the application.

(5) Compliance with these provisions is based on the use of measurement instrumentation employing a resolution bandwidth of 1 MHz or less, but at least one percent of the emission bandwidth of the fundamental emission of the transmitter, provided the measured energy is integrated over a 1 MHz bandwidth.

(6) In complying with the requirements in §§ 27.53(a)(1) and 27.53(a)(2), WCS equipment that uses opposite sense circular polarization from that used by satellite DARS systems in the 2320–2345 MHz band shall be permitted an allowance of 10 dB.

(7) When measuring the emission limits, the nominal carrier frequency shall be adjusted as close to the edges, both upper and lower, of the licensee's bands of operation as the design permits.

(8) The measurements of emission power can be expressed in peak or average values, provided they are expressed in the same parameters as the transmitter power.

(9) The above out-of-band emissions limits may be modified by the private contractual agreement of the affected licensees, who shall maintain a copy of the agreement in their station files and disclose it to prospective assignees or transferees or, upon request, to the Commission.

(b) *For WCS satellite DARS operations:* The limits set forth in section 25.202(f) of this chapter apply, except that satellite DARS operations are limited to a maximum power flux density of −197 dBW/m2/4 kHz in the 2370–2390 MHz band at Arecibo, Puerto Rico.

(c) When an emission outside of the authorized bandwidth causes harmful interference, the Commission may, at its discretion, require greater attenuation than specified in this section.

§ 27.54 Frequency stability.

The frequency stability shall be sufficient to ensure that the fundamental emissions stay within the authorized bands of operation.

§ 27.55 Field strength limits.

The predicted or measured median field strength at any location on the border of a WCS service area shall not exceed 47 dBμV/m unless the parties agree to a different field strength. This value applies to both the initially offered MEA and REAG service areas and to partitioned service areas.

§ 27.56 Antenna structures; air navigation safety.

A licensee that owns its antenna structure(s) must not allow such antenna structure(s) to become a hazard to air navigation. In general, antenna structure owners are responsible for registering antenna structures with the FCC if required by part 17 of this chapter, and for installing and maintaining any required marking and lighting. However, in the event of default of this responsibility by an antenna structure owner, the FCC permittee or licensee authorized to use an affected antenna structure will be held responsible by the FCC for ensuring that the antenna structure continues to meet the requirements of part 17 of this chapter. See § 17.6 of this chapter.

(a) *Marking and lighting.* Antenna structures must be marked, lighted and maintained in accordance with part 17 of this chapter and all applicable rules and requirements of the Federal Aviation Administration. For any construction or alteration that would exceed the requirements of section 17.7 of this chapter, licensees must notify the appropriate Regional Office of the Federal Aviation Administration (FAA Form 7460–1) and file a request for antenna height clearance and obstruction marking and lighting specifications (FCC Form 854) with the FCC, WTB, 1270 Fairfield Road, Gettysburg, PA 17325.

(b) *Maintenance contracts.* Antenna structure owners (or licensees and permittees, in the event of default by an antenna structure owner) may enter into contracts with other entities to monitor and carry out necessary maintenance of antenna structures. Antenna structure owners (or licensees and permittees, in the event of default by an antenna structure owner) that make such contractual arrangements continue to be responsible for the maintenance of antenna structures in regard to air navigation safety.

§ 27.57 International coordination.

WCS operations in the border areas shall be subject to coordination with those countries and provide protection to non-U.S. operations in the 2305–2320 and 2345–2360 MHz bands as appropriate. In addition, satellite DARS operations in WCS spectrum shall be subject to international satellite coordination procedures.

§ 27.59 Environmental requirements.

WCS operations that may have a significant environmental impact as defined by §§ 1.1301 through 1.1319 of this chapter, must file an FCC Form 600 and supply specific technical information about their proposed site prior to construction of such site as well as an environmental assessment (EA) in accordance with §§ 1.1301 through 1.1319 of this chapter. Such application will be placed on public notice in accordance with § 27.316 and may not be constructed or operated prior to a finding of no significant impact (FONSI) being issued and placed on public notice by the FCC.

§ 27.61 Quiet zones.

Quiet zones are those areas where it is necessary to restrict radiation so as to minimize possible impact on the operations of radio astronomy or other facilities that are highly sensitive to interference. The areas involved and procedures required are as follows:

(a) *NRAO, NRRO.* The requirements of this paragraph are intended to minimize possible interference at the National Radio Astronomy Observatory site located at Green Bank, Pocahontas County, West Virginia, and at the Naval Radio Research Observatory site at Sugar Grove, Pendleton County, West Virginia. WCS licensees planning to construct and operate a new or modified WCS station at a permanent fixed location within the area bounded by N.39°15′ on the north, W.78°30′ on the east, N.37°30′ on the south, and W.80°30′ on the west must notify the Director, National Radio Astronomy Observatory, Post Office Box No. 2, Green Bank, WV 24944, in writing, of the technical details of the proposed operation. The notification must include the geographical coordinates of the antenna location, the antenna height, antenna directivity (if any), the channel, the emission type and power.

(b) *Table Mountain.* The requirements of this paragraph are intended to minimize possible interference at the Table Mountain Radio Receiving Zone of the Research Laboratories of the U.S. Department of Commerce located in Boulder County, Colorado.

(1) WCS licensees planning to construct and operate a new or modified WCS station at a permanent fixed location in the vicinity of Boulder County, Colorado are advised to give consideration, prior to filing applications, to the need to protect the Table Mountain Radio Receiving Zone from interference. To prevent degradation of the present ambient radio signal level at the site, the U.S. Department of Commerce seeks to ensure that the field strengths of any radiated signals (excluding reflected signals) received on this 1800 acre site (in the vicinity of coordinates 40°07′50″ North Latitude, 105°14′40″ West Longitude) resulting from new assignments (other than mobile stations) or from the modification or relocation of existing facilities do not exceed the values given in Table C–3.

TABLE C–3—FIELD STRENGTH LIMITS FOR TABLE MOUNTAIN

Frequency range	Field strength	Power flux density
890 to 3000 MHz.	1 mV/m	-85.8 dBW/m²

Note: Equivalent values of power flux density are calculated assuming free space characteristic impedance of 376.7Ω (120πΩ). (120).

(2) Advance consultation is recommended, particularly for WCS licensees that have no reliable data to indicate whether the field strength or power flux density figures in the above table would be exceeded by their proposed radio facilities. In general, coordination is recommended for:

(i) Stations located within 2.4 kilometers (1.5 miles);

(ii) Stations located within 4.8 kilometers (3 miles) transmitting with 50 watts or more effective radiated power (ERP) in the primary plane of polarization in the azimuthal direction of the Table Mountain Radio Receiving Zone;

(iii) Stations located within 16 kilometers (10 miles) transmitting with 1 kW or more ERP in the primary plane of polarization in the azimuthal direction of Table Mountain Radio Receiving Zone;

(iv) Stations located within 80 kilometers (50 miles) transmitting with 25 kW or more ERP in the primary plane of polarization in the azimuthal direction of Table Mountain Receiving Zone.

(3) WCS licensees are urged to communicate with the Radio Frequency Management Coordinator, U.S. Department of Commerce, Research Support Services NOAAR/E5X2, Boulder Laboratories, Boulder, CO 80303; telephone (303) 497–6548, in advance of construction and operation of such facilities.

(c) *Federal Communications Commission protected field offices.* The requirements of this paragraph are intended to minimize possible interference to FCC monitoring activities.

(1) WCS licensees planning to construct and operate a new or modified WCS station at a permanent fixed location in the vicinity of an FCC protected field office are advised to give consideration to the need to avoid interfering with the monitoring activities of that office. FCC protected field offices are listed in § 0.121 of this chapter.

(2) Applications for stations (except mobile stations) that could produce on any channel a direct wave fundamental field strength of greater than 10 mV/m (−65.8 dBW/m² power flux density assuming a free space characteristic impedance of 120πΩ) in the authorized bandwidth at the protected field office must be examined by WCS licensees to determine the potential for interference with monitoring activities.

(3) In the event that the calculated field strength exceeds 10 mV/m at the protected field office site, or if there is any question whether field strength levels might exceed that level, advance consultation with the FCC to discuss possible measures to avoid interference to monitoring activities should be considered. WCS licensees may communicate with: Chief, Compliance and Information Bureau, Federal Communications Commission, Washington, DC 20554.

(4) Advance consultation is recommended for WCS licensees that have no reliable data to indicate whether the field strength or power flux density figure indicated would be exceeded by their proposed radio facilities. In general, coordination is recommended for:

(i) Stations located within 2.4 kilometers (1.5 miles);

(ii) Stations located within 4.8 kilometers (3 miles) with 50 watts or more average effective radiated power (ERP) in the primary plane of polarization in the azimuthal direction of the protected field offices.

(iii) Stations located within 16 kilometers (10 miles) with 1 kW or more average ERP in the primary plane of polarization in the azimuthal direction of the protected field office;

(iv) Stations located within 80 kilometers (50 miles) with 25 kW or more average ERP in the primary plane of polarization in the azimuthal direction of the protected field office;

(5) Advance coordination for stations transmitting on channels above 1000 MHz is recommended only if the proposed station is in the vicinity of a protected field office designated as a satellite monitoring facility in § 0.121 of this chapter.

(6) The FCC will not screen applications to determine whether advance consultation has taken place. However, such consultation may serve to avoid the need for later modification of the authorizations of stations that interfere with monitoring activities at protected field offices.

§ 27.63 Disturbance of AM broadcast station antenna patterns.

WCS licensees that construct or modify towers in the immediate vicinity of AM broadcast stations are responsible for measures necessary to correct disturbance of the AM station antenna pattern which causes operation outside of the radiation parameters specified by the FCC for the AM station, if the disturbance occurred as a result of such construction or modification.

(a) *Non-directional AM stations.* If tower construction or modification is planned within 1 kilometer (0.6 mile) of a non-directional AM broadcast station tower, the WCS licensee must notify the licensee of the AM broadcast station in advance of the planned construction or modification. Measurements must be made to determine whether the construction or modification would affect the AM station antenna pattern. The WCS licensee is responsible for the installation and continued maintenance of any detuning apparatus necessary to restore proper non-directional performance of the AM station tower.

(b) *Directional AM stations.* If tower construction or modification is planned within 3 kilometers (1.9 miles) of a directional AM broadcast station array, the WCS licensee must notify the licensee of the AM broadcast station in advance of the planned construction or modification. Measurements must be made to determine whether the construction or modification would affect the AM station antenna pattern. The WCS licensee is responsible for the installation and continued maintenance of any detuning apparatus necessary to restore proper performance of the AM station array.

§ 27.64 Protection from interference.

Wireless Communications Service (WCS) stations operating in full accordance with applicable FCC rules and the terms and conditions of their authorizations are normally considered to be non-interfering. If the FCC determines, however, that interference which significantly interrupts or degrades a radio service is being caused, it may, after notice and an opportunity for a hearing, require modifications to any WCS station as necessary to eliminate such interference.

(a) *Failure to operate as authorized.* Any licensee causing interference to the service of other stations by failing to operate its station in full accordance with its authorization and applicable FCC rules shall discontinue all transmissions, except those necessary for the immediate safety of life or property, until it can bring its station

into full compliance with the authorization and rules.

(b) *Intermodulation interference.* Licensees should attempt to resolve such interference by technical means.

(c) *Situations in which no protection is afforded.* Except as provided elsewhere in this part, no protection from interference is afforded in the following situations:

(1) *Interference to base receivers from base or fixed transmitters.* Licensees should attempt to resolve such interference by technical means or operating arrangements.

(2) *Interference to mobile receivers from mobile transmitters.* No protection is provided against mobile-to-mobile interference.

(3) *Interference to base receivers from mobile transmitters.* No protection is provided against mobile-to-base interference.

(4) *Interference to fixed stations.* Licensees should attempt to resolve such interference by technical means or operating arrangements.

(5) *Anomalous or infrequent propagation modes.* No protection is provided against interference caused by tropospheric and ionospheric propagation of signals.

Subpart D—Competitive Bidding Procedures for WCS

§ 27.201 WCS subject to competitive bidding.

Mutually exclusive initial applications to provide WCS service are subject to competitive bidding procedures. The procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise specified in this part.

§ 27.202 Competitive bidding mechanisms.

In addition to the provisions of § 1.2104(a) through (f), (h) and (i) of this chapter, the following provision will apply to WCS: Where a tie bid occurs, the high bidder will be determined by the order in which the bids were received by the Commission.

§ 27.203 Withdrawal, default and disqualification payments.

When the Commission conducts a simultaneous multiple round auction pursuant to § 27.202, the Commission will impose payments on bidders who withdraw high bids during the course of an auction, or who default on payments due after an auction closes or who are disqualified. When the amount of such a payment cannot be determined, a deposit of up to 20 percent of the amount bid on the license will be required.

(a) Bid withdrawal prior to close of auction. A bidder who withdraws a high bid during the course of an auction will be subject to a payment equal to the difference between the amount bid and the amount of the winning bid the next time the license is offered by the Commission. No withdrawal payment would be assessed if the subsequent winning bid exceeds the withdrawn bid. This payment amount will be deducted from any upfront payments or down payments that the withdrawing bidder has deposited with the Commission.

(b) Default or disqualification after close of auction. If a high bidder defaults or is disqualified after the close of such an auction, the defaulting bidder will be subject to the payment in paragraph (a) of this section plus an additional payment equal to 3 percent of the subsequent winning bid. If the subsequent winning bid exceeds the defaulting bidder's bid amount, the 3 percent payment will be calculated based on the defaulting bidder's bid amount. These amounts will be deducted from any upfront payments or down payments that the defaulting or disqualified bidder has deposited with the Commission.

§ 27.204 Bidding application and certification procedures; prohibition of collusion.

(a) *Submission of Short-Form Application (FCC Form 175).* In order to be eligible to bid, an applicant must timely submit, by means of electronic filing, a short-form application (FCC Form 175). Unless otherwise provided by public notice, the Form 175 need not be accompanied by an upfront payment (see § 27.205).

(1) All Form 175s will be due on the date specified by public notice.

(2) The Form 175 must contain the following information:

(i) Identification of each license on which the applicant wishes to bid;

(ii) The applicant's name, if the applicant is an individual. If the applicant is a corporation, then the short-form application will require the name and address of the corporate office and the name and title of an officer or director. If the applicant is a partnership, then the application will require the names, citizenship and addresses of all partners, and, if a partner is not a natural person, then the name and title of a responsible person should be included as well. If the applicant is a trust, then the name and address of the trustee will be required. If the applicant is none of the above, then it must identify and describe itself and its principals or other responsible persons;

(iii) The identity of the person(s) authorized to make or withdraw a bid;

(iv) If the applicant applies as a designated entity pursuant to section 27.210(b), a statement to that effect and a declaration, under penalty of perjury, that the applicant is qualified as a designated entity under § 27.210(b).

(v) Certification that the applicant is legally, technically, financially and otherwise qualified pursuant to section 308(b) of the Communications Act of 1934, as amended. The Commission will accept applications certifying that a request for waiver or other relief from the requirements of section 310 is pending;

(vi) Certification that the applicant is in compliance with the foreign ownership provisions of section 310 of the Communications Act of 1934, as amended;

(vii) Certification that the applicant is and will, during the pendency of its application(s), remain in compliance with any service-specific qualifications applicable to the licenses on which the applicant intends to bid including, but not limited to, financial qualifications. The Commission may require certification in certain services that the applicant will, following grant of a license, come into compliance with certain service-specific rules, including, but not limited to, ownership eligibility limitations;

(viii) An exhibit, certified as truthful under penalty of perjury, identifying all parties with whom the applicant has entered into partnerships, joint ventures, consortia or other agreements, arrangements or understandings of any kind relating to the licenses being auctioned, including any such agreements relating to the post-auction market structure;

(ix) Certification under penalty of perjury that it has not entered and will not enter into any explicit or implicit agreements, arrangements or understandings of any kind with any parties other than those identified pursuant to paragraph (a)(2)(viii) of this section regarding the amount of their bids, bidding strategies or the particular licenses on which they will or will not bid; and

(x) Certification under penalty of perjury that it is not in default on any Commission licenses and that it is not delinquent on any extension of credit from any federal agency.

Note to paragraph (a): The Commission may also request applicants to submit additional information for informational purposes to aid in its preparation of required reports to Congress.

(b) Modification and Amendment of Application. Applicants will be permitted to amend their Form 175 applications to make minor amendments to correct minor errors or defects such as typographical errors. Applicants will also be permitted to amend FCC Form 175 to make changes to the information required by § 27.204(a) (such as ownership changes or changes in the identification of parties to bidding consortia), provided such changes do not result in a change in control of the applicant and do not involve another applicant (or parties in interest to an applicant) who has applied for licenses in any of the same geographic license areas as the applicant. Amendments which change control of the applicant will be considered major amendments. An FCC Form 175 which is amended by a major amendment will be considered to be newly filed and cannot be resubmitted after applicable filing deadlines. See also § 1.2105 of this chapter.

(c) Prohibition of collusion. (1) Except as provided in paragraphs (c)(2), (c)(3) and (c)(4) of this section, after the filing of short-form applications, all applicants are prohibited from cooperating, collaborating, discussing or disclosing in any manner the substance of their bids or bidding strategies, or discussing or negotiating settlement agreements, with other applicants until after the high bidder makes the required down payment, unless such applicants are members of a bidding consortium or other joint bidding arrangement identified on the bidder's short-form application pursuant to § 27.204(a)(2)(viii).

(2) Applicants may modify their short-form applications to reflect formation of consortia or changes in ownership at any time before or during an auction, provided such changes do not result in a change in control of the applicant, and provided that the parties forming consortia or entering into ownership agreements have not applied for licenses in any of the same geographic license areas. Such changes will not be considered major modifications of the application.

(3) After the filing of short-form applications, applicants may make agreements to bid jointly for licenses, provided the parties to the agreement have not applied for licenses in any of the same geographic license areas.

(4) After the filing of short-form applications, a holder of a non-controlling attributable interest in an entity submitting a short-form application may acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with, other applicants for licenses in the same geographic license area, provided that:

(i) The attributable interest holder certifies to the Commission that it has not communicated and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has a consortium or joint bidding arrangement, and which have applied for licenses in the same geographic license area(s); and

(ii) The arrangements do not result in any change in control of an applicant.

(5) Applicants must modify their short-form applications to reflect any changes in ownership or in the membership of consortia or joint bidding arrangements.

(6) For purposes of this paragraph:

(i) The term "applicant" shall include the entity submitting a short-form application to participate in an auction (FCC Form 175), as well as all holders of partnership and other ownership interests and any stock interest amounting to 5 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application, and all officers and directors of that entity; and

(ii) The term "bids or bidding strategies" shall include capital calls or requests for additional funds in support of bids or bidding strategies.

§ 27.205 Submission of upfront payments.

(a) Each eligible bidder for WCS licenses subject to auction shall pay an upfront payment pursuant to this chapter and procedures specified by public notice. No interest will be paid on upfront payments.

(b) Upfront payments must be made by wire transfer.

(c) If the applicant does not submit at least the minimum upfront payment, it will be ineligible to bid, its application will be dismissed and any upfront payment it has made will be returned.

(d) The upfront payment(s) of a bidder will be credited toward any down payment required for licenses on which the bidder is the high bidder. Where the upfront payment amount exceeds the required deposit of a winning bidder, the Commission will refund the excess amount after determining that no bid withdrawal payments are owed by that bidder.

(e) In accordance with the provisions of paragraph (d) of this section, in the event a payment is assessed pursuant to § 27.203 for bid withdrawal or default, upfront payments or down payments on deposit with the Commission will be used to satisfy the bid withdrawal or default payment before being applied toward any additional payment obligations that the high bidder may have.

§ 27.206 Submission of down payment and filing of long-form applications.

(a) After bidding has ended, the Commission will identify and notify the high bidder and declare the bidding closed.

(b) Within ten (10) business days after being notified that it is a high bidder on a particular license(s), a high bidder must submit to the Commission's lockbox bank such additional funds (the "down payment") as are necessary to bring its total deposits (not including upfront payments applied to satisfy bid withdrawal or default payments) up to twenty (20) percent of its high bid(s). This down payment must be made by wire transfer or cashier's check drawn in U.S. dollars from a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation and must be made payable to the Federal Communications Commission. Down payments will be held by the Commission until the high bidder has been awarded the license and has paid the remaining balance due on the license, in which case it will not be returned, or until the winning bidder is found unqualified to be a licensee or has defaulted, in which case it will be returned, less applicable payments. No interest will be paid on any down payment.

(c) A high bidder that meets its down payment obligations in a timely manner must, within ten (10) business days after being notified that it is a high bidder, submit an additional application (the "long-form application") pursuant to the rules governing the service in which the applicant is the high bidder. Notwithstanding any other provision in title 47 of the Code of Federal Regulations to the contrary, high bidders need not submit an additional application filing fee with their long-form applications. Notwithstanding any other provision in Title 47 of the Code of Federal Regulations to the contrary, the high bidder's long-form application must be mailed or otherwise delivered to: Office of the Secretary, Federal Communications Commission, Attention: Auction Application Processing Section, 1919 M Street, NW, Room 222, Washington, DC 20554. An applicant that fails to submit the required long-form application as required under this section, and fails to establish good cause for any late-filed submission, shall be deemed to have defaulted and will be subject to the payments set forth in section 27.203.

(d) As an exhibit to its long-form application, the applicant must provide a detailed explanation of the terms and conditions and parties involved in any bidding consortia, joint venture, partnership or other agreement or arrangement it had entered into relating to the competitive bidding process prior to the time bidding was completed. Such agreements must have been entered into prior to the filing of short-form applications pursuant to § 27.204.

§ 27.207 Procedures for filing petitions to deny against WCS long-form applications.

(a) Within five (5) days after the Commission gives public notice that a long-form application has been accepted for filing, petitions to deny that application may be filed. Any such petitions must contain allegations of fact supported by affidavit of a person or persons with personal knowledge thereof, and be served by hand upon the applicant or its representative.

(b) An applicant may file an opposition to any petition to deny within five (5) days after the deadline for filing petitions to deny. Allegations of fact or denials thereof must be supported by affidavit of a person or persons with personal knowledge thereof, and such opposition must be served by hand upon the petitioner.

(c) If the Commission determines that:

(1) An applicant is qualified and there is no substantial and material issue of fact concerning that determination, it will grant the application;

(2) An applicant is not qualified and that there is no substantial issue of fact concerning that determination, the Commission need not hold a evidentiary hearing and will deny the application; and

(3) Substantial and material issues of fact require a hearing, it will conduct a hearing. The Commission may permit all or part of the evidence to be submitted in written form and may permit employees other than administrative law judges to preside at the taking of written evidence. Such hearing will be conducted on an expedited basis.

§ 27.208 License grant, denial, default, and disqualification.

(a) Unless otherwise specified in these rules, auction winners are required to pay the balance of their winning bids in a lump sum within ten (10) business days following award of the license. Grant of the license will be conditioned on full and timely payment of the winning bid.

(b) If a winning bidder withdraws its bid after the Commission has declared competitive bidding closed or fails to remit the required down payment within ten (10) business days after the Commission has declared competitive bidding closed, the bidder will be deemed to have defaulted, its application will be dismissed, and it will be liable for the default penalty specified in § 27.203. In such event, the Commission may either re-auction the license to existing or new applicants or offer it to the other highest bidders (in descending order) at their final bids. The down payment obligations set forth in § 27.206(b) will apply.

(c) A winning bidder who is found unqualified to be a licensee, fails to remit the balance of its winning bid in a timely manner, or defaults or is disqualified for any reason after having made the required down payment, will be deemed to have defaulted and will be liable for the payment set forth in § 27.203. In such event, the Commission will conduct another auction for the license, affording new parties an opportunity to file applications for the license.

(d) Bidders who are found to have violated the antitrust laws or the Commission's rules in connection with their participation in the competitive bidding process may be subject, in addition to any other applicable sanctions, to forfeiture of their upfront payment, down payment or full bid amount, and may be prohibited from participating in future auctions.

§ 27.209 Designated entities; bidding credits; unjust enrichment.

(a) Designated entities entitled to preferences in the WCS auction are small businesses and very small businesses as defined in § 27.110(b). Designated entities will be eligible for bidding credits, as defined in paragraphs (b) and (c) of this section.

(b) A winning bidder that qualifies as a *small business* may use a bidding credit of 25 percent to lower the cost of its winning bid.

(c) A winning bidder that qualifies as a *very small business* may use a bidding credit of 35 percent to lower the cost of its winning bid.

(d) Unjust Enrichment:

(1) If a small business or very small business (as defined in § 27.210(b)) that utilizes a bidding credit under this section seeks to transfer control or assign an authorization to an entity that is not a small business or a very small business, or seeks to make any other change in ownership that would result in the licensee losing eligibility as a small business or very small business, the small business or very small business must seek Commission approval and reimburse the U.S. Government for the amount of the bidding credit, plus interest based on the rate for ten year U.S. Treasury obligations applicable on the date the license is granted, as a condition of approval of the assignment or transfer of control.

(2) If a very small business (as defined in § 27.210(b)) that utilizes a bidding credit under this section seeks to transfer control or assign an authorization to a small business meeting the eligibility standards for a lower bidding credit, or seeks to make any other change in ownership that would result in the licensee qualifying for a lower bidding credit under this section, the licensee must seek Commission approval and reimburse the U.S. Government for the difference between the amount of the bidding credit obtained by the licensee and the bidding credit for which the assignee, transferee, or licensee is eligible under this section, plus interest based on the rate for ten year U.S. Treasury obligations applicable on the date the license is granted, as a condition of the approval of such assignment, transfer, or other ownership change.

(3) The amount of payments made pursuant to paragraphs (d)(1) and (d)(2) of this section will be reduced over time as follows: A transfer in the first five years of the license term will result in a forfeiture of 100 percent of the value of the bidding credit (or the difference between the bidding credit obtained by the original licensee and the bidding credit for which the post-transfer licensee is eligible); in year 6 of the license term the payment will be 80 percent; in year 7 the payment will be 60 percent; in year 8 the payment will be 40 percent; and in year 9 the payment will be 20 percent. For a transfer occurring in year 10 and thereafter, there will be no assessment.

§ 27.210 Definitions.

(a) Scope. The definitions in this section apply to § 27.209, unless otherwise specified in those sections.

(b) Small Business; Very Small Business; Consortia.

(1) A *small business* is an entity that, together with its affiliates and controlling principals, has average annual gross revenues that are not more than $40 million for the preceding three years.

(2) A *very small business* is an entity that, together with its affiliates and controlling principals, has average annual gross revenues that are not more than $15 million for the preceding three years.

(3) For purposes of determining whether an entity meets the $40 million

average annual gross revenues size standard set forth in paragraph (b)(1) of this section or the $15 million average annual gross revenues size standard set forth in paragraph (b)(2) of this section, the gross revenues of the applicant and its affiliates shall be considered on a cumulative basis and aggregated subject to the following exceptions:

(i) For purposes of paragraphs (b)(1) and (b)(2) of this section, the personal net worth of an applicant and its affiliates is not included in the applicant's gross revenues; and

(ii) For purposes of paragraphs (b)(1) and (b)(2) of this section, Indian tribes or Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), or entities owned and controlled by such tribes or corporations, are not considered affiliates of an applicant (or licensee) that is owned and controlled by such tribes, corporations or entities, and that otherwise complies with the requirements of paragraphs (b)(1) and (b)(2) of this section, except that gross revenues derived from gaming activities conducted by affiliated entities pursuant to the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) will be counted in determining such applicant's (or licensee's) compliance with the financial requirements of paragraphs (b)(1) and (b)(2) of this section, unless such applicant establishes that it will not receive a substantial unfair competitive advantage because significant legal constraints restrict the applicant's ability to access such gross revenues.

(4) A consortium of small businesses (or a consortium of very small businesses) is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (b)(1) of this section or each of which satisfies the definition in paragraph (b)(2) of this section. Where an applicant (or licensee) is a consortium of small businesses, the gross revenues of each small business shall not be aggregated.

(c) *Gross Revenues.* Gross revenues shall mean all income received by an entity, whether earned or passive, before any deductions are made for costs of doing business (*e.g.*, cost of goods sold), as evidenced by audited financial statements for the relevant number of most recently completed calendar years, or, if audited financial statements were not prepared on a calendar-year basis, for the most recently completed fiscal years preceding the filing of the applicant's short-form application (Form 175). If an entity was not in existence for all or part of the relevant period, gross revenues shall be evidenced by the audited financial statements of the entity's predecessor-in-interest or, if there is no identifiable predecessor-in-interest, unaudited financial statements certified by the applicant as accurate. When an applicant does not otherwise use audited financial statements, its gross revenues may be certified by its chief financial officer or its equivalent.

(d) *Affiliate.*—(1) *Basis for affiliation.* An individual or entity is an affiliate of an applicant if such individual or entity:

(i) Directly or indirectly controls or has the power to control the applicant;

(ii) Is directly or indirectly controlled by the applicant;

(iii) Is directly or indirectly controlled by a third party or parties who also control or have the power to control the applicant; or

(iv) Has an "identity of interest" with the applicant.

(2) *Nature of control in determining affiliation.* (i) Every business concern is considered to have one or more parties who directly or indirectly control or have the power to control it. Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists.

Example for paragraph (d)(2)(i). An applicant owning 50 percent of the voting stock of another concern would have negative power to control such concern since such party can block any action of the other stockholders. Also, the bylaws of a corporation may permit a stockholder with less than 50 percent of the voting stock to block any actions taken by the other stockholders in the other entity. Affiliation exists when the applicant has the power to control a concern while at the same time another person, or persons, are in control of the concern at the will of the party or parties with the power of control.

(ii) Control can arise through stock ownership; occupancy of director, officer, or key employee positions; contractual or other business relations; or combinations of these and other factors. A key employee is an employee who, because of his/her position in the concern, has a critical influence in or substantive control over the operations or management of the concern.

(iii) Control can arise through management positions if the voting stock is so widely distributed that no effective control can be established.

Example for paragraph (d)(2)(iii). In a corporation where the officers and directors own various size blocks of stock totaling 40 percent of the corporation's voting stock, but no officer or director has a block sufficient to give him/her control or the power to control and the remaining 60 percent is widely distributed with no individual stockholder having a stock interest greater than 10 percent, management has the power to control. If persons with such management control of the other entity are controlling principals of the applicant, the other entity will be deemed an affiliate of the applicant.

(3) *Identity of interest between and among persons.* Affiliation can arise between or among two or more persons with an identity of interest, such as members of the same family or persons with common investments. In determining if the applicant controls or is controlled by a concern, persons with an identity of interest will be treated as though they were one person.

(i) *Spousal affiliation.* Both spouses are deemed to own or control or have the power to control interests owned or controlled by either of them, unless they are subject to a legal separation recognized by a court of competent jurisdiction in the United States.

(ii) *Kinship affiliation.* Immediate family members will be presumed to own or control or have the power to control interests owned or controlled by other immediate family members. In this context "immediate family member" means father, mother, husband, wife, son, daughter, brother, sister, father- or mother-in-law, son- or daughter-in-law, brother- or sister-in-law, step-father or -mother, step-brother or -sister, step-son or -daughter, half-brother or -sister. This presumption may be rebutted by showing that:

(A) The family members are estranged;

(B) The family ties are remote;

(C) The family members are not closely involved with each other in business matters.

Example for paragraph (d)(3)(ii). A owns a controlling interest in Corporation X. A's sister-in-law, B, has a controlling interest in a WCS geographic area license application. Because A and B have a presumptive kinship affiliation, A's interest in Corporation X is attributable to B, and thus to the applicant, unless B rebuts the presumption with the necessary showing.

(4) *Affiliation through stock ownership.* (i) An applicant is presumed to control or have the power to control a concern if he/she owns or controls or has the power to control 50 percent or more of its voting stock.

(ii) An applicant is presumed to control or have the power to control a concern even though he/she owns, controls, or has the power to control less than 50 percent of the concern's voting stock, if the block of stock he/she owns, controls, or has the power to control is large as compared with any other outstanding block of stock.

(iii) If two or more persons each owns, controls or has the power to control less

than 50 percent of the voting stock of a concern, such minority holdings are equal or approximately equal in size, and the aggregate of these minority holdings is large as compared with any other stock holding, the presumption arises that each one of these persons individually controls or has the power to control the concern; however, such presumption may be rebutted by a showing that such control or power to control, in fact, does not exist.

(5) *Affiliation arising under stock options, convertible debentures, and agreements to merge.* Stock options, convertible debentures, and agreements to merge (including agreements in principle) are generally considered to have a present effect on the power to control the concern. Therefore, in making a size determination, such options, debentures, and agreements will generally be treated as though the rights held thereunder had been exercised. However, neither an affiliate nor an applicant can use such options and debentures to appear to terminate its control over another concern before it actually does so.

Example 1 for paragraph (d)(5). If company B holds an option to purchase a controlling interest in company A, who holds a controlling interest in a WCS geographic area license application, the situation is treated as though company B had exercised its rights and had become owner of a controlling interest in company A. The gross revenues of company B must be taken into account in determining the size of the applicant.

Example 2 for paragraph (d)(5). If a large company, BigCo, holds 70% (70 of 100 outstanding shares) of the voting stock of company A, who holds a controlling interest in a WCS geographic area license application, and gives a third party, SmallCo, an option to purchase 50 of the 70 shares owned by BigCo, BigCo will be deemed to be an affiliate of company A, and thus the applicant, until SmallCo actually exercises its options to purchase such shares. In order to prevent BigCo from circumventing the intent of the rule, which requires such options to be considered on a fully diluted basis, the option is not considered to have present effect in this case.

Example 3 for paragraph (d)(5). If company A has entered into an agreement to merge with company B in the future, the situation is treated as though the merger has taken place.

(6) *Affiliation under voting trusts.* (i) Stock interests held in trust shall be deemed controlled by any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and to any person who has the right to revoke the trust at will or to replace the trustee at will.

(ii) If a trustee has a familial, personal or extra-trust business relationship to the grantor or the beneficiary, the stock interests held in trust will be deemed controlled by the grantor or beneficiary, as appropriate.

(iii) If the primary purpose of a voting trust, or similar agreement, is to separate voting power from beneficial ownership of voting stock for the purpose of shifting control of or the power to control a concern in order that such concern or another concern may meet the Commission's size standards, such voting trust shall not be considered valid for this purpose regardless of whether it is or is not recognized within the appropriate jurisdiction.

(7) *Affiliation through common management.* Affiliation generally arises where officers, directors, or key employees serve as the majority or otherwise as the controlling element of the board of directors and/or the management of another entity.

(8) *Affiliation through common facilities.* Affiliation generally arises where one concern shares office space and/or employees and/or other facilities with another concern, particularly where such concerns are in the same or related industry or field of operations, or where such concerns were formerly affiliated, and through these sharing arrangements one concern has control, or potential control, of the other concern.

(9) *Affiliation through contractual relationships.* Affiliation generally arises where one concern is dependent upon another concern for contracts and business to such a degree that one concern has control, or potential control, of the other concern.

(10) *Affiliation under joint venture arrangements.* (i) A joint venture for size determination purposes is an association of concerns and/or individuals, with interests in any degree or proportion, formed by contract, express or implied, to engage in and carry out a single, specific business venture for joint profit for which purpose they combine their efforts, property, money, skill and knowledge, but not on a continuing or permanent basis for conducting business generally. The determination whether an entity is a joint venture is based upon the facts of the business operation, regardless of how the business operation may be designated by the parties involved. An agreement to share profits/losses proportionate to each party's contribution to the business operation is a significant factor in determining whether the business operation is a joint venture.

(ii) The parties to a joint venture are considered to be affiliated with each other.

Subpart E—Application, Licensing, and Processing Rules for WCS

§ 27.301 Authorization required.

No person shall use or operate any device for the transmission of energy or communications by radio in the services authorized by this part except as provided in this part.

§ 27.302 Eligibility.

(a) General. Authorizations will be granted upon proper application if:

(1) The applicant is qualified under the applicable laws and the regulations, policies and decisions issued under those laws, including § 27.12;

(2) There are frequencies available to provide satisfactory service; and

(3) The public interest, convenience or necessity would be served by a grant.

(b) Alien Ownership. A WCS authorization may not be granted to or held by an entity not meeting the requirements of section 310 of the Communications Act of 1934, as amended, 47 U.S.C. section 310 insofar as applicable to the particular service in question.

§ 27.303 Formal and informal applications.

(a) Except for an authorization under any of the conditions stated in section 308(a) of the Communications Act of 1934 (47 U.S.C. 308(a)), the Commission may grant only upon written application received by it, the following authorization: station licenses; modifications of licenses; renewals of licenses; transfers and assignments of station licenses, or any right thereunder.

(b) Except as may be otherwise permitted by this part, a separate written application shall be filed for each instrument of authorization requested. Applications may be:

(1) "Formal applications" where the Commission has prescribed in this part a standard form; or

(2) "Informal applications" (normally in letter form) where the Commission has not prescribed a standard form.

(c) An informal application will be accepted for filing only if:

(1) A standard form is not prescribed or clearly applicable to the authorization requested;

(2) It is a document submitted, in duplicate, with a caption which indicates clearly the nature of the request, radio service involved, location of the station, and the application file number (if known); and

(3) It contains all the technical details and informational showings required by the rules and states clearly and completely the facts involved and authorization desired.

§ 27.304 Filing of WCS applications, fees, and numbers of copies.

(a) As prescribed by § 27.307, standard formal application forms applicable to the WCS may be obtained from either:

(1) Federal Communications Commission, Washington, DC 20554; or

(2) By calling the Commission's Forms Distribution Center, (202) 418–3676.

(b) Applications for the initial provision of WCS service must be filed on FCC Form 175 in accordance with the rules in § 27.204 and part 1, subpart Q of this chapter. In the event of mutual exclusivity between applicants filing FCC Form 175, only auction winners will be eligible to file subsequent long form applications on FCC Form 600 for initial WCS licenses. Mutually exclusive applications filed on Form 175 are subject to competitive bidding under those rules.

(c) All applications for WCS radio station authorizations (other than applications for initial provision of WCS service filed on FCC Form 175) shall be submitted for filing to: Federal Communications Commission, Wireless Telecommunications Bureau, 1270 Fairfield Road, Gettysburg, PA 17325, Attention: WCS Processing Section.

(d) All correspondence or amendments concerning a submitted application shall clearly identify the name of the applicant, FCC Account Number or Commission file number (if known) or station call sign of the application involved, and may be sent directly to the Wireless Telecommunications Bureau, 1270 Fairfield Road, Gettysburg, PA 17325, Attention: WCS Processing Section.

(e) Except as otherwise specified, all applications, amendments, correspondence, pleadings and forms (with the exception of FCC Form 175, which is to be filed electronically pursuant to § 27.204) shall be submitted on one original paper copy and with a 3.5-inch floppy disk containing all attachments, and any other supporting documentation in separate ASCII text (.TXT) file formats. Those filing any amendments, correspondence, pleadings, and forms must simultaneously submit the original hard copy which must be stamped "original". In addition to the original hard copy, those filing pleadings, including pleadings under § 1.2108 of this chapter shall also submit 2 paper copies as provided in § 1.51 of this chapter. Applicants who file electronically will not be required to follow these procedures, but instead are required to follow all instructions for electronic filing detailed by the FCC in any subsequent public notices.

(f) Subsequent application by auction winners or non-mutually exclusive applicants for WCS radio station(s) under this part 27. FCC Form 600 shall be submitted by each auction winner for each WCS license applied for on FCC Form 175. In the event that mutual exclusivity does not exist between applicants filing FCC Form 175, the Commission will so inform the applicant and the applicant will also file FCC Form 600. Blanket licenses are granted for each market frequency block. Applications for individual sites are not needed and will not be accepted. See § 27.11.

§ 27.305 [Reserved].

§ 27.306 Miscellaneous forms.

(a) Renewal of station licenses. Except for renewal of special temporary authorizations, FCC Form 405 ("Application for Renewal of Station License") must be filed in duplicate by the licensee between thirty (30) and sixty (60) days prior to the expiration date of the license sought to be renewed.

(b) Assignment of authorization or transfer of control. Assignments of authorization or transfers of control applications are to be filed on the FCC Form 490, "Application for Assignment of Authorization or Consent to Transfer of Control of License".

§ 27.307 General application requirements.

(a) Each application (including applications filed on Forms 175 and 600) for a radio station authorization or for consent to assignment or transfer of control in the WCS shall disclose fully the real party or parties in interest and must include the following information:

(1) A list of its subsidiaries, if any. Subsidiary means any business five per cent or more whose stock, warrants, options or debt securities are owned by the applicant or an officer, director, stockholder or key management personnel of the applicant. This list must include a description of each subsidiary's principal business and a description of each subsidiary's relationship to the applicant;

(2) A list of its affiliates, if any. Affiliate is defined in § 27.210(d);

(3) A list of the names, addresses, citizenship and principal business of any person holding five percent or more of each class of stock, warrants, options or debt securities together with the amount and percentage held, and the name, address, citizenship and principal place of business of any person on whose account, if other than the holder, such interest is held. If any of these persons are related by blood or marriage, include such relationship in the statement;

(4) In the case of partnerships, the name and address of each partner, each partner's citizenship and the share or interest participation in the partnership. This information must be provided for all partners, regardless of their respective ownership interests in the partnership. This information must be included an exhibit to the application; and

(b) Each application for a radio station authorization in the WCS must:

(1) Submit the information required by the Commission's rules, requests, and application forms;

(2) Be maintained by the applicant substantially accurate and complete in all significant respects in accordance with the provisions of § 1.65 of this chapter; and

(3) Show compliance with and make all special showings that may be applicable.

(c) Where documents, exhibits, or other lengthy showings already on file with the Commission contain information which is required by an application form, the application may specifically refer to such information, if:

(1) The information previously filed is over one A4 (21 cm x 29.7 cm) or 8.5 x 11 inch (21.6 cm x 27.9 cm) page in length, and all information referenced therein is current and accurate in all significant respects under § 1.65 of this chapter; and

(2) The reference states specifically where the previously filed information can actually be found, including mention of:

(i) The station call sign or application file number whenever the reference is to station files or previously filed applications; and

(ii) The title of the proceeding, the docket number, and any legal citations, whenever the reference is to a docketed proceeding. However, questions on an application form which call for specific technical data, or which can be answered by a "yes" or "no" or other short answer shall be answered as appropriate and shall not be cross-referenced to a previous filing.

(d) In addition to the general application requirements of subpart F of this part and § 27.204, applicants shall submit any additional documents, exhibits, or signed written statements of fact:

(1) As may be required by these rules; and

(2) As the Commission, at any time after the filing of an application and during the term of any authorization, may require from any applicant,

permittee, or licensee to enable it to determine whether a radio authorization should be granted, denied, or revoked.

(e) Except when the Commission has declared explicitly to the contrary, an informational requirement does not in itself imply the processing treatment of decisional weight to be accorded the response.

§ 27.308 Technical content of applications.

All applications required by this part shall contain all technical information required by the application forms or associated public notice(s). Applications other than initial applications for a WCS license must also comply with all technical requirements of the rules governing the WCS (see subparts C and D of this part as appropriate).

§ 27.310 Waiver of rules.

(a) *Request for waivers.* (1) Waivers of these rules may be granted upon application or by the Commission on its own motion. Requests for waivers shall contain a statement of reasons sufficient to justify a waiver. Waivers will not be granted except upon an affirmative showing:

(i) That the underlying purpose of the rule will not be served, or would be frustrated, by its application in a particular case, and that grant of the waiver is otherwise in the public interest; or

(ii) That the unique facts and circumstances of a particular case render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest. Applicants must also show the lack of a reasonable alternative.

(2) If the information necessary to support a waiver request is already on file, the applicant may cross-reference to the specific filing where it may be found.

(b) *Denial of waiver, alternate showing required.* If a waiver is not granted, the application will be dismissed as defective unless the applicant has also provided an alternative proposal which complies with the Commission's rules (including any required showings).

§ 27.311 Defective applications.

(a) Unless the Commission shall otherwise permit, an application will be unacceptable for filing and will be returned to the applicant with a brief statement as to the omissions or discrepancies if:

(1) The application is defective with respect to completeness of answers to questions, informational showings, execution, or other matters of a formal character; or

(2) The application does not comply with the Commission's rules, regulations, specific requirements for additional information or other requirements. See also § 27.204.

(b) Some examples of common deficiencies which result in defective applications under paragraph (a) of this section are:

(1) The application is not filled out completely and signed; or

(2) The application (other than an application filed on FCC Form 175) does not include an environmental assessment as required for an action that may have a significant impact upon the environment, as defined in § 1.1307 of this chapter.

(3) The application is filed prior to the public notice issued under § 27.316 announcing the application filing date for the relevant auction or after the cutoff date prescribed in that public notice;

(c) If an applicant is requested by the Commission to file any documents or any supplementary or explanatory information not specifically required in the prescribed application form, a failure to comply with such request within a specified time period will be deemed to render the application defective and will subject it to dismissal.

§ 27.312 Inconsistent or conflicting applications.

While an application is pending and undecided under this part 27, no subsequent inconsistent or conflicting application may be filed by the same applicant, his successor or assignee, or on behalf or for the benefit of the same applicant, his successor or assignee.

§ 27.313 Amendment of applications for Wireless Communications Service (other than applications filed on FCC Form 175).

This section applies to all applications for Wireless Communications Service other than applications filed on FCC Form 175.

(a) Amendments as of right. A pending application may be amended as a matter of right if the application has not been designated for hearing.

(1) Amendments shall comply with § 27.319, as applicable; and

(2) Amendments which resolve interference conflicts or amendments under § 27.319 may be filed at any time.

(b) The Commission or the presiding officer may grant requests to amend an application designated for hearing only if a written petition demonstrating good cause is submitted and properly served upon the parties of record.

(c) Major amendments, minor amendments. The Commission will classify all amendments as minor, unless there is a substantial change in ownership or control. Such an amendment shall be deemed to be a major amendment subject to § 27.316.

(d) If a petition to deny (or other formal objection) has been filed, any amendment, requests for waiver, (or other written communications) shall be served on the petitioner by hand, unless waiver of this requirement is granted pursuant to paragraph (e) of this section. See also § 1.2108 of this chapter.

(e) The Commission may waive the service requirements of paragraph (d) of this section and prescribe such alternative procedures as may be appropriate under the circumstances to protect petitioners' interests and to avoid undue delay in a proceeding, if an applicant submits a request for waiver which demonstrates that the service requirement is unreasonably burdensome.

(f) Any amendment to an application shall be signed and shall be submitted in the same manner, and with the same number of copies, as was the original application. Amendments may be made in letter form if they comply in all other respects with the requirements of this chapter.

(g) An application will be considered to be a newly filed application if it is amended by a major amendment (as defined in this section), except in the following circumstances:

(1) The amendment reflects only a change in ownership or control found by the Commission to be in the public interest; or

(2) The amendment corrects typographical transcription, or similar clerical errors which are clearly demonstrated to be mistakes by reference to other parts of the application, and whose discovery does not create new or increased frequency conflicts.

§ 27.314 Application for temporary authorizations.

In circumstances requiring immediate or temporary use of facilities, request may be made for special temporary authority (STA) to operate new or modified equipment. Such requests may be submitted as informal applications (see § 22.105 of this chapter) and must contain complete details about the proposed operation and the circumstances that fully justify and necessitate the grant of STA. Such requests should be filed in time to be received by the FCC at least 10 days prior to the date of proposed operation or, where an extension is sought, 10 days prior to the expiration date of the existing STA. Requests received less than 10 days prior to the desired date of operation may be given expedited consideration only if compelling reasons are given, in writing, for the delay in submitting the request. Otherwise, such late-filed requests are considered in turn, but action might not be taken prior to the desired date of operation. Requests for STAs must be accompanied by the proper filing fee.

(a) *Grant without Public Notice.* STAs may be granted without being listed in a Public Notice, or prior to 30 days after such listing, if:

(1) The STA is to be valid for 30 days or less and the applicant does not plan to file an application for regular authorization of the subject operation;

(2) The STA is to be valid for 60 days or less, pending the filing of an application for regular authorization of the subject operation;

(3) The STA is to allow interim operation to facilitate completion of authorized construction or to provide substantially the same service as previously authorized; or

(4) The STA is made upon a finding that there are extraordinary circumstances requiring operation in the public interest and that delay in the institution of such service would seriously prejudice the public interest.

(b) *Limit on STA term.* The FCC may grant STAs valid for a period not to exceed 180 days under the provisions of section 309(f) of the Communications Act of 1934, as amended, (47 U.S.C. section 309(f)) if extraordinary circumstances so require, and pending the filing of an application for regular operation. The FCC may grant extensions of STAs for a period of 180 days, but the applicant must show that extraordinary circumstances warrant such an extension.

§ 27.315 Receipt of application; applications in the Wireless Communications Service filed on FCC Form 175 and other applications in the WCS Service.

(a) All applications for WCS filed pursuant to § 27.304 are given a file number. The assignment of a file number to an application is merely for administrative convenience and does not indicate the acceptance of the application for filing and processing. Such assignment of a file number will not preclude the subsequent return or dismissal of the application if it is found to be defective or not in accordance with the Commission's rules.

(b) Acceptance of an application for filing merely means that it has been the subject of a preliminary review as to completeness. Such acceptance will not preclude the subsequent return or dismissal of the application if it is found to be defective or not in accordance with the Commission's rules.

§ 27.316 Public notice period.

(a) At regular intervals, the Commission may issue a public notice listing:

(1) The acceptance for filing of all applications and major amendments thereto;

(2) Significant Commission actions concerning applications listed as acceptable for filing;

(3) Information which the Commission in its discretion believes of public significance. Such notices are solely for the purpose of informing the public and do not create any rights in an applicant or any other person; or

(4) Special environmental considerations as required by part 1 of this chapter.

(b) The Commission will not grant any application until expiration of a period of seven (7) days following the issuance date of a public notice listing the application, or any major amendments thereto, as acceptable for filing. Provided, that the Commission will not grant an application filed on Form 600 filed either by a winning bidder or by an applicant whose Form 175 application is not mutually exclusive with other applicants, until the expiration of a period of forty (40) days following the issuance of a public notice listing the application, or any major amendments thereto, as acceptable for filing. See also § 27.207.

(c) As an exception to paragraphs (a)(1), (a)(2) and (b) of this section, the public notice provisions are not applicable to applications:

(1) For authorization of a minor technical change in the facilities of an authorized station where such a change would not be classified as a major amendment (as defined by § 27.313) were such a change to be submitted as an amendment to a pending application;

(2) For issuance of a license subsequent to a radio station authorization or, pending application for a grant of such license, any special or temporary authorization to permit interim operation to facilitate completion of authorized construction or to provide substantially the same service as would be authorized by such license;

(3) For temporary authorization pursuant to § 27.314;

(4) For an authorization under any of the proviso clauses of section 308(a) of the Communications Act of 1934 (47 U.S.C. section 308(a));

(5) For consent to an involuntary assignment or transfer of control of a radio authorization; or

(6) For consent to a voluntary assignment or transfer of control of a radio authorization, where the assignment or transfer does not involve a substantial change in ownership or control.

§ 27.317 Dismissal and return of applications.

(a) Any application may be dismissed without prejudice as a matter of right if the applicant requests its dismissal prior to designation for hearing or, in the case of applications filed on Forms 175 and 175–S, prior to auction. An applicant's request for the return of his application after it has been accepted for filing will be considered to be a request for dismissal without prejudice. Applicants requesting dismissal of their applications are also subject to § 27.203.

(b) A request to dismiss an application without prejudice will be considered after designation for hearing only if:

(1) A written petition is submitted to the Commission and is properly served upon all parties of record; and

(2) The petition complies with the provisions of this section and demonstrates good cause.

(c) The Commission will dismiss an application for failure to prosecute or for failure to respond substantially within a specified time period to official correspondence or requests for additional information. Dismissal shall be without prejudice if made prior to designation for hearing or prior to auction, but dismissal may be made with prejudice for unsatisfactory compliance or after designation for hearing or after the applicant is notified that it is the winning bidder under the auction process.

§ 27.319 Ownership changes and agreements to amend or to dismiss applications or pleadings.

(a) Applicability. Subject to the provisions of § 27.204 (Bidding Application and Certification Procedures; Prohibition of Collusion), this section applies to applicants and all other parties interested in pending applications who wish to resolve contested matters among themselves with a formal or an informal agreement or understanding. This section applies only when the agreement or understanding will result in:

(1) A major change in the ownership of an applicant to which §§ 27.313(c) and 27.313(g) apply or which would cause the applicant to lose its status as a designated entity under § 27.210(b), or

(2) The individual or mutual withdrawal, amendment or dismissal of any pending application, amendment, petition or other pleading.

(b) The provisions of § 27.207 will apply in the event of the filing of petitions to deny or other pleadings or informal objections filed against WCS applications. The provisions of § 27.317 will apply in the event of dismissal of WCS applications.

§ 27.320 Opposition to applications.

(a) Petitions to deny (including petitions for other forms of relief) and responsive pleadings for Commission consideration must comply with § 27.207 and must:

(1) Identify the application or applications (including applicant's name, station location, Commission file numbers and radio service involved) with which it is concerned;

(2) Be filed in accordance with the pleading limitations, filing periods, and other applicable provisions of §§ 1.41 through 1.52 of this chapter except where otherwise provided in § 27.207;

(3) Contain specific allegations of fact which, except for facts of which official notice may be taken, shall be supported by affidavit of a person or persons with personal knowledge thereof, and which shall be sufficient to demonstrate that the petitioner (or respondent) is a party in interest and that a grant of, or other Commission action regarding, the application would be prima facie inconsistent with the public interest;

(4) Be filed within five (5) days after the date of public notice announcing the acceptance for filing of any such application or major amendment thereto (unless the Commission otherwise extends the filing deadline); and

(5) Contain a certificate of service showing that it has been hand delivered to the applicant no later than the date of filing thereof with the Commission.

(b) A petition to deny a major amendment to a previously filed application may only raise matters directly related to the amendment which could not have been raised in connection with the underlying, previously filed application. This does not apply to petitioners who gain standing because of the major amendment.

(c) Parties who file frivolous petitions to deny may be subject to sanctions including monetary forfeitures, license revocation, if they are FCC licensees, and may be prohibited from participating in future auctions.

§ 27.321 Mutually exclusive applications.

(a) Two or more pending applications are mutually exclusive if the grant of one application would effectively preclude the grant of one or more of the others under the Commission's rules governing the Wireless Communications Services involved. The Commission uses the general procedures in this section for processing mutually exclusive applications in the Wireless Communications Services.

(b) An application will be entitled to comparative consideration with one or more conflicting applications only if the Commission determines that such comparative consideration will serve the public interest.

§ 27.322 Consideration of applications.

(a) Applications for an instrument of authorization will be granted if, upon examination of the application and upon consideration of such other matters as it may officially notice, the Commission finds that the grant will serve the public interest, convenience, and necessity. See also § 1.2108 of this chapter.

(b) The grant shall be without a formal hearing if, upon consideration of the application, any pleadings or objections filed, or other matters which may be officially noticed, the Commission finds that:

(1) The application is acceptable for filing, and is in accordance with the Commission's rules, regulations, and other requirements;

(2) The application is not subject to a post-auction hearing or to comparative consideration pursuant to § 27.322 with another application(s);

(3) The applicant certifies that the operation of the proposed facility would not cause harmful electromagnetic interference to another authorized station;

(4) There are no substantial and material questions of fact presented; and

(5) The applicant is qualified under current FCC regulations and policies.

(c) If the Commission should grant without a formal hearing an application for an instrument of authorization which is subject to a petition to deny filed in accordance with § 27.319, the Commission will deny the petition by the issuance of a concise statement for the reason(s) for the denial and dispose of all substantial issues raised by the petition.

(d) Whenever the Commission, without a formal hearing, grants any application in part, or subject to any terms or conditions other than those normally applied to applications of the same type, it shall inform the applicant of the reasons therefor, and the grant shall be considered final unless the Commission should revise its action (either by granting the application as originally requested, or by designating the application for a formal evidentiary hearing) in response to a petition for reconsideration which:

(1) Is filed by the applicant within thirty (30) days from the date of the letter or order giving the reasons for the partial or conditioned grant;

(2) Rejects the grant as made and explains the reasons why the application should be granted as originally requested; and,

(3) Returns the instrument of authorization.

(e) The Commission will designate an application for a formal hearing, specifying with particularity the matters and things in issue, if, upon consideration of the application, any pleadings or objections filed, or other matters which may be officially noticed, the Commission determines that:

(1) A substantial and material question of fact is presented (see also section 1.2108 of this chapter);

(2) The Commission is unable for any reason to make the findings specified in paragraph (a) of this section and the application is acceptable for filing, complete, and in accordance with the Commission's rules, regulations, and other requirements; or

(3) The application is entitled to concurrent consideration (under section 27.321) with another application (or applications).

(f) The Commission may grant, deny or take other action with respect to an application designated for a formal hearing pursuant to paragraph (e) of this section or part 1 of this chapter.

(g) Reconsideration or review of any final action taken by the Commission will be in accordance with part 1, subpart A of this chapter.

§ 27.323 [Reserved]

§ 27.324 Transfer of control or assignment of station authorization.

(a) Authorizations shall be transferred or assigned to another party, voluntarily (for example, by contract) or involuntarily (for example, by death, bankruptcy, or legal disability), directly or indirectly or by transfer of control of any corporation holding such authorization, only upon application and approval by the Commission. A transfer of control or assignment of station authorization in the Wireless Communications Service is also subject to section 27.209.

(1) A change from less than 50% ownership to 50% or more ownership shall always be considered a transfer of control.

(2) In other situations a controlling interest shall be determined on a case-by-case basis considering the distribution of ownership, and the relationships of the owners, including family relationships.

(b) Form required:

(1) Assignment.

(i) FCC Form 490 shall be filed to assign a license or permit.

(ii) In the case of involuntary assignment, FCC Form 490 shall be filed within 30 days of the event causing the assignment.

(2) Transfer of control.

(i) FCC Form 490 shall be submitted in order to transfer control of a corporation holding a license or permit.

(ii) In the case of involuntary transfer of control, FCC Form 490 shall be filed within 30 days of the event causing the transfer.

(3) Notification of completion. The Commission shall be notified by letter of the date of completion of the assignment or transfer of control.

(4) If the transfer of control of a license is approved, the new licensee is held to the original renewal requirement of § 27.14.

(c) In acting upon applications for transfer of control or assignment, the Commission will not consider whether the public interest, convenience, and necessity might be served by the transfer or assignment of the authorization to a person other than the proposed transferee or assignee.

(d) Applicants seeking to transfer their licenses within three years after the initial license grant date are required to file, together with their transfer application, the associated contracts for sale, option agreements, management agreements, and all other documents disclosing the total consideration to be received in return for the transfer of the license.

(e) Partial assignment of authorization. If the authorization for some, but not all, of the facilities of a Wireless Communications Service station is assigned to another party, voluntarily or involuntarily, such action is a partial assignment of authorization.

(f) To request FCC approval of a partial assignment of authorization, the following must be filed in addition to the forms required by paragraph (b) of this section:

(g) The assignee must apply for authority (FCC Form 600) to operate a new station including the facilities for which authorization is assigned, or to modify the assignee's existing station to include the facilities for which authorization was assigned.

§ 27.325 Termination of authorization.

(a) All authorizations shall terminate on the date specified on the authorization, unless a timely application for renewal has been filed.

(b) If no application for renewal has been made before the authorization's expiration date, a late application for renewal will only be considered if it is filed within 30 days of the expiration date and shows that the failure to file a timely application was due to causes beyond the applicant's control. Service to subscribers need not be suspended while a late filed renewal application is pending, but such service shall be without prejudice to Commission action on the renewal application and any related sanctions. See also § 27.14 (Criteria for Comparative Renewal Proceedings).

(c) Special Temporary Authority. A special temporary authorization shall automatically terminate upon failure to comply with the conditions in the authorization.

PART 97—AMATEUR RADIO SERVICE

1. The authority citation for part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

2. Section 97.303(j) is revised to read as follows:

§ 97.303 Frequency sharing requirements.

* * * * *

(j) In the 13 cm band:

(1) The amateur service is allocated on a secondary basis in all ITU Regions. In ITU Region 1, no amateur station shall cause harmful interference to, and shall be not protected from interference due to the operation of, stations authorized by other nations in the fixed and mobile services. In ITU Regions 2 and 3, no amateur station shall cause harmful interference to, and shall not be protected from interference due to the operation of, stations authorized by other nations in the fixed, mobile and radiolocation services.

(2) In the United States:

(i) The 2300–2305 MHz segment is allocated to the amateur service on a secondary basis. (Currently the 2300–2305 MHz segment is not allocated to any service on a primary basis.);

(ii) The 2305–2310 MHz segment is allocated to the amateur service on a secondary basis to the fixed, mobile, and radiolocation services;

(iii) The 2390–2400 MHz segment is allocated to the amateur service on a primary basis; and

(iv) The 2400–2402 MHz segment is allocated to the amateur service on a secondary basis. (Currently the 2400–2402 MHz segment is not allocated to any service on a primary basis.) The 2402–2417 MHz segment is allocated to the amateur service on a primary basis. The 2417–2450 MHz segment is allocated to the amateur service on a co-secondary basis with the Government radiolocation service. Amateur stations operating within the 2400–2450 MHz segment must accept harmful interference that may be caused by the proper operation of industrial, scientific, and medical devices operating within the band.

[FR Doc. 97–5128 Filed 2–28–97; 8:45 am]
BILLING CODE 6712–01–P

Monday
March 3, 1997

federal register

Part IV

The President

Proclamation 6974—Irish-American Heritage Month, 1997

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Federal Register
Vol. 62, No. 41
Monday, March 3, 1997

Presidential Documents

Title 3—

The President

Proclamation 6974 of February 27, 1997

Irish-American Heritage Month, 1997

By the President of the United States of America

A Proclamation

Throughout the history of the United States, from the founding of our republic to the modern spread of our cultural influence around the globe, American life has been enriched continuously by the contributions of Irish Americans.

Although thousands of immigrants from Ireland had already come to America before the signing of the Declaration of Independence, the largest number emigrated from their homeland in the middle of the 19th century, when devastating famine overtook their native Ireland. Many moved into our cities, where their hard work helped American industries, their political skills energized local government, and their culture added richness to urban neighborhoods. Others, freshly arrived from Cork, Kilkenny, or Belfast, kept moving all the way to the American West. Wherever they went, they added their muscle to the building of our railroads, bridges, tunnels, and canals, and they applied their minds to the shaping of American law and letters. And their values were exemplified by a firm confidence in education, a dedication to the work ethic, and a deep belief in God.

America offered these new citizens abundant opportunities and the freedom to exercise their talents in a country that was still less than 100 years old. In return, Ireland added immensely to the American national character. This month, when communities all across the Nation celebrate St. Patrick's Day, we honor the millions of Americans who trace their lineage to Ireland.

Our country has been blessed by the rich legacy of famous Americans whose ancestors emigrated to our shores from Ireland. Georgia O'Keefe, Edgar Allen Poe, and F. Scott Fitzgerald are just a few among the many whose talents have graced the arts. Andrew Mellon and Henry Ford excelled in business and finance. Will Rogers, Spencer Tracy, Bing Crosby, and John Wayne have entertained us. Pierce Butler signed the Constitution, General Douglas MacArthur led the Allied Forces in the Pacific during World War II, and Sandra Day O'Connor became the first woman to sit on our Supreme Court.

But let us not forget the sacrifices, dedication, and profound achievements of the thousands of less well-known Irish Americans who have labored to make the United States a country of which we all can be proud. They were—and continue to be—motivated by their deep commitment and fervent loyalty to family, friends, community, and country. This month we honor them and thank them for their efforts.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim March 1997 as Irish-American Heritage Month. I call upon all the people of the United States to observe this month with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of February, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-first.

William J. Clinton

[FR Doc. 97–5351
Filed 2–28–97; 10:54 am]
Billing code 3195–01–P

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CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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CFR CHECKLIST

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§§ 1.1001–1.1400	(869–028–00095–9)	26.00	Apr. 1, 1996
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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1996. The CFR volume issued April 1, 1990, should be retained.

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March 25	April 9	April 24	May 9	May 27	June 23
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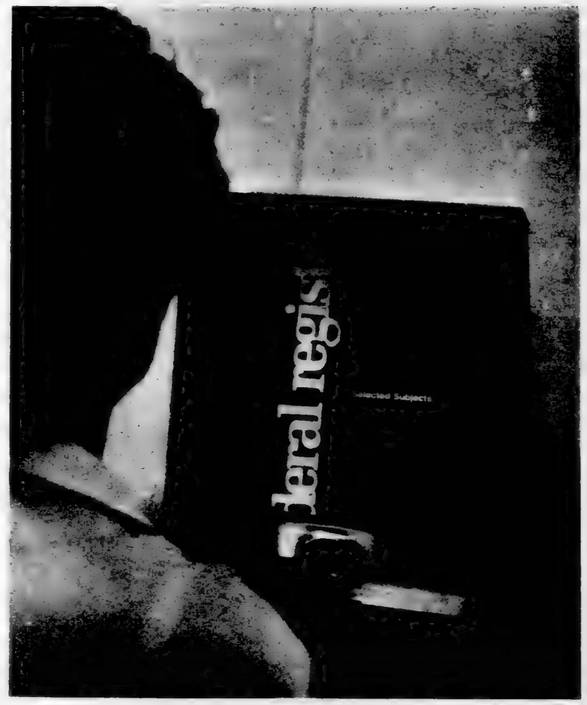

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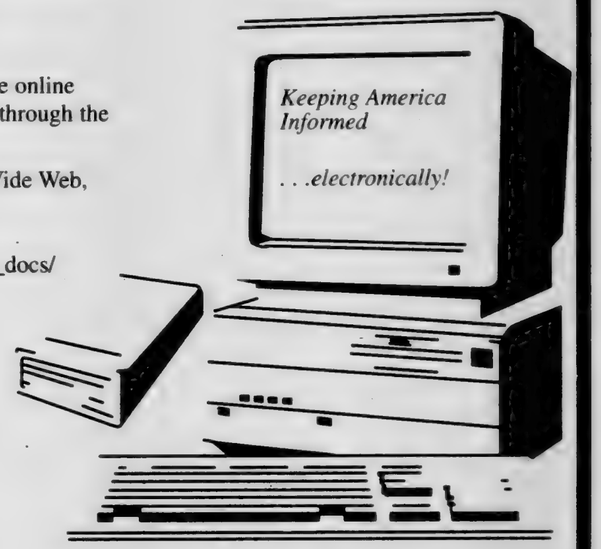

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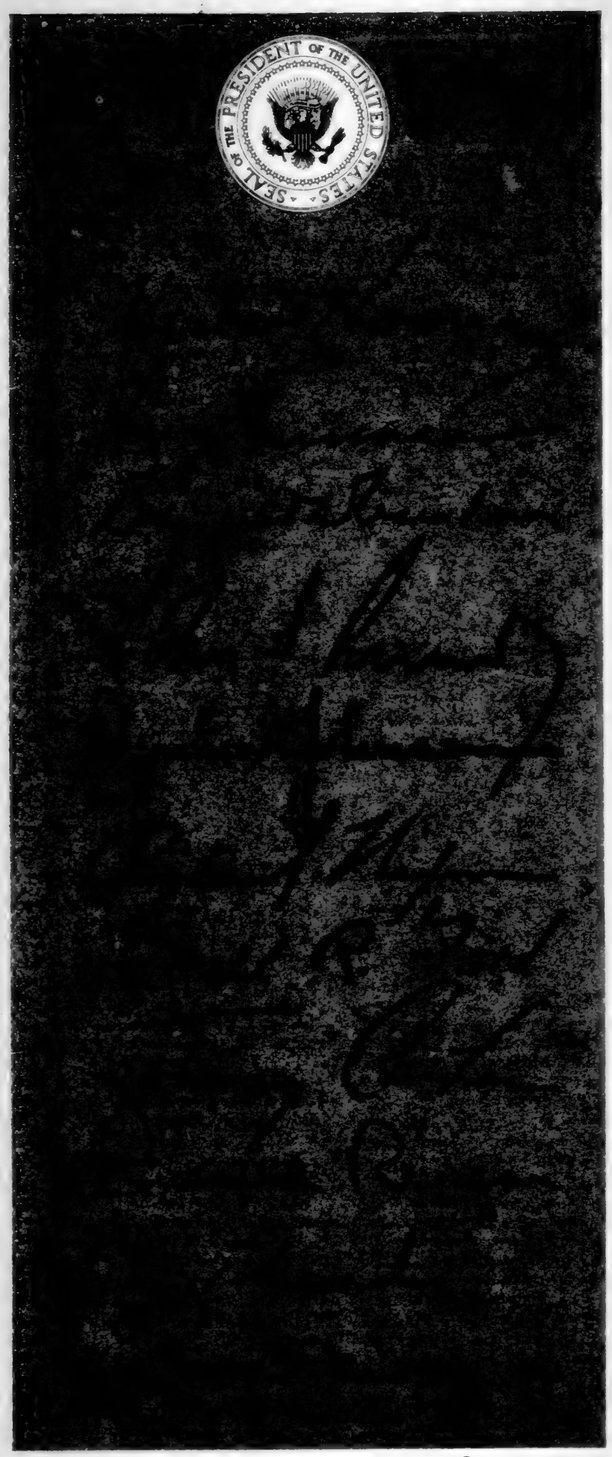

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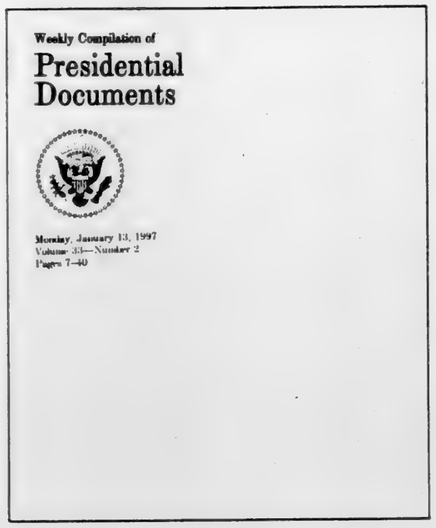

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–26–AD; Amendment 39–9954; AD 97–05–10]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Boeing Model 737 series airplanes. This action requires removal of the main rudder power control unit (PCU) and replacement with a serviceable unit. This amendment is prompted by a report of the installation of an incorrect bolt on the main rudder PCU. The actions specified in this AD are intended to prevent cracking of the bearing of the main rudder PCU due to installation of an incorrect bolt; such cracking could result in seizure of the bearing and resultant uncommanded rudder movement.

DATES: Effective March 19, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of March 19, 1997.

Comments for inclusion in the Rules Docket must be received on or before May 5, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–26–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kenneth W. Frey, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227–2673; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received a report of cracking of the internal summing lever assembly bearing of the main rudder power control unit (PCU) on a Model 737 series airplane. Investigation revealed that a Hi-Lock bolt had been installed in the lever assembly bearing instead of the correct bolt, Boeing Part Number (P/N) 66–22749–1. Apparently, installation of the incorrect bolt was approved by the repair station performing the installation. The Hi-Lock bolt has a larger radius in the shoulder-to-shank transition than the correct bolt. The larger bolt radius created an interference fit that caused the inner race of the bearing to crack. Such cracking, if not detected and corrected, could cause the bearing to seize and, consequently, lead to an uncommanded rudder movement.

Explanation of Relevant Service Information

The FAA has reviewed Boeing Service Letter, 737–SL–27–112–B, dated February 6, 1997, which lists serial numbers of certain PCU's of the main rudder that have been identified as those having incorrect bolts. The service letter describes procedures for removal of those PCU's from the airplanes, and a one-time visual inspection to detect cracking of the lever assembly bearing with a 10-power magnification and strong light, a one-time eddy current inspection, and repair, if necessary, before the PCU can be reinstalled on the airplane.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 737 series airplanes of the same type design, this AD is being issued to prevent cracking of the bearing of the main rudder power control unit (PCU) due to the installation of an incorrect bolt; such cracking could result in seizure of the bearing and a consequent uncommanded rudder movement. This AD requires removal of the PCU and replacement with a serviceable unit. This AD also prohibits installation of a subject PCU on any airplane in the future unless the PCU has been inspected (visually and by eddy current) to detect cracking, repaired (if necessary), and tested. The actions are required to be accomplished in accordance with the service letter described previously.

This AD also requires that operators submit a report to the FAA of the inspection results whenever a PCU is inspected for cracking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to

modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–26–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–05–10 Boeing: Amendment 39–9954. Docket 97–NM–26–AD.

Applicability: Model 737 series airplanes, having a main rudder power control unit (PCU) that is identified in Boeing Service Letter 737–SL–27–112–B, dated February 6, 1997; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracking and seizing of the internal summing lever assembly bearing of the main rudder power control unit (PCU), which could result in uncommanded rudder movement, accomplish the following:

(a) Within 90 days after the effective date of this AD, remove the main rudder PCU and replace it with a serviceable unit in accordance with Boeing Service Letter 737–SL–27–112–B, dated February 6, 1997.

(b) As of 90 days after the effective date of this AD, no person shall install on any airplane a main rudder PCU having a serial number specified in Boeing Service Letter 737–SL–27–112–B, dated February 6, 1997, unless the following actions have been accomplished in accordance with Boeing Service Letter 737–SL–27–112–B, dated February 6, 1997.

(1) Remove the internal summing lever assembly of the main rudder PCU in accordance with the service letter.

(2) Perform a one-time visual inspection using 10-power magnification and strong light to detect cracking of the bearing, in accordance with the service letter.

(i) If no cracking is detected during the visual inspection, perform an eddy current inspection to detect cracking of the bearing in accordance with the service letter.

(A) If no cracking is detected during the eddy current inspection, the unit may be reinstalled on the airplane after it is reassembled and tested in accordance with the service letter.

(B) If any cracking is detected during the eddy current inspection, before reinstallation of the PCU on any airplane, repair the lever assembly, reassemble, and test; in accordance with the service letter.

(ii) If any cracking is detected during the visual inspection, before reinstallation of the PCU on any airplane, repair the lever assembly, reassemble, and test, in accordance with the service letter.

(c) Within 14 days after accomplishing the requirements of paragraph (b) of this AD, submit a report of any cracked PCU bearing to the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, WA 98055–4056; fax (206) 227–1181. The report shall include the information specified in paragraphs (c)(1) and (c)(2) of this AD. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) The PCU part number and serial number.

(2) The date of the inspection and the inspection findings.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The actions shall be done in accordance with Boeing Service Letter 737–SL–27–112–B, dated February 6, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on March 19, 1997.

Issued in Renton, Washington, on February 25, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–5159 Filed 2–28–97; 12:40 pm]

BILLING CODE 4910–13–P

14 CFR Part 71

[Airspace Docket No. 97–AAL–2]

Amendment to Class E Airspace; Buckland, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, correction.

SUMMARY: This action corrects the effective date and an error in the geographic coordinates of a final rule that was published in the **Federal Register** on January 6, 1997 (62 FR 608), Airspace Docket 96–AAL–32.

EFFECTIVE DATE: 0901 UTC, March 27, 1997.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, System Management Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number: (907) 271–5863; e-mail: Robert.van.Haastert@faa.dot.gov.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 97–175, Airspace Docket 96–AAL–32, published on January 6, 1997, (62 FR 608), revised the Class E airspace area at Buckland, AK. The effective date for Airspace Docket 96–AAL–32 and the geographic coordinates for AKUDY are in error. This action corrects these errors.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the effective date for the Airspace Docket 96–AAL–32 and the geographic coordinates listed for AKUDY as published in the **Federal Register** on January 6, 1997 (62 FR 608), (**Federal Register** Document 97–175, page 608), is corrected as follows:

* * * * *

EFFECTIVE DATE: 0901 UTC, March 27, 1997.

* * * * *

§ 71.1 [Corrected]

* * * * *

AAL AK E5 Buckland, AK [Corrected]

By removing "(lat. 66°04'23" N, long. 161°30'08" W)" and substituting "(lat. 66°04'23" N, long. 161°30'09" W)."

* * * * *

Issued in Anchorage, AK on February 25, 1997.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 97–5293 Filed 3–3–97; 8:45 am]

BILLING CODE 4910–13–P–M

14 CFR Part 97

[Docket No. 28818; Amdt. No. 1785]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center

(FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (Air).

Issued in Washington, DC on February 21, 1997.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instruction Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs; identified as follows:

* * * *Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	SIAP
02/06/97	IA	Vinton	Vinton Veterans Memorial Airpark	FDC 7/0730	NDB OR GPS RWY 27, AMDT 3...
02/07/97	AK	Wrangell	Wrangell	FDC 7/0736	LDA/DME–D AMDT 6A...
02/07/97	AK	Wrangell	Wrangell	FDC 7/0737	LDA/DME–C AMDT 7A...
02/07/97	CO	Grand Junction	Grand Junction/Walker Field	FDC 7/0769	VOR OR GPS RWY 11, AMDT 1...
02/07/97	IA	Des Moines	Des Moines Intl	FDC 7/0760	NDB OR GPS RWY 31R, AMDT 18...
02/07/97	MO	Kansas City	Richards-Gebaur Memorial	FDC 7/0756	GPS RWY 1 ORIG...
02/07/97	MO	Kansas City	Richards-Gebaur Memorial	FDC 7/0757	ILS RWY 1 AMDT 4A...
02/10/97	GA	Waycross	Waycross-Ware County	FDC 7/0797	ILS RWY 18 ORIG–A... Correction to TL97–05
02/12/97	PA	Washington	Washington County	FDC 7/0831	GPS RWY 9 ORIG...
02/13/97	AL	Mobile	Mobile Regional	FDC 7/0866	NDB OR GPS RWY 14 AMDT 2...
02/13/97	MN	Eveleth	Eveleth-Virginia Muni	FDC 7/0857	GPS RWY 27 AMDT 1...
02/13/97	NC	Erwin	Harnett County	FDC 7/0848	GPS RWY 4 ORIG...
02/13/97	WI	Green Bay	Austin Straubel Intl	FDC 7/0850	ILS RWY 36 AMDT 6...
02/13/97	WI	Green Bay	Austin Straubel Intl	FDC 7/0851	VOR/DME OR TACAN OR GPS RWY 36 AMDT 7...
02/17/97	MN	Eveleth	Eveleth-Virginia Muni	FDC 7/0881	VOR RWY 27 AMDT 11...
02/17/97	NC	Hickory	Hickory Regional	FDC 7/0871	ILS RWY 24 AMDT 6B...
02/18/97	TX	Athens	Athens Muni	FDC 7/0919	NDB RWY 35, AMDT 4...
02/18/97	TX	Gilmer	Gilmer-Upshur County	FDC 7/0908	VOR/DME–A, AMDT 1...
02/18/97	TX	Gladewater	Gladewater Muni	FDC 7/0918	VOR/DME OR GPS RWY 13, AMDT 2...
02/18/97	TX	Henderson	Rusk County	FDC 7/0915	VOR/DME OR GPS–A, AMDT 3...
02/18/97	TX	Henderson	Rusk County	FDC 7/0916	GPS RWY 16, ORIG...
02/18/97	TX	Henderson	Rusk County	FDC 7/0917	NDB–B, ORIG...
02/18/97	TX	Marshall	Harrison County	FDC 7/0912	GPS RWY 33, ORIG...
02/18/97	TX	Marshall	Harrison County	FDC 7/0913	VOR/DME–A, AMDT 4A...
02/18/97	TX	Marshall	Harrison County	FDC 7/0914	RNAV RWY 33, AMDT 1...
02/18/97	TX	Mineola-Quitman	Mineola-Quitman	FDC 7/0909	VOR/DME OR GPS–B, AMDT 1...
02/18/97	TX	Mineola-Quitman	Mineola-Quitman	FDC 7/0933	RNAV OR GPS RWY 18, AMDT 1...
02/18/97	TX	Mineola	Mineola Wisener Field	FDC 7/0907	VOR/DME–A, AMDT 3A...
02/18/97	TX	Tyler	Tyler Pounds Field	FDC 7/0920	GPS RWY 31, ORIG...
02/18/97	TX	Tyler	Tyler Pounds Field	FDC 7/0921	VOR/DME OR GPS RWY 4, AMDT 3...
02/18/97	TX	Tyler	Tyler Pounds Field	FDC 7/0924	VOR/DME OR GPS RWY, AMDT 3...

FDC date	State	City	Airport	FDC No.	SIAP
02/18/97	TX	Tyler	Tyler Pounds Field	FDC 7/0926	NDB OR GPS RWY 13, AMDT 17...
02/18/97	TX	Tyler	Tyler Pounds Field	FDC 7/0927	ILS RWY 13, AMDT 20...
02/18/97	TX	Winnsboro	Winnsboro Muni	FDC 7/0911	VOR–A, AMDT 4...
02/19/97	NC	Wilson	Wilson Industrial Air Center	FDC 7/0956	NDB OR GPS RWY 21 AMDT 1...
02/19/97	NH	Portsmouth	Pease Intl Tradeport	FDC 7/0953	VOR OR TACAN OR GPS RWY 34 ORIG...

[FR Doc. 97–5290 Filed 3–3–97; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28817; Amdt. No. 1784]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (Air).

Issued in Washington, DC on February 21, 1997.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective March 27, 1997*

San Luis Obispo, CA, San Luis Obispo County-McChesney Field, LOC RWY 11, Amdt 4, CANCELLED
San Luis Obispo, CA, San Luis Obispo County-McChesney Field, ILS RWY 11, Orig
Boyne Falls, MI, Boyne Mountain, NDB–C, Orig, CANCELLED
Gwinn, MI, Sawyer, VOR/DME–A, Orig
Richmond, VA, Richmond International, ILS RWY 34, Amdt 13

** * * Effective April 24, 1997*

Washington, DC, Washington Dulles Intl, ILS/DME RWY 1L, Amdt 5
Baltimore, MD, Martin State, VOR/DME RNAV RWY 15, Amdt 5
Perkasie, PA, Pennridge, VOR RWY 8, Amdt 2
Rutland, VT, Rutland State, LDA 1 RWY 19, Amdt 8

** * * Effective May 22, 1997*

Talkeetna, AK, Talkeetna, GPS RWY 36 Orig
El Dorado, AR, South Arkansas Regional at Goodwin Field, GPS RWY 22, Orig
Vacaville, CA, Nut Tree, GPS RWY 20, Amdt 1
Sterling, CO, Sterling Muni, GPS RWY 33, Orig
Melbourne, FL, Melbourne International, NDB OR GPS RWY 9R, Amdt 14
Melbourne, FL, Melbourne International, ILS RWY 9R, Amdt 10
Orlando, FL, Orlando Executive, LORAN RNAV RWY 7, Amdt 1, CANCELLED
Orlando, FL, Orlando Executive, LORAN RNAV RWY 25, Amdt 2, CANCELLED
Alexandria, LA, Alexandria International, GPS RWY 18, Orig
Endicott, NY, Tri-Cities, GPS RWY 21, Orig
Endicott, NY, Tri-Cities, VOR OR GPS–A, Amdt 4
Lincolnton, NC, Lincoln County, NDB or GPS RWY 23, Amdt 2
Blackwell, OK, Blackwell-Tonkawa Muni, VOR/DME RNAV RWY 17, Amdt 2, CANCELLED
Blackwell, OK, Blackwell-Tonkawa Muni, GPS RWY 17, Orig
Blackwell, OK, Blackwell-Tonkawa Muni, GPS RWY 35, Orig
Fairview, OK, Fairview Muni, GPS RWY 17, Orig
Oklahoma City, OK, Clarence E Page Muni, GPS RWY 17R, Orig
Oklahoma City, OK, Clarence E Page Muni, GPS RWY 35L, Orig
Prague, OK, Prague Muni, GPS RWY 17, Orig
La Grande, OR, La Grande/Union County, GPS RWY 16, Orig
Allentown, PA, Lehigh Valley Intl, LOC BC RWY 24, Amdt 20
Altoona, PA, Altoona-Blair County, ILS RWY 20, Amdt 5
Titusville, PA, Titusville, VOR OR GPS–A, Amdt 5
Columbia, SC, Columbia Owens Downtown, GPS RWY 31, Orig
Lufkin, TX, Angelina County, GPS RWY 7, Orig
Lufkin, TX, Angelina County, GPS RWY 15, Orig
Lufkin, TX, Angelina County, GPS RWY 33, Orig
Nacogdoches, TX, A L Mangham Jr. Regional, GPS RWY 18, Orig
Nacogdoches, TX, A L Mangham Jr. Regional, GPS RWY 33, Orig
Nacogdoches, TX, A L Mangham Jr. Regional, GPS RWY 36, Orig
Logan, UT, Logan-Cache, GPS RWY 35, Orig
Manitowish, WI, Manitowish Waters, GPS RWY 32, Orig
Necedah, WI, Necedah, GPS RWY 36, Orig
Necedah, WI, Necedah, NDB RWY 36, Amdt 1

Effective Upon Publication

Bremerton, WA, Bremerton National, ILS RWY 19, Amdt 12

[FR Doc. 97–5289 Filed 3–3–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 341

[Docket No. 94N–0247]

RIN 0910–AA01

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Amendment of Monograph for OTC Bronchodilator Drug Products; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final monograph for over-the-counter (OTC) bronchodilator drug products that appeared in the **Federal Register** of May 20, 1996 (61 FR 25142). The document amended the final monograph for OTC bronchodilator drug products by removing pressurized metered-dose aerosol container dosage forms for the ingredients epinephrine, epinephrine bitartrate, and racepinephrine hydrochloride. The document was published with an inadvertent error in one of the amendatory instructions. This document corrects that error.

EFFECTIVE DATE: March 4, 1997.

FOR FURTHER INFORMATION CONTACT: LaJuana D. Caldwell, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

SUPPLEMENTARY INFORMATION: In FR Doc. 96–12499, appearing on page 25142 in the **Federal Register** of Monday, May 20, 1996, the following correction is made: On page 25146, in the 3d column, amendatory instruction 4 is corrected to read as follows:

4. Section 341.76 is amended by removing the heading for paragraph (d)(2), and paragraphs (d)(2)(i) and (e), by redesignating paragraph (d)(2)(ii) as paragraph (d)(2), and by revising the heading of newly redesignated paragraph (d)(2) to read as follows:

Dated: February 24, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–5210 Filed 3–3–97; 8:45 am]

BILLING CODE 4160–01–F

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Procedural Rules

AGENCY: National Labor Relations Board.

ACTION: Final rule.

SUMMARY: The National Labor Relations Board is amending its rules that govern compliance proceedings to clarify that Regional Directors have authority, in appropriate circumstances, to issue a compliance specification at any stage during the pendency of an unfair labor practice proceeding. The amendments are being adopted in order to resolve any possible ambiguity that may exist with respect to this authority. The intended effect of the revisions is to avoid needless challenges to this procedure.

EFFECTIVE DATE: March 4, 1997.

FOR FURTHER INFORMATION CONTACT: John J. Toner, Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W. Room 11600, Washington, D.C. 20570–0001, Telephone: (202) 273–1940.

SUPPLEMENTARY INFORMATION: Section 102.54 of the National Labor Relations Board's Rules and Regulations, 29 CFR 102.54, sets forth procedures for the initiation of formal compliance proceedings and for the issuance of a compliance specification and notice of hearing. Although compliance specifications ordinarily are issued to resolve disputes that arise with respect to an outstanding Board order, there have been circumstances in which it was considered appropriate to issue a compliance specification in advance of a Board order. Section 102.54(b) presently provides that such a compliance specification may be consolidated with an outstanding complaint and notice of hearing issued pursuant to § 102.15, 29 CFR 102.15.

Section 102.54(b) never was intended to imply that a compliance specification could only be issued in advance of a Board order when it was to be consolidated with proceedings on an outstanding complaint. For, there may be other circumstances in which it is appropriate to issue a compliance specification in advance of a Board order. This could occur, for example, where the compliance specification is issued to plead a specific amount in controversy in some collateral proceeding in which the Board is seeking prejudgment relief to avoid dissipation of assets before a Board order can issue.

There have been instances in which respondents have interposed in collateral litigation the argument that the Board's rules, as drafted, preclude the agency from issuing a compliance specification in advance of a Board order without consolidating it with the related complaint and notice of hearing. Although we are not aware of any case in which this argument has prevailed, the Board considers it prudent to clarify the rule to avoid litigation over this issue in the future.

Accordingly, a new paragraph (b) of § 102.54 is being added to reflect that a compliance specification may issue based on an outstanding complaint whenever the Regional Director deems it necessary to effectuate the purposes and policies of the Act or to avoid unnecessary costs or delay. Current paragraph (b) of § 102.54 is being redesignated paragraph (c). In all other respects, § 102.54 remains unchanged.

Regulatory Requirements

This rule relates solely to agency organization, procedure and practice, and will not have a significant economic impact on a substantial number of small businesses or impose any information collection requirements. Accordingly, the Agency finds that prior notice and comment is not required for these rules and that good cause exists for waiving the general requirement of delaying the effective date under the Administrative Procedure Act (5 U.S.C. 553), and that the rules are not subject to the Regulatory Flexibility Act (5 U.S.C. 601), Small Business Regulatory Enforcement Act (5 U.S.C. 801), Paperwork Reduction Act (44 U.S.C. 3501), or Executive Order 12866.

List of Subjects in 29 CFR Part 102

Administrative practice and procedure, Labor management relations.

29 CFR part 102 is amended as follows:

1. The authority citation for 29 CFR part 102 continues to read as follows:

Authority: Section 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156). Section 102.117(c) also issued under section 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)). Sections 102.143 through 102.155 also issued under section 504(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1)).

2. In section 102.54, paragraph (b) is redesignated as paragraph (c), and a new paragraph (b) is added to read as follows:

§ 102.54 Initiation of formal compliance proceedings; issuance of compliance specification and notice of hearing.

* * * * *

(b) Whenever the Regional Director deems it necessary in order to effectuate the purposes and policies of the Act or to avoid unnecessary costs or delay, the Regional Director may issue a compliance specification, with or without a notice of hearing, based on an outstanding complaint.

* * * * *

Dated, Washington, DC, February 27, 1997.

By direction of the Board:

John J. Toner,

Executive Secretary.

[FR Doc. 97–5283 Filed 3–3–97; 8:45 am]

BILLING CODE 7545–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7208]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Executive Associate Director, Mitigation Directorate, reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not

listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Executive Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modifications	Community No.
Arizona: Maricopa.	Town of Cave Creek.	Dec. 16, 1996, Dec. 23, 1996, *Arizona Republic.*	The Honorable Tom Augerton, Mayor, Town of Cave Creek, 37622 North Cave Creek Road, Cave Creek, Arizona 85331.	Nov. 27, 1996 ...	040129
Arizona: Maricopa.	City of Phoenix	Jan. 24, 1997, Jan. 31, 1997, *Arizona Republic.*	The Honorable Skip Rimsza, Mayor, City of Phoenix, 200 West Washington Street, Phoenix, Arizona 85003–1611.	Dec. 19, 1996 ...	040051
Arizona: Maricopa.	City of Phoenix	Jan. 7, 1997, Jan. 14, 1997, *Arizona Republic.*	The Honorable Skip Rimsza, Mayor, City of Phoenix, 200 West Washington Street, Phoenix, Arizona 85003–1611.	Dec. 6, 1996	040051
Arkansas: St. Francis.	City of Forrest City.	Jan. 24, 1997, Jan. 31, 1997, *Forrest City Times-Herald.*	The Honorable Danny Ferguson, Mayor, City of Forrest City, P.O. Box 1074, Forrest City, Arkansas 72335.	Jan. 3, 1997	050187
Arkansas: Benton.	City of Rogers ..	Dec. 16, 1996, Dec. 23, 1996, *Benton County Daily Record.*	The Honorable John W. Sampier, Jr., Mayor, City of Rogers, 300 West Poplar, Record Rogers, Arkansas 72756.	Dec. 3, 1996	050013
Arkansas: White	City of Searcy ...	Jan. 24, 1997, Jan. 31, 1997, *Daily Citizen.*	The Honorable David Evans, Mayor, City of Searcy, 401 West Arch Avenue, Searcy, Arkansas 77143–5392.	Dec. 20, 1996 ...	050229
California: Ventura.	City of Camarillo	Jan. 22, 1997, Jan. 29, 1997, *Ventura County Star.*	The Honorable David Smith, Mayor, City of Camarillo, P.O. Box 248, Camarillo, California 93011.	Jan. 2, 1997	065020
California: Orange.	City of Fullerton	Jan. 23, 1997, Jan. 30, 1997, *Fullerton News-Tribune.*	The Honorable Chris Norby, Mayor, City of Fullerton, 303 West Commonwealth Avenue, Fullerton, California 92832.	Jan. 6, 1997	060219
California: San Luis Obispo.	City of Grover Beach.	Dec. 12, 1996, Dec. 19, 1996, *Telegram-Tribune.*	The Honorable Ronald Arnoldsen, Mayor, City of Grover Beach, P.O. Box 365, Grover Beach, California 93483.	Nov. 25, 1996 ...	060306
California: Sonoma.	City of Petaluma	Jan. 10, 1997, Jan. 17, 1997, *Press Democrat.*	The Honorable M. Patricia Hilligoss, Mayor, City of Petaluma, P.O. Box 61, Petaluma, California 94953.	Dec. 4, 1996	060379
California: San Luis Obispo.	City of Pismo Beach.	Dec. 12, 1996, Dec. 19, 1996, *Telegram-Tribune.*	The Honorable John Brown, Mayor, City of Pismo Beach, P.O. Box 3, Pismo Beach, California 93449.	Nov. 25, 1996 ...	060309

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modifications	Community No.
California: Riverside.	Unincorporated Areas.	Dec. 16, 1996, Dec. 23, 1996, *The Press-Enterprise.*	The Honorable Kay Ceniceros, Chairperson, Riverside County, Board of Supervisors, P.O. Box 1486, Riverside, California 92502–1486.	Nov. 27, 1996 ...	060245
California: Sacramento.	Unincorporated Areas.	Jan. 22, 1997, Jan. 29, 1997, *Sacramento Bee.*	Mr. Douglas M. Fraleigh, Administrator, Sacramento County Public Works Agency, County Administration Building, 827 Seventh Street, Room 304, Sacramento, California 95814.	Dec. 30, 1996 ...	060262
Colorado: Denver.	City and County of Denver.	Jan. 23, 1997, Jan. 30, 1997, *The Denver Post.*	The Honorable Wellington E. Webb, Mayor, City and County of Denver, 1437 Bannock Street, Denver, Colorado 80202.	Jan. 8, 1997	080046
Nevada: Clark ...	Unincorporated Areas.	Dec. 16, 1996, Dec. 23, 1996, *Las Vegas Review Journal.*	The Honorable Yvonne Atkinson Gates, Chairperson, Clark County Board of Commissioners, 225 East Bridger Avenue, Las Vegas, Nevada 89155.	Nov. 21, 1996 ...	320003
New Mexico: Bernalillo.	City of Albuquerque.	Jan. 24, 1997, Jan. 31, 1997, *Albuquerque Journal.*	The Honorable Martin J. Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103.	Jan. 6, 1997	350002
New Mexico: Bernalillo.	Unincorporated Areas.	Jan. 24, 1997, Jan. 31, 1997, *Albuquerque Journal.*	The Honorable Albert Valdez, Chairman, County Commissioners, Bernalillo County, One Civic Plaza, Northwest, Tenth Floor, Albuquerque, New Mexico 87102.	Jan. 6, 1997	350001
Texas: Harris	City of Baytown	Dec. 11, 1996, Dec. 18, 1996, *Baytown Sun.*	The Honorable Pete Alfaro, Mayor, City of Baytown, City Hall, 2401 Market Street Baytown, Texas 77522.	Nov. 19, 1996 ...	485456
Texas: Dallas	City of Dallas	Dec. 18, 1996, Dec. 24, 1996, *Dallas Morning News.*	The Honorable Ron Kirk, Mayor, City of Dallas, 1500 Marilla Street, Room 5E North, Dallas, Texas 75201.	Nov. 27, 1996 ...	480171
Texas: Dallas	City of Farmers Branch.	Dec. 18, 1996, Dec. 24, 1996, *Dallas Morning News.*	The Honorable Bob Phelps, Mayor, City of Farmers Branch, P.O. Box 819010, Farmers Branch, Texas 75381–9010.	Nov. 27, 1996 ...	480174
Texas: Tarrant ..	City of Haltom City.	Dec. 16, 1996, Dec. 23, 1996, *Fort Worth Star-Telegram.*	The Honorable Charles Womack, Mayor, City of Haltom City, P.O. Box 14246, Haltom City, Texas 76117.	Dec. 3, 1996	480599
Texas: Harris	Unincorporated Areas.	Dec. 13, 1996, Dec. 20, 1996, *Houston Chronicle.*	The Honorable Robert Eckels, Harris County Judge, 1001 Preston Street, Suite 911, Houston, Texas 77002.	Nov. 25, 1996 ...	480287
Texas: Harris	Unincorporated Areas.	Dec. 11, 1996, Dec. 18, 1996, *Baytown Sun.*	The Honorable Robert Eckels, Harris County Judge, 1001 Preston Street, Suite 911, Houston, Texas 77002.	Nov. 19, 1996 ...	480287
Texas: Montgomery.	Unincorporated Areas.	Dec. 13, 1996, Dec. 20, 1996, *Houston Chronicle.*	The Honorable Alan B. Sadler, Montgomery County Judge, 301 North Thompson, Suite 210, Conroe, Texas 77301.	Nov. 25, 1996 ...	480483
Texas: Tarrant ..	City of North Richland Hills.	Jan. 24, 1997, Jan. 31, 1997, *Fort Worth Star-Telegram.*	The Honorable Tommy Brown, Mayor, City of North Richland Hills, P.O. Box 820609, North Richland Hills, Texas 76182–0609.	Dec. 23, 1996 ...	480607
Texas: Tarrant ..	City of North Richland Hills.	Dec. 16, 1996, Dec. 23, 1996, *Fort Worth Star-Telegram.*	The Honorable Tommy Brown, Mayor, City of North Richland Hills, P.O. Box 820609, North Richland Hills, Texas 76182–0609.	Dec. 3, 1996	480607
Texas: Williamson.	City of Round Rock.	Dec. 5, 1996, Dec. 12, 1996, *Round Rock Leader.*	The Honorable Charles Culpepper, Mayor, City of Round Rock, 221 East Main, Round Rock, Texas 78664.	Nov. 12, 1996 ...	481048
Texas: Williamson.	Unincorporated Areas.	Dec. 5, 1996, Dec. 12, 1996, *Round Rock Leader.*	The Honorable John Doerfler, Williamson County Judge, County Courthouse, 710 Main Street, Suite 201, Georgetown, Texas 78626.	Nov. 12, 1996 ...	481079
Washington: Spokane.	Unincorporated Areas.	Dec. 11, 1996, Dec. 18, 1996, *The Spokesman-Review.*	The Honorable Jim Lindow, Chief Executive Officer, Spokane County, 1116 West Broadway, Spokane, Washington 99260.	Nov. 26, 1996 ...	530174

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: February 24, 1997.

Richard W. Krimm,

Executive Associate Director, Mitigation Directorate.

[FR Doc. 97–5272 Filed 3–3–97; 8:45 am]

BILLING CODE 6718–04–P

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s)

in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Executive Associate Director has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Executive Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona: Pima (FEMA Docket No. 7200).	Unincorporated Areas	Sept. 18, 1996; Sept. 25, 1996; *Arizona Daily Star.*	The Honorable Paul Marsh, Chairman, Pima County Board of Supervisors, 130 West Congress, Tucson, Arizona 85701.	Aug. 13, 1996	040073
California: San Diego (FEMA Docket No. 7200).	Unincorporated Areas	Oct. 1, 1996; Oct. 8, 1996; *San Diego Daily Transcript.*	The Honorable Ron Roberts, Chairman, San Diego County Board of Supervisors,1600 Pacific Highway, Room 335, San Diego, California 92101.	Sept. 16, 1996	060284
Colorado: Jefferson (FEMA Docket No. 7200).	City of Golden	Sept. 6, 1996; Sept. 13, 1996; *Golden Transcript.*	The Honorable Jan C. Schenck, Mayor, City of Golden, City Hall, 911 Tenth Street, Golden, Colorado 80401.	Aug. 20, 1996	080090

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Colorado: Boulder (FEMA Docket No. 7200).	City of Louisville	Sept. 18, 1995; Sept. 25, 1995; *Louisville Times.*	The Honorable Tom Davidson, Mayor, City of Louisville, 749 Main Street, Louisville, Colorado 80027.	Sept. 6, 1996.	085076
Colorado: Boulder (FEMA Docket No. 7200).	Unincorporated Areas	Sept. 18, 1996; Sept. 25, 1996; *Louisville Times.*	The Honorable Ronald K. Stewart, Chairman, Board of County Commissioners, Boulder County, P.O. Box 471, Boulder, Colorado 80306.	Sept. 6, 1996	080023
Colorado: Jefferson (FEMA Docket No. 7200).	City of Wheat Ridge	Sept. 20, 1996; Sept. 27, 1996; *Wheat Ridge Transcript.*	The Honorable Dan Wilde, Mayor, City of Wheat Ridge, 7500 West 29th Avenue, Wheat Ridge, Colorado 80215.	Aug. 28, 1996	085079
Kansas: Harvey (FEMA Docket No. 7200).	City of Halstead	Oct. 3, 1996; Oct. 10, 1996; *The Harvey County Independent.*	The Honorable Dorel Neufeld, Mayor, City of Halstead, P.O. Box 312, Halstead, Kansas 67056–0312.	Sept. 4, 1996	200131
Kansas: Harvey (FEMA Docket No. 7200).	Unincorporated Areas	Oct. 3, 1996; Oct. 10, 1996; *The Harvey County Independent.*	The Honorable Craig R. Simons, Harvey County Administrator, Administration Department, P.O. Box 687, Newton, Kansas 67114–0687.	Sept. 4, 1996	200585
Oklahoma: Comanche (FEMA Docket No. 7200).	City of Lawton	Oct. 1, 1996; Oct. 8, 1996; *The Lawton Constitution.*	The Honorable John T. Marley, Mayor, City of Lawton, 103 Southwest Fourth Street, Lawton, Oklahoma 73501.	Aug. 30, 1996	400049
Oklahoma: Ottawa (FEMA Docket No. 7200).	City of Miami	Sept. 18, 1996; Sept. 25, 1996; *Miami News Record.*	The Honorable Louis E. Mathia, Mayor, City of Miami, P.O. Box 309, Miami, Oklahoma 74355–0309.	Aug. 16, 1996	400157
Oregon: Jackson (FEMA Docket No. 7200).	City of Medford	Sept. 5, 1996; Sept. 12, 1996; *Mail Tribune.*	The Honorable Jerry Lausmann, Mayor, City of Medford, 411 West Eighth Street, Medford, Oregon 97501.	Aug. 2, 1996	410096
Texas: Harris (FEMA Docket No. 7200).	Unincorporated Areas	Sept. 18, 1996; Sept. 25, 1996; *Houston Chronicle.*	The Honorable Robert Eckels, Harris County Judge, Harris County Administration Building, 1001 Preston Street, Houston, Texas 77002.	Aug. 16, 1996	480287
Texas: Tarrant (FEMA Docket No. 7200).	City of Haslet	Sept. 20, 1996; Sept. 27, 1996; *Fort Worth Star-Telegram.*	The Honorable I. J. Frazier, Mayor, City of Haslet, P.O. Box 183, Haslet, Texas 76052.	Aug. 29, 1996	480600
Texas: Denton (FEMA Docket No. 7200).	Town of Hebron	Sept. 11, 1996; Sept. 18, 1996; *Lewisville Leader.*	The Honorable Stanley Dozier, Mayor, Town of Hebron, Route 2, Box 184, Carrollton, Texas 75010.	Aug. 20, 1996	481495
Texas: Montgomery (FEMA Docket No. 7200).	Unincorporated Areas	Oct. 1, 1996; Oct. 8, 1996; *Conroe Courier.*	The Honorable Alan B. Sadler, Montgomery County Judge, 301 North Thompson, Suite 210, Conroe, Texas 77301.	Sept. 12, 1996	480483
Texas: Collin (FEMA Docket No. 7200).	City of Plano	Oct. 8, 1996; Oct. 15, 1996; *Plano Star Courier.*	The Honorable James N. Muns, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086–0358.	Sept. 11, 1996	480140

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Texas: Collin (FEMA Docket No. 7200).	City of Plano	Oct. 9, 1996; Oct. 16, 1996; *Plano Star Courier.*	The Honorable James N. Muns, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086–0358.	Sept. 12, 1996	480140
Texas: Wichita (FEMA Docket No. 7200).	City of Wichita Falls	Oct. 3, 1996; Oct. 10, 1996; *Wichita Falls Times Record News.*	The Honorable Kay Yeager, Mayor, City of Wichita Falls, P.O. Box 1431, Wichita Falls, Texas 76307.	Sept. 24, 1996	480662

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: February 24, 1997.

Richard W. Krimm,

Executive Associate Director, Mitigation Directorate.

[FR Doc. 97–5271 Filed 3–3–97; 8:45 am]

BILLING CODE 6718–04–P

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Executive Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq. Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD)
ARIZONA	
Graham County (Unincorporated Areas) (FEMA Docket No. 7198)	
Gila River:	
At downstream limit of detailed study (approximately 4,300 feet downstream of Eighth Avenue)	*2,888
At upstream limit of detailed study	*2,938
Maps are available for inspection at the Graham County Planning and Zoning Department, 800 Main Street, Safford, Arizona.	
Safford (City), Graham County (FEMA Docket No. 7198)	
Gila River:	
Approximately 100 feet upstream of First Avenue	*2,909
At upstream corporate limits	*2,916
Maps are available for inspection at the City of Safford Department of Public Works, 717 Main Street, Safford, Arizona.	
ARKANSAS	
Franklin County and Incorporated Areas (FEMA Docket No. 7198)	
Arkansas River:	
At Franklin-Johnson County Line	*360
At Franklin-Crawford County Line	*388
Mulberry River:	
Approximately 2.2 miles downstream of State Highway 23	*686
Approximately 3.1 miles upstream of State Highway 23	*741
Fane Creek:	
At confluence with Mulberry River	*723
Approximately 0.4 mile upstream of State Highway 23	*758
Maps are available for inspection at the Franklin County Courthouse, 211 West Commercial, Ozark, Arkansas.	
Maps are available for inspection at the City of Ozark City Hall, 607 College Street, Ozark, Arkansas.	
CALIFORNIA	
Jackson (City), Amador County (FEMA Docket No. 7198)	
North Fork Jackson Creek:	
Approximately 200 feet upstream of Stark Lane	*1,269
Approximately 930 feet upstream of Jackson Gate Road	*1,316
Oneida Creek:	
At confluence with North Fork Jackson Creek	*1,296
Approximately 1,820 feet upstream of confluence	*1,334
New York Ranch Creek:	
Approximately 150 feet downstream of Court Street	*1,215
Approximately 1,340 feet upstream of Rollingwood Drive	*1,341
Placer Drive:	
At storm drain inlet approximately 1,520 feet upstream of confluence with New York Ranch Creek	*1,248
Approximately 2,000 feet upstream of confluence	*1,255
Maps are available for inspection at the City of Jackson City Hall, 33 Broadway, Jackson, California.	
Amador County (Unincorporated Areas) (FEMA Docket No. 7198)	
Sutter Creek:	
Just upstream of Sutter Creek Road	*1,250
Approximately 5 miles upstream of Sutter Creek Road	*1,452
North Fork Jackson Creek:	
Approximately 850 feet upstream of Stark Lane	*1,278
Approximately 50 feet upstream of Jackson Gate Road	*1,300
Approximately 940 feet upstream of Jackson Gate Road	*1,316
Oneida Creek:	
Approximately 1,340 feet upstream of confluence with North Fork Jackson Creek	*1,318
South Fork Jackson Creek:	
Approximately 3,150 feet upstream of Broadway	*1,249
Maps are available for inspection at the Amador County Department of Planning, Administrative Center, 500 Argonaut Lane, Jackson, California.	
Carlsbad (City), San Diego County (FEMA Docket No. 7146)	
Agua Hedionda Creek:	
Approximately 1,400 feet downstream of El Camino Real Drive	*32
Approximately 1,400 feet downstream of El Camino Real (right levee removed)	*30
Approximately 1,400 feet downstream of El Camino Real (left bank flow)	*37
Approximately 100 feet upstream of Rancho Carlsbad (upstream crossing)	*61
Approximately 100 feet upstream of an unnamed road (approximately 8,200 feet upstream of El Camino Real)	*102
Calavera Creek:	
At confluence with Agua Hedionda Creek (south side of floodwall)	*48
At confluence with Agua Hedionda Creek (north side of floodwall)	*39
Just upstream of the floodwall	*61
Approximately 700 feet upstream of confluence with Calavera Creek Splitflow	*74
Calavera Creek Splitflow:	
Approximately 700 feet upstream of confluence with Calavera Creek	*73
Maps are available for inspection at the City of Carlsbad Engineering Department, 2075 Las Palmas Drive, Carlsbad, California.	
Chula Vista (City), San Diego County (FEMA Docket No. 7146)	
Poggi Canyon Creek:	
Approximately 2,200 feet upstream of Oleander Avenue	*207
Approximately 2,500 feet upstream of Oleander Avenue	*212
Telegraph Canyon Creek:	
170 feet upstream of Telegraph Canyon Road	*344
50 feet downstream of Otay Lakes Road	*451
3,540 feet upstream of Otay Lakes Road	*499
Maps are available for inspection at the City of Chula Vista City Hall, 276 Fourth Avenue, Chula Vista, California.	
El Cajon (City), San Diego County (FEMA Docket No. 7146)	
Forester Creek:	
Approximately 110 feet below Terra Lane	*541
At Terra Lane	*542
Approximately 65 feet upstream of Terra Lane at corporate limits	*542
Maps are available for inspection at the City of El Cajon Department of Public Works, 200 East Main Street, El Cajon, California.	
Escondido (City), San Diego County (FEMA Docket No. 7146)	
Maywood Wash:	

Source of flooding and location	# Depth in feet above ground. • Elevation in feet (NGVD)
50 feet east of intersection of La Honda Drive and Dippon Lane	#1
Kit Carson Park Creek:	
1,200 feet downstream of Via Rancho Parkway (at Lake Hodges)	*326
Maps are available for inspection at the City of Escondido Public Works Department, 201 North Broadway, Escondido, California.	
Escondido (City), San Diego County (FEMA Docket No. 7146)	
Reidy Creek:	
Approximately 19,000 feet upstream of confluence with Escondido Creek	*740
Just upstream of the North Broadway Avenue Bridge	*753
Approximately 20,500 feet upstream of confluence with Escondido Creek	*754
Approximately 22,050 feet upstream of confluence with Escondido Creek	*767
Approximately 22,550 feet upstream of confluence with Escondido Creek	*770
Maps are available for inspection at the City of Escondido Public Works Department, 201 North Broadway, Escondido, California.	
Mountain View (City), Santa Clara County (FEMA Docket No. 7188)	
Permanente Creek:	
Approximately 1,400 feet downstream of Shoreline Parkway	*8
Approximately 1,100 feet upstream of Shoreline Parkway	*9
At U.S. Route 101 (Bayshore Freeway)	*14
Permanente Creek-East Overbank:	
Just downstream of Amphitheater Parkway	*8
Approximately 850 feet upstream of Amphitheater Parkway	*9
Permanente Creek-West Overbank:	
Approximately 500 feet downstream of Amphitheater Parkway	*8
Approximately 850 feet upstream of Amphitheater Parkway	*9
Maps are available for inspection at the City of Mountain View Department of Public Works, 500 Castro Street, Mountain View, California.	
Oceanside (City), San Diego County (FEMA Docket No. 7146)	
Pilgrim Creek:	
Approximately 2,300 feet downstream of confluence with Windmill Canyon	*52
Approximately 1,600 feet upstream of confluence with Windmill Canyon	*56
Approximately 3,600 feet upstream of confluence with Windmill Canyon	*57
Maps are available for inspection at the City of Oceanside Engineering Department, 300 North Hill Street, Oceanside, California.	
Orinda (City), Contra Costa County (FEMA Docket No. 7198)	
Orinda Village Overflow from San Pablo Creek:	
Approximately 150 feet downstream of Orinda Way	*402
Just upstream of Orinda Way	*412
Approximately 600 feet upstream of Camino Sobrante	*430
San Pablo Creek (Reach 1):	
Approximately 500 feet upstream of Camino Sobrante	*432
Approximately 800 feet upstream of confluence with Overhill Creek	*479
San Pablo Creek (Reach 2):	
Approximately 150 feet downstream of Brookside Road	*527
Just upstream of Brookside Road	*538
Just upstream of Greenwood Court	*731
Brookside Road Tributary:	
At confluence with San Pablo Creek	*522
Approximately 1,500 feet upstream of Brookside Road	*591
Maps are available for inspection at the City of Orinda Department of Planning, City Hall, 26 Orinda Way, Orinda, California.	
San Diego (City), San Diego County (FEMA Docket No. 7146)	
Lusardi Creek:	
Approximately 4,200 feet upstream of confluence with San Dieguito River	*122
Approximately 5,500 feet upstream of confluence with San Dieguito River	*134
Maps are available for inspection at the City of San Diego Engineering Department, 202 C Street, San Diego, California.	
San Diego (City), San Diego County (FEMA Docket No. 7146)	
Beeler Creek:	
1,200 feet downstream of Old Pomerado Road	*446
500 feet downstream of Old Pomerado Road	*457
Approximately 1.6 miles upstream of Pomerado Road	*604
Approximately 2.1 miles upstream of Pomerado Road	*636
Carroll Canyon Creek:	
950 feet upstream of Willow Creek Road	*523
Approximately 2,500 feet downstream of Avenida Magnifica	*559
Rose Canyon Creek:	
450 feet downstream of Balboa Avenue	*13
200 feet downstream of Mission Bay Drive	*17
1,350 feet upstream of Interstate Highway 805	*261
1,800 feet upstream of Interstate Highway 805	*265
Soledad Canyon:	
Upstream side of North Torrey Pines Road	*11
2,000 feet upstream of North Torrey Pines Road	*12
Maps are available for inspection at the City of San Diego City Hall, 202 C Street, San Diego, California.	
San Diego County (Unincorporated Areas) (FEMA Docket No. 7146)	
Witch Creek:	
Approximately 7,700 feet upstream of confluence with Santa Ysabel Creek	*2,487
Approximately 11,360 feet upstream of confluence with Santa Ysabel Creek	*2,566
Approximately 11,900 feet upstream of confluence with Santa Ysabel Creek	*2,723
Approximately 18,100 feet upstream of confluence with Santa Ysabel Creek	*2,782
Rainbow Creek:	
Approximately 100 feet downstream of Old Highway 395	*1,028
At Fifth Street	*1,036
At Huffstatler Street	*1,044

Source of flooding and location	# Depth in feet above ground. • Elevation in feet (NGVD)
At Rainbow Valley Boulevard	*1,049
Approximately 4,225 feet upstream of Rainbow Valley Boulevard	*1,073
Rainbow Creek (West Branch):	
At confluence with Rainbow Creek	*1,044
At First Street	*1,058
Approximately 1,900 feet upstream of First Street	*1,070
Steele Canyon Creek:	
Approximately 480 feet upstream of confluence with Sweetwater River	*313
At Miller Ranch Road	*325
At Stony Oak Drive	*472
At Aurora Vista Road	*530
At Vista Sage Lane	*754
Approximately 2,300 feet upstream of Vista Sage Lane	*804
Eucalyptus Hills Creek (East Branch):	
Approximately 700 feet above confluence with San Diego River	*374
At Riverside Drive	*380
At Lakeside Avenue	*388
Approximately 2,630 feet upstream of Lakeside Avenue	*424
Eucalyptus Hills Creek (West Branch):	
Approximately 950 feet downstream of Riverside Drive	*374
At Riverside Drive	*374
Approximately 0.75 mile upstream of Riverside Drive	*423
Approximately 1.25 miles upstream of Riverside Drive	*519
Lusardi Creek:	
At confluence with the San Dieguito River	*57
Approximately 3,000 feet upstream of confluence with the San Dieguito River	*90
Approximately 5,500 feet upstream of confluence with the San Dieguito River	*134
Beaver Hollow Creek:	
Approximately 2,700 feet upstream of confluence with the Sweetwater River	*1,076
Approximately 5,500 feet upstream of confluence with the Sweetwater River	*1,134
Approximately 9,900 feet upstream of confluence with the Sweetwater River	*1,273
Approximately 14,530 feet upstream of confluence with the Sweetwater River	*1,447
Tributary to Sweetwater River:	
Approximately 600 feet downstream of Easement Road	*128
At Proctor Valley Road	*147
At El Rancho Grande Road	*200
At San Miguel Road	*244
Approximately 1,350 feet upstream of San Miguel Road	*268
Buena Creek:	
Approximately 120 feet downstream of Buena Creek Road	*620
At Sugar Bush Drive	*642
At Hollyberry Drive	*662
Approximately 600 feet upstream of Hollyberry Drive	*674
Moosa Creek (North Branch):	
At unnamed road 1,600 feet downstream of Valley Vista Road	*1,409
At Valley Vista Road	*1,462
At Cool Water Ranch Road	*1,518
At Bates Nut Farm Road	*1,575
At Indian Hill Ranch Road	*1,596
At Lake Wohlford Road	*1,632
Just upstream of Canal Road	*1,658
Moosa Creek (South Branch):	
At confluence with Moosa Creek	*1,599
Approximately 990 feet downstream of Lake Wohlford Road	*1,613
Approximately 10 feet upstream of Lake Wohlford Road	*1,628
Gopher Canyon:	
Just downstream of Old River Road	*149
Approximately 2,400 feet upstream of Old River Road	*174
Approximately 4,700 feet upstream of Old River Road	*208
At Gopher Canyon Road	*253
Approximately 3,650 feet upstream of Gopher Canyon Road	*320
At Robbie Lane	*400
At Twin Oaks Valley Road	*453
Approximately 3,200 feet upstream of Twin Oaks Valley Road	*521
Escondido Creek:	
Approximately 660 feet downstream of North Lake Wohlford Road	*1,492
At Bear Valley Heights Road	*1,566
Approximately 1,800 feet upstream of Bear Valley Heights Road	*1,581
Pala Mesa Creek:	
Just downstream of Old Route 395	*311
At Canonita Drive	*384
Approximately 140 feet upstream of Valley Oaks Boulevard East	*442
Slaughterhouse Creek:	
Approximately 1,240 feet downstream of Route 67	*447
Just downstream of Slaughterhouse Canyon Road	*465
Approximately 1,680 feet upstream of Slaughterhouse Canyon Road	*490
Approximately 4,080 feet upstream of Slaughterhouse Canyon Road	*545
Forester Creek:	
Approximately 110 feet downstream of Terra Lane	*541
Approximately 1,000 feet upstream of Greenfield Road	*628
At Flume Drive	*659
Approximately 0.25 mile upstream of Forester Creek Road	*740
Approximately 3,110 feet upstream of Forester Creek Road	*900
Approximately 1 mile upstream of Forester Creek Road	*1,060
Approximately 7,530 feet upstream of Forester Creek Road	*1,178
Approximately 2 miles upstream of Forester Road	*1,280
Tributary to Forester Creek (South Branch):	
Approximately 1,150 feet downstream of Fourth Street	*518
Approximately 1,350 feet upstream of Fourth Street	*542
Approximately 2,950 feet upstream of Fourth Street	*562
Tributary to Forester Creek:	
Approximately 2,250 feet downstream of Third Street	*490
Approximately 100 feet upstream of Third Street	*506
Approximately 30 feet downstream of Fourth Street	*532
Approximately 2,330 feet upstream of Fourth Street	*562
Santa Ysabel Creek:	
Approximately 8,370 feet downstream of Route 79	*2,810
Just upstream of Route 79	*2,930
Approximately 2,930 feet upstream of Route 79	*2,993
Lawson Creek:	
Approximately 7,200 feet upstream of confluence with the Sweetwater River	*1,572
At Sloane Canyon Road	*1,636
Approximately 1,850 feet upstream of Sloane Canyon Road	*1,662
Approximately 3,630 feet upstream of Sloane Canyon Road	*1,752
Approximately 5,050 feet upstream of Sloane Canyon Road	*1,770
Approximately 1,970 feet downstream of Rudnick Road	*1,840
Approximately 730 feet downstream of Rudnick Road	*1,914
Approximately 70 feet upstream of Rudnick Road	*1,944
Approximately 1,510 feet upstream of Rudnick Road	*1,960
Coleman Creek:	
Approximately 1,860 feet downstream of Highway 78	*3,569
Approximately 400 feet upstream of Highway 78	*3,604

Source of flooding and location	# Depth in feet above ground. • Elevation in feet (NGVD)
Approximately 410 feet downstream of Calico Ranch Road	•3,620
Approximately 990 feet upstream of Calico Ranch Road	•3,660
Approximately 2,840 feet upstream of Calico Ranch Road	•3,740
Approximately 3,490 feet upstream of Calico Ranch Road	•3,780
Approximately 4,890 feet upstream of Calico Ranch Road	•3,869
Approximately 6,390 feet upstream of Calico Ranch Road	•3,914
Approximately 7,650 feet upstream of Calico Ranch Road	•3,941
Approximately 1.75 miles upstream of Calico Ranch Road	•3,974
Approximately 2 miles upstream of Calico Ranch Road	•4,012
Approximately 12,230 feet upstream of Calico Ranch Road	•4,044
Approximately 13,530 feet upstream of Calico Ranch Road	•4,164
Twin Oaks Valley Creek:	
Approximately 300 feet downstream of Olive Street	•694
Approximately 400 feet upstream of Olive Street	•700
At Deer Springs Road	•723
Approximately 100 feet downstream of Tres Encinas Road	•770
Approximately 2,420 feet upstream of Tres Encinas Road	•809
Deer Springs Creek:	
Approximately 75 feet downstream of Marilyn Lane	•723
Approximately 2,550 feet upstream of Marilyn Lane	•749
Approximately 3,965 feet upstream of Marilyn Lane	•774
Stevenson Creek:	
Approximately 900 feet downstream of Deer Springs Road	•730
At Vista Merriam Road	•766
Approximately 200 feet upstream of Country Garden Lane	•815
Olive Creek:	
At confluence with Twin Oaks Valley Creek	•699
Approximately 1,800 feet upstream of confluence with Twin Oaks Valley Creek	•715
Approximately 50 feet downstream of Kiso Lane	•724
Approximately 610 feet upstream of Kiso Lane	•738
Buena Creek:	
Just downstream of the Atchison, Topeka and Santa Fe Railroad	•443
Just upstream of the Atchison, Topeka and Santa Fe Railroad	•445
Approximately 300 feet upstream of the Atchison, Topeka and Santa Fe Railroad	•447
Reidy Creek:	
Approximately 20,650 feet from confluence with Escondido Creek	•756

Maps are available for inspection at the San Diego County Department of Public Works, Land Development Division, 5555 Overland Avenue, San Diego, California.

San Diego County (Unincorporated Areas) (FEMA Docket No. 7146)

Johnson Canyon Creek:	
800 feet upstream of confluence with Otay River	# 1
920 feet upstream of confluence with Otay River	•229
4,500 feet upstream of confluence with Otay River	•307
14,030 feet upstream of confluence with Otay River	•511
San Luis Rey River:	
2,100 feet downstream of Old Highway 395 (Escondido Expressway)	0
Just downstream of Shearer Road	0

Maps are available for inspection at the San Diego County Department of Public Works, Land Development Division, 5555 Overland Avenue, San Diego, California.

San Marcos (City), San Diego County (FEMA Docket No. 7146)

Olive Creek:	
Approximately 600 feet upstream of confluence with Twin Oaks Valley Creek	•699
Approximately 815 feet upstream of confluence with Twin Oaks Valley Creek	•704
Approximately 1,415 feet upstream of confluence with Twin Oaks Valley Creek	•711
Twin Oaks Valley Creek:	
Approximately 900 feet downstream of Olive Street	•690
Approximately 400 feet upstream of Olive Street	•700
Approximately 200 feet upstream of Mulberry Drive	•716
At Deer Springs Road	•723

Maps are available for inspection at the City of San Marcos Engineering Services Department, One Civic Center Drive, San Marcos, California.

Santee (City), San Diego County (FEMA Docket No. 7146)

San Diego River:	
Approximately 1,800 feet downstream of Riverford Road	•354
Approximately 1,200 feet downstream of Riverford Road	•361

Maps are available for inspection at the City of Santee City Hall, 10601 Magnolia Avenue, Santee, California.

Saratoga (City), Santa Clara County (FEMA Docket No. 7198)

Calabazas Creek:	
Approximately 600 feet upstream of Prospect Road	•306
Just upstream of Wardell Road	•341
Prospect Creek:	
At confluence with Calabazas Creek	•315
Just downstream of Prospect Road	•351

Maps are available for inspection at 13777 Fruitvale Avenue, Saratoga, California.

Sonoma County (Unincorporated Areas) (FEMA Docket No. 7198)

Fryer Creek:	
Just upstream of Leveroni Road	•56
Approximately 0.5 mile upstream of Leveroni Road	•60

Maps are available for inspection at the Sonoma County Department of Permits and Resources, 575 Administrative Drive, Santa Rosa, California.

COLORADO

Colorado Springs (City), El Paso County (FEMA Docket No. 7202)

Pine Creek:	
Approximately 950 feet upstream of Interstate 25	•6,319
Approximately 480 feet upstream of Academy Boulevard	•6,441
Pine Creek Tributary:	
Approximately 225 feet above confluence with Pine Creek	•6,378
Approximately 2,100 feet upstream of confluence with Pine Creek	•6,398

Maps are available for inspection at the City of Colorado Springs Regional Building Department, 101 West Costilla Street, Colorado Springs, Colorado.

El Paso County (Unincorporated Areas) (FEMA Docket No. 7188)

Bear Creek:	
At confluence with Fountain Creek	•5,939
Just above Eighth Street	•5,978
Approximately 570 feet upstream of Eighth Street	•5,985
Black Forest Creek:	
Approximately 160 feet upstream of confluence with Monument Creek	•6,657
Approximately 1,840 feet upstream of Gleneagle Drive	•7,036
Black Forest Creek—Baptist Road Tributary:	
At confluence with Black Forest Creek	•6,955
Approximately 250 feet upstream of Celtic Court	•7,160
Black Forest Creek—Middle Tributary:	
Just upstream of Interstate 25	•6,725
Approximately 100 feet upstream of Westchester Drive	•6,808
Camp Creek:	
At confluence with Fountain Creek	•6,110
Just upstream of 31st Street	•6,266
Just upstream of Gateway Road	•6,314
Approximately 1.5 miles upstream of Gateway Road	•6,524
Crystal Creek:	
At confluence with Monument Lake	•6,922
Approximately 800 feet upstream of Deer Creek Road	•7,138
Crystal Creek—Split Flow Channel:	
At confluence with Dirty Woman Creek	•7,000
Approximately 1,000 feet upstream of Frontage Road	•7,061
Dirty Woman Creek:	
At confluence with Monument Creek	•6,869
Approximately 2,150 feet upstream of Furrow Road	•7,320
Dirty Woman Creek—Lake Fork:	
At convergence with Dirty Woman Creek	•7,006
Approximately 340 feet upstream of Woodmoor Drive	•7,270
Dirty Woman Creek—Middle Fork:	
At confluence with Dirty Woman Creek	•7,142
Approximately 1,050 feet upstream of Furrow Road	•7,336
Dirty Woman Creek—North Fork:	
At confluence with Dirty Woman Creek—Middle Fork	•7,156
Approximately 1.3 miles upstream of Augusta Drive	•7,385
Dirty Woman Creek—South Fork:	
At confluence with Dirty Woman Creek	•7,153
Approximately 975 feet upstream of Furrow Road	•7,320
Douglas Creek South:	
Approximately 4,250 feet upstream of confluence with Monument Creek	•6,212
Just upstream of Holland Park Boulevard	•6,254
1,620 feet upstream of Arrowswest Drive	•6,428
Fisher's Canyon—Above Loomis Avenue:	
Approximately 3,650 feet upstream of Loomis Avenue	•5,913
Approximately 600 feet upstream of Cheyenne Meadows Road	•5,938
Fisher's Canyon-South Branch:	
At confluence with Fisher's Canyon-Above Loomis Avenue	•5,930
Approximately 140 feet upstream of Wycliffe Drive	•5,955
Pine Creek:	
At confluence with Pine Creek	•6,282
Just upstream of U.S. Interstate 25	•6,296
Approximately 600 feet upstream of Academy Boulevard	•6,441
Pine Creek Tributary:	
At confluence with Pine Creek	•6,367
Approximately 1 mile upstream of confluence with Pine Creek	•6,467
Sutherland Creek:	
Approximately 0.25 mile upstream of confluence with Fountain Creek	•6,277
Approximately 1,250 feet upstream of Crystal Hills Boulevard	•6,505

Maps are available for inspection at the El Paso County Regional Building Office, 101 West Costilla, Colorado Springs, Colorado.

Manitou Springs (City), El Paso County (FEMA Docket No. 7202)

Sutherland Creek:	
Approximately 1,200 feet upstream of confluence with Fountain Creek	•6,267
Approximately 1,250 feet upstream of Crystal Hills Boulevard	•6,505

Maps are available for inspection at the City of Manitou Springs City Hall, 606 Manitou Avenue, Manitou Springs, Colorado.

Monument (Town), El Paso County (FEMA Docket No. 7202)

Black Forest-Baptist Road Tributary:	
At Baptist Road	•7,020
Approximately 120 feet upstream of Baptist Road	•7,022
Crystal Creek:	
Approximately 70 feet upstream of confluence with Monument Lake	•6,923
Approximately 160 feet downstream of Interstate 25	•7,053
Dirty Woman Creek:	
At Mitchell Street	•6,886
Just downstream of Westword Lane	•6,995

Maps are available for inspection at the Town of Monument Town Hall, 166 Second Street, Monument, Colorado.

MISSOURI

Lamar Heights (Village), Barton County (FEMA Docket No. 7198)

North Fork Spring River:	
Approximately 1,500 feet downstream of the Burlington Northern Railroad	•938
Just upstream of First Street	•941

Maps are available for inspection at 128 West Tenth Street, Lamar, Missouri.

NEBRASKA

Lincoln (City), Lancaster County (FEMA Docket No. 7118)

Deadman's Run:	
At confluence with Salt Creek	•1,142
Just downstream of Huntington Avenue	•1,150
Just upstream of bike trail	•1,189
Just upstream of "O" Street	•1,220
Just downstream of "A" Street	•1,260

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD)
Maps are available for inspection at the City of Lincoln Planning Department, 555 South Tenth Street, Lincoln, Nebraska.	
NEW MEXICO	
Silver City (Town), Grant County (FEMA Docket No. 7198)	
San Vicente Arroyo:	
Approximately 400 feet downstream of State Route 90	*5,822
At confluence with Silva and Pinos Altos Creeks	*5,890
Pinos Altos Creek:	
At confluence with San Vicente Arroyo	*5,890
At 32nd Street	*6,035
Approximately 1,300 feet upstream of 32nd Street	*6,047
Tributary 7 to Pinos Altos Creek:	
At confluence with Pinos Altos Creek	*5,951
Approximately 700 feet upstream of confluence with Pinos Altos Creek	*5,961
Silva Creek:	
At confluence with San Vicente Arroyo	*5,890
Approximately 2,500 feet upstream of U.S. Route 180	*5,939
Approximately 7,000 feet upstream of U.S. Route 180	*5,990
Maps are available for inspection at the Town of Silver City Town Hall, Broadway Street, Silver City, New Mexico.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: February 24, 1997.

Richard W. Krimm,

Executive Associate Director, Mitigation Directorate.

[FR Doc. 97–5274 Filed 3–3–97; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL MARITIME COMMISSION

46 CFR Part 586

[Docket No. 96–20]

Port Restrictions and Requirements in the United States/Japan Trade

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission, in response to unfavorable conditions in the foreign oceanborne trade between the United States and Japan, is imposing $100,000 per-voyage fees on liner vessels operated by Japanese carriers calling at United States ports. The unfavorable conditions identified by the Commission involve restrictions on and requirements for use of Japanese ports. These conditions arise out of or result from laws, rules, and regulations of the Government of Japan.

DATES: *Effective Date:* April 14, 1997.

ADDRESSES: Requests for publicly available information or additional filings should be addressed to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Thomas Panebianco, General Counsel, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573, (202) 523–5740.

SUPPLEMENTARY INFORMATION:

Background

On November 6, 1996, the Commission proposed a rule, pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b) ("Section 19") to assess fees on Japanese liner operators in response to requirements and restrictions on the use of Japanese ports.[1] In the Notice of Proposed Rulemaking, 61 FR 58160, Nov. 13, 1996, ("Notice") the Commission stated that the Government of Japan appeared to discriminate against U.S. carriers by not licensing non-Japanese companies to perform stevedoring or terminal operating services. The Commission further found that the Government of Japan, through its licensing practices and other support, appeared to protect the dominant position of the Japan Harbor Transportation Association ("JHTA"), the trade organization that wields broad control over the Japanese harbor services industry. The Commission explained that JHTA's authority over Japanese harbor services stemmed from its administration of the prior consultation system, a process of mandatory discussions and pre-approvals for ocean carrier operational plans. In response to these conditions, the Commission proposed to levy a per-voyage fee of $100,000 each time a liner vessel owned or operated by one of the three Japanese liner operators serving U.S. trades (Kawasaki Kisen Kaisha, Nippon Yusen Kaisha, and Mitsui O.S.K. Lines) enters a U.S. port from abroad.

The closing date for comments, originally set for January 13, 1997, was extended to January 20, 1997, to allow parties to address the outcome of maritime consultations held between the United States Government and the Government of Japan on January 6–7, 1997.

Comments

American President Lines and Sea-Land Service

Joint comments strongly supporting the proposed rule were filed by American President Lines, Ltd. ("APL"), and Sea-Land Service, Inc. ("Sea-Land"), the two U.S. carriers operating in the Japan trade. Those lines stated:

> The premise on which [the proposed rule] rests is indisputable, namely, that the government of Japan has, through its discriminatory licensing system in the harbor services industry, created conditions unfavorable to shipping in the U.S.-Japan trade. As accurately recounted in the Supplementary Information to the Notice, the stevedoring and terminal services providers in Japan are licensed by the Ministry of Transport ("MOT") in a largely discretionary process and are exclusively Japanese entities. Also, [JHTA] functions as a trade association of such providers with the approval of MOT. The activities of the JHTA, in which MOT have long acquiesced, are characterized by blatant anti-competitive practices including those at issue in this and prior proceedings of the Commission.

APL/Sea-Land Comments at 1–2.

The U.S. carriers explained that the need for changes in Japanese port practices is becoming more urgent:

> In years past, when carriers performed their individual vessel and terminal operations, JHTA-imposed inefficiencies were merely an unwelcome set of phenomena. However, difficult market conditions in the trans-Pacific trade in general and in the U.S.-Japan trade in particular have forced carriers to enter into reciprocal slot charter and terminal rationalization arrangements in order to increase service competitiveness while lowering costs. Thus, when an economically-driven redeployment of the assets of several carriers operating under a strategic alliance is frustrated or delayed by the absolute control and abuse of power of the JHTA in Japan over every operational aspect of the alliance, the need for reform becomes acute.

APL/Sea-Land Comments at 4.

APL and Sea-Land also pointed out that other foreign carriers serving Japan are being adversely affected as well. They noted that the European Commission, at the behest of European carriers, has urged the Government of Japan for years to secure the elimination of port restrictions. It was also pointed out that in October of last year, the European Commission filed a formal complaint with the World Trade Organization regarding the prior consultation process and JHTA's "de facto monopoly on stevedoring in Japan."

The U.S. carriers opined that the amount of the sanction proposed by the Commission, $100,000 per voyage, is reasonable under the present circumstances. According to those lines, the sanction "is an assessment which is far less than the economic impact on the U.S. Carriers of the cumulative adverse effects of the prior consultation system, that is, the abuse of unbridled market power by the harbor services industry in Japan." APL/Sea-Land Comments at 3. However, the U.S. carriers suggested that, if JHTA were to retaliate against U.S. carriers in response to the actions taken by the Commission, either directly or through labor disturbances, the severity of sanctions should be increased substantially. Similarly, they urged that if the Government of Japan or its instrumentalities take any retaliatory action against the U.S. carriers in response to actions taken by the Commission, the severity of sanctions should also be increased.

The sanctions should be continued until U.S. carriers are licensed to perform stevedoring and terminal operating services co-extensive with those performed by licensed entities in Japan and by Japanese carriers and their affiliates in U.S. ports, the U.S. carriers recommended. Moreover, they argued that they must be free to operate as, or contract for the operation of, stevedores and terminal operators independent of JHTA's system of prior consultation. They also maintained that any remaining conspiracy by the Japan harbor services monopoly to injure or eliminate competition from the new licensees, or to deprive new licensees of a supply of skilled labor, would merit continuing sanctions.

APL and Sea-Land also reported on consultations between the Government of Japan and the United States in Washington on January 6–7, 1997, concerning prior consultation, licensing, and other Japanese port practices. According to the U.S. lines, the Japanese delegation to these talks recited the view that the practices in question were purely commercial matters, and the talks adjourned without an agreement of any kind having been reached.

International Chamber of Commerce

Comments in support of the proposed rule were submitted by the Commission on Maritime Transport of the International Chamber of Commerce ("ICC–CMT"). The comments indicated that the ICC–CMT is made up of representatives of all segments of the maritime sector, including carriers, shippers, forwarders and port interests from around the world.

The ICC–CMT raised the following concerns: (1) Limited competition in Japan's harbor services creates port costs which are arguably among the highest in the world; (2) carriers are subjected to a system of prior consultation with the JHTA which makes it difficult to effectively improve service or reduce costs; and (3) shippers are forced to absorb some of the very high costs which result from these restrictions. The comments expressed hope that the Government of Japan will see to it that port services are opened to competition, and indicated support for all governmental efforts to remove restrictions and assure free and fair trade in maritime transport services.

Japan Foreign Steamship Association

The Japan Foreign Steamship Association ("JFSA"), the organization of non-Japanese shipping lines in Japan, submitted a copy of a position paper urging specific and detailed changes in Japanese port policies and practices.

JFSA represents the interests of the foreign carriers (including the U.S. lines) in prior consultation and other dealings with JHTA. According to a cover letter included in its submission, JFSA's position paper was provided to the Director General of the Maritime Transport Bureau, Ministry of Transport ("MOT"), for consideration at a MOT-chaired meeting between JFSA, the Japanese Shipowners' Association, and JHTA, held January 29, 1997.

JFSA in its position paper proposed a number of changes to the prior consultation system. Under the JFSA plan, shipping lines would be permitted to consult or negotiate directly with their stevedoring companies, rather than be required to submit their operational plans to JHTA for approval. Stevedore companies would then consult (either on their own or, if they choose, through JHTA), with labor. JFSA also urged that the requirement for prior consultation be limited to "major issues," defined as arrangements for rationalization requiring changes in ports, terminals, or berths, that may seriously affect the employment of port laborers, rather than all operational changes, as is currently the case.

In addition, JFSA requested a commitment from MOT, JHTA and its member companies that prior consultations will not be used as a tool for allocating business among member companies, and that prior consultation will never be required for individual business transactions between carriers and stevedoring companies. JFSA proposed procedural rules for prior consultation, including time limits and requirements that decisions be explained in writing. According to JFSA, MOT should be responsible for implementation and enforcement of the revised process, and disputes over operation of the process should be referred to a standing arbitration body nominated by all parties and supervised by MOT.

JFSA urged that, within a reasonable time period, carriers be allowed to freely select stevedore and terminal service companies, and be allowed to obtain unrestricted general stevedore licenses at any or all Japanese ports. The present system of regulated rates, according to JFSA, should be abolished to allow for competitive bidding for port services. In addition, JFSA proposed the implementation of permanent Sunday work, including terminal and gate services, and 24-hour port operations.

According to JFSA, the proposed changes would "insure fair and equitable commercial operating conditions comparable to those now enjoyed in U.S. and European international trades by Japanese shipping companies." The changes were said to be necessary to secure fair and reasonable business practices, protect the significant investment of shipping lines, ascertain a satisfactory service environment for Japanese export and import industry, and maintain and assure sufficient work volume to satisfy labor requirements.

American Association of Exporters and Importers

The American Association of Exporters and Importers ("AAEI") stated that "the port practices in question supported by Japanese government regulations are trade restrictive practices working against the interests of U.S. (and all other) shippers." AAEI also acknowledged that the practices in question fall within the Commission's jurisdiction.

However, AAEI stated that it believes the practices at issue place Japan in

[1] Section 19 authorizes and directs the Commission to "make rules and regulations affecting shipping in the foreign trade not in conflict with law in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade, whether in any particular trade or upon any particular route or in commerce generally, including . . . terminal operations . . . which arise out of or result from foreign laws, rules, or regulations or from competitive methods or practices employed by owners, operators, agents, or masters of vessels of a foreign country . . . ."

The rules and regulations the Commission is authorized to make include limitation of sailings, suspension of carriers' tariffs or rights to use conference tariffs, suspension of carriers' rights to operate under FMC-filed terminal and other agreements, fees of up to $1,000,000 per voyage, or any other action deemed necessary and appropriate to adjust or meet the unfavorable condition. 46 U.S.C. app. 876(9).

violation of World Trade Organization ("WTO") rules, and followed that "the United States has both the obligation and the long term need to settle its trade disputes, in areas covered by WTO rules, through WTO dispute settlement channels." Accordingly, AAEI proposed a procedure whereby the Commission, before taking any action, would join with the Office of the United States Trade Representative to "satisfy themselves that these . . . port practices . . . are in violation of WTO rules." If so satisfied, AAEI would have the Commission take no action while the U.S. sought to resolve these matters through the WTO; otherwise, the agencies would jointly issue an explanation of why WTO rules did not apply, "in order to justify" FMC action.

AAEI also asked that the Commission perform an impact study of the costs to the U.S. business community of cargo diversion to Canadian ports which, according to AAEI, might occur as a result of the Commission's action.

Port of Portland

The Port of Portland, located in Portland, Oregon, raised three points concerning the proposed rule. First, it suggested that the Commission should clarify whether the $100,000 fee would be assessed on a "per port call" basis, or on a "per voyage" basis. Second, it suggested that the Commission consider and publish additional steps the Government of Japan might take to avert the imposition of sanctions. Finally, the Port of Portland expressed concern that the proposed sanctions could lead to the diversion of vessel calls to non-U.S. ports in Mexico and Canada. The Port of Portland urged the Commission to consider and publish alternative sanctions that would not create such a risk.

Japanese Shipowners' Association

The Japanese Shipowners' Association ("JSA") stated that it is an association domiciled in Japan of 147 shipping companies doing business both in the ocean worldwide trades and in Japan's domestic trades. The JSA indicated that it is "curious to know why our leading members are to be penalized where they are not accused of any misconduct and where the allegations in the Notice are as vague as they are groundless." JSA went on to state:

> Our understanding is that the Japanese Ministry of Transport has never received an application from a U.S. carrier, that the licensing law has not been administered to discriminate against the nationality of an applicant, that no MOT official was authorized to advise any U.S. carriers not to apply for a license and that, according to the Association's inquiry, no such advice was ever given by a responsible MOT official.

Unilateral sanctions proposed against entities having no responsibility could lead to only confusion, as well as to a precedent detrimental to the future of U.S./Japan trade relationships.

Mitsui O.S.K. Lines, Kawasaki Kisen Kaisha, and Nippon Yusen Kaisha

Opposition to Sanctions

Comments and a memorandum opposing the proposed rule were jointly filed by Mitsui O.S.K. Lines, Ltd. ("MOL"), Kawasaki Kisen Kaisha, Ltd. ("K-Line"), and Nippon Yusen Kaisha ("NYK"), the three Japanese liner carriers operating in the U.S. trades. Those lines, as an initial matter, stated that they are private companies, that they are not in a position to direct or control the policies and actions of the Ministry of Transport, and that they "deplore a statutory application which would punish us irrespective of the lawful character of our carrier operations in the Japan/U.S. oceanborne trades." MOL/K-Line/NYK Comments at 4.

The Japanese carriers indicated that they will be severely injured by the threatened sanctions. Based on 1996 vessel operations, during which sailings were said to have averaged 34 per month, imposition of the proposed $100,000 fee reportedly would cost the Japanese lines 3.5 to 4 million dollars per month in 1997, approximately 42 to 45 million dollars per year.

Licensing

The Japanese carriers challenged the Commission's proposed finding that the Ministry of Transport uses its licensing authority to restrict entry and to shield JHTA and its members from foreign competition. They asserted that the Government of Japan has never discriminated against U.S. carriers with regard to the issuance of licenses, and that MOT has never advised U.S. carriers on the matter of licensing or received an application from a U.S. carrier.

The Japanese carriers stated that there is no ownership restriction in the Port Transportation Business Law which would bar a U.S. carrier applicant based on nationality. According to MOL, NYK and K-Line, the supply-demand requirement in the law was enacted as an internal measure to promote tranquility at the waterfront; "while this restriction inherently serves to place a limit at some point on the number of licenses the ministry can grant, it is a limit when reached that would apply to any applicant regardless of its nationality." MOL/K-Line/NYK Memorandum at 2–3. They asserted that MOT has offered written assurance that a U.S. carrier's application "would be fairly and evenly adjudged under the same standards as Japanese applications. . . ." *Id.* at 2.

The Japanese carriers argued that the "basis" and "linchpin" of the Commission's proposed action is the "single undocumented assertion" that U.S. carriers have been shut out of the Japanese stevedoring market and advised not to bother to apply, and contended that no legal or factual support is presented to substantiate these findings. *Id.* at 2; MOL/K-Line/NYK Comments at 5. They urged the Commission to discontinue the proceeding on the basis that "sanctions under section 19 simply cannot be applied absent a demonstration by substantial evidence of discrimination against U.S. carriers." MOL/K-Line/NYK Memorandum at 4. They further asserted that the Commission violated section 553(b)(3)(c) of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(c), and contravened the carriers' protections of the Due Process Clause of the Fifth Amendment, by failing to disclose factual information such as the timing and circumstances under which inquiries regarding licenses were made, the names of relevant carrier and MOT officials, and accounts of the exchanges. The Japanese carriers urged the Commission to release any such details and to allow an opportunity for comment on them.

The Japanese carriers suggested that the Government of Japan is taking steps to address the licensing-related concerns raised by the Commission. They indicated that in December, 1996, MOT announced a proposal to abolish the licensing system over a three-to-five year period. Attached to the comments was a newspaper article outlining MOT's plan, indicating that prior to any action the proposal would be deliberated at the administrative reform committee and studied at the Council for Transport Policy. Furthermore, the article stated that, as a precondition for such a move, "measures for ensuring the stable management of ports are necessary." MOL/K-Line/NYK Comments, Attachment 3. However, the Japanese lines pointed out that MOT's announcement was met with opposition by waterfront labor unions, suggesting need for a period of time before the intended changes can be made.

Prior Consultation

The Japanese carriers read the Notice to propose that only the Government of Japan's licensing practices, and not prior consultation, contravene the standards set forth in section 19:

> [T]he Commission's Notice observes that it is the Ministry of Transport's discriminatory and restrictive licensing which would "appear" to constitute conditions unfavorable to shipping. Though critical of the procedural aspects of the Prior Consultation system and MOT's alleged exercise of authority as to permit JHTA to wield "unchecked authority" through the Prior Consultation process, we read the Notice as not concluding that the system itself is a condition which is unfavorable to shipping.

MOL/K-Line/NYK Comments at 10. Nevertheless, they maintained that the Commission has inaccurately characterized the prior consultation system.

MOL, NYK and K-Line suggested that the Commission failed to distinguish between the system of prior consultation itself, which they asserted enjoys the support of both Japanese and non-Japanese carriers, and the way it is administered, which they conceded is in need of reform. They reviewed the procedures for prior consultation:

> [M]atters related to innovated services which affect port laborers are negotiated first between the shipping company (or JSPC or JFSA) and JHTA and then JHTA and the harbor workers' Unions. Under the procedures followed since 1986, matters are proposed for prior consultation through the submission of a written application by the shipping company. * * * The initiation of this process is known as "pre-prior consultation" under which the matter proposed is considered at a meeting attended by JHTA's Chairman and some of its prior consultation committee members and the shipping company applicant.
>
> Once a matter passes pre-prior consultation and has been accepted by JHTA for Prior Consultation, it is deliberated between JHTA and the Unions, first, at the "Central" or national level and then at the local level. Under these procedures, therefore, there are no direct negotiations between shipping companies and the harbor worker unions, thus reducing the prospect of labor conflicts and confrontations.

MOL/K-Line/NYK Comments at 11–12.[2]

The Japanese lines suggested that the prior consultation system was developed to resolve the conflicting objectives of shipping companies and shoreside laborers and to avoid the debilitating confrontations of the past. They asserted that they are aware of no other system that offers a better prospect for labor peace. Pointing to the 1986 boycott of YS Line vessels described in the Notice, they claimed that waterfront unions support prior consultation and are willing to take whatever steps are necessary to defend it.

MOL, NYK and K-Line stated that over the past year parties began to address the flaws in the current system. They described negotiations between shipping lines and JHTA regarding transparency and simplification of procedures, and pointed to an agreement signed in August, 1996, confirming the necessity of prior consultation and establishing new procedures and time limits to accelerate the process.

The Japanese carriers also stated that the Commission did not properly characterize the role of MOT with regard to the prior consultation system. They contended that prior consultation is a private sector business practice, and that MOT has no interest in its continuation, other than labor peace and the smooth running of Japan's ports. According to the Japanese carriers, MOT's only involvement with the system has come when carriers have asked it to bring about the restoration, continuance, and improvement of the system. They maintained that MOT treats prior consultation negotiations as matters for the private sector, except when they break down, at which point MOT may become involved as a catalyst. This is because, according to MOL, NYK and K-Line, under Japanese labor laws, there is a policy of non-interference in employer-union bargaining.

The Japanese lines stated that the 1992 Ministerial View referred to in the Notice was not an endorsement of JHTA's activities; rather, it "merely called for respect for the existing system regarding the operations of existing container terminals which procedures had been privately negotiated by the parties." MOL/K-Line/NYK Comments at 19. The Japanese carriers also pointed out that MOT has endeavored to arrange meetings of interested carrier parties and JHTA with the aim of improving the prior consultation process.

Port and Terminal Interests

After the comment period closed, the Commission received a number of closely similar or identical comments from various port and terminal interests, including H&M International Transportation, Inc.; the Port of Seattle; the Port Authority of New York and New Jersey; the Jacksonville Port Authority; Cronos Containers Inc.; Ceres Terminals Inc.; Georgia Ports Authority; and the Port of Oakland.[3] These comments urged that the Commission stay final action, or reduce or revise the proposed sanctions. The commenters raised the concerns that the Japanese carriers would divert sailings to non-U.S. ports or "load center" operations at a single U.S. port. Several of these commenters suggested that it is unfair to penalize Japanese carriers for Japanese port conditions, when the carriers have invested millions of dollars in U.S. terminals, inland facilities, equipment, and ships. Jacksonville Port Authority expressed concerns that the rule would negatively affect the Japanese-flag auto carriers that call there.

Discussion

Licensing

The Japanese carriers appear to have taken the position, first, that the sole basis for the Commission's proposed finding of conditions unfavorable to shipping is the Government of Japan's reportedly restrictive and discriminatory licensing practices, and second, that MOT has never actually acted discriminatorily in issuing licenses. Therefore, they concluded, the proposed rule should be withdrawn. However, both aspects of the Japanese lines' argument are without foundation or merit.

It is clear from the Notice that the administration of the restrictive licensing requirement is not the sole unfavorable condition at issue in this proceeding. Rather, the Commission listed in section 586.2(a)(1–4) of the proposed rule, and explained in detail in the Supplementary Information, an extensive series of apparent unfavorable conditions. These conditions included MOT's refusal to grant U.S. carriers licenses, with the result that U.S. carriers have no choice but to submit their shoreside planning and operations to JHTA control; however, several other conditions were set forth as well, including JHTA's use of the prior consultation system to control competition in the harbor services market, impose restrictions on carrier operations, and force carriers to take on unnecessary stevedoring companies.

There is also little apparent basis for the Japanese carriers' challenges to the Commission's proposed finding that the Government of Japan's licensing processes are discriminatory and restrictive. The Japanese lines asserted that MOT, to their knowledge, never advised U.S. carriers on the matter of licensing or received an application from a U.S. carrier, that there are no

[2] "JSPC" refers to the Japanese Shipowners Ports Council, the component of the Japanese Shipowners' Association that deals directly with harbor service-related matters. JSPC often serves as the voice of the Japanese lines in prior consultation and other dealings with JHTA.

[3] The Commission has determined to accept these comments into the record.

nationality-based restrictions in the Port Transportation Business Law, and that MOT would review any new application without regard to nationality. However, these arguments focus entirely on purported procedures for obtaining a license, ignoring the practical bars to obtaining such a license that stem from well-known official Japanese policies. By emphasizing the form and substance of the licensing system, the Japanese lines disregard its discriminatory and restrictive effects and results, which are of primary concern to the Commission.

These official barriers to licensing U.S. carriers and other potential entrants to the stevedoring market, and their practical effects, were confirmed most recently in the U.S.-Japan maritime consultations on January 6–7, 1997. During these meetings, officials from the Departments of State and Transportation reportedly inquired as to how MOT would apply its supply and demand test to a stevedoring application filed by a large organization such as APL or Sea-Land.[4] After reviewing supply and demand factors to be considered, the delegation of the Government of Japan reportedly stated that, in general, Japanese ports are either balanced or supply is slightly larger than demand, that there is already too much competition, and that there are too many service providers already. The Japanese delegation was said then to have suggested that U.S. carriers buy an interest in an existing stevedore company or form a joint venture with such a company, so that the supply-demand balance could be maintained. Given the mandatory nature of the supply-demand test, the position articulated by the Government of Japan leads inescapably to the conclusion that licenses will not be issued to U.S. carriers. Under such circumstances, it would seem futile for U.S. carriers to go to the considerable time and expense of preparing and submitting formal applications, absent a clear shift in policy by the Government of Japan.

Given these conditions, even if the Government of Japan's licensing standard is administered in a nationality-neutral manner, it is still discriminatory and protectionist in effect. By barring new entrants, the licensing system protects existing operators, all of whom are Japanese firms, from competition from U.S. or other foreign companies. It also shields JHTA from competition from new non-JHTA entrants, thereby protecting that group's dominant position.

The Japanese carriers invite the Commission to be sidetracked on an evidentiary dispute regarding whether MOT officials told U.S. carriers that licenses would not be granted, or told them not to apply, or whether involved officials were properly authorized. Such a diversion is unwarranted, however. First, statements by MOT officials that licenses would not be granted are entirely consistent with the position recently articulated by the Government of Japan that supply currently balances or exceeds demand in Japanese ports. More importantly, however, the Commission's concerns regarding licensing are based on the system's restrictive and protectionist effects, rather than the timing or details of any particular bureaucratic exchange.[5]

MOT's recently announced proposal to abolish its current licensing system does not warrant deferral of further Commission action. MOT proposed that the change be made in three to five years, that it be subject to review and consultation by a number of governmental bodies, and that other unspecified measures would be enacted to ensure the "stable management" of ports. While elimination of the licensing requirement would address a number of the Commission's concerns, the conditions attaching to the MOT proposal and its over-the-horizon timetable call into question whether, and under what conditions, such reforms might actually be made. If MOT is indeed of the opinion that more entrants and increased competition would be appropriate in the port services sector, its broad administrative discretion could be used to issue new stevedoring licenses to U.S. carriers and other qualified applicants; any action or plan substantially short of that would appear to be an inadequate resolution of these issues.

Prior Consultation

There is no support for the Japanese carriers' broad assertion that the Commission "fails accurately to describe or comprehend the prior consultation system." MOL/K-Line/NYK Comments at 10. The Japanese lines failed to identify any specific factual errors in the Commission's account and, in fact, their description of prior consultation is consistent with that of the Notice, differing only in focus and emphasis on historical context. The U.S. carriers, in contrast, ardently supported the proposed findings in the Notice regarding prior consultation.

As the Japanese carriers explained, the prior consultation system involves "two party/two party" negotiations for all planned changes in shipping line operations involving Japanese ports. The first "two party" negotiation is between a shipping line and JHTA, while the second is between JHTA and the waterfront unions. As was described in the Notice, virtually all carrier operational changes must be submitted for prior consultation.[6] If a carrier wishes to make such a change and it is deemed important by JHTA, a representative of the line, often accompanied by an official of the stevedoring company it uses, must explain its request to the JHTA Chairman. At this stage (sometimes referred to as "pre-pre-prior consultation"), the JHTA Chairman may refuse to accept the request, or require changes or impose conditions for acceptance.

If the carrier's request is acceptable to the JHTA Chairman, it is taken up at a formal "pre-prior consultation" meeting between the carrier and its stevedore, on the one hand, and JHTA on the other. If the request is accepted at this stage, the matter is deliberated at formal prior consultation meetings between JHTA and union officials, both in Tokyo and at the local level. It appears that the formal pre-prior consultation and prior consultation meetings are merely formalities; if a carrier's request is unacceptable to JHTA, it simply is not accepted for consideration at the formal prior consultation meetings. In contrast, if a request is accepted at the initial stage by the JHTA Chairman, it is almost assured to be approved at the formal meetings.

JHTA's processes are characterized by a total lack of transparency. There are almost no written rules, either substantive or procedural, nor are there written reasons for decisions or an appeal process. JHTA appears to have absolute discretion over the terms and conditions imposed in the prior consultation process.

This arrangement, whereby JHTA can arbitrarily permit or deny carriers access to the prior consultation process, gives JHTA extraordinary leverage. If JHTA refuses to accept a proposed matter for prior consultation, any attempt by the carrier or its stevedore to implement the plan is likely to be met with work stoppages or other labor disruptions. Carriers are left with no choice but to acquiesce to any conditions imposed by JHTA. In a recent conversation with a U.S. Government official, the JHTA Chairman gave a clue as to the extent of his influence and discretion, reportedly stating that he enjoys "absolute power" to influence harbor-related matters in Japan.

It is uncontroverted that JHTA uses this leverage (that is, its unchecked authority to accept or reject carrier plans for pre-prior consultation) to prevent competition and maintain an agreed upon allocation of work among JHTA member companies. This conclusion is well-established in the responses of several lines to the Information Demand Orders, and was further supported in the U.S. lines' comments. For example, JHTA has prevented carriers and consortia from freely switching terminals or stevedores, and from consolidating and rationalizing operations. Also, it has refused to grant prior consultation requests unless carriers agreed to employ additional unnecessary stevedoring companies or contractors. Such practices prevent any real competition and undermine attempts to increase the efficiency of port operations, with the result that Japan has port costs that far exceed those of its Asian neighbors and other major trading nations.

The Japanese carriers raised several arguments in defense of the prior consultation system. First, they asserted that the system itself enjoys universal support among carriers. This, however, is clearly incorrect, as JFSA and the U.S. carriers advocate substantial revisions in the current system. Their proposed changes would go to the heart of the Commission's concerns, removing JHTA's free hand to approve or deny carrier requests, restrict competition, and allocate stevedoring work. The improvements advanced by the non-Japanese lines would, among other things, allow carriers to arrange their operations normally with their chosen stevedoring and terminal companies, as is the case in other major maritime nations. Under the JFSA proposal, JHTA could still maintain a legitimate collective bargaining role in negotiations between employers and labor unions, but would no longer be a "black box" issuing unappealable directions as to how carriers' shoreside operations should be conducted.

The Japanese carriers stated that the system was created to maintain labor stability and avoid the need for face to face confrontations between carriers and unions over the inauguration of "innovated vessels." They pointed out that the inauguration of container service, which occurred in the 1960's and 70's, raised serious issues and led to disruption in waterfront labor relations in many maritime nations, including the U.S. They suggested that prior consultation is still necessary to avoid the disruptions of the past, and stated that they know of no other system that would better guarantee labor stability.

These reasons, however, do not justify the anticompetitive practices currently engaged in by JHTA. At no point has the Commission ever questioned the appropriateness of JHTA's role as an intermediary between employers and unions, or the practice of collective bargaining for waterfront labor, nor has it challenged any employer's right to designate JHTA as its representative in such negotiations. The Commission's concern lies with JHTA's autocratic control of carrier operations, suppression of competition, allocation of work among members, extraction of fees and other concessions, and retaliation against its detractors. None of these factors is a necessary or logical precondition to JHTA's collective bargaining or labor relations role, and none merits a policy of labor-related "non-interference" by the Government of Japan. Rather, these measures only serve to consolidate JHTA's power and shield its member companies from market forces.

While JHTA itself is an organization of harbor service providers, its abuses are not purely private sector matters. As explained in detail in the Notice and Information Demand Orders, in accordance with Japanese laws and regulations, JHTA operates with the permission of, and under the supervision of, MOT, which can annul JHTA's incorporation if it acts contrary to the public interest. MOT is authorized to give oversight or guidance relating to the prior consultation system, and has in fact intervened repeatedly, as confirmed by the Japanese carriers, to bring about the "restoration, improvement, and continuance" of the system. Moreover, MOT is vested with broad regulatory authority over JHTA member companies, including licensing authority and the right to review and disapprove rates and business plans. The Japanese lines' protestations that MOT generally takes no role in the day-to-day operations of prior consultation, and that it has no vested interest in its continuation, are immaterial. Given the Government of Japan's regulatory and oversight authority, JHTA and its member firms could not continue to operate in the current manner without the Government of Japan's ongoing support and approval.

The Japanese lines suggested that recent changes in prior consultation have eliminated the U.S. carriers' concerns. While any improvements are praiseworthy, these recent changes have been aimed only at adding transparency and speed to the process. They have done nothing to address the core problems of the system, such as JHTA's absolute authority to block carrier plans at the pre-pre-prior consultation stage, and its use of this authority to eliminate competition and extract other concessions.

Procedural Issues

The Japanese carriers argued that this proceeding is procedurally defective, and that their due process rights have been violated, because they have not had an opportunity to review the responses submitted by other carriers to the Commission's 1995 Information Demand Orders. They asserted that it was improper for the Commission to rely on these materials to reach the proposed findings set forth in the Notice without making them available to the Japanese carriers.

These procedural challenges are without basis. Confidentiality of submissions is explicitly provided for in the statute; section 19(8) states: "Notwithstanding any other law, the Commission may refuse to disclose to the public a response or other information provided under the terms of this section." The confidentiality provided by this section is necessary to ensure that the Commission receives the most complete and accurate information possible. Disclosure in some cases could lead to retribution against respondents, seriously discouraging candid submissions. These points apparently were not lost on the Japanese carriers, as they requested confidential treatment for their entire Information Demand Order submissions.[7]

[4] Section 19(12) of the Merchant Marine Act, 1920, states: "the Commission may consult with, seek the cooperation of, or make recommendations to other appropriate agencies prior to taking any action under this section."

[5] Moreover, we are skeptical that the Japanese carriers, which in response to the Commission's 1995 Information Demand Orders pled unawareness of virtually all matters concerning MOT's licensing practices, can now credibly attest to the details of MOT officials' past conversations regarding licensing.

[6] As noted in the proposed rule, these include: changes in berth, route, or port calls; inauguration of new services or new vessels; calls by non-container ships at container berths; changes in vessel size or technology which affect stevedoring or terminal operations; temporary assignment of vessels as substitutes or the renaming of vessels; rationalization agreements between carriers involving vessel sharing or berthing changes; the assignment of a stevedoring contractor or terminal operator to a carrier and any subsequent change in assignment; requests for Sunday work; changes in mandatory weighing and measuring arrangements; or any other changes which affect stevedoring or terminal operations.

[7] The "[n]otwithstanding any other law . . ." language in the statute undermines the Japanese carriers" argument that full disclosure is required by the Administrative Procedure Act. It would defy logic and common tenets of statutory construction to suggest that Congress added the non-disclosure provision in 1990 with the intention that it be

Continued

The Japanese carriers' assertion that their due process rights have been violated also lacks merit. In *American Association of Exporters and Importers* v. *U.S.*, the Court of Appeals for the Federal Circuit rejected statutory and constitutional challenges raised by an importers" and exporters" group to actions of the Committee for the Implementation of Trade Agreements, a federal agency, regulating and imposing quotas on trade in textiles. The court found no merit in appellant's claim that the agency violated importers' due process rights by denying them the opportunity to be heard prior to the imposition of quotas. In reasoning applicable to this proceeding, the court held that "a prerequisite for due process protection is some interest worthy of protecting; 'We must look to see if the interest is within the [Constitution's] protection of liberty and property.'" 751 F.2d at 1250, quoting *Board of Regents* v. *Roth*, 408 U.S. 564, 571 (1972). The court reasoned that a protectable interest must be more than a unilateral expectation; rather, those seeking constitutional protection under the due process clause must point to a "legitimate claim of entitlement" prior to any consideration of the government's constitutional obligations. The court held that the mere subjective expectation of a future business transaction does not rise to the level of an interest worthy of protection, and that "[n]o one has a protectable interest in international trade." *Id.*, citing *Arnett* v. *Kennedy*, 416 U.S. 134, 167 (1974); *Perry* v. *Sinderman*, 408 U.S. 593, 603 (1972); *Norwegian Nitrogen Co.* v. *United States*, 288 U.S. 294 (1933).

The Japanese carriers' expectation to be permitted, in the future, to operate in the U.S. foreign trades free of fees or charges therefore does not rise to the level of an interest in property worthy of constitutional protection. Accordingly, there can be no finding that the Japanese carriers' due process rights were violated.

There also is no merit to the Japanese carriers' argument that the instant proceeding is an "adjudication" and that as such they are entitled to additional procedural protections. The Commission's notice did not propose findings of unlawful conduct on the part of these three individual companies. Rather, it proposed findings that there exist conditions unfavorable to shipping in the U.S.-Japan trade, arising out of Japanese laws, rules, and regulations. In response, it proposed an across-the-board fee of $100,000, prospectively establishing the terms and conditions by which all Japanese carriers may operate liner vessels in the U.S. trades. The character of the proceeding is not transformed by the fact that the Commission, drawing on its trade monitoring resources, preliminarily identified in the Notice those carriers that appeared to fall into the subject class. Indeed, should it come to the Commission's attention that other Japanese carriers are operating liner services in the U.S. trades, the final rule will be amended to include them. *See* Docket No. 91–24, *Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Korea Trade*—Amendment to Final Rule, 58 FR 7988 (1993) (adding a Korean carrier that had newly entered the trade to a list of lines subject to sanctions).

Port and Terminal Concerns

The Port of Portland asked that the Commission clarify whether the $100,000 fee would be levied "per-voyage" or "per-port call." As set forth in the proposed rule, the fee would be assessed on a per-voyage basis; that is, after a line first calls in the U.S. from abroad and is assessed the $100,000 fee, it would not be subject to additional fees for each successive U.S. port call on that voyage. This treatment would seem to eliminate the concern that the fee could lead to Japanese lines dropping or consolidating port calls in the U.S. Also, in response to Jacksonville Port Authority's concerns, we would point out that the rule applies only to container-carrying liner vessels, not dedicated car-carriers.

A number of commenters requested that the Commission address the possibility that Japanese carriers will cancel sailings or shift services to Canadian or Mexican ports in response to the fee. Such actions would appear improbable, and have not, in any event, been suggested by the Japanese carriers thus far in this proceeding. The $100,000 fee represents only a small percentage of the Japanese carriers' gross per-voyage revenues in the U.S. trades.[8] Given carriers' high fixed costs, it is unlikely that they would cancel services, foregoing multi-million dollar revenues, in order to avoid paying the fee. Similarly, it does not appear that the level of the fee would justify the high costs of shifting vessel calls to foreign ports. Such moves would require lines to make costly changes in contracts and arrangements for, among other things, terminal facilities, stevedoring, warehousing and storage, inland transportation, sailing schedules, and foreign and U.S. customs clearance. Nevertheless, the Commission will closely monitor and evaluate cost, revenue, and service level data to guard against adverse effects on U.S. ports, terminals, and shippers.

The Commission is not swayed by the argument, raised by a number of port commenters, that it would be unfair to impose fees on Japanese carriers when they are not responsible for Japanese port conditions and have invested millions of dollars in U.S. port facilities. Indeed, this argument highlights the inequity in treatment afforded U.S. lines in Japan versus that afforded Japanese carriers in this country, as U.S. carriers have had no opportunity to make similar investments in owning and operating Japanese terminal facilities. Japanese carriers have enjoyed continued success in the American market, enjoying high revenues and substantial growth in liner services and terminal operations, in large part due to the favorable and open business climate created by the laws, rules, and regulations of the United States. However, Japanese firms cannot expect to continue to reap the benefits of favorable U.S. transportation policies if such treatment is not reciprocated by the Government of Japan.

Recent Developments

As noted in the comments, a meeting reportedly was held on January 29, 1997, involving JHTA, non-Japanese carriers (represented by JFSA), and Japanese carriers (represented by JSPC). The meeting was arranged and chaired by MOT for the purpose of discussing possible reforms to the prior consultation system. Apparently, at the meeting JFSA presented a proposal based on the position paper submitted to the Commission. No proposals were submitted by JSPC or JHTA. MOT did not take a position on the JFSA proposal. We understand that another such meeting was held February 18, 1997; however, by all accounts, no progress was made.

It appears that the Government of Japan has modified its stance somewhat with regard to JHTA and prior consultation. Rather than insisting that these are purely private matters outside of its control, it now appears to be acknowledging that the system has serious problems and indicating that it will endeavor to bring about a solution. However, thus far MOT's only action has been to arrange meetings, in the hopes that JHTA and the carriers will find a solution among themselves. The Government of Japan has suggested to U.S. officials that more time to reach a solution is needed.

MOT, however, has had ample time to address the restrictive conditions that exist in its ports. The instant controversy did not begin with the issuance of the Commission's Information Demand Orders or proposed rule. The U.S. Government and other major trading nations have been informing the Government of Japan repeatedly and strenuously for several years that its port policies and practices are unacceptable. In October of 1995, the Commission clearly indicated that these problems may be serious enough to warrant sanctions under Section 19. However, the Government of Japan simply maintained that the disputed practices were a matter for the private sector. While it is encouraging that the Government of Japan has finally begun acknowledging the seriousness of these matters, and meeting with involved parties, these steps do not go far enough now to warrant a stay of Commission action.

It appears unlikely, moreover, that a resolution to the current problems involving prior consultation will be reached through commercial negotiations limited to carriers and JHTA. At issue in this proceeding are, among other things, JHTA's dominance of the stevedoring industry, its control of the prior consultation system, and its use of that system to force changes and extract concessions from carriers. It appears, in sum, that JHTA has boundless negotiating leverage, and the carriers, especially foreign carriers, have none. Under such conditions, it is improbable that JHTA will simply volunteer to relinquish its overarching control over port services. Rather, it appears that only decisive measures by the Government of Japan can bring about meaningful reforms.

Demonstrating this point, JHTA recently threatened U.S. Government officials with massive retaliation against U.S. carriers if the Commission does not withdraw its proposed rule. Earlier this month, the JHTA Chairman reportedly told U.S. officials that, unless the threat of FMC sanctions against Japanese carriers is removed, he "will not let any U.S. ships come into Japanese ports." Stating that it would be impossible to resolve issues with sanctions looming, he announced that he intends to suspend prior-consultations for U.S. shipping firms, and possibly European firms as well, if the proposed rule is not withdrawn. Such threats were reportedly repeated at the February 18, 1997, meeting between JHTA and the carrier groups.

The JHTA Chairman's threats confirm and validate the need for immediate action in this area. That JHTA could recklessly threaten to disrupt the U.S.-Japan oceanborne trade, causing severe commercial harm to U.S. carriers, shippers, and international commerce, and that it has the apparent will and means to carry out such threats, strongly supports and justifies a finding of conditions unfavorable to shipping. These are clearly not private sector matters; the responsibility lies with the Government of Japan to eliminate the conditions which have left international trade so vulnerable to JHTA's self-serving caprice.

Final Rule

Based on the foregoing, the Commission concludes that a finding of conditions unfavorable to shipping in the U.S.-Japan trade is warranted. Accordingly, the Commission is issuing a final rule levying a fee of $100,000 each time a container-carrying liner vessel owned or operated by a Japanese carrier enters a U.S. port from abroad, assessed in the manner set forth in the proposed rule. This final rule will become effective April 14, 1997.[9]

The Commission is authorized to assess a per-voyage fee of up to one million dollars to adjust or meet conditions unfavorable to shipping in the foreign trade. At this time, a $100,000 fee is an appropriate and measured response to the conditions identified herein. However, if these issues are not addressed in a timely fashion, the level of this fee will be increased.

In addition, the Commission is gravely concerned about the possibility of retaliation against U.S. carriers for the actions and positions taken by the Commission and the United States Government. The validity of these concerns, voiced as well by the U.S. carriers in their comments, was confirmed by the repeated threats of JHTA officials. Therefore, as indicated in the final rule, the Commission has determined that the level of the fee will be increased upon a finding that the Government of Japan, JHTA, or related bodies have retaliated against U.S. carriers. Such a finding may be made expeditiously upon review by the Commission of information collected from carriers, U.S. Government agencies, or other sources, without the need for additional notice and comment. The level of the fee increase will be commensurate with the economic harm to U.S. carriers as a result of the retaliation. Similarly, should a finding of retaliation be made prior to the effective date of the final rule, the rule will be amended to become effective immediately.

List of Subjects in 46 CFR Part 586

Cargo vessels, Exports, Foreign relations, Imports, Maritime carriers, Penalties, Rates and fares, Tariffs.

Therefore, pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b), as amended, Reorganization Plan No. 7 of 1961, 75 Stat. 840, and 46 CFR Part 585, Part 586 of Title 46 of the Code of Federal Regulations is amended as follows:

1. The authority section for Part 586 continues to read as follows:

Authority: 46 U.S.C. app. 876(1)(b); 46 U.S.C. app. 876(5) through (12); 46 CFR Part 585; Reorganization Plan No. 7 of 1961, 26 FR 7315 (August 12, 1961).

2. Section 586.2 is added to read as follows:

§ 586.2 Conditions unfavorable to shipping in the United States/Japan trade.

(a) *Conditions unfavorable to shipping in the trade.* The Federal Maritime Commission ("Commission") has identified the following conditions unfavorable to shipping in the U.S.-Japan trade, arising out of or resulting from laws, rules, or regulations of the Government of Japan:

(1) Shipping lines in the Japan-U.S. trades are not allowed to make operational changes, major or minor, without the permission of the Japan Harbor Transportation Association ("JHTA"), an association of Japanese waterfront employers operating with the permission of, and under the regulatory authority and ministerial guidance of, the Japan Ministry of Transport ("MOT").

(2) JHTA has absolute and unappealable discretion to withhold permission for proposed operational changes by refusing to accept such

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vitiated by the general provisions of the pre-existing APA. In addition, we would point out that the section cited by the Japanese lines includes an exception "to the extent there is involved . . . [a] foreign affairs function of the United States." 46 U.S.C. § 553(a)(1); *see American Association of Exporters and Importers* v. *U.S.*, 751 F.2d 1239 (Fed. Cir. 1985).

[8] For example, for an average-sized vessel in the Asia-U.S. trades (i.e., a vessel with 3000 20-foot container capacity operating three-quarters full) the FMC fee would cost a carrier about $45 per container. In contrast, a carrier collects freight charges averaging $1,836 per container in the Japan-U.S. trades, and $2,250 from the China, Hong Kong, and Taiwan regions, according to FMC rate indices. A carrier will collect freight of over $4 million for one sailing of one average-sized vessel from Japan to the U.S., and over $5 million from the China range to the U.S., not including revenues from the return or onward voyage.

[9] Accordingly, the Motion to Withdraw Proposed Rule and Discontinue the Proceeding, filed February 12, 1997, by MOL, NYK, and K-Line, is denied.

proposals for "prior consultation," a mandatory process of negotiations and pre-approvals involving carriers, JHTA, and waterfront unions.

(3) There are no written criteria for JHTA's decisions whether to permit or disallow carrier requests for operational changes, nor are there written explanations given for the decisions.

(4) JHTA uses and has threatened to use its prior consultation authority to punish and disrupt the business operations of its detractors.

(5) JHTA uses its authority over carrier operations through prior consultation as leverage to extract fees and impose operational restrictions, such as Sunday work limits.

(6) JHTA uses its prior consultation authority to allocate work among its member companies (whose rates and business plans are subject to MOT approval), by barring carriers and consortia from freely choosing or switching operators and by compelling shipping lines to hire additional, unneeded stevedore companies or contractors.

(7) The Government of Japan administers a restrictive licensing standard which blocks new entrants from entering into the stevedoring industry in Japan. Given that all currently licensed stevedores are Japanese companies, and all are JHTA members, this blocking of new entrants by the Government of Japan shields existing operators from competition, protects JHTA's dominant position, and ensures that the stevedoring market remains entirely Japanese.

(8) Because of the restrictive licensing requirement, U.S. carriers cannot perform stevedoring or terminal operating services for themselves or third parties in Japan. In contrast, Japanese carriers (or their related companies or subsidiaries) currently perform stevedoring and terminal operating services in Japan and the United States.

(b) *Definitions*—(1) *Japanese carrier* means Kawasaki Kisen Kaisha, Ltd., Mitsui O.S.K. Lines, Ltd, and Nippon Yusen Kaisha.

(2) *Designated vessel* means any container-carrying liner vessel owned or operated by a Japanese carrier (or any subsidiary, related company, or parent company thereof).

(c) *Assessment of fees.* A fee of one hundred thousand dollars is assessed each time a designated vessel is entered in any port of the United States from any foreign port or place.

(d) *Report and payment.* Each Japanese carrier, on the fifteenth day of each month, shall file with the Secretary of the Federal Maritime Commission a report listing each vessel for which fees were assessed under paragraph (c) during the preceding calendar month, and the date of each vessel's entry. Each report shall be accompanied by a cashier's check or certified check, payable to the Federal Maritime Commission, for the full amount of the fees owed for the month covered by the report. Each report shall be sworn to be true and complete, under oath, by the carrier official responsible for its execution.

(e) *Refusal of clearance by the collector of customs.* If any Japanese carrier subject to this section shall fail to pay any fee or to file any report required by paragraph (d) of this section within the prescribed period, the Commission may request the Chief, Carrier Rulings Branch of the U.S. Customs Service to direct the collectors of customs at U.S. ports to refuse the clearance required by 46 U.S.C. app. 91 to any designated vessel owned or operated by that carrier.

(f) *Denial of entry to or detention at United States ports by the Secretary of Transportation.* If any Japanese carrier subject to this section shall fail to pay any fee or to file any report required by paragraph (d) of this section within the prescribed period, the Commission may request the Secretary of Transportation to direct the Coast Guard to:

(1) Deny entry for purpose of oceanborne trade, of any designated vessel owned or operated by that carrier to any port or place in the United States or the navigable waters of the United States; or

(2) Detain that vessel at the port or place in the United States from which it is about to depart for another port or place in the United States.

(g) *Adjustment in fees to meet retaliatory measures.* Upon a finding by the Commission that U.S. carriers have been subject to discriminatory fees, restrictions, service disruptions, or other retaliatory measures by JHTA, the Government of Japan, or any agency, organization, or person under the authority or control thereof, the level of the fee set forth in paragraph (c) shall be increased. The level of the increase shall be equal to the economic harm to U.S. carriers on a per-voyage basis as a result of such retaliatory actions, provided that the total fee assessed under this section shall not exceed one million dollars per voyage.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 97–5233 Filed 3–3–97; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 59

[CC Docket 96–237, FCC 97–36]

Implementation of Infrastructure Sharing Provisions in the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On February 7, 1996, the Commission released *Implementation of Infrastructure Sharing Provisions in the Telecommunications Act of 1996,* Report and Order, CC Docket 96–237, FCC 97–36, to implement new section 259 of the Communications Act of 1934, as added by the Telecommunications Act of 1996. Section 259 generally requires incumbent local exchange carriers (incumbent LECs) to make available "public switched network infrastructure, technology, information, and telecommunications facilities and functions" to "qualifying carriers" that are eligible to receive federal universal service support but that lack economies of scale or scope. Wherever possible, the Commission adopts general rules that restate the statutory language. This approach, which relies in large part on private negotiations among parties to satisfy their unique requirements in each case, will help ensure that certain carriers who agree to fulfill universal service obligations pursuant to section 214(e) can implement evolving levels of technology to continue to fulfill those obligations.

EFFECTIVE DATE: The requirements and regulations established in this decision shall become effective upon approval by the Office of Management and Budget (OMB) of the new information collection requirements adopted herein, but no sooner than April 3, 1997. The Commission will publish a document in the **Federal Register** announcing the effective date of these regulations following OMB's approval of the information collections in this decision.

FOR FURTHER INFORMATION CONTACT: Thomas J. Beers, Deputy Chief, Industry Analysis Division, Common Carrier Bureau, at (202) 418–0952, or Scott Bergmann, Industry Analysis Division, Common Carrier Bureau, at (202) 418–7102. For additional information concerning the information collections in the Report and Order contact Dorothy Conway, at (202) 418–0217, or via the Internet to dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, *Implementation of Infrastructure Sharing Provisions in the Telecommunications Act of 1996* adopted February 6, 1997 and released February 7, 1997 (CC Docket 96–237, FCC 97–36). The full text of this Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, Washington, D.C. 20554. This *Report and Order* contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed and/or modified information collections contained in this proceeding. The complete text also may be purchased from the Commission's copy contractor, International Transcription Service, Inc. (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

PAPERWORK REDUCTION ACT: As required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, the NPRM invited the general public and the Office of Management and Budget (OMB) to comment on proposed information collection requirements contained in the NPRM.[1] On January 22, 1997, OMB approved the proposed information collection requirements, as submitted to OMB, in accordance with the Paperwork Reduction Act.[2]

In this Report and Order, we adopt new or modified information collection requirements that are subject to OMB review. These requirements are contingent upon approval by OMB. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this Order, as required by the PRA. Written comments by the public on the information collections are due 30 days after date of publication in the **Federal Register**. OMB notification of action is due May 5, 1997. Comments should address: (1) whether the new or modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–0755.

Title: Policy and Rules Concerning the Implementation of Infrastructure Sharing Provisions in the Telecommunications Act of 1996, CC Docket 96–237.

Form Number: Not Applicable.

Type of Review: Revision.

Respondents: Business or other for profit, including small businesses.

Burden Estimate:

Section/title	Respondents	Est. time per resp. (hrs.)	Frequency (per year)	Annual burden (hrs.)
(1) Section 259(b)(7) filing of tariffs, contracts or other arrangements	75	1	5	375
(2) Section 259(c) information concerning deployment of new services and equipment	75	2	12	1800
(3) Sixty day notice before termination of agreement	75	1	5	150

Total Annual Burden: 2,325 total hours.

Estimated Costs Per Respondent: $0.00.

Needs and Uses: The information collections for which approval is sought are contained in new section 259 ("Infrastructure Sharing") of the Communications Act of 1934 (the Act), as amended. First, the information collections adopted pursuant to section 259(c) in this *Report and Order* will provide notice to third parties (qualifying carriers) of changes in the incumbent local exchange carrier's network that might affect the parties' ability to fully benefit from section 259 agreements. Second, the information collected pursuant to section 259(b)(7) will make available for public inspection any tariffs, contracts or other arrangements showing the conditions under which the incumbent LEC is making available public switched network infrastructure and functions pursuant to section 259. Third, the sixty day notice of termination requirement will ensure that third parties (qualifying carriers) will be able to anticipate service disruptions and to inform their customers accordingly. Fourth, placing the burden of proof on providing incumbent LECs to show that section 259 agreements have become economically unreasonable is appropriate because such providing incumbent LECs are seeking to terminate the agreement and are in control of the necessary information. Failing to collect the information would violate the language and the intent of the 1996 Act to ensure that access to the evolving, advanced telecommunications infrastructure would be made broadly available in all regions of the nation at just, reasonable and affordable rates.

Summary of the Report and Order

1. In this Report and Order, part of the Commission's implementation of the Telecommunications Act of 1996,[3] we adopt rules implementing new section 259 of the Communications Act of 1934, as amended.[4] Section 259 generally requires an incumbent local exchange carrier (incumbent LEC)[5] to make available "public switched network infrastructure, technology, information, and telecommunications facilities and functions" to "qualifying carriers" that are eligible to receive federal universal service support but that lack economies of scale or scope.[6] In contrast to sections 251 and 252, which grant rights to requesting carriers irrespective of whether the requesting carrier intends

[1] NPRM at ¶ 55.

[2] *Notice of Office of Management and Budget Action* (OMB No. 3060–0755) (January 22, 1997).

[3] Telecommunications Act of 1996, Public Law 104–104, 110 Stat. 56 (1996 Act).

[4] The Communications Act of 1934, as amended, 47 U.S.C. §§ 259, *et seq.* (1934 Act or Act).

[5] Section 251(h) of the Communications Act defines incumbent local exchange carriers as follows:

(1) DEFINITION—For purposes of this section, the term 'incumbent local exchange carrier' means, with respect to an area, the local exchange carrier that—

(A) on the date of enactment of the Telecommunications Act of 1996, provided telephone exchange service in such area; and

(B)(i) on such date of enactment, was deemed to be a member of the exchange carrier association pursuant to section 69.601(b) of the Commission's regulations (47 CFR 69.601(b)); or

(ii) is a person or entity that, on or after such date of enactment, became a successor or assign of a member described in clause (i).

47 U.S.C. § 251(h).

[6] 47 U.S.C. § 259. *See also* 47 U.S.C. § 214(e).

to compete with the incumbent LEC, section 259 does not permit "qualifying carriers" to use an incumbent LEC's public switched network infrastructure, technology, information, and telecommunications facilities and functions obtained pursuant to section 259 to offer services or access to the incumbent LEC's customers in competition with the incumbent LEC. Section 259(a) directs the Commission to prescribe regulations that implement this requirement within one year after the date of enactment of the 1996 Act, i.e., by February 8, 1997.[7] Pursuant to the *Notice of Proposed Rulemaking* that initiated this proceeding,[8] we have elected, overall, to articulate general rules and guidelines to implement section 259.[9]

2. We determine that section 259 is complementary to the other sections of the 1996 Act and is a "limited and discrete" provision designed to promote universal service in areas that in many cases, at least initially, will be without competitive service providers, but without restricting the development of competition.[10] Essential differences in the language of sections 259 and 251 make clear that these provisions address fundamentally different situations. First, in accord with section 259(b)(6), section 259 applies only in instances where the qualifying carrier does not seek to use shared infrastructure to offer certain services within the incumbent LEC's telephone exchange area, whereas section 251 applies irrespective of whether new entrants seek to provide local exchange or exchange access service within the incumbent's telephone exchange area.[11] Second, section 259(a) establishes specific limitations on a qualifying carrier's use of an incumbent LEC's infrastructure, i.e., a qualifying carrier may use section 259 only "*for the purpose* of enabling such qualifying carrier to provide telecommunications services, or to provide access to information services, in the service area in which such qualifying carrier has requested and obtained designation as an eligible telecommunications carrier under section 214(e)."[12] Third, section 259, in contrast to section 251, limits the telecommunications carriers that may obtain access to an incumbent LEC's network by the inclusion of qualifying criteria in subsection 259(d).[13]

3. Thus, we conclude that while section 251 applies to all carriers in all situations—including, but not limited to, new entrants competing with the incumbent LEC—section 259 only applies in narrow circumstances, i.e., for the benefit of those carriers that are eligible to receive universal service support but lack economies of scale or scope and only to the extent that the qualifying carriers do not use section 259-obtained infrastructure to compete with the providing incumbent LEC. We conclude that a qualifying carrier that obtains, pursuant to section 259 arrangements, interconnection, unbundled network elements, and other telecommunications functionalities otherwise available pursuant to section 251, does not lose its section 251-derived obligation to provide interconnection to competitive LECs. We also find that section 259 arrangements can include additional functionalities that may be provided to qualifying carriers uniquely pursuant to section 259. Making clear that we will enforce the section 251-derived interconnection rights of competitive LECs, however, will help ensure that competitive entry into markets served by qualifying carriers markets is not hampered by the operation of otherwise valid section 259 arrangements. Moreover, we further promote competitive entry by finding that qualifying carriers may include *any* carrier that satisfies the requirements of section 259(d)—in other words, not just incumbent LECs, but competitive LECs and any other carrier that satisfies section 259(d) requirements.

4. In this Report and Order, we choose to implement section 259 by adopting rules that recognize the central role played by private negotiations in promoting the ability of qualifying carriers to obtain access to "public switched network infrastructure, technology, information, and telecommunications facilities and functions" provided by other carriers. A negotiation-driven approach is appropriate because, inter alia, section 259, unlike section 251, contemplates situations where the requesting carrier is not using the incumbent LEC's facilities or functions to compete in the incumbent LEC's telephone exchange area. In such circumstances, we believe that the unequal bargaining power between qualifying carriers, including new entrants, and providing incumbent LECs is less relevant since the incumbent LEC has less incentive to exploit any inequality for the sake of competitive advantage. Thus, wherever possible we adopt specific rules that restate the statutory language. The approach we adopt, which relies in large part on private negotiations among parties to satisfy their unique requirements in each case, will help ensure that certain carriers who agree to fulfill universal service obligations pursuant to section 214(e) can implement evolving levels of technology to continue to fulfill those obligations. Again, because we also affirm the rights of competitive LECs to secure interconnection pursuant to section 251 our approach to implementing section 259 does not discourage the development of competition in any local market.

5. Regarding the scope of section 259(a), we allow the parties to section 259 agreements to negotiate what "public switched network infrastructure, technology, information, and telecommunications facilities and functions" will be made available, without per se exclusions. We also decide that, whenever it is the *only means* to gain access to facilities or functions subject to sharing requirements, section 259(a) requires the providing incumbent LEC to seek to obtain and to provide necessary licensing of any software or equipment necessary to gain access to the shared capability or resource by the qualifying carrier's equipment, subject to the reimbursement for or the payment of reasonable royalties. We decide that it shall be the responsibility of the providing incumbent LEC to find a way to negotiate and implement section 259 agreements that do not unnecessarily burden qualifying carriers with licensing requirements. In cases where the only means available is including the qualifying carrier in a licensing arrangement, the providing incumbent LEC must secure such licensing by negotiating with the relevant third party directly.

6. Regarding the implementation of section 259, we conclude that section 259(a) grants the Commission authority to promulgate rules concerning any section 259 agreement to share public switched network infrastructure, technology, information, and telecommunications facilities and functions, regardless of whether they are used to provide interstate or intrastate services. At the same time, we make clear that nothing in our analysis of section 259 indicates an intent to regulate intrastate services, as opposed to regulating agreements regarding the sharing of infrastructure. We also note that section 259 dictates two discrete roles for the states with respect to section 259: states may accept for public inspection the filings of section 259 agreements that are required by section 259(b)(7); and states must designate a carrier as an "eligible telecommunications carrier" pursuant to section 214(e)(2)–(3). We further conclude that it is unnecessary to adopt any particular rules to govern disputes between parties to section 259 agreements that may be brought before the Commission. Finally, we decide that it would be inappropriate to further construe the requirements of section 259(d)(2) in this proceeding because issues materially relating to section 259(d)(2) will be decided by the Commission in the universal service proceeding scheduled to be concluded by May 8, 1997.

7. We require that providing incumbent LECs may recover their costs associated with infrastructure sharing arrangements, and we conclude that incentives already exist to encourage providing and qualifying carriers to reach negotiated agreements that do so (section 259(b)(1)). We decide that no incumbent LEC should be required to develop, purchase, or install network infrastructure, technology, and telecommunications facilities and functions solely on the basis of a request from a qualifying carrier to share such elements when such incumbent LEC has not otherwise built or acquired, and does not intend to build or acquire, such elements. We also decide that a providing incumbent LEC may withdraw from a section 259 infrastructure sharing agreement upon an appropriate showing to the Commission that the arrangement has become economically unreasonable or is otherwise not in the public interest.

8. We permit but do not require providing incumbent LECs and qualifying carriers to develop through negotiation terms and conditions for joint ownership or operation of "public switched network infrastructure, technology, information, and telecommunications facilities and functions" (section 259(b)(2)). We decide that joint owners will be treated as providing incumbent LECs for purposes of section 259 regulations. We also decide that it is not necessary for the Commission to consider, at this time, the accounting and jurisdictional separations implications of joint ownership arrangements pursuant to section 259.

9. We conclude that infrastructure sharing does not subject providing incumbent LECs to common carrier obligations, including a nondiscrimination requirement, because such a result would be contrary to the clear mandate of section 259(b)(3). In the NPRM we asked whether an "implied nondiscrimination requirement" should be inferred based on the "just and reasonable" requirement included in Section 259(b)(4). We conclude that Section 259(b)(4) includes no nondiscrimination requirement, but we also conclude that the "just and reasonable" requirement will serve to ensure that all qualifying carriers receive the benefits of section 259. We reaffirm that, to the extent that requesting carriers seek access to elements pursuant to section 251, sections 201 and 251 expressly require rates set pursuant to those provisions not only to be just and reasonable, but also non-discriminatory or not unreasonably discriminatory.[14]

10. We decide that, although the Commission may have pricing authority to prescribe guidelines to ensure that qualifying carriers "fully benefit from the economies of scale and scope of [the providing incumbent LEC]," it is not necessary at this time to exercise this authority (section 259(b)(4)). We anticipate that, in this negotiation-driven approach, qualifying carriers and providing incumbent LECs will face economic incentives that will allow them to reach mutually satisfactory terms for infrastructure sharing. In particular, we note that, because section 259 contemplates situations where requesting carriers are not using the incumbent LEC's facilities or functions to compete in the incumbent LEC's telephone exchange area, the unequal bargaining power between qualifying carriers, including new entrants, and providing incumbent LECs is less relevant since the incumbent LEC has less incentive to exploit any inequality for the sake of competitive advantage vis-a-vis a non-competing qualifying LEC. We further decide that availability, timeliness, functionality, suitability, and other operational aspects of infrastructure sharing also are relevant to determining whether the qualifying carrier receives the benefits mandated by section 259(b)(4). We conclude that the negotiation process, along with the available dispute resolution, arbitration, and complaint processes available from the Commission, will ensure that qualifying carriers fully benefit from the economies of scale and scope of providing incumbent LECs. We note that non-qualifying competitive LECs may avail themselves of these same processes to prevent unlawful anticompetitive outcomes resulting from section 259-negotiated arrangements. Further, we note that any anticompetitive outcomes may be proscribed by operation of the antitrust laws from which Congress has granted no exemption to parties negotiating section 259 agreements. We further note that the Commission has ample authority pursuant to Title II to set aside any intercarrier agreements found to be contrary to the public interest.

11. We conclude that it is unnecessary at this time for the Commission to establish detailed national rules to promote cooperation (section 259(b)(5)). We conclude that, because there is a requirement that infrastructure sharing arrangements not be used to compete with the providing incumbent LEC, and because a providing incumbent LEC is permitted to recover its costs incurred in providing shared infrastructure pursuant to section 259, sufficient incentives exist to encourage lawful cooperation among carriers. We also decide that the adoption of a good faith negotiation standard would promote cooperation between providing incumbent LECs and qualifying carriers.

12. We conclude that, for any services and facilities otherwise available pursuant to section 251, carriers that do not intend to compete using those services and facilities may request those services and facilities pursuant to either section 251 or 259, and carriers that do intend to compete using those services and facilities must request them pursuant to section 251. We decide that, with respect to facilities and information that are within the scope of section 259 but beyond the scope of section 251, carriers that do not intend to compete using those facilities and information may pursue agreements with incumbent LECs pursuant to section 259. We conclude that a providing incumbent LEC is not required to share services or access used to compete against it, and that an

[7] 47 U.S.C. § 259(a).

[8] *Implementation of Infrastructure Sharing Provisions in the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, CC Docket 96–237, FCC 96–456, (released November 22, 1996) (NPRM) 61 FR 63774 (December 2, 1996).

[9] Twenty parties filed comments in this proceeding and fourteen of these parties filed reply comments. Two additional parties filed comments to the Commission which were subsequently transferred to the universal service proceeding in CC Docket 96–45. The parties, along with the shorthand forms of identification used in the Report and Order, are listed in Appendix A of the Report and Order.

[10] *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, CC Docket 96–98, FCC 96–325, 11 FCC Rcd 15499 at ¶¶ 165 (released August 8, 1996), 61 FR 45476 (August 29, 1996) (*Local Competition First Report and Order*). We note that the U.S. Court of Appeals for the Eighth Circuit has stayed the pricing rules developed in the *Local Competition First Report and Order*, pending review on the merits. *Iowa Utilities Board* v. *FCC*, No. 96–3321 (8th Circuit, October 15, 1996).

[11] 47 U.S.C. § 259(b)(6). *See also* Discussion at Section III. C. 6. of the Report and Order.

[12] 47 U.S.C. § 259(a) (emphasis added). *See also* Discussion at Section III. A. 1. of the Report and Order.

[13] 47 U.S.C. § 259(d). *See also* Discussion at Section III. E. of the Report and Order.

[14] 47 U.S.C. §§ 201 (not unreasonably discriminatory), 251 (nondiscriminatory).

incumbent LEC's right to deny or terminate sharing arrangements extends to the full breadth of section 259. We also conclude that a qualifying carrier may not make available any information, infrastructure, or facilities it obtained from a providing incumbent LEC to any party that intends to use such information, infrastructure, or facilities to compete with the providing incumbent LEC. We emphasize that this will not otherwise affect the interconnection obligations of carriers pursuant to section 251. Moreover, competitive carriers, i.e., regardless of whether they qualify for infrastructure sharing pursuant to section 259(d), that require the use of information or facilities to compete with the providing incumbent LEC may request the necessary facilities pursuant to sections 251 and 252. We also find that nothing in section 259 permits a providing incumbent LEC to refuse to enter into a section 259 agreement simply because the qualifying carrier is competing with the providing incumbent LEC, provided that the qualifying carrier is not using any shared infrastructure obtained from the providing incumbent LEC pursuant to a section 259 agreement to compete.

13. We decide that section 259 agreements must be filed with the appropriate state commission, or with the Commission if the state commission is unwilling to accept the filing; must be made available for public inspection; and must include the rates, terms, and conditions under which an incumbent LEC is making available all "public switched network infrastructure, technology, information, and telecommunications facilities and functions" that are the subject of the negotiated agreement (section 259(b)(7)). We decide that this filing requirement refers only to agreements negotiated pursuant to section 259 and affirm that all previous interconnection agreements must be filed pursuant to section 252 as mandated by the Commission's *Local Competition First Report and Order*.[15]

14. We decide that section 259(c) requires notice to qualifying carriers of changes in the incumbent LECs' network that might affect qualifying carriers' ability to utilize the shared public switched network infrastructure, technology, information and telecommunications facilities and functions; that section 259(c) requires timely information disclosure by each providing incumbent LEC for each of its section 259-derived agreements; and that such notice and disclosure, provided pursuant to a section 259 agreement, are only for the benefit of the parties to a section 259-derived agreement. We also decide that section 259(c) does not include a requirement that providing incumbent LECs provide information on planned deployments of telecommunications and services prior to the make/buy point.

15. We decide that no incumbent LEC is excused, per se, from sharing its infrastructure because of the size of the requesting carrier, its geographic location, or its affiliation with a holding company. A carrier qualifying under section 259(d) therefore may be entitled to request and share certain infrastructure and, at the same time, be obligated to share the same or other infrastructure. We conclude that parties to section 259 negotiations can and will make the necessarily fact-based evaluations of their relative economies of scale and scope pertaining to the infrastructure that is requested to be shared. To facilitate such negotiations, we adopt a presumption that a telecommunication carrier falling within the definition of "rural telephone company" in section 3(37) lacks economies of scale or scope under section 259(d)(1), but we decide to exclude no class of carriers from attempting to demonstrate to a providing incumbent LEC that they qualify under section 259(d)(1). In negotiations with a requesting carrier or in response to a complaint arising from a refusal to enter into a section 259 agreement, a providing incumbent LEC may rebut the presumption that a "rural telephone company" lacks economies of scale or scope.

Final Regulatory Flexibility Act Analysis

16. As required by section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. § 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking, Implementation of Infrastructure Sharing Provisions in the Telecommunications Act of 1996.[16] The Commission sought written public comments on the proposals in the *Infrastructure Sharing NPRM* including on the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this Report and Order conforms to the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, 110 Stat. 847 (1996).[17]

A. Need for and Objectives of This Report and Order and the Rules Adopted Herein

17. The Commission, in compliance with section 259(a) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, promulgates the rules in this Report and Order to ensure the prompt implementation of the infrastructure sharing provisions in section 259 of the 1996 Act. Section 259 directs the Commission, within one year after the date of enactment of the 1996 Act, to prescribe regulations that require incumbent LECs to make certain "public switched network infrastructure, technology, information, and telecommunications facilities and functions" available to any qualifying carrier in the service area in which the qualifying carrier has requested and obtained designation as an eligible carrier under section 214(e).[18]

B. Summary and Analysis of the Significant Issues Raised by the Public Comments in Response to the IRFA

18. The only party to comment on our IRFA, the Rural Telephone Coalition (RTC), essentially argues that the Commission violated the RFA when we declined to include small incumbent LECs in our definition of the class of entities protected by the RFA.[19] RTC argues that small incumbent LECs that meet the SBA definition of "small entities" are among the class of carriers that will be affected by these rules either as providing incumbent LECs or as qualifying carriers.[20] RTC argues that the Commission has engaged in a "meaningless exercise" despite the fact that our IRFA included estimates of the number of small incumbent LECs potentially affected by the proposed rules and presented alternatives for comment by the public.

19. We disagree. Because the small incumbent LECs subject to these rules are either dominant in their field of operations or are not independently owned and operated, consistent with our prior practice, they are excluded from the definition of "small entity" and "small business concerns."[21]

[15] *Local Competition First Report and Order* at ¶ 165–171. We note that section 252(a) requires all interconnection agreements, "including any interconnection agreements negotiated before the date of enactment of the Telecommunications Act of 1996," to be submitted to the appropriate state commission for approval. In contrast, we note that section 259 does not include a comparable provision.

[16] NPRM at ¶ 55.

[17] SBREFA was codified as Title II of the Contract With America Advancement Act of 1996 (CWAAA), 5 U.S.C. § 601 et seq.

[18] 47 U.S.C. § 259. *See also* 47 U.S.C. § 214(e)(1).

[19] RTC Comments at 631.

[20] *Id.*

[21] *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, CC Docket 96–98, FCC 96–325, 11 FCC Rcd 15499 at ¶¶ 1328–30, 1342 (released August 8, 1996), 61 FR 45476 (August 29, 1996) (*Local Competition First Report and Order*). We note that the U.S. Court of Appeals for the Eighth Circuit has stayed the pricing rules developed in the *Local Competition First Report and Order*, pending review on the merits. *Iowa Utilities Board* v. *FCC*, No. 96–3321 (8th Circuit, October 15, 1996).

[22] *See id.*

[23] 47 U.S.C. § 259.

[24] *See, e.g.*, 47 U.S.C. § 259(a).

[25] 47 U.S.C. § 259(a), (d).

[26] 47 U.S.C. § 259(d). *See also* 47 U.S.C. § 3(44).

[27] 47 U.S.C. § 259(d)(2). *See Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking and Order Establishing Joint Board, CC Docket 96–45, FCC 96–93 (released March 8, 1996), 61 FR 10499 (March 14, 1996) (*"Universal Service NPRM"*).

[28] *See Universal Service NPRM*; see also Joint Board Recommendation on Universal Service, Recommended Decision, CC Docket 96–45, FCC 96J–3 (released November 8, 1996), 61 FR 63778 (December 2, 1996) (*Joint Board Recommendation on Universal Service*) (recommending eligibility criteria for carriers seeking universal service support). We note that the Commission must complete a proceeding to implement the Joint Board's recommendations on or before May 8, 1997.

[29] *See* 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. § 632).

[30] 15 U.S.C. § 632.

[31] 13 C.F.R. § 121.201.

[32] *See Local Competition First Report and Order* at ¶¶ 1328–30, 1342.

[33] *See id.*

[34] United States Department of Census, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size*, at Firm Size 1–123 (1995) (*"1992 Census"*).

[35] 15 U.S.C. § 632(a)(1).

Accordingly, our use of the terms "small entities" and "small businesses" does not encompass small incumbent LECs. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we did consider small incumbent LECs within the IRFA and used the term "small incumbent LECs" to refer to any incumbent LECs that arguably might be defined by SBA as "small business concerns."[22] We find nothing in this record to persuade us that our prior practice of treating all LECs as dominant is incorrect. Thus, we conclude that we have fully satisfied the requirements and objectives of the RFA.

C. Description and Estimate of the Number of Small Entities to Which the Rules Adopted in the Report and Order in CC Docket 96–237 Will Apply

20. Section 259 of the 1934 Act, as added by the 1996 Act, establishes a variety of infrastructure sharing obligations.[23] Many of the obligations adopted in this Report and Order will apply solely to providing incumbent LECs which may include small business concerns.[24] The beneficiaries of section 259 infrastructure sharing agreements—also affected by the rules adopted herein—are the class of carriers designated as "qualifying carriers" under section 259(d).[25] Such qualifying carriers must be telecommunications carriers, which, as defined in section 3(44) of the act, may include LECs, non-LEC wireline carriers, and various types of wireless carriers.[26] Because section 259(d)(1) limits qualifying carriers to those carriers that "lack economies of scale or scope," it is likely that there will be small business concerns affected by the rules proposed in this *NPRM*. We note, however, that section 259(d)(2) makes the definition of "qualifying carriers" dependent on the Commission's decisions in the universal service proceeding.[27] Until the Commission issues an order pursuant to the *Universal Service NPRM* that addresses related issues, it is not feasible to define precisely the number of "qualifying carriers" that may be "small business concerns" or, derivatively, the number of incumbent LECs that may be "small business concerns."[28] With that caveat, we attempt to estimate the number of small entities—both providing incumbent LECs and qualifying carriers—that may be affected by the rules included in this Report and Order.

21. For the purposes of this analysis, we examined the relevant definition of "small entity" or "small business" and applied this definition to identify those entities that may be affected by the rules adopted in this Report and Order. The RFA defines a "small business" to be the same as a "small business concern" under the Small Business Act, 15 U.S.C. § 632, unless the Commission has developed one or more definitions that are appropriate to its activities.[29] Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).[30] Moreover, the SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have fewer than 1,500 employees.[31] We first discuss generally the total number of small telephone companies falling within both of those categories. Then, we discuss the number of small businesses within the two subcategories, and attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

22. As discussed supra, and consistent with our prior practice, we shall continue to exclude small incumbent LECs from the definition of "small entity" and "small business concerns" for the purpose of this IRFA. Because the small incumbent LECs subject to these rules are either dominant in their field of operations or are not independently owned and operated, consistent with our prior practice, they are excluded from the definition of "small entity" and "small business concerns."[32] Accordingly, our use of the terms "small entities" and "small businesses" does not encompass small incumbent LECs. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will consider small incumbent LECs within this analysis and use the term "small incumbent LECs" to refer to any incumbent LECs that arguably might be defined by SBA as "small business concerns."[33]

21. Telephone Companies (SIC 481)

23. *Total Number of Telephone Companies Affected.* The decisions and rules adopted herein may have a significant effect on a substantial number of small telephone companies identified by the SBA. The United States Bureau of the Census (Census Bureau) reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone service, as defined therein, for at least one year.[34] This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated."[35] For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by this Order.

24 *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for telecommunications companies other than radiotelephone (wireless) companies (Telephone Communications, Except

Radiotelephone). The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992.[36] According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing fewer than 1,500 persons.[37] Of the 2,321 non-radiotelephone companies listed by the Census Bureau, 2,295 companies (or, all but 26) were reported to have fewer than 1,000 employees. Thus, at least 2,295 non-radiotelephone companies might qualify as small incumbent LECs or small entities based on these employment statistics. However, because it seems certain that some of these carriers are not independently owned and operated, this figure necessarily overstates the actual number of non-radiotelephone companies that would qualify as "small business concerns" under the SBA's definition. Consequently, we estimate using this methodology that there are fewer than 2,295 small entity telephone communications companies (other than radiotelephone companies) that may be affected by the proposed decisions and rules and we seek comment on this conclusion.

25. *Local Exchange Carriers.* Although neither the Commission nor the SBA has developed a definition of small providers of local exchange services, we have two methodologies available to us for making these estimates. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4813) (Telephone Communications, Except Radiotelephone) as previously detailed, supra. Our alternative method for estimation utilizes the data that we collect annually in connection with the Telecommunications Relay Service (TRS). This data provides us with the most reliable source of information of which we are aware regarding the number of LECs nationwide. According to our most recent data, 1,347 companies reported that they were engaged in the provision of local exchange services.[38] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of incumbent LECs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,347 small LECs (including small incumbent LECs) that may be affected by the actions proposed in this *NPRM*.

26. Our remaining comments are directed solely to non-LEC entities that may eventually be designated as "qualifying carriers." Section 259(d)(2) requires qualifying carriers, inter alia, to offer "telephone exchange service, exchange access, and any other service that is included in universal service" within the carrier's service area per universal service obligations imposed pursuant to section 214(e). As addressed supra, because section 259(d)(2) makes the scope of potential "qualifying carriers" contingent upon the Commission's decisions in the universal service proceeding, we are unable to define the scope of small entities that might eventually be designated as "qualifying carriers."[39] Thus, the remaining estimates of the number of small entities affected by our rules—based on the most reliable data for the non-LEC wireline and non-wireline carriers—may be overinclusive depending on how many such entities otherwise qualify pursuant to section 259(d)(2).

27. *Non-LEC wireline carriers.* We next estimate the number of non-LEC wireline carriers, including interexchange carriers (IXCs), competitive access providers (CAPs), Operator Service Providers (OSPs), Pay Telephone Operators, and resellers that may be affected by these rules. Because neither the Commission nor the SBA has developed definitions for small entities specifically applicable to these wireline service types, the closest applicable definition under the SBA rules for all these service types is for telephone communications companies other than radiotelephone (wireless) companies. However, the TRS data provides an alternative source of information regarding the number of IXCs, CAPs, OSPs, Pay Telephone Operators, and resellers nationwide. According to our most recent data: 130 companies reported that they are engaged in the provision of interexchange services; 57 companies reported that they are engaged in the provision of competitive access services; 25 companies reported that they are engaged in the provision of operator services; 271 companies reported that they are engaged in the provision of pay telephone services; and 260 companies reported that they are engaged in the resale of telephone services and 30 reported being "other" toll carriers.[40] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of IXCs, CAPs, OSPs, Pay Telephone Operators, and resellers that would qualify as small business concerns under SBA's definition. Firms filing *TRS Worksheets* are asked to select a single category that best describes their operation. As a result, some long distance carriers describe themselves as resellers, some as OSPs, some as "other," and some simply as IXCs. Consequently, we estimate that there are fewer than 130 small entity IXCs; 57 small entity CAPs; 25 small entity OSPs; 271 small entity pay telephone service providers; and 260 small entity providers of resale telephone service; and 30 "other" toll carriers that might be affected by the actions and rules adopted in this *Report and Order*.

28. *Radiotelephone (Wireless) Carriers:* The SBA has developed a definition of small entities for Wireless (Radiotelephone) Carriers. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992.[41] According to the SBA's definition, a small business radiotelephone company is one employing fewer than 1,500 persons.[42] The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated. Although it seems certain that some of these carriers are not independently owned and operated, and, we are unable to estimate with greater precision the number of radiotelephone carriers and service providers that would both qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,164 small entity radiotelephone companies that might be affected by the actions and rules adopted in this *Report and Order*.

29. *Cellular and Mobile Service Carriers.* In an effort to further refine our calculation of the number of radiotelephone companies affected by the rules adopted herein, we consider the categories of radiotelephone carriers, Cellular Service Carriers and Mobile Service Carriers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to Cellular Service Carriers and to Mobile Service Carriers. The closest applicable definition under SBA rules for both services is for telephone companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of Cellular Service Carriers and Mobile Service Carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 792 companies reported that they are engaged in the provision of cellular services and 138 companies reported that they are engaged in the provision of mobile services.[43] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of Cellular Service Carriers and Mobile Service Carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 792 small entity Cellular Service Carriers and fewer than 138 small entity Mobile Service Carriers that might be affected by the actions and rules adopted in this *Report and Order*.

30. *Broadband PCS Licensees.* In an effort to further refine our calculation of the number of radiotelephone companies affected by the rules adopted herein, we consider the category of radiotelephone carriers, Broadband PCS Licensees. The broadband PCS spectrum is divided into six frequency blocks designated A through F. As set forth in 47 CFR § 24.720(b), the Commission has defined "small entity" in the auctions for Blocks C and F as a firm that had average gross revenues of less than $40 million in the three previous calendar years. Our definition of a "small entity" in the context of broadband PCS auctions has been approved by SBA.[44] The Commission has auctioned broadband PCS licenses in Blocks A through F. We do not have sufficient data to determine how many small businesses bid successfully for licenses in Blocks A and B. There were 183 winning bidders that qualified as small entities in the Blocks C, D, E, and F auctions. Based on this information, we conclude that the number of broadband PCS licensees affected by the decisions in the *Infrastructure Sharing Report & Order* includes, at a minimum, the 183 winning bidders that qualified as small entities in the Blocks C through F broadband PCS auctions.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements and Steps Taken To Minimize the Significant Economic of This Report and Order on Small Entities and Small Incumbent LECs, Including the Significant Alternatives Considered and Rejected

31. In this section of the FRFA, we analyze the projected reporting, recordkeeping, and other compliance requirements that may apply to small entities and small incumbent LECs, and we mention some of the skills needed to meet these new requirements. We also describe the steps taken to minimize the economic impact of our decisions on small entities and small incumbent LECs, including the significant alternatives considered and rejected. Overall, we anticipate that the impact of these rules will be beneficial to small businesses since they may be able to share infrastructure with larger incumbent LECs, in certain circumstances, enabling small carriers to provide telecommunication services or information services that they otherwise might not be able to provide without building or buying their own facilities.[45]

Section 259(a)

32. *Summary of Projected Reporting, Recordkeeping, and other Compliance Requirements.* Regarding the scope of section 259(a), we allow the parties to section 259 agreements to negotiate what "public switched network infrastructure, technology, information, and telecommunications facilities and functions" will be made available, without *per se* exclusions.[46] In addition, we conclude that qualifying carriers should be able to obtain network facilities and functionalities available under section 251—including lease arrangements and resale—alternatively pursuant to section 251 or pursuant to section 259 (subject to the limitations in section 259(b)(6)), or pursuant to both if they so choose.[47]

33. To the extent that there are small businesses that are providing incumbent LECs, they will be required to make available "public switched network infrastructure, technology, information, and telecommunications facilities and functions" to defined qualifying carriers. We anticipate that compliance with such requests for infrastructure sharing may require the use of legal, engineering, technical, operational, and administrative skills. At the same time, these rules should create opportunities for small businesses that are qualifying carriers to utilize infrastructure that might not otherwise be available. To obtain access to infrastructure from a providing incumbent LEC, a qualifying carrier is required to pay the costs associated with the shared infrastructure.

34. *Steps Taken To Minimize the Significant Economic Impact of this Report and Order on Small Entities and Small Incumbent LECs, Including the Significant Alternatives Considered and Rejected.* We reject proposals offered by those parties who would assert limitations that remove whole classes or categories of "public switched network infrastructure, technology, information and telecommunications facilities and functions"—e.g., resale services and classes of non-network information—from the scope of section 259(a).[48] Similarly, we declined to exclude section 251-provided interconnection elements from section 259 arrangements.[49] We believe that the flexible approach that we adopt will give parties the ability to negotiate unique agreements that will vary based on individual requirements of parties in each case. Such an approach is particularly important because as technology continues to evolve, definitions based on present network requirements seem likely to limit qualifying carriers' opportunities to

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[36] *1992 Census*, supra, at Firm Size 1–123.

[37] 13 CFR § 121.201, Standard Industrial Classification (SIC) Code 4812.

[38] Federal Communications Commission, CCB, Industry Analysis Division, *Telecommunications Industry Revenue: TRS Fund Worksheet Data*, Tbl. 1 (Number of Carriers Reporting by Type of Carrier and Type of Revenue) (December 1996) ("*TRS Worksheet*").

[39] *See Universal Service NPRM*; see also *Joint Board Recommendation on Universal Service* (recommending eligibility criteria for carriers seeking universal service support). We note that the Commission must complete a proceeding to implement the Joint Board's recommendations on or before May 8, 1997.

[40] *TRS Worksheet*, at Tbl. 1 (Number of Carriers Reporting by Type of Carrier and Type of Revenue).

[41] *1992 Census*, supra, at Firm Size 1–123.

[42] 13 CFR § 121.201, (SIC Code 4812).

[43] *TRS Worksheet*, at Tbl. 1 (Number of Carriers Reporting by Type of Carrier and Type of Revenue).

[44] *See Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, PP Docket 93–253, Fifth Report & Order, 9 FCC Rcd 5532, 5581–84, 59 FR 37566 (July 22, 1994).

[45] 47 U.S.C. § 259(a).

[46] *See Infrastructure Sharing Report and Order* Discussion at Section III. A. of the Report and Order.

[47] *See Infrastructure Sharing Report and Order* Discussion at Section III. B. 1. of the Report and Order.

[48] *See, e.g.*, GTE Comments at 4 ("Section 259 requires only the sharing of infrastructure, not services. When Congress intended to include services, it did so specifically . . . ."); Southwestern Bell Comments at i, 5; Sprint Comments at 4 ("section 259 establishes requirements for the sharing of infrastructure, not the provision of service"); NCTA Comments at 4 n.13 (scope of section 259(a) should be no broader than section 251). *But see* RTC Comments at 7. *See also Infrastructure Sharing Report and Order* Discussion at Section III. B. 1. of the Report and Order.

[49] *See Infrastructure Sharing Report and Order* Discussion at Section III. B. 1. of the Report and Order.

obtain infrastructure unnecessarily. Further, we found no clear evidence of Congressional intent to limit the broad parameters of section 259(a).

35. Overall, we believe that there will be a significant positive economic impact on small entity carriers that—as a result of section 259 agreements—will be able to provide advanced telecommunications and information services in the most efficient manner possible by taking advantage of the economies of scale and scope of incumbent LECs. With regard to any small incumbent LECs that might receive requests for infrastructure sharing from qualifying carriers, we believe that the statutory scheme imposed by Congress and adopted in our rules will promote small business interests. First, we note that section 259(b)(1) protects providing incumbent LECs—small and large, alike—from having to take any actions that are economically unreasonable.[50] Second, we note that, under our rules, an incumbent LEC may demonstrate that the requesting carrier does not lack economies of scale and scope, relative to itself, with respect to the requested infrastructure and, thus, may avoid infrastructure sharing obligations in certain situations.[51]

Section 259(b) Terms and Conditions of Infrastructure Sharing

36. *Summary of Projected Reporting, Recordkeeping, and other Compliance Requirements.* We require that providing LECs can recover their costs associated with infrastructure sharing arrangements, and we conclude that market incentives already exist to encourage providing and qualifying carriers to reach negotiated agreements that do so (section 259(b)(1)).[52] Congress directed in section 259(b)(4) that providing incumbent LECs make section 259 agreements available to qualifying carriers on just and reasonable terms and conditions that permit such qualifying carrier to fully benefit from the economies of scale and scope of such providing incumbent local exchange carriers. We decide that, although the Commission has pricing authority to prescribe guidelines to ensure that qualifying carriers "fully benefit from the economies of scale and scope of [the providing incumbent LEC]," it is not necessary at this time to exercise this authority (section 259(b)(4)).[53]

37. We decide that section 259 agreements must be filed with the appropriate state commission, or with the Commission if the state commission is unwilling to accept the filing, and must be made available for public inspection (section 259(b)(7)). Compliance with this rule will require legal and administrative skills.

38. *Steps Taken to Minimize the Significant Economic Impact of this Report and Order on Small Entities and Small Incumbent LECs, Including the Significant Alternatives Considered and Rejected.* We generally reject proposals that incumbent LECs should be required to develop, purchase, or install network infrastructure, technology, and telecommunications facilities and functions solely on the basis of a request from a qualifying carrier to share such elements when such incumbent LEC has not otherwise built or acquired, and does not intend to build or acquire, such elements.[54] Because the record did not indicate that there would exist any scale and scope benefits in situations where the providing incumbent LEC did not also use the facilities, we concluded that such a result would be inappropriate. We believe that the approach that we adopt will enable small entity qualifying carriers to enjoy the benefits of section 259 sharing agreements without imposing undue burdens on providing incumbent LECs.

39. Further, we decline to accept various proposals that the Commission adopt pricing schemes for infrastructure shared per section 259.[55] Instead, we conclude that the negotiation process, along with the available dispute resolution, arbitration, and formal complaint processes available from the states and the Commission, will ensure that qualifying carriers fully benefit from the economies of scale and scope of providing LECs. We believe that allowing providing incumbent LECs—including any small business—to recover the costs associated with infrastructure sharing will encourage and facilitate infrastructure sharing agreements. We believe that such agreements will lead to mutual benefits for both qualifying carriers and providing incumbent LECs.

Section 259(c) Information Disclosure Requirements

40. *Summary of Projected Reporting, Recordkeeping, and other Compliance Requirements.* The statute also requires incumbent LECs to provide "timely information on the planned deployment of telecommunications services and equipment" to any parties to infrastructure sharing agreements.[56] The rules we adopt herein require disclosure by each providing incumbent LEC for each of its section 259-derived agreements and require that such notice and disclosure are only for the benefit of the parties to a section 259-derived agreement. Under our rules, providing incumbent LECs must provide notice of changes in their networks that might affect qualifying carriers' ability to utilize the shared infrastructure. Should a small incumbent LEC be subject to this requirement, we anticipate that it will require use of engineering, technical, operational, and administrative skills.

41. *Steps Taken to Minimize the Significant Economic Impact of this Report and Order on Small Entities and Small Incumbent LECs, Including the Significant Alternatives Considered and Rejected.* A number of parties suggest that the Commission need not adopt any new disclosure rules pursuant to section 259(c) because other network disclosure provisions provide similar notice of changes in the network.[57] We conclude that specific notice of changes to an incumbent LEC's network that affect a qualifying carrier's ability to utilize the shared infrastructure, a qualifying carrier—including small businesses—will enable qualifying carriers, including small entities, to maintain a high level of interoperability between its network and that of the providing incumbent LEC.

42. We also decide that section 259(c) does not include a requirement that providing incumbent LECs provide information on planned deployments of telecommunications and services prior to the make/buy point. We conclude that section 259 does not require such mandatory joint planning, but we note that providing incumbent LECs may have obligations to coordinate network planning and design under sections 251(a), 256, 273(e)(3) and other provisions.

[50] *See Infrastructure Sharing Report and Order* Discussion at Section III. C. of the Report and Order.

[51] *See Infrastructure Sharing Report and Order* Discussion at Section III. E. of the Report and Order.

[52] *See Infrastructure Sharing Report and Order* Discussion at Section III. C. 1. of the Report and Order.

[53] *See Infrastructure Sharing Report and Order* Discussion at Section III. C. 4. of the Report and Order.

[54] MCI Comments at 7. *Contra* NYNEX Reply Comments at 10. *See Infrastructure Sharing Report and Order* Discussion at Section III. C. 1. of the Report and Order.

[55] *See, e.g.,* MCI Comments at 7. *Contra* RTC Comments at 11. *See Infrastructure Sharing Report and Order* Discussion at Section III. C. 1. and 4. of the Report and Order.

[56] *See Infrastructure Sharing Report and Order* at Section III. D. of the Report and Order.

[57] *See, e.g.,* NYNEX Comments at 16–17; GTE Comments at 12.

Section 259(d) Definition of Qualifying Carriers

43. *Summary of Projected Reporting, Recordkeeping, and other Compliance Requirements.* We adopt a rebuttable presumption that carriers satisfying the statutory definition of "rural telephone company" in section 3(37) also satisfy the qualifying criteria in section 259(d)(1) of lacking "economies of scale or scope," but we decide to exclude no class of carriers from attempting to show that they qualify under section 259(d)(1).[58] A carrier otherwise qualifying under section 259(d) therefore may be entitled to request and share certain infrastructure and, at the same time, be obligated to share the same or other infrastructure. We conclude that parties to section 259 negotiations can and will make the necessarily fact-based evaluations of their relative economies of scale and scope pertaining to the infrastructure that is requested to be shared. Complying with the section 259 process set out in our rules may require small incumbent LECs and requesting small entities to use legal and negotiation skills.

44. *Steps Taken to Minimize the Significant Economic Impact of this Report and Order on Small Entities and Small Incumbent LECs, Including the Significant Alternatives Considered and Rejected.* We believe that the approach we take will facilitate negotiations between requesting carriers and incumbent LECs. We expect that many if not most requests for infrastructure sharing agreements will be made by carriers whose customers reside predominantly, if not exclusively, in rural, sparsely-populated areas.[59] At the same time, there is nothing in the statutory language or legislative history to persuade us that Congress intended such a per se restriction on who can qualify under section 259(d). Thus, we rejected proposals that we limit qualifying carriers to those who meet the requirements of section 3(37).[60] We opposed these proposals because they would unduly limit the opportunities to engage in section 259 sharing agreements to those qualifying carriers located in particular geographic areas. We believe that the approach that we have adopted will enable all small entity qualifying carriers to enjoy the benefits of section 259 sharing agreements without regard to their geographic location.

F. Report to Congress

45. The Commission shall send a copy of this Final Regulatory Flexibility Analysis, along with this *Report and Order,* in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801 (a)(1)(A). A copy of this FRFA will also be published in the **Federal Register**.

Ordering Clauses

46. Accordingly, *It is ordered* That, pursuant to sections 4(i), 4(j), 201–205, 259, 303(r), 403 of the Communications Act of 1934, as amended by the 1996 Act, 47 U.S.C. §§ 154(i), 154(j), 201–205, 259, 303(r), 403, the rules, requirements and policies discussed in this Report and Order *are adopted* and §§ 59.1 through 59.4 of the Commission's rules, 47 CFR §§ 59.1 through 59.4, *are adopted* as set forth below.

47. *It is further ordered* That the requirements and regulations established in this decision shall become effective upon approval by OMB of the new information collection requirements adopted herein, but no sooner than April 3, 1997. The Commission will publish a notice in the **Federal Register** announcing OMB's approval of the information collections in this decision.

List of Subjects in 47 CFR Part 59

Antitrust, Communications common carriers, Communications equipment, Reporting and recordkeeping requirements, Rural areas, Telegraph, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 59 of Title 47 of the Code of Federal Regulations is added to read as follows:

PART 59—INFRASTRUCTURE SHARING

Sec.

59.1 General duty.
59.2 Terms and conditions of infrastructure sharing.
59.3 Information concerning deployment of new services and equipment.
59.4 Definition of "qualifying carrier".

Authority: 47 U.S.C. 154(i), 154(j), 201–205, 259, 303(r), 403.

§ 59.1 General duty.

Incumbent local exchange carriers (as defined in 47 U.S.C. section 251(h)) shall make available to any qualifying carrier such public switched network infrastructure, technology, information, and telecommunications facilities and functions as may be requested by such qualifying carrier for the purpose of enabling such qualifying carrier to provide telecommunications services, or to provide access to information services, in the service area in which such qualifying carrier has obtained designation as an eligible telecommunications carrier under section 214(e) of 47 U.S.C.

§ 59.2 Terms and conditions of infrastructure sharing.

(a) An incumbent local exchange carrier subject to the requirements of section 59.1 shall not be required to take any action that is economically unreasonable or that is contrary to the public interest.

(b) An incumbent local exchange carrier subject to the requirements of section 59.1 may, but shall not be required to, enter into joint ownership or operation of public switched network infrastructure, technology, information and telecommunications facilities and functions and services with a qualifying carrier as a method of fulfilling its obligations under section 59.1.

(c) An incumbent local exchange carrier subject to the requirements of section 59.1 shall not be treated by the Commission or any State as a common carrier for hire or as offering common carrier services with respect to any public switched network infrastructure, technology, information, or telecommunications facilities, or functions made available to a qualifying carrier in accordance with regulations issued pursuant to this section.

(d) An incumbent local exchange carrier subject to the requirements of section 59.1 shall make such public switched network infrastructure, technology, information, and telecommunications facilities, or functions available to a qualifying carrier on just and reasonable terms and pursuant to conditions that permit such qualifying carrier to fully benefit from the economies of scale and scope of such local exchange carrier. An incumbent local exchange carrier that has entered into an infrastructure sharing agreement pursuant to section 59.1 must give notice to the qualifying carrier at least sixty days before terminating such infrastructure sharing agreement.

(e) An incumbent local exchange carrier subject to the requirements of section 59.1 shall not be required to engage in any infrastructure sharing agreement for any services or access which are to be provided or offered to

[58] *See Infrastructure Sharing Report and Order* Discussion at Section III. E. of the Report and Order.

[59] *See* RTC Comments at 19–20 (urging the Commission to adopt a rebuttable presumption in favor of "rural telephone companies").

[60] *See* NCTA Comments at 3.

consumers by the qualifying carrier in such local exchange carrier's telephone exchange area.

(f) An incumbent local exchange carrier subject to the requirements of section 59.1 shall file with the State, or, if the State has made no provision to accept such filings, with the Commission, for public inspection, any tariffs, contracts, or other arrangements showing the rates, terms, and conditions under which such carrier is making available public switched network infrastructure, technology, information and telecommunications facilities and functions pursuant to this part.

§ 59.3 Information concerning deployment of new services and equipment.

An incumbent local exchange carrier subject to the requirements of section 59.1 that has entered into an infrastructure sharing agreement under section 59.1 shall provide to each party to such agreement timely information on the planned deployment of telecommunications services and equipment, including any software or upgrades of software integral to the use or operation of such telecommunications equipment.

§ 59.4 Definition of "qualifying carrier".

For purposes of this part, the term "qualifying carrier" means a telecommunications carrier that:

(a) Lacks economies of scale or scope; and

(b) Offers telephone exchange service, exchange access, and any other service that is included in universal service, to all consumers without preference throughout the service area for which such carrier has been designated as an eligible telecommunications carrier under section 214(e) of 47 U.S.C.

[FR Doc. 97–5177 Filed 3–3–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Parts 1002 and 1180

[STB Ex Parte No. 556]

Railroad Consolidation Procedures—Modification of Fee Policy

AGENCY: Surface Transportation Board (Board), DOT.

ACTION: Interim rules with a request for comments.

SUMMARY: In this proceeding the Board adopts interim rules relating to the fee policy for proceedings involving major railroad consolidations under the Board's regulations at 49 CFR part 1180 and corresponding modifications in the Board's fee regulations at part 1002. The Board also adopts technical amendments to conform part 1180 to the ICC Termination Act of 1995.

DATES: Interim rules are effective on March 4, 1997; comments must be filed by April 3, 1997.

ADDRESSES: Send comments (an original and 10 copies) referring to STB Ex Parte No. 556 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1201 Constitution Avenue, NW., Washington, DC 20423–0001.[1]

FOR FURTHER INFORMATION CONTACT: Kathleen M. King, (202) 927–5249 or David T. Groves, (202) 927–6395 [after March 16, 1997, (202) 565–1551]. [TDD for the hearing impaired: (202) 927–5721. (after March 16, 1997, (202) 565–1695).]

SUPPLEMENTARY INFORMATION: The Independent Office Appropriation Act of 1952, 31 U.S.C. 9701 (IOAA), is the basis for user fees charged by federal government agencies, including this one. Under the IOAA, agencies are required to ensure that ". . . each service or thing of value provided by an agency . . . to a person . . . is to be self-sustaining to the extent possible." 31 U.S.C. 9701(a). Administrative guidance for implementation of the IOAA is provided in the Office of Management and Budget Circular A–25 User Fees, as revised July 8, 1993 (Circular A–25). Circular A–25 states that the general policy of the federal government is as follows: "A reasonable charge should be made to each identifiable recipient for a measurable unit or amount of Government service or property from which he derives a special benefit."

According to our current user fee policy, the filer of a primary application under our merger and consolidation regulations at 49 CFR part 1180 is not required to pay additional filing fees for directly related proceedings that are filed along with the primary application. Recently, in *Union Pacific Corporation, et al.—Control and Merger—Southern Pacific Rail Corporation, et al.*, Finance Docket No. 32760 (*UP–SP Merger*), there were 30 directly related proceedings filed concurrently with the application. Of the 30 transactions, 21 were railroad abandonment or discontinuance of service applications, petitions for exemption, and notices of exemption.[2] The directly related proceedings in *UP–SP* Merger engendered substantial additional staff work, such as the environmental review process that was required for each abandonment or discontinuance proceeding. Under our current fee policy, no additional filing fees were assessed for those proceedings at the time of the their filing.[3]

The current railroad consolidation fees understate the costs associated with processing directly related proceedings filed by the primary applicant(s). Therefore, to ensure that the costs associated with these directly related proceedings are borne by the primary applicant (the direct beneficiary of the Board's action), we are modifying our fee policy to require a separate fee for each and every directly related application, petition and/or notice that is filed with the primary application. The fee for a directly related proceeding will be the same as it would be if the directly related application, petition and/or notice were filed separately. For example, if the directly related proceeding involves a petition for exemption for abandonment or discontinuance of a rail line, the $3,800 fee currently set forth at fee item (21)(iii), would be assessed for that proceeding. Appropriate modifications are being made at 49 CFR 1002.2(d) and 1180.4(c) to reflect this fee policy change.

In addition, under the Board's existing fee policy regulations, the same fee of $4,700 is applied to any type of responsive application, including an inconsistent application. This policy, however, does not allow us to recover the full cost of handling an inconsistent application. The additional staff work required to review and analyze an inconsistent application is in most cases comparable to the work expended to process the primary application. Consequently, we are adding the regulations at 49 CFR 1180.4(d)(4)(ii) to state that, for fee purposes, a responsive application that is considered an inconsistent application will be classified as a major, significant, or minor transaction under 49 CFR 1180.2(a)–(c), and the fee for an inconsistent application will be based on the classification of the transaction at 49 CFR 1002.2(f)(38)–(41). As an example, under this new policy, an inconsistent application classified as a major transaction for a noncarrier to acquire two or more carriers would require a fee of $889,500, as currently set forth in fee item (39)(i).

Our existing fee schedule applies a $4,700 fee to all other types of responsive applications that are filed in railroad consolidation proceedings. The Board's costs for handling the various types of transactions, ranging from trackage rights requests to construction applications, are not accurately reflected by a single-set fee. Therefore, we are modifying our fee policy as set forth at 49 CFR 1180.4(d)(4)(ii) to provide that the fee for all other responsive applications will be whatever fee is set forth in our fee schedule for that particular type of filing submitted as a responsive application. For example, if the responsive application is a petition for exemption involving trackage rights, the $5,600 fee currently set forth in fee item (40)(vi) would be assessed for that proceeding. We are retaining the general $4,700 fee for responsive applications in fee items (38)–(41)(v) to cover any type of responsive application that does not currently have a corresponding fee elsewhere in the fee schedule.

In addition to the fee application policy changes outlined above, we also are making some technical changes to part 1180. We are removing the provision at 49 CFR 1180.4(d)(4)(ii) that responsive applications that are not major transactions are presumed to be significant transactions because, under current Board practice, responsive applications may also be found to be minor transactions. We also are revising the statutory references contained in part 1180 to reflect the statutory changes resulting from the passage of the ICC Termination Act of 1995, Pub. L. 104–88 (Dec. 29, 1995) (ICCTA). And, throughout part 1180, we are changing references to the Interstate Commerce Commission and Commission to the Surface Transportation Board and Board, respectively. Finally, we are removing references in part 1180 to transactions involving the issuance of stock or the acquisition of control of motor carriers, which are matters no longer under the Board's jurisdiction.

Because these fee policy changes involve agency procedure, they are exempt from the notice and comment requirements of the Administrative Procedure Act. *See* 5 U.S.C. 553(b)(A). With respect to the fee policy changes, we also find that notice and comment are impracticable. *See* 5 U.S.C. 553(b)(B). The Board expects to receive at least one major rail consolidation application in the immediate future. The application likely will include directly related applications, and generate responsive applications. Under the IOAA, the Board is obligated to ensure that services be self-sustaining to the extent possible. Thus, our fees need to be in place as soon as possible so that appropriate fees are received for services that will be rendered when the application is filed. Other changes are merely technical amendments to reflect the new fee policy or to conform our rules to the ICCTA. Therefore, we are adopting these changes as interim rules. However, we are providing an opportunity for public comment on these changes. After review of those comments, we will consider whether adjustments need to be made to this new policy.

We conclude that the fee and other changes adopted here will not have a significant economic impact on a substantial number of small entities. Our regulations provide for waiver of filing fees for those entities that can make the required showing of financial hardship.

This action will not significantly affect either the quality of human environment or the conservation of energy resources.

Notice of the interim rules adopted here will be transmitted to Congress pursuant to Pub. L. 104–121 (Mar. 29, 1996).

List of Subjects

49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information, User fees.

49 CFR Part 1180

Administrative practice and procedure, Bankruptcy, Railroads, Reporting and recordkeeping requirements.

Decided: February 24, 1997.

By the Board, Chairman Morgan and Commissioner Owen.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, parts 1002 and 1180, of the Code of Federal Regulations are amended as follows:

PART 1002—FEES

1. The authority citation for part 1002 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A) and 553; 31 U.S.C. 9701 and 49 U.S.C. 721(a).

2. Section 1002.2 is amended by revising paragraphs (d)(1) and (f)(38) through (f)(41) to read as follows:

§ 1002.2 Filing fees.

* * * * *

(d) *Related or consolidated proceedings.* (1)(i) Except as provided for in paragraph (d)(1)(ii) of this section, separate fees need not be paid for related applications filed by the same applicant that would be the subject of one proceeding.

(ii) In proceedings filed under the rail consolidation procedures at 49 CFR part 1180, the applicable filing fee must be paid for each proceeding submitted concurrently with the primary application. The fee for each type of proceeding is set forth in the fee schedule contained in paragraph (f) of this section.

* * * * *

(f) *Schedule of filing fees.*

TYPE OF PROCEEDING	Fee
. . . . .	
Part IV * * *	
(38) An application or inconsistent application for two or more carriers to consolidate or merge their properties or franchises (or a part thereof) into one corporation for ownership, management, and operation of the properties previously in separate ownership. 49 U.S.C. 11324:	
(i) Major transaction	$889,500

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[1] The Board is scheduled to relocate its offices over the weekend of March 15–16, 1997. Its new address will be: Surface Transportation Board, 1925 K Street NW., Washington, DC 20423–0001. We note that mail will not be received from March 13–18, 1997 (mail delivery will resume thereafter at the new location).

[2] In *Regulations Governing Fees For Services*, 1 I.C.C.2d 60 (1984), two proceedings, *Union Pacific-Control-Missouri Pacific; Western Pacific*, 366 I.C.C. 459 (1982) (*Union Pacific*), and *Norfolk Southern Corp.-Control-Norfolk & W. Ry. Co.*, 366 I.C.C. 171 (1982) (*Norfolk Southern*), formed the basis for computing the original fees for railroad consolidation proceedings. Those cases did not include nearly as many directly related proceedings as *UP–SP Merger*. In the *Norfolk Southern* proceeding, there were only eight directly related transactions filed concurrently with the primary application. They involved four construction and operation transactions, two railroad abandonments, one issuance of common stock, and one acquisition of a motor carrier. The *Union Pacific* proceeding included thirteen directly related transactions that entailed five trackage rights requests, three poolings of operations, three issuances of common stock, and two motor carrier acquisitions.

[3] Subsequently, however, the Secretary of the Board requested payment from the applicants of filing fees for the 21 abandonment or discontinuance of service proposals in *UP–SP Merger*, and the applicants paid those fees.

	Fee
(ii) Significant transaction	177,900
(iii) Minor transaction	4,700
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	1,000
(v) Responsive application for which a fee is not otherwise provided in this schedule	4,700
(vi) Petition for exemption under 49 U.S.C. 10502	5,600
(39) An application or inconsistent application of a noncarrier to acquire control of two or more carriers through ownership of stock or otherwise. 49 U.S.C. 11324:	
(i) Major transaction	889,500
(ii) Significant transaction	177,900
(iii) Minor transaction	4,700
(iv) A notice of an exempt transaction under 49 CFR 1180.2(d)	850
(v) Responsive application for which a fee is not otherwise provided in this schedule	4,700
(vi) Petition for exemption under 49 U.S.C. 10502	5,600
(40) An application or inconsistent application to acquire trackage rights over, joint ownership in, or joint use of any railroad lines owned and operated by any other carrier and terminals incidental thereto. 49 U.S.C. 11324:	
(i) Major transaction	889,500
(ii) Significant transaction	177,900
(iii) Minor transaction	4,700
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	750
(v) Responsive application for which a fee is not otherwise provided in this schedule	4,700
(vi) Petition for exemption under 49 U.S.C. 10502	5,600
(41) An application or inconsistent application of a carrier or carriers to purchase, lease, or contract to operate the properties of another, or to acquire control of another by purchase of stock or otherwise. 49 U.S.C. 11324:	
(i) Major transaction	889,500
(ii) Significant transaction	177,900
(iii) Minor transaction	4,700
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	850
(v) Responsive application for which a fee is not otherwise provided in this schedule	4,700
(vi) Petition for exemption under 49 U.S.C. 10502	3,900

* * * * *

PART 1180—RAILROAD ACQUISITION, CONTROL, MERGER, CONSOLIDATION PROJECT, TRACKAGE RIGHTS, AND LEASE PROCEDURES

3. The authority citation for part 1180 is revised to read as follows:

AUTHORITY: 5 U.S.C. 553 and 559; 11 U.S.C. 1172; 49 U.S.C. 721, 10502, 11323–11325.

§ 1180.0 [Amended]

4. Section 1180.0 is amended by removing the words "49 U.S.C. 11343" and adding in its place the words "49 U.S.C. 11323", removing the word "Commission" and adding in its place the word "Board" and removing the words "Commission's Rules" and adding in their place the words "Board's Rules".

§ 1180.1 [Amended]

5. Section 1180.1 is amended as follows:

a. In paragraph (a) remove the words "Interstate Commerce Commission" and add in their place the words "Surface Transportation Board" and remove the word "Commission" wherever it appears and add in its place the word "Board".

b. In the introductory text of paragraph (b) remove the word "Commission's" and add in its place the word "Board's", remove the words "49 U.S.C. 11344" and add in their place the words "49 U.S.C. 11324" and remove the words "49 U.S.C. 10101a" and add in their place the words "49 U.S.C. 10101".

c. In the introductory text of paragraph (b)(1) remove the words "Section 11344" and add in their place "Section 11324" and remove the word "Commission" wherever it appears and add in its place the word "Board".

d. In paragraph (b)(2) remove the word "Commission" and add in its place the word "Board".

e. In paragraph (c) remove the word "Commission" wherever it appears in that paragraph and add in its place the word "Board" and remove the word "Commission's" wherever it appears in that paragraph and add in its place the word "Board's".

f. In paragraphs (d) and (e) remove the word "Commission" wherever it appears in those paragraphs and add in its place the word "Board".

g. In paragraph (f) remove the word "Commission" wherever it appears in that paragraph and add in its place the word "Board" and remove the words "(49 U.S.C. 11347)" and add in their place the words "(49 U.S.C. 11326)".

h. In paragraphs (g) and (h) remove the word "Commission" wherever it appears in those paragraphs and add in its place the word "Board".

§ 1180.2 [Amended]

6. Section 1180.2 is amended as follows:

a. In the introductory text of this section remove the words "49 U.S.C. 11343" and add in their place the words "49 U.S.C. 10101".

b. In the introductory text of paragraph (b) remove the words "49 U.S.C. 11345 (a)(2) and (c)" and add in their place the words "49 U.S.C. 11325 (a)(2) and (c)".

c. In the introductory text of paragraph (d) remove the word "Commission" and add in its place the word "Board", remove the words "49 U.S.C. 10101a" and add in their place the words "49 U.S.C. 10101", remove the words "49 U.S.C. 10505" and add in their place the words "49 U.S.C. 10502", remove the words "49 U.S.C. 10505(g)(2) and 11347" and add in their place the words "49 U.S.C. 10502(g) and 11326".

d. In paragraphs (d)(1) and (d)(4) remove the word "Commission" wherever it appears in those paragraphs and add in its place the word "Board".

§ 1180.3 [Amended]

7. Section 1180.3 is amended as follows:

a. In paragraphs (d) and (e) remove the word "Commission" where it appears in those paragraphs and add in its place the word "Board".

b. In paragraph (f) remove the words "49 U.S.C. 11343" and add in their place the words "49 U.S.C. 11323" and remove the word "Commission" and add in its place the word "Board".

c. In paragraph (g) remove the words "49 U.S.C. 10102(18)–(19)" and add in their place the words "49 U.S.C. 10102(5)–(6)".

d. Section 1180.3 is further amended by revising paragraph (h) to read as follows:

§ 1180.3 Definitions.

* * * * *

(h) *Responsive applications.* Applications filed in response to a primary application are those seeking affirmative relief either as a condition to or in lieu of the approval of the primary application. Responsive applications include inconsistent applications, inclusion applications, and any other affirmative relief that requires an application, petition, notice, or any other filing to be submitted to the Board (such as trackage rights, purchases, constructions, operation, pooling, terminal operations, abandonments, and other types of proceedings not otherwise covered). For fees for responsive applications see 49 CFR 1002.2(f)(38)–(41) and 1180.4(d)(4)(ii).

* * * * *

§ 1180.4 [Amended]

8. Section 1180.4 is amended as follows:

a. In paragraphs (a)(3) and (a)(4) and (b)(1) and (b)(2) remove the word "Commission" wherever it appears in those paragraphs and add in its place the word "Board".

b. In paragraph (c)(2)(ii) remove the words "Interstate Commerce Commission" and add in their place the words "Surface Transportation Board".

c. In paragraphs (c)(2)(iv) and (c)(2)(v) remove the word "Commission" and add the word "Board" in its place.

d. In paragraph (c)(6)(iii) remove the word "Commission's" and add in its place the word "Board's" and in paragraphs (c)(6)(iii) and (c)(6)(iv) remove the word "Commission" wherever it appears in those paragraphs and add in its place the word "Board".

e. In paragraph (c)(7)(i) remove the word "Commission" wherever it appears and add in its place the word "Board", remove the words "49 U.S.C. 11345(b)" and add in its place the words "49 U.S.C. 11325(b)", remove the words "49 U.S.C. 11345(c)" and add in their place the words "49 U.S.C. 11325(c)" and remove the words "49 U.S.C. 11345(d)" and add in their place the words "49 U.S.C. 11325(d)".

f. In paragraph (c)(7)(ii) remove the word "Commission" wherever it appears and add in its place the word "Board".

g. In paragraphs (d)(1)(ii)(D), (d)(1)(iii)(G), (d)(1)(iii)(I)(3), (d)(2), (d)(3), and (d)(4)(iii) remove the word "Commission" wherever it appears in those paragraphs and add in its place the word "Board".

h. In paragraphs (e)(1) and (e)(4) remove the word "Commission" wherever it appears in those paragraphs and add in its place the word "Board".

i. In paragraph (f)(1) remove the word "Commission" add in its place the word "Board".

j. In paragraph (g) remove the words "INTERSTATE COMMISSION" and add in its place the words "SURFACE TRANSPORTATION BOARD", and remove the words "49 U.S.C. 10505(d)" wherever they appear and add in their place the words "49 U.S.C. 10502(d)", remove the word "Commission" and add in its place the word "Board" and remove the word "Commission's" wherever its appears and add in its place the word "Board's".

k. In paragraph (h) remove the word "Commission" and add in its place the word "Board" and remove the word "ICC" wherever it appears and add in its place the word "STB".

l. Paragraph (i) is removed.

m. Section 1180.4 is further amended by revising paragraphs (c)(1), (c)(2)(vi) and (d)(4)(ii) and (g)(1)(iii) to read as follows:

§ 1180.4 Procedures.

* * * * *

(c) *Application.* (1) The fees for filing applications, petitions, or notices under these procedures are set forth in 49 CFR 1002.2.

(2) * * *

(i) * * *

(vi) Applicant shall file concurrently all directly related applications, *e.g.*, those seeking authority to construct or abandon rail lines, obtain terminal operations, acquire trackage rights, etc.

* * * * *

(d) * * *

(4) * * *

(ii) For filing fee purposes, a responsive application that is an inconsistent application will be classified as a major, significant, or minor transaction as provided for in § 1180.2(a)–(c). The fee for an inconsistent application will be the fee for the type of transaction involved. See 49 CFR 1002.2(f)(38)–(41). The fee for any other types of responsive applications is the fee for the particular type of proceeding set forth in 49 CFR 1002.2(f).

* * * * *

(g) * * *

(1) * * *

(iii) Other exemptions that may be relevant to a proposal under this provision are codified at 49 CFR part 1150, subpart D, which governs transactions under 49 U.S.C. 10901.

* * * * *

§ 1180.6 [Amended]

9. Section 1180.6 is amended as follows:

a. In the introductory text of paragraph (a) remove the words "49 U.S.C. 11343" and add in their place the words "49 U.S.C. 11323".

b. In paragraph (a)(2)(vi) remove the words "49 U.S.C. 11344" and add in their place the words "49 U.S.C. 11324".

c. In paragraphs (a)(4) and (a)(6) remove the word "Commission" wherever it appears in those paragraphs and add in its place the word "Board".

d. In paragraph (a)(8) remove the words "Commission's Section of Energy and Environment" and add in their place the words "Board's Section of Environmental Analysis".

e. In paragraph (b)(6) remove the word "Commission" wherever it appears and add in its place the word "Board".

§ 1180.7 [Amended]

10. Section 1180.7 is amended as follows:

In the introductory text of this section remove the words "(49 U.S.C. 11344 (b) or (d)," and add in their place the words "(49 U.S.C. 11324 (b) or (d)," and remove the word "Commission" wherever it appears and add in its place the word "Board".

§ 1180.9 [Amended]

11. Section 1180.9 is amended as follows:

In the introductory text of this section remove the word "Commission's" and add in its place the word "Board's" and in paragraph (e) remove the word "Commission" wherever it appears and add the word "Board".

§ 1180.20 [Amended]

12. Section 1180.20 is amended as follows:

a. In paragraph (a)(2)(ii) remove the words "49 U.S.C. 11343, et seq." and add in their place the words "49 U.S.C. 11323, et seq.".

b. In paragraphs (b), (c), and (d) remove the word "Commission" wherever it appears in those paragraphs and add in its place the word "Board" and in paragraph (c) remove the words "49 U.S.C. 11347" and add in its place the words "49 U.S.C. 11326".

[FR Doc. 97–5149 Filed 3–3–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 950725189–6245–04; I.D. 022697B]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Trip Limit Reduction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Trip limit reduction.

SUMMARY: NMFS reduces the commercial trip limit of king mackerel in the Florida east coast sub-zone from 50 to 25 per day in or from the exclusive economic zone (EEZ). This trip limit reduction is necessary to protect the overfished Gulf king mackerel resource.

EFFECTIVE DATE: The 25–fish commercial trip limit is effective 12:01 a.m., local time, March 1, 1997, through March 31, 1997.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–570–5305.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented by regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, NMFS implemented a commercial quota for the Gulf migratory group of king mackerel in the Florida east coast sub-zone of 865,000 lb (392,357 kg). In accordance with 50 CFR 622.44(a)(2)(i)(B), from the date that 75 percent of the sub-zone's commercial quota has been harvested, provided that the date occurs before March 1, until a closure of the Florida east coast sub-zone has been effected, king mackerel in or from this sub-zone in the EEZ may be possessed on board or landed from a permitted vessel in amounts not exceeding 25 per day. The 25–fish trip limit remains in effect through March 31, 1997, when the boundary of the Gulf migratory group of king mackerel shifts from the east coast to the west coast of Florida, unless 100 percent of the commercial quota is reached before March 31, in which case the commercial fishery for king mackerel in the Florida east coast sub-zone is closed by publication of a notification in the **Federal Register**.

NMFS has determined that 75 percent of the commercial quota for Gulf group king mackerel from the Florida east coast sub-zone was reached by February 28, 1997. Accordingly, a 25–fish trip limit applies to king mackerel in or from the EEZ in the Florida east coast sub-zone effective 12:01 a.m., local time, March 1, 1997.

The Florida east coast sub-zone extends from 25°20.4′ N. lat. (due east of the Dade/Monroe County, FL, boundary) to 29°25′ N. lat. (due east of the Volusia/Flagler County, FL, boundary) from November 1 through March 31.

Classification

This action is taken under 50 CFR 622.44(a)(2)(i)(B) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 27, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–5303 Filed 2–27–97; 5:02 pm]

BILLING CODE 3510–22–F

50 CFR Part 679

[Docket No. 961107312–7012–02; I.D. 022697D]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Eastern Aleutian District of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for Pacific ocean perch in the Eastern Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 1997 total allowable catch (TAC) of Pacific ocean perch in this area.

EFFECTIVE DATE: 1200 hrs, Alaska local time (A.l.t.), February 27, 1997, until 2400 hrs, A.l.t., December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The TAC of Pacific ocean perch for the Eastern Aleutian District was established by the Final 1997 Harvest Specifications of Groundfish for the BSAI (62 FR 7168, February 18, 1997) as 3,240 metric tons (mt). See § 679.20(c)(3)(iii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the TAC for Pacific ocean perch specified for the Eastern Aleutian District will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 3,040 mt, and is setting aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Eastern Aleutian District.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 679.20(e) and (f).

Classification

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 27, 1997.

Gary Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–5301 Filed 2–27–97; 5:02 pm]

BILLING CODE 3510–22–F

50 CFR Part 679

[Docket No. 961107312–7012–02; I.D. 022697C]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Eastern Aleutian District and Bering Sea Subarea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Prohibition of retention.

SUMMARY: NMFS is prohibiting retention of Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). NMFS is requiring that catches of Atka mackerel in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the Atka mackerel 1997 total allowable catch (TAC) in this area has been reached.

EFFECTIVE DATE: 1200 hrs, Alaska local time (A.l.t.), February 28, 1997, until 2400 hrs, A.l.t., December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and CFR part 679.

The 1997 TAC of Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea was established by the Final 1997 Harvest Specifications of Groundfish for the BSAI (62 FR 7168, February 18, 1997) as 15,000 metric tons. See § 679.20(c)(3)(iii).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 1997 TAC for Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea has been reached. Therefore, the Regional Administrator is requiring that further catches of Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea be treated as prohibited species in accordance with § 679.21(b).

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 679.20(e).

Classification

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 27, 1997.

Gary Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–5302 Filed 2–27–97; 5:02 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 42
Tuesday, March 4, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–AAL–31]

Proposed Revision of Class E Airspace; Klawock, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action revises Class E airspace at Klawock, AK. The revision of the Global Positioning System (GPS) instrument approach and creation of a non-directional beacon (NDB) instrument approach to RWY 1 has made this action necessary. The area would be depicted on aeronautical charts for pilot reference. The intended effect of this proposal is to provide adequate controlled airspace for IFR operations at Klawock, AK.

DATES: Comments must be received on or before April 18, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, AAL–530, Docket No. 96–AAL–31, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, at the address shown above.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, System Management Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number: (907) 271–5863; email: Robert.van.Haastert@faa.dot.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96–AAL–31." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise Class E airspace for GPS and NDB instrument approach procedures at Klawock, AK. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1 (61 FR 48403; September 13, 1996). The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

* * * * *

AAL AK E5 Klawock, AK [Revised]

Klawock Airport, AK
(Lat. 55°34'48" N, long. 133°04'30" W)
Klawock NDB/DME
(Lat. 55°34'07" N, long. 133°04'46" W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Klawock Airport and 6.5 miles north and 10 miles south of the 243° bearing from the Klawock NDB/DME extending to 16 miles southwest of the NDB/DME; and that airspace extending upward from the 1,200 feet above the surface within 6.7 miles northwest and 9.5 miles southeast of the 039° bearing from the airport extending from the airport to 6.7 miles northeast of the airport and within 6.7 miles northwest and 9.5 miles southeast of the 219° bearing from the airport extending from the airport to 32 miles southwest of the airport and 6.5 miles north and 10 miles south of the 243° bearing from the Klawock NDB/DME beginning 16 miles west of the NDB/DME and extending to 35 miles west of the NDB/DME.

* * * * *

Issued in Anchorage, AK, on February 25, 1997.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 97–5292 Filed 3–3–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Chapter I

[Docket No. 97N–0068]

Proposed Approach to Regulation of Cellular and Tissue-Based Products; Availability and Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of proposed regulatory approach; public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled, "Proposed Approach to Regulation of Cellular and Tissue-Based Products." In addition, FDA is announcing a public meeting to solicit information and views from the interested public on the agency's proposed regulatory approach for such products. These actions are taken in response to the Administration's "Reinventing Government" initiative which seeks to streamline regulatory requirements to ease the burden on regulated industry, while providing adequate protection to the public health.

DATES: Written comments may be submitted at any time; however, comments should be submitted by April 17, 1997, to ensure their adequate consideration in preparing FDA's final approach to the regulation of cellular and tissue-based products.

The public meeting will be held on March 17, 1997, from 8 a.m. to 4:30 p.m. Submit written notices of participation by March 10, 1997, including a summary of the presentation, which will be submitted to the docket, and approximate time requested.

Registration is not required; however, groups are asked to limit the number of individuals attending because of the anticipated broad interest in the meeting and the limited available seating.

ADDRESSES: The public meeting will be held at the Parklawn Bldg., conference rooms D and E, 5600 Fishers Lane, Rockville, MD 20857.

Submit written requests for single copies of the document "Proposed Approach to Regulation of Cellular and Tissue-Based Products" to the Office of Communication, Training and Manufacturer's Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your request. The document may also be obtained by mail or by calling the CBER Voice information System at 1–800–835–4709, or 301–827–1800, or FAX at 1–888–CBER–FAX, or 301–827–3844.

Persons with access to the Internet may obtain the document using the world wide web (WWW) or bounce-back-e-mail. For WWW access, connect to CBER at "http://www.fda.gov/cber/cberftp.html". To receive the document by bounce-back e-mail, send a message to "CELL TISSUE@a1.CBER.FDA.GOV".

Submit written comments on the document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Two copies of any comments are to be submitted, except individuals may submit one copy. Requests and comments should be identified with the docket number found in the brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch, address above, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

For information regarding the meeting or to submit a notice of intent to participate: Martha A. Wells, Center for Biologics Evaluation and Research (HFM–305), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–0967, FAX 301–827–2844.

For information regarding this document: Sharon A. Carayiannis, Center for Biologics Evaluation and Research (HFM–630), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–3074.

SUPPLEMENTARY INFORMATION:

FDA is announcing the availability of a document entitled "Proposed Approach to Regulation of Cellular and Tissue-Based Products." This document is being issued as a part of FDA's continuing effort to reduce unnecessary burdens for industry without diminishing public health protection.

FDA has designed a new regulatory framework for cells and tissues. The document describes this new approach, which FDA believes would provide adequate protection of public health, both from the risks of transmission of communicable disease and from the risks of therapies that may be ineffective or dangerous, while enabling investigators to develop new therapies and products with as little regulatory burden as possible. The proposed approach would encompass, but not be limited to, the regulation of the following: Human tissue intended for transplantation, currently regulated under 21 part CFR 1270; demineralized bone; reproductive tissue; heart valves; peripheral blood hematopoietic stem cells; placental/umbilical cord blood hematopoietic stem cells; somatic cell therapy products; and gene therapy products.

The approach does not encompass vascularized organs or minimally-manipulated bone marrow, transfusable blood products (e.g., whole blood, red blood cells, platelets, and plasma), tissues derived from animals, products used in the propagation of cells or tissues, or products that are secreted by or extracted from cells or tissues (e.g., human milk, collagen, urokinase, cytokines, and growth factors and hormones). Such products generally raise different safety and effectiveness issues, and generally are covered by other rules, regulations, and/or

standards. The agency intends to implement this regulatory plan in a step-by-step fashion and to issue through notice and comment rulemaking new regulatory requirements.

The regulatory approach focuses on five overarching public health and regulatory concerns, which can be stated as the following questions:

(1) How can the transmission of communicable disease be prevented?

(2) What processing controls are necessary, e.g., to prevent contamination that could result in an unsafe or ineffective product, and to preserve integrity and function so that products will work as they are intended?

(3) How can clinical safety and effectiveness be assured?

(4) What labeling is necessary, and what kind of promotion is permissible, for proper use of the product?

(5) Should manufacturers notify FDA when they process and market tissue products?

With these concerns in mind, FDA categorized cells and tissues and their uses by their risk relative to each concern, so as to enable the agency to provide only that level of oversight relevant to each of the individual areas of concern. Thus, under the plan, cells and tissues would be regulated with a tiered approach based on risk and the necessity for FDA review.

In addition to making this document available, FDA is announcing a public meeting to discuss the proposed approach to the regulation of cellular and tissue-based products. At the public meeting FDA intends to present a brief overview of the proposed regulatory approach and provide an opportunity for public comments on the approach. Individuals who wish to make a presentation should contact Martha A. Wells, address above. FDA will determine the time available for presentations based on the number of participants. As time permits, those who did not submit a notice of participation will be given an opportunity to speak at the end of the meeting. FDA is requesting that those persons making oral presentations also submit their statements in writing, as described below, to ensure their adequate consideration.

Although all members of the public will have an opportunity to comment on the proposed regulations when they are published, interested persons who wish to comment on the agency's proposed approach to the regulation should submit written comments on the document, "Proposed Approach to Regulation of Cellular and Tissue-Based Products," and written comments in response to the public meeting to Dockets Management Branch (address above). Written comments may be submitted at anytime, however, comments should be submitted by April 17, 1997, to assure their adequate consideration. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments and information are to be identified with the docket number found in brackets in the heading of this document. A copy of the document and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Written comments on this document and comments received in response to the public meeting will be considered in determining whether revisions to the document are warranted and in preparing any future rulemaking.

Dated: February 26, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97-5240 Filed 2-28-97; 2:13 pm]

BILLING CODE 4160-01-F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-7210]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646-2796.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act.

The Executive Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
California	Arcata (City) Humboldt County.	Janes Creek	Just upstream of Samoa Boulevard	None	*7
			Just downstream of U.S. Highway 101	None	*35
Maps are available for inspection at the City of Arcata Public Works Department, 736 F Street, Arcata, California. Send comments to The Honorable Alice Harris, City Manager, City of Arcata, 736 F Street, Arcata, California 95521.					
Kansas	Lindsborg City McPherson Country	Cow Creek	Just upstream of Sheridan Street	*1,321	*1,320
			At Coronado Avenue	1,334	*1,333
Maps are available for inspection at the City of Lindsborg City Hall, 101 South Main, Lindsborg, Kansas. Send comments to The Honorable Donald Anderson, Mayor, City of Lindsborg, P.O. Box 70, Lindsborg, Kansas 67456.					
Louisiana	Assumption Parish (unincorporated areas).	Pierre Pass at Pierre Part	At the area surrounding Lake Vevret	None	*6
Maps are available for inspection at the City Hall, 141 Highway 1008, Napoleonville, Louisiana. Send comments to The Honorable James Clement, Parish Manager, Assumption Parish, 141 Highway 1008, Napoleonville, Louisiana 70390.					
	St. Martin Parish (unincorporated areas).	Bayou Long	At southeastern portion of Parish, east of State Highway 70.	None	*6
Maps are available for inspection at Parish Police Jury, 415 South Main Street, St. Martinville, Louisiana. Send comments to The Honorable Jerard Durand, Parish Executive, St. Martin Parish, P.O. Box 9, St. Martinville, Louisiana 70582.					
Missouri	Lamar (City) Barton County.	North Fork Spring River	At confluence of Unnamed Tributary A	None	*936
			Just upstream of the Burlington Northern Railroad.	None	*940
			At Reavley Street Extended	None	*942
		Unnamed Tributary A	Approximately 1,300 feet downstream of Walnut Street.	None	*936
			Just upstream of U.S. Highway 160	None	*958
Maps are available for inspection at the City of Lamar City Hall, 1104 Broadway, Lamar, Missouri. Send comments to The Honorable Gerald W. Gilkey, Mayor, City of Lamar, 1104 Broadway, Lamar, Missouri 64759.					
Nebraska	Milford (City) Seward County.	Big Blue River	Approximately 1.5 miles downstream of the Burlington Northern Railroad.	*1,403	*1,401
			Approximately 3.0 miles upstream of the Burlington Northern Railroad.	*1,412	*1,413
Maps are available for inspection at the City of Milford City Hall, 505 First Street, Milford, Nebraska. Send comments to The Honorable Dean A. Bruha, Mayor, City of Milford, P.O. Box 13, Milford, Nebraska 68405.					
Oklahoma	Piedmont (City) Canadian and Kingfisher Counties.	Soldier Creek South Branch.	Just above dam located 0.5 mile upstream of 16th Street Northeast.	*1,169	*1,168
			Approximately 3,500 feet upstream of Piedmont Road.	None	*1,205
		Deer Creek Tributary 5A	Just upstream of Washington Street	None	*1,156
			Approximately 2,000 feet upstream of Piedmont Street.	None	*1,198

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Maps are available for inspection at the City of Piedmont City Hall, 314 Edmond Road, Piedmont, Oklahoma.					
Send comments to The Honorable John Bickerstaff, Mayor, City of Piedmont, City Hall, 314 Edmond Road, Piedmont, Oklahoma 73078.					
Texas	Junction (City) Kimble County.	Llano River	Approximately 500 feet downstream of Interstate Highway 10.	*1,698	*1,695
			At confluence of North and South Llano Rivers.	*1,703	*1,698
		North Llano River	At confluence of with South Llano River ..	*1,703	*1,698
			Approximately 1,000 feet upstream of U.S. Highways 83, 290, and 377.	*1,715	*1,709
		South Llano River	At confluence with North Llano River	*1,703	*1,698
			Approximately 700 feet upstream of Flatrock Lane.	*1,716	*1,711
Maps are available for inspection at the City of Junction City Hall, 102 North Fifth Street, Junction, Texas.					
Send comments to The Honorable Keaton Blackburn, Mayor, City of Junction, 730 Main Street, Junction, Texas 76849.					

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: February 24, 1997.

Richard W. Krimm,

Executive Associate Director, Mitigation Directorate.

[FR Doc. 97–5273 Filed 3–3–97; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC04

Endangered and Threatened Wildlife and Plants; Withdrawal of Proposed Rule to List Coccoloba Rugosa (Ortegón) as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: The U.S. Fish and Wildlife Service withdraws the proposed rule to list *Coccoloba* rugosa (ortegón) as threatened, pursuant to the Endangered Species Act of 1973, as amended. This plant, endemic to Puerto Rico, occurs primarily in the eastern portion of the island. It is currently known from approximately 33 localities. Based on an evaluation of data available following publication of the proposal and evaluation of the comments, the Service determines that listing of ortegón is not warranted at the present time. The Service expects to work together with the U.S. Army, U.S. Navy, U.S. Forest Service, the Puerto Rico Conservation Trust and private landowners to protect and monitor the status of the species on these lands.

ADDRESSES: The complete file for this action is available for inspection, by appointment, during normal business hours at the Caribbean Field Office, Box 491, Boquerón, Puerto Rico 00622.

FOR FURTHER INFORMATION CONTACT: Ms. Susan R. Silander at the Caribbean Field Office address (809/851–7297).

SUPPLEMENTARY INFORMATION:

Background

Although there are no records available concerning when *Coccoloba rugosa* was first discovered, it is known that it was widely cultivated in European botanical gardens during the nineteenth century (Proctor, pers. comm.). The species was named in 1815 and described in 1829 by the French botanist René Louiche Desfontaines from a cultivated specimen at the Botanical Garden of Paris (Little et al. 1974). This plant was reported from St. Thomas more than a century ago, but it is a doubtful record (Proctor, pers. comm.).

Coccoloba rugosa is a small evergreen tree 9 meters (30 feet) tall with a diameter of approximately 12.5 centimeters (5 inches). The bark is brown or gray and fissured, with faint rings at the nodes. The green twigs are stout, slightly flattened with longitudinal ridges. The alternate stalkless leaves are 22–60 centimeters (9–24 inches) wide, very thick, brittle, and hairless. The leaf surface is rugose, with veins deeply sunken on the upper side and prominent beneath. At the base of each leaf is a large sheath (ocrea) measuring 4–6 centimeters (1.5–2.5 inches) long. Inflorescences are terminal, 30–75 centimeters (1–2.5 feet) long with numerous small crimson-colored flowers. Male and female flowers are borne on different trees (dioecious). The red ovoid fruits are about 1 centimeter (.4 inch) long with one brown, pointed, 3-angled seed that is .5 centimeter (.2 inch) long.

Ortegón is known from approximately 5,000 individuals at 33 sites most of which occur in the subtropical moist forest life zone of northern and eastern Puerto Rico. In eastern Puerto Rico the species is known from 23 localities. More than 1,000 individuals have been located at several localities on a privately-owned tourist resort complex in the Humacao/Yabucoa area in eastern Puerto Rico. An additional 400 individuals were found at Punta Guayanez, adjacent to the tourist resort complex. The species also occurs in 10 areas in the Punta Yeguas/Punta Toro area of Yabucoa/Maunabo municipalities. Portions of the Punta Yeguas area are owned and managed by the Puerto Rico Conservation Trust. Approximately 350 individuals may occur in these areas. More than 2,000 plants have been reported from the east facing slopes of Cerro Mala Pascua at approximately 100 meters above sea level in the municipalities of Maunabo and Patillas.

In northeastern Puerto Rico *Coccoloba rugosa* has been reported from locations in Luquillo, Río Grande, the El Convento area of Fajardo, and from two locations which fall within the Caribbean National Forest (approximately 36 plants).

In northern Puerto Rico the species occurs in the limestone knolls within the San Juan metropolitan area at two localities: 6 individuals on the Fort Buchanan Army installation in the municipality of Guaynabo and one locality consisting of 2 individuals on the Sabana Seca Naval Security Group Activities facility in the municipality of Toa Baja. One population historically reported from west of the San José lagoon in the San Juan metropolitan area was destroyed some years ago (Little et al. 1974).

Previous Federal Action

Coccoloba rugosa was included among the plants being considered as a candidate species (species for which the Service has on file sufficient information on biological vulnerability and threat(s) to support issuance of a proposed rule to list) by the Service, as published in the **Federal Register** notice of review dated February 21, 1990 (55 FR 6184) and September 30, 1993 (58 FR 51144).

The Service published a proposal to list ortegón as threatened on September 24, 1993 (58 FR 49660) based on information available at that time. The comment period on the proposal was subsequently reopened until January 24, 1995 (59 FR 60598) to allow for the collection and verification of additional information. The deadline for publishing a final listing decision was extended in the same **Federal Register** notice to March 24, 1995.

The processing of this action conforms with the Service's final listing priority guidance published in the **Federal Register** on December 5, 1996 (61 FR 64475). The guidance clarifies the order in which the Service will process rulemakings during fiscal year 1997. The guidance calls for giving highest priority to handling emergency situations (Tier 1) and second highest priority (Tier 2) to resolving the listing status of the outstanding proposed listings. This rule falls under Tier 2. At this time, there are no pending Tier 1 actions.

Summary of Comments and Recommendations

In the September 24, 1993, proposed rule and associated notifications, all interested parties were requested to submit factual reports of information that might contribute to the development of a final rule. Appropriate agencies of the Commonwealth of Puerto Rico, Federal agencies, scientific organizations and other interested parties were contacted and requested to comment. A newspaper notice inviting general public comment was published in the "San Juan Star" on October 10, 1993. The Service received three letters of comment, one supported the listing (Puerto Rico Department of Natural and Environmental Resources) and the other two provided information (University of Puerto Rico at Humacao and Vazquez Environmental Services, Inc. for Palmas del Mar, Inc.) but did not indicate either support or opposition.

Nevertheless, on June 21, 1994, the Service received a letter from Vinson & Elkins, attorneys for the Palmas del Mar Properties, Inc., which provided additional information on both the distribution and abundance of *Coccoloba rugosa*. Based on this additional information the Service reopened the comment period through January 24, 1995, and requested additional information from Federal agencies, Commonwealth of Puerto Rico agencies, scientific organizations and interested parties. One letter of comment was received, from Vinson & Elkins for Palmas del Mar, Inc., which provided information similar to that in their letter of June 21, 1994. The Service has verified data provided by Palmas in both of these letters and this information has been incorporated into the supplementary information provided above.

Summary of Factors Affecting the Species

The Endangered Species Act and implementing regulations found at 50 CFR 424.17(3) provide for the basis for determining a species to be endangered or threatened and for withdrawing a proposed rule when the proposal has not been found to be supported by available evidence. The five factors described in section 4(a)(1) of the Endangered Species Act, as they apply to the withdrawal of the proposed listing of *Coccoloba rugosa* (ortegón) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

At present, *Coccoloba rugosa* is known from a total of 33 localities. Two are located on land which is managed by the U.S. Forest Service as part of the Caribbean National Forest and the species is included by the Forest Service as a sensitive species and is considered in environmental evaluations and in management practices. The species occurs on property of both the U.S. Navy and the U.S. Army, both of which are aware of the presence of the species and the need to protect it. No activities are currently proposed by these entities for the areas where the species is found. The localities at Punta Yeguas are owned and managed by the Puerto Rico Conservation Trust, a non-governmental organization dedicated to the protection of natural resources, and the organization is aware of the presence of the species on its property and the need for its protection.

More than 1,000 individuals are located within the boundaries of the Palmas del Mar, Inc. resort in Humacao, Puerto Rico. The resort has, in its most recent development expansion proposal, included all known individuals within the project area in green areas and has avoided impacting individuals. The corporation has expressed interest in protecting the species through a cooperative agreement.

B. Overutilization for Commercial, Recreational, Scientific or Educational Purposes

Not applicable. Ortegón may be of interest as a cultivated, ornamental plant, and has been the subject of successful propagation both by private entities as well as by the Puerto Rico Department of Natural and Environmental Resources.

C. Disease or Predation

Not applicable.

D. The Inadequacy of Existing Regulatory Mechanisms

The species is considered to be a "critical" species by the Puerto Rico Department of Natural and Environmental Resources and is considered in evaluations done by the agency for development proposals. Listing under the Act would have offered protection through Sections 7 and 9, and through recovery planning. Nevertheless, the largest populations are on privately-owned land where few federally-funded or permitted projects are anticipated.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Although the forests of eastern Puerto Rico were dramatically affected by the passage of Hurricane Hugo in 1989, the species occurs in a sufficient number of localities that would ensure its continued survival.

Proposed Rule Withdrawal

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by *Coccoloba rugosa* in determining to withdraw this proposed rule. The withdrawal is based on the likelihood of the species retaining its current distribution and numbers and the anticipated cooperation on the part of both Federal and Commonwealth agencies and non-governmental and private entities in the conservation of the species.

The Service withdraws the proposed rule of September 24, 1993 (58 FR 49660) to list the *Coccoloba rugosa* as a threatened species. At present the Service does not consider this species a Candidate for listing.

References Cited

Little, E.L., R.O. Woodbury, and F.H. Wadsworth. 1974. Trees of Puerto Rico and the Virgin Islands. Second volume. U.S. Department of Agriculture Handbook No. 449. Washington, D.C. 1024 pp.

Author

The primary author of this document is Ms. Susan R. Silander (see **ADDRESSES** section).

Authority

The authority for this action is section 4(b)(6)(B)(ii) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: February 10, 1997.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 97–5156 Filed 3–3–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[Docket No. 960416112–7024–04; I.D. 111396A]

RIN 0648–AJ04

Atlantic Highly Migratory Species Fisheries; Tuna Fishery Regulatory Adjustments

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to amend regulations governing the Atlantic tuna fisheries to: Divide the large school-small medium size class quota and the large medium-giant quotas of Atlantic Bluefin Tuna (ABT) into north and south regional subquotas; establish a new tuna permit program to provide for category changes, annual renewals and the collection of fees; establish authority for self-reporting for ABT landed under the Angling category; prohibit the retention of ABT less than the large medium size class by vessels permitted in the General category; prohibit all fishing by persons aboard vessels permitted in the General category on designated restricted-fishing days; and prohibit the use of spotter aircraft except in purse seine fisheries. The proposed regulatory amendments are necessary to achieve domestic management objectives for the Atlantic tuna fisheries. NMFS will hold public hearings to receive comments from fishery participants and other members of the public regarding these proposed amendments.

DATES: Comments are invited and must be received on or before March 31, 1997.

ADDRESSES: Comments on the proposed rule should be sent to, William Hogarth, Acting Chief, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3282.

FOR FURTHER INFORMATION CONTACT: John Kelly, 301–713–2347.

SUPPLEMENTARY INFORMATION: The Atlantic tuna fisheries are managed under the authority of the Atlantic Tunas Convention Act (ATCA). ATCA authorizes the Secretary of Commerce (Secretary) to implement regulations as may be necessary to carry out the recommendations of the International Commission for the Conservation of Atlantic tunas (ICCAT). The authority to implement ICCAT recommendations has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA).

Relation to Advance Notices of Proposed Rulemaking

This proposed rule responds in part to comments received subsequent to two recently published Advanced Notices of Proposed Rulemaking (ANPR) (61 FR 43518, August 23, 1996 and 61 FR 48876, September 17, 1996). Written comments were accepted over a 30 day period following publication of each ANPR. A summary of comments received follows.

NMFS received comments from several organizations and individuals in support of dividing the large school-small medium and large medium-giant size class quotas into regional subquotas. Many commenters are concerned that the high catch rates off North Carolina in the winter months preclude the opportunity to land a trophy size bluefin in other areas. Some commenters felt that this would be a more reasonable solution than delaying the Angling category season until June 1. Still others suggested that since the winter fishery off North Carolina is not historical, at least at current levels, it should not be allowed to increase if it is likely to jeopardize the ABT recovery program or preclude fisheries in traditional areas.

Some commenters wrote in support of providing NMFS the authority to close and/or reopen all or part of the Angling category in order to ensure an equitable distribution of fishing opportunities. NMFS has decided to address this option in a separate regulatory action.

Regarding a new tuna permit program, some commenters support annual renewal and the collection of a fee. Some individuals state that an annual renewal system would be an administrative burden. A few commenters suggest a higher fee for commercial and charter permits, and a few oppose the fee altogether. Several commenters support the establishment of a self-reporting system for ABT landed under the Angling category. Some are concerned about NMFS getting the resources to develop a monitoring strategy in which the constituency can have confidence.

Many commenters wrote to support issuance of one permit per vessel so that vessels could not fish in more than one quota category. In July 1995, NMFS issued regulations that precluded issuance of both a General and Angling category permit to a single vessel, but that rule also allowed General and Charter/Headboat permitted vessels to fish under the Angling category quota. The numerous comments NMFS received in support of separating the General and Angling category permits can thus be translated as requests to prohibit the retention of school ABT by General category vessels.

Some commenters wrote to support the requirement of logbooks for General category vessels.

Over 350 post cards were received that requested NMFS to prohibit fishing by persons on General category vessels on restricted-fishing days. A few commenters oppose restricted-fishing days. NMFS received 510 comments supporting prohibition of spotter planes in all handgear categories, two comments supporting the prohibition for the General category only, and one comment supporting the prohibition for the Harpoon category only.

NMFS has reviewed comments received on the two ANPRs and has considered them in developing this proposed rule.

Relation to Proposed Consolidation

A proposed rule on "Atlantic Highly Migratory Species Fisheries; Consolidation of Regulations" was published by NMFS on November 6, 1996, in the **Federal Register** at 61 FR 57361. The regulatory amendments contained in this proposed rule have been written to be consistent with the previously proposed consolidation. As proposed, the consolidated regulations significantly reorganize and condense regulatory text regarding the Atlantic tuna fisheries. In particular, regulations governing the Atlantic tuna fisheries, currently found at 50 CFR part 285, were proposed to be combined with other regulations governing HMS under 50 CFR part 630. This proposed rule is drafted in a consistent format to enable the public to place these changes in context, as the changes will amend the proposed consolidated regulations under part 630. Copies of the proposed consolidation rule may be obtained by writing (see **ADDRESSES**) or calling the contact person (see **FOR FURTHER INFORMATION CONTACT**).

Subsequent to the publication of the proposed consolidation, a technical amendment to 50 CFR part 285 was filed at the Office of the Federal Register (62 FR 331, January 3, 1997) to remove references to the Regional Director for the purposes of issuing Atlantic Tunas permits. This amendment was necessary to begin implementation of the automated permitting system by a private sector contractor. Therefore, regulatory text referring to permits in this proposed rule reflects changes made by that technical amendment in addition to the proposed consolidation.

Angling Category

Changes to Angling category regulations would provide more information for scientific monitoring by lengthening the fishing season. Additionally, these changes would provide more equitable geographic and temporal distribution of fishing opportunities.

Since 1992, the school size subcategory has been divided between a "north" and "south" area quota, with the division at Delaware Bay. The northern region has been allocated 53 percent of the school ABT quota and the southern region 47 percent. Given the recent and unprecedented increase in landings of large school-small medium and large medium-giant (trophy class) ABT in the early season North Carolina fishery, NMFS proposes to subdivide the large school-small medium quota and the large medium-giant quota in the same proportions and for the same geographic areas as has been specified for the school size class of ABT. This subdivision would improve scientific data collection over all regions and the entire fishing season and help ensure that the northern and southern areas have access to an equitable share of the quota. If implemented, these northern and southern area subquotas will be identified in the annual quota specifications to be published in the **Federal Register** at a later date.

NMFS believes that the subdivision of the quota combined with the expanded authority for interim closures, to be undertaken in a separate action, could adequately address the scientific monitoring and fishing opportunity issues without delaying the opening of the Angling category fishing season until June.

General Category

In 1995, NMFS proposed amendments to permit regulations to preclude issuance of both ABT General and Angling category permits to a single vessel (60 FR 25665, May 12, 1995). At the time, industry participants had communicated concerns to NMFS that permitting vessels in both the Angling and General categories facilitates violations of daily catch limits and results in discarding and additional mortality of bluefin tuna. These commenters maintained that under a dual permit system, vessels may continue to fish after the daily commercial trip limit is reached with the intent to capture a more valuable fish or illegally transfer fish to another vessel. It was argued that issuance of only a General or Angling category permit to a single vessel would also reduce bluefin discard mortality by separating commercial and recreational fishing activities.

In response, NMFS proposed that a permit for a single category be issued to a vessel, that persons aboard General category vessels be required to release all ABT less than 73 inches curved fork length and cease fishing once the daily limit of large medium or giant ABT is attained, and that persons aboard Angling category vessels be required to release all ABT greater than 73 inches curved fork length and cease fishing once the daily limit of school, large school, or small medium ABT is attained, except that vessels registered in the NMFS cooperative tagging program would be authorized to continue catch and release fishing.

At the 1995 public hearings, many General category permittees expressed interest in maintaining a "mixed" fishery, that is, alternately targeting large or small ABT depending on weather conditions and availability of fish. Based on comments received, NMFS issued final regulations (60 FR 38505, July 27, 1995) that limited permits to one category per vessel, but that also allowed General and Charter/Headboat permitted vessels to fish under the Angling category quota for ABT less than 73 inches.

Since that time, fishery participants have continued to express concerns in letters, phone calls and at public meetings about enforcement of General category rules, particularly restricted fishing days and daily catch limits, in situations where General category vessel operators could legally continue to fish under the Angling category rules. In addition, concerns have been raised about NMFS' ability to monitor the Angling category quota when General category vessels are included in the sample frame for the telephone and dockside surveys. The fact that the General and Angling quota categories do not correspond exactly with the General, Charter/Headboat and Angling permit categories has led to much confusion on the part of the regulated public. Often the General category is perceived as a commercial fishery for giant ABT when in fact there is considerable overlap with the recreational fishery for school ABT. Of the more than 13,000 General category permittees, only about 1,000 normally land and sell commercial-size ABT in a given year.

To address these concerns about quota monitoring and effective effort controls, NMFS again proposes to prohibit the retention of ABT less than the large medium size class by vessels permitted in the General category. This would effectively separate the commercial and recreational fisheries, with the exception of charter/headboats. Anglers aboard vessels permitted in the Charter/Headboat category could fish under either the daily Angling category limits or the daily General category limit as applicable on that day. The size category of the first ABT retained or possessed would determine the fishing category of the vessel for that day.

Additionally, NMFS proposes to prohibit all fishing by persons aboard vessels permitted in the General category on designated ABT restricted-fishing days. This measure is necessary to monitor and enforce the General category effort controls but is only practical if the recreational and commercial categories are separate. Fee-paying anglers aboard vessels permitted in the Charter/Headboat category could fish under the Angling category rules on designated restricted-fishing days.

The proposed requirements for General category vessels would improve distribution of fishing opportunities, decrease ABT mortality, facilitate enforcement and increase the effectiveness of the General category restricted fishing days, and improve the accuracy of catch estimates for both the Angling and General categories.

Permits and Catch Reporting

Revisions proposed for the Atlantic tunas permit and reporting program would provide for annual renewals and the collection of fees, and the authorization for a mandatory reporting

system for ABT landed under the Angling category.

In recent years, NMFS has received substantial criticism that the existing telephone and dockside surveys do not result in timely or accurate catch estimates. Revisions to the permitting and reporting systems will improve NMFS' ability to monitor the Angling category catch and effect a fair distribution of fishing opportunities. While collection of fees and annual renewals are authorized under current regulations, Atlantic tuna permits are currently provided free of charge, and have been issued for renewals on a three-year, staggered basis. Because of the extremely high volume of permit requests, NMFS previously found it cost-inefficient to collect fees and to implement an annual renewal system.

Recent changes to automate the permit program, now managed by private sector contractor, will expedite permit renewals and the processing of initial applications. Under the new system, reissued tuna permits would be required for all permit holders, regardless of the date of expiration indicated on current permits and a fee would be assessed to recover administrative costs of permit issuance.

Atlantic tunas permits issued by NMFS Northeast Regional Office, regardless of expiration date printed on the permit would have to be renewed under the new system in 1997. In addition, all new permit applications and requests for category changes would be made under the new system. NMFS has provided advance notice to vessel owners of proposed procedures to access the new permitting system via letters to individual permit holders and in notices broadcast over the Highly Migratory Species FAX network. Additionally, recorded information and instructions on the proposed new system can be obtained by phone (toll-free, 1–888–USA-TUNA) or over the internet (http://www.usatuna.com).

Permit fees are established according to the NOAA schedule for recovery of administrative costs. Such fees, previously authorized but waived by the NMFS Northeast Regional Office for administrative reasons, are now necessary to recover the cost of the permit program contract. The fee for calendar year 1997 would be set at $18.00.

The automated procedures, which include application by telephone or internet, will reduce the administrative burden on NMFS and the public, thus annual renewals are feasible. Annual renewals are necessary to maintain an accurate permit database for the purposes of quota monitoring and statistical collection.

Systems implemented for the permit program will also accommodate automated catch reporting. Automated procedures for direct telephone catch reporting by anglers would be less burdensome yet more timely and potentially more precise than current survey-based reporting. Additional reporting procedures may involve catch reports by tagging fish or using punch cards. NMFS intends to establish a pilot reporting system in 1997. If selected for this pilot program, anglers would be notified by mail of applicable reporting procedures. Depending on the feasibility and cost assessment of the direct reporting pilot study, the requirements would be expanded, as appropriate, in 1998. Such improvements in quota monitoring are necessary to meet ICCAT obligations and domestic management objectives.

Finally, Atlantic tunas permitting requirements would be extended to require permits when fishing under the provisions for tag and release. In recent years, situations have arisen where significant levels of fishing activity occur during closures of the ABT fishery. Current regulations require that tagging kits be on board the vessel and that tags be used to qualify anglers for the catch and release exemption to ABT fishery closures. Requiring vessel permits in addition to tagging kits recognizes that these situations are in fact directed fisheries for ABT and will facilitate enforcement of ABT regulations and collection of catch and effort information.

These proposed permitting and reporting requirements would improve the quality and quantity of catch information collected for stock assessments as well as the accuracy of catch estimates for both the Angling and General categories.

Spotter Aircraft

This proposed rule would prohibit the use of aircraft to assist fishing vessel operators in the location and capture of ABT, with the exception of purse seine vessels. NMFS has received numerous comments that the use of aircraft to locate bluefin tuna is contrary to the effort controls previously established for the General category and is accelerating the closure of the Harpoon category. NMFS has, on two occasions, requested specific comments on ways to mitigate the impact of aircraft use on catch rates (54 FR 29916, July 17, 1989 and 61 FR 18366, April 25, 1996).

In both cases, NMFS elected not to regulate aircraft use in the Atlantic tuna fisheries, in part because of concerns about the enforceability of spotter plane regulations. Additionally, in 1996, a voluntary agreement was signed by the majority of active tuna spotters that would limit activity to vessels using harpoon gear. NMFS recognized that the voluntary agreement warranted a trial period, but also indicated that the agency would continue to monitor the situation and would take appropriate action if necessary. Since the fishery management concerns continue to be expressed, and due to increased numbers of aircraft and vessels, safety issues are now being raised, NMFS has reconsidered action to respond to these issues.

NMFS considered combining the Harpoon and General categories as a means to resolve the catch rate and safety issues. The incentive for aircraft use would be greatly diminished if all handgear fishermen were subject to a daily catch limit. However, it is debatable whether the harpoon fishery, as it has traditionally existed, could continue under catch limits. Also, aircraft are currently used in the General category, so it is not clear how aircraft use would adapt to a single handgear category. On the other hand, fishery participants have expressed a commitment to self-policing, increasing the likelihood that a spotter aircraft regulation could be effectively enforced. Recognizing that self-policing is essential for effective enforcement, NMFS proposes to prohibit use of aircraft for ABT fishing except for assisting purse seine vessels. NMFS requests comment on this proposal and alternative measures to address the fishery management and safety issues raised by use of aircraft in the ABT fisheries.

Public Hearings

NMFS will hold public hearings to receive comments on these proposed amendments. These hearings will be scheduled at a later date and before the end of the comment period. Advanced notice of these hearings will be published in the **Federal Register** and via the HMS fax network, internet worldwide web site (http://www.usatuna.com), and telephone information hotline (301–713–1279).

Classification

This proposed rule is published under the authority of the ATCA, 16 U.S.C. 971 *et seq.* Preliminarily, the AA has determined that the regulations contained in this proposed rule are necessary to implement the recommendations of ICCAT and are necessary for management of the Atlantic tuna fisheries.

NMFS prepared a draft EA for this proposed rule with a preliminary finding of no significant impact on the human environment. In addition, a draft RIR was prepared with a preliminary finding of no significant impact.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief of Advocacy of the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities as follows:

The proposed regulatory amendments are necessary to achieve domestic management objectives. Small businesses should benefit from measures to extend the fishing season and distribute fishing opportunities. Permit fees will be $18.00 per year and anglers will not incur any significant costs to comply with reporting requirements. Restricted-fishing days should augment total revenues to the General category due to increased prices from more even product flow on the export market. Approximately 30 pilots would be affected by the spotter plane prohibition. Some pilots would continue to fly for purse seine vessels. Otherwise, since pilots operate on a catch share basis lost revenue would accrue to fishing vessel operators. While over 10,000 recreational vessel owners could be restricted from selling a bluefin tuna, such sales are an infrequent occurrence. Therefore, it is concluded that these proposed actions, considered separately or in aggregate, will not have a significant impact on a substantial number of small entities. Thus, a regulatory flexibility analysis is not required for these actions.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB Control Number.

This proposed rule would implement new collections and restates or revises existing collection-of-information requirements subject to the PRA. Atlantic tuna vessel permits required under § 630.4(a) are approved under OMB Control Number 0648–0202 and are estimated at 30 minutes per permit action. Vessel reporting and recordkeeping requirements for longline vessels under § 630.5 are currently approved for swordfish and shark vessels under OMB Control Number 0648–0016 and are estimated at 15 minutes per logbook entry and 16 minutes for the attachment of tally sheets. Vessel reporting requirements for Atlantic tuna vessels permitted in the Angling category as proposed to be authorized under § 630.5 are currently approved as a voluntary collection under OMB Control Number 0648–0052 and are estimated at 8 minutes per telephone interview and 5 minutes per dockside interview.

Although permitting and reporting requirements have been approved by OMB for these fisheries, this rule would modify or extend these information collections. First, the new permit system would require reissuance of all vessel permits. NMFS estimates that up to 20,000 permit holders may be affected at an estimated 6 minutes per phone call. Second, commercial tuna vessel operators, who do not otherwise submit logbooks under swordfish or shark fishery requirements could be selected for the pelagic logbook reporting program. Purse seine, harpoon or handgear vessels could be affected. NMFS would request OMB approval prior to selecting vessels from these categories. Finally, ABT catch reporting by recreational anglers would be conducted by direct phone call rather than by interview. Catch reports are estimated at 5 minutes per toll-free phone call. While automated catch reporting may reduce the burden to individual respondents, the direct reporting program, if fully implemented, would increase the number of respondents. NMFS has requested that OMB review these proposed modifications to information collections. If implemented, the effectiveness of these collections will be delayed, pending OMB approval.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

NMFS issued a biological opinion under the Endangered Species Act on July 5, 1989, indicating that the level of impact and marine mammal takes in the Atlantic tuna fisheries is not likely to jeopardize the continued existence of any sea turtle species or any marine mammal populations. NMFS has since reinitiated consultation on the Atlantic highly migratory species fisheries under section 7 of the Endangered Species Act. This consultation will consider new information concerning the status of the northern right whale. NMFS has determined that proceeding with this rule, pending completion of that consultation, will not result in any irreversible and irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures.

List of Subjects in 50 CFR Part 630

Fisheries, Fishing, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: February 19, 1997.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 630 as proposed to be amended at 61 FR 57361, November 6, 1996, is further proposed to be amended as follows:

1. The authority citation for part 630 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.* and 16 U.S.C. 1801 *et seq.*

2. In § 630.2, definitions for "aircraft" and "restricted-fishing day" are added to read as follows:

§ 630.2 Definitions.

* * * * *

Aircraft means any contrivance used for flight in air.

* * * * *

Restricted-fishing day means a date, after the commencement date of the General category fishing season and before the effective date of fishery closure on attaining the annual quota, designated by the Director under § 630.29(a)(1)(i) upon which no fishing may be conducted by persons aboard vessels permitted in the Atlantic tunas General category.

* * * * *

3. In § 630.4, paragraph (a)(2)(v), the introductory text of paragraph (c) and paragraphs (c)(1)(i), (c)(1)(iii), (c)(1)(v), and paragraphs (d), (e), (f), (i) and (k) are revised to read as follows:

§ 630.4 Permits and fees.

(a) * * *

(2) * * *

(v) *Change of category.* Except for purse seine vessels for which a permit has been issued under paragraph (a)(2)(iv) of this section, an owner may change the category of the vessel's Atlantic tunas permit to another category a maximum of once per calendar year by application on the appropriate form to NMFS before May 15. After May 15, the vessel's permit category may not be changed to another

category for the remainder of the calendar year, regardless of any change in the vessel's ownership.

* * * * *

(c) *Application.* A vessel owner or dealer applying for a permit under paragraph (a) or (b) of this section must submit a completed permit application as indicated in the application instructions at least 30 days before the date on which the applicant desires to have the permit made effective.

(1) *Vessel permits.* (i) Applicants must provide all information concerning vessel, gear used, fishing areas, and fisheries participation, including sworn statements relative to income requirements and permit conditions, as indicated in the instructions on the application form.

* * * * *

(iii) NMFS may require the applicant to provide documentation supporting any sworn statements required under this section before a permit is issued or to substantiate why such permit should not be revoked or otherwise sanctioned under paragraph (l) of this section. Such required documentation may include copies of appropriate forms and schedules from the applicant's income tax return. Copies of income tax forms and schedules are treated as confidential.

* * * * *

(v) Applicants must also submit any other information that may be necessary for the issuance or administration of the permit, as requested by NMFS.

* * * * *

(d) *Issuance.* (1) Except as provided in subpart D of 15 CFR part 904, a permit shall be issued within 30 days of receipt of a completed application. An application is complete when all requested forms, information, sworn statements and supporting documentation have been received and the applicant has submitted all reports required under this part.

(2) The applicant will be notified of any deficiency in the application. If the applicant fails to correct the deficiency within 15 days following the date of notification, the application will be considered abandoned.

(e) *Duration.* A permit issued under paragraph (a) or (b) of this section remains valid until it expires or is suspended, revoked, or modified pursuant to subpart D of 15 CFR part 904. Permits expire on the date indicated on the permit or when any of the information previously submitted on the application changes. Permits must be renewed upon expiration. Renewal of permits must be initiated at least 30 days before the expiration date to avoid a lapse in validity.

(f) *Fees.* NMFS may charge a fee to recover the administrative expenses of permit issuance. The amount of the fee shall be determined, at least biannually, in accordance with the procedures of the NOAA Finance Handbook, available from the Director, for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified with application or renewal instructions. The required fee must accompany each application or renewal. Failure to pay the fee will preclude issuance of the permit. Payment by a commercial instrument later determined to be insufficiently funded shall invalidate any permit.

* * * * *

(i) *Change in application information.* Within 15 days after any change in the information contained in an application submitted under paragraph (a) or (b) of this section, the vessel owner or dealer must report the change by phone (1–888–USA-TUNA) or internet (http://www.usatuna.com). In such case, a new permit will be issued to incorporate the new information. For certain informational changes, NMFS may require supporting documentation before a new permit will be issued or may require payment of an additional fee. Permittees will be notified of such requirements, if applicable, when reporting changes. The permit is void if any change in the information is not reported within 15 days.

* * * * *

(k) *Replacement.* Replacement permits will be issued when requested by the owner or authorized representative. A request for a replacement permit will not be considered a new application. An appropriate fee, consistent with paragraph (f) of this section, may be charged for issuance of the replacement permit.

* * * * *

4. In § 630.5, the first sentence in each of paragraphs (a)(1) and (2) are revised, and a new paragraph (a)(4) is added to read as follows:

§ 630.5 Recordkeeping and reporting.

(a) *Vessels*—(1) *Logbooks.* If selected and so notified in writing by NMFS, the owner and/or operator of a vessel for which a permit has been issued under § 630.4(a), must ensure that a daily logbook form is maintained of the vessel's fishing effort, catch, and disposition on forms available from the Science and Research Director. * * *

(2) *Tally sheets.* The owner and/or operator of a vessel for which a permit has been issued under § 630.4(a), and who is required to submit a logbook under paragraph (a)(1) of this section, must ensure that copies of tally sheets are submitted for all fish offloaded and sold after a fishing trip. * * *

* * * * *

(4) *Angling reports.* Angling category permittees selected by the Director are required to report all ABT landed under the Angling category quota. Permittees will be notified in writing by the Director of their selection and applicable reporting requirements and procedures. Reporting procedures shall be established by the Director in cooperation with the States, and may include telephone, dockside or mail surveys, mail-in or phone-in reports, tagging programs, or mandatory ABT check-in stations. A statistically based sample of the Angling category permittees may be selected for specific reporting programs.

* * * * *

5. In § 630.21, paragraph (f) is added to read as follows:

§ 630.21 Gear restrictions.

* * * * *

(f) *Aircraft.* Other than for a vessel holding a valid permit in the Purse Seine category under § 630.4(a)(2), locating, fishing for, catching, taking, retaining or possessing ABT by means, aid, or use of any aircraft is prohibited.

6. In § 630.28, paragraphs (b)(5) and (e)(1) are revised to read as follows:

§ 630.28 Quotas and closures.

* * * * *

(b) * * *

(5) *Inseason adjustments.* NMFS may make transfers between fishing categories or allocate any portion of the Reserve held for inseason adjustments to any category of the fishery, or to account for harvest by persons conducting research activities authorized under § 630.1(b)(2) in accordance with § 630.32. NMFS will publish notification of any inseason adjustment amount in the **Federal Register**. Before making any such allocation between categories or from the Reserve, NMFS will consider the following factors:

(i) The usefulness of information obtained from catches of the particular category of the fishery for biological sampling and monitoring the status of the stock.

(ii) The catches of the particular gear segment to date and the likelihood of closure of that segment of the fishery if no allocation is made.

(iii) The projected ability of the particular gear segment to harvest the additional amount of Atlantic bluefin tuna before the anticipated end of the fishing season.

(iv) The estimated amounts by which quotas established for other gear segments of the fishery might be exceeded.

* * * * *

(e) *Closures*—(1) *Atlantic bluefin tuna.* (i) NMFS will monitor catch and landing statistics, including catch and landing statistics from previous years and projections based on those statistics, of Atlantic bluefin tuna by vessels other than those permitted in the Purse Seine category. On the basis of these statistics, NMFS will project a date when the catch of Atlantic bluefin tuna will equal any quota established under this section, and will file notification with the Office of the Federal Register stating that fishing for or retaining Atlantic bluefin tuna under the quota must cease on that date at a specified hour.

(ii) Upon determining that variations in seasonal distribution, abundance, or migration patterns of ABT, and the catch rate in one area may preclude anglers in an another area from a reasonable opportunity to harvest its historical share of the quota, NMFS may close all or part of the Angling category or reopen it at a later date, to ensure that ABT have migrated to the identified area before the entire Angling category quota is reached. In determining the need for any such temporary or area closure, NMFS will consider the applicable factors referenced under § 630.28(b)(5).

* * * * *

7. In § 630.29, paragraph (a)(1)(iv) is removed and paragraphs (a)(1)(i) and (a)(5) are revised to read as follows:

§ 630.29 Catch limits.

(a) *Atlantic bluefin tuna*—(1) *General category.* (i) From the start of each fishing year, except on designated restricted- fishing days, only one large medium or giant Atlantic bluefin tuna may be caught and landed per day from a vessel for which a General category permit has been issued under § 630.4(a)(2). On designated restricted-fishing days, persons aboard such vessels may not fish. NMFS will publish in the **Federal Register** a schedule of designated restricted-fishing days applicable for that fishing season.

* * * * *

(5) *Charter/Headboat category.* (i) Persons aboard vessels for which a Charter/Headboat category permit has been issued under § 630.4(a)(2) are subject to the daily catch limit in effect on that day for school, large school, and small medium ABT applicable to the Angling category or the daily catch limit in effect on that day for large medium and giant ABT applicable to the General category. The size category of the first ABT retained or possessed shall determine the fishing category applicable to the vessel that day. Persons aboard the vessel may possess ABT in an amount not to exceed a single day's catch, regardless of the length of the trip, as allowed by the daily catch limit in effect on that day for the Angling or General category, as applicable. School, large school, and small medium ABT landed by persons aboard Charter/Headboat category vessels are counted against the Angling category quota. Large medium and giant ABT landed by persons aboard Charter/Headboat category vessels are counted against the General category quota if landed under paragraph (a)(5)(ii) of this section, or the Angling category quota, if landed under paragraph (a)(5)(iii) or (iv) of this section.

(ii) When commercial fishing by vessels for which General category permits have been issued under § 630.4(a)(2) is authorized, except when fishing in the Gulf of Mexico, operators of vessels for which a Charter/Headboat category permit has been issued under § 630.4(a)(2) are subject to the daily catch limit in effect for the General category for large medium or giant Atlantic bluefin tuna as specified in paragraph (a)(1) of this section. Once the applicable catch limit for large medium or giant bluefin tuna is possessed or retained on authorized commercial fishing days, persons aboard vessels for which Charter/Headboat category permits have been issued under § 630.4(a)(2) must cease fishing and the vessel must proceed to port. Large medium or giant ABT landed under this paragraph may be sold.

(iii) When the General category fishery is closed, except when fishing in the Gulf of Mexico, operators of vessels for which a Charter/Headboat category permit has been issued under § 630.4(a)(2) are subject to the annual vessel limit and reporting requirement for non-commercial take of large medium or giant Atlantic bluefin tuna as specified in paragraph (a)(4)(ii) of this section. Once the applicable catch limit for large medium or giant bluefin tuna is possessed or retained under the Angling category quota, fishing by persons aboard Charter/Headboat category vessels must cease and the vessel must proceed to port.

(iv) At any time when fishing in the Gulf of Mexico, operators of vessels for which Charter/Headboat category permits have been issued under § 630.4(a)(2) may not fish for, catch, retain or possess bluefin tuna except that large medium and giant bluefin tuna taken incidental to fishing for other species may be retained subject to the annual vessel limit and reporting requirement for non-commercial take of large medium or giant Atlantic bluefin tuna as specified in paragraph (a)(4)(ii) of this section. Once the applicable catch limit for large medium or giant bluefin tuna is possessed or retained under the Angling category quota, fishing by persons aboard Charter/Headboat category vessels must cease and the vessel must proceed to port.

8. In § 630.30, paragraph (a)(1) is revised to read as follows:

§ 630.30 Catch and release.

(a) *Atlantic bluefin tuna.* (1) Notwithstanding other provisions of this part, a person aboard a vessel permitted under § 630.4(a)(2), other than a person aboard a vessel permitted in the General category on a designated restricted-fishing day, may fish for Atlantic bluefin tuna under a tag and release program, provided the person tags all Atlantic bluefin tuna so caught with tags issued or approved by NMFS under this section, and releases and returns such fish to the sea immediately after tagging and with a minimum of injury. If NMFS-issued or NMFS-approved tags are not on board a vessel, all persons aboard that vessel are deemed to be ineligible to fish under the provisions of this section.

* * * * *

9. In § 630.70, paragraphs (a)(8) and (a)(78) are revised and paragraphs (a)(101) and (a)(102) are added to read as follows:

§ 630.70 Prohibitions.

* * * * *

(8) Fish for, catch, possess, or retain any Atlantic bluefin tuna less than the large medium size class from a vessel other than one issued a permit for the Angling or Charter/Headboat categories under § 630.4(a)(2)(i), or a permit for the Purse Seine category under § 630.4(a)(2)(i) as authorized under § 630.26(a)(2).

* * * * *

(78) Fish for, catch, or possess or retain Atlantic bluefin tuna in excess of the catch limits specified in § 630.29(a), except that fish may be caught and released under the provisions of § 630.30.

* * * * *

(101) For persons aboard vessels permitted in the General category under

§ 630.4(a)(2), engage in fishing for any species on designated restricted-fishing days.

(102) Fish for, catch, possess or retain, or attempt to fish for, catch, possess or retain any ABT by means, aid, or use of any aircraft, unless holding a valid permit in the Purse Seine category under § 630.4(a).

[FR Doc. 97–4587 Filed 2–27–97; 4:45 pm]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 62, No. 42

Tuesday, March 4, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business—Cooperative Service

Rural Utilities Service

Farm Service Agency

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: The Rural Housing Service, Rural Business—Cooperative Service, Rural Utilities Service, Farm Service Agency, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's (RHS) intention to request an extension for the currently approved information collection in support of the program for Community Facilities loans.

DATES: Comments on this notice must be received by May 5, 1997 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Sharon R. Douglas, Loan Specialist, Community Programs Division, RHS, U.S. Department of Agriculture, Stop 3222, 1400 Independence Avenue SW., Washington, DC 20250–3222. Telephone (202) 720–1506.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR 1956, Subpart C, Debt Settlement—Community and Business Programs.

OMB Number: 0575–0124.

Expiration Date of Approval: June 30, 1997.

Type of Request: Extension of a currently approved information collection.

Abstract

The Community Facilities loan program is authorized by Section 306 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926) to make loans to public entities, nonprofit corporations and Indian tribes for the development of community facilities for public use in rural areas.

The Economic Opportunity Act of 1964, Title 3 (Pub.L. 88–452), authorizes Economic Cooperative loans to assist incorporated and unincorporated associations provide to low-income rural families essential processing, purchasing, or marketing services, supplies, or facilities.

The Water and Waste Disposal program is authorized by Section 306(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)) to provide basic human amenities, alleviate health hazards, and promote the orderly growth of the rural areas of the Nation by meeting the need for new and improved water and waste disposal systems.

The Business and Industry program is authorized by Section 310 B (7 U.S.C. 1932) (Pub.L. 92–419, August 30, 1972) of the Consolidated Farm and Rural Development Act to improve, develop, or finance business, industry, and employment and improve the economic and environmental climate in rural communities, including pollution abatement and control.

The Food Security Act of 1985, Section 1323 (Pub.L. 99–198), authorizes loan guarantees and grants to Nonprofit National Corporations to provide technical and financial assistance to for-profit or nonprofit local businesses in rural areas.

The Powerplant and Industrial Fuel Use Act of 1978, Section 601 (42 U.S.C. 8401), authorizes Energy Impact Assistance Grants to states, councils of local government, and local governments to assist areas impacted by coal or uranium development activities. Assistance is for the purposes of growth management, housing planning, and acquiring and developing sites for housing and public facilities.

The Consolidated Farm and Rural Development Act, Section 310B(c) (7 U.S.C. 1932 (c)), authorizes Rural Business Enterprise Grants to public bodies and nonprofit corporations to facilitate the development of private businesses in rural areas.

The Consolidated Farm and Rural Development Act, Section 310B(f)(i) (7 U.S.C. 1932 (c)), authorizes Rural Technology and Cooperative Development Grants to nonprofit institutions for the purpose of enabling such institutions to establish and operate centers for rural technology or cooperative development.

The Farm Ownership loan program is authorized by the Consolidated Farm and Rural Development Act, Pub.L. 91–229, to make insured loans to Indian Tribes or tribal corporations within tribal reservations and Alaskan communities. The Act also gives Farmer Programs the authority to make loans for grazing, other irrigation and drainage projects, and association irrigation and drainage loans.

The debt settlement program authorizes debt restructuring for the above programs. The debt restructuring actions would be available to the borrowers who are delinquent due to no fault of their own and who have acted in good faith in connection with their loans. These servicing actions are: writing down of principal and interest, deferral, loan consolidation and adjustment of interest rates and terms. However, any debt restructuring must result in a net recovery to the Federal Government during the term of the loan as restructured that would be more than or equal to the net recovery to the Federal Government from an involuntary liquidation or foreclosure on the property securing the loan.

The information collected under this program is considered the minimum necessary to conform to the requirements of the regulation established by law. Also, the information collected is considered to be the minimum necessary to ensure that the intent of the law is achieved.

Information will be collected by the field offices from applicants and borrowers. Under the provisions of this regulation, the information collected will primarily be financial data.

Failure to collect this information could result in improper servicing of these loans.

Estimate of Burden: 8.14 hours per response.

Respondents: Public Bodies and nonprofit organizations.

Estimate Number of Respondents: 17.

Estimate Number of Responses per Respondent: 3.23.

Estimate Total Annual Burden on Respondents: 448.

Copies of this information collection can be obtained from Barbara Williams,

Regulations and Paperwork Management Division, at (202) 720–9734.

Comments: Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the function of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Barbara Williams, Regulations and Paperwork Management Division, U.S. Department of Agriculture, Rural Development, Stop 9743, 1400 Independence Avenue SW., Washington, DC 20250–9743. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: February 5, 1997.

Jan E. Shadburn,

Acting Administrator, Rural Housing Service.

Dated: February 12, 1997.

Dayton J. Watkins,

Administrator, Rural Business—Cooperative Service.

Dated: February 18, 1997.

Wally B. Beyer,

Administrator, Rural Utilities Service.

Dated: February 20, 1997.

Grant Buntrock,

Administrator, Farm Service Agency.

[FR Doc. 97–5244 Filed 3–3–97; 8:45 am]

BILLING CODE 3410–XV–U

Food and Consumer Service

Agency Information Collection Activities: Proposed Collection; Comment Request Collection of Information for the Quality Control Sampling Plans Required by Part 275 of the Food Stamp Program's Regulations on Quality Control

AGENCY: Food and Consumer Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on the proposed information collection for the Quality Control Sampling Plans required by Part 275 of the Food Stamp Program's regulations on Quality Control.

DATES: Written comments must be submitted on or before May 5, 1997.

ADDRESSES: Send comments and requests for copies of this information collection to: John Knaus, Chief, Quality Control Branch, Program Accountability Division, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: John Knaus, (703) 305–2474.

SUPPLEMENTARY INFORMATION:

Title: Food Stamp Program Regulations, Part 275—Quality Control.

OMB Number: 0584–0303.

Form Number: Not Applicable.

Expiration Date: 07/31/97.

Type of Request: Extension of a currently approved collection.

Abstract: As part of the Performance Reporting System, each State agency is required to provide a systematic means of determining the accuracy of household eligibility and measuring the extent to which households receive the food stamp allotment to which they are entitled. The quality control system is designed to provide a basis for determining each State agency's error rates. Quality control data serves as an objective measure of program operations at the State level and is essential to the determination of a State agency's entitlement to an increased Federal share of its administrative costs or liability for sanctions.

To help ensure that quality control data is reliable and unbiased, Section 275.11(a) requires each State agency to submit a quality control sampling plan to the Food and Consumer Service for approval. The sampling plan is a part of the inclusive State Plan of Operation.

Affected Public: State or local governments.

Estimated Number of Respondents: 53.

Estimated Time per Response: 5 Hours.

Estimated Total Annual Burden: 266.

Dated: February 26, 1997.

William E. Ludwig

Administrator, Food and Consumer Service.

[FR Doc. 97–5278 Filed 3–3–97; 8:45 am]

BILLING CODE 3410–30–U

Forest Service

Southwest Washington Provincial Advisory Committee Meeting Notice

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Washington Provincial Advisory Committee will meet on March 20, 1997, at the Red Lion Inn in Kelso, Washington, near Interstate 5 at Exit No. 39. The meeting will begin at 9 a.m. and continue until 4:30 p.m.

The purpose of the Advisory Committee meeting is to utilize the Province Health Matrix and Watershed Analyses to advise on proposed timber sales for the Cowlitz, Lewis, Wind River, and White Salmon Basins. Agenda items to be covered include: (1) 1997–1998 Timber Sale Program, with in-depth presentations on the Cowlitz Basin, (2) Updates from Subcommittees on the Social and Economic Indicators of Basin Health, Field Trips and Committee Work Priorities, and (3) Public Open Forum. All Southwest Washington Provincial Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. The "open forum" provides opportunity for the public to bring issues, concerns, and discussion topics to the Advisory Committee. The "open forum" is scheduled as part of agenda item (4) for this meeting. Interested speakers will need to register prior to the open forum period. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Sue Lampe, Public Affairs, at (360) 750–5091, or write Forest Headquarters Office, Gifford Pinchot National Forest, 6926 E. Fourth Plain Blvd., PO Box 8944, Vancouver, WA 98668–8944.

Dated: February 26, 1997.

Ted C. Stubblefield,

Forest Supervisor.

[FR Doc. 97–5234 Filed 3–3–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

Intent To Revoke Antidumping Duty Orders and Findings and To Terminate Suspended Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of intent To revoke antidumping duty orders and findings and To terminate suspended investigations.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its intent to revoke the antidumping duty orders and findings and to terminate the suspended investigations listed below. Domestic interested parties who object to these revocations and terminations must submit their comments in writing no later than the last day of March 1997.

EFFECTIVE DATE: March 4, 1997.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld or the analyst listed under Antidumping Proceeding at: Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke an antidumping duty order or finding or terminate a suspended investigation if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke the following antidumping duty orders and findings and to terminate the suspended investigations for which the Department has not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months:

Antidumping Proceeding

Australia
Canned Bartlett Pears
A–602–039
38 FR 7566
March 23, 1973
Contact: Mathew Rosenbaum at (202) 482–0198

Canada
Construction Castings
A–122–503
51 FR 17220
March 5, 1986
Contact: Laurel LaCivita at (202) 482–4470

Chile
Standard Carnations
A–337–602
52 FR 8939
March 20, 1987
Contact: Lyn Johnson at (202) 482–5287

France
Brass Sheet & Strip
A–427–602
52 FR 6995
March 6, 1987
Contact: Thomas Killiam at (202) 482–2704

Israel
Oil Country Tubular Goods
A–508–602
52 FR 7000
March 6, 1987
Contact: Michael Heaney at (202) 482–4475

Italy
Certain Valves and Connections of Brass, for Use in Fire Protection Equipment
A–475–401
50 FR 8354
March 1, 1985
Contact: Leon McNeill at (202) 482–4236

Italy
Brass Sheet & Strip
A–475–601
52 FR 6997
March 6, 1987
Contact: Tom Killiam at (202) 482–2704

Japan
Televisions
A–588–015
36 FR 4597
March 10, 1971
Contact: Sheila Forbes at (202) 482–5253

Sweden
Brass Sheet & Strip
A–401–601
52 FR 6998
March 6, 1987
Contact: Tom Killiam at (202) 482–2704

Taiwan
Light-Walled Welded Rectangular Carbon Steel Tubing
A–583–803
54 FR 12467
March 27, 1989
Contact: Thomas O. Barlow at (202) 482–0410

The People's Republic of China
Chloropicrin
A–570–002
49 FR 10691
March 22, 1984
Contact: Andrea Chu at (202) 482–4794

If no interested party requests an administrative review in accordance with the Department's notice of opportunity to request administrative review, and no domestic interested party objects to the Department's intent to revoke or terminate pursuant to this notice, we shall conclude that the antidumping duty orders, findings, and suspended investigations are no longer of interest to interested parties and shall proceed with the revocation or termination.

Opportunity To Object

Domestic interested parties, as defined in § 353.2(k) (3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke these antidumping duty orders and findings or to terminate the suspended investigations by the last day of March 1997. Any submission to the Department must contain the name and case number of the proceeding and a statement that explains how the objecting party qualifies as a domestic interested party under § 353.2(k) (3), (4), (5), and (6) of the Department's regulations.

Seven copies of such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, D.C. 20230. You must also include the pertinent certification(s) in accordance with § 353.31(g) and § 353.31(i) of the Department's regulations. In addition, the Department requests that a copy of the objection be sent to Michael F. Panfeld in Room 4203. This notice is in accordance with 19 CFR 353.25(d)(4)(i).

(Dated): February 25, 1997.

Richard W. Moreland,

Acting Deputy Assistant Secretary for AD/CVD Enforcement.

[FR Doc. 97–5230 Filed 3–3–97; 8:45 am]

BILLING CODE 3510–DS–P

[A–533–809]

Certain Forged Stainless Steel Flanges From India: Final Results of Antidumping Duty New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty new shipper reviews.

SUMMARY: On November 25, 1996, the Department of Commerce (the Department) published the preliminary results of its new shipper reviews of the antidumping duty order on certain stainless steel flanges (SSF) from India (61 FR 59861). These reviews cover exports of this merchandise to the United States by two manufacturer/exporters, Isibars Ltd. (Isibars) and Patheja Forgings and Auto Parts Ltd. (Patheja), during the period September 1, 1995 through February 29, 1996.

We gave interested parties an opportunity to comment on our preliminary results. We received comments from respondent Patheja concerning alleged clerical errors. The review indicates the existence of a dumping margin for Patheja for this period.

EFFECTIVE DATE: March 4, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas Killiam or John Kugelman, Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2704 or 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Background

The antidumping duty order on SSF from India was published February 9, 1994 (59 FR 5994). On November 25, 1996, the Department published in the **Federal Register** the preliminary results of these new shipper reviews of the antidumping duty order on SSF from India (61 FR 59861). The Department has now completed these new shipper reviews in accordance with section 751 of the Act.

Scope of the Review

The products covered by this order are certain forged stainless steel flanges both finished and not finished, generally manufactured to specification ASTM A–182, and made in alloys such as 304, 304L, 316, and 316L. The scope includes five general types of flanges. They are weld neck, used for butt-weld line connection; threaded, used for threaded line connections; slip-on and lap joint, used with stub-ends/butt-weld line connections; socket weld, used to fit pipe into a machined recession; and blind, used to seal off a line. The sizes of the flanges within the scope range generally from one to six inches; however, all sizes of the above-described merchandise are included in the scope. Specifically excluded from the scope of this order are cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to specification ASTM A–351. The flanges subject to this order are currently classifiable under subheadings 7307.21.1000 and 7307.21.5000 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this order remains dispositive.

The reviews cover two Indian manufacturer/exporters, Isibars and Patheja, and the period September 1, 1995 through February 29, 1996.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from Patheja on December 10, 1996, concerning alleged clerical errors.

Comment 1: Patheja argues that it provided audited figures on August 22, 1996, to update provisional data submitted earlier, but the Department relied instead on the earlier, provisional data for the preliminary results. Patheja argues that the Department should revise its analysis using the audited figures pertaining to cost of manufacturing, general and administrative expenses, interest expenses and profitability.

Department's Position: We agree and have revised our analysis accordingly.

Comment 2: Patheja argues that the Department inadvertently added vendor charges, a component of material costs, twice, resulting in double counting of those charges.

Department's Position: We agree and have revised our analysis accordingly.

Comment 3: Patheja argues that the Department failed to deduct the value of scrap metal from the cost of manufacturing.

Department's Position: We agree and have revised our analysis accordingly.

Comment 4: Patheja argues that the Department used as an ending date for the credit expense period for U.S. sales the date of October 11, 1996, whereas the correct date of payment is October 30, 1996.

Department's Position: We agree and have revised our analysis accordingly.

Final Results of Reviews

As a result of our analysis of the comments received, we have determined that the following weighted-average dumping margins exist for Isibars and Patheja:

Manufacturer/exporter	Period	Margin (percent)
Isibars	9/1/95–2/29/96	0.00
Patheja	9/1/95–2/29/96	1.61

Individual differences between the U.S. price and normal value may vary from the above percentages. The Department shall instruct the Customs Service to liquidate all appropriate entries, and to assess no antidumping duties on Isibars' entries.

Furthermore, the following deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided for by section 751(a)(1) of the Act:

(1) The rate for the reviewed firms will be as listed above;

(2) For previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period;

(3) If the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be that rate established for the manufacturer of the merchandise in earlier reviews or the original investigation, whichever is the most recent; and

(4) If neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 162.14 percent, the "all others" rate established in the LTFV investigation.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR § 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR § 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested.

Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This administrative review and this notice are in accordance with section 751(a)(2)(B) of the Act (19 U.S.C. 1675(a)(2)(B)) and 19 CFR § 353.22(h).

Dated: February 24, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–5229 Filed 3–3–97; 8:45 am]

BILLING CODE 3510–DS–P

INTERNATIONAL TRADE ADMINISTRATION

[A–489–807]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars From Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 4, 1997.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson, Cameron Werker, or Fabian Rivelis, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1776, (202) 482–3874, or (202) 482–3853, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA).

Final Determination

We determine that certain steel concrete reinforcing bars (rebar) from Turkey are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in § 735 of the Act.

Case History

Since the preliminary determination in this investigation (*Notice of Preliminary Determination and Postponement of Final Determination: Certain Steel Concrete Reinforcing Bars from Turkey*, 61 FR 53203, (Oct. 10, 1996)), the following events have occurred:

In October 1996, we issued supplemental sales and cost questionnaires to Colakoglu Metalurji A.S. (Colakoglu), Ekinciler Demir Celik A.S. (Ekinciler), and Habas Sinai Ve Tibbi Gazlar Istihsal Endustrisi A.S. (Habas), and a supplemental cost questionnaire to Izmir Metalurji Fabrikasi Turk A. S. (Metas). Responses to these questionnaires were also received in October 1996.

From October through December 1996, we verified the questionnaire responses of Colakoglu, Ekinciler, Habas, and Metas. We also verified that the following companies had no shipments of subject merchandise to the United States during the period of investigation (POI): Cebitas Demir Celik Endustrisi A.S., Cukurova Celik Endustrisi A.S., Icdas Istanbul Celik ve Demir Izabe Sanayii A.S., Diler Demir Celik Endustrisi ve Ticaret A.S., Diler Dis Ticaret A.S., and Yazici Demir Celik Sanayi ve Ticaret A.S.

On January 14 and 27, 1997, the Department requested that Colakoglu and Habas submit new computer tapes to include data corrections identified through verification. This information was submitted on January 17 and 29, 1997, respectively.

Petitioners (*i.e.*, AmeriSteel Corporation and New Jersey Steel Corporation) and three of the respondents (*i.e.*, Colakoglu, Ekinciler, and Habas) submitted case briefs on January 22, 1997, and rebuttal briefs on January 27, 1997. No case or rebuttal briefs were received from any other interested party.

Scope of Investigation

The product covered by this investigation is all stock deformed steel concrete reinforcing bars sold in straight lengths and coils. This includes all hot-rolled deformed rebar rolled from billet steel, rail steel, axle steel, or low-alloy steel. It excludes (i) plain round rebar, (ii) rebar that a processor has further worked or fabricated, and (iii) all coated rebar. Deformed rebar is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 7213.10.000 and 7214.20.000. The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this investigation is dispositive.

Period of Investigation

The POI is January 1, 1995, through December 31, 1995.

Facts Available

One of the respondents in this case, Izmir Demir Celik Sanayi A.S. (IDC), failed to respond completely to the Department's requests for information. Specifically, IDC submitted a response to Sections A, B, and C of the May 9 questionnaire, but did not provide any subsequent information, including a response to the supplemental sales questionnaire and the cost of production (COP) questionnaire.

On August 12, 1996, IDC informed the Department that it would not be able to provide any additional information in a timely manner and requested that the Department use the information already on the record in its analysis. However, we were unable to perform any analysis for IDC without a COP response because COP data is an essential component in our margin calculations. We afforded IDC an opportunity to request additional time for completion of its responses. However, IDC neither requested an extension nor submitted any additional data.

Section 776(a)(2) of the Act provides that if an interested party: (1) Withholds information that has been requested by the Department; (2) fails to provide such information in a timely manner or in the form or manner requested; (3) significantly impedes a determination under the antidumping statute; or (4) provides such information but the information cannot be verified, the Department shall, subject to subsections 782(c)(1) and (e) of the Act, use facts otherwise available in reaching the applicable determination. Because IDC

failed to respond to the Department's supplemental and COP questionnaires and because that failure is not overcome by the application of subsections 782(c)(1) and (e) of the Act, we must use facts otherwise available with regard to IDC.

Section 776(b) of the Act provides that adverse inferences may be used against a party that has failed to cooperate by not acting to the best of its ability to comply with requests for information. *See also* Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Sess. 870. IDC's failure to reply to the Department's requests for information demonstrates that IDC has failed to act to the best of its ability in this investigation. Thus, the Department has determined that, in selecting among the facts otherwise available, an adverse inference is warranted with regard to IDC. As facts otherwise available, we are assigning to IDC the highest margin stated in the notice of initiation, 41.8 percent.

Section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Corroborative means that the secondary information to be used has probative value. *See* SAA at 870. In analyzing the petition, the Department reviewed all of the data the petitioners relied upon in calculating the estimated dumping margins, and adjusted those calculations where necessary. *See* Memorandum to the File from Case Analysts, dated March 26, 1996. These estimated dumping margins were based on a comparison of a home market price list to: (1) A contracted price to a U.S. customer; and (2) an offer of sale to a U.S. customer. The estimated dumping margins, as recalculated by the Department, ranged from 27.4 to 41.8 percent. The Department corroborated all of the secondary information from which the margin was calculated during our pre-initiation analysis of the petition to the extent appropriate information was available for this purpose at that time. For purposes of this determination, the Department re-examined the price information provided in the petition in light of information developed during the investigation and found that it continued to be of probative value.

Fair Value Comparisons

Petitioners have requested that the Department and the ITC find that there is a regional industry [1] and perform the requisite analysis, in accordance with § 771(4)(C) of the Act. Section 736(d)(1) of the Act directs the Department to assess duties only on the subject merchandise of the specific exporters and producers that exported the subject merchandise for sale into the region concerned during the POI. In our notice of initiation we indicated that the petition had met the requirements of § 771(4)(C) and § 732(c)(4)(C) of the Act. However, because respondents were not able to provide requested information on sales which were ultimately made in the region, we have not limited our analysis in the LTFV investigation to only shipments entering ports located in the region. We will again attempt to collect this information during any subsequent administrative reviews, in the event that an antidumping duty order is issued in this case.

To determine whether sales of the subject merchandise by Colakoglu, Ekinciler, Habas, and Metas to the United States were made at less than fair value, we compared the Export Price (EP) to the Normal Value (NV), as described in the "Export Price" and "Normal Value" sections of this notice.

Regarding Habas, we calculated NV based on constructed value (CV) in accordance with § 773(a)(4) of the Act because Habas's home market sales did not provide an appropriate basis for calculating NV. *See* the "Normal Value" section of this notice, below, for further discussion.

Regarding Metas, we calculated NV on the basis of CV because we found no home market sales at prices above COP. *See* the "Normal Value" section of this notice, below, for further discussion.

Regarding Colakoglu and Ekinciler, as set forth in § 773(a)(1)(B)(i) of the Act, we calculated NV based on sales at the same level of trade as the U.S. sale. In accordance with § 777A(d)(1)(A)(i) of the Act, we compared weighted-average EPs to weighted-average NVs. In determining averaging groups for comparison purposes, we considered the appropriateness of such factors as physical characteristics, level of trade, and significant inflation.

(i) Physical Characteristics

In accordance with § 771(16) of the Act, we considered all products covered by the description in the *Scope of Investigation* section, above, produced in Turkey and sold in the home market during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Regarding Colakoglu and Ekinciler, where there were no sales of identical merchandise in the home market pursuant to § 771(16)(B) of the Act, to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the physical characteristics listed in Appendix III of the Department's antidumping questionnaire.

(ii) Level of Trade

In its preliminary determination, the Department found that no differences in level of trade existed between home market and U.S. sales for any participating respondent. Our findings at verification confirmed that the respondents performed essentially the same selling activities for each reported home market and U.S. marketing stage. Accordingly, we determine that all price comparisons are at the same level of trade and that an adjustment pursuant to § 773(a)(7)(A) of the Act is unwarranted.

(iii) Significant Inflation

Turkey experienced significant inflation during the POI, as measured by the Wholesale Price Index (WPI) published by the International Monetary Fund (IMF) in the *International Financial Statistics*. Accordingly, to avoid the distortions caused by the effects of significant inflation on prices, we calculated EPs and NVs on a monthly-average basis, rather than on a POI-average basis. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Turkey*, 61 FR 30309, 30315 (June 14, 1996) (*Pasta*).

Export Price

We calculated EP, in accordance with subsections 772 (a) and (c) of the Act, where the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and where constructed export price was not otherwise warranted based on the facts of record.

A. Colakoglu

We based EP on packed prices to the first unaffiliated purchaser in the United States. We made deductions to EP for foreign inland freight, dunnage expenses, lashing expenses, loading charges, despatch expenses (which included an adjustment for revenue that was realized on a contractual agreement between Colakoglu and its ocean freight carrier), demurrage expenses, and ocean freight, where appropriate, in accordance with § 772(c)(2)(A) of the Act. We disallowed an adjustment to EP for wharfage revenue and freight commissions earned by an affiliated party because we were unable to make a corresponding deduction for the affiliate's costs (*see* Comment 8).

We based our calculations on the revised U.S. sales database submitted by Colakoglu after verification. We revised the amount of despatch revenue received on one U.S. sale based on our findings at verification because this correction was not incorporated into the revised sales listing.

B. Ekinciler

We based EP on packed prices to the first unaffiliated purchaser in the United States. We made deductions for foreign inland freight, warehousing expenses, loading charges, tallying expenses, forklift expenses, dunnage expenses, demurrage expenses (which included an adjustment for despatch revenues), ramneck tape expenses, customs fees, detention expenses, stevedoring expenses, wharfage expenses, overage insurance, and ocean freight, where appropriate, in accordance with § 772(c)(2)(A) of the Act. We disallowed an adjustment to EP for agency fee revenue and freight commissions earned by an affiliated party because we were unable to make a corresponding deduction for the affiliate's costs (*see* Comment 8).

We made the following corrections to the data reported by Ekinciler, based on our findings at verification: a) we revised the price and quantity for two U.S. sales; b) we revised the control number used for matching purposes for certain U.S. sales; c) we revised the following movement expenses for certain U.S. sales: international freight, forklift expenses, inland freight from plant to port, overage insurance, and pre-sale warehouse expenses; and d) we revised bank fees for two U.S. sales. In addition, we disallowed Ekinciler's claim for dunnage revenue on certain U.S. sales (*see* Comment 13).

C. Habas

We based EP on packed prices to the first unaffiliated purchaser in the United States. We made deductions to EP for foreign inland freight, dunnage expenses, despatch expenses (which included an adjustment for revenue that was realized on a contractual agreement between Habas and its customer), brokerage and handling, demurrage expenses, customs fees, ocean freight, and marine insurance, where appropriate, in accordance with § 772(c)(2)(A) of the Act. We disallowed an adjustment to EP for freight revenue earned by an affiliated party because we were unable to make a corresponding deduction for the affiliate's costs (*see* Comment 8). We revised the amounts reported for demurrage, brokerage, international freight, marine insurance, and export fees for certain vessels based on our findings at verification.

D. Metas

We based EP on packed prices to the first unaffiliated purchaser in the United States. We made deductions for foreign inland freight, lashing expenses, brokerage and handling, demurrage expenses (which included an upward adjustment for revenue that was realized on a contractual agreement between Metas and its ocean freight carrier), and ocean freight, where appropriate, in accordance with § 772(c)(2)(A) of the Act.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared each respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with § 773(a)(1)(C) of the Act. Because each respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable for each respondent.

Regarding Habas, however, we did not use home market sales as the basis for NV. Rather, we based NV on CV in accordance with § 773(a)(4) of the Act. In its questionnaire responses, Habas notified the Department that its home market was a residual market and that it did not maintain the records necessary to accurately report the unique physical characteristics of its home market products. We examined Habas's record-keeping practices at verification and confirmed that Habas was unable to report specific product characteristics for its home market database. Consequently, we are unable to use these products to make price-to-price comparisons according to the matching criteria listed in Appendix III of the Department's questionnaire.

Regarding Ekinciler and Metas, these respondents made sales of subject merchandise to affiliated parties in the home market during the POI. Consequently, we tested these sales to ensure that, on average, they were made at "arm's-length" prices, in accordance with 19 CFR 353.45. To conduct this test, we compared the gross unit prices of sales to affiliated and unaffiliated customers net of all movement charges, rebates, and packing. Based on the results of that test, we discarded from each respondent's home market database all sales made to an affiliated party that failed the "arm's-length" test.

Based on the cost allegation submitted by petitioners, the Department determined, pursuant to § 773(b) of the Act, that there were reasonable grounds to believe or suspect that sales in the home market were made at prices below the cost of producing the merchandise. Consequently, the Department initiated an investigation to determine whether the respondents made home market sales during the POI at prices below their respective COPs.

We calculated the COP based on the sum of each respondent's cost of materials and fabrication for the foreign like product, plus amounts for home market selling, general, and administrative expenses (SG&A), in accordance with § 773(b)(3) of the Act. As noted above, we determined that the Turkish economy experienced significant inflation during the POI. Therefore, in order to avoid the distortive effect of inflation on our comparison of costs and prices, we requested that respondents submit monthly COP figures based on the current production costs incurred during each month of the POI. *See Pasta*.

We used the respondents' monthly COP amounts, adjusted as discussed below, and the WPI from the IMF (*see* Comment 2) to compute an annual weighted-average COP for each respondent during the POI. We compared the weighted-average COP figures to home market sales of the foreign like product, as required under § 773(b) of the Act, in order to determine whether these sales had been made at prices below their COP. On a product-specific basis, we compared the COP to the home market prices, less any applicable movement charges, rebates, and packing expenses. We did not deduct selling expenses from the home market price because these expenses were included in the SG&A portion of COP.

In determining whether to disregard home market sales made at prices below the COP, we examined: 1) whether, within an extended period of time, such sales were made in substantial quantities; and 2) whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time.

[1] The region identified by the petitioners includes Maine, New Hampshire, Connecticut, Massachusetts, Rhode Island, Vermont, New Jersey, New York, Pennsylvania, Delaware, Florida, Georgia, Louisiana, Maryland, North Carolina, South Carolina, Virginia, West Virginia, Alabama, Kentucky, Mississippi, Tennessee, the District of Columbia, and Puerto Rico.

Where 20 percent or more of a respondent's sales of a given product during the POI were at prices below the COP, we found that sales of that model were made in "substantial quantities," and within an extended period of time, in accordance with § 773(b)(2) (B) and (C) of the Act. To determine whether prices were such as to provide for recovery of costs within a reasonable period of time, we tested whether the prices which were below the per-unit COP at the time of the sale were above the weighted-average per-unit COP for the POI, in accordance with § 773(b)(2)(D) of the Act. If prices that were below cost at the time of sale were above the weighted-average cost for the POI, we included such prices in determining NV (for all respondents except Habas). Otherwise, we disregarded them.

In accordance with § 773(e) of the Act, we calculated CV based on the sum of each respondent's cost of materials, fabrication, SG&A, profit, and U.S. packing costs, except as noted in the company-specific sections below. In accordance with § 773(e)(2)(A) of the Act, where possible, we based SG&A expenses and profit on the amounts incurred and realized by each of these companies in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. In addition, to account for the effects of inflation on costs, we calculated each respondent's CV based on the methodology described in the calculation of COP above. Company-specific calculations are discussed below.

A. Colakoglu

We relied on the respondent's COP and CV amounts except in the following instances:

(1) We adjusted Colakoglu's submitted scrap cost to include the transfer prices it paid to an affiliated company for freight service because the transfer prices were made at arm's length and represent the actual cost to Colakoglu (*see* Comment 11).

(2) Colakoglu based its reported SG&A and financing expense rates on amounts contained in the company's tax return. However, because the Department prefers to use figures from audited financial statements, we revised the SG&A and financing expense rates for COP and CV using amounts reported in Colakoglu's 1995 audited financial statements.

(3) We indexed the submitted monthly SG&A and financing expenses using the IMF's WPI (*see* Comment 2).

(4) We included translation losses in financing expense (see Comment 3).

(5) Because Colakoglu did not report costs for products which were once-folded, we assigned to these products the COP and CV amounts calculated for the same products sold in straight lengths, based on our findings at verification confirming that there were no appreciable cost differences associated with folding.

For those comparison products for which there were sales at prices above the COP, we based NV on ex-factory prices to home market customers. In accordance with § 773(a)(6) of the Act, we deducted home market packing costs and added U.S. packing costs. In addition, we adjusted for differences in the circumstances of sale, in accordance with § 773(a)(6)(C)(iii) of the Act. These adjustments included differences in imputed credit expenses (offset by the interest revenue actually received by the respondent), bank charges, testing and inspection fees, and Exporters' Association fees. We revised the interest revenue amounts received on certain home market sales based on our findings at verification. In addition, we recalculated credit expenses using the interest rates associated with Colakoglu's actual borrowings in the home market (see Comment 7). Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with § 773(a)(6)(C)(ii) of the Act and 19 CFR 353.57.

Where we compared CV to export prices, we deducted from CV the weighted-average home market direct selling expenses and added the weighted-average U.S. product-specific direct selling expenses.

B. Ekinciler

We relied on the respondent's COP and CV amounts except in the following instances:

(1) We revised the reported COP and CV amounts to account for the costs of rebar produced by subcontractors.

(2) We used the IMF's WPI to inflate the idle asset revalued depreciation expense adjustment, SG&A and financing expense (*see* Comment 2).

(3) We included translation losses in financing expense and amortized them over the remaining life of the loans (*see* Comment 3).

(4) We disallowed Ekinciler's offset to financing expenses for foreign exchange gains related to accounts receivable because they occurred after the sale date and therefore are not relevant to the Department's margin calculations.

(5) We added intra-factory freight expense to the cost of billets (*see* Comment 19).

(6) We reduced G&A expenses by non-operating revenue and increased G&A expenses by non-operating expenses (*see* Comment 17).

For those comparison products for which there were sales at prices above the COP, we based NV on ex-factory, ex-warehouse or delivered prices to home market customers. We excluded from our analysis home market sales by Ekinciler of non-subject merchandise because this merchandise was not within the class or kind of merchandise subject to investigation (*see* Comment 12 and § 731 and § 771(16) of the Act). Where appropriate, we made deductions from the starting price for foreign inland freight, inland insurance, and direct warehousing expenses. We revised certain foreign inland freight expenses based on our findings at verification. In accordance with § 773(a)(6) of the Act, we deducted home market packing costs and added U.S. packing costs. As facts available for a portion of Ekinciler's total packing expenses, we used the highest verified packing expense for one of Ekinciler's mills (*see* Comment 15). In addition, we adjusted for differences in the circumstances of sale, in accordance with § 773(a)(6)(C)(iii) of the Act. These adjustments included differences in imputed credit expenses, bank charges, warranty expenses, testing and inspection fees, and Exporters' Association fees. Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with § 773(a)(6)(C)(ii) of the Act and 19 CFR § 353.57.

Where we compared CV to export prices, we deducted from CV the weighted-average home market direct selling expenses and added the weighted-average U.S. product-specific direct selling expenses.

C. Habas

As noted in the "Fair Value Comparisons" section above, we determined NV for Habas on the basis of CV. We relied on the respondent's CV amounts except in the following instances:

(1) We revised the reported CV amounts to account for the cost of billets and rebar produced by subcontractors.

(2) Because Habas could not accurately report the unique physical characteristics of its home market products, we were unable to determine whether Habas made home market sales in the ordinary course of trade (*e.g.*, perform the cost test). Consequently, we based Habas's SG&A expenses and profit on the weighted average of the profit and SG&A data computed for those respondents with home market sales of the foreign like product in the ordinary course of trade (*i.e.*, Colakoglu and Ekinciler) in accordance with § 773(e)(2)(B)(ii) of the Act.

Because we were unable to use Habas's home market sales data for purposes of making price-to-price comparisons, we compared export prices to CV. We deducted from CV the weighted-average home market direct selling expenses and added the weighted-average U.S. product-specific direct selling expenses. Home market direct selling expenses were based on the weighted average of the selling expense data computed for Colakoglu and Ekinciler (the respondents for whom we found home market sales of the foreign like product in the ordinary course of trade after performing the cost test) in accordance with § 773(e)(2)(B)(ii) of the Act. U.S. direct selling expenses included imputed credit expenses, bank charges, testing and inspection fees, and Exporters' Association fees. We revised the total bank fee amount to account for unreported bank fees based on our findings at verification.

Regarding Habas's U.S. packing expenses, we revised the monthly reported figures based on corrections found at verification.

D. Metas

We relied on the respondent's COP and CV amounts except in the following instances:

(1) We used the IMF's WPI to recalculate the company's SG&A and financing expenses (*see* Comment 2).

(2) We adjusted material costs by using the actual mix of scrap purchased during 1995 (*see* Comment 23).

(3) We adjusted SG&A expenses to exclude expenses associated with the movement of finished goods because COP is calculated on an ex-factory basis, in accordance with § 773 of the Act.

(4) Because Metas made no home market sales in the ordinary course of trade (*i.e.*, all sales were found to be below cost), we based the profit and SG&A expenses used in CV on the weighted average of the profit and SG&A data computed for Colakoglu and Ekinciler, in accordance with § 773(e)(2)(B)(ii) of the Act.

Because all of Metas's home market sales were sold below their COP, we compared export prices to CV. We deducted from CV the weighted-average home market direct selling expenses and added the weighted-average U.S. product-specific direct selling expenses. Home market direct selling expenses were based on the weighted average of the selling expense data computed for Colakoglu and Ekinciler (those respondents with home market sales of the foreign like product in the ordinary course of trade after performing the cost test), in accordance with § 773(e)(2)(B)(ii) of the Act. U.S. direct selling expenses included imputed credit expenses (offset by the interest revenue actually received by the respondent), bank charges, testing and inspection fees, and Exporters' Association fees.

Currency Conversion

The Department's preferred source for daily exchange rates is the Federal Reserve Bank. However, the Federal Reserve Bank does not track or publish exchange rates for Turkish Lira. Therefore, we made currency conversions based on the daily exchange rates from the Dow Jones News/Retrieval Service. *See* 19 CFR § 353.60. *See e.g., Pasta.*

Critical Circumstances

In the petition, petitioners made a timely allegation that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of subject merchandise.

According to § 733(e)(1) of the Act, if critical circumstances were alleged under § 733(e) of the Act, the Department will determine whether:

(A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or

(ii) the person by whom, or for whose account, the merchandise was imported knows or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and

(B) there have been massive imports of the subject merchandise over a relatively short period.

In this investigation, the first criterion is satisfied because the Republic of Singapore began imposing antidumping measures against rebar from Turkey in 1995. Therefore, we determine that there is a history of dumping of rebar by Turkish producers/exporters. Because there is a history of dumping, it is not necessary to address whether the importer had knowledge that dumping was occurring and material injury was likely.

Because we have found that the first statutory criterion is met, we must consider the second statutory criterion: whether imports of the merchandise have been massive over a relatively short period. Pursuant to 19 CFR 353.16(f) and 353.16(g), we consider the following to determine whether imports have been massive over a relatively short period of time: (1) Volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by the imports.

When examining volume and value data, the Department typically compares the export volume for equal periods immediately preceding and following the filing of the petition. Under 19 CFR 353.16(f)(2), unless the imports in the comparison period have increased by at least 15 percent over the imports during the base period, we will not consider the imports to have been "massive."

To determine whether or not imports of subject merchandise have been massive over a relatively short period for all respondents, except IDC, we compared each respondent's export volume for the seven months subsequent to and including the filing of the petition to that during the comparable period prior to the filing of the petition. Based on our analysis, we find that imports of the subject merchandise from Ekinciler, Habas, and Metas increased by more than 15 percent over a relatively short period, whereas the imports of subject merchandise from Colakoglu did not increase by more than 15 percent. Moreover, regarding IDC, as facts available, we are making the adverse assumption that imports have been massive over a relatively short period of time in accordance with § 735(a)(3)(B) of the Act.

Therefore, because there is a history of dumping of such or similar merchandise, and because we find that imports of rebar from all respondents except Colakoglu have been massive over a relatively short period of time, we determine that critical circumstances exist with respect to exports of rebar from Turkey by Ekinciler, Habas, IDC, and Metas. Regarding Colakoglu, because we find that imports of rebar from this company have not been massive over a relatively short period of time, we determine that critical circumstances do not exist with respect to exports of rebar from Turkey by Colakoglu. For further discussion, *see* Comment 10.

Regarding all other exporters, because we find that critical circumstances exist for three of the four investigated companies, we also determine that critical circumstances exist for companies covered by the "All Others" rate.

Verification

As provided in § 782(i) of the Act, we verified the information submitted by the respondents for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by respondents.

Interested Party Comments

A. General

Comment 1: *Use of Total Facts Available for the Final Determination*

Petitioners assert that the Department should base its final determination with regard to Ekinciler on total facts available due to the numerous errors discovered by the Department at verification. Petitioners contend that these errors are so numerous and substantial that they call into question the propriety of using Ekinciler's response as the basis for calculating a dumping margin. Petitioners cite the following examples: (1) Ekinciler included non-subject merchandise in its home market sales database; (2) Ekinciler's packing expenses contained errors; (3) Ekinciler did not report the cost of old stocks (*i.e.*, fuel oil) and certain service production costs; and (4) Ekinciler was unable to provide the Department with heat sheets for grade 60 billets as requested.

In support of their position, petitioners cite to *Circular Welded Non-Alloy Steel Pipe from South Africa: Notice of Final Determination of Sales at Less Than Fair Value*, 61 FR 24274 (May 14, 1996) (*Steel Pipe*), where the Department used facts available because "the number of errors discovered draw into question the completeness and accurateness of respondent's remaining sales (*i.e.*, sales not specifically reviewed at verification)." Petitioners state that the antidumping law and the Department's practice require that the Department strive to calculate accurate margins, but that an accurate and fair comparison is not possible in view of the errors in Ekinciler's responses. Therefore, according to petitioners, the final determination for Ekinciler should be based on total facts available. Moreover, petitioners urge the Department to consider applying total facts available to Colakoglu and/or Habas on the same basis, even though their errors were not as egregious or numerous as those of Ekinciler.

Ekinciler argues that its reported sales and cost data were substantially verified by the Department and, as a result, the use of total facts available for the final determination is not supported by evidence on the record. Respondent cites to *Certain Cut-To-Length Carbon Steel Plate from Germany: Final Results of Antidumping Duty Administrative Review*, 61 FR 13834 (March 28, 1996), where the Department rejected petitioner's request to base the final results of the review on total best information available because respondent had been cooperative throughout the proceeding and the errors found at verification were not so large as to render the respondent's reported information unusable. Ekinciler maintains that, pursuant to § 776(a)(2) of the Act, when errors or gaps appear in otherwise timely and verified information and the respondent has been cooperative, the Department will simply revise the information or fill the gaps using non-adverse facts available. Accordingly, Ekinciler asserts that the Department should, consistent with this practice, fill the gaps in its reported data found at verification with non-adverse facts available.

Colakoglu and Habas argue that the information they have submitted on the record was also substantially verified, and, thus, the use of total facts available is not supported by evidence on the record.

DOC Position

We agree with respondents. Although our verifications uncovered certain errors in the responses of these companies, those errors are not so egregious as to resort to total facts available for purposes of the final determination. The errors found at Ekinciler consisted primarily of minor variations in the reported movement expenses due to clerical errors and inadvertent omissions—errors that the Department routinely corrects in making its final determination. Regarding the inclusion of non-subject merchandise, the Department normally excludes sales from its analysis which were found at verification to have been incorrectly included. *See Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey*, 61 FR 69067, 69068 (Dec. 31, 1996), *Final Results of Antidumping Duty Administrative Review: Extruded Rubber Thread from Malaysia*, 61 FR 54767 (Oct. 22, 1996), and *Final Determination of Sales at Less Than Fair Value: Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Brazil*, 60 FR 31960, 31965 (June 19, 1995).

Contrary to petitioners' assertion, the errors found at Ekinciler were not of the same magnitude as the errors described in *Steel Pipe*. The errors encountered at verification in *Steel Pipe* undermined the fundamental components of the respondent's submitted data and included most notably quantity and value reconciliation errors, unreported sales, and incorrect prices for a majority of sales. Such errors led the Department to determine that respondent's questionnaire responses were unverifiable. In the instant case, the discrepancies found in Ekinciler's responses are not so material and pervasive as to warrant use of total facts available. Consequently, in accordance with our practice, we have used facts available only for certain aspects of Ekinciler's response, as discussed in other comments below.

Comment 2: Selection of Inflation Index

Respondents argue that monthly costs should be inflated to year-end values using the WPI published by the IMF rather than the primary metals index (PMI) published by the Turkish Institute of Statistics. Respondents note that the WPI was used to determine that Turkey was experiencing hyperinflation and, thus, this index should be used to account for distortions caused by hyperinflation. Additionally, respondents argue that they paid for major material inputs using U.S. dollars. For this reason, respondents argue that the Department should use the WPI—which is a general indicator of the price levels of the whole economy—because it provides a reliable, macroeconomic indicator of the relative values of the Turkish lira and the U.S. dollar. Respondents assert that the PMI does not reflect macroeconomic considerations.

Petitioners counter that PMI should be used to inflate monthly costs to year-end values because this index is industry-specific and, unlike the WPI, it is not subject to influences which are irrelevant to the merchandise under investigation. Petitioners argue that the test of whether an economy is experiencing hyperinflation is a threshold test and the use of a particular index to determine whether the threshold has been met does not imply that the same index should be used to measure the impact of inflation. Petitioners also claim that it is irrelevant whether the index used is a reliable indicator of the relative values of the Turkish lira and the U.S. dollar because the index is being used for a different purpose—to inflate Turkish lira-denominated monthly expenses and cost of sales to year-end amounts.

DOC Position

We agree with petitioners that it is irrelevant whether the index used is a macroeconomic indicator of the relative value of the Turkish lira and the U.S. dollar since inflation adjustments concern only the Turkish lira. However, we have reconsidered our use of the PMI in the preliminary determination and, for the reasons set forth below, have used instead the WPI published by the IMF to account for inflation in the final determination.

There are no financial reporting requirements prescribed by Turkish authorities that require the financial statements of Turkish companies to be restated to account for the effects of inflation. Consequently, in the absence of this requirement, none of the respondents restated their financial statements to correct for the effects of inflation. Accordingly, in this instance, we relied on International Accounting Standard (IAS) 29 entitled "Financial Reporting in Hyper-inflationary Economies" for guidance on an appropriate methodology. (*See* Memorandum to the File from Paul McEnrue, dated February 12, 1997.) According to IAS 29, financial statements prepared in the currency of a highly inflationary economy must be restated to account for the effects of inflation. The statement requires the use of a general price index that reflects changes in general purchasing power to restate financial statements. The IAS statement also notes that the same index should be used for all enterprises that report in the currency of the same economy. Because the WPI measures changes in the general price index, while the PMI does not, we find that it is more appropriate to use the WPI to account for inflation for purposes of the final determination.

Comment 3: Translation Losses[2]

Respondents contend that translation losses from their foreign currency borrowings (which were principally U.S. dollar-denominated) should be excluded from the submitted costs. Respondents reason that, since the translation losses are not a result of cash transactions, the losses are fictional. Respondents explain that the translation losses result from converting dollar-denominated loans into their Turkish lira equivalents as of the balance sheet date. Respondents argue that the translation losses are equivalent to monetary corrections on domestic loans and the Department's practice is to exclude monetary corrections from reported costs. Respondents note that, where the indexation (*i.e.*, adjustment for inflation) of domestic loan balances is required by the generally accepted accounting principles (GAAP) of a hyperinflationary economy, the Department's practice has been to exclude the monetary corrections on such loan balances and to treat the indexation of those loan balances as an adjustment which is not relevant to the determination of cost (*see Final Determination of Sales at Less Than Fair Value: Tubeless Disc Wheels From Brazil*, 52 FR 8947, 8949 (March 20, 1987) and *Notice of Amended Final Determination of Sales at Less Than Fair Value: Ferrosilicon From Brazil*, 59 FR 8598, 8598 (Feb. 23, 1994)). Respondents maintain that their adjustment of foreign currency loan balances for translation losses is equivalent to the indexation of domestic loans and, thus, the Department should not include respondents" translation losses in COP and CV. Additionally, because costs included in CV are eventually converted into dollars, respondents argue that the Department should base loan costs on the U.S. dollar-denominated loan balances and avoid the conversion from dollars to Turkish lira and back to dollars which creates a loss that does not exist in dollar terms.

Petitioners argue that translation losses are "real costs" that should be included in COP and CV. To support their position, petitioners cite the decision of the Court of International Trade (CIT) in *Micron Tech.* v. *United States*, 993 F. Supp. 21, 29–30 (CIT 1995). In that case, the CIT held that "increased liability for borrowed funds caused by fluctuations in the exchange rate . . . are akin to an increased cost of borrowing funds that should be included in any reasonable measure of the cost climate faced by the company during the period of investigation. . . ." Moreover, petitioners maintain that it is the Department's practice to include foreign exchange translation losses in the cost of manufacturing (*see Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Products, Certain Cold-Rolled Carbon Steel Products, Certain Corrosion-Resistant Carbon Steel Products and Certain Cut-to-Length Carbon Steel Plate from Korea*, 58 FR 37176, 37187 (July 9, 1993)).

Petitioners contend that respondents" argument for excluding translation costs from COP and CV fails for the following reasons. First, CV is the cost of producing merchandise in the exporting country and not the cost of producing merchandise in the United States or in U.S. dollars. Therefore, the fact that a translation loss does not exist in dollars is irrelevant. Second, the Department's practice of excluding from costs monetary adjustments from the indexation of domestic loan balances does not apply in this case because respondents do not index their foreign currency or domestic loans and Turkish GAAP does not call for such indexation. Third, respondents did not cite any precedent which establishes the Department's position regarding the treatment of monetary corrections for foreign currency loans. Thus, petitioners urge the Department to include respondents" translation losses in COP and CV.

DOC Position

We agree with petitioners. The cases cited by respondents are not specifically related to the Department's treatment of monetary corrections for foreign currency loans. The Department does not agree with respondents' supposition that their translation losses are fictional. The translation losses are recorded in respondents" financial statements in the ordinary course of business. In the past, the Department has found that translation losses represent an increase in the actual amount of cash needed by respondents to retire their foreign currency-denominated loan balances. *See Notice of Final Determination of Sales at Less Than Fair Value: Fresh Cut Roses from Ecuador*, 24 FR 7019, 7039, (Feb. 6, 1995). We have therefore included the translation losses in our calculation of COP and CV and have amortized these expenses over the remaining life of the companies" loans.

Comment 4: Waste and Discarded Material

Petitioners note that the accounting method used by each respondent to record the value of scrap (either generated from or recycled back into rebar production) can result in a significant understatement of costs. Petitioners reason, therefore, that the Department should closely scrutinize the quantity, value and accounting treatment of scrap reported by each respondent.

Respondents maintain that each company's treatment of scrap is reasonable and does not result in a significant understatement of costs.

DOC Position

We reviewed and verified the respondents' accounting treatment of

[2] Foreign currency translation is the process of expressing amounts denominated in one currency in terms of a second currency, by using the exchange rate between the currencies. Assets and liabilities are translated at the current exchange rate on the balance sheet date. The Department typically includes foreign exchange translation gains and losses in a respondent's financial expenses if such gains and losses are related to the cost of acquiring debt for purposes of financing the production of the subject merchandise.

scrap. We found respondents' treatment accurately reflects the value of scrap. *See* Colakoglu Cost Verification Report at 6 and 7; Ekinciler Cost Verification Report at 10 and 18; Habas Cost Verification Report at 9 and 17; and Metas Cost Verification Report at 10 and 18.

Comment 5: Treatment of Defective Bar and "Out-of-form" Billets

Petitioners assert that Colakoglu and Habas improperly treated defective bar and "out-of-form" billets, respectively, as co-products. Petitioners argue that both respondents should have treated these products as by-products. Petitioners state that by-products are: (1) products that have low sales value compared to the sales value of the main product; and (2) produced unintentionally as part of the manufacturing process from the intended product. Petitioners assert that Colakoglu's defective bar and Habas's out-of-form billet satisfy all the by-product criteria and, therefore, should be treated as such.

Colakoglu maintains that its co-product accounting treatment of defective bar is proper, stating that a co-product accounting methodology is consistent with the manner in which defective bar is treated in its books and records in the normal course of business. Colakoglu argues that during verification the Department did not find its co-product methodology distortive.

Habas argues that it properly treated "out-of-form" billet as a co-product because billets are a finished good and are treated as such in Habas's books. Furthermore, Habas contends that it accounts for such billets in the same manner as it accounts for plain billets in the ordinary course of business. Habas also states that the only difference between billet and rebar production processes is the additional rolling time required for rebar.

DOC Position

We agree with respondents. We believe that the methods used by Colakoglu and Habas to account for defective bar and "out of form" billet, respectively, are reasonable because we found that they do not distort the cost of producing rebar. Consequently, we have relied on them for purposes of the final determination.

According to § 773(f)(1)(A) of the Act, "costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country (or the producing country, when appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise." *See also* H.R. Doc. No. 316 (SAA) at 834 and 835. The CIT has upheld the Department's use of expenses recorded in the company's financial statements, when those statements are prepared in accordance with the home country's GAAP and do not significantly distort the company's actual costs. *See e.g., Laclede Steel Co.* v. *United States,* Slip Op. 94–160 at 22 (CIT 1994).

Accordingly, our practice is to adhere to an individual firm's recording of costs, if we are satisfied that such principles reasonably reflect the costs of producing the subject merchandise and are in accordance with the GAAP of its home country. *See, e.g., Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit from Thailand,* 60 FR 29553, 29559 (June 5, 1995); *Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Welded Pipe from the Republic of Korea,* 57 FR 53693, 53705 (Nov. 12, 1992); and *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from South Africa,* 60 FR 22550, 22556 (May 8, 1995). Normal accounting practices provide an objective standard by which to measure costs, while allowing respondents a predictable basis on which to compute those costs. However, in those instances where it is determined that normal accounting practices result in an unreasonable allocation of production costs, the Department will make certain adjustments or may use alternative methodologies that more accurately capture the costs incurred. *See, e.g., Final Determination of Sales at Less Than Fair Value: New Minivans from Japan,* 57 FR 21937, 21952 (May 26, 1992).

In the instant proceeding, therefore, the Department examined whether respondents' accounting methodology for defective bar and "out of form" billet reasonably reflects the cost of producing the subject merchandise. We found that the quantity of defective bar and "out of form" billet produced by these companies, in relation to total production of all bar products, is so small as to not significantly affect the per-unit cost for rebar. *See* Colakoglu Cost Verification Report at 12 and Habas Cost Verification Report at 11. As such, we have determined that respondents' methods of accounting for defective bar and "out of form" billet do not distort the cost of producing rebar. Moreover, these methods are used in the normal course of business. Accordingly, we have accepted these methods for purposes of the final determination.

Comment 6: Revised Cost Databases Submitted by Colakoglu and Habas

Petitioners argue that several fields in the cost databases submitted after verification were revised without explanation from those used for the preliminary determination. Therefore, petitioners argue that the Department should use facts available instead of the unexplained values contained in the altered fields. If the Department has the information at its disposal, petitioners ask that the Department explain why certain fields were omitted from the revised cost databases.

In addition, petitioners state that Habas reported costs for certain products for months during which there was no production of those products. Petitioners maintain that the Department should ensure that Habas did not fail to account for all costs actually incurred and that the method Habas used to calculate monthly costs appropriately allocated all costs. Petitioners argue that the Department should use total facts available if Habas's submissions do not account for all costs actually incurred, or if all costs are accounted for but inappropriately allocated.

Colakoglu maintains that certain fields in its cost database were altered due to changes that were requested by the Department. Furthermore, Colakoglu states that certain fields were omitted because the Department did not use those fields for the preliminary determination, and, in fact, never requested that such data be reported.

DOC Position

We disagree with petitioners. We analyzed respondents' revised databases and found that all revisions were the direct result of changes requested by the Department. Moreover, regarding the omitted fields, we agree with Colakoglu that these fields were unnecessary and were not used in our analysis. Therefore, we have accepted respondents' revised databases for purposes of the final determination.

Company-Specific Issues

B. Colakoglu

Comment 7: Interest Rate Used to Calculate Home Market Credit Expenses

Colakoglu argues that the Department should not use loans issued by the Turkish Eximbank in calculating its home market imputed credit expenses. Colakoglu asserts that its Eximbank loans were related to export-oriented activities and, as such, were not used to finance home market sales. As precedent for its position, Colakoglu cites *Porcelain-on-Steel Cooking Ware From Mexico; Final Results of Antidumping Duty Administrative Review,* 58 FR 43327 (Aug. 16, 1993) *(Porcelain-on-Steel Cooking Ware),* where the Department excluded short-term export loans from the information used to calculate the home market interest rate.

Petitioners disagree, stating that the Department should use Colakoglu's Eximbank loans in calculating credit because Colakoglu had no other source of borrowings denominated in Turkish lira during the POI. Petitioners maintain that Colakoglu's actual borrowings are more indicative of the company's short-term borrowing experience than are the rates published by the IMF. Moreover, petitioners claim that the facts in this case are distinguishable from those in *Porcelain-on-Steel Cooking Ware* because the respondent in *Porcelain-on-Steel Cooking Ware* had other short-term loans denominated in the home market currency.

DOC Position

We agree with petitioners. In general, the Department's practice with regard to the interest rate used to calculate home market imputed credit expenses is to base the rate on a company's actual borrowings in the home market currency. The Department makes exceptions to this practice either when there are no loans in the home market currency or when a company is able to prove that its loans in that currency do not form an appropriate basis for the home market interest rate (*e.g.*, when they are tied to specific export transactions).

In *Porcelain-on-Steel Cooking Ware,* it was demonstrated to the Department's satisfaction that the loans at issue were tied directly to exports of subject merchandise. In this case, however, not only is there no evidence on the record showing that these loans are tied to U.S. sales of rebar, but there is also no evidence that they are tied to exports at all. Moreover, these loans are based on Turkish lira-denominated borrowings and bear interest rates into which inflation has been factored. Consequently, we find that the interest rates paid on these loans are more indicative of Colakoglu's actual borrowing experience than are the interest rates published by the IMF. Accordingly, we have used them in our calculation of home market credit for purposes of the final determination.

Comment 8: SG&A Expenses Incurred by Affiliated Parties at the Port

Colakoglu argues that the Department should not include in its U.S. movement expenses those SG&A expenses incurred by Denak, an affiliated party, in connection with export-related activities at the port. According to Colakoglu, the administrative services performed by Denak consist of securing vessels and communicating with vessel owners, not running the port or moving goods. As such, Colakoglu asserts that these circumstances are analogous to the circumstances in which a respondent itself secures the services of an unaffiliated ocean freight company. Colakoglu notes that, in such an instance, the Department does not add a respondent's overhead expenses to the amount reported for ocean freight.

Colakoglu also contends that in the event that the Department decides that it must make an adjustment for Denak's SG&A expenses, the Department should exclude those expenses which were unrelated to services provided on behalf of Colakoglu.

Petitioners assert that the Department should make an adjustment for Denak's SG&A expenses in order to ensure that all U.S. movement expenses are captured in the margin calculation.

DOC Position

We disagree with petitioners and have made no adjustment for Denak's SG&A expenses for the reasons explained below.

Regarding services provided by affiliated parties, the Department's practice is to value the services at an arm's-length price. In order to determine whether the price between the parties is at arm's length, the Department generally looks at prices charged by the affiliate to unaffiliated parties or at prices paid by the respondent to an unaffiliated party. *See, e.g., Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from Finland,* 56 FR 56363 (Nov. 4, 1991). When there is no transaction with an unaffiliated party, the Department must find another way to value the services in question.

In this case, we examined Denak's role in the export process at verification. We noted that Denak performed several services for Colakoglu related to the shipment of the subject merchandise to the United States. However, we were unable to determine the arm's-length value of these services because we found that Denak did not charge Colakoglu for such services, nor did Colakoglu secure the same services from an outside party. As an alternative, we examined Denak's total SG&A expenses at verification. However, we are unable to use these expenses in our margin calculations because they relate to Denak's operations as a whole, and not just to the shipment of rebar to the United States.

Under these circumstances, the Department would normally base the per-unit amount of the expense on facts available. Given the particular facts of this case, however, we find that this is not appropriate for Colakoglu. Specifically, we find that there is no net cost associated with Denak's activities because: (1) Denak received revenue from unaffiliated parties which was directly related to Colakoglu's export of subject merchandise to the United States; and (2) Denak's revenues exceeded its aggregate costs during the POI. As such, we determine that no adjustment for Denak's SG&A expenses (or the directly-related revenues) is warranted in this case.

We note that two of the other respondents, Ekinciler and Habas, had similar arrangements with affiliated parties during the POI and similar problems in determining the amount of per-ton SG&A expenses. Consistent with our treatment of Colakoglu's situation, we have made no adjustments for either the expenses or revenues associated with these transactions.

Comment 9: Use of Data Contained in Revised Sales Database

At verification, the Department found that in certain instances Colakoglu had reported average home market price and interest revenue data. Colakoglu argues that the Department should accept its revised database correcting these data for purposes of the final determination. Colakoglu maintains that the averaging affected only a limited portion of the home market database. Moreover, Colakoglu notes that the corrected information was verified by the Department.

Petitioners contend that the Department should not use the data in question. According to petitioners, this information is untimely because it was submitted after the deadline for submission of factual information (*i.e.*, seven days prior to the start of verification). Petitioners cite *Elemental Sulfur from Canada: Preliminary Results of Antidumping Duty Administrative Review,* 62 FR 969 (Jan. 7, 1997) (*Elemental Sulfur*), which outlines the conditions under which the Department will accept new information

at verification.[3] Petitioners claim that the conditions set forth in *Elemental Sulfur* do not apply here.

DOC Position

We disagree with petitioners. The information in question was not new information within the meaning of 19 CFR § 353.31 because it consisted of minor corrections to data which were already on the record and affected only a limited portion of Colakoglu's home market database. Accordingly, consistent with our practice outlined in *Elemental Sulfur*, we used Colakoglu's revised home market database for purposes of the final determination.

Comment 10: Critical Circumstances

Colakoglu maintains that the Department should determine that critical circumstances do not exist with respect to its shipments based on the fact that the increase in its imports has not been massive prior to the preliminary determination. According to Colakoglu, it is the Department's practice to use in its analysis the longest period for which information is available from the month of the filing of the petition until the effective date of the preliminary determination. In this case, the appropriate period would be seven months.

Petitioners contend, however, that the Department should define the period used in its analysis as the five-month period between the filing of the petition and the date of the preliminary determination as originally scheduled (*i.e.*, August 1996). Petitioners argue that, had it not been for the Department's decision to conduct a below-cost investigation, the Department would have issued the preliminary determination in August and Colakoglu would have been effectively precluded from making its argument on critical circumstances. Moreover, petitioners assert that a finding in Colakoglu's favor would have a chilling effect on petitioners' use of either the below-cost provisions or the critical circumstances provisions of the antidumping law, by forcing petitioners to choose between alleging the existence of sales below cost or critical circumstances.

DOC Position

We agree with Colakoglu. In determining whether imports have been massive within the meaning of § 735(a)(3)(B) of the Act, it is the Department's practice to base its analysis on the longest period for which information is available, normally beginning with the month of filing of the petition[4] and ending with the date of the preliminary determination. *See Notice of Final Determinations of Sales at Less Than Fair Value: Brake Drums and Brake Rotors from the People's Republic of China* (issued on Feb. 24, 1997), where the Department used a seven-month period; *Notice of Preliminary Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China*, 60 FR 56567, 56574 (Nov. 9, 1995), where the Department used periods ranging from three to six months, based on "the Department's practice of using the longest period for which information is available from the month that the petition was submitted through the effective date of the preliminary determination," affirmed in *Notice of Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China*, 61 FR 19026, 19031 (April 30, 1996)); and *Notice of Preliminary Determination of Critical Circumstances: Disposable Pocket Lighters from the People's Republic of China*, 60 FR 436, 437 (Jan. 4, 1995), where the Department used a period of seven months, affirmed in *Notice of Final Determination of Sales at Less Than Fair Value: Disposable Pocket Lighters from the People's Republic of China*, 60 FR 22359, 22363 (May 5, 1995).

Consequently, we have based our analysis on the seven-month period between the filing of the petition and the date of the preliminary determination. Using these data, we find that imports by Colakoglu have not been massive over a relatively short period of time. Accordingly, we find that critical circumstances do not exist for Colakoglu.

Comment 11: Affiliated Party Freight Services

Colakoglu argues that the transfer prices that it pays to its affiliate Denak for transporting imported scrap are not equivalent to market prices and, therefore, should not be used in the Department's final determination. Respondent notes that, in the past, the Department has included transfer prices only when it was demonstrated that they were equivalent to market prices. *See Final Determination at Less Than Fair Value: High Information Content Flat Panel Displays and Display Glass from Japan*, 56 FR 32376, 32376 (July 16, 1991). Respondent reasons that, in order for the Department to conclude that the transfer price between Colakoglu and its affiliate is at arm's length, the Department must conclude that prices charged by the affiliate are comparable to those charged by an unaffiliated freight supplier. Respondent argues that the discrepancy between Denak's price and the unaffiliated price demonstrates that the amount charged by Denak is not an arm's-length price and should be disregarded. Respondent notes that the statute does not specify that only transfer prices that are lower than market prices may be disregarded. Rather, respondent points out that in the past the Department has also disregarded transfer prices which are higher than arm's-length prices. *See Final Results of Antidumping Duty Administrative Review: Color Picture Tubes from Japan*, 55 FR 37915, 37922 (Sept. 14, 1990).

Petitioners argue that the Department should continue to use the price Colakoglu paid to Denak for freight services because it is an arm's-length price. Petitioners note that the Department has recently found that "in the case of a transaction between affiliated persons involving a major input, we will use the highest of the transfer price between the affiliated parties, the market price between unaffiliated parties, and the affiliated supplier's cost of producing the major input." *See Final Results of Antidumping Administrative Review: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom*, 62 FR 2081, 2115 (Jan. 15, 1997) (*AFB's*).

DOC Position

We agree with petitioners. In determining whether a transaction occurred at an arm's-length price for a major input, as stated in *AFB's*, the Department will use the highest of the transfer price between the affiliated parties, the market price between unaffiliated parties, and the affiliated supplier's cost of producing a major input.

In the normal course of business Colakoglu records the transfer price in its books to account for freight costs from its affiliate. However, Colakoglu submitted its affiliate's cost of providing freight service, the transfer price paid by Colakoglu, and prices from unaffiliated freight companies. In accordance with the practice outlined in *AFB's*, we compared these data and found that the price paid to Denak was an arm's-length price for freight services pursuant to § 773(f) (2) or (3) of the Act. Accordingly, we have used the affiliated company's transfer price to value freight services.

[3] These conditions are: (1) the need for the information was not evident previously, (2) the information makes minor corrections to information already on the record, or (3) the information corroborates, supports, or clarifies information already on the record.

[4] The date on which a petition is filed will determine whether the month of filing will be included in the base or comparison period.

C. Ekinciler

Comment 12: *Non-Subject Merchandise*

Ekinciler argues that the inclusion of de minimis quantities of non-subject merchandise in its home market database is not material to the calculation of dumping and that the Department should not adjust its reported home market sales database with regard to non-subject merchandise. Ekinciler states that the number of sales of fabricated rebar inadvertently included in its home market sales database is so small as to be insignificant. Ekinciler maintains that a comparison of the relative prices of the non-subject rebar to the subject rebar demonstrates that the inclusion of the non-subject merchandise is of no consequence and may work to its disadvantage. Thus, Ekinciler asserts that the Department should continue to use Ekinciler's submitted home market database without making adjustments for fabricated rebar for purposes of the final determination.

Petitioners contend that, if the Department does not base Ekinciler's margin on total facts available (*see* Comment 1), it should use the most adverse facts available for this aspect of Ekinciler's margin.

DOC Position

We disagree with respondent, in part. We agree with respondent that the Department should continue to use its home market sales listing because the quantity of non-subject merchandise included is small. However, according to § 773(a)(1)(B)(i) of the Act, the price on which normal value is based is "the price at which the foreign like product is first sold (or, in the absence of a sale, offered for sale) for consumption in the exporting country * * *" Therefore, we are required by the statute to exclude non-subject merchandise from our calculation of normal value.

Petitioners point to the inclusion of non-subject merchandise as evidence that Ekinciler's entire response is unreliable and propose the use of the most adverse facts available for this aspect of Ekinciler's response. We find, however, that adverse facts available is not warranted in this instance because we were able to verify Ekinciler's home market sales of subject merchandise. Accordingly, we have excluded all sales of non-subject merchandise discovered at verification.

Comment 13: Dunnage Revenue

Petitioners argue that the Department should omit dunnage revenue from the calculation of U.S. price for Ekinciler because dunnage revenue could not be verified. Specifically, petitioners cite to the verification report which stated that Ekinciler was "unable to provide bills of lading for third country sales that would have confirmed which shipment was more appropriately associated with the dunnage sales."

Ekinciler contends that, although it was not possible to directly tie the reported dunnage revenue to a specific U.S. sale, its methodology is reasonable, and the Department should make an adjustment for the reported revenue. Ekinciler maintains that, as stated in the verification report, no more than one vessel may dock at the port for loading at any one time. Therefore, since Ekinciler matched dunnage sales to shipments that left the port on approximately the same date as the date of the dunnage sale, it claims that it is reasonable to assume that the reported dunnage revenues were earned in connection with the identified U.S. shipments.

DOC Position

We agree with petitioners. At verification, we noted that Ekinciler did not receive revenue from the sale of dunnage materials on every export shipment. Consequently, we were unable to verify that the reported dunnage revenue actually corresponded to shipments of U.S.-bound rebar and not to shipments to other export markets. Therefore we did not include dunnage revenue in our final margin calculation for Ekinciler.

Comment 14: Home Market Credit Expense

Ekinciler asserts that the Department should make no adjustment for imputed home market credit expense for the final determination because this adjustment is de minimis. Ekinciler claims that the imputed credit expense resulting from the use of its verified average number days outstanding is insignificant, and that the Department should disregard this insignificant adjustment to NV in accordance with § 777A(a)(2) of the Act and 19 CFR 353.59(a). Alternatively, Ekinciler contends that the Department should correct its calculation of credit to reflect that the interest rate reported is an annual rate.

DOC Position

We agree with respondent, in part. According to § 773A(a)(2) of the Act, the Secretary may disregard adjustments that are insignificant. However, there is no requirement that adjustments which may be insignificant must be disregarded. We have made the adjustment to NV for imputed credit expenses because this adjustment can be easily made and the information on which it is based has been verified and is reliable. However, we agree with respondent that this expense was calculated incorrectly for the preliminary determination. Accordingly, we have corrected our calculation for the final determination to reflect that the interest rate was reported on an annual basis.

Comment 15: Packing Expenses

Ekinciler argues that the Department should accept its packing expenses as reported. Ekinciler maintains that, although the Department's verification report indicates that there was a variation in the reported packing expenses for one of its mills as well as a difference in home market and U.S. packing, it was unaware that there was any significant discrepancy between the reported packing costs and those found at verification. Ekinciler states that, if the Department should find that the packing expenses with respect to the mill in question need to be corrected, the Department may use any of the reported monthly packing expenses from its other mills. According to Ekinciler, these sources provide accurate, verified data reasonable for use as facts available, particularly since Ekinciler can be assumed to have sourced all of its packing materials for all of its mills from the same sources at the same prices.

Petitioners argue that, if the Department does not base Ekinciler's margin on total facts available (*see* Comment 1), it should use the most adverse facts available for this aspect of Ekinciler's margin calculation.

DOC Position

We disagree with Ekinciler that the Department should accept its submitted packing expenses. At verification, Ekinciler was unable to demonstrate that the packing expenses associated with one of its mills were reported correctly. Consequently, we have based the packing expenses for the mill in question on facts available. As facts available, we used the highest verified monthly packing expense reported by Ekinciler for any of its other mills.

Comment 16: Depreciation

Petitioners claim that Ekinciler failed to allocate the year-end inflation adjustment for depreciation expense to each month of the year. Thus, petitioners maintain that Ekinciler's monthly depreciation costs are understated.

According to Ekinciler, its cost submissions clearly show that the year-end inflation adjustment to depreciation expense was included in the monthly costs used to derive COP and CV. Also, Ekinciler asserts that, if the Department inflates its monthly production costs as it did in the preliminary determination, it will overstate its depreciation expense because this expense was already adjusted to account for inflation. Ekinciler notes that the Department verified its reported depreciation expense included a monthly adjustment. This adjustment was calculated at year-end using the revaluation index published by the Turkish Ministry of Finance and applied to each month's costs. Therefore, Ekinciler contends that in the final determination the Department should either: (1) Not inflate reported monthly depreciation expenses; or (2) deflate the reported monthly depreciation expenses to remove the effects of the revaluation before depreciation expenses are inflated.

DOC Position

We agree with Ekinciler. Ekinciler expressed the year-end inflation adjustment to depreciation expense as a percentage of cost of sales and applied this percentage to reported monthly manufacturing costs to derive the monthly depreciation expense reported for COP and CV. Thus, contrary to petitioners" claim, the adjustment to inflate depreciation expense was applied to each month of the POI.

Additionally, the Department found at verification that the reported depreciation expense was calculated using asset costs that had been revalued with the revaluation index published by the Turkish Ministry of Finance. Moreover, Ekinciler provided a translation of the Ministry of Finance's regulations concerning asset revaluation which indicated that the revaluation index is based on an inflation index. Thus, revaluation using this index means that the depreciation expense was already adjusted for inflation. Accordingly, for the final determination we have subtracted depreciation expense from total manufacturing costs before inflating those costs to year-end values. We added inflated manufacturing costs to the reported depreciation expense to derive the total cost of manufacturing.

Comment 17: Other Revenue and Expenses

Petitioners maintain that Ekinciler should include non-operating and other expenses in general and administrative (G&A) expenses because these expenses are related to the production of subject merchandise. However, petitioners argue that non-operating and other revenue should not be used to offset G&A expenses because this revenue is either from activities unrelated to the sale or manufacture of rebar or from accounting adjustments.

Ekinciler maintains that both non-operating and other expenses and revenue should be included as reported because these are components of G&A expenses. Unless G&A expenses are reported on a divisional or product-line basis, Ekinciler contends that it is irrelevant that an element of G&A does not relate to the subject merchandise.

DOC Position

We agree with Ekinciler that both non-operating and other revenue and expenses should be included in G&A. At verification, we identified each item included in non-operating and other revenue and expenses. After examining these items we determined that, except for one revenue item, Ekinciler's non-operating and other revenue and expenses relate to the subject merchandise. We reached this conclusion because these items are generated from resources associated with the production of subject merchandise. The Department's practice is to adjust G&A expenses for miscellaneous revenue and expenses related to the production of subject merchandise (*see Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods From Argentina*, 60 FR 33539, 33550, (June 28, 1995)). Therefore, we have increased G&A by non-operating and other expenses and reduced G&A expenses by non-operating and other revenue except for the one revenue item unrelated to the production of subject merchandise.

Comment 18: G&A Rate

Petitioners note that Ekinciler included certain non-manufacturing costs (*i.e.*, costs associated with operating Ekinciler's port and cafeteria) in the denominator of its G&A ratio, but did not report these costs elsewhere in its response. Petitioners argue that, because these non-manufacturing costs were not included in COP and CV, the Department should base both Ekinciler's G&A rate and COP on adverse facts available. Petitioners claim that Ekinciler's failure to report the costs in question demonstrates that the company's response contains other inaccuracies. At a minimum, however, petitioners argue that, if the Department does not apply adverse facts available, it should treat the non-manufacturing costs consistently (*i.e.*, either exclude or include such costs from both the G&A rate and the reported costs).

Ekinciler maintains that the Department should accept its G&A rate as reported (*i.e.*, by including the non-manufacturing costs in question as part of the denominator of the calculation of the G&A rate). Ekinciler notes that the Department defined G&A expenses in its cost questionnaire as "those period expenses which relate to the activities of the company as a whole rather than to the production process alone."

DOC Position

We agree with Ekinciler. Because the G&A expenses used to derive the G&A rate relate to the activities of the company as a whole, including non-manufacturing activities, we have determined that the methodology Ekinciler used to compute the G&A rate is appropriate. Furthermore, the non-manufacturing costs are related to a separate line of business and, thus, they are unrelated to the manufacture of the subject merchandise. Therefore, these costs were properly excluded from the COP and CV.

Comment 19: Billet Transportation Costs

At verification, the Department found that Ekinciler failed to include the cost of transporting billets within the factory in its reported billet cost. Ekinciler urges the Department to accept the reported billet costs because the omission found at verification is insignificant.

Petitioners claim Ekinciler's failure to include intra-factory transportation costs in reported billet costs indicates Ekinciler's responses are unreliable and therefore, the Department should base Ekinciler's billet cost on adverse facts available.

DOC Position

We disagree with petitioners. For the reasons stated in Comment 1, we do not find that Ekinciler's omission of intra-factory transportation costs satisfies the statutory requirements for using facts available or making adverse inferences in reaching a determination. Therefore, consistent with the Department's practice of correcting minor errors where the use of adverse facts available is unwarranted, we adjusted the reported billet cost to include intra-factory transportation costs (*see Notice of Final Determination of Sales at Less Than Fair Value: Beryllium Metal and High Beryllium Alloys From the Republic of Kazakstan*, 62 FR 2648, 2650 (Jan. 17, 1997)).

D. Habas

Comment 20: Packing Expenses

Habas acknowledges that the Department was unable to verify the monthly production quantities of exported billet, which together with monthly rebar production quantities serve as the denominator for monthly per-unit strap expense. However, Habas maintains that the Department was able to successfully verify all other components of its packing calculation. Habas, therefore, argues that the Department should continue to use Habas's reported packing costs in the margin calculation.

Petitioners argue that, because the Department found Habas's packing expense to be erroneous at verification, the Department should either base Habas's packing expense on adverse facts available or recalculate Habas's packing expense taking into account the information discovered at verification. Petitioners maintain that using adverse facts available with respect to calculating Habas's packing expense is appropriate because: 1) the respondent has an obligation to provide accurate data; 2) the Department has a practice of not accepting new information submitted at verification; and 3) the Department's resorting to the use of facts available constitutes a significant incentive for the submission of accurate data.

DOC Position

To calculate the per unit strap expense in its overall packing calculation, Habas used billets produced for export along with total rebar production as part of the calculation's denominator. At verification, Habas was unable to provide supporting documentation for billets produced for export. We agree with respondent that, other than this one element, the Department was able to successfully verify all other packing material and labor expenses. Therefore, we disagree with petitioners that adverse facts available is warranted in this instance. We do, however, agree with petitioners that the Department should recalculate Habas's packing expense taking into account the information discovered at verification. Therefore, rather than billets produced for export, we used the total verified 1995 exports of billets and total rebar production as the denominator for the per-unit strap calculation.

Comment 21: Home Market Credit

Habas states that, as reported to the Department, its books do not accurately reflect the date of receipt of payment for home market sales. However, Habas contends that its methodology for reporting payment dates and amounts of payment is consistent with the records kept by Habas in the ordinary course of business. Therefore, Habas argues that the Department should continue to use its reported home market credit expenses in the final determination.

DOC Position

Because we did not use Habas's selling expense data for purposes of the final determination, this issue is moot.

Comment 22: G&A Expenses

Petitioners assert that, as facts available, the Department should base Habas's G&A expenses on Habas's annual corporate-wide G&A expenses for 1995, adjusted for inflation, rather than the G&A expenses for the iron and steel division. As support for this position, petitioners cite the Department's practice in the following determinations: *Final Determination of Sales at Less than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, Certain Cut-to-Length Carbon Steel Plate from Canada*, 58 FR 37099, 37114 (July 9, 1993).

Habas maintains that the Department verified all of its SG&A expenses. Habas states that, although the Department frequently uses a corporate-wide G&A rate, the Department's practice is to use selling expenses which are based on the expenses of the relevant division within a company. Therefore, Habas maintains that the correct ratio to use for the sales portion of the SG&A is the indirect selling expenses of the iron and steel division divided by the iron and steel division's cost of sales.

DOC Position

Insofar as we did not use Habas's G&A expenses in the calculations for the final determination, this issue is moot.

E. Metas

Comment 23: Material Costs

Petitioners argue that Metas's submitted cost of materials is not based on the actual quantities of scrap used in the production of rebar. Petitioners note that Metas calculated its submitted cost of scrap inputs based on the company's policy regarding the preferred mixture of different scrap types. Petitioners maintain that the Department was unable to verify that Metas's policy of preferred scrap usage is indicative of the actual scrap used to produce rebar during the POI. Petitioners believe that Metas's schedule of scrap purchases during the POI is the best evidence on the record of actual scrap used and argue that the Department should adjust Metas's material costs so that the average usage of scrap reflects the ratio of scrap purchased during 1995.

DOC Position

We agree with petitioners. In order to provide the Department with product-specific material costs, Metas calculated the cost of materials using the average scrap quantities it believes are typical of the mixtures required to make rebar. During verification, we found that Metas does not specifically track the quantity of the types of scrap used in the production of rebar. As a result, Metas was unable to provide us with documentation to substantiate the ratio of scrap types used in its calculations. Therefore, we recalculated Metas's material costs using the actual mix of scrap purchased during 1995.

Continuation of Suspension of Liquidation

In accordance with § 735(c) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of rebar from all companies except Colakoglu that are entered, or withdrawn from warehouse, for consumption on or after July 12, 1996, which is 90 days prior to the date of publication of the notice of the preliminary determination in the **Federal Register**. Regarding Colakoglu, we are directing the Customs Service to continue to suspend liquidation of all entries of rebar from Colakoglu that are entered, or withdrawn from warehouse, for consumption on or after October 10, 1996, the date of publication of our preliminary determination in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which NV exceeds export price, as indicated in the chart below. This suspension of liquidation will remain in effect until further notice.

Exporter/manufacturer	Weighted-average margin percentage	Critical circumstances
Colakoglu	9.84	No.
Ekinciler	18.68	Yes.
Habas	19.15	Yes.

Exporter/manufacturer	Weighted-average margin percentage	Critical circumstances
IDC	41.80	Yes.
Metas	30.16	Yes.
All Others	16.25	Yes.

ITC Notification

In accordance with § 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to § 735(d) of the Act.

Dated: February 24, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–5228 Filed 3–3–97; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

Export Trade Certificate of Review; Notice of Application to Amend Certificate

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review. This notice summarizes the proposed amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any priviledged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five copies, plus two copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 95–A0006."

The Water and Wastewater Equipment Manufacturers Association ("WWEMA") original Certificate was issued on June 21, 1996 (61 FR 36708, July 12, 1996). A summary of the application for an amendment follows.

Summary of the Application

Applicant: Water and Wastewater Equipment Manufacturers Association ("WWEMA"), 101 E. Holly Avenue, Suite 14, Sterling, Virginia 22170.

Contact: Randolph J. Stayin, Partner.

Telephone: (202) 289–1313.

Application No.: 95–A0006.

Date Deemed Submitted: February 19, 1997.

Proposed Amendment: WWEMA seeks to amend its Certificate to:

1. Add the following companies as new "Members" of the Certificate within the meaning of Section 325.2(1) of the Regulations (15 CFR 325.2(1)): Ashbrook Corporation, Houston, Texas and The F.B. Leopold Company Inc., Zelienople, Pennsylvania (Parent: Thames Water Products & Services); Jeffrey Chain Corporation, Morristown, Tennessee; and Waterlink, Inc., Canton, Ohio, and its subsidiaries which include Aero-Mod, Incorporated, Manhattan, Kansas; Great Lakes Environmental, Inc., Addison, Illinois; Mass Transfer Systems, Inc., Fall River, Massachusetts; SanTech, Inc. dba Sanborn Technologies, Medway, Massachusetts; Water Equipment Technologies, Inc., West Palm Beach, Florida; and Waterlink Operational Services, Inc. dba Blue Water Services, Manhattan, Kansas.

Dated: February 26, 1997.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 97–5252 Filed 3–3–97; 8:45 am]

BILLING CODE 3510–DR–P

National Oceanic and Atmospheric Administration

[I.D. 011597A]

Pacific Salmon Fisheries off the Coasts of California, Oregon, Washington, Alaska and in the Columbia River Basin

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent; scoping meeting; extension of comment period.

SUMMARY: In the **Federal Register** of January 27, 1997, NMFS announced its intent to hold scoping meetings, prepare Environmental Assessments (EAs) and an Environmental Impact Statement (EIS) on ocean and in-river fisheries that may result in the incidental take of Pacific salmonids currently listed or proposed for listing under the Endangered Species Act. NMFS will hold an additional scoping meeting in Alaska and is also extending the comment period on the EIS and EAs.

DATES: Written comments will be accepted through March 21, 1997. The scoping meeting will be held on March 6, 1997, 1:30–3:30 p.m., Sitka, AK.

ADDRESSES: Written comments and requests to be included on a mailing list of persons interested in the EIS should be sent to Joseph R. Blum, Office of Protected Resources, Endangered Species Division (PR3), National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

The scoping meeting for Alaska will be held at the Swan Lake Senior Center, 402 Lake Street, Sitka, AK 99835.

FOR FURTHER INFORMATION CONTACT: Joseph R. Blum (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

Background and rationale for this action were provided in the notice of intent (62 FR 3873, January 27, 1997) and are not repeated here.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Tamra Faris (907) 586–7228 at least 3 days before the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*; 42 U.S.C. *et. seq.*

Dated: February 26, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–5263 Filed 3–3–97; 8:45 am]

BILLING CODE 3510–22–F

[Docket No. 970121009–7009–01]

RIN 0648–ZA27

Coastal Services Center Coastal Management Fellowship

AGENCY: National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of Federal assistance.

SUMMARY: The Coastal Services Center is issuing this notice to solicit applications for the Coastal Services Center Coastal Management Fellowship program. The Fellowship program was established to provide professional on-the-job education and training opportunities for post-graduate students in coastal resource management and policy and to provide specific technical assistance for state coastal resource management programs. For two years the Fellows will work on substantive state-level coastal resource management issues that pertain to Federal management policies and regulations. The grants will be provided to the Sea Grant Programs of the States hosting the Fellows. These Sea Grant Programs will administer the grants.

DATES: Applications for Fellowship positions will be available from all Sea Grant Program offices and the Coastal Services Center beginning on 21 February 1997. Applications will be due to State Sea Grant Directors no later than 28 March 1997. Each Sea Grant Directors may nominate up to two qualified candidates. These nominations from the Sea Grant Directors are due to the Coastal Services Center no later than 11 April 1997. Those candidates selected to be finalists will be notified by 30 April 1997. Fellowships and selected projects will begin 1 October 1997.

ADDRESSES: Send requests for the Fellowship Selection Application packages as well as completed nomination packages to CSC Coastal Management Fellowships, Attn: Mr. Michael Pentony, NOAA Coastal Services Center, 2234 South Hobson Avenue, Charleston, South Carolina, 29405–2413.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Pentony, Coastal Management Services, at (803) 974–6257.

SUPPLEMENTARY INFORMATION:

Authority

Statutory authority for these awards is provided under 16 USC 1456.c [Technical Assistance]; 15 USC Sec. 1540 [Cooperative Agreements]; and, 33 USC 1442 [Research program respecting possible long-range effects of pollution, overfishing, and man-induced changes of ocean ecosystems].

Catalog of Federal Domestic Assistance (CFDA)

The CSC Program is listed in the Catalog of Federal Domestic Assistance under Number 11.473.

Program Description

The goal of the Coastal Services Center is to build capabilities around the nation which simultaneously address pressing issues of coastal health and change by conserving coastal environments including coastal wetlands, riparian forested wetlands, maritime forests, fisheries/shell fisheries, and other living marine resources and by promoting efficient and sustainable industry, farming, commercial and residential development, urban redevelopment, and tourism.

Seven competitive post-graduate fellowships will be awarded for meritorious recent Masters, professional, and Ph.D. degree recipients to spend two years working with coastal resource management agencies on state-level needs and federal management issues. State coastal zone programs provided project proposals in a competition for placement of one of the CSC Coastal Management Fellows (see section on Application Requirements).

The project selection process was completed before the fellow selection process in order to give the Sea Grant Directors and prospective Fellows better guidance as to the nature of the projects for which they will be competing. Given that the projects are being selected independently of the fellow selection and the desire to broaden the educational experience of selected fellows, they will most likely be serving outside of their Sea Grant home state.

Funding Availability

Coastal Service Center funding for each twenty-four month fellowship is expected to be $64,000, for a total of $448,000 for the seven fellowships over the fellowship period. Publication of this announcement does not require NOAA CSC to make any specific award or to obligate any amount of the funds available. The two year grant of $64,000 with an additional $12,000 State match made for each Fellow to the receiving state's Sea Grant program includes $30,000 per year for the Fellow divided into a $20,000 stipend and $10,000 for per diem. The remaining $8,000 per year will be roughly divided as follows: $5,000 for benefits, including health insurance; $1,000 for moving expenses; $1,500 for travel associated with the fellowship experience; and, $500 for any administrative costs incurred by the administering Sea Grant program. Required travel for the Fellows includes attending either the Coastal Zone Conference or the bi-annual meeting of The Coastal Society, depending on the year. NOAA will provide funding directly to the Sea Grant Programs that will administer the grants.

Matching Requirements

Cost sharing of a portion of the fellow cost for the second year of the fellowship is required by each state in which a Fellow is placed, in the amount of $12,000. Additionally, the coastal zone program is expected to provide in-kind support (office space, phone service, computer equipment, etc.) for the entire term of the fellowship.

Type of Funding Instrument

The projects will be awarded as a Grant, distributed by the Coastal Services Center. NOAA anticipates that there be no substantial involvement of the Coastal Services Center in the performance of activities under this assistance program.

Eligibility Criteria

Any student who has completed a master's, doctoral, or professional degree program in coastal, marine, or Great Lakes related studies at any

accredited United States institution of higher education in 1996 or by 30 September 1997, is eligible to apply through the state Sea Grant Program nearest their residence or graduate institution. Knauss Marine Policy Fellows from the previous year, who have finished their degree requirements, may also apply.

All states with federally approved coastal zone management programs, and states developing such programs for approval, were eligible to submit one application for this program through the NOAA Coastal Services Center. All eligible agencies were notified for the project proposal application process by mail in December 1996, and projects were selected in February 1997. The seven selected project agencies will serve as hosts to the CSC Coastal Management Fellows.

Once the seven Fellows have been selected and matched to the state host agencies, the Sea Grant Programs in those states will be asked to prepare a grant application package in order to receive the grant from NOAA. Those grant application packages will be due to NOAA no later than 30 June 1997.

Award Period

The twenty-four month fellowship commences 1 October 1997.

Indirect Costs

Funds to support the Coastal management Fellowship program will be given directly to the state Sea Grant programs, and the maximum allowable Administrative or Indirect Costs are five hundred dollars per year.

Application Requirements

The Coastal Services Center, in cooperation with the Coastal States Organization, National Sea Grant College Program Office, and the National Ocean Service's Office of Ocean and Coastal Resource Management (OCRM), is seeking applications from qualified individuals to complete for Fellowship projects. These projects will directly involve the Fellow in such activities as natural coastal hazards planning, mitigation and recovery; habitat evaluation or restoration; and mitigation of habitat impacts caused by a major project or type of projects.

All fellowship applications must include:

A. A personal and academic resume or curriculum vitae.

B. An educational and career goal statement from the applicant with emphasis on what the prospective Fellow expects from the experience. Placement preference in terms of geographical placement or topic of focus may be stated by the applicant, and will be honored to the extend practical. Prospective fellows should keep in mind that limited descriptions of placement or topic will make final placement more difficult.

C. Two letters of recommendation, including one from the student's major professor.

D. A detailed letter of endorsement from the sponsoring state Sea Grant Director, as a result of a face to face interview, addressing such important topics as communication skills, philosophical approach toward work, and ability to work with people.

E. Copies of all undergraduate and graduate student transcripts.

F. Standard Form 424, "Application for Federal Assistance."

All Fellow applicants will be evaluated and chosen only on their qualifications, therefore letters of endorsements from individuals such as members of Congress, friends, and/or relatives should not be submitted.

Sea Grant Programs submitting grant applications will be required to submit the following:

A. SF–424, "Application for Federal Assistance;"

B. SF–424A, "Budget Information—Non-Construction Programs;"

C. SF–42B, "Assurances—Non-Construction Programs;"

D. Budget with necessary supporting detail, Budget Narrative;

E. Audit Information; and,

F. CD–511, "Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace requirements and Lobbying;"

Project Funding Priorities

Funds will be awarded for the support of the Fellow, as delineated in Section 7.f. of this notice. Funds for the fellowship will be given to the Sea Grant programs in the states receiving Fellows and not to the state coastal programs that submitted project proposals.

Evaluation Criteria

Fellow applications will be evaluated based on the following criteria:

(a) Support of Sea Grant Director (25%);

(b) Support of major professor (15%);

(c) Strength of academic performance (15%);

(d) Diversity of academic background (15%);

(e) Experience working in coastal management or marine affairs (10%);

(f) Written and verbal communications skills (10%); and

(g) Ability to work with people (10%).

All qualified applicants will be considered regardless of age, race, color, sex, creed, marital status, national origin, lawful political affiliation, religious preference or non-disqualifying physical handicap. Academic discipline, geographic representation, and individual state coastal program needs will be considered in balancing the class.

Selection Procedures

Applications will be received at the Sea Grant program office nearest the applicant's graduate institution. All applications will be reviewed by the Sea Grant Director, or a designee. Applications which do not conform to the requirements may not be considered for further evaluation. Each Sea Grant Director may nominate up to two applicants for further consideration. The complete application package, with a letter of endorsement by the nominating Sea Grant Director, will be submitted to the Coastal Services Center at the address listed above under the **ADDRESSES** section of this notice.

A finalist selection panel will be convened, by 28 April 1997, to review and recommend selection of the top fourteen Fellow applicants using the criteria outlined above. This selection panel will present its recommendations to the CSC Coastal Management Fellowship Program Director. The panel will consist of the Coastal States Organization Executive Director and representatives from the Coastal Services Center, a Sea Grant Director representative from the Sea Grant Directors' Association, a representative from the NOAA Office of Ocean and Coastal Resources Management, and a current Fellow. Representatives from these groups will be chosen according to availability, timing, and other exigencies. Final decision will be made by 28 April 1997, and all Fellow applicants will be notified of the selection decision.

Although the fourteen selected Fellow applicants will be considered finalists, only seven of the finalists will become Fellows and be placed with state coastal management program hosts. Each of the selected host states will send a representative, preferably the Fellow mentor, to the final placement workshop in Charleston, SC, 28–30 May 1997. The fourteen Fellow finalists will be brought by CSC to the workshops for final interviews and placement. The placement workshops will serve as the final selection and placement point and will consist of: 1. Orientation to the program; 2. Host office project proposal presentations; 3. Finalist presentations; 4. Finalist-Host interviews; and 5. Fellow Matching.

By 7 May 1997, CSC will send each finalist a packet of information detailing the interview process during the placement workshop in Charleston. This packet will include information on each of the final seven coastal resource management projects, the host agencies, and background on the area of assignment. No contact between prospective hosts and finalists should be made prior to the placement workshop.

Other Requirements

Federal Policies and Procedures

Recipients and sub-recipients are subject to all Federal laws and Federal and DOC policies, regulations, and procedures applicable to Federal financial assistance awards.

Past Performance

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

Pre-Award Activities

If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no objection on the part of DOC to cover pre-award costs.

No Obligation for Future Funding

If an application is selected for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC.

Delinquent Federal Debts

No award of Federal Funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

(i) The delinquent account is paid in full,

(ii) A negotiated repayment schedule is established and at least one payment is received, or

(iii) Other arrangements satisfactory to DOC are made.

Primary Applicant Certifications

All Sea Grant Programs preparing grant applications must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension, and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and explanations are hereby provided:

Non-procurement Debarment and Suspension. Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

Drug-Free Workplace. Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Government side Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

Anti-Lobbying. Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to application/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

Anti-Lobbying Disclosures. Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Lower-Tier Certifications

Recipients shall require applicants/bidders for sub-grants, contracts, subcontracts, or other lower-tier-covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or sub-recipient should be submitted to DOC in accordance with the instructions contained in the award document.

False Statements

A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Intergovernmental Review

Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Buy American-Made Equipment or Products

Applicants are hereby notified that they will be encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent.

Classification

This action has been determined to be not significant for purposes of Executive Order 12866.

This notice contains a collection-of-information requirement subject to the Paperwork Reduction Act. The collection-of-information has been approved by OMB, OMB Control Numbers 0348–0043, 0348–0044, 0348–0040 and 0348–0046.

Dated: February 20, 1997.

David L. Evans,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 97–5265 Filed 3–3–97; 8:45 am]

BILLING CODE 3510–12–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Submission for OMB Review; Comment Request

February 25, 1997

The Corporation for National and Community Service (CNCS) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service Deputy Director, AmeriCorps Leaders Program, Julie Catlett, (202) 606–5000, Extension 164.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Corporation for National and Community Service, Office of Management and Budget, Room 10235, Washington, D.C. 20503. (202) 395–7316, within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the Corporation, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Agency: Corporation for National and Community Service.

Title: AmeriCorps Leaders Program Site Application.

OMB Number: 3045–0007

Affected Public: Not-for-Profit Institutions

Number of Respondents: 150.

Estimated Time Per Respondent: 3 Hours.

Total Burden Hours: 450.

Total Annualized capital/startup costs: $6,800.

Total Annual Cost (operating/maintaining systems or purchasing services): $150.

Description: The Corporation for National and Community Service proposes to revise the AmeriCorps Leaders Program Leader Application and Reference Forms and its AmeriCorps Leaders Program Site Application in order to reduce duplication of information gathering.

Dated: February 25, 1997.

Meri C. Ames,

Director, AmeriCorps Leaders Program.

[FR Doc. 97–5245 Filed 3–3–97; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Class Tuition Waiver for Children of Foreign Personnel Assigned to Partnership for Peace

AGENCY: DoD, DoDDS.

ACTION: Notice.

The Assistant Secretary of Defense (Force Management Policy (ASD(FMP)) issued a memorandum dated July 9, 1995, establishing a class tuition waiver for the space available enrollment of Partnership for Peace (PFP) dependents at the SHAPE International School (SIS) and the Brussels American School (BAS). On January 16, 1997, the ASD(FMP) signed a memorandum that supersedes the 1995 memorandum.

Effective immediately enrollment in the SIS and the BAS on a space-available, tuition-free basis is designated through the end of school year 1997–98, for the dependents of military and diplomatic personnel participating in the PFP Program in Belgium who meet the following criteria: The sponsor must be identified and recommended to the Brussels District Superintendent as eligible under the waiver by the U.S. National Military Representative (USNMR) to the Supreme Headquarters Allied Powers, Europe (SHAPE) for PFP sponsors assigned to the Partnership Coordination Cell, Mons, or other North Atlantic Treaty Organization (NATO) activities in the SHAPE area; or by the Defense Advisor to the U.S. Mission to the NATO for PFP sponsors stationed at NATO Headquarters or other NATO activities in the Brussels area. To be eligible, a PFP sponsor must be assigned specifically for the purposes of performing representational functions within the PFP Program, and the sponsor's principal "place of duty" must be a PFP office at NATO command or headquarters in either Mons or Brussels, Belgium.

Notwithstanding the above criteria, children enrolled for school year (SY) 1996–97 pursuant to the June 9, 1995 memorandum, will be enrolled, space-available, tuition-free, through the end of SY 1996–97. Thereafter, to remain eligible, those students and all other PFP students who request enrollment, must meet the above criteria. Commencing with SY 1997–98, enrollment preference will be extended to students who were previously enrolled, in the order in which they registered. All eligible students will be screened to determine the appropriate educational program. Enrollment is contingent upon the availability of space. Tuition is waived only for so long as a student remains eligible under the terms of this memorandum. Students must be disenrolled upon the loss of eligibility, unless space is available to enroll them as tuition-paying students and they pay tuition in accordance with DoD Directive 1342.13.

SUPPLEMENTARY INFORMATION: Copies of DoD Directive 1342.13, "Eligibility Requirements for Education of Minor Dependents in Overseas Area," are available, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. Questions can be addressed to the Department of Defense Education Activity, Attention: Mr. Robert Terzian, 4040 North Fairfax Drive, Arlington, VA 22203–1635.

Dated: February 27, 1997.

L.M. Bynum,

Alternate OSD Federal Register Officer, Department of Defense.

[FR Doc. 97–5253 Filed 3–3–97; 8:45 am]

BILLING CODE 5000–04–M

National Defense Panel; Notice of Meeting

SUMMARY: This notice sets forth the schedule and summary agenda for the meeting of the National Defense Panel on March 5 and 6, 1997. In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended [5 U.S.C. App. II, (1982)], it has been determined that this National Defense Panel meeting concerns matters listed in 5 U.S.C. § 552b (c)(1)(1982), and that accordingly this meeting will be closed to the public in order for the Panel to discuss classified material. This notice is less than fifteen days prior to the meeting due to the delayed selection of the panel and the Panel members' desire to accelerate their meeting schedule to meet the legislated reporting timeline.

DATES: March 5 and 6, 1997.

ADDRESSES: Suite, 1931 Jefferson Davis Hwy, Arlington, VA.

SUPPLEMENTARY INFORMATION: The National Defense Panel was established on January 14, 1997 in accordance with the Military Force Structure Review Act of 1996, Public Law 104–201. The mission of the National Defense Panel is to provide the Secretary of Defense and Congress with an independent, non-partisan assessment of the Secretary's Quadrennial Defense Review and an Alternative Force Structure Analysis. This analysis will explore innovative ways to meet the national security challenges of the twenty-first Century.

PROPOSED SCHEDULE AND AGENDA: The National Defense Panel will meet in closed session from 9:00 a.m. until 5:00 p.m. on March 5 and 6, 1997. The Panel will discuss classified national intelligence information on the international security environment provided by the National Intelligence Council. They will also receive classified briefings from DOD on the Quadrennial Defense Review actions to date.

FOR FURTHER INFORMATION CONTACT: Please contact the National Defense Panel at (703) 697–5136.

Dated: February 27, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–5254 Filed 3–3–97; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DOD.

ACTION: Addition of a system of records.

SUMMARY: The Department of the Air Force proposes to add a system of records to its inventory of systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The addition will be effective on April 3, 1997, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force Access Programs Manager, HQ USAF/SCMI, 1250 Air Force Pentagon, Washington, DC 20330–1250.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 697–8674 or DSN 227–8674.

SUPPLEMENTARY INFORMATION: The complete inventory of Department of the Air Force system of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 522a(r) of the Privacy Act of 1974, as amended, was submitted on February 25, 1997, to the House Committee on Government Reform and Oversight, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: February 26, 1997.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F168 AF SG G

SYSTEM NAME:

Reporting of Medical Conditions of Public Health and Military Significance.

SYSTEM LOCATION:

Epidemiology Services Branch, Epidemiologic Research Division, Armstrong Laboratory, 2601 West Gate Road, Suite 114, Brooks Air Force Base, TX 78235–5241, medical centers, hospitals and clinics, medical aid stations, Air National Guard activities, and Air Force Reserve units. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty Air Force members and their dependents, civilian Air Force employees, retired Air Force members and their dependents, Air Force Reserve and Air National Guard personnel and foreign national Air Force employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, home address, home phone, date of birth, and records relating to communicable diseases, occupational illnesses, animal bites, and both completed and attempted suicides.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 55, Medical and Dental Care; 10 U.S.C. 8013, Secretary of the Air Force; powers and duties; delegation by; 29 CFR 1960, Occupational Illness/Injury Reporting Guidelines for Federal Agencies; Air Force Instruction 48-105, Surveillance, Prevention, and Control of Diseases and Conditions of Public Health or Military Significance; and E.O. 9397 (SSN).

PURPOSE(S):

Records from this system of records will be used for ongoing public health surveillance, which is the systematic collection, analysis, and interpretation of outcome-specific data for use in the planning, implementation, and evaluation of public health practice within the Air Force.

Primary users include appropriate Air Force activity/installation preventive medicine and public health personnel and their major command and Air Force counterparts. Records are used and reviewed by health care personnel in the performance of their duties.

Health care personnel include military and civilian personnel assigned to the Air Force facility where the records are maintained. Students participating in a USAF training program may also use and review records as part of their training program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained therein, may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the officials and employees of the National Research Council and the Department of Veterans Affairs in cooperative studies of the natural history of disease and epidemiology. Each study in which the records of members and former members of the Air Force are used must be approved by the Surgeon General of the Air Force.

To officials and employees of local and state governments in the performance of their official duties pursuant to the laws and regulations governing local control of communicable diseases, preventive medicine and safety programs, and other public health and welfare programs.

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of record system notices apply to this system, except as stipulated in 'Note' below.

NOTE: Records of identity, diagnosis, prognosis or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol/drug abuse treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided herein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. The 'Blanket Routine Uses' do not apply to these types of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in machine readable form.

RETRIEVABILITY:

Records are retrieved by name, Social Security Number, reportable event, location, or any combination of these.

SAFEGUARDS:

Records are accessed by custodians of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened. Except when under direct physical control by authorized individuals, records will be electronically stored in computer storage devices protected by computer system software. Computer

terminals are located in supervised areas with terminal access controlled by password or other user code systems.

RETENTION AND DISPOSAL:

Local retention may vary, but will be no less than 5 years after the fiscal year to which the records relate. After that time, records may be destroyed by erasing, deleting, or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Epidemiology Services Branch, Epidemiologic Research Division, Armstrong Laboratory (AL/AOES), 2601 West Gate Road, Suite 114, Brooks Air Force Base, TX 78235–5241, or comparable official of the Public Health Office serving the Air Force activity/installation. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to Chief, Epidemiology Services Branch, Epidemiologic Research Division, Armstrong Laboratory (AL/AOES), 2601 West Gate Road, Suite 114, Brooks Air Force Base, TX 78235–5241, or comparable official of the Public Health Office serving the Air Force activity/installation. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Written requests should contain the full name and signature of the requester.

Requests in person must be made during normal office duty hours Monday through Friday, excluding national and/or local holidays.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to the Chief, Epidemiology Services Branch, Epidemiologic Research Division, Armstrong Laboratory (AL/AOES), 2601 West Gate Road, Suite 114, Brooks Air Force Base, TX 78235–5241, or comparable official of the Public Health Office serving the Air Force activity/installation. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Written requests should contain the full name and signature of the requester.

Requests in person must be made during normal office duty hours Monday through Friday, excluding national and/or local holidays.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Records in this system are obtained from DOD and Air Force employees involved in the surveillance, prevention, control, and reporting of diseases and conditions of public health or military significance.

Database is compiled using information from personnel, medical, and casualty records, investigative reports, and environmental sampling data.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 97–5237 Filed 3–3–97; 8:45 am]

BILLING CODE 5000–04–F

Department of the Army

Supplemental Environmental Impact Statement on Final Site Selection and Authorization for Implementation of Multi-Purpose Range Complex-Heavy, Camp Shelby, MS; De Soto National Forest, Forrest and Perry Counties, MS

AGENCY: Department of the Army, National Guard Bureau; U.S. Department of Agriculture (USDA), Forest Service.

ACTION: Notice of intent.

SUMMARY: The National Guard Bureau, as co-lead agency with the USDA, Forest Service, will cooperatively participate in the preparation of a Supplemental Environmental Impact Statement (SEIS) to the Final Environmental Impact Statement (FEIS) for Military Training Use of National Forest Lands, Camp Shelby, Mississippi. The SEIS will identify sites evaluated by both agencies for consideration in selection of a final site for the Multi-Purpose Range Complex-Heavy (MPRC–H) location and disclose new information relevant to environmental concerns having a bearing on the proposed action.

Description of Proposed Action

The National Guard Bureau proposes to construct, operate, and maintain a MPRC–H facility within the Operations Area at Camp Shelby. The project area includes National Forest System lands on the De Soto National Forest that are currently utilized for military training activities under terms and conditions of a special use permit issued by the United States Department of Agriculture, Forest Service.

The MPRCH–H is a standard Army gunnery range which has three maneuver avenues. Only "practice" ammunition will be fired within the target array. The proposed project would consist of the range operation and control area, the downrange area, and the vehicle holding and maintenance area.

Preliminary Alternatives

Two sites were initially studied in the original special uses EIS. Since that time, numerous alternative sites have been examined by both agencies. Three alternative sites, plus the no action alternative, have been identified for further analysis in this supplement. The surface danger zones all remain within the current buffer zone of the dedicated impact area.

No Action Alternative: The No Action alternative provides a basis for describing the proposed action and other alternatives.

Range 41: This site overlays an existing tank gunnery range (Range 41) in the northern third of the impact area.

FS3: This site is located northeast of the Range 41 site and has a southeasterly orientation directed towards the northeast corner of the dedicated impact area.

FS4; This site is located north of the Range 41 site and has a southeasterly orientation directed towards the northwest corner of the dedicated impact area.

Supplemental EIS Availability

The draft supplement to the spring of 1997. The responsible officials will consider the comments, responses, environmental consequences discussed in the final supplement in making a decision regarding this proposal. Each responsible official will document their decision and reasons for the decision in a Record of Decision (ROD). The Forest Service Record of Decisions will be issued along with the final supplement and will be subject to administrative review (appeal) under 36 CFR 215. The Record of Decision will address the final site selection and authorization for construction and operation of an MPRC–H on Camp Shelby Training Site under a Special Use Permit for occupation and use of National Forest administered lands. A scoping meeting will be scheduled during March 1997 with a draft supplement to follow. Comments and suggestions can be forwarded to the following individuals: (1) Lieutenant Colonel Parker Hills, Public Affairs Office, Mississippi Army National Guard, P.O. Box 5027, Jackson, Mississippi 39296–5027, telephone (601) 973–6349, facsimile extension 6176; (2) Mr. Jeff Long, Forest Environmental Coordinator, U.S. Forest Service, National Forests in Mississippi, 100 West Capitol Street, Suite 1141, Jackson, Mississippi 39269, telephone (601) 965–5525, facsimile extension 5519; or (3) Major John Phillippe, National Guard Bureau ILE–E, 111 South George Mason Drive, Arlington, Virginia 22204, telephone (703) 607–7968.

Dated: February 26, 1997.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I, L&E).

[FR Doc. 97–5270 Filed 3–3–97; 8:45 am]

BILLING CODE 3710–08–M

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DOD.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of the Army is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on April 3, 1997, unless comments are received which result in a contrary determination.

ADDRESSES: Privacy Act Officer, Records Management Division, U.S. Army Publishing and Records Management Center, ATTN: SAIS-PRP-DR, Stop C55, Ft. Belvoir, VA 22060–5576.

FOR FURTHER INFORMATION CONTACT: Ms. Pat Turner at (703) 806–3389 or DSN 656–3389.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: February 26, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0025–6USAISC

SYSTEM NAME:

Military Affiliate Radio System *(August 3, 1993, 58 FR 41251).*

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0025–6USASC'.

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 3013; DoD Directive 4650.2; and Field Manual 11–490–7'.

* * * * *

RETRIEVABILITY:

Add to entry 'and amateur and/or MARS call signs'.

SAFEGUARDS:

Information is maintained in buildings having security guards and is accessible only to individuals who have need therefor to perform their duties. Automated records are further protected by a password assigned to designated persons.

RETENTION AND DISPOSAL:

Delete entry and repace with 'Signed receipts are destroyed after 5 years, or 1 year after termination of membership, and then destroyed by shredding.'

* * * * *

A0025–6USASC

SYSTEM NAME:

Military Affiliate Radio System.

SYSTEM LOCATION:

U.S. Army Signal Command, Fort Huachuca, AZ 85613–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals having a valid amateur radio station license issued by the Federal Communications Commission who apply for membership in the Army Military Affiliate Radio System (MARS).

CATEGORIES OF RECORDS IN THE SYSTEM:

Applicant's name, home address and telephone number, licensing data and call-sign provided by Federal Communications Commission, Army MARS call-sign, relevant inquiries/records and reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013; DoD Directive 4650.2; and Field Manual 11–490–7.

PURPOSE(S):

To provide a potential reserve of trained radio communications personnel for military duty when needed and/or to provide auxiliary communications for military, civil, and/or disaster officials during periods of emergency.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to Department of Army and Department of Defense communication agencies and their authorized contractors in connection with individual's participation in the Army Military Affiliate Radio System Program and to federal supply agencies in connection with individual's participation in the Army MARS Equipment Program.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Cards; paper in file folders, computer tapes, discs, listings.

RETRIEVABILITY:

By member's name, and amateur and/or MARS call signs.

SAFEGUARDS:

Information is maintained in buildings having security guards and is accessible only to individuals who have need therefor to perform their duties. Automated records are further protected by a password assigned to designated persons.

RETENTION AND DISPOSAL:

Signed receipts are destroyed after 5 years, or 1 year after termination of membership, and then destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Signal Command, ATTN: AFSC-OPT-BC, Fort Huachuca, AZ 95613–5000.

NOTIFICATION PROCEDURE:

Individual seeking to determine whether information about themselves is contained in this system should address written inquiries to the

Commander, U.S. Army Signal Command, ATTN: AFSC-OPT-BC, Fort Huachuca, AZ 95613–5000.

Individual should provide the name under which licensed is the Army MARS program, amateur and or MARS call sign, present address, call sign, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this record system should address written inquiries to the Commander, U.S. Army Signal Command, ATTN: AFSC-OPT-BC, Fort Huachuca, AZ 95613–5000.

Individual should provide the name under which licensed is the Army MARS program, amateur and or MARS call sign, present address, call sign, and signature.

CONTESTING RECORDS PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual and the Federal Communications Commission.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 97–5238 Filed 3–3–97; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF EDUCATION

[CFDA No.: 84.132A–3]

Centers for Independent Living; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1997.

Purpose of Program

This program provides support for planning, conducting, administering, and evaluating centers for independent living (centers) that comply with the standards and assurances in section 725 of the Rehabilitation Act of 1973, as amended (Act), consistent with the State plan for establishing a statewide network of centers. Centers are consumer-controlled, community-based, cross-disability, nonresidential, private nonprofit agencies that are designed and operated within local communities by individuals with disabilities and provide an array of independent living (IL) services.

Eligible Applicants

To be eligible to apply, an applicant must be a consumer-controlled, community-based, cross-disability, nonresidential, private nonprofit agency as defined in 34 CFR 364.4; have the power and authority to meet the requirements in 34 CFR 366.2(a)(1); be able to plan, conduct, administer, and evaluate a center for independent living consistent with the requirements of section 725 (b) and (c) of the Act and Subparts F and G of 34 CFR Part 366; and either—(1) not currently be receiving funds under Part C of Chapter 1 of Title VII of the Act; or (2) propose the expansion of an existing center through the establishment of a separate and complete center (except that the governing board of the existing center may serve as the governing board of the new center) in a different geographical location. Eligibility under this competition is limited to entities that meet the requirements of 34 CFR 366.24 and propose to serve areas that are unserved or underserved in the States and territories listed under *Available Funds.*

Deadline for Transmittal of Applications: April 30, 1997.

Deadline for Intergovernmental Review: June 29, 1997.

Applications Available: March 7, 1997.

Available Funds: $101,587 as distributed in the following manner: Washington, $101,587.

Estimated Range of Awards: $101,587.

Estimated Number of Awards: 1 per eligible State.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77,79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Parts 364 and 366.

For Applications or Further Information Contact: John Nelson, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3326 Switzer Building, Washington, D.C. 20202–2741. Telephone (202) 205–9362. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be downloaded from the Rehabilitation Services Administration's electronic bulletin board, telephone (202) 205–5574 (2400 bps) and (202) 205–9950 (9600 bps) or from the World Wide Web (at http://www.ed.gov/offices/OSERS/RSA/rsakits.html); and can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server (at gopher://gcs.ed.gov); or on the World Wide Web (at http://gcs.ed.gov). However, the official application notice for this competition is the notice published in the **Federal Register**.

Program Authority: 29 U.S.C. 721 (c) and (e) and 796(f)

Dated: February 25, 1997.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 97–5217 Filed 3–3–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 96–99–LNG]

Phillips Alaska Natural Gas Corporation and Marathon Oil Company; Application to Amend Authorization To Export Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application filed on December 31, 1996, by Phillips Alaska Natural Gas Corporation (PANGC) and Marathon Oil Company (Marathon) requesting that DOE approve a five-year extension of their long-standing authorization to export Alaskan liquefied natural gas (LNG) from Alaska to Japan. The gas would be liquefied at the applicants' Kenai LNG plant in the Cook Inlet area of Alaska and would be transported by tanker to Japan for sale to Tokyo Electric Power Company, Inc. (Tokyo Electric) and Tokyo Gas Company, Ltd. (Tokyo Gas).

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, Motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, April 3, 1997.

ADDRESSES: Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, FE–50, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT:

Patrick J. Fleming, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, FE–50, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9387

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 6E–042, GC–40, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION:

Background

PANGC, a Delaware corporation with its principal place of business in Bartlesville, Oklahoma, is a wholly owned subsidiary of Phillips Petroleum Company, a Delaware corporation. Marathon, an Ohio corporation with its principal place of business in Houston, Texas, is a wholly owned subsidiary of USX Corporation, also a Delaware corporation. PANGC and Marathon are not affiliated with each other.

The LNG export authorization held by PANGC and Marathon was granted originally by the Federal Power Commission (FPC) on April 19, 1967. It was subsequently amended by DOE's Economic Regulatory Administration in 1982, 1986, 1987, and 1988, and by FE in 1991, 1992, and 1995. PANGC and Marathon are currently authorized to export up to 64.4 trillion Btu (approximately 64.4 billion cubic feet (Bcf)) of LNG per year through March 31, 2004. See FPC Order No. 1227 (37 FPC 777, April 19, 1967); DOE/ERA Opinion and Order No. 49 (1 ERA ¶ 70,116, December 14, 1982); DOE/ERA Opinion and Order No. 49A [1] (1 ERA ¶ 70,127, April 3, 1986); DOE/ERA Opinion and Order No. 206 (1 ERA ¶ 70,128, November 16, 1987); DOE/ERA Opinion and Order No. 261 (1 ERA ¶ 70,130, July 28, 1988); DOE/FE Opinion and Order No. 261–A (1 FE ¶ 70,454, June 18, 1991; DOE/FE Opinion and Order No. 261–B [2] (1 FE ¶ 70,506, December 19, 1991); DOE/FE Opinion and Order No. 261–C (1 FE ¶ 70,607, July 15, 1992); and DOE/FE Opinion and Order No. 261–D (1 FE ¶ 71,087, March 2, 1995) (herein collectively referred to as Order 261).

PANGC and Marathon request that FE amend the export authorization granted by Order 261 to approve the continued exportation of LNG for an additional five years commencing April 1, 2004, and extending through March 31, 2009, using existing facilities. During the five-year extension, the natural gas to be exported would be produced from gas fields owned or controlled by PANGC and Marathon in the Cook Inlet area of Alaska. The natural gas would be manufactured into LNG at the existing liquefaction plant near Kenai, Alaska.[3]

The pricing and other provisions in the applicants' current LNG sales contracts with Tokyo Electric and Tokyo Gas would remain the same during the extension period. Order 261 authorizes a market-sensitive pricing formula under which the monthly selling price per MMBtu of LNG exported to Japan by PANGC and Marathon is adjusted each month according to changes over a period of three months in the selling price of all crude oils imported into Japan as reported in Japan Exports & Imports Monthly which is edited by the Customs Bureau, Ministry of Finance, and published by the Japan Tariff Association.

PANGC and Marathon and the Japanese buyers of the LNG have held discussions concerning the LNG purchase and sale to facilitate planning their respective operations. Pursuant to such discussions, the Parties negotiated and executed a Letter Agreement dated May 17, 1993, attached as Appendix A to the application, in which the Parties agreed to the contract extension. The extension is subject to PANGC and Marathon providing written acceptance of such extension to Tokyo Electric and Tokyo Gas on or before March 31, 2001.

Public Interest Considerations

In support of their application, PANGC and Marathon state there is no evidence of domestic need, either regional or national, for the natural gas they would export during the proposed extension. According to the applicants, the Cook Inlet area of Alaska continues to have an oversupply of natural gas and, based on two studies submitted with their application, PANGC and Marathon conclude estimates of remaining gas reserves in Alaska, and the Cook Inlet area in particular, are adequate to supply local and regional need beyond the 2004–2009 extension period.[4] Applicants project that under the more pessimistic of the two scenarios examined, the low supply/high demand scenario, remaining reserves would exceed 1.2 trillion cubic feet (Tcf) at the end of 2009, a figure that climbs to 2.0 Tcf under the expected and less conservative supply/demand scenario.

With respect to national need, PANGC and Marathon state that gas supplies in the lower 48 states are sufficient to meet demand and under existing economic conditions LNG could not be shipped to the lower 48 at market clearing prices. The applicants emphasize there are no existing or anticipated West Coast LNG receiving terminals and the cost of shipping Kenai LNG to terminals on the East Coast of the lower 48 makes that alternative improbable. Furthermore, PANGC and Marathon state there are extensive Canadian gas reserves available for export to the lower 48 states at prices lower than those necessary to support Alaskan LNG.

PANGC and Marathon assert the five-year extension of their authority to export Cook Inlet LNG from Kenai to Japan would extend the current benefits now enjoyed by the Kenai Peninsula Borough, the State of Alaska, and the United States in general, and is therefore consistent with the public interest. According to the applicants, cessation of exports of LNG to Japan would end these benefits, forcing the closure of the Kenai liquefaction plant with the resultant estimated loss of over 800 jobs generating over $40 million [5] in personal income per year. The applicants also state the cessation of exports would reduce local, state, and federal revenue from taxes and royalties, revenues which totaled nearly $44 million in 1995. Finally, PANGC and Marathon note the potential detrimental effects on the U.S./Japan balance of payments.

DOE/FE Evaluation

This export application will be reviewed pursuant to section 3 of the Natural Gas Act, as amended by section 201 of the Energy Policy Act of 1992 (Pub. L. 102–486) and the authority contained in DOE Delegation Order Nos. 0204–111 and 0204–127. In reviewing LNG exports, DOE considers domestic

[1] In ERA Opinion and Order No. 49A the authorization previously granted to Phillips Petroleum Company to export LNG was transferred to Phillips 66 Natural Gas Company effective January 1, 1986.

[2] In DOE/FE Opinion and Order No. 261–B the authorization previously granted to Phillips 66 Natural Gas Company to export LNG was transferred to PANGC effective December 19, 1991.

[3] The Kenai LNG plant is owned by Kenai LNG Corporation, 70 percent of which is owned by PANGC and 30 percent by Marathon.

[4] See Resource Decisions, Economic Analysis of Regional and Local Interest Relating to Kenai LNG Export to Japan (December 11, 1996) included as Appendix C to the application of PANGC and Marathon filed December 31, 1996; Schlumberger GeoQuest Reservoir Technologies, Proven Reserves Assessment Cook Inlet Alaska Effective January 1, 1996 (March 1996) included as Appendix D to the application of PANGC and Marathon filed December 31, 1996.

[5] In 1995 dollars.

need for the gas and any other issue determined to be appropriate, including whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose this application should comment in their responses on these issues.

PANGC and Marathon assert that the gas will not be needed domestically during the extension period and the export is otherwise consistent with the public interest. Parties that oppose extending the PANGC/Marathon export should comment on the specific statements of the applicants, including conclusions in the two studies submitted as part of the application. Opponents will bear the burden of demonstrating the proposed export extension is not consistent with the public interest.

The National Environmental Policy Act (NEPA) (42 U.S.C. 4231 *et seq.*) requires DOE to give appropriate consideration to the environmental effects of its proposed action. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Anyone who wants to become a party to this proceeding and to have their written comments considered as the basis for the decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Natural Gas & Petroleum Import & Export Activities at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of PANGC's and Marathon's application is available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities docket room, 3F–056, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on February 25, 1997.

Wayne E. Peters,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.

[FR Doc. 97–5257 Filed 3–3–97; 8:45 am]

BILLING CODE 6450–01–P

Bonneville Power Administration

Notice of Floodplain and Wetlands Involvement for Upper Snake River Fish Culture Facility

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of floodplain and wetlands involvement.

SUMMARY: This notice announces BPA's proposal to purchase an existing fish hatchery suitable for remodeling and operation as a fish hatchery for domestic rainbow trout and testing facility for potential rearing of native Yellowstone cutthroat and redband trout.

Three alternative hatcheries are being evaluated for purchase and remodeling; two are located in Bingham County, Idaho and one in Power County, Idaho. In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR Part 1022), BPA will prepare a floodplain and wetlands assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain and wetlands. The assessment will be included in the environmental assessment being prepared for the proposed project in accordance with the requirements of the National Environmental Policy Act. A floodplain statement of findings will be included in any finding of no significant impact that may be issued following the completion of the environmental assessment.

DATE: Comments are due to the address below no later than March 19, 1997.

ADDRESSES: Submit comments to the Public Involvement Office, Bonneville Power Administration—ACS, P.O. Box 12999, Portland, Oregon 97212. Internet address: comment@bpa.gov.

FOR FURTHER INFORMATION CONTACT: Colleen Spiering, Environmental Project Lead—ECN, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon, 97208–3621, phone number 503–230–5756, fax number 503–230–5699.

SUPPLEMENTARY INFORMATION: Houghland Farm (sec. 25, T. 4 S., R. 32 E. and sec. 30, T.4 S., R. 33 E) is located in Bingham County, Idaho between Springfield and the McTucker Springs Recreational Area. Papoose Springs (sec. 1, T. 6 S., R. 33 E. and sec. 6, T. 6 S,. R. 34 E) site is located in Power County, Idaho on Tank Farm Rd. near Siphon Rd. Jackson Ranch (sec 31, T. 3 S., R. 34 E. and sec 6, T. 4 S., R. 34 E). is located in Bingham County, Idaho on Jackson Troutfarm Rd. near Ferry Butte Rd. There is a possibility that Floodplains and Wetlands could be impacted as a result of this project.

Maps and further information are available from BPA at the address above.

Issued in Portland, Oregon, on February 24, 1997.

Thomas C. McKinney,

NEPA Compliance Officer.

[FR Doc. 97–5255 Filed 3–3–97; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. RP97–201–001]

National Fuel Gas Supply Corporation; Notice of Proposed Chances in FERC Gas Tariff

February 26, 1997.

Take notice that on February 24, 1997, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, with an effective date of April 1, 1997.

National Fuel states that the filing is to supplement its December 23, 1996, Section 4 filing at Docket No. RP97–201. National Fuel states that the purpose of the filing is: (1) to postpone the effective date of the proposed Interconnect Agreement requirement until June 1, 1997, when all interstate pipelines will be in compliance with the GISB Standards, and (2) to withdraw its proposed tariff changes that contemplate the introduction of a new enhanced electronic bulletin system, as it now plans to develop a system that relies on internet based communications.

National Fuel states that it is serving copies of the filing upon all parties to this proceeding, firm customers and interested state commissions. National Fuel states that copies are also being served on all interruptible customers as of the date of the filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rule 385.211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–5221 Filed 3–3–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–284–000]

Northern Border Pipeline Company; Notice of Application

February 26, 1997.

Take notice that on February 24, 1997, Northern Border Pipeline Company (Northern Border), P.O. Box 3330, Omaha, Nebraska 68103–0330, filed an application with the Commission in Docket No. CP97–264–000 pursuant to Section 7(b) of the Natural Gas Act (NGA) and Section 9 of the Alaskan Natural Gas Transportation Act (ANGTA) for permission and approval to abandon certain individual natural gas transportation arrangements with Pan-Alberta Gas (U.S.) Inc. (PAGUS), which were authorized in Docket Nos. CP78–124–013, CP93–3–000, and CP94–22–000, all as more fully set forth in the application which is open to the public for inspection.

Northern Border proposes to abandon its firm transportation of a total of 800 MMcf of natural gas per day for PAGUS. Northern Border states that is transports said gas for PAGUS under the terms of three U.S. shipper service agreements under its FERC Rate Schedule T–1. Northern Border and PAGUS are parties to service agreements dated October 7, 1989, for 450 MMcf per day; October 1, 1992, for 150 MMcf per day; and October 1, 1992, for 200 MMcf per day. Northern Border states that it proposes to abandon its currently authorized Section 7(c) transportation services under these three service agreements at the request of PAGUS in order to convert to Part 284 transportation service. Northern Border also states that PAGUS indicated in its request to Northern Border that the proposed conversion would facilitate increaed operating flexibility, allow access to new interconnections as they develop, and would allow PAGUS to more fully use the capacity release provisions under Part 284.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 19, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern Border to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–5218 Filed 3–3–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–407–011]

Questar Pipeline Company; Notice of Tariff Filing

February 26, 1997.

Take notice that on February 21, 1997, Questar Pipeline Company, (Questar) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Fifth Substitute Alternate Fifth Revised Sheet No. 5, and Third Substitute Third Revised Sheet No. 6A, to be effective February 1, 1996.

Questar states that the proposed tariff sheets respond to the Commission's February 6, 1997 letter order in Docket No. RP95–407–010.

Questar states further that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Wyoming Public Service Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rule 385.211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–5220 Filed 3–3–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–203–001]

Questar Pipeline Company; Notice of Tariff Filing

February 26, 1997.

Take notice that on February 21, 1997, Questar Pipeline Company (Questar) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute First Revised Sheet Nos. 81A, and 82 and Substitute Original Sheet No. 82A to be effective January 23, 1997.

Questar explains that the proposed tariff sheets revise Section 12.13 of the General Terms and Conditions of Part I of Questar's tariff by incorporating tariff language as directed by the January 22, 1997, Commission letter order, issued in Docket No. RP97–203. The revised Section 12.13 implements a mechanism for tracking fuel-use and lost-and-unaccounted-for gas to be effective January 23, 1997.

Questar states that it has included a response to the protest filed by Conoco Inc. as directed by the January 22, 1997, letter order.

Questar further states that a copy of this filing has been served upon Questar's customers, the Public Service Commission of Utah and the Wyoming Public Service Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 385.211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed in accordance with Section 154.210 of the Commission Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–5222 Filed 3–3–97; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 1494–118]

Grand River Dam Authority; Notice of Availability of Environmental Assessment

February 26, 1997.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47910), the Office of Hydropower Licensing (OHL) reviewed the application for non-project use of project lands for the Pensacola Hydroelectric Project. The application proposes to excavate approximately 15,000 to 20,000 cubic yards of shoreline and lake bottom material from the Grand Lake O' the Cherokees, in Delaware County, Oklahoma, in order to raise the applicant's property and access road to elevation 757 feet Pensacola Datum to prevent flooding and retain access to the site during high water. The staff prepared an Environmental Assessment (EA) for the action. In the EA, staff concludes that approval of the non-project use of project lands would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, Room 1A, of the Commission's offices at 888 First Street, NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–5219 Filed 3–3–97; 8:45 am]

BILLING CODE 6717–01–M

Southeastern Power Amination

Intent To Formulate Revised Power Marketing Policy Cumberland System of Projects

AGENCY: Southeastern Power Administration, DOE.

ACTION: Notice.

SUMMARY: Pursuant to its Procedure for Public Participation in the Formulation of Marketing Policy published in the **Federal Register** of July 6, 1978, Southeastern intends to revise its marketing policy for future disposition of power from its Cumberland System of Projects.

The current power marketing policy published on August 5, 1993, for the Southeastern Power Administration's (Southeastern) Cumberland System is reflected in contracts for the sale of system power which are maintained in Southeastern's headquarter's offices. Proposals and recommendations for consideration in formulating the proposed revised marketing policy are solicited, as are requests for further information or consultation.

EFFECTIVE DATE: Comments must be submitted on or before April 3, 1997.

ADDRESSES: Five copies of written proposals or recommendations should be submitted to the Administrator, Southeastern Power Administration, Elberton, Georgia 30635, (706) 213–3800.

FOR FURTHER INFORMATION CONTACT: Charles A. Borchardt, Administrator, Southeastern Power Administration, Elberton, Georgia 30635, (706) 213–3800.

SUPPLEMENTARY INFORMATION: A "Final Power Marketing Policy for the Cumberland System of Projects" was developed and published in the **Federal Register** on August 5, 1993, 58 FR 41762 by Southeastern. Transmission contracts under this policy with Tennessee Valley Authority (TVA) and Carolina Power & Light (CP&L) are in the process of renegotiation. A contract with Kentucky Utilities Company (KU) for power allocated to municipal preference customers in the KU area was executed December 31, 1996. The Cumberland System consists of Barkley, Center Hill, Cheatham, Cordell Hull, Dale Hollow, Laurel, Old Hickory, J. Percy Priest, and Wolf Creek projects. The power from the projects is currently marketed to Preference Customers located in the service areas of TVA, Big Rivers Electric Corporation, CP&L (Western Division), East Kentucky Power Cooperative, KU, Municipal Energy Agency of Mississippi, the seven cooperative members of South Mississippi Electric Power Association currently receiving Cumberland power, and Southern Illinois Power Cooperative. The policy establishes the marketing area for system power and deals with the allocation of power among or for the benefit of area customers. It also deals with utilization of area utility systems for essential purposes, wholesale rates, resale rates, and energy and economic efficiency measures.

Under Section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s), Southeastern is responsible for the transmission and disposition of electric power and energy from reservoir projects operated by the Department of Army. Southeastern has negotiated transmission contracts with area utilities described previously under this authority. To pay the transmission fees under these contracts to area utilities Southeastern must obtain an appropriation each year in a budget approved by Congress and the President. Because of budget constraints, Southeastern has had difficulty in obtaining these appropriations. This difficulty has compelled Southeastern to consider selling the government power at the bus bar of the projects. Southeastern requests comments on this change in its marketing policy. The current policy does not contemplate such a disposition of the power from the projects.

Issued in Elberton, Georgia, February 20, 1997.

Charles A. Borchardt,

Administrator.

[FR Doc. 97–5258 Filed 3–3–97; 8:45 am]

BILLING CODE 6450–01–P

Southeastern Power Administration

Intent To Formulate Revised Power Marketing Policy Kerr-Philpott System of Projects

AGENCY: Southeastern Power Administration, DOE.

ACTION: Notice.

SUMMARY: Pursuant to its Procedure for Public Participation in the Formulation of Marketing Policy published in the Federal Register of July 6, 1978, Southeastern intends to revise its marketing policy for future disposition of power from its Kerr-Philpott System of Projects. The current power marketing policy published on July 29, 1985, for the Southeastern Power Administration's (Southeastern) Kerr-Philpott System is reflected in contracts for the sale of system power which are maintained in Southeastern's headquarter's offices. Proposals and recommendations for consideration in formulating the proposed revised marketing policy are solicited, as are requests for further information or consultation.

EFFECTIVE DATE: Comments must be submitted on or before May 5, 1997.

ADDRESSES: Five copies of written proposals or recommendations should be submitted to the Administrator, Southeastern Power Administration, Elberton, Georgia 30635, (706) 213–3800.

FOR FURTHER INFORMATION CONTACT: Charles A. Borchardt, Administrator, Southeastern Power Administration, Elberton, Georgia 30635, (706) 213–3800.

SUPPLEMENTARY INFORMATION: A "Final Power Marketing Policy for the Kerr-Philpott System of Projects" was developed and published in the **Federal Register** on July 29, 1985, 50 FR 30752 by Southeastern. Transmission contracts under this policy were effective with Virginia Electric and Power Company (VEPCO) and Carolina Power & Light Company (CP&L) on February 1, 1987, and Appalachian Power Company (APCO) on June 30, 1987.

The Kerr-Philpott System consists of two projects, the John H. Kerr and the Philpott project. The power from the projects is currently marketed to Preference Customers located in the service areas of VEPCO, CP&L and APCO. The policy establishes the marketing area for system power and deals with the utilization of area utility systems for essential purposes. The policy also deals with wholesale rates, resale rates, and conservation measures.

Under Section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s), Southeastern is responsible for the transmission and disposition of electric power and energy from reservoir projects operated by the Department of Army. Southeastern has negotiated transmission contracts with area utilities described previously under this authority. To pay the transmission fees under these contracts to area utilities Southeastern must obtain an appropriation each year in a budget approved by Congress and the President. Because of budget constraints, Southeastern has had difficulty in obtaining these appropriations. This difficulty has compelled Southeastern to consider selling the government power at the bus bar of the projects. Southeastern requests comments on this change in its marketing policy. The current policy does not contemplate such a disposition of the power from the projects.

Issued in Elberton, Georgia, February 20, 1997.

Charles A. Borchardt,

Administrator.

[FR Doc. 97–5259 Filed 3–3–97; 8:45 am]

BILLING CODE 6450–01–M

Western Area Power Administration; Proposed Rates for Central Valley and California-Oregon Transmission Project

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed rates.

SUMMARY: The Western Area Power Administration (Western) is proposing rates (Proposed Rates) for Central Valley Project (CVP) commercial firm power, power scheduling service, CVP transmission, transmission of CVP power by others, network transmission, California-Oregon Transmission Project (COTP) transmission, and ancillary services. The current rates expire April 30, 1998. The Proposed Rates will provide sufficient revenue to pay all annual costs, including interest expense, and repayment of required investment within the allowable period. The rate impacts are detailed in a rate brochure to be provided to all interested parties. The Proposed Rates are scheduled to go into effect on October 1, 1997, to correspond with the start of the Federal fiscal year, and will remain in effect through September 30, 2002. This **Federal Register** notice initiates the formal process for the Proposed Rates.

DATES: The consultation and comment period will begin from the date of publication of this **Federal Register** notice and will end June 2, 1997. A public information forum at which Western will present a detailed explanation of the Proposed Rates is scheduled for March 25, 1997, beginning at 9 a.m. PST, at the Sierra Nevada Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710. A public comment forum at which Western will receive oral and written comments is scheduled for April 22, 1997, beginning at 9 a.m. PDT, at the same location. Western should receive written comments by the end of the consultation and comment period to be assured consideration.

ADDRESSES: Written comments are to be sent to: James C. Feider, Regional Manager, Sierra Nevada Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710.

FOR FURTHER INFORMATION CONTACT: Debbie Dietz, Rates Manager, Sierra Nevada Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710, (916) 353–4453.

SUPPLEMENTARY INFORMATION: The Proposed Rates for CVP commercial firm power are designed to recover an annual revenue requirement that includes the investment repayment, interest, purchase power, and operation and maintenance expense. A cost of service study allocates the projected annual revenue requirement for commercial firm power between capacity and energy. The capacity revenue requirement includes 100 percent of capacity purchase costs, 50 percent of the investment repayment, interest expense, and power operation and maintenance expense allocated to commercial power, and 100 percent of fixed transmission expense. These annual costs are reduced by the projected revenue from sales of CVP transmission to determine the capacity

revenue requirement. The energy revenue requirement includes 100 percent of energy purchase costs and 50 percent of the investment repayment, interest expense, and power operation and maintenance expense allocated to commercial power. These annual costs are reduced by the projected revenue from sales of surplus power to determine the energy revenue requirement. The resulting capacity/energy revenue requirement split varies from 51 percent allocated to capacity in fiscal year (FY) 1998 to 44 percent allocated to capacity in FY 2002. The average capacity/energy revenue requirement split for the five-year period is 47 percent to capacity and 53 percent to energy.

The Proposed Rates will also include an Annual Energy Rate Alignment (AERA). The AERA will be applied to firm energy purchases from Western at or above an average annual load factor of 80 percent. The AERA is the difference between the estimated market purchase rate used in the cost of service study for CVP commercial firm power and the CVP energy rate. The billing for the AERA will occur at the end of each fiscal year.

The Proposed Rates for CVP commercial firm power, applicable revenue requirement split between capacity and energy, and the AERA are provided in Table 1 below.

TABLE 1.—PROPOSED COMMERCIAL FIRM POWER RATES

Effective period	Total composite (mills/kWh)	Capacity ($/kW-mo)	Energy (mills/kWh)	Capacity/ energy split	AERA (mills/kWh)
10/01/97 to 09/30/98	20.64	5.00	10.11	51/49	3.06
10/01/98 to 09/30/99	19.59	4.57	9.98	49/51	3.65
10/01/99 to 09/30/00	19.59	4.51	10.10	49/51	4.01
10/01/00 to 09/30/01	18.59	3.95	10.30	45/55	4.30
10/01/01 to 09/30/02	20.09	4.15	11.35	44/56	3.76

The Deputy Secretary of the Department of Energy (DOE), approved the existing Rate Schedule CV–F8 for CVP commercial firm power on September 19, 1995 (Rate Order No. WAPA–72, 60 FR 52671, October 10, 1995), and the Federal Energy Regulatory Commission (FERC) confirmed and approved the rate schedule on March 14, 1996, under FERC Docket No. EF95–5012–000 (74 FERC ¶ 62,136). The existing Rate Schedule CV–F8 became effective on October 1, 1995, for the period ending April 30, 1998. Under Rate Schedule CV–F8, the composite rate on October 1, 1997, is 26.50 mills per kilowatt-hour (mills/kWh), the base energy rate is 16.93 mills/kWh, the tier energy rate is 26.48 mills/kWh, and the capacity rate is $4.58 per kilowatt-month (kW-mo). The Proposed Rates for CVP commercial firm power will result in an overall composite rate decrease of approximately 22 percent on October 1, 1997, when compared with the current CVP commercial firm power rates under Rate Schedule CV–F8. Table 2 provides a comparison of the current rates in Rate Schedule CV–F8 and the Proposed Rates along with the percentage change in the rates.

TABLE 2.—COMPARISON OF CURRENT AND PROPOSED RATES

[Percentage Change in Commercial Firm Power Rates]

Effective period	Total composite (mills/kWh)	Percent change	Capacity ($/kW-mo)	Percent change	Base energy (mills/kWh)	Percent change
Current Rate Schedule						
Existing 10/01/97 and thereafter	26.50	.....	4.58	.....	16.93	.....
Proposed Rates						
10/01/97 to 09/30/98	20.64	−22	5.00	+9	10.11	−40
10/01/98 to 09/30/99	19.59	−26	4.57	.....	9.98	−41
10/01/99 to 09/30/00	19.59	−26	4.51	−2	10.10	−40
10/01/00 to 09/30/01	18.59	−30	3.95	−14	10.30	−39
10/01/01 to 09/30/02	20.09	−24	4.15	−9	11.35	−33

Adjustment Clauses Associated With the Proposed Rates for CVP Commercial Firm Power

Power Factor Adjustment

This provision contained in Rate Schedule CV–F8, will remain the same under the Proposed Rates for CVP commercial firm power.

Low Voltage Loss Adjustment

This provision contained in Rate Schedule CV–F8, will remain the same under the Proposed Rates for CVP commercial firm power.

Revenue Adjustment

The methodology for the Revenue Adjustment contained in Rate Schedule CV–F8, will remain the same under the Proposed Rates for CVP commercial firm power.

Proposed Rate for Power Scheduling Service

The Proposed Rate for power scheduling service is $73.80 per hour and is based on an estimated time to provide the service. Power scheduling service provides for the scheduling of resources to meet loads and reserve requirements.

Proposed Rates for CVP Transmission

The Proposed Rate for firm CVP transmission service is $0.48 per kW-mo., an 11.6 percent increase from the existing rate of $0.43 per kW-mo. currently under Rate Schedule CV–FT2. The Proposed Rate for non-firm CVP transmission service is 1.00 mill/kWh, an 18.7 percent reduction in the existing 1.23 mills/kWh rate. Service of firm or non-firm transmission for one year or less may be at rates lower than the Proposed Rates.

The Proposed Rates for CVP transmission service are based on a revenue requirement that recovers: (i) The CVP transmission system costs for facilities associated with providing all transmission service; and (ii) the non-facilities costs allocated to transmission service. These rates include the cost for scheduling, system control and dispatch service, and reactive supply and voltage control associated with the transmission service. The Proposed Rates are applicable to existing CVP firm transmission service and future point-to-point transmission service.

Proposed Rate for Transmission of CVP Power by Others

Transmission service costs incurred by Western in the delivery of CVP power over a third party's transmission system to a CVP customer, will be directly passed through to that CVP customer. Rates under this schedule are proposed to be automatically adjusted as third party transmission costs are adjusted.

Proposed Rate for Network Transmission

The Proposed Rate for network transmission service, if offered by Western, is the product of the network customer's load ratio share times one-twelfth (1/12) of the annual network transmission revenue requirement. The load ratio share is based on the network customer's hourly load coincident with Western's monthly CVP transmission system peak minus coincident peak for all firm CVP (including reserved capacity) point-to-point transmission service. The Proposed Rate for network transmission service is based on a revenue requirement that recovers: (i) The CVP transmission system costs for facilities associated with providing all transmission service; and (ii) the non-facilities costs allocated to transmission service. These rates include the cost for scheduling, system control and dispatch service, and reactive supply and voltage control needed to provide the transmission service.

Proposed Rates for COTP Transmission

The Proposed Rates for firm transmission service for Western's share of the California-Oregon Transmission Project (COTP) are $1.66 per kW-mo. for FY 1998 and $1.12 per kW-mo. for FY 1999 through FY 2002. These Proposed Rates for firm COTP transmission service result in 18.2 percent (FY 1998) and 44.8 percent (FY 1999 through FY 2002) reductions in the existing rate of $2.03 per kW-mo. The Proposed Rates for non-firm COTP transmission service are 2.28 mills/kWh for FY 1998 and 1.54 mills/kWh for FY 1999 through FY 2002. These Proposed Rates for non-firm COTP transmission service result in 18.0 percent (FY 1998) and 44.6 percent (FY 1999 through FY 2002) reductions in the existing rate of 2.78 mills/kWh. Service of firm or non-firm transmission for one year or less may be at rates lower than the Proposed Rates.

The Proposed Rates for COTP transmission service are based on a revenue requirement that recovers the costs associated with: (i) Western's participation in the COTP; (ii) the offering of this service; and (iii) scheduling, system control and dispatch service, and reactive supply and voltage control needed to provide the transmission service. The Proposed Rates are applicable to existing COTP transmission service and future point-to-point transmission service.

Proposed Rates for Ancillary Services

Western will provide ancillary services, subject to availability, at the Proposed Rates listed in Table 3. The Proposed Rates are designed to recover only the costs incurred by Western for providing the service(s). Sales of ancillary services of one year or less may be at rates lower than the Proposed Rates.

TABLE 3.—PROPOSED CVP ANCILLARY SERVICES RATES

Ancillary service type	Rate
Transmission Scheduling, System Control and Dispatch Service—is required to schedule the movement of power through, out of, within, or into a control area	Included in appropriate transmission rates.
Reactive Supply and Voltage Control—is reactive power support provided from generation facilities that is necessary to maintain transmission voltages within acceptable limits of the system	Included in appropriate transmission rates.
Regulation and Frequency Response Service—providing generation to match resources and loads on a real-time continuous basis.	Monthly: $1.39 per kW-mo. Weekly: $0.3192 per kW-week. Daily: $0.0456 per kW-day.
Energy Imbalance Service—is provided when a difference occurs between the scheduled and actual delivery of energy to a load or from a generation resource within a control area over a single month	Within Limits of Deviation Band: Accumulated deviations are to be corrected or eliminated within 30 days. Any net deviations that are accumulated at the end of the month (positive or negative) are to be exchanged with like hours of energy or charged at the composite rate for CVP commercial firm power, then in effect.
Hourly Deviation (MW) is the net scheduled amount of energy for the hour minus the hourly net metered (actual delivered) amount.	Outside Limits of Deviation Band: (I) Positive Deviations—no charge, lost to the system. (ii) Negative Deviations—during on-peak hours, the greater of 3 times the Proposed Rates for CVP commercial firm power or any additional cost incurred. During off-peak hours, the greater of the Proposed Rates for CVP commercial firm power or any additional cost incurred.
Spinning Reserve Service—is providing capacity that is available the first ten minutes to take load and is synchronized with the power system	Monthly: $1.14 per kW-mo. plus adder. Weekly: $0.2688 per kW-wk. plus adder. Daily: $0.0384 per kW-day plus adder. Hourly: $0.0016 per kWh plus adder. Adder for purchasing energy to motor unit will be at market purchase rate.

TABLE 3.—PROPOSED CVP ANCILLARY SERVICES RATES—Continued

Ancillary service type	Rate
Supplemental Reserve Service—is providing capacity that is not synchronized, but can be available to serve loads within ten minutes	Monthly: $1.14 per kW-mo. Weekly: $0.2688 per kW-wk. Daily: $0.0384 per kW-day. Hourly: $0.0016 per kWh.

Since the Proposed Rates constitute a major rate adjustment as defined by the procedures for public participation in general rate adjustments, as cited below, both a public information forum and a public comment forum will be held. After review of public comments, Western will recommend the Proposed Rates (and as amended) for approval on an interim basis by the Deputy Secretary of DOE.

Power and transmission rates for the CVP are established pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*) and the Reclamation Act of 1902 (43 U.S.C. 371 *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) and Acts of Congress approved August 26, 1937 (50 Stat. 844, 850); August 12, 1955 (69 Stat. 719); and October 23, 1962 (76 Stat. 1173, 1191), and Acts amendatory or supplementary thereof.

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of DOE delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the FERC. Existing DOE procedures for public participation in power rate adjustments (10 CFR Part 903) became effective on September 18, 1985 (50 FR 37835).

Availability of Information

All brochures, studies, comments, letters, memoranda, or other documents made or kept by Western for developing the Proposed Rates, are and will be made available for inspection and copying at the Sierra Nevada Region Office, located at 114 Parkshore Drive, Folsom, California 95630–4710.

Regulatory Procedure Requirements

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*), each agency, when required to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. Western has determined that (1) this rulemaking relates to services offered by the Sierra Nevada Region and therefore is not a rule within the purview of the Act, and (2) the proposed rates for the services offered by the Sierra Nevada Region would not cause an adverse economic impact to such entities. The requirements of this Act can be waived if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. By his execution of this **Federal Register** notice, Western's Administrator certifies that no significant economic impact on a substantial number of small entities will occur.

Environmental Compliance

Pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*); the Council on Environmental Quality Regulations for implementing NEPA (40 CFR Parts 1500 through 1508); and the DOE NEPA Implementing Procedures and Guidelines (10 CFR Part 1021), Western conducts environmental evaluations of the proposed rates and develops the appropriate level of environmental documentation.

Review Under the Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520, Western has received approval from the Office of Management and Budget for the collection of customer information in this rule, under control number 1910–1200.

Determination Under Executive Order 12866

DOE has determined that this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by Office of Management and Budget is required.

Issued at Golden, Colorado, February 20, 1997.

J.M. Shafer,

Administrator.

[FR Doc. 97–5256 Filed 3–4–97; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237]

Change in Time for March 11, 1997 Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On February 27, 1997, the Commission released a public notice announcing a change in the time for the March 11 meeting of the North American Numbering Council (NANC). The March 11 meeting and its agenda had been announced in a public notice published in the **Federal Register** on February 26, 1997 (*See* 62 FR 8741). The intended effect of this action is to make the public aware that the time of the March 11 NANC meeting has changed from 9:30 A.M. EST, to 8:30 A.M. EST.

FOR FURTHER INFORMATION CONTACT: Linda Simms, Administrative Assistant of the NANC, (202) 418–2330. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, 2000 M Street, NW, Suite 235, Washington, D.C. 20054. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released: February 27, 1997. The FCC, in a Public Notice released February 21, 1997, and published in the **Federal Register** on February 26, 1997 (*See* 62 FR 8741), announced the March 11, 1997 meeting of the North American Numbering Council (NANC) and the agenda for this meeting. The Public Notice stated that the NANC meeting would commence at 9:30 A.M EST. The NANC has changed the meeting time to 8:30 A.M. EST. The meeting place, the Federal Communications Commission, 1919 M Street, NW, Room 856, Washington, DC, remains the same.

Federal Communications Commission.

Geraldine A. Matise,

Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 97–5348 Filed 3–3–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Interagency Policy Statement Regarding Uniform Guideline on Internal Control for Foreign Exchange in Commercial Banks

AGENCIES: Office of the Comptroller of the Currency (OCC), Department of the Treasury; Board of Governors of the Federal Reserve System (FRB); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Withdrawal of guideline.

SUMMARY: The OCC, FRB, and FDIC ("the Agencies") are withdrawing their joint guideline entitled: "Interagency Policy Statement Regarding Uniform Guideline on Internal Control for Foreign Exchange in Commercial Banks," dated May 22, 1980 (45 FR 42370, June 24, 1980) ("the Guideline") because it is considered outdated and has been superseded by other pronouncements from each of the agencies.

EFFECTIVE DATE: The removal of the Guideline is effective March 4, 1997.

FOR FURTHER INFORMATION CONTACT:

FRB: Michael Martinson, Assistant Director, (202)/452–3640), or Joe Sciortino, Supervisory Financial Analyst, (202/452–2294), Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551.

FDIC: Christie Sciacca, Assistant Director, (202/898–3638), Federal Deposit Insurance Corporation, 550 17th St., N.W., Washington, D.C. 20429.

OCC: Leon Tarrant, Manager, (202/874–4730), Office of the Comptroller of the Currency, 250 E Street, S.W., Washington D.C. 20219.

SUPPLEMENTARY INFORMATION: The policy set forth in the Guideline was developed to provide uniformity among the Agencies in establishing minimum standards for documentation, accounting, and auditing for foreign exchange operations in U.S. commercial banks. The Guideline was not intended to be all encompassing as to policies and procedures expected to be found in the most active market participants. Rather, it called for each bank to develop a system of internal control commensurate with the risks to which it is exposed.

The Guideline has become outdated in view of numerous changes that have subsequently taken place, including: the scope and depth of foreign exchange trading activities in banks, new product developments, significant improvements in automated trading systems, and the management of the business along product lines. These conditions prompted each agency to issue subsequent pronouncements and updated examination and/or policy procedures for U.S. banks as well as for foreign banks doing business in the United States.

The Agencies' Action

The Agencies hereby withdraw the Guideline.

Dated: February 27, 1997.

Joe M. Cleaver,

Executive Secretary, Federal Financial Institutions Examination Council.

[FR Doc. 97–5286 Filed 3–3–97; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL HOUSING FINANCE BOARD

[97–N–1]

Monthly Survey of Rates and Terms on Conventional 1-Family Nonfarm Mortgage Loans

AGENCY: Federal Housing Finance Board.

ACTION: Request for comments.

SUMMARY: The Federal Housing Finance Board (Finance Board) is seeking comments on several aspects of its Monthly Survey of Rates and Terms on Conventional 1-Family Nonfarm Mortgage Loans. The Finance Board seeks comments on whether it should continue to publish mortgage information by lender type. If not, then the Finance Board seeks comments on whether the sampling and weighting design for this survey should draw lenders without regard to lender type. If so, the Finance Board seeks suggestions for alternative sampling and weighting methodologies. The Finance Board also seeks comments on the designation of successor adjustable-rate mortgage indexes if it decides to stop publishing data by lender type.

DATES: Comments must be received by April 18, 1997.

ADDRESSES: Mail comments to Elaine L. Baker, Executive Secretary, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006. Comments will be available for inspection at this address.

FOR FURTHER INFORMATION CONTACT: Joseph A. McKenzie (202) 408–2845, Associate Director, Office of Policy, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

A. Background

The Finance Board is responsible for conducting the Monthly Survey of Rates and Terms on Conventional 1-Family Nonfarm Mortgage Loans. This survey, usually called the "Monthly Interest Rate Survey" or "MIRS," asks a sample of approximately 350 mortgage lenders to report the terms and conditions on all conventional mortgage loans for the purchase of single-family, nonfarm homes that they close during the last five working days of the month. The sample of lenders includes savings associations, mortgage companies, commercial banks, and savings banks that have volunteered to participate in the survey. MIRS provides national and regional data on mortgage interest rates, mortgage terms, and house prices. The Finance Board's regulations describe MIRS more thoroughly. *See* 12 CFR 902.3.

From 1963 to September 1989, the former Federal Home Loan Bank Board conducted MIRS. Law requires the Finance Board to conduct this survey. The statutory mandate to conduct MIRS appears in identical provisions in the Federal National Mortgage Association (Fannie Mae) Charter Act, 12 U.S.C. 1717(b)(2), and the Federal Home Loan Mortgage Corporation (Freddie Mac) Act, 12 U.S.C. 1454(a)(2). These provisions allow the two agencies annually to adjust the maximum size of mortgage loans that they can purchase or guarantee by the October-over-October percentage price change in house prices as reported in MIRS.

More recently, the 1994 Department of Housing and Urban Development (HUD) appropriation act tied the high-cost area limits for Federal Housing Administration (FHA)-insured mortgages to the purchase-price limitations of Fannie Mae and Freddie

Mac, thus linking the FHA limits indirectly to MIRS. *See* Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, Pub. L. No. 103–327, 108 Stat. 2298 (1994). In addition, the Internal Revenue Service uses the data from MIRS to set the safe-harbor purchase-price limits for mortgages purchased with the proceeds of mortgage revenue bond issues. *See* 26 CFR 6a.103A–2(f)(5).

Beyond its use for indexing the conforming loan limit, MIRS provides information for general statistical purposes and program evaluation. Economic policy makers use the data to determine interest rates, down payments, terms to maturity, terms on adjustable-rate mortgages (ARMs), initial fees and charges on mortgage loans, and other trends in mortgage markets. Information from MIRS regularly appears in the popular and trade press.

On or about the 26th of each month the Finance Board publishes a MIRS press release with mortgage rate and term information by property type (all, newly built, and previously occupied; Table I), by loan type (adjustable-rate and fixed-rate; Table II), and by lender type (savings association, mortgage company, commercial bank, savings bank; Table III), and a table providing data on 15- and 30-year conforming fixed-rate loans (Table V). In addition, it publishes quarterly tables with rate and term information for metropolitan areas (Table IV) and for Federal Home Loan Bank districts (Table VI).

An ARM index derived from MIRS—the National Average Contract Mortgage Rate for the Purchase of Previously Occupied Homes—was the only ARM index that Federally chartered savings institutions could use for a period in the early 1980's. A very small proportion of existing ARMs may use another interest-rate series from MIRS as an index.

B. Sampling and Weighting the Data

The Finance Board samples all savings associations, mortgage companies, commercial bank, and savings banks for MIRS because it publishes monthly aggregate data by lender type. In addition, the Finance Board samples lenders representing all regions because it publishes quarterly data for 32 selected large metropolitan areas, quarterly data for the 12 Federal Home Loan Bank districts, and annual data for all 50 states and for 60 metropolitan statistical areas (MSAs).

MIRS presents a "clustered sampling" problem. The item of interest is individual loans, but the Finance Board must sample lenders to get the individual loan data. The loans must come from all regions and must represent all lender types. Several recent developments have improved the geographical dispersion of MIRS loans. First, some large national mortgage companies participate in MIRS. This means that one lender may report loans from 20 or more states. Second, the continuing trend toward the consolidation of depository institutions has resulted in large institutions that originate loans in many states.

As with most survey data, the tabulated MIRS data reflects the weighting of the individual responses. The current weighting draws depository institutions with equal probabilities of selection from "lender-type geo strata" (for example, commercial banks in Nebraska, savings associations from the Cincinnati MSA, or savings banks from the Boston CMSA.) Since the sample of loans reported in a given month may differ from true lending experience (for example, over -or under-represent certain regions), the MIRS data is weighted to comport with information on lending patterns derived from independent sources:

(1) The data is adjusted so that the distribution of loans by lender type matches the lender-type distribution in the latest release of HUD's Survey of Mortgage Lending Activity, and

(2) The data is adjusted so that the distribution of loans by Federal Home Loan Bank district matches the state pattern of mortgage originations annually reported by HUD.

The weighting process builds up the national data from four separate subsamples based on lender type, where the shares of loans by lender type come from the HUD data. On balance, this weighting process significantly increases the importance of loans reported by commercial banks and reduces the importance of loans reported by savings associations because commercial bank loans are under-represented in the sample. Regional adjustment of the data does not have a significant effect on the results because the geographic pattern of responses approximates aggregate lending patterns.

C. Sampling by Lender Type

The Finance Board publishes data by lender type principally because the former Federal Home Loan Bank Board published the data that way when it conducted MIRS. Accordingly, the Finance Board draws four separate subsamples corresponding to savings associations, mortgage companies, commercial banks and, savings banks. As the financial services sector evolves, the distinctions between commercial banks and thrifts continue to erode. If the institutional distinctions between commercial bank and thrift are blurred, then published data by lender type may no longer be useful or meaningful.

While the overall samples of savings associations, savings banks, and mortgage companies are adequate, the Finance Board has had persistent trouble in recruiting commercial banks for the sample. Over the past several years, the Finance Board has contacted more than 2,000 commercial banks, all with at least 10 percent of their assets in residential mortgage loans, and asked them to participate in MIRS. Most of the banks contacted never responded to the solicitation. Many banks that did respond said that either they make no mortgages or that a subsidiary mortgage company originates all the loans that they hold. Many banks that responded positively never submitted any loan data.

Despite the Finance Board's recruitment efforts, only 118 commercial banks reported a total of 5,437 loans in 1996. This represents only 4 percent of the total number of loans reported in 1996. However, HUD's Survey of Mortgage Lending Activity reports that commercial banks originate about one-quarter of all single-family mortgage loans. As a result, the MIRS weighting process weighs up each commercial bank loan by a factor of about six.

While the MIRS sample has few large commercial banks, the overall sample contains many loans originated by the mortgage banking subsidiaries of large commercial banks that have large mortgage investments.

The Finance Board specifically requests comments on the following:

—Should it continue to report MIRS data by lender type?

—Should it continue to sample MIRS lenders by lender type?

—Do institutional changes render the data by lender type meaningless?

—Are there alternative ways to increase commercial bank participation in the sample?

D. Home Mortgage Disclosure Act Data

The HUD data on mortgage originations by lender type is crucial to the MIRS weighting process. However, some observers believe the HUD data may overstate the commercial bank share of mortgage originations. Very few large commercial banks originate mortgage loans. Most of the large commercial banks with significant portfolio concentrations of residential mortgages have purchased these loans from subsidiary mortgage companies that have significant origination volumes.

Home Mortgage Disclosure Act (HMDA) data may provide an alternative data source for the lender type shares for MIRS. HMDA requires lenders to submit information on single-family mortgage applications. The data includes a disposition code, so it is possible to use HMDA information on loans closed. The scope of the HMDA data includes information on all nonmetropolitan mortgage originations but from the smallest lenders. The more important of these omissions is loans in nonmetropolitan areas. Approximately one-fifth of the nation's population lives outside metropolitan areas. Secondly, very small lenders are not subject to HMDA reporting. The Finance Board specifically requests comments on whether it could or should use the HMDA data as the basis for developing the lender-type adjustment in the MIRS weighting process. The Finance Board also requests comments on whether another data source is available that it could use in developing shares of aggregate lending by lender type.

Beyond the use of the HMDA data to develop the lender-type adjustment, the Finance Board requests comments on whether it could develop a size-stratified weighting scheme based on individual lender origination volumes reported in the HMDA data. A HMDA-based weighting scheme would group lenders by origination volume and sample lenders, without regard to charter type, with decreasing frequency (and increasing weight) as origination volume declines. The implicit assumption is that loans originated by one type of lender (for example, commercial banks) are no different from loans originated by another type of lender.

The Finance Board requests comments on whether it should change its MIRS weighting methodology. Should it adopt a size-stratified weighting methodology using HMDA data? If so, how should it surmount the omission in the HMDA data of nonmetropolitan lending data and loans from small lenders? (The MIRS data now contains loans from nonmetropolitan lenders as well as loans made by metropolitan lenders in nonmetropolitan areas.) Is there another weighting methodology that is more appropriate than either the current methodology or the one suggested that uses the HMDA data?

E. Data Edit Limits

Most statistical surveys incorporate certain validity checks that the data must pass. MIRS contains validity checks or edits on allowable interest-rate ranges, loan sizes, purchase prices, loan fee amounts, and consistency of ZIP code with state of the property. The Finance Board established the current maximum allowable value of $500,000 for loan size and $750,000 for property price in November 1991. These edits would reject loans where the responding lender omitted a decimal point from dollar values, which would have the effect of reporting a loan amount or purchase price 100 times larger than the actual amount. The edits also exclude certain typographical errors, especially when the purchase price contains an extra zero. For example, a reported $50,000 loan on a $900,000 property is more likely to be a $50,000 loan on a $90,000 property. The current edits would reject this transaction.

While the edits screen out incorrect transactions, they also may exclude some valid transactions. Since the Finance Board established the current price and loan-size limits in November 1991, housing prices have increased modestly. The Finance Board seeks comments on an appropriate methodology to adjust the house size and loan amount edit limits to allow for housing price appreciation. The Finance Board does not plan to change the lower loan size and property price limit of $10,000.

While it is not possible precisely to quantify the effect that the changes in the edit limits will have on the reported average house prices, the Finance Board believes the effect will be small because the proportion of loans between the old and any higher new edit limits is likely to be small. MIRS now has few transactions in bands just below the current edit limits. In 1996, only 0.7 percent of MIRS loans had balances between $400,000 and $500,000, and only 1.2 percent of MIRS loans financed homes with prices between $500,000 and $750,000. Transactions in these bands are skewed toward the lower end of the bands. Therefore, the Finance Board expects that only a small fraction of 1 percent of the survey's loans will fall between the old and any higher new edit limits.

F. Adjustable-Rate Mortgage Index

A very small number of ARMs may use as an index a MIRS interest rate series by lender type. This information appears on Table III of the regular monthly MIRS release. If the Finance Board were to adopt a changed MIRS sampling methodology that no longer separately sampled lenders by lender type, then it probably would stop the publication of Table III in the monthly MIRS release.

Section 402(e)(4) of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 "FIRREA," Public Law No. 101–73, 103 Stat. 183 (August 9, 1989), requires the Chairperson of the Finance Board to designate a "substantially similar" successor index if the Finance Board no longer makes available any index from MIRS. If the Finance Board were to stop Table III, then it proposes to designate that the National Average Contract Mortgage Rate for the Purchase of All Homes by Combined Lenders be the successor index for any ARM index that uses a contract rate from Table III. It also proposes to designate the National Average Effective Mortgage Rate for the Purchase of All Homes by Combined Lenders be the successor index for any ARM index that uses an effective rate from Table III. The Finance Board publishes both of the proposed successor index rates in the top panel of Table I in the monthly MIRS release, and the current value of both interest rates is available on a recording maintained by the Finance Board.

The Finance Board is proposing these successor index rates because the loans reported in Table III by lender type include loans on both newly built and previously occupied homes. The proposed successor index rates also include loans on both newly built and previously occupied homes. The only difference is that the data in Table I combines loans from all types of lenders whereas Table III reports mortgage data by type of lender.

The Finance Board seeks comments on these proposed successor index rates.

G. Effective Date and Transition Provisions

The Finance Board would adopt any changes to the MIRS sampling and weighting methodology effective at the beginning of 1998. Before implementing any changes, the Finance Board would consult with the technical staff of other Federal agencies and instrumentalities to obtain their views and suggestions about the MIRS sampling and weighting methodology.

The Finance Board also would make available special tabulations so that Fannie Mae and Freddie Mac would have data calculated on the same basis for their determination of the conforming loan limit for 1999. This calculation would occur in November 1998.

By the Federal Housing Finance Board.

Dated: February 26, 1997.
Rita I. Fair,
Managing Director.
[FR Doc. 97–5266 Filed 3–3–97; 8:45 am]
BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 18, 1997.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Louis Ray Jones, Virginia Beach, Virginia; to acquire an additional 14.94 percent, for a total of 24.90 percent, of the voting shares of Resource Bank, Virginia Beach, Virginia.

B. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. Carl W. Jones, Minnetonka, Minnesota, Christopher W. Jones, Long Lake, Minnesota, Janet N. Jones, Excelsior, Minnesota; each to acquire 33.33 percent of the voting shares of Harbourside, LP, Wayzata, Minnesota, and thereby indirectly acquire Anchor Bancorp, Inc., Wayzata, Minnesota; Anchor Bank, N.A., Wayzata, Minnesota; Anchor Bank, West St. Paul, N.A., West St. Paul, Minnesota; The Bank of Saint Paul, St. Paul, Minnesota; Heritage National Bank, North St. Paul, Minnesota; and The First National Bank of Farmington, Farmington, Minnesota.

Board of Governors of the Federal Reserve System, February 26, 1997.
Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 97–5232 Filed 3–3–97; 8:45 am]
BILLING CODE 6210-01-F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 28, 1997.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Armstrong Financial Co., Minden, Nebraska; to become a bank holding company by acquiring 80.99 percent of the voting shares of Minden Exchange Co., Minden, Nebraska, and thereby indirectly acquire Minden Exchange Bank & Trust Co., Minden, Nebraska.

2. Commerce Bancshares, Inc., Kansas City, Missouri, and CBI Kansas, Inc., Kansas City, Missouri; to acquire 100 percent of the voting shares of, and thereby merge with Shawnee Bank Shares, Inc., Shawnee, Kansas, and thereby indirectly acquire Shawnee State Bank, Shawnee, Kansas.

Board of Governors of the Federal Reserve System, February 26, 1997.
Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 97–5231 Filed 3-3-97; 8:45 am]
BILLING CODE 6210-01-F

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System
TIME AND DATE: 11:00 a.m., Monday, March 10, 1997.
PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.
STATUS: Closed.
MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 28, 1997.
Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 97–5464 Filed 2–28–97; 3:50 pm]
BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of a Meeting of the National Bioethics Advisory Commission (NBAC)

SUMMARY: Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of a meeting of the National Bioethics Advisory Commission. The Commission members will address the bioethical issues arising from the research on human biology and behavior, and in the applications of that research including clinical. They will also begin a review of the legal and ethical issues associated with the recent report of a technique of cloning sheep. The public is invited to speak on any of these issues and opportunities for statements will be provided.

DATES: Thursday, March 13, 1997, 8:00 a.m. to 4:30 p.m., and Friday, March 14, 1997, 8:00 a.m. to 4:30 p.m.

LOCATION: The Commission will meet at the Watergate Hotel, Continental Chesapeake Extender Room, 2650 Virginia Avenue, NW., Washington, DC.

SUPPLEMENTARY INFORMATION: The President established the National Bioethics Advisory Commission (NBAC) by Executive Order 12975 on October 3, 1995. The charter of the Commission was signed on July 26, 1996. The first meeting took place on October 4, 1996. The mission of the NBAC is to advise and make recommendations to the National Science and Technology Council and other entities on bioethical issues arising from the research on human biology and behavior, and in the applications of that research. On February 24, 1997, the President instructed the Commission to undertake a review of the legal and ethical issues associated with the recent report of a technique for cloning sheep. This scientific discovery raises a host of important issues including serious ethical questions, in particular the possible use of this technique to clone human embryos, as well as the promise of benefits in a number of areas.

Tentative Agenda

The Commission will (1) receive reports from its subcommittees, (2) discuss and plan the Commission's 90-day report to the President on issues of cloning, and (3) listen to presentations from the public.

Public Participation

The meeting is open to the public with attendance limited by the availability of space. Members of the public who wish to present oral statements should contact the Acting Deputy Executive Director of the NBAC by telephone, fax machine, or mail as shown below as soon as possible, prior to the meeting. The Chair of the NBAC will reserve time for presentations by persons requesting an opportunity to speak. The order of speakers will be assigned either on a first come, first serve basis or along other considerations. Individuals unable to make oral presentations are encouraged to mail or fax their comments to the NBAC at least two business days prior to the meeting for distribution to the subcommittee members and inclusion in the record. We urge anyone planning to speak to call the NBAC office two or three days before the meeting to obtain information on the final logistical arrangements.

Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact NBAC staff at the address or telephone number listed below as soon as possible.

FOR FURTHER INFORMATION CONTACT: Ms. Henrietta D. Hyatt-Knorr, National Bioethics Advisory Commission, MSC–7508, 6100 Executive Boulevard, Suite 3C01, Rockville, Maryland 20892–7508, telephone 301–402–4242, fax number 301–480–6900.

Dated: February 25, 1997
Henrietta Hyatt-Knorr,
Acting Deputy Executive Director, National Bioethics Advisory Commission.
[FR Doc. 97–5207 Filed 3–3–97; 8:45 am]
BILLING CODE 4160–17–P

Notice of a Meeting of the National Bioethics Advisory Commission (NBAC), Genetics Subcommittee

ACTION: Correction Notice for Previously Published Notice (Published on February 26, 1997, page 8743, 2nd Column).

The date is corrected to read: Date: Wednesday, March 5, 1997, 7:00 a.m. to 1:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Henrietta Hyatt-Knorr, National Bioethics Advisory Commission, MSC–7508, 6100 Executive Boulevard, Suite 3C01, Rockville, Maryland 20892–7508, telephone 301–402–4242, fax number 301–480–6900.

Dated: February 26, 1997.
Henrietta Hyatt-Knorr,
Acting Deputy Director, National Bioethics Advisory Commission.
[FR Doc. 97–5208 Filed 3–3–97; 8:45 am]
BILLING CODE 4160–17–M

Administration on Aging

[Program Announcement No. AoA–97–2]

Fiscal Year 1997 Program Announcement; Availability of Funds and Notice Regarding Applications

AGENCY: Administration on Aging, HHS.
ACTION: Announcement of availability of funds and request for applications to develop new statewide legal hotlines for older Americans and, in addition, to provide technical assistance and guidance to statewide senior legal hotline projects.

SUMMARY: The Administration on Aging announces that it will hold a priority area competition for grant awards for three (3) to four (4) model projects that demonstrate effective ways of planning, developing, and sustaining statewide senior legal hotlines, and for a project to provide appropriate technical assistance to statewide senior legal hotline projects.

The deadline date for the submission of applications is May 15, 1997. Prospective applicants should note that because of the specialized nature of this priority area, they should have a proven track record of experience in providing legal services to the elderly in order to compete successfully for project awards.

Application kits are available by writing to: Department of Health and Human Services, Administration on Aging, Office of Program Development, 330 Independence Avenue, S.W., Room 4274, Washington, DC 20201.

Dated: February 26, 1997.
Robyn I. Stone,
Acting Assistant Secretary for Aging.
[FR Doc. 97–5204 Filed 3–3–97; 8:45 am]
BILLING CODE 4130–40–P

Centers for Disease Control and Prevention

[INFO–97–05]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Wilma Johnson, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. The Fourth National Health and Nutrition Examination Survey (NHANES IV)—New—The National Health and Nutrition Examination Survey (NHANES) has been conducted periodically since 1970 by the National Center for Health Statistics, CDC.

NHANES IV is planned for 1998–2004 to include 40,000 sample persons. They will receive an interview and a physical examination. A pretest of 400 people and a dress rehearsal of 555 are needed to test the sampling process, data collection procedures, computer-assisted personal interviews (including translations into Spanish), examination protocols, automated computer systems and quality control procedures. Participation in the pretest and the full survey will be completely voluntary and confidential.

NHANES programs produce descriptive statistics which measure the health and nutrition status of the general population. Through the use of questionnaires, physical examinations, and laboratory tests, NHANES studies the relationship between diet, nutrition and health in a representative sample of the United States. NHANES monitors the prevalence of chronic conditions and risk factors related to health such as coronary heart disease, arthritis, osteoporosis, pulmonary and infectious diseases, diabetes, high blood pressure, high cholesterol, obesity, smoking, drug and alcohol use, environmental exposures, and diet. NHANES data are used to establish the norms for the general population against which health care providers can compare such patient characteristics as height, weight, and nutrient levels in the blood. Data from future NHANES can be compared to those from previous NHANES to monitor changes in the health of the U.S. population. NHANES IV will also establish a national probability sample of genetic material for future genetic testing for susceptibility to disease.

Users of NHANES data include Congress; the World Health Organization; Federal agencies such as NIH, EPA, and USDA; private groups such as the American Heart Association; schools of public health; private businesses; individual practitioners; and administrators. NHANES data are used to establish, monitor, and evaluate recommended dietary allowances, food fortification policies, programs to limit environmental exposures, immunization guidelines and health education and disease prevention programs. The burden hour estimate in this notice is based on the request for OMB approval for the pretest, dress rehearsal and the first 2.25 years of the full survey. The total cost to respondents for the period covered by this notice and the related request for OMB approval (from 1/98–12/00) is estimated at $952,995.

Respondents	Number of respondents between 1/98–12/00	Number of responses/ respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
1. Screening interview	34,188	1	.167	5,709
2. Family questionnaire (subset of #1)	5,830	1	.267	1,557
3. Household interview (subset of #1)	11,660	1	.667	7,777
4. Exam (primary) (subset of #3)	8,816	1	5.00 (including travel time)	44,080
5. Replicate exam (10% of #4 above)	882	1	5.00 (including travel time)	4,410
Total				65,533

2. 1998 National Health Interview Survey, Basic Module (0920–0214)—Revision—The annual National Health Interview Survey (NHIS) is a basic source of general statistics on the health of the U.S. population. Due to the integration of health surveys in the Department of Health and Human Services, the NHIS also has become the sampling frame and first stage of data collection for other major surveys, including the Medical Expenditure Panel Survey, the National Survey of Family Growth, and the National Health and Nutrition Examination Survey. By linking to the NHIS, the analysis potential of these surveys increases. The NHIS has long been used by government, university, and private researchers to evaluate both general health and specific issues, such as cancer, AIDS, and childhood immunizations. Journalists use its data to inform the general public. It will continue to be a leading source of data for the Congressionally-mandated "Health US" and related publications, as well as the single most important source of statistics to track progress toward the National Health Promotion and Disease Prevention Objectives, "Healthy People 2000."

Because of survey integration and changes in the health and health care of the U.S. population, demands on the NHIS have changed and increased, leading to a major redesign of the annual core questionnaire, or Basic Module, and a redesign of the data collection system from paper questionnaires to computer assisted personal interviews (CAPI). Those redesigned elements were partially implemented in 1996 and fully implemented in 1997. This clearance is for the second full year of data collection using the Basic Module on CAPI, and for implementation of the first "Topical Module" (or supplement), which is on Health People 2000 Objectives. Ad hoc Topical Modules on various health issues are provided for in the redesigned NHIS. This data collection, planned for January–December 1998, will result in publication of new national estimates of health statistics, release of public use micro data files, and a sampling frame for other integrated surveys. In particular, the topical module will provide end-point estimates for many of the Healthy People 2000 Objectives.

The Basic Module of the new data system is expected to be in the field at least until 2006. The total cost to respondents is estimated at $714,000 for the whole survey.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Family	42,000	1	0.5	21,000
Sample adult	42,000	1	0.75	31,500
Sample child	18,000	1	0.25	4,500
Total				57,000

3. National Childhood Blood Lead Surveillance System—(0920–0337)—Reinstatement—Lead poisoning is a common and societally devastating environmental disease of young children in the United States. In response to the call for a national surveillance program of lead levels made in the HHS publication, *Strategic Plan for the Elimination of Childhood Lead Poisoning* (February 1991), CDC established the National Childhood Blood Lead Surveillance System. In FY92, CDC awarded funds to eight states to assist them in developing a complete childhood lead surveillance activity. In FY96, CDC provided funding for childhood blood lead surveillance activity in 31 states and the District of Columbia. Sixteen of these states submitted 1995 (calendar year) data to the national database. Information from this national surveillance system may be used by Federal and state agencies to (1) more accurately estimate the number of children with elevated lead levels; (2) monitor short-term trends; (3) identify clusters of cases; (4) determine geographic distribution of cases; (5) examine risk factors among children with elevated lead levels; (6) identify risk factors for elevated lead levels among specific population groups; (7) target intervention programs to groups at risk for elevated lead levels; and (8) track national progress in eliminating childhood lead poisoning. The total cost to respondents is $8,208.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
State Health Departments:				
(a) Annual Report	20	1	10	200
(b) Quarterly Report	32	4	2	256
Total				456

Dated: February 26, 1997.

Wilma G. Johnson,

Acting Associate Director for Policy Planning And Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–5235 Filed 3–3–97; 8:45 am]

BILLING CODE 4163–18–P

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Study of Benefits for Head Start Program Employees.

OMB No.: New Collection.

Description: Head Start legislation requires that the Secretary conduct a study regarding the benefits available to individuals employed by Head Start Agencies including a description of benefits provided and to make recommendations about increasing the access of the individuals to benefits including access to a retirement pension program. The attached instrument is a survey designed to collect information about present benefits provided to employees.

Respondents: Not-for-profit institutions and households.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Staff Questionnaire	360	1	.5	180
H.S. Program Director Questionnaire	360	1	2	720
Dir. of Non-H.S. Child Care Program	5	1	2	10

Estimated Total Annual Burden Hours: 210.

Additional Information

Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: February 26, 1997.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 97–5277 Filed 3–3–97; 8:45 am]

BILLING CODE 4184–01–M

[Program Announcement No. OCS–97–02]

Request for Applications Under the Office of Community Services' Fiscal Year 1997 National Youth Sports Program

AGENCY: Office of Community Services, ACF, DHHS.

ACTION: Request for applications under the Office of Community Services' National Youth Sports Program.

SUMMARY: The Office of Community Services (OCS) announces that competing applications will be accepted for new grants pursuant to the Secretary's discretionary authority under Section 682 of the Community Services Block Grant Act of 1981, as

amended. This Program Announcement contains forms and instructions for submitting an application.

For Fiscal Years 1998–2001 the National Youth Sport Program would become a non-competing continuation grant. This means that once the Fiscal Year 1997 grantee has been selected the continuation grant funded under this award beyond the first one year budget period, will be entertained in subsequent years on a non-competitive basis, subject to availability of funds, satisfactory progress of the grantee, and a determination that continued funding would be in the best interest of the Government. The National Youth Sports Program will be announced again in Fiscal Year 2002.

CLOSING DATE: The closing date and time for receipt of applications is 4:30 p.m., eastern time zone, on May 5, 1997. Applications received after 4:30 p.m. will be classified as late. Postmarks and other similar documents do not establish receipt of an application. Detailed application submission instructions including the addresses where applications must be received are found in Part G.1. of this announcement.

CONTACT: Joseph R. Carroll, Acting Director, Division of Community Discretionary Programs, Office of Community Services, Administration for Children and Families, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, (202) 401–9354.

Part A—Preamble

1. Legislative Authority

Section 682 of the Community Services Block Grant Act, as amended, authorizes the Secretary of Health and Human Services to make a grant to an eligible service provider to administer national or regional programs designed to provide instructional activities for low-income youth.

2. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for OCS programs covered under this announcement is 93.570. The title is "CSBG Discretionary Awards."

3. Definitions of Terms

For purposes of this Program Announcement the following definitions apply:

—Low-income youth: A youth between the ages of 10 through 16 whose family income does not exceed the DHHS Poverty Income Guidelines.
—Eligible Applicant: A national private nonprofit organization, a coalition of such organizations, or a private nonprofit organization applying jointly with a business concern that has demonstrated experience in operating a program providing instructions to low-income youth.
—Budget period: The interval of time into which a grant period of assistance is divided for budgetary and funding purposes.
—Project period: The total time for which a project is approved for support, including any approved extensions.

Part B—Application Prerequisites

1. Eligible Applicants

OCS will only consider those applications received from entities which are eligible applicants as specified in Part A 3. of this announcement. Non-profit organizations must submit proof of their non-profit status in their applications at the time of submission. Failure to do so will result in rejection of their applications. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code or by providing a copy of currently valid IRS tax exemption certification, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

2. Number of Grants, Grant Amount, and Matching Requirements

a. Number of Grants

In Fiscal Year 1997, OCS anticipates that one grant will be made under this program. For Fiscal Years 1998–2001, OCS anticipates, subject to the availability of funds, that one grant will be made under this program.

b. Grant Amounts

Estimated twelve million dollars ($12,000,000) is available for Fiscal Year 1997. For Fiscal Years 1998–2001, the estimated amounts of ($12,000,000) are subject to final appropriation.

c. Matching Requirements

The grants require a match of either cash or third party in-kind of one dollar for each dollar awarded up to $9,400,000 and a cash match of 25% of the Federal funds requested in excess of $9,400,000.

3. Project Period and Budget Period

The project period must not exceed 60 months (5 years), with a budget period not to exceed 12 months. A significant amount of the program activities must be undertaken in the period covering June, July and August of each fiscal year.

4. Administrative Costs/Indirect Costs

No federal funds from a grant made under this program may be used for administrative expenses. To the extent that indirect costs are not administrative in nature, such costs may be allowed provided the grantee has negotiated an approved Indirect Cost Rate Agreement which excludes administrative expenses. However, it should be understood that indirect costs are part of, and not in addition to, the amount of funds awarded in the subject grant.

5. Program Beneficiaries

Projects proposed for funding under this announcement must result in direct benefits targeted toward 10–16 year olds from low-income families.

Attachment A to this announcement is an excerpt from the most recently published Poverty Income guidelines. Annual revisions of these Guidelines are normally published in the **Federal Register** in February or early March of each year and are applicable to projects being implemented at the time of publication. Grantees will be required to apply the most recent Guidelines throughout the project period. No other government agency or privately defined poverty guidelines are applicable to the determination of low-income eligibility for this OCS program.

The **Federal Register** may be obtained from public libraries, Congressional offices, or by writing the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

6. Multiple Submittals

An applicant organization should not submit more than one application under this Program Announcement.

Part C—Purpose and Project Requirements

1. Purpose

The Department of Health and Human Services is committed to improving the health and physical fitness of young people, particularly those that are members of low-income families and residents of economically disadvantaged areas of the United States.

The Department seeks to improve the lives of these young people through sports skill instruction, counseling in good health practices, and counseling related to drug and alcohol abuse.

2. Project Requirements

Any instructional activity carried out by an eligible service provider receiving a grant under this program announcement shall be carried out on the campus of an institution of higher education (as defined in section 1201(a) of the Higher Education Act) and shall include —

a. Access to the facilities and resources of such institution;

b. An initial medical examination and follow-up referral or treatment, without charge, for youth during their participation in such activity;

c. At least one nutritious meal daily, without charge, for participating youth during each day of participation;

d. High quality instruction in a variety of sports (that shall include swimming and that may include dance and any other high quality recreational activity) provided by coaches and teachers from institutions of higher education and from elementary and secondary schools (as defined in sections 1471(8) and 1471(21) of the Elementary and Secondary Education Act of 1965); and

e. Enrichment instruction and information on matters relating to the well-being of youth, to include educational opportunities and study practices, education for the prevention of drug and alcohol abuse, health and nutrition, career opportunities, and family and job responsibilities.

Part D—Review Criteria

Applications which pass the initial screening and pre-rating review described in Part G 5. will be assessed and scored by reviewers. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and weaknesses under each applicable criterion published in this announcement.

The in-depth evaluation and review process will use the criteria set forth below coupled with the specific requirements described in Part D.

Applicants should write their project narrative according to the review criteria using the same sequential order.

Criteria for Review and Evaluation of Applications Submitted Under This Program Announcement

1. Criterion I: Location and Number of Institutions of Higher Education (Maximum: 20 points)

a. Applicant must describe and document the number and location of Institutions of Higher Education committed to participation in this program, with special attention to documenting the accessibility of the schools to economically disadvantaged communities (0–12 points).

b. Applicant must describe in the aggregate the facilities which will be available on the campuses of the institutions to be used in the program (swimming pools, medical facilities, food preparation facilities, etc.) (0–8 points).

2. Criterion II: Adequacy of Work Program (Maximum: 20 Points)

a. Applicant must set forth realistic weekly time targets for the summer program. The time targets should specify the tasks to be accomplished in the given timeframes. (0–8 points).

b. Applicant must address the legislatively-mandated activities found in Part C.2., to include: (1) Project priorities and rationale for selecting them; (2) project goals and objectives; and (3) project activities. (0–12 points)

3. Criterion III: Significant and Beneficial Impact (Maximum: 20 points)

a. Applicant proposes to improve nutritional services to the participating youths (0–5 points).

b. Project incorporates medical examinations along with follow-up referral or treatment (0–5 points).

c. Project includes counseling, related to drug and alcohol abuse, by counselors with experience in those areas as a major element (0–5 points).

d. Project makes use of an existing outreach activity of a community action agency or some other community-based organization (0–5 points).

4. Criterion IV: Organizational Experience in Program Area and Staff Responsibilities (Maximum: 30 points)

a. Organizational experience in program area (0–10 points)
Documentation provided indicates that projects previously undertaken have been relevant and effective and have provided significant benefits to low-income youth. Information provided should also address the achievements and competence of the participating institutions.

b. Management history (0–10 points).
Applicants must fully detail their ability to implement sound and effective management practices and if they have been recipients of other Federal or other governmental grants, they must also detail that they have consistently complied with financial and program progress reporting and audit requirements. Applicants should submit any available documentation on their management practices and progress reporting procedures. Applicant should also submit a statement by a Certified or Licensed Public Accountant as to the sufficiency of the applicant's financial management system to protect any Federal funds which may be awarded under this program.

c. Staffing skills, resources and responsibilities (0–10 points).
Applicant must briefly describe the experience and skills of the proposed project director showing that the individual is not only well qualified but that his/her professional capabilities are relevant to the successful implementation of the project. If the key staff person has not been identified, the application should contain a comprehensive position description which indicates that the responsibilities assigned to the project director are relevant to the successful implementation of the project.

The application must indicate that the applicant and the subgrantees or delegate institutions have adequate facilities and resources (i.e., space and equipment) to successfully carry out the work plan. The application must clearly show that sufficient time of the project director and other senior staff will be budgeted to assure timely implementation and oversight of the project and that the assigned responsibilities of the staff are appropriate to the tasks identified for the project.

5. Criterion V: Adequacy of Budget (Maximum: 10 points)

Budget is adequate and funds requested are commensurate with the level of effort necessary to accomplish the goals and objectives of the program. The estimated cost of the project to the government is reasonable in relation to the anticipated results.

Part E—Contents of Application and Receipt Process

See Application Forms in Attachment B.

1. Contents of Application

Each application package should include one original and two additional copies of the following:

a. A signed Federal Assistance Application (SF–424)

b. A signed Budget Information Non-construction Program (SF–424A)

c. A signed Assurances—Non-construction Programs (SF–424B)

d. A signed Disclosure of Lobbying Activities

e. A Project Narrative consisting of the following elements preceded by a consecutively numbered Table of Contents that describes the project in the following order:

(i) Eligibility confirmation (Part B).

(ii) Number and location of Institutions of Higher Education committed to the program and their accessibility to youth from economically disadvantaged areas (Part C).

(iii) Organization experience and staff responsibilities (Part D).

(iv) Executive Summary—one page or less (Part D).

(v) Work Program (Part D).

(vi) Appendices; including Bylaws; Articles of Incorporation; proof of non-profit status; resumé of project director; statement by a Certified or Licensed Public Accountant as to the sufficiency of the applicant's financial management system to protect Federal funds; Single Point of Contact comments, if available; certifications regarding Lobbying, Debarment and Drug Free Workplace activities and Environmental Tobacco Smoke.

The total number of pages for the entire application package should not exceed 50 pages. Applications should be two holed punched at the top and fastened separately with a compressor slide paper fastener or a binder clip. The submission of bound applications, or applications enclosed in binder, is especially discouraged.

Applications must be uniform in composition since OCS may find it necessary to duplicate them for review purposes. Therefore, applications must be submitted on white 8 1/2 x 11 inch paper only. They should not include colored, oversized or folded materials. Do not include organizational brochures or other promotional materials, slides, films, clips, etc. in the proposal. They may be discarded, if included.

2. Acknowledgement of Receipt

If an acknowledgement and/or notice is not received within three weeks after the deadline date, please notify ACF by telephone (202) 401–9365.

Part F—Instructions for Completing Application Package

See Application Forms in Attachment B.

Section A—Indirect Cost Rates

Applicants should enclose a copy of the current rate agreement.

If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately, upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the pertinent *DHHS Guide for Establishing Indirect Cost Rates*, and submit it to the appropriate DHHS Regional Office. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not be also charged as direct costs to the grant.

Section B—Non-Federal Resources

Mobilized funds from other non-Federal resources should be listed on a separate sheet and describe whether it is a grantee-incurred cost or a third-party in-kind contribution.

Part G—Application Procedures

Section A—See Application Forms in Attachment B

1. Application Submission

The date by which applications must be received is indicated under "Closing Date" at the beginning of this announcement.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, S.W., Mail Stop 6C–462, Washington, D.C. 20447, Attention: Application for National Youth Sports Program. Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Applications handcarried by applicants, applicant couriers, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8:00 a.m. and 4:30 p.m., at the U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grant, 901 "D" Street, S.W., ACF Mailroom, Second Floor, Washington, D.C. 20024, between Monday and Friday (excluding Federal holidays). (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of Date or Time of submission and time of receipt.

2. Late Application and Extension of Deadlines

Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

ACF may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., widespread disruption of the mails, or when it is anticipated that many of the applications will come from rural or remote areas. However, if ACF does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

3. Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995, Public Law 104–13, the Department is required to submit to OMB for review and approval any reporting and recordkeeping requirements in regulations, including program announcements. This program announcement does not contain information collection requirements beyond those approved for ACF grant applications under OMB Control Number 0970–0139.

4. Project Development (Intergovernmental Review)

Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, American Samoa, Colorado, Connecticut, Kansas, Hawaii, Idaho, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, and Washington have elected to participate in the Executive Order process and have established Single Points of Contacts (SPOCs). Applicants from these twenty-three jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 6th Floor, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447.

A list of the Single Points of Contact for each State and Territory is included as Attachment C of this announcement.

Section B—Information Not Available

1. Availability of Forms

Copies of the **Federal Register** containing this Announcement are available at most local libraries and Congressional District Offices for reproduction. If copies are not available at these sources they may be obtained by writing or telephoning the office listed in the section entitled **CONTACT** at the beginning of this Announcement.

2. Application Submission

For Fiscal Years 1998–2001 the grantee will be notified of the requirements for submission of the continuation application by March of the current fiscal year.

3. Application Consideration

Applications which meet the screening requirements in Section 5 below will be reviewed competitively. Such applications will be referred to reviewers for a numerical score and explanatory comments based solely on responsiveness to program guidelines and evaluation criteria published in this announcement. Applications will be reviewed by persons outside of the OCS unit which would be directly responsible for programmatic management of the grant. The results of these reviews will assist the Director and OCS program staff in considering competing applications. Reviewers' scores will weigh heavily in funding decisions but will not be the only factors considered. Applications will generally be considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding since the Director may also consider other factors deemed relevant including, but not limited to, the timely and proper completion of projects funded with OCS funds granted in the last five (5) years; comments of reviewers and government officials; staff evaluation and input; geographic distribution; previous program performance of applicants; compliance with grant terms under previous DHHS grants; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowances on OCS or other Federal agency grants. OCS reserves the right to discuss applications with other Federal or non-Federal funding sources to ascertain the applicant's performance record.

4. Criteria for Reviewing Applications

All applications that meet the published deadline for submission will be screened to determine completeness and conformity to the requirements of this Announcement. Only those applications meeting the following requirements will be reviewed and evaluated competitively. Others will be returned to the applicants with a notation that they were unacceptable.

a. Initial Screening

(1) The application must contain a completed Standard Form SF–424 signed by an official of the entity applying for the grant who has authority to obligate the organization legally;

(2) a budget (SF–424A); and

(3) Assurances (SF–424B) signed by the appropriate official.

b. Pre-rating Review

Applications which pass the initial screening will be forwarded to reviewers for analytical comment and scoring based on the criteria detailed in the Section below and the specific requirements contained in Part C of this Announcement. Prior to the programmatic review, these reviewers and/or OCS staff will verify that the applications comply with this Program Announcement in the following areas:

(1) Eligibility: Applicant meets the eligibility requirements found in Part A 2.

(2) Target Populations: The application clearly targets the specific outcomes and benefits of the project to low-income participants as defined in the DHHS Poverty Income Guidelines (Attachment A).

(3) Grant Amount: The amount of funds requested does not exceed the estimated amount of $12 million.

(4) Program Focus: The application addresses the geographic scope and project requirements described in Part C of this Announcement.

c. Evaluation Criteria

Applications which pass the initial screening and prerating review will be assessed and scored by reviewers. Each reviewer will give a numerical score for each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and major weaknesses under each applicable criterion published in this Announcement.

Part H—Post Award Information and Reporting Requirements

Following approval of the applications selected for funding, notice of project approval and authority to draw down project funds will be made in writing. The official award document is the Financial Assistance Award which provides the amount of Federal funds for use in the project period, the budget period for which support is provided, and the terms and conditions of the award.

In addition to the General Conditions and Special Conditions (where the latter are warranted) which will be applicable to grant, the grantee will be subject to the provisions of 45 CFR Part 74 along with OMB Circulars A–122, A–133, and, for institutions of higher education, A–21.

Grantee will be required to submit progress and financial reports (SF–269).

Grantee is subject to the audit requirements in 45 CFR part 74.

Dated: February 26, 1997.

Donald Sykes,

Director, Office of Community Services.

ATTACHMENT A

Size of family unit	Poverty guidelines
1996 Poverty Income Guidelines for the 48 Contiguous States and District of Columbia	
1	$7,740
2	10,360
3	12,980
4	15,600
5	18,220
6	20,840
7	23,460
8	26,080
For family units with more than 8 members, add $2,226 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)	
1996 Poverty Income Guidelines for Alaska	
1	$9,660
2	12,940
3	16,220
4	19,500
5	22,780
6	26,060
7	29,340
8	32,620
For family units with more than 8 members, add $3,280 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)	
1	$9,660
2	12,940
3	16,220
4	19,500
5	22,780
6	26,060
7	29,340
8	32,620
For family units with more than 8 members, add $3,280 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)	

BILLING CODE 4184–04–P

Attachment B

Attachment B
APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name: | Organizational Unit:

Address (give city, county, state, and zip code): | Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): — | 7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A. State H. Independent School Dist.
B. County I. State Controlled Institution of Higher Learning
C. Municipal J. Private University
D. Township K. Indian Tribe
E. Interstate L. Individual
F. Intermunicipal M. Profit Organization
G. Special District N. Other (Specify) _____

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: — TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (Cities, Counties, States, etc.):

13. PROPOSED PROJECT: Start Date | Ending Date

14. CONGRESSIONAL DISTRICTS OF: a. Applicant | b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE _____
b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BILLING CODE 4184–01–C

Instructions for the SF 424

This a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
—"New" means a new assistance award.
—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184-01-P

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		Total (g)
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
					$
a. Personnel	$				
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Nonfederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years) (b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 - 19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION
(Attach additional Sheets if Necessary)

21. Direct Charges:

22. Indirect Charges:

23. Remarks

SF 424A (4-88) Page 2
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Instructions for the SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary

Lines 1–4, Columns (a) and (b).

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal to sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Link 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers,

or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention' Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 372–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 92–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official

Title

Applicant Organization

Date Submitted

Program Narrative

This program narrative section was designed for use by many and varied programs. Consequently, it is not possible to provide specific guidance for developing a program narrative statement that would be appropriate in all cases. Applicants must refer the relevant program announcement for information on specific program requirements and any additional guidelines for preparing the program narrative statement. The following are general guidelines for preparing a program narrative statement.

The program narrative provides a major means by which the application is evaluated and ranked to compete with other applications for available assistance. It should be concise and complete and should address the activity for which Federal funds are requested. Supporting documents should be included where they can present information clearly and succinctly. Applicants are encouraged to provide information on their organizational structure, staff, related experience, and other information considered to be relevant. Awarding offices use this and other information to determine whether the applicant has the capability and resources necessary to carry out the proposed project. It is important, therefore, that this information be included in the application. However, in the narrative the applicant must distinguish between resources directly related to the proposed project from those which will not be used in support of the specific project for which funds are requested.

Cross-referencing should be used rather than repetition. ACF is particularly interested in specific factual information and statements of measurable goals in quantitative terms. Narratives are evaluated on the basis of substance, not length. Extensive exhibits are not required. (Supporting information concerning activities which will not be directly funded by the grant or information which does not directly pertain to an integral part of the grant funded activity should be placed in an appendix.) Pages should be numbered for easy reference.

Prepare the program narrative statement in accordance with the following instructions:

- Applicants submitting new applications or competing continuation applications should respond to Items A and D.
- Applicants submitting noncompeting continuation applications should respond to Item B.
- Applicants requesting supplemental assistance should respond to Item C.

A. Project Description—Components

1. Project Summary/Abstract

A summary of the project description (usually a page or less) with reference to the funding request should be placed directly behind the table of contents or SF–424.

2. Objectives and Need for Assistance

Applicants must clearly identify the physical, economic, social, financial, institutional, or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation such as letters of support and testimonials from concerned interests other than the applicant may be included. Any relevant data based on planning studies should be included or referenced in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the narrative, the applicant may volunteer or be requested to provide information on the total range of projects currently conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

3. Results or Benefits Expected

Identify results and benefits to be derived. For example, when applying for a grant to establish a neighborhood child care center, describe who will occupy the facility, who will use the facility, how the facility will be used, and how the facility will benefit the community which it will serve.

4. Approach

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking this approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of microloans made. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

Identify the kinds of data to be collected, maintained, and/or disseminated. (Note that clearance from the U.S. Office of Management and Budget might be needed prior to an information collection.) List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

5. Evaluation

Provide a narrative addressing how you will evaluate 1) the results of your project and 2) the conduct of your program. In addressing the evaluation of results, state how you will determine the extent to which the program has achieved its stated objectives and the extent to which the accomplishment of objectives can be attributed to the program. Discuss the criteria to be used to evaluate results; explain the methodology that will be used to determine if the needs identified and discussed are being met and if the project results and benefits are being achieved. With respect to the conduct of your program, define the procedures you will employ to determine whether the program is being conducted in a manner consistent with the work plan you presented and discuss the impact of the program's various activities upon the program's effectiveness.

6. Geographic Location

Give the precise location of the project and boundaries of the area to be served by the proposed project. Maps or other graphic aids may be attached.

7. Additional Information (Include if applicable)

Additional information may be provided in the body of the program narrative or in the appendix. Refer to the program announcement and "General Information and Instructions" for guidance on placement of application materials.

Staff and Position Data—Provide a biographical sketch for key personnel appointed and a job description for each vacant key position. Some programs require both for all positions. Refer to the program announcement for guidance on presenting this information. Generally, a biographical sketch is required for original staff and new members as appointed.

Plan for Project Continuance Beyond Grant Support—A plan for securing resources and continuing project activities after Federal assistance has ceased.

Business Plan—When federal grant funds will be used to make an equity investment, provide a business plan. Refer to the program announcement for guidance on presenting this information.

Organization Profiles—Information on applicant organizations and their cooperating partners such as organization charts, financial statements, audit reports or statements from CPA/Licensed Public Accountant, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with federal/state/local government standards, documentation of experience in program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code *or* by providing a copy of the currently valid IRS tax exemption certificate, *or* by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Dessemination Plan—A plan for distributing reports and other project outputs to colleagues and the public. Applicants must provide a description of the kind, volume and timing of distribution.

Third-Party Agreements—Written agreements between grantees and subgrantees or subcontractors or other cooperating entities. These agreements may detail scope of work, work schedules, remuneration, and other terms and conditions that structure or define the relationship.

Waiver Request—A statement of program requirements for which waivers will be needed to permit the proposed project to be conducted.

Letters of Support—Statements from community, public and commercial leaders which support the project proposed for funding.

B. Noncompeting Continuation Applications

A program narrative usually will not be required for noncompeting continuation applications for nonconstruction programs. Noncompeting continuation applications shall be abbreviated unless the ACF Program Office administering this program has issued a notice to the grantee that a full application will be required.

An abbreviated application consists of:

1. The Standard Form 424 series (SF 424, SF 424A, SF–424B)

2. The estimated or actual unobligated balance remaining from the previous budget period should be identified on an accurate SF–269 as well as in Section A, Columns (c) and (d) of the SF–424A.

3. The grant budget, broken down into the object class categories on the 424A, and if category "other" is used, the specific items supported must be identified.

4. Required certifications.

A full application consists of all elements required for an abbreviated application plus:

1. Program narrative information explaining significant changes to the original program narrative statement, a description of accomplishments from the prior budget period, a projection of accomplishments throughout the entire remaining project period, and any other supplemental information that ACF informs the grantee is necessary.

2. A full budget proposal for the budget period under consideration with a full cost analysis of all budget categories.

3. A corrective action plan, if requested by ACF, to address organizational performance weaknesses.

C. Supplemental Requests

For supplemental assistance requests, explain the reason for the request and justify the need for additional funding. Provide a budget and budget justification *only* for those items for which additional funds are requested. (See Item D for guidelines on preparing a budget and budget justification.)

D. Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail

sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification which describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs

The following guidelines are for preparing the budget and budget justification. Both federal and non-federal resources should be detailed and justified in the budget and narrative justification. For purposes of preparing the program narrative, "federal resources" refers only to the ACF grant for which you are applying. Non-Federal resources are all other federal and non-federal resources. It is suggested that for the budget, applicants use a column format: Column 1, object class categories; Column 2, federal budget amounts; Column 3, non-federal budget amounts, and Column 4, total amounts. The budget justification should be a narrative.

Personnel. Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, show name/title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits. Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, taxes, etc.

Travel. Costs of project related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF sponsored workshops as specified in this program announcement should be detailed in the budget.

Equipment. Costs of all non-expendable, tangible personal property to be acquired by the project where each article has a useful life of more than one year and an acquisition cost which equals the lesser of (a) the capitalization level established by the applicant organization for financial statement purposes, or (b) $5000.

Justification: For each type of equipment requested, provide a description of the equipment, cost per unit, number of units, total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends.

Supplies. Costs of all tangible personal property (supplies) other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

Contractual. Costs of all contracts for services and goods except for those which belong under other categories such as equipment, supplies, construction, etc. Third-party evaluation contracts (if applicable) and contracts with secondary recipient organizations including delegate agencies and specific project(s) or businesses to be financed by the applicant should be included under this category.

Justification: All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. If procurement competitions were held or if a sole source procurement is being proposed, attach a list of proposed contractors, indicating the names of the organizations, the purposes of the contracts, the estimated dollar amounts, and the award selection process. Also provide back-up documentation where necessary to support selection process.

Note: Whenever the applicant/grantee intends to delegate part of the program to another agency, the applicant/grantee must provide a detailed budget and budget narrative for each delegate agency by agency title, along with the required supporting information referenced in these instructions.

Applicants must identify and justify any anticipated procurement that is expected to exceed the simplified purchase threshold (currently set at $100,000) and to be awarded without competition. Recipients are required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc. under the conditions identified at 45 CFR Part 74.44(e).

Construction. Costs of construction by applicant or contractor.

Justication: Provide detailed budget and narrative in accordance with instructions for other object class categories. Identity which construction activity/costs will be contractual and which will assumed by the applicant.

Other. Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (noncontractual), fees and travel paid directly to individual consultants, space and equipment rentals, printing and publication, computer use, training costs, including tuition and stipends, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Indirect Charges. Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services or another cognizant Federal agency.

Justification: With the exception of most local government agencies, an applicant which will charge indirect costs to the grant must enclose a copy of the current rate agreement if the agreement was negotiated with a cognizant Federal agency other than the Department of Health and Human Services (DHHS). If the rate agreement was negotiated with the Department of Health and Human Services, the applicant should state this in the budget justification. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the pertinent DHHS Guide for Establishing Indirect Cost Rates, and submit it to the appropriate DHHS Regional Office. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect costs pool should not be also charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under this program announcement, the authorized representative of your organization needs to submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

Program Income. The estimated amount of income, if any, expected to be generated from this project. Separately show expected program income generated from program support and income generated from other mobilized funds. Do not add or subtract this amount from the budget total. Show the nature and source of income in the program narrative statement.

Justification: Describe the nature, source and anticipated use of program income in the budget or reference pages in the program narrative statement which contain this information.

Non-Federal Resources. Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF-424.

Justificaiton: The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process.

Total Direct Charges, Total Indirect Charges, Total Project Costs. (self explanatory)

BILLING CODE 4184–01–P

U.S. Department of Health and Human Services

Certification Regarding Drug-Free Workplace Requirements

Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

Check __ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

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DGMO Form#2 Revised May 1990

BILLING CODE 4184-01-C

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," providing by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which is determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally processed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to,

check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility an Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress; or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form–LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31 U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form–LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the require statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Date

BILLING CODE 4184–01–P

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. **Type of Federal Action:** ☐ a. contract ☐ b. grant ☐ c. cooperative agreement ☐ d. loan ☐ e. loan guarantee ☐ f. loan insurance	2. **Status of Federal Action:** ☐ a. bid/offer/application ☐ b. initial award ☐ c. post-award	3. **Report Type:** ☐ a. initial filing ☐ b. material change For Material Change Only: year _____ quarter _____ date of last report _____
4. **Name and Address of Reporting Entity:** ☐ Prime ☐ Subawardee Tier _____, *if known*: Congressional District, *if known*:	5. **If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:** Congressional District, *if known*:	
6. **Federal Department/Agency:**	7. **Federal Program Name/Description:** CFDA Number, *if applicable*: _____	
8. **Federal Action Number**, *if known*:	9. **Award Amount**, *if known*: $	
10. a. **Name and Address of Lobbying Entity** (*if individual, last name, first name, MI*):	b. **Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):	
(*attach Continuation Sheet(s) SF-LLL-A, if necessary*)		
11. **Amount of Payment** (*check all that apply*): $ _____ ☐ actual ☐ planned	13. **Type of Payment** (*check all that apply*): ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____	
12. **Form of Payment** (*check all that apply*): ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____		
14. **Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:** (*attach Continuation Sheet(s) SF-LLL-A, if necessary*)		
15. **Continuation Sheet(s) SF-LLL-A attached:** ☐ Yes ☐ No		
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	**Signature:** _____ **Print Name:** _____ **Title:** _____ **Telephone No.:** _____ **Date:** _____	
Federal Use Only:		Authorized for Local Reproduction Standard Form - LLL

BILLING CODE 4184–01–C

Certification Regarding Environmental Tobacco Smoke

Public Law 103–227, Part C—Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act. The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

Attachment C—OMB State Single Point of Contact Listing

Arizona

Joni Saad, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315, Fax: (602) 280–8144

Arkansas

Mr. Tracy L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, 1515 W. 7th St., Room 412, Little Rock, Arkansas 72203, Telephone: (501) 682–1074, Fax: (501) 682–5206

California

Grants Coordinator, Office of Planning & Research, 1400 Tenth Street, Room 121, Sacramento, California 95814, Telephone: (916) 323–7480, Fax: (916) 323–3018

Delaware

Francine Booth, State Single Point of Contact Executive Department, Thomas Collins Building, P.O. Box 1401, Dover, Delaware 19903, Telephone: (302) 739–3326, Fax: (302) 739–5661

District of Columbia

Charles Nichols, State Single Point of Contact, Office of Grants Mgmt. & Dev., 717 14th Street, N.W.—Suite 500, Washington, D.C. 20005, Telephone: (202) 727–6554, Fax: (202) 727–1617

Florida

Florida State Clearinghouse, Department of Community Affairs, 2740 Centerview Drive, Tallahassee, Florida 32399–2100, Telephone: (904) 922–5438, Fax: (904) 487–2899

Georgia

Tom L. Reid, III, Administrator, Georgia State Clearinghouse, 254 Washington Street, S.W.—Room 401J, Atlanta, Georgia 30334, Telephone: (404) 656–3855 or (404) 656–3829, Fax: (404) 656–7938

Illinois

Virginia Bova, State Single Point of Contact, Department of Commerce and Community Affairs, James R. Thompson Center, 100 West Randolph, Suite 3–400, Chicago, Illinois 60601, Telephone: (312) 814–6028, Fax: (312) 814–1800

Indiana

Amy Brewer, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone: (317) 232–5619, Fax: (317) 233–3323

Iowa

Steven R. McCann, Division for Community Assistance, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone: (515) 242–4719, Fax: (515) 242–4859

Kentucky

Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601–8204, Telephone: (502) 573–2382, Fax: (502) 573–2512

Maine

Joyce Benson, State Planning office, State House Station #38, Augusta, Maine 0433, Telephone: (207) 287–3261, Fax: (207) 287–6489

Maryland

William G. Carroll, Manager, State Clearinghouse for Intergovernmental Assistance, Maryland Office of Planning, 301 W. Preston Street—Room 1104, Baltimore, Maryland 21201–2365, Staff Contact: Linda Janey, Telephone: (410) 225–4490, Fax: (410) 225–4480

Michigan

Richard Pfaff, Southeast Michigan Council of Governments, 1900 Edison Plaza, 660 Plaza Drive, Detroit, Michigan 48226, Telephone: (313) 961–4266, Fax: (313) 961–4869

Mississippi

Cathy Malette, Clearinghouse Officer, Department of Finance and Administration, 455 North Lamar Street, Jackson, Mississippi 39202–3087, Telephone: (601) 359–6762, Fax: (601) 359–6764

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Room 760, Truman Building, Jefferson City, Missouri 65102, Telephone: (314) 751–4834, Fax: (314) 751–7819

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone: (702) 687–4065, Fax: (702) 687–3983

New Hampshire

Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process, Mike Blake, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone: (603) 271–2155, Fax: (603) 271–1728

New Mexico

Robert Peters, State Budget Division, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone: (505) 827–3640

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone: (518) 474–1605

North Carolina

Chrys Baggett, Director, N.C. State Clearinghouse, Office of the Secretary of Admin., 116 West Jones Street, Raleigh, North Carolina 27603–8003, Telephone: (919) 733–7232, Fax: (919) 733–9571

North Dakota

North Dakota Single Point of Contact, Office of Intergovernmental Assistance, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone: (701) 224–2094, Fax: (701) 224–2308

Ohio

Larry Weaver, State Single Point of Contact, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411

Please direct correspondence and questions about intergovernmental review to: Linda Wise, Telephone: (614) 466–0698, Fax: (614) 466–5400.

Rhode Island

Daniel W. Varin, Associate Director, Department of Administration/Division of Planning, One Capitol Hill, 4th Floor, Providence, Rhode Island 02908–5870, Telephone: (401) 277–2656, Fax: (401) 277–2083

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning.

South Carolina

Omeagia Burgess, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street—Room 477, Columbia, South Carolina 29201, Telephone: (803) 734–0494, Fax: (803) 734–0385

Texas

Tom Adams, Governors Office, Director, Intergovernmental Coordination, P.O. Box 12428, Austin, Texas 78711, Telephone: (512) 463–1771, Fax: (512) 463–1888

Utah

Carolyn Wright, Utah State Clearinghouse, Office of Planning and Budget, Room 116, State Capitol, Salt Lake City, Utah 84114, Telephone: (801) 538–1535, Fax: (801) 538–1547

West Virginia

Fred Cutlip, Director, Community Development Division, W. Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone: (304) 558–4010, Fax: (304) 558–3248

Wisconsin

Martha Kerner, Section Chief, State/Federal Relations, Wisconsin Department of Administration, 101 East Wilson Street—6th Floor, P.O. Box 7868, Madison, Wisconsin 53707, Telephone: (608) 266–2125, Fax: (608) 267–6931

Wyoming

Sheryl Jeffries, State Single Point of Contact, Office of the Governor, State Capital, Room 124, Cheyenne, Wyoming 82002, Telephone: (307) 777–5930, Fax: (307) 632–3909

Territories

Guam

Mr. Giovanni T. Sgambelluri, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone: 011–671–472–2285, Fax: 011–671–472–2825

Puerto Rico

Norma Burgos/Jose E. Caro, Chairwoman/Director, Puerto Rico Planning Board, Federal Proposals Review Office, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–1119, Telephone: (809) 727–4444, (809) 723–6190, Fax: (809) 724–3270, (809) 724–3103

North Mariana Islands

Mr. Alvaro A. Santos, Executive Officer, State Single Point of Contact, Office of Management and Budget, Office of the Governor, Saipan, MP, Telephone: (670) 664–2256, Fax: (670) 664–2272

Contact Person: Ms. Jacoba T. Seman, Federal Programs Coordinator, Telephone: (670) 644–2289, Fax: (670) 644–2272

Virgin Islands

Jose George, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802

Please direct all questions and correspondence about intergovernmental review to: Linda Clarke, Telephone: (809) 774–0750, Fax: (809) 776–0069.

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BILLING CODE 4184–01–P

Food and Drug Administration

[Docket No. 96N–0496]

Agency Information Collection Activities: Proposed Collection; Reinstatement

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish a notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the reporting and recordkeeping requirements for manufacturers and distributors of electronic products set forth in the regulations.

DATES: Submit written comments on the collection of information by April 3, 1997.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Judith V. Bigelow, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–1479.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Reporting and Recordkeeping Requirements for Manufacturers and Distributors of Electronic Products—21 CFR Parts 1002–1010, FDA Forms 2877, 3147, and 766 (OMB Control Number 0910–0025—Reinstatement)

Sections 532 through 542 (21 U.S.C. 360ii through ss) of the Federal Food, Drug, and Cosmetic Act (the act) direct the Secretary of the Department of Health and Human Services (the Secretary) to establish and carry out an electronic product radiation control program to protect the public from unnecessary radiation from electronic products. Such program shall include the development, issuance, and administration of performance standards to control the emission of electronic product radiation from electronic products. Section 534(g) of the act directs the Secretary to review and evaluate industry testing programs on a continuing basis, and section 535(e) and (f) of the act direct the Secretary to immediately notify manufacturers of, and assure correction of, radiation defects or noncompliances with performance standards. The authority for records and reports is contained in section 537(b) and (c) of the act.

The regulations implementing these statutory provisions are found in parts 1002 through 1010 (21 CFR parts 1002 through 1010). Section 1002.3 requires manufacturers, when directed by FDA, to provide technical and safety information to users. Section 1002.10(a) through (k) requires manufacturers to submit to FDA product reports containing identification, design, operation and testing, quality control procedures, test results, and product labeling prior to the entry of the product into commerce. Section 1002.11(a) and (b) requires manufacturers to submit supplemental reports to FDA if modifications in product safety or testing of electronic products affect actual or potential radiation emission. Section 1002.12(a) through (e) requires manufacturers to submit abbreviated information on product safety and testing. Section 1002.13(a) through (c) requires manufacturers to report annually to FDA a summary of manufacturer records maintained in accordance with § 1002.30, and provide quarterly updates of models instead of § 1002.10 or § 1002.11 reports. Section 1002.20(a) through (c) requires manufacturers to report to FDA the circumstances, amount of exposure, and

remedial actions taken concerning any accidental radiation occurrence involving their electronic products. If a firm is also required to report the incident under 21 CFR part 803, those regulations take precedence. Section 1002.30(a) and (b) requires manufacturers to keep records on test data and procedures, correspondence regarding radiation safety, and distribution records. Section 1002.31(a) requires manufacturers to maintain records required to be kept under part 1002 for 5 years. Section 1002.31(c) requires manufacturers, when requested by FDA, to provide copies of the distribution records required to be maintained by § 1002.30(b). Section 1002.40(a) through (c) requires dealers and distributors to retain first purchaser information, to be used by manufacturers when a product recall is instituted to ensure the radiation safety of a product. Section 1002.41(a) and (b) specifies that the dealer/distributor records in § 1002.40 may be retained by the dealer or forwarded to the manufacturer for retention and that the manufacturer or dealer shall retain distribution records for 5 years. Section 1002.50(a) specifies criteria by which manufacturers may request exemption from reporting and recordkeeping requirements when there is a low risk of injury, and § 1002.51 specifies criteria by which manufacturers may request exemption from reporting and recordkeeping requirements under certain circumstances if the product is intended for U.S. Government use. The burden is combined with § 1002.50(a), because the processes and procedures are identical.

Section 1003.10(a) and (c) requires manufacturers to notify FDA when their product has a defect or fails to comply with applicable performance standards. Also, under § 1003.10(b) manufacturers must notify purchasers, dealers, and distributors of product defects or noncompliance. Section 1003.11(a)(3) specifies criteria by which manufacturers may refute FDA's notice of defective or noncompliant product, and § 1003.11(b) states that manufacturers, when notified by FDA, must provide information on the number of defective products introduced into commerce. Section 1003.20(a) through (h) specifies information to be provided by manufacturers to FDA when the manufacturer discovers a defect or failure to comply. Section 1003.21(a) through (d) specifies the content and format of the notification by manufacturers to affected persons required by § 1003.10(a). Under § 1003.22(a) and (b), manufacturers must provide to FDA copies of the § 1003.10 disclosure sent to purchasers, dealers or distributors. Section 1003.30(a) and (b) specifies criteria by which manufacturers may request an exemption from the § 1003.10 disclosure and possible product recall and § 1003.31(a) and (b) specifies the content of the § 1003.30 report and the procedure that the agency will follow in reviewing exemption requests. Sections 1004.2(a) through (i), 1004.3(a) through (i), and 1004.4(a) through (h) require manufacturers to report to FDA every plan to remedy a product defect or noncompliance through repair or replacement or refund.

Section 1005.21(a) through (c) specifies criteria for manufacturers or importers to request correction of noncompliant products for importation into the United States, including specific corrections, timeframe, and location for completion. Such requests are made on Form FDA 766, Application for Authorization to Relabel or to perform other action of the Federal Food, Drug, and Cosmetic Act and other related Acts. Section 1005.25(a) and (b) requires importers to report identification information and compliance status of products to FDA. Initial designations are provided in the §§ 1002.10, 1002.11, and 1002.12 reports, so that burden is included in those sections. For each shipment, identification is made on Form FDA 2877. Form FDA 2877, Declaration for Products Subject to Radiation Control Standards, is used to collect this information.

Part 1010 prescribes performance standards for electronic products, under section 534 of the act, to which manufacturers must certify. Section 1010.2(d) specifies criteria for manufacturers to request alternate means of certification to a performance standard. Section 1010.3(a) through (c) requires manufacturers to provide to FDA the coding systems if information on labels is coded and to identify each brand name, and the name and address of the individual or company for whom each product so branded is manufactured. Because firms provide such information in the §§ 1002.10, 1002.11, and 1002.12 reports, the burden is included in those sections. Section 1010.4(b) specifies criteria for manufacturers to petition FDA for a variance from a performance standard. Form FDA 3147, Application for a Variance from 21 CFR 1040.11(c) for Laser Light Shows, is used only by manufacturers of laser products to submit the information. Since the vast majority of variances are submitted by this industry, this form was developed to reduce the burden and timeframe for approvals. Section 1010.5(c) and (d) specifies criteria by which manufacturers or U.S. Government agencies may request an exemption (or amendment or extension) from performance standards when a product is to be used exclusively by a part of the U.S. Government and has adequate radiation emission specifications. Section 1010.13 provides that manufacturers may request alternate test procedures from those specified in a performance standard. The burden is combined with § 1010.5(c) and (d) because the processes and procedures are identical.

The information collections are placed upon manufacturers, importers, assemblers, distributors and dealers of electronic products. Not all of the requirements are placed on all of these groups. The data reported to FDA and the records that are maintained are used by FDA and the industry to make decisions and take actions that protect the public from radiation hazards presented by electronic products. The reports are reviewed by FDA staff to determine product safety and adequacy of quality control testing. Potential and actual problems are resolved with the individual firm. Each firm's quality control staff reviews the test records to maintain production of safe and compliant products. The data provided to users and others are intended to encourage actions to reduce or eliminate radiation exposures.

If FDA did not collect this information, FDA may not have sufficient information to take appropriate actions to protect the public from unnecessary radiation hazards presented by electronic products.

FDA estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section/Form Number	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours	Total Operating & Maintenance Costs
1002.3	10	1	10	12	120	$2,940
1002.10, 1010.3	540	1.6	850	24	20,400	$499,800
1002.11	1,000	1.5	1,500	0.5	750	$18,375
1002.12	150	1	150	5	750	$18,375
1002.13 Annual	900	1	900	26	23,400	$573,300
1002.13 Quarterly	250	2.4	600	0.5	300	$7,350
1002.20	40	1	40	2	80	$1,960
1002.50(a), 1002.51	10	1.5	15	1	15	$367.50
Form FDA 2877	600	32	19,200	0.2	3,840	$94,080
1010.2	1	1	1	5	5	$122.50
1010.4 and Form FDA 3147	53	2.1	115	0.5	58	$1,421
1010.4—Other	1	1	1	120	120	$2,940
1010.5, 1010.13	3	1	3	22	66	$1,617
Totals	1,760		23,385		49,904	$1,222,648

There are no capital costs associated with this collection.

ESTIMATED ANNUAL RECORDKEEPING BURDEN

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours	Total Operating & Maintenance Costs
1002.30, 1002.31(a)	1,150	1,655.5	1,903,825	198.7	228,505	$5,598,373
1002.40, 1002.41	2,950	49.2	145,140	2.4	7,080	$173,460
Totals	4,100				235,585	

There are no capital costs associated with this collection.

These burden estimates are based on comments from industry and interviews with industry personnel.

Several requirements are not included in the burden chart because they are exempt under 5 CFR 1320.4. These exempt requirements are: Sections 1002.31(c), 1003.10(a) and (c), 1003.10(b), 1003.11(a)(3), 1003.11(b), 1003.20(a) through (h), 1003.21(a) through (d), 1003.22(a) and (b), 1003.30(a) and (b), 1003.31(a) and (b), 1004.2(a) through (i), 1004.3(a) through (i), 1004.4(a) through (h) and 1005.21(a) through (c). Other requirements are not included because they constitute a disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public (5 CFR 1320.3(c)(2)).

Dated: February 24, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–5211 Filed 3–3–97; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Grantee Reporting Requirements for the Rural Health Network Grant Program; New

The Rural Health Network Grant Program is authorized by Section 330A of the Public Health Service Act as amended by the Health Centers Consolidation Act of 1996 (Public Law 104–229). The purpose of the program is to assist in the development of vertically integrated networks of health care providers in rural communities. Grantees will be working to change the delivery system in their service areas and will be using the federal funds to develop network capabilities.

Grantees will be asked to submit semiannual reports which provide information on progress towards goals and objectives of the network, progress toward developing the governance and organizational arrangements for the network, specific network activities, certain financial data related to the grant budget, and health care services provided by the network.

The information will be used to evaluate progress on the grants, to understand barriers to network development in rural areas, to identify grantees in need of technical assistance, and to identify best practices in the development of provider networks in rural communities. The information will

also be used to begin to evaluate the impact of networks on access to care.

To minimize the burden on grantees, the reports will be submitted electronically. The estimated burden is as follows:

Type of respondent	Number of respondents	Responses per respondent	Burden per response	Total burden (hours)
Grantees	40	2	20	1,600

Send comments to Patricia Royston, HRSA Reports Clearance Officer, Room 14–36, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: February 26, 1997.

J. Henry Montes,

Director, Office of Policy and Information Coordination.

[FR Doc. 97–5209 Filed 3–3–97; 8:45 am]

BILLING CODE 4160–15–P

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 1997 Funding Opportunities for Knowledge Development and Application Cooperative Agreements

AGENCY: Substance Abuse and Mental Health Services Administration, HHS

ACTION: Notice of funding availability.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Prevention (CSAP) announces the availability of FY 1997 funds for Knowledge Development and Application cooperative agreements for the following activities. These activities are discussed in more detail under Section 4 of this notice. This notice is not a complete description of the activities; potential applicants *must* obtain a copy of the Guidance for Applicants (GFA) before preparing an application.

Activity	Application deadline	Estimated funds available (million)	Estimated number of awards	Project period (years)
State Incentive Program	05/12/97	$15.0	5	3
Centers for the Application of Prevention Technologies (CAPT)	05/12/97	5.0	5	3
Workplace Managed Care	05/12/97	4.0	10–15	3

Note: SAMHSA published notices of available funding opportunities in FY 1997 in the **Federal Register** (Vol. 62, No. 16) on Friday, January 24, 1997; (Vol. 62, No. 27) on Monday, February 10, 1997; and (Vol. 62, No. 31) on Friday, February 14, 1997.

The actual amount available for awards and their allocation may vary, depending on unanticipated program requirements and the volume and quality of applications. Awards are usually made for grant periods from one to three years in duration. FY 1997 funds for activities discussed in this announcement were appropriated by the Congress under Public Law No. 104–208. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The SAMHSA Centers' substance abuse and mental health services activities address issues related to Healthy People 2000 objectives of Mental Health and Mental Disorders; Alcohol and Other Drugs; Clinical Preventive Services; HIV Infection; and Surveillance and Data Systems.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone: 202–512–1800).

GENERAL INSTRUCTIONS: Applicants must use application form PHS 5161–1 (Rev. 5/96; OMB No. 0937–0189). The application kit contains the GFA (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from the organization specified for each activity covered by this notice (see Section 4).

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. This is to ensure receipt of all necessary forms and information, including any specific program review and award criteria.

The PHS 5161–1 application form is also available electronically via SAMHSA's World Wide Web Home Page (address: http://www.samhsa.gov). Click on SAMHSA Funding Opportunities for instructions. You can also click on the address of the forms distribution Web Page for direct access.

The full text of each of the activities (i.e., the GFA) described in Section 4 is available electronically via the following:

SAMHSA's World Wide Web Home Page (address: http://www.samhsa.gov) and SAMHSA's Bulletin Board (800–424–2294 or 301–443–0040).

APPLICATION SUBMISSION: Applications must be submitted to: SAMHSA Programs, Division of Research Grants, National Institutes of Health, Suite 1040, 6701 Rockledge Drive MSC–7710, Bethesda, Maryland 20892–7710.*

(* Applicants who wish to use express mail or courier service should change the zip code to 20817)

APPLICATION DEADLINES: The deadlines for receipt of applications are listed in the table above. Please note that the deadlines may differ for the individual activities.

Competing applications must be received by the indicated receipt dates to be accepted for review. An application received after the deadline may be acceptable if it carries a legible proof-of-mailing date assigned by the carrier and that date is not later than one week prior to the deadline date. Private metered postmarks are not acceptable as proof of timely mailing.

Applications received after the deadline date and those sent to an address other than the address specified above will be returned to the applicant without review.

FOR FURTHER INFORMATION CONTACT: Requests for activity-specific technical information should be directed to the program contact person identified for each activity covered by this notice (see Section 4).

Requests for information concerning business management issues should be directed to the grants management contact person identified for each activity covered by this notice (see Section 4).

SUPPLEMENTARY INFORMATION: To facilitate the use of this Notice of Funding Availability, information has been organized as outlined in the Table of Contents below. For each activity, the following information is provided:

- Application Deadline.
- Purpose.
- Priorities.
- Eligible Applicants.
- Grants/Cooperative Agreements/Amounts.
- Catalog of Federal Domestic Assistance Number.
- Contacts.
- Application Kits.

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1. Program Background and Objectives

SAMHSA's mission within the Nation's health system is to improve the quality and availability of prevention, early intervention, treatment, and rehabilitation services for substance abuse and mental illnesses, including co-occurring disorders, in order to improve health and reduce illness, death, disability, and cost to society.

Reinventing government, with its emphases on redefining the role of Federal agencies and on improving customer service, has provided SAMHSA with a welcome opportunity to examine carefully its programs and activities. As a result of that process, SAMHSA is moving assertively to create a renewed and strategic emphasis on using its resources to generate knowledge about ways to improve the prevention and treatment of substance abuse and mental illness and to work with State and local governments as well as providers, families, and consumers to effectively use that knowledge in everyday practice.

The agency has transformed its demonstration grant programs from service-delivery projects to knowledge acquisition and application. For FY 1997, SAMHSA has developed an agenda of new programs designed to answer specific important policy-relevant questions. These questions, specified in this and subsequent Notices of Funding Availability, are designed to provide critical information to improve the Nation's mental health and substance abuse treatment and prevention services.

The agenda is the outcome of a process whereby providers, services researchers, consumers, National Advisory Council members and other interested persons participated in special meetings or responded to calls for suggestions and reactions. From this input, each SAMHSA Center developed a "menu" of suggested topics. The topics were discussed jointly and an agency agenda of critical topics was agreed to. The selection of topics depended heavily on policy importance and on the existence of adequate research and practitioner experience on which to base studies. While SAMHSA's FY 1997 programs will sometimes involve the evaluation of some delivery of services, they are services studies and application activities, not merely evaluation, since they are aimed at answering policy-relevant questions and putting that knowledge to use.

SAMHSA differs from other agencies in focusing on needed information at the services delivery level, and in its question-focus. Dissemination and application are integral, major features of the programs. SAMHSA believes that it is important to get the information into the hands of the public, providers, and systems administrators as effectively as possible. Technical assistance, training, preparation of special materials will be used, in addition to normal communications means.

2. Special Concerns

SAMHSA's FY 1997 Knowledge Development and Application activities discussed below do not provide funds for mental health and substance abuse treatment and prevention services except for costs required by the particular activity's study design. Applicants are required to propose true knowledge application or knowledge development and application projects. Applications seeking funding for services projects will be considered nonresponsive. Applications that are incomplete or nonresponsive to the GFA will be returned to the applicant without further consideration.

3. Criteria for Review and Funding

Consistent with the statutory mandate for SAMHSA to support activities that will improve the provision of treatment, prevention and related services, including the development of national mental health and substance abuse goals and model programs, competing applications requesting funding under the specific project activities in Section 4 will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures.

3.1 General Review Criteria

As published in the **Federal Register** on July 2, 1993 (Vol. 58, No. 126), SAMHSA's "Peer Review and Advisory Council Review of Grant and Cooperative Agreement Applications and Contract Proposals," peer review groups will take into account, among other factors as may be specified in the application guidance materials, the following general criteria:

- Potential significance of the proposed project;
- Appropriateness of the applicant's proposed objectives to the goals of the specific program;
- Adequacy and appropriateness of the proposed approach and activities;
- Adequacy of available resources, such as facilities and equipment;
- Qualifications and experience of the applicant organization, the project director, and other key personnel; and
- Reasonableness of the proposed budget.

3.2 Funding Criteria for Scored Applications

Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council (if applicable) review process.

Other funding criteria will include:

- Availability of funds.

Additional funding criteria specific to the programmatic activity may be included in the application guidance materials.

4. Special FY 1997 Substance Abuse Activities

4.1 Cooperative Agreements

Three major activities for SAMHSA cooperative agreement programs are discussed below. Substantive Federal programmatic involvement is required in cooperative agreement programs. Federal involvement will include planning, guidance, coordination, and participating in programmatic activities (e.g., participation in publication of findings and on steering committees). Periodic meetings, conferences and/or communications with the award recipients may be held to review mutually agreed-upon goals and objectives and to assess progress. Additional details on the degree of Federal programmatic involvement will be included in the application guidance materials.

4.1.1 National Youth Substance Abuse Prevention Initiative—State Incentive Cooperative Agreements for Community-Based Action (State Incentive Program)

• Application Deadline: May 12, 1997

• Purpose: To reverse the trend in drug use by youth, the State Incentive Cooperative Agreements for Community-Based Action will call upon Governors to set a new course of action that will assess needs, identify gaps and channel or redirect resources (consistent with the requirements of the funding source) to implement comprehensive strategies for effective youth substance abuse prevention. This program gives States the opportunity to develop an innovative process for using these special incentive funds in a different way so as to complement and enhance existing prevention efforts. Through this State-led process, individual citizens can be encouraged to play a more forceful role in their community's anti-drug efforts; and additional resources can be mobilized to support promising prevention approaches across systems and settings.

The State Incentive Program will support the States in coordinating and redirecting all prevention resources available within the State and in developing a revitalized, comprehensive prevention strategy that will make optimal use of those resources. With these redirected resources and a viable prevention strategy in place, Governors can more effectively mobilize local citizens—youth, families, communities, schools and workplaces—to work proactively with State and local prevention organizations.

Therefore, the State Incentive Program has a two-fold purpose:

(1) Governors should coordinate, leverage and/or redirect, as appropriate, and legally permissible, all substance abuse prevention resources (funding streams and programs) within the State that are directed at communities, families, schools and workplaces in order to fill gaps with effective and promising prevention approaches targeted to marijuana and other drug use by youth. Any redirection of Federal funds, however, must be consistent with the terms and conditions of such funding and all other Federal laws.1

(2) States should develop a revitalized, comprehensive State-wide strategy aimed at reducing drug use by youth through the implementation of promising community-based prevention efforts derived from sound scientific research findings.

• Priorities: None.

• Eligible Applicants: Eligibility is limited to the Office of the Governor so that a consistent State-wide strategy on substance abuse prevention will be implemented by the Governor and evaluated as to effectiveness in the strategies used. Eligibility is limited to the Office of the Governor in those States (including the District of Columbia) and territories and the Indian Tribal organization (i.e., the Red Lake Band of Chippewa) that receive the Substance Abuse Prevention and Treatment Block Grant, Title XIX, Part B, Subpart II of the Public Health Service Act, 42 U.S.C. 300x–21, et seq. (hereinafter referred to as "States"). That grant sets aside 20 percent of the funds for primary prevention activities. This set-aside is a large resource available to the State for prevention activities and, along with the resources available under this announcement and other resources available to the State for substance abuse prevention activities, could assist the Governor in implementing a State-wide strategy.

By awarding cooperative agreement funds directly to the Governor's Office, SAMHSA/CSAP will best facilitate the optimal conditions and incentives needed to establish the State Incentive Program. The Governor's leadership and commitment to youth substance abuse prevention, along with the infrastructure developed through the substance abuse Block Grant funds can spur the support of organizations throughout the State and ensure that substance abuse prevention aimed at youth remains a high-priority, comprehensive, and systemically integrated effort.

For this State Incentive Program, SAMHSA/CSAP strongly supports using the prevention expertise and resources that have historically resided in the Alcohol and Drug Single State Agency (SSA), which continues to fund prevention strategies through the Substance Abuse Prevention and Treatment Block Grant. Therefore, SAMHSA/CSAP encourages Governors to include a significant role for the SSA in the development, planning and implementation of State efforts under this cooperative agreement. For example, the SSA director or his/her designee could serve as the project director for the cooperative agreement and would thus serve in a key leadership and oversight capacity.

• Cooperative Agreements/Amounts: It is estimated that approximately $15 million will be available to support approximately five (5) awards under this cooperative agreement announcement in FY 1997. Actual funding levels will depend upon the availability of funds.

• Catalog of Federal Domestic Assistance Number: 93.230.

• Program Contact: For programmatic or technical assistance, contact: Dave Robbins or Dan Fletcher, DSCSD, Systems Applications Branch, Center for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration, Rockwall II Building, 9th Floor, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–9438.

• Grants Management Contact: For business management assistance, contact: Mary Lou Dent, Division of Grants Management, OPS, Substance Abuse and Mental Health Services Administration, Rockwall II Building, Room 640, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–5702.

• Application Kits: Application kits are available from: National Clearinghouse for Alcohol and Drug Information (NCADI), P.O. Box 2345, Rockville, MD 20847–2345, 1–800–729–6686; 1–800–487–4889 TDD, Via Internet: www.health.org (Go into the Forum Section of the Web site, click on "CSAP FY 97 Grant Opportunities.")

Visually impaired: Disk versions of the application may be requested.

4.1.2 CSAP Cooperative Agreements for Centers for the Application of Prevention Technologies (CAPT)

• *Application Deadline:* May 12, 1997.

• *Purpose:* Cooperative agreements will be awarded to develop and operate five regional Centers for the Application of Prevention Technologies (CAPT). The purpose of this program is to assist States to apply on a consistent basis, the latest research knowledge to their substance abuse prevention programs, practices, and policies. The regions served by the CAPT program will be the same as those of the National Prevention Network (a membership organization of State prevention coordinators).

The CAPT program goal is to use conventional and electronic delivery methods to assist recipients of State Incentive Cooperative Agreements for Community-Based Action, their subrecipients, and other States in applying and utilizing scientifically defensible substance abuse prevention knowledge and technology. The CAPT program will bridge the gap between dissemination of prevention knowledge and effective application of that knowledge in the field.

The CAPT program will focus its efforts on four key prevention topic areas. These topic areas include: youth illicit drug use (with an emphasis on marijuana); underage drinking; alcohol, drugs, and violence; and HIV/AIDS and drug use. Applicants may be required to provide services on other topic areas as well. Applicants must also demonstrate a thorough knowledge and ability to provide technical assistance and skills development in the following six CSAP prevention strategies: information dissemination, education, community mobilization, alternatives, environmental change, and early identification and referral.

• *Priorities:* None.

• *Eligible Applicants:* Applications may be submitted by organizations such as units of State or local government and by domestic private nonprofit or for-profit organizations such as community-based organizations, universities, colleges, and hospitals.

• *Cooperative Agreements/Amounts:* It is estimated that approximately $5 million will be available to support approximately 5 awards under this program in FY 1997. Actual funding levels will depend upon the availability of funds.

• *Catalog of Federal Domestic Assistance Number:* 93.230.

• *Program Contact:* For programmatic or technical assistance contact: Ms. Luisa del Carmen Pollard, M.A., Division of Community Education Center for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration, Rockwall II, Suite 800, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301/443–0377.

Note: The Division of Community Education (DCE) , CSAP, will accept concept papers (not to exceed 4 pages) from prospective applicants via FAX or the Internet. DCE staff will review them and provide technical assistance by Internet, FAX, or phone. Concept papers may be submitted anytime up to 20 days prior to the application receipt date. Concept paper should be faxed or e-mailed to: CAPT at (301) 443–5592 or via the Internet: www.health.org (Go into the Forum section of the web site, click on "CSAP Grant Opportunities for FY97.") Whether or not a concept paper is submitted will have no bearing on the subsequent acceptance and review of an application.

• *Grants Management Contact:* For business management assistance, contact: Mary Lou Dent, Division of Grants Management, OPS, Substance Abuse and Mental Health Services Administration, Rockwall II, Suite 6405600 Fishers Lane, Rockville, MD 20857.

• *Application Kits:* Application kits are available from: National Clearinghouse for Alcohol and Drug Information (NCADI), P.O. Box 2345, Rockville, MD 20847–2345, 1–800/729–6686, 1–800/487–4889 TDD, Via Internet: www.health.org (Go into the Forum Section of the Web site, click on "CSAP FY97 Grant Opportunities')

The full text of the GFA is also available electronically via the CSAP site at the NCADI (www.health.org).

4.1.3 Cooperative Agreements for Public/Private Sector Workplace Models and Strategies for the Incorporation of Substance Abuse Prevention and Early Intervention Into Managed Care (Short Title: Workplace Managed Care)

• *Application Deadline:* May 12, 1997

• Purpose: SAMHSA/CSAP is seeking to build a strategic cooperative effort with those who are engaged in, have a binding agreement with or documented access to, an operational, fully funded, public/private sector workplace managed care (WMC) substance abuse prevention and early intervention program. Those with access to these WMC programs must also have documented, authorized access to the data related to the program. If data are available, grantees will analyze retrospective data to assess longitudinal effectiveness. All grantees will collect, analyze and compare prospective data for a study group and at least one selected comparison group. Programs will evaluate their operational processes and outcomes, be part of a cross-site evaluation study and will develop a replication manual.

The fully funded, public/private sector workplace managed care substance abuse prevention and early intervention program must already be in place for a minimum of 1 year and fully implemented for employees, if not all covered lives. The workplace must have a documented minimum of 250 employees at selected workplace study sites. This cooperative agreement program will assist SAMHSA/CSAP to identify effective components and strategies of these programs which serve to prevent and reduce substance abuse and enhance overall wellness of individual employees and their families. This information will promote the development of models and materials and the dissemination first to businesses and eventually to communities and States as they initiate new programs where none exist and assist those that do exist to improve their effectiveness.

The overall goal of this cooperative agreement program is to determine which public/private sector workplace managed care substance abuse prevention and early intervention programs are the most effective in reducing the incidence and prevalence of substance abuse and to disseminate these findings.

The two objectives in support of this goal are to:

1. Determine the nature (e.g., structure, organization, function, etc.) of WMC programs utilizing substance abuse prevention and early intervention efforts.

2. Provide a detailed description of the WMC programs; assess their strengths and weaknesses and their impact on the substance abuse of employees and their families (e.g., covered lives); and assess the quality and delivery of substance abuse prevention and early intervention.

Through funding this program, SAMHSA/CSAP anticipates gaining knowledge about the following global questions.

• Do substance abuse prevention and early intervention strategies and programs, applied within various managed care models prevent and reduce substance abuse for covered lives (employees and their families) over time?

• Does the prevalence and incidence of substance abuse differ among substance abuse prevention and early intervention models of managed care?

• Does the prevalence/incidence of substance abuse differ among substance abuse prevention and early intervention models within specific managed care and non-managed care models?

• What issues or policies related to gender, cultural, ethnic, age, race, educational, legal and/or linguistic variations need to be addressed to increase positive impacts of the program?

• *Priorities:* None

• Eligible Applicants: Applications may be submitted by domestic private

nonprofit and for-profit organizations such as businesses, Employee Assistance Programs (EAPs), health care service organizations, research institutes, universities, colleges, and hospitals, and by organizations, such as units of State or local government.

Substance abuse prevention and early intervention programs may be co-located with other managed care services or may be organizationally or geographically separate. If separate, linkages must be clearly described.

• Cooperative Agreements/Amounts: It is estimated that approximately $4 million will be available to support approximately 10–15 awards under this GFA in FY 97. It is anticipated that the average award will be in the $275,000 to $500,000 range. Actual funding levels will depend upon the availability of funds.

• Catalog of Federal Domestic Assistance Number: 93.230

• Program Contact: For programmatic or technical assistance, contact: Deborah M. Galvin, Ph.D., Center for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration, Parklawn, Room 13A–54,5600 Fishers Lane, Rockville, MD 20857, (301) 443–6780.

• Grants Management Contact: For business management assistance, contact: Mary Lou Dent, Division of Grants Management, OPS, Substance Abuse and Mental Health Services Administration, Rockwall II, Room 640, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–5702.

• Application Kits: Application kits are available from: National Clearinghouse for Alcohol and Drug Information, PO Box 2345, Rockville, MD 20847–2345, 1–800–729–6686; 1–800–487–4889 TDD, Via Internet: www.health.org (go into Forum Section of the web site, click on "CSAP FY 97 Grant Opportunities')

Visually impaired: Disk versions of the application may be requested.

5. Public Health System Reporting Requirements

The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements.

Application guidance materials will specify if a particular FY 1997 activity described above is/is not subject to the Public Health System Reporting Requirements.

6. PHS Non-Use of Tobacco Policy Statement

The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Specific application guidance materials may include more detailed guidance as to how a Center will implement SAMHSA's policy on promoting the non-use of tobacco.

7. Executive Order 12372

Applications submitted in response to all FY 1997 activities listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Office of Extramural Activities Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: February 24, 1997.

Richard Kopanda,

Executive Officer, SAMHSA

[FR Doc. 97–5236 Filed 3–3–97; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Technology Transfer Act of 1986

AGENCY: United States Geological Survey, Interior.

ACTION: Notice of proposed cooperative research and development agreement (CRADA) negotiations.

SUMMARY: The United States Geological Survey (USGS) is contemplating entering into a Cooperative Research and Development Agreement (CRADA) with the Electric Power Research Institute (EPRI) to generate reliable, accurate, and accessible quality information on major U.S. coal beds that will be mined during the next 20–30 years.

INQUIRIES: If any other parties are interested in similar activities with the USGS, please contact Dr. Robert B. Finkelman of the U.S. Geological Survey, Energy Resource Surveys Program, Mail Stop 956, Reston, Virginia 20192; telephone (703) 648–6412; fax (703) 648–6419; e-mail <rbf@usgs.gov>.

SUPPLEMENTARY INFORMATION: This notice is to meet the USGS requirement stipulated in the Survey Manual.

Dated: February 21, 1997.

P. Patrick Leahy,

Chief, Geologic Division.

[FR Doc. 97–5224 Filed 3–3–97; 8:45 am]

BILLING CODE 4310–31–M

National Park Service

Notice of Inventory Completion for Native American Human Remains From Kitsap County, WA, in the Possession of the Department of Anthropology, Central Washington University, Ellensburg, WA, and Associated Funerary Objects from Kitsap County, WA in the Possession of The Burke Museum, University of Washington, Seattle, WA

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of Native American human remains from Kitsap County, WA, in the possession of the Department of Anthropology, Central Washington University, Ellensburg, WA; and associated funerary objects from Kitsap County, WA in the possession of The Burke Museum, University of Washington, Seattle, WA.

A detailed assessment of the human remains was made by Central Washington University Department of Anthropology professional staff and of the associated funerary object by the Burke Museum professional staff. Both of these assessments were made in consultation with representatives of the Skokomish Indian Tribe.

In 1925, human remains representing one individual were recovered near Holly, Kitsap County, WA by Mr. Albert Pfundt on his property. In 1974, these human remains were transferred from the Burke Museum to the Department of Anthropology, Central Washington University. No known individuals were identified. The thirteen associated funerary objects include antler wedges and fragments, bone points, a harpoon valve, a harpoon point. These associated funerary objects were donated to the Burke Museum in 1942 by Mr. Albert Pfundt. According to the Burke Museum's accession ledger, all these objects were found with the human remains under the stump of a tree estimated to be 300–400 years old.

Anthropological evidence indicates continuous 2,000 year occupation of this part of Kitsap County, WA into the historic period, based on oral history and continuity of technology. Consultation evidence presented by representative of the Skokomish Indian Tribe indicate the Skokomish have occupied this area throughout this period.

Based on the above mentioned information, Central Washington University officials have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. The Burke Museum officials have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the thirteen objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, Central Washington University officials and The Burke Museum officials have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Skokomish Indian Tribe.

This notice has been sent to officials of the Skokomish Indian Tribe. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Steven Hackenberger, Chair, Department of Anthropology, Central Washington University, 400 E. 8th Ave., Ellensburg, WA 98926–7544; telephone: (509) 963–3201, fax (509) 963–3215; or Dr. James Nason, Chair of the repatriation committee, Burke Museum, Box 353010, University of Washington, Seattle, WA 98195, telephone (206) 543–9680 before April 3, 1997. Repatriation of the human remains and associated funerary objects to the Skokomish Indian Tribe may begin after that date if no additional claimants come forward.

Dated: February 26, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 97–5213 Filed 3–3–97; 8:45 am]

BILLING CODE 4310–70–F

Notice of Intent to Repatriate Cultural Items in the Possession of the Arizona State Museum, University of Arizona, Tucson, AZ

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3005 (a)(2), of the intent to repatriate cultural items in the possession of the Arizona State Museum, University of Arizona, Tucson, AZ, which meet the definition of "sacred object" under Section 2 of the Act.

The cultural items are two Hopi spirit friends or katsina masks worn in Katsina dances. The spirit friends are known as Niman and Heheya.

In 1929, the spirit friend Niman was donated to the Arizona State Museum by an anonymous donor. The museum's accession information states this spirit friend was collected from the Hopi Pueblos. In 1964, the spirit friend Heheya was donated to the Arizona State Museum by the Arizona Pioneers Historical Society. The cultural affiliation of these cultural items is clearly Hopi as documented in museum records and verified by the Katsinmomngwit (traditional religious leaders) of the Hopi Tribe. During consultation, the Katsinmomngwit and representatives of the Hopi Tribe identified these two katsina masks as specific ceremonial objects which are needed by traditional religious leaders for the practice of the Hopi religion by present-day adherents.

Based on the above-mentioned information, officials of the Arizona State Museum have determined that, pursuant to 25 U.S.C. 3001 (3)(C), these two cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Arizona State Museum have also determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these cultural items and the Hopi Tribe.

This notice has been sent to officials of the Hopi Tribe and the Pueblo of Zuni. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Nancy Odegaard, Acting Curator of Collections, Arizona State Museum, University of Arizona, Tucson, AZ 85721, telephone (520) 621–6314 before April 3, 1997. Repatriation of these objects to the Hopi Tribe may begin after that date if no additional claimants come forward.

Dated: February 24, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist,

Manager, Archeology and Ethnography Program.

[FR Doc. 97–5215 Filed 3–3–97; 8:45 am]

BILLING CODE BILLING CODE 4310–70–F

Notice of Intent to Repatriate Cultural Items from Nebraska and South Dakota in the Possession of the Fruitlands Museums, Harvard, MA

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3005 (a)(2), of the intent to repatriate cultural items in the possession of the Fruitlands Museums, Harvard, MA, which meet the definitions of "unassociated funerary object," "sacred object" and "object of cultural patrimony" under Section 2 of the Act.

The objects include seven strands of beads, eleven pipestone pipes, six pipe bags, two pipe tampers, four rattles, two eagle bone whistles, and one webbed shield.

The seven strands of beads are made up of various combinations of shell disks, bone tubes, and catlinite and glass beads. The seven strands of beads were purchased by the museum from Henry T. Neuman between 1927 and 1932. Neuman labeled the strands of beads as "Sioux-Nebraska." Museum staff identify the seven strands of beads as Santee Sioux and the representatives from Cheyenne River Sioux tribe agree.

The eleven pipes are represented by ten "L" and "T" shaped catlinite pipe bowls and nine wooden stems. Nine of these pipes were purchased by the museum from Henry T. Neuman between 1927 and 1932. Neuman labeled the nine pipes as "Sioux-Nebraska." Museum staff identify the nine pipes acquired from Neuman as Santee Sioux and the representatives from Cheyenne River Sioux tribe agree. No collection information is available for the other two pipes, but stylistic analysis confirms their identification as being of Lakota origin.

The six pipe bags are made of leather and decorated with glass beads and porcupine quill work. Museum records indicate that Henry T. Neuman sold Sioux bags and tobacco bags, however, the records are too vague to identify exactly those specific bags. Although no definitive collection information is available, stylistic analysis confirms the identification of these six pipe bags as being of Lakota origin.

The two pipe tampers consist of carved wooden sticks. One of the tampers has a horse head carved on one end and is decorated with beads and tin cones on the other. The two pipe tampers were purchased by the museum from Henry T. Neuman between 1927 and 1932. Neuman labeled the pipe tampers as "Sioux-Nebraska." Museum staff identify the pipe tampers as Santee Sioux and the representatives from Cheyenne River Sioux tribe agree.

The four rattles are made of wood and rawhide. Collection information indicates these rattles were sold to the museum by Henry T. Neuman between 1928–1929. Stylistic analysis confirms their identification as being of Lakota origin.

The two whistles consist of an eagle humerus with proximal and anterior ends cut off. One whistle bares a red paint design. The other whistle has a mescal bean and a pink feather attached. In 1929, the latter whistle was purchased by the museum from Henry T. Neuman, who labeled that whistle as "Sioux." No collection information is available for the other whistle, but stylistic analysis confirms its identification as being of Lakota origin.

The shield consists of rawhide webbing decorated with golden eagle feathers, locks of horse hair, rings of gray fur, five clusters of smaller feathers, and two wooden piercing implements. This shield was sold to the museum in 1933 as a "ceremonial shield" by the Plume Trading Company. Records indicate representatives of the Rosebud Sioux Tribe approached the museum to claim the shield in 1989. Stylistic analysis of the webbed shield confirms its identification as being of Lakota origin.

Pteincila cannumpa awayanka Arvol Looking Horse has identified the eleven pipestone pipes, six pipe bags, two pipe tampers, four rattles, two eagle bone whistles, and one webbed shield as specific ceremonial objects needed by traditional Lakota religious leaders for the practice of traditional Lakota religion by present-day adherents. A traditional religious leader from the Cheyenne River Sioux Tribe states that the eleven pipes, six pipe bags, two pipe tampers, four rattles, two eagle bone whistles, and one webbed shield spoke to him and asked to be brought back to the Lakota Nation. The representative of the Cheyenne River Sioux Tribe states that the eleven pipestone pipes, six pipe bags, two pipe tampers, four rattles, two eagle bone whistles, and one webbed shield were not and are not considered "personal property" but belong to the Lakota People as a whole. The Lakota People currently comprise the Cheyenne River Sioux Tribe, Rosebud Sioux Tribe, Standing Rock Sioux Tribe, and Oglala Sioux Tribe.

Officials of the Fruitlands Museum believe that the Massachusetts Uniform Commercial Code gives the museum good title to all objects in its collection if they were obtained through good faith purchases, and that all of the above-mentioned items were obtained through good faith purchases. However, museum officials also believe that the spirit of the Native American Graves Protection and Repatriation Act takes precedence over concerns for title. Further, it is the opinion of officials of the Fruitlands Museum that many of these items could have been made for sale, however, their purchase from Henry T. Neuman, a known grave robber and pot hunter, make the circumstances of collection more likely to have been from cultural contexts.

Based on the above-mentioned information, officials of the Fruitlands Museum have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the seven strands of beads are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Officials of the Fruitlands Museum have also determined that, pursuant to 25 U.S.C. 3001 (3)(C), the eleven pipestone pipes, six pipe bags, two pipe tampers, four rattles, two eagle bone whistles, and one webbed shield are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Further, officials of the Fruitlands Museum have determined that, pursuant to 25 U.S.C. 3001 (3)(D), the eleven pipestone pipes, six pipe bags, two pipe tampers, four rattles, two eagle bone whistles, and one webbed shield have ongoing historical, traditional, or cultural importance central to the Lakota People as a whole and could not have been alienated, appropriated, or conveyed by any individual regardless of whether or not the individual is a member of the tribe.

Lastly, officials of the Fruitlands Museums have also determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between the seven strands of beads, nine pipestone pipes, two pipe tampers, and one eagle bone whistle and the Santee Sioux Tribe. Officials of the Fruitlands Museums have also determined that there is a relationship of shared group identify which can be reasonably traced between two pipestone pipes, six pipe bags, four rattles, one eagle bone whistles, and one webbed shield and the Cheyenne River Sioux Tribe, Rosebud Sioux Tribe, Standing Rock Sioux Tribe, and the Oglala Sioux Tribe.

This notice has been sent to officials of the Cheyenne River Sioux Tribe, Rosebud Sioux Tribe, Santee Sioux Tribe, Standing Rock Sioux Tribe, and Oglala Sioux Tribe. Any lineal descendant or Indian tribe that believes itself to be culturally affiliated with these human remains should contact Michael A. Volmar, Curator, Fruitlands Museum, Harvard, MA 01451, phone: (508) 456–3924, before April 3, 1997. Repatriation of the seven strands of beads, nine pipestone pipes, two pipe tampers, and one eagle bone whistle to the Santee Sioux Tribe may begin after that date if no additional claimants come forward. Repatriation of the two pipestone pipes, six pipe bags, four rattles, one eagle bone whistles, and one webbed shield to the Cheyenne River Sioux Tribe, Rosebud Sioux Tribe, Standing Rock Sioux Tribe, and Oglala Sioux Tribe may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the determinations within this notice.

Dated: February 26, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 97–5212 Filed 3–3–97; 8:45 am]

BILLING CODE 4310–70–F

Notice of Inventory Completion for Native American Human Remains From Mummy Island Cave, AK, in the Possession of the University of Alaska Museum, Fairbanks, AK

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003(d), of the completion of an inventory of human remains in the possession of the University of Alaska Museum, Fairbanks, AK.

A detailed assessment of the human remains was made by University of Alaska Museum professional staff in consultation with representatives of the Chugach Heritage Foundation on behalf of the Native Village of Eyak.

In 1964, human remains representing one individual were recovered from a cave on Mummy Island located at the mouth of Orca Inlet near Cordova, AK. There is no further information in the museum's records regarding the collection of this individual. The human remains were donated by Bobby Benson and given to Dr. Ivar Skarland of the Anthropology Department at the University of Alaska, Fairbanks. No known individual was identified. No associated funerary objects are present.

Historical documents and archeological evidence indicate the caves on Mummy Island are traditional burial areas of the Native Village of Eyak based on manner of internment and associated funerary objects. Oral tradition presented by the representatives of the Chugach Heritage Foundation also states Mummy Island is a traditional burial area.

Based on the above mentioned information, officials of the University of Alaska Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the University of Alaska Museum have also determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Chugach Heritage Foundation on behalf of the Native Village of Eyak.

This notice has been sent to officials of the Chugach Heritage Foundation and the Native Village of Eyak. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Gary Selinger, Special Projects Manager, University of Alaska Museum, 907 Yukon Drive, Fairbanks, AK 99775–1200; telephone: (907) 474–6117, before April 3, 1997. Repatriation of the human remains to the Chugach Heritage Foundation on behalf of the Native Village of Eyak may begin after that date if no additional claimants come forward.

Dated: February 24, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 97–5214 Filed 3–3–97; 8:45 am]

BILLING CODE 4310–70–F

Notice of Inventory Completion for Native American Human Remains From the Area of Teller, AK, in the Possession of the University of Alaska Museum, Fairbanks, AK

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of human remains from the area of Teller, AK, in the possession of University of Alaska Museum, Fairbanks, AK.

A detailed assessment of the human remains was made by University of Alaska Museum professional staff in consultation with representatives of the Native Village of Teller and the Bering Straits Foundation.

At an unknown date, human remains representing three individuals were recovered from unknown sites in the Teller, AK area by unknown individual(s). The human remains were donated to the Anthropology Department at the University of Alaska, Fairbanks, and accessioned by the University Museum in 1993. No known individuals were identified. No associated funerary objects are present.

Archeological and ethnographic evidence indicates the general region of Teller, AK, shows a continuity of cultural occupation from around 900 A.D. to the present. Oral history presented by representatives of the Native Village of Teller supports this cultural continuity between this region and the present-day Native Village of Teller. Oral history evidence provided by Teller elders says that this area was used for Teller burials.

Based on the above mentioned information, officials of the University of Alaska Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of three individuals of Native American ancestry. Officials of the University of Alaska Museum have also determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Native Village of Teller.

This notice has been sent to officials of the Native Village of Teller and the Bering Straits Foundation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Gary Selinger, Special Projects Manager, University of Alaska Museum, 907 Yukon Drive, Fairbanks, AK 99775–1200; telephone: (907) 474–6117, before April 3, 1997. Repatriation of the human remains to the Native Village of Teller may begin after that date if no additional claimants come forward.

Dated: February 24, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 97–5216 Filed 3–3–97; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF JUSTICE

Civil Rights Division

Office of Special Counsel for Immigration Related Unfair Employment Practices; Immigration Related Employment Discrimination Public Education Grants

AGENCY: Office of Special Counsel for Immigration Related Unfair

Employment practices, Civil Rights Division, U.S. Department of Justice.

ACTION: Notice of availability of funds and solicitation for grant applications.

SUMMARY: The Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) announces the availability of funds for grants to conduct public education programs about the rights afforded potential victims of employment discrimination and the responsibilities of employers under the antidiscrimination provisions of the Immigration and Nationality Act (INA), 8 U.S.C. 1324b.

It is anticipated that a number of grants will be competitively awarded to applicants who can demonstrate a capacity to design and successfully implement public education campaigns to combat immigration-related employment discrimination. Grants will range in size from $50,000 to $150,000.

OSC will accept proposals from applicants who have access to potential victims of discrimination or whose experience qualifies them to educate employers about the antidiscrimination provisions of INA. OSC welcomes proposals from diverse nonprofit organizations such as local, regional or national ethnic and immigrants' rights advocacy organizations, trade associations, industry groups, professional organizations, or other nonprofit entities providing information services to potential victims of discrimination and/or employers.

APPLICATION DUE DATE: May 5, 1997.

FOR FURTHER INFORMATION CONTACT: Patita McEvoy, Public Affairs Specialist, Office of Special Counsel for Immigration Related Unfair Employment Practices, 1425 New York Ave., NW., Suite 9000, P.O. Box 27728, Washington, DC 20038–7728. Tel. (202) 616–5594, or (202) 616–5525 (TDD for the hearing impaired).

SUPPLEMENTARY INFORMATION: The Office of Special Counsel for Immigration Related Unfair Employment Practices of the Civil Rights Division of the Department of Justice announces the availability of funds to conduct public education programs concerning the antidiscrimination provisions of INA. Funds will be awarded to selected applicants who propose cost-effective ways of educating employers and/or members of the protected class, or to those who can fill a particular need not currently being met.

Background

On November 6, 1986, President Reagan signed into law the Immigration Reform and Control Act of 1986 (IRCA), Public Law 99–603, 8 U.S.C. 1324b, *et seq.*, which amended the INA. Additional provisions were signed into law by President Bush in the Immigration Act (IMMACT 90) on November 29, 1990. IRCA and subsequently, IMMACT 90, makes hiring aliens without work authorization unlawful, and requires employers to verify the identity and work authorization of all new employees. Employers who violate this law are subject to sanctions, including fines and possible criminal prosecution.

During the debate on IRCA, Congress foresaw the possibility that employers, fearful of sanctions, would refuse employment to individuals simply because they looked or sounded foreign. Consequently, Congress enacted Section 102 of IRCA, an antidiscrimination provision. Section 102 prohibits employers of four or more employees from discriminating on the basis of citizenship status or national origin in hiring, firing, recruitment or referral for a fee, and prohibits employers from engaging in document abuse in the employment eligibility verification process.

Citizens and certain classes of work authorized individuals are protected from citizenship status discrimination. Protected non-citizens include permanent residents, temporary residents under the 1986 amnesty, the Special Agricultural Workers (SAWs) or the Replenishment Agricultural Workers (RAWs) programs, and refugees and asylees who apply for naturalization within six months of being eligible to do so. Citizens and all work authorized individuals are protected from discrimination on the basis of national origin. However, this prohibition applies only to employers with four to fourteen employees. National origin discrimination complaints against employers with fifteen or more employees remain under the jurisdiction of the Equal Employment Opportunity Commission pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, *et seq.*

In addition, under the document abuse provision of the law, employers must accept all forms of work authorization and proof of identity allowed by the Immigration and Naturalization Service (INS) for completion of the Employment Eligibility Verification (I–9) Form. Employers may not prefer or require one form of documentation over another for hiring purposes. Requiring more or specific documents to prove identity and work authorization may constitute document abuse.

On October 1, 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). IIRIRA will expand the existing electronic employment eligibility pilot programs being carried out by the INS, and will reduce the number of documents that employers can accept to verify an individual's work eligibility. These changes are expected to take place October 1, 1997.

OSC is responsible for receiving and investigating discrimination charges and, when appropriate, filing complaints with a specially designated administrative tribunal. OSC also initiates independent investigations of possible Section 102 violations.

While OSC has established a record of vigorous enforcement, studies by the U.S. General Accounting Office and other sources have shown that there is an extensive lack of knowledge on the part of protected individuals and employers about the antid scrimination provisions. Enforcement cannot be effective if potential victims of discrimination are not aware of their rights. Moreover, discrimination can never be eradicated so long as employers are not aware of their responsibilities.

Purpose

OSC seeks to educate both potential victims of discrimination about their rights and employers about their responsibilities under the antidiscrimination provisions of INA. Because previous grantees have developed a wealth of materials (*e.g.*, brochures, posters, booklets, information packets, and videos) to educate these groups, OSC has determined that the focus of the program should be on the actual delivery of these materials to educate further both potential victims and employers. More specifically, in keeping with the purpose of the grant program, OSC seeks proposals that will use *existing materials* effectively to educate large numbers of workers or employers about exercising their rights or fulfilling their obligations under the antidiscrimination provisions.

Program Description

The program is designed to develop and implement cost effective approaches to educate potential victims of employment discrimination about their rights and to educate employers about their responsibilities under INA's antidiscrimination provisions. Applications may propose to educate potential victims only, employers only, or both in a single campaign. Program budgets must include the travel, lodging and other expenses necessary for at least one, but not more than two, program staff members to attend the mandatory OSC grantee training (2 days) held in Washington, DC at the beginning of the grant period (late Autumn). Proposals should outline the following key elements of the program:

Part I: Targeted Population

The educational efforts under the grant should be directed to (1) work authorized non-citizens who are protected individuals, since this group is especially vulnerable to employment discrimination; (2) those citizens who are most likely to become victims of employment discrimination; and/or to (3) employers. The proposals should define the characteristics of the work authorized population or the employer group(s) targeted for the educational campaign, and the applicant's qualifications to reach credibly and effectively large segments of the campaign targets.

The proposals should also detail the reasons for targeting each group of protected individuals or employers by describing particular needs or other factors to support the selection. In defining the campaign targets and supporting the reasons for the selection, applicants may use studies, surveys, or any other sources of information of generally accepted reliability.

Part II: Campaign Strategy

We encourage applicants to devise effective and creative means of public education and information dissemination that are specifically designed to reach the widest possible targeted audience. Those applicants proposing educational campaigns addressing potential victims of discrimination should keep in mind that some of the traditional methods of public communication may be less than optimal for educating members of national or linguistic groups that have limited community-based support and communication networks.

Some grantees who are implementing citizenship campaigns, have, in the past, combined those efforts and resources with the INA antidiscrimination education campaigns in order to maximize the scope and breadth of the project and to reach a larger number of individuals in the targeted population. If an applicant proposes to combine these efforts, please discuss how the programs will interact and how the budgets will be administered.

Proposals should discuss the components of the campaign strategy, detail the reasons supporting the choice of each component, and explain how each component will effectively contribute to the overall objective of cost-effective dissemination of useful and accurate information to a wide audience of protected individuals or employers. Discussions of the campaign strategies and supporting rationale should be clear, concise, and based on sound evidence and reasoning.

Since there presently exists a wealth of materials for use in educating the public, proposals should include in their budgets the costs for distribution of materials received from OSC or from current/past OSC grantees.

To the extent that applicants believe the development of original materials particularly suited to their campaign is necessary, their proposal should articulate in detail the circumstances requiring the development of such materials. All such materials must be approved by OSC to ensure legal accuracy and proper emphasis prior to production. It should be noted that proposed revisions/translations of OSC approved materials must also be submitted for clearance. All information distributed should also include mention of the OSC as a source of assistance, information and action, and the correct address and telephone numbers of the OSC (including the toll-free and TDD toll-free numbers for the hearing impaired).

Part III: Evaluation of the Strategy

One of the central goals of this program is determining what public education strategies are most effective and thus, should be included in future public education efforts Therefore, it is crucial that the methods of evaluating the campaign strategy and public education materials and their results be carefully detailed. A full evaluation of a project's effectiveness is due within 60 days of the conclusion of a campaign.

Selection Criteria

The final selection of grantees for award will be made by the Special Counsel for Immigration Related Unfair Employment Practices.

Proposals will be submitted to a peer review panel. OSC anticipates seeking assistance from sources with specialized knowledge in the areas of employment and immigration law, as well as in evaluating proposals, including the agencies that are members of the Antidiscrimination Outreach Task Force: the Department of Labor, the Equal Employment Opportunity Commission, the Small Business Administration, and the Immigration and Naturalization Service. Each panelist will evaluate proposals for effectiveness and efficiency with emphasis on the various factors enumerated below. The panel's results are advisory in nature and not binding on the Special Counsel. Letters of support, endorsement, or recommendation will not be accepted or considered.

In determining which applications to fund, OSC will consider the following (based on a one-hundred point scale):

1. Program Design (50 points)

Sound program design and cost-effective strategies for educating the targeted population are imperative.

Consequently, areas that will be closely examined include the following:

a. Evidence of in-depth knowledge of the goals and objectives of the project. (15 points)

b. Selection and definition of the target group(s) for the campaign, and the factors that support the selection, including special needs, and the applicant's qualifications to reach effectively the target. (10 points)

c. A cost effective campaign strategy for educating targeted employers and/or members of the protected class, with a justification for the choice of strategy. (15 points)

d. The evaluation methods proposed by the applicant to measure the effectiveness of the campaign and their precision in indicating to what degree the campaign is successful. (10 points)

2. Administrative Capability (20 points)

Proposals will be rated in terms of the capability of the applicant to implement the targeting, public education and evaluation components of the campaign:

a. Evidence of proven ability to provide high quality results. (10 points)

b. Evidence that the applicant can implement the campaign, and complete the evaluation component within the time lines provided.

Note: OSC's experience during previous grant cycles has shown that a number of applicants choose to apply as a consortium of individual entities; or, if applying individually, propose the use of sub-contractors to undertake certain limited functions. It is essential that these applicants demonstrate the proven management capability and experience to ensure that, as lead agency, they will be directly accountable for the successful implementation, completion, and evaluation of the project. (10 points)

3. Staff Capability (10 points)

Applications will be evaluated in terms of the degree to which:

a. The duties outlined for grant-funded positions appear appropriate to the work that will be conducted under the award. (5 points)

b. The qualifications of the grant-funded positions appear to match the requirements of these positions. (5 points)

Note: If the grant project manager or other member of the professional staff is to be hired later as part of the grant, or should there be any change in professional staff during the grant period, hiring is subject to review and approval by OSC at that time.

4. Previous Experience (20 points)

The proposals will be evaluated on the degree to which the applicant demonstrates that it has successfully carried out programs or work of a similar nature in the past.

Eligible Applicants

This grant competition is open to nonprofit organizations that serve potential victims of discrimination and/or employers.

Grant Period and Award Amount

It is anticipated that several grants will be awarded and will range in size from $50,000 to $150,000.

During evaluation, the panel will closely examine those proposals that guarantee maximum exposure and penetration in the employer or potential victims target populations. All things being equal, a campaign designed to reach a very large number of employers (or potential victims) in the state of Texas might score higher than a campaign designed to reach a more limited number of employers (or potential victims) nationwide.

Publication of this announcement does not require OSC to award any specific number of grants, or to obligate all or any part of available funds. The period of performance will be twelve months from the date of the grant award, in most cases beginning October 1, 1997.

Application Deadline

All applications must be received by 6:00 p.m. EDT, May 5, 1997, at the Office of Special Counsel for Immigration Related Unfair Employment Practices, 1425 New York Ave., NW., Suite 9000, P.O. Box 27728, Washington, DC 20038–7728. Applications submitted via facsimile machine will not be accepted or considered.

Application Requirements

Applicants should submit an original and two (2) copies of their completed proposal by the deadline established above. All submissions must contain the following items in the order listed below:

1. A completed and signed Application for Federal Assistance (Standard Form 424) and Budget Information (Standard Form 424A).

2. OJP Form 4061/6 (Certification Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements).

3. A Standard Form LLL (Disclosure Form to Report Lobbying).

4. An abstract of the full proposal, not to exceed one page.

5. A program narrative of not more than fifteen (15) double-spaced typed pages which include the following:

a. A clear statement describing the approach and strategy to be utilized to complete the tasks identified in the program description;

b. A clear statement of the proposed goals and objectives, including a listing of the major events, activities, products and timetables for completion;

c. The proposed staffing plan (NOTE: If the grant project manager or other professional staff member is to be hired later as part of the grant, or should there be a change in professional staff during the grant period, hiring is subject to review and approval by OSC at that time); and

d. Description of how the project will be evaluated.

6. A proposed budget outlining all direct and indirect costs for personnel, fringe benefits, travel, equipment, supplies, subcontracts, and a short narrative justification of each budgeted line item cost. If an indirect cost rate is used in the budget, then a copy of a current fully executed agreement between the applicant and the cognizant Federal agency must accompany the budget.

Note: Program budgets must include the travel, lodging and other expenses necessary for at least one, but not more than two, program staff members to attend the mandatory OSC grantee training (2 days) held in Washington, DC at the beginning of the grant period (late Autumn).

7. OJP Form 7120/1 (Accounting System and Financial Capability Questionnaire).

8. Copies of resumes for the professional staff proposed in the budget.

9. Detailed technical materials that support or supplement the description of the proposed effort should be included in the appendix.

In order to facilitate handling, please do not use covers, binders or tabs.

Application forms may be obtained by writing or telephoning: Office of Special Counsel for Immigration Related Unfair Employment Practices, 1425 New York Ave., NW., Suite 9000, P.O. Box 27728, Washington, DC 20038–7728. Tel (202) 616–5594, or (202) 616–5525 (TDD for the hearing impaired).

Dated: February 27, 1997.

James S. Angus,

Acting Special Counsel, Office of Special Counsel for Immigration, Related Unfair Employment Practices.

[FR Doc. 97–5304 Filed 3–3–97; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980

In accordance with Departmental policy, 28 C.F.R. § 50.7, and 42 U.S.C. § 9622(d)(2), notice is hereby given that on February 12, 1997, a Consent Decree was lodged in *United States* v. *James Maxwell, et al.*, Civil Action No. 97–WY–286–AJ with the United States District Court for the District of Colorado.

The Complaint in this case was filed under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9606 and 9607, with respect to Clear Creek Superfund Site located in Gilpin and Clear Creek Counties, Colorado against James Maxwell, Argo Town, U.S.A., Inc., and Argo Tunnel Recovery Co. Pursuant to the terms of the Consent Decree, which resolves claims under the above-mentioned statute and under Section 7003 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6973, the settling defendants will provide the United States with property upon which a wastewater treatment facility will be built.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *James Maxwell, et al.*, DOJ Ref. No. 90–11–3–1553. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA.

The proposed Consent Decree may be examined at the office of the United States Attorney, District of Colorado, 1961 Stout Street, Suite 1100, Denver, Colorado. Copies of the Consent Decree may also be examined and obtained by mail at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005 (202–624–0892) and the offices of the Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202. When requesting a copy by mail, please enclose a check in the amount of $12.25 (twenty-five cents per page reproduction costs) payable to the "Consent Decree Library."

Joel M. Gross,

Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 97–5247 Filed 3–3–97; 8:45 am]

BILLING CODE 4410–15–M

Antitrust Division

United States v. Delta Dental of Rhode Island; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Section 16 (b) through (h), that a proposed Final Judgment, a Stipulation, and a Competitive Impact Statement have been filed with the United States District Court for the District of Rhode Island in *United States of America* v. *Delta Dental of Rhode Island*, Civil Action No. 96–113P.

The Complaint in the case alleges that Delta Dental of Rhode Island ("Delta") entered into so-called "most favored nation" agreements with its panel dentists in unreasonable restraint of trade, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. Delta, a broad-panel plan contracting with over 90% of Rhode Island's dentists, required that participating dentists offer no lower price to competing dental plans. The agreements effectively restricted the willingness of panel dentists to discount fees for dental care and blocked competition from narrow-panel, lower cost dental plans.

The proposed Final Judgment eliminates Delta's most favored nation clause and enjoins Delta from engaging in other actions that would limit future discounting by its participating dentists.

Public comment on the proposed Final Judgment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to Gail Kursh, Chief; Health Care Task Force; United States Department of Justice; Antitrust Division; Liberty Place; 325 7th Street, NW., Room 404, Washington, DC 20530 (202/307–5799).

Rebecca P. Dick,

Deputy Director of Operations, Antitrust Division, United States Department of Justice.

United States District Court for the District of Rhode Island

[Civil Action No. 96–113P]

United States of America, Plaintiff, vs. Delta Dental of Rhode Island, Defendant.

Stipulation

It is stipulated by and between the undersigned parties, their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over both of the parties, and venue of this action is proper in the District of Rhode Island.

2. The parties consent that a Final Judgment in the form attached may be filed and entered by the Court, upon the motion of either party or upon the Court's own action, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that Plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on Defendant any by filing that notice with the Court.

3. If Plaintiff withdraws its consent, or if the proposed Final Judgment is not entered pursuant to the terms of this Stipulation, this Stipulation shall be of no effect whatsoever, and the making of this Stipulation shall be without prejudice to either party in this or in any other proceeding.

4. Defendant agrees to be bound by the provisions of the proposed Final Judgment pending its approval by the Court.

Dated: _____.

For Plaintiff

Joel I. Klein,
Acting Assistant Attorney General.
A. Douglas Melamed,
Deputy Assistant Attorney General.
Rebecca P. Dick,
Deputy Director, Office of Operations.
Gail Kursh,
Chief, Health Care Task Force.
David C. Jordan,
Assistant Chief, Health Care Task Force, Antitrust Division, Department of Justice, Washington, D.C. 20530.

For Defendant

William R. Landry, #494,
Blish & Cavanagh, Commerce Center, 30 Exchange Terrace, Providence, R.I. 02903–1765, (401) 831–8900.
Steven Kramer,
William E. Berlin,
Mark J. Botti,
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Richard S. Martin,
Attorneys, Antitrust Division, Department of Justice, 325 7th Street, N.W., Washington, D.C. 20530, (202) 307–0997.
Sheldon Whitehouse,
United States Attorney, District of Rhode Island.
By: Anthony DiGioia,
Ass't. U.S. Attorney, 10 Dorrance Street, Providence, R.I. 02903, (401) 528–5477.
William G. Kopit,
Espstein Becker & Green, 1227 25th Street, N.W., Washington, D.C. 20037, (202) 861–9000.

United States District Court for the District of Rhode Island

[Civil Action No. 96–113P]

United States of America, Plaintiff, vs. Delta Dental of Rhode Island, Defendant.

Final Judgment

Plaintiff, United States of America, filed its Complaint on February 29, 1996. Plaintiff and Defendant, by their respective attorneys, have consented to the entry of this Final Judgment without trial or final adjudication of any issue of fact or law. This Final Judgment shall not be evidence against or an admission by any party of any issue of fact or law, nor a determination that any violation of law has occurred. Therefore, before the taking of any trial testimony and without trial of any issue of fact or law, and upon consent of the parties, it is

Ordered, adjudged, and decreed, as follows:

I. Jurisdiction

This Court has jurisdiction over the subject matter of this action and over each of the consenting parties. The Complaint states a claim upon which relief may be granted against Delta under Section 1 of the Sherman Act, 15 U.S.C. 1.

II. Definitions

As used herein, the term:

(A) "Defendant" or "Delta" means Delta Dental of Rhode Island.

(B) "Participating Dentist's Agreement" means Delta's agreement with dentists for the provision of dental services to Delta's subscribers, including Delta's Rules and Regulations referenced in the agreement, and all amendments and additions to any such agreement.

(C) "Participating Dentist" means any dentist who has agreed to comply with the terms of the Participating Dentist's Agreement.

(D) "Most Favored Nation Clause" means:

(1) paragraph 10 of Delta's Rules and Regulations, sometimes characterized as Delta's "Prudent Buyer Policy," pursuant to which:

"Delta Dental reserves the right to limit reimbursements to dentists to such levels as such dentists have agreed to accept as reimbursement from other non-governmental dental benefits reimbursement programs;" or

(2) any contractual provision, policy, or practice which requires a dentist to charge Delta no more than the lowest fee charged by that dentist to any non-Delta plan or patient.

(E) "Usual and customary fees" means the fees for services and material that dentists usually charge, before any discounting, to their patients.

III. Applicability

This Final Judgment applies to Delta and to its successors and assigns, and to all other persons (including Participating Dentists) in active concert or participation with any of them, who have received actual notice of the Final Judgment by personal service or otherwise.

IV. Prohibited Conduct

Delta is enjoined and restrained from:

(A) maintaining, adopting, or enforcing any Most Favored Nation Clause or similar provision in any Participating Dentist's Agreement, or by any other means or methods;

(B) maintaining, adopting, or enforcing any policy or practice varying Delta's payments to, or other treatment of, any dentist because the dentist charges any non-Delta patient or plan a fee lower than the fee the dentist charges Delta;

(C) taking any action to discourage any dentist from participating in any non-Delta plan or from offering or charging to any non-Delta patient, or any non-Delta plan, any fee lower than that paid to the dentist by Delta; and

(D) monitoring, auditing, or obtaining from any dentist the fees a particular dentist charges any non-Delta patient or any non-Delta plan, except as provided in Section V.

V. Permitted Activities

Nothing herein shall be construed so as to preclude Delta from:

(A) establishing preferred provider networks or other forms of limited panels of providers, including discounted fee panels, recruiting dentists who are participating with other dental plans in similar panels, and negotiating bi-lateral fee arrangement with such dentists, provided that such activity does not violate any provision of Section IV;

(B) establishing provider reimbursement levels as may be reasonable and necessary to respond to market conditions and having different reimbursement levels for different categories or panels of providers, provided that Delta's criteria for differentiation in reimbursement among categories or panels of dentists are not based on their participation in other dental plans, on fees those dentists offer other dental plans or persons, or on fees those dentists agree upon with other dental plans or persons; and

(C) collecting through otherwise lawful means, including use of a survey sent to all Participating Dentists, (1) Participating Dentists' usual and customary fees for each applicable service, provided that such information is collected uniformly from all Participating Dentists; and (2) data and information, including reimbursement levels, regarding other dental plans.

VI. Nullification

Delta's Most Favored Nation Clause shall be null and void and Delta shall impose no obligation arising from it on any Participating Dentist. Within 90 days of entry of this Final Judgment, Delta shall disseminate to each Delta Participating Dentist revised Rules and Regulations, referenced in the Participating Dentist's Agreement, that omit the Most Favored Nation Clause. Delta shall eliminate the Most Favored Nation Clause from all Participating Dentist's Agreements entered into after entry of this Final Judgment.

VII. Compliance Measures

The Delta shall:

(A) distribute, within 60 days of the entry of this Final Judgment, a copy of this Final Judgment to: (1) all Delta officers and directors; and (2) all Delta employees who have any responsibility for approving, disapproving, monitoring, recommending, or implementing any provisions in agreements with Participating Dentists.

(B) distribute in a timely manner a copy of this Final Judgment to any officer, director, or employee who succeeds to a position described in Section VII(A) (1) or (2);

(C) obtain from each present or future officer, director, or employee designated in Section VII(A) (1) or (2), within 60 days of entry of this Final Judgment or of the Person's succession to a designated position, a written certification that he or she: (1) has read, understands, and agrees to abide by the terms of this Final Judgment; and (2) has been advised and understands that his or her failure to comply with this Final Judgment may result in conviction for criminal contempt of court;

(D) maintain a record of persons to whom the Final Judgment has been distributed and from whom, pursuant to Section VII(C), the certification has been obtained;

(E) distribute, within 60 days of the entry of this Final Judgment, a copy of the attached letter, which has been approved by the Antitrust Division, by first-class mail to all currently Participating Dentists; and

(F) report to the Plaintiff any violation of the Final Judgment.

VIII. Certification

(A) Within 100 days of the entry of this Final Judgment, Delta shall certify to the Plaintiff whether it has: (1) disseminated revised Rules and Regulations pursuant to Section VI; (2) distributed the Final Judgment in accordance with Section VII(A); (3) obtained certifications in accordance with Section VII(C); and (4) distributed copies of the attached letter in accordance with Section VII(E).

(B) For ten years after the entry of this Final Judgment, on or before its anniversary date, Delta shall file with the Plaintiff an annual Declaration as to the fact and manner of its compliance with the provisions of Sections IV, V, VI, and VII.

IX. Plaintiff's Access to Information

(A) to determine or secure compliance with this Final Judgment, duly authorized representatives of the Plaintiff, upon written request of the Assistant Attorney General in charge of the Antitrust Division and on reasonable notice to Delta made to its principal office, shall be permitted, subject to any legally recognized privilege:

(1) Access during Delta's office hours to inspect and copy all documents in the possession or under the control of Delta, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of Delta and without restraint or interference from it, to interview officers, employees or agents of Delta, who may have Delta's counsel and/or their own counsel present, regarding such matters.

(B) Upon the written request of the Assistant Attorney General in charge of the Antitrust Division made to Delta's principal office, Delta shall submit such written reports, under oath if requested, relating to any matters contained in this Final Judgment as may be reasonably requested, subject to any legally recognized privilege.

(C) Delta shall have the right to be represented by counsel in any process under this Section.

(D) No information or documents obtained by the means provided in Section IX shall be divulged by the Plaintiff to any person other than duly authorized representatives of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(E) If at the time information or documents are furnished by Delta to Plaintiff, Delta represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Delta marks each pertinent page of such material, "subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days' notice shall be given by Plaintiff to Delta prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Delta is not a party.

(F) Nothing in this Final Judgment prohibits the Plaintiff from using any other investigatory method authorized by law.

X. Further Elements of the Final Judgment

(A) This Final Judgment shall expire ten years from the date of its entry.

(B) Jurisdiction is retained by this Court for the purpose of enabling either of the parties to this Final Judgment, but no other person, to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment; to modify or terminate any of its provisions, based on changed circumstances of fact or law warranting such action; to enforce compliance; and to punish violations of its provisions.

(C) Entry of this Final Judgment is in the public interest.

Dated: _____.

_____

United States District Judge.

Attachment

Attachment Referred to in Section VII(E)

As you may know, Delta Dental has been involved in a lawsuit with the United States Department of Justice in the United States District Court of Rhode Island regarding Rule 10 of Delta's Rules and Regulations for Dentists, which is sometimes called Delta's "Prudent Buyer" policy. Rule 10 has allowed Delta Dental to limit its payments to dentists to the lowest level the dentist had agreed to accept from any other non-governmental plan or from any uninsured patient.

Delta Dental and the Department of Justice have agreed to a consent decree that has been entered as an order of the District Court. As part of this consent decree, Delta has agreed to eliminate Rule 10 if its Rules and Regulations.

The consent decree declares Rule 10 null and void and prohibits Delta from varying its payments to, or other treatment of, any dentist because the dentist charges any non-Delta patient or plan a fee lower than the fee the dentists charges Delta. Within the next thirty (30) days, we will forward to you a superseding set of Rules and Regulations that omits Rule 10.

Sincerely yours,

_____

Director of Provider Relations.

[Civil Action No. 96–113P]

United States District Court for the District of Rhode Island

United States of America, Plaintiff, vs. Delta Dental of Rhode Island, Defendant.

Competitive Impact Statement

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16 (b)–(h), the United States submits this Competitive Impact Statement describing the proposal Final Judgment submitted to resolve this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On February 29, 1996, the United States filed a civil antitrust compliant alleging that Delta Dental of Rhode Island ("Delta"), enters into agreements with its participating dentists that unreasonably restrain completion by inhibiting discounting of fees for denial care in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. The Compliant seeks injunctive relief to enjoin continuance of the violation.

Entry of the proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction over the matter for any further proceedings that may be required to interpret, enforce, or modify the Judgment or to punish violations of any of its provisions.

II. Practices Giving Rise to the Alleged Violation

If this matter had proceeded to trial, the United States would have introduced evidence as follows. Delta is Rhode Island's largest dental insurer, insuring or administering plans providing insurance to about 35–45% of Rhode Island residents covered by dental insurance. Delta seeks to offer its enrollees the broadest possible panel of dentists and contracts with over 90% of Rhode Island dentists. Delta accounts for a substantial percentage of the professional income of most Rhode Island dentists.

Pursuant to Delta's Participating Dentist's Agreement (the "Agreement"), each contracting dentist agrees to comply with Delta's Rules and Regulations. Rule 10 of these Rules and Regulations is a Most Favored Nation (MFN) clause, which provides that Delta has the right to lower the fees it pays a dentist to the level of the lowest fees that that dentist charges any other plan. Delta has applied its MFN clause also to dentists' charges to uninsured patients. Rule 7 gives Delta the additional right to audit dentists' records to determine whether they are complying with the MFN clause.

In contrast to Delta's program, which by design includes as many dentists as possible, some dental plans such as preferred provider organizations ("PPOs") and health maintenance organizations ("HMOs"), contract selectively with a limited panel of dentists. By offering the prospect of increased patient volume, these managed care plans are able to contract with some dentists for services at fees substantially below Delta's. These plans then create financial incentives for their enrollees to use panel dentists. Selective contracting with dentists helps a managed dental care plan lower the cost of the delivery of dental service to its enrollees. Accordingly, these plans are able to offer patents lower premiums and lower out-of-pocket costs.

Delta currently provides so much more of most Rhode Island dentists' income than would any entering managed care plan that if these dentists were to reduce their fees to such plans, the resulting reduction in their income from Delta would be much greater than their added income from the entrant plan. Because few dentists in Rhode Island are not under contract with Delta, and because Delta's MFN clause gives its participating dentists strong disincentives to contract with dental managed care plans at fees below Delta's, other plans have been unable to form a competitively viable panel. By thus excluding from the dental insurance market reduced-cost plans that many consumers view as an important option, Delta's MFN clause has protected Delta from competition from such lower-cost plans at the expense of consumers.

In recent years, Delta's MFN clause has blocked the entry or expansion of several low-cost plans. For example, Delta's MFN clause caused dentists to withdraw from Dental Blue PPO—a low-cost preferred provider organization established in the fall of 1993 by Blue

Cross and Blue Shield of Massachusetts to serve Raytheon employees and their dependents, including the approximately 1,000 employees and their dependents at Raytheon's facility in Portsmouth, Rhode Island. Dental Blue PPO had initially succeeded in contracting with a number of Rhode Island dentists at substantially discounted rates—rates, by Delta's calculations, that were 14% lower than Delta's. These PPO savings would have significantly reduced or eliminated Raytheon plan members' co-payments.

After identifying Dental Blue PPO as a long-run competitive threat, Delta's senior management pursued several related tactics. First, it contacted the former chairman of the Rhode Island Dental Association ("RIDA")'s Council on Dental Programs, who supports Delta's MFN clause because he believes it sets a floor on dentists' fees. He sent RIDA's members a letter warning that because of Delta's MFN clause dentists would face "severe financial penalties" if they contracted with dental Blue PPO. Second, Delta's management sent a letter to Rhode Island dentists who Delta knew to be participating in Dental Blue PPO, announcing its intention to apply its MFN clause and describing the new, reduced payment levels they would receive from delta if they continued to participate in Dental Blue PPO.

By the end of January 1994, all of the dentists contacted by Delta had withdrawn from Dental Blue PPO. Some of them made clear to Delta at the time that the reason for their withdrawal was Delta's decision to apply its MFN clause and requested that Delta return their payments to former levels. As a result, Raytheon employees were denied the opportunity to lower or eliminate their co-payments for dental care, and Rhode Island was denied the entry of a low-cost dental insurance plan.[1]

Delta's MFN clause also caused dentists to refuse to contract, at fees below levels paid by Delta, with at least two other lower-cost plans. In one instance, U.S. Healthcare attempted to establish a plan in Rhode Island (as it had in other states) that would have paid dentists at fee levels lower than Delta's. Rhode Island dentists uniformly refused to participate because they feared that Delta would apply its MFN clause. Similarly, Delta's participating dentists refused, because of Delta's MFN clause, to contract with dental Benefit Providers ("DBP") at fee levels below Delta's, forcing DBP to pay Delta's higher rates to enter the market and depriving consumers of a low-cost alternative.

Delta's MFN clause also prevented two other organizations—a self-insured employee group and an uninsured retiree group—from recruiting additional dentists, at fee levels substantially below Delta's, to augment their limited panels of dentists. Both had persuaded a few Rhode Island dentists to accept fees substantially below Delta's and both had avoided the application of Delta's MFN clause—despite Delta's commitment to enforce the clause—only because Delta had been unaware of their operation. Although both wanted to expand their panels, they refrained from recruiting additional dentists because of their concern that such efforts would disclose their existence to Delta and trigger Delta's enforcement of its MFN clause, causing their existing dentists to disaffiliate. As a result, some members of these groups were denied more accessible, low-cost dental care that would have been available in the absence of the MFN clause.

Although the language of Delta's MFN clause appears to apply only to fees dentists offer to insurance plans, Delta has also on occasion enforced the MFN when dentists have lowered their fees to uninsured patients. Some dentists who have been willing to serve uninsured patients at reduced rates have suffered an added financial penalty imposed by Delta. As a result, they and other dentists have been deterred from offering discounts to uninsured patients. Delta's MFN clause has thus raised the prices, and reduced the availability, of dental services to some of Rhode Island's most vulnerable consumers.

By Delta's own admission, its MFN clause has not generated any meaningful savings or other procompetitive benefits. Far from saving consumers money, Delta's MFN clause has, in fact, eliminated most discounting by dentists below Delta's fees, and—as recognized by the former chairman of the RIDA's Council on Dental Programs—set a floor on dental fees, thus raising the costs of dental services and dental insurance for Rhode Island consumers.

[1] Delta's application of its MFN clause to the Dental Blue PPO demonstrates that Delta has not enforced the clause when a dentist, who had initially agreed to charge another plan substantially lower fees, then raised the fees to Delta's level or disaffiliated from the plan. Delta's approach suggests that Delta applied its MFN clause to prevent the entry of a new, low-cost rival, not just to ensure that it obtained the lowest prices available.

Delta indeed did develop a contingency plan to compete on price with Dental Blue PPO by forming its own limited-panel, reduced-fee PPO. When Delta's MFN clause brought about the collapse of the Dental Blue PPO, however, Delta shelved its PPO plans. Rhode Island consumers thus remained without a limited panel, lower-cost competitive alternative to Delta's existing, mid-range plan.

III. Explanation of the Proposed Final Judgment

The Plaintiff and Delta have stipulated that the Court may enter the proposed Final Judgment after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h). The proposed Final Judgment provides that its entry does not constitute any evidence against or admission by any party of any issue of fact or law.

Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(e), the proposed Final Judgment may not be entered unless the Court finds that entry is in the public interest. Section X(C) of the proposed Final Judgment sets forth such a finding.

The proposed Final Judgment is intended to ensure that Delta eliminates its MFN clause and ceases all similar practices that unreasonably restrain competition among dentists and dental insurance plans.

A. Scope of the Proposed Final Judgment

Section III of the proposed Final Judgment provides that the Final Judgment shall apply to Delta, to its successors and assigns, and to all other persons (including Delta's participating dentists) in active concert or participation with any of them, who shall have received actual notice of the Final Judgment by personal service or otherwise.

In the Stipulation to the proposed Final Judgment, Delta has agreed to be bound by the provisions of the proposed Final Judgment pending its approval by the Court.

B. Prohibitions and Obligations

Under Section IV(A) of the proposed Final Judgment, Delta is enjoined and restrained for a period of ten years from maintaining, adopting, or enforcing any Most Favored Nation Clause or similar provision in any Participating Dentist's Agreement or by any other means or methods. Other provisions of the Final Judgment seek to ensure that the MFN clause's anticompetitive effects cannot be achieved in other ways. Specifically, Section IV(B) enjoins Delta from maintaining, adopting, or enforcing any policy or practice varying its payments to, or other treatment of, any dentist because the dentist charges any non-Delta patient or plan a fee lower than the fee the dentist charges Delta; Section IV(C) enjoins Delta from taking any action to discourage any dentist from participating in any non-Delta plan or from offering or charging to any non-Delta patient, or any non-Delta plan, any fee lower than that paid to the dentist by Delta; and Section IV(D) enjoins Delta from monitoring, auditing, or obtaining from any dentist information about the fees a particular dentist charges any non-Delta patient or any non-Delta plan, except as provided in Section V.

Section V permits Delta to engage in certain specified activities without violating the prohibitions of Section IV, including creation of a limited-panel plan, implementation of different reimbursement levels under certain circumstances, and collection through certain means of information about market rates. These activities will likely facilitate, rather than impair, competition.

Section VI of the Final Judgment declares Delta's MFN clause null and void. It directs Delta to disseminate to each Delta participating dentist revised Rules and Regulations, referenced in the Participating Dentist's Agreement, that omit the Most Favored Nation Clause. This Section also requires Delta to eliminate the Most Favored Nation Clause from all Participating Dentist's Agreements entered into after entry of the Final Judgment.

Section VII of the Final Judgment imposes various compliance measures. Section VII(A) requires Delta to distribute, within 60 days of entry of the Final Judgment, a copy of the Final Judgment to: (1) all Delta officers and directors; and (2) all Delta employees who have any responsibility for approving, disapproving, monitoring, recommending, or implementing any provisions in agreements with participating dentists. Sections VII(B)-(D) require Delta to provide a copy of the Final Judgment to future officers, directors, and employees who have any responsibility for approving, disapproving, monitoring, recommending, or implementing any provisions in agreements with participating dentists and to obtain and maintain records of such persons' written certifications that they have read, understand, and will abide by the terms of the Final Judgment. Section VII(E) requires Delta to distribute a copy of a letter, approved by the Antitrust Division and attached to the Final Judgment, to all currently participating dentists. Section VII(F) obligates Delta to report to the Plaintiff any violation of the Final Judgment.

Finally, Section VIII obligates Delta to certify its compliance with specified requirements, summarized above, of Sections IV, V, VI, and VII of the Final Judgment. In addition, Section IX sets forth a series of measures by which the Plaintiff may have access to information needed to determine or secure Delta's compliance with the Final Judgment.

C. Effect of the Proposed Final Judgment on Competition

By eliminating the MFN clause, the relief imposed by the proposed Final Judgment will enjoin and eliminate a substantial restraint on price competition between Delta and other dental insurance plans and among dentists in Rhode Island and its environs. It will do so by eliminating the disincentives created by the MFN clause for dentists to discount their fees and to join non-Delta plans offering payments below Delta's levels. The Judgment also prevents Delta from taking any other action to discourage dentists from discounting or participating in competing dental insurance plans. Consequently, non-Delta plans' efforts to attract and maintain viable panels of dentists to serve their members will no longer be hampered.

The proposed Final Judgment will restore the benefits of free and open competition to dental insurance plans and consumers in Rhode Island. Consequently, limited panel dental insurance plans should be able to achieve cost savings that they can pass on to consumers, and consumers should be able to choose from a wider array of dental insurance alternatives. Competition among dentists should also be invigorated.

IV. Alternatives to the Proposed Final Judgment

The alternative to the proposed Final Judgment would be a full trial on the merits of the case. Such a trial would involve substantial costs to both the United States and Delta and is not warranted because the proposed Final Judgment provides all of the relief that the United States would likely obtain upon a favorable decision at the close of trial and fully remedies the violations of the Sherman Act alleged in the Complaint.

V. Remedies Available to Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist in the bringing of such actions. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the Final Judgment has no *prima facie* effect in any subsequent lawsuits that may be brought against Delta in this matter.

VI. Procedures Available for Modification of the Proposed Final Judgment

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Final Judgment should be modified may submit written comments to Gail Kursh, Chief; Health Care Task Force; Department of Justice; Antitrust Division; 325 7th Street, N.W.; Room 404; Washington, D.C. 20530, within the 60-day period provided by the Act. Comments received, and the Government's responses to them, will be filed with the Court and published in the **Federal Register**. All comments will be given due consideration by the Department of Justice, which remains free, pursuant to Paragraph 2 of the Stipulation, to withdraw its consent to the proposed Final Judgment at any time before its entry if the Department should determine that some modification of the Judgment is necessary to protect the public interest. The proposed Final Judgment itself provides that the Court will retain jurisdiction over this action, and that the parties may apply to the Court for such orders as may be necessary or appropriate for the modification, interpretation, or enforcement of the Judgment.

VII. Determinative Documents

No materials and documents of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b), were considered in formulating the proposed Final Judgment. Consequently, none are filed herewith.

Dated: February 19, 1997.

Respectfully submitted,

Steven Kramer,
William E. Berlin
Mark J. Botti,
Michael S. Spector,
Richard S. Martin,
Attorneys, Antitrust Division, U.S. Department of Justice, 325 7th Street, N.W., Room 426, Washington, D.C. 20530, (202) 307-0997.

United States District Court for the District of Rhode Island

[Civil Action No. 96–113P]

United States of America, Plaintiff, vs. Delta Dental of Rhode Island, Defendant.

Certificate of Service

I certify that I caused a copy of the Stipulation, the Final Judgment, and the United States' Competitive Impact

Statement to be served on February 20, 1997, by overnight delivery to:

William R. Landry, Blish & Cavanagh, Commerce Center, 30 Exchange Terrace, Providence, R.I. 02903-1765

and by first class mail to:

William G. Kopit, Epstein Becker & Green, 1227 25th Street, N.W., Washington, D.C. 20037.

Dated: February 20, 1997.

Steven Kramer,

Attorney, Antitrust Division, U.S. Department of Justice, 325 7th Street, N.W., Room 426, Washington, D.C. 20530, (202) 307-0997.

[FR Doc. 97-5151 Filed 3-3-97; 8:45 am]

BILLING CODE 4410-11-M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Center for Manufacturing Sciences, Inc. (NCMS)

Notice is hereby given that, on February 4, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the National Center for Manufacturing Sciences, Inc. ("NCMS") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership and providing information on the status of its research projects. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following companies were accepted as active members of NCMS: Advanced Technology & Research Corporation, Burtonsville, MD; Lockheed Martin Corporation, Idaho Falls, ID; OMNEX Engineering & Management, Inc., Ann Arbor, MI; and Structural Dynamics Research Corporation, Milford, OH. Software Productivity Consortium NFP, Inc., Herndon, VA, was approved for affiliate membership. Cimflex Teknowledge Corporation, Palo Alto, CA, changed its name to Teknowledge Corporation, and ICAD, Inc., Burlington, MA, has changed its name to Concentra Corporation. The McNeal-Schwendler Corporation, Los Angeles, CA, acquired Aries Technology, Inc. and subsequently became a member of NCMS. The following companies have canceled their active membership in NCMS: Andersen Consulting LLP, Detroit, MI; Computer Tool & Die Systems, Inc., Ann Arbor, MI; Knowledge Based Systems, Inc., College Station, TX; Physical Sciences Inc., Andover, MA; C. Thorrez Industries, Inc., Jackson, MI; and Weed Instrument Company, Inc., Simi Valley, CA. The following organizations have resigned from affiliate membership in NCMS: American Supplier Institute, Allen Park, MI; Les Chefs Mailleurs de la Qualite, Quebec City, Quebec, Canada.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NCMS intends to file additional written notification disclosing all changes in membership.

On February 20, 1987, NCMS filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 17, 1987 (52 FR 8375).

The last notification was filed with the Department on November 24, 1996. This notice was published in the **Federal Register** on December 19, 1996 (61 FR 67067).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97-5246 Filed 3-3-97; 8:45 am]

BILLING CODE 4410-11-M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Ole for Process Control (OPC) Foundation

Notice is hereby given that, on December 18, 1996, pursuant to § 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), the Ole for Process Control Foundation ("OPC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new members are as follows: ABB Asea Brown Boveri Ltd., Zurich, SWITZERLAND; Applicorn International S.A., Caudebec Les Elbeuf, FRANCE; Biles & Associates, Houston, TX; Canary Labs, Inc., Martinsburg, PA; Ci Technologies Pty Limited, Pymble, NSW, AUSTRALIA; Dynapro Systems, Inc., New Westminster, BC, CANADA; Hardy Software Systems, Inc., Houston, TX; Honeywell, Inc., Phoenix, AZ; ICONICS, INC., Foxborough, MA; Institut fur Automation und Kommunikation e. V. Magdeburg, Barleben, GERMANY; Johnson Yokogawa Corporation, Newnan, GA; National Instruments, Austin, TX; OMNX Control Systems, Charleston, TN; PID, Phoenix, AZ; Process Automation Systems, Inc., Vancouver, BC, CANADA; ProMicro Ltd., London, ENGLAND; RDI Software Technologies, Inc., Des Plaines, IL; Roy-G-Biv Corporation, Seattle, WA; S–S Technologies, Inc., Kitchener, ON, CANADA; Siemens AG, AUT 1E Nuremberg, GERMANY; SoftPLC Corporation, Humble, TX; Star Enterprise, Houston, TX; TA Engineering Co., Inc., Moraga, CA; The Foxboro Company, Foxboro, MA; The Software Studio, Inc., Cupertino, CA; Toshiba Corporation, Tokyo, JAPAN; Trebing & Himstedt Prozessautomation GmbH & Co. KG, Schwerin, GERMANY; and Wonderware Corporation, Irvine, CA. One member, Rockwell Software, Inc., has moved from Milwaukee, WI to West Allis, WI.

No other changes have been made in either the membership or planned activity of OPC. Membership in this venture remains open and OPC intends to file additional written notifications disclosing all membership changes.

On July 15, 1996, the Ole for Process Control Foundation ("OPC"), filed its original notification pursuant to § 6(b) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to § 6(b) of the Act on August 14, 1996 (61 Fed. Reg. 42269).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97-5248 Filed 3-3-97; 8:45 am]

BILLING CODE 4410-11-M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; VSI Alliance

Notice is hereby given that, on November 29, 1996, pursuant to § 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.*. ("the Act"), the VSI Alliance ("VSI") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to § 6(b) of the Act, the identities of the parties are: Advanced RISC Machines Ltd., Cambridge, ENGLAND; Cadence Design Systems, Inc., San Jose, CA; Fujitsu Limited, Kawasaki, JAPAN; Mentor Graphics Corporation, Wilsonville, OR; Sony Corporation, Tokyo, JAPAN; Synopsys, Inc., Mountain View, CA; and Toshiba Corporation, Kawasaki, JAPAN.

VSI's area of planned activity is to define, develop, ratify, test and promote open interface specifications which will facilitate the mix-and-match of intellectual property blocks from different sources onto a single silicon chip—much like combining various integrated circuits or other components onto a printed circuit board. By defining "Virtual Socket Interfaces" (hence the name "VSI"), VSI hopes to enable the use or reuse of intellectual property blocks from different sources in the design of "systems-chips", thereby shortening the design cycle and promoting the growth of the systems-chips industry. These open specifications will be designed to allow the mix-and-match of system-level-module intellectual property (including analog, digital, mixed signal and software intellectual property), as it relates to the design and development of systems-chips.

Membership in the VSI Alliance will be open to any individual or entity that is interested in supporting the objectives and goals of VSI and subscribes to its bylaws and membership agreements.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97-5249 Filed 3-3-97; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

February 27, 1997.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Teresa M. O'Malley ((202) 219-5096 ext. 143). Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219-4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395-7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment Standards Administration.

Title: Application for Authority for an Institution of Higher Learning to Employ its Full-Time Students at Subminimum Wages Under Regulations at 29 CFR Part 519.

OMB Number: 1215–0080 (extension).

Frequency: Annually.

Affected Public: Individuals or households; Business or other for-profit.

Number of Respondents: 50.

Estimated Time Per Respondent: 15 to 30 minutes.

Total Burden Hours: 15.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): $17.50.

Description: The Form WH–201 is completed by an employer, in order to obtain authorization, pursuant to section 14(b) of the Fair Labor Standards Act to pay full-time students at a wage rate lower than the statutory Federal minimum wage. If this information was not collected, employers would not have a mechanism to apply for permission to pay full-time students at subminimum wages, and job opportunities for full-time students would be reduced.

Agency: Bureau of Labor Statistics.

Title: Consumer Expenditure Surveys.

OMB Number: 1220–0050 (revision).

Affected Public: Individuals or households.

Form No.	Frequency	Number of respondents	Average time per response
Quarterly	Quarterly	6,438	363.60 min.
Diary	Two Consecutive Weekly Reports	5,489	286.20 min.

Total Burden House: 65,107.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The Consumer Expenditure Surveys are used to gather information on expenditures, income, and other related subjects. These data are used to periodically update the National Consumer Price Index. The data are collected from a national probability sample of households designed to represent the total civilian non-institutional population.

Theresa M. O'Malley,

Departmental Clearance Officer.

[FR Doc. 97-5262 Filed 3-3-97; 8:45 am]

BILLING CODE 4510-23-M

LEGAL SERVICES CORPORATION

Meeting of the Board of Directors Operations and Regulations Committee

TIME AND DATE: The Operations and Regulations Committee of the Legal Services Corporation Board of Directors will meet on March 7, 1997. The meeting will begin at 9:30 a.m. and continue until the committee concludes its agenda.

LOCATION: Legal Services Corporation, 750 First Street, N.E.,—11th Flr. Board Room, Washington, D.C. 20002.

STATUS OF MEETING: Open, except that a portion of the meeting may be closed pursuant to a unanimous vote of the Board of Directors to hold an executive session of the Committee. At the executive session, the Corporation's counsel will report to the Committee on litigation to which the Corporation is or may become a party. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. § 552b(c)(10)] and the corresponding regulation of the Legal Services Corporation [45 C.F.R. § 1622.5(h)]. A copy of the General Counsel's Certification that the closing is authorized by law will be posted for public inspection at Corporation headquarters, 750 First Street N.E., Washington, D.C.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda.
2. Approval of minutes of January 5, 1997.
3. Consider and act on revisions to the Corporation's Personnel Manual, with principal attention devoted to sections 1, 2, 3 and 8.
4. Consider and act on draft revisions to 45 C.F.R. Part 1642, the Corporation's interim regulation on attorneys' fees.

Closed Session

5. Report from the General Counsel on potential and pending litigation involving the Corporation.

Open Session

6. Consider and act on draft interim revisions to 45 C.F.R. Part 1610, the Corporation's regulation on use of non-LSC funds.
7. Consider and act on proposed revisons to the Corporation's Accounting Guide for Recipients and Auditors.
8. Consider and act on draft revisions to 45 C.F.R. Part 1639, the Corporation's interim regulation on welfare reform.
9. Consider and act on proposed 45 C.F.R. Part 1641, a new regulation on Debarment, Suspension and Removal of Recipient Auditors.
10. Consider and act on other business.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel, (202) 336–8810.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Barbara Asante at (202) 336–8892.

Dated: February 28, 1997.

Victor M. Fortuno,

General Counsel.

[FR Doc. 97–5442 Filed 2–28–97; 2:44 pm]

BILLING CODE 7050–01–P

Sunshine Act Meeting of the Corporation's Board of Directors

TIME AND DATE: The Board of Directors of the Legal Services Corporation will meet on March 8, 1997. The meeting will begin at 9:00 a.m. and continue until conclusion of the Board's agenda.

LOCATION: Legal Services Corporation, 750 First Street N.E.—11th Flr. Board Room, Washington, D.C.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of minutes of January 6, 1997, open session.
3. Chairman's and Members' Reports.
4. President's Report.
5. Inspector General's Report.
6. Consider and act on the report of the Board's Operations and Regulations Committee:
   a. Consider and act on final revisions to sections 1, 2, 3 and 8 of the Corporation's Personnel Manual.
   b. Consider and act on draft revisions to 45 CFR Part 1642, the Corporation's interim regulation on attorneys' fees.
   c. Consider and act on interim revisions to 45 CFR Part 1610, the Corporation's regulation on use of non-LSC funds.
   d. Consider and act on proposed revisions to the Corporation's Accounting Guide for Recipients and Auditors.
   e. Consider and act on draft revisions to 45 CFR Part 1639, the Corporation's interim regulation on welfare reform.
   f. Consider and act on proposed 45 CFR Part 1641, a new regulation on Debarment, Suspension and Removal of Recipient Auditors.
7. Consider and act on proposed policies and procedures relating to communications between the Corporation and Congress.
8. Consider and act on proposed policies and procedures for annual performance reviews of the Corporation's President and Inspector General.
9. Consider and act on the report of the Board's Finance Committee.
10. Consider and act on the report of the Board's Provision Committee.
11. Consider and act on the report of the Board's Presidential Search Committee.
12. Consider and act on a resolution upgrading the Corporation's service contract with Mutual of America to provide a Full Services Arrangement for the Corporation's 403(b) Thrift Plan.
13. Public comment.
14. Consider and act on other business.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel, (202) 336–8810.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Barbara Asante, at (202) 336–8800.

Dated: February 28, 1997.

Victor M. Fortuno,

General Counsel.

[FR Doc. 97–5443 Filed 2–28–97; 2:44 pm]

BILLING CODE 7050–01–P

Sunshine Act Meeting of the Board of Directors Finance Committee

TIME AND DATE: The Finance Committee of the Legal Services Corporation's Board of Directors will meet on March 7, 1997. The meeting will begin at 2 p.m. and continue until conclusion of the committee's agenda.

LOCATION: Legal Services Corporation, 750 First Street NE., 11th Floor, Washington, DC 20002.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of minutes of January 5, 1997.
3. Presentation of report of Thompson, Cobb, Bazillo & Assoc. on their audit of the Corporation's Fiscal Year 1996 financial statements.
4. Review and consideration of the Corporation's FY '97 budget and expenses through January 31, 1997.
5. Presentation of staff report on the Corporation's office space planning.
6. Consider and act on other business.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel, (202) 336–8810.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Barbara Asante, at (202) 336–8800.

Dated: February 28, 1997.

Victor M. Fortuno,

General Counsel.

[FR Doc. 97–5444 Filed 2–28–97; 2:44 pm]

BILLING CODE 7050–01–P

Sunshine Act Meeting of the Presidential Search Committee of the Board of Directors

TIME AND DATE: The Presidential Search Committee of the Legal Services Corporation Board of Directors will meet on March 8–9, 1997. The meeting will begin at 3:00 p.m. on March 8, 1997, and continue on March 9, 1997, until conclusion of the committee's agenda.

STATUS OF MEETING: With the exception of the adoption of the agenda and the approval of minutes, the meeting will be closed pursuant to a unanimous vote of the Board of Directors to hold an executive session. At the executive session, the Committee will interview candidates for the position of president of the Corporation. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. § 552b(c)(2) & (6)] and the corresponding regulation of the Legal Services Corporation [45 C.F.R. § 1622.5(a) & (e)]. A copy of the General Counsel's Certification that the closing is authorized by law will be posted for public inspection at Corporation headquarters, 750 First Street N.E., Washington, D.C. 20002, in its 11th floor reception area, and will also be available upon request.

LOCATION: Washington Court Hotel, 525 New Jersey Avenue, N.W., Washington, D.C. (202) 628–2100.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of minutes of February 20 and 27, 1997.

CLOSED SESSION:

3. Interview with candidates for the position of President of the Legal Services Corporation.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel & Secretary of the Corporation, (202) 336–8810.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Barbara Asante, at (202) 336–8800.

Dated: February 28, 1997.

Victor M. Fortuno,

General Counsel.

[FR Doc. 97–5445 Filed 2–28–97; 2:44 pm]

BILLING CODE 7050–01–P

Sunshine Act Meeting of the Board of Directors Committee on Provision for the Delivery of Legal Services

TIME AND DATE: The Provision for the Delivery of Legal Services Committee of the Legal Services Corporation's Board of Directors will meet on March 7, 1997. The meeting will begin at 2 p.m. and continue until conclusion of the committee's agenda.

LOCATION: Legal Services Corporation, 750 First Street NE., 10th Floor, Washington, D.C.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of minutes of January 5, 1997, meeting of the Committee.
3. Report by the Corporation's Inspector General on the status of implementation of § 509 of Pub. L. 104–134.
4. Status report on activities of the Office of Program Operations, including its reorganization, the status of competition for 1997 grants, restrictions enforcement and follow-up, the Americorps Project, and other matters.
5. Consider and act on other business.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel, (202) 336–8810.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Barbara Asante, at (202) 336–8800.

Dated: February 26, 1997.

Victor M. Fortuno,

General Counsel.

[FR Doc. 97–5446 Filed 2–28–97; 2:44 pm]

BILLING CODE 7050–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

February 25, 1997.

TIME AND DATE: 11:30 a.m., Thursday, February 20, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: It was determined by a unanimous vote of the Commissioners that the Commission consider and act upon the following in closed session:

1. Secretary of Labor versus Broken Hill Mining Co., Docket No. KENT 94–1199, etc. No earlier announcement of the scheduling of this meeting was possible.

TIME AND DATE: 10:00 a.m., Thursday, March 6, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Secretary of Labor versus Broken Hill Mining Co., Docket No. KENT 94–1208 (Issues include whether the judge correctly applied the penalty criteria of 30 U.S.C. § 820(i) in assessing a penalty against the operator for its violation of 30 CFR § 75.1702's prohibition against carrying smoking materials underground).

TIME AND DATE: 2:00 p.m., Thursday, March 6, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Secretary of Labor versus Western Fuels—Utah, Inc., Docket No. WEST 93–298 (Issues include whether the judge erred in finding that the operator's malfunctioning slippage and sequence switches on its conveyor belt did not violate 30 CFR § 75.1102 and that the operator's insufficient sensing devices on its dry chemical fire suppression system did not violate 30 CFR § 75.1101–16(a), and whether the judge erred in vacating as duplicative a citation alleging a violation of 30 CFR § 75.1101–14(a) because the citation was also abated by conduct taken by the operator to abate a separate violation of 30 CFR § 75.1101–15(d)).

TIME AND DATE: 10:00 a.m., Thursday, March 20, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. Secretary of Labor versus Amax Coal Co., Docket No. LAKE 94–74 (Issues include whether the judge's conclusion that the operator's violation

of 30 CFR 75.400's prohibition against accumulations of combustible materials was significant and substantial is legally correct and supported by substantial evidence and whether the judge's conclusion that the violation was due to the operator's unwarrantable failure is supported by substantial evidence).

TIME AND DATE: 11:15 a.m., Thursday, March 20, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: It was determined by a unanimous vote of the Commissioners that the commission consider and act upon the following in closed session:

1. Secretary of Labor versus Amax Coal Co., Docket No. LAKE 94–74 (See oral argument listing, *supra*, for issues).

TIME AND DATE: 2:00 p.m., Thursday, March 20, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. Secretary of Labor versus Amax Coal Co., Docket No. LAKE 95–267 (Issues include whether the judge was correct in determining that the operator's failure to extend a line curtain within 40 feet of a working face, as required by its ventilation plan, was the result of the operator's unwarrantable failure).

TIME AND DATE: 3:15 p.m., Thursday, March 20, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: It was determined by a unanimous vote of the Commissioners that the Commission consider and act upon the following in closed session:

1. Secretary of Labor versus Amax Coal Co., Docket No. LAKE 95–267 (See oral argument listing, *supra*, for issues).

Any person attending oral argument or an open meeting who required special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 653–5629 / (202) 708–9300 for TDD Relay / 1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 97–5340 Filed 2–27–97; 5:04 pm]

BILLING CODE 6735–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Physics (1208).

Date and Time: March 21, 1997 from 8:00AM to 9:00PM.

Place: Room 1020, NSF 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. David Berley, Program Manager for LIGO, Room 1015, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1892.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Gravitational Physics proposals regarding LIGO as part of the selection progress for awards.

Reason for Closing: The project plans being reviewed include information of a proprietary or confidential nature, including technical information; information on personnel and proprietary data for present and future subcontracts. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 27, 1997.

Linda Allen-Benton,

Deputy Director, Division of Human Resources Management, Acting Committee Management Officer.

[FR Doc. 97–5288 Filed 3–3–97; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 247]

Consolidated Edison Company of New York; Notice of Consideration of Issuane of Amendment To Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–26 issued to Consolidated Edison Company of New York, Inc. (Con Edison or the licensee) for operation of the Indian Point Nuclear Generating Station Unit 2 (IP2) located in Westchester County, New York.

The proposed amendment would permit a one-time only extension of the current steam generator tube inservice inspection cycle. Technical Specification 4.13A.2.a requires steam generator tube examinations to be conducted at not less than 12 months and no later than 24 calendar months after the previous examination. Based upon the last examination during the 1995 refueling outage being completed on April 14, 1995, operation of the unit after April 14, 1997, would not be permitted. Con Edison proposes a one-time extension of the examination requirements, scheduled to be conducted during the 1997 refueling outage, to commence no later than May 2, 1997. Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve a significant hazards consideration since:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not involve any physical modifications to the plant or modification in the methods of plant operation which could increase the probability or consequences of previously evaluated accidents. The proposed change permits a one-time only extension of the current steam generator tube inservice inspection cycle. This extension would allow the steam generator tube examinations to be conducted during the 1997 refueling outage which will commence no later than May 2, 1997. The basis for acceptance of this increase in the technical specification limit is the 'non-operating' steam generator time between the last examination and the upcoming examination. No appreciable steam generator tube wear or degradation is expected as a result of this extension. This change will not affect the scope, methodology, acceptance limits and corrective measures of the existing steam generator tube examination program. The probability and consequences of failure of the steam generators due to leaking or degraded tubes is not increased by the proposed change. Therefore, the probability and the consequence of a design basis accident are not being increased by the proposed change.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Plant systems and components will not be operated in a different manner as a result of the proposed Technical Specification change. The proposed change permits the upcoming steam generator tube examination to be conducted during the 1997 refueling outage that will commence no later than May 2, 1997. There are no plant modifications or changes in methods of operation. Since this extension is based upon the 'non-operating' steam generator time between the last examination and the upcoming examination, it will not increase the probability of occurrence of a tube rupture, increase the probability or consequences of an accident, or create any new accident precursor. Therefore, the possibility for an accident of a different type than was previously evaluated in the safety analysis report is not created by the proposed change to the Technical Specification.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change to Technical Specification section 4.13A.2.a will not reduce the margin of safety. This amendment involves a one-time only extension of the current steam generator tube inservice inspection cycle. The basis for acceptance of this increase in the technical specification limit is the 'non-operating' steam generator time between the last examination and the upcoming examination. No appreciable steam generator tube wear or degradation is expected as a result of this extension. Therefore, the accident analysis assumptions for design basis accidents are unaffected and the margin of safety is not decreased by the proposed Technical Specification change.

Based on the preceding analysis, it is concluded that operation of Indian Point Unit No. 2 in accordance with the proposed amendment does not increase the probability of an accident previously evaluated, does not create the possibility of a new or different kind of accident from any accident previously evaluated, nor reduce any margin of plant safety. Therefore, the license amendment does not involve a Significant Hazards Consideration as defined in 10 CFR 50.92.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 3, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the

petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248–5100 (in Missouri 1-(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to S. Singh Bajwa: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 14, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Dated at Rockville, Maryland, this 26th day of February 1997.

For the Nuclear Regulatory Commission.

Jefferey F. Harold,

Project Manager, Project Directorate 1–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–5251 Filed 3–3–97; 8:45 am]

BILLING CODE 7590–01–P

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of March 3, 10, 17, and 24, 1997.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of March 3

There are no meetings scheduled for the Week of March 3.

Week of March 10—Tentative

Monday, March 10

10:30 a.m. Briefing on 10 CFR 50.59 Regulatory Process Improvements (PUBLIC MEETING) (Contact: Eileen McKenna, 301–415–2189)

2:30 p.m. Briefing on Implementation of Maintenance Rule, Revised Regulatory Guide, and Consequences (PUBLIC MEETING) (Contact: Suzanne Black, 301–415–1017)

Thursday, March 13

11:30 a.m. Affirmation Session (PUBLIC MEETING) (if needed)

Week of March 17—Tentative

There are no meetings scheduled for the Week of March 17.

Week of March 24—Tentative

Tuesday, March 25

10:00 a.m. Briefing on High-Burnup Fuel Issues (PUBLIC MEETING) (Contact: Ralph O. Meyer, 301–415–6789)

11:30 a.m. Affirmation Session (PUBLIC MEETING) (if needed)

Note: The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 451–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: February 28, 1997.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 97–5441 Filed 2–28–97; 2:43 pm]

BILLING CODE 7590–01–M

DEPARTMENT OF STATE

[Public Notice No. 2513]

United States International Telecommunications Advisory Committee (ITAC) Study Groups B and D; Meeting Notice

The Department of State announces that the United States International Telecommunications Advisory Committee (ITAC), Study Group B will meet on Friday, March 14, 1997 at the Regal Harvest House, 1345 28th Street, Boulder, Colorado from 10:00 a.m. to 4:00 p.m. Study Group D will meet on Tuesday, April 1, 1997, Room 1207 at the U.S. Department of State, 2201 "C" Street, NW., Washington, DC 20520 from 9:00 a.m. to 3:00 p.m.

The agenda for the Study Group B meeting of March 14, will review results of the January meeting of Study Group 11 and the February meeting of Study Group 13. It also will review contributions for the April meeting of Study Group 15, as well as any other business of SG B. Please bring 25 copies of proposed contributions to the meetings unless documents have been previously mailed. In the later case, bring only 5 copies. Alternately, contributions endorsed by a U.S. standards body can be brought in for consideration and approval. For agenda planning purposes, please notify Marcie Geisinger on 303–497–5810 not later than 5 days before the meeting if you plan to attend the March 14 meeting.

The agenda for the April 1 meeting of Study Group D will review the results of the March meetings of Study Groups 7 and 16, consider contributions for the April 21–25 meeting of Study Group 9, consider nominations for a U.S. delegation to the meeting of Study Group 9, and any other business relevant to U.S. Study Group D. Please bring 25 copies of documents to be considered at the April 1 meeting.

Please Note: Persons intending to attend the April 1 U.S. Study Group D meeting must announce this not later than 48 hours before the meeting to the Department of State by sending a fax to 202–647–7407. The announcement must include name, Social Security number and date of birth. The above includes government and non-government attendees. One of the following valid photo ID's will be required for admittance: U.S. driver's license with picture, U.S. passport, U.S. government ID (company ID's are no longer accepted by Diplomatic Security). Enter from the "C" Street Main Lobby.

Dated: February 13, 1997.

Earl S. Barbely,

Chairman, U.S. ITAC for Telecommunication Standardization.

[FR Doc. 97–5225 Filed 3–3–97; 8:45 am]

BILLING CODE 4710–45–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Notice No. 97]

Information Collection Activity

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of information collection approval

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the emergency approval by the Office of Management and Budget (OMB) of an information collection request (ICR). An emergency interim final rule (IFR) regarding cargo tank motor vehicles in liquefied compressed gas service contained the ICR and was published in the **Federal Register** on February 19, 1997, in Docket No. RSPA–97–2133 (HM225) with a 60-day comment period (62 FR 7638). The ICR describes the nature of the information collection and its expected cost and burden.

DATES: OMB approval of the information collection request expires August 15, 1997.

FOR FURTHER INFORMATION CONTACT: Deborah Boothe, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8102, 400 Seventh Street, S.W., Washington, DC 20590–0001, Telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION: OMB regulations (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (PRA) (Pub. L. 104–13; 109 Stat.163; 44 U.S.C. 3501 *et seq.*) require that interested members of the public and affected agencies be given an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). Under the PRA, no person is required to respond to an information collection unless it displays a valid OMB control number.

The IFR requires that a comprehensive emergency operating procedure be developed for all liquefied compressed gas transfer operations. The information collection and recordkeeping requirements contained in the IFR have received emergency approval by OMB under the provisions of the PRA. The OMB control number for the information collection is 2137–0595, and the approval expires August 15, 1997. The comment period for the IFR, including the information collection requirements, closes April 21, 1997. If RSPA receives substantive comments on the information collection requirements, a revised ICR will be submitted to OMB for emergency approval. RSPA estimates that the total information collection and recordkeeping burden of the IFR is 18,753 hours, at a cost of $422,660, for the development and maintenance of the comprehensive emergency operating procedure. Requests for a copy of this information collection should be directed to the address above.

Issued in Washington, DC on February 27, 1997.

Edward T. Mazzullo,

Director, Office of Hazardous Materials Standards.

[FR Doc. 97–5294 Filed 3–3–97; 8:45 am]

BILLING CODE 4910–60–P

Surface Transportation Board

[STB No. MC–F–20904]

Peter Pan Bus Lines, Inc.; Pooling; Greyhound Lines, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice of proposed pooling application.

SUMMARY: Applicants, Peter Pan Bus Lines, Inc., of Springfield, MA, and Greyhound Lines, Inc., of Dallas, TX, jointly seek approval under 49 U.S.C. 14302 of an operations and revenue pooling agreement to govern their motor passenger and express transportation service between Philadelphia, PA, and New York, NY.

DATES: Comments are due by April 7, 1997, and, if comments are filed, applicants' rebuttal is due by April 25, 1997.

ADDRESSES: Send an original and 10 copies of comments referring to STB No. MC–F–20904 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1201 Constitution Avenue, NW., Washington, DC 20423.[1] Also, send one copy of comments to applicants' representatives: Jeremy Kahn, 1730 Rhode Island Ave., NW., Washington, DC 20036; and Fritz R. Kahn, 1100 New York Ave., NW., Washington, DC 20005–3934.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5660 [after March 16, 1997, (202) 565–1600]. [TDD for the hearing impaired: (202) 927–5721 (after March 16, 1997, (202) 565–1695).]

SUPPLEMENTARY INFORMATION: Applicants seek approval to pool passenger and express operations and revenues on the bus service they provide between Philadelphia and New York, via the New Jersey Turnpike. They state that their services between these points overlap and that excess schedules are operated because of the need to protect their respective marketshares. According to applicants, this has resulted in unacceptably low load factors, an over-served market, and inefficient operations.

Applicants state that the pooling agreement will allow them to reduce excess bus capacity, cement their business relationship, and allow them to share in the financial vicissitudes of the pooled-route operations of the other. They claim public benefits that will include: (1) Rationalization of schedules

[1] After March 16, 1997, when the Board's offices will be relocated, pleadings should be sent to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001.

with more frequent bus service over a broader time period; (2) greater flexibility for passengers to use buses, tickets, and terminals; (3) capital improvements; (4) continued bus service by more sound and financially stable carriers; and (5) a salutary effect on the environment.

Applicants state that competition will not be unreasonably restrained. They argue that: (1) the pooled service is subject to overwhelming intermodal competitive pressure from Amtrak, airlines, and private automobiles; and (2) other motor passenger carriers may easily enter and compete in the market.

Copies of the application may be obtained free of charge by contacting applicants' representatives. A copy of this notice will served on the Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, NW., Washington, DC. 20530.

Decided: February 25, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–5282 Filed 3–3–97; 8:45 am]

BILLING CODE 4915–00–P

[STB Finance Docket No. 33366]

Paducah & Louisville Railway, Trackage Rights Exemption, CSX Transportation, Inc.

CSX Transportation, Inc. (CSXT) has agreed to grant overhead trackage rights to Paducah & Louisville Railway (P&L) from the P&L/CSXT connection at a point approximately 2,100 feet north of milepost 179 at Central City, KY, to approximately milepost 172 south of Drakesboro, KY, and between Drakesboro (Valuation Station 0+00) and the junction with trackage leased to Midwest Coal Handling Co., Inc. (Valuation Station 47+88), a total distance of approximately 8.9 miles in Muhlenberg County, KY.

The transaction is scheduled to be consummated on March 1, 1997.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33366, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, NW., Washington, DC 20423.[1] In addition, a copy of each pleading must be served on J. Thomas Garrett, Esq., Paducah & Louisville Railway, 1500 Kentucky Avenue, Paducah, KY 42003.

Decided: February 25, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–5280 Filed 3–3–97; 8:45 am]

BILLING CODE 4915–00–P

[STB Docket No. AB–485X]

Blue Mountain Railroad, Inc., Abandonment Exemption, in Whitman County, WA, and Latah County, ID

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of exemption and interim trail use or abandonment.

SUMMARY: The Board, under 49 U.S.C. 10502, exempts from the prior approval requirements of 49 U.S.C. 10903–05 the abandonment by Blue Mountain Railroad, Inc., of three segments of its rail line located between: (1) milepost 19.0 at Kamiaken Street and milepost 19.30 at Pullman, WA; (2) milepost 19.75 at Pullman and milepost 25.50 near Moscow, ID; and (3) milepost 26.10 near Moscow and milepost 27.50 at Line Street in Moscow, totaling 7.45 miles, in Whitman County, WA, and Latah County, ID, subject to labor protective conditions, an historic preservation condition, and environmental conditions.[1]

DATES: This exemption will be effective on March 4, 1997. Petitions to reopen must be filed by March 31, 1997.

ADDRESSES: Send pleadings referring to STB Docket No. AB–485X to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1201 Constitution Avenue, NW., Washington, DC 20423,[2] and (2) Karl Morell, Ball Janik LLP, Suite 225, 1455 F Street, N.W., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660; after March 15, 1997, (202) 565–1600. [TDD for the hearing impaired: (202) 927–5721; after March 15, 1997, (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC News & Data, Inc., Room 2229, 1201 Constitution Avenue, NW., Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.][3]

Decided: February 25, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–5281 Filed 3–3–97; 8:45 am]

BILLING CODE 4915–00–P

[1] Due to the Board's scheduled relocation on March 16, 1997, any filings made after March 16, 1997, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

[1] BMR will retain two segments of the line between mileposts 19.30 and 19.75 at Pullman and mileposts 25.50 and 26.10 near Moscow, for use in serving the two local shippers on the line.

[2] Effective March 17, 1997, the Board's offices will be relocated and pleadings should be sent to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423.

[3] Effective March 17, 1997, DC News & Data, Inc., will relocate its offices to 1925 K Street, NW., Suite 210, Washington, DC 20006 [telephone: (202) 289–4357].

DEPARTMENT OF THE TREASURY

Proposed Collection; Comment Request

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Notice.

SUMMARY: In order to comply with the requirements of the Paperwork Reduction Act of 1995, concerning proposed extensions of information collection requirements, the Financial Crimes Enforcement Network (FinCEN) is soliciting comments concerning a revision of Internal Revenue Service (IRS) Form 8362, Currency Transaction Report by Casinos (CTRC) which is filed for currency transactions involving casinos under the Bank Secrecy Act regulations.

DATES: Written comments must be received on or before May 5, 1997.

ADDRESSES: Direct all written comments to the Financial Crimes Enforcement Network, Office of Regulatory Policy and Enforcement, Attn.: CTRC Comments, Suite 200, 2070 Chain Bridge Road, Vienna, VA 22182–2536. Comments may also be submitted by Internet e-mail to RegComments@fincen.treas.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or for a copy of the form should be directed to Leonard Senia, Senior Financial Enforcement Officer; Office of Regulatory Policy and Enforcement, (703) 905–3931, or by inquiry to the Internet e-mail address shown above. A copy of the CTRC form, as well as all other forms required by the Bank Secrecy Act, can be obtained through the Internet at http://www.irs.ustreas.gov/prod/forms-pubs/forms.html.

SUPPLEMENTARY INFORMATION: The Currency and Foreign Transactions Reporting Act (commonly known as the Bank Secrecy Act) Titles I and II of Pub. L. 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314, 5316–5326, 5328–5330, authorizes the Secretary of the Treasury, *inter alia*, to issue regulations requiring records and reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters. Regulations implementing Title II of the Bank Secrecy Act (BSA) (codified at 31 U.S.C. 5311–5314, 5316–5326, 5328–5330) appear at 31 CFR Part 103. The authority of the Secretary to administer the BSA regulations has been delegated to the Director of FinCEN.

The Bank Secrecy Act specifically authorizes the Secretary to issue regulations that require a report when "a domestic financial institution is involved in a transaction for the payment, receipt, or transfer of United States coins or currency (or other monetary instruments the Secretary of the Treasury prescribes), in an amount, denomination, or amount and denomination, or under circumstances the Secretary prescribes * * *" See 31 U.S.C. 5313(a). The BSA also defines casinos as financial institutions. 31 U.S.C. 5312(a)(2)(X). *See* 31 CFR 103.11(n)(7)(i). The authority of 31 U.S.C. 5313(a) to require domestic financial institutions to report certain transactions has been implemented through regulations promulgated at 31 CFR 103.22(a)(2) and through promulgation of the CTRC, IRS Form 8362.

Information collected on the CTRC is made available, in accordance with strict safeguards, to appropriate criminal law enforcement and regulatory personnel in the official performance of their duties. The information collected is used for regulatory purposes and in investigations involving international and domestic money laundering, tax violations, fraud, and other financial crimes.

This notice proposes changes to the current text of the CTRC and to its instructions, as well as the extension of this information collection requirement. The CTRC is being revised to enhance its value to law enforcement personnel and, in many instances, to simplify it by eliminating non-critical items. Also, FinCEN intends to replace the current OMB Control Number for this collection requirement with a new OMB Control Number. This technical change will facilitate FinCEN's oversight over BSA information collection requirements by obtaining a unique OMB Control Number for each form.

In accordance with requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), and its implementing regulations, 5 CFR 1320, the following information concerning the collection of information on the CTRC is presented to assist those persons wishing to comment on the information collection. (Since the number of respondents has significantly increased during 1996 because of the inclusion of tribal casinos under the BSA, the estimates below are based on 1996 filings.)

Title: Currency Transaction Report by Casinos.

Form Number: IRS Form 8362.

OMB Number: 1506–0003.

Description of Respondents: All United States casinos, except those in Nevada. A separate form will be authorized for use by casinos in Nevada, which are subject to state imposed reporting and recordkeeping requirements, pursuant to 31 CFR 103.45.

Estimated Number of Respondents: 300.

Estimated Number of Annual Responses: 93,000.

Frequency: As required.

Estimate of Burden: Reporting average of 19 minutes per response; recordkeeping average of 5 minutes per response.

Estimate of Total Annual Burden on Respondents: Reporting burden estimate = 29,450 hours; recordkeeping burden 5 estimate = 7,750 hours. Estimated combined total of 37,200 hours.

Estimate of Total Annual Cost to Respondents for Hour Burdens: Based on $20 per hour, the total cost to the public is estimated to be $744,000.

Estimate of Total Other Annual Costs to Respondents: None.

Type of Request: Revision and extension of a currently approved information collection.

Request for Comments

FinCEN specifically invites comments on the following subjects: (a) Whether the proposed collection of information is necessary for the proper performance of the mission of FinCEN, including whether the information shall have practical utility; (b) the accuracy of FinCEN's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

In addition, the Paperwork Reduction Act of 1995 requires agencies to estimate the total annual cost burden to respondents or recordkeepers resulting from the collection of information. Thus, FinCEN also specifically requests comments to assist with this estimate. In this connection, FinCEN requests commenters to identify any additional costs associated with the completion of the form. These comments on costs should be divided into two parts: (1) any additional costs associated with reporting; and (2) any additional costs associated with recordkeeping.

Responses to the questions posed by this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record.

Dated: February 21, 1997

Stanley E. Morris,

Director, Financial Crimes Enforcement Network.

[FR Doc. 97–5305 Filed 3–3–97; 8:45 am]

BILLING CODE 4820–3–P

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Distilled Spirits Plants, Excise Taxes.

DATES: Written comments should be received on or before May 5, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Daniel Hiland, Wine, Beer and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Distilled Spirits Plants, Excise Taxes *OMB Number:* 1512–0203

Recordkeeping Requirement ID Number: ATF REC 5110/06

Abstract: The collection of information is necessary to account for and verify taxable removals of distilled spirits. The data is used to audit tax payments. The record retention requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension

Affected Public: Business or other for-profit

Estimated Number of Respondents: 133

Estimated Time Per Respondent: 26 hours

Estimated Total Annual Burden Hours: 3458

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 24, 1997.

John W. Magaw,

Director.

[FR Doc. 97–5203 Filed 3–3–97; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Formula For Distilled Spirits Under the Federal Alcohol Administration Act.

DATES: Written comments should be received on or before May 5, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Roberta Sanders, Product Compliance Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8116.

SUPPLEMENTARY INFORMATION:

Title: Formula For Distilled Spirits Under the Federal Alcohol Administration Act.

OMB Number: 1512–0204.

Form Number: ATF F 5110.38.

Abstract: ATF F 5110.38 is used to determine the classification of distilled spirits for labeling and for consumer protection. The form describes the person filing, type of product to be made and restrictions to the label and/or manufacturing process. The form is used by ATF to ensure that a product is made and labeled properly and to audit distilled spirits operations. Records are kept indefinitely for this information collection.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 200.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 4,000.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 25, 1997.

John W. Magaw,

Director.

[FR Doc. 97–5205 Filed 3–3–97; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application For Transfer of Spirits and/or Denatured Spirits in Bond.

DATES: Written comments should be received on or before May 5, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Steve Simon, Wine, Beer and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Application For Transfer of Spirits and/or Denatured Spirits in Bond.

OMB Number: 1512–0191.

Form Number: ATF F 5100.16.

Abstract: ATF F 5100.16 is completed by distilled spirits plant proprietors who wish to receive spirits in bond from other distilled spirits plants. ATF uses the information to determine if the applicant has sufficient bond coverage for the additional tax liability assumed when spirits are transferred in bond. Records are kept as long as the approved application remains in effect.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 250.

Estimated Time Per Respondent: 12 minutes.

Estimated Total Annual Burden Hours: 300.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 24, 1997.

John W. Magaw,

Director.

[FR Doc. 97–5206 Filed 3–3–97; 8:45 am]

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Federal Register

Tuesday
March 4, 1997

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 101, 161, and 501

Food Labeling: Net Quantity of Contents; Compliance; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 101, 161, and 501

[Docket No. 92P–0441]

Food Labeling; Net Quantity of Contents; Compliance

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to revise its human and animal food labeling regulations that pertain to declarations of net quantity of contents on food packages. This action would establish specific procedures for checking conformance to net contents labeling requirements nationwide, and provide consumers with information that accurately reflects the actual contents of the package. These procedures include analytical methods for evaluating declarations in terms of mass or weight, volume, and count. FDA is also proposing to require that food packed in a pressurized container bear a declaration of the net mass or weight of the contents expelled when the instructions for use are followed, and to clarify when net content declarations expressed in terms of mass or weight are to be based on the contents without the packing medium (i.e., drained weight). Further, the agency is proposing to revise the standard of identity for fresh oysters. This proposal is based on petitions submitted by the National Conference on Weights and Measures (NCWM) and on comments that FDA received on one of these petitions.

DATES: Submit written comments by June 2, 1997. Submit written comments on the information collection requirements by April 3, 1997.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Submit written comments on the information collection requirements to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Loretta A. Carey, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration; 200 C St. SW., Washington, DC 20204, 202–205–5099.

SUPPLEMENTARY INFORMATION:

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I. Background

A. General

Since the earliest days that it applied to food, Federal law has required that the label of food in package form bear an accurate statement of the quantity of the contents of the package. On March 3, 1913, an amendment to the Food and Drugs Act of 1906 required that statements be accurate, but it provided that "reasonable variations shall be permitted, * * * by rules and regulations" (37 Stat. 732). Under this provision, FDA adopted regulations in 1914 that stated:

(i) The following tolerances and variances from the quantity of the contents marked on the package shall be allowed:

(1) Discrepancies due exclusively to errors in weighing, measuring, or counting which occur in packing conducted in compliance with good commercial practice.

* * * * *

(3) Discrepancies in weight or measure due exclusively to differences in atmospheric conditions in various places, and which unavoidably result from the ordinary and customary exposure of the packages to evaporation or to the absorption of water.

Discrepancies under classes (1) * * * of this paragraph shall be as often above as below the marked quantity. The reasonableness of discrepancies under class (3) of this paragraph will be determined on the facts in each case.

(Regulation 29(I) of the Rules and Regulations for the Enforcement of the Food and Drugs Act; see Food Inspection Decision No. 154, Regulation of Marking the Quantity of Food in Package Form, May 11, 1914)

When Congress passed the Federal Food, Drug, and Cosmetic Act (the act) in 1938, Congress retained much of the earlier language concerning reasonable variations. Section 403(e)(2) of the act (21 U.S.C. 343(e)(2)) states that a food shall be deemed to be misbranded if the package does not bear a label containing "an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count, provided that under clause (2) of this paragraph reasonable variations shall be permitted * * *."

Under this provision, FDA's current labeling regulations in parts 101 (for human food) and 501 (for animal food) (21 CFR parts 101 and 501), specifically §§ 101.105 (a) and (q), and 501.105 (a) and (q) state:

(a) The principal display panel of a food in package form shall bear a declaration of the net quantity of contents. This shall be expressed in the terms of weight, measure, numerical count, or a combination of numerical count and weight or measure. The statement shall be in terms of fluid measure if the food is liquid, or in terms of weight if the food is solid, semisolid, or viscous, or a mixture of solid and liquid; except that such statement may be in terms of dry measure if the food is a fresh fruit, fresh vegetable, or other dry commodity that is customarily sold by dry measure. * * *

* * * * * * *

(q) The declaration of net quantity of contents shall express an accurate statement of the quantity of contents of the package. Reasonable variations caused by loss or gain of moisture during the course of good distribution practice or by unavoidable deviations in good manufacturing practice will be recognized. Variations from stated quantity of contents shall not be unreasonably large.

Although §§ 101.105(q) and 501.105(q) make it clear that FDA requires that firms include an accurate statement of the quantity of contents of the package, and that variations from the stated quantity not be unreasonably large, the regulations provide almost no guidance about what constitutes an "accurate statement" of quantity, or about what constitutes an "unreasonably large" variation. However, §§ 101.105(q) and 501.105(q) states that reasonable variations from moisture loss or gain, and unavoidable deviations in good manufacturing practice (GMP), will be recognized. These sections make it clear that an individual package need not contain exactly the amount of the product stated on the label.

To ensure that net weight label statements reflect the quantity of food in a package with appropriate accuracy, FDA conducts field examinations of packaged products and has provided its personnel with guidance on how to conduct these examinations (Sec. 562.300 Compliance Policy Guides Manual (CPG) 7120.19). FDA rarely, if ever, conducts field examinations at a retail store. Its investigators usually do field examinations at food storage warehouses or at manufacturing plants. Agency employees examine 48 individual packages (e.g., retail units) collected at random from the lot of the food product being inspected. When a field examination reveals that the quantity declared on the label does not accurately reflect the amount of the product present in the packages, a portion of the packages (a subsample) is reevaluated in agency laboratories. If the laboratory analysis confirms the finding of the field examination, and the average contents of the subsample is 1 percent or more short of the weight on the label (short weight), agency likely will consider regulatory action. The 1-percent guideline serves to focus the agency's limited resources on those instances in which the economic deception is significant. FDA has not provided guidance for assessing compliance for net contents declarations made in terms of volume or count.

B. Past Attempts to Define "Reasonable Variations"

In 1980, to provide more specific guidance about what constitutes a reasonable variation, FDA proposed to revise its regulations concerning declarations of net quantity of contents on packages of human food (45 FR 53023, August 8, 1980) by doing the following:

(1) Deleting the general provisions in § 101.105(q) that provide for "reasonable variations" caused (a) by loss or gain of moisture during the course of good distribution practice or (b) by unavoidable deviations (other than those from moisture loss) in GMP, and

(2) Adding a new § 101.106 that would specify the amount of "reasonable variation" that would be permitted for: (a) Moisture loss in specific foods and (b) unavoidable deviations in all foods with declarations of quantity in terms of weight.

The attempt to provide this guidance did not prove practicable. Most of the 85 comments that FDA received on the proposal either disapproved of it or suggested major revisions. These comments were predominantly from industry and State and local governments. Many comments asserted that the proposed regulations were unnecessary because no chronic short weight problem with food commodities had existed for more than a decade. Some added that, without such a problem, it would be improper for FDA to revise existing regulations solely to help State and local regulators in making judgements about whether variations from stated net weight declarations were "reasonable."

Many industry comments contended that the specific provisions of proposed § 101.106 could not be practicably substituted for existing general provisions of § 101.105(q).

Some comments objected that, because the moisture loss provisions of proposed § 101.106 were limited to such a small number of food classes, an enormous economic burden would be placed on the affected industry. The comments stated that manufacturers of the large number of foods that were not yet included in § 101.106 would be forced to overfill food packages by approximately 9 percent until FDA revised § 101.106 to provide moisture loss tolerances for them. The comments advised that, in some cases, it would take several years to gather data to justify these revisions, and that, once the data were gathered, it could take several more years for FDA to issue the revisions. The comments maintained that overpacking during these time periods would have large economic consequences.

In addition, one comment suggested that any specific maximum moisture loss provisions might be taken by a dishonest manufacturer as a license to underfill down to the "legal" limit. Weights and measures officials would be unable to detect such intentional underfillings because local inspectors relying on the regulation would have to assume that a variation that was within the limit specified by the regulation was the result of moisture loss. The comment said that the violation could only be detected through laboratory analysis or by checking the product before it left the manufacturer's premises. The comment stated that the obvious losers in this situation would be the consumer and the honest packer who continued to deliver full value to the consumer.

Other comments objected that proposed § 101.106 was inadequate with respect to unavoidable deviations (other than those from moisture loss) that resulted even though GMP was followed. Some comments pointed out that none of these provisions concerned products whose declarations of quantity of contents were expressed in terms of volume or count. As a result, such products would be permitted no variation from their labeled declarations of net quantity of contents. The comments argued that such a situation would be clearly contrary to the intent of Congress.

Comments pointed out that the proposed unavoidable deviations provisions may also not be adequate for certain bakery products. For example, one comment contended that the net weight of yeast-leavened products is much more difficult to control than is the net weight of liquids and fine powders. The comment stated that bakers could comply with the proposed net weight provisions only with substantial overpacking and significant price increases.

Because FDA was concerned that there were significant problems with proposed § 101.106, and that this regulation could have considerable adverse economic impact on the affected industry, the agency did not issue a final rule in this matter. The agency withdrew the proposed rule on December 30, 1991 (56 FR 67440).

C. The Basis for Preemption

Section 403A of the act (21 U.S.C. 343–1) provides that State food labeling requirements are preempted when they are the type required by section 403 (b), (c), (d), (e), (f), (h), (i)(1), (i)(2), (k), (q), and (r) of the act but are not identical to those requirements. It also preempts any requirement for a food that is the subject of a food standard of identity established under section 401 of the act (21 U.S.C. 341) that is not identical to such standard of identity or that is not identical to the requirement of section 403(g). FDA's regulations that pertain to net contents declarations of human and animal food, which are issued under

authority of section 403(e) of the act, are therefore preemptive of State and local laws and regulations that pertain to net contents declarations on human and animal food.

Thus, Congress decided that even though Federal requirements may preempt more restrictive State requirements in certain instances, the net benefits from national uniformity in these aspects of food labeling outweigh any loss in consumer protection that may occur as a result.

However, Congress also provided in section 403A(b) of the act that States may petition for an exemption from preemption, and that FDA may initiate rulemaking to grant such an exemption, where the State rule:

(1) Would not cause any food to be in violation of any applicable requirement under Federal law,

(2) Would not unduly burden interstate commerce, and

(3) Is designed to address a particular need for information which need is not met by the requirements of the sections referred to in subsection (a).

In the **Federal Register** of January 6, 1993 (58 FR 2462), the agency issued final regulations that set out the procedures for the submission, and for agency review, of petitions for exemption from preemption, and the information that the petitioner should supply. Section 100.1 sets forth the requirements that a State petition must meet to justify an exemption from preemption.

D. The Impact of Preemption on Net Contents Declarations

FDA's regulations that pertain to net contents declarations on human and animal foods are very general, and typically, as stated above, the agency's enforcement of these regulations takes place at the point of distribution or manufacture. FDA's sampling approach, involving examination of 48 randomly selected packages for each sample, often cannot be used in retail stores, where an inspection lot[1] may contain less than 48 packages. State and local regulatory agencies, unlike FDA, focus their enforcement efforts on retail stores. To facilitate retail level inspections, they may have adopted specific regulations and policies that differ from FDA's. These differences include sampling procedures that are more suitable to retail inspection.

For example, to determine whether net contents declarations are sufficiently accurate, most State and local agencies use a guide that is published by the National Institute of Standards and Technology (NIST). NIST is charged by Congress with primary responsibility in matters concerning weights and measures. It maintains standard units of weight and measure that serve as authoritative references for the Federal Government.

The NIST guide that is used by State and local agencies is referred to as "NBS Handbook 133—Third Edition" and is entitled "Checking the Net Contents of Packaged Goods" (Handbook 133) (Ref. 1). NIST has published four supplements to this guide. With passage of the 1990 amendments, many State and local agencies have grown concerned that some courts may rule that they are preempted from following some or all of their enforcement procedures for net contents declarations because Handbook 133 is not part of the regulations that FDA has adopted to implement section 403(e) of the act.

E. The Need for Consistent Test Procedures for Human and Animal Food

Historically, FDA has regulated the labeling of food intended for animals and of food intended for humans similarly when and where appropriate. For example, current animal food labeling regulations regarding the statement of identity, declaration of net contents, listing of ingredients, and declaration of name and address of manufacturer, packer, or distributor are identical to those for food for human consumption with only minor exceptions. This consistency in approach reflects the act but also is an attempt to provide consumers with equivalent labeling information on human and animal food. It also provides one standard for the feed/food industry and a common basis for the Government to conduct its inspections. FDA is not aware of any basis for deviating from this approach with respect to declarations of net quantity of contents.

II. The NCWM Petition for Exemption From Preemption

A. The Contents of Petition

On November 9, 1992, NCWM submitted a petition (Docket No. 92P–0441) (the 1992 NCWM petition) on behalf of officials representing most of its State regulatory agency membership. The petition requested that FDA grant to those State and local governments that use Handbook 133 an exemption from Federal preemption for the net contents declarations provisions in sections 403(e)(2), 502(b)(2), and 602(b)(2) of the act (21 U.S.C. 343(e)(2), 352(b)(2), and 362(b)(2)) of the act for food, drugs, and cosmetics. NCWM is a voluntary standards-writing body whose membership includes State and local weights and measures officials, and Federal Government, industry, and consumer representatives. NCWM is also an internationally recognized forum for establishing uniformity in weights and measures laws, regulations, and procedures for testing the accuracy of net contents declarations.

Handbook 133 contains procedures, using statistical sampling techniques, for determining whether packages of a wide variety of commodities conform to legal requirements for net contents declarations. NCWM stated that packaged products must meet two basic requirements under Handbook 133:

(1) The average quantity of contents of the packages in a lot, shipment, or delivery must equal or exceed the quantity printed on the label. The sampling plans and random sample selection criteria used to determine the average quantity of contents are based on practical sampling procedures that are similar to those used in quality control programs.

(2) The variation of individual package contents from the labeled quantity must not be "unreasonably" large. "Unreasonably" large variations are identified through use of values that Handbook 133 refers to as maximum allowable variations (MAV's). The MAV's cited in Handbook 133 are those values below which errors are "unreasonable." MAV's are based on field studies of actual variability in packaging plants, warehouses, and retail outlets. Product samples may not have more than a permitted number of packages (based on the number of packages in the sample) with net contents deviations below the labeled contents that are more than the MAV's. MAV's apply only to shortages in package contents.

NCWM advised that 47 States use Handbook 133 to conduct net contents inspections of packaged goods. NCWM contended that the requested exemption would achieve, to the maximum extent possible, national standardization in net contents inspection procedures. It asserted that manufacturers, packagers, and consumers need the protection that can be provided by the inspection programs conducted by State and local inspectors using Handbook 133. NCWM advised that industry support for Handbook 133 has been "overwhelming."

NCWM claimed that, because of the number of States that use Handbook 133, there is already considerable uniformity among the States. It also stated that procedures in Handbook 133 have not, and will not, cause any food to be in violation of FDA requirements. NCWM asserted that the use of Handbook 133 in State and local enforcement programs provides legitimate and specific protection for consumers in areas where FDA resources and activities have historically been limited; that Handbook 133 provides specific MAV's and testing procedures that are not set by Federal law; and that Handbook 133 provides clear and uniform notice to packers, wholesalers, and retailers of net weight compliance procedures and requirements.

Therefore, according to NCWM, no unreasonable burden on interstate commerce exists under the current system, and no burden, and no significant economic impact, would result if the exemption were granted. In addition, NCWM maintained that granting the requested exemption would be consistent with the intention of the 1990 amendments to provide national uniformity in certain aspects of food labels and labeling.

B. Comments on the NCWM Handbook 133 Petition

In response to the submission of the 1992 NCWM petition, the Grocery Manufacturers of America, Inc., the American Bakers Association, the American Frozen Food Institute, the International Dairy Foods Association, the National Food Processors Association, the National Pasta Association, and the Snack Food Association joined to form the Food Industry Weights and Measures Task Force (Task Force). The Task Force represents the majority of food manufacturers in the United States.

On behalf of the Task Force, GMA submitted a letter, dated June 4, 1993, commenting on the petition. The Task Force advised that it had previously submitted a letter to NCWM conveying its endorsement of NCWM's petition requesting the adoption of Handbook 133 for use as the standard throughout the United States to ensure uniformity in measurement procedures and quantity declarations for all food products. However, the Task Force pointed out that the 1992 NCWM petition had been filed before the January 6, 1993, regulation on exemptions from preemption was published (58 FR 2462 at 2468). The Task Force also expressed the opinion that the petition could not succeed because it does not meet all of the criteria specified in the final regulation.

The Task Force explained that the 1992 NCWM petition does not itemize or cite with required particularity each petitioning State's requirement that has been preempted. The Task Force stated that no more than 18 of the States that joined in the filing of the petition have enacted Handbook 133 as a final rule, and that the remainder of the States that joined in the filing of the petition have requirements that are either not described by the petition or are too informal to support a citation. The Task Force stated that these remaining States have legal requirements that are therefore different from Handbook 133 and that are most likely different from FDA's current net contents declaration requirements. The Task Force maintained that Handbook 133 is not functioning as a nationally uniform standard, and that the requirements of the petitioners are so disparate and undetermined that a blanket exemption would be virtually meaningless.

C. Denial of Exemption From Preemption

FDA is denying the petition for exemption of Handbook 133 from preemption because, as the Task Force pointed out, the 1992 NCWM petition was submitted before the publication of the January 6, 1993, final rule, and it does not satisfy all of the criteria specified in the final rule. The petition does not itemize or cite with required particularity each petitioning State's requirement that has been preempted. Furthermore, the petition does not address several of the issues that a petition is required to address under § 100.1, including: (1) Comparing the costs of compliance with the State and Federal requirements on the sale and the price of the food product in interstate commerce, and (2) the effect of the State requirement on the availability of the food product to consumers. The petition also does not include information showing that it is practical and feasible for producers of food products to comply with the State requirement.

Further, with respect to drugs and cosmetics, sections 502(b)(2) and 602(b)(2) of the act are not specifically preemptive of State and local law as is section 403(e) of the act. In addition, there are no provisions under the act for the agency to grant exemptions from preemption of the drug and cosmetic provisions.

III. Suggestions to the Agency About the Actions the Agency Should Take if It Denied the 1992 NCWM Petition

Although the Task Force recommended that FDA deny the 1992 NCWM petition, it stressed that there is a great need for a uniform, national standard for ensuring that net contents declarations are accurate. The Task Force also pointed out that a national standard could be most effectively provided through FDA regulations that would be preemptive of State and local regulations. The Task Force stressed that, without such a standard for determining compliance for net contents declarations, substantial burdens on interstate commerce occur because nonuniform labeling requirements necessitate either a multiplicity of labels or levels of fill to meet each of the different requirements, or the understating of the net contents declaration sufficiently to meet the "most onerous State requirement." It stated that neither option serves the best interests of consumers or packagers.

The Task Force stated that there are major costs to industry, and ultimately to consumers, associated with the burdens on interstate commerce from overfilling to meet the most stringent requirements of State regulatory agencies. The Task Force pointed out that the agency's August 8, 1980, proposal (45 FR 53023 at 53026) advised that a nationwide survey had revealed that consumers routinely receive a 4-percent overfill for the average of all packaged foods purchased. That proposal also advised that the GMA had stated that a 4-percent overfill translates into a 4-percent cost increase, and that such a cost increase may involve added annual costs in the billions of dollars per year.

The Task Force requested that FDA incorporate a modified Handbook 133 into its regulations. The Task Force suggested a number of modifications that it believed should be included in any FDA-adopted version of Handbook 133. In subsequent comments on the 1992 NCWM petition in letters dated June 24, 1994, and September 15 and 22, 1994, the Task Force reconfirmed its belief that its suggested modifications should be adopted, and it suggested changes in FDA regulations to implement some of those modifications.

The 1992 NCWM petition itself asked that, if FDA decides to deny the requested exemption, the agency join with NCWM, NIST, and other Federal agencies to harmonize all net content requirements and test procedures using Handbook 133 as the basis for such work.

[1] "Inspection lot," for purposes of this document, means the collection of packages from which the sample is collected that consists of the same kind, with the same label (but not necessarily the same production lot code or, in the case of random packages, the same actual quantity), and from the same packer.

After filing its petition, NCWM also provided suggestions concerning harmonization. The NIST Handbook 133 Working Group (the Working Group), a committee of NCWM charged with the responsibility of recommending changes in Handbook 133, submitted a letter to FDA (Docket No. 92P–0441), dated November 15, 1993, commenting on the petition. The Working Group requested that FDA incorporate a modified Handbook 133 into the agency's regulations if the agency denies the petition. The Working Group suggested a number of modifications to Handbook 133 that it believed would help FDA to develop a revised version of Handbook 133. NCWM subsequently adopted the suggested modifications, and NIST published them in "Supplement 4, October 1994" (the 1994 Handbook). However, the agency points out that the 1994 Handbook has not yet been issued as a new edition of Handbook 133. The 1994 Handbook consists of Handbook 133 and the substantive changes provided in Supplement 4. The details of sampling, analytical, and compliance procedures of the 1994 Handbook are contained in both documents. Although the agency is denying the petition to adopt modified Handbook 133, FDA has considered Handbook 133 and the changes provided in Supplement 4 very carefully in developing this proposal.

IV. The Need for Rulemaking

Although many State and local regulatory agencies do have enforcement approaches patterned after Handbook 133, NIST has stressed that the approaches are not all uniform (Ref. 3). NIST pointed out that uniform enforcement approaches may be assured only where State and local regulatory agencies use the most current version of Handbook 133 (e.g., the 1994 Handbook). NIST advised, however, that some State and local regulatory agencies have not formally adopted the most current version of Handbook 133 and are using older versions. In addition, NIST advised, not all State and local agencies that use a particular version of Handbook 133 conform with its provisions. Further, as pointed out by the Task Force and as acknowledged in the 1992 NCWM petition, some State and local jurisdictions do not use Handbook 133 at all.

NIST pointed out the potential for dramatically increased overfilling costs without the agency formally adopting the most current version of Handbook 133 as a standard. NIST stated:

> Handbook 133 contains two widely varying approaches with differing statistical bases for determining whether contents declarations are sufficiently accurate. In Handbook 133, these approaches are designated as "Category A" and "Category B" approaches. Both approaches address the appropriate sample size corresponding to the size of the inspection lot, and the maximum number of packages permitted to exceed the MAV established for the package size that is being examined. However, for most inspection lots, especially the larger ones, sample sizes are larger under the "Category A" approach than under "Category B." Also, only the "Category A" approach provides correction factors that must be used in a statistical evaluation of the analytical findings to provide assurance that the findings actually represent the fills that are present throughout the entire inspection lot. Under the "Category B" approach, the absence of the correction factors means that an inspection lot that is actually in compliance could be found violative 50 percent of the time. Under the "Category A" approach, the same lot is likely to be found violative only 3 percent of the time. (Ref. 3)

NIST advised that before the 1994 Handbook, it was common practice for State and local regulatory agencies to use the "Category B" approach because it is simpler to use and biased in favor of consumers rather than industry (Ref. 3). Because of concern about the large differences in the statistical bases between the "Category A" and "Category B" approaches, the 1994 Handbook provides that the "Category A" approach is to be used for all situations where regulatory action may result. The "Category B" approach is to be used only in meat and poultry plants that are subject to the jurisdiction of the U.S. Department of Agriculture (USDA).

However, NIST pointed out that the simplicity of the "Category B" approach provides strong incentive for regulatory agencies to continue using the "Category B" approach where they have not formally adopted the most current version of Handbook 133. Thus, different jurisdictions may still have significantly different enforcement approaches. Furthermore, because some State and local regulatory officials do not use the "Category A" approach, firms recognize that regulatory action may be taken against inspection lots that are actually in compliance. Manufacturers are, therefore, as a practical matter, forced to systematically and significantly overfill their packages.

Although FDA has no data concerning the extent of current overfilling, the survey that it cited in 1980 (45 FR at 53023 at 53026) supports the Task Force's contention that expenses associated with overfilling constitute a significant burden on interstate commerce. FDA notes that the same survey suggests that the amount spent on overfilling may be in the billions of dollars annually. These expenditures raise the price of the overfilled packages. Thus, if adopted, the uniform approach set out in this proposal should reduce the amount of overfilling and the increased prices associated with overfilling.

Furthermore, the Task Force pointed out that overfilling misleads consumers about the nutrient content in a serving of food. For example, the nutrition labeling information on a food package declares the nutrient profile of the food in terms of the number of servings present in a package. If a food package is overfilled, a serving of a food contains more nutrients (e.g., calories, fat, and cholesterol) than is stated on the label. Thus, a consumer attempting to reduce intake of certain nutrients for health reasons from an overfilled food package would not recognize that nutrient reductions are less than the consumer would expect.

Based on these factors, the 1992 NCWM petition and the comments on the 1992 NCWM petition, have convinced the agency that the diversity in approaches to enforcement of net contents declaration labeling requirements on foods among State and local regulatory agencies has created significant burdens on interstate commerce.

As pointed out in section I.C. of this document, Congress included preemption provisions in the 1990 amendments to provide national uniformity to facilitate interstate commerce. Although FDA has no authority to require State and local agencies to adopt specific procedures for enforcement of net contents declaration labeling requirements, the preemptive effect of the provisions that FDA adopts will mean that, to the extent that such agencies adopt requirements that relate to net contents declarations, they will have to adopt requirements that are consistent with FDA's requirements. Given this fact, to the extent that FDA identifies "reasonable variations" in its regulations, the affected industry will know when net content deviations are likely to be considered violative. Such knowledge should help firms to reduce overfilling of packages and should facilitate interstate commerce by making the establishment of uniform target fill levels practicable for all package sizes.

FDA's current approach to declarations of net quantity of contents of foods cannot practicably serve as a national standard, however. Rather than having regulations that identify "reasonable variations" for a variety of situations, FDA relies on a case-by-case approach for determining whether variations are reasonable. With respect to assessments concerning whether an inspection lot conforms to net contents labeling provisions of the act, FDA looks at analytical findings of each sample and decides whether the statistical characteristics of those findings support a conclusion that the lot is violative. The agency does not have an established procedure for adjusting net contents findings with correction factors such as those in the "Category A" approach. Admittedly, the guidance in FDA's CPG 7120.19 (which directs FDA field personnel to consider regulatory action where the average contents of the subsamples is 1 percent or more under fill, i.e., less than the declared net quantity of contents) may serve to minimize the impact of the lack of such correction factors, but, as mentioned previously in this document, 1-percent criterion in the CPG was intended only to conserve agency resources.

Without an established procedure for adjusting net contents findings with correction factors, a case-by-case approach would not be likely to produce national uniformity because each State and local enforcement agency could set its own policy for determining when variations are reasonable. For example, different statistical approaches might be used for concluding that a lot is violative. There would be a significant potential for such a situation happening with the large number of State and local regulatory agencies in the United States. Moreover, as mentioned previously in this document, FDA's sampling approach cannot be used in retail stores, where inspection lots often consist of less than 48 units. In view of these facts, FDA finds that there is a need to initiate rulemaking proceedings on net contents determinations.

FDA recognizes that the regulation that it is proposing is prescriptive and complex. Normally, in this time of Government reinvention, this is not the type of regulation that FDA would be proposing. However, FDA tentatively finds that to establish a uniform national system under which manufacturers can be assured net quantity of contents will be tested the same way regardless of the jurisdiction, it must adopt detailed regulations. FDA welcomes comment on this tentative judgment.

One alternative that the agency considered was to issue the detailed provisions that are contained in the proposed regulations as guidance rather than as regulations. FDA has tentatively concluded, however, that guidance would not be effective to correct the problems that both industry and NCWM have asked FDA to address. Section 403A(a)(2) of the act (21 U.S.C. 343–1(a)(2)) states that no State or political subdivision of a State may establish a requirement of the type required by section 403(c) of the act that is not identical to the requirement of such section. Thus, apparently, in the absence of a Federal regulation, State and local jurisdictions could not adopt regulations, even regulations that reflect Federal guidance. Consequently, the effect of an FDA decision to rely on guidance rather than regulations would be to continue the national, State, and local systems that rely on case-by-case determinations. Because such a system would deprive consumers and industry of the benefits listed above, FDA has tentatively rejected this alternative. However, the agency invites comments on the appropriateness of this choice.

V. The Foundation of the New Proposed Rule

During its review of the 1994 Handbook, FDA tentatively concluded that NCWM is correct. If the 1994 Handbook is appropriately modified, it can serve as a national standard for determining the accuracy of net contents declarations. The statistical base of the procedures for determining compliance in this handbook is such that there should be little need for unnecessary overfilling of packages to ensure compliance. Use of the detailed sampling, analytical, and compliance procedures in the 1994 Handbook can minimize case-by-case decisions affecting compliance testing and can provide a basis to make uniform guidance practicable. Further, the 1994 Handbook identifies "reasonable variations" for both average and individual fills, as well as some moisture loss variations. In addition, the 1994 Handbook has been developed by NCWM through a long-established process, spanning approximately 30 years, and it is based on a consensus of regulators, industry, and consumer advocates. All of the published editions of the NCWM Handbook have had histories of successful implementation. Because the 1994 Handbook has been developed through this consensus building process, FDA findsconsiderable merit in the suggestions by industry, NIST, and NCWM that FDA adopt, as part of its regulations, the testing procedures in the 1994 Handbook, with some appropriate revisions.

However, while the 1994 Handbook does contain many desirable features, there are some obstacles to the agency's incorporating the 1994 Handbook into its regulations. Much of the material in the 1994 Handbook is not necessary or appropriate for agency rules on net contents declarations on packaged food. For example, there are many methods of analysis in the 1994 Handbook for products that are not foods or that are not regulated by FDA. Further, there is considerable background information that would not need to be codified. Even if FDA were to adopt the 1994 Handbook with a number of exceptions for irrelevant provisions, the large quantity of material (more than 250 pages), and the long list of exceptions that the agency would have to include with such adoption could be very confusing to all affected parties. Thus, FDA finds that it is not practicable to adopt the 1994 Handbook in its entirety.

Nonetheless, many aspects of the 1994 Handbook can serve as the foundation for regulations on net quantity of contents. In view of the fact that the Handbook 133 portion of the 1994 Handbook is already a widely used national model, and that NIST was one of the primary authors of Handbook 133 and the 1994 Handbook, FDA tentatively concludes that it should use the 1994 Handbook as a starting point for its regulations. This approach was suggested by the Task Force when it requested that FDA incorporate Handbook 133 in a modified form into the agency's regulations. Therefore, FDA set out to craft a regulation based on the 1994 Handbook.

In developing specific provisions of the proposed regulations, FDA worked closely with NIST, as was suggested by the petition and comments on the petition. FDA used NIST as its primary technical resource because of the worldwide recognition of that agency's expertise in all issues concerning weights and measures. Also, NIST's involvement in developing Handbook 133 and the 1994 Handbook has made that agency uniquely qualified to help in FDA's review of the 1994 Handbook.

As mentioned in section III. of this document, NCWM requested that FDA include them in agency efforts to establish national uniformity in net contents requirements if the agency decided to deny the requested exemption. FDA did not grant this request, however, because of concerns that, given its diverse membership, NCWM participation might create procedural problems in developing this proposal. However, NIST is extremely active in NCWM. NIST's involvement in developing of this proposed rule, and the significant NCWM technical material in the 1994 Handbook, has minimized the significance of FDA's decision not to have NCWM participate.

VI. Provisions of the Proposed Rule

A. Existing Provisions

FDA examined its existing regulations that pertain to declarations of net contents for human and animal food in §§ 101.105 and 501.105 to identify all provisions that bear on the accuracy of measurements and to determine what revisions, if any, need to be made. The agency found that §§ 101.105(b)(2), (g), and (q) and 501.105(b)(2), (g), and (q) contain information that bears on the accuracy of measurements. The remaining paragraphs in §§ 101.105 and 501.105 cover a broad range of topics concerning declarations of net quantity of contents that are not relevant to the accuracy of measurements of content. For example, type size requirements for letters and numerals in declarations (§ 101.105(h)) and location requirements for such declarations (§ 101.105(f)) have no bearing on the accuracy of the quantity declaration.

Given the distinction between the provisions that bear on accuracy of quantity declarations and those that bear on how those declarations are to be presented, FDA has decided to move § 101.105(b)(2) and (g) into a new section. FDA is also redesignating § 101.105 as § 101.200 and moving it to a new subpart H of part 101. The proposed new section that FDA is creating out of § 101.105(b)(2) and (g), proposed § 101.201, will contain the other provisions that relate to the accuracy of net contents declarations in subpart H of part 101. The agency sees no reason, however, to repeat the same provisions in parts 101 and 501 when it may cross-reference them. Accordingly, with the exception of §§ 101.200 and 101.201, FDA is proposing to cross-reference the provisions in part 101 in part 501 (proposed § 501.105(g)).

In addition to redesignating certain provisions that had appeared in § 101.105, FDA is proposing to make a number of substantive changes in the provisions that it is redesignating. A description of these proposed changes follows.

1. Reference Temperatures

Liquid food products may be held for sale at room temperature or at other colder temperatures that refrigerate the products or cause them to be frozen. Sections 101.105(b)(2) and 501.105(b)(2) affect the accuracy of measurements by specifying the temperatures at which volume measurements of frozen, refrigerated, and other liquid foods are to be made to determine whether they meet the net quantity of contents requirements. These temperatures are to approximate the temperature at which the food is customarily sold. The temperature at which the volume of food is to be measured is referred to in this proposal as the "reference temperature."

The reference temperature affects measurement accuracy because the volume that is occupied by any food varies with the temperature of the product. Sections 101.105(b)(2) and 501.105(b)(2) and the 1994 Handbook contain reference temperatures for frozen, refrigerated, and other liquid foods. Although there is consistency between agency regulations and the 1994 Handbook for refrigerated foods and other foods, §§ 101.105(b)(2) and 501.105(b)(2) provide that statements of fluid measure for a frozen liquid food shall express the volume "at the frozen temperature." However, the Handbook 133 portion of the 1994 Handbook contains a frozen food reference temperature of 0 °F (−17.8 °C). Unless FDA also establishes a specific reference temperature for frozen liquid food, considerable variation could occur in volumetric measurement for the same volume depending on the temperature of the product at the time that it is tested.

For example, it is possible to approximate the behavior of liquids with high water content by calculating the volumetric changes predicted for water: At −20 °C (−4 °F), the density of water is 0.993550 grams (g) per cubic centimeter, and at 0 °C (+32 °F), the density of water is 0.9998425 g per cubic centimeter. Thus, 12 fluid ounces of frozen orange juice at 0 °C (+32 °F) would occupy 354.9 millimeters (mL), but at −20 °C (−4 °F), it would occupy 357.1 mL, a difference of 0.6 percent. Since defrosting freezers that cycle between −10 and +20 °F are used routinely at retail outlets to store and display frozen foods (Ref. 3), it is important to define a reference temperature for frozen liquids to ensure that there is consistency and predictability in the temperature at which such products are tested. FDA is therefore proposing to establish a reference temperature for frozen food. For consistency with reference temperatures in the agency's ongoing metric labeling rulemaking proceedings (see 58 FR 29716 May 21, 1993, and 58 FR 67444 December 21, 1993), the agency has rounded the metric temperature to the nearest whole number, −18 °C, and placed it before 0 °F in proposed § 101.201(a)(2)(i) and proposed § 501.105(b)(2)(i).

2. Accuracy Within Reasonable Variations

As mentioned previously in this section of the document, paragraphs (g) and (q) of §§ 101.105 and 501.105 both relate to accuracy of net quantity declarations. These paragraphs are somewhat redundant in that they both require that the net contents declaration be accurate. However, while paragraph (g) requires that the declaration reveal the quantity of food in the package exclusive of wrappers and other material packed therewith, paragraph (q) provides that the net contents of an individual package need not precisely meet the labeled declaration. It recognizes that reasonable variations may be caused by loss or gain of moisture during the course of good distribution practice or by unavoidable deviations in GMP. Paragraph (q) also requires, however, that such variations not be unreasonably large.

Given the basic redundancy in these two paragraphs, FDA has tentatively decided to combine them as §§ 101.201(b) and 501.105(g) and to remove paragraph (q) in both human and animal food regulations. The proposed paragraph, however, carries forward the two basic aspects of the current provisions. It requires that the declaration of net quantity of contents provide an accurate statement of the quantity of contents of the package and defines an accurate statement as one that conforms to all requirements for the declaration set forth in subpart H. It also recognizes that there may be reasonable variations in the net content declarations and refers to §§ 101.240, 101.245, and 101.250 to define what constitutes a "reasonable variation."

Although the proposed provisions of subpart H establish the procedures and analytical methodology that will, if finalized, be used in enforcement decisions by Federal, State, and local regulatory agencies, manufacturers will be free to use any alternate procedures and analytical methodology that they find appropriate. However, FDA strongly recommends that manufacturers use the same procedures and analytical methodology that appear in subpart H. Where firms elect to adopt a different approach than the recommended approach, firms would be advised to compare their approach to that in subpart H to ensure that their approach produces similar results.

3. Pressurized Containers

Section 101.105(g) addresses what the net contents declarations on pressurized containers is to present. It states, in part:

> * * * In the case of foods packed in containers designed to deliver the food under pressure, the declaration shall state the net quantity of the contents that will be expelled when the instructions for use as shown on the container are followed. The propellant is included in the net quantity declaration.

Paragraph (g) does not address, however, whether the declaration is to be in terms of solid or fluid measure when the product is expelled as a gaseous suspension of fine solid or liquid particles.

Aerosol-packaged products and similar pressurized products are often dispensed as suspensions. Sections §§ 101.105(a) and 501.105(a) provide that net contents declarations for food products are to be in terms of fluid measure if the product is liquid, and in terms of weight if the product is solid, semisolid, or viscous or a mixture of solid and liquid. The agency has interpreted § 101.105(a) with respect to aerosols in the Fair Packaging and Labeling Manual Guide 7563.7 (Guide 7563.7), which states:

> We have not objected to the use of units of volume to declare the net contents of aerosol preparations that would be liquid if not combined with the propellant, and a net weight statement in avoirdupois units for products that would be solids if not combined with a propellant.

While this position is consistent with § 101.105(a), it is not consistent with the Handbook 133 portion of the 1994 Handbook, which requires that such net contents declarations be expressed in terms of weight. The inconsistency between Guide 7563.7 and Handbook 133 was brought to the agency's attention a number of years ago when FDA received a petition from NCWM (Docket No. 90P–0180) that requested, in part, that FDA amend its regulations for foods to require that declarations of quantity of contents on aerosol-packaged products and on similar pressurized packages be expressed in terms of net mass or weight.

NCWM pointed out in that petition that State and local regulatory agencies have regulated these products on the basis of net mass or weight for many years. NCWM explained that, for aerosol and other pressurized packages, an expression of quantity in terms of mass or weight is the only net contents declaration that could practicably be checked by regulatory inspection officials and used successfully in the packer's filling operation. NCWM also pointed out that it could be difficult for consumers to make value comparisons between similar products where some are labeled in terms of volume, and some are labeled in terms of mass or weight. Further, NCWM advised that because State and local officials have long required net contents declarations on self-pressurized containers to be in terms of net mass or weight, such declarations have become an industry-wide practice. Consistent with State and local requirements, the Handbook 133 portion of the 1994 Handbook provides for net contents declarations on such products only in terms of mass or weight, with the expelled propellant being included in the net contents declaration.

Based on the arguments set forth in the 1992 NCWM petition, the fact that FDA knows of no human or animal aerosol foods with net contents declarations that are expressed in terms of volume, and the fact that FDA is using the 1994 Handbook as a starting point for its regulations, the agency has been persuaded to propose that net contents declarations on aerosol foods be expressed in terms of mass or weight. This approach will apparently cause the least amount of disruption in labeling, while removing a significant inconsistency between the agency and State and local requirements. Accordingly, the agency is proposing to redesignate § 101.105(a) as § 101.200(a) and revise newly redesignated § 101.200(a) and revise § 501.105(a) to provide that a food packaged in a self-pressurized container shall bear a net contents declaration in terms of the mass or weight of the food and the propellant that will be expelled when the instructions for use as shown on the container are followed.

4. Mass or Weight of the Packing Medium

Section 101.105 does not address when net contents declarations that are expressed in terms of mass or weight are to be declared as the mass or weight of the contents without the packing medium, which is commonly referred to as the "drained mass or weight" or the "drained solids." The agency tentatively concludes that new § 101.200 should address this matter.

For many years, FDA has advised firms that the net contents declaration should include the packing medium if it is generally consumed as part of the food. Conversely, where solid foods are packed in a salt brine or other medium that is always, or almost always, discarded before serving, the agency has expected that the label would disclose the drained weight. For example, FDA's Fair Packaging and Labeling Manual Guide 7699.2 states that the appropriate net contents declarations for canned artichokes, canned clams, canned mushrooms, green olives in brine, and canned wet-pack shrimp are in terms of drained weight. However, the agency's case-by-case approach to determining when a packing medium is always or almost always discarded before serving would be difficult to implement uniformly if many different regulatory agencies are making such assessments.

The congressional mandate for national uniformity suggests that FDA should provide more specific direction in this matter. However, FDA notes that it has already dealt with the issue of when a food should be declared in terms of its drained weight in its regulation on serving sizes (§ 101.12). The agency's nutrition labeling requirements provide for declaration of nutrient information in terms of the serving size based on the reference amounts customarily consumed as set forth in § 101.12, and that section specifically provides for cases where the reference amounts are in terms of drained solids.

Thus, FDA no longer has to make case-by-case assessments about whether the packing medium is always or almost always discarded before serving. Instead, the agency can now refer to § 101.12 in determining whether net contents declarations must include the packing medium. Therefore, FDA is proposing to require in § 101.200(a) that, except where the reference amount customarily consumed per eating occasion is in terms of drained solids in accordance with § 101.12, a food that is packed or canned in liquid, and that is required to bear a net contents declaration in terms of weight, shall bear a declaration expressed in terms of the total net contents including the liquid.

FDA points out that, for many years, it has had a policy of permitting both drained weight and net weight to be stated on the principal display panel (PDP) of a food label. However, some State regulatory agencies prohibit both drained weight and net weight from appearing on the PDP of a label because they consider one of the weight declarations to be in conflict with section 4(b) of the Fair Packaging and Labeling Act (FPLA), which prohibits qualifying words or phrases from appearing with the required net contents declaration. FDA advises that it does not believe that its policy in this regard conflicts in any way with section 4(b) of the FPLA.

Although neither the language of the FPLA nor the regulations established thereunder provide clear guidance, the legislative history of the FPLA does. The May 25, 1966, Senate Report No. 1186, which addressed the meaning of the prohibition of supplemental statements, states:

> Subsection 4(b) prohibits the qualification of the separate net quantity statement by any modifying words or phrases. However, a supplemental statement of the net quantity of

contents set apart from the separate net quantity of contents, required by the bill, may be modified by nondeceptive words or phrases, so long as such words or phrases do not tend to exaggerate the amount of the commodity contained in the package. For example, where a package contains a separate net quantity statement in conformity with promulgated regulations, such as "6 oz. net weight," the package could also contain in a supplemental statement, apart from the required net quantity statement, the phrase "6 oz. of fast acting X detergent" but could not contain the statement "6 jumbo oz. of X detergent" at any place on the package* * *.

From the above quote, it is obvious that the required declaration of net quantity may not contain statements designed to imply that one product is different in quantity from others declaring the same net contents. It is also obvious that Congress wanted the required declaration to be separate from supplemental statements designed to promote product sales. FDA has a regulation, § 101.105(o) (which would be redesignated as § 101.200(o)), that is intended to ensure that such separation exists by permitting supplementary net quantity statements on label panels other than the PDP. However, there is no indication in Senate Report No. 1186, or elsewhere in the legislative history of the FPLA, that congressional concern about a "supplementary statement" was intended to encompass other forms of nonmisleading information about the quantity of contents than the one required. To the contrary, the broad congressional policy declared in section 2 of the FPLA states: "Packages and labels should enable consumers to obtain accurate information as to the quantity of the contents and should facilitate value comparisons" (15 U.S.C. 1451). Declaration of a statement of net quantity of contents in terms of both drained weight and net weight would not be inconsistent with this policy because such declarations advise consumers of the amount of food and the accompanying packing medium, thereby assisting purchasing decisions.

Although the agency does not consider it necessary to codify the present policy of permitting both drained weight and net weight to be declared on the PDP of a food label, FDA solicits comments on whether it should codify this policy into its regulations.

B. New Provisions

In response to suggestions from State and local regulatory agencies and the affected industry, FDA has tentatively determined that, for national uniformity, it should adopt new regulations that set out the specific details of the techniques and methods that it will use in assessing the accuracy of net contents declarations. The agency turns now to those regulations.

1. Definitions

The 1994 Handbook, Appendix C has a glossary that contains almost 100 different terms and their definitions to help users follow its requirements. The 1994 Handbook also contains a number of additional definitions in various locations throughout the handbook. With one exception, which is discussed below, the definitions used in the 1994 Handbook have been accepted and used by regulated industry and regulatory agencies for a number of years.

FDA tentatively finds that any regulations that it adopts based on this proposal will profit if they include a similar set of definitions. The definitions will not only make the regulations understandable, but they will help to foster consistency with the 1994 Handbook. FDA is therefore proposing, in § 101.205, to define a number of terms that it has used in the proposed regulations. FDA has drawn heavily on the 1994 Handbook for these definitions because of the long history embodied in the 1994 Handbook, and because the definitions were arrived at by NCWM after consideration of the views of both industry and regulatory agencies.

The agency is not, however, proposing to define all of the terms defined in the 1994 Handbook because some of the terms in the 1994 Handbook pertain to products that FDA does not regulate.

Where FDA is including terms in proposed § 101.205 that are defined in the 1994 Handbook, it is, for the most part, incorporating the 1994 Handbook definitions. The agency has, however, made minor changes in the definitions for clarity.

A few terms that are used in the regulations, however, have either not been defined in the 1994 Handbook or are defined in the 1994 Handbook in a way that is not fully satisfactory. A discussion of these terms, and of the definitions that FDA is proposing for them, follows.

a. *Sample standard deviation.* In § 101.205(o), the agency is proposing to adopt the following commonly recognized definition for "sample standard deviation:"

Sample Standard Deviation (s) means a statistic used as a measure of dispersion (i.e., differences of individual values from the mean) in a sample. It is calculated as follows:

$s = (\Sigma(xi - x)2/(n-1))^{1/2}$ or equivalently (and primarily for calculations without a computer),

$s = ((\Sigma xi^2 - (\Sigma x_i)^2/n)/(n-1))^{1/2}$.

Where:

Σ means "the sum of,"

xi means the ith individual package error,

n means the sample size, and

x means the average of the package errors, that is, the sum of the package errors divided by the number of packages in the sample.

This definition is a commonly recognized definition for "sample standard deviation" (Ref. 3).

FDA points out that it is proposing the use of this definition for samples collected using either of the random selection approaches set forth in the 1994 Handbook. The 1994 Handbook provides for the collection of a sample through either: (1) A single-stage approach of randomly selecting the individual packages directly from the lot, or (2) a multistage approach of first randomly selecting the larger storage units (e.g., cartons or pallets), followed by random selection of the individual packages. While the proposed definition of "sample standard deviation" is mathematically fully correct only where the single-stage approach is used, FDA has tentatively decided that the definition can be used when a multistage approach is used for three reasons. First, NIST has recommended its use in this circumstance (Ref. 3). Second, its use will minimize the complexity of these regulations. Third, NIST advised (Ref. 3) that any errors introduced by using this definition with a sample collected using a multistage approach will not be significant.

The single-stage approach is generally used at retail locations on smaller lots of packages that are not in cartons or on pallets. The multistage approach is generally used for larger lots, such as those found in food storage warehouses (e.g., in locations where foods are found in shipping cases, containing 12, 24, or 48 individual packages, which are typically stored on several different pallets). In the first stage of a multistage sampling approach, an official randomly selects one or more pallets from all of the pallets available from which to collect samples. In the second stage, the official randomly selects one or more shipping cases from the selected pallets. Finally, in the third stage the official opens the shipping cases and randomly selects individual packages from the shipping cases for use as the sample packages in determining lot compliance.

For a multistage approach, a more complicated calculation of the standard deviation than the one that FDA is proposing is theoretically appropriate. For multistage samples, the average of the package errors within each of the larger storage units can be used to determine the sample standard deviation rather than the package errors for each package regardless of the storage unit in which the packages are contained.

Nonetheless, FDA is proposing to provide that the more simple approach to computing sample standard deviation be used. NIST recommended that FDA not increase the level of complexity for regulatory officials in calculating the sample standard deviation (Ref. 3). NIST said that any increase in complexity would significantly increase the risk that regulatory officials would make mistakes in classifying an inspection lot as violative, and that the difference in the results obtained using the two methods would be minor. Therefore, NIST stated, it would not justify the increased time and costs related to net quantity of contents inspections if the more complex calculation were required. NIST also stated that the harm that could result from the potential mistakes caused by the increased complexity of the calculation could far exceed any benefits of calculating standard deviation in a more theoretically appropriate manner. Thus, NIST recommended that FDA require the use of the less complex approach for determining sample standard deviation. It pointed out that this approach is normally used in the food industry for statistical process quantity control.

FDA agrees with NIST and is proposing in § 101.205(p) to define "sample standard deviation" based on the less complex approach suggested by NIST. FDA requests comments on the adequacy of this proposed definition.

b. *Gravimetric test procedure.* FDA is proposing in § 101.205(c) to define the term "gravimetric test procedure" as an analytical procedure that involves measurement by mass or weight. The proposed regulations contain a number of different gravimetric procedures, and the proposed definition should simplify the description of these procedures by eliminating the need to include a lengthy discussion of measurement by mass or weight. FDA requests comments on whether there are any problems created by this approach.

c. *Dry animal food.* In § 501.105(u), FDA is proposing that the term "dry animal food" mean animal food packaged in paperboard boxes or kraft paper bags that has 13 percent or less moisture at time of pack. This definition is derived from a definition of the term "Dry pet food" in the 1994 Handbook[2] that serves to designate a class of food entitled to certain adjustments for moisture loss that are discussed subsequently in this preamble. As proposed, FDA's definition is the same as that in the 1994 Handbook except that the agency is proposing to use the term to encompass all animal food rather than only food used for pets. The 1994 Handbook does not contain any indication as to what it precisely means by the term "pet." In view of the lack of such specificity, and the fact that FDA knows of no reason to differentiate between pet and non-pet animal food, the agency tentatively concludes that the definition can apply to all animal food.

According to NIST (Ref. 3), the 13-percent moisture content limitation in the proposed definition was developed in cooperation with the Pet Food Institute, a trade association that represents a majority of the manufacturers of pet foods. NIST stated that NCWM developed the limitation for dry animal food based on moisture loss studies that were conducted using products from several manufacturers. The laboratory tests conducted as part of those studies revealed that the maximum moisture level of the products used in the field studies was less than 13 percent. NIST advised that it was not aware of any concerns on the part of packers over the NCWM definition because it is only intended to be used to identify the types of dry animal foods subject to moisture loss and serves no other purpose. Most packers are required under many state animal food laws and regulations to provide moisture content information in the guaranteed analysis displays on pet food packages. Therefore, FDA is proposing to adopt this definition.

2. Sample Collection

The 1994 Handbook provides that the "Category A" approach is to be used on FDA regulated commodities for determining whether net contents declarations are sufficiently accurate. The "Category A" approach addresses, in part, the sample collection procedure to be used for evaluation of the accuracy of the net contents label declaration. For this approach, the 1994 Handbook provides that the size of the sample taken depends on the size of the lots being sampled.[3] The handbook provides for four basic sample sizes. Where the lots consist of less than 12 packages, all of the packages in the lot are included in the sample. Where there are 12 to 250 packages, 12 packages are to be taken as the sample. Where there are 251 to 3,200 packages, 24 packages are to be taken as the sample. Where there are more than 3,200 packages, 48 packages are to be taken as the sample. All packages in the sample are collected through random selection procedures that are discussed subsequently in this preamble.

NIST pointed out in its letter to FDA that the sample collection procedure under the "Category A" approach can be readily used for both retail and wholesale inspections (Ref. 3). NIST advised that sample collection under this approach does not make unreasonable demands on inspection time through overly large sample sizes. Furthermore, NIST pointed out that the "Category A" approach was developed from a consensus position of the NCWM after consideration of the views of both regulators and the regulated industry. NIST stressed that the "Category A" sample collection procedure is easy to use and appropriate for use in verifying the net quantity of contents of packaged food at all levels of wholesale and retail trade.

FDA tentatively agrees with NIST's assessment of the "Category A" sample collection procedure in the 1994 Handbook. The practicability of implementation of this procedure, coupled with the consensus agreement on the approach, have led FDA to tentatively conclude that this procedure represents a reasonable approach to sampling. The agency is therefore proposing to adopt, in § 101.210, the Category A sample collection procedure from the 1994 Handbook.

3. Measuring Equipment

One of the fundamental aspects of any approach to ensuring that net contents declarations on food packages are accurate is to ensure that accurate measurements are made. To this end, FDA is proposing to address: (1) Selection of appropriate measuring equipment and (2) standardization of that equipment to ensure that it is accurate. FDA's hope is that these provisions will allow all affected parties to have confidence in the measurements made under the standard. FDA expects that this confidence will mean that regulatory agencies will be comfortable in embracing and implementing the approach set out in these regulations, and that the regulated industry will be able to establish uniform practicable target fill levels for all package sizes, regardless of the ultimate distribution location, with confidence that the fill

[2] The 1994 Handbook's definition appears in Table 3–3 on page B–17 of the Handbook 133 portion, of the 1994 Handbook.

[3] See Chapter 2 and Table 2–1 in Appendix B of the Handbook 133 portion of the 1994 Handbook.

levels will meet the local regulatory standards. With uniform target fill levels, firms should be able to significantly reduce overfilling of packages, thereby reducing production costs and providing consumers with more accurate nutritional information.

FDA notes that the 1994 Handbook contains procedures for both the selection and standardization of measuring equipment. These procedures pertain primarily to balances and volumetric measures (i.e., measuring devices for use in the measurement of volumes of liquids, such as standard measuring flasks, graduates, and cylinders (see Chapters 2 through 5 of the 1994 Handbook)). Many of these procedures (or "tolerances" as the 1994 Handbook often refers to them) are incorporated into the 1994 Handbook through reference to the NIST Handbook 44 (Ref. 4) (referred to subsequently as "Handbook 44"). Handbook 44 is widely recognized as the national standard for accuracy requirements for scales and balances (Ref. 3). In addition, both the 1994 Handbook and Handbook 44 contain instructions (or "test procedures" as the 1994 Handbook refers to them) for the calibration of equipment to ensure that its accuracy is consistent with measurement standards maintained by NIST.

FDA sees considerable merit in the 1994 Handbook procedures for selection and standardization of measuring equipment. The agency has therefore, with a very few exceptions (which are discussed below where relevant to a particular type of equipment), used these procedures as the basis for the equipment requirements in these proposed regulations. A discussion of these proposed requirements follows:

a. *Equipment selection*—i. *Thermometers.* In § 101.215(a), FDA is proposing to require that any thermometer used in measuring net contents (e.g., to bring a product to an appropriate reference temperature before measuring the volume) have graduations no larger than 1° (2° Fahrenheit). This proposed selection criterion reflects the standard that appears in Chapter 4 of the Handbook 133 portion of the 1994 Handbook. NIST advised FDA (Ref. 3) that graduations larger than these could mean that it would not be possible to determine whether the appropriate reference temperature has actually been achieved, and, consequently, significant volumetric measuring errors could occur. NIST also pointed out that this criterion has been in Handbook 133 for many years. NIST advised that this criterion can be applied to any type of thermometer (e.g., the commonly used mercury-in-glass thermometer or electronic device). FDA tentatively concludes, based on these factors, that 1°C or 2°F constitute the appropriate minimum graduations for thermometers that are to be used under these regulations.

ii. *Linear measuring equipment.* The 1994 Handbook contains no requirements for selection criteria for linear measuring equipment. However, in its letter to FDA, NIST suggested (Ref. 3) that any regulations on ensuring the accuracy of net quantity of contents declarations should include provisions on linear measuring devices because such devices are used in a variety of ways to determine net contents. For example, depth gauges are used to measure the headspace from the top of a package to the level of the product, and that distance is used to calculate the volume of product in the package (see analytical method in proposed § 101.225(f)).

NIST pointed out that while the 1994 Handbook contains no selection requirements for linear measuring equipment, it does contain a number of recommendations for such selections.[4] However, NIST expressed concern about these recommendations. NIST's concern focused on the suggestion in Handbook 133 that a 36-inch ruler be used for measurements of 25 inches or less, and that a 100-foot tape be used for measurements of greater than 25 (in). NIST explained that these provisions might be too inflexible in some circumstances to be practicable. NIST stated that it did not seem logical that a 36-inch ruler that could be used for measurements of 25 inches or less could not also be used to measure a slightly longer distance (e.g., 30 (in)). Thus, NIST suggested that FDA adopt a requirement for use of a tape or ruler of appropriate length, with a minimum graduation of 1/64 inch (or 0.5 milliliter (mm)) or less for equipment of 25 (in) or less or a minimum graduation of 0.1 inch (2 mm) for equipment of greater than 25 (in), without any limit on the distances that these devices can be used to measure.

NIST stated that the requirement should also express the 25-inch linear criterion as a metric value of 63.5 cm, explaining that the metric recommendations in section 5.3.1 of Handbook 133 are incorrect because of an inadvertent conversion error (Ref. 3). Also, NIST stated that the metric expressions of maximum permitted measurement errors in section 5.3.1 (i.e., 0.4 mm and 2.5 mm) should be expressed in terms of graduation values commonly found on precision metric tapes and rulers (i.e., 0.5 mm and 2 mm), rather than precise equivalents.

FDA is proposing in § 101.215 (b)(1) and (b)(2) to adopt the requirements that NIST suggested for tapes and rulers. As discussed above, FDA has tentatively determined that it will facilitate interstate shipment of product, and thus be of significant value, if the agency established standards for equipment used in determining the accuracy of net quantity of contents declarations. Given the well-recognized expertise of NIST on weight and measure matters, FDA considers it appropriate for the agency to defer to NIST in the development of those standards.

FDA is not proposing a standard for selection of calipers and depth gauges used to determine the level of fill in packages labeled by volume (headspace). NIST suggested only that a caliper or a depth gauge used to make such measurements be suitable in design and measuring range, and that the values of its smallest measurement unit be suitable for the purpose for which it is to be used. Neither NIST nor FDA is aware of more specific criteria that could be proposed for these measuring instruments (Ref. 3). NIST stated that specific requirements regarding suitability would be difficult to develop because of the broad range of container sizes that could be encountered in the marketplace.

Given the lack of specificity of NIST's suggestion, FDA is not proposing to incorporate it in the agency's regulations, although the agency urges regulatory officials and manufacturers to adhere to the guidance contained in NIST's recommendation. FDA also requests comments on whether there are objective selection criteria that should be used for calipers and depth gauges.

iii. *Volumetric measuring equipment.* In § 101.215(c), the agency is proposing the following selection criteria for volumetric measuring equipment that pertain to the graduations on, and the size of, the equipment:

a. Size. In § 101.215(c)(1), FDA is proposing to require that a volumetric measure used in fluid volumetric determinations be of such size that no volume less than 25 percent of the maximum capacity of the volumetric measure is measured. For example, a graduate with a capacity of 4 fluid ounces could not be used to measure volume of less than 1 fluid ounce. While the proposed requirement may not be readily apparent in the 1994 Handbook, NIST advised (Ref. 3) that it is actually present through incorporation by reference of Handbook 44.

[4] See section 5.3.1, page 5–6 of the Handbook 133 portion of the 1994 Handbook.

In its letter to FDA, NIST advised (Ref. 3) that, the criterion was developed by NIST many years ago and has been widely used by most State and local regulatory agencies since its development.[5] The criterion is based on the fact that when small amounts are measured, the error that comes within individual gradient can constitute a rather large percentage of the product measured. The 25-percent limit provides a means of controlling this factor.

NIST pointed out that section 4.44, "Graduates," in Handbook 44 provides tables specifying the design criteria for graduates (one type of volumetric measure) that limit their lower measuring range. These tables use the 25-percent criterion as the basis for prohibiting measurements below certain capacities of the graduate.

b. Graduations. In § 101.215(c)(2), FDA is proposing a selection criterion for volumetric measuring equipment that pertains to the maximum size of each individual graduation appearing on the volumetric measure. For such graduations, the agency is proposing to require that any volumetric equipment have a maximum graduation value related to the MAV. (As discussed previously in this preamble, one of the basic requirements of the 1994 Handbook is that the variation of individual package contents from the labeled quantity not be "unreasonably" large. The 1994 Handbook defines unreasonably large deviations in terms of the MAV, which varies with the size of the package.) The proposed criterion, which NIST advised has been in Handbook 133 since 1981 (Ref. 3) and has been widely accepted, requires that volumetric measuring equipment have a maximum graduation of no greater than ⅙ of the MAV for the labeled net quantity of contents of the package being measured. NIST explained in its letter to FDA that the criterion is intended to ensure that volumetric measuring equipment can accurately detect MAV deviations (Ref. 3).

NIST pointed out that frequently the ⅙ MAV criterion will not result in an exact equivalent to most graduations provided on volumetric measures. Under such circumstances, the most commonly used graduation should be selected. For example, where a 100 mL flask is to be used for a volumetric measurement, proposed § 101.245(f) (Table 3 "Liquid or Dry Volume MAV's for Individual Packages Labeled in Metric Units") provides that the MAV for the flask is 5.5 mL. When this MAV is divided by 6, a graduation criterion of 0.917 mL results. Thus, graduations smaller than 0.917 mL must be present on the 100 mL volumetric measure. NIST states that the most common graduation on a flask conforming to such a criterion would be a 0.5 mL graduation. Flasks marked 0.1 mL graduations could also be used but would rarely be available. A 100 mL buret marked with 0.1 mL graduations could be used. Flasks marked only with 1 mL or larger graduations would not meet the ⅙ MAV criterion.

Given the well-recognized expertise of NIST on weight and measure matters, it is appropriate for FDA to defer to NIST in the development of this ⅙ criterion. FDA tentatively concludes that the graduations that will result under this criterion will be adequate to enable regulatory officials to make accurate and fully informed judgments with respect to the MAV. FDA is therefore proposing to adopt the standard.

iv. *Gravimetric measuring equipment.* In § 101.215(d), FDA is proposing criteria for selecting gravimetric measuring equipment. These criteria are intended to ensure the appropriateness of the equipment used to measure the contents of the package being evaluated. The proposed criteria are a reiteration of those in the 1994 Handbook (including references to Handbook 44 in the Handbook 133 portion of the 1994 Handbook). FDA tentatively finds that more criteria are needed to guide the selection of gravimetric equipment than are needed to guide the selection of other types of measuring equipment because of the great complexity of gravimetric equipment. For gravimetric equipment, not only must the graduations on a balance be appropriate, but the design of equipment must also be appropriate for measurement of the package. In addition, the equipment must be functioning properly to make the measurement, and many factors may affect the way the equipment functions.

a. Gravimetric equipment design. With respect to gravimetric equipment design, proposed § 101.215(d)(1) (i) and (ii) provide that the portion of the balance on which the package is placed for weighing (i.e., the load receiving element) must be large enough to hold the package and be of sufficient weighing capacity for the package. Proposed § 101.215(d)(1)(iii) requires that, based on the 1994 Handbook, the balance have a minimum number of graduations, referred to as "scale divisions" (i.e., 100). FDA is proposing this number based on the 1994 Handbook (see page 2–11, Table 3 of Handbook 44). NIST advised FDA that at least 100 divisions are necessary to permit reliable assessments of the performance of a balance.

In addition, FDA is proposing a ⅙ MAV criterion for the maximum size of the individual scale divisions. This criterion is consistent with the ⅙ MAV volumetric graduation criterion, and FDA is proposing it for the same reasons that underlie the volumetric graduation criterion. Assessment of conformance with this criterion will also be made in a manner that is consistent with the approach discussed previously for the volumetric graduation criterion, except that the appropriate gravimetric tables (e.g., Tables 1 and 2 in the proposed regulation would be used to determine the MAV. NIST advised FDA that the proposed ⅙ gravimetric criterion has also been in Handbook 133 since 1981 (Ref. 3) and has been widely accepted.

b. Gravimetric equipment performance. With respect to gravimetric equipment performance, FDA is proposing selection criteria that will ensure that balances are sensitive enough to measure small variations in the net contents of different packages, which may be made with different packaging materials, without weighing errors attributable to the balance that would create an unfair bias concerning the weighing results. These sensitivity criteria will focus on ensuring that any balance selected for making measurements will not produce unacceptable errors (subsequently referred to as "rejection criteria") in a variety of performance tests.

Details of four performance tests are set forth in proposed § 101.215(d)(2). The proposed provisions require that the tests be performed before each initial daily use, use at a new location, or use in the presence of any indication of abnormal equipment performance, and that the balance be found in such tests not to exceed the criteria in the regulation for rejection. FDA is proposing to require that the tests be conducted before use of the balance because the sensitivity of the measuring device can be affected by handling and transportation to the test location, routine wear of mechanical or electrical components, and environmental factors at the test location such as temperature and air currents.

All of the proposed tests involve multiple weighings of test loads consisting of a variety of calibrated test weights (referred to as "mass standards"). The proposed procedures, which reflect the procedures set forth in section N.1., page 2–11, Handbook 44, include an "increasing load test" (§ 101.215(d)(2)(i)), which is conducted by applying mass standards to the

[5] FDA also has imposed the 25-percent criterion on its field personnel for many years (see section 428.21 of FDA's Investigations Operations Manual).

balance in increasing increments (e.g., 1, 2, 3, and 4 pounds (lb)—up to 10 percent more than the package gross weight) and, for most types of balances, a "decreasing load test" (§ 101.215(d)(2)(ii)), which is conducted by reversing the increasing load test procedure. In addition, FDA is proposing a test involving off-center loading (called a "shift test" in Handbook 44) (§ 101.215(d)(2)(iii)), to determine whether a balance accurately weighs packages placed anywhere on the load receiving element (e.g., the scale platter or pans). Finally, FDA is proposing a "repeatability performance test" (§ 101.215(d)(2)(iv)), wherein mass standards are weighed at least twice.

NIST stated in its letter to FDA (Ref. 3) that the proposed test procedures are appropriate for balances used in determining the net contents of packaged food, and that these test procedures are based on the procedures in Handbook 44 for verifying the accuracy of balances used in supermarkets. NIST also advised that, although there are four different performance tests, only 2 to 3 minutes are required to complete them. In fact, NIST pointed out they are often looked upon as simply one test comprised of four different weighing procedures. NIST explained that each of the four different procedures is needed because each duplicates one of the most common ways that weighing devices are used. NIST stated that improperly functioning balances may not always register the same quantity with increasing and decreasing loads, repeated weighings of the same quantity, and weighings of the same quantity in different locations of the load receiving element. NIST stressed that it is important to evaluate balance performance using all common weighing procedures that may be used. To illustrate the long history of use and acceptance of the proposed test procedures, NIST pointed out (Ref. 3) that similar test procedures were published on January 31, 1945, by NIST (then called the National Bureau of Standards) in NBS Handbook H37, "Testing of Weighing Equipment."

As mentioned, FDA is proposing that balances not have errors exceeding the rejection criteria in any of the performance tests. The agency sets out the proposed rejection criteria in proposed § 101.215(d)(3). Under this provision, if the criteria are exceeded in any individual weighing that is a part of a performance test, the balance does not meet the gravimetric selection criteria, and the balance may not be used to determine whether an inspection lot is violative.

The gravimetric selection criterion concerns the size of the error that will trigger rejection when that error is expressed in terms of a number of scale divisions (see proposed § 101.215(d)(1)(iii)) on the balance. In the 1994 Handbook, this criterion varies according to the type of balance used and the weight of the individual package unit being tested. The 1994 Handbook expresses this criterion in terms of two classes of balances that are identified in Handbook 44 as Class II and Class III balances. (Class I balances pertain to the most precise type of balances that are used primarily for weighing precious stones. These balances are not used for weighing food.) Class II balances are analytical balances which are generally found only in laboratories. Class III balances are generally used at supermarkets by investigators in the field. A Class III balance might have only 3,000 scale divisions, whereas a Class II balance might have more than 50,000 scale divisions.

Proposed Table 1 in § 101.215(d)(3)(i) is derived from the 1994 Handbook. It contains directions on how to determine the class of the balance based on value of the smallest balance division and the minimum and total number of balance divisions. Proposed Table 2 in § 101.215(d)(3)(ii), which is also derived from the 1994 Handbook, contains directions on how to determine the number of balance divisions for rejection based on the class of the balance and the weight of the package in terms of the total number of balance divisions.

The criteria for rejecting a balance have been set forth in Handbook 133 since July 1986.[6] According to NIST, these criteria were developed in conjunction with the Scale Manufacturers Association, a national trade association that represents the majority of U.S. manufacturers of weighing devices. Although FDA is proposing the same criteria as those in the 1994 Handbook, FDA is not proposing to use the term "tolerance" to identify the standard proposed in Table 2 in § 101.215 because that standard focuses on the number of errors for rejection rather than the number of errors that are permitted.

c. *Equipment standardization.* FDA is also proposing a category of requirements that pertain to the standardization of other types of measuring equipment. NIST recommended (Ref. 3), and FDA agrees, that it is therefore appropriate that all Federal requirements for standardization incorporate the NIST standard units of weight and measure. Thus, FDA is proposing in § 101.215(e) that all measuring equipment be standardized to the NIST standard units of measure.

As recommended by NIST (Ref. 3), FDA is proposing that the standardization take place through either direct or indirect comparison with NIST standards. For example, a mass standard used in the field may be compared to either the corresponding NIST mass standard or to a mass standard that has itself been directly compared to the corresponding NIST mass standard. NIST advised that the comparison should be made in a manner consistent with well-recognized procedures developed by that agency. Specifically, NIST recommended use of calibration procedures found in NBS Handbook 145, Handbook for the Quality Assurance of Metrological Measurements, November 1986 (Ref. 5), for all measuring equipment other than time measuring devices. For time measuring devices, NIST recommended use of its standard operating procedure (SOP), Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures, Specifications and Tolerances for Field Standard Stopwatches (Ref. 6).

NIST also advised, however, that Handbook 145 is being updated to include, in part, the SOP for stopwatches. In view of current updating of Handbook 145, FDA tentatively concludes that it is not necessary to propose procedures for standardizing stopwatches. The agency intends to incorporate the most up-to-date version of the test procedure for stopwatches in Handbook 145 in any final rule that may issue based on this proposed rule. If the anticipated revision of Handbook 145 has not been completed by the time of the final rule is issued, FDA may rely on NIST's SOP for stopwatches in the final rule.

NIST recommended that, except for volumetric glassware, the comparison to NIST standards be made on a routine basis (e.g., annually for equipment used on a weekly basis) (Ref. 3). NIST also advised that where neither Handbook 145 nor the SOP for stopwatches specifically provides calibration procedures for a particular type of measuring device, the requirement that calibration be done with a standard traceable to NIST can be satisfied by using nationally accepted standards and procedures that are traceable to NIST. NIST advised that calibration certificates or reports of tests of equipment should be maintained by FDA field offices to ensure that appropriate calibration intervals are met (Ref. 3).

Also, NIST provided guidance concerning the amount of error that it would consider acceptable in calibration procedures for stop watches, thermometers, linear measuring devices, volumetric measures, and mass standards (Ref. 3).

Because NIST is the Federal authority in matters concerning weights and measures, FDA tentatively concludes that it should follow NIST's recommendations in these matters. By following the recommendations of the agency with the most expertise on these matters in the Federal Government and whose views are informed by regular contacts with NCWM and the States, FDA should be able to establish a uniform national system that will be as efficient and workable as possible. FDA is therefore proposing to adopt NIST's recommendations for standardizing the types of equipment enumerated in the discussion that follows.

(*i*). *Stopwatch standardization.* In § 101.215(e)(1), FDA is proposing to require that any stopwatch used in procedures for measuring net contents not have an error exceeding ±2 seconds in a 3-hour time period. This proposed requirement is a reiteration of the provision on stopwatches that appears on page 3–34, section 3.13.1 of the Handbook 133 portion of the 1994 Handbook, except that the maximum permissible error pertains to the error during a 3-hour, rather than 2-hour time period. NIST stated that, except for an inadvertent typographical error, Handbook 133 would contain a 3-hour time period (Ref. 3). NIST explained that the Handbook 133 stopwatch criterion was based on Federal Specification GG–S–764C, which provides that a 3-hour time period be used for standardization.

(*ii*). *Thermometer standardization.* In § 101.215(e)(2), FDA is proposing to require that any thermometer used in procedures for measuring net contents not have an error exceeding ±1° Celsius (2 °F). This proposed requirement reflects the provision pertaining to thermometers that appears on page 4–4, section 4.2 of the Handbook 133 portion of the 1994 Handbook.

(*iii*). *Linear measure standardization.* The 1994 Handbook contains no requirements for linear measure standardization. As pointed out above, however, NIST advised (Ref. 3) that the proposal should include such requirements because linear measuring devices may be used in a variety of ways to determine net contents. NIST advised further that the 1994 Handbook does contain a number of recommendations for standardization of some linear measuring devices (see section 5.3.1, page 5–6 of the Handbook 133 portion of the 1994 Handbook). NIST stated that section 5.3.1 inch-pound recommendations could serve as a basis for requirements in the proposal pertaining to tapes and rulers. The recommendations provide, in part: (1) That, for measurements of 63.5 cm (25 in) or less, measurement errors shall be no greater than ±0.39 mm (± 1/64 inch), and (2) that, for measurements greater than 63.5 cm (25 in), measurement errors shall be no greater than ±2.5 mm (± 0.1 inch). NIST recommended that FDA proposes to include provisions that reflect these recommendations in the regulation.

FDA tentatively concludes that it should generally follow NIST's recommendations in matters concerning weights and measures. FDA is therefore proposing to adopt NIST's recommendations for standardization of tapes and rulers.

For calipers and depth gauges used to determine the level of fill in packages labeled by volume (headspace), the agency is also proposing standardization criteria based on information provided by NIST (Ref 3). NIST recommended that FDA establish an error limit of ± 50 micrometers for lengths of up to 400 mm; of ± 100 micrometers for lengths of 400 mm to 800 mm; and of ± 150 micrometers for lengths of 800 to 1,000 millimeters. NIST explained that such a requirement is needed to ensure that measurement errors attributable to these measuring instruments not adversely affect the results of the test. NIST based its recommendation for these error limits on the accuracy requirements for mechanical and electronic calipers and depth gauges that the American Society of Mechanical Engineers is considering including in its industry standard (ASME B89 1.14) (Ref. 7) for these devices.

FDA agrees with NIST that there is a need for standardization of these devices and is deferring to NIST for the appropriate standards. In proposed § 101.215(e)(3)(iii), Table 3, FDA is proposing to adopt the error limits for calipers and depth gauges that are recommended by NIST.

(*iv*). *Volumetric standardization.* In proposed § 101.215(e)(4), FDA is proposing a requirement that any flask or cylinder used in a procedure for measuring net contents not exceed error limits that vary according to the full capacity that is measured by the device. This proposed requirement reflects the error limits for flasks and cylinders that appear in Appendix I, page I–3 of the Handbook 133 portion of the 1994 Handbook. These error limits have been in Handbook 133 since before 1971 and are widely accepted as reasonable and appropriate. NIST advised FDA (Ref. 3) that, although error limits should be provided for both inch-pound and SI units of measure (volumetric measures may be graduated in either system of measure), all error limits should be expressed in terms of SI units only (i.e., mL) because metric measures are used more frequently in laboratories where standardization generally occurs. Therefore, the error limits that FDA is proposing in § 101.215, Table 4 are in SI units. Also, NIST pointed out that the error limits have been developed for liquids at the reference temperature that is closest to most common room temperature so as to minimize the adjustments in glassware and calibration liquid temperature that will have to be made to determine whether error limits have been exceeded.

(*v*). *Gravimetric standardization.* In § 101.215(e)(5), FDA is proposing to require that gravimetric measuring equipment used to measure net contents not exceed error limits that vary according to the size of the individual mass standard and the type of balance (i.e., Class II or Class III) used for the measurement. For Class III error limits, the proposed requirement reflects the error limits for field standard weights that appear on pages I–1 and I–2 in Appendix I of the Handbook 133 portion of the 1994 Handbook. These widely recognized error limits have been in Handbook 133 since 1981. As with volumetric standardization, while error limits need to be provided for both in inch-pound and SI units of measure (gravimetric measures may be graduated in either system of measure), all error limits are proposed to be expressed in terms of SI units only (i.e., mL) because metric measures are used more frequently in laboratories where standardization generally occurs.

For Class II balances, however, NIST recommended (Ref. 3) that significantly smaller error limits be adopted because these balances can reliably measure far smaller quantities than Class III balances. NIST advised that, while it had published some guidance concerning appropriate error limits in Class II balances (i.e., National Bureau of Standards Circular 547, Section 1, which is out of print), FDA should rely on Tables X5.1 and X5.2 of American Society of Testing and Materials (ASTM) Standard Specification E 617–91, Standard Specification for Laboratory Weights and Precision Mass Standards (Ref. 8) because the ASTM

[6] Section 3.1 of Handbook 133 incorporated the criteria by referencing the tolerances described in section T.N.3.2, page 2–22 of Handbook 44.

Tables are more current than Circular 547.

Given NIST's expertise, FDA has tentatively decided to accept its recommendation. FDA is proposing to include the ASTM values in Tables 5 and 6 for Class II balances and 7 and 8 for Class III in § 101.215(e)(5).

FDA requests comments on the appropriateness of doing so.

4. Analytical Procedures

The 1994 Handbook provides specific instructions for a wide variety of methods of analysis for determining the net contents of the packages in samples. These methods are found in Chapters 3, 4, and 5 of the Handbook 133 portion of the 1994 Handbook. The methods fall into two broad categories. The first category consists of general test methods (referred to as "core methods" in this preamble) that are for use for all products. The 1994 Handbook contains core methods of analysis for determining net mass or weight, drained mass or weight, volume, count, and tare weight. The second category consists of core test methods that have been modified for use with specific products. The 1994 Handbook contains modified methods of analysis for determining the net mass or weight of aerosols, vacuum packed coffee, flour, and frozen foods. Also, the 1994 Handbook contains modified methods of analysis for determining the drained mass or weight of frozen foods and glazed raw seafood. With respect to volume, the 1994 Handbook contains modified methods of analysis for determining the net contents of mayonnaise, salad dressing, ice cream, frozen desserts, and fresh oysters.

FDA sees considerable merit in the 1994 Handbook's approach of providing directions for the use of analytical methodology because such directions will help to ensure uniform implementation of the methodology and thus contribute significantly to uniform enforcement. Without such directions, there would be a significant opportunity for analytical findings to differ among those who perform the analysis. FDA has therefore included in this proposal specific instructions to follow with respect to how to perform analytical procedures. The instructions are derived largely from methodology in the 1994 Handbook.

The agency is proposing procedures for determining net mass or weight in § 101.220, for volume in § 101.225, for count in § 101.230, and for tare in § 101.235. Consistent with methodology in the 1994 Handbook, each of the proposed sections sets out core procedures for use for all foods. In addition, the proposed sections on determining mass or weight and on determining volume include additional procedures for use with specific foods or for use in specific circumstances, which are explained in the proposed provisions.

Although the proposed methods have been taken largely from the 1994 Handbook, FDA has made several nonsubstantive changes for clarity and brevity. For example, the 1994 Handbook contains a number of methods for use only with certain specific foods. As mentioned above, these methods are generally core test procedures that have been modified for use with the particular food. These modifications are intended to facilitate the measuring process for the specific foods. However, while the modifications may be helpful for making the measurement, many of the descriptions of the modified methods include detailed measuring instructions that are not critical to achieving accurate analytical results (Ref. 3). The agency's tentative view is that it would be unnecessarily redundant to include each of the specific modifications of core methods in the regulation. Instead, FDA is proposing the general core procedures with some modifications for clarity.

In addition, where the 1994 Handbook methods are consistent with methodology in "Official Methods of Analysis of the Association of Official Analytical Chemists International (AOAC)," 16th ed., 1995, FDA is proposing to incorporate by reference the appropriate AOAC method in the regulation rather than the 1994 Handbook method because this approach is consistent with the agency's general preference for using AOAC methods. This preference is reflected in 21 CFR 2.19 of FDA's regulations which states that it is the policy of the agency in its enforcement programs to utilize AOAC methods where the analytical method is not prescribed in a regulation. Where the 1994 Handbook methods are not consistent with AOAC methodology, and the AOAC method appears to be more appropriate than that in the 1994 Handbook, FDA is proposing to adopt the AOAC method rather than the 1994 Handbook method. The combined use of more general core methodology and the incorporation of AOAC methods by reference in the proposal makes the proposed provisions significantly shorter than the corresponding provisions in the 1994 Handbook. As a result, the proposed provisions should be easier for affected parties to follow.

In a number of instances, FDA is proposing methodology that differs significantly from that in the 1994 Handbook. These differences are specifically addressed as follows.

a. *Proposed § 101.220, net mass or weight.* As mentioned above, analytical procedures pertaining to net mass or weight appear in proposed § 101.220, which contains both general procedures for making particular types of net mass or weight determination for foods, referred to as the "core procedures," and more specific procedures for determining the net mass or weight of certain specific foods. Regardless of which type of measuring procedure is used, it will need to be performed on appropriate equipment and in an appropriate manner. FDA is proposing to reflect this fact in § 101.220(a), which states that all measuring equipment must conform to § 101.215, and that good weighing procedures must be used for all measurements. FDA considered proposing a prescriptive provision setting forth specifically what good weighing procedures must include. However, the agency has tentatively concluded that there are simply too many factors that may affect what procedures should be used for determining weight in a particular situation. FDA does, however, expect that all weighings will be performed on balances that: (1) Have been properly leveled; (2) are maintained at a zero reading when empty; (3) are properly dried after each weighing of moist packages (e.g., frost crystals on packages); and (4) are used in a manner that is consistent with the balance manufacturer's instructions.

The core procedure for net mass or weight is set out in proposed § 101.220(b)(1). This provision describes the general steps to follow in making this type of measurement. FDA is proposing that net mass or weight be determined by subtracting the average used tare mass or weight, determined in accordance with § 101.235, from the gross mass or weight of each package in the sample. This core procedure has been included in the Handbook 133 portion of the 1994 Handbook since 1981. Simply stated, what this provision means is that to determine the net weight of the contents of a package, it is necessary to subtract the weight of the packaging from the gross weight of the package. The appropriateness of this approach is clear as a matter of common sense.

In § 101.200(b)(2), FDA is proposing a specific procedure for determining net weight of unglazed frozen seafoods and vegetables. The proposed procedure is incorporated by reference from the "AOAC," 16th ed., 1995 section 963.26, under the heading "Net Contents of Frozen Food Containers Procedure 1963." The proposed procedure is not identical to the procedure in Section 3.12, page 3–33 of the Handbook 133 portion of the 1994 Handbook. (Handbook 133 advises that all frozen products should be measured with the core net weight procedure that appears in that Handbook.) However, as stated above, where AOAC procedures are available, FDA is proposing to require that those procedures be used, unless the agency provides in this preamble a reason for requiring other procedures. Section 963.26 of Official Methods of Analysis of the AOAC specifically pertains to frozen vegetables and, by reference in section 35.1.02(b) of this AOAC analytical manual, to unglazed frozen seafoods. FDA tentatively concludes that use of the more specific AOAC procedure is appropriate because it clarifies that the weight of any frost found inside the food package is added to the weight of the seafood to determine the net contents. (Frost inside the package generally comes from the liquid portion of the food, whereas frost outside the package generally comes from the atmosphere.)

The core procedure for determining drained mass or weight appears in proposed § 101.220(c)(1). This procedure is similar to the core procedure for net mass or weight in that the drained weight is calculated by subtraction of a tare weight from a gross weight. However, under proposed § 101.220(c)(1), the tare weight is calculated by including the weight of any liquid drained from the product with the weight of the other packaging materials. The tare weight is measured by placing the product on an appropriate sieve that is positioned at an appropriate angle on a receiving pan, placing all packaging materials on that same pan, draining the product for exactly 2 minutes, and weighing the pan after removal of the sieve containing the product (proposed § 101.220(c)(1) (i) to (iii)). This core procedure does not directly measure the weight of the drained food remaining in the sieve used to drain the liquid from the food.

FDA developed the proposed § 101.220(c)(1) after close review of both the drained weight core procedure in section 3.10, page 3–24, of Handbook 133 and the existing AOAC procedures for drained weight in "Official Methods of Analysis of the AOAC," 16th ed., 1995, section 968.30, under the heading "Canned Vegetables Drained Weight Procedure." The drained weight procedures in both documents are quite similar, but there are some differences. FDA is proposing to resolve the differences by adopting some elements from both documents for its core procedure.

Both the AOAC procedure and the Handbook 133 procedure provide for drained weight determinations using a 203-mm (8-inch) U.S. No. 8 standard test sieve for packages with net quantity of contents of 1.36 kg (3 lb) or less and a 12-inch (305 mm) U.S. No. 8 standard test sieve for packages with net contents greater than 1.36 kg (3 lb). However, the Handbook 133 procedure does not provide for use of a different size sieve for canned tomatoes, as the AOAC procedure does. The AOAC procedure specifies that for canned tomatoes, a U.S. No. 11.3-mm (7/16-inch) standard test sieve is to be used. Given that AOAC procedures are generally better suited for FDA enforcement purposes than Handbook 133, the agency is proposing to require in § 101.220(c)(1)(ii) that drained weight for canned tomatoes be determined with a U.S. No. 11.3-mm (7/16-inch) standard test sieve.

In one respect, however, the Handbook 133 drained weight core procedure is more appropriate than the AOAC core procedure for canned vegetables. The AOAC procedure is not specific about how the drained solids should be weighed. Thus, under the AOAC procedure, weighings could be made either (1) Through direct weighings of the sieve with the drained solids, followed by subtracting the weight of the sieve, or (2) through indirect weighings involving subtraction of the weight of the drained liquid and package tare weight from the package gross weight. NIST has advised (Ref. 3) that the 1994 Handbook procedure is preferable because the indirect approach provides less opportunity for continued drainage of the solids after the specified drain time. NIST explained that with the indirect procedure, when the sieve is removed the precise weight of the drained liquid is obtained, whereas with the direct approach, the solids continue to drain during weighing, resulting in a lower drained product weight.

FDA recognizes that, if it were to permit use of both direct and indirect drainage procedures, there would be an opportunity for drained weights to differ depending upon which procedure is used. Such differences would be contrary to the agency's goal of establishing a system that ensures that there will be as much uniformity in measurements as possible. Accordingly, FDA is proposing to provide for only indirect weighing in the drained weight procedure in § 101.220(c)(1).

The agency notes that in the food standard regulations on canned fruit (21 CFR part 145) and canned vegetables (21 CFR part 155) there are drained weight procedures that are based on the direct weighing procedure. If FDA adopts the procedure set forth in § 101.220, it will consider whether to propose to revise those regulations for consistency with § 101.220 or to remove the procedures from those regulations.

With respect to procedures for specific products, the agency is proposing in § 101.220(c)(2) to incorporate by reference AOAC procedures for determining drained weight for glazed vegetables and frozen seafood (except for frozen shrimp and crab meat) (AOAC section 963.18), frozen shrimp (AOAC section 967.13), and frozen crab meat (AOAC sections 967.13 and 970.60) and, in § 101.220(d), shucked oysters (AOAC section 953.11). Corresponding procedures appear in Handbook 133 in sections 3.14 (page 3–35), 3.13 (page 3–35), and 4.16 (page 4–43). The Handbook 133 procedures differ from the AOAC procedures in only two respects. First, section 3.13 provides for thawing the frozen shrimp or crab meat in a plastic bag in a water bath, whereas AOAC sections 967.13 and 970.60 provide for thawing the product directly in the water bath at a specific temperature without being placed in any bag. In addition, section 4.16 of Handbook 133 provides for draining the liquid from the shucked oysters with a U.S. No. 8 standard test sieve, whereas AOAC 953.11 provides for draining this liquid with a custom designed sieve referred to as "skimmer." Again, without a specific reason to do otherwise, FDA is proposing to require that the AOAC procedure be followed.

b. *Proposed § 101.225, volume.* Proposed § 101.225 contains both general procedures for determining the net volume of most foods and more specific procedures for determining net volume of specific foods.

In § 101.225(a), FDA is proposing to require that measuring equipment conform to § 101.215, and that good weighing and measuring procedures be used for all measurements.

The core procedures for net volume appear in proposed § 101.225 (b) and (c). Both procedures have been in Handbook 133 since 1981 and are widely recognized as valid and appropriate methods (Ref. 3). They are essentially the same as core procedures appearing in chapter 4 of the Handbook 133 portion of the 1994 Handbook.

The procedure prescribed in proposed § 101.225(b) uses only a volumetric measure to determine the net contents. It involves pouring the entire contents of a package into a volumetric measure (see proposed § 101.201(a) for appropriate reference temperature) and

comparing the liquid level with the graduations on the measure.

The procedure prescribed in proposed § 101.225(c) uses both a volumetric measure and a balance to determine the net contents, with most measurements involving a gravimetric procedure for net volume. Initially, the proposed procedure requires that a test demonstrate that individual packages within the sample have constant product density (weight/volume at the appropriate reference temperature). For this product density test, the same measured amount of product from two individual packages is weighed. Where the weight is the same in both cases, information from the weighings is used to calculate the volumes of the remaining individual packages of product in the sample from the weights of those packages. NIST explained (Ref. 3) that the product density test must demonstrate the same measured weight in both cases because only when product density is constant among all of the individual packages within the sample may the weights of the packages be used to calculate the volumes of those packages. If used in other circumstances, net volume determinations made using proposed § 101.225(c) could have significant errors. When product density is constant, however, the gravimetric procedure in proposed § 101.225(c) is considerably faster than the procedure in proposed § 101.225(b) because, under § 101.225(c), most packages are simply weighed, while under § 101.225(b), all packages must be opened, their contents poured into a volumetric measure, and the liquid level of these contents compared with the graduations on the measure.

NIST pointed out that although the gravimetric procedure proposed in § 101.225(c) basically relies on constant variability, some flexibility must be provided for in the procedure because most types of balances display weight in the form of a digital reading that has been rounded by computerized components within the balance to the nearest whole scale division (Ref. 3). Thus, the balance may introduce variation of as much as one-half scale division. In the presence of such balance variation, more than a one scale division difference must be present to conclude that differences in weights are attributable to the food rather than to the balance. Thus, NIST advised, only where more than one scale division is present between the 2 volumes weighed in the product density test should proposed § 101.225(c) contain a provision prohibiting its use to determine net volume because the product density is not constant (see proposed § 101.225(c)(3)(v)).

NIST advised (Ref. 3) that proposed § 101.225(c) may appear different from the Handbook 133 gravimetric procedure for volume to some affected parties because of the presence of the above stipulation that the procedure not be used where more than a one scale division difference between packages is present. However, NIST pointed out (Ref. 3) that Handbook 133 actually needs this stipulation to be properly updated. NIST explained that the existing gravimetric procedure in Handbook 133 was developed for the types of scales and balances used by weights and measures officials in the 1960's and 1970's, which did not have the computerized components with the capability of rounding to the nearest whole scale division.

In § 101.225 (d), (e), (f), and (g), the agency is proposing measuring procedures for specific products. In paragraphs (d) and (e), FDA is proposing to incorporate by reference AOAC procedures for determining net volume for shucked oysters, clams, or scallops and for ice cream and frozen desserts. Corresponding procedures appear in Handbook 133 in sections 4.16 (page 4–43), and 4.15 (page 4.38). The Handbook 133 procedures differ in only a few respects. For shucked oysters, clams, or scallops, the AOAC procedure includes specific procedures for preparing the food for measurement that are not contained in Handbook 133. For ice cream and frozen desserts, the AOAC procedure includes specific procedures for handling and freezing the food that are not included in Handbook 133. Also, the AOAC procedure in Method I (AOAC 968.14) provides that kerosene is the immersion fluid for the measurement, rather than cold water, as provided for in Handbook 133.

NIST points out (Ref. 3) that there could be significant problems for field regulatory officials to safely transport and handle kerosene. NIST stated that kerosene is specified in the AOAC procedure to ensure that the food will not mix with the immersion liquid. NIST also advised, however, that water of 0.56 °C (33 °F) or below may be used as the immersion liquid provided there are no visual indications of mixing.

Based on NIST's position on this matter and the deference that it considers to be due NIST, FDA tentatively concludes that it should permit the use of sufficiently cold water for measuring the volume of ice cream and frozen desserts. FDA is therefore proposing to permit substitution of water of 33 °F (0.56 °C) or below for kerosene in the AOAC procedure, provided that the food does not mix with the water.

In § 101.225(f), FDA is proposing a volumetric depth gauge procedure that may be used to determine volume where the food has a smooth and level headspace (e.g., oils, syrups, and other viscous liquids). The proposed procedure involves determining the headspace of the package at the point of contact with the food using a depth gauge; emptying, cleaning, and drying the package; and determining the amount of water necessary to refill the package to the headspace present with the food. The proposed procedure reflects the procedure in section 4.6.1, page 4–12, of the Handbook 133 portion of the 1994 Handbook but with a few differences because of the NIST recommendations (Ref. 3).

FDA is proposing to require a 6-inch bubble level rather than at least a 10-inch level because NIST advised that 6-inch levels are adequate for the intended purpose and more commonly available than 10-inch levels (Ref. 3). Also, the agency is proposing no restrictions on the size of the micrometer depth gauge because the test procedure can be used on a wide variety of package sizes that may require the use of depth gauge rods of different lengths (Ref. 3). Further, section 4.6.1 of Handbook 133 states that the size of the micrometer measuring rod shall be 0 to 9 (in), but NIST recommended that no size be stipulated. NIST advised that, when this section of Handbook 133 was written, NCWM intended to provide guidance in selecting commonly available equipment appropriate for use in testing most products, but there was no intent on the part of NCWM to limit the procedure's use to measurements of less than 9 (in) (Ref. 3).

In § 101.225(g), FDA is proposing a volumetric air space procedure that may be used to determine volume where the food does not have a smooth and level headspace (e.g., mayonnaise). The proposed procedure involves determining the amount of air space above the product in the package and then the total container volume. Subtracting the airspace volume from the total container volume gives the product volume. The proposed procedure reflects section 4.8, p. 4–20 and section 4.14.2, p. 4–36, of the Handbook 133 portion of the 1994 Handbook.

There is, however, one significant difference between all of the procedures proposed in § 101.225 and the corresponding Handbook 133 procedures. The difference concerns reference temperatures. As mentioned previously in this preamble, a "reference temperature" is the temperature at which the fill of a food sold by volume must meet the declared net quantity of contents (see proposed § 101.205(m)). This temperature is important in measurements to determine the net volume because the volume that is occupied by any food varies with temperature. Where the temperature falls below the reference temperature, the volume decreases. As a result, a product that contains the declared net quantity of contents at the reference temperature could measure below the declared net quantity at a reduced temperature. If a regulatory official made a measurement at a reduced temperature, an appropriately labeled product might be considered violative. Such a situation would be unfair to the manufacturer. To prevent this situation, Handbook 133 prohibits measurement where product temperatures are below the appropriate reference temperature. Conversely, measurement at a temperature higher than the reference temperature could be unfair to consumers, but Handbook 133 does not address this situation.

To be fair to both consumers and manufacturers, the volumetric methodology that FDA is proposing in § 101.225 provides that the food be brought to the appropriate reference temperature before measurement of its volume. However, there is often no practicable way to maintain the reference temperature while all subsamples are being measured. The 1994 Handbook provides for this situation by advising that officials have some flexibility with respect to these temperatures in making fluid measurements, but it does not specify how much flexibility is appropriate. Without any constraints on this flexibility, there is reduced assurance of uniformity of enforcement. However, NIST suggested that one way to identify an appropriate amount of flexibility would be to specify those reference temperature ranges at which there would be no more impact in volume measurements than 0.01 percent of the measured volume (Ref. 3). NIST stated that measurements should be performed from −18 °C (0 °F) to −15 °C (5 °F) for frozen food, from 1.7 °C (35 °F) to 7.2 °C (45 °F) for refrigerated food, and from 20 °C (68 °F) to 22.7 °C (73 °F) for other foods. NIST explained that these temperature ranges would afford needed flexibility in making measurements (Ref. 3).

As the agency has stated repeatedly in this document, it has tentatively decided to follow all of NIST's recommendations on matters of weights and measures. FDA is therefore proposing to adopt NIST's recommendations for appropriate reference temperature analytical ranges in § 101.225(b)(1). Under this provision, all measurements of net volume are to be made at the NIST-recommended temperatures, unless FDA has specifically provided otherwise.

There is a second difference between § 101.225 and Handbook 133 concerning measuring devices used "to deliver" liquids. All volumetric measures are calibrated either "to deliver" or "to contain" a volume of liquid. The graduations of "to deliver" volumetric measures represent the volume of liquid in the vessel that can be poured from it. The graduations of "to contain" volumetric measures represent the volume of liquid in the vessel and do not represent the volume of liquid that can be poured from it (some liquid is inevitably retained after pouring). However, both types of measures actually measure the same quantity, and both types may be used to determine the volume of any liquid, provided appropriate procedures for use are followed. With proper use, the accuracy of the measurements from either type of volumetric measure is equivalent.

"To contain" volumetric measures must be cleaned and dried between each use because the measure was calibrated and marked in comparison to a cleaned and dried volumetric standard. However, "to deliver" measures do not have to be prepared in this manner because they have been calibrated to deliver a specific amount of liquid after a specific drain time that is marked on the measures. These measures only have to undergo an initial wetting and draining treatment. Section 4.3.c. of Handbook 133 provides a set of directions for preparing these measures for use. The directions, which are consistent with the recommendations of NIST for such calibration (Ref. 3) have been reiterated in proposed § 101.225(b)(2)(ii).

However, some manufacturers of volumetric measures may use different emptying and drainage times in calibration procedures than those currently in Handbook 133. Where they do so, the manufacturer designates the appropriate time for emptying (including pouring out the liquid and draining it) or draining (excluding the time for pouring out most of the liquid) the measure. (Most manufacturers that do designate such a time, express it in terms of a draining time (Ref. 3).) NIST recommends that when a manufacturer designated emptying or drainage time appears on a measure, that time be used.

In view of this recommendation and of the fact that it is logical to assume that greater accuracy would consistently result from following the manufacturer's recommendation, when it is present, than more general procedures, FDA is proposing in § 101.225(b)(2)(ii)(B) to differ from Handbook 133 provisions by requiring the use of the manufacturer's delivery recommendations when they are present. FDA requests comment on the appropriateness of its approach.

FDA points out that its Investigations Operations Manual (IOM) directs its personnel to use only "to contain" volumetric measures, whereas the proposed provisions do not include this restriction because of the recommendations mentioned above by NIST (Ref. 3). If FDA adopts this proposal, the IOM will be modified to reflect this change.

c. *Proposed § 101.230, count.* Chapter 5 of the Handbook 133 portion of the 1994 Handbook contains two core procedures for checking net contents declared by count. The procedure may be used in all situations that involve counting the contents of each individual package. However, a gravimetric test procedure may also be used to determine count where product density (weight/volume at the appropriate reference temperature) is constant among all of the individual packages within the sample. (As discussed previously in this preamble, gravimetric procedures for other forms of expression of net contents provide reliable results only where product density does not vary among individual food packages.)

FDA is proposing the Handbook 133 individual count as a core procedure in § 101.230(a) and the gravimetric count core procedure in § 101.230(b). Where it may be used, the gravimetric procedure for net count is considerably faster than the procedure in proposed § 101.230(a), because most packages are simply weighed rather than being subjected to the procedure where all packages are opened, and their contents individually counted.

To determine whether the product density is constant, proposed § 101.230(b)(1) prescribes a product density test that requires that, for two individual packages, the net contents be weighed at the reference temperature and individually counted. These values are used to calculate the net weight of the package with the labeled count. For both packages, the labeled count must be calculated to weigh the same amount. As discussed previously in this document, because most types of balances may introduce some variation in measurements from computerized components that round to the nearest whole scale division, more than a one scale division difference must be

present to conclude that differences in weights are attributable to the food rather than to the balance. Thus, where more than one scale division is present between the two calculated weights of the labeled count in this product density test, proposed § 101.230(b)(1)(v) prohibits the use of the gravimetric procedure to determine net count because the product density is not constant.

Where more than one scale division is not present, proposed § 101.230(b)(2) contains a gravimetric measuring procedure wherein the balance used in the product density test is also used to determine the net weights of the individual packages in the sample, and the product density is used to convert the net weights to net counts. This procedure reflects the core procedure appearing in Chapter 5[7] of the Handbook 133 portion of the 1994 Handbook. This procedure has been in Handbook 133 since 1981.

The proposed procedure may appear to be different from the Handbook 133 procedure because of the presence of the stipulation against use of the procedure where there is a two or more scale divisions difference in the product density test. However, NIST recommended incorporating this stipulation to update the Handbook 133 gravimetric procedure for net volume (Ref. 3). As stated previously, the Handbook 133 procedure was developed for the types of scales and balances used by weights and measures officials in the 1960's and 1970's.

FDA points out that the core procedures for count in proposed § 101.230 (a) and (b), if adopted, will be used primarily for dietary supplements in tablet, capsule, or other unit dosage form rather than for food in conventional food form. For such dietary supplements, consumer value comparisons are facilitated primarily by information concerning the amount of dietary ingredient in the unit form and the number of such units in the food package. A statement in terms of the net weight alone is often of little practical value to purchasing decisions. For dietary supplements in unit form, FDA generally requires that declarations of net quantity be expressed in terms of net count, with statements of net contents in other forms being voluntary expressions.

With respect to food in conventional food form, only a few products (e.g., chewing gum) may express net contents in terms of only count. The agency solicits comments concerning whether it should require that declarations of net quantity of contents on dietary supplements in unit form include information concerning the amount of dietary ingredient in a unit of the supplement, as well as information in terms of count.

d. *Proposed § 101.235, tare.* The Handbook 133 portion of the 1994 Handbook defines "tare weight" as the weight of a container, wrapper, or other material that is deducted from the gross weight to obtain the net weight. With respect to other material that is deducted from the gross weight, regulatory officials have had differing opinions concerning whether food particles adhering to the container and liquids from the food absorbed in the container must be included in tare weight. Because of a lack of agreement in this area, Handbook 133 contains definitions of tare to accommodate all positions of the officials. Any of the definitions may be used with the gravimetric methods of analysis in Handbook 133, and significant variation in analytical findings may result from this flexibility.

Handbook 133 contains definitions for "dry tare," "dried used tare," and "wet tare." "Dry tare" is defined as unused tare that comprises all packaging materials (including glue, labels, and ties) that contain or enclose a product, including prizes, gifts, coupons, or decorations that are not part of the product. "Dried used tare" is defined as used tare for which an effort is made to reconstruct the unused tare weight by removing the food from the tare by washing, scraping, wiping, ambient air drying, or other techniques involving more than "normal" household recovery procedures but not including such laboratory procedures as oven drying because oven drying can damage the tare material and result in invalid tare determinations. "Wet tare" is defined as used tare when no effort is made to reconstruct unused tare weight. For wet tare determinations, only readily separable food product is removed. Wet tare may include food particles that adhere to packaging materials, as well as fluids that may have been absorbed into these materials. As a result, free flowing fluids that have drained from the food may not be included in the net mass or weight of the food. With used wet tare, there is a significant possibility that there will be large variations in tare weight (Ref. 3). These variations may differ with the type of product, packaging materials (e.g., with absorbent packaging material), and handling and storage conditions. Additional variations in wet tare may be caused by the procedures used to determine wet tare, such as how long the product is allowed to drain before it is removed from the packaging and weighed.

NIST pointed out (Ref. 3) that these variations make it difficult for packers to set accurate fill levels because, in most cases, they must overpack to accommodate the largest possible wet tare determination that could be found with the product. Because of variations in wet tare determinations and the fact that dry tare is generally not available in sampling locations such as warehouses and retail stores, NIST recommended (Ref. 3) that FDA require that tare determinations be made with only dried used tare.

In response to NIST's recommendation, and in view of the fact that FDA has evaluated net contents declarations with dried used tare for many years, FDA is proposing in § 101.235(a) that only dried used tare be used in quantity of contents determinations. The agency is not proposing that unused dry tare be permitted because the agency is proposing these rules for national uniformity, and there may be some weight differences in the two types of dry tares from a variety of factors such as absorbed packing medium. The procedures that FDA is proposing for determining dried used tare are those that are currently set out in the 1994 Handbook. The agency considers them appropriate because they have been widely accepted by State and local regulatory agencies and industry for more than 30 years (Ref. 3).

With respect to how many tares must be weighed to determine the average tare that will be used in gravimetric procedures to determine the net contents, the Handbook 133 portion of the 1994 Handbook provides for 2 approaches for determining the average value. However, the 1994 Handbook permits only one of these approaches to be used. This approach is set out in "Alternative Tare Procedures," in section 2.11.4., page 2–22 of Handbook 133, with modifications made by the 1994 Handbook.

The "Alternative Tare Procedures" involve a 2-stage procedure. An initial small tare sample size is weighed, and the variation within the individual packages of that initial sample is used to make a decision on how many additional individual packages must be weighed before calculating the average tare. The initial test is needed because tare weight can vary considerably from package to package (e.g., plastic buckets, glass bottles, and metal cans). If this tare variation is sizeable in comparison with the net weight variation, the net weights calculated for the sample packages can be erroneous.

[7] Section 5.1.3, page 5–3, of Handbook 133.

To minimize erroneous findings, the 1994 Handbook identifies values of ratios of the tare weight divided by the net weight that will ensure that no more than 5 percent of the gross weight variation results from variation in tare. (Before the 1994 Handbook revisions of Handbook 133 were made, the contribution of this variation in tare could be 25 percent of the gross weight. The contribution was limited because of concern that tare errors might influence the net weight results to too large a degree.) In some cases, where there is a large variation in package tare weights, all of the packages in the sample may have to be opened, and the average tare determined using the tare values for each of these packages.

NIST recommended that FDA adopt the 1994 Handbook procedures for determining the numbers of tare weights to be obtained (Ref. 3). Again, because FDA is not aware of any potential problems with these procedures, and because of NIST's expertise, FDA has tentatively decided to follow NIST's recommendation with respect to appropriate tare weight. Therefore, proposed § 101.235 (b) through (i) incorporates a procedure for determining fare weight that is modeled after the 1994 Handbook.

5. Compliance Procedures

As explained previously, the 1994 Handbook uses the "Category A" approach to ascertain conformance with net quantity labeling requirements. This approach has two aspects: Procedures for sample collection, and procedures for using the package characteristics of a sample to determine whether the inspection lot is violative. The sample collection aspect of the "Category A" approach, which was discussed earlier in this preamble, serves as the basis for FDA's proposed § 101.210. This section of the preamble pertains to the other aspect of the "Category A" approach, which may be characterized as "compliance procedures." Compliance procedures minimize the number of case-by-case decisions by prescribing specific steps to determine whether the requirements for declarations of net contents have been met.

a. *Requirements pertaining to average package fills.* According to NIST (Ref. 3), the insistence in the 1994 Handbook that the average quantity of contents of the packages in a lot, shipment, or delivery be equal to or exceed the quantity printed on the label is the primary tool for protecting consumers. Most State and local regulatory actions result from this aspect of the 1994 Handbook (Ref. 3). The focus on the average quantity of contents provides good assurance that, while individual packages within an inspection lot may fluctuate, on a lot basis, consumers will receive the amount of food declared on the label (Ref. 3).

i. *Industry concern about average requirements.* The industry Task Force stressed that it is concerned about Handbook 133's focus on average quantity of contents because decisions about whether regulatory actions are warranted are usually made based on inspection lots. The Task Force argued that it is not appropriate to subject an inspection lot to regulatory action based solely on an average requirement because if this is done, it will not be possible to tell whether the problems found in an inspection lot are the result of underfilling or of the reasonable variations permitted for a production lot under section 403(e)(2) of the act. The Task Force stressed that, within each production lot, net contents will often rise above and fall below the declared net contents, but that the average net contents of the production lot will meet the declared net contents.

Given the fluctuations among packages, however, the Task Force said that inspection lots may not be representative of their larger parent production lots. The Task Force explained that inspection lots are generally small parts of much larger production lots. Because of distribution practices, the inspection lot usually represents an interval of production and not a random sample of the production lot. Thus according to the Task Force, the averaging out at the declared contents level that occurs in the production lot may not occur in the inspection lot.

The Task Force expressed particular concern over regulatory action based on very small inspection lots. The Task Force contended that net content examinations of inspection lots should be used primarily as "audit tools," and that actions against an inspection lot should only be taken if a firm's quality control records show that there were problems with the production lot at the plant, or if access to such records is denied to regulatory officials.

The Task Force also argued that FDA should establish a statistically valid sampling variation allowance that is not reduced for small sample sizes. The Task Force explained that even package filling operations that comply with GMP cannot guarantee that each inspection lot with as few as 10 to 30 units will always have the same average net contents. The Task Force requested that a sampling variation allowance based on two standard deviations of the sample mean be applied to all in-plant, wholesale, and retail inspection samples.

ii. *NIST position on industry concern.* NIST maintained that it is fair to industry for regulatory agencies to follow the 1994 Handbook and to take regulatory action against inspection lots if they are found to be violative based on samples analyzed using the average requirement because of the mathematical approach that undergirds that requirement.

iii. *Mathematical approach.* The 1994 Handbook requires that a sample of the inspection lot be drawn from the entire inspection lot, using random selection procedures. Such procedures are necessary if a reliable mathematical evaluation of net contents findings is to be made. Random selection of the sample means that, using the net contents of the individual packages in the sample, it is possible to derive a reliable picture of the range of possible average net contents values for the inspection lot. The range of possible average net contents values will be correct 97 or more times out of 100 (or, in statistical terms, with 97 or more percent confidence).

The 1994 Handbook uses the range of possible average net contents values for the inspection lot to estimate the uppermost average package error that could be present in the inspection lot with 97 or more percent confidence. (As explained previously in this document, the package error is the difference between the measured net quantity of contents and the labeled quantity on the package.) If the package error calculated using the 1994 Handbook is less than 0, it would mean that the net contents of a significant number of packages in the inspection lot would not meet the declared net contents, and that inspection lot is violative.

Under the 1994 Handbook, the range of possible average net contents values for the inspection lot is calculated by: (1) Determining the net contents of all individual packages in the sample; (2) Determining the package errors for all of the individual packages in the sample (again, the package error is the difference between the measured net quantity of contents and the labeled quantity on the package); (3) Determining the average package error for the sample; and (4) Determining the range statistic, that is, a value that, when combined with the average package error for the sample (by addition to and subtraction from this error), will be used to make a reliable estimate of the range (i.e., the difference between the greatest and smallest values) of average package error values that may be present in the inspection

lot. The range statistic, is determined by: (a) Determining the standard deviation (s) of package errors within the sample (s is a statistic used as a measure of dispersion (i.e., differences of individual values from the mean) in a sample); (b) Selecting from a mathematical table (found in Column 2 of Table 1 in proposed § 101.240) the appropriate statistic that will be used to account for the number of individual packages in the sample. There is a 97 percent confidence incorporated in the estimate of the range of possible variations of average package error within the inspection lot. (Any estimate of the range of possible variations in average package error within the inspection lot using the average package error of the sample will vary with the sample size because the reliability of such an estimate is greater as more individual measurements are made. The 1994 Handbook refers to the statistic that it uses to account for sample size and the desired confidence as the "Sample Correction Factor" (SCF). The SCF gets larger as the sample size gets smaller. For the SCF values in Table 1 of proposed § 101.240, the level of desired confidence for estimates about the inspection lot is that they be correct 97 or more times out of 100 (or, in statistical terms, with 97 or more percent confidence). (The 97 percent confidence aspect of the SCF statistic is consistent with Task Force requests for a sampling variation allowance based on two standard deviations of the sample mean.); and (c) Multiplying "s" by the appropriate SCF to determine the range statistic, that is the sample error limit (SEL). The SEL is a statistical value that allows for the uncertainty between the average error for the sample and the average error for the inspection lot.

The 1994 Handbook uses the SEL to estimate the uppermost average package error that could be present in the inspection lot with 97 or more percent confidence. This package error is determined by adding the SEL to the average package error of the sample. If this uppermost average package error in the inspection lot is less than 0, the 1994 Handbook, as stated above, classifies the inspection lot violative.

iv. *Fairness of the 1994 Handbook approach.* To illustrate fairness in the 1994 Handbook's approach to reasonable variations in the average net quantity of contents in the inspection lot, NIST referred to a number of hypothetical sampling situations with varying sample net weights (Ref. 3). All of these situations pertained to inspection lots with a total declared net weight of 48 oz (3 lb) and with varying package errors within a sample size of 12 individual packages. NIST advised that because it used a computer for all of its calculations in these situations, the formula it used for determining the standard deviations of the package errors in each of the situations was $s=(\sum(x_i-x)^2/(n-1))^{1/2}$.

Situation A: Inspection lot size: 250 packages

Package error range: 3 oz (−1.5 oz to +1.5 oz)

Package errors among the 12 packages within the sample: +1, −1.5, +0.5, −1, +1, −1.5, −1.5, −1, +0.5, −1.5, +1.5, −1.5

Average package error: −0.42 oz

Calculation of SEL

Standard deviation (s): 1.203 sample correction factor (SCF) for sample size of 12 from Table 1, § 101.240: 0.5774 SEL=1.203×0.5774=0.69 oz

Compliance Status of Inspection Lot

Avg package error + SEL=−0.42+0.69=0.27 oz 0.27 meets the 0 or greater criterion discussed above, so the lot is in compliance

Permitted Reasonable Variations in Package Errors

Estimation of Allowance for Reasonable Variation Range Within Inspection Lot = sample avg package error ± SEL=−0.42 oz ±0.69 oz=−1.11 oz to 0.27 oz

Permitted Reasonable Variations in Average Net Weight

48 oz−1.11 oz to 48+0.27 oz=46.89 oz to 48.27 oz

Maximum Percent Shortage Within Reasonable Variations

1.11 divided by 48×100=2.3%

Situation B: Inspection lot size: 250 packages: Package error range: 0.16 oz (−0.17 oz to −0.01 oz) (note that all errors are negative). Package errors among the 12 packages within the sample: −0.17, −0.01, −0.01, −0.01, −0.01, −0.01, −0.01, −0.02, −0.01, −0.02, −0.01, −0.01. Average package error: −0.02 oz

Calculation of SEL

Standard deviation (s): 0.0458 SCF for sample size of 12 from Table 1, § 101.240: 0.5774 SEL=0.0458×0.5774=0.03 oz

Compliance Status of Inspection Lot

Avg package error + SEL=−0.02+0.03=0.01 0.01 meets the 0 or greater criterion, so lot is in compliance

Permitted Reasonable Variations in Package Errors

Estimation of Allowance for Reasonable Variation Range Within Inspection Lot = sample avg package error ± SEL=−0.02 oz±0.03 oz=−0.05 oz to 0.01 oz

Permitted Reasonable Variations in Average Net Weight

48 oz−0.05 oz to 48+0.01 oz=47.95 oz to 48.01 oz

Maximum Percent Shortage Within Reasonable Variations

0.05 divided by 48×100=0.10%

Situation C: A small inspection lot, all of which is included in the sample, with mixed production codes (such as those often found in retail marketplace). Inspection lot size: 12 packages. Package error range: 1.49 oz (−1.5 oz to −0.01 oz) (note that all errors are negative). Package errors among the 12 packages within the sample: −1.50, −0.19, −0.5, −0.09, −1.40, −0.03, −0.01, −0.02, −0.01, −0.01, −0.01, −0.02 Average package error: −0.32 oz

Calculation of SEL

Standard deviation (s): 0.5448 sample correction factor (SCF) for sample size of 12 from Table 1, § 101.240: 0.5774 SEL=0.5448×0.5774=0.32 oz

Compliance Status of Inspection Lot

Avg package error+SEL=−0.32+0.32=0.00 0.00 meets the 0 or greater criterion, so lot is in compliance

Permitted Reasonable Variations in Package Errors

Estimation of Allowance for Reasonable Variation Range Within Inspection Lot=sample avg package error ±SEL=−0.32 oz±0.32 oz=−0.64 oz to 0.00 oz

Permitted Reasonable Variations in Average Net Weight

48 oz−0.64 oz to 48+0.00 oz=47.68 oz to 48.00 oz

Maximum Percent Shortage Within Reasonable Variations

0.64 divided by 48×100=1.3%

NIST stated (Ref. 3) that these illustrations disclose that the foundation of the 1994 Handbook's approach to permitting reasonable variations in the average net quantity of contents lies in its evaluation of the significance of the standard deviation (s) of package errors within the sample.

For small inspection lots (about which the Task Force expressed the greatest concern), NIST stated (Ref. 3) that the 1994 Handbook's approach provides sufficient allowance for the variations that are likely to occur.

NIST advised that the Situation C illustration demonstrates that there is little foundation to industry's concern that small inspection lots are at a significant disadvantage under the 1994 Handbook. NIST explained that the 1994 Handbook includes, as requested by the Task Force, an SEL that is not reduced for small sample sizes. NIST stated that the approach that is reflected in proposed § 101.210 provides for collection of smaller sample sizes for smaller inspection lots (e.g., 12 individual packages for an inspection lot of 250 packages versus 48 individual packages for an inspection lot of more than 3,200 packages). As stated above, smaller sample sizes result in larger SCF's and, in turn, in larger SEL's. The larger SEL's permit greater adjustment of the average sample net quantity of contents before application of the 0 or greater criterion for the average sample package error that is discussed above. As a result, it is more likely that a small inspection lot with an underweight average will be accepted than that the lot will be rejected.

NIST pointed out (Ref. 3) that because those firms that pack with greater variability from a variety of sources, including poor quality control, will get larger correction allowances than firms packing with smaller variability, firms with poor quality control might get undue benefit from the 1994 Handbook approach to calculating the SEL. However, NIST advised also that it knows of no way to prevent larger allowances under such circumstances. FDA solicits comments about alternative approaches that might prevent a firm from taking advantage of the proposed allowances. In the absence of contrary information, however, FDA's tentative view is that abuse of the approach in the 1994 Handbook would not be likely because firms have far more to gain from savings from better quality control of product filling practices than from a larger SEL.

Further, NIST pointed out that the Situation C illustration demonstrates that small lots are likely to be permitted reasonable variations from inclusion of different manufacturing codes in the inspection lot. NIST explained (Ref. 3) that including of multiple manufacturing codes in the same inspection lot significantly increases the chance of an inspection lot sample having a larger standard deviation than would occur with a single code because different codes are generally packaged at different times and possibly by different filling machines. Differing codes may well mean that portions of the inspection lot were packaged days, weeks, or even months apart. Under such circumstances, there is an increased likelihood that differences in filling practices cause larger variability between individual fills within the packages included in the sample, thereby driving the standard deviation upward with a corresponding increase in the SEL.

NIST points out, however, that the 1994 Handbook's manner of calculating SEL, which provides for reasonable variations for small inspection lots, is not consistent with well recognized academic approaches to determining appropriate sampling variation allowances. Such academic approaches (Ref. 9) provide that the size of the sampling variation allowance be reduced as the percent of the lot that is sampled is increased. For example, when inspection lots are 100 percent sampled, the SEL would always be 0. However, under the 1994 Handbook, the SEL would rarely, if ever, be 0. As a result, the 1994 Handbook provides for significant sampling variation allowance. In the previously discussed Situation C illustration, the SEL of 0.32 oz would mean that a sample with every package fill below the labeled package fill would be classified as in compliance.

However, NIST advised that large permitted variations in small inspections lots are not inconsistent with consumer protection because where any but the smallest shipments are involved, there would be little practical impact on the SEL reduction. For example, the SEL is reduced by only 5 percent with inspection lots of 125 units and, with inspection lots of 3200, the SEL is reduced by only 1 percent (Ref. 3). Accordingly, FDA tentatively concludes that this inconsistency with academic approaches should not affect its decision to propose the 1994 Handbook approach for determining the SEL. FDA suggests, however, that regulatory officials should attempt to collect samples from the largest inspection lots practicable to minimize the impact of the large variations that are permitted in small inspection lots.

For large inspection lots, fairness under the 1994 Handbook's approach results primarily from the way the SEL reduces the probability that nonviolative lots will be rejected. Furthermore, the 1994 Handbook restricts violative findings to the inspection lot, even where arguments could be made for broader applicability. For example, NIST has pointed out (Ref. 3) that if the inspection lot is found to be in violation after application of the SEL, and if the inspection lot is composed or made up of packages randomly selected from the entire production lot, then there is every reason to believe that the production lot as a whole was in violation. However, NIST advises that the 1994 Handbook does not suggest regulatory action against the production lot under such circumstances. NIST stated that restraint under such circumstances further illustrates that it is not unfair to industry to base regulatory action on inspection lots.

v. *Practicability.* NIST maintained (Ref. 3) that it would be impracticable for regulatory attention to be focused on the production lot instead of the inspection lot. NIST explained that the designation of the production lot may be artificial because it is, in fact, often only a segment of continuous production. The segment may be large or small, depending upon whether the packager uses more than one code during a day. NIST advised that in the United States, the only restriction on the definition of the production lot for net contents purposes is one established by USDA for meat and poultry products. Meat and poultry package production lots can consist of no more than 8 hours' production. Generally, however, the definition is left entirely to the manufacturer or may be dictated by other considerations (such as tracing batches of ingredients that are susceptible to spoilage or contamination). In the European Union, by contrast, a production lot is defined as no more than 10,000 packages (Ref. 10).

In addition, it is not unusual for U.S. firms to be shipping packages from a given production lot out of a plant while more packages from that same lot are still being produced. Thus, according to NIST (Ref. 3), it is common not to be able to sample from an entire production lot, even when the sample is taken at the packaging location. Therefore, if actions were to be taken only against production lots, NIST suggested that it would be necessary to circumscribe what would constitute a production lot. Also, it would be necessary that the lot be held for some period of time, so that regulatory officials would have an opportunity to take a random sample of the entire production lot.

vi. *FDA's tentative position about industry concern.* FDA points out that the language of section 403(e)(2) of the act charges the Secretary of Health and Human Services and, by delegation,

FDA with the responsibility of ensuring that food packages have an "accurate" quantity of contents declaration, but that the act states also that reasonable variations shall be permitted. The first aspect of section 403(e)(2) protects consumers from being misled about package net contents and facilitates retail value comparisons. The second aspect protects industry by making clear that this requirement is to be enforced in a reasonable manner. Neither aspect of this provision is subordinated to the other. Thus, the agency must attempt to strike an appropriate balance between the interests of consumers and of industry in any approach to enforcing section 403(e) that it adopts.

As previously discussed in this preamble, FDA has tentatively concluded that the diversity in approaches to enforcement of net contents declaration labeling requirements on foods among State and local regulatory agencies has created significant burdens on interstate commerce. Firms shipping a product to several States must overfill their products to meet the most stringent State's requirement. Some adjustment in the balance between consumer and industry interests in net contents declarations is therefore necessary to alleviate the burden on industry that is produced by this diversity in approaches.

Further, to the extent that FDA identifies in its regulations what are "reasonable variations" under section 403(e)(2) of the act, the affected industry will be in a better position to judge at what point contents deviations are likely to be considered violative. Such knowledge should help firms reduce overfilling of packages and should facilitate interstate commerce by making the establishment of more uniform target fill levels practicable for all package sizes. Also, consumers will be better informed about the amount of food that they are purchasing.

FDA does not agree, however, that net content examinations of inspection lots should be used only as "audit tools." The agency is not persuaded that there is an inequity to the affected industry from a regulatory approach that focuses on the inspection lot when it is an increment of a much larger production lot. FDA tentatively finds that NIST has presented persuasive evidence that the mathematical approach in the 1994 Handbook is fair when used on inspection lots of all sizes. Thus this approach together with the large individual package variations permitted by the large MAV's, permits reasonable variations in the average net quantity of contents. FDA is not aware of any Federal, State, or local regulatory officials that have ever attempted to follow the production lot regulatory approach that is suggested by the Task Force. Most State regulations require that the average of the "lot, shipment, or delivery" meet or exceed the labeled net contents (Ref. 3). In practice, all inspection agencies at Federal, State, and local government levels, including FDA, inspect what is available for inspection and do not determine what might have originally comprised the shipment or delivery. Even where the same production lot codes are inspected at the manufacturing plant, inspection agencies focus only on the compliance of the packages from which the sample was taken, not whether the production lot complied. This focus is necessary because the sample will not necessarily be taken from the entire production lot. For example, as NIST pointed out, a production lot may take hours to package, and shipments of the earliest packaged portions of that production lot may be shipped before the entire lot has been packaged. Thus, the entire production lot may not be available for inspection.

FDA therefore tentatively concludes that it is appropriate for regulatory action to be based solely on evaluations of inspection lots. The agency tentatively concludes that acting on this basis is the only practicable way of providing meaningful levels of consumer protection from net quantity violations. It would not be practicable to require that industry hold a production lot for a specified period of time. Such a requirement would likely be a significant hardship for firms, who frequently must fill orders without delay. Without such a requirement, however, focusing on the production lot could not provide any consumer protection because such lots will likely be distributed before the agency has an opportunity to examine it.

vii. *Proposed compliance procedures; average requirements.* Accordingly, FDA is proposing in § 101.240 to adopt the 1994 Handbook Category A compliance procedures for average net contents requirements. Most aspects of the proposed compliance procedures are taken directly from the 1994 Handbook, although FDA has made a number of nonsubstantive changes for clarity and brevity. The proposed provisions identify specifically when inspection lots are to be classified as violative because of average package errors in weighing, measuring, or counting. Again, the package error is the difference between the measured net quantity of contents and the labeled quantity on the package.

As proposed, § 101.240 provides step-by-step instructions on how to calculate the average package error, and, when this average error is a negative value, how to make adjustments in the average error to determine whether the error is sufficiently large to cause the inspection lot from which the sample is taken to be considered violative. Two adjustments in the average error are provided for in § 101.240. One adjustment involves calculation of the standard deviation and using that value to calculate, as discussed above, the highest possible estimate of average net contents within the inspection lot.

The other adjustment in the average error involves making an allowance for moisture loss that may have taken place in the samples selected for measurement (proposed §§ 101.240(b)(2) and 101.250). FDA is proposing in proposed § 101.250 to identify the extent to which moisture loss affects these violative findings. Under proposed § 101.240(b)(2), the appropriate moisture allowance provided for the specific food in § 101.250 is added to the average package error after it has been adjusted by the SEL.

viii. *Exemption from average requirements.* NIST has advised FDA (Ref. 3) that, for statistical reasons, the compliance of an inspection lot containing packages labeled in terms of count of 50 items or less should not be based on a determination of an average count. NIST stated that their statisticians have advised them that normal distribution does not reliably occur until counts exceed 50. NIST explained that many packages labeled by count, for example, "10 sticks" of gum, do not have a normal distribution around a mean value. This failure derives from the fact that there are either 10 sticks in a package of gum, or there are fewer than 10 sticks (no matter how rarely this might occur). The package is constructed such that it cannot hold 11 sticks. Because only negative package errors can occur, it will not be possible to obtain an average net contents meeting the declared net contents where any shortage in net contents is present.

After the count exceeds 50 units, however, there is no reason for package construction to prevent positive package errors, and average package counts may reasonably be expected to meet labeled packaged counts. For these reasons, FDA is proposing an exemption in the first sentence of § 101.240 for packages labeled with net contents declarations of 50 or less units from average net contents requirements. (The agency is proposing to exempt packages with a declaration in terms of count that are

subject to proposed § 101.245(e) from the average requirements of proposed § 101.240. Proposed § 101.245(e) imposes requirements for declarations in terms of count where the declaration is 50 items or less.)

In view of the fact that an average requirement would not be appropriate for packages labeled in terms of a count of 50 units or less, and the fact that MAV's are relatively crude measures of unavoidable deviations, FDA is concerned that some compliance criterion be included in these regulations for such packages to provide adequate consumer protection.

NIST pointed out (Ref. 3) that the 1994 Handbook contains a unique approach for dealing with this problem,[8] and that this approach is valid even though packages may not be subject to package errors. For all sample sizes, the 1994 Handbook contains specific limits on the number of packages in the sample that may have any shortage. The limits are: (1) For samples of 2 through 12 packages—no more than 1 package, (2) For samples of 24 packages—no more than 2 packages, and (3) For samples of 48 packages—no more than 3 packages.

NIST suggested that FDA adopt the 1994 Handbook's approach to this problem. The presence in the Handbook 133 portion of the 1994 Handbook of the same specific limits on the number of packages in the sample that may have any shortage in count indicates that the suggested approach is an accepted means of providing consumer protection where net contents are in terms of count, and the declared count is 50 or fewer units. Its presence in Handbook 133 also evidences a long history of use of the limits by State and local regulatory agencies. Thus, FDA has incorporated the suggested compliance criteria into the proposed regulation. Because the proposed compliance criteria do not address average fill requirements, FDA is proposing to include them in § 101.245(e), the section pertaining to the procedures for individual packages, rather than in § 101.240, the section pertaining to compliance procedures for average fills. FDA requests comment on this proposed approach.

b. *Requirements pertaining to individual package fills.* As mentioned above, the 1994 Handbook provides that the variation of individual package contents below the labeled quantity may not be "unreasonably" large. The handbook identifies "unreasonably" large errors through MAV's, and the handbook contains MAV's for a wide variety of package sizes.

NIST advised FDA (Ref. 3) that it developed the MAV's for NCWM in the 1970's based on net contents tests of thousands of samples of common package sizes of food and nonfood items that were labeled primarily by weight, volume, or count. The tests were made only on inspection lots whose average net contents equaled or exceeded the labeled net contents because NIST believed that such lots were more likely to have been packaged under GMP than lots with average net contents below the declared weight. NIST wanted to identify MAV's from data generated using packages prepared in accordance with GMP to avoid development of unreasonably lenient individual compliance criteria. NIST looked for identifiable correlations between the package sizes and amount of variation from labeled net contents. NIST found no such correlations, noting only that the percent variation from labeled contents appeared slightly larger with smaller package sizes than with larger package sizes.

In view of the lack of significant identifiable correlations, NIST developed MAV's based on the data available for each specific package size tested. For each size, a variation was derived that would be an MAV that would encompass the largest variation below the labeled quantity that an individual package might be expected to have 99 percent of the time. The specific derivation of these MAV's was complex, but NIST developed them in a manner that may be closely compared to the procedure of prohibiting only those deviations that are 3 standard deviations or more below the labeled quantity (see previous discussion of standard deviation). NIST acknowledged (Ref. 3) that development of MAV's in this manner resulted in crude measures of unavoidable deviations, but it stressed that such measures provide some uniform control for unreasonably large individual deviations. NIST stressed that such control is preferable to no control or to case-by-case evaluations of the acceptability of each large individual deviation. NIST also pointed out that the crude nature of MAV's is offset by the fact that the primary tool for protecting consumers in the 1994 Handbook is the principle that the average net contents in the sample must meet or exceed the label declaration.

NIST recommended (Ref. 3) that FDA propose to adopt the MAV's in the 1994 Handbook. One State agency, however, asserted that Handbook 133 MAV's are too lenient, and that FDA should adopt more stringent (i.e., smaller) values for the MAV's. The State submitted a list of smaller MAV values for consideration but did not provide evidence that these MAV's were developed using data collected on a national basis, or that the suggested values represent current packaging practices.

FDA has considered that the original data on which NIST based its MAV values were collected in the 1970's, and that packagers have become more sophisticated in their ability to reduce packaging variations. The agency recognizes that because MAV's are crude measures of unavoidable deviations, it would be best if MAV's could be revised in accordance with current technology in the food industry. However, limited resources prevent FDA from undertaking the extensive studies needed to do so at this time. Moreover, FDA does not believe that it is appropriate to propose the tighter MAV's submitted by the State regulatory agency in view of the lack of evidence that these MAV's would prove practicable on a national level.

Further, FDA points out that the 1994 Handbook does, to some degree, make the MAV's more stringent than they were in Handbook 133 before the 1994 revisions. Before the 1994 revisions, Handbook 133 permitted differing numbers of units to exceed the MAV's, depending upon the sample size, before the product was deemed out of compliance. The permitted numbers varied from 0, for samples consisting of 30 or fewer units, to 7, for samples consisting of 250 units. Handbook 133 provided that sample sizes of 50 units were permitted 2 MAV's. The 1994 Handbook permits no more than 1 MAV for the largest sample sizes of 48 units. Thus, the 1994 Handbook decreases by at least 50 percent the maximum number of MAV's permitted to be found in a sample.

Accordingly, the agency is proposing in § 101.245(f), consistent with the recommendation of NIST, to adopt the MAV's in the 1994 Handbook. However, the agency is not proposing MAV's for count for packages with 50 or fewer units because, as pointed out by NIST, such MAV's would serve no practical purpose. For such packages, as discussed previously, FDA is proposing in § 101.245(e) that, if more than 1 package from a sample of 12 or less contains less than the labeled count where the inspection lot size is 250 packages or less; if more than 2 packages from a sample of 24 packages contain less than the labeled count where the inspection lot size is between 251 to 3200 packages; or if more than 3 packages from a sample of 48 packages contain less than the labeled count

[8] See section 5.2, page 54, Handbook 133.

where the inspection lot is more than 3200 packages, the inspection lot be classified as violative.

c. *Proposed compliance procedures; individual requirements.* As explained above, FDA is proposing in § 101.245, to adopt the 1994 Handbook Category A compliance procedures for individual weight requirements. FDA has taken most aspects of the proposed compliance procedures directly from the 1994 Handbook. However, the agency has made a number of nonsubstantive changes for clarity and brevity.

As proposed, § 101.245 provides step-by-step instruction on how to determine the appropriate MAV for the labeled net quantity of contents using the appropriate table § 101.245(f) (i.e., Tables 1 and 2 for mass or weight, Tables 3 and 4 for liquid or dry volume, and Table 5 for count except where the count is 50 units or fewer, where MAV's are not applicable). Where there are any negative package errors and moisture loss adjustments that are provided for in § 101.250, the errors are adjusted with the appropriate allowance for that food by adding the allowance to each of the negative errors. For example, if the labeled package size on a package of frozen fruit is 2 lb, and a 1-percent moisture loss allowance is permitted under § 101.250, the MAV of 0.07 lb from Table 2 is increased by adding 0.02 lb to give an adjusted MAV of 0.09 lb.

Once the MAV is determined, proposed § 101.245(d) identifies those situations in which the occurrence of package errors larger than the MAV cause the inspection lot to be violative. Where an inspection lot is sufficiently small that under proposed § 101.210(b), the sample consists of less than 48 individual packages, proposed § 101.245(d)(1) provides that the sample is violative if it contains any negative package errors that exceed the MAV or adjusted MAV, as appropriate, for the labeled net quantity of contents. Where an inspection lot is sufficiently large that under proposed § 101.210(b), the sample size consists of 48 individual packages, proposed § 101.245(d)(2) provides that the sample is violative if it contains more than 1 negative package error that exceeds the MAV or adjusted MAV, as appropriate, for the labeled net quantity of contents. As explained previously in this preamble, the agency is proposing limits on individual package fills for packages with declarations of net quantity in terms of count that have 50 or fewer units in lieu of average net quantity requirements. Because these limits are more stringent than any MAV limits would be, no practical purpose would be served by identifying MAV's for such packages. Consequently, the agency is proposing in § 101.245(d)(1) that such packages be exempt from the above violative MAV criteria.

d. *Impact of compliance procedures on existing policy.* FDA intends that the procedures that it adopts as a result of this rulemaking, if any, will supersede FDA's CPG 562.300 (formerly CPG 7120.19), which directs FDA field personnel to consider regulatory action where the average contents of the subsamples is 1 percent or more short weight. FDA intends to revoke the CPG at the time that it publishes a final rule in this proceeding.

e. *Section 101.250, moisture loss—i. Background.* As mentioned previously in this preamble, current FDA regulations permit reasonable variations for moisture loss but do not define limits for such variations. The agency has tried to deal with the issue of how to define the limits on variations for many years. FDA's Quantity of Contents Compendium contains the results of studies that date back to the early 1940's to determine variations because of moisture loss.

The agency attempted to use information from its moisture loss studies to establish limits for moisture loss in its 1980 proposal (45 FR 53023, August 8, 1980). However, there was considerable opposition to that proposal. Comments objected because the proposed moisture loss allowances were for only a small number of food classes, because it would be very time-consuming and expensive to develop data to justify new allowances, and because firms would have to overfill packages until rulemaking was completed. There was also concern that any specific maximum moisture loss provision might be taken by the dishonest manufacturer as a license to underfill down to the "legal" limit. Because FDA was concerned that there were significant problems with the regulation that it proposed, and that there could be considerable adverse economic impact on the affected industry, the agency did not issue a final rule in this matter.

In 1988, NCWM attempted to deal with this issue on a product by-product basis by including in Handbook 133 its "gray area" approach. Under this approach, any product found short weight in excess of the "gray area" limit would be subject to legal action. If the product is found short weight but within the "gray area" limit, the inspecting agency would take additional steps (such as comparing of laboratory moisture determinations at the time of sampling and at the time of pack from quality control records) to determine whether the product is short weight because of underweighing at the time of pack or because of "reasonable" moisture loss that occurred during distribution.

The 1994 Handbook includes "gray area" limits for two foods regulated by FDA—flour and dry pet food (hereafter referred to as "dry animal food"). For both products, the "gray area" limit is 3 percent. NIST advised FDA (Ref. 3) that NCWM considered two approaches in developing these limits. Under one approach, products would be permitted the maximum loss that could be expected to occur throughout the shelf life of the product. Under the other approach, which was the one ultimately adopted by NCWM, a lower, negotiated limit would be established. For example, some studies in dry regions of the United States showed that flour and dry pet food lose from 6- to 9-percent moisture on store shelves. In more humid regions of the United States, some studies showed that these products lose from 1- to 2-percent moisture. NIST advised that the 3-percent limits that were ultimately set by NCWM were supported by the pet food industry through the Pet Food Institute and the flour industry through the Millers National Federation.

FDA agrees with the NCWM approach of establishing a limit on cognizable moisture loss somewhere between the maximum loss and the minimum loss that occurs throughout the shelf life of the product. It would not be practical to establish a multiplicity of limits to reflect the humidity swings that occur in the different parts of the United States throughout the seasons and from year to year. Also, it would not be fair to consumers in more humid areas of the country to establish limits based on losses in the driest areas of the country (where the largest moisture losses generally occur) because large allowances for moisture loss would be provided where very little losses would occur given the high humidity. The NCWM approach represents a rational approach for dealing with moisture loss in all areas of the United States. It provides reasonable, but not total, relief to the affected industry.

Even though FDA sees considerable merit in the "gray area" approach in the 1994 Handbook, the agency does not believe that it would be practicable for it to adopt this approach. The agency does not have authority under the act to obtain the quality control records at the point of pack to determine whether underweighing actually takes place. Moreover, limits for only two foods have been established. Even though, as

NIST has advised, limits are being developed for rice and pasta, there are simply too few limits established for foods subject to moisture loss for this approach to be viable at this time. Accordingly, FDA is not incorporating the "gray area" approach into this proposal.

ii. *The Proposed approach.* While FDA and some State and local agencies attempt to make case-by-case allowances for variations in moisture loss, other State and local agencies take the position that no allowances are permitted because FDA has not provided specific guidance concerning appropriate allowances. Even though the latter position is arguably not consistent with section 403(e)(2) of the act, it is not uncommon for regulatory agencies to employ it (Ref. 3). In large measure, the regulated industry appears to have decided not to contest the lack of allowances for moisture where agencies have chosen not to permit such allowances. Thus, firms shipping foods subject to moisture loss to jurisdictions that do not make allowances for such loss may be incurring significant costs from overfilling, or they may be being subjected to regulatory action. Based on these facts, FDA tentatively concludes that the current case-by-case approach to providing moisture loss variations has not produced the type of consistent results that are necessary to facilitate interstate commerce.

Although the regulated industry objected to FDA's 1980 attempts to define reasonable variations for moisture loss, in view of the above problems, industry response may be more positive if a more practicable approach is presented. FDA has therefore revisited the possibility of defining these variations and concluded that it should again propose to define what would constitute a reasonable variation but with significantly more flexibility than it proposed in 1980.

FDA's tentative view is that it is appropriate and practicable to establish a regulatory approach for net contents declarations that is tied to whether the inspection takes place at the point of manufacture or at some other location. For inspections at the point of manufacture, the agency is proposing that measurements be made of the accuracy of the net contents declaration. Because inspections at the point of manufacture would mean that there was no opportunity for any moisture loss to have taken place, no allowance for moisture loss would be provided. Such inspections would deter firms from underfilling to the extent of the allowances that FDA is proposing to establish for inspections that occur outside the plant.

The agency is proposing to establish moisture loss allowances, similar to those established by NCWM for flour and dry animal food, that reflect available moisture loss information. The allowances will serve to guide all affected parties about maximum permissible moisture losses. State and local regulatory agencies will be able to use these allowances in conducting inspections at both retail and wholesale marketplaces. These allowances will provide both the regulatory agencies and the industry with objective standards for determining whether an inspection lot is violative. Thus, this two pronged approach, which uses standards tied to the place at which the inspection occurs, will protect both consumers and the regulated industry.

iii. *At point of pack.* FDA tentatively concludes that, as a general rule, no allowance for moisture loss is reasonable at the point of manufacture. Clearly, at the time that products come off the production line, the contents declaration should be accurate. At that time, regulatory officials may reliably determine whether firms are attempting to take undue advantage of any moisture loss allowance that has been established.

However, regulatory officials may often encounter product at the point of pack that has been stored before shipment to other locations. The agency recognizes that allowances for moisture loss are appropriate after some period of storage. In view of the multiplicity of foods that may be subject to moisture loss and the agency's limited resources, however, it would be difficult for FDA to establish minimum storage times for each commodity before moisture loss might affect the contents measurement.

FDA asked NIST how other regulatory agencies have resolved this problem. NIST advised the agency that a number of European countries permit no moisture loss within the first 7 days following the end of the date of pack (Ref. 3) and recommended that FDA adopt a similar approach. Because NIST believes that this European approach has merit, the agency has provided in the proposed § 101.250(a)(1) that no allowance for moisture loss will be made if the food (other than a fresh bakery product for reasons discussed subsequently in this preamble) is weighed within 7 days following the end of the day of pack.

However, a number of comments on the 1980 proposal pointed out that fresh bakery products may suffer moisture loss within a very short time after production, and that such products often have a short shelf life (often as little as 3 to 5 days). As a result, FDA tentatively concludes that fresh bakery products should not be subjected to the 7-day no moisture loss rule at point of pack. The agency is therefore proposing to permit no moisture loss only within 1 day following the end of the day of pack for fresh bakery products in § 101.250(a)(2). Bakery products other than fresh baked breads, buns, rolls, and muffins will, as proposed, be subjected to the 7-day no moisture loss rule at point of pack. The agency solicits comments about the impact of proposed § 101.250(a)(2) for bakery products.

In proposed § 101.250(b), FDA is providing that after one day, fresh baked breads, buns, rolls, and muffins would still be in compliance if they lost 1 percent of their moisture. This allowance is based on data submitted in response to the 1980 proposal.

In proposed § 101.250(c), FDA is permitting a 3-percent moisture loss for these products after 7 days following the end of the day of pack. This proposed allowance is based on the data available from NIST (see discussion below). FDA is proposing to permit a similar moisture loss for dry animal food (see § 501.105(g)).

NIST advised that there may be many other foods that also suffer moisture loss within very short time periods after production, and that such products also have a short shelf life. Further, NIST advised that the 1-day period may be too rigid for some fresh bakery products. NIST was not able to identify these products but did suggest an alternative approach that it considered practicable and that could justify allowance of moisture loss on a more specific product basis at the point of pack or any other storage location. The approach that NIST suggested involved moisture loss data collection at the manufacturing plant followed by storage for specific time periods in specific locations and by measurements of the net quantity of contents (Ref. 3).

According to NIST, the collection could take place on a daily basis under environmental conditions similar to those that exist where the packages under inspection are stored (e.g., if the product is typically placed in a sealed case on a pallet and shrink wrapped, the control lots would be stored under those conditions, rather than under laboratory conditions). NIST suggested that the data be based on at least 3 control lots, with each lot consisting of at least 12 randomly selected individual packages that are collected on the same day, and consisting of at least 48 randomly selected individual packages in the 3 lots combined. NIST advised that

individual packages should be weighed upon collection and then daily (or hourly in the case of rapid dramatic moisture loss) throughout the duration of the study. The moisture loss allowance should be calculated with a 97-percent level of confidence.

NIST pointed out also that where moisture loss varies with climatic changes in environmental conditions, the data should be collected at an appropriate time to justify a finding of moisture loss. For example, where an inspection is made of current production at a food processing plant in the middle of July, and moisture loss varies significantly from winter to summer, data collected in January cannot be relied on to establish or calculate moisture loss during the inspection.

FDA agrees that the proposed rule should permit firms to gather justification for more specific moisture loss allowances where firms believe that it would be in their best interest to do so. Accordingly, FDA is proposing in § 101.250(d) to permit firms to determine more specific allowances in the manner suggested by NIST. As proposed, these allowances would not be limited to the point of pack if firms wish to gather data to demonstrate that allowances are justified at other locations. FDA is proposing that the data to support an allowance be gathered in the manner suggested by NIST and described above.

iv. *Other than point of pack.* FDA has reexamined all old moisture loss data that it has collected to determine which commodities may be subject to moisture loss and the amount of loss that might be expected. Most of this data appears in FDA's Quantity of Contents Compendium (Ref. 11) which contains a variety of data collected from the 1920's through the 1970's. The agency also consulted with NIST about which commodities have come to the attention of State and local agencies because of moisture loss. Moisture loss has been identified with flour, pasta, rice, cheese and cheese products, dried fruits and vegetables, fresh and frozen fruits and vegetables, coffee beans, and bakery products (Ref. 3). Of all of these commodities, the extent of moisture loss variations is best known for flour. In fact, very little is known about the extent of moisture loss for most of the other commodities. However, because of NCWM's work, considerable reliable data support an allowance limit of 3 percent for flour (as well as dry animal food) (Ref. 12).

For other commodities, data are considerably less dependable, either because of the age of the studies for the commodities or because of the limited scope of the studies. In its 1980 proposal, FDA proposed to establish an allowance of 1 percent for frozen fruits and frozen vegetables in certain packaging based on data in the Quantity of Contents Compendium. NIST advised (Ref. 3) that representatives of the frozen food industry believe that a 1-percent allowance for that industry is reasonable. Also, a comment on the 1980 proposal from a trade association representing the bakery industry stated that fresh bread, buns, and rolls are subject to a moisture loss of only about 1 percent. FDA is therefore proposing a new § 101.250(b) to provide a 1-percent allowance for frozen fruits and vegetables when they are weighed more than 7 days following the end of the day of pack, and for fresh bread, buns, and rolls when they are weighed more than 1 day, but less than 7 days, following the end of the day of pack.

Except for flour, dry animal food, frozen fruit and vegetables, and fresh bread, buns, and rolls, FDA is not aware of data that would permit the agency to estimate specifically what allowances should be provided for each of the other commodities identified as undergoing moisture loss during distribution. Some data were submitted in 1980 that showed moisture losses for other products of as high as 20 percent, but the person submitting these data stated that, in the studies in which the data were derived, the packaging of the products had been punctured to permit moisture loss. FDA advises that such deviations from actual marketing conditions make these studies of dubious value.

However, because NIST has thoroughly evaluated the need for allowances in one major food commodity (i.e., flour, Ref. 12) and has concluded that a significant moisture loss allowance must be provided, and because, as explained above, many other food commodities also need some allowance for moisture loss, the agency tentatively finds that it must take some action to establish allowances for those commodities that are subject to moisture loss problems until sufficient data are provided by the affected industries. Accordingly, FDA is proposing in § 101.250(c) that the commodities that it identified above as undergoing moisture loss during distribution be provided with the same 3-percent allowance that it is proposing for flour more than 7 days following day of pack.

The proposed allowance is a crude estimate of reasonable variations for commodities other than flour. FDA's tentative view is that the allowance is not too lenient because packers are subject to inspection at the point of pack. The agency recognizes, however, that point of pack inspection of foreign firms may not be likely. Thus it hopes that, during the comment period, interested parties will develop and submit data on which it can establish reliable moisture loss allowances. The agency suggests that firms interested in developing such data work closely with NCWM, which has expertise in this area.

Nonetheless, some restriction on the proposed allowances for moisture loss seems warranted based on the type of packaging. Certainly, no allowance should be made where the food is packaged in an air tight container (e.g., cans, glass bottles, food enclosed in paraffin). FDA is therefore proposing that foods in such containers will not be permitted any moisture allowance (§ 101.250(a)(4)). Further, the agency is proposing that if the food is not subject to moisture loss, no allowance is permitted (§ 101.250(a)(3)).

C. Oysters

The traditional method of sale for packaged raw oysters out of the shell ("shucked") is by fluid volume (consumer-sized packages are sold by the pint) rather than by drained weight. Given this traditional trade practice, to facilitate value comparisons, FDA tentatively concludes that it needs to establish a limit on the amount of free liquid in packages of oysters. Without such a limit, poor manufacturing and packaging practices may result in excessive water in shucked oyster packages. NIST explained that shucked oysters sold by fluid volume are often packed by methods that can introduce excessive water into the package (Ref. 3). For example, water may be introduced by:

(1) Storing the shucked oysters in an ice slush before packing;

(2) Cleaning the shucked oysters for a several-hour period with aerated water; and

(3) Not draining the oysters as they are being placed in the package; or

(4) Adding the oysters to containers that already have water in them.

NIST advised that NCWM has found that these practices are widespread and particularly prevalent in the warmer months (Ref. 3). NIST pointed out that without enforceable controls on the amount of free liquid in the containers, only continuous inspection could practicably control these practices.

NIST stated that commercial oyster buyers often specify a minimum net weight for oysters in an attempt to control poor packaging practices (e.g., some buyers specify a "4-pound gallon" or a "6-pound gallon," meaning there has to be 4 or 6 lbs of oysters in a gallon). However, the packages are not marked as to the amount of solids.

In addition, packages that have more fluid and less solids cannot be visually identified, even when sitting side-by-side with packages containing significantly lesser amounts of free liquid. Studies conducted by the Virginia Department of Agriculture have shown that observers could not identify packages that contained only 15-percent free liquid from those that contained 60 percent (Ref. 3). (NIST stated that although NCWM recognizes that other similar shellfish products (e.g., scallops) may have similar problems as oysters, it was not aware that adequate studies have been performed to justify establishing a limit on the amount of free liquid in packages of those products.)

Although FDA limits the amount of free liquid in packaged raw oysters to 5 percent § 161.130(c)(2)(ii) (21 CFR 161.130(c)(2)(ii)), this limit can only be enforced at the packing plant. As a result, for many years there has been a significant void in surveillance activities concerning the free liquid requirement. Seafood trade associations have advised FDA that, although western U.S. oysters have low amounts of free liquid, southeastern U.S. oysters typically have between 5- and 15-percent moisture (Ref. 3). Retail market studies conducted by State weights and measures agencies over a 2-year period in 1989 and 1990 at the request of NCWM found that packagers could meet a 15-percent limit in free liquid (Ref. 3).

NIST has advised that, in 1991, NCWM adopted a standard of fill for fresh oysters that are removed from the shell that limits the free liquid to 15-percent by weight (Ref. 3).

For this reason, NCWM adopted the 15-percent criterion[9] to limit the free liquid to a reasonable and specific level. NIST recommends (Ref. 3) that, for national uniformity, FDA revise its regulations to permit no more than 15-percent free liquid in shucked oysters.

FDA tentatively agrees with the recommendation of NIST that a 15-percent criterion should be established. Accordingly, the agency is proposing to add this limit to the standard of identity for oysters in § 161.130(d).

In addition, FDA is aware that the names for the species of oysters currently identified in § 161.130 are outdated (i.e., *Ostrea gigas, O. virginica,* and *O. lurida*). These names need to be revised to maintain consistency with accepted scientific nomenclature set forth in American Fisheries Society Special Publication 16, "Common and Scientific Names of Aquatic Invertebrates From the United States and Canada: Mollusks" (Ref. No. 13). In that publication, the respective scientific names of these species names appear as "*Crassostrea gigas, C. virginica,* and *Ostreola conchaphila.*" FDA is therefore proposing to revise § 161.130 to reflect the updated nomenclature. FDA emphasizes that this proposed change will not have any substantive impact on the food standard for oysters. The proposed change does not change the oyster species covered by § 161.130.

[9] Section 1.5.2.3. of the Uniform Method of Sale of Commodities Regulation.

VII. The Impact on Other Rulemaking Proceedings

FDA points out that, in the **Federal Register** of May 21, 1993 (58 FR 29716), and December 21, 1993 (58 FR 67444), it proposed revisions to § 101.105 to accommodate new statutory requirements for declaration of net contents in metric units and to reorganize existing provisions of contents labeling provisions for clarity. Except for redesignating § 101.105 as § 101.200 and the specific changes proposed in this document, FDA does not intend that the earlier proposals be affected by this rulemaking. Because the earlier proposals initiated a reorganization of § 101.105, the actual location in new § 101.200 of the proposed provisions may differ from that identified in this proposal. Although FDA is not addressing the changes initiated in the May 21, 1993, and December 21, 1993, proposals in this preamble, the agency points out that it proposed to change the headings of all quantity of contents regulations from "Declaration of net quantity of contents when exempt" to "Declaration of net quantity of contents." Thus, any confusion about "when exempt" in the heading of proposed §§ 101.200 and 501.105 will be addressed in rulemaking based on the May 21, 1993, and December 21, 1993, proposals.

VIII. Animal Products

As mentioned in section VI.A. of this document above, FDA considers it logical to continue to have the same requirements for human and animal food with respect to declarations of net quantity of contents. The agency sees no reason to reiterate all of the same provisions in both parts 101 and 501 when it can cross-reference those provisions in part 101 that pertain to net contents in part 501. To that end, the agency is proposing to revise § 501.105 in the same manner as it is proposing to revise § 101.200 (current § 101.105) and to cross-reference all remaining changes. In addition, as stated in section VI.A. of this document, FDA is proposing to define "dry animal food" in proposed § 501.105(u).

However, FDA is proposing one difference in how quantity of contents is declared on human and animal food. The difference pertains to whether, for an animal food packed in liquid with a net contents declaration in terms of weight, the liquid should be included in the net weight declared. For human food, FDA is proposing in § 101.220(c) procedures for measuring drained weight. The focus on drained weight derives from the provisions of the act on nutrition labeling and, specifically, on serving size, which focuses on the amount of food customarily consumed. There are no equivalent provisions in the animal food labeling regulations. Section 403(q) of the act, on nutrition labeling, only applies to food intended for human consumption. In view of the lack of such a reference regulation, and the fact that FDA knows of no need to address requirements concerning liquid packing media in animal food, FDA is not proposing a parallel provision on drained weight in § 501.105.

The accuracy provisions for animal food regulations are slightly different from the provisions in proposed § 101.200 for human food because of the previously discussed differences in the proposed animal and human food provisions. Instead, proposed § 501.105 excepts provisions of § 101.200 from incorporation with the rest of subpart H of part 101. Because proposed § 501.105 contains all the provisions of proposed § 101.201, FDA is also not incorporating the latter provision in § 501.105.

IX. Analysis of Impacts

FDA has examined the economic implications of the proposed rule as required by Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select the regulatory approach which maximizes net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million or adversely affecting in a material way a sector of the economy, competition, or jobs, or if it raises novel legal or policy issues. If a rule has a significant impact on a

substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze options that would minimize the economic impact of the rule on small entities. FDA finds that this proposed rule is not a significant rule as defined by Executive Order 12866. The agency acknowledges that some provisions of this rule may have significant impact on a substantial number of small entities. Finally, the agency, in conjunction with the administrator of the Office of Management and Budget (OMB), finds that this is not a major rule for the purpose of congressional review (Pub. L. 104–121).

A. The Compelling Public Need for a Regulation

FDA is proposing this rule in order to establish specific procedures for checking conformance to net contents labeling requirements. As discussed previously in this preamble, the preemptive nature of regulations pertaining to net contents results in these procedures being the only ones that State and local jurisdictions can adopt if they decide to ensure the accuracy of net contents declarations. State and local jurisdictions are likely to bring a degree of rigor to enforcement of these standards that reflects the preferences of the populations that they represent. However, there is no reason to believe that consumers in different jurisdictions have different preferences about the specific statistical methods for determining conformance to net contents labeling requirements. Further, to the extent that FDA defines "reasonable variations" in its regulations, the affected industry will know at what point contents deviations would be considered violative. Such knowledge should help firms to reduce overfilling of packages and facilitate interstate commerce by making the establishment of more uniform target fill levels practicable for all package sizes. Currently food packagers selling food in interstate commerce must meet different standards for determining quantity of fill in different jurisdictions, depending on the analytical method of determining compliance used in each jurisdiction. FDA is proposing to establish provisions to remedy this situation.

B. Costs

Because the requirements in this proposed rule would allow industry to reduce overfilling of package contents, the agency believes that, except possibly for the amendment to the oyster standard discussed in section VIII.B. of this document, this proposal will cause no compliance costs to be incurred by industry. To the extent that this proposal will preempt the current activities of State and local agencies, these entities may incur some costs of switching to the new method of determining compliance with these fill rules. For example, some State and local agencies may need to retrain some inspectors.

FDA has no information on the potential need for retraining or the costs of retraining. However, the agency believes these costs will be small because the measures that FDA is proposing are generally consistent with those of NCWM, which are used by most of the States.

The agency is proposing to amend the standard of identity for oysters to limit the amount of free liquid to 15 percent. The agency has no data on the extent to which shellfish shippers pack oysters with more than 15-percent free liquid. However, the agency believes that this does not occur frequently, and that the cost of complying with the proposed standard will be small. This conclusion is based on information from NIST stating that, because NCWM adopted a 15-percent free liquid standard, there have been no reports of widespread complaints about the moisture content of shucked oysters. The agency requests comment on the cost complying with this proposed standard.

C. Benefits

An important benefit of this proposed rule is in establishing a uniform standard for determining compliance with accuracy requirements for net contents declarations across the national food market. A food packager considering entering a market in a State different from those to which it currently ships will not need to be concerned with determining whether it will need to adjust the degree to which it fills its packages. The same standard will apply in all States. Another benefit may be to consumers of food in single serving packages. In using the nutrition information on the nutrition labels, consumers will have information that more accurately reflects the actual contents of the package if the degree of package overfill is reduced.

D. The Initial Regulatory Flexibility Analysis

If finalized, this rule will establish a national standard for enforcing net contents declarations. Given that the standard for net contents declarations that FDA is proposing, except possibly for the amendment to the oyster standard discussed in section VIII.D. of this document, will impose no compliance costs on industry, the agency believes that there will be no significant impact from these provisions on a substantial number of small businesses. However, because there is some uncertainty related to the costs of compliance, FDA is voluntarily doing this Initial Regulatory Flexibility Analysis. The agency requests comments on its judgment.

The only provision of this proposed rule that may have a significant impact on a substantial number of small businesses is the proposed amendment of the standard of identity for shucked oysters, which, if adopted, will establish a ceiling on the amount of free liquid at 15 percent by mass or weight. There are approximately 400 shellfish shucking-packing or repacking plants in the United States on the Interstate Certified Shellfish Shippers List (ICSSL) for November 1995. There are approximately 100 foreign shellfish shucking-packing or repacking plants that ship to the United States on the ICSSL for the same period. With few exceptions, these are single plant businesses, and all of the businesses have fewer than 500 employees. The agency has no data on the extent to which shellfish shippers pack oysters with more than 15-percent free liquid. However, it seems likely that excessive filling with free liquid does not occur frequently based on information from NIST stating that since NCWM adopted a 15-percent free liquid standard, there have been no reports of widespread complaints about the moisture content of shucked oysters. The agency requests comment on the impact of this provision on small shellfish shippers.

FDA has several alternatives to the proposed limit of 15-percent free liquid by mass or weight for shucked oysters. The agency could establish a lower limit or a higher limit. Shellfish shippers have a cost incentive to ship the maximum allowable amount of free liquid in shucked oysters. Therefore, the higher the limit set by regulation, the more free liquid packages will contain. For this reason, the agency wants to avoid setting an unnecessarily high limit on free liquid. The agency requests comment on the impact of various limits on free liquid on small shellfish shippers.

Another approach could be to require label declaration of the percent free liquid, by mass or weight, in the package. The advantages of such a policy are: (1) That the standard is less prescriptive, (2) that consumers are informed by the label as to the amount of free liquid in the package, and (3) that processors are not penalized for shipping packages with less free liquid than their competitors, but instead they are given an incentive to reduce the amount of moisture in the package. The disadvantages of such a policy are: (1) That frequent label changes may be necessary to accurately label packages where the amount of free liquid varies, (2) that the process of measuring the amount of free liquid with enough frequency to ensure that the packages are labeled accurately may be costly, and (3) that it permits what many consider to be a deceptive practice to continue. The agency requests comments and suggestions on alternatives to the proposed limit of 15-percent free liquid by mass or weight.

X. The Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no reporting, recordkeeping, or other third party disclosure requirements. Thus, there is no "information collection" necessitating clearance by the Office of Management and Budget. FDA tentatively concludes that the moisture loss study described in section 101.250 would generally not be presented to the agency unless, during the course of an investigation, questions have been raised about underfill. Thus the moisture loss study would be exempt from Paperwork Reduction Act (PRA) requirements under 5 CFR 1320.4. To ensure the accuracy of this tentative conclusion, FDA is asking for comment on whether this proposed rule to establish procedures for determining whether label net quantity of content statements are accurate imposes any paperwork burden.

XI. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

XII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. U.S. Department of Commerce, National Bureau of Standards, "NBS Handbook 133-Third Edition," "Checking the Net Contents of Packaged Goods;" Supplement, September 1990; Suppl. 2, October 1991; and Suppl. 3 October 1992; U.S. Government Printing Office, Washington, DC, 20402–9325.
2. NIST Handbook 133, 3d ed., Supplement 4, U.S. Government Printing Office, Washington, DC, 20402–9325, October 1994.
3. NIST letter to FDA, December 12, 1996.
4. NIST Handbook 44, "Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices", October, 1994.
5. NBS Handbook 145, Handbook for the Quality Assurance of Metrological Measurements, Superintendent of Documents, U.S. Government Printing Office, Washington DC 20402, November 1986.
6. Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures, Specifications and Tolerances for Field Standard Stopwatches (undated).
7. American Society of Mechanical Engineers Voluntary Standard Designated as ASME B89 1.14.
8. American Society of Testing and Materials Standard specification E 617–91, Standard Specification for Laboratory Weights and Precision Mass Standards.
9. Fuller, Wayne A., Sample and Surveys, American Mathematical Society Short Course on Modern Statistics: Methods and Application, San Antonio, TX, pp. 1 to 18, 1980.
10. United Kingdom, Department of Trade, "Code of Practical Guidance for Packers and Importers, Weights and Measures Act," Issue No. 1, pp. 10 to 12, 1979.
11. "Quantity of Contents Compendium," June 1966.
12. NBS Special Publication 734, "Report of the 72d National Conference on Weights and Measures," pp. 63 and 64, 83 and 84, 141, and 148 to 157, 1987.
13. American Fisheries Society Special Publication 16, "Common and Scientific Names of Aquatic Invertebrates From the United States and Canada: Mollusks."

List of Subjects

21 CFR Part 101

Food labeling, Incorporation by reference, Nutrition, Reporting and recordkeeping requirements.

21 CFR Part 161

Food grades and standards, Frozen foods, Seafood.

21 CFR Part 501

Animal foods, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 101, 161, and 501 be amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

2. New Subpart H (consisting of §§ 101.200 through 101.250) is added, § 101.105 of subpart G is redesignated as § 101.200 of new subpart H, and newly redesignated 101.200 is amended by revising the section heading, paragraphs (a) and (b), and by removing and reserving paragraph (q), to read as follows:

Subpart H—Net Quantity of Contents

Sec.

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Subpart H—Net Quantity of Contents

§ 101.200 Declaration of net quantity of contents.

(a) The principal display panel of a food in package form shall bear a declaration of the net quantity of contents. This declaration shall be expressed in the terms of weight, measure, numerical count, or a combination of numerical count and weight or measure. If the food is liquid the declaration must be expressed in terms of fluid measure. If the food is solid, semisolid, or viscous, or a mixture of solid and liquid the declaration shall be expressed in terms of weight. If the food is a fresh fruit, fresh vegetable, or other dry commodity that is customarily sold by dry measure the declaration statement may be expressed in terms of dry measure. Except as provided for in § 101.12, a food that is packed or canned in liquid, and is required to bear a contents declaration in terms of weight, shall bear a declaration expressed in terms of the total net contents including

the liquids. Where the reference amount in § 101.12 is declared in terms of drained solids, the contents declaration shall be in terms of drained weight. If the food is packaged in a self-pressurized container, the statement shall be in terms of the mass or weight of the food and the propellant that will be expelled when the instructions for use as shown on the container are followed. If there is a firmly established general consumer usage or trade custom of declaring the contents of a liquid by weight, or a solid, semisolid, or viscous product by fluid measure, it may be used. Whenever the Food and Drug Administration determines that an existing practice of declaring net quantity of contents by weight, measure, numerical count, or a combination in the case of a specific packaged food does not facilitate value comparisons by consumers and offers an opportunity for consumer confusion, it will by regulation designate the appropriate term or terms to be used for such commodity.

(b)(1) Statements of weight shall be in terms of avoirdupois pound and ounce.

(2) Statements of fluid measure shall be in terms of the U.S. gallon of 231 cubic inches and quart, pint, and fluid ounce subdivisions thereof.

(3) Statements of dry measure shall be in terms of the U.S. bushel of 2,150.42 cubic inches and peck, dry quart, and dry pint subdivisions thereof.

* * * * *

§ 101.201 Accuracy of net quantity declaration.

(a) In making volume measurements, the measurement shall be made:

(1) In the case of frozen food that is sold and consumed in a frozen state, at −18 °C (0 °F);

(2) In the case of refrigerated food that is sold in the refrigerated state, at 4 °C (40 °F); and

(3) In the case of other foods, at 20 °C (68 °F).

(b) The declaration of net quantity of contents shall provide an accurate statement of the quantity of contents of the package. For purposes of this section, an accurate statement is one that conforms to all requirements for the declaration set forth in this subpart. Sections 101.240, 101.245, and 101.250 of this subpart describe what constitutes a reasonable variation in net content declarations that is the result of loss or gain of moisture during the course of good distribution practice or by unavoidable deviations in good manufacturing practice. All net contents measurements shall be made in accordance with the procedures and methodology set forth in this subpart. Any net quantity of contents declarations that overstate the amount of product in the container by an amount that is more than that can be attributed to a reasonable variation under these regulations will misbrand the product under section 403(e) of the Federal Food, Drug, and Cosmetic Act.

§ 101.205 Definitions.

For the purposes of this subpart the following definitions apply:

(a) *Drained mass or weight* means the mass or weight of solid or semisolid food representing the contents of a package obtained after a prescribed method for removal of the liquid has been employed.

(b) *Dried used tare* means the mass or weight of a container, wrapper, or other material (e.g., glazing on frozen seafood) that is deducted from the gross mass or weight of a package to obtain the net mass or weight. The tare mass or weight comprises all packaging materials (including glue, labels, ties, etc.) that contain or enclose a food, as well as all packaging materials (including prizes, gifts, coupons, decorations, etc.) that are not part of the food. The food is removed from the tare by washing, scraping, wiping, ambient air drying, and other techniques involving more than "normal" household recovery procedures, but not including such laboratory procedures as oven drying.

(c) *Gravimetric test procedure* means an analytical procedure that involves measurement by mass or weight.

(d) *Gross mass or weight* means the combined mass or weight of the package including its contents, packing materials, labels, etc.

(e) *Inspection lot* means the collection of packages from which the sample is collected that consists of the same food, with the same label (but not necessarily the same lot code, or in the case of random content packages the same actual quantity), from the same packer.

(f) *Maximum allowable variation* (MAV) means the value of the largest deviation of net quantity of contents below the labeled declaration of net quantity of contents that, where the sample consists of less than 48 individual units, is reasonable for any individual unit, or, where the sample consists of 48 units, is reasonable for any more than one individual unit.1

(g) *Net quantity of contents* means that quantity of packaged food (e.g., in terms of mass or weight, volume, or numerical count) remaining after all necessary deductions of the tare mass or weight from the gross mass or weight.

(h) *Net mass or weight* means the mass or weight of solid or semisolid food plus any liquid that accompanies the food.

(i) *Package error* means the difference between the measured net quantity of contents of an individual package and the declared net quantity of contents on the package label. When the individual package contains less net contents than the declared net contents, the difference is referred to as the "negative package error."

(j) *Random sample* means that every package in the lot has an equal chance of being selected as part of the sample.

(k) *Range* means the difference between the largest value and the smallest value in any set of numbers.

(l) *Reference temperature* means the temperature at which the fill of a food sold by volume must meet the declared net quantity of contents.

(m) *Sample* means a random sample of a group of packages taken from a larger collection of packages and providing information that can be used as a basis for making a decision concerning the larger collection of packages or of the package production process.

(n) *Sample size* means the number of packages in a sample.

(o) Sample standard deviation (s) means a statistic used as a measure of dispersion (i.e., differences of individual values from the mean) in a sample. It is calculated as follows:

$s=[\Sigma(x_i-x)^2/(n-1)]^{1/2}$ or equivalently (and primarily for calculations without a computer),

$s=((\Sigma x_i^2-(\Sigma x_i)^2/n)/(n-1))^{1/2}$.

Where:

Σ means "the sum of,"

x_i means the ith individual package error,

n means the sample size, and

x means the average of the package errors, that is, the sum of the package errors divided by the number of packages in the sample.

(p) *Sample error limit (SEL)* means a statistical value that allows for the uncertainty between the average error for the sample and the average error for the inspection lot with a 97-percent level of confidence. It is computed by multiplying a factor appropriate for the sample size (found in column 2 of Table 1, of § 101.240) times the sample standard deviation.

(q) *Tare sample* means the packages selected for use in determining the average used tare mass or weight.

(r) *Total tare sample size* (n_t), means the number of packages used to determine the average used tare mass or weight.

(s) *Volumetric measure* means a measuring device for use in the measurement of volumes of liquids (e.g., standard measuring flasks, graduates, cylinders, etc.).

§ 101.210 Sample collection.

The following procedures shall be used to collect samples for determining the net quantity of contents of packaged food:

(a) Determine the number of packages in the inspection lot;

(b) Find the inspection lot size in column 1 of Table 1 of this section, and determine the appropriate sample size from column 2 of Table 1; and

TABLE 1.—SAMPLING PLANS

Column 1 inspection lot size	Column 2 sample size
11 packages or less	All packages.
12 to 250 packages	12 packages.
251 to 3,200 packages	24 packages.
More than 3,200 packages	48 packages.

(c) Select a random sample of the packages from the inspection lot.

§ 101.215 Measuring equipment.

(a) *Thermometer selection.* Graduations on a thermometer shall be no larger than 1 °C (2 °F).

(b) *Linear equipment selection.* (1) A tape or ruler used to measure dimensions of 63.5 centimeter (25 inches) or less shall be at least as long as the distance to be measured and flexible enough for the measurement and shall have a minimum graduation of 0.5 millimeter (or 1/64 inch) or less.

(2) A tape or ruler used to measure dimensions of more than 63.5 centimeters (25 inches) shall be at least as long as the distance to be measured and flexible enough for the measurement and shall have a minimum graduation of 2 millimeters (1/16 inch).

(c) *Volumetric equipment selection.* Volumetric equipment shall meet the following requirements:

(1) A volumetric measure used in fluid volumetric determinations shall be of such size with respect to the labeled net quantity of contents of the package that no volume less than 25 percent of the maximum capacity of the volumetric measure is measured; and

(2) Have graduations that are not greater than 1/6 of the maximum allowable variation (MAV) for the labeled net quantity of contents of the package being measured.

(d) *Gravimetric equipment selection.* Gravimetric equipment shall meet the following requirements:

(1) A balance may only be used if it has the following features:

(i) It has a load receiving element of sufficient dimensions to hold the packages during weighing;

(ii) It has a load receiving element of sufficient weighing capacity for the package size being tested;

(iii) It has at least 100 scale divisions, and each division is no larger than 1/6 of the MAV for the package size being weighed. The total number of scale divisions on the balance is calculated by dividing the scale or balance capacity by the minimum scale division (e.g., a scale or balance with a capacity of 5,000 grams and a minimum scale division of 0.1 gram has 50,000 scale divisions);

(2) Before each initial daily use, use at a new location, or use in the presence of any indication of abnormal equipment performance, the balance shall be found not to exceed the rejection criteria of paragraph (d)(3)(ii) of this section in all measurements made as part of the following performance tests, which use mass standards that have been calibrated in accordance with paragraph (e) of this section:

(i) For all types of balances, conduct an "increasing load performance test" with all test loads centered on the load receiving element. The test shall start with the scale on zero and progress with increasing test loads to an upper "maximum test load" of approximately 10 percent more than the gross mass or weight of the package to be weighed. At least four test loads of approximately equal value shall be used to test the device up to the "maximum test load," and the accuracy of the balance shall be determined at each test load;

(ii) For all types of balances, other than one with a beam indicator or equal-arm balance, conduct a "decreasing load performance test" with all test loads centered on the load receiving element. The test shall use the same test loads used in the "increasing load performance test" of paragraph (d)(3)(i) of this section and shall start at the "maximum test load." The test loads shall be removed from the load receiving element in the reverse order of the increasing load test until all test loads are removed and the accuracy of the balance determined at each test load; and

(iii) For all types of balances, conduct an "off-center load performance test" with the test loads located as follows:

(A) Except for an equal arm balance, no test loads are centered on a load receiving element. The test shall use a test load equal to one-half of the "maximum test load" used for the "increasing load performance test" of paragraph (d)(3)(i) of this section. The test load shall be placed in the center of four separate quadrants, equidistant between the center and edge of the load receiving element and the accuracy of the balance determined in each quadrant. For example, where the load receiving element constitutes a rectangle or circle, the test load would be placed in the center of the circles in the following diagrams:

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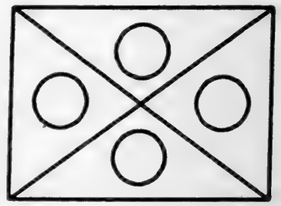

Diagram 1. Off-Center Loading Pattern for Regular or Square Balance Pans

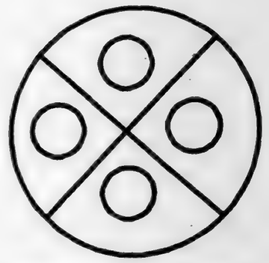

Diagram 2. Off-Center Loading Positions for a single pan balance

(B) For an equal arm balance, both load receiving elements are tested with the same test loads on both elements at the same time. The test shall use test loads equal to one-half of the "maximum test load" used for the "increasing load performance test" of paragraph (d)(3)(i) of this section. On one receiving element, the test load is centered on the load receiving element. On the other load receiving element, the test load is instead placed in the center of four separate quadrants, equidistant between the center and edge of the load receiving element and the accuracy of the balance determined in each quadrant. This test is repeated with the positions of the test loads switched between load receiving elements. For example, in the first half of the test, the test load would be placed in the center of the circles in the following diagram:

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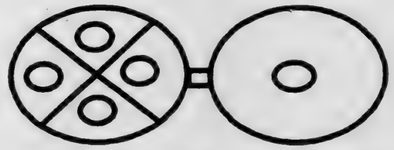

Diagram 3. Off-Center Loading Positions for an Equal Arm Balance. Each side is tested using the same pattern.

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(iv) For all types of balances, conduct a "repeatability performance test" with the "maximum test load" centered on the load receiving element. The "maximum test load" shall be weighed at least twice, and the accuracy of the balance determined with each measurement;

(3) A balance may only be used if it does not have an error that exceeds the number of smallest units of measure (i.e., balance divisions) for rejection established by the procedures set forth below:

(i) Determine in Table 1 of this section the Class of the balance that is appropriate in light of the minimum balance division and the total number of balance divisions to be used for the net contents measurement. For example, with a balance with a minimum balance division of 1 gram and 50,000 total balance divisions the appropriate tolerance class is "Class II";

TABLE 1.—BALANCE CLASSES

Value of smallest balance division [1]	Minimum and total number of balance divisions	Balance class
1 milligram to 0.5 gram (g)	Device has more than 100, but not more than 100,000 balance divisions.	II
0.1 g or more	Device has more than 5,000, but not more than 100,000 balance divisions.	II
0.1 g to 2 g	Device has more than 100, but not more than 10,000 balance divisions.	III
0.0002 pound (lb) to 0.005 lb 0.005 ounce (oz) to 0.125 oz 5 g or more 0.01 lb or more 0.25 oz or more	Device has more than 500, but not more than 10,000 balance divisions.	III

[1] On some balances, manufacturers have designated a verification balance division for testing purposes. Where the verification balance division is less than or equal to the minimum balance division, the verification division shall be used instead of the minimum balance division. Where balances are made for use with standard test weights (e.g., an equal arm balance), the smallest test weight used for the measurement is the minimum balance division.

(ii) Determine in Table 2 of this section the number of balance divisions for rejection that is appropriate for the test load and the balance class to be used for the net contents measurement. For example, with a test load of up to 20,000 balance divisions and a Class II balance, ± 2 is the appropriate number of balance divisions for rejection. In this situation, the balance may not be used if it has an error of two balance divisions in any of the performance tests set forth in paragraph (d)(3) of this section;

TABLE 2.—BALANCE DIVISIONS FOR REJECTION

Balance class II test load in balance divisions	Balance class III test load in balance divisions	Number of balance divisions for rejection
0 to 5,000	0 to 500	1
5,001 to 100,000	501 to 4,000	2
Not Applicable	4,001 or more	3

(e) *Accuracy standardization.* When compared directly or indirectly to standards provided by the National Institute of Standards and Technology (NIST), all equipment identified in this paragraph shall be standardized before initial use in accordance with the calibration instructions set forth in NBS Handbook 145, Handbook for the Quality Assurance of Metrological Measurements, which is incorporated by reference in accordance with 5 U.S.C. 551(a) and 1 CFR part 51. Copies of this publication may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or may be examined at the Center for Food Safety and Applied Nutrition's Library, 200 C St. SW., rm. 3321, Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC. Except for volumetric glassware, the comparison to NIST standards shall be done on a routine basis (e.g., annually for equipment used on a weekly basis). The standardization shall ensure that the equipment does not have an error that exceeds the following rejection criteria:

(1) *Stop-watch standardization.* A stop-watch shall not have an error exceeding ±2 seconds in a 3-hour time period;

(2) *Thermometer standardization.* A thermometer shall not have an error exceeding ±1 °C (2 °F);

(3) *Linear measure standardization.* (i) A tape or ruler used to measure dimensions of 63.5 centimeters (25 inches) or less shall not have a measurement error greater than ±0.39 millimeter (±1/64 inch);

(ii) A tape or ruler used to measure dimensions of more than 63.5 centimeters (25 inches) shall not have a measurement error greater than ±2 millimeter (±0.1 inch); and

(iii) A caliper or depth gauge shall not exceed the error limits in Table 3 of this section.

TABLE 3.—ERROR LIMITS FOR CALIPERS AND DEPTH GAUGES

Measured length in millimeters	Error limit in micrometers
0 to 400	±50
400 to 800	±100
800 to 1000	±150

(4) *Volumetric standardization.* An error in volumetric measuring equipment shall not exceed the error limits in Table 4 of this section; and

TABLE 4.—Error Limits for Flasks and Cylinders [1]

Capacity at 20 °C (68 °F)	Error limits for the full capacity	Error limits for individual graduations
50 milliliter (mL) cylinder.	±0.3 mL±	±0.3 mL
2 fluid ounces (59 mL) cylinder.	±0.3 mL	±0.30 mL
100 mL flask	±0.2 mL	±0.06 mL
1 gill (118 mL) flask.	±0.2 mL	±0.10 mL
200 mL flask	±0.3 mL	±0.10 mL
½ pint (236 mL) flask.	±0.3 mL	±0.10 mL
250 mL flask	±0.3 mL	±0.10 ml
1 pint (473 mL) flask.	±0.4 mL	±0.15 mL
500 mL flask	±0.5 mL	±0.15 mL
1 quart (946 mL) flask.	±0.7 mL	±0.30 mL
1,000 mL flask	±0.8 mL	±0.22 mL
½ gallon (1,892 mL) flask.	±1.0 mL	±0.30 mL
2,000 mL flask	±1.2 mL	±0.33 mL
1 gallon (3,785 mL) flask.	±1.2 mL	±0.30 mL

[1] For volumetric measures less than 50 mL, full capacity error limits do not apply. For these volumetric measures apply ±0.10 mL to individual graduations. For a capacity intermediate between two capacities listed below the tolerances prescribed for the lower capacity shall be applied. For volumes greater than 3,785 mL (1 gallon) apply ±0.02 percent of nominal capacity for error limits at full capacity and ±0.3 percent of the minimum graduation for error limits for individual graduations.

(5) *Gravimetric standardization.* (i) Errors in mass standards used to test Class II balances, as described in paragraph (d) of this section, shall not exceed the error limits in Tables 5 and 6 of this section.

TABLE 5.—ERROR LIMITS FOR INCH-POUND MASS STANDARDS USED TO TEST TOLERANCE CLASS II BALANCES

Mass standard in pounds	Error limits in milligrams
100	±910
50	±450
25	±23
10	±91
5	±45
2	±18
1	±9
0.5	±K4.5
0.2	±1.8
0.1	±1.1
0.05	±0.77
0.02	±0.45
0.01	±0.34
0.005	±0.27
0.002	±0.19
0.001	±0.15

TABLE 5.—ERROR LIMITS FOR INCH-POUND MASS STANDARDS USED TO TEST TOLERANCE CLASS II BALANCES—CONTINUED

Mass standard in ounces	Error limits in milligrams
8	±4.5
4	±2.3
2	±1.3
1	±0.86
0.5 (½)	±0.59
0.25 (¼)	±0.43
0.2	±0.38
0.125 (⅛)	±0.31
0.1	±0.29
0.0625 (1/16)	±0.24
0.05	±0.23
0.03125 (1/32)	±0.19
0.02	±0.17
0.015625 (1/64)	±0.15
0.01	±0.14

TABLE 6.—ERROR LIMITS FOR SI MASS STANDARDS USED TO TEST TOLERANCE CLASS II BALANCES

Mass standard in kilograms	Error limits in milligrams
50	±1000
25	±500
20	±400
10	±200
5	±100
2	±40
1	±20
Mass standard in grams	**Error Limits in milligrams**
500	±10
300	±6
200	±4
100	±2
50	±1.2
30	±0.90
20	±0.70
10	±0.50
5	±0.36
2	±0.26
1	±0.20
Mass standard in milligrams	**Error Limits in milligrams**
500	±0.16
300	±0.14
200	±0.12
100	±0.10
50	±0.085
30	±0.075
20	±0.070
10	±0.060
5	±0.055
2	±0.05
1	±0.05

(ii) Errors in mass standards used to test tolerance Class III balances, as described in paragraph (d) of this section, shall not exceed the error limits in Tables 7 and 8 of this section.

TABLE 7.—ERROR LIMITS FOR INCH-POUND MASS STANDARDS USED TO TEST TOLERANCE CLASS III BALANCES

Mass standard in pounds	Error limits in grams
100	±4.5
50	±2.3
25	±1.1
20	±0.91
10	±0.45
Mass standard in ounces	**Error limits in milligrams**
5	±230
2	±91
1	±70
0.5	±45
0.2	±18
0.1	±9.1
0.05	±4.5
0.02	±1.8
0.01	±1.5
0.005	±1.2
0.002	±0.87
0.001	±0.7
Mass standard in ounces	**Error limits in milligrams**
8	±45
4	±23
2	±11
1	±5.4
0.5 (½)	±2.8
0.25 (¼)	±1.7
0.2	±1.6
0.125 (⅛)	±1.3
0.1	±1.3
0.0625 (1/16)	±1.1
0.05	±1.0
0.03125 (1/32)	±0.87
0.02	±0.75
0.015625 (1/64)	±0.69
0.01	±0.60

TABLE 8.—ERROR LIMITS FOR SI MASS STANDARDS USED TO TEST TOLERANCE CLASS III BALANCES

Mass standard in kilograms	Error limits in grams
50	±5
20	±2
10	±1
5	±0.5
2	±0.2
1	±0.1
Mass standard in grams	**Error limits in milligrams**
500	±70
300	±60
200	±40
100	±20
50	±10
20	±4
10	±2
5	±1.5
2	±1.1
1	±0.9

TABLE 8.—ERROR LIMITS FOR SI MASS STANDARDS USED TO TEST TOLERANCE CLASS III BALANCES—CONTINUED

Mass standard in kilograms	Error limits in milligrams
500	±0.72
300	±0.61
200	±0.54
100	±0.43
50	±0.35
30	±0.30
20	±0.26
10	±0.21
5	±0.17
2	±0.12
1	±0.10

§ 101.220 Analytical procedures, net mass or weight.

The following procedures shall be used to determine the net quantity of contents of packaged foods labeled in terms of mass or weight:

(a) Make all measurements with equipment that conforms to § 101.215. Good weighing procedures shall be used to ensure accurate results (e.g., operate scales or balances in accordance with the manufacturers instructions, and conduct tests in locations where the environment does not adversely affect results);

(b)(1) The following core procedure shall be used to determine net mass or weight, except where a different specific procedure is provided for in paragraph (b)(2) of this section:

(i) Determine the gross mass or weight of the package;

(ii) Determine the average used tare mass or weight in accordance with provisions of § 101.235; and

(iii) Determine net mass or weight by subtracting the average used tare mass or weight determined in (b)(1)(ii) of this section from the gross mass or weight of each package in the sample.

(2) For unglazed frozen seafoods and vegetables, the method prescribed for unglazed frozen foods in the "Official Methods of Analysis of the Association of Official Analytical Chemists International," 16th ed., 1995, section 963.26, under the heading "Net Contents of Frozen Food Containers Procedure 1963," which is incorporated by reference in accordance with 5 U.S.C. 551(a) and 1 CFR part 51, shall be used to determine net mass or weight. Copies may be obtained from the Association of Official Analytical Chemists International, 481 North Frederick Ave., suite 500, Gaithersburg, MD 20877–2504, or may be examined at the Center for Food Safety and Applied Nutrition's Library, 200 C St. SW., rm. 3321, Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(c)(1) The following core procedure shall be used to determine drained mass or weight except where a different specific procedure is provided for in paragraph (c)(2) of this section:

(i) Determine and record the following:

(A) The tare mass or weight of the receiving pan; and

(B) The gross mass or weight of each individual package of the sample;

(ii) Use a 203 millimeters (8 inch) U.S. No. 8 standard test sieve for packages with net quantity of contents of 1.36 kilograms (3 pounds) or less, or a 305 millimeters (12 inch) U.S. No. 8 standard test sieve for packages with net contents greater than 1.36 kilograms (3 pounds); except that, for canned tomatoes obtain either a 203 millimeters (8 inch) or 305 millimeters (12 inch) (as appropriate) U.S. No., 11.3 millimeters (7/16 inch) standard test sieve;

(iii) Pour the contents of the package into the appropriate dry sieve with the receiving pan beneath it; incline the sieve at an angle of 17° to 20° to facilitate drainage. Do not shake or shift material on the sieve. Drain exactly 2 minutes;

(iv) Immediately weigh the receiving pan, liquid, wet container, and any other tare material (do not include weight of sieve and food). Record this value as the total tare mass or weight for the package and receiving pan;

(v) Subtract the tare mass or weight of the receiving pan determined according to paragraph (c)(1)(i) of this section from the mass or weight obtained in paragraph (c)(1)(iv) of this section to obtain the tare mass or weight (which includes the mass or weight of the liquid packing medium);

(vi) Subtract the tare mass or weight determined according to paragraph (c)(1)(v) of this section from the appropriate package gross mass or weight determined according to paragraph (c)(1)(i) of this section to obtain the net weight of that package. Determine the package error by subtracting the net mass or weight from the labeled mass or weight; and

(vii) Repeat the procedure provided for in paragraphs (c)(1)(ii) through (c)(1)(vi) of this section for the remaining packages in the sample. Clean and dry the sieve and receiving pan between measurements on each package.

(2) The following procedures shall be used to determine drained mass or weight for the foods noted. The procedures in this paragraph shall be conducted in accordance with the specified section "Official Methods of

Analysis of the Association of Official Analytical Chemists International," 16th ed., 1995, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Association of Official Analytical Chemists International, 481 North Frederick Ave., suite 500, Gaithersburg, MD 20877–2504, or may be examined at the Center for Food Safety and Applied Nutrition Library, 200 C St. SW., rm. 3321, Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC:

(i) For glazed vegetables and for frozen seafood, except for frozen shrimp and crabmeat, the method prescribed for glazed seafoods in section 963.18, under the heading "Net Contents of Frozen Seafoods," which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(ii) For frozen shrimp and crabmeat, the method prescribed for frozen shrimp and crabmeat in section 967.13, under the heading "Drained Weight of Frozen Shrimp and Crabmeat," which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(iii) For frozen crabmeat, the method prescribed for in paragraph (c)(2)(ii) or the method prescribed for frozen crabmeat in section 970.60, under the heading "Drained Weight of Frozen Crabmeat," which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(d) For shucked oysters, the percent of liquid by weight that is removed by draining shall be determined by using the method prescribed for such foods in section 953.11, under the heading "Drained Liquid from Shucked Oysters," which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (c)(2) of this section.

§ 101.225 Analytical procedures, volume.

The following procedures shall be used to determine the net quantity of contents of packaged foods labeled in terms of volume:

(a) Conduct all measurements on equipment that conforms to § 101.215 Good weighing and measuring procedures shall be used to ensure accurate results (e.g., operating scales or balances in accordance with the manufacturer's instructions, and conducting tests in locations where the environment does not adversely affect results).

(b) The following procedure shall be used to determine net volume, except where a different procedure is provided for in paragraphs (c), (d), (e), and (f) of this section:

(1) Bring the package and its food to the appropriate temperature as set forth in § 101.201(a), within the following temperature ranges:

(i) In the case of frozen food, −18 °C (0 °F) to −15 °C (5 °F);

(ii) In the case of refrigerated food, 1.7 °C (35 °F) to 7.2 °C (45 °F); or

(iii) In the case of other foods, 20 °C (68 °F) to 22.7 °C (73 °F).

(2) Prepare a clean volumetric measure of appropriate capacity for use;

(i) If the volumetric measure is calibrated on a "to contain" basis, immediately before each measurement, the volumetric measure shall be dried.

(ii) If the volumetric measure is calibrated on a "to deliver" basis, immediately before each use, the volumetric measure shall be filled with water to a point slightly below the top graduation on the neck. Start a stopwatch and invert the volumetric measure gradually, so that the walls are splashed as little as possible, to approximately an 85° angle and completely empty the volumetric measure.

(A) If the volumetric measure is marked with a standardized emptying time, hold the measure in the inverted position until the stopwatch indicates that the entire standardized time has expired, and touch off the drop of water that adheres to the tip.

(B) If no standardized emptying time is provided, pour the food in a steady stream so that virtually all of the product is delivered within 30 seconds (± 5 seconds). If a drainage time is designated by the manufacturer for the volumetric measure, hold the volumetric measure in the inverted position until any time designated on the measure has elapsed, or until the stopwatch indicates that 10 seconds have elapsed beyond the time necessary to completely empty the container. Touch off the drop of water that adheres to the tip.

(iii) If the food effervesces or foams when opened or poured (such as carbonated beverages), add two drops of a defoaming agent to the bottom of the volumetric measure before filling with the food.

(iv) For additional measurements of a food, use water to wash or rinse and prepare the volumetric measure between each measurement of liquid food from the sample packages (dry or drain the volumetric measure as described in paragraph (b)(2)(i) or (b)(2)(ii) of this section, as appropriate);

(3) If the food requires mixing for uniformity, it should be mixed before opening each package (e.g., in accordance with any shaking instructions specified on the package label);

(4) Empty the food into the volumetric measure holding the package in a nearly vertical position, but tipping so that the bottom of the container will drain. Drain the container into the volumetric measure for 1 minute after the stream of liquid breaks into drops; and

(5) Position the volumetric measure vertically with the surface of the liquid at eye level. For foods that are clear liquids, place a shade of some dark material immediately below the meniscus and read volume from the lowest point of the meniscus. For foods that are opaque liquids, read volume from the center of the top rim of the liquid surface.

(c) Except where a different procedure is provided for in paragraphs (d) and (e) of this section, the following gravimetric procedure may be used to determine net volume if the product density requirements of this paragraph are met:

(1) Select a volumetric measure equal to or one size smaller than the labeled volume and determine the tare mass or weight of the measure;

(2) Prepare the package and volumetric measure for measurement by following the provisions of paragraphs (b)(1), (b)(2), and (b)(3) of this section;

(3) Determine acceptability of the food density variation on two packages selected for tare determination in accordance with provisions of § 101.235 as follows:

(i) Determine the gross mass or weight of the first food package;

(ii) Pour an amount of the food from the first food package into a volumetric measure exactly to a specified mark on the neck of the measure. The amount of the food that is elected to be poured is referred to as the volume standard (vol_{std}) for this procedure;

(iii) Weigh the filled volumetric measure and subtract the tare mass or weight of the measure to obtain the net mass or weight of the food;

(iv) Determine the net mass or weight of the vol_{std} of the food from a second package using the procedure in paragraph (c)(3)(iii) of this section; and

(v) If the difference between net mass or weight of both packages exceeds one division of the scale or balance, the net quantity of contents may not be determined by the gravimetric procedure in this paragraph; instead, use the totally volumetric procedure provided for in paragraph (b) of this section;

(4) Determine the "nominal gross mass or weight" as follows:

(i) Determine the average used tare mass or weight of the sample in accordance with provisions of § 101.235. Include the packages used to determine acceptability of this procedure as part of the tare;

(ii) Use the net mass or weight of the known volume (Vol_{std}) as determined in paragraphs (c)(3)(iii) and (c)(3)(iv) of this section and calculate the average of the two values for the average net mass or weight (net wt_{avg});

(iii) Calculate the average net mass or weight of the labeled volume (avg. wt v_1) of the food using the formula:

Avg. wt v_1=(net wt_{avg}/vol_{std}) × labeled volume of net contents;

(iv) Calculate the "nominal gross mass or weight" (nom. gr. wt) using the formula:

Nom. gr. wt = avg wt v_1 + average used tare mass or weight;

(v) Weigh the remaining packages in the sample;

(vi) Subtract the nominal gross mass or weight from the gross mass or weight of each package to obtain package errors in terms of weight;

(vii) Calculate the average error of the sample (i.e., the total error divided by the sample size); and

(viii) If the average error is a negative number, calculate package error for each package in terms of volume using the formula:

Package error (volume) = [package error in weight] divided by [average weight of both standard volumes of paragraph (c)(3) of this section (net wt avg)] multiplied by [volume of standard volume (vol_{std})]

(d) For shucked oysters, clams, or scallops, use the method prescribed for such foods in the "Official Methods of Analysis of the Association of Official Analytical Chemists International," 16th ed., 1995, section 937.08, under the heading "Volume of Shucked Oysters, Clams or Scallops," which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Association of Official Analytical Chemists International, 481 North Frederick Ave., suite 500, Gaithersburg, MD 20877–2504, or may be examined at the Center for Food Safety and Applied Nutrition Library, 200 C St. SW., rm. 3321, Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC;

(e) The volume displacement procedure prescribed for ice cream and frozen desserts in the "Official Methods of Analysis of the Association of Official Analytical Chemists International," 16th ed., 1995, section 968.14, under the heading "Weight per Unit Volume of Packaged Ice Cream" Method I, which is incorporated by reference in accordance with 5 U.S.C. 551(a) and 1 CFR part 51. Copies may be obtained from the Association of Official Analytical Chemists International, 481 North Frederick Ave., suite 500, Gaithersburg, MD 20877–2504, or may be examined at the Center for Food Safety and Applied Nutrition Library, 200 C St. SW., rm. 3321, Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC. This procedure may be used to determine volume where appropriate; except that water of 33 °F (0.56 °C) or below may be used rather than the kerosene displacement liquid in that procedure, provided that the food does not mix with the ice water;

(f) The volumetric depth gauge procedure set forth below may be used to determine volume where the food has a smooth and level headspace (e.g., oils, syrups, and other viscous liquids):

(1) Make all measurements on a surface that appears to be level when tested with a bubble level that is at least 15 centimeters (6 inches) in length;

(2) Bring the temperature of both the food and the water to be used to measure the volume of the food to the appropriate temperature provided for in § 101.201(a), achieving a temperature within the range designated in paragraph (b)(1) of this section;

(3) Determine the headspace of the package at the point of contact with the food using a depth gauge with a fully rounded rather than a pointed rod end. If necessary, the package shall be supported to prevent the bottom of the container from distorting;

(4) Empty, clean, and dry the package;

(5) Refill the container with distilled water measured from a volumetric measure to the original food headspace level found in paragraph (f)(3) of this section until the water touches the depth gauge; and

(6) Determine amount of water used in paragraph (f)(5) of this section to obtain the volume of the food and calculate the "package error" for that volume;

(g) The volumetric air space procedure set forth in this paragraph may be used to determine volume where the food does not have a smooth and level headspace (e.g., mayonnaise):

(1) Acquire the following equipment specifically for use in this procedure:

(i) 500-milliliter buret;

(ii) Rubber bulb syringe; and

(iii) Plastic Disks three-millimeter (1/8 inch) thick disks with diameters to correspond to the seat diameter or larger than the brim diameter of each container tested. Diameter tolerance is ±0.05 millimeter (±0.002 inch). The outer edge should be beveled at a 30° angle with the horizontal to 0.8 millimeter (1/32 inch) thick at the edge. There should be a 20-millimeter (3/4 inch) diameter hole through the center of the disk and a series of 1.5-millimeter (1/16 inch) diameter holes 25 millimeters (1 inch) from the outer edge. All edges should be smooth;

(2) Make all measurements on a surface that appears to be level when tested with a bubble level that is at least 15 centimeter (6 inch) in length;

(3) Bring the temperature of both the food and the water used to measure the volume of the food to the appropriate temperature designated in § 101.200(b) within the tolerances provided for in paragraph (b)(1) of this section;

(4) Open the first package and place a disk larger than the package container opening over the opening;

(5)(i) Add water to the container using flask (or flasks), graduate, or buret corresponding to labeled capacity of the container. If it appears that the contents of the flask may overfill the container, do not empty the flask. Add water until all of the air in the container has been displaced and the water begins to rise in the center hole of the disk. Stop the filling procedure when the water fills the center disk hole and domes up slightly due to the surface tension;

(ii) If the water dome breaks on the surface of the disk, the container has been overfilled and the test is void; dry the container and start over; and

(iii) Do not add additional water after the level of the water dome has dropped;

(6) Record the amount of water used to fill the container and subtract 1 milliliter (0.03 fluid ounce) (this is the amount of water in the disk hole) to obtain the air space capacity;

(7) Empty, clean, and dry the package container;

(8) In accordance with procedures set forth in paragraph (5) of this section, refill the package container with water measured from a volumetric measure to the maximum capacity of the package and record the amount of water used as the container volume; and

(9) From the container volume in paragraph (g)(8) of this section, subtract the air space capacity in paragraph (g)(6) of this section to obtain the volume of the food and calculate the "package error" for that volume, where "Package error" equals labeled volume minus the measured volume of the food.

§ 101.230 Analytical procedures, count.

The following procedures shall be used to determine the net quantity of

contents of packaged foods labeled in terms of count:

(a) Count each unit in each package of the sample to determine the net quantity of contents of packaged foods labeled in terms of count; or

(b) If the product density requirements of paragraph (b)(1) of this paragraph are met, the following gravimetric procedure may be used to determine count:

(1) Determine acceptability of the food density variation on two packages selected for tare determination in accordance with provisions of § 101.235 as follows:

(i) Determine the gross mass or weight of the first food package;

(ii) Open the package and determine the net weight and the exact number of food units in the first food package;

(iii) Calculate the weight of the labeled count of the package using the formula:

Weight of labeled count=[labeled count] divided by [count found] multiplied by [net weight];

(iv) Determine the weight of the labeled count of the food from a second package using the procedure set forth in paragraph (b)(1) (i) to (iii) of this section;

(v) If there is a difference between net mass or weight of the weight of the labeled count calculated from the two packages that exceeds one division of the scale or balance, the net quantity of contents may not be determined by the gravimetric procedure in this paragraph; instead, use the procedure provided for in paragraph (a) of this section;

(2) Determine the "nominal gross mass or weight" as follows:

(i) Determine the average used tare mass or weight of the sample in accordance with provisions of § 101.235. Include the packages used to determine acceptability of this procedure as part of the tare;

(ii) With the two determinations of count and net mass or weight of that count as determined in paragraph (b)(1) of this section, calculate the average count ($count_{avg}$) and the average net mass or weight ($net\ wt_{avg}$);

(iii) Calculate the average net mass or weight of the labeled count (ave. wt c_l) of the food using the formula:

Avg. wt c_l = (net wt_{avg}/$count_{avg}$) × labeled count of net contents;

(iv) Calculate the "nominal gross mass or weight" (nom. gr. wt) using the formula:

Nom. gr. wt = avg wt c_l + average used tare mass or weight;

(3) Weigh the remaining packages in the sample;

(4) Subtract the nominal gross mass or weight from the gross mass or weight of each package to obtain package errors in terms of weight;

(5) Calculate the average error of the sample (i.e., the total error divided by the sample size); and

(6) If the average error is a negative number, calculate package error for each package in terms of count using the formula:

Package error (count) = [package error in weight] divided by [average weight of both known counts of paragraph (b)(2) of this section ($net\ wt_{avg}$)] multiplied by [average of count of paragraph (b)(2) ($count_{avg}$)]

§ 101.235 Tare determination.

The following procedures shall be used to make tare determinations for the net quantity of contents of packaged foods:

(a) If the net quantity of contents is determined by weighing, an average dried used tare mass or weight shall be used to determine net mass or weight, unless the dried used tare mass or weight of each package in the sample is determined individually. If the inspection lot consists of 11 packages or less, the average dried used tare mass or weight shall be computed with 2 tare samples. If the inspection lot consists of 12 or more packages the average used tare mass or weight shall be computed with 2 tare samples except, if the package is made of glass, or if it is an aerosol container, and the sample size is 24 or 48 packages, 3 tare samples shall be used to compute the average dried used tare mass. Under other situations, the average dried used tare mass or weight shall be computed using the tare sample size (n_t) listed in Table 1 of this section for the different sample sizes (n) as follows:

(b) Select an initial tare sample size ("n_{it}") as specified in paragraph (a) of this section to determine if additional tare samples are required. Any of the sample packages may be used as tare samples;

(c) Determine the gross mass or weight for each tare sample;

(d) Determine the tare mass or weight of each package in the initial tare sample (n_{it}) and the range of masses or weights of the tare samples (abbreviated as "R_t"). If the range in the mass or weights of the initial tare sample is zero, no additional tare samples must be taken;

(e) Determine the net mass or weight of each package and, except for random weight packages, the range of net masses or weights in the initial tare sample (abbreviated as "R_c"). For random weight packages "R_c" is determined using the range of the package errors in the initial tare sample, not the range of net masses or weight;

(f) Calculate the ratio of the range of net masses or weights (R_c) to the range of masses or weights in the initial tare sample size (R_t) (i.e., divide R_c by R_t);

(g) From Table 1 of this section, determine the total tare sample size corresponding to the R_c/R_t ratio determined in paragraph (f) (e.g., if the ratio of R_c/R_t is 3.72, the sample size is 48, and the initial tare sample size is 2, the total tare sample size is 10). Where the number of packages listed in the Table 1 of this section for R_c/R_t equals the initial tare sample size, the initial tare sample shall serve as the total tare sample; and

(h) Determine the average dried used tare mass or weight by adding the mass or weight of all of the tare samples required for the total tare sample size and divide that value by the total number of tare samples.

(i) TABLE 1.—TOTAL TARE SAMPLE SIZE (ABBREVIATED AS n_t)

Ratio R_c/R_t	Number of packages in sample[1]				
	n=12	n=24		n=48	
	n_{it}=2	n_{it}=2	n_{it}=3	n_{it}=2	n_{it}=3
0.2 or less	12	24	24	48	48
0.21–0.40	12	23	23	46	46
0.41–0.60	11	22	22	44	44
0.61–0.80	10	21	21	41	41
0.81–1.00	10	19	19	38	38
1.01–1.20	9	18	18	35	35
1.21–1.40	8	16	16	32	32

(i) TABLE 1.—TOTAL TARE SAMPLE SIZE (ABBREVIATED AS n_t)—Continued

Ratio R_c/R_t	Number of packages in sample[1]				
	n=12	n=24		n=48	
	n_{it}=2	n_{it}=2	n_{it}=3	n_{it}=2	n_{it}=3
1.41–1.60	7	15	15	29	29
1.61–1.80	7	13	13	27	27
1.81–2.00	6	12	12	24	24
2.01–2.20	5	11	11	22	22
2.21–2.40	5	10	10	20	20
2.41–2.60	4	9	9	18	18
2.61–2.80	4	8	8	16	16
2.81–3.00	4	7	7	15	15
3.01–3.20	3	7	7	13	13
3.21–3.40	3	6	6	12	12
3.41–3.60	3	6	6	11	11
3.61–3.80	3	5	5	10	10
3.81–4.00	2	5	5	10	10
4.01–4.20	2	4	4	9	9
4.21–4.40	2	4	4	8	8
4.41–4.60	2	4	4	8	8
4.61–4.80	2	4	4	7	7
4.81–5.00	2	3	3	7	7
5.01–5.20	2	3	3	6	6
5.21–5.40	2	3	3	6	6
5.41–5.60	2	3	3	5	5
5.61–5.80	2	3	3	5	5
5.81–6.00	2	2	3	5	5
6.01–6.20	2	2	3	5	5
6.21–6.40	2	2	3	4	4
6.41–6.60	2	2	3	4	4
6.61–6.80	2	2	3	4	4
6.81–7.00	2	2	3	4	4
7.01–7.20	2	2	3	3	3
7.21–7.40	2	2	3	3	3
7.41–7.60	2	2	3	3	3
7.61–7.80	2	2	3	3	3
7.81–8.00	2	2	3	3	3
8.01–8.20	2	2	3	3	3
8.21–8.40	2	2	3	3	3
More than 8.40	2	2	3	2	3

[1] Including those already opened for initial tare determination.

§ 101.240 Compliance procedures; average requirement.

Except where the sample contains packages with a declaration in terms of count that is subject to § 101.245(e), or where the sample consists of only one package, the determination as to whether the declaration of net quantity of contents on the packages in an inspection lot is violative under section 403(e) of the Federal Food, Drug, and Cosmetic Act is to be made using the procedures set forth below:

(a) Calculate the average error of the sample (i.e., the sum of the individual minus and plus package errors divided by the sample size);

(1) If the average error is zero or a positive number, the sample conforms with the average requirement;

(2) If the average error is a negative number, use the following procedure to determine the sample error limit (SEL):

(i) Calculate the sample standard deviation; and

(ii) Obtain the sample correction factor (SCF) from column 2 of Table 1 of this section for the appropriate sample size;

TABLE 1.—SAMPLE CORRECTION FACTORS (SCF)

Column 1 sample size	Column 2 sample correction factor
1 package	Apply individual package requirement (maximum allowable variation (MAV)
2 packages	1.414
3 packages	1.155
4 packages	1.000
5 packages	0.8944
6 packages	0.8165
7 packages	0.7559
8 packages	0.7071

TABLE 1.—SAMPLE CORRECTION FACTORS (SCF)—Continued

Column 1 sample size	Column 2 sample correction factor
9 packages	0.6667
10 packages	0.6325
11 packages	0.6030
12 packages	0.5774
24 packages	0.4082
48 packages	0.2887

(b) Multiply the sample standard deviation(s) by the SCF to calculate the SEL;

(1) If the average error, disregarding the minus sign, is a smaller number than or equal to the SEL computed in paragraph (b) of this section, the sample complies with this section.

(2) If the average error, disregarding the minus sign, is a larger number than the SEL computed in paragraph (b) of this section, the inspection lot shall be

classified violative; except that, if the sample consists of a product for which a moisture loss allowance has been established in § 101.250, the appropriate allowance percent (A%) provided for in that section shall be used to calculate an adjusted sample error limit (SEL_{adj}) according to the formula:

$$SEL_{adj} = s \times SCF + (A\% \times \text{labeled contents}/100)$$

§ 101.245 Compliance procedures; maximum variations.

An inspection lot shall be classified violative if the net quantity of contents of the sample does not conform to the individual package requirements as determined by the procedures set forth below:

(a) Determine amount of each negative package error in the sample;

(b)(1) In accordance with the appropriate table in paragraph (f) of this section (i.e., Tables 1 and 2 for mass or weight; Tables 3 and 4 for liquid or dry volume; and Table 5 for count except where the count is 50 units or less where MAV's are not applicable), determine the MAV for the labeled net quantity of contents;

(2) Where an allowance for moisture content change is permitted in § 101.250 the MAV shall be adjusted to provide for the change by adding the percent of the labeled mass or weight attributable to the moisture change to the MAV (e.g., if the labeled package size is 2 pounds, and a 1-percent moisture loss could reasonably be expected, the MAV of 0.07 pound from Table 2 of this section is increased by adding 0.02 lb to give an adjusted MAV of 0.09 lb);

(c) Determine the number of negative package errors that exceed the MAV or adjusted MAV, as appropriate, for the labeled net quantity of contents;

(d)(1) Except where the sample contains packages with a declaration in terms of count that is subject to paragraph (e) of this section, any negative package error found in accordance with paragraph (c) of this section results in the inspection lot being classified violative if the sample consists of less than 48 packages;

(2) Except where the sample contains packages with a declaration in terms of count that is subject to paragraph (e) of this section, more than one negative package error found in accordance with paragraph (c) of this section results in the inspection lot being classified violative if the sample consists of 48 packages;

(e) For declarations in terms of count where the declaration is 50 items or less, if more than 1 package from a sample of 12 or less contains less than the labeled count where the inspection lot size is 250 packages or less; or if more than 2 packages from a sample of 24 packages contain less than the labeled count where the inspection lot size is between 251 to 3,200 packages; or if more than 3 packages from a sample of 48 packages contain less than the labeled count where the inspection lot is more than 3,200 packages, the inspection lot shall be classified as violative; and

(f) The Tables of MAV's are as follows:

TABLE 1.—MASS MAV'S FOR INDIVIDUAL PACKAGES LABELED IN METRIC UNITS

Metric units	
Labeled mass or weight in grams (g) or kilograms (kg)	MAV in grams
Less than 36 g	10 percent of labeled quantity.
From 36 to 54 g	4.
More than 54 to 82 g	5.
More than 82 to 118 g	7.
More than 118 to 154 g	9.
More than 154 to 209 g	11.
More than 209 to 263 g	13.
More than 263 to 318 g	15.
More than 318 to 381 g	16.
More than 381 to 426 g	18.
More than 426 to 490 g	20.
More than 490 to 572 g	22.
More than 572 to 635 g	24.
More than 635 to 698 g	25.
More than 698 to 771 g	27.
More than 771 to 852 g	29.
More than 852 to 971 g	32.
More than 971 g to 1.125 kg	35.
More than 1.125 to 1.35 kg	40.
More than 1.35 to 1.60 kg	45.
More than 1.60 to 1.80 kg	50.
More than 1.80 to 2.10 kg	55.
More than 2.10 to 2.64 kg	65.
More than 2.64 to 3.08 kg	70.
More than 3.08 to 3.80 kg	80.
More than 3.80 to 4.40 kg	85.
More than 4.40 to 5.20 kg	100.
More than 5.20 to 6.80 kg	115.
More than 6.80 to 8.20 kg	130.
More than 8.20 to 10.60 kg	145.
More than 10.60 to 14.30 kg	170.
More than 14.30 to 19.25 kg	200.
More than 19.25 to 24.70 kg	230.
More than 24.70 kg	2 percent of labeled quantity.

TABLE 2.—WEIGHT MAV'S FOR INDIVIDUAL PACKAGES LABELED IN INCH-POUND UNITS

Inch-pound units		
Labeled mass or weight in Pounds (lb) or Ounces (oz)	Pounds	MAV ounces
	10 percent of labeled quantity	
0.08 lb or less, 1.28 oz or less.		
More than 0.08 to 0.12 lb		
More than 1.28 to 1.92 oz	0.008	1/8
More than 0.12 to 0.18 lb		
More than 1.92 to 2.88 oz	.012	3/16
More than 0.18 to 0.26 lb		
More than 2.88 to 4.16 oz	.016	1/4
More than 0.26 to 0.34 lb		
More than 4.16 to 5.44 oz	.020	5/16
More than 0.34 to 0.46 lb		
More than 5.44 to 7.36 oz	.024	3/8
More than 0.46 to 0.58 lb		
More than 7.36 to 9.28 oz	.028	7/16
More than 0.58 to 0.70 lb		
More than 9.28 to 11.20 oz	.032	1/2
More than 0.70 to 0.84 lb		
More than 11.20 to 13.44 oz	.036	9/16
More than 0.84 to 0.94 lb		
More than 13.44 to 15.04 oz	.040	5/8
More than 0.94 to 1.08 lb		
More than 15.04 to 17.28 oz	.044	11/16
More than 1.08 to 1.26 lb	.048	3/4
More than 1.26 to 1.40	.052	13/16
More than 1.40 to 1.54 lb	.056	7/8
More than 1.54 to 1.70 lb	.060	15/16
More than 1.70 to 1.88 lb	0.064	1
More than 1.88 to 2.14 lb	.070	1 1/8
More than 2.14 to 2.48 lb	.078	1 1/4
More than 2.48 to 2.76 lb	.086	1 3/8
More than 2.76 to 3.20 lb	.094	1 1/2
More than 3.20 to 3.90 lb	.11	1 3/4
More than 3.90 to 4.70 lb	.12	2
More than 4.70 to 5.80 lb	.14	2 1/4
More than 5.80 to 6.80 lb	.15	2 1/2
More than 6.80 to 7.90 lb	.17	2 3/4
More than 7.90 to 9.40 lb	.19	3
More than 9.40 to 11.70 lb	.22	3 1/2
More than 11.70 to 14.30 lb	.25	4
More than 14.30 to 17.70 lb	.28	4 1/2
More than 17.70 to 23.20 lb	.31	5
More than 23.20 to 31.60 lb	.37	6
More than 31.60 to 42.40 lb	.44	7
More than 42.40 to 54.40 lb	.50	8
More than 54.40 lb	4.2 percent of labeled quantity	

TABLE 3.—LIQUID OR DRY VOLUME MAV'S FOR INDIVIDUAL PACKAGES LABELED IN METRIC UNITS

Metric units	
Labeled volume in milliliters (mL) or liters (L)	MAV in mL
3 mL or less	0.5[1].
More than 3 to 8 mL	1.0[1].
More than 8 to 15 mL	1.5[1].
More than 15 to 22 mL	2.
More than 22 to 67 mL	3.5.
More than 67 to 126 mL	5.5.
More than 126 to 170 mL	7.5.
More than 170 to 222 mL	9.
More than 222 to 347 mL	11.
More than 347 to 503 mL	15.
More than 503 to 621 mL	18.
More than 621 to 798 mL	22.
More than 798 to 917 mL	26.
More than 917 to 1.153 L	30.
More than 1.153 to 1.627 L	37.

TABLE 3.—LIQUID OR DRY VOLUME MAV'S FOR INDIVIDUAL PACKAGES LABELED IN METRIC UNITS—Continued

Metric units	
Labeled volume in milliliters (mL) or liters (L)	MAV in mL
More than 1.627 to 2.041 L	44.
More than 2.041 to 2.514 L	52.
More than 2.514 to 3.046 L	59.
More than 3.046 to 4.732 L	74.
More than 4.732 to 5.489 L	89.
More than 5.489 to 7.098 L	104.
More than 7.098 to 8.044 L	118.
More than 8.044 to 10.173 L	133.
More than 10.173 to 11.593 L	148.
More than 11.593 to 16.561 L	177.
More than 16.561 to 18.927 L	207.
More than 18.927 to 23.659 L	237.
More than 23.659 to 26.734 L	266.
More than 26.734 L	1 percent of labeled quantity.

[1] Use laboratory glassware.

TABLE 4.—LIQUID OR DRY VOLUME MAV'S FOR INDIVIDUAL PACKAGES LABELED IN INCH-POUND UNITS.

Inch-pound units			
Labeled volume (fluid ounces)	Liquid MAV (fluid ounce)	Labeled volume (cubic inches)	Dry MAV (cubic inches)
0.50 or less	[1]	0.18 or less	0.03
More than 0.50 to 0.75	0.06	0.18 to 0.49	0.06
More than 0.75 to 2.25	0.13	0.49 to 0.92	0.09
More than 2.25 to 4.25	0.19	0.92 to 1.35	0.11
More than 4.25 to 5.75	0.25	1.35 to 4.06	0.23
More than 5.75 to 7.5	0.31	4.06 to 7.67	0.34
More than 7.5 to 11.75	0.38	7.67 to 10.38	0.45
More than 11.75 to 17	0.50	10.38 to 13.54	0.56
More than 17 to 21	0.63	13.54 to 21.21	0.68
More than 21 to 27	0.75	21.21 to 30.68	0.90
More than 27 to 31	0.88	30.68 to 37.90	1.13
More than 31 to 39	1.00	37.90 to 48.73	1.35
More than 39 to 55	1.25	48.73 to 55.95	1.58
More than 55 to 69	1.50	55.95 to 70.38	1.80
More than 69 to 85	1.75	70.38 to 99.26	2.26
More than 85 to 103	2.0	99.26 to 124.5	2.71
More than 103 to 160	2.5	124.5 to 153.4	3.2
More than 160 to 185.6	3.0	153.4 to 185.9	3.6
More than 185.6 to 240	3.5	185.9 to 288.8	4.5
More than 240 to 272	4.0	288.8 to 335.0	5.4
More than 272 to 344	4.5	335.0 to 443.1	6.3
More than 344 to 392	5.0	443.1 to 490.9	7.2
More than 392 to 560	6.0	490.9 to 620.8	8.1
More than 560 to 640	7.0	620.8 to 707.4	9.0
More than 640 to 800	8.0	707.4 to 1,011	10.8
More than 800 to 904	9.0	1,011 to 1,155	12.6
More than 904	1 percent of labeled quantity.	1,155 to 1,444	14.4
		1,444 to 1,631	16.2
		More than 1,631	1 percent of labeled quantity.

[1] Convert to metric units and use laboratory glassware.

TABLE 5.—COUNT MAV'S FOR INDIVIDUAL PACKAGES LABELED BY COUNT

Labeled count	MAV
51 to 83	2.
84 to 116	3.
117 to 150	4.
151 to 200	5.
201 to 240	6.
241 to 290	7.
291 to 345	8.
346 to 400	9.
401 to 465	10.
466 to 540	11.

TABLE 5.—COUNT MAV'S FOR INDIVIDUAL PACKAGES LABELED BY COUNT—Continued

Labeled count	MAV
541 to 625	12.
626 to 725	13.
726 to 815	14.
816 to 900	15.
901 to 990	16.
991 to 1,075	17.
1,076 to 1,165	18.
1,166 to 1,250	19.
1,251 to 1,333	20.
More than 1,333	1.5 percent of labeled count rounded off to the nearest whole number.

§ 101.250 Maximum allowances for moisture loss.

Reasonable variations caused by the loss or gain of moisture in packaged foods are permitted as specified in this section. The following maximum allowances for moisture loss, expressed as a percentage of the labeled net quantity of contents, are permitted:

(a) No allowance for moisture loss will be made if:

(1) A food, other than a fresh bakery product, is weighed within 7 days following the end of the day of pack, except where the packer provides documentation of moisture loss during this time period, and the documentation has been produced in a manner that complies with paragraph (d) of this section; or

(2) A fresh bakery product is weighed within 1 day following the end of the day of pack, except where the packer provides documentation of moisture loss during this time period, and the documentation has been produced in a manner that complies with paragraph (d) of this section; or

(3) The food is not listed in paragraphs (b) or (c) of this section and thus is not subject to moisture loss; or

(4) The food is packaged in an air tight container (e.g., cans, glass bottles, enclosed in paraffin);

(b) One percent for the following foods: Frozen fruit and frozen vegetables more than 7 days following the end of the day of pack and fresh baked breads, buns, rolls, and muffins more than 1 day, but less than 7 days, following the end of the day of pack;

(c) Three percent for the following foods more than 7 days following the day of pack: Flour, pasta, rice, cheese and cheese products, dried fruits and vegetables, fresh fruits and vegetables, coffee beans, and bakery products other than fresh baked breads, buns, rolls, and muffins; and

(d) A percent based on data that, upon request, is provided to an agency investigator to establish the moisture loss; provided that, the data are gathered through an approach that includes, but is not limited to, all of the following features:

(1) The data are based on 3 control lots with each lot consisting of at least 12 randomly selected individual packages that are collected on the same day, and the total number of randomly selected individual packages in the 3 lots is at least 48;

(2) Each of the individual packages in the control lots is identified and weighed at the time of collection;

(3) All control lots are stored at various locations in the storage site under the same conditions, which are typical for storage of the product (e.g., if the product is typically placed in a sealed case on a pallet and shrink wrapped, the control lots must be stored under those conditions, rather than under laboratory conditions);

(4) All individual packages in the control lots are weighed daily throughout the entire duration of the study;

(5) The maximum allowance for moisture loss is the average percent moisture loss that would be expected with a 97-percent level of confidence for the number of days of storage in view of the individual package weighings in all control lots for those days; and

(6) Where moisture loss varies with climatic changes in environmental conditions, the data are collected at an appropriate time to justify the moisture loss. For example, where an inspection is made of current production at a food processing plant in the middle of July, and moisture loss varies significantly from winter to summer, data collected in January cannot be used to document moisture loss during the inspection.

PART 161—FISH AND SHELLFISH

3. The authority citation for 21 CFR part 161 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 379e).

4. Section 161.130 is amended by revising paragraph (c)(1) and adding new paragraph (d) to read as follows:

§ 161.130 Oysters.

* * * * *

(c) * * *

(1) "Shell oysters" means live oysters of any of the species, *Crassostrea gigas, Crassostrea virginica,* and *Ostrea conchaphila,* in the shell, which, after removal from their beds, have not been floated or otherwise held under conditions that result in the addition of water.

(2) [Reserved]

(d) The oysters shall not have more than 15-percent liquid by weight after packing.

PART 501—ANIMAL FOOD LABELING

5. The authority citation for 21 CFR Part 501 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

6. Section 501.105 is amended by revising paragraphs (a),(b), and (g) and by adding new paragraph (u) to read as follows:

§ 501.105 Declaration of net quantity of contents.

(a) The principal display panel of a food in package form shall bear a declaration of the net quantity of contents. This shall be expressed in the terms of weight, measure, numerical count, or a combination of numerical count and weight or measure. If the food is liquid the declaration shall be in terms of fluid measure. If the food is solid, semisolid, or viscous, or a mixture of solid and liquid the declaration shall be expressed in terms of weight. If the food is a fresh fruit, fresh vegetable, or

other dry commodity that is customarily sold by dry measure the declaration statement may be expressed in terms of dry measure. If the food is packaged in a self-pressurized container, the statement shall be in terms of the mass or weight of the food and the propellant that will be expelled when the instructions for use as shown on the container are followed. If there is a firmly established general consumer usage and trade custom of declaring the contents of a liquid by weight, or a solid, semisolid, or viscous product by fluid measure, it may be used. Whenever the Food and Drug Administration determines that an existing practice of declaring net quantity of contents by weight, measure, numerical count, or a combination in the case of a specific packaged food does not facilitate value comparisons by consumers and offers opportunity for consumer confusion, it will by regulation designate the appropriate term or terms to be used for such commodity.

(b)(1) Statements of weight shall be in terms of avoirdupois pound and ounce.

(2) Statements of fluid measure shall be in terms of the U.S. gallon of 231 cubic inches and quart, pint, and fluid ounce subdivisions thereof, and shall:

(i) In the case of frozen food that is sold and consumed in a frozen state, express the volume at -18 °C (0 °F);

(ii) In the case of refrigerated food that is sold in the refrigerated state, express the volume at 4 °C (40 °F);

(iii) In the case of other foods, express the volume at 20 °C (68 °F);

(3) Statements of dry measure shall be in terms of the U.S. bushel of 2,150.42 cubic inches and peck, dry quart, and dry pint subdivisions thereof.

* * * * *

(g) The declaration of net quantity of contents shall provide an accurate statement of the quantity of contents of the package. For purposes of this section, an accurate statement is one that conforms to all requirements for the declaration set forth under part 101 of this chapter except for §§ 101.200 and 101.201. Sections 101.240, 101.245, and 101.250 of this chapter identify what constitutes a reasonable variation in net content declarations that is the result of loss or gain of moisture during the course of good distribution practice or by unavoidable deviations in good manufacturing practice. Maximum allowance for moisture loss as permitted under § 101.250(c) applies to dry animal food. All net contents measurements shall be made in accordance with the procedures and methodology set forth in part 101 of this chapter. Any net quantity of contents declarations that overstate the amount of product in the container by an amount that is more than that can be attributed to a reasonable variation under these regulations will misbrand the product under section 403(e) of the Federal Food, Drug, and Cosmetic Act.

* * * * *

(u) "Dry animal food" means animal food packaged in paperboard boxes or kraft paper bags that has 13 percent or less moisture at time of pack.

Dated: January 30, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–4956 Filed 3–3–97; 8:45am]

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federal register

Tuesday
March 4, 1997

Part III

Environmental Protection Agency

40 CFR Part 80

Regulation of Fuels and Fuel Additives: Adjustments to Individual Baselines for the Reformulated Gasoline and Anti-Dumping Programs; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[AMS–FRL–5696–2]

Regulation of Fuels and Fuel Additives: Adjustments to Individual Baselines for the Reformulated Gasoline and Anti-Dumping Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: Under the Clean Air Act (CAA or the Act), as amended in 1990, the Environmental Protection Agency (EPA or the Agency) promulgated anti-dumping regulations for conventional gasoline, that is, gasoline not certified as reformulated gasoline (RFG). These regulations require that conventional gasoline not be more polluting than it was in 1990. They also include provisions for the development of individual refinery baselines. The regulations also include provisions which allow a refinery to obtain an adjusted baseline under certain, limited circumstances. Today's regulations modify the requirements of one baseline adjustment and specify the requirements of two new baseline adjustments.

Specifically, today's rulemaking modifies the requirements for obtaining a baseline adjustment due to the production of JP–4 jet fuel in 1990. This rule also allows a baseline adjustment for refiners who are now unable to acquire extremely sweet crude oil (that is, crude oil relatively low in sulfur) that had been available in 1990 and from which the gasoline used to develop a 1990 individual baseline was obtained. Finally, this rule allows a baseline adjustment for refineries which have both extremely low baseline sulfur and olefin levels.

The criteria for obtaining any baseline adjustment are stringent. As a result, only those refineries which would experience a severe economic burden due to the regulations are allowed the relief provided by a baseline adjustment. Since few refineries qualify for these adjustments and requiring compliance without a baseline adjustment would be of minimal benefit to the environment, the environmental impact of allowing the baseline adjustments is negligible.

DATES: This rule will be effective on April 22, 1997.

ADDRESSES: Materials relevant to this final rulemaking (FRM) are contained in Public Docket No. A–95–03. Materials relevant to the RFG final rule are contained in Public Dockets A–91–02 and A–92–12. These dockets are located at Room M–1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket may be inspected from 8:00 a.m. until 5:30 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Christine M. Brunner, U.S. EPA, Fuels and Energy Division, 2565 Plymouth Road, Ann Arbor, MI 48105. Telephone: (313) 668–4287. To request copies of this document, contact Delores Frank, U.S. EPA, Fuels and Energy Division, 2565 Plymouth Road, Ann Arbor, MI 48105. Telephone: (313) 668–4295.

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I. Electronic Copies of Rulemaking Documents

A. Technology Transfer Network Bulletin Board System (TTNBBS)

An electronic copy of this notice is available on the EPA's Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network Bulletin Board System (TTNBBS). The service is free of charge, except for the cost of the phone call. The TTNBBS can be accessed with a phone line and a high-speed modem per the following information:

TTNBBS: 919–541–5742
(1200–14400 bps, no parity, 8 data bits, 1 stop bit)
Voice Help-line: 919–541–5384
Off-line: Mondays from 8:00 AM to 12:00 Noon ET

A user who has not called TTN previously will first be required to answer some basic informational questions for registration purposes. After completing the registration process, proceed through the following menu choices from the top menu to access information on this rulemaking.

<T> GATEWAY TO TTN TECHNICAL AREAS (Bulletin Boards)
<M> OMS—Mobile Sources Information
<K> Rulemaking and Reporting
<3> Fuels
<9> File Area #9 * * * Reformulated gasoline

At this point, the system will list all available files in the chosen category in reverse chronological order with brief descriptions. These files are compressed (i.e., ZIPped). Today's notice can be identified by the following title: JP4FRM.ZIP. To download this file, type the instructions below and transfer according to the appropriate software on your computer:

>D>ownload, <P>rotocol, <E>xamine, <N>ew, <L>ist, or <H>elp Selection or <CR> to exit: D filename.zip

You will be given a list of transfer protocols from which you must choose one that matches the terminal software on your own computer. The software should then be opened and directed to receive the file using the same protocol. Programs and instructions for de-archiving compressed files can be found via <S>ystems Utilities from the top menu, under <A>rchivers/de-archivers. After you have downloaded the desired files, you can quit the TTNBBS with the <G>oodbye command. Please note that due to differences between the software used to develop the document and the software to which the document is downloaded, changes in page format may occur.

B. Internet

Rulemaking documents can also be located on the Internet as follows:

World Wide Web

http://www.epa.gov/omswww

Telnet

telnet ttnbbs.rtpnc.epa.gov

FTP

ftp://ftp.epa.gov
Then change the directory (CD) to /pub/gopher/OMS/

Gopher

gopher://gopher.epa.gov:70/11/Offices/Air/OMS
Alternatively, go to the main EPA gopher and follow the menus:
gopher.epa.gov
EPA Offices and Regions
Office of Air and Radiation
Office of Mobile Sources

II. Regulated Entities

Entities that could be regulated by this action are those that produced gasoline in 1990 and which have an individual baseline per part 40 section 80.91 of the Code of Federal Regulations (CFR). Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Oil refineries.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria at 40 CFR 80.91. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

III. Introduction

The standards that a refiner must comply with for certain aspects of the reformulated and conventional gasoline regulations are based on the refiner's individual baseline.[1] An individual baseline is the set of fuel parameter values, emissions values, and component volumes which represent the quality and quantity of the refiner's 1990 gasoline. (See 40 CFR 80.91.) EPA's regulations establish requirements for developing an individual baseline. For special situations, the Agency has allowed the baseline fuel parameters, emissions values, and component volumes to be adjusted. Such situations have included unforeseen downtime of a gasoline blendstock producing unit, non-annual maintenance, work-in-progress, and JP–4 jet fuel production.

This FRM allows baseline adjustments for three situations where parties would suffer an extreme economic burden due to the original regulations if relief were not granted. Specifically, this rule (1) Revises the requirements for a baseline adjustment due to the production of JP–4 jet fuel in 1990, (2) provides an adjustment to the baseline sulfur values of certain refineries for instances where extremely sweet crude oil (which is no longer available) was used in 1990 gasoline production, and (3) adds a provision for adjusting refinery baselines which have very low values for both sulfur and olefins.

In general, for refiners who qualify for one or more of the baseline adjustments finalized today, EPA will apply the adjustments to gasoline produced in 1996. In the August 1995 Notice of Proposed Rulemaking (NPRM) EPA indicated that any adjustments finalized under this rulemaking would apply to a refiner's 1995 compliance determination. However, EPA cannot retroactively apply a rulemaking, even one that provides a measure of regulatory relief. Many refiners affected by today's rule received baseline adjustments under the stay promulgated at 60 FR 40006 (August 4, 1995). Because these refiners have the same adjusted baseline under the stay that they would receive as a result of today's action, they are unaffected by whether or not today's rule applies to 1995 compliance determinations. For those refiners who did not receive an adjusted baseline, EPA will consider this rule in its review of 1995 compliance determinations.

IV. JP–4 Baseline Adjustment

A. Introduction

JP–4 jet fuel, the use of which is being phased out by the U.S. Department of Defense, was produced in 1990 by many refiners under contract with the Defense Department. Because refineries will most likely use the JP–4 blendstock in gasoline, the JP–4 fuel must first be processed through a reformer to increase its octane to suitable gasoline levels. Due to the high aromatic content of the reformer streams, the toxic emissions of the "new" gasoline (calculated using the Simple and Complex Models) will likely increase relative to the gasoline's 1990 values. In addition, it is possible that gasoline production will increase (relative to 1990 production) due to movement of blendstocks directly and indirectly from JP–4 to gasoline. The impact of the increase in aromatic content and/or additional volume due to JP–4 phase-out will affect certain refiners more than others.

The December 1993 regulations[2] already provide for an adjustment to a refiner's individual baseline due to production of JP–4 in 1990 if three criteria are met. These criteria were designed to ensure that the original adjustment would result in de minimis environmental impact and would remove the extreme burden on the refiner.[3] First, under the original adjustment, JP–4 baseline adjustments are allowed only for refiners who do not or will not in the future produce RFG. If a refiner granted such an adjustment subsequently produces RFG, its conventional gasoline compliance will be subject to its original unadjusted baseline during the current averaging period and all subsequent years. Second, a JP–4 baseline adjustment is available primarily to qualifying single-refinery refiners. A multi-refinery refiner could also receive an adjustment if each of its refineries produced JP–4 in 1990 and if each refinery also meets the other requirements for obtaining the adjustment. Third, to receive an adjustment, the refiner is required to show that a significant burden would exist if no baseline adjustment was allowed. The original regulations require that the ratio of a refinery's 1990 JP–4 production to its 1990 gasoline production must equal or exceed 0.5 in order to be defined as a significant burden on the refiner.

In the August 4, 1995 NPRM (60 FR 40009), EPA proposed modified provisions related to JP–4 baseline adjustments. These provisions were essentially the same as those contained in a direct final rulemaking (DFRM) which was published at 59 FR 36944, July 20, 1994.[4] Specifically, EPA proposed the following three conditions that would have to be met by a refiner who petitions for a baseline adjustment due to JP–4 production in 1990. The first condition applies to multi-refinery refiners while the second and third

[1] In general, the anti-dumping provisions apply to refiners or importers of conventional gasoline. The baseline adjustment provisions finalized in today's notice, however, are applicable only to refiners and their refineries.

[2] 59 FR 7716, February 16, 1994.

[3] Alabama Power Company vs. Costle, 636 F.2d 323–357 (D.C. Cir. 1979).

[4] EPA withdrew this DFRM since EPA received adverse comments on the changes specified in the DFRM with regard to JP–4 baseline adjustments. As announced in the DFRM, such provisions would take effect only if no persons submitted adverse comments or requested an opportunity to comment. For more discussion, see the support document, "Regulation of Fuels and Fuel Additives: Standards for Reformulated and Conventional Gasoline—Detailed Discussion and Analysis", Air Docket A–95–03.

conditions apply to all refining companies.

(1) The Qualifying Refiner Must Have Produced JP–4 at One or More of Its Refineries in 1990

The original JP–4 baseline adjustment provisions for multi-refinery refiners require that each refinery must have produced JP–4 in 1990. This revision would allow a refiner to obtain this baseline adjustment even if only one of its refineries produced JP–4 in 1990 (and if the refiner and its refineries also meet the other criteria specified for this baseline adjustment). EPA believes it may use its discretion to provide relief for a multi-refinery refiner even if only one of the refiner's refineries produced JP–4 in 1990 (provided that the refiner or refinery meets the other requirements required for a JP–4 baseline adjustment). If a multi-refinery refiner qualifies for a baseline adjustment under this criterion, it must then calculate the adjusted baseline of the refinery(ies) which actually produced JP–4 in 1990 and determine its anti-dumping compliance on an aggregate basis.

(2) The Qualifying Refiner Must Have a 1990 JP–4 to Gasoline Ratio Greater Than or Equal to 0.15 (See Discussion Below Regarding JP–4 Baseline Adjustment Ratio)

(a) For each individual refiner, if all of its refineries produced JP–4 in 1990, the refiner may comply with the anti-dumping requirements on an individual or aggregate basis; or

(b) On a refiner-wide basis, in which case the refiner must determine an individual baseline for each of its refineries but must comply with the anti-dumping requirements on an aggregate basis.

(3) The Qualifying Refiner Must Not Produce Reformulated Gasoline (RFG) at Any of Its Refineries Now or in the Future

The comments received on this proposal are discussed below. None of the comments provided new information or supportive data. Therefore, EPA today finalizes this provision as proposed, for the reasons described in the NPRM.

B. General Comments on the Proposal

Summary of Comments

Generally, many commenters felt the original eligibility requirements for receiving a JP–4 baseline adjustment are unnecessarily restrictive. They felt that EPA's overriding concern should be the impact of the baseline adjustments on the environment, and they suggested that most refineries meeting the JP–4 criteria operate in rural, clean air (i.e., attainment) areas.

Several commenters opposed the regulation change, stating that it would be more equitable for all JP–4 producers to get an adjustment, regardless of ratio, aggregation, or RFG production. Commenters stated that this position is based on the fact that all JP–4 producers were meeting a market demand, and therefore should not be selectively penalized. Furthermore, these commenters felt that elimination of post-1995 demand for JP–4 causes all baselines to be unrepresentative of current and future operations. Therefore the JP–4 phase-out and anti-dumping regulations may have unintended adverse effects on the regulated community of former JP–4 suppliers. These commenters suggested that a better approach would be to allow an adjustment for all JP–4 producers, and allow refiners to rethink aggregation decisions. The commenters felt this would "level the playing field" and simplify the regulations.

Analysis and Conclusion

EPA's authority to grant exceptions to this requirement of the CAA is very limited. EPA does not believe it is appropriate, given the applicable facts and this limitation, to allow adjustments for all JP–4 producers. Exceptions to this requirement of the Act should only be allowed for cases of extreme regulatory burden with minimal environmental impact, and not all refiners who produced JP–4 in 1990 are extremely burdened by the requirements of the RFG and anti-dumping programs. Today's action slightly broadens the JP–4 baseline adjustment criteria, but continues to allow adjustment only where extreme burden is demonstrated.

C. Comments on the Proposed Ratio of JP–4 Production to Gasoline Production

Summary of Comments

Some commenters opposed the change in production ratio to 0.15, stating that the 0.15 ratio is arbitrary and that EPA has provided no evidence of hardship for the three or four refineries which would be affected. One commenter felt that if the environmental impacts are minimal at 0.15, they would be even less for those below the 0.15 production ratio. They stated that as little as two percent JP–4 production can be a significant aspect of refining operations; adjusting for production, this low percentage may have little impact on the baseline but would provide necessary relief for refiners who have experienced increasing levels of benzene and aromatics. Commenters also felt that refineries on the "wrong side" of the ratio will continue to argue for special exemptions; any ratio arbitrarily provides relief to some while denying it to others.

Commenters also stated that it is impossible for the public to judge whether a hardship even exists. They felt that the ratio criterion is only one of several criteria which should be used to determine hardship. They argued that the regulation should not be limited to just one criterion, but rather it should include alternative tests for hardship. Several alternative criteria for determining hardship were suggested by commenters. One commenter suggested that EPA should evaluate the financial penalty of noncompliance relative to the refiner's size and profit to determine extreme burden. One commenter proposed that a straight production volume of 100,000 gallons of JP–4, rather than a jet fuel-to-gasoline production ratio, would be a more appropriate baseline adjustment criterion. In addition, commenters suggested that EPA should consider the historical pattern of JP–4 production for a refinery, stating that a refinery that produces JP–4 over a long period will have greater hardship converting that product to gasoline.

Finally, it was suggested that EPA needs to recognize that the industry is capital-intensive and that refineries should be encouraged to make the necessary capital investments.

Analysis and Conclusion

As stated before, in addition to minimal environmental impact, regulatory burden must also be considered before an exception to the regulations can be made, and a baseline adjustment allowed. As discussed in the December 1993 Regulatory Impact Analysis (RIA), the JP–4 to gasoline production ratio is the best measure found by EPA to estimate and quantify this burden. However, based on information received by EPA subsequent to the initiation of the RFG program, the original 0.5 ratio does not provide the relief intended by the Agency. Using industry data, EPA proposed a more appropriate ratio of 0.15, and stated that a few more (three or four) refineries could potentially benefit from this change in the ratio. Although EPA agrees with commenters that other means of showing extreme burden of the regulations may exist, EPA has not found any which seem as appropriate (particularly with respect to providing a quantitative means of establishing burden). Additionally, EPA believes that such alternative tests would be difficult to implement at this stage in the baseline approval process. Finally, EPA believes that limiting this analysis to 1990 situations is most consistent with statutory structure.

D. Comments on the Aggregation and RFG Production Restrictions

In the August 1995 NPRM, EPA proposed that a multi-refinery refiner, could qualify for a JP–4 baseline adjustment even if only one of its refineries produced JP–4 in 1990. However, that refiner would have to determine its compliance on an aggregate basis and could produce no RFG at any of its refineries. A detailed discussion of the basis of these requirements can be found in the support document for this rule, "Regulation of Fuels and Fuel Additives: Standards for Reformulated and Conventional Gasoline-Detailed Discussion and Analysis," Air Docket A–95–03.

Summary of Comments

Commenters supporting the proposed modifications to the regulation provided several points to support the changes. Primarily, they stated that without these changes, it would be impossible for a multi-refinery refiner to qualify for an adjustment. Thus, according to commenters, the regulation would not provide the relief intended by EPA. Some commenters supporting the proposed changes to the regulation endorsed the need for change in the aggregation requirements of the JP–4 adjustment. Commenters felt that such requirements would further restrict the business decisions of a multi-refinery refiner.

Many commenters addressed the RFG production restrictions placed on a refiner that receives a JP–4 adjustment. Commenters felt that prohibiting RFG production by these refiners may cause a refiner not to produce RFG for areas where it is needed. Also, commenters argued that some refiners who qualify for the JP–4 adjustment may have already produced RFG. These commenters felt that the environmental impact of allowing RFG production would be minimal.

Analysis and Conclusion

EPA is retaining the proposed requirement that a multi-refinery refiner qualifying for a JP–4 baseline adjustment, for which not all of its refineries produced JP–4 in 1990, must determine its compliance on an aggregate basis. Under the regulations promulgated today, such a refiner is able to obtain a JP–4 baseline adjustment because it has determined its JP–4 to gasoline ratio on an aggregate basis. EPA continues to believe that it is appropriate to thus require such a refiner to determine its anti-dumping compliance on an aggregate basis as well. A multi-refinery refiner for which each of its refineries meets the JP–4 baseline adjustment criteria individually may determine its compliance on an aggregate or non-aggregate basis.[5]

EPA continues to believe that prohibiting RFG production is a critical criteria for this baseline adjustment as it is the best way to ensure that no "dumping" will occur. EPA does not consider this requirement to be unduly restrictive.

E. Comments Regarding the Effect of JP–4 Production on Refinery Operation

Summary of Comments

Several commenters, including both those supporting the regulation changes and those opposing them, stated that EPA should give full consideration to the effects of JP–4 production on refinery operations. These commenters pointed out that 1990 JP–4 production can limit gasoline production at a refinery, and that premium gasoline, the most profitable gasoline to produce, is most affected by baseline limitations. Commenters stated that JP–4 production limited small refiners with low conversion configurations who could not fractionate excess gasoline into distillate.

Analysis and Conclusion

EPA recognizes that there are difficulties in the conversion of refinery operations from JP–4 production to gasoline production, and that production volumes may also be limited. EPA also recognizes that the burden of the conversion and compliance with the RFG and anti-dumping requirements differs from refiner to refiner. However, as stated previously, EPA's authority in allowing exceptions to the regulations in the form of baseline adjustments is limited. Environmental impact and regulatory burden are the only factors EPA considered in determining what type of baseline adjustment, if any, should be allowed. EPA believes that the most appropriate measure of the regulatory burden in this context is the JP–4 to gasoline ratio, discussed above.

[5] However, as for all refiners, once the decision to determine compliance on an aggregate basis is made, compliance must be made on that basis for all future compliance periods.

V. Crude Oil Quality Baseline Adjustment

A. Introduction

Crude sulfur content is increasing nationwide.[6] The ability of refiners to deal with this change varies. EPA is aware that the quality of the crude oil (with regard to sulfur content) available to refiners in PADD IV has been deteriorating faster than crude oil in other regions of the U.S. since 1990.[7] In addition, refiners in this region do not have access to foreign crude oil imports other than those from Canada. Thus, the quality of crude oil available to these refiners, from conventional or alternative sources, is limited. Prior to promulgation of the December 1993 final rule, EPA was not aware that the deterioration of crude oil available to certain refiners (in regard to increasing sulfur content) might force them to cease operation since the burden of compliance might be prohibitively expensive.

The anti-dumping requirements contained in the December 1993 regulations generally do not allow baseline adjustments for changing crude oil quality or availability. However, as discussed in the preamble to the December 1993 final rule, EPA recognized that a refiner's ability to comply with its individual baseline can be difficult due to changes in crude oil supplies, markets, and fuel specifications. As with the work-in-progress baseline adjustment (40 CFR 80.91) and the original JP–4 baseline adjustment (40 CFR 80.91), EPA believes it is appropriate to provide baseline adjustments in situations where the anti-dumping regulatory burden is extremely onerous and where requiring compliance would yield little or no environmental benefit. Thus, EPA is finalizing such a baseline adjustment where a dramatic increase in crude sulfur content has occurred which could severely affect the anti-dumping compliance of refiners with extremely low baseline sulfur levels.

EPA expects a minimal environmental impact from allowing the low-sulfur crude baseline adjustment (based on the criteria finalized today) for two reasons. First, only a few refineries are expected to qualify for the adjustment and second, the total production volume of these refineries is marginal.

[6] E.J. Swain, "U.S. crude slate continues to get heavier, higher in sulfur," *Oil & Gas Journal*, p. 37, January 9, 1995.

[7] Ibid.

B. General Comments on the Proposal

Summary of Comments

Several commenters felt that EPA was unjustified in granting a small number of refiners special treatment for what is a "fact of life" for all refiners. They felt this proposal appears to satisfy certain refiners at the expense of others. Some commenters claimed that since sour crude oil is typically less expensive than sweet crude oil, refiners can invest in the appropriate level of desulfurization capacity to refine the crude into a competitive crude slate. On the other hand, one commenter asserted that it is not appropriate to grant a waiver to purchase sour crude oil supplies, and then allow the production of gasoline which would not meet the anti-dumping standards.

Other commenters opposing the proposal felt that, although it is very restrictive, they could not support concessions for only a few regulated parties. They contended that EPA should force a capital solution by the affected refiners, and not allow the adjustment.

Analysis and Conclusion

In finalizing the low-sulfur crude baseline adjustment, EPA is using the authority granted to it by Congress to allow limited exceptions under narrow circumstances. As with the other baseline adjustments mentioned above, the appropriate criteria for obtaining an adjustment are designed to be stringent in order to provide relief only in cases of extreme burden and to maintain the environmental benefits of the (anti-dumping) program. EPA is not allowing adjustments for all refiners who have experienced increasing crude sulfur levels since 1990 or for refiners who will experience such increases in the future. Thus, the existing provisions in part 40, section 80.91 of the regulations still apply, i.e., no adjustments for crude oil quality or availability changes are allowed unless the criteria finalized today are met.

C. Comments on Crude Oil Quality Changes Since 1990

In the NPRM, EPA requested comments on inherent crude oil properties, other than sulfur, which have significantly deteriorated since 1990 and which directly and significantly affect the values of any fuel parameters for which an individual baseline value must be determined. In addition, EPA requested comments on future crude oil trends (i.e. whether crude sulfur content will continue to increase or stabilize), specifically on a regional or PADD basis.

Summary of Comments

No commenter specified crude oil properties, other than sulfur, which have significantly deteriorated since 1990 and which directly and significantly affect the values of any fuel parameters for which an individual baseline value must be determined. Additionally, no commenter discussed future crude oil property trends. Commenters did discuss the RFG and anti-dumping programs, specifically with regard to individual baselines, as indicated below.

One commenter in support of a baseline adjustment commented that the existing anti-dumping regulations have the unintended consequence of placing a disproportionately heavy burden on producers of clean gasoline which ultimately could lead to a deterioration of air quality. Specifically, the commenter stated that refiners who produced clean gasoline in 1990 are held to stricter standards than those who produced dirtier gasoline in 1990. Furthermore, the difficulties of the more stringent standards become more acute when the quality of a refiner's gasoline is affected by circumstances beyond the refiner's control.

Another commenter indicated that driving the cleanest refiners out of business was not an intended effect of the RFG and anti-dumping programs, and would not promote protection of public health or the environment. This commenter felt the regulations should recognize the needs of the cleanest refiners and afford them the opportunity for continued operation, by allowing a low sulfur crude adjustment. The commenter stated that despite increased sulfur content, clean refiners would still produce very clean gasoline. Furthermore, the commenter indicated that without an appropriate and sufficient baseline adjustment, clean refiners may have to cease operation which could subsequently lead to fewer clean refineries in the petroleum industry.

In regard to standard pipeline procedures, one commenter felt that certain crude oil properties were beyond the control of downstream refiners. Therefore, the commenter stated that refiners should be allowed to adjust baselines annually. As an example, the commenter stated that perhaps such an adjustment would be based on the naphtha fraction of the crude oil received from the Alaska North Slope.

Analysis and Conclusion

EPA disagrees with the comment that refiners who produced relatively cleaner gasoline in 1990 are held to a stricter standard than those who produced relatively dirtier gasoline in 1990. The same basic standard applies to all refiners with an individual baseline, that is, they must produce gasoline as clean as the gasoline they produced in 1990.

As indicated above, the original regulations generally do not allow baseline adjustments for changing crude oil quality or availability. However, during the review and approval of baselines, EPA was informed that the depleted supply of very sweet crude oil which had been processed in 1990 could force one or more refiners to cease gasoline production. If a refiner processed a very sweet crude (e.g., less than 500 ppm) in 1990, its baseline sulfur level could be 50 ppm or lower. Because of increasing sulfur content in the crude oil supply, if that refiner currently processes relatively sweet crude oil (e.g., less than 1200 ppm sulfur), it would likely be unable to comply with its individual baseline without severe economic burden due to its extremely low baseline sulfur level. It may also be extremely expensive for refiners to add refinery units in order to ensure compliance. For example, gasoline sulfur may be lowered by hydro-desulfurization of gasoline components and/or by charging the gasoline to blendstock producing units. This option is expensive and could require the installation of considerable new refining equipment. It could also require extensive volumes of hydrogen, which may be hard to produce within a given refinery. Thus, compliance options for such a refiner might be prohibitively expensive.

In response to the comment on standard pipeline procedures, the purpose of the low-sulfur crude baseline adjustment is to provide refiners limited relief in situations where the anti-dumping regulatory burden is extremely onerous and where requiring compliance would yield little or no environmental benefit. Although a few refiners will be granted the low-sulfur crude baseline adjustment, these refiners must realize that they (like all other refiners) will be responsible for future adaptations to changing crude sulfur levels. Baseline adjustments are intended to reduce, not eliminate, the burden associated with regulatory compliance. If the burden were completely eliminated, then the required criteria would no longer be met and the goals of the anti-dumping program would no longer be fulfilled.

D. Comments on the Proposed Criteria for a Baseline Adjustment

In the NPRM, EPA proposed seven criteria that a refiner would have to meet to qualify for the low-sulfur crude baseline adjustment. Comments on these criteria are discussed below.

Criterion 1: *The refinery produces no reformulated gasoline.*

The anti-dumping requirements, in general, apply to all conventional gasoline whether or not RFG is produced. Under this adjustment, however, no dumping will result from RFG production. If a refiner who receives this baseline adjustment subsequently produces RFG, the refiner's conventional gasoline compliance will be subject to its original unadjusted baseline during the current averaging period and in all subsequent years. However, in the NPRM, EPA also proposed that the eligibility of any refinery of a multi-refinery company for this baseline adjustment is not dependent on the RFG production of the refining company's other refineries.

Summary of Comments

Some commenters stated that if a baseline adjustment were made, the prohibition of RFG production would be unnecessary and overly restrictive. Commenters added that restrictions on baseline adjustment qualification may limit a refiner's ability to adapt to future, unforeseen market changes. Commenters stated that this restriction would have an adverse impact on cleaner operations by limiting flexibility and competition, and could lead to a future shortage of RFG. It was pointed out that many refiners would be prevented from producing RFG if they were forced to revert back to their unadjusted baselines. Commenters argued that, if refiners were forced to choose between RFG and conventional fuel production based on artificial factors rather than a response to market demand, refiners with higher sulfur baselines would be able to compete in both markets simultaneously with less competition. Therefore, the commenters suggested that EPA should allow the baseline adjustment for refiners that meet the other proposed criteria, regardless of their RFG production.

Analysis and Conclusion

EPA considered the above comments in its decision, but maintains that a refiner must not produce RFG to qualify for a baseline adjustment. EPA believes that refiners who were able to adjust refinery operations (through capital investment or process modifications) to produce RFG should be able to accommodate increases in crude sulfur content. In addition, the Agency believes that prohibiting RFG production is the best way to ensure that "no dumping" will occur. EPA does not believe that this requirement is unduly restrictive. Therefore, EPA is finalizing the proposed criterion that a refiner must not produce RFG to qualify for this baseline adjustment.

Criterion 2: *A refiner has an unadjusted baseline sulfur value less than or equal to 50 ppm.*

EPA believes that requiring a threshold sulfur content of 50 ppm is appropriate because higher baseline levels would indicate that the refiner's 1990 crude slate was not extremely low in sulfur. In addition, a refiner with a higher baseline sulfur level should have sufficient leeway, e.g., types of crude oil supplies used or available and processing flexibility, to comply with its individual baseline. In the NPRM, EPA requested comments on the appropriateness of requiring a threshold sulfur content, and on the suitability of 50 ppm or another concentration as a threshold level.

Summary of Comments

Most commenters opposing the baseline adjustment were concerned that such an adjustment would not result in equal treatment for all, and would give some refiners an unfair advantage. These commenters contended that the rule should not be applied to only those with sulfur levels below 50 ppm or any other number, because increased crude sulfur impacts every refiner regardless of its baseline. Commenters added that all refiners are faced with changing crude oil quality; refiners must consider these changes when planning future capital investments and product slates. Furthermore, many commenters asserted that there is no basis for the 50 ppm threshold proposed by EPA. They indicated that this level should be significantly raised or eliminated. In addition, one commenter argued that requests for adjustment could go beyond crude sulfur content, though the commenter did not specify which other crude oil parameters could be investigated. Finally, commenters contended that this rule could be challenged based on the competitive advantage gained by exempt parties.

Analysis and Conclusion

As with any baseline adjustment, EPA's authority to allow adjustments is limited. As stated previously, exceptions to this requirement of the Act will only be allowed for cases of extreme economic burden with minimal environmental impact. Not all refiners who have experienced increases in crude oil sulfur levels are unduly burdened. In order to quantify this burden, and for the reasons stated earlier, EPA proposed a 50 ppm threshold value for the crude oil sulfur content of a refiner's unadjusted baseline. Because commenters did not suggest another threshold value and EPA is not aware of another value that would be more appropriate, the Agency is finalizing an unadjusted baseline sulfur level of 50 ppm. Refiners must comply with this sulfur criterion to qualify for a low-sulfur crude baseline adjustment.

Criterion 3: *The affected refinery of a multi-refinery refiner may not be aggregated with the refiner's other refineries for compliance purposes.*

EPA proposed that this baseline adjustment would be available to refineries of both single-refinery and multi-refinery companies. However, EPA also proposed that the affected refinery of a multi-refinery refining company may not be aggregated with the company's other refineries for compliance purposes. If a refinery that is granted a low-sulfur crude baseline adjustment is subsequently included in an aggregate baseline, its conventional gasoline compliance will be subject to its original unadjusted baseline during the current averaging period and in all subsequent years. Therefore, to qualify for a low-sulfur crude baseline adjustment, the affected refinery of a multi-refinery company may not be aggregated with the refining company's other refineries for compliance purposes.

Summary of Comments

Commenters opposing the baseline adjustment proposal suggested that EPA should not tie eligibility for the adjustment to aggregation. If there is a need for adjustment, it should affect the refinery only, without the need to revert back to the unadjusted baseline.

Analysis and Conclusion

EPA agrees that allowing refiners to comply with the anti-dumping requirements on an aggregate basis provides flexibility. However, the Agency still believes that refiners should not be able to aggregate and also receive a low-sulfur crude baseline adjustment for one of its refineries. Because the ability to aggregate is limited to multi-refinery refiners, such refiners have more flexibility than single refiners in regard to baseline compliance. Thus, they already have

some means of reducing the effect of increasing crude sulfur on their compliance. EPA believes it would be inappropriate, and possibly anti-competitive, to allow a refinery receiving this baseline adjustment to also be included in an aggregate baseline.

Criterion 4: *The installation of the refinery units necessary to process higher sulfur crude oil supplies to comply with the refinery's actual (i.e., unadjusted) baseline would cost $10 million or be greater than or equal to 10 percent of the depreciated book value of the refinery as of January 1, 1995.*

The purpose of this provision is to ensure that baseline adjustments are limited to cases of extreme burden or economic hardship. (This is the same requirement for economic burden that must be met by a refiner seeking a work-in-progress baseline adjustment.) EPA requested comments on this criterion and whether the specified values of $10 million or 10 percent are adequate given the type of unit (e.g., hydrotreater) that a refiner would have to install in order to comply. EPA also requested comments on (1) the economic burden, if any, of producing and selling gasoline blendstocks in lieu of finished gasoline, and (2) the economic burden of complying with an unadjusted baseline under the circumstances described above by modifying refinery operations in ways other than installing major refinery units.

Summary of Comments

Most commenters supported the proposed criterion of $10 million or 10 percent and stated that this criterion is fair and appropriate. One commenter stated that refining equipment is expensive and it is not difficult for a refiner to spend $10 million. Furthermore, the commenter indicated that the 10 percent depreciation value was not a significant hurdle either.

Commenters also expressed concern that if this adjustment were not allowed, refiners would be forced by the regulation to produce blendstocks in lieu of gasoline. They stated that the discounts refiners would be forced to give for at least some of those blendstocks would be too great to remain viable; refiners could not profitably produce blendstocks in lieu of gasoline. The commenters contended that the decision to produce gasoline is dictated by refinery design and marketing. One commenter added that restricting the ability to freely choose the most profitable product mix would be an economic disadvantage.

In response to the second request, nearly all commenters agreed that increases in crude sulfur directly (but not linearly) lead to increases in gasoline sulfur, unless major structural and operational modifications are made to the refinery (assuming the necessary equipment is not already in place.) Whether and how EPA should address this situation, though, is a point of contention.

One commenter, however, stated that changes in crude sulfur are a poor indicator of gasoline sulfur levels. This commenter suggested that it would be more appropriate to consider catalytic cracking unit (catcracker) feed sulfur. This suggestion applies to refineries without vacuum units, which catcrack reduced crude. Catcracker sulfur can only be reduced by either lowering the distillation end point or hydrotreating the feed or the blendstock. The commenter also stated, though, that lowering the end point artificially forces a refiner to operate at less than optimum conditions. Furthermore, hydrotreating the blendstock stream is impractical since it reduces the octane value of the blendstock and forces higher reformer severity. The commenter added that feed stream hydrotreatment is expensive.

Analysis and Conclusion

EPA agrees that a refiner could be subject to an extreme economic burden if it were forced to produce blendstocks in lieu of gasoline or to significantly modify refinery operations in order to comply with the anti-dumping regulations (although some refiners may produce blendstocks or modify operations at a high cost for other reasons). As a result, EPA believes that limited relief from these potential burdens is necessary and can be provided through a low-sulfur crude baseline adjustment which the Agency is finalizing today.

EPA agrees that it may not be difficult for a refiner who meets the other criteria specified for this baseline adjustment to spend $10 million to reduce sulfur in order to comply with the anti-dumping requirements. Nonetheless, EPA believes this economic criteria is essential for showing extreme economic burden, and thus is retaining this provision as proposed.

EPA generally agrees with the comment that changes in crude sulfur are a poor indicator of gasoline sulfur levels. However, given the other criteria that a refiner must meet to obtain this baseline adjustment, particularly the low threshold values for baseline gasoline sulfur and crude sulfur changes, EPA believes that it is appropriate to consider the influence of extremely low crude sulfur levels on extremely low baseline sulfur levels. As will be discussed below, EPA is not basing the actual adjustment on the relationship between crude sulfur and baseline sulfur levels.

Criterion 5: *The refiner has access to a geographically-limited crude oil supply.*

EPA proposed that a refiner must show that it could not reasonably or economically obtain crude oil from an alternative source that could be refined into conventional gasoline in compliance with the refiner's unadjusted baseline. EPA requested comment on this proposed provision and on criteria that should be used to evaluate "reasonably and economically available".

Summary of Comments

Small refiners with restricted operational flexibility and limited financial access supported the proposal. They felt that without more than the 125 percent flexibility given in the original regulation (i.e., simple model anti-dumping compliance for sulfur), crude sulfur increases would force very clean small refiners with low baselines out of business. One commenter stated that refiners in the Rocky Mountains have traditionally relied on very sweet crude oil supplies which have historically been available in the area. However, the sulfur content of Rocky Mountain crude oil has increased at a greater rate than that of crude oil in the rest of the country. This commenter stated that these refiners realistically only have access, due to geography and economics, to crude oil supplies imported at the Canadian border.

One commenter suggested that EPA should provide examples of refiners meeting this requirement (e.g., all single-refinery refiners in land-locked states). This commenter also suggested additional criteria EPA could consider in allowing this adjustment, such as the distance from a particular refinery to alternative sources of low sulfur crude supplies, the size of the refinery, the ability of the refiner to access and transport such crude oil supplies, and the extent to which the viability of the refiner is threatened by the cost of obtaining alternative crude oil supplies. Another criterion that was suggested would be the increase in the average sulfur content of the crude slate used for gasoline production between 1990 and 1994.

Analysis and Conclusion

Although EPA agrees with the importance of evaluating the information described in the above suggestion, it does not believe it is necessary to impose additional specific criteria for determining who should qualify for a low-sulfur crude baseline adjustment. EPA will consider these factors in determining whether a refinery meets this criterion and will evaluate petitions for this low-sulfur crude baseline adjustment on a case-by case basis. EPA is finalizing this provision as proposed.

Criterion 6: *The refiner has experienced an average crude sulfur increase greater than or equal to 25 percent since 1990.*

EPA proposed that the highest annual-average crude sulfur slate used during the period 1991–1994, inclusive, be compared to the 1990 sulfur level to determine if the "25 percent" criterion is met. Comments were requested concerning the level of difference between 1990 and post-1990 crude sulfur contents that should exist in order to obtain an adjustment, and whether 1991–1994 is an appropriate comparison period or whether some other comparison should be established. The Agency also requested comments as to whether it would be appropriate, and feasible, to distinguish crude oil supplies used solely for gasoline production from crude oil supplies used to produce other refinery products. If such distinction were possible, EPA believes it would be appropriate to base all calculations (pertaining to this adjustment) only on the volumes of each crude used to produce gasoline.

Summary of Comments

Opponents to the proposal were concerned that this adjustment rewards refiners that purchased higher sulfur crude oil supplies after 1990. They indicated that the trend toward sour crude oil supplies was recognized during the Regulatory Negotiation, and that the annual averaging and 125 percent compliance provisions for conventional gasoline were created to address the situation. These commenters felt that if the 125 percent compliance level is not sufficient, it should be changed for all parties.

Some commenters supporting this baseline adjustment indicated that it is feasible to distinguish crude oil supplies used solely for gasoline production from crude oil supplies used to produce other refinery products, and that it would be appropriate to evaluate this criterion based only on the crude used for gasoline production.

Analysis and Conclusion

Although the trend toward sour crude oil supplies was recognized in the Regulatory Negotiation, the quality of the crude oil available to refiners in PADD IV has been deteriorating faster than the rest of the U.S. since 1990. As a result, some refiners with very clean baselines have found it very difficult to comply with the anti-dumping regulations. EPA is finalizing the low-sulfur crude baseline adjustment for those refiners who qualify for the adjustment based on the criteria finalized today. However, EPA believes that the criteria are necessarily stringent so that only those refiners who are extremely burdened will qualify. In addition, EPA believes that because the program is so restrictive, the environmental impact of the adjustment will be minimal and will not negate the benefits of the anti-dumping program.

Commenters supported EPA's belief (as stated in the NPRM) that it is appropriate and feasible to base the low-sulfur crude baseline adjustment only on crude used for gasoline production. EPA is finalizing this criterion as proposed, with a correction to the regulations (contained in the proposal) which reflects the Agency's intent in both the proposal and today's final rule, as follows. In the proposed regulations, one aspect of the equation associated with this criterion was incorrectly defined, namely, the definition of the variable "CSHI". In the proposed regulations, "CSHI" was defined as the "highest annual average crude slate per paragraph (e)(8)(ii)(B) of this section." Paragraph (e)(8)(ii)(B) of that section referenced the "* * * highest crude sulfur level (ppm) of the crude slate utilized in the production of gasoline in the refinery in 1994 * * *." Thus, the definition of "CSHI" in the proposed regulations was not consistent with the discussion contained in the proposal preamble (60 FR 40012. August 4, 1995) which referenced the years 1991–1994, as does today's regulation. Today's regulation corrects this error to reflect the Agency's intent in both the NPRM and today's final rulemaking preambles.

Criterion 7: *Gasoline sulfur changes are directly and solely attributable to the crude sulfur change, and not due to alterations in refinery operation nor choice of products.*

No comments were received on this proposed criterion. EPA is thus finalizing this requirement.

E. Comments on the Proposed Options for a Baseline Adjustment

EPA requested comments on the options proposed for determining the adjusted baseline sulfur level if a refiner meets the proposed criteria and is approved for a baseline adjustment. These options are summarized below. EPA also requested comments on its view that a refiner should not be exempt from its other anti-dumping compliance baselines, i.e., all other simple model requirements as well as exhaust benzene and exhaust toxics emissions under the complex model since those emissions are minimally affected by sulfur. See the support document for this rule for more discussion related to the various proposed options. ("Regulation of Fuels and Fuel Additives: Standards for Reformulated and Conventional Gasoline—Detailed Discussion and Analysis", Air Docket A–95–03.)

Option 1: EPA proposed that the adjusted baseline sulfur value be related to the ratio of the sulfur content of the highest sulfur crude utilized in 1994 to the average sulfur content of the crude slate utilized in 1990. Under this option, if a refiner used two crude oil supplies in its gasoline production in 1994 with sulfur levels of 1000 ppm and 2100 ppm, the higher sulfur crude would be used in the determination of the adjusted baseline sulfur value. If, for example, the 1990 average crude sulfur content was 500 ppm (resulting in a baseline sulfur value of approximately 20 ppm), the adjusted baseline sulfur value would be 84 ppm {20 ppm × (2100/500)}. EPA specifically requested comments on whether the highest sulfur crude from 1991–1994 should be used rather than just considering 1994.

Option 2: EPA proposed that the adjusted baseline sulfur value be related to the ratio of the highest average sulfur content of the crude slate used in 1991, 1992, 1993 or 1994 to the average sulfur content of the crude slate used in 1990. Incorporating the 1990 baseline and crude sulfur levels from Option 1, and average crude sulfur contents of 1000, 1100, 1400, and 1300 ppm for years 1991, 1992, 1993 and 1994, respectively, the adjusted baseline sulfur value would be 56 ppm, i.e., 20 ppm×(1400/500).

Option 3: EPA proposed that an adjusted baseline sulfur value be determined for each year through 1999. Beginning January 1, 2000, the adjusted baseline sulfur value would be the same as it was in 1999. EPA proposed that the annual adjusted value be determined over the four years prior to the year before the new value takes effect, except for 1995 and 1996 which would be determined as specified in Option 1 above (and for which the adjusted baseline sulfur value would be the same). EPA also proposed that if less than a 25 percent difference occurs between the 1990 average crude sulfur level and the average crude sulfur level over a four-year period, the refiner would receive no additional

adjustments, and its most recent adjusted baseline sulfur value would become its permanent baseline sulfur value at that point. For example, the standard for 1997 would be based on the ratio of the average sulfur content of the crude oil used in 1992, 1993, 1994 or 1995 to the average sulfur content of the crude slate used in 1990. EPA proposed that the resulting adjusted baseline sulfur value be submitted to the Agency for evaluation and approval by June 1 of the year preceding the year for which it would be the standard. In the example given, the adjusted baseline value (and all supporting information) would have to be submitted by June 1, 1996.

Option 4: For this option, EPA proposed requirements similar to those presented for Option 3 except that adjustments would only be allowed through 1997, i.e., the simple model years. Beginning in 1998, the adjusted baseline sulfur value would be equal to the value in 1997.

Option 5: EPA proposed that the adjusted baseline sulfur value be the unadjusted baseline sulfur value plus 50 ppm. EPA specifically solicited comments on the appropriateness of using 100 ppm or 150 ppm instead of 50 ppm.

In order to show that increasing gasoline sulfur is due solely to increasing crude sulfur, EPA also requested comments as to whether changes in refinery configuration or refinery operation should be prohibited.

Summary of Comments

Commenters suggested that if a one-time baseline adjustment is granted, refiners should be given the opportunity to estimate the compliance burden over a five to ten year period. According to commenters this concession would accommodate someone who meets the requirements in the short term, but who would require more substantial investment to implement a long term solution. Another commenter felt a one-time adjustment would only benefit the refiner if it were large enough to provide relief for the foreseeable future. Commenters indicated that the EPA proposals did not provide adequate time for adjustment. Furthermore, one commenter argued that proposing a one-time adjustment for a dynamic situation (changing crude oil sulfur) is illogical. The commenter explained that other adjustments allowed by the regulation, such as the work-in-progress, were for temporary events.

Of the options presented in the NPRM, most commenters who supported any adjustment felt that Option 1 was too restrictive and would offer little relief. They preferred Option 5 as the simplest and most flexible approach. One commenter stated that Options 1 and 2 were inappropriate since they include the assumption that crude sulfur and gasoline sulfur increase at a constant ratio, which is not correct. The commenter added that the sulfur content of gasoline depends on several factors such as the crude oil composition, refinery operation, and the type of gasoline produced. This commenter contended that Options 3 and 4 were also inappropriate, although Option 3 was preferable to Option 4 because of the additional time provided for obtaining a final adjustment. This commenter supported continuing relief, but did not support a limit beginning in 1997 or 1999. The commenter considered Option 5 to be the most appropriate option for making a sulfur adjustment, if the added amount was 150 ppm. This commenter also expressed concern regarding the low repeatability of tests for sulfur below 100 ppm. The commenter claimed that EPA appears to recognize the low repeatability by defining a negligible quantity limit of 30 ppm. Finally, this commenter proposed that EPA provide another opportunity for adjustment in five years, if crude sulfur levels continue to increase at faster rates than anticipated.

One commenter felt that if a refiner does not produce RFG, does not aggregate, has a limited crude supply, and meets the "financial hurdles", there is no need for arbitrary numbers, and such refiners should be given the statutory baseline of 338 ppm.

In addition to these concerns, other commenters opposed the continuation of the adjustment beyond the simple model time frame. They stated the complex model provides enough flexibility for refiners, and that EPA has neither the expertise to evaluate non-sulfur control options for complying with NO_x requirements nor the ability to shift from the simple model to the complex model for exhaust benzene. Commenters also stated that the simple model sulfur cap can be avoided by using the complex model. One commenter suggested that if EPA feels that more flexibility is needed, it could allow separate use of the simple and complex models for conventional fuel and RFG sulfur, olefins, and T90. This approach would provide industry-wide flexibility and would minimize the need to provide special relief to a limited number of refiners.

EPA also received a suggested option from a commenter who proposed that a refiner should be able to produce conventional gasoline which does not meet, on average, the requirements of its individual baseline if the refiner could show that deviation from its baseline was directly and solely attributable to crude sulfur change, and not due to alterations in refinery operation or choice of products. The suggested option also contained other requirements, which are essentially those finalized today by EPA, that are necessary for determining baseline adjustment eligibility.

Analysis and Conclusion

All five proposed options would determine the adjusted baseline sulfur value prior to the period of production, thus treating an affected refiner like all other refiners. Although today's rule provides some relief for refiners who are unduly burdened by baseline compliance, these refiners may have to modify refinery operations in the future to accommodate increasing crude sulfur levels. In the future, however, refinery modifications will likely be required of most refiners, without the benefit of a baseline adjustment.

After careful analysis of the proposed options, sulfur distribution data, and comments, EPA is finalizing essentially Option 5 in today's rule. Under this option, a refiner's one-time adjusted baseline sulfur value will be equal to the refiners unadjusted baseline sulfur value plus 100 ppm. EPA believes that a 100 ppm sulfur adjustment is appropriate for the following reasons. First, 50 ppm, as suggested in the NPRM, is too low. Upon further consideration, especially regarding the criteria which must be met in order to obtain this adjustment, EPA believes that a sulfur adjustment of 50 ppm would not provide sufficient relief. Refiners who are severely burdened by the anti-dumping regulations, and who meet the criteria, will likely need more than a 50 ppm baseline adjustment in order to reduce the extreme burden of the regulations. Second, a baseline adjustment value of 150 ppm sulfur is too high. Although this value was proposed in the NPRM, the Agency believes that an adjustment of this magnitude would negate the intentions of this regulation (which is to provide reasonable relief for extremely burdened refiners) and the goals of the anti-dumping program. If an adjustment of 150 ppm sulfur was permitted, several refiners not qualifying for the adjustment (due to the 50 ppm threshold required in Criterion 2) would have lower baseline sulfur values than some refiners who do qualify for the adjustment. Finally, EPA believes that a sulfur adjustment of 100 ppm will provide adequate relief for qualifying refiners while maintaining the environmental benefits of the anti-dumping program.

Based on the above decision, 150 ppm is the maximum adjusted baseline sulfur value that a refiner could be granted under today's final rule (50 ppm threshold + 100 ppm additional sulfur = 150 ppm maximum adjusted baseline value for sulfur). The Agency believes that this option will provide refiners maximum flexibility with minimal anti-competitive effects.

Regarding the comment that EPA should provide another opportunity for adjustment in five years if crude sulfur levels continue to increase at faster rates than expected, EPA believes this action would be inappropriate. Baseline adjustments are intended to provide relief where the burden is extreme. EPA expects that the refining industry will develop means of dealing with increasing crude sulfur levels. The cost of such means may be high, but given the lead time, and the industry's knowledge of crude oil exploration and production, it is unlikely that a well-prepared refiner would be extremely burdened by future high sulfur levels.

As with other baseline adjustments, refiners receiving this baseline adjustment will retain the adjustment even after the Simple Model years, i.e., after 1997. Although the Complex Model does provide more compliance flexibility than the Simple Model, EPA, via the baseline adjustments, is providing relief for compliance with anti-dumping requirements as a whole, and not just the Simple or Complex Model requirements. In some cases, even the Complex Model does not provide enough flexibility such that an extreme burden (when evaluated under the Simple Model) is reduced. EPA also disagrees with commenters who suggested that EPA allow compliance to be determined under one model for conventional gasoline and under the other model for RFG. The reasons for requiring the use of the same models for both conventional and RFG were discussed at length in the December 1993 final rule. Additionally, as stated several times previously, EPA does not have authority and does not believe it is appropriate to provide a broad, i.e., industry-wide, adjustment program.

EPA considered the suggested option, but is not finalizing it due to some concerns about the concept and detail of the option. This option would exempt a qualifying refiner from complying with its anti-dumping compliance baseline if the refiner can show, at the end of the compliance period, that deviation from its baseline was directly and solely attributable to crude sulfur change. Thus, unlike all other refiners, a qualifying refiner would have no clearly defined standard prior to year of production. Furthermore, if EPA was not satisfied that deviation from its baseline was directly and solely attributable to crude sulfur change, the refiner would have to determine compliance relative to its unadjusted baseline and would likely be out of compliance.

VI. Low Sulfur, Low Olefin Baseline Adjustment

A. Introduction

Certain very clean individual baselines, i.e., those with extremely low values for one or more fuel parameters, can make compliance for refiners extremely difficult or impossible due to (1) limited maneuverability about the clean baseline and (2) limited flexibility with regard to annual averaging. During the review and approval of individual baselines, EPA was informed that extremely low baseline sulfur and olefin values could force a refiner to cease gasoline production. In addition, refiners with very clean baselines presumably produce the least polluting gasoline. It would be environmentally harmful if these refiners ceased production and their volumes were then produced by refiners with relatively dirtier baselines.

EPA believes it is appropriate to provide limited relief in the form of a baseline adjustment in those few cases where the regulatory burden is extremely onerous and where requiring compliance would yield little or no environmental benefit.

B. General Comments on the Proposal

To provide some relief for those refiners who are severely burdened by the combination of extremely low sulfur and olefin levels, EPA proposed a baseline adjustment which set the annual average sulfur and olefin values to 30 ppm and 1.0 volume percent (vol%), respectively. To receive this adjustment, EPA proposed that a refiner must meet the following criteria:

(1) Have an individual baseline sulfur level less than or equal to 30 ppm and an individual olefin level less than or equal to 1.0 vol%;

(2) Show that installation of the refinery units necessary for compliance with an unadjusted baseline would cost $10 million or be at least 10 percent of the depreciated book value of the refinery as of January 1, 1995.

Additionally, EPA proposed that such an adjustment would be available to both single-refinery and multi-refinery refining companies. However, the affected refinery of a multi-refinery company would not be allowed to be aggregated with the company's other refineries for compliance purposes. If at any time a given refinery's baseline is aggregated with another refinery's baseline for compliance purposes, EPA proposed that the applicable individual baselines will revert to the unadjusted baselines.

EPA also proposed that the summer and winter individual baseline values for sulfur and olefins be set to 30 ppm and 1.0 vol%, respectively.

Summary and Analysis of Comments

Several commenters supported this proposed adjustment and EPA's statement that no environmental impacts would occur due to this rule. Additionally, many commenters cited problems with the accuracy of laboratory test methods at very low sulfur and olefin levels as further justification for this baseline adjustment. Commenters stated that errors in lab analysis, sample contamination, or product commingling can incorrectly result in fuel parameter values which are greater than the baseline values when those baseline values are extremely low. EPA agrees that this baseline adjustment will provide flexibility for qualifying refiners and will reduce the complications associated with testing low sulfur and olefin levels.

While the majority of commenters supported this proposal, many of them suggested changes in the criteria for the adjustment. One commenter suggested that EPA remove the aggregation requirement. This commenter stated that a conflict arises when a refiner also qualifies for a JP–4 baseline adjustment (under the JP–4 baseline adjustments, in certain instances, a qualifying multi-refinery refiner must determine its anti-dumping compliance on an aggregate basis). EPA agrees with this comment. EPA proposed the aggregation requirement because it believed that, as for certain other baseline adjustments, it would be inappropriate to provide a baseline adjustment and to also allow a refinery receiving such an adjustment to be included in an aggregate baseline for compliance purposes. Refiners who can comply with the reformulated and anti-dumping regulations on an aggregate basis (i.e., multi-refinery refiners) already have a degree of flexibility over single-refinery refiners, and EPA believed that allowing a refinery both a baseline adjustment and the ability to be included in an aggregate baseline might provide a competitive advantage to certain refiners. However, EPA did not intend that one baseline adjustment would eliminate use of another baseline

adjustment, and believes that this particular adjustment (because of the extremely low sulfur and olefin levels involved), when coupled with the ability to aggregate, would not create a significant competitive advantage. Thus, EPA is not finalizing the requirement that refiners who receive this low sulfur/low olefin adjustment must revert to the unadjusted baseline if that refinery is included in an aggregate baseline.

Several commenters suggested removing the economic criterion. Commenters stated that requiring large capital expenditures as a condition for this adjustment is unfair and devalues the investment in all such refineries. Commenters felt that refinery modifications would not guarantee compliance with an ultra-clean baseline. Commenters stated that even the allowed 125 percent of such ultra-low values could be less than the reproducibility and could approach the lower limit of the test method. Additionally, commenters said that subtle changes in the crude slate could affect compliance for these refiners.

EPA agrees that for extremely low sulfur or olefin values, it may be almost impossible to install additional equipment or take other actions to ensure compliance with 100 percent or even 125 percent of the baseline values. In such cases, the burden would most likely exceed $10 million or 10 percent of the depreciated refinery value as proposed in the NPRM. To require demonstration of this would be of little additional value. Thus, EPA is not finalizing that provision of this baseline adjustment.

EPA proposed two options for assigning seasonal adjusted sulfur and olefins values for summer and winter. The first option was to set these values to 30 ppm and 1.0 vol%, respectively, as for the annual average values. The other option was to use the refiner's own ratio of summer and winter values to determine the seasonal values. Few commenters indicated a preference for assigning seasonal baseline sulfur and olefin levels. EPA is thus promulgating its first option, that is, values of 30 ppm sulfur and 1.0 vol% olefins for both the annual average and seasonal values. EPA believes this choice is appropriate since, under this rule, baseline values for these two fuel parameters are different from the actual unadjusted baseline values of qualifying refiners. Additionally, based on comments mentioned earlier, testing of extremely low sulfur and low olefin values could have resulted in inaccurate unadjusted baseline values. Thus any ratio calculated from those values would also be inaccurate.

One commenter felt that refiners should be allowed to use the 30 ppm sulfur and 1.0 vol% olefin levels as threshold values which would also curtail testing of these trace parameters. This rule is only concerned with baseline development, for which all testing has been completed, and does not address compliance issues.

C. Provisions of the Final Rule

To obtain this baseline adjustment, a refinery must have a baseline sulfur value less than or equal to 30 ppm and a baseline olefin value less than or equal to 1.0 vol%. A refinery that meets this criteria will have an adjusted baseline sulfur value of 30 ppm and an adjusted baseline olefin value of 1.0 vol% as its summer, winter and annual average values. Although for most baseline adjustments refiners are required to petition EPA for the adjustment, in this case, since baselines are already established, it is more efficient for EPA to determine which refineries qualify for this baseline adjustment, rather than require such refineries to petition EPA. Thus, refiners with refineries that qualify for this adjustment will receive notification from EPA in a timely manner.

VII. Environmental and Economic Impacts

EPA expects a negligible environmental impact from allowing baseline adjustments under the criteria of this rule because (1) only a few refiners are expected to qualify for the adjustments (about 16), and (2) the total gasoline production of the qualifying refiners is small (less than three percent of annual gasoline production).

To quantitatively illustrate this negligible impact, EPA used the Complex Model (an emissions model that indicates changes in in-use motor vehicle emissions based on changes in one or more of the gasoline fuel parameters evaluated by the model) to determine the adjustments' effects on harmful exhaust toxics and NO_X emissions. Results from the model indicate less than a one percent increase in exhaust toxics emissions due to these three baseline adjustments (primarily due to the JP–4 adjustment), and less than a 0.1 percent increase in NO_X emissions (primarily due to the low sulfur crude and low sulfur/low olefins adjustments). The low sulfur crude and low sulfur/low olefins baseline adjustments have almost no impact on exhaust toxics emissions, and the JP–4 baseline adjustment will likely yield a decrease in annual NO_X emissions.

Refineries affected by this rule are geographically dispersed throughout the United States, mostly in ozone attainment areas.

The economic impacts of this rule are generally beneficial to affected refiners due to the additional flexibility provided by this action. Minimal anti-competitive effects are expected.

A more comprehensive description of the environmental and economic impacts of the RFG program is described in the Regulatory Impact Analysis (RIA) supporting the December 1993 rule. This RIA is available in Public Docket A–92–12 located at Room M–1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460.

VIII. Administrative Requirements

A. Administrative Designation

Pursuant to Executive Order 12866, (58 FR 51735, October 4, 1993) the Agency must determine whether this regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this FRM is not a "significant regulatory action."

B. Impact on Small Entities

EPA has determined that this rule will not have a significant economic impact on a substantial number of small entities, and that it is therefore not necessary to prepare a regulatory flexibility analysis in conjunction with this final rule. Because today's rule provides for less stringent requirements than the December 1993 regulations for qualifying refiners, small entities which qualify for one or more of the baseline adjustments contained herein will find it easier to comply with the requirements of the RFG and anti-dumping programs.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., and implementing regulations, 5 CFR Part 1320, do not apply to this action as it does not involve the collection of information as defined therein.

D. Unfunded Mandates Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate; or by the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that today's action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local or tribal governments in the aggregate, or to the private sector. This action has the net effect of reducing burden of the RFG program on regulated entities. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

E. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

IX. Statutory Authority

The statutory authority for the action promulgated today is granted to EPA by sections 211 (c) and (k) and 301 of the Clean Air Act, as amended; 42 U.S.C. 7545 (c) and (k), and 7601.

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, Gasoline, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: February 21, 1997.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 80 of title 40 of the Code of Federal Regulations is amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: Sections 114, 211 and 301 of the Clean Air Act as amended (42 U.S.C. 7414, 7545 and 7601).

2. Section 80.91 is amended by revising paragraph (e)(7)(i); removing paragraph (e)(7)(iv) and by adding paragraphs (e)(8) and (e)(9) to read as follows:

§ 80.91 Individual baseline determination.

* * * * *

(e) * * *

(7) * * *

(i) Baseline adjustments may be allowed, upon petition and approval (per § 80.93), if a refinery produced JP–4 jet fuel in 1990 and all of the following requirements are also met:

(A) Refinery type.

(*1*) The refinery is the only refinery of a refiner such that it cannot form an aggregate baseline with another refinery (per § 80.101(h)); or

(*2*) The refinery is one refinery of a multi-refinery refiner for which all of the refiner's refineries produced JP–4 in 1990; or

(*3*) The refinery is one refinery of a multi-refinery refiner for which not all of the refiner's refineries produced JP–4 in 1990.

(B) No refinery of a given refiner produces reformulated gasoline. If any refinery of the refiner produces reformulated gasoline at any time in a calendar year, the compliance baselines of all the refiner's refineries receiving a baseline adjustment per this paragraph (e)(7) shall revert to the unadjusted baselines of each respective refinery for that year and all subsequent years.

(C) 1990 JP–4 to gasoline ratio.

(*1*) For a refiner per paragraph (e)(7)(i)(A)(*1*) of this section, the ratio of its refinery's 1990 JP–4 production to its 1990 gasoline production must be greater than or equal to 0.15.

(*2*) For a refiner per paragraph (e)(7)(i)(A)(*2*) of this section, the ratio of each of its refinery's 1990 JP–4 production to its 1990 gasoline production must be greater than or equal to 0.15.

(*3*) For a refiner per paragraph (e)(7)(i)(A)(*3*) of this section, the ratio of the refiner's 1990 JP–4 production to its 1990 gasoline production must be greater than or equal to 0.15, when determined across all of its refineries. Such a refiner must comply with its anti-dumping requirements on an aggregate basis, per § 80.101(h), across all of its refineries.

* * * * *

(8) Baseline adjustments due to increasing crude sulfur content.

(i) Baseline adjustments may be allowed, upon petition and approval (per § 80.93), if a refinery meets all of the following requirements:

(A) The refinery does not produce reformulated gasoline. If the refinery produces reformulated gasoline at any time in a calendar year, its compliance baseline shall revert to its unadjusted baseline for that year and all subsequent years;

(B) Has an unadjusted baseline sulfur value which is less than or equal to 50 parts per million (ppm);

(C) Is not aggregated with one or more other refineries (per § 80.101(h)). If a refinery which received an adjustment per this paragraph (e)(8) subsequently is included in an aggregate baseline, its compliance baseline shall revert to its unadjusted baseline for that year and all subsequent years;

(D) Can show that installation of the refinery units necessary to process higher sulfur crude oil supplies to comply with the refinery's unadjusted baseline would cost at least $10 million or be greater than or equal to 10 percent of the depreciated book value of the refinery as of January 1, 1995;

(E) Can show that it could not reasonably or economically obtain crude oil from an alternative source that would permit it to produce conventional gasoline which would comply with its unadjusted baseline;

(F) Has experienced an increase of greater than or equal to 25 percent in the average sulfur content of the crude oil used in the production of gasoline in the refinery since 1990, calculated as follows:

$$\frac{(CSHI - CS90)}{CS90} \times 100 = CS\%CHG$$

Where:

CSHI=highest annual average crude sulfur (in ppm), of the crude slates used in the production of gasoline, determined over the years 1991–1994;

CS90=1990 annual average crude slate sulfur (in ppm), of the crude slates used in the production of gasoline;
CS%CHG=percent change in average sulfur content of crude slate;

(G) Can show that gasoline sulfur changes are directly and solely attributable to the crude sulfur change, and not due to alterations in refinery operation nor choice of products.

(ii) The adjusted baseline sulfur value shall be the actual baseline sulfur value, in ppm, plus 100 ppm.

(iii) All adjustments made pursuant to this paragraph (e)(8) must be accompanied by:

(A) Unadjusted and adjusted fuel parameters and emissions; and

(B) A narrative describing the situation, the types of calculations, and the reasoning supporting the types of calculations done to determine the adjusted values.

(9) Baseline adjustment for low sulfur and olefins.

(i) Baseline adjustments may be allowed if a refinery meets all of the following requirements:

(A) The unadjusted annual average baseline sulfur value of the refinery is less than or equal to 30 parts per million (ppm);

(B) The unadjusted annual average baseline olefin value of the refinery is less than or equal to 1.0 percent by volume (vol%).

(ii) Adjusted baseline values.

(A) The adjusted baseline shall have an annual average sulfur value of 30 ppm, and an annual average olefin value of 1.0 vol%.

(B) The adjusted baseline shall have a summer sulfur value of 30 ppm, and a summer olefin value of 1.0 vol%.

(C) The adjusted baseline shall have a winter sulfur value of 30 ppm, and a winter olefin value of 1.0 vol%.

* * * * *

§ 80.10 [Amended]

3. Section 80.101 is amended by removing paragraph (b)(1)(v).

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federal register

Tuesday
March 4, 1997

Part IV

Department of Education

National Institute on Disability and Rehabilitation Research; Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

AGENCY: Department of Education.

ACTION: Notice of proposed priorities for fiscal years 1997–1998 for research and demonstration projects, rehabilitation research and training centers, and a knowledge dissemination and utilization project.

SUMMARY: The Secretary proposes priorities for the Research and Demonstration Project (R&D) Program, the Rehabilitation Research and Training Center (RRTC) Program, and the Knowledge Dissemination and Utilization (D&U) Program under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1997–1998. The Secretary takes this action to focus research attention on areas of national need to improve rehabilitation services and outcomes for individuals with disabilities, and to assist in the solutions to problems encountered by individuals with disabilities in their daily activities.

DATES: Comments must be received on or before April 3, 1997.

ADDRESSES: All comments concerning these proposed priorities should be addressed to David Esquith, U.S. Department of Education, 600 Independence Avenue, S.W., Switzer Building, Room 3424, Washington, D.C. 20202–2601. Internet: NPP—ADA@ed.gov

FOR FURTHER INFORMATION CONTACT: David Esquith. Telephone: (202) 205–8801. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8133. Internet: David—Esquith@ed.gov

SUPPLEMENTARY INFORMATION: This notice contains proposed priorities to establish R&D projects for model systems for burn injury and traumatic brain injury, RRTCs for research related to aging with a spinal cord injury and severe problem behaviors, and a D&U project to improve the utilization of existing and emerging rehabilitation technology in the State vocational rehabilitation program.

These proposed priorities support the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The Secretary will announce the final funding priorities in a notice in the **Federal Register**. The final priorities will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the final priorities, the availability of funds, and the quality of the applications received. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priorities does *not* solicit applications. A notice inviting applications under these competitions will be published in the **Federal Register** concurrent with or following publication of the notice of the final priorities.

Research and Demonstration Projects

Authority for the R&D program of NIDRR is contained in section 204(a) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760–762). Under this program the Secretary makes awards to public agencies and private agencies and organizations, including institutions of higher education, Indian tribes, and tribal organizations. This program is designed to assist in the development of solutions to the problems encountered by individuals with disabilities in their daily activities, especially problems related to employment (see 34 CFR 351.1). Under the regulations for this program (see 34 CFR 351.32), the Secretary may establish research priorities by reserving funds to support the research activities listed in 34 CFR 351.10.

Priorities

Under 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference to applications that meet one of the following priorities. The Secretary proposes to fund under this program only applications that meet one of these absolute priorities:

Proposed Priority 1: Burn Injury Rehabilitation Model System

Background

Each year more than 2.0 million persons (about one percent of the population of the United States) receive a burn injury. Of these, 6,500 to 12,000 do not survive; 500,000 require medical care and result in temporary disability with respect to home, school, or work activities; and 70,000 to 100,000 are severe enough to be admitted to a hospital (Rice, D.P. and MacKenzie, E.J., "Cost of Injury in the United States: A Report to Congress," Atlanta, GA: Centers for Disease Control, 1989).

In 1994, NIDRR provided funding to establish Burn Injury Rehabilitation Model Systems of Care. These R&D projects focused primarily on developing and demonstrating a comprehensive, multidisciplinary model system of rehabilitative services for individuals with severe burns, and evaluating the efficacy of that system through the collection and analysis of uniform data on system benefits, costs, and outcomes. NIDRR's multi-center model systems program is designed to study the course of recovery and outcomes following the delivery of a coordinated system of care including emergency care, acute care management, comprehensive in-patient rehabilitation, and long-term interdisciplinary follow-up services.

Burn rehabilitation requires interventions as soon as possible after admission to hospitals and has treatment implications for several years following hospital discharge. Burn trauma often causes injuries and impairments in addition to the burn, and many individuals with burn injuries have secondary complications related to the burn condition. These may include open wounds, contractures, neuropathies, cosmetic abnormalities, deconditioning, bony deformities, hypersensitivity to heat and cold, amputation, psychosocial distress, chronic pain, and scarring. The complicated nature of burn injuries, the difficulty of treatment, and the risk of infection with possible loss of function requires interventions quickly and frequently to attempt to maintain a functional lifestyle and return to living independently. Minimization of physical deterioration and prevention of further impairment and functional limitation is critical and research is needed to find the appropriate procedures for clinical applications. Research is needed to develop and refine methods to determine the effectiveness of interventions to prevent, manage, and reduce medical complications that contribute to short- and long-term disability in burn patients.

Improved measures are needed of an individual's functional ability as a result of burn rehabilitation interventions. Functional assessment brings objectivity to rehabilitation by establishing appropriate, uniform descriptors of rehabilitation care and changes in individual capacity to perform activities of daily living or other measurable elements of an individual's major life activities (Granger, C. and Brownscheidle, C., "Outcome Measurement in Medical Rehabilitation," *International Journal of Technology Assessment in Health Care*, 11:2, 1995). Increasingly, health and rehabilitation services require effectiveness and impact measures to evaluate their services as a part of procedures for cost-reimbursement and billing for services. With greater emphasis on individual choice in services delivery, consumers and advocates are likewise advocates for functional assessment measures as encoders of service effectiveness. Few existing functional assessment measures, however, address the specialized and complex combination of psychosocial and medical challenges encountered by an individual who has experienced severe burn injury (Rucker, K., et al., "Analysis of Functional Assessment Instruments for Disability Rehabilitation Programs," SSA Contract No. 600–95–2194, Virginia Commonwealth University, 1996).

Burn injuries can produce emotional problems, such as post-traumatic stress disorders, anxiety, and depression. These problems may result from a variety of causes (e.g., reaction to cosmetic alterations, changes in functional abilities, changes in work status, restrictions on recreational activities) (Cromes, G.F. and Helm, P.A., "Burn Injuries," in *Medical Aspects of Disability*, pgs. 92–104, 1993). The aesthetic disability of disfigurement is frequently more severe than the physical disability and may result in profound social consequences for those afflicted (Hurren, J.S., "Rehabilitation of the Burned Patient: James Laing Memorial Essay for 1993," *Burns*, Vol. 21, No. 2, 1995). The more severe the burn, the greater the likelihood of long-term psychosocial adjustment issues related to both physical and psychosocial problems, that affect quality of life. Although psychosocial adjustment is a critical factor in the long-term recovery of burn injury patients, there continues to be limited emphasis on research in the area of psychosocial rehabilitation and its relationship to quality of life. Family and friends play an important role and provide major support in the psychological recovery of burn patients. Research in this area needs to address the role of the family and personal advocacy systems in providing support during the burn injury rehabilitation process.

Difficulty with long-term follow-up of all patients after hospital discharge has always been a problem, but it is even more difficult when the individual lives far from the specialized rehabilitation unit. Problems are also encountered with those individuals living in rural areas, where access to burn injury rehabilitation, including mental health services, may be quite limited due to lack of proximity to specialized practitioners, limited access to technological advances, and hospital closures.

Return-to-work and educational pursuits are important measures of rehabilitation success. Work is an important source of satisfaction, self-respect, and dignity, as well as an arena for socialization for individuals who have experienced burn injury (Salisbury, R., "Burn Rehabilitation: Our Unanswered Challenge," 1992 Presidential Address to the American Burn Association, April, 1992). However, the efficacy of vocational rehabilitation interventions for this population has not been documented adequately. The physical, psychosocial, and emotional factors that lead to successful employment have not been clearly identified. Research is needed to examine relationships between vocational interventions and supports, employment, functional capacity, and degree of burn injury, including secondary complications.

Proposed Priority 1

The Secretary proposes to establish Burn Injury Rehabilitation Model Systems R&D projects for the purpose of demonstrating a comprehensive, multidisciplinary model system of rehabilitative services for individuals with severe burns. An R&D project must:

(1) Identify and evaluate techniques to prevent secondary complications;

(2) develop and evaluate outreach programs to improve follow-up services for rural populations;

(3) develop and evaluate measures of functional outcome for burn rehabilitation; and

(4) identify and evaluate interventions, including vocational rehabilitation interventions, to improve psychosocial adjustment, quality of life, community integration, and employment-related outcomes.

In carrying out these purposes, the R&D project must:

- Participate in clinical and systems analysis studies of the burn injury rehabilitation model system by collecting and contributing data on patient characteristics, diagnoses, causes of injury, interventions, outcomes, and costs to a uniform, standardized national data base as prescribed by the Secretary; and
- Consider collaborative projects with other model systems.

Proposed Priority 2: Traumatic Brain Injury Model Systems

Background

An estimated 1.9 million Americans experience traumatic brain injury (TBI) each year (Collins, J.F., "Types of Injuries by Selected Characteristics: US 1985–87," National Center for Health Statistics, Vital Health Stat 10 (175), 1990). Incidence is highest among youth and younger adults. Young males have the highest incidence rates of any group ("Disability Statistics Abstract," No. 14, Disability Statistics Rehabilitation Research & Training Center, University of California, San Francisco, November, 1995). Each year approximately 70,000 to 90,000 TBI survivors enter a life of continuing, debilitating loss of function; an estimated 5,000 survivors experience seizure disorders; and 2,000 enter into a persistent vegetative state. The number of people surviving head injuries has increased significantly over the last 25 years as a result of faster and better emergency treatment, more rapid and safer transport to specialized treatment facilities, and advances in medical treatment (National Foundation for Brain Research, Washington, DC, 1994).

In 1987, NIDRR provided funding to establish TBI Model Systems of Care. These R&D projects focused primarily on developing and demonstrating a comprehensive, multidisciplinary model system of rehabilitative services for individuals with TBI, and evaluating the efficacy of that system through the collection and analysis of uniform data on system benefits, costs, and outcomes. NIDRR's multi-center model systems program is designed to study the course of recovery and outcomes following the delivery of a coordinated system of care including emergency care, acute neuro-trauma management, comprehensive in-patient rehabilitation, and long-term interdisciplinary follow-up services.

The TBI Model Systems serve a substantial number of patients, allowing the projects to conduct clinical research and program evaluation, which maximize the potential for project replication. In addition, the TBI Model Systems have the advantage of a complex data collection and retrieval program with the capability to analyze the different system components and provide information on project cost effectiveness and benefits. Information is collected throughout the rehabilitation process, permitting long-term follow-up on the course of injury, outcomes, and changes in employment status, community integration, substance abuse and family needs. The TBI Model Systems projects serve as

regional and national models for program development and as information centers for consumers, families, and professionals.

The TBI Model Systems National Database reports that the average length of stay in acute care has decreased approximately 50 percent, from 30 days in 1989 to 15 days in 1996; and the average length of stay in in-patient rehabilitation has decreased 38 percent, from 52 days in 1989 to 32 days in 1996. With the changing patterns of service delivery, there continues to be a need to establish and evaluate new rehabilitation interventions and strategies. Specialized measurement tools have been developed by the TBI Model Systems to assess progress and describe clinical and functional outcomes. Refinement of these measurement tools is necessary to demonstrate the effectiveness of rehabilitation interventions in in-patient and outpatient settings. After the individual is discharged from an in-patient setting, there is an ongoing need for outpatient and community reintegration services in order to continue therapeutic interventions and the educational and referral process. As the average length of stay in in-patient settings decreases, there is a greater need to evaluate outpatient and community reintegration programs.

Findings from a multi-center investigation of employment and community integration following TBI highlight the need for post-acute rehabilitation programs with particular emphasis on vocational rehabilitation (Sander, A., et al., *Journal of Head Trauma Rehabilitation*, Vol. 11, No. 5, pgs. 70–84, 1996). Kreutzer states that employment and productivity, relating to others in the community, and independently caring for oneself at home are important quality-of-life components ("TBI: Models and Systems of Care," Conference Syllabus, Medical College of Virginia, April, 1996). As functional recovery progresses during the first year or more after the injury, the focus of rehabilitation shifts from medical intervention and physical restoration to psychosocial and vocational adaptation. The ultimate goal of psychosocial and vocational rehabilitation is community reintegration and employment. It is important to emphasize that services aimed at community reintegration must consider not only attributes and limitations of the injured individuals, but also the social, educational, and vocational systems in which the individual will function. In addition, rates of competitive employment decrease substantially from pre-injury levels. Head injury frequently results in unemployment, and there are significant relationships between risk factors (e.g., substance abuse) and this changed employment status. However, there is no reliable information regarding the magnitude of risk associated with different factors, or with different levels of these factors (Dikmen, S., et al., "Employment following Traumatic Head Injuries," *Archives of Neurology*, Vol. 51, February, 1994).

A major disability like TBI has a profoundly disorganizing impact on the lives of individuals with TBI and their families. Questions involving community, family, and vocational restoration, as well as generic concerns about future happiness and fulfillment, are common (Banja, J., & Johnston, M., "Ethical Perspectives and Social Policy," *Archives of Physical Medicine Rehabilitation*, Vol. 75, SC–19, December, 1994). Even individuals who have integrated well into society experience adverse psychosocial effects. Employment instability, isolation from friends, and increased need for support are a few of the problems encountered by individuals with TBI. Families often function as the primary support system for individuals with TBI after they are discharged. There is a clear need for research to develop family treatment strategies and explore their effect on outcomes for individuals with TBI.

The health care costs associated with TBI are staggering. The direct medical costs of TBI treatment have been estimated at more than $4 billion annually (Max, W., et al., "Head Injuries: Costs and Consequences," *Journal of Head Trauma Rehabilitation*, Vol. 6, pgs. 76–91, 1991). In view of current scrutiny of all health care spending, which may result in pressures to constrict or deny rehabilitation care to individuals with traumatic brain injury, it is important to gather information on the efficacy and cost-effectiveness of various treatment interventions and service delivery models. Credible outcome monitoring systems are needed to establish guidelines by which fair compromises can be reached (Johnston, M. & Hall, K., "Outcomes Evaluation in TBI Rehabilitation, Part I: Overview and System Principles," *Archives of Physical Medicine and Rehabilitation*, Vol. 75, December, 1994). A greater emphasis on outcomes measurements and management will foster the gathering of information on efficacy and cost-effectiveness.

Violence-induced TBI is increasingly common, and has significant implications for rehabilitation and community reintegration. According to the 1991 National Health Interview Survey data, violence was responsible for nine percent of all non-fatal TBIs. In addition, violence was a cause of injury in 30 percent of the 684 external injury cases in the TBI Model Systems database (a higher frequency due, in part, to the urban setting of one of the TBI Model Systems). The frequency of violence as a cause of TBI, in part, can be attributed to the fact that the individuals most likely to sustain TBI (i.e., males under age 18) are also those most likely to be involved in crimes and violence. The increase in violence as a cause of brain injury may have consequences with regard to rehabilitation costs, treatment interventions and long-term outcomes. For example, individuals with violence-related injuries show more difficulties with community integration skills one year following injury, which evidences itself in areas of social integration and productivity. Further research is needed to examine whether individuals who sustain a TBI as a result of violence require specialized rehabilitation interventions.

Proposed Priority 2

The Secretary proposes to establish Model Systems TBI R&D projects for the purpose of demonstrating a comprehensive, multidisciplinary model system of care for individuals with TBI. An R&D project must:

(1) Investigate efficacy of alternative methods of service delivery interventions after in-patient rehabilitation discharge;

(2) Identify and evaluate interventions that can improve vocational outcomes and community integration;

(3) Develop key predictors of rehabilitation outcome at hospital discharge and at long-term follow-up;

(4) Determine relationships between cost of care and functional outcomes; and

(5) Examine the implications of violence as a cause of TBI on treatment interventions, rehabilitation costs, and long-term outcomes.

In carrying out these purposes, the R&D Systems project must:

• Participate in clinical and systems analysis studies of the traumatic brain injury model system by collecting and contributing data on patient characteristics, diagnoses, causes of injury, interventions, outcomes, and costs to a uniform, standardized national data base as prescribed by the Secretary;

• Consider collaborative projects with other model systems; and

• Coordinate research efforts with other NIDRR grantees that address TBI-related issues.

Rehabilitation Research and Training Centers (RRTCs)

Authority for the RRTC program of NIDRR is contained in section 204(b)(2) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760–762). Under this program the Secretary makes awards to public and private organizations, including institutions of higher education and Indian tribes or tribal organizations for coordinated research and training activities. These entities must be of sufficient size, scope, and quality to effectively carry out the activities of the Center in an efficient manner consistent with appropriate State and Federal laws. They must demonstrate the ability to carry out the training activities either directly or through another entity that can provide such training.

The Secretary may make awards for up to 60 months through grants or cooperative agreements. The purpose of the awards is for planning and conducting research, training, demonstrations, and related activities leading to the development of methods, procedures, and devices that will benefit individuals with disabilities, especially those with the most severe disabilities.

Under the regulations for this program (see 34 CFR 352.32) the Secretary may establish research priorities by reserving funds to support particular research activities.

Description of the Rehabilitation Research and Training Center Program

RRTCs are operated in collaboration with institutions of higher education or providers of rehabilitation services or other appropriate services. RRTCs serve as centers of national excellence and national or regional resources for providers and individuals with disabilities and the parents, family members, guardians, advocates or authorized representatives of the individuals.

RRTCs conduct coordinated and advanced programs of research in rehabilitation targeted toward the production of new knowledge to improve rehabilitation methodology and service delivery systems, to alleviate or stabilize disabling conditions, and to promote maximum social and economic independence of individuals with disabilities.

RRTCs provide training, including graduate, pre-service, and in-service training, to assist individuals to more effectively provide rehabilitation services. They also provide training including graduate, pre-service, and in-service training, for rehabilitation research personnel and other rehabilitation personnel.

RRTCs serve as informational and technical assistance resources to providers, individuals with disabilities, and the parents, family members, guardians, advocates, or authorized representatives of these individuals through conferences, workshops, public education programs, in-service training programs and similar activities.

NIDRR encourages all Centers to involve individuals with disabilities and minorities as recipients in research training, as well as clinical training.

Applicants have considerable latitude in proposing the specific research and related projects they will undertake to achieve the designated outcomes; however, the regulatory selection criteria for the program (34 CFR 352.31) state that the Secretary reviews the extent to which applicants justify their choice of research projects in terms of the relevance to the priority and to the needs of individuals with disabilities. The Secretary also reviews the extent to which applicants present a scientific methodology that includes reasonable hypotheses, methods of data collection and analysis, and a means to evaluate the extent to which project objectives have been achieved.

The Department is particularly interested in ensuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Not later than three years after the establishment of any RRTC, NIDRR will conduct one or more reviews of the activities and achievements of the Center. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

General

The Secretary proposes that the following requirements will apply to these RRTCs pursuant to the priorities unless noted otherwise:

Each RRTC must conduct an integrated program of research to develop solutions to problems confronted by individuals with disabilities.

Each RRTC must conduct a coordinated and advanced program of training in rehabilitation research, including training in research methodology and applied research experience, that will contribute to the number of qualified researchers working in the area of rehabilitation research.

Each Center must disseminate and encourage the use of new rehabilitation knowledge. They must publish all materials for dissemination or training in alternate formats to make them accessible to individuals with a range of disabling conditions.

Each RRTC must involve individuals with disabilities and, if appropriate, their family members, as well as rehabilitation service providers, in planning and implementing the research and training programs, in interpreting and disseminating the research findings, and in evaluating the Center.

Priorities

Under 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference to applications that meet one of the following priorities. The Secretary proposes to fund under these competitions only applications that meet one of these absolute priorities:

Proposed Priority 3: Effective Interventions for Children and Youth With Disabilities Who Exhibit Severe Problem Behaviors

Background

In recent years researchers have focused on the application of non-aversive approaches to reduce and eliminate severe problem behaviors (SPBs) exhibited by children and youth with disabilities. This has been the case because of ethical concerns about aversive interventions expressed by disability professionals, parents, and advocates, as well as research findings which indicate that aversive interventions are largely ineffective in eliminating or reducing SPBs over an extended period of time. Because of their disruptive nature, SPBs such as physical aggression, self-injury, violence, and property destruction are among the primary obstacles to full inclusion of children and youth with disabilities in age-appropriate community-based activities and regular education settings. School and community-based program personnel need effective methods to reduce and eliminate SPBs in order to provide these children and youth with disabilities with opportunities to learn, play, and work with their non-disabled peers.

Previous research in this area has improved our understanding of the early indicators of SPBs. For example, children with disabilities who display minor self-injurious behavior during the preschool years are strong candidates to exhibit more SPBs within two years (Hall, S., "Early Intervention of Self-

injurious Behavior in Young Children with Intellectual Disabilities: Naturalistic Observation," Presented at the Annual Meeting of the American Association of Mental Retardation, San Francisco, June, 1995). Further research is needed on how severe problem behavior patterns develop and whether early intervention efforts can reduce, and perhaps prevent, SPBs.

Preliminary research has also indicated that problem behaviors can be reduced by understanding the antecedents to and function of the behavior. Accordingly, children and youth with disabilities who exhibit SPBs may be able to learn to self-manage their problem behaviors.

While there are encouraging indications that non-aversive approaches can be effective in reducing and eliminating SPBs, there is a need to develop effective interventions that can be maintained over extended periods of time. Treatments of self-injurious behaviors are particularly problematic in regard to long-term effectiveness. Research has shown that children who exhibit self-injurious behaviors, even after intensive non-aversive treatment programs, may revert to self-injury at high rates within a few months of intervention (Durand, V.M., et al., "The Course of Self-injurious Behavior Among People with Autism," Paper presented at the Annual Meeting of the Berkshire Association for Behavior Analysis and Therapy, Amherst, MA. 1995).

Information from functional assessments can be used to develop educational plans and address inappropriate behavior. Functional assessment is the general label assigned to describe a set of processes (e.g., interviews, rating, rating scales, direct observations, and systematic experimental analyses of specific situations) for defining the events in an environment that reliably predict and maintain behaviors. More research needs to be been done in order to expand the application of functional assessments with children and youth with disabilities who exhibit severe behavior problems.

Under normal circumstances, children and youth with disabilities who exhibit SPBs in school and the community are also exhibiting these behaviors at home. In order for non-aversive approaches to be implemented consistently across environments, parents and other caregivers must not only consent to the approach, but also be capable of implementing the approach effectively in the home environment. The non-aversive strategies that are developed must be compatible with the home environment, and take into account providing parents and guardians with the skills they need to implement the program effectively.

Proposed Priority 3

The Secretary proposes to establish an RRTC for the purpose of providing school and community-based program personnel with effective methods to reduce and eliminate SPBs in children and youth with disabilities. The RRTC shall:

(1) Develop and evaluate non-aversive interventions that reduce and eliminate severe behavior problems exhibited by children and youth with disabilities;

(2) Investigate the etiology of SPBs for the purpose of developing prevention and early intervention strategies;

(3) Investigate the durability and maintenance of effective non-aversive interventions;

(4) Investigate the effectiveness of self-management strategies;

(5) Develop and evaluate functional assessments to address SPBs in educational and community-based settings;

(6) Develop materials and provide training to educators, community-based program personnel, parents, and caregivers who address SPBs; and

(7) Develop and disseminate informational materials and provide technical assistance to local and State educational agencies to address SPBs.

In carrying out the purposes of the priority, the RRTC shall disseminate materials and coordinate training activities with related projects supported by the Office of Special Education Programs, including the Regional Resource Centers and Parent Information Centers.

Proposed Priority 4: Aging With Spinal Cord Injury

Background

Persons who experience a spinal cord injury (SCI) and related conditions are surviving in significant numbers to late middle age and beyond. Less than fifty years ago the average life expectancy for a spinal cord injured individual in the United States was approximately three years post-injury; today life expectancy approaches that of the general population (Enders, A., "Issues and Options in Technology for Disability and Aging," National Conference on Disability and Aging, Institute for Health and Aging, San Francisco, 1986). Estimates of spinal cord injury prevalence in America range from 180,000 to 250,000 with between 7,000 and 10,000 new spinal cord injuries each year (National Spinal Cord Injury Statistical Center, The University of Alabama at Birmingham, 1995). One of four individuals who previously sustained a spinal cord injury is now at least 20 years post-onset. The average age of a SCI survivor is now about 48 years and about 20 percent of SCI survivors are over age 60.

Many SCI survivors develop new medical, functional, and psychological problems that threaten their independence. In addition, many experience job loss, barriers to accessing proper health maintenance and caregiver/personal assistance services, loss of financial assistance, and economic hardship. Persons aging with SCI are susceptible to multiple health maintenance problems including cardiovascular, urinary tract infections, pressure sores, hypertension, fractures, blood in the urine or bowel problems, diabetes, respiratory and neurological problems (Whiteneck, G. (Ed.), *Aging with a Spinal Cord Injury*, 1992). The leading medical cause of death and further disability that affects people with SCI is now premature cardiovascular disease of the atherosclerotic kind. Whiteneck, using data from England, found that cardiovascular disease is now tied with genito-urinary problems as the leading cause of death in people aging with SCI.

Individuals aging with a SCI also experience complications as a result of osteoporosis and lower extremity fractures (Garland, D.E., "Bone Mineral Density about the Knee in SCI Patients with Pathological Fractures," *Contemporary Orthopaedics*, 1992 and Garland, D.E., "Osteoporosis Following SCI," *Journal of Orthopaedic Research*, 1992). Garland discovered a high prevalence of carpal tunnel syndrome, which increased with the length of time after injury. In addition, Sie found an increased prevalence of general upper extremity pain and shoulder pain with time since injury in both paraplegic and tetraplegia individuals (Sie, I., "Upper Extremity Pain in the Post-Rehabilitation SCI Injured Patient," *Archives of Physical Medicine and Rehabilitation*, 1992). Shoulder pain occurs in about 50 percent of people with paraplegia secondary to prolonged wheelchair use. Pain, fatigue and weakness are also commonly reported but accommodations for them are poorly understood.

Further research is needed to determine the changes in functional ability to perform activities of daily living (ADL) and work. Research related to work performance and employment status indicates that ten years after the SCI, the employment rate peaks at about 40 percent for persons with paraplegia and at 28 percent for persons with quadriplegia, and sharply declines about 18 years after the post-injury (SCI Model Systems Annual Report, 1992). Interventions are needed to maintain the employment status of people aging with SCI and prevent job loss due to premature aging effects.

As people age and their functioning changes, the need for assistance from others (i.e., family, friends, and paid caregivers) increases. Strategies to best assist the caregiver, in turn, to help the person who is aging with SCI need to be developed. Moreover, there is no "typical" caregiver, some are spouses, some are parents, and some are children. Fifty percent of people with SCI receive help exclusively from their families, and an additional 19 percent receive substantial help from their families. Living with family is the most frequently reported living situation, occurring in over 90 percent of cases (Nosek, M.A., "Personal Assistance: Key to Maintaining Ability of Persons with Physical Disabilities," *Applied Rehabilitation Counselor*, Vol. 21, 1990).

Declining or unstable support systems for people aging with SCI are also a major concern. Since parents of aging SCI individuals are often elderly, they are also at risk of poor health or death. Spousal support providers may experience "burn-out" and stress, or develop health problems. There are few alternatives to the informal support system. As individuals with SCI age, access to proper health care, especially with the growing trend toward managed care, is becoming a bigger problem. There is need for research on maintaining independence in the community for people aging with SCI through both the informal and formal systems of care.

Psychological well-being for individuals aging with SCI is also of major concern. Depression is a very important issue requiring additional study because of its bearing on quality of life, its importance for overall health, and its relationship to suicide (Schulz, R., "Long Term Adjustment to Physical Disability: The Role of Social Support Service of Control and Self Blame," *Journal of Personality and Social Psychology*, 5, pgs. 1162–1172, 1985). The research indicates that over 40 percent of people who have sustained functional changes as a consequence of aging with SCI show high levels of distress and depression. Pilot data on treatment are available from the NIDRR-funded centers, but a full treatment procedure for stress and depression needs to be developed.

Proposed Priority 4

The Secretary proposes to establish an RRTC for the purpose of conducting research on rehabilitation techniques that assist individuals aging with SCI to maintain employment and independence in the community. The RRTC shall:

(1) Identify, develop, and evaluate interventions that maintain employment for individuals aging with SCI;

(2) Identify, develop, and evaluate rehabilitation techniques that will assist individuals aging with SCI to cope with changes in functional abilities, changes in ADL, and the impact of these techniques on quality of life;

(3) Investigate how formal and informal systems of care could be improved to address the impact of problems associated with long-term care givers and personal service assistants;

(4) Develop a program of information dissemination and training for individuals aging with SCI and those who provide services to them;

(5) Develop regimens to minimize or take account of the impacts of aging with SCI and develop materials that support these regimens for individuals with SCI, their families, service providers and educators; and

(6) Develop materials for individuals with SCI, their families, service providers and educators that will provide a better understanding of the natural course of SCI as persons age.

In carrying out the purposes of the priority, the RRTC shall coordinate with all other relevant SCI research and demonstration activities, including those sponsored by the National Center on Medical Rehabilitation Research, RSA, Paralyzed Veterans of America, National Spinal Cord Injury Association and NIDRR-funded SCI projects.

Knowledge Dissemination and Utilization Projects

Authority for the D&U program of NIDRR is contained in sections 202 and 204(a) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760–762). Under this program the Secretary makes awards to public and private organizations, including institutions of higher education and Indian tribes or tribal organizations. Under the regulations for this program (see 34 CFR 355.32), the Secretary may establish research priorities by reserving funds to support particular research activities.

Priority

Under 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this competition only applications that meet this absolute priority:

Proposed Priority 5: Improving the Utilization of Existing and Emerging Rehabilitation Technology in the State Vocational Rehabilitation Program

Background

One of the more persistent issues in the rehabilitation of individuals with disabilities has been maximizing the use of existing and emerging rehabilitation technology in the service settings of the State Vocational Rehabilitation (VR) programs.

As defined in Section 7(13) of the Rehabilitation Act, as amended (Act), rehabilitation technology means "the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of and address the barriers confronted by individuals with disabilities in areas which include education, rehabilitation, employment, transportation, independent living and recreation" and includes "rehabilitation engineering, assistive technology devices, and assistive technology services." Under Section 101(a)(5)(C) of the Act, designated VR agencies must describe in their State plan how the State will provide a broad range of rehabilitation technology services at each stage of the rehabilitation process. As appropriate, rehabilitation technology services are provided to individuals with disabilities served by State VR programs under an Individualized Written Rehabilitation Program.

Rehabilitation technology, and information about rehabilitation technology, is generated by a variety of sources including, but not limited to, NIDRR-funded Rehabilitation Engineering and Research Centers, the Assistive Technology program funded under the Technology-Related Assistance for Individuals with Disabilities Act of 1988, ABLEDATA, the Department of Veterans Affairs Research and Development projects, and manufacturers in the private sector. While many of these sources may undertake dissemination activities, too often rehabilitation counselors and related vocational rehabilitation service providers are unaware of existing or emerging rehabilitation technologies, resulting in a number of problems for clients of the State vocational rehabilitation system.

The provision of inappropriate rehabilitation technology can result in nonuse. The nonuse of a device may lead to decreases in functional abilities, freedom, and independence. On a

service delivery level, device abandonment represents ineffective use of limited funds by Federal, State, and local government agencies, insurers, and other provider organizations (Phillips, B. and Hongxin, Z., "Predictors of Assistive Technology Abandonment," *Assistive Technology*, Vol. 5, No. 1, pg. 36, 1993).

If vocational rehabilitation personnel are unfamiliar with an emerging technology, their clients are disadvantaged by not having access to recent developments in the field. These developments may be more effective and economical than existing rehabilitation technology. Because of the costs that can be involved, the decision to utilize a particular rehabilitation technology, even if the technology is outdated, can be difficult to reverse or modify.

Information barriers related to rehabilitation technology also apply to secondary students with disabilities who increasingly complete their education with the help of assistive devices (Everson, J., "Using Person-centered Planning Concepts to Enhance School-to-Adult Life Transition Planning," *Journal of Vocational Rehabilitation*, Vol. 6, 1996). In order to ensure their continued access to technical accommodation as part of their transition to employment and independent living, special education and vocational rehabilitation personnel involved in their transition must have proper training and access to current information.

Assigning inappropriate or outdated rehabilitation technology to consumers can be avoided if vocational rehabilitation personnel are provided with comprehensive and current information on existing and emerging rehabilitation technology. Rehabilitation counselors and related vocational rehabilitation service providers gain access to information about rehabilitation technology from various sources including, but not limited to, their pre-service and in-service training, memberships in professional organizations, conferences, and more recently through the information superhighway. Because the field of rehabilitation technology is developing rapidly, and because it is a technically diverse and complex field, it has been a challenge for rehabilitation personnel development programs to keep pace with rehabilitation technology. There is a growing need for dissemination of information about rehabilitation technology, including the development of pre-service and in-service resources, in order to promote improved rehabilitation professional training on rehabilitation technology.

Proposed Priority 5

The Secretary proposes to establish a knowledge dissemination and utilization project for the purpose of improving the ability of rehabilitation professionals to more effectively use rehabilitation technology in providing services to individuals through the State VR Services program. The proposed D&U project must:

(1) evaluate the pre-service and in-service rehabilitation professional training materials that address rehabilitation technology and identify strengths and deficiencies in those materials;

(2) Based on this evaluation, develop training materials that will improve the ability of rehabilitation counselors and related professionals to utilize existing and emerging rehabilitation technology;

(3) Disseminate these materials to pre-service and in-service rehabilitation professional training programs;

(4) As needed, provide technical assistance to these pre-service and in-service training programs to maximize the use of the materials; and

(5) Using a variety of strategies, disseminate information about existing and emerging rehabilitation technology to rehabilitation counselors, special educators involved with the transition of secondary students, and related rehabilitation professionals.

In carrying out the purposes of the priority, the proposed D&U project must:

- Coordinate with the Assistive Technology projects to avoid duplication of effort;
- Develop information about existing and emerging rehabilitation technology from a wide variety of sources; and
- On a regular basis, update the information and materials that are developed.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed priorities.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 3423, Mary Switzer Building, 330 C Street S.W., Washington, D.C., between the hours of 8:00 a.m. and 3:30 p.m., Monday through Friday of each week except Federal holidays. APPLICABLE PROGRAM REGULATIONS: 34 CFR Parts 350, 351, and 352.

Program Authority: 29 U.S.C. 760–762.

Dated: February 27, 1997.

(Catalog of Federal Domestic Assistance Numbers: 84.133A, Research and Demonstration Projects, 84.133B, Rehabilitation Research and Training Center Program, 84.133D, Knowledge Dissemination and Utilization Program)

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 97–5241 Filed 3–3–97; 8:45 am]

BILLING CODE 4000–01–P

federal register

Tuesday
March 4, 1997

Part V

Federal Emergency Management Agency

Changes to the Hotel and Motel Fire Safety Act National Master List; Notice

FEDERAL EMERGENCY MANAGEMENT AGENCY

Changes to the Hotel and Motel Fire Safety Act National Master List

AGENCY: United States Fire Administration, FEMA.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA or Agency) gives notice of additions and corrections/changes to, and deletions from, the national master list of places of public accommodations which meet the fire prevention and control guidelines under the Hotel and Motel Fire Safety Act.

EFFECTIVE DATE: April 3, 1997.

ADDRESSES: Comments on the master list are invited and may be addressed to the Rules Docket Clerk, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472, (fax) (202) 646–4536. To be added to the National Master List, or to make any other change to the list, please see Supplementary Information below.

FOR FURTHER INFORMATION CONTACT: John Ottoson, Fire Management Programs Branch, United States Fire Administration, Federal Emergency Management Agency, National Emergency Training Center, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1272.

SUPPLEMENTARY INFORMATION: Acting under the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. 2201 note, the United States Fire Administration has worked with each State to compile a national master list of all of the places of public accommodation affecting commerce located in each State that meet the requirements of the guidelines under the Act. FEMA published the national master list in the **Federal Register** on Friday, June 21, 1996, 61 FR 32036–32560.

Parties wishing to be added to the National Master List, or to make any other change, should contact the State office or official responsible for compiling listings of properties which comply with the Hotel and Motel Fire Safety Act. A list of State contacts was published in 61 FR 32032, also on June 21, 1996. If the published list is unavailable to you, the State Fire Marshal's office can direct you to the appropriate office. The Hotel and Motel Fire Safety Act of 1990 National Master List is now accessible electronically. The National Master List Web Site is located at: http://www.usfa/fema.gov/hotel/index.htm

Visitors to this web site will be able to search, view, download and print all or part of the National Master List by State, city, or hotel chain. The site also provides visitors with other information related to the Hotel and Motel Fire Safety Act. Instructions on gaining access to this information are available as the visitor enters the site.

Periodically FEMA will update and redistribute the national master list to incorporate additions and corrections/changes to the list, and deletions from the list, that are received from the State offices. Each update contains or may contain three categories: "Additions;" "Corrections/changes;" and "Deletions." For the purposes of the updates, the three categories mean and include the following:

"Additions" are either names of properties submitted by a State but inadvertently omitted from the initial master list or names of properties submitted by a State after publication of the initial master list;

"Corrections/changes" are corrections to property names, addressee or telephone numbers previously published or changes to previously published information directed by the State, such as changes of address or telephone numbers, or spelling corrections; and

"Deletions" are entries previously submitted by a State and published in the national master list or an update to the national master list, but subsequently removed from the list at the direction of the State.

Copies of the national master list and its updates may be obtained by writing to the Government Printing Office, Superintendent of Documents, Washington, DC 20402–9325. When requesting copies please refer to stock number 069–001–00049–1.

Dated: February 25, 1997.

David L. de Courcy,

Acting General Counsel.

The update to the national master list for the month of February 1997 follows:

THE HOTEL AND MOTEL FIRE SAFETY ACT OF 1990 NATIONAL MASTER LIST FEBRUARY 19, 1997 UPDATE

Index property name	PO Box/Rt. No. street address	City, State/zip	Phone
ADDITIONS			
AK:			
AK0052 BEST WESTERN HOTEL SEWARD.	PO BOX 670, 221 5TH AVE	SEWARD, AK 99664	(907)224–2378
AL:			
AL0258 LA QUINTA INN & SUITES	120 RIVERCHASE PKWY	BIRMINGHAM, AL 35244	(205)403–0096
AL0260 STUDIO PLUS AT CAHABA PARK.	101 CAHABA PARK CIRCLE	BIRMINGHAM, AL 35242	(334)273–0075
AL0262 STUDIO PLUS AT WILDWOOD	40 STATE FARM PKWY	BIRMINGHAM, AL 35209	(205)290–0102
AL0257 JAMESON INN	2120 JAMESON PLACE S.W	DECATUR, AL 35602	(205)355–2229
AL0259 LA QUINTA INN & SUITES	60 STATE FARM PRKWY	HOMEWOOD, AL 35209	(205)290–0850
AL0261 STUDIO PLUS AT MONTGOMERY.	5115 CARMICHAEL RD	MONTGOMERY, AL 361063341	(334)273–0075
AZ:			
AZ0267 LA QUINTA INN & SUITES	8888 EAST SHEA BLVD	SCOTTSDALE, AZ 85260	(602)614–5300
AZ0268 BEST WESTERN PAINT PONY LODGE.	581 W. DEUCE OF CLUBS	SHOW LOW, AZ 859014804	(520)537–5773
AZ0265 BEST WESTERN MISSION INN	3460 E. FRY BLVD.	SIERRA VISTA, AZ 85635	(520)458–8500
AZ0266 LA QUINTA INN & SUITES	7001 SOUTH TUCSON	TUCSON, AZ 85706	(520)573–3333
CA:			
CA1485 BEST WESTERN DEANZA INN	2141 N. FREMONT ST	MONTEREY, CA 93940	(800)858–8775
CA1487 SAN PEDRO HILTON AT CARRILLO MARINA.	2800 VIA CARRILLO MARINA	SAN PEDRO, CA 90731	(310)514–3344
CA1486 SONOMA HILTON AT SANTA ROSA.	3555 ROUND BARN BLVD	SANTA ROSA, CA 95403	(707)523–7555

THE HOTEL AND MOTEL FIRE SAFETY ACT OF 1990 NATIONAL MASTER LIST FEBRUARY 19, 1997 UPDATE—Continued

Index property name	PO Box/Rt. No. street address	City, State/zip	Phone
CA1488 BEST WESTERN MOUNTAIN INN.	416 W. TEHACHAPI BLVD	TEHACHAPI, CA 93561	(805)822–5591
IL:			
IL0552 PARKWAY INN	2419 SPRINGFIELD ROAD	BLOOMINGTON, IL 61701	(309)828–1505
IL0553 BEST WESTERN WORTHINGTON INN.	920 W. LINCOLN AVE	CHARLESTON, IL 61920	(800)528–8161
ME:			
ME0059 GATEWAY INN	ROUTE 157	MEDWAY, ME 04460	(207)746–3193
MS:			
MS0116 BEAUJOLAIS VILLAS CONDOMINIUMS.	11263 GORENFLO ROAD	BILOXI, MS 39532	(601)396–1004
MS0115 GRAND CASINO HOTEL "BILOXI".	265 BEACH BOULEVARD	BILOXI, MS 39530	(601)435–8954
MS0114 BEST WESTERN MCCOMB	2298 DELAWARE AVENUE	MCCOMB, MS 39648	(601)684–5566
ND:			
ND0093 BEST WESTERN DOUBLEWOOD INN.	1400 E. INTERCHANGE AVENUE	BISMARCK, ND 58501	(701)258–7000
NY:			
NY0637 CORTLAND HOLIDAY INN	2 RIVER ST.	CORTLAND, NY 13045	(607)756–4431
NY0639 QUEENSBURY HOTEL	88 RIDGE STREET	GLENS FALLS, NY 12801	(518)782–1121
NY0642 LAKE PLACID HILTON RESORT	1 MIRROR LAKE DRIVE	LAKE PLACID, NY 12946	(518)523–4411
NY0641 OWEGO TREADWAY INN	1100 STATE RT. 17C	OWEGO, NY 13827	(607)687–4500
NY0640 RADISSON HOTEL	200 GENESEE ST	UTICA, NY 13502	(315)797–8010
NY0638 CASTEL GRISCH	3380 COUNTY RTE. 28	WATKINS GLEN, NY 14891	(607)535–9614
OR:			
OR0212 BEST WESTERN HERMISTON INN.	2255 HWY 395 S	HERMISTON, OR 97838	(541)564–0202
TN:			
TN0319 CHATTANOOGA RESIDENCE INN BY MARRIOTT.	215 CHESTNUT ST.	CHATTANOOGA, TN 37402	(423)266–0600
TN0317 COUNTRY SUITES	7051 MC CUTCHEIN RD	CHATTANOOGA, TN 37421	(423)899–2302
TN0316 DAYS INN RIVERGATE	901 CARTER ST.	CHATTANOOGA, TN 37402	(423)266–7331
TN0321 STUDIO PLUS-MEMPHIS/CORDOVA.	8110 CORDOVA CENTER DR	CORDOVA, TN 38018	(901)954–4030
TN0318 FRENCH QUARTERS SUITES HOTEL.	2144 MADISON AVE	MEMPHIS, TN 38104	(901)728–4000
TN0320 HOLIDAY INN EXPRESS-SOUTHEAST AIRPORT.	981 MURFREESBORO RD	NASHVILLE, TN 37217	(615)367–2890
CORRECTIONS/CHANGES			
AZ:			
AZ0257 LA QUINTA INN #939 FLAGSTAFF.	2015 S. BEULAH BLVD	FLAGSTAFF, AZ 86001	(520)556–8666
CA:			
CA1263 BEST WESTERN EXECUTIVE INN.	18880 E. GALE AVE	ROWLAND HEIGHTS, CA 91748	(818)810–1818
CA0941 TORRANCE HILTON AT SOUTH BAY.	21333 HAWTHORNE BLVD	TORRANCE, CA 905036546	(310)540–0500
MD:			
MD0253 BEST WESTERN WASHINGTON GATEWAY HOTEL.	1251 W. MONTGOMERY AVE	ROCKVILLE, MD 20850	(301)424–4940
ME:			
ME0034 RADISSON HOTEL	157 HIGH ST.	PORTLAND, ME 04101	(207)746–5411
OR:			
OR0074 RODEWAY INN	1506 NE 2ND AVE.	PORTLAND, OR 97232	(503)641–6565
OR0043 WESTERN INN AT THE MEADOWS.	1215 N. HAYDEN MEADOWS DR	PORTLAND, OR 97217	(503)286–9600
OR0004 SALBASGEON INN OF THE UMPQUA.	45209 HWY. 38	REEDSPORT, OR 97467	(541)271–2025
DELETIONS			
NONE.			

[FR Doc. 97–5269 Filed 3–3–97; 8:45 am]

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federal register

Tuesday
March 4, 1997

Part VI

Department of Housing and Urban Development

Community Development Work Study Program; Notice of Funding Availability for Fiscal Year 1997; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4189–N–01]

Community Development Work Study Program; Notice of Funding Availability; FY 1997

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of Funding Availability (NOFA) for Fiscal Year (FY) 1997.

SUMMARY: This notice invites applications from institutions of higher education, area-wide planning organizations (APOs), and States for grants under the Community Development Work Study Program (CDWSP). The CDWSP, authorized by the Housing and Community Development Act of 1974, as amended, assists economically disadvantaged and minority students participating in work study programs in such institutions. This notice announces HUD's intention to award up to $3 million from FY 1997 appropriations (plus any additional funds recaptured from prior appropriations) to fund work study programs to be carried out from August 1997 to September 1999.

DATES AND INSTRUCTIONS FOR OBTAINING APPLICATIONS: Applications may be requested beginning March 14, 1997. Applications must be physically received by the Office of University Partnerships, in care of the Division of Budget, Contracts, and Program Control in Room 8230 by 4:30 p.m. Eastern Time on May 5, 1997. Facsimile (FAX) copies of the application will not be accepted. This deadline is firm as to date, hour, and place. In the interest of fairness to all competing applicants, HUD will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submissions of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. Applicants hand-delivering applications are advised that considerable delays may occur in attempting to enter the building because of security procedures.

Application packages may be obtained by written request from the following address: HUD USER, ATTN: Community Development Work Study Program, P.O. Box 6091, Rockville, MD 20850. Requests for application kits may be faxed to: 301–251–5747 (this is not a toll-free number). Requests for application kits must include the applicant's name, mailing address (including zip code), telephone number (including area code), and must refer to "Document FR–4189." The application kit is also available on the Internet from the Office of University Partnerships Clearinghouse. The Clearinghouse can be accessed from the World Wide Web at: http://www.oup.org; or from a Gopher Server at: gopher://oup.org:78.

FOR FURTHER INFORMATION CONTACT: John Hartung, Office of University Partnerships, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, Telephone (202) 708–3061, extension 261 (Voice). Hearing- or speech-impaired individuals may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8339. (With the exception of the "800" number, these are not toll-free numbers.) Mr. Hartung can also be reached via the Internet at jhartung@hud.gov.

SUPPLEMENTARY INFORMATION:

A. Background

Section 107(c) of the Housing and Community Development Act of 1974, as amended, (42 U.S.C. 5301 *et seq.*) (the Act) authorizes the CDWSP. Under this section, HUD is authorized to provide grants to institutions of higher education, either directly or through area-wide planning organizations or States, for the purpose of providing assistance to economically disadvantaged and minority students, including students with disabilities, who participate in community development work study programs and are enrolled in full-time graduate or undergraduate programs in community or economic development, community planning, or community management.

On July 10, 1996 (61 FR 36456), HUD issued a new final rule for the program, making several changes in program requirements. Among other revisions, the rule: (1) Limited the number of students assisted under the CDWSP to five students per participating institution of higher education; (2) limited the CDWSP to graduate level programs; (3) permitted institutions of higher education to apply individually or through APOs; and (4) streamlined the selection factors used to select grantees.

Two-year institutions are not eligible applicants for funding under this program. This notice announces HUD's intention to award up to $3 million from FY 1997 appropriations (plus any additional funds recaptured from prior appropriations). Awards will be made under the HUD implementing regulations at 24 CFR 570.400 and 570.415 and the provisions of this Notice.

B. Eligible Applicants

The following are eligible to apply for assistance under the program subject to the conditions noted below:

1. Institutions of higher education offering graduate degrees in a community development academic program.

2. Area-wide planning organizations (APOs) which apply on behalf of two or more institutions of higher education located in the same SMSA or non-SMSA area as the APO. As a result of the new final rule for the program issued on July 10, 1996, institutions of higher education are permitted to choose whether to apply independently or through an APO.

3. States which apply on behalf of two or more institutions of higher education located in the State. If a State is approved for funding, institutions of higher education located in the State are not eligible recipients.

C. Threshold Requirements

To be eligible for ranking, applications must meet each of the following threshold requirements:

1. The application must be filed in the application form prescribed by HUD, and within the required time prescribed by the Application Kit released pursuant to this notice.

2. The application must demonstrate that the applicant is eligible to participate.

3. The applicant must demonstrate that each institution of higher education participating in the program as a recipient has the required academic programs and faculty to carry out its activities under CDWSP. Each work placement agency must be an agency and must have the required staff and community development work study program to carry out its activities under CDWSP. Eligible work placement agencies must be involved in community building and must be an agency of a State or unit of local government, an areawide planning organization, an Indian tribe, or a private nonprofit organization.

4. Institutions of higher education, APOs, and States must maintain at least a 50 percent rate of graduation of students from the FY 1994 funding round which covered school years September 1994 to September 1996 in order to participate in the current round of CDWSP funding. Institutions of higher education, APOs, and States funded under the FY 1994 CDWSP funding round which did not maintain such a rate will be excluded from participating in the FY 1997 funding round. Such institutions, APOs, and States are eligible to participate in the 1998 round.

D. Selection Factors (100 points)

The following factors will be considered by HUD in evaluating applications in response to the solicitation.

1. *Quality of academic program* (30 points). The quality of the academic program offered by the institution of higher education (or institutions, in the case an application from an APO or State), including without limitation the:

(a) Quality of course offerings;

(b) Appropriateness of course offerings for preparing students for careers in community building; and

(c) Qualifications of faculty and percentage of their time devoted to teaching and research in community building.

2. *Rates of graduation* (7 points). The rates of graduation of students previously enrolled in a community building academic program, specifically including (where applicable) graduation rates from any previously funded CDWSP academic programs or similar programs.

3. *Extent of financial commitment* (10 points). The commitment and ability of the institution of higher education (or institutions, in the case of an application from an APO or State) to assure that CDWSP students will receive sufficient financial assistance (including loans, where appropriate) above and beyond the CDWSP funding to complete their academic program in a timely manner and without working in excess of 20 hours per week during the school year.

4. *Quality of work placement assignments* (15 points). The extent to which the participating students will receive a sufficient number and variety of work placement assignments, the assignments will provide practical and useful experience to students participating in the program, and the assignments will further the participating students' preparation for professional careers in community building. Students engaging in community building projects through an institution of higher education may do so only through a community outreach center and will then be considered placed at that center. Accordingly, in assessing the number and variety of work placement assignments an applicant will make available to students, such a community outreach center will be considered a single placement assignment.

5. *Likelihood of fostering students' permanent employment in community building* (10 points). The extent to which the proposed program will lead participating students directly and immediately to permanent employment in community building, as indicated by:

(a) The past success of the institution of higher education in placing its graduates (particularly CDWSP-funded and similar program graduates, where applicable) in permanent employment in community building; and

(b) The amount of faculty/staff time and resources devoted to assisting students (particularly students in CDWSP-funded and similar programs, where applicable) in finding permanent employment in community building.

6. *Effectiveness of program administration* (18 points). The degree to which the applicant will be able to effectively coordinate and administer the program. HUD will allocate the maximum points available under this criterion equally among the following three considerations, except that the maximum points available under this criterion will be allocated equally only between (a) and (b), where the applicant has not previously administered a CDWSP-funded program.

(a) The strength and clarity of the applicant's plan for placing CDWSP students on rotating work placement assignments and monitoring CDWSP students' progress both academically and in their work placement assignments;

(b) The degree to which the individual who will coordinate and administer the program has clear responsibility, ample available time, and sufficient authority to do so;

(c) The effectiveness of the applicant's prior coordination and administration of a CDWSP-funded program, where applicable (including the timeliness and completeness of the applicant's compliance with CDWSP reporting requirements).

7. *Commitment to meeting the needs of economically disadvantaged and minority students* (10 points). The applicant's commitment to meeting the needs of economically disadvantaged and minority students as demonstrated by the policies and plans regarding, and past efforts and success in, recruiting, enrolling and financially assisting economically disadvantaged and minority students. If the applicant is an APO or State, HUD will consider the demonstrated commitment of each institution of higher education on whose behalf the APO or State is applying; HUD will also consider the demonstrated commitment of the APO or State to recruit and hire economically disadvantaged and minority students.

E. Program Policy Factors

HUD may provide assistance to support a number of students that is less than the number requested under applications in order to provide assistance to as many highly rated applications as possible. In addition, HUD might award a lower funding level than the requested amount for tuition, work stipend, books and additional support.

In the event two or more applications have the same number of points, the application with the most points for selection factor (1) will be selected. If there is still a tie, the application with the most points for selection factor (6) will be selected.

F. Application Content and Review Procedures

Applicants must complete and submit applications in accordance with instructions contained in the application kit, and must include all certifications, assurances, and budget information requested in the kit. Following the expiration of the application submission deadline, HUD will review and rank applications in a manner consistent with the procedures described in this Notice and the provisions of the program regulations at 24 CFR 570.415.

G. Corrections to Deficient Applications

If an application lacks certain technical items or contains a technical error, such as an incorrect signatory, HUD may notify the applicant in writing that it has 14 calendar days from the date of HUD's written notification to cure the technical deficiency. If the applicant fails to submit the missing material within the 14-day cure period, HUD may disqualify the application.

This 14-day cure period applies only to non-substantive deficiencies or errors. Any deficiency capable of cure will involve only items not necessary for HUD to assess the merits of an application against the factors specified in this NOFA.

H. Findings and Certifications

1. Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies and procedures contained in this notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the federal government and the States, or on the distribution of power and

responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order.

2. Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this notice will likely have a beneficial impact on family formation, maintenance, and general well-being. Accordingly, since the impact on the family is beneficial, no further review is considered necessary.

3. Accountability in the Provision of HUD Assistance

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) and the final rule codified at 24 CFR part 4, subpart A, published on April 1, 1996 (61 FR 1448), contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992 (57 FR 1942), HUD published a notice that also provides information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

a. Documentation and Public Access

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis.

b. HUD Responsibilities—Disclosures

HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports, both applicant disclosures and updates, will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

c. State and Unit of General Local Government Responsibilities—Disclosures

States and units of general government receiving assistance under this NOFA must make all applicant disclosure reports available to the public for three years. Required update reports must be made available along with the applicant disclosure reports, but in no case for a period less than three years. Each State and unit of general local government may use HUD Form 2880 to collect the disclosures, or may develop its own form.

4. Prohibition Against Advance Information on Funding Decisions

HUD's regulation implementing section 103 of the HUD Reform Act, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have ethics related questions should contact HUD's Ethics Law Division (202) 708–3815 (This is not a toll-free number.)

5. Prohibition Against Lobbying Activities

Applicants for funding under this NOFA are subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991 (31 U.S.C. 1352) (the Byrd Amendment), which prohibits applicants from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. Applicants are required to certify, using the certification found at Appendix A to 24 CFR part 87, that they will not, and have not, used appropriated funds for any prohibited lobbying activities. In addition, applicants must disclose, using Standard Form LLL, "Disclosure of Lobbying Activities," any funds, other than Federally appropriated funds, that will be or have been used to influence Federal employees, members of Congress, and Congressional staff regarding specific grants or contracts.

6. Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been approved by the Office of Management and Budget (OMB), under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2528–0175. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

7. Environmental Impact

This NOFA does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate property acquisition, disposition, lease, rehabilitation, alteration, demolition, or new construction, or set out or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this NOFA is categorically excluded from environmental review under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321). In addition, the provision of assistance under this NOFA is categorically excluded from review in accordance with 24 CFR 50.19(b)(9).

I. The Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number for the CDWSP is 14.234.

Authority: 42 U.S.C. 5301–5320; 42 U.S.C. 3535(d); 24 CFR 570.402.

Date: February 18, 1997.

Michael A. Stegman,

Assistant Secretary for Policy Development and Research.

[FR Doc. 97–5295 Filed 3–3–97; 8:45 am]

BILLING CODE 4210–29–P

federal register

Tuesday
March 4, 1997

Part VII

The President

Presidential Determination No. 97–17—Suspending Restrictions on U.S. Relations With the Palestine Liberation Organization

Federal Register
Vol. 62, No. 42
Tuesday, March 4, 1997

Presidential Documents

Title 3—

The President

Presidential Determination No. 97–17 of February 21, 1997

Suspending Restrictions on U.S. Relations With the Palestine Liberation Organization

Memorandum for the Secretary of State

Pursuant to the authority vested in me by the Middle East Peace Facilitation Act of 1995, title VI, Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1996, Public Law 104–107 ("the Act"), I hereby:

(1) Certify that it is in the national interest to suspend the application of the following provisions of law through August 12, 1997:

(A) Section 307 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2227), as it applies with respect to the Palestine Liberation Organization or entities associated with it;

(B) Section 114 of the Department of State Authorization Act, Fiscal Years 1984 and 1985 (22 U.S.C. 287e note), as it applies with respect to the Palestine Liberation Organization or entities associated with it;

(C) Section 1003 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (22 U.S.C. 5202); and

(D) Section 37, Bretton Woods Agreement Act (22 U.S.C. 286w), as it applies to the granting to the Palestine Liberation Organization of observer status or other official status at any meeting sponsored by or associated with the International Monetary Fund.

(2) certify that the Palestine Liberation Organization, the Palestinian Authority, and successor entities are complying with the commitments described in section 604(b)(4) of the Act.

(3) certify that funds provided pursuant to the exercise of the authority of the Act and the authorities under section 583(a) of Public Law 103–236 and section 3(a) of Public Law 103–125 have been used for the purposes for which they were intended.

You are authorized and directed to transmit this determination to the Congress and to publish it in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, February 21, 1997.

[FR Doc. 97–5472
Filed 3–3–97; 8:45 am]
Billing code 4710–10–P

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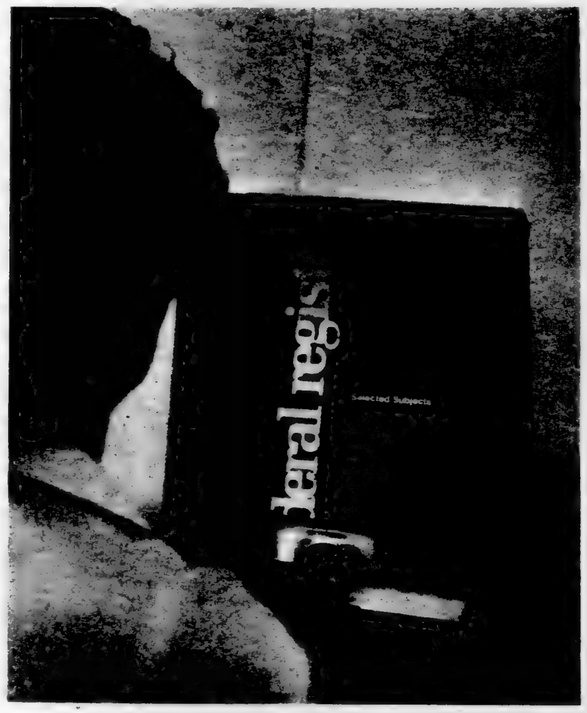

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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Presidential Documents

Title 3—

The President

Proclamation 6975 of March 3, 1997

Women's History Month, 1997

By the President of the United States of America

A Proclamation

Throughout the history of our Nation, women have played a pivotal role in bringing about positive change to every aspect of American life, and their achievements continue to touch the lives of every single citizen. Women's History Month honors the women who made these accomplishments possible, securing their rightful place in history among those who have made our country great. This month, we celebrate these women's lives—and renew our commitment to breaking down the gender barriers that still exist.

Through their courage, foresight, and community spirit over the years, American women have created a world of opportunity for today's heroines and role models—women such as Secretary of State Madeleine Albright, the highest ranking woman to serve in any presidential administration; Dr. Shannon W. Lucid, who has performed five historic and complex Space Shuttle missions during 18 years with NASA and recently broke the American and women's world record for continuous time in space; Oseola McCarty, who in 1995 donated the life savings she had earned as a maid to fund scholarships at the University of Mississippi; and Julie Su, the young attorney who first came to prominence through her efforts to expose illegal exploitation of Thai immigrants in a California sweatshop and who continues to help immigrants to secure proper medical care, employment, and the dignity they deserve. The pioneers in women's history would be proud of today's women pioneers.

As we approach the 21st century, we have reached another significant milestone in our Nation's history: Women have approached an almost equal share in the labor force. Thus, it is more important than ever that we enable women and men to meet their responsibilities at work and at home.

Women continue to break the glass ceiling, changing their status from employee to employer. Today, women-owned businesses are creating one out of every four jobs in the United States. From the classroom to the board room, women now occupy every part of the work force, building the kinds of lives for themselves and their families that are the heart of the American Dream.

Women's History Month provides Americans with an opportunity to celebrate the contributions of all the women who have enriched our Nation, to honor their legacy, and to reflect upon what we can all do to end discrimination against women. I encourage all Americans to learn from, and share information about, women's history in their workplaces, classrooms, and family rooms. As every family has its own heroes, so does our country. Only by studying the history of America's women can we fully understand the history of America.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States of America, do hereby proclaim March 1997, as Women's History Month. I ask educators, Government officials, and all citizens to observe this month with appropriate programs, ceremonies, and activities, remembering not only this month but also every month the many different contributions that women make every day.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of March, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-first.

William J. Clinton

[FR Doc. 97–5565
Filed 3–4–97; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 6976 of March 3, 1997

Save Your Vision Week, 1997

By the President of the United States of America

A Proclamation

Our eyes are our windows to the world. They give us the freedom to gaze at a sunset, read a book, or drive a car. Our sight allows us to jog along a garden pathway or enjoy a panoramic view.

All of us need to care for our vision, but older Americans in particular should be aware of their susceptibility to eye disease. As the "baby boom" generation ages, it is critical that these Americans receive regular eye examinations from eye-care professionals.

A thorough exam can lead to early detection and control or cure of eye diseases such as glaucoma, cataract, and diabetic retinopathy. A professional eye exam can also diagnose age-related macular degeneration (AMD), a leading cause of severe visual impairment and blindness in the United States. This common disease affects the retina, the part of the eye that helps to produce sharp, central vision required for activities such as reading and driving. AMD causes a loss of this clear, central vision; in some cases, vision loss is rapid and dramatic. The risk of AMD dramatically increases after age 60. It is estimated that this disease already causes visual impairment in approximately 1.7 million of the 34 million Americans now older than 65. As these numbers continue to grow, researchers are working to find the cause of, and develop treatment for, this debilitating disease.

People with AMD and its accompanying visual impairment often cannot perform daily activities such as reading the newspaper, preparing meals, or recognizing faces of friends. The inability to see well affects routine activities and social interactions and can lead to a loss of independence.

However, low-vision services and devices can greatly improve the quality of life for visually impaired patients and help them maintain their independence. Devices such as hand-held magnifiers, computer monitors with large type, and large-print newspapers and books can help the visually impaired dramatically improve their quality of life.

To remind Americans of the importance of protecting their eyesight, the Congress, by joint resolution approved December 30, 1963 (77 Stat. 629; 36 U.S.C. 169a), has authorized and requested the President to proclaim the first week in March of each year as "Save Your Vision Week."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim March 2 through March 8, 1997, as Save Your Vision Week. Our eyes play a vital role in our independence and daily living and need to be examined regularly. Let us recognize the work done by vision researchers across our Nation on AMD and other eye diseases and the efforts they are making to enhance and retain our precious sight. Education on good vision starts with us, and we should take progressive steps to protect our eyes.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of March, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-first.

William J. Clinton

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Rules and Regulations

Federal Register
Vol. 62, No. 43
Wednesday, March 5, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Regulation H; Docket No. R-0909]

Membership of State Banking Institutions in the Federal Reserve System; Recordkeeping and Confirmation of Certain Securities Transactions Effected by State Member Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System is adopting final amendments to Regulation H pertaining to the recordkeeping and confirmation of certain securities transactions. The amendments accommodate developments in recordkeeping, confirmation and settlement requirements for broker-dealers by adding certain yield-related confirmation disclosure requirements for transactions involving debt and asset-backed securities effected by State member banks for customers, and providing for three-day settlement of those transactions. The amendments also clarify that State member banks that effect *de minimis* government securities brokerage transactions and are exempt from registration under Department of the Treasury regulations, also are exempt from Regulation H. Finally, the amendments address the minimum recordkeeping requirements for State member banks exempt from the regulation, require State member banks to establish trading policies and procedures that separate the sales function from the back office function, liberalize the written notification requirements for periodic plans, and include several new definitions and language edits.

DATES: Effective April 1, 1997.

FOR FURTHER INFORMATION CONTACT: Angela Desmond, Senior Counsel, or Susan Meyers, Senior Securities Regulation Analyst, (202) 452-2781. For users of Telecommunications Device for the Deaf (TDD), please contact Dorothea Thompson, (202/452-3544), Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: The amendments to § 208.24 are part of an interagency effort to update the respective regulations of the Board, the OCC and the FDIC (agencies) that were adopted in 1979[1] as part of a coordinated effort to provide guidance to banks effecting securities transactions for customers in trust departments and in other areas of the bank. The regulations are based on SEC recordkeeping and confirmation rules.[2]

Recognizing that a number of market and regulatory changes have occurred since the regulation was adopted, the Board, in consultation with the other agencies, published draft amendments for comment on December 26, 1995.[3] The draft amendments were designed to update the recordkeeping and confirmation requirements of Regulation H to conform with SEC rules, with pertinent Department of the Treasury regulations adopted under the Government Securities Act of 1986, 15 U.S.C. 78o-5, and with principles of safe and sound banking practices. The draft amendments also were consistent with the amendments published by the other agencies.[4]

After reviewing the comments, the Board has determined to adopt final amendments to Regulation H as described in the section-by-section summary below. The amendments are limited to § 208.24 (formerly § 208.8(k)) of Regulation H and are part of an ongoing comprehensive review of the regulation. Adoption of the amendments will provide continued consistency among the regulations of the agencies and parity with securities industry practices in these important areas.

As is the practice with respect to other notification practices of banks, the confirmation and notification requirements of § 208.24 can be satisfied by facsimile and, when the parties agree and the necessary safeguards are in place, via electronic means. Such safeguards should ensure correct delivery, the maintenance of confidentiality and security of the transmission, appropriate notice that the transmission is being sent, and evidence of delivery. In addition, a customer consenting to electronic delivery should still be able to request and obtain a written version of the information.

Summary of Comments and Section-by-Section Summary of Final Amendments

The Board received twelve comment letters; seven were from Federal Reserve Banks, one from a trade association, three from banks, and one from a law firm. Eleven commenters expressed general support for the proposed amendments, and one bank expressed general concern with the complexity and burden of complying with the regulation. Six commenters stated that the proposed amendments would not have a significant cost or burden impact on banks.

Several commenters offered constructive suggestions that were incorporated into the final amendments. In addition, certain organizational changes have been made to assure as much consistency as possible between the respective regulations of the agencies. A section-by-section summary of the final amendments noting changes from the amendments proposed for comment follows.

Section 208.24(a) Exceptions and Safe and Sound Operations

The exceptions previously found in current § 208.8(k)(6) and the new section related to safe and sound operations for banks exempt from § 208.24 have been combined into one subsection and moved to the front of the regulation, to § 208.24(a). This makes it easier for State member banks to determine whether they qualify for an exemption from the regulation, and if so, what recordkeeping procedures are expected.

[1] 44 FR 43258 (July 24, 1979). The OCC and the FDIC adopted similar rules on the same date, 12 CFR Part 12, 44 FR 43252 (July 24, 1979) and 12 CFR Part 344, 44 FR 43261 (July 24, 1979), respectively.

[2] SEC rule 10b-10, 17 CFR 240.10b-10; rule 17a-3, 17 CFR 240.17a-3; and rule 17a-4, 17 CFR 240.17a-4, all adopted under the Securities Exchange Act.

[3] 60 FR 66759.

[4] The OCC published amendments for comment on December 22, 1995, 60 FR 66517, and adopted final amendments on December 2, 1996, 61 FR 63958. The FDIC published an advanced notice of rulemaking on its regulation on May 24, 1996, 61 FR 26135 and published amendments for comment on December 24, 1996, 61 FR 67729.

The Board is adopting the proposed language in § 208.24(a)(1)(B), which clarifies that State member banks that effect up to 500 government securities brokerage transactions and are exempt from registration under Department of the Treasury regulation 401.3(a)(2)(i), 17 CFR 401.3(a)(2), also are exempt from § 208.24. This exemption is not available if a bank has filed notice or is required to file notice indicating that it acts as a government securities broker or dealer.

The Board also is adopting, with the support of the commenters, a provision on safe and sound operations for banks exempt from § 208.24. The provision codifies the longstanding interpretation of Board staff that principles of safety and soundness require such a bank to maintain effective systems of records and controls regarding customer securities transactions that reflect accurate information and are sufficient to provide an adequate basis for an audit of the information.

Section 208.24(b) Definitions

The amendments add definitions of: asset-backed security, completion of the transaction, crossing of buy and sell orders, debt security, government security, and municipal security. In general, the new definitions are based on definitions contained in the Securities Exchange Act, or in the SEC's confirmation rule 10b–10, 17 CFR 240.10b–10, and are necessary for applying the confirmation disclosure and the three-day settlement requirements. The definition of "security" has been amended to conform generally to the definition in section 3(a)(10) of the Securities Exchange Act, 15 U.S.C. 78c(a)(10), although the Board has retained the current exclusions from the definition in the final rule.

The definition of "periodic plan" has been modified to include cash management sweep services or other prearranged automated transfers of funds from a deposit account to purchase a security in response to commenters seeking clarification how the transaction notification requirements for periodic plans apply to automatic sweep or transfer arrangements. Finally, the term "dealer bank" in the definition of "customer" has been replaced by the term "municipal securities broker or dealer" to clarify that a bank acting as a municipal securities broker is not a customer for purposes of § 208.24.

Section 208.24(c) Recordkeeping

The Board is adopting language in § 208.24(c) that clarifies that § 208.24 applies to government securities transactions effected for customers by State member banks and to municipal securities transactions effected by State member banks that are not registered as municipal securities dealers. All recordkeeping requirements are now located in § 208.24(c), and explanatory language that was at the end of the old recordkeeping section has been moved to the beginning of the rule to simplify the section.

Section 208.24(d) Content and Time of Notification

Section 208.24(d) has been renamed to clarify its subject matter. Substantively, the amendments delete the old five business day requirement for confirmation delivery and provide that confirmations be given or sent to customers "at or by completion of the transaction," defined as the payment and delivery of the securities in § 208.24(b).

The proposed amendments would have deleted the extension of time for State member banks that choose to send confirmations from the executing broker to a customer rather than creating their own confirmations. In response to a commenter who stated that it may be difficult to meet the three-day delivery requirement in this situation, § 208.24(d) now provides that if a State member bank uses a broker-dealer's confirmation, it must give or send the confirmation to its customer within one business day of the bank's receipt of the confirmation.

As proposed, the final amendments require confirmations to: (i) Contain a legend when the security is callable prior to maturity indicating that an early redemption could affect the yield stated on the confirmation and offering additional information on request (§ 208.24(d)(2)(viii)); (ii) disclose the yield and/or resulting dollar price of transactions involving debt securities and asset-backed securities (§ 208.24(d)(2) (ix) and (x)); and, (iii) indicate when a debt security, other than a government security, is unrated by a nationally recognized statistical rating organization (§ 208.24(d)(2)(xii)). These disclosures conform bank confirmations with those of broker-dealers under SEC rule 10b–10 and with longstanding practice in the municipal securities industry.

The Board had requested comment whether it would be preferable to incorporate SEC rules 10b–10, 17a–3 and 17a–4 by reference for State member banks to refer to, rather than specify items of confirmation disclosure in the regulation. All of the comments received on this issue preferred the current approach, i.e., to specify the disclosures required to be contained on confirmations in the regulation.

Section 208.24(d)(2)(vi) requires banks to disclose on confirmations the amount of any remuneration received by the bank on the transaction. In response to commenters who pointed out that SEC rule 10b–10(a)(2)(i)(D) provides more flexibility to brokers in this area, the final amendments provide that a State member bank may elect to disclose whether it has or will receive remuneration from a party other than the customer and offer to furnish the information within a reasonable time on request.

Section 208.24(e) Notification by Agreement; Alternative Forms and Times

Section 208.24(e) has been renamed to indicate that it deals with alternative arrangements for the delivery of notifications of securities transactions to customers. Substantive changes have been made to § 208.24(e)(5), pertaining to notifications of transactions in periodic plans, to conform more completely with securities industry requirements. Formerly, the regulation required that a notification be provided to a customer "as soon as possible after each transaction." The Board is amending this requirement to require notification "not less than every three months" for all periodic plans other than cash management sweep accounts. As requested by two commenters, the final amendments provide that a notification of a transaction involving a cash management sweep service should be given or sent to a customer "for each month in which a securities transaction takes place but not less than every three months if there are no securities transactions."[5] These amendments will provide more flexibility to State member banks in scheduling notifications in periodic plans and conform with SEC rule 10b–10(b)(2).

Section 208.24(f) Settlement of Securities Transactions

The amendments to § 208.24(f) update the regulation to require State member banks to settle transactions effected for customers within the "standard settlement cycle for broker-dealers in the United States" unless the parties agree to a different settlement date at the time of the transaction. The standard settlement cycle currently is three business days (T+3) after the trade date.

[5] Notwithstanding the provisions of this paragraph, banks that retain custody of government securities that are the subject of a hold-in-custody purchase agreement are subject to the requirements of 17 CFR 403.5(d).

The requirement applies to transactions in securities that would fall under SEC rule 15c6–1, 17 CFR 240.15c6–1, for broker-dealers, and brings banks into line with the rest of the securities industry in this area.

The commenters were nearly split with respect to the rule's use of the term "standard settlement cycle for broker-dealers in the United States" rather than specifying T+3 for sending customer confirmations. Four commenters favor the approach taken in the rule, while three commenters would specify T+3. The Board has determined to adopt the proposed language as it will avoid having to amend the regulation to reflect expected future modifications to the standard settlement cycle. Moreover, the same term is used in the Board's Regulation T and has not engendered any confusion.

Section 208.24(g) Securities Trading Policies and Procedures

The amendments add § 208.24(g)(1)(iii) that requires State member banks to establish supervisory procedures and reporting lines for back office personnel that are separate from those established to oversee personnel accepting orders and effecting transactions. All comments received on this provision favored its adoption.

With respect to filing notices of personal securities transactions by bank officers and directors under § 208.24(g)(4), the Board notes that affected individuals that file similar reports under SEC rule 17j–1, 15 CFR 270.17j–1, for investment advisers, do not need to file a separate notice to satisfy Regulation H requirements.

Regulatory Flexibility Act

The Board certifies that the final rule will have no significant economic impact on a substantial number of small entities. While the final rule adds certain confirmation disclosure requirements, it also streamlines and reduces other confirmation, recordkeeping and regulatory burdens for State member banks engaged in certain securities transactions for customers.

Paperwork Reduction Act

In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100–0196.

The collection of information requirements in this regulation are found in 12 CFR 208.24. This information is required to evidence compliance with the requirements of section 208.24 of Regulation H. The respondents are for-profit financial institutions. Records must be retained for three years.

No comments specifically addressing the burden estimate were received.

The proposed amendments would provide for only a minor addition in disclosure practices of state member banks, would not increase the banks' reporting requirements to the Federal Reserve, and would have a negligible effect on respondent burden. The estimated burden is 3 minutes per response. There are 1,214 respondents and the number of their recordkeeping and notification occurrences varies with the amount and type of securities transactions. The total annual recordkeeping and disclosure burden for these respondents is estimated to be 165,520 hours. Based on an hourly cost of $20, the annual cost to the public is estimated to be $3,310,400.

Because the records would be maintained at state member banks and the notices are not provided to the Federal Reserve, no issue of confidentiality under the Freedom of Information Act arises.

The Federal Reserve has a continuing interest in the public's opinions of our collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100–0196), Washington, DC 20503.

List of Subjects in 12 CFR Part 208

Accounting, Agriculture, Banks, banking, State member banks, Confidential business information, Crime, Currency, Federal Reserve System, Flood insurance, Mortgages, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Board amends 12 CFR Part 208 as set forth below:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for Part 208 continues to read as follows:

Authority: 12 U.S.C. 36, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1820(d)(8), 1823(j), 1828(o), 1831o, 1831p–1, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o–4(c)(5), 78q, 78q–1 and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106 and 4128.

§ 208.8 [Amended]

2. In § 208.8 paragraph (k) is removed and reserved.

3. A new § 208.24 is added to subpart A to read as follows:

§ 208.24 Recordkeeping and confirmation of certain securities transactions effected by State member banks.

(a) Exceptions and safe and sound operations.

(1) A State member bank may be excepted from one or more of the requirements of this section if it meets one of the following conditions of paragraphs (a)(1)(i) through (a)(1)(iv) of this section:

(i) *De minimis transactions.* The requirements of paragraphs (c)(2) through (c)(4) and paragraphs (e)(1) through (e)(3) of this section shall not apply to banks having an average of less than 200 securities transactions per year for customers over the prior three calendar year period, exclusive of transactions in government securities;

(ii) *Government securities.* The recordkeeping requirements of paragraph (c) of this section shall not apply to banks effecting fewer than 500 government securities brokerage transactions per year; provided that this exception shall not apply to government securities transactions by a State member bank that has filed a written notice, or is required to file notice, with the Federal Reserve Board that it acts as a government securities broker or a government securities dealer;

(iii) *Municipal securities.* The municipal securities activities of a State member bank that are subject to regulations promulgated by the Municipal Securities Rulemaking Board shall not be subject to the requirements of this section; and

(iv) *Foreign branches.* The requirements of this section shall not apply to the activities of foreign branches of a State member bank.

(2) Every State member bank qualifying for an exemption under paragraph (a)(1) of this section that conducts securities transactions for

customers shall, to ensure safe and sound operations, maintain effective systems of records and controls regarding its customer securities transactions that clearly and accurately reflect appropriate information and provide an adequate basis for an audit of the information.

(b) *Definitions.* For purposes of this section:

(1) *Asset-backed security* shall mean a security that is serviced primarily by the cash flows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to the security holders.

(2) *Collective investment fund* shall mean funds held by a State member bank as fiduciary and, consistent with local law, invested collectively as follows:

(i) In a common trust fund maintained by such bank exclusively for the collective investment and reinvestment of monies contributed thereto by the bank in its capacity as trustee, executor, administrator, guardian, or custodian under the Uniform Gifts to Minors Act; or

(ii) In a fund consisting solely of assets of retirement, pension, profit sharing, stock bonus or similar trusts which are exempt from Federal income taxation under the Internal Revenue Code (26 U.S.C.).

(3) *Completion of the transaction* effected by or through a state member bank shall mean:

(i) For purchase transactions, the time when the customer pays the bank any part of the purchase price (or the time when the bank makes the book-entry for any part of the purchase price if applicable); however, if the customer pays for the security prior to the time payment is requested or becomes due, then the transaction shall be completed when the bank transfers the security into the account of the customer; and

(ii) For sale transactions, the time when the bank transfers the security out of the account of the customer or, if the security is not in the bank's custody, then the time when the security is delivered to the bank; however, if the customer delivers the security to the bank prior to the time delivery is requested or becomes due then the transaction shall be completed when the banks makes payment into the account of the customer.

(4) *Crossing of buy and sell orders* shall mean a security transaction in which the same bank acts as agent for both the buyer and the seller.

(5) *Customer* shall mean any person or account, including any agency, trust, estate, guardianship, or other fiduciary account, for which a State member bank effects or participates in effecting the purchase or sale of securities, but shall not include a broker, dealer, bank acting as a broker or dealer, municipal securities broker or dealer, or issuer of the securities which are the subject of the transactions.

(6) *Debt security* as used in paragraph (c) of this section shall mean any security, such as a bond, debenture, note or any other similar instrument which evidences a liability of the issuer (including any security of this type that is convertible into stock or similar security) and fractional or participation interests in one or more of any of the foregoing; provided, however, that securities issued by an investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a–1 et seq., shall not be included in this definition.

(7) *Government security* shall mean:

(i) A security that is a direct obligation of, or obligation guaranteed as to principal and interest by, the United States;

(ii) A security that is issued or guaranteed by a corporation in which the United States has a direct or indirect interest and which is designated by the Secretary of the Treasury for exemption as necessary or appropriate in the public interest or for the protection of investors;

(iii) A security issued or guaranteed as to principal and interest by any corporation whose securities are designated, by statute specifically naming the corporation, to constitute exempt securities within the meaning of the laws administered by the Securities and Exchange Commission; or

(iv) Any put, call, straddle, option, or privilege on a security as described in paragraphs (b)(7) (i), (ii), or (iii) of this section other than a put, call, straddle, option, or privilege that is traded on one or more national securities exchanges, or for which quotations are disseminated though an automated quotation system operated by a registered securities association.

(8) *Investment discretion* with respect to an account shall mean if the State member bank, directly or indirectly, is authorized to determine what securities or other property shall be purchased or sold by or for the account, or makes decisions as to what securities or other property shall be purchased or sold by or for the account even though some other person may have responsibility for such investment decisions.

(9) *Municipal security* shall mean a security which is a direct obligation of, or obligation guaranteed as to principal or interest by, a State or any political subdivision thereof, or any agency or instrumentality of a State or any political subdivision thereof, or any municipal corporate instrumentality of one or more States, or any security which is an industrial development bond (as defined in 26 U.S.C. 103(c)(2) the interest on which is excludable from gross income under 26 U.S.C. 103(a)(1), by reason of the application of paragraph (4) or (6) of 26 U.S.C. 103(c) (determined as if paragraphs (4)(A), (5) and (7) were not included in 26 U.S.C. 103(c)), paragraph (1) of 26 U.S.C. 103(c) does not apply to such security.

(10) *Periodic plan* shall mean:

(i) A written authorization for a State member bank to act as agent to purchase or sell for a customer a specific security or securities, in a specific amount (calculated in security units or dollars) or to the extent of dividends and funds available, at specific time intervals, and setting forth the commission or charges to be paid by the customer or the manner of calculating them (including dividend reinvestment plans, automatic investment plans, and employee stock purchase plans); or

(ii) Any prearranged, automatic transfer or sweep of funds from a deposit account to purchase a security, or any prearranged, automatic redemption or sale of a security with the funds being transferred into a deposit account (including cash management sweep services).

(11) *Security* shall mean:

(i) Any note, stock, treasury stock, bond, debenture, certificate of interest or participation in any profit-sharing agreement or in any oil, gas, or other mineral royalty or lease, any collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, for a security, any put, call, straddle, option, or privilege on any security, or group or index of securities (including any interest therein or based on the value thereof), any instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing.

(ii) But does not include a deposit or share account in a federally or state insured depository institution, a loan participation, a letter of credit or other form of bank indebtedness incurred in the ordinary course of business, currency, any note, draft, bill of exchange, or bankers acceptance which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited, units of a collective investment fund, interests in a variable amount (master) note of a borrower of prime credit, or U.S. Savings Bonds.

(c) *Recordkeeping.* Except as provided in paragraph (a) of this section, every State member bank effecting securities transactions for customers, including transactions in government securities, and municipal securities transactions by banks not subject to registration as municipal securities dealers, shall maintain the following records with respect to such transactions for at least three years. Nothing contained in this section shall require a bank to maintain the records required by this paragraph in any given manner, provided that the information required to be shown is clearly and accurately reflected and provides an adequate basis for the audit of such information. Records may be maintained in hard copy, automated, or electronic form provided the records are easily retrievable, readily available for inspection, and capable of being reproduced in a hard copy. A bank may contract with third party service providers, including broker/dealers, to maintain records required under this part.

(1) Chronological records of original entry containing an itemized daily record of all purchases and sales of securities. The records of original entry shall show the account or customer for which each such transaction was effected, the description of the securities, the unit and aggregate purchase or sale price (if any), the trade date and the name or other designation of the broker/dealer or other person from whom purchased or to whom sold;

(2) Account records for each customer which shall reflect all purchases and sales of securities, all receipts and deliveries of securities, and all receipts and disbursements of cash with respect to transactions in securities for such account and all other debits and credits pertaining to transactions in securities;

(3) A separate memorandum (order ticket) of each order to purchase or sell securities (whether executed or cancelled), which shall include:

(i) The account(s) for which the transaction was effected;

(ii) Whether the transaction was a market order, limit order, or subject to special instructions;

(iii) The time the order was received by the trader or other bank employee responsible for effecting the transaction;

(iv) The time the order was placed with the broker/dealer, or if there was no broker/dealer, the time the order was executed or canceled;

(v) The price at which the order was executed; and

(vi) The broker/dealer utilized;

(4) A record of all broker/dealers selected by the bank to effect securities transactions and the amount of commissions paid or allocated to each such broker during the calendar year; and

(5) A copy of the written notification required by paragraphs (c) and (d) of this section.

(d) *Content and time of notification.* Every State member bank effecting a securities transaction for a customer shall give or send to such customer either of the following types of notifications at or before completion of the transaction or; if the bank uses a broker/dealer's confirmation, within one business day from the bank's receipt of the broker/dealer's confirmation:

(1) A copy of the confirmation of a broker/dealer relating to the securities transaction; and if the bank is to receive remuneration from the customer or any other source in connection with the transaction, and the remuneration is not determined pursuant to a prior written agreement between the bank and the customer, a statement of the source and the amount of any remuneration to be received; or

(2) A written notification disclosing:

(i) The name of the bank;

(ii) The name of the customer;

(iii) Whether the bank is acting as agent for such customer, as agent for both such customer and some other person, as principal for its own account, or in any other capacity;

(iv) The date of execution and a statement that the time of execution will be furnished within a reasonable time upon written request of such customer specifying the identity, price and number of shares or units (or principal amount in the case of debt securities) of such security purchased or sold by such customer;

(v) The amount of any remuneration received or to be received, directly or indirectly, by any broker/dealer from such customer in connection with the transaction;

(vi) The amount of any remuneration received or to be received by the bank from the customer and the source and amount of any other remuneration to be received by the bank in connection with the transaction, unless remuneration is determined pursuant to a written agreement between the bank and the customer, provided, however, in the case of Government securities and municipal securities, this paragraph (d)(2)(vi) shall apply only with respect to remuneration received by the bank in an agency transaction. If the bank elects not to disclose the source and amount of remuneration it has or will receive from a party other than the customer pursuant to this paragraph (d)(2)(vi), the written notification must disclose whether the bank has received or will receive remuneration from a party other than the customer, and that the bank will furnish within a reasonable time the source and amount of this remuneration upon written request of the customer. This election is not available, however, if, with respect to a purchase, the bank was participating in a distribution of that security; or with respect to a sale, the bank was participating in a tender offer for that security;

(vii) The name of the broker/dealer utilized; or, where there is no broker/dealer, the name of the person from whom the security was purchased or to whom it was sold, or the fact that such information will be furnished within a reasonable time upon written request;

(viii) In the case of a transaction in a debt security subject to redemption before maturity, a statement to the effect that the debt security may be redeemed in whole or in part before maturity, that the redemption could affect the yield represented and that additional information is available on request;

(ix) In the case of a transaction in a debt security effected exclusively on the basis of a dollar price:

(A) The dollar price at which the transaction was effected;

(B) The yield to maturity calculated from the dollar price; provided, however, that this paragraph (c)(2)(ix)(B) shall not apply to a transaction in a debt security that either has a maturity date that may be extended by the issuer with a variable interest payable thereon, or is an asset-backed security that represents an interest in or is secured by a pool of receivables or other financial assets that are subject to continuous prepayment;

(x) In the case of a transaction in a debt security effected on the basis of yield:

(A) The yield at which the transaction was effected, including the percentage amount and its characterization (e.g., current yield, yield to maturity, or yield to call) and if effected at yield to call, the type of call, the call date, and the call price; and

(B) The dollar price calculated from the yield at which the transaction was effected; and

(C) If effected on a basis other than yield to maturity and the yield to maturity is lower than the represented yield, the yield to maturity as well as

the represented yield; provided, however, that this paragraph (c)(2)(x)(C) shall not apply to a transaction in a debt security that either has a maturity date that may be extended by the issuer with a variable interest rate payable thereon, or is an asset-backed security that represents an interest in or is secured by a pool of receivables or other financial assets that are subject to continuous prepayment;

(xi) In the case of a transaction in a debt security that is an asset-backed security which represents an interest in or is secured by a pool of receivables or other financial assets that are subject continuously to prepayment, a statement indicating that the actual yield of such asset-backed security may vary according to the rate at which the underlying receivables or other financial assets are prepaid and a statement of the fact that information concerning the factors that affect yield (including at a minimum, the estimated yield, weighted average life, and the prepayment assumptions underlying yield) will be furnished upon written request of such customer; and

(xii) In the case of a transaction in a debt security, other than a government security, that the security is unrated by a nationally recognized statistical rating organization, if that is the case.

(e) *Notification by agreement; alternative forms and times of notification.* A State member bank may elect to use the following alternative procedures if a transaction is effected for:

(1) Accounts (except periodic plans) where the bank does not exercise investment discretion and the bank and the customer agree in writing to a different arrangement as to the time and content of the notification; provided, however, that such agreement makes clear the customer's right to receive the written notification pursuant to paragraph (c) of this section at no additional cost to the customer;

(2) Accounts (except collective investment funds) where the bank exercises investment discretion in other than an agency capacity, in which instance the bank shall, upon request of the person having the power to terminate the account or, if there is no such person, upon the request of any person holding a vested beneficial interest in such account, give or send to such person the written notification within a reasonable time. The bank may charge such person a reasonable fee for providing this information;

(3) Accounts, where the bank exercises investment discretion in an agency capacity, in which instance:

(i) The bank shall give or send to each customer not less frequently than once every three months an itemized statement which shall specify the funds and securities in the custody or possession of the bank at the end of such period and all debits, credits and transactions in the customer's accounts during such period; and

(ii) If requested by the customer, the bank shall give or send to each customer within a reasonable time the written notification described in paragraph (c) of this section. The bank may charge a reasonable fee for providing the information described in paragraph (c) of this section;

(4) A collective investment fund, in which instance the bank shall at least annually furnish a copy of a financial report of the fund, or provide notice that a copy of such report is available and will be furnished upon request, to each person to whom a regular periodic accounting would ordinarily be rendered with respect to each participating account. This report shall be based upon an audit made by independent public accountants or internal auditors responsible only to the board of directors of the bank;

(5) A periodic plan, in which instance the bank:

(i) Shall (except for a cash management sweep service) give or send to the customer a written statement not less than every three months if there are no securities transactions in the account, showing the customer's funds and securities in the custody or possession of the bank; all service charges and commissions paid by the customer in connection with the transaction; and all other debits and credits of the customer's account involved in the transaction; or

(ii) Shall for a cash management sweep service or similar periodic plan as defined in § 208.24(b)(10)(ii) give or send its customer a written statement in the same form as prescribed in paragraph (e)(i) above for each month in which a purchase or sale of a security takes place in a deposit account and not less than once every three months if there are no securities transactions in the account subject to any other applicable laws or regulations;

(6) Upon the written request of the customer the bank shall furnish the information described in paragraph (c) of this section, except that any such information relating to remuneration paid in connection with the transaction need not be provided to the customer when paid by a source other than the customer. The bank may charge a reasonable fee for providing the information described in paragraph (d) of this section.

(f) Settlement of securities transactions. All contracts for the purchase or sale of a security shall provide for completion of the transaction within the number of business days in the standard settlement cycle for the security followed by registered broker dealers in the United States unless otherwise agreed to by the parties at the time of the transaction.

(g) Securities trading policies and procedures. Every State member bank effecting securities transactions for customers shall establish written policies and procedures providing:

(1) Assignment of responsibility for supervision of all officers or employees who:

(i) Transmit orders to or place orders with broker/dealers;

(ii) Execute transactions in securities for customers; or

(iii) Process orders for notification and/or settlement purposes, or perform other back office functions with respect to securities transactions effected for customers; provided that procedures established under this paragraph (g)(1)(iii) should provide for supervision and reporting lines that are separate from supervision of personnel under paragraphs (g)(1)(i) and (g)(1)(ii) of this section;

(2) For the fair and equitable allocation of securities and prices to accounts when orders for the same security are received at approximately the same time and are placed for execution either individually or in combination;

(3) Where applicable and where permissible under local law, for the crossing of buy and sell orders on a fair and equitable basis to the parties to the transaction; and

(4) That bank officers and employees who make investment recommendations or decisions for the accounts of customers, who participate in the determination of such recommendations or decisions, or who, in connection with their duties, obtain information concerning which securities are being purchased or sold or recommended for such action, must report to the bank, within ten days after the end of the calendar quarter, all transactions in securities made by them or on their behalf, either at the bank or elsewhere in which they have a beneficial interest. The report shall identify the securities purchased or sold and indicate the dates of the transactions and whether the transactions were purchases or sales. Excluded from this requirement are transactions for the benefit of the officer or employee over which the officer or employee has no direct or indirect influence or control, transactions in mutual fund shares, and all transactions involving in the aggregate $10,000 or less during the calendar quarter. For purposes of this paragraph (g)(4), the term securities does not include government securities.

By order of the Board of Governors of the Federal Reserve System, February 27, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–5423 Filed 3–4–97; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 344

RIN 3064–AB74

Recordkeeping and Confirmation Requirements for Securities Transactions

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is amending its regulations governing the procedures for recordkeeping and confirmation requirements with respect to effecting securities transactions for customers of an insured state nonmember bank or a foreign bank having an insured branch (Bank). The final rule updates, clarifies and streamlines the FDIC regulations and reduces unnecessary regulatory costs and other burdens. The final rule also reorganizes and clarifies the regulation in areas where it previously was confusing. In addition, the FDIC has incorporated significant interpretive positions and updated various provisions to address market developments and regulatory changes by other regulators that affect requirements for recordkeeping and confirmation of securities transactions by Banks.

DATES: *Effective date.* The final rule is effective April 1, 1997. *Early compliance.* These revisions may be followed immediately by the affected party.

FOR FURTHER INFORMATION CONTACT: Miguel D. Browne, Manager—Risk Policy Development, (202) 898–6789; Keith A. Ligon, Chief, Policy Unit, (202) 898–3618; and John F. Harvey, Review Examiner (Trust), Securities, Capital Markets and Trust Branch, Division of Supervision (202) 898–6762; and Patrick J. McCarty, Counsel, Regulations and Legislation Section, Legal Division, (202) 898–8708.

SUPPLEMENTARY INFORMATION:

Background

In 1979, the FDIC adopted part 344 to require Banks under its jurisdiction to establish uniform procedures and recordkeeping and confirmation requirements with respect to effecting securities transactions for customers. The requirements reflected, in part, the recommendations of the Securities and Exchange Commission's (SEC) Final Report of the Securities and Exchange Commission on Bank Securities Activities (June 30, 1977). Part 344's recordkeeping and confirmation requirements were patterned after the SEC's rules applicable to broker/dealers and were intended to serve similar purposes for Banks involved in effecting customers' securities transactions. See 44 FR 43261 (July 24, 1979). The Board of Governors of the Federal Reserve System (FRB) and the Office of the Comptroller of the Currency (OCC) also adopted regulations substantially identical to part 344 in 1979.[1]

The FDIC and the other federal banking agencies are required by section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI) to review and streamline their regulations to improve efficiency, reduce unnecessary costs and eliminate unwarranted constraints on credit availability. 12 U.S.C. 4803(a). Section 303(a) also requires the federal banking agencies to work jointly to make uniform all regulations and guidelines implementing common statutory or supervisory policies.

On December 22, 1995, the OCC published a notice of proposed rulemaking (60 FR 66517) to revise 12 CFR part 12, the OCC's Recordkeeping and Confirmation Requirements for Securities Transactions regulation. The purpose of the proposal was to modernize part 12, address various market developments and regulatory changes, and reduce regulatory burden, where possible. The OCC published its final rule on December 2, 1996. See 61 FR 63958. The FRB published a substantially similar yet somewhat differently worded proposed rule on December 26, 1995. See 60 FR 66759.

The FDIC published an advance notice of proposed rulemaking on May 24, 1996, soliciting comment on issues similar to those raised in the OCC's and FRB's proposed rules, as well as issues which the OCC and FRB proposals did not address. See 61 FR 26135. On December 24, 1996, the FDIC published a notice of proposed rulemaking (61 FR 67729) to amend part 344 to address various market developments and regulatory changes, and reduce regulatory burden, where possible. Consistent with Section 303 of CDRI, the FDIC reviewed the OCC rule and the FRB proposal in connection with the preparation of its notice of proposed rulemaking. The FDIC has endeavored to create a rule that is uniform with the other agencies. As part of that effort, the staff of the FDIC has been in contact with the staffs of the FRB and the OCC in connection with the drafting of the final rule. The FDIC's final rule is closer in structure, definitions, language and form to the FRB's proposal than the OCC's final rule, however, all of the agencies' rules are substantively very similar.

Comments Received and Changes Made

The FDIC received six comments on the proposal. One comment came from a bank, one from a bank holding company and four comments came from trade associations representing banks, investment companies and accountants. In general, the commenters strongly supported the proposal as promoting uniformity among the Federal bank regulatory agencies, reducing regulatory burdens as well as addressing recent developments in the securities market. Most commenters specifically supported the provision of the proposal that excluded from the scope of part 344 customer transactions conducted directly with a broker/dealer where the customer has a written account agreement with the broker-dealer and the broker-dealer is fully disclosed to the customer. This change would exclude from part 344's coverage commonly utilized contractual relationships between banks and broker/dealers whereby the broker/dealers conducts securities transactions on bank premises, known as networking arrangements.

In addition, certain of the commenters requested specific changes to the proposal. The FDIC has considered each of the comments carefully and has made a number of changes in response to the comments received. Overall, the final rule adopts most of the changes to part 344 as proposed by the FDIC although certain changes have been made in an attempt to increase uniformity with regard to recordkeeping and confirmation requirements among the federal banking regulatory agencies. The section-by-section discussion of this preamble describes the final regulation

[1] See 12 CFR 208.8(k), 44 FR 43258 (July 24, 1979) (FRB regulation); 12 CFR part 12, 44 FR 43254 (July 24, 1979)(OCC regulation).

and identifies and discusses the comments received and changes made to certain sections of the proposal.

Section-by-Section Discussion

Purpose and Scope. (Section 344.1)

The purpose of part 344 is twofold: to ensure that purchasers of securities from Banks are provided with certain necessary information about the transaction; and to ensure that Banks engaging in such transactions maintain adequate records and controls with respect to such transactions. In general, part 344 applies to securities transactions effected by Banks on behalf of customers unless the transaction is specifically exempted in § 344.2, such as, to a limited extent, transactions in government securities and transactions in municipal securities conducted by Banks that are not registered as municipal securities dealers with the SEC.

Exceptions. (Section 344.2)

The final rule provides five exceptions from the requirements of certain provisions of part 344. The specific exceptions, which are unchanged from the proposal, are: (1) Banks conducting a small number of securities transactions; (2) certain government securities transactions; (3) certain municipal securities transactions; (4) securities transactions conducted by a foreign branch of a bank; and (5) certain securities transactions with a broker/dealer. The first four exceptions already exist in part 344. The proposal added the exemption covering certain securities transactions with a broker/dealer. In order for the exception to apply, the broker/dealer must be fully disclosed to the customer and the customer must have a direct contractual agreement with the broker/dealer, that is, a signed account agreement. This exception makes clear that under the circumstances described dual employee arrangements are not subject to part 344. This exemption is similar to that found in the OCC's rule. See 12 CFR § 12.1(c)(2)(v). The rule also clarifies that even though certain transactions are excepted from compliance with all, or certain sections, of part 344, the FDIC expects a Bank conducting securities transactions for its customers to maintain effective systems of records and controls to ensure safe and sound operations.

In connection with the broker/dealer networking exception, the FDIC requested comment on whether part 344 should apply to banks which impose surcharges or additional fees on customers in addition to the transaction volume compensation they normally receive under a networking agreements. The only comment received on this issue indicated support for requiring banks to disclose to customers that such surcharges or additional fees were being imposed. It is the FDIC's understanding that these type of surcharges and additional fees are not common, however, the FDIC expects banks to disclose the imposition of these surcharges or fees to customers and will monitor this area to determine if further supervisory action is necessary.

The FDIC received comment on the small number of securities transactions exceptions. This exception applies to banks effecting an average of fewer than 200 securities transactions per year for customers over the prior three calendar year period and excepts the bank from certain record maintenance requirements as well as the need to establish most required written policies and procedures. One commenter proposed that this limited transactions exemption be expanded to allow a Bank to effect 500 rather than 200 transactions in securities that are neither municipal securities or government securities. In light of the FDIC's desire for uniformity of its recordkeeping and disclosure requirements with those of the other Federal banking regulators and the lack of a compelling basis by the commenter to make the suggested change, the FDIC has determined to maintain the exemption for limited transactions at an average of 200 of such transactions per year.

Definitions. (Section 344.3)

Section 344.3 sets forth the definitions of 13 terms used in the rule. The FDIC's advance notice of proposed rule making described six new definitions—"asset-backed security", "completion of the transaction", "crossing of buy and sell orders", "debt security", "government security" and "municipal security." The proposal added two additional new definitions: "bank" and "cash management sweep account". The proposed definitions are the similar to those proposed by the FRB. The OCC's final rule also uses the same terms, but the structure and language used are somewhat different. The final rule adopts the definitions as set forth in the proposal with the following minor modifications in response to comments received

As proposed, the term "cash management sweep account" would cover any prearranged, automatic transfer of funds above a certain dollar level from a deposit account to purchase a security or securities or any prearranged, automatic redemption or sale of a security or securities when a deposit account drops below a certain dollar level with the proceeds being transferred into a deposit account. The term would only cover transactions involving the purchase or sale of securities. The FDIC received two comments on its proposed definition of a "cash management sweep account" found at § 344.3(c). One commenter expressed appreciation for the clarity provided by having a separately defined term; the other raised concern that while the FDIC proposes to treat cash management sweep accounts in a manner identical to the OCC, an additional definition may cause uncertainty. The OCC defined a cash management sweep account within its definition of "periodic plan". For the reasons stated in the proposed rulemaking [2], the FDIC believes that there are benefits to separately defining the term "cash management sweep account". Furthermore, we do not foresee confusion resulting from the distinction used in the OCC's regulation. With respect to cash management sweep accounts, both the OCC's and the FDIC's rules will require monthly statements to be furnished to a customer for each month in which a security is purchased or sold, but not less than quarterly.

The FDIC has amended the definition of the term "security" at § 344.3(m) so that it conforms to the definition used by the other federal banking regulatory agencies. The new definition more closely tracks the definition of "security" in the Securities Exchange Act of 1934. See 17 U.S.C. 78a et seq. No substantive change in the definition or meaning of the term "security" is intended from the definition of the term as published in the FDIC's proposal and the term as used in the existing regulation. The FDIC is conforming where possible the terms of part 344 with the rules of the other federal banking regulatory agencies so that any regulatory burden resulting from the use of different terminology can be minimized.

[2] Sweep accounts are different in kind from typical periodic plans such as dividend reinvestment plans (DRIPs) and automatic investment plans. Sweep accounts do not normally invest in securities at the regular intervals (i.e. monthly or quarterly) as do DRIPs and automatic investment plans. Second, sweep accounts are a significant product/service in their own right which account for several billions of dollars worth of transactions on a daily basis and probably exceed the dollar volume in traditional periodic plans. Due to these differences, the FDIC believes it is not appropriate to include sweep accounts in the definition of periodic plans.

Recordkeeping. (Section 344.4)

Section 344.4 sets forth the requirements for maintenance of records of securities transactions by Banks or a third party service provider for the Bank. The rule specifically permits the use of electronic or automated records as long as the records are easily retrievable and readily available for inspection and the Bank has the capability to reproduce the records in hard copy form. The FDIC received no comments on this section, and therefore it is being adopted as proposed.

Content and Timing of Customer Notification. (Section 344.5)

Section 344.5 of the regulation identifies the information that a Bank must provide to a customer at or before the completion of a securities transaction. When a broker/dealer is utilized in a transaction, Banks have the option of either having a broker/dealer that executes a transaction for the Bank send a confirmation directly to the Bank's customer or choosing to forward a copy of the broker/dealer confirmation to the Bank customer when it is received. Banks opting to have confirmations sent directly to their customers by the broker/dealer are ultimately responsible for the timely delivery of confirmations as well as accurate disclosure of all information required therein. The FDIC received several comments concerning this section of the proposal. One commenter supported the provision allowing notices to be furnished to customers via facsimile or other electronic means. The FDIC notes its intent that references—in § 344.5 as well as § 344.6—to the "give" or "send" notices includes notice provided via facsimile or other electronic transmission.

Several commenters had concerns with the partial exemption to the customer notification requirement of the source and amount of remuneration received by a Bank from a third party. The source and amount of remuneration that the Bank receives, other than from its customer, must be disclosed to the extent required under paragraph (b)(6) of § 344.5. Paragraph 344.5(b)(6) describes three circumstances in which a Bank need only disclose to a customer that the Bank has received remuneration from a third party and that the Bank will provide such information upon the written request of the customer. If a transaction falls within one of the three enumerated exceptions in § 344.5(b)(6)(i), a simple disclosure that the Bank received remuneration from a third party and that the source and amount of such remuneration received by the Bank from a third party is available upon written request of the customer will satisfy the disclosure requirements of § 344.5(a)(2). One commenter indicated that the rule could be read so that § 344.5(a)(2) would vitiate the exemption under § 344.5(b)(6)(ii). The FDIC does not agree. As discussed, § 344.5 (a)(2) is clear that notice need be provided only to the extent that such notice would be required under § 344.5(b)(6), including any notice based on the request of a customer as permitted in paragraph (b)(6)(ii).

Another commenter suggested that the § 344.5(b)(6)(ii) partial exemption to the customer notification requirement regarding remuneration to the Bank by a source other than the customer be extended to permit a Bank not to disclose this information to the customer at all. The commenter expressed the belief that the specific source of such remuneration would not be of interest to the majority of customers. After consideration, the FDIC has determined not to change the rule from its proposed form. The final rule will reduce regulatory burden because a Bank is required to provide amount and source of remuneration information only upon specific written request by the customer. It is also noted that the final rule is consistent with similar rules of the other federal banking regulatory agencies. Moreover, because the Bank will only need to provide such information to customers who affirmatively request it, the burden on the Bank should be minimal, particularly if—as the commenter suggests—third party remuneration to the Bank is not of interest to a majority of customers.

In addition, we note that the "source and amount of remuneration" issue which led to the FDIC issuing a partial waiver of part 344 in 1995 [3] has been resolved in the final rule. Previously, a literal reading of part 344 could have required a Bank to disclose the remuneration it obtained from a broker/dealer that dealt directly with the customer even if the Bank's remuneration was solely based on the broker/dealer's volume of transactions with Bank customers. Due to the impossibility of providing such disclosure to customers at the time of the transaction, the FDIC had granted a partial waiver of the requirements of part 344. Id. The FDIC now exempts for the scope of part 344 those securities transactions where the customer has a direct contractual agreement with a fully disclosed broker/dealer. See 12 CFR § 344.2(a)(5). This exemption will remove from part 344's scope most, if not all, networking arrangements between registered broker/dealers and financial institutions. Banks will not be obligated to disclose the source and amount of remuneration since the customer is actually a customer of the broker/dealer, not the Bank, and will receive a confirmation from the broker/dealer as required by SEC regulations.

[3] See "Waiver of Burdensome Disclosures for Certain Securities Transactions for Bank Customers", FDIC Financial Institutions Letter 29–95 (April 7, 1995).

Notification by Agreement; Alternative Forms and Times of Notification. (Section 344.6)

In addition to the standard notification requirements in § 344.5, the final regulation, in § 344.6, generally authorizes a Bank, in cases in which it does not exercise investment discretion, to enter into a written agreement with its customer for an alternative arrangement as to the time and content of written notification. Section 344.6 also sets forth alternative forms and times of notification for certain specific types of accounts. These are: (1) accounts in which the bank exercises investment discretion in other than an agency capacity; (2) accounts in which the bank exercises investment discretion in an agency capacity; (3) cash management sweep accounts; (4) transactions for a collective investment fund account; and (5) transactions for a periodic plan account. The FDIC has added language to the final regulation amending the requirements for certain cash management sweep accounts set forth in § 344.6(d) in order to ensure that banks are aware that if they retain custody of securities that are the subject of a hold-in-custody repurchase agreement, they are subject to certain Treasury Department regulations governing confirmation requirements with respect to government securities transactions.

The FDIC received one comment regarding the financial disclosure required for collective investment fund accounts in § 344.6(e) suggesting that such disclosure be required to be made only by independent auditors in accordance with generally accepted auditing standards. The final rule allows either independent public accountants or internal auditors responsible only to the board of directors of the bank to prepare the financial information. The FDIC notes that § 344.6(e) is identical to language used in the OCC's rule and the FRB's proposal. Moreover, the potential benefits resulting from the mandated use of external auditors does not outweigh the costs associated with

imposing such a regulatory burden upon the industry. Banks should be allowed the flexibility to effect the required disclosure through the use of external auditors as suggested by the commenter, or internal auditors that are responsible to only the board of directors. The final regulation adopts the language of the proposal.

Settlement of Securities Transactions. (Section 344.7)

The proposal provided for a settlement period of T+3 and requires Banks to send broker/dealer confirmations within one business day of receipt. These requirements are being adopted in the final rule without change. The requirements are identical to those of the SEC and the other federal banking regulatory agencies and were generally supported by the commenters. One commenter suggested cross-referencing the rules of the Securities and Exchange Commission governing the settlement period for securities transactions into part 344 so that regulatory amendments by the SEC would automatically amend the FDIC's regulations. The FDIC has determined not to incorporate citations to the SEC's settlement regulations. Rather, the FDIC will review any regulatory amendments by the SEC on a case-by-case basis to determine whether such changes would be appropriate for Banks. The FDIC received no other comments on this section, and therefore it is being adopted as proposed.

Securities Trading Policies and Procedures. (Section 344.8)

Section 344.8 of the final regulation requires Banks to establish written policies and procedures assigning supervisory responsibility for personnel engaged in different aspects of the trading process. Specifically, this section addresses orders and execution of trades, the equitable allocation of securities and prices for accounts and the crossing of buy and sell orders. In addition, § 344.8(a)(2) requires the separation of order and execution functions from the traditional back office clearing functions in order to ensure that Banks maintain adequate internal controls for securities trading. The FDIC received no comments on this section, and therefore it is being adopted as proposed.

Personal Securities Trading Reported by Bank Officers and Employees. (Section 344.9)

The proposal relocated to § 344.9 without substantive change the personal trading reporting requirements for certain officers and employees. The notice of proposed rulemaking also included a new requirement that certain directors report their transactions in securities. As proposed, § 344.9(a) would have required Bank directors, under certain limited and specified circumstances, to report a limited number of transactions in securities. The OCC's rule and the FRB's proposal do not specifically address the issue of director reporting requirements in this area.

As proposed, the reporting requirements of § 344.9 would have applied equally to directors, officers, or employees who have access to information in such a fashion so as to enable the person to gain an improper advantage or abuse the information obtained. The reporting requirement would not extend to individuals who routinely obtain such information but are never in a position to abuse it.

The two comments received on the provision indicated uncertainty as to the scope and application of this provision of the proposed rule. One commenter indicated the rule could be interpreted more broadly than anticipated, and another comment indicated a reading more narrow than intended. Given the different interpretations of the proposed changes, it is clear that additional clarification is required if the FDIC were to retain the requirement. Upon review, the FDIC believes that additional revision to the proposed regulatory language would be necessary to accomplish the FDIC's intent. The FDIC recognizes that implementing the proposed amendatory language could result in reports being submitted by individual directors who are not intended to be subject to the reporting requirements. Other directors may innocently fail to report who are intended to be subject to the rule. Accordingly, in order to not unnecessarily increase the burden of regulatory reporting requirements, and in a continuing effort to maintain uniformity in the reporting requirements imposed by the federal banking regulators, the final rule does not contain specific reporting requirements for directors. The FDIC will, in consultation with the other federal banking regulators, study the issue of employee, officer, and director disclosures further and address the issue in a future rulemaking as appropriate. Any changes to the reporting requirements to be imposed upon bank directors, if proposed in the future, will be implemented following appropriate notice and comment.

Waivers. (Section 344.10)

This section maintains the current provision that enables the FDIC to waive any provision of part 344 for good cause. No comments were received on this provision and it is being adopted as proposed.

Effective Date

This regulation will become effective on April 1, 1997 in accordance with the requirements of the Paper Work Reduction and Regulatory Improvement Act (PWRRIA). Section 302(b) requires that the effectiveness of new rules be delayed until the beginning of the following calendar quarter in order to give depository institutions adequate time to adjust to new requirements, such as in this instance, the T+3 settlement requirement. Nevertheless, as permitted by Section 302 of the PWRRIA, 12 U.S.C. 4802, banks may comply with the final rule before the effective date. In particular, the FDIC would not object to a Bank immediately taking advantage of § 344.2(a)(5) of the final rule that exempts transactions in which a bank receives remuneration from a registered broker dealer so long as the broker/dealer is fully disclosed to the bank customer and the bank customer has a direct contractual agreement with the broker/dealer may be utilized.

Regulatory Flexibility Act

Under section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)), the final regulatory flexibility analysis otherwise required under section 604 of the RFA (5 U.S.C. 604) is not required if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and the agency publishes such certification in the **Federal Register** along with its general notice of proposed rulemaking or at the time of publication of the final rule.

The Board of Directors has concluded after reviewing the final regulation that it will not have a significant economic impact on a substantial number of small institutions. The Board of Directors therefore hereby certifies pursuant to section 605 of the RFA that the regulation will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA. The FDIC anticipates that the final rule will result in a net benefit to all banks regardless of size due to the clarification provided by the rule. Small banks, in particular should be benefited by these changes. Most banks with total assets of under $100 million are not engaged in securities activities in a manner covered by this regulation. Rather, a small bank typically will use either a registered broker/dealer who has rented space on the bank's premises in what is commonly referred to as a "networking arrangement" or an "introducing broker" who will refer a customer to a dealer that can effect the desired transaction, both of which situations are outside the scope of part 344 as adopted.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Public Law 104–121) provides generally for agencies to report rules to Congress and for Congress to review rules. The reporting requirement is triggered when agencies issue a final rule as defined by the Administrative Procedure Act (APA) at 5 U.S.C. 551. Because the FDIC is issuing a final rule as defined by the APA, the FDIC will file the reports required by SBREFA.

The Office of Management and Budget (OMB) has determined that this final revision to part 344 does not constitute a "major rule" as defined by SBREFA.

Paperwork Reduction Act

The collection of information contained in this final rule has been reviewed and approved by the OMB under control number 3064–0028 pursuant to section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Comments on the collections of information should be directed to the OMB, Paperwork Reduction Project (3064–0028) Washington, D.C. 20503 Attention: Desk officer for the Federal Deposit Insurance Corporation, with copies of such comments to be sent to Steven F. Hanft, Office of the Executive Secretary, room F–400, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, D.C. 20429.

The collection of information requirements in this final rule are found in 12 CFR 344.2(b), 344.4(a), 344.5 (a) and (b), 344.8, and 344.9. The collections consist of recordkeeping requirements, §§ 344.2(b) and 344.4(a); the provision of written confirmations, §§ 344.5 (a) and (b) and 344.6; the establishment of written policies and procedures for placing orders and executing trades as well as back office functions, § 344.8; the reporting of personal securities trading by certain bank officers and employees, § 344.9. The likely respondents/recordkeepers are state nonmember insured banks.

Estimated average annual burden hours per respondent/recordkeeper: 19.43 hours.

Estimated number of respondents and/or recordkeepers: 5,663 state nonmember insured banks.

Estimated total annual reporting and recordkeeping burden: 109,818 hours.

Start-up costs to respondents: None.

Records under this part are to be maintained for at least three years.

List of Subjects in 12 CFR Part 344

Banks, banking, Reporting and recordkeeping requirements, Securities.

For the reasons set forth above, the FDIC hereby revises 12 CFR part 344 to read as follows.

PART 344—RECORDKEEPING AND CONFIRMATION REQUIREMENTS FOR SECURITIES TRANSACTIONS

Sec.

344.1 Purpose and scope.
344.2 Exceptions.
344.3 Definitions.
344.4 Recordkeeping.
344.5 Content and time of notification.
344.6 Notification by agreement; alternative forms and times of notification.
344.7 Settlement of securities transactions.
344.8 Securities trading policies and procedures.
344.9 Personal securities trading reporting by bank officers and employees.
344.10 Waivers.

Authority: 12 U.S.C. 1817, 1818 and 1819.

§ 344.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to ensure that purchasers of securities in transactions effected by a state nonmember insured bank (except a District bank) or a foreign bank having an insured branch are provided adequate information regarding transactions. This part is also designed to ensure that banks subject to this part maintain adequate records and controls with respect to the securities transactions they effect.

(b) *Scope; general.* Any security transaction effected for a customer by a bank is subject to this part unless excepted by § 344.2. A bank effecting transactions in government securities is subject to the notification, recordkeeping, and policies and procedures requirements of this part. This part also applies to municipal securities transactions by a bank that is not registered as a "municipal securities dealer" with the Securities and Exchange Commission. See 15 U.S.C. 78c(a)(30) and 78o–4.

§ 344.2 Exceptions.

(a) A bank effecting securities transactions for customers is not subject to all or part of this part 344 to the extent that they qualify for one or more of the following exceptions:

(1) *Small number of transactions.* The requirements of §§ 344.4(a) (2) through (4) and 344.8(a) (1) through (3) do not apply to a bank effecting an average of fewer than 200 securities transactions per year for customers over the prior three calendar year period. The calculation of this average does not include transactions in government securities.

(2) *Government securities.* The recordkeeping requirements of § 344.4 do not apply to banks effecting fewer than 500 government securities brokerage transactions per year. This exemption does not apply to government securities dealer transactions by banks.

(3) *Municipal securities.* This part does not apply to transactions in municipal securities effected by a bank registered with the Securities and Exchange Commission as a "municipal securities dealer" as defined in title 15 U.S.C. 78c(a)(30). See 15 U.S.C. 78o–4.

(4) *Foreign branches.* Activities of foreign branches of a bank shall not be subject to the requirements of this part.

(5) *Transactions effected by registered broker/dealers.* (i) This part does not apply to securities transactions effected for a bank customer by a registered broker/dealer if:

(A) The broker/dealer is fully disclosed to the bank customer; and

(B) The bank customer has a direct contractual agreement with the broker/dealer.

(ii) This exemption extends to bank arrangements with broker/dealers which involve bank employees when acting as employees of, and subject to the supervision of, the registered broker/dealer when soliciting, recommending, or effecting securities transactions.

(b) *Safe and sound operations.* Notwithstanding this section, every bank effecting securities transactions for customers shall maintain, directly or indirectly, effective systems of records and controls regarding their customer securities transactions to ensure safe and sound operations. The records and systems maintained must clearly and accurately reflect the information required under this part and provide an adequate basis for an audit.

§ 344.3 Definitions.

(a) *Asset-backed security* means a security that is serviced primarily by the cash flows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period plus any rights or other assets designed to assure the servicing

or timely distribution of proceeds to the security holders.

(b) *Bank* means a state nonmember insured bank (except a District bank) or a foreign bank having an insured branch.

(c) *Cash management sweep account* means a prearranged, automatic transfer of funds above a certain dollar level from a deposit account to purchase a security or securities, or any prearranged, automatic redemption or sale of a security or securities when a deposit account drops below a certain level with the proceeds being transferred into a deposit account.

(d) *Collective investment fund* means funds held by a bank as fiduciary and, consistent with local law, invested collectively:

(1) In a common trust fund maintained by such bank exclusively for the collective investment and reinvestment of monies contributed thereto by the bank in its capacity as trustee, executor, administrator, guardian, or custodian under the Uniform Gifts to Minors Act; or

(2) In a fund consisting solely of assets of retirement, pension, profit sharing, stock bonus or similar trusts which are exempt from Federal income taxation under the Internal Revenue Code (26 U.S.C.).

(e) *Completion of the transaction* means:

(1) For purchase transactions, the time when the customer pays the bank any part of the purchase price (or the time when the bank makes the book-entry for any part of the purchase price, if applicable), however, if the customer pays for the security prior to the time payment is requested or becomes due, then the transaction shall be completed when the bank transfers the security into the account of the customer; and

(2) For sale transactions, the time when the bank transfers the security out of the account of the customer or, if the security is not in the bank's custody, then the time when the security is delivered to the bank, however, if the customer delivers the security to the bank prior to the time delivery is requested or becomes due then the transaction shall be completed when the bank makes payment into the account of the customer.

(f) *Crossing of buy and sell orders* means a security transaction in which the same bank acts as agent for both the buyer and the seller.

(g) *Customer* means any person or account, including any agency, trust, estate, guardianship, or other fiduciary account for which a bank effects or participates in effecting the purchase or sale of securities, but does not include a broker, dealer, bank acting as a broker or a dealer, issuer of the securities that are the subject of the transaction or a person or account having a direct, contractual agreement with a fully disclosed broker/dealer.

(h) *Debt security* means any security, such as a bond, debenture, note, or any other similar instrument that evidences a liability of the issuer (including any security of this type that is convertible into stock or a similar security) and fractional or participation interests in one or more of any of the foregoing; provided, however, that securities issued by an investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a–1 et seq., shall not be included in this definition.

(i) *Government security* means:

(1) A security that is a direct obligation of, or obligation guaranteed as to principal and interest by, the United States;

(2) A security that is issued or guaranteed by a corporation in which the United States has a direct or indirect interest and which is designated by the Secretary of the Treasury for exemption as necessary or appropriate in the public interest or for the protection of investors;

(3) A security issued or guaranteed as to principal and interest by any corporation whose securities are designated, by statute specifically naming the corporation, to constitute exempt securities within the meaning of the laws administered by the Securities and Exchange Commission; or

(4) Any put, call, straddle, option, or privilege on a security described in paragraph (i) (1), (2), or (3) of this section other than a put, call, straddle, option, or privilege that is traded on one or more national securities exchanges, or for which quotations are disseminated through an automated quotation system operated by a registered securities association.

(j) *Investment discretion* means that, with respect to an account, a bank directly or indirectly:

(1) Is authorized to determine what securities or other property shall be purchased or sold by or for the account; or

(2) Makes decisions as to what securities or other property shall be purchased or sold by or for the account even though some other person may have responsibility for these investment decisions.

(k) *Municipal security* means a security which is a direct obligation of, or an obligation guaranteed as to principal or interest by, a State or any political subdivision, or any agency or instrumentality of a State or any political subdivision, or any municipal corporate instrumentality of one or more States or any security which is an industrial development bond (as defined in 26 U.S.C. 103(c)(2)) the interest on which is excludable from gross income under 26 U.S.C. 103(a)(1) if, by reason of the application of paragraph (4) or (6) of 26 U.S.C. 103(c) (determined as if paragraphs (4)(A), (5) and (7) were not included in 26 U.S.C. 103(c), paragraph (1) of 26 U.S.C. 103(c) does not apply to such security.

(l) *Periodic plan* means any written authorization for a bank to act as agent to purchase or sell for a customer a specific security or securities, in a specific amount (calculated in security units or dollars) or to the extent of dividends and funds available, at specific time intervals, and setting forth the commission or charges to be paid by the customer or the manner of calculating them. Periodic plans include dividend reinvestment plans, automatic investment plans, and employee stock purchase plans.

(m) *Security* means any note, stock, treasury stock, bond, debenture, certificate of interest or participation in any profit-sharing agreement or in any oil, gas, or other mineral royalty or lease, any collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, and any put, call, straddle, option, or privilege on any security or group or index of securities (including any interest therein or based on the value thereof), or, in general, any instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing. The term security does not include:

(1) A deposit or share account in a federally or state insured depository institution;

(2) A loan participation;

(3) A letter of credit or other form of bank indebtedness incurred in the ordinary course of business;

(4) Currency;

(5) Any note, draft, bill of exchange, or bankers acceptance which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited;

(6) Units of a collective investment fund;

(7) Interests in a variable amount (master) note of a borrower of prime credit; or

(8) U.S. Savings Bonds.

§ 344.4 Recordkeeping.

(a) *General rule.* A bank effecting securities transactions for customers shall maintain the following records for at least three years:

(1) *Chronological records.* An itemized daily record of each purchase and sale of securities maintained in chronological order, and including:

(i) Account or customer name for which each transaction was effected;

(ii) Description of the securities;

(iii) Unit and aggregate purchase or sale price;

(iv) Trade date; and

(v) Name or other designation of the broker/dealer or other person from whom the securities were purchased or to whom the securities were sold;

(2) *Account records.* Account records for each customer, reflecting:

(i) Purchases and sales of securities;

(ii) Receipts and deliveries of securities;

(iii) Receipts and disbursements of cash; and

(iv) Other debits and credits pertaining to transactions in securities;

(3) *A separate memorandum (order ticket)* of each order to purchase or sell securities (whether executed or canceled), which shall include:

(i) The accounts for which the transaction was effected;

(ii) Whether the transaction was a market order, limit order, or subject to special instructions;

(iii) The time the order was received by the trader or other bank employee responsible for effecting the transaction;

(iv) The time the order was placed with the broker/dealer, or if there was no broker/dealer, time the order was executed or canceled;

(v) The price at which the order was executed; and

(vi) The broker/dealer utilized;

(4) *Record of broker/dealers.* A record of all broker/dealers selected by the bank to effect securities transactions and the amount of commissions paid or allocated to each broker during the calendar year; and

(5) *Notifications.* A copy of the written notification required by §§ 344.5 and 344.6.

(b) *Manner of maintenance.* Records may be maintained in whatever manner, form or format a bank deems appropriate, provided however, the records required by this section must clearly and accurately reflect the information required and provide an adequate basis for the audit of the information. Records may be maintained in hard copy, automated or electronic form provided the records are easily retrievable, readily available for inspection, and capable of being reproduced in a hard copy. A bank may contract with third party service providers, including broker/dealers, to maintain records required under this part.

§ 344.5 Content and time of notification.

Every bank effecting a securities transaction for a customer shall give or send, by mail, facsimile or other means of electronic transmission, to the customer at or before completion of the transaction one of the types of written notification identified below:

(a) Broker/dealer's confirmations. (1) A copy of the confirmation of a broker/dealer relating to the securities transaction. A bank may either have the broker/dealer send the confirmation directly to the bank's customer or send a copy of the broker/dealer's confirmation to the customer upon receipt of the confirmation by the bank. If a bank chooses to send a copy of the broker/dealer's confirmation, it must be sent within one business day from the bank's receipt of the broker/dealer's confirmation; and

(2) If the bank is to receive remuneration from the customer or any other source in connection with the transaction, a statement of the source and amount of any remuneration to be received if such would be required under paragraph (b)(6) of this section; or

(b) *Written notification.* A written notification disclosing:

(1) Name of the bank;

(2) Name of the customer;

(3) Whether the bank is acting as agent for such customer, as agent for both such customer and some other person, as principal for its own account, or in any other capacity;

(4) The date and time of execution, or the fact that the time of execution will be furnished within a reasonable time upon written request of the customer, and the identity, price, and number of shares or units (or principal amount in the case of debt securities) of the security purchased or sold by the customer;

(5) The amount of any remuneration received or to be received, directly or indirectly, by any broker/dealer from such customer in connection with the transaction;

(6)(i) The amount of any remuneration received or to be received by the bank from the customer, and the source and amount of any other remuneration received or to be received by the bank in connection with the transaction, unless:

(A) Remuneration is determined pursuant to a prior written agreement between the bank and the customer; or

(B) In the case of government securities and municipal securities, the bank received the remuneration in other than an agency transaction; or

(C) In the case of open end investment company securities, the bank has provided the customer with a current prospectus which discloses all current fees, loads and expenses at or before completion of the transaction;

(ii) If the bank elects not to disclose the source and amount of remuneration it has or will receive from a party other than the customer pursuant to paragraph (b)(6)(i) (A), (B), or (C) of this section, the written notification must disclose whether the bank has received or will receive remuneration from a party other than the customer, and that the bank will furnish within a reasonable time the source and amount of this remuneration upon written request of the customer. This election is not available, however, if, with respect to a purchase, the bank was participating in a distribution of that security; or, with respect to a sale, the bank was participating in a tender offer for that security;

(7) Name of the broker/dealer utilized; or where there is no broker/dealer, the name of the person from whom the security was purchased or to whom the security was sold, or a statement that the bank will furnish this information within a reasonable time upon written request;

(8) In the case of a transaction in a debt security subject to redemption before maturity, a statement to the effect that the debt security may be redeemed in whole or in part before maturity, that the redemption could affect the yield represented and that additional information is available upon request;

(9) In the case of a transaction in a debt security effected exclusively on the basis of a dollar price:

(i) The dollar price at which the transaction was effected; and

(ii) The yield to maturity calculated from the dollar price, provided however, that this shall not apply to a transaction in a debt security that either has a maturity date that may be extended by the issuer thereof, with a variable interest payable thereon, or is an asset-backed security that represents an interest in or is secured by a pool of receivables or other financial assets that are subject continuously to prepayment;

(10) In the case of a transaction in a debt security effected on the basis of yield:

(i) The yield at which the transaction was effected, including the percentage amount and its characterization (e.g., current yield, yield to maturity, or yield to call) and if effected at yield to call,

the type of call, the call date and call price;

(ii) The dollar price calculated from the yield at which the transaction was effected; and

(iii) If effected on a basis other than yield to maturity and the yield to maturity is lower than the represented yield, the yield to maturity as well as the represented yield; provided however, that this paragraph (b)(10) shall not apply to a transaction in a debt security that either has a maturity date that may be extended by the issuer with a variable interest rate payable thereon, or is an asset-backed security that represents an interest in or is secured by a pool of receivables or other financial assets that are subject continuously to prepayment;

(11) In the case of a transaction in a debt security that is an asset-backed security, which represents an interest in or is secured by a pool of receivables or other financial assets that are subject continuously to prepayment, a statement indicating that the actual yield of the asset-backed security may vary according to the rate at which the underlying receivables or other financial assets are prepaid and a statement of the fact that information concerning the factors that affect yield (including at a minimum estimated yield, weighted average life, and the prepayment assumptions underlying yield) will be furnished upon written request of the customer; and

(12) In the case of a transaction in a debt security, other than a government security, that the security is unrated by a nationally recognized statistical rating organization, if that is the case.

§ 344.6 Notification by agreement; alternative forms and times of notification.

A bank may elect to use the following alternative notification procedures if the transaction is effected for:

(a) *Notification by agreement.* Accounts (except periodic plans) where the bank does not exercise investment discretion and the bank and the customer agree in writing to a different arrangement as to the time and content of the written notification; provided however, that such agreement makes clear the customer's right to receive the written notification pursuant to § 344.5 (a) or (b) at no additional cost to the customer.

(b) *Trust accounts.* Accounts (except collective investment funds) where the bank exercises investment discretion in other than in an agency capacity, in which instance the bank shall, upon request of the person having the power to terminate the account or, if there is no such person, upon the request of any person holding a vested beneficial interest in such account, give or send to such person the written notification within a reasonable time. The bank may charge such person a reasonable fee for providing this information.

(c) *Agency accounts.* Accounts where the bank exercises investment discretion in an agency capacity, in which instance:

(1) The bank shall give or send to each customer not less frequently than once every three months an itemized statement which shall specify the funds and securities in the custody or possession of the bank at the end of such period and all debits, credits and transactions in the customer's accounts during such period; and

(2) If requested by the customer, the bank shall give or send to each customer within a reasonable time the written notification described in § 344.5. The bank may charge a reasonable fee for providing the information described in § 344.5.

(d) *Cash management sweep accounts.* A bank effecting a securities transaction for a cash management sweep account shall give or send its customer a written statement, in the same form as required under paragraph (f) of this section, for each month in which a purchase or sale of a security takes place in the account and not less than once every three months if there are no securities transactions in the account. Notwithstanding the provisions of this paragraph (d), banks that retain custody of government securities that are the subject of a hold-in-custody repurchase agreement are subject to the requirements of 17 CFR 403.5(d).

(e) *Collective investment fund accounts.* The bank shall at least annually give or send to the customer a copy of a financial report of the fund, or provide notice that a copy of such report is available and will be furnished upon request to each person to whom a regular periodic accounting would ordinarily be rendered with respect to each participating account. This report shall be based upon an audit made by independent public accountants or internal auditors responsible only to the board of directors of the bank.

(f) *Periodic plan accounts.* The bank shall give or send to the customer not less than once every three months a written statement showing:

(1) The funds and securities in the custody or possession of the bank;

(2) All service charges and commissions paid by the customer in connection with the transaction; and

(3) All other debits and credits of the customer's account involved in the transaction; provided that upon written request of the customer, the bank shall give or send the information described in § 344.5, except that any such information relating to remuneration paid in connection with the transaction need not be provided to the customer when the remuneration is paid by a source other than the customer. The bank may charge a reasonable fee for providing information described in § 344.5.

§ 344.7 Settlement of securities transactions.

(a) A bank shall not effect or enter into a contract for the purchase or sale of a security (other than an exempted security as defined in 15 U.S.C. 78c(a)(12), government security, municipal security, commercial paper, bankers' acceptances, or commercial bills) that provides for payment of funds and delivery of securities later than the third business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction.

(b) Paragraphs (a) and (c) of this section shall not apply to contracts:

(1) For the purchase or sale of limited partnership interests that are not listed on an exchange or for which quotations are not disseminated through an automated quotation system of a registered securities association; or

(2) For the purchase or sale of securities that the Securities and Exchange Commission (SEC) may from time to time, taking into account then existing market practices, exempt by order from the requirements of paragraph (a) of SEC Rule 15c6–1, 17 CFR 240.15c6–1(a), either unconditionally or on specified terms and conditions, if the SEC determines that an exemption is consistent with the public interest and the protection of investors.

(c) Paragraph (a) of this section shall not apply to contracts for the sale for cash of securities that are priced after 4:30 p.m. Eastern time on the date the securities are priced and that are sold by an issuer to an underwriter pursuant to a firm commitment underwritten offering registered under the Securities Act of 1933, 15 U.S.C. 77a et seq., or sold to an initial purchaser by a bank participating in the offering. A bank shall not effect or enter into a contract for the purchase or sale of the securities that provides for payment of funds and delivery of securities later than the fourth business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction.

(d) For purposes of paragraphs (a) and (c) of this section, the parties to a contract shall be deemed to have expressly agreed to an alternate date for payment of funds and delivery of securities at the time of the transaction for a contract for the sale for cash of securities pursuant to a firm commitment offering if the managing underwriter and the issuer have agreed to the date for all securities sold pursuant to the offering and the parties to the contract have not expressly agreed to another date for payment of funds and delivery of securities at the time of the transaction.

§ 344.8 Securities trading policies and procedures.

(a) *Policies and procedures.* Every bank effecting securities transactions for customers shall establish written policies and procedures providing:

(1) Assignment of responsibility for supervision of all officers or employees who:

(i) Transmit orders to or place orders with broker/dealers; or

(ii) Execute transactions in securities for customers;

(2) Assignment of responsibility for supervision and reporting, separate from those in paragraph (a)(1) of this section, with respect to all officers or employees who process orders for notification or settlement purposes, or perform other back office functions with respect to securities transactions effected for customers;

(3) For the fair and equitable allocation of securities and prices to accounts when orders for the same security are received at approximately the same time and are placed for execution either individually or in combination; and

(4) Where applicable, and where permissible under local law, for the crossing of buy and sell orders on a fair and equitable basis to the parties to the transaction.

§ 344.9 Personal securities trading reporting by bank officers and employees.

(a) *Officers and employees subject to reporting.* Bank officers and employees who:

(1) Make investment recommendations or decisions for the accounts of customers;

(2) Participate in the determination of such recommendations or decisions; or

(3) In connection with their duties, obtain information concerning which securities are being purchased or sold or recommend such action, must report to the bank, within ten business days after the end of the calendar quarter, all transactions in securities made by them or on their behalf, either at the bank or elsewhere in which they have a beneficial interest. The report shall identify the securities purchased or sold and indicate the dates of the transactions and whether the transactions were purchases or sales.

(b) *Exempt transactions.* Excluded from this reporting requirement are:

(1) Transactions for the benefit of the officer or employee over which the officer or employee has no direct or indirect influence or control;

(2) Transactions in registered investment company shares;

(3) Transactions in government securities; and

(4) All transactions involving in the aggregate $10,000 or less during the calendar quarter.

(c) *Alternative report.* Where a bank acts as an investment adviser to an investment company registered under the Investment Company Act of 1940, the bank's officers and employees may fulfill their reporting requirement under paragraph (a) of this section by filing with the bank the "access persons" personal securities trading report required by (SEC) Rule 17j–1, 17 CFR 270.17j–1.

§ 344.10 Waivers.

The Board of Directors of the FDIC, in its discretion, may waive for good cause all or any part of this part 344.

By Order of the Board of Directors.

Dated at Washington, D.C., this 25th day of February, 1997.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 97–5425 Filed 3–4–97; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. AIR–100–9601]

Replacement and Modification Parts: "Standard" Parts; Interpretation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of interpretation.

SUMMARY: The FAA is notifying the public that the interpretation of an acceptable U.S. government or Industry accepted specification may include specifications that may be limited to detailed performance criteria, complete testing procedures, and uniform marking criteria. Manufacturers of parts that conform to such specifications are excepted as "standard parts" from the requirement to obtain FAA Parts Manufacturer Approval. The FAA is aware that specifications meeting the above criteria exist for discrete electric or electrical component parts.

EFFECTIVE DATE: January 31, 1997.

FOR FURTHER INFORMATION CONTACT: Bruce Kaplan, Aerospace Engineer, Aircraft Engineering Division, AIR–100, FAA, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–9588.

SUPPLEMENTARY INFORMATION: Section 21.303(a) of Title 14 of the Code of Federal Regulations (CFR), Replacement and Modification Parts, prohibits a person from producing a part for sale for installation on a type certificated product unless that person produces the part pursuant to an FAA Parts Manufacturer Approval (PMA). Section 21.303(b) provides four exceptions to the requirement in § 21.303(a). One of these exceptions is for "Standard parts (such as bolts and nuts) conforming to established industry or U.S. specifications." (14 CFR § 21.303(b)(4).)

"Standard part" is not otherwise defined in Title 14. Section 21.303(b)(4) has come to be understood by the aviation and manufacturing public as meaning a part, the specification for which has been published by a standard setting organization or by the U.S. government, and the FAA has traditionally regulated parts production with that understanding. Examples of such "traditional" standard part specifications include National Aerospace Standards (NAS), Air Force-Navy Aeronautical Standard (AN), Society of Automotive Engineers (SAE), SAE Aerospace Standard (AS), and Military Standard (MS). The FAA will continue to consider parts conforming to these specifications as standard parts.

Prior to this notice, for a specification to be acceptable, it had to include information on the design, materials, manufacture, and uniform identification requirements. The specification had to include all the information necessary to produce the part and ensure its conformity to the specification. Furthermore, the specification must be publicly available, so that any party is capable of manufacturing the part. The above examples of accepted specifications fulfill those criteria.

In the past the FAA has applied § 21.303(b)(4) to parts that have specifications where a determination of physical conformity to a design could be made. This application largely excluded classes of parts where the parts are conformed not on the basis of their physical configuration but by meeting

the specified performance criteria. These types of parts are best exemplified by discrete electrical and electronic parts.

Much of the componentry used in electronic devices are manufactured under standard industry practices, often to published specifications developed by standards organizations such as the Society of Automotive Engineers (SAE), the American Electronics Association, Semitec, Joint Electron Device Engineering Council, Joint Electron Tube Engineering Council, and the American National Standards Institute (ANSI). Such standards development by these bodies is overseen by the Institute of Electrical and Electronics Engineers (IEEE), the IEEE Standards Committee, as well as the electrical and electronics industry, at large, who depends upon characteristic design standards for consistency in operation and performance.

The FAA has determined that certain kinds of electrical and electronic parts fit within the limits of the § 21.303(b)(4) exception; these include resistors, capacitors, diodes, transistors, and non-programmable integrated circuits (e.g. amplifiers, bridges, switches, gates, etc.). Conversely, large scale, application-specific, or programmable integrated circuits; hybrids, gate arrays, memories, CPU's, or other programmable logic devices would not be considered standard parts, such components are not 'discretes' since they require programming that controls their timing, functionality, performance, and overall operating parameters.

It is important to remember that 14 CFR Part 21 § 21.303 deals with the production of parts for sale for installations on type certificated products. Installation of replacement or modification parts including owner/operator-produced and standard parts, must be accomplished in compliance with part 43 of Title 14 of the CFR (Part 43). Generally, a standard part may be replaced with an identical standard part, in accordance with the manufacturers maintenance instructions, without a further demonstration of compliance with the airworthiness regulations. Substitution of a standard part with another would require a demonstration of acceptability in accordance with part 43.

Discussion of Comments

The FAA published (61 FR 47671, September 10, 1996) a proposed expanded interpretation for "standard part" and requested comments from the public on the ability of producers to conform discrete electrical and electronic parts, and other kinds of parts, to specified performance criteria. The FAA also requested comment on the ability of producers to distinctly identify such parts.

A total of 19 comments were received in response to the notice. These commenters represent air carriers, aircraft manufacturers; associations representing aircraft manufacturers, aircraft maintenance personnel, and fixed base operators/air charter/air taxi operators/scheduled operators; component manufacturers; and the Joint Aviation Authorities. All but one commenter voiced general support for the proposal. Five commenters concur with no additional comment. Six commenters concur and express the desire to include specifications for other types of parts (beyond discrete electrical and electronic parts) under this expanded intrepretation.

The substantive issues raised by the commenters are discussed in the following discussion of comments.

Comment: Two commenters expressed concern about standard parts in general. They commented that some manufacturers claim to build their parts to these standards but do not have any proof that the parts meet the requirements and that just because a part is marked with the standard part type number or marking does not demonstrate that the part in fact conforms to the established industry or U.S. Government specifications. One commenter suggested the FAA survey suppliers to determine if they are reliable candidates to meet the requirements of various standards.

FAA Response: A standard part is one that conforms to the established specification. Beyond just physical configuration and performance testing almost all specifications have quality control and testing requirements. The FAA in conducting an investigation of standard part manufacturers would be looking for complete compliance with the specification, and would look for the existence and proper execution of records necessary to prove conformity. Non-conformities would be cause for enforcement action by the FAA and could be cause for a criminal investigation by the appropriate law enforcement agencies.

The marking of a part is the manufacturer's certification that the part conforms to the specification. The ability of the manufacturer to make that certification at the time of manufacture is based on the specification requirements which include production system requirements, test and acceptance procedures, and any additional internal quality control requirements. The marking of parts also serves as a means by which an installer may identify a part and establish its eligibility for installation on an aircraft. The end users confidence in that manufacturer's certification is based on their experience with that manufacturer and is supplemented by their receiving inspection, and the final determination of airworthiness as required by FAR 43.13.

Standard part manufactures are subject to continuing in-depth audits by their customers whether they be commercial airplane manufacturers, the automotive industry, or the U.S. Government. The FAA feels that these continuing process checks provide an appropriate degree of confidence.

Comment: Three commenters expressed concern that a part meeting a standard specification may be used by a design approval holder in an application that is safety-critical or outside the specified operating tolerances requiring greater scrutiny of that part. For this reason one commenter stipulated that parts must be designated as standard by the design approval holder.

FAA Response: The qualification and quality control requirements for any part installed on a product is established by the design approval holder for that product. If a design approval holder utilizes a standard part design in a safety critical application (and/or an application requiring the part to perform outside its specified operating tolerances) but imposes qualification or quality control requirements beyond those of the standard specification for the part, then that altered part would no longer be a "standard part".

Certain design approval holders are required to provide instructions for continued airworthiness including data necessary for maintenance. It is these maintenance instructions that are to be followed by maintenance personnel. It would be incorrect for a design approval holder to identify a part as a "standard part" in their maintenance instructions when their qualification or quality control procedures exceed those of the standard part specification.

Comment: Several Commenters voiced the need for including I.S.O. and European government and industry standards.

FAA Response: The FAA can recognize any industry established specification regardless of country of origin. However, under present language of Part 21 21.303(b)(4) acceptable government specifications are limited to those published by the U.S. Government. The Aviation Rulemaking Advisory Committee (ARAC), Aircraft Certification Procedures Issues Group (Part 21), Parts & Production Working Group is currently developing a draft notice of proposed rulemaking (NPRM), for submittal to the FAA, addressing the approval of replacement and modification parts. This issue is under consideration; changes could be incorporated into the forthcoming NPRM.

Comment: Several commenters expressed the desire to allow various other categories of parts such as lamps electrical connectors, and bearings.

FAA Response: The FAA's Notice solicited information as to the merits of including categories of parts other than discrete electrical or electronic components under the interpretation. The commenters did not state how the conformity of the parts could be established solely on the basis of meeting a performance specification. Thus, the FAA still regards the standard parts exclusion as applicable to a narrow segment of the entire population of part designs.

Comment: One commenter expressed the desire to allow programmable devices to be considered standard parts when there are approved pin-for-pin alternatives. Such components only become notionally non-standard after programming for a specific application.

FAA Response: Programmable devices were specifically excluded in the proposed expanded interpretation because their performance characteristics may vary with the instruction programmed within or provided to such devices, or due to different applied voltages and signals affecting logical switching conditions. Even though such devices may be pin-to-pin compatible, the performance characteristics cannot be assured, thus making such devices ineligible for consideration of the "performance" based interpretation of the definition.

The interpretation for standard parts is effective on January 31, 1997. The FAA is compiling a list of standard setting bodies and U.S. government entities that establish specifications for standard parts. That list will be published on the Aircraft Certification Home Page on the World Wide Web by June 30, 1997.

Issued in Washington, DC on January 31, 1997.

Elizabeth Yoest,

Deputy Director, Aircraft Certification Service.

[FR Doc. 97–5437 Filed 3–4–97; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 96–NM–146–AD; Amendment 39–9953; AD 97–05–09]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, that requires replacement of the flow restrictors of the aileron and elevator power control units (PCU's) with new flow restrictors. This amendment is prompted by a review of the design of the flight control systems on Model 737 series airplanes. The actions specified by this AD are intended to prevent reduced roll and/or pitch rate control of the airplane and consequent increased pilot workload as a result of fragments from a deteriorated flow restrictor filter screen becoming lodged in the PCU.

DATES: Effective April 9, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of April 9, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Don Kurle, Senior Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2798; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 737 series airplanes was published in the **Federal Register** on August 28, 1996 (61 FR 44232). That action proposed to require replacement of the flow restrictors of the aileron and elevator power control units (PCU's) with new flow restrictors.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

One commenter supports the proposed rule.

Request To Revise Statement of Findings of Critical Design Review Team

One commenter requests the second paragraph of the Discussion section that appeared in the preamble to the proposed rule be revised to accurately reflect the findings of the Critical Design Review (CDR) team. The commenter asks that the FAA delete the one sentence in that paragraph, which read: "The recommendations of the team include various changes to the design of the flight control systems of these airplanes, as well as correction of certain design deficiencies." The commenter suggests that the following sentences should be added: "The team did not find any design issues that could lead to a definite cause of the accidents that gave rise to this effort. The recommendations of the team include various changes to the design of the flight control systems of these airplanes, as well as incorporation of certain design improvements in order to enhance its already acceptable level of safety."

The FAA does not find that a revision to this final rule in the manner suggested by the commenter is necessary, since the Discussion section of a proposed rule does not reappear in a final rule. The FAA acknowledges that the CDR team did not find any design issue that could lead to a definite cause of the accidents that gave rise to this effort. However, as a result of having conducted the CDR of the flight control systems on Boeing Model 737 series airplanes, the team indicated that there are a number of recommendations that should be addressed by the FAA for each of the various models of the Model 737. In reviewing these recommendations, the FAA has concluded that they address unsafe conditions that must be corrected through the issuance of AD's. Therefore, the FAA does not concur that these design changes merely "enhance [the Model 737's] already acceptable level of safety."

Request To Extend Compliance Time for Replacing Flow Restrictors

Several commenters request that the proposed compliance time for

replacement of the flow restrictors be extended.

The Air Transport Association (ATA) of America, on behalf of several of its members, requests that the proposed compliance time for accomplishment of paragraph (a) of the proposal be extended from within 18 months to within five years after the effective date of the AD to align with regularly scheduled maintenance ("D" checks).

One commenter requests that the compliance time for paragraph (a) of the proposal be extended to 24 months to avoid grounding aircraft by scheduling maintenance outside of regularly scheduled visits. One ATA member requests a 4-year compliance time based on considerations including scheduling, airplane downtime, unit turn-around time, and availability of spare parts.

One commenter states that the retrofit requires a 30-day turn-around time. Another commenter indicates that although the replacement takes 3 work hours, it takes 42 total work hours to return the airplane to service since the affected units are CAT II sensitive line replaceable units. The commenters also point out that there has never been an in-service failure of the filter screen. The failure referenced in the proposal occurred during a shop functional test at 5,400 pounds per square inch (psi) and, in service, the unit would not be subjected to operational pressures greater than 3,000 psi. The commenters add that there is some uncertainty at this time as to whether the shop test should be accomplished at such a high pressure; such a test may cause more safety concerns than it addresses.

One ATA member states that there is no service history or other evidence to indicate that the filter screens may fail when subjected to 3,000 psi, nor is there any history of discrepant PCU operation attributed to failure of the filter screens. The commenter indicates that the affected PCU's have accumulated an average of 17,400 flight hours each (for a total of approximately 17 million flight hours) without an in-service failure due to disintegration of the flow restrictor filter screens. The commenter believes that an acceptable level of safety can be achieved by mandating the replacement of suspect flow restrictors at the next PCU overhaul, not to exceed 5 years after the effective date of the AD.

Boeing agrees that, in order to preclude any failures from occurring during a functional test following maintenance action, the suspect PCU filter screens should be replaced. However, Boeing indicates that any maintenance action involving removing, disassembling, modifying, and reinstalling the PCU provides opportunity for a maintenance error. In addition, Boeing states that any suspect filter screens already installed in airplanes are very unlikely to fail. Boeing adds that there is added risk if a filter screen failed during functional testing, but was not discovered. In view of these considerations, Boeing recommends a compliance time of five years or 15,000 hours.

One commenter, an operator of affected airplanes of foreign registry, requests that the proposed compliance time be extended to 60 months to allow sufficient time to accomplish the replacement without grounding airplanes.

The FAA concurs with the commenters' request to extend the compliance time. The FAA has determined that, in light of the information presented by the commenters, the compliance time can be extended to five years or 15,000 flight hours (whichever occurs first) to allow the replacement to be performed at a base during regularly scheduled maintenance where special equipment and trained maintenance personnel will be available, if necessary. The FAA does not consider that this extension will adversely affect safety. Paragraph (a) of the final rule has been revised to specify the extended compliance time.

Request To Extend Compliance Time for Disallowing Installation of Flow Restrictors

The ATA also requests that the proposed compliance time for disallowing installation of flow restrictors, as specified in paragraph (b) of the proposal, be extended from "as of the effective date of this AD" to within two years after the effective date of the AD. The commenter does not provide specific justification for this request.

The FAA does not concur. Since the service information referenced in this final rule was issued in June 1992, the FAA finds that ample opportunity has been provided for removal of the affected flow restrictors from operators' inventories and replacement with acceptable parts.

Requests To Withdraw the Proposal

Several commenters request that the proposed rule be withdrawn.

One commenter believes the proposal is not justified since it cannot be supported by data. The commenter indicates the proposal does not contribute to improving the safety aspects of Model 737 aircraft. The commenter states that the Critical Design Review (CDR) team's report does not indicate that there is any evidence to tie the referenced service documents to any in-service problems or accidents. The commenter adds that the FAA has not indicated that it has reviewed any routine component tear-down reports that would support the proposed actions. The commenter concludes that the FAA does not understand the enormity of the proposed action.

A second commenter concludes that the proposal does not address an unsafe condition, even in a worst case situation; that an unsafe condition is extremely unlikely to occur in service; and that an unsafe condition would most likely be detected during a preflight check.

Another commenter, Boeing, states that the proposal does not correct an unsafe condition; rather, it eliminates the potential for a failure condition that could degrade controllability (but not prevent continued safe flight and landing). Boeing indicates that there have been no reported in-service failures of the suspect filter screens. Based on "the limited safety concern," Boeing states that it is appropriate for removal and rework of the suspect units as part of routine maintenance. Boeing suggests that, if the FAA does not withdraw the proposal, the PCU overhaul manual could be revised to provide a procedure for inspection and replacement of suspect flow restrictors.

One commenter states that both Boeing and FAA analyses indicate a worst case scenario (with an accompanying independent hydraulic failure) to be reversion to manual control—a situation checked many times each year during maintenance test flights by carriers. The commenter also states that the instance in which the filter collapsed occurred at proof test pressures that would never be encountered in service (according to Boeing and the component manufacturer).

The FAA does not concur with these requests to withdraw the proposed rule. The FAA has not received any data to demonstrate the reliability or strength of the faulty filters. However, the FAA is aware that these filters were not strong enough to pass proof testing at the PCU manufacturer's facility. Neither the filter or PCU manufacturer attempted to quantify the actual strength of the filter screen. In addition, while it is true that there have been no reported in-service failures, a screen failure would not necessarily be reported since the FAA does not require reports of screen failures.

As discussed in the preamble to the proposal, the FAA has determined that sufficient data exist to demonstrate that contamination of the PCU at the main control valve due to deterioration of a filter screen from a flow restrictor can result in fragments of the screen migrating to the main control valve, the damping orifice, or the bypass valve. Fragments from a deteriorated flow restrictor filter screen could become lodged in the PCU. As suggested by one of the commenters, even if manual reversion is checked during maintenance test flights several times each year, this condition is considered unsafe since it would result in reduced roll and/or pitch rate control of the airplane and consequent increased pilot workload. The FAA has determined that replacement of the flow restrictors of the aileron and elevator PCU's with new flow restrictors, as required by this AD action, will adequately address that unsafe condition.

The FAA has no objection to Boeing revising the PCU overhaul manual to provide a procedure for inspection and replacement of suspect flow restrictors; such revision will not affect the requirements of this AD.

Request To Allow Records Search

One commenter requests that a note be added to the proposal to specify that compliance with the AD can be demonstrated by accomplishing a records search to determine whether any of the suspect units are installed on the airplane.

The FAA finds that no change to the final rule is necessary. The applicability of this final rule specifies that the AD applies only to certain Model 737 series airplanes that are equipped with an aileron or elevator PCU having a particular part number. This AD does not preclude an operator from performing a records search to determine if an airplane in its fleet is subject to the requirements of this AD.

Request To Revise Cost Impact Information

One commenter states that imposition of the proposal would overburden competent repair facilities and expose the airlines and the flying public to unnecessary risk as a result. In support of its position, the commenter states that the cost impact information in the proposal indicates the screens referenced in the service letter cited in the AD are line replaceable when they are not. The commenter also asserts that the costs specified in the proposal are unrealistically low; however, the commenter does not provide any suggested cost estimates or data to substantiate this remark.

The FAA infers from these remarks that the commenter requests that the cost impact information be revised. In this case, the FAA does not concur.

First, the FAA points out that comments are more likely to be persuasive to the extent that they provide specific and detailed information regarding actual costs. However, when commenters submit simple generalizations about the costs, there is little that the FAA can consider.

Second, the cost impact information, below, describes only the "direct" costs of the specific actions required by this AD. The number of work hours necessary to accomplish the required actions and the cost for required parts were provided to the FAA by the manufacturer based on the best data available to date. This number represents the time necessary to perform only the actions actually required by this AD.

The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur "incidental" costs in addition to the "direct" costs. The FAA realizes that such is the case for this AD, since the filter screen is not a line replaceable unit. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs, such as the time required to gain access and close up; planning time; or time necessitated by other administrative actions. Because incidental costs may vary significantly from operator to operator, they are almost impossible to calculate.

Third, the FAA finds that the revised compliance time specified in paragraph (a) of this AD should allow ample time for the required actions to be accomplished coincidentally with scheduled major airplane inspection and maintenance activities, thereby minimizing any burden on repair facilities and any additional costs.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 244 Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 146 airplanes of U.S. registry will be affected by this AD, that it will take approximately 12 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $2,960 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $537,280, or $3,680 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97-05-09 Boeing: Amendment 39-9953. Docket 96-NM-146-AD.

Applicability: Model 737 series airplanes equipped with an aileron or elevator power control unit (PCU) having part number (P/N) 65-45180-29, serial numbers 182 through 1297 inclusive; certificated in any category.

Note 1: Originally, aileron or elevator PCU's having P/N's and serial numbers identified in the applicability of this AD may have been installed on Model 737 series airplanes having line numbers 1793 through 2036 inclusive. In addition, some of these PCU's may have been used as spares; therefore, specific airplane line numbers equipped with such PCU's cannot be provided in this AD.

Note 2: PCU's having P/N 65-45180-29 consist of a PCU assembly having P/N 65-44761-21 plus associated hydraulic fittings. Both PCU P/N's 65-45180-29 and 65-44761-21 are serialized. PCU's subject to the requirements of this AD may be more easily identified using serial numbers for P/N 65-44761-21. The following serial numbers correspond to P/N 65-44761-21:

8550A,
8552A,
8556A,
8557A,
8561A,
8563A through 8718A inclusive,
8720A through 8726A inclusive,
8728A through 8745A inclusive,
8749A,
8750A through 8758A inclusive,
8760A through 8873A inclusive,
8876A through 9004A inclusive,
9007A through 9012A inclusive,
9014A through 9040A inclusive,
9042A through 9066A inclusive,
9068A through 9340A inclusive,
9342A through 9388A inclusive,
9390A through 9529A inclusive,
9531A through 9676A inclusive, and
9678A through 9688A inclusive.

Note 3: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced roll and/or pitch rate control of the aileron and consequent increased pilot workload, accomplish the following:

(a) Within 5 years or 15,000 flight hours after the effective date of this AD, whichever occurs first: Replace the four flow restrictors, part number (P/N) JETA1875500D, on the aileron and elevator power control units (PCU's), P/N 65-45180-29, serial numbers 182 through 1297 inclusive, with flow restrictors having P/N JETX0527100B, in accordance with Boeing Service Letter 737-SL-27-71-A, dated June 19, 1992, including Attachment 1.

(b) As of the effective date of this AD, no person shall install a flow restrictor having P/N JETA1875500D on an aileron or elevator PCU having P/N 65-45180-29, serial numbers 182 through 1297 inclusive, of any airplane.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The replacement shall be done in accordance with Boeing Service Letter 737-SL-27-71-A, dated June 19, 1992, including Attachment 1. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on April 9, 1997.

Issued in Renton, Washington, on February 25, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97-5158 Filed 3-4-97; 8:45 am]

BILLING CODE 4910-13-U

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14 CFR Part 71

[Airspace Docket No. 93-AEA-02]

Amendment to Class E Airspace; Dunkirk, NY

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the Class E airspace at Dunkirk, NY, to accommodate a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 19 and a VHF Omni-Directional Radio Range/Distance Measuring Equipment (VOR/DME) SIAP to at Angola Airport. The intended effect of this action is to provide adequate controlled airspace for instrument flight rules (IFR) operations at the airport.

EFFECTIVE DATE: 0901 UTC, May 22, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Operations Branch, AEA-530, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building # 111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553-4521.

SUPPLEMENTARY INFORMATION:

History

On January 6, 1995, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by modifying Class E airspace at Dunkirk, NY, (60 FR 2047). This action would provide adequate Class E airspace for IFR operations at Angola Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Class E airspace areas designations are published in paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies Class E airspace area at Dunkirk, NY, to accommodate a GPS RWY 19 SIAP, a VOR/DME or GPS A SIAP and for IFR operations at Angola Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designation and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA NY AEA E5 Dunkirk, NY [Revised]

Chautauqua County/Dunkirk Airport, NY
(Lat. 42°29'36" N., long. 79°16'19" W.)
Angola Airport, NY
(Lat. 42°39'37" N., long. 78°59'28" W.)
Dunkirk VORTAC, NY
(Lat. 42°29'26" N., long. 79°16'27" W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Chautauqua County/Dunkirk Airport and within 11.8-mile radius of the airport extending clockwise from a 022° to a 264° bearing from the airport and within a 6.3 mile radius of the Angola Airport and within 5.3 miles northwest of 051° radial from the Dunkirk VORTAC and within 5.3 miles northwest of the 231° radial from the VORTAC extending from the 6.3-mile radius to 9.9 miles southwest of the VORTAC.

* * * * *

Issued in Jamaica, New York on February 21, 1997.

James K. Buckles,

Acting Manager, Air Traffic Division, Eastern Region.

[FR Doc. 97-5436 Filed 3-4-97; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Laidlomycin Propionate Potassium

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Hoffmann-LaRoche, Inc. The supplemental NADA provides for use of dry laidlomycin propionate potassium Type A articles for making liquid Type B medicated feeds used to make dry Type C medicated feeds. The Type C feeds are for cattle fed in confinement for slaughter for increased rate of weight gain and improved feed efficiency.

EFFECTIVE DATE: March 5, 1977.

FOR FURTHER INFORMATION CONTACT: Russell G. Arnold, Center for Veterinary Medicine (HFV-142), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1674.

SUPPLEMENTARY INFORMATION: Hoffmann-LaRoche, Inc., Nutley, NJ 07110, filed supplemental NADA 141-025, which provides for use of Cattylyst® 50 (50 grams (g) per pound laidlomycin propionate potassium) dry Type A articles to make liquid, 100 to 2,000 g per ton (g/t) laidlomycin propionate potassium Type B feeds, used to make dry, 5 to 10 g/t laidlomycin propionate potassium Type C feeds. The Type C feeds are for cattle fed in confinement for slaughter for increased rate of weight gain and improved feed efficiency. The supplemental NADA is approved as of March 5, 1997, and § 558.305 (21 CFR 558.305) is amended to reflect the approval.

In addition, certain mixing directions for liquid feeds are required for use of laidlomycin propionate potassium liquid Type B feeds to make Type C feeds. Those directions had not been previously codified in the regulation. At this time, existing § 558.305(b) is redesignated as § 558.305(d) and new paragraph (b) is added to include those directions. New § 558.305(c) is established and reserved for future use.

The supplement is for a new formulation of an approved product used to make another approved product. Approval does not affect the basis of approval or the conditions of use of the currently approved application. No additional safety or effectiveness data are required. Therefore, a freedom of information summary is not required. A summary of safety and effectiveness data and information submitted to support approval of the original application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval does not qualify for marketing exclusivity because the supplement does not contain substantial evidence of effectiveness of the drugs involved, any studies of animal safety or, in the case of food-producing animals, human food safety studies (other than bioequivalence or residue studies) required for approval and conducted or sponsored by the applicant.

The agency has determined under 21 CFR 25.24(d)(1)(iii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

2. Section 558.305 is amended by redesignating paragraph (b) as paragraph (d), by adding new paragraphs (b) and (c), and by revising the title of redesignated paragraph (d)(3) to read as follows:

§ 558.305 Laidlomycin propionate potassium.

* * * * *

(b) *Special considerations.* (1) Laidlomycin liquid Type B feeds may be manufactured from dry laidlomycin Type A articles. The liquid Type B feeds must have a pH of 6.0 to 8.0, dry matter of 62 to 75 percent, and bear appropriate mixing directions as follows:

(i) For liquid Type B feeds stored in recirculating tank systems: Recirculate immediately prior to use for no less than 10 minutes, moving not less than 1 percent of the tank contents per minute from the bottom of the tank to the top. Recirculate daily as described even when not used.

(ii) For liquid Type B feeds stored in mechanical, air, or other agitation type tank systems: Agitate immediately prior to use for not less than 10 minutes, creating a turbulence at the bottom of the tank that is visible at the top. Agitate daily as described even when not used.

(2) The expiration date for the liquid Type B feed is 21 days after date of manufacture. The expiration date for the dry Type C feed made from the liquid Type B feed is 7 days after date of manufacture.

(c) [Reserved]

(d) * * *

(3) *Additional limitations.* * * *

Dated: February 6, 1997.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 97–5312 Filed 3–4–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 203

[Docket No. FR–4032–I–02]

RIN 2502–AG72

Single Family Mortgage Insurance—Loss Mitigation Procedures Suspension of Certain Provisions of Interim Rule

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Suspension of certain provisions of interim rule.

SUMMARY: This document suspends, until the date of publication of a final rule, the last sentence in introductory paragraph (a) of 24 CFR 203.355 and the second sentence in paragraph (f) of 24 CFR 203.402, which otherwise would have become applicable on March 1, 1997. This suspension is being issued to permit HUD to consider fully the public comments on these provisions before making them applicable. The suspended provisions relate to loss mitigation procedures for single family mortgage insurance.

DATES: Effective February 28, 1997, the last sentence of the introductory test of 24 CFR 203.355(a) and the second sentence of 24 CFR 203.402(f) are suspended.

FOR FURTHER INFORMATION CONTACT: Joseph McCloskey, Director, Single Family Servicing Division, Room 9178, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, (202) 708–1672, or, TTY for hearing and speech impaired, (202) 708–4594. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION: In an interim rule published on July 3, 1996 (61 FR 35014) to implement loss mitigation procedures under section 407 of The Balanced Budget Downpayment Act, I (Pub. L. 104–99, approved January 26, 1996) (Downpayment Act), delayed implementation dates were included for provisions in two sections so that HUD would be able to consider and address any public comments on these provisions before the prescribed implementation date. The reduction from nine to six months for taking action upon default of a mortgage in § 203.355(a), and the amendment to § 203.402(f) to permit varying the percentage of foreclosure costs or the costs of acquiring a property that are reimbursed, were made to apply only after March 1, 1997.

HUD has determined that it is appropriate to delay the implementation of these provisions until the publication of a final rule. Section 203.355(a) provides, in part, that "where the date of default is on or after March 1, 1997, the mortgagee shall take one of the following actions within six months of the date of default or within such additional time approved by HUD[.]" Section 203.402(f) provides, in part, that: "For mortgages insured on or after March 1, 1997, the Secretary will reimburse a percentage of foreclosure costs or costs of acquiring the property, which percentage shall be determined in accordance with such conditions as the Secretary shall prescribe."

Accordingly, HUD is providing notice that is suspending the provision contained in the last sentence of the introductory text of paragraph (a) of § 203.355 that reduces the foreclosure initiation time frame from nine months to six months for mortgages where the default date is on or after March 1, 1997. This will leave in place the nine-month time frame in effect prior to the July 3, 1996 interim rule until HUD issues a final rule.

In addition, HUD is providing notice that it is suspending the provision contained in the second sentence of § 203.402(f) that permits HUD to vary the percentage of foreclose costs or costs of acquiring the property otherwise reimbursed for mortgages insured on or after March 1, 1997. Under this suspension, HUD will continue to reimburse foreclosure costs or costs of acquiring the property otherwise (including costs of acquiring the property by the mortgagee and of conveying and evidencing title to the property to HUD, but not including any costs borne by the mortgagee to correct title defects) actually paid by the mortgagee and approved by HUD, in an amount not in excess of two-thirds of such costs or $75, whichever is the greater. This will leave in place the reimbursement rate in effect prior to the July 3, 1996 interim rule until HUD issues a final rule.

Dated: February 28, 1997.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 97–5457 Filed 2–28–97; 3:55 pm]

BILLING CODE 4210–27–M

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Issuance and Service of Subpoenas

AGENCY: National Labor Relations Board.

ACTION: Final rule.

SUMMARY: The Board is amending its rules to provide that the Executive Secretary may sign and issue subpoenas on behalf of the Board or any Member thereof and that the date of service of the subpoena for purposes of computing the 5-day period for filing a petition to revoke shall be construed as the date the subpoena is received.

EFFECTIVE DATE: March 5, 1997.

FOR FURTHER INFORMATION CONTACT: John J. Toner, Executive Secretary, National Labor Relations Board, 1099 14th Street, NW, Room 11600, Washington, DC 20570. Telephone: (202) 273–1940.

SUPPLEMENTARY INFORMATION: For approximately the last three years, the NLRB has been conducting an intensive internal review of its procedures at all levels of the Agency. The purpose of this internal review has been to find ways to maintain and improve the Agency's case-processing efficiency in light of the Agency's diminishing resources. Many initiatives have already been implemented by the Board as part of this ongoing review, such as the initiative authorizing the use of settlement judges and providing judges with the discretion to dispense with briefs and to issue bench decisions,

which was published as a final rule on February 23, 1996, following a one-year experimental period (61 FR 6940). See also the Board's recent, December 11, 1996, notice implementing certain proposed changes in the Board's advisory opinion rules and procedures (61 FR 65180).

Another, more technical, change that the Board has considered at the suggestion of Agency personnel involves the current process for issuing subpoenas. Under the current procedure, the Board supplies preprinted blank subpoenas bearing a seal and the facsimile signature of one of the current Board Members to the regional offices which, as required by Section 11 of the Act, automatically issue the subpoenas to the person requesting the subpoena. Although this procedure is perfectly proper (see *Lewis* v. *NLRB*, 357 U.S. 10, 14–15 (1958)), experience has shown that it may not be the most efficient procedure available to the Agency. The problem is that, because the Board Members serve out limited, 5-year terms, the preprinted subpoena forms containing a particular Board Member's facsimile signature will only be useable for the length of that Member's time in office, and will have to be destroyed and replaced after the Board Member's term expires or the Member otherwise vacates the position.

The Agency has attempted to minimize the number of unused subpoena forms which must be destroyed after a Board Member leaves by ordering a limited number of preprinted forms containing the facsimile signature of a particular Board Member, and by using those forms exclusively, before printing or using the forms containing the facsimile signature of the next most senior Board Member (i.e., the Board Member whose term is next scheduled to expire). However, notwithstanding these efforts, literally thousands of subpoena forms containing a former Board Member's facsimile signature often remain unused following the Member's departure. For example, at the conclusion of Member Cohen's term in August 1996, there were over 6,000 unused preprinted subpoena forms containing his facsimile signature stored at the Washington Headquarters alone, not counting those stored at the Agency's 50 regional and subregional offices.

In an effort to eliminate or at least reduce such an obvious waste of its increasingly scarce resources,[1] the Board has decided to amend Sections 102.31(a) and 102.66(c) of the rules to provide that the Board's Executive Secretary may sign and issue the subpoenas on behalf of the Board or any Member thereof.[2] As a career official, the Executive Secretary can reasonably be expected to serve for a longer period of time than any one Board Member.[3] Thus, it is expected that, by providing for issuance of subpoenas by the Executive Secretary, the frequency in number of times that the preprinted subpoena forms will need to be updated with a new facsimile signature will be significantly reduced.[4]

Finally, the Board has also decided to clarify §§ 102.31(b) and 102.66(c) of the rules by adding a provision in each section stating that the "date of service" of a subpoena for purposes of computing the 5-day period for filing a petition to revoke shall be construed as the date the subpoena was received. Although this has long been the Board's policy, it has never been clearly articulated by the Board in a published decision.[5] Further, it is an issue that has arisen with some frequency in recent years. Accordingly, the Board has decided to revise the foregoing sections to clearly set forth the Board's policy in this regard.

Regulatory Requirements

This rule relates solely to agency organization, procedure and practice, and will not have a significant economic impact on a substantial number of small businesses or impose any information collection requirements.

Accordingly, the Agency finds that prior notice and comment is not required for these rules and that good cause exists for waiving the general requirement of delaying the effective date under the Administrative Procedure Act (5U.S.C. 553), and that the rules are not subject to the Regulatory Flexibility Act (5 U.S.C. 601), Small Business Regulatory Enforcement Act (5 U.S.C. 801), Paperwork Reduction Act (44 U.S.C. 3501), or Executive Order 12866.

List of Subjects in 29 CFR Part 102

Administrative practice and procedure, Labor management relations.

29 CFR part 102 is amended as follows:

PART 102—RULES AND REGULATIONS

1. The authority citation for 29 CFR part 102 continues to read as follows:

Authority: Section 6, National Labor Relations Act, as amended 929 U.S.C. 151, 156). Section 102.117(c) also issued under Section 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A). Sections 102.143 through 102.155 also issued under Section 504(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1).

2. Section 102.31 is amended as follows:

(a) Paragraph (a) is revised;

(b) Paragraph (b) is amended by removing the first sentence of that paragraph and adding two sentences in its place as set forth below.

§ 102.31 Issuance of subpenas; petitions to revoke subpenas; rulings on claim of privilege against self-incrimination; supena enforcement proceedings; right to inspect and copy data.

(a) The Board, or any Member thereof, shall, on the written application of any party, forthwith issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence, or documents, in their possession or under their control. The Executive Secretary shall have the authority to sign and issue any such subpoenas on behalf of the Board or any Member thereof. Applications for

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[1] The per-unit cost of the subpoenas to the Agency is about 4 or 5 cents, depending on the particular subpoena form used, or about $1800 to $2500 per 50,000. Although this is obviously a relatively small cost in the Agency's overall budget, the Board recognizes its responsibility in these times of budgetary cutbacks to implement reasonable cost-saving measures wherever it may responsibly do so, regardless of their potential size or impact.

[2] Such a delegation is clearly lawful since, as indicated above, the issuance of subpoenas is mandatory under the NLRA, does not involve the exercise of any discretion, and is therefore a purely ministerial act. See *Lewis* v. *NLRB*, 357 U.S.C. 10, 14–15 (1958).

[3] For example, former Executive Secretary John C. Truesdale served in that position for a total of approximately 18 of the last 25 years (June 6, 1972–Oct. 25, 1997; Jan. 26, 1981–Jan. 23, 1994; and March 4, 1994–Dec. 22, 1994). Moreover, during four separate periods in the other 7 years, he served as a Board Member (Oct. 25, 1977–Aug. 27, 1980; Oct. 23, 1980–Jan. 25, 1981; Jan. 24, 1994–March 3, 1994; and Dec. 23, 1994–Jan. 3, 1996). Thus, if the instant new rule had been in effect during the past 25 years, his signature would have been valid not only during the 18 years that he served as the Executive Secretary, but also during those periods in the other 7 years when he was serving as a Board Member. Thus, no change in the subpoena form would have been necessary for virtually the entire 25-year period.

[4] The agency, of course, will also continue to study other possible ways to reduce the costs associated with issuing subpoenas, such as eliminating the carbon copy and computerizing the printing process so that the subpoenas may be printed on an as-needed basis.

[5] But see the administrative law judge's decision in *Champ Corp.*, 291 NLRB 803, 817 (1988), citing *NLRB* v. *C.E. Strickland*, 220 F. Supp. 661 (D.C. Tenn. 1962), affd. 321 F.2d 811 (6th Cir. 1963). Compare Section 102.112 of the Board's rules, which generally provides that the date of service under the Board's rules shall be the day when the matter served is deposited in the mail or with a private delivery service, is personally delivered, or, if by fascimile transmission, when the transmission is received.

subpoenas, if filed prior to the hearing, shall be filed with the Regional Director. Applications for subpoenas filed during the hearing shall be filed with the administrative law judge. Either the Regional Director or the administrative law judge, as the case may be, shall grant the application on behalf of the Board or any Member thereof. Applications for subpoenas may be made ex parte. The subpoena shall show on its face the name and address of the party at whose request the subpoena was issued.

(b) Any person served with a subpoena, whether ad testificandum or duces tecum, if he or she does not intend to comply with the subpoena, shall, within 5 days after the date of service of the subpoena, petition in writing to revoke the subpoena. The date of service for purposes of computing the time for filing a petition to revoke shall be the date the subpoena is received. * * *

* * * * *

3. Paragraph (c) of § 102.66 is amended by removing the first four sentences of that paragraph and adding the following seven sentences in their place as set forth below:

§ 102.66 Introduction of evidence; rights of parties at hearing; subpoenas.

* * * * *

(c) The Board, or any Member thereof, shall, on the written application of any party, forthwith issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence, or documents, in their possession or under their control. The Executive Secretary shall have the authority to sign and issue any such subpoenas on behalf of the Board or any Member thereof. Any party may file applications for subpoenas in writing with the Regional Director if made prior to hearing, or with the hearing officer if made at the hearing. Applications for subpoenas may be made ex parte. The Regional Director or the hearing officer, as the case may be, shall forthwith grant the subpoenas requested. Any person served with a subpoena, whether ad testificandum or duces tecum, if he or she does not intend to comply with the subopoena, shall, within 5 days after the date of service of the subpoena, petition in writing to revoke the subpoena. The date of service for purposes of computing the time for filing a petition to revoke shall be the date the subpoena is received. * * *

* * * * *

Dated, Washington, D.C., February 27, 1997.

By direction of the Board.

John J. Toner,

Executive Secretary.

[FR Doc. 97–5284 Filed 3–4–97; 8:45 am]

BILLING CODE 7545–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 901, 902, 904, 906, 913, 914, 915, 916, 917, 918, 920, 925, 926, 931, 934, 935, 936, 938, 943, 944, 946, 948 and 950

RIN 1029–AB86 and 1029–AB87

State Program Amendments

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is amending its regulations by revising the information currently reported in the Code of Federal Regulations (CFR) regarding the OSM Director's approval of amendments to State regulatory programs and abandoned mine land reclamation plans (hereafter State program amendments). This information is being condensed to a three-column tabular presentation providing the dates when State program amendments were originally submitted to OSM, the dates the OSM Director's decision approving all or portions of these amendments were published in the **Federal Register**, and the State citations affected by the amendments. This rulemaking will reduce the number of unnecessary pages in the CFR and make it a more useful document. As always, people interested in getting copies of the full text of the amended State regulatory program or abandoned mine land reclamation plan can contact the State regulatory authority office or the OSM field office with oversight authority for that State.

EFFECTIVE DATE: April 4, 1997.

FOR FURTHER INFORMATION CONTACT: John A. Trelease, Division of Regulatory Support, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW, Room 210 SIB, Washington, DC 20240; Telephone (202) 208–2783.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Final Rule and Responses to Comments
III. Procedural Matters

I. Background

The OSM Director's approval or approval in part of State program amendments is published in the **Federal Register** and codified in the CFR. The regulatory text documenting such decisions usually contained topical headings describing the amendments in a variety of forms, the associated program citations, the dates the amendments were submitted to OSM, and the dates the amendments became effective. The proposed rules published on May 8 and May 28, 1996, (61 FR 20768 and 61 FR 26477, respectively), would have limited the regulatory text to a two-column tabular presentation of the dates that the State program amendments were submitted to OSM and the dates the amendments were published in the **Federal Register** after approval, or partial approval, by the OSM Director for 30 CFR parts 901, 902, 904, 906, 913, 914, 915, 916, 917, 918, 920, 925, 926, 931, 934, 935, 936, 938, 943, 944, 946, 948 and 950.

This final rulemaking adds a third column to each table providing the State program citations affected by each program amendment. Where no citation is available or appropriate, a brief description is provided.

II. Discussion of Final Rule and Responses to Comments

Three commenters responded to the proposed rules, a citizens group and two trade associations. While neither association opposed the proposed goal of making the CFR a more readable document, they however argued that the rule should not be construed as being responsive to the regulatory reform required by the President's Regulatory Reform Initiative. While the formatting and informational changes promulgated by this rule may not meet all of the objectives of the Initiative, OSM believes that these changes are well within the discretion exercised by the Secretary for the last 20 years as to the nature of information published in the **Federal Register** and codified in the CFR documenting approval or approval in part of State program amendments.

One of the associations referenced its comments submitted in opposition to another earlier OSM rulemaking which had proposed deleting the whole text of State-Federal Cooperative Agreements from the CFR. (April 4, 1996, 61 FR 15005). OSM considers such comments to be inapplicable to the instant rule which provides as high or higher a level of meaningful State program amendment information as that provided under the prior rules.

Both associations and the citizens group contended that the proposed two-column format would not be useful to people researching the status of amendments, and would reduce the information currently available to the public. One of the associations suggested as a solution that a third column be added which would list the State citations affected by each amendment. In this way, the commenter believed that OSM would achieve the reform efforts of the proposed tabular format while maintaining its usefulness to people researching the status of State program amendments.

OSM accepts this last suggestion. In the final rule a third column has been added to each table labeled "Citation/Description." This column provides State citations or a brief description of the topic being affected by the State program amendment.

With the addition of the third column, the only category of information included in the prior State program amendment rules which is not being carried forward into the current rulemaking is the topical headings attributed to amended State program provisions. It is noteworthy that many of the early State program amendment rules did not include this type of topical information.

While some parties may have found the topical headings of the prior rules a convenient place to have begun research of a particular State program amendment provision, the topical headings most often supplied little useful guidance as to the actual nature or purpose of the amended provision. This was because the majority of amendments affect only a small portion of their topical headings. For example, the Illinois State program amendment submitted to OSM on July 26, 1990, and which became effective on May 6, 1991, listed four paragraphs of § 1778.13 as being amended: § 1778.13 (b), (c)(5), (i), and (j), but attributed to each paragraph the broader section heading of "Permit Applications; Identification of Interests." If a person was interested in the current requirements for the submission of information under § 1778.13, that person would have no indication from the prior rules" topical headings that such requirements were amended at § 1778.13(j). Under the final rule, as under the prior rules, people interested in researching a particular State program provision must continue to refer to an updated copy of that program to determine the precise language of the provision.

OSM anticipates that the public will find that elimination of the prior rules' topical headings allows for a more concise, readable format without a material lessening of the information needed for researching a particular program provision.

During the process of preparing the Citation/Description column, OSM found numerous instances where the State program citations listed in the CFR were either incomplete or incorrect. Pursuant to the discretion the Secretary has historically exercised as to the nature of State program amendment information published in the **Federal Register** and codified in the CFR, OSM has taken the opportunity in the final rule to correct all errors found and to include the complete State citations approved by the Director where possible.

III. Procedural Matters

Federal Paperwork Reduction Act

This rule does not contain collections of information which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Regulatory Flexibility Act

The Department of the Interior certifies that this revision would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Executive Order 12866

This rule is not significant under Executive Order 12866 and does not require review by the Office of Management and Budget.

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731 and 732 have been met.

List of Subjects in 30 CFR Parts 901, 902, 904, 906, 913, 914, 915, 916, 917, 918, 920, 925, 926, 931, 934, 935, 936, 938, 943, 944, 946, 948 and 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 20, 1997.

Kathrine L. Henry,

Acting Director.

For the reasons set out in the preamble, 30 CFR parts 901, 902, 904, 906, 913, 914, 915, 916, 917, 918, 920, 925, 926, 931, 934, 935, 936, 938, 943, 944, 946, 948 and 950 are amended as follows.

PART 901—ALABAMA

1. The authority citation for part 901 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 901.15 is revised to read as follows:

§ 901.15 Approval of Alabama regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register** and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the **Federal Register**.

Original amendment submission date	Date of final Publication	Citation/description
November 24, 1982	July 27, 1983	Recodification of ASMC Rules

Original amendment submission date	Date of final Publication	Citation/description
August 29, 1983	March 2, 1984	Ala. Code 9–16–75, 79(1)(a), 87(d), 89(h)(2), 90(b)(10)(b.1), 92(a)(4), 93(f), 94(a), (e), 95 (f), 99(2), 105; ASMC Rules 880–X–: 2A–.06(xx), (yy), (fff), (www)(5), (kkkkkk)(1); 5A–.02(1)(i), .17(1)(n), .18, .36; 8C–.09; 8D–.05(1)(b), (4); 8E–.06(2), (5)(a); 8F–.07, .08(1)(d), (p), (2), .09(2)(e); 8G–.05(1)(b), (4); 8H–.06(2), (5)(a); 8I–.07(1)(d), (2), (p), .08(2)(e), .09; 8J–.09(4)(i), .11; 8K–.05(4)(a), .12(1)(a), (b); 8N–.07, (c), .08, .09, .13(d); 10A–.03; 10B–.06(a); 10C–.03, .30 through .35, .34–4(e)(2), .64(3); 10D–.03, .28–32, .31–4(e)(2), .62(3); 10G–.01, .07(a); 10J; 11C–.02(1)(b), (2)(b)
November 28, 1983	July 5, 1984	ASMC Rules 880–X–8C–.06; 10C–.13, .17, .20, .27, .36; 10D–.13, .17, .20, .25, .33; Ala. revised systems Ch. V, §731.14(f), (g)(9).
January 9, 1984	September 27, 1984 ...	ASMC Rules 880–X–10C–.30(c); 10D–.28(3); 12A–.01 through .08; and other items.
May 22, 1985	July 19, 1985	ASMC Rules 880–X–2E
April 2, 1985	December 3, 1985	Staffing levels.
May 7, 1986	August 14, 1986	Ala. Senate Bill 445.
May 20, 1986	September 8, 1986	ASMC Rules 880–X–2A–.06, 8J–.11.
November 22, 1989	February 5, 1991	ASMC Rules 880–X–2A–.06; 2B–.01; 7B–.07; 7D–.10; 8A–.07; 8B–.06; 8C–.08; 8D–.08, .14; 8E–.05, .06, .10, .11; 8F–.08, .14, .18; 8G–.08, .14; 8H–.05, .06, .10, .11; 8I–.07, .14, .18; 8J–.04, .08; 8K–.05 through .09, .11 through .16; 8M–.07 through .12; 10B–.04, .05, .06; 10C–.08, .12, .14, .24, .26, .28, .37 through .49, .52 through .56, .58 through .61, .63; 10D–.08, .12, .14, .23, .24, .26, .34 through .45, .48, .49, .52, .53, .54, .55, .57, .59, .60, .61; 10F–.03; 10G; 10I–.04, .06; 11A–.04; 11B–.02; 11C–.02; 11D–.10; 11E.
July 16, 1990	February 28, 1991	ASMC Rules 880–X–2A–.07(1)(c); 2E–.01 through .11.
July 16, 1990	July 3, 1991	ASMC Rules 880–X–2A–.06, .07; 8B–.03; 8C–.01 through .07, .09, .10; 8F–.11, .17, .19; 8I–.12, .17, .19; 8J–.08; 9A–.04; 9B–.04; 9C–.03, (7), .04; 9D–.02; 9E–.05; 10B–.01, 02, .06, .07; 10C–.17, .20, .62, .67 through .71; 10D–.17, .20, .56, .65 through .69; 10G–.05.
November 22, 1989, July 16, 1990, August 1, 1991.	May 11, 1992	ASMC Rules 880–X–2A–.06, .07(3); 6A–.06; 8D–.05, .06; 8G–.05, .06; 8I–.10; 8K–.10, .11, .17, .18; 10C–.40, .45, .62; 10D–.56, .58; 11C–.02.
June 23, 1993	October 21, 1993	ASMC Rules 880–X–8D–.05(8), .09(2); 8F–.08(2)(j); 8G–.05(8), .09(2); 8I–.07(2)(j), .16(1); 8K–.10(1)(a); 10C–.41(1); 10J–.03(f); 12A–.07.

3. Section 901.25 is revised to read as follows:

§ 901.25 Approval of Alabama abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register** and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the **Federal Register**.

Original amendment submission date	Date of final publication	Citation/description
June 15, 1987	July 7, 1988	Alabama policies and procedures for land acquisition, management and disposal of property, and reclamation on private lands.
April 25, 1990	August 31, 1990	Emergency program.
June 26, 1992	January 12, 1993	Ranking and selection of AML projects.
October 1, 1993	June 30, 1994	Eligibility and definition of AML.
December 5, 1994	August 15, 1995	Ranking and selection of AML projects; administrative and management structure.

PART 902—ALASKA

4. The authority citation for part 902 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

5. Section 902.15 is revised to read as follows:

§ 902.15 Approval of Alaska regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register** and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the **Federal Register**.

Original amendment submission date	Date of final publication	Citation/description
November 12, 1983	December 23, 1983	Redesignation of title 11, Ch 90 of the AAC.
May 28, 1985, November 16, 1986, February 24, 1987.	February 22, 1988	11 AAC 90.065(b), .077(d), .331(a)(3), .461(f), .601 (d) through (g), .625, .627(a), (b), .751(a), .907(d), (g); Articles 15 through 17.

Original amendment submission date	Date of final publication	Citation/description
February 2, 1990	August 19, 1992	11 AAC 90.021(c), .023(a)(1), (2), (3), (b)(1), (2), .025(a)(1), (2), (b), (c), .041(a), (b), .043(b), (c), .045(b)(4), .057, .071(2)(D), .077(b)(5), (11), (d), .081(a)(1), (2), (3), (b), (c), .085(a)(1), (2), (3)(A) through (E), (4), (b)(3), (4), (c)(3), (4), (5)(A) through (D), .089(a), (c), .099(a), .101(c)(1), (2)(A) through (F), (3)(A), (B), (C), (4), (5)(A), (B), (6), .119(d), (e), .121(c), .125(a)(7) through (13), .127(4), (5)(A), (B), (C), (6), .129 (a)(6), (7), (8), .141(a)(1), .163(a)(2) (A) through (G), (b)(2), (3), (c)(1), (2), (3)(A), (B), .173(a)(1), (2), (3), .175(4)(D), .181(a)(5)(A), (B), (6), .185(a)(3), (4), (5), .207(c)(5)(C), .213(g), (h), .323(a) through (d), .325(b), (c), (d)(1), (2), (3), (g)(3), .327(b)(2), .331(b)(1), (2), (3), (c), (d)(2), (3), (4), (e), (f), (g), .333, .336(a), (b)(1), (2), (c)(1) through (9), (d)(1), (2), (3), (e), (f), .337(a), (b), (c)(1) through (7), (d), (e), (g), .338(1) through (7), .343, .345(a), (b)(1) through (5), (c), (d), (e)(1) through (6), (f) through (i), .349(2)(A), .353(a)(1), (2), (3), .371(d)(1) through (4), .373(b), (c), (d), .375(b), (e) through (h), .379(b), (c), (e) through (j), .381(a), (b), .391(b), (e), (g), (i), (k), (l), (m)(1) through (6), (n), (o), (p)(3) through (7), (q), (r), .395(a)(1) through (5), (b), .397(a), (b), (c)(1) through (5), (d) through (g), .399, .401(a), (b)(1), (2), (3), (c), (d), (e), .403, .405, .407(a) through (d), (f) through (i), .409, .435, .441(a), (b), (c), .443(a), (b), (c)(1)(A) through (F), (e)(2), (3), (4), (f) through (k), .451(b)(1), (5), .455(1) through (4), .457(b), (c)(5), .635(a), (b)(1), (2), (c), (d)(1), (2), (3), (e)(1), (2), (3), (f), (g), (h), .703(e), .705(a) through (e), .901(c), .907(b), (i), .911(18) through (21), (51), (110), (118), (122).
January 26, 1995	September 17, 1996 ...	11 AAC 05.010(a)(11)(D), 90.002, .003, .011, .025(a), (b), (c), .045(a), .049(2), (D) through (H), .083(b)(10), (11), (12), (3), (b), (c), .097, .099, .149(d), (1), .163(a), (b), (1), (c), (3)(B), (4), (5), .207(f)(1), (2), (4) through (7), .337(f), .345(e), .375, .391(b), (h), .401(e), .407(e), .409, .423(b), (h), .443(d)(1), (k), .491(a), (1), (6), (7), (8), (c)(4) through (8), (e), (f), .901(e), .907(c) through (h), (j).

6. Section 902.25 is revised to read as follows:

§ 902.25 Approval of Alaska abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register** and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the **Federal Register**.

Original Amendment submission date	Date of final publication	Citation/description
May 28, 1992	November 16, 1992	Emergency response reclamation program.

PART 904—ARKANSAS

7. The authority citation for part 904 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

8. Section 904.15 is revised to read as follows:

§ 904.15 Approval of Arkansas regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register** and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the **Federal Register**.

Original amendment submission date	Date of final publication	Citation/description
December 7, 1983	March 16, 1984	ASCMRC 771.25 (a)(2); 776(c)(1), (2), (4), (5)(i), (ii); 842(c).
May 21, 1985	August 15, 1985	ASCMRC 843.12; 845.18 through .20.
December 17, 1984	December 2, 1985	ASCMRC 816.61–S, –U, .62, .64, –U, .65, .67, .68; 850.1, .5, .12 through .15.
March 10, 1986	March 28, 1988	ASCMRC 701.5; 761.12(b)(2), (e)(1), (2), (3); .15; 762.5; 764.13, .15(a)(1); 771.23(c)(4); 776.12, (a)(3)(vi), .14(a); 778.14(c); 779.14(a), (b)(1), .17; 780.18(b)(4), .21; 784.20(a)(1), (2), (b)(1), (e); 785.13(e), (5), (i), (j), (k), .17(b)(1)(ii); 786.1(d), .11(a), .15(a)(4), .16(a), .17(a)(1), .19(d)(8), .29(c); 788.18(d); 795.13, .14(d)(4), .19(a)(5); 800.11(h), .13(g); 805.13(b), .14(a); 806.11(b), (d)(2)(v); 807.11(d)(2)(v); 808.14(c); 815.15(a); 816.41(d), .42(a)(7), .43, .44(b)(3), .46, .49, .52(a)(4), .53, .55(d), .57(a)(2), .71 through .74, .79, .81, .83, .84, .87, .89, .97(b), (d)(10), .102(a)(2), (b), (f), .107, .111, .116, .126–U(a), (e), (f), .133(b)(1), .150, .151; 819.11(c)(1), (2); 823.12(a)(1), .15; 826.12(c); 827.11; 842.16(a); 843.11(a)(2), (3); 845.12(b), .13(b)(2), .15(b)(1)(i), (ii), (2); 1000(6), (10), (13), (16), (19), (51).
November 4, 1987	June 1, 1988	ASCMRC 776.12(a)(3), (b); 780.31; 786.19(p).
December 22, 1988	November 14, 1989	ASCMRC 705.11(a), .13(a), .15; 780.16(b)(3)(i), (ii), (c); 784.21; 816.97(b); 817.97; 846.1, .5, .12, .14, .18; 1000(50).
December 18, 1989	November 23, 1990	ASCMRC 778.13(a), (5), (6), (7), (b), (1) through (5), (c), (g), (h), .14(c), (d); 786.5(c), .17(c), (d), .19(i), .27(d), .30(a), (b), (c), .31(a), (b), (c); 843.11(g).
September 20, 1990 ...	June 14, 1991	ASCMRC 700.10(d), part 702.

Original amendment submission date	Date of final publication	Citation/description
September 27, 1990 ...	July 18, 1991	ASCMRC 700.10(a); 701.5; 776.11(b); 780.21(f), .37(f), (g), (h), .38; 784.27; 800.11(b)(2); 815.15(c)(2), (3), (4), .17(a), (b); 816.49(b)(7), (c)(2), .84(b)(2), (f), .116(b)(3), (c)(4), .117, .150 (b), (d), (f), .152(a), (c); 1000(d)(2), (8), (30) through (36), (44), (47).
October 11, 1991	April 23, 1992	ASCMRC 816.116(c)(2).
April 11, 1991, September 25, 1991.	August 19, 1992	ASCMRC 701.5, .11(c)(1); 707.12; 761.5 defining VER and public roads; 764.15(a)(7); 770.5, .6(a), (b), (c); 771.23(e)(1), (2); 772; 779.11, .12(a), (b), .15(a), .16(a), (b)(2), .17, .18(a), .20(a), .21(a), .22(a), (c), .24(g), (k), .25, .25(d) through (h), (j), .27(a), (b)(5), (d)(1), (2); 780.11, .14(b), (2), .18(b)(3), .23(b), .25(a), (b), .37(e); 783.14(a) through (d); 785.16(a), .17(a), (b); 786.5(b), .14(b)(3), .19(c); 788.13(b); 805.13(d); 806.12(e)(6)(iii), (g)(7)(iii); 808.12(c), .14(a), (b); 810.11; 815, .2(b), (c), .11(c), .15(a) through (d), (f) through (k); 816.13, .41(a), .43(e), .51–S(b), .52(a)(1), (2), .54, .65(f), .95(a), (b), .101(b)(1), .102(a), (g), .103, .104(a), (b), (3), .106, .107, .115, .133(c); 823.1, .14(c); 826.12(b); 827.12(m); 828.11(e), .12(a); 1000(d)(1), (3), (4), (5), (7), (9), (11), (12), (14), (15), (17), (18), (20) through (29), (37) through (43), (45), (46), (48), (49).
March 31, 1993	November 17, 1994	ACA 15–58–104(11), 503(a)(2)(A), (B), (C).
August 26, 1994	June 30, 1995	ASCMRA 4(18), (19), 5(b)(1), 13(k).

9. Section 904.25 is revised to read as follows:

§ 904.25 Approval of Arkansas abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register** and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the **Federal Register**.

Original amendment submission date	Date of final publication	Citation/description
March 31, 1993	July 19, 1993	ACA 15–58–401(b), (c).
October 6, 1993	January 5, 1994	ACA 15–58–401(b)(2).

PART 906—COLORADO

10. The authority citation for part 906 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

11. Section 906.15 is revised to read as follows:

§ 906.15 Approval of Colorado regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register** and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the **Federal Register**.

Original amendment submission date	Date of final publication	Citation/description
January 11, 1982, February 25, 1982.	December 16, 1982	2 CCR 407–2, 1.03.3(2), 1.03.4(2)(a); 2.02.2(3); 2.03.4(3); 2.05.3(6), .4(2)(c), .6, .6(3)(a), (c), .6(4), .6(6)(f); 2.06.12, .5(1), .6(2)(j), .8(3)(b), .8(5); 2.08.4(1)(f), .4(5)(b), (c); 3.02.1(5)(b); 3.05.1(1)(a), .1(7); 4.05.2(2), .3(5), (6), .4, .6(3)(c), .6(9); 4.06.5; 4.15.7(2)(d), .8(7), (8); 4.16.2(1); 4.21.2(1), (2); 5.03.6.
January 11, 1982, February 25, 1982, May 26, 1983, August 2, 1983.	May 1, 1984	CRS 34–33–108, 2 CCR 407–2, 1.13, 2.07.6(3), 4.05.2(7).
August 28, 1985	November 15, 1985	CCR 407–2, 5.03.2(1), 5.04.5(2)
August 28, 1984, March 12, 1985.	February 5, 1986	2 CCR 407–2, 1.04(95), (111); 1.14; 1.15; 2.02.1, .2(2), .(g), .3(1)(c), (e); 2.03.5(3), .9(1); 2.04.4, .8(1), .9(1), .10(4), .12(1), (2), (4), 2.05.3(4)(a), .5(1)(a); 2.07.5(1)(b); 2.10.1(1), (2), (3), .2(4), .3(1); 4.03; 4.06.1(2), .2(1), (2)(a), (4)(a), .4(1); 4.07.1(2), .3(1), (2); 4.08.3(2)(b), .4(1)(b), .4(10), .6(2); 4.15.1(2)(a), (d), .1(4), .2, .4, .5, .6(3), .8(2), (3), (4), (7), (8), .9; 4.16.2, .3; 4.18(3), (4); 4.21.1, .4(1); 4.30.1(2); 5.02.2, 5.03.2(2), 5.04.6(4).
January 23, 1986	May 30, 1986	2 CCR 407–2, 5.03.3(2)(b).
January 27, 1986, May 13, 1986.	July 1, 1986	2 CCR 407–2, 1.04; 6.01–4; blaster training program; blaster certification examination.
August 18, 1986	February 5, 1987	2 CCR 407–2, 2.02.2(2)(g); 2.04.12(1); 2.10.1(1); 4.06.1(2), .2(2)(a), .2(4)(a); 4.21.4(1); The Handbook Memorandum, "Alternative to Topsoil Stockpiles," which interprets 4.06.1(2).
November 25, 1986	May 7, 1987	2 CCR 407–2, 4.15.7(2)(d).
May 26, 1987	March 31, 1989	2 CCR 407–2, 1.04(25), (57), (59), (71), (116), (120), (153); 1.05.1; 2.03.7(3); 2.04.9(1), .12; 2.05.4(2), .6(6)(f); 2.06.2(4), (5), (8), (9), (10), .6(1), (2); 2.07.6(2)(d), (e); 3.02.1(4), (5), (6), .2(4), .4(1), (2); 3.03.1(2), .2(5), (6); 3.04.2(5), (6); 4.06.2(2), (4), (5), (6); 4.15.1(1), .2, .7(2), (3), .8(2), (3), (4), (7), (9); 4.18; 4.20.1(3), .4(1), (3); 4.25.5(2), (3); 5.02.4(1); 5.03.3(5); 5.04.3(2), (3); 7.03(3)(f); 7.04(5); 7.06.2(1), (2), .3(1), (2), .5(2).

Original amendment submission date	Date of final publication	Citation/description
October 14, 1988	June 6, 1989	2 CCR 407–2, 2.05.6(4)(b), 2.07.6(2)(e), 2.10.3(1)(g).
August 23, 1988	December 11, 1989	2 CCR 407–2, 1.04; 2.02.3, .5; 2.03, .3, .5; 2.04.4, .6, .7, .13; 2.05.3, .4, .8; 2.06.3, .7, .8; 2.07.3, .4, .5; 2.08.4, .5, .6; 2.09.2, .3, .5, .6, .8; 2.10.3; 3.02.4; 3.03.2; 4.05.1 through .6, .8, .9, .13, .16; 4.07.2; 4.08.1, .2, .4, .5, .6; 4.09, .1 through .4; 4.10, .1 through .4; 4.11, .1 through .5; 4.14.1, .2, .6; 4.17; 4.21.4; 4.24.2 through .5; 5.04.3; 7.08.
July 18, 1989	January 14, 1991	2 CCR 407–2, 1.01(9); 1.04(64), (70a), (83a), (115), (153); 1.10.2(2), .4(1); 2.02.3(1)(c), .7(2)(a); 2.03.4, .5(3), (4); 2.04.7(1)(a); 2.05.3(4)(a), (b), .6(2)(c); 2.06.8(3)(c); 2.07.6(1)(b),(d), (2)(h), (10)(c), .7(4), (5); 4.05.3(1), (7), (8), (9), .4(1), (2)(b), .6(3)(c), (d), (e), (4), (5), (6), (11), (11i), (11j), (11k), (12), (13), (13b), .8(1), (2), .9(1)(a), (e), (f), (3), (3a), (3b), (4), (5), (12), (13), (13c); 4.08.1(3), .4(6)(c), .5(4)(c), (11); 4.09.1(10), .2(2)(a), (3); 4.11.5(3)(b), (d); 4.21.4(7), (7)(c); 4.23.2(7); 4.25.1(2); 5.02.2(4)(b); 5.03.2(1)(d), .5(1)(d), (4)(e); 5.04.7(2), (3), (4).
April 11, 1991	July 22, 1991	2 CCR 407–2, 3.03.3; 4.05.3(1)(c), (d), (e), .8(1); 4.14.1(1)(e); 5.02.2(8), (9); 5.04.(7)(1).
March 19, 1993	January 19, 1994	2 CCR 407–2, 1.04(103a); 4.14.1(2)(a), (f), (g), (h), .2(1), (1a), (1b); 4.27.4, (1).
June 30, 1993	June 1, 1994	2 CCR 407–2, 1.04(111) through (111c); 2.05.3(3)(a), (c), (9)(a), (10)(a) through (e), .4(2); 4.03.1(1)(a), (b), (d), (e), (2)(b), (3)(c), (e), (6)(c), (7)(a), (b), .2(1)(a), (b), (e), (f), (2)(b), (3)(c), (e), (6)(a), (c), (7)(a), (b), .3(1)(a), (b), (2)(b), (3)(c), (6)(c), (7)(i); 4.08.4(10) through (b), .6(1); 4.09.3(2)(c); 4.11.4(3); 4.14.2(2), (c); 4.21.4(3)(b), (c), (d); 4.26.2(2), (b), (c); Policy statements in the 11/03/93 revised amendment, "Statement of Basis, Specific Statutory Authority and Purpose".
April 18, 1994	December 6, 1994	2 CCR 407–2, 1.04(25), (116); 3.02.1(4), (7), .2(4)(b), (d), .4(1)(b), (c), (2)(b) through (e); 3.03.1(2), (3)(b), (d), (e), .2(1)(b), (2), (4)(c), (5)(a), (b); 3.06; 4.15.10(2), (3); 4.25.5(3)(a).
March 18, 1994	May 15, 1995	Memorandum of Understanding (MOU).
July 12, 1995	December 14, 1995	2 CCR 1.04(21), (80), (92), (111), (132), .05.1(1)(b); 2.03.3(4), .7(1), .05.3(3)(c)(iv), (8)(c), .6(2)(iii)(A), .06.6(2), .8(5), (c)(i)(A), (B), .07.2; 3.02.2(5), .3(c), .4(1)(b)(2), (c)(ix), (1)(d), (i); 3.03.1(2)(b); 4.08.6(1), .15.10(3), .20.3(2).
November 20, 1995	February 21, 1996	2CCR 5.03.6, (4)(e).

12. Section 906.25 is revised to read as follows:

§ 906.25 Approval of Colorado abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register** and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the **Federal Register**.

Original amendment submission date	Date of final publication	Citation/description
April 29, 1985	January 9, 1986	Reclamation of noncoal sites.

PART 913—ILLINOIS

13. The authority citation for part 913 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

14. Section 913.15 is revised to read as follows:

§ 913.15 Approval of Illinois regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register** and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the **Federal Register**.

Original amendment submission date	Date of final publication	Citation/description
March 3, 1980	November 23, 1982	62 IAC 1823.14(a).
November 30, 1982	May 25, 1983	62 IAC 1807.11(d), 1816.64(a).
July 27, 1983	October 13, 1983	62 IAC 1786.19(h).
August 11, 1983	November 10, 1983	62 IAC 1817.65, 1843.12.
March 16, 1984	September 28, 1984 ...	62 IAC 1785.17(a).
September 27, 1984 ...	January 11, 1985	62 IAC 1816.190, 1817.190.
December 23, 1983	October 30, 1985	62 IAC 1850.
May 30, 1985, June 2, 1986.	December 10, 1986	62 IAC 1816.111 through 117, 1817.111 through 117, 1823, 1825.
March 28, 1986, May 22, 1987.	October 25, 1988, January 4, 1989.	62 IAC 1700, 1701, 1705, 1760, 1761, 1762, 1764, 1770 through 1780, 1782 through 1788, 1795, 1800, 1801, 1805 through 1808, 1815 through 1819, 1824 through 1828, 1840, 1843, 1845.

Original amendment submission date	Date of final publication	Citation/description
July 17, 1989	August 29, 1990	62 IAC 1700.11; 1701; 1761.11; 1761.12; 1772.12; 1773.5, .11, .15, .17, .19, .20, .21; 1774.15, .17; 1778.13, .14; 1779.12; 1780.16, .21, .31; 1783.12; 1784.14, .17, .21; 1800.21, .40, .60; 1816.49, .61, .64, .67, .68, .83, .97, .99, .102; 1817.49, .61, .64, .66, .67, .68, .83, .97, .122; 1843.11; 1846.
July 26, 1990	May 6, 1991	62 IAC 1700.11(d), (e); 1761.11(a), .12; 1772.12(b)(8)(D); 1773.15(b)(1), .20(b)(2)(B), (c)(2), .21(b); 1778.13(b), (c)(5), (i), (j), .14(c), (e); 1779.12, (b); 1780.16(a)(1)(B)(i), .21(f)(3)(C), (D)(v), .31(a)(1), (b); 1783.12(b); 1784.14(e)(3)(C)(v), .17(a)(1), (b), .21(a)(1)(B)(i), (2)(C); 1800.21(d), .40(a)(2), (b)(2), (e); 1816.49(a)(1), (10), .67, .97(b); 1817.49(a)(1), (10), .66(d), .67, .97(b); 1843.11; 1846.5, .14(a)(3).
March 5, 1991	August 2, 1991	1773.19(b)(1), (2), (3); 20 ILCR 720 §2.11(d).
February 1, 1991	December 13, 1991	62 IAC 1700.11(a), (a)(2), (c); 1701, appendix A; 1702; 1761.11(a), (d)(2), .12(c), (1), (2); 1772.11(b)(5), 14(a), (b); 1773.5, .11(a), (b)(1)(C), .15(b)(1), (B), .17(h); 1774.13(b)(1); 1778.14(c); 1780.16(b)(3)(B), .21(f), .37(a)(5), (7), (b), .39; 1784.14(e), .21(a)(2)(C), .24(a)(5), (7), (b), .30; 1816.49(a)(1), (3)(A), (B), (5)(A), (10)(B), .68(a)(18), (19), .84(b)(2), (f), .111(a)(4), (b)(1), (5), .116(a)(2)(C), (D), (E), (3), (C), (D), (E), (4)(A)(iii), (D), (b)(2), .117(a), (1), (3), (5), (b), (c), (d)(1) through (6), .150 (a) through (f), .151, appendix A; 1817.49(a)(1), (3)(A), (B), (5)(A), (10)(B), .68(a)(18), (19), .84(b)(2), (f), .116(a)(2)(C), (D), (E), (3), (C), (D), (E), (b)(2), .117(a), (1), (3), (5), (b), (c), (d)(1) through (6), .150 (a) through (f), .151; 1823.14(g), .15(b)(3).
June 22, 1992	September 3, 1993	62 IAC 1701, Appendix A; 1702.11(a)(2), (f)(1), (2), .17(c)(1), (2), (3); 1705.21; 1761.11(g), .12(b)(2), (c), (4), (d)(1), (g); 1764.19(d); 1772.12(e)(2); 1773.13(a)(1)(E), .15(b)(1)(B), (3), (c)(12), (d), .20(b)(2)(B), .21(c); 1774.11(c), .13(b)(2)(E), (d)(2), (4), (5), .15(f); 1775; 1777.17(a) through (d); 1778.15(a), (e); 1779.19(b); 1780.21(b)(1)(B), .38; 1783.19(b); 1784.14(b)(1)(B), .27; 1785.13(a), (g); 1800.11(a), .40(a)(3), (e), (f) through (h), .50(c)(2) through (5); 1816.49(a)(9)(B), (c)(2), .84(b)(2), .116(a)(3)(A) through (E), (b)(2), .117(a)(1), (2), (5), (d)(6), .151(b); 1817.49(a)(9)(B), (c)(2), .84(b)(2), .116(a)(3)(A) through (E), (b)(2), .117(a)(1), (2), (5), (d)(6), .151(b), .182(d); 1827.12(b); 1843.12(i), .13(c), (e) through (k), .14(a)(2), .15(a), .16, .17, .20, .21; 1845.12(c), (d), .13(b)(4)(A) through (D), .17(b), (b)(2)(B), (c), .18(a)(2), (c), .19, .20(a); 1846.17(b)(1), .18(b); 1847.1 through .9; 1848.1, .2, .3, 5 through .9, .11, .12, .13, .15 through .22.
August 17, 1993	February 2, 1994	225 ILCS 720 §§2.11 (a), (b), (c), (g); 6.01(b).
September 9, 1994	November 21, 1994	225 ILCS 720, §§2.02(b); 3.15(e); 9.07(a).
March 3, 1995	July 11, 1995	Executive Order Number 2, §§I(C), II(C), III, IV(F).
February 3, 1995	May 29, 1996	62 IAC 1700.11, .16; 1701.Appendix A; 1761.11; 1772.11, .12; 1773.15, .20, .22 through .25; 1774.13; 1778.15; 1779.25; 1780.23; 1783.22; 1784.15; 1785.17, .23; 1795.1, .4, .6, .9, .12; 1800.5, .20, .21; 1816/1817.13, .22, .41, .46, .79, .97, .116, .117, .151, 190; 1816. Appendix A; 1817.121; 1825.14; 1840.11, .17; 1843.13, .23; 1845.12; 1847.3, .4 through .7; 1848.5; 1850.14 through .17.
March 4, 1996	July 18, 1996	Self-bonding; 62 IAC 1800.4(c) through (f); 1800.5(c); 1800.11(a), (e); 1800.23.

15. Section 913.25 is revised to read as follows:

§ 913.25 Approval of Illinois abandoned mine land reclamation plan amendments.

(a) You may receive copies of the Illinois Abandoned Mine Land Reclamation Plan and amendments from the:

(1) Illinois Department of Natural Resources, Office of Mines and Minerals, Division of Abandoned Mine Lands Reclamation, 524 South Second Street, Springfield, Illinois 62701–1787; or

(2) Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, Minton-Capehart Federal Building, room 301, 575 North Pennsylvania Street, Indianapolis, Indiana 46204.

(b) The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register** and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the **Federal Register**.

Original amendment submission date	Date of final publication	Citation/description
January 19, 1984	June 11, 1984	Emergency reclamation program.
September 6, 1989	February 14, 1990	Non-coal reclamation.
June 29, 1990	November 2, 1990	Procedures for public participation, ranking and selection of reclamation projects, liens, bids and contracts.
August 13, 1992	January 14, 1993	Ch. 96½, par. 8001.03; 8002.13.
July 2, 1993	September 21, 1993	20 ILCS 1920 §§2.11, .13; 62 IAC 2501.37.
April 10, 1995	July 11, 1995	Executive Order No. 2 (1995), Part I(C); Part II(D); Part III(A), (C); Part IV(F).

PART 914—INDIANA

16. The authority citation for part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

17. Section 914.15 is revised to read as follows:

§ 914.15 Approval of Indiana regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register** and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the **Federal Register**.

Original amendment submission date	Date of final publication	Citation/description
September 1, 1982	December 17, 1982	Revision to permit application forms to require applicant to certify that all reclamation fees had been paid.
December 9, 1982	March 4, 1983	310 IAC 12–2–7, –9; 12–3–1, –12(c)(2), –21(b)(4), –25, –37(a), –47(b), –48, –59(b)(4), –74(a), –81, –97, –102(c); 12–4–5, –10(e)(1), –16; 12–5–3, –18, –24(f), –51, –84, –90(f), –115, –123(b), –149, –152; 12–6–6(d), (f), –6.5, –16(b)(3)(ii); 12–7–4(f).
April 19 and 28, 1983	August 19, 1983	IC 13–4.1–2–3, 13–4.1–4–5(c), 13–4.1–7–5, 13–4.1–11–11(i), 13–4.1–14–2(a); 310 IAC 12–1–3; 12–3–12, –39, –63, –76, –112, –118; 12–4–3, –4, –7, –17; 12–5–19, –36, –41, –71.5, –85, –101, –105, –139.5; 12–6–1, –4, –5, –6.5, –9, –15, –16.
March 5, 1984	July 10, 1984	IC 13–4.1–2–4, 13–4.1–3–3, 13–4.1–4–3, 13–4.1–5–7.
March 19, 1984	October 19, 1984	310 IAC 12–2–8; 12–3–43, –118; 12–5–6, –34, –35, –36, –38, –40; 12–5–73, –100, –100.5, –101, –103.
February 7, 1985	May 13, 1985	IC 13–4–6–1.5, –1.6; 13–4.1–1–7; 13–4.1–3–1, –3.5; 13–4.1–5–8; 13–4.1–6–9; 13–4.1–8–1; 13–4.1–10–1; 13–4.1–12–1, –2.
December 7, 1984	May 15, 1985	310 IAC 12–2–11; 12–3–46, –80, –96, –97, –98; 12–5–3, –6, –11, –12, –12.1, –13, –14, –15, –18, –19, –20, –21, –23, –24, –44, –54, –54.1, –55, –55.1, –56, –56.1, –57, –57.1, –69, –73, –77, –78, –78.1, –79, –80, –81, –84, –85, –86, –87, –89, –90, –108, –118, –119, –119.1, –120, –121, –121.1, –137, –147, –150, –150.1, –151, –152, –153, –154; 12–6–2, –9.1.
May 29, 1984	May 16, 1985	310 IAC 0.5; Policy statement dated October 16, 1984.
February 18, 1985	June 5, 1985	310 IAC 12–3–26, –64, –106, –107, –108.
December 10 and 16, 1985.	March 14, 1986	310 IAC 0.5–1–1 through –5, –8 through –13, –15 through –19; 12–5–148; advisory letter from Indiana State Office of the Attorney General dated April 23, 1985.
September 4, 1985	March 17, 1986	310 IAC 12–1–3; 12–5–33, –99; 12–8–1 through 12–8–9; blaster training program.
January 31, 1986	May 13, 1986	310 IAC 12–3–121; 12–5–34, –36, –100, –101; 12–6–11, –12, –12.5.
May 29, 1986	August 14, 1986	310 IAC 12–3–8.
September 24, 1986	January 21, 1987	310 IAC 12–5–56.1, –121.1.
June 11, 1986, November 7, 1986.	April 1, 1987	IC 4–21.5; 4–22–1; 13–4–6–9; 13–4.1–1–3, –5; 13–4.1–3–3, –4, –6; 13–4.1–4–1, –3, –7; 13–4.1–7–1, –5, –6; 13–4.1–8–1; 13–4.1–11–5, –6, –8, –12; 13–4.1–14–1; 310 IAC 12–8–4, –8.
June 11, 1986, May 4, 1987.	February 16, 1988	IC 13–4.1–1–8, 13–4.1–3.2, 13–4.1–6–8, 13–4.1–12–6.
April 10, 1987	March 22, 1988	310 IAC 12–5–12.1(a)(3)(i), –78.1(a)(3)(i).
August 13, 1987	November 10, 1988	IC 13–4.1–6–4; 13–4.1–11–3, –4.
August 13, 1987, June 12, 1989.	October 11, 1989	310 IAC 12–1–3; 12–2–7; 12–3–104, –104.1; 12–5–155, –156.
September 28, 1988	November 1, 1989	310 IAC 12–5–18, –19, –84, –85.
March 18, 1988	December 15, 1989	IC 13–4.1–11–10, 35–44–1–3.
November 8, 1989	April 5, 1990	IC 13–4.1–10–3.
March 18, 1988	April 23, 1990	IC 13–4.1–6–5, 13–4.1.6.3–1 through –13.
December 5, 1989, May 16, 1990.	August 10, 1990	310 IAC 12–3–111; 12–5–148; 12–6–8, –9, –16; 12–8–9.
December 4, 1989, August 9, 1990.	September 24, 1990	IC 13–4.1–2–2, 13–4.1–11–5.
August 15, 1989, December 5, 1989.	January 18, 1991	310 IAC 0.6–1, 12–6–6.5.
October 24, 1990	March 15, 1991	Intervention in hearings by those who may be adversely affected by the outcome of the proceedings.
December 11, 1990	March 21, 1991	310 IAC 12–0.5, 12–0.5–25(c), 12–1–3.
September 29, 1988, February 15, 1991.	August 2, 1991	310 IAC 12–5–29, –94; IC 4–26–3–27.8; 13–4.1–2, –4, –5; 14–3; Non-code provision at § 46 of Senate Enrolled Act 362 concerning the Bureau of Mine Reclamation.
June 4, 1991	November 27, 1991, December 13, 1991.	IC 13–4.1–3–2; 13–4.1–6–9; 13–4.1–6.3–11(2), –13; 13–4.1–10–1; 13–4.1–11–6.
July 11, 1991	December 13, 1991	310 IAC 0.7–3–5.
March 18, 1988	April 20, 1992	IC 13–4.1–6–8, 13–4.1–6.5.
May 22 and 23, 1991	May 29, 1992	310 IAC 12–5–64, –64.1 through .3, –65, –128, –128.1 through .3, –129.
June 4, 1991	June 23, 1992	IC 13–4.1.
May 23, 1991	September 14, 1992	310 IAC 12–5–145 through –148, –148.5.
May 7, 1992	December 17, 1992	310 IAC 12–3–8, –9; 12–8–4, –8; 12–9–1 through –4.
March 18, 1988, February 15, 1991, July 10, 1991.	December 30, 1992	IC 13–4.1–1–3; 13–4.1–2–4; 13–4.1–3–3, –3.1; 13–4.1–4–2, –3.1, –5; 13–4.1–14–1; SEA 121, § 8; 310 IAC 12–0–5–48; 12–0.5–59; 12–2–1, –2; 12–3–13, –29, –38, –52, –67, –75, –84, –112, –121.
July 16, 1992	January 14, 1993	IC 13–4.1–1–1, 13–4.1–3–2(c), –3(c), –3.5(a)(1), (5).
December 2, 1992	May 17, 1993	310 IAC 12–3–87.1; 12–5–130.1, –131.1.
November 13, 1992	June 24, 1993	310 IAC 12–0.5; 12–3–19, .1, –20, –111, –112, –119.5, .6; 12–6–5.
January 4, 1993	August 2, 1993	310 IAC 12–5–64.1 through .3, –128.1, .3; –145; –148.5.

Original amendment submission date	Date of final publication	Citation/description
March 26, 1992	August 16, 1993	310 IAC 12–0.5–6, –32.5, –90.5, –91.5; 12–2–6, –7; 12–3–6, –30.5, –33, –46.5, –47, –57, –68.5, –71, –78, –80.5, –81, –94, .1, –98, –106, –110, –116, –127, –128, –131; 12–4–3, –16; 12–5–16, –24, –27, –30, –32, –39, –42, –43, .1, –48, –51, .1, –57.5, –82, –92, –95, –97, –99, –100, –104, –106, –107, .1, –115, –119.1, –121.5, –131, –144.
August 8, 1992	September 3, 1993	310 IAC 12–0.5–5.5, –32.6, .7, .8, –72.5, –78.5; 12–1–5 through –12.
April 19, 1993	September 21, 1993	IC 13–4.1–1–5, 13–4.1–6.5–8(d).
February 24, 1993	November 18, 1993	310 IAC 0.6–1–5, –13; 0.7–3–5; 12–6–6.5.
July 2, 1993	June 16, 1994	310 IAC 12–0.5–6, –23, –53, –55, –64, –72, –104, –111, –116, –139.
April 2, 1993	July 15, 1994	310 IAC 0.6–1–2, .5, –9, –17.
October 1, 1993	July 27, 1994	310 IAC 13–4.1–4–3(a)(10).
June 15, 1994	October 20, 1994	310 IAC 0.6–1–5, –13; 0.7–3–5.
August 11, 1994	December 13, 1994	310 IAC 12–4–16(c)(3).
September 26, 1994	February 2, 1995	Amendment #94–4 to the Indiana program to correct typographical, clerical, spelling errors.
December 7, 1994	March 10, 1995	310 IAC 12–8–4.1, –8.1.
March 21, 1994	April 4, 1995	IC 13–4.1–6–9; 13–4.1–9–2.5; 13–4.1–2–4; 13–4.1–4–3, –5; 13–4.1–6–7; 13–4.1–11–6, –8, –12; 13–4.1–12–1; 13–4.1–13–1; 13–4.1–15–9.
January 31, 1995	April 7, 1995	310 IAC 12–5–54.1.
March 18, 1994, August 25, 1994.	April 20, 1995	310 IAC 12–3–87, .1(c)(2), (7); 12–5–130, .1(c)(2), (g), (h), –131; Amendment #94–2 to the Indiana program.
May 3, 1995	September 14, 1995, October 25, 1995.	310 IAC 12–3–130; –131–Intro paragraph, (1), (2), (B), (C), –132.5, –133 through –135; 12–5–64.1(c), –128.1(c); correction of typographical, clerical, spelling errors.
May 11, 1995	October 16, 1995	310 IAC 12–0.5–2, –15, –57, –95, –99.
December 30, 1993	November 9, 1995	310 IAC 12–0.5–109.5, –110.5, –122.5; 12–1–5; 12–3–31, –48, –69, –78, –82, –97, –106; 12–4–5, –7; 12–5–3, –4; 12–6–20 through –24; 12–7–4, –5, –6; Amendment #93–7, Part I.
September 11, 1995	April 8 and 10, 1996	IC 13–4.1; 14–2–285.5; 14–8, –2–144.5; 14–34, –2–4, –4–8.5, –10.5, –10–2(b)(23), –13–1, –2, –19–2.
March 18, 1984	May 28, 1996	310 IAC 12–3–87.1(c)(2); 12–5–130.1(c)(2), –132.
September 26, 1994	October 29, 1996	310 IAC 12–0.5–78.7, –91.5, –109; 12–3–30, –32, –33, –34, –41, –47, –49, –55, –55.1, –68, –70, –71, –81, –83, –90.5, –91; 12–5–17, –20, –21(a)(3), –24(a)(9)(B), –27, –31, –39, –41, –42, –44, –48, –50, –69, –70, –83, –86,–87(a)(3), –90(a)(9)(B), –92, –96, –104, –105, –106, 108, –112, –114, –127, –137, –137.5(2), –144; 12–6–19.

18. Section 914.25 is revised to read as follows:

§ 914.25 Approval of Indiana abandoned mine land reclamation plan amendments.

(a) The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register** and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the **Federal Register**.

Original amendment submission date	Date of final publication	Citation/description
January 22, 1988	November 29, 1988	Project selection reclamation coordination, land acquisition, rights of entry, lien consideration, public participation, procurement, accounting systems, endangered and threatened species listing, revised administrative and management structure of the plan.
December 6, 1991	May 11 and October 6, 1992.	Revisions to the Indiana State Reclamation Plan corresponding to 30 CFR 884.13(c)(1), (2), (3), (5), (7), (d)(1), (e)(1), (2), (f)(1).
November 17, 1992	October 26, 1994	Emergency response reclamation program.

PART 915—IOWA

19. The authority citation for part 915 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

20. Section 915.15 is revised to read as follows:

§ 915.15 Approval of Iowa regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register** and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the **Federal Register**.

Original amendment submission date	Date of final publication	Citation/description
October 1, 1981	May 26, 1982	IAC 780–4.6(8), 4.35(13).
June 3, 1982	September 8, 1982	IC 83–14.2, .7(a).
September 28, 1982	January 4, 1983	IAC 4.311(2); 4.322(13); 4.522(11); 4.523(15), (38), (60); 4.55(1), (5).
May 9, 1984	December 7, 1984	IAC 4.523(63), 4.322(14).
January 31, 1985	May 24, 1985	IAC 780–4.6(83), .42(1)(83).
July 25 and 26, 1985	May 9, 1986	IAC 780–4.6(1), (4), .35(1), (6), .37(2), .321(8), .361(9); and 780-Chapter 26.

Original amendment submission date	Date of final publication	Citation/description
June 16, 1986	October 7, 1986	Iowa Senate File 2175: State Government Reorganization Bill.
August 12, 1986	December 11, 1986	IAC 4.522(15)c, g.
April 28, 1987	October 7, 1987	I.C. 83.7
June 9, 1988.	December 9, 1988	I.C. 83.26.
December 26, 1990	November 6, 1991	IAC 27–40.1 through .7, .11, .12, .13, .21, .22, .23, .30 through .39, .41, .51, .61 through .68, .71 through .74, .81, .82, .91 through .99.
November 23, 1992	February 8, 1994	IAC 27–40.1, .3 through .7, .11, .12, .13, .21, .22, .23, .30 through .39, .41, .51, .61 through .68, .71, .73, .74, .75, .81, .82, .92.
April 13, 1994	April 6, 1995	IAC 27–40.3(207), .4(9), .31(14), .32(207), .51(7), .63(20), .74(3), .75(2).

PART 916—KANSAS

21. The authority citation for part 916 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

22. Section 916.15 is revised to read as follows:

§ 916.15 Approval of Kansas regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register** and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the **Federal Register**.

Original amendment submission date	Date of final publication	Citation/description
May 20, 1981	April 14, 1982	MLCRA 49–411, 412, 413, 414, 416, 421, 49–422, 422a, 430.
November 16, 1982	March 1, 1983	MLCRA 49–403, 49–405c, 49–406, 49–420; § 10 of House Bill 2182; K.A.R. 47–2–21, 47–8–10, 47–8–11.
March 16, 1984	June 8, 1984	MLCRA 49–406; K.A.R. 47–1–10.
December 21, 1984	April 11, 1985	K.A.R. 47–15–13.
April 4, 1985	November 15, 1985	K.S.A 1984 Supp. 49–406(g); K.A.R. 47–1–11; 47–2–75; 47–3–42, (a)(23), (45); 47–5; 47–8–9(a), (j); 47–9–1, 2, 3; 47–13–4, 5, 6; 47–15; Memoranda of understanding with Fish and Game Commission, Division of Water Resources, Department of Health and Environment, State Geological Survey, State Historical Society, State Water Office, State Conservation Commission and State Fire Marshal.
April 23, 1986	May 26, 1987	K.A.R. 47–1–4; 47–2–7, 17, 44, 53, a, 75; 47–3–2, 3, a, 4, 21, 40, 42; 47–4–14, 15; 47–6–3, 4, 5, 6; 47–7–2; 47–8–2, 9, a, 10; 47–9–1, 3, 4; 47–10–1; 47–11–8; 47–12–4; 47–15–1a.
August 5, 1987	December 31, 1987	K.S.A. 49–431; K.A.R. 47–9–1.
April 29, 1988	October 5, 1988	K.S.A. 49–402, 404, 405, a through d; 407 through 410, 413, 415, 416, a, 417, 420, 421a, 426 through 429, 432, 433; K.S.A. 1987 Supplement 49–403, 406, 422a.
January 26, 1988	October 7, 1988	K.A.R. 47–2–75; 47–3–42(a); 47–7–2; 47–9–1 (c), (d); 47–10–1; 47–12–4.
June 8, 1990	February 19, 1991	The revegetation guidance document entitled "Revegetation Standards for Success and Statistically Valid Sampling Techniques for Measuring Revegetation Success".
June 29, 1989	September 13, 1991	K.A.R. 47–1–1, 3, 4, 8, 9, 10, 11; 47–2–14, 21, 53, 67, 75; 47–3–1, 2, 3a, 42; 47–4–14a, 15, 16, 17; 47–5–5a, 16; 47–6–1 through 4, 6 through 10; 47–7–2; 47–8–9, 11; 47–9–1, 2, 4; 47–10–1; 47–11–8; 47–12–4; 47–13–4 through 7; 47–15–1a, 3, 4, 7, 8, 15, 17.
June 29, 1989	April 13, 1992, September 9, 1994.	"Guidelines for repair of rills and gullies in Kansas".
June 3, 1991	August 19, 1992	Statistical sample adequacy.
July 10, 1992	June 14 and August 30, 1993.	K.A.R. 47–1–9; 47–2–14, 53a, 58, 67, 75; 47–3–2, 3a, 42; 47–4–14a, 15; 47–5–5a, 16; 47–6–1 through 4, 6, through 10; 47–7–2; 47–8–9, 11; 47–9–1, 4; 47–10–1; 47–11–8; 47–12–4; 47–13–4, 5; 47–14–4, 7; 47–15–1a, 4, 7, 8.
September 14, 1993	June 3, 1994	K.A.R. 47–2–75(e)(6); 47–4–14a(b), (c)(7), (11), (d), (2)(F), (6)(E)(iii), (iv); 47–5–5a(a)(10), (b), (14), (15), (16), (19), (20), (c)(7)(C); 47–6–7(h)(2); 47–9–1(c)(17), (43), (46), (d)(17), (39), (44); 47–15–1a, (b)(6), (9), (21).
August 9, 1995	November 27, 1995	Alternative sampling method for determining woody stem density.

23. Section 916.25 is revised to read as follows:

§ 916.25 Approval of Kansas abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register** and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the **Federal Register**.

Original amendment submission date	Date of final publication	Citation/description
April 29, 1988	October 5, 1988	Reorganization of the Regulatory Authority. House Bill 3009 eliminated the Kansas Mined Land Conservation and Reclamation Board and transferred its functions and staff to the Kansas Department of Health and Environment.

Original amendment submission date	Date of final publication	Citation/description
September 30, 1988 ...	January 10, 1989	Approval of emergency reclamation program.
June 29 and July 26, 1989.	November 30, 1989	KAR 47–16–1, –16–2, –16–4 through –8; policy and procedures for project ranking and selection; organization structure; public participation.
October 25, 1991	April 13, 1992	KAR 47–16–5(b), –6.

PART 917—KENTUCKY

24. The authority citation for part 917 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

25. Section 917.15 is revised to read as follows:

§ 917.15 Approval of Kentucky regulatory program amendments.

(a) The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register** and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the **Federal Register**.

Original amendment submission date	Date of final publication	Citation/description
May 28, 1982	January 4, 1983	405 KAR 1:005 § 6; 3:005 § 6; 7:020 § 1(11), (70), (117); 7:030 § 1; 7:040 § 5(1), 10(2), (7); 7:090 § 4(1), (6); § 6; 7:095, 8:010 § 6(1), (2), 13(1), 20(5), 21(2)(a)(4), (b)(1), 22(1), (2)(a), (a)(2), (2)(c)(1), (4), (5), (6); 8:020 § 2(2)(h); 8:030 § 23(4); 12:010 § 3(5)(a), (b); 16:140 § 2(1)(d); 18:140 § 2(1)(d); 24:020 § 3(5), (7), 4(6); 24:030 § 4(4), 8(7), 9.
May 28, 1982	May 13, 1983	KRS 151.250(3); 350.010, .035, .062(9), .093 § 2, .425, .990; 405 KAR 16:020 § 4.
January 11, 1983	May 20, 1983	405 KAR 7:020 § 1(13), (27), (34), (57); 12:010 § 6; 16:060 §§ 1(3), 9(2), 11(1), :090 §§ 2, 5(5), :110 § 2(2), :130 § 2(2), :220 § 4; 18:060 §§ 7(3), 9(1), (3), :090 §§ 2, 5(5), :110 2(2), :130 § 2(2), :230 § 4; 24:030 § 3.
February 1, 1983	October 12, 1983	Technical Reclamation Memorandum #9.
October 31, 1983	November 25, 1983	405 KAR 7:020E, :030E.
January 10, 1984	April 13, 1984	"Kentucky's Plan for Transition to Primacy".
May 1, 1984	August 22, 1984	KRS 350.010, .032, .093(2), .250(1), (3), (4); 355.060(5)(g).
October 31, 1983	September 25, 1984 ...	405 KAR 1:030, :040, :050; 7:020, :030, :090; 8:030, :040; 16:060, :090, :140; 18:090, :140.
October 31, 1983	October 3, 1984	405 KAR 8:050 § 2; 16:190; 18:190.
October 12, 1984	March 4, 1985	405 KAR 7:020 § 1(87), (118), :030 § 3(1)(e).
August 3, 1984	May 30, 1985	KRS Chapter 350, .032, .060, .135, .990; 405 KAR 16:020.
August 29, 1985	November 20, 1985	Paragraph D of "Field Enforcement Procedures" in § II of the State program plan; 405 KAR 7:090 §§ 11(2)(a), 12(3); 24:030 defining "substantial legal and financial commitments".
December 4, 1984	December 10, 1985	405 KAR 7:070; 16:120; 18:120.
June 6, 1984, December 17, 1985.	January 24, 1986	405 KAR 1:015; 3:015; 7:015.
August 13, 1985	March 3, 1986	405 KAR 7:020, :080; 8:030, :040; 12:010, :020; 16:050, :110, :130, :170; 18:050, :110, :130, :170; 20:030.
September 16, 1985, December 10, 1985.	March 17, 1986	405 KAR 7:015; 10:030.
December 10, 1985	April 4, 1986	405 KAR 7:090, § 11(2)(a).
December 3, 1985	April 9, 1986	405 KAR 7:020E; 8:050E; 20:070E.
August 3, 1984	May 27, 1986	KRS 350.066 through .070; 405 KAR 10:035.
April 29, 1986	July 15, 1986	KRS Chapter 350 contained in Senate Bills 130, 374; KRS 350.470 through .550 contained in House Bill 285; KRS 350.060(22) contained in House Bill 757; KRS 350.990 contained in House Bill 839.
August 30, 1985, September 16, 1985, February 7, 1986.	August 27, 1986	405 KAR 7:020, :060; 8:030, :040, :050; 16:010, :060, :080, :190; 18:060, :080, :190; 20:040, :070; documents incorporated by reference: "Soil Conservation Service, Kentucky Standards and Specifications for Land Restoration, Currently Mined Prime Farmland;" "Kentucky Prime Farmland Revegetation and Crop Production After Mining;" "Estimated Crop Yields on Prime Farmland Soils in Western Kentucky Coalfields;" "Estimated Crop Yields on Prime Farmland Soils in Eastern Kentucky Coalfields".
September 5, 1986	March 9, 1987	405 KAR 10:200.
February 27, 1987	December 31, 1987	405 KAR 16:060 § 11; 18:060 § 11, :190 § 2.
June 17, 1987	March 10, 1988	405 KAR 7:070.
April 29, 1988	October 6, 1988	405 KAR 7:090.
May 28, 1987	October 7, 1988	KRS 350.032 contained in House Bill 869.
July 5, 1989	December 15, 1989	405 KAR 8:010, :020, :030, :040; 24:040.
April 29, 1986	April 9, 1990	KRS 350.032.
April 21, 1988	August 10, 1990	KRS 350.020, .060, .064, .093, .130, .131, .151.
August 15, 1989	November 1, 1990	405 KAR 8:010 § 20(3), (5).
July 15, 1988	December 31, 1990	405 KAR 7:015, :020, :030, :090; 8:010, :020, :050; 10:010, :020, :030, :040, :050; 16:010, :070, :080, :100, :110, :120, :150, :190; 18:010, :070, :080, :100, :110, :120, :150, :190; 20:010, :060; 24:020, :030, :040.
May 8, 1990	February 6, 1991	KRS chapter 350 contained in Senate Bill 255; 350.010, .053, .054, .057, .060, .070, .085, .090, .093, .110, .113, .130, .139, .151, .990; 224.083.

Original amendment submission date	Date of final publication	Citation/description
January 9, 1991	April 16, 1991	405 KAR 10:040 § 2(4)(b)1.
January 24, 1991	September 23, 1991 ...	405 KAR 7:020 § 1; 8:010 §§ 13(4), (5), 18(5), 25(1) through (4), :030 §§ 1(4), 2, 3, :040 §§ 1(3), 2, 3; 12:020 § 3(6).
June 28, 1991	April 15, 1992	405 KAR 7:080.
September 18, 1989 ...	August 18, 1992	405 KAR 10:200; KRS 350.710–710.
June 28, 1991	October 1, 1992	405 7:001, § 1, :015 § 4(6), (7), :020, :021, § 1, :030 § 3(1) through (4), :035, §§ 1 through 9; 8:001 § 1, :020 §§ 1, 1(1), (2)(c), 2, (1), (2)(g), 4, 4(c)(5); 10:001 § 1, :200 §§ 1, 2, 4(4), 5(3), 6(1), (2), 7(1), (d), (e), (f), (j), (2), (d), (e), (i); 12:001 § 1; 16:001 § 1, :190 § 7(2), :210 §§ 1(1), 2, 3, 4; 18:001 § 1, :190 § 5(2), :220 §§ 1(1), 2, 3, 4; 20:001 § 1, :010 §§ 2, 3, 4; 24:001 § 1.
March 13, 1992	December 9, 1992	405 KAR 8:030(20), (36), :040(20), (36); 16:180(1), (2), (3); 18:180(1), (2), (3).
July 30, 1992	December 17, 1992	KRS Chapter 350 §§ 350.550, .553, .560, .597.
June 28, 1991	January 12, 1993	405 KAR 8:010 §§ 5(1)(c), (d), 12(1)(a), 14(8), 20(2)(a)10, (3)(a), (d)23, (f), 20(5) through (7).
July 30, 1992	March 26, 1993	KRS Chapter 350 contained in House Bill 844 and Senate Bill 381; 350.010, .0281, .130(1), .260, .450(4)(c), .705(1) (b), (c); numerous other sections on "applicant," "permit applicant," "permittee," "person," "operator".
June 28, 1991	June 8, 1993	405 KAR 16:200, 18:200, TRM No. 19 (Field Sampling Techniques for Determining Ground Cover, Productivity, and Stocking Success of Reclaimed Surface Mined Lands), the use of average county yield data found in Kentucky Agricultural Statistics, a report published annually by the Kentucky Agricultural Statistics Service.
July 28, 1992	August 6, 1993	KRS 350 contained in Senate Bill 318; 405 KAR 7:001, 7:090, :091, :092; 8:001; 12:020.
July 21, 1992	October 1, 1993	405 KAR 1:007, 3:007, 7:030 § 4.
May 21, 1993	February 24, 1994	405 KAR 10:050 Statutory and regulatory citations, sections Necessity and Function, 1(1), 2(4), (5); 12:001 section Necessity and Function, (29), (30); 12:010 Statutory and regulatory citations, sections Necessity and Function, 3(2), (5)(a), (b), 4(1), (3).
June 28, 1991	May 26, 1994	405 KAR 8:030 §§ 1(4)(a), (b), 2(3), (4), (5)(a), (11), (12), 3(5), 4(2), 5(4), 10, 37–MRP, 38–MRP; 8:040 §§ 1(3)(a), (b), 2(3), (4), (11), (12), 3(5), 4(2), 5(4), 10, 37–MRP, 38–MRP.
April 26, 1994	September 1, 1994	405 KAR 7:080 sections Necessity and Function, 1, 3, 4, 5, 6(4), (5), (8)(b), 7(1)(b), (3), 8, 10(2) (a), (b), 11(1), (d), (e).
April 18, 1994	September 16, 1994 ...	KRS 350.010, 350(1) through (32).
October 3, 1994	February 15, 1995	405 KAR 7:080 §§ 5(2), (a), (b), 6, 8(2)(a)(11), (b)(11), 11(1), (e).
April 29, 1994	June 27, 1995	KRS 42.470(1)(c); 132; 136; 138; 139; 177.977; 211.390(1), .392(1), (2), (5), (6), (8); 350.010 (1), (2), (9), (16), (22), (23), .0285, .0301(1), (4), .0305, .032(2), (4), .070(1), .085(1), (7), .095(1), (2), .421, (1), (2), .560(1); 351.070(13), (14); 352.420(3).
August 2, 1994	December 7, 1995	405 KAR 16:010 §§ 1, 6, 7, 8; 18:010 §§ 4, 5, 6.

(b) The Director is deferring his decision on the enforcement provisions of section 720 of the Act from its effective date (October 24, 1992), to the effective date of KRS 350.421(1) and (2) (July 15, 1994).

26. Section 917.21 is revised to read as follows:

§ 917.21 Approval of Kentucky abandoned mine land reclamation plan amendments.

(a) The Kentucky Amendment, submitted to OSM on December 8, 1982, is approved. You may receive a copy from:

(1) Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet, Division of Abandoned Lands, 618 Teton Trail, Frankfort, Kentucky 40601; or

(2) Office of Surface Mining Reclamation and Enforcement, Lexington Field Office, 2675 Regency Road, Lexington, Kentucky 40503–2922.

(b) The Kentucky Abandoned Mine Reclamation Amendment, submitted to OSM on March 25, 1985, is approved. Copies may be obtained at the addresses listed in paragraph (a) of this section.

(c) The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register** and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the **Federal Register**.

Original amendment submission date	Date of final publication	Citation/description
June 24, 1992	December 17, 1992	Chapter 3—Goals and Obligations, Chapter 15—Maps of Eligible Lands and Waters.
May 5, 1994	July 29, 1994	Chapter 5—Coordination with Ramp, Indian, and Other Reclamation Programs.

PART 918—LOUISIANA

27. The authority citation for part 918 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

28. Section 918.15 is revised to read as follows:

§ 918.15 Approval of Louisiana regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register** and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the **Federal Register**.

Original amendment submission date	Date of final publication	Citation/description
January 19, 1990	May 8, 1991	Chapters 1, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 35, 37, 39, 41, 43, 45, 47, 51, 53, 55, 59, 63, 65, 69.
August 14, 1990	May 21, 1991	Policy statements—PS–1, PS–2, PS–3 regarding requirements at LSMR 5353.C, 3127, 5321; 107.C, Chapter 4.
November 12, 1991	October 28, 1992	LSMR 107.G.1, 2; 53123.A, .1, .2, .3, .4, .B.1.b, .d, .2.a, .b, .3.b, .B.2.a, .4, .7, .9; Policy Statement PS–4 interpreting LSMR 2523; LSMR 53125.
May 3, 1994	September 20, 1994	LSMR 53123.B.4.a.
November 2, 1994	January 24, 1995	LSMR 5423.B.4.a; Policy Statement PS–5.

29. Section 918.25 is added to read as follows:

§ 918.25 Approval of Louisiana abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register** and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the **Federal Register**.

Original amendment submission date	Date of final publication	Citation/description
February 3, 1986	November 10, 1986	Approval of AMLR program.
June 12, 1989	April 9, 1990	Certification for Noncoal reclamation.

PART 920—MARYLAND

30. The authority citation for part 920 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

31. Section 920.15 is revised to read as follows:

§ 920.15 Approval of Maryland regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register** and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the **Federal Register**.

Original amendment submission date	Date of final publication	Citation/description
October 28, 1982	February 8, 1984	COMAR 08.13.09.01B(24), .02K(2)(d), .05A(5), (12), (13), .07B(3), H(1), (3), .25A(4).
May 28, 1984, October 5, 1984.	January 22, 1985	Blaster certification program; COMAR 08.13.09.02, .25; and other items.
January 30, 1985	September 10, 1985	COMAR 08.13.09.02, .25.
January 13, 1984, June 8, 1984, August 7, 1984, October 10 1984, November 9, 1984.	November 18, 1985	COMAR 08.13.09, 08.13.09.07, .15B(2)(c), C(3), F(3), H(2), (5), I(1)(b), (c), (2)(a), J(4), (5), (6)(a), .40B, F(4) through (7); M.C.A. §§7–504(a), (c), 7–505.1(e), 7–506(c)(3), (h), 7–507(c)(2), 7–511(a), (b), 7–514.6.
January 14, 1986, May 15, 1986.	December 12, 1986	COMAR 08.13.09.07A, B, C, G(2), (5)(a), (k); M.C.A. §§7–504(D), 7–505(g), 7–506(c), 7–507(c)(1), 7–514(C).
March 18, 1986, April 23, 1986.	January 30, 1987	COMAR 08.13.09.01B(14), .03, G, H, .28, E.
July 8, 1987, June 10, 1988.	June 5, 1990	M.C.A. §§7–505(a), (b)(2)(iii), (c)(1), (2), (d)(1), I, II, III, (2); 7–506; §2; 7–511(A), (B); 7–513; 7–514(a); 7–517(D).
March 30, 1989	January 11, 1991	COMAR 08.13.09.01, .02, .13, .17, .28, .31 through .34, .42, .43.
June 15, 1989	March 21, 1991	M.C.A. §§7–5A–05(c), (d); 7–5A–05.1; 7–5A–13(c), (d); 7–5A–13.2; 7–203(H); 7–205(B), (C); 7–501(n); 7–505(c), (d), (k); 7–507(a), (b), (c)(3); 7–509(A); 7–510(b); 7–514(d).
September 28, 1990, November 21, 1990.	April 26, 1991	COMAR 08.13.09.06, B, .43K(7), N(7).
March 27, 1989	May 22, 1991	COMAR 08.13.09.01, .02, .04, .05, .08, .10, .11, .26, .40.
March 23, 1990	June 21, 1991	COMAR 08.13.09.02, .05, .10, .11.
October 31, 1989	August 9, 1991	COMAR 08.13.09.01B, .02K, O, .23D, E, I, J, .24A, C, D, F, H, I, .35A, C through G, .41, B through G.
December 6, 1990	December 2, 1991	COMAR 08.13.09.01B(59), .02H, i, i(1), (3), (4), (5), (11), .04L(2) through (6), M(1), (3), .05D(9), E, F, .40G(10).
June 10, 1988, June 14, 1989, June 15, 1989.	December 5, 1991	COMAR 08.13.09.15A through F, H, I, (2)(b), (4), (a), (b), J, L, M; M.C.A. §§7–507.1, 7–514, .1, .2, 7–519, 7–5A–05.2, 7–5A–09(c), 7–5A–10(d).
May 7, 1991, May 16, 1991.	January 10, 1992	COMAR 08.13.09.43A, B(1), (e), (3) through (6), K(7), (8), N(7).
January 23, 1992	September 24, 1992	COMAR 08.13.09.03D(7), .11G(7), .33C(1).
June 11, 1992	November 16, 1992	M.C.A. §§7–101(k), 7–501(o), 7–5A–01(h).

Original amendment submission date	Date of final publication	Citation/description
July 14, 1992	December 17, 1992	M.C.A. §§7–205(b)(2), (c); 7–206; 7–505(a), (c), (d), (5), (f), (j).
June 23, 1992	December 30, 1992	M.C.A. §7–508(b)(2).
October 21, 1992	May 17, 1993	COMAR 08.13.09.24B.
February 23, 1993	June 17, 1993	COMAR 08.13.02.01(B), (E), (M), .02A, C(2), .03E, J, M, .04B, C, .06, .07A, B, .08, .09, .10, A, B.
February 7, 1992	June 22, 1993	COMAR 08.13.09.23E, .24H, I, .41C.
February 5, 1993	July 6, 1993	COMAR 08.13.09. 04B(3)(c), (4), C(2)(e), G(4), (5), (6), H(1), (2)(b), I, (1), J(1), (a), (2) through (5), (7), L, .27A, B, (8), (13), (14), (15), D; 08.20.04. 02C, D, .03B(5), .07D, E, F, .08A, B(2), .09, .10A, .11, A, (1), B, D through G, .13; 08.20.23.01A, B, (8), (13), (14) (15), D.
February 25, 1994	June 30, 1994	COMAR 08.13.02.01 through .05, .07, .11 through .15; 08.20.02.18; 08.20.13.01, .03(C), (D), .04(D), .10(D), .11, .12; 08.20.14.13(A), (C), (E).
May 16, 1994, May 31, 1994.	November 14, 1994	M.C.A. §§7–501(o), (v); 7–504 (b) through (d); 7–517.1; COMAR 08.13.09.24H(1)(q), (3)(c).
June 16, 1995	November 9, 1995	M.C.A. §§7–505, Code 7–515; COMAR 08.20.16.02A, .03A, .08A, B.
October 26, 1995	March 25, 1996	M.C.A. §§7–501(m), (w); 7–505(1)(2); 7–511(b)(2)(I), (II), (III); COMAR 08.20.14.14.

32. Section 920.25 is revised to read as follows:

§ 920.25 Approval of Maryland abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register** and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the **Federal Register**.

Original amendment submission date	Date of final publication	Citation/description
September 4, 1992	March 22, 1993	Chapters 1, 5, 11 of Plan—Expenditure of Funds.
August 19, 1993	December 9, 1994	Chapter 1 of Plan—Project Ranking & Selection.

PART 925—MISSOURI

33. The authority citation for part 925 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

34. Section 925.15 is revised to read as follows:

§ 925.15 Approval of Missouri regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register** and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the **Federal Register**.

Original amendment submission date	Date of final publication	Citation/description
December 3, 1980, March 12, 1981.	July 23, 1982	10 CSR 40–2.080; 40–3.050; 40–3.100(4)(B); 40–6.010(6), .070, .090(3), (4)(C); 40–7.030(1)(E), .040(2)(C); 40–8.030(5) through (13)(A).
September 7, 1982, October 13, 1982.	January 17, 1983	10 CSR 40–8.030(6)(B)1, (C), (7)(A), (D), (8)(A)1, (E), (9)(A)2, (B), (10)(A), (13)(B), .050(8), .060.
April 13, 1983	May 8, 1984	RSMo 444: .805, .830, .950, .955, .960, .965, .970; 10 CSR 40–3.120, .270; 40–4.030; 40–7.010, .011, .020, .021, .030, .031, .040, .041, .050; 40–8.030.
March 13, 1986	January 7, 1987	10 CSR 40–2.090(6); 40–7.031(3)(B); 40–8.030(1), (6), (7), (17), .040(3), (7), (8).
February 4, 1987	February 26, 1988	10 CSR 40–2.090(5); 40–3.040(2), (6), (17), .110(1), .120(7), .200(2), (16), .270(7); 40–7.011(2), (3), .021(2), .031, .041(1), (2), (3); 40–8.030(6), (18); RSMo 444: .950, .960, .965.
June 22, 1987	June 16, 1988	10 CSR 40–3.010(6), .050, .110(6), .120(8)(A), (D), .170, .210; 40–6.010(3)(C), (5)(C), .030(2)(C), .050(4), .070(2)(C), (6), (7), (8), .090(4), (6), (9), (10), (11), .100(2)(C); 40–8.040(3).
December 14 and 18, 1987.	October 31, 1988	10 CSR 40–2.090(6)(B); 40–3.050(1)(E), .210(1)(E); 40–4.010, .030(4)(C), (5), (6), (7)(A), (B)(1) through (8); 40–6.010(6)(A), .020, .040(16), .060(1)(E), (G), (J), (K), (4)(B), (C), (D), .110(16); 40–7.021(4)(B); 40–8.010(1)(A)5, 15, 16, 17, 19, 20, 25, 47, 48, 92, .030(3)(B), .050, .070(2); RSMo 444.730, .800, .805, .950.
August 3, 1988	December 11, 1989	10 CSR 40–3.050(1)(C), (D), (2)(F), (3)(B), (5)(B), (D), .210(1)(C), (D), (2)(F), (5)(B), (D), .160; 40–4.030(4), (7)(B)6; 40–6.070(8)(J), (K), (L), (N), (O).
July 8, 1988	January 8, 1990	10 CSR 40–3.200(2)(B); RSMo 444.535.7(2), .615.6(2).
March 18, 1988	June 5, 1990	10 CSR 40–3.100(2), .120(1), (6)(A), (6)(B)3, (7)(C)2, .250(1)(B), .270(1), (6)(A), (B)3, (7)(C)2; 40–6.040(3)(B), (11)(B), (C), (D), .050(7)(B), (C), (14)(B), .070(8)(E), .110(3)(B), (11)(B), (C), (D), .120(8)(B), (12)(B), (C), .040(8)(B), (C).
June 5, 1989	July 6, 1990	10 CSR 40–6.040(5)(A), (B)1, .050(5)(C), (9)(A) through (E); .060(4)(A), .070(12)(D), .110(11)(B), .120(2)(B)3, (5)(A), (C), (D), (E), (11)(A), (14)(C); 40–8.040(8)(K).

Original amendment submission date	Date of final publication	Citation/description
July 21, 1989	October 30, 1990	10 CSR 40–4.080(1), (2); 40–6.040(11)(E)2, 3, .050(5)(C), .060(2)(B), (C), .070(7)(A)3, 8(M), .120(11); 40–8.010(1)(A)5, 18, .045; 40–060(8)(B).
January 12, 1989	January 3, 1991	10 CSR 40–3.040(1)(B), (3)(G), (4)(B)3, (6)(B), (H), (7)(A), (B), (10)(A), (E), (G), (J), (13)(A)1, (B)1.C, .060(1)(B), (F), (H), (K), .080(1)(C), (2)(A), (4)(A), (D)3, (10)(B), (11)(D), .100(2), .110(6), .120(6)(A), (B)2.A through F, (8)(D), .200(1)(B), (3)(H), (4)(B)3, (6)(B), (H), (7)(A), (B), (10)(A), (E), (G), (J), (12)(A)1, (B)1.C, .220(1)(B), (F), (H), (K), .230(1)(C), (2)(A), (4)(A), (D)3, (10)(B), (11)(D), .270(6)(A), (B)2.A through F, .280(1)(C); 40–5.010(2)(C), (E), (3)(B)2, .020(4)(B)1, 2, 4, 5, 6, (C)1, 3, 4, 5; 40–6.060(4)(A)3; 40–8.010(1)(A)59, 79.
July 8, 1988, January 12, 1988.	May 8, 1991	RSMo 444.805(8), (16), .950.1, .2, .3, .4, .960.1, .965.2, .4; 10 CSR 40–7.011(1) (E), (F), (G), (2)(C), (4)(E), (F), (5)(A)4, (B)2, 4, (D), .021(2)(B)4, (D)(3), (3), .031, .041(1)(B), 1, (D), (4)(A)2.
November 8, 1991	September 24, 1992	RSMo 444.870.1 through .5, .873.1, .3, .4.
October 10, 1990	September 29, 1992	10 CSR 40–3.010(5), .030(1)(C), .040(2)(A)1, (4)(B)(3), (6)(B), (C), (D), (H), (Q), (T), (10)(G), (I), .050(6)(C), .060(1)(A), (H), .080(3)(A), (8)(B), (D), .090, .110(3)(A), .120(1)(D), (E), (5), (6)(B)1, 2, A, D, G, I, (7)(C)2, (C)3.A, C, (8)(A)4 through 8, 10, .130(2)(A), (3)(C), (I), .140(1)(A), (D)(1), (3)(D)9, (6)(D), (8)(A), (D)(1), (10)(D)9, (13)(C), (D), (15)(A), (20)(C), (D), .170(5), .190(1)(C), .200(2)(A)1, (4)(B)3, (6)(B), (C), (D), (H), (Q), (T), (10)(G), (I), .210(6)(C), .220(1)(A), (H), .230(3)(A), (8)(D), .240, .250(1)(B), .260(3)(A)1, .270(1)(D), (E), (5), (6)(B)1, 2, A, B, D, G, I, (7)(C)2, 3.A, C, (8)(A)4 through 8, 10, .290(1)(A), (D)1, (3)(D)9, (6)(D), (8)(A), (D)1, (10)(D)9, (13)(C), (D), (15)(A), (20)(C), (D), .300(2)(A), (3)(C), (I); 40–4.030(4)(A), (7)(B)6; 40–5.010(1)(A), (J), (2)(C), (3)(F)1; 40–6.010(2)(E), .020(2)(B)3, (3)(B)3, (5), .030(1)(A), (C), (D), (H), (2)(D), .040(5)(A), (11)(A), (E), (F), .050(7)(A), (B)1, (B)2, (C)1, (C)3, (9)(C)5, (11)(C), (17)(A)1 through 9, (B), (18), .060(4)(A), (E)5, .070(1)(B), (7)(C), (C)2, (F), (G), (8)(I), (L), (10)(B)1.A, (E)2, (11)(A), (B), (13)(E), .100(1)(A), (C), (D), (H), (2)(D), .110(5)(A), (B), (11)(A), (E), (F), .120(5)(C)4, (7)(C), (12)(A), (B)1, (C)1, (C)3, (16), (17)(A)1 through 9, (B); 40–7.011(3)(C), (4)(E), (5)(D)2.C.(II), (III), (D)2.(I), 5. A, B, C, 8, .021(2)(A), (B)1, 5, 6, .031(3)(B); 40–8.010(1)(A)4, 53, 51.B, C, D, I, J, 54, .030(6)(G), (7)(A), .040(5)(B)3, (8)(A), (K), .070(2)(C).
October 19, 1992	December 6, 1993	10 CSR 40–3.010, .040, .080, .100, .110, .120, .130, .140, .200, .230, .250, .260, .270; 40–4.010; 40–5.010; 40–6.030, .040, .050, .070, .100, .120; 40–7.011, .021, .031, .041; 40–8.010, .030, .040.
September 24, 1993	April 22, 1994	RSMo 444.870.3, .5 through .8.
February 10, 1995	July 13, 1995	10 CSR 40–3.030(4)(B)2, .040(10)(B)5, .060(1)(L)1, (0), .080(8)(B), .100(5)2, (6), (7), .110(3)1, (3)3, (6)(B), .140(1)(A); 40–6.010(2)(H), .020(2)(A), (3)(A), .030(1)(C), (5)(B), .050(7)(C), (D), .060(4)(D)(4), .070(8)(M), (9)(A)1, 2.A, .B, .120(7)(C), (12)(D); 40–8.010(1)(A)72, 84, .030(7)(A), .040(9), .050(2)(B).
March 7 and 28, 1995, December 14, 1995.	May 28, 1996	RSMo 444.805, 830.1, .3, 950.1, .3, .4, 960.1, .5, 965.1, .3, .4, .5; 10 CSR 40–3.120, .270(6)(B); 7.011(1) through (5), .021(2), (5), .041(1), (4).
March 20, 1996	July 24, 1996	RSMo 444.800, .810, .950.

35. Section 925.25 is revised to read as follows:

§ 925.25 Approval of Missouri abandoned mine land reclamation plan amendments.

(a) You may receive copies of the Missouri abandoned mine land reclamation plan and amendments from the:

(1) Missouri Department of Natural Resources, Land Reclamation Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, MO 65102; or

(2) Office of Surface Mining Reclamation and Enforcement, Mid-Continent Regional Coordinating Center, Alton Federal Building, 501 Belle Street, Alton, IL 62002.

(b) The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register** and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the **Federal Register**.

Original amendment submission date	Date of final publication	Citation/description
June 22, 1987	June 16, 1988	10 CSR 40–9.060(2), (3), (4).
August 22, 1988	March 15, 1989	Organization; project selection; rights of entry; coordination of reclamation activities; land acquisition, management and disposal; database.
November 29, 1994	August 24, 1995	RSMo 444.810.2 through .8; 444.915.3; 10 CSR 40–9.020(1)(D), (E), (3)(A); AML Plan § 884.13(C)(2), (D)(3), (4).

PART 926—MONTANA

36. The authority citation for part 926 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

37. Section 926.15 is revised to read as follows:

§ 926.15 Approval of Montana regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register** and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the **Federal Register**.

Original amendment submission date	Date of final publication	Citation/description
September 13, 1983	January 3, 1984	MCA 82–4–237, –251(4), –254.
April 2, 1984	January 3, 1985	ARM 26.4.1206 through .1209, .1211, .1212.
January 3, 1984	November 18, 1985	ARM 26.4.310, .621 through .626, .1260 through .1263.
July 3, 1985	February 14, 1986	MCA 82–4–231, 232, 254.
April 23, 1987	December 31, 1987	MCA 82–4–203, 222, 223.
December 21, 1988	May 11, 1990	ARM 26.4 subchapters 3, definitions and strip mine permit application requirements; 4, mine permit and test pit prospecting permit procedures; 5, backfilling and grading requirements; 6, transportation facilities, explosives and hydrology; 7, topsoiling, revegetation, and protection of wildlife and air resources; 8, alluvial valley floors, prime farmlands, alternate reclamation, and auger mining; 9, underground coal and uranium mining; 10, prospecting; 11, bonding, insurance reporting, and special areas; 12, special departmental procedures; 13, miscellaneous provisions.
June 19, 1990	March 20, 1991, August 19, 1992.	ARM 26.4.724 through 726, .728, .730 through .733, .1301A, .724; ARM 26.4.920, .924 through .927, .930, .932; ARM 26.4 subchapters 3, 5, 8, 11, 12.
October 19, 1992	February 25, 1994	MCA 82–4–203(26).
June 16, 1993, July 28, 1993.	February 1, 1995	MCA 82–4–203, subsections (14), (16), (21), (23), (29), (34), (35), (36), definitions; 82–4–224, surface owner consent; 82–4–226, subsections (1), (2), (3), (5), (6), (8), prospecting permits and notices of intent; 82–4–227, subsections (1), (2), (3), (7) through (13), permit approval/denial criteria

38. Section 926.25 is revised to read as follows:

§ 926.25 Approval of Montana abandoned mine land reclamation plan amendments.

(a) Montana certification of completing all known coal-related impacts is accepted, effective July 9, 1990.

(b) The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register** and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the **Federal Register**.

Original amendment submission date	Date of final publication	Citation/description
April 20, 1983	August 18, 1983	Liens on noncoal projects; noncoal additions to Montana Abandoned Mine Land Inventory; emergency response reclamation program; organizational restructure.
March 22, 1995	July 19, 1995	Reclamation of interim program and bankrupt surety coal sites; future set-aside program; water supply facilities and water replacement; other policies and procedures.

PART 931—NEW MEXICO

39. The authority citation for part 931 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

40. Section 931.15 is revised to read as follows:

§ 931.15 Approval of New Mexico regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register** and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the **Federal Register**.

Original amendment submission date	Date of final publication	Citation/description
February 28, 1982	May 27, 1982	Procedures for Posting and Publishing Notices of Show Cause Orders.
July 9, 1982	October 26, 1982	CSMC 80–1–19–15(d), 80–1–20–71(i), 20–102(a); 80–1–29–12(b), definition of "Unconsolidated Stream-laid Deposits Holding Streams".
February 8, 1984	August 1, 1984	CSMC 80–1–14–23(a), (b).
June 6, 1984	January 4, 1985	CSMC 80–1–1–5 definition of roads; 80–1–20–150, 151.
June 20, 1984, July 18, 1984.	January 31, 1985	CSMC 80–1–1–11; 80–1–11–30; 80–1–20–103.
August 12, 1987	February 11, 1988	CSMC 80–1–30–12(c) through (l).
September 1, 1988	January 30, 1989	CSMC 80–2–22–29(p).
June 17, 1987	March 9, 1989	CSMC 80–1–5–25, –26; 80–1–8–11; 80–1–9–18; 80–1–11–27, 80–1–20–89, –102, –103, –106, –181; 80–1–29–11; 80–1–33 Training, Examination, and Certification of Blasters.
April 18, 1988, October 20, 1988.	March 17, 1989	CSMC 80–1–20–71(b), –81, –83(b), –85, –92(b).
February 21, 1989, August 17, 1989.	December 26, 1989	CSMC 80–1–20–41(d)(1), –42(a)(1).

Original amendment submission date	Date of final publication	Citation/description
March 29, 1989, April 26, 1989.	April 26, 1990	CSMC 80–1–20–83(b), –89(d)(2), –103(a)(1); 80–1–29–11(a); 80–1–33–11, –14, –15(e)(1).
May 25, 1989	November 23, 1990	CSMC 80–1–1–5, definitions of "affected area," "self-bond"; 80–1–8–20; 80–1–9–16; 80–1–14–23(d)(2),–40(a)(2); 80–1–20–97(b), (c); 80–1–31–21 through –24; July 12, 1990 Policy Statement.
July 22, 1989	February 26, 1991	CSMC 80–1–1–5, definition of "other treatment facilities;" 80–1–20–41(f), –46, (a), –49.
April 24, 1990	June 21, 1991	CSMC 80–1–20–42(a)(8), –133(c).
March 15, 1990	December 31, 1991	CSMC 80–1–1–5, definitions of "cumulative impact area," "previously mined area," "excess spoil," "impoundment," "coal processing waste," "coal processing waste bank;" 80–1–2–11(f), –12(b)(2); 80–1–4–15(b); 80–1–6–10, –11(b)(5), –12(b)(7), –13(d); 80–1–8–14(b)(1)(vi), –15(c), –16(b)(3), –24, –27(a); 80–1–9–13(f), –14(c), –21(b) through (d); 80–1–10–13, (a), (c), (e), –17(a)(1)(i), (6); 80–1–11–11(a)(3), –15(a), (b), –19(c), –27(e); 80–1–13–11(a), –12(c), (d), –18(c)(3), (d), (e); 80–1–20–11(f), –41(a), –43(a), –44(a), (c), –52(a), (b), –57(a)(1), (2), –61 through –68, –71(f), (j), (k), –82(a), –91(c), –97(d)(10), –102(a), (f), (g), –111(c), –112(c), (d); 80–1–24–11(c), –12(a)(1), –15(c)(2) through (6); 80–1–26–12(c); 80–1–29–16(a); 80–1–30–13(d); 80–1–31–17(b)(1), 18(b)(1); Policy Statement for Records and Retention.
July 9, 1991	April 13, 1992	CSMC 80–1–20–42(a)(4)(ii), (a)(8).
November 22, 1991	June 23, 1992	CSMC 80–1–20–72(d), –83(b).
January 16, 1991	December 17, 1993	CSMC 80–1–1–5, definition of "owned or controlled and owns and controls;" 80–1–4–15(b)(2); 80–1–7–13(a) through (j); –14(a) through (d); 80–1–9–21(c), –25(b), (c), (e), –37(a) through (e), –39(b), –40; 80–1–11–17(c), (2), (3), (d), (e), –19(i), –20(a), (b)(1), (i), (iii), (2), (i), (ii), (3), (c), (1) through (4), –24(a), (b), (c), –29(d); 80–1–19–15(c)(2), (3), (4), –17(a), (b); 80–1–20–91(c), –93(a), (c), (d), (e), –116(a), (b)(1), (3), (6), (7), (d) through (d)(3), –117(a) through (d), (1), (2), (3)(i), –121(a), –124, –150(a)(2)(i), (iii), (b)(9), (c), (e)(1), (g)(5), (6), (7), –151(a), (b)(2), (c)(1), (6); 80–1–30–11(b), (l); NMSA 69–25A–31.
October 26, 1994	February 15, 1995	CSMC 80–1–34–1 through 10.
January 22, 1996	May 29, 1996	CSMC 80–1–1–5 definitions of "Applicant/violator system" or "AVS," "Federal violation notice," "Ownership or control link," "State violation notice," and "Violation notice;" "Drinking, domestic, or residential water supply," "Material damage," "Noncommercial building," "Occupied residential dwelling and associated structures," "Replacement of water supply;" "OSM," "Qualified Laboratory," "Road," "SMCRA;" 80–1–4–15(b)(1); 80–1–7–14(c) (1) through (5); 80–1–9–25(a)(2), (3), (c), –39(a) (1) through (6), (b), (c)(1) through (9); 80–1–11–17(c), (d), –19(i), –20(b)(1), (ii), (3), (c)(1), (2), (d), (e), –24(a), –29(d), –31(a) through (d), –32(a) through (c), –33 (a) through (d), –34(a) through (d); 80–1–19–15(c)(2), (3), (iii), (4); 80–1–20–41(e)(3)(i), –49(d), (e)(1) through (11), (f)(2), (g)(4), (5), –82(a)(4), –89(d)(2), –93(a)(1), –97(b), (c), –116(b)(1), (5), (6), –117, (c)(1), (3), (4), (d)(2), (3)(i), –124(a) through (d), –125(a) through (e), –127, –150(c)

41. Section 931.25 is revised to read as follows:

§ 931.25 Approval of New Mexico abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register** and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the **Federal Register**.

Original amendment submission date	Date of final publication	Citation/description
July 24, 1995	July 24, 1996	Plan §§ 874.16, 875.16, .20, 886.23(c); NMSA 69–25B–3.A, C, D, –4, –6.B, –7, –8.

PART 934—NORTH DAKOTA

42. The authority citation for part 934 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

43. Section 934.15 is revised to read as follows:

§ 934.15 Approval of North Dakota regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register** and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the **Federal Register**.

Original amendment submission date	Date of final publication	Citation/description
July 30, 1982	February 9, 1983, November 9, 1983.	NDCC Chapter 38–14.1; subsection 5 of § 38–14.1–02, definitions of "extended mining plan," "performance bond;" 38–14.1–03; subsection 3 of § 38–14.1–07, 13; subdivision "u" of subsection 1 of § 38–14.1–14; subdivision "n" of subsection 2 of § 38–14.1–14; § 38–14.15; subsection 3 of § 38–14.1–20; subsections 17, 18 of § 38–14.1–24; subsection 4 of § 38–14.1–30; § 38–14.1–38; Chapter 38–12.1; subdivision b of § 1 of § 38–12.1–04; Chapter 38–18; subsection 3 of § 38–18–05, definition of "mineral developer;" subsection 6 of § 38–18–05, definition of "mineral owner;" subsection 10 of § 38–18–05, definition of "surface owner;" subsection 3 of § 38–18–06; § 38–18–07; NDAC 69–05.2, Chapter 69–05.2–01, 05 through 19, 21, 22, 23, 26; NDCC § 38.12.1–03.
February 2, 1984	July 19, 1984	NDAC §§ 38–14–1.02(33)(a), 04.1, .2, .3, 13(1)(b), 24(1)(1); §§ 69–05.2–05–03, 69–05.2–09–18, 69–05.2–13–12.1 through .6, 69–05.2–16–04.
February 27, 1984	January 3, 1985	NDAC §§ 69–05.2–01–02, definition of "blaster" and renumbering of §; 69–05.2–17–01; 69–05.2–31.
June 18, 1985	February 18, 1986	NDCC 38–14.1–04.2, .3, –7, –10, –14, –21, –30,–33; NDAC 69–05.2–04–01, –06–02, –08–03, –09–02,–08, –09, –10–03, –16–09.
May 30, 1986	October 21, 1986	NDAC 69–05.2–01–02 (11), (12), definitions "coal preparation," "coal preparation plant," "coal processing plant," 08–05(2)(c)(5), –09–19, –13–13, –15–01, –02, –03(2), –04, –16–04(1)(b), –09(22), –15–01, –21–03.
September 8, 1986	December 9, 1986	NDAC 69–05.2–12–20.
April 3, 1987	November 16, 1987	NDCC 38–14.1–16(2), (7), –17(7).
February 10, 1987	February 2, 1988	NDAC 69–05.2–12, –13–04, –23.
June 1, 1988	March 10, 1989	Amendment X, "Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre-and Post- mining Vegetation Assessments".
April 11, 1989	August 4, 1989	NDCC 38–14.1–37, –39.
November 1, 1988	January 19, 1990	NDAC 69–05.2, 2–01 through –31.
November 20, 1990	January 9, 1992	NDCC 28–32–02(3), (4); NDAC 69–05.2–01–02, –03(4), (5), (7), –04–01(5)(b), –05–06(1), (1d), –06–01,–02(3) through (6), –08–05(2), (2C), (2e), –09(3b), –15,–09–01(4), –06(1), (2), –09(1)(c)(7–8), (1)(e), (2)(c through e), (h), –17(1), (2), –19(1), –10–03, –05(3a, e), –11–03, –12–01(4), (10), –12(3), –18, –20, –13–08(2) through (6), –12(4), –13, –15–04(4)(a)(2)(c), –16–03, –07(2a), –09(9), (17), (18), (20), –12(1), –14(3), –20, –17–01(2), –05(1), –18–01, –12(f), –20–03(1b, d), (3),–22–07(4)(e) through (i), –23–01, –24–01–09, –25–03(2), (4), –26–05, (3), –28–03, (7), 16 through 18.
June 12, 1991, November 19, 1991.	August 20, 1992	NDCC 38–12.1–03–2.b, –05–2.d; 38–14.1–02–33.a, –24.13.a, –30.3.c through g(1), (2); NDAC 43–02–01–18.1, –20; 69–05.2–01–01–3, –05–08, –08–01, –02; 69–05.2–08, –10.1a, –12; –09–04, –09, –10, –11, –14, –17, –10–02, –11–01.5, 02, –12–01, –05 through –08, –12–11, –12, –14, –16, –13–06, –08, –14–01, –15–02, –18–04, –06, –12, –22–07, –25–03, –04; 69–05.2–32, –32–01.1.b.
April 21, 1993	March 15, 1994, July 22, 1994.	NDAC 69–05.2–06–02(3), –09–01(4), –10–03(1), (1)(a), (4), –13–02(4)(e), –08(3) through (6), –15–04(3), –16–09 (13), (14), (16), –20–03(3), (4); NDCC 38–14.1–21(5), –24(13)(e), –37(2), (a) through (f), (3) through (6); 38–12.1–04(1)(a); 43–02–01–05, –20.3(c)(2); 43–02–01–05.
October 22, 1993	July 22, 1994	NDAC 69–05.2–17–02, –29–01(2), –02(1)(a), (b), –03(2), (5), –04, –05, –06(1)(a), –07(1), –08(1)(a) through (e), (2).
November 10, 1994	April 13, 1995	NDAC 69–05.2–04–07(3)(a), –05–09, –06–01(2), –02(6), –10–03(5), –11–01(1)(d), –03(5)(c), –06(1)(c), –12–09(2), –15–02(2a), –16–09(7), (20), –21–01(2), –28–03(6)
February 17, 1994	July 14, 1995	Policy document entitled "Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessments".

44. Section 934.25 is revised to read as follows:

§ 934.25 Approval of North Dakota abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register** and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the **Federal Register**.

Original amendment submission date	Date of final publication	Citation/description
March 4, 1983	June 24, 1983	Definition of reclamation terms; right of entry; land acquisition, management, and disposition; other policies and procedures.
September 15, 1987	June 16, 1988	Revision of administrative and management structure of the approved North Dakota Plan.
October 31, 1991	July 27, 1992	NDCC 38–14.2–04, –06.
May 25, 1993	September 27, 1993	Emergency response reclamation program; set-aside trust funds, eligible lands.
September 20, 1995	October 8, 1996	NDCC 38–14.2–03(14); Public Service Commission Procurement and Contract Procedures; PSC policies Nos. 2–01–81(5), 2–02–81(5); PSC organizational structure.

PART 935—OHIO

45. The authority citation for part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

46. Section 935.15 is revised to read as follows:

§ 935.15 Approval of Ohio regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register** and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the **Federal Register**.

Original amendment submission date	Date of final publication	Citation/description
September 16, 1982 ...	January 17, 1983	OAC:13–1–01.
October 13, 1982	January 31, 1983, July 22, 1983.	OAC 1501:13–1–02(E), –07; 13–4–03 through –05.
January 6, 1983	May 24, 1983	ORC as amended by SB 240 and 323.
June 10, 1983, August 11, 1983, August 22, 1983.	October 6, 1983	OAC 1501:13–1–02; 13–4–04, –05, –13, –14; 13–9–04; 13–12–03, –04.
July 18, 1983	October 13, 1983	ORC 1513:01(G)(2), (U); –13(A)(1), (C)(1), (3).
January 30, 1984	April 23, 1984	OAC 1501:13–4–13(K)(1).
February 8, 1984	May 1, 1984	OAC 1501:13–9–15(E)(5); ORC1513–101(J), (k), (L).
December 28, 1983	June 5, 1984	OAC 1501:13–14–01.
March 5, 1984	August 8, 1984	OAC 1501:13–14–05.
June 15, 1984	September 25, 1984 ...	OAC 1501:13–4–04(I), (L), –13(I), (J), (L); 13–9–04(B)(5), (G)(15); and Division Advisory Memo No. 31.
July 23, 1984	November 1, 1984	ORC contained in Substitute House Bill No. 164.
March 9, 1984	November 7, 1984	OAC 1501:13–4–13(E)(2).
September 17, 1984 ...	December 31, 1984	OAC 1501:13–2–15.
July 10 and 23, 1984 ..	March 18, 1985	OAC 1501:13–9–06.
July 11, 1984, July 23, 1984.	May 23, 1985	OAC 1501:13–14–01; ORC 1513–3–01 through –22.
July 3, 1985	September 18, 1985 ...	OAC 1513–3–01 through –22.
November 15, 1985	April 9, 1986, June 9, 1986.	ORC 1513.02, .07, .08, .10, .16, .18, .20, .25, .27 through .33, .37, .181; 5749.02, .021.
January 15, 1986	May 6, 1986	OAC 1513–3–01 through 04, 16, 17.
October 26, 1985	July 17, 1986	OAC 1501:13–3–05; 13–4–04, –13; 13–9–04.
November 6, 1984	July 28, 1986	OAC 1501:13–14–03.
March 3, 1986	September 18, 1986 ...	OAC 1501:13–4–05, 14; 13–9–07.
July 10, 1986	October 29, 1986	OAC 1501:13–9–06.
October 8, 1986	March 5, 1987	OAC 1501:13–9–07.
December 1, 1986, January 13, 1987.	June 19, 1987	OAC1501:13–7–03(B)(5)(g), (7)(h).
May 16, 1986	July 17, 1987	OAC 1501:13–1–01, –02, –07, –10, –13; 13–3–02 through –07; 13–4–01 through –04, –06, –08, –12, –13, –14; 13–5–01; 13–6–03; 13–7–01 through –08; 13–8–0; 13–9–01, –04, –06, –08, –09, –10 (formerly 13–14–05), –11, –13, –14, –15; 13–10–01; 13–13–02 through –06, –08; 13–14–01 through –05; 1513–3–03, –08; ORC 1513.16(H)(2), (3), .18(F).
January 28, 1987	August 10, 1987	OAC 1513–3–02, –03, –04, –08, –19, –21.
June 26, 1987	December 9, 1987	OAC 1501:13–1–02.
January 16, 1987	March 10, 1988	OAC 1501:13–7–03(B)(5)(g).
October 16, 1987	May 27, 1988	OAC 1501:13–1–02(M), (PP), (YY); 13–3–03 (C), (G), –04(E); 13–4–01(B), –04(A), (K)(7), –05(K), –13(A), (K)(7), –14(J); 13–5–01(E)(16).
March 24, 1988	July 14, 1988	OAC 1513:1513–3–21(E) (3), (4), (5).
May 24, 1988, August 23, 1988.	December 22, 1988	OAC 1501:13–1–02; 13–4–03, –04, –05; 13–4–13, –14; 13–7–03, –04, –05, –07(B); 13–9–04, –07, –09, –14, –15; 13–10–01; 13–14–02, –05.
March 8, 1988, July 1, 1988.	January 30, 1989	OAC 1501:13–4–02(B)(1)(b), (B)(1)(c), (C)(1), (C)(1)(a).
April 17, 1987	February 21, 1989	OAC 1501:13–9–15(A)(1)(a), (F)(8), (e)(i), (f)(i), (F)(9) through (12).
November 3, 1987	December 15, 1989	OAC 1501:13–9–15(F)(4)(c).
January 26, 1989	January 31, 1990	OAC 1501:13–9–15(A)(1)(a), (F), (G), (H), (I)(2)(c), (4)(c), (8), (b), (f)(i), (I)(9).
October 2, 1989	April 20, 1990	ORC 1513.02(J), .08(A), .18(B), (C), (F), (H), .24, .37(J).
August 11, 1989	June 5, 1990	ORC 1513.05, .13(E), (F); OAC 1513–3–21.
December 5, 1989	July 20, 1990	OAC 1501:13–7–01(A)(4), (5), (6)(a)(i), (ii), –05(A)(1), (2)(b), (iv), (c)(ii), (B)(2)(c), (4) through (4)(e).
October 20, 1988	July 25, 1990	OAC 1501:13–3–07(B)(8); 13–4–01(B); 13–7–01(A)(6)(c)(ii), –05(A)(3), (5)(b)(i), (B)(2)(e); 13–9–07(K)(1)(b).
May 11, 1990	August 21, 1990	OAC 1501:13–7–06(F).
March 1, 1989	September 18, 1990 ...	OAC 13–1–02, 03; 13–4–14; 13–5–01; 13–7–04, –05; 13–9–11; 13–14–06.
January 20, 1989	September 24, 1990 ...	ORC 1513.07, .16; OAC 1501:13–4–15(A) through (I).
May 11, 1990	February 21, 1991	OAC 1501:13–9–15(I)(2)(c)(ii).
December 7, 1990	February 26, 1991	OAC 1501:13–10–01(G)(1).
June 15, 1990	April 19, 1991	OAC 1501:13–4–03(A), (B), (C); 13–5–01(A)(4)(a), (D), and letter of interpretation dated April 1, 1991 (Administrative Record Number OH–1498), (E)(8), (F), (G)(5), (H)(5), –02; 13–14–02(A)(8), (C)(7), (D)(1)(c), (I); ORC 1513.07(E)(6).
January 31, 1991	May 21, 1991, June 6, 1991.	OAC 1501:03–9–13.
March 1, 1991	May 30, 1991	OAC 1501:13–9–11(D)(3).

Original amendment submission date	Date of final publication	Citation/description
January 31, 1989	October 21, 1991	ORC 1513.07(B)(4); OAC 1501:13–6–03(C)(1)(b), (I)(1)(d), (I)(1)(e).
August 23, 1991	December 9, 1991	OAC 1501:13–14–02(A)(2).
November 16, 1987, October 12, 1990.	April 13, 1992	ORC 1513.01(G)(1)(a); 1513.07(E)(5), (6); OAC 1501:13–1–02(S)(1)(a); 13–4–16; 13–5–03; 13–14–01; OAC 1513.16(F)(3)(b).
January 16, 1990	July 27, 1992	OAC 1501:13–1–02(E)(1)(d), (YYYY); 13–4–05(H)(2)(c), (M)(1)(d), (e), (2), –14(H)(2)(c), (L)(1)(d), (e), (2); 13–9–04(G)(3)(b)(i), (ii), (iii), (H)(1)(c), (h)(i), (ii), (iii), (2)(h), (3)(b); 13–9–09(C)(2)(b), (5), 15(F) through (I)(2)(c)(i), (ii), (3)(c); 13–10–01(B)(1), (D)(1), (F) (5), (6), (G)(1), (G)(3), (G)(4); 13–11–02(A); ORC 1513.01(G)(2).
July 22, 1991, September 10, 1991.	August 18, 1992	OAC 1501:13–9–04(H)(1)(i), (2)(d), (e), (g), (h), –07(H).
May 12, 1992	September 11, 1992 ...	OAC 1501:13–1–01(D)(1), (2).
December 11, 1991	October 28, 1992	OAC 1501:13–7–06(A), (1), (4), (B), (1), (2)(b), (C), (1), (2), (a), (b), (c), (C)(3), (4), (E)(1), (E)(4).
June 30, 1992	January 12, 1993	OAC 1501:13–13–06(A).
May 12, 1992, June 22, 1992.	January 14, 1993	OAC 1501:13–5–01(A)(4)(a), 13–9–15(J)(1).
December 9, 1992	April 23, 1993	OAC 1501:13–1–01(B).
February 7, 1992, March 2, 1992.	June 11, 1993	ORC 1513.02(F)(3).
April 5, 1993	June 22, 1993	OAC 1501:13–1–02 (HHHH), 13–4–15(B)(5), (I)(2)(a), (3)(d).
February 11, 1993	August 16, 1993	OAC 1501:13–9–15.
January 15, 1993	September 3, 1993	OAC 1501:13–4–02(C)(2) through (K).
May 1, 1992, June 11, 1993.	May 2, 1994	OAC 1501:13–4–06(E)(2)(g), 13–9–15, 17(B); Ohio Department of Natural Resources Guidelines for Evaluating Revegetation Success; Division of Reclamation Policy/Procedure Directive, Regulatory 94–2.
May 17, 1994	July 27, 1994	OAC 1501:13–9–17.
March 15, 1993	September 1, 1994	Program Amendment Number 63.
February 23, 1994	October 12, 1994	OAC 1501:13–1–05, –10(B)(2).
March 4, 1993	November 15, 1994	OAC 1501:13–4–05(E)(1)(g), (H)(1)(b)(iv), (c)(iv), –14(E)(1)(f), (H)(1)(b)(iv), (c)(iv); 13–9–04(B)(1)(a), (b), (G)(2)(e); Ohio's Policy/Procedure Directive, Inspection and Enforcement 93–4.
July 19, 1994	May 11, 1995	Combined Program Amendments 25R and 56R: Ohio Guidelines for Evaluating Revegetation Success.
May 17, 1994	May 12, 1995	Program Amendment 68R: Contemporaneous Reclamation.
September 22, 1994 ...	July 17, 1995	OAC 1501:13–1–03(D)(2), (I)(1), (J)(1), (L)(1), (2), (3) (Financial interest statements); 13–7–05(A)(2)(b)(ii), (c)(ii), (B)(2)(c).
March 28, 1995	July 25, 1995	OAC 1501:13–14–01.
February 2, 1995	November 9, 1995	Program Amendment 63R: Ohio regulatory and Abandoned Mine Land reclamation programs.
July 3, 1995	February 28, 1996	OAC 1501:13–4–15(d)(2); Policy Directives 92–3, 93–4.
May 23, 1996	September 4, 1996	OAC 1501:13–4–12(G)(3)(d), (4)(f), (i); 13–09–08(A)(1), (B); 13–13–01.
May 17, 1996	October 29, 1996	OAC 1501:13–14–01(A)(2)(b), (c).
August 26, 1996	February 28, 1997	OAC 1501:13–1–02(OOO), (JJJJJJ); 13–4–08(A)(15), –10(A)(6), –12(L), –15(B); 13–5–01(D)(7), (D), (E)(19), (A), (B), (C); 13–9–15(F)(2), (A), (3), (a), (4)(d), (G)(3)(a), (H)(2), (I)(6), (J)(1)(b), (L), (2), (M)(4), (O), (1) through (6).

47. Section 935.25 is revised to read as follows:

§ 935.25 Approval of Ohio abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register** and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the **Federal Register**.

Original amendment submission date	Date of final publication	Citation/description
January 6, 1983	May 24, 1983	ORC 1513.37(D)(2), (4), (5), (J).
August 20, 1986	August 17, 1987	Ohio AMLR Plan 3.7.4, 3.9.1; RAMP Committee role; AMLR program staff organization.
October 2, 1989	April 20, 1990	ORC 1513.02(J), .08(A), .18(B), (C), (F), (H), .24, .37(J).
February 19, 1992	September 24, 1992 ...	AML emergency program; ORC 1513.37(C)(1), (L)(1), (2); OAC 1501:13–6–03(C)(1)(b), (I)(1)(d), (e).

PART 936—OKLAHOMA

48. The authority citation for part 936 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

49. Section 936.15 is revised to read as follows:

§ 936.15 Approval of Oklahoma regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register** and the State citations or

a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the **Federal Register**.

Original amendment submission date	Date of final publication	Citation/description
January 22, 1982	April 2, 1982	Permanent program regulations to replace those approved by the Secretary on January 19, 1981, and subsequently rescinded by the Oklahoma Legislature on February 12, 1981.
February 22, 1983	May 4, 1983	§§ 816.42(b) and 817.42(b).
May 13, 1983	August 28, 1984	45 O.S. 1981, §§ 745.2, 746.16, 774(c), 786(E), 788.17 through 788.19, 816.64; Parts 842, 843, 845; §§ 4.1000 through 4.1400; Sections governing the transfer, sale or assignment of rights under permits, inspection and enforcement provisions.
July 8, 1983	March 18, 1985	DOM/RR 776.12 through .15, .17, .18; 815.5, .11; 816.1,.2.
July 16, 1985	December 10, 1985	45 O.S. 1981.
August 15, 1985	January 14, 1986	Administration and funding of the Small Operator Assistance Program.
September 11, 1985	January 16, 1986	DOM/RR 700.5: definition of "surface coal mining operations", 701.5: definitions of "coal preparation" and "coal preparation plant".
August 8, 1985	April 28, 1986	DOM/RR Part 850 establishing blaster training, examination and certification program.
May 18, 1988	March 27, 1990, May 15, 1990.	DOM/RR 700.1 through .5, .11 through .15; 701.1 through .5, .11; 705.1 through .6, .11, .13, .15, .17, .18, .19, .21, .22; 707.1, .4, .5, .10, .11, .12; 761.1, .3, .5, .11, .12; 762.1, .4, .5, .11 through .14; 764.1, .11, .13, .15, .17, .19, .21, .23, .25; 772.1, .2, .3, .11 through .16; 773.1, .5, .11, .12, .13, .15, .17, .19, .20, .21; 774.1, .11, .13, .15, .17; 775.1, .11, .13; 777.1, .11, .13, .14, .15, .17; 778.1, .13 through .18, .20, .21; 779.1, .2, .4, .11, .12, .18, .19, .21, .22, .24, .25; 780.1, .2, .4, .11 through .16, .18, .21, .22, .23, .25, .27, .29, .31, .33, .35, .37, .38; 783.1, .2, .4, .11, .12, .18, .19, .21, .22, .24, .25; 784.1, .2, .4, .11 through .26, .29, .30, .200; 785.1, .2, .13, .14, .15, .17, .18, .20, .21, .22; 795.3; .5 through .9, .12; 800.1, .4, .5, .11 through .17, .20, .21, .23, .30, .40, .50, .60; 810.1, .2, .4, .11; 815.1, .13, .15; 816.1, .2, .11, .13, .14, .15, .22, .41, .42, .43, .45, .46, .47, .49, .56, .57, .59, .61, .62, .64, .66, .67, .68, .71 through .74, .79, .81, .83, .84, .87, .89, .95, .97, .99, .100, .102, .104 through .107, .111, .113, .114, .116, .121, .122, .131, .132, .133, .150, .151, .180, .181, .200; 817.1, .2, .11, .13, .14, .15, .22, .41, .42, .43, .45, .46, .47, .49, .56, .57, .59, .61, .62, .64, .66, .67, .68, .71 through .74, .81, .83, .84, .87, .89, .95, .97, .99, .100, .102, .106, .107, .111, .113, .114, .116, .121, .122, .131, .132, .133, .150, .151, .180, .181, .200; 819.1, .11, .13, .15, .17, .19, .21; 823.1, .2, .11 through .15; 824.1, .2, .11; 827.1, .11, .12; 828.1, .2, .11, .21; 842.1, .11 through .16; 843.1, .5, .11 through .18, .20, .22; 845.1, .2, .11 through .21; 846.1, .5, .12, .14, .17, .18; 850.1, .5, .12 through .15.
March 30, 1990	December 18, 1990, February 15, 1991.	DOR/RR 700.5, 700.11(b)(4), and part 702, concerning an exemption for operations when the extraction of coal is incidental to the extraction of other minerals.
June 21, 1990	January 9, 1991	DOM/RR 772.12(b)(12); 773.5(a)(2): the definition of "owned or controlled and owns or controls".
February 6, 1992	December 7, 1993	Bond Release Guidelines, including revegetation success standards, statistically valid sampling techniques, guidelines for phase I, II, and III bond release.
February 17, 1994	January 10, 1995	Bond Release Guidelines, including revegetation success standards, statistically valid sampling techniques, guidelines for phase I, II, and III bond release; Subsections I.E.3.b; I.F.3.d, .5.b; II.B.2.d; III.B.2.d; IV.A.1.a, b; V.B.2.c through f; VI.B.2.e; VII.A, B; Appendices A, F, J, O, R, V.
September 14, 1994	March 10 and 29, 1995	OAC 460:20–35–1, –3(a)(2), (A), (B), (D), (b), –6(a), (b)(1) through (6), (d), –7(a), (2), (3); 460:20–43–12(b)(3), –45–12(b)(3); OAC, certification of construction of siltation structures by qualified, registered professional engineers and land surveyors; OAC 460:20–43–12(f)(8), –47, –48, –53(1); 460:20–45–28, –53(1); 460:20–49–5(a)(1), –6, –7(5).
July 5, 1995	November 9, 1995	OAC 460:20–61–10(b)(1).
April 26, 1996	July 24, 1996	OAC 460:20–6–1 through –5.

50. Section 936.25 is revised to read as follows:

§ 936.25 Approval of Oklahoma abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register** and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the **Federal Register**.

Original amendment submission date	Date of final publication	Citation/description
August 24, 1989, November 13, 1995.	May 28, 1996	OAC 155:15, 884.13.(c)(1), (2), (3), (5), (7), (d)(1).

PART 938—PENNSYLVANIA

51. The authority citation for part 938 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

52. Section 938.15 is revised to read as follows:

§ 938.15 Approval of Pennsylvania Regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register** and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the **Federal Register**.

Original amendment submission date	Date of final publication	Citation/description
April 26, 1983, May 12, 1983.	October 5, 1983	Bureau of Water Quality Management Underground Mine/Coal preparation Plant Permit Application Instructions; Bituminous Underground Mining Operation Permit/Manual; Coal Refuse Disposal Permit Application; Anthracite Coal Refuse Disposal Permit Application; Anthracite Bank Removal and Reclamation Permit Application; Anthracite Surface Mine Permit Application; Anthracite Underground Mining Operation Permit Application/Manual; Memorandum of Understanding between the Pennsylvania Department of Environmental Resources and the Pennsylvania Museum and Historical Commission.
August 1, 1983	January 4, 1984	25 PA Code 89.143(2)(iii)(A) through (D), (4), .144(b)(3), .145(a)(4), (b), (d), .146(e), .147(a).
January 17, 1984	March 20, 1984	Pennsylvania policy statement: Citizen Complaint Procedures, Department of Environmental Resources Inspection and Enforcement Policy for Mining Operations, Civil Penalty Program.
October 31, 1983	May 15, 1984, July 3, 1984.	25 PA Code 86.5, .38(b), .112(b), .134(c), .211; 87.1, .112(c)(1), (2), (d), (e), .144, .138, .175; 89.86(a)(1), .161, .162, .163; 90.1, .112(c), (d), (e); addendum to the DER Inspection and Enforcement Policy for Mining Operations.
March 30, 1984	November 27, 1984	25 PA Code chapter 88, subchapters A through D, F.
March 2, 1984	April 4, 1985	Blaster training, examination and certification program, as contained in 25 PA Code chapter 210, subchapter A.
April 19, 1985	August 15, 1985	Blaster certification program.
April 18, 1985	November 4, 1985	25 PA Code chapter 89, subchapter F on subsidence control regulations.
September 5, 1985	February 19, 1986	Act 158 of 1984; 25 PA Code chapter 87, subchapter F; chapter 88, subchapter G; letters from the Pennsylvania Deputy General Counsel and the First Deputy Attorney General to Rebecca W. Hanmer, Director, Office of Water Enforcement Permits, U.S. EPA, dated July 8, 1985, and August 19, 1985, respectively.
November 2, 1984	May 19, 1986	25 PA Code 86.37(a)(13), .171(e)(12), .172(d)(2)(iii); 88.1—definitions for "cropland," "historically used for cropland," "prime farmland," and "soil survey", .24(b)(4), .30(a), (1), .31(a)(7), .32, .61, .129, .134(a), (e), .135(c)(1), (f)(2), (h), .136(a), (c), .137(18), (19), .217, .330, .381(b)(2), (c)(6), (8), (9), .491(i)(1), (13), (22), (23), (j), (k), .492(m), .493(8).
September 30, 1985	September 8, 1986	Civil Penalty Program: §§ I, II.2, II.4, II.8; Inspection and Enforcement Policy: §§ II.B.2.a.(4), (5), E, J.
April 18, 1985	June 18, 1987	25 PA Code 89.143(b).
January 22, 1987	July 14, 1987	§ 4.2(F)(II): right-of-entry requirements.
April 14, 1987	October 27, 1988	§§ II.J of the Inspection and Enforcement Policy, II.2 of the Civil Penalty Program, both concern alternative enforcement actions for failure to abate violations.
December 5, 1988	July 14, 1989	25 PA Code 86.1, .12; 88.1, .381; 89.5.
August 17, 1988	August 18, 1989	Civil Penalty Program, § II (Assessment), paragraph 4; Program Guidance Manual, § 1:3:6 (Civil Penalty Assessments) Part 1—Coal, paragraph 4.
August 21, 1986	November 3, 1989	PA Policy Statement entitled Reclamation in Lieu of Cash Payment for Civil Penalties found in Department of Environmental Resources Program Guidance Manual at § 1:3:9.
December 22, 1989	May 31, 1991	25 PA Code 86.17(e), .83(a)(2), .112(b)(1), .158(b)(1), (2), (3), .174(d)(1), .175(1), (2), (3), .182(d); 87.73, .112(b)(1), (f), .125(a), .127(e)(2), (h), .131(n), .135(a), .138; 88.24(b)(4), .492(c)(4); 89.34(a)(1), (2)(ii), .59(a)(1), (2), (3), .71(d), .82, .101(a), (d), .172(b); 90.112(b)(1), (d), (f), .150.
September 24, 1986	October 24, 1991	25 PA Code 86.182, .186 through .190; PA SMCRA §§ 3.1, 4(a), (b), 18(c)(i), 18.8.
May 27, 1992	October 28, 1992	25 PA Code 86.83, .94.
June 2, 1992	November 16, 1992	25 PA Code 86.1; 88.1, .381; 89.5.
December 18, 1991	December 30, 1992, January 14, 1993, April 8, 1993.	25 PA Code 86.1, .36(c), .37(a), (c), .41 .43, .44, .52(c)(4), .53, .55(d), .62, .63, .101, .102, .129, .132, .133, .134(3)(ii)(C), (12), .136, .151(a), (d), (h), .163, .165, .193(3), (f), .194, .195, .202, .212; 87.1, .11, .14, .21, .42(2), .54(a)(9), (22), .77, .112(c), .151(d), .155, .160, .166; 88.1, .22(2), .31(a)(9), (22), .56, .115, .116, .381(c)(9), .491(a)(1)(ii), (i)(7), .492(f); 89.5, .26, .38(a), (b), (c), .86, .90, .111(c); 90.1, .11(a)(3), .21(a)(9), (24), .40, .112(c), .134, .140, .155(d), .159.
February 18, 1993	July 6, 1993	25 PA Code 86.17.
March 9, 1993	December 6, 1993	PA SMCRA § 4(d) concerning financial instruments for performance bonds.
May 11, 1993	July 20, 1994	25 PA Code 86.142, .159, .166.
October 24, 1994	April 3, 1995	25 PA Code 86.81 through .89, .91 through .95.

53. Section 938.25 is revised to read as follows:

§ 938.25 Approval of Pennsylvania abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register** and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the **Federal Register**.

Original amendment submission date	Date of final publication	Citation/description
April 17, 1992	October 30, 1992	Part D of Plan—Initiative, Part E of Plan—Modifications.

PART 943—TEXAS

54. The authority citation for part 943 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

55. Section 943.15 is revised to read as follows:

§ 943.15 Approval of Texas regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register** and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the **Federal Register**.

Original amendment submission date	Date of final publication	Citation/description
March 27, 1980	June 18, 1980, November 26, 1980.	TCMR 051.07.04.023, .070.
September 18, 1981	June 3, 1982	TCMR 05.07.01.313(a).
August 31, 1984	July 9, 1985	TCMR 051.07.04.008, .138, .184, .201, .340, .510, .620 through .625.
August 24, 1988	December 11, 1989	TCMR 806.309(j)(1)(A) through (H), (2)(A) through (D), (4)(A), (B), (C), (5)(A), (B), (6)(A) through (E), (7), (8).
June 24, 1991	February 19, 1992	TCMR 806.309(j)(1)(H), (I), 806.309(j)(2), (3), (7), (8), (9).
December 23, 1991	April 17, 1992	TCMR 816.394.
September 12, 1989	May 21, 1992	TCMR 701.008(53), 778.116(a) through (l), (n); 786.215(e)(2), .221(d), .225(h).
September 22, 1989	August 19, 1992	TCMR 700.002(b)(2), .003(22), .008(18), (56), (81), (85); 762.074(1), (2); 770.100(c), .101, .102(c); 771.107(d), .108; 776.111(a)(3)(A), (7), (b), (1); 779.125(b), .126(a), .133; 780.144(a), .145(b)(4), .151; 783.171(b), .172, .179; 784.187(b)(4), .191, .194(a), (e), (f), .195(a); 785.200(a), (b), (c), (f) through (i); 786.216(p); 788.230(a)(4), (5), (6); 788.232(c)(1), (d), (e); 795.237(b)(5), (c), (d), .238(d)(4), .243(a); 800.301(b); 808.317; 815.327(a), (f); 816.339(a), .344(a), .353(d), .359 through .362, .363(j), (i), (o), (p), .368(c), .369(a), .371(c)(3), .375(d), .377(b), .380(b), (c), .384(b)(2), .390(a); 817.509(a), .514(a), .531(j), (i), (o), (p), .547(b), (c), .551(b)(2), .562(c), .565(e); 819.600(c)(1); 840.672(b); 843.680(a), .682(f); 845.695(b)(2); 850.700, .701, .702(a) through (d), .703 through .710; recodification of the TCMR 700.001 through 845.698.
February 8, 1993	March 21, 1994	TCMR 778.116(l), (m); 786.215(e)(1), (2), (g); 788.225(e), (1)(A), (2), (3), (f), (1), (2), (g); 843.680(c).
May 24, 1994	March 27, 1995	TCMR 778.116(m); 786.215(e)(1), (f), .216(i) through (o), .225(f)(3), (4), (g), (1), (i) through (iv), (2), (h).
August 11, 1995	December 13, 1995	TCMR 806.309(j)(2)(C)(iv)(I)(A) through (C), (II)(A) through (C).
December 20, 1995	April 8, 1996	TCMR 701.008(71); 780.154(a) through (c); 784.198(a) through (c); 816.400 through 403; 815.327(c); 817.569 through 572; 827.651(b).
August 30, 1995, September 18, 1995.	June 18, 1996	TSMCRA Article 5920–11, 6(b), 21(a), (c); TCMR 701.008(104); 778.116(m), .225(g)(1).
August 24,1995	January 30, 1997	Recodification of TSMCRA Article 5920–11, 1 through 38; 4 Ch. 134.001 through .188.

56. Section 943.25 is revised to read as follows:

§ 943.25 Approval of Texas abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register** and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the **Federal Register**.

Original amendment submission date	Date of final publication	Citation/description
May 11 and 26, 1989	August 19, 1992	Certification of the completion of reclamation on all lands adversely impacted by past coal mining
August 24, 1997	January 30, 1997	Recodification of TSMCRA Article 5920–11, § 3(7); 4 Ch. 134.142.

PART 944—UTAH

57. The authority citation for part 944 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

58. Section 944.15 is revised to read as follows:

§ 944.15 Approval of Utah regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register** and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the **Federal Register**.

Original amendment submission date	Date of final publication	Citation/description
June 29, 1981	June 22, 1982	UCA 40–10–10, –11, –16, –17, –18, –21, –22, –24; UMC 784.20(b)(3)(v); 817.124(b).
May 21, 1981	September 27, 1982	SMC/UMC 845; Vegetation Information Guidelines.
August 26, 1982	December 13, 1982	SMC 816.53(c); UMC 817.42(a)(3)(i), (ii), .53(c), .101(b)(8), (c).
December 3, 1982	March 7, 1983	SMC/UMC 785.19(c)(3)(ii); SMC 816.72(b), (c); UMC 817.72(b), (c).
February 6, 1984	August 29, 1984	SMC/UMC 816/817.42; 840.11; 843.12.
August 13, 1984	December 3, 1985	SMC/UMC 700.1, .5—definition for "affected area;" 800, .5, .11 through .17, .20 through .23, .30, .40, .50, .60; 805 through 808; 843.11, .15, .16; 845.12, .13, .17 through .20.
September 25, 1985	December 18, 1985	SMC/UMC 843.13.
October 9, 1985	January 16, 1986	SMC/UMC 700.5—definition for "incidental boundary change;" 771.21(b)(3); 778.12.
January 21, 1985	June 10, 1986	Definitions for "adjacent area," "disturbed area," "permit area," "mine plan area;" SMC 843.11, .15, .16, .20; 845.12, .13, .17, .18, .19.
March 3, 1986	July 28, 1986	SMC/UMC 816/817.61; 850; Memorandum of Agreement between the Board and Division of Oil, Gas, and Mining and the Utah Industrial Commission; UCA 40–2–14 through –16; Utah Industrial Commission's General Safety Orders, Coal Mining, §§ 51 through 53.
September 3, 1986	January 28, 1987	SMC/UMC 700.5—definitions for "coal processing," "coal processing plant".
February 17, 1987	March 28, 1988	SMC/UMC 845.15(b)(1)(ii), (2).
September 24, 1987	August 18, 1988	SMC/UMC 785.19(e)(2).
August 11, 1989	April 12, 1990	Utah Admin. R. 614–100 through –105, –200 through –203, –300; –301, –100 through –800; –302, –100 through –300; –303, –100 through –300; –400, –100 through –300; –401, –100 through –900; –402, –100 through –500.
November 13, 1989	August 13, 1990	UCA 40–10–10, –14, –20, –21, –25, –30, –31.
October 10, 1990	January 29, 1991	UCA 40–10–6.5(1), (2), (3); 6.6(1), (2).
July 3, 1990	August 23, 1991	Utah Admin. R. 614–100–200, definitions of "fragile lands," "owned or controlled," "owns or controls," "unwarranted failure to comply," "valid existing rights;" –415; 614–103–220 through –222; 614–105–443; 614–201–400 through –432, .100, .300, –433, –434; 614–300–112.500, –132.100, .120, .200, .300, –148, .100, .200, –160, –161, –162.100 through .300, –163, .100 through .400, –164, .100 through .300, –170; 614–301–112.200 through .420, .900, –113.300 through .310, .400, –352, –356.110 and Vegetation Information.
March 1, 1991	November 22, 1991	Utah Admin. R. 614–100–200, definition for "public road".
December 30, 1991	May 11, 1992	Utah Admin. R. 645–100–200 definitions for "cumulative impact area," "cumulative measurement period," "cumulative production," "cumulative revenue," "mining area," "other minerals;" –414; 645–106–100, –200 through –262, –300 through –326, –400 through –430, –500 through –522, –600 through –616, –700 through –724, –800 through –843, –900 through –926; 645–300–211.
July 26, 1991	August 19, 1992	UCA 40–10–5(1), (b), (2), –6.6(1), (2), (3).
November 20, 1991	September 11, 1992	Utah Admin. R. 645–100–200, –400 through –452; 645–103–220; 645–301–111.400, –356.231, –425, –512.140, –528.320, –553.800, –731.750, –742.224; 645–300–110, Guideline for Examining and Evaluating Violations, Penalties, and Fees; Vegetation Information Guidelines.
November 5, 1992	March 30, 1993	Utah Admin. R. 614–100–452.
April 30, 1992	September 17, 1993	Utah Admin. R. 645–100–200, definition for "highwall;" 645–301–553, .100, .130, .510, .520, .521, .523, .620, .630 through .633, .652 through .655.
September 17, 1992	April 7, 1994	Utah Admin. R. 645–100–200, definitions for "affected area," "public road," "road".
March 7, 1994	May 24, 1994	Utah Admin. R. 645–303–224.400 through .600.
August 2, 1993	July 11, 1994	Utah Admin. R. 641–112; R645–100–500; 645–103–441; 645–203–200; 645–301–524.661, –731.760; 645–302–314.110, –323.310.
January 27, 1994	September 27, 1994	Utah Admin. R. 645–200–121, –122, –123, –220, –230; 645–201–100 through –130, –200 through –220, –223, –310, –323.100, –342.200; 645–202–100, –232, –235.
March 7, 1994	September 27, 1994	UCA 40–10–14(3), 20(1), (2), (3), (5), (6), (8).
September 9, 1994	March 27, 1995	Utah Admin. R. 645–203–200.
February 10, 1995	May 2, 1995	Utah Admin. R. 645–401–120, –410, –430, –721, –723.100, –742, –810, –830, –910; 645–402–120, –420, –422.
November 12, 1993	May 30, 1995	Utah Admin. R. 645–100–200, definition for "continuously mined areas;" 645–301–553, .100 through .130, .150, .200 through .230, .252, .300, .500 through .540, .600 through .612, .650, .650.100 through .500.
April 14, 1994	July 19, 1995	UCA 40–10–2(1) through (6), –3(1) through (22), –4, –6.5(1), (2), (3), .7, –7(1), –8(1), (3), –10(2), –11(1), (2)(a) through (d), (e)(ii), (f)(i), (iii), (3), (4), (a), (b), (5)(a) through (c), –12(3), –13(2)(b), –14(2), (3), (6), –15(1), –16(1), (3), (6)(a) through (d), –17(2)(g), (j)(i)(B), (ii)(A), (B), (2)(m), (o), (o)(i), (iv), (v), (p)(i)(F), (ii), (iii), (t)(i), (ii), (2)(v), (viii), (3)(b), (ii), (c), (4)(a), (d), (5), –18(1), (2)(i)(i)(B), (j), (4)(a) through (c), (5), –19(1), (2)(a), –20(2)(e)(ii), –21(1)(a)(i), (ii), (2)(a)(ii), (5), –22(1)(c), (d), (2)(a)(i), (b), (3)(a), (b), (d), (e), (f), –24(1)(c)(i)(A), (B), (C), (D), (ii), (e)(i), (ii), (iii), (2)(a), (b), –30; Utah Admin. R. 641–100–100.
February 6, 1995	September 14, 1995	Utah Admin. R. 645–301–357.300 through .365, Vegetation Information Guidelines.

Original amendment submission date	Date of final publication	Citation/description
November 30, 1995, December 4, 1995, March 11, 1996.	September 4, 1996	Utah Admin. R. 645–100–500; 645–301–553.110, .120.

59. Section 944.25 is revised to read as follows:

§ 944.25 Approval of Utah abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register** and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the **Federal Register**.

Original amendment submission date	Date of final publication	Citation/description
July 26, 1991	August 19, 1992	UCA 40–10–25(1), (2)(c), (e), (f), (3)(a), (b), (c), .1(1)(a), (b), (2)(a), (b), (c), (3)(a) through (d), .2(1), (2), –27(10)(b), –28.1(1) through (7).
March 7, 1994	September 27, 1994 ...	UCA 40–10–28(1), (a)(i), (b), (2)(b), .1(6).
April 14, 1994	July 19, 1995	UCA 40–10–25(2)(d), (e), (3), (a), (b), (4), (5), (6), –27(5)(a), (12)(b), –28(1)(a)(ii), (2)(a).

PART 946—VIRGINIA

60. The authority citation for part 946 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

61. Section 946.15 is revised to read as follows:

§ 946.15 Approval of Virginia regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register** and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the **Federal Register**.

Original amendment submission date	Date of final publication	Citation/description
January 28, 1982	July 21, 1982	Virginia's revised policy statement granting authority to field inspectors to issue cessation orders for imminent danger or harm.
July 9, 1982	August 19, 1982	VA Code § 33.1–246.1; V816.150, V817.150.
July 8, 1982	September 21, 1982 ...	VA Code §§ 45.1–270.1 through .7; V808.15, V809, reference changes to remainder of Subchapter VJ.
August 13, 1982	December 13, 1982	VA Code § 45.1–235(C); conditions (a) through (j), (l) through (p), (s).
September 30, 1982 ...	January 18, 1983	§ V809.
December 20, 1982	February 28, 1983	§ V809.11.
March 22, 1983	April 21, 1983, June 6 and 20, 1983.	VA Code §§ 45.1–234, 240 , 249, 251.
July 9, 1982	April 22, 1983	Chapter 23 of Title 45.
May 20, 1983	December 27, 1983	VA Code §§ 45.1–270.2 through .4; Part V809.
July 27, 1983	March 16, 1984	Coal haul road policy.
February 10, 1984	May 8, 1984	§ V786.19(o).
April 11, 1984	August 2, 1984	Subchapter VM Part V850—Blaster certification program; §§ V816/817.61(c); Chapter 230 of the 1984 Acts of Assembly; and all other items.
June 13, 1984	August 31, 1984	Chapter 590 of the 1984 Acts of Assembly to revise various Sections of Title 45.
February 20, 1985	May 8, 1985	VA Code §§ 45.1–244, 369.1.
May 1985	August 15, 1985	VA Code §§ 45.1–364, 364.1.
September 4, 1985	November 18, 1985	V700.5—definitions of "coal preparation or coal processing," "coal preparation plant".
November 8, 1985	November 25, 1986	VR 480–03–19: 700 through 850; techniques for measuring revegetation success; applications for a permit revision.
March 20, 1987	July 17, 1987	VR 480–03–19: 784.20(f)(2); 817.121(c)(2).
January 16, 1987	August 17, 1987	VR 480–03–19.801.13(a)(2), .17(a).
June 15, 1987, July 2, 1987.	December 31, 1987	VA Code §§ 45.1–270.3:1, .4, .5:1, .6B; VR 480–03–19.801.12(a).
September 1, 1987	March 7, 1988	VR 480–13–19.789.1(e); measurement techniques for determining ground cover on small areas; sampling techniques for measuring productivity of grazing land, pasture land, and crop land; VR 480–03–19: .843.15, .845.17(b), .18(b)(1).
September 10, 1987 ...	June 16, 1988	VR 480–03–19: 700.5 defining "abatement plan," "actual improvement," "baseline pollution load," "best professional judgment," "best technology," "pollution abatement area;" 785.19; 825.
June 30, 1989	December 1, 1989	VR 480–03–19: 700.11; 764.15, 773.15; 779.19, .20; 780.14, .16; 783.19, .20; 784.20, .21; 785.14; 801.17; 816.97; 817.97; 840.11; 846, .2, .12; 846.14, .17, .18.
July 5, 1989	February 2, 1990	VA Code §§ 45.1–270.2, .3.

Original amendment submission date	Date of final publication	Citation/description
April 6, 1988	February 5, 1990	VR 480–03–19: 700.5; 772.12(b)(8)(iv); 773.12, .15(c)(11), (12); 779.12(b), .24(j); .780.31; 783.12(b), .24(j); 784.17; 785.13(b)(2), .14(c)(1), .16(a)(1); 800.52; 816/817.116(b)(3)(v)(C); 842.15(d); 843.12(j), .13(f); revegetation success standard.
August 31, 1990	December 7, 1990	VA Code § 45.1–270.4:1.
September 12, 1990 ...	December 26, 1990	VR 480–03–19: 784.20; 817.121
June 29, 1990	January 4, 1991	VR 480–03–19: 700.5; 773.15, .17, .20, .21; 778.13, .14; 843.11, .13.
April 5, 1991, May 1, 1991.	August 5, 1991	VR 480–03–19: 801.11(a), .12(a), (b), (g), .14(a) through (d), .15(a); VA Code §§ 45.1–261.1, 270.3, .3:1, .4, .4:1
October 1, 1990	July 7, 1992	VR 480–03–19: 700.5 definitions—"Road," "Support Facilities," .11(a), (4), (d); 701.11(a) through (c); 702.5 defining Exemption for Coal Extraction Incidental to the Extraction of Other Minerals, .11 through .18; 772.11(a), (b)(3), .12(a), (b)(3), (d), .14(a), (b); 773.11(a); 780.25(c), .37(a) through (e), .38; 784.16(c), .24(a) through (e), .30; 785.17(e)(5), .21(a); 800.60(b); 815.2, .15(b); 816.46(c)(2), .49(a)(1), (3)(i), (5), (8), (9), (b)(7), (c)(2), .84(b)(2), (f), .116(b)(3)(i), (ii), (iv)(C), (c)(2), .150(a) through .150(e), (f)(1), .151(a)(1), (2), (c), (d)(1), (2), (4), (5), (6); 817.46(c)(2), .49(a)(1), (3)(i), (5), (8), (9), (b)(7), (c)(2), .84(b)(2), (f), .116(b)(3)(i), (ii), (iv)(C), (v)(C), (c)(2), .150(a) through (e), (f)(1), .151(a), (c), (d)(1), (2), (4), (5), (6); 823.11(b), .12(c)(2), .14(d); 827.1; 843.11(a)(2).
May 6, 1993	September 24, 1993 ...	VA Code §§ 45.1–243, –258.
October 22, 1993	September 27, 1994 ...	VR 480–03–19.816/817: .49(a)(3)(ii), .116(b)(3)(v)(A), (c)(3), .151(b), .152.
October 31, 1994	August 8, 1995	VR 480–03–19.816/817.102(e)(1), (2).
October 13, 1995	May 29, 1996	VR 480–03–19.816.102(e), .817.102(e).
April 17, 1996	August 19, 1996	VA Code § 45.1–243B; VR 480–03–19.784.14(g); 817.41(i)(3), (i)(3)(i), (ii).
May 28, 1996	September 4, 1996	VA 480–03–19.700.5 concerning definitions of "Lands eligible for remining," "Unanticipated event or condition;" 773.15(b)(4), (c)(14); 785.25; 816/817.116(c)(2)(i), (ii).

62. Section 946.25 is revised to read as follows:

§ 946.25 Approval of Virginia abandoned mine land reclamation plan amendments.

(a) The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register** and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the **Federal Register**.

Original amendment submission date	Date of final publication	Citation/description
November 8, 1985	November 25, 1986	VR 480–03–19.874 through 882.
February 3, 1987	November 13, 1987	VR 480–03–19.884.13(c) (2), (5), (6), (7), (d)(1), (2); Establish emergency program.

(b) You may receive a copy from:

(1) Virginia Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Gap, Virginia 24219, or

(2) Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, Powell Valley Square Shopping Center, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, Virginia 24219.

PART 948—WEST VIRGINIA

63. The authority citation for part 948 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

64. Section 948.15 is revised to read as follows:

§ 948.15 Approval of West Virginia regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register** and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the **Federal Register**.

Original amendment submission date	Date of final publication	Citation/description
October 29, 1981	May 11, 1982	§ 10.
June 17, 1982	September 10, 1982 ...	§ E.03 of the State's coal refuse disposal regulations.
September 14, 1982, October 29, 1982.	March 1, 1983	§§ 4D.04h; 6A.02a.6; 6B.02, .07c.2, f; 7A.02a.6; 12B.07; 15A.01; Part H concerning alternative bonding system.
February 16, 1983, April 29, 1983, June 15, 1983, September 13, 1983.	November 16, 1983	Technical Handbook of Standards and Specifications for Mining Operations; applicability; bond release procedures for interim program permits; incidental mining.
January 12, 1984	September 20, 1984 ...	Chapter 22–4 Series—blaster certification program.
November 20, 1984	April 23, 1985	Chapter 22–4 Series, § 6.01(B), 9—blaster certification program.

Original amendment submission date	Date of final publication	Citation/description
March 30, 1984, October 30, 1984, May 20, 1985, June 14, 1985.	July 11, 1985	Reclamation and coal refuse disposal; Transfer of program authority; permit addendum and Chapter 20, Revegetation, of the Technical Handbook for Surface Mining; permit or significant revision to a permit; the coal exploration approval document; civil penalty procedures; assessable and non-assessable violations.
November 11, 1985	March 20, 1986	Financial analysis and supporting documentation demonstrating sufficient money in the special reclamation fund; withdrawals from the fund; noncoal administrative expenses.
June 30, 1986, April 26, 1986.	May 23, 1990	Code of Violations; Replacement of all regulations in chapter 20, Article 6, Series VII and VII–A (1985) with new set of Legislative Rules at title 38, Series 2.
June 29, 1990	October 4, 1991	CSR 38–2 §§2, 3, 5, 6, 9, 11 through 14, 17, 20, 22.
July 12, 1991	November 19, 1991	CSR 38–2–20.5, .6, .7
July 30, 1993	August 16, 1995	CSR 38–2–14.14(b)(4), (g)(1)(B), (g)(8), (11), (12).
June 28, 1993	October 4, 1995, February 21, 1996.	WV Code 22–1–4 through –8; 22–2; 22–3–3, –5, –7, –8, –9, a, –11(a), (g), –12, –13, –15, –17, –18, –19, –22, –26,—28, –40; 22B–1–4 through –12; 22B–3–4; 22B–4; CSR 38–2–1.2, –2, –3.1(o), .4, .6, .7, .8, .12, .14, .15, .16, .25, .26, .27(a), .28, .29, .30, .31(a), .32, .33, .34, –4, .1(a), .2 through .12, –5.2, .4, .5, –6, .3(b), .6, .8, –8.1, –9, –11.1 through .7, –12.2, .3, .4(a), (2)(B), (c) through (e), .5,—13, –14.5, .8, .11, .12, .14, .15, .17, .18, .19, –15.2,—16.2, –17, –18.3, –20.1, .2, .4 through .7, –22; 38–2C–4,—5, –8.2, –10.1, –11.1; 38–2D–4.4(b), –6.3(a), –8.7(a).
April 2, 1996	July 24, 1996	CSR 38–2–4.12, –5.4(c), –12.2(e), –14.3(c), .14(e)(4), .15(m).

65. Section 948.25 is revised to read as follows:

§ 948.25 Approval of West Virginia abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register** and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the **Federal Register**.

Original amendment submission date	Date of final publication	Citation/description
May 20, 1985	July 11, 1985	Transfer of program authority to the Department of Energy (HB 1850).
December 30, 1987	August 26, 1988	Agency structure, public participation procedures, assumption of emergency reclamation program.
September 17, 1991, October 25, 1991.	March 26, 1993	Amendments contained in House Bill 2492; Expanded eligibility criteria; Acid mine drainage treatment and abatement program.

PART 950—WYOMING

66. The authority citation for part 950 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

67. Section 950.15 is revised to read as follows:

§ 950.15 Approval of Wyoming regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register** and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the **Federal Register**.

Original amendment submission date	Date of final publication	Citation/description
March 26, 1981, April 8, 1981.	February 18, 1982	LQD Rules, Ch I, §2(14) defining "complete application;" Ch II, §§1.c., 2.a.(1)(f)(ii), 3.a(6)(b)(iii), (d)(ii); Ch IV, §§2.c.(2)(a), 2.d.(6), 3.p.(1)(a); sworn applicant statement regarding reclamation fees payment.
May 26, 1982	September 27, 1982	LQD Rules, Ch I, §2(99).
March 3, 8 and 21, 1983.	November 9, 1983	W.S. 35–11–103(e) (xxii), (xxiii) defining "complete application," "deficiency" in permit applications, "interim mine stabilization;" W.S. 35–11–401(n), 406(h); LQD Rules, Ch I, §2; Ch XIII, §2; Ch XVI, §§1 through 6.
June 25, 1984	February 28, 1985	LQD Rules, Ch IV, §§1, 2; Ch XII, §§1 through 7; Ch XVII, §§1 through 3.
September 21, 1984	December 3, 1985	LQD Rules, Ch I, §2; Ch XIII.
October 12, 1984	December 13, 1985	LQD Rules, Ch VI, §6.
June 19, 1985	January 2, 1986	LQD Rules, Ch X, and accompanying Appendix A.
June 10, 1985	March 31, 1986	LQD Rules, Ch II, §3; Ch III, §2; Ch V, §§1, 6, 7; Ch VI, §§2 through 5; Ch VII, §§1 through 4; Ch XI, §§1 through 4, 6; Ch XVI, §§1 through 5; Ch XVIII, §§1 through 5.
May 1, 1986	November 24, 1986	LQD Rules, Chs I, II, III, IV, IX, XII, XIV, XXIII; Appendix A, "Vegetation Sampling Methods and Reclamation Success Standards for Surface Coal Mining Operations".
December 13, 1985	May 6, 1987	LQD Rules, Ch XII, "Self-Bonding Program".
March 31, 1989	July 25, 1990	LQD Rules, Ch I, §2; Ch II, §§2, 3; Ch IV, §§2, 3; Ch V, §§2, 6, 7; Ch VI, §§3, 4; Ch VII, §§1, 4; Ch IX, §§1, 2, 3; Ch XI, §§1, 3; Ch XII, §§1 through 4, 6; Ch XIII, §1; Ch XIV, §§1, 2; Ch XVI, §§1, 3, 4; Ch XVII, §§1, 2; Ch XVIII, §§1, 3.

Original amendment submission date	Date of final publication	Citation/description
May 1, 1986	January 29, 1991	LQD Rules, Ch IV, §§3(h)(iii)(A), (B); Ch VI, §3(c)(ii)(C)(I)
March 21, 1991	July 8, 1992	W.S. Article 1, subsection 35–11–103(e) (xxvi), (xxvii); Article 4, subsection 35–11–402(b).
June 24, 1991	October 29, 1992	W.S. 35–11–103(d)(ii)(D); LQD Rules, Ch I, §§2(br), (ba), 3(b)(i); Ch II, §§3(a)(vi)(E), (M), (b)(xvi)(D), (xx), (v)(C); Ch IV, §§3(d)(vii), (e)(i)(H); Ch XI, §2(b)(iv); Ch XII, §1(a); Ch XIII, §1(a)(v)(A); Ch XXI, §3(b)(vii), (x).
March 19, 1993	August 23, 1993	W.S. 35–11–406(h), (j).
July 8, 1992	October 7, 1993	LQD Rules, Ch II, §3(b)(iv)(B); Ch IV, §3(o)(iv); Appendix B, "Wildlife Monitoring Requirements for Surface Coal Mining Operations".
July 24, 1992	November 2, 1993	LQD Rules, Ch I, §2(e); Ch II, §3(a)(i)(D); Ch XIV, §§2(b)(i), 6(a).
August 18, 1982, March 9, 1993.	January 24, 1994	W.S. 35–11–437(f); LQD Rules, Ch I, §2(cv) defining "toxic materials;" Ch II, §7; Ch V pertaining to the award of costs and expenses in administrative proceedings; Ch VI pertaining to informal review by the Director.
December 15, 1992, August 6, 1993.	March 30, 1994	LQD Rules, Chs I through XX, Appendices A, B.
May 1, 1986	June 30, 1994	LQD Rules, Ch IV, §2(b)(i).
April 13, 1994	October 21, 1994	W.S. 35–11–437(f), (g).
November 8, 1994	March 17, 1995	Appendix B, §§C, E.
June 2, 1995	September 14, 1995	W.S. 35–11–406(j).
April 21, 1995	February 21, 1996	W.S. 35–11–1206(a), (b), –1209(a), (b).
November 29, 1995	August 6, 1996	W.S. 35–11–103(e)(xxviii), (xxix), (xxx); 35–11–402(b), (c); Ch I, §2(ac), (ax), (bc)(iii), (viii), (xi), (v), (w); Ch. II, §2(a)(vi)(G)(II), (b)(iv)(C); Ch IV, §2(d)(x)(E)(I), (II), (III), appendix A; Ch X, §4(e); Ch XI, §5(a); Ch. XIII, §1(a).
April 18, 1996	August 27, 1996	W.S. 35–11–426(a), (b); 35–11–431(a)(vi).

68. Section 950.35 is revised to read as follows:

§ 950.35 Approval of Wyoming abandoned mine land reclamation plan amendments.

(a) Wyoming certification of completing all known coal-related impacts is accepted, effective May 25, 1984.

(b) The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register** and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the **Federal Register**.

Original amendment submission date	Date of final publication	Citation/description
December 16, 1991	April 13, 1992	W.S. 35–11–1201 through 1304; Chs I through VIII of State's AML rules.
April 21, 1995	February 21, 1996	W.S. 35–11–1206(a), (b); –1209(a), (b).

[FR DOC. 97–5243 Filed 3–4–97; 8:45 am]
BILLING CODE 4310–05–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 536

Narcotics Trafficking Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control of the U.S. Department of the Treasury is issuing the Narcotics Trafficking Sanctions Regulations to implement the President's declaration of a national emergency and imposition of sanctions against significant foreign narcotics traffickers centered in Colombia.

EFFECTIVE DATE: February 28, 1997.

FOR FURTHER INFORMATION CONTACT: Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220; tel.: 202/622–2520.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

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Background

On October 21, 1995, the President issued Executive Order 12978, declaring a national emergency with respect to "the actions of significant foreign narcotics traffickers centered in Colombia, and the unparalleled violence, corruption, and harm that they cause in the United States and abroad,"

and invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706). The order blocks all property and interests in property of four persons listed in an Annex to the order, as well as the property and interests in property of other persons who are designated by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State. The order also authorizes the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to take such actions, including the promulgation of rules and regulations, as may be necessary to carry out the purposes of the order. In implementation of the order, the Treasury Department is issuing the Narcotics Trafficking Sanctions Regulations (the "Regulations").

The Regulations block all property and interests in property of (1) foreign persons designated in Executive Order 12978; (2) foreign persons designated by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, because they are found:

(a) to play a significant role in international narcotics trafficking centered in Colombia; or

(b) materially to assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to the order.

The Regulations also block all property and interests in property of persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, any other designated person. Persons coming within any of these categories are called specially designated narcotics traffickers ("SDNTs"). Executive Order 12978 blocks all property or interests in property of SDNTs that are in the United States, that hereinafter come within the United States, or that are or hereafter come within the possession or control of U.S. persons, including their overseas branches. Section 2 of Executive Order 12978 also prohibits any transaction or dealing by U.S. persons or in the United States in property or interests in property of SDNTs, including any transaction that evades or avoids, or that has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in the order.

Transactions otherwise prohibited under this part but found to be consistent with U.S. policy may be authorized by a general license contained in subpart E or by a specific license issued pursuant to the procedures described in § 536.801 of subpart H. Civil and criminal penalties for violations of the Regulations are described in subpart G.

Since the Regulations involve a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553), requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply. Wherever possible, however, it is the practice of the Office of Foreign Assets Control to receive written submissions or hold informal consultations with interested parties concerning any rule or other public document.

Paperwork Reduction Act

The Regulations are being issued without prior notice and public comment procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the collections of information contained in the Regulations have been submitted to and approved by the Office of Management and Budget ("OMB") pending public comment, and have been assigned control number 1505–0163. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collections of information in the Regulations are contained in §§ 536.503, 536.504, subpart F, and § 536.801. This information is required by the Office of Foreign Assets Control for licensing, compliance, civil penalty, and enforcement purposes. This information will be used to determine the eligibility of applicants for the benefits provided through specific licenses, to determine whether persons subject to the Regulations are in compliance with applicable requirements, and to determine whether and to what extent civil penalty or other enforcement action is appropriate. The likely respondents and record keepers are individuals and business organizations.

The estimated total annual reporting and/or recordkeeping burden: 500 hours.

The estimated annual burden per respondent/record keeper varies from 30 minutes to 2 hours, depending on individual circumstances, with an estimated average of 1 hour.

Estimated number of respondents and/or record keepers: 500.

Estimated annual frequency of responses: 1–12.

Comments are invited on: (a) whether these collections of information are necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start–up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments concerning the above information, the accuracy of estimated average annual burden, and suggestions for reducing this burden should be directed to OMB, Paperwork Reduction Project, control number 1505–0163, Washington, DC 20503, with a copy to the Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Ave., NW—Annex, Washington, DC 20220. Any such comments should be submitted not later than May 5, 1997. Comments on aspects of the Regulations other than those involving collections of information should not be sent to OMB.

List of Subjects in 31 CFR Part 536

Administrative practice and procedure, Banks, banking, Blocking of assets, Drug traffic control, Narcotics trafficking, Penalties, Reporting and recordkeeping requirements, Specially designated narcotics traffickers, Transfer of assets.

For the reasons set forth in the preamble, 31 CFR part 536 is added to read as follows:

PART 536—NARCOTICS TRAFFICKING SANCTIONS REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.

536.101 Relation of this part to other laws and regulations.

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Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

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536.502 Exclusion from licenses and authorizations.
536.503 Payments and transfers to blocked accounts in U.S. financial institutions.
536.504 Investment and reinvestment of certain funds.
536.505 Entries in certain accounts for normal service charges authorized.
536.506 Provision of certain legal services authorized.
536.507 Authorization of emergency medical services.

Subpart F—Reports

536.601 Required records.
536.602 Reports to be furnished on demand.
536.603 Registration of persons holding blocked property subject to § 536.201.

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536.701 Penalties.
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536.704 Penalty notice.
536.705 Administrative collection; referral to United States Department of Justice.

Subpart H—Procedures

536.801 Licensing.
536.802 Decisions.
536.803 Amendment, modification, or revocation.
536.804 Rulemaking.
536.805 Delegation by the Secretary of the Treasury.
536.806 Rules governing availability of information.

Subpart I—Paperwork Reduction Act

536.901 Paperwork Reduction Act notice.

Authority: 3 U.S.C. 301; 50 U.S.C. 1601–1641, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 12978, 60 FR 54579 (October 24, 1995), 3 CFR, 1995 Comp., p. 415.

Subpart A—Relation of This Part to Other Laws and Regulations

§ 536.101 Relation of this part to other laws and regulations.

(a) This part is separate from, and independent of, the other parts of this chapter. Differing foreign policy and national security contexts may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part.

(b) No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

Subpart B—Prohibitions

§ 536.201 Prohibited transactions involving blocked property.

Except as authorized by regulations, orders, directives, rulings, instructions, licenses, or otherwise, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, no property or interests in property of a specially designated narcotics trafficker that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of U.S. persons, including their overseas branches, may be transferred, paid, exported, withdrawn or otherwise dealt in.

§ 536.202 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date, which is in violation of any provision of this part or of any regulation, order, directive, ruling, instruction, license, or other authorization hereunder and involves any property held in the name of a specially designated narcotics trafficker or in which a specially designated narcotics trafficker has or has had an interest since such date, is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power or privilege with respect to such property.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or interest in, any property held in the name of a specially designated narcotics trafficker or in which a specially designated narcotics trafficker has an interest, or has had an interest since such date, unless the person with whom such property is held or maintained, prior to such date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, an appropriate license or other authorization issued by or pursuant to the direction or authorization of the Director of the Office of Foreign Assets Control before, during, or after a transfer shall validate such transfer or render it enforceable to the same extent that it would be valid or enforceable but for the provisions of the International Emergency Economic Powers Act, this part, and any regulation, order, directive, ruling, instruction, or license issued hereunder.

(d) Transfers of property which otherwise would be null and void or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void or unenforceable as to any person with whom such property was held or maintained (and as to such person only) in cases in which such person is able to establish to the satisfaction of the Director of the Office of Foreign Assets Control each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property was held or maintained;

(2) The person with whom such property was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization by or pursuant to this part and was not so licensed or authorized, or if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation of a third party or the withholding of material facts or was otherwise fraudulently obtained; and

(3) The person with whom such property was held or maintained filed with the Office of Foreign Assets Control a report setting forth in full the circumstances relating to such transfer promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any

regulation, ruling, instruction, license, or other direction or authorization hereunder; or

(ii) Such transfer was not licensed or authorized by the Director of the Office of Foreign Assets Control; or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or the withholding of material facts or was otherwise fraudulently obtained.

Note to paragraph (d)(3): The filing of a report in accordance with the provisions of this paragraph (d)(3) shall not be deemed evidence that the terms of paragraphs (d)(l) and (2) of this section have been satisfied.

(e) Unless licensed or authorized pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property which, on or since the effective date, was held in the name of a specially designated narcotics trafficker or in which there existed an interest of a specially designated narcotics trafficker.

536.203 Holding of certain types of blocked property in interest-bearing accounts.

(a)(1) Any person, including a U.S. financial institution, currently holding property subject to § 536.201 which, as of the effective date or the date of receipt if subsequent to the effective date, is not being held in an interest-bearing account, or otherwise invested in a manner authorized by the Office of Foreign Assets Control (*e.g.*, § 536.504), shall transfer such property to, or hold such property or cause such property to be held in, an interest-bearing account or interest-bearing status in a U.S. financial institution as of the effective date or the date of receipt if subsequent to the effective date of this section, unless otherwise authorized or directed by the Office of Foreign Assets Control.

(2) The requirement set forth in paragraph (a)(1) of this section shall apply to currency, bank deposits, accounts, obligations, and any other financial or economic resources or assets, and any proceeds resulting from the sale of tangible or intangible property. If interest is credited to an account separate from that in which the interest-bearing asset is held, the name of the account party on both accounts must be the same and must clearly indicate the specially designated narcotics trafficker having an interest in the accounts. If the account is held in the name of a specially designated narcotics trafficker, the name of the account to which interest is credited must be the same.

(b) For purposes of this section, the term *interest-bearing account* means a blocked account in a U.S. financial institution earning interest at rates that are commercially reasonable for the amount of funds in the account. Except as otherwise authorized, the funds may not be invested or held in instruments the maturity of which exceeds 90 days.

(c) This section does not apply to blocked tangible property, such as chattels, nor does it create an affirmative obligation on the part of the holder of such blocked tangible property to sell or liquidate the property and put the proceeds in a blocked account. However, the Office of Foreign Assets Control may issue licenses permitting or directing sales of tangible property in appropriate cases.

536.204 Evasions; attempts; conspiracies.

Any transaction for the purpose of, or which has the effect of, evading or avoiding, or which facilitates the evasion or avoidance of, any of the prohibitions set forth in this part, is hereby prohibited. Any attempt to violate the prohibitions set forth in this part is hereby prohibited. Any conspiracy formed for the purpose of engaging in a transaction prohibited by this part is hereby prohibited.

536.205 Exempt transactions.

(a) *Personal communications.* The prohibitions contained in this part do not apply to any postal, telegraphic, telephonic, or other personal communication, which does not involve the transfer of anything of value.

(b) *Information and informational materials.* (1) The importation from any country and the exportation to any country of information or informational materials as defined in § 536.306, whether commercial or otherwise, regardless of format or medium of transmission, are exempt from the prohibitions and regulations of this part.

(2) This section does not authorize transactions related to information and informational materials not fully created and in existence at the date of the transactions, or to the substantive or artistic alteration or enhancement of informational materials, or to the provision of marketing and business consulting services by a U.S. person. Such prohibited transactions include, without limitation, payment of advances for informational materials not yet created and completed, provision of services to market, produce or co- or produce, create or assist in the creation of information and informational materials, and payment of royalties to a specially designated narcotics trafficker with respect to income received for enhancements or alterations made by U.S. persons to information or informational materials imported from a specially designated narcotics trafficker.

(3) This section does not authorize transactions incident to the exportation of technology that is not informational material as defined in § 536.306(b)(1) or incident to the exportation of goods for use in the transmission of any information.

(c) *Travel.* The prohibitions contained in this part do not apply to transactions ordinarily incident to travel to or from any country, including importation of accompanied baggage for personal use, maintenance within any country including payment of living expenses and acquisition of goods or services for personal use, and arrangement or facilitation of such travel including non-scheduled air, sea, or land voyages. Any transactions entered into by a specially designated narcotics trafficker while traveling in the United States that are outside the scope of those set forth in this paragraph are in violation of § 536.201.

Subpart C—General Definitions

§ 536.301 Blocked account; blocked property.

The terms *blocked account* and *blocked property* shall mean any account or property subject to the prohibition in § 536.201 held in the name of a specially designated narcotics trafficker or in which a specially designated narcotics trafficker has an interest, and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to an authorization or license from the Office of Foreign Assets Control authorizing such action.

§ 536.302 Effective date.

The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part which is 12:01 a.m. EDT, October 22, 1995, or, in the case of specially designated narcotics traffickers designated after that date, the earlier of the date on which a person receives actual or constructive notice of such designation.

§ 536.303 Entity.

The term *entity* means a partnership, association, corporation, or other organization, group or subgroup.

§ 536.304 Foreign person.

The term *foreign person* means any citizen or national of a foreign state (including any such individual who is also a citizen or national of the United States), or any entity not organized solely under the laws of the United States or exisfing solely in the United States, but does not include a foreign state.

§ 536.305 General license.

The term *general license* means any license or authorization the terms of which are set forth in this part.

§ 536.306 Information and informational materials.

(a) For purposes of this part, the term *information and informational materials* means:

(1) Publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds, and other information and informational articles.

(2) To be considered informational materials, artworks must be classified under chapter subheading 9701, 9702, or 9703 of the Harmonized Tariff Schedule of the United States.

(b) The terms *information* and *informational materials* with respect to U.S. exports do not include items:

(1) That were, as of April 30, 1994, or that thereafter become, controlled for export pursuant to section 5 of the Export Administration Act of 1979, 50 U.S.C. App. 2401–2420 (the "EAA"), or section 6 of the EAA to the extent that such controls promote nonproliferation or antiterrorism policies of the United States, including *software* as defined in 15 CFR part 772 that is not *publicly available* (see 15 CFR parts 734 and 772); or

(2) With respect to which acts are prohibited by 18 U.S.C. chapter 37.

§ 536.307 Interest.

Except as otherwise provided in this part, the term *interest* when used with respect to property (*e.g.*, "an interest in property") means an interest of any nature whatsoever, direct or indirect.

§ 536.308 License.

Except as otherwise specified, the term *license* means any license or authorization contained in or issued pursuant to this part.

§ 536.309 Person.

The term *person* means an individual or entity.

§ 536.310 Property; property interest.

The terms *property* and *property interest* include, but are not limited to, money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, guarantees, debentures, stocks, bonds, coupons, any other financial instruments, bankers acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership or indebtedness, letters of credit and any documents relating to any rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors sales agreements, land contracts, leaseholds, ground rents, real estate and any other interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future or contingent.

§ 536.311 Narcotics trafficking.

The term *narcotics trafficking* means any activity undertaken illicitly to cultivate, produce, manufacture, distribute, sell, finance or transport, or otherwise assist, abet, conspire, or collude with others in illicit activities relating to narcotic drugs, including, but not limited to, cocaine.

§ 536.312 Specially designated narcotics trafficker.

The term *specially designated narcotics trafficker* means:

(a) Persons listed in the annex to Executive Order 12978 (3 CFR, 1995 Comp., p.415);

(b) Foreign persons designated by the Secretary of Treasury, in consultation with the Attorney General and the Secretary of State, because they are found:

(1) To play a significant role in international narcotics trafficking centered in Colombia; or

(2) Materially to assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of specially designated narcotics traffickers; and

(c) Persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, any other specially designated narcotics trafficker.

§ 536.313 Specific license.

The term *specific license* means any license or authorization not set forth in this part but issued pursuant to this part.

§ 536.314 Transfer.

The term *transfer* means any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property and, without limitation upon the foregoing, shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the making of any payment; the setting off of any obligation or credit; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or levy of or under any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition; the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security.

§ 536.315 United States.

The term *United States* means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

§ 536.316 United States person; U.S. person.

The term *United States person* or *U.S. person* means any United States citizen or national; permanent resident alien; entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches); or any person in the United States.

§ 536.317 U.S. financial institution.

The term *U.S. financial institution* means any U.S. person (including foreign branches) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent; including,

but not limited to, depository institutions, banks, savings banks, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. This term includes those branches, offices and agencies of foreign financial institutions which are located in the United States, but not such institutions' foreign branches, offices, or agencies.

Subpart D—Interpretations

§ 536.401 Reference to amended sections.

Except as otherwise specified, reference to any section of this part or to any regulation, ruling, order, instruction, direction, or license issued pursuant to this part shall be deemed to refer to the same as currently amended.

§ 536.402 Effect of amendment.

Any amendment, modification, or revocation of any section of this part or of any order, regulation, ruling, instruction, or license issued by or under the direction of the Director of the Office of Foreign Assets Control shall not, unless otherwise specifically provided, be deemed to affect any act done or omitted to be done, or any civil or criminal suit or proceeding commenced or pending prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license shall continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 536.403 Termination and acquisition of an interest in blocked property.

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) away from a specially designated narcotics trafficker, such property shall no longer be deemed to be property in which a specially designated narcotics trafficker has or has had an interest, or which is held in the name of a specially designated narcotics trafficker, unless there exists in the property another interest of a specially designated narcotics trafficker, the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization issued pursuant to this part, if property (including any property interest) is transferred or attempted to be transferred to a specially designated narcotics trafficker, such property shall be deemed to be property in which there exists an interest of the specially designated narcotics trafficker.

§ 536.404 Setoffs prohibited.

A setoff against blocked property (including a blocked account), whether by a U.S. bank or other U.S. person, is a prohibited transfer under § 536.201 if effected after the effective date.

§ 536.405 Transactions incidental to a licensed transaction.

Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except a transaction by an unlicensed, specially designated narcotics trafficker or involving a debit to a blocked account or a transfer of blocked property not explicitly authorized within the terms of the license.

§ 536.406 Provision of services.

(a) Except as provided in § 536.205, the prohibitions contained in § 536.201 apply to services performed by U.S. persons, wherever located:

(1) On behalf of, or for the benefit of, a specially designated narcotics trafficker; or

(2) With respect to property interests of a specially designated narcotics trafficker.

(b) *Example:* U.S. persons may not, except as authorized by the Office of Foreign Assets Control by or pursuant to this part, provide legal, accounting, financial, brokering, freight forwarding, transportation, public relations, educational, or other services to a specially designated narcotics trafficker. See § 536.506, with respect to certain authorized legal services.

§ 536.407 Offshore transactions.

The prohibitions contained in § 536.201 apply to transactions by U.S. persons in locations outside the United States with respect to property which the U.S. person knows, or has reason to know, is held in the name of a specially designated narcotics trafficker, or in which the U.S. person knows, or has reason to know, a specially designated narcotics trafficker has or has had an interest since the effective date.

§ 536.408 Alleged change in ownership or control of an entity designated as a specially designated narcotics trafficker.

(a) A change or alleged change in ownership or control of an entity designated as a specially designated narcotics trafficker shall not be the basis for removal of that entity from the list of specially designated narcotics traffickers unless, upon investigation by the Office of Foreign Assets Control and submission of evidence by the entity, it is demonstrated to the satisfaction of the Director of the Office of Foreign Assets Control that the transfer to a bona fide purchaser at arm's length is legitimate and that the entity no longer meets the criteria for designation under § 536.312. Evidence submitted must conclusively demonstrate that all ties with other specially designated narcotics traffickers have been completely severed, and may include, but is not limited to, articles of incorporation; identification of new directors, officers, shareholders, and sources of capital; and contracts evidencing the sale of the entity to its new owners.

(b) Any continuing substantial financial obligations on the part of the new owners to any specially designated narcotics traffickers, including long–term payment plans, leases, or rents, will be considered as evidence of continuing control of the entity by the specially designated narcotics trafficker. Purchase of a designated entity without ongoing substantial financial obligations to a specially designated narcotics trafficker may nonetheless be a basis for subsequent designation of the purchaser, if the transaction is determined materially to assist in or provide financial support for the narcotics trafficking activities of specially designated narcotics traffickers for purposes of § 536.312(b)(2). For example, any acquisition transaction resulting in a direct cash transfer to or other enrichment of a specially designated narcotics trafficker could lead to designation of the purchaser. Mere change in name of an entity will not be considered as constituting a change of the entity's status.

§ 536.409 Credit extended and cards issued by U.S. financial institutions.

The prohibition in § 536.201 on dealing in property in which a specially designated narcotics trafficker has an interest prohibits U.S. financial institutions from performing under any existing credit agreements, including, but not limited to, charge cards, debit cards, or other credit facilities issued by a U.S. financial institution to a person designated under this part.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 536.501 Effect of license or authorization.

(a) No license or other authorization contained in this part, or otherwise issued by or under the direction of the Director of the Office of Foreign Assets Control, shall be deemed to authorize or validate any transaction effected prior to the issuance of the license, unless specifically provided in such license or authorization.

(b) No regulation, ruling, instruction, or license authorizes any transaction prohibited under this part unless the regulation, ruling, instruction, or license is issued by the Office of Foreign Assets Control and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part shall be deemed to authorize any transaction prohibited by any provision of this chapter unless the regulation, ruling, instruction or license specifically refers to such provision.

(c) Any regulation, ruling, instruction, or license authorizing any transaction otherwise prohibited under this part has the effect of removing a prohibition or prohibitions contained in this part from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction, or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property which would not otherwise exist under ordinary principles of law.

§ 536.502 Exclusion from licenses and authorizations.

The Director of the Office of Foreign Assets Control reserves the right to exclude any person, property, or transaction from the operation of any license, or from the privileges therein conferred, or to restrict the applicability thereof with respect to particular persons, property, transactions, or classes thereof. Such action shall be binding upon all persons receiving actual or constructive notice of such exclusion or restriction.

§ 536.503 Payments and transfers to blocked accounts in U.S. financial institutions.

(a) Any payment of funds or transfer of credit or other financial or economic resources or assets into a blocked account in a U.S. financial institution is authorized, provided that a transfer from a blocked account pursuant to this authorization may only be made to another blocked account held in the same name on the books of the same U.S. financial institution. This authorization is subject to the condition that written notification from the U.S. financial institution receiving an authorized payment or transfer is furnished to the Compliance Programs Division, Office of Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Avenue, NW—Annex, Washington, DC 20220, within 10 days from the value date of the payment or transfer. This notification shall confirm that the payment or transfer has been deposited into a blocked account pursuant to this section and § 536.203 and shall provide the account number, the name and address of the person in whose name the account is held and, if the account party is not a specially designated narcotics trafficker, the name of the specially designated narcotics trafficker having an interest in the account, the name and address of the transferee U.S. financial institution, the name and address of the transferor financial institution, the amount of the payment or transfer, the name and telephone number of a contact person at the transferee financial institution from whom compliance information may be obtained, and the name and telephone number of the person, registered with the Office of Foreign Assets Control pursuant to § 536.603, responsible for the administration of blocked assets at the transferee financial institution from whom records on blocked assets may be obtained.

(b) This section does not authorize any transfer from a blocked account within the United States to an account held outside the United States.

§ 536.504 Investment and reinvestment of certain funds.

(a) U.S. financial institutions are hereby authorized and directed to invest and reinvest assets held in blocked accounts in the name of a specially designated narcotics trafficker, subject to the following conditions:

(1) The assets representing such investments and reinvestments are credited to a blocked account or sub–account which is in the name of the specially designated narcotics trafficker and which is located in the United States or within the possession or control of a U.S. person; and

(2) The proceeds of such investments and reinvestments are not credited to a blocked account or sub–account under any name or designation which differs from the name or designation of the specific blocked account or sub–account in which such funds or securities were held; and

(3) No immediate financial or economic benefit or access accrues (*e.g.*, through pledging or other use) to the specially designated narcotics trafficker.

(b)(1) U.S. persons seeking to avail themselves of this authorization must register with the Office of Foreign Assets Control, Blocked Assets Division, before undertaking transactions authorized under this section.

(2) Transactions conducted pursuant to this section must be reported to the Office of Foreign Assets Control, Blocked Assets Division, in a report filed no later than 10 business days following the last business day of the month in which the transactions occurred.

§ 536.505 Entries in certain accounts for normal service charges authorized.

(a) U.S. financial institutions are hereby authorized to debit any blocked account with such U.S. financial institution in payment or reimbursement for normal service charges owed to such U.S. financial institution by the owner of such blocked account.

(b) As used in this section, the term *normal service charge* shall include charges in payment or reimbursement for interest due; cable, telegraph, or telephone charges; postage costs; custody fees; small adjustment charges to correct bookkeeping errors; and, but not by way of limitation, minimum balance charges, notary and protest fees, and charges for reference books, photostats, credit reports, transcripts of statements, registered mail, insurance, stationery and supplies, check books, and other similar items.

§ 536.506 Provision of certain legal services authorized.

(a) The provision to or on behalf of a specially designated narcotics trafficker of the legal services set forth in paragraph (b) of this section is authorized, provided that all receipt of payment therefor must be specifically licensed.

(b) Specific licenses may be issued, on a case–by–case basis, authorizing receipt of payment of professional fees and reimbursement of incurred expenses for the following legal services by U.S. persons to a specially designated narcotics trafficker:

(1) Provision of legal advice and counseling on the requirements of and compliance with the laws of any jurisdiction within the United States, provided that such advice and counseling is not provided to facilitate transactions that would violate any of the prohibitions contained in this part;

(2) Representation of a specially designated narcotics trafficker when named as a defendant in or otherwise made a party to domestic United States legal, arbitration, or administrative proceedings;

(3) Initiation of domestic United States legal, arbitration, or administrative proceedings in defense of property interests subject to U.S.

jurisdiction of a specially designated narcotics trafficker;

(4) Representation before any federal or state agency with respect to the imposition, administration, or enforcement of United States sanctions against significant narcotics traffickers centered in Colombia or specially designated narcotics traffickers; and

(5) Provision of legal services in any other context in which prevailing United States law requires access to legal counsel at public expense.

(c) The provision of any other legal services to a specially designated narcotics trafficker, not otherwise authorized in or exempted by this part, requires the issuance of a specific license.

(d) Entry into a settlement agreement affecting property or interests in property of a specially designated narcotics trafficker or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment or other judicial process purporting to transfer or otherwise alter or affect a property interest of a specially designated narcotics trafficker is prohibited unless specifically licensed in accordance with § 536.202(e).

§ 536.507 Authorization of emergency medical services.

The provision of nonscheduled emergency medical services to a specially designated narcotics trafficker located in the United States is authorized, provided that any payment for such services requires prior authorization by specific license.

Subpart F—Reports

§ 536.601 Required records.

(a) Except as otherwise provided, every person engaging in any transaction subject to the provisions of this part shall keep a full and accurate record of each transaction engaged in, regardless of whether such transaction is effected pursuant to license or otherwise, and such record shall be available for examination for at least 5 years after the date of such transaction. Except as otherwise provided, every person holding property subject to § 536.201 shall keep a full and accurate record of such property, and such record shall be available for examination for the period of time that such property is blocked and for at least 5 years after the date such property is unblocked.

(b) Any person, other than an individual, required to maintain records pursuant to this section, must designate an individual to be responsible for providing information concerning such records to the Office of Foreign Assets Control when so requested.

§ 536.602 Reports to be furnished on demand.

Every person is required to furnish under oath, in the form of reports or otherwise, from time to time and at any time as may be required, complete information relative to any transaction, regardless of whether such transaction is effected pursuant to license or otherwise, subject to the provisions of this part. Such reports may be required to include the production of any books of account, contracts, letters or other papers, connected with any such transaction or property, in the custody or control of the person required to make such reports. Reports with respect to transactions may be required either before or after such transactions are completed. The Director of Foreign Assets Control may, through any person or agency, conduct investigations, hold hearings, administer oaths, examine witnesses, receive evidence, take depositions, and require by subpoena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to any matter under investigation, regardless of whether any report has been required or filed in connection therewith.

§ 536.603 Registration of persons holding blocked property subject to § 536.201.

(a) Any individual holding property subject to § 536.201 must register with the Office of Foreign Assets Control, Blocked Assets Division, by the later of March 17, 1997, or within 10 days after the date such property is received or becomes subject to § 536.201.

(b) Any person, other than an individual, holding property subject to § 536.201 must register the name, title, address, and telephone number of the individual designated under § 536.601(b) to be responsible for the administration of blocked assets, from whom the Office of Foreign Assets Control can obtain information and records. The registration shall be sent to the Blocked Assets Division, Office of Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Avenue, NW—Annex, Washington, DC 20220, by the later of March 17, 1997, or, unless notification is given pursuant to § 536.503, 10 days after the date such property is received or becomes subject to § 536.201.

Subpart G—Penalties

§ 536.701 Penalties.

(a) Attention is directed to section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705 — the "Act"), which is applicable to violations of the provisions of any license, ruling, regulation, order, direction or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the Act. Section 206 of the Act, as adjusted pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, as amended, 28 U.S.C. 2461 note), provides that:

(1) A civil penalty of not to exceed $11,000 per violation may be imposed on any person who violates any license, order, or regulation issued under the Act;

(2) Whoever willfully violates any license, order, or regulation issued under the Act shall, upon conviction, be fined not more than $50,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment or both.

(b) The criminal penalties provided in the Act are subject to increase pursuant to 18 U.S.C. 3571.

(c) Attention is also directed to 18 U.S.C. 1001, which provides that whoever, in any matter within the jurisdiction of any department or agency of the United States, knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined under title 18, United States Code, or imprisoned not more than five years, or both.

(d) Violations of this part may also be subject to relevant provisions of other applicable laws.

§ 536.702 Prepenalty notice.

(a) *When required.* If the Director of the Office of Foreign Assets Control has reasonable cause to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the International Emergency Economic Powers Act, and the Director determines that further proceedings are warranted, he shall issue to the person concerned a notice of his intent to impose a monetary penalty. The prepenalty notice may be issued whether or not another agency has taken any action with respect to this matter.

(b) *Contents*—(1) *Facts of violation.* The prepenalty notice shall describe the violation, specify the laws and regulations allegedly violated, and state the amount of the proposed monetary penalty.

(2) *Right to respond.* The prepenalty notice also shall inform the respondent of respondent's right to respond to the notice within 30 days of its mailing as to why a monetary penalty should not be imposed, or, if imposed, why it should be in a lesser amount than proposed.

§ 536.703 Response to prepenalty notice.

(a) *Time within which to respond.* The respondent shall have 30 days from the date of mailing of the prepenalty notice to respond in writing to the Director of the Office of Foreign Assets Control.

(b) *Form and contents of written response.* The written response need not be in any particular form, but shall contain information sufficient to indicate that it is in response to the prepenalty notice. It should respond to the allegations in the prepenalty notice and set forth the reasons why the person believes the penalty should not be imposed or, if imposed, why it should be in a lesser amount than proposed.

(c) *Informal settlement.* In addition or as an alternative to a written response to a prepenalty notice pursuant to this section, the respondent or respondent's representative may contact the Office of Foreign Assets Control as advised in the prepenalty notice to propose the settlement of allegations contained in the prepenalty notice and related matters. In the event of settlement at the prepenalty stage, the prepenalty notice will be withdrawn, the respondent is not required to take a written position on allegations contained in the prepenalty notice, and the Office of Foreign Assets Control will make no final determination as to whether a violation occurred. The amount accepted in settlement of allegations in a prepenalty notice may vary from the civil penalty that might finally be imposed in the event of a formal determination of violation. In the event no settlement is reached, the 30–day period specified in paragraph (a) of this section for written response to the prepenalty notice remains in effect unless additional time is granted by the Office of Foreign Assets Control.

§ 536.704 Penalty notice.

(a) *No violation.* If, after considering any written response to the prepenalty notice and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was no violation by the respondent named in the prepenalty notice, the Director promptly shall notify the respondent in writing of that determination and that no monetary penalty will be imposed.

(b) *Violation.* If, after considering any written response to the prepenalty notice and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was a violation by the respondent named in the prepenalty notice, the Director promptly shall issue a written notice of the imposition of the monetary penalty or other available disposition on the respondent.

§ 536.705 Administrative collection; referral to United States Department of Justice.

In the event that the respondent does not pay the penalty imposed pursuant to this part or make payment arrangements acceptable to the Director of the Office of Foreign Assets Control within 30 days of the mailing of the written notice of the imposition of the penalty, the matter may be referred for administrative collection measures or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a Federal district court.

Subpart H—Procedures

§ 536.801 Licensing.

(a) *General licenses.* General licenses have been issued authorizing under appropriate terms and conditions certain types of transactions which are subject to the prohibitions contained in this part. All such licenses in effect on the date of publication are set forth in subpart E of this part. It is the policy of the Office of Foreign Assets Control not to grant applications for specific licenses authorizing transactions to which the provisions of an outstanding general license are applicable. Persons availing themselves of certain general licenses may be required to file reports and statements in accordance with the instructions specified in those licenses. Failure to file such reports or statements will nullify the authority of the general license.

(b) *Specific licenses*—(1) *General course of procedure.* Transactions subject to the prohibitions contained in this part which are not authorized by general license may be effected only under specific licenses.

(2) *Applications for specific licenses.* Applications for specific licenses to engage in any transactions prohibited by or pursuant to this part may be filed by letter with the Office of Foreign Assets Control. Any person having an interest in a transaction or proposed transaction may file an application for a license authorizing such transaction, but the applicant for a specific license is required to make full disclosure of all parties in interest to the transaction so that a decision on the application may be made with full knowledge of all relevant facts and so that the identity and location of the persons who know about the transaction may be easily ascertained in the event of inquiry.

(3) *Information to be supplied.* The applicant must supply all information specified by relevant instructions and/or forms, and must fully disclose the names of all the parties who are concerned with or interested in the proposed transaction. If the application is filed by an agent, the agent must disclose the name of his principal(s). Such documents as may be relevant shall be attached to each application as a part of such application except that documents previously filed with the Office of Foreign Assets Control may, where appropriate, be incorporated by reference. Applicants may be required to furnish such further information as is deemed necessary to a proper determination by the Office of Foreign Assets Control. Any applicant or other party in interest desiring to present additional information or discuss or argue the application may do so at any time before or after decision. Arrangements for oral presentation should be made with the Office of Foreign Assets Control.

(4) *Effect of denial.* The denial of a license does not preclude the reopening of an application or the filing of a further application. The applicant or any other party in interest may at any time request explanation of the reasons for a denial by correspondence or personal interview.

(5) *Reports under specific licenses.* As a condition for the issuance of any license, the licensee may be required to file reports with respect to the transaction covered by the license, in such form and at such times and places as may be prescribed in the license or otherwise.

(6) *Issuance of license.* Licenses will be issued by the Office of Foreign Assets Control acting on behalf of the Secretary of the Treasury or licenses may be issued by the Secretary of the Treasury acting directly or through any

specifically designated person, agency, or instrumentality.

(7) *Address.* License applications, reports, and inquiries should be addressed to the appropriate section or individual within the Office of Foreign Assets Control, or to its Director, at the following address: Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW—Annex, Washington, DC 20220.

§ 536.802 Decisions.

The Office of Foreign Assets Control will advise each applicant of the decision respecting filed applications. The decision of the Office of Foreign Assets Control acting on behalf of the Secretary of the Treasury with respect to an application shall constitute final agency action.

§ 536.803 Amendment, modification, or revocation.

The provisions of this part and any rulings, licenses, whether general or specific, authorizations, instructions, orders, or forms issued hereunder may be amended, modified, or revoked at any time.

§ 536.804 Rulemaking.

(a) All rules and other public documents are issued by the Secretary of the Treasury upon recommendation of the Director of the Office of Foreign Assets Control. In general, rulemaking by the Office of Foreign Assets Control involves foreign affairs functions of the United States, and for that reason is exempt from the requirements under the Administrative Procedure Act (5 U.S.C. 553) for notice of proposed rulemaking, opportunity for public comment, and delay in effective date. Wherever possible, however, it is the practice of the Office of Foreign Assets Control to receive written submissions or hold informal consultations with interested parties before the issuance of any rule or other public document.

(b) Any interested person may petition the Director of the Office of Foreign Assets Control in writing for the issuance, amendment, or repeal of any rule.

§ 536.805 Delegation by the Secretary of the Treasury.

Any action which the Secretary of the Treasury is authorized to take pursuant to Executive Order 12978 or any further executive orders relating to the national emergency declared in Executive Order 12978 may be taken by the Director of the Office of Foreign Assets Control, or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

§ 536.806 Rules governing availability of information.

(a) The records of the Office of Foreign Assets Control required by the Freedom of Information Act (5 U.S.C. 552) to be made available to the public shall be made available in accordance with the definitions, procedures, requirements for payment of fees, and other provisions of the regulations on the Disclosure of Records of the Departmental Offices and of other bureaus and offices of the Department of the Treasury issued under 5 U.S.C. 552 and published at 31 CFR part 1.

(b) The records of the Office of Foreign Assets Control required by the Privacy Act (5 U.S.C. 552a) to be made available to an individual shall be made available in accordance with the definitions, procedures, requirements for payment of fees, and other provisions of the regulations on the Disclosure of Records of the Departmental Offices and of other bureaus and offices of the Department of the Treasury issued under 5 U.S.C. 552a and published at 31 CFR part 1.

(c) Any form issued for use in connection with the Narcotics Trafficking Sanctions Regulations may be obtained in person or by writing to the Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW—Annex, Washington, D.C. 20220, or by calling 202/622–2520.

Subpart I—Paperwork Reduction Act

§ 536.901 Paperwork Reduction Act notice.

The information collection requirements in §§ 536.503, 536.504, subpart F, and § 536.801 have been approved by the Office of Management and Budget under the Paperwork Reduction Act and assigned control number 1505–0163.

Dated: February 7, 1997.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: February 18, 1997.

James E. Johnson,

Assistant Secretary (Enforcement).

[FR Doc. 97–5299 Filed 2–28–97; 12:34 pm]

BILLING CODE 4810–25–F

DEPARTMENT OF DEFENSE

Corps of Engineers; Department of the Army

33 CFR Part 334

Danger Zones and Restricted Areas, National Guard Training Center, Sea Girt, NJ

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The Corps is revoking the regulations which establish a danger zone in the waters of the Atlantic Ocean at the New Jersey National guard Training Vente, Sea Girt, New Jersey. According to the State of New Jersey, the danger zone is no longer needed due to the improvements made at the small arms firing range located at Sea Girt. The danger zone was established to protect the public from the hazards associated with the possibility of an errant round or ricochet from the range impacting into the waters offshore. The revocation of the danger zone is essential to allow a beach nourishment project to proceed and formalize full public use of the water areas offshore of the National Guard Training Center. The revocation of the danger zone regulations will not affect any other Federal, State, or local regulations in that area.

EFFECTIVE DATE: March 20, 1997.

ADDRESSES: HQUSACE, CECW–OR, Washington, D.C. 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Eppard, Regulatory Branch, CECW–OR at (202) 761–1783, or Mr. Richard Tomer of the New York District at (212) 264–9053.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps is amending the regulations in 33 CFR Part 334.90. The National Guard Training Center is located adjacent to the federally authorized share protection project identified as "Ashbury Park to Manasquan South Reach". One entire borrow area and a portion of another borrow are that are designated to be used as a source of sand for part of the beach restoration and storm damage protection that will be provided to this area located within the limits of the danger zone. The danger zone regulations in 33 CFR 334.90 prohibits entry by vessels into the danger zone during operation of the range. The State of New Jersey Department of Military and Veterans Affairs and the State of New Jersey Department of Environmental Protection have requested that the danger zone at the National Guard Training Center at Sea Girt, New Jersey, established by the Corps on January 10, 1969, be disestablished. According to the State, the danger zone is no longer needed to protect the public using the waters offshore of the National Guard Training Center, because of improvements previously made at the small arms firing range. Accordingly, we are hereby removing the regulations which establish the danger zone. We have determined that notice of proposed rulemaking and public procedures thereto are unnecessary since the revocation of the danger zones removes a restriction on public use of the offshore.

Procedural Requirements

A. Review Under Executive Order 12866

This rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

B. Review Under the Regulatory Flexibility Act

These rules have been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354), which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small Governments). The Corps expects that the economic impact of the removal of the danger zone at the National Guard Training Center at Sea Girt, New Jersey would have no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic and accordingly, certifies that this rule will have no significant economic impact on small entities.

C. Review Under the National Environmental Policy Act

We have concluded that this amendment to the danger zone regulations which removes a restriction on the public's use of a water area will not have a significant impact to the human environment, and preparation of an environmental impact statement is not required.

D. Unfunded Mandates Act

This rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 of 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small Governments will not be significantly and uniquely affected by this rulemaking.

E. Submission to Congress and the GAO

Pursuant to Section 801(a)(1)(A) of the Administrative Procedure Act as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, the Army has submitted a report containing this rule to the U.S. Senate, House of Representatives, and the Comptroller General of the General Accounting Office. This rule is not a major rule within the meaning of Section 804(2) of the Administrative Procedure Act, as amended.

List of Subjects in 33 CFR Part 334

Navigation (water), Transportation, Danger zones.

For the reasons set out in the preamble, we are amending 33 CFR Part 334, as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for Part 334 continues to read as follows:

Authority: 40 Stat. 266; (33 U.S.C. 1) and 40 Stat. 892; (33 U.S.C. 3).

§ 334.90 [Removed]

2. Section 334.90 is removed.

Dated: February 23, 1997.

Russell L. Fuhrman,

Major General, United States Army, Director of Civil Works.

[FR Doc. 97–5049 Filed 3–4–97; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900–AI33

Rulemaking Procedures; Public Participation

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the "General Provisions" regulations of the Department of Veterans Affairs (VA) by eliminating a policy statement concerning prior notice-and-comment for rulemaking. We believe that there is no need to retain this policy statement. Furthermore, this action is warranted to prevent confusion concerning VA policy.

EFFECTIVE DATE: April 4, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas O. Gessel, Director, Office of Regulations Management (02D), Office of General Counsel, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8605.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on March 20, 1996 (61 FR 11309), we amended the "General Provisions" regulations in 38 CFR Part 1 by removing § 1.12 captioned "Public participation in regulatory development." Subsequently, judicial review was sought on the basis that the removal did not comply with notice-and-comment provisions. Accordingly, to avoid unnecessary litigation, we reestablished § 1.12 in a document published in the **Federal Register** on July 1, 1996 (61 FR 33850). In addition, in a companion document also published in the **Federal Register** on July 1, 1996 (61 FR 33878), we proposed to remove § 1.12 and requested comments on the proposal. Accordingly, this document relates to the proposal to remove § 1.12.

The comment period ended August 30, 1996. We received four comments. Three were submitted by veterans' service organizations and one was submitted by a law school professor. The commenters argued in favor of retaining § 1.12.

The provisions of the Administrative Procedure Act (APA) at 5 U.S.C. 553 set forth notice-and-comment requirements for rulemaking and include exemptions from the notice-and-comment requirements for rulemaking concerning public property, loans, grants, benefits, or contracts.

The regulatory history of § 1.12 indicates that this section was established for the purpose of adopting a recommendation of the 1969 Administrative Conference of the United States, i.e., that agencies adopt a policy stating that they would not exempt rulemaking from notice-and-comment provisions solely because the rulemaking concerned public property, loans, grants, benefits, or contracts (see 37 FR 3552, February 17, 1972; 37 FR 7157, April 11, 1972).

Subsequent to the initial promulgation of § 1.12, statutory provisions were established that specifically apply the notice-and-comment provisions of 5 U.S.C. 553 to VA rulemaking concerning loans, grants, or benefits (see 38 U.S.C. 501(d)). Also, subsequent to the initial promulgation of § 1.12, statutory provisions were established that specifically apply notice-and-comment

provisions to certain rulemaking concerning contracts (see 41 U.S.C. 418b). These statutory provisions do not impose notice-and-comment provisions for rulemaking concerning public property.

One commenter indicated that we should retain the notice-and-comment provisions for rulemaking concerning public property and contracts. We are committed to compliance with all legal requirements concerning rulemaking, including APA requirements. However, we believe that self-imposition of any other procedures for rulemaking should be done on a case-by-case basis and we do not believe that it is necessary or prudent to self-impose additional requirements by regulation.

The commenters also argued in favor of retaining § 1.12 based on issues relating to certain "non-legislative rules" (rules of agency management; interpretative rules; general statements of policy; rules of organization, procedure, or practice). In this regard, the provisions of 5 U.S.C. 553 contain exemptions from the notice-and-comment requirements for "non-legislative rules." The commenters argued that § 1.12 added notice-and-comment requirements for rulemaking regarding such "non-legislative rules" and further included specific reasons to support the desirability of having additional notice-and-comment for such types of rulemaking.

Rulemaking documents establishing "non-legislative rules" are issued by the Secretary and concurred in by the General Counsel. The provisions of § 1.12 included internal instructions which stated: "Exceptions to the policy of permitting public participation in the regulatory development may be authorized by the Secretary or one of the Secretary's deputies if adequately justified and concurred in by the General Counsel." The next sentence, in part, states: "Such exceptions, unless public comment is required by statute, may be recommended when: (a) The proposed regulations consist of interpretative rules, general statements of policy, or rules of Department of Veterans Affairs organization procedure or practice * * *." The mere finding that a rulemaking proceeding concerned a "non-legislative" rule met the "adequately justified" standard for foregoing the notice-and-comment procedures. The elimination of § 1.12 would bring VA practice into conformity with the requirements generally imposed on the rest of government, i.e., notice-and-comment issues would be governed by the provisions of 5 U.S.C. 553. Eliminating the regulatory provisions imposing internal procedural steps increases government efficiency and would not result in the diminution of the substantive rights of any party.

Furthermore, the removal of § 1.12 is warranted because it has generated much confusion, particularly with respect to "non-legislative rules.'

Accordingly, based on the rationale set forth in the proposed rule and this document, we are removing § 1.12.

This rulemaking action concerns VA policy and internal VA procedures. Although we provided notice-and-comment concerning this rulemaking proceeding it was not required under the provisions of the APA and, consequently, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Nevertheless, the Secretary of Veterans Affairs certifies that this rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act. This rule will not have a direct effect on small entities.

There is no Catalog of Federal Domestic Assistance program number.

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Claims, Freedom of information, Government contracts, Government employees, Government property, Reporting and recordkeeping requirements.

Approved: February 24, 1997.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 1 is amended as set forth below:

PART 1—GENERAL PROVISIONS

1. The authority citation for part 1 continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 1.12 [Removed]

2. Section 1.12 and the undesignated center heading preceding § 1.12 are removed.

[FR Doc. 97–5341 Filed 3–4–97; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO–015–1015a; FRL–5682–5]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving the Asarco Glover, Missouri, lead emission control plan submitted by the state of Missouri on August 14, 1996. The plan was submitted by the state to satisfy certain requirements under the Clean Air Act (CAA) to reduce lead emissions sufficient to bring the Glover area into attainment with the National Ambient Air Quality Standard (NAAQS) for lead.

DATES: This action is effective May 5, 1997 unless by April 4, 1997 adverse or critical comments are received. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and the EPA Air & Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Josh Tapp at (913) 551–7606.

SUPPLEMENTARY INFORMATION:

I. Background

Currently, the only significant source of lead contributing to violations of the lead NAAQS in the Glover area is a primary lead smelter owned and operated by the American Smelting and Refining Company (Asarco). The smelter processes lead concentrate recovered from lead mines into pure lead or lead compounds to meet its customer's specifications. The facility's refining capacity is approximately 140,000 tons of refined lead per year.

The original Glover lead State Implementation Plan (SIP) was approved by the EPA in 1981.

Subsequent to SIP approval, the EPA conducted modeling which predicted continued violations of the standard. Asarco and Missouri prepared several SIP revisions; however, these revisions were not approved because modeling still showed violations in some areas defined as "ambient air.'

In 1987, the state began to record violations of the lead standard three miles from the facility. These data prompted Region VII to request more monitors in closer proximity to the source. On November 5, 1990, the EPA requested that the state of Missouri revise the SIP for this facility based on modeling conducted for 1983 through 1987, and based on monitored violations during 1988, 1989, and 1990.

On November 6, 1991, the EPA designated the Liberty and Arcadia Townships which surround the Glover facility as nonattainment for lead. This designation became effective on January 6, 1992.

The attainment plan was required to be submitted 18 months after the designation or by July 6, 1993. The state failed to make the required submission and on August 2, 1993, the EPA notified the Governor by letter of this fact. This notice initiated sanctions clocks in accordance with section 179 of the CAA and the Federal Implementation Plan (FIP) clock in accordance with section 110 of the CAA.

Under section 179 of the CAA, the EPA must impose sanctions on a nonattainment area for which the state has failed to submit a plan which has been determined complete by the EPA. The first of two sanctions must be implemented within 18 months after the date of the finding (or in this case, not later than January 2, 1995), and the second sanction must be implemented within 6 months after the implementation of the first sanction (or in this case, not later than August 2, 1995).

On August 4, 1994 (59 FR 39832), the EPA published a rulemaking which identifies the order of sanctions as follows: the first sanction to be imposed is the 2:1 offset sanction which requires 2:1 offsets for emission increases of the nonattainment pollutant from certain new or modified major sources within the nonattainment area; the second sanction to be imposed is the highway funding sanction. Under this sanction, Federal highway funds are withheld from the nonattainment area, unless the funds are for exempt projects.

Furthermore, section 110(c) of the Act obligates the EPA to promulgate a FIP within two years of a finding that the state has failed to submit the required plan. The EPA must approve a plan submitted by the state in order to stop the FIP clock.

In a January 27, 1995, letter, the EPA notified the Governor of the imposition of the mandatory offset sanction on February 2, 1995, barring a complete submission. And in an August 1, 1995, letter, the EPA notified the Governor of the imposition of the mandatory highway funding sanction on August 2, 1995, barring a complete submission.

Both sanctions were imposed until September 18, 1996, when the EPA was able to find that the state's August 14, 1996, submittal was complete, thus lifting the sanctions.

II. Criteria for Approval

The state's August 14, 1996, submission was reviewed using the criteria established by the CAA. The requirements for all SIPs are contained in section 110(a)(2) of the CAA. Subpart 1 of Part D of Title I of the CAA, and in particular section 172(c), specifies the provisions necessitated by designation of an area as nonattainment for any of the NAAQS. Further guidance and criteria are set forth in Subpart 5 of Part D, the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (57 FR 13498), and in the "Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (58 FR 67748).

III. Review of State Submittal

A. Control Strategy

The control strategy must contain provisions to ensure that Reasonably Available Control Technology (RACT), including Reasonably Available Control Measures (RACM), for area sources are implemented (see section 172(c)(1) of the CAA). See 57 FR 13549 and 58 FR 67748 for the EPA's interpretation of RACM and RACT requirements.

The state's selection of control strategies for the SIP was based on an evaluation of controls provided to the state by Asarco and its contractors. In this study, Asarco evaluated 19 fugitive emission control strategies and 29 process and stack-related control strategies. Asarco selected what it considered to be the most implementable and cost-effective options from this list which would bring the area into attainment with the lead NAAQS. The state concurred with Asarco's assessment that these controls constituted RACT. Detailed information regarding Asarco's control option selection process can be found in the EPA's technical support document (TSD).

The attainment modeling assisted Asarco and the state in focusing the control strategy by indicating which sources or groups of sources were the greatest contributors to the ambient concentrations.

Sinter plan fugitive emissions were identified as the single largest contributor to the violations with an estimated contribution of 91 percent. The sinter plant scrubber stack, the sinter plan ventilation baghouse stack, and the in-plant roads were also identified as significant contributors.

The sinter plant is the first process point for the lead concentrate at the lead smelter. Fugitive emissions from the sinter plant building are created by sources inside the building as well as by losses from point source ventilation systems. Emissions caused by material conveyance, crushing, and screening exit the building through open sides and roof monitors. This plan requires increased efficiency of materials handling by the reduction of transfer steps, and the enclosure and ventilation of the sinter plant.

The sinter plant scrubber cleans ventilation gases from the crushing and mixing of virgin feedstock for the sinter machine. The emissions from the scrubber currently exit the roof of the sinter building through the wet scrubber stack. The plan requires that these gases, once processed by the scrubber, be routed to the sinter machine updraft fans to be used as process air for the sinter feedstock bed. The gases will ultimately be captured by the sinter machine ventilation hoods and routed to the process gas baghouse.

The sinter plant wheelabrator ventilation baghouse cleans the point source ventilation gases from the crushing and sorting of sinter produced from the sinter machine. These gases exit the roof of the sinter building through the baghouse stack. This plan will require that baghouse gases be rerouted to the intake of the sinter machine updraft fans to be used as process gases and ultimately collected by the sinter machine hoods and routed to the process gas baghouse.

Finally, the plan requires compliance with state and Federally approved work practices to minimize fugitive emissions from in-plant roadways, stockpiles, baghouse unloading, and other sources. These work practices require additional trafficway paving, sweeping, dust supression, and materials handling practices to reduce fugitive emissions.

Once approved, these work practices may be modified only through Federal approval of a SIP revision.

B. Attainment Demonstration

Section 192(a) of the CAA requires that SIPs must provide for attainment of the lead NAAQS as expeditiously as practicable, but not later than five years from the date of an area's nonattainment designation. The lead nonattainment designation for the Liberty and Arcadia Townships became effective on January

6, 1992; therefore, the latest attainment date permissible by statute is January 6, 1997.

The Industrial Source Complex Short-Term Model was used to demonstrate attainment and maintenance of the lead NAAQS. The procedures recommended in the EPA's *Guideline on Air Quality Models (Revised)*, EPA 450/2–78–027R, July 1986, and *Supplement A to the Guideline on Air Quality Models (Revised)*, EPA 450/2–78–027R, July 1987, were followed. This modeling predicts attainment of the Federal lead standard by January 1, 1997, with the implementation of the control strategy. See the TSD for more information.

C. Emission Inventory and Air Quality Data

Section 172(c)(3) of the CAA requires that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area.

Asarco, the state, and the EPA undertook a comprehensive study to develop an accurate baseline emission inventory and dispersion model. This inventory was quantified through stack testing, evaluation of equipment and procedures, the EPA emission estimation methods, and engineering judgment. The attainment emission inventory was derived from the baseline inventory with the control strategy applied. Both inventories are included in the state's submittal.

The state's submittal also provides a historical summary of the air quality data for the Glover area collected from 1984 through the most current quarter.

D. Reasonable Further Progress (RFP)

The SIP must provide for RFP [see section 172(c)(2) of the Act]. The state's Consent Decree specifies an implementation schedule which requires a logical stepwise implementation of emissions control projects. This schedule results in a continual decrease of lead emissions through the implementation of the last projects, scheduled to be completed by December 31, 1996. The EPA believes that the RFP demonstration meets the requirements of section 172(c)(2) and the relevant guidelines in the "Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (58 FR 67748).

E. New Source Review (NSR)

Section 172(c)(5) requires that nonattainment areas be subject to the NSR permitting requirements of section 173. Missouri NSR regulations were originally approved pursuant to Part D of the Act on May 9, 1980 (45 FR 30626). The 1990 Amendments to the Act added other requirements pursuant to the review and approval of new and modified sources. Missouri incorporated these requirements into its regulations, and the EPA approved this SIP revision on February 29, 1996 (61 FR 7714). Therefore, the state's rules presently meet the requirements of sections 172(c)(5) and 173. The EPA proposed changes to the Part D NSR regulations on July 23, 1996 (61 FR 38250). Missouri may be required to revise its NSR regulations to conform to the final EPA requirements, when finalized.

F. Contingency Measures

As provided in section 172(c)(9) of the CAA, all nonattainment area SIPs must include contingency measures. Contingency measures should consist of specific emission control measures that are not part of the area's control strategy. These measures must take effect without further action by the state or the EPA, upon a determination that the area has failed to meet RFP or attain the lead NAAQS by the applicable attainment date.

There are seven contingency measures established in item 2.C. of the state's Consent Decree. These measures are: (1) construct and utilize a truck wash, (2) expand the in-plant road sprinkler system, (3) withdraw unloading building air for sinter plant make-up air, (4) comply with more stringent stack emission limitations, (5) cool lead bullion pots before dumping into receiving kettles, (6) modify refinery skims handling in blast furnace area, and (7) increase efficiency of sinter plant ventilation baghouse. In accordance with the Consent Decree, contingency measure number 1 would be implemented by Asarco within 30 days from receipt of notice by Missouri that the area failed to attain the standard. In the case that an additional violation is recorded, measures 2, 3, and 4 would be implemented in the following quarter and, in the case that a further violation is recorded, measures 5, 6, and 7 would be implemented. No triggers were set for contingency measure implementation in the case that the area failed to maintain RFP, based on circumstances unique to this lead SIP. The plan was adopted by the state well into Asarco's implementation of the control strategy, and the impending attainment date would not allow much evaluation of Asarco's maintenance of RFP by the state prior to the statutory deadline for attainment of the standard.

G. Enforceability

All measures and other elements in the SIP must be enforceable by the state and the EPA (see sections 172(c)(6), 110(a)(2)(A), and 57 FR 13556). The state submittal includes rule 10 CSR 10–6.120 and Consent Decree Case No. CV596–98CC, which contain all of the control and contingency measures, with enforceable dates for implementation. This Consent Decree also contains language regarding stipulated penalties. While the EPA is approving this language, Federal enforcement actions and related activities would be initiated by the EPA pursuant to its authority under the CAA.

As mentioned above, a Work Practice Manual was also included in the state's submission as an integral part of the enforceable plan to achieve attainment of the standard. These work practices are designed to limit the fugitive emissions at the facility, and are enforced through recordkeeping requirements. Noncompliance with the established work practices is a violation of the state's rule and the terms of the Consent Decree. The EPA approves the Work Practice Manual with the understanding that any change to the Work Practice Manual requires a revision to the Missouri SIP.

IV. Implications of This Action

This SIP revision will significantly revise the current SIP. The modeling performed in support of the SIP revision indicates that the emissions control strategy will result in attainment of the NAAQS for lead by January 1, 1997.

V. Final Action

Pursuant to sections 110 and 172 of the CAA, this is a direct final action which approves the lead plan submitted by the state of Missouri on August 14, 1996, in response to the designation of the Liberty and Arcadia Townships as nonattainment for lead. This SIP revision meets the requirements of section 110 and Part D of Title I of the CAA and 40 CFR Part 51.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action is effective May 5, 1997 unless, by April 4, 1997, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action is effective May 5, 1997.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

VI. Administrative Requirements

A. Executive Order (E.O.) 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5. U.S.C. § 600 et seq., the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under state or local law, and imposes no new Federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 5, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Particulate matter, Reporting and recordkeeping requirements.

Dated: January 16, 1997.

Dennis Grams,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401—7671q.

Subpart AA—Missouri

2. Section 52.1320 is amended by adding paragraph (c)(95) to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

(95) Plan revisions were submitted by the Missouri Department of Natural Resources on August 14, 1996, which reduce lead emissions from the Asarco primary lead smelter located within the lead nonattainment area defined by the boundaries of the Liberty and Arcadia Townships located in Iron County, Missouri.

(i) Incorporation by reference.

(A) Rule 10 CSR 10–6.120, Restriction of Emissions of Lead From Primary Lead Smelter—Refinery Installations, except subsection 2(B) and 2(C), and section 4, effective June 30, 1996.

(B) Consent Decree Case Number CV596–98CC, STATE OF MISSOURI ex. rel. Jeremiah W. (Jay) Nixon and the Missouri Department of Natural Resources v. ASARCO, INC., Missouri Lead Division, effective July 30, 1996, with Exhibits A, C, D, E, F, and G.

(ii) Additional material.

(A) Narrative SIP material submitted on August 14, 1996. This submittal includes the emissions inventory and the attainment demonstration.

[FR Doc. 97–5132 Filed 3–4–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[OPP–300455; FRL–5591–5]

RIN No. 2070–AB78

Thiazopyr; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes tolerances for residues of the herbicide thiazopyr (3-pyridinecarboxylic acid, 2-(difluoromethyl)-5-(4,5-dihydro-2-thiazolyl)-4-(2-methylpropyl)-6-(trifluoromethyl)-, methyl ester) and its metabolites determined as 2-(difluoromethyl)-6-(trifluoromethyl)-3,4,5-pyridinetricarboxylic acid, all expressed as the parent equivalents in or on the raw agricultural commodities orange and grapefruit. Rohm and Haas Company submitted a petition to EPA under the Federal Food, Drug and Cosmetic Act as amended by the Food Quality Protection Act of 1996 requesting the tolerances.

EFFECTIVE DATE: This regulation becomes effective March 5, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300455], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the docket control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically to the OPP by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [OPP–300455].

No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Product Manager (PM) 23, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail address: Rm. 237, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 305–6224; e-mail: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 21, 1993 (58 FR 54354), EPA issued a notice pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), announcing the filing of a pesticide tolerance petition by Monsanto Co., Suite 1100, 700 14th St., NW., Washington, DC 20005. The petition requested that 40 CFR part 180 be amended by adding a regulation for tolerances for combined residues of the herbicide thiazopyr (3-pyridinecarboxylic acid, 2-(difluoromethyl)-5-(4,5-dihydro-2-thiazolyl)-4-(2-methylpropyl)-6-(trifluoromethyl)-, methyl ester) and its metabolites determined as 3-pyridinecarboxylic acid, 5-(aminocarbonyl)-2-(difuoromethyl)-4-(2-methylpropyl)-6-trifluoromethyl-, methyl ester and 3-pyridinecarboxylic acid, 2-(difluoromethyl)-4-(2-methylpropyl)-5-[(2-sulfoethyl)amino) carbonyl-6-(trifluoromethyl) and expressed as parent equivalents, in or on the raw agricultural commodities: Citrus, whole fruit at 0.05 ppm; cotton seed at 0.05 ppm and cotton forage at 0.2 ppm. The proposed analytical method for determining residues was gas chromatography with mass spectrometry.

In the **Federal Register** of August 24, 1994 (59 FR 43580) EPA issued a notice of an amendment to the petition. The tolerances requested were changed to residues of thiazopyr (3-pyridinecarboxylic acid, 2-[difluoromethyl]-5-(4,5-dihydro-2-thiazolyl)-4-(2-methylpropyl)-6-(trifluoromethyl)-, methyl ester) and its metabolites determined as 3-pyridinecarboxylic acid, 5-(aminocarbonyl)-2-(difluoromethyl)-4-(2-methylpropyl)-6-trifluoromethyl)-, methyl ester and 3-pyridinecarboxylic acid, 2-(difluoromethyl)-4-(2-methylpropyl)-5-(((2-sulfoethyl) amino) carbonyl)-6-(trifluoromethyl) acid and expressed as parent equivalents, in or on citrus whole fruit at 0.05 ppm, cotton seed at 0.05 ppm and cotton forage at 0.2 ppm. Monsanto Co. requested the petition be amended to read: tolerances of 0.05 ppm for orange, whole fruit and 0.05 for grapefruit, whole fruit. The proposed analytical method for determining residues was mass spectral multiple-ion detection.

In the **Federal Register** of November 22, 1996 (61 FR 59440)(FRL–5573–8) EPA issued a third notice of filing to amend the petition to bring the petition in conformity with the Food Quality Protection Act (FQPA) of 1996. The notice contained a summary of the petition prepared by the petitioner and this summary contained conclusions and arguments to support its conclusion that the petition complied with FQPA. In this instance the petitioner proposed to amend 40 CFR part 180 by establishing a regulation for tolerances for residues of thiazopyr in or on orange and grapefruit at 0.05 ppm on the whole fruit, the same as proposed in the previous EPA notices of filing.

There were no comments or requests for referral to an advisory committee received in response to the notices of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data listed below were considered in support of these tolerances.

I. Toxicological Profile

1. A battery of acute toxicity studies placing technical thiazopyr in Toxicity Categories III and IV.

2. A 3–month feeding study in rats at dietary intakes of 0, 0.07, 0.67, 6.60, 68, or 201 milligrams per kilogram per day (mg/kg/day) (males) and 0.08, 0.79, 8.0, 79 or 227 mg/kg/day (females) with a no observed effect level (NOEL) of 6.6 mg/kg/day, based on increased liver, thyroid and kidney weights, changes in clinical chemistry and hematological parameters and on gross and microscopic changes observed in the liver and thyroid at dose levels of 68 mg/kg/day and higher. At the 201 mg/kg/day dose diffuse thyroid follicular cell hypertrophy/hyperplasia was observed.

3. A 3–month feeding study in dogs at 0, 3, 6, 35 and 175 mg/kg/day (males) and 0, 2, 3, 35 and 160 mg/kg/day (females) with a NOEL of 2 mg/kg/day, based on decreased body weight gain and increased SGPT levels at 3 and 6 mg/kg/day for males and females, respectively and above; decreased total protein and albumin concentration and albumin/globulin ratio, increased AP, hepatocytic hypertrophy, oval cell proliferation and increased hepatocytic fatty content at 35 mg/kg/day and above; and decreased calcium concentration which is thought to be related to the hypoalbuminemia, decreased cholesterol and triglyceride concentrations, slightly increased GGT and SGPT, follicular hyperplasia of thyroid, increased colloid content in follicles and increased relative thyroid weight at 175 mg/kg/day.

4. A 3–week dermal study in rabbits at 0, 100, 500 and 1,000 mg/kg/day with a NOEL of 100 mg/kg/day. The effects were increased mean absolute and relative kidney weights and minimal multifocal or periportal hepatocyte vacuolation.

5. A 1–year feeding study in dogs at 0, 0.8, 7.8, 86 mg/kg/day (males) and 0, 0.8, 8.8, and 78 mg/kg/day (females). The NOEL was 0.8 mg/kg/day and the LOEL is 7.8 mg/kg/day based upon hepatocellular hypertrophy/hyperplasia, which was observed at 7.8 to 8.8 mg/kg/day for males and females, respectively, and above. In addition, an increase of approximately 10% in prothrombin time was observed at 8.6 and 7.8 mg/kg/day for males and females, respectively with both sexes, as well as increased SGOT, SGPT, GGT and ALK and decreases in cholesterol, albumin, total protein and calcium levels. An increase in absolute and relative liver weights were also observed at 2,000 ppm. Enlargement and/or discoloration in some of the high dose animals provided additional evidence of hepatotoxicity.

6. A developmental toxicity study in rats at 0, 10, 100 and 250 mg/kg/day. The maternal NOEL is 100 mg/kg/day and the maternal lowest observed effect level (LOEL) is 250 mg/kg/day based on increased liver weights, salivation, decreased body weight gains and food consumption. The developmental NOEL was 100 mg/kg/day and the developmental LOEL was 250 mg/kg/day based on increased incidences of unossified sternebra(e) and 7th cervical rib variations.

7. A developmental toxicity study in rabbits at 0, 10, 75 and 175 mg/kg/day. The maternal NOEL was 75 mg/kg/day based on reduced body weight gain and food consumption. The developmental NOEL was 175 mg/kg/day the highest dose tested. No effects were observed.

8. A two-generation reproductive study in rats at 0, 0.72, 7.33 and 72.9 mg/kg/day (males) and 0, 0.86, 8.49, 81.3 mg/kg/day (females). The parental/systemic NOEL was 0.72 mg/kg/day. The toxic effects were increased absolute and relative liver weight, hepatic discoloration, histologic evidence of hepatic hypertrophy and vacuolization in females in both generations. The reproductive NOEL was 72.9 mg/kg/day, the highest dose tested. There were no reproductive effects.

9. A mouse carcinogenicity study at doses of 0, 0.17, 1.6, 16.9 66.3 and 128.4 mg/kg/day (males) and 0,0.24, 2.6, 26.8, 108.1 and 215.9 mg/kg/day (female). The systemic NOEL was 1.6 mg/kg/day. The effects were hepatocellular hypertrophy and amyloid deposition. At 66.3 mg/kg/day the same lesions plus increased liver weights, random and periportal hepatocellular vacuolation were observed. At 128.4 mg/kg/day the same lesions plus distended abdomen, slight increase in ALP, SGOT and SGPT, abnormal coloration and enlargement of liver, decrease in absolute and relative spleen weights, increase in absolute and relative kidney weights, increase in eosinophilia in hepatocytes, kidney nephropathy and lymphocytic hyperplasia of the nesenteric lymph nodes were observed. There were no increases in neoplastic lesions in any of the treated groups.

10. A 2–year rat carcinogenicity study at doses of 0, 0.04, 0.4, 4.4, 44.2 or 136.4 mg/kg/day (males) and 0, 0.06, 0.6, 5.6, 56.3 or 177.1 mg/kg/day (female) with a systemic NOEL of 4.4 mg/kg/day. The effects were protruding eyes, evidence of mild anemia, increased GGT and cholesterol, increased absolute and relative liver, kidney and thyroid weights and significant increase in microscopic lesions in the liver (hypertrophy and vacuolar changes), kidney (nephropathy) and thyroid (hypertrophy and hyperplasia); decreased mean body weight and body weight gain and food consumption. A statistically significant increase in thyroid follicular cell adenomas/cystadenomas were observed in males at 44.2 and 136.4 mg/kg/day. A nonsignificant increase in renal tubular adenomas in high-dose females was considered to be equivocal.

The EPA's Health Effects Division Carcinogenicity Peer Review Committee classified thiazopyr as a Group C, possible human carcinogen and recommended that for the purpose of risk characterization a Margin of Exposure (MOE) approach should be used in evaluation of the consequences of human exposure.

11. An acceptable study for inducing reverse mutation in Ames Salmonella strains of bacteria exposed with or without activation at doses up to 10,000 micrograms per plate. The study showed negative results.

12. An acceptable study for inducing micronuclei in bone marrow cells of mice treated up to a lethal dose of 800 mg/kg. The study showed negative results.

13. A mutagenic study with Chinese hamster ovary cells exposed *in vitro* with or without activation to doses up to 1,000 micrograms, the highest dose tested. The study showed negative results for inducing forward mutation at the hypoxanthine guanine phosphoribosyl transferase locus (HGPRT). On the basis of the studies on mutagenicity and genotoxicity, it is concluded that thiazopyr is not a mutagenic or genotoxic chemical.

14. An acute neurotoxicity in rats at doses of 0, 500, 1,000 and 2,000 mg/kg with a NOEL of 500 mg/kg. The effects were transient differences in functional observational battery and motor activity compared to control groups. The results of the study were considered to be inconclusive for neurotoxicity. At the highest dose (2,000 mg/kg) it was not possible to distinguish between neurotoxicity and general systemic toxicity.

15. Two metabolism studies were conducted in rats with radio-labeled thiazopyr. One with the ^{14}C at the 4 position of the pyridine ring and one with the ^{14}C at the 4′ and 5′ positions of the thiazole ring. The absorption of an orally administered dose was about 90%. The overall radiolabel recovery for all study groups was 88.9, plus or minus 0.65%. No significant sex-related differences were observed in the total percent recovery. However, the distribution of recovery was sex-related. There was little radiolabel detected in tissues at study termination. Preferential sites for localization of the radiolabel included liver, adipose tissue, muscle and bone. The metabolic pathway is essentially an oxidative pathway. Vulnerable sites of the molecule are the thiazoline ring, the isobutyric side chain and the pyridine rings. Thiazopyr appears to be rapidly and extensively eliminated with low amounts of residues remaining in the tissues and carcasses. The percentage of radiolabel remaining in the carcasses following feeding thiazoline-labeled thiazopyr was between 6.9 and 10.8%.

16. Special mechanistic studies for mode of toxic action on thyroid function. The results of three studies on the effects of thiazopyr on thyroid function and mechanisms involved in the disposition of T4 in rats were reviewed. These studies are described below:

a. Thiazopyr was administered through the diet, in rats, at 0 and 150 mg/kg/day to determine the subchronic effect on hormone level and other biochemical endpoints. Animals were

assayed at 7, 14, 28, 56 or 90 days. Significant decreases in body weight gain were observed at 90 days. Early in the study the treated rats showed increases in TSH (ranging from 133 to 200% of controls) and decreases in T4 (ranging from 43% to 76% of controls). In addition there were increases in liver and thyroid weights and increases in thyroid follicular cell hypertrophy/hyperplasia. Reverse T3 was increased at 28 days, and T3 was either not affected or increased. There were indications of increases in hepatic UDPGT activity and significant increases in T4 UDPGT activity. Hepatic 5'-monodeiodinase activity was either not affected or decreased. The effects observed in this study were supportive of the theory that thiazopyr may induce thyroid tumors through a disruption in the thyroid-pituitary hormonal feedback mechanisms.

b. A second study on the effects of thiazopyr on the biochemical mechanisms of thyroid toxicity in rats at doses of 0, 0.5, 1.5, 5, 15, 50 or 150 mg/kg/day was conducted. Dose response effects on various biochemical parameters were observed. Two groups of the rats in the study were observed for reversibility of effects observed up to 56 and 112 days. Doses at 15, 50 and 150 mg/kg/day significantly increased the liver weights. Thyroid weights were increased at doses of 50 and 150 mg/kg/day. There was no significant effect on body weight or body weight gains during the study. The T4 UDPGT levels were increased by 117 and 376% above controls at the 50 and 150 mg/kg/day dosages, respectively. Effects of 150 mg/kg/day were increases in T3, TSH and rT3 serum concentrations, and increased incidence of follicular cell hypertrophy/hyperplasia at the 150 mg/kg/day dose. A NOEL of 1.5 mg/kg/day was determined based on liver weight increases. Thyroid weight was the only parameter that did not return to those similar to the controls. At the 56 and 112 day recovery periods the thyroid weights were 120 and 123% of control values, respectively.

c. A third thyroid function study on the biochemical mechanisms involved with disposition of T4 in rats fed dosages of 0 and 150 mg/kg/day for 56 days was conducted. Rats feed thiazopyr had increase T4 UDPGT activity and total deiodinase activity in their livers. There was also a two-fold increase in mixed function oxidase enzyme activity. Results of the three studies suggest that increased glucuronidation, deiodination of T4 and T3, and increased rate of clearance of T4 from the blood and excretion of the hormone and its metabolites in the bile could significantly reduce the level of circulating T4 in the male rat.

Results of these studies support the hypothesis that thiazopyr may induce thyroid tumors through a disruption of the thyroid-pituitary hormonal feedback mechanism circulating T4 in the male rat.

II. Aggregate Exposures

1. *Food and feed uses.* The primary source for human exposure to thiazopyr will be from ingestion of both raw and processed agricultural commodities as proposed in the November 22, 1996 notice of filing cited above. Based on tolerances of 0.05 ppm in or on orange and grapefruit, the Theoretical Maximum Residue Contributions (TMRC) for the U.S. adult population and for U.S. children (1 to 6 years of age) were determined. In deriving the dietary exposure to thiazopyr and its metabolites, EPA assumed that 100% of the orange and grapefruit crops were cultured with the aid of this herbicide. A chronic exposure was used to estimate the TMRC. The TMRC for the U.S. population was estimated to be 0.000118 mg/kg/day. The TMRC for children, 1 to 6 years of age was 0.000324 mg/kg/day. The TMRC for children, 7 to 12 years of age was 0.000173 mg/kg/day.

2. *Potable water.* There is presently no EPA Lifetime Health Advisory level for thiazopyr and its degradates as drinking water contaminates. Thiazopyr has not been found in ground water. A monoacid degradate was found in wells at concentrations of up to 7.6 parts per billion (ppb). The wells were being monitored as part of a prospective ground water study in the state of Florida. Using a standard potable water ingestion of 2 liters per day by adults and 1 liter per day by children, the exposure from potable water to adults was determined to be 0.000217 mg/kg/day. Exposure to children was determined to be 0.00076 mg/kg/day.

3. *Non-dietary uses.* There are no non-dietary uses registered under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended.

4. Cumulative exposure to substances with common mechanism of toxicity.Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." While the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the capability to resolve the scientific issues concerning common mechanism of toxicity in a meaningful way. EPA is commencing a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will enable the Agency to apply common mechanism issues to its pesticide risk assessments. At present, however, the Agency does not know how to apply the information in its files concerning common mechanism issues to risk assessments, and therefore believes that in most cases there is no "available information" concerning common mechanism that can be scientifically applied to tolerance decisions. Where it is clear that a particular pesticide may share a significant common mechanism with other chemicals, or where it is clear that a pesticide does not share a common mechanism with other chemicals, a tolerance decision may be affected by common mechanism issues. The Agency expects that most tolerance decisions will fall into the area in between, where EPA can not reasonably determine whether a pesticide does or does not share a common mechanism of toxicity with other chemicals (and, if so, how that common mechanism should be factored into a risk assessment). In such circumstances, the Agency will reach a tolerance decision based on the best, currently available and usable information, without regard to common mechanism issues. However, the Agency will also revisit such decisions when the Agency learns how to apply common mechanism information to pesticide risk assessments.

In the case of thiazopyr, EPA has determined that it does not now have the capability to apply the information in its files to a resolution of common mechanism issues in a manner that would be useful in a risk assessment. This tolerance determination therefore does not take into account common mechanism issues. The Agency will reexamine the tolerances for thiazopyr, if reexamination is appropriate, after the Agency has determined how to apply common mechanism issues to its pesticide risk assessments.

III. Determination of Safety for U.S. Population and Non-nursing Infants

1. *The U.S. population.* Based on a NOEL of 0.8000 milligrams per kilogram of body weight per day (mg/kg bwt/day) from a 2–year dog feeding study that showed a liver effect of hepatocellular hypertrophy and hyperplasia, and using a safety or uncertainty factor of 100 to account for the interspecies extrapolation and intraspecies variability, the Agency has determined a Reference Dose (RfD) of 0.008 mg/kg bwt/day for this assessment of risk. Based on the available toxicity data and the available exposure data identified above, the proposed tolerances will utilize 1.5% of the RfD for the U.S. population. Including an estimated exposure of 7.6 ppb in potable water, the dietary exposure for the U.S. adult population, assuming the ingestion of 2 liters of water per day, increases to 0.000335 mg/kg/day and utilizes 4.6% of the RfD.

2. *Non-nursing infants.* Using the RfD of 0.008 mg/kg/bwt/day as described above and the TMRC of 0.000251 mg/kg/day determined of non-nursing infants, the proposed tolerances utilize 13.97% (3.1% dietary and 10.87% potable water) of the RfD.

3. *Nonfood uses.* There are no nonfood uses of thiazopyr registered under FIFRA, as amended.

IV. Determination of Safety for Infants and Children

Risk to infants and children was determined by use of two developmental toxicity studies. One study in rats had a NOEL for developmental toxicity of 100 mg/kg/day, based on an increase in the incidence of unossified sternebrae and 7th cervical rib variations. The maternal NOEL was also 100 mg/kg/day based on toxic effects of increased liver weights, salivation, decreased body weight gains and food consumption. Fetal toxicity was only observed at maternally toxic doses. No malformations were observed at any dose. A second study in rabbits had a maternal NOEL of 75 mg/kg/day based on effects in reducing body weight gain and food consumption. There were no development effects at 175 mg/kg/day, the highest dose tested.

In a reproduction study in rats, the parental NOEL was 0.72 to 8.1 mg/kg/day. The reproductive toxicity NOEL was 72.9 to 81.3 mg/kg/day. There were no treatment-related effects on any reproductive parameter in the adults or their offspring. Overall, thiazopyr was not associated with significant developmental or reproductive effects below maternally toxic doses.

FFDCA section 408 provides that EPA shall apply an additional safety factor for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that such additional factor is not necessary to protect the safety of infants and children. EPA believes that reliable data support using a different safety factor (usually 100x) and not the additional safety factor when EPA has a complete data base and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the traditional safety factors.

The toxicological database for evaluating pre- and post-natal toxicity for thiazopyr is mostly complete. Available data indicate that no developmental toxicity was observed in the rabbit study at the highest dose tested (175 mg/kg/day). Maternal toxicity was observed in the rabbit in the 175 mg/kg/day dose group which consisted of reductions in body weight gain and food consumption. In the rat developmental study, a reduction in maternal body weight gain and body weight was observed at the highest dose tested (250 mg/kg/day). Developmental toxicity was observed in the high dose (250 mg/kg/day) as increased incidences of unossified sternebra and 7th cervial rib variations.

The NOEL for systemic (parental) toxicity is 0.72 mg/kg/day. The NOEL for reproductive toxicity is 72.9 mg/kg/day (highest dose tested). There were no reproductive effects noted in the study. These data taken together suggest minimal concern for developmental or reproductive toxicity and do not indicate any increased pre- or post-natal sensitivity in the offspring; no additional uncertainty factor for increased sensitivity in infants and children is appropriate.

The percent of the RfD that will be utilized by the aggregate exposure to thiazopyr will range from 7.148% for non-nursing infants, up to 13.55% for children (1 to 6 years of age). Therefore, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure.

V. Other Considerations

A. Endocrine Effects

An evaluation of the potential effects on the endocrine systems of mammals was partially determined by chronic toxicology studies described above. There were observed pathology of the endocrine organs in those studies. Three supplemental rat studies were conducted to determine the mode of toxic action of thiazopyr on thyroid function. The mode of toxic action as indicated by effects of thiazopyr on serum hormone levels, hepatic enzyme activity, and thyroid-pituitary hormonal feedback mechanisms.

B. Metabolism in Plants and Animals

The metabolism of thiazopyr in plants and animals is adequately understood for the purposes of these tolerances. There were no crop residues found after the preemergence use in the culture of orange and grapefruit. The metabolites that were identified in a radiolabeled thiazopyr study and converted to two common entities: amide ester and sulfonic diacid. However, the Agency has accepted enforcement analytical methodology that uses only one common entity to determine greater than 70% of the expected thiazopyr residues.

C. Analytical Method

There is a practical analytical method for detecting and measuring levels of thiazopyr and its metabolites in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances. The proposed analytical method for determining residues is gas-liquid chromatography with mass selective detection. Thiazopyr and its metabolites are converted to a common moiety which is quantified. The quantitation limit of this method is 0.015 ppm for whole orange fruit. EPA has provided information on this method to FDA. Because of the long lead time from establishing these tolerances to publication, the enforcement methodology is being made available in the interim to anyone interested in pesticide enforcement when requested by mail from: Calvin Furlow, Public Response Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone umber: Rm. 1130A, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)–305–5937.

D. International Tolerances

There are no Codex Alimentarius Commission (Codex) Maximum Residue Levels (MRLs) for thiazopyr.

E. Summary of Findings

The analysis for thiazopyr using tolerance level residues shows that the proposed uses in the culture of orange and grapefruit will not cause exposure to exceed the levels at which the Agency believes there is an appreciable risk. All population subgroups examined by EPA are exposed to thiazopyr residues at levels below 100 percent of the RfD for chronic effects.

Based on the information cited above, the Agency has determined that the establishment of these tolerances by adding a new section to 40 CFR part 180

will be safe; therefore, the tolerances are established as set forth below.

VI. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (1)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which governs the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by May 5, 1997, file written objections to any aspect of this regulation (including the automatic revocation provision) and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VII. Public Docket

A record has been established for this rulemaking under docket number [OPP–300455]. A public version of this record, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operation Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. EPA has also established a special record for post-FQPA tolerances which contains documents of general applicability. This record can be found in the same location.

The official record for this rulemaking, as well as the public version, as described above, is kept in paper form. Accordingly, in the event there are objections and hearing requests, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VIII. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), this action is not a "significant regulatory action" and since this action does not impose any information collection requirements subject to approval under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., it is not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, or contain any "unfunded mandates" as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because tolerances established on the basis of a petition under section 408(d) of FFDCA do not require issuance of a proposed rule, the regulatory flexibility analysis requirements of the Regulatory Flexibility Act (RFA), 5 U.S.C. 604(a), do not apply. Prior to the recent amendment of the FFDCA, EPA had treated such rulemakings as subject to the RFA; however, the amendments to the FFDCA clarify that no proposal is required for such rulemakings and hence that the RFA is inapplicable.

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104–121, 110 Stat. 847), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 19, 1997.

Stephanie R. Irene,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By adding § 180.496 to read as folllows:

§ 180.496 Thiazopyr; tolerances for residues.

Tolerances are established for combined residues of the herbicide thiazopyr (3-pyridinecaroxylic acid, 2-(difluoromethyl)-5-(4,5-dihydro-2-thiazolyl)-4-(2-methylpropyl)-6-(trifluoromethyl)-, methyl ester) and its metabolites determined as 2-(difluoromethyl)-6-(trifluoromethyl)-3,4,5-pyridinetricarboxylic acid, all expressed as the parent equivalents in or on the following raw agricultural commodities:

Commodities	Parts per million
Grapefruit	0.05
Orange	0.05

[FR Doc. 97–5201 Filed 3–4–97; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[OPP–300457; FRL–5592–2]

RIN 2070–AB78

Clofencet; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes tolerances for the residues of the plant growth regulator (hybridizing agent) clofencet, [2-(4-chlorophenyl)-3-ethyl-2,5-dihydro-5-oxo-4-pyridazinecarboxylic acid, potassium salt] expressed as the free acid, active ingredient code 128726, CAS No. 82697–71–0 in or on the raw agricultural commodities wheat as a primary application; in or on the cereal grains group (except rice, wild rice, sweet corn and wheat) and soybeans as rotational crops; and in animal products. Monsanto Co. submitted a petition to EPA under the Federal Food, Drug and Cosmetic Act as amended by the Food Quality Protection Act of 1996 requesting the tolerances.

EFFECTIVE DATE: This rule becomes effective March 5, 1997.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [OPP–300457], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [OPP–300457]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Philip V. Errico, Product Manager (PM) 25, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail address: Rm. 241, CM #2, 1921 Jefferson Davis Highway., Arlington, VA 22202, (703) 305–6027; e-mail: errico.philip@epamail. epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 7, 1996 (61 FR 41153), (PF–667; FRL–5388–7), EPA issued a notice announcing that Monsanto Company, 700 14th St., NW., Suite 1100, Washington, DC 20005, had submitted pesticide petition 4F4346 to EPA which requested that the Administrator, pursuant to section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA), amend 40 CFR part 180 to establish tolerances for residues of clofencet, [2-(4-chlorophenyl)-3-ethyl-2,5-dihydro-5-oxo-4-pyridazinecarboxylic acid, potassium salt] expressed as the free acid, in or on the raw agricultural commodities: wheat grain at 250 parts per million (ppm), wheat hay at 40 ppm, wheat straw at 50 ppm and wheat forage at 10 ppm; in the animal product commodities of cattle, goats, hogs, horses and sheep: fat at 0.04 ppm, kidney at 10 ppm, meat at 0.15 ppm, meat by-products (except kidney) at 0.5 ppm and milk at 0.02 ppm; in animal product commodities of poultry: eggs at 1 ppm, fat at 0.04 ppm, meat at 0.15 ppm and meat by-products at 0.20 ppm; and rotational crop tolerances in the raw agricultural commodities: soybeans at 30 ppm, soybean hay at 10 ppm and soybean forage at 10 ppm; cereal grains group (except rice, wild rice, sweet corn and wheat): grain at 20 ppm, straw at 4 ppm, forage at 4 ppm, stover (fodder) at 1 ppm and hay at 15 ppm.

In the **Federal Register** of December 12, 1996 (61 FR 65392), (PF–678; FRL–5576–2), EPA issued a second notice to bring the Notice into conformity with the Food Quality Protection Act (FQPA) of 1996. The notice contained a summary of the petition prepared by the petitioner, Monsanto Co., including information and arguments to support its conclusion that the petition complied with FQPA. It was stated in the notice that the conclusions and arguments were not of the EPA.

There were no comments received in response to the notices of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data listed below were considered in support of these tolerances.

I. Toxicology Profile

1. A battery of acute toxicity studies placing technical clofencet in toxicity category II for eye irritation, category III for oral LD_{50}, category IV for inhalation LC_{50} and dermal irritation and category V for dermal LC_{50}.

2. A 90–day rat neurotoxicity study at doses of 0, 200, 2,000 or 20,000 ppm (males = 0, 12.3, 124.5 or 1,232 milligrams per kilogram per day (mg/kg/day); females = 0, 15.2, 149.8 or 1,537.2 mg/kg/day) with a No Observed Effect Level (NOEL) of 2,000 ppm in females based on decreased body weight gain in females and 20,000 ppm in males. At the 20,000 ppm (Highest Dose Tested (HDT)), no neurotoxicity was observed in either male or female rats.

3. A 21–day rat dermal toxicity study at doses of 0, 100, 300 or 1,000 mg/kg/day which showed no significant toxic effects at any dose tested with a systemic and dermal NOEL of 1,000 mg/kg/day.

4. A 90–day dog feeding study at doses of 0, 10, 50, 200 or 500 mg/kg/day with a NOEL of 50 mg/kg/day based on histological findings in the thymus and testes.

5. A 90–day rat feeding study at doses of 0, 200, 1,000, 5,000 or 20,000 ppm (males = 0, 12, 60, 311 or 1,207 mg/kg/day; females = 0, 15, 75, 373 or 1,477 mg/kg/day) with a NOEL of 5,000 ppm in the diet based on decreased cumulative weight gain and slightly increased kidney weights in females.

6. A rat developmental toxicity study at doses of 0, 100, 300 or 1,000 mg/kg/day with a maternal and developmental NOEL of 1,000 mg/kg/day HDT. There was no developmental toxicity considered to be the result of clofencet administration.

7. A rabbit developmental toxicity study at doses of 0, 50, 150 or 500 mg/kg/day) with a maternal and developmental NOEL of 150 mg/kg/day based on mortality, increased abortions and decreased body weight gain, decreased food consumption, lower fetal body weights, increased incidence of fetal hydrocephalus and an increase in

the number of fetuses/litters with unossified bones.

8. A rat two-generation reproduction study at dietary concentrations of 0, 500, 5,000 or 20,000 ppm (males = 0, 38, 393 or 1,602 mg/kg/day; females = 0, 52, 529 or 2,044 mg/kg/day) with a maternal NOEL of 5,000 ppm based on suggestive increase in mortality, decrease in body weight/weight gains and lung pathology. The reproductive NOEL is 500 ppm based on an increase in pup mortality in F1a and F1b during lactation days 1 to 4 and decreased body weights during lactation.

9. A 1–year dog chronic toxicity study at doses of 0, 5, 30 or 200 mg/kg/day. The NOEL was 5 mg/kg/day based on liver and epididymal/testicular effects.

10. An 18–month mouse carcinogenicity study at doses of 0, 70, 300, 3,000 or 7,000 ppm (males = 0, 11.45, 50.31, 501.20 or 1,228.22 mg/kg/day; females = 0, 16.92, 70.67, 710.79 or 1,608.46 mg/kg/day) with a systemic NOEL of 3,000 ppm based on decreased survival as well as bone marrow myeloid hyperplasia, lung congestion and skin fibrosis in males and an increased incidence of histiocytic sarcomas in females at 7,000 ppm (HDT).

11. A 2–year rat chronic/carcinogenicity study at dietary doses of 0, 100, 1,000, 10,000 or 20,000 ppm (males = 0, 4.7, 47, 470 or 989 milligrams per kilogram of body weight per day (mg/kg bwt/day)); females = 0, 5.9, 58, 607 or 1,288 mg/kg bwt/day) with a systemic NOEL of 1,000 ppm based on hematuria, white/gray lung foci and kidney lesions. Clofencet at 20,000 ppm (HDT) may cause an increase in the number of animals with hepatocellular carcinomas and adenomas/carcinomas in males and an increase in thyroid C-cell adenomas in males and females.

12. A metabolism study in rats indicated that clofencet was rapidly absorbed and excreted by 7 days post-dosing, with the majority of the administered ^{14}C-label (>78%) eliminated in the urine within 24 hours. Analysis of the excreta indicated that ^{14}C MON 21200 was eliminated mostly unmetabolized in the urine (87.9 to 92.1% of the administered dose) and in the feces (4.5 to 9.1% of the administered dose). Less than 1% was of the administered ^{14}C-label was eliminated as expired CO_2. Less than 1% was retained in the tissue at 7 days post-dosing, indicating low bioaccumulation. There were no apparent sex- or dose-related differences in the absorption, distribution, metabolism or elimination.

13. Acceptable studies on gene mutation and other genotoxic effects: Ames *Salmonella* Assay; CHO/HGPRT Point Mutation Assay; *In Vitro* Cytogenetics Assay in Human Lymphocytes; Mouse Micronucleus Assay; and *In Vivo/In Vitro* Hepatocyte DNA Repair Assay yielded negative results.

II. Dose Response Assessment

Reference dose (RfD). The RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. The RfD is determined by using the toxicological end-point or the NOEL for the most sensitive mammalian toxicological study. To assure the adequacy of the RfD, the Agency uses an uncertainty factor in deriving it. The factor is usually 100 to acount for both interspecies extrapolation and intraspecies variability represented by the toxicological data. The EPA has determined a RfD of 0.05 mg/kg/day with an uncertainty factor of 100 for this risk assessment, based on a NOEL of 5.0 mg/kg/day from a 1–year feeding study in dogs which demonstrated the effect of epididymitis, tubular degeneration and absence of spermatozoa as endpoint effects.

Carcinogenicity classification. Using the Guidelines for Carcinogenic Risk Assessment published September 24, 1986 (51 FR 33992), the EPA has classified clofencet as Group "C" for carcinogenicity (possible human carcinogen) based on the increase in histiocytic sarcomas (malignant) by both pair-wise and trend analyses in female mice. The thyroid C-cell tumors in male rats (mainly benign) were considered to have occurred only at an excessive dose. There were no apparent genotoxicity concerns and little additional support for carcinogenicity based on structure-activity relationship (SAR) with a related wheat hybridizing agent, fenridazon; therefore, the EPA's Carcinogenicity Peer Review Committee recommended that for the purpose of risk characterization, the RfD approach be used for quantitation of human risk.

III. Residential Exposure Assessment

The toxicological endpoint of concern for residential exposure is systemic toxicity resulting from chronic exposure. There are no proposed residential uses for clofencet and it is not likely to be applied in or near residential areas; therefore, there are no residential risk concerns.

IV. Dietary Exposure Assessment

Use of a pesticide results or may reasonably be expected to result, directly or indirectly, in pesticide residues in food. Primary residues or indirect/inadvertent residues in agricultural commodities are determined by chemical analysis. To account for the diversity of growing conditions, cultural practices, soil types, climatic conditions, crop varieties and methods of application of the pesticide, data from studies that represent the commodities are collected and evaluated to determine an appropriate level of residue that would not be exceeded if the pesticide is used as represented in the studies.

1. *Plant/animal metabolism and magnitude of the residue.* The nature of the residue (metabolism) of clofencet in plants and animals is adequately understood for the purposes of these tolerances. There are no Codex maximum residue levels established for residues of clofencet on wheat or the rotational crops. The residue of concern to be regulated is the parent, clofencet.

2. *Residue analytical methods.* The analytical method proposed for detecting and measuring levels of clofencet in or on the commodities with a limit of detection that allows monitoring of food with residues at or above the levels set in the tolerance for primary and rotational crops includes derivatization of clofencet to its methyl ester followed by analysis via gas chromatography with electron capture detection, however, for rotational crops, it is necessary to first hydrolyze clofencet-sugar conjugates to clofencet before proceeding with derivatization. The method for animal tissues includes derivatization of clofencet to its methyl ester followed by analysis via HPLC with UV detection. For milk and eggs, analysis is achieved by extraction, concentration and direct analysis via HPLC with UV detection. EPA will provide information on this method to the Food and Drug Administration (FDA). Because of the long lead time from establishing these tolerances to publication, the enforcement methodology is being made available in the interim to anyone interested in pesticide enforcement when requested by mail from: Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1130A, CM #2, 1921 Jefferson-Davis Highway, Arlington, VA 22202, (703) 305–5937.

The presence of the pesticide or degradates of the pesticide in potable water may also be a source of dietary exposure that must be considered in establishing a tolerance level for an agricultural commodity.

V. Aggregate Exposures Assessment

In examining aggregate exposure, FQPA directs EPA to consider available information concerning exposures from the pesticide residue in food, including water, and all other non-occupational exposures. The aggregate sources of exposure the Agency looks at include food, drinking water or groundwater, and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

1. *Acute dietary.* There is no concern for acute effects due to dietary exposure to clofencet.

2. *Chronic dietary.* Tolerances in this petition are based on residues from field trial data. Using the Dietary Risk Evaluation System (DRES), a routine chronic exposure analysis was based on 0.1% crop treated and on tolerance values for wheat and rotational crops listed in this petition. Although percent crop treated were used, the estimate is conservative, since it is assumed that 100% of the fields treated with clofencet in the United States are rotated to cereal grains group crops (except rice, wild rice, sweet corn and wheat) and soybeans at the same time. At this time, there is no concern for chronic effects due to exposure of clofencet in the diet.

3. *Drinking water.* Because the Agency lacks specific water- related exposure data for most pesticides, EPA has commenced and nearly completed a process to identify a reasonable yet conservative bounding figure for the potential contribution of water related exposure to the aggregate risk posed by a pesticide. In developing the bounding figure, EPA estimated residue levels in water for a number of specific pesticides using various data sources. The Agency then applied the estimated residue levels, in conjunction with appropriate toxicological endpoints (RfD's or acute dietary NOEL's) and assumptions about body weight and consumption, to calculate, for each pesticide, the increment of aggregate risk contributed by consumption of water containing that pesticide. This analysis is included in the docket for this rulemaking. While EPA has not yet pinpointed the appropriate bounding figure for consumption of water containing pesticides, the ranges the Agency is continuing to examine are all well below the level that would cause clofencet to exceed the RfD by granting the tolerances being considered in this document. The Agency has therefore concluded that the potential exposures associated with clofencet in water, even at the higher levels the Agency is considering as a conservative upper bound, will not prevent the Agency from determining that there is a reasonable certainty of no harm.

4. *Non-occupational non-dietary.* Since the proposed use does not involve residential use and since clofencet is not likely to be used in or near residential areas, non-occupational non-dietary exposure is not expected.

5. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also policies and methodologies for conducting cumulative risk assessments. While the Agency has some information in its files that may be helpful in determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodology to resolve the scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will enable it to develop and apply policies for evaluating the cumulative effects of chemicals having a common mechanism of toxicity. At present, however, the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments.

In making individual tolerance decisions, the Agency will determine whether: (1) It has sufficient information to determine that a pesticide does not appear to share a common mechanism of toxicity with other substances; or (2) it is unable to conclude that a pesticide does not share a common mechanism of toxicity with other substances.

For pesticides falling into the first category, the Agency will explain its determination and factor the determination into the tolerance decision. For pesticides falling into the second category, the Agency will conclude that it does not have sufficient available information concerning common mechanism of toxicity to scientifically apply that information to the tolerance decision, the tolerance decision will be reached based upon the best available and useful information for the individual chemical, and a risk assessment will be performed for the tolerance action assuming that no common mechanism of toxicity exists. However, tolerance decisions falling into the second category will be reexamined by the Agency after EPA establishes methodologies and procedures for integrating information concerning common mechanism into its risk assessments. In such circumstances, related registration actions may be conditioned upon the provision of such data as may be necessary to evaluate common mechanism of toxicity issues in a risk assessment.

In the case of clofencet, EPA has not yet determined whether or how to include this chemical in a cumulative risk assessment. This tolerance determination therefore does not take into account common mechanism issues. After EPA develops a methodology for applying common mechanism of toxicity issues to risk assessments, the Agency will develop a process (either as part of the periodic review of pesticides or otherwise) to reexamine those tolerance decisions made earlier. The registrant must submit, upon EPA's request and according to a schedule determined by the Agency, such information as the Agency directs to be submitted in order to evaluate issues related to whether clofencet share(s) a common mechanism of toxicity with any other substance and, if so, whether any tolerances for clofencet needs to be modified or revoked.

VI. Determination of Safety for the U.S. Population and Non-nursing Infants

Using the Dietary Risk Evaluation System (DRES), a routine chronic dietary exposure analysis was based on use of 0.1% of the wheat crop treated, and 0.1% of the cereal grains group crops (except rice, wild rice, sweet corn and wheat) and soybeans as rotated crops in fields previously containing wheat treated with clofencet, and tolerance levels established in this document. Percent crop treated of 0.1% is based on the petitioner's expectations that up to 33,000 acres of wheat grown for seed will be treated in the year 2000. This 33,000 acres is 0.05% of the approximate 70,000,000 acres of wheat which is grown for grain in the United States. Pursuant to section 408(b)(2)(F) of FFDCA as amended, the Agency may, when assessing chronic dietary risk, consider available data and information on the percent of food actually treated

with the pesticide chemical, and finds that the data are reliable and provides a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide chemical residue, finds that the exposure estimate does not understate exposure for any significant subpopulation group, finds that, if data are available on pesticide use and consumption of food in a particular area, the population in such area is not dietarily exposed to residues above those estimated by the Agency, and provides for the periodic reevaluation of the estimate of anticipated dietary exposure.

The Agency believes the above conditions have been met for the conditions stated above. Based on the available information and the use of this conservative risk assessment, EPA finds the exposure estimate does not understate exposure for any significant subpopulation group. Also, EPA has no data that show clofencet use on wheat grown for seed, and consumption of food in a particular area differ significantly from that used in the conservative risk assessment stated herein. Registration of end-use product(s) containing clofencet conditioned on production of no more clofencet than necessary to treat no more than 35,000 acres per year. The additional 2,000 acres was requested by the registrant, and does not significantly effect the results of this risk determination. Before the petitioner can increase production of product for treatment of greater than 35,000 acres per year, permission from the Agency must be obtained. The petitioner must also provide annual reports on production of end-use products containing clofencet, number of acres treated, and a best estimate of which crops and how many acres were planted as rotational crops on fields previously planted to wheat treated with clofencet. The registrant must also provide field residue data on wheat grain, forage, hay and straw from commercially treated crop beginning 18 months after wheat grain is first harvested. Field residue trials on the rotated crops listed in this document may also be required. The Agency will provide for periodic reevaluation of the dietary exposure, if warranted, with percent crop treated, acres of wheat treated, end-use product production information provided by the petitioner and other available sources, and submitted field residue data. The reason for using 0.1% instead of 0.05% crop treated is to allow expansion of use if other conditions of registration are satisfied. Before expansion beyond 0.1% is allowed, reevaluation of the dietary exposure may be performed using all available information as necessary.

Based on the conservative dietary assessment presented above, the proposed use of clofencet uses 0.73% of the RfD for the U.S. population and for the most highly exposed subgroups, 0.6% for non-nursing infants (<1 year old), 1.6% for children (1 to 6 years old) and 1.2% for children (7 to 12 years old). The risk estimate from combined food and water sources is expected to be below 25% of the RfD even with the addition of a reasonable bounding figure for the contribution from drinking water. EPA concluded there is a reasonable certainty that no harm will occur from aggregate exposure to clofencet for this directed use on wheat and the subsequent rotational crops [cereal grains group (except rice, wild rice, sweet corn and wheat) and soybeans].

VII. Determination of Safety for Infants and Children

Risk to infants and children was determined by the use of the two developmental toxicity studies in rats and rabbits and the two-generation reproduction study in rats noted above. The developmental toxicity studies evaluates the potential for adverse effects on the developing organism resulting from exposure during prenatal development to the female parent. The reproduction study provides information relating to effects from exposure to the chemical on the reproductive capability of both (mating) parents and on systemic toxicity.

FFDCA section 408 provides that the EPA shall apply an additional safety factor of 10 in the case of threshold effects for infants and children to account for pre- and post-natal toxicity and the completeness of the database unless EPA determines, based on reliable data, that a different safety factor would be appropriate. EPA believes that reliable data support using a different safety factor (usually 100X (100 times)) and not the additional safety factor when EPA has a complete data base and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the traditional safety factors. The Agency believes that an additional safety factor for infants and children is not warranted here. First, a complete set of developmental and reproductive studies have been submitted and EPA has found them to be acceptable. Second, since the NOELs from the developmental and reproductive studies are 7.6X to 200X (7.6 times to 200 times) higher than the NOEL used for the RfD, the Agency does not believe the effects seen in these studies are of such concern to require an additional safety factor. Accordingly, the Agency believes the RfD has an adequate margin of protection for infants and children. The percent of the RfD that would be utilized by the aggregate exposure to clofencet will range from 0.6% for non-nursing infants to 1.6% for children 1 to 6 years old. EPA concluded that there is reasonable certainty that no harm will occur to infants and children from aggregate exposure to clofencet.

VIII. Other Considerations

Endocrine effects. No specific tests have been conducted with clofencet to determine whether the chemical may have an effect in humans that is similar to an effect produced by a naturally occuring estrogen or other endocrine effects. However, there were no significant findings in other relative toxicity studies, i.e., teratology and multi-generation reproductive studies, which would suggest that clofencet produces these kinds of effects.

IX. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under the new section 408(e) and (1)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which governs the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by May 5, 1997 file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given below (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

X. Public Docket

A record has been established for this rulemaking and all written comments for this rule under docket number [OPP–300457]. A public version of this record, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. EPA has also established a special record for post-FQPA tolerances which contains documents of general applicability. This record can be found in the same location.

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above, is kept in paper form. Accordingly, in the event there are objections and hearing requests, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place paper copies in the official rulemaking record.

XI. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and, since this action does not impose any information collection requirements subject to approval under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., it is not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, or contain any "unfunded mandates" as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because tolerances established on the basis of a petition under section 408(d) of FFDCA do not require issuance of a proposed rule, the regulatory flexibility analysis requirements of the Regulatory Flexibility Act (RFA), 5 U.S.C. 604(a), do not apply. Prior to the recent amendment of the FFDCA, EPA had treated such rulemakings as subject to the RFA; however, the amendments to the FFDCA clarify that no proposal is required for such rulemakings and hence that the RFA is inapplicable.

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104–121, 110 Stat. 847), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 24, 1997.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.s.c. 346a and 371.

2. By adding § 180.497, to read as follows:

§ 180.497 Clofencet; tolerances for residues.

(a) *Tolerances–general.* Tolerances are established for the plant growth regulator (hybridizing agent) clofencet, [2-(4-chlorophenyl)-3-ethyl-2,5 dihydro-5-oxo-4-pyridazinecarboxylic acid, potassium salt] expressed as the free acid in or on the following raw agricultural commodities:

Commodities	Parts per million
Cattle, fat	0.04
Cattle, kidney	10.0
Cattle, mbyp (except kidney)	0.5
Cattle, meat	0.15
Eggs	1.0
Goats, fat	0.04
Goats, kidney	10.0
Goats, mbyp (except kidney)	0.5
Goats, meat	0.15
Hogs, fat	0.04
Hogs, kidney	10.0
Hogs, mbyp (except kidney)	0.5
Hogs, meat	0.15
Horses, fat	0.04
Horses, kidney	10.0
Horses, mbyp (except kidney)	0.5
Horses, meat	0.15
Milk	0.02
Poultry, fat	0.04
Poultry, mbyp	0.20
Poultry, meat	0.15
Sheep, fat	0.04
Sheep, kidney	10.0
Sheep, mbyp (except kidney)	0.5
Sheep, meat	0.15
Wheat, forage	10.0
Wheat, grain	250.0
Wheat, hay	40.0
Wheat, straw	50.0

(b) *Tolerances for Indirect or inadvertent residues.* Tolerances are established for indirect or inadvertent residues of the plant growth regulator (hybridizing agent) clofencet, [2-(4-chlorophenyl)-3-ethyl-2,5-dihydro-5-oxo-4-pyridazinecarboxylic acid, potassium salt] expressed as the free acid in or on the following raw agricultural commodities when present therein as a result of the application of clofencet to the growing crops in paragraph (a) of this section:

Commodities	Parts per million
Cereal grains group (except rice, wild rice, sweet corn and wheat), forage	4.0

Commodities	Parts per million
Cereal grains group (except rice, wild rice, sweet corn and wheat, grain	20.0
Cereal grains group (except rice, wild rice, sweet corn and wheat), hay	15.0
Cereal grains group (except rice, wild rice, sweet corn and wheat), stover (fodder)	1.0
Cereal grains group (except rice, wild rice, sweet corn and wheat), straw	4.0
Soybeans	30.0
Soybean, forage	10.0
Soybean, hay	10.0

[FR Doc. 97–5415 Filed 3–4–97; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 180

[OPP–300456; FRL–5591–7]

RIN 2070–AC78

Tebufenozide; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for combined residues of the insecticide tebufenozide in or on the raw agricultural commodities peppers, non-brassica leafy vegetables (Crop Group 4 - celery, lettuce, spinach, swiss chard), turnips grown for foliage tops only, and brassica (cole) leafy vegetables (Crop Group 5 - broccoli, cabbage, cauliflower, collards, kale, kohlrabi, and mustard greens) in connection with EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of tebufenozide on peppers, leafy vegetables (except brassica), turnips grown for foliage tops only and brassica leafy vegetables in Texas; and lettuce, broccoli, cauliflower, cabbage and spinach in Arizona. This regulation establishes maximum permissible levels for residues of tebufenozide in these foods. These tolerances will expire on February 28, 1998.

DATES: This regulation becomes effective March 5, 1997. This regulation expires on February 28, 1998. Objections and requests for hearings must be received by EPA on May 5, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300456], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300456], should be submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Highway., Arlington, VA. A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov.

Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [OPP–300456]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Pat Cimino, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA 22202. (703) 308–8328, e-mail: cimino.pat@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for residues of the insecticide tebufenozide (benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide) in or on peppers at 0.5 part per million (ppm), leafy vegetables (except brassica) at 5.0 ppm, turnip tops at 5.0 ppm, and brassica (cole) leafy vegetables at 5.0 ppm. These tolerances will expire on February 28, 1998.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the FFDCA, 21 U.S.C. 301 et seq., and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq. The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities were discussed in detail in the final rule establishing the time-limited tolerance for an emergency exemption for use of propiconazole on sorghum (61 CFR 58135, November 13, 1996)(FRL–5572–9).

New section 408(b)(2)(A)(i) allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State Agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Section 408(l)(6) also requires EPA to promulgate regulations by August 3, 1997, governing the establishment of tolerances and exemptions under section 408(l)(6) and requires that the regulations be consistent with section 408(b)(2) and (c)(2) and FIFRA section 18.

Section 408(l)(6) allows EPA to establish tolerances or exemptions from the requirement for a tolerance, in connection with EPA's granting of FIFRA section 18 emergency exemptions, without providing notice or a period for public comment. Thus, consistent with the need to act expeditiously on requests for emergency exemptions under FIFRA, EPA can establish such tolerances or exemptions under the authority of section 408(e) and (l)(6) without notice and comment rulemaking.

In establishing section 18-related tolerances and exemptions during this interim period before EPA issues the section 408(l)(6) procedural regulation and before EPA makes its broad policy decisions concerning the interpretation and implementation of the new section 408, EPA does not intend to set precedents for the application of section 408 and the new safety standard to other tolerances and exemptions. Rather, these early section 18 tolerance and exemption decisions will be made on a case-by-case basis and will not bind EPA as it proceeds with further rulemaking and policy development. EPA intends to act on section 18-related tolerances and exemptions that clearly qualify under the new law.

II. Emergency Exemptions for Tebufenozide on Peppers, Leafy Vegetables (except Brassica), Turnip Tops, and Cole Leafy Vegetables (Brassica) and FFDCA Tolerances

On December 18, and 20, 1996, the Texas Department of Agriculture availed of itself the authority to declare the existence of a crisis situation within the State, thereby authorizing use under FIFRA section 18 of tebufenozide on leafy vegetables (non-brassica), turnip tops and brassica leafy vegetables to control the beet armyworm (BAW), respectively. The states of Texas and Arizona have also requested specific exemptions for use of this chemical to control beet armyworm on brassica and non-brassica leafy vegetable, turnip tops and peppers. Emergency conditions are determined to exist due to: (1) The BAW populations demonstrating resistance to registered insecticides causing control failures when these products are applied to BAW; (2) a mild winter and unusually dry, hot weather have increased the survival rate of the pest. Natural controls, such as disease, needed cooler, wetter conditions to have their greatest impact on this pest; and (3) the unusually large numbers of BAW. According to the Applicant, estimated yield losses due to BAW in peppers and non-brassica leafy vegetables could result in a 50% yield loss and a 30% yield for brassica (cole) leafy vegetables without the use of an effective pesticide.

As part of its assessment of these applications for emergency exemption, EPA assessed the potential risks presented by residues of tebufenozide on brassica (cole), non-brassica leafy vegetables, turnip tops and peppers. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided to grant the section 18 exemptions only after concluding that the necessary tolerance under FFDCA section 408(l)(6) would clearly be consistent with the new safety standard and with FIFRA section 18. This tolerance for tebufenozide will permit the marketing of brassica (cole) and non-brassica leafy vegetables, turnip tops and peppers treated in accordance with the provisions of the section 18 emergency exemptions. Consistent with the need to move quickly on the emergency exemptions and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment under section 408(e) as provided in section 408(l)(6). Although these tolerances will expire on February 28, 1998, under FFDCA section 408(l)(5), residues of tebufenozide not in excess of the amount specified in the tolerance remaining in or on brassica (cole) , and non-brassica leafy vegetables, turnip tops and peppers after that date will not be unlawful, provided the pesticide is applied during the term of, and in accordance with all the conditions of, the emergency exemptions. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

EPA has not made any decisions about whether tebufenozide meets the requirements for registration under FIFRA section 3 for use on brassica (cole) and non-brassica leafy vegetables, turnip tops and peppers or whether a permanent tolerance for tebufenozide on these crops would be appropriate. This action by EPA does not serve as a basis for registration of tebufenozide by a State for special local needs under FIFRA section 24(c). Nor does this action serve as the basis for any State other than Texas or Arkansas to use this product on this crop under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR 180.166. For additional information regarding the emergency exemptions for tebufenozide, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. For many of these studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the "no-observed effect level" or "NOEL").

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a "safety factor") of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100 percent or less of the RfD) is generally considered by EPA to pose no appreciable risk.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or margin of exposure calculation based on the appropriate

NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, and other non-occupational exposures, such as where residues leach into groundwater or surface water that is consumed as drinking water. Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. The TMRC is a "worst case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100 percent of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

IV. Aggregate Risk Assessments, Cumulative Risk Discussion, and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. Tebufenozide is not registered by EPA for indoor or outdoor residential use. Existing food and feed use tolerances for tebufenozide are listed in 40 CFR 180.482. At this time EPA is not in possession of a registration application for tebufenozide on brassica (cole) and non-brassica leafy vegetables, turnip tops, and peppers. However, based on the information submitted to the Agency thus far, EPA has sufficient data to assess the hazards of tebufenozide and to make a determination on aggregate exposure, consistent with section 408(b)(2), for the time-limited tolerances for residues of tebufenozide on brassica (cole) leafy vegetables at 5.0 ppm, non-brassica leafy vegetables at 5.0 ppm, turnip tops at 5.0 ppm and peppers at 0.5 ppm. EPA's assessment of the dietary exposures and risks associated with establishing these tolerances follows.

A. Toxicological Profile

1. *Chronic toxicity.* Based on the available chronic toxicity data, the EPA's Office of Pesticide Programs (OPP) has established the RfD for tebufenozide at 0.018 milligrams/kilogram/day (mg/kg/day). The RfD is based on a 1–year feeding study in dogs with a NOEL of 1.8 mg/kg/day and an uncertainty factor of 100. Decreased red blood cells, hematocrit, and hemoglobin and increased heinz bodies, reticulocytes, and platelets were observed at the Lowest-Observed Effect Level (LOEL) of 8.7 mg/kg/day.

2. *Acute toxicity.* No appropriate acute dietary endpoint was identified by OPP. This risk assessment is not required.

3. *Carcinogenicity.* Using its Guidelines for Carcinogen Risk Assessment published September 24, 1986 (51 FR 33992), OPP has classified tebufenozide as a Group "E" chemical (no evidence of carcinogenicity for humans) based on the results of carcinogenicity studies in two species. There was no evidence of carcinogenicity in a 2–year rat study and an 18–month mouse study.

B. Aggregate Exposure

Tolerances for residues of tebufenozide are currently expressed as benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide. Permanent tolerances currently exist for residues on apples and walnuts (see 40 CFR 180.482).

For purposes of assessing the chronic dietary exposure from tebufenozide, EPA assumed tolerance level residues and 100 percent of crop treated refinements to estimate the TMRC from all established existing food uses for tebufenozide as well as the proposed use on leafy vegetables, turnip tops and peppers. Neither peppers nor any of the commodities comprising Crop Group 4 (Non-brassica leafy vegetables) and 5 (Brassica Cole Leafy vegetables) are considered livestock feed items; thus, there is no reasonable expectation that measurable residues of tebufenozide will occur in meat, milk, poultry, or eggs under the terms of these emergency exemptions. Although, turnip tops potentially are a ruminant feed item, conversation with the Texas Department of Agriculture indicates that the turnip tops treated under this section 18 are destined for fresh market use only. Nonetheless, even if those turnip tops were fed to ruminants, potential residue levels in animal commodities would most likely be undetectable. For purposes of this section 18 registration only, OPP concludes that tolerances for animal commodities are not needed.

Other potential sources of exposure of the general population to residues of pesticides are residues in drinking water and exposure from non-occupational sources. Based on the available studies used in EPA's assessment of environmental risk, tebufenozide is moderately persistent to persistent and mobile, and could potentially leach to groundwater and runoff to surface water under certain environmental conditions. There are no established Maximum Concentration Levels for residues of tebufenozide in drinking water. No drinking water health advisory levels have been established for tebufenozide. There is no entry for tebufenozide in the "Pesticides in Groundwater Database" (EPA 734–12–92–001, September 1992).

The Agency does not have available data to perform a quantitative drinking water risk assessment for tebufenozide at this time. However, in order to mitigate the potential for tebufenozide to leach into groundwater or runoff to surface water, precautionary language has been incorporated into the product label.

Because the Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water risk assessment for many pesticides, EPA has commenced and nearly completed a process to identify a reasonable yet conservative bounding figure for the potential contribution of water-related exposure to the aggregate risk posed by a pesticide. In developing the bounding figure, EPA estimated residue levels, in water for a number of specific pesticides using various data sources. The Agency then applied the estimated residue levels, in conjunction with appropriate toxicological endpoints (RFD's or acute dietary NOEL's) and assumptions about body weight and consumption, to calculate, for each pesticide, the increment of aggregate risk contributed by consumption of contaminated water. While EPA has not yet pinpointed the appropriate bounding figure for consumption of contaminated water, the ranges the Agency is continuing to examine are all below the level that would cause tebufenozide to exceed the RFD if the tolerance being considered in this document were granted. The Agency has therefore concluded that the potential exposures associated with tebufenozide in water, even at the higher levels the Agency is considering as a conservation upper bound, would not prevent the Agency from determining that there is a reasonable certainty of no harm if the tolerance is granted.

Tebufenozide is not registered for either indoor or outdoor residential use. Non-occupational exposure to the general population is therefore not expected and not considered in aggregate exposure estimates.

C. Cumulative Exposure to Substances with Common Mechanisms of Toxicity

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also policies and methodologies for conducting cumulative risk assessments. While the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodology to fully resolve the scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will enable the Agency to apply common mechanism issues to its pesticide risk assessments. At present, however, the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments.

In making individual tolerance decisions, the Agency will determine whether:

1. It has sufficient information to determine that a pesticide does not appear to share a common mechanism of toxicity with other substances.

2. It is unable to conclude that a pesticide does not share a common mechanism of toxicity with other substances.

For pesticides falling into the first category, the Agency will explain its determination and factor the determination into the tolerance decision. For pesticides falling into the second category, the Agency will conclude that it does not have sufficient available information concerning common mechanism of toxicity to scientifically apply that information to the tolerance decision, the tolerance decision will be reached based upon the best available and useful information for the individual chemical, and a risk assessment will be performed for the individual chemical assuming that no common mechanism of toxicity exists. However, tolerance decisions falling into the second category will be reexamined by the Agency after EPA establishes methodologies and procedures for integrating information concerning common mechanism into its risk assessments. In such circumstances, related registration actions may be conditioned upon the provision of such data as may be necessary to evaluate common mechanism of toxicity issues in a risk assessment.

Tebufenozide falls into the second category and at this time, the Agency has not made a determination that tebufenozide and other substances that may have a common mode of toxicity would have cumulative effects. EPA has not yet determined whether to include this chemical in a cumulative risk assessment. This tolerance determination does not take into account common mechanism issues. The Agency will reexamine tolerances for tebufenozide, after the Agency has developed a methodology for applying common mechanism of toxicity issues to risk assessments.

Given the time limited nature of this request, the need to make emergency exemption decisions quickly, and the significant scientific uncertainty at this time about how to define common mode of toxicity, the Agency will make its safety determination for these tolerances based on those factors which it can reasonably integrate into a risk assessment. For purposes of these tolerances only, the Agency is considering only the potential risks of tebufenozide in its aggregate exposure.

D. Safety Determinations for U.S. Population

EPA has concluded that chronic dietary exposure to tebufenozide will utilize 27% of the RfD for the U.S. population. EPA generally has no concern for exposures below 100 percent of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to tebufenozide in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to tebufenozide residues.

E. Determination of Safety for Infants and Children

In assessing the potential for additional sensitivity of infants and children to residues of tebufenozide, EPA considered data from developmental toxicity studies in the rat and rabbit and a reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

Developmental (pre-natal) toxicity was not observed in developmental studies using rats and rabbits. The NOEL for developmental effects in both rats and rabbits was >1,000 mg/kg/day the highest dose tested (HDT), which demonstrates that no toxicity was present for tebufenozide.

In the two-generation reproductive toxicity study in the rat, the reproductive/developmental toxicity NOEL of 12.1 mg/kg/day was 14–fold higher than the parental (systemic) toxicity NOEL (0.85 mg/kg/day), which indicates that post-natal toxicity in the production studies occurs only in the presence of significant parental toxicity.

These developmental and reproduction studies indicate that tebufenozide does not have additional sensitivity for infants and children in comparison to other exposed groups. The TMRC value for the most highly exposed infant and children subgroup (non-nursing infants <1 year old) occupies 61% of the RfD. However, this calculation assumes 100% crop treated and uses tolerance level residues for all commodities. Refinement of the dietary risk assessment by using percent crop treated and anticipated residue data would greatly reduce dietary exposure. Therefore, this risk assessment is an over-estimate of dietary risk. Consideration of anticipated residues and percent crop treated would likely result in an anticipated residue contribution (ARC) which would occupy a percent of the RfD that is likely to be significantly lower than the currently calculated TMRC value. Therefore, taking into account the completeness and reliability of the toxicity data and the conservative exposure assessment, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to tebufenozide residues.

FFDCA section 408 provides that EPA shall apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety is appropriate. EPA has concluded that the database on this pesticide is sufficiently complete regarding potential effects on infants and children and that the studies demonstrate no additional sensitivity in infants and children. Therefore, EPA concludes that an additional uncertainty factor is not warranted and that the RfD at 0.018 mg/kg/day based on a 100–fold safety is adequate for protecting infants and children.

V. Other Considerations

The metabolism of tebufenozide in plants is adequately understood for the purposes of this tolerance. There are no Mexican, Canadian or Codex International maximum residue levels established for residues of tebufenozide. There is a practical analytical method (liquid chromatography with ultraviolet detection) for detecting and measuring levels of tebufenozide in or on food with a limit of detection that allows monitoring of food with residues at or above the level set by the tebufenozide tolerance. EPA has provided information on this method to FDA. The method is available to anyone who is interested in pesticide residue enforcement from: By mail, Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Crystal Mall #2, Rm 1128, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703–305–5805.

VI. Conclusion

Therefore, tolerances in connection with the FIFRA section 18 emergency exemptions are established for residues of tebufenozide at 0.5 ppm in peppers, 5.0 ppm in/on leafy vegetables (brassica and non-brassica-cole), and 5.0 ppm in/on turnip tops grown for foliage tops only. These tolerances will expire on February 28, 1998.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by May 5, 1997, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Docket

A record has been established for this rulemaking under docket number [OPP–300456]. A public version of this record, which does not include any information claimed as CBI, is available for inspection from 8:30 am to 4 pm, Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above, is kept in paper form. Accordingly, in the event there are objections and hearing requests, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record. The official rulemaking record is the paper record maintained at the Virginia address in " ADDRESSES" at the beginning of this document.

IX. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and, since this action does not impose any information collection requirements as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., it is not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because FFDCA section 408(l)(6) permits establishment of this regulation without a notice of proposed rulemaking, the regulatory flexibility analysis requirements of the Regulatory Flexibility Act, 5 U.S.C. 604(a), do not apply.

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104–121, 110 Stat. 847), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and record keeping requirements.

Dated: February 25, 1997.

Peter Caulkins,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR Chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.482, the section heading and the table in paragraph (b) are revised to read as follows:

§ 180.482 Tebufenozide; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/Revocation Date
Leafy Vegetable (Cole -brassica)	5.0	February 28, 1998
Leafy Vegetables (non-brassica)	5.0	February 28, 1998
Peppers	0.5	February 28, 1998
Turnip Tops	5.0	February 28, 1998

[FR Doc. 97–5414 Filed 3–4–97; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 68

Connection of Telephone Equipment to the Telephone Network; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correcting amendments.

SUMMARY: This document contains corrections to the final regulations which related to the connection of terminal equipment to the telephone network. (61 FR 42386 August 15, 1996)

EFFECTIVE DATE: March 5, 1997.

FOR FURTHER INFORMATION CONTACT: William von Alven, (202) 418–2342.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections relate to the means of connection of equipment making use of the Public Switched Digital Service (PSDS) and the Integrated Services Digital Network (ISDN).

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and are in need of correction.

List of Subjects in 47 CFR Part 68

Communications equipment, Telephone.

Accordingly, 47 CFR Part 68 is amended by making the following correction:

PART 68—CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORK

1. The authority citation for Part 68 continues to read as follows:

Authority: Secs. 1, 4, 5, 201–5, 208, 215, 218, 226, 227, 303, 313, 403, 404, 410, 602 of the Communications Act of 1934 as amended, 47 U.S.C. 151. 154. 155. 201–5, 208, 215, 218, 226, 227, 303, 314, 403, 410, 602, 610.

§ 68.308 [Corrected]

2. Section 68.308 is amended by revising the heading to the introductory text of paragraph (h)(3) and adding new paragraph (h)(4) to read as follows:

§ 68.308 Signal power limitations.

* * * * *

(h) * * *

(3) *PSDS Types II and III Maximum Output Pulse Templates.*

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(4) *Limitations on Terminal Equipment Connected to ISDN BRA.* If registered terminal equipment connecting to ISDN BRA services contains a digital-to-analog converter, or generates signals directly in digital form, which are intended for eventual conversion into voiceband analog signals, the encoded analog content of the digital signal must be limited. The maximum equivalent power of the encoded analog signals, other than live voice as derived from a zero-level-decoder test configuration, shall not exceed –12 dBm when averaged over a three second interval. The maximum equivalent power of encoded analog signals, as derived by a zero-level decoder test configuration, for network control signaling, shall not exceed –3 dBm when averaged over any three-second interval.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–5352 Filed 3–4–97; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 96–9; RM–8736]

Radio Broadcasting Services; Ukiah, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule; Petition for reconsideration.

SUMMARY: This document dismisses a petition for partial reconsideration filed on behalf of LifeTalk Broadcasting Association ("LifeTalk") of the Report and Order in this proceeding, which allotted Channel 246A to Ukiah, California, as that community's fourth local commercial FM transmission service, rather than reserving Channel 246A for noncommercial educational use, as requested by LifeTalk. See 61 FR 58340, November 14, 1996. LifeTalk subsequently requested the withdrawal of its petition for partial reconsideration. With this action, the proceeding is terminated.

EFFECTIVE DATE: April 14, 1997.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order, MM Docket No. 96–9, adopted February 21, 1997, and released February 28, 1997.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–5354 Filed 3–4–97; 8:45 am]

BILLING CODE 6712–01–P

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47 CFR Part 73

[MM Docket No. 96–176; RM–8851]

Radio Broadcasting Services; Greensboro, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 256A to Greensboro, Alabama, as that community's first local aural transmission service, in response to a petition for rule making filed by Autaugaville Radio, Inc. See 61 FR 47471, September 8, 1996. Coordinates used for Channel 256A at Greensboro, Alabama, are 32–47–22 and 87–34–39. With this action, the proceeding is terminated.

DATES: Effective April 14, 1997. The window period for filing applications for Channel 256A at Greensboro, Alabama, will open on April 14, 1997, and close on May 15, 1997.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the window application filing process for Channel 256A at Greensboro, Alabama, should be addressed to the Audio Services Division, Mass Media Bureau, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 96–176, adopted February 21, 1997, and released February 28, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by adding Greensboro, Channel 256A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–5357 Filed 3–4–97; 8:45 am]

BILLING CODE 6712–01–P

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47 CFR Part 73

[MM Docket No. 96–205; RM–8862]

Radio Broadcasting Services; Hobe Sound and Jupiter, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action in this document substitutes Channel 288C2 for Channel 288C3 at Jupiter, Florida, reallots the channel to Hobe Sound, Florida, and modifies the construction permit for Station WTPX(FM) to specify operation on Channel 288C2 at Hobe Sound. *See* 61 FR 54404, October 18, 1996. The coordinates for Channel 288C2 at Hobe Sound are 27–16–03 and 80–12–10. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 14, 1997.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 96–205, adopted February 21, 1997, and released February 28, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC. 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 288C3 at Jupiter and adding Hobe Sound, Channel 288C2.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–5359 Filed 3–4–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Parts 234, 242, and 252

[DFARS Case 96–D024]

Defense Federal Acquisition Regulation Supplement; Earned Value Management Systems

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to adopt industry-standard "Guidelines for Earned Value Management Systems" in lieu of the cost/schedule control systems criteria that are unique to DoD contracts.

DATES: Effective date: March 5, 1997.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before May 5, 1997 to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Mr. Michael Pelkey, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350.

Please cite DFARS Case 96–D024 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Michael Pelkey, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

On August 19, 1996, the National Security Industrial Association, Aerospace Industries Association, American Shipbuilding Association, Shipbuilders Council of America, and Electronic Industries Association proposed that DoD recognize industry-standard "Guidelines for Earned Value Management Systems (EVMS)" as an alternative to DoD-unique cost/schedule control systems. On December 14, 1996, the Under Secretary of Defense for Acquisition and Technology directed that these guidelines be adopted for use as the criteria by which the acceptability of DoD contractors' management control systems will be evaluated. Since DoD's cost/schedule control systems criteria are considered to be equivalent to EVMS, contractors' previously approved cost/schedule control systems are considered to be acceptable under the EVMS criteria.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only applies to contractors for certain major defense programs, and eliminates the requirement that such contractors use a unique management control system for DoD contracts. An initial regulatory flexibility analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with Section 610 of the Act. Such comments should be submitted separately and should cite DFARS Case 96–D024 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any new information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense to issue this rule as in interim rule. Urgent and compelling reasons exist to promulgate this rule without prior opportunity for public comment. This interim rule implements the December 14, 1996, direction from the Under Secretary of Defense for Acquisition and Technology that DoD recognizes industry-standard "Guidelines for Earned Value Management Systems" as an alternative to DoD-unique cost/schedule control systems. Immediate implementation is necessary to preclude incurring unnecessary costs to create or maintain DoD-unique cost/schedule control systems at DoD contractors' facilities where acceptable earned value management systems exist. However, comments received in response to the publication of this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Parts 234, 242, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 234, 242, and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 234, 242, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 234—MAJOR SYSTEM ACQUISITION

2. Section 234.005–70 is revised to read as follows:

234.005–70 Earned value management systems.

When an offeror provides an earned value management system (EVMS) plan as part of its proposal in accordance with the provision at 252.234–7000, the contracting officer shall forward a copy of the plan to the cognizant administrative contracting officer (ACO). The procuring contracting officer shall obtain the assistance of the ACO in determining the adequacy of the proposed EVMS plan.

3. Section 234.005–71 is added to read as follows:

234.005–71 Solicitation provision and contract clause.

When the Government requires contractor compliance with DoD earned value management system criteria—

(a) Use the provision at 252.234–7000, Notice of Earned Value Management System, in solicitations; and

(b) Use the clause at 252.234–7001, Earned Value Management Systems, in solicitations and contracts.

PART 242—CONTRACT ADMINISTRATION

4. Section 242.302 is amended by revising paragraph (a)(41) to read as follows:

242.302 Contract administration functions.

(a) * * *

(41) The Defense Contract Management Command (DCMC) has responsibility for reviewing earned value management system (EVMS) plans and verifying initial and continuing contractor compliance with DoD EVMS criteria.

* * * * *

5. Section 242.1107–70 is revised to read as follows:

242.1107–70 Solicitation provision and contract clause.

(a) Use the clause at 252.242–7005, Cost/Schedule Status Report, in solicitations and contracts for other than major systems that require cost-schedule status reporting (i.e., the Contract Data Requirements List includes DI–MGMT–81467).

(b) Use the provision at 252.242–7006, Cost/Schedule Status Report Plans, in solicitations for other than major systems that require cost/schedule status reporting.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Section 252.234–7000 is revised to read as follows:

252.234–7000 Notice of earned value management system.

As prescribed in 234.005–71, use the following provision:

Notice of Earned Value Management System (Mar 1997)

(a) The offeror shall provide documentation that the cognizant Administrative Contracting Officer (ACO) has recognized that the proposed earned value management system (EVMS) complies with the EVMS criteria of DoD 5000.2, Mandatory Procedures for Major Defense Acquisition Programs and Major Automated Information Systems, or that the proposed cost/schedule control system has been accepted by the Government.

(b) If the offeror proposes to use a system that does not meet the requirements of paragraph (a) of this provision, the offeror shall submit a comprehensive plan for compliance with the EVMS criteria.

(1) The plan shall—

(A) Describe the EVMS the offeror intends to use in performance of the contract;

(B) Distinguish between the offeror's existing management system and modifications proposed to meet the criteria;

(C) Describe the management system and its application in terms of the 32 EVMS criteria;

(D) Describe the proposed procedure for administration of the criteria as applied to subcontractors; and

(E) Provide documentation describing the process and results of any third-party or self-evaluation of the system's compliance with EVMS criteria.

(2) The offeror shall provide information and assistance as required by the Contracting Officer to support review of the plan.

(3) The Government will review the offeror's plan for EVMS before contract award.

(c) Offerors shall identify the major subcontractors, or major subcontracted effort if major subcontractors have not been selected, planned for application of the criteria. The prime contractor and the Government shall agree to subcontractors selected for application of the EVMS criteria.

(End of provision)

7. Section 252.234–7001 is revised to read as follows:

252.234–7001 Earned value management system.

As prescribed in 234.005–71, use the following clause:

Earned Value Management System (Mar 1997)

(a) In the performance of this contract, the Contractor shall use an earned value management system (EVMS) meeting the criteria provided in DoD 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs and Major Automated Information Systems.

(b) If the Contractor has an EVMS that has been recognized by the cognizant Administrative Contracting Officer (ACO) as complying with the EVMS criteria (or an existing cost/schedule control system (C/SCS) that has been accepted by the Government), the Contractor shall apply the system to this contract within 60 calendar days after contract award or as otherwise agreed to by the parties.

(c) If the Contractor does not have an EVMS that has been recognized by the cognizant ACO as complying with EVMS criteria (or does not have an existing C/SCS that has been accepted by the Government), the Contractor shall be prepared to demonstrate to the ACO that the EVMS complies with the EVMS criteria referenced in paragraph (a) of this clause.

(d) The Government may require an integrated baseline review within 180 calendar days after (1) contract award, (2) the exercise of significant contract options, or (3) the incorporation of major modifications. The purpose of the integrated baseline review is for the Government and the Contractor to jointly assess areas, such as the Contractor's planning, to ensure complete coverage of the statement of work, logical scheduling of the work activities, adequate resourcing, and identification of inherent risks.

(e) Unless a waiver is granted by the ACO, Contractor proposed EVMS changes require approval of the ACO prior to implementation. The ACO shall advise the Contractor of the acceptability of such changes within 30 calendar days after receipt of the notice of proposed changes from the Contractor. If the advance approval requirements are waived by the ACO, the Contractor shall disclose EVMS changes to the ACO at least 14 calendar days prior to the effective date of implementation.

(f) The Contractor agrees to provide access to all pertinent records and data requested by the ACO or duly authorized representatives. Access is to permit Government surveillance to ensure that the EVMS complies, and continues to comply, with the criteria referenced in paragraph (a) of this clause.

(g) The Contractor shall require those subcontractors specified in the contract for application of the EVMS criteria to comply with the requirements of this clause.

(End of clause)

8. Section 252.242–7005 is revised to read as follows:

252.242–7005 Cost/Schedule Status Report.

As prescribed in 242.1107–70(a), use the following clause:

Cost/Schedule Status Report (Mar 1997)

(a) The Contractor shall use management procedures in the performance of this contract that provide for—

(1) Planning and control of costs;

(2) Measurement of performance (value for completed tasks); and

(3) Generation of timely and reliable information for the cost/schedule status report (C/SSR).

(b) As a minimum, these procedures must provide for—

(1) Establishing the time-phased budgeted cost of work scheduled (including work authorization, budgeting, and scheduling), the budgeted cost for work performed, the actual cost of work performed, the budget at completion, the estimate at completion, and provisions for subcontractor performance measurement and reporting;

(2) Applying all direct and indirect costs and provisions for use and control of management reserve and undistributed budget;

(3) Incorporating changes to the contract budget base for both Government directed changes and internal replanning;

(4) Establishing constraints to preclude subjective adjustment of data to ensure performance measurement remains realistic. Unless the Contracting Officer provides prior written approval, in no case shall the total allocated budget exceed the contract budget base. For cost-reimbursement contracts, the contract budget base shall exclude changes for cost growth increases, other than for authorized changes to the contract scope; and

(5) Establishing the capability to accurately identify and explain significant cost and schedule variances, both on a cumulative basis and projected at completion basis.

(c) The Contractor may use a cost/schedule control system that has been recognized by the cognizant Administrative Contracting Officer (ACO) as complying with the earned value management system criteria provided in DoD 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs and Major Automated Information Systems.

(d) The Government may require an integrated baseline review within 180 calendar days after (1) contract award, (2) the exercise of significant contract options, or (3) the incorporation of major modifications. The purpose of the integrated baseline review is for the Government and the Contractor to jointly assess areas, such as the Contractor's planning, to ensure complete coverage of the statement of work, logical scheduling of the work activities, adequate resourcing, and identification of inherent risks. The Contractor shall provide necessary documents and data which describe the methods of planning, control and data generation in actual operation and satisfy the requirements of paragraph (a) of this clause.

(e) The Contractor shall provide access to all pertinent records, company procedures, and data requested by the ACO, or authorized representative, to—

(1) Show proper implementation of the procedures generating the cost and schedule information being used to satisfy the C/SSR contractual data requirements to the Government; and

(2) Ensure continuing application of the accepted company procedures in satisfying the C/SSR data item.

(f) The Contractor shall submit any substantive changes to the procedures and their impact to the ACO for review.

(g) The Contractor shall require a subcontractor to furnish C/SSR in each case where the subcontract is other than firm-fixed-price, is 12 months or more in duration, and has critical or significant tasks related to the prime contract. Critical or significant tasks shall be defined by mutual agreement between the Government and Contractor. Each subcontractor's reported cost and schedule information shall be incorporated into the Contractor's C/SSR.

(End of clause)

9. Section 252.242–7006 is added to read as follows:

252.242–7006 Cost/Schedule Status Report Plans.

As prescribed in 242.1107–70(b), use the following provision:

Cost/Schedule Status Report Plans (Mar 1997)

(a) The offeror shall submit a written summary of the management procedures it will establish, maintain, and use in the performance of any resultant contract to comply with the requirements of the clause at 252.242–7005, Cost/Schedule Status Report.

(b) If the offeror proposes to use a cost/schedule control system that has been recognized by the cognizant Administrative Contracting Officer as complying with the earned value management system criteria of DoD 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs and Major Automated Information Systems, the offeror may submit a copy of the documentation of such recognition instead of the written summary required by paragraph (a) of this provision.

(End of provision)

[FR Doc. 97–5362 Filed 3–4–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 649

[Docket No. 970219034–7034–01; I.D. 021097D]

RIN 0648–XX81

American Lobster Fishery; Technical Amendment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; technical amendment.

SUMMARY: NMFS issues this final rule to add a provision allowing vessels issued Maine state lobster permits to fish in designated waters of the Federal exclusive economic zone (EEZ). This technical amendment conforms the American lobster regulations to existing statutory language, as amended by the Sustainable Fisheries Act.

EFFECTIVE DATE: February 28, 1997.

FOR FURTHER INFORMATION CONTACT: Mary Tokarcik, Fisheries Management Specialist, 508–281–9326.

SUPPLEMENTARY INFORMATION: On October 11, 1996, the Sustainable Fisheries Act (SFA) was signed into law. The SFA amended, among other statutes, the Atlantic Coastal Fisheries Cooperative Management Act (16 U.S.C. 5101 *et seq.*) to allow fishing for lobster by vessels issued Maine State American lobster permits in designated areas of the EEZ. These areas are often referred to as Maine pocket waters. The SFA provides that any person holding a valid permit issued by the State of Maine may engage in lobster fishing in these pocket waters, if such fishing is in accordance with all other applicable Federal and State regulations. These pocket waters are small areas of the EEZ that lie between two areas of State waters, created by islands near the coast of Maine. This technical amendment changes § 649.8, modifying the prohibitions to allow for this provision. It also adds § 649.24 to designate areas of the EEZ in which State-permitted vessels may harvest American lobster.

Classification

This rule only conforms to an existing set of regulations to a recently enacted statutory provision for which the agency has no discretion. As such, under authority at 5 U.S.C. 553(b)(B), there is good cause to waive the requirement to provide prior notice and an opportunity for public comment as such procedures are unnecessary. Similarly, as the statute is already effective, there is good cause under authority at 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date.

This rule is exempt from review under E.O. 12866.

List of Subjects in 50 CFR Part 649

Fisheries.

Dated: February 27, 1997.

Charles Karnella,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 649 is amended as follows:

PART 649—AMERICAN LOBSTER FISHERY

1. The authority citation for part 649 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 649.8, paragraphs (a) introductory text, (b), (c) introductory text, (c)(1)(iv), (c)(2), and (c)(4) are revised and (c)(1)(v) is added to read as follows.

§ 649.8 Prohibitions.

(a) In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person owning or operating a vessel issued a Federal American lobster permit under § 649.4 or a vessel or person holding a valid State of Maine American lobster permit or license and fishing under the provisions of and under the areas designated in § 649.24 to do any of the following:

* * * * *

(b) In addition to the prohibitions specified in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel that has not been issued a limited access American lobster permit as described under § 649.4(b) or a vessel or person holding a valid State of Maine American lobster permit or license and fishing under the provisions of and in the area designated under § 649.24, to possess on board a vessel or land American lobsters unless the vessel is a party, charter, or dive boat and there are six or fewer American lobsters per person on such boats, and the lobster are not sold, traded or bartered, or unless the vessel is a recreational vessel, or a vessel fishing for American lobsters exclusively in State waters.

(c) In addition to the general prohibitions specified in § 600.725 of this chapter and the prohibitions specified in paragraphs (a) and (b) of this section, it is unlawful for any person to do any of the following:

(1) * * *

(iv) The American lobsters were harvested by a recreational fishing vessel; or

(v) The American lobsters were harvested by a vessel or person holding a valid State of Maine American lobster permit or license that is fishing under the provisions of and in the areas designated in § 649.24.

(2) Sell, barter or trade, or otherwise transfer, or attempt to sell, barter, or trade, or otherwise transfer for a commercial purpose, any American lobsters from a vessel, unless the vessel had been issued a valid Federal American lobster permit under § 649.4, the American lobsters were harvested by a vessel without a Federal lobster permit that fishes for lobsters exclusively in State waters or unless the vessel or person holds a valid State of Maine American lobster permit or license and is fishing under the provisions of and in the areas designated in § 649.24.

* * * * *

(4) Purchase, possess, or attempt to purchase or receive for commercial purposes, as, or in the capacity of, a dealer, American lobsters caught by a vessel other than one issued a Federal American lobster permit under § 649.4 or one holding or owned or operated by one holding a valid State of Maine American lobster permit or license and fishing under the provisions of and in the areas designated in § 649.24, unless the American lobsters were harvested by a vessel without a Federal American lobster permit and that fishes for American lobster exclusively in state waters.

* * * * *

3. Section 649.24 is added to subpart B to read as follows:

§ 649.24 Exempted waters for Maine State American lobster permits.

A person or vessel holding a valid permit or license issued by the State of Maine that lawfully permits that person to engage in commercial fishing for American lobster may, with the approval of the State of Maine, engage in commercial fishing for American lobsters in the following areas designated as EEZ, if such fishing is conducted in such waters in accordance with all other applicable Federal and State regulations:

(a) West of Monhegan Island in the area located north of the line 43.5°42'08" N. lat., 69.5°34'18" W. long., and 43.5°42'15" N. lat., 69.5°19'18" W. long.

(b) East of Monhegan Island in the area located west of the line 43.5°44'00" N. lat., 69.5°15'05" W. long., and 43.5°48'10" N. lat., 69.5°08'01" W. long.

(c) South of Vinalhaven in the area located west of the line 43.5°52'21" N. lat., 68.5°39'54" W. long., and 43.5°48'10" N. lat., 67.5°40'33" W. long.

(d) South of Boris Bubert Island in the area located north of the line 44.5°19'15" N. lat, 67.5°49'30" W. long. and 44.5°23'45" N. lat., 67.5°40'33" W. long.

[FR Doc. 97–5440 Filed 2–28–97; 4:43 pm]

BILLING CODE 3510–22–F

50 CFR Part 679

[Docket No. 961126334–7025–02; I.D. 022897A]

Fisheries of the Exclusive Economic Zone Off Alaska, Pollock in the Eastern Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for pollock by vessels catching pollock for processing by the inshore component in the Eastern Regulatory Area in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the allocation of the total allowable catch (TAC) for pollock by vessels catching pollock for processing by the inshore component in the Eastern Regulatory Area.

EFFECTIVE DATE: 1200 hrs, Alaska local time (A.l.t.), March 2, 1997, until 2400 hrs, A.l.t., December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–486–6919.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The final specification of the allocation of pollock to vessels catching pollock for processing by the inshore component in the Eastern Regulatory Area of the GOA was established by the Final 1997 Harvest Specifications of Groundfish for the GOA (62 FR 8179, February 24, 1997) as 5,580 metric tons (mt), determined in accordance with § 679.20 (a)(6)(ii).

In accordance with § 679.20 (d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the allocation of the TAC of pollock to vessels catching pollock for processing by the inshore component in the Eastern Regulatory Area will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 5,480, and is setting aside the remaining 100 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20 (d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the inshore component in the Eastern Regulatory Area.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 679.20(e) and (f).

Classification

This action is required by 50 CFR 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 28, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–5439 Filed 2–28–97; 4:43 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 43
Wednesday, March 5, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 551

RIN 3206–AA40

Pay Administration Under the Fair Labor Standards Act

AGENCY: Office of Merit Systems Oversight, OPM.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Office of Personnel Management (OPM) is withdrawing the proposed rule published on January 10, 1995, at 60 FR 2549–2551. The proposed rule would have added Subpart F—Complaints and Compliance to OPM's regulations administering pay of Federal employees under the Fair Labor Standards Act (FLSA or Act); however, events have overtaken the proposed rule.

FOR FURTHER INFORMATION CONTACT: Jeffrey D. Miller, Director, Classification Appeals and FLSA Programs, by telephone on 202–606–2530; by fax on 202–606–2663; or by e-mail at JDMiller@opm.gov.

SUPPLEMENTARY INFORMATION: On January 10, 1995, OPM published a proposed rule at 60 FR 2549–2551 to amend regulations on the Fair Labor Standards Act (FLSA). The proposed rule was to supersede instructions contained in Federal Personnel Manual Letter 551–9, *Civil Service Commission System for Administering the Fair Labor Standards Act (FLSA) Compliance and Complaint System* (March 30, 1976).

Pursuant to the Legislative Branch Appropriations Act of 1996, most of the claims settlement functions performed by the General Accounting Office (GAO) were transferred to the Director of the Office of Management and Budget (OMB). See Section 211, Public Law 104–53, 109 Stat. 535. The OMB Director delegated these functions to various components within the Executive branch in a determination order dated June 28, 1996. This order delegated to the Office of Personnel Management (OPM) the authority to settle claims against the Untied States involving Federal employees' compensation and leave (31 U.S.C. 3702), deceased employees' compensation 95 U.S.C. 5583), and proceeds of canceled checks for veterans' benefits payable to deceased beneficiaries (38 U.S.C. 5122). OPM is withdrawing the proposed rule to amend 5 CFR Part 551 while it considers a claims procedure in keeping with its new authority.

Until superseded by OPM regulations, it is OPM's policy, with one exception, to apply to the administration of any authority transferred from the General Accounting Office (GAO) any applicable GAO regulations in effect at the time of the transfer. The exception to this policy involves claims arising under the Fair Labor Standards Act (FLSA), 29 U.S.C. 201, *et seq.* FLSA claims will continue to be settled in the same manner as complaints under this Act are resolved pursuant to OPM's authority to administer the FLSA for the Federal Government pursuant to 29 U.S.C. 204(f).

Office of Personnel Management.

James B. King,

Director.

[FR Doc. 97–5366 Filed 3–4–97; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AEA–16]

Proposed Amendment to Class E Airspace; Olean, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Olean, NY. The development of two new Standard Instrument Approach Procedures (SIAP) at Cattaraugus County-Olean Airport based on the Global Positioning System has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate these SIAPs and for instrument flight rules (IFR) operations at the airport.

DATES: Comments must be received on or before April 5, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, AEA–530, Docket No. 97–AEA–16, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Operations Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Jr., Airspace Specialist, Operations Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–AEA–16." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposal rule. The proposal contained in this notice may be changed in light of comments

received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class E airspace area at Olean, NY. A GPS RWY 22 SIAP and a GPS RWY 4 SIAP has been developed for the Cattaraugus County-Olean Airport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for IFR operations at the airport. Class E airspace designations for airspace area extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a 'significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA NY E5 Olean, NY [Revised]

Cattaraugus County-Olean Airport, NY
(lat. 42°14'24" N., long. 78°22'18" W.)
OLEAN NDB
(lat. 42°17'01" N., long. 78°20'06" W.)

That airspace extending upward from 700 feet above the surface within a 10.3-mile radius of Cattaraugus County-Olean Airport and within 3.1 miles each side of the OLEAN NDB 032° bearing extending from the 10.3-mile radius to 10 miles northeast of the NDB.

* * * * *

Issued in Jamaica, New York, on February 21, 1997.

James K. Buckles,

Acting Manager, Air Traffic Division, Eastern Region.

[FR Doc. 97–5435 Filed 3–4–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF DEFENSE

Corps of Engineers; Department of the Army

33 CFR Part 207

Navigation Regulations

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Corps is proposing to amend the navigation regulations for the Red River Waterway, Louisiana and the Yazoo Diversion Canal at Vicksburg, Mississippi. It is proposed to amend the Red River Waterway navigation regulation which prescribe maximum length, width, and draft of vessel tows that are allowed to enter the lock chamber for each lockage. It is proposed to mend the Yazoo Diversion Canal navigation regulation that establishes procedures for mooring of vessels along the banks. If the proposal is approved for the Red River Waterway, the maximum length of allowable vessel tow that may enter the lock chamber for each lockage will be increased from 685 feet to 705 feet. The maximum allowable width and draft of tow remains the same at 80 feet and 9 feet, respectively. Increasing the usable tow length to 705 feet will increase the efficiency of lock operations by reducing the number of tow breakups during a locking operation. If the proposal is approved for the Yazoo Diversion Canal, the navigation regulation would clarify vessel mooring locations along the canal banks for various river stages and that fairways will be established by the Vicksburg District Engineer. Establishment of fairways and specifying locations along the banks that vessels may moor for various river stages, will control indiscriminate vessel moorings and improve navigation safety .

DATES: Comments must be submitted on or before April 15, 1997.

ADDRESSES: HQUSACE, ATTN: CECW–OD, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Hilton, Dredging and Navigation Branch (CECW–OD) at (202) 761-8830 or Mr. Jim Jeffords, Vicksburg District, Operations Division at (601) 631–5274.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1), the Corps proposes to amend the regulations in 33 CFR Part 207. The Commanding Officer, Lower Mississippi Valley Division, Vicksburg, Mississippi has requested an amendment to the regulations in 33 CFR 207.249(b)(5)(iv) and 33 CFR 207.260 (c) and (g). The 685 feet maximum tow length currently allowed in the Red River Waterway lock chamber is based on the design vessel tow length. Increasing the tow length that may safety enter the lock chamber for each lockage to 705 feet, will not affect the safety of either the lock structure or the tow in the chamber during a filling or emptying operation, if the tow is properly secured and positioned. In addition to the publication of this proposed rule, the Corps Vicksburg District Engineer is concurrently soliciting public comment on these proposed changes to the Navigation Regulations by distribution of a public notice to all known interested parties.

Procedureal Requirements

a. Executive Order 12866

This proposed rule is not a significant regulatory action under E.O. 12866. The Corps expects the economic impact of this rule, if approved, to be so minimal that further regulatory evaluation is unnecessary. We have concluded this because we expect that the proposed change will benefit the commercial towing industry.

b. Review Under the Regulatory Flexibility Act

These proposed rules have been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354), which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small Governments). The Corps expects that the economic impact of the change to the tow length on the Red River Waterway and mooring locations on the Yazoo Diversion Canal, would have a positive affect on the towing industry and the general public, with no anticipated navigational safety or interference with existing waterway traffic and accordingly, certifies that this proposal, if adopted, will have no significant economic impact on small entities.

c. Review Under the National Environmental Policy Act

An environmental assessment has been prepared for this action. We have concluded, based on the Red River Waterway increase in tow length and Yazoo Diversion Canal mooring locations, there will not be a significant impact to the human environment, and preparation of an environmental impact statement is not required. The environmental assessment may be reviewed at the Corps Vicksburg District Office, in room 129, Regulatory Branch, located at 4155 E. Clay Street, Vicksburg, Mississippi.

d. Collection of information

This proposed rule contains no collection of information under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

e. Federalism

The Corps has analyze this proposed rule under principles and criteria in E.O. 12612 and has determined that this proposed rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

f. Unfunded Mandates Act

This proposed rule does not impose an enforceable duty among the private sector and therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Act. We have also found, under Section 203 of the Act, that small Governments will not be significantly and uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 207

Navigation (water), Transportation, and Lockage.

For the reasons set out in the preamble, we propose to amend 33 CFR Part 207, as follows:

PART 207—NAVIGATION REGULATIONS

The authority citation for Part 207 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1).

2. Section 207.249 is amended by revising paragraphs (b)(5)(iv) to read as follows:

§ 207.249 Ouachita and Black Rivers, Ark, and La. Mile 0.0 to Mile 338.0 (Camden, Ark.) above the mouth of the Black River; the Red River, La., Mile 6.7 (Junction of Red, Atchafalaya and Old Rivers) to Mile 228.0 (Shreveport, La.); use, administration, and navigation.

(b) * * *

(5) * * *

(iv) The maximum dimensions on the Red River Waterway of a vessel tow attempting to pass through the lock during normal pool stages in a single passage are 80 feet wide, 705 feet long, and 9 feet draft. Tows requiring breaking into two or more sections to pass through the lock may transit the lock at such time as the lockmaster/lock operator determines that they will neither unduly delay the transit of craft of lesser dimensions, nor endanger the lock structure and appurtenances because of wind, current, and other adverse conditions. These craft are also subject to such special handling requirements as the lockmaster/lock operator finds necessary at the time of transit.

* * * * *

3. Section 207.260 is amended by revising paragraphs (c) and (g) to read as follows:

§ 207.260 Yazoo Diversion Canal, Vicksburg, Miss., from its mouth to the entrance of the upper Vicksburg Harbor Extension.

* * * * *

(c) *Mooring.* No vessel or raft shall be moored along the west bank of the canal between points Latitude 32°21'22", Longitude 90°53'02" and Latitude 32°20'48", Longitude 90°53'22", which is approximately 2000 feet above and 2000 feet below the public boat launch (foot of Clay Street) at Vicksburg City Front. No vessel or raft shall be moored along the west bank of the canal at any stage from the mouth of the Yazoo Diversion Canal where it enter into the Mississippi River to Latitude 32°20'21", Longitude 90°53'44" which is approximately 1200 feet from the mouth. At stages below 20 on the Vicksburg gage, no vessel or raft shall be moored along the east bank of the canal from the mouth of the Yazoo Diversion Canal where it enters into the Mississippi River to Latitude 32°20'12", Longitude 90°53'41", which is approximately 750 feet from the mouth. When tied up, boats, barges, or rafts shall be moored by bow and stern lines parallel to the bank and as close in as practicable. Lines shall be secured at sufficiently close intervals to insure the vessel or raft will not be drawn away from the bank by winds, current, or other passing vessels. No vessel or raft shall be moored along the banks of the canal for a period longer than five (5) days without written permission from the District Engineer, Corps of Engineers, Vicksburg District Office, 4155 E. Clay St, Vicksburg, Mississippi 39180–3435.

* * * * *

(g) *Fairway.* A clear channel not less than 175 feet wide as established by the District Engineer shall be left open at all times to permit free and unobstructed navigation by all types of vessels.

Dated: February 19, 1997.

John P. D'Aniello,

Deputy Director of Civil Works.

[FR Doc. 97–5048 Filed 3–4–97; 8:45 am]

BILLING CODE 3710–62–M

PANAMA CANAL COMMISSION

35 CFR Part 103

RIN 3207–AA40

Preference in the Transit Schedule/Order of Transiting Vessels; Passenger Steamers Given Preference in Transiting

AGENCY: Panama Canal Commission.

ACTION: Notice of proposed rule with request for comments.

SUMMARY: This document proposes a test of a revised vessel transit reservation system. The proposed rule incorporates certain new features, including increasing the number of

available reserved transit slots, creation of a third booking period, establishment of new booking fees for transit reservations whenever the total number of vessels awaiting transit is excessively high, and clarification and refinement of procedures concerning cancellations refunds, and penalties.

The proposed rule being announced also makes certain passenger vessels seeking preference over other vessels in transiting the Panama Canal, that heretofore were exempt, subject to the revised vessel transit reservation system to be tested.

DATES: Written comments must be received on or before April 4, 1997.

ADDRESSES: Written comments may be mailed to John A. Mills, Secretary, Panama Canal Commission, 1825 I Street, NW, Suite 1050, Washington, DC 20006–5402, Telephone (202) 634–6441, Fax (202) 634–6439, Internet E-Mail: PanCanalWO@AOL.COM.

FOR FURTHER INFORMATION CONTACT: John A. Mills, Secretary, Panama Canal Commission, 1825 I Street, NW, Suite 1050, Washington, DC 20006–5402, Telephone (202) 634–6441, Fax (202) 634–6439, Internet E-Mail: PanCanalWO@AOL.COM.

SUPPLEMENTARY INFORMATION: On April 1, 1983, the Panama Canal Commission (PCC) implemented the vessel transit reservation system described in 35 CFR 103.8.

Section 1801 of the Panama Canal Act of 1977, as amended (22 U.S.C. 3811), authorizes PCC to prescribe and, from time to time, amend regulations governing the passage and control of vessels through the Panama Canal or any part thereof, including the locks and approaches thereto.

For the reasons discussed below, PCC proposes to adopt an interim rule to test certain improvements and modifications to the current vessel transit reservation system, formerly known as the Panama Canal Transit Booking System.

Technological advances now permit the shipping industry to schedule vessels for arrival and transit of the Panama Canal earlier than the current 21-day limitation stipulated in 35 CFR 103.8. Additionally, a significant number of Canal customers (especially those who utilize the reservation system) operate on regular fixed schedules that are planned and published as much as a year in advance.

The sixteen (16) reserved transit slots currently available are based on what the sustainable Canal capacity was in 1983 when the current vessel transit reservation system was put into effect. Today, due to major Canal improvements and more efficient use of PCC's operational resources, the sustainable Canal capacity has been significantly increased, thereby allowing reserved transit slots to be increased to 21.

Under the current vessel transit reservation system, when reduced Canal capacity attributable to maintenance and other factors coincides with unusually high vessel arrivals, transit bookings frequently are suspended. Canal customers complain that it is during just such periods that the vessel transit reservation system is the most beneficial to shipping and, for that reason, Canal authorities should continue taking reservations.

In response to these customers complaints, when due to various operational factors sustained Canal capacity is expected to be reduced, Canal authorities will continue to book transits, although the number of available reserved transit slots may be reduced. To better reflect the market value of the transit reservation service being provided to Canal customers whenever the total number of vessels awaiting transit is excessively high, customers wishing to reserve transit slots during these periods will be required to pay a premium booking fee.

Since 1925, certain passenger vessels have been given preference over other vessels in transiting the Panama Canal; the original justification being that such vessels carried the bulk of overseas travelers and mail and, unlike most other vessels, operated on fixed published schedules. When the current vessel transit reservation system went into effect in 1983, passenger vessels were exempted from the provisions thereof and continued to receive preference in transiting. Today, the focus of the passenger vessel industry is luxury leisure cruising. Also, many other types of vessels now operate on fixed published schedules.

In fairness to all Canal customers seeking timely transits, commercial passenger vessels, as a condition to continuing to receive preference in transiting the Canal, should be required to reserve transit slots and pay prescribed booking fees.

Technological improvements in PCC's communications capabilities will permit Canal customers to request transit reservations 24 hours a day.

Cancellations of transit bookings on short notice by Canal customers is disruptive to vessel transit operations. Shortened deadlines coupled with financial incentives will encourage customers to give Canal authorities greater advance notice of cancellations.

Summarizing, PCC hereby proposes to implement an interim rule, which would test certain modifications and refinements of the existing rule, in the following particulars:

1. Make commercial passenger vessels subject to the vessel transit reservation system as a condition of continued preferential treatment in transiting;
2. Increase the number of reserved transit slots from 16 to 21;
3. Permit reservation requests to be made via fax, 24 hours a day, with processing handled on a first come-first served basis;
4. Permit transit reservations to be made up to 365 days in advance;
5. Increase booking fee whenever the total backlog of vessels awaiting transit is projected to be, within 48-hours, 90 or more vessels, to $0.69 per PC/UMS Net Ton;
6. Use shortened deadlines and financial incentives to reduce cancellations of transit bookings on short notice; and
7. Clarify policies and procedures concerning refunds and penalties.

The test of the interim rule will be 120 days in duration, or longer, to afford PCC a fair opportunity to determine whether the refinements to the current rule discussed herein, are feasible and beneficial to PCC and its customers.

PCC strongly encourages all interested persons to submit written data, views or arguments before PCC publishes the interim rule in the **Federal Register**. All timely written submissions will be considered by PCC. Wherever suggested revisions to the proposed rule are indicated, revisions based thereon will be made. The test of the interim rule will commence upon its publication in the **Federal Register**, but no earlier than the expiration of the comment period announced in this notice.

PCC is exempt from Executive Order 12866. The provisions of that directive, therefore, do not apply to this proposed rule. Even if the Order was applicable, this proposed rule would not have any significant economic impact on any substantial number of small entities under the Regulatory Flexibility Act of 1980.

Additionally, PCC has determined that implementation of this proposed rule will not have an adverse effect on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of PCC certifies that these proposed regulatory changes meet the applicable standards contained in sections 3(a) and 3(b)(2) of Executive Order No. 12988 of February 7, 1996.

List of Subjects in 35 CFR Parts 103 and 104

General provisions governing vessels, Panama Canal, Vessels.

For the reasons set forth in the preamble, PCC proposes to amend 35 CFR Chapter 1 by removing §§ 103.8 and 103.9, and adding a new part 104 to read as follows:

PART 104—VESSEL TRANSIT RESERVATION SYSTEM

Sec.

104.1 Applicability and scope.
104.2 Definitions.
104.3 Booking periods; allocation of booking slots.
104.4 Booked transits.
104.5 Passenger vessel preference.
104.6 Booking Fees.
104.7 Penalties.
104.8 Re-scheduling; refunds.
104.9 Cancellations.
104.10 Regular transits.
104.11 Temporary suspension of system.
104.12 Further implementation.

Authority: 22 U.S.C. 3811.

§ 104.1 Applicability and scope.

Subject to the limitations imposed by Article III of the 1901 Treaty to Facilitate the Construction of a Ship Canal, entered into by the United States and Great Britain, and by Articles II and VI of the 1977 Treaty concerning the Permanent Neutrality and Operation of the Panama Canal, between the United States and the Republic of Panama, Canal authorities have implemented a vessel transit reservation system that allows vessels desiring transit of the Panama Canal to reserve transit slots by complying with the provisions of this part.

§ 104.2 Definitions.

(a) *Booked for transit* means that a vessel, in advance of arriving at the Canal, has been assigned a specific date by Canal authorities on which it will be moved through the Canal and that the vessel has otherwise complied with the provisions of this part.

(b) *Regular transit* means movement through the Canal of a vessel that has not been booked for transit.

(c) *Required arrival time* means the date and the hour of the day established by Canal authorities as the deadline by which a vessel booked for transit must arrive at a terminus of the Canal in order to transit on its reserved transit date.

§ 104.3 Booking periods; allocation of booking slots.

(a) Vessel agents only may request reserved transit slots for vessels during the following booking periods:

(1) First period—365 to 22 days prior to the requested transit date.

(2) Second period—21 days to 4 days prior to the requested transit date.

(3) Third period—3 to 2 days prior to the requested transit date.

(b) A total of 21 reserved transit slots will be made available for all three booking periods, allocation of which among the booking periods is to be determined by Canal authorities. Canal authorities, from time to time, may adjust the total number of available reserved transit slots to ensure continued safe and efficient operation of the Canal.

§ 104.4 Booked Transits.

(a) The specific order vessels transit the Canal, whether booked or regular transits, shall be determined by Canal authorities. Except as provided in this part, a vessel booked for transit may not transit prior to its reserved transit date, unless Canal authorities determine that assigning the vessel an earlier transit slot would not impair safe and efficient operation of the Canal.

(b) Notwithstanding any subsequent assignment of an earlier transit slot, a vessel booked for transit will be charged the prescribed booking fee.

(c) Substitution of reserved transit slots between or among vessels booked for transit will be permitted only on conditions specified by Canal authorities.

§ 104.5 Passenger vessel preference.

To the extent consistent with efficient operation of the Canal, and subject to being booked for transit, commercial passenger vessels running on fixed published schedules will be given preference over other vessels in transiting, as determined by Canal authorities.

§ 104.6 Booking fees.

(a) The booking fee for reserving a transit slot for a vessel measured in accordance with § 135.13(a) of this chapter, shall be $0.26 per PC/UMS Net Ton.

(b) The booking fee for reserving a transit slot for a vessel subject to transitional relief measures and measured in accordance with § 135.13(b) of this chapter, shall be $0.23 per Panama Canal Gross Ton, as specified on the last tonnage certificate issued to the vessel by Canal authorities between March 23, 1976 and September 30, 1994, inclusive.

(c) Notwithstanding any contrary provision, whenever the total number of vessels awaiting transit at both terminuses of the Canal is projected by Canal authorities to be, within 48-hours, 90 or more vessels, any vessel booked for transit that transits the Canal while this condition is in effect shall automatically be assessed a booking fee of $0.69 per PC/UMS Net Ton.

(d) Notwithstanding any contrary provision, the minimum booking fee for any vessel booked for transit shall be $1500.

§ 104.7 Penalties.

(a) The reserved transit slot of a vessel booked for transit will be cancelled by Canal authorities and a penalty fee assessed in a sum that is the greater of the prescribed booking fee or $1,500, in the following situations:

(1) When a vessel that is subject to transit restrictions (e.g., clear cut, clear-cut daylight) has been booked for transit and does not arrive at a terminus of the Canal by 0200 hours of the day of the scheduled transit;

(2) When a vessel that is not subject to transit restrictions has been booked for transit and does not arrive at a terminus of the Canal by 1400 hours of the day of the scheduled transit; or

(3) When a vessel booked for transit arrives on time but cannot or, at the vessel operator's election, does not transit as scheduled, despite the readiness of Canal authorities to proceed.

(b) Canal authorities may waive assessment of a penalty fee if the vessel agent presents acceptable proof that late arrival of the vessel was due to a medical or humanitarian emergency arising during the voyage, or a naturally occurring, extraordinary phenomenon or event of major proportions that could not have been reasonably predicted in advance.

(c) Failure of the vessel agent to provide complete and accurate information required by Canal authorities when requesting transit bookings may result in rejection of the booking request or cancellation of the vessel's reserved transit slot.

(d) When a vessel's reserved transit slot is cancelled, and unless otherwise directed by the vessel agent, upon arrival, Canal authorities will re-schedule the vessel for regular transit.

§ 104.8 Re-scheduling; refunds.

(a) Except as otherwise provided, a vessel agent, without penalty, may request cancellation of a vessel's reserved transit slot and rescheduling of the vessel for regular transit or, alternatively, may request assignment of an alternate reserved transit slot, in the following situations:

(1) If for whatever reason Canal authorities cancel or significantly delay the transit of a vessel booked for transit that is otherwise ready to proceed as scheduled;

(2) If for whatever reason Canal authorities delay the transit of a vessel booked for transit to such a degree that the delay is likely to cause the vessel to be unable to meet its required arrival time for a later, second reserved transit, booked before the delay of the first reserved transit occurred; or

(3) If a vessel is booked for transit on the assumption that the vessel will pay the booking fee prescribed by § 104.6(a) or (b) but, subsequently, a change in traffic conditions occurs triggering the higher booking fee prescribed by § 104.6(c).

(b) A vessel booked for transit will be deemed to have transited the Canal on its reserved transit date if the vessel arrives at the first set of locks at either terminus of the Canal prior to 2400 hours that day and its in-transit time (ITT) is 18 hours or less. ITT begins when the vessel enters the first set of locks at either Canal terminus and ends when the vessel departs the last set of locks at the opposite terminus. No booking fee will be charged if ITT, through no fault of the vessel, exceeds 18 hours.

§ 104.9 Cancellations.

(a) A vessel agent may cancel the transit reservation of a vessel by giving notice prescribed by Canal authorities. In such event, and except as otherwise provided, a cancellation fee will be charged. The amount of the fee will depend on the amount of notice (days or hours) received by Canal authorities in advance of the vessel's required arrival time, according to the following schedule:

Advance notice periods	Cancellation fee (the greater of)
31 days or more	None.
30 to 11 days	20% of booking fee or $500.
10 to 7 days	40% of booking fee or $750.
6 to 2 days	60% of booking fee or $1,000.
1 day to 8 hours	80% of booking fee or $1,200.

(b) Receipt of notice of cancellation of a transit reservation by Canal authorities after the vessel's required arrival time will result in levy of a cancellation fee equal to the entire prescribed booking fee.

§ 104.10 Regular Transits.

Vessels not booked for transit will be scheduled for movement through the Canal on the date and in the order determined by Canal authorities. In establishing the daily schedule of vessels to be moved through the Canal, the order in which vessels arrive is only one of several considerations. In general, regular transits will equal or exceed in number, one-half the total number of daily vessel transits.

§ 104.11 Temporary Suspension of System.

(a) Canal authorities may temporarily suspend, in whole or in part, for whatever period of time deemed necessary, the vessel transit reservation system established by this part, whenever Canal authorities determine that such action is necessary to ensure continued safe and efficient operation of the Canal.

(b) No penalty or fee shall be levied against any vessel booked for transit whose reserved transit slot is cancelled by reason of a temporary suspension of the system pursuant to this section.

104.12 Further Implementation.

In order to ensure safe and efficient operation of the system, Canal authorities may establish additional policies and procedures, define additional terms and issue clarifications and interpretations not inconsistent with the provisions of this part, which periodically will be published and distributed to Canal customers through notices to shipping or other appropriate means.

Dated: February 28, 1997.

John A. Mills,

Secretary, Panama Canal Commission.

[FR Doc. 97–5396 Filed 3–4–97; 8:45 am]

BILLING CODE 3640–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO–015–1015(b); FRL–5682–6]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the Asarco Glover, Missouri, lead emission control plan submitted by the state of Missouri on August 14, 1996. The plan was submitted by the state to satisfy certain requirements under the Clean Air Act to reduce lead emissions sufficient to bring the Liberty and Arcadia Townships into attainment with the National Ambient Air Quality Standard for lead.

In the final rules section of the **Federal Register**, the EPA is approving the plan as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments must be received on or before April 4, 1997.

ADDRESSES: Comments may be mailed to Josh Tapp, Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Josh Tapp at (913) 551–7606.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Authority: 42 U.S.C. 7401—7671q.

Dated: January 15, 1997.

Dennis Grams,

Regional Administrator.

[FR Doc. 97–5138 Filed 3–4–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[MO–018–1018; FRL–5698–7]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed notice of failure to attain the National Ambient Air Quality Standard (NAAQS) for lead in the vicinity of the Doe Run Company's primary lead smelter in Herculaneum, Missouri.

SUMMARY: Pursuant to the Clean Air Act (CAA or the Act), the EPA has notified the state of Missouri that the Doe Run-Herculaneum nonattainment area failed to attain the NAAQS for lead (Pb) by June 30, 1995, as required under the provisions of the Act and the Missouri State Implementation Plan (SIP). This notification is based on the EPA's review of monitored air quality data for compliance with the NAAQS for lead. This notice is issued pursuant to the EPA's obligations under sections 179(c)(1) and (2) of the CAA, which require the EPA to make a determination of an area's attainment status following an applicable attainment date, and publish a notice in the **Federal Register** indicating that such a determination has been made. If EPA finalizes this notice, then pursuant to section 179(d)(1) of the CAA, Missouri would be required to submit a SIP revision, meeting the applicable provisions of the Act. This SIP revision would be required within one year of publication of the finding in the **Federal Register**.

DATES: Comments must be received on or before April 4, 1997.

ADDRESSES: Comments may be mailed to Royan W. Teter, Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Royan W. Teter at (913) 551–7609.

SUPPLEMENTARY INFORMATION:

I. Background

On June 3, 1986, the EPA issued a call for a revision to the Missouri SIP in response to violations of the NAAQS for lead near the Doe Run primary lead smelter in Herculaneum, Missouri (Doe Run-Herculaneum). The state submitted a SIP revision on September 6, 1990, with additional materials submitted on May 8, 1991. The 1990 SIP established February 1, 1993, as the attainment date for the Herculaneum area.

The CAA was amended on November 15, 1990. Sections 107(d) (1) and (5) of the Act, as amended, provide for areas to be designated as nonattainment with respect to the NAAQS. Upon promulgation of the nonattainment designation, a state must prepare a revision to the SIP in accordance with the requirements of section 172 of the CAA, showing how the area will be brought into attainment. The EPA promulgated a nonattainment designation for the area in the vicinity of Doe Run-Herculaneum under the authority granted by the CAA. The designation was published on November 6, 1991 (56 FR 56694), and became effective on January 6, 1992.

As a result of the EPA's promulgation of the nonattainment designation, the Part D requirements of the CAA became applicable to the Missouri SIP revision for Doe Run-Herculaneum. The EPA granted limited approval for Missouri's 1990 SIP revision on March 6, 1992 (57 FR 8076). The EPA did not give full approval because the state was required to submit a supplemental SIP revision meeting the applicable Part D requirements.

The state of Missouri initially submitted a SIP revision addressing the applicable Part D requirements of the CAA on July 2, 1993. The submission also provided for additional control measures in response to unanticipated emissions after the control measures were implemented under the 1990 SIP revision. These emissions resulted in violations of the lead NAAQS after the 1990 SIP revision attainment date of February 1, 1993. Upon review, the EPA determined that additional revisions were necessary. Missouri submitted these revisions in March and November 1994.

The final result was a SIP that established June 30, 1995, as the attainment date for the area and satisfied the Part D requirements of the CAA. The revised plan also contained a control strategy to address the violations of the NAAQS which occurred upon implementation of the control measures in the 1990 SIP revision. Dispersion modeling indicated that the subsequent control measures would result in attainment of the NAAQS for lead.

II. Proposed Action

A. Determination of Attainment Status

By today's action, the EPA provides notice that the Herculaneum, Missouri, nonattainment area failed to attain the NAAQS for lead by June 30, 1995, as required by the approved SIP. This determination is based upon air quality data showing violations of the lead NAAQS during 1995 and 1996.

Since June 30, 1995 (second quarter 1995), a total of eight violations of the lead standard (1.5 μg/m³ quarterly arithmetic mean) have been measured at multiple monitoring sites in Herculaneum, Missouri. The data are as follows:

LEAD AMBIENT AIR QUALITY DATA—VICINITY OF THE DOE RUN PRIMARY SMELTER, CALENDAR QUARTERLY VALUES (MICROGRAMS OF LEAD PER CUBIC METER OF AIR (μG/M³)), HI-VOL MONITOR LOCATIONS

Date	S Dunklin 29–099–0014	H Dunklin 29–099–0005	H Golf course 29–099–0008	H North 29–099–0009	H Ursaline 29–099–0010	H Rutz 29–099–0011	H Div. manager 29–099–0013	H Broad Street 29–099–0015
1995:								
3rd	1.4	1.2	0.3	0.3	0.2	1.0	1.2	*4.1*
4th	*1.9*	*1.7*	0.4	0.8	0.1	*1.6*	1.3	*6.3*
1996:								
1st	*2.3*	*1.9*	0.3	0.4	0.1	1.4	.8	*2.3*
2nd	*1.6*	1.2	0.5	0.1	0.2	*2.4*	0.8	*5.7*
3rd	0.8	0.6	0.1	0.2	0.3	0.7	0.5	*4.0*

Notes:[1] (S) = State monitor, (H) = Herculaneum monitor.[2] *Italics* Quarterly Air Quality Values exceed the National Ambient Air Quality Standard (NAAQS) for lead; the NAAQS for lead is 1.5 μg/m³ and is the arithmetic mean of a series of daily (24-hour) values from hi-vol monitors measuring particulate matter, within a three-month (calendar quarter) period.

Attainment of the lead standard is based upon regulations found in 40 CFR 50.12. The lead national primary and secondary air quality standards are 1.5 micrograms per cubic meter, maximum arithmetic mean averaged over a calendar quarter. The data indicate that four monitors in the Herculaneum area continue to measure violations of the NAAQS for lead in spite of the state's efforts.

Under section 179(c)(1) of the CAA, the EPA has the responsibility for determining whether a nonattainment area has attained the lead NAAQS. The EPA must make an attainment determination as expeditiously as practicable, but no later than six months after the attainment date for the area. The Act also requires the EPA to publish a notice of its findings in the **Federal Register**.

In the case where the area fails to attain the NAAQS by the applicable attainment date, the EPA policy (Shaver 1995) specifies that the EPA will notify the affected state(s) by letter and **Federal Register** notice of the EPA's findings. The EPA notified Missouri of its finding on August 27, 1996.

B. Implementation of Contingency Measures

Upon receipt of notification, affected states are required to implement specific contingency measures previously identified in the approved SIP. These measures were identified and submitted under section 172(c)(9) of the CAA. These measures are to be undertaken without further action on the part of the state or the EPA. In general, the EPA expects all actions needed to effect full implementation of the contingency measures to occur with 60 days of notification. On December 10, 1996, the EPA received written notification from the Missouri Department of Natural Resources that all contingency measures in the approved SIP have been implemented.

C. Call for Revision of Missouri's SIP

In accordance with section 179(d) of the CAA, upon publication of the EPA's notice indicating an area has failed to attain, states must within one year submit a SIP revision meeting all of the requirements of sections 110 and 172 of the Act and any additional measures as may be reasonably prescribed, including all measures that can be feasibly implemented in light of technological achievability, costs, and other factors. With this document, the EPA gives notice that it has notified the Governor of Missouri that the Herculaneum, Missouri, area has failed to attain the NAAQS for lead. This notice requests public comment on this determination.

Retention of the area's nonattainment status under section 107(d) of the Act does not impose any new requirements on small entities. Retention of the nonattainment designation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. To the extent that the area must adopt new regulations, based on its nonattainment status, the EPA will review the effect of those actions on small entities at the time the state submits those regulations. The Administrator certifies that retention of the area's nonattainment status will not affect a substantial number of small entities.

III. Administrative Requirements

A. Executive Order (EO) 12866

Under E.O. 12866, 58 FR 51735 (October 4, 1993), the EPA is required to determine whether regulatory actions are significant and therefore should be subject to the Office of Management and Budget review, economic analysis, and the requirements of the Executive Order. The Executive Order defines a "significant regulatory action" as one that is likely to result in a rule that may meet at least one of the four criteria identified in section 3(f), including, under paragraph (1), that the rule may "have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities."

The Agency has determined that today's finding of failure to attain results in none of the effects identified in section 3(f). Under section 179(c) of the CAA, findings of failure to attain for nonattainment areas are based upon air quality considerations, in light of certain air quality conditions. They do not, in and of themselves, impose any new requirements on any sectors of the economy.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

As discussed in section III of this notice, findings of failure to attain for nonattainment areas under section 179(c) of the CAA do not in and of themselves create any new requirements. Therefore, I certify that today's proposed action does not have a significant impact on small entities.

C. Unfunded Mandates

Under sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, the EPA must assess whether various actions undertaken in association with proposed or final regulations include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to state, local, or tribal governments in the aggregate.

The EPA believes, as discussed above, that the proposed finding of failure to attain for the Herculaneum, Missouri, lead nonattainment area is a factual determination based upon air quality considerations and does not impose any Federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, National parks, Wilderness areas, Lead.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 18, 1997.

Dennis Grams,

Regional Administrator.

[FR Doc. 97–5416 Filed 3–4–97; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Parts 52 and 70

[MO 014–1014; FRL–5698–8]

Approval and Promulgation of Implementation Plan and State Operating Permit Program; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve revisions to Missouri's State Implementation Plan (SIP) concerning Missouri's rule 10 CSR 10–6.110, Submission of Emission Data, Emission Fees, and Process Information. This rule also clarifies the requirements for the payment of emission fees to support Missouri's Title V program and was submitted as part of the state's plan to comply with Title V of the Clean Air Act (CAA).

DATES: Comments must be received on or before April 4, 1997.

ADDRESSES: Comments may be mailed to Stan Walker, Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Stan Walker at (913) 551–7494.

SUPPLEMENTARY INFORMATION:

I. Background

On February 1, 1996, the state of Missouri submitted revisions to Missouri rule 10 CSR 10–6.110 as part of the SIP and to comply with the operating permit requirement outlined in Title V of the CAA as amended (1990). A public hearing was held on July 27, 1996.

A. Missouri's SIP Submission

Revisions to the rule provide procedures for collecting, recording, and submitting emission data and process information on state-supplied Emission Inventory Questionnaires (EIQ) and Emission Statement forms, or in a format satisfactory to the Director. This is necessary so the state can calculate emissions for state air resource planning. As specified in sections 182(a)(3)(B) and 182(b) of the CAA, emission statements are required of certain facilities in nonattainment areas. Emission statements are required if the actual emissions of either nitrogen oxide, volatile organic compounds, or carbon monoxide are equal to or greater than ten tons annually. Facilities must report emissions of each pollutant if they meet the ten-ton threshold for any of the three.

An amendment to the rule also establishes emission factor approvability and procedures for adjusting emission fees. Also, the amendment revises the use of the terms "contaminant" and "pollution" to reflect definitions in 10 CSR 10–6.020.

B. Proposed Approval of Revision to Missouri's Part 70 Operating Permit Program

One amendment to Missouri rule 10 C.S.R. 10–6.110, changes section (1), "Applicability," to include a provision that all installations required to obtain permits under 10 C.S.R. 10–6.060 or 10 C.S.R. 10–6.065 to file an EIQ as outlined in the reporting frequency table in subsection (2)(E). Installations, however, can prove to the staff director that their potential emissions are below de minimis levels and that they should be exempt. The purpose of this change is to remove exemptions that were not intended by the Missouri legislature. Consequently, all air contaminant sources required to obtain a permit must pay emission fees. This rule requires subject facilities to submit emission information and emission fees, and makes emission data available to the public. Reference to rules 10 CSR 10–6.060 and 10 CSR 10–6.065, as well as changes to Section (5) of the rule, relate to Missouri's Title V program covered under 40 CFR Part 70.

The revision to Section (5) of Missouri rule 10 CSR 10–6.110 clarifies language related to payment of fees by charcoal kilns. This particular change relates to Missouri's Operating Permits Program, as specified in the Missouri statutes, which was previously approved by the EPA on April 4, 1996 (61 FR 16063).

II. Proposed Action

The EPA is proposing to approve revisions to Missouri's SIP and Missouri's Title V Operating Permit Program concerning Missouri rule 10 CSR 10–6.110, "Submission of Emission Data, Emission Fees, and Process Information."

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

III. Administrative Requirements

A. Docket

Copies of the state submittal and other information relied upon for the proposed approval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, the EPA in the development of this proposed approval. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Executive Order (E.O.) 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5. U.S.C. § 600 et seq., the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

D. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirement.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 5, 1997.

William Rice,

Acting Regional Administrator.

[FR Doc. 97–5422 Filed 3–4–97; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 268

[FRL–5699–3]

RIN 2050 AE05

Land Disposal Restrictions—Phase IV: Treatment Standards for Characteristic Metal Wastes; Notice of Data Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability.

SUMMARY: EPA has received additional information on an issue it first raised in the Land Disposal Restrictions (LDR) Phase III proposed rule (60 FR 11702, March 2, 1995), that of whether the addition of iron filings (and iron dust) to lead-contaminated spent foundry sand is a means of diluting the waste impermissibly rather than treating it to conform with the requirements of the LDR rules. The new information being noticed today addresses whether this practice stabilizes (or otherwise treats) lead, the chief hazardous constituent found in the spent sand, so that the lead will not migrate through the environment when the spent sand is land disposed. Stabilization as a technology-based LDR standard (STABL) is described in 40 CFR 268.42 as using the following reagents (or waste reagents) or combinations of reagents: (1) Portland cement; or (2) lime/pozzolans (e.g., fly ash and cement kiln dust)—this does not preclude the addition of reagents (e.g., iron salts, silicates, and clays) designed to enhance the set/cure time and/or compressive strength, or to overall reduce the leachability of the metal or inorganic. New studies have been performed to evaluate this hazardous waste management practice, and the studies have undergone external Peer Review. EPA is noticing these studies, and the results of the Peer Review, in this Notice, and soliciting public comment. EPA may use the results of the studies to promulgate a revised final approach on this waste management practice in an upcoming LDR rulemaking (Phase IV).

The public has 30 days from publication of this notice to comment on the results of the studies and the Peer Review. This notice does not reopen for comment any other Phase III or Phase IV issue; only comments about the waste management practice of adding iron filings or dust to lead-contaminated spent foundry sand will be considered by the Agency.

DATES: Comments are due by April 4, 1997.

ADDRESSES: To submit comments, the public must send an original and two copies to Docket Number F–97–PH3A–FFFFF, located at the RCRA Docket. The mailing address is: RCRA Information Center, U.S. Environmental Protection Agency (5305W), 401 M Street, SW, Washington, DC 20460. RCRA Information Center is located at 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. The RCRA Information Center is open for public inspection and copying of supporting information for RCRA rules from 9:00 a.m. to 4:00 p.m. Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory document at no cost. Additional copies cost $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information or to order paper copies of this **Federal Register** document, call the RCRA Hotline. Callers within the Washington Metropolitan Area must dial 703–412–9810 or TDD 703–412–3323 (hearing impaired). Long-distance callers may call 1–800–424–9346 or TDD 1–800–553–7672. The RCRA Hotline is open Monday-Friday, 9:00 a.m. to 6:00 p.m., Eastern Standard Time. For other information on this notice, contact Mary Cunningham at (703) 308–8453, John Austin at (703) 308–0436 or Rhonda Craig at (703) 308–8771, Office of Solid Waste, Mail Code 5302W, 401 M Street, SW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Paperless Office Effort

EPA is asking prospective commenters to voluntarily submit one additional copy of their comments on labeled personal computer diskettes in ASCII (TEXT) format or a word processing format that can be converted to ASCII (TEXT). It is essential to specify on the disk label the word processing software and version/edition as well as the commenter's name. This will allow EPA to convert the comments into one of the word processing formats utilized by the Agency. Please use mailing envelopes designed to physically protect the submitted diskettes. EPA emphasizes that submission of comments on diskettes is not mandatory, nor will it result in any advantage or disadvantage to any commenter. This expedited procedure is in conjunction with the Agency "Paperless Office" campaign. For further information on the submission of diskettes, contact Rhonda Craig of the Waste Treatment Branch at (703) 308–8771.

This **Federal Register** notice is available on the Internet System through EPA Public Access Server, www.epa.gov. For the text of the notice, choose: Rules, Regulations, and Legislation; FR-Waste; Year/Month/Day.

Notice of Data Availability

I. Overview

On March 2, 1995, EPA published the LDR Phase III proposal in the **Federal Register** (60 FR 11702). Among other things, EPA proposed that adding iron filings to lead-contaminated spent foundry sand constituted impermissible dilution of hazardous lead waste rather than treatment to meet the LDR treatment standards (60 FR 11731). As explained in the proposed rule, the addition of iron filings seems to temporarily retard the leachability of lead in the spent foundry sand thus allowing the waste to pass the TCLP test, but not to be permanently treated. Comments were mixed on this issue, and EPA decided not to finalize a determination that the practice is a form of impermissible dilution in the Phase III final rule without studying the issue further. See 61 FR 15569, April 8, 1996.

Since then, two studies have become available on this issue. One study was developed by Dr. John Drexler of the University of Colorado, and the other by Dr. Douglas Kendall of the National Enforcement Investigations Center (NEIC). The results of these studies indicate that the addition of iron filings or iron dust to spent foundry sand does not constitute adequate treatment of the waste because high concentrations of lead remain available to the environment, and indeed have been shown to leach in actual field monitoring of units receiving the spent foundry wastes. The studies also may support a more basic principle: a method of treatment that does not in fact result in substantial reductions of a waste's toxicity or mobility could be viewed as not adequately minimizing threats posed by land disposal of the waste, and therefore, may fail to satisfy the requirements for permissible treatment under section 3004(m) of RCRA. Cf. 62 FR 1994–1995 (Jan. 14, 1997) (EPA discusses similar principle in connection of treatment of hazardous waste K088).

EPA requested that these studies be reviewed by experts from the academic community who are independent of EPA. The studies are discussed in greater detail below.

II. Discussion of the Studies

Spent foundry sand, as generated, may fail the Toxicity Characteristic Leaching Procedure (TCLP) for lead, and would then be considered a characteristic hazardous waste. At a brass foundry in Nacogdoches, Texas, EPA found that hazardous foundry sand is treated by the addition of iron dust and iron filings. After this treatment, the spent foundry sand passed the TCLP (and thus was no longer considered a hazardous waste) and was disposed in the municipal landfill. EPA Region VI commissioned studies to assess the effectiveness of this waste management practice. The studies discuss the chemistry behind iron treatment and conclude that the addition of iron to waste foundry sand does not permanently prevent the release of lead into the environment.

The studies were based on samples collected from two cells at the Nacogdoches Municipal landfill and NIBCO, Inc. in Nacogdoches, Texas by a team from A. T. Kearney (EPA Contractor) and EPA. The landfill cells contained waste sands and other wastes from the NIBCO facility and were sampled so as to preserve depth information. Samples taken at the NIBCO brass foundry included waste foundry sands, green sand, hydofilter sludge, baghouse dust, resin sand, and silica sand. Dr. John W. Drexler of the University of Colorado performed a geostatistical evaluation of the Nacogdoches Landfill data and photomicrographic analysis of the samples. Dr. Douglas Kendall with EPA's National Enforcement Investigations Center (NEIC) evaluated total and leachate analyses performed by the NEIC laboratory. These studies and supporting documentation are being placed in the docket for the Phase IV rule, and are being made available for review by today's notice.[1]

In his study, Dr. Drexler concluded the following: (1) That the spent foundry wastes placed in the Nacodoches Municipal Landfill remained hazardous in fact; (2) the addition of iron filings to spent foundry sand does not cause chemical reduction (i.e., the hazardous lead remains oxidized); (3) the addition of iron filings to the spent foundry sand promoted a physicochemical dilution of the sample during the TCLP by producing significant increases in surface area sorption sites; (4) the addition of iron filings to the waste sand artificially altered the environmental character of the TCLP test by increasing pH, and lowering Eh (redox potential) and DO (dissolved oxygen); and (5) in-vitro testing shows that these "treated" spent foundry sands maintain a high bioavailability of lead.

In his study, Dr. Kendall concluded that when metallic iron is mixed with lead-contaminated foundry sand there is no reaction, the lead is not entrapped or immobilized. During the TCLP the mixture comes in contact with an aqueous solution and the lead begins to leach into the solution. If metallic iron is present, the lead concentration in solution will be decreased by an oxidation/reduction reaction to levels below the lead characteristic level. If fresh metallic iron is regularly introduced into the mixture, then soluble lead can be kept at low levels. If, however, the mixture is placed in a landfill and left alone, the iron will oxidize, thereby losing its ability to reduce lead ions. The report concludes that adding iron is not a way to permanently treat lead-contaminated waste.

The A.T. Kearney *Peer Review Report* includes comments from three reviewers: Dr. Abinash Agrawal of Wright State University; Dr. Carl Palmer of the Oregon Institute of Science and Technology; and Dr. Geoffrey Thyne of California State University at Bakersfield. The peer reviewers were instructed to review each report to determine if the reports addressed the following questions:

1. Does the report support the conclusion that treatment has not occurred by adding iron filings to the foundry sand containing lead?
2. Do the scientific data present in the report support the conclusions reached?
3. Is the report based on sound scientific research and fact?

The peer reviewers agree that adding iron filings to spent foundry sand is not treatment of hazardous waste constituents. The Peer Review report further states that the scientific data presented in the studies support the conclusions reached by the studies. Furthermore, the Peer Review report finds that the studies are based on sound scientific research and fact.

The Agency is in the process of reviewing all the data that were obtained during the NIBCO investigation. The Agency is also continuing to review the comments submitted to the LDR Phase III proposed rulemaking which addressed this issue (59 FR 11731, March 2, 1995). These studies and data are being analyzed in order to determine the treatment validity of adding iron filings to characteristic metal wastes as a method of treatment.

The documents being placed in the docket for this NODA include:

- *Phase I, Characterization of Iron Filings Treatment Method of Foundry Sands,* Dr. John W. Drexler, Associate Professor, University of Colorado Laboratory for Environmental and Geological Studies.
- *Impermanence of Iron Treatment of Lead-Contaminated Foundry Sand,* Douglas Kendall, Ph.D., Senior Chemist, National Enforcement Investigations Center (NEIC).
- *Peer Review Report,* September 3, 1996, submitted by A.T. Kearney, Inc., Dallas, Texas to Rena McClurg, Regional Project Officer, USEPA, Dallas, Texas.
- Fax message to Bret Kendrick from Dr. Abinash Agrawal *RE: Peer Review for EPA Region 6.*
- *Reply to Reviewers' Comments; Impermanence of Iron Treatment of Lead-Contaminated Foundry Sand,* Douglas Kendall, Ph.D., Senior Chemist, National Enforcement Investigations Center (NEIC).
- *Responses to Peer Review Comments, Characterization of Iron Filings Treatment Method of Foundry Sands, Dr. John W. Drexler.*

List of Subjects in 40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

[1] EPA is mentioning its enforcement activities here solely to indicate the provenance of the studies being made available for public comment. EPA is not seeking to influence the results of any enforcement actions by doing so. In addition, none of the Agency staff involved in any pending enforcement action involving any member of the foundry industry has any substantive involvement in the Agency's rulemaking considering the question of whether addition of iron to foundry wastes is a permissible form of treatment.

Dated: February 20, 1997.

Matthew Hale,

Acting Director, Office of Solid Waste.

[FR Doc. 97–5419 Filed 3–4–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 372

[OPPTS–400101; FRL–5584–9]

RIN 2070-AC00

Polymeric Diphenylmethane Diisocyanate; Toxic Chemical Release Reporting; Community Right-to-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Denial of petition.

SUMMARY: EPA is denying a petition to remove polymeric diphenylmethane diisocyanate (PMDI) from the diisocyanates category subject to the reporting requirements under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA). EPA has reviewed the available toxicological data on this chemical and has determined that PMDI does not meet the section 313(d)(3) deletion criterion. Therefore, EPA is denying the petitioner's request to remove PMDI from the EPCRA section 313 diisocyanates category.

FOR FURTHER INFORMATION CONTACT: Daniel R. Bushman, Acting Petitions Coordinator, 202–260–3882, or e-mail: bushman.daniel@epamail.epa.gov, for specific information regarding this document or for more information on EPCRA section 313, the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 401 M St., SW., Washington, DC 20460, Toll free: 1–800–535–0202, in Virginia and Alaska: 703–412–9877 or Toll free TDD: 1-800-553-7672.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

This action is taken under sections 313(d) and (e)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11023. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99-499).

B. Background

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using listed toxic chemicals to report their environmental releases of such chemicals annually. Beginning with the 1991 reporting year, such facilities also must report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the Pollution Prevention Act of 1990 (PPA), 42 U.S.C. 13106. Section 313 established an initial list of toxic chemicals that was comprised of more than 300 chemicals and 20 chemical categories. Polymeric diphenylmethane diisocyanate (PMDI) is a diisocyanate chemical reportable under the diisocyanates category which was added to the EPCRA section 313 list of toxic chemicals on November 30, 1994 (59 FR 61432) (FRL–4922–2). Section 313(d) authorizes EPA to add or delete chemicals from the list, and sets forth criteria for these actions. EPA has added and deleted chemicals from the original statutory list. Under section 313(e)(1), any person may petition EPA to add chemicals to or delete chemicals from the list. Pursuant to EPCRA section 313(e)(1), EPA must respond to petitions within 180 days, either by initiating a rulemaking or by publishing an explanation of why the petition is denied.

EPCRA section 313(d)(2) states that a chemical may be listed if any of the listing criteria are met. Therefore, in order to add a chemical, EPA must demonstrate that at least one criterion is met, but does not need to examine whether all other criteria are also met. Conversely, in order to remove a chemical from the list, EPA must demonstrate that none of the criteria are met.

EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for submitting petitions. On May 23, 1991 (56 FR 23703), EPA issued guidance regarding the recommended content of petitions to delete individual members of the section 313 metal compound categories. EPA has also published a statement clarifying its interpretation of the section 313(d)(2) and (3) criteria for adding and deleting chemical substances from the section 313 list (59 FR 61432).

II. Description of Petition

On August 15, 1995, EPA received a petition from the Polyurethane Division of the Society of the Plastics Industry (SPI) to delete PMDI (Chemical Abstracts Service Registry Number (CASRN) 9016–87–9) from the list of chemicals reportable under EPCRA section 313 and PPA section 6607. Specifically, the petitioner requested that PMDI be removed from the EPCRA section 313 diisocyanates category. The petitioner contends that PMDI should be delisted because: (1) PMDI does not independently meet the EPCRA section 313 toxicity criteria since it is a mixture that contains approximately 50 percent 4,4'-methylenediphenylene isocyanate (MDI), and it is the MDI that dominates the toxicity of the mixture; (2) PMDI is not a diisocyanate and does not meet the molecular weight criterion of the diisocyanates category that the petitioner claims was set by EPA; (3) MDI, which is the constituent of toxic concern, is listed in the diisocyanates category and its releases would continue to be reported by users of PMDI; and (4) the higher molecular weight oligomers that make up the other 50 percent of PMDI have low volatility relative to other members of the diisocyanates category which prevents significant environmental exposures.

Because the petitioner does not dispute the listing of MDI and acknowledges that the MDI component of PMDI is a source of the toxicity of PMDI, this petition is limited to the issue of whether the higher molecular weight oligomers in PMDI can reasonably be anticipated to add to the toxicity of PMDI such that PMDI should be included as a separate chemical in the diisocyanates category.

III. EPA's Technical Review of PMDI

A. Introduction

On November 30, 1994 (59 FR 61432), EPA added the diisocyanates category to the EPCRA section 313 list of toxic chemicals based on concerns for chronic pulmonary toxicity. There are no other criteria for defining this EPCRA section 313 category. The diisocyanates category consists of a list of 20 individual diisocyanates, including PMDI. The reference that the petitioner makes to a "molecular weight criteria set by EPA for the diisocyanates category" refers to the definition EPA set for the diisocyanates category under review by EPA's Office of Pollution Prevention and Toxics (OPPT) in the existing chemicals program (Ref. 1). The OPPT existing chemicals review was undertaken to determine whether to regulate diisocyanates under the Toxic Substances Control Act (TSCA). The TSCA diisocyanates category was defined as "monomeric diisocyanates of molecular weight less than or equal to 300, plus polymeric diphenylmethane diisocyanate (which is only 40 to 60 percent polymerized)." While EPA included all members of the TSCA category in the EPCRA section 313 diisocyanates category, it did not include any molecular weight criterion or any other criteria other than the list of chemicals included in the EPCRA category. Therefore, molecular weight alone does not exclude a diisocyanate from being included in the EPCRA section 313 diisocyanates category.

The technical review of the petition to delete polymeric diphenylmethane diisocyanate included a review of the chemistry of PMDI (Refs. 2 and 3) and available toxicological data (Refs. 3-16). The focus of EPA's review, however, was on whether the higher molecular weight oligomers in PMDI can reasonably be anticipated to cause chronic pulmonary toxicity.

B. Chemistry

PMDI is manufactured by a process that results in a mixture that contains approximately 50 percent MDI and 50 percent higher molecular weight oligomers (Refs. 2 and 3). PMDI typically contains the following products in the percent ranges indicated in the figure below:

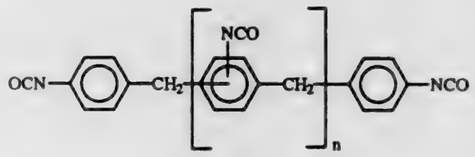

n	MW	Weight %
0 (MDI)	250	40-60
1	381	25-35
2	512	10-20
3	643	<5
4	774	trace

The higher molecular weight oligomers are those where n = 1 or greater in the above figure. As indicated above, less than 5 percent of the compounds in the mixture have a molecular weight greater than 512. The higher molecular weight oligomers contain the diisocyanate moiety; however, they are not formally identified as diisocyanates since they have more than two isocyanate groups. Since the reactive sites in diisocyanates are the isocyanate groups, these extra isocyanate groups are additional reactive sites (both chemically and biologically) within the molecule (Ref. 4). These higher molecular weight oligomers are structurally very similar to MDI, varying only by the sequential addition of an aromatic ring and an isocyanate group.

Since the higher molecular weight oligomers are never isolated as pure compounds, their physical/chemical properties have not been measured and must be estimated. Using data on MDI as a reference point, the estimated melting point range for the higher molecular weight oligomers in PMDI would be 30-50 °C, the estimated boiling point would be > 400 °C and the estimated vapor pressure would be < 1 x 10^{-5} millimeters mercury (mm Hg) (Ref. 2).

C. Toxicity Evaluation

In a 2–year chronic inhalation study (Refs. 12 and 13), Wistar rats (60/sex/exposure level) were exposed whole-body to 0, 0.2, 1.0, and 6.0 milligrams per cubic meter (mg/m^3) of PMDI aerosol for 6 hours/day (hrs/day), 5 days/week (days/wk), for 24 months. The PMDI material tested was a dark brown liquid with an average molecular weight of about 400 that contained 47 percent MDI and 53 percent higher molecular weight oligomers. Ninety five percent of the particles in the aerosols generated were smaller than 5 micrometers.

There were no treatment-related deaths, changes in body weights, clinical signs or effects on serum chemistry, hematology or urinalysis parameters. There was a significant increase in lung weights in both males and females exposed to 6.0 mg/m^3 after 1 and 2 years. In the 2–year study, males exposed to the highest dose had increased incidence of spotted and discolored lungs. At the interim sacrifices at 1 year, males and females in the highest dose group had treatment related histological changes in the nasal cavity, lungs and mediastinal lymph nodes. The incidence and severity of degeneration and basal cell hyperplasia of the olfactory epithelium and Bowman's gland hyperplasia were increased in males of the 1.0 and 6.0 mg/m^3 groups and in females of the high dose group following the 2 year exposure period. The lungs from the rats of the 1.0 and 6.0 mg/m^3 group had similar changes to, but more severe than, those found after 1 year of exposure. There were significant increases in alveolar duct epithelialization, accumulation of macrophages containing PMDI associated yellow pigment and focal fibrosis in males and females of the mid and high dose groups. Pulmonary adenomas were found in 6 males and 2 females and 1 male had pulmonary adenocarcinoma in the 6.0 mg/m^3 group. The data obtained in this chronic inhalation study identifies a no-observed-adverse-effect-level (NOAEL) of 0.2 mg/m^3 (duration-adjusted concentration = 0.036 mg/m^3) and a lowest-observed-adverse-effect-level (LOAEL) of 1.0 mg/m^3 (duration-adjusted concentration = 0.18 mg/m^3) based on hyperplasia of the olfactory epithelium.

In a 90-day inhalation study (Ref. 14), Wistar rats (15/sex/dose) were exposed to 4, 8, and 12 mg/m^3 of PMDI aerosol for 6 hrs/day, 5 days/wk, for 13 weeks. The content of the PMDI was approximately 52 percent MDI and 48 percent higher molecular weight oligomers and 95 percent of the particles in the aerosols had aerodynamic diameters of < 5 micrometers. Mortality and severe respiratory distress occurred in the 12 mg/m^3 dosed group, and less severe symptoms occurred in the 8 mg/m^3 dosed group. A dose related increase in lung weight was noted in the 8 and 12 mg/m^3 dose groups for both males and females. Degenerative lesions occurred

in the olfactory epithelium of the nasal cavity of both males and females in the 12 mg/m³ groups. There was a significant increase in macrophages in the lungs and lymph nodes of all exposed animals (4 mg/m³ or higher) compared with control groups. This study demonstrated adverse effects in the lungs and nasal cavity at levels of 4 mg/m³ and above.

Although there are no toxicological studies available on the higher molecular weight oligomers of PMDI in the absence of MDI, there is indirect evidence, from studies of diisocyanates other than PMDI, to support the conclusion that the higher molecular weight oligomers can cause chronic pulmonary toxicity. For some other diisocyanates, the higher molecular weight oligomers rather than the monomeric form may induce adverse pulmonary effects. In one study (Ref. 15), subjects exposed to a prepolymer of toluene diisocyanate (TDI) in wood varnish exhibited an asthmatic reaction, but exposure to monomeric TDI did not elicit the same response. Another prospective study (Ref. 16), was conducted among 10 workers with occupational asthma caused by spray paints which contained both monomeric hexamethylene diisocyanate (HDI) and polymeric HDI. In the study, four workers developed asthmatic reactions only after exposure to polymeric HDI and not after exposure to monomeric HDI.

In the chronic inhalation studies discussed above, the test animals where exposed to aerosols of PMDI which should have contained a representative sample of all of the components of PMDI. From these chronic inhalation studies, it is not possible to separate out the adverse health effects caused by MDI from those caused by the higher molecular weight oligomers and EPA is aware of no studies on the higher molecular weight oligomers themselves. However, given the structural similarities between MDI and the higher molecular weight oligomers, it is reasonable to anticipate that their toxicological properties will be similar to those of MDI and upon exposure will result in the adverse health effects observed in the PMDI studies. In addition, the indirect evidence discussed above also supports this conclusion.

D. Technical Summary

The technical review of the petition to delete polymeric diphenylmethane diisocyanate from the diisocyanates category focused on the chronic toxicity of the higher molecular weight oligomers contained in PMDI. Animal studies conducted on aerosolized PMDI have demonstrated that PMDI can cause chronic pulmonary toxicity. Because of the structural similarities between MDI and the higher molecular weight oligomers of PMDI, there is no basis to conclude that the toxicity observed in these studies is due only to the MDI present in PMDI. Based on a review of the available data on PMDI and other diisocyanates, EPA has determined that there is sufficient evidence to reasonably anticipate that the higher molecular weight oligomers of PMDI can cause chronic pulmonary toxicity.

IV. Rationale for Denial

EPA is denying the petition submitted by the Polyurethane Division of the Society of the Plastics Industry to delete PMDI from the diisocyanates category on the EPCRA section 313 list of toxic chemicals. This denial is based on EPA's conclusion that, based on available data on PMDI and other diisocyanates, the higher molecular weight oligomers of PMDI can reasonably be anticipated to cause chronic pulmonary toxicity. EPA considers the LOAEL of 1.0 mg/m³ and the NOAEL of 0.2 mg/m³ for PMDI to be relatively low doses and thus EPA does not consider PMDI to have low chronic toxicity. Therefore, in accordance with EPA's stated policy on the use of exposure assessments (59 FR 61432, November 30, 1994), EPA does not believe that an exposure assessment is necessary to conclude that PMDI meets the toxicity criterion of EPCRA section 313(d)(2)(B).

V. References

1. USEPA, OPPTS, 1995. Memorandum from Sandra Strassman-Sundy, Existing Chemical Assessment Division, re: Additions to Section 313. (May 6, 1992).

2. USEPA, OPPTS, 1995. Chemistry Report for Delisting of Polymeric MDI by Diana Darling, Industrial Chemistry Branch, Economics, Exposure and Technology Division, Office of Pollution Prevention and Toxics. (September 25, 1995).

3. USEPA, OPPTS, 1995. Memorandum from James W. Holder, Effects Identification and Characterization Group, National Center for Environmental Assessment, Office of Research and Development, re: Response to Delist Polymeric MDI (PMDI) from Ongoing MDI Reporting under Section 313, Toxic Chemical Release Reporting of EPCRA (Emergency Right-to-Know Act of SARA of 1986). (September 18, 1995).

4. Dynamac. 1987. Generic Health Hazard Assessment of the Chemical Class Diisocyanates, Final Report May 5, 1987, Appendix 4. EPA Contract No. 68-02-3990, Work Assignment No. 205. Submitted to USEPA, Office of Toxic Substances, Health and Environmental Review Division, Washington, DC Prepared by Dynamac Corporation, Rockville, MD.

5. USEPA, OPPTS, 1995. Memorandum from Nicole Paquette, Health Effects Branch, Health and Environmental Review Division, Office of Pollution Prevention and Toxics, re: Review of the Delisting Petition for Polymeric Diphenylmethane Diisocyanate (PMDI). (September 20, 1995).

6. USEPA, OPPTS, 1995. Memorandum from Daniel Bushman, Industrial Chemistry Branch, Economics, Exposure and Technology Division, Office of Pollution Prevention and Toxics, re: Health Effects Review for Polymeric Diphenylmethane Diisocyanate. (October 2, 1995).

7. USEPA, OPPTS, 1995. Memorandum from Nicole Paquette, Health Effects Branch, Health and Environmental Review Division, Office of Pollution Prevention and Toxics, re: Health Effects Review for Polymeric Diphenylmethane Diisocyanate (PMDI). (October 5, 1995).

8. USEPA, OPPTS, 1995. Memorandum from Elbert L. Dage, Analysis and Information Management Branch, Chemical Screening and Risk Assessment Division, Office of Pollution Prevention and Toxics. re: Risk Assessment Review for Polymeric Diphenylmethane Diisocyanate (PMDI). (November 7, 1995).

9. USEPA, OPPTS, 1996. Memorandum from Nicole Paquette, Health Effects Branch, Health and Environmental Review Division, Office of Pollution Prevention and Toxics, re: Health Effects Review for Polymeric Diphenylmethane Diisocyanate (PMDI). (January 16, 1996).

10. USEPA, OPPTS, 1996. Memorandum from Daniel Bushman, Toxics Release Inventory Branch, Environmental Assistance Division, re: EPCRA Section 313 Petition to Delist PMDI. (July 8, 1996).

11. USEPA, OPPTS, 1996. Memorandum from Nicole Paquette, Health Effects Branch, Health and Environmental Review Division, Office of Pollution Prevention and Toxics, re: EPCRA Section 313 Petition to Delist Polymeric Diphenylmethane Diisocyanate (PMDI). (July 9, 1996).

12. Reuzel, P.G.J., Arts, J.H.E., Lomax, L.G., Kuijpers, M.H.M., Kuper, C.F., Feron, V.J., Loser, E., "Chronic Inhalation Toxicity and Carcinogenicity Study of Respirable Polymeric Methylene Diphenyl Diisocyanate (Polymeric MDI) Aerosol in Rats," Journal of Fundamental and Applied Toxicology, v. 22, (1994), pp. 195-210.

13. Reuzel, P.G.J., Arts, J.H.E., Kuypers, M.H.M., Kuper, C.F., "Chronic Toxicity/Carcinogenicity Inhalation Study of Polymeric Methylene Diphenyl Diisocyanate Aerosol in Rats (Final Report)," Prepared by Civo Institute for the International Isocyanate Institute. Report No. V88.122. (March 1990).

14. Reuzel, P.G.J., Kuper, C.F., Feron, V.J., Appelman, L.M., Loser, E., "Acute, Subacute, and Subchronic Inhalation Toxicity Studies of Respirable Polymeric Methylene Diphenyl Diisocyanate (Polymeric MDI) Aerosol in Rats," Journal of Fundamental and Applied Toxicology, v. 22, (1994), pp. 186-194.

15. Vandenplas, O., Malo, J.L., Saetta, M., Mapp, C.E., Fabbri, L.M., "Occupational Asthma and Extrinsic Alveolitis Due to Isocyanates: Current Status and Perspective," British Journal of Industrial Medicine, v. 30, (1993), pp. 213-228.

16. Vandenplas, O., Cartier, A., Lesage, J., Cloutier, Y., Perrault, G., Grammar, L.C., Shaughnessy, M.A., Malo, J.L., "Prepolymers of Hexamethylene Diisocyanate as a Cause of Occupational Asthma," Journal of Allergy and Clinical Immunology, v. 91, (1993), pp. 850-861.

VI. Administrative Record

The record supporting this decision is contained in docket control number OPPTS–400101. All documents, including the references listed in Unit V. of this document and an index of the docket, are available to the public in the TSCA Nonconfidential Information Center (NCIC), also known as the Public Docket Office, from noon to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA NCIC is located at EPA Headquarters, Rm. NE-B607, 401 M St., SW., Washington, DC 20460.

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: February 20, 1997.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 97–5307 Filed 3–4–97; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 16, 74, 75, and 95

Indirect Cost Appeals

AGENCY: Department of Health and Human Services (HHS).

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This NPRM would remove the informal grant appeals procedure for indirect cost rates and other cost issues. The regional HHS Divisions of Cost Allocation have been reorganized into a new Program Support Center and no longer report to the Regional Directors, making the process obsolete. The Department also sees little value in this formal appeals process because it frequently lengthens the time required for appeals. Deletion of this rule will reduce internal management regulations as required by Executive Order 12861.

DATES: Comments must be submitted by May 5, 1997.

ADDRESSES: Comments must be in writing and should be mailed or faxed to Charles Gale, Director, Office of Grants Management, HHS, Room 517–D, 200 Independence Ave. SW., Washington DC 20201; FAX (202) 690–8772. Written comments may be inspected at the identified address during agency business hours from 9:30 a.m. to 5:30 p.m.

FOR FURTHER INFORMATION CONTACT: Ronald Speck, (202) 401–2751. For the hearing impaired only: TDD (202) 690–6415.

SUPPLEMENTARY INFORMATION: We propose to remove 45 CFR part 75, "Informal grant appeals procedures," together with all references to it. Part 75 provides for an informal appeals process to the Regional Directors (prior to formal appeals under 45 CFR part 16) for disputes arising from determinations made by a Director, Division of Cost Allocation (DCA) in the Department's regional offices, concerning indirect cost rates and certain other cost allocation plans. The Department's Divisions of Cost Allocation have been reorganized into a new Program Support Center and no longer report to the Regional Directors. Consequently the procedures in part 75 are obsolete.

In addition, experience has shown that this informal appeals process actually resolves very few of the covered disputes, because most of these informal appeals are subsequently appealed to the Departmental Appeals Board established by 45 CFR part 16. Therefore, this informal appeals process has the effect of lengthening the total time required to finally resolve the subject appeals.

Since the department sees little value in this informal appeals process, and this process is obsolete, we propose to eliminate part 75 and thereby reduce internal management regulations as required by Executive Order 12861.

Regulatory Impact Analyses

Executive Order 12866

In accordance with the provisions of Executive Order 12866, this proposed rule was not reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule before publication and, by approving it, certifies that it does not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This proposed rule does not contain information collection requirements requiring clearance under the Paperwork Reduction Act.

List of Subjects in 45 CFR Parts 16, 74, 75, and 95

Accounting, Administrative practice and procedure, Grant programs—health, Grant programs—social programs, Grants administration, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number does not apply)

Dated: February 25, 1997.

Donna E. Shalala,

Secretary.

Accordingly, for the reasons set forth above, it is proposed that title 45 of the Code of Federal Regulations be amended as follows:

PART 16—PROCEDURES OF THE DEPARTMENTAL GRANT APPEALS BOARD

1. The authority citation for part 16 would continue to read as follows:

Authority: 5 U.S.C. 301 and secs. 1, 5, 6, and 7 of Reorganization Plan No. 1 of 1953, 18 FR 2053, 67 Stat. 631 and authorities cited in the Appendix.

§ 16.3 [Amended]

2. Section 16.3 would be amended in paragraph (c) by removing the words "and part 75 of this title for rate determinations and cost allocation plans".

Appendix A to Part 16—[Amended]

3. Section D. of appendix A would be amended by removing the last sentence.

PART 74—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR AWARDS AND SUBAWARDS TO INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, OTHER NONPROFIT ORGANIZATIONS, AND COMMERCIAL ORGANIZATIONS; AND CERTAIN GRANTS AND AGREEMENTS WITH STATES, LOCAL GOVERNMENTS AND INDIAN TRIBAL GOVERNMENTS

4. The authority citation for part 74 would continue to read as follows:

Authority: 5 U.S.C. 301; OMB Circular A–110 (November 29, 1993, 58 FR 62992).

§ 74.62 [Amended]

5. Section 74.62 would be amended in paragraph (b) by removing the numbers "16, 75," and adding, in their place, the number "16".

§ 74.90 [Amended]

6. Section 74.90 would be amended in paragraph (b) by removing the words "parts 16 and 75" and adding, in their place, the words "part 16".

PART 75—[REMOVED]

7. Part 75— would be removed.

PART 95—GENERAL ADMINISTRATION—GRANT PROGRAMS (PUBLIC ASSISTANCE AND MEDICAL ASSISTANCE)

8. The authority citation for part 95 would continue to read as follows:

Authority: Sec. 452(a), 83 Stat. 2351, 42 U.S.C. 652(a); sec. 1102, 49 Stat. 647, 42 U.S.C. 1302; sec. 7(b), 68 Stat. 658, 29 U.S.C. 37(b); sec. 139, 84 Stat. 1323, 42 U.S.C. 2577b; sec. 144, 81 Stat. 529, 42 U.S.C. 2678; sec. 1132, 94 Stat. 530, 42 U.S.C. 1320b–2; 306(b), 94 Stat. 530, 42 U.S.C. 1320b–2 note, unless otherwise noted.

§ 95.513 [Removed]

9. Section 95.513 would be removed.

§ 95.519 [Amended]

10. Section 95.519 would be amended by redesignating paragraph (b)(1) as paragraph (b), by removing the words "reconsideration of the determination under 45 CFR part 75" and adding, in their place, the words "appeal of the determination under 45 CFR part 16", and by removing paragraph (b)(2).

[FR Doc. 97–5276 Filed 3–4–97; 8:45 am]

BILLING CODE 4150–04–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–86, RM–9025]

Radio Broadcasting Services; Camdenton, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Camdenton Community Broadcasters proposng the allotment of Channel 265A to Camdenton, Missouri. The coordinates for Channel 265A are 38–02–00 and 92–44–20. There is a site restriction 2.9 kilometers (1.8 miles) north of the community.

DATES: Comments must be filed on or before April 21, 1997, and reply comments on or before May 6, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Richard J. Hayes, Jr., 13809 Black Meadow Road, Spotsylvania, Virginia 22553.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–86, adopted February 21, 1997, and released February 28, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–5353 Filed 3–4–97; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 97–84, RM–9021]

Radio Broadcasting Services; Pauls Valley, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Tom Stamper seeking the allotment of Channel 291A to Pauls Valley, OK, as the community's second local FM and third aural broadcast service. Channel 291A can be allotted to Pauls Valley in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.8 kilometers (6.1 miles) south, at coordinates 34–39–14 NL; 97–11–54 WL, to avoid a short-spacing to Station KGOU, Channel 292A, Norman, OK.

DATES: Comments must be filed on or before April 21, 1997, and reply comments on or before May 6, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Tom Stamper, 2402 C Avenue, Lawton, OK 73505 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–84, adopted February 21, 1997, and released February 28, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–5355 Filed 3–4–97; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 97–85, RM–9026]

Radio Broadcasting Services; Belgrade, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Gallatin Valley Witness, Inc., proposing the allotment of Channel 256A to Belgrade, Montana, as that community's second local FM broadcast service. The coordinates for Channel 256A are 45–46–36 and 111–10–36.

DATES: Comments must be filed on or before April 21, 1997, and reply comments on or before May 6, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Bryan Cave LLP, 700 Thirteenth Street, NW, Suite 600, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–85, adopted February 21, 1997, and released February 28, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC. 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–5356 Filed 3–4–97; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 97–83; RM–8948]

Radio Broadcasting Services; Westport, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Chehalis Broadcasting Company proposing the allotment of Channel 267A at Westport, Washington, as the community's first local aural transmission service. Channel 267A can be allotted to Westport in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 267A at Westport are North Latitude 46–53–24 and West Longitude 124–06–06. Since Westport is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been requested.

DATES: Comments must be filed on or before April 21, 1997, and reply comments on or before May 6, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Henry E. Crawford, Esq., 1150 Connecticut Ave., NW., Suite 900, Washington, DC 20036 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–83, adopted February 21, 1997, and released February 28, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–5358 Filed 3–4–97; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 76

[CS Docket No. 97–80; FCC 97–53]

Commercial Availability of Navigation Devices

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Communications Commission seeks comments on proposals to implement Section 629 of the Communications Act of 1934, as amended, 47 U.S.C. 549, concerning the commercial availability of navigation devices. This notice is prompted by Section 304 of the 1996 Telecommunications Act, which became law on February 5, 1996, adding this provision to the Communications Act. This action is intended to implement the 1996 Act.

DATES: Comments are due on or before May 16, 1997 and reply comments are due on or before June 16, 1997.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION, CONTACT: Technical Information: Michael Lance, Cable Services Bureau, (202) 418–7014. Legal Information: Barrett L. Brick, Cable Services Bureau, (202) 418–1065.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, CS Docket No. 97–80, adopted February 11, 1997 and released on February 20, 1997. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1919 M Street, NW., Washington, DC 20554.

Synopsis of the Notice of Proposed Rule Making

1. In this notice of proposed rulemaking, the Commission seeks comment on proposals to implement Section 629 of the Communications Act, added as part of the Telecommunications Act of 1996, Public Law 104–104, 110 Stat. 56 (1996) (1996 Act). Section 629 instructs the Commission to promote the commercial availability to consumers of navigation devices: That is, equipment used to access multichannel video programming and other services offered over multichannel video programming systems. The Commission is also instructed not to jeopardize the security of services offered over multichannel video programming systems.

2. The Commission first seeks comment regarding the scope and meaning of Section 629. The Commission tentatively concludes that the coverage of Section 629 is broad in terms of the multichannel video programming distributors (MVPDs) involved, including cable television, multichannel broadcast television, DBS, MMDS, and SMATVs. The Commission also tentatively concludes that Section 629 is broad in terms of the type of equipment covered, including not just equipment used to receive video programming, but also equipment used to access other services offered by MVPDs over their systems. The Commission seeks comments on these conclusions, and also on methods to narrow the focus of the rulemaking process and rules adopted in order best to accomplish the statutory objectives.

3. The Commission seeks comment on the meaning of commercial availability in the context of Section 629. The Commission proposes to incorporate a consumer right to attach equipment into the rules, modeled after the telephony right to attach which had its genesis in Carterphone, 13 FCC 2d 420, recon. denied, 14 FCC 2d 571 (1968), and seeks comment on this proposal. The Commission recognizes that in implementing Section 629, there is a need to assure that customer premises equipment (CPE) does not cause harm to the network to which the CPE is attached, and that the networks technical integrity is maintained. The Commission seeks comment on how best to accomplish this task. The Commission tentatively concludes that existing Part 15 certification rules should adequately address signal leakage issues surrounding existing navigation devices, and seeks comment on this conclusion. The Commission also seeks comment on whether the marketplace will sufficiently address signal quality issues involving navigation devices.

4. Section 629 requires that navigation devices be commercially available from vendors not affiliated with any MVPD. The Commission tentatively concludes that the definition of affiliate in Section 3 of the 1996 Act, which establishes a ten percent equity interest threshold, is applicable to Section 629 and seeks comment on this conclusion.

5. The Commission seeks comment not only on issues raised by current equipment distribution models, but also on whether and what degree of standardization might be necessary so that navigation devices may be geographically portable or may be interoperable to function with different types of MVPDs or both. The Commission seeks comment on the incremental cost of additional capabilities in this context. The Commission also seeks comment on the process whereby any necessary standards might be developed to promote competition. The Commission states its desire not to develop standards itself, but rather urges the adoption of voluntary standards by those affected. The Commission seeks comment on the techniques it should use should standards prove to be necessary or desirable toward assuring the commercial availability of navigation devices, including alternatives to actual standard setting.

6. The Commission recognizes that some of the technologies implicated by this proceeding may be wholly or partially proprietary in nature. The Commission seeks comment on its authority to affect proprietary rights, and on what limitations existing proprietary rights may place on the Commission's authority to mandate commercial availability of navigation devices.

7. Section 629 instructs the Commission not to jeopardize the security of services offered over multichannel video programming systems, nor to impede service providers' legal rights to prevent theft of service. In order to fashion effective rules that fulfill this requirement, the Commission seeks data and information on existing security methodologies employed by MVPD industries, and seeks comment on what it means to jeopardize security and to impede a programmer's rights to prevent theft of service. The Commission recognizes that equipment that performs security functions is often combined with equipment that performs other functions. The Commission seeks comment on the possibility of unbundling security from nonsecurity equipment. The Commission tentatively concludes, should such unbundling be necessary, that the preferred option for developing the necessary framework to accomplish this would be to adopt only a conduct or performance rule mandating the separation involved, leaving to the industry participants involved the task of developing the necessary interface standards. The Commission also seeks comment on whether the affected industries could voluntarily adopt and the Commission approve a variant of the decoder interface connector discussed in the First Report and Order in ET Docket No. 93–7, 9 FCC Rcd 1981, 59 FR 25339 (May 16, 1994) and in the Memorandum Opinion and Order in ET Docket No. 93–7, 11 FCC Rcd 4121, 61 FR 18508 (April 26, 1996). The Commission also seeks comment on the impact of the 1996 Act's amendments to Section 624A of the Communications Act on the Commission's authority under Section 629.

8. Section 629 allows MVPDs to offer navigation devices to consumers if the charges are separately stated and not subsidized by charges for the service accessed by the devices. The Commission tentatively concludes that continuing with existing forms of regulations that are broadly intended to constrain the subsidization of equipment prices from regulated service revenues is most consistent with the 1996 Act, and seeks comment on this conclusion, as well as on alternative means of addressing subsidy issues.

9. Section 629 requires the Commission to waive any implementing

regulation adopted for a limited period of time upon an appropriate showing that such a waiver is necessary to assist the development or introduction of new or improved multichannel video programming or other service offered over multichannel video programming systems, technology, or products. The Commission tentatively concludes that where such waivers are required and requested, these requests should be looked upon sympathetically and expansively. The Commission seeks comment on this analysis. The Commission also seeks comment on whether guidelines need to be set to define the limited time contemplated, and also on whether the Commission's existing waiver procedures need to be modified to comply with the statutory mandate that the Commission act on a waiver within 90 days of its filing.

10. Section 629 provides that implementing regulations which are adopted shall cease to apply upon a Commission determination that the MVPD market is fully competitive, that the market for navigation devices is fully competitive, and that elimination of the regulations will promote competition and the public interest. The Commission seeks comment on the service category and geographic market analyses required, as well as the circumstances in general under which regulatory involvement might terminate. The Commission tentatively concludes that regulations for certain types of equipment may not need to be adopted in the first place if competition is already fully robust, and seeks comment on this conclusion.

Initial Regulatory Flexibility Analysis

11. As required by Section 603 of the Regulatory Flexibility Act ("RFA"),[1] the Commission has prepared the following Initial Regulatory Flexibility Analysis ("IRFA") of the expected significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice but they must have a separate and distinct heading designating them as responses to the IRFA. The Secretary shall send a copy of this *Notice* to be sent to the Chief Counsel for Advocacy of the Small Business Administration ("SBA") in accordance with 5 U.S.C. 603(a).

12. Need for and Objectives of the Proposed Rules: The 1996 Act requires the Commission to promulgate rules designed to promote the commercial availability of navigation devices. The Commission is issuing this *Notice* to seek comment on the proposed rules intended to implement this provision of the 1996 Act, and to provide a record for a Commission decision on issues discussed in the Notice.

13. Legal Basis: Authority for this proposed rulemaking is contained in Sections 4(i), 4(j), 303(r), and 629 of the Communications Act of 1934 as amended, 47 U.S.C. 154(i), 154(j), 303(r), and §§ 304 and 549 of the Telecommunications Act of 1996, Public Law 104–104, 110 Stat. 56 (1996).

14. Description and Estimate of Small Entities to Which the Proposed Rules Will Apply: Implementation of Section 304 will have the positive result of opening up to small entities the market to supply navigation devices directly to cable and other subscribers. In addition, small businesses will have the opportunity to become the manufacturers of navigation devices. While any policies or rules developed in this proceeding could have an impact on small businesses that manufacture, distribute, or use converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems, this proceeding seeks comment on how this burden, if any, could be mitigated for small entities.

15. The Regulatory Flexibility Act defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under Section 3 of the Small Business Act.[2] A small concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

16. Small MVPDs: SBA has developed a definition of small entity for cable and other pay television services, which includes all such companies generating less than $11 million in revenue annually. This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau, there were 1,323 such cable and other pay television services generating less than $11 million in revenue that were in operation for at least one year at the end of 1992.[3]

17. Cable Systems: The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company," is one serving fewer than 400,000 subscribers nationwide.[4] Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995.[5] Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the decisions and rules proposed in this Notice.

18. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000."[6] The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate.[7] Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1,450.[8] Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the

[1] 5 U.S.C. 603. The RFA has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) ("CWAAA"). Title II of the CWAAA is the "Small Business Regulatory Enforcement Fairness Act of 1996" ("SBREFA"), codified at 5 U.S.C. 601 *et seq.*

[2] 5 U.S.C. 601(3) (1980).

[3] U.S. Census Bureau, 1992 Economic Census, 1992 Census of Transportation, Communications and Utilities at Firm Size 1–123.

[4] 47 CFR 76.901(e). The Commission developed this definition based on its determinations that a small cable system operator is one with annual revenues of $100 million or less. Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 60 FR 35854 (July 12, 1995).

[5] Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

[6] 47 U.S.C. 543(m)(2).

[7] 47 CFR 76.1403(b).

[8] Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

19. MMDS: The Commission refined the definition of "small entity" for the auction of MMDS as an entity that together with its affiliates has average gross annual revenues that are not more than $40 million for the preceding three calendar years.[9] This definition of a small entity in the context of the Commission's Report and Order concerning MMDS auctions that has been approved by the SBA.[10]

20. The Commission completed its MMDS auction in March 1996 for authorizations in 493 basic trading areas ("BTAs"). Of 67 winning bidders, 61 qualified as small entities. Five bidders indicated that they were minority-owned and four winners indicated that they were women-owned businesses. MMDS is an especially competitive service, with approximately 1573 previously authorized and proposed MMDS facilities. Information available to us indicates that no MDS facility generates revenue in excess of $11 million annually. We tentatively conclude that for purposes of this IRFA, there are approximately 1634 small MMDS providers as defined by the SBA and the Commission's auction rules.

21. ITFS: There are presently 2032 ITFS licensees. All but one hundred of these licenses are held by educational institutions. Educational institutions are included in the definition of a small business.[11] However, we do not collect annual revenue data for ITFS licensees and are not able to ascertain how many of the 100 non-educational licensees would be categorized as small under the SBA definition. Thus, we tentatively conclude that at least 1932 licensees are small businesses.

22. DBS: As of December 1996, there were eight DBS licensees. However, the Commission does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. Although DBS service requires a great investment of capital for operation, we acknowledge that there are several new entrants in this field that may not yet have generated $11 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

23. HSD: The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 265 channels of programming placed on C-band satellites by programmers for receipt and distribution by MVPDs, of which 115 channels are scrambled and approximately 150 are unscrambled.[12] HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming packager. Thus, HSD users include: (1) Viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other MVPDs; (2) viewers who receive only non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing. Because scrambled packages of programming are most specifically intended for retail consumers, these are the services most relevant to this discussion.[13]

24. According to the most recently available information, there are approximately 30 program packagers nationwide offering packages of scrambled programming to retail consumers.[14] These program packagers provide subscriptions to approximately 2,314,900 subscribers nationwide.[15] This is an average of about 77,163 subscribers per program packager. This is substantially smaller than the 400,000 subscribers used in the Commission's definition of a small MSO. Furthermore, because this an average, it is likely that some program packagers may be substantially smaller.

25. SMATVs: Industry sources estimate that approximately 5200 SMATV operators were providing service as of December 1995.[16] Other estimates indicate that SMATV operators serve approximately 1.05 million residential subscribers as of September 1996.[17] The ten largest SMATV operators together pass 815,740 units.[18] If we assume that these SMATV operators serve 50% of the units passed, the ten largest SMATV operators serve approximately 40% of the total number of SMATV subscribers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, we tentatively conclude that a substantial number of SMATV operators qualify as small entities.

26. LMDS: Unlike the above pay television services, LMDS technology and spectrum allocation will allow licensees to provide wireless telephony, data, and/or video services. A LMDS provider is not limited in the number of potential applications that will be available for this service. Therefore, the definition of a small LMDS entity may be applicable to both cable and other pay television (SIC 4841) and/or radiotelephone communications companies (SIC 4812). A small radiotelephone entity is one with 1500 employees or less.[19] However, for the purposes of this Notice, we include only an estimate of LMDS video service providers.

27. LMDS is a service that is expected to be auctioned by the FCC in 1997. The vast majority of LMDS entities providing video distribution could be small businesses under the SBA's definition of cable and pay television (SIC 4841). However, in the Third NPRM, we proposed to define a small LMDS provider as an entity that, together with affiliates and attributable investors, has average gross revenues for the three preceding calendar years of less than $40 million.[20] We have not yet received approval by the SBA for this definition.

28. There is only one company, CellularVision, that is currently providing LMDS video services. Although the Commission does not collect data on annual receipts, we assume that CellularVision is a small business under both the SBA definition

[9] 47 CFR 21.961(b)(1).

[10] See Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding, MM Docket No. 94–31 and PP Docket No. 93–253, Report and Order, 10 FCC Rcd 9589, 60 FR 36524 (July 17, 1995).

[11] SBREFA also applies to nonprofit organizations and governmental organizations such as cities, counties, towns, townships, villages, school districts, or special districts, with populations of less than 50,000. 5 U.S.C. 601(5).

[12] Report in CS Docket No. 96–133 ("1996 Competition Report"), FCC 96–496 at ¶ 49, 62 FR 5627 (February 6, 1997).

[13] Id.

[14] Id.

[15] Id.

[16] 1996 Competition Report at ¶81.

[17] Id.

[18] Id.

[19] 13 CFR § 121.201.

[20] In the Matter of Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, to Reallocate the 29.5–30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services and Suite 12 Group Petition for Pioneer's Preference ("Third NPRM"), CC Docket No. 92–297, 11 FCC Rcd 53, at]188, 60 FR 43740 (August 23, 1995).

and our proposed auction rules. We tentatively conclude that a majority of the potential LMDS licensees will be small entities, as that term is defined by the SBA and the Commission's proposed definition.

29. Small Manufacturers: The SBA has developed definitions of small entity for manufacturers of household audio and video equipment (SIC 3651) and for radio and television broadcasting and communications equipment (SIC 3663). In each case, the definition includes all such companies employing 750 or fewer employees.

30. Electronic Equipment Manufacturers: The Commission has not developed a definition of small entities applicable to manufacturers of electronic equipment. Therefore, we will utilize the SBA definition of manufacturers of Radio and Television Broadcasting and Communications Equipment.[21] According to the SBA's regulations, a TV equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern.[22] Census Bureau data indicates that there are 858 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would be classified as small entities.[23] The Census Bureau category is very broad, and specific figures are not available as to how many of these firms are exclusive manufacturers of television equipment or how many are independently owned and operated. We conclude that there are approximately 778 small manufacturers of radio and television equipment.

31. Electronic Household/Consumer Equipment: The Commission has not developed a definition of small entities applicable to manufacturers of electronic equipment used by consumers, as compared to industrial use by television licensees and related businesses. Therefore, we will utilize the SBA definition applicable to manufacturers of Household Audio and Visual Equipment. According to the SBA's regulations, a household audio and visual equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern.[24] Census Bureau data indicates that there are 410 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 386 of these firms have fewer than 500 employees and would be classified as small entities.[25] The remaining 24 firms have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. Furthermore, the Census Bureau category is very broad, and specific figures are not available as to how many of these firms are exclusive manufacturers of television equipment for consumers or how many are independently owned and operated. We conclude that there are approximately 386 small manufacturers of television equipment for consumer/household use.

32. Computer Manufacturers: The Commission has not developed a definition of small entities applicable to computer manufacturers. Therefore, we will utilize the SBA definition of Electronic Computers. According to SBA regulations, a computer manufacturer must have 1,000 or fewer employees in order to qualify as a small entity.[26] Census Bureau data indicates that there are 716 firms that manufacture electronic computers and of those, 659 have fewer than 500 employees and qualify as small entities.[27] The remaining 57 firms have 500 or more employees; however, we are unable to determine how many of those have fewer than 1,000 employees and therefore also qualify as small entities under the SBA definition. We conclude that there are approximately 659 small computer manufacturers.

33. Small Retailers: The Commission has not developed a definition of small entities applicable to navigation retail devices. Therefore, we will utilize the SBA definition. The 1992 Bureau of the Census data indicates: there were 9,663 U.S. firms classified as Radio, TV & electronic stores (SIC 5731), and that 9,385 of these firms had $4.999 million or less in annual receipts and 9,473 of these firms had $7.499 million or less in annual receipts.[28] Consequently, we tentatively conclude that there are approximately 9,663 small entities that produce and distribute radio, television, and electronic stores that may be affected by the decisions and rules proposed in this Notice.

34. Reporting, Recordkeeping, and Other Compliance Requirements: The proposed actions may require MVPDs to obtain security modules for sale to subscribers. They may also prohibit MVPDs from providing CPE which is not commercially available. In addition, the proposed actions may require MVPDs to make available to consumers basic technical information concerning the network to which a navigation device is to be attached (paragraph 56). This latter proposal, if adopted, would not necessitate any additional professional, engineering, or customer service skills beyond those already utilized in the ordinary course of business by MVPDs. Any costs to the MVPD would be justified by the competitive benefits; MVPDs and consumers will benefit from an increased, more innovative, and more competitive market for navigation devices. We seek comment on this.

35. Any Significant Alternatives Minimizing the Impact On Small Entities Consistent With the Stated Objectives: We believe that our proposals will have the positive result of opening up to small entities the market to supply navigation devices directly to cable and other subscribers (see discussion at paragraph 84). In addition, small businesses will have the opportunity to become the manufacturers of navigation devices (see discussion at paragraph 84). While small businesses would experience costs associated with maintaining for sale navigation devices, should we adopt rules that would require such, we believe such businesses are capable of doing so. Should commenters disagree with this conclusion, we welcome comments suggesting ways in which any perceived burden upon small entities could be mitigated.

36. Federal Rules Which Overlap, Duplicate or Conflict with Proposed Rules: None.

Ex Parte

37. This is a non-restricted notice and comment rule making proceeding. *Ex*

[21] This category excludes establishments primarily engaged in the manufacturing of household audio and visual equipment which is categorized as SIC 3651. See infra for SIC 3651 data.

[22] 13 CFR 121.201, (SIC) Code 3663.

[23] U.S. Dept. of Commerce, 1992 Census of Transportation, Communications and Utilities, Table 1D, (issued May 1995). SIC category 3663.

[24] 13 CFR 121.201, (SIC) Code 3651.

[25] U.S. Small Business Administration 1995 Economic Census Industry and Enterprise Report, Table 3, SIC Code 3651, (Bureau of the Census data adapted by the Office of Advocacy of the U.S. Small Business Administration).

[26] 13 CFR 121.201, (SIC) Code 3571.

[27] U.S. Small Business Administration 1995 Economic Census Industry and Enterprise Report, Table 3, SIC Code 3571, (Bureau of the Census data adapted by the Office of Advocacy of the U.S. Small Business Administration).

[28] U.S. Small Business Administration 1992 Economic Census Industry and Enterprise Report, Table 2D, SIC 7812, (Bureau of the Census data adapted by the Office of Advocacy of the U.S. Small Business Administration) (SBA 1992 Census Report). The Census data does not include a category for $6.5 million therefore, we have reported the closest increment below and above the $6.5 million threshold. There is a difference of 88 firms between the $4.999 and $7.499 million annual receipt categories. It is possible that these 88 firms could have annual receipts of $6.5 million or less and therefore, would be classified as small businesses.

parte presentations are permitted, provided they are disclosed as provided in the Commission's Rules. See generally 47 CFR 1.1202, 1.1203 and 1.1206(a).

Comment Dates

38. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before May 16, 1997 and reply comments on or before June 16, 1997. All relevant and timely comments will be considered before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, NW, Washington, DC 20554.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–5350 Filed 3–4–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN: 1018—AC10

Endangered and Threatened Wildlife and Plants, Notice of Reopening of Comment Period on Proposed Threatened Status for the Flat-tailed Horned Lizard

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed Rule, notice of reopening of comment period.

SUMMARY: The Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), provides notice of reopening of the comment period on proposed endangered status for the flat-tailed horned lizard (*Phrynosoma mcalli*). The comment period has been reopened to acquire additional information from interested parties.

DATES: The public comment period closes May 9, 1997. Any comments received by the closing date will be considered in the final decision on this proposal.

ADDRESSES: Written comments and materials concerning this proposal should be sent directly to the Field Supervisor, Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad California 92008. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Sandy Vissman at (619) 431–9440.

SUPPLEMENTARY INFORMATION:

Background

The flat-tailed horned lizard inhabits desert areas of southern Riverside, eastern San Diego, and Imperial Counties in California; southwestern Arizona; and adjacent regions of northwestern Sonora and northeastern Baja California Norte, Mexico. Within the United States, populations of the flat-tailed horned lizard are centered in portions of the Coachella Valley, Ocotillo Wells, Anza Borrego Desert, West Mesa, East Mesa and the Yuma Desert in California; and the area between Yuma and the Gila Mountains in Arizona. The flat-tailed horned lizard occurs on Federal, State, county, and privately owned lands.

This species may be threatened by one or more of the following: commercial and residential development, agricultural development, off-highway vehicle activity, energy developments, military activities, and pesticide use.

On November 29, 1993, the Service published a rule proposing threatened status for the flat-tailed horned lizard. The original comment period closed on January 28, 1994. The Service was unable to make a final listing determination on this species because of a limited budget, other endangered species assignments driven by court orders, and higher listing priorities. In addition, a moratorium on listing actions (Public Law 104–6) that took effect April 10, 1995, stipulated that no funds could be used to make final listing or critical habitat determinations. Now that funding has been restored, the Service is proceeding with a final determination for this species.

Due to the length of time that has elapsed since the close of the initial comment period, changing procedural and biological circumstances, and the need to review the best scientific information available during the decision-making process, the comment period is being reopened. Such changing circumstances include the recent (October 1996) draft *Flat-tailed Horned lizard Rangewide Management Strategy*, which likely affect the threats facing the species.

The Service seeks information that has become available in the last three years concerning:

(1) Biological, commercial, or other relevant data on any threat (or lack thereof) to this species; and

(2) The size, number, or distribution of populations of this species.

Written comments may be submitted until May 9, 1997 to the Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, California 92008.

Author: The primary author of this notice is Sandy Vissman.

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*)

Dated: February 26, 1997.

Thomas J. Dwyer,

Acting Regional Director, Region 1.

[FR Doc. 97–5383 Filed 3–4–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 970226037–7037–01; I.D. 022197F]

RIN 0648–AJ39

Fisheries of the Exclusive Economic Zone Off Alaska; Management Measures to Reduce Seabird Bycatch in the Hook-and-Line Groundfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to require operators of hook-and-line vessels fishing for groundfish in the Bering Sea and Aleutian Islands management area (BSAI) and the Gulf of Alaska (GOA) and federally-permitted hook-and-line vessels fishing for groundfish in Alaska waters adjacent to the BSAI and to the GOA, to conduct fishing operations in a specified manner, and to employ specified bird avoidance techniques to reduce seabird bycatch and incidental seabird mortality. This measure is necessary to mitigate hook-and-line fishery interactions with the short-tailed albatross, an endangered species protected under the Endangered Species Act (ESA), and other seabird species. This measure is intended to accomplish the objectives of the ESA and of the Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (Groundfish FMPs) with respect to the management of the GOA groundfish fishery and the BSAI groundfish fishery and the marine environment.

DATES: Comments must be received by March 20, 1997.

ADDRESSES: Comments should be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori J. Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for the amendment may be obtained from the North Pacific Fishery Management Council, Suite 306, 605 West 4th Avenue, Anchorage, AK 99501–2252; telephone: 907–271–2809.

FOR FURTHER INFORMATION CONTACT: Kim S. Rivera, 907–586–7228.

SUPPLEMENTARY INFORMATION: The U.S. groundfish fisheries of the GOA and the BSAI in the Exclusive Economic Zone (EEZ) are managed by NMFS under the Groundfish FMPs. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 773 *et seq.*, 1801 *et seq.*; Magnuson-Stevens Act) and are implemented by regulations for the U.S. fisheries at 50 CFR part 679. General regulations that also pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

Background

Recent takes of the endangered short-tailed albatross (*Diomedea albatrus*) (two in 1995 and one in 1996) in hook-and-line groundfish fisheries in the BSAI and the GOA highlight a seabird bycatch problem. A biological opinion issued in an ESA section 7 consultation on the GOA and BSAI groundfish fisheries includes an incidental take statement for the take of two short-tailed albatrosses annually in the fisheries. If the annual take exceeds two, NMFS immediately must reinitiate section 7 consultation and review with the U.S. Fish & Wildlife Service (USFWS) the need for possible modification of the reasonable and prudent measures established to minimize take of the short-tailed albatross.

In response to these recent takes, several industry groups representing hook-and-line vessels in the GOA and the BSAI petitioned the Council and NMFS to impose regulatory measures intended to reduce the incidental mortality of seabirds in their fisheries. The presence of "free" food in the form of offal and bait attract many birds to fishing operations. In the process of feeding, birds sometimes come into contact with fishing gear and are accidentally killed. For example, most birds taken during hook-and-line operations are attracted to the baited hooks when the gear is being set. These birds become hooked at the surface and are then dragged underwater where they drown. The proposed measures would reduce the incidental mortality of short-tailed albatrosses and other seabird species by (1) minimizing the seabirds' attraction to fishing vessels and (2) preventing seabirds from attempting to seize baited hooks.

At its December 1996 meeting, the Council voted unanimously to recommend that all hook-and-line vessels fishing for groundfish in the GOA and BSAI must use certain seabird bycatch avoidance devices intended to reduce the incidental mortality of the short-tailed albatross and other seabird species. At its April 1997 meeting, the Council is scheduled to take final action to expand these measures to the Pacific halibut fishery in convention waters off Alaska. Should the Council take this action, rulemaking to require seabird avoidance measures would be initiated separately for the halibut fishery.

At the February 1997 Council meeting, NMFS informed the Council of revisions in the draft proposed rulemaking made because of concerns regarding the enforceability of some of the seabird avoidance measures. The Council reiterated its December 1996 recommendations that the seabird avoidance measures be required in regulation.

Seabird Bycatch in Alaskan Groundfish Fisheries

Over 80 species of seabirds, including the short-tailed albatross, occur over waters off Alaska and could potentially be affected by interactions with the GOA and BSAI groundfish fisheries. Fulmars, gulls, and albatrosses account for the vast majority of seabird bycatch in both the GOA and the BSAI. NMFS, USFWS, and the National Biological Survey are cooperating to obtain accurate information on the mortality of seabirds related to hook-and-line, trawl, and pot vessels fishing groundfish in the EEZ of the GOA and BSAI. This cooperative project will also address questions about the effects of various levels of take on the world-wide population of short-tailed albatrosses, currently estimated at 800 birds. Whereas the USFWS provided an opinion in 1989 that short-tailed albatrosses could be adversely affected by commercial fishing operations in Alaska, this effect on the world population is unknown.

The EA/RIR/IRFA prepared for this action contains more information on Alaskan seabirds and a historical background of the seabird bycatch issue (see **ADDRESSES**).

Seabird Bycatch Avoidance Gear and Methods

The proposed measures are intended to reduce the incidental mortality of seabirds by minimizing their attraction to fishing vessels and by preventing the seabirds from attempting to seize baited hooks. The proposed measures would apply to vessels fishing for groundfish with hook-and-line gear in the GOA and the BSAI and federally-permitted vessels fishing groundfish with hook-and-line gear in waters of the State of Alaska that are adjacent to the GOA and the BSAI and that retain more round-weight equivalent of groundfish than round-weight equivalent of halibut.

1. All applicable hook-and-line fishing operations would be conducted in the following manner:

a. Use hooks that, when baited, sink as soon as they are put in the water. This could be accomplished by the use of weighted groundlines and/or thawed bait.

b. Avoid dumping of offal to the extent practicable while gear is being set or hauled. If discharge of offal is unavoidable, the discharge must take place aft of the hauling station or on the opposite side of the vessel to that where gear is set or hauled.

c. Make every reasonable effort to ensure that birds brought on board alive are released alive and that, wherever possible, hooks are removed without jeopardizing the life of the bird.

2. All applicable hook-and-line fishing operations would be required to employ one or more of the following seabird avoidance measures:

a. Deploy gear only during the hours specified at § 679.24(e)(2)(iv)(D) of this

proposed rule, using only the minimum vessel's lights necessary for safety;

b. Tow a streamer line or lines during deployment of gear to prevent birds from taking hooks;

c. Tow a buoy, board, stick or other device during deployment of gear, at a distance appropriate to prevent birds from taking hooks. Multiple devices may be employed; or

d. Deploy hooks underwater through a lining tube at a depth sufficient to prevent birds from settling on hooks during deployment of gear.

The Council and NMFS intend to implement these proposed regulations for the groundfish fisheries first and to follow at a future time with the same or similar regulations for the Pacific halibut fishery. To avoid having the proposed groundfish regulations applicable to halibut fishermen that retain bycatch amounts of groundfish, the proposed regulations would apply only to those hook-and-line fishermen that retain more round-weight equivalent of groundfish than round-weight equivalent of halibut.

The Council and NMFS intend to reduce the fisheries-related bycatch and incidental mortality of seabirds that occur over waters off Alaska. To maximize the extent to which these proposed regulations would apply, an operator of a hook-and-line vessel that has been issued a Federal permit to fish for groundfish in the BSAI and GOA would be required to comply, even while fishing for groundfish in State of Alaska waters.

Although the Council's recommendation at its December 1996 meeting included a provision whereby fishermen could substitute other experimental seabird avoidance devices with the approval of the NMFS Administrator, Alaska Region, NMFS believes that such a waiver provision is not administratively practicable. NMFS strongly encourages the industry's efforts to find other effective seabird avoidance devices. Additional effective measures can be implemented through the regulatory amendment process in the future.

The proposed measures are modeled after NMFS' regulations implementing conservation and management measures adopted by the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) (61 FR 8483; March 5, 1996) and measures currently in use by some hook-and-line fishermen in Alaskan fisheries. Some of the CCAMLR measures were initially developed for use in the Australian and New Zealand longline fisheries and have proven very effective in reducing bait loss and incidental seabird mortality. In addition to the measures benefitting seabirds, the reduction of bait loss and subsequent increased fish harvest provides financial benefits to fishermen. In the Australian southern bluefin tuna fishery, annual economic losses attributed to bait loss and reduced harvest were estimated to exceed $7 million in Australian dollars (approximately $5 million United States).

The CCAMLR regulations indicate that longline gear shall be set between the times of nautical twilight. Nautical twilight is defined practically as those times when it is too dark to see the horizon clearly and when normal outdoor activities cannot be conducted without the use of artificial light. The intent of the proposed regulation is to limit hook-and-line gear deployment to those hours (nighttime hours/hours of darkness) between nautical twilight, if that is the option being exercised by the fisherman. The proposed regulation provides a table specifying the allowed hours of hook-and-line gear deployment. The *Nautical Almanac*, a U.S. Naval Observatory publication, was used to determine these times. This option is not available during the months of June and July, due to the lack of nautical twilight at northernmost latitudes.

Besides the measures proposed here, other methods have been used to reduce seabird bycatch. Some of them are: Loud noises to deter birds from the stern of the fishing vessel during gear deployment, automatic bait-caster to deploy bait away from the turbulent water caused by "prop wash" and causing the bait to remain afloat, deflating swim bladders or the squid mantle of bait species (causing bait to sink faster), and reducing the time taken to haul back gear. NMFS specifically requests comments on: (a) These and other effective methods for reducing seabird bycatch that are not included in the proposed measures, (b) any safety concerns of using seabird bycatch avoidance devices during extreme weather conditions, and (c) offal discharge during setting or hauling of hook-and-line gear and how either or both of these operations impacts seabird bycatch.

Suggestions for Streamer Line Construction

The streamer line is a seabird avoidance device that currently is required in Australian and New Zealand longline fisheries and has been credited with effectively reducing seabird bycatch. Scientific studies in New Zealand indicate that the quality of a streamer line, both in construction and materials used, played a major role in the streamer line's effectiveness in preventing seabirds from seizing baited hooks. In fact, the difference in bycatch rates between sets that used no streamer line and sets that used a poorly-constructed streamer line was not significant. Sets that used a high-quality streamer line were significantly less likely to catch seabirds than sets that used a poor-quality streamer line or no streamer line at all. The purpose of the streamer line is to scare birds away from the stern of the vessel when gear is deployed and baited hooks are present near or on the water's surface. A well-constructed streamer line thrashes about unpredictably; thus, the seabirds do not become habituated to its movement. The key characteristics of an effective streamer line are:

- All materials used to construct the streamer line and to hold the streamer line in place are strong enough to withstand all weather conditions in which hook-and-line fishing activity is likely to be undertaken;
- The streamer line is attached to a pole at the stern of the vessel and positioned such that it will be directly above the baited hooks as they are deployed;
- The height of the streamer line at the point of attachment is 3 to 4 meters (m) above sea level;
- The streamer line is constructed of material that is between 2 and 5 millimeters (mm) in diameter;
- Length of streamer line is a minimum of 150 to 175 m;
- Number of streamers attached to a streamer line is 5 to 10 pairs;
- Streamers made of a heavy, flexible material that will allow the streamers to move freely and flop unpredictably (for example, streamer cord inserted inside a red polyurethane tubing);
- Streamer pairs attached to the bird streamer line using a 3-way swivel; and
- Streamers should just skim above the water's surface over the baited hooks.

These characteristics should be taken into consideration when employing a bird streamer line, as proposed in this rulemaking.

The Magnuson-Stevens Act requires that the public be provided with a comment period of 15 to 60 days to respond to proposed regulations. Beginning January 1, the hook-and-line fisheries open in the BSAI and GOA. Short-tailed albatross sightings in the BSAI and/or GOA have occurred in all months from April to November. Considering the urgency of completing rulemaking regarding these proposed measures, NMFS has provided for a 15-day public comment period. The proposed measures were initially requested by hook-and-line industry representatives as emergency measures because of concerns about the potential economic impacts if the annual take limit for the short-tailed albatross is exceeded and fishing ceases pending reinitiation and conclusion of consultation pursuant to section 7 of the ESA.

Classification

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

NMFS prepared an IRFA as part of the RIR, which describes the impact this proposed rule would have on small entities, if adopted. Based on the analysis, it was determined that this proposed rule could have a significant economic impact on a substantial number of small entities. In 1995, 1,217 and 100 hook-and-line catcher vessels harvested groundfish from the GOA and BSAI, respectively. Catcher/processor vessels numbered 35 and 46 in those respective areas. Very significant impacts on small entities could occur if the groundfish fisheries are altered or perhaps closed due to the annual take of the endangered short-tailed albatross being exceeded. The likelihood of this happening is great under the status quo alternative because of recent takes (e.g., two in 1995). The economic impacts of such alterations or closures would depend on the development and implementation of the reasonable and prudent measures established to minimize take of the short-tailed albatross.

Several measures available under the preferred alternative would minimize the economic impacts on small entities. The economic impact on small entities would depend upon the particular measures chosen. Procedural or operational changes may be necessary in fishing operations. A vessel operator would have a choice of several other measures. The cost of buoys and bird streamer lines as seabird bycatch avoidance devices range from $50–$250 per vessel. A lining tube is a technology used in fisheries of other nations to deploy baited hooks underwater to avoid birds and is offered as a possible option. NMFS anticipates that the operators of smaller vessels (less than 60 ft (18.3 m)) would choose an avoidance measure other than a lining tube, which could cost as much as $35,000 per vessel. There are 154 and 53 hook-and-line catcher vessels and 31 and 45 catcher/processor vessels equal to or greater than 60 ft (18.3 m) in the GOA and BSAI, respectively.

If the annual take of short-tailed albatross in the hook-and-line fisheries operating under these proposed measures would exceed the take limit established under the ESA section 7 consultation, the actual economic impacts resulting from the modification of the reasonable and prudent measures established to minimize take of the short-tailed albatross would depend upon the development and implementation of revised measures. The revised measures could range from those proposed by this rule, additional or modified measures, to closures. The economic impact on fishing operations would depend upon the length of time of the closed period and the additional cost of revised measures. Significant impacts on small entities could occur if the fisheries closed due to the annual take of the endangered short-tailed albatross being exceeded. The likelihood of this happening is less under the proposed rule than under the status quo alternative. The economic impacts of this proposed rule on small entities could result in a reduction in annual gross revenues by more than 5 percent and could, therefore, potentially have a significant economic impact on a substantial number of small entities. A copy of this analysis is available from the Council (see **ADDRESSES**).

List of Subjects in 50 CFR Part 679

Fisheries, Reporting and recordkeeping requirements.

Dated: February 28, 1997.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.* and 1801 *et seq.*

2. In § 679.24, paragraph (e) is added to read as follows:

§ 679.24 Gear limitations.

* * * * *

(e) *Seabird avoidance gear and methods for hook-and-line vessels fishing for groundfish*—(1) *Applicability.* (i) Except as provided in paragraph (e)(1)(ii) of this section, the operator of a vessel that is required to obtain a Federal fisheries permit under § 679.4(b)(1) must comply with the seabird avoidance measures in paragraph (e)(2) of this section while fishing for groundfish with hook-and-line gear in the BSAI, in the GOA, or in waters of the State of Alaska that are shoreward of the BSAI and the GOA.

(ii) The operator of a vessel is not required to comply with the seabird avoidance measures in paragraph (e)(2) of this section whenever the round-weight equivalent of halibut retained on board exceeds the round-weight equivalent of groundfish retained on board.

(2) The operator of a vessel described in paragraph (e)(1) of this section must conduct fishing operations in the following manner:

(i) Use hooks that when baited, sink as soon as they are put in the water.

(ii) Avoid dumping of offal to the extent practicable while gear is being set or hauled. If discharge of offal is unavoidable, the discharge must take place aft of the hauling station or on the opposite side of the vessel to that where gear is set or hauled.

(iii) Make every reasonable effort to ensure that birds brought on board alive are released alive and that wherever possible, hooks are removed without jeopardizing the life of the bird.

(iv) Employ one or more of the following seabird avoidance measures:

(A) Tow a streamer line or lines during deployment of gear to prevent birds from taking hooks;

(B) Tow a buoy, board, stick or other device during deployment of gear, at a distance appropriate to prevent birds from taking hooks. Multiple devices may be employed; or

(C) Deploy hooks underwater through a lining tube at a depth sufficient to prevent birds from settling on hooks during deployment of gear; or

(D) Deploy gear only during the hours specified below, using only the minimum vessel's lights necessary for safety.

HOURS THAT HOOK-AND-LINE GEAR CAN BE DEPLOYED FOR SPECIFIED LONGITUDES ACCORDING TO PARAGRAPH (E)(2)(IV) OF THIS SECTION

[Hours are Alaska local time]

Calendar Month	Longitude		
	Shoreward to 150°W	151 to 165°W	166 to 180°W
January	1800–0700	1900–0800	2000–0900
February	1900–0600	2000–0700	2100–0800
March	2000–0500	2100–0600	2200–0700
April	2100–0400	2200–0500	2300–0600
May	2200–0300	2300–0400	2400–0500
June	[1]	[1]	[1]
July	[2]	[2]	[2]
August	2200–0400	2300–0500	2400–0600
September	2000–0500	2100–0600	2200–0700
October	1900–0600	2000–0700	2100–0800
November	1800–0700	1900–0800	2000–0900
December	1700–0700	1800–0800	1900–0900

[1] This measure cannot be exercised during June.
[2] This measure cannot be exercised during July.

[FR Doc. 97–5438 Filed 3–4–97; 8:45 am]
BILLING CODE 3510–22–P

50 CFR Part 697

[I.D. 091696A]

Atlantic Coast Weakfish Fisheries; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of additional public hearing; extension of comment period.

SUMMARY: On February 21, 1997, NMFS announced three public hearings to receive comments from fishery participants and other members of the public regarding proposed regulations on the harvest and possession of weakfish in the exclusive economic zone of the Atlantic Ocean from Maine through Florida.

Due to requests from the public, NMFS now announces one additional public hearing in New Bern, NC and extends the comment deadline.

To accommodate people unable to attend a hearing or wishing to provide additional comments, NMFS also solicits written comments on the proposed rule.

DATES: Written comments on the proposed rule and supporting documents (Draft Supplemental Environmental Impact Statement and Regulatory Impact Review (DSEIS/RIR) must be received on or before April 1, 1997.

The New Bern, NC hearing will be held on Thursday, March 27, 1997, from 7–9 p.m.

ADDRESSES: Written comments should be sent to Richard H. Schaefer, Chief, Staff Office of Intergovernmental and Recreational Fisheries (Fx2), National Marine Fisheries Service, 8484 Georgia Avenue, Suite 425, Silver Spring, MD 20910. Clearly mark the outside of the envelope "Atlantic Weakfish Comments." The hearing will be held at the following location:

Sheraton Grand New Bern, 1 Bicentennial Park, New Bern, NC 28563.

FOR FURTHER INFORMATION CONTACT: Thomas Meyer/Paul Perra, 301–427–2014.

SUPPLEMENTARY INFORMATION: The hearing announcement was published on February 21, 1997, (62 FR 7994).

A complete description of the measures, and the purpose and need for the proposed action, is contained in the proposed rule published February 14, 1997 (62 FR 6935), and is not repeated here. A copy of the proposed rule may be obtained by writing (see **ADDRESSES**) or calling the contact person (see **FOR FURTHER INFORMATION CONTACT**).

The purpose of this document is to alert the interested public of hearings and provide for public participation. These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids for the New Bern, NC hearing should be directed to Thomas Meyer by March 17, 1997 (see **ADDRESSES**).

Authority: 16 U.S.C. 1851 note.

Dated: February 27, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–5335 Filed 3–4–97; 8:45 am]
BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 62, No. 43
Wednesday, March 5, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 28, 1997.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20523 and to Department Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6204 or (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

- **Rural Business-Cooperative Service**

Title: Intermediary Relending Program.

OMB Control Number: 0575–0130.

Summary: Information collected includes an application contract, agreements, work plans, certifications and budget information.

Need and Use of the Information: The information is necessary in order to make prudent credit and financial analysis decisions.

Description of Respondents: Not-for-profit institutions; individuals or households; business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 160.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 16,930.

- **Rural Utilities Service**

Title: 7 CFR 1717, Subpart Y, Settlement of Debt Owed by Electric Borrowers.

OMB Control Number: 0572–New.

Summary: Information will be collected concerning the need for debt settlement, the amount of debt that can be repaid, scheduling of repayment and the range of opportunities for enhancing the amount of debt that can be recovered.

Need and Use of the Information: The information is needed to determine whether debt settlement is required and the amount of relief that is needed.

Description of Respondents: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 2.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 6,000.

Larry Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 97–5391 Filed 3–4–97; 8:45 am]
BILLING CODE 3410–01–M

Food Safety and Inspection Service

[Docket No. 97–005N]

User Fees To Cover On-site Inspection Costs of Meat, Poultry, and Egg Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Department of Agriculture's Food Safety and Inspection Service (FSIS) will hold a public meeting on March 10, 1997, to discuss user fees for the inspection of meat, poultry, and egg products. The meeting will be an initial step in identifying the most equitable user fee system, and will enable the public to begin focusing on identifying criteria to be evaluated and options to be considered in establishing such a system.

DATES: The meeting will be held from 1:00 p..m. to 5:00 p.m. on March 10, 1997, in the Patio in the Jamie A. Whitten Building, Department of Agriculture, 12th and Jefferson Drive, SW., Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: To register for the meeting, contact Ms. Lisa Parks at (202) 501–7138, FAX (202) 501–7642, or E-mail usdafsis/s=confer@mhs.attmail.com. For questions about the meeting or to obtain copies of a draft agenda, contact Mr. Charles Danner, FSIS, at (202) 501–7138.

SUPPLEMENTARY INFORMATION: The Administration believes that the collection of user fees is essential to the successful long-term implementation of meat, poultry and egg inspection reforms. In Fiscal Year 1998, it is estimated that the new fees would generate $390 million for the Federal Government and result in savings to taxpayers. This March 10, 1997, public meeting will be convened for the purpose of identifying the criteria FSIS will use in considering available user fee options. Attendees will be asked to address (1) What criteria should be used in developing and evaluating user fee options? and (2) What user fees options FSIS should be considering?

Done at Washington, DC, on February 27, 1997.

Thomas J. Billy,

Administrator.

[FR Doc. 97–5332 Filed 2–27–97; 5:06 pm]
BILLING CODE 3410–DM–P

Grain Inspection, Packers and Stockyards Administration

Opportunity for Designation in Kansas - Termination of Kansas' Designation, Possible Cancellation of Kansas' Designation, and Requests for Applications for Designation from Persons Interested in Providing Official Services in Kansas

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA), USDA.

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations will end not later than triennially and may be renewed. The designation of the Kansas State Grain Inspection Department (Kansas) will end August 31, 1997, according to the Act. GIPSA is asking persons interested in providing official services in Kansas to submit an application for designation. In addition, Kansas has advised GIPSA that it is considering asking for cancellation of its designation effective July 1, 1997. Accordingly, GIPSA is also asking that the persons submitting applications be prepared to provide service effective July 1, 1997.

DATES: Applications must be postmarked or sent by telecopier (FAX) on or before March 31, 1997.

ADDRESSES: Applications must be submitted to USDA, GIPSA, Neil E. Porter, Director, Compliance Division, AG Code 3604, 1400 Independence Avenue, S.W., Washington, D.C. 20250–3604. Internet and GroupWise users may respond to nporter@fgisdc.usda.gov. Applications may be submitted by FAX on 202–690–2755. If an application is submitted by FAX, GIPSA reserves the right to request an original application. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Neil E. Porter, telephone 202–720–8262.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services. GIPSA designated Kansas, main office located in Topeka, Kansas, to provide official inspection services under the Act on September 1, 1994.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act. The designation of Kansas ends on August 31, 1997, according to the Act.

Pursuant to Section 7(f)(2) of the Act, the following geographic area, the entire State of Kansas, is assigned to Kansas.

Interested persons, including Kansas, are hereby given the opportunity to apply for designation to provide official services in the geographic area specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the Kansas geographic area is for the period beginning September 1, 1997, and ending August 31, 2000. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant(s) will be designated.

Further, Kansas has advised GIPSA that it is considering asking for cancellation of its designation effective July 1, 1997. As a result, GIPSA is also asking persons submitting applications to be prepared to provide official services effective July 1, 1997.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: February 26, 1996.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 97–5333 Filed 3–4–97; 8:45 am]

BILLING CODE 3410–EN–F

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the District of Columbia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the District of Columbia Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 12:00 p.m. on Thursday, March 13, 1997, at the U.S. Commission on Civil Rights, Conference Room 540, 624 Ninth Street NW, Washington, DC 20425. The purpose of the meeting is to provide an orientation for new Committee members, and plan project activities for FY 1997.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Steven Sims, 202–862–4815, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 28, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–5456 Filed 2–28–97; 4:58 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 10–97]

Foreign-Trade Zone 38, Spartanburg, SC; Request for Manufacturing Authority, Zeuna Stärker USA, Inc., (Automotive Exhaust Systems)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the South Carolina State Ports Authority, grantee of FTZ 38, pursuant to § 400.28(a)(2) of the Board's regulations (15 CFR part 400), requesting authority on behalf of Zeuna Stärker USA, Inc. (ZSUSA) (a subsidiary of Zeuna Stärker GmbH & Co., KG, Germany), to manufacture automotive exhaust systems under FTZ procedures within FTZ 38, with certain restrictions applicable to foreign stainless steel materials. It was formally filed on February 18, 1997.

The ZSUSA plant is located at 2651 New Cut Road within the proposed Site 4 of FTZ 38 in the Wingo Corporate Park, Spartanburg, South Carolina (Docket 65–96, 61 FR 45400, 8–29–96). The ZSUSA plant (50 employees) is used to manufacture exhaust systems for automotive applications that are sold in the U.S. and exported. Components sourced from abroad (about 80% of total) include: Catalytic converters, muffler boxes, flanges, fasteners, helical pressure and threaded inserts, brackets, stainless steel alloy pipe, and monoliths (duty rate range: 0.1–5.3%). The application indicates that the majority of the plant's current output is shipped to BMW Manufacturing Corporation's auto plant in Spartanburg, South Carolina. Some two percent of the ZSUSA plant's shipments are exported.

FTZ procedures would exempt ZSUSA from Customs duty payments on the foreign components used in export production. On its domestic sales, ZSUSA would be able to choose the duty rate during Customs entry procedures that applies to finished auto exhaust systems (2.7%) for the foreign inputs noted above, except that foreign status stainless steel pipe would be admitted to FTZ 38 in privileged foreign status (19 CFR 146.41), making such materials subject to the full duty normally applicable. The motor vehicle duty rate (2.5%) could apply to the foreign components in the finished exhaust systems, which are not in privileged foreign status, and that are shipped to the BMW plant (FTZ Subzone 38A) or other U.S. motor vehicle assembly plants with subzone status for manufacture into finished motor vehicles under FTZ procedures. FTZ procedures would also exempt the foreign components that become scrap during the production process (about 0.08% for stainless steel pipe; 4% for the other foreign items) from Customs duties. The request indicates that the savings from FTZ procedures would help improve the ZSUSA plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 5, 1997. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to May 19, 1997).

A copy of the application and the accompanying exhibits will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th Street & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: February 24, 1997.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–5404 Filed 3–4–97; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–301–602]

Certain Fresh Cut Flowers From Colombia: Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of antidumping duty administrative review.

SUMMARY: On August 19, 1996, the Department of Commerce (the Department) published in the **Federal Register** the final results of three concurrent administrative reviews of the antidumping duty order on certain fresh cut flowers from Colombia. These reviews cover a total of 348 producers and/or exporters of fresh cut flowers to the United States for at least one of the following periods: March 1, 1991 through February 29, 1992; March 1, 1992 through February 28, 1993; and March 1, 1993 through February 28, 1994. We are now amending the final results to correct certain ministerial errors we made in our calculations for the 93/94 review period.

EFFECTIVE DATE: March 5, 1997.

FOR FURTHER INFORMATION CONTACT: Lyn Johnson or Richard Rimlinger, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4733.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

SUPPLEMENTARY INFORMATION:

Background

On August 19, 1996, the Department published in the **Federal Register** (61 FR 42833) the final results of three concurrent administrative reviews of the antidumping duty order on certain fresh cut flowers from Colombia. Imports covered by these reviews are shipments of certain fresh cut flowers from Colombia (standard carnations, miniature (spray) carnations, standard chrysanthemums and pompon chrysanthemums). The reviews covered a total of 348 producers and/or exporters of fresh cut flowers to the United States for at least one of the following periods: March 1, 1991 through February 29, 1992; March 1, 1992 through February 28, 1993; and March 1, 1993 through February 28, 1994.

After publication of our final results, we received timely allegations of ministerial and clerical errors from several respondents. We reviewed the allegations and agreed that we made certain ministerial errors in our calculations for the final result for the 93/94 period for three respondents: Grupo Papagayo (Papagayo Group), Floricola La Gaitana, S.A., and Agricola Celestina & La Maria Ltda., (AGA Group). Although these final results are currently the subject of litigation before the U.S. Court of International Trade, the Court granted permission to correct these errors on February 12, 1997.

As a result of correcting the ministerial errors, some weighted-average rates for the period have changed. *See* Memorandum to the file dated December 4, 1996, for Grupo Papagayo, and memoranda to the file dated September 6, 1996, for Floricola La Gaitana and the AGA Group. We have corrected these errors only for the 93/94 review period because only this review period will affect the current deposit rates.

Amended Final Results of Review

After correcting for ministerial errors, we have determined the following weighted-average margins to exist for the following producers or exporters for the period March 1, 1993 through February 28, 1994:

Producer/exporter	93/94
Papagayo Group Agricola Papagayo Ltda. Inversiones Calypso S.A.	3.88
Floricola La Gaitana, S.A	0.00
AGA Group Agricola la Celestina Agricola la Maria Agricola Benilda Ltda.	9.99

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages as stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of these amended final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption, as provided by section 751(a)(1) of the Act, on or after the publication date of these amended final

results of review: (1) The cash deposit rate for the named companies will be the rates as listed above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the "all other" rate of 3.10 percent. This is the rate established during the LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These amended final results of administrative review and notice are in accordance with section 751(f) of the Tariff Act (19 U.S.C. 1675(f)) and 19 CFR 353.28.

Dated: February 27, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–5406 Filed 3–4–97; 8:45 am]

BILLING CODE 3510–DS–P

[A–583–508]

Porcelain-on-Steel Cooking Ware From Taiwan: Final Results of Changed Circumstances Antidumping Duty Administrative Review, and Revocation in Part of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of changed circumstances antidumping duty administrative review, and revocation in part of antidumping duty order.

SUMMARY: On January 10, 1997, the Department published a notice of initiation of a changed circumstances antidumping duty administrative review and preliminary results of review with intent to revoke, in part, the antidumping duty order on porcelain-on-steel (POS) cooking ware from Taiwan. We are now revoking this order in part, with regard to teakettles, based on the fact that domestic parties have expressed no interest in the importation or sale of teakettles imported from Taiwan.

EFFECTIVE DATE: March 5, 1997.

FOR FURTHER INFORMATION CONTACT: Amy S. Wei or James Terpstra, Office of Antidumping/Countervailing Duty Enforcement, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Background

On September 12, 1996, General Housewares Corporation (GHC) requested that the Department conduct a changed circumstances administrative review to determine whether to partially revoke the order with regard to imports of teakettles from Taiwan. In its request, GHC stated that it is the only U.S. producer of POS cooking ware and that, in the original petition, it requested that the scope of order include teakettles. GHC also stated that it no longer manufactures POS teakettles and has no further interest in the antidumping duty order with respect to teakettles.

We preliminarily determined that petitioner's affirmative statement of no interest constituted changed circumstances sufficient to warrant a partial revocation of this order. Consequently, on January 10, 1997, the Department published a notice of initiation and preliminary results of changed circumstances antidumping duty administrative review and intent to revoke this order in part (62 FR 1434). We gave interested parties an opportunity to comment on the preliminary results of this changed circumstances review. We received no comments.

Scope of Review

The products covered by this antidumping order are POS cooking ware, including teakettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. Kitchenware is not subject to this order. See Antidumping Duty Order; Porcelain-on-Steel Cooking Ware from Taiwan, 51 FR 43416 (December 2, 1986).

The merchandise covered by this changed circumstances review are teakettles from Taiwan. Imports of teakettles are currently classifiable under the harmonized tariff schedule (HTS) subheading 7323.94.00.10. The HTS subheading is provided for convenience and U.S. Customs purposes. Our written description of the scope of this proceeding is dispositive. The order with regard to imports of other POS cooking ware is not affected by this request. Thus, pursuant to the Department's determination to revoke in part the antidumping order on POS cooking ware from Taiwan with respect to teakettles, the scope of the antidumping order on POS cooking ware from Taiwan now reads as follows: The products covered by this antidumping duty order are POS cooking ware which do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. Kitchenware and teakettles are not subject to this order.

Final Results of Review; Partial Revocation of Antidumping Duty Order

The affirmative statement of no interest by petitioner in POS cooking ware from Taiwan constitutes changed circumstances sufficient to warrant partial revocation of this order. Therefore, the Department is partially revoking the order on POS cooking ware from Taiwan with regard to teakettles, in accordance with sections 751 (b) and (d) and 782(h) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 353.25(d)(1).

The Department will instruct the U.S. Customs Service (Customs) to proceed with liquidation, without regard to antidumping duties, of all unliquidated entries of teakettles from Taiwan that are not subject to final results of administrative review. The Department will further instruct Customs to refund with interest any estimated duties collected with respect to unliquidated entries of teakettles from Taiwan that are not subject to final results of administrative review.

This notice also serves as a reminder to parties subject to administrative protection orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This changed circumstances administrative review, partial revocation of the antidumping duty order and notice are in accordance with sections 751 (b) and (d) and 782(h) of the Act and sections 353.22(f) and 353.25(d) of the Department's regulations.

Dated: February 27, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–5403 Filed 3–4–97; 8:45 am]

BILLING CODE 3510–DS–P

[A–428–820]

Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From Germany; Antidumping Duty Administrative Review; Extension of Time Limit

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit.

SUMMARY: The Department of Commerce (the Department) is extending the time limit of the preliminary results of the antidumping duty administrative review of Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Germany. This review covers the period January 27, 1995 through July 31, 1996.

EFFECTIVE DATE: March 5, 1997.

FOR FURTHER INFORMATION CONTACT: Nancy Decker or Linda Ludwig, Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1324 or 482–3833, respectively.

SUPPLEMENTARY INFORMATION: The Department has received a timely cost allegation from Petitioner. We have initiated a cost of production investigation based on these allegations. Because of the cost investigation, it is not practicable to complete this review within the original time limit. The Department is extending the time limit for completion of the preliminary results until September 2, 1997, in accordance with section 751(a)(3)(A) of the Trade and Tariff Act of 1930, as amended by the Uruguay Round Agreements Act of 1994. The deadline for the final results of this review will continue to be 120 days after publication of the preliminary results.

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (19 U.S.C. 1675 (a)(3)(A)).

Dated: February 27, 1997.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 97–5407 Filed 3–4–97; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–054, A–588–604]

Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof From Japan and Tapered Roller Bearings, Less Than Four Inches in Outside Diameter, and Components Thereof From Japan; Antidumping Duty Administrative Reviews; Time Limits

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limits.

SUMMARY: The Department of Commerce (the Department) is extending the time limits for the preliminary results of the 1995–1996 administrative reviews of the antidumping duty order (A–588–604) and finding (A–588–054) on tapered roller bearings from Japan. These reviews cover 5 manufacturers/exporters and resellers of the subject merchandise to the United States and the period October 1, 1995, through September 30, 1996.

EFFECTIVE DATE: March 5, 1997.

FOR FURTHER INFORMATION CONTACT: Valerie Owenby at (202) 482–0145, Charles Ranado at (202) 482–3518, or Stephanie Arthur at (202) 482–6312, AD/CVD Enforcement Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete these reviews within the normal time frame, the Department is extending the time limits for completion of the preliminary results until September 1, 1997 in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act of 1994. See Memorandum from Joseph A. Spetrini to Robert S. LaRussa, on file in Room B–099 of the Main Commerce Building. The deadline for the final results of this review will continue to be 120 days after publication of the preliminary results.

These extensions are in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)(3)(A)).

Dated: February 26, 1997.

Joseph A. Spetrini,

Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 97–5405 Filed 3–4–97; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 022597E]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of the Law Enforcement Advisory Panel (AP).

DATES: This meeting will be held on March 19, 1997, from 8:30 a.m. to 12:00 noon.

ADDRESSES: This meeting will be held at the Isle of Capri Crowne Plaza Resort, 151 Beach Boulevard, Biloxi, MS 39530; telephone: (601) 435–5400.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Richard Leard, Senior Fishery Biologist; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION: The purpose of the meeting will be to review management alternatives being considered by the Council in Amendment 15 to the Fishery Management Plan (FMP) for Reef Fish in the Gulf of Mexico. Amendment 15 includes a license limitation system for red snapper with initial trip-limit allocations. In order to help alleviate the effects of derby fishing, the amendment also considers opening the commercial season for red snapper for only the first 15 days of each month until the quota is reached and the fishery is closed. In addition to proposed measures for red snapper, Amendment 15 considers alternatives regarding the harvest of reef fish in traps other than permitted reef-fish traps and the potential removal of certain species of sea basses, grunts, and porgies from the management unit.

The Law Enforcement AP will also review the current regulations on bag limits for reef fish species and any potential enforcement problems. Finally, the AP will review the schedule for implementation of Amendment 9 to the Shrimp FMP that requires virtually all shrimp trawls used in Federal waters west of Cape San Blas, FL to be equipped with certified bycatch reduction devices.

At 1:00 p.m., members of the Law Enforcement AP will attend a meeting of the Ad Hoc Interjurisdictional Legal Panel of the Gulf States Marine Fisheries Commission at the same location. This meeting will focus on:

(1) Consistency of state fishery regulations with Magnuson-Stevens Act FMP guidelines;

(2) Consistency among Gulf States in licensing and vessel registration;

(3) Development of guidelines for effective state prosecution of Federal fishery violations; and

(4) Future of state jurisdictional authority within and without states' waters. If necessary, the Law Enforcement AP will reconvene following the Ad Hoc Legal Panel meeting to consider any recommendations that arise from these discussions. All business is expected to be concluded by 5:00 p.m.

The AP comprises chief enforcement agents for the state and Federal fishery agencies in the Gulf area who advise the Council on law enforcement issues.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by March 12, 1997.

Dated: February 26, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–5336 Filed 3–4–97; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 022597C]

Pacific Fishery Management Council; Public Meetings and Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of reports; notice of public meetings and hearings.

SUMMARY: The Pacific Fishery Management Council (Council) has begun its annual preseason management process for the 1997 ocean salmon fisheries. This notice announces the availability of Council documents and the dates and locations of Council meetings and public hearings. These actions comprise the complete schedule of events followed by the Council for determining the annual proposed and final modifications to ocean salmon management measures.

DATES: Written comments on the season options must be received by April 2, 1997.

ADDRESSES: Written comments should be sent to Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201; telephone: (503) 326–6352. See **SUPPLEMENTARY INFORMATION** for dates, times, and locations of public meetings and hearings.

FOR FURTHER INFORMATION CONTACT: John Coon, Salmon Management Coordinator; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION:

February 24, 1997: Council reports which summarize the 1996 salmon season and project the expected salmon stock abundance for 1997 are available to the public from the Council office.

March 3–7, 1997: Council and advisory entities meet at the Red Lion Hotel Lloyd Center, 1000 NE Multnomah, Portland, OR, to adopt 1997 regulatory options for public review.

March 18, 1997: Report with proposed management options and public hearing schedule is mailed to the public. (The report includes options, rationale, and summary of biological and economic impacts.)

March 31 - April 1, 1997: Public hearings are held to receive comments on the proposed ocean salmon fishery regulatory options adopted by the Council. All public hearings begin at 7 p.m. on the dates and at the locations specified below.

March 31, 1997: Westport High School Commons, 2850 S. Montesano Street, Westport, WA.

March 31, 1997: Pony Village Motor Inn, Ballroom, Virginia Avenue, North Bend, OR.

April 1, 1997: Red Lion Inn, Chinook Room, 400 Industry, Astoria, OR.

April 1, 1997: Red Lion Inn, Evergreen Room, 1929 Fourth Street, Eureka, CA.

April 7–11, 1997: Council and its advisory entities meet at the Clarion Hotel, Millbrae, CA, to adopt final 1997 regulatory measures.

April 17, 1997: Newsletter describing adopted ocean salmon fishing management measures is mailed to the public.

April 11–22, 1997: Salmon Technical Team completes "Preseason Report III Analysis of Council Adopted Regulatory Measures for 1996 Ocean Salmon Fisheries."

May 1, 1997: Federal regulations implemented and preseason report III available for distribution to the public.

Special Accommodations

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Eric Greene at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: February 26, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–5334 Filed 3–4–97; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 022797B]

Marine Mammals; Permit No. 968 (P557D)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Scientific research permit amendment.

SUMMARY: Notice is hereby given that a request for amendment of scientific research permit no. 968 submitted by Scripps Institution of Oceanography, Acoustic Thermometry of Ocean Climate Project, Institute for Geophysics and Planetary Physics, 9500 Gilman Drive, La Jolla, California 92093–02252, has been granted.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (310/980–4001).

SUPPLEMENTARY INFORMATION: The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

This amendment incorporates into Permit No. 968 refinements to the research protocol, as provided for by Special Condition A.5. of Permit 968.

Issuance of this amendment, as required by the ESA was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: February 27, 1997.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–5382 Filed 3–4–97; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

New Export Visa Stamp for Certain Textiles and Textile Products Produced or Manufactured in Japan

February 27, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs providing for the use of a new export visa stamp.

EFFECTIVE DATE: April 1, 1997.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

Beginning on April 1, 1997, the "Japan Cotton Textile Exporters Association" and the "Japan Silk & Synthetic Textiles Exporters' Association" will merge to form the "Japan Textiles Exporters' Association."

Effective on April 1, 1997, regardless of the date of export, textile products from Japan shall be accompanied by a visa with the new stamped marking "Japan Textiles Exporters' Association," instead of the ones from the former "Japan Cotton Textile Exporters Association" and "Japan Silk & Synthetic Textiles Exporters' Association." There will be a grace period from April 1, 1997 through April 30, 1997, during which the old or the new visas will be acceptable. The new visa stamp must accompany goods exported on and after May 1, 1997.

Export visa stamps from Japan with the following markings remain unchanged and will continue to be accepted: "Japan Woollen & Linen Textiles Exporters Association," "The Japan Textile Products Exporters' Association" and "Japan General Merchandise Exporters' Association." The exempt certification stamp will continue unchanged with the "The Japan Textile Products Exporters' Association" marking.

See 52 FR 4639, published on February 13, 1987.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 27, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on February 6, 1987, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive directed you to prohibit entry of certain textiles and textile products, produced or manufactured in Japan for which the Government of Japan has not issued an appropriate visa or exempt certification.

Beginning on April 1, 1997, the "Japan Cotton Textile Exporters Association" and the "Japan Silk & Synthetic Textiles Exporters' Association" will merge to form the "Japan Textiles Exporters' Association."

Effective on April 1, 1997, regardless of the date of export, textile products from Japan shall be accompanied by a visa with the new stamped marking "Japan Textiles Exporters' Association," instead of the ones from the former "Japan Cotton Textile Exporters Association" and "Japan Silk & Synthetic Textiles Exporters' Association." There will be a grace period from April 1, 1997 through April 30, 1997, during which the old or the new visas will be acceptable. The new visa stamp must accompany goods exported on and after May 1, 1997.

A facsimile of the new visa stamp is enclosed with this letter. The remaining visa and certification stamps remain unchanged.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

BILLING CODE 3510–DR–F

Visa Stamp:

JAPAN TEXTILE EXPORTERS' ASSOCIATION

[FR Doc. 97-5402 Filed 3-4-97; 8:45 am]
BILLING CODE 3510-DR-C

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Scientific Advisory Board Closed Meeting

AGENCY: Defense Intelligence Agency, Department of Defense.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92-463, as amended by Section 5 of Public Law 94-409, notice is hereby given that a closed meeting of the DIA Scientific Advisory Board has been scheduled as follows:

DATES: March 18, 1997 (800am to 1600pm).

ADDRESSES: The Defense Intelligence Agency, Bolling AFB, Washington, D.C. 20340-5100.

FOR FURTHER INFORMATION CONTACT: Maj. Michael W. Lamb, USAF, Executive Secretary, DIA Scientific Advisory Board, Washington, D.C. 20340-1328 (202) 231-4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(I), Title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: February 28, 1997.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 97-5364 Filed 3-4-97; 8:45 am]

BILLING CODE 5000-04-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[FERC-544]

Proposed Information Collection and Request for Comments

February 28, 1997.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104-13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted within 60 days of the publication of this notice.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael P. Miller, Information Services Division, ED-12.4, 888 First Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael P. Miller may be reached by telephone at (202) 208-1415, by fax at (202) 273-0873, and by e-mail at mmiller@ferc.fed.us.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC-544 "Gas Pipeline Rates: Rate Change (Formal)" OMB No. 1902-0153) is used by the Commission to implement the statutory provisions of the Sections 4, 5, and 16 of the Natural Gas Act (NGA) (15 U.S.C. 717-717w). Under FERC-544 the Commission investigates the rates charged by natural gas pipeline companies subject to its jurisdiction. If, after its investigation, the Commission is of the opinion that the rates are "unjust or unreasonable or unjustly discriminatory or unduly preferential," it is authorized to determine and prescribe just and reasonable rates.

Formal rate change filings (FERC-544) are suspended and set for hearing. When the Section 4(e) filing is suspended, the rate becomes the subject of a hearing process and may go into effect subject to refund with interest. All suspended filings that go through the hearing process are considered formal cases and an investigation is instituted to determine the reasonableness of the rate filing. If the rates and charges are deemed unjust, unreasonable or unduly discriminatory, the appropriate rate, charge or service condition is ascertained by the Commission and a final order issued.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
25	1.0	4,582.5	114,563

The estimated total cost to respondents is $5,728,150, (114,563 hours divided by 2,087 hours per year per employee times $104,350 per year per average employee=$5,728,150). The cost per respondent is $229,125.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Commetns are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of

the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.* permitting electronic submission of responses.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5392 Filed 3–4–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–259–000]

Algonquin Gas Transmission Company; Notice of Application

February 27, 1997.

Take notice that on February 21, 1997, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed an application with the Commission in Docket No. CP97–259–000 pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon and remove pipe in New Jersey and pursuant to Section 7(c) of the NGA in order to temporary acquire temporary workspace adjacent to the existing right-of-way to replace the removed pipe, all as more fully set forth in the application which is open to the public for inspection.

Algonquin proposes to remove and replace approximately 2,400 feet of 26-inch diameter pipe in Raritan, Hunterdon County, New Jersey, in order to comply with a U.S. Department of Transportation (DOT) class location change. Algonquin states that it must upgrade this portion of its pipeline or lower the Maximum Allowable Operating Pressure (MAOP) below the currently effective MAOP of 750 psig by January 17, 1998. Algonquin also states that it would be unable to meet its contractual obligations at an MAOP lower than the present MAOP of 750 psig.

Algonquin proposed to acquire temporary rights to use 35 feet of work space adjacent to its existing right-of-way in order to remove the 2,400 feet of pipe it needs to replace. Algonquin states that it would place new 26-inch diameter pipe in the same trench excavated to remove the old pipe. Algonquin further states that it would be forced to operate heavy equipment over its in-service 30-inch diameter loop pipeline if Algonquin does not acquire the temporary workspace. Algonquin estimates that it would cost $1,312,833 to replace the removed pipe.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 20, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Algonquin to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5329 Filed 3–4–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–258–000]

Gas Transport, Inc.; Notice of Request Under Blanket Authorization

February 27, 1997.

Take notice that on February 21, 1997, Gas Transport, Inc. (GTI), P.O. Box 430, Lancaster, OH 43130–0430, filed in Docket No. CP97–258–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a new delivery point in West Virginia under GTI's blanket certificate issued in Docket No. CP86–291–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

GTI proposes to construct and operate a new connection for the delivery of gas to Hope Gas, Inc. (Hope). The new delivery point location is 702+00 GTI Line #1, Clay District, Wood County, West Virginia. The quantity of gas to be delivered at this delivery point is a maximum of 3,000 Mcf per year. GTI states that this new delivery point is not prohibited by its existing tariff and that it has sufficient capacity to accomplish deliveries without detriment or disadvantage to other customers. The proposed delivery point will not have an effect on GTI's peak day and annual deliveries and the total volumes delivered will not exceed total volumes authorized prior to this request. The cost of construction is estimated at $2,000 and Hope will provide a contribution-in-aid-of-construction to finance the measurement and regulation.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5330 Filed 3–4–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–317–002]

Great Lakes Gas Transmission Limited Partnership; Notice of Compliance Filing

February 27, 1997.

Take notice that on February 25, 1997, Great Lakes Gas Transmission Limited Partnership (Great Lakes), tendered for filing to become part of its FERC Gas Tariff, the following revised tariff sheets:

Second Revised Volume No. 1

Substitute Third Revised Sheet No. 6
Substitute Second Revised Sheet No. 9
Substitute Second Revised Sheet No. 53
Substitute First Revised Sheet No. 54
Substitute Second Revised Sheet No. 59
Substitute Original Sheet No. 59A
Substitute Second Revised Sheet No. 60

Original Volume No. 2

Substitute Sixth Revised Sheet No. 3–A

Great Lakes states that on February 3, 1997, in Docket No. RP96–317–000, the Commission issued an order accepting Great Lakes' proposal to implement a revised fuel allocation methodology to reflect a more distance sensitive methodology than the present zone-based method presently utilized. Under the revised fuel allocation methodology, Great Lakes' Transporter's Use percentages applicable to transportation services are to be determined on a 75-mile basis.

Pursuant to the Commission's February 3, 1997 order, Great Lakes filed the revised tariff sheets to implement the approved revision to the methodology for allocating system fuel and other use gas, and the corresponding determination of Transporter's Use percentages, from a zone-based methodology to a 75-mile based methodology. Great Lakes requested that the revised tariff sheets filed herein become effective on April 1, 1997.

Great Lakes states that copies of its filing were served on each of its firm customers, parties on the official service list in this proceeding, and the Public Service Commissions of the States of Minnesota, Wisconsin and Michigan.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Copies of this filing are on file with the Commission and are available for public inspection in the Commission's Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5326 Filed 3–4–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–143–042]

Great Lakes Gas Transmission Limited Partnership; Notice of Compliance Filing

February 27, 1997.

Take notice that on February 24, 1997, Great Lakes Gas Transmission Limited Partnership (Great Lakes), tendered for filing to become part of its FERC Gas Tariff, the following revised tariff sheets, with an effective date of March 1, 1997:

Second Revised Volume No. 1

First Revised Second Revised Sheet No. 4
First Revised First Revised Sheet No. 4A
First Revised First Revised Sheet No. 5

Original Volume No. 2

First Revised Seventeenth Revised Sheet No. 151
First Revised Fourteen Revised Sheet No. 223
First Revised Fourteen Revised Sheet No. 245
First Revised Eighth Revised Sheet No. 269
First Revised Fourteen Revised Sheet No. 294
First Revised Ninth Revised Sheet No. 603
First Revised Sixth Revised Sheet No. 604

Great Lakes states that on January 21, 1997, in Docket No. RP91–143–037, the Commission issued an order accepting Great Lakes' pro forma Case-B alternative methodology reflecting the allocation of Administrative and General, Account No. 850 and Account No. 851 expenses (A&G/S&E) on a volumetric basis, in lieu of the currently utilized volume-distance basis.

Great Lakes states the above referenced tariff sheets are being filed in compliance with the Commission's order accepting the Case-B allocation methodology for A&G/S&E.

Great Lakes states that copies of its filing were served on each of its firm customers, parties on the official service list in this proceeding, and the Public Service Commissions of the States of Minnesota, Wisconsin and Michigan.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed as provided in Section 154.210 of the Commission's Regulations. Copies of this filing are on file with the Commission and are available for public inspection in the Commission's Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5327 Filed 3–4–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–260–000]

National Fuel Gas Supply Corporation; Notice of Application

February 27, 1997.

Take notice that on February 21, 1997, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203 filed an application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations for permission and approval for National Fuel to abandon certain storage service provided under Rate Schedules SS–1 and SS–2, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, National Fuel proposes to abandon, effective April 1, 1997, the storage service it provides for Valley Gas Company, Connecticut Natural Gas Corporation, Essex County Gas Company, and Yankee Gas Services Company under National Fuel's Rate Schedules SS–1 and SS–2. National Fuel states that all four customers submitted written notices of termination to National Fuel on or before March 31, 1996, requesting termination of their services, effective April 1, 1997.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 20, 1997, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulation Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience

and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for National Fuel to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5328 Filed 3–4–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–239–001]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

February 27, 1997.

Take notice that on February 24, 1997, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet, to become effective March 1, 1997:

Substitute Alternate First Revised Sheet No. 254

Northwest states that on January 29, 1997, Northwest submitted preferred and alternate tariff sheets to propose changes to the Facilities Reimbursement provision of Section 21 of the General Terms and Conditions of its tariff. Northwest further states that it intended for Section 21.4, Existing Facilities, to be identical on Second Revised Sheet No. 255 and on Alternate First Revised Sheet No. 254. Northwest states that due to an oversight, the phrase "including any related income taxes" was inadvertently omitted from Section 21.4 on Sheet No. 254. Therefore, Northwest has submitted Substitute Alternate First Revised Sheet No. 254 in lieu of the Alternate First Revised Sheet No. 254.

Northwest states that a copy of this filing has been served upon Northwest's customers, upon all intervenors in Docket No. RP97–239 and upon interested state regulatory commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5324 Filed 3–4–97; 8:45 am]

BILLING CODE 6717–01–M

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

February 27, 1997.

Take notice that on February 24, 1997, Williams Natural Gas Company (WNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to be effective May 1, 1997:

Fifth Revised Sheet No. 1
Sixth Revised Sheet No. 2
First Revised Sheet Nos. 132 and 138
Second Revised Sheet No. 144
First Revised Sheet Nos. 145 and 146
Original Sheet No. 147
Second Revised Sheet No. 210
Original Sheet No. 210A
Second Revised Sheet Nos. 248 and 458
Original Sheet Nos. 458A, 458B, 458C, and 458D

WNG states that this filing is being made to establish Rate Schedule IPS under which WNG will provide pooling service as required by the Gas Industry Standards Board (GISB). WNG's current tariff does not provide for pooling as contemplated by GISB standard 1.3.18, which provides that deliveries from receipt points should be able to be delivered directly into at least one pool and delivery points should be able to receive quantities from at least one pool.

WNG states that a copy of its filing was served on all of WNG's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5323 Filed 3–4–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP97–227–001 and TM97–2–49–002]

Williston Basin Interstate Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

February 27, 1997.

Take notice that on February 24, 1997, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2, the following tariff sheets, with an effective date of January 1, 1997:

Second Revised Volume No. 1

1st Rev Sub 20th Revised Sheet No. 15
1st Rev Sub 23rd Revised Sheet No. 16
1st Rev Sub 20th Revised Sheet No. 18
1st Rev Sub 17th Revised Sheet No. 21

Original Volume No. 2

1st Rev Sub 64th Revised Sheet No. 11B

Williston Basin states that on January 14, 1997, it filed tariff sheets in Docket Nos. RP96–93–000 and TM97–2–49–000 to reflect the elimination of the Docket No. RP96–93–000 Take-or-Pay Throughput Surcharge, effective January 1, 1997.

On February 12, 1997, the OPR—Rate Review Branch I issued a Letter Order in Docket Nos. RP97–227–000 and TM97–2–49–000, which accepted the filed tariff sheets to be effective as proposed but ordered that Williston Basin correct the tariff sheet pagination on the January 1, 1997 tariff sheets. Williston Basin filed the above tariff sheets in compliance with that Order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are

available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5325 Filed 3–4–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG97–34–000, et al.]

Atlantis Energy Systems—Germany AG et al. Electric Rate and Corporate Regulation Filings

February 26, 1997.

Take notice that the following filings have been made with the Commission:

1. Atlantis Energy Systems—Germany AG

[Docket No. EG97–34–000]

Take notice that on February 18, 1997, Atlantis Energy Systems—Germany AG ("AES-G") filed an application for determination of exempt wholesale generator status. AES-G is solely in the business of installing, owning and operating building-integrated photovoltaic systems ("PV Systems"), which are used to generate electric energy.

Comment date: March 18, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Texican Energy Ventures, Inc. Westcoast Power Marketing, Inc., Rig Gas Inc., Hinson Power Company, Wicor Energy Services, Inc., Federal Energy Sales, Inc. American Hunter Energy, Inc.

[Docket Nos. ER94–1362–007, ER95–378–007, ER95–480–008, ER95–1314–007, ER96–34–005, ER96–918–004, and ER97–144–001] (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On January 31, 1997, Texican Energy Ventures, Inc. filed certain information as required by the Commission's July 25, 1994, order in Docket No. ER94–1362–000.

On January 31, 1997, Westcoast Power Marketing, Inc. filed certain information as required by the Commission's April 20, 1995, order in Docket No. ER95–378–000.

On January 28, 1997, Rig Gas Inc. filed certain information as required by the Commission's March 16, 1995, order in Docket No. ER95–480–000.

On January 27, 1997, Hinson Power Company filed certain information as required by the Commission's August 29, 1995, order in Docket No. ER95–1314–000.

On January 28, 1997, Wicor Energy Services, Inc. filed certain information as required by the Commission's November 9, 1995, order in Docket No. ER96–34–000.

On January 31, 1997, Federal Energy Sales, Inc. filed certain information as required by the Commission's March 1, 1996, order in Docket No. ER96–918–000.

On January 27, 1997, American Hunter Energy, Inc. filed certain information as required by the Commission's November 13, 1995, order in Docket No. ER97–144–000.

3. Engelhard Power Marketing, Inc., Stand Energy Corporation Proler Power Marketing, Inc., Seagull Power Services Inc., Utility Management & Consulting, Inc., American Energy Solutions, Inc.

[Docket Nos. ER94–1690–11, ER95–362–008, ER95–1433–005, No. ER96–342–004, ER96–525–003 ER97–360–001] (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On February 3, 1997, Engelhard Power Marketing, Inc. filed certain information as required by the Commission's December 29, 1994, order in Docket No. ER94–1690–000.

On January 23, 1997, Stand Energy Corporation filed certain information as required by the Commission's February 24, 1995, order in Docket No. ER95–362–000.

On January 30, 1997, Proler Power Marketing, Inc. filed certain information as required by the Commission's October 16, 1995, order in Docket No. ER95–1433–000.

On January 30, 1997, Seagull Power Services Inc. filed certain information as required by the Commission's February 15,1996, order in Docket No. ER96–342–000.

On January 3, 1997, Utility Management & Consulting, Inc. filed certain information as required by the Commission's January 19, 1996, order in Docket No. ER96–525–000.

On January 29, 1997, American Energy Solutions, Inc. filed certain information as required by the Commission's December 5, 1996, order in Docket No. ER97–360–000.

4. Tennessee Power Company, K Power Company, Dupont Power Marketing, Inc., Dupont Power Marketing, Inc., Industrial Energy Applications, Inc., Entergy Power Marketing Corp., Preferred Energy Services, Inc.

[Docket Nos. ER95–581–007, ER95–792–006, ER95–1441–007, Docket ER95–1441–008, ER95–1465–005, ER95–1615–005 and ER96–2141–002 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On January 22, 1997, Tennessee Power Company filed certain information as required by the Commission's April 28, 1995, order in Docket No. ER95–581–000.

On January 27, 1997, K Power Company filed certain information as required by the Commission's June 19, 1995, order in Docket No. ER95–792–000.

On February 18, 1997, Dupont Power Marketing, Inc. filed certain information as required by the Commission's August 30, 1995, order in Docket No. ER95–1441–000.

On February 18, 1997, Dupont Power Marketing, Inc. filed certain information as required by the Commission's August 30, 1995, order in Docket No. ER95–1441–000.

On February 7, 1997, Industrial Energy Applications, Inc. filed certain information as required by the Commission's September 28, 1995, order in Docket No. ER95–1465–000.

On January 27, 1997, Entergy Power Marketing Corp. filed certain information as required by the Commission's February 14, 1996, order in Docket No. ER95–1615–000.

On January 7, 1997, Preferred Energy Services, Inc. filed certain information as required by the Commission's August 13, 1996, order in Docket No. ER96–2142–000.

5. Gateway Energy Inc., Stalwart Power Company, Questar Energy Trading Company, IUC Power Services, Bonneville Fuels Management Corp., Gateway Energy Marketing, Inland Pacific Energy Services

[Docket Nos. ER95–1049–006, ER95–1334–005, ER96–404–004, ER96–594–004, ER96–659–004, ER96–795–004 and ER96–2144–001, (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On February 3, 1997, Gateway Energy Inc. filed certain information as required by the Commission's August 4, 1995, order in Docket No. ER95–1049–000.

On February 3, 1997, Stalwart Power Company filed certain information as required by the Commission's August 18, 1995, order in Docket No. ER95–1334–000.

On January 27, 1997, Questar Energy Trading Company filed certain information as required by the Commission's January 29, 1996, order in Docket No. ER96–404–000.

On February 3, 1997, IUC Power Services filed certain information as required by the Commission's February 9, 1996, order in Docket No. ER96–594–000.

On February 3, 1997, Bonneville Fuels Management Corp. filed certain information as required by the Commission's February 8, 1996, order in Docket No. ER96–659–000.

On February 10, 1997, Gateway Energy Marketing filed certain information as required by the Commission's March 7, 1996, order in Docket No. ER96–795–000.

On January 21, 1997, Inland Pacific Energy Services filed certain information as required by the Commission's September 16, order in Docket No. ER96–2144–000.

6. Duke Power Company

[Docket No. ER97–1651–000]

Take notice that on February 11, 1997, Duke Power Company (Duke) tendered for filing a Transmission Service Agreement between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, and Consumers Power Company dba Consumers Energy Company (Consumers) and The Detroit Edison Company (Edison). Duke states that the TSA sets out the transmission arrangements under which Duke will provide Consumers and Edison non-firm point-to-point transmission service under Duke's Pro Forma Open Access Transmission Tariff. Duke requests that the Agreement be made effective as of January 8, 1997.

Comment date: March 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Duke Power Company

[Docket No. ER97–1652–000]

Take notice that on February 11, 1997, Duke Power Company (Duke) tendered for filing a Market Rate Service Agreement between Duke and Federal Energy Sales, Inc. dated as of January 22, 1997. Duke requests that the Agreement be made effective as of January 22, 1997.

Comment date: March 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Duke Power Company

[Docket No. ER97–1653–000]

Take notice that on February 11, 1997, Duke Power Company (Duke) tendered for filing a Market Rate Service Agreement between Duke and Vitol Gas & Electric LLC, dated as of January 24, 1997. Duke requests that the Agreement be made effective as of January 24, 1997.

Comment date: March 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Long Island Lighting Company

[Docket No. OA96–38–002]

Take notice that on February 13, 1997, Long Island Lighting Company tendered for filing to Section 206 of the Federal Power Act (FPA), Section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, and in compliance with the Commission's Order dated January 29, 1997 in American Electric Service Corporation, Docket No. OA96–183–000, *et al.*, an Open Access Transmission Tariff (Tariff).

LILCO served copies of the filing upon the persons listed on a service list submitted with its filing, including each of its existing wholesale customers and the state regulatory authority for each state in which its existing wholesale customers are served.

Comment date: March 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Sierra Pacific Power Company

[Docket No. OA96–68–002]

Take notice that on February 3, 1997, Sierra Pacific Power Company tendered for filing a revised tariff sheet in compliance with the Commission's order in this docket dated December 18, 1996.

Comment date: March 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. New England Power Company, Massachusetts Electric Company, The Narragansett Electric Company, Granite State Electric Company, Nantucket Electric Company

[Docket No. OA96–74–001]

Take notice that on February 13, 1997, New England Power Company, on behalf of itself and its affiliates Massachusetts Electric Company, The Narragansett Electric Company, Granite State Electric Company and Nantucket Electric Company, tendered an open access transmission compliance filing pursuant to the Commission's Order dated January 29, 1997.

Comment date: March 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Consolidated Edison Company of New York, Inc.

[Docket No. OA96–138–002]

Take notice that on February 13, 1997, Consolidated Edison Company of New York, Inc. tendered for filing its revised access transmission tariff (the Tariff) in compliance with the Commission's January 29, 1997 Order.

Con Edison states that a copy of this filing has been served by mail to all of its wholesale transmission customers who have taken wholesale transmission service since March, 1995 and all parties included on the service list in the above docket. Con Edison has also served this filing by mail on the state commissions of each of the aforementioned transmission customers, the members of the New York Power Pool, and the New York State Public Service Commission.

Comment date: March 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Lockhart Power Company

[Docket No. OA96–163–002]

Take notice that on January 22, 1997, Lockhart Power Company (Lockhart), tendered for filing revisions to its Open Access Tariff filing, filed on July 8, 1996 pursuant to Order No. 888. The revisions to the compliance filing are being made to comply with the Commission's November 13, 1996, Order which required Lockhart to revise its compliance filing to provide a more detailed description of the method Lockhart uses to compute Available Transmission Capacity (ATC).

Lockhart Power requests an effective date of July 9, 1996.

Copies of the filing were served on all parties to this proceeding.

Comment date: March 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Citizens Utilities Company

[Docket No. OA96–184–001]

Take notice that on February 13, 1997, Citizens Utilities Company (Citizens) tendered for filing in Docket No. OA96–184–001 a revised Open Access Transmission Tariff applicable to its Vermont Electric Division.

Citizens states that this tariff is being filed in compliance with the Commission's January 29, 1997 order in American Electric Power Service Corp., et al., 78 FERC ¶61,070 (1997), and conforms to the non-rate terms and conditions of the Pro Forma tariff set forth in Order No. 888.

Citizens states that it served copies of this filing on all affected state commissions and customers, as well as on certain other interested parties.

Comment date: March 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. New York State Electric & Gas Corporation

[Docket No. OA96–195–002]

Take notice that New York State Electric & Gas Corporation ("NYSEG") on February 13, 1997, tendered for filing pursuant to Section 206 of the Federal Power Act ("FPA"), Section 35.13 of the Federal Energy Regulatory Commission's ("Commission") Regulations, 18 CFR 35.13, and in compliance with the Commission's Order dated January 29, 1997 in American Electric Power Service Corporation, Docket No. OA96–183–000, et al., an Open Access Transmission Tariff.

NYSEG served copies of the filing upon the persons listed on a service list submitted with its filing, including each of its existing wholesale customers and the New York State Public Service Commission.

Comment date: March 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. El Paso Electric Company

[Docket No. OA96–200–003]

Take notice that on February 13, 1997, El Paso Electric Company ("El Paso"), tendered for filing its Non-discriminatory Open Access Transmission Service Tariff (Open Access Tariff) pursuant to the Commission's January 29, 1997 order in the above-captioned proceeding and Sections 205 and 206 of the Federal Power Act, 16 U.S.C. 824d, 824e, Order No. 888, 61 FR 21540 (May 10, 1996), III FERC Stats. & Regs. ¶31,036 (1996), and Sections 35.1, 35.12, and 35.28(c) of the Commission's Regulations, 18 CFR 35.1, 35.12, 35.28(c).

El Paso states that the Open Access Tariff conforms with the pro forma tariff and Order No. 888. El Paso requests that its Open Access Tariff be accepted for filing by the Commission with an effective date of July 9, 1996.

Copies of the filing have been served on all parties in the above-captioned proceeding, as well as the Public Utility Commission of Texas, the New Mexico Public Utility Commission, and all customers that have received wholesale transmission service from El Paso since March 29, 1995 and on the state agencies that regulate public utilities in the states where the customers are located. An electronic version of the Open Access Tariff will be served upon request.

Comment date: March 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Orange and Rockland Utilities, Inc.

[Docket No. OA96–210–001]

Take notice that on February 13, 1997, Orange and Rockland Utilities, Inc. acting on behalf of itself and its wholly owned subsidiaries, Rockland Electric Company and Pike County Light & Power Company, filed a revised Open Access Transmission Service Tariff. Pursuant to the requirements of the Commission's Order dated December 18, 1996 in the above-referenced docket, this revised Open Access Transmission Service Tariff eliminates changes to the indemnity and force majeure provisions of the pro forma tariff.

Comment date: March 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. The United Illuminating Company

[Docket No. OA97–521–000]

Take notice that on January 31, 1997, The United Illuminating Company (UI) tendered for filing its Policy Implementing the FERC Standards of Conduct contained in Section 37.4 of the Commission's Regulations 18 CFR 37.4, in compliance with the Commission's Order No. 889, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs. ¶ 31,038 (1996), *reh'g pending*, and the Commission's order in *The United Illuminating Co., et al.*, Notice of Extension of time, Docket Nos. OA96–157–000 et al. (December 16, 1996).

Comment date: March 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Madison Gas and Electric Company

[Docket No. OA97–522–000]

Take notice that on January 31, 1997, Madison Gas and Electric Company (MGE) tendered for filing with the Federal Energy Regulatory Commission unbundled rate proposals for the following FERC Rate Schedules:

MGE/FERC Rate Schedule 7
MGE/FERC Rate Schedule 10
MGE/FERC Rate Schedule 12
MGE/FERC Rate Schedule 13
MGE/FERC Rate Schedule 14
MGE/FERC Rate Schedule 19

MGE states that a copy of the filing has been provided to the Public Service Commission of Wisconsin and the parties whose rate schedules are affected by the proposed changes. MGE is requesting an effective date of January 1, 1997.

Comment date: March 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Upper Peninsula Power Company

[Docket No. OA97–523–000]

Take notice that on January 31, 1997, Upper Peninsula Power Company tendered for filing a proposed non-discriminatory open access transmission service tariff in compliance with FERC Order No. 888 and this Commission's order issued November 29, 1996 in *Black Creek Hydro, Inc.* Docket Nos. OA96–25–000, *et al.*

Comment date: March 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Moon Lake Electric Association Inc.

[Docket No. OA97–525–000]

Take notice that on February 5, 1997, Moon Lake Electric Association, Inc. ("Moon Lake") submitted for filing a Request for Waiver of the Application of the Requirements of Order Nos. 888 and 889, in accordance with Section 35.28(d) of the Rules of the Federal Energy Regulatory Commission ("Commission"), 18 CFR 35.28(d).

Moon Lake states that it owns, operates, or controls only limited and discrete transmission facilities that do not constitute an integrated grid. Moon Lake states that it thus qualifies for a waiver of application of the requirements of Orders No. 888 and 889 to it, as more fully set forth in the application which is on file with the Commission and open to public inspection.

Comment date: March 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Cleveland Electric Illuminating Company

[Docket No. OA97–529–000]

Take notice that on February 11, 1997, The Cleveland Electric Illuminating Company (CEI) tendered for filing an electric power service agreement for the sale of electricity under its FERC Electric Tariff, Original Volume No. 2, to the City of Cleveland, Ohio. CEI has requested waiver of the notice provisions of the Commission's regulations in order to permit the service agreement to be made effective as of January 12, 1997.

Comment date: March 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5339 Filed 3–4–97; 8:45 am]

BILLING CODE 6717–01–P

[Docket Nos. CP96–178–000, CP96–178–002, CP96–248–000, CP96–248–003, CP96–249–000, CP96–249–003 and CP97–238–000]

Maritimes & Northeast Pipeline, L.L.C., Portland Natural Gas Transmission System, and Portland Natural Gas Transmission System and Maritimes & Northeast Pipeline, L.L.C.; Notice of Technical Conference

February 27, 1997.

On March 6, 1997, the Commission staff will convene a technical conference with Maritimes & Northeast Pipeline, L.L.C. (Maritimes) and Portland Natural Gas Transmission System (PNGTS) in response to PNGTS's February 24, 1997 request. The purpose of this technical conference is to discuss the filing of the revised environmental report in Docket No. CP97–238–000 scheduled to be made by PNGTS and Maritimes on March 17, 1997 and the amendment to be filed by PNGTS in Docket Nos. CP96–249–000, *et al.* In addition, procedures will be discussed to make the subject filings suitable for analysis by the Commission staff. Further, PNGTS and Maritimes should be prepared to discuss the attached questions from staff and should answer them in writing as part of the proposed March 17, 1997 filing. The meeting will begin at 9:30 am, in a room to be designated at the Commission's headquarters, 888 First Street NE, Washington, DC.

When adequate information is filed in the joint application to permit it to be publicly noticed and when all related amendments in the PNGTS and Maritimes proceedings are filed and considered complete, the Commission staff will issue a notice to convene a technical conference to be held at a location near the proposed joint project area. The exact time and location will be provided in that notice.

Lois D. Cashell,

Secretary.

Appendix

Maritimes & Northeast Pipeline L.L.C (M&NP); Portland Natural Gas Transmission System (PNGTS); Docket No. CP96–178–000 et al.

Environmental Information Request

1. The following facilities are listed in only the application or table 1–2 of resource report 1 (not both), filed on February 10, 1997. Please clarify if they are proposed for the Joint Facilities Project:

a. The 0.6-mile-long, 20-inch-diameter Haverhill Lateral and associated meter station for the interconnection with Tennessee Gas Pipe Line Company (Tennessee) (application page 14);

b. the Granite State Meter Station on the Newington Lateral for the interconnection with Granite State (application page 13);

c. the interconnection with Public Service of New Hampshire (PSNH) from the acquired Northern Utilities Meter Station (application page 14); and

d. the S.D. Warren Meter Station on the Westbrook Lateral (resource report table 1–2, page 7).

2. If the Haverhill Lateral is part of the Joint Facilities Project, update the resource tables to include all relevant environmental information.

3. if the Northern Utilities meter station is acquired for the interconnection with PSNH, what modifications would be required and how much land would be disturbed?

4. Provide a listing by milepost (MP) of all areas along the Joint Facilities mainline and laterals that have not been surveyed.

5. M&NP and PNGTS indicate that the following information will be filed when they become available:

a. Original U.S. Geological (USGS) 7.5-minute-series topographic maps with mileposts showing the proposed route and meter stations;

b. alignment sheets (scale not smaller than 1:6,000) showing the exact location of all meter stations, pig launchers/receivers, block values and any other aboveground facilities, staging areas and extra work spaces, pipe storage yards, and temporary and permanent access roads needed during construction and operation (scheduled for March 17, 1997);

c. acreage of each wetland disturbed during construction and acreage of forested wetlands that would be permanently converted to other cover types;

d. volume, discharge rate, and source and discharge locations of hydrostatic test water;

e. residences within 50 feet of the construction work area by milepost and site-specific plans for residences closer than 25 feet to the construction work area; and

f. Soil Erosion and Sediment Control Guidelines (Guidelines) for the Joint Facilities Project. When filing these Guidelines, clearly indicate whether all of the provisions contained in our *Erosion Control, Revegetation, and Maintenance Plan and Wetland and Waterbody Construction and Mitigation Procedures* (Procedures) are incorporated. For any individual provision that M&NP and PNGTS consider unnecessary, technically infeasible, or unsuitable due to local conditions, please provide alternative measures that M&NP and PNGTS would use to ensure an equal or greater level of protection. Be specific and definitive in describing these alternative measures.

Please provide the above items or a schedule indicating when they will be filed.

6. Provide right-of-way cross section diagrams for segments of the mainline and laterals that would parallel existing rights-of-way. Clearly indicate the amount of existing right-of-way that is presently maintained clear of forest vegetation.

7. These project plan/reports previously filed by M&NP and PNGTS contain differing data and mitigation techniques. Please provide the following to resolve these inconsistencies:

a. A wetland delineation report for the Joint Facilities Project.

b. A spill prevention and containment plan detailing specific measures that would be taken to cleanup and dispose of any accidental discharge within a municipal watershed, or within 100 feet of wetlands or waterbodies. Indicate what portions of our Procedures (version 12/2/94) M&NP and PNGTS will incorporative into its plan, and for those it will not, indicate why and what alternative measures would be used.

c. A plan prepared in consultation with the Massachusetts, New Hampshire, and Maine State Historic Preservation Officers (SHPO) identifying the procedures M&NP and PNGTS will follow if human remains are discovered during cultural resources investigations or construction, or if unanticipated historic properties are discovered during construction.

d. A directional drill contingency plan that what describes what methods M&NP and PNGTS would use to contain and manage drilling muds during construction.

e. Resource Report 11, Reliability and Safety.

8. Provide copies or the current status of all required Federal, state, and local government approvals.

9. Provide a detailed description of the construction techniques to be used for the Squamscott River (MP 34.2), Piscataqua River (MP 47.9), Mousam River (MP 73.1), Saco River (MP 81.8), and Presumpscot River (MP 97.6) crossings. The descriptions should include:

a. Crossing method to be used (open cut or directional drill);

b. if open cut, the method to be used to excavate the trench underwater;

c. if open cut, the techniques to be used to minimize turbidity and sedimentation impacts associated with trenching in the river;

d. if open cut, the location of spoil storage areas and the mitigative measures that would be used to control and store the spoil;

e. if open cut, the method to be used to pull the pipeline across the river, including the amount of time required for the pull;

f. if open cut, the material and method to be used to backfill the trench underwater;

g. an explanation of the location and size requirements of the extra workspaces on each bank (such as trench size and work to be done in each workspace); and

h. an estimate of the total length of time required for each phase of construction (such as river crossings and restoration).

Please indicate if either M&NP's or PNGTS's previously filed river crossing plans for any of these waterbodies are still accurate for the Joint Facilities Project. There is no need to re-file river crossing plans that are still current.

10. In its February 24, 1997 data response, PNGTS stated that due to favorable geotechnical conditions, it intends to directionally drill the crossing of the Piscataqua River. The Joint Facilities Project environmental report shows M&NP's proposed crossing as the preferred location. If an open-cut crossing of the Piscataqua River is still proposed, please provide a summary of discussions with the U.S. Army Corps of Engineers and state (New Hampshire and Maine) agencies concerning the feasibility and impact of an open-cut. If no discussions have taken place, provide a schedule for future discussions with those agencies.

11. In its February 24, 1997 data response, PNGTS stated that due to unfavorable geotechnical conditions, directional drilling of the crossings of the Powwow River, Great Brook, their associated wetlands, and New Hampshire State Route 107A (approximate MPs 26.5 to 26.9) is inappropriate. PNGTS proposes a combined open-cut/push-pull technique. Provide responses to items b through h in question 10, as well as any additional measures PNGTS will take to mitigate impacts on these waterbodies and wetlands.

12. Provide a site-specific crossing plan for the Exeter River (MP 29.7) that addresses:

a. Protection of the downstream drinking water supply;

b. avoidance of riparian vegetation removal or active restoration of the riparian zone with woody vegetation;

c. minimization of sedimentation; and

d. avoidance of interference with migratory fisheries.

13. Discuss the feasibility of crossing Branch Brook (MP 71.2) using a dry crossing technique (*e.g.*, flume, dam and pump, horizontal bore, directional drill). Provide a site-specific crossing plan that addresses protection of the downstream drinking water supply. Indicate the downstream distance to all drinking water intakes. Provide copies of all correspondence and describe communications with appropriate agencies and/or water supply authorities regarding the crossing of Branch Brook.

14. Provide a report summarizing your January 28, 1997 meeting with the Maine Department of Environmental Protection regarding stream crossing issues, which you stated would be filed with the Commission on or about February 4, 1997.

15. Will M&NP and PNGTS prohibit refueling activities and storage of hazardous liquids within at least a 200-foot-radius of all private wells and at least a 400-foot-radius of all municipal or community water supply wells? If not, how would M&NP and PNGTS minimize the potential for contamination of private and municipal/community water supply wells?

16. M&NP and PNGTS indicate that potentially contaminated sediments may be found in the Great Bay tributaries, Pickering Brook, Piscataqua River, and Saco River tributaries and in soils within the former Pease Airforce Base. Provide copies of all relevant correspondence and provide specific construction and mitigation measures that would be used to contain and avoid spread of contaminants found in sediments or soils.

17. Table 3–3 indicates that one federally listed endangered species, the small whorled pogonia (*Isotria medeoloides*) occurs within the pipeline corridor. Provide:

a. A copy of the 1996 survey report prepared by qualified biologists using U.S. Fish and Wildlife (FWS) approved survey methods. The survey report must include the following information:

(1) Name(s) and qualifications of person(s) conducting the survey;

(2) method(s) used to conduct the survey;

(3) date(s) of survey;

(4) areas surveyed (include mileposts);

(5) potential impacts, both beneficial and negative, that could result from construction of the proposed project; and

(6) proposed mitigation that would substantially minimize or eliminate these potential negative impacts.

b. FWS comments on the survey conducted.

c. A timetable for completion of any surveys for this species that are scheduled for 1997, including all previously unidentified extra work areas, staging areas, and access roads.

18. Provide a copy of the consolidated report on state rare, threatened, and endangered species surveys conducted in 1996 and copies of all relevant recent correspondence with state agencies. Also, provide a timetable for completion of the 1997surveys and filing of the report, and the species to be surveyed.

19. For all staging areas, extra work spaces, pipe storage areas, and other similar areas that would disturb wetlands, provide the following information:

a. MP location;

b. dimensions;

c. type of wetland that would be disturbed;

d. acreage of wetland that would be disturbed; and

e. reasons the wetland cannot be avoided.

20. Table 6–2 identifies 11 active sand and gravel pits where PNGTS and M&NP will coordinate their activities with the owners, and 25 other mineral operations in the project vicinity. Identify any access roads to active sand and gravel pits that would be crossed by the pipeline. Provide the MP location of each road and copies of correspondence and records of communications with the owners/operators of these sand and gravel pits. Discuss plans to minimize disruption of these operations.

21. Provide the locations by MP of all septic systems that would be crossed by

the Joint Facilities Project. What do M&NP and PNGTS intend to do if a septic system is damaged during construction and cannot be repaired to its former capacity?

22. Provide the following information on the proposed developments in Plaistow (MP 19.4), Newton (MPS 21.8 and 23.5), and Greenland (MP 40.1):

a. Development plans filed with the towns;

b. status of permitting; and

c. status of construction.

23. For all public or designated recreation land identified on table 8–3, describe the areas that would be affected and any requested or proposed mitigation to minimize impact on natural resources or recreational activities.

24. If any of the meter stations include pressure reduction/regulation valves and line heaters, provide the expected L_{dn} at the nearest noise sensitive areas (specify direction and distance) near the stations. What measures would be used to limit noise from these meter stations?

25. PNGTS and M&NP have not identified extra work areas, staging areas, or access roads and assessed potential impact on cultural resources from these activities. Please consult with the State Historic Preservation Officers as these locations are identified regarding the need for cultural resources surveys and the appropriate level of intensity of those surveys. If additional surveys are needed, update the schedule provided in your January 27, 1997 filing for when they would be done. Also, update Table 4.5 (areas requiring survey) from the January 27, 1997 filing. Include the following in the updated schedule and Table:

a. Areas where deep testing is required; and

b. areas requiring additional archeological evaluation.

All material filed with the Commission containing location, character, and ownership information about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering: "CONTAINS PRIVILEGED INFORMATION—DO NOT RELEASE."

26. Provide photoalignment sheets or USGS 7.5-minute-series maps of the Joint Facilities pipeline route and mileposts that show the following:

a. Beginning and ending points of all areas where cultural resource identification surveys have been completed;

b. beginning and ending points of all areas where cultural resource identification surveys remain to be completed; and

c. locations (including boundaries where these are known or can be estimated) of all identified cultural resources located on or immediately adjacent to the project's construction right-of-way or extra work areas, including those listed in table 4–1.

27. Please initiate discussions with the SHPOs regarding the acceptability of letter type clearance reports for individual areas as needed, and a final consolidation report for the entire project, as an approach to the numerous small parcel surveys which this project may require. Provide the results of these discussions and the reaction of each SHPO to this approach.

28. Provide copies of the NRHP nomination forms for the William Fogg Library and the Conway Junction Railroad Turntable Site.

29. Please document all correspondence and other consultation with Indian tribes, Native American groups, ethnic groups, and other interested persons concerning cultural resource issues.

30. Please provide a schedule for when treatment plans for effected significant cultural resources would be submitted. See section VIII in OPR's "Guidelines for Reporting on Cultural Resources Investigations" (Guidelines).

31. On October 10, 1996, M&NP's Cultural Resources Executive Summary indicated that Native American archaeological sites were located at M&NP's MPs 21.5 and 31.0. Table 4–1 of Resource Report 4 for the Joint Facilities Project identifies four arheological sites at M&NP MPs 20.4, 22.8, 20.1 and 32.5 Please explain this discrepancy.

32. In order to reduce land use impacts, discuss the feasibility of installing the Dracut Meter Station adjacent to the existing Tennessee Meter Station north of Methuen Street.

33. To minimize impacts within the Arrow Woods subdivision (MPs 4.5 to 5.3), discuss the feasibility of installing the pipeline on the edge or within the existing New England Power right-of-way.

34. Provide an explanation for the selection of the proposed joint route in the following areas:

a. Between MPs 17.1 and 18.0, the proposed route would cross North Avenue between two residences and then use an existing residential road which provides access to six residences. M&NP's original route in this area would only affect three residences and would cross diagonally through an empty lot.

b. The Maine Nature Conservancy has indicated a preference for the pipeline to be placed on the east side of the powerline through the Kennebunk Plains (MPs 71.0 to 72.2). The proposed route (PNGTS's) would be on the west side of the powerline. M&NP's route was on the east side.

c. The National Spiritual Assembly of the Baha's indicated concern with a pipeline crossing through Monsalvat (also known Sunset Hill) because of its significant cultural and religious value (MPs 49.0 to 49.5). The proposed route would cross the western portion of this area. M&NP proposed Reroute 2 would entirely avoid this area.

d. The selection of the PNGTS route for the Westbrook Lateral instead of the M&NP route. Provide an environmental comparison of these two routes that includes:

(1) Acreage of both the permanent and construction right-of-way;

(2) the size and location of any non-typical work areas required;

(3) the length in miles that would be adjacent to existing rights-of-way, including any proposed overlap of the construction or permanent right-of-way;

(4) the number of residences, schools, or hospitals within 50 feet of the edge of the construction right-of-way;

(5) the distances to Westbrook Junior High School (MPs 1.74–1.94), and Westbrook Community Hospital (MPs 2.14–2.24), and copies of all correspondence with these facilities regarding the proposed right-of-way.

(6) the number of waterbodies and wetlands crossed and the length of each wetland crossing; and

(7) the acres of forest that would be cleared.

M&NP and PNGTS may supplement its response with other information that may be relevant to the analysis of the alternative and/or with suggestions to the route that would result in fewer environmental impacts.

35. In our December 10, 1996 letter, we identified the M&NP independent route from MPs 35.8 to 36.9 as part of our potential joint pipeline route. However, you state that your route for that segment is "virtually the same as M&NP's independent route", and the same segment of "the FERC route involves a new ROW alignment". Please explain.

[FR Doc. 97–5331 Filed 3–4–97; 8:45 am]
BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5696–5]

Agency Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following proposed and/or continuing Information Collection Requests (ICRs) to the Office of Management and Budget (OMB). Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collections as described below.

DATES: Comments must be submitted on or before May 5, 1997.

ADDRESSES: U.S. Environmental Protection Agency, 401 M Street SW, Mail code 2223A, OECA/OC/METD, Washington, DC 20460. A copy of these ICRs may be obtained without charge from Sandy Farmer (202) 260–2740.

FOR FURTHER INFORMATION CONTACT: Jane M. Engert, tel: (202) 564–5021; FAX: (202) 564–0050; e-mail: engert.jane@epamail.epa.gov for NSPS subparts M, P, Q, R, and Z. Scott Throwe tel: (202) 564–7013; FAX: (202) 564–0050; e-mail: Throwe.Scott@epamail.epa.gov for NSPS subpart PP. Steven Hoover—tel: (202) 564–7007; FAX: (202) 564–0050; e-mail: Hoover.Steve@epamail.epa.gov for NSPS subpart SSS. Virginia Lathrop, 202/564–7057. Fax 202/564–0050. Lathrop.Virginia@epamail.epa.gov. For NESHAP subpart D. Jane M. Engert, tel: (202) 564–5021; FAX: (202) 564–0050; e-mail: engert.jane@epamail.epa.gov for NESHAP subpart O. Dave Stangel, (202) 564–4162 fax (202) 564–0085 or Stangel.david@epamail.epa.gov for "Notification of Stored Pesticides with Suspended or Canceled Registrations."

SUPPLEMENTARY INFORMATION:

NSPS Subpart M: Secondary Brass and Bronze Production Plants

Affected entities: Entities potentially affected by this action are Secondary Brass and Bronze Production Plants that commenced construction, modification, or reconstruction after the date of proposal (June 11, 1973). The specific units to which this subpart applies are reverberatory and electric furnaces of 1,000 kg (2205 lb) or greater production capacity and blast (cupola) furnaces of 250 kg/h (550 lb/h) or greater production capacity. This subpart does not apply to furnaces from which molten brass or bronze are cast into the shape of finished products, such as foundry furnaces.

Title: New Source Performance Standards (NSPS) for Secondary Brass and Bronze Production Plants [40 CFR Part 60, Subpart M], OMB Control Number: 2060–0110, Expires: 9/30/97.

Abstract: Secondary brass and bronze production activities result in emissions of metallic particulate matter. In the Administrator's judgment, emissions from these sources are in sufficient quantity to cause or contribute to air pollution that may endanger public health or welfare. Consequently, New Source Performance Standards were promulgated for this source category. These standards establish limits for both particulate matter and visible emissions.

In order to ensure compliance with the standards, adequate recordkeeping and reporting is necessary. This information enables the Agency to: (1) Identify the sources subject to the standard; (2) ensure initial compliance with emission limits; and (3) verify continuous compliance with the standard. Specifically, the rule requires an application for approval of construction, notification of startup, notification and report of the initial emissions test, and notification of any physical or operational change that may increase the emission rate. In addition, sources are required to keep records of all startups, shutdowns, and malfunctions.

In the absence of such information collection requirements, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act. Consequently, these information collection requirements are mandatory, and the records required by this NSPS must be retained by the owner or operator for two years. In general, the required information consists of emissions data and other information deemed not to be private. However, any information submitted to the agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, Chapter 1, Part 2, Subpart B—Confidentiality of Business Information. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The average annual burden to the industry over the next three years from these recordkeeping and reporting requirements is estimated at 7.5 person-hours. This is based on an estimated 5 respondents, with no new plants or potlines expected to be constructed in the next three years. The burden estimate includes only recordkeeping associated with startup, shutdown and malfunction events. Since reporting requirements apply only to new sources, there is no anticipated reporting burden for this industry over the next three years as a result of these standards.

NSPS Subpart P, Primary Copper Smelters; NSPS Subpart Q, Primary Zinc Smelters; NSPS Subpart R, Primary Lead Smelters

Affected entities: Entities potentially affected by this action are Primary Copper Smelters, Primary Lead Smelters, and Primary Zinc Smelters that commenced construction, modification, or reconstruction after the date of proposal (October 16, 1974). The specific units to which this subpart applies are: (1) For primary copper smelters, each dryer, roaster, smelting furnace or copper converter; (2) for primary lead smelters, each sintering machine, sintering machine discharge end, blast furnace, dross reverberatory furnace, electric smelting furnace, and converter; and (3) for primary zinc smelters, each roaster and sintering machine.

Title: New Source Performance Standards (NSPS) for Primary Copper Smelters, Primary Lead Smelters, and Primary Zinc Smelters [40 CFR Part 60, Subparts P, Q, and R] There is no active OMB Control Number.

Abstract: Primary copper, lead and zinc smelter operations result in

emissions of metallic particulate matter and sulfur dioxide. In the Administrator's judgment, emissions from these sources are in sufficient quantity to cause or contribute to air pollution that may endanger public health or welfare. Consequently, New Source Performance Standards were promulgated for these source categories. These standards establish limits for particulate matter, visible emissions and sulfur dioxide.

In order to ensure compliance with the standards, adequate recordkeeping and reporting is necessary. This information enables the Agency to: (1) Identify the sources subject to the standard; (2) ensure initial compliance with emission limits; and (3) verify continuous compliance with the standard. Specifically, the rule requires an application for approval of construction, notification of startup, notification and report of the initial emissions test, and notification of any physical or operational change that may increase the emission rate. In addition, sources are required to keep daily records of average sulfur dioxide concentrations, and records of all startups, shutdowns, and malfunctions as they occur. Excess emissions must be reported semi-annually. For copper smelters only, owners or operators must keep monthly records of the smelter charge rate and weight percent (dry basis) of arsenic, antimony, lead and zinc.

In the absence of such information collection requirements, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act. Consequently, these information collection requirements are mandatory, and the records required by this NSPS must be retained by the owner or operator for two years. In general, the required information consists of emissions data and other information deemed not to be private. However, any information submitted to the agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, Chapter 1, Part 2, Subpart B—Confidentiality of Business Information. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The average annual burden to the industry over the next three years from these recordkeeping and reporting requirements is estimated at 1445 person-hours. This is based on an estimated 15 respondents, with no new smelters expected to be constructed in the next three years. The burden estimate includes daily and monthly recordkeeping as well as records of startup, shutdown and malfunction events. Since there are no new sources anticipated, the only reporting burden for this industry is the semi-annual reporting of excess emissions which is estimated at 8 hours per report.

NSPS Subpart Z: Ferroalloy Production Facilities

Affected entities: Entities potentially affected by this action are Ferroalloy Production Facilities that commenced construction, modification, or reconstruction after the date of proposal (October 21, 1974). The specific units to which this subpart applies are: Electric submerged arc furnaces that produce silicon metal, ferrosilicon, calcium silicon, silicomanganese zirconium, ferrochrome silicon, silvery iron, high-carbon ferrochrome, charge chrome, standard ferromanganese, silicomanganese, ferromanganese silicon, or calcium carbide; and dust-handling equipment.

Title: New Source Performance Standards(NSPS) for Ferroalloy Production Facilities [40 CFR Part 60, Subpart Z]. No active OMB Control Number.

Abstract: The production of ferroalloys results in emissions of particulate matter and carbon monoxide. In the Administrator's judgment, emissions from these sources are in sufficient quantity to cause or contribute to air pollution that may endanger public health or welfare. Consequently, New Source Performance Standards were promulgated for this source category. These standards establish limits for particulate matter and carbon dioxide, and for visible emissions from dust-handling equipment.

In order to ensure compliance with the standards, adequate recordkeeping and reporting is necessary. This information enables the Agency to: (1) Identify the sources subject to the standard; (2) ensure initial compliance with emission limits; and (3) verify continuous compliance with the standard. Specifically, the rule requires an application for approval of construction, notification of startup, notification and report of the initial emissions test, and notification of any physical or operational change that may increase the emission rate. In addition, sources are required to keep daily records of operating parameters, and record all startups, shutdowns, and malfunctions.

In the absence of such information collection requirements, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act. Consequently, these information collection requirements are mandatory, and the records required by this NSPS must be retained by the owner or operator for two years. In general, the required information consists of emissions data and other information deemed not to be private. However, any information submitted to the agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, Chapter 1, Part 2, Subpart B—Confidentiality of Business Information. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who

are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The average annual burden to the industry over the next three years from these recordkeeping and reporting requirements is estimated at 177 person-hours. This is based on an estimated 1 respondent, with no new plants expected to be constructed in the next three years. The burden estimate includes recordkeeping associated with daily monitoring, and records of startup, shutdown and malfunction events. There is no anticipated reporting burden for this industry over the next three years as a result of these standards.

NSPS Subpart PP: Ammonium Sulfate Manufacture

Affected entities: Entities potentially affected by this action are facilities with ammonium sulfate dryers within an ammonium sulfate manufacturing plant in the caprolactum by-product, synthetic and coke oven by-product sectors of the ammonium sulfate industry.

Background: The Administrator has judged that PM emissions from ammonium sulfate manufacturing plants cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Owners/operators of ammonium sulfate manufacturing plants must notify EPA of construction, modification, startups, shut downs, date and results of initial performance test and excess emissions. In order to ensure compliance with the standards promulgated to protect public health, adequate reporting and recordkeeping is necessary. In the absence of such information enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: There are 21 sources subject to NSPS subpart PP. No new sources are expected in the next 3 years. The affected sources are required to submit semiannual excess emissions reports. Each report is estimated at 8 hours. The total reporting and recordkeeping burden for this collection of information is estimated to average 336 hours per year for the industry. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

NSPS Subpart SSS Supplementary Information

Affected entities: Entities potentially affected by this action are those which are subject to NSPS Subpart SSS, or each coating operation and each piece of coating mix preparation equipment for which construction, modification or reconstruction commenced after January 22, 1986.

Title: New Source Performance Standards for Magnetic Tape Coating Facilities—Subpart SSS, OMB Number 2060–0171, expires September 30, 1997.

Abstract: The EPA is charged under Section 111 of the Clean Air Act, as amended, to establish standards of performance for new stationary sources that reflect:

* * * Application of the best technological system of continuous emissions reduction which (taking into consideration the cost of achieving such emissions reduction, or any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated [Section 111(a)(1)].

The Agency refers to this charge as selecting the best demonstrated technology (BDT). Section 111 also requires that the Administrator review and, if appropriate, revise such standards every four years. In addition, Section 114(a) states that:

* * * The Administrator may require any owner or operator subject to any requirement of this Act to (A) establish and maintain such records, (B) make such reports, (C) install, use and maintain such monitoring equipment or methods (in accordance with such methods at such locations, at such intervals, and in such manner as the Administrator shall prescribe, and (D) sample such emissions (E) keep records on control parameters, production variables or other indirect data when direct monitoring of emissions is impractical (submit compliance certifications in accordance with section 114(a)(3), and (G) provide such other information, as he may reasonably require.

In the Administrator's judgement, VOC emissions from the magnetic tape manufacturing industry cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, the New Source Performance Standards (NSPS) for Magnetic Tape Coating Facilities were proposed on January 22, 1986, and promulgated on October 3, 1988. These standards apply to each coating operation and each piece of coating mix preparation equipment for which construction, modification or reconstruction commenced after January 22, 1986. Volatile organic compounds (VOC's) are the pollutants regulated under this Subpart.

Owners or operators of the affected facilities described must make the following one-time-only reports: notification of the date of construction or reconstruction (40 CFR 60.7(a)(1)); notification of the anticipated and actual dates of startup (40 CFR 60.7 (a)(2) and (a)(3)); notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate (40 CFR 60.7(a)(4)); and notification of the date of demonstration of continuous monitoring system and initial performance test (40 CFR 60.7 (a)(5) and (d)). Owners or operators are also required to maintain records of the occurrence and duration of any startup,

shutdowns, malfunctions, or periods where the continuous monitoring system is inoperative. The owner or operator must also provide notification of the date of the initial performance test (40 CFR 60.8(d)) and the reporting of initial performance test results (40 CFR 60.8(a) and 60.717(a)). The owner or operator must maintain performance test results and continuous monitoring system records (40 CFR 60.714(i)), as well as maintain a file of all measurements including performance test measurements, and all other information required by this subpart recorded in a permanent file suitable for inspection. This file shall be retained for at least two years (40 CFR 60.7(e)).

Recordkeeping specific to magnetic tape coating operations include the requirement to install, calibrate, maintain, and operate a device to indicate cumulative VOC recovered (when monthly liquid balance is to be performed) (40 CFR 60.713(b)(1)). Records must also be maintained of projected and actual solvent consumption (40 CFR 60.714(a), and 40 CFR 60.717 (b) and (c)), as well as the monthly liquid material balance (40 CFR 60.714(b)). Records of the periods when control devices are not operating must also be maintained (40 CFR 60.714(h)). The owner or operator shall install, calibrate, maintain, and operate monitoring devices to record VOC levels in inlet and outlet gas streams controlled by a carbon adsorption system (40 CFR 60.714(c)). A coating operation controlled by a condensation system shall monitor the temperature of the condenser exhaust stream (40 CFR 60.714(d)). Where coating operations or coating mix preparation is controlled by thermal incinerator, the combustion temperature of incinerator must be recorded (40 CFR 60.714(e)). Where the coating operation or affected coating mix preparation equipment is controlled by a catalytic incinerator, the gas temperature of both upstream and downstream of the catalyst bed shall be recorded (40 CFR 60.714(f)). Where a VOC capture system is used, the owner or operator shall identify parameters to be monitored, and then install, calibrate, maintain, and operate a monitoring device that records the value of the chosen parameter (40 CFR 60.714(g)).

Records shall be maintained of the monthly weighted average mass of VOC contained in the coating (40 CFR 60.714(j)). The actual solvent use records shall be submitted at the end of the initial calendar year (40 CFR 60.717(b)). Each owner or operator shall submit quarterly reports which document the VOC content, capture or destruction, and equipment monitoring data (40 CFR 60.717(d)). Each owner or operator not required to submit quarterly reports because no reportable periods have occurred shall submit semiannual reports (40 CFR 60.717(e)).

All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office. Notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. The reviewing authority may then inspect the source to check if the pollution control devices are properly installed and operated, and that the standard is being met. Performance test reports are needed as these are the Agency's record of a source's initial capability to comply with the emission standard, and note the operating conditions (e.g., combustion temperature or concentration of organic compounds in the exhaust stream) under which compliance was achieved. The quarterly reports are used for problem identification, as a check on source operation and maintenance, and for compliance determinations. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The Agency computed the burden for the currently approved 1994 Information Collection Request (ICR). Where appropriate, the Agency identified specific tasks and made assumptions, while being consistent with the concept of burden under the Paperwork Reduction Act. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

This estimate is based on the assumption that there would be 10 sources currently covered by the ICR and an additional 3.2 sources per year over the three years covered by the ICR. The annual burden of reporting and recordkeeping requirements for facilities subject to Subpart SSS are summarized by the following information. The reporting requirements are as follows: Read Instructions (1 person-hour), Initial performance test (280 person-hours). It is assumed that 20% of tests are repeated due to failure. Performing monthly method 24 analysis (90 person-hours for 12 occurrences per year). Estimates for report writing are: Notification of construction/reconstruction (2 person-hours), Notification of physical/operational changes (8 person-hours), Notification of anticipated startup (2 person-hours), Notification of actual startup (2 person-hours), Notification of initial performance test (2 person-hours), Notification of CMS (2 person-hours), and Report of performance test (included in VOC content of all coatings applied, total amount and percent VOC recovered, and the total amount of coating applied. In addition, facilities utilizing less solvent annually than the applicable cutoff shall make semiannual estimates of projected annual amount of solvent use and maintain records of actual solvent use.

Each owner or operator of an affected magnetic tape coating operation shall install, calibrate, maintain, and operate a monitoring device that continuously indicates and records the concentration level of organic compounds in the outlet gas stream. Certain facilities will also be required to continuously measure and record either the combustion temperature of the incinerator (for those facilities controlled by a thermal incinerator) or the condenser exhaust

temperature (for those facilities controlled by a condensation system).

Owners or operators of the affected facilities described must make the following one-time-only reports: notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of reporting requirements listed above). The report of excess emissions (16 person-hours for 4 occurrences per year) assuming 20 percent of the facilities have excess emissions, and the report of no excess emissions (8 person-hours) on a twice per year basis (assuming 80 percent of the facilities have no excess emissions). Recordkeeping requirements are time to enter information records of startups, shutdown, malfunction, etc. (1.5 person-hours for 50 occurrences/year), records of control device operating parameters (0.25 person-hours for 350 occurrences per year), records of projected/actual solvent use (8.0 person-hours for 2 occurrences per year), records for monthly liquid material balance (2.0 person-hours for 12 occurrences per year), and monthly determination of average VOC content of coating (2.0 person-hours for 12 occurrences per year). Records must be kept for a period of two years.

The average burden to industry over the three years of the current ICR from these recordkeeping and reporting requirements was estimated to be 3982 person-hours on an annual basis. The respondent costs have been calculated on the basis of $14.50 per hour plus 110 percent overhead. The average annual burden to industry over the three year period of the ICR was estimated to be $121,264.

NESHAP Subpart D: Beryllium Rocket Motor Firing

Affected entities: Entities potentially affected by this action are those which are rocket motor test sites using beryllium propellant.

Title: NESHAP subpart D: Beryllium Rocket Motor Firing. There is not an active OMB Control Number for this ICR.

Abstract: Beryllium rocket motor firing operations result in emissions of beryllium. In the Administrator's judgment, emissions from these sources are in sufficient quantity to cause or contribute to air pollution that may endanger public health or welfare. Consequently, National Emission Standards for Hazardous Air Pollutants (NESHAP) subpart D was promulgated on April 6, 1973 and amended November 7, 1985 for this source category. These standards establish limits for beryllium.

In order to ensure compliance with the standards, adequate recordkeeping and reporting is necessary. This information enables the Agency to: (1) Identify the sources subject to the standard; (2) ensure initial compliance with emission limits; and (3) verify continuous compliance with the standard. Specifically, the rule requires subject test sites to test ambient air for Beryllium during and after firing of a rocket motor. Sampling techniques are approved by the Administrator. Samples are analyzed within 30 days and results are reported to the EPA Region by registered letter by the business day following the determination (See 40 CFR 61.43.). In addition stack sampling required at 40 CFR 61.41, requires continuous sampling of beryllium combustion products, analysis and reporting within 30 days. The results are reported to EPA by the day following the determination and calculation. There is one test facility and three to four stored Beryllium fueled rockets subject to NESHAP subpart D.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The estimated burden hours should be 6 hours per year for the one facility in the industry. An average of two reports per year averaging 3 hours each for a total of 6 hours per year. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

NESHAP Subpart O: Inorganic Arsenic Emissions From Primary Copper Smelters

Affected entities: Entities potentially affected by this action are those which are subject to the NESHAP for Inorganic Arsenic Emissions from Primary Copper Smelters.

Title: NESHAP subpart O: Inorganic Arsenic Emissions from Primary Copper Smelters. There is not an active OMB Control Number for this ICR.

Abstract: Primary Copper Smelter operations result in emissions of inorganic arsenic emissions. In the Administrator's judgment, emissions from these sources are in sufficient quantity to cause or contribute to air pollution that may endanger public health or welfare. Consequently, National Emission Standards for Hazardous Air Pollutants (NESHAP) subpart O was promulgated on August 4, 1986 for this source category. These standards establish limits for inorganic arsenic.

In order to ensure compliance with the standards, adequate recordkeeping and reporting is necessary. There are currently seven sources subject to this subpart. All sources are covered by section 61.172(a) which exempts them from emission standards. As long as these sources remain in this status their only requirement is to submit an annual report under 61.177(f). This information enables the Agency to be informed of their status.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the

proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The estimated burden hours should be 2 hours per year for each facility to prepare the annual report. An for the seven sources the total burden is 14 hours per year for the industry.

Notification of Stored Pesticides With Suspended or Canceled Registrations

Affected entities: This action affects any producer or exporter of pesticides, registrant of a pesticide, applicant for registration of a pesticide, applicant for or holder of an experimental use permit, commercial applicator, any person who distributes or sells any pesticide, or who possesses any pesticide which has had its registration suspended or canceled.

Title: Notification of Stored Pesticides with Canceled or Suspended Registrations Under Section 6(g) of the Federal Insecticide, Fungicide and Rodenticide Act (EPA Form No. 1519.04), OMB Control Number 2070–0109, Expiration Date: 8/31/97.

Abstract: Section 6(g) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) requires any producer or exporter of pesticides, registrant of a pesticide, applicant for registration of a pesticide, applicant for or holder of an experimental use permit, commercial applicator, or any person who distributes or sells any pesticide, who possesses any pesticide which has had its registration suspended or canceled under section 6 to notify the Administrator and appropriate State and local officials of: (1) Such possession; (2) the quantity of such pesticide such person possesses, and (3) the place at which such pesticide is stored.

EPA may require affected persons to submit information on the storage of canceled or suspended pesticides through FIFRA section 6 Suspension and/or Cancellation orders or through Notices published in the **Federal Register**. The formats, procedures, and identification of persons who must submit FIFRA section 6(g) information will appear in the Suspension/Cancellation Order or **Federal Register** Notice itself. The information required by FIFRA section 6(g) will be used by the Agency for compliance monitoring purposes (identification of areas where large amounts of suspended/canceled products are being stored, inspection targeting to assure adequate storage and compliance with the terms of the cancellation or suspension order, inspections to confirm the adequacy of the registrant's recall plans, etc.), indemnification determinations for emergency suspended and canceled products, the determination of disposal burdens, to aid the FIFRA section 19 recall process, and to aid the Agency in the development of a reimbursement plan for the registrant's costs for the storage of canceled and suspended pesticides which have been recalled under FIFRA section 19.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement:

Burden Hours per Response: 1.5 hours per respondent which includes time for reading the **Federal Register** or Notice of Intent to Cancel, plan activities, create and gather information, process information, and record and report information.

Frequency of Response: As necessary. Burden estimates are based on an estimate of 2 suspensions or cancellations per year.

Number of Respondents: 104,000 respondents (52,000 potential respondents per action) who may be required to submit information per year.

Total Annual Reporting and Recordkeeping Burden: 156,000 hours.

This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: February 27, 1997.

Elliott J. Gilberg,

Acting Director, Office of Compliance.

[FR Doc. 97–5421 Filed 3–4–97; 8:45 am]

BILLING CODE 6560–50–P

Environmental Statistics Subcommittee of the National Advisory Council for Policy and Technology; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Environmental Statistics Subcommittee (of the Environmental Information, Economics and Technology Committee) of the National Advisory Council on Environmental Policy and Technology (NACEPT) will hold a one and one-half day meeting of the full Subcommittee.

The Environmental Statistics Subcommittee was formed to provide key recommendations and strategic advice on the statistical products and activities necessary to enhance the Agency's knowledge about environmental statistics and trends, and to explore information gaps from the perspective of the users/products of these data products. The meeting is being held to discuss and offer critical advice on initiatives of the Office of Strategic Planning and Environmental Data.

Scheduling constraints preclude oral comments from the public during the meeting. Written comments can be submitted by mail, and will be transmitted to Committee members for consideration.

DATES: The public meeting will be held on April 10, 1997 from 9:00 a.m. to 5:00 p.m. and April 11, 1997 from 9:00 a.m. to 1:00 p.m.

ADDRESSES: The meetings will be held at the World Resources Institute 1709, New York Avenue N.W., 2nd Floor Conference Room Washington, D.C. 20006. This meeting is open to the public. Due to limited space, seating at the meeting will be on a first-come basis. Written comments should be sent to: N. Phillip Ross, Office of Strategic Planning and Environmental Data, U.S. Environmental Protection Agency, Mail Code 2161, 401 M Street, S.W., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: N. Phillip Ross, Designated Federal Official, Direct Line (202) 260–0250, General Line (202) 260–5244, FAX (202) 260–8550.

Dated: February 27, 1997.

N. Phillip Ross,

Designated Federal Official.

[FR Doc. 97–5418 Filed 3–4–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5698–9]

Science Advisory Board; Notice of Public Teleconferences

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that two Committees of the Science Advisory Board (SAB) will conduct public teleconference meetings on the dates noted below. The meetings are all open to the public. All times noted are Eastern Time.

1. Executive Committee

The Science Advisory Board's (SAB) Executive Committee, will conduct a public teleconference meeting on Monday, March 17, 1997, between the hours of 12:00 and 1:00 p.m. Eastern Time. The meeting will be coordinated through a conference call connection in Room 2103 of the Mall at the Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The public is welcome to attend the meeting physically or through a telephonic link. Additional instructions about how to participate in the conference call can be obtained by calling Ms. Priscilla Tillery-Gadsen at 202–260–4126 by March 12.

In this meeting the Executive Committee plans to review the report from its *Integrated Human Exposure Committee*—Review of the Agency's Exposure Factors Handbook. If time permits, the Committee may discuss other issues.

Any member of the public wishing further information concerning the meeting or who wishes to submit comments should contact Dr. Donald G. Barnes, Designated Federal Official for the Executive Committee, Science Advisory Board (1400), U.S. Environmental Protection Agency, Washington DC 20460; telephone (202) 260–4126; FAX (202) 260–9232; or via the INTERNET at barnes.don@epamail.epa.gov. Copies of the review document are available from the same source.

2. Advisory Council on Clean Air Compliance Analysis

The Advisory Council on Clean Air Compliance Analysis (ACCACA, or the "Council") of the Science Advisory Board (SAB) plans to hold four public teleconferences on the dates and times described below. All meetings are open to the public, however, the number of available phone lines is limited. For further information concerning the specific meetings described in this notice, please contact the individuals listed below. Documents that are the subject of SAB reviews are normally available from the originating EPA office and are *not* available from the SAB Office. These teleconferences are a follow-up to earlier Council discussions held on November 7 and 8, 1996 concerning the 1990 Clean Air Act (CAA) Section 812 Retrospective and Prospective Studies (See 61 FR, 54196, Thursday, October 17, 1996).

The Council has allocated four dates for public teleconferences to deal with both the Retrospective and the Prospective Studies. The dates, times, and anticipated topical issues to be discussed are listed as follows:

(a) *Friday, March 14, 1997 (11:00 a.m. to 2:00 p.m.): Prospective Study and Retrospective Study:* The major topic planned for this teleconference is review of the Prospective Study emissions modeling assumptions, methodology, results and documentation. The Council will provide advice to the Agency on the validity and utility of the emissions modeling data within the purposes of the current Prospective Study. It is also planned that logistical and scheduling aspects of both the Prospective and Retrospective Studies will be briefly discussed during this public teleconference. Some discussion may occur on select Retrospective Study issues at this teleconference. However, the preferred plan is to keep these topics separate, with this teleconference being reserved primarily to deal with the Prospective Study.

(b) *Wednesday, March 19, 1997 (11:00 a.m. to 1:00 p.m.): Prospective Study and Retrospective Study:* The major topics for this teleconference are to complete review of the Prospective Study emissions modeling assumptions, methodology, results and documentation (if more time is needed after the discussions of March 14), and to begin closure review on the Retrospective Study issues. The timing of which specific issues are to be discussed at each teleconference will be planned at this or the previous (March 14, 1997) teleconference, and will be driven by the schedule of availability of the Lead Discussants and other Council participants. The Council identified a number of Retrospective Study issue areas, some of which are listed here as follows: valuation of bronchitis and heart disease; presentation of baseline ("but for" issues, that is, but for the presence of the 1990 Clean Air Act), choice of study for estimating PM-related mortality (includes physical effects); costs (operations and maintenance costs, cost-of-clean, etc.); ecological effects; valuing changes in intelligence quotient (IQ) issues; presentation of life years lost calculations (life years remaining issue); methodological effects; morbidity effects by age; and research needs. Other related issues are planned to be discussed as time permits.

(c) *Friday, March 21, 1997 (11:00 a.m. to 2:00 p.m.): Retrospective Study:* The major topic of this teleconference is to continue closure review on the Retrospective Study issue areas identified above. Specific issue areas will be scheduled to match the availability of the Lead Discussants and other interested Council participants.

(d) *Wednesday, March 26, 1997 (11:00 a.m. to 2:00 p.m.): Retrospective Study:* The major topic of this teleconference is to continue closure review on the Retrospective Study issue areas identified above. If all the issue areas have been discussed in the earlier teleconferences, the Council members may elect to cancel this session. However, this time is being reserved for the Council just in case they need additional discussions to facilitate closure on the Retrospective Study.

After the teleconference sessions are complete, the Agency plans to revise the Retrospective Study Report to Congress and re-issue it to the entire Council and the public for one final closure review prior to submitting the document for Executive Branch review and subsequent submission to Congress.

Please contact the SAB staff (see below) to determine the logistics and details of the individual public teleconference meetings, or if the later planned meetings will be necessary.

Purpose of the Teleconferences

The specific topic of the Prospective Study review is the draft emissions modeling assumptions, methodology,

results and documentation for this study. The Council is being asked by the Agency to review the emissions modeling data (including input, model configurations, and output data) to be used for the first CAA Section 812 prospective analysis and make recommendations to the Administrator on the validity and utility of the emissions modeling data within this analytical context. Specific questions include the following:

(1) Are the regulatory assumptions and other design features of the Pre-Clean Air Act Amendments (CAAA) and Post-CAAA scenarios reasonable and appropriate, given the purposes of the present study?

(2) Are the input data used to configure the emissions models sufficiently valid and reliable for the intended analytical purpose?

(3) Are the emissions models, and the methodologies they employ, sufficiently valid and reliable for the intended analytical purpose?

(4) If the answers to any of the three questions above is negative, what specific alternative assumptions, data or methodologies does the Council recommend the Agency consider using for the prospective analysis?

(5) If the answers to questions (1), (2), and (3) are positive, are the emissions inventories for the Pre-CAAA and Post-CAAA scenarios developed by this modeling exercise sufficiently valid and reliable for the intended purpose?

(6) If the answer to question (5) is negative, what specific improvements does the Council recommend the Agency consider?

The draft documents that present, compile and document the results and methodologies used for the Prospective Study emissions modeling, as well as the Retrospective Study Appendices and select text edits which are the subject of these reviews are available from the originating EPA office. The review materials and supporting documentation for the Prospective Study include the following:

Review Materials

(1) U.S. EPA, Office of Air and Radiation, *Air Emissions Estimates from Electric Power Generation for the CAAA Section 812 Prospective Study*, February 1997,

(2) E.H. Pechan & Associates, Inc., *Emission Projections for the Clean Air Act Section 812 Prospective Analysis*, January 31, 1997,

Supporting Documents

(3) U.S. EPA, Office of Air and Radiation, *Analyzing Electric Power Generation Under the CAAA*, July, 1996,

(4) U.S. EPA, *Natural Gas Supply Assumptions in the Clean Air Power Initiative*, U.S. EPA White Paper, July 31, 1996,

(5) U.S. EPA, *Coal Supply Assumptions in the Clean Air Power Initiative*, U.S. EPA White Paper, July 31, 1996,

(6) ICF Kaiser, Inc., *The 1990 Clean Air Act Amendments (CAAA) and the Increasing Competitiveness of Powder Run River Basin (PRB) Coals*,

Memorandum from Charles Mann and Theodore Breton, ICF Kaiser, Inc. to Sam Napolitano, U.S. EPA, Office of Air and Radiation, October 15, 1996.

In addition to the above review materials and supporting documents, it is anticipated that briefing slides or bullet point documents will be circulated to the SAB's Council and made available to the public approximately ten days prior to the first public review teleconference on March 14, 1997. The intent behind the distribution of these briefing materials is to present summaries of the analytical context of the emissions modeling step, key scenario design features, emissions modeling methodologies, and emissions modeling results in order to facilitate the Agency's presentations during the teleconference, and to help focus the Council's subsequent review discussions.

Once the Agency, considering the advice of the Council, determines that the emissions inventories are sufficiently valid and reliable, the Agency will configure and operate the air quality models to translate differences in emissions under the scenarios into differences in air quality conditions. On a parallel track, the costs of compliance with the regulatory programs and standards associated with each of the scenarios will also be developed. The methodological details and results of these subsequent analytical steps will be submitted for the SAB's Council to review at a later date.

To discuss technical aspects or obtain copies of the draft documents pertaining to the CAA Section 812 Prospective Study emissions estimates listed above, or the Appendices and select text edits for the Retrospective Study, as well as the anticipated briefing slides or bullet point documents, please contact Mr. James DeMocker, Office of Policy Analysis and Review (OAR) (MC 6103), US Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Tel. (202) 260–8980; FAX (202) 260–9766, or via the Internet at: democker.jim@epamail.epa.gov. To obtain copies of the latest complete draft of the Retrospective Study Report to Congress dated October 1996 and entitled "The Benefits and Costs of the Clean Air Act, 1970 to 1990," please contact Ms. Michelle Olawuyi, Secretary, Office of Economy and Environment (MC 2172), US Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Tel. (202) 260–5488; FAX (202) 260–5732, or via the Internet at olawuyi.michelle@epamail. epa.gov.

To obtain copies of the teleconference agendas, please contact Mrs. Diana L. Pozun, Secretary to the Council at Tel. (202) 260–8414; FAX (202) 260–7118; or via the Internet: pozun.diana@epamail.epa.gov). To discuss technical or logistical aspects of the Council's review process, please contact Dr. K. Jack Kooyoomjian, Designated Federal Official, Advisory Council on Clean Air Compliance Analysis (the "Council"), Tel. (202) 260–2560; FAX (202) 260–7118; or via the Internet: kooyoomjian.jack @epamail.epa.gov). Members of the public who wish to physically be present at the teleconferences may do so at the U.S. Environmental Protection Agency (EPA) Headquarters Building, 401 M Street, SW., Washington, DC 20460, Waterside Mall Room Number 2103. Members of the public who wish to obtain logging-on procedures should contact Mrs. Diana L. Pozun at least one week prior to the teleconference(s) of interest.

Public Speaking

To request time for public comments at the Council teleconferences, please contact Mrs. Diana L. Pozun in writing at the mail, FAX or E-Mail addresses given above no later than one week prior to each of the teleconferences.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board (SAB) expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, opportunities for oral comment at teleconference meetings will be usually limited to three minutes per speaker and no more than fifteen minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date (usually one week prior to a meeting), may be mailed to the Council prior to its meeting; comments received too close to the meeting date will normally be provided to the Council at its meeting, except for teleconferences, where brief written materials may be FAXed to the participants, with more detailed or lengthy materials received too close to the teleconference to be mailed to the Council or its appropriate subcommittee participants shortly after the teleconference. Written comments may be provided up until the time of the meeting.

Dated: February 24, 1997.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 97–5309 Filed 3–4–97; 8:45 am]

BILLING CODE 6560–50–P

[PF–705; FRL–5585–6]

Bayer Corporation; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Filing.

SUMMARY: This notice announces the filing of a pesticide petition proposing the establishment of a tolerance for residues of tebuconazole in or on grapes. This notice contains a summary of the petition that was prepared by the petitioner, Bayer Corporation.

DATES: Comments, identified by the docket control number PF–705 must be received on or before April 4, 1997.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway., Arlington, VA 22202.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number PF–705. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). No CBI should be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above from 8:30 a. m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Connie B. Welch, Product Manager (PM) 21, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–6226; e-mail: welch.connie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition (PP) 6F4669 from Bayer Corp., P.O. Box 4913, 8400 Hawthorne Road, Kansas City, MO 64120–0013, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, to amend 40 CFR 180.474 by establishing tolerances for residues of the fungicide tebuconazole in or on the agricultural commodity grapes at 5.0 ppm. The proposed analytical method for determining residues uses gas-liquid chromatography coupled with a thermionic detector. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

As required by section 408(d) of the FFDCA, as recently amended by the Food Quality Protection Act, (Pub. L. 104–170), Bayer included in the petition a summary of the petition and authorization for the summary to be published in the **Federal Register** in a notice of receipt of the petition. The summary represents the views of Bayer; EPA is in the process of evaluating the petition. As required by section 408(d)(3) EPA is including the summary as a part of this notice of filing. EPA may have made minor edits to the summary for the purpose of clarity.

I. Petition Summary

A. Residue Chemistry

1. *Nature of residue.* Bayer believes the nature of the residue in plants and animals is adequately understood. The residue of concern is the parent compound only, as specified in 40 CFR 180.474.

2. *Analytical method.* An enforcement method for plant commodities has been validated on various commodities. It has undergone successful EPA validation and has been submitted for inclusion in PAM II. The method should be adequate for grapes. The animal method has also been approved as an adequate enforcement method and will be submitted to FDA for inclusion in PAM II.

3. *Magnitude of residue.* Fifteen separate residue trials have been conducted and submitted to the EPA with tebuconazole on grapes. The EPA has determined that these data show that residues of tebuconazole, α-[2-(4-Chlorophenyl)ethyl]-α-(1,1-dimethylethyl)-*H*-1,2,4-triazole-1-ethanol, are not expected to exceed 5 ppm in grapes as a result of the proposed use. Processing data show that residue of tebuconazole do not concentrate in grape juice and that a tolerance is not required in or on raisins. In addition, since grapes are not normally rotated, the nature of residue in rotational crops is not of concern.

B. Toxicological Profile

The following mammalian toxicity studies have been conducted to support the tolerances of tebuconazole:

1. *Acute toxicity.* i. Rat acute oral study with an LD_{50} of >5,000 milligrams/kilogram (mg)/(kg) (male) and 3,933 mg/kg (female).

ii. Rabbit acute dermal of LD_{50} of >5,000 mg/kg.

iii. Rat acute inhalation of LC_{50} of >0.371 mg/liter(l).

iv. Primary eye irritation study in the rabbit which showed mild irritation reversible by day 7.

v. Primary dermal irritation study which showed no skin irritation.

vi. Primary dermal sensitization study which showed no sensitization.

2. *Genotoxicity.* i. An Ames mutagenesis study in *Salmonella* showed no mutagenicity with or without metabolic activation.

ii. A micronucleus mutagenesis assay study in mice showed no genotoxicity.

iii. A sister chromatid exchange mutagenesis study using CHO cells was negative at dose levels 4 to 30 micrograms/milliliter (μg/mL) without activation or 15 to 120 μg/mL with activation.

iv. An unscheduled DNA synthesis (UDS) study was negative for UDS in rat hepatocytes.

3. *Reproductive and developmental toxicity.* i. A rat oral developmental toxicity study with a maternal no

observed effect level (NOEL) of 30 milligrams per kilogram of body weight per day (mg/kg bw/day) and an lowest effect level (LEL) of 60 mg/kg bw/day based on elevation of absolute and relative liver weights. For developmental toxicity, a NOEL of 30 mg/kg bw/day and an LEL of 60 mg/kg bw/day was determined, based on delayed ossification of thoracic, cervical and sacral vertebrae, sternum, fore and hind limbs and increase in supernumerary ribs.

ii. A rabbit oral developmental toxicity study with a maternal NOEL of 30 mg/kg bw/day and an LEL of 100 mg/kg bw/day based on depression of body weight gains and food consumption.

iii. A developmental NOEL of 30 mg/kg bw/day and an LEL of 100 mg/kg bw/day were based on increased post-implantation losses, from both early and late resorptions and frank malformations in eight fetuses of five litters.

iv. A mouse oral developmental toxicity study with a maternal NOEL of 10 mg/kg bw/day and an LEL of 20 mg/kg bw/day based on a supplementary study indicating reduction in hematocrit and histological changes in liver.

v. A developmental NOEL of 10 mg/kg bw/day and an LEL of 30 mg/kg bw/day based on dose-dependent increases in runts/dam at 30 and 100 mg/kg bw/day.

vi. A mouse dermal developmental toxicity study with a maternal NOEL of 30 mg/kg bw/day and an LEL of 60 mg/kg bw/day based on a supplementary study indicating increased liver microsomal enzymes and histological changes in liver.

vii. The NOEL for developmental toxicity in the dermal study in the mouse is 1,000 mg/kg bw/day, the highest dose tested (HDT).

viii. A 2–generation rat reproduction study with a dietary maternal NOEL of 15 mg/kg bw/day (300 ppm) and an LEL of 50 mg/kg bw/day (1,000 ppm) based on depressed body weights, increased spleen hemosiderosis, and decreased liver and kidney weights.

ix. A reproductive NOEL of 15 mg/kg bw/day (300 ppm) and an LEL of 50 mg/kg bw/day (1,000 ppm) were based on neonatal birth weight depression.

4. *Subchronic toxicity.* i. A 28–day feeding study in the rat with a NOEL of 30 mg/kg/day and a LEL of 100 mg/kg/day based on changes in hematology and clinical chemistry parameters.

ii. A 90–day rat feeding study with a NOEL of 34.8 mg/kg bw/day (400 ppm) and an LEL of 171.7 mg/kg bw/day (1,600 ppm) in males, based on decreased body weight gains and histological changes in the adrenals. For females, the NOEL was 10.8 mg/kg bw/day (100 ppm) and the LEL was 46.5 mg/kg bw/day (400 ppm) based on decreased body weights, decreased body weight gains, and histological changes in the adrenals.

iii. A 90–day dog-feeding study with a NOEL of 200 ppm (73.7 mg/kg bw/day in males and 73.4 mg/kg bw/day in females) and an LEL of 1,000 ppm (368.3 mg/kg bw/day in males and 351.8 mg/kg bw/day in females). The LEL was based on decreases in mean body weights, body weight gains, and food consumption, and an increase in liver *N*-demethylase activity.

5. *Chronic toxicity.* i. A 2–year rat chronic feeding study defined a NOEL of 7.4 mg/kg bw/day (100 ppm) and an LEL of 22.8 mg/kg bw/day (300 ppm) based on body weight depression, decreased hemoglobin, hematocrit, MCV and MCHC, and increased liver microsomal enzymes in females. Tebuconazole was not oncogenic at the dose levels tested (0, 100, 300, and 1,000 ppm).

ii. A 1–year dog feeding study with a NOEL of 1 mg/kg bw/day (40 ppm) and an LEL of 5 mg/kg bw/day (200 ppm), based on lenticular and corneal opacity and hepatic toxicity in either sex (the current Reference Dose was determined based on this study). A subsequent 1–year dog feeding study, using lower doses to further define the NOEL for tebuconazole, defines a systemic LOEL of 150 ppm (based on adrenal effects in both sexes) and a systemic NOEL of 100 ppm.

iii. A mouse oncogenicity study at dietary levels of 0, 20, 60, and 80 ppm for 21 months did not reveal any oncogenic effect for tebuconazole at any dose tested. Because the maximum-tolerated-dose (MTD) was not reached in this study, the study was classified as supplementary. A follow-up mouse study at higher doses (0, 500, and 1,500 ppm in the diet), with an MTD at 500 ppm, revealed statistically significant incidences of hepatocellular adenomas and carcinomas in males and carcinomas in females. The initial and follow-up studies, together with supplementary data were classified as core minimum.

6. *Animal metabolism.* A general rat metabolism study at dietary levels of 2 and 20 mg/kg showed rapid elimination from the rat in 3 days (some 99 percent excreted by the feces and urine and 0.0304 percent in expired air). Increased concentrations of radioactivity from the active ingredient and metabolites were found only in the liver. The bones and the brain were among the tissues showing the least amount of radioactivity.

7. *Metabolite toxicity.* The residue of concern in plants is the parent compound, tebuconazole, only. For animal commodities, the EPA has determined that the tolerance expression should include the HWG 2061 metabolite, α-[2-(4 -Chlorophenyl)-ethyl]-α-[(2-hydroxy-1,1-dimethyl)ethyl]-1*H*-1,2,4-triazole-1-ethanol. An acute oral toxicity study has been submitted to the EPA on this metabolite. This study shows an oral LD_{50} of >5,000 for female rats. This value indicates that the HWG 2061 metabolite is relatively innocuous and less acutely toxic than tebuconazole.

8. *Endocrine effects.* No special studies investigating potential estrogenic or endocrine effects of tebuconazole have been conducted. However, the standard battery of required studies has been completed. These studies include an evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following repeated or long-term exposure. These studies are generally considered to be sufficient to detect any endocrine effects but no such effects were noted in any of the studies with either tebuconazole or its metabolites.

9. *Carcinogenicity.* EPA's Carcinogenicity Peer Review Committee (CPRC) has classified tebuconazole as a Group C carcinogen (possible human carcinogen). This classification is based on the Agency's "Guidelines for Carcinogen Risk Assessment" published in the **Federal Register** of September 24, 1986 (51 FR 33992). The Agency has chosen to use the reference dose calculations to estimate human dietary risk from tebuconazole residues. The decision supporting classification of tebuconazole as a possible human carcinogen (Group C) was primarily based on the statistically significant increase in the incidence of hepatocellular adenomas, carcinomas, and combined adenomas/carcinomas in both sexes of NMRI mice both by positive trend and pairwise comparison at the HDT.

C. Aggregate Exposure

1. *Dietary (food) exposure.* For purposes of assessing the potential dietary exposure from food under the proposed tolerances, Bayer has estimated exposure based on the Theoretical Maximum Residue Contribution (TMRC) derived from the previously established tolerances for tebuconazole on cherries, peaches, bananas, barley, oats, wheat, and peanuts as well as the proposed tolerances for tebuconazole on grapes at 5.0 ppm. The TMRC is obtained by using a model which multiplies the tolerance level residue for each commodity by consumption data which estimate the amount of each commodity and products derived from the commodities that are eaten by the U.S. population and various population subgroups. In conducting this exposure assessment, very conservative assumptions — 100 percent of all commodities will contain tebuconazole residues, and those residues would be at the level of the tolerance — which result in a large overestimate of human exposure. Thus, in making a safety determination for these tolerances, Bayer took into account this very conservative exposure assessment.

2. *Dietary (drinking water) exposure.* There is no Maximum Contaminant Level established for residues of tebuconazole. Bayer was advised by the EPA's Environmental Fate and Ground Water Branch's (EFGWB) May 26, 1993 memorandum for our application for use on bananas and peanuts that all environmental fate data requirements for tebuconazole were satisfied. The EFGWB had determined that tebuconazole is resistant to most degradative processes in the environment, including hydrolysis, photolysis in water and aerobic and anaerobic metabolism. Only minor degradation occurred in soil photolysis studies. The photolytic half-life of tebuconazole is 19 days. Laboratory and field studies have shown that the mobility of tebuconazole in soil is minimal. Therefore, tebuconazole bears no apparent risk to ground water under most circumstances.

3. *Non-dietary exposure.* Although current registrations and the proposed use on grapes are limited to commercial crop production, Bayer has submitted an application to register tebuconazole on turf. Bayer has conducted an exposure study designed to measure the upper bound acute exposure potential of adults and children from contact with tebuconazole treated turf. The population considered to have the greatest potential exposure from contact with pesticide treated turf soon after pesticides are applied are young children. Margins of exposure of 1,518 to 8,561 for 10–year–old children and 1,364 to 7,527 for 5–year–old children were estimated by comparing dermal exposure doses to the tebuconazole no-observable effect level of 1,000 mg/kg/day established in a subacute dermal toxicity study in rabbits. The estimated safe residue levels for tebuconazole on treated turf for 10–year–old children ranged from 4.8 to 27.3 micrograms per square centimeter (μg/cm²) and for 5–year–old children from 4.4 to 24.0 μg/cm². This compares with the average tebuconazole transferable residue level of 0.319 μg/cm² present immediately after the sprays have dried. These data indicate that children can safely contact tebuconazole-treated turf as soon after application as the spray has dried.

D. Cumulative Effects

At this time, the EPA has not made a determination that tebuconazole and other substances that may have a common mechanism of toxicity would have cumulative effects. Therefore, for this tolerance, only the potential risks of tebuconazole in its aggregate exposure are considered.

E. Safety Determination

1. *U.S. population.* Based on a complete and reliable toxicity database, the EPA has adopted an RfD value of 0.03 mg/kg/day. This RfD is based on a 1–year dog study with a NOEL of 2.96 mg/kg/day and an uncertainty factor of 100. Using the conservative exposure assumptions described above, Bayer has determined that aggregate dietary exposure to tebuconazole from the previously established and the proposed tolerances will utilize 7.1 percent of the RfD for the U.S. population (48 states) and 29.5 percent of the RfD for the most highly exposed population subgroup (children 1 to 6 years old). There is generally no concern for exposures below 100 percent of the RfD because the RfD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. Therefore, there is a reasonable certainty that no harm will result from aggregate exposure to tebuconazole.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of tebuconazole, the data from developmental studies in both the rat and rabbit and a 2–generation reproduction study in the rat should be considered. The developmental toxicity studies evaluate any potential adverse effects on the developing animal resulting from pesticide exposure of the mother during prenatal development. The reproduction study evaluates any effects from exposure to the pesticide on the reproductive capability of mating animals through two generations, as well as any observed systemic toxicity.

A developmental toxicity study in the rat, a developmental toxicity study in the rabbit, two developmental studies in the mouse and a 2–generation rat reproduction study have been conducted with tebuconazole. Maternal and developmental toxicity NOELs of 30 mg/kg/day were determined in the rat and rabbit studies. An oral mouse developmental toxicity study had maternal and developmental toxicity NOELs of 10 mg/kg/day while the mouse dermal developmental study had a maternal NOEL of 30 mg/kg/day and a developmental toxicity NOEL of 1,000 mg/kg/day. The parental and reproductive NOELs in the 2–generation rat reproduction study were determined to be 15 mg/kg/day (300 ppm). In all cases, the reproductive and developmental NOELs were greater than or equal to the parental NOELs. Bayer concludes that this indicates that tebuconazole does not pose any increased risk to infants or children.

FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre-and post-natal effects and the completeness of the toxicity database. Based on current toxicological data requirements, the toxicology database for tebuconazole relative to pre-and post-natal effects is complete. Further for tebuconazole, the NOEL of 2.96 mg/kg/bw from the 1–year dog study, which was used to calculate the RfD, is already lower than the NOELs from the developmental studies in rats (30 mg/kg bw/day) and rabbits (30 mg/kg bw/day) by a factor of 10 times. Since a 100–fold uncertainty factor is already used to calculate the RfD, Bayer surmises that an additional uncertainty factor is not warranted and that the RfD at 0.03 mg/kg/bw/day is appropriate for assessing aggregate risk to infants and children.

Using the conservative exposure assumptions, Bayer has determined from a chronic dietary analysis that the percent of the RfD utilized by aggregate exposure to residues of tebuconazole ranges from 9.2 percent for children 7 to 12 years old up to 29.5 percent for children 1 to 6 years old. EPA generally has no concern for exposure below 100 percent of the RfD. Therefore, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, Bayer concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the residues of tebuconazole, including all anticipated dietary exposure and all other non-occupational exposures.

F. International Issues

No Codex Maximum Residue Level (MRL) have been established for residues of tebuconazole on any crops at this time. A Codex MRL of 2.0 ppm for residues of tebuconazole on grapes has been proposed. There are no established tolerances for tebuconazole in or on grapes in Canada and Mexico.

G. Mode of Action

Tebuconazole, the active ingredient of Folicur 3.6 F is a sterol demethylation inhibitor (DMI) fungicide. It is systemic and shows activity against powdery mildew and black rot infecting grapes. Tebuconazole provides protective activity by preventing completion of the infection process by direct inhibition of sterol synthesis. It is rapidly absorbed by plants and translocated systemically in the young growing tissues.

II. Public Record

EPA invites interested persons to submit comments on this notice of filing. Comments must bear a notification indicating the docket control number PF–705.

A record has been established for this notice docket under docket control number PF–705 (including any comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. The official record for this notice of filing, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ADDRESSES at the beginning of this document.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping.

Dated: February 19, 1997.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–5200 Filed 3–4–97; 8:45 am]

BILLING CODE 6560–50–F

[PF–579A; FRL–5587–1]

Novartis; Pesticide Petition Withdrawal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of withdrawal of pesticide petition.

SUMMARY: EPA is withdrawing a pesticide petition from Novartis (formerly known as Ciba-Geigy Corporation) for the combined residues of the insecticide cyromazine, (*N* cyclopropyl-1,3,5-triazine-2,4,6-triamine plus its major metabolite, melamine, 1,3,5-triazine-2,4-6-triamine) for use in or on certain commodites.

FOR FURTHER INFORMATION CONTACT: George T. LaRocca, Product Manager (PM) 13, Registration Division, (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M. St., SW., Washington, DC 20460. Office location, telephone number and e-mail address: Rm. 200, CM#2, 1921 Jefferson Davis Highway, Arlington, VA; 703–305–6100; e-mail: larocca.george@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA in a notice issued in the Federal Register of August 18, 1993 (58 FR 43892), announced that Novartis, P.O. Box 18300, Greensboro, NC 27419, had filed a pesticide petition (PP) 6F3422 proposing to amend 40 CFR part 180.414 to establish tolerances for the combined residues of the insecticide cyromazine, (*N* cyclopropyl-1,3,5-triazine-2,4,6-triamine plus its major metabolite, melamine, 1,3,5-triazine-2,4-6-triamine) for use in or on cabbage, sweet potatoes, sugar beets (roots and tops), and sorghum (grain, forage and fodder). The tolerances were to cover residues resulting from the planting of these crops as rotational crops following the harvest of cyromazine treated crops. On August 26, 1996 Novartis notified EPA that it requests that the petition be withdrawn without prejudice to future filing. The Agency has withdrawn the subject pesticide petition.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural Commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 17, 1997.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–4884 Filed 3–4–97; 8:45 am]

BILLING CODE 6560–50–F

[PF–700; FRL–5586–1]

Rhone-Poulenc Ag Company; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing.

SUMMARY: This notice announces the filing of a pesticide petition proposing to establish tolerances for residues of thiodicarb and its metabolite in or on leafy vegetables, broccoli, cabbage and cauliflower. The notice includes a summary of the petition prepared by the petitioner, Rhone-Poulenc Ag Company.

DATES: Comments, identified by the docket control number [PF–700], must be received on or before, April 4, 1997.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted either as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be acceped on disks in Wordperfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number [PF–700]. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below this document.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. No CBI should be submitted through e-mail. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record.

Information not marked confidential may be disclosed publicly by EPA without prior notice.

FOR FURTHER INFORMATION CONTACT: Dennis H. Edwards, Jr. Product Manager (PM 19), Registration Division, (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC. Office location, telephone number and e-mail address: Rm., 207, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.; Telephone: 703–305–6386, e-mail: edwards.dennis@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions (PP) 6F3417 and 7F3516 from Rhone-Poulenc Ag Company, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. These petitions propose, pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. section 346a, to amend 40 CFR part 180 by establishing tolerances for the combined residues of the insecticide thiodicarb (Dimethyl *N,N*-[thiobis[[(methylimino) carbonyl]oxy]] bis [ethanimidothioate]) and its metabolite methomyl (*S*-methyl *N* [(methylcarbamoyl)oxy]-thioacetimadate) in or on the following raw agricultural commodities: leafy vegetables at 35 parts per million (ppm), broccoli at 7 ppm, cabbage at 7 ppm, and cauliflower at 7 ppm. The proposed analytical method is HPLC.

As required by section 408(d) of the FFDCA, as recently amended by the Food Quality Protection Act (FQPA), Rhone-Poulenc Ag Company included in the petition a summary of the petitions and authorization for the summary to be published in the **Federal Register** in a notice of receipt of the petition. The summary represents the views of Rhone-Poulenc Ag Company; EPA is in the process of evaluating the petition. As required by section 408(d)(3), EPA is including the summary as a part of this notice of filing. EPA may have made minor edits to the summary for the purpose of clarity.

I. Petition Summary

A. Residue Chemistry

The metabolism of thiodicarb in plants and animals is adequately understood. Adequate analytical methods are available for enforcement purposes. There are no livestock feed items associated with this petition; there are no problems of secondary residues in meat, milk, poultry or eggs.

B. Toxicological Profile

1. *Acute toxicity.* EPA evaluation of the three acute oral toxicity studies in rats indicated the LD_{50} in males and females to be >50 miligrams/kilograms (mg/kg). Based on the results of these studies, thiodicarb is placed in Toxicity Category II. The acute dermal toxicity study in rabbits resulted in a LD_{50} of >2,000 mg/kg for both males and females. The acute inhalation LC_{50} was found to be >0.56 mg/l in male and female rats. The primary eye irritation study showed iridal involvement and moderate to severe conjunctival irritation. All positive reactions cleared within 4 days and eyes had returned to a normal appearance by day 7 following treatment. There was no irritation in the primary dermal irritation study. Thiodicarb was a weak dermal sensitizer in guinea pigs.

Conclusion. Based on the acute toxicity data cited above, Rhone-Poulenc Ag Company concludes that thiodicarb does not pose any acute dietary risks.

2. *Mutagenicity.* Mutagenicity studies completed include *Salmonella typhimurium* mammalian microsome reverse mutation assay (negative), *Saccharomyces cerevisiae* reverse mutation (negative), mitotic crossing over (negative) and gene conversion (positive in strain D7 and negative in strain D4), primary DNA damage in *Escherichia coli* (negative), mouse lymphoma gene mutation assay (equivocal positive), chromosomal aberration assay in CHO cells (negative), UDS assay with primary rat hepatocytes (negative), *in vivo* micronucleus test in mouse bone marrow (negative) and dominant lethal test in rats (negative).

Conclusion. Thiodicarb was tested in a variety of mutagenicity assays and was negative in all but the mouse lymphoma assay, in which there was only a weak to equivocal response and for mitotic gene conversion in *Saccharomyces cerevisiae.* EPA has previously concluded that overall there is low concern for the mutagenicity of thiodicarb.

3. *Metabolism.* The metabolism of thiodicarb has been studied in several animal and plant species and studies submitted and accepted by EPA. The metabolism in plants and animals is adequately understood for the purposes of this tolerance.

4. *Chronic effect.* Based on the available chronic toxicity data, the Health Effects Division-RfD/Peer Review Committee of the EPA recommended in their RfD/Peer Review Report (Ghali, June 18, 1996) that the Reference Dose (RfD) for thiodicarb remain unchanged from the previously established value of 0.03 mg/kg/day. The recently completed rat studies support the no observed effect level (NOEL) of 3 mg/kg/day established in previous studies. An Uncertainty Factor (UF) of 100 was applied to account for both the interspecies extrapolation and intraspecies variability.

5. *Carcinogenicity.* The potential oncogenicity of thiodicarb has been fully evaluated by the EPA's Health Effects Division Carcinogenicity Peer Review Committee (CPRC) (Taylor and Rinde, June 10, 1996). The committee determined that the available database was adequate for the determination of the carcinogenicity of thiodicarb in animals and concluded that thiodicarb should be classified in Group B2. While Rhone-Poulenc disagrees with the classification of thiodicarb and the interpretation of the study results (as described below) Rhone-Poulenc agrees with the risk characterization procedure recommended by the CPRC and concurs that the recommended procedures are fully adequate to protect humans from dietary exposure to thiodicarb.

The CPRC recommended that a margin of exposure methodology be applied for the estimation of human risk because the findings observed in the oncogenicity studies occurred only at the highest doses tested in the studies and in the case of mice the highest dose tested may even have been excessive. In addition, there was no evidence of genotoxicity.

a. Rhone-Poulenc feels that the results in the most recent oncogenicity study in rats should not be considered indicative of a carcinogenic response in the Leydig cells of the rats for the following reasons:

i. Compared to the control groups, both sexes at the high dose level displayed fewer tumors and there were fewer with multiple benign and malignant tumors.

ii. There was a statistically significant decrease in pituitary adenomas in the high dose animals relative to controls (10 percent vs 56 percent) indicating more high dose than control animals had normal pituitaries at the end of the study. The incidence of pituitary adenomas is well below the historical control range (10 percent vs a range of 43 to 80 percent). Pituitary activity is known to be critical in the regulation of benign Leydig cell tumor formation through the secretion of luteinizing hormone. Increased pituitary activity in aged male rats would be expected to secondarily result in increased benign Leydig cell tumor formation.

iii. There was no statistical increase in benign interstitial cell tumors relative to the concurrent controls when all

animals were included in the statistical analysis.

iv. There is clear evidence that exposure to 900 ppm thiodicarb resulted in increased survival for male rats relative to controls. The 2 year survival rate for high dose males was 1.3 times that of controls (58 percent vs 45 percent, respectively). Benign interstitial cell tumors are very common age related tumors. Because survival was 1.3 times higher in the high dose group than in controls, the high dose animals should be expected to have a higher raw incidence of common age related tumors.

v. Benign interstitial cell tumors do not transform into a more aggressive form with time.

vi. Benign interstitial cell tumors are very common in rats and highly uncommon in humans. There is an absence of epidemiological evidence that Leydig cell tumors in rats are relevant for human health risk assessment. The Food and Drug Administration (FDA), and European regulatory authorities in general do not consider these findings to be relevant for human health risk assessment. Numerous scientific symposia/discussions have been held regarding the lack of relevance of rat Leydig cell changes for human risk assessment.

b. Rhone-Poulenc feels that the results in the most recent mouse oncogenicity study should not be considered indicative of a carcinogenic response in the liver cells of the mice for the following reasons:

i. The evidence shows that thiodicarb is not oncogenic in mice at doses which do not exceed the maximum tolerated dose (MTD).

ii. There was no evidence to suggest liver oncogenicity in the first mouse study at doses up to 10 mg/kg/day or in the second study at doses up to 70 mg/kg/day.

iii. In the second study where there was evidence suggestive of an oncogenic response in the liver, the MTD was significantly exceeded based on increased mortality in females and a dramatic body weight gain depression in the males. The body weight gains for males at 1,000 mg/kg/day were 54 percent of the control male gains during the first year of the study. The body weight gains for the 1,000 mg/kg/day group females were 85 percent of controls for the same time period. Survivability at 97 weeks was also significantly decreased in males (41 percent versus 58 percent in control males) and females (24 percent versus 51 percent in control females).

iv. Other evidence that the MTD was exceeded included severe and sustained liver toxicity demonstrated by increased liver weights, hepatocyte hypertrophy, single cell necrosis and hemosiderin deposition by 52 weeks and increased bilirubin and ALT, increased liver weight, hepatocyte hypertrophy, bile duct hyperplasia, hepatocyte pleomorphism and hemosiderin deposition at 97 weeks of treatment.

Conclusion. The oncogenicity studies with thiodicarb fully conform to the currently accepted guidelines for this study type. Rhone-Poulenc Ag Company believes that the results of the studies provide only minimal evidence that the compound is oncogenic in rodents. After analysis of the data, EPA scientists recently determined that a margin of exposure of 100 applied to the lowest NOEL from the chronic studies with thiodicarb would provide adequate safety for any risks to humans. Rhone-Poulenc agrees with this risk assessment approach and is confident that it will provide adequate safety for all human population subgroups including infants and children.

6. *Teratology.* Several teratology studies exist on thiodicarb in rats, rabbits, and mice. These are reviewed below:

a. A teratology study in rats was conducted at doses of 0, 0.5, 1.0, 3, and 100 mg/kg/day. No signs of teratogenicity were observed.

b. A teratology study was conducted in rats at doses of 0, 1, 10 and 30 mg/kg/day. No signs of teratogenicity were observed.

Data from both studies can be (and were by EPA) used to derive maternal and developmental NOELs and lowest observed effect levels (LOELs). Based on data from both studies, the maternal NOEL and LOEL were determined to be 10 and 20 mg/kg/day, respectively. The developmental NOEL and LOEL were determined to be 3 and 10 mg/kg/day, respectively, based on delayed ossification of sternebrae.

c. A teratology study in rabbits was conducted at doses of 0, 5, 20 and 40 mg/kg/day. No signs of teratogenicity were observed. The NOEL and LOEL for maternal toxicity were determined to be 20 and 40 mg/kg/day, respectively. The developmental NOEL was determined to be 40 mg/kg/day. As this was the highest level tested, no LOEL for developmental toxicity was determined.

d. A teratology study in mice was conducted at doses of 0, 50, 100 and 200 mg/kg/day. No signs of teratogenicity were observed. The maternal NOEL and LOEL were determined to be 100 and 200 mg/kg/day, respectively. As no fetal effects were observed at all, the developmental NOEL can be considered to be 200 mg/kg/day.

Conclusion. Based on all the studies above, Rhone-Poulenc Ag Company does not believe that thiodicarb is a teratogen, or that it presents any unreasonable risk to children.

7. *Reproductive effects.* Two reproduction studies were recently conducted with thiodicarb; one dose-rangefinding study and one definitive study.

a. In the dose-rangefinding study, rats were administered thiodicarb in their diets at concentrations of 0, 200, 600, 1,800, and 3,000 ppm. Maternal toxicity, as evidenced by decreased pup viability at birth and day 4, was seen at the three highest doses. Also at the three highest doses, decreased pup growth occurred. Therefore, the NOEL for both maternal and fetal effects was determined to be 200 ppm.

b. In the definitive study, thiodicarb was administered in the diets of rats at concentrations of 0, 100, 300, and 900 ppm. Fetal body weight gain at 100 ppm was significantly decreased when compared with concurrent controls resulting in the conclusion that, strictly speaking, no NOEL was reached for fetal effects in this study. An independent expert consulting firm was contracted with to statistically derive from these data a conservative NOEL for all effects. These experts concluded that a conservative NOEL for all effects would be 80 ppm, equivalent to an average daily dose of 5.20 mg/kg/day. EPA subsequently utilized a Benchmark Dose approach to estimate the NOEL for this study, and ultimately concluded that, based on all the data and all the different analyses of the data, 100 ppm is at or near the NOEL for reproductive/developmental toxicity. It is significant, too, that this NOEL is higher than the NOEL from the chronic toxicity/oncogenicity study in rats, where the NOEL is used to determine the Reference Dose for thiodicarb.

Conclusion. Based on the studies cited above, Rhone-Poulenc Ag Company believes that thiodicarb does not pose an unreasonable risk of reproductive effects to parents or their offspring. Further, as none of the effects observed in the cited studies are classically related to any specific endocrine mechanism, Rhone-Poulenc Ag Company believes that thiodicarb is not an endocrine disrupter.

C. Aggregate Exposure/Cumulative Effects

The Dietary Analysis for the Proposed Use of thiodicarb on leafy vegetables has been run by EPA and summarized in a document dated June 17, 1991 (Schaible, S.A.). Using the Theoretical Maximum Residue Contributions (TMRC) calculated from the tolerances and estimated consumption data for various populations (very conservative estimates) a value of 0.019213 is obtained for the TMRC which represents 64.0 percent of the established reference dose was reached for the overall U.S. population. The Dietary Analysis for the Proposed Use of thiodicarb on broccoli, cabbage and cauliflower has been run by EPA and summarized in a document dated July 9, 1990 (Briggs, R.). Using the TMRC calculated from the tolerances and estimated consumption data for various populations (very conservative estimates). A value of 0.015225 is obtained for the TMRC which represents 50.8 percent of the established reference dose utilized for the overall U.S. population. None of the population subgroups exceeded the 100 percent level of the reference dose. This value includes all pending and published tolerances, including apples, tomatoes and peppers for which Rhone-Poulenc Ag Company does not currently have a registration. This is a large overestimation of the actual dietary exposure to thiodicarb because it assumes 100 percent of crops treated and maximum residue levels present.

The FQPA of 1996 lists three other potential sources of exposure to the general population that must be addressed, these are pesticides in drinking water, exposure from non-occupational sources, and the potential cumulative effect of pesticides with similar toxicological modes of action. Based on the available studies of thiodicarb in the environment which show a short half-life in soil (1.5 days), Rhone-Poulenc Ag Company does not anticipate residues of thiodicarb in drinking water. There is no established Maximum Concentration Level or Health Advisory Level for thiodicarb under the Safe Drinking Water Act.

The potential for non-occupational exposure to the general public is also insignificant. There are no residential lawn or garden uses for thiodicarb products where the general population may be exposed via inhalation or dermal routes.

Rhone-Poulenc concludes that consideration of a common mechanism of toxicity is not appropriate at this time since there is no reliable data to indicate that the toxic effects caused by thiodicarb would be cumulative with those of any other compound. Based on this point, Rhone-Poulenc has considered only the potential risks of thiodicarb in it's exposure assessment.

D. Safety Determinations

1. *U.S. population in general.* Using the very conservative exposure estimates described above, the conclusion reached is that aggregate exposure to thiodicarb will utilize no more than 64 percent of the established reference dose. Rhone-Poulenc Ag Company has conducted a preliminary Dietary Risk Exposure Study (DRES) with TAS, Inc. which utilizes actual data (where available) for percent crops treated and residue data from FDA and Cal-EPA monitoring programs (no detectable residues of thiodicarb were observed in these databases, so as a conservative estimate, all methomyl residues were assumed to result from thiodicarb use). Only registered and conditionally registered uses (including leafy vegetables, broccoli, cabbage and cauliflower) were included in the analysis. The study concluded that chronic exposure estimates are well below the endpoints of concern. Chronic exposure estimates are 0.1 percent of the RfD or less for all population groups. Based on this study and the above points, Rhone-Poulenc Ag Company believes there is a reasonable certainty that no harm will result from aggregate exposure to thiodicarb.

2. *Infants and children.* Referring to the conclusions and summary in the Developmental and Reproductive Toxicity section stated above, Rhone-Poulenc Ag Company believes there is no additional sensitivity for infants and children and that an additional safety factor for infants and children is not warranted. The RfD of 0.03 mg/kg/day is appropriate for assessing aggregate risk to this subpopulation. For the infant and children (1 to 6 years of age) populations only 0.1 percent of the reference dose was used in the DRES study discussed above.

Based on the completeness and reliability of the toxicology data and the dietary analysis Rhone-Poulenc Ag Company concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to thiodicarb residues.

E. International Tolerances

There are no Codex maximum residue levels established for thiodicarb on leafy vegetables, broccoli, cabbage or cauliflower.

II. Public Record

EPA invites interested persons to submit comments on this notice of filing. Comments must bear a notification indicating the docket control number [PF–700].

A record has been established for this notice under docket control number [PF–700] (including comments and data submitted electronically as described below). A public version of this record, including printed paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official notice record which will also include all comments submitted directly in writing. The official notice record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Authority: 21 U.S.C. 346a.

List of Subjects

Environmental Protection, Administrative practice and procedure, Agricultural commodities, Pesticide and pest, Reporting and recordkeeping requirements.

Dated: February 10, 1997.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–4879 Filed 3–4–97; 8:45 am]

BILLING CODE 6560–50–F

[OPP–181034; FRL 5591–2]

Bifenthrin; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Washington

Department of Agriculture (hereafter referred to as the "Applicant") to use the pesticide bifenthrin (CAS 82657–04–3 *cis* and 83322–02–5 *trans*), formulated as Brigade WSB, to treat up to 9,500 acres of raspberries to control weevils. This is the fifth year this use has been requested, and it has been allowed under section 18 for the past 4 years. Since this request proposes a use which has been requested or granted in any 3 previous years, and a complete application for registration and petition for tolerance has not yet been submitted to the Agency, EPA is soliciting public comment before making the decision whether or not to grant the exemption, in accordance with 40 CFR 166.24(a)(6).

DATES: Comments must be received on or before March 20, 1997.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–181034," should be submitted by mail to: Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–181034]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8791; e-mail: beard.andrea@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of bifenthrin on raspberries to control weevils. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicant, this emergency exists because of the loss of the chlorinated hydrocarbon insecticides. Initially, raspberry growers obtained some relief through use of carbofuran under an exemption; however, that use was later disallowed due to groundwater concerns. Exemptions were then issued for several years for use of permethrin, but discontinued as the Applicant opted to request bifenthrin instead, due to claims that use of permethrin disrupted natural controls of other raspberry pests, leading to population flare-ups of these pests (primarily mites). This use of bifenthrin has been allowed under section 18 for the past four years, and the Applicant states that alternative controls are not adequate to prevent significant economic losses due to damage and contamination problems from weevils.

Under the proposed exemption, bifenthrin would be applied at a rate of 0.1 lb. a.i. per acre, with no more than 2 applications during the growing season, not to exceed the rate of 0.2 lb. a.i. per acre using ground equipment only. If all 9,500 acres are treated at this maximum rate, this could potentially result in a total use of 1,900 lb. a.i.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt of an application for a specific exemption proposing a use which has been requested or granted in any 3 previous years, and a complete application for registration and/or tolerance petition has not been submitted to the Agency [40 CFR 166.24 (a)(6)]. Such notice provides for opportunity for public comment on the application.

A record has been established for this notice under docket number [OPP–181034] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Washington Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests, Emergency exemptions.

Dated: February 19, 1997.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–5199 Filed 3–4–97; 8:45 am]

BILLING CODE 6560–50–F

[OPP–181033; FRL 5591–1]

Chlorfenapyr; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Texas Department of Agriculture (hereafter referred to as the "Applicant") to use the pesticide chlorfenapyr (CAS 122453–73–0), formulated as Pirate 3SC, to treat up to 1.8 million acres of cotton to control the beet armyworm (BAW).The Applicant proposes the use of a new (unregistered) chemical. Therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before March 20, 1997.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–181033," should be submitted by mail to: Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–181033]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8791; e-mail: beard.andrea@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of chlorfenapyr on cotton to control beet armyworm. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicant, three primary factors have brought about this situation. These are: (1) the resistance to registered alternative pesticides causing control failures when these products are applied on cotton to control BAW; (2) the weather conditions consisting of mild winters and unusually dry hot weather were conducive to a BAW outbreak, and (3) BAW infesting cotton in unusually large numbers. Yield losses due to infestations of beet armyworms in cotton have ranged from 0 percent with light populations to 100 percent, due to the crop being completely devoured or the grower abandoning the field. Combining estimates from the Texas Agricultural Extension Entomologists from the various areas of infestation, at least 40 percent yield losses may occur on approximately 35 percent of the cotton acreage in the requested sites. These yield losses will result in significant economic losses for the cotton producers.

Under the proposed exemption, chlorfenapyr may be applied at a rate of 0.2 lb. a.i. per acre, with no more than 2 applications during the growing season, not to exceed the rate of 0.4 lb. a.i. per acre using ground or aerial equipment. If all 1.8 million acres are treated at this maximum rate, this could potentially result in a total use of 720,000 lb. a.i., or 239,907 gal. of product.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide), [40 CFR 166.24 (a)(1)]. Such notice provides for opportunity for public comment on the application.

A record has been established for this notice under docket number [OPP–181033] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Texas Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests, Emergency exemptions.

Dated: February 25, 1997.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–5306 Filed 3–4–97 8:45 am]

BILLING CODE 6560–50–F

[OPP–181032; FRL 5588–6]

Pyriproxyfen and Buprofezin; Receipt of Application for Emergency Exemptions, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received specific exemption requests from the California Environmental Protection Agency, Department of Pesticide Regulation (hereafter referred to as the "Applicant") to use the insect growth regulators pyriproxyfen (CAS 95737–68–1) and buprofezin (CAS 69327–76–0) to treat up to 100,000 acres of cotton to control the sweet potato, or silverleaf whitefly *Bemesia species*. In the case of pyriproxyfen, the Applicant proposes the first food use of an active ingredient. Buprofezin is an unregistered material, and its proposed use is thus use of a "new" chemical. Therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemptions.

DATES: Comments must be received on or before March 20, 1997.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–181032," should be submitted by mail to: Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–181032]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location, telephone number and e-mail: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8791; e-mail: beard.andrea@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue specific exemptions for the use of pyriproxyfen and buprofezin on cotton to control the sweet potato, or silverleaf whitefly (SLW). Information in accordance with 40 CFR part 166 was submitted as part of this request.

The Applicant states that a new strain or possibly a new species, of whitefly, often referred to as the strain B of sweet potato whitefly, or silverleaf whitefly (SLW), has been a major pest of cotton in California since 1991. Since that time, it has steadily spread to new host plants and grown in population size each summer and fall. The SLW causes damage by feeding, and also through the production of honeydew, which encourages growth of sooty mold and other fungi, and leads to sticky cotton. When SLWs become numerous, their direct feeding lowers the yield. The SLW has also been implicated as a vector of virus. The Applicant claims that adequate control of the SLW is not being achieved with currently registered products and alternative cultural practices.

The Applicant points out that the ability to adequately control this pest is further complicated because of the close proximity of these California cotton-growing areas to that of Arizona where large populations of whitefly have demonstrated resistance to available insecticidal control. It has also been demonstrated that there are whitefly populations in California with resistance problems to those being experienced in Arizona. The Applicant indicates that one application of either one or the other of the requested chemicals would not provide adequate control throughout the season, and since application of either would be limited to one, is requesting the use of both materials. The Applicant indicates that without adequate control of the SLW in cotton, significant economic losses will be suffered.

The Applicant proposes to apply pyriproxyfen at a rate of 0.054 lb. active ingredient (a.i.) per acre with a maximum of one application per crop season on up to 100,000 acres of cotton. The Applicant proposes to apply buprofezin at a rate of 0.35 lb., a.i. per acre with a maximum of one application per crop season on up to 100,000 acres of cotton. Therefore, use under these exemptions could potentially amount to a maximum total of 5,400 lbs. of pyriproxyfen and 35,000 lbs. of buprofezin.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt in the **Federal Register** for an application for a specific exemption proposing the first food use of an active ingredient, or for use of a new (unregistered) chemical. Such notice provides for opportunity for public comment on the application.

A record has been established for this notice under docket number [OPP–181032] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the California Department of Pesticide Regulation.

List of Subjects

Environmental protection, Pesticides and pests, Emergency exemptions.

Dated: February 19, 1997.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–5198 Filed 3–4–97; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5699–4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer, (202) 260–2740; please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 1746.01; NESHAP for Elastomers—40 CFR 63, Subpart U; was approved 02/04/97; OMB No. 2060–0356; expires 02/28/2000.

EPA ICR No. 0613.06; Trade Secret Clearance Justification; was approved 02/06/97; OMB No. 2070–0053; expires 02/28/2000.

EPA ICR No. 1001.06; Polychlorinated Biphenyls (PCBs); Exclusions, Exemptions, and Use Authorizations; was approved 02/19/97; OMB No. 2070–0008; expires 02/28/2000.

EPA ICR No. 1687.03; National Emission Standards for Hazardous Air Pollutants for Aerospace Manufacturing and Rework Operations; was approved 02/19/97; OMB No. 2060–0314; expires 09/30/98.

EPA ICR No. 1587.04; Part 70 Operating Permits Regulations; was approved 02/20/97; OMB No. 2060–0243; expires 02/28/2000.

EPA ICR No. 1415.03; NESHAP for Dry Cleaning Facilities/ Perchloroethylene (PCE)–(63, M) was approved 02/20/97; OMB No. 2060–0234; expires 02/28/2000.

EPA ICR No. 0262.08; RCRA Hazardous Waste Permit Application and Modification, Part A; was approved 09/30/96; OMB No. 2050–0034; expires 10/31/99.

EPA ICR No. 0574.10; Addendum to Existing ICR to Include the Final Rule for Certain Microbial Products of Biotechnology; was approved 02/19/97; OMB No. 2070–0012; expires 02/28/2000.

Extension of Expiration Dates

EPA ICR No. 1665.01; Confidentiality Rules; expiration date was extended from 02/28/97 to 04/30/97.

EPA ICR No. 1759.01; Worker Protection Standard; expiration date was extended from 02/28/97 to 05/31/97.

Dated: February 27, 1997.

Joseph Retzer,

Director, Regulatory Information Division

[FR Doc. 97–5420 Filed 3–4–97; 8:45 am]

BILLING CODE 6560–50–M

[FRC–5699–7]

Release of Volume 2, Risk Assessment and Risk Management in Regulatory Decision-Making; Commission on Risk Assessment and Risk Management

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Commission on Risk Assessment and Risk Management, established as an Advisory Committee under Section 303 of the Clean Air Act Amendments of 1990, will release Volume 2, of its two-volume final report, Risk Assessment and Risk Management in Regulatory Decision-Making, on March 7, 1997. Volume 1 was released in a public meeting held on January 29, 1997.

If you wish to receive a copy of the final report, either fax your request to 202–233–9540, mail your request to the Commission on Risk Assessment and Risk Management, 529 14th Street, NW, Room 420, Washington, DC 20045, or obtain via the internet at http://www.riskworld.com. Be sure to indicate your complete mailing address and a phone number where you can be reached. If you have already requested a copy of the draft report, or a copy of Volume 1, it is not necessary to send another request. Everyone who requested a copy earlier will be sent Volume 2.

If you need additional information, please call 202–233–9537. The report will not be available prior to March 7, 1997.

Dated: February 27, 1997.

Gail Charnley,

Executive Director, Commission on Risk Assessment and Risk Management.

[FR Doc. 97–5417 Filed 3–4–97; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting on Implementation of the Hotel and Motel Fire Safety Act of 1990

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of open meeting.

SUMMARY: FEMA announces the following open meeting:

NAME: United States Fire Administration.

DATE OF MEETING: March 12, 1997.

PLACE: Federal Emergency Management Agency, U.S. Fire Administration, Building N, Room 309, 16825 South Seton Avenue, Emmitsburg, MD 21727.

TIME: 9:30 a.m.

PROPOSED AGENDA: Presentation on the Hotel and Motel Fire Safety Act, recent amendments to reporting requirements, successor standards, applicability to the hospitality industry, colleges and universities. Open discussion on these and other related issues.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public with approximately 10 seats available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact John Ottoson, U.S. Fire Administration, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1272, on or before Monday, March 10, 1997.

Minutes of the meeting will be prepared and will be available for public viewing in the Office of the U.S. Fire Administrator, Federal Emergency Management Agency, 16825 South Seton Avenue, Emmitsburg, MD 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: February 27, 1997.

Donald G. Bathurst,

Deputy Administrator.

[FR Doc. 97–5380 Filed 3–4–97; 8:45 am]

BILLING CODE 6718–08–P

FEDERAL TRADE COMMISSION

[File No. 971–0009]

American Home Products Corporation; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, will settle antitrust concerns stemming from the Madison, New Jersey-based company's proposed acquisition of Solvay, S.A.'s animal health business. The complaint accompanying the consent agreement alleges that the proposed $463 million acquisition would give American Home Products a dominant position in the market for canine lyme vaccines, canine corona virus vaccines, and feline leukemia vaccines. The agreement would require, among other things, that American Home Products divest Solvay's U.S. and Canadian rights to the three types of vaccines to the Schering-Plough Corporation or another Commission-approved buyer.

DATES: Comments must be received on or before May 5, 1997.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: William J. Baer, Federal Trade Commission, H–374, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580. (202) 326–2932; George S. Cary, Federal Trade Commission, H–374, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580. (202) 326–3741; Casey R. Triggs, Federal Trade Commission, S–2308, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580. (202) 326–2804.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for February 25, 1997), on the World Wide Web, at "http://www.ftc.gov/os/actions/htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an agreement containing a proposed Consent Order from American Home Products Corporation ("AHP") under which AHP would divest Solvay S.A.'s ("Solvay"), canine lyme vaccine, canine corona virus combination vaccines and feline leukemia combination vaccines. The agreement is designed to remedy the anticompetitive effects resulting from AHP's acquisition of Solvay's animal health business.

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed Order.

The proposed complaint alleges that the proposed acquisition, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, in the markets for canine lyme vaccine, canine corona virus combination vaccines and feline leukemia combination vaccines.

The canine lyme, canine corona virus combination and feline leukemia combination vaccines are the only effective method to prevent certain companion animal diseases. These vaccines work by exposing the host animal's own immune system to specific antigens for the disease. These antigens in turn stimulate the immune system's production of antibodies, which protect the host animal against future exposure to the disease.

Companion animal vaccine manufacturers sell vaccines such as canine lyme, canine corona virus combination and feline leukemia combination to veterinarians, who then charge consumers when they bring their companion animals in for treatment. Veterinarians rely on competition among the vaccine manufacturers to drive down the cost of services they provide. Where a single vaccine manufacturer controls a large share of a vaccine market, that manufacturer is able to extract higher prices as a result.

AHP's proposed acquisition of Solvay's animal health business would give the combined entity a dominant position in the canine lyme, canine corona virus combination and feline leukemia combination vaccine markets. As a result, the combined entity would have the ability to raise prices in each of these markets. Furthermore, entry into these markets is difficult and time consuming because of lengthy development periods and the need for approvals by the United States Department of Agriculture ("USDA") and is unlikely to offset the competitive harm that would result from the combination of AHP and Solvay's animal health business.

The proposed consent order requires AHP to divest certain assets to Schering-Plough, Ltd. ("Schering-Plough") relating to Solvay's canine lyme, canine corona virus combination and feline leukemia combination vaccines including, but not limited to, master seeds and cell stock, know-how, intellectual property and research and development. In addition, AHP is required to assist Schering-Plough in obtaining USDA certification. These assets in the hands of Schering-Plough are sufficient to replace the lost competition that would result from the acquisition.

Public comments regarding all aspects of the proposed divestiture to Schering-Plough will be considered with other comments on the proposed Order.

Under the proposed Order, if Schering-Plough ceases to sell contract manufactured canine lyme, canine corona virus combination and feline leukemia combination vaccines prior to obtaining USDA certification, abandons its efforts to obtain USDA approval, or fails to obtain timely USDA approval, or in the event AHP fails to divest the assets absolutely and in good faith, the Commission may terminate the divestiture agreement and appoint a trustee to divest Solvay's canine lyme vaccine, canine corona virus combination vaccines, and feline leukemia combination vaccines, as well as Solvay's Charles City Facility and equine vaccines. The crown jewel provision also includes, at AHP's discretion, a supply contract for a term not to exceed (3) three years from the date of the divestiture, which requires the new acquirer to supply AHP (i) any swine or poultry vaccines for sale worldwide, (ii) any canine lyme vaccine, canine corona virus combination vaccines and feline leukemia combination vaccines for sale by AHP outside the United States and Canada and (iii) single antigen rabies vaccine and feline leukemia combination vaccine with rabies for sale worldwide being produced at the Charles City Facility at the time of divestiture, priced at each vaccine's average total cost. This crown jewel provision will ensure that a trustee can divest a package of assets that is sufficiently attractive to potential buyers.

Under the provisions of the proposed Order, AHP is also required to provide the Commission with a report of compliance with the divestiture provisions of the Order within sixty (60) days following the date this Order becomes final, and every ninety (90) days thereafter until AHP has fully complied with the divestiture provisions of the proposed Order.

The purpose of this analysis is to facilitate public comment on the proposed Order, and it is not intended to constitute an official interpretation of the agreement and proposed Order or to modify in any way their terms.

Donald S. Clark,

Secretary.

Concurring Statement of Commissioner Mary L. Azcuenaga in American Home Products Corp., File No. 971–0009

I concur in the decision to accept the consent agreement for public comment and write separately to invite comment on whether and when the Commission should require the firm divesting assets to give up patent rights beyond those acquired in the transaction at issue. Paragraph IID of the proposed order requires American Home Products (AHP) not only to license the intellectual property that is acquired from Solvay S.A., but also to agree not to sue the acquiring firm for infringement of vaccine patents that AHP owned before the acquisition. The firm purchasing the divested assets will obtain Solvay's intellectual property free and clear of any claim that the Solvay vaccines infringe AHP's patents. Should the Commission resolve the patent dispute regarding whether Solvay's vaccines infringed AHP's patents, and if so, how should such a dispute be resolved?

[FR Doc. 97–5343 Filed 3–4–97; 8:45 am]

BILLING CODE 6750–01–M

[File No. 942–3341]

Schering-Plough Healthcare Products, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the marketer of Coppertone Kids sunscreens for children from making deceptive claims about the effectiveness of sunscreens marketed for use on children. The agreement will also require that the company produce and distribute 150,000 consumer education brochures to alert parents to the importance of sunscreen protection for children and the need to reapply sunscreens after toweling or sustained vigorous activity. The complaint accompanying the consent agreement alleges that Schering's ads for Coppertone Kids 6-Hour Waterproof Sunblock make unsubstantiated claims that one application of Coppertone Kids provides six hours of protection from the sun for children engaged in sustained vigorous activity in and out of the water.

DATES: Comments must be received on or before May 5, 1997.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Joel Winston, Federal Trade Commission, S–4002, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580. (202) 326–3153; Toby Milgrom Levin, Federal Trade Commission, S–4002, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580. (202) 326–3156.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for February 18, 1997), on the World Wide Web, at "http://www.ftc.gov/os/actions/htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Schering-Plough Healthcare Products, Inc. ("Schering-Plough Healthcare"). Schering-Plough Healthcare, a wholly-owned subsidiary of the Schering-Plough Corporation, is a manufacturer and distributor of health care products, including sunscreens.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received

during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves alleged deceptive representations made in advertising for Coppertone Kids, a sunscreen product promoted for use on children. According to the FTC complaint, Schering-Plough Healthcare represented, without adequate substantiation, that a single application of Coppertone Kids provides six hours of protection from the sun, at the advertised SPF level, for children engaged in sustained vigorous activity in and out of the water. The complaint also alleges that Schering-Plough Healthcare falsely represented that it had conducted tests demonstrating that the product provides such protection. According to the complaint, among other things, the company's tests did not evaluate a single application of the product under the advertised conditions of use (sustained vigorous activity).

The consent order contains provisions designed to remedy the violations charged and to prevent Schering-Plough Healthcare from engaging in similar acts and practices in the future.

Part I of the proposed order prohibits Schering-Plough Healthcare from representing: (a) the length of time that Coppertone Kids or any other children's sun protection product will provide protection from the sun for persons engaged in sustained vigorous activity in and out of the water; or (b) the efficacy of any children's sun protection product in providing protection against any harmful effect of sun exposure or ultraviolet radiation, unless the company has scientific substantiation for the representation.

The order defines a "children's sun protection product" as any sun protection product that uses the word "babies," "children," "kids," or other similar words in the name or promotion of the product, or that is advertised or promoted for use primarily on children under the age of twelve.

Part II of the proposed order prohibits Schering-Plough Healthcare from misrepresenting the existence, contents, validity, or conclusions of any test or study concerning any sun protection product.

Part III of the order allows Schering-Plough Healthcare to make any representation for a sun protection product that is specifically permitted in labeling for that product under any tentative final or final Food and Drug Administration standard or under any new drug application approved by the Food and Drug Administration.

Part IV of the proposed order requires Schering-Plough Healthcare to produce and disseminate a consumer brochure addressing the importance of sunscreen usage to children and the health benefits associated with it, and promoting the proper use and application of sunscreens on children. The brochure, which is subject to FTC approval, will be disseminated by Schering-Plough Healthcare to organizations with direct access to parents or organizations with access to parents or others who work with or care for children under the age of 12.

Parts V, VII, IX, and X of the proposed order require Schering-Plough Healthcare to keep copies of all materials relied upon in making any representations covered by Parts I and II of the order; to provide copies of the order to certain of the company's personnel; to notify the Commission of any change in corporate structure; and to file compliance reports with the Commission. Part VI permits respondent to use existing labeling for 100 days after the date of service of the order. Part VIII provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

Separate Statement of Commissioner Mary L. Azcuenaga Concurring in Part and Dissenting in Part in Schering-Plough Healthcare, File No. 942 3341

Today, the Commission accepts for public comment a proposed consent agreement resolving allegations about certain claims in the advertising of Coppertone Kids 6-Hour Waterproof Sunblock. I concur except with respect to Part IV of the proposed order, which requires the respondent to develop and disseminate a consumer education brochure addressing the dangers of unprotected exposure to the sun. Consumer education brochures are an integral part of the Commission's consumer protection program, but they are not necessarily defensible adjuncts to Commission orders.

A fencing-in provision will be sustained by the courts as long as it is "reasonably related" to the violation found.[1] Fencing-in relief properly may include requirements beyond simply prohibiting the challenged conduct that are designed to "close all roads to the prohibited goal, so that [the Commission's] order may not be by-passed with impunity."[2] The allegedly deceptive claim is that the respondent's sunblock for children would remain effective for six hours even if the children engaged in "sustained vigorous activities in and out of the water," such as playing in sand, taking off and putting on clothes and toweling off after swimming. Complaint ¶5. The proposed order expressly enjoins the respondents from making the challenged claim, either directly or indirectly, for the product at issue as well as for "any other children's sun protection product." Order ¶I.

In addition, the proposed order requires the respondent to develop and distribute 150,000 copies of a color brochure concerning the importance of sunscreen usage by children. The order requires that the brochure contain six messages or themes only one of which addresses the issue in this case, the need to reapply so-called water-proof or water-resistant sunblock after vigorous activity or after toweling off. Order ¶ IV–E.

The brochure requirement, even the message that relates most closely to the challenged claim, is not focused on preventing the respondent from making the challenged claim or otherwise from avoiding compliance with the order. The brochure would help educate consumers regarding an important health issue, and, presumably, make them less likely to be misled by the kind of implied claims challenged in this action.[3] There is no reason to think that it would enhance the deterrent effect of the order on Schering.

Presumably, the brochure requirement will not be unduly burdensome or costly for Schering because it will promote the use of its product, and the brochure is undoubtedly commendable as a public health initiative. Nevertheless, under the circumstances, it is an overly broad order requirement as measured against the current standard for ordering relief.[4] There is a

[1] FTC v. Colgate-Palmolive Co., 380 U.S. 374, 394–95 (1965); FTC v. National Lead Co., 352 U.S. 419, 428 (1957).

[2] FTC v. Ruberoid Co., 343 U.S. 470, 473 (1952).

[3] The product label already contains the statement, "Reapply after toweling."

[4] It would be even more difficult to justify Part IV of the order as corrective advertising, because it is unlikely that the implied claim challenged in the complaint would linger in the minds of consumers long after it ceased being made. *See Warner-Lambert Co.* v. *FTC*, 562 F.2d 749, 762 (D.C. Cir. 1977), cert. denied, 435 U.S. 950 (1978).

value to the Commission in maintaining the integrity of the standard for imposing a fencing-in remedy.

I respectfully dissent from Part IV of the order.

Separate Statement of Commissioner Roscoe B. Starek, III Concurring in Part and Dissenting in Part in Schering-Plough Healthcare, File No. 9423341

I have voted to accept for public comment the consent agreement with Schering-Plough Healthcare Products, Inc. ("Schering"), because I have reason to believe that the challenged advertisements are deceptive and I find that the proposed order, for the most part, provides appropriate relief. I do not, however, support the requirement that Schering produce and distribute a consumer education brochure that includes numerous specified "messages or themes." As set forth in the proposed order, this consumer education remedy is overbroad and in any event is unlikely to assist in the prevention of the violations alleged in the complaint. Although I am an advocate of a strong Commission consumer education program, and we can be proud of the valuable work done by the Bureau of Consumer Protection's Office of Consumer and Business Education, this remedy is a well-meaning but not legally justifiable effort to fund a general consumer education campaign.

The Commission enjoys extensive authority to fashion fencing-in relief for deceptive practices so long as the remedy has a reasonable relation to the violations alleged in the complaint. *See, e.g., FTC* versus *Colgate-Palmolive Co.*, 380 U.S. 374, 394–95 (1965); *FTC* versus *National Lead Co.*, 352 U.S. 419, 428–29 (1957). With such authority, however, comes the responsibility to exercise it judiciously. In my view, the consumer education remedy mandated by this proposed order bears no reasonable relationship to the violations alleged in the complaint.

The proposed complaint alleges that Schering lacked a reasonable basis for the claim that a single application of Coppertone Kids provides six hours of protection from the sun for children engaged in sustained vigorous activity in and out of the water.[1] The order addresses this allegation by requiring scientific substantiation for claims about the efficacy of any children's sun protection product in providing protection against any harmful effect of sun exposure or ultraviolet radiation, or about the length of time that any such product will provide sun protection for individuals engaged in sustained vigorous activity in and out of the water.

In addition, however, the order would require Schering to design, produce and print a brochure—subject to the approval of the Associate Director of the Division of Advertising Practices ("DAP") in the Commission's Bureau of Consumer Protection—about the importance of sunscreen usage by children. The order mandates that the brochure include all of the following "messages or themes":

(A) The importance of sunscreens in preventing skin damage, including skin cancer, sunburn, and premature skin aging;

(B) Regular use of a high SPF sunscreen during childhood can significantly reduce the risk of certain types of skin cancers later in life;

(C) A single bad sunburn during childhood can significantly increase a child's risk of developing skin cancer later in life;

(D) The importance of proper application of sunscreens;

(E) The need to reapply sunscreens after toweling or sustained vigorous activity; and

(F) The need to use sunscreens during outdoor activities—not only in connection with water activities.

Order ¶ IV. The respondent must disseminate 150,000 copies of this brochure to parents or to organizations with access to parents or others who work with or care for children under age twelve.[2]

Of the six required messages, only statement (E) seems likely to assist in the prevention of future deception like or related to that alleged in the complaint. Yet by including this key reapplication information in an extensive list of other facts about sunscreen, the order makes it less likely that consumers will see the reapplication information. In my view, it is highly unlikely that a parent who receives and reviews whatever brochure is approved will recall the one piece of information related to the complaint allegation when the parent makes a sunscreen purchase. Because the scope of the information to be included in the brochure is so broad, the consumer education remedy is not reasonably related to the violations alleged in the proposed complaint.[3]

It is also troubling that if the Commission issues this order, it essentially will be ordering the respondent to advertise that persons should buy and use more of the respondent's products. Schering already has every incentive to communicate the required messages to consumers. In fact, the consumer education remedy is advertising ("use more sunscreen") that the company might wish to do in any event since the conduct provisions of the order may prevent it from continuing to distinguish its children's sun protection product from others by claiming that it requires fewer applications. The deterrence value of this remedy is minimal at best.

Finally, if this relief were sought in litigation, rather than obtained through a consent agreement, it would not withstand scrutiny under the First Amendment. For purposes of First Amendment analysis, there is no difference between compelled speech and restrictions on speech. *Riley* v. *National Fed'n of the Blind*, 487 U.S. 781, 796–97 (1988). A valid restriction on commercial speech must be no more extensive than necessary to serve the substantial governmental interest directly advanced by the restriction. *Rubin* v. *Coors Brewing Co.*, 115 S. Ct. 1585, 1591 (1995) (discussing *Central Hudson Gas & Elec. Corp.* v. *Public Serv. Comm'n of N.Y.*, 447 U.S. 557, 566 (1980)). Thus, disclosures compelled by the FTC can be no broader than necessary to prevent future deception or to correct the effects of past deception. *See, e.g., National Comm'n on Egg Nutrition* v. *FTC*, 570 F.2d 157, 164 (7th Cir. 1977), *cert. denied*, 439 U.S. 821 (1978). Additionally, the government bears the burden of showing that a speech restriction will advance its

[1] The proposed complaint challenges as false the claim that Schering has conducted tests demonstrating that a single application of Coppertone Kids provides six hours of protection from the sun for children engaged in sustained vigorous activity in and out of the water. The proposed order broadly prohibits false establishment claims for any sun protection product.

[2] Like the brochure, the dissemination plan is subject to the approval of the Associate Director in charge of DAP.

[3] The consumer education remedy here stands in contrast to a fencing-in provision contained in a consent order issued by the Commission last year. See Blenheim Expositions, Inc., Docket No. C–3633 (Jan. 18, 1996) (requiring a franchise show promoter to undertake a limited distribution of an FTC consumer education brochure to customers attending its franchise shows). The respondent in Blenheim allegedly made unsubstantiated claims regarding the earnings and success of franchise owners and false claims regarding a poll of franchise owners. The brochure specifically identified FTC requirements with which franchisors must comply, including consumers' right to receive an earnings claims document, and it provided instructions on how to evaluate earnings claims. It thus contained information likely to assist the respondent's customers to detect and protect themselves from possible future misrepresentations of earnings like those alleged in the complaint. Although the brochure also addressed other issues related to the purchase of a franchise, all of the advice in the brochure at least arguably would help prospective franchisees avoid becoming victims of future violations by the respondent.

interest "to a material degree." *44 Liquormart, Inc.* v. *Rhode Island*, 116 S. Ct. 1495, 1509 (1996) (plurality opinion of Justice Stevens) (citing *Edenfield* v. *Fane*, 507 U.S. 761, 771 (1993)). A commercial speech restriction that "provides only ineffective or remote support for the government's purpose" does not pass this test. *44 Liquormart*, 116 S. Ct. at 1509 (citing *Central Hudson*, 447 U.S. at 564).

The dubious efficacy of the proposed consumer education remedy makes it unlikely that it will directly advance the asserted governmental interest in preventing future deception by the respondent. In addition, I doubt that a credible argument can be made that the information that the order specifically requires be included in the brochure is no more extensive than necessary to prevent future violations by Schering. Certainly Schering has waived any First Amendment objections to this relief by entering into the consent agreement. Nonetheless, when a remedy implicates First Amendment rights, the Commission should be particularly reluctant to obtain through negotiations relief that it lacks at least a colorable chance to obtain in litigation.

In my view, it would be better to have no consumer information remedy in the consent order if the only alternative is an overbroad remedy of doubtful efficacy that raises First Amendment concerns.

[FR Doc. 97–5344 Filed 3–4–97; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Idaho National Engineering Laboratory Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Citizens Advisory Committee on PHS Activities and Research at DOE Sites: Idaho National Engineering Laboratory Health Effects Subcommittee (INEL).

Times and Dates: 8:30 a.m.–5 p.m., March 20, 1997. 8:30 a.m.–5 p.m., March 21, 1997.

Place: Red Lion Inn-Riverside, 2900 Chinden Boulevard, Boise, Idaho 83714, telephone 208/343–1871, FAX 208/344–1079.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: The Subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, Agency for Toxic Substances and Disease Registry (ATSDR), regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. Activities shall focus on providing a forum for community, American Indian Tribal, and labor interaction and serve as a vehicle for community concern to be expressed as advice and recommendations to CDC and ATSDR.

Matters to be Discussed: Agenda items include presentations from the National Center for Environmental Health (NCEH) regarding current activities, the National Institute for Occupational Safety and Health, and ATSDR will provide updates on the progress of current studies, and working group discussions. Additional presentations will include prioritization and screening of chemicals for INEL dose reconstruction, discussions of screening methodology, and future dose reconstruction activities.

Agenda items are subject to change as priorities dictate.

Contact Persons for More Information: Arthur J. Robinson, Jr., or Nadine Dickerson, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, M/S F–35, Atlanta, Georgia 30341–3724, telephone 770/488–7040, FAX 770/488–7044.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–5400 Filed 3–4–97; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

[Docket No. 95N–0329]

Preclearance of Promotional Labeling; Clarification

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Center for Biologics Evaluation and Research (CBER) is clarifying its policy regarding the preapproval of promotional labeling for biological products. In the November 1995 report issued by the President and Vice President, "Reinventing the Regulation of Drugs Made from Biotechnology," FDA made a commitment to harmonize immediately CBER's requirements for the preapproval of promotional labeling with those of the Center for Drug Evaluation and Research (CDER) under which a company may submit such information to the agency at the time the company disseminates it. This notice is issued to clarify that FDA has fulfilled the commitment to allow industry to submit promotional labeling to CBER at the time of initial dissemination. Sponsors need not wait for approval from CBER before using promotional labeling.

FOR FURTHER INFORMATION CONTACT: Toni M. Stifano, Center for Biologics Evaluation and Research (HFM–202), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3028.

SUPPLEMENTARY INFORMATION: Under CBER's previous policy, as announced in the **Federal Register** of August 9, 1993 (58 FR 42340) and revised in the **Federal Register** of August 3, 1994 (59 FR 39570), preapproval by CBER was required for promotional labeling prior to introduction of a new biologic, for 120 days following approval of a new biologic, and for 120 days following approval of a new use for a currently licensed biologic. In the November 1995 report issued by the President and Vice President, "Reinventing the Regulation of Drugs Made from Biotechnology," FDA made a commitment that, effective immediately, CBER would no longer require preapproval of promotional labeling. This approach, it was noted, is consistent with that of CDER. FDA has fulfilled its commitment.

In a proposed rule on changes to an approved application, published in the **Federal Register** of January 29, 1996 (61 FR 2739), FDA took a further step toward harmonizing the two Centers' promotional requirements. Among other things, the proposed rule would amend 21 CFR 601.12 to make CBER requirements for advertisements, as well as promotional labeling, consistent with those of CDER as set forth in 21 CFR 314.81(b)(3)(i).

The scope of this notice does not extend to promotional materials for products reviewed under the regulations for accelerated approval (21 CFR part 601, subpart E), which should be submitted to the agency for consideration as required in 21 CFR 601.45.

Dated: February 28, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–5311 Filed 3–4–97; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

Advertisement of an Opportunity To Investigate the Effect of Nitroxide Compounds on Diseases Relating to Stresses of Aging

AGENCY: National Institute on Aging, NIH.

ACTION: Advertisement of an opportunity.

SUMMARY: The National Institute on Aging is seeking a Cooperative Research and Development Agreement (CRADA) with a pharmaceutical company to investigate the effect of nitroxide compounds on diseases related to the stresses of aging.

The Collaborator must be able to collaborate with NIA staff to explore the effect nitroxides have on diseases of aging. The Collaborator must have a demonstrated record of success in privately producing nitroxide compounds suitable for pharmaceutical application, as well as a reputation for excellence in research.

The term of the CRADA will be up to five (5) years.

DATES: Interested parties should notify this office in writing of their intent to file a formal proposal no later than May 5, 1997. Formal proposals must be submitted to this office no later than June 3, 1997.

ADDRESSES: Inquiries and proposals regarding this opportunity should be addressed to Bruce D. Goldstein, J.D., (Tel. #301–496–0477, FAX # 301–402–2177), Office of Technology Development, National Center Institute, Executive Plaza South, Suite 450, 6120 Executive Blvd. MSC 7182, Bethesda, Maryland, 20892.

SUPPLEMENTARY INFORMATION: A CRADA is the anticipated joint agreement to be entered into by NIA pursuant to the Federal Technology Transfer Act of 1986, as amended by the National Technology Transfer Act (Pub. L. #104–1993 (1996)) and by Executive Order 12591 of October 10, 1987. NIA is presently exploring the protective effects of nitroxide compounds on oxyradical-induced oxidative stress, to the extent such stresses are related to diseases of aging.

- Under the present proposal, the goal of the CRADA will be research into, and development of, the following technology:
- Assessment of the qualitative and quantitative influence nitroxide compounds have on various aspects of the aging process.
- Development of new nitroxide compounds having *in vivo* inhibitive effect on the formation of oxyradicals.
- Development of new nitroxide compounds that enhance neuronal function and performance of aged animals.

Party Contributions

The role of NIA includes the following:

(1) Provide staff, expertise, & materials for the development of the desired compounds;

(2) Evaluate the work product of Collaborator to ensure progress toward meeting the CRADA goals; and

(3) Provide work space, expertise, and equipment for production of any prototypes developed.

The role of the successful Collaborator will include the following:

(1) Provide expertise on biological aging mechanisms and assistance in the development of nitroxide compounds likely to have therapeutic value;

(2) Provide funding, as necessary, in support of production and dissemination of the desired compounds; and

(3) Provide resources and expertise to market any products developed.

Selection Criteria

Proposals submitted for consideration should fully address each of the following qualifications:

(1) Expertise:

(A) Demonstrated expertise in developing and producing nitroxide compounds;

B. Demonstrated expertise on biological aging mechanisms;

C. Demonstrated ability to secure national and international marketing and distribution of nitroxide compounds;

D. Demonstrated expertise in overseeing all aspects of product development; and

E. Demonstrated intellectual ability to participate in the research and commercial ability to guide development of the results into a viable product line.

(2) Physical Resources:

A. An established headquarters with offices, space, and equipment;

B. Access to the organization during business hours by telephone, mail, e-mail, the Internet, and other evolving technologies; and

C. Sufficient financial resources to support the current activities of the CRADA to meet the needs of NIA.

Dated: February 18, 1997.

Thomas D. Mays,

Director, Office of Technology Development, NCI, NIH.

[FR Doc. 97–5322 Filed 3–4–97; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Cancer Institute Initial Review Group:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: Subcommittee D—Clinical Research Studies Subcommittee.

Date: April 1–2, 1997.

Time: 8:00 am.

Place: DoubleTree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Martin H. Goldrosen, Ph.D, Scientific Review Administrator, National Cancer Institute, NIH, 6130 Executive Blvd. Room 635C, Bethesda, Md 20892, Telephone: 301–496–7930.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research. 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: February 27, 1997.

LaVerne Y. Springfield,

Committee Management Officer, NIH.

[FR Doc. 97–5319 Filed 3–4–97; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Cancer Institute Special Emphasis Panel (SEP) meeting:

Name of SEP: Investigator Grants for Clinical Center Therapy Research.

Date: March 24–26, 1997.

Time: 9:00 am.

Place: DoubleTree Hotel, Halpine Room, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Wilna A. Woods, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 605, 6130 Executive Boulevard, MSC 7410, Bethesda, MD 20892–7405, Telephone: 301/496–7903.

Purpose/Agenda: To evaluate and review grant applications.

The meeting will be closed in accordance with the provisions set forth in secs.

552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: February 27, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–5320 Filed 3–4–97; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Clinical Sciences.
Date: March 7, 1997.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 4118, Telephone Conference.
Contact Person: Dr. Christine Melchior, Scientific Review Administrator, 6701 Rockledge Drive, Room 4118, Bethesda, Maryland 20892, (301) 435–1713.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Clinical Sciences.
Date: March 17, 1997.
Time: 8:30 a.m.
Place: Holiday Inn, Chevy Chase, Maryland.
Contact Person: Dr. Harold Davidson, Scientific Review Administrator, 6701 Rockledge Drive, Room 4216, Bethesda, Maryland 20892, (301) 435–1776.

Name of SEP: Clinical Sciences.
Date: March 17, 1997.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 4128, Telephone Conference.
Contact Person: Dr. Anshumali Chaudhari, Scientific Review Administrator, 6701 Rockledge Drive, Room 4128, Bethesda, Maryland 20892, (301) 435–1210.

Name of SEP: Biological and Physiological Sciences.
Date: March 20, 1997.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 4202, Telephone Conference.
Contact Person: Dr. Eugene Zimmerman, Scientific Review Administrator, 6701 Rockledge Drive, Room 4202, Bethesda, Maryland 20892, (301) 435–1220.

Name of SEP: Biological and Physiological Sciences.
Date: March 20, 1997.
Time: 2:00 p.m.
Place: NIH, Rockledge 2, Room 4132, Telephone Conference.
Contact Person: Dr. Sayed Quadri, Scientific Review Administrator, 6701 Rockledge Drive, Room 4132, Bethesda, Maryland 20892, (301) 435–1211.

Name of SEP: Clinical Sciences.
Date: March 21, 1997.
Time: 2:00 p.m.
Place: NIH, Rockledge 2, Room 4118, Telephone Conference.
Contact Person: Dr. Christine Melchior, Scientific Review Administrator, 6701 Rockledge Drive, Room 4118, Bethesda, Maryland 20892, (301) 435–1713.

Name of SEP: Biological and Physiological Sciences.
Date: March 24, 1997.
Time: 8:30 a.m.
Place: Doubletree Hotel, Rockville, Maryland.
Contact Person: Dr. Ramesh Nayak, Scientific Review Administrator, 6701 Rockledge Drive, Room 5146, Bethesda, Maryland 20892, (301) 435–1026.

Name of SEP: Clinical Sciences.
Date: March 26, 1997.
Time: 11:00 a.m.
Place: NIH, Rockledge 2, Room 4106, Telephone Conference.
Contact Person: Dr. Josephine Pelham, Scientific Review Administrator, 6701 Rockledge Drive, Room 4106, Bethesda, Maryland 20892, (301) 435–1786.

Name of SEP: Clinical Sciences.
Date: March 26, 1997.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 4118, Telephone Conference.
Contact Person: Dr. Christine Melchoir, Scientific Review Administrator, 6701 Rockledge Drive, Room 4118, Bethesda, Maryland 20892, (301) 435–1713.
Purpose/Agenda: To review Small Business Innovation Research.

Name of SEP: Biological and Physiological Sciences.
Date: March 30–31, 1997.
Time: 12:00 p.m.
Place: River Inn, Washington, DC.
Contact Person: Dr. Anita Sostek, Scientific Review Administrtor, 6701 Rockledge Drive, Room 5202, Bethesda, Maryland 20892, (301) 435–1260.

Name of SEP: Biological and Physiological Sciences.
Date: March 24–25, 1997.
Time: 8:30 a.m.
Place: Doubletree Hotel, Rockville, Maryland.
Contact Person: Dr. Sayed Quadri, Scientific Review Administrator, 6701 Rockledge Drive, Room 4132, Bethesda, Maryland 20892, (301) 435–1211.

The meetings will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would consistute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.206, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: February 27, 1997.

LaVerne Y. Stringfield,

Committee Management Office, NIH.

[FR Doc. 97–5321 Filed 3–4–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Western Water Policy Review Advisory Commission Meeting

AGENCY: Department of the Interior.

ACTION: Notice of public review of basin study reports.

SUMMARY: Notice is hereby given that the Western Water Policy Review Advisory Commission (Commission), established by the Secretary of the Interior under the Reclamation Projects Authorization and Adjustment Act of 1992, has been conducting studies of water issues in six major river basins. The reports are in the draft stage and are being made available to the public for comment. The basins being studied are the Colorado River, Columbia River, Platte River, Sacramento-San Joaquin Rivers, Truckee-Carson Rivers, and the Upper Rio Grande River.

DATES: Drafts will be available March 5, 1997, for all basins except the Columbia, which will be available March 19, 1997. Comments will be accepted through April 4, 1997, for all studies with the exception of the Colorado and Columbia basins, for which comments will be accepted through April 11, 1997.

ADDRESSES:
email:wwprac@do.usbr.gov.Mail: Western Water Policy Review Office, D–5001; P. O. Box 25007; Denver, CO 80225–0007.

FOR FURTHER INFORMATION CONTACT: The Commission Office at telephone 303–236–6211, FAX 303–236–4286, or email to rgunnar@sondo.usbr.gov.

SUPPLEMENTARY INFORMATION: The Commission has established a Website (address:http//www.den.doi.gov/wwprac) which will be used to facilitate this review and post current information on the Commission's activities. Due to the size of the respective files, the basin reports will be available on the Commission's Website for downloading only. Printed copies will be available from the Western Water Policy Review Office. All comments must be provided to the Commission Office, and may be provided by email to the Commission email address, or in writing by mail or facsimile.

The Basin Study Researchers will review all comments and may or may not incorporate the comments in the final reports; they will prepare comment and response documents, which will be available to the public after June 30, 1997. Specific replies to comments will not be provided.

Dated: February 27, 1997.

Larry Schulz,

Administrative Officer.

[FR Doc. 97–5347 Filed 3–4–97; 8:45 am]

BILLING CODE 4310–94–M

Bureau of Indian Affairs

Proclaiming Certain Lands as Reservation for the Pinoleville Indian Community of California; Correction

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Correction of notice of reservation proclamation.

SUMMARY: The Assistant Secretary—Indian Affairs proclaimed certain lands in Mendocino County, California, as an addition to the reservation of the Pinoleville Indian Community of California on November 1, 1996. This notice is published to correct the legal description of the land and is in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

FOR FURTHER INFORMATION CONTACT: Larry E. Scrivner, Bureau of Indian Affairs, Chief, Division of Real Estate Services, MS–4510/MIB/Code 220, 1849 C Street, N.W., Washington, D.C. 20240, telephone (202) 208–7737.

SUPPLEMENTARY INFORMATION: On November 1, 1996, a proclamation was issued pursuant to the Act of June 18, 1934, (48 Stat. 986; 25 U.S.C. § 467). The legal description of the tract was in error. The portion reading "thence North 09°28′20″ West" is corrected to read "thence North 01°28′20″ West." Corrected legal description is as follows:
Mendocino County, California

Being a portion of Parcel 1, as shown on that map filed in Map Case 2, Drawer 1, Page 74, Mendocino County Records: Beginning at the Southeast corner of the said Parcel 1; thence North 01°28′20″ West along the East line of the said Parcel 1, a distance of 242.55 feet; thence North 01°43′20″West along the said East line, a distance of 103.13 feet; thence South 88°16′40″ West, 185.41 feet; thence North 01°43′20″ West, 40 feet; thence South 88°16′40″West, 140.94 feet to the West line of said Parcel 1; thence South 01°00′00″ East along the said West line, a distance of 367.13 feet to the Southwest corner of said Parcel 1; thence South 88°30′00″ East along the South line of said Parcel 1, a distance of 330.44 feet to the point of beginning.

Dated: January 28, 1997.

Ada E. Deer,

Assistant Secretary, Indian Affairs.

[FR Doc. 97–5379 Filed 3–4–97; 8:45 am]

BILLING CODE 4310–02–P

Bureau of Land Management

[NM–070–1320–01; NM–11670, NM–8128, NM–8130]

Notice of Coal Action; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability, Cost Estimate Document (CED) for the Thermal Energy Preference Right Lease Applications (PRLAs) San Juan County, New Mexico.

SUMMARY: The PRLA process requires that a CED be prepared and made available to the public. The CED estimates the costs of compliance with all laws, regulations, lease terms, and special stipulations intended to protect the environmental impacts of mining. This action establishes the availability of the CED for Thermal Energy's PRLAs.

DATES: On or before May 6, 1997, interested parties may submit comments regarding the CED to the Bureau of Land Management at the following address. All comments will be reviewed by the Bureau of Land Management, Farmington District Manager, 1235 La Plata Hwy., Farmington, New Mexico, 87401.

Dated: February 27, 1997.

Charlie Beecham,

Team Leader for Solid Minerals, Farmington District, Bureau of Land Management.

[FR Doc. 97–5381 Filed 3–4–97; 8:45 am]

BILLING CODE 4310–FB–M

[NM–030–1100–00; NMNM95109]

Notice of Realty Action; Recreation and Public Purposes Act Classification; Socorro County, NM

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of realty action.

SUMMARY: The following public land in Socorro County, New Mexico has been examined and found suitable for classification for lease or conveyance to the County of Socorro under the provisions of the Recreation and Public Purpose Act as amended (43 U.S. 869 *et seq.*). Socorro County proposes to use the land for the San Antonio Volunteer Fire Department, Luis Lopez Substation/Training Facility.

New Mexico Principal Meridian

T. 4 S., R. 1 E.,
Sec. 18, lot 21.
Containing 5.78 acres.

The lands are not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest.

DATES: Interested parties may submit comments on the classification or purposed lease/conveyance. Comments must be submitted on or before April 21, 1997.

ADDRESSES: Comments should be sent to Area Manager, Socorro Resource Area Office, 198 Neel Avenue NW, Socorro, New Mexico 87801.

FOR FURTHER INFORMATION CONTACT: Lois Bell, BLM, Socorro Resource Area Office, 198 Neel Ave, NW, Socorro, New Mexico 87801, or telephone (505) 835–0412.

SUPPLEMENTARY INFORMATION: Lease or conveyance will be subject to the following terms, conditions, and reservations:

1. Provisions of the R&PP Act and to applicable regulations of the Secretary of the Interior.
2. All valid existing rights documented on the official public land records at the time of lease/patent issuance.
3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.
4. A reservation for the construction of ditches and canals shall be reserved to the United States.
5. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Upon publication of this notice in the **Federal Register**, the land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the R&PP Act and leasing under the mineral leasing laws.

Classification Comments

Interested parties may submit comments involving the suitability of the land for a fire substation/training facility. Comments on the classification are restricted to whether the land is physically suited for a fire substation/training facility, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a fire substation/training facility.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Dated: February 26, 1997.

Stephanie Hargrove,

Acting District Manager.

[FR Doc. 97–5317 Filed 3–4–97; 8:45 am]

BILLING CODE 4310–VC–M

[UTU–73634 & UTU–73635]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Utah

AGENCY: Bureau of Land Management.

SUMMARY: The following public lands in Uintah County, Utah have been examined and found suitable for classification for conveyance to Uintah County under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended (43 U.S.C. 869 *et seq.*). Uintah County proposes to purchase these tracts of public land for landfill purposes.

Salt Lake Meridian, Utah

T. 4 S., R. 22 E.,
Sec. 8, Lots 3 and 5, NE¼SW¼, E½NW¼SW¼;
Sec. 17, N½NW¼.
Containing 211.05 acres, more or less.

T. 5. S., R. 19 E.,
Sec. 11, W½W½NW¼NE¼, W½NW¼SW¼NE¼, NE¼NW¼, N½SE¼NW¼.
Containing 75.00 acres, more or less.

The 211.05 acre tract, located near Vernal City, Utah, is needed by Uintah County to expand their Vernal Landfill facility presently situated on adjoining land. The 75.00 acre tract, located near the community of LaPoint, Utah, is currently leased to Uintah County for landfill purposes (R&PP lease, UTU–53917) and would continue to be used for landfill purposes and as a solid waste transfer station. The public lands are not needed for Federal purposes. Conveyance is consistent with current BLM and Uintah County land use planning and would be in the public interest.

The patents, if issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act, as amended and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

4. The patentee shall comply with all federal and state laws applicable to the disposal, placement, or release of hazardous substances (substances as defined in 40 CFR Part 302).

5. Reservation of oil and gas lease UTU–64918.

6. Those rights granted to Utah Power and Light for a 138kV power transmission line under right-of-way (R/W) grant, UTU–0118311.

7. The privilege of grazing permittees to continue to graze livestock on public land adjoining the existing Vernal Landfill would expire on January 31, 1998, unless the permittees choose to waive their grazing privileges earlier.

8. Uintah County, its successors or assigns, shall defend, indemnify, and save harmless the United States and its officers, agents, representatives, and employees (hereinafter referred to in this clause as the United States), from all claims, loss, damage, actions, causes of action, expense, and liability (hereinafter referred to in this clause as claims) resulting from, brought for, or on account of, any personal injury, threat of personal injury, or property damage received or sustained by any person or persons (including the patentee's employees) or property growing out of, or occurring or attributable directly or indirectly, to the disposal of solid waste on, or the release of hazardous substances from Salt Lake Meridian, Utah, Sec. 11, W½W½NW¼NE¼, W½NW¼SW¼NE¼, NE¼NW¼, N½SE¼NW¼, and T. 5 S., R. 19 E., and Sec. 8, Lots 3 and 5, NE¼SW¼ and E½NW¼SW¼, Sec. 17, N½NW¼, T. 4 S., R. 22 E., regardless of whether such claims shall be attributable to: (1) the concurrent, contributory, or partial fault, failure, or negligence of the United States, or (2) the sole fault, failure, or negligence of the United States.

A partial revocation of a withdrawal created by Public Land Order 4522 would be completed prior to issuing a patent for the 75.00 acres of public land located near LaPoint, Utah.

Detailed information concerning this action is available for review at the BLM's Vernal District office, 170 South 500 East, Vernal, Utah 84078.

Classification Comments

Interested parties may submit comments concerning the suitability of these public lands for landfill purposes. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the County's applications and plans of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for landfill purposes.

Comments received on the classification will be answered by the State Director with the right to further comment to the Secretary. Comments on the applications will be answered by the State Director with the right of appeal to the Interior Board of Land Appeals.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the R&PP Act, as amended and leasing under the mineral leasing laws. The segregative effect shall terminate upon issuance of a patent, upon final rejection of the applications, or two years from the date of filing of the applications, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed conveyance or classification of the lands to the District Manager, Vernal District Office, 170 South 500 East, Vernal, Utah 84078. In the absence of any adverse comments, the classification will be effective 60 days from the date of publication of this notice in the **Federal Register.**

Dated: February 9, 1997.

David E. Howell,

District Manager.

[FR Doc. 97–5009 Filed 3–4–97; 8:45 am]

BILLING CODE 4310–DQ–M

[NV–930–1430–01; N–58667]

Amendment of Lahontan Resource Management Plan (RMP)/ Notice of Realty Action, Recreation and Public Purposes Act Conveyance Churchill County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice is hereby given that the Bureau of Land Management (BLM) has amended the Lahontan RMP to change the land tenure designation from retention to disposal on 840 acres of land generally described as:

Mount Diablo Meridian

T. 16 N., R. 29 E.,
Sec. 20, E½E½, NW¼NE¼ (unsurveyed),
Sec. 21, All (unsurveyed).

Notice is further given that up to 240 acres of this public land, previously classified pursuant to the Recreation and Public Purposes (R&PP) Act of 1926, as amended (43 U.S.C. 869 *et seq.*), is proposed for transfer in accordance with the R&PP Act to the City of Fallon for a solid waste landfill. The exact description of the land to be conveyed is unavailable pending completion of a cadastral survey. No land will be conveyed until a cadastral survey is approved.

PLANNING PROTESTS: Any party that participated in the plan amendment and is adversely affected by the amendment may protest this action as it affects issues submitted for the record during the planning process. The protests shall be in writing and filed with the Director (WO–210) Bureau of Land Management, 1849 "C" Street NW., Washington, DC 20240 within 30 days of this notice.

APPLICATION COMMENTS: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed conveyance of the land to the Assistant District Manager, Non-Renewable Resources, Bureau of Land Management, 1535 Hot Springs Road, Carson City, Nevada 89706. Objections will be reviewed by the District Manager who may sustain, vacate, or modify this realty action. Comments on the application would include whether BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a landfill.

SUPPLEMENTARY INFORMATION:

Conveyance of the public land to the City of Fallon for a landfill is consistent with the amended land use plan and would be in the public interest. Patent, when issued, will be subject to the provisions of the R&PP Act and to all applicable regulations of the Secretary of the Interior, and the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All mineral deposits in the land so patented, and to it, or persons authorized by it, the right to prospect for, mine and remove such deposits from the same under applicable law and regulations to be established by the Secretary of the Interior. Planning documents and other pertinent materials may be examined at the Carson City District Office between 7:30 a.m. and 5:00 p.m. Monday through Friday. Further details can be obtained by contacting Jo Ann Hufnagle, Realty Specialist, at (702) 885–6000.

Dated this 21st day of February, 1997.

Daniel L. Jacquet,

Acting Assistant District Manager, Non-Renewable Resources, Carson City District.

[FR Doc. 97–5337 Filed 3–4–97; 8:45 am]

BILLING CODE 4310–HC–P

Minerals Management Service

Agency Information Collection Activities: Submission for Office of Management and Budget Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of revision of a currently approved collection.

SUMMARY: The Department of the Interior has submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1995 (Act) the collection of information discussed below. The Act requires that OMB provide interested Federal agencies and the public an opportunity to comment on information collection requests. The Act also provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Submit written comments by April 4, 1997.

ADDRESSES: Submit comments and suggestions directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Interior Department (1010–0041), 725 17th Street, NW, Washington, D.C. 20503.

Send a copy of your comments to: Rules Processing, Mail Stop 4700, Engineering and Operations Division, Minerals Management Service, 381 Elden Street, Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Alexis London, Engineering and Operations Division, Minerals Management Service, telephone (703) 787–1600. You may obtain copies of the proposed collection of information by contacting MMS's Information Collection Clearance Officer at (703) 787–1242.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart K, Oil and Gas Production Rates.

OMB Number: 1010–0041.

Abstract: Respondents provide information and maintain records on the production of oil and gas. The MMS uses the information in its efforts to conserve natural resources, prevent waste, and protect correlative rights including the Government's royalty interest. Responses to this collection of information are mandatory. The revision to the currently approved collection pertains to § 250.175, Flaring or venting gas and burning liquid hydrocarbons. This section was revised in two separate rulemaking actions. The collections of information associated with each notice of proposed rulemaking were previously approved by OMB in 1993 and 1995. There were only minor comments with respect to the information collections in the proposed rules and no significant changes resulted in the notices of final rulemaking published on May 20, 1996 (61 FR 25147) and January 27, 1997 (62 FR 3793).

Description of Respondents: Federal Outer Continental Shelf oil and gas and sulphur lessees.

Estimated Number of Respondents: 130.

Frequency: The reporting and recordkeeping requirements and number of responses vary for each section and are mostly on occasion.

Estimated Annual Burden on Respondents: Reporting burden of 3,224 hours; recordkeeping burden of 10,426 hours; for a total of 13,650 burden hours.

Form Number: N/A.

Comments: OMB is required to make a decision within 60 days after receiving the MMS request for approval of the collection of information and the publication of this notice. However, OMB shall provide at least 30 days for public comment. Therefore, a comment to OMB is best ensured of having its full effect if OMB receives it within 30 days of publication of this notice.

Bureau Clearance Officer: Carole deWitt (703) 787–1242.

Dated: February 13, 1997.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 97–5394 Filed 3–4–97; 8:45 am]

BILLING CODE 4310–MR–M

Agency Information Collection Activities: Submission for Office of Management and Budget Review; Comments Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of revision of a currently approved collection.

SUMMARY: The Department of the Interior has submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1995 (Act) the collection of information discussed below. The Act requires that OMB provide interested Federal agencies and the public an opportunity to comment on information collection requests. The Act also provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Submit written comments by April 4, 1997.

ADDRESSES: Submit comments and suggestions directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0053), 725 17th Street, NW., Washington, DC 20503.

Send a copy of your comments to the Minerals Management Service, Mail Stop 4700, 381 Elden Street, Herndon, Virginia 20170–4817, Attention: Rules Processing.

FOR FURTHER INFORMATION CONTACT: Alexis London, Engineering and Operations Division, Minerals Management Service, telephone (703) 787–1600. You may obtain copies of the proposed collection of information by contacting MMS's Information Collection Clearance Officer at (703) 787–1242.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart D, Oil and Gas Drilling Operations.

OMB Number: 1010–0053.

Abstract: Respondents provide information and maintain records on the conditions of a drilling site in the Outer Continental Shelf (OCS). The MMS needs the information to determine if lessees are properly providing for the safety of operations and protection of human life or health and the environment. The MMS uses the information to avoid and eliminate hazards inherent in drilling operations. Responses to this collection of information are mandatory. The revision to the currently approved collection pertains to a final rule published in the **Federal Register** on January 27, 1997 (62 FR 3793) to amend 30 CFR 250.67, Hydrogen sulfide. The MMS has provided several opportunities for the public to comment on the collection of information required by 30 CFR part 250, subpart D. We did not receive any comments in response to those notices.

Description of Respondents: Federal OCS oil and gas and sulphur lessees.

Estimated Number of Respondents: 130.

Frequency: The reporting and recordkeeping requirements and number of responses vary for each section and are mostly on occasion.

Estimated Annual burden on Respondents: Reporting burden of 4,141 hours; recordkeeping burden of 112,364 hours; for a total of 116,505 burden hours.

Form Number: N/A.

Comments: Within 60 days after receipt of the collection of information or publication of this notice, OMB is required to make a decision. However, OMB shall provide at least 30 days for public comment. Therefore, a comment to OMB is best ensured of having its full effect if OMB receives it within 30 days of publication of this notice.

Bureau Clearance Officer: Carol deWitt (703) 787–1242.

Dated: January 3, 1997.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 97–5395 Filed 3–4–97; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Draft Addendum Valley Housing Plan for the 1992 Supplement to Final Environmental Impact Statement General Management Plan, Yosemite National Park; Notice of Extended Comment Period

Extension for Comments: The comment period for the Yosemite Draft Addendum Valley Housing Plan (DES 96–47) published December 4, 1996 (61 FR 64361) was originally scheduled for 90 days. Due to flooding in and around Yosemite during early January 1997, and considering the ensuing disruption for park visitors, employees, and neighboring county and local residents, businesses, and officials, the National Park Service is extending the comment period for this draft document. Written comments and suggestions are now being accepted through March 31, 1997.

Comments: Written comments on the draft addendum should be directed to the attention of Superintendent, Yosemite National Park, P.O. Box 577, Yosemite National Park, California, 95389. Copies of the draft document are available for public inspection at the park and at area libraries. Requests for copies may also be directed to the Superintendent (at the above address), or by telephone at (209) 372–0202. The draft addendum is also available for review on the InterNet via the NPS Planning Home Page http://www.nps.gov/planning/.

Dated: February 26, 1997.

Bruce M. Kilgore,

Acting Field Director, Pacific West Area.

[FR Doc. 97–5313 Filed 3–4–97; 8:45 am]

BILLING CODE 4310–70–P

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 22, 1997. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by March 20, 1997.

Carol D. Shull,

Keeper of the National Register.

Colorado

San Juan County

Silverton Historic District (Boundary Increase), Roughly, along CO 110 and aerial tramway from Lodore Mine to Mayflower Mine, Silverton vicinity, 97000247

Florida

Sarasota County

Burns, William J., House, 47 S. Washington Dr., Sarasota, 97000248

Georgia

Bartow County

Harris, Corra White, House, Study, and Chapel, 659 Mt. Pleasant Rd., NE., Rydal, 97000249

Richmond County

Church of the Most Holy Trinity, 720 Telfair St., Augusta, 97000250

Mississippi

Bolivar County

Sillers, Walter, Sr., House, 307 Levee St., Rosedale, 97000252

Humphreys County

Parker—Summerfield Mound Archeological Site, Address Restricted, Midnight vicinity, 97000251

Montana

Chouteau County

Geraldine Milwaukee Depot, Railroad Ave., SW of MT 80, Geraldine vicinity, 97000254

Mineral County

Superior School, River Rd., approximately .25 mi N of US 10, Superior vicinity, 97000253

North Carolina

Lee County

Rosemount—McIver Park Historic District, Roughly bounded by N. Horner Blvd., N. Vance and Carthage Sts., Sanford, 97000255

New Hanover County

Joy Lee Apartment Building and Annex, 317 Carolina Beach Ave., N., Carolina Beach, 97000256

Tennessee

Roane County

Valley View Farm, 160 Martin Rd., Harriman, 97000257

Texas

Galveston County

Balinese Room, 2107 Seawall Blvd., Galveston, 97000258

Marion County

Hodge—Taylor House, Approximately 1 mi. NW of jct. of TX 49 and US 59 Jefferson vicinity, 97000259

Utah

Cache County

Bankhead, Heber K. and Rachel H., House, 185 E. 800 South, Wellsville, 97000261

West Virginia

Jefferson County

Downtown Charles Town Historic District, Roughly, Washington, Liberty and Congress Sts. from eastern town limits to Water St., Charles Town, 97000263

Mingo County

Mountaineer Hotel, 31 E. 2nd Ave., Williamson, 97000265

Putnam County

Asbury House, 2922 Putnam Ave., Hurricane, 97000266

Webster County

Lowther Store, Co. Rt. 3, jct. with WV 20, Wheeler vicinity, 97000264

Wisconsin

Green Lake County

Luther, J. P., Company Glove Factory, 139 S. Pearl St., Berlin, 97000267

Princeton Downtown Historic District, Roughly, W. Water St. from Pearl to Washington Sts. Princeton, 97000271

Milwaukee County

Wauwatosa Arcade Building, 7210—26 W. North Ave., Wauwatosa, 97000270

Sauk County

Ringling, Charles, House, 201 8th St., Baraboo, 97000268

Wood County

Central Wisconsin State Fair Round Barn, Jct. of Vine Ave. and E. 17th St., Marshfield, 97000269

[FR Doc. 97–5310 Filed 3–4–97; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–380]

Certain Agricultural Tractors Under 50 Power Take-Off Horsepower; Issuance of General Exclusion Order and Cease and Desist Orders

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a general exclusion order and eleven cease and desist orders in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Shara L. Aranoff, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3090.

SUPPLEMENTARY INFORMATION: The authority for the Commission's determination is contained in Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in §§ 210.45 and 210.50 of the Commission's rules of practice and procedure (19 CFR 210.45 and 210.50).

This trademark-based section 337 investigation was instituted by the Commission on February 14, 1996, based on a complaint filed by Kubota Tractor Corporation ("KTC"), Kubota Manufacturing of America ("KMA"), and Kubota Corporation ("KBT") (collectively "complainants"). Complainants alleged unfair acts in violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation, sale for importation, and/or the sale within the United States after importation, of certain agricultural tractors under 50 power take-off horsepower, by reason of infringement of complainants' four registered trademarks, U.S. Reg. Nos. 922,330 ("KUBOTA" in block letters), 1,775,620 ("KUBOTA" stylized), 1,028,221 (Gear Design), and 1,874,414 (stylized "K"). The Commission's notice of investigation named 20 respondents: Eisho World Ltd., Nitto Trading Corporation, Nitto Trading Co. Ltd., Sanko Industries Co., Ltd., Sonica Trading, Inc., Suma Sangyo, Toyo Service Co., Ltd., Bay Implement Company, Casteel Farm Implement Co. of Monticello, Arkansas, Casteel Farm Implement Co. of Pine Bluff, Arkansas, Casteel World Group, Inc., Gamut Trading Co., Gamut Imports, Lost Creek Tractor Sales, MGA, Inc. Auctioneers, Tom Yarbrough Equipment Rental and Sales, Inc., The Tractor Shop, Tractor Company, Wallace International Trading Co. and Wallace Import Marketing Co. Inc. 61 FR 6802 (Feb. 22, 1996).

On May 29, 1996, the Commission determined not to review an ID (Order No. 13) finding respondents Tractor Company, Sonica Trading, and Toyo Service in default pursuant to Commission rule 210.16 (19 CFR 201.16), and ruling that they had waived their respective rights to appear, to be served with documents, and to contest the allegations at issue in the investigation. On June 19, 1996, the notice of investigation was amended to add Fujisawa Trading Company as a respondent. On September 25, 1996, the Commission issued a consent order terminating the investigation as to respondent Nitto Trading Corporation. On September 30, 1996, the Commission issued a consent order terminating the investigation as to

respondent Tom Yarbrough Equipment Rental and Sales, Inc.

On August 21, 1996, the Commission determined not to review an initial determination (ID) (Order No. 40) granting complainants' motion for summary determination that complainants' four trademarks are valid and that the "KUBOTA" (block letters) and Gear Design marks are incontestable. On September 6, 1996, the Commission determined not to review an ID (Order No. 47) granting complainants' motion for summary determination that a domestic industry exists with respect to the "KUBOTA" (block letters) and "KUBOTA" (stylized) trademarks.

The presiding administrative law judge (ALJ) held an evidentiary hearing on the merits between August 29 and September 7, 1996, and heard closing arguments on October 24, 1996. The ALJ issued his final ID finding a violation of section 337 on November 22, 1996. He found that there had been imports of the accused products; that 24 specific models of the accused tractors infringed the "KUBOTA" (block letters) trademark (U.S. Reg. No. 922,330); that one model of the accused tractors, the KBT L200, did not infringe the "KUBOTA" (block letters) trademark; that none of the 25 accused KBT models considered infringed the "KUBOTA" (stylized) trademark (U.S. Reg. No. 1,775,620); and that complainants were no longer asserting violations of section 337 based on infringement of the stylized "K" and "Gear Design" trademarks.

On January 9, 1997, the Commission determined to review (1) the finding of no infringement and no violation with respect to the KBT model L200 tractor; and (2) the decision to limit infringement analysis to 25 models of accused tractors rather than all models of KBT tractors as to which there is evidence of importation and sale in the United States.

The Commission determined not to review the ID in all other respects. On review, the Commission requested that the parties address the following issues:

(1) Whether the fact that gray market KBT model L200 tractors are imported and sold bearing Japanese-language labels constitutes a "material difference" from the authorized KTC model L200 tractors sufficient to establish a likelihood of consumer confusion;

(2) Whether evidence on the record in this investigation demonstrates that specific KBT models other than the 25 identified on (Staff Exhibit) SX–1 have been imported and sold in the United States; and, if so,

(3) Whether evidence on the record in this investigation demonstrates that any specific KBT model identified in number (2) above was imported and sold in the United States bearing Japanese-language labels or is otherwise materially different than the closest corresponding KTC model with respect to any of the differences found to be "material" in the ID.

In addition, the Commission requested written submissions on the issues of remedy, the public interest, and bonding. 62 FR 2179 (Jan. 15, 1997).

Submissions and reply submissions on remedy, the public interest, and bonding and on the issues under review were received from complainants, respondents, and the Commission investigative attorney (IA). In addition, complainants filed a request for oral hearing pursuant to Commission rule 210.45, complainants filed a request to strike pages 4–20 of respondents" brief on review, respondents filed a request to strike certain consumer survey information submitted by complainants and to sanction complainants for submitting that information, complainants filed a motion for leave to file a surreply brief in response to the reply brief filed by the IA, and respondents filed an objection to complainants" surreply brief.

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission has determined (1) to reverse the ALJ's finding of no infringement and no violation by the KBT model L200 tractor; (2) to find a violation of section 337 with respect to 20 models of KBT tractors in addition to the 25 models considered by the ALJ; and (3) to deny complainants" request for oral hearing, both requests to strike, respondents" request for sanctions, and complainants" motion for leave to file a surreply brief. The Commission has further determined that the appropriate form of relief is a general exclusion order prohibiting the unlicensed entry for consumption of agricultural tractors under 50 power take-off horsepower manufactured by Kubota Corporation of Japan that infringe the federally-registered U.S. trademark "KUBOTA" (Reg. No. 922,330) and eleven cease and desist orders directed to respondents Bay Implement Company, Casteel World Group, Inc. (and related entities), Gamut Trading Co. (and related entities), Lost Creek Tractor Sales, MGA, Inc. Auctioneers, The Tractor Shop, Tractor Company, and Wallace International Trading Co. prohibiting the importation, sale for importation, or sale in the United States after importation of agricultural tractors under 50 power take-off horsepower manufactured by Kubota Corporation of Japan that infringe the federally-registered U.S. trademark "KUBOTA" (Reg. No. 922,330).

The Commission has also determined that the public interest factors enumerated in subsections 1337(d) and (f) do not preclude the issuance of the general exclusion order and cease and desist orders, and that the bond during the Presidential review period shall be in the amount of 90 percent of the entered value of the articles in question.

Copies of the Commission's order, the public version of the Commission's opinion in support thereof, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal at 202–205–1810.

Issued: February 25, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–5408 Filed 3–4–97; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–746 (Final)]

Beryllium Metal and High-Beryllium Alloys From Kazakstan

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Kazakstan of beryllium metal and high-beryllium alloys,[3] that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

[2] Chairman Miller dissenting.

[3] The imported products subject to this investigation, as defined by the U.S. Department of Commerce, are beryllium metal and high-beryllium alloys with a beryllium content equal to or greater than 30 percent by weight, whether in ingot, billet, powder, block, lump, chunk, blank, or other semifinished form. These are intermediate or semifinished products that require further machining, casting, and/or fabricating into sheet, extrusions, forgings, or other shapes in order to meet the specifications of the end user. Beryllium metal and high-beryllium alloys in which beryllium predominates over all other metals are provided for in subheadings 8112.11.30 and 8112.11.60 of the Harmonized Tariff Schedules of the United States (HTS). High-beryllium alloys in which beryllium does not predominate are provided for elsewhere in the HTS; e.g., high-beryllium alloys in which aluminum predominates are provided for in HTS subheading 7601.20.90. Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the scope of this investigation is dispositive.

Background

The Commission instituted this investigation effective March 14, 1996, following receipt of a petition filed with the Commission and the Department of Commerce by Brush Wellman, Cleveland, OH. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by the Department of Commerce that imports of beryllium metal and high-beryllium alloys from Kazakstan were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of September 19, 1996 (61 FR 49341). The hearing was held in Washington, DC, on January 22, 1997, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on February 24, 1997. The views of the Commission are contained in USITC Publication 3019 (February 1997), entitled "Beryllium Metal and High-Beryllium Alloys from Kazakstan: Investigation No. 731–TA–746 (Final)."

Issued: February 27, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–5413 Filed 3–4–97; 8:45 am]

BILLING CODE 7020–02–P

[Inv. No. 337–TA–381]

Certain Electronic Products, Including Semiconductor Products, Manufactured by Certain Processes; Commission Determination Not To Review an Initial Determination Terminating the Investigation on the Basis of a Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ's) initial determination (ID) (Order No. 24) in the above-captioned investigation terminating the investigation on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Mark D. Kelly, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3106.

SUPPLEMENTARY INFORMATION: This patent-based section 337 investigation was instituted by the Commission on February 22, 1996, on behalf of Texas Instruments Incorporated, Dallas, Texas. 61 FR 6863. The complaint alleged violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic products, including semiconductor products, that are manufactured, produced, and assembled using processes that are covered by claims 1–8 or 9 of U.S. Letters Patent 4,884,674; claims 1–6 or 7 of U.S. Letters Patent 5,216,613; or claims 1–14 or 15 of U.S. Letters Patent 4,490,209; and that there existed an industry in the United States as required by subsection (a)(2) of section 337. The notice of investigation named Samsung Electronics Company, Ltd., Seoul, Korea and Samsung America, Inc., Ridgefield Park, New Jersey as respondents.

On December 23, 1996, the parties to the investigation, pursuant to Commission rule 210.21(a)(1) and (b)(1), filed a joint motion to terminate the investigation as to all issues based upon a settlement agreement. On January 30, 1997, the presiding ALJ granted the joint motion and issued an ID (Order No. 24) terminating the investigation on the basis of the settlement agreement. The ALJ found that there is no indication that termination of the investigation would have an adverse impact on the public interest and that termination based on settlement is generally in the public interest. No petitions for review were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission rule 210.42, 19 CFR 210.42.

Copies of the public version of the ALJ's ID, and all other nonconfidential documents filed in connection with this investigation, are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: February 27, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–5411 Filed 3–4–97; 8:45 am]

BILLING CODE 7020–02–P

[Inv. No. 337–TA–385]

Certain Random Access Memories, Processes for the Manufacture of Same, and Products Containing Same; Commission Determination Not To Review an Initial Determination Terminating the Investigation on the Basis of a Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ's) initial determination (ID) (Order No. 10) in the above-captioned investigation terminating the investigation on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Mark D. Kelly, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3106.

SUPPLEMENTARY INFORMATION: This patent-based section 337 investigation was instituted by the Commission on March 19, 1996, on behalf of Samsung Electronics Company, Ltd., Seoul, Korea. 61 FR 11222. The complaint alleged violations of section 337 based on the importation into the United States, the sale for importation, and the sale within the United States after importation of certain random access memories and products containing same that infringe claims 1–3 of U. S. Letters Patent 4,947,059, claims 1–7 of U. S. Letters Patent 5,444,026, and claims 1 and 5 of U. S. Letters Patent 5,072,134. The complaint also alleged that a domestic industry existed or was in the process of being established as required by subsection (a)(2) of section 337. The notice of investigation named Texas Instruments Incorporated of Dallas, Texas, Texas Instruments Singapore (PTE), Ltd., and Texas Instruments Japan, Ltd. as respondents.

On December 23, 1996, the parties to the investigation, pursuant to Commission rule 210.21(a)(1) and (b)(1), filed a joint motion to terminate the investigation as to all issues based upon a settlement agreement. On January 30, 1997, the presiding ALJ granted the joint motion and issued his ID (Order No. 10) terminating the investigation on the basis of the settlement agreement. The ALJ found that there is no indication that termination of the investigation would have an adverse impact on the public interest and that termination based on settlement is generally in the public interest. No petitions for review were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission rule 210.42, 19 CFR 210.42.

Copies of the public version of the ALJ's ID, and all other nonconfidential documents filed in connection with this investigation, are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: February 27, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–5412 Filed 3–4–97; 8:45 am]

BILLING CODE 7021–02–P

[Inv. No. 337-TA–394]

Certain Screen Printing Machines, Vision Alignment Devices Used Therein, and Component Parts Thereof; Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on January 28, 1997, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of MPM Corporation, 16 Forge Park, Franklin, Massachusetts 02038. Supplements to the complaint were filed on February 11, February 13, and February 18, 1997. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain screen printing machines, vision alignment devices used therein, and component parts thereof that infringe claims 1, 2, 3, 4, 11, 18, and 21 of U.S. Letters Patent 5,060,063 and claims 1 and 7 of U.S. Letters Patent Re. 34,615. The complaint further alleges that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a hearing, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint and supplements, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

FOR FURTHER INFORMATION CONTACT: Steven Glazer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2577.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section § 210.10 of the Commission's rules of practice and procedure, 19 CFR 210.10 (1996).

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on February 27, 1997, *ordered that*

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain screen printing machines, vision alignment devices used therein, or component parts thereof by reason of infringement of claims 1, 2, 3, 4, 11, 18, or 21 of U.S. Letters Patent 5,060,063, or claims 1 or 7 of U.S. Letters Patent Re. 34,615, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

MPM Corporation, 16 Forge Park Franklin, MA 02038.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

DEK Printing Machines Limited, 11 Albany Road Granby Industrial Estate, Weymouth, Dorset DT4 9TH, United Kingdom.

DEK USA Inc., 8 Bartlés Corner Road, Flemington, NJ 08822.

(c) Steven A. Glazer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Room 401–K, Washington, DC 20436, shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section § 210.13 of the Commission's rules of practice and procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a) of the Commission's rules, such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: February 27, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–5409 Filed 3–4–97; 8:45 am]

BILLING CODE 7020–02–P

[Investigations Nos. 731–TA–761–762 (Preliminary)]

Static Random Access Memory Semiconductors From the Republic of Korea and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping investigations Nos. 731–TA–761–762 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the Republic of Korea (Korea) and Taiwan of static random access memory (SRAM) semiconductors,[1] that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach preliminary determinations in antidumping investigations in 45 days, or in this case by April 11, 1997. The Commission's views are due at the Department of Commerce within five business days thereafter, or by April 18, 1997.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207), as amended in 61 FR 37818 (July 22, 1996).

EFFECTIVE DATE: February 25, 1997.

FOR FURTHER INFORMATION CONTACT: Fred Fischer (202–205–3179), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on February 25, 1997, by Micron Technology, Inc., Boise, ID.

Participation in the Investigations and Public Service List

Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on March 18, 1997, at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC. Parties wishing to participate in the conference should contact Fred Fischer (202–205–3179) not later than March 14, 1997, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before March 21, 1997, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

Issued: February 27, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–5410 Filed 3–4–97; 8:45 am]

BILLING CODE 7020–02–P

[1] The products covered by these investigations are synchronous, asynchronous, and specialty static random access memory semiconductors (SRAMs), whether assembled or unassembled, from the Republic of Korea and Taiwan. Assembled SRAMs include all package types. Unassembled SRAMs include processed wafers, uncut dice, and cut dice. Processed wafers produced in Korea or Taiwan but packaged or assembled into memory modules in a third country are included in the scope; however, wafers produced in a third country and assembled or packaged in Korea or Taiwan are not included in the scope.

The scope of these investigations includes modules containing SRAMs. Such modules include single in-line processing modules (SIPs), single in-line memory modules (SIMMs), dual in-line memory modules (DIMMs), memory cards, or other collections of SRAMs whether unmounted or mounted on a circuit board.

The SRAMs subject to these investigations are currently classified in statistical reporting numbers 8542.13.8037 through 8542.13.8049, the subject modules are classified in statistical reporting number 8473.30.10, and the subject processed wafers, uncut dice and cut dice are classified in statistical reporting number 8542.13.8005 of the Harmonized Tariff Schedule of the United States.

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10307, et al.]

Proposed Exemptions; ADP Fluor Daniel, Incorporated Retirement Savings Plan (the Plan)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice of Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

ADP Fluor Daniel, Incorporated Retirement Savings Plan (The Plan) Located in Tucson, Arizona

(Application No. D–10307)

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale by the Plan of two limited partnership interests (the Units) to ADP Fluor Daniel, Incorporated, a party in interest with respect to the Plan, providing the following conditions are satisfied: (1) the sale is a one-time transaction for cash; (2) the Plan pays no commissions nor other expenses relating to the sale; and (3) the purchase price is the greater of: (a) The fair market value of the Units as determined by a qualified, independent appraiser, or (b) the original acquisition and holding costs, plus attributable opportunity costs.

Summary of Facts and Representations

1. The Plan is a combination 401(K) and profit sharing plan sponsored by ADP Fluor Daniel, Incorporated (ADP). ADP is an Arizona corporation engaged in the business of international architecture and engineering. As of December 31, 1994, the Plan had 250 participants and assets with a fair market value of approximately $4,642,585.00.

2. Among the assets of the Plan are the Units, which are two shares of the Central Corridor-Osborn Investors Limited Partnership (the Limited Partnership), an Arizona limited partnership. The Plan's percentage ownership represented by its Units in the Limited Partnership is 3.11%. The Limited Partnership owns a 2.26 acre property located at the southeast corner of Central Avenue and Osborn Road, in Phoenix, Arizona. The Plan acquired the Units directly from the Limited Partnership, an unrelated third party, in 1987. The decision to acquire the Units was made by the Plan trustees; Richard Anderson, Philip Owen, Dale Harman, Solomon Pan, and Michael Stanley (the Trustees).[1] It is represented that the Plan paid a total of $25,000 to acquire the Units and subsequently made additional cash contributions and various other payments totaling $34,800 between 1989 and 1996 in connection with the holding of the Units. It is further represented that the Plan never derived any income from the investment in the Units to offset the expenditures made by the Plan related to the acquisition and holding of the Units. In this regard, it is represented that the cumulative costs paid by the Plan in connection with the acquisition and holding of the Units is $59,800.

3. The Applicant represents that the Plan wishes to sell the Units in order to divest itself of an asset which has and may continue to depreciate in value. It is further represented that the Units which are not publicly traded are incompatible with the Plan's new administrative investment features, which permits participants to access daily valuations and to individually direct the investments of their accounts. Selling the Units to ADP will enable the Plan to convert an illiquid, non-publicly traded real estate investment into cash,

[1] The Department expresses no opinion herein on whether the acquisition and holding of the Units by the Plan violated any of the provisions of Part 4 of Title I of the Act.

which will then be allocated to the accounts of participants and invested pursuant to the direction of those participants.

The Applicant obtained an independent appraisal of the units from Gary Ringel, President of U.S.L. Valuation, Inc., a real estate appraiser and consultant located in Scottsdale, Arizona. After reviewing the pertinent data, Mr. Ringel estimated that the Units' fair market value as of April 30, 1996 was $20,800.

4. The Applicant proposes to purchase the Units from the Plan for $85,072, which will be allocated on a pro rate basis among the participants' accounts that are invested in the Units. This amount represents the greater of: (a) The fair market value of the Units as determined by a qualified, independent appraiser, or (b) the Units' original acquisition and holding costs to the Plan plus opportunity costs attributable to the Units. It is represented, that because the fair market value of the Units is less than their acquisition cost, ADP will purchase the units for the latter amount. Taking into account the purchase price of the Units ($25,000) and the associated holding costs ($25,272), the Plan will receive a rate of return approximately equal to six percent for each of the eight years that the Plan has held the Units.

The Applicant represents that the subject transaction is in the interest of the Plan because if the Plan sold the Units on the open market, the Plan would receive substantially less than the amount the Applicant is willing to pay. In addition, the Plan could not at this time sell the Units to an unrelated third party at other than a substantial discount.

5. In summary, the Applicant represents that the subject transaction satisfies the statutory criteria for an exemption under section 408 of the Act for the following reasons: (1) The sale will be a one-time transaction for cash; (2) the Plan will not pay commissions nor other expenses relating to the sale; (3) the sale will enhance the liquidity of the assets of the Plan; and (4) the purchase price will be the greater of: (a) the fair market value of the Units as determined by a qualified, independent appraiser, or (b) the original acquisition and holding costs of the Units plus attributable opportunity costs.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Code, including sections 401(a)(4), 404 and 415.

Notice to Interested Persons

Notice of the proposed exemption shall be given to all interested persons by personal delivery and by first-class mail within 10 days of publication of the notice of pendency in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and/or request a hearing with respect to the proposed exemption. Comments and requests for a hearing are due within 40 days of the date of publication of the notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Janet L. Schmidt of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

TA Associates, Inc. (TA Associates) Located in Boston, MA

(Application No. D–10314)

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply, effective December 29, 1993, to the making, by an employee benefit plan (the Plan), of capital contributions to any venture capital fund (the TA Fund) that is organized, sponsored and/or managed by TA Associates and/or any of its affiliates (collectively, TA) pursuant to a contractual obligation by a Plan having an interest in the TA Fund.[2]

This proposed exemption is subject to the following conditions:

(a) At the time the Plan undertakes the obligation to make such capital contributions (the Determination Date), the TA Fund is not a party in interest with respect to the Plan.

(b) The decision to make a capital contribution to a TA Fund is made on behalf of the Plan by a Plan fiduciary which is independent of and unrelated to TA and the portfolio company whose interest is acquired by the TA Fund.

(c) TA does not otherwise provide investment advice to the Plan within the meaning of Regulation section 29 CFR 2510.3–21(c) with respect to such Plan's assets that are invested in the TA Fund.

(d) At the Determination Date, the Plan has aggregate assets that are in excess of $50 million. In the case of multiple Plans which are invested through a master or group trust in a TA Fund, the assets of which are "plan assets" under 29 CFR 2510.3–101 (the Plan Asset Regulation), the $50 million threshold applies to the aggregate assets of such trust.

(e) Subsequent to the Determination Date, the TA Fund is a party in interest with respect to the Plan solely by reason of a relationship to a portfolio company which is a service provider to a Plan, as described in section 3(14) (H) or (I) of the Act, including a fiduciary with respect to such Plan.

(f) At the Determination Date, the capital commitment of the Plan (together with the capital commitments of any other Plans maintained by the same employer or employee organization) with respect to the TA Fund, does not exceed 15 percent of the total capital commitments with respect to such TA Fund.

(g) At the Determination Date, the percentage of the Plan's assets committed to be invested in the TA Fund does not exceed 5 percent of the Plan's total assets.

(h) At the Determination Date, a Plan's aggregate capital commitment to all TA Funds does not exceed 25 percent of the Plan's total assets.

(i) The Plan receives the following initial and ongoing disclosures with respect to the TA Fund:

(1) A copy of the private placement memorandum applicable to the TA Fund or another comparable document containing substantially the same information;

(2) A copy of the limited partnership or other agreement establishing the TA Fund;

(3) A copy of the subscription agreement applicable to the TA Fund, if any;

(4) Copies of the proposed exemption and grant notice related to the exemptive relief described herein; and

(5) Periodic, but no less frequently than annually, reports relating to the overall financial position and operational results of the TA Fund

[2] As discussed herein, TA Funds are expected to be organized as venture capital operating companies that are managed by TA.

including copies of the TA Fund's annual financial statements.

(j) With respect to capital contributions made to a TA Fund by a Plan after the date of issuance of the final exemption, TA maintains or causes to be maintained for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (k) to determine whether the conditions of this exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred, if due to circumstances beyond the control of TA, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest, other than TA, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (k).

(k)(1) Except as provided in paragraph (k)(2) and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (j) are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(B) Any fiduciary of a Plan who has an interest in the TA Fund and has the authority to acquire or dispose of the interest of the Plan in the TA Fund, or any duly authorized employee or representative of such fiduciary; and

(C) Any participant or beneficiary of any Plans or duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in paragraph (k)(1)(B) and (k)(1)(C) shall be authorized to examine trade secrets of TA or commercial or financial information which is privileged or confidential.

EFFECTIVE DATE: If granted, this proposed exemption will be effective December 29, 1993.

Summary of Facts and Representations

1. TA is a Delaware corporation involved in the venture capital industry since 1968. TA has organized, sponsored and/or managed 21 venture capital funds, involving total capital commitments of approximately $1.46 billion. The investors in the TA Funds are primarily wealthy individuals and sophisticated investors, including employee benefit plans that are subject to the Act, private foundations, government plans, endowments and other tax exempt organizations. The applicant represents that venture capital funds, such as the TA Funds, allow Plans, particularly those having significant asset bases, to achieve greater diversification by asset class. As such, many of the investors in existing TA Funds and many potential investors in future TA Funds will be Plan investors that are covered by the Act.

2. Each TA Fund is organized and operated so that the assets of such TA Fund will not be deemed to be plan assets under the Plan Asset Regulation. In most cases, this results from the fact that the TA Fund is operated in a manner which causes such fund to qualify as a venture capital operating company.[3] In some cases, it may be the result of the fact that the equity participation in the TA Fund by benefit plan investors is not significant (i.e., more than 75 percent or more of the equity interest in the entity is held by non-benefit plan investors).[4]

3. The TA Funds have typically been structured as limited partnerships with TA serving as general partner and, in some cases, having an interest as limited partner. (TA Funds organized in the future may be organized as limited liability companies.) The TA Funds are managed by TA which receives a pre-specified management fee as well as a pre-specified incentive allocation after investors have received distributions in excess of their capital contributions plus a pre-specified minimum rate of return. Because the TA Funds are expected to be organized as venture capital operating companies, the applicant represents that none of the TA Funds will hold "plan assets" and that the compensation paid to TA by the TA Funds will not be subject to the prohibitions under the Act.[5]

TA's most recent fund, Advent VII, has aggregate capital commitments of approximately $303 million from 83 individual and institutional investors. Of the institutional investors, 14 investors are Plans that are covered under the provisions of the Act. These Plans have made a total capital commitment to Advent VII of $95 million.

4. Each investor in a TA Fund, including each Plan investor, enters into a binding commitment to make capital contributions to the TA Fund in an amount specified by the investor. Although an investor's capital commitments are not required to be made at the outset, capital is drawn down over time as the TA Fund identifies and makes its venture capital and other investments. Generally, capital is called down in installments ranging from 5 percent to 10 percent of the total commitment. In most cases, all of the capital commitments will have been drawn down within 3 to 5 years of the establishment of the TA Fund.

5. In recent years, the TA Funds have expanded their focus to include a wide variety of portfolio companies.[6] Specifically, the TA Funds have acquired, and expect to acquire, interests in portfolio companies which are involved, either directly or through subsidiaries, in various aspects of the financial services industry. TA believes this broader scope is necessary to enable the TA Funds to maximize investment opportunities and investment returns. In TA's view, business opportunities can arise in connection with start-up or later-stage companies (including spin-offs and management buy-outs of existing business operations) in

[3] Regulation section 29 CFR 2510.3–101(c) of the Plan Asset Regulation defines the term "operating company" as an entity that is primarily engaged, directly or through a majority-owned subsidiary or subsidiaries, in the production or sale of a product or service other than the investment of capital. The term "operating company" includes a "venture capital operating company."

Regulation section 29 CFR 2510.3–101(d) provides, in part, that an entity is a "venture capital operating company" if at least 50 percent of its assets are invested in venture capital investments, and the entity, in the ordinary course of its business, actually exercises management rights with respect to one or more operating companies in which it invests. Regulation section 29 CFR 2510.3–101(d)(3) explains that a venture capital investment is an investment in an operating company (other than a venture capital operating company) as to which the investor has or obtains management rights. The term "management rights" is defined under regulation section 29 CFR 2510.3–101(d)(3)(ii) to mean contractual rights directly between the investor and an operating company to substantially participate in, or substantially influence the conduct of, the management of the operating company.

[4] Regulation section 2510.3–101(f)(1) states, in pertinent part, that equity participation in an entity by benefit plan investors is "significant" on any date, if immediately after the most recent acquisition of any equity interest in the entity, 25 percent or more of the value of any class of equity interests in the entity is held by benefit plan investors.

[5] The Department is providing no opinion with regard to whether a TA Fund is a venture capital operating company or whether the equity participation by Plans investing in a TA Fund is not significant. In addition, the Department is not expressing any views with respect to the compensation that is paid to TA by a TA Fund.

[6] According to the applicant, the term "portfolio company" refers to each of the operating companies in which a venture capital fund has made an investment. Thus, for example, when a venture capital fund, such as a TA Fund, makes an investment in a start-up, high tech company, that company becomes one of the venture capital fund's portfolio companies and will remain so as long as the venture capital fund retains its investment in that high tech company. Similarly, if a venture capital fund acquires an interest in an investment management firm, the investment management firm will become a portfolio company of the venture capital fund.

virtually any type of business rather than exclusively in the hi-technology area.

6. As part of this diversification trend, TA Funds have been and will be acquiring interests in portfolio companies that are involved in providing money management services, brokerage services or other types of services which may be utilized by Plans and institutional investors. The portfolio company may be, or may become, a party in interest with respect to one or more Plans which hold an interest in the TA Fund when such portfolio company, or any subsidiary thereof performs services for a Plan. The services may include fiduciary services (e.g., management of assets of the Plan other than those invested in a TA Fund). In no event will the portfolio company or its subsidiary act in a fiduciary capacity with respect to the assets of the Plan that are invested in the TA Fund.

If the TA Fund owns, directly or indirectly, a 10 percent or more interest in a service provider, TA notes that the Fund will become a party in interest with respect to such Plan under section 3(14) (H) and (I) of the Act.[7] Since a TA Fund frequently purchases a 10 percent or more interest in a portfolio company, TA represents that it is possible that a TA Fund could become a 10 percent or more owner of a service provider and a party in interest with respect to each Plan as to which the portfolio company (or one of its subsidiaries) is a service provider. Once a TA Fund becomes a party in interest with respect to a Plan, TA states that the Plan would be prohibited from engaging in any transaction with that TA Fund.

If a TA Fund were to become a party in interest with respect to a Plan, TA is concerned that a capital contribution made by the Plan subsequent to the TA Fund's becoming a party in interest would violate section 406(a)(1)(D) of the Act notwithstanding the fact that the capital contribution is being made pursuant to a pre-existing binding contractual commitment made by the Plan at a time when the TA Fund was not a party in interest. Therefore, to resolve these potential technical violations of the Act, TA has requested an administrative exemption from the Department.

7. If granted, the proposed exemption will be effective December 29, 1993. On that date, one of the TA Funds acquired 100 percent of the interest in a portfolio company which owned or subsequently acquired several investment managers. At least one of the investment managers provided services to a Plan that was also an investor in the TA Fund. As a result, TA believes that prohibited transactions may have occurred when the Plan subsequently funded its remaining capital contributions to the TA Fund.

It is represented that the discovery of the prohibited transactions was made by TA and not by the investment manager. The only role that the investment manager played in these determinations was its provision to TA of a list of clients which enabled TA to compare the investment manager's clients with the list of investors in the affected TA Fund. It is represented that the investment manager did not have any responsibility with respect to the assets of the Plan that were invested in the TA Fund.

8. The requested exemption is subject to a number of conditions that will apply both retroactively and prospectively. First, the TA Fund's party in interest status will, in all cases, arise on the Determination Date, i.e., after the Plan has made a binding commitment to invest in the TA Fund, including its commitment to make future capital contributions to the TA Fund. Second, the decision to undertake the obligation to make a binding commitment must be made on behalf of the Plan by a Plan fiduciary which is independent of and unrelated to TA and the portfolio company. Third, TA must not otherwise provide investment advice to the Plan within the meaning of Regulation section 29 CFR 2510.3–21(c) with respect to such Plan's assets that are invested in the TA Fund. Fourth, at the Determination Date, the Plan must have aggregate assets that are in excess of $50 million. In the case of multiple Plans which are invested through a master or group trust in an entity, the $50 million threshold will apply to the aggregate assets of such trust or entity. Fifth, as of the Determination Date, the capital commitment of the Plan (together with the capital commitments of any other Plans maintained by the same employer or employee organization) with respect to the TA Fund, must not exceed 15 percent of the total capital commitments with respect to such TA Fund. Sixth, at the Determination Date, the percentage of the Plan's assets committed to be invested in the TA Fund must not exceed 5 percent of the Plan's total assets. Seventh, at the Determination Date, a Plan's aggregate capital commitment with respect to all TA Funds must not exceed 25 percent of such Plan's total assets. TA represents that the transaction which occurred on December 29, 1993 met all of the foregoing substantive conditions.

9. The conditions of the exemption also require that each Plan receive the following initial and ongoing written disclosures from TA: (a) A copy of the private placement memorandum applicable to the TA Fund or another comparable document containing substantially the same information; (b) a copy of the limited partnership or other agreement establishing the TA Fund; (c) a copy of the subscription agreement applicable to the TA Fund, if any; (d) copies of the proposed exemption and grant notice related to the exemptive relief described herein; and (e) periodic, but no less frequently than annually, reports relating to the overall financial position and operational results of the TA Fund including copies of the TA Fund's annual financial statements. In addition, with respect to capital contributions made to a TA Fund by a Plan after the date of issuance of the final exemption, TA will maintain or cause to be maintained for a period of six years from the date of each transaction, records of each Plan investing in a TA Fund and each portfolio company comprising a TA Fund. Such records will enable the Department and other persons to determine whether the terms and conditions of the exemption are being met.

10. If the exemption is not granted, TA represents that it and the TA Funds would be required to make one of several adjustments designed to avoid the prohibited transaction concern that is the subject of this request. However, TA states that it does not believe these adjustments would be in the best interest of existing or prospective Plan investors. In this regard, TA represents that it might attempt to avoid the problem by not acquiring any portfolio companies which are, directly or indirectly, service providers to any of a TA Fund's Plan investors. However, TA does not consider this alternative satisfactory because it would limit the TA Fund's potential range of investments and diminish the expected investment return of such Fund. Moreover, TA points out that a portfolio company which is not a service provider at the time of the TA Fund's investment might become a service provider at some time in the future. Under these circumstances, TA

[7] In this regard, it is noted that the corresponding section of the Code relating to disqualified persons (see section 4975(e)(2) (H) and (I) does not contain a similar provision which would make the owner of 10 percent or more of a service provider a disqualified person with respect to a Plan. Nevertheless, because the service provider is a disqualified person under section 4975(e)(2)(B) of the Code, TA has requested that the exemption extend to both the Code and the Act in order to avoid any potential concerns regarding the possibility of indirect prohibited transactions.

represents that it would be impractical to restrict the activities of all portfolio companies in which the TA Fund invests to assure that no such portfolio company would ever become a service provider to any TA Fund's Plan investors. According to TA, such restriction would be contrary to the best interest of the TA Funds and their investors, particularly, their Plan investors.

As another alternative, TA represents that it could limit the offering of interests in the TA Funds to those Plans which could take advantage of Prohibited Transaction Exemption (PTE) 84–14 (49 FR 9494 March 13, 1984), the Class Exemption for Plan Asset Transactions Determined by Independent Qualified Professional Asset Managers (QPAMs) or PTE 96–23 (61 FR 15975, April 10, 1996), the Class Exemption for Plan Asset Transactions Determined by In-House Asset Managers (INHAMs).[8] However, TA believes that such an approach would be unduly restrictive and not in the best interest of the Plans since relatively few Plans could take advantage of PTE 96–23. Also Plans would be forced to hire a QPAM and incur an additional expense in order to invest in a TA Fund if the Plan's named fiduciary would otherwise make that decision itself.

11. In summary, it is represented that the proposed exemption has satisfied or will satisfy the statutory conditions for an exemption under section 408(a) of the Act because: (a) At the Determination Date, the TA Fund's party in interest status has or will, in all cases, arise after the Plan has made its binding commitment to invest in the TA Fund, including its commitment to make future capital contributions to the TA Fund; (b) the decision by a Plan to make capital contributions to the TA Fund has been and will be made on behalf of the Plan by a Plan fiduciary which is independent of and unrelated to TA and the portfolio company that is acquired by the TA Fund; (c) TA will not otherwise provide investment advice to the Plan within the meaning of 29 CFR 2510.3–21(c) of the Act with respect to such Plan's assets that are invested in the TA Fund; (d) as of the Determination Date, the capital commitment of the Plan (together with the capital commitment of any other related Plans maintained by the same employer or employee organization) has not and will not exceed more than 15 percent of the total outstanding capital commitments with respect to the TA Fund; (d) at the Determination Date, the percentage of the Plan's assets committed to be invested in the TA Fund does not and will not exceed 5 percent of the Plan's total assets and the Plan's aggregate commitment to all TA Funds has not and will not exceed 25 percent of the Plan's total assets; (e) a Plan investing in a TA Fund has or will have assets that are in excess of $50 million; and (f) TA has or will make written disclosures to the Plan regarding the TA Fund both at the time of the initial commitment to invest in such Fund as well as on an ongoing basis.

Notice to Interested Persons

Those persons who may be interested in the pendency of the requested exemption include fiduciaries of Plans whose assets are currently invested in a TA Fund. Accordingly, the Department has determined that the only practical form of providing notice to such Plan fiduciaries is the distribution, by TA, of a copy of the proposed exemption by first class mail within 30 days of the date of publication of the pendency notice in the **Federal Register**. The notice will include a copy of the notice of proposed exemption, as published in the **Federal Register**, as well as a supplemental statement, as required, pursuant to 29 CFR 2570.43(b)(2), which shall inform interested persons of their right to comment on the pending exemption. Comments with respect to the proposed exemption are due 60 days after the date of publication of the proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975 (c)(2) of the Code does not believe a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 28th day of February 1997.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

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BILLING CODE 4510–29–M

[8] PTE 84–14 permits various parties which are related to employee benefit plans to engage in transactions involving plan assets, if among other conditions, the assets are managed by QPAMs (i.e., banks, savings and loan associations, insurance companies or investment advisers registered under the Investment Advisers Act of 1940), which are independent of the parties in interest and meet certain financial standards. PTE 96–23 permits various transactions involving employee benefit plans whose assets are managed by INHAMs and party in interest service providers.

[Prohibited Transaction Exemption 97–15; Exemption Application No. D–10172, et al.]

Grant of Individual Exemptions; The Chicago Corporation (TCC), et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

• In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

The Chicago Corporation (TCC), Located in Chicago, IL

[Prohibited Transaction Exemption 97–15; Application No. D–10172]

Exemption

Section I. Covered Transactions

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the proposed sale, for cash or other consideration, by the Midwest Banc Fund IV Group Trust (the BF IV Group Trust) in which employee benefit plans (the Plans) invest, of certain securities (the Securities) that are held in the BF IV Group Trust Portfolio, to a party in interest with respect to a participating Plan, where the part in interest proposes to acquire or merge with a bank company (the Bank Company) or a financial services company (the Financial Services Company) that issued such securities.

In addition, the restrictions of section 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(E) of the Code, shall not apply to the payment of a performance fee (the Performance Fee) by Plans investing in the BF IV Group Trust to TCC.

This exemption is subject to the following conditions as set forth below in Section II.

Section II. General Conditions

(a) Prior to a Plan's investment in the BF IV Group Trust, a Plan fiduciary which is independent of TCC and its affiliates (the Independent Fiduciary) approves such investment on behalf of the Plan.

(b) Each Plan investing in the BF IV Group Trust has total assets that are in excess of $50 million.

(c) No Plan invests more than 10 percent of its assets in beneficial interests (the Beneficial Interests) in the BF IV Group Trust and such Beneficial Interests held by the Plan may not exceed 25 percent of the Group Trust.

(d) No Plan may invest more than 25 percent of its assets in investment vehicles (i.e., collective investment funds or separate accounts) managed or sponsored by TCC and/or its affiliates.

(e) Prior to investing in the BF IV Group Trust,

(1) Each Independent Fiduciary receives a Private Placement Memorandum and its supplement containing description of all material facts concerning the purpose, structure and the operation of the BF IV Group Trust.

(2) An Independent Fiduciary who expresses further interest in the BF IV Group Trust receives—

(A) A copy of the Group Trust Agreement outlining the organizational principles, investment objectives and administration of the BF IV Group Trust, the manner in which Beneficial Interests may be redeemed, the duties of the parties retained to administer the BF IV Group Trust and the manner in which BF IV Group Trust assets will be valued;

(B) A copy of the Investment Management Agreement describing the duties and responsibilities of TCC, as investment manager of the BF IV Group Trust, the rate of compensation that it will be paid and conditions under which TCC may be terminated; and

(C) Copies of the proposed exemption and grant notice covering the exemptive relief provided herein.

(3) If accepted as an investor in the Group Trust, the Independent Fiduciary is—

(A) Furnished with the names and addresses of all other participating Plans;

(B) Required to acknowledge, in writing, prior to purchasing a Beneficial Interest in the BF IV Group Trust that such Independent Fiduciary has received copies of such documents; and

(C) Required to acknowledge, in writing, to TCC that such fiduciary is independent of TCC and its affiliates, capable of making an independent decision regarding the investment of Plan assets, knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and able to make an informed decision concerning participation in the BF IV Group Trust.

(f) Each Plan, including the trustee (the Trustee) of the BF IV Group Trust, receives the following written disclosures from TCC with respect to its ongoing participation in the BF IV Group Trust:

(1) Within 120 days after the end of each fiscal year of the BF IV Group Trust as well as at the time of termination, an annual financial report containing a balance sheet for the BF IV Group Trust as of the end of such fiscal year and a statement of changes in the financial position for the fiscal year, as audited and reported upon by independent, certified public accountants. The annual report will also disclose the fees paid or accrued to TCC.

(2) Within 60 days after the end of each quarter (except in the last quarter) of each fiscal year of the BF IV Group Trust, an unaudited quarterly financial report consisting of at least a balance sheet for the BF IV Group Trust as of the end of such quarter and a profit and loss statement for such quarter. The quarterly report will also specify the fees that are actually paid to or accrued to TCC.

• (3) Such other information as may be reasonably requested by the Plans or the Trustee (e.g., certain trading activity and portfolio status reports provided to the Trustee as required by Prohibited Transaction Exemption 86–128 (51 FR

41686, November 16, 1986) in order to comply with the reporting requirements of the Act and the Code.

(g) At least annually, TCC holds a meeting of the participating Plans at which time the Independent Fiduciaries of investing Plans are given the opportunity to decide on whether the BF IV Group Trust, the Trustee or TCC should be terminated as well as to discuss any aspect of the BF IV Group Trust and the agreements promulgated thereunder with TCC.

(h) During each year of the BF IV Group Trust's existence, TCC representatives are available to confer by telephone or in person with Independent Fiduciaries on matters concerning such Group Trust.

(i) The terms of all transactions that are entered into on behalf of the BF IV Group Trust by TCC remain at least as favorable to an investing Plan as those obtainable in arm's length transactions with unrelated parties. In this regard, the valuation of assets in the BF IV Group Trust that is done in connection with the payment of Performance Fees is based upon independent market quotations or (where the same are unavailable) determinations made by an independent appraiser.

(j) In the case of the sale by the BF IV Group Trust of Securities to a party in interest with respect to a participating Plan, the party in interest is not TCC, any employer of a participating Plan, or any affiliated thereof, and the BF IV Group Trust receives the same terms as is offered to other shareholders of a Bank Company or a Financial Services Company.

(k) As to each Plan, the total fees paid to TCC and its affiliates constitute no more than "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(l) TCC's Performance Fee is based upon a predetermined percentage of net realized gains minus net unrealized losses. In this regard.

(1) The Performance Fee is not to be paid before December 31, 2001, which represents the completion of the projected acquisition phase of the BF IV Group Trust, and not until all participating Plans have received distributions equal to 100 percent of their capital contributions made to the BF IV Group Trust.

(2) Prior to the termination of the BF IV Group Trust, no more than 75 percent of the Performance Fee credited to TCC is withdrawn from such Group Trust.

(3) The Performance Fee account established for TCC is credited with realized gains and losses and charged for net unrealized losses and fee payments.

(4) No portion of the Performance Fee is withdrawn if the Performance Fee Account is in a deficit position.

(5) TCC repays all deficits in its Performance Fee account and it maintains a 25 percent cushion in such account before receiving any further fee payment.

(m) Either TCC or the Trustee, on behalf of Plans participating in the BF IV Group Trust, may terminate the Investment Management Agreement at any time pursuant to the provisions in such agreement.

(n) TCC maintains, for a period of six years, the records necessary to enable the persons described in paragraph (o) of this Section II to determine whether the conditions of this exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of TCC and/or its affiliates, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest other than TCC shall be subject to the civil penalty that may be assessed under section 502(i) or the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (o) below.

(o)(1) Except as provided in section (o)(2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (n) of this Section II shall be unconditionally available at their customary location during normal business hours by:

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(B) Any Independent Fiduciary of a participating Plan or any duly authorized representative of such Independent Fudiciary;

(C) Any contributing employer to any participating Plan or any duly authorized employee representative of such employer; and

(D) Any participant or beneficiary of any participating Plan, or any duly authorized representative of such participant or beneficiary.

(o)(2) None of the persons described above in subparagraphs (B)–(D) of this paragraph shall be authorized to examine the trade secrets of TCC or commercial or financial information which is privileged or confidential.

Section III. Definitions

For purposes of this exemption,

(a) the term "TCC" means The Chicago Corporation and any affiliate of TCC as defined in paragraph (b) of Section III.

(b) An "affiliate" of TCC includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with TCC.

(2) Any officer, director or partner in such person, and

(3) Any corporation or partnership of which such person is an officer, director or a 5 percent partner or owner.

(c) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) An "Independent Fiduciary" is Plan fiduciary who is independent of TCC and its affiliates and is either a Plan administrator, trustee, named fiduciary, as the recordholder of Beneficial Interests in the BF IV Group Trust or an investment manager.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption on January 14, 1997 at 62 FR 1913.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

United States Trust Company of New York and Certain of Its Affiliates, Located in New York, New York

(Prohibited Transaction Exemption 97–17; Application Nos. D–10234 and D–10235)

Section I—Exemption for In-Kind Transfers of Assets

The restrictions of section 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (F) of the Code, shall not apply, effective as of May 31, 1996, to the in-kind transfer to any diversified open-end investment company (the Fund or Funds) registered under the Investment Company Act of 1940 (the ICA) to which the United States Trust Company of New York or any of its affiliates (collectively, US Trust) serves as investment adviser and may provide other services (i.e. "Secondary Services" as defined in Section III(h) below, of the assets of various employee benefit plans (the Plan or Plans) that are either held in certain collective investment funds (the CIF or CIFs) maintained by US Trust or otherwise held by US Trust as trustee, investment manager, or in any other capacity as fiduciary on behalf of the Plans, in exchange for shares of such Funds; provide that the following conditions are met:

(a) A fiduciary (the Second Fiduciary) who is acting on behalf of each affected Plan and who is independent of and unrelated to US Trust, as defined in Section III(g) below, receives advance written notice of the in-kind transfer of assets of the Plans or the CIFs in exchange for shares of the Fund and the disclosures described in Section II(f) below.

(b) On the basis of the information described in Section II(f) below, the Second Fiduciary authorizes in writing the in-kind transfer of CIF or Plan assets in exchange for shares of the Funds, the investment of such assets in corresponding portfolios of the Funds, and the fees received by US Trust in connection with its services to the Fund. Such authorization by the Second Fiduciary is to be consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act.

(c) No sales commissions are paid by the Plans in connection with the in-kind transfers of CIF or Plan assets in exchange for shares of the Funds.

(d) All or a pro rata portion of the assets of the Plans held in the CIFs or all or a pro rata portion of the assets of the Plans held by US Trust in any capacities as fiduciary on behalf of such Plans are transferred in-kind to the Funds in exchange for shares of such Funds. Notwithstanding the foregoing, solely for purposes of this paragraph (d), assets of the 401(k) Plan and ESOP of United States Trust Company of New York and Affiliated Companies (the UST DC Plan) held by US Trust as trustee and allocated to the U.S. Government Short/Intermediate Term Investment Fund shall be treated as assets held in a CIF.

(e) The Plans or the CIFs receive shares of the Funds that have a total net asset value equal in value to the assets of the Plans or the CIFs exchanged for such shares on the date of transfer.

(f) With respect to any in-kind transfer of CIF assets to a Fund, each Plan receives shares of a Fund which have a total net asset value that is equal to the value of the Plan's pro rata share of the assets of the corresponding CIF on the date of the transfer, based on the current market value of the CIF's assets, as determined in a single valuation performed in the same manner as of the close of the same business day with respect to all such Plans participating in the transaction on such day, using independent sources in accordance with the procedures set forth in Rule 17a–7(b) under the ICA (Rule 17a–7) for the valuation of such assets. Such procedures must require that all securities for which a current market price cannot be obtained by reference to the last sale price for transactions reported on a recognized securities exchange or NASDAQ be valued based on an average of the highest current independent bid and lowest current independent offer, as of the close of business on the last business day prior to the in-kind transfers, determined on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of US Trust.

(g)(1) Not later than thirty (30) days after completion of each in-kind transfer of CIF or Plan assets in exchange for shares of the Funds (except for certain transactions described in paragraph (g)(2) below), US Trust sends by regular mail to the Second Fiduciary, a written confirmation containing:

(i) the identity of each of the assets that are valued for purposes of the transaction in accordance with Rule 17a–7(b)(4) under the ICA;

(ii) the price of each of the assets involved in the transaction; and

(iii) the identity of each pricing service or market maker consulted in determining the value of such assets;

(2) For the in-kind transfer of CIF assets to the Funds which occurred on June 28 and July 31, 1996, the written confirmations described above in paragraph (g)(1) were made by US Trust to all Second Fiduciaries of the appropriate Plans by October 15, 1996.

(h) For all in-kind transfer of CIF assets, US Trust sends by regular mail to the Second Fiduciary, no later than ninety (90) days after completion of the asset transfer made in exchange for shares of the Funds, a written confirmation containing:

(1) the number of CIF units held by each affected Plan immediately before the in-kind transfer, the related per unit value, and the aggregate dollar value of the units transferred; and

(2) the number of shares in the Funds that are held by each affected Plan following the in-kind transfer, the related per share net asset value, and the aggregate dollar value of the shares received.

(i) The conditions set forth in paragraphs (d), (e), (f), (o), (p), and (q) of Section II below are satisfied.

Section II—Exemption for Receipt of Fees From Funds

The restrictions of section 406(a) and section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (F) of the Code shall not apply, effective as of June 30, 1996, to the receipt of fees by US Trust from the Funds for acting as the investment adviser for the Funds as well as for acting as the custodian, transfer agent, sub-administrator or for providing other "Secondary Services" (as defined in Section III(h) below) to the Funds in connection with the investment in the Funds by Plans for which US Trust acts as a fiduciary (Client Plans), other than Plans established and maintained by US Trust for the benefit of its employees and their beneficiaries (Bank Plans), provided that the following conditions are met:

(a) No sales commissions are paid by the Client Plans in connection with purchases or sales of shares of the Funds and no redemption fees are paid in connection with the sale of such shares by the Plans to the Funds.

(b) The price paid or received by the Client Plans for shares in the Funds is the net asset value per share, as defined in Section III(e), at the time of the transaction and is the same price which would have been paid or received for the shares by any other investor at that time.

(c) Neither US Trust nor any affiliate (including officers, directors and other persons, as defined in Section III(b) below) purchases from or sells to the Client Plans any shares of the Funds.

(d) For each Client Plan, the combined total of all fees received by US Trust for the provision of services to the Client Plan, and in connection with the provision of services to any of the Funds in which the Plan may invest, are not in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(e) US Trust or an affiliate does not receive any fees payable, pursuant to Rule 12b–1 under the ICA (the 12b–1 Fees) in connection with the transactions.

(f) The Second Fiduciary who is acting on behalf of a Client Plan receives in advance of the investment by a Plan in any of the Funds a full and detailed written disclosure of information concerning such Fund including, but not limited to:

(1) a current prospectus for each portfolio of each of the Funds in which such Client Plan is considering investing;

(2) a statement describing the fees for investment management, investment advisory, or other similar services, any fees for Secondary Services, as defined in Section III(h) below, and all other fees to be charged to or paid by the

Client Plan and by such Funds to US Trust, including the nature and extent of any differential between the rates of such fees;

(3) the reasons why US Trust may consider such investment to be appropriate for the Client Plan;

(4) a statement describing whether there are any limitations applicable to US Trust with respect to which assets of a Client Plan may be invested in the Funds, and, if so, the nature of such limitations; and

(5) upon request of the Second Fiduciary, a copy of the proposed exemption and/or a copy of the final exemption (once such documents are published in the **Federal Register**).

(g) On the basis of the information described in Section II(f) above, the Second Fiduciary authorizes in writing the investment of assets of the Client Plan in shares of the Fund and the fees to be paid to US Trust in connection with its services to the Funds. The authorization may be the Second Fiduciary must be consistent with the duties, responsibilities and obligations imposed on fiduciaries by Part 4 of Title I of the Act.

(h) The authorization described above in Section II(g) is terminable at will by the Second Fiduciary of a Client Plan, without penalty to such Plan, upon receipt by US Trust of written notice of termination. Such termination will be effected by US Trust selling the shares of the Fund held by the affected Client Plan within one business day following receipt by US Trust of the termination form (the Termination Form), as defined in Section III(i) below, or any other written notice of termination; provided that if, due to circumstances beyond the control of US Trust, the sale cannot be executed within one business day, US Trust shall have one additional business day to complete such sale.

(i) Each Client Plan receives a credit, either through cash or, if applicable, the purchase of additional shares of the Funds, pursuant to an annual election, which may be revoked at any time, made by the Client Plan, of such Plan's proportionate share of all investment advisory fees charged to the Funds by US Trust, including any investment advisory fees paid by US Trust to third party sub-advisers, within not more than one business day after the receipt of such fees by US Trust. The crediting of all such fees to the Client Plans by US Trust is audited by an independent accounting firm on at least an annual basis to verify the proper crediting of the fees to each Client Plan.

(j) In the event of an increase in the rate of any fees paid by the Funds to US Trust regarding any investment management services, investment advisory services, or fees for similar services that US Trust provides to the Funds over an existing rate for such services that had been authorized by a Second Fiduciary, in accordance with Section II(g), US Trust will, at least thirty (30) days in advance of the implementation of such increase, provide a written notice (separate from the Fund prospectus) to the Second Fiduciary of each of the Client Plans invested in a Fund which is increasing such fees.

(k) In the event of an addition of a Secondary Service, as defined in Section III(h) below, provided by US Trust to the Fund for which a fee is charged or an increase in the rate of any fee paid by the Funds to US Trust for any Secondary Service that results either from an increase in the rate of such fee or from the decrease in the number or kind of services performed by US Trust for such fee over an existing rate for such Secondary Service which had been authorized by the Second Fiduciary of a Client Plan, in accordance with Section II(g), US Trust will at least thirty (30) days in advance of the implementation of such additional service for which a fee is charged or fee increase, provide a written notice (separate from the Fund prospectus) to the Second Fiduciary of each of the Client Plans invested in a Fund which is adding a service or increasing fees. Such notice shall be accompanied by the Termination Form, as defined in Section III(i) below.

(l) The Second Fiduciary is supplied with a Termination Form at the times specified in paragraphs (k), (l), and (m) of this Section II, which expressly provides an election to terminate the authorization, described above in Section II(g), with instructions regarding the use of such Termination Form including statements that:

(1) The authorization is terminable at will by any of the Client Plans, without penalty to such Plans. Such termination will be effected by US Trust selling the shares of the Fund held by the Client Plans requesting termination within one business day following receipt by US Trust, either by mail, hand delivery, facsimile, or other available means at the option of the Second Fiduciary, of the Termination Form or any other written notice of termination; provided that if, due to circumstances beyond the control of US Trust, the sale of shares of such Client Plans cannot be executed within one business day, U.S. shall have one additional business day to complete such sale; and

(2) Failure by the Second Fiduciary to return the Termination Form on behalf of a Client Plan will be deemed to be an approval of the additional Secondary Service for which a fee is charged or increase in the rate of any fees, if such Termination Form is supplied pursuant to paragraphs (k) and (l) of this section II, and will result in the continuation of the authorization, as described in Section II(g), of US Trust to engage in the transactions on behalf of such Client Plan.

(m) The Second Fiduciary is supplied with a Termination Form, annually during the first quarter of each calendar year, beginning with the first quarter of the calendar year that begins after the date this exemption is published in the **Federal Register** and continuing for each calendar year thereafter; provided that the Termination Form need not be supplied to the Second Fiduciary, pursuant to this paragraph (m), sooner than six months after a Termination Form is supplied pursuant to Section II (k) and (l), except to the extent required by such paragraphs to disclose an additional Secondary Service for which a fee is charged or an increase in fees.

(n)(1) With respect to each of the Funds in which a Client Plan invests, US Trust will provide the Second Fiduciary of such Plan:

(A) at least annually with a copy of an updated prospectus of such Fund;

(B) upon the request of such Second Fiduciary, with a report or statement (which may take the form of the most recent financial report, the current statement of additional information, or some other written statement) which contains a description of all fees paid by the Fund to US Trust; and

(2) With respect to each of the Funds in which a Client Plan invests, in the event such Fund places brokerage transactions with US Trust, US Trust will provide the Second Fiduciary of such Plan at least annually with a statement specifying:

(A) the total, expressed in dollars, brokerage commissions of each Fund's investment portfolio that are paid to US Trust by such Fund;

(B) the total, expressed in dollars, of brokerage commissions of each Fund's investment portfolio that are paid by such Fund to brokerage firms unrelated to US Trust;

(C) the average brokerage commissions per share, expressed as cents per share, paid to US Trust by each portfolio of a Fund; and

(D) the average brokerage commissions per share, expressed as cents per share, paid by each portfolio of a Fund to brokerage firms unrelated to US Trust.

(o) All dealings between the Client Plans and any of the Funds are on a basis no less favorable to such Plans that dealings between the Funds and other shareholders holding the same class of shares as the Plans.

(p) US Trust maintains for a period of six (6) years the records necessary to enable the persons, as described in Section II(q) below, to determine whether the conditions of the exemption have been met, except that:

(1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of US Trust, the records are lost or destroyed prior to the end of the six (6) year period, and

(2) no party in interest, other than US Trust, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by Section II(q) below.

(q)(1) Except as provided in Section II(q)(2) and notwithstanding any provisions of Section 504 (a)(2) and (b) of the Act, the records referred to in Section II(p) above are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(ii) Any fiduciary of each of the Plans who has authority to acquire or dispose of shares of any of the Funds owned by such a Plan, or any duly authorized employee or representative of such fiduciary; and

(iii) Any participant or beneficiary of the Plans or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraph (q)(1)(ii) and (q)(1)(iii) of Section II shall be authorized to examine trade secrets of US Trust, or commercial or financial information which is privileged or confidential.

Section III—Definitions

For purposes of this exemption,

(a) The term "US Trust" means the United States Trust Company of New York and an affiliate, as defined in Section III(b)(1).

(b) An "affiliate" of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term "Fund or Funds" means any diversified open-end investment company or companies registered under the ICA for which US Trust serves as investment adviser, and may also provide custodial or other services as approved by such Funds.

(e) The term, "net asset value" means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in a Fund's prospectus and statement of additional information, and other assets belonging to each of the portfolios in such Fund, less the liabilities charged to each portfolio, by the number of outstanding shares.

(f) The term, "relative," means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(g) The term, "Second Fiduciary," means a fiduciary of a plan who is independent of and unrelated to US Trust. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to US Trust if:

(1) Such Second Fiduciary directly or indirectly controls, is controlled by, or is under common control with US Trust;

(2) Such Second Fiduciary, or any officer, director, partner, employee, or relative of such Second Fiduciary is an officer, director, partners, or employee of US Trust (or is a relative of such persons);

(3) Such Second Fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with any transaction described in this exemption; provided, however, that with respect to the Bank Plans, the Second Fiduciary may receive compensation from US Trust in connection with the transactions contemplated herein, but the amount or payment of such compensation may not be contingent upon or be in any way affected by the Second Fiduciary's ultimate decision regarding whether the Bank Plans participate in the transactions.

With the exception of the Bank Plans, if an officer, director, partner, or employee of US Trust (or a relative of such persons), is a director of such Second Fiduciary, and if he or she abstains from participation in (i) the choice of the Plan's investment manager/advisor, (ii) the approval of any purchase or sale by the Plan of shares of the Funds, and (iii) the approval of any change of fees charged to or paid by the Plan, in connection with any of the transactions described in sections I and II above, then Section III(g)(2) above shall not apply.

(h) The term, "Secondary Service," means a service, other than an investment management, investment advisory, or similar service, which is provided by US Trust to the Funds, including but not limited to custodial, accounting, administrative, or any other service. However, for purposes of transactions which occurred prior to the date this exemption is granted, the term "Secondary Service" does not include any brokerage services provided by US Trust to the Funds.

(i) The term "Termination Form," means the form supplied to the Second Fiduciary, at the times specified in paragraph (k), (l), and (m) of Section II above, which expressly provides an election to the Second Fiduciary to terminate on behalf of the Plans the authorization, described in Section II(g). Such Termination Form may be used at will by the Second Fiduciary to terminate such authorization without penalty to the Plans and to notify US Trust in writing to effect such termination by selling the shares of the Fund held by the Plans requesting termination within one business day following receipt by US Trust, either by mail, hand delivery, facsimile, or other available means at the option of the Second Fiduciary, of written notice of such request for termination; provided that if, due to circumstances beyond the control of US Trust, the sale cannot be executed within one business day, US Trust shall have one additional business day to complete such sale.

(j) The term "UST DB Plan" means the Employees' Retirement Plan of United States Trust Company of New York and Affiliated Companies.

(k) The term "UST DC Plan" means the 401(k) Plan and ESOP of United States Trust Company of New York and Affiliated Companies.

(l) The term "Bank Plan" means the UST DB Plan and the UST DC Plan.

(m) The term "Client Plan" means any "employee benefit plan" within the meaning of section 3(3) of the Act and/

or any "plan" within the meaning of Code section 4975 (e)(1).[1]

EFFECTIVE DATE: This exemption is effective as of May 31, 1996, for transactions described in Section I, and June 30, 1996, for transactions described in Section II.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on December 17, 1996, at 61 FR 66320.

WRITTEN COMMENTS AND MODIFICATIONS: US Trust submitted the following comments and requests for modifications regarding the notice of proposed exemption (the Proposal).

First, US Trust notes that paragraph 17 of the Summary of Facts and Representations in the Proposal (the Summary) states that to the extent that US Trust does not currently execute brokerage services for any Fund, but proposes to do so in the future, US Trust intends to provide at least 30 days advance written notice of such additional service. US Trust represents that pursuant to a proposal adopted by the Funds' boards of directors prior to the December 17th publication of the Proposal in the **Federal Register**, the Funds' retained an affiliate of US Trust to provide such brokerage services. US Trust states that these brokerage services commenced on January 3, 1997.

US Trust represents that written notice of this additional service was provided to each Client Plan that was affected by the in-kind conversion transactions prior to the commencement of such service by US Trust. However, due to holiday schedules, the notices were sent late and were not sent at least 3 days in advance of the commencement of the brokerage services, as was intended by US Trust. In addition to the late notices, for all Client Plans, US Trust proposes to include another copy of the notice in each Client Plan's next account statement.

US Trust notes that section II(n)(2) of the Proposal requires certain annual disclosures regarding brokerage services (which US Trust intends to provide). In addition, the definition of "Secondary Service" in section III(h) expressly exempts brokerage services from the requirements of section II(k), including the 30-day advance notice requirement for the addition of a Secondary Service. Accordingly, US Trust proposes no change in the language of the Proposal and merely notes for the record this change in the facts from those set out in paragraph 17 of the Summary.

In this regard, the Department acknowledges that advance notices to the Client Plans regarding the brokerage services were not sent at least 30 days prior to the commencement of such services by US Trust, as previously represented. The Department also acknowledges that an advance notice requirement of brokerage services was not specifically set forth in the Proposal. However, the Department believes that prior notice of an additional "Secondary Service" to a Fund for which a fee will be charged should include notice of any brokerage services to be provided by US Trust to the Fund. Therefore, the Department has modified the definition of "Secondary Service" contained in section III(h) of the Proposal by deleting the reference which exempted brokerage services from the notice requirements of section II(k) and adding the following language:

"* * * However, *for purposes of transactions which occurred prior to the date this exemption is granted*, the term 'Secondary Service' does not include any brokerage services provided by US Trust to the Funds." [emphasis added]

Second, US Trust states that the Proposal does not contain a definition of the term "Plan" or "Client Plan": US Trust notes that in paragraph 2 of the Summary, the Plans to which the exemption would apply presently consist of Code section 401(a) qualified plans that are "pension plans" under section 3(2) of the Act. Paragraph 2 states that US Trust requests that the exemption apply to any "employee benefit plan" within the meaning of section 3(3) of the Act and/or any "plan" within the meaning of Code section 4975(e)(1). Thus, US Trust suggests that the operative language of the exemption be modified to specify that all such plans will be covered.

In this regard, the Department has added, as section III(m) above, a definition of the term "Client Plan" (with a footnote regarding references to Title I of the Act and the corresponding provisions of the Code) in order to respond to the clarification request made by US Trust.

Third, US Trust also requests that the Department clarify that the requirement of section II(f)(5)—that US Trust provide each Client Plan's Second Fiduciary (upon request) with a copy of the proposed and/or final exemption in advance of the Plan's investment—does not apply with respect to any Plan that was already invested in the Funds prior to the date of the Proposal. US Trust states that it has provided the Proposal to Client Plans as part of the notice to interested persons described in the Proposal (see 61 FR at 66331). In addition, US Trust states that it will continue to provide to any Client Plan's Second Fiduciary copies of the Proposal, upon request, and will provide copies of the final exemption after it is published in the **Federal Register.**

In this regard, the Department acknowledges the comments made by US Trust and, in an attempt to clarify this matter, has amended section II(f)(5) by adding the parenthetical phrase "* * * (once such documents are published in the **Federal Register**)."

Fourth, US Trust notes that sections II(1) and III(i) state that a Second Fiduciary will be supplied with a Termination Form "* * * at times specified in paragraphs (k), (l), and (m) of section II". However, US Trust wishes to clarify that paragraph (1) of section II does not specify any time for providing such Form distinct from the times noted in paragraph (k) and (m) of section II. The Department acknowledges the accuracy of this comment, but does not believe that any change to the language of these sections is necessary.

Finally, US Trust states that the correct figures in the example contained in paragraph 8 of the Summary (at the bottom of the second column on page 66326 of the **Federal Register**) used to illustrate the interests of the Bank Plans and Client Plans in a particular CIF at the time of the conversion, should be 45 percent and 55 percent, respectively. In this regard, the example in the Summery had incorrectly stated these percentages as 45 percent and 65 percent. The Department acknowledges this correction to the record.

Accordingly, the Department has determined to grant the exemption as modified.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

Consolidated Lumber Corp. Pension Plan (the Plan), Located in Clifton, New Jersey

(Prohibited Transaction Exemption 97–17; Exemption Application No. D–10344)

Exemption

The restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale for cash (the Sale) by the Plan to Consolidated Lumber Corp., the sponsor of the Plan, of certain wholelife insurance policies (the Policies) issued by Confederation Life Insurance Company of Canada provided the following conditions are satisfied: (a) All terms and conditions of the Sale are at least as favorable to the Plan as those which the Plan could obtain in arm's-length transactions with unrelated parties; (b) the Plan receives cash consideration from each Sale that is no less than the greater of (1) the fair market value of the Policies as of the date of the Sale, or (2) each of the Policies' net cash surrender value as of the date of the Sale; and (C) the Plan does not incur any expenses or suffer any losses with respect to the transactions.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on December 30, 1996 at 61 FR 68799.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

APA, Inc. 401(k) Profit Sharing Plan (the Plan), Located in Pleasant Hill, California

(Prohibited Transaction Exemption 97–19; Exemption Application No. D–10375)

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) The loan (the Loan) of $30,000 to Mr. Gary Petsuch (Mr. Petsuch), a party in interest with respect to the Plan, from Mr. Petsuch's segregated account (the Account) in the plan, and (2) the personal guarantee of the Loan by Mr. Petsuch, provided the following conditions are satisfied: (a) The terms of the Loan are at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party; (b) the loan does not exceed 25% of the assets of the Account; (c) the Loan is secured by a pledge of Mr. Petsuch's interest in an investment account which has been currently valued by an independent party as having a fair market value approximately 280% of the principal amount of the Loan; (d) the account collateralizing the Loan will be maintained at a collateral-to-Loan ratio of not less than 200% throughout the duration of the Loan; (e) Mr. Petsuch has also personally guaranteed the Loan; and (f) Mr. Petsuch is the only Plan participant to be affected by the Loan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 14, 1997 at 62 FR 1924.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 28th day of February, 1997.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 97–5431 Filed 3–4–97; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collections pursuant to the Paperwork Reduction Act of 1995.

[1] For purposes of this exemption, references to Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

DATES: Written comments must be submitted to OMB at the address below on or before April 4, 1997 to be assured of consideration.

ADDRESSES: Comments should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Ms. Maya Bernstein, Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–713–6730 or fax number 301–713–6913.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on December 27, 1996 (61 FR 68305). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed collection information is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Request to Microfilm Records.
OMB number: 3095–0017.
Agency form number: none.
Type of review: Regular.
Affected public: Companies and organizations that wish to microfilm archival holdings in the National Archives of the United States or a Presidential library for micropublication.
Estimated number of respondents: 5.
Estimated time per response: 10 hours.
Frequency of response: On occasion (when respondent wishes to request permission to microfilm records).
Estimated total annual burden hours: 50.
Abstract: The information collection is prescribed by 36 CFR 1254.92. The collection is prepared by companies and organizations that wish to microfilm archival holdings with privately-owned equipment. NARA uses the information to determine whether the request meets the criteria in 36 CFR 1254.94, to evaluate the records for filming and to schedule use of the limited space available for filming.

Dated: February 27, 1997.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 97–5367 Filed 3–4–97; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting; Notice of Change in Time and Date of Meetings

The National Credit Union Administration Board determined that its business requires the previously announced (**Federal Register**, 62 FR 9213, February 28, 1997) open meeting schedule scheduled for 10:00 a.m., Thursday, March 6, 1997 and the closed meeting scheduled for 11:30 a.m., Thursday, march 6, 1997, to be rescheduled.

TIME AND DATE: 8:10 a.m., Friday, March 7, 1997.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

BOARD BRIEFING: 1. Insurance Fund Report.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Requests from Federal Credit Unions to Convert to a Community Charter.
3. Charter Application from the Proposed First Combined Community Federal Credit Union.
4. Request from a Corporate Federal Credit Union for a Field of Membership amendment.
5. Final Rule: Part 704, NCUA's Rules and Regulations, Corporate Credit Unions.
6. Proposed Rule: Request for Comments on Federal Credit Union Bylaws.
7. Advance Notice of Proposed Rulemaking: Request for Comments on Interpretive Rulings and Policy Statements (IRPS).
8. Proposed Rule: Amendments to Section 701.26(b), 701.27, and 740.3(c), and addition of part 712, NCUA's Rules and Regulations, Credit Union Service Contracts, Credit Union Service Organizations, and Advertising.

RECESS: 10:00 a.m.

TIME AND DATE: 10:15 a.m., Friday, March 7, 1997.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Administrative Actions under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (5), (7), (8), (9)(A)(ii), and (9)(B).
3. Personnel Action(s). Closed pursuant to exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703)–518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 97–5483 Filed 2–28–97; 4:54 pm]

BILLING CODE 7535–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME: 9:30 a.m., Wednesday, March 12, 1997.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE DISCUSSED: 6598A Marine Accident Report: Grounding of the Panamanian Passenger Ship ROYAL MAJESTY on Rose and Crown Shoal near Nantucket, Massachusetts, June 10, 1995.

News Media Contact: Telephone: (202) 314–6100.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 314–6065.

Dated: February 28, 1997.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 97–5482 Filed 3–28–97; 4:55 pm]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recording Requirements: Office of Management and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Revision.
2. The title of the information collection: 10 CFR Part 34, "Licenses for Radiography and Radiation Safety Requirements for Radiographic Operations," 10 CFR Part 71, "Packaging and Transportation of Radioactive Material," and NRC Form 313, Application for Material License.
3. The form number if applicable: NRC Form 313.
4. How often is the collection required: On occasion, such as upon submittal of an application for a materials license or renewal, or upon discovery of a leaking source.
5. Who will be required or asked to report: Licensees and applicants requesting approvals in accordance with 10 CFR Part 34.
6. An estimate of the number of responses: Part 34—696, Part 71—(–)450, NRC Form 313—450.
7. The estimated number of annual respondents: 450.
8. An estimate of the number of hours needed annually to complete the requirement or request: Part 34—1,440 hours for reporting (approximately 3.2 hours per response) plus an additional 41,406 hours for recordkeeping (approximately 92 hours per licensee); Part 71—(–)1,440 hours for reporting and recordkeeping (approximately (–)3.2 hours per response); NRC Form 313—5,850 hours for 450 licensees (approximately 13 hours per response).
9. An indication of whether Section 3507(d), Pub. L. 104–13 applies: Applicable.
10. Abstract: The NRC regulation, 10 CFR Part 34, specifies the information and data to be provided by applicants and licensees using byproduct material for industrial radiography. 10 CFR Part 34 has been revised in its entirety. The revision adds to or modifies the requirements to include additional training of radiographers' assistants, leak tests of "S" tubes, and specifies records to be kept at various locations. The revision deletes the requirement for radiography licensees to submit a Quality Assurance program under 10 CFR Part 71. The revision requires the following additional information to be reported on NRC Form 313, Application for Materials License: locations and descriptions of all field stations and permanent radiographic installations, designation of a Radiation Safety Officer, and additional information on training and testing. This information is reviewed by NRC to ensure that the safety of radiographers and the public is protected.

Submit by April 4, 1997, comments that address the following question:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC 20555–0001. Members of the public who are in the Washington, DC, area can access this document via modem on the Public Document Room Bulletin Board (NRC's Advanced Copy Document Library), NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672), or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608. Additional assistance in locating the document is available from the NRC Public Document Room, nationally at 1–800–397–4209, or within the Washington, DC, area at 202–634–3273.

Comments and questions should be directed to the OMB reviewer by April 4, 1997: Edward Michlovich, Office of Information and Regulatory Affairs, (3150–0007 and 3150–0120), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 26th day of February, 1997.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 97–5384 Filed 3–4–97; 8:45 am]

BILLING CODE 7590–01–P

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission, new, revision, or extension: Revision.
2. The title of the information collection: Reactor Operator and Senior Reactor Operator Licensing Training and Requalification Programs.
3. The form number if applicable: Not applicable.
4. How often the collection is required: As needed per facility; generally once or less per year.
5. Who will be required or asked to report: All reactor licensees and applicants for an operating license at power and non-power reactors.
6. An estimate of the number of responses: One each for 72 power reactors and 30 non-power reactors annually.
7. The estimated number of annual respondents: 75 for power reactors and 30 for non-power reactors.
8. An estimate of the total number of hours needed annually to complete the requirement or request: 27,882 hours annually (24,882 hours for reporting and 3000 hours for recordkeeping for power reactor licensees (387 hours per response) and 124 reporting hours annually for non-power reactor licensees (4 hours per response).
9. An indication of whether section 3507(d), Public Law. 104–13 applies: Not applicable.
10. Abstract: The NRC requests copies of initial and requalification training material and examinations from reactor licensees/applicants. The training material is used by the NRC staff to develop operator and senior operator licensing and requalification examinations. The initial examinations are reviewed, modified, and approved by the NRC staff for use in licensing operators and senior operators; the requalification examinations are inspected to verify regulatory compliance.

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Members of the public who are in the Washington, DC, area can access the submittal via modem on the Public Document Room Bulletin Board (NRC's Advanced Copy Document Library) NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608. Additional assistance in locating the document is available from the NRC Public Document Room, nationally at 1–800–397–4209, or within the Washington, DC, area at 202–634–3273.

Comments and questions should be directed to the OMB reviewer by April 4, 1997: Edward Michlovich, Office of Information and Regulatory Affairs (3150–0101) NEOB–10202, Office of Management and Budget, Washington, DC 20503. Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 28th day of February, 1997.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official, Information Resources Management.

[FR Doc. 97–5506 Filed 3–4–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–237 and 50–249]

Commonwealth Edison Company; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–19 and DPR–25, issued to Commonwealth Edison Company (ComEd, the licensee) for operation of the Dresden Nuclear Power Station, Units 2 and 3, located in Grundy County, Illinois.

The proposed amendments would change the Technical Specifications (TS) by relocating the TS requirements associated with the 24/48 Vdc batteries, battery chargers and distribution systems to other licensee administratively controlled documents.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendments requested involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because of the following:

Removal of the 24/48 Vdc batteries, chargers, and distribution panels from the Technical Specification requirements of 3/4.9.C, 3/4.9.D, 3/4.9.E, and 3/4.9.F and the subsequent relocation of those requirements to licensee administrative control is an administrative change that will still ensure the availability of the 24/48 Vdc system and will not increase the probability of accidents previously evaluated. Relocation of the 24/48 Vdc requirements to administrative controls will have no effect on the control instrumentation and cannot act as an initiator for any of the accidents evaluated in the UFSAR [Updated Final Safety Analysis Report].

Similarly, relocation of the 24/48 Vdc system requirements to licensee administrative control will have no effect on the availability of the loads which are supplied by the 24/48 Vdc batteries nor on any of the consequences of accidents previously evaluated in the UFSAR. Control of the 24/48 Vdc requirements by station administrative controls under 10 CFR 50.59 will not affect any of the protection or mitigation functions which may be provided by any of the loads supplied by the batteries. Operation under the proposed amendment will not significantly increase the probability or consequences of any accidents previously evaluated.

Because of the above evaluation, removal of the 24/48 Vdc system from the Technical Specifications will not involve a significant increase in the probability or the consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

The 24/48 Vdc batteries, chargers, and other components will retain the separation, and redundancy under which they are presently installed. No new failure modes are introduced by this administrative relocation of requirements, for the 24/48 Vdc system, from the Technical Specifications to licensee administrative control. The possibility of a new or different accident from any accident previously evaluated is not increased or created by this administrative change.

(3) Involve a significant reduction in the margin of safety because:

Relocation of the TS requirements for the 24/48 Vdc system does not affect the operating points or setpoints of any systems or components. Plant operating points or parameters are not changed by this proposed relocation of requirements in this amendment request. The safety related equipment that is supported by the 24/48 Vdc system will continue to be required in the existing modes of applicability as determined by the individual equipment Technical Specifications. Thus operation under the proposed license amendment removes some redundancy and constraints during refueling but does not significantly reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments requested involve no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications

Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 4, 1997, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendments requested involve no significant hazards consideration, the Commission may issue the amendments and make them immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendments requested involve a significant hazards consideration, any hearing held would take place before the issuance of any amendments.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Robert A. Capra: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated February 19, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450.

Dated at Rockville, Maryland, this 26th day of February 1997.

For the Nuclear Regulatory Commission.

John F. Stang,

Senior Project Manager, Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–5390 Filed 3–4–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 40–8681, 40–9024]

Energy Fuels Nuclear, Inc.; Notice of Opportunity for Hearing

SUMMARY: Notice is hereby given that Energy Fuels Nuclear, Inc. (EFN) has requested U.S. Nuclear Regulatory Commission approval for the transfer of NRC Source Material License Nos. SUA–1358 and SUA–1558, for the White Mesa uranium mill and the Reno Creek facility, respectively, to International Uranium (USA) Corporation. EFN's request was transmitted to NRC by letter dated December 31, 1996. The NRC staff is in the process of reviewing the request.

FOR FURTHER INFORMATION CONTACT: Mr. James R. Park, Uranium Recovery Branch, Mail Stop TWFN 7–J9, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone 301/415–6699.

SUPPLEMENTARY INFORMATION: Section 184 of the Atomic Energy Act of 1954, as amended, states, in part, that no license granted under the Atomic Energy Act of 1954, as amended, can be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of the Atomic Energy Act of 1954, as amended, and shall give its consent in writing. Section 40.41(b) of the Commission's regulations, in Title 10 of the Code of Federal Regulations (CFR), states that neither the license, nor any right under the license, can be assigned or otherwise transferred in violation of the provisions of the Atomic Energy Act of 1954, as amended. Section 40.46 of the Commission's regulations requires, in part, the Commission's consent in writing to any transfer of control of a license. In addition, 10 CFR 40.51(a) provides that no licensee shall transfer source or byproduct material except as authorized pursuant to that section, while 10 CFR 40.51(b)(5) provides, in part, that a licensee may transfer source or byproduct material to any person authorized to receive such material under terms of a specific or general license issued by the Commission.

EFN's letter requesting the proposed action, and the accompanying supporting information, are available for public inspection and copying at the NRC Public Document Room, in the Gelman Building, 2120 L Street N.W., Washington, DC 20555.

Notice of Opportunity for Hearing

The Commission hereby provides notice that this is a proceeding on an application for a licensing action falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings, of the Commission's Rules of Practice for Domestic Licensing Proceedings in 10 CFR Part 2" (54 FR 8269). Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(c), a request for a hearing must be filed within thirty (30) days from the date of publication of this **Federal Register** notice. The request for a hearing must be filed with the Office of the Secretary either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Each request for a hearing must also be served, by delivering it personally or by mail to:

(1) The applicant, Energy Fuels Nuclear, Inc., 1515 Arapahoe Street, Suite 900, Denver, CO 80202;

(2) The NRC staff, by delivery to the Executive Director of Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the Commission's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) the requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

Any hearing that is requested and granted will be held in accordance with the Commission's Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings in 10 CFR Part 2, Subpart L.

Dated at Rockville, Maryland, this 24th day of February 1997.

For the Nuclear Regulatory Commission.

Joseph J. Holonich,

Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–5387 Filed 3–4–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–387 and 50–388]

Pennsylvania Power and Light Company; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–14 and NPF–22 issued to Pennsylvania Power & Light Company (PP&L, the licensee) for operation of the Susquehanna Steam Electric Station, Units 1 and 2, located in Luzerne County, Pennsylvania.

The proposed amendment would change the Technical Specifications (TSs) for the two units to include sections that would define and permit the withdrawal of control rods in OPERATIONAL CONDITIONS 3 and 4, hot shutdown and cold shutdown, respectively, with the reactor mode switch in the REFUEL position. These specific changes had been included in a submittal dated August 1, 1996, which was the conversion to the Improved Technical Specifications (ITS); but in this current application, the specific ITS Sections 3.10.3 and 3.10.4 have been reformatted for incorporation into the current TSs for each unit.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By April 4, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248–5100 (in Missouri 1-(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW, Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendments after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments dated February 11, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania.

Dated at Rockville, Maryland, this 28th day of February 1997.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–5399 Filed 3–4–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 40–8681]

Energy Fuels Nuclear, Inc.; Final Finding of No Significant Impact Notice of Opportunity for Hearing

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) proposes to renew NRC Source Material License SUA–1358 to authorize the licensee, Energy Fuels Nuclear, Inc. (EFN), for continued commercial operation of the White Mesa uranium mill, located near Blanding, Utah. An Environmental Assessment was performed by the NRC staff in accordance with the requirements of 10 CFR Part 51. The conclusion of the Environmental Assessment is a Finding of No Significant Impact (FONSI) for the proposed licensing action.

FOR FURTHER INFORMATION CONTACT: Mr. James R. Park, Uranium Recovery Branch, Mail Stop TWFN 7–J9, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone 301/415–6699.

SUPPLEMENTARY INFORMATION:

Background

Source Material License SUA–1358 was originally issued by NRC on August 7, 1979, pursuant to Title 10, Code of Federal Regulations (10 CFR), Part 40, Domestic Licensing of Source Material. This license currently authorizes EFN to (1) receive, acquire, possess, and transfer uranium at the White Mesa mill, (2) possess byproduct material in the form of uranium waste tailings and other uranium byproduct waste generated by operations at the mill, and

(3) accept, for disposal, limited amounts of byproduct material from in-situ leach (ISL) uranium mining facilities. The mill was operated on a continual basis from May 1980 until February 1983, and then intermittently from October 1985 to the present time. SUA–1358 was renewed last in 1985.

Summary of the Environmental Assessment

The NRC staff performed an appraisal of the environmental impacts associated with the continued operation of the White Mesa mill, in accordance with 10 CFR Part 51, Licensing and Regulatory Policy Procedures for Environmental Protection. In conducting its appraisal, the NRC staff considered the following: (1) information contained in previous environmental evaluations of the White Mesa project; (2) information contained in EFN's license renewal application; (3) information contained in EFN's license amendment requests submitted subsequent to its renewal application, and NRC staff approvals of such requests; (4) land use and environmental monitoring reports; and (5) information derived from NRC staff site visits and inspections of the White Mesa mill site and from communications with EFN and the State of Utah Department of Environmental Quality. The results of the staff's appraisal are documented in an Environmental Assessment. The safety aspects for the continued operation of the mill are discussed in a Safety Evaluation Report.

The license renewal would authorize EFN to continue operating the White Mesa mill, at a maximum production rate of 4380 tons of yellowcake per year. Additionally, EFN would continue to be authorized, by license condition, to (1) possess byproduct material in the form of uranium waste tailings and other uranium byproduct waste generated by its milling operations authorized by the renewal license, and (2) accept, for disposal, limited amounts of byproduct material from ISL uranium mining facilities.

All conditions in the renewal license and commitments presented in the licensee's license renewal application are subject to NRC inspection. Violation of the license may result in enforcement action.

Conclusions

The NRC staff has reexamined actual and potential environmental impacts associated with continued yellowcake production at the mill site, and has determined that renewal of the source material license (1) will be consistent with requirements of 10 CFR Part 40, (2) will not be inimical to the public health and safety, and (3) will not have long-term detrimental impacts on the environment. The following statements support the FONSI and summarize the conclusions resulting from the staff's environmental assessment:

1. An acceptable environmental sampling program is in place to monitor effluent releases and to detect if appropriate limits are exceeded;
2. The licensee has implemented an intensive, routine inspection program of the mill process building, associated facilities, and tailings retention impoundments, and conducts an annual "as low as is reasonable achievable" (ALARA) audit program;
3. Standard operating procedures are in place for all operational process activities involving radioactive materials that are handled, processed, or stored;
4. Mill tailings and process liquid effluents from the mill circuit are discharged to partially below-grade, lined tailings impoundments, with leak detection systems;
5. The licensee will implement an acceptable groundwater detection monitoring program to ensure compliance with the requirements of 10 CFR Part 40, Appendix A;
6. The licensee will conduct site decommissioning and reclamation activities in accordance with NRC-approved plans; and
7. Because the staff has determined that there will be no significant impacts associated with approval of the license renewal, there can be no disproportionately high and adverse effects or impacts on minority and low-income populations. Consequently, further evaluation of "Environmental Justice" concerns, as outlined in Executive Order 12898 and NRC's Office of Nuclear Material Safety and Safeguards Policy and Procedures Letter 1–50, Rev.1, is not warranted.

Alternatives to the Proposed Action

The proposed action is to renew NRC Source Material License SUA–1358, for continued operation of the White Mesa mill, as requested by EFN. Therefore, the principal alternatives available to NRC are to:

(1) Renew the license with such conditions as are considered necessary or appropriate to protect public health and safety and the environment; or

(2) Deny renewal of the license.

Based on its review, the NRC staff has concluded that there are no significant environmental impacts associated with the proposed action; therefore, any alternatives with equal or greater environmental impacts need not be evaluated. Since the environmental impacts of the proposed action and the no-action alternative (i.e., denial of the renewal) are similar, there is no need to further evaluate alternatives to the proposed action.

Finding of No Significant Impact

The NRC staff has prepared an Environmental Assessment for the proposed renewal of NRC Source Material License SUA–1358. On the basis of this assessment, the NRC staff has concluded that the environmental impacts that may result from the proposed action would not be significant, and therefore, preparation of an Environmental Impact Statement is not warranted.

The Environmental Assessment and other documents related to this proposed action are available for public inspection and copying at the NRC Public Document Room, in the Gelman Building, 2120 L Street N.W., Washington, DC 20555.

Notice of Opportunity for Hearing

The Commission hereby provides notice that this is a proceeding on an application for a licensing action falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings, of the Commission's Rules of Practice for Domestic Licensing Proceedings in 10 CFR Part 2" (54 FR 8269). Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(c), a request for a hearing must be filed within thirty (30) days from the date of publication of this **Federal Register** notice. The request for a hearing must be filed with the Office of the Secretary either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Each request for a hearing must also be served, by delivering it personally or by mail to:

(1) The applicant, Energy Fuels Nuclear, Inc., 1515 Arapahoe Street, Suite 900, Denver, CO 80202;

(2) The NRC staff, by delivery to the Executive Director of Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the Commission's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) the requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

Any hearing that is requested and granted will be held in accordance with the Commission's Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings in 10 CFR Part 2, Subpart L.

Dated at Rockville, Maryland, this 26th day of February 1997.

For the Nuclear Regulatory Commission.

Joseph J. Holonich,

Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–5388 Filed 3–4–97; 8:45 am]

BILLING CODE 7590–01–P

[Licenses SMB–179 and SUB–1452—Dockets 40–672 and 40–8866]

Nuclear Metals, Inc.—Concord, Massachusetts: Renewal of Source Material Licenses; Finding of No Significant Impact and Notice of Opportunity for a Hearing (NUREG/CR–6528)

The U.S. Nuclear Regulatory Commission is considering the renewal of Source Material Licenses SMB–179 and SUB–1452 for the continued operation of Nuclear Metals, Inc. (NMI), located in Concord, Massachusetts.

Summary of the Environmental Assessment

Identification of the Proposed Action

The proposed action is the renewal of NMI's Source Material Licenses SMB–179 and SUB–1452 for at least 5 years. With these renewals, the NMI facility will continue to conduct ongoing operations including the development and manufacture of castings, extrusions, machined parts, and metal powders comprised of depleted uranium and natural uranium metal. The proposed action would permit NMI to possess, under License SMB–179, natural uranium metal, alloy, or oxide; depleted uranium metal, alloy, oxide, or fluoride; natural thorium metal, alloy, or oxide; and depleted uranium slab. The licensed uranium may be an element of any compound except uranium hexafluoride (UF_6). The proposed action would also permit NMI to possess, under License SUB–1452, depleted uranium as contamination in sand; depleted uranium as contamination on metallic components, packaging materials or equipment, or as waste solids; and natural thorium as contamination on metallic components, packaging materials or equipment, or as waste solids.

Prior to September 1985, liquid and sludge wastes from the processes were stabilized and emptied into an unlined holding basin and adjacent bog located on site property. The holding basin was covered by a special membrane in 1986 to reduce infiltration of rain water and discharge of contaminants to surface and ground waters. Remediation of the holding basin and contaminated groundwater is being planned as a separate decommissioning action; therefore, this action and subsequent environmental impacts are outside the scope of this EA.

The Need for the Proposed Action

The action is to determine if the licenses should be renewed or denied. NMI manufactures products composed of depleted uranium and natural uranium that have military, aerospace, industrial, and medical applications. Depleted uranium metal is processed to form armor penetrators, aircraft counterweights and radiation shielding devices. Denial of the license renewals for NMI is an alternative available to NRC, but since approximately half of the U.S. demand for these products is being met by operations at NMI facilities, denying the licenses would not be in the nation's best interest.

Environmental Impacts of the Proposed Action

Both radiological and nonradiological atmospheric emissions occur and were assessed during normal (incident-free) operations at NMI. The radiological impacts of the continued operation of the NMI facility were assessed using atmospheric dispersion modeling to estimate ambient annual dose to the public resulting from emissions at the NMI facility. To assess the impact of uranium emissions on atmospheric resources, the COMPLY computer code was used to determine the maximum annual dose equivalent received from uranium concentrations in the ambient air (at or beyond the site boundary). These estimated annual doses were compared to NRC requirements and EPA standards to gauge impacts to public health and safety.

Ambient air concentrations (at or beyond the site boundary) resulting from the primary sources of nonradiological air emissions were estimated using the Industrial Source Complex—Version 2 (ISC2) air dispersion model (EPA 1992a). Total predicted concentrations were compared to the National Ambient Air Quality Standards (NAAQS) in order to gauge impacts on air quality.

Doses From Routine Airborne Releases

Small amounts of uranium are emitted from 33 stacks at NMI. The town of Concord permits depleted uranium emissions of up to 280 μCi per calendar quarter for operations associated with License Nos. SMB–179 and SUB–1452. NRC's regulations (10 CFR 20.1301) require licensees to limit doses to members of the public to 100mrem per year. Emission rates of depleted uranium in 1994 were less than 60 percent of the 280 μCi per calendar quarter limit. For the modeling, annual emissions were assumed to be at maximum permitted levels (i.e., 1,120 μCi/y as by the town of Concord). The assumptions are conservative in that they result in higher predicted doses than are expected to occur. The maximum annual committed effective dose equivalent predicted was 2.5 mrem. This dose was estimated to occur to a person located 150 m (492 ft) from the nearest building. This is about one-half the distance to the nearest resident. Therefore, 150 m (492 ft) is considered a sufficiently conservative distance to form an upper bound of doses that could be received by the public annually. The predicted annual dose is 2.5 percent of the NRC limit.

The primary sources of nonradiological air emissions at NMI are two boilers, which burn #4 fuel oil, and which emit the following criteria pollutants: SO_2, NO_2, PM–10, and CO. Short-term emission rates, calculated using the maximum monthly fuel usage rates, were used in ISC2 for periods of 24 hr or less. Long-term emission rates, calculated using the maximum annual fuel usage rates, were used in ISC2 for the annual time period. Both site specific data and conservative assumptions were used in the modeling analysis. Total predicted concentrations were compared to the NAAQS in order to gauge impacts on air quality. The results of the analysis show that maximum 3-hr and 24-hr average SO_2 concentrations are about twice their respective NAAQS. For all other criteria

pollutants, maximum concentrations are within the NAAQS, and impacts to local air quality associated with these pollutants would be minor. NMI is prepared to undertake mitigative action to prevent potential exceedances of the short-term SO_2 NAAQS, and the Massachusetts Department of Environmental Protection is prepared to resolve the issue.

Accident Evaluation

The EA evaluated one accident as the bounding accident: the potential quantities of uranium and nonradiological materials that might be released to the atmosphere in the unlikely event of a major fire at the NMI facility. The regulatory analysis documented in NUREG–1140 (McGuire 1988), which assessed the accident potential for doses exceeding EPA protective action guides, was used to evaluate potential impacts. For uranium, NUREG–1140 found that the highest doses come from the inhalation pathway. The analysis shows a committed effective dose equivalent of 0.89 rems at 100 m (330 ft) might occur to a nearby downwind individual that would result from a fire involving the limiting value quantities agreed to by NMI of 454,000 kg (1,000,000 lb) of depleted uranium in any one building. This value is less than the EPA-recommended lower limit for consideration of protective actions (i.e., a dose of 1 rem). Therefore, radiological impacts resulting from exposure to natural uranium during a severe fire would not be major.

NMI's operations with licensed material involve use of several acids. The evaluation of the potential impacts of these nonradiological materials was based on a release to the atmosphere using the same accidental fire scenario as for the radiological materials. The results were compared to the Emergency Response Planning Guidelines (ERPGs) established by the American Industrial Hygiene Association, the immediately dangerous to life and health (IDLH) threshold value, established by the National Institute of Occupational Safety and Health (NIOSH), and the LC_{50}, the concentration which would result in fatalities to 50 percent of the exposed population. Of the acids, only sulfuric (H_2SO_4) caused concern as the predicted concentration of H_2SO_4 is below the LC_{50} but higher than the ERPG levels. These results were discussed with Commonwealth of Massachusetts staff and NMI is prepared to discuss the potential for an accidental H_2SO_4 release with local emergency response officials.

Conclusion

The NRC staff concludes that the environmental impacts associated with the proposed license renewal for continued operation of the NMI's Concord, Massachusetts facility are expected to be insignificant.

Finding of No Significant Impact

The Commission has prepared an EA related to the renewal of Special Nuclear Material Licenses SMB–179 and SUB–1452. On the basis of the assessment, the Commission has concluded that environmental impacts that would be created by the proposed action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The EA is being made available as NUREG/CR–6528. Copies of NUREG/CR–6528 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555–0001.

Opportunity for a Hearing

Any person whose interest may be affected by the issuance of this renewal may file a request for a hearing. Any request for hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the publication of this notice in the **Federal Register**; be served on the NRC staff (Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852), and on the licensee (Nuclear Metals, Inc., 2229 Main Street, Concord, MA 01742); and must comply with the requirements for requesting a hearing set forth in the Commission's regulations, 10 CFR Part 2, Subpart L, "Information Hearing Procedures for Adjudications in Materials Licensing Proceedings."

These requirements, which the request must address in detail, are:

1. The interest of the requestor in the proceeding;

2. How that interest may be affected by the results of the proceeding (including the reasons why the requestor should be permitted a hearing);

3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for hearing is timely—that is, filed within 30 days of the date of this notice.

In addressing how the requestor's interest may be affected by the proceeding, the request should describe the nature of the requestor's right under the Atomic Energy Act of 1954, as amended, to be made a party to the proceeding; the nature and extent of the requestor's property, financial, or other (i.e., health, safety) interest in the proceeding; and the possible effect of any order that may be entered in the proceeding upon the requestor's interest.

Dated at Rockville, Maryland, this 20th day of February, 1997.

For the Nuclear Regulatory Commission.

Larry W. Camper,

Chief, Medical, Academic, and Commercial Use Safety Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–5385 Filed 3–4–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–344]

Portland General Electric Company, Trojan Nuclear Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order approving an application regarding a proposed merger involving the holding company for Portland General Electric Company (PGE, the licensee), holder of Facility Operating License No. NPF–1, for the Trojan Nuclear Plant located on the west bank of the Columbia River in Columbia County, Oregon. The Trojan Nuclear Plant permanently ceased operating in January 1993 and is being decommissioned.

Environmental Assessment

Identification of the Proposed Action

The proposed action would approve, by issuance of an order, the application under 10 CFR 50.80 regarding the merger between Portland General Corporation (PGC), the parent company of PGE, a 67.5 percent holder of the Trojan Nuclear Plant license, and Enron Corporation (Enron). Enron is a Delaware corporation engaged in the gathering, transportation, and wholesale marketing of natural gas. PGC has agreed to a merger with Enron, subject to certain conditions. Those conditions include approval by the shareholders of the companies and obtaining appropriate governmental approvals which do not impose terms or conditions that would be reasonably likely to have an adverse effect on PGE or Enron. Under an Agreement and Plan of Merger, Enron will become an Oregon corporation (hereinafter referred to as the "Merger Company"), and PGC will merge with and into the Merger Company. Shares of stock held in Enron and in PGC would be converted into shares of the Merger Company on a one-for-one basis. The proposed action is in accordance with PGE's application dated August 20 1996, as supplemented by letters dated October 16, 1996, and October 30, 1996.

The Need for the Proposed Action

The proposed action is required to facilitate the merger between PGC and Enron.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed merger and concludes that there will be no physical or operational change to the decommissioning activities now in progress at the Trojan Nuclear Plant as a result of the merger. The merger will not affect the qualifications or organizational affiliations of the personnel responsible for the decommissioning activities at the Trojan Nuclear Plant.

The merger will not affect PGE's status as a regulated public utility in the State of Oregon. PGE will continue to be headquartered in Portland, Oregon and senior management will remain in place. According to the licensee, the planned merger of PGE's parent company, PGC, with the Merger Company should improve the overall financial strength and stability of PGE's parent after the merger. After the merger, PGE will continue to be the NRC licensee for Trojan Nuclear Plant and no direct transfer of the operating license or interests in the unit will result from the merger.

The Commission has evaluated the environmental impact of the proposed action and has determined that the probability and consequences of accidents would not be increased by the merger, and that radiological releases, both normal releases and accidental releases, would not be greater than previously evaluated. Further, the Commission has determined that the merger would not increase occupational radiological exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the merger would not affect nonradiological plant effluents and would have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Having concluded that there are no significant environmental effects that would result from the proposed action, the Commission has no need to evaluate any alternative with equal or greater environmental impacts.

The principal alternative would be to deny the requested action. Denial of the application would not change the environmental impact. The environmental impact of the proposed action and the alternative action are the same.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Trojan Nuclear Plant dated August 1973 or the Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities, dated August 1988.

Agencies and Persons Contacted

In accordance with its stated policy, on Feb. 10, 1997, the staff consulted with Mr. Adam Bless, of the Oregon Department of Energy, regarding the environmental impact of the proposed action. Mr. Bless had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated August 20 1996, as supplemented by letters dated October 16, 1996, and October 30, 1996, which are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document room for the Trojan Nuclear Plant located at the Branford Price Millar Library, Portland State University, Portland, Oregon 97207.

Dated at Rockville, Maryland, this 27th day of February 1997.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 97–5386 Filed 3–4–97; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Nuclear Waste, Revised Notice

The agenda of the 90th meeting of the Advisory Committee on Nuclear Waste (ACNW) scheduled for March 20 and 21, 1997, in Room T–2B3, at 11545 Rockville Pike, Rockville, Maryland is being revised to include a session to discuss:

• *10 CFR Part 960*—The ACNW will review an options paper prepared by the NRC staff for commenting on DOE's recently revised Siting Guidelines in10 CFR Part 960. These guidelines are now Yucca Mountain specific.

All other items pertaining to this meeting remain the same as published in the **Federal Register** on Tuesday, February 18, 1997 (62 FR 7280).

FOR FURTHER INFORMATION CONTACT: Mr. Richard K. Major, Chief, Nuclear Waste Branch (telephone 301/415–7366), between 8:00 a.m. and 5:00 p.m. EDT.

ACNW meeting notices, meeting transcripts, and letter reports are now available on FedWorld from the "NRC MAIN MENU." Direct Dial Access number to FedWorld is (800) 303–9672; the local direct dial number is 703–321–3339.

Dated: February 27, 1997.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 97–5390 Filed 3–4–97; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Patricia H. Paige, Staffing Reinvention Office, Employment Service (202) 606–0830.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its

last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 on February 7, 1997 (62 FR 5863). Individual authorities established or revoked under Schedules A and B and established under Schedule C between January 1, 1997, and January 31, 1997, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 will also be published.

Schedule A

The following Schedule A authorities were established:

Department of Commerce

One position above GS–15 in support of the President's Commission on Critical Infrastructure Protection. This authority remains in effect for six months after termination of the Commission. Effective January 24, 1997.

Department of Justice

National Drug Intelligence Center. All positions. Effective January 30, 1997.

The following Schedule A authorities were revoked:

Export-Import Bank of the United States

One position of Food Service Worker, WG–7804–3/4/5, in the Office of the President and Chairman. Effective January 23, 1997.

General Services Administration

One position of Deputy Director of Network Services. Effective January 23, 1997.

Schedule B

No Schedule B authorities were established or revoked during January 1997.

Schedule C

The following Schedule C authorities were established during 1997:

Commodity Futures Trading Commission

Administrative Assistant to the Commissioner. Effective January 23, 1997.

Department of Agriculture

Confidential Assistant to the Assistant Secretary for Congressional Relations. Effective January 8, 1997.

Director, Intergovernmental Affairs to the Assistant Secretary for Congressional Relations. Effective January 8, 1997.

Confidential Assistant to the Assistant Secretary for Congressional Relations. Effective January 8, 1997.

Special Assistant to the Director, Empowerment Zone/Enterprise Community. Effective January 16, 1997.

Confidential Assistant to the Chief, Natural Resources Conservation Service. Effective January 17, 1997.

Special Assistant to the Chief, Forest Service. Effective January 23, 1997.

Department of the Army (DOD)

Confidential Assistant to the Secretary of the Army. Effective January 27, 1997.

Department of Commerce

Confidential Assistant to the Director, Office of Business Liaison. Effective January 2, 1997.

Confidential Assistant to the Director, Office of Business Liaison. Effective January 2, 1997.

Confidential Assistant to the Director, Office of Public Affairs, International Trade Administration. Effective January 2, 1997.

Confidential Assistant to the Director, Office of White House Liaison. Effective January 3, 1997.

Confidential Assistant to the Director, Office of Policy and Strategic Planning. Effective January 8, 1997.

Confidential Assistant to the Director, Office of Public Affairs and Press Secretary. Effective January 14, 1997.

Confidential Assistant to the General Counsel. Effective January 17, 1997.

Department of Defense

Staff Specialist to the Assistant to the President/Director, White House Office for Women's Initiative and Outreach, Office of the Secretary. Effective January 17, 1997.

Department of Education

Confidential Assistant to the Under Secretary, Office of the Under Secretary. Effective January 3, 1997.

Special Assistant to the Deputy Secretary, Office of the Deputy Secretary. Effective January 3, 1997.

Special Assistant to the Senior Advisor to the Secretary. Effective January 16, 1997.

Deputy Secretary's Regional Representative to the Secretary's Regional Representative, Region I, Boston, MA. Effective January 17, 1997.

Confidential Assistant to the Special Advisor to the Secretary (Director, America Reads Challenge). Effective January 31, 1997.

Department of Energy

Special Assistant to the Assistant Secretary for Defense Programs. Effective January 6, 1997.

Special Assistant to the Director, Office for Worker and Community Transition. Effective January 10, 1997.

Special Assistant to the Under Secretary of Energy. Effective January 28, 1997.

Department of Health and Human Services

Special Assistant to the Deputy Assistant Secretary for Planning and Evaluation. Effective January 2, 1997.

Department of the Interior

Special Assistant to the Deputy Chief of Staff. Effective January 2, 1997.

Special Assistant to the Director of the Bureau of Land Management. Effective January 17, 1997.

Department of Labor

Executive Assistant to the Assistant Secretary for Veterans' Employment and Training. Effective January 17, 1997.

Environmental Protection Agency

Senior Advisor to the Assistant Administrator for the Office of Policy Planning and Evaluation. Effective January 23, 1997.

General Services Administration

Special Assistant to the Director for Workplace Initiatives. Effective January 10, 1997.

Special Assistant to the Regional Administrator, Region 7. Effective January 17, 1997.

Special Assistant to the Associate Administrator for Enterprise Development. Effective January 29, 1997.

Office of National Drug Control Policy

Events Manager to the Director, Strategic Planning. Effective January 2, 1997.

Research Assistant to the Director, Strategic Planning. Effective January 2, 1997.

Staff Assistant to the Chief of Staff. Effective January 23, 1997.

Staff Assistant to the Director, Office of the National Drug Control Policy. Effective January 23, 1997.

Office of the United States Trade Representative

Writer (Speechwriter) to the Chief of Staff. Effective January 2, 1997.

U.S. International Trade Commission

Confidential Assistant to the Commissioner. Effective January 17, 1997.

United States Information Agency

Confidential Assistant to the Voice of America Director. Effective January 16, 1997.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958. Comp., P. 218.

Office of Personnel Management.

James B. King,

Director.

[FR Doc. 97–5365 Filed 3–4–97; 8:45 am]

BILLING CODE 6325–01–M

POSTAL RATE COMMISSION

[Docket Number A97–11; Order No. 1158]

Cardiff, Maryland 21024 (Mary A. Smith, Petitioner); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. § 404(b)(5)

Issued February 28, 1997.

Before Commissioners: Edward J. Gleiman, Chairman; H. Edward Quick, Jr., Vice-Chairman; George W. Haley; W.H. "Trey" LeBlanc III.

Docket Number: A97–11.

Name of Affected Post Office: Cardiff, Maryland 21024.

Name(s) of Petitioner(s): Mary A. Smith.

Type of Determination: Closing.

Date of Filing of Appeal Papers: February 24, 1997.

Categories of Issues Apparently Raised:

1. Effect on the community [39 U.S.C. § 404(b)(2)(A)].

2. Effect on postal services [39 U.S.C. § 404(b)(2)(C)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. § 404 (b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission orders:

(a) The Postal Service shall file the record in this appeal by March 11, 1997.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Margaret P. Crenshaw,

Secretary.

Appendix

February 24, 1997
Filing of Appeal letter
February 28, 1997
Commission Notice and Order of Filing of Appeal
March 21, 1997
Last day of filing of petitions to intervene [see 39 C.F.R. § 3001.111(b)]
March 31, 1997
Petitioner's Participant Statement or Initial Brief [see 39 C.F.R. § 3001.115(a) and (b)]
April 21, 1997
Postal Service's Answering Brief [see 39 C.F.R. § 3001.115(c)]
May 6, 1997
Petitioner's Reply Brief should Petitioner choose to file one [see 39 C.F.R. § 3001.115(d)]
May 13, 1997
Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 C.F.R. § 3001.116]
June 24, 1997
Expiration of the Commission's 120-day decisional schedule [see 39 U.S.C. § 404(b)(5)]

[FR Doc. 97–5377 Filed 3–4–97; 8:45 am]

BILLING CODE 7710–FW–P

[Docket No. A97–12 Order No. 1159]

Jackson Junction, Iowa 52150 (Gary L. Holst, Petitioner); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. § 404(b)(5)

Issued February 28, 1997.

Before Commissioners: Edward J. Gleiman, Chairman; H. Edward Quick, Jr., Vice-Chairman; George W. Haley; W.H. "Trey" LeBlanc III.

Docket Number: A97–12.

Name of Affected Post Office: Jackson Junction, Iowa 52150.

Name(s) of Petitioner(s): Gary L. Holst.

Type of Determination: Closing.

Date of Filing of Appeal Papers: February 25, 1997.

Categories of Issues Apparently Raised:

1. Effect on the community [39 U.S.C. § 404(b)(2)(A)].

2. Effect on postal services [39 U.S.C. § 404(b)(2)(C)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. § 404 (b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission orders:

(a) The Postal Service shall file the record in this appeal by March 12, 1997.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Margaret P. Crenshaw,

Secretary.

Appendix

February 25, 1997
Filing of Appeal letter
February 28, 1997
Commission Notice and Order of Filing of Appeal
March 21, 1997
Last day of filing of petitions to intervene [see 39 C.F.R. § 3001.111(b)]
April 1, 1997
Petitioner's Participant Statement or Initial Brief [see 39 C.F.R. § 3001.115(a) and (b)]
April 21, 1997
Postal Service's Answering Brief [see 39 C.F.R. § 3001.115(c)]
May 6, 1997
Petitioner's Reply Brief should Petitioner choose to file one [see 39 C.F.R. § 3001.115(d)]
May 13, 1997
Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 C.F.R. § 3001.116]
June 25, 1997
Expiration of the Commission's 120-day decisional schedule [see 39 U.S.C. § 404(b)(5)]

[FR Doc. 97–5378 Filed 3–4–97; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Extension.

Reproposed Rule 13h–1, SEC File No. 270–358, OMB Control No. 3235–0408.

Rule 19d–2, SEC File No. 270–204, OMB Control No. 3235–0205.

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for approval of extension on previously approved collections of information:

Reproposed Rule 13h–1 was proposed pursuant to Section 13 of the Securities Exchange Act of 1934 (the "Act").[1] Rule 13h–1 will enable the Commission to gather timely large trader information in the form necessary for the reconstruction of trading activity in periods of market stress and for surveillance, enforcement, and other regulatory purposes. Without this information, the Commission would not be able to perform the reconstructions of trading activity necessary for evaluating periods of markets stress and other regulatory purposes.

The staff estimates that there are 630 broker-dealers that will be subject to the recordkeeping and reporting requirements of the reproposed rule. In addition, the staff estimates, based upon analysis of previous requests for similar information, that 750 investors will be large traders subject to the identification requirements of the reproposed rule. Therefore, the Staff estimates that there will be (630+750=1,380) 1,380 respondents under the reproposed rule.

Precise cost estimates are impossible to calculate because the commentators on the original proposal did not provide specific details on costs. Nevertheless, the staff estimates that annually the 1,380 respondents will require approximately 11,444 hours to comply with the reproposed rule. Further, the staff estimates that, on average, each response hour will cost approximately $12.00, and therefore the total annual cost of complying with the rule will be approximately $137,328.

Rule 19d–2 under the Act prescribes the form and content of applications of the Commission by persons desiring stays of final disciplinary sanctions and summary action of self-regulatory organizations ("SROs") for which the Commission is the appropriate regulatory agency.

It is estimated that approximately 30 respondents will utilize this application procedure annually, with a total burden of 90 hours, based upon past submissions. The staff estimates that the average number of hours necessary to comply with the requirements of Rule 19d–2 is 3 hours. The average cost per hour is approximately $30. Therefore, the total cost of compliance for the respondents is $2,700.

General comments regarding the estimated burden hours should be directed to the Desk Officer for the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549 and Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: February 26, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–5372 Filed 3–4–97; 8:45 am]

BILLING CODE 8010–01–M

[1] Section 13 of the Act was amended by the addition of Subsection (h) (15 U.S.C. § 78m(h) (1990)) when Section 3 of the Market Reform Act of 1990 (Pub. L. No. 101–432, 104 Stat. 963 (1990)) was enacted.

[Release No. 34–38342; File No. SR–CBOE–97–03]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Options on Interests in Listed, Open-End, Indexed Investment Companies

February 26, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 22, 1997, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes the adoption of rules to permit the trading of options on interests in listed, open-end, investment companies that hold a portfolio of securities comprising or based on a broad-based stock index.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to provide for the trading of options on listed shares or units of open-end, indexed, investment companies. For purposes of this filing, indexed investment companies are those that hold a portfolio of securities comprising or based on a designated broad-based stock index such that the investment company is designed to provide investment results that substantially correspond to the price and yield performance of the designated index. The kinds of shares or units issued by open-end, investment companies that are within the scope of the proposed rule change include listed shares issued by open-end, managed investment companies or by series of such funds, or listed interests in open-end unit investment trusts ("UITs") that have as their assets either an indexed portfolio of equity securities or shares of an open-end investment company that holds such a portfolio. (Shares or other interests in investment companies are herein referred to as "shares."). "Listed" shares are those that are principally traded on a national securities exchange or through the facilities of a national

securities association and reported as a "national market security."

The open-end investment companies that qualify as underlying securities for options under this proposal continuously offer to sell their shares or interests at net asset value, although in some cases the offering of such shares may be made only in large block-size units (sometimes referred to as "Creation Units") in exchange for an in-kind deposit of the underlying indexed portfolio of securities (or in the case of UITs holding shares of an indexed fund, an in-kind deposit of shares of the indexed fund) and a specified amount of cash to make the deposit equal the net asset value of the fund shares being purchased. Thus, it will always be possible for a person to purchase block-size units of shares of an underlying fund or UIT at net asset value by means of an in-kind deposit. The value of a Creation Unit varies from fund to fund, but it generally is of substantial size.[1]

Similarly, redemptions of shares of underlying investment companies may always be made at net asset value, although, as for purchases, in some cases redemptions may be made only in block-size Creation Units, in which case payment of redemption proceeds will be made only in the form of an in-kind distribution of the securities comprising the underlying indexed portfolio or shares of the underlying indexed fund.

Options on open-end investment companies are proposed to be traded on CBOE pursuant to the same rules and procedures that apply generally to trading in options on equity securities or indexes of equity securities, except that special listing criteria are proposed to apply to this category of options, and these options are proposed to be subject to position and exercise limits on the same basis as broad-based index options.

The listing standards proposed for options on open-end investment companies are set forth in proposed Interpretation and Policy. .06 under CBOE Rule 5.3 and in Interpretation .10 under CBOE Rules 5.4. These standards, which provide for the listing of European-style options only, are substantially the same as those that have been applied to the initial and continued listing of various open-end investment companies on other securities exchanges. There is also the requirement, comparable to that which applies to index options, that the preponderant weight of a non-U.S. index must be represented by stocks traded on exchanges that have entered into surveillance sharing agreements with the Exchange. CBOE's proposed listing standards provide that there will be no opening transactions in investment company options and all such options will trade on a liquidation-only basis if the underlying investment companies should cease to trade on an exchange or as national market securities in the over-the-counter market. Conforming the listing standards for options on open-end investment companies to those applicable to the underlying investment companies themselves assures that options may be considered for listing on CBOE on all open-end investment companies that are themselves listed on an exchange or on Nasdaq.

This in turn should be beneficial to investors in listed investment companies enabling them to adjust the risks and rewards of their investments to suit their individual needs. The ability of these options should also add to the depth and liquidity of the market for the underlying investment companies by permitting market makers in that market to hedge the risks of their market-making activities.

Exchange maintenance listing standards for open-end investment companies do not include criteria based on either the number of shares or other units outstanding or on their trading volume.[2] The CBOE believes the absence of such criteria is justified on the ground that since it should always be possible to create additional shares or other interests in open-end investment companies at their net asset value by making an in-kind deposit of the securities that comprise the underlying index or portfolio, there is no limit on the available supply of such shares or interests. This, in turn, in the CBOE's view, should make it highly unlikely that the market for listed, open-end investment company shares could be capable of manipulation, since whenever the market price for such shares departs from net asset value, there will be arbitrage opportunities either to purchase or redeem shares at net asset value that should bring prices back in line.

For this same reason, there is not the same need for option position and exercise limits to protect the underlying market against squeezes and other types of manipulation as their may be for options or securities that are not open-ended. Furthermore, in the absence of any maintenance listing requirements in the underlying market that call for a minimum number of shares or units or for minimum trading volume, position and exercise limits are not meaningful as a percentage of either of these measures. Nevertheless, CBOE is proposing to subject options on indexed, open-end, listed investment companies to the same position and exercise limits that currently apply to indexed European-exercise style options generally. After some period of experience with these limits, CBOE may propose their relaxation or elimination, but any such proposal would be subject to being filed and approved under section 19(b)2) of the Securities Exchange Act of 1934.

Reflecting the indexed nature of the underlying portfolios of the investment companies on which options are proposed to be traded, the Exchange proposes to amend Interpretation and Policy .01 under Exchange Rule 5.5 to provide that the minimum strike price intervals for these options will be $2.50 where the strike price is $200 or less, and $5.00 where the strike price is over $200. These are comparable to the strike price intervals provided in Interpretation and Policy .01 under Exchange Rule 24.9, as applicable to broad-based index options having strike prices at about the level expected for listed investment company options.

Margin requirements are proposed for options on listed investment companies at the same levels that apply to options generally under Exchange Rule 12.3, except that, reflecting the indexed nature of underlying portfolios of these investment companies, minimum margin must be deposited and maintained equal to 100% of the current market value of the option plus 15% (instead of 20%) of the market value of equivalent units of the underlying security value. In this respect, the margin requirements proposed for options on listed, indexed investment companies are comparable to margin requirements that currently apply to

[1] For example, Creation Units for the series of indexed open-end management investment companies approved for listing on the American Stock Exchange and known as "WEBs" represent from 80,000 to 600,000 shares, which were valued from $450,000 to $10,000,000, depending on the series, at the time the Amex rules applicable to WEBs were approved. See Securities Exchange Act Release No. 36947 (March 8, 1996) (order approving Amex Rules applicable to WEBs). Similarly, a Creation Unit for listed UITs indexed to the S&P 500 Index represents 50,000 units, valued at $3,750,000 at the current level of that Index.

[2] See, for example, the maintenance listing standards contained in Amex Rules 1002(b) and 1002A(b), applicable to indexed UIT interests and indexed mutual funds, respectively. Notwithstanding the absence of maintenance standards requiring a minimum number of shares outstanding, as a practical matter there can never be trading in a series of a listed investment company in which there is less than one Creation Unit outstanding, since listed open-end investment companies may only be created and redeemed in Creation Unit size, and if the last outstanding Creation Unit should ever be redeemed, the series (and options on that series) will cease to trade.

market index options under Exchange Rule 24.11(b)(i).

CBOE believes it has the necessary systems capacity to support the additional series of options that would result from the introduction of investment company options, and it has been advised that the Options Price Reporting Authority ("OPRA") also has the capacity to support these additional services.[3]

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular because, by providing for the trading of options on listed, indexed, open-end investment companies within the framework of CBOE's regulated market place while there is trading in the underlying investment companies in other exchange markets, the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–97–03 and should be submitted by March 26, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–5371 Filed 3–4–97; 8:45 am]

BILLING CODE 8010–01–M

[3] See memorandum from Joseph Corrigan, Executive Director, OPRA, to Eileen Smith, CBOE, dated January 21, 1997.

[4] 17 CFR 200.30–3(a)(12).

[Release No. 34–38332; File No. SR–CBOE–97–07]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Chicago Board Options Exchange, Inc., Relating to Certain Multi-Market Orders Involving Index Options

February 24, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), and Rule 19b–4 thereunder, 17 CFR 240.19b–4, notice is hereby given that on February 12, 1997, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 6.48 to specify that certain duties of CBOE members in effecting options transactions on the CBOE that are part of certain stock-option orders on the CBOE involving index options. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

In 1995, the Exchange filed a rule change proposal with the Commission that amended Rule 6.48 and set forth the duties of CBOE members executing options orders that constitute a component of a "package" stock-options order. The execution of this type of order involves transactions in CBOE's options market and in another market (a "multi-market" order).[1] Rule 6.48 specifies the sole basis on which an options trade that is a component of a multi-market order may be canceled by the members that are parties thereto. However, Rule 6.48 does not currently provide for the cancellation of any stock-option order that entails the purchase of sale of index options.

Multi-market orders in index options play an important role in allowing traders to hedge their risks and thus, in providing liquidity to customers in their products. Sometimes, multi-market orders involving index options might consist of a spread between the CBOE option product and another single security traded in another market, *e.g.*, S&P 500 index options (SPX) versus a unit investment trust in the S&P 500. In those instances where an order involves a CBOE index option and an equity index-based security traded in another market, where both are based upon the same index,[2] the Exchange believes it is appropriate to deem such an order a stock-option order, and thus eligible for the order cancellation provision contained in paragraph (b) of Rule 6.48. Another common type of multi-market order often involves the nearly simultaneous trading of a CBOE option and a basket of stocks in another market. The CBOE does not believe that this type of order should be deemed a stock-option order eligible for the cancellation provisions contained in Rule 6.48 because a "basket" of stocks is not an "underlying or related security" as required in the definition of stock-option order.[3] To date, CBOE traders in index options have relied on informal trading protocols to ensure fairness and equity in connection with the execution and cancellation of multi-market orders.

Accordingly, the Exchange is proposing to extend the order execution and cancellation provisions contained in Rule 6.48 to stock-option orders involving an index option and a single security equity index-based product traded in another market, where both are based upon the same index.[4] Consequently, the Exchange is proposing the deletion of paragraph (b)(ii) of Rule 6.48 which exempts stock-option orders involving index options from the two requirements set forth in paragraph (b) of Rule 6.48. The first of those requirements is that a member announcing such an order to a trading crowd must disclose all legs of the order and must identify the specific markets and prices at which the non-options leg(s) are to be filed. Second, concurrent with the execution of the option leg of any multi-market order, the initiating member and each member that is a counterparty to the trade must take steps to immediately execute the non-options leg(s) in the identified market(s).

The Exchange believes, as with stock-option orders involving equity options, that these provisions will clarify members' expectations about the execution of each non-option component of such orders.

Current Rule 6.48 provides that a party to an options transaction that is part of a stock-option order may have the options transaction canceled only in the event that market conditions in another market prevents the execution of one or more of the non-option legs of the order.

The current proposal only addresses multi-market orders involving an index option and a single security equity index-based product traded in another market, where both are based upon the same index (*e.g.*, a stock-option order involving SPDRs and SPX options). Additionally, Rule 6.48 is not intended to allow multi-market orders involving index options and "baskets" of securities to get the benefit of the order cancellation provisions of the rule. Stock-option orders are just one subset of the types of multi-market orders that are transacted by traders in the index crowds. As mentioned above, some multi-market orders involve a transaction of an index option coupled with a basket of stocks comprising the index. An order for this type of transaction does not meet the definition of a stock-option order which is defined under CBOE Rule 1.1(ii). The Exchange is currently reviewing the protocols used in the execution of these other types of multi-market orders to determine if further rule changes would be beneficial in the handling of these orders.

(2) Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to deal with the special circumstances of multi-market orders involving index options in a manner that promotes just and equitable principles of trade, and the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) was provided to the Commission for its review at least five days prior to the filing date; and (4) does not become operative for 30 days from February 12, 1997, the date on which it was filed, the rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(e)(6) thereunder. In particular, the Commission believes the proposal qualifies as a "noncontroversial filing" in that the proposed standards do not significantly affect the protection of investors or the public interest and do not impose any significant burden on competition. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions

[1] See Securities Exchange Act Release No. 36516 (November 27, 1995), 60 FR 62114 (December 4, 1995).

[2] The trust which underlies S&P 500 Depositary Receipts ("SPDRs") is made to replicate the performance of the S&P 500 index; however, there are a couple of reasons why the value of the SPDR trust may deviate slightly from the S&P 500 value. First, the trust underlying SPDRs is subject to slight rounding errors because the trust must contain whole shares while the S&P 500 index is not so limited. Second, the trust underlying SPDRs is required only to make adjustments to the components monthly unless the value of the component deviates by more than a certain percentage from that component's comparable weight in the S&P 500 index.

[3] See CBOE Rule 1.1(ii).

[4] Telephone conversation between Tim Thompson, Senior Attorney, CBOE, and John Ayanian, Special Counsel, Office of Market Supervision, Division of Market Regulation, Commission, on February 21, 1997.

should refer to File No. SR–CBOE–97–07 and should be submitted by March 26, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–5373 Filed 3–4–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38338; File No. SR–CHX–97–02]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Enhanced SuperMAX

February 26, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 30, 1997, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange requests permanent approval of its Enhanced SuperMAX pilot program, as amended, located in subsection (e) of Rule 37 of Article XX.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organizations has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 22, 1995, the Commission approved a proposed rule change of the CHX that allows specialists on the Exchange, through the Exchange's MAX system, to provide order execution guarantees that are more favorable than those required under CHX Rule 37(a), Article XX.[2] That approval order contemplated that the CHX would file with the Commission specific modifications to the parameters of MAX that are required to implement various options available under this new rule.

On July 27, 1995, the Commission approved a proposed rule change of the CHX that implemented two options available under this new rule.[3] These two new options, Enhanced SuperMAX and Timed Enhanced SuperMAX, we approved on a pilot basis until July 31, 1996. The Commission extended the pilot program until December 31, 1996 and requested that the CHX provide a report to the Commission, by August 31, 1996,[4] describing its experience with the pilot program. On August 30, 1996, the CHX submitted the report. Most recently, the Commission extended the pilot program until March 1, 1997.[5] In connection with the extension, the CHX agreed to provide additional data to the Commission regarding the pilot. On January 31, 1997, the Exchange submitted this data.

The purpose of the proposed rule change is to request permanent approval of the pilot program, as amended by this filing. Specifically, the Exchange is combining the two options currently available under the pilot program into one option, to be called Enhanced SuperMAX. Enhanced SuperMAX was merely a reactivation of the Exchange's Enhanced SuperMAX program, a program originally approved by the Commission on a pilot basis in 1991.[6] The proposed Enhanced SuperMAX program differs from the original pilot program approved in 1991 in that it is available starting at 8:45 a.m. instead of 9:00 a.m. This program also differs from the Exchange's SuperMAX program in that under this program, certain orders are "stopped" at the consolidated best bid or offer and are executed with reference to the next primary market sale instead of the previous primary market sale.

The Enhanced SuperMAX program, as amended by this filing, also includes all of the features of the pilot version of the Timed Enhanced SuperMAX program. Essentially, the new Enhanced SuperMAX program will execute orders in the same manner as the pilot Enhanced SuperMAX program, except that if there are no executions in the primary market after the order has been stopped for a designated time period, the order is executed at the stopped price at the end of such period. Such period, known as a time out period, is pre-selected by a specialist on a stock-by-stock basis based on the size of the order, may be changed by a specialist no more frequently than once a month, and may be no less than 30 seconds.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments were solicited or received.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission has carefully reviewed the Exchange's proposed rule change and, for the reasons set forth below, finds that the proposed rule change, as amended by this filing, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Exchange, and, in particular, with Section 6(b)(5)[7] of the Act in that it is designed to promote just and equitable prineiples of trade, to remove impediments and to perfect the mechanism of a free and

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] See Securities Exchange Act Release No. 35753 (May 22, 1995), 60 FR 28007.

[3] See Securities Exchange Act Release No. 36027 (July 27, 1995), 60 FR 39465.

[4] See Securities Exchange Act Release No. 37491 (July 29, 1996), 61 FR 48690.

[5] See Securities Exchange Act Release No. 38098 (December 30, 1996), 62 FR 1008. Commission note: The CHX Form 19b–4 filing indicates incorrectly that the pilot program was extended until March 31, 1997.

[6] See Securities Exchange Act Release No. 30058 (December 10, 1991), 56 FR 65765.

[7] 15 U.S.C. 78f(b)(5).

open market and a national market system, and, in general, to protect investors and the public interest.

The proposed rule change provides for a modified version of the SuperMAX system. SuperMAX is a system that automatically improves executions of small agency market orders from the consolidated best bid or offer according to certain predefined criteria, including the last sale in the primary market. In 1990, the Commission first approved SuperMAX on a pilot basis.[8] In 1991, the Commission approved Enhanced SuperMAX on a pilot basis to run concurrently with SuperMAX, which was still on a pilot at that time.[9] This program differed from the Exchange's SuperMAX program in that under this program, certain orders are "stopped" at the consolidated best bid or offer and are executed with reference to the next primary market sale instead of the previous primary market sale. The Exchange sought approval of the Enhanced SuperMAX and SuperMAX systems to evaluate both systems and to determine which system it wanted to implement.

In 1993, the Exchange chose to implement SuperMAX rather than Enhanced SuperMAX and sought approval of SuperMAX on a permanent basis. The Commission permanently approved SuperMAX, believing that the automated execution feature of SuperMAX would provide a more efficient means of bettering the execution price on a large volume of electronically delivered market orders than through manual processing.[10] The Enhanced SuperMAX pilot expired in 1993 without the Exchange requesting an extension or permanent approval. In the initial Enhanced SuperMAX pilot approval order, the Commission had described its concerns with the program and requested that the Exchange submit a report detailing the use of the pilot. The Exchange, however, did not submit a report because specialists on the Exchange made little or no use of the pilot program.[11] Since the Exchange revived the Enhanced SuperMAX pilot program in 1995 (and at the same time requested the Commission approve a pilot of Timed Enhanced SuperMAX), according to reports submitted by the Exchange, no orders have been executed in the Enhanced SuperMAX program because no specialist has chosen this option.[12] According to the Exchange, there are two reasons for the lack of use of this option. First, there has been no interest in this option from customers. Second, competitors (especially third market firms) now give executions with a time-out feature that is akin to Timed Enhanced SuperMAX. As a result, the Exchange states, customers have come to expect, and now desire, an execution after a designated time period.[13]

The Exchange has revised the rule to combine Enhanced SuperMAX and Timed Enhanced SuperMAX into one option, Enhanced SuperMAX, as amended, which preserves the option of the Enhanced SuperMAX in its pilot form while recognizing that customers have almost exclusively chosen the Timed Enhanced SuperMAX option. As a result, if a specialist has selected a time-out period, and there is a sale during the time-out period, the execution price is the same as it would have been under Enhanced SuperMAX. If, however, there is no sale in the primary market during the time-out period, execution will occur at the stopped price at the end of the time-out period.

The Commission finds appropriate the combining of the two options currently available under the pilot program into one option, now called Enhanced SuperMAX, even if no orders have been executed on the Enhanced SuperMAX pilot program. With this approach, the Exchange has streamlined the rule and also preserved the option for customers to use the former Enhanced SuperMAX option. This approach also eliminates the need for the Exchange to apply to the Commission for a re-activation of the Enhanced SuperMAX option.

The Commission finds that the pricing and execution features of Enhanced SuperMAX, as amended, are not inconsistent with the maintenance of fair and orderly auction markets on national securities exchanges and the protection of investors. The execution criteria of Enhanced SuperMAX, as amended, should contribute to an orderly market because they help to reduce the price variations from trade to trade on low volume.

The Commission recognizes that the increased competition that results from permitting regional specialists to attract orders from other markets by providing superior quotations and more efficient order executions generally enhances market making ability and the quality of customer order executions. The Commission believes the automated pricing parameters and execution procedures of the Enhanced SuperMAX system, as amended, may enhance competition by opening an alternative electronic order routing and execution system for smaller size orders.

Although the Commission finds that Enhanced SuperMAX, as amended, would not automatically provide a ⅛ point price improvement, it would provide some opportunity for price improvement. The Exchange indicated in the First Report that 38% of the eligible orders under the Timed Enhanced SuperMAX algorithm received price improvement,[14] and in the Second Report that 44% of the eligible orders under the Timed Enhanced SuperMAX algorithm received price improvement.[15] As part of the Second Report, the Exchange provided a comparison of executions occurring on one day under SuperMAX and Timed Enhanced SuperMAX (Enhanced SuperMAX, as amended) for a single stock, Nike, Inc. Under the SuperMAX algorithm, 12 of 81 eligible trades received ⅛ point price improvement. The Exchange determined that if Nike, Inc. had been on Timed Enhanced SuperMAX, rather than SuperMAX, between two and twelve orders would have received price improvement, depending on the length of the time-out period. If the time-out period had been set at 30 seconds, only two orders would have been price improved. If the time-out period had been set at 30 seconds, only two orders would have been priced improved. If the time-out period had been set at 5 minutes, 12 orders would have been price improved, and one of those orders would have received ¼ price improvement. The Exchange concluded that Timed Enhanced SuperMAX could provide greater price improvement than the SuperMAX algorithm under certain circumstances.[16]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication thereof in the **Federal Register**. The Commission believes that it is appropriate to approve the proposed rule change on an accelerated

[8] See Securities Exchange Act Release No. 28014 (May 14, 1990), 55 FR 20880.

[9] *Supra* note 6.

[10] Securities Exchange Act Release No. 32631 (July 14, 1993), 58 FR 30969 (order approving SuperMAX permanently).

[11] *Id.*

[12] Report of the Chicago Stock Exchange Relating to the Enhanced SuperMAX and Timed Enhanced SuperMAX Pilot Programs (August 30, 1996) at 1 ("First Report") (covering the three month period ending August 27, 1996); Second Report of the Chicago Stock Exchange Relating to the Enhanced SuperMAX and Timed Enhanced SuperMAX Pilot Programs (January 30, 1997) at 1 ("Second Report") (covering the three month period ending January 20, 1997).

[13] First Report, *supra* note 12 at 1; Second Report, *supra* note 12 at 1.

[14] First Report, *supra* note 12 at 2.

[15] Second Report, *supra* note 12 at 2.

[16] *Id.*

basis so that the Exchange can enable public customers to receive the benefits of Enhanced SuperMAX, as amended, without the interruption that would result if the pilot program were allowed to expire on March 1, 1997 without permanent approval of the program in place. Moreover, both the Enhanced SuperMAX and Timed Enhanced SuperMAX have operated without any significant problems as pilot programs since July, 1995. Finally, the Commission received no comments on the Exchange's earlier request for permanent approval of the pilot, which was published for comment on November 20, 1996.[17] The Commission, therefore, believes that granting accelerated approval of the proposed rule change is appropriate and consistent with Section 6(b)(5) of the Act.[18]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the Exchange. All submissions should refer to File No. SR–CHX–97–02 and should be submitted by March 26, 1997.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–5369 Filed 3–4–97; 8:45 am]

BILLING CODE 8010–01–M

[17] Securities Exchange Act Release No. 37497 (November 13, 1996), 61 FR 59124.

[18] 15 U.S.C. 78f.

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12)

[Release No. 34–38340; File No. SR–DTC–22]

Self-Regulatory Organization's; The Depository Trust Company; Notice of Filing of a Proposed Rule Change To Amend DTC's Charge Back and Return of Funds Procedures

February 26, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 4, 1996, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–DTC–96–22) as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends DTC's charge back and return of funds policies ("Policy")[2] to shorten from ten business days to one business day the period within which a paying agent can request that DTC return principal and income ("P&I") payments that have been allocated to participants.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filings with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Policy[4] currently authorizes DTC to return P&I payments to paying agents after the funds have been credited to the accounts of DTC participants, which is commonly referred to as a "clawback," if the paying agent notifies DTC in writing within ten business days of the payable date that: (i) The issuer has failed to provide the paying agent with sufficient funds to cover the payments; or (ii) the issuer has become bankrupt.[5] The proposed rule change will reduce the period within which a paying agent can request DTC to return funds to such paying agent from ten business days to one business day.[6] Furthermore, the Policy provides that if an agent requests the return of a P&I payment more than ten business days after a payable date, DTC will work with the agent and participate to resolve the matter. However, DTC will not return the allocated payments without the participant's consent.

PSA The Bond Market Trade Association ("PSA") has expressed concern with the current policy and the associated risk of loss placed on DTC participants in the event a payment is returned to a paying agent.[7] In response, DTC convened a joint working group of paying agents, PSA representatives, and other interested parties.[8] In October 1996, the working group concluded that DTC should reduce the period within which DTC may return funds to paying agent's from ten business days to one business day.

DTC concurs with the working group's recommendation and proposes to amend the Policy accordingly. Although the current Policy may encourage paying agents to make more timely payments to DTC by offering them more flexibility with regard to the return of funds if an issuer defaults, DTC believes that it has received only one default-related return of funds request since the Policy was promulgated in 1986.[9] Due to the Policy's infrequent use, DTC proposes to finalize P&I payments sooner and minimize the uncertainty and risk of loss that the Policy currently places on DTC's participants.[10] DTC proposes to implement the proposed rule change for all P&I payments made after April 30, 1997.

DTC believes the proposed rule change is consistent with the requirements of Section 17A of the Act[11] and the rules and regulations thereunder because the proposal promotes the prompt and accurate clearance and settlement of transactions in securities. In addition, DTC believes that the proposed rule change will result in increased protection to investors by providing finality of payment within a substantially shorter period of time.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The proposed rule change has been endorsed by the PSA and was recommended by a special industry working group comprised of PSA representatives, paying agents, and other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which DTC consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the file number SR–DTC–96–22 and should be submitted by March 26, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–5370 Filed 3–4–97; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] A copy of the Policy marked to show the specific changes to DTC's procedures is attached as Exhibit C to DTC's proposed rule change which is available for inspection and copying at the Commission's Public Reference Room or through DTC.

[3] The Commission has modified the text of the summaries prepared by DTC.

[4] For a complete description of the procedures relating to the Policy, refer to Securities Exchange Act Release Nos. 23219 (May 8, 1986), 51 FR 17845 [SR–DTC–03] (notice of filing and immediate effectiveness on a temporary basis of a proposed rule change); 23686 (October 7, 1986), 51 FR 37104 [SR–DTC–86–4] (order permanently approving proposed rule change); 26070 (September 9, 1988) 53 FR 36142 [SR–DTC–88–17] (notice of filing and immediate effectiveness of proposed rule change clarifying that charge back proceedings apply to DTC's same-day funds settlement system and next-day funds settlement system); and 35452 (March 7, 1995), 60 FR 13743, [SR–DTC–95–03] (notice of filing and immediate effectiveness of proposed rule change excluding money market instrument programs from DTC's charge back and return of funds procedures).

[5] The Policy also allows DTC to return previously credited payments upon written request from a paying agent within ten business days of the payable date due to an error by the paying agent. The proposed rule change does not alter this position of the Policy.

[6] Under the proposed rule change, although the time within which a paying agent can request a reversal of allocated funds will be reduced from ten business days to one business day following payable date, the actual reversal may take up to two or three business days after the payable date. For example, if a paying agent requests a reversal from DTC late in the day of the first business day after the payable ("P+1"), DTC would likely notify its participants' on the morning of the following business day ("P+2"). In the interest of fairness and pursuant to DTC's procedures, DTC must notify all affected participants one business day prior to the date on which DTC enters the reversal into its participant's daily settlement accounts. Accordingly, the actual reversal will not occur until P+3. Telephone conversation between Larry E. Thompson, Deputy General Counsel and Senior Vice President, DTC; Mark Steffensen, Special Counsel, Division of Market Regulation ("Division"), Commission; and Jeffrey Mooney, Attorney, Division, Commission (December 18, 1996).

[7] Letter from Heather L. Ruth, President, PSA to William F. Jaenike, Chairman of the Board and Chief Executive Officer, DTC (August 16, 1996).

[8] The working group is composed of representatives from the Corporate Trust Advisory Board of the American Bankers Association, the Bank Depository User Group, the Corporate Trust Advisory Committee of the Corporate Fiduciaries Association of New York City, the New York Clearing House—Securities Committee, PSA, the Securities Industry Association, and DTC.

[9] In September 1996, a paying agent requested the return of a single payment $30,000 due to nonpayment by an issuer.

[10] DTC has notified its participants, paying agents, trustees, and issuers of the proposed rule change in DTC Important Notice B# 2068–96 (November 26, 1996) and DTC Important Notice B# 2069–96 (November 26, 1996), which are attached as Exhibit B to DTC's proposed rule change.

[11] 15 U.S.C. 78q–1.

[12] 17 CFR 200.30–3(a)(12).

[Release No. 34–38341; File No. SR–Phlx–97–01]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the U–SAVE Program

February 26, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 15, 1997 the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to implement a program that will calculate and then display on the execution reports sent to member firms the dollar amounts realized as savings to their customers as a result of price improvement in the execution of their orders on the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to implement a program for calculating and displaying, on a PACE execution report sent to member firms entering orders, the dollar value saved by their customers as a result of price improvement of orders executed on the Exchange. This program does not in any

[1] 15 U.S.C. 78s(b)(1).

way affect the actual execution of PACE orders. The Exchange is proposing to refer to this calculated dollar savings as the "U–SAVE" program.

The U–SAVE program is proposed to be made available for intraday round lot and partial round lot market and marketable limit orders [2] entered via the Exchange's PACE system.[3] The U–SAVE (almost of price improvement) is calculated in comparison to the best bid and offer displayed in the national market system at the time the order is received. For buy side orders, only orders executed at a price lower than the national best offer price will receive a U–SAVE indicator. For sell side orders, only orders executed at a price higher than the national best bid price will receive a U–SAVE indicator.

The following examples illustrate how U–SAVE is proposed to work.

Example 1—Assume the national market quote is 50–50¼. A market order to sell 1,000 shares, entered on the Phlx, is stopped at 50, meaning it is guaranteed a price at 50 or a better price. The order is subsequently executed at 50⅛. This is an ⅛ point savings over the national bid price of 50, which translates into $125 savings over the guaranteed price. Thus, the execution report would display U–SAVE $125.

Example 2—Assume the national market quote is 50–50¼. A marketable limit order to sell 800 shares at 50 or better is entered on the Phlx. The order is subsequently executed at 50⅛. This is an ⅛ point savings over taking the prevailing bid of 50. The execution report would display U–SAVE $100.

Example 3—Assume the national market quote is 50–50⅛. A market order to buy 1,000 shares, entered on the Phlx, is executed at 50. This is an ⅛ point savings over taking the prevailing offer of 50⅛. The execution report would display U–SAVE $125.

If no price improvement was provided or if the firm has not requested to participate in the program then no price improvement information would be displayed on the execution report to the entering firm.

The Exchange believes that the U–SAVE program may be expected to enhance the information made available to investors and improve their understanding of the auction market.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) [4] of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. This rule change is designed to perfect the mechanism of a free and open market in that it enhances the information provided to investors by displaying to them the dollar value of the price improvement their orders may have received when executed on the Phlx.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) does not have the effect of limiting access to or availability of any Exchange order entry or trading system, the U–SAVE program has become effective pursuant to Section 19(b)(3)(A)(iii) [5] of the Act and Rule 19b–4(e)(5) [6] thereunder.

At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[7]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–97–01 and should be submitted by March 26, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–5374 Filed 3–4–97; 8:45 am]

BILLING CODE 8010–01–M

[2] Only limit orders that are marketable at the time they are received by the Exchange are considered in calculating price improvement savings. See letter from Michele R. Weisbaum, Vice President and Associate General Counsel, Phlx, to Anthony P. Pecora, Attorney, Division of Market Regulation, SEC, dated February 7, 1997 ("Amendment No. 1").

[3] Tick sensitive orders and orders entered on the Floor are not included in the U–SAVE program. *Id.*

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78s(b)(3)(A)(iii).

[6] 17 CFR 240.19b–4(e)(5).

[7] The Commission notes that Amendment No. 1 substantively modifies the proposed rule change. Therefore, the time period within which the Commission may act to summarily abrogate this rule change began on February 11, 1997, the date Amendment No. 1 was received.

[8] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster Loan Area #9378]

North Dakota; (and Contiguous Counties in Minnesota, South Dakota & Montana); Declaration of Disaster Loan Area; Amendment #1

The above-numbered Declaration, approved on February 11, 1997, is hereby amended to include Bowman County and the contiguous Counties of Slope in the State of North Dakota, and Fallon in the State of Montana as economic injury disaster loan areas as a result of severe winter storms and blizzard conditions during the period of January 3 through January 31, 1997. All other contiguous counties not listed herein have already been included in previous declarations.

All other information remains the same, i.e., the termination date for filing applications for economic injury assistance is November 12, 1997.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: February 25, 1997.

Aida Alvarez,

Administrator.

[FR Doc. 97–5318 Filed 3–4–97; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Fitness Determination of Casino Airlines, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause (Order 97–2–30).

SUMMARY: The Department of Transportation is proposing to find that Casino Airlines, Inc., is fit, willing, and able, to provide commuter air service under 49 U.S.C. 41738.

DATES: Persons wishing to file objections should do so no later than March 14, 1997.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with James A. Lawyer, Air Carrier Fitness Division, X–56, Room 6401, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses should be filed no later than March 24, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Lawyer, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–1064.

Dated: February 27, 1997.

Patrick V. Murphy,

Deputy Assistant Secretary for Aviation and International Affairs.

[FR Doc. 97–5360 Filed 3–4–97; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Aircraft Fluorescent Lighting Ballast/Fixture

AGENCY: Federal Aviation Administration.

ACTION: Notice of availability for public comment.

SUMMARY: This notice announces the availability of and request comments on a proposed technical standard order (TSO) pertaining to aircraft fluorescent ballast/fixture. The proposed TSO prescribes the minimum performance standards that aircraft fluorescent ballast/fixture must meet to be identified with the marking "TSO–C141."

DATES: Comments must identify the TSO file number and be received on or before June 13, 1997.

ADDRESSES: Send all comments on the proposed technical standard order to: Technical Programs and Continued Airworthiness Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service—File No. TSO–C141, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Or deliver comments to: Federal Aviation Administration, Room 804, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Program and Continued Airworthiness Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–9546.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 804, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. All communications received on or before the closing date for comments specified above will be considered by the Director of the Aircraft Certification Service before issuing the final TSO.

Background

In June 1991, the FAA requested that the Society of Automotive Engineers (SAE) develop an aerospace standard (AS) for fluorescent lighting systems. This action was prompted by an unsatisfactory service history of this equipment when installed in aircraft.

In the past ten years, the Federal Aviation Administration (FAA) has issued at least five Airworthiness Directives (AD) against various cabin fluorescent lighting systems. These AD's corrected unsafe conditions that resulted in smoke, fire, or electromagnetic interference to essential airplane systems caused by failure conditions of the cabin fluorescent lighting system. The failure conditions generally consisted of failures in the inverters, transformer (ballast) units, or the lamp connector interface.

The resulting document developed by SAE is AS 4914, aircraft Fluorescent Lighting Ballast/Fixture Safety Design Standard. This is the referenced document in proposed TSO–C141.

How To Obtain Copies

A copy of the proposed TSO–C141 may be obtained by contacting **FOR FURTHER INFORMATION CONTACT.** Copies of Society of Automotive Engineers, Inc. (SAE) Aerospace Standard (AS) 4914 may be purchased from SAE, Inc., 400 Commonwealth Drive, Warrendale, PA 15096–0001. Copies of RTCA Document No. DO–160C, "Environmental Conditions and Test Procedures for Airborne Equipment, "dated December 1989, may be purchased from the RCTA Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

Issued in Washington, DC, on February 24, 1997.

Brian A. Yanez,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 97–5434 Filed 3–4–97; 8:45 am]

BILLING CODE 4910–13–M

Aircraft Mechanical Fasteners

AGENCY: Federal Aviation Administration.

ACTION: Notice of availability for public comment.

SUMMARY: This notice announces the availability of and requests comments on a proposed Technical Standard Order pertaining to aircraft mechanical fasteners. The proposed TSO prescribes the regulatory performance standards that manufacturer-specified parts and appliances must meet to be identified with the marking "TSO–C148."

DATES: Comments must identify the TSO file number and be received on or before May 23, 1997.

ADDRESSES: Send all comments on the proposed technical standard order to: Technical Programs and Continued Airworthiness Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service—File No. TSO–C148, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Or deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Programs and Continued Airworthiness Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800

Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–9546.

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 815, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. All communications received on or before the closing date for comments specified above will be considered by the Director of the Aircraft Certification Service before issuing the final TSO.

Background

The FAA established the Aviation Rulemaking Advisory Committee (ARAC) in January 1991 to provide an ongoing mechanism to accept recommendations from the aviation industry in the regulatory process (56 FR 2190; January 22, 1991; and 58 FR 9230; February 19, 1993). In March 1993, the FAA established the Parts Working Group as part of ARAC (58 FR 16572; March 29, 1993). The Parts Working Group was tasked with recommending to ARAC new regulations and guidance material, as appropriate, pertaining to the issuance and administration of approvals of replacement and modification parts for civil aircraft. The proposed TSO in this notice is based on a draft proposed TSO developed by the Parts Working Group and recommended to the FAA by the ARAC.

The standards of proposed TSO–C148 apply to types of mechanical fasteners intended for tension and/or shear applications in the manufacture and maintenance of aircraft products. The standards are also adaptable to fasteners of proprietary designs. Proposed TSO–C148 provides alternative requirements for marking each individual fastener in lieu of the marking specified by 14 CFR § 21.607(d).

How To Obtain Copies

A copy of the proposed TSO–C148 may be obtained by contacting **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on February 26, 1997.

Todd B. Thompson,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 97–5432 Filed 3–4–97; 8:45 am]

BILLING CODE 4910–13–M

Lithium Batteries

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability for public comment.

SUMMARY: This notice announces the availability of and request comments on a proposed technical standard order (TSO) pertaining to lithium batteries. The proposed TSO prescribes the minimum performance standards that lithium batteries must meet to be identified with the marking "TSO–C142."

DATES: Comments must be received on or before June 13, 1997.

ADDRESSES: Send all comments on the proposed technical standard order to: Technical Programs and Continued Airworthiness Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service—File No. TSO–C142, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Or deliver comments to: Federal Aviation Administration, Room 804, 800 Independence Avenue, SW., Washington, DC 20591. Comments must identify the TSO file number.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Program and Continued Airworthiness Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–9546.

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. Comments received on the proposed TSO order may be examined, before and after the comment closing date, in Room 804, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. All communications received on or before the closing date for comments specified above will be considered by the Director of the Aircraft Certification Service before issuing the final TSO.

Background

In the late 1970's there were numerous reports of emergency locator transmitters, powered by lithium sulfur dioxide batteries, exploding, corroding, and venting toxic gases in general aviation airplanes. This resulted in a series of three airworthiness directives (Amendment 39–3549 (44 FR 50321, August 27, 1979), Amendment 39–3422 (44 FR 10980; February 26, 1979), and amendment 39–3708 (45 FR 13051, February 28, 1980)) to correct the safety problem and the issuance of TSO–C97, specifically for lithium sulfur dioxide batteries. Since TSO–C97 was issued, there have been few installations using lithium sulfur batteries in aircraft equipment. Other batteries, however, of different lithium chemistries, sizes, and construction are widely used today in non aviation applications.

Lithium batteries are desired for installation in aircraft because of their high energy per unit weight and volume, high cell voltage, relatively constant voltage during discharge, excellent low-temperature performance, and long shelf life. They continue to pose a potential safety hazard if not chosen carefully for the intended use, and used within their design and test limitations throughout their life cycle. Proposed TSO–C142 prescribes a means of assuring that lithium batteries will perform their intended function safely under conditions normally encountered in aeronautical operations.

How To Obtain Copies

A copy of the proposed TSO-C142 may be obtained by contacting **FOR FURTHER INFORMATION CONTACT.** Copies of RTCA Document No. DO–227, "Lithium Batteries," dated June 23, 1995, may be purchased from the RTCA Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

Issued in Washington, DC, on February 24, 1997.

Brian A. Yanez,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 97–5433 Filed 3–4–97; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Bernalillo County, NM

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) for the Gibson East Transportation Corridor Study.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed transportation project in Bernalillo County, New Mexico, in accordance with 23 CFR part 771.

FOR FURTHER INFORMATION CONTACT: Reuben S. Thomas, Division Administrator, Federal Highway Administration, 604 W. San Mateo Rd., Santa Fe, New Mexico 87505, Telephone: (505) 820–2022.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the New Mexico State Highway and Transportation Department and the City of Albuquerque Public Works Department, will prepare an environmental impact statement (EIS) on a proposal to improve Gibson Boulevard in Bernalillo County, New Mexico. The proposed action involves the improvement of Gibson Boulevard beginning at Interstate 25 and extending eastward to the Juan Tabo Boulevard-Interstate 40 interchange for a total corridor distance of about 12.9 kilometers or 8.0 miles.

The proposed action addresses the need to relieve increased traffic congestion in the southeast quadrant of Albuquerque with a safe and efficient transportation system that also serves major employment centers including the Albuquerque International Airport, Kirtland Air Force Base, the Kirtland Airforce Base/Veterans Administration Medical Center, and the Lovelace Medical Center.

Alternatives under consideration include (1) the No Build Alternative; (2) the Arterial Alternative; (3) The Expressway Alternative; (4) the Expressway/Arterial Alternative, and (5) the Transit/High-Occupancy Vehicle Alternative.

The No Build Alternative would maintain the existing condition of Gibson Boulevard as a six-lane principal arterial with varying degrees of access control from the Interstate 25/Gibson Boulevard interchange eastward to its existing terminus at Louisiana Boulevard, a distance of approximately 6.4 kilometers or 4.0 miles.

The Arterial Alternative would reconstruct major street intersections, make some minor roadway improvements on Gibson Boulevard from the Interstate 25/Gibson Boulevard interchange to Louisiana Boulevard, and close several existing roadway medians. It would also extend Gibson Boulevard eastward from Louisiana Boulevard to the Juan Tabo Boulevard/Central Avenue intersection.

The Expressway/Arterial Alternative would upgrade Gibson Boulevard to a high-capacity, high speed, limited access principal arterial with full access limited to major intersections approximately one-half mile apart for its eight mile length.

The Expressway/Arterial Alternative would upgrade Gibson Boulevard to a high-capacity, high-speed, limited-access principal arterial with full access limited to major street intersections approximately one-half mile apart along seven of its eight mile length. For the remaining one-mile segment, between San Mateo Boulevard and Louisiana Boulevard, the Arterial Alternative standards would apply.

The Transit/High-Occupancy Vehicle Alternative would upgrade Gibson Boulevard from Interstate 25 to the Juan Tabo Boulevard/Interstate 40 interchange to a transit/high-occupancy vehicle corridor.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed an interest or are known to have an interest in this proposal. A series of public meetings will be held in Albuquerque, New Mexico beginning in February, 1997. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues and impacts identified, comments and suggestions are invited from all interested parties. Comments and questions concerning this proposed action and the EIS should be directed to FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities supply to this program)

Issued on: February 12, 1997.

Reuben S. Thomas,

Division Administrator, Santa Fe, NM.

[FR Doc. 97–5338 Filed 3–4–97; 8:45 am]

BILLING CODE 4910–22–M

Maritime Administration

[Docket No. M–030]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before May 5, 1997.

FOR FURTHER INFORMATION CONTACT: David Lippold, Division of Capital Assets Management, Office of Ship Financing, Maritime Administration, MAR–533, Room 8122, 400 Seventh Street, S.W., Washington, DC 20590. Telephone (202) 366–5744 or FAX (202) 366–3954. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Capital Construction Fund and Exhibits.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0027.

Form Number: No Maritime Administration form is required; only a format specified in 46 CFR Part 390, "Capital Construction Fund".

Expiration Date of Approval: April 30, 1997.

Summary of Collection of Information: The collection consists of application for a Capital Construction Fund agreement under section 607 of the Merchant Marine Act, 1936 as amended, and annual submissions of appropriate schedules and exhibits. The Capital Construction Fund is a tax deferred ship construction fund that was created to assist owners and operators of U.S.-flag vessels in accumulating the large amount of capital necessary for the modernization and expansion of the U.S. merchant marine. The program encourages construction, reconstruction, or acquisition of vessels through the deferment of Federal income taxes on certain deposits of money or property placed into a CCF.

Need and Use of the Information: The collected information is used by the Maritime Administration to determine an applicant's eligibility to enter into a CCF Agreement.

Description of Respondents: U.S. citizens which own or lease one or more

eligible vessels and that have a program to provide for the acquisition, construction or reconstruction of a qualified vessel as defined in section 607(k)(2) of the Act.

Annual Responses: 130.

Annual Burden: 15.4 hours average per year per respondent.

Comments: Send all comments regarding this information collection to Joel C. Richard, Department of Transportation, Maritime Administration, MAR–120, Room 7210, 400 Seventh Street, S.W., Washington, D.C. 20590. Send comments regarding whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected.

By Order of the Maritime Administrator.

Dated: February 27, 1997.

Joel C. Richard,

Secretary.

[FR Doc. 97–5346 Filed 3–4–97; 8:45 am]

BILLING CODE 4910–81–P

National Highway Traffic Safety Administration

[Docket No. 96–116, Notice 2]

Capacity of Texas, Inc.; Grant of Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 121

Collins Industries of Hutchinson, Kansas, on behalf of its subsidiary, Capacity of Texas, Inc., of Longview, Texas, applied for a temporary exemption from paragraph S5.1.6 of Federal Motor Vehicle Safety Standard No. 121 *Air Brake Systems*. The basis of the application was that compliance will cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith.

Notice of receipt of the application was published on November 15, 1996, and an opportunity afforded for comment (61 FR 58604).

Paragraph S5.1.6 (which includes S5.1.6.1–S5.1.6.3) of Standard No. 121 requires in pertinent part that each truck tractor manufactured on and after March 1, 1997, be equipped with an antilock brake system. Capacity of Texas ("Capacity") asked that one of its truck tractor models be exempted for three months from the provisions of S5.1.6 that will apply to it effective March 1, 1997. Capacity manufactures the Trailer Jockey "Model TJ–5000 (Off Highway)" truck tractor. Terming it a "yard tractor", Capacity stated that "this type of truck is designed to operate in a freight yard moving trailers from one terminal entrance to another * * * geared to limited speed [45 mph maximum] and to provide start-up torque for repeated stopping and starting." The tractors generally operate at 25 mph.

Because these terminal tractors do not appear manufactured primarily for use on the public roads, ordinarily NHTSA would not consider them to be "motor vehicles" to which Standard No. 121 applies. However, Capacity is currently working to fill its third contract with the U.S. Postal Service. Unlike the other two contracts, the present Postal Service contract specifies that the truck tractors be certified to comply with all Federal motor vehicle safety standards applicable to on-road truck tractors, even though Capacity estimates that the tractors will spend "approximately 5% or less of their life in operation on the public highways." Capacity's contract is for 210 vehicles, to be produced between September 1996 and June 1997, and it estimated that the final 60 under the order will be completed by the end of May 1997. It thus seeks an exemption from March 1, 1997, to June 1, 1997, from the antilock brake requirements for the 60 tractors.

One option that it examined is acceleration of its production schedule so that manufacture of all vehicles could be completed by March 1, 1997. However, this would require an increase in production rates "by at least 33% two months prior to the March 1, 1997 date." The work in part would have to be performed by newly hired and trained employes, increasing its overtime costs by 100%. It estimates that total costs would be greater by far than its net income for the fiscal year ending October 31, 1996. In addition, it would have to lessen its efforts to fill other orders, with a consequent loss of business. This means that, at the completion of the order as of March 1, 1997, it would have to lay off 50% of its work force until more orders were received and an orderly production schedule established. For these reasons, acceleration of the production schedule would cause it substantial economic hardship.

A further option is to delay production of the 60 vehicles until compliance with Standard No. 121 is achieved. Capacity stated that "it will be possible to delay delivery of other customer trucks until testing of ABS truck systems is complete." However, according to Capacity, delay for conformance is not acceptable to the Postal Service because it would result in a fleet of dissimilar vehicles requiring different spare parts. As Capacity further argued, identical vehicles are desired by the Postal Service because "all drivers in the fleet can be trained to the same operating procedures" and "Fleet maintenance people will be working on these trucks and will be able to maintain all 270 using the same procedures." Even if a delay were acceptable to the Postal Service, Capacity would have to absorb the increase in costs since "the price is fixed by contract and no upward price relief is available."

In the year preceding the filing of its petition, Capacity produced and certified 47 vehicles for on-road use other than those produced under the postal contract. It also produced less than 500 off-road vehicles. In the same period, its parent corporation, Collins, Inc., manufactured less than 2,000 school buses and less than 2,000 ambulance conversions. Capacity's net income has declined over the past three fiscal years and, in its fiscal year ending October 31, 1996, is far less than $1,000,000.

Capacity argued that a temporary exemption would be in the public interest because the vehicles are produced for the U.S. Postal Service. It submitted that an exemption is also consistent with motor vehicle safety because "NHTSA is using a staggered effectivity date for addition of antilock brakes to tractors, trucks, and buses." It pointed out that "[t]here will be many vehicles built during the 3 months of this petition that are built under the old standard * * *. The only reason tractors are involved is because they got the first effectivity date instead of buses."

One comment was received. Carter Hart of Corsicana, Texas, does not like anti-lock brakes and commented that "[t]he company requesting the exemption from this regulation should not need one because it is the regulation which is flawed." NHTSA considers this comment irrelevant to the merits of the application.

Capacity's application presents a situation that differs from the usual hardship case where a small manufacturer's resources may be insufficient to achieve compliance by the effective date of a standard or to test for compliance, or where the small volume manufacturer is experiencing difficulties in obtaining conforming parts in a timely fashion. Capacity and its parent do not have net and cumulative losses in the three years before the application was filed; however, its net income has declined over these years. Further, Capacity can achieve compliance with Standard No. 121 after some delay, but presents arguments why it may not be in the public interest to do so.

NHTSA has great flexibility in its interpretation of the phrase "substantial economic hardship." Ordinarily it may consider cumulative net losses a per se demonstration of hardship, but it specifically invites applicants to submit "[a] discussion of any other hardships (e.g., loss of market) that the petitioner desires the agency to consider." (49 CFR 555.7(a)(1)(D)(vi)). In this situation, Capacity will not have a problem if it accelerates its manufacturing schedule to complete the order before the effective date of the new provisions of Standard No. 121. But this can be achieved only at the cost of hiring and training additional manufacturing personnel, and requiring its work force to work exclusively and overtime on filling the order of the Postal Service to the detriment of other customers whose orders will then be delayed. These costs cannot be recovered under Capacity's fixed cost contract with the Postal Service. NHTSA also notes that the quality of the vehicles may suffer when vehicles are rushed to completion by a newly-trained work force. All these are hardship factors that NHTSA deems relevant to its determination.

The facts also indicate that the Administrator's findings that a manufacturer has made a good faith effort to conform and that an exemption is in the public interest and consistent with traffic safety objectives stem from the following scenario. Capacity can achieve compliance no later than 3 months after the effective date of the amendments to Standard No. 121. While it is willing to defer completion of its order until then, this is not acceptable to its customer who has already taken delivery of the initial vehicles for which it has contracted. Delayed delivery will not only deprive the Postal Service of vehicles it needs, but also require it to train drivers and maintenance personnel in two differing procedures. NHTSA believes that this may complicate replacement parts inventories as well. All in all, this would appear to increase the costs to the Postal Service which will contribute to the on-going economic pressure for increases in postal rates. The effect on safety of providing an exemption for 60 truck tractors which will spend only an estimated 5% of their lives on the public roads would appear to be *de minimis*.

On the basis of the foregoing, it is hereby found for good cause shown, that compliance with Standard No. 121 would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. It is further found that a temporary exemption is in the public interest and consistent with the objectives of traffic safety. Accordingly, Capacity of Texas, Inc., is hereby granted NHTSA Temporary Exemption No. 96–1 from paragraph S5.1.6 of 49 CFR 571.121 Motor Vehicle Safety Standard No. 121 "Air Brake Systems" expiring June 1, 1997.

(49 U.S.C. 30113; delegation of authority at 49 CFR 1.50.)

Issued on: February 28, 1997.

Ricardo Martinez,

Administrator.

[FR Doc. 97–5427 Filed 3–4–97; 8:45 am]

BILLING CODE 4910–59–P

Bureau of Transportation Statistics

Advisory Council on Transportation Statistics

AGENCY: Bureau of Transportation Statistics, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 10(A)(2) of the Federal Advisory Committee Act (Pub. L. 72–363; 5 U.S.C. App. 2), notice is hereby given of a meeting of the Bureau of Transportation Statistics (BTS) Advisory Council on Transportation Statistics (ACTS) to be held Friday, March 21, 1997, 10:00 to 4:00 p.m. The meeting will take place at the U.S. Department of Transportation, 400 7th Street, SW., Washington, DC, in conference room 9234 of the Nassif Building.

The Advisory Council, called for under Section 6007 of Pub. L. 102–240, Intermodal Surface Transportation Efficiency Act of 1991, December 18, 1991, and chartered on June 19, 1995, was created to advise the Director of BTS on transportation statistics and analyses, including whether or not the statistics and analysis disseminated by the Bureau are of high quality and are based upon the best available objective information.

The agenda for this meeting will include a review of the last meeting, identification of substantive issues, review of plans and schedule, other items of interest, discussion and agreement of date(s) for subsequent meetings, and comments from the floor.

Since access to the DOT building is controlled, all persons who plan to attend the meeting must notify Ms. Carolee Bush, Council Liaison, on (202) 366–6946 prior to March 20. Attendance is open to the interested public but limited to space available. With the approval of the Chair, members of the public may present oral statements at the meeting. Noncommittee members wishing to present oral statements, obtain information, or who plan to access the building to attend the meeting should also contact Ms. Bush.

Members of the public may present a written statement to the Council at any time.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Ms. Bush (202) 366–6946 at least seven days prior to the meeting.

Issued in Washington, DC, on February 28, 1997.

Robert A. Knisely,

Executive Director, Advisory Council on Transportation Statistics.

[FR Doc. 97–5428 Filed 3–4–97; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1996 Rev., Supp. No. 9]

Surety Companies Acceptable on Federal Bonds; Redland Insurance Company

A certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under Sections 9304 to 9308, Title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1996 Revision, on page 34304 to reflect this addition:

Redland Insurance Company, BUSINESS ADDRESS: 222 South 15th Street, Suite 600 North, Omaha, NE, 68102. PHONE: (402) 344–8800. UNDERWRITING LIMITATION *b/*: $3,2240,000. SURETY LICENSES *c/*: AL, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MN, MS, MO, MT, NE, NV, NH, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Iowa.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR, Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet (http:/

/www. fms.treas.gov/c570.html) or through our computerized public bulletin board system (FMS Inside Line) at (202) 874–6887. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048–000–00499–7.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6F04, Hyattsville, MD 20782, telephone (202) 874–6507.

Dated: February 13, 1997.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 97–5345 Filed 3–4–97; 8:45 am]

BILLING CODE 4810–35–M

UNITED STATES INFORMATION AGENCY

Proposed Collection; Comment Request

AGENCY: United States Information Agency.

ACTION: Proposed collection; Comment request.

SUMMARY: The United States Information Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on an information collection entitled "Rulemaking Number 102, Camp Counselor Exchanges". This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 [Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)].

The information collection activity involved with this program is conducted pursuant to the mandate given to the United States Information Agency under the terms and conditions of the Mutual Educational and Cultural Exchange Act of 1961, as amended. USIA has been delegated the authority to designate exchange visitor programs for U.S. Government agencies, public and private education and Cultural exchange. In addition, 22 Code of Federal Regulations (CFR), part 514.30, Camp Counselors; Limitation of Program Participation.

DATES: Comments are due on or before May 5, 1997.

COPIES: Copies of the Request for Clearance (OMB 83–I), supporting statement, and other documents that will be submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Ms. Jeannette Giovetti, United States Information Agency, M/ADD, 301 Fourth Street, S.W., Washington, D.C. 20547, telephone (202) 619–4408; and OMB review: Ms. Victoria Wassmer, Office of Information And Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10202, NEOB, Washington, D.C. 20503, Telephone (202) 395–3176.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information (Paper Work Reduction Project: OMB No. 3116–0213) is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Responses are required to obtain benefits and respondents will be required to respond only one time.

Comments are requested on the proposed information collection concerning (a) Whether the proposed collection of information is necessary for the proper performance of the agency, including whether the information has practical utility; (b) the accuracy of the Agency's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Send comments regarding this burden estimate or any other aspect of this collection of information to the United States Information Agency, M/ADD, 301 Fourth Street, S.W., Washington, D.C. 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10202, NEOB, Washington, D.C. 20503.

Current Actions: USIA is requesting an extension of this collection for a three-year period.

Title: Rulemaking No. 102, Camp Counselor Exchanges.

Abstract: Approximately 10 Agency-designated for profit and non-profit entities will submit a report listing the names of aliens who have participated in camp counselor exchanges more than twice. This report will be the basis of the Agency's efforts to monitor these exchanges, to prevent inappropriate staffing with alien labor, and to ensure compliance with the articulated policy.

Proposed Frequency of Response:

No. of Respondents—10.
Recordkeeping Hours—.08.
Total Annual Burden—1.0.

Dated: February 28, 1997.

Rose Royal,

Federal Register Liaison.

[FR Doc. 97–5429 Filed 3–4–97; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Cost-of-Living Adjustments for Service-Connected Benefits

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As required by the Veterans' Compensation Cost-of-Living Adjustment Act of 1996, Public Law 104–263, the Department of Veterans Affairs (VA) is hereby giving notice of cost-of-living adjustments (COLAs) in certain benefit rates. These COLAs affect the compensation and dependency and indemnity compensation (DIC) programs.

DATES: These COLAs are effective December 1, 1996, the date provided by Public Law 104–263.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge, Consultant, Compensation and Pension Service (213B), Veterans Benefit Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–7218.

SUPPLEMENTARY INFORMATION: The Veterans' Compensation Cost-of-Living Adjustment Act of 1996, Public Law 104–263, provides for a COLA for each of the rates in sections 1114, 1115(1), 1162, 1311, 1313, and 1314 of title 38, United States Code. VA is required to increase these benefit rates by the same percentage as increases in the benefit amounts payable under title II of the Social Security Act. In computing increased rates in the cited title 38 sections, fractions of a dollar equaling $.50 or more are rounded to the next higher dollar amount. The increased rates are required to be published in the **Federal Register.**

The Social Security Administration has announced that there will be a 2.9 percent cost-of-living increase in Social Security benefits. Therefore, applying the same percentage, the following increased rates for VA compensation and DIC programs will be effective December 1, 1996:

DISABILITY COMPENSATION (38 U.S.C. 1114)

Disability evaluation	Monthly rate
10%	$94
20%	$179
30%	$274
40%	$391
50%	$558
60%	$703
70%	$887
80%	$1,028
90%	$1,157
100%	$1,924
(38 U.S.C. 1114(k) through (s)):	
38 U.S.C. 1114(k)	$74; $2,393; $74; $3,356
38 U.S.C. 1114(l)	$2;393
38 U.S.C. 1114(m)	$2,639
38 U.S.C. 1114(n)	$3,003
38 U.S.C. 1114(o)	$3,356
38 U.S.C. 1114(p)	$3,356
38 U.S.C. 1114(r)	$1,441; $2,145
38 U.S.C. 1114(s)	$2,154
Additional Compensation for Dependents (38 U.S.C. 1115(l)):	
38 U.S.C. 1115(l)	
38 U.S.C. 1115(1)(A)	$112
38 U.S.C. 1115(1)(B)	$191; $59
38 U.S.C. 1115(1)(C)	$77; $59
38 U.S.C. 1115(1)(D)	$91
38 U.S.C. 1115(1)(E)	$211
38 U.S.C. 1115(1)(F)	$177

DISABILITY COMPENSATION (38 U.S.C. 1114)—Continued

Disability evaluation	Monthly rate
Clothing Allowance (38 U.S.C. 1162):	
$518 per year	
DIC to a Surviving Spouse (38 U.S.C. 1311):	
Pay Grade:.	
E–1	$833
E–2	$833
E–3	$833
E–4	$833
E–5	$833
E–6	$833
E–7	$861
E–8	$909
E–9(1)	$949
W–1	$880
W–2	$915
W–3	$943
W–4	$997
O–1	$880
O–2	$909
O–3	$972
O–4	$1,028
O–5	$1,132
O–6	$1,276
O–7	$1,378
O–8	$1,510
O–9	$1,618
O–10(2)	$1,774

(1) If the veteran served as sergeant major of the Army, senior enlisted advisor of the Navy, chief master sergeant of the Air Force, sergeant major of the Marine Corps, or master chief petty officer of the Coast Guard, the surviving spouse's monthly rate is $1,023.

(2) If the veteran served as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, the surviving spouse's monthly rate is $1,902.

DIC TO A SURVIVING SPOUSE (38 U.S.C. 1311 (A) THROUGH (D))

	Monthly rate
38 U.S.C. 1311 (a) through (d):	
38 U.S.C. 1311(a)(1)	$833
38 U.S.C. 1311(a)(2)	$182
38 U.S.C. 1311(b)	$211
38 U.S.C. 1311(c)	$211
38 U.S.C. 1311(d)	$102
DIC to Children (38 U.S.C. 1313):	
38 U.S.C. 1313:.	
38 U.S.C. 1313(a)(1)	$354
38 U.S.C. 1313(a)(2)	$510
38 U.S.C. 1313(a)(3)	$662
38 U.S.C. 1313(a)(4)	$662; $130
Supplemental DIC to Children (38 U.S.C. 1314):	
38 U.S.C. 1314:.	
38 U.S.C. 1314(a)	$211
38 U.S.C. 1314(b)	$354
38 U.S.C. 1314(c)	$179

Dated: February 21, 1997.

Jesse Brown,

Secretary of Veterans Affairs.

[FR Doc. 97–5342 Filed 3–4–97; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 62, No. 43
Wednesday, March 5, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Hanford Health Effects Subcommittee

Correction

In notice document 97–3472 appearing on page 6539 in the issue of Wednesday, February 12, 1997 make the following correction:

The meeting schedule in the second column is corrected below.

Dates:	February 20, 1997	February 21, 1997
Times:	9 a.m.–5 p.m. 6:30 p.m.–8:30 p.m.	9:30 a.m.–12:30 p.m.
Place:	Red Lion Hotel/Jantzen Beach 909 N. Hayden Island Drive Portland, Oregon 97217	Same Location
Tel:	503/283–4466	
Fax:	503/283–4743	
Dates:	May 8, 1997	May 9, 1997
Times:	9 a.m.–5 p.m. 6:30 p.m.–8:30 p.m.	9:30 a.m.–3:30 p.m.
Place:	Cavanaugh's at Columbia Center 101 Columbia Center Boulevard Kennewick, Washington 99336	Same Location
Tel:	509/783–0611	
Fax:	509/735–3087	
Dates:	July 24, 1997	July 25, 1997
Times:	9 a.m.–5 p.m. 6:30 p.m.–8:30 p.m.	9:30 a.m.–3:30 p.m.
Place:	Marine's Memorial Club 609 Sutter Street (at Mason) San Francisco, California 94102	
Tel:	415/673–6672	
Fax:	415/441–3649	
Dates:	October 9, 1997	October 10, 1997
Times:	9 a.m.–5 p.m. 6:30 p.m.–8:30 p.m.	9:30 a.m.–3:30 p.m.
Place:	Coeur d'Alene Inn West 414 Appleway Coeur d'Alene, Idaho 83814	Same Location

Tel:	208/765–3200	
Fax:	208/664–1962	
Dates:	December 11, 1997	December 12, 1997
Times:	9 a.m.–5 p.m. 6:30 p.m.–8:30 p.m.	9:30 a.m.–3:30 p.m.
Place:	Madison Hotel 515 Madison Street Seattle, Washington 98104	Same location
Tel:	206/583–0300	
Fax:	206/624–8125	

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Minerals Management Service

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Outer Continental Shelf Pipelines

Correction

In notice document 97–3769, beginning on page 7037, in the issue of Friday, February 14, 1997, make the following corrections:

1. On page 7037, in the second column, in the second full paragraph, in the sixth line, "he" should read "the".

2. On the same page, in the third column, under **II. Authority**, in the first paragraph, in the fourth line "or" should read "of".

3. On page 7038, in the third column, under **V. Limitations**, in item 3, in the fourth line, "of" should read "or".

BILLING CODE 1505-01-D

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federal register

Wednesday
March 5, 1997

Part II

Department of Agriculture

Rural Housing Service
Rural Business-Cooperative Service
Rural Utilities Service
Farm Service Agency

7 CFR Part 1951, et al.
Implementation of the Delinquent Account Servicing Provisions of the Federal Agriculture Improvement and Reform Act of 1996; Interim Rule

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1951, 1956, 1962, 1965

RIN 0560–AE89

Implementation of the Delinquent Account Servicing Provisions of the Federal Agriculture Improvement and Reform Act of 1996

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, Farm Service Agency, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The following changes implement provisions of the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act) that affect the Farm Loan Programs of the Farm Service Agency (FSA), formerly administered by the Farmers Home Administration (FmHA). The provisions of this rule affect the direct and guaranteed farm ownership (FO), operating loan (OL) programs, and the direct emergency (EM) loan program. Implementation of these provisions will result in the streamlining and shortening of the loan servicing process and result in reduced losses to the Government.

DATES: *Effective:* March 14, 1997. Comments must be submitted by May 13, 1997.

ADDRESSES: Submit written comments to Director, Farm Service Agency, United States Department of Agriculture, Farm Loan Programs Loan Servicing and Property Management Division, Ag Code 0523, Post Office Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Kimberly R. Laris, Senior Loan Officer, Farm Service Agency, U.S. Department of Agriculture, Room 5449–S, Washington, DC 20250–0523; Telephone: 202–720–1659; Facsimile: 202–690–0949.

SUPPLEMENTARY INFORMATION

Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Farm Service Agency certifies that this rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96–534, as amended (5 U.S.C. 601).

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." The issuing agencies have determined that this action does not significantly affect the quality of human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Executive Order 12778

This interim rule has been reviewed under Executive Order 12778, Civil Justice Reform. In accordance with this rule: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; (3) administrative proceedings in accordance with 7 CFR parts 11 and 780 must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Executive Order 12372

For reasons set forth in the notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs within this rule are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

The Unfunded Mandate Reform Act of 1995

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local and tribal governments and the private sector of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA, FSA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to state, local, or tribal governments, in the aggregate, or to the private sector. When such a statement is needed for a rule, section 205 of the UMRA generally requires FSA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under regulatory provisions of title II of the UMRA) for state, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act

This interim rule does not impose any new information collection or recordkeeping requirements; however, the provisions of the 1996 Act do eliminate the need for some information previously collected and result in a revision to the number of estimated respondents from whom information will be collected. Therefore, the agency will revise the information collection currently approved in support of its regulations pertaining to Farm Loan Programs account servicing policies under the Office of Management and Budget (OMB) control number 0560–0161 and debt settlement regulations under OMB control number 0575–0118. The agency will publish a **Federal Register** notice in the near future requesting comments for a 60-day period regarding revisions resulting from the 1996 Act; increases or decreases in program activity; and changes to the estimated responses per respondent and estimated average hours per response. OMB emergency clearance has been obtained to allow continued use of the affected regulations and forms under OMB control numbers 0560–0172 and 0560–0173.

Federal Assistance Programs

10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.416—Soil and Water Loans.

Discussion of the Interim Rule

Enacted on April 4, 1996, the Federal Agriculture Improvement and Reform Act (1996 Act) changed the qualifications for loan servicing benefits for borrowers with farm loans from FSA, formerly FmHA. The specific changes to FSA Farm Loan Programs are as follows:

Leaseback/Buyback Program

The 1996 Act terminated the Leaseback/Buyback program effective April 4, 1996. Borrowers, former owners and their spouses, children, or former operators no longer have any priority right to purchase FSA inventory property or to lease such property with an option to purchase. This action will remove the regulations for this program. A transition rule provides that borrowers who had submitted a complete application for leaseback/buyback before the date of enactment may still be considered for the program. The regulations governing leaseback/buyback for these applications can be found in the previous CFR volume containing revisions as of January 1, 1996 and the Agency's procedures, (available in any county office.)

Homestead Protection

The application period for this program was changed by the 1996 Act from 90 to 30 days after notification of the former owner of FSA inventory property. The Agency is now required to advise the owner of program availability on or before the date that it acquires the property, instead of within 30 days of acquisition as was required by 7 CFR 1951.911(b)(2)(iii).

Primary Loan Servicing

The 1996 Act requires notification of loan servicing programs to borrowers who are 90 days past due on their FLP loan payment (or 60 days delinquent, since accounts are not considered delinquent until they are 30 days past due). Formerly, these packets were sent when borrowers were 180 days delinquent (210 days past due). Application requirements have been modified to eliminate some forms and clarify that borrowers do not need to provide information that is already in their case files and still current, as determined by the approval official. Borrowers who request servicing before they become delinquent are required to pay at least a portion of the interest due on the account as a condition of rescheduling or reamortization. In making restructuring decisions, FSA will assume that the borrower needs up to 110 percent of the amount indicated for payment of farm operating expenses, debt service obligations, and family living expenses, instead of the 105 percent required before the 1996 Act. Failure to achieve this 110 percent margin will not make a borrower ineligible for loan servicing, but in no case will the account be restructured with a cash flow of less than 100 percent. Borrowers who qualify for debt writedown, but whose accounts could be restructured without writedown at a margin of less than 110 percent, will be allowed to choose between the two options: (1) Restructuring with writedown, or (2) restructuring without writedown at a margin of less than 110 percent. Since section 645 of the 1996 Act, which establishes the 110 percent cash flow, is not mandatory, FSA is offering borrowers the option to forego writedown. Thus, they would avoid the statutory debt forgiveness limitation explained below. Borrowers who choose writedown (with a higher cash flow margin than restructuring without writedown) will not be able to receive any additional debt forgiveness from FSA.

Debt Forgiveness

Under the 1996 Act, borrowers can receive only one reduction or termination of a direct FLP loan in a manner that results in a loss to the Government. Those who have received debt forgiveness on a direct loan at any time in the past are no longer eligible for such relief on another loan. Pursuant to section 640(2) of the 1996 Act, debt forgiveness is defined as writing down or writing off a direct loan, debt settling a direct loan, paying a loss claim on a loan guarantee pursuant to section 357 of the Consolidated Farm and Rural Development Act (Con Act) and discharging a debt as a result of bankruptcy.

Buyout of Debt

The loan servicing option of buying out a debt at its net recovery value was changed by the Act to buyout at current market value. The requirement for a recapture agreement, under which the Agency could recover a portion of its loss if the property is sold within 10 years, was eliminated.

Conservation Contracts

Based on section 642 of the 1996 Act, the Agency has revised Exhibit H of this subpart to change the conservation easement program to a conservation contract program. Since section 642(1) of the 1996 Act removed the requirement that the program restrict the usage of the property for not less than 50 years, FSA has exercised its discretion to provide a graduated reduction in the amount of debt written off, based on the time period that usage is restricted. Borrowers who agree to a 50-year contract will receive the maximum amount of debt writedown. Borrowers who agree to a 30-year contract will receive 60 percent of the maximum writedown. Borrowers who agree to a 10-year contract will receive 20 percent of the maximum writedown.

Graduation

When reviewing accounts for possible graduation from direct FLP credit, the Agency is authorized by the Act to submit a borrower prospectus to potential commercial lenders without the borrower's approval. Borrowers must be notified that such information has been provided. If an approved lender agrees to provide credit to that borrower in accordance with the terms of the prospectus, that borrower is ineligible for Farm Ownership or Farm Operating direct loan credit.

Annual Reviews and Eligibility

Under section 635 of the 1996 Act, the County Committee must certify annually that a review has been made of each borrower's operation and of continued eligibility for Agency assistance. This is an internal agency requirement and therefore regulations governing this requirement are not published in the CFR.

Electronic Filing of Financing Statements

Pursuant to section 662 of the 1996 Act, all lenders are authorized to file financing statements electronically in states having Uniform Commercial Code (UCC) laws allowing that practice.

Appeals

The Agency has removed from this regulation the requirement that the borrower be notified of appeal rights in numerous instances where it previously appeared following authorization for an adverse decision. A guide to the mediation, appeals and review processes has been added as section 1951.904.

Miscellaneous

Some material which was obsoleted, outdated, or repetitive has been omitted. Some references to other sections of the CFR have been revised for conformity purposes.

List of Subjects

7 CFR Part 1951

Account servicing, Accounting, Debt restructuring, Foreclosure, Government acquired property, Credit, Loan programs—agriculture, Loan programs—housing and community development, Low and moderate income housing loans—servicing, Mortgages, Rural areas, Sale of government acquired property, Surplus government property.

7 CFR Part 1956

Accounting, Loan programs—agriculture, Rural areas.

7 CFR Part 1962

Crops, Government property, Livestock, Loan programs—agriculture, Rural areas.

7 CFR Part 1965

Foreclosure, Loan programs—agriculture, Rural areas.

Accordingly, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for part 1951 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart F—Analyzing Credit Needs and Graduation of Borrowers

2. Section 1951.262 is amended by revising paragraphs (f)(1) and (f) (2) to read as follows:

§ 1951.262 Farm Loan Programs—graduation of borrowers.

* * * * *

(f) * * *

(1) The Agency will distribute a borrower's prospectus to local lenders for possible refinancing. The borrower's permission is not required, however, the borrower must be notified of this action.

(2) The borrower is responsible for any application fees. The borrower has 30 days from the date the borrower is notified of lender interest in refinancing to make application, if required by the lender, and refinance the FLP loan. For good cause, the borrower may be granted a reasonable amount of additional time by the Agency.

Subpart J—Management and Collection of Nonprogram (NP) Loans

§ 1951.454 [Amended]

3. Section 1951.454 is amended by revising the words "chapter; except that a borrower does have appeal rights if the decision involves the denial of NP loan assistance under the Leaseback/Buyback and Homestead Protection provisions of subpart S of this Part 1951" to read "chapter or parts 11 and 780 of this title."

§ 1951.455 [Amended]

4. Section 1951.455 is amended by:

a. In paragraph (a) by removing "Leaseback/Buyback and" in the second sentence; by revising the words "Leaseback/Buyback and Homestead Protection programs," to read "Homestead Protection program" in the fourth sentence; by removing the words "FmHA or its successor agency under Public Law 103–354" in the fifth sentence; by revising the words "FmHA or its successor agency under Public Law 103–354" to read "the Agency" in the sixth sentence;

b. In paragraph (b) by removing the first sentence; by revising the words "FmHA or its successor agency under Public Law 103–354" to read "FLP" in the second sentence; by removing the words "FmHA or its successor agency under Public Law 103–354" in the fourth sentence; by revising the words "FmHA or its successor agency under Public Law 103–354" and "FP" to read "FLP" in the fifth sentence;

c. In paragraph (c) by revising the words "FmHA or its successor agency under Public Law 103–354 office" to read "agency office" and the words "FmHA or its successor agency under Public Law 103–354 credit" to read "FLP credit" in the first sentence;

d. In paragraph (e) by revising the words "FmHA or its successor agency under Public Law 103–354 office" to read "agency office" in the first sentence and removing the words "FmHA or its successor agency under Public Law 103–354" in the fourth sentence;

e. In paragraph (f) by removing the first and third sentence;

f. In paragraph (g) by revising the words "FmHA or its successor agency under Public Law 103–354" to read "FLP" in the introductory text; by removing paragraphs (g) (1) and (4); by revising the words "FmHA or its successor agency under Public Law 103–354 may" to read "the agency may" and the words "FmHA or its successor agency under Public Law 103–354 retains" to read "the agency retains" in the second sentence of paragraph (g)(2); and by redesignating paragraphs (g) (2), (3) and (5) as (g) (1) through (3);

g. In paragraph (h) by revising the word "FP" to read "FLP";

h. In paragraph (i) by removing the first sentence;

i. In paragraph (j) by revising the words "an FmHA or its successor agency under Public Law 103–354" to read "a".

5. Section 1951.457 is amended by revising paragraph (a) to read as follows:

§ 1951.457 Payments.

(a) *Receiving payments.* Borrowers will mail or bring their payments to the county office. Borrowers will be responsible for any fees associated with converting cash payments to money orders. If the fee is not paid, it will be deducted from the payment.

* * * * *

6. Section 1951.458 is revised to read as follows:

§ 1951.458 Servicing real estate taxes.

Refer to subpart A of part 1925 of this chapter for servicing real estate taxes.

Subpart S—Farmer Program Account Servicing Policies

7. Section 1951.901 is revised to read as follows:

§ 1951.901 Purpose.

This subpart describes the policies and procedures that the agency will use in servicing most Farm Loan Program (FLP) loans. The loans include Operating Loan (OL), Farm Ownership Loan (FO), Soil and Water Loan (SW), Softwood Timber Production Loan (ST), Emergency Loan (EM), Economic Emergency Loan (EE), Economic Opportunity Loan (EO), Recreation Loan (RL), and Rural Housing Loan for farm service buildings (RHF) accounts. Cases involving unauthorized assistance will be serviced as described in subpart L of this part. When it has been determined that all the conditions outlined in § 1951.558(b) of subpart L of this part have been met, the loan will be treated as an authorized loan and may be serviced under this subpart. Cases involving graduation of borrowers to other sources of credit will be serviced as described in subpart F of this part. This subpart does not apply to FLP Non-Program (NP) loans. Examples of Primary Loan Servicing actions are: consolidation, rescheduling and/or reamortization, deferral of principal and interest payments, reclassifying to ST loans, reducing interest rate on the loan, writedown of debt and conservation contract, or a combination of these actions. Preservation loan servicing is the Homestead Protection program. Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to agency employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an agency employee.

8. Section 1951.902 is revised to read as follows:

§ 1951.902 General.

Supervision and Servicing. It is a primary objective of the Agency to provide supervised credit to borrowers in financial, production or other difficulty in a manner that will assure the maximum opportunity for their recovery and, at the same time, get the best recovery for the Government. Supervision and servicing are continuing processes that begin the day a farmer comes into the office. Providing supervised credit has two objectives:

(a) To help farmers set goals, work on problem areas and work toward graduation to commercial credit;

(b) To recover the maximum possible amount for the Government.

9. Section 1951.903 is revised to read as follows:

§ 1951.903 Authorities and responsibilities.

(a) *Responsibilities.* Servicing officials will make full use of the National automated tracked system to track and manage the FLP primary and preservation loan servicing and debt settlement programs.

(b) *Authorities.* All loan servicing decisions except as set forth in this section will be made by the servicing official except the approval of writedown and buyout of a borrower's debt. Also, all applications for debt settlement of FLP loans must be recommended by the County Committee (except where the debt has been discharged through bankruptcy), approved by the State Executive Director or the Administrator (depending upon the amount of debt to be settled), and processed in accordance with the provisions of subpart B of part 1956 of this chapter. Servicing officials are authorized to accept a buyout payment when the borrower(s) pays the current market value of the security set forth in § 1951.909 of this Instruction. Only State Executive Directors are authorized to approve writedown and buyout in accordance with § 1951.909 of this part and release a divorced spouse from liability on the debt in accordance with § 1951.909(a) of this part.

10. Section 1951.904 is added to read as follows:

§ 1951.904 Mediation, reviews and appeals.

(a) *Participant rights.* (1) For loan servicing under this subpart, mediation or a voluntary meeting of creditors will be offered if the DALR$ calculations indicate that a feasible plan of operation cannot be developed considering all primary loan service programs, Softwood Timber, and Conservation Contracts. In states with a USDA Certified Mediation Program, mediation will be offered. In all other states, a voluntary meeting of creditors will be offered.

(2) Any negotiation of an Agency appraisal must be completed prior to the meeting of creditors or mediation.

(3) If the borrower does not request mediation or a voluntary meeting of creditors as offered in Exhibit E of this subpart within 45 days, the servicing official will issue the appropriate "Notice of Intent to Accelerate or to Continue Acceleration and Notice of Borrowers' Rights."

(4) Whenever the servicing official makes a decision that will adversely affect a participant, the participant will be informed that the decision can be reviewed in accordance with 7 CFR part 780 and indicate whether it can be appealed to the USDA National Appeals Division (NAD) according to regulations set forth in 7 CFR part 11. Nonprogram (NP) participants are not entitled to appeal rights.

(b) *Non-appealable decisions.* The following types of decisions are not appealable:

(1) Decisions made by parties outside the agency, even when those decisions are used as a basis for the agency's decisions.

(2) Decisions that do not meet the eligibility requirements of 7 CFR part 11.

(3) Interest rates as set forth in Agency procedures, except appeals alleging application of the incorrect interest rate.

(4) Refusal to request or grant an administrative waiver permitted by program regulations.

(5) Denials of assistance due to lack of funds.

(6) In cases where the adverse decision is based on both appealable and non-appealable actions, the adverse action is not appealable.

(7) Determinations previously made by the Agency that have been appealed, and a NAD decision adverse to the participant has been entered; or upon which the time frame for appeal has expired with no appeal being requested.

(c) *Next-level review.* Any adverse decision, whether appealable or non-appealable, may be reviewed in accordance with 7 CFR part 780.

(d) *NAD review.* (1) A participant may request that NAD review the Agency's determination that the decision may not be appealed.

(2) A participant may request that NAD review any decision that is appealable.

(3) NAD will review the participant's request in accordance with 7 CFR part 11.

(e) *Agency actions pending outcome of appeal.* Assistance will not be discontinued pending the outcome of an appeal of any adverse action. Releases for essential family living and farm operating expenses will not be terminated until the account has been accelerated.

(f) *Time limits.* Time limits for action under this subpart will be tolled during the pendency of an appeal, but not during the pendency of a request that NAD determine that a matter is or is not appealable.

11. Section 1951.906 is revised to read as follows:

§ 1951.906 Definitions.

As used in this subpart, the following definitions apply:

Borrower. An individual or entity which has outstanding obligations to the agency under any Farm Loan Programs (FLP) loan, without regard to whether the loan has been accelerated. This does not include any such debtor whose total loans and accounts have been foreclosed or liquidated, voluntarily or otherwise. Collection-only borrowers are considered borrowers. Borrower also includes any other party liable for the FLP debt. Nonprogram (NP) borrowers are not considered borrowers for the purposes of this subpart.

CONACT or CONACT property. Property which secured a loan made or insured under the Consolidated Farm and Rural Development Act. Within this part, it shall also be construed to cover property which secured other FLP loans.

Conservation contract. A contract under which a borrower agrees to set aside land for conservation, recreation or wildlife purposes in exchange for cancellation of a portion of an outstanding FLP debt. Relief obtained in this manner is not considered debt forgiveness as defined in this section.

Consolidation. The combining and rescheduling of the rates and terms of two or more notes of the same type of OL or EO loans, EE operating-type loans or EM loans. EM actual loss loans will not be consolidated.

Current market value buyout. Termination of a borrower's loan obligations to the agency in exchange for payment of the current appraised value of the security property, less any prior liens.

Debt forgiveness. For the purposes of loan servicing, debt forgiveness is defined as a reduction or termination of a direct FLP loan in a manner that results in a loss to the Agency. Included, but not limited to, are losses from a writedown or writeoff under this subpart, subpart J of this part, subpart B of part 1956 of this chapter, after discharge under the bankruptcy code, and associated with release of liability. Debt cancellation through conservation contracts is not considered debt forgiveness under this subpart.

Debt settlement. The settlement of debts owed the United States for FLP loans. The types of debt settlement programs are: compromise, adjustment, cancellation and chargeoff.These programs are administered in accordance with subpart B of part 1956 of this chapter. Any action through debt settlement which results in a loss to the Agency will be considered debt forgiveness.

Deferral. An approved delay in making regularly scheduled payments, including softwood timber (ST) loans. Deferral is not considered debt forgiveness.

Delinquent borrower. A borrower who has failed to make all or part of a payment which is due for 30 or more calendar days after the due date.

Entity. A corporation, partnership, joint operation, or cooperative.

Farm Loan Programs (FLP) loans. This refers to Farm Ownership (FO), Soil and Water (SW), Recreation (RL), Economic Opportunity (EO), Operating (OL), Emergency (EM), Economic Emergency (EE), Softwood Timber (ST) loans, and Rural Housing loans for farm service buildings (RHF).

Farm plan. Form FmHA 431–2, "Farm and Home Plan," or other plans or documents acceptable to the agency that will accurately reflect the production and financial management of the farming operation for one production cycle. The agency will not require the use of consolidated financial statements.

Feasible plan. A feasible plan must be based upon the applicant or borrower's actual records that show the farming operation's actual income, production and expenses. These records will include income tax returns and supporting documents (hereafter called income tax records). The records must be for the most recent five-year period or, if the borrower has been farming less than five years, for the period which the borrower has farmed. For borrowers who have been farming for less than five years, other available records will be used in the order listed in section § 1924.57(d)(1) of subpart B of part 1924 of this chapter to complete a five-year history. Future production yields will be based on an average of the most recent past five years' actual production yields. Borrowers with yields affected by disasters in at least two of the five most recent years may exclude the crop year with the lowest actual yield. In addition, in accordance with section § 1924.57(d)(1) of subpart B of part 1924 of this chapter, if the applicant's remaining disaster years' yields are less than the County average yield, and the borrower's yields were affected by the disaster, County average yields will be used for those years. If County average yields are not available, State average yields will be used. These records will be used along with realistic anticipated prices, including any planned FLP loan payments, to determine that the income from the farming operation, and any reliable off-farm income, will provide the income necessary for an applicant or borrower to at least be able to:

(1) Pay all operating expenses and taxes which are due during the projected farm business accounting period.

(2) Meet scheduled payments on all debts.

(3) Meet up to 110 percent, but not less than 100 percent, of the amount indicated for payment of farm operating expenses, debt servicing obligations and family living expenses. The Agency will assume that a borrower needs this margin to meet all obligations and continue farming. However, this will not prohibit a borrower from receiving debt restructuring because the farm and home plan shows less than such a margin. In no case will a borrower with a cash flow of less than 100 percent receive restructuring.

(d) Provide living expenses for the family members of an individual borrower or a wage for the farm operator in the case of a cooperative, corporation, partnership, or joint operation borrower, which is in accordance with the essential family needs. Family members include the individual borrower or farm operator in the case of an entity, and the immediate members of the family which reside in the same household.

Financially distressed. A financially distressed borrower is one who will not be able to make payments as planned for the current or next business accounting period. Borrowers will also be considered as in financial distress if it is determined that they will not be able to project a feasible plan of operation for the next business accounting period.

Foreclosed. The completed act of selling security either under the "power of sale" in the security instrument or through court proceedings.

Good faith. An eligibility requirement for Primary Loan Servicing and Current Market Value Buyout. Borrowers are considered to have acted in "good faith" if they have demonstrated "honesty" and "sincerity" in complying with the requirements of Form 1962–1, "Agreement for the Use of Proceeds/Release of Chattel Security," and any other written agreements made with the agency, as documented in the case file. In addition, the agency must substantiate any allegations of fraud, waste, or conversion with a written legal opinion from the Office of the General Counsel (OGC) when such allegations are used to deny a servicing request. A borrower will not be considered to lack "good faith" if the sole basis for such a determination was the disposition of normal income security (§ 1962.4 of subpart A of part 1962 of this chapter) prior to October 14, 1988, without the Agency's consent and the borrower demonstrates that the proceeds were used to pay essential family living and farm operating expenses that could have been approved according to § 1962.17 of subpart A of part 1962 of this chapter.

Homestead Protection. The right of a former owner to apply to lease, with an option to purchase the Homestead Protection property, not to exceed 10 acres.

Homestead Protection property. This refers to the principal residence which secured a FLP loan.

Indian Reservation. Indian reservation means all land located within the limits of any Indian reservation under the jurisdiction of the United States, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; trust or restricted land located within the boundaries of a former reservation of a Federally recognized Indian tribe in the State of Oklahoma; or all Indian allotments the Indian titles to which have not been extinguished if such allotments are subject to the jurisdiction of a Federally recognized Indian Tribe.

Limited Resource Program. A reduction of interest rates for operating loans (OL), farm ownership loans (FO) and soil and water loans (SW).

Liquidated. The completed act of voluntarily selling security to end the obligation for the debt, or involuntarily as the result of a completed civil suit against a borrower to recover collateral against the debt. The filing of a claim in a bankruptcy action is not a complete liquidation of the borrower's accounts. Collection-only accounts are not considered liquidated.

Loan service program. A Primary Loan Servicing program or a Preservation Loan Servicing program (Homestead Protection) for FLP loan borrowers.

New application. An application submitted on or after November 28, 1990, for loan servicing programs. This does not include an application reconsidered after an appeal or revision of an application submitted before November 28, 1990.

Nonessential assets. Nonessential assets are those in which the borrower has an ownership interest, that:

(1) do not contribute a net income to pay essential family living expenses or to maintain a sound farming operation (see 1962.17 of subpart A of part 1962 of this chapter); and

(2) are not exempt from judgment creditors or in a bankruptcy action. Each State Executive Director, with the guidance of the Office of the General Counsel, will issue a State Supplement to establish guidelines on items that are exempt from judgment creditors and are exempt under bankruptcy law in accordance with statute.

Nonprogram (NP) loan. An NP loan results when a loan is made to an ineligible applicant or transferee in connection with a loan assumption and sale of inventory properties at ineligible

terms. Borrowers originally determined eligible by the agency and found to be ineligible after the loan was made due to an agency error are not considered to have nonprogram loans.

Preservation loan service program. See Homestead Protection.

Primary loan service program. Primary loan service program means:

(1) loan consolidation, rescheduling, or reamortization;

(2) interest rate reduction, including use of the limited resource program;

(3) loan restructuring, including deferral, or writing down of the principal or accumulated interest; or

(4) any combination of the above.

Reamortization. Reamortization is rearranging the installment payments of a real estate loan, and may include changing the interest rate and terms of a loan made for Subtitle A purposes.

Rescheduling. Rescheduling is rewriting the rates and/or terms of OL, SL, EO loans, EE operating-type loans or EM loans made for Subtitle B purposes.

Writedown. For purposes of this subpart, writedown is reducing a borrower's debt to an amount that will result in a feasible plan of operation.

12. In § 1951.907, paragraphs (c), (d) and (e) are revised to read as follows and paragraph (f) is removed:

§ 1951.907 Notice of loan service programs.

* * * * *

(c) *Notification of borrowers 90 days past due on payments.* FLP borrowers who are at least 90 days past due (60 days delinquent) will be sent Exhibit A of this subpart with attachments 1 and 2 by certified mail, return receipt requested. If the borrower submits an incomplete application, see paragraph (e) of this section for procedures on requesting additional information. Delinquent borrowers who have also violated their loan agreements with the agency will be handled in accordance with § 1951.907(e). In addition to the requirements set forth above, servicing officials will provide Attachments 1 and 2 of Exhibit A of this subpart to these borrowers, as set forth below:

(1) At the time an application is made for participation in an FLP loan service program, unless such application is the result of the notice provided to the borrower in accordance with this section,

(2) On written request of any FLP borrower, whether delinquent or not, prior to the sending of a packet under paragraph (c) of this section, and

(3) If a borrower has not previously received exhibit A and attachments 1 and 2 of this subpart, such exhibit and attachments will be provided before the earliest of:

(i) Initiating any liquidation action,

(ii) Accepting a voluntary conveyance of security, or the borrower requesting permission to sell security,

(iii) Accelerating payments on the loan,

(iv) Repossessing the borrower's property,

(v) Foreclosing on property, or

(vi) Taking any other collection action.

(d) *Notification of borrowers in non-monetary default; delinquent borrowers also in non monetary default, or when a junior or senior lienholder is foreclosing.* FLP borrowers who are in non-monetary default will be sent attachments 1, 3, and 4 of exhibit A of this subpart by certified mail, return receipt requested. If a case is in the hands of the Department of Justice or in litigation, no loan servicing action will be taken without Department of Justice or OGC concurrence (see 1962.49 of this chapter). Any servicing request will be processed as indicated in § 1951.909. The account will not be liquidated until the borrower has the opportunity to appeal any adverse decision. After any final appeal decision that does not result in a resolution of the loan defaults, the account will be accelerated.

(e) *Request for primary and preservation loan service programs.*(1) To request consideration for Primary and Preservation Loan Service programs, borrowers who are sent exhibit A, with attachments 1 and 2 or attachments 1, 3, and 4 must complete and return attachment 2 or attachment 4, as appropriate, to the local county office within 60 days after receiving those documents, with the forms required by this paragraph for a completed application.

(2) If borrowers are sent attachments 3 and 4 and do not request servicing within 60 days, the agency will proceed with liquidation in accordance with § 1955.15 of this chapter.

(3) If borrowers are sent exhibit A and attachments 1 and 2 of this subpart and do not submit a completed application within the 60-day time period, the servicing official will send attachments 9 and 10, or 9–A and 10–A of exhibit A of this subpart, as applicable. These attachments will not be sent to borrowers who are being serviced in accordance with § 1951.908. For borrowers receiving attachments 9 and 10 or 9–A and 10–A, the agency will proceed with liquidation in accordance with § 1955.15 of this chapter.

(4) If a borrower has moved and left a forwarding address, the certified mail will be forwarded. If no forwarding address is given, the mail will be returned to the county office. The servicing official will immediately send the documents from the certified mail package to the borrower's last known address, first class mail. The borrower's response date for a completed application will begin on the date of receipt of the certified mail or 3 days following the date of first class mailing, whichever is earlier.

(5) An application for loan service programs must include the following forms (available in any agency office), and data, unless the information is already in the borrower's case file and still current, as determined by the approval official:

(i) Attachment 2 or 4 of exhibit A to this subpart, response form to apply for loan servicing.

(ii) Form 410–1, "Application for FmHA Services," including a current (within 90 days) financial statement of all individuals and entities personally liable for the FLP debt.

(iii) Form 431–2, "Farm and Home Plan," or any other form or submission acceptable to the agency that sets forth a plan of operation and the necessary information. Commodity prices supplied by the agency will be used to complete the forms.

(iv) Form 440–32, "Request for Statement of Debts and Collateral."

(v) Form RD 1910–5, "Request for Verification of Employment."

(vi) Form AD–1026, "Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification," if the one on file with the agency does not reflect all the land owned and leased by the borrower.

(vii) Form SCS CPA–26, "Highly Erodible Land and Wetland Determination," if not previously on file with the agency for the farm operation. This form is included as part of the application after being completed by NRCS. (This form is available at NRCS local offices.)

(viii) If the applicant wants to be considered for a conservation contract, a map or copy of an aerial photo of the farm, on which the applicant must show that portion of the farm and approximate acres to be considered in a request for debt restructuring provided for in the conservation contract program.

(ix) The most recent five years' income tax returns and supporting documents, unless the borrower has been farming for less than five years. In such case, income tax returns and supporting documents for the tax years that the borrower farmed.

(x) If the borrower is applying for debt settlement, Form RD1956–1,

"Application for Settlement of Indebtedness."

(6) The borrower will be provided with copies of these forms when Exhibit A is sent, and may request copies of regulations and the forms manual inserts (FMI) in writing within 30 days of receipt of the loan servicing notice. If these latter items are not provided within 10 days of such a request, the borrower's time for submission of a complete application will be increased by the period of delay in excess of 10 days caused by the Agency.

(7) Not more than one 60-day period will be provided to a borrower to respond to the notice of loan service programs except in accordance with § 1951.908. Subsequent notices as provided for in this section will not be issued until the first notice is resolved.

13. Section 1951.908 is revised to read as follows:

§ 1951.908 Servicing financially distressed current borrowers.

A borrower who is financially distressed, but is not yet delinquent on FLP payments, may request servicing at any time.

(a) *Notification.* If a current plan of operation demonstrates that the borrower is or will be financially distressed, as defined in § 1951.906, or if the borrower otherwise requests servicing, the servicing official will provide attachments 1 and 2 of exhibit A of this subpart.

(b) *Eligibility.* To be considered for servicing in accordance with this section, the borrower must submit to the county office within 60 days Attachment 2 of exhibit A of this subpart and a complete application in accordance with the requirements of § 1951.907(e).

(1) The eligibility requirements of § 1951.909(c) (1) and (2) apply to servicing under this section.

(2) Eligible financially distressed borrowers who are current on their FLP loan payments may be considered for the Primary Loan Service programs described in §§ 1951.909(e) (1), (2) and (3).

(3) Financially distressed borrowers who are not delinquent are not eligible for writedown of debt or buyout as described in 1951.909.

(c) *Processing the application.* The servicing official must process a completed application and notify the borrower of the decision.

(1) Current borrowers will be considered only for the Primary Loan Servicing programs described in §§ 1951.909 (e) (1), (2), and (3). The servicing official must use the Debt and Loan Restructuring System (DALR$) program, in accordance with exhibit J–1 of this subpart, to determine if a feasible plan can be developed as defined in § 1951.906.

(2) If a feasible plan can be developed, the borrower will be sent exhibit B of this subpart with attachment 1 and the printout of the DALR$ calculations as notification of the favorable decision. The borrower must accept the offer within 45 days of its receipt by returning attachment 1 to exhibit B of this subpart or the offer will expire. If the borrower accepts, loan restructuring will be processed in accordance with §§ 1951.909 (e) (1), (2), or (3), as applicable.

(3) If a feasible plan cannot be developed, the borrower will be informed of the reasons for the adverse decision. The DALR$ printout will be attached.

(4) Current borrowers who have received notices under this section and who do not apply for primary loan servicing, or who refuse an offer to restructure their debt, and later become 90 days past due on the FLP loan payment, will be sent notices as described in § 1951.907.

(5) Borrowers whose accounts are not delinquent may receive rescheduling, reamortization, consolidation, or deferral under this subpart only after they have paid at least a portion of the interest due on their FLP debt. The portion due will be based on the applicant's ability to pay, as determined by thoroughly analyzing the farm operation, including any off-farm income. The payment must be made on or before the date that restructuring is closed. Borrowers in non-monetary default, but not delinquent on their FLP debt, must cure the non-monetary default before they may be considered for servicing under this paragraph.

14. Section 1951.909 is revised to read as follows:

§ 1951.909 Processing primary loan service programs requests.

(a) *Servicing official responsibilities.* (1) After receipt of attachment 2 or 4 and a completed application in accordance with § 1951.907(e), the servicing official will consider all primary service programs options in this subpart. That official must use the Debt and Loan Restructuring System (DALR$) computer program, in accordance with exhibit J–1 of this subpart for borrowers who submit a new application, to attempt to find the combination of loan service programs that will result in a feasible plan. Borrowers who request loan servicing and who have disposed of all the FLP loan security, including Collection-Only borrowers, will be processed in accordance with part 1956, subpart B, of this chapter. If the application includes a request for the Conservation Contract program, as indicated by the submission of the information required in § 1951.907(e)(5)(viii), the servicing official will determine whether the borrower is eligible, based on criteria as set forth in exhibit H of this subpart. If the borrower is eligible, the servicing official will make an estimate of the information needed to permit the DALR$ program to make the calculations of feasibility of the Conservation Contract. The assumptions used to establish the estimates will be based on the servicing official's knowledge of the farmland values, the borrower's repayment ability, and the proposed contract acreage. When the DALR$ calculations for restructuring are completed, the borrower will be notified as set forth in paragraph (h) of this section.

(2) When jointly liable individual borrowers have been divorced and one has withdrawn from the operation, the State Executive Director will consider, upon the recommendation of the servicing official, the release of liability for the individual who has withdrawn if the following conditions are met.

(i) A divorce decree or property settlement document held the withdrawing party not responsible for the loan payments;

(ii) The withdrawing party's interest in the security is conveyed to the borrower with whom the loan will be continued;

(iii) The person withdrawing does not have any repayment ability for the loan, and does not own any nonessential assets, as defined in § 1951.906;

(iv) The individual withdrawing has never received debt forgiveness on another direct loan; and.

(v) The withdrawing party provides a copy of the divorce decree and property settlement, evidence of conveyance, a current financial statement, verification of income and debts, and Form 431–2 or Form RD–1944–3 as applicable.

(3) If a completed application includes a request for a waiver from the training required by paragraph (c)(5) of this section, the County Committee will, prior to any offer of Primary Loan Servicing, evaluate the borrower's knowledge and ability in production and financial management and determine the need for additional training as set out in § 1924.74 of this chapter.

(b) *Adverse determination.* (1) If the approval official determines that the borrower is not eligible for any of the Primary Loan Service programs or

restructuring is not feasible because of debt held by other lenders, the borrower will be advised of mediation or meeting of creditors as provided in paragraph (h)(3) of this section. If mediation or the meeting of creditors does not result in a feasible plan, the borrower will be sent attachments 5 and 6, or 5–A and 6–A, of exhibit A of this subpart, as applicable.

(2) Borrowers who do not buy out their debt at its current market value, or who indicate in writing that they do not wish to buy out, will automatically be considered for debt settlement if they submitted an "Application For Debt Settlement." Any appeal of a primary loan servicing denial will be completed before the servicing official begins any further processing of a Debt Settlement or Homestead Protection request. If the adverse decision on restructuring is upheld on appeal, the borrower will be considered for these options. The servicing official will complete the processing of the borrower's application for Debt Settlement in accordance with part 1956 of this chapter. Homestead Protection will be processed in accordance with § 1951.911. No acceleration or foreclosure will occur until the appeal process has been completed for servicing or debt settlement requests timely submitted under this subpart.

(3) Applicants may request a negotiated appraisal in accordance with paragraph (i) of this section if they object to the agency's appraisal. Negotiation of the appraisal, if requested by the borrower, will take place before mediation or a voluntary meeting of creditors.

(c) *Eligibility.* Applicants will be eligible for Primary Loan Service programs if the servicing official has determined that they meet all of the following requirements:

(1) The delinquency or financial distress does exist and is due to circumstances beyond the control of the borrower, due to a reduction in income which reduces cash flow to a point where outflows exceed inflows, only as follows:

(i) The reduction in essential income from a non-farm job due to unemployment or underemployment of the borrower-operator or spouse is caused by circumstances beyond their control;

(ii) Illness, injury, or death of an individual borrower, stockholder, member or partner who operates the farm;

(iii) Natural disasters, an outbreak of uncontrollable disease, or uncontrollable insect damage which caused severe loss of agricultural production that reduced repayment ability so that scheduled payments cannot be made; or

(iv) Economic factors that are widespread and not limited to an individual case, such as high interest rates or low market prices for agricultural commodities as compared to production costs, that reduce repayment ability so that the scheduled payments cannot be made.

(2) The borrower has acted in good faith.

(3) Borrowers who do not meet the eligibility requirements of this section will be notified of the adverse decision by sending attachments 5 and 6, or 5–A and 6–A, of exhibit A of this subpart, as appropriate.

(4) Borrowers with sufficient nonessential assets to bring the FLP loan account current are not eligible for assistance under this subpart and will be processed in accordance with § 1951.910 of this subpart.

(5) The borrower must agree to meet the training requirements of § 1924.74 of this chapter unless a waiver is granted in accordance with that section. The training requirement applies to all primary loan servicing programs.

(d) *Feasibility determinations.* The servicing official must determine:

(1) That the borrower will be able to develop a feasible plan.

(2) If restructured, the loan will result in a net recovery to the Government that will be equal to or greater than the net recovery value from involuntary liquidation or foreclosure as calculated in accordance with paragraph (f) of this section. A comparison with net recovery to the Government, however, will not be made when establishing conservation contracts under exhibit H of this subpart.

(e) *Primary loan service programs.* Any FLP borrower may request Primary Loan Servicing Programs described in this subpart at any time prior to becoming 90 days past due. However, borrowers must show that they are not able to pay their debt as scheduled before the agency will approve Primary Loan Servicing Programs. The agency will consider the borrower's other assets in accordance with § 1951.910 of this subpart. Rescheduling, reamortization, consolidation, or deferral may be utilized for any eligible borrower. Existing deferrals will be cancelled at the same time additional primary loan servicing is received. The loan will be entered into DALR$ as if the deferral were already cancelled. If DALR$ shows that a borrower can develop a feasible plan without a writedown at a lower cash flow margin than with a writedown, that borrower will be provided the opportunity to choose between restructuring with or without a writedown.

(1) *Consolidation and rescheduling of OL and EO loans, EE operating-type loans and EM loans made for subtitle B purposes including EM loss loans.* This subsection explains how to consolidate and/or reschedule *existing* loans, providing the borrower agrees to such actions. When the servicing official determines that consolidation and/or rescheduling will assist in the orderly collection of the loan, the servicing official should take such action provided all of the following conditions exist:

(i) The borrower meets the eligibility requirements in paragraph (c) of this section;

(ii) Such action is not taken to circumvent the FLP graduation requirements;

(iii) The borrower's account is not being serviced by the OGC or the U.S. Attorney and there are no plans to have the account serviced by either of these offices in the near future;

(iv) Loans may be rescheduled or reamortized, as appropriate, to bring the account current or to keep the account from becoming delinquent. A sufficient number of notes including all delinquent notes will be rescheduled to permit the development of a feasible plan of operation;

(v) The borrower will comply with the highly Erodible Land and Wetland Conservation provisions of exhibit M of subpart G of part 1940 of this chapter, if applicable;

(vi) Loans secured by real estate will not be consolidated and/or rescheduled, until the servicing official reviews the Government's real estate lien priority and value of security and decides that such an action will be in the best interest of the Government and the borrower. If there are any liens which were not in existence at the time the note was signed, the servicing official will ask the OGC for an opinion as to what lien position the Government will have if a new note is taken unless a State supplement authorizing this action has been issued on this subject;

(vii) Only loans of the same type will be consolidated;

(viii) EM actual loss loans will not be consolidated;

(ix) Loans serviced under subpart L of this part will not be consolidated with another loan;

(x) Loans that have been deferred under this section will not be consolidated and/or rescheduled during the deferral period;

(xi) Terms of consolidated and/or rescheduled loans are as follows:

E of exhibit J of this subpart for an

(iii) *Approval offical determinations.*

there is no typical year, then it will be

(A) Consolidated and/or rescheduled loans will be repaid according to the borrower's repayment ability, but will not exceed 15 years from the date of the consolidation and/or rescheduling action, except:

(B) Repayment of loans solely for recreation and/or nonfarm enterprise purposes may not exceed seven years from the date of the consolidation and/or rescheduling action (the date the new note is signed).

(C) Repayment of EE loans may not exceed 15 years from the date of rescheduling.

(xii) Interest rates of consolidated and/or rescheduled loans will be as follows:

(A) The interest rate for consolidated and/or rescheduled loans will be the lesser of the current interest rate for that type of loan or the lowest *original* loan note rate on any of the original notes being consolidated and/or rescheduled. In the case of an OL-limited resource loan, it will be the lesser of the current limited resource OL loan rate or the original note rate. The interest rate for loans rescheduled but not consolidated will be the lesser of the current interest rate for that type of loan or the *original* loan note rate.

(B) At the time of the consolidation and/or rescheduling action, OL loans that were not assigned a limited resource rate when the loan was received, may be assigned a limited resource rate if:

(*1*) The borrower meets the requirements for the limited resource interest rate, and

(*2*) A feasible plan cannot be developed at regular interest rates and maximum terms permitted in this section.

(xiii) The original (old) note(s) will be marked "Rescheduled" and stapled to the new rescheduled promissory note and will be filed in the operation file. Copy(ies) for the borrower's(s') case file should be marked and stapled the same and filed in position 2 of the case file. If a transfer is involved, assumption agreement(s) will be marked and stapled with the note(s) and copies filed as indicated above. If part of a note is written down, the written down note will be marked "Rescheduled with Debt Write Down," and will be filed in the operation file.

(xiv) For applications received before November 28, 1990, the amount of outstanding accrued interest more than 90 days overdue and any outstanding protective advances, as defined in § 1965.11(b) of subpart A of part 1965 of this chapter, made on the loan will be added to the principal at the time of consolidation and/or rescheduling (the date the new note is signed by the borrower). Protective advances are not authorized for the payment of prior or junior liens except real estate tax liens. See section II E of exhibit J of this subpart for an explanation of how to schedule payment of interest not more than 90 days overdue; and

(xv) For new applications, the amount of outstanding accrued interest and any outstanding protective advances, as defined in § 1965.11(b) subpart A of part 1965 of this chapter, made on the loan will be added to the principal at the time of consolidation and/or rescheduling (the date the new note is signed by the borrower) in accordance with the provisions of exhibit J–1 of this subpart. Protective advances are not authorized for the payment of prior or junior liens except real estate tax liens.

(2) *Reamortization of FO, SW, RL, RHF, EE, or EM loans made for real estate purposes.* When the servicing official determines that a reamortization action will assist in the orderly collection of the loan, the servicing official should take such action, provided:

(i) The borrower meets the eligibility requirements of 1951.909(c) of this subpart;

(ii) Such action is not taken to circumvent the FLP graduation requirements;

(iii) The borrower's account is not being serviced by the OGC or the U.S. Attorney, and there are no plans to have the account serviced by either of these offices in the foreseeable future;

(iv) A feasible plan for the borrower cannot be developed with the existing repayment schedule. A sufficient number of notes, including all delinquent notes, will be reamortized to permit the development of a feasible plan of operation;

(v) The borrower will comply with the Highly Erodible Land and Wetland Conservation requirements of exhibit M of subpart G of part 1940 of this chapter, if applicable;

(vi) Loans that have been deferred in this supbart will not be reamortized during the deferral period unless the deferral is cancelled;

(vii) Terms of repayment of reamortized loans are as follows:

(A) Reamortized installments usually will be scheduled for repayment within the remaining time period of the note or assumption agreement being reamortized. If repayment terms are extended, the new repayment period may not exceed 40 years from the date of the original note or assumption agreement or the useful life of the security, whichever is less. EE loans for real estate purposes, which are secured by chattels only, may be reamortized over a period not to exceed 20 years from the date of the original note or assumption agreement, or the useful life of the security, whichever is less. RHF loans may not exceed 33 years from the date of the original note or assumption agreement.

(B) The Agency's lien priority may be affected if the final due date of the original loan is extended. A State supplement will be issued to provide instructions on the effect that a change in the final due date has on security instruments and the actions necessary to retain the Government's lien priority. The State supplement will also include instructions for releasing the original security instrument when a new one is obtained.

(viii) Interest:

(A) The interest rate will be the current interest rate in effect on the date of reamortization (the date the new note is signed by the borrower), or the interest rate on the *original* Promissory Note to be reamortized, whichever is less. In the case of a limited resource loan, it will be the limited resource FO or SW loan rate or the original loan note rate, whichever is less.

(B) At the time of the reamortization, an FO or SW loan that was not assigned a limited resource rate when the loan was received, may be changed to a limited resource interest rate if:

(*1*) The borrower meets the requirements for a limited resource interest rate,

(*2*) A feasible plan cannot be developed at regular interest rates and at the maximum terms permitted in this section, and

(*3*) For SW loans, the loans funds were used for soil and water conservation and protection purposes as set forth in § 1943.66 (a)(1) through (a)(5) of subpart B of part 1943 of this chapter.

(C) For applications received before November 28, 1990, the amount of accrued interest more than 90 days overdue and any protective advances, as defined in § 1965.11(b) of subpart A of part 1965 of this chapter, charged to the borrower's account, will be added to the principal at the time of the reamortization action (the date the new note is signed by the borrower). *Protective advances are not authorized for the payment of prior or junior liens except real estate tax liens.* If there are no deferred installments, the first installment payment under the reamortization will be at least equal to the interest amount which will accrue on the new principal between the date the Form 1940–17 is processed and the next installment due date. See section II E of exhibit J of this subpart for an explanation of how to schedule payments of interest not more than 90 days overdue. For new applications, the amount of outstanding accrued interest and any outstanding protective advances made on the loan will be added to the principal at the time of reamortization (the date the new note is signed by the borrower) in accordance with the provisions of exhibit J–1 of this subpart.

(ix) The original (old) note(s) will be marked "Reamortized" and will be stapled to the new promissory note and filed in the operational file. Copies for the borrower(s) case file should be marked and stapled the same and filed in position 2 of the case file. If a transfer is involved, assumption agreement(s) will be marked and stapled with the note(s) and copies filed as indicated above. If a part of a note is written down, the written down note will be marked "Reamortized with Debt Writedown" and will be filed as indicated above in this paragraph.

(3) *Deferral of existing OL, FO, SW, RL, EM, EO, RHF, and EE loans.—(i) Loan deferrals.* Deferrals will be considered only after it has been determined that consolidation, rescheduling, and reamortization, in accordance with this subpart, will not provide a feasible plan.

(ii) *Conditions.* In order to be considered for a deferral, the borrower must meet both of the following conditions:

(A) The need for the deferral must be temporary. To be *temporary* means that the borrowers will be able to show to the satisfaction of the servicing official that they will be able to resume payment on the debt by the end of the deferral period, or the new payments, as established by using consolidation, rescheduling, or reamortization can be resumed at the end of the deferral period; and

(B) Continuation of loan payments as presently scheduled without change, will unduly impair the borrower's standard of living. An unduly impaired standard of living is a condition whereby the borrower, due to circumstances beyond the borrower's control, is unable to pay essential family living expenses (partnerships, joint operators, corporations, and cooperatives do not have family living expenses), pay normal farm operating expenses, including reasonable and customary hired labor and/or salary paid to the operator(s) of a partnership, a joint operation, a corporation, or a cooperative, maintain essential chattels and real estate, and meet the scheduled payments of all debts.

(iii) *Approval offical determinations.* The approval official must:

(A) Determine that the borrower meets the eligibility requirements of § 1951.909(c) of this subpart;

(B) Determine that a deferral of payments is necessary and appropriately document the conditions causing the need for deferral;

(C) If a borrower owns 50 acres or more of marginal land as defined in exhibit G of this subpart and a feasible plan cannot be developed after consideration of a deferral, the servicing official will inform the borrower about the Softwood Timber (ST) loan program authorized by exhibit G of this subpart by sending Attachment 1 of exhibit G of this subpart by certified mail, return receipt requested, within 5 days after the adverse deferral determination. If the borrower requests the servicing official to determine that an ST loan may allow the borrower to continue to farm, within 15 days of the borrower's receipt of attachment 1, the servicing official will determine if the borrower is eligible, based on criteria as set forth in exhibit G of this subpart. If the borrower is eligible the servicing official will help the borrower to develop a plan to determine if a feasible operation can be developed utilizing this program. The discussion will be documented in the borrower's case file.

(iv) *Loan deferral considerations.* The servicing official will assist the borrower in completing a typical-year plan. If there is no typical year, the servicing official will assist the borrower with completing a plan of operation for each year of the deferral. The plans must be considered in DALR$.

(A) A sufficient number of loans must be considered for deferral to permit the borrower to have a feasible plan.

(B) A deferral plan may include a reorganization of the farming operation, including the use of new enterprises, to overcome existing financial, economic or other limitations of the operation. If the proposed restructuring requires capital expenditures, a subordination or additional loan will be considered. Deferral of additional loan installments beyond those needed to allow the borrower to develop a feasible plan will not be used to create additional cash reserve for capital purchases. Such purchases are not considered operating expenses.

(C) A typical year during the deferral period is a year which most closely represents the borrower's average operation for the entire deferral period. There may be no typical year for farming or ranching operations undergoing a major reorganization. If there is no typical year, then it will be necessary to develop a plan of operation for each year of the deferral. The plans must be considered in DALR$ to determine if each plan is feasible.

(D) The deferral of loan installments is not intended to create a high net cash reserve where revenue substantially exceeds expenses. If the deferral of a complete note would cause a high net cash reserve during the entire deferral period, a full deferral should not be granted. In such a case, a partial deferral should be considered to obtain a feasible plan of operation. The same approach should be used for situations in which there is no typical year and debt payments must vary throughout the deferral period.

(E) The borrower must have feasible plans of operation to support any deferral request. Plans of operation in conjunction with loan deferrals must be realistic and supported by the borrower's actual records.

(v) *Additional and subsequent deferrals.* If, during the period of the initial deferral, the borrower is unable to make the scheduled payments, the borrower may again request primary loan service actions. When considering primary servicing actions, existing deferred notes must be entered into DALR$ as if they had not been deferred. If it is necessary to defer additional loans to develop a feasible plan, such action will be taken if the deferral will result in a greater net recovery to the Government than debt writedown. Borrowers may obtain subsequent deferrals after the deferral period provided the conditions of this subsection are met.

(vi) *Term and interest rate.* A deferral period will not exceed five (5) annual installments. Deferral interest rates will be determined as specified in paragraphs (e)(1)(xii) and (e)(2)(viii) of this section.

(A) All loans being deferred will be consolidated, rescheduled or reamortized, as applicable. The promissory note rescheduled, reamortized or consolidated for the deferral will show "zero" as the installments due during the period of the deferral if the whole note is deferred and will not be changed during the deferral period unless the conditions of paragraph (e)(3)(v) of this section are met. The servicing official will determine the amount of interest that will accrue during the deferred period. This interest will be repaid in equal amortized installments during the term of the loan remaining after the deferral period. The calculated installments will be added to the remaining installments for the remaining principal balance and

inserted on the promissory note as a

When doing the analysis to determine

the time of closing the restructured

inserted on the promissory note as a scheduled installment for the remaining period of the loan. The Finance Office will apply the payments made on the note in accordance with subpart A of this part. For applications received before November 28, 1990, the amount of outstanding accrued interest more than 90 days overdue and any outstanding protective advances, as described in § 1965.11(b) of subpart A of part 1965 of this chapter, made on the loan will be added to the principal at the time of the deferral (the date the new note is signed by the borrower). Protective advances are not authorized for the payment of prior or junior liens except real estate taxes. See section II E of exhibit J of this subpart for an explanation of how to schedule payment of interest not over 90 days overdue. For new applications, the amount of outstanding accrued interest and any outstanding protective advances made on the loan will be added to the principal at the time of deferral (the date the new note is signed by the borrower).

(B) The field office will process the deferral via the Automated Discrepancy Processing System (ADPS).

(C) If a deferral is approved, the borrower's name and the date of approval will be recorded and maintained in accordance with subpart A of part 1905 of this chapter. The Finance Office will provide the county office with a quarterly status report for each borrower who has received a deferral.

(D) Six months prior to the end of the deferral period the servicing official will notify the borrower in writing of the expiration of the deferral and the amount and date of the borrower's first upcoming installment of the debt.

(E) A deferral will be cancelled if the loan is later restructured in accordance with this subpart. The cancellation will be processed via ADPS.

(vii) *Increase in repayment ability.* At the time the servicing official makes the analysis required by § 1924.60 of subpart B of part 1924 of this chapter, the servicing official will determine whether the borrower has had an increase in income and repayment ability. If an income increase is substantial enough to enable the borrower to graduate, the case will be handled in accordance with subpart F of this part. If an increase would enable the borrower to make some payments during the deferral period, the servicing official will, in writing, ask the borrower to sign a Form 440–9, "Supplementary Payment Agreement," within 30 days of the date of the written request. The borrower will be provided appeal rights. When doing the analysis to determine whether there is a substantial increase in income and repayment ability, the servicing official will determine whether this increase exists by comparing it to the original plan developed in the deferral application and also to plans developed for the current operating year to determine that the excess income is not needed for essential living and operating expenses or scheduled debt payment. Refusal to sign Form 440–9 will be considered a non-monetary default and will be handled as set forth in § 1951.907(e) of this subpart. If the borrower signs Form 440–9 and later does not honor the terms and conditions of the repayment agreement, the borrower's account will be handled as set forth in § 1951.907 of this subpart.

(4) *Writedown.* The following conditions shall be met in order for a borrower to receive writedown of FLP debts:

(i) No other Primary Loan Service programs, including deferral, nor any combination thereof, will produce a feasible plan that will permit the borrower to continue the operation. However, if DALR$ shows that a borrower can develop a feasible plan without a writedown at a lower cash flow margin than with a writedown, then the borrower will be provided the opportunity to choose between restructuring with or without a writedown;

(ii) The borrower must never have received debt forgiveness on another direct loan at any time;

(iii) The amount written off may not exceed $300,000.

(iv) A feasible plan must be developed that will result in a present value of loans to be repaid to the Government which is equal to or more than a net recovery from an involuntary liquidation or foreclosure;

(v) The borrower must comply with the Highly Erodible Land and Wetland Conservation requirements of exibibit M of subpart G of part 1940 of this chapter, if applicable;

(vi) The borrower must agree to a Shared Appreciation Agreement if the loan is secured by real estate;

(vii) Loans written down with the Primary Loan Servicing programs will be rescheduled, reamortized, or deferred in accordance with paragraph (e) of this section; and

(viii) Borrower must agree to a lien on certain assets as provided in 1951.910 of this subpart, including nonessential assets, where the net recovery value of these assets was not paid to the Agency. (The Agency's lien will be taken only at the time of closing the restructured loans); and

(ix) Debt reduction received through conservation easements or contracts will not be counted toward the limitations in paragraphs (e)(4) (ii) and (iii) of this section.

(f) *Determining value of net recovery from involuntary liquidation.* After receipt of a complete application for Primary and Preservation Loan Service programs, the servicing official will make the calculations required in this section and notify the borrower of the result. For New Applications, nonessential assets will be considered in accordance with § 1951.910(a) of this subpart.

(1) The servicing official will use the computer program, DALR$, to determine the net recovery to the Government equivalent to involuntary liquidation of the collateral securing the FLP debt in accordance with Exhibit J or J–1 of this subpart, "Debt and Loan Restructuring System," as applicable, and will follow the guidance provided by State supplements and Exhibit I of this subpart, "Guidelines for Determining Adjustments for Net Recovery Value of Collateral." The servicing official will determine the current market value of the collateral in the borrower's possession including tangible property in existence and of record in accordance with subpart E of part 1922 of this chapter for real estate property, and on Form 440–21, "Appraisal of Chattel Property." The servicing official also will determine the current market value of any bank accounts, stocks and bonds, certificates of deposit and the like pledged to and/or in the possession of the Agency. Collateral may include real estate, chattels, tangible property and property such as bank accounts, stocks and bonds, certificates of deposit, and the like. Chattels include machinery, equipment, livestock, growing crops, and crops in storage. Tangible property may include accounts receivable (including Government payments), inventories, supplies, feed, etc. From the current market value of the collateral in the borrower's possession, or pledged to and/or in the possession of the Agency (in the case of bank accounts, stock and bonds, certificates of deposit, and the like), the following adjustments will be made:

(i) Subtract the amount which would be required to pay prior liens on the collateral;

(ii) Subtract taxes and assessments, depreciation, management costs, and interest cost to the Government based on the 90-day Treasury Bills (published in a National Office issuance). Taxes and assessments, depreciation, management costs, as well as interest costs will be calculated on the current market value of the property for the average inventory holding period. The holding period for suitable inventory farm property will be established by each State as of July 1 each year using Report Code 597. The months that the suitable property is under lease will not be included in determining the average holding period for purposes of this subpart;

(iii) Adjust the current market value for estimated increases or decreases in value of the property for the holding period specified in paragraph (f)(1)(ii) of this section;

(iv) Subtract resale expenses, such as repairs, commissions, and advertising;

(v) Other administrative and attorney's expenses;

(vi) Add income which will be received after acquisition; and

(vii) For a borrower who submits a "new application" as defined in § 1951.906 of this subpart, add the value of any collateral that is not in the borrower's possession and that has not been approved on the Form 1962–1 or released in writing by the Agency, minus the value of any prior lienholder's interest. Collateral not in possession of the borrower is defined as any property specified in any agency security instruments for such borrower's FLP debt that the borrower has disposed of and that the Agency has not approved or released in writing. The value of normal income security not in possession of the borrower will not be added to the NRV if it could be post-approved for release in accordance with § 1962.17 of subpart A of part 1962. The value of any collateral that is not in the possession of the borrower will be determined by the servicing official based upon the best information available about the value of the collateral on or about the time of its disposition. In determining the value of such property, the Agency will use such sources as the publications Hotline (Farm Equipment Guide) and Official Guide (Tractor and Farm Equipment), sale prices at local public auctions, public livestock sale barn prices, comparable real estate sales, etc. Agency appraisal forms will be used to record the value of the missing collateral and the basis for the valuation.

(2) The State Executive Director will determine costs of involuntary liquidation of collateral for farm loans by analyzing the costs of involuntary liquidation within the geographic areas of their jurisdiction. The State Executive Director also will issue a State supplement of estimated costs and average holding time to be used as guidelines by servicing officials in making calculations of net recovery value under this subsection. Such cost analyses will be carried out in July of each year. The State Executive Director will consult with State Executive Directors of adjoining States, other lenders, real estate agents, auctioneers, and others in the community to gather and analyze the information specified in this subpart.

(g) *Determining net recovery value resulting from primary servicing.* The value of the restructured debt will be based on the present value of payments the borrower would make to the Agency using any combination of primary loan service programs that will provide a feasible plan. Present value is a calculation concept which assigns a lower current value to dollars received in later years than to dollars received at the present time. Servicing officials will use a discount rate based on 90-day Treasury Bills as of the date the borrower files the application for restructuring. The National Office will publish the 90-day Treasury Bill rate in a National Office issuance.

(h) *Notification requirements.* In those instances where the applicable notice is sent certified mail, and the certified mail is not accepted by the borrower, the servicing official will immediately send the documents from the certified mail package to the borrower's last known address, first class mail. The appropriate response time will commence 3 days following the date of mailing.

(1) *Offer.* If the calculations show that the value of the restructured debt is greater than or equal to the NRV as determined in paragraph (f) of this section, the servicing official will forward to the State Executive Director the borrower's Farm and Home Plan and the original printout of the DALR$ calculations. The servicing official will certify that the borrower meets all requirements for debt restructuring with the writedown amount specified on the printout. The State Executive Director's authorization to the servicing official to proceed with the writedown will be evidenced by the State Executive Director's signature affixed to the original copy of the DALR$ printout returned to the servicing official. Within 60 days after receiving a complete application, the servicing official will notify the borrower of the results of the calculations by sending Exhibit F of this subpart, certified mail, return receipt requested, and offer to restructure the debt. A printout of the DALR$ calculations will be attached to Exhibit F of this subpart.

(i) Exhibit F of this subpart will inform the borrower(s) of the Agency's offer to restructure the debt, the right to request a copy of the agency's appraisal, and other options which may include payment of nonessential assets and negotiation of the appraisal. If the borrower accepts the offer within 45 days following any appeal, the servicing official will restructure the debt within 45 days after receipt of the written notice of the borrower's acceptance.

(ii) If the borrower does not respond to exhibit F within 45 days, or declines the Agency's offer to restructure the debt without requesting an appeal or negotiation, the servicing official will send attachments 9 and 10, or 9–A and 10–A of exhibit A of this subpart, as applicable. If the borrower requests an appeal and the Agency is upheld, attachments 9–A and 10–A will not be sent until the borrower is given the opportunity to accept the original offer within 45 days following the final appeal decision. These borrowers will not have an additional opportunity to appeal the offer in attachments 9–A and 10–A. If attachment 10 or 10–A is not returned within 30 days of the borrower's receipt of the attachments, the account will be accelerated or foreclosed in accordance with § 1955.15 of subpart A of part 1955 of this chapter.

(iii) If the borrower submitted a new application and requests a negotiated appraisal within 30 days of receiving exhibit F, the negotiation of the appraisal will be completed in accordance with paragraph (i) of this section.

(A) After completing a negotiation of the appraisal, if the debt can be restructured, the servicing official will send exhibit F to the borrower making the new offer in accordance with paragraph (h)(1)(i) of this section.

(B) If the negotiated appraisal changes the DALR$ calculations so that the debt cannot be restructured, the borrower will be sent exhibit E, "Notification of Adverse Decision for Primary Loan Servicing, Mediation or Meeting of Creditors and Other Options," in accordance with paragraph (h)(3) of this section. The appraisal cannot be negotiated again and is not subject to appeal.

(2) *Conservation contracts.* If the borrower returned attachment 2 or 4 to Exhibit A of this subpart within 60 days, requesting a conservation contract by submitting a map or aerial photo showing the portion of the farm and approximate acres to be considered in the request, the servicing official will proceed with processing the request for debt relief as set forth in Exhibit H of this subpart. Borrowers who did not

previously ask for this option can make a request for the contract at this time by submitting a map or copy of an aerial photo indicating that portion of the farm and appropriate acres to be considered. Borrowers must submit the photo within 30 days of receiving Exhibit E of this subpart.

(3) *Mediation/voluntary meeting of creditors.* If the DALR$ calculations indicate a feasible plan of operation *cannot* be developed considering all Primary Loan Service Programs, Softwood Timber, or Conservation Contracts, the servicing official will take the following actions within 15 days from the date of the determination that the borrower's debt cannot be restructured as requested:

(i) Exhibit E, "Notification of Adverse Decision for Primary Loan Servicing, Mediation or Meeting of Creditors and Other Options," of this subpart will be sent to the borrower in all cases by certified mail, return receipt requested. A printout of the DALR$ calculations will be attached to exhibit E of this subpart.

(A) When the borrower is in a State *with* a USDA Certified Mediation Program, paragraph I in exhibit E will be used. Paragraph I tells the borrower that the Agency is requesting mediation with the borrower's creditors in an effort to obtain debt adjustment which would permit the development of a feasible plan of operation. If the borrower submitted a new application, the borrower must respond to exhibit E of this subpart if the borrower wants to negotiate the Agency's appraisal in accordance with paragraph (i) of this section. The borrower may request a copy of the Agency's appraisal. The Agency must participate in USDA Certified Mediation Programs whether or not the borrower responds to exhibit E of this subpart. Any negotiation of the appraisal must be completed prior to any mediation.

(B) In States *without* a certified mediation program, exhibit E of this subpart will be sent by certified mail, return receipt requested, to inform the borrower about the applicable options which may include a request for a copy of the Agency's appraisal, a meeting of creditors, payment of nonessential assets, negotiation of the appraisal and a request for an independent appraisal. Paragraph I of exhibit E of this subpart will be deleted. The purpose of the voluntary meeting of creditors is to develop a feasible plan. Paragraph II of exhibit E of this subpart, therefore, will be used to offer a voluntary meeting of creditors when the borrower has undersecured creditors who hold a substantial part of the borrower's total debt. A "substantial part of the borrower's total debt" means that the debt of the undersecured creditors is large enough so that if it were written down to zero, a feasible plan could be developed considering all primary servicing options. The servicing official will document such determination in the case file, and the servicing official will not offer to carry out a voluntary meeting of creditors when the undersecured debt is not a substantial part of the borrower's total debt. Such borrower will be informed later of additional rights, including appeal rights, when the Agency sends attachments 5 and 6, or attachments 5–A and 6–A, of exhibit A of this subpart. Any appeal may challenge the Agency's determination not to offer a voluntary meeting of creditors because the undersecured debt is not a substantial part of the borrower's total debt.

(C) Any negotiation of the Agency's appraisal must be completed prior to the meeting of creditors or mediation. If the borrower does not request any of the options offered in exhibit E of this subpart within 45 days, the servicing official will send attachments 5 and 6, or 5–A and 6–A of exhibit A of this subpart, as applicable, certified mail, return receipt requested.

(ii) If mediation or the voluntary meeting of creditors is held but is not successful, the borrower will be sent attachments 5 and 6, or 5–A and 6–A, of exhibit A of this subpart, as applicable, certified mail, return receipt requested, within 15 days of the unsuccessful mediation or meeting. The DALR$ computer printout will be attached to attachment 5 or 5–A of exhibit A of this subpart.

(4) *Buyout of loans.* The following notification and processing provisions also apply to buyout as offered in Attachments 5 and 5–A of Exhibit A of this subpart. After July 3, 1996, buyout will be at the Current Market Value (CMV) of the security.

(i) Eligible borrowers will have 90 days after the receipt of the notification of ineligibility for Primary Loan Service programs to buy out their loans at Current Market Value, or the balance of their unpaid FLP debt, whichever is lower.

(ii) The present value of the restructured loan must be less than the net recovery value to receive buyout.

(iii) The Agency will not provide direct or guaranteed credit for a buyout.

(iv) The borrower must never have received debt forgiveness on another direct loan. (Applies if any debt will be written off.)

(v) The amount written off may not exceed $300,000.

(vi) The borrower must have acted in good faith.

(vii) Debt reduction received through conservation easements or contracts will not be counted toward the limitations in paragraphs (h)(4) (iv) and (v) of this section.

(viii) The mortgage or deed of trust will be released in accordance with paragraph (k) of this section.

(ix) The State Executive Director must approve the buyout prior to offering buyout to the borrower if the Agency will be writing off any debt.

(i) *Administrative appeals and negotiation of appraisals.*—(1) *Appeals.* The time limit to pay the current market value of the security, as set out in paragraph (h)(4) of this section, will start on the day the borrower receives the final appeal or review decision upholding the initial decision. The borrower will have conclusively presumed to have received that decision within 3 days of mailing.

(2) *Appeal process.* (i) If the administrative appeal process results in a determination that the borrower is *eligible* for Primary Loan Servicing, the servicing official will process the request pursuant to § 1951.909 of this subpart. The information used will be that which the appeal officer used in making the decision on the appeal, unless stated otherwise in the final appeal decision letter. In cases of debt restructure resulting from appeals, the interest rate will be the lesser of the current rate or the original note rate on the date of the closing of the transaction. If implementation of the appeal decision would cause writedown or writeoff of more than $300,000 because of interest accrued after the adverse decision, the servicing official will process the action so as to complete the transaction.

(ii) If the administrative appeal process results in a determination that the borrower is *ineligible* for Primary Loan Servicing, the servicing official will send Exhibit K and Attachment 1 of this subpart and continue processing any application for debt settlement that may have been submitted in accordance with subpart B of part 1956 of this chapter. If the borrower does not return Attachment 1 of Exhibit K within 15 days of the date that it is sent, the servicing official will continue to process the application for Preservation Loan Servicing and any debt settlement. The account will not be accelerated or foreclosure will not continue until the borrower has the opportunity to appeal any denial of the Preservation Loan Servicing and any Debt Settlement request. If the borrower returns Attachment 1 of Exhibit K within 15 days of its mailing, the account will be accelerated.

(3) *Appraisal appeals.* (i) Borrowers appealing the current market appraisal completed by the Agency may obtain an appraisal by an independent appraiser selected from a list of at least three names provided by the servicing official. A borrower who submitted a new application may appeal the Agency's appraisal, if it has not previously been negotiated under paragraph (i)(4) of this section, and the denial of other issues of Primary Loan Service programs in which the appraisal, as part of the NRV calculation, is relevant. The cost of the independent appraisal must be paid by the borrower. The borrower will, upon request, have access to the case file and receive a copy of the Agency's appraisal. The independent appraiser must be a State certified general appraiser.

(ii) The appraisal report must conform to subpart E of part 1922 of this chapter for real estate and Form 440–21 for chattels.

(iii) If either the servicing official or the borrower discovers any mathematical or property description errors in the appraisal prior to or at the time of the review and comparison, necessary corrections may be made if both parties agree. The party discovering the error must contact the other for a meeting to approve the corrections.

(iv) If the Agency's appraisal and the borrower's independent appraisal vary in value by five percent or less, the borrower will select the appraisal to be used for servicing under this subpart.

(4) *Negotiation of appraisals.* A borrower who submits a new application may request to negotiate the appraisal one time only. Negotiation of appraisals is offered in Exhibits E and F of this subpart, as discussed in paragraph (h) of this section. All appraisals used in the negotiations must reflect the value of the property as of the same time frame as the Agency's initial appraisal. Errors will be handled in accordance with paragraph (i)(3)(iii) of this section.

(i) The borrower can request the list of independent appraisers from the servicing official on Attachment 2 of Exhibits E and F of this subpart. The borrower must provide the servicing official with a copy of his or her independent appraisal within 30 days of requesting negotiation. The borrower must pay for this independent appraisal. The borrower's independent appraiser and appraisal report must meet the qualifications described in paragraph (i)(3)(ii) of this section, but the independent appraiser need not be on the Agency's list of qualified appraisers. If the Agency's appraisal and the borrower's independent appraisal vary in value by five percent or less, the borrower will select the appraisal to be used for servicing under this subpart. No further negotiation will occur.

(ii) If the two appraisals differ by more than five percent, the servicing official will give the borrower a list of qualified, independent appraisers. The borrower will select one appraiser from the Agency's list to conduct a third appraisal. The appraiser cannot have conducted either the Agency's or the borrower's independent appraisal, and must meet the qualifications set out in paragraph (i)(3) of this section. The borrower, the appraiser and the servicing official will complete and sign the Appraisal Agreement (Attachment 3 of Exhibit F of this subpart). The appraiser will be sent a copy of the appraisal standards, subpart E of part 1922 of this chapter, for real estate and Form 440–21 for chattels. The borrower will submit to the servicing official the original or a copy of the third appraisal and its attachments and the appraiser's bill. The Agency will pay 50 percent of the cost. The borrower is responsible for paying the appraiser directly the remaining 50 percent of the cost.

(iii) Following the completion of the third appraisal, the three appraisals will be compared by the servicing official, who will average the two that are the closest in value. The average of the two closest in value will become the final appraised value. Errors will be handled in accordance with paragraph (i)(3)(iii) of this section.

(j) *Processing of writedown.* Borrowers who are eligible for Primary Loan Service Programs with writedown will have their loans rescheduled or reamortized in accordance with this subpart. All loan servicing actions approved in connection with the writedown must take place simultaneously. The borrower and servicing official will complete exhibit D to this subpart, "Shared Appreciation Agreement." Exhibit D provides for recapture as specified in 1951.914 of this subpart of a portion of any appreciation in the value of the real property securing the debt remaining after the writedown. The DALR$ computer program will be used to determine the notes to be written down.

(1) A separate Form 1940–17, "Promissory Note," will be used for each note or assumption agreement being reamortized.

(2) A Form 1940–17 will be completed, signed, and distributed as provided in the FMI.

(3) The loan servicing action date of approval is also the date that will be inserted on the rescheduled or reamortized Form 1940–17 in accordance with the provisions in the ADPS manual when establishing an equity record.

(4) A Form 1940–17 may be processed provided the County Office has possession of the original note being reamortized. If the County Office does not have possession of the original note, the servicing official will ask the Finance Office to return the original note so that it is in the County Office before Form 1940–17 is processed.

(5) The field office will process the reamortization or consolidation via the Automated Discrepancy Processing System (ADPS) in accordance with Form 1940–17, and complete exhibit D of this subpart.

(6) The original (old) note(s) will be marked "Rescheduled or Reamortized with Writedown of Debt" and stapled to the new rescheduled or reamortized promissory note(s) and will be filed in the promissory note file in the operation file. Copies for the borrower(s) case file should be marked and stapled the same and filed in position 2 of the case file. If a transfer is involved, assumption agreement(s) will be marked and stapled with the note(s) and copies will be filed as indicated above.

(7) A lien will be taken on assets in accordance with § 1951.910 of this subpart.

(k) *Real estate liens.* The Agency's real estate liens will be maintained even if the writedown of the borrower's real estate debt results in all real estate debts to the Agency being written down. The Agency's real estate lien will not be subordinated to increase the amount of the prior liens during the shared appreciation period. Shared appreciation agreements will be serviced in accordance with § 1951.914 of this subpart. Upon payment by the borrower of current market value in a buyout, the original mortgage or deed of trust will be released on real estate for the FLP loans bought out. The notes will be marked "Satisfied at Current Market Value" and returned to the debtor or the debtor's legal representative. Existing net recovery buyout recapture agreements will be serviced in accordance with § 1951.913 of this subpart.

(l) *Non-real estate liens.* If a borrower's FLP loan(s) were not secured by real estate, there will be no recapture and the borrower will not be required to enter into a recapture agreement. Upon payment by the borrower of the current market value in a buyout, the original security instruments will be released on

chattel security for the FLP loans bought out. These notes will be marked

Form 440–21, "Appraisal of Chattel Property," for chattels. Borrowers who

taken on all assets owned by the entity, and all assets owned by all members of

(1) *Purpose.* The purpose of the

request for homestead protection. If

completed in accordance with

chattel security for the FLP loans bought out. These notes will be marked "Satisfied at Current Market Value" and returned to the debtor or the debtor's legal representative.

(m) *Notes.* Notes evidencing real estate debts written down in full or written off as a result of Primary Servicing will be returned to the debtor at the end of any recapture period. If there is no recapture period, the notes will be returned when the County Office verifies that the transaction has been recorded in the Finance Office. For a market value buyout, the original and copies of the notes will be marked "Satisfied by Approved Current Market Value Buyout." For writedown in full, the original and copies of the notes will be marked "Satisfied by Approved Debt Writedown." If a note is only partially written-down, it will be returned to the debtor when paid in full. The original and copies of such notes will be marked "Satisfied by Approved Partial Writedown." Original chattel security notes will be marked "Satisfied at Current Market Value" and released to the debtor upon payment of their current market value in a buyout.

15. Section 1951.910 is revised to read as follows:

§ 1951.910 Consideration of borrower's other assets for new applications.

If a delinquent borrower has other assets that are not serving as collateral for the FLP debt, the servicing official will determine whether these assets are nonessential, as defined in § 1951.906 of this subpart.

(a) *Nonessential assets.* The net recovery value (NRV) of nonessential assets must be considered when the borrower's application is processed for loan servicing in accordance with this subpart. The Agency will not write down or write off any debt or portion of a debt that could be paid by liquidation of nonessential assets, or by payment of the loan value of the assets that could be received from non-Agency sources. The loan value of the assets will be considered as the same as the NRV of the assets.

(1) *Determining the value of nonessential assets.* The NRV of the nonessential assets is the market value less any prior liens and any selling costs which may include such items as taxes due, commissions and advertising costs. The determination of NRV of nonessential assets does not include a deduction for carrying the property in inventory. The market value of the nonessential assets must be estimated by a current appraisal in accordance with subpart E of part 1922 of this chapter for real estate property, and on Form 440–21, "Appraisal of Chattel Property," for chattels. Borrowers who disagree with the Agency's appraisal may request a negotiated appraisal or appeal in accordance with § 1951.909(i) of this subpart.

(2) *Eligibility.* If the NRV of the nonessential assets is sufficient to bring the delinquent FLP account current, the borrower is not eligible for primary loan servicing including buyout in accordance with this subpart. The borrower, instead, will be sent attachments 5–A and 6–A of exhibit A of this subpart. The servicing official will indicate the values of both the NRV of nonessential assets and the FLP security on attachment 5–A. The borrower's nonessential assets and their NRVs also will be listed on attachment 5–A. The borrower will have 90 days to bring the FLP account current from the date of the receipt of attachments 5–A and 6–A. If the borrower does not pay current within this time period, the account will be accelerated after all appeal rights have been exhausted. If the NRV of the nonessential assets is not sufficient to bring the FLP account current, then the nonessential assets will be considered as set out in paragraph (a)(3) of this section.

(3) *Inclusion in NRV.* If the NRV of the nonessential assets is not sufficient to bring the FLP account current, then the servicing official will add the NRV of these assets to the NRV of the FLP collateral according to § 1951.909(f) of this subpart. The servicing official will encourage, but not require the borrower to liquidate those nonessential assets and apply the proceeds to his/her outstanding debts. If the borrower liquidates the nonessential assets, or obtains a loan against the equity in such assets, and pays the Agency the NRV of the nonessential assets within 45 days of receiving exhibit E or F of this subpart, as appropriate, the payment will be subtracted from the FLP debt and then the servicing official will recalculate the debt restructuring without considering the NRV of the nonessential assets. If the borrower does not sell these assets, the servicing official will include their NRV in calculating the debt restructuring and take a lien on the assets at the time of closing the restructured loan.

(b) *Lien on certain assets.* Delinquent borrowers must pledge certain assets, essential and nonessential, unencumbered to the Agency as security at the time FLP loans are restructured, as follows:

(1) The best lien obtainable will be taken on all assets owned by the borrower. When the borrower is an entity, the best lien obtainable will be taken on all assets owned by the entity, and all assets owned by all members of the entity. Different lien positions on real estate are considered separate and identifiable collateral.

(2) Security will include, but is not limited to, the following: land, buildings, structures, fixtures, machinery, equipment, livestock, livestock products, growing crops, stored crops, inventory, supplies, accounts receivable, certain cash or special cash collateral accounts, marketable securities, certificates of ownership of precious metals, and cash surrender value of life insurance.

(3) Security will also include assignments of leases or leasehold interests having mortgageable value, revenues, royalties from mineral rights, patents and copyrights, and pledges of security by third parties.

(4) The exceptions set forth in § 1941.19(c) of subpart A of part 1941 of this chapter apply.

(5) These assets will be considered as additional security for the loans as well as any shared appreciation agreement. The value of the essential assets will not be included in the NRV calculation to determine restructuring. The Agency's lien will be taken only at the time of closing the restructured FLP loans.

16. Section 1951.911 is revised to read as follows:

§ 1951.911 Homestead protection.

(a) *General.* If the Agency has only chattel property as security, preservation servicing will not be offered. Borrowers who submitted a complete application prior to April 4, 1996 will be considered for leaseback/buyback in accordance with the previous CFR volume containing revisions as of January 1, 1996 and Agency procedures, (available in any county office.) Inventory property which is located within the boundaries of an Indian reservation of a Federally recognized Indian Tribe and the previous owner is a member of the Indian Tribe that has jurisdiction over that reservation should be handled in accordance with § 1955.66(d) of subpart A of part 1955 of this chapter.

(b) *Homestead protection.* Borrowers and former borrowers who had or have an FLP loan secured by the real property containing the dwelling owned by them and used as their principal residence may apply for homestead protection before or after the Agency acquires the property. Real property that is in inventory as of the effective date of the statute or is acquired in the future will be considered for homestead protection as set forth in this subpart.

(1) *Purpose.* The purpose of the Homestead Protection Program is to permit borrowers or former borrowers to retain their dwellings through a lease or purchase. Such lease or purchase could permit these individuals to have a home and providing an opportunity to continue to farm.

(2) *Notification and processing.* If a feasible plan for restructuring debt cannot be developed using Primary Loan Service programs, the borrower will be advised by the use of Exhibit K with Attachment 1 of this subpart that the Agency will continue with the processing of Preservation Service programs, if applicable. A borrower who desires homstead protection must request it in accordance with § 1951.907. A borrower who meets the eligibility requirements of paragraph (b)(3) of this section will be permitted to retain possession of the homestead, in accordance with paragraph (b)(2)(ii) of this section, before title is acquired or under a lease with an option to purchase after title is acquired.

(i) *Determining homestead protection property.* (A) The homestead protection property will include the borrower's principal residence and not more than 10 acres of adjoining land that is used to maintain the borrower's family and a reasonable number of farm service buildings located on land adjoining the residence which are useful to the occupants of the dwelling.

(B) The servicing official will review the proposed homestead protection property. If the servicing official does not agree with the proposed shape or size of the property, an alternate configuration will be negotiated with the borrower.

(C) If the borrower and the servicing official cannot agree on the proposed shape and size of the property, the servicing official will make the determination.

(D) When the size and shape of the property is agreed upon and the borrower has been found eligible, the servicing official will request a licensed surveyor to survey the property, have a legal description prepared, and mark the property lines with permanent type markers.

(E) Appraisals will be completed in accordance with paragraphs (b)(6) and (b)(7)(ii)(B) of this section.

(ii) *Processing homestead protection before the Agency acquires title.* (A) A borrower will be considered for homestead protection when it is determined that the Primary Loan Service programs cannot resolve the delinquency. To process an application, the borrower must indicate the buildings and land to be included in the request for homestead protection. If determined eligible for homestead protection, the borrower and the servicing official will enter into a Homestead Protection Program Agreement (Exhibit L of this subpart) to lease the property if and when the Agency acquires title. A copy of Form 1955–20, "Lease of Real Property," will be attached to the agreement as an exhibit.

(B) Concurrently with the execution of the preacquisition Homestead Protection Program Agreement, the borrower will deliver a completed Form RD 1955–1 to the Agency. The Agreement is subject to the provisions of subpart A of part 1955 of this chapter. If the Agency acquires title during the processing of a preacquisition Homestead Protection Agreement, processing of the agreement will be terminated and the owner will be given homestead protection rights pursuant to paragraph (b)(2)(iii) of this section.

(C) The Agency's obligation to lease the dwelling to the borrower will be contingent on the Agency's prior compliance with all State and local laws, ordinances and regulations governing the subdivision of land. If the Agency cannot satisfy the conditions within 2 years from the date of the agreement, the agreement (and the Agency's obligation to lease with option to purchase) will terminate. If an agreement has been entered into, but title to the property has not been conveyed to the Agency (or acquisition has been determined not to be in its financial interest), the Agency will continue with acceleration and foreclosure of the property. It is not the intent of the 2-year term of the agreement to limit the Agency's ability to foreclose on the property, provided that all the terms have been met except that title has not been conveyed.

(iii) *Application for homestead protection when the Agency acquires title.* When the Agency acquires title to the farm property, the borrower will be sent Exhibit M of this subpart, by certified mail, return receipt requested, no later than the date of acquisition. The borrower must request homestead protection by notifying the servicing official in writing not later than 30 days after the date of acquisition and must provide the information set forth in § 1951.907(e) of this subpart and indicate the buildings and land to be included in the request.

(iv) *Lease with option.* A lease with an option to purchase will be entered into with an eligible borrower on Form 1955–20 after the Agency acquires title to the property. Form 1955–20 will be completed in accordance with § 1951.911 (b)(8) of this subpart.

(3) *Eligibility.* The servicing official will make the determination on eligibility. To qualify for homestead protection, the borrower must meet the following requirements:

(i) An applicant must be an individual who is or was personally liable for the Farm Loan Programs (FLP) loan that was secured in part by the Homestead Protection property, or, if a non-borrower pledged the property to secure the FLP loan, the owner of the property. In either case, the applicant must be or have been the owner of the Homestead Protection property. A member of an entity who is or was personally liable for a loan that is or was secured by the Homestead protection property is considered an owner for homestead protection purposes, so long as either the member of the entity or the entity itself held fee title to the property.

(ii) When more than one member of an entity was personally liable for an FLP loan, each such member who possessed and occupied a separate dwelling as his or her principal residence, on property that is or was security for the loan may apply separately for homestead protection of their individual dwellings;

(iii) The applicant and any spouse must have received, from the farming or ranching operations, gross farm income reasonably commensurate with the size and location of the farm and reasonably commensurate with local agricultural conditions (including natural and economic conditions) in at least 2 calendar years during the 6-year period preceding the calendar year in which the application is made. Farms used for comparison purposes must be of similar size, type of operation and locality. For the purposes of §§ 1951.911(b)(3) (iii) and (iv) of this subpart, income from farming or ranching operations will include rent paid by a lessee of agricultural land during any period in which the borrower, due to circumstances beyond his or her control, such as economic, natural disaster or health problems, was unable to actively farm that property. The borrower's records will be used in determining whether the gross farm income was reasonably commensurate with the farm size and location and local agricultural conditions. When applying for homestead protection, the borrower will give the servicing official at least 2 calendar years of records of planned and actual gross farm income for the 6-year period preceding the calendar year in which the application is made. If such records do not exist, they may be developed by the applicant

and servicing official from information relating to yields, expenses and prices found in the borrower's county office case file, agency records, or other reliable sources;

(iv) The applicant and any spouse must have received, from the farming or ranching operations, at least 60 percent of their gross annual income in at least 2 of the 6 calendar years preceding the calendar year in which the application is made;

(v) The applicant must have continuously occupied the homestead protection property during the 6-year period preceding the calendar year in which the application is made, unless it was necessary to leave for a period of time not to exceed 12 months during the 6-year period due to circumstances beyond the borrower's control, such as illness, employment, or conditions that made the dwelling uninhabitable; and

(vi) The applicant must have sufficient income to make rental payments for the term of the lease and the ability to maintain the property in good condition, and must agree to all the terms and conditions set forth in paragraph (b)(7) of this section and in Form 1955–20.

(4) *Transfer of homestead protection.* An applicant's right to request homestead protection and rights under the Agreement or lease entered into pursuant to this section are not transferable or assignable by the applicant or by operation of law, except that, in the case of death or incompetency of the applicant, such rights and agreements shall be transferable to the spouse upon agreement to comply with the terms and conditions of the lease.

(5) *Property requirements.* (i) The proposed homestead protection property tract must meet all requirements for the division into a separate legal lot as required by State and local laws. All environmental considerations required under subpart G of part 1940 of this chapter will be complied with.

(ii) Costs for a survey, legal description or other service needed to establish, appraise, define or describe the homestead protection property as a separate tract, will be paid for by the Agency. No repairs or improvements will be paid for by the Agency except as provided for in § 1955.64 (a) of subpart A of part 1955 of this chapter.

(iii) If necessary, the Agency will grant or retain for the benefit of adjoining property reasonable easements for ingress, egress, utilities, water rights, etc.

(6) *Appraisal.* The current market value of the homestead protection property shall be determined by an independent appraisal made within 6 months from the date of the borrower's application for homestead protection. The applicant will select an independent real estate appraiser from a list of appraisers approved by the servicing official. The cost of such an appraisal will be handled in accordance with paragraph (b)(5)(ii) of this section.

(7) *Terms of the lease and exercising the option.* (i) All leases will have an option to purchase. Any reference to a lease for homestead protection purposes will mean a lease with an option to purchase. The lease will be offered with an option to purchase on Form 1955–20 and will be for a period of not more than 5 years as requested by the applicant. A lease of less than 5 years may be extended, but not beyond 5 years from the date of the beginning of the term of the original lease.

(A) The amount of the rent will be based upon equivalent rents charged for similar residential properties in the area in which the dwelling is located.

(B) Lease payments will be retained by the Government.

(C) Failure to make lease payments as scheduled or to maintain the property in good condition shall constitute cause for the termination of all rights of the lessee to possession and occupancy of the dwelling and property under this section. If a lease default is not cured within 30 days of notice, the servicing official will notify the lessee in writing of the termination of the lease and option.

(D) Any interference by the lessee with the Government's efforts to lease or sell the remainder of farm inventory property shall constitute cause for the termination of all rights of the lessee to possession and occupancy of the dwelling and property including the right to exercise the option to purchase.

(ii) Exercising the option to purchase.

(A) The lessee may exercise the option in writing at any time prior to the expiration of the lease by delivering to the servicing official a signed, written statement notifying the Agency that the lessee is exercising the option to purchase the property. Failure to exercise the option within the lease period will end the lessee's rights under the option to purchase.

(B) When the lessee exercises the option to purchase the property, the purchase price will be the current market value of the property. That value will be determined by an appraisal in accordance with paragraph (b)(6) of this section providing the appraisal is not more than 1 year old. If the appraisal is more than 1 year old, the current market value will be determined by a new appraisal requested in accordance with paragraph (b)(6) of this section.

(C) At the time the lessee exercises the option, the lessee must notify the servicing official if he or she wants to purchase the property for cash or finance it through a credit sale from the Agency.

(D) If a credit sale is involved, the applicant must furnish the servicing official the information required by § 1951.907 (e) to assist in determining whether or not the applicant has adequate repayment ability.

(8) *Rates and terms for a credit sale.* Terms for a credit sale of homestead protection property when the lessee is exercising the option to purchase will be in accordance with subpart J of this part.

(9) *Closing.* A credit sale will be closed in accordance with subpart J of this part.

(10) *Conflict with State law.* In the event of a conflict between a borrower's homestead protection rights and any provisions of the law of any State relating to the right of a borrower to designate for separate sale or redeem part or all of the property securing a loan foreclosed on by a lender, such provision of State law shall prevail. A State supplement will be prepared as necessary to supplement paragraph (b) of this section.

(11) *Servicing homestead protection loans.* Homestead protection loans will be serviced as set forth in subpart J of this part.

§ 1951.914 [Amended]

17. Section 1951.914 is amended by removing paragraph (a)(5)(iii) and redesignating paragraphs (a)(5)(iv) through (a)(5)(vi) to (a)(5)(iii) through (a)(5)(v) respectively.

§§ 1951.917 and 1951.918 [Removed and reserved]

18. Sections 1951.917 and 1951.918 are removed and reserved.

19. Exhibit A is revised to read as follows:

Exhibit A—Notice of the Availability of Loan Servicing and Debt Settlement Programs for Delinquent Farm Borrowers

Dear (Borrower's Name):

This notice is to inform you that you are behind with your loan payments and to inform you of your options.

I. Loan Servicing Programs Available

Primary loan servicing programs are intended to adjust the debt so that you can continue farming and the Agency will receive a better recovery on the money it loaned you.

The Preservation loan servicing program (Homestead Protection) is intended to help farmers who may lose their land to the Agency get their home back through a lease with an option to buy.

II. Application Information

Time Limits

You must notify the county office within 60 days of getting this notice if you want to be considered for these programs.

How to Apply

To apply, you must complete and return the required forms enclosed with this notice, including your signed Acknowledgment Of Notice Of Program Availability within the 60-day time limit. The county office will process your completed forms and let you know if you qualify.

Included With This Notice You Will Find:

(1) A summary of primary loan servicing programs options;

(2) A summary of the preservation loan servicing program;

(3) A summary of debt settlement programs;

(4) The forms you need to apply for services;

(5) Information on how to get copies of the Agency's regulations;

(6) A description of the National Appeals Division appeal process.

III. Foreclosure and Liquidation

What Happens if You Do Not Apply Within 60 Days?

The Agency will accelerate your loan if you continue to be delinquent or in nonmonetary default. Acceleration of your loan is very severe. This means the Agency will take legal action to collect all the money you owe them.

After acceleration, the Agency will start foreclosure proceedings. They will repossess or take legal action to take any real estate, personal property, crops, livestock, equipment, or any other assets in which the Agency has a security interest. The Agency will also stop allowing you to use your crop, livestock, and milk checks to pay living and operating expenses. The Agency will also take by administrative offset money which other federal agencies owe you.

Sincerely,

Attachment 1—Primary and Preservation Loan Servicing and Debt Settlement Programs Purpose

Purpose

These programs are to help you repay the loan and keep your farm property and settle your Farm Loan Programs loan debt. This notice tells you:

(1) How To get more information
(2) How to apply
(3) Your appeal rights if you apply and are turned down

How To Get More Information

Ask at any county office for copies of the rules describing these programs. These rules must be given to you within 10 days of when we receive your request.

Who Can Apply?

All "farm loan programs borrowers" who have one of the following loans:

Operating (OL)
Farm Ownership (FO)
Emergency (EM)
Economic Emergency (EE)
Soil and Water (SW)
Recreation (RL)
Rural Housing Loans made for farm service buildings (RHF)
Economic Opportunity (EO)

Borrowers that are current on their scheduled payments but are financially distressed through no fault of their own may be eligible for some assistance to restructure their debt.

You May Need Help in Applying

The legal requirements for these programs are very complicated. You may need help to understand them. You may want to ask an attorney to help you. If you cannot get an attorney, there are organizations that give free or low-cost advice to farmers. Ask your State Department of Agriculture or the USDA Extension Service what services are available to your state.

Note: Agency employees cannot recommend a particular attorney or organization.

I. Primary Loan Service Programs

(1) Loan Consolidation

Two or more of the same type of loans can be combined into one larger loan. For example, operating loans can only be joined with operating loans.

(2) Loan Rescheduling

The payment schedule can be altered to give you longer to repay loans secured by equipment, livestock, or crops. For example, the time for repayment of an operating-type loan can be extended up to 15 years from the date the loan is rescheduled. When a loan is rescheduled, the interest rate may be reduced.

(3) Loan Reamortization

The payment schedule can be changed to give you longer to repay loans secured by real estate. For example, a Farm Ownership loan payback period may be extended to 40 years from the date the original loan was signed. When a loan is reamortized, the interest rate may be reduced.

(4) Interest Rate Reduction

Regular Interest Rate

FSA has specific interest rates for each type of loan. These interest rates change quite often. They depend on what it costs the Government to borrow money. Each type of loan will have a regular rate.

Limited Resource Interest Rate

If you have an Operating Loan (OL), Soil and Water (SW) loan or a Farm Ownership (FO) loan, it may be possible for you to get a "limited resource interest rate." The limited resource interest rate can be as low as 5 percent. It changes quite often and depends on what it cost the Government to borrow money.

Interest Rate for Loan Servicing

When loans are consolidated, rescheduled, or reamortized, the interest rate on the new loan will be either the interest rate on the original loan or the current regular rate of interest for that type of loan, whichever is less. The borrower may be able to get the limited resource interest rate on OL, SW, or FO loans.

For information about current interest rates, contact the FSA county office.

(5) Loan Deferral

Payments of principal and interest can be temporarily delayed for up to 5 years. You must show that you cannot pay essential living expenses or maintain your property and pay your debts. You must also show you will be able to pay at the end of the deferral period.

The interest rate on a deferred loan will be either the current rate of interest for loans of the same type or the original rate on the loan, whichever one is lower.

The interest that builds up during the deferral period will be added to the principal of the loan. You must pay this interest in yearly payments for the rest of the loan term.

Note: You can only get a loan deferral if the FSA determines options 1–4 will not work for you.

(6) Softwood Timber Program

Marginal land including highly erodible land and pasture can be planted in softwood timber. If you qualify, a debt of up to $1000 an acre can be deferred up to 45 years. Interest will be charged during the deferral period. The debt must be paid when the timber is sold.

(7) Conservation Contract Program

You may enter into a contract with the Secretary of Agriculture to protect highly erodible land, wetlands, or wildlife habitat located on your property that serves as security for your farm loan debt. In exchange for the contract, FSA will reduce your FSA debt. The amount of land left after the contract must be enough to continue your farming operation.

(8) Debt Writedown

This is not available to borrowers who are current in their loan payments or to borrowers who have had previous debt forgiveness on another direct loan.

Debt writedown means the FSA debt you owe is reduced. FSA can reduce both the principal and interest of your debt. Your debt can be reduced to the recovery value.

Recovery value. The recovery value is the fair market value of the collateral pledged as security for FSA loans minus all of the expenses such as sale costs, attorneys fees, management costs, taxes and payment of prior liens on the collateral that FSA would have to pay if it foreclosed on and sold the collateral. The fair market value of any collateral that is not in your possession and has not been released for sale by FSA in writing will also be used in determining recovery value.

Also considered, will be the fair market value of any other assets that you may own that are not essential for family living or for farm operation, and are not exempt from your judgment creditors or in a bankruptcy action, minus the value of any creditors' prior security interests and your selling costs. The

value of the collateral and any other assets must be decided by a qualified appraiser.

In order to get debt writedown, you must show that after the writedown, you will have up to 110 percent, but not less than 100 percent, of income available to pay all of your family living and farming operating expenses and scheduled debt payments. This means you must have a feasible plan of operation. FSA will not write down more of the debt than is necessary for you to show a feasible plan. You have the choice to select a smaller cash flow margin without a writedown. If you choose to do this, you will avoid taking your one time debt forgiveness as explained below.

The writedown is used only when the loan servicing programs listed in 1–7 above alone will not be enough for you to have a feasible plan. If you get writedown, some of the principal and interest on your loans will be written down in addition to changing the payback period, and possibly the interest rate, using 1–7 above.

You can receive a writedown if you have not previously received any form of debt forgiveness from FSA on any other direct farm loan. The maximum debt that can be written down on all loans is $300,000.

II. *Who Can Qualify for Primary Loan Service Programs*

To qualify you must prove that:

(1) You cannot repay your FSA debt due to circumstances beyond your control. If you have certain nonessential assets with a value high enough to bring your account current, then you are not eligible for Primary Loan Service Programs. These assets are only those that are not essential for necessary family living or for your farm operation. FSA cannot reduce or write off any of your debt that you could pay by selling any of these assets or borrowing against your equity in the assets.

You must have had less income than expected due to such things as:

(a) A natural disaster, weather, or insect problems;
(b) Family illness or injury;
(c) Loss or reduction of off-farm income;
(d) Disease in your livestock;
(e) Low commodity prices and high operating expenses in your local area; or
(f) Other circumstances beyond your control.

(2) You have acted in "good faith" to keep your agreements with FSA in that you have kept all written agreements with FSA including those for the use of proceeds and release of property used to secure the loan, and your file shows no fraud, waste, or conversion.

You must agree to give FSA a lien on certain other assets for additional security for the FSA debt. If you are offered restructuring and accept the offer, you must provide this lien at closing.

You must agree to meet, at your own cost, FSA's training requirements in production and financial management. The cost will be included in your farm plan as an operating expense. The training must be completed within 2 years from the date of restructuring. This requirement may be waived if you are able to demonstrate that you have adequate training in this area. To request a waiver of this training requirement, complete Form FmHA 1924–27, "Request for Waiver of Borrower Training Requirements," and submit with your request for FSA servicing. This training requirement is not applicable if you have previously received a waiver or you have successfully completed the required FSA Borrower Training program.

Who Will Decide if You Qualify?

The FSA servicing official will decide if you qualify. The servicing official will decide whether you can pay as much or more on the loan as FSA would get if they foreclosed and sold the collateral for the loan plus the value of any nonessential assets. To do this, the servicing official must decide whether the total payments of principal and interest on your adjusted debt will be at least as much as the "recovery value" defined in part I above.

Can You Get Your Debts Written Down?

Only if FSA will get as much or more by writing down part of your debt than through foreclosure or sale of the collateral for the loan and any nonessential assets. You also must be delinquent on your FSA debt payments.

Conditions of the New Agreement if You Qualify

You must sign a shared appreciation agreement for 10 years. Under the terms of the agreement:

- You must repay a part of the sum written down.
- The amount you must repay depends on how much your real estate collateral increases in value.

During this 10 years, FSA will ask you to repay part of the debt written down if you do one of the following:

(1) Sell or convey the real estate
(2) Stop farming
(3) Pay off the entire debt

If you do not do one of these things during the 10 years, FSA will ask you to repay part of the debt written down at the end of the 10 year period.

FSA can only ask you to repay if the value of your real estate collateral goes up.

If either 1, 2, or 3 above occurs in the first four years of the agreement, FSA will ask you to pay 75 percent of the increase in value of the real estate. In the last 6 years, you will be asked to pay only 50 percent of the increase in value. FSA will not ask you to pay more than the amount of the debt written down.

Date To Begin Restructured Agreement

If you are found eligible, you will be informed of the date for an appointment so your debt can be restructured. You must notify FSA that you accept its offer to restructure your debt within 45 days of when you receive the offer.

III. Preservation Loan Servicing Program

Purpose

This program applies when the primary loan service programs cannot help you.

Homestead Protection. (Keeping your farm home.) You may lease your farm home, certain outbuildings and up to 10 acres of land. The lease time will be for up to 5 years. The lease will include an option for you to purchase the property you lease.

IV. Who Can Qualify for Homestead Protection?

(1) Your gross annual income from your farm or ranch must have been similar to other comparable operations in your area. This must be true for at least 2 years of the last 6 years.

(2) Sixty percent (60%) of your gross annual income in at least 2 of the last 6 years must have come from the farming operation.

(3) You must have lived in your homestead property for 6 years immediately before your application. If you had to leave for less than 12 months during the 6-year period and you had no control over the circumstances, you still may qualify.

(4) You must be the owner or former owner of the property.

(5) If FSA has already taken your property, you must apply within 30 days of the date FSA took your property.

How To Lease Your Dwelling

(1) You may lease your home and up to 10 acres if you pay FSA reasonable rent. The rent prices FSA charges you will be similar to comparable property in your area.

(2) You must maintain the property in good condition during the term of the lease.

(3) You may lease for up to 5 years.

(4) You cannot sublease your property.

(5) If you do not keep up your rental payments to FSA, FSA will force you to leave.

You can buy back your homestead property at current market value at any time during the lease. FSA may place an easement on your property to protect and restore any wetlands or converted wetlands. Current market value will be decided by an independent appraiser. The appraisal will be made within 6 months of your application for homestead protection. The appraised value of your property will reflect the value of the land after any placement of a wetland conservation easement.

You should be aware that any real property, located in special areas or having special characteristics, which comes into FSA's inventory, may have restrictions or easements placed on the property which prevent your use of all or a portion of the property, should you choose to lease or buy your former dwelling. These restrictions and encumbrances will be placed in leases and in deeds on properties containing wetlands, floodplains, endangered species, wild and scenic rivers, historic and cultural properties, coastal barriers, and highly erodible soils.

V. Debt Settlement Programs.

Purpose

These programs apply after it has been determined that primary loan service programs cannot help you. You may be eligible for both debt settlement and homestead protection. If you do not have FSA collateral you will need to apply for debt settlement only. Under these programs, the debt you owe FSA may be settled for less than the amount you owe. You may apply for debt settlement at any time by submitting an application for debt settlement on Form

FmHA 1956–1. These programs are subject to the discretion of the agency and are not a matter of entitlement or right.

Programs Available

(1) Compromise offer: A lump-sum payment of less than the total FSA debt owed.

(2) Adjustment offer: One or more payments of less than the total amount owed to FSA. Your payments can be spread out over a maximum of five years if FSA decides you will be able to make the payments as they become due.

(3) Cancellation: The final settlement of a debt without any payment. FSA must decide there is no FSA security or other asset from which FSA can collect. You must be unable to pay any part of the debt now or in the future.

Approval Requirements

If you sell your collateral, you must apply the proceeds from the sale to your FSA account before you can be considered for debt settlement. In the case of compromise and adjustment, however, you may keep your collateral if you are unable to pay your total FSA debt and pay FSA the present fair market value of your collateral along with any additional amount you are able to pay as determined by FSA. You will be allowed to retain a reasonable equity in essential nonsecurity property to continue your normal operations and meet minimum family living expenses. FSA will not finance a compromise or adjustment offer.

All debt settlements of FLP loans must be recommended by the County Committee with a finding that the statements on your application are true. The committee must certify that you do not have assets or income in addition to what you stated in your application. You must also have not previously received any form of debt forgiveness from FSA on any other direct farm loan. If you qualify, your application must also be approved by the FSA State Executive Director or the FSA Administrator depending on the amount of the debt to be settled.

VI. How to Apply for Primary and Preservation Loan Servicing Programs

Application Forms and Information Needed

The forms set out below should be included with this notice. If they are not, you can obtain them from the FSA county office or as directed below.

(1) Attachment 2 or 4 of Exhibit A Response form to apply for loan services.

(2) FmHA 410–1 Application for FSA Services (The financial statement on this form must include information no more than 90 days old. The financial statement must be for all individuals and entities personally liable for the FSA debt.

(3) FmHA 431–2 Farm and Home Plan, or other acceptable plan of operation. The commodity prices to use for this plan of operation or Farm and Home Plan are included with the form. You may request the servicing official to assist you in completing your plans.

(4) FmHA 440–32 Request for Statement of Debts and Collateral. Complete the name and address of the creditor, account number, if applicable, and your name. All parties liable to the creditor must sign and date the forms. FSA will obtain the creditor information.

(5) FmHA 1910–5 Request for Verification of Employment. Complete employer's name and address, employee's name and address, social security number, sign and date. FSA will send the form to your employer to obtain the needed information.

(6) SCS–CPA–026 Highly Erodible Land and Wetland Conservation Determination (This form must be obtained from and completed by the Natural Resources Conservation Service office, if not already on file with FSA.)

(7) AD–1026 Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification (You will be required to complete this form in the FSA office if the one you have on file does not reflect all the land you own and lease.)

(8) FmHA 1960–12 Financial and Production Farm Analysis Summary (Complete the backside of the form or other similar type worksheets to provide production and expense history for crops, livestock, livestock products, etc. for each of the five years immediately preceding the year of application or the years you have been farming, whichever is less and if not already in the FSA case file. You must be able to support this information with farm or income tax records.)

(9) Copies of income tax records and any supporting documents for the last five years immediately preceding the year of application if not already on file with the FSA county office. (If you have been farming for less than 5 years, submit the tax records for the tax years immediately preceding the year of application during which you farmed. If copies of tax records are not readily available, you can obtain copies from the Internal Revenue Service (IRS).)

(10) Map or aerial photo of your farm from FSA or Natural Resources Conservation Service if you are applying for the conservation contract program. (Identify on the map or photo the portion of the land and approximate number of acres to be considered in the contract.)

(11) RD 1956–1 Application for Settlement of Indebtedness (Complete this form only if you wish to apply for debt settlement.)

Time to Apply for Primary and Preservation Loan Servicing Programs

To apply, you must complete the appropriate forms and return them and the required information to the FSA county office within 60 days from the date you received this notice.

VII. What Happens When You Are Not Eligible for Primary Loan Service Programs?

If the servicing official decides you are not eligible, you may request a meeting with that official so the official can explain the decision.

If you do not agree with the FSA servicing official's decision, you can tell the official why. If you can make the necessary realistic changes to your Farm and Home Plan to show a feasible plan, you should show these changes to the servicing official.

Negotiation of the Appraisal

A negotiation of the appraisal is a process whereby the borrower objects to the FSA appraisal, obtains an independent appraisal at the borrower's own costs, pays one-half of the cost for a third appraisal, and the average of the two appraisals closest in value is taken as the final appraised value to be used in considering restructuring. In all cases of primary and preservation loan servicing where the borrower presents an independent appraisal which is conducted by a qualified appraiser and is within 5 percent of the value of the FSA appraisal, the borrower must choose one of these two appraisals for the servicing official to use to continue processing the request. Negotiation of appraisal may affect your right to appeal the appraisal.

You May Request Mediation of Other Loans

If you cannot show a feasible farm plan because you owe too much to other creditors and suppliers, FSA will help you try to get your other creditors to adjust your debts. This will be done by FSA asking for mediation if your State has a mediation program approved by the United States Department of Agriculture. If there is no State mediation program, FSA will try to set up a meeting with your other creditors and suppliers if it can be shown that a reduction in these debts can provide a feasible farm plan.

You Have the Right to Appeal

Appeal. Appeal rights will be provided to you after FSA has made a decision on your request for primary loan servicing. If you first request a meeting with the servicing official instead of an appeal, the time for requesting an appeal will be extended until you are advised of the results of your meeting. You will be provided with the address of USDA's National Appeals Division. Your request for an appeal must be postmarked no later than 30 days from the date you received the agency's adverse decision. If you disagree with FSA's determination that any determination is not appealable, you may request a determination of appealability from the National Appeals Division.

You May Buyout (Pay Off) Your Loan at the "Current Market Value"

(1) *Current market Value.* If the analysis of your debt shows that you cannot "cash flow" even if your debt to FSA is reduced to the value of the collateral, the servicing official will advise you in writing that you can buyout the loan by paying the "current market value" minus any prior liens. The current market value is determined by a current appraisal completed by a qualified appraiser.

(2) *Limits.* You may receive a buyout if you have not previously received any form of debt forgiveness from FSA on any other direct farm loan. The maximum debt that can be written off with buyout is $300,000.

(3) *Eligibility.* To qualify you must prove that:

You cannot repay your FSA delinquent debt and the reason you cannot repay was due to circumstances beyond your control,

You have acted in good faith, and

The value of your restructured loan is less than the recovery value.

(4) *Time Limit.* If you want to buy out your farm loan debt at the current market value, you must pay FSA within 90 days of the date you receive the offer. If you appeal the servicing official's decision not to give you primary loan servicing, this 90 days will not start until the administrative appeal process ends.

(5) *Cash.* If you pay off the loan at the current market value, you must pay in cash. FSA will not make or guarantee a loan for this purpose.

Consideration for Preservation Loan Service Program

(Homestead Protection)

You will be considered for homestead protection if:

(1) You applied for primary loan servicing as required and did not qualify.

(2) You do not appeal your primary loan servicing denial, or do not win your appeal.

(3) You do not pay off the loan through buyout.

(4) You agree to give FSA title to your land at the time FSA signs the written homestead protection agreement with you. FSA will not accept title and will deny your preservation request if it is not in FSA's best financial interest to accept title. FSA will compute the costs of taking title including the cost of paying other creditors who have outstanding liens on the property. FSA will take title only if it can obtain a recovery on its cost. Any written agreement for preservation loan servicing will include the amount you must pay for rent, the number of years you can rent, and an option to purchase the property at the fair market value at the time you exercise the option to purchase.

(5) You must request Homestead Protection within 30 days of FSA obtaining title to the property.

Consideration for Debt Settlement Programs

If you wish to be considered for debt settlement, you will need to request and return a completed Form RD 1956–1. You may request debt settlement at any time. Usually, the most appropriate time for making this request is when FSA has determined that Primary Loan Servicing options will not provide the best net recovery to the Government and you are requesting preservation loan servicing. If you no longer have any security remaining for the outstanding FSA loans, you may want to request debt settlement instead of primary and preservation loan servicing.

VIII. What Happens When You Are Turned Down for Homestead Protection or Debt Settlement Programs?

If FSA decides that you cannot get homestead protection or debt settlement you can ask for

(1) A meeting with FSA to discuss the decision, or

(2) Appeal the determination.

The Right to a Meeting

The servicing official will send you a letter telling you why FSA decided not to give you homestead protection or debt settlement. That letter will give you 15 days to ask for a meeting with FSA.

The Right to an Appeal

Appeal rights will be provided to you after FSA has made a decision on your request for homestead protection. If you first request a meeting with the servicing official instead of an appeal, the time for requesting an appeal will be extended until you are advised of the results of your meeting. You will be provided with the address of USDA's National Appeals Division. Your request for an appeal must be postmarked no later than 30 days from the date you received the final determination.

On appeal, you can contest FSA's rental amount and its decision not to give you homestead protection. You can also contest FSA's decision to reject your debt settlement application.

IX. Acceleration and Foreclosure

If you do not appeal an adverse determination or if you are denied relief on appeal, FSA will accelerate your loan account and make demand for payment of the whole debt. FSA will stop allowing you to use any of your crop, livestock, and milk checks, on which they have a claim, to pay for living and operating expenses. FSA will repossess the collateral or start legal foreclosure or liquidation proceedings to take and sell the collateral, including your equipment, livestock, crops, and land. FSA will also take by administrative offset money which FSA and other Federal Government agencies owe you.

FSA may refrain from taking these actions if you agree to do one, or a combination of the following actions, within an agreed upon time, with FSA's approval:

(1) Sell all the collateral for the loan at market value.

(2) Convey (legally transfer) the collateral to FSA.

(3) Apply to transfer the collateral to someone else and have that person assume all or part of the FSA debt. (This is called transfer and assumption.)

If any of these options result in payment of less than you owe, you may apply or reapply for debt settlement. You may apply or reapply for homestead protection even if you applied before and were not accepted. However, applications for homestead protection or debt settlement filed after the 60-day time period provided in this notice will not delay acceleration, offset, and foreclosure.

Attachment 2—Acknowledgment of Notice of Program Availability

I have been given a notice explaining the primary and preservation loan service and debt settlement programs.

The date on the notice was _____.

This notice explained that FSA programs are available to help me keep my property or settle my debt with FSA.

I ask FSA to consider me for all of these programs.

I understand that I will be notified of my rights to appeal after FSA decides on my request.

Signature _____

Date _____

Attachment 3—Notice to Borrowers With Non-Monetary Defaults, Non-Monetary Defaults and Delinquency, or That a Prior Lienholder or Junior Lienholder is Foreclosing

Dear

FSA has reviewed your loan account. Our record shows:

[ ] You are now $_____ behind on your payments. This is a violation of your loan agreement.

[ ] You have disposed of some of your property used to secure your loan. You did not get written approval for this. This property is

_____

(Describe property.)

[ ] You have stopped farming or ranching. This is a violation of your loan agreement.

[ ] A foreclosure action has been filed against you by _____. This is a violation of your loan agreement.

[ ] You have _____

(Insert reasons for proposed action.)

FSA Will Accelerate Your Loans

FSA will take legal action to collect the money you owe. They will foreclose on real estate and repossess equipment and other property used to secure your loans. They will also stop the release of money from the sale of crops or other property. They will take by administrative offset money you are owed by other Federal agencies.

Steps You Can Take Before FSA Accelerates Your Loans

You can apply for the programs described in Attachment 1. These are called Primary and Preservation Loan Service and Debt Settlement Programs. You can also ask for a meeting. At this meeting you can explain why you think FSA's records, as indicated on this Notice, are wrong. You can also suggest things you can do to correct these problems, so as to avoid acceleration and foreclosure. You can request loan servicing, debt settlement and a meeting at the same time. For example, if this Notice states that you are delinquent, and also have disposed of property without FSA's written consent, you can request servicing to deal with the delinquency problem and request a meeting on the question of unauthorized disposition of property. Please read the section on debt settlement programs for guidance in requesting and receiving consideration of a request for debt settlement.

Forms Attached to This Notice

You will find:

(1) A summary of all primary loan service programs;

(2) A summary of the preservation loan servicing program;

(3) A summary of all debt settlement programs;

(4) Copies of the forms needed to apply; and

(5) Advice on how to get copies of FSA regulations.

Purpose of Primary Service Programs

These loan service programs are to help you repay the loan and keep your farm property.

Purpose of the Preservation Loan Service Program

This program is intended to help farmers who may lose their land to FSA to get their home back, either by purchase or through a lease with an option to purchase.

Purpose of Debt Settlement Programs

These programs apply after it has been determined that primary loan service programs cannot help you. You may be eligible for both debt settlement and preservation loan service programs. If you no longer have FSA collateral you will need to apply for debt settlement only. Under these programs, the debt you owe FSA may be settled for less than the amount you owe. You may apply for debt settlement at any time by requesting and submitting an application for debt settlement on Form RD 1956–1.

How to Apply for Loan Servicing

Complete Attachment 4 and the appropriate forms included with this notice.

You must return these within 60 days of receiving this notice.

Right to a Meeting

You have the right to meet with your FSA servicing official before they decide to accelerate your loan. You must check the box on Attachment 4 saying you want a meeting. (Attachment 4 is the "Response to Notice of Intent to Accelerate and Notice of Borrower Rights.")

How to Ask for a Meeting

You must check the box on Attachment 4 asking for a meeting within 15 days from the date of this notice. Return it to your county office. Do this as soon as possible. It is wise to call also to set up the meeting.

The Right to Appeal

- You can ask for an administrative appeal even if the meeting does not resolve your problems.
- You can ask for an appeal even if you do not have a meeting.
- You have the right to appeal even if you do not want to apply for loan servicing programs or debt settlement.

How to Ask for an Appeal

Your request for appeal must be in writing and sent directly to the National Appeals Division, (NAD), <NAD Area Director's address>. Your letter must describe FSA's decision and why you believe the decision was not correct. In order for this decision to be changed, you will have to show why the decision should be reversed. Mail a copy of your request to the FSA county office. Your request for appeal must be postmarked no later than 30 days from the date you receive this notice.

Note: If you do not check the box on the Attachment 4 to ask for primary and preservation loan service programs, you will not be considered for those programs.

If you do not ask for a meeting to try and resolve the issues, you will not get another chance later.

The Right Not To Be Discriminated Against

Federal law does not allow discrimination of any kind. You cannot be denied a loan because of your race, color, religion, national origin, sex, marital status, handicap, or age (if you can legally sign a contract). You cannot be denied a loan because all or part of your income is from a public assistance program. If you believe that you have been discriminated against for any of these reasons, you can write the Secretary of Agriculture, Washington, D.C. 20250.

You cannot be denied a loan because you exercised your rights under the Consumer Credit Protection Act. You must have exercised these rights in good faith. The Federal Agency responsible for seeing this law is obeyed is the Federal Trade Commission, Washington, DC 20580.

Sincerely,

Attachment 4—Response to Notice Informing Me of FSA's Intent To Accelerate My Loan

Notice of My Rights

TO: Farm Service Agency

FROM: _____

(Please print your name and address.)

I have read the notice informing me of FSA's intent to accelerate my loan which I received with this form.

I want to: (Check one or more of the following boxes).

[ ] 1. Request a meeting with the FSA servicing official.

My phone number is _____.

I must return this form in 15 days. I understand I do not lose my right to appeal by asking for a meeting.

[ ] 2. Be considered for all primary and preservation loan service and debt settlement programs. I must return this form along with all applicable forms in 60 days.

I understand that if I want to appeal FSA's decision to accelerate my loan, I must send a letter requesting an appeal to the National Appeals Division. My letter must describe FSA's decision and why I believe the decision was not correct. I should also send the FSA county office a copy of my appeal request. I understand that I will be contacted by the National Appeals Division to set up the appeal hearing date and give me more information. My request for an appeal must be postmarked no later than 30 days from the date I received this notice.

Date: _____

Signature: _____

(Sign here.)

Attachment 5—Notice of Intent To Accelerate or To Continue Acceleration and Notice of Borrowers' Rights

Name and Address

Dear (Borrower's Name):

You are not eligible for debt restructuring.

I. [ ] FSA has reviewed your application for primary loan servicing (debt restructuring) and based upon the information available, you are not eligible.

Your Farm and Home Plan does not show you can pay all your family living expenses, farm operating expenses, and scheduled debt repayments even with FSA help.

The attached computer printout shows that in order to develop a feasible plan and receive primary loan servicing, you would need to increase your cash available to pay your debts by $_____.

II. [ ] FSA has reviewed your application and your case file. You have broken your agreement with FSA. Your Farm and Home Plans shows you can pay all of your family living expenses, farm operating expenses, and scheduled debt repayments if FSA uses primary loan servicing, softwood timber, and conservation contract programs to restructure your loans.

You have broken loan agreements with FSA in the following way:

[ ] You are $_____ behind in your scheduled loan payments.

[ ] You have sold or otherwise disposed of property you used to secure the FSA loan without proper approval from FSA. This property is _____

(Describe property.)

[ ] You no longer are farming or ranching.

[ ] You have

_____

III. [ ] You have already received your lifetime limit of at least one form of debt forgiveness on other direct loans.

IV. FSA Intends to Foreclose

FSA will accelerate your loan because you are not eligible for primary loan servicing.

FSA will take legal action to collect the money you owe.

FSA may:

(1) Repossess and sell your equipment, crops, livestock, livestock products, and other personal property used to secure your FSA loan;

(2) Foreclose and sell your real estate mortgaged to FSA;

(3) Stop any release of money from the sale of crops, livestock, livestock products, or other property you need to live and operate your farm;

(4) Take by administrative offset any money you are owed by Federal agencies;

(5) File lawsuits to collect money you owe to FSA.

V. WHAT YOU CAN DO TO STOP FORECLOSURE

Before FSA can take action against you, you can:

(1) *Request a meeting with the FSA servicing official.*

If you disagree with FSA's decision that you broke your loan agreement or the decision not to give you debt restructuring, you should request a meeting with the FSA servicing official. The servicing official can explain the FSA decision. You can also present changes in your Farm and Home Plan which may show that you can make the amount of payment listed above in Section I.

To ask for this meeting, check the box #1 on the Response Form: (Attachment 6).

Time limit: You must return the "Response Form" to the county FSA office within 15 days from the date you get this letter. You should also call the county office to set up the meeting.

(2) *Appeal.*

You may appeal FSA's decision. On appeal, you may challenge the ways FSA says you broke your loan agreement. You may also challenge FSA's decision that you cannot present a feasible Farm and Home Plan for primary loan servicing if your notice states FSA believes you cannot present a feasible plan.

You may also ask for an independent appraisal of your property used to secure the FSA loan. This independent appraisal may be important if you think FSA has put too high or too low a value on your property when it considered you for primary loan servicing. You will have to pay for this appraisal. FSA will give you three names of appraisers to choose from. Check box #2 on the "Response Form" if you want the independent appraisal.

If you request a meeting with the FSA servicing official, you will be given another chance to appeal after that meeting. If you do not want to request the meeting but do want to appeal, you must send a letter requesting appeal directly to the National Appeals Division, (NAD), <NAD Area Director's address>. Your letter must describe FSA's decision and why you believe the decision was not correct. In order for this decision to be changed, you will have to show why the decision should be reversed. Mail a copy of your request to the FSA county office. Your request for appeal must be postmarked no later than 30 days from the date you receive this notice.

If you want to request a meeting and appeal at the same time, you must request the meeting on the "Response Form" and appeal in writing to NAD.

(3) *Buy Out the Loan at the Current Market Value.*

You have this option if you meet the eligibility requirements and the recovery value is greater than the value of the restructured loan. The recovery value is $_____. The restructured loan value is $_____.

You [may] or [may not] buy out your FSA loans at the current market value of the property securing the loan, minus prior liens, in the amount of $_____. (This amount could change if the prior lien indebtedness changes before the buyout date.)

Note: The attached computer printout summarizes FSA's calculations.

If you are eligible and pay the buyout amount, FSA will write off the rest of your debt.

Time Limit. If you are eligible and want to buy out your FSA debt, you must pay FSA the above amount within 45 days from the date you received this letter. You must pay FSA in cash, legal money order, or certified check.

If you appeal FSA's adverse decision, the 45-day period to buy out will not start until all of the appeals are completed. Check box #3 on the "Response Form" if you want to buy out.

(4) Consideration for Homestead Protection

After all appeals are concluded, and your time to buy out, if eligible, has expired, FSA will automatically consider you for Homestead protection if your home is mortgaged to FSA. [You applied for this program when you applied for primary loan servicing (debt restructuring).] FSA will notify you that it will be considering you for this program and will request some additional information when the time comes to consider you.

VI. What Happens If You Do Not Cure Your Default or Buyout?

If you do not cure your default or buyout, FSA will accelerate or continue with acceleration of your FSA debts. This is a very severe action. FSA will take any of the actions listed above to collect on your debt.

The Right Not to Be Discriminated Against

Federal law does not allow discrimination of any kind. You cannot be denied a loan because of your race, color, religion, national origin, sex, marital status, handicap, or age (if you can legally sign a contract.) You cannot be denied a loan because all or part of your income is from a public assistance program. If you believe you have been discriminated against for any of these reasons, you can write the Secretary of Agriculture, Washington, DC 20250.

You cannot be denied a loan because you exercised your rights under the Consumer Credit Protection Act. You must have exercised these rights in good faith. The Federal Agency responsible for seeing that this law is obeyed is the Federal Trade Commission, Washington, DC 20580.

Sincerely,

Attachment 5–A—Notice of Intent To Accelerate or To Continue Acceleration and Notice of Borrowers' Rights

(To Be Used for Applications Submitted On or After November 28, 1990)

Name and Address

Dear (Borrower's Name):

You are not eligible for debt restructuring.

I. [ ] FSA has reviewed your application for primary loan servicing (debt restructuring) and based upon the information available, you are not eligible.

Your Farm and Home Plan does not show you can pay all your family living expenses, farm operating expenses, and scheduled debt repayments even with FSA help.

The attached computer printout shows that in order to develop a feasible plan and receive primary loan servicing, you would need to increase your cash available to pay your debts by $_____.

II. [ ] FSA has reviewed your application and your case file. Your Farm and Home Plans shows you can pay all of your family living expenses, farm operating expenses, and scheduled debt repayments if FSA uses primary loan servicing, softwood timber, and conservation contract programs to restructure your loans.

But you have not acted in good faith.

You have broken loan agreements with FSA in the following way:

[ ] You are $_____behind in your scheduled loan payments.

[ ] You have sold or otherwise disposed of property you used to secure the FSA loan without proper approval from FSA. This property is _____

_____

_____

(Describe property.)

[ ] You no longer are farming or ranching.

[ ] You have _____

_____

III. [ ] FSA has reviewed your application and case file. You have sufficient nonessential assets to bring your FSA account current. The net recovery value (NRV) of the nonessential assets is $_____. Your nonessential assets and their NRVs are as follows:

Nonessential Assets _____

_____

_____

NRVs _____

_____

_____

The NRV is the current appraised market value minus any prior liens and any costs of sale such as taxes due, commissions and advertising costs.

The amount needed to bring your FSA account current is $_____.

If you intend to sell the nonessential assets or borrow against their value to obtain the money to pay FSA current, you must do so immediately so that you can pay FSA current within 90 days from the date you receive this letter.

If you do not pay FSA current within 90 days or appeal this adverse decision (see part VI of this notice), FSA will accelerate your account (see part V). If you appeal the decision, the 90-day period to pay FSA current will not start until all the appeals are completed. You must check the appropriate block on the response form and return it to FSA within the specified time limit. Since FSA believes you have sufficient nonessential assets to bring your FSA account current, you are not now eligible for buyout (option 3 on Attachment 6–A). If you disagree, see part VI for an explanation of your rights.

IV. [ ] You have already received your lifetime limit of at least one form of debt forgiveness for which you are entitled.

[ ] Your writedown or writeoff of debt exceeded $300,000.

V. FSA Intends to Foreclose

FSA will accelerate your loan because you are not eligible for primary loan servicing.

FSA will take legal action to collect the money you owe.

FSA may:

(1) Repossess and sell your equipment, crops, livestock, livestock products, and other personal property used to secure your FSA loan;

(2) Foreclose and sell your real estate mortgaged to FSA. This could include your dwelling, if it was used to secure your farm loan;

(3) Stop any release of money from the sale of crops, livestock, livestock products, or other property you need to live and operate your farm;

(4) Take by administrative offset any money you are owed by Federal agencies;

(5) File lawsuits to collect money you owe to FSA.

VI. What You Can Do To Stop Foreclosure

Before FSA can take action against you, you can:

(1) Pay your FSA account current.

(2) Request a meeting with the FSA servicing official.

If you disagree with FSA's decision that you broke your loan agreement or the decision not to give you debt restructuring, you should request a meeting with the FSA servicing official. The servicing official can explain the FSA decision. You can also present changes in your Farm and Home Plan which may show that you can make the amount of payment listed above in section I.

To ask for this meeting, check the box #1 on the Response Form: (Attachment 6–A).

Time limit: You must return the "Response Form" to the county FSA office within 15 days from the date you get this letter. You should also call the county office to set up the meeting.

(3) Appeal.

You may appeal FSA's decision. On appeal, you may challenge the ways FSA says you broke your loan agreement. You may challenge FSA's decision that you cannot present a feasible Farm and Home Plan for primary loan servicing if your notice states FSA believes you cannot present a feasible plan. You may challenge FSA's decision that you are ineligible for debt restructuring because you have already received a writedown, buyout, or other form of debt forgiveness from FSA on another direct farm loan.

If you did not previously negotiate your appraisal, you may ask for an independent appraisal of your property including any nonessential assets that FSA says you own. This independent appraisal may be important if you think FSA has put too high or too low a value on your property. You will have to pay for this appraisal. The FSA servicing official will give you a list of three appraisers to choose from. Check box #2 on the "Response Form" if you want the independent appraisal. If the FSA appraisal contains mathematical or property description errors, you and the servicing official can make the necessary corrections if you both agree to such changes.

If you submit an independent appraisal and it is within five percent of the value of the FSA appraisal, you must select which of the two appraisals you want FSA to use for your request. This will be the final appraisal. It cannot be appealed.

If you request a meeting with the FSA servicing official, you will be given a chance to appeal after that meeting. If you do not want to request the meeting but do want to appeal, you must send a letter requesting appeal directly to the National Appeals Division, <NAD Area Director's address>. Your letter must describe FSA's decision and why you believe the decision was not correct. In order for this decision to be changed, you will have to show why the decision should be reversed. A copy of your request should be sent to the FSA county office. Your request for an appeal must be postmarked no later than 30 days from the date you received this notice.

If you want to request a meeting and appeal at the same time, you must request the meeting on the "Response Form" and appeal in writing to NAD.

(4) Buy Out the Loan at the Current Market Value.

You have this option if the recovery value is greater than the value of the restructured loan, you cannot repay your FSA debt due to circumstances beyond your control, and you have acted in good faith and tried to keep your loan agreements with FSA. The recovery value in this case is $_____. The restructured loan value is $_____.

In addition, buyout is subject to certain lifetime limitations regarding the maximum amount and number of benefits that can be received. A further explanation of these limits can be found in the Primary and Preservation Loan Service and Debt Settlement Programs Purpose notice which was sent to you earlier.

You [may] or [may not] buy out your FSA debt at the current market value of the property securing the loan and any nonessential assets, minus prior liens, in the amount of $_____. (This amount could change if the prior lien indebtedness changes before the buyout date.)

Note: The attached computer printout summarizes FSA's calculations.

If you are eligible and pay the buyout amount, FSA will write off the rest of your debt up to $300,000.

Time Limit. If you are eligible and want to buy out your FSA debt, you must pay FSA the above amount within 90 days from the date you received this letter. You must pay FSA in cash, legal money order, or certified check.

If you appeal FSA's adverse decision, the 90-day period to buy out will not start until all of the appeals are completed. Check box #3 on the "Response Form" if you want to buy out.

(5) Consideration for Homestead Protection and Debt Settlement.

After all appeals are concluded and your time to buyout, if eligible, has expired, FSA will automatically consider you for Homestead protection if your home is mortgaged to FSA. [You applied for this program when you applied for primary loan servicing (debt restructuring).] FSA will notify you that it will be considering you for this program and will request some additional information when the time comes to consider you. If you applied for Debt Settlement by returning Form FmHA 1956–1, will also consider you for this option at this time. If you did not apply for Debt Settlement before, you can apply now. Copies of Form FmHA 1956–1 are available at your FSA County Office.

VII. WHAT HAPPENS IF YOU DO NOT CURE THE DEFAULT OR BUYOUT?

If you do not cure the default or buyout, or if you do not respond to this letter by completing and returning the enclosed Attachment 6–A, FSA will accelerate or continue with acceleration of your FSA debts. This is a very severe action. FSA will take any of the actions listed in section V above to collect on your debt.

The Right Not To Be Discriminated Against

Federal law does not allow discrimination of any kind. You cannot be denied a loan because of your race, color, religion, national origin, sex, marital status, handicap, or age (if you can legally sign a contract.) You cannot be denied a loan because all or part of your income is from a public assistance program. If you believe you have been discriminated against for any of these reasons, you can write to the Secretary of Agriculture, Washington, D.C. 20250.

You cannot be denied a loan because you exercised your rights under the Consumer Credit Protection Act. You must have exercised these rights in good faith. The Federal Agency responsible for seeing this law is obeyed is the Federal Trade Commission, Washington, DC 20580.

Sincerely,

Attachment 6—Response to Notice Informing Me of FSA'S Intent To Accelerate or Continue With Acceleration and Notice of My Rights

TO: Farm Service Agency

FROM: _____

(Please print your name and address.)

I have read the notice informing me of FSA's intent to accelerate or continue with acceleration of my loan which I received with this response form.

I want to:

[Check appropriate box or boxes.]

[ ] (1) Request a meeting with an FSA servicing official.

My current telephone number is _____.

I understand that I do not lose my appeal rights by asking for this meeting.

[ ] (2) Request an independent appraisal of my property that secures the FSA loans.

I understand that I must pay for this appraisal. I understand that the FSA servicing official will give me the names of three appraisers, from which I must choose one.

[ ] (3) Buy out my loan at the current market value.

I understand that I must pay FSA _____ in cash, certified check, or legal money order. I understand I should contact the servicing official when I am ready to pay this amount as it may be different if my prior lien indebtedness changes before the buyout date. I understand that I must pay FSA within 45 days of the date I received this letter, or if I appeal, I must pay within 45 days from the adverse decision on appeal. I understand that if I pay this amount FSA will write off the rest of my debt.

I understand that if I want to appeal FSA's decision to accelerate my loan, I must send a letter requesting an appeal to the National Appeals Division. My letter must describe FSA's decision and why I believe the decision was not correct. I should also send the FSA county office a copy of my appeal request. I understand that I will be contacted by the National Appeals Division to set up the appeal hearing date and give me more information. My request for an appeal must be postmarked no later than 30 days from the date I received this notice.

Borrower's signature _____

Date _____

Attachment 6–A— Response to Notice Informing Me of FSA'S Intent To Accelerate or Continue With Acceleration and Notice of My Rights

TO: Farm Service Agency

FROM: _____

(Please print your name and address.)

I have read the notice informing me of FSA's intent to accelerate or continue with acceleration of my loan which I received with this response form.

I want to:

[Check appropriate box or boxes.]

[ ] (1) Request a meeting with an FSA servicing official.

I must return this "Response Form" within 15 days to request a meeting.

My current telephone number is _____.

I understand that I do not lose my appeal rights by asking for this meeting.

[ ] (2) Request an independent appraisal of my property including any nonessential assets.

I must return this "Response Form" within 30 days to request an independent appraisal.

I understand that I must pay for this appraisal. I understand that the FSA servicing official will give me names of three appraisers, from which I must choose one if I am also requesting an appeal.

[ ] (3) Buy out my loans at the current market value.

I understand that I must pay FSA $_____ in cash, certified check, or legal money order. I understand I should contact the servicing official when I am ready to pay this amount as it may be different if my prior lien indebtedness changes before the buyout date. I understand that I must pay FSA within 90 days of the date I received this letter, or if I appeal the FSA decision, I must pay within 90 days from the end of the appeal of the FSA decision.

[ ] (4) Pay my FSA account current.

I understand that I must pay FSA $_____ to pay my account current. I will pay this amount to FSA within 90 days of the date I received this letter, or if I appeal the FSA decision, I will pay within 90 days from the end of the appeal process on the FSA decision. I understand that when I pay this amount FSA will continue with my account.

I understand that if I want to appeal FSA's decision to accelerate my loan, I must send a letter requesting an appeal to the National Appeals Division. My letter must describe FSA's decision and why I believe the decision was not correct. I should also send the FSA county office a copy of my appeal request. I understand that I will be contacted by the National Appeals Division to set up the appeal hearing date and give me more information. My request for an appeal must be postmarked no later than 30 days from the date I received this notice.

Borrower's signature _____

Date _____

Attachments 7 and 8—Obsolete

Attachment 9—Notification of Intent To Accelerate or Continue Acceleration of Loans and Notice of Your Rights

Name and Address

Date

Dear (Borrower's Name):

FSA will accelerate your loan because you have not asked or have not accepted the offer for primary loan service programs.

You can:

(1) Ask for meeting with your FSA servicing official.

(2) Appeal FSA's decision.

(3) Ask to voluntarily convey to FSA the property used to secure your loan and ask to be released from your debt.

(4) Ask to keep your home if the FSA acquires ownership of it.

You are behind with your payments to FSA, and a review of your account shows:

[ ] You are _____ behind in your FSA loan payments.

This is a violation of your loan agreement.

[ ] You have sold or otherwise disposed of property used to secure your FSA loan. You did not get written approval for this. The property is _____

_____

(Describe property.)

[ ] You are no longer farming or ranching.

This is a violation of your loan agreement.

[ ] You have _____

_____

(Insert reason for proposed action.)

FSA Will Accelerate Your Loans

FSA will take legal action to collect the money you owe. They will foreclose on real estate and other property used to secure your loans. They may also stop the release of money from the sale of crops or other property. They will take by administrative offset any money you are owed by other Federal agencies.

Steps You Can Take Before FSA Accelerates or Continues Acceleration of Your Loans

(1) Ask for a meeting. You can ask to meet with your FSA servicing official before they decide to accelerate or continue acceleration of your loan. You must check the box on Attachment 10 saying you want a meeting. [Attachment 10 is the "Response to Notice of Intent to Accelerate or Continue Acceleration of My Loan."]

How Soon Must I Ask for a Meeting? You must ask for a meeting within 15 days from the date of this notice. Check the box on Attachment 10. Return it to your county office. Do this as soon as possible.

(2) Appeal. You can ask for an administrative appeal. On appeal, you can contest FSA's decision to accelerate or continue acceleration of your loan. You can ask for an independent appraisal of your land. You will have to pay for this appraisal. FSA will give you three names of approved appraisers to choose from. Check box 3 if you want an independent appraisal.

You can ask for an administrative appeal, even if you have asked for a meeting and your problems were not resolved at that meeting. However, you only have the opportunity to appeal an issue once. For example, if you previously appealed or had the opportunity to appeal a favorable debt restructuring offer and were not successful on appeal, or did not appeal within the time alloted, you cannot appeal this offer again. You can ask for an appeal even if you do not have a meeting.

How to Ask for an Appeal. Your request for appeal must be in writing and sent directly to the National Appeals Division, (NAD), <NAD Area Director's address>. Your letter must describe FSA's decision and why you believe the decision was not correct. In order for this decision to be changed, you will have to show why the decision should be reversed. Mail a copy of your request to the FSA county office. Your request for appeal must be postmarked no later than 30 days from the date you receive this notice.

What Happens if You Do Not Respond? If you do not respond to this notice by filling out Attachment 10, or requesting an appeal, FSA will accelerate or continue acceleration of any loans. This means they will take legal action to collect the unpaid loan, including foreclosure as described above.

Note: Foreclosure means you lose the title to your land. But you can still apply for homestead protection to keep possession of your house. [See Exhibit A, Attachment 1 sent to you on _____. If you did not get these forms, contact your county office within 15 days of this notice.]

The Right Not to Be Discriminated Against

Federal law does not allow discrimination of any kind. You cannot be denied a loan because of your race, color, religion, national origin, sex, marital status, handicap, or age (if you can legally sign a contract). You cannot be denied a loan because all or a part of your income is from a public assistance program. If you believe you have been discriminated against for any of these reasons, you can write to the Secretary of Agriculture, Washington, D.C. 20250.

You cannot be denied a loan because you exercised your rights under the Consumer Credit Protection Act. You must have exercised these rights in good faith. The Federal Agency responsible for seeing this law is obeyed is the Federal Trade Commission, Washington, DC 20580.

Sincerely,

Attachment 9–A—Notification of Intent To Accelerate or Continue Acceleration of Loans and Notice of your Rights

(To Be Used for Borrowers Receiving Notices on or After November 28,1990)

Name and Address

Date

Dear (Borrower's Name):

FSA will accelerate your loan because you have not asked or have not accepted the offer for primary loan service programs.

You can:

(1) Ask for meeting with your FSA servicing official.

(2) Appeal FSA's decision.

(3) Ask to voluntarily sign over to FSA the property used to secure your loan and ask to be released from your debt.

(4) Ask to keep your home if the FSA acquires ownership of it.

You are behind with your payments to FSA, and a review of your account shows:

[ ] You are $_____ behind in your FSA loan payments.

This is a violation of your loan agreement.

[ ] You have sold or otherwise disposed of property used to secure your FSA loan. You did not get written approval for this. The property is _____

_____

(Describe property.)

[ ] You are no longer farming or ranching.

This is a violation of your loan agreement.

[ ] You have _____

_____

(Insert reason for proposed action.)

FSA Will Accelerate Your Loans

FSA will take legal action to collect the money you owe. They will foreclose on real estate and other property used to secure your loans. They may also stop the release of money from the sale of crops or other property. They will take by administrative offset any money you are owed by other Federal agencies.

Steps You Can Take Before FSA Accelerates or Continues Acceleration of Your Loans

(1) Ask for a meeting. You can ask to meet with your FSA servicing official before they decide to accelerate or continue acceleration of your loan. You must check the box on Attachment 10–A saying you want a meeting. [Attachment 10–A is the "Response to Notice of Intent to Accelerate or Continue Acceleration of My Loan."]

How Soon Must I Ask for a Meeting? You must ask for a meeting within 15 days from the date of this notice. Check the box on Attachment 10–A. Return it to your county office. Do this as soon as possible.

(2) Appeal. You can ask for an administrative appeal. On appeal, you can contest FSA's decision to accelerate or continue acceleration of your loan. You can ask for an administrative appeal, even if you have asked for a meeting and your problems were not resolved at that meeting. However, you only have the opportunity to appeal an issue once. For example, if you previously appealed or had the opportunity to appeal a favorable debt restructuring offer and were not successful on appeal, or did not appeal within the time alloted, you cannot appeal this offer again. You can ask for an appeal even if you do not have a meeting.

How to Ask for an Appeal. Your request for appeal must be in writing and sent directly to the National Appeals Division, (NAD), <NAD Area Director's address>. Your letter must describe FSA's decision and why you believe the decision was not correct. In order for this decision to be changed, you will have to show why the decision should be reversed. Mail a copy of your request to the FSA county office. Your request for appeal must be postmarked no later than 30 days from the date you receive this notice.

What Happens if You Do Not Respond? If you do not respond to this notice by filling out Attachment 10–A, or request an appeal, FSA will accelerate or continue acceleration of any loans. This means they will take legal action to collect the unpaid loan, including foreclosure as described above.

Note: Foreclosure means you lose the title to your land. But you can still apply for homestead protection to keep possession of your house. [See Exhibit A, Attachment 1 sent to you on _____. If you did not get these forms, contact your county office within 15 days of this notice.]

The Right Not To Be Discriminated Against

Federal law does not allow discrimination of any kind. You cannot be denied a loan because of your race, color, religion, national origin, sex, marital status, handicap, or age (if you can legally sign a contract). You cannot be denied a loan because all or a part of your income is from a public assistance program. If you believe you have been discriminated against for any of these reasons, you should write to the Secretary of Agriculture, Washington, DC 20250.

You cannot be denied a loan because you exercised your rights under the Consumer Credit Protection Act. You must have exercised these rights in good faith. The Federal Agency responsible for seeing this law is obeyed is the Federal Trade Commission, Washington, DC 20580.

Sincerely,

Attachment 10—Response to Notice Informing Me of FSA'S Intent To Accelerate or Continue To Accelerate My Loan

Notice of My Rights

TO: Farm Service Agency

FROM: _____

(Please print your name and address.)

I want to: (Check one or more of the following boxes)

[ ] (1) Request a meeting with the FSA servicing official.

My telephone number is _____.

I understand I do not lose my right to appeal if I ask for a meeting.

[ ] (2) Voluntarily sign over to FSA all the property used to secure my loan and settle my debt.

[ ] (3) Request an independent appraisal of property securing my loans. I understand I must pay for this appraisal. I understand FSA will give me names of three qualified appraisers.

[ ] (4) Homestead Protection.

I understand that if I want to appeal FSA's decision to accelerate my loan, I must send a letter requesting an appeal to the National Appeals Division. My letter must describe FSA's decision and why I believe the decision was not correct. I should also send the FSA county office a copy of my appeal request. I understand that I will be contacted by the National Appeals Division to set up the appeal hearing date and give me more information. My request for an appeal must be postmarked no later than 30 days from the date I received this notice.

Signed _____

Date _____

Attachment 10–A—Response to Notice Informing Me of FSA'S Intent To Accelerate or Continue To Accelerate My Loan

(To Be Used for Borrowers Receiving Notices on or After November 28, 1990)

Notice of My Rights

TO: Farm Service Agency

FROM: _____

(Please print your name and address.)

I want to: (Check one or more of the following boxes)

[ ] (1) Request a meeting with the FSA servicing official.

My telephone number is _____.

I must return this form within 15 days.

I understand I do not lose my right to appeal if I ask for a meeting.

[ ] (2) Voluntarily sign over to FSA all the property used to secure my loan and settle my debt.

[ ] (3) Homestead Protection.

I understand that if I want to appeal FSA's decision to accelerate my loan, I must send a letter requesting an appeal to the National Appeals Division. My letter must describe FSA's decision and why I believe the decision was not correct. I should also send the FSA county office a copy of my appeal request. I understand that I will be contacted by the National Appeals Division to set up the appeal hearing date and give me more information. My request for an appeal must be postmarked no later than 30 days from the date I received this notice.

Signed _____

Date _____

20. Exhibit B is revised to read as follows:

Exhibit B—Notification of Offer To Restructure Debt for Financially Distressed Borrowers Current on Their Loan Payments

(Borrower's Name and Address)

(Date)

Dear (Borrower's Name):

We have determined that the Farm Service Agency (FSA) can approve your request for primary loan servicing programs.

Our calculations indicate that you will be able to make the necessary annual payment on your FSA loan if your loan is restructured through the use of primary loan servicing programs. The attached computer printout indicates the primary loan servicing program that will help you overcome your financial difficulty and provide the greatest net recovery to the Government. Therefore, We are offering to restructure your FSA debt in the following fashion:

_____

_____

* As a condition of this restructuring, you must agree to meet, at your own cost, FSA's training requirements which provide instruction in production and financial management within 2 years of the date your loans are restructured. The cost will be included in your farm plan as an operating expense. Upon completion of the training, the instructor will assign a score according to the following criteria:

Score

1 The borrower attended classroom sessions as agreed, satisfactorily completed all assignments, and demonstrated an understanding of the course material.

2 The borrower attended classroom sessions as agreed and attempted to complete all assignments; however, the borrower does not demonstrate an understanding of the course material.

3 The borrower did not attend classroom sessions as agreed or did not attempt to complete assignments. In general, the borrower did not make a good faith effort to complete the training.

Attached is a list of courses you will be required to complete to fulfill the training requirement. A list of approved vendors in your area for these courses is also attached. Any denial of a request for a waiver of the training requirement is not appealable. If you fail to complete the training as agreed, you will be ineligible for future FSA benefits including future direct and guaranteed loans, Primary Loan Servicing, Interest Assistance renewals, and restructuring of guaranteed loans.

* The County Committee has waived the training requirement for the restructuring offered in this notice.

If you want FSA to use the primary servicing program identified on the computer printout, you must accept this offer in writing. Your acceptance must be received by FSA not later than *45 days* from your receipt of this letter. You may accept this offer in writing by signing and returning the attached form titled "Acceptance of Offer to Restructure my Debt."

If you do not accept this offer within 45 days, and your account becomes delinquent, FSA will renotify you of all servicing options available at that time.

Sincerely,

* Indicates optional paragraphs to fit the individual circumstances.

Attachment 1—Acceptance of Offer to Restructure My Debt

(Date)

TO: Farm Service Agency

FROM: (Please print your name and address)

I have received your offer to restructure my FSA debt. I would like to accept that offer.

Sincerely,

(Borrower's signature)

(Date)

21. Exhibit C is revised to read as follows:

Exhibit C—Net Recovery Buyout Recapture Agreement

In consideration of the Farm Service Agency (FSA) allowing me to purchase the real estate property securing my FSA Farm Loan Programs loan obligations at the net recovery value of $ _____ in accordance with 7 CFR part 1951, subpart S, I agree to pay to difference between the net recovery value of the security of $ _____ and the fair market value of the real estate property of $ _____ as of the date of this agreement, if I sell or otherwise convey the security within 2 years of this agreement for an amount which exceeds the net recovery value. This amount is $ _____. I further agree to give FSA a mortgage or deed of trust to secure this amount for the best lien obtainable which will be subordinate to any purchase money security instrument which does not exceed the fair market value of the property to enable the borrower to purchase the property from FSA at the net recovery value. This mortgage or deed of trust will be released 2 years from the date of this agreement if I do not sell or convey the property during the two year period.

I understand that the difference between the net recovery value of the real estate securing the FSA loan obligations and the fair market value of the real estate security specified above will all be due and payable on the day of sale or conveyance if I sell or otherwise convey the real estate property within two (2) years from the date of this agreement, if I realize a gain in this transaction.

Loan Balance $ _____.

Amount of Buyout $ _____.

Date of Agreement

Borrower

22. Exhibit C–1 is revised to read as follows:

Attachment C–1—Net Recovery Buyout Recapture Agreement

Purpose

This agreement with FSA will allow you to buy out your loan at the net recovery value.

1. I _____ understand and agree to the following conditions.

2. I will give FSA a lien (mortgage or deed of trust) on the FSA real estate security property I own to secure this agreement.

The lien is to secure the maximum recapture amount listed in item 6.c. of this agreement. This lien is secondary to the following liens, including any lien used to obtain the net recovery buyout amount up to the net recovery value.

(name, address, and unpaid balance of liens)

3. I agree that if I do not sell or convey any portion of the real estate used as security for 10 years, the agreement and any liability you have under it will be satisfied at the end of 10 years, and then FSA will release its lien.

Note: Convey includes, but is not limited to, any form of transfer in all or any portion of the real estate property, including sale, gift, Contract Sale or Purchase Agreement, foreclosure, and below-fair-market sale, but does not include a mortgage or deed of trust. Transfer of title to property to a spouse or child who is actively engaged in farming the property upon the death or retirement of a borrower will not be treated as a conveyance. In such a transaction, FSA will not release its lien, and the transferee will assume liability under the agreement.

4. I agree that as of the date of this agreement, the net recovery value of the real estate is $ _____.

5. I agree that as of the date of this agreement, the total amount of the FSA debt secured by real estate including principal and interest before buyout is $ _____.

6. If I do sell or convey any part or all of this real estate within 10 years of this agreement, I must pay FSA the recapture amount for that part sold or conveyed which is the smaller of a., b., or c.

a. The Fair Market Value of the real estate parcel at the time of the sale or conveyance, as determined by an FSA appraisal, minus that portion of the recovery value of the real estate represented in item 4,

b. The Fair Market Value of the real estate parcel at the time of the sale or conveyance, as determined by an FSA appraisal, minus the unpaid balance of prior liens at the time of the sale or conveyance, minus the net recovery value of the real estate in item 4 if this amount has not been accounted for as a prior lien, or

c. The total amount of the FSA debt written off for loans secured by real estate.

I agree that the amount in Item 5 is the outstanding balance of principal and interest owed on the FSA Farm Loan Programs loans as of the date of this agreement, minus the net recovery value of the real estate in item 4. This amount is $ _____ and is the maximum amount that can be recaptured.

7. When I pay the recapture amount due, FSA will release its lien on the property sold or conveyed. The agreement and any liability I have under it will be satisfied at the end of 10 years if I have made all the required payments under the recapture agreement. The agreement and any liability I have under it will be satisfied before this time only if I sell or convey all of the real estate securing this agreement and make all the required payments under the agreement.

8. This agreement is subject to FSA regulations in 7 CFR part 1951, subpart S, and any future regulations which are consistent with this agreement.

9. The date of this agreement is the latest date of the dates below.

Signed _____

(borrower or obligor)

Date _____

Signed _____

(borrower or obligor)

Date _____

(FSA)

Date _____

23. Exhibit E is revised to read as follows:

Exhibit E—Notification of Adverse Decision for Primary Loan Servicing, Mediation or Meeting of Creditors and Other Options

(Borrower's Name and Address)

Dear (Borrower's Name):

The Farm Service Agency (FSA) has carefully considered your request for primary loan servicing programs. Due to your debt with lenders other than FSA, you are unable to develop a feasible plan. Your Farm and Home Plan must show that you have enough income after payment of your essential living and operating expenses and other non-FSA debts to make an annual payment to FSA of at least $ _____. The attached computer printout shows that in order to develop a feasible plan and receive primary loan servicing, you would need to increase your cash available to pay FSA and your other debts by $ _____.

If you did not previously request a Conservation Contract, you may request this servicing action by submitting a map or FSA aerial photo indicating that portion of the farm and the appropriate acres to be considered. You must submit this information to FSA within 30 days of receiving this notice.

(To be used when Certified State Mediation is available)

Certified State Mediation

We are requesting mediation under the (Name) State Certified Mediation Program. We will work with you and your creditors to determine if your debts can be adjusted sufficiently to permit you to develop a feasible plan of operation. If, with the adjustment of your debt, you are able to develop a feasible plan of operation which shows that you can make an annual payment to FSA of at least $_____, FSA will reconsider your application for primary loan servicing.

(To be used when Certified State Mediation is not available and undersecured creditors have a substantial part of the total borrower's debt.)

Meeting of Creditors

If you request, we will schedule a meeting with you and your other creditors in an effort to reach agreements with them to adjust your debts sufficiently to permit you to develop a feasible plan of operation. The FSA State Executive Director will contract for a mediator or appoint an FSA representative not previously involved in servicing of your account upon your written request to participate in the meeting with creditors. Sign the attached acknowledgement within 30 days of the date of this letter. The acknowledgment will be your written request and consent to FSA releasing information concerning your account to other creditors who participate in the meeting.

(To be used when Certified State Mediation is not available and undersecured creditors do not hold a substantial part of the total borrower's debt.)

We will not be scheduling a meeting with you and your other creditors in an effort to reach agreements with them to adjust your debts. We have determined that your other creditors do not hold a sufficient amount of your total debt to permit you to develop a feasible plan of operation even if their debts are entirely written off. You may object to our determination not to give you a voluntary meeting of creditors in any appeal you may have. You will be notified of your appeal rights in a later notice.

(The following paragraphs will be removed if the application was submitted before November 28, 1990, or the borrower does not have any nonessential assets.)

Nonessential Assets

FSA has determined that you have nonessential assets that do not contribute income to pay essential family living and farm operating expenses. The net recovery value (NRV) of the nonessential assets has been added to the NRV of the FSA collateral for the calculation on the attached printout. The NRV of the nonessential assets is $_____. Your nonessential assets and their NRVs are as follows:

Nonessential Assets

_____

_____

_____

_____

NRVs

_____

_____

_____

_____

FSA encourages you to sell the nonessential assets or borrow against their value. If you pay the NRV of the nonessential assets on your FSA debt, that amount will be subtracted from your debt and FSA will reevaluate your servicing request. If you are going to pay FSA the NRV of your nonessential assets, you must do so within 45 days of the date of receiving this letter. You must check the appropriate block on the response form and return it to FSA within 45 days with $_____ for payment of the NRV of the nonessential assets. If you want to reduce the NRV, you must pay FSA before any mediation or meeting of creditors.

If you wish to dispute FSA's decision that you own nonessential assets, you will be given the opportunity to appeal if mediation or the meeting of creditors is unsuccessful. If mediation or a meeting of creditors is not held, you will be notified of your appeal rights in a later notice.

Negotiation of the Appraisal

If you object to the FSA appraisal of your property, you may ask the FSA by returning the "Response Form" to negotiate the appraisal with you. You must ask to negotiate the FSA appraisal within 30 days from the date you receive this notice. To do this you must provide FSA with a copy of your current independent appraisal or you must now obtain, at your cost, an independent appraisal of your property. The appraisal and the appraiser must meet certain standards published in FSA regulations.

If you do not have a current independent appraisal and wish FSA to assist you, check option 2 of the "Response Form" and FSA will provide you with a list of such appraisers.

You must provide FSA a copy of your independent appraisal within 30 days of requesting negotiation.

If your current independent appraisal is within five percent of the FSA appraisal, you must select which appraisal of the two you want FSA to use in processing your request. The appraisal you select will be the final appraisal. It cannot be further negotiated or appealed. If the difference is more than five percent and you have requested a negotiated appraisal, you and FSA will choose an independent appraiser to complete a third appraisal. You must pay one-half of the cost of the third appraisal. FSA will pay for the other half of the third appraisal. You, the appraiser and the servicing official must complete and sign an appraisal agreement. Following the completion of the third appraisal, the average of the two appraisals that are closest in value, as determined by FSA, shall establish the appraised value to be used. This final negotiated appraisal is not appealable. Do not select this option of the "Response Form" if you and FSA have already negotiated your appraisal.

If you choose not to negotiate and wish to dispute FSA's appraisal, you will be given the opportunity to appeal in a later notice. If you believe there are mathematical or property description errors in the appraisals, you should immediately contact the servicing official. If you and the servicing official agree, the corrections will be made and initialed by both you and the servicing official.

If you want information on the requirements of an FSA appraisal, you may request a copy of the FSA appraisal regulations from the servicing official.

Sincerely,

Attachment

Attachment 1—Borrower's Request for Meeting of Creditors and Acknowledgment

I have been given a notice explaining that I am not eligible for primary loan service programs. FSA has told me that due to my debt with other lenders it does not believe I can develop a feasible plan. I request that you schedule a meeting with my undersecured creditors to assist me in developing a feasible plan of operation. I consent to FSA releasing information concerning my FSA account to these creditors to assist me in developing a feasible plan.

(Date) _____

(Borrower's signature) _____

Attachment 2—Borrower's Request for Meeting of Creditors or Request to Negotiate the FSA Appraisal and Acknowledgment

I have been given a notice explaining that I am not eligible for primary loan service programs.

I want to:

[Check the appropriate box or boxes.]

[ ] (1) Request an independent appraisal of my property including any nonessential assets.

I must return this "Response Form" within 30 days to request an independent appraisal.

I understand that I must pay for this appraisal. I understand that the FSA servicing official will give me a list of appraisers.

If the independent appraisal is within five percent of the FSA appraisal, I must select which of the two appraisals I want to be used for processing my request.

[ ] (2) Request Negotiation of the Appraisal.

I must return this "Response Form" within 30 days to request a negotiation of my appraisal.

I understand that I must provide FSA with a copy of my independent appraisal within 30 days of requesting negotiation. I understand that I must pay for this appraisal and one-half of a third appraisal, if necessary. I understand that FSA will not negotiate the appraisal more than once.

[ ] (3) I request a copy of the recent FSA appraisal of my property.

[ ] (4) I am paying FSA the net recovery value of any nonessential assets that FSA has

said I own. I will pay this amount within 45 days.

Please recalculate the restructuring of the FSA debt.

* [ ] (5) Request that you schedule a meeting with my undersecured creditors to assist me in trying to develop a feasible plan of operation. I consent to FSA releasing information concerning my FSA account to these creditors to assist me in developing a feasible plan. I must return this "Response Form" within 30 days if I want a meeting.

(Date) _____

(Borrower's signature) _____

* Optional paragraph depending on the circumstances.

24. Exhibit F is revised to read as follows:

Exhibit F—Notification of Offer to Restructure Debt

(Borrower's Name and Address)

Date

Dear (Borrower's Name):

We have determined that the Farm Service Agency (FSA) can approve your request for primary loan servicing programs.

Offer

Our calculations indicate that you will be able to develop a feasible plan and make the necessary annual payment on your FSA loan if your loan is restructured in the following fashion:

_____

_____

_____

The attached computer printout indicates the primary loan servicing program that will keep you on the farm and provide the greatest net recovery to the Government.

* Our calculations indicate that a feasible plan can be found with or without a writedown, as described below. However, with a writedown, your cash flow margin would be _____ percent, whereas without a writedown, your cash flow margin would only be _____ percent. You can choose to accept the restructuring offer with or without a writedown on the attached response form. If you choose a writedown, you will not be able to receive future loans through FSA, except for annual operating loans.

* As a condition of this restructuring, you must agree to meet, at your own cost, FSA's training requirements which provide instruction in production and financial management within 2 years of the date your loans are restructured. The cost will be included in your farm plan as an operating expense. Upon completion of the training, the instructor will assign a score according to the following criteria:

Score

1 The borrower attended classroom sessions as agreed, satisfactorily completed all assignments, and demonstrated an understanding of the course material.

2 The borrower attended classroom sessions as agreed and attempted to complete all assignments; however, the borrower does not demonstrate an understanding of the course material.

3 The borrower did not attend classroom sessions as agreed or did not attempt to complete assignments. In general, the borrower did not make a good faith effort to complete the training.

Attached is a list of courses you will be required to complete to fulfill the training requirement. A list of approved vendors in your area for these courses is also attached. Any denial of a request for a waiver of the training requirement is not appealable. If you fail to complete the training as agreed, you will be ineligible for future FSA benefits including future direct and guaranteed loans, Primary Loan Servicing, Interest Assistance renewals, and restructuring of guaranteed loans.

* The County Committee has waived the training requirement for the restructuring offered in this notice.

If you want FSA to use the primary servicing program identified on the computer printout to restructure your debt, you must accept this offer in writing. Your acceptance must be received by FSA no later than 45 days from your receipt of this letter. You may accept this offer in writing by signing and returning the attached form titled "Acceptance of Offer to Restructure my Debt."

** Nonessential Assets*

FSA has determined that you have nonessential assets that do not contribute a net income to pay essential family living expenses or maintain a sound farming operation. The net recovery value (NRV) of the nonessential assets has been added to the NRV of the FSA collateral for the calculation on the attached printout. The NRV of the nonessential assets is $ _____. Your nonessential assets and their NRVs are as follows:

Nonessential Assets

_____

_____

_____

NRVs _____

_____

_____

_____

_____

FSA encourages you to sell the nonessential assets or borrow against their value. If you pay the NRV of the nonessential assets, the amount will be subtracted from your debt and FSA will recalculate the value of your FSA debt. If you are going to pay FSA the NRV of your nonessential assets, you must do so within 45 days of the date of receiving this letter. You must check the appropriate block on the response form and return it to FSA within 45 days with your payment for the NRV of the nonessential assets of $_____.

If you wish to dispute FSA's decision that you own nonessential assets or disagree with the offer presented, you may request a meeting and/or an appeal.

Negotiation of the Appraisal

If you object to the FSA appraisal of your property, you may ask the FSA to negotiate the appraisal with you by returning the "Response Form." You must ask to negotiate the FSA appraisal within 30 days from the date you receive this notice. To do this, you must provide FSA with a copy of your current independent appraisal or you must now obtain, at your cost, an independent appraisal of your property. The appraisal and the appraiser must meet certain standards published in FSA regulations.

If you do not have a current appraisal and wish FSA to assist you, check option 2 of the "Response Form" and FSA will provide you with a list of such appraisers.

You must provide FSA a copy of your independent appraisal within 30 days of requesting negotiation.

If your current independent appraisal is within five percent of the FSA appraisal, you must select which appraisal of the two you want FSA to use in processing your request. The appraisal you select will be the final appraisal. It cannot be further negotiated or appealed. If the difference is more than five percent and you have requested a negotiated appraisal, you and FSA will choose an independent appraiser to complete a third appraisal. You must pay one-half of the cost of the third appraisal. You, the appraiser and the servicing official must complete and sign an appraisal agreement for this appraisal. FSA will pay for the other half of the third appraisal. Following the completion of the third appraisal, the average of the two appraisals that are closest in value, as determined by FSA, shall establish the appraised value to be used. This final negotiated appraisal is not appealable. Do not select this option on the "Response Form" if you and FSA have already negotiated your appraisal.

If you wish to dispute FSA's appraisal, but do want to reach agreement with FSA by negotiating the appraisal, you may also request a meeting or appeal of other items of the decision that you do not agree with by checking the appropriate box on the attached response form. If you believe there are mathematical or property description errors in the appraisals, you should immediately contact the servicing official. If you and the servicing official agree, the corrections will be made and initialed by both you and the servicing official.

If you want information on the requirements of an FSA appraisal, you may request a copy of the FSA appraisal regulations from the servicing official.

What Happens If You Do Not Accept the Offer

If you do not accept the restructuring offer on page 1, FSA will deny your request for primary loan servicing and send you an additional notice stating that FSA intends to liquidate your account. You can appeal FSA's offer by sending a letter requesting appeal directly to the National Appeals Division, (NAD), <NAD Area Director's address>. Your letter must describe FSA's decision and why you believe the decision was not correct. In order for this decision to be changed, you will have to show why the decision should be reversed. A copy of your request should be sent to the FSA county office. Your request must be postmarked no later than 30 days from the date you received this notice.

YOU MAY HAVE A FEDERAL INCOME TAX LIABILITY IF FSA RESTRUCTURES YOUR FSA INDEBTEDNESS WITH A WRITEDOWN. YOU SHOULD CONTACT THE INTERNAL REVENUE SERVICE (IRS) FOR INFORMATION.

Sincerely,

* Optional paragraphs depending on circumstance.

Attachment 1—Acceptance of Offer To Restructure My Debt

TO: Farm Service Agency

FROM: (Please print your name and address)

I have received your offer to restructure my FSA debt.

I would like to accept that offer.

Sincerely.

(Borrower's signature)

(Date) _____

Attachment 2—Acceptance of Restructuring Offer, Request To Negotiate Appraisal or Pay FSA the NRV of Nonessential Assets

(This Attachment Will Be Used Instead of Attachment 1 for Borrowers Who Submitted Applications On or After November 28, 1990)

TO: Farm Service Agency

FROM: (Please print your name and address)

I have received your offer to restructure my FSA debt.

(Check the appropriate blocks.)

* [ ](1) I accept FSA's offer to restructure my debt. I understand that I must accept FSA's offer within 45 days of receiving Exhibit F.

* [ ](1) I accept FSA's offer to restructure my debt as follows: (Put an "X" in Block (a) or (b).) I undestand I must accept FSA's offer within 45 days of receiving Exhibit F.

(a) [ ] With a writedown giving me a higher cash flow margin than without a writedown.

(b) [ ] Without a writedown giving me a lower cash flow margin than if I would take the writedown.

[ ](2) I request an independent appraisal of my property including any nonessential assets. If the difference between my independent appraisal and the FSA appraisal is not more than five percent, I understand that I must select which of the two appraisals I want to be used for reconsidering my request. In such a case, there will not be an appeal of the appraisal or any further negotiation of the appraisal.

I must return this "Response Form" within 30 days to request an independent appraisal.

I understand that I must pay for this appraisal. I understand that the FSA servicing official will give me a list of appraisers.

[ ](3) I request a copy of the FSA recent appraisal of my property.

[ ](4) Request Negotiation of the Appraisal.

I must return this "Response Form" within 30 days to request a negotiation of my appraisal.

I understand that I must provide FSA with a copy of my independent appraisal within 30 days of requesting negotiation. I understand that I must pay for this appraisal plus one-half of a third appraisal, if necessary. I understand that FSA will not negotiate the appraisal more than once.

[ ](5) I intend to pay FSA the net recovery value of any nonessential assets that FSA has said I own.

I understand that I must pay the net recovery value of the nonessential assets within 45 days of receiving Exhibit F.

I understand that if I want to appeal FSA's offer to restructure, I must send a letter requesting an appeal to the National Appeals Division. My letter must describe FSA's decision and why I believe the decision was not correct. I should also send the FSA county office a copy of my appeal request. I understand that I will be contacted by the National Appeals Division to set up the appeal hearing date and give me more information. My request for an appeal must be postmarked no later than 30 days from the date I received this notice. If possible, I should submit a copy of my independent appraisal to the FSA servicing official and the hearing officer prior to the appeal hearing if I am appealing the appraisal.

Sincerely,

(Borrower's signature)

_____

(Date)

* Optional paragraphs depending on the circumstance.

25. Exhibit H is revised to read as follows:

Exhibit H—Conservation Contract Program

I. General

A Conservation Contract (CC) may be exchanged, when requested by a borrower (current or delinquent), for a cancellation of a portion of the borrower's FSA indebtedness. The CC may be considered alone, or with other Primary Loan Servicing Programs as set forth in 7 CFR 1951.909. These contracts can be established for conservation, recreational, and wildlife purposes on farm property that is wetland, wildlife habitat, upland or highly erodible land. Such land must be suitable for the purposes involved. All Farm Loan Programs loans which are secured by real estate may be considered for a CC. Non-program loan debtors are not eligible to receive any benefits under this section.

Definitions

(1) *Conservation purposes.* These include protecting or conserving any of the following environmental resources or land uses:

(a) *Wetland,* except when such term is part of the term *Converted wetland,* is land that the Natural Resources Conservation Service (NRCS) has determined has a predominance of hydric soils and that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions, except that this term does not include lands in Alaska identified as having a high potential for agricultural development and a predominance of permafrost soils.

(i) *Hydric soils* means soils that, in an undrained condition, are saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation;

(ii) *Hydrophytic vegetation* means a plant growing in—

(*A*) Water; or

(*B*) A substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content;

(b) *Highly erodible land* is land that NRCS has determined has an erodibility index of 8 or more.

(c) *Upland* is a term used in the law to refer to land other than highly erodible land and wetland. Although upland in its normal use implies many types of land, it has been more narrowly defined for this purpose to include land or water areas that meet any one of the following criteria:

(i) One-hundred year floodplain,

(ii) Aquatic life, or wildlife habitat or endangered plant habitat of local, regional, State or Federal importance,

(iii) Aquifer recharge area of local, regional or State importance, including lands in the wellhead protection program for public water supplies authorized by the Safe Drinking Water Act Amendments of 1986,

(iv) Area of high water quality or scenic value,

(v) Area containing historic or cultural property, which is listed in or eligible for the National Register of Historic Places, as provided by the National Historic Preservation Act (NHPA),

(vi) Area that provides a buffer zone necessary for the adequate protection of proposed conservation contract areas,

(vii) Area within or adjacent to a National Park, U.S. Fish and Wildlife Service administered area, State Fish and Wildlife agency administered area, a National Forest, a Bureau of Land Management administered area, a Wilderness Area, a National Trail, a unit of the Coastal Barrier Resource System, abandoned railroad corridors contained in local, State or Federal open space, recreation or trail plans, Federal or State Wild or Scenic River, U.S. Army Corps of Engineers land designated for flood control or recreation purposes, State and local recreation, natural or wildlife areas or State Conservation Agency administered areas.

(viii) Area that NRCS determines contains soils that are generally not suited for cultivation such as soils in land capability classes IV, V, VI, VII or VIII in the NRCS's Land Capability Classification System.

(d) *Wildlife habitat* is a term used to include the area that provides direct support for given wildlife species, species life stages, populations, or communities determined appropriate by the Conservation Agency within the State as being of State, regional or local importance or as determined by the Fish and Wildlife Service to be of national importance. This wildlife habitat area includes all acceptable environmental features such as air quality, water quality, vegetation, and soil characteristics.

(2) *Management authority.* Any agency of the United States, a State, or a unit of local Government of a State, a person, or an

individual that is designated in writing by FSA to carry out all or a portion of the activities necessary to manage and implement the terms and conditions of a contract or its management plan. The borrower whose land is subject to the contract may be eligible to be designated as a management authority.

(3) *Person.* Any agency of the United States, a State, a unit of local Government within a State, or a private or public nonprofit organization.

(4) *Recreational purposes.* These activities include providing public use for both consumption (e.g. hunting, fishing) and nonconsumption (e.g. camping, hiking) recreational activities, in a manner that conserves wildlife and their habitats, ensures public safety, complies with applicable laws, regulations, and ordinances and permits the operation of the remaining farm enterprise.

(5) *Wildlife.* Means any wild animal, whether alive or dead, including any wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean, arthropod, coelenterate, or other invertebrate, whether or not bred, hatched, or born in captivity, and includes any part, product, egg, or offspring.

(6) *Wildlife purposes.* These program objectives include establishing and managing areas that contain fish and wildlife habitats of local, regional, State or Federal importance.

II. Eligibility

The following steps must be taken to determine if the borrower is eligible for a conservation contract. If the borrower is found to be ineligible, the FSA servicing official will notify the borrower of the opportunity to appeal the adverse decision on the eligibility for the contract after a final decision is made on whether the borrower qualifies for any other servicing options. The servicing official must find that:

(1) All Farm Loan Programs loans which are secured by real estate may be considered for a CC. A real estate mortgage or deed of trust taken on a borrower's real estate as additional security for a Farm Loan Programs loan qualifies as real estate security.

(2) The proposed contract helps a qualified borrower to repay the loan in a timely manner.

(3) If the land being proposed for the contract is within the FSA Conservation Reserve Program, both the requirements of that program and this section can be met.

III. Establishing the Contract Review Team

The servicing official will establish a contract review team by notifying the appropriate field offices of the Natural Resources Conservation Service (NRCS), U.S. Fish and Wildlife Service (FWS), State Fish and Wildlife Agencies, Conservation Districts, National Park Service, Forest Service (FS), State Historic Preservation Officer, State Conservation Agencies, State Environmental Protection Agency, State Natural Resource Agencies, adjacent public landowner, and any other entity that may have an interest and qualifies to be a management authority for a contract. The notified parties may in turn notify other eligible entities. NRCS, for example, may want to notify the appropriate Conservation District. As part of the notification, the servicing official will provide an approximate location and a general description of the potentially affected land. All notified parties will be invited to serve on the contract review team.

IV. Responsibilities of the Contract Review Team

NRCS will lead the contract review team which in every case will be composed of an NRCS, FSA and FWS representative, plus all other parties that accepted the invitation to participate. To the extent practicable, a site visit will be conducted within fifteen days from the date the review team members are invited to participate. Any lien holder and the borrower will be informed of the site visit time and invited to attend. Within thirty days after the site visit, a report will be developed by the review team and provided to the servicing official. The report will cover the items listed in paragraphs (A) through (F) of this paragraph and will be prepared by the review team. The items to be addressed in the review team report are:

(A) The amount of land, if any, which is wetland, wildlife habitat, upland or highly erodible land and the approximate boundaries of each type of land. If applicable, contract boundaries may be recommended which go beyond the wetland, upland, or highly erodible land but are necessary for either the establishment of identifiable contract boundaries or are required for the efficient management of the contract's terms and conditions.

(B) A finding of whether the land is suitable for conservation, recreation or wildlife habitat purposes and a priority ranking of purposes included, if the land can be so classified and ranked.

First, priority will be given to land contract opportunities to benefit wildlife species of Federal Trust responsibility (e.g., migratory birds and endangered species) and their habitats (e.g., wetlands). Special consideration will be given to opportunities to benefit a combination of conservation, recreation and wildlife habitat purposes. When there are other land contracts already established or under review within the local area and the intent of these contracts has been established, the review team will consider these actions as purpose rankings are developed.

(C) If appropriate, any special terms or conditions that would need to be placed on the contract plus unique or important features of the property which would not be adequately addressed by the standard contract terms and conditions.

(D) A proposed management plan consistent with the purpose or purposes for which the contract would be established. The management plan will outline the various management alternatives for the proposed contract. The selection of the alternatives to be followed will be based upon future needs, fund availability, and identification within the management plan. The management plan will provide guidance as to the conservation practices to be followed and the costs which may occur in the establishment and maintenance of the contract. This management plan will specifically recommend whether or not public recreational use and public hunting should be allowed on the contract and provide supporting reasons for the recommendation made. Whenever changes are required in the management plan, FSA, may update the management plan to reflect the changes.

V. FSA's Review of Contract Team's Report

Upon receipt, the Servicing Official will review the contract team's report. If the report indicates that a contract is not feasible given the nature of the land, or other factors, the servicing official will inform the borrower of the reasons that the contract has been denied and that the borrower may appeal the denial of the contract or meet with the servicing official.

VI. Terms of Contracts

Borrowers participating in the debt cancellation conservation contract program will be given the option of selecting a 50, 30 or 10 year contract term. The amount of debt to be canceled will be directly proportional to the length of the contract. The area placed under the conservation contract cannot be used for the production of agricultural commodities during the term of the contract.

VII. Determining the Amount of Farm Loan Programs (FLP) Debt That Can Be Canceled

(A) *Calculate the amount of debt to be canceled for a delinquent borrower as follows:*

(1) *Step 1.* Determine what percent the number of contract acres is of the total acres of land that secures the borrower's FLP loans by dividing the contract acres that secure the borrower's FLP loans by the total acres that secure the borrower's FLP loans.

Contract acres divided by *Total Farm and Ranch Acres = Percent of Contract Acres to Total Acres.*

(2) *Step 2.* Determine the amount of FLP debt that is secured by the contract acreage by multiplying the borrower's total unpaid FLP loan balance (principal, interest and recoverable costs already paid by FSA) by the percentage calculated in step 1. *Total FLP Debt × Percent Calculated in step 1 =* _____

(3) *Step 3.* Determine the current value of the land in the contract by multiplying the present market value of the farm that secures the borrower's FLP loans by the percent calculated in step 1. *PMV of Total Farm × Percent Calculated in step 1 =* _____

(4) *Step 4.* Subtract the current value of the contract acres in step 3 from the FLP debt that is secured by the contract acres in step 2. *Result from step 2 − Result from step 3 =* _____

(5) *Step 5.* Select the greater of the amounts calculated in step 3 and step 4.

(6) *Step 6.* Select the lessor of the amounts calculated in steps 2 and 5. This will be the maximum amount of debt that can be canceled for a 50-year contract term.

(7) *Step 7.* For a 30-year contract term, the borrower will receive 60 percent of the amount calculated in step 6. *Result from Step 6 × 60% =* _____

(8) *Step 8.* For a 10-year contract term, the borrower will receive 20 percent of the amount calculated in step 6. *Result from Step 6 × 20% =* _____

(B) Calculate the amount of debt to be canceled for a current borrower as follows:

(1) *Step 1.* Determine what percent the number of contract acres is of the total acres of land that secures the borrower's FLP loans by dividing the contract acres that secure the borrower's FLP loans by the total acres that secure the borrower's FLP loans. *Contract Acres* divided by *Total Farm and Ranch Acres =* _____%

(2) *Step 2.* Determine the amount of FLP debt that is secured by the contract acreage by multiplying the borrower's total unpaid FLP loan balance (principal, interest and recoverable costs already paid by FSA) by the percentage calculated in step 1. *Total FLP Debt × Percent Calculated in step 1 =* _____

(3) *Step 3.* Multiply the borrower's total unpaid FLP loan balance (principal, interest and recoverable costs already paid by thirty-three (33) percent. *Total FLP Debt × 33% =* _____

(4) *Step 4.* Select the lessor of the amounts calculated in steps 2 and 3. This is the maximum amount of debt that can be canceled for a current borrower receiving a 50-year contract.

(5) *Step 5.* For a 30-year contact term, the borrower will receive 60 percent of the amount calculated in step 4. *Amount calculated in step 4 × 60% =* _____

(6) *Step 6.* For a 10-year contract term, the borrower will receive 20 percent of the amount calculated in step 4. *Amount calculated in Step 4 X 20% =* _____

(C) *Feasibility of debt cancellation.* The servicing official will determine whether or not the borrower, if provided the amount of debt cancellation allowed by paragraph (VII) coupled with other servicing options will be able to develop a feasible plan for farm operations for the current and coming year. In no instance will the total debt cancellation exceed the maximum amount calculated in paragraphs (A) or (B) above. If the borrower would not be able to develop a feasible plan, the servicing official will notify the borrower of the reason that the contract has been denied and that the borrower may appeal this adverse decision after the servicing official has decided whether the borrower qualifies for the additional servicing programs in this subpart.

(D) *The boundaries of the contract area will be determined by the most appropriate method including rectangular surveys, and aerial photographs.* A professional survey of the contract area will not be required but can be used where needed.

(E) *Reaching an agreement with the borrower.* The borrower will be informed of the contract's value, the impact on the remaining financial obligation, and the terms and conditions of the contract. The borrower also will be provided a copy of the contract review team's report. If the borrower decides to enter into the contract, approval will be made by the servicing official, and the borrower by signing Form FSA 1951–39.

(F) *Recording of noncash credit.* The total credit to the borrower's account will not exceed the greater of the value of the land on which the contract is acquired; or the difference between the amount of the outstanding indebtedness secured by the real estate, and the value of the real estate taking into consideration the term of the contract. In the case of a non-delinquent borrower, the amount to be credited will not exceed 33 percent of the amount of the loan secured by the real estate on which the contract is obtained taking into consideration the term of the contract. In all cases, the amount credited will be applied on the FSA loan as an extra payment in order of lien priority on the security. The loan may be reamortized if needed for both current and delinquent borrowers.

(H) *Contract Records.* If State law allows, the CC will be recorded in the real estate records.

VIII. Violation of Terms and Conditions

If the borrower violates any of the terms or conditions of the contract, the violations will be handled in accordance with the provisions outlined in the contract.

IX. Authorization Requests

When under the circumstances stated in the contract's terms and conditions (Form FSA 1951–39), the grantor needs the Government's written authorization to proceed with an action, a written request for such authorization must be provided by the grantor to the servicing official. In order to provide the requested written authorization, the servicing official must determine that the request does not violate the contract's terms and conditions and must receive the written concurrence of the enforcement authority.

26. Exhibit J–1 is revised to read as follows:

EXHIBIT J–1—The Debt and Loan Restructuring System (DALR$) (For applications filed for primary loan servicing on or after November 28, 1990)

I. INTRODUCTION TO DALR$.

Farm Service Agency (FSA) primary loan service programs provide a large number of alternatives for restructuring an agency loan. Additionally, borrowers may request consideration for the Softwood Timber (ST) and Conservation Contract (CC) Programs. The number of loans a borrower has increases the number of combinations of possible servicing alternatives. It is difficult and virtually impossible to manually calculate all the potential combinations of servicing actions. To assure that all the various possible combinations of programs are considered, FSA has developed the Debt and Loan Restructuring System (DALR$) for operation on the county office computer system.

DALR$ is a menu driven computerized support tool that assists FSA field offices in determining and evaluating the effects of primary loan servicing in accordance with 7 CFR part 1951, subpart S. DALR$ will complete a series of mathematical calculations based on information regarding the borrower's cash flow and loan status obtained from the borrower's case file. This information is used in attempting to restructure the borrower's debt and maximize their repayment ability, while avoiding or minimizing loss to the Government. DALR$ will provide a printed summary of the computations and outcome of the calculations.

FSA personnel will not manually perform the calculations in this exhibit. This exhibit is provided as a benefit to those who may want to perform manual calculations, or understand the procedures DALR$ utilizes during the execution of the program.

II. ADVANTAGES OF DALR$

The DALR$ system provides the following benefits to FSA borrowers:

A. Speed of Calculation—Calculations which would take hours or days are reduced to minutes. This not only speeds the processing of servicing requests, but provides the flexibility to consider several alternative plans of operation within the same time constraints.

B. Consistency—The use of DALR$ assures that the feasibility of all requests for primary loan servicing will be evaluated on using the same calculation methods.

C. Full Consideration—DALR$ considers primary loan service programs and combinations of those programs for every borrower entered into the system. Thus, borrowers can be assured that they will be considered for as many of these actions as necessary to develop a feasible plan, if a feasible plan is possible.

D. Reduction of Errors—Use of DALR$ greatly reduces the potential for errors and inadvertent denial of assistance due to those errors. DALR$ eliminates errors in the calculations. The only potential errors related to the calculations are input errors, which are much easier to detect and correct than calculation errors. However, DALR$ results are only as reliable as the input data.

IV. OVERVIEW

When computing debt restructuring, DALR$ will consider all primary loan service programs, if necessary in attempting to develop a feasible plan. A combination of loan service programs may be necessary. DALR$ will consider each combination until a feasible plan is developed, or it is determined that a feasible plan is not possible with full utilization of primary loan servicing, ST and CC.

DALR$ will attempt to provide the maximum margin available up to ten percent above the total amount needed for payment of farm operating, family living expenses and debt repayment after restructuring. If a feasible plan cannot be developed, DALR$ will determine if the writeoff with market value buyout (less prior liens) is less than or equal to the statutory ceiling for writedown and writeoff. A DALR$ report can be printed which will detail the offer to restructure the borrower's FSA debt, offer to buyout the FSA Farm Loan Programs (FLP) loans at the market value, less prior liens, or inform the borrower that the borrower is not eligible for primary loan servicing or debt forgiveness.

The DALR$ calculations proceed in the following general order:

A. DALR$ calculates the net recovery value (NRV) for FSA security and nonessential assets.

B. DALR$ computes new loan and annual operating expense payments at regular interest rates.

C. DALR$ applies loan payments that will pay loans in full on the proposed restructure date.

D. DALR$ considers conservation contract, if requested, to the maximum extent permitted under the regulations. Conservation contract (CC) will not be provided unless a feasible plan is developed after considering CC and other loan servicing options.

E. DALR$ reschedules or reamortizes all delinquent loans at the maximum term with an interest rate at the lower of the original note rate or current loan program rate. Limited resource rate loans will be rescheduled or reamortized at the lower of the original note rate or the current limited resource loan rate. After rescheduling or reamortizing all delinquent loans, DALR$ will determine if a feasible plan has been developed with the appropriate debt service margin.

F. DALR$ reschedules or reamortizes non-delinquent loans at the maximum term and with an interest rate at the lower of the original note rate or the current loan program rate. Limited resource rate loans will be rescheduled or reamortized at the lower of the original note rate or the current limited resource rate. Non-delinquent loans are rescheduled or reamortized one loan at a time until a feasible plan is developed with the appropriate debt service margin, or until all non-delinquent loans have been processed.

G. DALR$ reschedules or reamortizes limited resource eligible loans at the maximum term and with an interest rate at the lower of the original note rate or the current limited resource program interest rate. Limited resource eligible loans are rescheduled or reamortized one at a time until a feasible plan has been developed with the appropriate debt service margin, or all limited resource eligible loans have been processed.

H. DALR$ reschedules or reamortizes unequal payment loans at the maximum term and with an interest rate at the lower of the original note rate or the current loan program rate (limited resource, if applicable). Unequal payment loans are rescheduled or reamortized one at a time until a feasible plan has been developed with the appropriate debt service margin, or all unequal payment loans have been processed.

I. DALR$ determines the cash available to repay the FSA debt for the first year and the year after the deferral period by subtracting non-FSA payments, farm operating expenses, excluding interest, and family living expenses from the adjusted balance available. If the first year cash available is negative, DALR$ will proceed with paragraph M of this section. If the first year cash available is positive and less than the cash available for the year after the deferral period, DALR$ will consider loan deferral. Loans will be selected for deferral so as to minimize the debt repayment in the year after the deferral period. If the full deferral of a loan will result in a cash flow for the first year that exceeds the appropriate debt service margin, a partial deferral of the loan is used to eliminate the excess cash flow margin. A partial deferral has the added benefit of reducing the payment amount in the years after the deferral period.

J. DALR$ considers ST loan deferral, when requested by the borrower, to the maximum limits permitted. Previously calculated regular deferrals will be cancelled prior to DALR$ considering ST loan deferral. If the cash available after the deferral period is greater than the first year cash available, and ST loan deferral fails to produce a feasible plan at the applicable debt service margin, non-ST deferred loans will be reconsidered. Regular loan deferrals are recalculated after selecting loans for ST to:

1. Minimize any decrease in present value caused by the conversion to ST, and

2. Minimize the increase in payments in the year after the deferral period.

A ST loan deferral has the same effect on the debt repayment ability as a writedown of the same amount. However, a ST loan deferral will always have a greater present value. Therefore, after a loan is selected for ST loan deferral, it will not be considered for writedown since this will always decrease the present value of restructured loans.

K. DALR$ considers writedown of FSA debt for those borrowers who have not received their lifetime limit for writedown and writeoff (with market value buyout).

1. If the cash available for the first year is greater than the cash available for the year after the deferral period, DALR$ considers writedown, in combination with other primary loan service programs (except ST deferrals as noted in paragraph K of this section). When considering a borrower for writedown, DALR$ will attempt to maximize the borrower's repayment ability and minimize losses to the Government.

The amount of writedown cannot exceed the $300,000 limitation. In addition, the present value of the restructured loan plus the amount of the CC cannot be less than the total NRV of the FSA security and non-essential assets.

2. If the cash available after the deferral period is greater than the cash available in the first year, DALR$ will consider a combination of deferral and writedown.

Loans are selected for deferral to achieve a cash flow in the first year. If deferral of loans will result in a cash flow in the first year that exceeds the applicable debt service margin, DALR$ partially defers the loan to reduce the excess cash flow. If there is a negative cash flow after the expiration of the deferral period, DALR$ provides writedown of one loan to attempt to develop a feasible plan in the year after the deferral period. This process is repeated until a feasible plan is developed for both the first year and the year after the deferral period, or until all loans have been processed. The amount of the writedown cannot exceed the $300,000 limitation and the present value of the restructured loans plus the value of the CC cannot be less than the total NRV of the FmHA security and non-essential assets.

L. DALR$ considers market value buyout when a feasible plan cannot be developed after considering the borrower for all combinations of the above servicing options and the borrower has not received the lifetime limitation for writedown and writeoff. The amount of FSA debt to be written off must be less than or equal to the $300,000 limitation, otherwise the borrower is not eligible for primary loan servicing or market value buyout.

M. DALR$ determines the amount of cash improvement needed in the first year Balance Available to cash flow with a zero percent debt service margin when a feasible plan cannot be developed.

N. DALR$ offers to print a servicing report which provides a summary of the computations and the outcome of the calculations.

V. Information Entered in DALR$

The following information will be entered in DALR$ prior to beginning the calculations.

A. Borrower Case Number and Name—The borrower's case number is a concatenation of the State Code, County Code, and Borrower ID (usually the borrower's social security number or tax identification number). Borrowers are entered as either an individual or entity.

B. Date Servicing Actions Requested—This is the date that the borrower submitted a complete application for primary loan servicing. The discount rate used in the calculations of the present value of restructured loans and the NRV will be the rate in effect on this date.

C. Proposed Restructure Date—This is the projected effective date of the restructuring. The interest rate used for restructuring loans and the net recovery constants used in the calculation of the NRV will be those in effect on this date as of the date DALR$ was prepared.

D. Eligibility for Writedown or Writeoff—This field determines if writedown or writeoff (with buyout) should be considered when attempting to restructure the borrower's debt. Borrowers that are not delinquent, or that have met the lifetime limitation regarding writedown and writeoff are not eligible for writedown or writeoff. If the borrower is not eligible, DALR$ will consider the borrower for all primary loan servicing except writedown and market value buyout.

E. Period of Deferral—DALR$ will default to the maximum deferral period of 5 years. The field can be cleared and a lessor period entered if applicable.

F. Adjusted Balance Available—The adjusted balance available for the first year is obtained from Form FmHA 431–2, "Farm and Home Plan" developed for the current production cycle or the typical plan, if applicable. Adjusted balance available is the sum of total planned family living expenses from Table F, total planned cash farm operating expenses, less interest from Table G, and line 16, "Balance Available," from Table J of the Farm and Home Plan. If loan deferral or debt writedown is anticipated or needed, the balance available for the year after the deferral period must also be calculated and entered.

G. Non-Agency Debts, Family Living Expenses and Adjusted Operating Expenses—This is the sum of total planned family living expenses from Table F, total planned cash farm operating expenses, less interest, from table G, and total non-Agency debt repayment (principal and interest) from Table K of Form FmHA 431–2, "Farm and Home Plan". If future non-agency loans are planned that will affect the first year or the year after the deferral, the annual debt repayment for these loans should be included. Debt repayment on FSA nonprogram loans should be included when determining this amount. FSA nonprogram debts must be entered here to assure that these loans are not included in the present value calculations or when determining if the $300,000 writedown or writeoff limitation was exceeded.

H. FSA Loan for Annual Operating Expense—The amount of FSA loan for annual operating expenses is the amount of annual operating expense loan principal which is due in the applicable planning year. The estimated average number of months the annual operating loan will be outstanding is also entered.

If some of the principal will be carried over to future years, then that amount is either:

1. Included in the new loan payments computed using the amortization factor over the applicable loan term at the regular loan program interest rate, or

2. If the amount to be carried over was entered as an existing loan, it is rescheduled with the applicable term and interest rate permitted by the program regulation.

I. New FSA Loans and Scheduled Advances—The amount of the loan, loan type, regular program interest rate, and year that the cash flow will be affected will be entered. DALR$ will consider a reduction from the regular program interest rate to the limited resource interest rate (if applicable) during the rescheduling or reamortizing process if necessary to develop a feasible plan.

J. NRV Data—Information pertaining to FSA security and nonessential assets owned by the borrower will be entered in accordance with Exhibit I of part 1951, subpart S. Prior liens will include other creditors debts that hold a prior lien to FSA on the security property. Prior liens may also include FSA nonprogram loans if the same security is cross-collateralized with the program loans and they hold a prior lien to the program loans.

K. Existing Loan Data—Loan information will be obtained from the borrower's case file and Finance Office status inquiry screens. The date of status screens must be after the date of the last payment or other transaction on the loan. The loan information includes the consideration for servicing actions, unpaid principal and interest, amount of next payment, maximum term, original and existing interest rate, security priority, information regarding any portion of the loan not to be rescheduled, and proposed payment in full on the restructure date.

1. If the interest accrual date of the status screen precedes the proposed restructure date, DALR$ will calculate the additional interest accrual. Interest accrual is calculated in accordance with section I of attachment 1 to this exhibit.

2. Loan selection for many of the calculation processes is based partly on the security priority identified for each loan. There are three priorities:

a. Low—These loans are unsecured. If FSA loan security was liquidated, the proceeds would not be sufficient to result in a payment on this loan.

b. Medium—These loans are undersecured. If FSA security was liquidated, the proceeds would be sufficient to result in a partial payment on this loan.

c. High—These loans are fully secured. If FSA security was liquidated, the proceeds would be sufficient to pay this loan in full.

L. Conservation Contract Data—If the borrower requested a conservation contract, the total acreage of the farm, acres to be included in the conservation contract, unpaid debt secured by the farm, and the current market value of the farm must be entered.

M. Softwood Timber (ST) Loan Data—If ST deferral was requested by the borrower, the acreage eligible for ST must be entered.

N. Interest Rate Tables—Interest rates and the effective date provided in Exhibit B of FmHA Instruction 440.1 will be entered.

O. Discount Rate Tables—The discount rate and the effective date provided in Exhibit B of FmHA Instruction 440.1 will be entered.

P. Net Recovery Constants Tables—Net Recovery Constants and the effective date determined in accordance with exhibit I of part 1951, subpart S will be entered.

VI. CALCULATION PROCESS.

As described in section IV of this exhibit, the DALR$ calculations are a repetitive process. During the first phase of the calculations, DALR$ will attempt to restructure the borrower's debt utilizing all necessary combinations of loan servicing and provide a ten percent debt service margin. Debt service margin is calculated in accordance with section II of attachment A of this exhibit. If a feasible plan cannot be developed after considering all combinations of loan servicing, the debt service margin will be reduced to nine percent and all combinations of servicing will again be considered. DALR$ will continue to reduce the debt service margin by one percent until a feasible plan is developed or the debt service margin falls below zero and a feasible plan is not possible with any combination of servicing options.

The calculation process proceeds as follows:

A. Calculation of NRV

As required by §§ 1951.909 and 1951.910 of title 7, DALR$ computes total NRV of agency loan security and non-essential assets. Exhibit I of part 1951, subpart S, "Guidelines for Determining Adjustments for Net Recovery Value", provides guidance in determining the value of specific items utilized in the net recovery calculations outlined below.

NRV is computed for all Farm Loan Programs loan security, other non-essential assets owned by the borrower, and assets not in the borrower's possession. If the agency's lien position, or the amount of prior liens vary from item to item, separate NRV will be computed for each item which has a different lien structure.

Example: FSA has a first lien on a borrower's equipment, except for two tractors. One tractor was financed by non-agency credit, and FSA has a junior lien subject to the purchase money financing. In the case of the second tractor, FSA subordinated its lien to another lender to finance repairs, thus, FSA has a junior lien to the amount subordinated. In this example, there would be three net recovery calculations. One for each tractor, and one for the remaining equipment. The same logic applies to real estate security. The total of all net recovery calculations will be the total NRV.

The general formula for calculating NRV is as follows:

* Current market value of the security
* Minus prior liens
* Minus property taxes while in inventory
* Minus depreciation on buildings and improvements
* Minus management charges
* Minus repairs necessary for resale
* Minus legal and administrative costs
* Minus sales cost
* Minus advertising cost
* Minus miscellaneous expenses
* Minus interest cost while in inventory
* Plus or minus the increase or decrease, as applicable, in value while in inventory
* Plus anticipated income while in inventory
* Equals NRV of the individual property items

The sum of the NRV of individual property items minus:

* Real estate property management costs
* Real estate or real estate and chattel costs, and
* Chattel only costs as applicable, equals the total NRV of FSA security, non-essential assets, and assets not in possession.

The factors listed above do not apply to the calculation of NRV for non-essential assets and assets not in possession.

B. Calculation of Payments for New FSA Loans

DALR$ calculates debt repayment for new FSA term loans and FSA loans for annual operating expenses as follows:

1. Repayment for new term loans will be calculated based on the regular loan program interest rate and the term of the loan. The payment will be calculated in accordance with section III A of attachment 1 to this exhibit.

2. Repayment of loans for annual operating expenses will be calculated based on the regular interest rate and the projected number of months the loan will be outstanding determined in accordance with section III B of attachment 1 to this Exhibit. DALR$ will calculate interest accrual for the annual operating loan by multiplying the amount of principal to be repaid during the period of the plan by the monthly decimal equivalent for the regular program interest rate. This amount is then multiplied by the average number of months that the loan will be outstanding. The amount of debt repayment due on annual operating expense will be the total of interest accrual plus the principal amount of the loan.

DALR$ will initially calculate payments for new FSA loans and FSA loans for annual operating expenses at the regular program interest rate. If a feasible plan cannot be developed, DALR$ will reduce the interest rate to limited resource rates (if applicable) during the calculations completed in paragraph F of this section.

C. Application of Payment on the Effective Date of Servicing.

DALR$ will apply loan payments to be made on the effective date of loan servicing. DALR$ can only consider a full payoff of a loan. If a payment for less than the full amount of the loan is expected or received, the payment must be applied to the loan prior to completing the DALR$ calculations.

If after the application of payments to pay loans in full, there is a debt repayment margin of ten percent or more and none of the borrowers remaining loans are delinquent, no further servicing action in DALR$ is required.

D. Conservation Contract.

DALR$ will consider Conservation Contract (CC), if requested by the borrower, prior any other loan servicing option. CC can be requested by both current and delinquent borrowers. Only FLP loans secured by real estate are eligible. A borrower will not be offered CC unless, the CC or CC in combination with other loan servicing options results in a feasible plan. Debt cancellation as a result of CC will be applied against the borrowers loans as a noncash credit and will not affect the borrowers debt repayment unless the loan is fully written down.

CC eligible loans will be selected in the order of lowest security priority first. For loans with equal security priority, the secondary selection will be the loan with the largest amortization factor determined in accordance with section IV of attachment 1 to this Exhibit.

The calculations completed during this process are as follows:

1. Determine the maximum amount of CC in accordance with attachment 1 of exhibit H of part 1951, subpart S.

2. Deduct the lessor of the unpaid loan balance or the maximum CC from the first loan selected. Repeat this step until the maximum CC debt cancellation has been deducted, or all CC eligible loans have been written down in full.

3. If a feasible plan was developed with a debt service margin greater than or equal to ten percent, and the borrower does not have any remaining delinquent loans, no further servicing is required. DALR$ will offer the user the opportunity to print the servicing report.

4. If the borrower has delinquent loans, or the debt service margin is less than five percent after consideration of CC, DALR$ will proceed with paragraph E of this section.

E. Rescheduling or Reamortization of Delinquent Loans

DALR$ will reschedule or reamortize existing loans to eliminate any delinquency. All delinquent loans will be restructured. Loans with regular interest rates will be restructured at the lower of the original note rate or the current program rate. Loans that currently have a limited resource rate will be restructured at the lower of the original note rate or the current limited resource rate.

Only loans that are delinquent will be restructured during this process. Loans will be selected in the order of lowest security priority first. For loans with equal security priorities, the secondary selection will be based on the loan with the lowest amortization factor. For loans with an equal amortization factor, the final selection will be based on the loan with the lowest present value calculated in accordance with section V of attachment 1 of this Exhibit.

The calculations completed during this process are as follows:

1. Combine recoverable cost items with parent loans.

2. Reschedule or reamortize the delinquent loan over the maximum term entered for the loan.

3. Calculate debt repayment for the first year for the rescheduled or reamortized loan based on the new interest rate and term.

4. Repeat steps 2 and 3 until all delinquent loans have been processed.

5. Determine if a feasible plan was developed with the appropriate debt service margin by rescheduling or reamortizing all delinquent loans.

6. If a feasible plan was developed, no further servicing is required. The combination of a recoverable cost item with the parent loan will be reversed if the combined loans did not require servicing. DALR$ will provide the user with the opportunity to print the servicing report.

7. If a feasible plan was not found, DALR$ will reschedule or reamortize non-delinquent loans in accordance with paragraph F of this section.

F. Reschedule or Reamortize Non-Delinquent Loans

DALR$ will reschedule or reamortize non-delinquent loans one at a time to attempt to develop a feasible plan. Loans with regular interest rates will be restructured at the lower of the original note rate, or the current program rate. Loans that currently have a limited resource rate will be restructured at the lower of the original note rate or current limited resource rate.

Loans will be selected in the order of lowest security priority first. For loans with equal security priorities, the secondary selection will be based on the loan with the lowest amortization factor. For loans with equal amortization factors, the final selection will be based on the loan with the lowest present value.

After each non-delinquent loan has been rescheduled or reamortized, DALR$ will determine if a feasible plan was developed with the appropriate debt service margin prior to proceeding to the next loan.

The calculations completed during this process are as follows:

1. Reschedule or reamortize the non-delinquent loan over the maximum term entered for the loan.

2. Calculate debt repayment for the first year for the restructured loan based on the new interest rate and term.

3. Determine if a feasible plan was developed with the appropriate debt repayment margin.

4. If a feasible plan was developed, no further servicing is required. The combination of a recoverable cost item with the parent loan will be reversed if the combined loans did not require servicing. DALR$ will provide the user with the opportunity to print the servicing report.

5. If a feasible plan is not found, repeat steps 1 through 3 until a feasible plan is found with the appropriate debt service margin, or all non-delinquent loans have been rescheduled.

6. If a feasible plan was not found, DALR$ will reschedule or reamortize delinquent and non-delinquent loans at limited resource rates (if applicable), in accordance with paragraph G of this section.

G. Rescheduling or Reamortization of Limited Resource Eligible Loans at Limited Resource Rates

DALR$ will attempt to reschedule or reamortize limited resource eligible loans at the limited resource rate to develop a feasible plan. Debt repayment for new FSA term loans and for annual operating expenses will be recalculated at limited resource rates (if applicable). The interest rate for existing loans will be the lessor of the original note rate or the current limited resource rate.

Loans will be selected in the order of lowest security priority first. For loans with equal security priorities, the secondary selection will be based on the loan with the lowest amortization factor. For loans with equal amortization factors, the final selection will be based on the loan with the lowest present value.

After each limited resource eligible loan has been rescheduled or reamortized at the limited resource rate, DALR$ will determine if a feasible plan was developed with the appropriate debt service margin prior to proceeding to the next loan.

The calculations completed during this process are as follows:

1. Recalculate repayment for new FSA term loans and annual operating loans at the limited resource rate.

2. Determine if a feasible plan was found with the appropriate debt service margin after reducing the interest rate on new loans.

3. If a feasible plan was developed, no further servicing is required. Proceed to step 7.

4. Reschedule or reamortize an existing limited resource eligible loan at the limited resource interest rate.

5. Calculate debt repayment for the first year for the rescheduled or reamortized loan at the maximum term entered for the loan with limited resource rates.

6. Determine if a feasible plan was found with the appropriate debt service margin.

7. If a feasible plan was developed, no further servicing is required. The combination of a recoverable cost item with the parent loan will be reversed if the combined loans did not require servicing. DALR$ will provide the user with the opportunity to print the servicing report.

8. If a feasible plan was not found, repeat steps 4 through 6 until a feasible plan is found with the appropriate debt service margin, or until all limited resource eligible loans have been processed.

9. If a feasible plan was not found, DALR$ will reschedule or reamortize loans with unequal payment schedules in accordance with paragraph H of this section.

H. Rescheduling or Reamortizing Loans with Unequal Payment Schedules

DALR$ will reschedule or reamortize loans with unequal payment schedules. These loans were not previously restructured in sections F or G as rescheduling or reamortization would have resulted in an increase in debt repayment in the first year. However, if the loan was delinquent, the loan would have been rescheduled or reamortized under section E regardless of the impact on the first year debt repayment. Loans will be restructured at the lower of the original note rate or the current loan program rate (limited resource if applicable).

Loans selected for rescheduling or reamortization in this process will not have been restructured during any of the earlier calculations and cannot be a ST loan.

Loans will be selected in the order of lowest security priority first. For loans with equal security priorities, the secondary selection will be based on the loan with the lowest amortization factor. For loans with equal amortization factors, the final selection will be based on the loan with the lowest present value.

After each loan with an unequal payment schedule has been rescheduled or reamortized, DALR$ will determine if a feasible plan was developed with the appropriate debt service margin prior to proceeding to the next loan.

The calculations completed during this process are as follows:

1. Reschedule or reamortize an unequal payment loan over the maximum term.

2. Calculate the debt repayment for the first year for the restructured loan based on the new term and interest rate.

3. Determine if a feasible plan was developed with the appropriate debt service margin.

4. If a feasible plan was developed, no further servicing is required. The combination of a recoverable cost item with the parent loan will be reversed if the combined loans did not require servicing. DALR$ will offer the user the opportunity to print the servicing report.

5. If a feasible plan is not developed, repeat steps 1 through 3 until a feasible plan is developed with the appropriate debt service margin, or until all unequal payment schedule loans have been processed.

6. If a feasible plan is not developed, calculate the necessary cash improvement required to cash flow in the first year using the rescheduling or reamortization process. Retain this amount for later use in the cash improvement process.

7. If a feasible plan was not developed, DALR$ will consider deferrals in accordance with paragraph I of this section.

Rescheduling or Reamortization with Deferral

If a feasible plan cannot be developed by utilization of rescheduling or reamortizing delinquent and non-delinquent loans with the maximum terms and lowest interest rates available under the regulations with a ten percent margin, deferral data must be entered in DALR$. DALR$ will not consider the borrower for writedown (discussed in paragraph J of this section) unless deferral data has been entered.

DALR$ will attempt to develop a feasible plan for the first year by deferring payments on FSA loans until the end of the deferral period (1–5 years). A deferral will decrease the payment during the period of the deferral, and increase the payment for the remaining term after the deferral period. Deferrals will only be beneficial if the debt repayment margin increases in the year after the deferral period. This improvement must be no later than six years after the current planning year, since the maximum deferral period is five years.

To determine the appropriate deferral period, the servicing official and borrower will review the farm operation over the next five years. Loans should be deferred to the year when the improvement from the first planning year is the greatest and the improvement in the following years are at least as good.

Loans will be deferred at the lower of the original note rate, or current program interest rate (limited resource, if applicable). ST will not be considered for regular deferral.

To select loans for deferral, DALR$ will calculate the payment after the deferral period for each loan as if the loan had been fully deferred. (This is only a side calculation to determine the best order of selection.) The ratio of the difference between the post deferral year payment and first year payment will be calculated as follows:

(Post Deferral Payment—First Year Payment)

First Year Payment

The loan with the smallest ratio will be deferred first and so forth.

The calculations completed during this process are as follows:

1. Defer the selected loan and calculate debt repayment in the first year and the year after the deferral period.

2. Determine if a feasible plan was developed for the first year with the appropriate debt service margin. If a feasible plan was developed proceed with step three, otherwise, repeat step one until a feasible plan for the first year is developed or all loans have been deferred.

3. If the applicable debt service margin for the first year was exceeded (this indicates that the last loan deferred did not require a full deferral), the following will occur:

a. DALR$ will determine the amount of the partial deferral needed on the last loan selected to maintain the feasible plan developed for the first year. See section VI of attachment 1 of this Exhibit for formulas used in calculating partial deferral.

b. DALR$ will calculate the debt repayment for this loan for the first year and the year after the deferral period.

4. Calculate total debt repayment for the year after the deferral period.

5. If a feasible plan exists for the year after the deferral period, then no further servicing actions are required. DALR$ will offer the user the opportunity to print the servicing report.

6. If the deferral of loans will not permit the borrower to cash flow in the first year, DALR$ will calculate the cash improvement required to cash flow in the first year using deferral. This amount will be retained for later use in the cash improvement process.

7. If a feasible plan does not exist for the year after the deferral period, DALR$ will consider the borrower for ST, if requested in accordance with paragraph J of this section. Otherwise, DALR$ will consider the borrower for debt writedown in accordance with paragraph K of this section.

J. Softwood Timber (ST)

DALR$ will consider ST, if requested by the borrower, to the maximum limit permitted under the regulations. Deferral of payment on ST until the end of the ST deferral period must improve the borrowers debt repayment ability during the first year and the year after the deferral period. All previously calculated regular deferrals will be cancelled. Only loans eligible for ST will be considered. If the entire unpaid balance of a loan is not converted to a ST loan, the loan will be split into two loans. The interest rate for the ST portion will be the lessor of the original note rate or the current ST loan program interest rate. The non ST portion of the loan will retain the interest rate and term determined prior to ST consideration.

Loans will be selected to maximize the present value of the loan after ST deferral. This will minimize or eliminate loss to the Government. DALR$ will calculate the present value for each eligible loan before and after ST and compute the decrease in present value using the following formula:

(Present Value w/ Full ST Deferral—Present Value if not Deferred)

Nondeferred First Year Payment

Note: For loans in which the present value increases, this will be a negative number.

The ratio of the decrease in present value to the first year payment will be calculated. The loan with the smallest (or most negative) ratio will be selected first. For loans with equal ratios, the secondary selection will be based on the loan with the lowest security priority.

The calculations completed during this process are as follows:

1. Starting with the first loan selected for ST, defer the loan. The amount of ST deferral cannot exceed the maximum limit permitted under the regulations.

2. Determine if a feasible plan was developed for the first year with the appropriate debt service margin. If a feasible plan was found, proceed with step three, otherwise, repeat step one until a feasible plan is found or the maximum for ST deferral has been reached.

3. If the full deferral of a loan results in the applicable debt service margin being exceeded, DALR$ will determine the amount of partial deferral required for a feasible plan. If a loan is only partially deferred, DALR$ will create a new loan identity for the partially deferred portion of the loan. The portion not deferred will maintain the interest rate and term prior to the deferral.

4. If full utilization of the ST program does not result in a positive cash flow in the first

year, repeat the regular deferral process (see paragraph J of this section. Loans selected for ST will not be deferred when repeating the regular deferral calculations.

5. If the deferral of loans under the ST program results in a positive cash flow with the applicable debt service margin for the first year, no further servicing is required. DALR$ will provide the user with the opportunity to print the servicing report.

6. If the deferral of loans under the ST program will not permit the borrower to cash flow in the first year, DALR$ will calculate the cash improvement required to cash flow in the first year using the ST program. This amount will be retained for later use in the cash improvement process.

7. If a feasible plan is not found, DALR$ will consider the borrower for writedown in accordance with paragraph K of this section.

K. Writedown

If a feasible plan could not be developed utilizing CC, rescheduling or reamortization, limited resource rates, regular deferral and ST deferral, and the borrower is eligible for writedown or writeoff, DALR$ will attempt to develop a feasible plan by writing down the borrower's FSA debt. Borrowers who have met the lifetime limitation for writedown or writeoff will not be considered for writedown. The amount of the writedown necessary to develop a feasible plan must be less than or equal to $300,000 in accordance with section 1951.909 of part 1951, subpart S.

DALR$ will prioritize the loans for writedown and attempt to develop a feasible plan (pass one). If a feasible plan is not found, DALR$ will re-order the loans based on different criteria and again attempt to develop a feasible plan with writedown (pass two). Loans deferred under the ST program will not be considered for writedown.

For the first attempt to writedown (pass one), loan selection will be based on an attempt to maximize the amount of writedown. The loan with the lowest security priority will be selected first. For loans with an equal security priority, the secondary selection will be based on the loan with the largest amortization factor.

If a feasible plan was not developed, DALR$ will re-order the loans based on new criteria, and will again attempt writedown (pass two). Loan selection will be based on lowest security priority. For loans with equal security priority, the secondary selection will be based on the loan with the smallest present value factor. For loans with an equal present value factor, the final selection will be based on the loan with the highest amortization factor.

The calculations completed during this process are as follows:

1. From the list of loans for the first method of loan prioritization (pass one), select the first from the list ordered and apply writedown. This step will be repeated until the borrower cash flows in the first year, or until all selected loans have been written down. The writedown amount for each loan will be retained and added to the total writedown amount.

2. If a cash flow for the first year was achieved and the full writedown of the last loan selected results in the applicable debt service margin being exceeded, this implies that a full writedown was not required. DALR$ will compute the amount of partial writedown on the last loan selected necessary to achieve a cash flow in the first year at the appropriate debt service margin and reschedule or reamortize the remaining unpaid balance.

3. If the present value of all FSA remaining debt plus the total CC equals or exceeds the NRV, and the total writedown amount is less than or equal to $300,000, no further serving is required. DALR$ will offer the user the opportunity to print the servicing report.

If this step fails, the process will be repeated from step one using the second method for ordering loans for writedown.

4. If step three fails after repeating the writedown calculations based on the second method of prioritizing loans for writedown, DALR$ will consider the borrower for a combination of deferral and writedown in accordance with paragraph L of this section.

L. Writedown with Deferral

This process will defer payment on FSA loans in combination with debt writedown in an effort to develop a feasible plan for the first year and the year after the deferral period. Regular and ST deferrals did not result in a feasible plan for the first year and the year after the deferral period.

The deferral period will be 1–5 years as entered by the user.

To select loans for deferral, DALR$ will calculate the payment for each loan as if it had been fully deferred. (This is a side calculation used only to prioritize the loans.) The ratio between the post deferral year payment and the first year payment will be calculated as follows:

(Post Deferral Payment—First Year Payment)

First Year Payment

The loan with the smallest ratio is deferred first and so on until the borrower cash flows in the first year with the appropriate debt service margin or all loans have been deferred.

Loans will be selected for writedown based on the selection criteria established in paragraph J of this section. The deferred portion of the loan is considered a separate loan in this process and must be prioritized for selection with the remaining loans.

The calculations completed during this process are as follows:

1. Loans are deferred to obtain a positive cash flow in the first year as described in paragraph J of this section.

2. DALR$ will create a new loan identity for the partially deferred portion of any loan.

3. If the borrower cash flows with the appropriate debt service margin in both the first year and the year after the deferral period, no further servicing is required. DALR$ will offer the user the opportunity to print the servicing report.

Otherwise, using the first method of loan selection (pass one) described in paragraph L of this section, DALR$ will select one loan at a time and attempt to develop a feasible plan by utilization of full or partial writedown.

4. If the borrower does not cash flow in the year after the deferral period, or the cash flow in the first year exceeds the appropriate debt service margin, DALR$ retains the writedown amount, all loans not completely written down are converted to non-deferred status, and the process will begin again at step one.

5. If the present value of all FSA remaining debt plus the total CC equals or exceeds the NRV, and if the writedown amount is less than or equal to $300,000, a feasible plan has been found and no further servicing is required. Otherwise, repeat this process beginning from step one using the second method of prioritizing loans for writedown described in paragraph L of this section.

6. If step three fails after repeating the writedown calculations based on the second method of prioritizing loans for writedown, DALR$ will determine if the borrower will be offered buyout at the current market value. If the writeoff amount (total principal and interest minus the total market value) is less than or equal to $300,000, DALR$ will compute an offer to the borrower for buyout at the current maket value. Otherwise, the borrower is not eligible for debt forgiveness. DALR$ will offer the user the opportunity to print the servicing report.

M. Cash Improvement

If a feasible plan could not be developed after considering all available primary loan servicing, DALR$ will provide the user with the opportunity to determine the amount of cash improvement in the first year balance available to produce a feasible plan.

The calculations completed during this process are as follows:

1. Collect cash improvement solutions from the reschedule or reamortize debt process, the regular deferral process, and the softwood timber deferral process.

2. Determine the cash improvement required in the first year to cash flow using conservation contract, if applicable.

3. Determine the cash improvement required in the first year to cash flow using writedown, if applicable.

4. Determine the cash improvement required in the first year to cash flow using writedown with deferrals, if applicable.

5. Select the lowest of all the cash improvements and display it to the screen. DALR$ will offer the user the opportunity to print the servicing report.

O. SUMMARY

At this point, DALR$ has finished its calculations. A feasible plan has been developed, or all possible combinations of servicing actions has been considered. DALR$ will provide a report of the results of the calculations performed.

If DALR$ does not find a solution that will provide a feasible plan, FSA will proceed with the other actions authorized in this subpart, including mediation, offer the opportunity to purchase collateral for market value, and consideration for Homestead Protection.

Attachment 1—Formulas Used in DALR$ Calculations

I. INTEREST ACCRUAL ON EXISTING LOANS

If the interest accrual date for an existing loan precedes the proposed restructure date, DALR$ will determine the amount of additional interest which will accrue between these dates. This amount will be added to the unpaid interest that was outstanding as of the accrual date. The calculations used are as follows:

A. Interest Accrual After the Loan Status Date Equals

[(Principal × Interest Rate)/365] × (Effective Date − Accrual Date)

B. Total Accrued Interest Equals

Interest Accrual After the Loan Status Date + Accrued Interest as of the Loan Status Date

II. DEBT SERVICE MARGIN

DALR$ will attempt to develop a feasible plan that provides the borrower with a ten percent margin above the amount needed for family living expenses, farm operating expenses and debt service obligations. If a feasible plan cannot be found with a ten percent debt service margin, DALR$ will reduce the margin in increments of one percent until a feasible plan is found, or the debt service margin falls below zero. DALR$ will consider all loan servicing options prior to reducing the debt service margin.

The debt service margin is applicable in both the first year and the post deferral year calculations if deferral is being considered. The debt service margin is used to calculate the cash available restructure FSA debt and is calculated as follows:

Cash Available = ((balance available + family living expenses + farm operating expenses − interest expense) / applicable debt service margin) − —family living expenses − farm operating expenses (excluding interest) − non-agency debt repayment

The debt service margin used in the above calculations is set initially at 1.10. If a feasible plan is not found after consideration of all loan servicing options, the margin is reduced incrementally by .01. After the reduction is completed, DALR$ will reconsider the borrower for all loan servicing requested. DALR$ will continue to reduce the debt service margin until a feasible plan is developed, or until it has been determined that a feasible plan is not possible with a debt service margin of 1.00.

III. LOAN PAYMENT CALCULATIONS

Loan payments are calculated using amortization factors rounded to the nearest five places. All payments are rounded up to the next dollar. The equations used to calculate loan payments are as follows:

A. Payments on New FSA Loans

Payment = Principal Amount × Amortization Factor

B. Payments on FSA Loans for Annual Operating Expenses

1. Determine the average number of months that the loan for annual operating expenses will be outstanding. It may be estimated or calculated from the projected advance and payment schedule for the loan.

For example, the loan for annual operating expenses is estimated to be $15,000 and the projected advance and repayment schedule is planned as follows:

Principal balance outstanding	Number of months outstanding
$15,000	3
$8,000	2
$6,000	4

Average Months = (3 × 15,000) + (2 × 8,000) + (4 × 6000) 15,000

Average Months = 45,000 + 16,000 + 24,000 15,000

Average Months = 85,000 15,000

Average Months = 5.7

2. Determine interest accrual on annual operating expense loan.

Interest Accrual = [(Principal Amount × Interest Rate)/12] × Number of Months Outstanding

3. Determine total payment.

Total Payment = Principal Amount + Interest Accrual

C. Payments for Rescheduled or Reamortized Loans

1. Determine interest accrual if loan status date precedes the proposed restructure date in accordance with section I of this attachment.

2. Determine unpaid loan balance.

Unpaid Loan Balance = Principal Amount + Unpaid Interest (as of the loan status date) + Interest Accrual

3. Determine payment amount.

Payment = Unpaid Balance × Amortization Factor

D. Payments for Deferred Loans

1. Determine term of loan entered in DALR$.

2. Determine remaining term after deferral period.

Remaining Term = Term—Deferral Period

Remaining Term = Term-Deferral Period

3. Determine payment during deferral period.

Payment = Nondeferred Principal x Amortization Factor

Note: Amortization factor is based on the full term of the loan.

4. Determine payment after deferral.

a. Determine interest accrual on deferred principal.

Interest Accrual = Deferred Principal x Interest Rate x Deferral Period

b. Determine payment on interest accrual.

Payment = Interest Accrual / Remaining Term

c. Determine payment on deferred principal.

Payment = Deferred Principal x Amortization Factor

Note: Amortization factor is based on the remaining term after the expiration of the deferral period.

d. Determine total payment after deferral.

Payment = Payment of Nondeferred Principal + Payment on Interest Accrual + Payment on Deferred Principal

IV. LOAN AMORTIZATION FACTORS

Loan amortization factors are calculated using the following equations:

A. Non-deferred loan

$A = [(i(1 + i)n)/((1 + i)n - 1)]$

A—amortization factor
i—interest rate
n—term

B. Deferred loan

$A = [((i(1 + i)n - t)/((1 + i)n - t - 1)) + ((i x t)/(n-t))]$

A—amortization factor
i—interest rate
n—term
t—deferral period

C. Deferred interest

$A = 1/(n - t)$

A—amortization factor
n—term
t—deferral period

V. Present value calculations

A. The net present value factors for each loan are calculated using the following equations:

1. Non-deferred loan

$P = [((1+ i)n - 1/(i(1+ i)n))]$

P—net present value factor
i—discount rate
n—term

2. Deferred loan

$P = [((1+ i)n - t - 1/(i(1+ i)n - t))/(1+ i)t]$

P—net present value factor
i—discount rate
n—term
t—deferral period

B. The loan net present is calculated using the following equation:

$NPV = (P)(p)$

NPV—loan net present value
P—loan net present value factor
p—loan payment

VI. Partial deferral calculations

Whenever full deferral of a loan results in excess cash flow (above the applicable debt service margin) in the first year, a partial deferral of that loan will decrease future payments on that loan and eliminate the excess cash flow in the first year. A partial loan is created by apportioning the loan balance into two distinct parts (nondeferred and deferred).

Partial deferrals are calculated as follows:

A. Determine the amount of deferral necessary to achieve cash flow in the first year.

$d = 1 - (r/R)$

d = The fraction of the loan which must be deferred.
r = The amount of excess cash flow in the first year with full deferral.
R = The debt repayment on the loan in the first year with out deferral.

B. Determine the deferred and nondeferred portion of the loan.

1. $P1 = (1-d) \times P$
$P1 = (r/R) \times P$

P1—Nondeferred Portion
d—Fraction of the Loan which must be deferred

P—Principal Balance
2. P2 = P—P1
P2—Deferred Portion
P—Principal Balance
P1—Nondeferred Portion

VII. $300,000 Debt writedown and buyout limitation

DALR$ will attempt to develop a feasible plan with a ten percent margin. All loan servicing, including writedown will be considered prior to reducing the debt service margin. However, DALR$ will only consider writedown for those borrowers that have not received the lifetime limitations for writedown or writeoff (with buyout). If a feasible plan is found with writedown, DALR$ will:

A. Writedown

1. Determine the amount of writedown that was necessary for the borrower to have a positive cash flow.

2. If the amount of the writedown is less than or equal to $300,000, a feasible plan has been found.

3. If the amount of the writedown is greater than $300,000, and the debt service margin exceeds 1.00, reduce the debt service margin by .01 and repeat from step 1.

4. If the amount of writedown is greater than $300,000, and the debt service margin equals 1.00, or a feasible plan cannot be developed, determine the amount of writeoff (with buyout at the current market value).

5. If the amount of writeoff (with buyout at the current market value) is less than or equal to $300,000, the borrower will be offered buyout.

6. If the amount of writeoff (with buyout at the current market value) is greater than $300,000, the borrower is not eligible for loan servicing or buyout.

27. Exhibit K is revised to read as follows:

Exhibit K—Notification of Consideration for Homestead Protection

Purpose: To notify borrowers of preacquisition homestead protection consideration when there is a dwelling on the security property and a complete application was submitted for primary and preservation loan servicing or requested from the notice of intent to accelerate notice.

Dear (Borrower's Name)

This notice is to inform you that, per your request, you are being considered for Homestead Protection.

We will need the following additional information to complete our processing of your request:

1.
2.
3.

Please provide the above information within 30 days from the date of this letter. If we do not receive the above requested information within 30 days, we will deny your request for Homestead Protection.

If you wish to withdraw your request for Homestead Protection, please complete and return the enclosed Attachment 1, "Response to Notification of Consideration for Homestead Protection," within 15 days of the date of this letter.

[FOR INDIVIDUAL BORROWERS ONLY—INSERT EQUAL CREDIT OPPORTUNITY PARAGRAPH]

Sincerely,

Attachment 1—Response to Notification of Consideration for Homestead Protection

TO: Farm Service Agency
FROM: (Please Print your Name and Address)

I have read the Notification of Consideration for Homestead Protection which I received with this response form.

I want to withdraw my request for Homestead Protection.

_____
Borrower's Signature

_____
(Date)

28. Exhibit L is revised to read as follows:

Exhibit L—Homestead Protection Program Agreement

This agreement is entered into this _____ day of _____, 19 ____, by and between the Farm Service Agency (FSA) of the United States Department of Agriculture and _____ ("Borrower").

Concurrently, with the execution of the pre-acquisition Homestead Protection Program Agreement, the borrower will deliver a completed Form FmHA 1955–1 to FSA. The Homestead Protection Program Agreement is subject to the provisions of 7 CFR part 1955, subpart A.

A. Borrower has received a loan or loans from FSA secured by real property which includes the Borrower's dwelling, and adjoining land that is used to maintain the Borrower and the Borrower's family (the Homestead Protection property). In some cases the FSA loans may also have been included one or more outbuildings that are useful to the Borrower and the Borrower's family and in such cases these outbuildings are included in the definition of Homestead Protection property.

B. Borrower's FSA loan is in default which could result in the loss of the borrower's Homestead Protection property.

C. Borrower wants to continue to occupy the Homestead Protection property after FSA acquires title to it.

D. FSA has already determined that Borrower has satisfied the requirements for its Homestead Protection Program.

E. FSA agrees to permit Borrower to retain occupancy of the Homestead Protection property on the following terms and conditions:

1. Subject to the terms and conditions set forth below FSA agrees to lease the Homestead Protection property, as more particularly described in attachment 1 hereto, to Borrower on the terms and conditions set forth in the lease as attachment 2 (the "lease"). Borrower agrees to enter into the lease of the Homestead Protection property.

2. FSA's obligation to enter into the lease of the Homestead Protection property is subject to the occurrence of the following conditions:

a. FSA acquires fee title to the Homestead Protection property in connection with the liquidation of the farm property of which the Homestead Protection property is a portion.

b. All State and local governmental laws, ordinances and regulations concerning the creation of the Homestead Protection property as a separate legal parcel which can be leased and sold have been satisfied.

3. The term of the lease will begin on the date the later of the conditions set forth in paragraph 2 is satisfied and such date will be inserted into the lease.

4. The term of the lease will be ____ years. This term will be inserted in the lease.

5. The rent to be charged during the term of the lease will be determined by FSA as of the commencement date of the lease and will be in an amount substantially equivalent to rents charged for similar residential properties in the area. The borrower will be notified by letter of the amount of the rent and the amount of the rent will be inserted in the lease form, Form FmHA 1955–20.

6. Borrower agrees to cooperate with FSA in applying for and securing whatever local governmental approvals are necessary in order for the Homestead Protection property to be a separate legal parcel. FSA will bear the cost and expense of obtaining such approvals.

7. If the term of the lease has not begun on or before 2 years from the date of this agreement, the agreement shall end and be of no further force or effect.

Farm Service Agency
By: _____

Borrower:

_____

_____

Attachment 1, Legal Description of the Property.

Attachment 2, Lease Form, Form FmHA 1955–20.

29. Exhibit M is revised to read as follows:

Exhibit M—Notice of the Availability of Homestead Protection

(Insert Borrower's Name and Address)

(Date)

On [acquisition date], FSA acquired the property which was security for your FSA loan. FSA has a program called the Homestead Protection Program under which you may be allowed to lease (with an option to purchase) the house which you owned and used as your principal residence, a reasonable number of farm buildings located near the house that are useful to the occupants of the house, and not more than 10 acres of land adjoining the house. If you would like to be considered for the Homestead Protection Program, you must notify this office, in writing, by [date 30 days from acquisition date] of the buildings and land you wish to retain.

If you would like more information about the Homestead Protection Program, you should contact the FSA servicing official at [insert county office telephone number].

Failure to respond by the above date will terminate any rights that you have to lease and purchase the property under the Homestead Protection Program.

Sincerely,

Exhibits N, O, P and Q [Removed]

30. Exhibits N, O, P and Q are removed.

Subpart T—Disaster Set-Aside Program

§ 1951.958 [Amended]

31. Section 1951.958 is amended in paragraph (a)(2) by revising the words "net recovery buyout in accordance with subpart S of part 1951, or operating loan assistance in accordance with § 1941.14 of subpart A of 7 CFR part 1941" to read "buyout in accordance with subpart S of this part."

PART 1956—DEBT SETTLEMENT

32. The authority citation for part 1956 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 31 U.S.C. 3711; 42 U.S.C. 1480.

Subpart B—Debt Settlement—Farm Loan Programs and Multi-Family Housing

33. Subpart B is amended by revising the heading of the subpart to read as set forth above.

34. Section 1956.54 is amended in the definition of "Farmer programs loans" by revising the words "Farmer programs loans" to read "Farm Loan Programs (FLP) loans;" and by adding a definition of "Debt Forgiveness" as follows:

§ 1956.54 Definitions.

* * * * *

Debt forgiveness. For the purposes of servicing Farm Loan Programs loans, debt forgiveness is defined as a reduction or termination of a direct FLP loan in a manner that results in a loss to the Government. Included, but not limited to, are losses from a writedown or writeoff under subpart S of part 1951 of this chapter, debt settlement, after discharge under the provisions of the bankruptcy code, and associated with release of liability. Debt cancellation through conservation easements or contracts is not considered debt forgiveness for loan servicing purposes.

* * * * *

35. Section 1956.57 is amended in paragraph (b) by revising the words "Agricultural Stabilization and Conservation Service" to read "Farm Service Agency" in the second sentence and by revising the term "FP" to read "FLP" in the third sentence and by revising paragraph (k) and adding a paragraph (l) to read as follows:

§ 1956.57 General provisions.

* * * * *

(k) *Settlement where debtor owes more than one type of Agency loan.* It is not the policy to settle any loan indebtedness of a debtor who is also indebted on another agency loan and who will continue as an active borrower. In such case, the facts will be fully documented in part VIII of Form RD 1956–1.

(l) *No previous debt forgiveness.* Debt settlement may not be approved for any direct Farm Loan Programs loan if the borrower has received debt forgiveness on any other direct loan as defined in § 1956.54 of this subpart.

§ 1956.66 [Amended]

36. Section 1956.66 is amended in the introductory text by revising the words "FmHA or its successor agency under Public Law 103–354" to read "RD" in the second sentence and by revising the words "FmHA or its successor agency under Public Law 103–354" to read "the Agency" in the fourth sentence and in paragraph (a), introductory text, by revising the term "FP" to read "FLP" each time it appears.

PART 1962—PERSONAL PROPERTY

37. The authority citation for part 1962 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart A—Servicing and Liquidation of Chattel Security

§ 1962.13 [Amended]

38. Section 1962.13 is amended in paragraph (a)(1) by removing the words ", with signature."

39. Section 1962.34 is amended in paragraph (b)(3) by revising the words "exhibit B of Agency Instruction 440.1 (available in any Agency office) to read "a National Office issuance" and by adding a new paragraph (b)(6) and a new second sentence in paragraph (d) to read as follows:

§ 1962.34 Transfer of chattel security and EO property and assumption of debts.

* * * * *

(b) * * *

(6) The transferee has never been liable for a previous Farm Loan Programs (FLP) loan or loan guarantee which was reduced or terminated in a manner that resulted in a loss to the Government.

* * * * *

(d) * * * However, no such release will be granted to any borrower who was liable for any direct FLP loan which was reduced or terminated in a manner that resulted in a loss to the Government. * * *

* * * * *

§ 1962.40 [Amended]

40. Section 1962.40 is amended by revising the words "FmHA or its successor agency under Public Law 103–354" to read "the agency" every time it is mentioned in paragraph (a) and paragraph (b)(1) and by revising the words "Farmer Program" to read "Farm Loan Programs" in the heading and first sentence of the introductory text of paragraph (b)(2) and by revising the words "180 days delinquent" to read "90 days past due (60 days delinquent) on their payments" in the first sentence of the introductory text of paragraph (b)(2).

41. Section 1962.41 is amended by revising in paragraph (a) the words "FmHA or its successor agency under Public Law 103–354" to read "RD" in the second sentence and by revising the words "FmHA or its successor agency under Public Law 103–354" to read "Agency" in the third and fourth sentence and by revising the words "FmHA or its successor agency under Public Law 103–354" to read "the Agency" in the fifth sentence; and by revising paragraphs (c), (d), (e), and (f) to read as follows:

§ 1962.41 Sale of chattel security or EO property by borrowers.

* * * * *

(c) *Government takes possession.* The borrower may also turn over possession of the chattels to the agency by signing Form RD 455–4, "Agreement for Voluntary Liquidation of Chattel Security." This form authorizes the agency to sell the security at either public or private sale. If the agency hires a caretaker, services should be obtained by use of Form AD–838, "Purchase Order."

(d) *Record of Sale.* The sale will be recorded on Form FmHA 1962–1.

(e) *Unpaid debt.* If the sale results in less than full payment of the debt, the servicing official will have the County Committee review the case to determine if the borrower can be released of personal liability in accordance with paragraph (f) of this section. The borrower will be notified of the County Committee's recommendation for or against a release of personal liability.

(f) *Release of liability.* The borrower and any co-signer may be released from personal liability to the agency when all the chattel security or EO property is sold at the present market value and the proceeds are applied on the loan accounts. If the County Committee recommends a release of liability based on the following comment, the comment will be typed on the County Committee Certification and executed by the committee, and be further processed

and approved in accordance with § 1962.34(h) of this subpart:

In our opinion (name of borrower and any co-signer) does not have reasonable ability to pay all or a substantial part of the balance of the debt owed after the cash sale, taking into consideration his or her assets and income at the time of the conveyance. The borrower has cooperated in good faith, used due diligence to maintain property against loss, and has otherwise fulfilled the convenants incident to the loan to the best of his or her ability. (Name of borrower and any cosigner) has not been liable for a previous Farm Loan Programs (FLP) loan which was reduced or terminated in a manner that resulted in a loss to the Government. Therefore, we recommend that the borrower and any cosigner be released from personal liability for any balance due on the indebtedness upon completion of the transaction.

Form RD 1965–8, "Release From Personal Liability" will be given to the borrower to release him/her from liability. If a release from liability cannot be granted, the borrower will be sent a letter similar to exhibit F of subpart A of part 1955 of this chapter (available in any agency office). The account will then be considered for debt settlement.

42. Section 1962.42 is amended by revising in the introductory text of paragraph (a) the words "FmHA or its sucessor agency under Public Law 103–354" to read "agency" in the first sentence; by revising in paragraphs (a)(1)(i) and (a)(1)(iii) the words "FmHA or its successor agency under Public Law 103–354" to read "RD;" by revising in paragraph (a)(1)(iv) the words "FmHA or its successor agency under Public Law 103–354" to read "the agency;" and by revising paragraphs (a)(1)(v) and (a)(2) and the first sentence in paragraph (b)(1) to read as follows:

§ 1962.42 Repossession, care, and sale of chattel security or EO property by the County Supervisor.

(a) * * *

(1) * * *

(v) When Form RD 455–5, "Agreement of Secured Parties to Sale of SecurityProperty," is executed by all prior lienholders. If prior lienholders will not agree to liquidate the property, their liens may be paid if their notes and liens are assigned to the agency on forms prepared or approved by OGC. When prior liens are paid, the payment will be made in accordance with RD Instruction 2024–A (available in any agency office) and charged to the borrower's account.

* * * * *

(2) *Recording.* A list, dated and signed by the servicing official, of all security or EO property repossessed except for those items on Form RD 455–4, will be maintained in the borrower's case file. Whenever the servicing official is transferred to another position or leaves the agency or there is a change in jurisdiction, the District Director will give the succeeding servicing official in writing, the names of such borrowers and a list of the property repossessed in the custody of the servicing official and caretakers, its location, and the names and addresses of the caretakers.

(b) * * *

(1) * * * Care and feeding of livestock will be obtained by contract pursuant to subpart B of part 1955 of this chapter. * * *

* * * * *

43. Section 1962.46 is amended by adding a new paragraph (g)(2)(iv) to read as follows:

§ 1962.46 Deceased borrowers.

* * * * *

(g) * * *

(2) * * *

(iv) The transferee has never been liable for a previous Farm Loan Programs direct farm loan or loan guarantee which was reduced or terminated in a manner that resulted in a loss to the Government.

* * * * *

Exhibit D–1 of Subpart A [Removed]

44. Exhibit D–1 of subpart A is removed and reserved.

PART 1965—REAL PROPERTY

45. The authority citation for part 1965 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart A—Servicing of Real Estate Security for Farm Loan Programs Loans and Certain Note-Only Cases

46. Subpart A is amended to revise the heading of the subpart to read as set forth above.

47. Section 1965.26 is amended by revising paragraph (a)(1)(iv), by revising paragraph (a)(2), by revising paragraph (b), by revising paragraphs (c)(1) and (c)(3), by revising paragraphs (f)(4), (f)(5)(ii), adding a new paragraph (f)(5)(iii) and revising paragraph (f)(6) to read as follows:

§ 1965.26 Liquidation action.

* * * * *

(a) * * *

(1) * * *

(iv) Refinancing the Farm Loan Programs debt with another lender. The servicing official will explain the provisions of these regulations to the borrower.

(2) *Sale or transfer for less than secured debt.* If the property is to be sold or transferred for less than the total secured debts against it, the property will be appraised immediately to determine its present market value. The appraisal will be completed by an authorized agency employee in accordance with subpart E of part 1922 of this chapter and placed in the borrower's case file. If a qualified agency appraiser is not available, the State Executive Director may contract for an appraisal in accordance with RD Instruction 2024–A (available in any agency office).

(b) *Involuntary liquidation*—(1) *General.* When the servicing official, with the advice of the District Director, determines that continued servicing of the loan will not accomplish the objectives of the loan, or that further servicing cannot be justified under the policy stated in § 1965.2 of this subpart, liquidation of the account will be accomplished as quickly as possible under this section and subpart A of part 1955 of this chapter.

(2) *Farm Loan Programs loan cases.* In Farm Loan Programs loan cases, borrowers who are 90 days past due (60 days delinquent) on their payments, must receive Exhibit A with attachments 1 and 2, or attachments 1, 3, and 4 of exhibit A of subpart S of part 1951 of this chapter in cases involving nonmonetary default. The servicing official will send these forms to the borrower as soon as a decision is made to liquidate. The procedures set out in subpart S of part 1951 of this chapter shall be followed and any appeal must be concluded before any liquidation action, including termination of releases of sales proceeds, is taken. If the borrower fails to return attachment 2 of exhibit A of subpart S of part 1951 of this chapter and a complete application within 60 days, the servicing official will send attachments 9 and 10 or 9–A and 10–A of exhibit A of subpart S of part 1951 of this chapter. If the borrower fails to return attachment 4, 6, 6–A, 10, or 10–A of exhibit A of subpart S of part 1951 of this chapter within 60 days, the servicing official will submit the case to the District Director in accordance with the provisions of § 1955.15 of subpart A of part 1955 of this chapter.

(3) Reserved.

(4) Acceleration of account. When foreclosure is approved, acceleration of the account and demand for payment will be accomplished according to the applicable paragraphs of § 1955.15 of subpart A of part 1955 of this chapter.

(c) * * *

(1) When a borrower is indebted to the agency for more than one type of FLP loan, a thorough study should be made of each loan and the effect

liquidation of one or more of the loans would have on any and all other loans. When liquidation of one or more FLP loans secured by real estate and chattels is necessary, and it will jeopardize the repayment of or the accomplishment of the purpose of the other loans, liquidation of all real estate and all chattel security for all loans will be started at the same time. Chattel security will be liquidated under subpart A of part 1962 of this chapter, except when real estate is transferred in accordance with § 1965.27 of this subpart.

* * * * *

(3) RHS SFH loans on farm tracts must be considered for payment assistance and/or moratorium at the time servicing options are being considered for the FLP loan(s) prior to acceleration. The RHS county office file will be documented to show that payment assistance and moratorium were considered. When the Notice of Intent notices, set forth in subpart S of part 1951 of this chapter are sent to a borrower who also has an RHS loan, and the dwelling is security for the farm loan(s) and is located on the farm tract, it will not be necessary for RHS to meet the additional requirements of subpart G of part 1951 of this chapter prior to accelerating the RHS loan accounts. The RHS accounts will be accelerated at the same time the Notice of Intent notices, set forth in subpart S of part 1951 of this chapter are sent to the borrower. If it is later determined that the FLP loan(s) is to receive additional servicing in lieu of liquidation, the RHS loan will be reinstated simultaneously with the FLP servicing actions and may be reamortized in accordance with § 1951.315 of subpart G of part 1951 of this chapter.

* * * * *

(f) * * *

(4) The agency's liens against the security property are not released until the appropriate sale proceeds for application on the Government's claim are received. The release will be made on forms approved or prepared by OGC.

(5) * * *

(ii) When the Agency debt less the market value and prior liens is $1 million or more (including principal, interest, and other charges), release of liability must be approved by the Administrator or designee; otherwise, the State Executive Director must approve the release of liability. All cases requiring a release of liability will be submitted in accordance with exhibit A of subpart B of part 1956 of this chapter (available in any agency office).

(iii) The borrower has never been liable for any direct FLP loan or loan guarantee which was reduced or terminated in a manner resulting in a loss to the Government.

(6) If a release from liability cannot be granted, the borrowers will be sent a letter similar to exhibit F of subpart A of part 1955 of this chapter (available in any agency office). The servicing official will meet with the borrower within 30 days to assist the borrower in the development of a debt settlement offer in accordance with subpart B of part 1956 of this chapter. (available in any agency office).

* * * * *

§ 1956.27 [Amended]

48. Section 1965.27 is amended by:

a. In the introductory paragraph by revising the words "FmHA or its successor agency under Public Law 103–354" to read "Agency" in the first sentence; revising the words "Farmer program" to read "Farm Loan Programs (FLP)" in the second sentence; revising the words "FmHA or its successor agency under Public Law 103–354" to read "FLP" in the third and fourth sentence; by revising the words "FmHA or its successor agency under Public Law 103–354" to read "the Agency's" in the sixth sentence; by revising the words "FmHA or its successor agency under Public Law 103–354" to read "agency" in the seventh sentence; by removing the words "FmHA or its successor agency under Public Law 103–354" in the eighth sentence in both places they appear;

b. In paragraph (c)(2) by revising the words "FmHA or its successor agency under Public Law 103–354" to read "the agency" in the first sentence; by revising the third sentence to read "Interest rates are specified in agency National Office issuances (available in any agency office) for the type of loan involved."; by revising the words "FmHA or its successor agency under Public Law 103–354" to read "RD" in the fourth sentence; by revising the fifth sentence to read "The field office will process the assumption via the field office terminal system in accordance with Form 1965–13.";

c. In paragraph (d) by adding a sentence to the end of the paragraph to read "No assumption can be approved if the transferee has been liable for any Farm Loan Program (FLP) loan or loan guarantee which was reduced or terminated in a manner resulting in a loss to the Government.";

d. In paragraph (e) by revising the words "FmHA or its successor agency under Public Law 103–354" to read "agency";

e. In paragraph (f) by adding a new sentence after the first sentence to read "Release shall not be granted to any borrower or cosigner who was liable for any FLP direct loan which was reduced or terminated in a manner resulting in a loss to the Government"; by revising the word "FP" to read "FLP" in the third and fifth sentence; by revising the words "FmHA or its successor agency under Public Law 103–354" to read "agency" in the third sentence; by removing the fourth sentence that read "SFH borrowers will be released from liability in accordance with § 1965.127 of subpart C of part 1965 of this chapter."; and by removing the words "FmHA or its successor agency under Public Law 103–354" in the seventh sentence."

Dated: February 13, 1997.

James W. Schroeder,

Acting Under Secretary for Farm and Foreign Agricultural Services.

Dated: February 14, 1997.

Jill Long Thompson,

Under Secretary for Rural Development.

[FR Doc. 97–5115 Filed 3–4–97; 8:45 am]

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Wednesday
March 5, 1997

Part III

Department of Education

Emergency Immigrant Education Program; Notice

DEPARTMENT OF EDUCATION

(CFDA No.: 84.162A)

Emergency Immigrant Education Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1997

Purpose of Program: This program provides grants to State educational agencies (SEAs) to assist local educational agencies (LEAs) that experience unexpectedly large increases in their student population due to immigration. These grants are to be used to provide high-quality instruction to immigrant children and youth and to help those children and youth make the transition into American society and meet the same challenging State performance standards expected of all children and youth.

Eligible Applicants: State educational agencies.

Deadline for Transmittal of Applications: May 15, 1997.

Deadline for Intergovernmental Review: July 15, 1997.

Applications Available: March 10, 1997.

Available Funds: $100 million.

Project Period: Up to 16 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 76, 77, 79, 80, 81, 82, and 85.

Programmatic Information: An SEA is eligible for a grant if it meets the eligibility requirements specified in sections 7304 and 7305 of the Elementary and Secondary Education Act of 1965 (the Act), as amended by the Improving America's School's Act of 1994 (Pub. L. 103–382, enacted October 20, 1994). (20 U.S.C. 7544 and 7545). In order to receive an award under this program, an SEA must provide a count, taken during April 1997, of the number of immigrant children and youth enrolled in public and nonpublic schools in eligible LEAs in accordance with the requirements specified in section 7304 of the Act. An eligible LEA is one in which the number of immigrant children and youth enrolled in the public and nonpublic elementary and secondary schools within the district is at least either 500 or 3 percent of the total number of students enrolled in those public and nonpublic schools. (20 U.S.C. 7544(b)(2)). Under section 7501(7) of the Act, the term "immigrant children and youth" means individuals who are aged 3 through 21, were not born in any State, and have not been attending one or more schools in any one or more States for more than 3 full academic years. (20 U.S.C. 7601(7)).

For Applications or Information Contact: Ms. Harpreet K. Sandhu, U.S. Department of Education, 600 Independence Avenue, SW., Room 5086, Switzer Building, Washington, DC 20202–6510. Telephone: (202) 205–9808. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of the application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server (at Gopher.//gcs.ed.gov); or on the World Wide Web (at http://www.ed.gov/money.html). However, the official application notice for this grant program is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 7541–7549.

Dated: February 27, 1997.

Delia Pompa,

Director, Office of Bilingual Education and Minority Language Affairs.

[FR Doc. 97–5424 Filed 3–4–97; 8:45 am]

BILLING CODE 4000–01–P

federal register

Wednesday
March 5, 1997

Part IV

Department of Justice

Bureau of Prisons

28 CFR Part 511 et al.

Progress Reports: Triennial Preparation; Proposed Rule

Searching and Detaining or Arresting Persons Other Than Inmates; Proposed Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 524

[BOP–1067–P]

RIN 1120–AA63

Progress Reports: Triennial Preparation

AGENCY: Bureau of Prisons, Justice.
ACTION: Proposed Rule.

SUMMARY: The Bureau of Prisons is proposing to amend its regulations on progress reports to require that progress reports for designated inmates be prepared at least once every 36 months. The purpose of this change is to streamline operations at Bureau facilities while continuing to provide appropriate program services to inmates.

DATES: Comments due by May 5, 1997.
ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.
FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.
SUPPLEMENTARY INFORMATION: The Bureau of Prisons is proposing to amend its regulations on progress reports (28 CFR part 524, subpart E). A final rule on this subject was published in the **Federal Register** on December 3, 1990 (55 FR 49977), and was amended February 11, 1994 (59 FR 6856) and February 27, 1995 (60 FR 10722).

Progress reports are used to maintain current information on an inmate such as his/her institutional adjustment, program participation, and readiness for release. Paragraph (e) of § 524.41 had previously specified that a progress report shall be prepared on each federal inmate at least once every 24 months, if for no other reason than to update report information. This paragraph was amended in 1995 to allow for a triennial rather than biennial progress report for inmates at independent camps. This amendment allowed the Bureau to allocate staff resources at independent camps in a more efficient manner. The Bureau wishes to extend such streamlining of operations to its other facilities, and therefore proposes to require that a progress report be prepared on each designated inmate at least once every 36 months if not previously generated for another reason required by § 524.41.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), does not have a significant impact on a substantial number of small entities. Because this rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, its economic impact is limited to the Bureau's appropriated funds.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., HOLC Room 754, Washington, DC 20534. Comments received during the comment period will be considered before final action is taken. Comments received after the expiration of the comment period will be considered to the extent practicable. All comments received remain on file for public inspection at the above address. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

List of Subjects in 28 CFR Part 524

Prisoners.

Ronald G. Thompson,
Acting Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 524 in subchapter B of 28 CFR, chapter V is proposed to be amended as set forth below.

SUBCHAPTER B—INMATE ADMISSION, CLASSIFICATION, AND TRANSFER

PART 524—CLASSIFICATION OF INMATES

1. The authority citation for 28 CFR part 524 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3521–3528, 3621, 3622, 3624, 4001, 4042, 4046, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 21 U.S.C. 848; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. In § 524.41, paragraph (e) is revised to read as follows:

§ 524.41 Types of progress reports.

* * * * *

(e) *Triennial Report*—prepared on each designated inmate at least once every 36 months if not previously generated for another reason required by this section.

* * * * *

[FR Doc. 97–5397 Filed 3–4–97; 8:45 am]
BILLING CODE 4410–05–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 511

[BOP 1066–P]

RIN 1120–AA61

Searching and Detaining or Arresting Persons Other Than Inmates

AGENCY: Bureau of Prisons, Justice.
ACTION: Proposed Rule.

SUMMARY: In this document, the Bureau of Prisons is proposing to amend its regulations on searching/detaining of non-inmates to authorize the Warden to conduct visual searches of visitors suspected of introducing contraband into a low and above security level institution (or administrative institution, or in a pretrial or in a jail unit within any security level institution) when there is reasonable suspicion that the visitor possesses contraband or is introducing or attempting to introduce contraband into the institution. Currently, such searches are authorized at medium and higher security level institutions (or administrative institution, or in a pretrial or in a jail unit within any security level institution). This amendment is intended to provide for the continued secure and safe operation of Bureau institutions.

DATES: Comments due by May 5, 1997.
ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.
FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.
SUPPLEMENTARY INFORMATION: The Bureau of Prisons is proposing to amend its regulations on searching/detaining non-inmates (28 CFR part 511, subpart A. A final rule on this subject was published in the **Federal Register** on November 1, 1984 (49 FR 44057) and was amended on July 18, 1986 (51 FR 26126), February 1, 1991 (56 FR 4159), and on February 8, 1994 (59 FR 5924).

Current regulations in § 511.12(d) permit the Warden to authorize a visual search (visual inspection of all body surfaces and cavities) of a visitor as a prerequisite to a visit in a medium or high security level institution, or administrative institution, or in a pretrial or in a jail (detention) unit within any security level institution when there is reasonable suspicion that the visitor possesses contraband or is introducing or attempting to introduce contraband into the institution. Any visitor who objects to the search procedure has the option of refusing and leaving the institution property, unless there is reason to detain and/or arrest.

Low security level institutions, like medium and higher security level institutions, maintain secure perimeter barriers and, to various degrees, are characterized by security factors similar to those of medium and higher security level institutions. Consistent with the needs of these secure institutions, the Bureau proposes to authorize the use of a visual search at low security level institutions. Minimum security level institutions are unaffected by this proposal.

As an editorial change, the Bureau is also revising the title of the regulation to "Searching and Detaining or Arresting Persons Other Than Inmates." This title more completely reflects the scope of the regulation.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), does not have a significant impact on a substantial number of small entities. Because this rule pertains to institution security requirements, its economic impact is limited to the Bureau's appropriated funds.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., HOLC Room 754, Washington, DC 20534. Comments received during the comment period will be considered before final action is taken. Comments received after the expiration of the comment period will be considered to the extent practicable. All comments received remain on file for public inspection at the above address. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

List of Subjects in 28 CFR Part 511

Prisoners.

Kathleen M. Hawk,
Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 511 in subchapter A of 28 CFR, chapter V is proposed to be amended as set forth below.

SUBCHAPTER A—GENERAL MANAGEMENT AND ADMINISTRATION

PART 511—GENERAL MANAGEMENT POLICY

1. The authority citation for 28 CFR part 511 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 751, 752, 1791, 1792, 1793, 3050, 3621, 3622, 3624, 4001, 4012, 4042, 4081, 4082 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99, 6.1.

2. In 28 CFR part 511, the heading for subpart B is revised to read as follows:

Subpart B—Searching and Detaining or Arresting Persons Other Than Inmates

3. In § 511.12, paragraph (d) is revised to read as follows:

§ 511.12 Procedures for searching visitors.

* * * * *

(d) The Warden may authorize a visual search (visual inspection of all body surfaces and cavities) of a visitor as a prerequisite to a visit to an inmate in a low and above security level institution, or administrative institution, or in a pretrial or in a jail (detention) unit within any security level institution when there is reasonable suspicion that the visitor possesses contraband or is introducing or attempting to introduce contraband into the institution.

* * * * *

[FR Doc. 97–5398 Filed 3–4–97; 8:45 am]
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Wednesday
March 5, 1997

Part V

Environmental Protection Agency

40 CFR Part 141
National Primary Drinking Water Regulations: Analytical Methods for Radionuclides; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[WH–FRL–5689–9]

RIN 2040–AC88

National Primary Drinking Water Regulations: Analytical Methods for Radionuclides

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the use of 66 additional analytical methods for compliance with current radionuclide drinking water standards and monitoring requirements. The methods are applicable to gross alpha, gross beta, tritium, uranium, radium-226, radium-228, gamma emitters, and radioactive cesium, iodine and strontium. This rule is expected to satisfy public requests for approval of new analytical technologies for measuring contaminants in drinking water. This rule imposes no burden, because it does not withdraw approval of any previously approved method. Today's final rule follows the Proposed Notice of Rulemaking for Radionuclides in Drinking Water published on July 18, 1991. The 1991 rulemaking proposed to approve analytical methods and establish Maximum Contaminant Level Goals (MCLGs) and National Primary Drinking Water Regulations (NPDWRs) for several radionuclides. Today's final rule is limited to the approval of additional analytical methods. In addition, since EPA received comments suggesting approval of additional methods during the comments period, EPA is proceeding with direct final rule making on 12 of the suggested methods. EPA is inviting comments on these 12 methods elsewhere in today's rule.

DATES: The effective date for amendment 2 is April 4, 1997. The effective date for amendment 3 is May 5, 1997 unless EPA receives adverse comments by April 4, 1997 requiring a response. If EPA receives adverse comments, EPA will publish a timely withdrawal of amendment 3.

The incorporation by reference of the publications listed in this regulation is approved by the Director of the Federal Register as of April 4, 1997.

This regulation shall be considered final Agency action on May 9, 1997 at 1:00 p.m. Eastern Standard Time for purposes of judicial review in accordance with 40 CFR 23.7.

ADDRESSES: Adverse comments on the direct final rule must be submitted to Chemistry Methods Docket Clerk, MC 4101, 401 M street, S.W., Washington, D.C. 20460. Copies of the public comments received, EPA responses, and all other supporting documents (including references included in this notice) are available for review at the U.S. Environmental Protection Agency, Water Docket, 401 M Street, S.W. Washington, D.C. 20460. For access to the docket materials, call 202–260–3027 on Monday through Friday, excluding Federal holidays, between 9:00 a.m. and 3:30 p.m. Eastern Time for an appointment. Copies of methods published by EPA are available for a nominal cost through the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. NTIS also may be reached at 800–553–6847. All other methods must be obtained from the publisher. Sources (with addresses) for all approved methods are cited at 40 CFR Part 141 and in the References section of today's rule.

FOR FURTHER INFORMATION CONTACT:

Dr. Richard Reding, Office of Ground Water and Drinking Water, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268, 513–569–7961; Dr. Jitendra Saxena, Office of Ground Water and Drinking Water (4603), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, 202–260–9579; or one of the EPA Regional Office contacts listed below. General information may also be obtained from the EPA Drinking Water Hotline. Callers within the United States may reach the Safe Drinking Water Hotline at 800–426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding Federal holidays, from 9:00 a.m. to 5:30 p.m. Eastern Time.

For technical information regarding the methods contact Stephen Pia, National Exposure Research Laboratory, Office of Research and Development, U.S. Environmental Protection Agency, P.O. Box 93478, Las Vegas, NV 89193–3478, 702–798–2102.

EPA Regional Offices:

I JFK Federal Bldg., One Congress Street, 11th floor, Boston, MA 02203, Phone: 617–565–3602, Jerry Healey
II 290 Broadway, 24th Floor, New York, NY 10007, Phone: 212–637–3880, Walter Andrews
III 841 Chestnut Building, Philadelphia, PA 19107, Phone: 215–597–6511, Victoria Binetti
IV 345 Courtland Street, N.E., Atlanta, GA 30365, Phone: 404–347–2207, Wayne Aronson
V 77 West Jackson Boulevard, Chicago, IL 60604, Phone: 312–886–6206, Charlene Denys
VI 1445 Ross Avenue, Suite 1200, Dallas, TX 75202, Phone: 214–655–7150, Oscar Cabra
VII 726 Minnesota Avenue, Kansas City, KS 66101, Phone: 913–551–7682, Robert Morby
VIII One Denver Place, 999 18th Street, Suite 500, Denver, CO 80202, Phone: 303–293–1652, Patrick Crotty
IX 75 Hawthorne Street, San Francisco, CA 94105, Phone: 415–744–1817, Doris Betuel
X 1200 Sixth Avenue, Seattle, WA 98101, Phone: 206–553–1893, Larry Worley.

SUPPLEMENTARY INFORMATION:

Regulated entities: Entities potentially regulated by this action are listed below:

Category	Example of regulated entities
Public Water Systems	All public water systems that have at least 15 service connections or regularly serve an average of at least 25 individuals daily at least 60 days out of the year.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the type of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your business is regulated by this action, you should carefully examine the applicability of the current radionuclide drinking water standards and monitoring requirements in § 141.15 and 141.16 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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I. Statutory Authority

The Safe Drinking Water Act (SDWA), as amended in 1996, requires EPA to promulgate national primary drinking water regulations (NPDWRs) which specify maximum contaminant levels (MCLs) or treatment techniques for drinking water contaminants (42 USC 300g–1). NPDWRs apply to public water systems (42 USC 300f(1)(A)). According to section 1401(1)(D) of the Act, NPDWRs include "criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels; including quality control and testing procedures * * *." In addition, Section 1445(a) of the Act authorizes the Administrator to establish regulations for monitoring to assist in determining whether persons are acting in compliance with the requirements of the SDWA. EPA's promulgation of analytical methods is authorized under these sections of the SDWA as well as the general rulemaking authority in SDWA Section 1450(a) (42 USC 300j–9(a)).

II. Regulatory Background

EPA has promulgated analytical methods for all currently regulated drinking water contaminants for which MCLs or monitoring requirements have been promulgated. In most cases, the Agency has promulgated regulations specifying (i.e., approving) use of more than one analytical method for measurement of a contaminant, and laboratories may use any approved method for determining compliance with an MCL or monitoring requirement. After any regulation is published, EPA may amend the regulations to approve additional methods, or modifications to approved methods, or withdraw methods that become obsolete.

On July 18, 1991 (56 FR 33050), EPA proposed to increase the number of methods approved for radionuclide monitoring by proposing the use of several new methods. EPA believed that these methods were as good as, or better than, existing approved methods and procedures. EPA also proposed drinking water standards (NPDWRs and MCLGs) and laboratory certification criteria for several radionuclides, including radon. EPA requested public comments on all of these proposed actions. Today's notice takes final action only on the approval of methods for gamma emitters, gross alpha, gross beta, radium-226, radium-228, uranium, tritium and radioactive cesium, iodine, and strontium. For the reasons discussed below, revision of standards for these radionuclides, and standards and analytical methods for radon-222 may be addressed in a separate rule.

In 1995 EPA initiated a dialogue with stakeholders to prioritize EPA drinking water activities in order to maximize health risk reduction. That dialogue resulted in a draft report, published for comment in November, 1995 (EPA 1995), proposing to reallocate EPA's resources to those projects which have the highest risk reduction potential. Assuring that analytical test methods for determining compliance with existing standards remained "up to date" received significant stakeholder support. Therefore, in today's rule, EPA is approving some of the proposed radionuclide methods. EPA is not taking action on any radon analytical methods or on any of the MCLGs or NPDWRs that were proposed in the 1991 notice. Schedule for rulemaking on radon and other radionuclides is governed by the 1996 SDWA Amendments.

III. Explanation of Today's Action

Today's action promulgates analytical methods for measurement of radionuclides in drinking water based on the 1991 proposal (54 methods) and on the public comments received on the 1991 proposal (12 methods). This action also corrects method citation and typographical errors made in the 1991 proposal. EPA is not withdrawing any of the 14 previously approved methods in today's action, which means the EPA Methods, the Standard Methods (13th edition) and ASTM methods that were previously cited at 40 CFR 141.25(a) are still approved and included in amendments 2 and 3. Laboratories may continue to use these 14 methods or they may choose from a group of 66 methods approved in today's rule. The effective date for approval of the 54 methods based on the 1991 proposal is April 4, 1997. The effective date for approval of the 12 methods submitted as public comments is May 5, 1997 (see explanation below).

In the 1991 notice the Agency proposed 56 new methods for measuring radionuclides in drinking water. The Agency is approving all but two of these methods. The analytical methods proposed were considered to be economically and technologically feasible for compliance monitoring. EPA analyzed the most recent available information and considered public comments on the proposal in arriving at the final selection of methods in the table at 40 CFR 141.25(a). Method D–1943–81 was proposed but is not approved today for gross alpha determinations because EPA realized that the 500 pCi/L lower limit of the method is too high to be of use for drinking water analysis. A precipitation method (Cs–01) for cesium was also proposed but is not approved because the method is no longer supported by its developer, the U.S. Department of Energy.

Twelve of the methods approved in today's rule using direct final rulemaking, are based on the public comments received on the 1991 proposal. Commenters submitted several methods or techniques for consideration for approval. EPA evaluated and compared the sensitivity, accuracy, precision and selectivity of the suggested methods to the method performance requirements at 40 CFR 141.25 and to the data in previously approved methods. EPA also determined whether the performance data submitted by the commenter would insure compliance with the radionuclide MCLs and monitoring requirements at 40 CFR 141.15, 141.16, 141.25 and 141.26. Based on this evaluation EPA is approving twelve of these methods all of which are published, supported and extensively peer reviewed by highly respected method organizations. Of the twelve methods, six are published by the Standard Methods Committee, two by the American Society for Testing and Materials (ASTM), two by the U.S. Geological Survey (USGS) and two by the Department of Energy (DOE). Eleven of these methods use technologies that underlie methods that were proposed. Only one method uses a technology that was not proposed in the 1991 rule. This new cost-saving technology, pulsed laser phosphorimetry, was not proposed because no validated method was available at the time of proposal. Approving these additional methods will cause no burden because their use, like use of all of the methods approved in this rule, is optional.

The Agency is publishing the twelve methods suggested by public comment on the 1991 proposed rule as a "direct final" rule. A direct final rule is not an "interim final" rule (i.e. a rule which provides for public comment after it has gone into effect); rather it is a rule which is published with a delayed effective date allowing for the receipt of and response to public comment before the rule goes into effect. If EPA receives comments requiring response, then EPA will take additional action necessary to respond to those comments prior to the effective date (i.e. either withdraw the direct final rule or promulgate today's companion proposal). This rule thus compiies with notice-and-comment requirements under the Administrative Procedure Act (APA). EPA has chosen to use the direct final approach for these twelve methods because the Agency does not expect to receive adverse public comment and to allow for the most expeditious implementation

possible consistent with the APA. Elsewhere in today's **Federal Register**, EPA is proposing these twelve methods. If EPA decides to withdraw any or all of these methods based on public comment, EPA will proceed with a revised rule based on this proposal. There will not be an additional comment period, so parties interested in commenting on the proposed rule should do so at this time.

The methods approved based on public comments and their analytes are: a co-precipitation method for gross alpha (7110C), two radon emanation and two radiochemical methods for radium-226 (7500–Ra C, Ra–05, D 2460–90 and R–1140–76), an alpha spectrometry and a laser phosphorimetry method for uranium (7500–U C and D 5174–91), one radiochemical and one gamma spectrometry method for cesium (R–1111–76 and 7120), one radiochemical and one gamma spectrometry method for iodine (7500–I C and 7500–I D) and a radiochemical method for strontium (SR–02). EPA evaluated and selected these methods using the same criteria (sensitivity, accuracy, precision and selectivity) that were used to select methods for the 1991 proposal (56 FR 33092–33093). In the proposal EPA stated that the "reliability of these [proposed] methods has been demonstrated by a history of many years' use by state, federal and private laboratories". Most of the methods approved in today's rule have been collaboratively validated in multi laboratory studies and the remainder in single laboratory studies.

Today's rule also corrects method citations and typographical errors made in the 1991 proposal. EPA has clarified the status of method 7500–U C to reflect a change made by the publisher. In the 18th edition of Standard Methods (1992), the fluorometric method 7500–U C for determination of uranium was dropped and the method number, 7500–U C, was assigned to an alpha spectrometry method for uranium. If the Standard Methods version of the alpha spectrometry method had been published earlier, EPA would have proposed it along with the four alpha spectrometry and five fluorometric methods for uranium that were proposed in the 1991 rule (56 FR 33124). As EPA is interested in approving both fluorometric and alpha spectrometric methods for uranium, this final rule approves method 7500–U C as a fluorometric method in the 17th edition of Standard Methods and as an alpha spectrometry method in the 18th and 19th editions of Standard Methods.

The method numbers in the 1991 proposal for a radiochemical iodine method and a liquid scintillation method were incorrect. These methods are approved and correctly listed in today's rule as methods D 4785–93 and D 4107–91. Other errors, which include page number references in the "Interim Radiochemical Methodology for Drinking Water" manual (EPA 1976), method numbers in the "EML Procedures Manual" (DOE 1990) and in the "Radiochemical Procedures Manual" (EPA 1987), and the publication date of the U.S. Geological Survey (USGS) book, are also corrected in today's rule.

IV. Response to Comments Received on the Proposed Rule

EPA received 160 analytical method related comments on the 1991 proposed rule. Commenters represented analytical laboratories, water utilities, instrument manufacturers, State and local governments, and trade associations. The majority of these comments dealt with radon methods, laboratory certification criteria and questions about the applicability of the methods to the proposed regulations. Only 27 comments were related to the methods covered by today's rule. Overall, public comments strongly supported approval of new and innovative methods for compliance with current radionuclide drinking water standards and monitoring requirements. A summary of major comments and the Agency's response to the issues raised are presented in this section. The Agency's detailed response to these comments is available in the public docket for this rule (EPA 1996).

Several commenters submitted radiochemical analytical methods or techniques to EPA for consideration for approval. EPA has approved 12 of the suggested methods because EPA believes they are as good as or better than existing methods and procedures, and have been extensively validated and peer reviewed. EPA has not approved 7 methods because these methods were not accompanied with the supporting data that the Agency believes is necessary for their evaluation.

Commenters recommended approval of pulsed laser phosphorimetry for analysis of uranium because it uses modern technology that is easier to use than the currently approved fluorometric methods. EPA agrees with this suggestion and as noted above, is approving laser phosphorimetry method D–5174–91. This method was published by ASTM in 1992 and has been validated to show that laser phosphorimetry is as good as or better than previously approved techniques, such as fluorometry, for the analysis of uranium in drinking water samples. EPA believes that laboratories may adopt the laser phosphorimetry method because this technology can increase hourly sample production to 15–20 samples as compared to 2–5 samples using current fluorometric and alpha spectrometric technologies.

EPA was asked to withdraw approval of the fluorometric methods for determination of uranium because the methods are old and somewhat cumbersome compared to laser phosphorimetry. EPA disagrees that fluorometric methods should be withdrawn. Although these methods were approved about twenty years ago, they are not obsolete. These methods provide acceptable results and they are still used by many laboratories. It would be costly, burdensome and unnecessary to require laboratories to adopt to another technique. The commenter did not provide (and EPA does not have) data to show that these methods have become unacceptable for compliance determinations of uranium.

In the 1991 notice EPA proposed to replace americium-241 (Am–241) with thorium-230 (Th–230) as the calibration standard in gross alpha activity methods because Am–241 "tended to bias analytic results" (56 FR 33094). Commenters agreed with EPA's proposal but recommended that EPA also allow use of natural uranium (Unat) as a calibration standard. They stated that the alpha energies of both Unat and Th–230 better approximate the alpha energies of uranium and radium-226, and both isotopes also better approximate the attenuation of the alpha particles caused by drinking water dissolved solids. EPA agrees with the comment and a footnote in the table of approved methods at 40 CFR 141.25(a) now approves use of either Unat or Th–230 as calibration standards for gross alpha analyses with co-precipitation and evaporation methods. EPA believes that Am–241 is only suitable for use with co-precipitation methods. Therefore, future revisions of the evaporation methods may specify use of only Unat and Th–230 as calibration standards. One commenter asked where to obtain standards of Th–230 for use with the gross alpha methods. Th–230 is readily available in a concentrated form from commercial vendors.

In the 1991 proposal EPA solicited comment on what conversion factor to use with the approved methods that measure uranium in mass units (micrograms) rather than in activity units (picocuries) (56 FR 33095). Uranium is measured in activity units with radiochemical and alpha spectrometry methods and in mass units with fluorometric and laser phosphorimetry methods. All of these techniques are acceptable provided a conversion factor is used to convert the fluorometric or laser phosphorimetric uranium result from micrograms to picocuries. The factor is required because the uranium contribution to the gross alpha activity MCL of 15 pCi/L must be evaluated in picocuries not micrograms (40 CFR 141.15(b)).

This conversion factor is not specified in the instructions in the approved mass-type methods for uranium determinations. In the 1991 proposal EPA solicited comment on use of a conversion factor of 1.38 pCi/μg or 0.67 pCi/μg. No public comments were received with respect to what factor to use to determine the activity contribution of uranium to the current gross alpha activity 15 pCi/L MCL. In today's rule the Agency is selecting the lower conversion factor, 0.67 pCi/μg, because it is a conservative factor that is based on the 1:1 activity ratio of U–234 to U–238 characteristic of naturally occurring uranium.

Several commenters expressed confusion and wanted clarification about the approval status of methods appearing in multiple editions of the ASTM and Standard Methods publications. As ASTM annually reprints all of the methods contained in the Annual Book of ASTM Methods, even methods that have not been editorially or technically revised, EPA permits the use of any edition of the ASTM book that contains the EPA-approved version of the compliance method. EPA is also approving at this time versions of the radionuclide methods in Standard Methods for the Examination of Water and Wastewater that are in the 13th, 17th, 18th and 19th editions of this publication. In the 1994 methods rule which covered chemistry and microbiology methods (59 FR 62456), EPA approved only one version of each compliance method that was published in Standard Methods. EPA approved only one version because later versions generally contained improvements in safety, quality assurance or performance. EPA feels that changes in the recent versions of radionuclide methods have not been significant enough to warrant withdrawing the previous versions.

V. Regulation Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735; October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule specifies additional analytical methods that laboratories may choose to use in lieu of existing approved methods for compliance measurement of radionuclides in drinking water. The rule does not impose any new requirements on small entities. Monitoring requirements were promulgated in earlier notices and are unaffected by this rule. This rule merely increases operational flexibility under these existing monitoring requirements. The rule may actually reduce the cost of compliance monitoring for radionuclides by allowing laboratories to use equipment and procedures that they may already own or have developed. Therefore, the Agency believes that this notice would have no adverse effect on any number of small entities.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. Today's rule approves use of optional analytical methods and thus provides operational flexibility to laboratories conducting analysis for radionuclides in drinking water. The rule does not withdraw approval of any previously approved methods. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The rule is highly technical and narrow in scope, and the sole objective of the rule is to increase the number of methods approved for measurement of radionuclides in drinking water. Thus, the rule actually provides regulatory relief in the form of increased operational flexibility for laboratory analysts.

D. Paperwork Reduction Act

The rule contains no reporting or record keeping requirements and consequently not subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

E. Science Advisory Board and National Drinking Water Advisory Council, and Secretary of Health and Human Services

In accordance with Section 1412(d) and (e) of the SDWA, the Agency consulted with the Science Advisory Board, the National Drinking Water Advisory Council, and the Secretary of Health and Human Services for this action. They had no comments..

F. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

VI. References

APHA. Thirteenth, seventeenth, eighteenth and nineteenth editions of Standard Methods for the Examination of Water and Wastewater, 1971, 1989, 1992, 1995, American Public Health Association, 1015 Fifteenth Street N.W., Washington, D.C. 20005.

ASTM. Annual Book of ASTM Methods, Vol. 11.02, 1994. American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428.

DOE. "EML Procedures Manual", 27th Edition, Volume 1,1990. Available at the Environmental Measurements Laboratory, U.S. Department of Energy (DOE), 376 Hudson Street, New York, NY 10014–3621.

EPA. 1976. "Interim Radiochemical Methodology for Drinking Water", EPA 600/4–75–008 (revised), March 1976. Available at U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161 (Telephone 800–553–6847), PB 253258

EPA. 1979. "Radiochemical Analytical Procedures for Analysis of Environmental Samples", March 1979, NTIS EMSL LV 053917.

EPA. 1980. "Prescribed Procedures for Measurement of Radioactivity in Water", EPA 600/4–80–032, August 1980, NTIS PB 80–224744.

EPA. 1987. "Radiochemistry Procedures Manual", EPA 520/5–84–006, December 1987, NTIS PB 84–215581.

EPA. 1995. Drinking Water Program Redirection Proposal, November 1995, pages 8–11, U.S. Environmental Protection Agency, Office of Water Resource Center (RC–4100), 401 M. Street S.W., Washington, D.C. 20460, EPA 810 D–95–001.

EPA. 1996. "Response to Comments on Radionuclide Methods on the July 18, 1991 (56 *FR* 33050) Radionuclides Proposed Rule", Office of Water Docket (MC 4101), 401 M. St. S.W., Washington, D.C. 20460, July 1996.

NJ. "Determination of Radium-228 in Drinking Water", August 1990, New Jersey Department of Environmental Protection, Division of Environmental Quality, Bureau of Radiation and Inorganic Analytical Services, 9 Ewing Street, Trenton, NJ 08625.

NY. "Determination of Ra–226 and Ra–228 (Ra–02)", January 1980, Revised June 1982, Radiological Institute Center for Laboratories and Research, New York State Department of Health, Empire State Plaza, Albany, NY 12201.

USGS. "Methods for Determination of Radioactive Substances in Water and Fluvial Sediments", Chapter A5 in Book 5 of Techniques of Water-Resources Investigations of the United States Geological Survey, 1977. Available at U.S. Geological Survey (USGS), Information Services, Box 25286, Federal Center, Denver, CO 80225–0425.

List of Subjects in 40 CFR Part 141

Environmental protection, Analytical Methods, Incorporation by reference, Intergovernmental relations, Monitoring, National Primary Drinking water regulations, Radionoclides, Water supply.

Dated: February 10, 1997

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 141 of title 40, Code of Federal Regulations, are amended as follows:

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9.

2. Section 141.25 is amended by revising paragraph (a) effective April 4, 1997 to read as follows:

§ 141.25 Analytical methods for radioactivity.

(a) Analysis for the following contaminants shall be conducted to determine compliance with §§ 141.15 and 141.16 (radioactivity) in accordance with the methods in the following Table, or their equivalent as determined by EPA in accordance with § 141.27.

Contaminant	Methodology	Reference (method or page number)								
		EPA[1]	EPA[2]	EPA[3]	EPA[4]	SM[5]	ASTM[6]	USGS[7]	DOE[8]	Other
Naturally occurring:										
Gross alpha[11] and beta.	Evaporation.	900.0	p 1	00–01	p 1	302, 7110 B.	.....	R–1120 –76	.....	
Gross alpha[11]	Co-precipitation.	.....		00–02		.....	.....	.....	.....	
Radium 226 ...	Radon emanation, Radiochemical.	903.1 903.0	p 16 p 13	Ra-04 Ra-03	p 19	..... 304, 305, 7500-Ra B.	D 3454 –91	R–1141–76	.....	N.Y.[9]
Radium 228 ...	Radiochemical.	904.0	p 24	Ra-05	p 19	304, 7500-Ra D.	.....	R–1142 –76	.....	N.Y.[9] N. J.[10]
Uranium[12] ..	Radiochemical. Fluorometric.	908.0 908.1				7500-U B 7500-U C (17th Ed.).	D 2907–91	R–1180–76 R–1181–76 R–1182–76	U–04 U–2	

Contaminant	Methodology	Reference (method or page number)								
		EPA[1]	EPA[2]	EPA[3]	EPA[4]	SM[5]	ASTM[6]	USGS[7]	DOE[8]	Other
	Alpha spectrometry.	.....		00–07	p 33	.....	D 3972–90	.....	.....	
Man-made:										
Radioactive cesium.	Radiochemical.	901.0	p 4			7500-Cs B	D 2459–72	.....	.....	
	Gamma ray spectrometry.	901.1			p 92	.....	D 3649–91	R–1110 –76	4.5.2.3	
Radioactive iodine.	Radiochemical.	902.0	p 6 p 9			7500-I B ..	.....	.....	.....	
	Gamma ray spectrometry.	901.1			p 92	7120 (19th Ed.).	D 3649–91 D 4785–88	.....	4.5.2.3	
Radioactive Strontium 89, 90.	Radiochemical.	905.0	p 29	Sr-04	p. 65	303, 7500-Sr B.	.....	R–1160 –76	Sr-01	
Tritium	Liquid scintillation.	906.0	p 34	H–02	p. 87	306, 7500–3H B.	D 4107 –91	R–1171 –76	.....	
Gamma emitters.	Gamma ray.	901.1			p 92	7120 (19th Ed.).	D 3649 –91	R–1110 –76	4.5.2.3	
	Spectrometry.	902.0 901.0				7500-Cs B 7500-I B ..	D 4785 –88	.....	.....	

The procedures shall be done in accordance with the documents listed below. The incorporation by reference of documents 1 through 10 was approved by the Director of the FEDERAL REGISTER in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the documents may be obtained from the sources listed below. Information regarding obtaining these documents can be obtained from the Safe Drinking Water Hotline at 800–426–4791. Documents may be inspected at EPA's Drinking Water Docket, 401 M Street, SW., Washington, DC 20460 (Telephone: 202–260–3027); or at the Office of the FEDERAL REGISTER, 800 North Capitol Street, NW., Suite 700, Washington, DC.

1. "Prescribed Procedures for Measurement of Radioactivity in Drinking Water", EPA 600/4–80–032, August 1980. Available at U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161 (Telephone 800–553–6847), PB 80–224744.
2. "Interim Radiochemical Methodology for Drinking Water", EPA 600/4–75–008 (revised), March 1976. Available at NTIS, ibid. PB 253258.
3. "Radiochemistry Procedures Manual", EPA 520/5–84–006, December 1987. Available at NTIS, ibid. PB 84–215581.
4. "Radiochemical Analytical Procedures for Analysis of Environmental Samples", March 1979. Available at NTIS, ibid. EMSL LV 053917.
5. "Standard Methods for the Examination of Water and Wastewater", 13th, 17th, 18th, 19th Editions, 1971, 1989, 1992, 1995. Available at American Public Health Association, 1015 Fifteenth Street N.W., Washington, D.C. 20005 . All methods are in the 17th, 18th and 19th editions except 7500-U C Fluorometric Uranium was discontinued after the 17th Edition, and 302, 303, 304, 305 and 306 are only in the 13th Edition.
6. *Annual Book of ASTM Standards*, Vol. 11.02, 1994. Available at American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428.
7. "Methods for Determination of Radioactive Substances in Water and Fluvial Sediments", Chapter A5 in Book 5 of *Techniques of Water-Resources Investigations of the United States Geological Survey*, 1977. Available at U.S. Geological Survey (USGS) Information Services, Box 25286, Federal Center, Denver, CO 80225–0425.
8. "EML Procedures Manual", 27th Edition, Volume 1, 1990. Available at the Environmental Measurements Laboratory, U.S. Department of Energy (DOE), 376 Hudson Street, New York, NY 10014–3621.
9. "Determination of Ra-226 and Ra-228 (Ra-02)", January 1980, Revised June 1982. Available at Radiological Sciences Institute Center for Laboratories and Research, New York State Department of Health, Empire State Plaza, Albany, NY 12201.
10. "Determination of Radium 228 in Drinking Water", August 1980. Available at State of New Jersey, Department of Environmental Protection, Division of Environmental Quality, Bureau of Radiation and Inorganic Analytical Services, 9 Ewing Street, Trenton, NJ 08625.
11. Natural uranium and thorium-230 are approved as gross alpha calibration standards for gross alpha with co-precipitation and evaporation methods; americium-241 is approved with co-precipitation methods.
12. If uranium (U) is determined by mass, a 0.67 pCi/μg of uranium conversion factor must be used. This conservative factor is based on the 1:1 activity ratio of U–234 to U–238 that is characteristic of naturally occurring uranium.

3. Section 141.25 is amended by revising paragraph (a) effective May 5, 1997 to read as follows:

§ 141.25 Analytical Methods for Radioactivity.

(a) Analysis for the following contaminants shall be conducted to determine compliance with §§ 141.15 and 141.16 (radioactivity) in accordance with the methods in the following Table, or their equivalent determined by EPA in accordance with § 141.27.

Contaminant	Methodology	Reference (method or page number)								
		EPA[1]	EPA[2]	EPA[3]	EPA[4]	SM[5]	ASTM[6]	USGS[7]	DOE[8]	Other
Naturally occurring:										
Gross alpha[11] and beta.	Evaporation	900.0	p 1	00–01	p 1	302, 7110 B		R–1120–76		
Gross alpha[11] ..	Co-precipitation.	.....		00–02		7110 C				

Contaminant	Methodology	Reference (method or page number)								
		EPA[1]	EPA[2]	EPA[3]	EPA[4]	SM[5]	ASTM[6]	USGS[7]	DOE[8]	Other
Radium 226 ..	Radon emanation,.	903.1	p 16	Ra-04	p 19	7500-Ra C	D 3454–91	R–1141–76	Ra-05	N.Y.[9]
		903.0	p 13	Ra-03		304, 305, ...	D 2460–90			
	Radio chemical.					7500-Ra B		R–1140–76		
Radium 228 ..	Radio chemical.	904.0	p 24	Ra-05	p 19	304, 7500-Ra D		R–1142–76		N.Y.[9] N.J.[10]
Uranium[12]	Radio chemical.	908.0				7500-U B				
	Fluorometric	908.1				7500-U C (17th Ed.).	D2907-91	R-1180-76 R-1181-76	U-04	
	Alpha spectrometry.	.....		00–07	p33	7500-U C (18th or 19th Ed.).	D 3972–90	R-1182-76	U-02	
	Laser Phosphorimetry.	.....				.....	D 5174–91			
Man-made:										
Radioactive cesium.	Radio chemical.	901.0	p 4			7500-Cs B	D 2459–72	R–1111–76		
	Gamma ray spectrometry.	901.1			p 92	7120 (19th Ed.)	D 3649–91	R–1110–76	4.5.2.3	
Radioactive iodine.	Radio chemical.	902.0	p 6 p 9			7500-I B ..... 7500-I C ..... 7500-I D	D3649-91		4.5.2.3	
	Gamma ray spectrometry.	901.1			p 92	7120 (19th Ed.)	D 4785–88		4.5.2.3	
Radioactive Strontium 89, 90.	Radio chemical.	905.0	p 29	Sr-04	p. 65	303, 7500-Sr B		R–1160–76	Sr-01 Sr-02	
Tritium	Liquid scintillation.	906.0	p 34	H–02	p. 87	306, 7500–3H B.	D 4107–91	R–1171–76		
Gamma emitters	Gamma ray	901.1			p92	7120 (19th Ed.)	D 3649–91	R–1110–76	4.5.2.3	
	Spectrometry	902.0 901.0				7500-Cs B ..... 7500-I B	D 4785–88			

The procedures shall be done in accordance with the documents listed below. The incorporation by reference of documents 1 through 10 was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the documents may be obtained from the sources listed below. Information regarding obtaining these documents can be obtained from the Safe Drinking Water Hotline at 800–426–4791. Documents may be inspected at EPA's Drinking Water Docket, 401 M Street, SW., Washington, DC 20460 (Telephone: 202–260–3027); or at the Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

[1] "Prescribed Procedures for Measurement of Radioactivity in Drinking Water", EPA 600/4–80–032 , August 1980. Available at U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161 (Telephone 800–553–6847), PB 80–224744.

[2] "Interim Radiochemical Methodology for Drinking Water", EPA 600/4–75–008(revised), March 1976. Available at NTIS, ibid. PB 253258.

[3] "Radiochemistry Procedures Manual", EPA 520/5–84–006, December 1987. Available at NTIS, ibid. PB 84–215581.

[4] "Radiochemical Analytical Procedures for Analysis of Environmental Samples", March 1979. Available at NTIS, ibid. EMSL LV 053917.

[5] "Standard Methods for the Examination of Water and Wastewater", 13th, 17th, 18th, 19th Editions, 1971, 1989, 1992, 1995. Available at American Public Health Association, 1015 Fifteenth Street N.W., Washington, D.C. 20005. All methods are in the 17th, 18th and 19th editions except 7500-U C Fluorometric Uranium was discontinued after the 17th Edition, 7120 Gamma Emitters is only in the 19th Edition, and 302, 303, 304, 305 and 306 are only in the 13th Edition.

[6] *Annual Book of ASTM Standards*, Vol. 11.02, 1994. Available at American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428.

[7] "Methods for Determination of Radioactive Substances in Water and Fluvial Sediments", Chapter A5 in Book 5 of *Techniques of Water-Resources Investigations of the United States Geological Survey*, 1977. Available at U.S. Geological Survey (USGS) Information Services, Box 25286, Federal Center, Denver, CO 80225–0425.

[8] "EML Procedures Manual", 27th Edition, Volume 1, 1990. Available at the Environmental Measurements Laboratory, U.S. Department of Energy (DOE), 376 Hudson Street, New York, NY 10014–3621.

[9] "Determination of Ra-226 and Ra-228 (Ra-02)", January 1980, Revised June 1982. Available at Radiological Sciences Institute Center for Laboratories and Research, New York State Department of Health, Empire State Plaza, Albany, NY 12201.

[10] "Determination of Radium 228 in Drinking Water", August 1980. Available at State of New Jersey, Department of Environmental Protection, Division of Environmental Quality, Bureau of Radiation and Inorganic Analytical Services, 9 Ewing Street, Trenton, NJ 08625.

[11] Natural uranium and thorium-230 are approved as gross alpha calibration standards for gross alpha with co-precipitation and evaporation methods; americium-241 is approved with co-precipitation methods.

[12] If uranium (U) is determined by mass, a 0.67 pCi/g of uranium conversion factor must be used. This conservative factor is based on the 1:1 activity ratio of U–234 to U–238 that is characteristic of naturally occurring uranium.

* * * * *

[FR Doc. 97–4889 Filed 3–4–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[WH–FRL–5694–7]

RIN 2040–AC88

National Primary Drinking Water Regulations: Analytical Methods for Radionuclides

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: Today, EPA is proposing to approve twelve analytical test procedures for monitoring compliance with radionuclide standards under the Safe Drinking Water Act. During the public comment period on an earlier rulemaking proposal (56 FR 33050, July 18, 1991), EPA received comments requesting approval of additional analytical test procedures for radionuclides. In the final rules section of this **Federal Register**, the Agency is promulgating these twelve analytical test procedures as a "direct" final rule because the Agency does not expect adverse comments and wants to provide for use of these additional test procedures as soon as possible. This proposal invites comment on the substance of the direct final rule (addressing twelve unproposed test methods) in the "final rules" section of today's **Federal Register**.

DATES: Comments on the twelve methods in this proposed rule must be received in writing by April 4, 1997.

ADDRESSES: Written comments on this proposed rule may be submitted to Chemistry Methods Docket Clerk, Water Docket, MC 4101, 401 M Street, SW, Washington, DC 20460. Comments will be considered to be timely if they are postmarked by April 4, 1997. Commenters who would like acknowledgement of receipt of their comments should include a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted.

A copy of the supporting information for this rule is available for review at EPA's Water Docket, 401 M Street, SW, Washington, DC 20460. For access to the docket materials, call (202) 260–3027 between 9 a.m. and 3:30 p.m. (Eastern time) for an appointment.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Reding, Office of Ground Water and Drinking Water, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268, 513–569–7961; Dr. Jitendra Saxena, Office of Ground Water and Drinking Water (4603), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, 202–260–9579; or one of the EPA Regional Office contacts listed below. General information may also be obtained from the EPA Drinking Water Hotline. Callers within the United States may reach the Safe Drinking Water Hotline at 800–426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding Federal holidays, from 9:00 a.m. to 5:30 p.m. Eastern Time.

For technical information regarding the methods contact Stephen Pia, National Exposure Research Laboratory, Office of Research and Development, U.S. Environmental Protection Agency, P.O. Box 93478, Las Vegas, NV 89193–3478, 702–798–2102.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final action which is located in the rules section of this **Federal Register**.

List of Subjects in 40 CFR Part 141

Environmental protection, Analytical methods, Incorporation by reference, Intergovernmental relations, Monitoring, Radionuclides, Water supply, National primary drinking water regulations.

Dated: February 10, 1997.

Carol M. Browner,

Administrator.

[FR Doc. 97–4890 Filed 3–4–97; 8:45 am]

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Wednesday
March 5, 1997

Part VI

Department of Transportation

Federal Highway Administration

23 CFR Parts 657 and 658
Truck Size and Weight; Technical Corrections; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 657 and 658

RIN 2125–AE08

Truck Size and Weight; Technical Corrections

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; technical corrections.

SUMMARY: This document amends the rule on truck size and weight in Part 658 to extend the Interstate System axle weight exemption for intrastate public agency transit buses; reduce the maximum length limit on trailers in triple trailer combinations in Alaska from 45 to 28.5 feet and change the beginning date when they may operate from April 15 to May 1 of each year; correct the maximum weight of LCV's that may operate on I–15 in Arizona to 129,000 pounds; amend appendix C to show that longer and heavier vehicles allowed in Nebraska and South Dakota may operate into Sioux City, Iowa and its commercial zone; correct the listing of a vehicle combination in Oregon from a longer combination vehicle (LCV) to a commercial motor vehicle combination subject to the ISTEA freeze on the length of its cargo carrying units; correct the maximum weight for LCV's in Michigan to 164,000 pounds; add a listing in Nebraska for a truck tractor and two trailing unit combination to operate at a length of 71.5 feet; correct the maximum cargo carrying length for a truck tractor and two trailing units in Missouri from 109 to 110 feet; exclude I–39 in Wisconsin and exclude I–99 in Pennsylvania from the Interstate System weight limits; and add regulations for transporters of vehicles used in motorsport competition events. Four additional technical corrections clarify the overhang regulations for automobile transporters, clarify what citations or civil assessments must be reported by the States in their annual certifications; and update statutory references in 23 CFR 657 and 658 to reflect 23 U.S.C. 127(d) and 9 U.S.C. 31111–31114, as appropriate.

EFFECTIVE DATE: March 5, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Klimek, Office of Motor Carrier Information Analysis, (202) 366–2212 or Mr. Charles Medalen, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION

Transit Vehicles

Section 341 of the Department of Transportation and Related Agencies Appropriations Act of 1993 (Pub. L. 102–388, 106 Stat. 1520, at 1552, October 6, 1992) added subsection (h) to section 1023 of the Intermodal Surface Transportation Efficiency Act of 1992 (ISTEA) (uncodified, see 23 U.S.C. 127 note). Under subsection (h)(1), "[t]he second sentence of section 127 of title 23, United States Code, relating to axle weight limitations for vehicles using the Dwight D. Eisenhower System of Interstate and Defense Highways, shall not apply, for the 2-year period beginning on the date of enactment of this Act, to any vehicle which is regularly and exclusively used as an intrastate public agency transit passenger bus. The Secretary may extend such 2-year period for an additional year." The FHWA extended the exemption to October 6, 1995 (59 FR 60242, November 22, 1994).

Section 326 of the National Highway System Designation Act of 1995 (NHS Act), Pub. L. 104–59, 109 Stat. 568, 592, November 29, 1995, amended section 1023(h)(1) of the ISTEA to provide that Federal axle weight limitations "shall not apply, for the period beginning on October 6, 1992, and ending on the date on which Federal-aid highway and transit programs are reauthorized after the date of the enactment of the National Highway System Designation Act of 1995 (November 28, 1995)." The current transit programs are authorized through the end of Fiscal Year 1997 (September 30, 1997). It is expected that these programs will be reauthorized on or about that date.

The new exemption, like the old, does not mean that transit buses are exempt from axle weight limits when operating on the Interstate System. It simply means that the FHWA may not impose financial sanctions on States that allow transit buses with axle weights in excess of the Federal limits to operate on the Interstate System.

Section 658.17(k) of 23 CFR will be amended to remove the October 6, 1995, expiration date for the exemption and reflect the statutory expiration date.

ISTEA Freeze

In its Fiscal Year 1995 certification, Alaska advised that the maximum length of each trailing unit in a triple trailer combination has been reduced from 45 to 28.5 feet. It also advised that the beginning date when triple trailer combinations may operate has been changed from April 15 to May 1 of each year. Appendix C to 23 CFR part 658 will be amended accordingly.

The weight limits shown in appendix C to 23 CFR part 658 for travel on I–15 in Arizona are 111,000 pounds for twin trailer combinations and 123,500 pounds for triple trailer combinations. However, the State has furnished information showing that on or before June 1, 1991, it authorized twin and triple trailer combinations weighing up to 129,000 pounds, the same as in Nevada and Utah, to operate on I–15 and that they did operate on I–15 on or before that date. The incorrect listing was caused by transcription errors compounded by miscommunication. Appendix C is being amended accordingly.

As shown in appendix C, Iowa did not allow longer combination vehicles (LCVs) to operate on its Interstate highways on or before June 1, 1991. LCVs are defined as combinations consisting of truck tractors with two or more semitrailers or trailers that operate on the Interstate System at weights in excess of 80,000 pounds. In addition, the State did not allow commercial motor vehicles with two or more cargo carrying units which exceeded the minimum lengths authorized by the Surface Transportation Assistance Act of 1982 (STAA) to operate on the NN on or before June 1, 1991. However, both types of vehicles operated in Nebraska and South Dakota. Consequently, these heavier and longer vehicles could not operate across their respective borders into Sioux City, Iowa. The Congress enacted an exception to the ISTEA freeze in section 312 of the NHS Act by providing that the heavier and longer vehicles authorized in Nebraska and South Dakota could travel across their respective borders into Sioux City, Iowa.

More specifically, Section 312(a) of the NHS Act amended 23 U.S.C. 127(a) to allow vehicles with a gross weight of more than 80,000 pounds to operate on I–29 and I–129 in Sioux City; amended 23 U.S.C. 127(d)(1) to permit Iowa to allow longer combination vehicles (LCV's) that were not in operation in that State on June 1, 1991, to operate on I–29 between the South Dakota border and Sioux City and on I–129 between the Nebraska border and Sioux City; and amended 49 U.S.C. 31112(c) to permit Iowa to allow (1) combinations with two or more cargo carrying units of the length allowed by South Dakota on June 1, 1991, on I–29 between the South Dakota border and Sioux City, and (2) combinations with two or more cargo carrying units of the length allowed by Nebraska on June 1, 1991, on I–129 between the Nebraska border and Sioux City. This provision is permissive and not mandatory. However, Mr. Darrel Rensink, Director of the Iowa Department of Transportation, in a letter dated February 12, 1996, advised that the State was adopting legislation to implement the congressional authorization. The legislation, Iowa House Bill 2066, (76th General Assembly, 2d Sess. (1996))with an immediate effective date, was signed by the Governor on March 1, 1996. (Iowa Code § 321.457(2)(f) (1995)).

In subsequent correspondence, Sioux City officials advised that their intent in seeking Federal legislation was to enable these vehicles to operate not only in Sioux City proper, but also "Siouxland", the commercial zone listed in 49 CFR 1048.101. Although the Sioux City commercial zone is not mentioned in Sec. 312(a), Iowa Code Annotated § 321.457.2.g (1985) authorized vehicles of legal length and weight in adjoining States to operate in the commercial zone of Iowa border cities. The inclusion of this statute in the Iowa code for more than 20 years strongly suggests that the supporters and sponsors of this Federal exception intended it to have the same geographical reach. Under the circumstances, we believe it is reasonable to allow the larger and heavier vehicles from Nebraska and South Dakota to operate on Interstate and NN routes not only in Sioux City but also in its commercial zone, as that zone existed on the date of enactment of the NHS Designation Act (November 28, 1995). Further expansion of the area covered by the exception will not be allowed even if the Sioux City commercial zone later expands as a result of population increase or expansion of the corporate limits of Sioux City. Appendix C will be amended accordingly.

Appendix C lists a truck-trailer—LCV combination authorized to operate in Oregon. Information received from the State dated January 31, 1992, and November 2, 1994, shows that the vehicle in actual and lawful operation in the State before June 2, 1991, was a truck-trailer combination operating at a maximum overall length of 75 feet. However, a truck-trailer combination cannot be an LCV, since the latter is defined as a combination of a truck tractor and two or more trailers. Appendix C will be corrected to delete the LCV listing and show the maximum cargo carrying unit length for this truck-trailer combination as 70 feet, 5 inches.

The maximum weight in Michigan for a truck tractor and 2 trailing units shown in appendix C of 23 CFR part 658 was corrected from 154,000 to 164,000 pounds in the **Federal Register** of March 22, 1995 (60 FR 15212) for the reasons given. However, the correction was inadvertently not made in the "STATE" section and is being done at this time.

The listing for Nebraska in appendix C is being corrected based on material previously submitted to the FHWA by the State as described in a March 20, 1992 (57 FR 9900) notice of proposed rulemaking. The State may issue permits for a truck tractor and 2 trailing unit combination to exceed 65 feet in length by 10 percent (up to 71.5 feet) when carrying seasonally harvested products from the field where they are harvested to storage, market, or stockpile in the field or from stockpile to market or factory when failure to move such product or products in abundant quantities would cause an economic loss to the person or persons whose product or products are being transported or when failure to move such product or products in as large quantities as possible would not be in the best interests of the national defense or general welfare. Permits are valid for 30 days and are renewable four times per year. Such a combination may not travel on the Interstate System and is limited to a maximum of 70 miles per permitted trip between origin and destination.

Appendix C provides that vehicles from Kansas, Nebraska, and Oklahoma that do not exceed the ISTEA length freeze may travel up to 20 miles into Missouri. The maximum cargo carrying length for a truck tractor and 2 trailing units listed for Missouri is 109 feet, the same as in Kansas, rather than 110 feet as in Oklahoma. The maximum cargo carrying length for Missouri will be corrected to 110 feet.

Additions to Interstate System

Section 312(b) of the NHS Act provided that if the 104-mile portion of Wisconsin State Route 78 and U.S. Route 51 between I–90/94 near Portage, Wisconsin, and Wisconsin State Route 29 south of Wausau was designated as part of the Interstate System, the Interstate weight limits would not apply with respect to the operation of any vehicle that could legally operate on this 104 mile segment before November 28, 1995. The route was designated as I–39 on January 11, 1996, and, therefore, 23 CFR 658.17 is amended to reflect that State weight limits in effect before November 28, 1995, will continue to apply for vehicles that could legally operate on it at that time.

Section 404 of the ICC Termination Act of 1995 (ICCTA), Pub. L. 104–88, 109 Stat. 803, 956, December 29, 1995, amended 23 U.S.C. 127 by adding new subsection (g) which provided that if the segment of U.S. Route 220 between Bedford and Bald Eagle, Pennsylvania, was designated as part of the Interstate System, the single axle weight, tandem axle weight, gross vehicle weight, and the bridge formula limits would be those that applied to any vehicle which could have operated on it before December 29, 1995. The route from the I–70/76 Pennsylvania Turnpike Exit 11 connection interchange near Bedford northerly to the U.S. 220/PA 350 interchange near Bald Eagle was designated as I–99 on January 26, 1996. Therefore, 23 CFR 658.17 is amended to reflect that State weight limits in effect before December 29, 1995, will continue to apply for vehicles that could legally operate on what is now I–99.

Motorsports Trailers

Section 104(b) of the ICCTA amended 49 U.S.C. 31111(b)(1), part of the Surface Transportation Assistance Act of 1982 (STAA), by adding a new paragraph (E) which, in context, provides as follows:

> (b) GENERAL LIMITATIONS.—(1) Except as provided in this section, a State may not prescribe or enforce a regulation of commerce that * * *.
>
> (E) imposes a limitation of less than 46 feet on the distance from the kingpin to the center of the rear axle on trailers used exclusively or primarily in connection with motorsports competition events.

Although the statute uses the word "trailers," the issue of kingpin settings arises almost exclusively in connection with semitrailers. The FHWA does not believe the word "trailers" was used as a term of art to mean a freight vehicle where no part of its weight, except the hitch, rests on the towing unit but was intended to include and primarily refer to semitrailers, where the front of the towed unit rests upon the self-propelled towing unit.

The STAA requires all States to allow truck tractors to operate in combination with 48-foot or grandfathered length semitrailers on the National Network and reasonable access routes. In the States of California, Indiana, and Wisconsin, where 53 feet is the grandfathered semitrailer length, subject to minimum kingpin distances of 38 feet, 40.5 feet, and 41 feet, respectively, these kingpin distances have been superseded for vehicles subject to 23 CFR 658.13(h). The grandfathered lengths remain 53 feet but the minimum kingpin settings have been amended to reflect the minimum 46-foot distance required for the vehicles described in paragraph (h). A minimum kingpin setting of 46 feet also applies to motorsports semitrailers to which States might later attempt to apply a kingpin

rule. The 46-foot minimum applies whether the length of such semitrailers is grandfathered under appendix B to part 658 or governed solely by State law.

The statute prohibits States from setting kingpin distances of less than 46 feet for trailers used exclusively or "primarily" in connection with motorsports competition events. This would include such trailers when transporting competition vehicles to or from off-track repair shops, storage facilities between races, or similar facilities.

A question may arise as to whether a vehicle transporting competition vehicles may be considered an automobile transporter subject to a 65-foot minimum overall length limit (75-foot if stinger steered). Although the statute does not specifically address this issue, kingpin settings are seldom at issue in automobile transporters since States may not require settings that would prevent them from realizing the minimum overall lengths. Furthermore, automobile transporters are defined as vehicle combinations "designed and used specifically for the transport of assembled highway vehicles," while the title of section 104(b) makes it clear that these trailers are designed to carry "off-road, competition vehicles." In addition, the trailers that are used to haul competition vehicles usually include other facilities, such as workshops or lounges. This fact would disqualify them from being considered automobile transporters.

Technical Amendments

A sentence in 23 CFR 658.13(e)(1)(ii) reads, "Further, no State shall impose a front overhang limitation of less than three (3) feet nor a rearmost overhand limitation of less than four (4) feet." The word "overhand" is an obvious error and will be changed to "overhang."

Regulations in 23 CFR 657.15(f)(3)(ii) read as follows:

> Penalties reported shall include citations issued, civil assessments, and incidences of load shifting or off-loading of excess weight categorized as follows: violations of axle and/or gross vehicle weights, or violations resulting from application of the bridge formula.

One State has interpreted this to mean that it may choose between reporting only axle and gross weight violations or only bridge formula violations. The purpose of the regulation is to require States to provide information used in evaluating the adequacy of their enforcement efforts, as explained in the preamble to the final rule published on August 7, 1980 (45 FR 52365):

> The certification shall include citations for gross and axle weights and also now must include, by specific reference, violations of the bridge formula, which is the central element in ensuring compliance with 23 U.S.C. 127. * * * It is essential that the bridge formula be enforced and it is not possible to evaluate State efforts in this respect without a specific reporting of activity. (45 FR 52368).

The regulation will be clarified accordingly.

Statutory references in 23 CFR 657.15 (b) and (c)(2), and 23 CFR 658.23 (c) and (e) will be updated to the current codification or recodification.

Regulatory Analyses and Notices

The Administrative Procedure Act allows agencies engaged in rulemaking to dispense with prior notice to the public when the agency for good cause finds that such procedure is impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b). The FHWA has determined that providing prior notice on this action is unnecessary because it merely amends regulations to incorporate statutory requirements and makes several technical corrections to 23 CFR parts 657 and 658, and appendix C to 23 CFR part 658. This document also contains several interpretations and general statements of policy which are not subject to notice and comment procedures under the Administrative Procedure Act. For the reasons set forth here, the FHWA has also determined that it has good cause under 5 U.S.C. 553(d)(3) to make the rule effective upon publication in the **Federal Register**.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of U.S. Department of Transportation Regulatory Policies and Procedures. The changes will reflect the statutory requirements and make several technical corrections. It is anticipated that the economic impact of this rulemaking will be minimal. Most of the new regulations adopted here codify statutes designed to preserve the status quo. The amended regulations were requested by the States, are substantively insignificant even to the parties affected or correct ministerial errors in previous rules; some fall into more than one category. Therefore a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. Most of these rules simply preserve the current status quo. Many of the changes benefit truckers by removing restrictions on their operations or correcting errors that could have led them inadvertently to violate Federal standards. The change with the greatest apparent impact—reducing the length of the trailers allowed in a triple-trailer combination in Alaska—is a ministerial amendment to codify a decision made by the State under State law. For these reasons, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The Statutes underlying this rule—primarily the ISTEA, the NHS Designation Act, and the ICC Termination Act—specify the Department's role. These technical amendments carry out the various Congressional mandates. Nearly all of the changes that affect the States were requested by the States. None preempts any significant State activity or authority.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this proceeding.

Paperwork Reduction

This action does not add or expand a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 et seq.

National Environmental Policy Act

The FHWA has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

23 CFR Part 657

Enforcement, Enforcement plan, Highways and roads, Sanctions, and Vehicle size and weight certification.

23 CFR Part 658

Grant programs—transportation, Highways and roads, and Motor carrier size and weight.

Issued on: February 5, 1997.

Rodney E. Slater

Federal Highway Administrator.

In consideration of the foregoing, the FHWA is amending 23 CFR, subchapter G, parts 657 and 658 as set forth below.

PART 657—CERTIFICATION OF SIZE AND WEIGHT ENFORCEMENT

1. The authority citation for 23 CFR part 657 is revised to read as follows:

> **Authority:** Sec. 123, Pub. L. 95–599, 92 Stat. 2689; 23 U.S.C. 127, 141, and 315; 49 U.S.C. 31111–31114; sec. 1023, Pub. L. 102–240, 105 Stat. 1914; and 49 CFR 1.48 (b) and (c).

2. In § 657.15, paragraphs (b) and (c)(2) are amended removing the words "49 U.S.C. app. 2311(j)" and adding "49 U.S.C. 31112".

3. In § 657.15, paragraph (f)(3)(ii) is revised to read as follows:

§ 657.15 Certification content.

* * * * *

(f) * * *

(3) * * *

(ii) *Penalties.* Penalties reported shall include the number of citations or civil assessments issued for violations of each of the following: Axle, gross and bridge formula weight limits. The number of vehicles whose loads are either shifted or offloaded must also be reported.

* * * * *

PART 658—TRUCK SIZE AND WEIGHT, ROUTE DESIGNATIONS—LENGTH, WIDTH, AND WEIGHT LIMITATIONS

4. The authority citation for 23 CFR part 658 is revised to read as follows:

> **Authority:** 23 U.S.C. 127 and 315; 49 U.S.C. 31111–31114; 49 CFR 1.48 (b) and (c).

5. In § 658.13, paragraph (e)(1)(ii) is amended by removing the word "overhand" and adding the word "overhang", and paragraph (h) is added to read as follows:

§ 658.13 Length.

* * * * *

(h) No State shall impose a limitation of less than 46 feet on the distance from the kingpin to the center of the rear axle on trailers or semitrailers used exclusively or primarily to transport vehicles in connection with motorsports competition events.

6. In § 658.17, paragraph (k) is revised and new paragraphs (l) and (m) are added to read as follows:

§ 658.17 Weight.

* * * * *

(k) Any vehicle which is regularly and exclusively used as an intrastate public agency transit passenger bus is excluded from the axle weight limits in paragraphs (c) through (e) of this section from October 6, 1992, until the date on which Federal-aid highway and transit programs are reauthorized after November 28, 1995.

(l) The provisions of paragraphs (b) through (e) of this section shall not apply to the operation, on the 104 mile portion of I–39 between I–90/94 near Portage, Wisconsin, and Wisconsin State Route 29 south of Wausau, Wisconsin, of any vehicle that could legally operate on this highway section before November 28, 1995.

(m) The provisions of paragraphs (b) through (e) of this section shall not apply to the operation, on I–99 between Bedford and Bald Eagle, Pennsylvania, of any vehicle that could legally operate on this highway section before December 29, 1995.

7. In 23 CFR 658.23, paragraphs (c) and (e) are amended by removing the words "sections 1023 and 4006 of Pub. L. 102–240" and adding "23 U.S.C. 127(d) and 49 U.S.C. 31112" wherever they appear.

8. Appendix B to part 658 is amended by revising footnote numbers 1, 2, and 3 for the States of California, Indiana, and Wisconsin, respectively, to read as follows:

Appendix B to Part 658—Grandfathered Semitrailer Lengths

* * * * *

[1] Semitrailers up to 53 feet may also operate without a permit by conforming to a kingpin-to-rearmost axle distance of 38 feet. Semitrailers that are consistent with 23 CFR 658.13(h) may operate without a permit provided the distance from the kingpin to the center of the rear axle is 46 feet or less.

[2] Semitrailers up to 53 feet in length may operate without a permit by conforming to a kingpin-to-rearmost axle distance of 40 feet 6 inches. Semitrailers that are consistent with 23 CFR 658.13(h) may operate without a permit provided the distance from the kingpin to the center of the rear axle is 46 feet or less.

[3] Semitrailers up to 53 feet in length may operate without a permit by conforming to a kingpin-to-rear axle distance of 41 feet, measured to the center of the rear tandem assembly. Semitrailers that are consistent with 23 CFR 658.13(h) may operate without a permit provided the distance from the kingpin to the center of the rear axle is 46 feet or less.

9. Appendix C to part 658 is amended as follows:

A. By revising the entries for the States of Arizona, Iowa, Missouri, and Oregon in the table entitled "Vehicle Combinations Subject to Pub. L. 102–240".

B. By changing the maximum length of each trailing unit in a triple trailer combination in Alaska from 45 to 28.5 feet and also changing the beginning date when they may operate from April 15 to May 1 of each year.

C. By changing the maximum weight for double and triple trailer combinations that may operate in Arizona on I–15 from 111,000 and 123,500 pounds, respectively, to 129,000 pounds.

D. By adding the State of Iowa to the detailed State listing to reflect the fact that vehicles subject to the ISTEA freeze in Nebraska and South Dakota are authorized to operate on I–29 and I–29 from their borders into Sioux City.

E. In the listing for the State of Michigan for the combination "Truck tractor and 2 trailing units—LCV" by revising the weight under the heading "Maximum Allowable Gross Weight".

F. By adding a listing in Nebraska for a truck tractor and 2 trailing unit combination over 65 feet up to 71.5 feet in length when carrying seasonally harvested products for a maximum of 70 miles per permitted trip between origin and destination.

G. In the listing for the State of Missouri for the combination "Truck tractor and 2 trailing units—LCV" by revising the "Length of the Cargo-Carrying Units" from 109 to 110 feet.

H. In the listing for the State of Oregon by removing the combination "Truck-trailer—LCV" and by adding new text for the combination "Truck-trailer".

The amended, added, and revised portions of appendix C read as follows:

Appendix C to Part 658—Trucks Over 80,000 Pounds on the Interstate System and Trucks Over STAA Lengths on the National Network

* * * * *

VEHICLE COMBINATIONS SUBJECT TO PUB. L. 102–240

State	Truck tractor and 2 trailing units	Truck tractor and 3 trailing units	Other
Arizona	95′ 129K	95′ 129K	(1)
Iowa	100′ 129K	100′ 129K	78′
Missouri	110′ 120K(4)	109′ 120K	NO
Oregon	68′ 105.5K	96′ 105.5K	70′ 5″

(4) These dimensions do not apply to the same combinations. The 110-foot length is limited to vehicles entering from Oklahoma, also limited to 90K gross weight. The 120K gross weight is limited to vehicles entering from Kansas, also limited to a cargo carrying length of 109 feet.

* * * * *

State: Alaska

Combination: Truck Tractor and 3 Trailing Units.

* * * * *

Vehicle: Individual trailer length in a three trailing unit combination shall not exceed 28.5 feet. Engine horsepower rating shall not be less than 400 horsepower.

These combinations are allowed to operate only between May 1 and September 30 of each year. Weather restrictions are imposed when hazardous conditions exist, as determined by the Alaska DOT&PF and the Department of Public Safety, Division of State Troopers. No movement is permitted if visibility is less than 1,000 feet.

State: Arizona

Combination: Truck Tractor and 2 Trailing Units—LCV.

* * * * *

Maximum Allowable Gross Weight: 129,000 pounds.

Operational Conditions:

* * * * *

Weight: Single-axle maximum weight limit is 20,000 pounds, tandem-axle maximum weight limit is 34,000 pounds, and the gross vehicle weight limit is 129,000 pounds, subject to the Federal Bridge Formula.

* * * * *

Access: Access is allowed for 20 miles from I–15 Exits 8 and 27 or 20 miles from other authorized routes.

* * * * *

State: Arizona

Combination: Truck tractor and 3 trailing units—LCV.

* * * * *

Maximum Allowable Gross Weight: 123,000 pounds (129,000 pounds on I–15).

Operational Conditions:

* * * * *

Weight: Single-axle maximum weight limit is 20,000 pounds, tandem-axle maximum weight limit is 34,000 pounds, and the gross vehicle weight is 123,500 pounds (129,000 on I–15), subject to the Federal Bridge Formula.

State: Iowa

Combination: Truck tractor and 2 trailing units—LCV.

Length of the Cargo-Carrying Units: 100 feet when entering Sioux City from South Dakota or South Dakota from Sioux City; 65 feet when entering Sioux City from Nebraska or Nebraska from Sioux City..

Maximum Allowable Gross Weight: 129,000 pounds when entering Sioux City from South Dakota or South Dakota from Sioux City; 95,000 pounds when entering Sioux City from Nebraska or Nebraska from Sioux City.

Operational Conditions:

Iowa allows vehicles from South Dakota and Nebraska access to terminals which are located within the corporate limits of Sioux City and its commercial zone as shown in 49 CFR 1048.101 on November 28, 1995. These vehicles must be legal in the State from which they enter Iowa.

Weight, Driver, Vehicle, and Permit: Same conditions which apply to a truck tractor and 2 trailing units legally operating in South Dakota or Nebraska.

Access: These combinations may operate on any road within the corporate limits of Sioux City and its commercial zone as shown in 49 CFR 1048.101 on November 28, 1995, when authorized by appropriate State or local authority.

Routes: LCV combinations may operate on all Interstate System routes in Sioux City and its commercial zone as shown in 49 CFR 1048.101 on November 28, 1995. If subject only to the ISTEA freeze on length, they may operate on all NN routes in Sioux City and its commercial zone, as above.

Legal Citations: Iowa Code § 321.457(2)(f) (1995).

State: Iowa

Combination: Truck tractor and 3 trailing units—LCV

Length of Cargo-Carrying Units: 100 feet when entering Sioux City from South Dakota or South Dakota from Sioux City.

Maximum Allowable Gross Weight: 129,000 POUNDS when entering Sioux City from South Dakota or South Dakota from Sioux City.

Operational Conditions:

Weight, Driver, Vehicle, and Permit: Same as the SD–TT3 combination.

Access: Same as the IA–TT2 combination.

Routes: Same as the IA–TT2 combination.

Legal Citation: Same as the IA–TT2 combination.

State: Iowa

Combination: Truck-trailer

Length of the Cargo-Carrying Units: 78 feet when entering Sioux City from South Dakota or South Dakota from Sioux City; 68 feet when entering Sioux City from Nebraska or Nebraska from Sioux City.

Operational Conditions:

Iowa allows vehicles from South Dakota and Nebraska access to terminals which are located within the corporate limits of Sioux City and its commercial zone, as shown in 49 CFR 1048.101 on November 28, 1995. These vehicles must be legal in the State from which they enter Iowa.

Weight, Driver, Vehicle, and Permit: Same conditions which apply to a truck-trailer combination legally operating in Nebraska or South Dakota.

Access: Same as the IA–TT2 combination.

Routes: Same as IA–TT2 combination.

Legal Citation: Same as the IA–TT2 combination.

* * * * *

State: Michigan

* * * * *

Combination: Truck tractor and 2 trailing units—LCV.

* * * * *

Maximum Allowable Gross Weight: 164,000 pounds.

Operational Conditions:

Weight: The single-axle weight limit for LCV's is 18,000 pounds for axles spaced 9 feet or more apart. For axles spaced more than 3.5 but less than 9 feet apart, the single-axle weight limit is 13,000 pounds. The tandem-axle weight limit is 16,000 pounds per axle for the first tandem and 13,000 pounds per axle for all other tandems. Axles spaced less than 3.5 feet apart are limited to 9,000 pounds per axle. Maximum load per inch width of tire is 700 pounds. Maximum gross weight is determined based on axle and axle group weight limits.

When restricted seasonal loadings are in effect, load per inch width of tire and maximum axle weights are reduced as follows: Rigid pavements—525 pounds per inch of tire width, 25 percent axle weight reduction; Flexible pavements—450 pounds per inch of tire width, 35 percent axle weight reduction.

* * * * *

State: Missouri

Combination: Truck tractor and 2 trailing units—LCV.

Length of the Cargo Carrying Units: 110 feet.

State: Nebraska

Combination: Truck tractor and 2 trailing units—LCV

Length of the Cargo-Carrying Units: 95 feet for combination units traveling empty. 65 feet for combination units carrying cargo, except those carrying seasonally harvested products from the field where they are harvested to storage, market, or stockpile in the field, or from stockpile to market, which may extend the length to 71.5 feet.

Operational Conditions:

Weight: Maximum weight:

Single axle = 20,000 pounds

Tandem axle = 34,000 pounds

Gross = Determined by Federal Bridge Formula B, but not to exceed 95,000 pounds.

* * * * *

Permit: A weight permit in accordance with Chapter 12 of the Nebraska Department of Roads (NDOR) Rules and Regulations is required for operating on the Interstate System with weight in excess of 80,000 pounds.

A length permit, in accordance with Chapters 8 or 11 of the NDOR Rules and Regulations, is required for two trailing unit combinations with a length of cargo-carrying units over 65 feet. Except for permits issued to carriers hauling seasonally harvested products in combinations with a cargo-carrying length greater than 65 feet but not more than 71.5 feet which may move as necessary to accommodate crop movement requirements, holders of length permits are subject to the following conditions.

Movement is prohibited on Saturdays, Sundays, and holidays; when ground wind speed exceeds 25 miles per hour; when visibility is less than 800 feet; or when steady rain, snow, sleet, ice, or other conditions cause slippery pavement. Beginning November 15 until April 16 permission to move must be obtained from the NDOR Permit Office within 3 hours of movement. Beginning April 16 until November 15 permission to move must be obtained within 3 days of the movement.

Fees are charged for all permits. Length permits for combinations carrying seasonally harvested products are valid for 30 days and are renewable but may not authorize operation for more than 120 days per year.

All permits are subject to revocation if the terms are violated.

Access: Access to NN routes is not restricted for two trailing unit combinations with a cargo-carrying length of 65 feet or less, or 71.5 feet or less if involved in carrying seasonally harvested products. For two trailing unit combinations with a cargo-carrying length greater than 65 feet and not involved in carrying seasonally harvested products, access to and from I–80 is limited to designated staging areas within six miles of the route between the Wyoming State Line and Exit 440 (Nebraska Highway 50); and except for weather, emergency, and repair, cannot reenter I–80 after exiting.

Routes: Except for length permits issued to carriers hauling seasonally harvested products in combinations with a cargo-carrying length greater than 65 feet but not more than 71.5 feet which may use all non-Interstate NN routes, vehicles requiring length permits are restricted to Interstate 80 between the Wyoming State Line and Exit 440 (Nebraska Highway 50). Combinations not requiring length permits may use all NN routes.

* * * * *

State: Nebraska

Combination: Truck tractor and 3 trailing units.

* * * * *

Operational Conditions:

* * * * *

Driver: Same as the NE–TT2 combination.

Permit: A length permit, in accordance with Chapter 11 of the NDOR Rules and Regulations is required for a three trailing unit combination. Conditions of the length permit prohibit movements on Saturdays, Sundays, and holidays; when ground wind speed exceeds 25 miles per hour; and when visibility is less than 800 feet. Movement is also prohibited during steady rain, snow, sleet, ice, or other conditions causing slippery pavement. Beginning November 15 until April 16 permission to move must be obtained from the NDOR Permit Office within 3 hours of movement. Beginning April 16 until November 15 permission to move must be obtained within 3 days of the movement. A fee is charged for the annual length permit. These permits can be revoked if the terms are violated.

Access: Access to and from I–80 is limited to designated staging areas within 6 miles of the route between Wyoming State Line and Exit 440 (Nebraska Route 50). Except for weather, emergency, and repair, three trailing unit combinations cannot reenter the Interstate after having exited.

* * * * *

State: Oregon

Combination: Truck-trailer.

Length of Cargo-Carrying Units: 70 feet, 5 inches.

Weight: This combination must operate in compliance with State laws and regulations. Because it is not an LCV, it is not subject to the ISTEA freeze as it applies to maximum weight.

Driver, Access, Routes, and Legal Citations: Same as OR–TT2 combination.

Vehicle: The truck or trailer may be up to 40 feet long not to exceed 75 feet overall. The truck may have a built-in hoist to load cargo. Any towed vehicle in a combination must be equipped with safety chains or cables to prevent the towbar from dropping to the ground in the event the coupling fails. The chains or cables must have sufficient strength to control the towed vehicle in the event the coupling device fails and must be attached with no more slack than necessary to permit proper turning. However, this requirement does not apply to a fifth-wheel coupling if the upper and lower halves of the fifth wheel must be manually released before they can be separated.

Permit: No overlength permit required.

* * * * *

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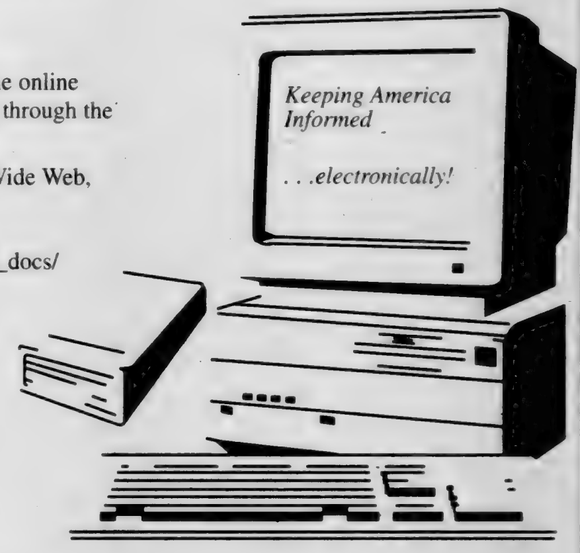

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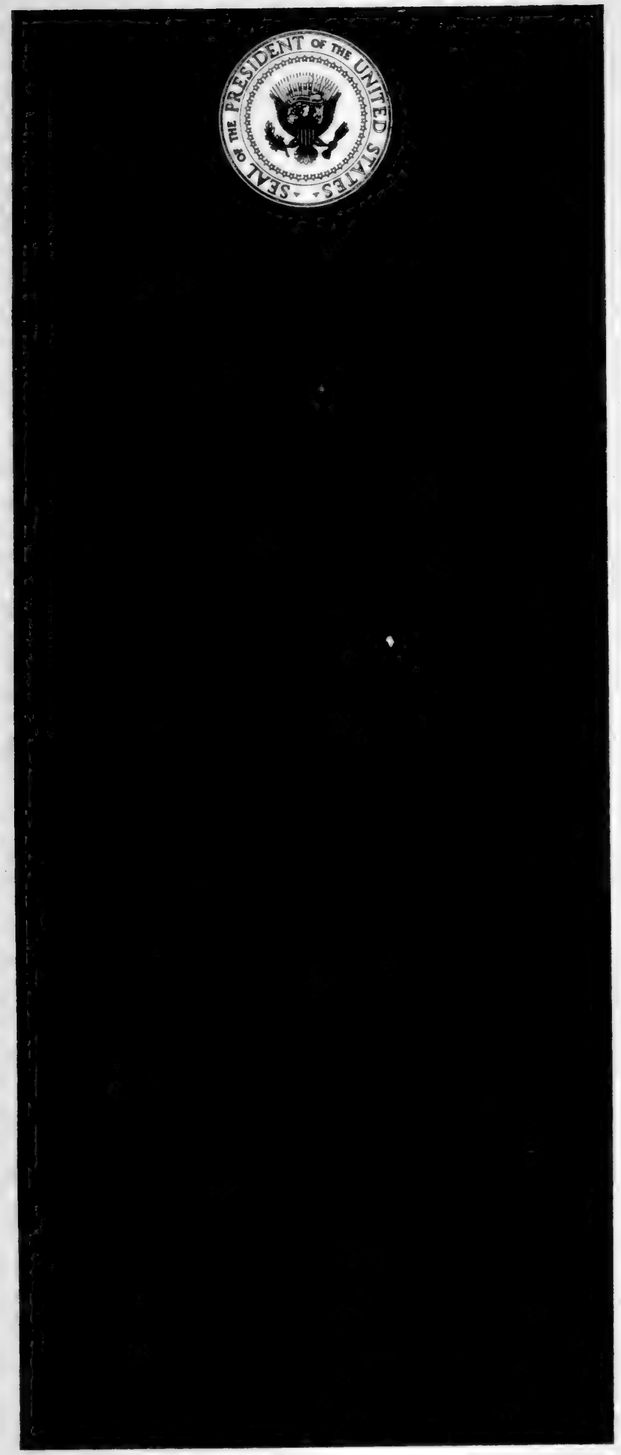

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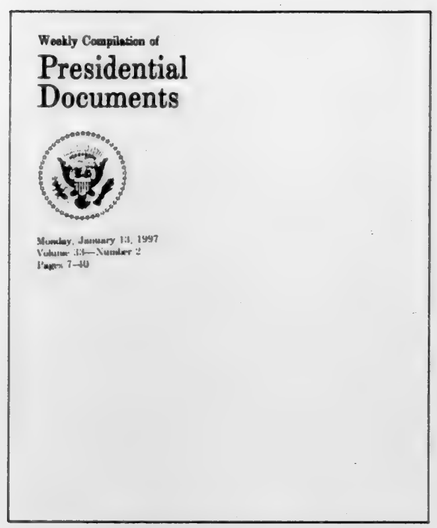

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The President

Executive Order 13037 of March 3, 1997

Commission To Study Capital Budgeting

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App.), it is hereby ordered as follows:

Section 1. *Establishment.* There is established the Commission to Study Capital Budgeting ("Commission"). The Commission shall be bipartisan and shall be composed of 11 members appointed by the President. The members of the Commission shall be chosen from among individuals with expertise in public and private finance, government officials, and leaders in the labor and business communities. The President shall designate two co-chairs from among the members of the Commission.

Sec. 2. *Functions.* The Commission shall report on the following:

(a) Capital budgeting practices in other countries, in State and local governments in this country, and in the private sector; the differences and similarities in their capital budgeting concepts and processes; and the pertinence of their capital budgeting practices for budget decisionmaking and accounting for actual budget outcomes by the Federal Government;

(b) The appropriate definition of capital for Federal budgeting, including: use of capital for the Federal Government itself or the economy at large; ownership by the Federal Government or some other entity; defense and nondefense capital; physical capital and intangible or human capital; distinctions among investments in and for current, future, and retired workers; distinctions between capital to increase productivity and capital to enhance the quality of life; and existing definitions of capital for budgeting;

(c) The role of depreciation in capital budgeting, and the concept and measurement of depreciation for purposes of a Federal capital budget; and

(d) The effect of a Federal capital budget on budgetary choices between capital and noncapital means of achieving public objectives; implications for macroeconomic stability; and potential mechanisms for budgetary discipline.

Sec. 3. *Report.* The Commission shall adopt its report through majority vote of its full membership. The Commission shall report to the National Economic Council by March 15, 1998, or within 1 year from its first meeting.

Sec. 4. *Administration.* (a) Members of the Commission shall serve without compensation for their work on the Commission. While engaged in the work of the Commission, members appointed from among private citizens of the United States may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government service (5 U.S.C. 5701–5707).

(b) The Department of the Treasury shall provide the Commission with funding and administrative support. The Commission may have a paid staff, including detailees from Federal agencies. The Secretary of the Treasury shall perform the functions of the President under the Federal Advisory Committee Act, as amended (5 U.S.C. App.), except that of reporting to the Congress, in accordance with the guidelines and procedures established by the Administrator of General Services.

Sec. 5. *General Provisions.* The Commission shall terminate 30 days after submitting its report.

William J. Clinton

THE WHITE HOUSE,
March 3, 1997.

[FR Doc. 97-5728
Filed 3-5-97; 8:45 am]
Billing code 3195-01-P

Rules and Regulations

Federal Register
Vol. 62, No. 44
Thursday, March 6, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Parts 210, 220, 225 and 226

RIN 0584–AC15

National School Lunch Program, School Breakfast Program, Summer Food Service Program for Children and Child and Adult Care Food Program: Meat Alternates Used in the Child Nutrition Programs

AGENCY: Food and Consumer Service, USDA.

ACTION: Final Rule.

SUMMARY: The Food and Consumer Service of the Department of Agriculture (Department) is amending the regulations governing the meal pattern requirements for the National School Lunch Program (NSLP), the School Breakfast Program (SBP), the Child and Adult Care Food Program (CACFP) and the Summer Food Service Program for Children (SFSP) to allow yogurt to be credited as a meat alternate for all meals. Formerly, yogurt could be credited as a meat alternate only for the supplement (snack) meal patterns of the Child Nutrition Programs. Under this final rule, four ounces of yogurt satisfies one ounce of the meat/meat alternate requirement for breakfasts, lunches and suppers served under any of the Child Nutrition Programs. This final rule responds to numerous recommendations for additional meat alternates and provides local food service operations with greater flexibility in planning and preparing meals using lowfat meat alternates.

EFFECTIVE DATE: April 7, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302; by telephone (703) 305–2620.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). The Administrator of the Food and Consumer Service (FCS) has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule provides greater flexibility to schools, institutions and homes participating in the NSLP, SBP, CACFP and SFSP rather than imposing more restrictive requirements upon them. The overall types and frequency of service of foods used in the meals served in these programs will not be significantly affected by this rule, and thus, this rule will not have a significant economic impact.

Catalog of Federal Assistance

The NSLP, SBP, SFSP and CACFP are listed in the Catalog of Federal Domestic Assistance under Nos. 10.555, 10.553, 10.559 and 10.558, respectively, and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (7 CFR part 3015, subpart V and final rule-related notice at 48 (FR) 29112, June 24, 1983.)

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This final rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** section of this preamble. Prior to any judicial challenge to the provisions of this final rule or the application of the provisions, all applicable administrative procedures must be exhausted. In the NSLP and SBP, the administrative procedures are set forth under the following regulations: (1) School food authority appeals of State agency findings as a result of an administrative review must follow State agency hearing procedures as established pursuant to 7 CFR 210.18(q) and 220.14(e); (2) school food authority appeals of FCS findings as a result of an administrative review must follow FCS hearing procedures as established pursuant to 7 CFR 210.30(d)(3) and 220.14(g); and (3) State agency appeals of State Administrative Expense fund sanctions (7 CFR 235.11(b)) must follow the FCS Administrative Review Process as established pursuant to 7 CFR 235.11(f). In the SFSP, (1) Program sponsors and food service management companies must follow State agency hearing procedures issued pursuant to 7 CFR 225.13; and (2) disputes involving procurement by State agencies and sponsors must follow administrative appeal procedures to the extent required by 7 CFR 225.17 and 7 CFR part 3015. In the CACFP, (1) institution appeal procedures are set forth in 7 CFR 226.6(k); and (2) disputes involving procurement by State agencies and institutions must follow administrative appeal procedures to the extent required by 7 CFR 226.22 and 7 CFR part 3015.

Information Collection

This final rule does not contain reporting and recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. The programs being amended are approved by OMB under the following control numbers: NSLP, 0584–0006; SBP, 0584–0012; SFSP, 0584–0280; and CACFP, 0584–0055.

Background

On July 5, 1996, the Department published a proposed rule to authorize the crediting of yogurt as a meat/meat alternate for all meals served under the NSLP, SBP, CACFP and SFSP (61 FR 35152–35157). Under this proposal, local food services would have the option of offering yogurt as a meat alternate with four ounces of yogurt equaling one ounce of meat. The Department proposed the four-to-one ratio of yogurt to meat in order to allow adequate levels of iron and niacin to continue being provided. The proposal also stipulated that the crediting change

would apply only to commercially prepared products which meet the definition and standard of identity for yogurt as established by the Food and Drug Administration (FDA) for yogurt, low fat yogurt and nonfat yogurt. (See 21 CFR 131.200, 131.203 and 131.206.) The proposal would not apply to the yogurt found on or in noncommercial and/or nonstandardized yogurt products, such as frozen yogurt, homemade yogurt, yogurt flavored products, yogurt bars, yogurt covered fruits and/or nuts or similar products. Finally, as a practical matter, the Department noted that the proposed regulation would apply only to meals planned and prepared using a food-based menu planning system, because schools planning and preparing meals on the basis of nutrient analysis do not have to observe specific component/quantity requirements and, therefore, are not subject to crediting requirements. For a complete discussion of the background to the proposed rule and the issues surrounding its provisions, interested parties should refer to the preamble of the proposal.

The Department issued the proposed rule as part of the School Meals Initiative for Healthy Children, a comprehensive, integrated plan to provide school children with varied, nutritious, healthful and appealing meals. As the first step in the School Meals Initiative for Healthy Children, the Department published a final rule on June 13, 1995, which established updated nutrition requirements for school lunches and breakfasts and provided local food service professionals with unprecedented flexibility to plan and prepare meals using a menu planning system that best meets their needs (60 FR 31188). Beginning July 1, 1996, schools are required to serve lunches that, over a week's time, provide one-third of the Recommended Dietary Allowances (RDA) for key nutrients and one-third of the calories needed by children of different ages. School breakfasts must provide one-fourth of the RDA for key nutrients and calories. In addition, school meals must comply with the recommendations of the Dietary Guidelines for Americans, including the limitations on calories from fat (no more than 30 percent of total calories) and saturated fat (less than 10 percent of total calories). The only exceptions to these standards are for schools that have been authorized by the State agency to delay implementation for not more than two years.

To achieve compliance with these requirements, school meal planners may select one of four menu planning options. Schools may elect to use Nutrient Standard Menu Planning, under which they conduct a nutrient analysis of the foods being prepared and make adjustments as needed. A second option is a variant of Nutrient Standard Menu Planning called Assisted Nutrient Standard Menu Planning, under which the analysis and subsequent development of recipes and menus are conducted by an outside party. In addition, there are two food-based menu planning systems from which to choose: The traditional meal pattern, consisting of the same component and quantity requirements that were in effect on July 1, 1995, and the enhanced meal pattern, that is based on the traditional pattern but has increased amounts of fruits/vegetables and grains/breads.

Because local planners using nutrient analysis do not have to satisfy specific component/quantity requirements or meet crediting standards, they are able to select various lowfat and nonfat sources of protein for their meals. To provide planners using food-based systems with similar flexibility, State agencies and local food service professionals requested the Department to reevaluate the use of yogurt as a meat/meat alternate for these menu planning systems. They also requested the Department to extend this consideration to the CACFP and the SFSP. Based on this reevaluation, the Department issued the July 5, 1996, proposed rule.

During the official comment period, which ended on September 3, 1996, the Department received 2077 comments. The following groups generated the greatest number of responses: general public (857), local food service personnel (528), other local agency personnel (534) and industry (90). Over 1900 of the comments supported the proposal, generally on the grounds that it would provide greater flexibility for local food services to reduce fat content. Some commenters also noted that the crediting of yogurt would enhance the ability of local planners to meet the nutrition needs of children who are lactose intolerant or who are vegetarians. Commenters who disapproved of the proposed rule essentially raised three objections. First, they voiced concern that the Department was attempting to eliminate meat products from meals served under the Child Nutrition Programs. Second, they maintained that it would be inappropriate to use a dairy product as a substitute for meat. Third, they noted that yogurt is inherently low in iron and niacin, both of which are generally provided by the meat/meat alternate. The remainder of this preamble discusses these issues.

Elimination of Meat Products

The Department emphasizes that the proposed rule was not intended as an endorsement of yogurt at the expense of meat products or other meat alternates. On the contrary, the proposal simply provides local food services with an additional option for meeting a variety of the needs and tastes of children. In fact, the Department does not envision any significant reduction in meat offerings given the traditional popularity of meat products. Moreover, it should be noted that even when yogurt is served, it would not necessarily replace meat entirely. For example, a school might serve a four ounce portion of yogurt in combination with a half sandwich, a cup of soup or salad containing a one ounce or equivalent portion of meat/meat alternate. Finally, some children who could benefit from this rule would not consume meat even if there were no alternative, because they are vegetarians or otherwise are not permitted to eat certain kinds of meat. For these reasons, the Department does not believe that the meat industry will be adversely affected by providing local food services with the option of serving yogurt.

Inappropriate Substitution

The purpose of the meat/meat alternate component in food-based menu planning systems is to ensure that an adequate source of protein is available as part of the meal. This specific requirement is not necessary in meal planning systems based on nutrient analysis because protein is one of the nutrients automatically measured as the meal is planned. However, the Department has long recognized that some non-meat products can provide the protein and other nutrients normally supplied by meat. Nuts and seeds as well as cheese/cheese alternates have been available as meat alternates for years. The Department also notes that yogurt is already credited as a meat alternate for snacks in the Child Nutrition Programs. Finally, allowing yogurt as a meat alternate would enable local food services to better serve children who, for religious or other reasons, are unable to eat meat.

Inadequacy of Certain Key Nutrients

A number of commenters were concerned that yogurt is inherently low in two key nutrients—iron and niacin—generally provided by the meat/meat alternate component. The Department recognizes this shortcoming and shares commenters' concern for the nutritional adequacy of meals served to children. The nutritional contributions of yogurt were carefully considered when the Department proposed to credit yogurt at the ratio of four ounces of yogurt to one ounce of meat. The Department notes, however, that children will continue to obtain key nutrients from a variety of foods. For example, when averaged over a week, other foods such as lean meats, beans, eggs and grains will be able to supplement the nutrients available in yogurt. Moreover, meal planners can also serve yogurt in combination with other foods. For example, as noted above, a local meal planner could offer children four ounces of yogurt along with a half sandwich, a cup of soup or salad. Finally, in response to requests from the school food service and nutrition advocacy communities, the Department intends to provide guidance material to assist local meal planners.

Definition and Standard of Identity

In the proposed rule, the Department stipulated that, to be credited, a yogurt product would have to meet the standard of identity for yogurt established by the FDA. However, the current definition and standard of identity includes yogurt products that contain no live bacteria cultures because the extremely high temperatures at which the products are processed to remove the tartness kill the bacteria. In response, the National Yogurt Association has petitioned to FDA to have yogurt products without live and active cultures excluded from the definition and standard of identity of yogurt. A large number of comments recommended that the Department follow the Association's recommendation and stipulate in the final rule that only yogurt containing live and active bacterial cultures be credited in the Child Nutrition Programs.

The Department appreciates commenters' position on this issue. However, the FDA is the Federal agency responsible for making decisions about product definitions and standards of identity, and it would be inappropriate for the Department to anticipate whether or not the FDA will adopt the recommendation of the National Yogurt Association's petition to exclude products which do not contain active live bacteria cultures from the definition and standard of identity of yogurt. It should also be noted that any amendments to the FDA definition and standard of identity for yogurt will be automatically implemented in the Child Nutrition Programs by virtue of the cross reference in this regulation to the FDA regulations. Moreover, the Department will make any other amendments as necessary. Finally, this final rule makes a technical change to the proposed rule to change the phrase "standard of identity" to read "definition and standard of identity."

Conclusion

For the reasons described above, the Department is adopting the July 5, 1996, proposal without change. The Department emphasizes, however, that it is aware that many of the yogurt products that could satisfy the regulatory requirements as the meat/meat alternate component of the meal are actually more like dessert items. The Department continues to expect that schools and institutions will exercise good judgment in selecting yogurt products for their meals. The Department also notes that this crediting policy does not extend to noncommercial and/or nonstandardized yogurt products, such as frozen yogurt, homemade yogurt, yogurt flavored products, yogurt bars, yogurt covering on fruit and/or nuts and similar products.

List of Subjects

7 CFR Part 210

Children, Commodity School Program, Food assistance programs, Grants programs-social programs, National School Lunch Program, Nutrition, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 220

Children, Food assistance programs, Grants programs-social programs, Nutrition, Reporting and recordkeeping requirements, School Breakfast Program.

7 CFR Part 225

Food assistance programs, Grant programs—health, infants and children, Reporting and Recordkeeping requirements.

7 CFR Part 226

Day care, Food assistance programs, Grant programs—health, infants and children, Surplus agricultural commodities.

Accordingly, the Department is amending 7 CFR part 210, 220, 225 and 226 as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

2. In § 210.2 a definition for *Yogurt* is added in alphabetical order to read as follows:

§ 210.2 Definitions.

* * * * *

Yogurt means commercially prepared coagulated milk products obtained by the fermentation of specific bacteria, that meet milk fat or milk solid requirements and to which flavoring foods or ingredients may be added. These products are covered by the Food and Drug Administration's Definition and Standard of Identity for yogurt, lowfat yogurt, and nonfat yogurt, 21 CFR 131.200, 21 CFR 131.203, and 21 CFR 131.206, respectively.

3. In § 210.10:

a. The meat or meat alternate section in the first column of the table in paragraph (k)(2) is amended by adding a new entry for yogurt after the entry for "Peanut butter or other nut or seed butters";

b. New paragraph (k)(3)(iii) is added;

c. Paragraph (n)(3)(iv) is amended by removing the words "in the snack only" from the first sentence of footnote 4 in the "Meal Supplement Chart for Children".

The additions read as follows:

§ 210.10 Nutrition standards for lunches and menu planning methods.

* * * * *

(k) *Food-based menu planning.* * * *

(2) *Minimum quantities.* * * *

Meal component	Minimum quantities required for				Option for grades K–3
	Ages 1–2	Preschool	Grades K–6	Grades 7–12	
Meat or Meat Alternate (quantity of the edible portion as served). * * *					

Meal component	Minimum quantities required for Ages 1–2	Preschool	Grades K–6	Grades 7–12	Option for grades K–3
Yogurt, plain or flavored, unsweetened or sweetened.	4 oz. or ½ cup	6 oz. or ¾ cup	8 oz. or 1 cup	8 oz. or 1 cup	6 oz. or ¾ cup.

* * * * *

(3) * * *

(iii) Yogurt may be used to meet all or part of the meat/meat alternate requirement. Yogurt served may be either plain or flavored, unsweetened or sweetened. Noncommercial and/or nonstandardized yogurt products, such as frozen yogurt, homemade yogurt, yogurt flavored products, yogurt bars, yogurt covered fruit and/or nuts or similar products shall not be credited. Four ounces (weight) or ½ cup (volume) of yogurt fulfills the equivalent of one ounce of the meat/meat alternate requirement in the meal pattern.

* * * * *

SCHOOL LUNCH PATTERN-PER LUNCH MINIMUMS

Food components and food items	Minimum quantities Group I, age 1–2, (preschool)	Group II, age 3–4 (preschool)	Group III, age 5–8 (K–3)	Group IV, age 9 and older (4–12)	Recommended quantities: group V, 12 years and older (7–12)
Meat or Meat Alternate (quantity of the edible portion as served): * * *					
Yogurt, plain or flavored, unsweetened or sweetened..	4 oz. or ½ cup	6 oz. or ¾ cup	6 oz. or ¾ cup	8 oz. or 1 cup	12 oz. or 1½.

(d) *Lunch components.* * * *

(2) *Meat or meat alternate.* * * *

(iii) Yogurt may be used to meet all or part of the meat/meat alternate requirement. Yogurt served may be either plain or flavored, unsweetened or sweetened. Noncommercial and/or nonstandardized yogurt products, such as frozen yogurt, homemade yogurt, yogurt flavored products, yogurt bars, yogurt covered fruit and/or nuts or similar products shall not be credited. Four ounces (weight) or ½ cup (volume) of yogurt fulfills the equivalent of one ounce of the meat/meat alternate requirement in the meal pattern.

* * * * *

PART 220—SCHOOL BREAKFAST PROGRAM

1. The authority citation for part 220 continues to read as follows:

Authority: 42 U.S.C. 1773, 1779, unless otherwise noted.

2. In § 220.2 a new paragraph (bb) is added to read as follows:

§ 220.2 Definitions

* * * * *

(bb) *Yogurt* means commercially prepared coagulated milk products obtained by the fermentation of specific bacteria, that meet milk fat or milk solid requirements and to which flavoring foods or ingredients may be added. These products are covered by the Food and Drug Administration's Definition and Standard of Identity for yogurt, lowfat yogurt, and nonfat yogurt, 21 CFR 131.200, 21 CFR 131.203, and 21 CFR 131.206, respectively.

3. In § 220.8, the meat or meat alternates section in the first column of the table in paragraph (g)(2) is amended by adding a new entry for yogurt after the entry for "Nut and/or seeds" to read as follows:

§ 220.8 Nutrition standards for breakfast and menu planning alternatives.

* * * * *

(g) Food-based menu planning. * * *

(2) Minimum quantities. * * *

Meal component	Minimum quantities required for Ages 1–2	Preschool	Grades K–12	Option for grades 7–12
Meat or Meat Alternates: * * *				
Yogurt, plain or flavored, unsweetened or sweetened.	2 oz. or ¼ cup	2 oz. or ¼ cup	4 oz. or ½ cup	4 oz. or ½ cup

* * * * *

4. In § 220.8a, the meat or meat alternates section in the first column of the table in paragraph (a)(2) is amended by adding a new entry for yogurt after the entry for "Nuts and/or seeds" to read as follows:

§ 220.8a Breakfast components and quantities for the meal pattern.

(a) (1) Food components. * * *

(2) Minimum required breakfast quantities. * * *

SCHOOL BREAKFAST PATTERN

[Required minimum serving sizes]

Food components/items	Ages 1 and 2	Ages 3, 4, and 5	Grades K–12
Meat/Meat Alternates: * * *			
Yogurt, plain or flavored, unsweetened or sweetened	2 oz. or ¼ cup	2 oz. or ¼ cup	4 oz. or ½ cup.

* * * * *

PART 225—SUMMER FOOD SERVICE PROGRAM

1. The authority citation for Part 225 continues to read as follows:

Authority: Secs. 9, 13 and 14, National School Lunch Act, as amended (42 U.S.C. 1758, 1761 and 1762a).

2. In § 225.16:

a. the Meat and Meat Alternates (Optional) section of the table in paragraph (d)(1) is amended by adding a new entry for yogurt after the entry for "Peanut butter or an equivalent quantity of any combination of meat/meat alternate";

b. the Meat and Meat Alternates section of the table in paragraph (d)(2) is amended by adding a new entry for yogurt after the entry for "Peanuts or soynuts or tree nuts or seed".

The additions read as follows:

§ 225.16 Meal service requirements.

* * * * *

(d) *Meal patterns.* * * *

BREAKFAST

(1) * * *

Food components	Minimum amount
Meat and Meat Alternates (Optional) * * * or Yogurt, plain or flavored, unsweetened or sweetened	4 oz. or ½ cup.

* * * * *

LUNCH OR SUPPER

(2) * * *

Food components	Minimum amount
Meat and Meat Alternates * * * or Yogurt, plain or flavored, unsweetened or sweetened	8 oz. or 1 cup.

* * * * *

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

1. The authority citation for Part 226 continues to read as follows:

Authority: Secs. 9, 11, 14, 16, and 17, National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765 and 1766).

2. In § 226.20:

a. new paragraph (a)(2)(ii)(C) is added;

b. the Meat and Meat Alternates section in the first column of the tables in paragraphs (c)(2) and (c)(3) are amended by adding a new entry for yogurt after the entries for "Peanuts or soynuts or tree nuts or seeds";

c. paragraph (d)(1) is amended by adding a semicolon and the words "or 4 oz of yogurt;" after the words "peanut butter".

The additions read as follows:

§ 226.20 Requirements for meals.

(a) * * *

(2) * * *

(ii) * * *

(C) Yogurt may be used to meet all or part of the meat/meat alternate requirement. Yogurt served may be either plain or flavored, unsweetened or sweetened. Noncommercial and/or nonstandardized yogurt products, such as frozen yogurt, homemade yogurt, yogurt flavored products, yogurt bars, yogurt covered fruit and/or nuts or similar products shall not be credited. Four ounces (weight) or ½ cup (volume) of yogurt fulfills the equivalent of one ounce of the meat/meat alternate requirement in the meal pattern.

* * * * *

(c) *Meal patterns for children age one through 12 and adult participants.*

* * *

LUNCH

(2) * * *

Food components	Age 1 and 2	Age 3 through 5	Age 6 through 12 [1]	Adult participants
. . . . .				
Meat and Meat Alternates * * * or Yogurt, plain or flavored, unsweetened or sweetened.	4 oz. or ½ cup	6 oz. or ¾ cup	8 oz. or 1 cup	8 oz. or 1 cup.
. . . . .				

[1] The text is unchanged.

* * * * *

(3) * * * SUPPER

Food components	Children ages 1 and 2	Children ages 3 through 5	Children ages 6 through 12	Adult participants
. . . . .				
Meat and Meat Alternates * * * or. Yogurt, plain or flavored, unsweetened or sweetened.	4 oz. or ½ cup	6 oz. or ¾ cup	8 oz. or 1 cup	8 oz. or 1 cup.
. . . . .				

* * * * *

Dated: February 28, 1997.

William E. Ludwig,

Administrator, Food and Consumer Service.

[FR Doc. 97–5537 Filed 3–5–97; 8:45 am]

BILLING CODE 3410–30–P

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 97–009–1]

Brucellosis in Cattle; State and Area Classifications; Tennessee

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Tennessee from Class A to Class Free. We have determined that Tennessee meets the standards for Class Free status. This action relieves certain restrictions on the interstate movement of cattle from Tennessee.

DATES: Interim rule effective February 28, 1997. Consideration will be given only to comments received on or before May 5, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–009–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–009–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Michael J. Gilsdorf, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, Suite 3B08, 4700 River Road Unit 36, Riverdale, MD 20737–1231, (301) 734–7708; or e-mail: mgilsdorf@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease affecting animals and humans, caused by bacteria of the genus *Brucella*.

The brucellosis regulations, contained in 9 CFR part 78 (referred to below as the regulations), provide a system for classifying States or portions of States according to the rate of *Brucella* infection present, and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or areas that do not meet the minimum standards for Class C are required to be placed under Federal quarantine.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the 12 months preceding classification as Class Free. The Class C classification is for States or areas with the highest rate of brucellosis. Class B and Class A fall between these two extremes. Restrictions on moving cattle interstate become less stringent as a State approaches or achieves Class Free status.

The standards for the different classifications of States or areas entail (1) maintaining a cattle herd infection rate not to exceed a stated level during 12 consecutive months; (2) tracing back to the farm of origin and successfully closing a stated percent of all brucellosis reactors found in the course of Market Cattle Identification (MCI) testing; (3) maintaining a surveillance system that includes testing of dairy herds, participation of all recognized slaughtering establishments in the MCI program, identification and monitoring of herds at high risk of infection (including herds adjacent to infected herds and herds from which infected animals have been sold or received), and having an individual herd plan in effect within a stated number of days after the herd owner is notified of the finding of brucellosis in a herd he or she owns; and (4) maintaining minimum procedural standards for administering the program.

Before the effective date of this interim rule, Tennessee was classified as a Class A State.

To attain and maintain Class Free status, a State or area must (1) remain free from field strain *Brucella abortus* infection for 12 consecutive months or longer; (2) trace back at least 90 percent of all brucellosis reactors found in the course of MCI testing to the farm of origin; (3) successfully close at least 95 percent of the MCI reactor cases traced to the farm of origin during the 12 consecutive month period immediately prior to the most recent anniversary of the date the State or area was classified Class Free; and (4) have a specified surveillance system, as described above, including an approved individual herd plan in effect within 15 days of locating the source herd or recipient herd.

After reviewing the brucellosis program records for Tennessee, we have concluded that this State meets the standards for Class Free status. Therefore, we are removing Tennessee from the list of Class A States in § 78.41(b) and adding it to the list of Class Free States in § 78.41(a). This action relieves certain restrictions on moving cattle interstate from Tennessee.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is warranted to remove unnecessary restrictions on the interstate movement of cattle from Tennessee.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the brucellosis status of Tennessee from Class A to Class Free will promote economic growth by reducing certain testing and other requirements governing the interstate movement of cattle from this State. Testing requirements for cattle moved interstate for immediate slaughter or to quarantined feedlots are not affected by this change. Cattle from certified brucellosis-free herds moving interstate are not affected by this change.

The groups affected by this action will be herd owners in Tennessee, as well as buyers and importers of cattle from this State.

There are an estimated 66,000 cattle herds in Tennessee that would be affected by this rule. All of these are owned by small entities. Test-eligible cattle offered for sale interstate from other than certified-free herds must have a negative test under present Class A status regulations, but not under regulations concerning Class Free status. If such testing were distributed equally among all herds affected by this rule, Class Free status would save approximately $5 to $10 per head.

Therefore, we believe that changing the brucellosis status of Tennessee will not have a significant economic impact on the small entities affected by this interim rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This document contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 78 is amended as follows:

PART 78—BRUCELLOSIS

1. The authority citation for part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a-1, 114g, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

§ 78.41 [Amended]

2. In § 78.41, paragraph (a) is amended by adding "Tennessee," immediately after "South Carolina,'.

3. In § 78.41, paragraph (b) is amended by removing "Tennessee".

Done in Washington, DC, this 28th day of February 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–5519 Filed 3–5–97; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–0942]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; official staff interpretation.

SUMMARY: The Board is publishing revisions to the official staff commentary to Regulation Z (Truth in Lending). The commentary applies and interprets the requirements of Regulation Z. The update provides guidance on issues relating to the treatment of certain fees paid in connection with mortgage loans. It addresses new tolerances for accuracy in disclosing the amount of the finance charge and other affected cost disclosures. In addition, the update discusses issues such as the treatment of debt cancellation agreements and a creditor's duties if providing periodic statements via electronic means.

DATES: This rule is effective February 28, 1997. Compliance is optional until October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Jane E. Ahrens or James A. Michaels, Senior Attorneys, or Sheilah A. Goodman or Manley Williams, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf (TDD) only, contact Dorothea Thompson at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Lending Act (TILA; 15 U.S.C. 1601 *et seq.*) is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. The act requires creditors to disclose the cost of credit as

a dollar amount (the finance charge) and as an annual percentage rate (the APR). Uniformity in creditors' disclosures is intended to assist consumers in comparison shopping. The TILA requires additional disclosures for loans secured by a consumer's home and permits consumers to rescind certain transactions that involve their principal dwelling. The act is implemented by the Board's Regulation Z (12 CFR Part 226). The Board's official staff commentary (12 CFR Part 226 (Supp. I)) interprets the regulation, and provides guidance to creditors in applying the regulation to specific transactions. The commentary is updated periodically to address significant questions that arise; it is a substitute for individual staff interpretations.

In November, the Board published proposed amendments to the commentary to Regulation Z (61 FR 60223, November 27, 1996). The Board received about 30 comments. Most of the comments were from financial institutions, mortgage lenders, insurance providers, and other creditors (or their representatives); about a half dozen were from consumer representatives and lawyers. Overall, commenters generally supported the proposed amendments. Views were mixed on a few comments, and some commenters expressed concerns about issues not addressed in the proposal. Except as discussed below, the commentary is being adopted as proposed; some technical suggestions or concerns raised by commenters are addressed. Compliance is optional until October 1, 1997, the effective date for mandatory compliance.

The revisions mainly incorporate guidance given in the supplementary information that accompanied September 1996 amendments to Regulation Z implementing the Truth in Lending Act Amendments of 1995 (Pub. L. 104–29, 109 Stat. 271). The rulemaking clarified the treatment of fees typically associated with real estate-related lending, and revised tolerances for finance charge calculations for loans secured by real estate or dwellings (61 FR 49237, September 19, 1996). It also addressed the treatment of fees charged in connection with debt cancellation agreements.

II. Commentary Revisions

Supplement I—Official Staff Interpretations

Subpart A—General

Section 226.4—Finance Charge

4(a) Definition

4(a)(1) Charges by Third Parties

Comment 4(a)(1)–1 illustrates the general rule that amounts charged by a third party are included in the finance charge if the creditor requires the use of a third party, even if the consumer may choose the service provider.

Comment 4(a)(1)–2 addresses the treatment of annuity premiums associated with some reverse mortgages. The proposal treated the cost of the premiums as a finance charge when the purchase of an annuity is effectively required incident to the credit. Commenters expressed concern about uncertainties that could result from such a test; the "effectively required" standard has been deleted for clarity.

4(a)(2) Special Rule; Closing Agent Charges

Comment 4(a)(2)–1 is revised and a new comment 4(a)(2)–2 is added to address commenters requests for further guidance about the treatment of charges by third-party closing agents when the creditor requires the use of a closing agent. Comment 4(a)(2)–2 provides examples of the types of fees charged by a closing agent that may be excluded from the finance charge, even though the creditor requires the use of a closing agent.

4(a)(3) Special Rule; Mortgage Broker Fees

Two comments addressing the treatment of mortgage broker fees were proposed. These comments are adopted with some modification for clarity, and a third comment is added. Under the 1995 Amendments, mortgage broker fees paid by the borrower are finance charges unless otherwise excluded. Comment 4(a)(3)–1 clarifies that mortgage brokers fees may be excluded from the finance charge if the fee would be excluded when charged by the creditor. To illustrate the rule, the comment discusses certain application fees as an example of fees charged by mortgage brokers that could be excluded from the finance charge.

New comment 4(a)(3)–2 addresses the scope of the special rule for mortgage broker fees. Commenters requested that the scope be clarified; some suggested defining the term "mortgage broker." Instead, the Board has clarified that the special rule for mortgage broker fees applies to consumer credit transactions secured by real property or a dwelling. The Board believes this interpretation carries out the purposes of the 1995 Amendments, and simplifies compliance by using existing definitions in the regulation rather than adding a new one.

Comment 4(a)(3)–3, redesignated from the proposal and revised for clarity, addresses the treatment of compensation paid by the creditor to a mortgage broker.

4(c) Charges Excluded From the Finance Charge

Paragraph 4(c)(5)

Comment 4(c)(5)–2, adopted substantially as proposed, addresses the treatment of finance charges paid by a noncreditor seller on a consumer's behalf before loan closing; it clarifies that disclosures should reflect the payment if the consumer is not legally bound to the creditor for the amount paid.

4(d) Insurance and Debt Cancellation Coverage

4(d)(3) Voluntary Debt Cancellation Fees

The comments are adopted as proposed, with minor revisions for clarity. Several commenters, including a credit insurance provider, disagreed with the Board's interpretation of section 226.4(d)(3), which in their view is not consistent with the TILA. These commenters objected to the proposed comments on the same grounds.

Comment 4(d)(3)–2 clarifies that although debt cancellation coverage and credit insurance are treated similarly for purposes of cost disclosures under the TILA, state law governs whether a creditor may represent that debt cancellation coverage is insurance. A provider of credit insurance commented that creditors should be permitted to disclose debt cancellation fees as insurance premiums only if the coverage is regulated by the state as insurance. Regulation Z does not provide a definition of insurance for purposes of the TILA, and under § 226.2(b)(3) the term's meaning is determined by state law—which may or may not take account of the extent to which the particular product is regulated by the state. Consequently, the comments are adopted substantially as proposed.

4(e) Certain Security Interest Charges

Section 226.4(e) excludes certain security interest charges paid to public officials from the finance charge if the amounts are itemized and disclosed. A new § 226.4(e)(3) was added to implement a provision in the 1995 Amendments which excludes from the finance charge taxes levied on security instruments or on documents evidencing indebtedness that must be paid to record the security instrument. Comments 4(e)–1 (adopted substantially as proposed) and –2 are revised to reflect the recent amendment to § 226.4(e)(3).

Subpart B—Open-end Credit

Section 226.5—General Disclosure Requirements

5(b) Time of Disclosures

5(b)(2) Periodic Statements

Paragraph 5(b)(2)(ii)

An addition to comment 5(b)(2)(ii)–3 is made to clarify that periodic statements may be provided electronically, for example, via home banking systems. Commenters generally supported the proposal and encouraged the Board to provide further guidance on how to adapt current rules to the way electronic disclosures may be used. A review is now underway that will seek to adapt current rules under the Board's Truth in Lending and other consumer protection regulations to the way electronic disclosures may be provided and retained, responding to technological developments in the way financial service transactions are conducted via electronic means.

Subpart C—Closed-end Credit

Section 226.17—General Disclosure Requirements

17(c) Basis of Disclosures and Use of Estimates

Paragraph 17(c)(2)(ii)

Comment 17(c)(2)(ii)–1 addresses the new rule applicable to the disclosure of per-diem interest charges. Under the rule, the disclosure of any numerical amount affected by the per-diem interest charge is considered accurate if it is based on the information known to the creditor at the time the disclosure is prepared, whether or not the disclosure of per-diem interest is accurate when it is received by the consumer. The comment clarifies that, in such cases, the resulting finance charge is considered accurate without regard to the tolerance for errors under § 226.18(d)(1). In response to requests for guidance, the comment clarifies that disclosures may be considered accurate under this rule without regard to whether they were labeled as estimates.

Section 226.18—Content of Disclosures

18(c) Itemization of Amount Financed

Comment 18(c)–4 is adopted substantially as proposed. Some commenters expressed concern that this comment imposed additional disclosure requirements. This is not the case. The comment is meant to streamline disclosure requirements for transactions that are also covered by Real Estate Settlement Procedures Act (RESPA) by allowing—not requiring—creditors to substitute the good faith estimate or the HUD–1 settlement statement for the itemization of the amount financed. Guidance is added regarding the format requirements for these disclosures.

A proposed revision to comment 18(c)(1)(iv)–2 responded to a proposal by the Department of Housing and Urban Development (HUD) to change the way that the amount collected at closing for escrow items is reflected on the HUD–1 for RESPA purposes (61 FR 46511, September 3, 1996). The Board is withdrawing the proposed revision given that HUD has not yet taken final action on its proposal.

Section 226.22—Determination of the Annual Percentage Rate

22(a) Accuracy of the Annual Percentage Rate

Paragraphs 22(a)(4) and 22(a)(5)

Section 226.22(a)(4) and 22(a)(5) provide APR tolerances for mortgage loans when the finance charge has been misstated but is considered accurate. The comments provide specific examples of these tolerances. Minor revisions have been made for clarity.

Section 226.23—Right of Rescission

23(h) Special rules for foreclosures

Paragraph 23(h)(1)(i)

Section 226.23(h), which implements section 125(i) of the TILA, contains special rescission rules that apply after a foreclosure action has been initiated. Section 226.23(h)(1) allows a consumer to rescind a loan in foreclosure if a mortgage broker fee that should have been included in the finance charge under the laws in effect at consummation was not included. Section 226.23(h)(2) contains a separate finance charge tolerance of $35 for loans in foreclosure; such loans may be rescinded if the finance charge was understated by more than $35. Comment 23(h)(1)(i)–1 is intended to clarify the relationship between these two provisions.

As proposed, the comment interpreted § 226.23(h)(1) to allow rescission if a mortgage broker fee was omitted from the finance charge entirely or if it was understated, without regard to the dollar amount involved. Under that interpretation, any finance charge understatement traceable to a misstatement of a mortgage broker fee would allow rescission of a loan in foreclosure; the $35 finance charge tolerance in § 226.23(h)(2) would not apply. Several commenters objected to this interpretation and expressed the view that the $35 finance charge tolerance should also apply to the rescission rights granted under § 226.23(h)(1)(i). They believed that the $35 tolerance in § 226.23(h)(2) provides the applicable rule for determining whether a mortgage broker fee has been included "in accordance with the laws and regulations in effect" at the time the loan was consummated. They noted that otherwise, creditors would be liable for inadvertent and technical errors—for example, if a mortgage broker fee was rounded down from fractional to whole dollar amounts. The commenters argued that this would be inconsistent with the purpose of the 1995 Amendments as a whole, which was to reduce lender liability for small technical errors.

Upon further analysis and after consideration of the comments received, a narrower interpretation of § 226.23(h)(1)(i) has been adopted. The Board believes that this narrower interpretation is consistent with the intent of section 125(i) of the TILA. The $35 tolerance in § 226.23(h)(2) reduces creditors' potential liability by replacing the $10 tolerance that applied before the 1995 Amendments became effective. Accordingly, comment 23(h)(1)(i)–1 clarifies that for loans in foreclosure, a right of rescission exists under § 226.23(h)(1)(i) only if the entire mortgage broker fee has been omitted from the finance charge. If the amount of a mortgage broker fee is misstated, the consumer's right to rescind is based on the rule in § 226.23(h)(2). A new comment 23(h)(2)-1 has been added to clarify that the $35 tolerance is based on the total finance charge and not its component charges.

Subpart E—Special Rules for Certain Home Mortgage Transactions

Section 226.31—General Rules

31(d) Basis of Disclosures and Use of Estimates

31(d)(3) Per-diem Interest

Several commenters noted that a comment to paragraph 31(d)(3) like the comment to 17(c)(2)(ii) would be useful; a conforming comment has been added.

Section 33—Requirements for Reverse Mortgages

33(a) Definition

Paragraph 33(a)(2)

Comment 33(a)(2)–2, which addresses reverse mortgages, is adopted substantively as proposed.

List of Subjects in 12 CFR Part 226

Advertising, Banks, banking, Consumer protection, Credit, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

For the reasons set forth in the preamble, the Board amends 12 CFR Part 226 as follows:

PART 226—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

2. In Supplement I to Part 226, under *Introduction*, the last sentence in paragraph 5. is revised to read as follows:

Supplement I—Official Staff Interpretations

Introduction

* * * * *

5. *Comment designations.* * * * Comments to the appendices may be cited, for example, as Comment app. A–1.

* * * * *

3. Supplement I to Part 226, under *§ 226.2—Definitions and Rules of Construction, paragraph 2(a)(25)* is amended by removing the last two sentences of the second paragraph of paragraph 6.

4. In Supplement I to Part 226, under *§ 226.4—Finance Charge*, the following amendments are made:

a. Under *4(a) Definition.*, paragraphs 3. and 4. are removed and paragraphs 5. through 7. are redesignated as paragraphs 3. through 5., respectively, and new paragraphs 4(a)(1), 4 (a)(2), and 4(a)(3) are added after the end of the text of 4(a);

b. Under *4(b) Examples of finance charges.*, a new paragraph 4(b)(10) is added;

c. Under *4(c) Charges excluded from the finance charge.*, under paragraph 4(c)(5)., paragraph 2. is revised;

d. Under 4(d), the heading is revised, and a new paragraph 4(d)(3) is added; and

e. Under *4(e) Certain security interest charges.*, paragraphs 1.i. and 2. are revised.

The additions and revisions read as follows:

* * * * *

Subpart A—General

* * * * *

§ 226.4—Finance Charge

4(a) Definition.

* * * * *

4(a)(1) Charges by third parties.

1. *Choosing the provider of a required service.* An example of a third-party charge included in the finance charge is the cost of required mortgage insurance, even if the consumer is allowed to choose the insurer.

2. *Annuities associated with reverse mortgages.* Some creditors offer annuities in connection with a reverse mortgage transaction. The amount of the premium is a finance charge if the creditor requires the purchase of the annuity incident to the credit. Examples include the following:

i. The credit documents reflect the purchase of an annuity from a specific provider or providers.

ii. The creditor assesses an additional charge on consumers who do not purchase an annuity from a specific provider.

iii. The annuity is intended to replace in whole or in part the creditor's payments to the consumer either immediately or at some future date.

4(a)(2) Special rule; closing agent charges.

1. *General.* This rule applies to charges by a third party serving as the closing agent for the particular loan. An example of a closing agent charge included in the finance charge is a courier fee where the creditor requires the use of a courier.

2. *Required closing agent.* If the creditor requires the use of a closing agent, fees charged by the closing agent are included in the finance charge only if the creditor requires the particular service, requires the imposition of the charge, or retains a portion of the charge. Fees charged by a third-party closing agent may be otherwise excluded from the finance charge under § 226.4. For example, a fee that would be paid in a comparable cash transaction may be excluded under § 226.4(a); a lump-sum fee for real-estate closing costs may be excluded under § 226.4(c)(7).

4(a)(3) Special rule; mortgage br[illegible]r fees.

1. *General.* A fee charged by a mortgage broker is excluded from the finance charge if it is the type of fee that is also excluded when charged by the creditor. For example, to exclude an application fee from the finance charge under § 226.4(c)(1), a mortgage broker must charge the fee to all applicants for credit, whether or not credit is extended.

2. *Coverage.* This rule applies to charges paid by consumers to a mortgage broker in connection with a consumer credit transaction secured by real property or a dwelling.

3. *Compensation by lender.* The rule requires all mortgage broker fees to be included in the finance charge. Creditors sometimes compensate mortgage brokers under a separate arrangement with those parties. Creditors may draw on amounts paid by the consumer, such as points or closing costs, to fund their payment to the broker. Compensation paid by a creditor to a mortgage broker under an agreement is not included as a separate component of a consumer's total finance charge (although this compensation may be reflected in the finance charge if it comes from amounts paid by the consumer to the creditor that are finance charges, such as points and interest).

4(b) Examples of finance charges.

* * * * *

4(b)(10) Debt cancellation fees.

1. *Definition.* Debt cancellation coverage provides for payment or satisfaction of all or part of a debt when a specified event occurs. The term includes guaranteed automobile protection or "GAP" agreements, which pay or satisfy the remaining debt after property insurance benefits are exhausted.

4(c) Charges excluded from the finance charge.

* * * * *

Paragraph 4(c)(5).

* * * * *

2. *Other seller-paid amounts.* Mortgage insurance premiums and other finance charges are sometimes paid at or before consummation or settlement on the borrower's behalf by a noncreditor seller. The creditor should treat the payment made by the seller as seller's points and exclude it from the finance charge if, based on the seller's payment, the consumer is not legally bound to the creditor for the charge. A creditor who gives disclosures before the payment has been made should base them on the best information reasonably available.

* * * * *

4(d) Insurance and debt cancellation coverage.

* * * * *

4(d)(3) Voluntary debt cancellation fees.

1. *General.* Fees charged for the specialized form of debt cancellation agreement known as guaranteed automobile protection ("GAP") agreements must be disclosed according to § 226.4(d)(3) rather than according to § 226.4(d)(2) for property insurance.

2. *Disclosures.* Creditors can comply with § 226.4(d)(3) by providing a disclosure that refers to debt cancellation coverage whether or not the coverage is considered insurance. Creditors may use the model credit insurance disclosures only if the debt cancellation coverage constitutes insurance under state law.

4(e) Certain security interest charges.

1. *Examples.*

i. *Excludable charges.* Sums must be actually paid to public officials to be excluded from the finance charge under § 226.4(e) (1) and (3). Examples are charges or other fees required for filing or recording security agreements, mortgages, continuation statements, termination statements, and similar documents, as well as intangible property or other taxes even when the charges or fees are imposed by the state solely on the creditor and charged to the consumer (if the tax must be paid to record a security interest). (See comment 4(a)–5 regarding the treatment of taxes, generally.)

* * * * *

2. *Itemization.* The various charges described in § 226.4(e) (1) and (3) may be totaled and disclosed as an aggregate sum, or they may be itemized by the specific fees and taxes imposed. If an aggregate sum is disclosed, a general term such as security interest fees or filing fees may be used.

* * * * *

5. In Supplement I to Part 226, under *§ 226.5—General Disclosure Requirements*, under *Paragraph 5(b)(2)(ii).*, paragraph 3. is revised to read as follows:

* * * * *

Subpart B—Open-End Credit

§ 226.5—General Disclosure Requirements

* * * * *

5(b) Time of disclosures.

* * * * *

5(b)(2) Periodic statements.

* * * * *

Paragraph 5(b)(2)(ii).

* * * * *

3. *Calling for periodic statements.* The creditor may permit consumers to call for their periodic statements, but may not require them to do so. If the consumer wishes to pick up the statement and the plan has a free-ride period, the statement (including a statement provided by electronic means) must be made available in accordance with the 14-day rule.

* * * * *

6. In Supplement I to Part 226, under *§ 226.17—General Disclosure Requirements*, the following amendments are made:

a. Under *17(c) Basis of disclosures and use of estimates.*, text is added under paragraph 17(c)(2)(ii); and

b. Under *17(f) Early disclosures.*, paragraphs 1. introductory text, 1.i., the last sentence of 1.ii. and 1.iii. are revised and a heading is added to paragraph 1.ii; and a new paragraph 17(f)(2) is added preceding 17(g).

The additions and revisions read as follows:

* * * * *

Subpart C—Closed-End Credit

§ 226.17—General Disclosure Requirements

* * * * *

17(c) Basis of disclosures and use of estimates.

* * * * *

Paragraph 17(c)(2)(ii).

1. *Per-diem interest.* This paragraph applies to any numerical amount (such as the finance charge, annual percentage rate, or payment amount) that is affected by the amount of the per-diem interest charge that will be collected at consummation. If the amount of per-diem interest used in preparing the disclosures for consummation is based on the information known to the creditor at the time the disclosure document is prepared, the disclosures are considered accurate under this rule, and affected disclosures are also considered accurate, even if the disclosures are not labeled as estimates. For example, if the amount of per-diem interest used to prepare disclosures is less than the amount of per-diem interest charged at consummation, and as a result the finance charge is understated by $200, the disclosed finance charge is considered accurate even though the understatement is not within the $100 tolerance of § 226.18(d)(1), and the finance charge was not labeled as an estimate. In this example, if in addition to the understatement related to the per-diem interest, a $90 fee is incorrectly omitted from the finance charge, causing it to be understated by a total of $290, the finance charge is considered accurate because the $90 fee is within the tolerance in § 226.18(d)(1).

* * * * *

17(f) Early disclosures.

1. *Change in rate or other terms.* Redisclosure is required for changes that occur between the time disclosures are made and consummation if the annual percentage rate in the consummated transaction exceeds the limits prescribed in this section, even if the initial disclosures would be considered accurate under the tolerances in §§ 226.18(d) or 226.22(a). To illustrate:

i. *General.* A. If disclosures are made in a regular transaction on July 1, the transaction is consummated on July 15, and the actual annual percentage rate varies by more than ⅛ of 1 percentage point from the disclosed annual percentage rate, the creditor must either redisclose the changed terms or furnish a complete set of new disclosures before consummation. Redisclosure is required even if the disclosures made on July 1 are based on estimates and marked as such.

B. In a regular transaction, if early disclosures are marked as estimates and the disclosed annual percentage rate is within ⅛ of 1 percentage point of the rate at consummation, the creditor need not redisclose the changed terms (including the annual percentage rate).

ii. *Nonmortgage loan.* * * * (See § 226.18(d)(2) of this part.)

iii. *Mortgage loan.* At the time TILA disclosures are prepared in July, the loan closing is scheduled for July 31 and the creditor does not plan to collect per-diem interest at consummation. Consummation actually occurs on August 5, and per-diem interest for the remainder of August is collected as a prepaid finance charge. Assuming there were no other changes requiring redisclosure, the creditor may rely on the disclosures prepared in July that were accurate when they were prepared. However, if the creditor prepares new disclosures in August that will be provided at consummation, the new disclosures must take into account the amount of the per-diem interest known to the creditor at that time.

* * * * *

Paragraph 17(f)(2).

1. *Irregular transactions.* For purposes of this paragraph, a transaction is deemed to be "irregular" according to the definition in footnote 46 of § 226.22(a)(3).

* * * * *

7. In Supplement I to Part 226, under *§ 226.18—Content of Disclosures*, the following amendments are made:

a. Under *18(c) Itemization of amount financed.*, paragraph 4. is revised;

b. Under *18(d) Finance charge.*, a new paragraph 18(d)(2) is added; and

c. *18(n)* is amended by revising the heading and adding a new paragraph 2.

The additions and revisions read as follows:

* * * * *

§ 226.18—Content of Disclosures

* * * * *

18(c) Itemization of amount financed.

* * * * *

4. *RESPA transactions.* The Real Estate Settlement Procedures Act (RESPA) requires creditors to provide a good faith estimate of closing costs and a settlement statement listing the amounts paid by the consumer. Transactions subject to RESPA are exempt from the requirements of § 226.18(c) if the creditor complies with RESPA's requirements for a good faith estimate and settlement statement. The itemization of the amount financed need not be given, even though the content and timing of the good faith estimate and settlement statement under RESPA differ from the requirements of §§ 226.18(c) and 226.19(a)(2). If a creditor chooses to substitute RESPA's settlement statement for the itemization when redisclosure is required under § 226.19(a)(2), the statement must be delivered to the consumer at or prior to consummation. The disclosures required by §§ 226.18(c) and 226.19(a)(2) may appear on the same page or on the same document as the good faith estimate or the settlement statement, so long as the requirements of § 226.17(a) are met.

* * * * *

18(d) Finance charge.

* * * * *

18(d)(2) Other credit.

1. *Tolerance.* When a finance charge error results in a misstatement of the amount financed, or some other dollar amount for which the regulation provides no specific tolerance, the misstated disclosure does not violate the act or the regulation if the finance charge error is within the permissible tolerance under this paragraph.

* * * * *

18(n) Insurance and debt cancellation.

* * * * *

2. *Debt cancellation.* Creditors may use the model credit insurance disclosures only if the debt cancellation coverage constitutes insurance under state law. Otherwise, they may provide a parallel disclosure that refers to debt cancellation coverage.

* * * * *

8. In Supplement I to Part 226, under *§ 226.19—Certain Residential Mortgage and Variable-Rate Transactions*, under *19(a)(2) Redisclosure required.*, the first sentence of paragraph 1. is revised to read as follows:

* * * * *

§ 226.19—Certain Residential Mortgage and Variable-Rate Transactions

* * * * *

Paragraph 19(a)(2) Rediscloure required.

1. *Conditions for redisclosure.* Creditors must make new disclosures if the annual percentage rate at consummation differs from the estimate originally disclosed by more than ⅛ of 1 percentage point in regular transactions or ¼ of 1 percentage point in irregular transactions, as defined in footnote 46 of § 226.22(a)(3). * * *

* * * * *

9. In Supplement I to Part 226, § 226.22—Determination of the Annual Percentage Rate, is amended by adding new paragraphs 22(a)(4) and 22(a)(5) to read as follows:

* * * * *

§ 226.22—Determination of the Annual Percentage Rate

22(a) Accuracy of the annual percentage rate.

* * * * *

22(a)(4) Mortgage loans.

1. *Example.* If a creditor improperly omits a $75 fee from the finance charge on a regular transaction, the understated finance charge is considered accurate under § 226.18(d)(1), and the annual percentage rate corresponding to that understated finance charge also is considered accurate even if it falls outside the tolerance of ⅛ of 1 percentage point provided under § 226.22(a)(2). Because a $75 error was made, an annual percentage rate corresponding to a $100 understatement of the finance charge would not be considered accurate.

22(a)(5) Additional tolerance for mortgage loans.

1. *Example.* This paragraph contains an additional tolerance for a disclosed annual percentage rate that is incorrect but is closer to the actual annual percentage rate than the rate that would be considered accurate under the tolerance in § 226.22(a)(4). To illustrate: in an irregular transaction subject to a ¼ of 1 percentage point tolerance, if the actual annual percentage rate is 9.00 percent and a $75 omission from the finance charge corresponds to a rate of 8.50 percent that is considered accurate under § 226.22(a)(4), a disclosed APR of 8.65 percent is within the tolerance in § 226.22(a)(5). In this example of an understated finance charge, a disclosed annual percentage rate below 8.50 or above 9.25 percent will not be considered accurate.

* * * * *

10. In Supplement I to Part 226, *§ 226.23—Right of Rescission* is amended by adding new 23(g) and 23(h) preceding the References to read as follows:

* * * * *

§ 226.23—Right of Rescission

* * * * *

23(g) Tolerances for accuracy.

23(g)(2) One percent tolerance.

1. *New advance.* The phrase "new advance" has the same meaning as in comment 23(f)–4.

23(h) Special Rules for Foreclosures.

1. *Rescission.* Section 226.23(h) applies only to transactions that are subject to rescission under § 226.23(a)(1).

Paragraph 23(h)(1)(i).

1. *Mortgage broker fees.* A consumer may rescind a loan in foreclosure if a mortgage broker fee that should have been included in the finance charge was omitted, without regard to the dollar amount involved. If the amount of the mortgage broker fee is included but misstated the rule in § 226.23(h)(2) applies.

23(h)(2) Tolerance for disclosures.

1. *General.* This section is based on the accuracy of the total finance charge rather than its component charges.

* * * * *

11. In Supplement I to Part 226, under *§ 226.31—General Rules*, the following amendments are made:

a. Under *Paragraph 31(c)(1)* paragraph 1. is redesignated as paragraph 1. under *Paragraph 31(c).*, and paragraph 2., under *Paragraph 31 (c)(1)* is redesignated as paragraph 1; and

b. Under *31(d)*, a new paragraph *31(d)(3)*, is added.

The revisions and additions read as follows:

* * * * *

Subpart E—Special Rules for Certain Home Mortgage Transactions

§ 226.31—General Rules

* * * * *

31(d) Basis of disclosures and use of estimates.

* * * * *

31(d)(3) Per-diem interest.

1. *Per-diem interest.* This paragraph applies to the disclosure of any numerical amount (such as the finance charge, annual percentage rate, or payment amount) that is affected by the amount of the per-diem interest charge that will be collected at consummation. If the amount of per-diem interest used in preparing the disclosures for consummation is based on the information known to the creditor at the time the disclosure document is prepared, the disclosures are considered accurate under this rule, and affected disclosures are also considered accurate, even if the disclosures were not labeled as estimates. (See comment 17(c)(2)(ii)–1 generally.)

* * * * *

12. In Supplement I to Part 226, under *§ 226.32—Requirements for Certain Closed-End Home Mortgages*, the following amendments are made:

a. Under *Paragraph 32(b)(1)(i).*, paragraph 1. is revised; and

b. Under *Paragraph 32(c)(3).*, a new paragraph 2. is added.

The revisions and additions read as follows:

* * * * *

§ 226.32—Requirements for Certain Closed-End Home Mortgages

* * * * *

32(b) Definitions.

Paragraph 32(b)(1)(i).

1. *General.* Section 226.32(b)(1)(i) includes in the total "points and fees" items defined as finance charges under §§ 226.4(a) and 226.(4)(b). Items excluded from the finance charge under other provisions of § 226.4 are not included in the total "points and fees" under paragraph 32(b)(1)(i), but may be included in "points and fees" under paragraphs 32(b)(1)(ii) and 32(b)(1)(iii). Interest, including per-diem interest, is excluded from "points and fees" under § 226.32(b)(1).

* * * * *

32(c) Disclosures.

* * * * *

Paragraph 32(c)(3) Regular payment.

* * * * *

2. *Balloon payments.* If a loan with a term of five years or more provides for a balloon payment, the balloon payment must be disclosed. For a loan with a term of less than five years, a balloon payment is prohibited.

* * * * *

13. In Supplement I to Part 226, under *§ 226.33—Requirements for Reverse Mortgages*, under *Paragraph 33(a)(2)*, in paragraph 2., the third and fourth sentences are revised and a new sentence is added at the end of the paragraph to read as follows:

* * * * *

§ 226.33—Requirements for Reverse Mortgages

33(a) Definition.

* * * * *

Paragraph 33(a)(2).

* * * * *

2. *Definite term or maturity date.* * * * An obligation may state a definite maturity date or term of repayment and still meet the definition of a reverse-mortgage transaction if the maturity date or term of repayment used would not operate to cause maturity prior to the occurrence of any of the maturity events recognized in the regulation. For example, some reverse mortgage programs specify that the final maturity date is the borrower's 150th birthday; other programs include a shorter term but provide that the term is automatically extended for consecutive periods if none of the other maturity events has yet occurred. These programs would be permissible.

* * * * *

14. In Supplement I to Part 226, under *Appendices G and H—Open-End and Closed-End Model Forms and Clauses*, a new paragraph 2. is added to read as follows:

* * * * *

Appendices G and H—Open-End and Closed-End Model Forms and Clauses

* * * * *

2. *Debt cancellation coverage.* This regulation does not authorize creditors to characterize debt cancellation fees as insurance premiums for purposes of this regulation. Creditors may provide a disclosure that refers to debt cancellation coverage whether or not the coverage is considered insurance. Creditors may use the model credit insurance disclosures only if the debt cancellation coverage constitutes insurance under state law.

* * * * *

15. In Supplement I to Part 226, under *Appendix H—Closed-End Model Forms and Clauses*, a new sentence is added to the end of paragraph 11. to read as follows:

* * * * *

Appendix H—Closed-End Model Forms and Clauses

* * * * *

11. *Models H–8 and H–9.* * * * The prior version of model form H–9 is substantially similar to the current version and creditors may continue to use it, as appropriate. Creditors are encouraged, however, to use the current version when reordering or reprinting forms.

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, February 28, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–5447 Filed 3–5–97; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 350

RIN 3064–AB98

Disclosure of Financial and Other Information by FDIC-Insured State Nonmember Banks

AGENCY: Federal Deposit Insurance Corporation (FDIC or Corporation).

ACTION: Final rule.

SUMMARY: As part of the FDIC's systematic review of its regulations and written policies under section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), the FDIC is revising its regulation entitled "Disclosure of Financial and Other Information by FDIC-Insured State Nonmember Banks" (the Rule). The revision removes references to the obsolete savings bank Call Report. It also permits the annual report required by the Corporation's regulation on annual independent audits and reporting requirements to be used as the annual disclosure statement in certain circumstances, and updates and clarifies certain other references in the Rule.

EFFECTIVE DATE: April 7, 1997.

FOR FURTHER INFORMATION CONTACT: Doris L. Marsh, Examination Specialist, Division of Supervision, (202) 898–8905; or Sandra Comenetz, Counsel, Legal Division, (202) 898–3582, FDIC, 550 17th Street N.W., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Background

The FDIC is conducting a systematic review of its regulations and written policies. Section 303(a) of the CDRI (12 U.S.C. 4803(a)) requires each federal banking agency to streamline and modify its regulations and written policies in order to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability. Section 303(a) also requires each federal agency to remove inconsistencies and outmoded and duplicative requirements from its regulations and written policies. Part 350 contains outdated and unnecessary language that needs to be revised or removed.

Part 350 was adopted by the FDIC Board of Directors on December 17, 1987, and published on December 31, 1987, 52 FR 49379, effective February 1, 1988. The Rule requires FDIC-supervised banks and branches of foreign banks to prepare, and make available on request, annual disclosure statements consisting of: (1) Required financial data comparable to specified schedules in Call Reports filed for the previous two year-ends; (2) information that the FDIC may require of particular organizations; and (3) other optional information. The annual disclosure statement must be prepared by March 31 of the following year, or the fifth day after an organization's annual report covering the year is sent to shareholders, whichever occurs first. In place of Call Report data, a bank may use audited financial statements or reports prepared pursuant to other regulations by the bank or a parent one-bank holding company.

Discussion

The contents of the annual disclosure statement listed in § 350.4(a)(1)(iv) and (v) refer in part to schedules in the Call Report for FDIC-supervised savings banks. The FDIC eliminated the separate savings bank Call Report in 1989. Therefore, these outdated references are being deleted.

The FDIC has proposed amending 12 CFR part 335 by incorporating by reference the rules and regulations promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934 rather than having its own detailed rules and regulations. (61 FR 33696) Therefore, § 350.5(a) is revised to refer simply to part 335 rather than to specific subsections of this regulation.

The Federal Deposit Insurance Corporation Improvement Act of 1991 added section 36 to the Federal Deposit Insurance Act. Section 36 and its implementing regulation, 12 CFR part 363, require all insured depository institutions with $500 million or more in total assets at the beginning of their fiscal year to have an annual audit of their financial statements performed by an independent public accountant. The audited financial statements are part of an annual report that institutions subject to section 36 must prepare and submit to the FDIC. A new paragraph (d) is added to § 350.5 permitting the use of these annual reports as annual disclosure statements in certain situations.

In addition, several other wording changes have been made to improve the clarity of the regulations.

Public Comment Waiver and Effective Date

This regulation is being issued as a final rule. The Administrative Procedure Act, 5 U.S.C. 551 *et seq.* (APA) requires that general notice of a proposed rulemaking be published in the **Federal Register**. 5 U.S.C. 553(b). However, the revision of part 350 is exempt from the **Federal Register** publication requirement pursuant to subsection 553(b)(B). This section of the APA creates a publication exemption "when the agency for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(B). The revisions to part 350 are minor and technical; therefore the notice and public comment requirements of section 553(b) are unnecessary. *Id.* In addition, the APA provides that the required publication of a substantive rule in the **Federal Register** shall be made not less than 30 days before its effective date. 5 U.S.C. 553(d). Part 350 would be exempt from this requirement also for good cause. The amendments are of such a nature that the public does not need a delayed period of time to conform or adjust to them. 5 U.S.C. 553(d)(3).

Paperwork Reduction Act

No collection of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is required by the amendments. Therefore, no information has been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

Because the revisions to part 350 are published in final form without a notice of proposed rulemaking, no regulatory flexibility analysis is required.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121) provides generally for Congressional review of final agency rules. The reporting requirement is triggered when agencies issue a final rule as defined by the Administrative Procedure Act (APA) at 5 U.S.C. 551. Because the FDIC is issuing a final rule as defined by the APA, the FDIC will file the reports required by SBREFA.

The Office of Management and Budget has determined that the revision of part 350 does not constitute a "major rule" as defined by SBREFA.

List of Subjects in 12 CFR Part 350

Accounting, Banks, banking, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board of Directors of the FDIC hereby amends part 350 of chapter III of title 12 of the Code of Federal Regulations as follows:

PART 350—DISCLOSURE OF FINANCIAL AND OTHER INFORMATION BY FDIC-INSURED STATE NONMEMBER BANKS

1. The authority citation for part 350 continues to read as follows:

Authority: 12 U.S.C. 1817(a)(1), 1819 "Seventh" and "Tenth".

2. Section 350.3 is revised to read as follows:

§ 350.3 Requirement for annual disclosure statement.

(a) *Contents.* Each bank shall prepare as of December 31 and make available on request an annual disclosure statement. The statement shall contain information required by § 350.4(a) and (b) and may include other information that bank management believes appropriate, as provided in § 350.4(c).

(b) *Availability.* A bank shall make its annual disclosure statement available to the public beginning not later than the following March 31 or, if the bank mails an annual report to its shareholders, beginning not later than five days after the mailing of such reports, whichever occurs first. A bank shall make a disclosure statement available continuously until the disclosure statement for the succeeding year becomes available.

3. Section 350.4 is revised to read as follows:

§ 350.4 Contents of annual disclosure statement.

(a) *Financial reports.* The annual disclosure statement for any year shall reflect a fair presentation of the bank's financial condition at the end of that year and the preceding year and, except for state-licensed branches of foreign banks, the results of operations for each such year. The annual disclosure statement may, at the option of bank management, consist of the bank's entire Call Report, or applicable portions thereof, for the relevant dates and periods. At a minimum, the statement must contain information comparable to that provided in the following Call Report schedules:

(1) For insured state-chartered organizations that are not members of the Federal Reserve System:

(i) Schedule RC (Balance Sheet);

(ii) Schedule RC-N (Past Due and Nonaccrual, Loans, Leases, and Other Assets—column A covering financial instruments past due 30 through 89 days and still accruing and Memorandum item 1 need not be included);

(iii) Schedule RI (Income Statement);

(iv) Schedule RI-A (Changes in Equity Capital); and

(v) Schedule RI-B, Part II (Changes in Allowance for Loan and Lease Losses).

(2) For insured state-licensed branches of foreign banks:

(i) Schedule RAL (Assets and Liabilities);

(ii) Schedule E (Deposit Liabilities and Credit Balances); and

(iii) Schedule P (Other Borrowed Money).

(b) *Other required information.* The annual disclosure statement shall include such other information as the FDIC may require of a particular bank. This could include disclosure of enforcement actions where the FDIC deems it in the public interest to do so.

(c) *Optional information.* A bank may, at its option, provide additional information that bank management considers important to an evaluation of the overall condition of the bank. This information could include, but is not limited to, a discussion of the financial data; information relating to mergers and acquisitions; the existence of and facts relating to regulatory enforcement actions; business plans; and material changes in balance sheet and income statement items.

(d) *Disclaimer.* The following legend shall be included in every annual disclosure statement to advise the public that the FDIC has not reviewed the information contained therein: "This statement has not been reviewed, or confirmed for accuracy or relevance, by the Federal Deposit Insurance Corporation."

4. Section 350.5 is revised to read as follows:

§ 350.5 Alternative annual disclosure statements.

The requirements of § 350.4(a) may be satisfied:

(a) In the case of a bank having a class of securities registered pursuant to section 12 of the Securities Exchange Act of 1934, by the bank's annual report to security holders for meetings at which directors are to be elected or the bank's annual report (see 12 CFR part 335);

(b) In the case of a bank with independently audited financial statements, by copies of the audited financial statements and the certificate or report of the independent accountant to the extent that such statements contain information comparable to that specified in § 350.4(a); and

(c) In the case of a bank subsidiary of a one-bank holding company, by an annual report of the one-bank holding company prepared in conformity with the regulations of the Securities and Exchange Commission or by sections in the holding company's consolidated financial statements on Form FR Y–9C pursuant to Regulation Y of the Federal Reserve Board (12 CFR part 225) that are comparable to the Call Report schedules enumerated in § 350.4(a)(1), provided that in either case not less than 95 percent of the holding company's consolidated total assets and total liabilities are assets and liabilities of the bank and the bank's consolidated subsidiaries.

(d) In the case of a bank covered by 12 CFR part 363, by an annual report prepared pursuant to 12 CFR 363.4. However, if the annual report is for a bank subsidiary of a holding company which provides only the consolidated financial statements of the holding company, this annual report may be used to satisfy the requirements of this part only if it is the report of a one-bank holding company and provided that not less than 95 percent of the holding company's consolidated total assets and total liabilities are assets and liabilities of the bank and the bank's consolidated subsidiaries.

5. Section 350.6 is revised to read as follows:

§ 350.6 Signature and attestation.

An authorized officer of the bank shall sign the annual disclosure statement. The officer shall also attest to

the correctness of the information contained in the statement if the financial reports are not accompanied by a certificate or report of an independent accountant.

6. Section 350.12 is revised to read as follows:

§ 350.12 Disclosure required by applicable banking or securities law or regulations.

The requirements of this part are not intended to replace or waive any disclosure required to be made under applicable banking or securities law or regulations.

By order of the Board of Directors.

Dated at Washington, D. C. this 4th day of February, 1997.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 97–5510 Filed 3–5–97; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–ANE–08; Amendment 39–9926; AD 97–04–03]

RIN 2120–AA64

Airworthiness Directives; AlliedSignal Inc. TFE731 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to AlliedSignal Inc. TFE731 series turbofan engines, that requires removal from service of certain first stage low pressure turbine (LPT) seal plates prior to accumulating the new, reduced cyclic life limit, and replacement with serviceable LPT seal plates. This amendment is prompted by a report that the machined LPT seal plate geometry did not meet the design intent due to drawing ambiguity. The actions specified by this AD are intended to prevent fatigue cracking and subsequent uncontained failure of an LPT seal plate.

DATES: Effective May 5, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 5, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from AlliedSignal Aerospace, Attn: Data Distribution, M/S 64–3/2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2493, fax (602) 365–5577. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (310) 627–5246; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to AlliedSignal Inc. TFE731 series turbofan engines was published in the **Federal Register** on July 10, 1996 (61 FR 36310). That action proposed to require removing from service first stage LPT seal plates, Part Number (P/N) 3073552–2 and P/N 3074053–1, prior to accumulating the new, reduced cyclic life limit of 3,700 cycles since new (CSN), and replacement with serviceable parts. The actions would be required to be accomplished in accordance with AlliedSignal Inc. Service Bulletin (SB) No. TFE731–72–3573, dated August 15, 1995. AlliedSignal Inc. SB No. TFE731–72–3001, Service Life Limits of Critical Life Limited Components, Revision 42, dated July 17, 1995, incorporates the new cyclic life limit of 3,700 CSN.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has added a new paragraph (c) to clarify that operators may seek FAA-approval of modifications to the new life limits only through the alternative method of compliance procedure described in the AD. The FAA has determined that air safety and the public interest require the adoption of the rule with this change.The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 268 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per engine to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $5,000 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,356,080.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [AMENDED]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–04–03 AlliedSignal Inc.: Amendment 39–9926. Docket 96–ANE–08.

Applicability: AlliedSignal Inc. Models TFE731–2A, –3C and –3CR series turbofan engines, with first stage low pressure turbine (LPT) seal plates, Part Number (P/N) 3073552–2 and P/N 3074053–1, installed on but not limited to the following aircraft: Cessna Model 650 Citation III and Israel Aircraft Industries Model 1125 Westwind Astra aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless

of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking and subsequent uncontained failure of a first stage LPT seal plate, accomplish the following:

(a) Prior to accumulating 3,700 cycles since new (CSN) on LPT seal plates, P/Ns 3073552–2 and 3074053–1, remove from service these first LPT seal plates, and replace with serviceable parts, in accordance with the Accomplishment Instructions of AlliedSignal Inc. Service Bulletin (SB) No. TFE731–72–3573, dated August 15, 1995.

(b) This action establishes a new, reduced cyclic life limit of 3,700 CSN for first stage LPT seal plates, P/N 3073552–2 and P/N 3074053–1.

(c) Except as provided in paragraph (d) of this AD, no alternative replacement times may be approved for LPT seal plates, P/N 3073552–2 and 3074053–1.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(f) The actions required by this AD shall be done in accordance with the following AlliedSignal Inc. SB:

Document No.	Pages	Date
TFE731–72–3573.	1–6	August 15, 1995

Total Pages: 6.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AlliedSignal Aerospace, Attn: Data Distribution, M/S 64–3/2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2493, fax (602) 365–5577. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(g) This amendment becomes effective on May 5, 1997.

Issued in Burlington, Massachusetts, on February 26, 1997.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 97–5512 Filed 3–5–97; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 95

[Docket No. 28833; Amdt. No. 401]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 UTC, March 27, 1997.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current.

It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that his amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, D.C. on February 21, 1997.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, March 27, 1997.

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

2. Part 95 is amended to read as follows:

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS

[Amendment 401 effective date, March 27, 1997]

From	To	MEA
§ 95.1001 Direct Routes—U.S.		
§ 95.637 Blue Federal Airway 37 is Amended to Read in Part		
Elephant, AK NDB *5100–MOCA	Sparl, AK FIX	*6000
§ 95.1001 Direct Routes—U.S. is Amended to Delete		
Dallas/Fort Worth, TX Vortax *2600–MOCA VIA DFW VORTAC 275& SPS VORTAC 140 *3000–MOCA	Duncan, OK VOR/DME	*5000
§ 95.6050 VOR Federal Airway 50 is Amended To Read in Part		
Pawnee City, NE VORTAC	St. Joseph, MO VORTAC	4000
§ 95.6069 VOR Federal Airway 69 is amended to read in Part		
Pine Bluff, AR VOR/DME Billi, AR FIX *6000–MRA **1500–MOCA	Billi, AR FIX *Hille, AR FIX	*2000 **6000
Hille, AR FIX *3000–MOCA	Walnut Ridge, AR VORTAC	*4000
§ 95.6153 VOR Federal Airway 153 is Amended to Read in Part		
Lake Henry, PA VORTAC *4200–MOCA	Grows, NY FIX	*5000
Grows, NY FIX *3700–MOCA	Georgetown, NY VORTAC	*–6000
§ 95.6210 VOR Federal Airway 210 is Amended to Read in Part		
Rolls, OK FIX *4400–MRA **3500–MOCA	*Waxey, OK FIX	**8400
§ 95.6223 VOR Federal Airway 223 is Amended to Read in Part		
Haney, VA FIX *1000–MRA	*Fluky, VA FIX	2600
§ 95.6375 VOR Federal Airway 375 is amended to Read in Part		
Gordonsville, VA VORTAC *7000–MRA	*Haney, VA FIX	2800
Haney, VA FIX *1000–MRA	Fluky, VA FIX	2600
§ 95.6488 VOR Federal Airway 488 is Amended to Read in Part		
Akelt, AK FIX *4000–MOCA	Almot, AK FIX	*10000
§ 95.6491 VOR Federal Airway 491 is amended to Read in Part		
Rapid City, SD VORTAC *5000–MOCA	Dickinson, ND VORTAC	*8000
§ 95.6507 VOR Federal Airway 507 is Amended to Read in Part		
Waxey, OK FIX *3500–MOCA	Rolls, OK FIX	*8400

From	To	MEA	MAA
§ 95.7532 Jet Route No. 532 is Amended to Delete			
Humboldt, MN VORTAC	U.S. Candian Border	18000	45000

§ 95.8003 VOR Federal Airways Changeover Points Airway Segment V–76 Is Amended to Delete

From	To	Changeover points	
		Distance	From
Lubbock, TX VORTAC	Big Spring, TX VORTAC	71	Lubbock
V–81 is Amended to Delete			
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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket Nos. RM91–11–006 and RM87–34–072; Order No. 636–C]

Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol

Issued February 27, 1997.

AGENCY: Federal Energy Regulatory Commission. Energy.

ACTION: Final rule: order on remand.

SUMMARY: In *United Distribution Cos.* v. *FERC*, 88 F.3d 1105 (D.C. Cir. 1996), *petitions for cert. filed*, 65 U.S.L.W. 3531–32 (U.S. Jan. 27, 1997) (No. 96–1186, *et al.*) (*UDC*), the Court of Appeals for the District of Columbia Circuit affirmed the Commission's restructuring of the natural gas industry in the Commission's Order No. 636. (Final rule published at 57 FR 13267, April 16, 1992). In UDC, the Court remanded six issues to the Commission for further explanation or consideration. This order complies with the Court's remand.

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Note: Appendix A, containing Tables 1 and 2, and Appendix B, containing Tables 1 through 5 are not being published in the **Federal Register** but are available from the Commission's Public Reference Room.

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

Pipeline Service Obligations and Revisions to Regulations to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Docket Nos. RM91–11–006 and RM 87–34–072; Order No. 636–C)

Order on Remand

Issued February 27, 1997.

In *United Distribution Companies* v. *FERC* (*UDC*),[1] the United States Court of Appeals for the District of Columbia Circuit upheld the Commission's Order No. 636[2] "in its broad contours and in most of its specifics."[3] In so doing, the Court affirmed the Commission's restructuring of the natural gas industry, but remanded six issues to the Commission for further explanation or consideration. This order complies with the Court's remand.

In light of the Court's remand, the Commission has reexamined Order No. 636, and of necessity, the changes in the natural gas industry that have occurred since restructuring. Based on reconsideration of the remanded issues, the Commission reaffirms certain of its previous rulings and reverses others.

I. Introduction

In Order No. 636 the Commission required interstate pipelines to restructure their services in order to improve the competitive structure of the natural gas industry. The regulatory changes were designed "to ensure that all shippers have meaningful access to the pipeline transportation grid so that willing buyers and sellers can meet in a competitive, national market to transact the most efficient deals possible."[4] To achieve this goal, the Commission required pipelines to restructure their services to separate the transportation of gas from the sale of gas, and to change the design of their transportation rates. The Commission also required pipelines to permit firm shippers to resell their capacity rights, creating national procedures for trading transmission capacity. The Commission adopted a new flexible delivery point policy and took various other actions in order to promote the growth in market centers. In addition, the Commission adopted policies to govern the pipelines' recovery of transition costs that would arise from the restructuring.

In *UDC*, the Court affirmed the major elements of the restructuring rule—the unbundling of sales and transportation,[5] the use of an SFV rate design, the capacity release rules, the curtailment provisions, the right-of-first refusal mechanism, and the recovery of transition costs. Specifically, the Court affirmed the Commission's regulation of capacity release including restrictions on non-pipeline releases,[6] its ban on buy/sell transactions,[7] and its adjustments to pipelines' rates, including the authority to increase those rates under section 5 of the Natural Gas Act (NGA) in the circumstances presented.[8] The Court further held that the Commission has jurisdiction over the curtailment of third-party supplies.[9]

The Court remanded six aspects of the rule for further explanation or consideration, although the Court permitted the rule to stand as formulated pending the Commission's final action on remand.[10] First, the Court remanded the issue of no-notice transportation eligibility, particularly the Commission's restriction on the entitlement to no-notice transportation service to those customers who received bundled firm-sales service on May 18, 1992.[11] The Court found that the Commission had not adequately explained the "disadvantaging of former bundled firm-sales customers who converted under Order No. 436."[12] Second, while the Court upheld the basic right-of-first-refusal mechanism, with its matching conditions of rate and contract term,[13] it remanded as to the Commission's selection of a twenty-year term-matching cap.[14] Specifically, the Court found that the Commission had not adequately explained how the twenty-year cap protects against pipelines' market power, and the failure to explain why it looked at new-construction contracts in arriving at the twenty-year figure.[15]

Third, the Court remanded the issue of SFV rate mitigation for further explanation of the requirement that initial rate mitigation measures must be applied on a customer-by-customer basis, and the phased-in measures must be applied on a customer-class basis.[16] The Court found that the Commission had not adequately justified its preference for customer-by-customer mitigation over customer-class mitigation.[17] The Court was particularly concerned by arguments of the pipelines that customer-by-customer mitigation would increase the risks that a pipeline will fail to collect its costs.[18] Fourth, the Court remanded the Commission's deferral to individual restructuring proceedings the eligibility of small customers on downstream pipelines for a one-part small-customer rate.[19] The Court found that the Commission made an arbitrary distinction between former indirect small customers of an upstream pipeline who are now direct customers, and small customers who have always been direct customers of the same upstream pipeline.[20]

Fifth, the Court found that the Commission had not adequately explained the requirement that pipelines allocate ten percent of Gas Supply Realignment (GSR) costs to interruptible customers.[21] The Court's principal concern was the lack of justification for the allocation figure of ten percent, as opposed to another percentage or allocation method.[22] Finally, the Court remanded the Commission's decision to exempt pipelines from sharing in GSR costs.[23] The Court required further explanation of why the Commission used "cost spreading" and "value of service" principles to allocate costs to the pipelines' customers, but reverted to traditional "cost causation" principles to justify exempting pipelines from those costs.[24]

Pipelines began implementing the requirements of Order No. 636 in 1993, and restructured services now have been in effect for three heating seasons. Significant changes have occurred in the natural gas industry since the development of the record in the Order No. 636 proceeding, many of which are a direct result of restructuring. Thus, the Commission's actions on remand necessarily will reflect the insight gained from restructuring.

Since Order No. 636, substantial progress has been made toward realizing the Commission's goal of opening up the pipeline grid to form a national gas market for gas sellers and gas purchasers to meet in the most efficient manner. Today, there are 38 operating market centers as compared to only six when Order No. 636 issued.[25] These market centers provide a variety of services that increase the flexibility of the system and facilitate connections between gas sellers and buyers. These services commonly include wheeling, parking, loaning, and storage.[26] In addition, electronic trading of gas and capacity rights, which did not exist at the time of Order No. 636, is now offered at over 20 market centers and other transaction points throughout North America. Electronic trading systems enable buyers and sellers to discover the price and availability of gas at transaction points, submit bids, complete legally binding transactions, and prearrange capacity release transactions.

In addition to the information provided by electronic trading services, electronic information services offer capacity release and tariff information

[1] *United Distrib. Cos.* v. *FERC*, 88 F.3d 1105 (D.C. Cir. 1996), *petitions for cert. filed*, 65 U.S.L.W. 3531–32 (U.S. Jan. 27, 1997) (No. 96–1186, *et al.*) (*UDC*).

[2] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, [Regs. Preambles Jan. 1991–June 1996] FERC Stats. & Regs. ¶ 30,939 (1992), *order on reh'g*, Order No. 636–A, [Regs. Preambles Jan. 1991–June 1992] FERC Stats. & Regs. ¶ 30,950 (1992), *order on reh'g*, Order No. 636–B, 61 FERC ¶ 61,272 (1992), *reh'g denied*, 62 FERC ¶ 61,007 (1993).

[3] *UDC*, 88 F.3d at 1191.

[4] Order No. 636, [Regs. Preambles Jan. 1991—June 1996] FERC Stats. & Regs. at 30,393.

[5] The mandatory unbundling remedy itself was not challenged; however, appellants challenged four peripheral aspects of the remedy which were addressed by the Court. First, the Court upheld the rule that customers must retain contractual firm-transportation capacity for which the pipeline receives no other offer. Second, the Court deferred to individual proceedings the issue of pipelines' ability to modify storage contracts without NGA section 7(b) abandonment proceedings. Third, the Court declared moot the challenge to the Commission's rule that transportation-only pipelines may not acquire capacity on other pipelines. Fourth, as discussed further in this order, the Court remanded for further consideration the Commission's decision that only those customers who received bundled firm-sales service on May 18, 1992, are entitled to no-notice transportation service.

[6] *UDC*, 88 F.3d at 1152–54.

[7] *Id.* at 1157.

[8] *Id.* at 1166.

[9] *Id.* at 1148.

[10] *Id.* at 1191.

[11] *Id.* at 1137.

[12] *Id.*

[13] *Id.* at 1139–40.

[14] *Id.* at 1141.

[15] *Id.*

[16] *Id.* at 1174.

[17] *Id.*

[18] *Id.*

[19] *Id.* at 1175.

[20] *Id.* at 1174–75.

[21] *Id.* at 1188.

[22] *Id.* at 1187.

[23] *Id.* at 1190.

[24] *Id.* at 1189.

[25] Energy Info. Agency, DOE, No. DOE–EIA–0560(96), Natural Gas Issues and Trends (Dec. 1996).

[26] Wheeling, offered at 33 market centers, is the transfer of gas from one interconnected pipeline to another. Parking, offered at 29 market centers, is when the market center holds the shipper's gas for a short time for redelivery within approximately 15 days. Loaning, offered at 20 market centers, is a short-term advance to a shipper by the market center operator which is repaid in kind by the shipper. Storage is offered at 16 market centers.

aggregated from pipeline electronic bulletin boards, gas futures pricing information,[27] weather information, and determination of least cost routing. Such information was not widely available electronically before Order No. 636.

Capacity release is also playing an increasingly significant role in permitting the reallocation of firm pipeline capacity to customers most desiring it. For example, in October 1996, the Commission estimates that released capacity held by replacement shippers accounted for about 23 percent of firm transportation contract demand, for a group of 30 pipelines for which capacity release data was obtained.[28] Capacity release permits shippers to release the rights to transportation on the segments of a pipeline they do not need, and to acquire firm rights in segments that connect to other supply areas, on a temporary or permanent basis. Because of this ability to obtain firm transportation access to supply regions throughout the North American continent, shippers have less need to renew contracts for firm capacity over the entire length of the pipelines that have traditionally served them from supply basins in the south and southwestern parts of the United States.[29]

The construction and development of the pipeline grid that continues today will increase this flexibility for shippers. In the Eastern region of the United States, construction has been undertaken to add pipeline capacity to meet peak day demand along traditional pipeline paths,[30] and to add paths to new supply regions.[31] The interstate pipeline grid is undergoing significant expansion in other regions also to access new supply basins, and to create new paths from existing supply basins to additional markets.[32] As new supply basins and paths develop, issues associated with shippers' relinquishment ("turn-back") of capacity along older pipeline routes from the traditional supply areas have arisen as firm contracts come up for renewal. The Commission has addressed such capacity issues on pipelines serving the Midwest[33] and Southern California,[34] and on other pipelines serving traditional production areas.[35] It is possible that as other pipelines' long-term contracts expire, additional capacity will become unsubscribed because shippers now have more flexibility to choose different suppliers and pipeline routes than they had prior to restructuring. The Commission and the industry have sought creative ways to market excess capacity so that pipelines can recover their costs.[36]

The Commission continues to refine its policies to reflect current circumstances. The Commission is considering possible improvements in the capacity release rules, so that pipeline capacity can be traded more efficiently.[37] The Commission has also adopted uniform national business standards for interstate pipelines,[38] and the process of standardizing practices for interstate transportation is a continuing effort.[39] Because of all these changes in the industry, the Commission's views on the issues remanded by the Court, of necessity, are different from the Commission's views in 1992 when it issued Order No. 636.

In summary, on remand the Commission has decided to modify its no-notice policy, on a prospective basis, to the extent the prior policy restricts entitlement to no-notice service to any particular group of customers. Further, the Commission will reverse its selection of a twenty-year matching term for the right of first refusal and instead adopt a five-year matching term. The Commission will reaffirm its decision to first require customer-by-customer mitigation of the effects of SFV rate design. In addition, the Commission will reaffirm its decision to establish the eligibility of customers of downstream pipelines for the upstream pipeline's one-part small-customer rate on a case-by-case basis. The Commission will reverse the requirement that pipelines allocate ten percent of GSR costs to interruptible customers, and instead will require pipelines to propose the percentage of their GSR costs their interruptible customers must bear in light of the individual circumstances present on each pipeline. Finally, the Commission will reaffirm its decision to exempt pipelines from sharing in GSR costs.

II. Eligibility Date for No-Notice Transportation

In Order No. 636, in connection with the conclusion that bundled, city-gate, firm sales service was contrary to section 5 of the NGA, the Commission required pipelines to provide a "no-notice" transportation service. Under no-notice transportation service, firm shippers could receive delivery of gas on demand up to their firm entitlements on a daily basis, without incurring daily scheduling and balancing penalties. The purpose of no-notice service was to enable firm shippers to meet unexpected requirements such as sudden changes in temperature. The Commission required that pipelines offer no-notice service only to those customers eligible for firm sales service at the time of restructuring.

The Court remanded for further explanation of this limitation on the no-notice service requirement.[40] Section 284.8(a)(4) of the regulations, adopted by Order No. 636, requires pipelines "that provided a firm sales service on May 18, 1992 [the effective date of Order No. 636]" to offer the no-notice service.[41] The eligibility cut-off for no-notice service was established in Order No. 636-A, in which the Commission held that pipelines were required to offer no-notice transportation service "only to customers that were entitled to receive a no-notice firm, city gate, sales service on May 18, 1992."[42] The Commission also strongly encouraged pipelines to make no-notice service available to their other customers on a non-discriminatory basis.

On appeal, the Court addressed the issue of whether the Commission should have required pipelines to offer no-notice transportation service not only to customers who remained sales customers on May 18, 1992, but also to former bundled firm sales customers who had converted to open access transportation before Order No. 636 (conversion customers). The Court found the Commission had not adequately explained why the conversion customers should not also have a right to receive no-notice service. The Court held that the Commission's desire to begin the experiment with no-notice service on a limited basis does not explain or justify the disadvantaging of former sales customers who converted before Order No. 636.[43] The Court also held that, while conversion customers had no right to expect to receive no-notice service, neither did customers who were still receiving bundled sales service on May 18, 1992.[44] Finally, the Court held that the Commission had not provided substantial evidence to support its assumption that bundled sales customers relied more heavily on reliability of transportation service than did conversion customers.[45] The Court accordingly remanded the issue of no-notice transportation eligibility to the Commission for further explanation.[46]

At the time of Order No. 636, considerable uncertainty existed whether pipelines would be able to perform no-notice service on a widespread basis. Many pipelines had indicated in their comments that they would not be able to provide no-notice transportation service.[47] However, at a technical conference held on January 22, 1992, pipelines made statements to the contrary. In Order No. 636, the Commission relied upon those later assertions. Nevertheless, on rehearing of Order No. 636, rehearing petitions from pipelines such as Carnegie Natural Gas Company (Carnegie) and CNG Transmission Corporation (CNG) indicated there was still some uncertainty among pipelines whether they would be able to provide reliable no-notice service.[48] In addition, pipelines asked the Commission to limit no-notice transportation service to existing sales customers at current delivery points with the option to extend the service on a nondiscriminatory basis where the pipeline had adequate capacity and delivery capacity.[49] The rehearing requests of bundled sales customers also reflected a continuing concern that unbundled services could not replicate the quality of the bundled sales services.[50]

In light of such uncertainty, the Commission decided to limit the requirement for pipelines to offer no-notice service to include only those customers who were then bundled sales customers. It appeared to the Commission that bundled sales customers relied more heavily on the reliability of the transportation service embedded within the sales service they were receiving than the conversion customers relied on the reliability of their transportation service. This is because no-notice service was an implicit part of bundled sales, but was not a part of unbundled transportation. During the period between Order Nos. 436 and 636, sales customers generally converted to transportation only to the extent that they did not need the higher quality of the transportation service embedded within bundled sales service.[51] In many cases, sales customers converted some, but not all, of their sales contract demand. These customers relied on their retained pipeline sales service to obtain gas during peak periods since sales service was equivalent to a no-notice service. Customers used their converted transportation service as a base load service to obtain cheaper gas from non-pipeline suppliers throughout the year.[52] The comments filed in the record of Order No. 636 also indicated that non-converted, or partially-converted customers placed more reliance on the reliability of the transportation service embedded within the bundled sales service.[53]

The post-restructuring experience with no-notice service has been quite varied, but the early concerns about the ability of pipelines to provide reliable no-notice service were not realized. Some pipelines had no bundled sales customers when Order No. 636 took effect, and thus were not required to offer no-notice service as part of their restructuring and did not do so. In the one restructuring proceeding[54] where customers who had converted to transportation before Order No. 636 indicated a desire for no-notice service, the pipeline offered them the service, but they ultimately refused it because they found it too expensive.

Some pipelines have, post-restructuring, expanded their offering of no-notice service. While Williams Natural Gas Company (Williams)

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[27] Since 1990, futures contracts have provided information about expected prices each month for the next two years, and these prices are reported daily.

[28] This estimate is derived from downloaded data posted on pipelines' electronic bulletin boards as required by 18 CFR § 284.10(b).

[29] For example, in Tennessee Gas Pipeline Co., Opinion No. 406, 76 FERC ¶ 61,022 at 61,127–29 (1996), customers argued they should not be compelled to pay for or hold firm rights to capacity in the production area when they only want capacity in the market area. *See also* Transcontinental Gas Pipe Line Corp., Opinion No. 405, 76 FERC ¶ 61,021 at 61,061 (1996) (discussing the significance of segmenting capacity).

[30] For example, in Docket No. CP96–153–000, Southern Natural Gas Co. has applied for authorization to expand its pipeline facilities by 76,000 Mcf/day of capacity, primarily to serve existing customers wishing to increase their firm contract quantities. *See* Southern Natural Gas Co., 76 FERC ¶ 61,122 (1996). The Commission recently authorized CNG Transmission Corp. to construct a pipeline loop between two points in Schenectady Co., New York, to alleviate potential service interruptions to Niagara Mohawk Power Corp.'s distribution system. CNG Transmission Corp., 74 FERC 61,073 (1996).

[31] In Docket Nos. CP96–248–000 and CP96–249–000, Portland Natural Gas Co. has proposed to construct a new 242-mile pipeline extending from Troy, Vermont, to Haverhill, Massachussets. In Docket Nos. CP96–178–000, CP96–809–000 and CP96–810–000, Maritimes & Northeast Pipeline, LLC also propose to construct new pipeline facilities in Northern New England.

[32] For example, Northern Border Pipeline Company, in Docket No. CP95–194–000 and Natural Gas Pipeline Company of America, in Docket No. CP96–27–000, have proposed to construct new pipeline facilities to bring Canadian gas to the Chicago area.

[33] Natural Gas Pipeline Co. of America, 73 FERC ¶ 61,050 (1995).

[34] El Paso Natural Gas Co., 72 FERC ¶ 61,083 (1995) (rejecting El Paso's proposed "exit fee" to reallocate costs associated with turned-back capacity); Transwestern Pipeline Co., 72 FERC ¶ 61,085 (1995) (approving a settlement including a mechanism to share the costs and burdens associated with capacity relinquishment).

[35] Tennessee Gas Pipeline Co., 77 FERC ¶ 61,083 at 61,358 (1996) (permitting rate design changes in a contested settlement based, in part, on Tennessee's concern that 70 percent of its firm contracts would expire by the year 2000); Transcontinental Gas Pipe Line Corp., Opinion No. 405–A, 77 FERC ¶ 61,270 (1996) (deferring potential capacity turn-back issues until closer to the expiration date of the contracts at issue).

[36] Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines, Statement of Policy and Request for Comments, 74 FERC 61,076 (1996); NorAm Gas Transmission Co., 75 FERC ¶ 61,091 at 61,310 (1996).

[37] Secondary Market Transactions on Interstate Natural Gas Pipelines, 61 FR 41046 (1996), IV FERC Stats. & Regs. ¶ 32,520 (to be codified at 18 CFR part 284) (proposed July 31, 1996).

[38] Standards for Business Practices of Interstate Natural Gas Pipelines, Order No. 587, 61 FR 39053 (1996), III FERC Stats. & Regs. ¶ 31,038 (1996) (to be codified at 18 CFR parts 161, 250, and 284).

[39] Standards for Business Practices of Interstate Natural Gas Pipelines, 61 FR 58790 (1996), IV FERC Stats. & Regs. ¶ 32,521 (to be codified at 18 CFR part 284) (proposed Nov. 13, 1996).

[40] UDC, 88 F.3d at 1137.

[41] 18 CFR 284.8(a)(4).

[42] Order No. 636-A, [Regs. Preambles Jan. 1991-June 1996] FERC Stats. & Regs. at 30,573.

[43] UDC, 88 F.3d at 1137.

[44] Id.

[45] Id.

[46] Id.

[47] For example, the Interstate Natural Gas Association of America (INGAA) took the position that the bundled, citygate firm sales service was essential to the providing of no-notice and instantaneous service. See also Initial Comments of Texas Eastern Transmission Corp., Panhandle Eastern Pipe Line Co., Trunkline Gas Co., and Algonquin Gas Transmission Company (PEC Pipeline Group) at 16–17.

[48] For example, Carnegie and CNG asserted that before unbundling, the pipeline's system manager could rely on storage, system supply gas, linepack, and upstream pipeline deliveries. They argued that unbundling would deprive the system manager of the use of some or all of these resources and restrict the manager's ability to operate the system in the most efficient, system-wide manner. CNG Transmission Corp., Request for Rehearing at 32; Carnegie Natural Gas Co., Request for Rehearing at 42–3.

[49] INGAA, United Gas Pipe Line Co., ANR Pipeline Co., and Colorado Interstate Gas Co.

[50] The American Public Gas Association argued that firm sales service could not be replicated without assured access to firm storage service. Request for Rehearing at 12–20, *citing* initial comments of the Distributors Advocating Regulatory Reform at 74. Similarly, Citizens Gas & Coke Utility complained that Order No. 636 did not discuss no-notice gas supplies, storage capacity allocation, or the use of flexible receipt points for meeting the needs of high priority customers. Request for Rehearing at 2–3.

[51] Order No. 636, [Regs. Preambles Jan. 1991-June 1996] FERC Stats. & Regs. at 30,402.

[52] For example, Order No. 636 found that in 1991, 60 percent of peak day capacity on the major pipelines that made bundled sales was still reserved for pipeline sales service. Order No. 636 also found: While pipeline sales were less than 20 percent of total throughput on the major pipelines, during the three day period of peak usage, pipeline sales were approximately 50 percent of total deliveries. The seasonal nature of the pipeline sales indicates that customers rely on pipeline sales during periods when capacity is most likely to be constrained. Order No. 636, [Reg. Preambles Jan. 1991-June 1996] FERC Stats. & Regs. at 30,400.

[53] Id. at 30,403 n.68 (quoting reply comments of United Distribution Companies at 7: "The remaining pipeline sales service is largely used to provide swing service during the winter months and therefore cannot be converted absent comparable transportation.").

[54] Questar Pipeline Co., 64 FERC ¶ 61,157 (1993).

originally refused a group of conversion customers' requests for no-notice service,[55] a number of the conversion customers eventually obtained no-notice service under new contracts with the pipeline.[56] More recently, Mid Louisiana Gas Company (Mid Louisiana) faced the loss of its no-notice customers to a lower-priced competing intrastate bundled service. In an effort to retain the customers, Mid Louisiana proposed to reconfigure its no-notice service to reduce costs and make its no-notice service a more attractive option.[57] Mid Louisiana also expanded its offering of no-notice service to all firm transportation customers, not just those former sales customers previously eligible for no-notice service.

According to data published by the Interstate Natural Gas Association of America, no-notice service represented 17 percent of total pipeline throughput in 1995, an increase from 15 percent the previous year.[58] This increase in the volume of no-notice service provided is consistent with the pattern the Commission has observed in the industry. Some pipelines, such as Mid Louisiana, Questar, and Williams, have been providing no-notice service beyond the minimum requirements directed by the Commission in Order No. 636-A.

The Commission cannot retroactively change Order No. 636's limitation on the pipeline's requirement to offer no-notice service since it is impossible to change past service. However, given the varied experience with no-notice service since restructuring, and in light of the Court's remand, the Commission will no longer continue to limit the pipeline's no-notice service obligation to the pipeline's bundled sales customers at the time of restructuring.

The Commission intends no other changes to the pipeline's obligation to provide no-notice service as provided in section 284.8(4) of the Commission's regulations. If a pipeline offers no-notice service, the Commission will require it to offer that service on a non-discriminatory basis to all customers who request it, under the nondiscriminatory access provision in § 284.8(b)(1).[59] The Commission is aware that since all pipelines were not required during restructuring to offer no-notice service, some pipelines may not have the facilities and the capacity available to do so. The Commission's open-access policy has always been that interstate pipelines must offer open-access transportation to all shippers on a nondiscriminatory basis, to the extent capacity is available.[60] The nondiscriminatory access condition does not obligate pipelines to expand their capacity or acquire additional facilities to provide service. Thus, a pipeline offering no-notice transportation service must do so only to the extent the pipeline has capacity available (including the storage capacity that may be needed to perform no-notice service).

The Commission believes that a prospective change in policy based on current circumstances will satisfy the needs of all shippers who desire no-notice service. This approach is consistent with the fact that some pipelines, such as Mid Louisiana, Williams, and Questar, have already shown a willingness to expand their no-notice service beyond the Commission's basic requirement. However, to the extent there are shippers who desire no-notice service and cannot obtain it for any reason, such cases are appropriately resolved on an individual basis, rather than in a generic rulemaking proceeding.

III. The Twenty-Year Contract Term

Order No. 636 authorized pregranted abandonment of long-term firm transportation contracts, subject to a right of first refusal for the existing shipper. Under the right of first refusal, the existing shipper can retain service by matching the rate and the term of service in a competing bid. The rate is capped by the pipeline's maximum tariff rate, and the Commission capped the term of service at twenty years. The twenty-year term-matching cap was not set forth in the Order No. 636 regulations themselves, but was explained in the preamble and is part of each pipeline's tariff. In Order No. 636, the Commission indicated that pipelines and customers could agree to a different cap.[61] As part of the restructuring obligations, pipelines were required to include in their tariffs the rules and procedures for exercising the right of first refusal, including the matching term cap to apply on that pipeline.

The Court found that the basic right of first refusal structure protects against pipeline market power,[62] and the Court approved the concept of a contract term-matching limitation "as a rational means of emulating a competitive market for allocating firm transportation capacity."[63] The Court, nevertheless, judged inadequate the Commission's explanations for selecting twenty years as an outer limit for an existing customer to bid before securing the continuation of its rights under an expiring contract.[64] Based upon the arguments of LDCs, the Court found inadequate the Commission's explanation that the twenty-year term balances between preventing market constraint and encouraging market stability. The Court concluded that the Commission failed to explain why the twenty-year cap "adequately protects against pipelines' preexisting market power, which they enjoy by virtue of natural-monopoly conditions;"[65] and why the "twenty-year cap will prevent bidders on capacity-constrained pipelines from using long contract duration as a price surrogate to bid beyond the maximum approved rate, to the detriment of captive customers."[66]

Further, the Court found that the Commission's reliance on the fact that twenty-year contracts have been traditional in cases involving new construction did not sufficiently explain the selection of a twenty-year term for renewal contracts on existing facilities.[67] Accordingly, while the Court held that the Commission had justified the right-of-first-refusal mechanism, with its twin matching conditions of rate and contract term, it remanded the twenty-year term cap for further consideration.[68]

The right-of-first-refusal mechanism was, and is, intended to protect existing customers and provide them with the right of continued service, while at the same time recognizing the role of market forces in determining contract price and term. As the Commission held in Order No. 636–A, when a contract has expired, it is most efficient, within regulatory restraints, for the capacity to go to the bidder who values it the most, as evidenced by its willingness to bid the highest price for the longest term.[69] The pipeline's maximum tariff rate is one regulatory restraint, as the bidding for price cannot go above that rate. The Commission set a cap on term-matching in order to avoid shippers on constrained pipelines being forced into contracts with pipelines for longer terms than they desired.

The term-matching cap is relevant mainly on capacity constrained pipelines. However, term-matching also could become necessary in situations where the contract path goes through constrained points. As the Court recognized, where capacity is not constrained, there is no need for an existing customer to match a competing bid, since the pipeline will have sufficient capacity to serve both the existing customer and any new customer that desires service.[70] While the Court approved the concept of a contract term-matching limitation, it found the basis for the particular cap chosen lacking.[71]

In determining the maximum term that an existing customer should be required to match in order to retain its capacity after its current contract expires, the Commission must weigh several factors. On the one hand, the cap should protect captive customers from having to match competing bids that offer longer terms than the competing bidder would have bid "in a competitive market without pipelines' natural monopoly."[72] On the other hand, the Commission does not wish to constrain unnecessarily the ability of shippers who value the capacity the most to obtain it for terms of the desired length. The Court has recognized that the Commission's task in setting the term-matching cap involves the selection of a "necessarily somewhat arbitrary figure."[73]

The Commission has reexamined the record of the Order No. 636 proceedings, as well as data concerning contract terms that have become available since industry restructuring. The Commission can find no additional record evidence, not previously cited to the Court, that would support a cap as long as the twenty-year cap chosen in Order No. 636. Due to changes in the Commission's filing requirements instituted after restructuring,[74] pipelines now must file, in an electronic format, an index of customers, which is updated quarterly and includes the contract term.[75] The data that are now on file have enabled the Commission to determine average contract terms, both before and since the issuance of Order No. 636. For pre-Order No. 636 long-term contracts, the average term was approximately 15 years.[76] The data show that since Order No. 636, pipelines have entered into substantially shorter contracts than before. Post-Order No. 636 long-term contracts had an average term of 9.2 years for transportation, and 9.7 years for storage. For all currently effective contracts (both pre- and post-Order No. 636), the average term is 10.3 years for transportation and 10 years for storage. Moreover, as shown in Appendix A, the trend toward shorter contracts is continuing. About one quarter to one third of contracts with a term of one year or greater, entered into since Order No. 636, have had terms of one to five years.[77] However, nearly one half of such contracts entered into since January 1, 1995, have had terms of one to five years.[78]

This information strongly suggests that since the issuance of Order No. 636, few, if any, pipeline customers have been willing, or required, to commit to twenty-year contracts for existing capacity. In the only case to come before the Commission to resolve a controversy about the pipeline's right-of-first-refusal process, the customers were required to commit to five-year terms in order to retain the capacity.[79] The industry trend thus appears to be contract terms that are much shorter than twenty years.

On remand, the Commission intends to select a cap to be generally applicable to all pipelines. However, the current data lead us to conclude that the term must be significantly shorter than the twenty-year cap approved in Order No. 636. In addition, the Commission recognizes that the selection of a different cap on remand must be supported by the record. In the Order No. 636 rulemaking, as the Court pointed out, "most of the commentators before the agency had proposed much shorter-term caps, such as five years."[80] For example, Associated Gas Distributors (AGD) argued on rehearing of Order No. 636–A that a five-year cap would provide "the most equitable balance between the LDC's needs to retain some flexibility in its gas supply portfolio and the pipeline's concern for financial stability."[81] Public Service Electric & Gas Company and New Jersey Natural Gas Company argued that a five-year cap would avoid unnecessary retention of capacity by LDCs, which, given their general public utility obligation to serve, "will err on the side of retaining capacity they might not need, rather than risking permanent loss of such capacity."[82] A number of other parties also argued in favor of a five-year matching term.[83] In addition, five years is approximately the median length of long term contracts entered into since January 1, 1995.

Based upon the record developed in the Order No. 636 proceeding, and the information available in the Commission's files, the Commission establishes the contract matching term cap at five years. The five-year cap will avoid customers' being locked into long-term arrangements with pipelines that they do not really want, and will therefore be responsive to the Court's concerns. The five-year cap also has the advantage of being consistent with the current industry trend of short-term contracts, as indicated by the Commission's newly-available data.[84]

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[55] Williams Natural Gas Co., 65 FERC ¶ 61,221 (1993), *reh'g denied*, FERC ¶ 61,315 (1994).

[56] Williams Natural Gas Co., 77 FERC ¶ 61,277 (1996).

[57] Mid Louisiana Gas Co., 76 FERC ¶ 61,212 (1996).

[58] Foster Natural Gas Report, No. 2098 (Sept. 9, 1996).

[59] 18 CFR 284.8(b)(1).

[60] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 436, [Regs. Preambles 1982–1985] FERC Stats. & Regs. ¶ 30,665 at 31,516–17 (1985).

[61] In the restructuring proceedings of Alabama-Tennessee Natural Gas Co., Mississippi River Transmission Corp., Northern Natural Gas Co., and Trunkline Gas Co., as a consequence, the pipeline and its customers agreed to 10-year caps.

[62] *UDC*, 88 F.3d at 1140.

[63] *Id.*

[64] *Id.* at 1140–41.

[65] *Id.* at 1140.

[66] The Court dismissed other arguments against the twenty-year term. In response to the claim that a contract term-matching requirement disadvantaged industrial customers because of the possible short useful life of a particular productive asset, the Court noted the industrial customers' ready access to alternative fuels, and greater access than consumers served by LDCs. *UDC*, 88 F.3d at 1140. The Court also rejected the contention that the twenty-year cap discriminated against industrial customers in light of their shorter-term natural gas needs than other customers. The Court found that although the cap may affect different classes of customers differently, since all parties have an equal opportunity to bid for capacity, the cap did not violate NGA section 5. *Id.* at 1141 and n.47.

[67] *Id.* at 1141.

[68] *Id.*

[69] Order No. 636–A, [Regs. Preambles Jan. 1991–June 1996] FERC Stats. & Regs. at 30,630.

[70] *UDC*, 88 F.3d at 1140.

[71] *Id.*

[72] *Id.*

[73] *Id.* at 1141 n.44.

[74] Revisions to Uniform System of Accounts, Forms, Statements, and Reporting Requirements for Natural Gas Cos., Order No. 581, [Regs. Preambles Jan. 1991–June 1996] FERC Stats. & Regs. ¶ 31,026 (1995), *reh'g*, Order No. 581–A, [Regs. Preambles Jan. 1, 1991–June 1996] FERC Stats. & Regs. ¶ 31,032 (1996).

[75] 18 CFR 284.106(c).

[76] Using the October 1, 1996 Index of Customers filings, the Commission calculated the average lengths of long-term contracts (contracts with terms of more than one year) entered into before the April 8, 1992 issuance of Order No. 636, versus those entered into after that date. For pre-Order No. 636 contracts, the average contract term for transportation was 14.8 years, and for storage, the average term was 14.6 years.

[77] Appendix A, p. 1.

[78] Appendix A, p. 2.

[79] Williams Natural Gas Co., 69 FERC ¶ 61,166 (1994), *reh'g*, 70 FERC ¶ 61,100 (1995), *reh'g*, 70 FERC ¶ 61,377 (1995), *appeal pending sub nom.* City of Chanute v. FERC, No. 95–1189 (D.C. Cir.).

[80] *UDC*, 88 F.3d at 1141.

[81] Sept. 2, 1992 Request for Rehearing and Clarification at 13.

[82] Sept. 2, 1992 Request for Rehearing at 6.

[83] *E.g.*, Northern States Power Co. (Minnesota) and Northern States Power Co. (Wisconsin), Sept. 1, 1992 Request for Rehearing at 4–6; New Jersey Board of Regulatory Commissioners, Sept. 2, 1992 Request for Rehearing at 2; New Jersey Natural Gas Co., May 8, 1992 Request for Rehearing at 6; UGI Utilities, Inc., Sept. 2, 1992 Request for Rehearing at 27; the Industrial Groups, Sept. 2, 1992 Request for Rehearing at 18.

[84] The American Gas Association (AGA), INGAA, and UDC have filed pleadings proposing different courses of action regarding the cont·act matching term. AGA urges the Commission either to

Continued

The Commission will require all pipelines whose current tariffs contain term caps longer than five years to revise their tariffs consistent with the new maximum cap, regardless of whether this issue is preserved in the individual restructuring proceedings. The Commission will consider on a case-by-case basis whether any relief is necessary in connection with contracts renewed since Order No. 636. The Commission will entertain on a case-by-case basis requests to shorten a contract term if a customer renewed a contract under the right-of-first-refusal process since Order No. 636 and can show that it agreed to a longer term renewal contract than it otherwise would have because of the twenty-year cap.

IV. Customer-by-Customer v. Customer-Class Mitigation

In order to mitigate the cost-shifting effects of SFV rate design, the Commission required pipelines to phase in SFV rates for some customer classes over a four-year period. However, the Commission required pipelines to first seek to avoid significant cost shifts to individual customers (rather than customer classes) by using alternative ratemaking techniques such as seasonal contract demand.

The Court found that the Commission had not adequately explained its preference for customer-by-customer mitigation over customer-class mitigation.[85] The Court was especially concerned by the argument that the "establishment of rates on a customer-by-customer basis increases the risks that a pipeline will fail to collect its total costs during the period in which rates are in effect."[86] This issue was remanded for the Commission to further examine the question of whether the initial mitigation measures should be implemented on the basis of customer class.[87]

This issue arises because, under MFV, half of the fixed costs in the reservation charge were allocated among customers on the basis of peak demand (the "D–1" charge), and the other half were allocated on the basis of annual usage (the "D–2" charge). Under the SFV method, however, a pipeline's fixed costs are allocated among customers based on contract entitlement alone. As the Court recognized, the adoption of SFV would shift costs to low load-factor customers, in part by "measuring usage solely based on peak demand, rather than annual usage."[88] The Commission, while finding that the impact of placing all of a pipeline's fixed costs in the reservation charge would facilitate an efficient transportation market and support a competitive gas commodity market, found it appropriate to minimize significant cost-shifting to "maintain the status quo with respect to the relative distribution of revenue responsibility."[89] In explaining how to minimize cost shifts, the Commission held in Order No. 636–B that a "significant cost shift" test was to be applied to each customer.[90] The Commission further explained that its goal was to maintain the status quo and not to provide the opportunity for some customers "to make themselves better off at the expense of other customers."[91] Instead, the Commission intended each individual customer's revenue responsibility to stay substantially the same.

The purpose of mitigation was, in a sense, to replicate the role the D–2 component played under MFV rate design. Under MFV rate design, the D–2s operated in essence on a customer-by-customer basis, since each customer got a different D–2 based on its annual usage. The result was a lower allocation to low load factor customers within a class than high load factor customers in the same class. This effect of D–2s was thus customer-specific.

Pipelines tend to have relatively few customer classes, but those classes have many members. As a result, customers within a single class have widely varying load factors and other characteristics. Therefore, the implementation of SFV, together with the elimination of the D–2 component in MFV rate design, caused substantial cost shifts among customers within particular customer classes. Mitigation by class does nothing to minimize those cost shifts. In the proceedings to implement each pipeline's restructuring, it became clear that the customer-by-customer approach was preferable because mitigation could be structured in accordance with the individual circumstances and needs of each customer. Thus, while Order No. 636 provided for mitigation on the basis of customer class as well as on a customer-by-customer basis, in fact, in the individual proceedings, the customer class approach was never used.

Another reason the Commission preferred customer-by-customer mitigation was that the risks to the pipeline, that it would underrecover its cost of service, could be examined and minimized on a case-by-case basis in the individual restructuring proceedings. As a general matter, the customer-by-customer mitigation was carried out by using seasonal contract demands.[92] That method, as implemented by the Commission, did not make it more likely that the pipeline would fail to recover its revenue requirement.[93] It simply uses seasonal measures to reallocate costs in order to avoid significant shifts in revenue responsibility.

Since the Commission directed, in Order No. 636–B, that each customer's revenue responsibility could not change significantly with the use of SFV, the rates would provide for the same revenue stream pre- and post-SFV. In the case of only one pipeline—Williston Basin Pipeline Company—has there been any problem of the pipeline not recovering its costs, and that grew out of the unusual circumstances that developed after restructuring.[94] That matter is now at issue in the pipeline's pending rate case, which is in hearing before an administrative law judge, and the issue will be addressed in that proceeding. In all other cases, the pipelines' concerns about cost recovery never materialized. Therefore, it appears that this issue has no continuing vitality today. As a result, we see no need to effect changes to the previous ruling. The issues presented in Williston's case can be addressed on a case-specific basis.

V. Small-Customer Rates for Customers of Downstream Pipelines

In Order No. 636, the Commission assured small customers that they could continue to receive firm transportation under a one-part volumetric rate computed at an imputed load factor, similar to the manner in which their previous sales rates were determined. The Commission thus required pipelines to offer a one-part small-customer transportation rate to those customers that were eligible for a small-customer sales rate on the effective date of restructuring.[95] On rehearing of Order No. 636-A, the issue arose whether the Commission should require upstream pipelines to offer their small-customer rate to the small customers of downstream pipelines, who became direct customers of the upstream pipeline as a result of unbundling. The Commission held in Order No. 636-B that this issue should be raised in the upstream pipeline's restructuring proceeding, to "enable the parties to consider the small customers' need for such a service on the upstream pipeline and the impact of the additional small customers on the rates charged to the upstream pipeline's current customers under the small customer schedule and its customers paying a two-part rate."[96]

The Court found that the Commission made an arbitrary distinction between former indirect small customers of an upstream pipeline and small customers who were direct customers of the upstream pipeline.[97] Despite the Commission's indication in Order No. 636–B that the Commission would consider the need for such discounts on a case-by-case basis, the Court agreed with appellants' contention, that it is "unfair and unreasonable to make them demonstrate * * * a need [for a small customer rate] in restructuring proceedings when that need has already been presumed for other small customers."[98] Thus, the Court remanded the issue to the Commission for further consideration of "whether or not the small customer benefits should be made available to the former downstream small customers."[99]

The Commission's ruling, that the issue would be considered on a pipeline-by-pipeline basis, rather than in a generic rulemaking, did not represent an unwillingness by the Commission to fully consider the needs of the former downstream small customers. One of the objectives of Order No. 636's requirement that pipelines offer a subsidized, one-part transportation rate to their former small sales customers was to maintain a status quo for that class of customers, subject to a few changes in terms and conditions adopted in the Rule.[100]

Any changes in the size of the subsidized, small customer class on a pipeline necessarily affect the pipeline's other customers. Under traditional cost-based ratemaking, rates are generally designed to recover the pipeline's annual revenue requirement.[101] Costs are allocated to customer classes based on contract capacity entitlements and projected annual or seasonal volumes. Small customer rates, however, involve an adjusted cost allocation to permit them to pay less for their service than they would if their rates were designed based on actual purchase levels. Small customers have historically been charged rates derived from a higher-than-actual, imputed load factor because these customers often "lack the flexibility to construct storage and lack industrial load to balance their purchases,"[102] and because they serve the distinct function of delivering gas primarily to residential and light commercial users.[103] During the restructuring process, the Commission intended for pipelines to retain the same imputed load factor for the small customer transportation rate that had previously been used to compute the small customer sales rate.[104]

Since a one-part, small-customer rate is a subsidized rate, eligibility criteria for the small-customer class and the size of that class is always a contentious issue in a pipeline rate case. Before restructuring, pipelines and their customers usually arrived at the small-customer eligibility cutoff through negotiations. The class size and eligibility criteria therefore differ on each pipeline. Changes to the eligibility criteria for the small customer rate, particularly those that enlarge the size of the class, upset the prior cost allocation among the customer classes. Those customers who are not in the small customer class experience a cost shift because they must pick up a greater share of the pipeline's costs. The determination of class size and eligibility requires consideration of the customer profile of each pipeline and the individual circumstances present on each system, and ultimately is the result of pragmatic adjustments.[105]

Before Order No. 636, the pipelines had a relatively stable group of customers. Order No. 636, however, greatly expanded the number of customers a pipeline would serve, and the cost-shifting effects of a significant expansion of the class of customers eligible for the rate were not known. Circumstances vary widely throughout the pipeline industry. For example, the upstream-most pipelines serving production areas, such as Texas and the Gulf of Mexico, may serve ten or more downstream pipelines. Therefore, allowing all the small customers of all those downstream pipelines automatically to qualify for small

eliminate the cap or to select a cap of no more than three years. However, AGA does not provide any basis for its argument that three years, as opposed to any other term shorter than twenty years, is the appropriate cap for the Commission to adopt. UDC supports AGA's proposal and argues that the majority of "long-term" contracts now and in the foreseeable future will average four years or less. INGAA argues that the right-of-first refusal requirement should only attach to contracts with terms of at least ten years or longer, and that the Commission should reduce the matching term to ten years. INGAA submits that this would correspond to the length of contract commonly required for new construction, as well as to the needs of the market.

[85] *UDC*, 88 F.3d at 1174.

[86] *Id.* (quoting Pipelines' Brief at 27).

[87] *Id.*

[88] *Id.* at 1170.

[89] Order No. 636–B, 61 FERC at 62,014.

[90] *Id.* at 62,016.

[91] *Id.*

[92] Northwest Pipeline Corp., 63 FERC ¶ 61,130 (1993), *order on reh'g* 65 FERC ¶ 61,055 (1994); Mississippi River Transmission Corp., 64 FERC ¶ 61,299 (1993).

[93] The use of seasonal contract demands enables firm customers to lower their daily reservation quantities for the off peak season and keep the higher quantity needed for the peak season.

[94] In Williston's restructuring proceeding, the Commission accepted Williston's proposal to allow the one customer on its system requiring mitigation (Wyoming Gas) to shift to Williston's one-part rate schedule for small customers. As a consequence, Wyoming Gas pays Williston only when it transports gas, including paying any GSR costs. Williston Basin Interstate Pipeline Co., 63 FERC ¶ 61,184 (1993). In May 1995, Wyoming Gas built a 15-mile extension and connected its facilities with Colorado Interstate Gas System, allowing it to bypass Williston. As a result, Wyoming Gas has reduced its takes from Williston by 35 percent. Williston recently asked the Commission to allow it to convert its existing one-part rate to a two-part rate, with a reservation charge, for Wyoming Gas. Williston has proposed an alternative method of mitigating the cost shift to Wyoming Gas. Williston's proposal, in Docket No. RP95–364, went into effect January 1, 1996, and is in hearing as part of Williston's general rate case. Williston Basin Pipeline Co., 73 FERC ¶ 61,344 (1995), *order on reh'g*, 74 FERC ¶ 61,144 (1996); Order on Motion Rates and Request for Stay, 74 FERC ¶ 61,081 (1996).

[95] Section 284.14(b)(3)(iv) of the regulations adopted by Order No. 636 required pipelines to include in their restructuring compliance filings tariff provisions offering one-part small-customer rates for transportation, to the class of customers eligible for that pipeline's small-customer sales rate on May 18, 1992. Section 284.14 contained provisions governing the implementation of pipeline restructuring and setting forth the contents of pipeline compliance filings. In Order No. 581, the Commission deleted Section 284.14 from the regulations because the regulation was no longer necessary following the completion of restructuring. Revisions to the Uniform System of Accounts, Forms, Statements, and Reporting Requirements for Natural Gas Cos., Order No. 581, 60 FR 53019 (October 11, 1995), II FERC Stats. & Regs. ¶ 20,000 *et seq.* (regulatory text), III FERC Stats. & Regs ¶ 31,026 (1995) (preamble).

[96] Order No. 636–B, 61 FERC at 62,020.

[97] *UDC*, 88 F.3d at 1174–75.

[98] *Id.* at 1174.

[99] *Id.* at 1175.

[100] Order No. 636-B, 61 FERC at 62,019.

[101] The Commission's traditional cost-based ratemaking is a five-step process. The first task is to determine the pipeline's overall cost of service. The second task is to functionalize the pipeline's costs by determining to which of the pipeline's operations or facilities the costs belong. The third task is to categorize the costs assigned to each function as fixed costs (which do not vary with the volume of gas transported) or variable, and to classify those costs to the reservation and usage charges of the pipeline's rates. The fourth step is to allocate the costs classified to the reservation and usage charges among the pipeline's various rate zones and among the pipeline's various classes of jurisdictional services. The fifth step is to design each service's rates for billing purposes by computing unit rates for each service. The fifth step is called rate design. *See* Order No. 636, [Regs. Preambles Jan. 1991–June 1996] FERC Stats. & Regs. at 30,431.

[102] Texas Eastern Transmission Corp., 30 FERC ¶ 61,144 at 61,288 (1985).

[103] Tennessee Gas Pipeline Co., 27 FERC ¶ 63,090 at 65,375 (1984).

[104] Order No. 636–B, 61 FERC at 62,019.

[105] *See* FPC v. Natural Gas Pipeline Co. of America, 315 U.S. 575, 586 (1941) (holding that rate-making bodies are "free, within the ambit of their statutory authority, to make the pragmatic adjustments which may be called for by particular circumstances.") *See also* Colorado Interstate Gas Co. v. FPC, 324 U.S. 581, 589 (1945) ("Allocation of costs is not a matter for the slide-rule. It involves judgment on a myriad of facts. It is not an exact science.").

customer status on the upstream

not have permitted the Commission to

No. 636 arise from the same provisions

discussed below, in Order Nos. 500/528

After carefully reviewing the Court's

of the GSR cost absorption issue does

customer status on the upstream pipeline could shift substantial costs to the relatively few existing non-pipeline direct customers of the upstream pipeline. The Commission could not, through a generic ruling, be certain this would not happen.

The circumstances of Tennessee Gas Pipeline Company (Tennessee) and its three downstream pipelines illustrate some of the factors to be taken into account with respect to the issues of small customer class size and eligibility.[106] During restructuring, small customers of three pipelines downstream from Tennessee (East Tennessee, Alabama-Tennessee, and Midwestern) became direct customers of Tennessee, as well as the downstream pipelines. Tennessee originally proposed to offer a one-part rate only to its direct small customers and those customers of downstream pipelines that took service directly from Tennessee prior to restructuring. Tennessee proposed to continue using its pre-existing eligibility cutoff of 10,000 Dth/day for the one-part rate. Tennessee added a different, two-part rate schedule for its former small sales customers and to other small customers of downstream pipelines. Tennessee requested an eligibility cutoff of 5,300 Dth/day for the two-part rate schedule because it was the highest criterion used in the tariffs of Tennessee's downstream pipelines.[107]

The Commission found that the lack of a one-part rate for small former sales customers on Tennessee's downstream pipelines would lead to inequitable results. The Commission thus required Tennessee to offer the one-part rate to those downstream customers otherwise eligible for small customer rates on the downstream pipelines, and held that the eligible level would be set at 5,300 Dth/day or less. The Commission analyzed the cost shifting effect of enlarging the small-customer class and found that the particular increase to the eligible class under consideration would affect only a small percentage of Tennessee's daily transportation contract demand.[108] A generic determination concerning the class of eligible customers simply would not have permitted the Commission to fully consider the needs of the small customers and the impact of expanding class size and eligibility on the other customers. Therefore, based on further consideration, the Commission reaffirms its decision to determine, on a case-by-case basis, the eligibility of customers of downstream pipelines for the upstream pipeline's small-customer rate.

VI. Pipelines' Exemption From GSR Costs

A. Summary of Commission Conclusion on Remand

In UDC, the Court remanded to the Commission the issue of the pipelines' recovery of prudently incurred GSR costs. While the Court did not question the basic principle that recovery of such costs is appropriate, it did take issue with the Commission's decision to provide pipelines the opportunity to recover their prudently incurred costs in a manner that differed from the approach taken by the Commission in the Order Nos. 500/528 series (hereinafter Order Nos. 500/528).

Observing that the petitioners challenging the Order No. 636 recovery mechanism noted "remarkable similarities" between Order Nos. 436 and 636, the Court stated that it "[i]nitially, agreed with petitioners that the Commission's stated rationale for allocating take-or-pay costs to pipelines substantially applied in the context of GSR costs as well."[109] The Court found that "Order No. 636 is based on principles of cost spreading and value of service that are, in turn, premised on the notion that all aspects of the natural gas industry must contribute to the transition to an unbundled marketplace."[110] Accordingly, the Court remanded the matter to the Commission for further consideration. In so doing, the Court expressly "did not conclude that the Commission necessarily was *required* to assign the pipelines responsibility for some portion of their GSR costs,"[111] but rather that the Commission's stated reasons did not rise to the level of reasoned decisionmaking.

The Commission readily acknowledges that there are noteworthy similarities between the take-or-pay problems underlying Order No. 436 and the Order Nos. 500/528 series and the GSR recovery issues addressed by the Commission in Order No. 636. Those similarities include, as the Court observed, the fact that the GSR costs to be recovered as transition costs in Order No. 636 arise from the same provisions in producer-pipeline contracts that gave rise to the take or pay problem addressed in Order Nos. 500/528. Another equally important similarity is that in both Order Nos. 500/528 and in Order No. 636, the Commission was attempting to fashion a mechanism to provide pipelines a means for recovering prudently incurred gas supply costs.

There are, however, compelling differences as well. In Order Nos. 500/528 the Commission was attempting to deal with the cost consequences of a failure in gas markets, resulting in a major suppression of demand for gas, coupled with mandated monthly increases in the wellhead ceiling prices for gas. This market failure had its origins in events that preceded the Commission's open access initiatives in Order No. 436 and persisted for a number of years thereafter.[112] A number of factors contributed to the extraordinary circumstance in which pipelines were continuing to incur huge contractual liabilities that could not be, and were not being, recovered in rates. As discussed below, Order No. 380 contributed significantly to the problem by prohibiting the pipelines from including commodity costs in their minimum bills. Order No. 436 exacerbated that problem, particularly by giving customers the ability to convert from sales to transportation service without either providing an appropriate transition cost recovery mechanism so that departing parties would bear some responsibility for the cost consequences associated with their departure or relieving the pipelines of their service obligation. They were still obligated to provide service to their customers when called upon but they could not depend upon those customers to purchase gas on an ongoing basis.[113] However, the inability of pipelines to recover their huge take-or-pay liabilities was, at bottom, the direct result of extraordinary market failures overhanging the pipeline-customer sales relationship that had traditionally provided the means by which pipelines recovered their prudently incurred costs.

In the face of these extraordinary market conditions, the Commission adopted extraordinary measures. As discussed below, in Order Nos. 500/528 the Commission created a mechanism to facilitate settlement of the take-or-pay liabilities, to free gas markets of the burdens of a problem that experience demonstrated would not be resolved through traditional cost recovery mechanisms, *with or without* open access transportation requirements. In that context, (and given the Court's decision in *AGD* requiring the Commission to address the take-or-pay problem as a condition to maintaining open access transportation) the Commission's overriding concern was to restore order to the markets promptly by encouraging settlements that could move the industry past economic stalemate. Of necessity, the Commission's objectives could only be achieved by foregoing efforts to assign costs and "responsibility" among the various industry participants through conventional means.

In those circumstances, and to facilitate settlement, the Commission found that because no one segment of the industry could be held accountable for the complex circumstance leading to the take-or pay problem, it required all industry participants, including pipelines, to participate in the solution. In exchange for a pipeline's agreement to absorb some part of its take-or-pay costs, the pipeline was granted a rebuttable presumption that its costs were prudently incurred, significantly reducing its risk that a further portion of its costs would be disallowed as not prudently incurred.

In stark contrast to the circumstances surrounding Order Nos. 500/528, Order No. 636 was not issued in the context of market conditions that precluded pipelines from a meaningful opportunity to seek recovery of prudently incurred costs. While at the time of Order No. 636 there were, of course, individual contracts that were priced higher than the prevailing market prices for gas, this "market circumstance" did not render pipeline gas supply costs unrecoverable. To the contrary, pipelines had the ability to seek recovery of costs incurred under those contracts, so long as their sales customers continued to purchase gas from them.

However, Order No. 636 effected significant regulatory changes, largely to the benefit of users of the transportation system and purchasers of gas, that directly resulted in the inability of pipelines to recover their gas supply costs from their sales customers (who were allowed to convert to transportation customers by Order No. 636).

After carefully reviewing the Court's concerns in *UDC* and the circumstances surrounding the cost recovery issues in both Order Nos. 500/528 and Order No. 636, the Commission believes that it must reaffirm its conclusion in Order No. 636 that pipelines should be permitted an opportunity to recover 100 per cent of prudently incurred GSR costs. As described below, the Commission finds that the extraordinary market circumstances that gave rise to the requirement for pipeline absorption of gas supply costs in Order Nos. 500/528 were not present at the time of Order No. 636. In the absence of the special circumstances that gave rise to the justification for pipeline absorption as required in Order Nos. 500/528, and in light of the fact that the regulatory changes in Order No. 636 directly led to the incurrence of GSR costs, the Commission reaffirms its conclusion in Order No. 636 that pipelines should be permitted an opportunity to recover 100 percent of costs that are determined to be eligible gas supply realignment costs and are prudently incurred.[114]

B. Scope of Commission's Decision

The Commission's disposition of this matter on remand does not affect the resolution of GSR costs for most pipelines. Since Order No. 636, the Commission has approved settlements between most pipelines and their customers resolving all issues concerning those pipelines' recovery of their GSR costs. In addition, in two GSR proceedings, no party sought rehearing of the Commission's acceptance of the pipeline's GSR recovery proposal.[115] None of the GSR settlements contains a provision permitting the settlement to be reopened as to the absorption issue.[116] Therefore, the Court's remand of the GSR cost absorption issue does not affect the settled GSR proceedings. Regardless of the Commission's decision on remand concerning absorption of GSR costs, the GSR settlements and the final and non-appealable orders will remain binding on the subject pipelines and their customers.[117] To the extent that pipelines have voluntarily elected to enter into settlements that require absorption of some portion of the GRS costs to avoid protracted litigation of eligibility and prudence challenges, we do not disturb that result.

However, there has as yet been no settlement of the proceedings initiated by Tennessee to recover its GSR costs.[118] There has also been no settlement of a recent filing by NorAm Gas Transmission Company (NorAm) and two recent filings by ANR Pipeline Company (ANR) to recover their GSR costs.[119] Also, while the Commission has approved a settlement concerning Southern Natural Gas Company's (Southern) recovery of GSR costs, several of Southern's customers were severed from that settlement.[120] In addition, the settlement approved by the

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[106] Customers of Tennessee's downstream pipelines include East Tennessee Customer Group and Tennessee Valley, the petitioners on this issue in *UDC*.

[107] East Tennessee used a volumetric maximum of 4,046 Dth/d; Midwestern Gas Co. used 5,233 Dth/d; and Alabama-Tennessee Natural Gas Co. used 2,564 Dth/d. East Tennessee Natural Gas Co., 63 FERC ¶ 61,102 (1993); Midwestern Gas Transmission Co., 63 FERC ¶ 61,099 (1993); and Alabama-Tennessee Natural Gas Co., 63 FERC ¶ 61,054 (1993).

[108] Tennessee Gas Pipeline Co., 65 FERC ¶ 61,224 at 62,064 (1993), *appeal pending sub nom.* East Tennessee Group v. FERC, (D.C. Cir. No. 93–1837 filed Aug. 20, 1993).

[109] 88 F.3d at 1188.

[110] *Id.* at 1190.

[111] *Id.* at 1188 (emphasis in original).

[112] Regulation of Natural Gas Pipelines after Partial Wellhead Decontrol, Order No. 500–H, [Regs. Preambles 1986–1990] FERC Stats. & Regs. ¶ 30,867 at 31,509–14 (1989), *aff'd in relevant part*, American Gas Ass'n v. FERC, 912 F.2d 1496 (D.C. Cir. 1990).

[113] Associated Gas Distributors v. FERC, 824 F.2d 981 (D.C. Cir. 1987), *cert. denied*, 485 U.S. 1006 (1988).

[114] The Court gave several examples of reasons which might justify not requiring pipelines to absorb a share of their GSR costs. These were: (1) a finding that "unbundling under Order No. 636 benefits consumers so much more than it does the pipelines that the pipelines should bear few or no GSR costs," *UDC*, 88 F.3rd at 1189, (2) a finding that "the pipelines' contribution to the industry's transition has already been so disproportionately large vis-a-vis consumers that they are entitled to be excused from further responsibility, *Id.*, and (3) a finding that requiring the pipeline segment of the industry to absorb GSR costs would "raise substantial concerns about its financial health," *Id.* at 1189 n. 99. The pipeline industry is not in such precarious financial condition that absorption would threaten its financial viability. However, the Commission does not believe that the Court precluded the Commission from using the rationale discussed below in this order.

[115] Trunkline Gas Co., 72 FERC ¶ 61,265 (1995); Williston Basin Interstate Pipeline Co., 70 FERC ¶ 61,009 (1995).

[116] On November 25, 1996, the Missouri Public Service Commission (MoPSC) filed, in this rulemaking docket, a motion asserting that Williams' GSR settlement left open the issue whether Williams must absorb its GSR costs in excess of $50 million. On December 10, 1996, Williams filed an answer, arguing that its settlement provides for it to recover 100 percent of those costs, without regard to the outcome of appeals of Order No. 636. In a separate order in the dockets in which Williams is seeking recovery of GSR costs in excess of $50 million, the Commission has upheld Williams' interpretation of its settlement. Williams Natural Gas Co., 78 FERC ¶ 61,068 (1997).

[117] /Similarly, after the court's decision in Associated Gas Distribs. v. FERC, 893 F.2d 348 (D.C. Cir. 1989) (AGD II), that the Order No. 500 method of allocating fixed take-or-pay charges violated the filed rate doctrine, the Commission exempted from the Order No. 528 order on remand all pipelines whose recovery of take-or-pay costs had been resolved either by settlement or by final and non-appealable order. Order No. 528, 53 FERC ¶ 61,163 at 61,594 (1990).

[118] On January 28, 1997, the Administrative Law Judge in Tennessee's GSR proceedings (Docket Nos. RP93–151–000 *et al.*) required the participants to file a joint status report concerning their settlement negotiations by February 7, 1997. The status report indicated that almost all parties have agreed to a settlement in principle. On February 21, Tennessee reported to the ALJ that the parties expect to file a settlement by February 28, or shortly thereafter.

[119] /NorAm made its first filing to recover GSR costs on August 1, 1996, following the *UDC* decision. The Commission accepted and suspended the filing, subject to this order on remand. NorAm Gas Transmission Co., 76 FERC ¶ 61,221 (1996). The Commission has approved settlements of ANR's first three GSR proceedings. ANR Pipeline Co., 72 FERC ¶ 61,130 (1995); 74 FERC ¶ 61,267 (1996). However, those settlements did not address ANR's recovery of any subsequent GSR costs. On October 31, 1996, ANR filed to recover additional GSR costs in Docket No. RP97–47–000. ANR Pipeline Co., 77 FERC ¶ 61,130 (1996). That proceeding has not yet been settled. In addition, on January 31, 1997, ANR made another GSR filing in Docket No. RP97–246–000.

[120] /Southern Natural Gas Co., 72 FERC ¶ 61,322 at 62,329–30, 62,355–6 (1995), *reh'g denied*, 75 FERC ¶ 61,046 (1996).

Commission concerning the recovery of GSR costs by Panhandle Eastern Pipe Line Company (Panhandle) does not resolve how it will recover any GSR costs which it may file in the future.[121] Therefore, since the recovery of GSR costs does remain an issue in some cases, the Commission must address the issue remanded by the Court. The following describes in greater detail the basis for the Commission's decision to reaffirm it's decision in Order No. 636 with respect to recovery of GSR costs.

C. The Regulatory Framework

The Commission's task in both Order Nos. 500/528 and Order No. 636 was to determine a method for pipelines to recover their prudently incurred costs arising from the non-market responsive take-or-pay contracts entered into during the late 1970s and early 1980s. Take-or-pay costs are part of a pipeline's expenses. As the Court of Appeals held in *Mississippi Power Fuel Corp.* v. *FPC*,[122] pipelines must be allowed an opportunity to recover their prudently incurred expenses:

> Expenses * * * are facts. They are to be ascertained, not created, by the regulatory authorities. If properly incurred, they must be allowed as part of the composition of rates. Otherwise, the so-called allowance of a return upon investment, being an amount over and above expenses, would be a farce.

The Court of Appeals has recently reiterated that holding, and emphasized the Supreme Court's longstanding admonition that regulatory agencies must recognize prudently incurred expenses in establishing just and reasonable rates:

> More than a half century ago, the Supreme Court admonished regulatory agencies to "give heed to all legitimate expenses that will be charges upon income during the term of regulation."
>
> *Mountain States Telephone & Telegraph Co.* v. *FCC*, 939 F.2d 1021, 1029 (D.C. Cir. 1991) (*citing West Ohio Gas Co.* v. *Public Utilities Comm'n of Ohio* 294 U.S. 63, 74 (1935)). Of course, recovery may be denied if particular costs (1) are not used and useful in performing the regulated service [123] or (2) have been imprudently incurred.

Consistent with the Supreme Court's admonishment that regulatory agencies recognize prudently incurred expenses, the Commission has a particular obligation not to ignore or disallow expenses incurred by pipelines as a result of the Commission's own regulatory actions. For that reason, as the Court of Appeals pointed out in *Public Utilities Comm'n of Cal.* v. *FERC*, 988 F.2d 154, 166 (1993), the Commission,

> With the backing of this court, has been at pains to permit pipelines to recover * * * [Order Nos. 500/528 take-or-pay costs] which have accumulated less through mismanagement or miscalculation by the pipelines than through an otherwise beneficial transition to competitive gas markets.

As more fully discussed below, the Order No. 636 GSR costs are the direct result of the transition to unbundled transportation service required by Order No. 636. In Order No. 636, the Commission prohibited pipelines from continuing their practice of bundling sales of natural gas with transportation rights and required pipelines making unbundled sales to do so through a separate arm of the company. Order No. 636 gave pipeline sales customers an immediate right to terminate gas purchases from the pipeline.[124] In light of the substantial improvement in the quality of stand-alone transportation service required by Order No. 636, almost all sales customers immediately terminated their sales service during restructuring, leading to the termination of the pipelines' merchant business. The Commission has developed standards for eligibility for GSR cost recovery designed to limit GSR costs solely to those costs caused by Order No. 636.[125] For that reason, the Commission has given pipelines an opportunity to recover the full amount of their GSR costs.

However, as discussed below, the massive take-or-pay settlement costs addressed by Order Nos. 500/528—unlike GSR costs—were not the direct result of the Commission's regulatory actions. Rather, they arose from market conditions beginning in the early 1980s which would have rendered a portion of the costs unrecoverable, regardless of the Commission's initiation of open access transportation in Order No. 436. In those unique circumstances, while the Commission created a special recovery mechanism to permit the pipelines to recover their take-or-pay settlement costs, the Commission also required pipelines using that mechanism to absorb a share of the costs.

D. The Treatment of Costs in Order Nos. 500/528

In order to understand the basis for the Commission's different treatment of Order No. 636 GSR costs and Order Nos. 500/528 take-or-pay costs, it is necessary first to review the circumstances which led to the Order Nos. 500/528 absorption requirement and the Commission's reasons for that requirement.

1. The Factual Context of Order Nos. 500/528

The industry's take-or-pay crisis developed before the Commission initiated open access transportation in Order No. 436. The Commission made this finding in Order No. 500–H.[126] The severe gas shortages of the 1970's led to enactment of the NGPA, which initiated a phased decontrol of most new gas prices and established ceiling prices for controlled gas, including incentive prices for price-controlled new gas higher than the ceiling prices previously established by the Commission under the NGA.[127] To avoid future shortages, pipelines then entered into long-term take-or-pay contracts at the high prices made possible by the NGPA, and those high prices stimulated producers to greatly increase exploration and drilling.[128] All participants in the natural gas industry expected both demand and prices to continue increasing indefinitely.

However, by 1982 demand was falling, due to a number of factors including unexpectedly strong competition from alternative fuels, the recession of the early 1980s, and warmer than normal weather. By 1983, demand for natural gas was 17 percent below its 1979 level. As a result, the supply of natural gas (*i.e.*, current deliverability from the nation's gas wells) exceeded demand for natural gas by 4 Tcf, or nearly 20 percent of total deliverability.[129] This deliverability surplus persisted for the remainder of the 1980s.

This unexpected change in market conditions caused pipelines, as early as 1982, to start incurring significant take-or-pay liabilities under the take-or-pay contracts entered into with the expectation of continued high demand. By year-end 1983, nearly two years before Order No. 436 issued, pipeline take-or-pay exposure was $5.15 billion.[130] However, despite the deliverability surplus, both wellhead gas prices and the gas costs reflected in the pipelines' rates continued to increase. Similarly, the average residential cost of gas continued to rise.[131] These price increases at a time of oversupply were primarily the result of the inflexible supply arrangements between producers, pipelines, LDCs, and consumers, under which most gas users could obtain gas only through purchases from the pipeline. The Commission's first major action to address those supply arrangements was the issuance of Order No. 380[132] on May 25, 1984, requiring pipelines to eliminate commodity costs from their minimum bills.

Take-or-pay exposure increased to $6.04 billion by year-end 1984.[133] By the end of 1985, just two months after Order No. 436 issued and before any pipeline had accepted a blanket certificate under Order No. 436, pipelines had outstanding take-or-pay liabilities of $9.34 billion.[134] In 1986, as pipelines were just beginning to implement open access transportation under Order No. 436, the pipelines' outstanding unresolved take-or-pay liabilities peaked at $10.7 billion.[135]

In short, although Order No. 436 exacerbated pipelines' existing take-or-pay problems by making it easier for the pipelines' traditional sales customers to purchase from alternative suppliers, Order No. 436 did not cause those problems. Rather, the pipelines' take-or-pay problems were caused by an excess of supply over demand in the natural gas market which arose in the early 1980s due to the convergence of a number of factors, many entirely unrelated to the Commission's exercise of its regulatory responsibilities. As a result, even before Order No. 436 issued, the natural gas industry already faced a massive problem in which pipelines were contractually bound to take or pay for high-priced gas which market conditions suppressed demand and prevented them from reselling at prices which would recover their costs. Simply put, at the time of Order No. 436, the market was requiring substantial cost absorption entirely apart from any regulatory action of the Commission.

The Commission and the industry had never previously faced a take-or-pay problem of this nature. In earlier times, pipelines had made take-or-pay payments to particular producers, and the Commission had a policy of permitting such payments to be included in rate base and then recovered as a gas cost when the pipeline later took the gas under make-up provisions in the contract.[136] By 1983, however, with their total take-or-pay exposure over $5 billion, the pipelines could not manage their take-or-pay problems, and stopped honoring the bulk of their take-or-pay liabilities.[137] They then sought settlements with the producers to reform or terminate the uneconomic take-or-pay contracts and to resolve outstanding take-or-pay liabilities.

Because pipelines had never previously incurred significant take-or-pay settlement costs, the Commission had no policy concerning whether and how pipelines were to recover those costs. The Commission commenced establishing such a policy in an April 1985 policy statement,[138] just six months before Order No. 436. When Order No. 500 issued in August 1987, few take-or-pay settlement costs had yet been included in pipelines' rates. However, since the pipelines' outstanding take-or-pay liabilities were in the neighborhood of $10 billion, it was clear that pipelines would incur massive costs in their settlements with producers.

2. The Policies of Order Nos. 500/528

When the Commission first addressed the issue of how pipelines should recover their take-or-pay settlement costs in Order No. 500, it did so under the shadow of the pipelines' vast outstanding take-or-pay exposure. As a result, the fundamental premise of Order No. 500 was, as the Court expressed it in *KN Energy* v. *FERC*, that "the extraordinary nature of this problem requires the aid of the entire industry to solve it."[139] In order to accomplish this result, Order No. 500 established an equitable sharing mechanism for pipelines to use in recovering their take-or-pay settlement costs, as an alternative to recovery through their commodity sales rates.[140] Relying on "cost spreading" and "value of service" principles, the Commission permitted pipelines using the equitable sharing mechanism to allocate their take-or-pay settlement costs among all their customers. The Commission also required the pipelines to absorb a portion of their costs.[141]

The Court was of the view that Order Nos. 500/528 based the absorption requirement on the "cost spreading" and "value of service" principles.[142] However, Order No. 528–A,[143] where the Commission gave its fullest justification for that absorption requirement, did not rely on either of those principles to support the absorption requirement. [144] Rather,

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[121] /Panhandle Eastern Pipe Line Co., 72 FERC ¶61,108 (1995).

[122] 163 F.2d 433, 437 (D.C. Cir. 1947).

[123] *Tennessee Gas Pipeline Co.* v. *FERC*, 606 F.2d 1094, 1109 (D.C. Cir. 1979), *cert denied*, 445 U.S. 920, *cert. denied*, 447 U.S. 922 (1980) ("current ratepayers should bear only legitimate costs of providing service to them").

[124] The Commission's only requirement for pipelines to continue to offer to sell gas at cost-based rates was a requirement that they offer small customers such sales service for a one-year transition period. Order No. 636–A, [Regs. Preambles Jan. 1991–June 1992] FERC Stats. & Regs. at 30,615.

[125] See Texas Eastern Transmission Co., 65 FERC ¶61,363 (1993).

[126] Regulation of Natural Gas Pipelines after Partial Wellhead Decontrol, Order No. 500–H, [Regs. Preambles 1986–1990] FERC Stats. & Regs. ¶30,867 (1989), aff'd in relevant part, *American Gas Ass'n* v. *FERC*, 912 F.2d 1496 (D.C. Cir. 1990).

[127] *Id.* at 31,509.

[128] *Id.* at 31,509–10.

[129] As the Commission found in Order No. 500–H:

> By 1982, demand for gas was falling. High natural gas prices, combined with decreasing oil prices, led to increased fuel switching, particularly as customers who did not already have the necessary equipment to burn alternative fuels installed it. The recession of the early 1980's and warmer than normal weather further decreased demand. These factors combined to create an excess of the supply of natural gas (*i.e.*, current deliverability from the nation's gas wells) over the demand for natural gas. The deliverability surplus persisted for the remainder of the 1980's. In 1982 the deliverability surplus was about 1.5 Tcf, or 8.3 percent of total deliverability. By 1983, with the demand for natural gas 17 percent below its 1979 level, the deliverability surplus was about 4 Tcf, or nearly 20 percent of total deliverability.

Id. at 31,510.

[130] *Id.*

[131] The residential cost of gas rose from $5.17 in 1982 to $6.12 in 1984. *Id.*

[132] Elimination of Variable Costs from Certain Natural Gas Pipeline Minimum Bill Provisions, Order No. 380, [Regs. Preambles 1982–1985] FERC Stats. Regs. ¶30,571 (1984).

[133] *Id.*

[134] *Id.* at 31,513.

[135] *Id.*

[136] Regulatory Treatment of Payments Made in Lieu of Take-or-Pay Obligations, Regulations Preambles 1982–85 ¶30,637 at 31,301 (1985).

[137] In Order No. 500–H, the Commission found that, although pipelines incurred total take-or-pay exposure over the period January 1, 1983 through June 30, 1987 of over $24 billion, they only made take-or-pay payments totalling $.7 billion. Order No. 500–H, Regulations Preambles 1986–1990 ¶30,867 at 31,514.

[138] Regulatory Treatment of Payments Made in Lieu of Take-or-Pay Obligations, [Regs. Preambles 1982–85] Stats & Regs. ¶30,637 (1985).

[139] 968 F.2d 1295, 1301 (D.C. Cir. 1992).

[140] Order No. 500 also increased the pipelines' bargaining power to negotiate settlements with producers through the take-or-pay crediting program.

[141] The Court in *KN Energy* upheld the Commission's use of cost spreading in connection with the allocation of take-or-pay costs among a pipeline's open access customers. However, the Court never reviewed the Order Nos. 500/528 requirement that pipelines absorb a share of the take-or-pay costs. AGA v. FERC, 888 F.2d 136, 152 (D.C. Cir. 1989), holding the absorption requirement not ripe for review. *Accord*: AGA v. FERC, 912 F.2d 1496 (D.C. Cir. 1990).

[142] *UDC*, 88 F.3d at 1188.

[143] Order No. 528–A, 54 FERC ¶61,095 (1991).

[144] The Commission's use of cost spreading and value of service principles to allocate take-or-pay costs among all the pipeline's open access customers was, as the Court suggested in *KN Energy*, 968 F.2d at 1302, "only a minor departure" from the traditional ratemaking principle that costs should be allocated among customers based on cost causation. Ordinarily, the cost causation principle is used to assign the pipeline's cost-of-service among customers. Its underlying premise is that each customer should be responsible for the costs its service causes the pipeline to incur. A necessary corollary is that the pipeline may, if the market permits, recover 100 percent of the costs it prudently incurs to serve its customers. Otherwise, the customers would not be responsible for all the

Order Nos. 500/528 consistently recognized the Commission's traditional obligation to "provide a pipeline a reasonable opportunity to recover its prudently incurred costs." [145] However, Order No. 528–A reasoned that, because the take-or-pay problem was caused more by general market conditions than by any regulatory action of the Commission and the underlying take-or-pay contracts were no longer used and useful, it was appropriate to require the pipelines to share in the losses arising from those market conditions.[146]

E. The Treatment of Costs in Order No. 636

The nature of the take-or-pay problem had changed dramatically by the time of Order No. 636. That difference in circumstances accounts for the different policies applied by the Commission in Order No. 636.

1. The Factual Context of Order No. 636

By 1992, when Order No. 636 issued, the world had changed, and the unique circumstances out of which the Order Nos. 500/528 absorption requirement arose no longer existed. Pipelines were no longer incurring substantial costs in connection with their take-or-pay contracts which they were unable to recover in sales rates, as they had been when Order No. 436 issued. While some of the uneconomic take-or-pay contracts of the late '70s and early '80s remained in effect and some pipelines were still working to resolve some past take-or-pay liabilities, there was no longer an industry-wide take-or-pay problem.[147]

In contrast to the situation when Order No. 436 issued, at the time of Order No. 636 most pipelines were no longer incurring new take-or-pay liabilities, even under their few remaining old, unresolved contracts.[148] Following Order No. 500, pipelines made a massive effort to reform their supply contracts by negotiating with producers settlements of thousands of take-or-pay contracts which either eliminated the uneconomic take-or-pay provisions or terminated the contracts altogether.[149] By the time Order No. 636 issued, pipelines had succeeded in reforming nearly all their supply contracts at a total cost, in settlement payments to producers, of nearly $10 billion.[150] For example, at the hearing in Docket No. RP92–134–000 concerning Southern's Mississippi Canyon construction costs, Southern provided testimony that by 1987 it had succeeded in renegotiating its supply arrangements such that it was no longer incurring additional take-or-pay liabilities.[151]

Another reason that pipelines were not incurring new take-or-pay liabilities when Order No. 636 issued is that, after Order No. 436, unlike after Order No. 636, pipelines continued to perform a significant sales service. This was at least in part because, as the Commission found in Order No. 636, open access transportation service under Order No. 436 was not comparable to the transportation component of bundled sales service. As a result, through such strategies as purchasing gas in the summer, storing it in their storage fields, and then reselling it during periods of peak demand and prices in the winter, at the time of Order No. 636 the pipelines could meet most of their minimum take requirements even in their remaining high-priced contracts. Many pipelines expected to continue providing such a sales service indefinitely into the future. For example, on the day before the June 30, 1991 issuance of the Notice of Proposed Rulemaking which led to Order No. 636, Southern and some of its sales customers filed a comprehensive settlement that would have assured a continued sales service by Southern.[152] Similarly, on March 10, 1992, less than a month before issuance of Order No. 636, ANR filed a settlement under which it would have continued a bundled sales service.[153]

Order No. 636 upset this relatively stable situation and created a new jeopardy for the recovery of pipeline gas supply costs. Order No. 636 prohibited pipelines from continuing their bundled sales service and resulted in the termination of the pipelines' merchant business. While Order No. 436 had only required pipelines to permit their customers to convert from sales to transportation service over a phased five-year schedule,[154] Order No. 636 gave pipeline sales customers an immediate right to terminate their entire sales service. Order No. 636 also required pipelines to substantially improve the quality of their stand-alone transportation service. As a result, the pipelines' remaining sales customers switched to transportation-only service, with almost all of them immediately terminating their sales service during restructuring.

Order No. 636 also made it more difficult for pipelines to manage their take-or-pay contracts in several other ways. Unlike Order No. 436, Order No. 636 required pipelines to give up most of their storage capacity so that they were less able to pursue such strategies as storing gas purchased in the summer, when sales were too low to meet minimum purchase obligations, for subsequent resale in the winter, when sales levels were higher. In addition, before Order No. 636, many of the pipelines that had the take-or-pay contracts with producers had downstream pipeline customers who were continuing to purchase some gas. However, Order No. 636 required the downstream pipelines also to unbundle, resulting in the loss of the downstream pipelines as sales customers.

The pattern of pipeline filings with the Commission to recover take-or-pay related costs is consistent with the conclusion that Order No. 636 reopened a take-or-pay problem that had been largely resolved. As shown in Table 1 of Appendix B to this order, since Order No. 436, pipelines have filed to recover a total of approximately $12.1 billion in take-or-pay related costs, including about $10.4 billion filed pursuant to Order Nos. 500/528 and $1.7 billion filed as Order No. 636 GSR costs. Fully 81.7 percent of the total $12.1 billion amount was filed, pursuant to Order

costs their service causes the pipeline to incur. For this reason the cost causation principle is not used to assign costs to the pipeline. Order Nos. 500/528 used cost spreading and value of service principles simply to extend the chain of causation to assign costs to a broader group of customers. KN Energy, 968 F.2d at 1302.

[145] Order No. 500–H, [Regs. Preambles 1986–1990] FERC Stats. & Regs. at 31,575.

[146] Order No. 528A, 54 FERC at 61,303–5 (1991).

[147] In late 1989, the Commission found in Order No. 500–H that pipelines' settlements with producers "have substantially resolved the existing take-or-pay liabilities of most pipelines, and all the pipelines have made significant progress in resolving their problems." Order No. 500–H, [Regs. Preambles 1986–90] FERC Stats. & Regs. at 31,523. The Commission also terminated the take-or-pay crediting program effective December 31, 1990, on the ground that such a program no longer would be necessary. *Id.* at 31,529.

[148] Similarly, when the Commission initiated open access transmission in the electric industry in Order No. 888, most electric utilities were recovering their electric generating costs in the rates charged their customers. Therefore, the Commission concluded that it would not be reasonable to require electric utilities to bear losses that, unlike the Order Nos. 500/528 take-or-pay costs, arise as a direct result of Congress' and the Commission's change in regulatory regime through FPA section 211 and Order No. 888. *See* Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, III FERC Stats. & Regs. ¶ 30,——at 31,——(Order No. 888–A) (1997). The Commission's approach to Order No. 636 GSR costs is similar to its approach in Order No. 888 to stranded electric generation costs.

[149] *See Id.* at 31,522–3 and 31,536.

[150] *See* Appendix B, Table 1.

[151] Southern Natural Gas Co., 72 FERC ¶ 61,322 at 62,358 (1995).

[152] However, during Southern's Order No. 636 restructuring proceeding, all its sales customers decided to take transportation only service and Southern terminated its merchant function. *Id.* at 62,362–3.

[153] ANR Pipeline Co., 59 FERC ¶ 61,347, *reh'g*, 60 FERC ¶ 61,145 (1992).

[154] 18 CFR 284.11(d)(3).

Nos. 500/528, before Order No. 636 issued in April 1992. *See* Table 2.

Since Order No. 636, pipelines have continued to make some filings to recover take-or-pay related costs under Order Nos. 500/528. This is because the only costs eligible for recovery as Order No. 636 GSR costs are costs that are tied to the restructuring required by Order No. 636. However, as shown by Table 2, post-Order No. 636 filings to recover take-or-pay related costs pursuant to Order Nos. 500/528 represent only 4.2 percent of the total take-or-pay related costs filed with the Commission since Order No. 436. Table 3, showing costs filed for recovery under Order Nos. 500/528, by quarter, demonstrates graphically the dramatic decline in such costs before Order No. 636, and the relative insignificance of such costs thereafter.

That take-or-pay was no longer an industry-wide problem at the time of Order No. 636 is also suggested by the fact that just two pipelines—Southern and Tennessee—account for approximately 65 percent of all take-or-pay related costs filed with the Commission as Order No. 636 GSR costs.[155] Moreover, the sudden spike in GSR costs filed with the Commission in late 1993, continuing to an extent in 1994, as pipelines were just implementing their Order No. 636 restructuring is consistent with a conclusion that Order No. 636 reopened a take-or-pay problem that had been largely resolved. *See* Tables 4 and 5.

2. The Policies of Order No. 636

Based on the changing nature of the take-or-pay problem reviewed above, the Commission holds that the rationale supporting the Order Nos. 500/528 absorption requirement is not valid for the GSR costs caused by Order No. 636. The rationale used in Order Nos. 500/528 does not support a requirement that pipelines absorb a share of their Order No. 636 GSR costs. In the factual context faced by the Commission at the time of Order No. 636, the bedrock ratemaking principle, that pipelines must be given an opportunity to recover the full amount of their prudently incurred costs, required the Commission to establish a different mechanism for pipelines to recover their Order No. 636 GSR costs. This is particularly so, because these costs were caused by the Commission's regulatory actions.

When Order No. 636 issued, pipelines were generally taking gas under their remaining take-or-pay contracts and no longer accumulating significant additional take-or-pay obligations. Thus, those contracts could no longer reasonably be analogized to a failed gas supply project, the analogy used to support the Order Nos. 500/528 absorption requirement.[156] As a result, the Commission's section 5 action in Order No. 636 reopened a take-or-pay problem that had been largely resolved. The termination of the pipelines' merchant business as a result of Order No. 636 created a situation in which the pipelines simply lacked an ability to manage and sell the natural gas supply portfolio they had under contract. In these circumstances, where the Commission's own regulatory action in Order No. 636 rendered the pipelines' supply contracts no longer used and useful, the Commission believes that pipelines should be allowed full recovery of transition costs caused by Commission action.

Moreover, the Commission only permits 100 percent recovery of GSR costs arising in connection with supply contracts which were part of an overall gas supply portfolio that was commensurate with the pipeline's merchant obligation—in other words contracts which were used and useful when Order No. 636 issued. *See Texas Eastern Transmission Co.*, 65 FERC ¶ 61,363 (1993). Where the pipeline cannot show that its costs satisfy the eligibility standards developed in *Texas Eastern*, the costs are only eligible for Order Nos. 500/528 recovery and a portion must be absorbed. Indeed, since Order No. 636, pipelines have filed to recover, pursuant to Order Nos. 500/528, over $500 million in costs which they recognized were not caused by Order No. 636. Moreover, when parties have questioned whether claimed GSR costs meet the *Texas Eastern* standards, the Commission has required pipelines to demonstrate their eligibility at a hearing. Thus, through its GSR eligibility standards, the Commission ensures that the costs for which 100 percent recovery is permitted are in fact caused by the Commission's regulatory actions in Order No. 636.

Eligible GSR costs are similar to other stranded pipeline merchant costs which Order No. 636 rendered no longer used and useful and whose recovery the Court approved in *UDC*, 88 F.3d at 1178–80. Order No. 636 permitted pipelines to file under NGA section 4 to recover 100 percent of costs "incurred by pipelines in connection with their bundled sales services that cannot be directly allocated to customers of the unbundled services." [157] Those costs included costs incurred in connection with upstream pipeline capacity and storage capacity that a pipeline no longer needs because its sales service terminated due to restructuring. In the section 4 cases where recovery of these costs has been sought, the Commission has recognized that its action in Order No. 636 rendered the costs no longer used and useful, and the Commission has accordingly permitted the full amount of the eligible and prudently incurred costs to be amortized as part of the pipeline's cost-of-service, although not included in rate base.[158] In *UDC*, the Court approved this approach.[159] The GSR costs have become stranded in an identical manner, and therefore pipelines should be afforded the same opportunity for full recovery of their prudently incurred GSR costs.

Moreover, the fact that Order No. 636 led to the complete termination of most pipelines' merchant function, unlike the situation after Order No. 436, means that the Commission cannot now take the Order Nos. 500/528 approach of offering the pipelines the alternative of seeking 100 percent recovery through their sales commodity rates. Rather, the recovery mechanism provided by Order No. 636 is the only available mechanism for recovering GSR costs. Therefore, if the Commission did not permit pipelines to seek recovery of the full amount of their GSR costs through the mechanism provided by Order No. 636, the Commission would be denying recovery by regulatory decree, not simply allowing market forces to prevent full recovery.

As the Commission has previously found, Order No. 636 substantially benefits all gas consumers. It is for that reason that the Commission required that GSR costs be allocated among all the pipelines' customers. In an October 22, 1996 petition for further proceedings on remand, the Pennsylvania Office of Consumer Advocate (POCA) suggested that Order No. 636 also benefitted pipelines by (1) allowing them to terminate their relatively risky merchant functions, while (2) retaining the relatively stable transportation operations bolstered by the guarantee of substantial fixed cost recovery under SFV rates. POCA asserts that in return for these benefits pipelines should be required to absorb a portion of their transition costs. However, as discussed above, most pipelines were not incurring current financial losses in connection with their merchant functions at the time of Order No. 636.

[155] *See* Table 1.

[156] Order No. 528–A, 54 FERC at 61,304.

[157] Order No. 636, [Regs. Preambles Jan. 1991–June 1996] FERC Stats. & Regs. at 30,662.

[158] *See* Equitrans, Inc. 64 FERC ¶ 61,374 at 63,601 (1993).

[159] *UDC*, 88 F.3d at 1178–80.

Yet the termination of those merchant functions caused a number of pipelines to incur significant expenses, including the costs of shedding the gas supplies they had contracted for to serve their sales customers. Therefore, the Commission does not see the pipelines' termination of their merchant functions as a "benefit" justifying the Commission to require the pipelines to absorb a portion of the resulting expenses.[160] This is particularly so, in light of the Supreme Court's admonishment that regulatory agencies must recognize prudently incurred costs.[161] That is an obligation the Commission takes especially seriously when, as here, its own regulatory actions have caused the costs.[162]

The Commission also does not believe that the shift to an SFV rate design, for the recovery of the pipelines' transmission costs, is relevant to the issue of the pipelines' recovery of the costs of realigning their gas supplies which supported their merchant function. To the extent SFV alters the risks a pipeline faces in connection with its performance of transportation service, the appropriate place to make an adjustment is in the allowed return on equity embodied in the pipelines' transportation rates.[163]

In conclusion, the Commission has consistently applied traditional ratemaking principles to the issue of the pipelines' recovery of transition costs. However, the different factual contexts addressed by Order Nos. 500/528 and Order No. 636 led the Commission to approve different recovery mechanisms in those orders. Even before the Commission initiated open access transportation in Order No. 436, the market was preventing pipelines from recovering costs incurred under their take-or-pay contracts. The Order Nos. 500/528 absorption requirement reflected the preexisting effect of the market, which would have required absorption even without open access transportation under Order No. 436.

However, the Commission's regulatory actions in Order No. 636 have caused the pipelines to incur the GSR costs and rendered the underlying gas supply contracts no longer used and useful. In these circumstances, traditional ratemaking principles require the Commission to allow the pipelines an opportunity to recover the full amount of the expenses caused by its actions. And the Commission has been careful, through the eligibility standards developed in *Texas Eastern*, to limit Order No. 636 GSR recovery to the costs actually caused by the Commission's actions in Order No. 636. Accordingly, the Commission reaffirms Order No. 636's holding that pipelines may recover 100 percent of their GSR costs.

VII. Recovery of GSR Costs From IT Customers

In Order No. 636-A, the Commission required pipelines to allocate 10 percent of GSR costs to interruptible transportation customers. The Industrial End-Users challenged this decision on appeal and contended that unbundling confers no real benefit on that class of customers, who therefore should not be responsible for paying GSR costs. The Small Distributors and Municipalities took the opposite view and asserted that the Commission should have allocated more GSR costs to interruptible transportation customers. The Court agreed with the Commission that interruptible transportation customers benefitted from Order No. 636, through, *inter alia*, access to low cost transportation that is available through the capacity release mechanism.[164]

The Court faulted the Commission, however, for failing to explain why it selected the figure of "10%". The Court could not discern how the Commission got from allocating some GSR costs to allocating 10% of those costs to interruptible transportation customers, emphasizing that the law "requires more than simple guess-work," and remanded the issue to the Commission for further consideration.[165]

As discussed above, the Commission has approved settlements between most pipelines and their customers concerning those pipelines' recovery of their GSR costs. Therefore, the Court's remand of the interruptible allocation issue does not affect the settled GSR proceedings. However, the issue of how much GSR costs should be allocated to interruptible service remains open on several pipeline systems. As discussed above, there has been no settlement resolving the recovery of GSR costs by Tennessee and NorAm. Also, the settlements which the Commission has approved in the GSR proceedings of several other pipelines do not resolve the interruptible allocation issue as to all of those pipelines' GSR costs. The Commission has interpreted the settlement of Williams' recovery of GSR costs as leaving open the issue of what portion of Williams' GSR costs in excess of $50 million should be allocated to interruptible service.[166] The interruptible allocation issue is also unresolved to the extent it affects the GSR costs which Southern may recover from the customers which the Commission severed from the settlement of Southern's GSR proceedings. Finally, the issue is unresolved as to any GSR costs which ANR and Panhandle may seek to recover in the future.[167]

The Commission continues to believe that pipelines should allocate some portion of their GSR costs to interruptible service. The Court upheld the Commission's holding that interruptible transportation customers benefit from unbundling under Order No. 636.[168] As the Court stated,

> An active market for firm transportation would seem likely to drive down the cost of less desirable interruptible transportation, and while the additional use of firm transportation under Order No. 636 may crowd out some interruptible transportation, that results at least in part from customers converting from interruptible to firm service * * *. Further still, interruptible transportation customers do clearly benefit from Order No. 636 through access to low cost transportation that is available through the Commission's capacity release mechanism.[169]

These benefits received by interruptible customers clearly justify

[160] *See UDC*, 88 F.3d at 1189.

[161] West Ohio Gas Co. v. Public Utilities Comm'n of Ohio, 294 U.S. at 74. *Mountain States Telephone & Telegraph Co.* v. *FCC*, 939 F.2d at 1029.

[162] *Public Utilities Comm'n of Cal.* v. *FERC*, 988 F.2d 154, 166 (1993) (The Commission "with the backing of this court, has been at pains to permit pipelines to recover [take-or-pay costs] . . . which have accumulated . . . through an otherwise beneficial transition to competitive gas markets").

[163] In determining the returns on equity allowed in individual rate cases after the shift to SFV, the Commission has refused to make any special downward adjustments based on the pipeline's shift to SFV. However, that has been because the Commission has found that the equity markets have already taken the Commission's shift to SFV into account. Therefore, the DCF analysis used by the Commission to establish return on equity reflects the shift to SFV without the need for any special adjustment. See Transcontinental Gas Pipe Line Corp., 71 FERC ¶ 61,305 at 62,196 (1995); 75 FERC ¶ 61,039 at 61,125–6 (1996); 76 FERC ¶ 61,096 at 61,506 (1996).

[164] *UDC*, 88 F.3d at 1187.

[165] *Id.* at 1187–88.

[166] Williams Natural Gas Co., 75 FERC ¶ 61,022 at 61,071, *reh'g denied*, 76 FERC ¶ 61,092 (1996).

[167] The Commission has approved four settlements concerning Natural's recovery of GSR costs from various groups of customers. Natural Gas Pipeline Company of America, 67 FERC ¶ 61,174 (1994), and 68 FERC ¶ 61,388 (1994). Those settlements are generally binding on the parties notwithstanding the outcome of the judicial review of Order No. 636, with certain limited exceptions as to particular settlement provisions. Any party to Natural's GSR proceedings believing that those settlements permit a change in the allocation of costs to interruptible service as a result of the Court's remand of that issue may file in the relevant Natural GSR proceedings a statement explaining why it so interprets the settlements. Otherwise, the Commission will presume that the issue has been settled as to all of Natural's GSR costs.

[168] *UDC*, 88 F.3d at 1187.

[169] *Id.*

the allocation of at least some GSR costs to interruptible service.

However, on remand, the Commission has determined not to require that the percentage of GSR costs so allocated must be 10 percent for all pipelines. As the Court recognized, different pipelines perform different levels of interruptible service. Among the pipelines that potentially could be affected by a departure from the generic 10 percent allocation, interruptible transportation comprises a widely varying percentage of the pipelines' total throughput for the first nine months of 1996—from 2.87 percent (Panhandle) to 21.68 percent (ANR).[170] Given this fact, it is not appropriate to require all pipelines to allocate the same percentage of their GSR costs to interruptible service. If the same percentage of GSR costs were allocated to interruptible service no matter how much interruptible service a pipeline performs, interruptible customers on pipelines performing little interruptible service could bear a disproportionate share of the pipeline's GSR costs (absent discounts).

Therefore, the Commission will, instead, require each individual pipeline, whose GSR proceedings have not been resolved, to propose the percentage of its GSR costs its interruptible customers should bear in light of the circumstances on its system. Pipelines which have filed to recover GSR costs before the date of this order, and whose GSR recovery proceedings have not been resolved by settlement or final and non-appealable Commission order, must file such proposals in their individual GSR proceedings within 180 days of the date of this order. Interested parties will be given an opportunity to comment on each pipeline's proposal. If the pipeline's proposal is protested, the Commission will set the proposal for hearing in the GSR cost recovery proceeding in which the proposal is made. Those hearings will permit the interested parties to develop a record on which the Commission can base its ultimate decision in each case.

This approach will allow the Commission and the parties to develop an allocation of GSR costs to interruptible service that is tailored to the specific circumstances of the few pipelines where the issue is still alive. The Commission also expects that such hearings will provide the parties a forum to discuss settlement of this issue. The Commission encourages the parties to seek to settle this and all other outstanding issues related to GSR recovery.

The Commission Orders

(A) Order No. 636 is reaffirmed, in part, and reversed, in part, as discussed in the body of this order.

(B) Within 180 days of the issuance of this order, any pipeline with a right-of-first-refusal tariff provision containing a contract term cap longer than five years must revise its tariff consistent with the new cap adopted herein.

(C) Within 180 days of the issuance of this order, pipelines which have filed to recover GSR costs before the date of this order, and whose GSR recovery proceedings have not been resolved by settlement or final and non-appealable Commission order, must file, in their individual GSR proceedings, a proposed allocation of GSR costs to its interruptible customers as discussed in the body of this order.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5363 Filed 3–5–97; 8:45 am]

BILLING CODE 6717–01–P

[170] Interruptible transportation comprises less than ten percent of total throughput on Panhandle, NorAm (5.89 percent), and Tennessee (9.81 percent). Pipelines for which interruptible transportation comprises greater than 10 percent of total throughput are Williams (17.72 percent), Natural (13.11 percent), Southern (11.17 percent), and ANR. The weighted average percentage of interruptible transportation throughput among all pipelines that report such data is approximately 18 percent. The Commission has determined all of the above percentages based on the pipelines' reports, pursuant to FERC Form No. 11, of the total volumes they transported during the first nine months of 1996 and their interruptible volumes during the same period.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Sarafloxacin Hydrochloride

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Abbott Laboratories. The supplement provides for use of sarafloxacin hydrochloride solution for injection in 18-day embryonated broiler eggs for control of early chick mortality associated with *Escherichia coli* organisms susceptible to sarafloxacin.

EFFECTIVE DATE: March 6, 1997.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center For Veterinary Medicine (HFV–133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1644.

SUPPLEMENTARY INFORMATION: Abbott Laboratories, 1401 Sheridan Rd., North Chicago, IL 60064–4000, filed a supplement to NADA 141–018 that provides for use of sarafloxacin hydrochloride solution for injection (SaraFlox® Injection) in 18-day embryonated broiler eggs in addition to approved use in day-old broiler chickens for control of early chick mortality associated with *E. coli* organisms susceptible to sarafloxacin. The supplement is approved as of January 21, 1997, and the regulations are amended by revising 21 CFR 522.2095(d) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval qualifies for 3 years of marketing exclusivity beginning January 21, 1997, because this supplement contains substantial evidence of the effectiveness of the drug involved, studies of animal safety, or human food safety studies (other than bioequivalence or residue studies), required for approval and conducted or sponsored by the applicant. Marketing exclusivity applies only to use in 18-day embryonated broiler eggs.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner

EFFECTIVE DATE: The requirements and

Register). We will allow carriers to

of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 522.2095 is amended by revising paragraph (d) to read as follows:

§ 522.2095 Sarafloxacin solution for injection.

* * * * *

(d) *Conditions of use.* 18-day embryonated broiler eggs and day-old broiler chickens:

(1) *Amount*—(i) 18-day embryonated broiler eggs: 0.05 milligram sarafloxacin in 0.1 milliliter dose in single in ovo injection.

(ii) Day-old broiler chickens: 0.1 milligrams sarafloxacin per 0.2 milliliter dose in single subcutaneous injection in the neck.

(2) *Indications for use.* For control of early chick mortality associated with *Escherichia coli* organisms susceptible to sarafloxacin.

(3) *Limitations.* Dilute 1 milliliter with 99 milliliters of sterile water or physiologic saline for use. Use entire contents of diluted solution within 24 hours. No preslaughter drug withdrawal period is required when the product is used as directed. Use in a manner other than that indicated or with dosages in excess of that recommended may result in illegal drug residues in edible tissues. Do not use in laying hens producing eggs for human consumption. Do not use in eggs intended for human consumption. The effects of sarafloxacin on the reproductive function of treated fowl have not been determined. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: February 7, 1997.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 97–5452 Filed 3–5–97; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs; Gentamicin Topical Spray

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Med-Pharmex, Inc. The ANADA provides for use of gentamicin topical spray in dogs for the treatment of infected superficial lesions caused by bacteria susceptible to gentamicin.

EFFECTIVE DATE: March 6, 1997.

FOR FURTHER INFORMATION CONTACT: Elizabeth Reese, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1617.

SUPPLEMENTARY INFORMATION: Med-Pharmex, Inc., 2727 Thompson Creek Rd., Pomona, CA 91767–1861, filed ANADA 200–188, which provides for Gentaspray™ Topical Spray (each milliliter contains gentamicin sulfate equivalent to 0.57 milligram (mg) gentamicin, betamethasone valerate equivalent to 0.284 mg betamethasone) to be used topically for the treatment of infected superficial lesions in dogs caused by bacteria susceptible to gentamicin.

Approval of ANADA 200–188 for Med-Pharmex, Inc. 's, Gentaspray™ Topical Spray (gentamicin sulfate with betamethasone valerate) is as a generic copy of Schering Plough's NADA 132–338 Gentocin® Topical Spray (gentamicin sulfate with betamethasone valerate). The ANADA is approved as of January 29, 1997, and the regulations in 21 CFR 524.1044f(b) are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 524.1044f is amended by revising paragraph (b) to read as follows:

§ 524.1044f Gentamicin sulfate, betamethasone valerate topical spray.

* * * * *

(b) *Sponsor.* See Nos. 000061 and 051259 in § 510.600(c) of this chapter.

* * * * *

Dated: February 11, 1997.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 97–5453 Filed 3–5–97; 8:45 am]

BILLING CODE 4160–01–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 32 and 53

[CC Docket No. 96–150; FCC 96–490]

Accounting Safeguards Under the Telecommunications Act of 1996: Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; Correction.

SUMMARY: This document contains a correction to the effective date of the Final Rules, which were published Tuesday, January 21, 1997, (62 FR 2918). The rules related to accounting safeguards that are necessary to satisfy the requirements of Sections 260 and 271 through 276 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("1996 Act"). Specifically, this Order prescribed the way incumbent local exchange carriers, including the Bell Operating Companies ("BOCs"), must account for transactions with affiliates involving, and allocate costs incurred in the provision of, both regulated telecommunications services and nonregulated services, including telemessaging, interLATA telecommunications, information, manufacturing, electronic publishing, alarm monitoring and payphone services, to ensure compliance with the 1996 Act.

EFFECTIVE DATE: The requirements and regulations established in this Order with regard to Part 32 of our Rules 47 CFR Part 32, shall become effective upon approval by OMB of the new information collection requirements adopted herein, but no sooner than July 20, 1997 (six months after publication in the **Federal Register**). We will allow carriers to implement these rules at an earlier date and encourage them to do so. The remaining new and/or modified information collections established in this Order shall become effective upon approval by OMB of the new information collection requirements adopted herein, but no sooner than February 20,1 997. The Commission will publish a document at a later date establishing the effective dates of these rules.

FOR FURTHER INFORMATION CONTACT: Mark Ehrlich, Attorney/Advisor, Accounting and Audits Division, Common Carrier Bureau, (202) 418–0385.

SUPPLEMENTARY INFORMATION:

Background

The Accounting Safeguards Under the Telecommunications Act of 1996 *Report and Order* established accounting safeguards that are necessary to satisfy the requirements of the 1996 Act, including the way incumbent local exchange carriers, including the Bell Operating Companies ("BOCs"), must account for transactions with affiliates involving, and allocate costs incurred in the provision of, both regulated telecommunications services and nonregulated services, including telemessaging, inteLATA telecommunications, information, manufacturing, electronic publishing, alarm monitoring and payphone services.

Need for Correction

Under section 220(g) of the Act, the Commission must allow six months notice before alterations in the required manner or form of keeping accounts are to take effect.

Correction of Publication

Accordingly, the publication on January 21, 1997 is corrected as follows:

1. The effective date paragraph on page 2918, in the third column, should read: The requirements and regulations established in this Order with regard to Part 32 of our Rules, 47 CFR Part 32, shall become effective upon approval by OMB of the new information collection requirements adopted herein, but no sooner than July 20, 1997 (six months after publication in the Federal Register). We will allow carriers to implement these rules at an earlier date and encourage them to do so. The remaining new and/or modified information collections established in this Order shall become effective upon approval by OMB of the new information collection requirements adopted herein, but no sooner than February 20, 1997.

2. The second indented paragraph 2925, in the second column, should read:

It is further ordered that, pursuant to section 220(g) of the Communications Act of 1934, as amended, 47 U.S.C. § 220(g) and section 1.427(c) of the Commission's Rules, 47 CFR § 1.427(c), the requirements and regulations established in this Order with regard to Part 32 of the Commission's Rules, 47 CFR Part 32, shall be effective six months after publication in the **Federal Register**. The remaining requirements and regulations established in this Order shall become effective upon approval by OMB of the new information collection requirements adopted herein, but no sooner than February 20, 1997.

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 97–5496 Filed 3–5–97; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 53

[CC Docket No. 96–149; FCC 96–489]

Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended; Final rule; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; Correction.

SUMMARY: This documents contains corrections to the final regulations which were published Tuesday, January 21, 1997 (62 FR 2927). The regulations related to special provisions relating to Bell Operating Companies.

EFFECTIVE DATE: March 6, 1997.

FOR FURTHER INFORMATION CONTACT: Joe Di Scipio (202) 418–1580.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections affect Bell Operating Companies.

Need for correction

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification. Accordingly, the publication on January 21, 1997 of the final regulations (FCC 97–52) is corrected as follows:

1. On page 2939, in the second column, the first indented paragraph is replaced by the following:

We note that, under *Computer II* and *Computer III*, we have treated three categories of protocol processing services as basic services, rather than enhanced services. These categories include protocol processing: (1) involving communications between an end user and the network itself (*e.g.*, for initiation, routing, and termination of calls) rather than between or among users; (2) in connection with the introduction of a new basic network technology (which requires protocol conversion to maintain compatibility with existing CPE); and (3) involving internetworking (conversions taking place solely within the carrier's network to facilitate provision of a basic network service, that result in no net conversion to the end user). We agree with PacTel that analogous treatment should be extended to these categories of protocol processing services under the statutory regime. Because the listed protocol processing services are information service capabilities used "for the management, control, or operation of a telecommunications system or the management of a telecommunications service," they are excepted from the statutory definition of information service. These excepted protocol conversion services constitute telecommunications services, rather than information services, under the 1996 Act.

2. On page 2940, column 3, the first indented paragraph is replaced by the following:

Remote Databases/Network Efficiency. BOCs may not provide interLATA services in their own regions, either over their own facilities or through resale, before receiving authorization from the Commission under section 271(d). Therefore, we conclude that BOCs may not provide interLATA information services, except for those designated as incidental interLATA services under section 271(g), in any of their in-region states prior to obtaining section 271 authorization. Section 271(g)(4) designates as an incidental interLATA service the interLATA provision by a BOC or its affiliate of "a service that permits a customer that is located in one

LATA to retrieve stored information from, or file information for storage in, information storage facilities of such company that are located in another LATA." Because BOCs were able to provide incidental interLATA services immediately upon enactment of the 1996 Act, they may provide interLATA information services that fall within the scope of section 271(g)(4) without receiving section 271(d) authorization from the Commission. Since section 271(g)(4) services are not among the incidental interLATA services exempted from section 272 separate affiliate requirements, however, they must be provided in compliance with those requirements. To the extent that parties have argued in the record that centralized data storage and retrieval services that fall within section 271(g)(4) either are not interLATA information services, or are not subject to the section 272 separate affiliate requirements, we specifically reject these arguments.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–5498 Filed 3–5–97; 8:45 am]

BILLING CODE 6712–01–P

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47 CFR Part 73

[MM Docket No. 96–43; RM–8754, RM–8830]

Radio Broadcasting Services; Frederiksted and Charlotte Amalie, VI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Jose J. Arzuaga, allots Channel 269B1 at Frederiksted, Virgin Islands, as the community's third local FM transmission service (RM–8754). *See* 61 FR 10978, March 18, 1996. We also, at the request of Calypso Communications, substitute Channel 297B1 for Channel 246B at Charlotte Amalie, Virgin Islands, and modify Station WVNX(FM)'s construction permit accordingly (RM–8830). Channel 269B1 can be allotted at Frederiksted in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 269B1 at Frederiksted are North Latitude 17–42–48 and West Longitude 64–53–00. Additionally, Channel 297B1 can be allotted at Charlotte Amalie in compliance with the Commission's minimum distance separation requirements with a site restriction of 20.8 kilometers (12.9 miles) east at Station WVNX(FM)'s presently authorized site. The coordinates for Channel 297B1 at Charlotte Amalie are North Latitude 18–20–30 and West Longitude 64–43–59. With this action, this proceeding is terminated.

DATES: Effective April 14, 1997. The window period for filing applications for Channel 269B1 at Frederiksted, Virgin Islands, will open on April 14, 1997, and close on May 15, 1997.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 96–43, adopted February 21, 1997, and released February 28, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

47 CFR PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Sections 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Virgin Islands, is amended by adding Channel 269B1 at Frederiksted; and by removing Channel 246B and adding Channel 297B1 at Charlotte Amalie.

Federal Communications Commission

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–5497 Filed 3–5–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961126334–7025–02; I.D. 022897E]

Fisheries of the Exclusive Economic Zone Off Alaska, Pacific Cod in the Western Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the allocation of Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA.

EFFECTIVE DATES: 1200 hrs, Alaska local time (A.l.t.), March 3, 1997, until 2400 hrs, A.l.t., December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–486–6919.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The final specification of the allocation of Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA was established by the Final 1997 Harvest Specifications of Groundfish for the GOA (62 FR 8179, February 24, 1997) as 17,442 metric tons (mt), determined in accordance with § 679.20(a)(6)(iii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the ITAC for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 17,142 mt, and is setting aside the remaining 300 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 679.20 (e) and (f).

Classification

This action is required by 50 CFR 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 3, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–5541 Filed 3–3–97; 3:10 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 62, No. 44

Thursday, March 6, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–18–AD]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace Corporation Model G–159 (G–I) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Gulfstream Model G–159 (G–I) airplanes, that currently requires repetitive inspections to detect corrosion in the wing planks under the bottom wing center fairings, and repair, if necessary. This action would require the installation of a protective paint system which, when accomplished, will allow the inspections to be conducted at longer intervals. This action was prompted by the development of a modification that will improve the corrosion resistance of the subject area. The actions specified by the proposed AD are intended to detect and prevent corrosion in the lower skins of the wing center section. If corrosion in this area remains unchecked, it could reduce the integrity of the wing-to-fuselage fitting, and consequently could lead to separation of the wing from the airplane.

DATES: Comments must be received by April 14, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–18–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Gulfstream Aerospace Corporation, Technical Operations Department, P.O. Box 2206, M/S D–10, Savannah, Georgia 31402–2206. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Christina Marsh, Aerospace Engineer, Airframe and Propulsion Branch, ACE–117A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7362; fax (404) 305–7348.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–18–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–18–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In 1967, the FAA issued AD 67–04–01, amendment 39–1234 (36 FR 12688, July 3, 1971), applicable to all Gulfstream Model G–159 (G–I) airplanes. That AD requires a visual inspection to detect corrosion of the wing planks under the bottom wing center fairing assemblies (having part numbers 159W10400–121 and 159W10401–121), and repair if necessary. After the initial inspection is accomplished, and after any repair is made, the inspection is required to be repeated at intervals of 26 weeks.

That action was prompted by reports indicating that corrosion was found in the lower skins of the wing center section of several of these airplanes. The requirements of that AD are intended to detect and correct corrosion in this area. If such corrosion remains unchecked, it could reduce the integrity of the wing-to-fuselage fitting, and consequently could lead to separation of the wing from the airplane.

Actions Since Issuance of Previous Rule

As part of its on-going program to address issues relevant to the continued operational safety of the aging transport fleet, the FAA, along with Gulfstream Aerospace Corporation and several U.S. and non-U.S. operators of the affected airplanes, agreed to undertake the task of identifying and implementing procedures to ensure the continuing structural airworthiness of aging commuter-class airplanes. This group recently reviewed selected service bulletins, applicable to Gulfstream Model G–159 airplanes, to be recommended for mandatory rulemaking action to ensure the continued operational safety of these airplanes.

Explanation of Relevant Service Information

The group reviewed and recommended Grumman Gulfstream I Aircraft Service Change No. 190, dated June 28, 1971, for mandatory regulatory action. That service change describes procedures for repetitive inspections to detect corrosion of the center section lower wing planks, and repair, if necessary. It also describes the

installation of a protective paint system to the fairing assemblies and bottom wing cover. This protective system is intended to improve the corrosion resistance of this area. Once it is installed, the repetitive inspections may be conducted at longer intervals.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 67–04–01. It would continue to require the repetitive visual inspections, specified in AD 67–04–01, to detect corrosion of the wing planks under the bottom wing center fairing assemblies, and repair, if necessary.

For airplanes on which a protective paint system had not been installed previously, this new action would require that the inspection continue to be repeated at intervals of 6 months (26 weeks), until a protective paint system is installed within 12 months. Once the paint system is installed, the repetitive inspections would be required to continue, but the repetitive interval would be extended to 18 months.

For airplanes on which a protective paint system was installed previously, this new action would extend the currently-required repetitive inspection interval of 12 months to 18 months.

These actions would be required to be accomplished in accordance with the aircraft service change described previously.

Cost Impact

There are approximately 146 Gulfstream Model G–159 airplanes of the affected design in the worldwide fleet. The FAA estimates that 72 airplanes of U.S. registry would be affected by this proposed AD.

The inspections that are currently required by AD 67–04–01, and those that would be required by this proposed action, take approximately 40 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed inspection actions on U.S. operators is estimated to be $172,800, or $2,400 per airplane, per inspection.

The installation of the protective paint system that is proposed in this AD action would take approximately 30 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required materials would cost approximately $100 per airplane. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $136,800, or $1,900 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–1234 (36 FR 12688, July 3, 1971), and by adding a new airworthiness directive (AD), to read as follows:

Gulfstream Aerospace Corporation: Docket 97–NM–18–AD. Supersedes AD 67–04–01, Amendment 39–1234.

Applicability: All Model G–159 (G–I) airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and prevent corrosion in the lower skins of the wing center section, which could reduce the integrity of the wing-to-fuselage fitting and consequently could lead to separation of the wing from the airplane, accomplish the following:

(a) For all airplanes: Within 4 weeks after July 3, 1971 (the effective date of AD 67–04–01, amendment 39–1234), remove the bottom wing center fairings having part numbers (P/N) 159W10400–121 and 159W10401–121, or use an FAA-approved equivalent method, to perform a visual inspection to detect corrosion of the wing planks under these fairings.

Note 2: Paragraph (a) of this AD merely restates the actions previously required by AD 67–04–01, amendment 39–1234. As allowed by the phrase, "unless accomplished previously," if those requirements of AD 67–04–01 have already been accomplished, this AD does not require that those actions be repeated.

Note 3: Care must be exercised when removing the fairings, since the attaching rivets go into the pressure vessel. Use caution not to enlarge rivet holes when removing rivets. When reinstalling the fairings, an adequate type fastener and sealant must be used.

Note 4: Grumman Service Newsletter, Volume 166, dated August–September 1966, pertains to this subject.

(b) For airplanes on which a protective paint system *has not been* installed in accordance with Grumman Gulfstream I Aircraft Service Change No. 190, dated June 28, 1971: Accomplish paragraphs (b)(1) and (b)(2) of this AD. As of the effective date of this AD, the inspections required by this paragraph shall be accomplished in accordance with Grumman Gulfstream I Aircraft Service Change No. 190, dated June 28, 1971.

Note 5: The repeated inspection referred to in this paragraph is the same inspection previously required by AD 67–04–01. Paragraph (b)(1) of this AD merely restates

the requirement of AD 67–04–01 to repeat the service change. After repair, continue to

postcard on which the following

detected and corrected, such wear could

airplanes, to be recommended for mandatory rulemaking action to ensure

Cost Impact

the requirement of AD 67–04–01 to repeat the inspection at intervals of 6 months. Paragraph (b)(2) permits the reinspection interval to be extended to 18 months once the specified protective paint system is installed.

(1) As a result of the inspection required by paragraph (a) of this AD:

(i) If no corrosion is detected, repeat the inspection thereafter at intervals not to exceed 6 months (26 weeks) until the actions specified in paragraph (b)(2) of this AD are accomplished.

(ii) If any corrosion is detected, prior to further flight, either repair the corroded part with an FAA-approved repair; or replace the corroded part with a new or serviceable part of the same part number; or replace the corroded part with a part approved by the FAA. Thereafter, continue to perform the inspection at intervals not to exceed 6 months (26 weeks) until paragraph (b)(2) of this AD is accomplished.

(2) Within 12 months after the effective date of this AD, install the protective paint system in accordance with Grumman Gulfstream I Aircraft Service Change No. 190, dated June 28, 1971. After installation, continue to perform the inspection required by this paragraph at intervals not to exceed 18 months.

(c) For airplanes on which a protective paint system *has been* installed previously in accordance with Grumman Gulfstream I Aircraft Service Change No. 190, dated June 28, 1971: Accomplish paragraphs (c)(1) and (c)(2) of this AD. As of the effective date of this AD, the inspections required by this paragraph shall be accomplished in accordance with Grumman Gulfstream I Aircraft Service Change No. 190, dated June 28, 1971.

Note 6: The repeated inspection referred to in this paragraph is the same inspection previously required by AD 67–04–01. Paragraph (c)(1) of this AD merely restates the requirement of AD 67–04–01 to repeat the inspection at intervals of 12 months. Paragraph (c)(2) permits the reinspection interval to be extended to 18 months.

(1) As a result of the inspection required by paragraph (a) of this AD:

(i) If no corrosion is detected, repeat the inspection thereafter at intervals not to exceed 12 months until paragraph (c)(2) of this AD is accomplished.

(ii) If any corrosion is detected, prior to further flight, either repair the corroded part with an FAA-approved repair; or replace the corroded part with a new or serviceable part of the same part number; or replace the corroded part with a part approved by the FAA. Thereafter, continue to perform the inspection at intervals not to exceed 12 months until paragraph (c)(2) of this AD is accomplished.

(2) Within 18 months since the last inspection accomplished in accordance with paragraph (c)(1) of this AD (i.e., the last inspection accomplished in accordance with AD 67–04–01), repeat the inspection specified in paragraph (c)(1) of this AD.

(i) If no corrosion is detected, repeat the inspection thereafter at intervals not to exceed 18 months.

(ii) If any corrosion is detected, prior to further flight, repair in accordance with the service change. After repair, continue to perform the inspection at intervals not to exceed 18 months.

(d)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 67–04–01, amendment 39–1234, are approved as alternative methods of compliance with this AD.

Note 7: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished. Issued in Renton, Washington, on February 27, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–5463 Filed 3–5–97; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 97–NM–19–AD]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace Corporation Model G–159 (G–I) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Gulfstream Model G–159 (G–I) airplanes, that currently requires repetitive inspections to detect chafe wear on the upper diagonal engine mount tube, and replacement or repair, if necessary. This action would require the installation of chafe guards at the engine mounts, which would terminate the currently required inspections. It also would require that the chafe guards then be repetitively inspected for chafe wear. This proposal is prompted by the development of a modification that will provide better protection of the subject area against future chafe wear. The actions specified by the proposed AD are intended to prevent excessive chafe wear in the area of the upper diagonal engine mount tubes and trusses; if not detected and corrected, such wear could result in failure of the engine mount assembly and possible separation of the engine from the airplane.

DATES: Comments must be received by April 14, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–19–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Gulfstream Aerospace Corporation, Technical Operations Department, P.O. Box 2206, M/S D–10, Savannah, Georgia 31402–2206. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Christina Marsh, Aerospace Engineer, Airframe and Propulsion Branch, ACE–117A, FAA Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7362; fax (404) 305–7348.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–19–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–19–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In 1967, the FAA issued AD 67–17–05, amendment 39–511 (32 FR 7248, May 16, 1967), applicable to certain Gulfstream Model G–159 airplanes, to require repetitive visual inspections to detect chafe wear on the upper diagonal engine mount tubes, part number (P/N) 159W10172–11 (left engine) and P/N 159W10172–13 (right engine). Depending upon the depth of wear found during any inspection, the AD requires that the tube(s) either be replaced or repaired, and the repetitive visual inspections continued thereafter at intervals of 200 hours time-in-service.

That AD also provides for optional terminating action for these visual inspections, which consists of installing a chafe guard (P/N 159WP10017–11) on each of the upper diagonal trusses. If an operator elects to install these chafe guards, the AD requires that the chafe guards be repetitively inspected to detect wear thereafter at intervals of 2,500 hours time-in-service.

That action was prompted by reports of excessive chafe wear found on the engine mount tubes on some airplanes. The chafe wear was determined to be caused by the tube coming into contact with the engine exhaust tail pipe blanket. The requirements of that AD are intended to detect and correct chafe wear of the engine mount tube; if such wear is left unchecked, it could result in the failure of the engine mount assembly and possible separation of the engine from the airplane.

Actions Since Issuance of Previous Rule

As part of its on-going program to address issues relevant to the continued operational safety of the aging transport fleet, the FAA, along with Gulfstream Aerospace Corporation and several U.S. and non-U.S. operators of the affected airplanes, agreed to undertake the task of identifying and implementing procedures to ensure the continuing structural airworthiness of aging commuter class airplanes. This group recently reviewed selected customer bulletins and aircraft service changes, applicable to Gulfstream Model G–159 airplanes, to be recommended for mandatory rulemaking action to ensure the continued operational safety of these airplanes.

Explanation of Relevant Service Information

The group reviewed and recommended Grumman Gulfstream I Aircraft Service Change No. 180, dated October 17, 1966, for mandatory regulatory action. That service change describes procedures for a one-time initial inspection to detect chafe wear of the upper diagonal trusses [P/N 159W10172–5 (left-hand nacelle) and P/N 159W10172–7 (right-hand nacelle), and replacement of worn parts, if necessary.

The service change also describes procedures for installing chafe guards [part number 159WP10017–11] after the inspection of the trusses is accomplished. The chafe guards are intended to provide better protection of the subject area against future chafe wear. Once these chafe guards are installed, the service change recommends that an inspection of the chafe guards be conducted thereafter at intervals of 2,500 hours time-in-service.

(The installation of the chafe guards and continuing inspections, as described in this service change, are the same actions that were provided as optional terminating action for the visual inspections of the engine mount tubes in AD 67–17–05.)

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 67–17–05. It would continue to require the repetitive visual inspections to detect chafe wear of the engine mount tube, and repair or replacement of the tube(s), if necessary. These inspections would be required to continue until (1) a one-time inspection is performed to detect chafe wear of the upper diagonal truss, and (2) chafe guards are installed. (Once the chafe guards are installed, the previously required visual inspections of the engine mount tubes would be terminated.) The proposed AD also would require that, after the chafe guards are installed, an inspection of the chafe guards be conducted at intervals of 2,500 hours time-in-service. These actions would be required to be accomplished in accordance with the aircraft service change described previously.

Cost Impact

There are approximately 146 Gulfstream Model G–159 airplanes of the affected design in the worldwide fleet. The FAA estimates that 72 airplanes of U.S. registry would be affected by this proposed AD.

The actions that are currently required by AD 67–17–05 take approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $17,280, or $240 per airplane, per inspection.

The installation of the chafe guards that is proposed in this AD action would take approximately 40 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $152 per airplane. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $183,744, or $2,552 per airplane.

The inspections of the chafe guards that are proposed in this AD action would take approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $17,280, or $240 per airplane, per inspection.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory

Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–511 (32 FR 7248, May 16, 1967), and by adding a new airworthiness directive (AD), to read as follows:

Gulfstream Aerospace Corporation (formerly Grumman): Docket 97–NM–19–AD. Supersedes AD 67–17–05, Amendment 39–511.

Applicability: All Model G–159 (G–I) airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent excessive chafe wear of the engine mount tube and upper diagonal truss, which could lead to failure of the engine mount assembly and possible separation of the engine from the airplane, accomplish the following:

(a) For airplanes on which chafe guards, P/N 159WP10017–11, *have not been* installed on each upper diagonal truss prior to the effective date of this AD: Accomplish paragraphs (a)(1), (a)(2), and (a)(3) of this AD:

(1) *Restatement of Requirements of AD 67–17–05:* Within 100 hours time-in-service after May 16, 1967 (the effective date of AD 67–17–05, amendment 39–411), visually inspect to detect chafe wear of the lower half of the upper diagonal engine mount tubes having part number (P/N) 159W10172–11 (left engine) and P/N 159W10172–13 (right engine).

(i) If no chafe wear is detected: Repeat this inspection thereafter at intervals not to exceed 200 hours time-in-service until the requirements of paragraph (a)(2) are accomplished.

(ii) If any tube is found to have wear depth greater than 0.030 inch (as measured from the outer edge of the tube): Prior to further flight, replace the tube with a tube of the same part number or with an FAA-approved equivalent part. After replacement, repeat the inspection required by this paragraph at intervals not to exceed 200 hours time-in-service until the requirements of paragraph (a)(2) are accomplished.

(iii) If any tube is found to have wear depth of 0.030 inch deep or less, as measured from the outer edge of the tube: Prior to further flight, either repair the tube in accordance with an FAA-approved repair, or replace the tube with a part of the same part number or with an FAA-approved equivalent part. After repair or replacement, repeat the inspection required by this paragraph at intervals not to exceed 200 hours time-in-service until the requirements of paragraph (a)(2) are accomplished.

(2) *One-Time Inspection of Upper Diagonal Truss and Installation of Chafe Guards.* Within 600 hours time-in-service after the effective date of this AD, perform a one-time visual inspection to detect chafe wear of the left-hand and right-hand upper diagonal truss, P/N's 159W10172–5 (left-hand nacelle) and P/N 159W10172–7 (right-hand nacelle), in accordance with Grumman Gulfstream Service Change No. 180, dated October 17, 1966. Once this inspection is completed, the repetitive inspections required by paragraph (a)(1) of this AD may be terminated.

(i) If there is no evidence of chafe wear on the truss; or if there is evidence of chafe wear and the depth of wear is .030 inch or less (measured from the surface of the tube): Prior to further flight, install a chafe guard, P/N 159WP10017–11, on the truss.

(ii) If there is any evidence of chafe wear and the depth of wear exceeds .030 inch measured (from the surface of the tube): Prior to further flight, install a new upper diagonal truss and install a chafe guard, P/N 159WP10017–11, on the truss.

(3) *Continuing Inspections of Chafe Guards.* Within 2,500 hours time-in-service after installation of the chafe guards required by paragraph (a)(2) of this AD, perform an inspection of the undersurface of each chafe guard for evidence of chafe wear, in accordance with Grumman Gulfstream Service Change No. 180, dated October 17, 1966.

(i) If no chafe wear is detected: Repeat the inspection at intervals not to exceed 2,500 hours time-in-service.

(ii) If any chafe wear is detected: Prior to further flight, replace the chafe guard with a new or serviceable part. After replacement, repeat the inspection for chafe wear of the chafe guard thereafter at intervals not to exceed 2,500 hours time-in-service.

(b) For airplanes on which chafe guards, P/N 159WP10017–11, have been installed on each upper diagonal truss prior to the effective date of this AD: Within 2,500 hours time-in-service after the last inspection of the chafe guard required by paragraph (c) of AD 67–17–05, repeat that inspection to detect chafe wear of the chafe guards in accordance with Grumman Gulfstream Service Change No. 180, dated October 17, 1966.

(1) If no chafe wear is detected: Repeat the inspection thereafter at intervals not to exceed 2,500 hours time-in-service.

(2) If any chafe wear is detected: Prior to further flight, replace the chafe guard with a new or serviceable part. After replacement, repeat the inspection thereafter at intervals not to exceed 2,500 hour time-in-service.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 27, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–5462 Filed 3–5–97; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 97–NM–16–AD]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace Corporation Model G–159 (G–I) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Gulfstream Model G–159 (G–I) airplanes, that currently requires modification and repetitive inspections for cracks in the main landing gear (MLG) retract cylinder attachment fittings. This action would require the installation of improved attachment fittings which, when accomplished, would terminate the requirement for the repetitive inspections. This proposal is prompted by the development of a modification that positively addresses the identified unsafe condition. The actions specified by the proposed AD are intended to prevent failure of the MLG retract cylinder attachment fitting due to fatigue cracking. That condition, if not corrected, could result in the inability to retract the MLG.

DATES: Comments must be received by April 14, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–16–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Gulfstream Aerospace Corporation, Technical Operations Department, P.O. Box 2206, M/S D–10, Savannah, Georgia 31402–2206. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Christina Marsh, Aerospace Engineer, Airframe and Propulsion Branch, ACE–117A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7362; fax (404) 305–7348.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–16–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–16–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In 1967, the FAA issued AD 67–31–08, amendment 39–515 (32 FR 16201, November 28, 1967), applicable to certain Gulfstream Model G–159 airplanes, to require repetitive visual and dye penetrant inspections for cracks in the main landing gear (MLG) retract cylinder attachment fittings, part number (P/N) 159WM10032–1 and –2, located on the lower surface of the left-hand and right-hand wings; and replacement of cracked parts. It also requires that the fittings be modified by rounding off their aft end edges.

AD 67–31–08 also provided for an optional terminating action, which consisted of replacing the MLG retract cylinder attachment fittings with improved fittings, having Grumman P/N 159WM10276–1 and –2, and balls having Grumman P/N 159WM10277–1.

That action was prompted by a report indicating that, during a routine inspection, the MLG retract cylinder attachment fitting on one airplane was found to be cracked through the aft end. Examination of the fitting revealed several notches located along one edge in the area where the failure had occurred. This cracking in the fitting was determined to be due to fatigue that could be directly attributed to these notches.

The requirements of that AD are intended to prevent failure of the MLG retract cylinder attachment fitting due to fatigue cracking. This condition, if not corrected, could result in the inability to retract the MLG.

Actions Since Issuance of Previous Rule

As part of its on-going program to address issues relevant to the continued operational safety of the aging transport fleet, the FAA, along with Gulfstream Aerospace Corporation and several U.S. and non-U.S. operators of the affected airplanes, agreed to undertake the task of identifying and implementing procedures to ensure the continuing structural airworthiness of aging commuter-class airplanes. This group reviewed selected customer bulletins and aircraft service changes, applicable to Gulfstream Model G–159 airplanes, to be recommended for mandatory rulemaking action to ensure the continued operational safety of these airplanes.

Explanation of Relevant Service Information

The group reviewed and recommended Grumman Gulfstream Service Change No. 184, dated February 1, 1968, and Amendment 1 to that Service Change, dated June 28, 1968, for mandatory rulemaking action. This service information describes procedures for removing MLG retract cylinder attachment fitting assemblies made of aluminum alloy and having P/N 159WM10032–1 and –2, and replacing them with fitting assemblies made of steel and having P/N 159WM10276–1 and –2 and balls having P/N 159WM10277–1. Installation of steel assemblies will preclude the potential for fatigue cracking to occur in the fittings.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 67–31–08. It would continue to require the repetitive inspections and modification of the MLG retract cylinder attachment fittings, and replacement, if necessary. This new action would require that the attachment fitting assemblies eventually be replaced with assemblies made of steel. Once this replacement is accomplished, the previously required modification and inspections may be terminated. The replacement action would be required to be accomplished in accordance with the service information described previously.

FAA's Determination for the Need to Mandate the Replacement

The FAA has determined that long term continued operational safety will be better assured by design changes to remove the source of the problem, rather than by repetitive inspections. Long term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous continual inspections, has led

Issued in Renton, Washington, on February

Airframe and Propulsion Branch, ACE–

actuator be replaced with an actuator

the FAA to consider placing less emphasis on inspections and more emphasis on design improvements. The proposed replacement requirement is in consonance with these considerations.

Cost Impact

There are approximately 146 Gulfstream Model G–159 (G–I) airplanes of the affected design in the worldwide fleet. The FAA estimates that 72 airplanes of U.S. registry would be affected by this proposed AD.

The actions that are currently required by AD 67–31–08 take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $12,960, or $180 per airplane, per inspection.

The replacement action that is proposed in this AD action would take approximately 45 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $5,400 per airplane. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $583,200, or $8,100 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–515 (32 FR 16201, November 28, 1967), and by adding a new airworthiness directive (AD), to read as follows:

Gulfstream Aerospace Corporation (formerly Grumman): Docket 97-NM-16-AD. Supersedes AD 67–31–08, amendment 39–515.

Applicability: Model G–159 (G-I) airplanes; serial numbers (S/N) 1 through 12 inclusive, 14 through 112 inclusive, 114 through 148 inclusive, 322, and 323; on which main landing gear cylinder attach fitting assemblies having part number (P/N) 159WM10276–1 and -2 and balls having P/N 159WM10277–1 are *not* installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the main landing gear (MLG) retract cylinder attachment fittings due to fatigue cracking, which could result in the inability to retract the MLG, accomplish the following:

(a) Accomplish the actions specified in paragraphs (a)(1) and (a)(2) of this AD, at the times indicated in those paragraphs and in accordance with Grumman Gulfstream Customer Bulletin No. 172, dated September 6, 1963.

(1) Beginning November 7, 1967 (the effective date of AD 67–31–08, amendment 39–515), and prior to each flight, conduct a visual inspection to detect cracks in the MLG retract cylinder attachment fittings on the lower surface of the right-hand and left-hand wings in the vicinity of the aft end of the fitting.

(2) Within 25 hours time-in-service after November 7, 1967, accomplish the actions specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this AD:

(i) Conduct a dye penetrant inspection, in conjunction with at least a 10X magnifying glass, to detect cracks in the MLG retract cylinder attachment fittings on the lower surface of the right-hand and left-hand wings in the vicinity of the aft end of the fitting. Repeat this inspection thereafter at intervals not to exceed 25 hours time-in-service. And

(ii) Modify the aft end edges of the fitting by rounding them off to approximately 1/32" radius.

(b) If any crack is found during an inspection required by paragraph (a) of this AD, prior to further flight, accomplish either paragraph (b)(1) or (b)(2) of this AD:

(1) Replace the cracked part with a part of the same part number that has been modified and inspected in accordance with paragraph (a) of this AD, in accordance with Grumman Gulfstream Customer Bulletin No. 172, dated September 6, 1963. Thereafter, continue the inspections required by paragraph (a) of this AD. Or

(2) Replace the fitting assembly with an assembly having part number (P/N) 159WM10276–1 or -2, and balls having P/N 159WM10277–1. After accomplishing this replacement, the repetitive inspections of that fitting required by paragraph (a) of this AD may be terminated.

(c) Within 400 hours time-in-service after the effective date of this AD, replace the MLG retract cylinder attachment fitting assemblies with assemblies having part numbers (P/N) 159WM10276–1 and -2, and balls having P/N 159WM10277–1. This replacement constitutes terminating action for the inspection requirements of this AD.

(d)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 67–31–08, amendment 39–515, are approved as alternative methods of compliance with this AD.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 27, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–5461 Filed 3–5–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 97–NM–15–AD]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace Corporation Model G–159 (G–I) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Gulfstream Model G–159 (G–I) airplanes, that currently requires repetitive inspections to detect cracking in the mounting lugs of the elevator trim tab actuators, and replacement, if necessary. This action would require the installation of improved elevator trim tab actuators that are not susceptible to the subject cracking. This proposal is prompted by the development of a modification that positively addresses the identified unsafe condition. The actions specified by the proposed AD are intended to prevent failure of the mounting lugs on the elevator trim tab actuator due to cracking; such failure could result in severe vibration during flight and/or reduction or loss of elevator trim tab capability, which could lead to reduced controllability of the airplane.

DATES: Comments must be received by April 14, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–15–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Gulfstream Aerospace Corporation, Technical Operations Department, P.O. Box 2206, M/S D–10, Savannah, Georgia 31402–2206. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Christina Marsh, Aerospace Engineer, Airframe and Propulsion Branch, ACE–117A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7362; fax (404) 305–7348.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–15–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–15–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In 1972, the FAA issued AD 72–24–04, amendment 39–1559 (37 FR 24419, November 17, 1972), applicable to certain Gulfstream Model G–159" airplanes (formerly designated as "Grumman Gulfstream G–159" airplanes), to require:

1. repetitive dye penetrant inspections to detect cracking in the mounting lugs of the elevator trim tab actuator, part number (P/N) 159SCC100–1 and –5; and

2. shimming to correct any out-of-plane mounting.

If cracking is detected during any inspection, the AD requires that the actuator be replaced with an actuator having P/N 159SCC100–1, –5, or –11. (AD 72–24–04 specifies that, if an actuator having P/N 159SCC100–11 is installed, no further action is required.)

That action was prompted by a report indicating that, during an inspection, all four mounting lugs on a Gulfstream G–159 elevator trim tab actuator were found to be cracked. Examination of the actuator unit indicated that two of the lugs had been failed for an undetermined period of time. Additional inspections of other airplanes revealed numerous fittings with one lug failed and some with two lugs failed.

Once one lug fails, the adjacent lug is under twice the normal stress, and will eventually fail. At that point, the remaining two lugs are being worked in bending and their remaining service life, in this condition, is short.

The requirements of that AD are intended to detect cracked lugs as early as possible so as to prevent the concurrent failure of the four lugs. Such failure could cause severe vibration during flight and/or reduction or loss of elevator trim tab capability; this could then result in reduced controllability of the airplane.

Actions Since Issuance of Previous Rule

As part of its on-going program to address issues relevant to the continued operational safety of the aging transport fleet, the FAA, along with Gulfstream Aerospace Corporation and several U.S. and non-U.S. operators of the affected airplanes, agreed to undertake the task of identifying and implementing procedures to ensure the continuing structural airworthiness of aging commuter-class airplanes. This group reviewed selected customer bulletins and aircraft service changes, applicable to Gulfstream Model G–159 airplanes, to be recommended for mandatory rulemaking action to ensure the continued operational safety of these airplanes.

Explanation of Relevant Service Information

The group reviewed and recommended Grumman Gulfstream I Aircraft Service Change No. 191, dated August 18, 1972, for mandatory rulemaking action. This service change describes procedures for replacing the elevator trim tab actuators having P/N 159SCC100–1 or –5, with actuators having P/N 159SCC100–11. The replacement actuators have new, increased strength housings, and are not susceptible to the type of cracking that

was previously found. Installation of these new actuators eliminates the need for the repetitive inspections for cracking.

The group recognized the fact that cracks in the existing elevator trim tab actuator housings are very difficult to identify, even with the dye penetrant, if they are small or have just started. Therefore, installation of the improved actuators will positively address the identified unsafe condition by eliminating the potential both for the cracking itself, as well as for cracks that are missed during an inspection.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 72–24–04. It would continue to require the repetitive dye penetrant inspections for cracks in the elevator trim tab actuator mounting lugs. However, it would also require the installation of improved actuators, which would constitute terminating action for the repetitive inspections. The installation would be required to be accomplished in accordance with the aircraft service change described previously.

FAA's Determination for the Need to Mandate the Installation

The FAA has determined that long term continued operational safety will be better assured by design changes to remove the source of the problem, rather than by repetitive inspections. Long term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous continual inspections, has led the FAA to consider placing less emphasis on inspections and more emphasis on design improvements. The proposed installation requirement is in consonance with these considerations.

Cost Impact

There are approximately 146 Gulfstream Model G–159 airplanes of the affected design in the worldwide fleet. The FAA estimates that 72 airplanes of U.S. registry would be affected by this proposed AD.

The inspections that are currently required by AD 72–24–04 take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $8,640, or $120 per airplane, per inspection.

The new installation that is proposed in this AD action would take approximately 12 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $4,900 per airplane. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $404,640, or $5,620 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–1559 (37 FR 24419, November 17, 1972), and by adding a new airworthiness directive (AD), to read as follows:

Gulfstream Aerospace Corporation (previously Grumman): Docket 97–NM–15–AD. Supersedes AD 72–24–04, amendment 39–1559.

Applicability: Model G–159 (G–I) airplanes, on which elevator trim tab actuators having part number 159SCC100–11 are *not* installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the elevator trim tab mounting lugs due to cracking, which could result in severe vibration during flight and a consequent reduction or loss of elevator trim tab capability, accomplish the following:

(a) Within 10 hours time-in-service after November 24, 1972 (the effective date of AD 72–24–04, amendment 39–1559), perform an inspection to detect cracks in the mounting lugs of the elevator trim tab actuators, having part number (P/N) 159SCC100–1 or –5; and shim to correct any out-of-plane condition, in accordance with Gulfstream Customer Bulletin No. 208A through Amendment 2, dated April 21, 1972, and Operational Summary No. 72–5B, dated August 1972.

(b) If no crack is found in any mounting lug during the inspection required by paragraph (a) of this AD, repeat the inspection at intervals not to exceed 200 hours time-in-service.

(c) If any crack is found in a mounting lug when conducting any inspection required by paragraph (a) or (b) of this AD, prior to further flight, replace the elevator trim tab actuator with a new or serviceable actuator having P/N 159SCC100–1, –5, or –11.

(1) If an actuator having P/N 159SCC100–1 or –5 is used as the replacement unit, repeat the inspection for cracks specified in paragraph (a) of this AD thereafter at intervals not to exceed 200 hours time-in-service.

(2) If an actuator having P/N 159SCC100–11 is used as the replacement unit, no further inspection action is required for that unit in accordance with this AD.

(d) Within 1,000 hours time-in-service after the effective date of this AD, replace the elevator trim tab actuators with actuators that have P/N 159SCC100–11, in accordance with Gulfstream Aircraft Service Change No.191, dated August 18, 1972. This installation constitutes terminating action for the inspections required by this AD.

(e)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 72–24–02, amendment 39–1559, are approved as alternative methods of compliance with this AD.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 27, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–5460 Filed 3–5–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–CE–25–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Britten-Norman Ltd. (formerly Britten-Norman) BN–2A, BN–2B, and BN–2T Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive that would apply to Pilatus Britten-Norman Ltd. (Pilatus Britten-Norman) BN–2A, BN–2B, and BN–2T series airplanes. The proposed AD would require repetitively inspecting the junction of the torque link lug and upper case of the main landing gear (MLG) torque link assemblies for cracks, and replacing any MLG torque link assembly with a Modification A39 MLG torque link assembly, either immediately when cracks are found or after a certain period of time if cracks are not found. Replacing all MLG torque link assemblies with Modification A39 MLG torque link assemblies would eliminate the need for the repetitive inspections. These proposed repetitive inspections are currently required by AD 86–07–02 for the BN–2A, BN–2B, and BN–2T series airplanes, as well as the BN2A MK. 111 series airplanes. There are no improved design parts for the BN2A MK. 111 series airplanes. The Federal Aviation Administration (FAA) is issuing in a separate action a proposed revision to AD 86–07–02 to retain the repetitive inspection and replacement (if cracked) requirements for the BN2A MK. 111 series airplanes. The actions specified in the proposed AD are intended to prevent failure of the main landing gear caused by cracks in the torque link area, which could lead to loss of control of the airplane during landing operations.

DATES: Comments must be received on or before May 12, 1997.

ADDRESSES: Submit comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–25–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR; telephone 44–1983 872511; facsimile 44–1983 873246. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Rodriguez, Program Officer, Brussels Aircraft Certification Division, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; telephone (32 2) 508.2717; facsimile (32 2) 230.6899; or Mr. S.M. Nagarajan, Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, Suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 96–CE–25–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–25–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has determined that reliance on critical repetitive inspections on aging commuter-class airplanes carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections. In determining what inspections are critical, the FAA considers (1) the safety consequences if the known problem is not detected during the inspection; (2) the probability of the problem not being detected during the inspection; (3) whether the inspection area is difficult to access; and (4) the possibility of damage to an adjacent structure as a result of the problem.

These factors have led the FAA to establish an aging commuter-class aircraft policy that requires incorporating a known design change when it could replace a critical repetitive inspection. With this policy in mind, the FAA conducted a review of existing AD's that apply to Pilatus Britten-Norman BN–2A, BN–2B, BN–2T, and BN2A MK. 111 series airplanes. Assisting the FAA in this review were (1) Pilatus Britten-Norman; (2) the Regional Airlines Association (RAA); (3) the Civil Aviation Authority of the

United Kingdom; and (4) several operators of the affected airplanes.

From this review, the FAA has identified AD 86–07–02, Amendment 39–5382, as one which falls under the FAA's aging aircraft policy. AD 86–07–02 currently requires repetitively inspecting the junction of the torque link lug and upper case of the main landing gear (MLG) torque link assemblies for cracks on Pilatus Britten-Norman BN–2A, BN–2B, BN–2T, and BN2A MK. 111 series airplanes, and replacing any cracked part.

Pilatus Britten-Norman has developed a modification that, when incorporated, would eliminate the need for the repetitive inspection requirement of AD 86–07–02 for the Pilatus Britten-Norman BN–2A, BN–2B, and BN–2T series airplanes. The requirements of AD 86–07–02 should still apply for the Pilatus Britten-Norman BN2A MK. 111 series airplanes.

Applicable Service Information

Fairey Hydraulics Limited has issued Service Bulletin (SB) 32–4, Issue 4, dated January 30, 1990, which applies to the Pilatus Britten-Norman BN–2A, BN–2B, and BN–2T series airplanes. This SB includes procedures for inspecting the junction of the torque link lug and upper case of the MLG torque link assemblies, and installing new Modification A39 MLG torque link assemblies. Pilatus Britten-Norman SB BN–2/SB.170, Issue 4, dated November 16, 1990, references Fairey Hydraulic Limited SB32–4, Issue 4, dated January 30, 1990.

The FAA's Determination

The FAA has examined all available information related to this subject matter and has determined that:

- AD action should be taken for the Pilatus Britten-Norman BN–2A, BN–2B, and BN–2T series airplanes to require the installation of Modification A39 MLG torque link assemblies. The repetitive inspections of the junction of the torque link lug and upper case of the MLG torque link assemblies would still be required until the improved parts are installed; and
- AD 86–07–02 should be revised to remove the BN–2A BN–2B, and BN–2T series airplanes from the applicability of that AD, but retain the actions for the BN2A MK. 111 series airplanes (this is being proposed in a separate action).

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Pilatus Britten-Norman BN–2A, BN–2B, and BN–2T series airplanes of the same type design, the proposed AD would require repetitively inspecting the junction of the torque link lug and upper case of the MLG torque link assemblies for cracks, and replacing any MLG torque link assembly with a Modification A39 MLG torque link assembly, either immediately when cracks are found or at a certain period of time if cracks are not found. Installation of the improved part would eliminate the need for the repetitive inspections. Accomplishment of the proposed inspections and installation would be in accordance with Fairey Hydraulics Limited SB 32–4, Issue 4, dated January 30, 1990.

Cost Impact

The FAA estimates that 112 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 13 workhours per airplane to accomplish the proposed action (1 workhour per inspection and 12 workhours for the installation), and that the average labor rate is approximately $60 an hour. Parts cost approximately $6,200 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $781,760 or $6,980 per airplane.

The proposed inspections are currently required on the 112 affected airplanes by AD 86–07–02. The proposed AD would not require any additional inspection requirements over that already required by AD 86–07–02. In addition, the cost figures referenced above are based on the presumption that no affected airplane operator has incorporated the proposed inspection-terminating installation. Pilatus Britten-Norman does not know the number of parts distributed to the affected airplane owners/operators. Numerous sets of parts were sent out to the owners/operators of the affected airplanes, but over the years Pilatus Britten-Norman has not retained these records.

The FAA's Aging Commuter Aircraft Policy

The intent of the FAA's aging commuter airplane program is to ensure safe operation of commuter-class airplanes that are in commercial service without adversely impacting private operators. Of the approximately 112 airplanes in the U.S. registry that would be affected by the proposed AD, the FAA has determined that approximately 25 percent are operated in scheduled passenger service by 11 different operators. A significant number of the remaining 75 percent are operated in other forms of air transportation such as air cargo and air taxi.

The proposed action would allow at least 1,000 hours TIS after the effective date of the AD before mandatory accomplishment of the design modification (upon the accumulation of 5,000 hours TIS or within the next 1,000 hours TIS after the effective date of the AD, whichever is later). The average utilization of the fleet for those airplanes in commercial commuter service is approximately 25 to 50 hours TIS per week. Based on these figures, operators of commuter airplanes involved in commercial operation would have to accomplish the proposed modification within 5 to 10 calendar months (at the least) after the proposed AD would become effective. For private owners, who typically operate between 100 to 200 hours TIS per year, this would allow 5 to 10 years (at the least) before the proposed modification would be mandatory. The time it would take those in air cargo/air taxi operations before the proposed action would be mandatory is unknown because of the wide variation between each airplane used in this service. The exact numbers would fall somewhere between the average for commuter operators and private operators.

Regulatory Flexibility Determination and Analysis

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionally burdened by government regulations. The RFA requires government agencies to determine whether rules would have a "significant economic impact on a substantial number of small entities," and, in cases where they would, conduct a Regulatory Flexibility Analysis in which alternatives to the rule are considered. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, outlines FAA procedures and criteria for complying with the RFA. Small entities are defined as small businesses and small not-for-profit organizations that are independently owned and operated or airports operated by small governmental jurisdictions. A "substantial number" is defined as a number that is not less than 11 and that is more than one-third of the small entities subject to a proposed rule, or any number of small entities judged to be substantial by the rulemaking official. A "significant economic impact" is defined by an annualized net compliance cost, adjusted for inflation, which is greater than a threshold cost level for defined entity types.

The entities that would be affected by this AD are mostly in the portion of Standard Industrial Classification (SIC) 4512, Operators of Aircraft for Hire, classified as "unscheduled." FAA Order 2100.14A sets the size threshold for small entities operating aircraft in this category at nine or fewer aircraft owned and the annualized cost thresholds of at least $4,975 (1996 dollars) for unscheduled operators. A four-year life for the torque link assembly and capital cost of 15-percent would establish an annualized cost of $2,445 (1996 dollars). This is less than 50-percent of the threshold cost of $4,975 per year. In order to incur costs of at least $4,975, an entity would have to operate three or more of the airplanes referenced in the proposed AD. FAA data shows that only five small entities operate three or more of these airplanes. In addition, this data shows that approximately 60 entities operate the airplanes referenced in the proposed AD, but that only 15 of these entities (one-fourth) operate two or more of these airplanes.

Based on this information, less than one-third of the entities would incur significant operating costs under FAA Order 2100.14A. Therefore, the proposed AD would not significantly affect a number of small entities.

A copy of the full Cost Analysis and Regulatory Flexibility Determination for the proposed action may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–25–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Pilatus Britten-Norman: Docket No. 96–CE–25–AD.

Applicability: Models BN–2, BN–2A, BN–2A–3, BN–2A–6, BN–2A–8, BN–2A–2, BN–2A–9, BN–2A–20, BN–2A–21, BN–2A–26, BN–2A–27, BN–2B–20, BN–2B–21, BN–2B–26, BN–2B–27, and BN–2T airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To prevent failure of the main landing gear caused by cracks in the torque link assembly area, which could lead to loss of control of the airplane during landing operations, accomplish the following:

(a) Prior to further flight after the effective date of this AD or within the next 100 hours time-in-service (TIS) after the last inspection required by AD 86–07–02, whichever occurs later, and thereafter at intervals not to exceed 100 hours TIS until the installations required by paragraph (c) of this AD are accomplished, inspect the junction of the torque link lug and upper case of all main landing gear (MLG) torque link assemblies for cracks (using a 10-power magnifying glass or by dye penetrant methods). Accomplish these inspections in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Fairey Hydraulics Limited Service Bulletin (SB) 32–4, Issue 4, dated January 30, 1990. Pilatus Britten-Norman SB BN–2/SB.170, Issue 4, November 16, 1990, references this service bulletin.

Note 2: These inspections were initially a part of AD 86–07–02, which applied to the BN2A MK. 111 series airplanes as well as the airplanes affected by this AD. The "prior to further flight after the effective date of this AD" compliance time was the original initial compliance time of AD 86–07–02, and is being retained to provide credit and continuity for already-accomplished and future inspections.

(b) If any cracks are found during any of the inspections required by this AD, prior to further flight, replace the MLG torque link assembly with a Modification A39 MLG torque link assembly in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Fairey Hydraulics Limited SB No. 32–4, Issue 4, dated January 30, 1990.

(1) Repetitive inspections are no longer required when all MLG torque assemblies are replaced with Modification A39 MLG torque link assemblies.

(2) Repetitive inspections may no longer be required on one MLG torque assembly, but still be required on another if all haven't been replaced with a Modification A39 MLG torque link assembly.

(c) Upon the accumulation of 5,000 hours TIS or within the next 1,000 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished as specified in paragraph (b) of this AD, replace each MLG torque link assembly with a Modification A39 MLG torque link assembly in accordance with of the ACCOMPLISHMENT INSTRUCTIONS section of Fairey Hydraulics Limited SB No. 32–4, Issue 4, dated January 30, 1990.

(d) The intervals between the repetitive inspections required by this AD may be adjusted up to 10 percent of the specified interval to allow accomplishing these actions along with other scheduled maintenance on the airplane.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the inspection requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Division, Europe, Africa, Middle East office, FAA, c/o American Embassy, 1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Division.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Brussels Aircraft Certification Division.

(g) All persons affected by this directive may obtain copies of the documents referred to herein upon request to Fairey Hydraulics

Limited, Claverham, Bristol, England; or Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR, as applicable; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on February 24, 1997.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–5471 Filed 3–5–97; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–CE–23–AD]

RIN 2120–AA64

Airworthiness Directives; Aviat Aircraft, Inc. Models S–1S, S–1T, S–2, S–2A, S–2S, and S–2B Airplanes (formerly known as Pitts Models S–1S, S–1T, S–2, S–2A, S–2S, and S–2B Airplanes)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise AD 96–12–03, which applies to Aviat Aircraft, Inc. (Aviat) Models S–1S, S–1T, S–2, S–2A, S–2S, and S–2B airplanes that are equipped with aft lower fuselage wing attach fittings incorporating either part number (P/N) 76090, 2–2107–1, or 1–210–102. That AD currently requires repetitively inspecting the aft lower fuselage wing attach fitting on both wings for cracks, and modifying any cracked aft lower fuselage wing attach fitting. Modifying both aft lower fuselage wing attach fittings eliminates the repetitive inspection requirement of AD 96–12–03. Aviat recently started incorporating modified aft lower fuselage wing attach fittings on newly manufactured airplanes. The proposed AD would retain the requirements of AD 96–12–03, but would exempt airplanes that had the modified aft lower fuselage wing attach fittings incorporated at manufacture. The actions specified by the proposed AD are intended to prevent possible in-flight separation of the wing from the airplane caused by a cracked fuselage wing attach fitting.

DATES: Comments must be received on or before June 4, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–23–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Aviat Aircraft, Inc., P.O. Box 1240 (postal service delivery), 672 South Washington Street (express mail), Afton, Wyoming 83110. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Caldwell, Aerospace Engineer, FAA, Denver Aircraft Certification Office, 26805 E. 68th Avenue, Room 214, Denver, Colorado 80249; telephone (303) 342–1086; facsimile (303) 342–1088.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 96–CE–23–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–23–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Events Leading to the Proposed AD

AD 96–12–03, Amendment 39–9645 (61 FR 28730, June 6, 1996), applies to Aviat Models S–1S, S–1T, S–2, S–2A, S–2S, and S–2B airplanes that are equipped with aft lower fuselage wing attach fittings incorporating either part number (P/N) 76090, 2–2107–1, or 1–210–102. The AD currently requires repetitively inspecting the aft lower fuselage wing attach fitting on both wings for cracks, and modifying any cracked aft lower fuselage wing attach fitting. Modifying both aft lower fuselage wing attach fittings eliminates the repetitive inspection requirement of AD 96–12–03. Accomplishment of the actions required by AD 96–12–03 is in accordance with Aviat Service Bulletin (SB) No. 25, dated April 3, 1996.

Aviat recently started incorporating modified aft lower fuselage wing attach fittings on newly manufactured Models S–1S, S–1T, S–2, S–2A, S–2S, and S–2B airplanes. In addition, Aviat revised SB No. 25 (Revised November 12, 1996) to include this airplane serial number effectivity change.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that (1) those airplanes with modified aft lower fuselage wing attach fittings incorporated at manufacture should be exempt from AD 96–12–03; and (2) AD action should be taken to prevent possible in-flight separation of the wing from the airplane caused by a cracked fuselage wing attach fitting.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Aviat Models S–1S, S–1T, S–2, S–2A, S–2S, and S–2B airplanes of the same type design that are equipped with aft lower fuselage wing attach fittings incorporating either P/N 76090, 2–2107–1, or 1–210–102, the FAA is proposing to revise AD 96–12–03. The proposed AD would retain the requirements of AD 96–12–03, but would exempt airplanes that had the modified aft lower fuselage wing attach fittings incorporated at manufacture. Accomplishment of the proposed AD would be in accordance with Aviat SB No. 25, dated April 3, 1996, Revised November 12, 1996.

Cost Impact

The FAA estimates that 500 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 2 workhours per airplane to accomplish the proposed initial inspection, and that the average labor rate is approximately $60 an hour. Parts to accomplish the repetitive inspections cost approximately $100 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $110,000. These figures do not take into account the cost of repetitive inspections. The FAA has no way of determining how many repetitive inspections each owner/operator may incur over the life of the airplane.

In addition, AD 96–12–03 currently requires the same inspections as the proposed AD for all 500 of the affected airplanes. The only difference is that newly manufactured airplanes would be exempt from the actions because they have modified aft lower fuselage wing attach fittings incorporated at manufacture. Therefore, the cost impact of the proposed AD for operators of all affected airplanes is the same as AD 96–12–03.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13, is amended by removing Airworthiness Directive (AD) 96–12–03, Amendment 39-9645, and by adding a new AD to read as follows:

Aviat Aircraft, Inc.: Docket No. 96–CE–23–AD. Revises AD 96–12–03, Amendment 39–9645.

Applicability: The following airplane models and serial numbers, certificated in any category, that are equipped with aft lower fuselage wing attach fittings incorporating part number (P/N) 76090, 2–2107–1, or 1-210–102, and where these aft lower fuselage wing attach fittings on both wings have not been modified in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Aviat Service Bulletin (SB) No. 25, dated April 3, 1996, Revised November 12, 1996; or Aviat SB No. 25, dated April 3, 1996:

—Models S–1S, S–1T, S–2, S–2A, and S–2S airplanes, all serial numbers.

—Model S–2B airplanes, serial numbers 5000 through 5348.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required initially within the next 50 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished (compliance with AD 96–12–03), and thereafter at intervals not to exceed 50 hours TIS.

To prevent possible in-flight separation of the wing from the airplane caused by a cracked aft lower fuselage wing attach fitting, accomplish the following:

(a) Inspect the aft lower fuselage wing attach fitting on both wings for cracks in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Aviat SB No. 25, dated April 3, 1996, Revised November 12, 1996; or Aviat SB No. 25, dated April 3, 1996.

(b) If any cracked aft lower fuselage wing attach fitting is found during any inspection required by this AD, prior to further flight, modify the cracked aft lower fuselage wing attach fitting in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Aviat SB No. 25, dated April 3, 1996, Revised November 12, 1996; or Aviat SB No. 25, dated April 3, 1996. Repetitive inspections are no longer necessary on an aft lower fuselage wing attachment fitting that was found cracked and has the referenced modification incorporated.

(c) Modifying the aft lower fuselage wing attach fitting on both wings in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Aviat SB No. 25, dated April 3, 1996, Revised November 12, 1996; or Aviat SB No. 25, dated April 3, 1996, is considered terminating action for the repetitive inspection requirement of this AD.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Denver Aircraft Certification Office, 26805 E. 68th Avenue, Room 214, Denver, Colorado 80249. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Denver ACO. Alternative methods of compliance approved in accordance with AD 96–12–03 are considered approved for this AD.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Denver ACO.

(f) All persons affected by this directive may obtain copies of the service bulletin referred to herein upon request to Aviat Aircraft, Inc., P.O. Box 1240 (postal service delivery), 672 South Washington Street (express mail), Afton, Wyoming 83110; or may examine this service bulletin at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(g) This amendment revises AD 96–12–03, Amendment 39–9645. Issued in Kansas City, Missouri, on February 24, 1997.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–5470 Filed 3–5–97; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 97–NM–17–AD]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace Corporation Model G–159 (G–I) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Gulfstream Model G–159 (G–I) airplanes, that currently requires repetitive inspections to detect cracks and loose rivets in the forward brackets for the main landing gear (MLG) uplock beam assembly, and replacement of the brackets, if necessary. This action would require the installation of redesigned brackets that preclude the potential for cracking and loose rivets; when accomplished, this installation would constitute terminating action for the currently required inspections. This proposal is prompted by the development of an installation that will positively address the identified unsafe condition. The actions specified by the proposed AD are intended to prevent failure of the bracket for the MLG uplock beam assembly due to cracking and loose rivets; such failure could result in the inability to retract the MLG.

DATES: Comments must be received by April 14, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–17–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Gulfstream Aerospace Corporation, Technical Operations Department, P.O. Box 2206, M/S D–10, Savannah, Georgia 31402–2206. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Christina Marsh, Aerospace Engineer, Airframe and Propulsion Branch, ACE–117A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7362; fax (404) 305–7348.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–17–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–17–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In 1966, the FAA issued AD 66–10–03, amendment 39–222 (31 FR 5660, April 12, 1966), applicable to certain Gulfstream Model G–159 airplanes, to require repetitive dye penetrant and visual inspections to detect cracks and loose rivets in the forward brackets of the main landing gear (MLG) uplock beam assembly, and replacement of the brackets, if necessary.

That action was prompted by reports of cracks and loose rivets found in brackets having part number (P/N) 159W10150–51/52. These conditions were attributed to elongated rivet holes.

The requirements of that AD are intended to prevent such cracking and loose rivets, which could lead to the failure of the bracket. Failure of the bracket of the MLG uplock beam assembly could result in the inability to retract the MLG.

Actions Since Issuance of Previous Rule

As part of its on-going program to address issues relevant to the continued operational safety of the aging transport fleet, the FAA, along with Gulfstream Aerospace Corporation and several U.S. and non-U.S. operators of the affected airplanes, agreed to undertake the task of identifying and implementing procedures to ensure the continuing structural airworthiness of aging commuter-class airplanes. This group reviewed selected customer bulletins and aircraft service changes, applicable to Gulfstream Model G–159 (G–I) airplanes, to be recommended for mandatory rulemaking action to ensure the continued operational safety of these airplanes.

Explanation of Relevant Service Information

The group reviewed and recommended Part II of Grumman Gulfstream Service Change No. 179, dated March 15, 1966, for mandatory regulatory action. (Part I of that service change describes procedures for repetitive inspections to detect cracks and loose rivets in the forward brackets of the MLG uplock beam assembly. Those procedures were mandated by AD 66–10–03.) Part II of the service change describes procedures for replacing the uplock beam support brackets (angles) with brackets of an improved design and having P/N 159W10150–71 and –72. Installation of these improved brackets eliminates the need for the repetitive inspections.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 66–10–03. It would continue to require repetitive dye penetrant and visual inspections to detect cracks and loose rivets in the forward brackets of the main landing gear (MLG) uplock beam assembly, and replacement of the brackets, if necessary. This new action also would require that the currently-installed brackets be replaced with the improved brackets. Once this replacement is accomplished, the previously required inspections may be terminated. The actions would be required to be accomplished in accordance with the service change described previously.

FAA's Determination for the Need to Mandate the Replacement

The FAA has determined that long term continued operational safety will be better assured by design changes to remove the source of the problem, rather than by repetitive inspections. Long term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous continual inspections, has led the FAA to consider placing less emphasis on inspections and more emphasis on design improvements. The proposed replacement requirement is in consonance with these considerations.

Cost Impact

There are approximately 146 Gulfstream Model G–159 airplanes of the affected design in the worldwide fleet. The FAA estimates that 72 airplanes of U.S. registry would be affected by this proposed AD.

The inspections that are currently required by AD 66–10–03 take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $8,640, or $120 per airplane, per inspection.

The terminating replacement that is proposed in this AD action would take approximately 12 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $425 per airplane. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $82,440, or $1,145 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–222 (31 FR 5660, April 12, 1966), and by adding a new airworthiness directive (AD), to read as follows:

Gulfstream Aerospace Corporation (formerly Grumman): Docket 97–NM–17–AD. Supersedes AD 66–10–03, Amendment 39–222.

Applicability: Model G–159 (G–I) airplanes; serial numbers (S/N) 1 through 12 inclusive, 14 through 83 inclusive, and 114; on which main landing gear uplock beam support brackets (angles) having part numbers (P/N) 159W10150–71 and –72 are not installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the brackets for the main landing gear (MLG) uplock beam assembly due to cracking and loose rivets, which could result in the inability to retract the MLG, accomplish the following:

(a) Within 50 hours time-in-service after April 12, 1966 (the effective date of AD 66–10–03, amendment 39–222), and thereafter at intervals not to exceed 100 hours time-in-service, accomplish the actions specified in paragraphs (a)(1) and (a)(2) of this AD in accordance with Grumman Gulfstream Service Change No. 179, dated March 15, 1966:

(1) Conduct a dye penetrant inspection, in conjunction with at least a 10X magnifying glass, to detect cracks in the MLG uplock beam forward brackets, P/N's 159W10150–51 and –52; and

(2) Conduct a visual inspection of the attachments of each bracket to the firewall bulkhead and to the main gear uplock beam for loose rivets caused by elongated rivet holes.

(b) If any crack or loose rivet is found during any inspection required by paragraph (a) of this AD, prior to further flight, accomplish either paragraph (b)(1) or (b)(2) of this AD, in accordance with Grumman Gulfstream Service Change No. 179, dated March 15, 1966:

Note 2: Grumman Gulfstream Service Change No. 179A, dated March 20, 1966, contains additional procedural information relevant to the inspection and replacement requirements of this AD.

(1) Replace the bracket with a new or serviceable bracket having P/N 159W10150–51 or –52, as applicable. After this replacement, continue to inspect in accordance with paragraph (a) of this AD. Or

(2) Replace the bracket with a bracket having P/N 159W10150–71 or –72, as applicable. This replacement constitutes terminating action for the inspection required by paragraph (a) of this AD for the replaced bracket.

(c) Within 1,000 hours time-in-service after the effective date of this AD, replace the brackets for the main landing gear (MLG) uplock beam assembly with brackets having P/N 159W10150–71 and –72, in accordance with Part II of Grumman Gulfstream Service Change No. 179, dated March 15, 1966. Such replacement constitutes terminating action for the inspections required by this AD.

(d)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 66–10–03, amendment 39–222, are approved as alternative methods of compliance with this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 27, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–5467 Filed 3–5–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 86–CE–23–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Britten-Norman Ltd. (formerly Britten-Norman) BN2A MK. 111 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise AD 86–07–02, which currently requires repetitively inspecting the junction of the torque link lug and upper case of the main landing gear (MLG) torque link assemblies for cracks on Pilatus Britten-Norman Ltd. (Pilatus Britten-Norman) BN–2A, BN–2B, BN–2T, and BN2A MK. 111 series airplanes, and replacing any part found cracked with a like part. The proposed AD would remove from the applicability the BN–2A, BN–2B, and BN–2T series airplanes, and would retain the repetitive inspection and replacement (if necessary) requirements of AD 86–07–02 for the BN2A MK. 111 series airplanes. The proposed AD results from the Federal Aviation Administration's determination that additional AD action needs to be taken on the BN–2A, BN–2B, and BN–2T series airplanes. This additional action will be addressed in a separate AD. The actions specified by the proposed AD are intended to prevent failure of the main landing gear caused by cracks in the torque link area, which could lead to loss of control of the airplane during landing operations.

DATES: Comments must be received on or before May 12, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 86–CE–23–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR; telephone 44–1983 872511; facsimile 44–1983 873246. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Rodriguez, Program Officer, Brussels Aircraft Certification Division, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; telephone (32 2) 508.2717; facsimile (32 2) 230.6899; or Mr. S.M. Nagarajan, Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932, facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 86-CE-23-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 86-CE-23-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has determined that reliance on critical repetitive inspections on aging commuter-class airplanes carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections. In determining what inspections are critical, the FAA considers (1) the safety consequences if the known problem is not detected during the inspection; (2) the probability of the problem not being detected during the inspection; (3) whether the inspection area is difficult to access; and (4) the possibility of damage to an adjacent structure as a result of the problem.

These factors have led the FAA to establish an aging commuter-class aircraft policy that requires incorporating a known design change when it could replace a critical repetitive inspection. With this policy in mind, the FAA conducted a review of existing AD's that apply to Pilatus Britten-Norman BN–2A, BN–2B, BN–2T, and BN2A MK. 111 series airplanes. Assisting the FAA in this review were (1) Pilatus Britten-Norman; (2) the Regional Airlines Association (RAA); (3) the Civil Aviation Authority of the United Kingdom; and (4) several operators of the affected airplanes.

From this review, the FAA has identified AD 86–07–02, Amendment39–5382, as one which falls under the FAA's aging aircraft policy. AD 86–07–02 currently requires repetitively inspecting the junction of the torque link lug and upper case of the main landing gear (MLG) torque link assemblies for cracks on Pilatus Britten-Norman BN–2A, BN–2B, BN–2T, and BN2A MK. 111 series airplanes, and replacing any cracked part.

Pilatus Britten-Norman has developed a modification that, when incorporated, would eliminate the need for the repetitive inspection requirement of AD 86–07–02 for the Pilatus Britten-Norman BN–2A, BN–2B, and BN–2T series airplanes. The requirements of AD 86–07–02 should still apply for the Pilatus Britten-Norman BN2A MK. 111 series airplanes.

Applicable Service Information

Fairey Hydraulics Limited has issued Service Bulletin (SB) 32–7, Issue 3, dated January 30, 1990, and Fairey Hydraulics Limited SB 32–10, Issue 2, dated November 10, 1992. These SB's include procedures for inspecting the junction of the torque link lug and upper case of the MLG torque link assemblies on Pilatus Britten-Norman BN2A MK. 111 series airplanes. Pilatus Britten-Norman SB BN–2/SB. 173, Issue 3, dated November 16, 1990, references Fairey Hydraulic Limited SB 32–7; and Pilatus Britten-Norman SB BN–2/SB.209, Issue 1, datedNovember 30, 1992, references Fairey Hydraulic Limited SB 32–10.

The FAA's Determination

The FAA has examined all available information related to this subject matter and has determined that:

- AD 86–07–02 should be revised to remove the BN–2A, BN–2B, and BN–2T series airplanes from the applicability of the AD (the BN2A MK. 111 series airplanes should still apply); and
- separate AD action should be taken for the Pilatus Britten-NormanBN–2A, BN–2B, and BN–2T series airplanes to require a modification to the main landing gear torque link assembly.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Pilatus Britten-Norman BN2A MK. 111 series airplanes of the same type design, the proposed AD would revise AD 86–07–02 by removing the BN–2A, BN–2B, and BN–2T series airplanes from the applicability of that AD. The requirement of repetitively inspecting the junction of the torque link lug and upper case of the MLG torque link assemblies would be retained for the BN2A MK. 111 series airplanes. The FAA will propose separate AD action for the BN–2A and BN–2T series airplanes to require a modification that, when incorporated, would eliminate the repetitive inspection requirement currently required by AD 86–07–02. Accomplishment of the proposed inspections and would be accomplished in accordance with the previously referenced service bulletins.

Cost Impact

The FAA estimates that nine airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately one workhour per airplane to accomplish the proposed initial inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $540 or $60 per airplane. This figure only takes into account the cost of the proposed initial inspection and does not take into account the cost of the proposed repetitive inspections. The FAA has no way of determining the number of repetitive inspections each of the owners/operators would incur over the life of the affected airplanes.

In addition, the proposed inspections are currently required on the nine affected airplanes. The proposed AD would not require any additional actions over that already required by AD 86–07–02.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a"significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 86–07–02, Amendment 39–5382, and by adding a new AD to read as follows:

Pilatus Britten-Norman LTD.: Docket No. 86–CE–23–AD. Revises AD 86–07–02, Amendment 39–5382.

Applicability: Models MK. 111, BN2A MK. 111–2, and BN2A MK. 111–3 airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required prior to further flight after the effective date of this AD (see **Note 2**) or within 100 hours time-in-service (TIS) after the last inspection accomplished in accordance with AD 86–07–02, whichever occurs later, and thereafter at intervals not to exceed100 hours TIS.

Note 2: The "prior to further flight after the effective date of this AD" compliance time was the original initial compliance time of AD 86–07–02, and is being retained to provide credit and continuity for already-accomplished and future inspections.

To prevent failure of the main landing gear caused by cracks in the torque link assembly area, which could lead to loss of control of the airplane during landing operations, accomplish the following:

(a) Inspect the junction of the torque link lug and upper case for cracks (using a 10-power magnifying glass or by dye penetrant methods) in accordance with Fairey Hydraulics Limited Service Bulletin (SB) 32–7, Issue 3, dated January 30, 1990, or Fairey Hydraulics SB 32–10, Issue 2, dated November 10, 1992, as applicable. Pilatus Britten-Norman SB BN–2/SB. 173, Issue 3, dated November 16, 1990, references Fairey Hydraulic Limited SB 32–7; and Pilatus Britten-Norman SB BN–2/SB.209, Issue 1, dated November 30, 1992, references Fairey Hydraulic Limited SB 32–10.

(b) If cracked parts are found during any of the inspections required by this AD, prior to further flight, replace the cracked parts with airworthy parts in accordance with the applicable maintenance manual.

(c) If the landing gear is replaced, only equal pairs of the same manufacturer are approved as replacement parts. Mixing of different manufacturer landing gears is not authorized.

(d) The intervals between the repetitive inspections required by this AD may be adjusted up to 10 percent of the specified interval to allow accomplishing these actions along with other scheduled maintenance on the airplane.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the inspection requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Division, Europe, Africa, Middle East office, FAA, c/o American Embassy, 1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Division. Alternative methods of

compliance approved for AD 86–07–02 are considered approved as alternative methods of compliance for this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Brussels Aircraft Certification Division.

(g) All persons affected by this directive may obtain copies of the documents referred to herein upon request to Fairey Hydraulics Limited, Claverham, Bristol, England; or Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR, as applicable; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(h) This amendment revises AD 86–07–02, Amendment 39–5382.

Issued in Kansas City, Missouri, on February 25, 1997.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–5491 Filed 3–5–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 2

[Docket No. 97N–0023]

RIN 0910–AA99

Chlorofluorocarbon Propellants in Self-Pressurized Containers; Determinations That Uses Are No Longer Essential; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is seeking public comment on the policy it is considering for adoption on making and implementing determinations that uses of chlorofluorocarbons (CFC's) currently designated essential will no longer be deemed essential under the Clean Air Act due to the availability of safe and effective medical product technology that does not use CFC's. Essential-use products are exempt from FDA's ban on the use of CFC propellants in FDA-regulated products and the Environmental Protection Agency's (EPA's) ban on the use of CFC's in pressurized dispensers. The agency is taking this action because it is responsible for determining which products containing CFC's or other ozone-depleting substances are an essential use under the Clean Air Act. FDA is soliciting comments on this policy to assist the agency in striking an appropriate balance that will best protect the public health, both by ensuring the availability of an adequate number of treatment alternatives and by curtailing the release of ozone-depleting substances.

DATES: Written comments by May 5, 1997.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Wayne H. Mitchell, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

Under § 2.125 (21 CFR 2.125), any food, drug, device, or cosmetic in a self-pressurized container that contains a CFC propellant for a nonessential use is adulterated, or misbranded, or both, under the Federal Food, Drug, and Cosmetic Act. This prohibition is based on scientific research indicating that CFC's reduce the amount of ozone in the stratosphere and thereby increase the amount of ultraviolet radiation reaching the earth. An increase in ultraviolet radiation will increase the incidence of skin cancer, and produce other adverse effects of unknown magnitude on humans, animals, and plants. Section 2.125(d) exempts from the adulteration and misbranding provisions of § 2.125(c) certain products containing CFC propellants that FDA determines provide unique health benefits that would not be available without the use of a CFC.

These products are referred to in the regulation as essential uses of CFC's and are listed in § 2.125(e). Under § 2.125(f), any person may petition FDA to request additions to the list of uses considered essential. To demonstrate that the use of a CFC is essential, the petition must be supported by an adequate showing that: (1) There are no technically feasible alternatives to the use of a CFC in the product; (2) the product provides a substantial health, environmental, or other public benefit that would not be obtainable without the use of the CFC; and (3) the use does not involve a significant release of CFC's into the atmosphere or, if it does, the release is warranted by the consequence if the use were not permitted.

EPA regulations implementing the provisions of section 610 of the Clean Air Act (42 U.S.C. 7671i) contain a general ban on the use of CFC's in pressurized dispensers, such as metered-dose inhalers (MDI's) (40 CFR 82.64(c) and 82.66(d)). These EPA regulations exempt from the general ban "medical devices" that FDA considers essential and that are listed in § 2.125(e). Section 601(8) of the Clean Air Act (42 U.S.C. 7671(8)) defines "medical device" as any device (as defined in the Federal Food, Drug, and Cosmetic Act), diagnostic product, drug (as defined in the Federal Food, Drug, and Cosmetic Act), and drug delivery system, if such device, product, drug, or drug delivery system uses a class I or class II ozone-depleting substance for which no safe and effective alternative has been developed (and, where necessary, approved by the Commissioner of Food and Drugs (the Commissioner)); and if such device, product, drug, or drug delivery system has, after notice and opportunity for public comment, been approved and determined to be essential by the Commissioner in consultation with the Administrator of EPA (the Administrator). Class I substances include CFC's, halons, carbon tetrachloride, methyl chloroform, methyl bromide, and other chemicals not relevant to this document (see 40 CFR part 82, appendix A to subpart A). Class II substances include hydrochlorofluorocarbons (HCFC's) (see 40 CFR part 82, appendix B to subpart A).

Production of ozone-depleting substances is being phased out worldwide under the terms of the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol), Sept. 16, 1987, S. Treaty Doc. No. 10, 100th Cong., 1st sess., 26 I.L.M. 1541 (1987). In accordance with the provisions of the Montreal Protocol, under authority of Title VI of the Clean Air Act (section 601 *et seq.*), manufacture of CFC's in the United States was generally banned as of January 1, 1996. To receive permission to manufacture CFC's in the United States after the phaseout date, manufacturers must obtain an exemption from the phaseout requirements from the Parties to the Montreal Protocol. Procedures for securing an essential-use exemption under the Montreal Protocol are described in the most recent request by EPA for applications for exemptions (60 FR 54349, October 23, 1995). Firms that wish to use CFC's manufactured after the phaseout date in medical devices (as defined in section 601(8) of the Clean Air Act) covered under section 610 of the Clean Air Act must receive exemptions for essential uses under the Montreal Protocol.

Faced with the statutorily mandated phaseout of the production of CFC's, drug manufacturers are developing or have developed alternatives to MDI's and other self-pressurized drug dosage forms that do not contain ozone-depleting substances. Examples of these alternative dosage forms are MDI's that use such non-ozone-depleting substances as propellants and dry-powder inhalers (DPI's). FDA has recently approved the first CFC-free MDI, 3M Pharmaceuticals Inc.'s albuterol sulfate product, Proventil® HFA; although a determination has not yet been made on whether this product is a technically feasible alternative to the use of CFC's, this approval gives the subject matter of this advance notice of proposed rulemaking (ANPRM) a particular timeliness. The current or future availability of "technically feasible alternatives to the use of a [CFC]" may mean that the existing listing of a use in § 2.125(e) would no longer reflect current conditions. It is with this situation in mind that FDA is publishing this ANPRM regarding agency determinations that certain uses of ozone-depleting substances are no longer essential.

FDA has determined that it would be most productive to set out the following tentative policy on the elimination of essential uses in an ANPRM. The agency believes that providing an opportunity for the fullest public participation at the earliest possible stage in the agency decisionmaking process in this matter is appropriate to assist FDA in striking an appropriate balance that will best protect the public health, both by ensuring the availability of an adequate number of treatment alternatives and by curtailing the release of ozone-depleting substances. In striking this balance, FDA intends to assess a number of factors and is interested in public comment on them. In establishing its policy on the elimination of essential uses, FDA will assess the potential beneficial effects of reducing CFC emissions from drug products broadly, based on the amount of CFC emissions that would be avoided, the stratospheric ozone depletion that would be averted, and the resulting decline in incidence of UV-B-related adverse human health effects, including human cancers and cataracts. FDA will also assess the beneficial public health effects of continued availability of CFC-containing drug products broadly, based on the availability, safety, and efficacy of alternatives, in full consideration of differences in patients' medical circumstances, physiological sensitivity, and acceptability of use, among others. FDA is specifically soliciting comments on how it should develop information to assist in striking this balance and how it should further balance the need for timely action. FDA also believes that there is adequate time to publish an ANPRM and respond to comments but will endeavor to complete this rulemaking process in a timely fashion. Because the first potential technically feasible alternatives are just now coming on the market, it will take a significant amount of time for manufacturers to collect and present the postmarketing safety and patient acceptance data that the agency will need to determine if the products are, in fact, technically feasible alternatives (see section II.B. of this document).

II. Proposed Policy

FDA has tentatively determined that certain uses of CFC's, listed in § 2.125(e) as essential, can no longer be considered to be essential. FDA is considering proposing to remove these uses from the list of essential uses in a rulemaking to be initiated soon. Uses no longer considered essential are discussed in section II.A. of this document. FDA also expects that certain uses still considered to be essential will cease to be considered essential as new technology develops. Section II.B. of this document describes the policy that FDA has tentatively determined will be used in making determinations that these uses of CFC's are no longer essential. FDA has worked closely with EPA in developing the following policy and this ANPRM reflects those discussions. This policy will also be the subject of a notice of proposed rulemaking to incorporate the policy into FDA regulations.

A. Listed Uses That Are No Longer Considered Essential

1. Metered-Dose Steroid Human Drugs for Nasal Inhalation

Steroid human drugs for nasal inhalation are currently available using metering atomizing pumps rather than nasal MDI's. The availability of such products as Beconase® AQ and Vancenase® AQ (beclomethasone dipropionate monohydrate), Nasarel® and Nasalide® (flunisolide), Flonase® (fluticasone propionate), and Nasacort® AQ (triamcinolone acetonide), and the widespread patient acceptance of these products, indicate to FDA that using CFC's in metered-dose steroid human drugs for nasal inhalation can no longer be considered to be essential and FDA has tentatively determined to remove the use from § 2.125(e).

2. Drug Products That Are No Longer Being Marketed

Several of the essential uses listed in § 2.125(e) exempt only a single approved drug product and, in a few cases, that drug product is no longer being marketed (or is no longer being marketed in a formulation containing CFC's). FDA has tentatively determined that an essential use for which no drug product is currently being marketed should no longer be considered to be essential. The absence of a demand for the product sufficient for even one company to market it is highly indicative that the use is not essential. Therefore, FDA has tentatively determined to remove the following uses from § 2.125(e): Polymyxin B sulfate-bacitracin zinc-neomycin sulfate soluble antibiotic powder without excipients, for topical use on humans; and contraceptive vaginal foams for human use.

B. Criteria for Determination That a Use Is No Longer Essential

1. Therapeutic Classes

In evaluating petitions submitted under § 2.125(f) requesting that a new use be listed as essential, FDA has not required a showing that technically feasible non-CFC alternatives to a product contain the same active ingredient or active moiety[1] as the drug product that would be the subject of the proposed essential use. Thus, if other drug products, containing other active moieties, are available for treatment of the same condition, they may be considered technically feasible alternatives to the proposed essential-use product. Many of the drug products marketed under § 2.125 are pharmacologically closely related, are indicated for the treatment of the same conditions, and may be considered to be treatment alternatives. In evaluating whether a use remains essential, FDA believes that it is appropriate to evaluate these treatment alternatives together as a therapeutic class. In this regard, FDA has tentatively determined that metered-dose corticosteroid human drugs for oral inhalation and metered-dose short-

[1] 21 CFR 314.108(a) defines active moiety as meaning "the molecule or ion, excluding those appended portions of the molecule that cause the drug to be an ester, salt (including a salt with hydrogen or coordination bonds), or other noncovalent derivative (such as a complex, chelate, or clathrate) of the molecule, responsible for the physiological or pharmacological action of the drug substance."

acting adrenergic bronchodilator human drugs for oral inhalation are appropriate therapeutic classes for essential-use determinations. The determination of whether drug products that are not members of either therapeutic class represent essential uses of CFC's will be made under the criteria set out in section II.B.2. of this document.

FDA has tentatively determined that all drugs currently marketed under § 2.125(e)(2) should be considered to be members of the therapeutic class "metered-dose corticosteroid[2] human drugs for oral inhalation." These drugs contain the following active moieties:

- beclomethasone
- dexamethasone
- flunisolide
- fluticasone
- triamcinolone

FDA has tentatively determined that drugs containing the following active moieties currently marketed under § 2.125(e)(3) should be considered to be members of the therapeutic class "metered-dose short-acting adrenergic bronchodilator human drugs for oral inhalation":

- albuterol
- bitolterol
- isoetharine
- isoproterenol
- metaproterenol
- pirbuterol
- terbutaline

Adrenergic bronchodilator drug products containing the active moiety salmeterol are not included in the therapeutic class because of the longer duration of action and different indication of usage of salmeterol as compared to metered-dose short-acting adrenergic bronchodilator human drugs for oral inhalation. Adrenergic bronchodilator drug products containing the active moiety epinephrine are also not included in the class because epinephrine is the only active moiety used in drug products sold over-the-counter (OTC). These OTC drug products are available to patients who may not have access to prescription drugs. Therefore, FDA has tentatively determined that prescription drug products should not be considered as alternatives to drug products containing epinephrine. The determination of whether a drug product containing salmeterol or epinephrine constitutes an essential use would be considered under the criteria for an individual active moiety discussed in section II.B.2. of this document.

The use of CFC's in any drug product that is a member of a therapeutic class described above would no longer be considered essential if, for each therapeutic class:

1. Three distinct alternative products, representing at least two different active moieties, are being marketed, with the same route of delivery, for the same indication, and with approximately the same level of convenience of use as the products containing CFC's. At least two of the three alternative products must be MDI's.
2. Adequate supplies and production capacity exist for the alternative products to meet the needs of the population indicated for the therapeutic class.
3. At least 1 year of postmarketing use data for each product are available. There should be persuasive evidence of patient acceptance in the United States of each of the alternative products.
4. There is no persuasive evidence to rebut a presumption that all significant patient subpopulations are served by the alternative products.

FDA believes that making essential-use determinations for an entire class of closely related drug products will expedite the elimination of drug products that release ozone-depleting substances. FDA recognizes that there may be limited incentives to develop alternative products containing every active moiety currently marketed under essential-use exemptions. By eliminating the essential use by therapeutic class, FDA will ensure that these drugs do not remain on the market longer than necessary.

FDA also hopes that the knowledge that the essential use covering a given product may be eliminated, even though no alternative product exists containing the same active moiety as that product, may provide added incentive for the manufacturer of that product to develop an alternative product containing the same active moiety. In addition, the agency believes that requiring multiple alternative drug products containing multiple active moieties should ensure that all significant patient populations have safe and effective alternatives to CFC-containing drug products.

A discussion of the application of these criteria can be found in section II.B.3 of this document.

Under the proposed policy being considered for elimination of the essential-use status of the therapeutic classes, the essential-use status for individual members of a therapeutic class would only be eliminated when the essential-use status for the therapeutic class as a whole is eliminated. FDA recognizes that this approach may allow the essential-use status of an individual member of a therapeutic class to be retained despite the marketing of one or more technically feasible alternatives containing the same active moiety, pending elimination of the essential-use status for the therapeutic class as a whole. In addition to the policy FDA is considering for elimination of the essential-use status of the therapeutic classes described above, FDA is considering a policy for elimination of the essential-use status of individual members of a therapeutic class in advance of elimination of the essential-use status for the therapeutic class as a whole. Under this proposed policy, the essential-use status of an active moiety within a therapeutic class would be eliminated when one alternative product that contains the same active moiety is being marketed. All other elements of the policy regarding therapeutic classes would apply, including: The alternative product is delivered by the same route of administration, for the same indication, and with approximately the same level of convenience of use; there are adequate supplies and production capacity; at least 1 year of postmarketing use data are available; and there is no persuasive evidence to rebut a presumption that all significant patient subpopulations using that active moiety are served by the alternative product. Therapeutic classes would still be evaluated under the proposed therapeutic class policy, and alternative products used in the evaluation of the essential-use status of a member of the therapeutic class under the proposed additional policy would also be used in the evaluation of the class as a whole. FDA requests public comment on these approaches, and other possible approaches, for the elimination of the essential-use status of individual members of the therapeutic classes and the therapeutic classes as a whole.

2. Individual Active Moieties

In examining the essential-use status of drug products when FDA has not already made a tentative determination that a currently listed essential use can no longer be considered to be essential, or when the drug is not a member of one of the therapeutic classes described in section II.B.1. of this document, FDA will look at other drug products containing the same active moiety as possible technically feasible alternatives. The use of CFC's in any drug product that is not a member of a therapeutic class described in section II.B.1. of this document would no longer be considered essential if:

1. One alternative product containing the same active moiety is being marketed, delivered by the same route of administration, for the same indication, and with approximately the same level of convenience of use compared to the product containing CFC's.
2. Adequate supplies and production capacity exist to meet the needs of the population indicated for the alternative drug product containing the active moiety.
3. At least 1 year of postmarketing use data for the product are available. There should be persuasive evidence of patient acceptance in the United States of the alternative product.
4. There is no persuasive evidence to rebut a presumption that all significant patient subpopulations are served by the alternative product.

A discussion of the application of these criteria can be found in section II.B.3. of this document.

Drug products marketed under the following current essential uses would generally be evaluated under the above "individual active moieties" criteria:

- Metered-dose ergotamine tartrate drug products administered by oral inhalation for use in humans.
- Intrarectal hydrocortisone acetate for human use.
- Anesthetic drugs for topical use on accessible mucous membranes of humans where a cannula is used for application.
- Metered-dose nitroglycerin human drugs administered to the oral cavity.
- Metered-dose cromolyn sodium human drugs administered by oral inhalation.
- Metered-dose ipratropium bromide for oral inhalation.
- Metered-dose atropine sulfate aerosol human drugs administered by oral inhalation.[3]
- Metered-dose nedocromil sodium human drugs administered by oral inhalation.
- Metered-dose ipratropium bromide and albuterol sulfate, in combination, administered by oral inhalation for human use.
- Sterile aerosol talc administered intrapleurally by thoracoscopy for human use.

As discussed in section II.B.1. of this document, the essential-use status of drugs containing the active moieties epinephrine and salmeterol will also be evaluated under the "individual active moieties" criteria.

FDA requests public comment on the appropriateness of potentially eliminating such essential uses and criteria outlined here.

3. Discussion of Criteria

In arriving at the tentative criteria for evaluating the essential-use status of the two therapeutic classes, FDA has kept in mind that the MDI is the most widely accepted delivery system for administering drugs by oral inhalation for the treatment of asthma and chronic obstructive pulmonary disease. Physicians and patients value an MDI's compact size and ease of use. Because these factors are important and help ensure that patients receive appropriate medical treatment, FDA would require that at least two of the alternative products be available as an MDI. FDA is also aware that not all patients may tolerate a given drug product. Accordingly, FDA has reached the tentative conclusion that there must be products representing at least two different active moieties before FDA will consider that there are technically feasible alternatives to the therapeutic class. FDA is proposing that there be three distinct drug products. FDA wishes to ensure that there are substantial differences among the alternative products in order to give patients a wide variety of therapeutic options. Therefore, a drug product and a second generic drug product that refers to the first drug product to gain approval, under section 505(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)), would not generally be considered to be two distinct drug products for purposes of evaluating the essential-use status of the drug.

For most of the essential uses that would be evaluated under the "individual active moieties" criteria, there is only one product being marketed under each essential use. Therefore, requiring the availability of more than one alternative would appear to be inadvisable.

Because of their larger size and relative lack of convenience of use, FDA does not consider currently available nebulizers to be technically feasible alternatives to MDI's. Currently available delivery systems that FDA considers to be technically feasible alternatives to MDI's using CFC's are multiple-dose DPI's[4] and MDI's that do not contain CFC's. Continuing changes in technology may give FDA reason to revisit this tentative determination.

In evaluating whether adequate supplies and production capacity exist for the alternative product or products to meet the needs of the patient population indicated for drug products covered by an essential use, FDA's analyses will be flexible, but with one overarching principle: To ensure that there are no significant shortages of drug product that could harm the public health of the United States. Factors such as multiple production sites, to secure a steady supply if there is an interruption at one site, would be considered favorably in this regard.

In evaluating postmarketing use data and evidence of patient acceptance under the third criterion, FDA anticipates that it may be useful for sponsors of alternative products to conduct large postmarketing studies, preferably in the U.S. clinical practice setting, directly comparing their product which does not contain CFC's to the CFC-containing product for which it would be considered an alternative. It may also be possible for several sponsors to jointly commission a large postmarketing clinical study of their common products. In addition to the formal studies described above, manufacturers of alternative products, or other persons requesting the elimination of an essential use, may wish to submit to FDA a review of postmarketing surveillance data from FDA's MEDWATCH program, the spontaneous reporting systems of other countries, and all other available postmarketing data after a potential alternative product has been marketed in the United States for a period of 1 year. FDA has tentatively concluded that foreign data would not be considered acceptable as the sole evidence of patient acceptance, but these data will be considered in addition to U.S. postmarketing use data in cases where U.S. formulations and foreign formulations have been shown to be the same or substantially similar. The term "patient acceptance" here

[2] The active ingredients in all drug products currently marketed under the essential use for metered-dose steroid human drugs for oral inhalation are members of the subclass of substances known as corticosteroids. FDA has tentatively determined that it would be more accurate to use the more specific term corticosteroids rather than the more general term steroids to describe the therapeutic class.

[3] The evaluation of the essential use status of drug products containing atropine sulfate may be an exception to the application of the criteria set out in section II.B. of this document. Drug products containing atropine sulfate were never commercially marketed under § 2.125, but were manufactured for the U.S. Army for use by armed services personnel. The unique status of this use may require that other criteria be applied to it.

[4] Single-dose DPI's that are currently marketed in the United States would not be considered technically feasible alternatives to MDI's using CFC's. The agency has tentatively determined that these single-dose DPI's do not approximate the convenience of MDI's because patients must carry both the single-dose DPI device and a supply of the drug. The patient must also load the device prior to each use. The comparative inconvenience of single-dose DPI's does not warrant their being considered technically feasible alternatives. The agency also believes that these single-dose DPI's have not shown adequate levels of patient acceptance.

assumes that the alternative products have adequate safety, tolerability, effectiveness, and compliance. Because information regarding patient acceptance is not routinely captured by postmarketing surveillance, such assessments should be incorporated into the proposed formal clinical studies.

In evaluating the last criterion, that there is no persuasive evidence to rebut a presumption that all significant patient subpopulations are served by the alternative product, FDA believes that there should be a strong presumption that, if the first three criteria are met, then all relevant subpopulations will be adequately served by alternative products. If FDA is not already in possession of evidence indicating the presence of a subpopulation served only by a product containing CFC's, then the burden of producing compelling scientific evidence that there is a subpopulation served only by a product containing CFC's would be placed on anyone opposing the determination that a use is no longer essential.

C. Implementation

FDA currently intends to publish a notice of proposed rulemaking after the comment period for this ANPRM closes. That proposed rule would eliminate essential uses for steroid human drugs for nasal inhalation and for drugs that are no longer marketed. The proposed rule would also codify the criteria for elimination of essential uses discussed in section II.B. of this document. FDA intends to use the preamble of the proposed rule to respond to comments on this ANPRM.

As the criteria for eliminating essential uses are met, FDA will propose elimination of essential uses for the appropriate therapeutic classes or individual active moieties. FDA intends that such proposals will be published and finalized in an expeditious manner.

FDA is aware that the proposed policy contained in this ANPRM is, to a certain degree, predicated on the assumption that drug manufacturers are aggressively developing alternatives to products containing CFC's. If this assumption is less than fully met, FDA recognizes that it may have to take an even more active role in encouraging the development of technically feasible alternatives. Furthermore, FDA contemplates reexamining the effectiveness of the policy set out in this ANPRM 1 to 3 years after the publication of the first final rule implementing the policy set out in this ANPRM. If this reexamination reveals that alternatives to CFC's are not being aggressively developed, FDA will consider eliminating essential uses where manufacturers of drug products covered by those uses have not demonstrated due diligence in developing alternative products.

D. Analysis of Impacts

FDA is required to examine the impacts of its proposed rules under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Regulatory Flexibility Act requires agencies to analyze regulatory options if the proposed rule is expected to have a significant impact on a substantial number of small entities. FDA is soliciting information and data to help it examine the impacts that a proposed rule based on this advance notice would have. In order to help the agency prepare these analysis, FDA requests comments on the following impact questions:

1. Are the incentives discussed in the ANPRM adequate to spur the needed market innovation? Are there alternative means of introducing appropriate market incentives?
2. Assuming that an alternative product is approved for marketing, what is the estimated cost of obtaining postmarketing data supporting the new product as a technologically feasible alternative? How much time would be necessary? What other costs should the agency consider?
3. How much would it cost to obtain the data including the postmarketing study discussed in the ANPRM? How much would it cost to obtain the data excluding such a postmarketing study? What are the components of this estimate (e.g., person-hours, contract dollars, etc.)?
4. How much time should be allowed for phasing out a CFC-containing product no longer considered essential?
5. Are there other alternative policies that the agency should consider that would achieve the stated goals and be less burdensome to patients that use these products and/or to the industry that provides the products?

III. Other Rulemaking Proceedings Regarding CFC's

In the very near future, FDA intends to propose a rule regarding criteria to be applied in agency determinations to add new essential uses to § 2.125(e). The agency is not soliciting comments on this separate rulemaking proceeding, and is only mentioning the matter here to provide a more complete picture of FDA's current plans regarding the regulation of CFC-containing drug products. FDA does not intend to respond to any comments regarding this issue at this time; those persons wishing to comment on this issue should wait until the proposed rule is published.

Consistent with the phaseout provisions of the Clean Air Act, the proposed rule regarding the addition of new essential uses will provide new and substantially more stringent criteria for determining that a use is essential. Specific criteria will be proposed for both investigational drugs and commercially marketed drugs.

FDA currently intends that this proposed rule will provide a restructuring of § 2.125(e) to eliminate essential uses that cover an entire class of drugs, such as current § 2.125(e)(3) "metered-dose adrenergic bronchodilator human drugs for oral inhalation." In their place, FDA will propose to list the use of every active moiety currently marketed under the current class essential use. This will mean that an individual wishing to market, for example, an adrenergic bronchodilator where the active moiety is not listed will need to petition FDA to amend § 2.125(e) to add the use of the active moiety.

The proposed rule would also eliminate out-of-date transitional provisions, and make other similar nonsubstantive housekeeping changes.

The agency has determined to go directly to a proposed rule on these provisions of the agency's policy, rather than requesting comment on them in this or another ANPRM, in order to accelerate consideration of the new more stringent criteria for determining when new uses are essential. FDA believes that as the agency will soon be eliminating essential uses, it would be a waste of scarce agency resources, as well as inconsistent with the general policy favoring the phase out of ozone-depleting substances, to create new essential uses unless an extraordinary showing of public benefit can be made.

Interested persons may, on or before May 5, 1997, submit to the Dockets Management Branch (address above) written comments regarding this ANPRM. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 28, 1997.

William B. Schultz,

Deputy Commissioner for Policy

[FR Doc. 97–5495 Filed 3–5–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Chapter I

[Docket No. FR–4170–N–07]

Native American Housing Assistance and Self-Determination Negotiated Rulemaking Committee; Meetings

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Negotiated Rulemaking Committee Meetings.

SUMMARY: This notice announces three series of negotiated rulemaking meetings sponsored by HUD to develop the regulations necessary to carry out the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (Pub. L. 104–330, approved October 26, 1996).

DATES: The meetings will be held on:

1. March 20, 21, 22, 24, 25, 26, and 27, 1997.
2. April 8, 9, 10, and 11, 1997.
3. April 24, 25, 26, 28, 29, 30, and May 1, 1997.

The meetings will begin at approximately 9:00 am and end at approximately 5:00 pm on each day, local time.

ADDRESS: The meetings will be held at the Cheyenne Mountain Conference Resort, 325 Broadmoor Valley Road, Colorado Springs, CO 8096; telephone (719) 576–4600 or 1–800–588–6532; fax (719) 576–4711 (With the exception of the "800" telephone number, these are not toll-free numbers).

FOR FURTHER INFORMATION CONTACT: Dominic Nessi, Deputy Assistant Secretary for Native American Programs, Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO; telephone (303) 675–1600 (voice) or 1–800–877–8339 (TTY for speech or hearing impaired individuals) (With the exception of the "800" number, these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Secretary of HUD has established the Native American Housing Assistance & Self-Determination Negotiated Rulemaking Committee (Committee) to negotiate and develop a proposed rule implementing NAHASDA. HUD will hold three series of meetings during March and April 1997 in Colorado Springs, Colorado to discuss the regulatory implementation of NAHASDA. The meetings will be held on the following dates:

1. March 20, 21, 22, 24, 25, 26, and 27, 1997.
2. April 8, 9, 10, and 11, 1997.
3. April 24, 25, 26, 28, 29, 30, and May 1, 1997.

The agenda planned for the meetings includes: (1) the development of regulatory language by workgroups; (2) discussion and approval of the draft regulatory language by the full Committee; and (3) other agenda items which may be agreed upon by the Committee.

The meetings will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent time permits, and file written statements with the Committee for its consideration. Written statements should be submitted to the address listed in the **FOR FURTHER INFORMATION** section of this notice. Summaries of Committee meetings will be available for public inspection and copying at the same address.

The location and dates of any future meetings will be published in the **Federal Register**. HUD will make every effort to publish such notice at least 15 calendar days prior to each meeting.

Dated: March 3, 1997.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

[FR Doc. 97–5564 Filed 3–5–97; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 202 and 206

RIN 1010–AB57

Amendments to Gas Valuation Regulations for Indian Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of meeting and reopening of public comment period.

SUMMARY: The Minerals Management Service (MMS) is reopening the public comment period for a proposed rule published in the **Federal Register** on September 23, 1996, 61 FR 49894, amending its regulations governing the valuation for royalty purposes of natural gas produced from Indian leases.

DATES: Comments must be submitted on or before April 4, 1997. The committee meeting will be on March 26, 1997.

ADDRESSES: MMS will hold a meeting of the Indian Gas Valuation Negotiated rulemaking committee on March 26, 1997, in the conference room at: Golden Hill Office Complex, 12600 West Colfax Avenue, Suite B200, Golden, Colorado.

Written comments, suggestions, or objections regarding this proposed amendment should be sent to the following addresses. For comments sent via the U.S. Postal Service use: Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3101, Denver, Colorado 80225–0165.

For comments via courier or overnight delivery service use: Minerals Management Service, Royalty Management Program, Rules and Publications Staff, MS 3101, Building 85, Denver Federal Center, Room A–212, Denver, Colorado 80225–0165.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Publications Staff, phone (303) 231–3432, FAX (303) 231–3194, e-Mail David_Guzy@smtp.mms.gov.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Procedures Staff, at (303) 231–3432.

I. SUPPLEMENTARY INFORMATION:

Background

On September 23, 1996, MMS published a notice of proposed rulemaking in the **Federal Register** (61 FR 49894) to amend the valuation regulations for gas production from Indian leases. The framework for the proposed rule was the product of an Indian Gas Valuation Negotiated Rulemaking Committee. The proposed rulemaking provided for a 60-day comment period, which ended November 22, 1996, and was extended to December 3, 1996, by a **Federal Register** Notice (61 FR 59849, November 25, 1996). during the public comment period MMS received 13 written comments: 7 responses from industry, 4 from industry trade groups or associations, 1 from an Indian tribe, and 1 from an Indian agency. A public hearing was held in Oklahoma City, Oklahoma, on October 23, 1996.

II. Comments on Proposed Rule

MMS proposed to revise the current regulations regarding the valuation of gas production from Indian leases to accomplish the following:

- To ensure that Indian mineral lessors receive the maximum revenues from mineral resources on their land consistent with the Secretary of the

Interior's (Secretary) trust responsibility and lease terms; and,

• To improve the regulatory framework so that information is available which would permit lessees to comply with the regulatory requirements at the time that royalties were due.

All commenters endorsed the concept of revising the existing regulations to provide simplicity and certainty, decrease administrative costs, and decrease litigation. Industry generally supports the use of independent published index prices for valuing gas produced from Indian leases. Industry also supports the concept of an alternative "percentage increase" to satisfy the dual accounting requirement contained in most Indian leases to the extent the use of this alternative methodology is voluntarily chosen by the lessee. Industry does not support the language in the proposed rule and objects to:

• the safety net concept for nondedicated sales,

• the separate dual accounting requirement on natural gas liquids, and

• the gross proceeds requirement if gas production was subject to a previous contract which was the subject of a gas contract settlement. The Council of Petroleum Accountants Societies (COPAS) states "The COPAS representative on the Committee voted in favor of the original index-based formula at the Committee's May, 1995 meeting based on the belief that the use of that formula would satisfy both the gross proceeds and major portion clauses contained in most Indian leases, with the exception of gas sold under certain high-priced contracts."

MMS agrees the gross proceeds requirement in the proposed rule dealing with the issue of gas contract settlements changed the Committee's agreement that the index formula was to replace both the gross proceeds requirement and the major portion requirement. The MMS would like to receive comments on a concept where contract settlement proceeds would be royalty bearing, but would not require a monthly gross proceeds comparison to the index formula. MMS will view contract settlement proceeds to be part of gross proceeds when value is determined by gross proceeds such as for production from a dedicated contract, or in nonindex areas where the initial value is determined under the gross proceeds context. For index areas, MMS will require the gross proceeds of gas sold under nondedicated contracts to be calculated only if the contract settlement proceeds per MMBTU when added to the 80 percent of the safety net price exceeds the formula value for the month including any increase for dual accounting. This computation would be made after the safety net prices were reported to the MMS by the lessee. Specifically, under this concept, MMS would revise § 206.172(b)(2)(ii) to read as follows:

This paragraph applies to gas not sold under a dedicated contract and that was subject to a previous contract which was part of a gas contract settlement. If the contract settlement proceeds per MMBTU added to the 80 percent of the safety net prices calculated at § 206.172(e)(4)(i) exceeds the index-based value that applies to the gas under this section (including any adjustments required under § 206.176), then the value of the gas is the higher of the value determined under this section (including any adjustments required under § 206.176) or § 206.174.

MMS specifically requests comments on these revised paragraphs. You do not need to comment on the rest of the rule. MMS will respond to all comments in a final rule.

February 28, 1997.

Lucy R. Querques,

Associate Director for Royalty Management.

[FR Doc. 97–5493 Filed 3–5–97; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 223 and 239

[FRA Docket No. PTEP–1, Notice No. 2]

RIN 2130–AA96

Passenger Train Emergency Preparedness

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking; dates and locations of public hearings.

SUMMARY: By notice of proposed rulemaking (NPRM) published on February 24, 1997 (62 FR 8330), FRA proposed a rule to require minimum Federal safety standards for the preparation, adoption, and implementation of emergency preparedness plans by railroads connected with the operation of passenger trains, including freight railroads hosting the operations of rail passenger service. In that notice, FRA announced that it would soon schedule two public hearings to allow interested parties the opportunity to comment on issues addressed in the NPRM.

DATES: Public Hearings: The date of the first public hearing is Friday, April 4 at 8:30 a.m. in Chicago, Illinois, and the date of the second public hearing is Monday, April 7 at 8:30 a.m. in New York City, New York. Any person wishing to participate in a public hearing should notify the Docket Clerk by telephone (202–632–3198) or by mail at the address provided below at least five working days prior to the date of the hearing and submit three copies of the oral statement that he or she intends to make at the hearing. The notification should identify the hearing in which the person wishes to participate, the party the person represents, and the particular subject(s) the person plans to address. The notification should also provide the Docket Clerk with the participant's mailing address. FRA reserves the right to limit participation in the hearings of persons who fail to provide such notification.

ADDRESSES: (1) *Docket Clerk:* Written notification should identify the docket number and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, RCC–10, 400 Seventh Street, S.W., Washington, D.C. 20590. (2) *Public Hearings:* The hearing scheduled for April 4 in Chicago will be held in the Special Events Room, Suite 200 on the Second Floor, Corporate Conference Center, 200 W. Adams Street, Chicago, Illinois 60606. The hearing scheduled for April 7 in New York City will be held in Room 305C of the Federal Building at 26 Federal Plaza, New York, N.Y. 10278.

FOR FURTHER INFORMATION CONTACT: Mr. Edward R. English, Director, Office of Safety Assurance and Compliance, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone number: 202–632–3349), or David H. Kasminoff, Esq., Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone: 202–632–3191).

Issued in Washington, D.C., on March 3, 1997.

Donald M. Itzkoff,

Deputy Federal Railroad Administrator.

[FR Doc. 97–5545 Filed 3–3–97; 3:39 pm]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 970213030–7030–01; I.D. 020597B]

RIN: 0648–AJ77

Central Title and Lien Registry for Limited Access Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: NMFS requests comments about a central registry (Registry) for limited access permits (LAPs). The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires us to establish the Registry. The Registry will be the exclusive means of perfecting title to LAPs. It will also be the exclusive means of perfecting security interests in, assignments of, and liens and other encumbrances (collectively Liens) against LAPs.

We want the public's guidance before proposing regulations.

DATES: Comments must be submitted by April 7, 1997.

ADDRESSES: Send comments to: Michael L. Grable, Chief, Financial Services Division, NMFS, 1315 East West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Michael L. Grable at (301) 713–2390.

SUPPLEMENTARY INFORMATION: Conservation and management sometimes requires limiting access to Federally-managed fisheries. Only parties with LAPs can fish in these fisheries. Some LAPs are transferable independently of fishing vessels (Transferable). Others are not.

The Sustainable Fisheries Act of 1996 (SFA) is Public Law 104–297. The SFA amended the Magnuson-Stevens Act. One SFA provision requires NMFS to establish the Registry:

> * * * the Secretary [of Commerce] shall establish an exclusive central registry system (which may be administered on a regional basis) for limited access system permits established under section 303(b)(6) or other Federal law, including individual fishing quotas, which shall provide for the registration of title to, and interests in, such permits * * *.

Section 110(d) of the SFA makes the Registry the legally exclusive means of perfecting LAP titles and Liens (except Federal tax Liens).

Before establishing the Registry, NMFS wants the public's guidance. We welcome comments from anyone, but particularly want guidance from:

1. Fisheries parties who will buy and sell LAPs,

2. Creditors and other parties who will file Liens for registration against LAPs, and

3. The Regional Fishery Management Councils.

We welcome comments about any Registry aspect, but particularly want guidance about the following:

1. Who should administer the Registry?

The SFA allows us either to administer the Registry or contract for its administration. We are considering the former alternative because:

a. The Registry's perpetual nature requires continuity,

b. Similar functions often appear to be governmentally administered, and

c. Many Registry title aspects involve LAP administration functions we already perform.

Should we administer the Registry, or should we contract for its administration? Which is the better alternative, and why?

2. Where should we locate the Registry?

Almost 90 per cent of all Transferable LAPs involve Alaska's fisheries. NMFS' Regional Office in Juneau, AK, administers these through its Restricted Access Management (RAM) Division.

If we administer the Registry, Juneau, AK, could be the most efficient and effective Registry location and the RAM Division the Registry's most suitable manager. A comparable example of a centralized national registry is the U.S. Coast Guard's National Vessel Documentation Center (NVDC) in Falling Waters, WV.

A centralized Registry could consider ways to facilitate filings from all parts of the country. One alternative could be similar to a NVDC approach that allows facsimile filings contingent upon receiving original documentation within 10 calendar days. If we adopted this approach, a facsimile's date and time could be the date and time of perfection if the original documentation were timely received. Otherwise, the date and time the Registry received the original documentation would be the date and time of perfection.

The centralization alternative includes only the Registry portion of LAP functions. Regular LAP administrative functions (issuance, renewal, transfer approval, etc.) would remain in their present regional locations.

3. Should the Registry register LAPs that are not Transferable?

About 60 per cent of all LAPs are Transferable. They can be bought and sold. They have market value. They can be pledged as collateral.

The other 40 per cent are not Transferable. They cannot be independently bought and sold. They have no independent market value. They are not useful as collateral. Most of them generally follow the titles of the fishing vessels to which they relate. They have no commercial significance apart from those vessels.

Although the SFA does not limit registration to Transferable LAPs, we question whether there is a practical reason to register LAPs that are not Transferable. The Registry's purpose is perfecting title to, and Liens against, LAPs. This benefits LAP buyers, sellers, lenders, and other lienholders. LAPs that are not Transferable do not separately involve any of these parties.

4. Should initial title registration be voluntary or mandatory for all Transferable LAPs?

In the first alternative, registration would be voluntary for all Transferable LAPs, except those to which title transfers, or against which Liens, were filed for registration. Registration would be mandatory for the excepted LAPs. The Registry would, without LAP holder requests, register these LAPs and bill LAP holders for the registration fees.

In the second alternative, registration of all Transferable LAPS would be mandatory. This might produce a more stable and dependable Registry that affords all LAP holders, buyers, lenders, and other lienholders greater security and assurance. Potential objections to mandatory registration, however, include:

a. Those planning neither to sell nor pledge their LAPs might object to mandatory registration's time and cost,

b. Mandatory registration could be burdensome for seasonal LAPs, and

c. Registering all LAPs might cause unnecessary Government work.

Regular LAP administration records disclose the authorized holders of all LAPs. We could automatically register title in the names of the authorized holders and charge a moderate fee for it (the SFA requires a fee). This would minimize the time and cost of mandatory registration. The alternative in question No. 5 might minimize the seasonal LAP problem.

5. How should the Registry treat seasonal LAPs that merely allocate periodic catch quantities for continuous LAPs?

The Pacific halibut and sablefish fishery, for example, has two types of LAPs. The first type is Quota Share (Access) permits. These are continuous

LAPs allowing access to the fishery. The second type is Individual Fishing Quota (Allocation) permits. These are seasonal LAPs that annually allocate the amount of fish each Access permit holder may catch that season. Allocation permit holders may transfer only 10 per cent of allocated catch quantity.

Separately including this fishery's Allocation permits in the Registry would be burdensome and complicated for everyone. Excluding Allocation permits could compromise minor commercial interests in the Allocation permit's limited transferability, but the time and expense of doing otherwise might not be worth the limited benefit.

One alternative we are considering would be for initial title registration of this fishery's Access permits (and payment of the registration fee) to include automatic registration of all subsequent Allocation permits (in the name of the LAP title holders of record and without payment of additional registration fees). This would prevent Access permit holders from having each year to register their seasonal Allocation permits and pay annual registration fees. Under this alternative, Liens against the Access permits would also encumber the corresponding Allocation permits.

6. How should we determine LAP "value"?

The SFA limits Registry fees to amounts not exceeding 0.5 per cent of LAP "value." Fees may be less, but not more, than this. We must determine the "value" of all LAPs included in the Registry.

Some LAPs have commonly known market values. We have market-value ranges for other LAPs because buyers and sellers have disclosed purchase prices to us. There may, however, be little or no market-value data for some LAPs.

Valuation problems should mostly be limited to initial title registration. The registration of subsequent title transfers should involve purchase prices or other consideration that we can objectively value. Where known, we could apply market values to LAPs transferred by gift, trade, or inheritance.

If initial registration fees are a modest flat fee for all, the valuation problem might be mostly limited to determining that the fee does not exceed 0.5 per cent of the "value" of LAPs for which little or no market data exists. We are unsure how to establish the "value" of these LAPs.

7. What fees should the Registry charge?

The SFA requires fees for initial title registration (Initial Fee) and subsequent title-transfer registration (Transfer Fee). It does not authorize fees for registering Liens (or their renewal, release, assumption, assignment, etc.) or for any other Registry service.

Presumably, Registry fees should offset Registry expenses.

Unless fees other than the specifically authorized ones are possible, title and title-transfer registrants will have to bear the cost of all Registry services. Although it might be more equitable if the Registry could also charge the cost of Lien or other services to those seeking them, the SFA does not authorize this.

How should we determine the Initial Fee? Should it be a modest flat fee or 0.5 per cent of market value, whichever is less? If so, what should control the flat fee's amount? Should it, instead, be a specified percentage (not exceeding 0.5%) of market value? If so, what should control the percentage's amount? Should we publish a schedule of average market values representative of various LAPs and base the percentage on those values?

Under the mandatory title-registration alternative, the Initial Fee could be moderate. There are about 23,000 Transferable LAPs, if Pacific halibut and sablefish Allocation permits are included. If not, there are about 14,500. Under the voluntary title-registration alternative, however, the Initial Fee may have to be substantially higher.

How should we determine the Transfer fee, and what should control its amount? Should it be a specified percentage (within the statutory maximum) of LAP purchase price? If so, what should control the percentage's amount? This alternative could include provisions to determine market value for LAP gifts, inheritances, trades, and other title transfers involving considerations other than market value.

Recent title-transfer activity for Transferable LAPs indicates about 2,300 title transfers annually.

8. How should we respond when LAP holders required to register LAP titles and pay registration fees do not do so?

This would apply to all LAP holders included in a mandatory Registry. In a voluntary Registry, it would apply only to those who sell or pledge their LAPs or whose LAPs are otherwise subjected to Liens. The Registry must be able to compel appropriate performance. How should it do this? What should the penalties be?

9. What Lien registrations should the Registry allow?

One alternative we are considering would limit registerable Liens to:

a. Secured interests in LAPs to which the LAPs' holders have, by their signatures, consented,

b. Liens authorized or constituted by the judgments or orders of duly constituted courts of competent jurisdiction, and

c. Other Liens authorized by State or Federal statute.

Should the Registry allow other types of Liens to be registered? Why? Could this create problems or be burdensome?

10. Should the Registry attempt to validate any title or Lien?

One alternative we are considering is to accept the validity of title or Lien filings that meet the Registry's minimal filing requirements. Under this alternative, the Registry would not attempt to determine the completeness, accuracy, or validity of any documents filed.

11. Should the Registry do anything to help prevent unauthorized signatures?

One alternative might be requiring signatures to be notarized. Would this be useful? Is there a better approach?

12. Should the Registry require using a standard form for filing Liens for registration?

One alternative we are considering is to require using a form fulfilling the Registry's minimum filing requirements. This seems to be the practice under the Uniform Commercial Code (UCC). For consensual Liens, the Registry could require both the lienholder and the LAP holder to sign this form. Nonconsensual Liens would not require the LAP holder's signature, but could require specifying the nature of, and authority for, the nonconsensual Liens. All forms could identify: the name and address of the LAP holder, the name and address of the lienholder, the LAP against which the Lien is to be registered, and the effective date of the Lien.

Would the use of a standard form expedite registration or make it more reliable? If so, what should the form require?

13. Should Lien filing forms be accompanied by the Lien documentation upon which the filings are based?

If the Registry were to register all Liens that met its minimal filing requirements, should Lien documentation accompany Lien filing forms? If so, why, and what should the Registry do with this documentation?

14. Should Lien registrations require periodic renewal?

One alternative we are considering is for Lien registrations to expire if lienholders do not renew them within a certain time. This seems to be the UCC practice. If we should adopt this alternative, what should the periodic renewal period be?

15. How should the Registry handle registering Lien releases?

The UCC practice seems to involve release forms signed by lienholders.

16. What Lien data should the Registry register, and how long should the Registry maintain them?

Should the Registry register only lienholders' names and addresses? Would registering other Lien characteristics (e.g., nature, amount, and maturity) be useful? Should the Registry perpetually maintain all Lien data or periodically purge all data about terminated Liens?

17. Should the Registry require using a specific form for filing LAP title transfers for registration and, if so, what should it include?

We are considering this alternative, because it might expedite title-transfer registration or make it more reliable.

For voluntary transfers, the form could be signed by the LAP seller and purchaser and could include: the identity of the LAP whose title seller transfers to purchaser, the date seller transfers title to purchaser, and the accompanying instrument evidencing seller's transfer of title to purchaser.

For involuntary transfers, the form could be signed by the party to whom title involuntarily transfers and include: the identity of the LAP interest whose title involuntarily transfers, the date title involuntarily transfers, and the nature of the accompanying instrument evidencing involuntary title transfer.

18. Should any evidence of title transfer the Registry might require contain original signatures or would a copy of the original evidence be sufficient?

19. Should the Registry perpetually maintain any evidence of title transfer it might require?

20. Should the Registry make available for public inspection any evidence of title transfer it might maintain and, if so, how and under what circumstances?

21. Should the Registry provide title abstracts (or any other written record of LAP title and lien registration)?

The statute does not authorize the Registry to charge fees for this purpose. If the Registry provided this, its cost might have to be recovered primarily from fees that the statute authorizes the Registry to collect for title transfers. What would the effect be if the Registry did not provide this? If it did, should it limit provision to certain users for certain purposes? What data should this include?

22. How should the Registry best provide for nonjudicial foreclosure (NJF)?

The SFA requires the Registry to provide:

* * * a mechanism for filing notice of a nonjudicial foreclosure * * * by which the holder of a senior security interest acquires or conveys ownership of a permit * * * [and] the interests of the holders of junior security interests are released when the permit is transferred * * *.

How should the Registry best comply? One alternative we are considering is adapting the UCC's NJF procedure. Under this alternative, we would register an NJF title transfer only if one of the following two conditions apply:

a. The LAP holder and all registered lienholders junior (Junior Lienholders) to the senior security interest being foreclosed nonjudicially (NJF Security) first notify the Registry in writing that they consent to the recordation of the NJF title transfer; or

b. Absent such consent:

i. The holder of the NJF Security (NJF Lienholder) certifies to the Registry that the NJF Lienholder:

A. Is contractually entitled to NJF,

B. Has, at least 21 calendar days before such certification, notified the LAP Holder and all Junior Lienholders and given the LAP Holder and all Junior Lienholders the opportunity to object in writing to the Registry about the NJF title transfer; and

ii. The Registry has received no such objection.

If either of these two conditions apply, the Registry would register NJF title transfer to the NJF Lienholder.

If neither of these two conditions applied, the Registry would not register NJF title transfer.

All NJF title transfers would release only such registered Liens as are junior to the NJF Security. The Registry would not release any registered Liens senior to the NJF security, and the title transferred by NJF would continue subject to the unreleased Liens.

We would not adjudicate conflicting interests. Conflicting interests would have either to be settled by the consent of all relevant parties or by adjudication in a duly constituted court of competent jurisdiction.

Are there better ways to implement the NJF provisions? What are they and why are they better than the alternative suggested here?

23. If we adopt the alternative suggested in question No. 22, what certification requirements should the Registry impose?

One alternative we are considering is a certification, pursuant to 28 U.S.C. 1746, that:

a. The NJF Lienholder gave NJF title transfer notice, at least 21 calendar days before such certification, to the LAP holder and all Junior Lienholders,

b. Such notice was in writing and delivered to the LAP holder and each Junior Lienholder both at the address of record maintained at the Registry for the LAP Holder and each Junior Lienholder and at such other address as the NJF Lienholder may have had cause to have known was a better address,

c. Such notice contained the notice language required by the Registry's regulations,

d. The NJF Lienholder is contractually entitled to NJF, and

e. Such certification is made in good faith and without any design to hinder, delay, or defraud the LAP holder or any present or future lienholder or creditor of the LAP holder.

24. When NJF title transfer is based on consent, should the Registry require using a standard filing form?

25. When NJF title transfer is based on certification, should the Registry require using a standard form of certification?

26. Under what circumstances should the Registry register title transfer by judicial foreclosure, as a result of judgment enforcement, or otherwise by involuntary transfer?

The SFA provides that the Registry shall provide:

* * *procedures for changes in the registration of title to such permits upon the occurrence of involuntary transfers, judicial* * * foreclosure of interests, enforcement of judgments thereon, and related matters deemed appropriate* * *.

The Registry would register judgments as Liens against LAP title. One alternative we are considering, however, is that the Registry would not register LAP title transfer by judicial foreclosure (or as a result of judgment enforcement or other involuntary transfer) unless the party judicially foreclosing (or enforcing a judgment or causing an involuntary transfer) presented to the Registry a bill of sale (or other instrument causing title transfer) issued pursuant to, or confirmed by, the order of a duly constituted court of competent jurisdiction.

27. How best should the Registry provide public access to Registry data, and what Registry data should be public?

We are considering putting Registry data on the Internet. Are there additional or better ways of providing public access to Registry data?

We are considering making the following data publicly available

a. LAP fishery;

b. LAP nature;

c. LAP holder's name and address (tax identification number and other protected or confidential data would be excluded);

d. Chronological listing of all LAP Lien data (including names and

addresses of all lienholders and recordation dates for: initial recordation, renewal, expiration, release, assumptions, assignments, etc.); and

e. Complete chain of post-Registry LAP title, including the name and address of each party to whom LAP title has been registered and the date of each such title registration.

28. How should the Registry best provide for the perfection of pre-Registry Liens?

The SFA provides that:

> Security interests on * * * [LAPs] that are effective and perfected by otherwise applicable law on the date of the final regulations implementing * * * [the Registry] shall remain effective and perfected if, within 120 days after such date, the secured party submits evidence satisfactory to * * * [the Registry] and in compliance with such regulations of the perfection of the security.

The UCC is (in UCC States) the only "otherwise applicable law" known to us under which pre-Registry Liens against LAPs could have been "perfected." Should we give priority to Liens perfected under the UCC in strict chronological precedence regardless of the UCC jurisdiction involved? If so, what evidence of UCC perfection and its chronological precedence should we require?

Are there any other "otherwise applicable laws" that we should consider? If so, how would they relate to perfection under the UCC?

What should the regulations require?

Before the SFA, we had informally allowed lienholders to register with the RAM Division their Liens against Alaska LAPs. These informal filings are not "perfected by otherwise applicable law" and we cannot consider them in determining pre-Registry Lien priorities.

We welcome all comments on any other Registry aspects.

This advance notice of proposed rulemaking has been determined to be not significant for purposes of E.O. 12866.

Dated: February 28, 1997.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97–5540 Filed 3–5–97; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 62, No. 44

Thursday, March 6, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Procurement and Property Management; Notice of Intent To Extend a Currently Approved Information Collection

AGENCY: Procurement and Property Management, USDA.

ACTION: Notice and request for comments.

SUMMARY: The Department of Agriculture, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Comment should be received on or before April 15, 1997.

ADDRESS: Direct all written comments to Denise Patterson, USDA, Room 1520–S, 1400 Independence Avenue, SW, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Linda W. Oliphant, (202) 720–3141, USDA, Room 1522–S, 1400 Independence Avenue, SW, Washington, DC 20250.

SUPPLEMENTARY INFORMATION:

Title: Department of Agriculture Guidelines for the Donation of Excess Research Equipment under 15 U.S.C. 3710(i).

OMB Number: 0505–0019.

Expiration Date of Approval: April 30, 1997.

Type of Request: Intent to extend currently approved information collection.

Abstract: This action is necessary to obtain approval for use of the forms beyond the current expiration date. The collection of this information will substantiate that property donations are based on need, usability and related to agricultural sponsored education and research activities. In addition, the information enables the Department of Agriculture to comply with the requirement to report all donations of excess research equipment under the Stevenson-Wydler Innovation Technology Act (Public Law 102–245), U.S.C. 3710(i).

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2 hours per response.

Respondents: Not-for-profit Institutions and State, local or Tribal Organizations.

Estimated number of Respondents: 50.

Estimated Number of Responses per Respondent: 1.

Estimate, Total Annual Burden on Respondents: 100 hours.

Copies of this information collection can be obtained from Linda W. Oliphant, (202) 720–3141.

Comments: Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

W.R. Ashoworth,

Director, Procurement and Property Management.

[FR Doc. 97–5475 Filed 3–5–97; 8:45 am]

BILLING CODE 3410–PA–M

Forest Service

Clean Slate Ecosystem Management Project; Nez Perce National Forest, Idaho County, ID

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) to analyze and disclose the environmental effects of applying ecosystem management techniques across the landscape in Main Slate and North Fork Slate Creek drainages. The area is located approximately 19 air miles south of Grangeville, Idaho. Some activities are planned within the North Fork Slate Creek (#1850) Roadless Area. This EIS will tier to the Nez Perce National Forest Land and Resource Management Plan and EIS, which provide overall guidance for achieving the desired forest condition of the area. The purpose of the proposed action is to improve overall vegetative conditions and diversity, restore impacted aquatic resources, and provide goods and services to the public.

DATES: Written comments and suggestions should be received by April 7, 1997 to receive timely consideration in the preparation of the Draft EIS.

ADDRESSES: Send written comments and suggestions on the proposed action, requests for a map of the proposed action, or requests to be placed on the project mailing list to Jack Carlson, District Ranger, Salmon River Ranger District, HC 01, Box 70, White Bird, Idaho 83554.

FOR FURTHER INFORMATION CONTACT: Mike McGee, Planner, Salmon River Ranger District, Nez Perce National Forest, HC 01, Box 70, White Bird, Idaho 83554, Phone (208) 839–2211.

SUPPLEMENTARY INFORMATION: The following activities are proposed in the Main Slate and North Fork Slate Creek drainages to: Treat approximately 1,100 acres through the use of helicopter, tractor, and cable logging systems, which will produce approximately 8 million board feet (MMBF) of timber; introduce fire for the treatment of both activity generated and natural fuels; use precommercial thinning of saplings and small poles; provide commercial post and pole material; improve watershed conditions by implementing actions such as cutslope revegetation, ditch rocking, culvert replacement, improvement of road drainage and surfacing, partial or complete obliteration on many sections of road, and improvement of the trail system; implement wildlife habitat improvements; implement practices to manage undesirable exotic vegetation; modify existing fish habitat structures in

Slate Creek; analyze and implement access management prescriptions for the existing road and trail system; develop and enhance dispersed recreation sites; and provide interpretive sites for the public.

No new permanent roads would be constructed. Some new construction of temporary roads and helicopter log landings would occur and some re-construction of existing roads would occur. Temporary roads that are constructed or re-constructed will be recontoured after use.

A watershed analysis, called the Slate Creek Implementation Area Assessment, was recently undertaken for the entire Slate Creek watershed. The Clean Slate project is located within the Slate Creek watershed. One of the primary purposes of this watershed analysis was to collect and display historic conditions and processes and document how management activities have influenced the current conditions of the watershed. From this, management opportunities were identified that would best fit with the natural character and processes of the watershed. This proposal is moving forward with some of the recommendations made in the Slate Creek Watershed Assessment.

The Forest Service will consider a range of alternatives to the proposed action. One of these will be the "no action" alternative, in which none of the proposed action will be implemented. Additional alternatives will examine varying levels and locations for the proposed activities, including entry into the Roadless Area, to achieve the proposal's purposes, as well as to respond to the issues and other resource values.

Public participation is an important part of the project, commencing with the initial scoping process (40 CFR 1501.7), which starts with publication of this notice and continues for the next 30 days. In addition, the public is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies, the Nez Perce Tribe, and other individuals or organizations who may be interested in or affected by the proposed action.

Comments from the public and other agencies will be used in preparation of the Draft EIS. The scoping process will be used to:

1. Identify potential issues.
2. Identify major issues to be analyzed in depth.
3. Eliminate minor issues or those which have been covered by a relevant previous environmental analysis, such as the Nez Perce National Forest Plan EIS.
4. Identify alternatives to the proposed action.
5. Identify potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects).

While public participation in this analysis is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the draft EIS, which is expected to be filed with the Environmental Protection Agency and available for public review in May, 1997. A 45-day comment period will follow publication of a Notice of Availability of the draft EIS in the **Federal Register**. The comments received will be analyzed and considered in preparation of a final EIS, which is expected to be filed in [July,] 1997. A Record of Decision will be issued not less than 30 days after publication of a Notice of Availability of the final EIS in the **Federal Register.**

The Forest Service believes it is important at this early stage to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to reviewer's position and contentions. Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 513 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. City of Angoon v. Hodel, 803 F.2d 1016, 1022 (9th Cir, 1986) and Wisconsin Heritages Inc. v. Harris, 490 F.Supp. 1334, 1338 (E.D. Wis., 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

I am the responsible official for this environmental impact statement.

Dated: January 31, 1997.

Coy G. Jemmett,

Forest Supervisor, Nez Perce National Forest, Route 2, Box 475, Grangeville, ID 83530.

[FR Doc. 97–5543 Filed 3–5–97; 8:45 am]

BILLING CODE 3410–11–M

Yakima Province Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Yakima Province Advisory Committee will meet on March 12, 1997, in the Cle Elum Ranger District office warehouse conference room, 803 W. 2nd Street, Cle Elum, Washington. The meeting will begin at 9:00 a.m. and continue until 3:00 p.m. Agenda items to be covered will include agency updates and information relative to the development and role of an advisory subcommittee in providing advice on the Snoqualmie Pass Adaptive Management Area. All Yakima Province Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Paul Hart, Designated Federal Official, USDA, Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801, 509–662–4335.

Dated: February 25, 1997.

Glenn Hoffman,

Acting Forest Supervisor, Wenatchee National Forest.

[FR Doc. 97–5458 Filed 3–5–97; 8:45 am]

BILLING CODE 3410–11–M

ARCTIC RESEARCH COMMISSION

Notice of Meeting

Notice is hereby given that the U.S. Research Commission will hold its 46th Meeting at 9:00 a.m. on Monday, March 24, 1997, at the National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Agenda items include:

(1) Call to order and approval of the Agenda
(2) Approval of the minutes of the 45nd Meeting
(3) Reports of Congressional Liaisons
(4) Agency Reports
(5) Research News

The focus of the meeting will be on Arctic Ocean Research.

Any person planning to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters must inform the Commission in advance of those needs.

Contact Person for More Information: Dr. Garrett W. Brass, Executive Director, Arctic Research Commission, 703–525–0111 or TDD 703/306–0090.

Garrett W. Brass,

Executive Director.

[FR Doc. 97–5520 Filed 3–5–97; 8:45 am]

BILLING CODE 7555–01–M

ASSASSINATION RECORDS REVIEW BOARD

Sunshine Act Meeting

DATE: March 13–14, 1997.

PLACE: ARRB, 600 E Street, NW, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Review and Accept Minutes of Closed Meeting
2. Review of Assassination Records
3. Other Business

CONTACT PERSON FOR MORE INFORMATION: Eileen Sullivan, Assistant Press and Public Affairs Officer, 600 E Street, NW, Second Floor, Washington, DC 20530. Telephone: (202) 724–0088; Fax: (202) 724–0457.

David G. Marwell,

Executive Director.

[FR Doc. 97–5619 Filed 3–3–97; 5:12 pm]

BILLING CODE 6118–01–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: March 11, 1997; 9:30 a.m.

PLACE: Cohen Building, Visitor's Center, First Floor, 330 Independence Ave., S.W., Washington, D.C. 20547.

OPEN MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in open session to address a variety of issues relating to U.S. Government-funded non-military international broadcasting. Among the subjects on the agenda are the following: opening remarks by the BBG Chairman; approval of minutes of a previous meeting; remarks by Kevin Klose, Director-designate of the International Broadcasting Bureau; remarks by Evelyn Lieberman, new Director of the Voice of America; and miscellaneous subjects relating to the Board's responsibilities such as the annual report to the President and the Congress.

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information about the meeting should contact Brenda Thomas at (202) 401–3736.

Dated: March 4, 1997.

David W. Burke,

Chairman.

[FR Doc. 97–5725 Filed 3–4–97; 2:37 pm]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1997 Economic Censuses General Classification Schedule.

Form Number(s): NC–9923.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 50,000 hours in FY98.

Number of Respondents: 300,000.

Avg. Hours Per Response: 10 minutes.

Needs and Uses: The 1997 Economic Census will cover virtually every sector of the U.S. economy. The Census Bureau will implement the new North American Industry Classification System (NAICS) in the 1997 Economic Census. The implementation of the NAICS as a replacement for the 1987 Standard Industrial Classification (SIC) system will require contacting businesses to collect classification information to update the 1997 Economic Census mailing lists. Accurate and reliable industry and geographic codes are critical to the Bureau of Census statistical programs. New businesses are assigned industry classification by the Social Security Administration (SSA). However, approximately 22 percent of these businesses cannot be assigned industry codes because insufficient information is provided on Internal Revenue Service (IRS) Form SS–4. Since the 1992 Economic Censuses, the number of unclassified businesses has grown to almost 500,000.

In order to provide detailed industry data reflecting NAICS for the 1997 Economic Censuses and the Standard Statistical Establishment List (SSEL), these unclassified businesses must be assigned industry codes. The Census Bureau has contracted with the Bureau of Labor Statistics (BLS) to receive classification information for unclassified businesses. However, differences in NAICS implementation schedules, coverage, and updating procedures between the two agencies and our further attempts to assign industry codes to these businesses based on their name will still leave some 300,000 unclassified businesses on the 1997 Economic Censuses mail list. This data collection, Form NC–9923, is designed to obtain classification information for different types of industries including reflecting changes from the SIC to NAICS and provide current information on physical locations.

Affected Public: Business or other for-profit, Not-for-profit institutions.

Frequency: Every five years.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 USC, Sections 131 and 224.

OMB Desk Officer: Jerry Coffey, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jerry Coffey, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: February 27, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–5490 Filed 3–5–97; 8:45 am]

BILLING CODE 3510–07–P

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Annual Capital Expenditures Survey.

Form Number(s): ACE–1, ACE–1(l), ACE–2, ACE–2(l).

Agency Approval Number: 0607–0782.

Type of Request: Revision of a currently approved collection.

Burden: 114,000 hours.

Number of Respondents: 46,000.

Avg. Hours Per Response: 2.5 hours.

Needs and Uses: The Census Bureau plans the continuing information collection for the 1996 and 1997 Annual Capital Expenditures Survey (ACES) measuring capital investment in new

and used structures and equipment. The ACES is the sole source of detailed comprehensive statistics on actual business spending by domestic, private, nonfarm businesses operating in the United States. Major changes from the 1995 collection of ACES data are the annual collection of data form businesses with one to four employees and nonemployers, and a request from employer businesses for data on total company sales and receipts, and sales and receipts for the three ACES industries with the largest sales and receipts.

Business spending data are used to evaluate the quality of estimates of gross domestic product, develop monetary policy, analyze business asset depreciation, and improve estimates of capital stock for productivity analysis. Industry analysts use these data for market analysis, economic forecasting, identifying business opportunities, product development, and business planning.

Affected Public: Business or other for-profit, Not-for-profit institutions.
Frequency: Annually.
Respondent's Obligation: Mandatory.
Legal Authority: (Title 13 USC, Sections 182, 224, and 225.
OMB Desk Officer: Jerry Coffey, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jerry Coffey, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: February 28, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–5542 Filed 3–5–97; 8:45 am]

BILLING CODE 3510–07–M

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.
Title: Study of Privacy Attitudes.
Form Number(s): None (automated instrument).
Agency Approval Number: 0607–0822.
Type of Request: Revision of a currently approved collection.
Burden: 396 hours.
Number of Respondents: 1,200.
Avg. Hours Per Response: 20 minutes.
Needs and Uses: The Census Bureau is interested in privacy issues—such as, the public's attitude toward individual privacy, the Census Bureau's privacy practices, and the potential use of administrative records and collecting Social Security numbers (SSNs—for several reasons. Most notable is the steady decline in response rates to the Census Bureau's mailed questionnaire in the last five decennial censuses, which may reflect the growing apathy toward and mistrust of the Federal government. A clear understanding of the public's beliefs regarding the Census Bureau and its practices may help decennial census planners offset the trend in declining responses rates and address new methods to acquire data. The purpose of this survey, along with former collections, is to:

Determine and clarify the public's opinion of: (1) The Federal government and Census Bureau in general; (2) the Census Bureau's privacy and confidentiality policies; (3) the extent to which the Census Bureau adheres to its own privacy guidelines; (4) the Census Bureau's expanded use of administrative records and possible interest in collecting SSNs in the future; (5) the notion of an "administrative records—only census" in 2010; and (6) the utility of adopting and communicating fair information use principles.

Assess change in the public's attitudes on privacy-related issues on a yearly basis. The 1996, 1997, and 1998 privacy studies, along with the inaugural survey—the 1995 Joint Program in Statistical Methods (JPSM) study, will help inform decisions on Census 2000. Beginning in 1999, privacy studies will be part of the research and experimentation program for the 2010 census.

The Study of Privacy Attitudes was formerly known as the "Study of Public Attitudes Towards Administrative Records Use (SPARU)." To maintain continuity, the content of the 1997 SPA questionnaire will be mostly the same as the 1996 SPARU. However, questions originally included in the 1995 JPSM survey that were left off the 1996 SPARU because of budgetary reasons will be reinstated for the 1997 SPA.
Affected Public: Individuals or households.
Frequency: One-time.
Respondent's Obligation: Voluntary.
Legal Authority: Title 13 USC, Sections 141 and 193.
OMB Desk Officer: Jerry Coffey, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jerry Coffey, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: February 28, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–5544 Filed 3–5–97; 8:45 am]

BILLING CODE 3510–07–M

Bureau of the Census

Survey of Local Government Finances (School Systems), Forms F–33, F–33–1, and F33–L1

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 5, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Sharon Meade, Bureau of the Census, Governments Division, Washington, DC 20233–0001. Her telephone number is (301) 457–1563.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau collects education finance data as part of its Annual Survey of State and Local Governments.

This survey is the only comprehensive source of public fiscal data collected on a nationwide scale using uniform definitions, concepts and procedures. The collection covers the revenues, expenditures, debt, and assets of all public school systems. This data collection has been coordinated with the National Center for Education Statistics (NCES). The NCES uses this collection to satisfy its need for school system level finance data.

Information on the finances of our public schools is vital to assessing their effectiveness. This data collection makes it possible to access a single data base to obtain information on such things as per pupil expenditures and the percent of state, local, and federal funding for each school system. Recently, as exemplified by the establishment of the America 2000 education goals, there has been increased interest in improving the Nation's public schools. One result of this intensified interest has been a significant increase in the demand for school finance data.

The three forms used in the school finance portion of the survey are:

Form F–33. This form contains item descriptions and definitions of the elementary-secondary education finance items collected jointly by the Census Bureau and NCES. It is used primarily as a worksheet by the state education agencies that provide school finance data centrally for all of the school systems in their respective states. Most states supply their data by electronic means.

Form F–33–1. This form is used at the beginning of each survey period to solicit the assistance of the state education agencies. It establishes the conditions by which the state education agencies provide their school finance data to the Census Bureau.

Form F–33–L1. This is a supplemental letter sent to the school systems in nine states. In these states, the state education agencies collect adequate detail in all aspects of school finance except for assets. Respondents provide the assets data on this letter and it is merged with the other data collected from the state education agencies.

This request is to reinstate the previous collection for which approval expires July 31, 1997. The data to be collected is identical to the previous collection except as follows:

1—In order to differentiate between payments made to public school systems and those made to private school systems, we are adding an item that identifies payments to private schools.

2—In order to differentiate between payments made to public schools, those made to private schools, and those made to quasi-public charter schools, we are adding an item that identifies payments to charter schools.

II. Method of Collection

Through central collection arrangements with the state education agencies, the Census Bureau collects almost all of the finance data for local school systems from state education agency data bases. The states transfer most of this information in electronic format on microcomputer disks and over the Internet. The Census Bureau has facilitated central collection of school finance data by accepting data in whatever formats the states elect to transmit.

III. Data

OMB Number: 0607–0700.
Form Number: F–33, F–33–1, F–33–L1.
Type of Review: Regular.
Affected Public: State and local governments.
Estimated Number of Respondents: 894.
Estimated Time Per Response: 3.2 hours.
Estimated Total Annual Burden Hours: 2,871 hours.
Estimated Total Annual Cost: $51,678.
Respondent's Obligation: Voluntary.
Legal Authority: Title 13 U.S.C., sections 161 and 181.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 27, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–05459 Filed 3–5–97; 8:45 am]

BILLING CODE 3510–07–P

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 01/11/97–02/21/97

Firm name	Address	Date petition accepted	Product
Centurion International, Inc	3425 North 44th St., Lincoln, NE 68501	01/17/97	Batteries and antennas.
Heinke Technology, Inc	5120 Northwest 38th St., Lincoln, NE 68524.	02/03/97	Pharmaceutical applicators.
Penn & Fletcher, Inc	242 West 30th St., suite 200, New York, NY 10001.	02/04/97	Embroidered lace and trimming.
Brodnax Mills, Inc	P.O. Box A, Brodnax, VA 23920	02/04/97	Synthetic and blended yarns.
Precision Sintered Parts, L.L.C	9902 East 46th Place, Tulsa, OK 74146	02/06/97	Iron or steel, forged or stamped gears.
Styletek, Inc	1857 Middlesex St., Lowell, MA 01851	02/07/97	Plastic parts for footwear, luggage, tool, and sporting goods industries and plastic injection molds.
Lamarr Jamerson	929 North Sherman, Springfield, MO 65802.	02/07/97	Wooden doors and door frames.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 01/11/97–02/21/97—Continued

Firm name	Address	Date petition accepted	Product
Ideal Forging Corp	167 Center St., Southington, CT 06489	02/07/97	Parts for compressors, pumps, and machinery.
Modu Form, Inc	172 Industrial Rd., Fitchburg, MA 01420	02/07/97	Stackable arm chairs, tables, casegoods, couches, and library shelving.
B&L Industries, Inc	4570 West 77th St., suite 238, Minneapolis, MN 55435.	02/10/97	Toroid radio frequency filters.
White Stokes Co., Inc	3615 South Jasper Place, Chicago, IL 60609.	02/10/97	Fondant as a reprocessed sugar-based paste used as a base ingredient in icing, fillings and candy, etc.
Cassemco, Inc	P.O. Box 1495, Cookeville, TN 38503	02/11/97	Seat parts for motor vehicles, chin straps for football helmets, ammunition packs and medical products.
Ever Corp	Highway 67 North, Newport, AR 72112	02/13/97	Collapsible aluminum tubes.
Acme Roll Forming Co	P.O. Box 706, Sebewaing, MI 48759	02/12/97	Steel tubes for material handling racks.
Posey Manufacturing Co., Inc	P.O. Box 418, 810 Ontario St., Hoquiam, WA 98550.	02/13/97	Piano parts.
Coates ASI	4607 South 35th St., Phoenix, AZ 85040	02/14/97	Wet processing equipment used to manufacture printed circuit boards.
Advance Energy Technologies, Inc	P.O. Box 387, Clifton Park, NY 12065	02/14/97	Insulated refrigeration walls for walk-in freezers and coolers.
Firerobin Puppets, Inc	Bridge St., Richmond, VT 05477	02/21/97	Puppets.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Trade Adjustment Assistance Division, Room 7023, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

(The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance)

Dated: February 27, 1997.

Anthony J. Meyer,

Coordinator, Trade Adjustment and Technical Assistance.

[FR Doc. 97–5450 Filed 3–5–97; 8:45 am]

BILLING CODE 3510–24–M

National Oceanic and Atmospheric Administration

[I.D. 022497D]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of scientific research permit no. 1029 (815–1312)

SUMMARY: Notice is hereby given that Mr. William G. Gilmartin, Hawaii Wildlife Fund, 55–472A Palekana Street, Laie, Hawaii 96762, has been issued a permit to "take" by Level A and Level B harassment, Hawaiian monk seals (*Monachus schauinslandi*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, NMFS, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (310/980–4016); and

Protected Species Program Coordinator, Pacific Area Office, Southwest Region, NMFS, 2570 Dole Street, Room 106, Honolulu, HI 96822–2396 (808/973–2987).

SUPPLEMENTARY INFORMATION: On November 18, 1996, notice was published in the **Federal Register** (61 FR 58676) that the above-named applicant had submitted a request for a scientific research permit to "take" by Level A and Level B harassment Hawaiian monk seals (*Monachus schauinslandi*) from the population at Midway Atoll. The research will be conducted over an 5-year period and will involve census observations, bleach marking, pup tagging/ measuring, disentanglement, necropsies, and scat collections. The objective of the research is to study the natural history and behavior of monk seals at Midway Atoll. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Regulations Governing the Taking, Importing, and Exporting of Endangered Fish and Wildlife (50 CFR part 222). Issuance of this permit, as required by the ESA, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: February 24, 1997.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–5479 Filed 3–5–97; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 022897C]

Marine Mammals; Scientific Research Permit (PHF# 848–1335)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Southwest Fisheries Science Center, Honolulu Laboratory, NMFS, 2570 Dole Street, Honolulu, Hawaii 96822–2396, has applied in due form for a permit to take Hawaiian monk seals (*Monachus schauinslandi*) for purposes of scientific research.

DATES: Written comments must be received on or before April 5, 1997.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Southwest Region, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (310/980–4001); and

Protected Species Coordinator, Pacific Area Office, 2570 Dole Street, Room 106, Honolulu, HI 96822–2396 (808/973–2987).

Written data or views, or requests for a public hearing on this request, should be submitted to the Director, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this application would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23).

The application encompasses all research and enhancement activities to be conducted on Hawaiian monk seals by the NMFS Honolulu Laboratory for the next 5 years. The proposed activities will also include all takes currently authorized under the Center's Permit No. 898, thereby making that permit null and void. Research activities will involve population assessment, disease assessment, recovery action, and pelagic ecology studies.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: February 28, 1997.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–5539 Filed 3–5–97; 8:45 am]

BILLING CODE 3510–22–W

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Meeting

Pursuant to the provisions of the Government in the Sunshine Act (5 U.S.C. 552b), notice is hereby given of the following meeting of the Board of Directors of the Corporation for National and Community Service (Corporation).

Date and Time: Thursday, March 13, 1997, from 9:30 a.m. to 1:00 p.m.

Place: The Ritz Carlton Hotel, 401 Ward Parkway, Kansas City, MO 64112.

Status: The meeting will be open to the public up to the seating capacity of the room, except that Board deliberations addressing personnel matters will be closed, pursuant to exemptions (c)(2) and (4) of the Government in the Sunshine Act. The basis for this partial closing has been certified by the Corporation's Deputy General Counsel. A copy of the certification will be posted for public inspection at the Corporation's headquarters at 1201 New York Avenue NW, Suite 8200, Washington, DC 20525, and will otherwise be available upon request.

Matters To Be Considered: The Board of Directors of the Corporation will meet to review (1) reports from committees of the Board of Directors on Corporation activities, (2) a report from the Chief Executive Officer, and (3) the status of Corporation initiatives.

Accommodations: Those needing interpreters or other accommodations should notify the Corporation by March 10, 1997. This notice may be requested in an alternative format for the visually impaired.

For Further Information: Contact Rhonda Taylor, Associate Director of Special Projects and Initiatives, the Corporation for National and Community Service, 1201 New York Avenue NW, 8th Floor, Washington, DC 20525. Telephone (202) 606–5000 ext. 282.

Dated: March 4, 1997.

Stewart Davis,

Deputy General Counsel, Corporation for National and Community Service.

[FR Doc. 97–5722 Filed 3–4–97; 2:36 pm]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Military Health Care Advisory Committee

AGENCY: Department of Defense, Military Health Care Advisory Committee.

ACTION: Notice.

SUMMARY: Notice is hereby given of the forthcoming meeting of the Military Health Care Advisory Committee. This is the sixth meeting of the Committee. The purpose of the meeting is to have discussions centering around medical personnel for the Military Health Service System which will include recruitment, retention, and support for readiness; and the healthcare benefit; and approaches to meeting medical personnel requirements. A meeting session will be held and will be open to the public.

DATES: March 25, 1997.

ADDRESSES: Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA, unless otherwise published.

FOR FURTHER INFORMATION CONTACT: Mr. Gary A. Christopherson, Senior Advisor or Commander Sid Rodgers, Special Assistant to PDASD, Office of the Assistant Secretary of Defense (Health Affairs), 1200 Defense Pentagon, Room 3E346, Washington, DC 20301–1200; telephone (703) 697–2111.

SUPPLEMENTARY INFORMATION: Business sessions are scheduled between 9:30 am and 5:00 pm, on Tuesday, March 25, 1997. Contact Elaine L. Powell, CMP, in the MHCAC Conference Support Office at (703) 575–5024, if you are interested in attending or need additional information concerning the agenda, directions, and maps to the meeting location.

Dated: February 28, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–5455 Filed 3–5–97; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Patent Applications Available for Licensing

AGENCY: Office of the Judge Advocate General.

ACTION: Notice.

SUMMARY: In compliance with 37 CFR 404 *et seq.*, announcement is made of the availability of the U.S. Patent applications available for licensing.

Patent No.	Title	Filing date
08/446,148	Chemotherapeutic Treatment of Bacterial Infections.	05/22/95
08/446,149	Chemotherapeutic Treatment of Bacterial Infections With An Antibiotic Encapsulated Within A Biodegradable Polymeric Matrix.	05/22/95
08/590,973	Novel Burst-Free Sustained Release Poly (Lactide/Glycolide) Microspheres.	01/24/96

Patent No.	Title	Filing date
08/352,944	Vaccines Against Diseases Caused by Enteropathogenic Organisms Using Antigens Encapsulated Within Biodegradable-Biocompatible Microspheres.	12/09/94
08/396,986	Oral-Intestinal Vaccines Against Diseases caused by Enteropathogenic Organisms Using Antigens Encapsulated Within Biodegradable-Biocompatible Microspheres.	03/01/95
08/242,960	Microparticle Carriers of Maximal Uptake Capacity By Both M Cells and Non-M Cells	05/16/94
08/247,884	Model For Testing Immunogenicity of Peptides	05/23/94
08/598,874	Vaccines Against Intracellular Pathogens Using Antigens Encapsulated Within Biodegradable-Microspheres	02/09/96
08/698,896	Hybrid Solvent Evaporation-Extraction Process For Producing PLGA Microspheres	08/16/96
08/788,002	Therapeutic Treatment And Prevention of Infections With A Bioactive Material(s) Encapsulated Within A Biodegradable-Biocompatible Polymeric Matrix.	01/24/97
08/789,734	Therapeutic Treatment And Prevention Of Infections With A Bioactive Material(s) Encapsulated Within A Biodegradable-Biocompatible Polymeric Matrix.	01/27/97

FOR FURTHER INFORMATION CONTACT: Dr. Paul Mele, ORTA, Walter Reed Army Institute of Research, Washington DC 20307–5100.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–5504 Filed 3–5–97; 8:45 am]

BILLING CODE 3710–08–M

Patents Available for Licensing

AGENCY: Office of the Judge Advocate General, Army.

ACTION: Notice.

SUMMARY: In compliance with 37 CFR 404 *et seq.*, announcement is made of the availability of U.S. Patent No. 5,417,986, entitled "Vaccines Against Diseases Caused by Enteropathogenic Organisms using Antigens Encapsulated Within Biodegradable-Biocompatible Microspheres" issued May 28, 1995 and U.S. Patent No. 5,470,311 entitled "Microsphere Drug Application Device" issued November 28, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. Paul Mele, ORTA, Walter Reed Army Institute of Research, Washington DC 20307–5100.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–5505 Filed 3–5–97; 8:45 am]

BILLING CODE 3710–08–M

Patent Applications Available for Licensing

AGENCY: Office of the Judge Advocate General.

ACTION: Notice.

SUMMARY: In compliance with 37 CFR 404 *et seq.*, announcement is made of the availability of the U.S. Patent applications available for licensing.

FOR FURTHER INFORMATION CONTACT: Dr. Paul Mele, ORTA, Walter Reed Army Institute of Research, Washington DC 20307–5100.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–5503 Filed 3–5–97; 8:45 am]

BILLING CODE 3710–08–M

Department of the Army

Corps of Engineers

Surplus Real Property—Fayetteville, NC

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice.

SUMMARY: This notice identifies the surplus real property designated as Recreation Center No. 2 and located at 333 Ray Avenue, Fayetteville, NC. The center is located on the corner of Rowan Street and Ray Avenue. Properties in the vicinity are generally commercial/business.

FOR FURTHER INFORMATION CONTACT:

For more information regarding the property identified in this Notice, contact Mr. Clyde Martin, U.S. Army Corps of Engineers, P.O. Box 889, Savannah, GA 31402–0889 (telephone 912–652–5014, fax 912–652–5335) or Mrs. Dewana Kennedy, Fort Bragg, NC 2830–5000 (telephone 910–396–4139, fax 910–396–3069).

SUPPLEMENTARY INFORMATION:

1. This surplus property is available under the provisions of the Federal Property and Administrative Services Act of 1949 and the Base Closure Community Redevelopment and Homeless Assistance Act of 1994. Notices of interest should be forwarded to Fayetteville City Council, ATTN: Mr. Roger L. Stancil, 433 Hay Street, Fayetteville, NC 28301–5537.

2. The surplus real property totals 4.35 acres and includes a two-story building containing 17,035 square feet. The facility is currently under lease to the City of Fayetteville and is being used for educational and recreational purposes.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–5502 Filed 3–5–97; 8:45 am]

BILLING CODE 3710–HF–M

Corps of Engineers

Grant of Exclusive License

AGENCY: U.S. Army Corps of Engineers.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.7(b)(1)(i), announcement is made of a prospective exclusive license of Japanese Patent Application No. 7–510293, entitled "Concrete Armor Unit to Protect Coastal and Hydraulic Structures and Shorelines" filed August 17, 1994.

DATES: Written objections must be filed not later than May 5, 1997.

ADDRESSES: .U.S. Army Waterways Experiment Station, 3909 Halls Ferry Road, Vicksburg, MS 39180–6199, ATTN: CEWES–OC.

FOR FURTHER INFORMATION CONTACT: Mr. Phil Stewart (601) 634–4113, e-mail stewarp@ex1.wes.army.mil.

SUPPLEMENTARY INFORMATION: The Concrete Armor Unit was invented by Jeffrey A. Melby and George F. Turk (Japanese Patent Application No. 7–510293, Filed August 17, 1994. Rights to the Japanese patent application have been assigned to the United States of America as represented by the Secretary of the Army. The United States of America as represented by the Secretary of the Army intends to grant an exclusive license for all fields of use, in the manufacture, use, and sale in the territories and possessions, including territorial waters of Japan to TETRA Co., LTD, Shinjuku I-Land Wing, 6–3–1, Nishishinjuku, Shinjuku-ku, Tokyo 160, Japan.

Pursuant to 37 CFR 404.7(b)(1)(i), any interested party may file a written objection to this prospective exclusive license agreement.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–5501 Filed 3–5–97; 8:45 am]

BILLING CODE 3710–62–M

Department of the Navy

Notice of Availability of Invention for Licensing; Government Owned Invention

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy.

Copies of the patent cited are available from the Commissioner of Patents and Trademarks, Washington, D.C. 20231, for $3.00 each. Requests for copies of the patent should include the patent number.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

U.S. Patent No. 5,552,993: AUDIO INFORMATION APPARATUS FOR PROVIDING POSITION INFORMATION, patented September 3, 1996.

Dated: February 20, 1997.

D.E. Koenig, Jr.

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 97–5521 Filed 3–5–97; 8:45 am]

BILLING CODE 3810–FF–P

Notice of Closed Meeting of the Chief of Naval Operations (CNO) Executive Panel

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel will meet 1 April 1997 from 10:00 to 11:00 at the office of the Chief of Naval Operations, 2000 Navy Pentagon, Washington, DC 20350–2000. This session will be closed to the public.

The purpose of this meeting is to conduct the mid-term briefing of the Naval Warfare Innovations Task Force to the Chief of Naval Operations. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

FOR FURTHER INFORMATION CONCERNING THIS MEETING CONTACT: Janice Graham, Assistant for CNO Executive Panel Management, 4401 Ford Avenue, Suite 601, Alexandria, Virginia 22302–0268, telephone number (703) 681–6205.

Dated: February 20, 1997.

D.E. Koenig, Jr.

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 97–5522 Filed 3–5–97; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP95–196–000, et al. and RP95–392–000 (Consolidated)]

Columbia Gas Transmission Corporation, UGI Utilities v. Columbia Gulf Transmission Company, et al.; Notice of Informal Settlement Conference

February 28, 1997.

Take notice that an informal settlement conference in this proceeding will be convened on Thursday, March 6, 1997, at 10:00 a.m. The settlement conference will be held at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, for the purpose of exploring the possible settlement of the above referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Thomas J. Burgess at 208–2058 or David R. Cain at 208–0917.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5485 Filed 3–5–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–178–001]

Kern River Gas Transmission Co.; Notice of Compliance Filing

February 28, 1997.

Take notice that on February 25, 1997, Kern River Gas Transmission (Kern River) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to become effective April 6, 1997:

First Revised Sheet Nos. 71–2
Original Sheet No. 72–A
First Revised Sheet No. 502
First Revised Sheet No. 602
First Revised Sheet No. 703
First Revised Sheet Nos. 804–805

Kern River states that the purpose of this filing is to propose an early

implementation date for standard 1.3.1 of the standards that were promoted by the Gas Industry Standard Board (GISB) and adopted by the Commission in Order No. 587 on July 17, 1996 in Docket No. RM96–1–000.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5486 Filed 3–5–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–269–000]

Midwestern Gas Transmission Company; Notice of Request Under Blanket Authorization

February 28, 1997.

Take notice that on February 26, 1997, Midwestern Gas Transmission Company (Midwestern), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP97–269–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct a new delivery point for Natural Gas of Kentucky (NGK), a local distribution company, under Midwestern's blanket certificate issued in Docket No. CP82–414–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Midwestern proposes to establish a new delivery point on its system at approximate Mile Post 2105–1+.5 in Ohio County, Kentucky, for the delivery of up to 1,500 Dekatherms of natural gas per day to NGK for the ultimate distribution to a commercial entity not currently served by any other provider. Midwestern states that in order to accommodate the deliveries to NGK, Midwestern proposes to install, own, operate and maintain a two-inch hot tap, a tie-in assembly and electronic gas measurement equipment. Midwestern also states that NGK will install, own, and maintain approximately 40 feet of two-inch interconnecting pipe and measurement facilities. Midwestern states that NGK will reimburse Midwestern for the cost of this project which is approximately $22,400.

Midwestern states that service at the proposed delivery point will be on an interruptible basis and that (i) volumes delivered to NGK after the construction of this delivery point will not exceed the total volumes authorized prior to this request, (ii) that the construction of the proposed delivery point is not prohibited by Midwestern's existing tariff, and, (iii) that Midwestern has sufficient capacity to accomplish deliveries at the proposed delivery point without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5487 Filed 3–5–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–225–000]

Tennessee Gas Pipeline Company; Notice of Request Under Blanket Authorization

February 28, 1997.

Take notice that on February 3, 1997, and as supplemented February 27, 1997, Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP97–225–000, pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) and blanket certificate authority granted September 1, 1982, in Docket No. CP82–413–000, a request for authorization to install a new delivery point to provide interruptible natural gas transportation service to El Paso Energy Marketing Company on behalf of Pearson Technologies (El Paso/Pearson), an end-user, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to establish a new delivery point on its system at approximately Mile Post 547]–102+7.0 in Monroe County, Mississippi. Tennessee states that it would install, own, operate and maintain a two-inch hot tap and electronic gas measurement interconnecting pipe on Tennessee's right-of-way, and will inspect and operate the meter facility to be installed by El Paso/Pearson. It is further stated that El Paso/Pearson would install the remaining interconnecting pipe—approximately 50 feet, and would provide the site for, and install, own, operate and maintain, the meter facility. Tennessee states that the cost of the proposed facility is approximately $37,900, and that El Paso/Pearson would reimburse Tennessee.

Tennessee further states that it proposes to deliver approximately 1,500 dekatherms per day to the proposed new delivery point. It is further stated that the total quantities to be delivered to El Paso/Pearson after the delivery point is installed would not exceed previously authorized total quantities. Tennessee further asserts that the installation of the proposed delivery point is not prohibited by Tennessee's tariff, and that it has sufficient capacity to accomplish deliveries at the proposed new point without detriment or disadvantages to Tennessee's other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5534 Filed 3–5–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–195–001]

Viking Gas Transmission Company; Notice of Compliance Filing

February 28, 1997.

Take notice that on February 25, 1997, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets proposed to be effective January 15, 1997:

Second Substitute Fourth Revised Sheet No. 1
Second Substitute Second Revised Sheet No. 117
Second Substitute Second Revised Sheet No. 118
Second Substitute Fourth Revised Sheet No. 141
Second Substitute Original Sheet No. 142
Second Substitute Original Sheet No. 143
Second Substitute Original Sheet No. 144
Second Substitute Original Sheet No. 145
Second Substitute Original Sheet No. 146

Viking states that purpose of this filing is to comply with the Office of Pipeline Regulation's January 15, 1997, Letter in Docket No. RP97–195–000 requesting that Viking correct the pagination on these sheets consistent with the tariff sheet pagination guidelines set forth by the Commission.

Viking states that the copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5489 Filed 3–5–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–249–000]

William Basin Interstate Pipeline Company; Notice of Request Under Blanket Authorization

February 28, 1997.

Take notice that on February 14, 1997, Williston basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, filed in Docket No. CP97–249–000 a request pursuant to §§ 157.205, 157.211, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211, 157.216) for authorization to modify an existing tap and to abandon the operation of the existing tap at Station 68+97, located in Ramsey County, North Dakota, under Williston Basin's blanket certificate issued in Docket No. CP82–487–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Williston Basin proposes to modify an existing tap at Station 68+97 located in Ramsey County, North Dakota, on its line from Cleveland to Grafton, North Dakota, to effectuate natural gas transportation deliveries to Montana-Dakota Utilities Company (Montana-Dakota), a local distribution company, under currently effective transportation service agreements. Williston Basin states the existing tap is owned and was installed by Montana-Dakota to serve industrial, commercial and/or residential customers. Williston Basin also proposes to abandon the operation of the existing tap at Station 68+97, located in Ramsey County, North Dakota.

Williston Basin declares the authorization requested herein includes installation of a two-inch tap and riser connected by approximately twelve feet of two-inch pipe. Williston Basin asserts they will retain ownership of the two-inch tap, riser, and piping through the first high-pressure valve.

Williston Basin states the estimated total cost of this project to be $3,700, 100% reimbursable by Montana-Dakota.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. if no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest if filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5488 Filed 3–5–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER97–783–000, et al.]

Illinois Power Company, et al.; Electric Rate and Corporate Regulation Filings

February 27, 1997.

Take notice that the following filings have been made with the Commission:

1. Illinois Power Company

[Docket No. ER97–783–000]

Take notice that on February 10, 1997, Illinois Power Company tendered for filing its amended summary of activity report for the second and third quarters of 1996.

Comment date: March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. PECO Energy Company

[Docket No. ER97–1501–000]

Take notice that on January 31, 1997, PECO Energy Company (PECO) tendered for filing a Service Agreement dated January 8, 1997 with Green Mountain Power Corporation (Green Mountain) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds Green Mountain as a customer under the Tariff.

PECO requests an effective date of January 8, 1997, for the Service Agreement.

PECO states that copies of the filing have been supplied to Green Mountain and to the Pennsylvania Public Utility Commission.

Comment date: March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Dayton Power & Light Company

[Docket No. ER97–1529–000]

Take notice that on January 30, 1997, Dayton Power & Light Company (DP&L) tendered for filing a summary of transactions made by DP&L for the 4th quarter of 1996.

Comment date: March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Cinergy Services, Inc.

[Docket No. ER97–1531–000]

Take notice that on January 30, 1997, Cinergy Services, Inc. (Cinergy) tendered for a quarterly transaction report for the quarter ending December 31, 1996.

Comment date: March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Cleveland Electric Illuminating Company

[Docket No. ER97–1532–000]

Take notice that on January 31, 1997, Cleveland Electric Illuminating Company (CEI) tendered for a quarterly transaction report for the quarter ending December 31, 1996.

Comment date: March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Duquesne Light Company

[Docket No. ER97–1589–000]

Take notice that on February 10, 1997, Duquesne Light Company (Duquesne) tendered for filing a Service Agreement between Duquesne and Ohio Edison Company.

Comment date: March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Duquesne Light Company

[Docket No. ER97–1590–000]

Take notice that on February 10, 1997, Duquesne Light Company (Duquesne) tendered for filing a Service Agreement between Duquesne and The Dayton Power & Light Company.

Comment date: March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Duquesne Light Company

[Docket No. ER97–1591–000]

Take notice that on February 10, 1997, Duquesne Light Company (Duquesne) tendered for filing an Agreement between Duquesne and The Cleveland Electric Illuminating Company.

Comment date: March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Duquesne Light Company

[Docket No. ER97–1592–000]

Take notice that on February 10, 1997, Duquesne Light Company (Duquesne) tendered for filing an Agreement between Duquesne and The Toledo Edison Company.

Comment date: March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Duquesne Light Company

[Docket No. ER97–1593–000]

Take notice that on February 10, 1997, Duquesne Light Company (Duquesne) tendered for filing an Agreement between Duquesne and Allegheny Power.

Comment date: March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Duquesne Light Company

[Docket No. ER97–1594–000]

Take notice that on February 10, 1997, Duquesne Light Company (Duquesne) tendered for filing a Service Agreement between Duquesne and WPS Energy Services, Inc.

Comment date: March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Duke Power Company

[Docket No. ER97–1654–000]

Take notice that on February 11, 1997, Duke Power Company (Duke), tendered for filing a Transmission Service Agreement between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, and Southern Energy Trading and Marketing, Inc. Duke states that the TSA sets out the transmission arrangements under which Duke will provide Southern Energy Trading and Marketing, Inc., non-firm point-to-point transmission service under Duke's Pro Forma Open Access Transmission Tariff. Duke requests that the Agreement be made effective as of January 18, 1997.

Comment date: March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Nevada Power Company

[Docket No. ER97–1655–000]

Take notice that on February 11, 1997, Nevada Power Company (Nevada Power), tendered for filing an Electric Service coordination Tariff (Coordination Tariff) having a proposed effective date of March 1, 1997. The Coordination Tariff provides for the sale of capacity and energy by Nevada Power to all eligible parties under the Coordination Tariff. Customers who take service under the Coordination Tariff can purchase any of the following services: 1) short term energy and capacity, 2) limited term energy and capacity, 3) economy energy, or 4) emergency energy.

Comment date: March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Florida Power Corporation

[Docket No. ER97–1656–000]

Take notice that on February 11, 1997, Florida Power Corporation ("FPC") tendered for filing a contract for the provision of interchange service between itself and PanEnergy Trading and Market Services, Inc. ("PanEnergy"). The contract provides for service under Schedule J, Negotiated Interchange Service, Schedule S, FERC Electric Rate Schedule No. 1 and OS, Opportunity Sales.

FPC requests Commission waiver of the 60-day notice requirement in order to allow the contract to become effective as a rate schedule on February 12, 1997. Waiver is consistent with Commission policies because it will allow voluntary economic transactions to go forward.

Comment date: March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. New York State Electric & Gas Corporation

[Docket No. ER97–1657–000]

Take notice that on February 11, 1997, New York State Electric & Gas Corporation (NYSEG), filed three Firm and one Non-Firm Service Agreements between NYSEG and New York State Electric & Gas Corporation, (Customer). The Service Agreements specify that the Customer has agreed to the rates, terms and conditions of the NYSEG open access transmission tariff filed on July 9, 1996 in Docket No. OA96–195–000.

NYSEG requests waiver of the Commission's sixty-day notice requirements and an effective date: January 12, 1997 Firm Point-to-Point Transmission Service Agreement, January 19, 1997 Firm Point-to-Point Transmission Service Agreement, January 26, 1997 Firm Point-to-Point Transmission Service Agreement, and January 12, 1997 Non-Firm Point-to-Point Transmission Service Agreement. NYSEG also requests that the Commission approve the termination of the above-referenced Firm Service Agreements as of the termination date set forth in each such agreement without the need for filing a separate notice of termination pursuant to the Commission's Rules. NYSEG has served copies of the filing on The New York State Public Service Commission and on the Customer.

Comment date: March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Duke Power Company

[Docket No. ER97–1658–000]

Take notice that on February 11, 1997, Duke Power Company (Duke), tendered for filing a Transmission Service Agreement between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, and The Power Company of America, L.P. Duke states that the TSA sets out the transmission arrangements under which Duke will provide The Power Company of America, L.P., non-firm point-to-point transmission service under Duke's Pro Forma Open Access Transmission Tariff. Duke requests that the Agreement be made effective as of January 23, 1997.

Comment date: March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Illinois Power Company

[Docket No. ER97–1659–000]

Take notice that on February 11, 1997, Illinois Power Company ("Illinois Power"), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which NIPSCO Energy Services will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of February 1, 1997.

Comment date: March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Western Resources, Inc.

[Docket No. ER97–1660–000]

Take notice that on February 11, 1997, Western Resources, Inc., tendered for filing non-firm transmission agreements between Western Resources and Illinois Power Company, St. Joseph Light & Power Company, Wisconsin Electric Power Company, Western Power Services, Inc., Heartland Energy Services, and Sonat Power Marketing L.P. Western Resources states that the purpose of the agreements is to permit non-discriminatory access to the transmission facilities owned or controlled by Western Resources in accordance with Western Resources' open access transmission tariff on file with the Commission. The agreements are proposed to become effective as follows: Illinois Power Company, January 24, 1997, St. Joseph Light & Power Company, January 30, 1997; Wisconsin Electric Power Company, January 30, 1997; Western Power Services, Inc., January 31, 1997; Heartland Energy Services, February 1, 1997; and Sonat Power Marketing L.P., February 5, 1997.

Copies of the filing were served upon Illinois Power Company, St. Joseph Light & Power Company, Wisconsin Electric Power Company, Western Power Services, Inc., Heartland Energy Services, and Sonat Power Marketing L.P., and the Kansas Corporation Commission.

Comment date: March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Wisconsin Electric Power Company

[Docket No. ER97–1661–000]

Take notice that on February 11, 1997, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a transmission service agreement between itself and Northern Indiana Public Service Company (Northern). The agreement establishes Northern as a customer under Wisconsin Electric's transmission service tariff (FERC Electric Tariff, Original Volume No. 7).

Wisconsin Electric respectfully requests an effective date sixty days after filing. Wisconsin Electric is authorized to state that Northern joins in the requested effective date.

Copies of the filing have been served on Northern and the Public Service Commission of Wisconsin.

Comment date: March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Wisconsin Public Service Corporation

[Docket No. ER97–1662–000]

Take notice that on February 11, 1997, Wisconsin Public Service Corporation ("WPSC"), tendered for filing an executed Transmission Service Agreement between WPSC and American Electric Power Service Corp. The Agreement provides for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

Comment date: March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Ohio Valley Electric Corporation, Indiana-Kentucky Electric Corporation

[Docket No. ER97–1664–000]

Take notice that on February 12, 1997, Ohio Valley Electric Corporation (including its wholly-owned subsidiary, Indiana-Kentucky Electric Corporation) (OVEC), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service, dated January 31, 1997 (the Service Agreement) between Federal Energy Sales, Inc. (Federal Energy Sales) and OVEC. OVEC proposes an effective date of January 31, 1997 and requests waiver of the Commission's notice requirement to allow the requested effective date. The Service Agreement provides for non-firm transmission service by OVEC to Federal Energy Sales.

In its filing, OVEC states that the rates and charges included in the Service Agreement are the rates and charges set forth in OVEC's Order No. 888 compliance filing (Docket No. OA96–190–000).

A copy of this filing was served upon Federal Energy Sales.

Comment date: March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Ohio Valley Electric Corporation Indian-Kentucky Electric Corporation

[Docket No. ER97–1665–000]

Take notice that on February 12, 1997, Ohio Valley Electric Corporation (including its wholly-owned subsidiary, Indiana-Kentucky Electric Corporation) (OVEC), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service, dated February 5, 1997 (the Service Agreement) between Duke/Louis Dreyfus L.L.C. (Duke/Louis Dreyfus) and OVEC. OVEC proposes an effective date of February 5, 1997 and requests waiver of the Commission's notice requirement to allow the requested effective date. The Service Agreement provides for non-firm transmission service by OVEC to Duke/Louis Dreyfus.

In its filing, OVEC states that the rates and charges included in the Service Agreement are the rates and charges set forth in OVEC's Order No. 888 compliance filing (Docket No. OA96–190–000).

A copy of this filing was served upon Duke/Louis Dreyfus.

Comment date: March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. New England Power Company

[Docket No. ER97–1666–000]

Take notice that on February 12, 1997, New England Power Company (NEP) filed Service Agreements with U.S. Generating Co. and Wisconsin Electric Power Co. for non-firm, point-to-point transmission service under NEP's open access transmission tariff, FERC Electric Tariff, Original Volume No. 9.

Comment date: March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Portland General Electric Company

[Docket No. ER97–1667–000]

Take notice that on February 12, 1997, Portland General Electric Company (PGE), tendered for filing under FERC Electric Tariff, Second Revised Volume No. 2, an executed Service Agreement with the Okanogan Public Utility District.

Pursuant to 18 CFR 35.11 and the Commission's order issued July 30, 1993 (Docket No. PL93–2–002), PGE respectfully requests the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the executed Service Agreement to become effective February 1, 1997.

A copy of this filing was caused to be served upon the Okanogan Public Utility District as noted in the filing letter.

Comment date: March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. New England Power Company

[Docket No. ER97–1668–000]

Take notice that on February 12, 1997, New England Power Company (NEP) filed a Service Agreement with Fitchburg Gas & Electric Co. (FG&E) for non-firm, point-to-point transmission service under NEP's open access transmission tariff, FERC Electric Tariff, Original Volume No. 9.

Comment date: March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Public Service Company of New Mexico

[Docket No. ER97–1669–000]

Take notice that on February 12, 1997, Public Service Company of New Mexico (PNM), submitted for filing an executed service agreement under the terms of PNM's Open Access Transmission Tariff with Southwestern Public Service Company. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Comment date: March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Southern Company Services, Inc.

[Docket No. ER97–1670–000]

Take notice that on February 12, 1997, Southern Company Services, Inc. (SCSI), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (collectively referred to as Southern Companies) filed two (2) service agreements under Southern Companies' Market-Based Rate Power Sales Tariff (FERC Electric Tariff, Original Volume No. 4) with the following entities: (i) Illinois Power Company; and (ii) Morgan Stanley Capital Group, Inc. SCSI states that the service agreements will enable Southern Companies to engage in short-term market-based rate transactions with this entity.

Comment date: March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Black Brook Energy Company

[Docket No. ER97–1676–000]

Take notice that on February 12, 1997, Black Brook Energy Company tendered for filing a Petition for Initial Rate Schedule, Waivers and Blanket Authority.

Comment date: March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. City of Vernon, California

[Docket No. OA97–524–000]

Take notice that on February 7, 1997, City of Vernon, California (Vernon) filed an application for waiver of the requirements of Order No. 889. Vernon states that it meets the standards enunciated by the Commission for eligibility for such a waiver.

Comment date: March 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5481 Filed 3–5–97; 8:45 am]

BILLING CODE 6717–01–P

[Project Nos. 11285–003]

Casitas Municipal Water District; Notice of Extension of Comment Date

February 28, 1997.

Because of delayed newspaper publication of the notice issued February 5, 1997 (62 FR 8235, February 24, 1997), for the Lake Casitas Power Project, the comment date in item j. is being extended from March 25, 1997 to April 1, 1997.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5480 Filed 3–5–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PL97–1–000]

Issues and Priorities for the Natural Gas Industry; Notice of Public Conference and Opportunity To Comment

February 28, 1997.

Take notice that the Federal Energy Regulatory Commission is convening a public conference on May 29 and 30, 1997, to conduct a broad inquiry into the important issues facing the natural gas industry today, and the Commission's regulation of the industry for the future. The Commission expects a broad ranging discussion that will allow the members of the Commission to discuss these issues with the industry, and the public generally, in order for the Commission to establish its regulatory goals and priorities in the post-Order No. 636 [1] environment. We anticipate engaging all industry segments in a dialogue about how the industry currently works, how the industry is changing, and how the Commission's regulatory policies should respond to such changes in the marketplace.

I. Background

Since the issuance and implementation of Order No. 636, natural gas markets have developed rapidly and the industry has gained experience functioning under different conditions.[2] Also, significant changes in the structure of the natural gas industry have occurred since Order No. 636 issued. These include consolidation in the ownership of interstate pipelines, the spin-off and spin-down of gathering with the potential for state regulation, the emergence of mega marketers, and the emerging electric and gas convergence. In addition, many more market centers exist today, offering a wide array of services that increase the flexibility of the system and facilitate connections between gas sellers and buyers. These services commonly include wheeling, parking, loaning, and storage.

The interstate pipeline transportation grid has expanded significantly, offering

[1] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, [Regs. Preambles Jan. 1991–June 1996] FERC Stats. & Regs. ¶ 30,939 (1992), *order on reh'g*, Order No. 636–A, [Regs. Preambles Jan. 1991–June 1992] FERC Stats. & Regs. ¶ 30,950 (1992), *order on reh'g*, Order No. 636–B, 61 FERC ¶ 61,272 (1992), *reh'g denied*, 62 FERC ¶ 61,007 (1993).

[2] For example, the winters of 1993–94 and 1995–96 were relatively cold and capacity in some regions was tight, and the winter of 1994–95 relatively warm and capacity was unusually slack in some regions.

shippers more flexibility in their choice of supply areas, and creating new paths from existing supply areas to additional markets. Today, the natural gas contract is among the most heavily traded of all commodity futures. Also, pipeline capacity rights can now be traded, and electronic communication and trading is increasingly more common. Electronic trading systems enable buyers to discover the price and availability of gas at transaction points, submit bids, complete legally binding transactions, and prearrange capacity release transactions. Further, capacity release is also playing an increasingly significant role in permitting the reallocation of firm pipeline capacity to customers most desiring it. Capacity release permits shippers to release the rights to transportation on the segments of a pipeline they do not need, and to acquire firm rights in segments that connect to other supply areas, on a temporary or permanent basis. In sum, all of the changes that have occurred since Order No. 636 have given shippers better alternatives at less cost and greater reliability than ever before.

With all these advances, the industry now faces new issues. A few states have implemented unbundled retail access for all customer classes. Unbundled retail access is progressing in some states faster than others, and unbundled retail access generally is not available to all customer classes equally. Further, the exercise of market power behind the city gate may translate into the exercise of market power in the interstate transportation market. These developments may create new issues for the Commission in its regulation of interstate pipelines.

In addition, the ability of customers to buy and sell gas and transportation capacity, especially in the intraday market, is not yet a reality. Electric generators, for example, sell into increasingly competitive hourly electric markets. The natural gas market has not yet developed the ability to engage in transactions on an hourly basis. The Commission would like input on whether trading gas and transportation capacity on an hourly basis is desirable to meet the needs of customers. It may be that regulatory impediments exist that prevent the natural gas industry from offering such flexibility.

Under Order No. 636 the natural gas markets have improved industry reliability; however, there may be further improvements that could be made, and at a lower cost. From a competitive perspective, gas transportation and commodity markets are interconnected. Many commodity trades cannot occur without the appropriate transportation. Therefore, the Commission needs to continually assess the operation of the transportation system to ensure that unnecessary restrictions, particularly regulatory restrictions, do not impair the functioning of the commodity market. Are there aspects of interstate pipeline regulation that could facilitate the emergence of even more efficient natural gas commodity and transportation markets?

In the aftermath of Order No. 636, the Commission also sees more competition among interstate pipelines. Nontraditional interstate service providers, such as intrastate pipelines, Hinshaw pipelines and local distribution companies, are also competing with interstate pipelines to provide interstate service. This raises questions concerning the relative roles of NGPA Section 311 [3] and NGA Section 7 [4] in meeting the demand for new interstate services. Increased use of NGPA Section 311 to provide a wide variety of interstate transportation services creates questions about applying two different regulatory regimes.

In addition, there are longstanding issues respecting pricing and environmental review for new facilities. Furthermore, given the post-Order No. 636 evolution of the natural gas industry, there are questions concerning the Commission's criteria for the certification and siting of new interstate pipeline facilities.

At the same time, market power issues also remain a concern. Discrimination, affiliate abuse, and other exercises of market power by transporters and holders of interstate pipeline capacity (*i.e.*, LDC's, marketers, producers and endusers) can undermine the goals of open access and can pose impediments to greater regulatory flexibility.

The Commission remains committed to the fundamental goal of Order No. 636: "improving the competitive structure of the natural gas industry in order to maximize the benefits of wellhead decontrol." [5] To that end, the Commission has already initiated certain regulatory changes to improve the functioning of the transportation grid. Among these are the standardization of interstate pipeline business practices,[6] which the Commission intends to be a continuing effort. The Commission also has adopted an alternative ratemaking policy, including market-based, negotiated, and incentive rates. Further, the Commission has obtained comments on the appropriateness of also permitting the negotiation of the terms and conditions of service.[7] The Commission has also considered capacity turnback issues in specific cases. The Commission has proposed improvements to the capacity release rules so that pipeline capacity can be traded more efficiently.[8] In addition to these initiatives, the Commission has also been urged to develop procedures to clarify and expedite the processing of complaints.

II. Scope of Inquiry

As noted, the Commission is interested in obtaining public comment as to what should be the Commission's near-term and longer term regulatory priorities. We request a broad analysis of industry issues now and in the future, including those deemed the highest priority for Commission action. Specifically, the Commission would like input on issues of competition and market power, the general financial outlook for the industry, and the present and future development of industry segments (*e.e.*, pipelines, local distribution companies, producers, marketers, and consumers). We would also like an analysis of whether, and to what extent, the Commission's current approach to regulation should be altered. For example, in light of the issues identified, what procedural innovations should the Commission explore? How can the Commission more effectively address the issues inherent in a competitive environment? How should the Commission continue to fulfill its NGA mandate in an increasingly competitive market? It is the answers to these kinds of questions that the Commission seeks in this proceeding.

III. Request for Comments

In order to focus and facilitate the organization of the discussion at the conference, the Commission requests written comments from interested participants to be filed with the Commission by April 29, 1997. The Commission requests that the

[3] 15 U.S.C. § 3371.

[4] 15 U.S.C. § 717*f*.

[5] Order No. 636 at 30,392 (citation omitted).

[6] Standards for Business Practices of Interstate Natural Gas Pipelines, Order No. 587, 61 FR 39053 (July 26, 1996), III FERC Stats. & Regs. ¶ 31,038 (1996) (to be codified at 18 CFR Parts 161, 250 and 284).

[7] Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines, 74 FERC ¶ 61,076 (1996).

[8] Secondary Market Transactions on Interstate Natural Gas Pipelines, 61 FR 41046 (August 7, 1996), IV FERC Stats. & Regs. ¶ 32,520 (proposed July 31, 1996).

participants include executive summaries in their comments, and file joint comments, wherever possible. Any person who wishes to make a formal presentation to the Commission should submit a request to the Secretary of the Commission along with the written comments. The Commission will issue a separate notice at a later date organizing the public conference.

An original and 14 copies of comments on these issues should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, and should refer to Docket No. PL97–1–000. All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room during regular business hours.

Commenters are requested to submit a diskette containing the written comments. If the Commission receives diskettes with the comments submitted in hard copy, then the Commission will make the written comments also available on the Commission Issuance Posting System (CIPS). CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing 202–208–1397 if dialing locally or 1–800–856–3920 if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this order will be available on CIPS in ASCII and WordPerfect 5.1 format. CIPS user assistance is available at 202–208–2474. CIPS is also available on the Internet through the Fed World system. Telnet software is required. To access CIPS via the Internet, point your browser to the URL address: http://www.fedworld.gov and select the "Go to the FedWorld Telnet Site" button. When your Telnet software connects you, log on to the FedWorld system, scroll down and select FedWorld by typing: 1 and at the command line and type: /go FERC. FedWorld may also be accessed by Telnet at the address fedworld.gov.

All questions concerning the format of the conference should be directed to: Erica J. Yanoff, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, 202–208–0708.

By direction of the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5535 Filed 3–5–97; 8:45 am]

BILLING CODE 6717–01–M

Notice of Issuance of Decisions and Orders by the Office of Hearings and Appeals; Week of February 3 Through February 7, 1997

During the week of February 3 through February 7, 1997, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: February 25, 1997.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 19

Week of February 3 Through February 7, 1997

Personnel Security Hearings

Personnel Security Hearing, 2/3/97 VSO–0106.

An OHA Hearing Officer issued an Opinion regarding the eligibility of an individual to maintain access authorization under the provisions of 10 C.F.R. Part 710. After considering the testimony presented at the hearing and the record, the Hearing Officer found that the individual habitually used alcohol to excess and had mental conditions (alcohol abuse and alcohol dependency) that cause or may cause a significant defect in judgment or reliability. These findings were based on the individual's two charges of Driving Under the Influence (DUI), his pattern of alcohol consumption despite the negative impact it had on his life and the fact that such consumption violated the terms of his probation, and the diagnoses of two mental health professionals, including one selected by the individual himself. The Hearing Officer found the Individual was not rehabilitated or reformed from his habitually excessive use of alcohol. The Hearing Officer also found that there was a security concern resulting from other alcohol consumption-related behavior that tended to show that the individual was not honest, reliable or trustworthy. However, the Hearing Officer found that the security concerns raised by other mental conditions diagnosed by the DOE psychiatrist were mitigated by the passage of time and a more current diagnosis in which another mental health professional expressed his opinion that such mental conditions were not present. Therefore, the Hearing Officer found that those concerns had been mitigated. Nevertheless, because of the security concerns based on his alcohol-related charges, the Hearing Officer recommended that the individual's access authorization not be restored.

Personnel Security Hearing, 2/3/97, VSO–0113

An OHA Hearing Officer issued an Opinion regarding the eligibility of an individual to maintain access authorization under the provisions of 10 C.F.R. Part 710. After considering the testimony presented at the hearing and the record, the Hearing Officer found that the individual habitually used alcohol to excess. This finding was based on the individual's two charges of Driving Under the Influence (DUI), the high amount of alcohol that the individual consumed and his belief that he had a drinking problem. Although the individual had attended a three month counseling program, he continued to drink. The Hearing Officer found the Individual was not rehabilitated or reformed from his habitually excessive use of alcohol. The Hearing Officer also found the Individual, due to his two DUI arrests, two assault charges, two domestic violence charges, two telephone harassment charges, and his unreformed drinking habitually to excess to have engaged in unusual conduct or to have been subject to circumstances which tend to show that he was not honest, reliable, or trustworthy; or which furnished reason to believe that he may be subject to pressure, coercion, exploitation, or duress which may cause him to act contrary to the best interests of the national security. Accordingly, the Hearing Officer recommended that the individual's access authorization not be restored.

Personnel Security Hearing, 2/7/97, VSO–0118

A Hearing Officer found that an individual had not successfully mitigated security concerns arising from his provision of false information to the DOE and a pattern of criminal and other conduct that tended to show that the individual was not honest, reliable, and trustworthy. Accordingly, the Hearing Officer recommended in the Opinion that the individual's access authorization not be restored.

Whistleblower Proceeding

Charles Barry DeLoach, 2/5/97, VWA–0014

Charles Barry DeLoach (DeLoach), a former employee of a Department of Energy (DOE) contractor, Westinghouse Savannah River Company (WSRC), filed a request for a hearing under the DOE's Contractor Employee Protection Program, 10 C.F.R., Part 708. DeLoach claimed that he was terminated from his job as a result of his raising issues with his superiors regarding various health and safety issues. WSRC claimed DeLoach was fired for stealing approximately $50,000 of DOE equipment. A hearing was held in which DeLoach and witnesses for WSRC testified before an Office of Hearings and Appeals Hearing Officer. On the basis of the testimony and other evidence in the record, the Hearing Officer concluded that DeLoach proved by a preponderance of the evidence that he had made disclosures protected by Part 708. However, the Hearing Officer further concluded that WSRC had proved by clear and convincing evidence that it would have taken this action even in the absence of DeLoach's disclosures. The Hearing Officer therefore determined that DeLoach was not entitled to any relief under 10 C.F.R. Part 708.

Implementation of Special Refund Procedures

Houma Oil Co., Jedco, Inc., 2/7/97, VEF–0023, VEF–0024

The DOE issued a Decision and Order establishing procedures for the distribution of funds obtained from Houma Oil Company and Jedco, Inc. These funds were remitted by each firm to the DOE to settle pricing violations with respect to sales of motor gasoline. The Decision sets forth procedures for customers who claim they were injured by motor gasoline purchases from Houma Oil during the period May 1, 1979 through April 30, 1980 or from Jedco, Inc. between November 1, 1973 and March 31, 1974. Any funds remaining after meritorious claims are paid will be used for indirect restitution through the states in accordance with the Petroleum Overcharge Distribution and Restitution Act of 1986.

Refund Applications

Anchor Gasoline Corporation/Mid Continent Systems, Inc., Seago Enterprises, Inc., Atlantic Richfield Company/Seago Enterprises, Inc., 2/4/97, RF346–18, RF346–48, RF304–15507

Both Seago Enterprises, Inc., and Mid Continent Systems, Inc., filed competing Applications for Refund in the Anchor special refund proceeding for the same purchases. The Anchor purchases had been made by Seago. However, the DOE found that Seago had merged into Mid Continent, and consequently, the right to the Anchor refund belonged to Mid Continent, not to the former owner of Seago. Accordingly, the application filed by Mid Continent was granted and that filed by Seago was denied. For these same reasons, the DOE rescinded a refund previously granted to Seago in the ARCO special refund proceeding.

Pan Ocean Shipping Co., Ltd., 2/4/97, RG272–381

The Department of Energy (DOE) issued a Decision and Order (D&O) granting an Application for Refund that was filed by Pan Ocean Shipping Co., Ltd. (Pan Ocean) in the crude oil refund proceeding. In the Decision, the OHA approved Pan Ocean's estimation methodology, which was based on their ships" average daily fuel consumption, the number of days that their voyages lasted, and the petroleum product purchasing patterns of their vessels. Pan Ocean was granted a refund of $184,469.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

AJO TRADING CORPORATION	RJ272–35	2/4/97
BLUFF CREST, INC	RJ272–36	
ALTAIR AIRLINES, INC	RG272–620	2/7/97
NORTHERN COOPERATIVE, INC. ET AL	RG272–640	2/7/97
RUDYARD COOPERATIVE COMPANY	RG272–658	2/4/97

Dismissals

The following submissions were dismissed.

Name	Case No.
ENERGY MARKET & POLICY ANALYSIS, INC	VFA–0259
ENSERCH CORPORATION	RG272–00495
FARMERS UNION COOPERATIVE CO	RG272–00584
KUMM FARM INC	RF272–89420
L. KRUPP CONSTRUCTION CO., INC	RG272–00855
LANKIN FARMERS GRAIN CO	RG272–00770
LYNNEDALE PLANTING CO., INC	RF272–89268
MIK COOP TRUCKING ASSN	RG272–00896
NERSTRAND FARMERS MERC. & ELEV. CO	RG272–00664
NEW YORK TELEPHONE COMPANY	RF272–89009
THE CALIFORNIA STATE UNIVERSITY	RF272–87979
WEST SHORE CONSTRUCTION	RG272–00789
XEROX CORPORATION	RF272–93346

[FR Doc. 97–5516 Filed 3–5–97; 8:45 am]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–00210; FRL–5592–9]

National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL); Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting and chemicals to be addressed.

SUMMARY: A meeting of the National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL) will be held on March 17–19, 1997, in Washington, D.C. At this meeting, the committee will continue deliberations as time permits on various aspects of the acute toxicology and development of Acute Exposure Guideline Levels (AEGLs) for the following chemicals: ethylene oxide; phosgene; aniline; toluene 2,6-diisocyanate and 2,4-isomer; isopropyl chloroformate; and hydrogen chloride.

DATES: A meeting of the NAC/AEGL will be held from 10 a.m. to 5 p.m. on Monday, March 17; from 8:30 a.m. to 5:00 p.m. on March 18; and from 8:30 a.m. to 11:15 a.m. on March 19, 1997.

ADDRESSES: The meeting will be held in Hearing Room C on the first floor of the Interstate Commerce Commission Building, 1201 Constitution Avenue NW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Dr. Paul S. Tobin, Office of Prevention, Pesticides, and Toxic Substances (7406), 401 M St. SW., Washington, D.C. 20460, (202) 260–1736, e-mail: tobin.paul@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: For further information on the scheduled meeting, the activities of the committee or the submission of information on chemicals to be discussed at the meeting, contact Dr. Paul S. Tobin, the Designated Federal Officer (DFO) (see FOR FURTHER INFORMATION CONTACT).

The meeting of the NAC/AEGL will be open to the public. Oral presentations or statements by interested parties will be limited to ten minutes. Since seating for outside observers may be limited, those wishing to attend the meeting as observers should contact the NAC/AEGL DFO at the earliest possible date to insure adequate seating arrangements. Inquiries regarding oral presentations and the submission of written statements or chemical specific information should also be directed to the DFO.

Another meeting of the NAC/AEGL is expected to be held in Washington, D.C. in June, 1997. It is anticipated that chemicals to be addressed at this meeting will include, but not necessarily be limited to the following: ammonia, carbon tetrachloride, allyl amine, ethylene imine, methyl isocyanate, chlorine trifluoride, diborane, methyl chloroformate, and propyl chloroformate. Inquiries regarding the submission of data, written statements or chemical-specific information on these chemicals should be directed to the DFO at the earliest date possible to allow for consideration of this information in the preparation of committee materials.

List of Subjects

Environmental protection.

Dated: February 27, 1997.

Joseph A. Carra,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 97–5684 Filed 3–5–97; 8:45 am]
BILLING CODE 6560–50–F

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 62 FR 9430, Monday, March 3, 1997.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (Eastern Time) Tuesday, March 11, 1997.

CHANGE IN THE MEETING:

Open Session

Item No. 2.B. Task Force presentation on Litigation Strategy has been removed from the agenda.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer, on (202) 663–4070.

Dated: March 3, 1997.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 97–5602 Filed 3–3–97; 4:28 pm]
BILLING CODE 6750–06–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

Tuesday, March 11, 1997 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

Thursday, March 13, 1997 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.
Advisory Opinion 1997–01: Susan Bevill Livingston on behalf of Tom Bevill and the Bevill Foundation.
Petition for Rulemaking Filed by James Bopp, Jr., on Behalf of the National Right to Life Committee, Inc.; Notice of Availability.
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 97–5729 Filed 3–4–97; 2:37 pm]
BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 20, 1997.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Randolph S. Miles, Antioch, Illinois; to retain a total of 55.73 percent of the voting shares of Antioch Holding Company, Antioch, Illinois, and thereby indirectly retain State Bank of The Lakes, Antioch, Illinois.

2. Cynthia M. Stout, Antioch, Illinois; to retain a total of 25.44 percent of the voting shares of Antioch Holding Company, Antioch, Illinois, and thereby indirectly retain State Bank of The Lakes, Antioch, Illinois.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Deborah Yowell Farley, Killeen, Texas, and Sheryl Yowell Anderson, Austin, Texas; to each acquire an additional 10.00 percent, for a total of 29.99 percent, of the voting shares of Texas State Bancshares, Harker Heights, Texas, and thereby indirectly acquire Heights State Bank, Harker Heights, Texas.

Board of Governors of the Federal Reserve System, February 28, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–5448 Filed 3–5–97; 8:45 am]
BILLING CODE 6210–01–F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 31, 1997.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Southern National Corporation, Winstom-Salem, North Carolina; to merge with United Carolina Bancshares Corporation, Whiteville, North Carolina, and thereby indirectly acquire United Carolina Bank, Whiteville, North Carolina, and United Carolina Bank of South Carolina, Greer, South Carolina.

Board of Governors of the Federal Reserve System, February 28, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–5449 Filed 3–5–97; 8:45 am]
BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Public Workshop on Consumer Information Privacy

AGENCY: Federal Trade Commission.

ACTION: Notice Requesting Public Comment and Announcing Public Workshop.

SUMMARY: The Federal Trade Commission has determined to hold a public workshop devoted to consumer information privacy. The workshop will be divided into three sessions.

Session One is intended to gather information as part of a Commission study of the collection, compilation, sale, and use of computerized data bases that contain what consumers may perceive to be sensitive identifying information, often referred to as "look-up services." These data bases typically are used to locate individuals or develop individual background information. Interested parties are encouraged to submit written comments concerning the subject of this study, which is described more fully in the Supplementary Information section of this Notice. Any person who wishes to apply for participation in Session One must file a written comment addressing one or more of the questions set forth below under the heading: "Session One: Computerized Data Bases Containing Sensitive Consumer Identifying Information." However, the Commission will consider comments of all persons, including non-participants in Session One.

Sessions Two and Three follow upon the Bureau of Consumer Protection's June 1996 public workshop on Consumer Privacy on the Global Information Infrastructure ("June 1996 Workshop"), which was held to provide an opportunity for public dialogue on the complex privacy issues posed by the emerging online marketplace. Sessions Two and Three are intended to update the Commission on the current status of the collection, compilation, sale, and use of personal information online, and on self-regulatory efforts and technological developments since June 1996. *Session Two* will address recent developments in the collection, compilation, sale, and use of personal information online generally, including self-regulatory efforts, technological innovations, and unsolicited commercial e-mail. *Session Three* will address the same developments as they pertain to children's personal information.

Interested parties who wish to apply for participation in Session Two must file a written comment addressing one or more of the questions listed below under the heading "Session Two: Consumer Online Privacy." Interested parties who wish to apply for participation in Session Three must file a written comment addressing one or more of the questions listed below under the heading "Session Three: Children's Online Privacy." However, Commission staff will consider comments of all persons, including non-participants in Session Two or Session Three, in determining what further Commission action, if any, it will recommend in the area of online privacy protections.

DATES: Written comments and notifications of interest in participating in the workshop must be submitted on or before April 15, 1997. Parties may apply to participate in more than one workshop session. Notifications of interest must specify the session(s) in which participation is sought. Requesters will be notified as soon as possible after May 15, 1997, if they have been selected to participate. The workshop will be held on June 10–13, 1997 in Room 432 of the Commission's headquarters building, Sixth Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580. The tentative

schedule for workshop sessions is as follows: Session One—June 10, 1997 (9:00 am—5:00 pm); Session Two—June 11, 1997 (9:00 am—5:00 pm) and June 12, 1997 (9:00 am—noon); Session Three—June 12, 1997 (1:30—5:00 pm) and June 13, 1997 (9:00 am—5:00 pm).

ADDRESSES: Six paper copies of each written comment and each request to participate in the workshop should be submitted to: Secretary, Federal Trade Commission, Room H–159, Sixth Street & Pennsylvania Ave., N.W., Washington, D.C., 20580. Comments for Session One should be captioned "Data Base Study—Comment, P974806." Requests to participate in Session One should be identified as "Data Base Workshop—Request to Participate, P974806." Comments for Sessions Two and Three should be captioned as "Consumer Privacy 1997—Comment, P954807." Requests to participate in Sessions Two and Three should be identified as "Consumer Privacy 1997—Request to Participate, P954807."

To enable prompt and efficient review and dissemination of the comments to the public, comments also should be submitted, if possible, in electronic form, on either a 5¼ or a 3½ inch computer disk, with a disk label stating the name of the commenter and the name and version of the word processing program used to create the document. (Programs based on DOS or Windows are preferred. Files from other operating systems should be submitted in ASCII text format to be accepted.) Individuals filing comments in electronic form need submit only one computer disk.

FOR FURTHER INFORMATION CONTACT: For questions concerning Session One: Steven Silverman, Attorney, Division of Credit Practices, Bureau of Consumer Protection, Federal Trade Commission, Sixth Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580, telephone 202–326–2460. For questions concerning Session Two: Martha Landesberg, Attorney, Division of Credit Practices, Federal Trade Commission, Sixth Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580, telephone 202–326–2825. For questions concerning Session Three: Toby Milgrom Levin, Attorney, Division of Advertising Practices, Federal Trade Commission, Sixth Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580, telephone 202–326–3156.

To obtain a copy of the Commission Staff Report *Consumer Privacy on the Global Information Infrastructure* (1996), contact the Commission's Public Reference Section, Room H-130, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, (202) 326–2222, or visit the Commission's home page at http://www.ftc.gov for instructions on obtaining an electronic copy.

SUPPLEMENTARY INFORMATION:

Session One: Computerized Data Bases Containing Sensitive Consumer Identifying Information

Background

In light of widespread concern and Congressional interest, the Commission has determined to conduct a study of the collection, compilation, sale, and use of computerized data bases that contain what consumers may perceive to be sensitive identifying information, often referred to as "look-up services." Examples of such sensitive identifying information may include some or all of the following: social security numbers, mothers' maiden names, prior addresses, and dates of birth. Some data bases provide significantly more information, such as information about physical characteristics, property holdings, and the subject individual's family members and neighbors. Session One is intended to gather information as part of this study.

The study will assess the types of information that consumers perceive to be sensitive, as well as their level of concern regarding the maintenance of and access to such information. In addition, the study will evaluate the risks associated with the lawful and unlawful use of data bases containing sensitive identifying information, and the benefits offered by such data bases. Finally, the data base study will explore consumers' privacy concerns regarding the collection, sale and use of their identifying information. The study will not address data bases used primarily for direct marketing purposes; medical and student records; or the use of consumer credit reports for employment purposes. The study will culminate in a report to Congress.

Invitation To Comment

Interested parties are requested to submit written comments on any issue of fact, law or policy that may inform the Commission's study of the collection, compilation, sale, and use of computerized data bases that provide sensitive consumer identifying information, often referred to as "look-up services." Please provide copies of any studies, surveys, research, or other empirical data referenced in responses. The Commission seeks comment on the following questions:

Information Collection and Use

1.1 What is the number and the identity of such data bases?

1.2 What information is contained in the data bases? Please provide specific examples.

1.3 What is the source of the information in the data bases?

1.4 What information is currently used to identify individuals? What types of information might be used to identify individuals in the future?

1.5 Do the data bases contain identifying information that consumers regard as sensitive? What identifying information is considered to be sensitive? Why is such information regarded as sensitive? Please provide specific examples.

1.6 Do the data bases contain identifying information that consumers regard as non-sensitive? What identifying information is considered to be non-sensitive? Why is such information regarded as non-sensitive? Please provide specific examples.

1.7 Who has access to the information in the data bases?

1.8 How is the information in the data bases accessed? What are the charges for accessing the information?

1.9 What are the uses of the information in the data bases? Are there beneficial uses of the information in these data bases? If so, please describe. Are there risks associated with the compilation, sale, and use of this information? If so, please describe.

1.10 Do these data bases create an undue potential for theft of consumers' credit identities? How is such potential for theft created? Please provide specific examples. What is the extent to which these data bases (as opposed to other means) contribute to consumer identity theft? Is this likely to change in the future? If so, please describe.

1.11 How do the risks of the collection, compilation, sale, and use of this information compare with the benefits?

1.12 Are there means that are currently available to address the risks, if any, posed by these data bases? If so, please describe.

1.13 What means might be considered in the future to address any risks posed by these data bases? What impact will potential solutions have on the beneficial uses of these data bases?

1.14 What are consumers' perceptions of (1) the benefits and risks associated with the collection, compilation, sale, and use of this information and (2) appropriate uses of such information?

1.15 Are consumers' privacy interests implicated by the collection, compilation, sale, and use of information from these data bases? If so, please describe. Are other legal interests implicated? If so, please describe.

1.16 Are there means to address any privacy or other legal interests implicated by the collection, compilation, sale, and use of information from these data bases? If so, please describe.

1.17 How should the benefits of the collection, compilation, sale, and use of information from these data bases be balanced against privacy or other legal interests implicated by such practices? Are there other ways to obtain these benefits without implicating privacy or other legal interests? If so, please describe.

1.18 Is the ultimate use of the information disclosed to the subject individuals? At what point in time is the use of the information disclosed? What is the content of such disclosures? Is there any information that should be added to these disclosures? If so, please describe.

1.19 Do data base operators permit consumers to choose whether and how their personal identifying information will be collected and used? If so, please describe the choices provided to consumers.

1.20 Is there an effective mechanism for an individual to remove his or her name from a data base or otherwise control the use of their personal identifying information? If so, please describe.

1.21 Do subject individuals have access to their data and the ability to correct errors? If so, please describe.

1.22 Have data base operators instituted procedures to maintain the security of identifying information that they collect? What is the nature of such procedures? Are the procedures adequate? Please provide specific examples.

1.23 Are there additional procedures that are used or available to assure the accuracy of the data and to limit use of the data to its intended purpose? What is the nature of such procedures? Are the procedures adequate? Please provide specific examples.

1.24 Is the collection, compilation, sale, and use of this information subject to any federal laws or regulations? If so, please describe.

1.25 Is the collection, compilation, sale, and use of this information subject to any state laws or regulations? If so, please describe.

1.26 Should the collection, compilation, sale, and use of information from these data bases be subject to additional regulations or laws? If so, what regulatory or legal requirements are appropriate?

Self-Regulation

1.27 Have data base operators undertaken self-regulatory efforts to address concerns raised by the collection, compilation, sale, and use of sensitive consumer identifying information?

1.28 What is the content of principles, recommendations, or guidelines that have emerged? To the extent that industry associations have developed principles, recommendations, or guidelines, are they permissive or mandatory for association members? What sanctions are imposed for non-compliance? How many association members have implemented them? Please provide case studies, member surveys, or other quantitative data wherever possible.

1.29 Have such principles, recommendations or guidelines been effective in addressing concerns associated with the collection, compilation, sale, and use of sensitive consumer identifying information? How can the effectiveness of self-regulation in this area best be measured?

Technological Developments

1.30 Has technology evolved that could address concerns raised by the collection, compilation, sale, and use of sensitive consumer identifying information? Please describe any such developments.

1.31 What are the costs and benefits of employing such technology?

1.32 What are consumers' perceptions, knowledge and expectations regarding the risks and benefits of using such technology?

Consumer and Business Education

1.33 What efforts are underway to educate consumers about data bases containing sensitive consumer identifying information?

1.34 What are or should be the principle messages of such efforts?

1.35 How can education efforts best be implemented?

Workshop Sessions Two and Three

Background

The June 1996 Workshop identified key issues raised by information practices of commercial sites on the World Wide Web (the "Web"), privacy concerns raised by those practices, and interactive technology's potential for addressing information privacy online. Participants in the June 1996 Workshop discussed a wide array of subjects, including the collection and use of personal information online; the necessary elements of self-regulatory efforts to enhance consumer privacy online; developments in interactive technology that could enhance online information privacy; consumer and business education efforts; the role of government in protecting online information privacy; and the special issues raised by the online collection and use of information from and about children. On January 6, 1997, the Commission published the staff report *Consumer Privacy on the Global Information Infrastructure* (1996), which summarized the workshop testimony. The report recommended that the Commission hold a follow-up workshop.

Unlike the June 1996 Workshop, which was convened primarily to provide a forum for the expression of views on online privacy issues, Workshop Sessions Two and Three are designed to collect empirical data relevant to those issues. Specifically, staff now seeks written commentary to document developments in four areas: (1) Web sites' current actual practices in the collection, compilation, sale, and use of consumers' personal information; (2) current implementation of self-regulatory efforts to address online privacy, including industry proposals presented at the June 1996 Workshop; (3) current design and implementation of technologies intended to enhance online information privacy; and (4) unsolicited commercial e-mail. Interested parties are requested to submit written comments on any issue of fact, law or policy that may inform the Commission on these subjects.

Session Two: Consumer Online Privacy

Invitation To Comment

To supplement and update the record developed at the June 1996 Workshop, the Commission seeks new evidence and additional comment on the following questions, a number of which were discussed generally at that Workshop. *Responses should provide specific examples, models, case studies, surveys or other research, and quantitative and empirical data wherever possible.* Please provide copies of any studies, surveys, research, or other empirical data referenced in responses.

Information Collection and Use

2.1 What kinds of personal information are collected by commercial Web sites from users who visit those sites and how is such information subsequently used? Among other things, is clickstream data being collected and

tied to personally identifying information?

2.2 To what extent is the collection, compilation, sale or use of personally identifying, as opposed to aggregate, personal information important for marketing online and for market research? What privacy concerns, if any, are raised by the collection or use of aggregate personal information in this context?

2.3 What are the risks, costs, and benefits of collection, compilation, sale, and use of personal consumer information in this context?

2.4 What surveys, other research, or quantitative or empirical data exist about consumers perceptions, knowledge and expectations regarding (1) whether their personal information is being or should be collected by Web site operators and the extent of such collection; (2) the benefits and risks associated with the collection and subsequent use of this information; (3) appropriate uses of such information; and (4) whether certain categories of information should never be collected or disclosed to others?

2.5 How many commercial Web sites collect, compile, sell or use personal information? Of these, how many give consumers notice of their practices regarding the collection and subsequent use of personal information? With respect to these Web sites, describe (1) how and when such notice is given, (2) the content of such notice, and (3) the costs and benefits, for both consumers and commercial Web sites, of providing such notice.

2.6 Of the commercial Web sites that collect, compile, sell or use personal information, how many provide consumers choice with respect to whether and how their personal information is to be collected and subsequently used by those sites? With respect to such Web sites, describe (1) what choices are provided to consumers and how such choices are exercised; and (2) the costs and benefits, for both consumers and commercial Web sites, of providing such choices.

2.7 Of the commercial Web sites that collect, compile, sell or use personal information, how many provide consumers access to, and an opportunity to review and correct, personal information about them that is collected and retained by those sites?

2.8 Of the commercial Web sites that collect, compile, sell or use personal information, how many have procedures to maintain the security of personal information collected from consumers online, and what are those procedures?

Self-Regulation

2.9 What industry principles, recommendations or guidelines have emerged since the June 1996 Workshop? Please discuss whether they are permissive or mandatory, whether they include sanctions for non-compliance, and the extent to which they have been implemented within the industry.

2.10 What steps have individual commercial Web sites taken since June 1996 to address online privacy issues? How many have employed the procedures for notice and choice set forth in the *Joint Statement on Online Notice and Opt-Out* presented at the June 1996 Workshop by the Direct Marketing Association and the Interactive Services Association?

2.11 How many online services have implemented the procedures set forth in the Interactive Services Association's *Guidelines for Online Services: The Renting of Subscriber Mailing Lists* submitted for inclusion in the June 1996 Workshop record?

2.12 How many marketers have implemented the provisions of the Coalition for Advertising Supported Information and Entertainment's (CASIE) *Goals for Privacy in Marketing on Interactive Media* presented at the June 1996 Workshop?

2.13 What privacy concerns, if any, are not adequately addressed by existing guidelines?

Technological Developments

2.14 Has interactive technology evolved since June 1996 in ways that could address online privacy issues? To what extent is it currently available and being used by consumers and commercial Web sites?

2.15 What are the risks and benefits, to both consumers and commercial Web sites, of employing such technology? What are consumers' perceptions about the risks and benefits of using such technology to address online privacy issues?

Unsolicited Commercial E-mail

2.16 How widespread is the practice of sending unsolicited commercial e-mail? Are privacy or other consumer interests implicated by this practice? What are the sources of e-mail addresses used for this purpose?

2.17 What are the risks and benefits, to both consumers and commercial entities, of unsolicited commercial e-mail? What are consumers' perceptions, knowledge, and expectations regarding the risks and benefits of unsolicited commercial e-mail?

2.18 What costs does unsolicited commercial e-mail impose on consumers or others? Are there available means of avoiding or limiting such costs? If so, what are they?

2.19 Are there technological developments that might serve the interests of consumers who prefer not to receive unsolicited commercial e-mail? If so, please describe.

2.20 How many commercial entities have implemented the *Principles for Unsolicited Marketing E-mail* presented at the June 1996 Workshop by the Direct Marketing Association and the Interactive Services Association?

Documents referenced in the above questions may be found in Appendix C to the Commission staff report *Consumer Privacy on the Global Information Infrastructure (1996).*

Session Three: Children's Online Privacy

Invitation To Comment

The June 1996 Workshop identified key issues raised by information practices of commercial Web sites that are directed to children ("children's commercial Web sites"), privacy concerns raised by those practices, and interactive technology's potential for addressing children's information privacy online. To supplement and update the record developed at the June 1996 Workshop, the Commission seeks new evidence and additional comment on the following questions, a number of which were discussed generally at that Workshop. *Responses should provide specific examples, models, case studies, surveys or other research, and quantitative and empirical data wherever possible.* Please provide copies of any studies, surveys, research, or other empirical data referenced in responses.

Information Collection and Use

3.1 What kinds of personal information are collected by children's commercial Web sites from children who visit those sites and how is such information subsequently used? Among other things, is clickstream data being collected and tied to personally identifying information about children; is information being collected from children to create lists for sending unsolicited e-mail?

3.2 To what extent is the collection, compilation, sale or use of personally identifying, as opposed to aggregate, children's personal information important for marketing online or for marketing research? What privacy concerns, if any, are raised by the collection or use of aggregate children's personal information in this context?

3.3 What are the risks, costs and benefits of the collection, compilation, sale, and use of children's information in this context?

3.4 What surveys, other research, or quantitative or empirical data exist about parents' perceptions, knowledge and expectations regarding (1) whether their children's personal information is being or should be collected by Web site operators and the extent of such collection; (2) the benefits and risks associated with the collection and subsequent use of such information; (3) appropriate uses of such information; and (4) whether certain categories of children's information should never be collected or disclosed to others?

3.5 How many children's commercial Web sites collect, compile, sell or use children's personal information? Of these, how many give parents notice of their practices regarding the collection and subsequent use of personal information? With respect to these Web sites, describe (1) how and when such notice is given; (2) the content of such notice; and (3) the costs and benefits, for both parents and children's commercial Web sites, of providing such notice.

3.6 Of the children's commercial Web sites that collect, compile, sell or use children's personal information, how many provide parents choice with respect to whether and how their children's personal information is collected and subsequently used by those sites? With respect to such Web sites, describe: (1) what choices are provided to parents and how such choices are exercised; and (2) the costs and benefits, for both parents and children's commercial Web sites, of providing such choices.

3.7 Of the children's commercial Web sites that collect, compile, sell or use children's personal information, how many provide parents access to, and an opportunity to review and correct, personal information about their children that is collected and retained by those sites?

3.8 Of the children's commercial Web sites that collect, compile, sell or use children's personal information, how many have procedures to maintain the security of personal information collected from children online, and what are those procedures?

3.9 Do children's information practices in the online context differ from those implemented in other contexts? If so, describe the differences. Do the risks, costs, and benefits of these practices differ depending on the context? If so, describe the differences.

3.10 Do schools, libraries, and other settings in which children may have access to the Web, have a role to play in protecting children's privacy? What role do they currently play, and what role could they play in the future?

Self-Regulation

3.11 What industry principles, recommendations or guidelines have emerged since the June 1996 Workshop? Please discuss whether they are permissive or mandatory, whether they include sanctions for non-compliance, and the extent to which they have been implemented within the industry.

3.12 What steps have children's commercial Web site operators taken since June 1996 to address children's online privacy issues? To what extent have they adopted the principles outlined in the following documents submitted at the June 1996 Workshop: (1) the *Joint Statement on Children's Marketing Issues* presented by the Direct Marketing Association and Interactive Services Association; (2) *Self-Regulation Proposal for the Children's Internet Industry* presented by Ingenius, Yahoo and Internet Profiles Corporation; and (3) *Proposed Guidelines* presented by the Center for Media Education and Consumer Federation of America?

3.13 What privacy concerns, if any, are not adequately addressed by existing guidelines?

Technological Developments

3.14 Has interactive technology evolved since June 1996 in ways that could address children's online privacy issues? To what extent is it (a) readily available; (b) currently in use; (c) easy to use; and (d) effective in preventing children from disclosing personally identifiable information?

3.15 What are the costs and benefits, to both parents and children's commercial Web sites, of employing such technology? What are parents' perceptions, knowledge and expectations of the risks and benefits of using such technology?

Unsolicited Commercial E-mail

3.16 How widespread is the practice of sending children unsolicited commercial e-mail? Are privacy or other consumer interests implicated by this practice? What are the sources of e-mail addresses used for this purpose?

3.17 What are the risks and benefits, to children, parents and commercial entities, of unsolicited e-mail directed to children? What are parents' perceptions, knowledge and expectations of the risks and benefits?

3.18 What costs does unsolicited commercial e-mail directed to children impose on children, parents, or others? Are there available means of avoiding or limiting such costs? If so, what are they?

3.19 Are there technological developments that might serve the interests of parents who prefer that their children not receive unsolicited commercial e-mail?

3.20 How many children's commercial Web sites have implemented the *Principles for Unsolicited Marketing E-mail* presented at the June 1996 Workshop by the Direct Marketing Association and the Interactive Services Association?

Documents referenced in the above questions may be found in Appendix C to the Commission staff report *Consumer Privacy on the Global Information Infrastructure* (1996).

Form and Availability of Comments

Comments should indicate the number(s) of the specific question(s) being answered, provide responses to questions in numerical order, and use a new page for each question answered.

Written comments will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and Commission regulations, 16 C.F.R. Part 4.9, on normal business days between the hours of 8:30 a.m. and 5:00 p.m. at the Public Reference Room 130, Federal Trade Commission, Sixth Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580. The Commission will make this notice and, to the extent technically possible, all comments received in response to this notice available to the public through the Internet at the following address: http://www.ftc.gov. The Commission cannot currently receive comments responding to this notice over the Internet.

Workshop Sessions

The workshop will be held on June 10–13, 1997 in Room 432 of the Commission's headquarters building, Sixth Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580. The tentative schedule for workshop sessions is as follows: Session One—June 10, 1997 (9:00 am–5:00 pm); Session Two—June 11, 1997 (9:00 am–5:00 pm) and June 12, 1997 (9:00 am–noon); Session Three—June 12, 1997 (1:30–5:00 pm) and June 13, 1997 (9:00 am–5:00 pm). Those parties who wish to participate in the workshop must file written comments and notify the Commission's Secretary, in writing, of their interest in participating in Sessions One, Two, and/or Three on or before April 15, 1997. Parties may participate in more than one workshop session; notifications of interest must specify the session(s) in which

participation is sought. All workshop sessions are open to the public.

The purpose of the workshop will not be to achieve a consensus of opinion among participants, or between participants and Commission staff, with respect to any issue raised in Sessions One, Two, or Three. The purpose of Session One will be to explore the issues raised by the Commission's study and discussed in the comments responding to this notice. The Commission will consider the views and suggestions made during Session One, as well as any written comments, as part of its study.

The purpose of Sessions Two and Three will be to update the Commission on the current collection and use of personal information online, and on self-regulatory efforts and technological developments since June 1996. Commission staff will consider the views and suggestions made during these sessions, as well as any written comments, in determining what further Commission action, if any, it will recommend in the area of online privacy protections.

If the number of parties who request to participate in Session One, Two, or Three is so large that including all requesters would inhibit effective discussion among the participants, then Commission staff will select a limited number of parties, from among those who submit written comments, to represent the significant interests affected by the study. These parties will participate in an open discussion of the issues. It is contemplated that the selected parties will ask and answer questions based on their respective comments, including questions posed by Commission staff. The discussion will be transcribed and the transcription placed on the public record.

To the extent possible, Commission staff will select parties to represent the following affected interests. For Session One: data base operators and their customers; suppliers of data to data bases; federal, state and local law enforcement and regulatory authorities; consumer and privacy advocacy groups; and any other interests that Commission staff may identify and deem appropriate for representation. For Sessions Two and Three: consumer and privacy advocacy groups; industry groups, online service providers, Web site owners; online marketers; consumers who are active on the World Wide Web; interactive technology developers; and any other interests that Commission staff may identify and deem appropriate for representation.

Parties to represent the above-referenced interests will be selected on the basis of the following criteria:

1. The party submits a written comment (in the prescribed form) for one or more sessions and notifies Commission staff of its interest in participating in those sessions on or before April 15, 1997.

2. The party's participation would promote a balance of interests being represented at the conference.

3. The party's participation would promote the consideration and discussion of a variety of issues raised by the study.

4. The party has expertise in or knowledge of the issues that are the focus of the study.

5. The party adequately reflects the views of the affected interest(s) which it purports to represent, not simply a single entity or firm within that interest.

6. The party has been designated by one or more interested parties (who timely file written comments and requests to participate) as a party who shares group interests with the designator(s).

7. The number of parties selected will not be so large as to inhibit effective discussion among them.

If it is necessary to limit the number of participants, those not selected to participate, but who submit both written comments and requests to participate, may be afforded an opportunity at the end of the session to present their views during a limited time period. The time allotted for these statements will be determined on the basis of the time necessary for discussion of the issues by the selected parties, as well as by the number of persons who wish to make statements.

Requesters will be notified as soon as possible after May 15, 1997, if they have been selected to participate in workshop sessions. To assist Commission staff in making this notification, parties are asked to include in their request to participate a telephone number and facsimile number if available.

Authority: 15 U.S.C. 41 et seq.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 97–5562 Filed 3–5–97; 8:45 am]

BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

Notice of Intent to Prepare an Environmental Impact Statement for the Exterior Security of Federally Occupied Buildings in the District of Columbia

Pursuant to Section 102(2)(C) the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500–1508), the General Services Administration (GSA) announces its intent to prepare an Environmental Impact Statement (EIS) to evaluate the potential environmental impacts of vehicle restrictions near selected federally-occupied buildings in the District of Columbia.

The GSA is investigating measures to improve security at buildings in the District of Columbia occupied by federal employees. In cooperation with the GSA, tenants of federally occupied buildings formed Building Security Committees (BSC) to decide the type and amount of security appropriate for their needs. The BSC recommended vehicle restrictions in the proximity of federal buildings. GSA will prepare an EIS to assess the potential effect of this type of recommendation and determine whether the impact of the recommended alternative is significant.

The GSA has identified 80 federally occupied buildings within the downtown of the District of Columbia that are currently at a security risk. A series of alternatives will be analyzed to determine the effectiveness at improving building security and determine the environmental impacts:

- No Action—This alternative presents no change in the existing vehicle restrictions.
- Partial Vehicular Restriction—Vehicle restrictions in proximity to federal buildings would only allow for authorized vehicles with a secure windshield sticker, placard, or other identifying marker.
- Total Vehicular Restriction—All vehicles in proximity to any at-risk federally occupied buildings would be prohibited.

The EIS to be prepared by the GSA will address the following potential areas of concern: economic impacts to the District of Columbia; traffic flow and mass transit; air quality; and public safety.

GSA will initiate a scoping process for the purpose of determining the scope of issues to be addressed and for identifying the significant issues related to this proposed action.

Public scoping meetings are scheduled for:

April 9, 1997 beginning at 7:30 p.m. at the General Services Administration Auditorium located at 18th and F Streets, NW., Washington, DC 20405 (enter on the F Street Entrance) and April 10, 1997 beginning at 1:30 p.m. at the General Services Administration Regional Auditorium located at 7th & D Streets, SW., Washington, DC 20407 (enter on the D Street Entrance) These meetings will be announced in local newspapers.

A brief presentation will precede the request for public comment. GSA representative will be available at this meeting to receive comments from the public regarding issues of concern. It is important that federal, state, and local agencies and interested groups and individuals take this opportunity to identify environmental concerns that should be addressed during the preparation of the EIS. All interested parties are invited to attend this meeting or submit comments in writing as described below. When registering, each attendee will be requested to indicate whether oral comments will be delivered at the meeting. In the interest of available time, each speaker will be asked to limit oral comments to five (5) minutes. Longer comments should be summarized at the public meeting or mailed to the address listed at the end of this announcement. To be most helpful, scoping comments should clearly describe specific issues or topics that the commenter believes the EIS should address. All written statements and/or questions regarding the scoping process should be mailed no later than April 24, 1997 to: Ms. Christine Kelly, General Services Administration, (WPCAA), Property Development Division, Room 2634, 7th & D Streets SW., Washington, DC 20407, telephone (202) 708–4900, ext. 256, E-mail *christine.kelly@gsa.gov.*

Dated: February 21, 1997.

William R. Lawson,

Assistant Regional Administrator, Public Buildings Service.

[FR Doc. 97–5477 Filed 3–5–97; 8:45 am]

BILLING CODE 6820–23–M

GOVERNMENT PRINTING OFFICE

Depository Library Council to the Public Printer; Meeting

The Depository Library Council to the Public Printer (DLC) will hold its Spring 1997 meeting on Monday, April 14, 1997, through Thursday, April 17, 1997, in Arlington, Virginia. The meeting sessions will take place from 8:30 a.m. until 5 p.m. on Monday, Tuesday, Wednesday and from 8:30 a.m. until 12 noon on Thursday. The sessions will be held at the Washington National Airport Hilton, 2399 Jefferson Davis Highway, Arlington, Virginia 22202. The purpose of this meeting is to discuss the Federal Depository Library Program. The meeting is open to the public.

A limited number of hotel rooms have been reserved at the Washington National Airport Hilton for anyone needing hotel accommodations. Telephone: 703–418–6800; FAX: 703–418–3762.

Please specify the Depository Library Council when you contact the hotel. Room cost per night is $124.

Michael F. DiMario,

Public Printer.

[FR Doc. 97–5557 Filed 3–5–97; 8:45 am]

BILLING CODE 1520–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS).

Times and Dates: 9 a.m.–5:30 p.m., March 13, 1997; 9 a.m.–5:30 p.m., March 14, 1997.

Place: Room 703A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The meeting will focus on the Committee's progress in addressing new responsibilities in health data standards and health information privacy as outlined in the administrative simplification provisions of P.L. 104–191, as well as on related matters. Departmental officials will brief the Committee on recent activities of the HHS Data Council, the status of HHS activities in implementing the administrative simplification provisions of P.L. 104–191, and related data policy activities. The Committee is scheduled to hear reports from its subcommittees and work groups dealing with privacy and confidentiality, data standards and populations at risk.

Information presentations are scheduled on conceptual frameworks for coding and classification, as well as on unique patient identifiers. The Committee also will discuss its priorities and work plans.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from James Scanlon, NCVHS Executive Staff Director, Office of the Assistant Secretary for Planning and Evaluation, DHHS, Room 440–D, Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, telephone (202) 690–7100, or Marjorie Greenberg, Acting Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436–7050.

Dated: February 28, 1997.

James Scanlon,

Director, Division of Data Policy.

[FR Doc. 97–5517 Filed 3–5–97; 8:45 am]

BILLING CODE 4151–04–M

Agency for Health Care Policy and Research

Notice of Health Care Policy and Research; Special Emphasis Panel Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2) announcement is made of the following special emphasis panel scheduled to meet during the month of March 1997:

Name: Health Care Policy and Research Special Emphasis Panel.

Date and Time: March 28, 1997, 1:00 p.m.

Place: Agency for Health Care Policy and Research, 2101 E. Jefferson Street, Suite 400, Rockville, MD 20852.

Open Mach 28, 1:00 p.m. to 1:15 p.m.

Closed for remainder of meeting.

Purpose: This Panel is charged with conducting the initial review of grant applications submitted in response to the National Research Service Award Individual Postdoctoral Fellowships Program. The postdoctoral research fellowships provide opportunities for 1 or more years of academic training and supervised experience in applying quantitative research methods to the systematic analysis and evaluation of health services.

Agenda: The open session of the meeting on March 28, from 1:00 p.m. to 1:15 p.m., will be devoted to a business meeting covering administrative matters. During the closed session, the committee will be reviewing and discussing grant applications dealing with health services research issues. In accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c)(6), the Acting Administrator, AHCPR, has made a formal determination that this latter session will be closed because the discussions are likely to reveal personal information concerning individuals associated with the grant applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members or other relevant information should contact Carmen M. Johnson, Agency for Health Care Policy and Research, Suite 400, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–1449 x1613.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: February 26, 1997.

Lisa Simpson,

Acting Administrator.

[FR Doc. 97–5494 Filed 3–5–97; 8:45 am]

BILLING CODE 4160–90–M

Centers for Disease Control and Prevention

[Announcement Number 730]

State Capacity Projects for Assessing and Preventing Secondary Conditions Associated With Disability and Promoting the Health of Persons With Disabilities; Notice of Availability of Funds for Fiscal Year 1997

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1997 cooperative agreements to establish and/or sustain capacity to assess the magnitude of disability in States, prevent secondary conditions associated with disability, and promote the health and wellness of persons with disabilities.

CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a national activity to reduce morbidity and mortality and improve the quality of life. This Announcement is related to the Healthy People 2000 category, Preventive Services. (For ordering a copy of "Healthy People 2000," see the section "WHERE TO OBTAIN ADDITIONAL INFORMATION.")

Authority

This program is authorized by Section 301(a) (42 U.S.C. 241(a)) and Section 317 (42 U.S.C. 247b) of the Public Health Service Act, as amended.

Smoke-free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. Public Law 103–227, the Pro Children Act of 1994 prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Eligible applicants are the official public health departments of States or other State agencies or departments. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments.

State agencies applying under this announcement other than the official State health department must provide written concurrence from that agency and describe the proposed working relationship. Only one application from each State may enter the review process and be considered for an award under this program.

Availability of Funds

A total of $5,300,000 is estimated to be available in FY 1997 to fund State capacity projects. CDC anticipates making 15–16 awards which will not exceed $350,000 each. Awards are expected to be made in June 1997, for a 12-month budget period beginning on July 1, 1997, within a project period of up to four years.

Funding estimates are subject to change, including funds to be awarded in continuation budget years. The funding levels for each continuation year of the project period are expected to remain constant at $350,000. However, the actual amount of future year funding levels will take into account documented progress toward objectives, the quality of subsequent project work plans, evidence of cost sharing, previous year expenditures, and the availability of funds.

Use of Funds and Project Costs

These awards may be used for personnel services, supplies, equipment, travel, subcontracts, consultants, and services directly related to project activities. Funds may not be used to supplant State or local funds for the purpose of this cooperative agreement, for construction costs, to lease or purchase space or facilities, or for patient care. Awards made under this Announcement should also be used to enhance/increase expenditures from State, local, and other funding sources to augment program operations.

This program has no statutory matching requirement; however applicants should demonstrate and document their capacity to support a portion of project costs, increase cost-sharing over time, and identify other funding sources for expanding the project.

Financial assistance should be utilized for the following State capacity activities (refer to the attachment providing DEFINITIONS included in the application kit and also appended to this Announcement available through the CDC Home Page on the Internet <http://www.cdc.gov>):

1. The human resources needed to direct the statewide project, including facilitating leadership, visibility, coordination, and inclusion of the prevention of secondary conditions as a public health priority, both within the applicant agency and in cross-agency collaborations;
2. Support of an advisory function to assist in project guidance and oversight;
3. Developing and implementing a State plan and/or policy document for the prevention of secondary conditions that includes coordination with other related planning functions;
4. Gathering and analyzing disability information from targeted populations in the State and promoting the use of this data in developing and implementing disability policy and the resulting program direction;
5. Support of data collection using questions taken from BRFSS-related modules and other instruments;
6. Sustaining collaborations and partnerships with constituency organizations and individuals, and ensuring that access for persons with disabilities to project activities and facilities will be achieved;
7. Collecting and disseminating disability and health promotion information;
8. Designing, promoting, and measuring the impact of efforts toward informing the public, professionals, and persons with disabilities and their family members regarding the disabling process and the opportunities for intervention;
9. Providing technical assistance to disability service organizations and community groups.

States may budget funds within their maximum request of $350,000 to develop a university partnership which can expand the scope of the State in defining and assessing the magnitude and impact of disabilities at the State and community level. This partnership may also include establishing and sustaining a resource and research capacity to serve the State in identifying gaps and addressing unmet disability data/information and service needs, and in assisting in program evaluation.

Within their application, States should outline the rationale for selecting and contracting with the proposed university (denoting specific departments or programs), and describe the competencies and relationships in place at the university that will blend with State capacity to address and fulfill the proposed epidemiologic and program evaluation agenda.

Such a partnership is not a requirement of this Announcement. However, if State applicants elect not to pursue the university affiliation; they must indicate how and by whom these enumerated tasks will be conducted (such as within the resources of the applicant agency).

Given the limits on funding for State capacity activities, it is important that applicants demonstrate their shared support in making a resource commitment for the project. States should identify those staff positions and other components of cost-sharing that will be supported by the applicant agency or other organizations in helping to achieve the objectives of the project. The sources and amounts of such contributions should be specified in the budget narrative and those amounts represented on the budget information sheet (Form 424A) under non-Federal budget categories. States receiving awards are expected to sustain (and make efforts to increase) that level of support throughout the project period. Meeting those commitments will be taken into account by CDC in funding level determinations for subsequent budget years.

Background

The CDC Office on Disability and Health (proposed), current name-Disabilities Prevention Program has provided financial assistance to States since 1988. These awards have permitted State health departments and other State agencies to build capacity in program identity, planning, surveillance of targeted disabilities, conduct of community-based interventions, training of providers, and providing health education/promotion curricula and conferences. Awards resulting from this Announcement are designed to assist States in shifting from assessing and preventing condition-specific etiologies (e.g., spinal cord injury, traumatic brain injury, fetal alcohol syndrome, mild mental retardation, spina bifida, cerebral palsy, osteoporosis, etc); toward building epidemiologic capacity to assess the magnitude of disability in States, developing data systems that contribute to the understanding of secondary conditions, and conducting other activities noted in the PROGRAM REQUIREMENTS section.

This change in approach acknowledges that over 49 million Americans have a disability and the national cost of disabilities is in excess of $170 billion each year, of which an estimated $85 billion is spent in federally-supported programs and services.

CDC has been assigned a Federal leadership role in assessing the magnitude of disability and the prevention of secondary conditions. Therefore, it is incumbent that this Announcement recognize that even though specific conditions or etiologies are important, each individually represents only a small portion of the total measure of disability in America. Broader disability domains and associated secondary conditions represent the major impact and effects of disability in terms of human and economic cost. CDC wishes to give priority to these broader effects of disability on Americans and address the importance of health promotion among persons with disabilities, preventing the loss of their independence and participation, and reducing the economic and human costs of secondary conditions. These are health and social concerns of great magnitude and national significance.

This Announcement emphasizes expanding the capacity of States to determine the magnitude of disability in their respective jurisdictions. States should also conduct and measure the effectiveness of programs to reduce or prevent secondary conditions, and assess the risk and protective factors related to their selected disability domain.

Disability domains are categories of activities that individuals perform in everyday life. States should propose activities in at least one of the following disability domains: (1) mobility (locomotion); (2) personal care/home management; (3) communication; and (4) learning. Descriptions and *examples* within these disability domains are as follow:

1. *Mobility* (locomotion) refers to an individual's ability to perform distinctive activities associated with moving; both himself and objects, from place to place. Examples of underlying conditions or diagnoses include persons with spinal cord injury, cerebral palsy, lower limb loss, blindness, arthritis, or stroke. Secondary conditions may include urinary tract infections, cardiovascular deficit due to sedentary lifestyle, pressure sores, results from falls, bowel obstruction, dependence on assistive devices and its economic impact, lack of access to medical care, and social isolation.

2. *Personal Care/Home Management* refers to an individual's ability to perform basic self-care activities such as feeding, bladder and bowel care, personal hygiene, dressing, financial management, and homemaking. Examples of underlying conditions or diagnoses include persons with arthritis, asthma, stroke, osteoporosis, paraplegia, or multiple sclerosis. Secondary conditions may include lack of physical fitness, weight gain, incontinence, poor nutrition, and emotional dependence.

3. *Communication* refers to an individual's ability to generate and express messages, and to receive and understand messages. Examples of underlying conditions or diagnoses include persons with cerebral palsy, deafness, aphasia from varied pathology, or congenital speech impediments. Secondary conditions may include family dysfunction, isolation, and constraints and barriers in employment opportunity.

4. *Learning* refers to an individual's ability to profit from daily experiences, and includes aspects of receiving, processing, remembering, and using information. Examples of underlying conditions or diagnoses include persons with mental retardation, spina bifida, fetal alcohol syndrome, or traumatic brain injury. Secondary conditions may include depression, behavioral problems, increased family stress, and poor academic and vocational performance.

Note that the examples listed above are illustrative, and not intended to be exhaustive. Several secondary conditions may apply to more than one disability domain. Because of limited funds and other resources available, this Announcement does not include disabilities created by psychiatric diagnoses, although mental health issues may be appropriately included as secondary conditions.

CDC will develop a set of questions taken from existing Behavioral Risk Factor Surveillance System (BRFSS) modules and add additional questions that must be asked by States funded under this Announcement. This would include asking an expected range of 20 to 25 questions that would take approximately 15–20 minutes to administer per interview. This process would employ BRFSS-like survey methods, designed to benefit the State in determining the magnitude of disability and selected secondary conditions. CDC will identify and finalize the survey questions by the time of issuance of awards in June 1997. The survey questions will be discussed with the successful State applicants in a start-up technical assistance conference to be held in Atlanta within 60 days of award. States will be required to implement (at a minimum) a point-in-time survey in the first year. The conduct of the BRFSS-like survey is expected to begin in early 1998 and would be repeated in the second and subsequent years of the project period, whether as a point-in-time survey or as a continuous

surveillance system at approximately the same range of annual expenditure.

For purposes of budgeting, applicants should set aside $50,000 of their financial assistance request to conduct the survey each year and describe the process, methods, and organizational structure within the State for its implementation. Since the States to be funded are not yet known, sample sizes for the survey based on population differences among States cannot yet be determined. Thus, with each State proposing $50,000 for this survey, adjustments to the awards will be made on an individual State basis once the sample sizes and resulting costs are determined. This will occur subsequent to the selection of States to be funded and during award negotiations.

Purpose

The purpose of these cooperative agreements is to assist States to develop highly visible programs for assessing the magnitude of disability in the State, preventing secondary conditions, and fostering health promotion among persons with disabilities within their own agency and through statewide collaborations. Financial assistance is being provided to allow States to work toward that goal by promoting public health leadership; building program visibility statewide; coordinating prevention services; using existing and emerging disability data; establishing an external or internal mechanism to enhance epidemiologic and program evaluation capabilities; providing technical assistance; and facilitating training, education, and health promotion programs directed to meet the needs of persons with disabilities. State capacity awards are also designed to support functions that promote and influence the activities of other organizations regarding these goals.

Program Requirements

Under this Program Announcement, States should develop strategies to identify the magnitude of a selected disability domain within the State in addition to the BRFSS-like survey. States should also be able to measure and characterize the incidence and prevalence of State-selected secondary conditions related to that domain, implement preventive interventions, and assess how participation is affected by secondary conditions.

State projects must include an organizationally-defined prevention office, an advisory function that includes broad representation with an emphasis on persons with disabilities, a strategic planning and/or policy development process, access to sound epidemiologic information on the magnitude of disabilities in the State, competence in guiding and overseeing education/health promotion activities for persons with disabilities, and the ability to establish and sustain communications/information dissemination systems.

To that end, applicants must propose a disability program office that includes a full-time manager/coordinator position with the authority to carry out all project requirements. *Applicants who do not include (and maintain) a full-time manager/coordinator position will not be eligible for award or continuation funding.* Applicants should present their plan and time line for staffing the disability program office and indicate how the proposed staff will function in facilitating and promoting the activities required under this Announcement. Applicants should describe the proposed staff disciplines and professional competencies needed to meet these requirements, while also coordinating and influencing those activities that reside outside of this office.

Applicants should describe the organizational structure and placement of the project and how this placement/location can maximize the applicant's capacity to promote State level policy and priority setting for the prevention of secondary conditions. CDC prefers that State disability program offices have a program title and organizational location that adequately conveys their State-level coordination functions and responsibilities.

Applicants must cite the present and/or proposed composition and structure of its advisory function, and indicate how maximum input by persons with a disability, and their family members, and minority populations will be achieved. CDC recommends as high ratios as practical, but requires that applicants provide a specific plan to maximize representation of persons with a disability, women, and minorities. *CDC requires that such a plan assures that the State advisory function includes a minimum representation of 25 percent of persons with a disability.*

States must note the disability domain selected and the basis for that determination. Within that domain, States should conduct surveillance assessing the prevalence of the selected domain in addition to the BRFSS-like survey. A variety of underlying conditions may contribute to the selected disability domain. To work toward that assessment, States should identify specific data sets which are available, and could be accessed to help ascertain the magnitude of disability within the selected domain.

Although separate State and other resources should be utilized for condition-specific surveillance, applicants may request a portion of cooperative agreement funds (up to a maximum of 15 percent of the total budget) to sustain surveillance for conditions or surveillance systems of importance (e.g., selected traumatic injuries, developmental disabilities, chronic diseases) that will contribute to the requirements of this Announcement.

Direct financing of interventions for primary prevention activities at the State or community level should be supported from resources apart from these awards; although the State disability program office may appropriately be used to provide technical assistance for planning, monitoring, and evaluation of these activities.

Cooperative Activities

In conducting activities to achieve the purposes of this program, the recipient shall be responsible for activities under A. (Recipient Activities) and CDC shall be responsible for activities listed under B. (CDC Activities).

A. Recipient Activities

1. Develop a highly visible State-based program for the prevention of secondary conditions (see attachment providing DEFINITIONS for the list of State capacity activities included in the application kit and also appended to this Announcement available through the CDC Home Page on the Internet <http://www.cdc.gov>);

2. Establish coordination with other disabilities-related agencies, develop project objectives and time frames, provide technical assistance, and establish a mechanism for computerized communications/information systems;

3. Implement data collection using survey questions provided by CDC from existing BRFSS-related modules and other instruments;

4. Use existing disability data and access other State information in developing and implementing disability policy, including working with populations within a disability domain; and

5. Promote prevention planning in communities, conduct or guide education and health promotion activities (primarily for persons with disabilities), and evaluate their effectiveness.

B. CDC Activities

1. Provide scientific and programmatic technical assistance in the planning, operation, and evaluation of disability data and health promotion activities;

2. Provide programmatic assistance in administrative and organizational aspects of project operations and provide information on project activities in other States and national initiatives;

3. Support project staff by conducting training programs, conferences, and workshops to enhance skills and knowledge;

4. Provide a point of referral for coordinating State, regional and/or national data pertinent to the disabling process; and

5. Provide survey questions to States from BRFSS-related modules and assist in the analysis of the resulting data.

Application Contents for State Capacity Projects

1. Document the background and need for support, including an overview (with evidence) of the disability problem in the State.

2. Describe the gaps in information and program services, and how this award will help close those gaps.

3. Provide a synopsis of prevention services now in place including those related to secondary conditions, denote other organizations with similar interests, discuss efforts to identify populations at risk, and provide an inventory of unmet needs that this award can help address.

4. Describe the plans to identify, designate, and utilize partner organizations and other collaborators in the conduct of the project and discuss their prospective roles in meeting agreed-upon objectives.

5. Describe the proposed structure of the advisory function and how it will function as a viable component for program guidance and oversight.

6. Present how the project will develop, disseminate, and implement a strategic plan and/or policy directive for the prevention of secondary conditions, and use it to advance this agenda within the State.

7. Provide letters of endorsement and support confirming proposed collaborations. These must represent specific, tangible commitments, not merely convey general interest and imprecise future relationships. Discuss how collaborations will function individually, and collectively contribute to the overall success of the project.

8. Provide a detailed work plan for all State capacity activities. The work plan should outline long-range goals for the four year project period, but also include detailed specific, measurable, and time-phased objectives by quarter the first two budget years of the project period.

9. Describe how the organizational linkages in place or to be negotiated will be utilized for data access, analysis, data sharing, and dissemination. Denote the internal State structure and the proposed university partnership (if selected) to enhance epidemiologic capability. Indicate the experience and competencies in place to assure that these epidemiologic activities can be performed successfully and within defined time frames.

10. Present the methods and organizational entities to be used for developing and conducting surveys using CDC-supplied BRFSS-related questions.

11. Describe and identify the information/data systems (including their title, ownership, linkage opportunities, and potential benefit) to be accessed for the selected disability domain. Outline how that data will be utilized in the design of health promotion programs or other interventions to prevent secondary conditions.

12. Indicate how the project will address the reliability and validity of epidemiologic data collected, and how it will be used for policy development and prevention practice.

13. Describe the plan, methods and structure (such as a university partnership) to be enlisted for ongoing program evaluation, noting the experience and competencies available, and how the evaluation component will be integrated into project operations.

14. Present how, and by whom the advisory function and strategic planning and policy activities of the project will be evaluated as to process and results.

15. Discuss how the delivery of health promotion and technical assistance activities will be measured and modified for greater quality, acceptance, and improved outcomes.

16. Present the plan to establish the State disability program office, clearly indicate the time frames for staff recruitment, and provide curriculum vitae for the proposed Principal Investigator and key project personnel.

17. Provide an organization chart of the proposed project delineating its placement, and discuss how this location and resultant linkages will serve to ensure the prominence of the program and its influence within the applicant agency.

18. Discuss how and by whom the project will be directed. Designate the responsibilities of all staff members in the State disability program office. Present the rationale for outlined tasks, and identify personnel (by positions) to be responsible for each identified objective.

19. Describe the plan for assuring that persons with disabilities as well as all racial, ethnic, gender, and cultural groups will have access to all project services, facilities, and opportunities for representation in the project.

20. Present the approach to design, influence, and/or provide leadership in training and education programs for health professionals and for the public, with an emphasis on groups at special risk. Indicate the subject areas and target audiences to be included in such programs. Describe the process for developing a system for disabilities-related information sharing and communications.

21. Prepare a budget and narrative that clearly and *fully justifies* all requested items, denoting the specific line categories for Federal financial assistance. The budget form should also list categories of non-CDC Federal funds and non-Federal funds that contribute to and comprise the total budget for the project.

22. In addition to the budget justification, applicants should denote the extent of State financial support of the project as documented by budget and narrative information. Indicate the level of full-time and majority-time staff and resources dedicated to this project and the level of other tangible costs to be borne by the applicant.

23. *Human Subjects (if applicable):* This section must describe the degree to which human subjects may be at risk and the assurance that the project will be subject to initial and continuing review by the appropriate institutional review committees.

Evaluation Criteria for State Capacity (Total 100 Points)

1. Evidence of Need and Understanding of the Problem: (10 Points)

Evaluation will be based on:

a. The applicant's description and understanding of the magnitude of disabilities showing evidence (as available) of estimates of incidence and/or prevalence, demographic indicators, scope of disabilities and their severity, and their associated costs.

b. The applicant's description of, and the extent of current prevention activities related to disability, including those related to the prevention of secondary conditions within the State. This description should describe need, available resources, populations-at-risk, knowledge gaps, and the use of this award in addressing those needs.

2. Evidence of Collaboration: (15 Points)

Evaluation will be based on:

a. Evidence of collaboration with other principal partners in the conduct of the project, including (if selected) the formal university partnership.

b. The description of the proposed advisory function including evidence of representation of persons with disabilities and its role and capacity to influence State-level policy.

c. The approach to develop and implement a State strategic plan and/or policy directive for the prevention of secondary conditions.

d. The description of the specific roles and responsibilities of these working partners including the products and services to be provided.

e. The presentation of evidence as to how these collaborations will result in successful implementation of the project.

3. Goals and objectives: (15 Points)

Evaluation will be based on the quality of the proposed project goals and objectives related to the conduct of the project. Objectives must be specific, measurable, achievable, and time-phased; and based on a formal work plan with descriptive methods and timetable for accomplishment.

4. Epidemiological Capacity: (25 Points)

Evaluation will be based on:

a. The epidemiologic capacity and structure in place to coordinate and facilitate data collection, analysis, and dissemination.

b. The description of the approach and activities necessary to conduct the survey taken from CDC-provided BRFSS-related questionnaires.

c. The description of the approach to access other identified applicable State disability information sources, and how such data will be used.

d. The plan for how the university partnership (if selected) or other agency will be employed to facilitate epidemiologic excellence toward assessing the magnitude of disability and set intervention and health promotion priorities.

e. The accounts of how the project will assess the reliability and validity of epidemiological data collected and used for policy development.

5. Program Evaluation: (15 Points)

Evaluation will be based on:

a. The overall plan for evaluation of the project, including design, methods, partners, and process to be followed for implementation.

b. The description of how the advisory committee functions and planning activities of the project will be evaluated, and by whom.

c. The description of how the project will measure increases in public awareness, knowledge, behavior, and the overall benefits of health promotion delivery.

d. The description of how the project will assess changes in public policy, and measure the effects of its technical assistance and communications directed toward communities and special populations.

6. Project Management and Staffing: (20 Points)

Evaluation will be based on:

a. The description of the proposed staffing for the project, including the plan to expedite filling of all positions.

b. The description of the responsibilities of individual staff members including the level of effort and time allocation for each project activity by staff position.

c. The extent to which the placement of the project within the applicant organization assures maximum operational visibility and influence.

d. The strength of the presentation citing that all project facilities and services provided will be fully accessible to persons with disabilities.

e. The extent to which the application demonstrates direct involvement of personnel who reflect the racial, ethnic, gender, and cultural composition of the population to be served.

f. The plan to provide technical assistance, education and training, and health promotion programs; and the proposed design of a shared information and communications dissemination system.

7. Budget Justification: (Not Scored)

The budget section must demonstrate reasonableness, a concise and clear justification, accuracy, and full itemization of line categories for Federal and non-Federal funds comprising the total budget. It also must show consistency with the intended use of cooperative agreement funds.

8. Human Subjects (if Applicable): (Not Scored)

The extent to which the applicant complies with the Department of Health and Human Services Regulations (45 CFR Part 46) regarding the protection of human subjects.

Funding Priorities

CDC intends that there be representation of all four listed disability domains among its State capacity recipients nationally. Therefore, to the extent that high quality and high ranking applications are reviewed, CDC plans to have no fewer than two States conducting prevention programs in each of the four disability domains.

As part of the funding decision process, CDC desires to achieve a balance of States that are geographically and demographically representative of the United States; and, to the extent practical, fund States in most or all of the ten Department of Health and Human Services Regions.

Priority for funding will be given to those States that both score high in the review and can also provide substantial commitment and *evidence* of tangible cost-sharing for financial and human resource contributions to this cooperative agreement. This includes commitments for both immediate and long-term support as the applicant's participation in project costs.

Priority for funding will also be given to those States that score high in the review and also demonstrate an organizational commitment to meet the requirements of this Announcement by integrating key project personnel within their agency personnelmerit system structure. In lieu of that capability, applicants should provide evidence that key personnel will be able to function effectively under an alternate staffing plan, such as through a contract/consultant personnel agreement, and present the basis and rationale for such action.

CDC considers it important that States expedite meeting the requirements of this Announcement. Hence, special consideration will be given to those applicants that demonstrate evidence of an immediate or short term capability to address these requirements, as opposed to a longer term approach for development of these components of the project. While extra points are not set aside for that capability, the objective review committee will view the tasks explicit in this Announcement in light of the applicant's facility for implementation and attainment over the short term, as opposed to not being in place until late or at the conclusion of the four year project period.

Reporting Requirements

Project narrative reports will be required twice annually; and due 31 days after the close of each six month calendar period. An original and two copies of the narrative progress report should be submitted to the CDC Grants Management Branch by January 31 and July 31 of each year. The January report should cover the period from July 1 to December 31. The July report should cover the period from January 1 to June 30. An original and two copies of the Financial Status Report is required to be submitted to the CDC Grants Management Branch no later than 90 days after the end of each budget period, or by September 30 of each year.

Special Instructions

Applicants must submit a separate typed abstract or summary of their proposal as a cover to their applications, consisting of no more than two double-spaced pages. Applicants should also include a table of contents for both the project narrative and attachments. The budget narrative and full budget justification must be placed immediately after the table of contents and abstract in the front of the application. Applications must be developed in accordance with PHS Form 5161–1. Applicants should organize their proposals along the lines of the application contents section for state capacity functions under this Announcement, as those elements are arranged to be compatible with the respective application review evaluation criteria.

The main body of the application narrative should not exceed 50 double-spaced pages. Pages must be numbered and printed on only one side of the page. All material must be typewritten; with 10 characters per inch type (12 point) on 8–½" by 11" white paper with at least 1" margins, headers and footers (except for applicant-produced forms such as organizational charts, photos, graphs and tables, etc.). Applications must be held together only by rubber bands or metal clips. Applications must not be bound together in any other way. Attachments to the application should be held to a minimum in keeping to those items required by this Announcement.

Applicants may contract with other entities for the conduct of the project. These can include activities such as formal instruments with universities and faculty members as part of State capacity, facilitators for project meetings, training leaders/specialists, consultants for strategic planning, data collection contracts, intra-agency agreements in states for conducting surveys such as BRFSS-like questions provided by CDC, health promotion curriculum and communications/information systems development, questionnaire and survey design, and workshops and conferences.

Applicants are invited by CDC to attend a one day technical assistance meeting in Atlanta on Wednesday, March 26, 1997, to discuss the requirements of this Announcement, and to ask questions regarding its content. Interested State applicants should contact the official listed for obtaining programmatic information in the "WHERE TO OBTAIN ADDITIONAL INFORMATION" Section for the time and location.

CDC plans to hold a start-up conference for successful applicants early in the project cycle. That meeting will be held in Atlanta within 60 days of award. Details regarding that conference will be provided at the time of the issuance of grant awards. Applicants should include travel funds in their budgets to participate in this start-up conference, and for one additional workshop for key project staff late in the first budget year.

CDC considers it critical that States participate in these and future project meetings. *By virtue of accepting an award, States are understood to have agreed to use cooperative agreement funds for travel by project staff selected by CDC to participate in CDC-sponsored workshops and other called meetings.*

Executive Order 12372

Applications are subject to the Intergovernmental Review of Federal Programs as governed by Executive Order 12372. Executive Order 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their State Singie Point of Contacts (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOCs of each affected State. A current list is included in the application kit. If SPOCs have any State process recommendations on applications submitted to CDC, they should forward them to Ron Van Duyne, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 255 East Paces Ferry Road, NE., Room 321, Mailstop E–13, Atlanta, Georgia 30305, no later than 60 days after the deadline date for new and competing awards. The granting agency does not guarantee to "accommodate or explain" State process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance (CFDA)

The Catalog of Federal Domestic Assistance number is 93.184.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and forms provided in the application kit.

Animal Subjects

If the proposed project involves research on animal subjects, the applicant must comply with the "PHS Policy on Humane Care and Use of Laboratory Animals by Awardee Institutions." An applicant organization proposing to use vertebrate animals in PHS-supported activities must file an Animal Welfare Assurance with the Office of Protection from Research Risks at the National Institutes of Health.

Women and Minority Inclusion Policy

It is the policy of CDC to ensure that women and racial and ethnic groups will be included in CDC-supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive Number 15 and include American Indian, Alaska Native, Asian, Pacific Islander, Black, and Hispanic. Applicants shall ensure that women, racial, and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is inappropriate or not feasible, this situation must be explained as part of the application. In conducting the review of applications for scientific merit, review groups will evaluate proposed plans for inclusion of minorities and both sexes as part of the scientific assessment and assigned score. This policy does not apply to research studies when the investigator cannot control the race, ethnicity, and/or sex of subjects. Further guidance to

this policy is contained in the **Federal Register**, Vol. 60, No. 179, Friday, September 15, 1995, pages 47947–47951.

Application Submission and Deadline

A. Pre-Application Letter of Intent

Although not a prerequisite of application, a non-binding letter of intent to apply is requested from potential applicants. The letter should be submitted to the Grants Management Officer whose name is noted in section B. below. The letter should be postmarked no later than 30 days prior to the submission deadline. The letter of intent should identify the Announcement Number; name the proposed project director; and in a paragraph, describe the scope of the proposed project. The letter will not influence review or funding decisions, but it will enable CDC to plan the review more efficiently and ensure that applicants receive timely and relevant information prior to application submission.

B. Application Submission

The original and two copies of the application PHS Form 5161–1 (OMB Number 0937–0189) should be submitted to Mr. Ron Van Duyne, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 321, Mailstop E–13, Atlanta, Georgia 30305, on or before Thursday, May 1, 1997.

1. *Deadline:* Applications will be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U. S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U. S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications that do not meet the criteria in 1.(a) or 1.(b). above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked your name, address, and telephone number and will need to refer to Announcement Number 730. You will receive a complete program description, information on application procedures, and application forms. In addition, this announcement is also available through the CDC Home Page on the Internet. The CDC Home Page address is http://www.cdc.gov.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Georgia L. Jang, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 255 East Paces Ferry Road, NE., Room 321, Mailstop E–13, Atlanta, Georgia 30305, telephone (404) 842–6814. (Internet address: glj2@cdc.gov).

Programmatic and operational information may be obtained from Joseph B. Smith, Office on Disability and Health, National Center for Environmental Health, Centers for Disease Control and Prevention, 4770 Buford Highway, Building 101, Mailstop F–29, Atlanta, Georgia 30341, telephone (770) 488–7082. (Internet address: jos4@cdc.gov). Epidemiologic and surveillance-related technical assistance is available from Donald J. Lollar, Ed.D. at the same address, telephone (770) 488–7094. (Internet address: dcl5@.cdc.gov).

An attachment to this Announcement provides definitions concerning the conceptional model of disability, secondary conditions; and includes a list and description of major State capacity activities (included in the application kit and also appended to this Announcement available through the CDC Home Page on the Internet <http://www.cdc.gov>).

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report; Stock number 017–001–00474–0) or "Healthy People 2000" (Summary Report; Stock number 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: February 28, 1997.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–5515 Filed 3–5–97; 8:45 am]

BILLING CODE 4163–18–P

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Application	57	1	40	2,280
Annual report	57	1	40	1,368

Administration for Children and Families

Agency Record/keeping/Reporting Requirements Under Emergency Review by the Office of Management and Budget (OMB)

Title: Community-Based Family Resource and Support Grants.

OMB No.: New Collection.

Description: The Program Instruction, prepared in response to the enactment of the Community-Based Family Resource and Support Grants (CBFRS), as set forth in Title II of Pub. L. 104–235, Child Abuse Prevention and Treatment Act Amendments of 1996, provides direction to the States and Territories to accomplish the purposes of (1) supporting State efforts to develop, operate, expand and enhance a network of community-based, prevention-focused, family resource and support programs that coordinate resources among existing human service organizations within the State; and (2) fostering an understanding, appreciation, and knowledge of diverse populations in order to be effective in preventing and treating child abuse and neglect. This Program Instruction contains information collection requirements that are found in Pub. L. 104–235 at Sections 202(1)(A); 202(b); 203(b)(1)(B); 205; and pursuant to receiving a grant award. The information submitted will be used by the agency to ensure compliance with the statute, complete the calculation of the grant award entitlement, and provide training and technical assistance to the grantee.

Respondents: State, Local or Tribal Govt.

ANNUAL BURDEN ESTIMATES—Continued

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Estimated total annual burden hours:				3,648

Additional Information: ACF is requesting that OMB grant a 180 day approval for this information collection under procedures for emergency processing by March 21, 1997. A copy of this information collection, with applicable supporting documentation, may be obtained by calling the Administration for Children and Families, Reports Clearance Officer, Larry Guerrero at (202) 401–6465.

Comments and questions about the information collection described above should be directed to the Office of Information and Regulatory Affairs, *ATTN:* OMB Desk Officer for ACF, Office of Management and Budget, Paperwork Reduction Project, 725 17th Street N.W., Washington, D.C. 20503, (202) 395–7316.

Dated: February 28, 1997.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 97–5451 Filed 3–5–97; 8:45 am]

BILLING CODE 4184–01–M

Food and Drug Administration

[Docket No. 97G–0063]

Cerestar Holding Co. B.V., Mitsubishi Chemical Corp., and Nikken Chemicals Co., Ltd.; Filing of Petition for Affirmation of GRAS Status

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Cerestar Holding Co. B.V., Mitsubishi Chemical Corp., and Nikken Chemicals Co., Ltd., have filed a petition (GRASP 7G0422) proposing to affirm that the use of erythritol is generally recognized as safe (GRAS) as an ingredient in human food.

DATES: Written comments by May 20, 1997.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Rosalie M. Angeles, Center for Food Safety and Applied Nutrition (HFS–205), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3107.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (secs. 201(s) and 409(b)(5) (21 U.S.C. 321(s) and 348(b)(5)) and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that Cerestar Holding Co. B.V., Mitsubishi Chemical Corp., and Nikken Chemicals Co., Ltd., c/o Hyman, Phelps & McNamara, 700 13th St. NW., suite 1200, Washington, DC 20005, have filed a petition (GRASP 7G0422) proposing that erythritol be affirmed as GRAS for use as an ingredient in human food.

The petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the requirements outlined in §§ 170.30 (21 CFR 170.30) and 170.35 is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for GRAS affirmation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Interested persons may, on or before May 20, 1997, review the petition and file comments with the Dockets Management Branch (address above). Two copies of any comments should be filed and should be identified with the docket number found in brackets in the heading of this document. Comments should include any available information that would be helpful in determining whether the substance is, or is not, GRAS for the proposed use. In addition, consistent with the regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency encourages public participation by review of and comment on the environmental assessment submitted with the petition that is the subject of this notice. A copy of the petition (including the environmental assessment) and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 12, 1997.

George H. Pauli,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 97–5454 Filed 3–5–97; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[Document Identifier: HCFA–3427]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Reinstatement, with change, of previously approved collection for which approval has expired; *Title of Information Collection:* End Stage Renal Disease (ESRD) Application and Survey and Certification Report Form; *Form No.:* HCFA–3427; *Use:* This form is a facility identification and screening measurement tool used to initiate the certification and recertification of ESRD

facilities. The form is also completed by the Medicare/Medicaid State survey agency to determine facility compliance with ESRD conditions for coverage; *Frequency:* Annually; *Affected Public:* State, Local or Tribal Governments; *Number of Respondents:* 2,640; *Total Annual Responses:* 1,056; *Total Annual Hours:* 2,376.

To obtain copies of the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, *Atten:* Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: February 27, 1997.

Edwin J. Glatzel,

Director, Management Analysis and Planning Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 97–5532 Filed 3–5–97; 8:45 am]

BILLING CODE 4120–03–M

[OPL–014–N]

Medicare Program; March 24, 1997 Meeting of the Practicing Physicians Advisory Council

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, this notice announces a meeting of the Practicing Physicians Advisory Council. This meeting is open to the public.

DATES: The meeting is scheduled for March 24, 1997, from 9 a.m. until 5 p.m. e.s.t.

ADDRESSES: The meeting will be held in the Stonehenge Room, 615F, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Pamela J. Gentry, Associate Administrator for External Affairs, Room 435–H, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, DC 20201, (202) 690–7418.

SUPPLEMENTARY INFORMATION: The Secretary of the Department of Health and Human Services (the Secretary) is mandated by section 1868 of the Social Security Act to appoint a Practicing Physicians Advisory Council (the Council) based on nominations submitted by medical organizations representing physicians. The Council meets quarterly to discuss certain proposed changes in regulations and carrier manual instructions related to physicians' services, as identified by the Secretary. To the extent feasible and consistent with statutory deadlines, the consultation must occur before publication of the proposed changes. The Council submits an annual report on its recommendations to the Secretary and the Administrator of the Health Care Financing Administration not later than December 31 of each year.

The Council consists of 15 physicians, each of whom has submitted at least 250 claims for physicians' services under Medicare or Medicaid in the previous year. Members of the Council include both participating and nonparticipating physicians, and physicians practicing in rural and underserved urban areas. At least 11 members must be doctors of medicine or osteopathy authorized to practice medicine and surgery by the States in which they practice. Members have been invited to serve for overlapping 4-year terms. In accordance with section 14 of the Federal Advisory Committee Act, terms of more than 2 years are contingent upon the renewal of the Council by appropriate action before the end of the 2-year term.

The Council held its first meeting on May 11, 1992.

The current members are: Richard Bronfman, D.P.M.; Wayne R. Carlsen, D.O.; Gary C. Dennis, M.D.; Catalina E. Garcia, M.D.; Mary T. Herald, M.D.; Ardis Hoven, M.D.; Sandral Hullett, M.D.; Jerilynn S. Kaibel, D.C. (renominated—pending selection); Marie G. Kuffner, M.D.; Marc Lowe, M.D.; Katherine L. Markette, M.D.; Susan Schooley, M.D.; Maisie Tam, M.D. (renominated—pending selection); and Kenneth M. Viste, Jr., M.D. The chairperson is Kenneth M. Viste, Jr., M.D.

The Council agenda will provide for discussion and comment on the following three items:

- Practice expense project.
- Administrative simplifications under the Health Insurance Portability and Accountability Act of 1966 (Public Law 104–191), enacted on August 21, 1996.
- Fraud and abuse provisions under the Health Insurance Portability and Accountability Act.

Council members will also receive an update on legislation, managed care, and Medicaid. In addition, new members will be sworn in to serve on the Council. Individuals or organizations who wish to make 5-minute oral presentations on the above issues should contact the Executive Director by 12:00 noon, March 13, 1997, to be scheduled. The number of oral presentations may be limited by the time available. A written copy of the oral remarks should be submitted to the Executive Director no later than 12:00 noon, March 19, 1997.

Anyone who is not scheduled to speak may submit written comments to the Executive Director by 12:00 noon, March 19, 1997. The meeting is open to the public, but attendance is limited to the space available.

(Section 1868 of the Social Security Act (42 U.S.C. 1395ee) and section 10(a) of Public Law 92–463 (5 U.S.C. App. 2, section 10(a))

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: February 27, 1997.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 97–5511 Filed 3–5–97; 8:45 am]

BILLING CODE 4120–01–P

Health Resources and Services Administration

Notice Regarding Healthy Start Initiative Cooperative Agreements

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Correction of eligibility criteria for healthy start initiative cooperative agreements.

SUMMARY: In Notice document 97–1928 in the issue of Monday January 27, 1997 (62 FR 3903), make the following correction: The eligibility criteria on page 3904 in the second column, the paragraph preceding "Funding Category; which states: "A percentage of children under 18 with family incomes below the Federal Poverty Level which exceeded the national average of 22 percent for 1993 only" has been changed to: "A percentage of children under 18 years of age with family incomes below the Federal Poverty Level which exceeded the national average of 19.9% for 1990."

This correction has been made to allow the use of 1990 Census data which is available and accessible to most communities. Applicants who have access to and wish to use more recent verifiable poverty data may do so.

Dated: March 3, 1997.

Ciro V. Sumaya,

Administrator.

[FR Doc. 97–5549 Filed 3–5–97; 8:45 am]

BILLING CODE 4160–15–P

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies, and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS (Formerly: National Institute on Drug Abuse, ADAMHA, HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

This Notice is now available on the internet at the following website: http://www.health.org

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, Room 13A–54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443–6014.

SUPPLEMENTARY INFORMATION:

Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

Aegis Analytical Laboratories, Inc., 624 Grassmere Park Rd., Suite 21, Nashville, TN 37211, 615–331–5300

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931 / 334–263–5745

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 22021, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866 / 800–433–2750

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787 / 800–242–2787

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Bayshore Clinical Laboratory, 4555 W. Schroeder Dr., Brown Deer, WI 53223, 414–355–4444 / 800–877–7016

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Ave., Miami, FL 33136, 305–325–5784

Centinela Hospital Airport Toxicology Laboratory, 9601 S. Sepulveda Blvd., Los Angeles, CA 90045, 310–215–6020

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917

CompuChem Laboratories, Inc., 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–549–8263/800–833–3984 (Formerly: CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory, Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–269–3093 (formerly: Cox Medical Centers)

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, P. O. Box 88–6819, Great Lakes, IL 60088–6819, 847–688–2045/847–688–4171

Diagnostic Services Inc., dba DSI, 4048 Evans Ave., Suite 301, Fort Myers, FL 33901, 941–418–1700/800–735–5416

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468

DrugProof, Division of Dynacare/ Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 800–898–0180/206–386–2672 (formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267

Harrison Laboratories, Inc., 9930 W. Highway 80, Midland, TX 79706, 800–725–3784/915–563–3300 (formerly: Harrison & Associates Forensic Laboratories)

Jewish Hospital of Cincinnati, Inc., 3200 Burnet Ave., Cincinnati, OH 45229, 513–569–2051

LabOne, Inc., 8915 Lenexa Dr., Overland Park, Kansas 66214, 913–888–3927/800–728–4064 (formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America, 888 Willow St., Reno, NV 89502, 702–334–3400 (formerly: Sierra Nevada Laboratories, Inc.)

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Specialists, Inc., 113 Jarrell Dr., Belle Chasse, LA 70037, 504–392–7961

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734

MedExpress/National Laboratory Center, 4022 Willow Lake Blvd., Memphis, TN 38118, 901–795–1515/800–526–6339

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43614, 419–381–5213

Medlab Clinical Testing, Inc., 212 Cherry Lane, New Castle, DE 19720, 302–655–5227

MedTox Laboratories, Inc., 402 W. County Rd, D, St. Paul, MN 55112, 800–832–3244/612–636–7466

Methodist Hospital of Indiana, Inc., Department of Pathology and

Laboratory Medicine, 1701 N. Senate Blvd., Indianapolis, IN 46202, 317–929–3587
Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Ave., Peoria, IL 61636, 800–752–1835/309–671–5199
MetroLab-Legacy Laboratory Services, 235 N. Graham St., Portland, OR 97227, 503–413–4512, 800–237–7808 (x4512)
Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 805–322–4250
Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–687–2134
Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400/800–541–7891
PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025, 415–328–6200/800–446–5177
PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Dr., Fort Worth, TX 76118, 817–595–0294 (formerly: Harris Medical Laboratory)
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–338–4070/800–821–3627
Poisonlab, Inc., 7272 Clairemont Mesa Blvd., San Diego, CA 92111, 619–279–2600/800–882–7272
Premier Analytical Laboratories, 15201 I–10 East, Suite 125, Channelview, TX 77530, 713–457–3784/800–888–4063 (formerly: Drug Labs of Texas)
Presbyterian Laboratory Services, 1851 East Third Street, Charlotte, NC 28204, 800–473–6640
Puckett Laboratory, 4200 Mamie St., Hattiesburgh, MS 39402, 601–264–3856/800–844–8378
Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–526–0947/972–916–3376 (formerly: Damon Clinical Laboratories, Damon/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, 875 Greentree Rd., 4 Parkway Ctr., Pittsburgh, PA 15220–3610, 800–574–2474/412–920–7733 (formerly: Med-Chek Laboratories, Inc., Med-Chek/Damon, MetPath Laboratories, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, 4444 Giddings Road, Auburn Hills, MI 48326, 810–373–9120 (formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, 1355 Mittel Blvd., Wood Dale, IL 60191, 630–595–3888 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratories, Inc.)
Quest Diagnostics Incorporated, 2320 Schuetz Rd., St. Louis, MO 63146, 800–288–7293/314–991–1311 (formerly: Metropolitan Reference Laboratories, Inc., CORNING Clinical Laboratories, South Central Division)
Quest Diagnostics Incorporated, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5590 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratory)
Quest Diagnostics Incorporated, National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485 (formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science, CORNING National Center for Forensic Science)
Quest Diagnostics Incorporated, 7470 Mission Valley Rd., San Diego, CA 92108–4406, 800–446–4728/619–686–3200 (formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)
Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130
Scott & White Drug Testing Laboratory, 600 S. 25th St., Temple, TX 76504, 800–749–3788
S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505–727–8800/800–999–LABS
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520/800–877–2520
SmithKline Beecham Clinical Laboratories, 801 East Dixie Ave., Leesburg, FL 34748, 352–787–9006 (formerly: Doctors & Physicians Laboratory)
SmithKline Beecham Clinical Laboratories, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 506 E. State Pkwy., Schaumburg, IL 60173, 847–447–4379/800–447–4379 (formerly: International Toxicology Laboratories)
SmithKline Beecham Clinical Laboratories, 400 Egypt Rd., Norristown, PA 19403, 800–523–0289/610–631–4600 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301 (formerly: SmithKline Bio-Science Laboratories)
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Rd., Suite 6, Tempe, AZ 85283, 602–438–8507
St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 N. Lee St., Oklahoma City, OK 73102, 405–272–7052
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260
TOXWORX Laboratories, Inc., 6160 Variel Ave., Woodland Hills, CA 91367, 818–226–4373/800–966–2211 (formerly: Laboratory Specialists, Inc.; Abused Drug Laboratories; MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.)
UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 800–492–0800/818–996–7300 (formerly: MetWest-BPL Toxicology Laboratory)
UTMB Pathology-Toxicology Laboratory, University of Texas Medical Branch, Clinical Chemistry Division, 301 University Boulevard, Room 5.158, Old John Sealy, Galveston, Texas 77555–0551, 409–772–3197.

Richard Kopanda,
Executive Officer, Substance Abuse and Mental Health Services Administration.
[FR Doc. 97–5563 Filed 3–5–97; 8:45 am]
BILLING CODE 4160–20–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO 310 1310 03–2410]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act; OMB Approval Number 1004–0074

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). On September 3, 1996, the Bureau of Land Management (BLM) published a notice in the **Federal Register** (61 FR 46480)

requesting comments on the collection. The comment period ended November 4, 1996. No comments were received. Copies of the proposed collection of information may be obtained by contacting the Bureau's Clearance Office at the phone number listed below.

OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration, your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0074), Office of Information and Regulatory Affairs, Washington, D.C. 20503, telephone (202) 395–7340. Please provide a copy of your comments to the Bureau Clearance Officer (WO–630) 1849 C St., N.W., Mail Stop 401 LS, Washington, D.C. 20240.

Nature of Comments:

We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the Bureau of Land Management, including whether the information will have practical utility;
2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;
3. The quality, utility, and clarity of the information to be collected; and
4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Oil and Gas and Geothermal Resources Leasing (43 CFR 3120, 3209 and 3220).

OMB Approval Number: 1004–0074.

Abstract: Respondents supply information that will be used to determine the highest qualified bonus bid submitted for a competitive oil and gas or geothermal resources parcel on Federal land and to enable the BLM to complete reviews in compliance with the National Environmental Policy Act. The BLM needs the information to determine the eligibility of an applicant to hold, explore for, develop, and produce oil and gas and geothermal resources on Federal lands.

Form Numbers: 3000–2 and 3200–9.

Frequency: On occasion.

Description of Respondents: Individuals, small businesses, large corporations.

Estimated Completion Time: 2 hours each form.

Annual Responses: 443.

Annual Burden Hours: 886.

Bureau Clearance Officer: Carole Smith (202) 452–0367.

Dated: February 27, 1997.

Frank P. Bruno,
Acting Manager, Regulatory Affairs Group.
[FR Doc. 97–5556 Filed 3–5–97; 8:45 am]
BILLING CODE 4310–84–P

[MT–921–07–1320–01; NDM 85515]

Coal Lease Offering

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of coal lease offering by sealed bid NDM 85515, NDM 85517, NDM 85537 (Acq.)—The Coteau Properties Company, and NDM 85516—The Falkirk Mining Company.

SUMMARY: Notice is hereby given that the coal resources in the tracts described below in Mercer and McLean Counties, North Dakota, will be offered for competitive lease by sealed bid, in accordance with the provisions of the Mineral Leasing Act of February 25, 1920, as amended (41 Stat. 437; 30 U.S.C. 181 et seq.), and The Mineral Leasing Act for Acquired Lands of August 7, 1947, as amended (30 U.S.C. 351–359 et seq.). This offering is being made as a result of applications filed by The Coteau Properties Company and The Falkirk Mining Company.

SUPPLEMENTARY INFORMATION:

Environmental Assessments of the proposed coal developments and related requirements for consultation, public involvement and hearings have been completed in accordance with 43 CFR 3425. The results of these activities were a finding of no significant environmental impact.

Each tract will be leased to the qualified bidder of the highest cash amount provided that the high bid meets the fair market value of the coal resource. The minimum bid for each tract is $100 per acre, or fraction thereof. No bid that is less than $100 per acre, or fraction thereof, will be considered. The minimum bid is not intended to represent fair market value. The fair market value will be determined by the authorized officer after the sale.

All tracts in this lease offering contain split estate lands. Regulations at 43 CFR 3427 set out the protection that shall be afforded qualified surface owners of split estate lands (as defined at 43 CFR 3400.0–5).

Coal Tracts Offered

The recoverable coal reserves of the tracts NDM 85515, NDM 85517, and NDM 85537 (Acquired) are contained in the Beulah-Zap lignite seam of the Sentinel Butte Formation of the Fort Union Group. The recoverable coal reserve of NDM 85516 is contained in the Hagel lignite seam of the Sentinel Butte Formation of the Fort Union Group.

NDM 85515

The coal resource to be offered consists of all recoverable reserves in the following-described lands located in Mercer County, North Dakota:

T. 145 N., R. 87 W., 5th P.M.
Sec. 2: Lot 3, SE¼NW¼

The 79.470-acre tract contains an estimated 2.00 million tons of recoverable coal reserves. For NDM 85515, the Beulah-Zap seam averages 15.5 feet in thickness with an average overburden depth of 125 feet, 6,690 BTU/lb. in heating value, and 1.43% sulphur content.

NDM 85516

The coal resource to be offered consists of all recoverable reserves in the following-described lands located in McLean County, North Dakota:

T. 146 N., R. 81 W., 5th P.M.
Sec. 30: Lot 4, SE¼SW¼, S½SE¼

The recoverable coal reserve in this 158.75-acre tract is contained in the Hagel lignite seam. The Hagel seam of the Sentinel Butte Formation of the Fort Union Group is split into two benches throughout the area. The upper bench, the Hagel A, ranges from 0 to 10.6 feet over the Falkirk Mine area and averages 8.6 feet in thickness, 6,082 BTU/lb. in heating value, and 0.55% sulphur content. Separating the upper and lower benches of the Hagel seam is an interburden layer ranging from 8 to 32 feet in thickness and consisting of clays, silts, and carbonaceous matter. The lower bench, the Hagel B, ranges from 0 to 4.4 feet over the mine area and averages 3.5 feet in thickness, 6,012 BTU/lb. in heating value, and 0.62% sulphur content. An estimated 1.75 million tons of recoverable lignite are present in the Hagel A and Hagel B coal seams.

NDM 85517

The coal resource to be offered consists of all recoverable reserves in the following-described lands located in Mercer County, North Dakota:

T. 146 N., R. 87 W., 5th P.M.
Sec. 30: Lot 2
T. 146 N., R. 88 W., 5th P.M.
Sec. 26: SE¼SE¼
Sec. 34: E½

The 398.790-acre tract contains an estimated 5.61 million tons of recoverable coal reserves. For NDM

85517, the Beulah-Zap averages 17.0 feet in thickness with an average overburden depth of 57 feet, 6,766 BTU/lb. in heating value, and 0.46% sulphur content.

NDM 85537 (Acquired)

The coal resource to be offered consists of all recoverable reserves in the following-described lands located in Mercer County, North Dakota. The United States owns 50 percent mineral interest in these lands.

T. 146 N., R. 87 W., 5th P.M.
Sec. 31: NE¼

The Federal interest in the 160.00-acre tract contains an estimated 0.51 million tons of recoverable coal reserves. For NDM 85537 (Acquired), the Beulah-Zap seam averages 16.0 feet in thickness with an average overburden depth of 70 feet, 6,766 BTU/lb. in heating value, and 0.46% sulphur content,

Rental and Royalty

Leases issued as a result of this offering will provide for payment of an annual rental of $3 per acre, or fraction thereof; and a royalty payable to the United States of 12.5 percent of the value of coal mined by surface methods and 8.0 percent of the value of coal mined by underground methods. The value of the coal shall be determined in accordance with 30 CFR 206.

Date

The lease sale will be held at 11:00 a.m., Wednesday, March 26, 1997, in the Conference Room on the Sixth Floor of the Granite Tower Building, Bureau of Land Management, 222 North 32nd Street, Billings, Montana 59101.

Bids

Sealed bids must be submitted on or before 10:00 a.m., Wednesday, March 26, 1997, to the cashier, Bureau of Land Management, Montana State Office, Second Floor, Granite Tower Building, 222 North 32nd Street, Post Office Box 36800, Billings, Montana 59107–6800. The bids should be sent by certified mail, return receipt requested, or be hand-delivered. The cashier will issue a receipt for each hand-delivered bid. Bids received after that time will not be considered.

If identical high sealed bids are received, the tying high bidders will be requested to submit follow-up sealed bids until a high bid is received. All tie-breaking sealed bids must be submitted within 15 minutes following the Sale Official's announcement at the sale that identical high bids have been received.

Notice of Availability

Bidding instructions for the offered tracts are included in the detailed statement of Lease Sale. Copies of the detailed statement and the proposed coal leases are available at the Montana State Office. Casefile documents are also available for public inspection at the Montana State Office.

Dated: February 26, 1997.

Thomas P. Lonnie,

Deputy State Director, Division of Resources.

[FR Doc. 97–5528 Filed 3–5–97; 8:45 am]

BILLING CODE 4310–DN–P

[NV–030–1992–02]

Notice of Availability for the Denton-Rawhide Mine Expansion Project Final Environmental Impact Statement

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of availability for the Denton-Rawhide Mine Expansion Final Environmental Impact Statement (FEIS), Mineral County, Nevada.

SUMMARY: Pursuant to section 102 (2) (C) of the National Environmental Policy Act, 40 CFR 1500–1508 and 43 CFR 3809, notice is given that the Bureau of Land Management (BLM) has prepared, with the assistance of a third-party consultant, a FEIS for Kennecott Rawhide Mining Company's proposed Denton-Rawhide Mine Expansion, located approximately 55 miles southeast of Fallon, Nevada. Copies of the document are available for public review.

DATES: Written comments on the FEIS will be accepted until close of business on April 7, 1997. No public meetings are scheduled. Following the 30-day availability period of this FEIS, a Record of Decision (ROD) will be issued.

ADDRESSES: A copy of the FEIS can be obtained from: Bureau of Land Management, Carson City District Office, Attn: Terri Knutson, Rawhide Project Manager, 1535 Hot Springs Road 89706.

The FEIS is available for inspection at the following locations: BLM State Office (Reno) and BLM Carson City District Office.

FOR FURTHER INFORMATION CONTACT: For additional information, write to the above address or call Terri Knutson at (702) 885–6156.

Dated: February 24, 1997.

John O. Singlaub,

District Manager.

[FR Doc. 97–5476 Filed 3–5–97; 8:45 am]

BILLING CODE 4310–HC–P

[(NM–930–1310–01); (NMNM 92169)]

New Mexico: Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease NMNM 92169 for lands in Chaves County, New Mexico, was timely filed and was accompanied by all required rentals and royalties accruing from December 1, 1996, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms of rentals and royalties at rates of $10.00 per acre or fraction thereof and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and has reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice.

The Lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Leasing Act of 1930 (30 USC 188), and the Bureau of Land Management is proposing to reinstate the lease effective December 1, 1996, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

For further information contact: Lourdes B. Ortiz, BLM, New Mexico State Office, (505) 438–7586.

Dated: February 26, 1997.

Lourdes B. Ortiz,

Land Law Examiner

[FR Doc. 97–5473 Filed 3–5–97; 8:45 am]

BILLING CODE 4310–FB–M

[NM–070–1430–01; NMNM039649/ NMNM96454, NMNM22493/NMNM97415]

Notice of Realty Action; Recreation and Public Purpose (R&PP) Act

AGENCY: Bureau of Land Management, Interior.

ACTION: R&PP transfer of title and change of use located in San Juan County, New Mexico.

SUMMARY: The following described public land are classified (previously) as being suitable for lease/conveyance under the provisions of the R&PP Act, as amended (43 U.S.C. 869 et seq.). An assignment from the City of Farmington to the Farmington Municipal School District #5, with a change of use taking place for the following lands.

New Mexico Principal Meridian

T. 30 N., R. 13 W.,
Sec. 25, S½SW¼NE¼SW¼,
SW¼SE¼NE¼SW¼,

S½SE¼SE¼NE¼SW¼,
S½NE¼SW¼NE¼SW¼,
S½NW¼SE¼NE¼SW¼,
NE¼SW¼SE¼, W½NE¼SW¼SE¼,
NW¼SE¼SW¼SE¼,
N½SW¼SE¼SW¼SE¼,
N½S½SW¼SW¼SE¼,
N½SW¼SW¼SE¼.

Containing 37.50 acres, more or less.

A transfer of title from the Farmington Municipal School District #5 to the City of Farmington, with a change of use taking place for the following lands.

New Mexico Principal Meridian

T. 30 N., R. 13 W.,
Sec. 25, SW¼.

Containing 40 acres, more or less.

FOR FURTHER INFORMATION CONTACT: Information related to this action, including the environmental assessment, is available for review at the Bureau of Land Management, Farmington District Office, 1235 La Plata Highway, Farmington, NM 87401.

SUPPLEMENTARY INFORMATION: Publication of this notice is to provide public notification that this transfer of title and change of use is being considered. The original land classifications remain the same.

Dated: February 28, 1997.

Joel E. Farrell,

Assistant District Manager for Lands and Renewable Resources.

[FR Doc. 97–5514 Filed 3–5–97; 8:45 am]

BILLING CODE 4310–FB–M

[CA–067–1230–00]

Establishment of Supplementary Rule for Use Management of Imperial Sand Dunes Recreation Area, California Desert District

AGENCY: Bureau of Land Management, Interior.

ACTION: Establishment of supplementary rule.

SUMMARY: The primary purpose of this supplementary rule is enhancement of public safety in the Imperial Sand Dunes Recreation Area. This rule will provide a safety zone between the heavy traffic on Gecko Road and those camping off the road.

The following rule is therefore recommended:

1. No person shall camp or park on the shoulder of Gecko Road in the Imperial Sand Dunes Recreation Area except where permitted by posted signs. In areas where there is no obvious shoulder, no one shall park or camp within 10 feet of the pavement of Gecko Rd. This includes all portions of Gecko Road. For purposes of this rule, the shoulder of the road is the compacted road base that extends from the edge of the pavement to where it drops off and resumes the natural contour of the surrounding terrain.

Background

The need for safety rules was identified during a series of public meetings held during preparation of the Imperial Sand Dunes Recreation Area Management Plan, completed in 1987. Safety hazards and methods of reducing them were high priority planning issues identified by participants at the planning meetings.

Additional safety precautions are needed to prevent accident or injury along Gecko Road. Visitors are parking and camping immediately adjacent to the road, and there is a high likelihood of accidents or injuries involving visitors parked or camped on the shoulder of the road.

EFFECTIVE DATE: Effective upon date of publication and will remain in effect until rescinded or modified by the authorized officer.

FOR FURTHER INFORMATION CONTACT: Chief Area Ranger Robert Zimmer, Bureau of Land Management, El Centro Resource Area, 1661 S. 4th St., El Centro, CA 92243 (619) 337–4407.

SUPPLEMENTARY INFORMATION: The authority for this restriction is provided in 43 CFR 8365.1–6. Violation of this restriction is punishable by a fine not to exceed $100,000.00 and/or imprisonment not to exceed 12 months.

Dated: February 26, 1997.

Terry Reed,

Area Manager.

[FR Doc. 97–5529 Filed 3–5–97; 8:45 am]

BILLING CODE 4310–40–M

[CO–956–96–1420–00]

Colorado; Filing of Plats of Survey

February 25, 1997.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 am., February 25, 1997. All inquiries should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

The plat (in six sheets) representing the dependent resurvey of portions of the subdivisional lines, and certain mineral claims and portions thereof and the subdivision of section 29, T. 1 N., R. 71 W., Sixth Principal Meridian, Group 1008, Colorado, was accepted February 3, 1997.

This survey requested by the Forest Service for administrative purposes.

The plat representing the dependent resurvey of portions of the south boundary, subdivisional lines, and the section subdivision lines of section 35, T. 1 S., R. 1 W., Ute Principal Meridian, Group 1144, Colorado, and the completion survey of section 35, the subdivision, the metes and-bounds survey of lots and private land parcels A & B, the original meander of the left bank, and the informative traverse of the meanders of the actual right bank of the Gunnison River, all in section 35, was accepted February 10. 1997.

This survey was requested by BLM for administrative purposes.

The amended plat correcting the bearings and distances on the west boundary T. 33 N., R. 6 W., New Mexico Principal Meridian, Colorado, was accepted January 7, 1997.

The supplemental plat showing the correct position of corner no. 7 and line 7–1 of the Maysville Townsite and creating new lot 20 in section 3, T. 49 N., R. 7 E., New Mexico Principal Meridian, Colorado, was accepted January 9, 1997.

These plats were requested by BLM for administrative purposes.

Colin R. Kelley,

Acting Chief Cadastral Surveyor for Colorado.

[FR Doc. 97–5536 Filed 3–5–97; 8:45 am]

BILLING CODE 4310–JB–P

[ID–957–1420–00]

Idaho; Filing of Plats of Survey; Idaho

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m. February 24, 1997.

The plat representing the dependent resurvey of portions of the subdivisional lines and the subdivision of section 15, T. 36 N., R. 2 E., Boise Meridian, Idaho, Group No. 903, was accepted February 24, 1997. This plat was prepared to meet certain administrative needs of the Nez Perce Tribe and the Bureau of Indian Affairs.

All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 S. Vinnell Way, Boise, Idaho, 83709–1657.

February 24, 1997.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 97–5527 Filed 3–5–97; 8:45 am]

BILLING CODE 4310–GG–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–368–371 and 731–TA–763–766 (Preliminary)]

Certain Steelwire Rod From Canada, Germany, Trinidad & Tobago, and Venezuela

AGENCY: United States International Trade Commission.

ACTION: Institution of countervailing duty and antidumping investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of the investigations and commencement of preliminary phase countervailing duty investigations 701–TA–368–371 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. § 1671b(a)) (the Act) and antidumping investigations No. 731–TA–763–766 (Preliminary) under section 733(a) of the Act (19 U.S.C. § 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada, Germany, Trinidad & Tobago, and Venezuela of certain steel wire rod, provided for in subheadings 7213.91.30, 7213.91.45, 7213.91.60, 7213.99.00, 7227.20.00, and 7227.90.60 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized and/or sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. § 1673a(c)(1)(B)), the Commission must reach preliminary determinations in countervailing duty and antidumping investigations in 45 days, or in this case by April 14, 1997. The Commission's views are due at the Department of Commerce within five business days thereafter, or by April 21, 1997.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207), as amended in 61 FR 37818 (July 22, 1996).

EFFECTIVE DATE: February 26, 1997.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

SUPPLEMENTARY INFORMATION

Background.—These investigations are being instituted in response to a petition filed on February 26, 1997, by counsel for Connecticut Steel Corp., Wallingford, CT; Co-Steel Raritan, Perth Amboy, NJ; GS Industries, Inc., Georgetown, SC; Keystone Steel & Wire Co., Peoria, IL; and North Star Steel Texas, Inc., Beaumont, TX.

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission countervailing duty and antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. § 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on March 19, 1997, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Debra Baker (202–205–3180) not later than March 13, 1997, to arrange for their appearance. Parties in support of the imposition of countervailing duty and/or antidumping duties in the investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before March 24, 1997, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: February 28, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–5466 Filed 3–5–97; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–390]

In the Matter of Certain Transport Vehicle Tires; Notice of Commission Determination Not To Review an Initial Determination Terminating the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ's) initial determination (ID) (Order No. 17) in the above-captioned investigation terminating the investigation based on withdrawal of the complaint.

FOR FURTHER INFORMATION CONTACT: Neal J. Reynolds, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3093.

SUPPLEMENTARY INFORMATION: On July 31, 1996, the Commission instituted this investigation based on a complaint filed by Michelin North America, Inc. ("MNA"). The complaint alleged that the importation and sale of certain transport vehicle tires violated section 337 of the Tariff Act of 1930 by infringing claims of U.S. Letters Patent 4,480,671 ("the '671 patent") covering tread on a heavy duty tire. The companies named as respondents are Kumho Tire Co., Ltd. and Kumho Tire U.S.A., Inc. ("Kumho").

On November 27, 1996, Kumho filed a motion for summary determination of non-infringement. MNA opposed the motion. On December 12, 1996, Kumho also filed two motions requesting the ALJ to compel MNA to discover certain information relating to MNA's tire compounding and manufacturing processes. MNA opposed the discovery motions, arguing that the information requested by Kumho was extremely sensitive and highly sought-after proprietary information of MNA and that it was not relevant to the subject matter of the investigation. On December 24, 1996, the ALJ ordered MNA to produce the information (Order No. 12).

On January 7, 1997, pursuant to Commission rule 210.21(a), MNA moved for an order terminating the investigation based on withdrawal of the complaint. MNA stated that it was withdrawing the complaint and requesting termination of the investigation in order to protect its highly proprietary tire compounding information from discovery. Kumho opposed the motion, arguing that the ALJ should rule on the pending motion for summary determination before addressing the motion to terminate. On January 30, 1997, the ALJ granted MNA's motion to terminate and issued an ID terminating the investigation "with prejudice" (Order No. 17). The ALJ declined to issue a decision on Kumho's motion for summary determination.

On February 6, 1997, Kumho filed a petition for review of the ID terminating the investigation. In its petition, Kumho requested that the Commission vacate the ID and remand the investigation to the ALJ with instructions to rule on Kumho's pending motion for summary determination and its motion for discovery sanctions before ruling on MNA's motion to terminate. MNA and the IA have opposed the petition for review.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, and Commission rule 210.42, 19 C.F.R. §§ 210.42. Copies of the ALJ's ID, and all other nonconfidential documents filed in connection with this investigation, are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: February 28, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–5465 Filed 3–5–97; 8:45 am]

BILLING CODE 7020–02–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Information Security Oversight Office; National Industrial Security Program Policy Advisory Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App.2) and implementing regulation 41 CFR 101–6, announcement is made of the following committee meeting:

Name of Committee: National Industrial Security Program Policy Advisory Committee (NISPPAC).

Date of Meeting: March 25, 1997.

Time of Meeting: 10:00 a.m. to 12:00 noon.

Place of Meeting: National Archives and Records Administration, 700 Pennsylvania Avenue, NW, Washington, DC.

Purpose: To discuss National Industrial Security Program policy matters.

This meeting will be open to the public. However, due to space limitations and access procedures, the names and telephone numbers of individuals planning to attend must be submitted to the Information Security Oversight Office (ISOO) no later than March 20, 1997.

For Further Information Contact: Steven Garfinkel, Director, ISOO, National Archives Building, 700 Pennsylvania Avenue, NW, Room 100, Washington, DC 20408, telephone (202) 219–5250.

Dated: February 28, 1997.

Mary Ann Hadyka,

Policy and Communications Staff.

[FR Doc. 97–5509 Filed 3–5–97; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL COMMUNICATIONS SYSTEM

National Security Telecommunications Advisory Committee

AGENCY: National Communications System (NCS).

ACTION: Notice of meeting.

SUMMARY: A meeting of the President's National Security Telecommunications Advisory Committee will be held on Tuesday, March 18, 1997, from 8:30 a.m. to 3:15 p.m. The Business Session will be held at the Department of State, 2101 C Street NW, Washington, DC. The Executive Session will be held at the Department of Treasury, 15th and Pennsylvania Avenue NW, Washington, DC. The agenda is as follows:

—Call to Order/Welcoming Remarks
—Manager's Report
—IES Report of Activities
—Information Assurance Task Force Report
—National Information Infrastructure Task Force Report
—Network Security Group Report
—Global Information Infrastructure and Information Assurance Topics
—Adjournment

Due to the potential requirement to discuss classified information, in conjunction with the issues listed above, the meeting will be closed to the public in the interest of National Defense.

FOR FURTHER INFORMATION: Telephone (703) 607–6221 or write the Manager, National Communications System, 701 S. Court House Rd., Arlington, VA 22204–2198.

Dennis Bodson,

Chief, Technology and Standards.

[FR Doc. 97–5474 Filed 3–5–97; 8:45 am]

BILLING CODE 5000–03–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Submission for OMB Review; Comment Request

March 3, 1997.

The National Endowment for the Arts (NEA) has submitted the following public information collection request (ICR) to the Office of Management and

Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 [P.L. 104–13, 44 U.S.C. Chapter 35]. Copies of this ICR, with applicable supporting documentation, may be obtained by calling the National Endowment for the Arts' Director of Guidelines & Panel Operations, A.B. Spellman [(202) 682–5421]. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 682–5496 between 10:00 a.m. and 4:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the National Endowment for the Arts, Office of Management and Budget, Room 10235, Washington, DC 20503 [(202) 395–7316], within 30 days from the date of this publication in the **Federal Register**.

The Office of Management and Budget (OMB) is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;

• Enhance the quality, utility and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

SUPPLEMENTARY INFORMATION: The Endowment request the review of all of its funding application guidelines. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. § 3504(h).

Agency: National Endowment for the Arts.

Title: Blanket Justification for NEA Funding Application Guidelines FY 1998–FY 2001.

OMB Number: 3135–0112.

Frequency: Annually.

Affected Public: Nonprofit organizations, state and local arts agencies, and individuals.

Estimated Number of Respondents: 5,000.

Estimated Time Per Respondent: 19.29 hours.

Total Burden Hours: 96,450.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (Operating/Maintaining Systems or Purchasing Services): 0.

Description: Guideline instructions and applications elicit relevant information from individuals, nonprofit organizations, and state and local arts agencies that apply for funding from the NEA. Current Endowment categories include, but are not limited to: Grants to Organizations, Partnership Agreements, Literature Fellowships, American Jazz Masters, National Heritage Fellowships in the Folk & Traditional Arts, and Leadership Initiatives (including Millennium). This information is necessary for the accurate, fair and thorough consideration of competing proposals in the review process.

ADDRESSES: A.B. Spellman, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Room 516, Washington, DC 20506–0001, telephone (202) 682–5421 (this is not a toll-free number), fax (202) 682–5049.

Murray Welsh,

Director, Administrative Services, National Endowment for the Arts.

[FR Doc. 97–5538 Filed 3–5–97; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–348 and 50–364]

Southern Nuclear Operating Company, Inc.; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–2 and NPF–8, issued to Southern Nuclear Operating Company, Inc. (the licensee), for operation of the Joseph M. Farley Nuclear Plant, Units 1 and 2, located in Houston County, Alabama.

The proposed amendments would revise and clarify surveillance requirements for the Control Room Emergency Filtration System, the Penetration Room Filtration System, and the Containment Purge Exhaust Filter System.

This requested Technical Specification (TS) change is a followup to a Notice of Enforcement Discretion (NOED) granted to the licensee that is in effect for the period from 1:27 p.m. Eastern Standard Time on February 26, 1997, until approval of this exigent TS request and full implementation of the amendments within 30 days of its issuance. NRC Inspection Manual, Part 9900, "Operations—Notices of Enforcement Discretion," requires that a followup TS amendment be issued within 4 weeks from the issuance of the NOED.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the requested amendments involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to convert from ANSI N510–1980 to ASME N510–1989 for specific FNP [Farley Nuclear Plant] filtration surveillance testing requirements do not affect the probability of any accident occurring. The consequences of any accident will not be affected since the proposed change will continue to ensure that appropriate and required surveillance testing for FNP filtration systems will be performed. Relocating specific testing requirements to the FNP FSAR [Final Safety Analysis Report] has no effect on the probability or consequences of any accident previously evaluated since required testing will continue to be performed.

Therefore, the proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Testing differences between ANSI N510–1980 and ASME N510–1989 have been evaluated by SNC [Southern Nuclear Operating Company, Inc.] and none of the proposed changes have the potential to create an accident at FNP. ANSI N510–1989 has been endorsed and approved by the NRC for licensee use in NUREG 1431. No new system design or testing configuration is being proposed that could create the possibility of any new or different kind of accident from any accident previously evaluated. Relocating specific testing requirements to the FSAR has no effect on the possibility of creating a new or different kind of accident from any accident previously evaluated since it is an administrative change in nature.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

Conversion from the testing requirements of ANSI N510–1980 sections 5, 8, and 14 to ASME N510–1989 sections 5, 8, and 14 has been previously approved by the NRC at other nuclear facilities. ASME N510–1989 has been approved and endorsed by the NRC in NUREG 1431. Relocating specific testing requirements to the FSAR has no effect on the margin of plant safety since required testing will continue to be performed. Therefore, SNC concludes based on the above, that the proposed changes do not result in a significant reduction of margin with respect to plant safety as defined in the Final Safety Analysis Report or the bases of the FNP technical specifications.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 7, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing.

The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to

present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Herbert N. Berkow: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated February 24, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room, located at the Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama.

Dated at Rockville, Maryland, this 28th day of February 1997.

For the Nuclear Regulatory Commission.

Jacob I. Zimmerman,

Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–5507 Filed 2–5–97; 8:45 am]

BILLING CODE 7590–01–P

Industry Presentation on the Fabrication of Mixed Oxide Fuel

AGENCY: Nuclear Regulatory Commission.

ACTION: Meeting notice.

SUMMARY: Representatives from the nuclear industry will be making presentations relating to the fabrication of mixed oxide (MOX) fuel for use in commercial light nuclear reactors. This meeting is a follow-up to the February 21, 1997, meeting where NEI presented material concerning the use of MOX fuel in nuclear reactors. The meeting is open to the public, and all interested parties may attend.

DATES: Wednesday, March 26, 1997, from 8:30 a.m. to 1:00 p.m.

ADDRESSES: U.S. Nuclear Regulatory Commission, Two White Flint North, Auditorium, 11545 Rockville Pike, Rockville, Maryland. (Note: The NRC is accessible to the White Flint Metro Station; visitor parking around the NRC building is limited.)

FOR FURTHER INFORMATION CONTACT: Ms. Vanice A. Perin, Mail Stop T–8–A–33, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. *Phone:* 301–415–8143; FAX: 301–415–5390; INTERNET: VAP@NRC.GOV. For material related to the meeting please contact U.S. NRC Public Affairs Office at (301) 415–8200 after March 26, 1997.

SUPPLEMENTARY INFORMATION: On January 14, 1997, the Department of Energy issued the Record of Decision (ROD) on the Storage and Disposition of Weapons-Usable Fissile Materials. One of DOE's approaches to dispose of the surplus plutonium is to burn it as MOX fuel in existing domestic commercial reactors.

The Nuclear Energy Institute (NEI) has requested the opportunity to present information on the use and fabrication of MOX fuel for nuclear reactors to NRC staff. This meeting is a follow-up to the February 21, 1997, meeting where NEI presented material concerning the use of MOX fuel in nuclear reactors. A preliminary agenda for the meeting is as follows: (1) Technology Confirmation Around the World, presented by the National Laboratories; (2) MOX Fabrication and Licensing Experience, presented by British Nuclear Fuels, Inc.; (3) MOX Fabrication and Licensing Experience, presented by Belgonucleaire; (4) MOX Fabrication and Licensing Experience, presented by Cogema; and (5) MOX Fabrication and Licensing Experience, presented by Siemens.

Attendees are requested to notify Ms. Vanice A. Perin at 301–415–8143 of their planned attendance if special requirements (e.g., for the hearing-impaired) are necessary.

Dated at Rockville, Maryland, this 28th day of February, 1997.

For the Nuclear Regulatory Commission.

Elizabeth Q. Ten Eyck,

Division Director, Division of Fuel Cycle Safety and Safeguards.

[FR Doc. 97–5508 Filed 3–5–97; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) *Collection title:* Voluntary Customer Surveys in Accordance with E.O. 12862.

(2) *Form(s) submitted:* G–201, Web-Site Survey.

(3) *OMB Number:* N/A.

(4) *Expiration date of current OMB clearance:* N/A.

(5) *Type of request:* New collection.

(6) *Respondents:* Individuals or households, business or other for profit.

(7) *Estimated annual number of respondents:* 11,550.

(8) *Total annual responses:* 11,550.

(9) *Total annual reporting hours:* 1,043.

(10) *Collection description:* The Railroad Retirement Board (RRB) will utilize voluntary customer surveys to ascertain customer satisfaction with the RRB in terms of timeliness, appropriateness, access, and other measures of quality service. Surveys will involve individuals that are direct or indirect beneficiaries of RRB services as well as railroad employers who must report earnings.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 97–5533 Filed 3–5–97; 8:45 am]

BILLING CODE 7905–01–M

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in Section 3221(c) of the Railroad Retirement Tax Act (16 U.S.C., Section 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such Section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning April 1, 1997, shall be at the rate of 35 cents.

In accordance with directions in Section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning April 1, 1997, 31.5 percent of the taxes collected under Sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 68.5 percent of the taxes collected under such Sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under Section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: February 25, 1997.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 97–5484 Filed 3–5–97; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22534; 812–9450]

Capital Southwest Corporation, et al.; Notice of Application

February 28, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Capital Southwest Corporation ("CSC") and Capital Southwest Venture Corporation ("CSVC")

RELEVANT ACT AND EXCHANGE ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from sections 18(a), 18(c), 30, and 61(a) of the Act, under sections 17(d) and 57(a)(4) of the Act and rule 17d–1 thereunder to permit certain joint transactions, under section 17(b) of the Act for an exemption from section 17(a) of the Act, and under section 57(c) of the Act for an exemption from section 57(a) of the Act.

SUMMARY OF APPLICATION: The order would permit CSC and CSVC to engage in certain transactions that would otherwise be permitted if CSC and CSVC were one company. The order also would permit modified asset coverage requirements for CSC and CSVC on a consolidated basis. In addition, the order would permit CSC and CSVC to file reports on a consolidated basis. The requested order would supersede a prior order.

FILING DATES: The application was filed on January 23, 1995, and amended on October 25, 1995, August 22, 1996, and February 27, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 25, 1997, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street N.W., Washington, D.C. 20549. Applicants, 12900 Preston Road, Suite 700, Dallas, Texas 75230.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Senior Counsel, at (202) 942–0572, or Mercer E. Bullard, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. CSC is a business development company ("BDC"), as defined under section 2(a)(48) of the Act,[1] organized under the laws of Texas. CSVC, a wholly-owned subsidiary of CSC, is a Nevada corporation and is registered under the Act as a closed-end management investment company. CSVC is also licensed by the Small Business Administration ("SBA") as a small business investment company ("SBIC") under the Small Business Investment Act of 1958. CSC's principal business is to make, directly and through CSVC, loans and equity-type investments in small businesses.

2. Applicants request an order to permit CSC and CSVC to engage in certain transactions that would otherwise be permitted if CSC and CSVC were one company. The order also would permit modified asset coverage requirements for CSC and CSVC on a consolidated basis. In addition, the order would permit CSC and CSVC to file reports on a consolidated basis. The requested order would supersede a prior order obtained by CSC, which, among other things, permits CSC and CSVC to engage in certain joint transactions.[2]

Applicants' Legal Analysis

A. Section 18

1. Section 18(a) of the Act prohibits a registered closed-end investment company from issuing any class or senior security unless the company complies with the asset coverage requirements set forth in section 18. "Asset coverage" is defined in section 19(h) to mean the ratio which the value of the total assets of an issuer, less all

[1] Section 2(a)(48) generally defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Investment Company Act and makes available significant managerial assistance with respect of the issuers of such securities. Such issuers are small, nascent companies whose securities typically are illiquid.

[2] Investment Company Act Release Nos. 5640 (Mar. 25, 1969) (notice) and 5827 (Sept. 30, 1969) (order).

liabilities not represented by senior securities, bears to the aggregate amount of senior securities of such issuer. Under section 18(a), senior securities of closed-end investment companies representing indebtedness must have an asset coverage of 300% immediately after their issuance and senior securities of such companies representing stock must have an asset coverage of 200%. Section 18(k) provides for modified asset coverage requirements for SBICs. Section 61 makes section 18, with certain modifications, applicable to a BDC.

2. CSC and CSVC are subject to the requirements of section 18(a) (as modified by section 61 with respect to CSC). Applicants request relief from section 18(a) to the extent necessary to provide that senior securities issued by CSVC that are excluded from CSVC's individual asset coverage ratio by section 18(k) will be excluded from CSC's consolidated asset coverage ratio.

3. Applicants believe that CSC may be required to comply with applicable as set coverage requirements on a consolidated basis with CSVC. Applicants state that this would mean that CSC would treat as its own any liabilities of CSVC (with intercompany receivables and liabilities eliminated), including liabilities of CSVC with respect to senior securities as to which CSVC is exempt from the provisions of section 18(a) by virtue of section 18(k). Applicants state that section 18(k) is intended to benefit SBICs by permitting them to issue a greater amount of senior securities representing indebtedness than is otherwise permitted under section 18(a). Applicants further state that if senior securities representing indebtedness issued and sold by CSVC are treated as CSC's for purposes of section 18(a), then the consolidated entity (CSC and CSVC) would lose the benefits of section 18(k) to which CSVC is entitled as a SBIC.

B. Sections 17(a) and 57(a)

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between registered investment companies and certain affiliated persons of that company. Paragraphs (1), (2), and (3) of section 57(a) impose substantially the same prohibitions between BDCs and certain of their affiliates as described in sections 57(b) of the Act.

2. Section 2(a)(3) of the Act defines an affiliated person of an investment company to include any person directly or indirectly controlling, or under common control with, such investment company. Applicants state that CSC is an affiliated person of CSVC, and therefore subject to section 17(a) with respect to transactions between it and CSVC, because CSC owns one hundred percent of CSVC's voting stock. Section 57(b)(2) of the Act describes certain persons to which section 57(a) applies. Such persons includes a person directly or indirectly controlling, controlled by, or under common control with a BDC. Applicants state that they share a common board of directors and are under common control of persons serving as officers and directors of both CSC and CSVC. Accordingly, applicants state that CSVC is "controlled by" CSC for purposes of section 57(b)(2).

3. Applicants believe that, under sections 17(a) and 57(a), the acquisition by CSC of the capital stock of CSVC in exchange for part of CSC's investment portfolio may be considered as (a) a sale of a security of an investment company (CSVC's capital stock) to a BDC (CSC); (b) a sale of a security (part of CSC's investment portfolio) to an investment company; (c) a purchase from an investment company of a security by an affiliate; and (d) a purchase from a BDC of a security by an affiliate. Likewise, loan transactions between CSC and CSVC may be deemed to be purchases and sales of securities representing indebtedness by an affiliate of a BDC or an affiliate of an investment company, as applicable. In addition, applicants contend that there may be circumstances when it is in the interest of CSC and its shareholders that CSVC invest in securities of an issuer that may be deemed to be an affiliate of CSC or that CSC invest in securities of an issuer that may be deemed to be an affiliate of CSVC, as in the case of a portfolio company deemed to be affiliated with either CSC or CSVC as a result of its ownership of five percent or more of the portfolio company's outstanding voting securities.

4. Applicants request an order from the provisions of sections 17(a) and 57(a) (1), (2), and (3) to exempt (a) any transaction solely between CSC and CSVC with respect to the purchase or sale of securities or other property or the borrowing of any money or other property including the guarantee by CSC of CSVC's debts and (b) any transaction involving CSC and/or CSVC and portfolio affiliates of either or both of CSC and/or CSVC, but only to the extent that any such transaction would not be prohibited if CSVC (and all of its asset and liabilities) were deemed to be part of CSC, and not a separate company.

C. Sections 17(d) and 57(a)(4) and Rule 17d–1

1. Section 17(d) and rule 17d–1 make it unlawful for an affiliated person of a registered investment company or any affiliated person of such person, acting as principal, to participate in or effect any transaction in connection with any joint enterprise or arrangement in which any such registered company or a company controlled by it is participant, unless an order permitting such transaction has been granted by the SEC. Section 57(a)(4) imposes substantially the same prohibitions on joint transactions involving BDCs and certain of their affiliates as described in section 57(b). Section 57(i) provides that the rules and transactions subject to section 57(a)(4) in the absence of rules under that section. No rules with respect to joint transactions have been adopted under section 57(a)(4) and, therefore, the standards set forth under rule 17d–1 govern the requested order.

2. As noted above, CSC and CSVC are affiliated persons of each other. Applicants state that there may be circumstances when it is in the interest of CSC and its shareholders that CSC and CSVC invest in securities of the same issuer, either simultaneously or sequentially, in the same or different securities of such issue, and to deal with their investments separately or jointly. Accordingly, applicants request an order under sections 57(a)(4) rule 17d–1 to permit CSC or CSVC to invest in any portfolio company in which the other is or proposes to be an investor, but only to the extent that such transaction would not be prohibited if CSVC were deemed to be part of CSC and not a separate company.

D. Reporting Requirements

1. Sections 30 (a) and (d) of the Act and rules 30a–1, 30b–1, and 30d–1 thereunder require that certain information be filed with the SEC and be transmitted to shareholders on an annual or semi-annual basis. As a registered investment company, CSVC must file the reports required by the SEC under section 30. Section 13(a) of the Securities Exchange Act of 1934 requires any issuer of a security subject to section 12 thereof, such as CSC, to file such documents and information as the SEC may require to keep such issuer's registration current and such annual or other periodic reports as the SEC may prescribe.

2. Applicants state that the filing of separate reports and financial statements of CSVC with respect to its individual operations, in addition to such filings by CSC with respect to the consolidated operations of CSC and CSVC, is unduly burdensome and is not necessary to protect the investing public. Accordingly, applicants request an order granting relief to CSVC from section 30 and rules 30a–1, 30b1–1, and 30–d to the extent necessary to permit CSC to file consolidated reports to the SEC and CSC's shareholders as provided in condition number four below.

E. Standards for Relief

1. Section 6(c) of the Act permits the SEC to exempt any person or transaction from any provision of the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy of the Act. Applicants state that the operation of CSC as a BDC with a wholly-owned SBIC subsidiary is intended to permit CSC to expand the scope of its operations beyond that which would be permitted to it as an SBIC. Applicants further state that the requested exemptions would permit CSC and CSVC to operate effectively as one company even though they will be divided into two legal entities. Accordingly, applicants believe that the requested relief meets the section 6(c) standards.

2. Section 17(b) of the Act permits the SEC to exempt a proposed transaction from section 17(a) if evidence establishes that (a) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 57(c) permits the SEC to exempt a proposed transaction from sections 57(a)(1), (2), and (3) using substantially the same standard imposed by section 17(b). Applicants believe that the requested relief from sections 17(a) and 57(a) meets these standards.

3. In passing upon applications filed pursuant to rule 17d–1, the SEC considers whether the participation of the registered investment company in a joint enterprise or arrangement is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants. Applicants believe that the requested authorization under sections 57(a)(4) and rule 17d–1 is appropriate.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be conditioned upon the following:

1. CSC will at all times own and hold, beneficially and of record, all of the outstanding capital stock of CSVC.

2. CSVC will have fundamental investment policies not inconsistent with those of CSC as set forth in CSC's registration statement; CSVC will not engage in any action described in section 13(a) of the Act, unless such action shall have been authorized by CSC after approval of such action by a vote of a majority (as defined in the Act) of the outstanding voting securities of CSC.

3. No person shall serve or act as investment adviser to CSVC unless the directors and shareholders of CSC shall have taken the action with respect thereto also required to be taken by the directors and sole shareholder of CSVC.

4. CSC shall (a) file with the SEC, on behalf of itself and CSVC, all information and reports required to be filed with the SEC under the Securities Exchange Act of 1934 and other applicable federal securities laws, including information and financial statements prepared solely on a consolidated basis as to CSC and CSVC, such reports to be in satisfaction of any separate reporting obligations of CSVC, and (b) provide to its shareholders such information and reports required to be disseminated to CSC's shareholders, including information and financial statements prepared solely on a consolidated basis as to CSC and CSVC, such reports to be in satisfaction of any separate reporting obligations of CSVC. Notwithstanding anything in this condition, CSC will not be relieved of any of its reporting obligations, including, but not limited to, any consolidating statement setting forth the individual statements of CSVC required by rule 6–03(c) of Regulation S–X.

5. CSC and CSVC may file on a consolidated basis pursuant to condition (4) above only so long as the amount of CSC's total consolidated assets invested in assets other than (a) securities issued by CSVC or (b) securities similar to those in which CSVC invests, does not exceed 10%.

6. No person shall serve as a director of CSVC unless elected as a director of CSC at its most recent annual meeting, as contemplated by section 16(a) of the Act. Vacancies on CSC's board of directors will be filled in the manner provided for in section 16(a). Notwithstanding the foregoing, the board of directors of CSVC will be elected by CSC as the sole shareholder of CSVC, and such board will be composed of the same persons that serve as directors of CSC.

7. CSC will not itself issue, and CSC will not cause or permit CSVC to issue, any senior security or sell any senior security of which CSC or CSVC is the issuer, unless immediately after the issuance or sale of any such senior securities, CSC and CSVC on a consolidated basis, and CSC individually, shall have the asset coverage that would be required by section 18(a) if CSC and CSVC had each elected to become a BDC pursuant to section 54 of the Act (except that, in determining whether CSC and CSVC, on a consolidated basis, have the asset coverage required by section 18(a), any borrowings by CSVC pursuant to section 18(k) of the Act shall not be considered senior securities and, for purposes of the definition of asset coverage in section 18(h), shall not be treated as indebtedness not represented by senior securities).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–5524 Filed 3–5–97; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22532; 811–5855]

Conestoga Family of Funds; Notice of Application

February 27, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Conestoga Family of Funds.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Application requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on November 12, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 24, 1997, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 680 East Swedesford Road, Wayne, Pennsylvania 19087–1658.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company organized as a Massachusetts business trust. Applicant's Pennsylvania Tax-Free Bond Fund is a non-diversified investment company, and all other funds of applicant are diversified investment companies. On August 9, 1989, applicant registered under section 8(a) of the Act and filed a registration statement on Form N–1A pursuant to section 8(b) of the Act and the Securities Act of 1933, covering an indefinite number of shares of common stock. The registration statement was declared effective on November 20, 1989, and the initial public offering of applicant's funds commenced thereafter.

2. On December 21, 1995, applicant's board of trustees considered and approved an Agreement and Plan of Reorganization (the "Reorganization Agreement") between applicant and CoreFunds, Inc. ("CoreFunds"). Pursuant to the Reorganization Agreement, the holders of each class of shares of applicant's Cash Management Fund, Tax-Free Fund, U.S. Treasury Securities Funds, Equity Fund, Intermediate Income Fund, Pennsylvania Tax-Free Bond Fund, Balanced Fund, and International Equity Fund (collectively, the "Reorganizing Portfolios") would receive the class of shares of the corresponding existing portfolios of CoreFunds (the "CoreFunds Portfolios"). Also pursuant to the Reorganization Agreement, the holders of each class of shares of applicant's Special Equity Fund, Bond Fund, and Short-Term Income Fund (collectively, the "Continuing Portfolios") would receive the class of shares of the corresponding new portfolios of CoreFunds (the "New CoreFunds Portfolios"),

3. In approving the Reorganization Agreement, the trustees identified certain potential benefits likely to result from the reorganization, including, (a) a broader array of investment opportunities available to shareholders, (b) existing purchase and redemption features will remain in place, and (c) the potential for economies of scale in portfolio management resulting from the larger asset size.

4. On February 15, 1996, proxy materials soliciting shareholder approval of the reorganization were sent to applicant's shareholders. The Reorganization Agreement was approved by applicant's shareholders at a special meeting held on March 22, 1996.

5. On April 15, 1996: (1) all of the assets of Conestoga Cash Management Fund were transferred to CoreFunds Cash Reserve in exchange for shares of CoreFunds Cash Reserve based on net asset value; (2) all of the assets of Conestoga Tax-Free Fund were transferred to CoreFunds Tax-Free Reserve in exchange for shares of CoreFunds Tax-Free Reserve based on net asset value; (3) all of the assets of Conestoga U.S. Treasury Securities Fund were transferred to CoreFunds Treasury Reserve in exchange for shares of CoreFunds Treasury Reserve based on net asset value; (4) all of the assets of Conestoga Equity Fund were transferred to CoreFunds Value Equity Fund based on net asset value; (5) all of the assets of Conestoga Intermediate Income Fund were transferred to CoreFunds Intermediate Bond Fund in exchange for shares of CoreFunds Intermediate Bond Fund based on net asset value; (6) all of the assets of Conestoga Pennsylvania Tax-Free Bond Fund were transferred to CoreFunds Pennsylvania Municipal Bond Fund in exchange for shares of CoreFunds Pennsylvania Municipal Bond Fund based on net asset value; (7) all of the assets of Conestoga Balanced Fund were transferred to CoreFunds Balanced Fund in exchange for shares of CoreFunds Balanced Fund based on net asset value; and (8) all of the assets of Conestoga International Equity Fund were transferred to CoreFunds International Growth Fund in exchange for shares of CoreFunds International Growth Fund based on net asset value. The aggregate net asset value of the shares of the corresponding existing CoreFunds Portfolios received by each Reorganizing Portfolio was equal to the aggregate net asset value of each such Reorganizing Portfolio. Thereafter, applicant's Reorganizing Portfolios made liquidating distributions to their shareholders so that a holder of a class of shares in a Reorganizing Portfolio received a class of shares of the corresponding existing CoreFunds Portfolio with the same aggregate net asset value as the shareholder had in the Reorganizing Portfolio immediately before the transaction.

6. On April 22, 1996, all of the assets of the Continuing Portfolios were transferred to corresponding New CoreFunds Portfolios in exchange for shares of the New CoreFunds Portfolios. The New CoreFunds Portfolios had only nominal assets and liabilities immediately prior to the transaction, and the number of shares of each class of shares of the New CoreFunds Portfolios issued in the transaction equalled the number of shares of each corresponding class of shares of the Continuing Portfolios that were issued and outstanding immediately prior to the transaction. Applicant thereafter made a liquidating distribution to shareholders of the Continuing Portfolios of a like number of full and fractional shares of the New CoreFunds Portfolios.

7. In connection with the reorganization, certain expenses were incurred and consisted primarily of professional fees, printing expenses, expenses associated with the special meeting of shareholders, and expenses associated with the winding up of applicant's affairs. The Reorganization Agreement provides that these expenses will be borne by Meridian Bancorp, Inc. and/or CoreStates Financial Corp., the bank holding companies that control the investment advisers.

8. Applicant has retained no assets. Applicant has no outstanding debts or liabilities. As of the date of the application, applicant has no security holders.

9. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

10. Applicant intends to file the necessary documentation with the Commonwealth of Massachusetts to effect its dissolution as a Massachusetts business trust.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–5469 Filed 3–5–97; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22533; 811–5331]

Hampton Utilities Trust; Notice of Application

February 27, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Hampton Utilities Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on December 3, 1996 and amended on February 21, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 24, 1997, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate or service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 777 Mariners Island Blvd., San Mateo, California 94404.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or Mary Kay Frech, Branch Chief, at (202) 942–0564 , (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application.The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end, diversified management investment company organized as a business trust under the laws of the Commonwealth of Massachusetts. On September 15, 1987, applicant registered under section 8(a) of the Act and filed a registration statement on Form N–2 pursuant to section 8(b) of the Act and the Securities Act of 1933 to register its shares of beneficial interest. On March 7, 1988, applicant's registration statement was declared effective, and the initial public offering of applicant's shares commenced on the same date.

2. On December 16, 1993, applicant's board of trustees approved an Agreement and Plan of Reorganization (the "Agreement") between applicant and Franklin Custodian Funds, Inc. on behalf of its Utilities Series, pursuant to which applicant would transfer substantially all of its assets to the Utilities Series in exchange for shares of common stock of Utilities Series. In accordance with rule 17a–8 of the Act, applicant's board determined that the sale of applicant's assets to Utilities Series was in the best interests of applicant and that the interests of the existing shareholders would not be diluted as a result of the sale.[1]

3. The board's conclusion was based on a number of factors, including that the sale of applicant's assets to the Utilities Series in exchange for shares of Utilities Series would permit shareholders to pursue their investment goals in a larger fund with enhanced ability to effect portfolio transactions on more favorable terms and with greater investment flexibility. The board also considered that as shareholders of an open-end fund, the holders of applicant's Capital Shares would have redemption rights and exchange privileges that were not previously available.

4. As of March 7, 1994, applicant was a closed-end investment company with two classes of shares outstanding: The Cumulative Preferred Shares and the Capital Shares. On that date, in accordance with applicant's Restated Declaration of Trust, dated December 16, 1993, all of the Cumulative Preferred Shares were redeemed by applicant in cash at $50.00 per share.

5. On or about May 30, 1994, proxy materials soliciting shareholder approval of the Agreement were furnished to holders of applicant's Capital Shares and filed with the SEC. Applicant's shareholders approved the Agreement at an annual meeting held on July 14, 1994.

6. On August 4, 1994, there were 1,032,684 Capital Shares of applicant outstanding at a net asset value of $12.54 per share. At such date, aggregate net assets amounted to $12,950,208.48.

7. On August 5, 994 (the "Closing Date"), applicant transferred substantially all of its net assets to the Utilities Series in exchange solely for shares of common stock of Utilities Series having an aggregate net asset value equal to the aggregate value of net assets transferred. The number of shares was determined by dividing the aggregate value of applicant's assets to be transferred on the Closing Date by the net asset value per share of common stock of Utilities Series as of 1:00 p.m. Pacific time on Closing Date. Shares of Utilities Series were distributed to the holders of applicant's Capital Shares pro rata in accordance with their respective interest in applicant.

8. The expenses incurred in connection with the reorganization were approximately $90,370. These expenses included printing and mailing costs for proxy materials and related documents. One half of these costs were borne by Franklin Advisers, Inc. through a reimbursement of the amounts advanced by applicant and Utilities Series, and the remainder of the costs were borne by applicant.

9. Applicant has no securityholders, assets, or liabilities. Applicant is not a party to any litigation or administration proceeding. Applicant is not now engaged, and does not propose to engage, in any business activities other than those necessary for the winding up of its affairs.

10. A Notice of Termination of Trust was filed with the Massachusetts Secretary of State on October 4, 1994.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–5468 Filed 3–5–97; 8:45 am]

BILLING CODE 8010–01–M

[1] Applicant and Franklin Custodian Funds, Inc., may be deemed to be affiliated persons of each other solely by reason of having a common investment adviser, common director, and/or common officers. Although purchases and sales between affiliated persons generally are prohibited by section 17(a) of the Act, rule 17a–8 provides an exemption from certain purchases and sales among investment companies that are affiliated persons of each other solely by reason of having a common investment adviser, common directors, and/or common officers.

[Release No. 35–26679]

Filings Under the Public Utility Holding Company Act of 1935, as amended ("Act")

February 28, 1997.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available

for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 24, 1997, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Western Massachusetts Electric Company (70–8959)

Western Massachusetts Electric Company ("WMECO" or the "Applicant"), a wholly owned electric utility subsidiary of Northeast Utilities, a registered holding company, located at 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, has filed an application-declaration under sections 6(a), 7, 9(a) and 10 of the Act and rule 54 thereunder.

WMECO requests that: (i) WMECO be allowed to organize a wholly-owned special purpose corporation to be called WMECO Receivables Corporation ("WRC") for the sole purpose of acquiring certain of WMECO's eligible accounts receivable; (ii) WRC be allowed to issue shares of Common Stock; (iii) WMECO be allowed to acquire shares of capital stock of WRC; and (iv) WMECO be allowed to make, directly and indirectly, general and initial equity contributions to WRC.

WMECO has entered into a Receivables Purchase and Sale Agreement dated as of September 11, 1996, as amended ("Existing Agreement") under which WMECO may sell (from time to time in its discretion and subject to the satisfaction of certain conditions precedent) fractional, undivided ownership interests expressed as a percentage ("Undivided Interests") in: (i) Billed and unbilled indebtedness of customers, as booked to Accounts 142.01 and 173 under the Federal Energy Regulatory Commission Chart of Accounts ("Receivables"); and (ii) certain related assets, including any security or guaranty for any Receivables, and collections thereon, and related records and software ("Related Assets"). The purchaser ("Purchaser") is a special purpose Delaware corporation which acquires receivables and other assets and issues commercial paper to finance these acquisitions. A Swiss bank will act as agent ("Agent") for the Purchaser for transactions under the Existing Agreement.

The Existing Agreement is structured so that any sales made thereunder would be accounted for as sales under generally accepted accounting principles. In order for such sales made on or after January 1, 1997 to be so treated, they must comply with the requirements of the Statement of Financial Accounting Standards No. 125 ("FAS 125") issued in June 1996. The formation of WRC is intended to satisfy certain of the requirements of FAS 125: (i) WRC, as purchaser and transferee, will be a "qualifying special purpose entity" within the meaning of FAS 125, and (ii) once transferred, WMECO will no longer have effective control over the assets, so that such transfers should be labeled "true sales" in the event of WMECO's bankruptcy or receivership. The Existing Agreement contemplates that a restructured purchase and sales program involving WRC will be in place by March 31, 1997, at which date the Existing Agreement will terminate.

The restructured accounts receivable purchase and sales program will consist of two agreements which will replace the Existing Agreement, and is intended to accomplish sales to the Purchaser in a manner substantially similar to that under the Existing Agreement. Applicant states that the addition or WRC serves merely as a vehicle to isolate the Receivables as required by FAS 125, and that restructured purchase and sales arrangements are on essentially the same terms to WMECO as the Existing Agreement. Under the first agreement ("Company Agreement"), WMECO will sell or transfer as equity contributions from time to time all of its receivables and related assets to WRC. The purchase price will take into account historical loss statistics in WMECO's receivables pool. Under the second agreement ("WRC Agreement"), WRC will sell Undivided Interests to the Purchaser from time to time. Such Undivided Interests may be funded and repaid on a revolving basis. The purchase price for an Undivided Interest will be calculated according to a formula. Such formula will include reserves based on, among other things, a multiple of historical losses, a multiple of historical dilution (such as, e.g., adjustments due to billing errors), customer concentrations that exceed specified levels and carrying costs and other costs associated with the agreements. The formula will also take into account the cost of servicing, which will be returned to WMECO in the form of a servicing fee.

Primarily because of the reserves, the purchase price paid by the Purchaser for Undivided Interests will be lower than the purchase price paid by WRC to WMECO for Receivables and Related Assets. WMECO states that it expects WRC to have sufficient assets to pay WMECO the full purchase price for Receivables purchased from WMECO.

WMECO anticipates that the availability of Receivables and Related Assets will vary from time to time in accordance with the Energy use of its customers. Therefore, since WRC's only source of funds are its participation in the program and WMECO's capital contributions, it may not have funds available at a particular time to purchase the Receivables and Related Assets available to it. WMECO proposes to accommodate this situation by (i) allowing WRC to make the purchase and owe the balance to WMECO on a deferred basis, or (ii) by making a capital contribution to WRC in the form of the Receivables and Related Assets for which WRC lacks the purchase price funds at the time.[1]

Under the WRC Agreement, purchases may be funded by the Purchaser's issuance of commercial paper or drawing under its bank facilities. Initially, the aggregate purchase price paid by the Purchaser for Undivided Interests is not intended to exceed $50,000,000.

The Agent will have the right to appoint a servicer on behalf of it and WRC, to administer and collect receivables and to notify the obligors of the sale of their receivables, at the Agent's option. WMECO will be appointed as the initial servicer.

Certain obligations under the Company Agreement create limited recourse against WMECO. In order to secure these obligations, WMECO will grant to WRC a lien on, and security interest in, any rights which WMECO may have in respect of Receivables and Related Assets. The WRC Agreement creates comparable recourse obligations against WRC, and WMECO states that WRC will grant a security interest to the Purchaser in all rights in the Receivables retained by WRC, the Related Assets and certain other rights and remedies (including its rights and remedies under the Company Agreement) to secure such recourse obligations.[2]

WMECO and WRC will be obligated to reimburse the Purchaser and the Agent for various costs and expenses associated with the Company Agreement and the WRC Agreement. WRC will also be required to pay to the Agent certain fees for services in connection with such agreements.

The arrangements under the Company Agreement and the WRC Agreement are scheduled to terminate on September 4, 2001. WRC may, upon at least five business days' notice to the Agent, terminate in whole or reduce in part the unused portion of its purchase limit in accordance with the terms and conditions of the WRC Agreement. The WRC Agreement allows the Purchaser to assign all of its rights and obligations under the WRC Agreement (including its Undivided Interests and the obligation to fund Undivided Interests) to other persons, including the providers of its bank facilities.

WMECO intends that the above-described transactions will permit it, in effect, through this intermediary device, to accelerate its receipt of cash collections from accounts receivable and thereby meet its short-term cash needs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–5525 Filed 3–5–97; 8:45 am]

BILLING CODE 8010–01–M

[1] WMECO also states that if WRC develops a substantial cash balance, it will likely dividend the excess cash to WMECO, so that WRC will not itself retain substantial cash balances at any one time, and substantially all of the net cash realized from the collection of Receivables will be made available to WMECO.

[2] WMECO states that neither WRC's nor the Purchaser's recourse to WMECO will include any rights against WMECO should customer defaults on the Receivables result in collections attributable to the Undivided Interests sold to the Purchaser being insufficient to reimburse the Purchaser for the purchase price paid by it for the Undivided Interests and its anticipated yield. The Purchaser will bear the risk for any credit losses on the Receivables which exceed the reserves for such losses included in the Undivided Interests.

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following closed meeting during the week of March 10, 1997.

A closed meeting will be held on Tuesday, March 11, 1997, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Wallman, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, March 11, 1997, at 10:00 a.m., will be:

Institution and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: March 4, 1997.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–5669 Filed 3–4–97; 12:08 pm]

BILLING CODE 8010–01–M

[Release No. 34–38351; File No. SR–Amex–97–06]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Audit Trail Identifiers

February 27, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 30, 1997, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to implement audit trail identifiers relating to competing market-maker and "short exempt" transactions, substantially identical to those previously approved for use at the New York Stock Exchange. The text of the proposed rule change is available at the Office of the Secretary, the Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Amex member firm procedures currently require that Amex clearing members provide comparison and clearing reports with the following trade details with respect to each transaction processed by them: security, volume, price, trade date, clearing member number and contra clearing member number. In addition, for each trade processed by them, clearing members are responsible for providing the Exchange with additional audit trail information, including the following account types: agency (market with identifier "A"), principal ("P"), specialist principal ("S"), registered trader ("G") and Amex options specialist or market-maker trading an Amex Paired Security ("V").

The Exchange proposes to require that the audit trail information provided by clearing members include the following additional account types:

Oproprietary transactions for a competing market-maker that is affiliated with the clearing member.

T—transactions for the account of an unaffiliated member's competing market-maker (that is, transactions were an Amex member is acting as agent for another member's competing market-maker account).

R—transactions for the account of a non-member competing market-maker.

"Competing market-maker" is defined as any person acting as a market-maker, as defined in section 3(a)(38)[3] of the Act, in an Amex-traded security. A person acting solely in the capacity of block positioner would not be considered to be a competing market maker. The Exchange believes that implementation of O, T and R identifiers will permit the Exchange to better assess the level of member and non-member competing market-maker activity on the Amex and to formulate appropriate rules and procedures relating to such activity in view of the needs of public investors and other market participants.

The Exchange proposes further to implement account identifiers for individual investor orders ("I") and orders submitted by an Amex clearing member for the account of an unaffiliated Amex member or member organization ("W").

The Exchange is also proposing to expand use of the audit trail account type field to require designation of "short exempt" trades Four identifiers would be added to the audit trail account type field to identify "short exempt" trades for:

The proprietary account of a clearing member organization or an affiliated member/member organization—to be designated E

The proprietary account of an unaffiliated member/member organization—to be designated F

An individual customer account—to be designated H

Other agency customer account—to be designated B.

In addition, member firms would be required to identify "short exempt" trades of competing market-makers utilizing the following identifiers:

L—to designate a "short exempt" transaction for the account of a competing market-maker that is a member or member organization trading for its own account.

X—to designate a "short exempt" transaction where one member is acting as agent for another member's competing market-maker account.

Z—to designate a "short exempt" transaction for the account of a non-member competing market-maker.

"Short exempt" transactions are those that are exempt from the "tick-test" provisions of SEC Rule 10a–1[4] or Amex Rule 7. The Exchange notes that it understands that members should mark as "short exempt" any short selling order that is exempt from the "tick-test" provisions of Rule 10a–1. Use of identifiers for "short exempt" transactions will enhance the Exchange's ability to identify violations of Rule 10a–1 and Amex Rule 7.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[5] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public.[6]

The Commission also believes that the adopted "short exempt" account identifiers are consistent with SEC Rule 10a–1, which requires that orders be marked "long" or "short." In this regard, the new, more precise identifier codes should facilitate surveillance investigations and will allow the Exchange to ensure compliance with the exemptive provisions of Rule 10a–1(e) of the Act.

Finally, the Commission believes that the proposed identification codes should prevent fraudulent and manipulative acts by improving the accuracy and efficiency of audit trail information used for surveillance purposes. In particular, more accurate audit trail information should increase the effectiveness of the Exchange's automated surveillance procedures and provide Exchange staff with a more comprehensive reconstruction of trading activity. In summary, the Commission believes that the proposed identifier codes should permit the Amex to perform its surveillance responsibilities under the Act more thoroughly and for this reason, finds the proposal consistent with Section 6(b)(5) of the Act.

The Commission notes that the approval of this proposal is limited solely to establishing competing dealer identifier codes for audit trail and surveillance purposes.[7] The proposal does not limit or restrict the activity of competing dealers or their access to the Amex. Thus, any competitive burden on competing dealers would be minimal and outweighed by the surveillance benefits to be obtained by the Amex.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. This rule change will permit the Amex to implement the new audit trail identifiers on the same day that their use will be made mandatory on the New York Stock Exchange.[8] Substantially similar audit trail identifiers were approved for use on the New York Stock Exchange in 1994 following a full notice period during which no comments were received.[9] Since that time, the Commission has not been made aware of any concerns regarding the use of the audit trail identifiers and therefore believes that it is appropriate to approve the use of the audit trail identifiers on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–97–06 and should be submitted by March 27, 1997.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–Amex–97–06) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–5526 Filed 3–5–97; 8:45 am]

BILLING CODE 8010–01–M

[3] Section 3(a)(38) of the Act defines market maker as any specialist permitted to act as a dealer, any dealer acting in the capacity of block positioner, and any dealer who, with respect to a security, holds himself out (by entering quotations in an inter-dealer communications system or otherwise) as being willing to buy and sell such security for his own account on a regular or continuous basis.

[4] 17 CFR 240.10a–1(e).

[5] 15 U.S.C. § 78f(b).

[6] In approving these rule changes, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. 15 U.S.C. § 78c(f).

[7] This information is not available to specialists or traders on the floor.

[8] The use of the new audit trail identifiers will be made mandatory on the NYSE on March 3, 1997. See NYSE Information Memo No. 96–36 (Dec. 5, 1996).

[9] See Securities Exchange Act Release Nos. 33662 (Feb. 23, 1994), 59 FR 10027 (Mar. 2, 1994) (order approving File No. SR–NYSE–91–46) and 34539 (Aug. 17, 1994), 59 FR 43605 (Aug. 24, 1994) (order approving File No. SR–NYSE–94–16).

[10] 15 U.S.C. § 78s(b)(2).

[11] 17 C.F.R. 200.30–3(a)(12).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Functional Advisory Committee on Customs Matters (IFAC 1)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of meeting.

SUMMARY: The Industry Functional Advisory Committee on Customs Matters (IFAC 1) will hold a meeting on March 24, 1997 from 9:30 a.m. to 12:30 p.m. The meeting will be open to the public.

DATES: The meeting is scheduled for March 24, 1997, unless otherwise notified.

ADDRESSES: The meeting will be held at the Department of Commerce in Room 1859, located at 14th Street and Constitution Avenue, N.W., Washington, D.C., unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Dan Gardner, Department of Commerce, 14th St. and Constitution Ave., N.W. Washington, D.C. 20230, (202) 482–3681 or Suzanna Kang, Office of the United States Trade Representative, 600 17th St. N.W., Washington, D.C. 20508, (202) 395–6120.

SUPPLEMENTARY INFORMATION: The IFAC 1 will hold a meeting on March 24, 1997 from 9:30 a.m. to 12:30 p.m. The meeting will be open to the public and press during this time. Agenda topics to be addressed will be:

1. Strategies and Priorities of U.S. Trade Promotion Efforts
2. Rules of Origin Work Program
3. Regional Customs Activities
4. Customs Valuation
5. Other Business

Attendance during this part of the meeting is for observation only. Individuals who are not members of the committee will not be invited to comment.

Phyllis Shearer Jones,

Assistant United States Trade Representative, Intergovernmental Affairs and Public Liaison.

[FR Doc. 97–5492 Filed 3–5–97; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Emergency Evacuation Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss emergency evacuation issues.

DATES: The meeting will be held on March 20, 1997 at 9:00 a.m. Arrange for oral presentations by March 14, 1997.

ADDRESSES: The meeting will be held on the 20th Floor, MIC Room of the Boeing Company, 1700 North Moore Street, Arlington, VA 22202 (Rosslyn Metro stop).

FOR FURTHER INFORMATION CONTACT: Jackie Smith, Office of Rulemaking, ARM–209, FAA, 800 Independence Avenue, SW, Washington, DC 20591, Telephone (202) 267–9682, FAX (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. III), notice is given of an ARAC meeting to be held on March 20, 1997 at Boeing Company, 20th Floor, MIC Room, 1700 North Moore Street, Arlington, VA 22202 (Rosslyn Metro stop).

The agenda will include:

- Opening Remarks.
- Review of Action Items.
- Report on Performance Standards Working Group Activities.

The Emergency Evacuation Issues Group will vote on the Performance Standards Working Group's proposal for revision to Technical Standard Order (TSO) C69b, emergency slides, ramps, and slide/raft combinations. Anyone interested in obtaining a copy of this document should contact the individual listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Attendance is open to the public, but will be limited to space available. The pubic must make arrangements by March 14, 1997 to present oral statements at the meeting. Written statements may be presented to the committee at any time by providing 25 copies to the Assistant Executive Director for Emergency Evacuation Issues or by providing copies at the meeting. In addition, sign and oral interpretation, as well as a listening device, can be made available if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on February 28, 1997.

Joseph A. Hawkins,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 97–5548 Filed 3–5–97; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Douglas County, KS

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of withdrawal.

SUMMARY: The Federal Highway Administration (FHWA) is issuing this notice to advise the public, that our October 17, 1994, Notice of Intent to complete a Supplement to the Final Environmental Impact Statement is withdrawn.

FOR FURTHER INFORMATION CONTACT: David R. Geiger, P.E., Division Administrator, FHWA 3300 S.W. Topeka Boulevard, Suite 1, Topeka, Kansas 66611–2237, Telephone: (913) 267–7281.

SUPPLEMENTARY INFORMATION: It was the intent of FHWA to re-evaluate the Final Environmental Impact Statement for that portion of the South Lawrence Trafficway project from U.S. 59 east to K–10. FHWA wanted to consider the effects of the proposed trafficway on the spiritual sites, cultural issues, and academic programs at the Haskell Indian Nations University. FHWA prepared and circulated a Draft Supplemental Environmental Impact Statement and received many comments. FHWA was in the process of evaluating these comments when Douglas County and the Kansas Department of Transportation decided not to use Federal-aid Highway funds for the project. Therefore, FHWA is no longer the lead Federal agency for this project and is discontinuing the Supplemental Environmental document process.

The Record of Decision dated June 5, 1990, is now valid only for that portion of the Trafficway from the western terminus to U.S. 59.

Issued on: February 27, 1997.

David R. Geiger,

Division Administrator, Kansas Division, Federal Highway Administration, Topeka, Kansas.

[FR Doc. 97–5531 Filed 3–5–97; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement; Orange, Seminole, and Volusia Counties, FL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in Orange County, Seminole County, and Volusia County, Florida.

FOR FURTHER INFORMATION CONTACT: Mr. Mark D. Bartlett, Program Operations Engineer, Federal Highway Administration, 227 N. Bronough Street, Room 2015, Tallahassee, Florida 32301. Telephone: (904) 942–9598.

SUPPLEMENTARY INFORMATION:

Description of Project

The FHWA, in consultation with the Florida Department of Transportation, will prepare an EIS for a proposal to improve Interstate 4 (I–4) in Orange County, Seminole County, and Volusia County, Florida. The project limits are from just west of the State Road 528 (Bee Line Expressway) Interchange in Orange County to just east of the State Road 472 Interchange in Volusia County, a distance of approximately 69 km (43 miles). The project is commonly referred to as the I–4 Project Development and Environmental (PD&E) Study—Section 2. The proposed improvement will involve widening the segment of I–4 to six general use lanes plus two high occupancy vehicle lanes. In addition, the project will evaluate the need for interchange modifications. Improvements to the corridor are considered necessary to provide for the existing and projected travel demand.

There are three independent studies which are being performed concurrently with the I–4 PD&E Study—Section 2. The I–4 PD&E Study—Section 1 involves preparation of an Environmental Assessment for improvements on I–4 from County Road 532 in Osceola County, Florida to State Road 528 in Orange County, Florida. The I–4 PD&E Study—Section 3 involves preparation of a Environmental Assessment for improvements on I–4 from State Road 472 to I–95 in Volusia County, Florida. The Central Florida Light Rail Transit System Study involves preparation of an EIS for Light Rail Transit improvements in Osceola, Orange, and Seminole Counties, Florida. Consideration of the cumulative effects of these actions, as well as other past, present and reasonable foreseeable future actions, will be included in the I–4 PD&E Study—Section 2.

Need for Project

I–4 is considered to be an integral part of Central Florida's transportation system. The Interstate carries the greatest number of people and vehicles of any transportation facility in the region and serves many of the area's primary activity centers. I–4 was originally designed to serve long distance travelers, however, the highway has evolved to one which serves many shorter trips.

Central Florida has experienced tremendous growth in the past two decades. A significant amount of this growth is occurring within close proximity to I–4. In recent years, congestion on I–4 has extended well beyond normal peak hours and major accidents have closed I–4, subsequently resulting in traffic congestion throughout the metropolitan area. Congestion and delays on I–4 and the parallel arterial highways are now considered to be the major transportation problem facing the region. Travel conditions in Central Florida are expected to continue to deteriorate due to the continuing trend of increased growth in population and tourism.

The design concepts and scope of the I–4 improvements were developed as part of the I–4 Major Investment Study (MIS). The MIS was performed in conjunction with the I–4 Multi-Modal Master Plan (I–4 MMMP) and included evaluations of a full range of reasonable alternatives and transportation modes. The specific design concept and scope recommendations identified in the MIS which are pertinent to the I–4 PD&E Study—Section 2 include:

- Six general use lanes plus two high occupancy lanes within the limits of the Section 2 Study,
- Reserved right-of-way for a rail envelope within Volusia County,
- Light rail transit from the city of Sanford to the South, extending beyond the southern limits of the Section 2 study,
- Express bus service between Volusia County and the Orlando metropolitan area.

The need for improvements to I–4 is recognized by local and regional plans. The MIS has been approved by the Orlando Urban Area Metropolitan Planning Organization (MPO) and the Volusia County MPO. The project is also included in the Orlando Urban Area and Volusia County year 2020 Long Range Transportation Plans. Local government comprehensive plans support mobility enhancements to I–4.

Alternative

Alternatives under consideration include: (1) "No Action" which involves no change to transportation facilities in the corridor beyond projects already committed; (2) the design concept recommended in the I–4 MIS and I–4 MMMP which consists of widening the segment of I–4 to six general use lanes plus two high occupancy vehicle lanes, and evaluating the need for interchange modifications; and (3) design concept refinements to the recommended I–4 MMMP alternative. The design concept refinements will involve consideration of geometric adjustments which maximize use of the existing infrastructure, reduce project costs, and avoid or minimize environmental impacts.

Probable Effects

FHWA and local joint lead agencies will evaluate in the EIS all significant environmental impacts including analysis of socio-economic, natural, and physical impacts for each of the alternatives. Analysis of socio-economic impacts will include the evaluation of land use and neighborhood impacts, park/recreation area impacts, historic/archaeological impacts, and visual and aesthetic impacts. Natural impact analysis will include impacts to Outstanding Florida Waters and Wild and Scenic Rivers, aquatic preserves, wetlands, and threatened or endangered species. In addition, within the study limits, I–4 crosses the St. John's River which is a navigable waterway. Consequently, navigation impacts will be evaluated as part of the natural impact analysis. Physical impact analysis will include evaluating impacts to noise, air quality, water quality, floodplain, potentially contaminated sites, and coastal zone. The environmental evaluation will consider both short-term and long-term impacts associated with the alternatives. Measures to mitigate any significant adverse impacts will also be considered.

Environmental issues raised from responses to the Advanced Notification Letter include neighborhood protection, aesthetics, bicycle facilities, recreational greenways, alternative modes of transportation, lake protection, hydrology and stormwater management, cultural features, wildlife corridors, and rare habitat and listed species.

Scoping

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have expressed interest in this proposal. Interested parties may request project information by contacting Mr. Harold Webb, Florida Department of Transportation, District Five, 719 South Woodland Boulevard, Florida 32720 or by calling him at (904) 943-5554. A series of public meetings will be held in Orange, Seminole, and Volusia Counties between August 1997 and December 1998. In addition, public hearings will be held in Orange, Seminole, and Volusia Counties. Public notice will be given of the time and place of the meetings and hearings. The Draft EIS will be made available for public and agency review and comment. A formal scoping meeting will be held at 8:00 a.m. on Tuesday, April 15, 1997 and Wednesday, April 16, 1997 at the Eastmonte Park Recreation & Civic Center located at 830 Magnolia Drive, Altamonte Springs, Florida.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding inter-governmental consultation on Federal programs and activities apply to this program)

Issued on February 27, 1997.

J.R. Skinner,

Division Administrator, Tallahassee.

[FR Doc. 97–5530 Filed 3–5–97; 8:45 am]

BILLING CODE 4910–22–M

Research and Special Programs Administration

[Docket No. P–97–2W; Notice 1]

Liquefied Natural Gas Facilities Petition for Waiver; Northern Eclipse, Inc.

Northern Eclipse, Inc. (NE) has petitioned the Research and Special Programs Administration (RSPA) for a waiver from compliance with 49 CFR storage tank impounding system. Section 193.2155(c) requires a Class 1 impounding system whenever an LNG storage tank is located within 20,000 feet from the nearest runway serving large aircraft. The petition applies to the Northern Eclipse's proposed LNG storage facility at Fairbanks, Alaska.

The petitioner's rationale for the waiver from compliance rests on the following reasons:

1. Fairbanks does not currently have natural gas service, and given the distance to gas fields and the size of the market, petitioner believes that LNG is the only feasible way to provide natural gas service in the community.

2. Fairbanks is a small town by a lower-48 states standards, however, due to international air transport and reliance of Alaskans on air travel, Fairbanks has an international airport (FIA) with a 11,050 foot long runway. In addition, Fairbanks has a similar runway for a U.S. military base (Fort Wainwright), and other smaller runways in the area. The 20,000 foot restriction requirement eliminates any reasonable site in Fairbanks for an LNG storage tank and it would not be economically feasible to build an impounding system which would withstand a direct impact from a 747, in order to provide gas service to the Fairbanks community.

3. NE does not propose to locate its storage tank in the approach/departure corridor for heavy aircraft. The areas under consideration are approximately two miles to the side of the FIA runway.

4. NE proposes the use of a shop fabricated, heavy outer wall storage tank of less than 70,000 gallon capacity, built to National Aeronautical and Space Administration specifications, and likely to survive even a direct impact from small aircraft.

5. Similar LNG storage tanks and dispensing facilities are routinely allowed at airports without impoundment as they are not subject to Part 193 requirements, but they pose precisely the same risk in the event of a collision, and due to their location at the airport pose a much greater risk of impact from an aircraft. To support this fact, NE provided pictures of an above ground NFPA 59A LNG storage tank at the Dallas/Fort Worth airport.

6. Part 193 contains special provisions for LNG tanks with less than a 70,000 gallon capacity. However, Section 193.2155(c) fails to reflect the vastly different risks posed by different sized LNG storage tanks. A small LNG tank like that proposed by NE poses no significant risk, and certainly no more than any other similar small energy storage tank, such as a propane tank or a non-Part 193 LNG tank.

7. During the December 9, 1996, meeting between NE and OPS on this issue, NE was informed that the origin of the distance of 20,000 feet from the airport was taken from the Federal Aviation Administration's (FAA) Regulations under 14 CFR part 77, which define a critical area surrounding a large airport. According to NE, only § 77.13(a)(2)(i) of 14 CFR part 77, addresses 20,000 ft. restriction, which exists where there are runways of over 3,200 feet in length, and that section refers only to the heights of structures. NE believes that the FAA may be concerned with the height of the structure rather than the contents.

Because of the unusual circumstances described above at NE's proposed LNG facility, relatively low risk to the public safety due to a smaller tank, and the operators's use of a shop fabricated heavy outer wall built to more stringent standards than those specified under part 193, RSPA believes that granting a waiver from the requirements of 49 CFR 193.2155(c) would not be inconsistent with pipeline safety, nor would it lessen public safety in this case. The operator must comply with all other requirements of part 193 including Class 2 impounding system for the storage tank. Therefore, RSPA proposes to grant the waiver.

Interested parties are invited to comment on the proposed waiver by submitting in duplicate such data, views, or arguments as they may desire. Comments should identify the docket number and the RSPA rulemaking number. Comments should be addressed to the Docket Facility, U.S. Department Of Transportation, plaza 401, 400

Seventh Street SW., Washington, DC 20590–0001.

All comments received before April 7, 1997 will be considered before final action is taken. Late filed comments will be considered so far as practicable. No public hearing is contemplated, but one may be held at a time and place set in a notice in the **Federal Register** if required by an interested person desiring to comment at a public hearing and raising a genuine issue. All comments and other docketed material will be available for inspection and copying in room 401 Plaza between the hours of 10:00 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Authority: 49 App. U.S.C. 2002(h) and 2015; and 49 CFR 1.53.

Issued in Washington, D.C., on March 3, 1997.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 97–5552 Filed 3–5–97; 8:45 am]

BILLING CODE 4910–60–P

Surface Transportation Board

[STB Finance Docket No. 33363]

Burlington Northern and Santa Fe Railway Co.; Trackage Rights Exemption; Birmingham Southern Railway Co.

Birmingham Southern Railway Company has agreed to grant overhead trackage rights to The Burlington Northern and Santa Fe Railway Company (BNSF) from BNSF's rail yard at milepost 147 + 28.00 to milepost 225 + 51.51 in Birmingham, AL, for the purpose of moving loaded and empty cars to the American Cast Iron Pipe Company plant.

The transaction was scheduled to be consummated on February 26, 1997.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33363, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423.[1] In addition, a copy of each pleading must be served on Michael E. Roper, Esq., The Burlington Northern and Santa Fe Railway Company, 3800 Continental Plaza, 777 Main Street, Forth Worth, TX 76102–5384.

Decided: February 27, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–5547 Filed 3–5–97; 8:45 am]

BILLING CODE 4915–00–P

[STB Docket No. AB–55 (Sub–No. 539X)]

CSX Transportation, Inc.—Abandonment Exemption—In Harrison County, WV

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon 14.1 miles of its line of railroad between milepost 2.1 at Clarksburg and milepost 16.2 at McWhorter, in Harrison County, WV.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received,[1] this exemption will be effective on April 5, 1997, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2), and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by March 19, 1997. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 26, 1997, with: Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423.[4]

A copy of any petition filed with the Board should be sent to applicant's representative: Charles M. Rosenberger, Senior Counsel, 500 Water Street, J150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

CSXT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by March 11, 1997. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Surface Transportation Board, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by CSXT's filing of a notice of consummation by March 6, 1998, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Decided: February 25, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–5546 Filed 3–5–97; 8:45 am]

BILLING CODE 4915–00–P

[1] Due to the Board's scheduled relocation on March 16, 1997, any filings made after March 16, 1997, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

[1] Under 49 CFR 1152.27(c)(2)(i), the expression of intent to file an OFA would normally be due 10 days after publication of notice in the **Federal Register**. However, due to the Board's scheduled relocation on March 16, 1997, expressions of intent in this proceeding may be filed as late as March 19, 1997.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] The Board will accept late-filed trail use requests as long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

[4] Due to the Board's scheduled relocation on March 16, 1997, any filings made after March 16, 1997, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1925 K Street, N.W., Washington, DC 20423.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 97–19

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).Currently, the IRS is soliciting comments concerning Notice 97–19, Guidance for Expatriates under Internal Revenue Code sections 877, 2501, 2107 and 6039F.

DATES: Written comments should be received on or before May 5, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Guidance for Expatriates under Internal Revenue Code sections 877, 2501, 2107 and 6039F.

OMB Number: 1545–1531.

Notice Number: Notice 97–19.

Abstract: Notice 97–19 provides guidance regarding the federal tax consequences for certain individuals who lose U.S. citizenship, cease to be taxed as U.S. lawful permanent residents, or are otherwise subject to tax under Code section 877. The information required by the notice will be used to help make a determination as to whether these taxpayers expatriated with a principal purpose to avoid tax.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals.

Estimated Number of Respondents: 12,300.

Estimated Time Per Respondent: 31 minutes.

Estimated Total Annual Burden Hours: 6,300.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 25, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–5553 Filed 3–5–97; 8:45 am]

BILLING CODE 4830–01–U

Proposed Collection; Comment Request for Revenue Procedure 97–19

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 97–19, 26 CFR 301.7502–1: Timely mailing treated as timely filing.

DATES: Written comments should be received on or before May 5, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: 26 CFR 301.7502–1: Timely mailing treated as timely filing.

OMB Number: 1545–1535.

Revenue Procedure Number: Revenue Procedure 97–19.

Abstract: Revenue Procedure 97–19 provides the criteria that will be used by the Internal Revenue Service to determine whether a private delivery service qualifies as a designated private delivery service under section 7502 of the Internal Revenue Code.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 5.

Estimated Time Per Respondent: 613 hours, 48 minutes.

Estimated Total Annual Burden Hours: 3,069.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information

unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 28, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–5555 Filed 3–5–97; 8:45 am]

BILLING CODE 4830–01–U

Tax on Certain Imported Substances (Epoxy); Notice of Determination

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice announces a determination, under Notice 89–61, that the list of taxable substances in section 4672(a)(3) will be modified to include diglycidyl ether of bisphenol-A.

EFFECTIVE DATE: This modification is effective April 1, 1992.

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under section 4672(a), an importer or exporter of any substance may request that the Secretary determine whether that substance should be listed as a taxable substance. The Secretary shall add the substance to the list of taxable substances in section 4672(a)(3) if the Secretary determines that taxable chemicals constitute more than 50 percent of the weight, or more than 50 percent of the value, of the materials used to produce the substance. This determination is to be made on the basis of the predominant method of production. Notice 89–61, 1989–1 C.B. 717, sets forth the rules relating to the determination process.

Determination

On February 24, 1997, the Secretary determined that diglycidyl ether of bisphenol-A should be added to the list of taxable substances in section 4672(a)(3), effective April 1, 1992.

The rate of tax prescribed for diglycidyl ether of bisphenol-A , under section 4671(b)(3), is $7.08 per ton. This is based upon a conversion factor for benzene of 0.459, a conversion factor for propylene of 0.494, a conversion factor for chlorine of 0.833, and a conversion factor for sodium hydroxide of 0.705.

The petitioner is Dow Chemical Company, a manufacturer and exporter of this substance. No material comments were received on this petition. The following information is the basis for the determination.

HTS number: 3907.3

CAS number: 025085–99–8

Diglycidyl ether of bisphenol-A (DGEBA) is derived from the taxable chemicals benzene, propylene, chlorine, and sodium hydroxide and produced predominantly from epichlorohydrin and bisphenol-A via a two-step reaction.

The stoichiometric material consumption formula for this substance is:

2 C_6H_6 (benzene) + 4 C_3H_6 (propylene) + 4 Cl_2 (chlorine) + 6 NaOH (sodium hydroxide) + 2 O_2 (oxygen) ——> $(CH_3)_2C(C_6H_4OC_3H_5O)_2$ (DGEBA) + CH_3COCH_3 (acetone) + 2 HCl (hydrogen chloride) + 6 NaCl (sodium chloride) + 5 H_2O (water)

Diglycidyl ether of bisphenol-A has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 92.95 percent by weight of the materials used in its production.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 97–5554 Filed 3–5–97; 8:45 am]

BILLING CODE 4830–01–U

federal register

Thursday
March 6, 1997

Part II

Department of Justice

Immigration and Naturalization Service and Executve Office for Immigration Review

8 CFR Part 1, et al.

Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures; Final Rule

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Executive Office for Immigration Review

8 CFR Parts 1, 3, 103, 204, 207, 208, 209, 211, 212, 213, 214, 216, 217, 221, 223, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 248, 249, 251, 252, 253, 274a, 286, 287, 299, 316, 318, and 329

[INS No. 1788–96; AG ORDER No. 2071–97]

RIN 1115–AE47

Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures

AGENCY: Immigration and Naturalization Service, Justice, and Executive Office for Immigration Review, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the regulations of the Immigration and Naturalization Service (Service) and the Executive Office for Immigration Review (EOIR) to implement the provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) governing expedited and regular removal proceedings, handling of asylum claims, and other activities involving the apprehension, detention, hearing of claims and ultimately the removal of inadmissible and deportable aliens. This rule incorporates a number of changes which are a part of the Administration's reinvention and regulation streamlining initiative.

DATES: *Effective date:* This interim rule is effective April 1, 1997.

Comment date: Written comments must be submitted on or before July 7, 1997.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW, Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS number 1788–96 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: *For matters relating to the Executive Office for Immigration Review*—Peggy Philbin, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2400, Falls Church, VA 22041, telephone number (703) 305–0470; *for asylum issues*—Michael Shaul, Field Manual Project Office, Immigration and Naturalization Service, 425 I Street NW, ULLB—4th Floor, Washington, DC 20536, telephone number (202) 616–7439; *for inspections issues*—Linda Loveless, Office of Inspections, Immigration and Naturalization Service, 425 I Street NW, Room 4064, Washington, DC 20536, telephone number (202) 616–7489; *for detention and removal issues*—Len Loveless, Office of Detention and Deportation, Immigration and Naturalization Service, 425 I Street NW, Room 3008, Washington, DC 20536, telephone number (202) 616–7799.

SUPPLEMENTARY INFORMATION:

Background

The Immigration and Naturalization Service and the Executive Office for Immigration Review jointly published a proposed rule on January 3, 1997 (62 FR 443–517 (1997)), to implement sections of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104–208, which was enacted on September 30, 1996. This legislation significantly amended the Immigration and Nationality Act (Act) by revising the asylum process and providing a mechanism for the determination and review of certain applicants who demonstrate a credible fear of persecution if returned to their own country; expanding the grounds of inadmissibility; redefining applicants for admission to include aliens who entered the United States without inspection; creating new expedited removal procedures for aliens attempting to enter the United States through fraud or misrepresentation or without proper documents; consolidating the former exclusion and deportation proceedings into one unified removal proceeding; and reorganizing and renumbering numerous provisions of existing law.

The effective date of most of the provisions affecting asylum, inspection, and removal processes is April 1, 1997, and implementing regulations must be in place by March 1, 1997. The proposed rule allowed only a 30-day comment period. The limited comment period was necessary, given the short statutory deadline and the time needed to draft the rule, coordinate with interested agencies, and complete the regulatory review process by the Office of Management and Budget. In order to meet the statutory deadline for an implementing regulation and yet provide adequate opportunity for public input on the issues addressed in this rulemaking, this rule is being published as an interim rule with an additional 120-day comment period.

The Department received 124 comments on the proposed rule. Most of the commenters represented either attorney organizations or voluntary organizations predominantly involved with refugees and asylum claimants. Commenters addressed a variety of topics, with much of the focus on asylum, expedited removal, and voluntary departure. The Department also received comments from individual members of Congress and Congressional subcommittees. Since many of the comments were duplicative or endorsed the submissions of other commenters, they will be addressed by topic, rather than referencing each specific comment and commenter. Also, because many of the comments were complex and dealt with issues that may be better addressed after the Department has had a period of time to gain operational experience under the new law, suggestions that were not adopted for the interim period will be further considered when a final rule is prepared. A number of comments were received concerning sections of the regulations that were not specifically changed by the proposed rule, but were simply moved to new sections. The Department has not addressed these comments at this time, but will consider them either as part of separate rulemaking initiatives or as part of the final rule rather than the interim rule, after the Service and EOIR more closely study the proposals. This supplementary information will identify significant changes made to the proposed rule and briefly discuss reasons why many other major suggestions were not adopted at this time.

Although the Department has addressed the major comments received, there will be further detailed analysis of these comments, as well as consideration of the additional comments received during the 120-day comment period following publication of the interim regulation. This will ensure every suggestion is more fully explored. Commenters responding to the interim rule may choose to amend or expand on prior comments or address other areas not raised by commenters during the first comment period.

Definitions

Several sections of the statute, such as sections 212(a)(9), 240B, and 241 of the Act, refer to arriving aliens, even though this term is not defined in statute. After carefully considering these references, the Department felt that the statute seemed to differentiate more clearly between aliens at ports-of-entry and those encountered elsewhere in the United States. For clarity, "arriving alien" was specifically defined in 8 CFR part 1, and the Department invited commentary on the proper scope of the regulatory definition.

One commenter suggested that aliens interdicted in United States waters should not be included in the definition because persons arriving in United States waters have already legally arrived in the United States. The Board of Immigration Appeals (BIA) has consistently held that the mere crossing into the territorial waters of the United States has never satisfied the test of having entered the United States. See *Matter of G*, 20 I&N Dec. 764 (BIA 1993). Aliens who have not yet established physical presence on land in the United States cannot be considered as anything other than arriving aliens. In addition, the Department has for years relied on interdiction efforts to stem the flow of inadmissible aliens and attempted illegal entries by sea. The inclusion of aliens interdicted at sea in the definition of arriving alien will support the Department's mandate to protect the nation's borders against illegal immigration. These provisions in no way alter the Department's current interdiction policy and should not be construed as to require that all interdicted aliens be brought to the United States. Only when an express decision is made, in accordance with existing interdiction policies, to transport an interdicted alien to the United States, will that alien be considered an arriving alien for purposes of the Act.

Another commenter suggested that the definition be expanded to include aliens who have been present for less than 24 hours in the United States without inspection and admission. The Department extensively considered this and similar options, such as a distance-based distinction. For the reasons discussed below relating to the decision not to apply the expedited removal provisions at this time to certain aliens who entered without inspection, and considering the difficulty not only in establishing that the alien entered without inspection, but also in determining the exact time of the alien's arrival, the Department continues to believe the position taken in the proposed rule is correct and will not modify this definition in the interim rule. The definition of "arriving alien" will be given further consideration in the final rule, however, drawing upon the experience of the early implementation of the interim rule.

One commenter objected to the inclusion of parolee in the definition of arriving alien. The definition in the proposed rule states "An arriving alien remains such even if paroled pursuant to section 212(d)(5) of the Act." The inclusion of paroled aliens was based on the statutory language in section 212(d)(5) of the Act, which states "* * * but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he or she was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States." Existing regulations at § 212.5(d) relating to termination of parole echo this provision, stating "* * * he or she shall be restored to the status he or she had at the time of parole." The Department feels there is solid statutory basis for inclusion of certain paroled aliens in the definition of arriving alien, and so will retain this provision.

The Department has added two additional definitions for the sake of clarity. The term "Service counsel" has been added to clarify that although the term refers to any immigration officer designated to represent the Service before the Immigration Court or the BIA. Existing regulations interchangeably use this term and a variety of other terms, including trial attorney, district counsel and assistant district counsel. The term "aggravated felony" has also been defined by reference to section 101(a)(43) of the Act as amended by IIRIRA. The regulatory definition clarifies that the amended section 101(a)(43) applies to any proceeding, application, custody determination or adjudication.

Parole of Aliens

This interim rule modifies § 212.5(a) to comport with the statutory change made by IIRIRA to section 212(d)(5)(A) of the Act.

Withdrawal of Application for Admission

The proposed rule contains provisions to implement the longstanding practice used by the Service to permit applicants for admission to voluntarily withdraw their application for admission to the United States in lieu of removal proceedings, now included in section 235(a)(4) of the Act. The withdrawal provisions in the proposed rule were written to conform with rulings of the BIA on withdrawal and with standard practice in many jurisdictions. Several commenters suggested that every alien subject to the expedited removal provisions should automatically be offered the opportunity to withdraw his or her application for admission prior to the secondary inspection interview. Permission to withdraw an application for admission is solely at the discretion of the Attorney General and is not a right of the alien, a premise that has been consistently upheld by the BIA. Only the Attorney General may decide whether to pursue removal charges against an alien who has violated the immigration laws. Withdrawal of application for admission is only one of several discretionary options that may be considered by the Service once the facts of the case are known, and so will not automatically be offered to all aliens subject to expedited removal.

The Department does, however, share the concern of several commenters that aliens who may be inadvertently or unintentionally in violation of the immigration laws or regulations should not be subject to the harsh consequences of a formal removal order. The Department also wishes to ensure that the expedited removal provisions and the discretionary option to permit withdrawal are applied consistently and fairly throughout the nation. Although not included in the regulations at this time, the Department intends to formulate policy guidance and criteria for determining the types of cases in which such permission should or should not be considered.

Classes Subject to Expedited Removal

The Department requested public comment regarding the appropriate use of the authority conferred by the statute upon the Attorney General to expand the class of aliens subject to expedited removal. Most commenters commended the Department on its decision not to apply at this time the expedited removal provisions to aliens in the United States who have not been admitted or paroled and who cannot establish continuous physical presence in the United States for the previous two years. At this time, the Department will apply the provisions only to "arriving aliens," as defined in § 1.1(q). The Department acknowledges that application of the expedited removal provisions to aliens already in the United States will involve more complex determinations of fact and will be more difficult to manage, and therefore wishes to gain insight and experience by initially applying these new provisions on a more limited and controlled basis.

The Department does, however, reserve the right to apply the expedited removal procedures to additional classes of aliens within the limits set by the statute, if, in the Commissioner's discretion, such action is operationally warranted. It is emphasized that a proposed expansion of the expedited removal procedures may occur at any time and may be driven either by specific situations such as a sudden influx of illegal aliens motivated by political or economic unrest or other events or by a general need to increase the effectiveness of enforcement operations at one or more locations.

Although several commenters suggested that imposition of the provisions should only occur after publication of a proposed rule followed by a comment period, the statute does not impose any specific notice requirement in connection with the Attorney General's designation under section 235(b)(1)(A)(3), and certainly does not impose the requirement of a full administrative rulemaking. Indeed, such a requirement would defeat a major purpose of this provision: to allow the Attorney General to respond rapidly, effectively, and flexibly to situations of mass influx or other exigencies. The Attorney General has elected to exercise this authority in connection with publication of a notice in the **Federal Register** (in advance, where practicable) simply as a matter of sound administration and policy. The provisions contained in § 235.3(b) of this interim rule will apply for now only to arriving aliens.

Several commenters suggested that certain classes of individuals, such as minors, certain nonimmigrant classifications, and aliens claiming to be lawful permanent residents or U.S. citizens, should not be subject to expedited removal, or that it should not be applied where resources or location do not permit optimal inspection conditions. Some stated that aliens in expedited removal should be entitled to a full hearing before an immigration judge. The statute is clear that the expedited removal provisions apply to all aliens inadmissible under sections 212(a)(6)(C) or (7) of the Act, and that such aliens are not entitled to further hearing or review with specific limited exceptions. Although the statute does not require it, the Department has provided for supervisory review and concurrence on all expedited removal orders. The statute itself provides for review of a claim to lawful permanent resident, refugee, or asylee status. In addition, the Department has a certain amount of prosecutorial discretion provided by statute. It may, in lieu of instituting removal proceedings, permit an alien to withdraw his or her application for admission in those cases where there is no fraudulent intent and the alien is inadmissible only through inadvertent error or misinformation. There are also discretionary waivers available in certain cases.

Reorganization of § 235.3(b)(1) and (2)

In order to provide a more logical discussion of the applicability of the expedited removal provisions and the procedures for applying them, § 235.3(b)(1) (determination of inadmissibility) and § 235.3(b)(2) (applicability) as they appeared in the proposed regulation have been interchanged and revised as discussed below.

Expedited Removal Procedures

Many commenters stated that the provisions in § 235.3(b) were not sufficiently explicit to ensure that the expedited removal provisions are fairly and consistently applied. Because most of these commenters represented organizations primarily concerned with refugee and asylum issues, we have addressed this topic in detail below in the section relating to credible fear determinations and claims of asylum or fear of persecution by aliens subject to expedited removal.

Review of Claim of Status as Lawful Permanent Resident, Asylee, or Refugee

Several commenters suggested provisions of § 235.3(b)(5) were not sufficiently clear to provide adequate review of claims by returning lawful permanent residents, asylees, or refugees who are subject to expedited removal. Specifically, the commenters asserted that § 235.3(b)(5)(ii) could be interpreted to imply that an alien whose claim to lawful permanent residence is verified and is not granted a discretionary waiver or provided an opportunity through deferred inspection to present the required documents could be ordered removed under section 235(b) of the Act. These commenters requested that § 235.3(b)(5)(iv) of the proposed regulation be amended to allow that claimed lawful permanent residents, asylees, or refugees (who the Service has been unable to verify ever was admitted in such status) be referred directly to removal proceedings under section 240 of the Act.

For the following reasons, these sections of the proposed regulation will not be changed in the interim rule. Section 235.3(b)(5)(ii) of the proposed regulation relates to those arriving aliens whose prior admission as a lawful permanent resident has been *verified* by the immigration officer by referring to official Service records. The Department intends that when such a prior admission is verified, the individual will not be removed under the expedited removal provisions of section 235(b) of the Act, regardless of the officer's determination as to the individual's current admissibility and/or retention of such lawful permanent status. For that reason the first sentence of § 235.3(b)(5)(ii) sets forth this prohibition. Since the removal provisions under section 235(b) of the Act are not available, the only actions left for the examining officer are to: admit the individual (through the grant of a waiver if need be); defer inspection to allow the individual to retrieve the appropriate documents; or place the person in removal proceedings under section 240 of the Act. This process will allow those individuals verified as having once been admitted as a lawful permanent resident, asylee, or refugee a full evidentiary hearing in removal proceedings under section 240 of the Act before an immigration judge to address the heavily fact-based issues of abandonment of status or other issues concerning loss of status. The language "may initiate proceedings" was used here to indicate that the officer is not required to initiate any proceedings but may opt to admit the individual into the United States.

As for those individuals claiming to be returning lawful permanent residents, asylees, or refugees, but who are not verified by the Service as having ever been admitted in such status, the referral to the immigration judge in § 235.3(b)(5)(iv) is for the purpose of allowing the individual to establish such a prior admission in such status, nothing more. If the individual establishes such a prior admission, the immigration judge will terminate the expedited removal order and at that point that person will be in the same position as the person whose prior admission was verified by the inspecting Service officer: the Service can admit the individual or contest his or her current retention of such status in the context of removal proceedings under section 240 of the Act.

Another commenter contended that it is not appropriate to refer aliens who are verified as having been admitted or establish that they were once admitted as lawful permanent residents, asylees, or refugees to proceedings under section 240 of the Act. Section 235(b)(1)(C) of the Act states that the Attorney General shall provide regulations for administrative review of an expedited removal order entered against "an alien who claims under oath . . ." to have

been lawfully admitted as a lawful permanent resident, asylee, or refugee. The statute provides no further directive as to how aliens who actually have been admitted in such status are to be processed if, in fact, the Service believes that such status may no longer be valid. If that claim is never verified or established before the inspecting Service officer or an Immigration Judge, the expedited removal order entered against the alien will be effected and the alien will be removed from the United States. However, once an alien establishes admission in such status, it is not inconsistent with the statute for further proceedings against an alien known to have been lawfully admitted as a permanent resident, asylee, or refugee to occur in the context of proceedings under section 240 of the Act. Further, given the greater interests and ties to the United States normally at stake for such aliens compared to those arriving without any previous status, the Department considers it appropriate that verified arriving permanent residents, asylees, and refugees be accorded the protections inherent in proceedings under section 240 of the Act.

Review of Claim to U.S. Citizenship

Several commenters stated that while the statute and regulations provide for review of an expedited removal order of an alien claiming to be a lawful permanent resident, refugee, or asylee, there is no such provision for review of a claim to U.S. citizenship. While U.S. citizens are not subject to the inadmissibility and removal provisions of the Act and the Department makes every effort to prevent the inadvertent removal of U.S. citizens, there are approximately 35,000 false claims to U.S. citizenship made every year at ports-of-entry. Congress recognized this problem in IIRIRA by adding a new ground of inadmissibility to section 212(a)(6)(C)(ii) of the Act specifically designating such aliens as inadmissible and subject to the expedited removal provisions. Existing regulations at § 235.1(b), which have been in place for many years, place the burden of establishing a claim to U.S. citizenship on the person seeking entry. Otherwise, that person is inspected as an alien. To provide an additional level of review and safeguard against a mistaken determination, the Department will institute the same procedures contained in § 235.3(b)(5) for persons who have not been able to establish U.S. citizenship, but who maintain a claim under oath or under penalty of perjury to be U.S. citizens, which are used for persons claiming to be lawfully admitted as permanent residents, refugees, or asylees.

Several commenters stated that the regulations do not provide any criteria for the detention or release of these individuals. The provisions of § 235.3(b)(2)(iii) requiring detention of all aliens subject to the expedited removal provisions and issued a removal order also apply to persons whose claim to lawful permanent resident, refugee, asylee, or U.S. citizen status has not been verified. To clarify that detention is required for these individuals, the interim rule reiterates this requirement in § 235.3(b)(5)(i).

Filing of an Application for a Refugee Travel Document While Outside the United States

Several commenters remarked favorably on the proposal to revise 8 CFR part 223 to allow refugees and asylees to apply for refugee travel documents from outside the United States, after departure from the United States, under certain very limited circumstances. The Department proposed this revision with full awareness of the provision in section 208(c)(1) of the Act under which the Attorney General may allow the alien to travel abroad "with the prior consent of the Attorney General." Despite the implied language of the statute, the Department felt that an exception was warranted for those cases where the alien innocently departed in ignorance of the requirement or, although aware of the requirement, departed without applying for the document due to an urgent humanitarian need, such as the impending death of a close relative. It should be noted that the current regulations only require that an application be filed before departure, not that the applicant delay travel until after the application is approved and the document is received. The Service has always provided the option of allowing the alien to pick up the document overseas at an American consular post.

A few commenters suggested that the decision whether to accept such applications not be left to the discretion of the Service. This change has been made. However, the regulation does not remove the general requirement that the application be filed before departure, nor does it intend that the new procedure be viewed as a routine method of obtaining the document. Although not specifically stated in the regulation, the Department intends that if it is apparent that the alien knew of the general requirement and simply chose to ignore it (e.g., if the alien had previously been issued a refugee travel document through this "overseas procedure" and there was no emergency necessitating the more recent departure), the director may determine that favorable exercise of discretionary authority is not warranted. Accordingly, the regulation provides that the district director having jurisdiction over the overseas location, or over the inspection facility in the case of an alien at a port-of-entry, may deny the application as a matter of discretion.

A few commenters suggested that there be no limit on how long after departure the application may be filed. Others suggested that the time limit be shortened from 1 year to 6 months to coincide with the 6 month time frame in section 101(a)(13)(C) of the Act, which is the period during which a lawful permanent resident who meets certain other requirements is not considered to be an applicant for admission. Another commenter stated that the validity of a refugee travel document approved under this process should not be limited to 1 year from the date of the alien's departure from the United States, so long as the application was filed within 1 year of that departure. The 1-year limitation was chosen because it is the maximum validity period for which a document would have been approved had the alien complied with the requirement of filing prior to departure. Allowing an applicant to file from outside the United States more than 1 year after departure would effectively authorize a longer validity period for the person who failed to comply with the requirement than for one who did. This would not be appropriate. Likewise, the 6-month period during which a lawful permanent resident (who meets the other criteria in section 101(a)(13) of the Act) is not deemed to be seeking admission is not analogous to that of the stranded refugee, since the refugee is clearly deemed to be seeking admission. Additionally, 6 months might be too short a time for the alien who realizes his or her error to file the application and for the Service to verify eligibility and approve that application. The Department feels that in those cases where it is proper to allow an exception from the requirement to file before departure, it is appropriate that the document be valid for the same length of time as for the person who complied with that requirement.

Revision of Asylum Procedures

In general, many commenters requested that specific "step-by-step" procedural instructions be placed in the regulations regarding the interview process at both the secondary inspection stage and the credible fear

determination stage. Although a number of these suggestions have been adopted, others have not. While the Department appreciates both the necessity for equal and proper treatment of all cases and the advantages of standardization, it must also recognize that not all situations are identical and the interviewing officer must be allowed a certain amount of flexibility in conducting interviews to account for differences in individual situations.

Convention Against Torture

Many commenters urged that there be express reference in several parts of the regulation to the non-refoulement obligation under Article 3 of the Convention Against Torture. This article requires a state not to "expel, return ('refouler') or extradite a person to another state where there are substantial grounds for believing that he or she would be in danger of being subjected to torture." This article has been in effect for the United States since November 1994. Although Article 3 of the Torture Convention itself is not self-executing, the Attorney General has sufficient administrative authority to ensure that the United States observes the limitations on removal required by this provision. In fact, the Service has received and considered individual requests for relief under the Torture Convention since November 1994 and has arranged for relief where appropriate. For the present, the Department intends to continue to carry out the non-refoulement provision of the Torture Convention through its existing administrative authority rather than by promulgating regulations. The Service is, however, developing thorough guidelines to address Article 3 issues and intends to issue those guidelines soon. These guidelines generally, and the expedited removal process in particular, will be implemented in accordance with Article 3.

Prohibitions on Filing Asylum Applications

There were numerous comments on the prohibitions on the filing of asylum applications in section 208(a)(2) of the Act. Because of the importance of a decision to deny an alien the right to apply for asylum, the Department has chosen to adopt the suggestion that only asylum officers, immigration judges, and the BIA be empowered to make such determinations. The Department has also made clear that, while the alien must establish by clear and convincing evidence that he or she applied within one year of his or her arrival in the United States, the alien's burden of establishing that one of the exceptions in section 208(a)(2)(D) applies must only be to the "satisfaction of the Attorney General." The rule also contemplates that the asylum officer or immigration judge hearing such a case will explore the reasons for the late filing. Finally, and importantly, the Department has decided to follow the recommendation that the date of arrival used to determine the one-year period in section 208(a)(2)(B), consistent with the effective date of that section, be no earlier than April 1, 1997. Thus, the first case to which this prohibition could apply would be one filed on April 2, 1998.

Regarding the changed circumstances exception in section 208(a)(2)(D), the Department has followed the recommendation of numerous commentators to drop the language limiting this exception, for purposes of section 208(a)(2)(B), to circumstances that arise after the one-year period. The Department has also decided to provide a better definition of this exception by indicating that the definition may include either changed conditions in the home country or changes in objective circumstances relating to the applicant in the United States, including changes in applicable U.S. law, that create a reasonable possibility that the applicant may qualify for asylum. Because of inconsistency between the formulation of changed circumstances in section 208(a)(2)(D) and the formulation in section 240(c)(5)(ii) of the Act, which permits an alien to file a motion to reopen beyond the time limit normally applicable to such a motion, the Department has decided to drop the requirement that, for purposes of the prohibition in section 208(a)(2)C), such exception may only be raised through a motion to reopen.

A large number of commenters requested that the Department list examples of what is meant by extraordinary circumstances within the meaning of section 208(a)(2)(D) of the Act, and several commenters suggested examples that they believed were appropriate. Accordingly, the Department has included such a list in the interim rule. It is important to bear two points in mind when reviewing the list. First, the list is not all-inclusive, and it is recognized that there are many other circumstances that might apply if the applicant is able to show that but for such circumstances the application would have been filed within the first year of the alien's arrival in the United States. Second, the alien still has the burden of establishing the existence of the claimed circumstance and that but for that circumstance, the application would have been filed within the year.

Some commenters requested that the Department clarify that failure to establish changed circumstances or extraordinary circumstances might bar an applicant from applying for asylum, it does not bar him or her from applying for withholding of removal. The Department agrees and the interim rule contains this clarification.

Some commenters objected to the requirement that an alien who meets the extraordinary circumstances criteria, file the application "as soon after the deadline as practicable given those circumstances," preferring instead the phrase "within a reasonable time period given those circumstances." The Department has adopted this suggestion and a similar formulation for the "changed circumstances" exception.

"Asylum-Only" Hearings

The Department noted a conflict in the proposed rule between the provisions of § 208.2(b)(1)(i)(C) and § 252.2(b) regarding crewmembers who are granted landing permits prior to April 1, 1997, and subsequently become deportable. The former provision would place such alien in "asylum-only" proceedings before the immigration judge, while the latter would place him or her in regular removal proceedings under section 240 of the Act. The interim rule corrects this conflict by specifying that the "asylum-only" process applies to those crewmembers granted landing privileges on or after April 1, 1997. Also, § 208.2(b)(2) has been expanded to explain the consequences of failure to appear for an asylum-only hearing and to set forth conditions and limitations on reopening such proceedings.

Discovery and FOIA Issues

Some commenters expressed concern about the statement in 8 CFR 208.12 that "[n]othing in this part shall be construed to entitle the applicant to conduct discovery directed towards the records, officers, agents, or employees of the Service, the Department of Justice or the Department of States." Specifically, they feared that the provision would preclude someone from seeking, or excuse the Service from providing, information under the Freedom of Information Act (FOIA). This fear is totally groundless. FOIA provisions are covered under separate statutory and regulatory bases. The Service is guided by 5 U.S.C. 522 and 8 CFR 103 with regard to FOIA matters, neither of which are in any way affected by this rulemaking.

Persecution for Illegal Departure or Applying for Asylum

Several commenters objected to the proposed elimination of § 208.13(b)(2)(ii) and § 208.16(b)(4), which require asylum officers and immigration judges to give "due consideration" to evidence that the government of the applicant's country of nationality or last habitual residence persecutes its nationals or residents if they leave the country without authorization or seek asylum in another country. These commenters interpreted this change to mean that the Department does not wish to consider seriously such evidence or to grant asylum or withholding to persons who are at risk of punishment for illegal departure from their countries or for applying for asylum abroad. This is not the case. The Department and the United States Government continue to deplore and oppose certain countries' practice of severely punishing their citizens for illegal departure or for applying for asylum in another country. The Department also acknowledges that persons who face severe punishment for such acts may continue to qualify for asylum or withholding of removal. However, the regulation at issue did not clearly implement this policy. First, it requires only that asylum officers and immigration judges give "due consideration" to evidence of such practices; this is a vague and indefinite standard. Second, it obliges adjudicators to consider evidence of whether a country "persecutes" its nationals for such actions. Such language begs the very question that an adjudicator must answer in deciding such a case: Does the alleged punishment amount to persecution? It is well-established that not all punishment for illegal departure constitutes persecution. *See, e.g., Sovich* v. *Esperdy*, 319 F. 2d 21 (2d Cir. 1963); *Matter of Chumpitazi*, 16 I&N Dec. 629 (BIA 1978). However, in some cases, it may. Such a question must be resolved on a case-by-case basis. Thus, rather than continue to have an ambiguous regulation on this issue, the Department believes its adjudicators should apply the same standards to these cases as they would to any other case in which the applicant claims a fear that derives from governmental prosecution. This is best accomplished by removing the provisions in question from the regulations.

Exception to the Prohibition on Withholding of Deportation in Certain Cases

Several commenters objected to the proposed rule's limitation in § 208.16(c)(3) on those aliens who may be eligible for relief under section 243(h)(3) of the Act, as amended by Pub. L. 104–132. In particular, these commenters object to the notion that the United States may summarily preclude from eligibility for withholding of deportation aliens convicted of a particularly serious crime, including an aggravated felony, without individually considering their cases. However, it is well established in U.S. law that aliens who have been convicted of an aggravated felony are mandatorily barred from obtaining withholding of deportation. *See, e.g., Kofa* v. *INS*, 60 F. 3d 1084, 1090 (4th Cir. 1995) (en banc). In the proposed regulation implementing section 243(h)(3) of the Act, the Department decided, consistent with the revisions made to the withholding of deportation statute by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, to make relief under this section available only to those persons convicted of an aggravated felony who receive an aggregate sentence of imprisonment of less than 5 years. This proposal is almost entirely consistent with a recent precedent decision issued by the BIA on this issue. *See Matter of Q–T–M–T–*, Int. Dec. 3300 (BIA 1996). Thus, the Department intends to retain the basic approach in the proposed regulation. We have only added a sentence providing that an alien convicted of an aggravated felony shall be presumed to have been convicted of a particularly serious crime. This minor change renders the regulation fully consistent with the Board's decision in *Matter of Q–T–M–T–*, supra.

Admission of the Spouse and Children of an Asylee

The proposed rule reserved § 208.19 for regulations pertaining to the admission of the spouse and children of an asylee. This matter was the subject of a separate proposed rule published July 9, 1996, see 61 FR 35,984 (1996) and the Department had intended to incorporate the revised regulations into this interim rule. However, because analysis of the comments to that earlier proposed rule has not been completed, the Department will instead redesignate the existing regulations at § 208.21 as § 208.19. The revised regulations on the admission of the spouse and children of an asylee will be incorporated into the final regulations, which will be published after the expiration of the comment period for this interim rule.

Credible Fear Standard

Several commenters urged that we adopt regulatory language emphasizing that the credible fear standard is a low one and that cases of certain types should necessarily meet that standard. Since the statute expressly defines the term "credible fear of persecution," we have chosen not to provide in the rule a further refinement of this definition. However, both INS and EOIR will give extensive training to their officials on the purpose of the credible fear standard and how it is to be applied to particular cases. The Department believes that such training will ensure that the standard is implemented in a way which will encourage flexibility and a broad application of the statutory standard.

Employment Authorization for Asylum Applicants

Almost all who chose to comment on the Department's position regarding work authorization for asylum applicants were pleased with the decision to continue to allow the applicant to apply for an employment authorization document once the asylum application has been pending for 150 days. One commenter requested that the 150-day period be abolished, but that suggestion was not deemed viable, especially in light of the new statutorily-mandated 6-month minimum time before granting such authorization contained in section 208(d)(2) of the Act.

The Department has also modified the regulations relating to employment authorization at §§ 208.7(a) and 274a.12(a)(8) to ensure that applicants who appear to an asylum officer to be eligible for asylum but have not yet received a grant of asylum are able to obtain employment authorization. Section 208(d)(5)(A)(i) of the Act obliges the Service, prior to granting asylum, to check the identity of the applicant "against all appropriate records or databases maintained by the Attorney General and by the Secretary of State * * *." Such databases include, among others, the Federal Bureau of Investigation's (FBI) fingerprint database. At present, the Service initiates such a fingerprint check at the time it grants asylum; if the check turns up information that undercuts that decision, asylum is later revoked. The Service's experience is that the FBI's fingerprint checks often take a significant period of time to complete. The new statutory requirement at section 208(d)(5)(A)(i) of the Act thus means that after April 1, 1997, an alien who would otherwise appear to be eligible for asylum may have to wait for a long period of time before he or she can be granted asylum or employment authorization. (A similar problem may

arise in the case of an alien who is determined to be a refugee under the new language in section 101(a)(42) of the Act but is precluded from being granted asylum because of the cap in section 207(a)(5) of the Act.) Such a result is contrary to one of the chief purposes of the asylum reforms brought about by the regulatory changes of January 1995: to ensure that bona fide asylees are eligible to obtain employment authorization as quickly as possible. Thus, consistent with the authority in section 208(d)(2) of the Act, the Department has decided to make employment authorization available to asylum applicants who are recommended for a grant of asylum but have not yet received such grant of asylum or withholding. An alien may apply for employment authorization under these provisions as soon as he or she receives notice of the grant recommendation.

Credible Fear Determinations and Claims of Asylum or Fear of Persecution by Alien Subject to Expedited Removal

Under the new section 235(b)(1)(A)(ii) of the Act, an alien subject to expedited removal who indicates an intention to apply for asylum or who expresses a fear of persecution will be referred to an asylum officer to determine if the alien has a credible fear of persecution. Many commenters stated that the regulation in § 235.3 was not sufficiently detailed in delineating the following procedures for recognizing and referring arriving aliens who may be genuine refugees fleeing persecution: disclosures to arriving aliens; conditions of secondary inspection; use of interpreters; representation during secondary inspection; written record of proceeding; time and place of credible fear interview; detention pending a determination of credible fear; and detention following a determination of credible fear. We will address these concerns individually.

Disclosures to Arriving Aliens

Many commenters expressed the opinion that all arriving aliens should be provided with information concerning the credible fear interview. This contention is based on the language of the statute in section 235(b)(1)(B)(iv) that states: "The Attorney General shall provide information concerning the asylum interview described in this subparagraph to aliens who may be eligible * * *." The commenters' position is that this requirement is not limited only to aliens who "are" eligible, but that all aliens who are suspected of qualifying for expedited removal "may" be eligible, and that the information should be given before the secondary inspection pre-screening process.

To understand the Service position on this issue, one must understand the general inspection process. All persons entering the United States at ports-of-entry undergo primary inspection. U.S. citizens are exempt from the inspection process, but must nevertheless undergo an examination to determine entitlement to exemption from inspection. In FY 96, the Service conducted more than 475 million primary inspections. During the primary inspection stage, the immigration officer literally has only a few seconds to examine documents, run basic lookout queries, and ask pertinent questions to determine admissibility and issue relevant entry documents. At most land border ports-of-entry, primary inspection duties are shared with U.S. Customs inspectors, who are cross-designated to perform primary immigration inspections. If there appear to be discrepancies in documents presented or answers given, or if there are any other problems, questions, or suspicions that cannot be resolved within the exceedingly brief period allowed for primary inspection, the person must be referred to a secondary inspection procedure, where a more thorough inquiry may be conducted. In addition, aliens are often referred to secondary inspection for routine matters, such as processing immigration documents and responding to inquiries. While millions of aliens (almost 10 million in FY 96) are referred to secondary inspection each year for many reasons, approximately 90 percent of these aliens are ultimately admitted to the United States in a very short period of time once they have been interviewed and have established their admissibility.

The secondary officer often does not know if an alien is likely to be removed under the expedited removal process until he or she has questioned the alien. Congress, in drafting the expedited removal provisions, chose to include both section 212(a)(6)(C) and 212(a)(7) of the Act as the applicable grounds of inadmissibility. The common perception is that most expedited removal cases will involve obvious fraudulent documents, or aliens arriving with no documents at all. This is not necessarily the type of case that most frequently falls within the provisions of sections 212(a)(6)(C) and (7) of the Act. Section 212(a)(6)(C) of the Act includes "any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act * * *," as well as aliens who falsely represent themselves to be citizens of the United States. In addition to the presentation of fraudulent documents, the falsity of which may not be verified until a thorough examination has been conducted, the fraud and misrepresentation referenced in this section may include falsehoods told by the alien concerning his or her admission or other misrepresentations told to Government officials now or in the past.

Section 212(a)(7) of the Act, in addition to covering a lack of valid documents (including expired or incorrect visas or passports), also encompasses the alien "who is not in possession of a valid unexpired immigrant visa." Under immigration law, aliens who cannot establish entitlement to one of the nonimmigrant categories contained in the Act are presumed to be immigrants, and, if not in possession of a valid immigrant visa, are inadmissible under section 212(a)(7) of the Act. The majority of the aliens currently found inadmissible to the United States fall into this category and will now be subject to expedited removal. Again, inadmissibility under this ground often cannot be determined until the secondary inspector has thoroughly questioned the alien.

To fully advise, prior to any secondary questioning, nearly all aliens referred to secondary inspection of the expedited removal procedures and of the possibility of requesting asylum would needlessly delay the millions of aliens who are ultimately found admissible after secondary questioning. For almost all of these people, asylum, fear of persecution, or fear of return is not an issue.

The Service has very carefully considered how best to ensure that bona fide asylum claimants are given every opportunity to assert their claim, while at the same time not unnecessarily burdening the inspections process or encouraging spurious asylum claims. Service procedures require that all expedited removal cases will be documented by creation of an official Service file, to include a complete sworn statement taken from the alien recording all the facts of the case and the reasons for a finding of inadmissibility. This sworn statement will be taken on a new Form I–867AB, Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act. The form will be used in every case where it is determined that an alien is subject to the expedited removal process, and contains a statement of rights, purpose, and consequences of the process. Among other things, it clearly advises the alien that this may be the only opportunity to present information concerning any fears or concerns about being removed from the United States, and that any information concerning that fear will be heard confidentially by another officer. The final page of the form contains a standard question asking if the alien has any fear or concern of being removed or of being sent home. If, during the course of the sworn statement, or at any time in the process, the alien indicates a fear or concern of being removed, he or she will be given a more detailed written explanation of the credible fear interview process prior to being placed in detention pending the credible fear interview. The *Inspector's Field Manual* will contain detailed instructions and guidance to officers to assist them in recognizing potential asylum claims, and this topic will also be covered in officer training. Every expedited removal case also undergoes supervisory review before the alien is removed from the United States. The Service is confident that these safeguards will adequately protect potential asylum claimants. To ensure that these procedures are followed in every expedited removal case, language has been added to § 235.3(b)(4) outlining the procedures.

Conditions of Secondary Inspection

Numerous commenters indicated that the secondary inspection should be conducted in private, comfortable rooms, and that no secondary inspection should take place before an alien has had time to rest (some commenters suggested 24 hours), eat, and consult with family, friends, counsel, or other representatives. The commenters also suggest that aliens should have access to interpreters before and during the screening process.

At airports, the inspection facilities for the Federal Inspection Services (FIS), which includes the Service, U.S. Customs Service, the U.S. Department of Agriculture, and the U.S. Public Health Service, are provided by the airport authorities. While the Government has input when new facilities are constructed, the inspection areas, especially in older airports, simply do not allow for the amenities suggested by the commenters. The same is true for land border ports, where the facility is usually provided by the General Services Administration and overall space is often extremely limited. The Service has always made every effort to afford as much privacy during sensitive or complex interviews as conditions allow, and will continue to do so.

As for delaying the secondary interview to allow every alien time to rest prior to being questioned, the Service again points out that it conducts more than ten million secondary inspections each year. Most of those questioned are eager to have their inspection completed as quickly as possible. The Department has neither the resources nor the authority to detain all secondary referrals without first conducting a prompt interview to determine inadmissibility.

Use of Interpreters

The issue of language barriers and the use of interpreters is not new to the Service. The Service makes use of interpreters whenever necessary and will continue to do so to ensure that all aliens are fully apprised of the proceedings against them. The Service currently uses its own officers, many of whom are bilingual or multilingual, airport personnel, or telephonic interpretive services when in-person interpreters are not available. Occasionally, family members or persons waiting to meet the arriving alien may be allowed to assist in translation of the interview. The Service will use appropriate means to ensure that aliens being removed are advised of and understand the reasons for the removal and the consequences of such removal.

Representation During Secondary Inspection

Several commenters stated that an alien subject to expedited removal should be able to obtain representation or counsel prior to any secondary inspection interview. As discussed in the section on disclosures to aliens in expedited removal, the secondary inspection officer often does not know that an alien will be subject to expedited removal until such questioning has taken place, nor will all determinations of inadmissibility under section 212(a)(6)(C) or (7) of the Act result in an expedited removal order. Section 292 of the Act provides that in any removal proceeding before an immigration judge, the person concerned shall have the privilege of being represented by counsel, at no expense to the Government. Congress did not amend this section to include proceedings before an immigration officer. In addition, while Congress specifically provided for consultation prior to the credible fear interview, it did not provide for consultation prior to the immigration inspection and issuance of the order. Therefore, the Department will retain its interpretation that an alien in primary or secondary inspection is not entitled to representation, except where the person has become the focus of a criminal investigation and has been taken into custody for that purpose.

Written Record of Proceeding

Several commenters expressed concern that there be a complete record of proceeding to ensure that Service officers are making proper decisions. As previously explained, an official Service file will be created on every expedited removal case. The file will include photographs, fingerprints, copies of any documentary or other evidence presented or discovered, and a complete written sworn statement. The sworn statement will record all facts of the case and the alien's statements. As with all sworn statements taken by the Service, the alien is required to initial each page and any corrections, and sign the statement certifying that he or she has read (or had read to him or her), the statement and that it is true and correct. When necessary, interpreters will be used. The language added to the regulation at § 235.3(b)(2) requires that such sworn statement be taken in every case. Procedures developed for the *Inspector's Field Manual* also contain very specific instructions regarding the record of proceeding.

Time and Place of Credible Fear Interview

Several commenters requested that the regulations state where and when the credible fear interviews will take place. The statute provides that credible fear interviews may take place either at a port-of-entry or at other locations that the Attorney General may designate. The Service intends that most interviews will be conducted at Service detention facilities, but prefers the flexibility to make adjustments to this arrangement as the need arises. Therefore, this operational concern will not be addressed in the regulation. The Service maintains detention facilities near several major airports such as JFK, Miami, and Los Angeles, as well as many locations along the southern border and other sites like Denver, Seattle, and Houston. In circumstances where the port of arrival is not near a Service detention facility and it is impractical to transport the alien to a Service facility, the alien may be detained in other Service-approved detention sites, such as local or county jails. In these instances an asylum

officer will travel to the detention site to conduct the interview.

Several commenters suggest that the Service should conduct credible fear interviews at its local asylum offices whenever possible. The Service declines to be bound by this suggestion because of the prohibitive costs involved in transporting aliens, under escort, to and from detention facilities. However, the Service retains the option to conduct interviews at places designated for asylum officers.

Similarly, the Service intends that aliens will normally be given 48 hours from the time of arrival at the detention facility, in which to contact family members, friends, attorneys, or representatives. During the referral process from the port-of-entry, they will be given a list of pro bono representatives. This list is provided for the purpose of consultation prior to the interview, and does not entitle the alien to formal counsel or representation during the credible fear interview. The aliens will be given access to a telephone to make such contacts. Commenters suggest that aliens be given petty cash or be permitted to make telephone calls at Government expense; however, the statute that provides for such consultation specifically states that the consultation shall be at no expense to the Government.

Detention Pending a Determination of Credible Fear

A few commenters stated that the provisions of § 235.3(b)(4) for detention of aliens awaiting a credible fear determination are too harsh, and asked that the rule be amended to allow for parole of such aliens. However, because section 235(b)(1)(B)(iii)(IV) of the Act requires that an alien in expedited removal proceedings "shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed," the Department feels that parole is appropriate only in the very limited circumstances specified in § 235.3(b)(4). The interim rule has been amended, however, to clarify that aliens found to have a credible fear will be subject to the generally applicable detention and parole standards contained in the Act. Although parole authority is specifically limited while a credible fear determination is pending under § 235.3(b)(4), those found to have a credible fear and referred for a hearing under section 240 of the Act will be subject to the rule generally applicable to arriving aliens in § 235.3(c). In addition, § 235.3(c) has been amended to retain detention authority for aliens whose admissibility will be determined in exclusion proceedings after April 1, 1997.

Review of Credible Fear Determinations

The proposed regulation provides that an alien may receive, upon request, review by an immigration judge of an asylum officer's finding of no credible fear. A number of commenters requested that language be inserted in the interim regulation which presumes that an asylum officer's finding of no credible fear will be reviewed by an immigration judge unless the alien desires to abandon the review and return to his or her home country. If such a suggestion is not adopted, these commenters request that, at a minimum, language be inserted requiring that the asylum officer advise the alien of his or her right to request review of the negative decision and requiring the officer to ask the alien whether he or she desires such review. The language of section 235(b)(1)(B)(iii)(III) of the Act clearly provides that the alien has the obligation to request review of a negative credible fear determination. The Department notes that § 208.30(e) of the proposed regulation requires the asylum officer to inquire whether the alien wishes review of the negative credible fear determination. This provision is appropriated into Form I–589.

A number of commenters asked that the regulation provide that, whenever practicable, the credible fear review be conducted in person; that the alien may be assisted by an attorney or other representative; and that an interpreter be provided when necessary. Another commenter stated, however, that no counsel should be allowed in the review of credible fear determinations; rather, a representative should be allowed to submit a written statement. The Department recognizes the concerns raised by these commenters. However, because the proposed regulation sets forth a procedure for credible fear review that is consistent with the language of section 235(b)(1)(B)(iii)(III) of the Act and provides the Attorney General the flexibility to administer such a procedure, the rule was not changed.

One commenter asserted that the proposed regulation that provides for an alien who demonstrates a credible fear of persecution to be placed in removal proceedings under section 240 of the Act is incorrect. The commenter maintains that IIRIRA contemplates that such aliens will be limited to an "asylum only" hearing with an appeal to the Board. This portion of the regulation will not be changed in the interim rule. Section 235(b)(1)(B)(ii) of the Act provides that if an asylum officer determines that an alien has a credible fear of persecution, the alien "shall be detained for further consideration of the application for asylum. The remainder of section 235(b) of the Act is very specific as to what procedures should be followed if an alien does not establish a credible fear. However, the statute is silent as to the procedures for those who do demonstrate a credible fear of persecution. Once an alien establishes a credible fear of persecution, the purpose behind the expedited removal provisions of section 235 of the Act to screen out arriving aliens with fraudulent documents or no documents and with no significant possibility of establishing a claim to asylum has been satisfied. Therefore, the further consideration of the application for asylum by an alien who has established a credible fear of persecution will be provided for in the context of removal proceedings under section 240 of the Act.

Detention Following a Determination of Credible Fear

Numerous commenters stated that aliens who have established a credible fear of persecution are presumptively eligible for release and should not be detained unless the government can demonstrate that the alien poses a danger to the community or a risk of flight. Some stated that the burden should be on the government to prove that custody is necessary. Again, the clear language of the statute states that such aliens shall be detained. The parole provisions of section 212(d)(5) of the Act provide discretionary authority to the Attorney General to parole into the United States or from custody only on a case-by-case basis. The credible fear standard sets a low threshold of proof of potential entitlement to asylum; many aliens who have passed the credible fear standard will not ultimately be granted asylum. It should also be noted, as stated by one commenter, that these aliens are prima facie inadmissible to the United States. However, the Department intends, as part of the credible fear interview process, to assess the eligibility for parole of aliens who have been determined to have a credible fear. The discretion to release from custody will remain with the district director on a case-by-case basis.

Effect of Initiation of Removal Proceedings

Several commenters objected to the language in section 239.3 providing that the filing of a notice to appear has no effect in determining periods of unlawful presence. These commenters noted that this section of the regulation could be interpreted to mean that the period of time a respondent is in removal proceedings is not a period "authorized by the Attorney General," which would mean that removal proceedings would not toll the running of time periods for purposes of the bars to admission in section 212(a)(9)(B) of the Act. The result, the commenters assert, would be that people would be compelled to abandon their legitimate claims for relief from removal because, by pursuing such relief before an immigration judge or on appeal to the Board, an individual would risk accruing over 180 days in "unlawful status" and thereby becoming inadmissible under section 212(a)(9)(B)(i)(I) of the Act. The commenters recommended that either this language in section 239.2 be deleted or that it be replaced by a statement that the filing of a notice to appear tolls the period of unlawful presence.

Upon review, the Department has concluded that the regulation will be retained without change in the interim rule. Section 212(a)(9)(B)(iv) of the statute is clear that any period of illegal presence may tolled only in very limited circumstances. This section of the statute does not include issuance of a charging document among those circumstances. The Department does not agree that application of this section will deter aliens from pursuing valid claims for relief in removal proceedings. The same forms of relief, including asylum and adjustment of status, remain available in such cases, even after passage of the 180 day and one year time limits. Similarly, availability of voluntary departure is unchanged. Further clarification of the applicability of section 212(a)(9) will be included in a separate proposed rule which the Service is currently drafting.

Motions to Reopen After Departure From United States

A few commenters recommended that motions to reopen be permitted after departure and that the Department delete the language in § 3.2(d) of the proposed rule providing that motions to reopen or reconsider cannot be made by or on behalf of a person after that person's departure from the United States. These commenters contend that this regulation is no longer valid because IIRIRA substituted former section 106(c) of the Act with new section 242. New section 242 of the Act does not contain the provision of former section 106(c) barring judicial review of a final order of deportation or exclusion if the alien departed the United States after issuance of that order. The commenters assert that if a petition for review of habeas corpus is successful, the petitioner should be lawfully entitled to reopen his or her removal case, even though he or she departed from the United States. They argue that such motions will promote judicial efficiency and economy.

The Department has decided not to adopt this suggestion and the interim regulations will not be changed. No provision of the new section 242 of the Act supports reversing the long established rule that a motion to reopen or reconsider cannot be made in immigration proceedings by or on behalf of a person after that person's departure from the United States.

Departure Constituting Withdrawal of Motion

In the proposed regulation, § 3.2(d) did not provide that departure from the United States after the filing of a motion to reopen or a motion to reconsider constitutes a withdrawal of such motion. The Department has reconsidered the advisability of adjudicating motions to reopen and reconsider subsequent to an alien's departure from the United States. The interim regulation retains the long established principal that any departure subsequent to moving to reopen or reconsider constitutes a withdrawal of that motion. The Department believes that the burdens associated with the adjudication of motions to reopen and reconsider on behalf of deported or departed aliens would greatly outweigh any advantages this system might render. Further, the Department is confident that the immigration judge's discretionary authority to stay the deportation or removal of an alien who has filed a motion to reopen or reconsider will safeguard an alien from being inappropriately deported before he is heard on his motion to reopen or motion to reconsider.

Time and Numerical Limitations on Filing Motions

A number of commenters pointed out that §§ 3.2(d) and 3.23(b) subject all parties to time and numerical limits for motions to reopen in deportation and exclusion proceedings, but apply those limits only to aliens in removal proceedings. These commenters argue that the same limitations should apply to all parties in all proceedings.

IIRIRA specifically mandates that "[a]n alien may only file one motion to reopen" in removal proceedings. Congress has imposed limits on motions to reopen, where none existed by statute before, and specifically imposed those limits on the alien only. The interim regulations will not be changed.

One commenter suggested that the time and numerical limitations for motions to reopen should be broader than changed country conditions, as provided in § 3.23(b)(4). The commenter asserted that IIRIRA contains a much broader exception for individuals to apply for asylum beyond the one year deadline and that it is inconsistent for the statute to provide these broader exceptions if eligible applicants will be barred from applying for asylum because of the stricter motion to reopen standard. As noted earlier, the Department has decided to drop the requirement that the changed circumstances exception to the one year filing deadline in section 208(a)(2) of the Act be raised only through a motion to reopen. The Department also notes that the standard for reopening an asylum case provided in 8 CFR 3.23(b)(4) is entirely consistent with the asylum reopening standard provided in IIRIRA.

Retention of September 30, 1996 Cut-Off Date on Filing Certain Motions

Some commenters indicated that § 3.2(c)(2) does not retain the September 30, 1996 cut-off date for earlier motions to reopen, while the proposed section 3.2(b)(2) does retain the July 31, 1996 cut-off date for earlier motions to reconsider. The commenters point out that although these dates have passed, they should be retained to ensure the rights of respondents who submitted timely motions that have not yet been adjudicated. Since the commenters demonstrate that the cut-off date in §§ 3.2(c)(2) and 3.23(b)(1) are not necessarily obsolete references, those sections are revised in the interim regulation to retain the appropriate cut-off dates.

Immigration Court Rules of Procedure

One commenter noted that § 3.12 omitted disciplinary proceedings under § 292.3 from the scope of the rules of Immigration Court procedure. The commenter correctly noted that no explanation had been given as to why disciplinary proceedings were omitted from the scope of the rules. Section 292.3 is currently being revised by EOIR and will ultimately be moved into 8 CFR 3. It was thought that the disciplinary proceedings regulations would have been revised and moved into part 3 prior to publication of this interim regulation and that a reference to § 292.3 would not be necessary. The disciplinary proceedings regulation, however, is still in progress. The interim

rule will therefore place the reference to disciplinary proceedings pursuant to § 292.3 back into § 3.12.

One commenter claimed that § 3.25(b), which allows the immigration judge to waive a hearing and enter a decision upon a stipulated request for that order, raises due process concerns because the provision requiring an immigration judge to determine that the alien's waiver is voluntary, knowing and intelligent is not an adequate safeguard. The interim rule does not change this provision. The requirement that the immigration judge determine if an unrepresented alien's waiver is voluntary, knowing and intelligent before granting a stipulated request for an order safeguards against an imprudent waiver of a formal adjudication on the part of an unrepresented alien. Further, the request for the order and waiver of the hearing must not only be stipulated to by both the alien and the Service, but must also be approved by the immigration judge. If an immigration judge is confronted with a stipulated request raising due process concerns, he or she may examine that request in the context of a hearing.

Comments Relating to Removal Hearings Under Section 240 of the Act

Several commenters were concerned with various aspects of the ordinary removal hearing process. One aspect of the removal process that received several comments was the method of service of Form I–862, Notice to Appear. Specifically, commenters were concerned that service of the notice to appear by regular mail would be inadequate. A few commenters have assumed that because service by certified mail is not required in all cases, it will not be used in any case. Both the statute and the regulations, however, allow for service by regular mail only when personal service is "not practicable." Moreover, because the regulatory provisions at issue follow exactly the requirements of the Act, these provisions have not been changed in the interim rule.

Commenters expressed concern over the provision at § 240.8(d) that states that it is the alien's burden to establish that mandatory grounds for denial of any application for relief do not apply. It is well-settled that an alien bears the burden of establishing eligibility for relief or a benefit. This provision merely reflects this well-settled rule. Also, an alien is only required to establish eligibility by a preponderance of the evidence. This provision has not been changed in the interim rule.

One commenter expressed concern that § 240.10 of the proposed regulation does not cross-reference § 236.1(e). Section 236.1(e) requires that every detained alien be notified that he or she has the privilege of communication with consular authorities. The commenter proposed that § 240.10 require the Service to determine whether the alien is covered by § 236.1(e) and therefore must have an opportunity to contact the consular officer before a responsive pleading. The Service is required to comply with this requirement before commencement of removal proceedings. In the unlikely event that the Service failed to comply with this requirement, such a procedure could unduly delay an otherwise routine removal case. Contact with a consular officer is unlikely to have any bearing on a respondent's inadmissibility or deportability. The delay in the proceedings and its attendant cost would generate little substantive benefit for the alien as a result.

One commenter expressed concern over provisions in § 240.10(g) implementing section 241(b) of the Act. Those provisions allow the Attorney General to remove an alien to a country other than as designated by the alien under certain circumstances. The commenter suggests a 30-day waiting period for removal from the time the alien is given notice of the new country of removal. The Service has considered this suggestion and has decided not to change this provision in the interim rule. This procedure is not required by the Act, and would place a significant strain on detention resources.

Another commenter argued that provisions in § 240.7(a) relating to the admissibility of prior statements in removal proceedings were unnecessary. Specifically, the commenter was concerned about criminal pleas resulting in less than a criminal conviction and their effect on removal proceedings. It is always within the authority of the immigration judge to assign the statement a proper weight. Moreover, this provision was carried over from the prior regulations where it formerly existed at § 242.14(c). Thus, this section has not been changed in the interim rule.

Several commenters requested that § 240.12(a) of the proposed regulation include language that was in former § 242.18(a) requiring that the decision of an immigration judge "shall include a discussion of the evidence and findings as to deportability [inadmissibility]." The commenters assert that such findings and discussion of the evidence is necessary for the respondent to properly determine whether to file a motion for reconsideration of that decision or to prepare a notice of appeal with sufficient specificity to prevent a summary dismissal by the Board under § 3.1(d)(1)(1–a) of the regulations. The Department disagrees. The proposed regulation allows for an adequate articulation of the immigration judge's basis for his or her decision as well as the underlying reasons for granting or denying the request. The rule provides sufficient information for the respondent to prepare a notice of appeal with sufficient specificity to prevent a summary dismissal of appeal. For these reasons this section has not been changed in the interim rule.

Other comments regarding procedures are not discussed individually and have not been adopted in this interim rule. Most recommended changes to existing procedures or commented on matters which directly resulted from changes to the law itself. These comments will be reviewed and considered in greater detail when the final rule is prepared.

Guardian Ad Litem

In the proposed rulemaking, the Department solicited comments on the advisability of procedures for appointment of guardians ad litem. Several thorough and detailed comments were received. Because the issue is a complex and sensitive one, the Department has decided to further examine the issue and prepare a separate rulemaking at a later date.

Cancellation of Removal

A number of commenters expressed concern with section 240.20(b) of the proposed regulation, which states that an application for cancellation of removal may be filed only with the Immigration Court after jurisdiction has vested pursuant to section 8 CFR 3.14. Section 3.14(a) provides that jurisdiction vests when a charging document is filed with the Immigration Court by the Service. The practical concern raised by the commenters arise if the Service serves Form I–862, Notice to Appear, on a respondent but does not file it with the Immigration Court. If the Service does not file a notice to appear which has been served, a respondent would not have access to the Immigration Court to obtain forms of relief such as cancellation of removal or adjustment of status. Moreover, the service of the notice to appear will cut off the accrual of time in continuous residence or continuous physical presence for that respondent under new section 240A(d)(1) of the Act. The commenters proposed that language be added to § 3.14(a) of the regulation allowing for jurisdiction to vest and

proceedings to commence when a charging document is filed by the Service or by a respondent. The commenters added that § 3.14(a) already permits immigration judges to conduct bond proceedings and credible fear determinations without a charging document being filed with the court. Thus, they assert, there is no rational basis to permit the initiation of those two types of proceedings and not permit an immigration judge to consider an application for cancellation of removal after a respondent files a charging document that previously has been served on the respondent by the Service. The ability to file a charging document has rested exclusively with the Service for a number of years, without problem. This portion of the proposed regulation will not be changed in the interim rule. The issue of the initiation of removal proceedings lies within the prosecutorial discretion of the Service. The Service needs to have control over when charging documents are filed with the Immigration Courts in order to best manage its administrative resources.

Apprehension, Custody, and Detention of Aliens

The IIRIRA extended the mandatory detention provisions to additional classes of inadmissible and deportable aliens but provided an exception for certain witnesses. It also allowed the Attorney General the option of a transition period for implementation of mandatory detention. The Service exercised this discretion and implemented the transition period custody rules on October 9, 1996, effective for 1 year. This interim rule amends the regulations to comply with the amended Act by removing the release from custody provisions for aliens who may no longer be released. These amendments to the regulations will take effect upon the termination of the transition period. As for non-criminal aliens, the rule reflects the new $1,500 minimum bond amount specified by IIRIRA. Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.

Several commenters complained that the Service has no national standards of detention. They stated that policies, practices, and decisions regarding outside communication are bewildering, arbitrary, and inconsistent. Consistent with its focus on providing safe, secure, and humane detention environments, the Service has implemented detention facility improvements and has set as a goal the accreditation of each of its facilities. The Krome Service Processing Center (SPC) has received accreditation with commendation from the Joint Commission of Healthcare Organizations (JCHO), the most prestigious medical accreditation that can be awarded. Currently, six SPCs are accredited by the National Commission on Correctional Health Care (NCCHC), and accreditation is pending at the remaining three SPCs. The Denver contract facility is also NCCHC accredited. Six contract facilities have American Correctional Association (ACA) accreditation and two others have begun the accreditation process.

Several commenters stated that the Service should require ACA standards in local detention facilities used. Approximately 46 percent of the detention space used by the Service is with state and local facilities. Formal ACA accreditation of a state or local facility is a matter for the state or local government. The Service could not meet its detention requirements by using only facilities that have been formally accredited. The Service has established its own rigorous inspection program that uses ACA standards for evaluation of a facility. The Service will not use a facility that fails to pass our inspection.

Several commenters stated that § 236 of the proposed rule as written is a reversal of long established procedure that provides that a noncriminal alien is presumptively eligible for release. The Service has been strongly criticized for its failure to remove aliens who are not detained. A recent report by the Department of Justice Inspector General shows that when aliens are released from custody, nearly 90 percent abscond and are not removed from the United States. The mandate of Congress, as evidenced by budget enhancements and other legislation, is increased detention to ensure removal. Accordingly, because the Service believes that the regulation as written is consistent with the intent of Congress, the interim rule has not modified the proposed rule in this regard.

Several commenters noticed a discrepancy between the discussion in the supplementary information and the substance of § 236.1(c)(5) of the proposed regulation. The supplementary information stated the Department's intended approach, and clause (i) of the proposed regulation was in error. Accordingly, the interim rule removes paragraph (c)(5)(i) of § 236.1 and renumbers the remaining paragraphs (c)(5)(ii), (iii), and (iv). The effect of this change is that inadmissible aliens, except for arriving aliens, have available to them bond redetermination hearings before an immigration judge, while arriving aliens do not. This procedure maintains the status quo regarding release decisions for aliens in proceedings, as discussed in the supplementary information of the proposed regulation.

One commenter stated that no criminal alien may be released pursuant to the Transition Period Custody Rules in section 303(b)(3) of IIRIRA where there is sufficient space to detain the individual alien. The same commenter stated that it was not the intention of Congress that EOIR continue to exercise bond redetermination authority under the Transition Rules. Aside from the classes of aliens covered by the Transition Rules, however, the basic structure of the Rules is essentially that of section 242(a)(2) of the Act as it stood prior to AEDPA, providing for the release of "lawfully admitted" criminal aliens (as well as unremovable criminal aliens), in the exercise of the Attorney General's discretion, when such aliens can demonstrate the absence of a danger to the community or a flight risk upon release. The Department intends to issue a separate proposed rule in the near future establishing both substantive limitations and procedural safeguards concerning the release of criminal aliens eligible to be considered for release under the Transition Rules. Accordingly, the interim rule has not been modified.

Expedited Deportation Procedures for Aliens Convicted of Aggravated Felonies Who Are Not Lawful Permanent Residents

The interim rule amends the Service's regulations to comply with the Act, as amended, by: including aliens who have lawful permanent residence on a conditional basis under section 216 of the Act as being subject to expedited administrative deportation procedures; removing references to prima facie eligibility for relief; and eliminating references to release from custody, since aliens subject to these proceedings are now statutorily ineligible for release as a result of changes to other sections of the Act.

Several commenters addressed the time period for response, the role of the deciding Service officer, the risk of deporting U.S. citizens or permanent residents, and other aspects of the procedure. These procedures were not changed from the regulation as it was written at § 242.25. These comments were previously addressed when the regulation was published on August 24, 1995.

Voluntary Departure and Employment Authorization

The proposed rule outlined how voluntary departure would be handled at various stages of proceedings. Since new section 240B of the Act and the corresponding proposed regulations represented a significant departure from the predecessor provisions for voluntary departure, public comments regarding the Department's approach to implementation of this provision were particularly welcomed.

Several commenters wrote in opposition to the language in § 240.25 providing that "[t[he Service may attach to the granting of voluntary departure any conditions it deems necessary to ensure the alien's timely departure from the United States." Many based their opposition on their contention that the language was "beyond the scope of the legislation." However, a similar provision already exists in regulation. The present § 242.5(b) states that "officers * * * may deny or grant the application and determine the conditions under which the alien's departure shall be effected." Similarly, current § 244.1 states that voluntary departure may be authorized "under such conditions as the district director shall direct." Basically, the language of the proposed rule merely stated what was already in regulation. In addition, it is noted that voluntary departure is a privilege granted by the Service and is not an entitlement to be claimed by the alien. An alien must establish both that he or she is statutorily eligible for voluntary departure and that he or she merits voluntary departure in the exercise of discretion. *See Matter of Seda*, 17 I&N Dec. 550 (BIA 1980). The ability to attach conditions to a grant of voluntary departure is necessary to the Service's ability to consider the request and is fully consistent with the intent of Congress in enacting section 240B of the Act, which tightens the previously applicable voluntary departure provisions in order better to assure actual departure. Therefore, the language will not be changed for the interim rule.

Several commenters objected to the maximum time limits for voluntary departure of 120 days prior to completion of removal proceedings, and 60 days at the completion of removal proceedings. Those commenters indicated that the statutory language limiting voluntary departure to 120 and 60 days did not preclude an interpretation authorizing additional extensions of voluntary departure in increments of 120 or 60 days. Several commenters, however, wrote in support of the voluntary departure provisions contained in the proposed rule. One commenter stated that "it would be unlawful to extend or renew voluntary departure beyond the single period of 60 or 120 days specified in that section." Another commenter stated that "These changes represent nothing more or less than what has been mandated by Congress, and there is no basis on which they can be substantively altered or amended in the promulgation of the interim rule."

In its proper form, voluntary departure serves several functions. First, it allows the Service to allocate its enforcement resources more efficiently through case management. Second, it saves resources by allowing aliens to depart at their own expense rather than at the expense of the government. Finally, it benefits the aliens involved by allowing them to avoid the harsh consequences of a formal order of removal. Too often, however, voluntary departure has been sought and obtained by persons who have no real intention to depart. The IIRIRA was intended as a comprehensive reform of the immigration system and was specifically designed to curb abuses of voluntary departure. A reading of the voluntary departure provisions allowing for extensions of voluntary departure in multiple increments of 120 or 60 days inconsistent with the purpose of the statute and would be at best difficult to reconcile with the language of section 240B of the Act.

Prior to IIRIRA, the authority for voluntary departure was found in section 244(e) of the Act, which contained no time limitation. Now, for the first time, there are statutory restrictions limiting the time for which voluntary departure may be authorized. The Conference Report on H.R. 2202 stated that under section 240B(a) of the Act, "[p]ermission to depart voluntarily under this subsection shall not be valid for a period exceeding 120 days * * *." Similarly, the Conference Report stated that under section 240B(b) of the Act, "[t]he period for voluntary departure cannot exceed 60 days * * *. The Department concludes that the total period, including all extensions, may not exceed 120 days for voluntary departure granted prior to completion of proceedings or 60 days for voluntary departure granted at the conclusion of proceedings.

Several commenters objected to the elimination of employment authorization for aliens who have been granted voluntary departure. Several other commenters wrote in favor of the elimination. Prior to April 1, 1997, voluntary departure was often granted by EOIR and the Service for extended periods of time. With grants and extensions of voluntary departure for extended periods of time, it was reasonable to allow for employment authorization. Now, voluntary departure is limited to a maximum of 120 days. Moreover, it has long been recognized that employment provides a magnet that draws aliens to this country. Voluntary departure provides an opportunity for an alien to complete the process of departure from the United States and should not be seen as a new opportunity for employment authorization. Although the granting of voluntary departure will not, in and of itself, cause any previously approved employment authorization to be terminated, neither will the granting of voluntary departure provide a new opportunity to apply for employment authorization. Therefore, the interim rule will eliminate the general provision found at § 274a.12(c)(12) for employment authorization for aliens who have been granted voluntary departure. Employment authorization will be retained only for beneficiaries of the Family Unity Program (section 301 of the Immigration Act of 1990, Pub. L. 101–649).

Several commenters expressed concern about the consequences for certain abused immigrant spouses and children of lawful permanent residents with properly filed self-petitions who were granted voluntary departure and work authorization pending availability of an immigrant visa. The Department shares the concerns of the commenters and is looking at how best to address them outside the context of voluntary departure.

Several commenters objected to the provisions for appeals, generally stating that the Service could appeal approvals, yet aliens cannot appeal denials. In § 240.25 (voluntary departure by the Service), the appeal procedure at paragraph (e) states that a denial of an application for voluntary departure may not be appealed, but such denial shall be without prejudice to the alien's right to apply to the immigration judge in accordance with § 240.26. Section 240.26(g)(1) (voluntary departure by EOIR) places limitations for appeals only on the Service, and places none on the alien. Section 240.26(g)(2) discusses an appeal of a grant or denial of voluntary departure. Therefore, the appeal procedures in §§ 240.25(e) and 240.26(g)(1) and (2) do not allow the Service to appeal approvals while precluding aliens from appealing denials. In reviewing the comments, however, it became apparent that the language of 240.26(g) appeared to

prohibit the Service from appealing a grant of voluntary departure on the ground that the alien was not eligible for the relief. Any such implication was unintended, and the language has been corrected to reflect that both the alien and the Government may appeal issues of both eligibility and discretion, but that neither may appeal the length of the voluntary departure period granted by the immigration judge.

One commenter expressed concern about the dangerous intersection between the voluntary departure time limits and new section 212(a)(9)(B) of the Act, which imposes a 3- to 10-year bar to admission upon any alien unlawfully present in the United States from 180 days to more than 1 year. The commenter pointed out that individuals now granted voluntary departure for extended periods of time for humanitarian reasons will become unlawfully present after 120 days of voluntary departure. The commenter stated that if deferred action is to be the sole avenue of relief, the Service needs to develop policy guidelines so that district directors will not be afraid to use it to enable the sick and the dying to receive treatment and to enable their parents to work for health insurance. The Department acknowledges that there will be some compelling humanitarian cases for which voluntary departure cannot be extended. A district director will be able to give individual consideration for a recommendation for deferred action to the regional director. If approved by the regional director, employment authorization may be granted under the provisions of § 274a.12(c)(14).

Several commenters objected to the provision for revocation found in § 240.25(f), and stated that revocation of voluntary departure should require notice and the opportunity to be heard. However, this provision already exists in the current § 242.5(c), which provides for revocation of a grant of voluntary departure without notice. The revocation is an adverse action initiated by the Service; therefore, personal service of the decision is required in accordance with § 103.5a(c). However, a notice of intent to revoke will not be issued. The interim rule will be amended to point out that the revocation shall be communicated in writing, and shall cite the statutory basis for revocation.

Several commenters objected to the limits in § 240.26(b)(1) on grants of voluntary departure under section 240B(a) of the Act, particularly the requirement that a request for such relief be made at or before a master calendar hearing, and decided by the immigration judge within 30 days thereafter. Other commenters stated that these provisions were confusing.

The regulation has not been changed substantively based on these comments but has been revised to clarify the applicable time periods. The revisions make it clear that in order to obtain voluntary departure from an immigration judge under section 240B(a) of the Act, an alien must request it prior to or at the master calendar hearing at which the case is initially calendared for a merits hearing, which is not necessarily the first master calendar hearing. This ensures that the alien is not obligated to request voluntary departure at preliminary stages of the process, before the case is ready to be scheduled for a merits hearing. The Department believes that this allows sufficient time for the alien to consider voluntary departure and other options and to discuss them with counsel. If such requests cannot be resolved at the master calendar hearing the immigration judge may take an additional 30 day period in case he or she desires additional time to consider the voluntary departure request or to complete the processing. In the event that the alien decides only after the specified master calendar hearing that he or she wishes to request voluntary departure, such a request can still be made later, but requires the concurrence of the Service under § 240.26(b)(2). Finally, even without Service concurrence, the immigration judge may grant voluntary departure under section 240B(b) of the Act upon conclusion of the proceeding.

Several commenters objected to the language at § 240.26(b)(1)(iv) authorizing the grant of voluntary departure by immigration judges pursuant to section 240B(a) of the Act only if the alien waives appeal of all issues. The Department believes that voluntary departure authorized by immigration judges prior to completion of proceedings should be for the purpose of settling cases in the interests of economy and justice. If an alien wishes to contest any issues, the proper forum will be a merits hearing. Once a case proceeds to a merits hearing and contested issues are settled, voluntary departure remains a form of relief; however, it may be authorized only pursuant to the provisions of section 240B(b) of the Act for voluntary departure granted at the completion of removal proceedings.

Several commenters wrote that the regulation should provide an exemption for an alien who would otherwise have a removal order issued against him or her for failing to depart when the alien, through no fault of his own, has not obtained travel documents. The regulation already provides, at § 240.26(b)(3)(ii), that the Service in its discretion may extend the period within which the alien must provide such documentation. However, the provision for extension is discretionary and not an entitlement. The alien in removal proceedings bears the responsibility to demonstrate eligibility for any relief requested. The alien is encouraged to work with the government of his or her home country to obtain a valid passport or other travel authorization if a travel document is necessary for return to that country. Failure to obtain necessary travel documentation will leave the Department no option but to enforce the alternate order of removal.

Several commenters pointed out that in a case involving an alien who was previously granted voluntary departure and failed to depart, the proposed regulation correctly reflects the statutory language that such an alien is not eligible for voluntary departure or relief under sections 240A, 245, 248, and 249 of the Act. The commenters pointed out, however, that the proposed regulation fails to include the statutory requirement that the alien must receive notice of the penalty for failing to depart. The Department agrees with the commenters, and will change the language in the interim rule to reflect the requirement that a voluntary departure order permitting an alien to depart voluntarily shall inform the alien of the penalties under section 240B(d) of the Act.

Sections 240B(a)(1) and 240B(b)(1)(C) of the statute bar aliens deportable under section 237(a)(2)(A)(iii) of the Act from voluntary departure. Because aliens entering without inspection are no longer considered deportable, however, the statutory bar might be read as allowing such aliens to obtain voluntary departure despite an aggravated felony conviction. The statute would thus create the anomaly of more favorable treatment for aggravated felons who enter without inspection. The Department does not believe that Congress intended such an anomaly. In any event, having become aware of the problem, the Department now exercises its discretion to bar such aliens from receiving this form of relief.

Finally, several commenters requested clarification regarding the effect of a motion or appeal to the Immigration Court, BIA, or a federal court on any period of voluntary departure already granted. Since an alien granted voluntary departure prior to completion of proceedings must concede removeability and agree to waive

pursuit of any alternative form of relief, no such appeal or motion would be possible in this situation. Regarding post-hearing voluntary departure, the Department considered several options, but has not adopted any position or modified the interim rule. The Department has identified three possible options: no tolling of any period of voluntary departure; tolling the voluntary departure period for any period that an appeal or motion is pending; or setting a brief, fixed period of voluntary departure (for example, 10 days) after any appeal or motion is resolved. The Department wishes to solicit additional public comments on these or other possible approaches to this issue so that it can be resolved when a final rule is promulgated.

Detention and Removal of Aliens Ordered Removed

This rule provides for the assumption of custody during the removal period, allows detention beyond the period, and provides conditions for discretionary release and supervision of aliens who cannot be removed during the period.

Several commenters stated that the wording of the statute provides for release of noncriminal aliens during the removal period and suggested that the Service adopt a policy of allowing the alien to remain at liberty during the 90-day removal period. One commenter stated that the proposed rule is consistent with the language and intent of IIRIRA and should be retained in the interim rule. The plain language of the statute requires that an alien be held in custody during the 90-day removal period and not be released. Accordingly, the proposed language is retained in the interim rule.

Several commenters stated that the statute requires release on an order of supervision after the expiration of the 90-day removal period. One commenter stated that the proposed rule is consistent with the language and intent of IIRIRA and should be retained in the interim rule. Taken together, sections 241(a)(3) and (a)(6) of the Act provide that any alien who is inadmissible or who is deportable on the grounds enumerated in paragraph (a)(6) may be detained beyond the removal period. Additionally, any alien who is a risk to the community or is unlikely to appear for removal may be detained regardless of the charge of inadmissibility or deportability. Accordingly, the proposed language is retained in the interim rule.

Reinstatement of Removal Orders Against Aliens Illegally Reentering

Several commenters suggested that aliens caught illegally reentering the United States after removal should be provided a hearing before an immigration judge. They expressed concern that issues such as identity and the propriety of the earlier removal order would not be addressed. One commenter argued that new section 241(a)(5) of the Act was not intended to be a substantive revision of former section 242(f) of the Act, which also dealt with reinstatement of deportation orders, but was merely taken from a bill proposing to recodify the Act without substantive change. One commenter wrote in support of these provisions, stating that they were consistent with the language and intent of IIRIRA.

A review of the relevant statutory provisions reveals that a substantive change was in fact effected in the transition from section 242(f) of the Act to section 241(a)(5) of the Act. Section 242(f) of the Act provided only that the deportation order was to be reinstated upon illegal entry. New section 241(a)(5) of the Act provides that the removal order is reinstated from its original date, but adds the provision "and is not subject to being reopened or reviewed."

The Service has taken steps to ensure the positive identification of an alien apprehended and removed under this section. In § 241.8(a)(2), the regulation requires fingerprint identification before an alien can be removed under section 241(a)(5) of the Act. In cases where no fingerprints are available and the alien disputes that he or she was previously removed, the alien will not be removed under section 241(a)(5) of the Act. Because the process mandated by the proposed rule adequately addresses the concerns expressed by the commenters, this provision remains unchanged in the interim rule.

Detention and Removal of Stowaways

Section 241.11 implements section 305 of IIRIRA, defining the responsibilities for stowaways and costs of detention in the new section 241 of the Act. All stowaways are deemed to be inadmissible under the Act and are not entitled to a hearing on admissibility. Those with a credible fear of persecution may seek asylum in accordance with 8 CFR part 208 in special proceedings before an immigration judge. The statute is very specific regarding most detention and removal responsibilities of the carriers.

Several commenters stated that the regulations do not contain a definition of stowaway. Since IIRIRA added a clear definition of stowaway in section 101(a)(49) of the Act, the Department saw no need to repeat the definition in the regulations. One commenter objected to the 15-day detention period for asylum-seeking stowaways, for which the owner of the vessel or aircraft bringing the stowaway is obligated for the costs of detention. As this time frame is mandated by statute in section 241(c)(3)(A)(ii)(III) of the Act, the Department is bound by it.

One commenter suggested that the regulation clearly define the situations where the Service should allow the carrier to remove, by aircraft, a stowaway who arrived by vessel. The regulation at § 241.11(c)(1) has been amended to include general circumstances where the Service might favorably consider such request. These circumstances will also be more thoroughly addressed in the *Inspector's Field Manual*.

One commenter stated that the regulations should define how the Service will make a determination that the necessary travel documents for the stowaway cannot be obtained, so as to shift the costs of the stowaway's detention from the carrier to the Service, as stated in section 241(c)(3)(A)(ii)(II) of the Act. The Department has not had sufficient time to consider this issue and so will address it in the final rule.

Adjustment of Status

Some commenters objected to the policy statement contained in the proposed rule that amended § 245.1(c)(8) and indicated that, as an exercise of discretion, the Attorney General would not adjust the status of arriving aliens ordered removed under section 235(b)(1) of the Act or in proceedings under section 240 of the Act. Those commenters believed that such a statement exceeded the Attorney General's authority by eliminating an immigration benefit that has not been eliminated by an act of Congress. Other commenters suggested that the policy statement did not go far enough and that the policy should be expanded to include all inadmissible aliens in section 240 proceedings, not just arriving aliens. In this interim rule, the Department will maintain the position taken in the proposed rule. This position promotes the Department's objective of taking steps to preserve the integrity of the visa issuance process while preserving the current additional avenue for review of discretionary denials of adjustment applications filed by aliens present without inspection and admission. The Department continues to believe this position is consistent with the intent of Congress when it passed IIRIRA.

In response to the commenters who suggested this policy exceeded the Attorney General's statutory authority, it is noted that section 245 of the Act clearly and unambiguously states that adjustment of status is a discretionary decision, subject to such regulatory limitations as the Attorney General may prescribe. The same commenters stated that aliens who depart using an advance parole authorization and whose applications are subsequently denied would no longer be able to renew their adjustment application before an immigration judge. However, the revisions to § 245.2(a)(5)(ii) contained in the proposed rule preserved this procedure.

Rescission of Adjustment of Status

The interim rule includes several changes to 8 CFR part 246 that update obsolete references and bring the regulation into agreement with the statute. References to special inquiry officer were updated to refer to immigration judges. References to status of permanent residence acquired through outdated sections of law, and any related procedures for special report to Congress, were eliminated. In § 246.2, the provision that limited the rescission authority of the district director to cases that had been adjusted under section 245 of 249 or the Act was expanded to include all types of adjustment, thereby bringing the regulation into accord with the statute. In § 246.6, the requirements for immigration judges' decisions were changed to comport with the requirements of immigration judges' decisions found in § 240.12. The reference to Form I–151 in § 246.9 was removed because Form I–151 is no longer a valid document.

Elimination of Mexican Border Visitor's Permit

The proposed rule eliminated the Form I–444, Mexican Border Visitor's Permit, which is issued at land border ports-of-entry along the United States/Mexico border to Mexican nationals traveling for more than 72 hours but less than 30 days in duration or for more than 25 miles from the United States/Mexico border but within the five states of Arizona, California, Nevada, New Mexico, or Texas. The elimination was proposed because the Form I–444 does not have adequate security features to deter counterfeiting, and provides no tracking or enforcement benefits.

One commenter suggested that since the elimination of the Form I–444 was not mandated by IIRIRA and represented a significant departure from past procedure, it should be removed from this rule and proposed in a separate rulemaking. The commenter specifically objected to the elimination of the time and distance controls imposed on Mexican nationals inherent in the issuance of the Form I–444. As stated in the proposed rule, the Service has been unable to demonstrate that there is any connection between the limits on travel by persons issued Forms I–444 and immigration violations. Mexican nationals must undergo the same interview process to obtain a Border Crossing Card (BCC) or nonimmigrant visa as any other applicant from any other country. New validity periods have been imposed in recent years on the BCC, requiring periodic renewal. A Mexican national entering with a BCC undergoes the same inspection process as any other applicant for admission and must establish eligibility as a visitor for business or pleasure upon each entry to the United States. Presently, Mexican nationals who request entry at a Mexican land border port-of-entry to travel more than 30 days or beyond the five-state area, and who establish admissibility as a visitor, are issued Form I–94, Arrival/Departure Record, and allowed to proceed anywhere in the United States with no additional restrictions. Mexican BCC holders entering the United States by air or via the Canadian land border are also admitted with no restrictions. The elimination of the Form I–444 does not expand the possible use of the BCC in any way; it merely standardizes the entry documentation issued. The Department can see no reason to continue to impose specific controls on Mexican nationals seeking admission only at Mexican border ports-of-entry, and so accordingly will retain in the interim rule the elimination of Form I–444 in favor of more thoroughly documenting entry with Form I–94.

Visa Waiver Pilot Program (VWPP)

The provisions relating to the VWPP in 8 CFR part 217 were included in the proposed rule primarily as part of the review intended to streamline and eliminate duplication in Department regulations. In addition, several changes were made to conform to new statutory terminology and to include certain new procedures created as a result of IIRIRA. One commenter expressed concern that there could be confusion in § 217.4 as to what constitutes fraudulent or counterfeit documents and that aliens could be removed without the opportunity for review by an immigration judge. The language in this section was not changed from what has existed in the regulations for years. Moreover, aliens applying under the VWPP are, by statute, not entitled to a hearing before an immigration judge, except on the basis of an asylum claim. The only change that the proposed rule made to this provision was that the hearing provided for VWPP asylum claimants is now more clearly limited to asylum issues only. In addition, inadmissible VWPP applicants may be temporarily refused permission to enter the United States, but are not subject to the formal expedited removal provisions of section 235(b)(1) of the Act.

One commenter objected to several aspects of the amended language in § 217.6 relating to carrier agreements. Since most of the language in this section is already contained on the Form I–775, Visa Waiver Pilot Program Agreement, which is signed by all carriers participating in the VWPP, much of this section has been removed from the interim rule. The commenter objected to the elimination of due process safeguards in allowing termination of agreements by the Commissioner, with 5 days notice to the carrier, for failure to meet the terms of the agreement. This is not a new provision. The exact language has existed in the regulations since at least 1991 and has also been part of the existing Form I–775 for years, and will be retained. The definition of round (return) trip ticket has been revised to conform with terminology used elsewhere in the regulation and carrier agreement, and to provide for electronic ticketing technology.

Miscellaneous Changes

The proposed rule contemplated removing 8 CFR part 215, Controls of Aliens Departing from the United States, because it was also contained in the Department of State regulations. The Department has decided to retain 8 CFR part 215.

The proposed rule contained § 240.39, which retained material previously found in § 242.22, and § 240.54, which preserved the former § 242.23. These sections have been removed from the interim rule since the subjects are encompassed by §§ 3.23 and 241.8, respectively.

One commenter correctly noted that § 216.5(e)(3)(ii) had been amended to allow an alien in exclusion, deportation, or removal proceedings to file a petition for waiver only until such time as there is a final order of deportation or removal. In § 216.5(e)(3), adjudication of a waiver is based upon the alien's claim of having been battered or subjected to extreme mental cruelty. The commenter stated that there is no reason to shorten

the period allotted for a battered woman and child to file a battered spouse waiver. The proposed rule change was meant to apply generally to all aliens filing a petition for a waiver, and was intended to add a point of finality to the time when the petition could be filed. Therefore, the interim rule has been amended to clarify the general applicability to all petitions for waiver. The regulation will permit filing of a petition for waiver at any time prior to the second anniversary of obtaining permanent resident status and up to the point of receiving a final order in exclusion, deportation, or removal proceedings, which includes any possible Federal court review.

Several commenters were concerned about removing language at § 204.2(a)(1)(iii)(A) through (C), which dealt with commencement and termination of proceedings, and exemptions from the general prohibition against approval of visa petitions filed on the basis of marriages during proceedings. The language was removed as part of the Service's streamlining initiative because it was duplicative of language in § 245.1(c)(8). The interim rule does clarify that in visa petition proceedings the burden of proof remains on the petitioner to establish eligibility for the exemption found at section 204(g) of the Act. In addition, § 204.2(a)(1)(iii) introductory text has been amended reflecting that § 245.1(c)(8) has been renumbered as § 245.1(c)(9).

Streamlining, Updating, and Reorganization

Several commenters expressed concern about sections of the regulation that were identified in the Supplementary Information of the proposed regulation as being revised solely for the purpose of streamlining: elimination of unnecessary recitation of statutory provisions; discussion of procedural matters; elimination of duplication; or general updating. It is emphasized that these streamlining changes neither created new requirements nor abolished any existing ones. Similarly, several comments concerned regulatory provisions that were simply carried over from the existing regulation, but relocated to new sections in order to conform with the general regulatory outline for the affected sections. Although the Department reviewed these comments, none resulted in further amendments to the streamlined or reorganized paragraphs. Other commenters proposed changes to current regulations that are beyond the scope of this rulemaking. These suggestions will be considered for inclusion in separate regulations after implementation of IIRIRA.

The Department solicited comments on the general organization and restructuring contained in the proposed regulation. No comments were received on this topic. Accordingly, the organizational structure has not been revised in the interim rule.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant adverse economic impact on a substantial number of small entities because of the following factors. This rule affects only federal government operations by codifying statutory amendments to the Immigration and Nationality Act primarily regarding the examination, detention, and removal of aliens from the United States. It affects only individuals and does not impose any reporting or compliance requirements on small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Executive Order 12866

This rule is considered by the Department of Justice to be a "significant regulatory action" under Executive Order 12866, section 3(f), because it will have a significant economic impact on the federal government in excess of $100 million. No economic impact is anticipated for state and local governments. The Service projects significant increases in detention-related costs due to the provisions of IIRIRA that mandate the custody of criminal aliens who have committed two or more crimes involving moral turpitude, aliens convicted of firearms offenses, and aliens who have been convicted of an aggravated felony. The type of crime that will qualify as an "aggravated felony" has been greatly expanded under IIRIRA. In addition, all aliens, even non-criminal aliens, who are subject to a final administrative order of removal must be held in custody until the alien can be removed from the United States. If the person is not removed within 90 days he or she may be released from custody.

The Commissioner has notified Congress pursuant to section 303(b) of IIRIRA that the Service lacks sufficient space to immediately implement the mandatory custody provisions. This notification will delay for 1-year full implementation of the new mandatory custody provisions. Section 303(b) also provides for an additional 1-year delay in implementation of the mandatory custody provisions upon a second certification that space and personnel are inadequate to comply with the requirement. The Service estimates that the cost to enforce the requirement to detain all criminal aliens will be at least $205,000,000. Of that total, personnel costs account for $65,284,000 and include detention and deportation officers ($32,873,000), investigators ($25,501,000), legal proceedings personnel ($4,968,000), and administrative support ($1,942,000). Non-personnel requirements are projected to be at least $139,732,000 and includes increases in bed space and related alien custody requirements ($82,782,000—funds 3,600 beds @ $63.00 per day), increases in alien travel expenses ($36,000,000—3,600 removals @ $1,000 each), and detention vehicle expenses ($20,950,000). The Service is currently in the process of projecting the costs of the IIRIRA requirement that we detain all aliens with administratively final orders of deportation pending their removal.

In addition to these detention related costs, the Service estimates that the expenses for training employees on the provisions of the new law and the regulations will be $2,977,500. The cost to the Service related to additional forms or changes needed to current forms is estimated to be $2,000,000 (until the final list of form requirements is completed it is not possible to more accurately assess this cost). Finally, the Department believes there may be some increases needed for immigration judges to review credible fear determinations made under section 235(b) of the Act.

The EOIR estimates increases in its costs related to IIRIRA-mandated immigration judge review of credible fear determinations (which must be made under stringent time frames) and the prompt immigration judge review that IIRIRA requires of certain expedited removal orders entered against aliens claiming to be, lawful permanent residents, asylees, or refugees. Further, EOIR projects costs associated with the possible need for an Immigration Court presence at certain ports-of-entry and additional detention centers, which will result from the above-mentioned credible fear review and expedited removal review process. Also, there will be costs related to the overall need for an increased Immigration Court presence at existing Service detention centers to support the processing of the additional detainees that will result from the implementation of this rule. Similarly, EOIR anticipates a need for construction of new Immigration Courts at new detention facilities the Service may open as a result of this rule's implementation.

Although there are still a number of unknown variables which could effect the total costs to EOIR to implement its part of the new expedited removal process and to respond to the increased number of detained individuals in proceedings under this rule, EOIR estimates that the total annual cost for EOIR could be as high as $25,000,000. Of that total, the cost for hiring new immigration judges and legal support staff is projected to be $21,300,000. The cost for new video and audio teleconferencing equipment is estimated at $3,000,000. Training costs are expected to be approximately $400,000. Finally, forms and other support requirements are estimated to cost $300,000.

Small Business Regulatory Enforcement Fairness Act of 1996

The Department of Justice considers this rule to be a "major" rule under the Small Business Regulatory Enforcement Fairness Act of 1996 in view of the projected expenditures for the federal government as discussed in the preceding section. The Department finds good cause to make this rule effective on April 1, 1997, in order to meet the statutory deadline. These rules are essential for the implementation of the provisions of Title III-A of IIRIRA, which become effective on that date pursuant to Section 309(a) of IIRIRA.

Executive Order 12612

The regulation adopted herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988

This interim rule meets the applicable standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. The OMB control numbers for these collections are contained in 8 CFR 299.5, Display of control numbers.

List of Subjects

8 CFR Part 1

Administrative practice and procedure, Immigration.

8 CFR Part 3

Administrative practice and procedure, Immigration, Organization and functions (Government agencies).

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Reporting and recordkeeping requirements.

8 CFR Part 204

Administrative practice and procedure, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 207

Administrative practice and procedure, Refugees, Reporting and recordkeeping requirements.

8 CFR Part 208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 209

Aliens, Immigration, Refugees.

8 CFR Part 211

Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 213

Immigration, Surety bonds.

8 CFR Part 214

Administrative practice and procedure, Aliens.

8 CFR Part 216

Administrative practice and procedure, Aliens.

8 CFR Part 217

Air carriers, Aliens, Maritime carriers, Passports and visas.

8 CFR Part 221

Aliens, Surety bonds.

8 CFR Part 223

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 232

Aliens, Public health.

8 CFR Part 233

Administrative practice and procedure, Air carriers, Government contracts, Travel.

8 CFR Part 234

Air carriers, Aircraft, Airports, Aliens.

8 CFR Part 235

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 236

Administrative practice and procedure, Aliens, Immigration.

8 CFR Part 237

Aliens.

8 CFR Part 238

Administrative practice and procedure, Aliens.

8 CFR Part 239

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 240

Administrative practice and procedure, Aliens, Immigration.

8 CFR Part 241

Administrative practice and procedure, Aliens, Immigration.

8 CFR Part 242

Administrative practice and procedure, Aliens, Immigration.

8 CFR Part 243

Administrative practice and procedure, Aliens.

8 CFR Part 244

Administrative practice and procedure, Aliens.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 246

Administrative practice and procedure, Aliens, Immigration.

8 CFR Part 248

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 249

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 251

Air carriers, Aliens, Crewmen, Maritime carriers, Reporting and recordkeeping requirements.

8 CFR Part 252

Air carriers, Airmen, Aliens, Crewmen, Maritime carriers, Reporting and recordkeeping requirements.

8 CFR Part 253

Air carriers, Airmen, Aliens, Maritime carriers, Reporting and recordkeeping requirements, Seamen.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

8 CFR Part 286

Air carriers, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 287

Immigration, Law enforcement officers.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

8 CFR Part 316

Citizenship and naturalization, Reporting and recordkeeping requirements.

8 CFR Part 318

Citizenship and naturalization.

8 CFR Part 329

Citizenship and naturalization, Military Personnel, Veterans.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 1—DEFINITIONS

1. The authority citation for part 1 is revised to read as follows:

Authority: 8 U.S.C. 1101; 8 CFR part 2.

2. Section 1.1 is amended by revising paragraph (l), and by adding new paragraphs (q) through (t) to read as follows:

§ 1.1 Definitions.

* * * * *

(l) The term *immigration judge* means an attorney whom the Attorney General appoints as an administrative judge within the Executive Office for Immigration Review, qualified to conduct specified classes of proceedings, including a hearing under section 240 of the Act. An immigration judge shall be subject to such supervision and shall perform such duties as the Attorney General shall prescribe, but shall not be employed by the Immigration and Naturalization Service.

* * * * *

(q) The term *arriving alien* means an alien who seeks admission to or transit through the United States, as provided in 8 CFR part 235, at a port-of-entry, or an alien who is interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport. An arriving alien remains such even if paroled pursuant to section 212(d)(5) of the Act.

(r) The term *respondent* means a person named in a Notice to Appear issued in accordance with section 239(a) of the Act, or in an Order to Show Cause issued in accordance with § 242.1 of this chapter as it existed prior to April 1, 1997.

(s) The term *Service counsel* means any immigration officer assigned to represent the Service in any proceeding before an immigration judge or the Board of Immigration Appeals.

(t) The term *aggravated felony* means a crime (or a conspiracy or attempt to commit a crime) described in section 101(a)(43) of the Act. This definition is applicable to any proceeding, application, custody determination, or adjudication pending on or after September 30, 1996, but shall apply under section 276(b) of the Act only to violations of section 276(a) of the Act occurring on or after that date.

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

3. The authority citation for part 3 continues to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1103, 1252 note, 1252b, 1324b, 1362; 28 U.S.C. 509, 510, 1746; sec. 2, Reorg. Plan No. 2 of 1950; 3 CFR, 1949–1953 Comp., p. 1002.

4. Section 3.1 is amended by revising paragraphs (b)(1), (b)(2), (b)(3), (b)(7), (b)(9), and (b)(10) to read as follows:

§ 3.1 General authorities.

* * * * *

(b) * * *

(1) Decisions of Immigration Judges in exclusion cases, as provided in 8 CFR part 240, Subpart D.

(2) Decisions of Immigration Judges in deportation cases, as provided in 8 CFR part 240, Subpart E, except that no appeal shall lie seeking review of a length of a period of voluntary departure granted by an Immigration Judge under section 244E of the Act as it existed prior to April 1, 1997.

(3) Decisions of Immigration Judges in removal proceedings, as provided in 8 CFR part 240, except that no appeal shall lie seeking review of the length of a period of voluntary departure granted by an immigration judge under section 240B of the Act or part 240 of this chapter.

* * * * *

(7) Determinations relating to bond, parole, or detention of an alien as provided in 8 CFR part 236, Subpart A and 8 CFR part 240, Subpart E.

* * * * *

(9) Decisions of Immigration Judges in asylum proceedings pursuant to § 208.2(b) of this chapter.

(10) Decisions of Immigration Judges relating to Temporary Protected Status as provided in 8 CFR part 244.

* * * * *

5. Section 3.2 is amended by:

a. Revising the section heading;

b. Revising paragraph (b)(2);

c. Revising paragraph (c)(2) and (c)(3), and by

d. Revising paragraphs (d) through (g)(1), to read as follows:

§ 3.2 Reopening or reconsideration before the Board of Immigration Appeals.

* * * * *

(b) * * *

(2) A motion to reconsider a decision must be filed with the Board within 30 days after the mailing of the Board decision or on or before July 31, 1996, whichever is later. A party may file only one motion to reconsider any given decision and may not seek reconsideration of a decision denying a previous motion to reconsider. In removal proceedings pursuant to section 240 of the Act, an alien may file only one motion to reconsider a decision that the alien is removable from the United States.

(c) * * *

(2) Except as provided in paragraph (c)(3) of this section, a party may file only one motion to reopen deportation or exclusion proceedings (whether before the Board or the Immigration Judge) and that motion must be filed no later than 90 days after the date on which the final administrative decision was rendered in the proceeding sought to be reopened, or on or before September 30, 1996, whichever is later. Except as provided in paragraph (c)(3) of this section, an alien may file only one motion to reopen removal proceedings (whether before the Board or the Immigration Judge) and that motion must be filed no later than 90 days after the date on which the final administrative decision was rendered in the proceeding sought to be reopened.

(3) In removal proceedings pursuant to section 240 of the Act, the time limitation set forth in paragraph (c)(2) of this section shall not apply to a motion to reopen filed pursuant to the provisions of § 3.23(b)(4)(ii). The time and numerical limitations set forth in paragraph (c)(2) of this section shall not apply to a motion to reopen proceedings:

(i) Filed pursuant to the provisions of § 3.23(b)(4)(iii)(A)(*1*) or § 3.23(b)(4)(iii)(A)(*2*);

(ii) To apply or reapply for asylum or withholding of deportation based on changed circumstances arising in the country of nationality or in the country to which deportation has been ordered, if such evidence is material and was not available and could not have been discovered or presented at the previous hearing;

(iii) Agreed upon by all parties and jointly filed. Notwithstanding such agreement, the parties may contest the issues in a reopened proceeding; or

(iv) Filed by the Service in exclusion or deportation proceedings when the basis of the motion is fraud in the original proceeding or a crime that would support termination of asylum in accordance with § 208.22(f) of this chapter.

* * * * *

(d) *Departure, deportation, or removal.* A motion to reopen or a motion to reconsider shall not be made by or on behalf of a person who is the subject of exclusion, deportation, or removal proceedings subsequent to his or her departure from the United States. Any departure from the United States, including the deportation or removal of a person who is the subject of exclusion, deportation, or removal proceedings, occurring after the filing of a motion to reopen or a motion to reconsider, shall constitute a withdrawal of such motion.

(e) *Judicial proceedings.* Motions to reopen or reconsider shall state whether the validity of the exclusion, deportation, or removal order has been or is the subject of any judicial proceeding and, if so, the nature and date thereof, the court in which such proceeding took place or is pending, and its result or status. In any case in which an exclusion, deportation, or removal order is in effect, any motion to reopen or reconsider such order shall include a statement by or on behalf of the moving party declaring whether the subject of the order is also the subject of any pending criminal proceeding under the Act, and, if so, the current status of that proceeding. If a motion to reopen or reconsider seeks discretionary relief, the motion shall include a statement by or on behalf of the moving party declaring whether the alien for whose relief the motion is being filed is subject to any pending criminal prosecution and, if so, the nature and current status of that prosecution.

(f) *Stay of deportation.* Except where a motion is filed pursuant to the provisions of §§ 3.23(b)(4)(ii) and 3.23(b)(4)(iii)(A), the filing of a motion to reopen or a motion to reconsider shall not stay the execution of any decision made in the case. Execution of such decision shall proceed unless a stay of execution is specifically granted by the Board, the Immigration Judge, or an authorized officer of the Service.

(g) *Filing procedures.* (1) English language, entry of appearance, and proof of service requirements. A motion and any submission made in conjunction with a motion must be in English or accompanied by a certified English translation. If the moving party, other than the Service, is represented, Form EOIR–27, Notice of Entry of Appearance as Attorney or Representative Before the Board, must be filed with the motion. In all cases, the motion shall include proof of service on the opposing party of the motion and all attachments. If the moving party is not the Service, service of the motion shall be made upon the Office of the District Counsel for the district in which the case was completed before the Immigration Judge.

* * * * *

6. The following sentence is added to the end of § 3.4:

§ 3.4 Withdrawal of appeal.

* * * Departure from the United States of a person who is the subject of deportation or removal proceedings, except for arriving aliens as defined in § 1.1(q) of this chapter, subsequent to the taking of an appeal, but prior to a decision thereon, shall constitute a withdrawal of the appeal, and the initial decision in the case shall be final to the same extent as though no appeal had been taken.

Subpart B—Immigration Court

7. In Part 3, the heading of Subpart B is revised as set forth above.

8. Section 3.9 is revised to read as follows:

§ 3.9 Chief Immigration Judge.

The Chief Immigration Judge shall be responsible for the general supervision, direction, and scheduling of the Immigration Judges in the conduct of the various programs assigned to them. The Chief Immigration Judge shall be assisted by Deputy Chief Immigration Judges and Assistant Chief Immigration Judges in the performance of his or her duties. These shall include, but are not limited to:

(a) Establishment of operational policies; and

(b) Evaluation of the performance of Immigration Courts, making appropriate reports and inspections, and taking corrective action where indicated.

9. Section 3.10 is revised to read as follows:

§ 3.10 Immigration Judges.

Immigration Judges, as defined in 8 CFR part 1, shall exercise the powers and duties in this chapter regarding the conduct of exclusion, deportation, removal, and asylum proceedings and such other proceedings which the Attorney General may assign them to conduct.

10. Section 3.11 is revised to read as follows:

§ 3.11 Administrative control Immigration Courts.

An administrative control Immigration Court is one that creates and maintains Records of Proceedings for Immigration Courts within an assigned geographical area. All documents and correspondence pertaining to a Record of Proceeding shall be filed with the Immigration Court having administrative control over that Record of Proceeding and shall not be filed with any other Immigration Court. A list of the administrative control Immigration Courts with their assigned geographical areas will be made available to the public at any Immigration Court.

Subpart C—Immigration Court—Rules of Procedure

11. In part 3, the heading of Subpart C is revised as set forth above.

12. Section 3.12 is amended by revising the last sentence, and adding a new sentence at the end of the section, to read as follows:

§ 3.12 Scope of rules.

* * * Except where specifically stated, the rules in this subpart apply to matters before Immigration Judges, including, but not limited to, deportation, exclusion, removal, bond, rescission, departure control, asylum proceedings, and disciplinary

proceedings under § 292.3 of this chapter. The sole procedures for review of credible fear determinations by Immigration Judges are provided for in § 3.42.

13. Section 3.13 is revised to read as follows:

§ 3.13 Definitions.

As used in this subpart:

Administrative control means custodial responsibility for the Record of Proceeding as specified in § 3.11.

Charging document means the written instrument which initiates a proceeding before an Immigration Judge. For proceedings initiated prior to April 1, 1997, these documents include an Order to Show Cause, a Notice to Applicant for Admission Detained for Hearing before Immigration Judge, and a Notice of Intention to Rescind and Request for Hearing by Alien. For proceedings initiated after April 1, 1997, these documents include a Notice to Appear, a Notice of Referral to Immigration Judge, and a Notice of Intention to Rescind and Request for Hearing by Alien.

Filing means the actual receipt of a document by the appropriate Immigration Court.

Service means physically presenting or mailing a document to the appropriate party or parties; except that an Order to Show Cause or Notice of Deportation Hearing shall be served in person to the alien, or by certified mail to the alien or the alien's attorney and a Notice to Appear or Notice of Removal Hearing shall be served to the alien in person, or if personal service is not practicable, shall be served by regular mail to the alien or the alien's attorney of record.

14. Section § 3.14 is amended by:

a. Revising paragraph (a), and by

b. Adding a new paragraph (c) to read as follows:

§ 3.14 Jurisdiction and commencement of proceedings.

(a) Jurisdiction vests, and proceedings before an Immigration Judge commence, when a charging document is filed with the Immigration Court by the Service. The charging document must include a certificate showing service on the opposing party pursuant to § 3.32 which indicates the Immigration Court in which the charging document is filed. However, no charging document is required to be filed with the Immigration Court to commence bond proceedings pursuant to §§ 3.19, 236.1(d) and 240.2(b) of this chapter.

* * * * *

(c) Immigration Judges have jurisdiction to administer the oath of allegiance in administrative naturalization ceremonies conducted by the Service in accordance with § 337.2(b) of this chapter.

15. Section 3.15 is amended by:

a. Revising the section heading;

b. Amending paragraph (b) introductory text and paragraph (b)(6), by adding the phrase "and Notice to Appear" immediately after the phrase "Order to Show Cause";

c. Redesignating paragraph (c) as (d);

d. Adding a new paragraph (c); and by

e. Revising newly redesignated paragraph (d), to read as follows:

§ 3.15 Contents of the order to show cause and notice to appear and notification of change of address.

* * * * *

(c) *Contents of the Notice to Appear for Removal Proceedings.* In the Notice to Appear for removal proceedings, the Service shall provide the following administrative information to the Immigration Court. Failure to provide any of these items shall not be construed as affording the alien any substantive or procedural rights.

(1) The alien's names and any known aliases;

(2) The alien's address;

(3) The alien's registration number, with any lead alien registration number with which the alien is associated;

(4) The alien's alleged nationality and citizenship; and

(5) The language that the alien understands.

(d) *Address and telephone number.* (1) If the alien's address is not provided on the Order to Show Cause or Notice to Appear, or if the address on the Order to Show Cause or Notice to Appear is incorrect, the alien must provide to the Immigration Court where the charging document has been filed, within five days of service of that document, a written notice of an address and telephone number at which the alien can be contacted. The alien may satisfy this requirement by completing and filing Form EOIR–33.

(2) Within five days of any change of address, the alien must provide written notice of the change of address on Form EOIR–33 to the Immigration Court where the charging document has been filed, or if venue has been changed, to the Immigration Court to which venue has been changed.

§ 3.16 [Amended]

16. Section 3.16(b) is amended by revising the term "respondent/applicant" to read "alien".

§ 3.17 [Amended]

17. Section 3.17(a) is amended in the first sentence by revising the term "respondent/applicant" to read "alien", and by revising the phrase "the appropriate EOIR form" to read "Form EOIR–28".

18. Section 3.18 is revised to read as follows:

§ 3.18 Scheduling of cases.

(a) The Immigration Court shall be responsible for scheduling cases and providing notice to the government and the alien of the time, place, and date of hearings.

(b) In removal proceedings pursuant to section 240 of the Act, the Service shall provide in the Notice to Appear, the time, place and date of the initial removal hearing, where practicable. If that information is not contained in the Notice to Appear, the Immigration Court shall be responsible for scheduling the initial removal hearing and providing notice to the government and the alien of the time, place, and date of hearing. In the case of any change or postponement in the time and place of such proceeding, the Immigration Court shall provide written notice to the alien specifying the new time and place of the proceeding and the consequences under section 240(b)(5) of the Act of failing, except under exceptional circumstances as defined in section 240(e)(1) of the Act, to attend such proceeding. No such notice shall be required for an alien not in detention if the alien has failed to provide the address required in section 239(a)(1)(F) of the Act.

§ 3.19 [Amended]

19. Section 3.19(a) is amended by revising the reference to "part 242 of this chapter" to read "8 CFR part 236" wherever it appears in the paragraph.

20. Section 3.19(d) is amended in the first sentence by adding the term "or removal" immediately after the word "deportation".

21. Section 3.19 is amended by removing paragraph (h).

22. In § 3.20, paragraph (a) is revised to read as follows:

§ 3.20 Change of venue.

(a) Venue shall lie at the Immigration Court where jurisdiction vests pursuant to § 3.14.

* * * * *

23. Section 3.23 is amended by revising the section heading and paragraph (b) to read as follows:

§ 3.23 Reopening or Reconsideration before the Immigration Court.

(a) * * *

(b) *Before the Immigration Court.* (1) *In general.* An Immigration Judge may upon his or her own motion at any time, or upon motion of the Service or the alien, reopen or reconsider any case in which he or she has made a decision, unless jurisdiction is vested with the Board of Immigration Appeals. Subject to the exceptions in this paragraph and paragraph (b)(4), a party may file only one motion to reconsider and one motion to reopen proceedings. A motion to reconsider must be filed within 30 days of the date of entry of a final administrative order of removal, deportation, or exclusion, or on or before July 31, 1996, whichever is later. A motion to reopen must be filed within 90 days of the date of entry of a final administrative order of removal, deportation, or exclusion, or on or before September 30, 1996, whichever is later. A motion to reopen or to reconsider shall not be made by or on behalf of a person who is the subject of removal, deportation, or exclusion proceedings subsequent to his or her departure from the United States. Any departure from the United States, including the deportation or removal of a person who is the subject of exclusion, deportation, or removal proceedings, occurring after the filing of a motion to reopen or a motion to reconsider shall constitute a withdrawal of such motion. The time and numerical limitations set forth in this paragraph do not apply to motions by the Service in removal proceedings pursuant to section 240 of the Act. Nor shall such limitations apply to motions by the Service in exclusion or deportation proceedings, when the basis of the motion is fraud in the original proceeding or a crime that would support termination of asylum in accordance with § 208.22(f) of this chapter.

(i) *Form and contents of the motion.* The motion shall be in writing and signed by the affected party or the attorney or representative of record, if any. The motion and any submission made in conjunction with it must be in English or accompanied by a certified English translation. Motions to reopen or reconsider shall state whether the validity of the exclusion, deportation, or removal order has been or is the subject of any judicial proceeding and, if so, the nature and date thereof, the court in which such proceeding took place or is pending, and its result or status. In any case in which an exclusion, deportation, or removal order is in effect, any motion to reopen or reconsider such order shall include a statement by or on behalf of the moving party declaring whether the subject of the order is also the subject of any pending criminal proceeding under the Act, and, if so, the current status of that proceeding.

(ii) *Filing.* Motions to reopen or reconsider a decision of an Immigration Judge must be filed with the Immigration Court having administrative control over the Record of Proceeding. A motion to reopen or a motion to reconsider shall include a certificate showing service on the opposing party of the motion and all attachments. If the moving party is not the Service, service of the motion shall be made upon the Office of the District Counsel for the district in which the case was completed. If the moving party, other than the Service, is represented, a Form EOIR–28, Notice of Appearance as Attorney or Representative Before an Immigration Judge must be filed with the motion. The motion must be filed in duplicate with the Immigration Court, accompanied by a fee receipt.

(iii) *Assignment to an Immigration Judge.* If the Immigration Judge is unavailable or unable to adjudicate the motion to reopen or reconsider, the Chief Immigration Judge or his or her delegate shall reassign such motion to another Immigration Judge.

(iv) *Replies to motions; decision.* The Immigration Judge may set and extend time limits for replies to motions to reopen or reconsider. A motion shall be deemed unopposed unless timely response is made. The decision to grant or deny a motion to reopen or a motion to reconsider is within the discretion of the Immigration Judge.

(v) *Stays.* Except in cases involving in absentia orders, the filing of a motion to reopen or a motion to reconsider shall not stay the execution of any decision made in the case. Execution of such decision shall proceed unless a stay of execution is specifically granted by the Immigration Judge, the Board, or an authorized officer of the Service.

(2) *Motion to reconsider.* A motion to reconsider shall state the reasons for the motion by specifying the errors of fact or law in the Immigration Judge's prior decision and shall be supported by pertinent authority. Such motion may not seek reconsideration of a decision denying previous motion to reconsider.

(3) *Motion to reopen.* A motion to reopen proceedings shall state the new facts that will be proven at a hearing to be held if the motion is granted and shall be supported by affidavits and other evidentiary material. Any motion to reopen for the purpose of acting on an application for relief must be accompanied by the appropriate application for relief and all supporting documents. A motion to reopen will not be granted unless the Immigration Judge is satisfied that evidence sought to be offered is material and was not available and could not have been discovered or presented at the former hearing. A motion to reopen for the purpose of providing the alien an opportunity to apply for any form of discretionary relief will not be granted if it appears that the alien's right to apply for such relief was fully explained to him or her by the Immigration Judge and an opportunity to apply therefore was afforded at the hearing, unless the relief is sought on the basis of circumstances that have arisen subsequent to the hearing. Pursuant to section 240A(d)(1) of the Act, a motion to reopen proceedings for consideration or further consideration of an application for relief under section 240A(a) (cancellation of removal for certain permanent residents) or 240A(b) (cancellation of removal and adjustment of status for certain nonpermanent residents) may be granted only if the alien demonstrates that he or she was statutorily eligible for such relief prior to the service of a notice to appear, or prior to the commission of an offense referred to in section 212(a)(2) of the Act that renders the alien inadmissible or removable under sections 237(a)(2) of the Act or (a)(4), whichever is earliest. The Immigration Judge has discretion to deny a motion to reopen even if the moving party has established a prima facie case for relief.

(4) *Exceptions to filing deadlines.*—(i) *Asylum.* The time and numerical limitations set forth in paragraph (b)(1) of this section shall not apply if the basis of the motion is to apply for relief under section 208 or 241(b)(3) of the Act and is based on changed country conditions arising in the country of nationality or the country to which removal has been ordered, if such evidence is material and was not available and could not have been discovered or presented at the previous proceeding. The filing of a motion to reopen under this section shall not automatically stay the removal of the alien. However, the alien may request a stay and, if granted by the Immigration Judge, the alien shall not be removed pending disposition of the motion by the Immigration Judge. If the original asylum application was denied based upon a finding that it was frivolous, then the alien is ineligible to file either a motion to reopen or reconsider, or for a stay of removal.

(ii) *Order entered in absentia in asylum proceedings or removal proceedings.* An order of removal entered in absentia in asylum proceedings pursuant to § 208.2(b) of this chapter or in removal proceedings pursuant to section 240(b)(5) of the Act may be rescinded only upon a motion to reopen filed within 180 days after the date of the order of removal, if the alien

demonstrates that the failure to appear was because of exceptional circumstances as defined in section 240(e)(1) of the Act. An order entered in absentia pursuant to § 208.2(b) of this chapter or pursuant to section 240(b)(5) may be rescinded upon a motion to reopen filed at any time if the alien demonstrates that he or she did not receive notice in accordance with sections 239(a)(1) or (2) of the Act, or the alien demonstrates that he or she was in Federal or state custody and the failure to appear was through no fault of the alien. However, in accordance with section 240(b)(5)(B) of the Act, no written notice of a change in time or place of proceeding shall be required if the alien has failed to provide the address required under section 239(a)(1)(F) of the Act. The filing of a motion under this paragraph shall stay the removal of the alien pending disposition of the motion by the Immigration Judge. An alien may file only one motion pursuant to this paragraph.

(iii) *Order entered in absentia in deportation or exclusion proceedings.* (A) An order entered in absentia in deportation proceedings may be rescinded only upon a motion to reopen filed:

(1) Within 180 days after the date of the order of deportation if the alien demonstrates that the failure to appear was because of exceptional circumstances beyond the control of the alien (e.g., serious illness of the alien or serious illness or death of an immediate relative of the alien, but not including less compelling circumstances); or

(2) At any time if the alien demonstrates that he or she did not receive notice or if the alien demonstrates that he or she was in federal or state custody and the failure to appear was through no fault of the alien.

(B) A motion to reopen exclusion hearings on the basis that the Immigration Judge improperly entered an order of exclusion in absentia must be supported by evidence that the alien had reasonable cause for his failure to appear.

(C) The filing of a motion to reopen under paragraph (b)(4)(iii)(A) of this section shall stay the deportation of the alien pending decision on the motion and the adjudication of any properly filed administrative appeal.

(D) The time and numerical limitations set forth in paragraph (b)(1) of this section shall not apply to a motion to reopen filed pursuant to the provisions of paragraph (b)(4)(iii)(A) of this section.

(iv) *Jointly filed motions.* The time and numerical limitations set forth in paragraph (b)(1) of this section shall not apply to a motion to reopen agreed upon by all parties and jointly filed.

24. Section 3.25 is revised to read as follows:

§ 3.25 Form of the proceeding.

(a) *Waiver of presence of the parties.* The Immigration Judge may, for good cause, and consistent with section 240(b) of the Act, waive the presence of the alien at a hearing when the alien is represented or when the alien is a minor child at least one of whose parents or whose legal guardian is present. When it is impracticable by reason of an alien's mental incompetency for the alien to be present, the presence of the alien may be waived provided that the alien is represented at the hearing by an attorney or legal representative, a near relative, legal guardian, or friend.

(b) *Stipulated request for order; waiver of hearing.* An Immigration Judge may enter an order of deportation, exclusion or removal stipulated to by the alien (or the alien's representative) and the Service. The Immigration Judge may enter such an order without a hearing and in the absence of the parties based on a review of the charging document, the written stipulation, and supporting documents, if any. If the alien is unrepresented, the Immigration Judge must determine that the alien's waiver is voluntary, knowing, and intelligent. The stipulated request and required waivers shall be signed on behalf of the government and by the alien and his or her attorney or representative, if any. The attorney or representative shall file a Notice of Appearance in accordance with § 3.16(b). A stipulated order shall constitute a conclusive determination of the alien's deportability or removability from the United States. The stipulation shall include:

(1) An admission that all factual allegations contained in the charging document are true and correct as written;

(2) A concession of deportability or inadmissibility as charged;

(3) A statement that the alien makes no application for relief under the Act;

(4) A designation of a country for deportation or removal under section 241(b)(2)(A)(i) of the Act;

(5) A concession to the introduction of the written stipulation of the alien as an exhibit to the Record of Proceeding;

(6) A statement that the alien understands the consequences of the stipulated request and that the alien enters the request voluntarily, knowingly, and intelligently;

(7) A statement that the alien will accept a written order for his or her deportation, exclusion or removal as a final disposition of the proceedings; and

(8) A waiver of appeal of the written order of deportation or removal.

(c) *Telephonic or video hearings.* An Immigration Judge may conduct hearings through video conference to the same extent as he or she may conduct hearings in person. An Immigration Judge may also conduct a hearing through a telephone conference, but an evidentiary hearing on the merits may only be conducted through a telephone conference with the consent of the alien involved after the alien has been advised of the right to proceed in person or, where available, through a video conference, except that credible fear determinations may be reviewed by the Immigration Judge through a telephone conference without the consent of the alien.

25. Section 3.26 is amended by revising paragraph (c) and adding a new paragraph (d) to read as follows:

§ 3.26 In absentia hearings.

* * * * *

(c) In any removal proceeding before an Immigration Judge in which the alien fails to appear, the Immigration Judge shall order the alien removed *in absentia* if:

(1) The Service establishes by clear, unequivocal, and convincing evidence that the alien is removable; and

(2) The Service establishes by clear, unequivocal, and convincing evidence that written notice of the time and place of proceedings and written notice of the consequences of failure to appear were provided to the alien.

(d) Written notice to the alien shall be considered sufficient for purposes of this section if it was provided at the most recent address provided by the alien. If the respondent fails to provide his or her address as required under § 3.15(d), no written notice shall be required for an Immigration Judge to proceed with an *in absentia* hearing. This paragraph shall not apply in the event that the Immigration Judge waives the appearance of an alien under § 3.25.

26. Section 3.27 is amended by revising paragraph (c) to read as follows:

§ 3.27 Public access to hearings.

* * * * *

(c) In any proceeding before an Immigration Judge concerning an abused alien spouse, the hearing and the Record of Proceeding shall be closed to the public unless the abused spouse agrees that the hearing and the Record of Proceeding shall be open to the public. In any proceeding before an Immigration Judge concerning an abused alien child, the hearing and the Record of Proceeding shall be closed to the public.

27. Section 3.30 is revised to read as follows:

§ 3.30 Additional charges in deportation or removal hearings.

At any time during deportation or removal proceedings, additional or substituted charges of deportability and/or factual allegations may be lodged by the Service in writing. The alien shall be served with a copy of these additional charges and/or allegations and the Immigration Judge shall read them to the alien. The Immigration Judge shall advise the alien, if he or she is not represented by counsel, that the alien may be so represented. The alien may be given a reasonable continuance to respond to the additional factual allegations and charges. Thereafter, the provision of § 240.10(b) of this chapter relating to pleading shall apply to the additional factual allegations and charges.

28. Section 3.35 is revised to read as follows:

§ 3.35 Depositions and subpoenas.

(a) *Depositions.* If an Immigration Judge is satisfied that a witness is not reasonably available at the place of hearing and that said witness' testimony or other evidence is essential, the Immigration Judge may order the taking of deposition either at his or her own instance or upon application of a party. Such order shall designate the official by whom the deposition shall be taken, may prescribe and limit the content, scope, or manner of taking the deposition, and may direct the production of documentary evidence.

(b) *Subpoenas issued subsequent to commencement of proceedings.* (1) *General.* In any proceeding before an Immigration Judge, other than under 8 CFR part 335, the Immigration Judge shall have exclusive jurisdiction to issue subpoenas requiring the attendance of witnesses or for the production of books, papers and other documentary evidence, or both. An Immigration Judge may issue a subpoena upon his or her own volition or upon application of the Service or the alien.

(2) *Application for subpoena.* A party applying for a subpoena shall be required, as a condition precedent to its issuance, to state in writing or at the proceeding, what he or she expects to prove by such witnesses or documentary evidence, and to show affirmatively that he or she has made diligent effort, without success, to produce the same.

(3) *Issuance of subpoena.* Upon being satisfied that a witness will not appear and testify or produce documentary evidence and that the witness' evidence is essential, the Immigration Judge shall issue a subpoena. The subpoena shall state the title of the proceeding and shall command the person to whom it is directed to attend and to give testimony at a time and place specified. The subpoena may also command the person to whom it is directed to produce the books, papers, or documents specified in the subpoena.

(4) *Appearance of witness.* If the witness is at a distance of more than 100 miles from the place of the proceeding, the subpoena shall provide for the witness' appearance at the Immigration Court nearest to the witness to respond to oral or written interrogatories, unless there is no objection by any party to the witness' appearance at the proceeding.

(5) *Service.* A subpoena issued under this section may be served by any person over 18 years of age not a party to the case.

(6) *Invoking aid of court.* If a witness neglects or refuses to appear and testify as directed by the subpoena served upon him or her in accordance with the provisions of this section, the Immigration Judge issuing the subpoena shall request the United States Attorney for the district in which the subpoena was issued to report such neglect or refusal to the United States District Court and to request such court to issue an order requiring the witness to appear and testify and to produce the books, papers or documents designated in the subpoena.

29. In Subpart C, a new § 3.42 is added to read as follows:

§ 3.42 Review of credible fear determination.

(a) *Referral.* Jurisdiction for an Immigration Judge to review an adverse credible fear finding by an asylum officer pursuant to section 235(b)(1)(B) of the Act shall commence with the filing by the Service of Form I–863, Notice of Referral to Immigration Judge. The Service shall also file with the notice of referral a copy of the written record of determination as defined in section 235(b)(1)(B)(iii)(II) of the Act, including a copy of the alien's written request for review, if any.

(b) *Record of proceeding.* The Immigration Court shall create a Record of Proceeding for a review of an adverse credible fear determination. This record shall not be merged with any later proceeding pursuant to section 240 of the Act involving the same alien.

(c) *Procedures and evidence.* The Immigration Judge may receive into evidence any oral or written statement which is material and relevant to any issue in the review. The testimony of the alien shall be under oath or affirmation administered by the Immigration Judge. If an interpreter is necessary, one will be provided by the Immigration Court. The Immigration Judge shall determine whether the review shall be in person, or through telephonic or video connection (where available). The alien may consult with a person or persons of the alien's choosing prior to the review.

(d) *Standard of review.* The Immigration Judge shall make a de novo determination as to whether there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the Immigration Judge, that the alien could establish eligibility for asylum under section 208 of the Act.

(e) *Timing.* The Immigration Judge shall conclude the review to the maximum extent practicable within 24 hours, but in no case later than 7 days after the date the supervisory asylum officer has approved the asylum officer's negative credible fear determination issued on Form I–869, Record of Negative Credible Fear Finding and Request for Review.

(f) *Decision.* If an Immigration Judge determines that an alien has a credible fear of persecution, the Immigration Judge shall vacate the order entered pursuant to section 235(b)(1)(B)(iii)(I) of the Act. Subsequent to the order being vacated, the Service shall issue and file Form I–862, Notice to Appear, with the Immigration Court to commence removal proceedings. The alien shall have the opportunity to apply for asylum in the course of removal proceedings pursuant to section 240 of the Act. If an Immigration Judge determines that an alien does not have a credible fear of persecution, the Immigration Judge shall affirm the asylum officer's determination and remand the case to the Service for execution of the removal order entered pursuant to section 235(b)(1)(B)(iii)(I) of the Act. No appeal shall lie from a review of an adverse credible fear determination made by an Immigration Judge.

(g) *Custody.* An Immigration Judge shall have no authority to review an alien's custody status in the course of a review of an adverse credible fear determination made by the Service.

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

30. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552(a); 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356; 47 FR 14874, 15557; 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

31. In § 103.1, paragraph (g)(3)(ii) is revised to read as follows:

§ 103.1 Delegations of authority.

* * * * *

(g) * * *

(3) * * *

(ii) *Asylum officers.* Asylum officers constitute a professional corps of officers who serve under the supervision and direction of the Director of International Affairs and shall be specially trained as required in § 208.1(b) of this chapter. Asylum officers are delegated the authority to hear and adjudicate credible fear of persecution determinations under section 235(b)(1)(B) of the Act and applications for asylum and for withholding of removal, as provided under 8 CFR part 208.

* * * * *

§ 103.5 [Amended]

32. Section 103.5 is amended by:

a. Removing paragraph (a)(1)(iii)(B);

b. Redesignating paragraphs (a)(1)(iii)(C) through (F) as paragraphs (a)(1)(iii)(B) through (E), respectively; and

c. Removing paragraph (a)(5)(iii).

33. In § 103.5a, paragraph (c)(1) is revised to read as follows:

§ 103.5a Service of notification, decisions, and other papers by the Service.

* * * * *

(c) * * *

(1) *Generally.* In any proceeding which is initiated by the Service, with proposed adverse effect, service of the initiating notice and of notice of any decision by a Service officer shall be accomplished by personal service, except as provided in section 239 of the Act.

* * * * *

34. In § 103.6, paragraph (a) is revised to read as follows:

§ 103.6 Surety bonds.

(a) *Posting of surety bonds.*—(1) *Extension agreements: consent of surety; collateral security.* All surety bonds posted in immigration cases shall be executed on Form I–352, Immigration Bond, a copy of which, and any rider attached thereto, shall be furnished the obligor. A district director is authorized to approve a bond, a formal agreement to extension of liability of surety, a request for delivery of collateral security to a duly appointed and undischarged administrator or executor of the estate of a deceased depositor, and a power of attorney executed on Form I–312, Designation of Attorney in Fact. All other matters relating to bonds, including a power of attorney not executed on Form I–312 and a request for delivery of collateral security to other than the depositor or his or her approved attorney in fact, shall be forwarded to the regional director for approval.

(2) *Bond riders.*—(i) *General.* Bond riders shall be prepared on Form I–351, Bond Riders, and attached to Form I–352. If a condition to be included in a bond is not on Form I–351, a rider containing the condition shall be executed.

* * * * *

35. Section 103.7(b)(1) is amended by:

a. Removing the entry to "Form I–444", and by

b. Adding the entry for "Form EOIR–42" to the listing of forms, in proper numerical sequence, to read as follows:

§ 103.7 Fees

* * * * *

(b) * * *

(1) * * *

* * * * * *

Form EOIR–42. For filing application for cancellation of removal under section 240A of the Act—$100.00. (A single fee of $100.00 will be charged whenever cancellation of removal applications are filed by two or more aliens in the same proceedings).

* * * * *

PART 204—IMMIGRANT PETITIONS

36. The authority citation for part 204 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255; 8 CFR part 2.

37. Section 204.2 is amended by:

a. Revising paragraph (a)(1)(iii) introductory text;

b. Removing paragraphs (a)(1)(iii)(A) through (C); and

c. Redesignating paragraphs (a)(1)(iii)(D) through (I) as paragraphs (a)(1)(iii)(A) through (F) respectively, to read as follows:

§ 204.2 Petitions for relatives, widows, and widowers, and abused spouses and children.

(a) * * *

(1) * * *

(iii) *Marriage during proceedings—general prohibition against approval of visa petition.* A visa petition filed on behalf of an alien by a United States citizen or a lawful permanent resident spouse shall not be approved if the marriage creating the relationship occurred on or after November 10, 1986, and while the alien was in exclusion, deportation, or removal proceedings, or judicial proceedings relating thereto. Determination of commencement and termination of proceedings and exemptions shall be in accordance with § 245.1(c)(9) of this chapter, except that the burden in visa petition proceedings to establish eligibility for the exemption in § 245.1(c)(9)(iii)(F) of this chapter shall rest with the petitioner.

* * * * *

PART 207—ADMISSION OF REFUGEES

38. The authority citation for part 207 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1157, 1159, 1182; 8 CFR part 2.

39. Section 207.1 is amended by removing paragraph (e), and by revising paragraph (a) to read as follows:

§ 207.1 Eligibility.

(a) *Filing jurisdiction.* Any alien who believes he or she is a refugee as defined in section 101(a)(42) of the Act, and is included in a refugee group identified in section 207(a) of the Act, may apply for admission to the United States by filing an application in accordance with § 207.2 with the Service office having jurisdiction over the area where the applicant is located. In those areas too distant from a Service office, the application may be filed at a designated United States consular office.

* * * * *

40. Section 207.3 is revised to read as follows:

§ 207.3 Waivers of inadmissibility.

(a) *Authority.* Section 207(c)(3) of the Act sets forth grounds of inadmissibility under section 212(a) of the Act which are not applicable and those which may be waived in the case of an otherwise qualified refugee and the conditions under which such waivers may be approved. Officers in charge of overseas offices are delegated authority to initiate the necessary investigations to establish the facts in each waiver application pending before them and to approve or deny such waivers.

(b) *Filing requirements.* The applicant for a waiver must submit Form I–602, Application by Refugee for Waiver of Grounds of Inadmissibility, with the Service office processing his or her case. The burden is on the applicant to show that the waiver should be granted based upon humanitarian grounds, family unity, or the public interest. The applicant shall be notified in writing of the decision, including the reasons for denial, if the application is denied. There is no appeal from such decision.

§ 207.8 [Amended]

41. Section 207.8 is amended in the last sentence by revising the reference to "sections 235, 236, and 237" to read "sections 235, 240, and 241".

42. Part 208 is revised to read as follows:

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

Subpart A—Asylum and Withholding of Removal

Sec.

208.1 General.
208.2 Jurisdiction.
208.3 Form of application.
208.4 Filing the application.
208.5 Special duties toward aliens in custody of the Service.
208.6 Disclosure to third parties.
208.7 Employment authorization.
208.8 Limitations on travel outside the United States.
208.9 Procedure for interview before an asylum officer.
208.10 Failure to appear at an interview before an asylum officer.
208.11 Comments from the Department of State.
208.12 Reliance on information compiled by other sources.
208.13 Establishing asylum eligibility.
208.14 Approval, denial, or referral of application.
208.15 Definition of "firm resettlement."
208.16 Withholding of removal.
208.17 Decisions.
208.18 Determining if an asylum application is frivolous.
208.19 Admission of the asylee's spouse and children.
208.20 Effect on exclusion, deportation, and removal proceedings.
208.21 Restoration of status.
208.22 Termination of asylum or withholding of removal or deportation.
208.23—29 [Reserved]

Subpart B—Credible Fear of Persecution

208.30 Credible fear determinations involving stowaways and applicants for admission found inadmissible pursuant to section 212(a)(6)(C) or 212(a)(7) of the Act.

Authority: 8 U.S.C. 1103, 1158, 1226, 1252, 1282; 8 CFR part 2.

Subpart A—Asylum and Withholding or Removal

§ 208.1 General.

(a) *Applicability.* Unless otherwise provided in this chapter, this subpart shall apply to all applications for asylum under section 208 of the Act or for withholding of deportation or withholding of removal under section 241(b)(3) of the Act, whether before an asylum officer or an immigration judge, regardless of the date of filing. For purposes of this chapter, withholding of removal shall also mean withholding of deportation under section 243(h) of the Act, as it appeared prior to April 1, 1997, except as provided in § 208.16(c). Such applications are hereinafter referred to generically as asylum applications. The provisions of this part shall not affect the finality or validity of any decision made by a district director, an immigration judge, or the Board of Immigration Appeals in any such case prior to April 1, 1997. No asylum application that was filed with a district director, asylum officer or immigration judge prior to April 1, 1997, may be reopened or otherwise reconsidered under the provisions of this part except by motion granted in the exercise of discretion by the Board of Immigration Appeals, an immigration judge, or an asylum officer for proper cause shown. Motions to reopen or reconsider must meet the requirements of sections 240(c)(5) and (c)(6) of the Act, and 8 CFR parts 3 and 103, where applicable.

(b) *Training of asylum officers.* The Director of International Affairs shall ensure that asylum officers receive special training in international human rights law, nonadversarial interview techniques, and other relevant national and international refugee laws and principles. The Director of International Affairs shall also, in cooperation with the Department of State and other appropriate sources, compile and disseminate to asylum officers information concerning the persecution of persons in other countries on account of race, religion, nationality, membership in a particular social group, or political opinion, as well as other information relevant to asylum determinations, and shall maintain a documentation center with information on human rights conditions.

§ 208.2 Jurisdiction.

(a) *Office of International Affairs.* Except as provided in paragraph (b) of this section, the Office of International Affairs shall have initial jurisdiction over an asylum application filed by, or a credible fear determination pertaining to, an alien physically present in the United States or seeking admission at a port-of-entry. An application that is complete within the meaning of § 208.3(c)(3) shall be either adjudicated or referred by asylum officers under this part in accordance with § 208.14. An application that is incomplete within the meaning of § 208.3(c)(3) shall be returned to the applicant. Except as provided in § 208.16(a), an asylum officer shall not decide whether an alien is entitled to withholding of removal under section 241(b)(3) of the Act.

(b) *Immigration Court.*—(1) *Certain aliens not entitled to proceedings under section 240 of the Act.* After Form I–863, Notice of Referral to Immigration Judge, has been filed with the Immigration Court, an immigration judge shall have exclusive jurisdiction over any asylum application filed on or after April 1, 1997, by:

(i) An alien crewmember who:

(A) Is an applicant for a landing permit;

(B) Has been refused permission to land under section 252 of the Act; or

(C) On or after April 1, 1997, was granted permission to land under section 252 of the Act, regardless of whether the alien has remained in the United States longer than authorized;

(ii) An alien stowaway who has been found to have a credible fear of persecution pursuant to the procedure set forth in subpart B of this part;

(iii) An alien who is an applicant for admission pursuant to the Visa Waiver Pilot Program under section 217 of the Act;

(iv) An alien who was admitted to the United States pursuant to the Visa Waiver Pilot Program under section 217 of the Act and has remained longer than authorized or has otherwise violated his or her immigration status;

(v) An alien who has been ordered removed under section 235(c) of the Act; or

(vi) An alien who is an applicant for admission, or has been admitted, as an alien classified under section 101(a)(15)(S) of the Act.

(2) *Rules of procedure.* (i) *General.* Proceedings falling under the jurisdiction of the immigration judge pursuant to paragraph (b)(1) of this section shall be conducted in accordance with the same rules of procedure as proceedings conducted under 8 CFR part 240, except the scope of review shall be limited to a determination of whether the alien is eligible for asylum or withholding of removal and whether asylum shall be granted in the exercise of discretion. During such proceedings all parties are prohibited from raising or considering any other issues, including but not limited to issues of admissibility, removability, eligibility for waivers, and eligibility for any form of relief other than asylum or withholding of removal.

(ii) *Notice of hearing procedures and in-absentia decisions.* The alien will be provided with notice of the time and place of the proceeding. The request for asylum and withholding of removal

submitted by an alien who fails to appear for the hearing shall be denied. The denial of asylum and withholding of removal for failure to appear may be reopened only upon a motion filed with the immigration judge with jurisdiction over the case. Only one motion to reopen may be filed, and it must be filed within 90 days, unless the alien establishes that he or she did not receive notice of the hearing date or was in Federal or State custody on the date directed to appear. The motion must include documentary evidence which demonstrates that:

(A) The alien did not receive the notice;

(B) The alien was in Federal or State custody and the failure to appear was through no fault of the alien; or

(C) "Exceptional circumstances," as defined in section 240(e)(1) of the Act, caused the failure to appear.

(iii) *Relief.* The filing of a motion to reopen shall not stay removal of the alien unless the immigration judge grants a written request for a stay pending disposition of the motion. An alien who fails to appear for a proceeding under this section shall not be eligible for relief under section 208, 212(h), 212(i), 240A, 240B, 245, 248, or 249 for a period of 10 years after the date of the denial.

(3) *Other aliens.* Immigration judges shall have exclusive jurisdiction over asylum applications filed by an alien who has been served Form I–221, Order to Show Cause; Form I–122, Notice to Applicant for Admission Detained for a Hearing before an Immigration Judge; or Form I–862, Notice to Appear, after a copy of the charging document has been filed with the Immigration Court. Immigration judges shall also have jurisdiction over any asylum applications filed prior to April 1, 1997, by alien crewmembers who have remained in the United States longer than authorized, by applicants for admission under the Visa Waiver Pilot Program, and by aliens who have been admitted to the United States under the Visa Waiver Pilot Program.

§ 208.3 Form of application.

(a) An asylum applicant must file Form I–589, Application for Asylum or Withholding of Removal, together with any additional supporting evidence in accordance with the instructions on the form. The applicant's spouse and children shall be listed on the application and may be included in the request for asylum if they are in the United States. One additional copy of the principal applicant's Form I–589 must be submitted for each dependent included in the principal's application.

(b) An asylum application shall be deemed to constitute at the same time an application for withholding of removal, unless adjudicated in deportation or exclusion proceedings commenced prior to April 1, 1997. In such instances, the asylum application shall be deemed to constitute an application for withholding of deportation under section 243(h) of the Act, as that section existed prior to April 1, 1997. Where a determination is made that an applicant is ineligible to apply for asylum under section 208(a)(2) of the Act, an asylum application shall be construed as an application for withholding of removal.

(c) Form I–589 shall be filed under the following conditions and shall have the following consequences:

(1) If the application was filed on or after January 4, 1995, information provided in the application may be used as a basis for the initiation of removal proceedings, or to satisfy any burden of proof in exclusion, deportation, or removal proceedings;

(2) The applicant and anyone other than a spouse, parent, son, or daughter of the applicant who assists the applicant in preparing the application must sign the application under penalty of perjury. The applicant's signature establishes a presumption that the applicant is aware of the contents of the application. A person other than a relative specified in this paragraph who assists the applicant in preparing the application also must provide his or her full mailing address;

(3) An asylum application that does not include a response to each of the questions contained in the Form I–589, is unsigned, or is unaccompanied by the required materials specified in paragraph (a) of this section is incomplete. The filing of an incomplete application shall not commence the 150-day period after which the applicant may file an application for employment authorization in accordance with § 208.7. An application that is incomplete shall be returned by mail to the applicant within 30 days of the receipt of the application by the Service. If the Service has not mailed the incomplete application back to the applicant within 30 days, it shall be deemed complete. An application returned to the applicant as incomplete shall be resubmitted by the applicant with the additional information if he or she wishes to have the application considered;

(4) Knowing placement of false information on the application may subject the person placing that information on the application to criminal penalties under title 18 of the United States Code and to civil penalties under section 274C of the Act; and

(5) Knowingly filing a frivolous application on or after April 1, 1997, so long as the applicant has received the notice required by section 208(d)(4) of the Act, shall render the applicant permanently ineligible for any benefits under the Act pursuant to § 208.18.

§ 208.4 Filing the application.

Except as prohibited in paragraph (a) of this section, asylum applications shall be filed in accordance with paragraph (b) of this section.

(a) *Prohibitions on filing.* Section 208(a)(2) of the Act prohibits certain aliens from filing for asylum on or after April 1, 1997, unless the alien can demonstrate to the satisfaction of the Attorney General that one of the exceptions in section 208(a)(2)(D) of the Act applies. Such prohibition applies only to asylum applications under section 208 of the Act and not to applications for withholding of removal under section 241 of the Act. If an applicant submits an asylum application and it appears that one or more of the prohibitions contained in section 208(a)(2) of the Act apply, an asylum officer or an immigration judge shall review the application to determine if the application should be rejected or denied. For the purpose of making determinations under section 208(a)(2) of the Act, the following rules shall apply:

(1) *Authority.* Only an asylum officer, an immigration judge, or the Board of Immigration Appeals is authorized to make determinations regarding the prohibitions contained in section 208(a)(2)(B) or (C) of the Act;

(2) *One-year filing deadline.* (i) For purposes of section 208(a)(2)(B) of the Act, an applicant has the burden of proving

(A) By clear and convincing evidence that he or she applied within one year of the alien's arrival in the United States or

(B) To the satisfaction of the asylum officer, immigration judge, or Board of Immigration Appeals that he or she qualifies for an exception to the one-year deadline.

(ii) The one-year period shall be calculated from the date of the alien's last arrival in the United States or April 1, 1997, whichever is later. In the case of an application that appears to have been filed more than a year after the applicant arrived in the United States, an asylum officer or immigration judge will determine whether the applicant qualifies under one of the exceptions to the deadline;

(3) *Prior denial of application.* For purposes of section 208(a)(2)(C) of the Act, an asylum application has not been denied unless denied by an immigration judge or the Board of Immigration Appeals;

(4) *Changed circumstances.* (i) The term "changed circumstances" in section 208(a)(2)(D) of the Act shall refer to circumstances materially affecting the applicant's eligibility for asylum. They may include:

(A) Changes in conditions in the applicant's country of nationality or, if the person is stateless, country of last habitual residence or

(B) Changes in objective circumstances relating to the applicant in the United States, including changes in applicable U.S. law, that create a reasonable possibility that applicant may qualify for asylum.

(ii) The applicant shall apply for asylum within a reasonable period given those "changed circumstances."

(5) The term *extraordinary circumstances* in section 208(a)(2)(D) of the Act shall refer to events or factors beyond the alien's control that caused the failure to meet the 1-year deadline. Such circumstances shall excuse the failure to file within the 1-year period so long as the alien filed the application within a reasonable period given those circumstances. The burden of proof is on the applicant to establish to the satisfaction of the asylum officer or immigration judge that the circumstances were both beyond his or her control and that, but for those circumstances, he or she would have filed within the 1-year period. These circumstances may include:

(i) Serious illness or mental or physical disability of significant duration, including any effects of persecution or violent harm suffered in the past, during the 1-year period after arrival;

(ii) Legal disability (e.g., the applicant was an unaccompanied minor or suffered from a mental impairment) during the first year after arrival;

(iii) Ineffective assistance of counsel, provided that:

(A) The alien files an affidavit setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard;

(B) The counsel whose integrity or competence is being impugned has been informed of the allegations leveled against him or her and given an opportunity to respond; and

(C) The alien indicates whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not;

(iv) The applicant maintained Temporary Protected Status until a reasonable period before the filing of the asylum application; and

(v) The applicant submitted an asylum application prior to the expiration of the 1-year deadline, but that application was rejected by the Service as not properly filed, was returned to the applicant for corrections, and was refiled within a reasonable period thereafter.

(b) *Filing location—*(1) *With the service center by mail.* Except as provided in paragraphs (b)(2), (b)(3), (b)(4) and (b)(5) of this section, asylum applications shall be filed directly by mail with the service center servicing the asylum office with jurisdiction over the place of the applicant's residence or, in the case of an alien without a United States residence, the applicant's current lodging or the land border port-of-entry through which the alien seeks admission to the United States.

(2) *With the asylum office.* Asylum applications shall be filed directly with the asylum office having jurisdiction over the matter in the case of an alien who has received the express consent of the Director of Asylum to do so.

(3) *With the immigration judge.* Asylum applications shall be filed directly with the Immigration Court having jurisdiction over the case in the following circumstances:

(i) During exclusion, deportation, or removal proceedings, with the Immigration Court having jurisdiction over the port, district office, or sector after service and filing of the appropriate charging document.

(ii) After completion of exclusion, deportation, or removal proceedings, and in conjunction with a motion to reopen pursuant to 8 CFR part 3 where applicable, with the Immigration Court having jurisdiction over the prior proceeding. Any such motion must reasonably explain the failure to request asylum prior to the completion of the proceedings.

(iii) In asylum proceedings pursuant to § 208.2(b)(1) and after the Notice of Referral to Immigration Judge has been served on the alien and filed with the Immigration Court having jurisdiction over the case.

(4) *With the Board of Immigration Appeals.* In conjunction with a motion to remand or reopen pursuant to §§ 3.2 and 3.8 of this chapter where applicable, an initial asylum application shall be filed with the Board of Immigration Appeals if jurisdiction over the proceedings is vested in the Board of Immigration Appeals under 8 CFR part 3. Any such motion must reasonably explain the failure to request asylum prior to the completion of the proceedings.

(5) *With the district director.* In the case of any alien described in § 208.2(b)(1) and prior to the service on the alien of Form I–863, any asylum application shall be submitted to the district director having jurisdiction pursuant to 8 CFR part 103. The district director shall forward such asylum application to the appropriate Immigration Court with the Form I–863 being filed with that Immigration Court.

(c) *Amending an application after filing.* Upon request of the alien and as a matter of discretion, the asylum officer or immigration judge having jurisdiction may permit an asylum applicant to amend or supplement the application, but any delay caused by such request shall extend the period within which the applicant may not apply for employment authorization in accordance with § 208.7(a).

§ 208.5 Special duties toward aliens in custody of the Service.

(a) *General.* When an alien in the custody of the Service requests asylum or withholding of removal or expresses a fear of persecution or harm upon return to his or her country of origin or to agents thereof, the Service shall make available the appropriate application forms and shall provide the applicant with the information required by section 208(d)(4) of the Act, except in the case of an alien who is in custody pending a credible fear of persecution determination under section 235(b)(1)(B) of the Act. Where possible, expedited consideration shall be given to applications of detained aliens. Except as provided in paragraph (c) of this section, such alien shall not be excluded, deported, or removed before a decision is rendered on his or her asylum application.

(b) *Certain aliens aboard vessels.* (1) If an alien crewmember or alien stowaway on board a vessel or other conveyance alleges, claims, or otherwise makes known to an immigration inspector or other official making an examination on the conveyance that he or she is unable or unwilling to return to his or her country of nationality or last habitual residence (if not a national of any country) because of persecution or a fear of persecution in that country on account of race, religion, nationality, membership in a particular social group, or political opinion, the alien shall be promptly removed from the conveyance. If the alien makes such fear known to an official while off such conveyance, the

alien shall not be returned to the conveyance but shall be retained in or transferred to the custody of the Service.

(i) An alien stowaway will be referred to an asylum officer for a credible fear determination under § 208.30.

(ii) An alien crewmember shall be provided the appropriate application forms and information required by section 208(d)(4) of the Act and may then have 10 days within which to submit an asylum application to the district director having jurisdiction over the port of entry. The district director, pursuant to § 208.4(b), shall serve Form I–863 on the alien and immediately forward any such application to the appropriate Immigration Court with a copy of the Form I–863 being filed with that court.

(2) Pending adjudication of the application, and, in the case of a stowaway the credible fear determination and any review thereof, the alien may be detained by the Service or otherwise paroled in accordance with § 212.5 of this chapter. However, pending the credible fear determination, parole of an alien stowaway may be permitted only when the Attorney General determines, in the exercise of discretion, that parole is required to meet a medical emergency or is necessary for a legitimate law enforcement objective.

(c) *Exception to prohibition on removal.* A motion to reopen or an order to remand accompanied by an asylum application pursuant to § 208.4(b)(3)(iii) shall not stay execution of a final exclusion, deportation, or removal order unless such stay is specifically granted by the Board of Immigration Appeals or the immigration judge having jurisdiction over the motion.

§ 208.6 Disclosure to third parties.

(a) Information contained in or pertaining to any asylum application shall not be disclosed without the written consent of the applicant, except as permitted by this section or at the discretion of the Attorney General.

(b) The confidentiality of other records kept by the Service that indicate that a specific alien has applied for asylum shall also be protected from disclosure. The Service will coordinate with the Department of State to ensure that the confidentiality of these records is maintained if they are transmitted to Department of State offices in other countries.

(c) This section shall not apply to any disclosure to:

(1) Any United States Government official or contractor having a need to examine information in connection with:

(i) The adjudication of asylum applications;

(ii) The defense of any legal action arising from the adjudication of or failure to adjudicate the asylum application;

(iii) The defense of any legal action of which the asylum application is a part; or

(iv) Any United States Government investigation concerning any criminal or civil matter; or

(2) Any Federal, state, or local court in the United States considering any legal action:

(i) Arising from the adjudication of or failure to adjudicate the asylum application; or

(ii) Arising from the proceedings of which the asylum application is a part.

§ 208.7 Employment authorization.

(a) *Application and approval.* (1) Subject to the restrictions contained in sections 208(d) and 236(a) of the Act, an applicant for asylum who is not an aggravated felon shall be eligible pursuant to §§ 274a.12(c)(8) and 274a.13(a) of this chapter to submit a Form I–765, Application for Employment Authorization. Except in the case of an alien whose asylum application has been recommended for approval, or in the case of an alien who filed an asylum application prior to January 4, 1995, the application shall be submitted no earlier than 150 days after the date on which a complete asylum application submitted in accordance with §§ 208.3 and 208.4 has been received. In the case of an applicant whose asylum application has been recommended for approval, the applicant may apply for employment authorization when he or she receives notice of the recommended approval. If an asylum application has been returned as incomplete in accordance with § 208.3(c)(3), the 150-day period will commence upon receipt by the Service of a complete asylum application. An applicant whose asylum application has been denied by an asylum officer or by an immigration judge within the 150-day period shall not be eligible to apply for employment authorization. If an asylum application is denied prior to a decision on the application for employment authorization, the application for employment authorization shall be denied. If the asylum application is not so denied, the Service shall have 30 days from the date of filing of the Form I–765 to grant or deny that application, except that no employment authorization shall be issued to an asylum applicant prior to the expiration of the 180-day period following the filing of the asylum application filed on or after April 1, 1997.

(2) The time periods within which the alien may not apply for employment authorization and within which the Service must respond to any such application and within which the asylum application must be adjudicated pursuant to section 208(d)(5)(A)(iii) of the Act shall begin when the alien has filed a complete asylum application in accordance with §§ 208.3 and 208.4. Any delay requested or caused by the applicant shall not be counted as part of these time periods. Such time periods also shall be extended by the equivalent of the time between issuance of a request for evidence under § 103.2(b)(8) of this chapter and the receipt of the applicant's response to such request.

(3) The provisions of paragraphs (a)(1) and (a)(2) of this section apply to applications for asylum filed on or after January 4, 1995.

(4) Employment authorization pursuant to § 274a.12(c)(8) of this chapter may not be granted to an alien who fails to appear for a scheduled interview before an asylum officer or a hearing before an immigration judge, unless the applicant demonstrates that the failure to appear was the result of exceptional circumstances.

(b) *Renewal and termination.* Employment authorization shall be renewable, in increments to be determined by the Commissioner, for the continuous period of time necessary for the asylum officer or immigration judge to decide the asylum application and, if necessary, for completion of any administrative or judicial review.

(1) If the asylum application is denied by the asylum officer, the employment authorization shall terminate at the expiration of the employment authorization document or 60 days after the denial of asylum, whichever is longer.

(2) If the application is denied by the immigration judge, the Board of Immigration Appeals, or a Federal court, the employment authorization terminates upon the expiration of the employment authorization document, unless the applicant has filed an appropriate request for administrative or judicial review.

(c) *Supporting evidence for renewal of employment authorization.* In order for employment authorization to be renewed under this section, the alien must provide the Service (in accordance with the instructions on or attached to the employment authorization application) with a Form I–765, the required fee (unless waived in accordance with § 103.7(c) of this chapter), and (if applicable) proof that

he or she has continued to pursue his or her asylum application before an immigration judge or sought administrative or judicial review. For purposes of employment authorization, pursuit of an asylum application is established by presenting to the Service one of the following, depending on the stage of the alien's immigration proceedings:

(1) If the alien's case is pending in proceedings before the immigration judge, and the alien wishes to continue to pursue his or her asylum application, a copy of any asylum denial, referral notice, or charging document placing the alien in such proceedings;

(2) If the immigration judge has denied asylum, a copy of the document issued by the Board of Immigration Appeals to show that a timely appeal has been filed from a denial of the asylum application by the immigration judge; or

(3) If the Board of Immigration Appeals has dismissed the alien's appeal of a denial of asylum, or sustained an appeal by the Service of a grant of asylum, a copy of the petition for judicial review or for habeas corpus pursuant to section 242 of the Act, date stamped by the appropriate court.

(d) In order for employment authorization to be renewed before its expiration, the application for renewal must be received by the Service 90 days prior to expiration of the employment authorization.

§ 208.8 Limitations on travel outside the United States.

(a) An applicant who leaves the United States without first obtaining advance parole under § 212.5(e) of this chapter shall be presumed to have abandoned his or her application under this section.

(b) An applicant who leaves the United States pursuant to advance parole under § 212.5(e) of this chapter and returns to the country of claimed persecution shall be presumed to have abandoned his or her application, unless the applicant is able to establish compelling reasons for such return.

§ 208.9 Procedure for interview before an asylum officer.

(a) The Service shall adjudicate the claim of each asylum applicant whose application is complete within the meaning of § 208.3(c)(3) and is within the jurisdiction of the Service.

(b) The asylum officer shall conduct the interview in a nonadversarial manner and, except at the request of the applicant, separate and apart from the general public. The purpose of the interview shall be to elicit all relevant and useful information bearing on the applicant's eligibility for asylum. At the time of the interview, the applicant must provide complete information regarding his or her identity, including name, date and place of birth, and nationality, and may be required to register this identity electronically or through any other means designated by the Attorney General. The applicant may have counsel or a representative present, may present witnesses, and may submit affidavits of witnesses and other evidence.

(c) The asylum officer shall have authority to administer oaths, verify the identity of the applicant (including through the use of electronic means), verify the identity of any interpreter, present and receive evidence, and question the applicant and any witnesses.

(d) Upon completion of the interview, the applicant or the applicant's representative shall have an opportunity to make a statement or comment on the evidence presented. The asylum officer may, in his or her discretion, limit the length of such statement or comment and may require its submission in writing. Upon completion of the interview, the applicant shall be informed that he or she must appear in person to receive and to acknowledge receipt of the decision of the asylum officer and any other accompanying material at a time and place designated by the asylum officer, except as otherwise provided by the asylum officer. An applicant's failure to appear to receive and acknowledge receipt of the decision shall be treated as delay caused by the applicant for purposes of § 208.7(a)(3) and shall extend the period within which the applicant may not apply for employment authorization by the number of days until the applicant does appear to receive and acknowledge receipt of the decision or until the applicant appears before an immigration judge in response to the issuance of a charging document under § 208.14(b).

(e) The asylum officer shall consider evidence submitted by the applicant together with his or her asylum application, as well as any evidence submitted by the applicant before or at the interview. As a matter of discretion, the asylum officer may grant the applicant a brief extension of time following an interview during which the applicant may submit additional evidence. Any such extension shall extend by an equivalent time the periods specified by § 208.7 for the filing and adjudication of any employment authorization application.

(f) The asylum application, all supporting information provided by the applicant, any comments submitted by the Department of State or by the Service, and any other information specific to the applicant's case and considered by the asylum officer shall comprise the record.

(g) An applicant unable to proceed with the interview in English must provide, at no expense to the Service, a competent interpreter fluent in both English and the applicant's native language or any other language in which the applicant is fluent. The interpreter must be at least 18 years of age. Neither the applicant's attorney or representative of record, a witness testifying on the applicant's behalf, nor a representative or employee of the applicant's country of nationality, or if stateless, country of last habitual residence, may serve as the applicant's interpreter. Failure without good cause to comply with this paragraph may be considered a failure to appear for the interview for purposes of § 208.10.

§ 208.10 Failure to appear at an interview before an asylum officer.

Failure to appear for a scheduled interview without prior authorization may result in dismissal of the application or waiver of the right to an interview. Failure to appear shall be excused if the notice of the interview was not mailed to the applicant's current address and such address had been provided to the Office of International Affairs by the applicant prior to the date of mailing in accordance with section 265 of the Act and regulations promulgated thereunder, unless the asylum officer determines that the applicant received reasonable notice of the interview. Failure to appear will be excused if the applicant demonstrates that such failure was the result of exceptional circumstances.

§ 208.11 Comments from the Department of State.

(a) The Service shall forward to the Department of State a copy of each completed application it receives. At its option, the Department of State may provide detailed country conditions information relevant to eligibility for asylum or withholding of removal.

(b) At its option, the Department of State may also provide:

(1) An assessment of the accuracy of the applicant's assertions about conditions in his or her country of nationality or habitual residence and his or her particular situation;

(2) Information about whether persons who are similarly situated to the applicant are persecuted in his or her country of nationality or habitual

residence and the frequency of such persecution; or

(3) Such other information as it deems relevant.

(c) Asylum officers and immigration judges may request specific comments from the Department of State regarding individual cases or types of claims under consideration, or such other information as they deem appropriate.

(d) Any such comments received pursuant to paragraphs (b) and (c) of this section shall be made part of the record. Unless the comments are classified under the applicable Executive Order, the applicant shall be provided an opportunity to review and respond to such comments prior to the issuance of any decision to deny the application.

§ 208.12 Reliance on information compiled by other sources.

(a) In deciding an asylum application, or whether the alien has a credible fear of persecution pursuant to section 235(b)(1)(B) of the Act, the asylum officer may rely on material provided by the Department of State, the Office of International Affairs, other Service offices, or other credible sources, such as international organizations, private voluntary agencies, news organizations, or academic institutions.

(b) Nothing in this part shall be construed to entitle the applicant to conduct discovery directed toward the records, officers, agents, or employees of the Service, the Department of Justice, or the Department of State.

§ 208.13 Establishing asylum eligibility.

(a) *Burden of proof.* The burden of proof is on the applicant for asylum to establish that he or she is a refugee as defined in section 101(a)(42) of the Act. The testimony of the applicant, if credible, may be sufficient to sustain the burden of proof without corroboration. The fact that the applicant previously established a credible fear of persecution for purposes of section 235(b)(1)(B) of the Act does not relieve the alien of the additional burden of establishing eligibility for asylum.

(b) *Persecution.* The applicant may qualify as a refugee either because he or she has suffered past persecution or because he or she has a well-founded fear of future persecution.

(1) *Past persecution.* An applicant shall be found to be a refugee on the basis of past persecution if he or she can establish that he or she has suffered persecution in the past in his or her country of nationality or last habitual residence on account of race, religion, nationality, membership in a particular social group, or political opinion, and that he or she is unable or unwilling to return to or avail himself or herself of the protection of that country owing to such persecution.

(i) If it is determined that the applicant has established past persecution, he or she shall be presumed also to have a well-founded fear of persecution unless a preponderance of the evidence establishes that since the time the persecution occurred conditions in the applicant's country of nationality or last habitual residence have changed to such an extent that the applicant no longer has a well-founded fear of being persecuted if he or she were to return.

(ii) An application for asylum shall be denied if the applicant establishes past persecution under this paragraph but it is also determined that he or she does not have a well-founded fear of future persecution under paragraph (b)(2) of this section, unless it is determined that the applicant has demonstrated compelling reasons for being unwilling to return to his or her country of nationality or last habitual residence arising out of the severity of the past persecution. If the applicant demonstrates such compelling reasons, he or she may be granted asylum unless such a grant is barred by paragraph (c) of this section .

(2) *Well-founded fear of persecution.* An applicant shall be found to have a well-founded fear of persecution if he or she can establish first, that he or she has a fear of persecution in his or her country of nationality or last habitual residence on account of race, religion, nationality, membership in a particular social group, or political opinion; second, that there is a reasonable possibility of suffering such persecution if he or she were to return to that country; and third, that he or she is unable or unwilling to return to or avail himself or herself of the protection of that country because of such fear. In evaluating whether the applicant has sustained his or her burden of proving that he or she has a well-founded fear of persecution, the asylum officer or immigration judge shall not require the applicant to provide evidence that he or she would be singled out individually for persecution if:

(i) The applicant establishes that there is a pattern or practice in his or her country of nationality or last habitual residence of persecution of a group of persons similarly situated to the applicant on account of race, religion, nationality, membership in a particular social group, or political opinion; and

(ii) The applicant establishes his or her own inclusion in and identification with such group of persons such that his or her fear of persecution upon return is reasonable.

(c) *Mandatory denials.* (1) *Applications filed on or after April 1, 1997.* For applications filed on or after April 1, 1997, an applicant shall not qualify for asylum if section 208(a)(2) or 208(b)(2) of the Act applies to the applicant. If the applicant is found to be ineligible for asylum under either section 208(a)(2) or 208(b)(2) of the Act, the applicant shall be considered for eligibility for withholding of removal under section 241(b)(3) of the Act.

(2) *Applications filed before April 1, 1997.* (i) An immigration judge or asylum officer shall not grant asylum to any applicant who filed his or her application before April 1, 1997, if the alien:

(A) Having been convicted by a final judgment of a particularly serious crime in the United States, constitutes a danger to the community;

(B) Has been firmly resettled within the meaning of § 208.15;

(C) Can reasonably be regarded as a danger to the security of the United States;

(D) Has been convicted of an aggravated felony, as defined in section 101(a)(43) of the Act; or

(E) Ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion.

(ii) If the evidence indicates that one of the above grounds apply to the applicant, he or she shall have the burden of proving by a preponderance of the evidence that he or she did not so act.

(d) *Discretionary denial.* An asylum application may be denied in the discretion of the Attorney General if the alien can be removed to a third country which has offered resettlement and in which the alien would not face harm or persecution.

§ 208.14 Approval, denial, or referral of application.

(a) *By an immigration judge.* Unless otherwise prohibited in § 208.13(c), an immigration judge may grant or deny asylum in the exercise of discretion to an applicant who qualifies as a refugee under section 101(a)(42) of the Act.

(b) *By an asylum officer.* Unless otherwise prohibited in § 208.13(c):

(1) An asylum officer may grant asylum in the exercise of discretion to an applicant who qualifies as a refugee under section 101(a)(42) of the Act.

(2) If the alien appears to be deportable, excludable or removable under section 240 of the Act, the asylum officer shall either grant asylum or refer the application to an immigration judge for adjudication in deportation, exclusion, or removal proceedings. An asylum officer may refer such an application after an interview conducted in accordance with § 208.9 or if, in accordance with § 208.10, the applicant is deemed to have waived his or her right to an interview.

(3) If the applicant is maintaining valid nonimmigrant status at the time the application is decided, the asylum officer may grant or deny asylum, except in the case of an applicant described in § 208.2(b)(1).

(c) *Applicability of § 103.2(b) of this chapter.* No application for asylum or withholding of deportation shall be subject to denial pursuant to § 103.2(b) of this chapter.

(d) *Duration.* If the alien's asylum application is granted, the grant will be effective for an indefinite period, subject to termination as provided in § 208.22.

(e) *Effect of denial of principal's application on separate applications by dependents.* The denial of an asylum application filed by a principal applicant for asylum shall also result in the denial of asylum status to any dependents of that principal applicant who are included in that same application. Such denial shall not preclude a grant of asylum for an otherwise eligible dependent who has filed a separate asylum application, nor shall such denial result in an otherwise eligible dependent becoming ineligible to apply for asylum due to the provisions of section 208(a)(2)(C) of the Act.

§ 208.15 Definition of "firm resettlement."

An alien is considered to be firmly resettled if, prior to arrival in the United States, he or she entered into another nation with, or while in that nation received, an offer of permanent resident status, citizenship, or some other type of permanent resettlement unless he or she establishes:

(a) That his or her entry into that nation was a necessary consequence of his or her flight from persecution, that he or she remained in that nation only as long as was necessary to arrange onward travel, and that he or she did not establish significant ties in that nation; or

(b) That the conditions of his or her residence in that nation were so substantially and consciously restricted by the authority of the country of refuge that he or she was not in fact resettled. In making his or her determination, the Asylum Officer or Immigration Judge shall consider the conditions under which other residents of the country live, the type of housing made available to the refugee, whether permanent or temporary, the types and extent of employment available to the refugee, and the extent to which the refugee received permission to hold property and to enjoy other rights and privileges, such as travel documentation including a right of entry or reentry, education, public relief, or naturalization, ordinarily available to others resident in the country.

§ 208.16 Withholding of removal.

(a) *Consideration of application for withholding of removal.* An asylum officer shall not decide whether the exclusion, deportation, or removal of an alien to a country where the alien's life or freedom would be threatened must be withheld, except in the case of an alien who is otherwise eligible for asylum but is precluded from being granted such status due solely to section 207(a)(5) of the Act. In exclusion, deportation, or removal proceedings, an immigration judge may adjudicate both an asylum claim and a request for withholding of removal whether or not asylum is granted.

(b) *Eligibility for withholding of removal; burden of proof.* The burden of proof is on the applicant for withholding of removal to establish that his or her life or freedom would be threatened in the proposed country of removal on account of race, religion, nationality, membership in a particular social group, or political opinion. The testimony of the applicant, if credible, may be sufficient to sustain the burden of proof without corroboration. The evidence shall be evaluated as follows:

(1) The applicant's life or freedom shall be found to be threatened if it is more likely than not that he or she would be persecuted on account of race, religion, nationality, membership in a particular social group, or political opinion.

(2) If the applicant is determined to have suffered persecution in the past such that his or her life or freedom was threatened in the proposed country of removal on account of race, religion, nationality, membership in a particular social group, or political opinion, it shall be presumed that his or her life or freedom would be threatened on return to that country unless a preponderance of the evidence establishes that conditions in the country have changed to such an extent that it is no longer more likely than not that the applicant would be so persecuted there.

(3) In evaluating whether the applicant has sustained the burden of proving that his or her life or freedom would be threatened in a particular country on account of race, religion, nationality, membership in a particular social group, or political opinion, the asylum officer or immigration judge shall not require the applicant to provide evidence that he or she would be singled out individually for such persecution if:

(i) The applicant establishes that there is a pattern or practice in the country of proposed removal of persecution of a group of persons similarly situated to the applicant on account of race, religion, nationality, membership in a particular social group, or political opinion; and

(ii) The applicant establishes his or her own inclusion in and identification with such group of persons such that it is more likely than not that his or her life or freedom would be threatened upon return.

(c) *Approval or denial of application.* (1) *General.* Subject to paragraphs (c)(2) and (c)(3) of this section, an application for withholding of deportation or removal to a country of proposed removal shall be granted if the applicant's eligibility for withholding is established pursuant to paragraph (b) of this section.

(2) *Mandatory denials.* Except as provided in paragraph (c)(3) of this section, an application for withholding of removal shall be denied if the applicant falls within section 241(b)(3)(B) of the Act or, for applications for withholding of deportation adjudicated in proceedings commenced prior to April 1, 1997, within section 243(h)(2) of the Act as it appeared prior to that date. For purposes of section 241(b)(3)(B)(ii) of the Act, or section 243(h)(2)(B) of the Act as it appeared prior to April 1, 1997, an alien who has been convicted of a particularly serious crime shall be considered to constitute a danger to the community. If the evidence indicates the applicability of one or more of the grounds for denial enumerated in the Act, the applicant shall have the burden of proving by a preponderance of the evidence that such grounds do not apply.

(3) *Exception to the prohibition on withholding of deportation in certain cases.* Section 243(h)(3) of the Act, as added by section 413 of Public Law 104–132, shall apply only to applications adjudicated in proceedings commenced before April 1, 1997, and in which final action had not been taken before April 24, 1996. The discretion permitted by that section to override section 243(h)(2) of the Act shall be exercised only in the case of an applicant convicted of an aggravated felony (or felonies) where he or she was

sentenced to an aggregate term of imprisonment of less than 5 years and the immigration judge determines on an individual basis that the crime (or crimes) of which the applicant was convicted does not constitute a particularly serious crime. Nevertheless, it shall be presumed that an alien convicted of an aggravated felony has been convicted of a particularly serious crime. Except in the cases specified in this paragraph, the grounds for denial of withholding of deportation in section 243(h)(2) of the Act as it appeared prior to April 1, 1997, shall be deemed to comply with the 1967 Protocol Relating to the Status of Refugees.

(d) *Reconsideration of discretionary denial of asylum.* In the event that an applicant is denied asylum solely in the exercise of discretion, and the applicant is subsequently granted withholding of deportation or removal under this section, thereby effectively precluding admission of the applicant's spouse or minor children following to join him or her, the denial of asylum shall be reconsidered. Factors to be considered will include the reasons for the denial and reasonable alternatives available to the applicant such as reunification with his or her spouse or minor children in a third country.

§ 208.17 Decisions.

The decision of an asylum officer to grant or to deny asylum or withholding of removal, or to refer an asylum application in accordance with § 208.14(b), shall be communicated in writing to the applicant. Notices of decisions to grant or deny asylum, or to refer an application, by asylum officers shall generally be served in person unless, in the discretion of the asylum office director, routine service by mail is appropriate. A letter communicating denial of the application shall state the basis for denial of the asylum application. The letter also shall contain an assessment of the applicant's credibility, unless the denial is the result of the applicant's conviction of an aggravated felony. Pursuant to § 208.9(d), an applicant must appear in person to receive and to acknowledge receipt of the decision.

§ 208.18 Determining if an asylum application is frivolous.

For applications filed on or after April 1, 1997, an applicant is subject to the provisions of section 208(d)(6) of the Act only if a final order by an immigration judge or the Board of Immigration Appeals specifically finds that the alien knowingly filed a frivolous asylum application. For purposes of this section, an asylum application is frivolous if any of its material elements is deliberately fabricated. Such finding shall only be made if the immigration judge or the Board is satisfied that the applicant, during the course of the proceedings, has had sufficient opportunity to account for any discrepancies or implausible aspects of the claim.

§ 208.19 Admission of the asylee's spouse and children.

(a) *Eligibility.* A spouse, as defined in section 101(a)(35) of the Act, 8 U.S.C. 1101(a)(35), or child, as defined in section 101(b)(1)(A), (B), (C), (D), (E), or (F) of the Act, also may be granted asylum if accompanying or following to join the principal alien who was granted asylum, unless it is determined that:

(1) The spouse or child ordered, incited, assisted, or otherwise participated in the persecution of any persons on account of race, religion, nationality, membership in a particular social group, or political opinion;

(2) The spouse or child, having been convicted by a final judgment of a particularly serious crime in the United States, constitutes a danger to the community of the United States;

(3) The spouse or child has been convicted of an aggravated felony, as defined in section 101(a)(43) of the Act; or

(4) There are reasonable grounds for regarding the spouse or child a danger to the security of the United States.

(b) *Relationship.* The relationship of spouse and child as defined in section 101(b)(1) of the Act must have existed at the time the principal alien's asylum application was approved, except for children born to or legally adopted by the principal alien and spouse after approval of the principal alien's asylum application.

(c) *Spouse or child in the United States.* When a spouse or child of an alien granted asylum is in the United States but was not included in the principal alien's application, the principal alien may request asylum for the spouse or child by filing Form I–730 with the District Director having jurisdiction over his only place of residence, regardless of the status of that spouse or child in the United States.

(d) *Spouse or child outside the United States.* When a spouse or child of an alien granted asylum is outside the United States, the principal alien may request asylum for the spouse or child by filing form I–730 with the District Director, setting forth the full name, relationship, date and place of birth, and current location of each such person. Upon approval of the request, the District Director shall notify the Department of State, which will send an authorization cable to the American Embassy or Consulate having jurisdiction over the area in which the asylee's spouse or child is located.

(e) *Denial.* If the spouse or child is found to be ineligible for the status accorded under section 208(c) of the Act, a written notice stating the basis for denial shall be forwarded to the principal alien. No appeal shall lie from this decision.

(f) *Burden of proof.* To establish the claim of relationship of spouse or child as defined in section 101(b)(1) of the Act, evidence must be submitted with the request as set forth in part 204 of this chapter. Where possible this will consist of the documents specified in 8 CFR 204.2(c) (2) and (3). The burden of proof is on the principal alien to establish by a preponderance of the evidence that any person on whose behalf he or she is making a request under this section is an eligible spouse or child.

(g) *Duration.* The spouse or child qualifying under section 208(c) of the Act shall be granted asylum for an indefinite period unless the principal's status is revoked.

§ 208.20 Effect on exclusion, deportation, and removal proceedings.

(a) An alien who has been granted asylum may not be deported or removed unless his or her asylum status is terminated pursuant to § 208.22. An alien in exclusion, deportation, or removal proceedings who is granted withholding of removal or deportation may not be deported or removed to the country to which his or her deportation or removal is ordered withheld unless the withholding order is terminated pursuant to § 208.22.

(b) When an alien's asylum status or withholding of removal or deportation is terminated under this chapter, the Service shall initiate removal proceedings under section 235 or 240 of the Act, as appropriate, if the alien is not already in exclusion, deportation, or removal proceedings. Removal proceedings may also be in conjunction with a termination hearing scheduled under § 208.22(e).

§ 208.21 Restoration of status.

An alien who was maintaining his or her nonimmigrant status at the time of filing an asylum application and has such application denied may continue in or be restored to that status, if it has not expired.

§ 208.22 Termination of asylum or withholding of removal or deportation.

(a) *Termination of asylum by the Service.* Except as provided in paragraph (e) of this section, an asylum officer may terminate a grant of asylum made under the jurisdiction of an asylum officer or a district director if following an interview, the asylum officer determines that:

(1) There is a showing of fraud in the alien's application such that he or she was not eligible for asylum at the time it was granted;

(2) As to applications filed on or after April 1, 1997, one or more of the conditions described in section 208(c)(2) of the Act exist; or

(3) As to applications filed before April 1, 1997, the alien no longer has a well-founded fear of persecution upon return due to a change of country conditions in the alien's country of nationality or habitual residence or the alien has committed any act that would have been grounds for denial of asylum under § 208.13(c)(2).

(b) *Termination of withholding of deportation or removal by the Service.* Except as provided in paragraph (e) of this section, an asylum officer may terminate a grant of withholding of deportation or removal made under the jurisdiction of an asylum officer or a district director if the asylum officer determines, following an interview, that:

(1) The alien is no longer entitled to withholding of deportation or removal due to a change of conditions in the country to which removal was withheld;

(2) There is a showing of fraud in the alien's application such that the alien was not eligible for withholding of removal at the time it was granted;

(3) The alien has committed any other act that would have been grounds for denial of withholding of removal under section 241(b)(3)(B) of the Act had it occurred prior to the grant of withholding of removal; or

(4) For applications filed in proceedings commenced before April 1, 1997, the alien has committed any act that would have been grounds for denial of withholding of deportation under section 243(h)(2) of the Act.

(c) *Procedure.* Prior to the termination of a grant of asylum or withholding of deportation or removal, the alien shall be given notice of intent to terminate, with the reasons therefor, at least 30 days prior to the interview specified in paragraph (a) of this section before an asylum officer. The alien shall be provided the opportunity to present evidence showing that he or she is still eligible for asylum or withholding of deportation or removal. If the asylum officer determines that the alien is no longer eligible for asylum or withholding of deportation or removal, the alien shall be given written notice that asylum status or withholding of deportation or removal and any employment authorization issued pursuant thereto, are terminated.

(d) *Termination of derivative status.* The termination of asylum status for a person who was the principal applicant shall result in termination of the asylum status of a spouse or child whose status was based on the asylum application of the principal. Such termination shall not preclude the spouse or child of such alien from separately asserting an asylum or withholding of deportation or removal claim.

(e) *Termination of asylum or withholding of deportation or removal by the Executive Office for Immigration Review.* An immigration judge or the Board of Immigration Appeals may reopen a case pursuant to § 3.2 or § 3.23 of this chapter for the purpose of terminating a grant of asylum or withholding of deportation or removal made under the jurisdiction of an immigration judge. In such a reopened proceeding, the Service must establish, by a preponderance of evidence, one or more of the grounds set forth in paragraphs (a) or (b) of this section. In addition, an immigration judge may terminate a grant of asylum or withholding of deportation or removal made under the jurisdiction of the Service at any time after the alien has been provided a notice of intent to terminate by the Service. Any termination under this paragraph may occur in conjunction with an exclusion, deportation or removal proceeding.

(f) *Termination of asylum for arriving aliens.* If the Service determines that an applicant for admission who had previously been granted asylum in the United States falls within conditions set forth in section 208(c)(2) of the Act and is inadmissible, the Service shall issue a notice of intent to terminate asylum and initiate removal proceedings under section 240 of the Act. The alien shall present his or her response to the intent to terminate during proceedings before the immigration judge.

§§ 208.23—208.29 [Reserved]

Subpart B—Credible Fear of Persecution

§ 208.30 Credible fear determinations involving stowaways and applicants for admission found inadmissible pursuant to section 212(a)(6)(C) or 212(a)(7) of the Act.

(a) *Jurisdiction.* The provisions of this subpart apply to aliens subject to sections 235(a)(2) and 235(b)(1) of the Act. Pursuant to section 235(b)(1)(B) of the Act, the Service has exclusive jurisdiction to make credible fear determinations, and the Executive Office for Immigration Review has exclusive jurisdiction to review such determinations. Except as otherwise provided in this subpart, paragraphs (b) through (e) of this section are the exclusive procedures applicable to credible fear interviews, determinations, and review under section 235(b)(1)(B) of the Act.

(b) *Interview and procedure.* The asylum officer, as defined in section 235(b)(1)(E) of the Act, will conduct the interview in a nonadversarial manner, separate and apart from the general public. At the time of the interview, the asylum officer shall verify that the alien has received Form M–444, Information about Credible Fear Interview in Expedited Removal Cases. The officer shall also determine that the alien has an understanding of the credible fear determination process. The alien may be required to register his or her identity electronically or through any other means designated by the Attorney General. The alien may consult with a person or persons of the alien's choosing prior to the interview or any review thereof, and may present other evidence, if available. Such consultation shall be at no expense to the Government and shall not unreasonably delay the process. Any person or persons with whom the alien chooses to consult may be present at the interview and may be permitted, in the discretion of the asylum officer, to present a statement at the end of the interview. The asylum officer, in his or her discretion, may place reasonable limits on the number of such persons who may be present at the interview and on the length of statement or statements made. If the alien is unable to proceed effectively in English, and if the asylum officer is unable to proceed competently in a language chosen by the alien, the asylum officer shall arrange for the assistance of an interpreter in conducting the interview. The interpreter may not be a representative or employee of the applicant's country of nationality or, if the applicant is stateless, the applicant's country of last habitual residence. The asylum officer shall create a summary of the material facts as stated by the applicant. At the conclusion of the interview, the officer shall review the summary with the alien and provide the alien with an opportunity to correct errors therein. The asylum officer shall create a written record of his or her determination, including a summary of the material facts as stated by the applicant, any additional facts relied on by the officer, and the officer's determination of whether, in light of such facts, the alien

has established a credible fear of persecution. The decision shall not become final until reviewed by a supervisory asylum officer.

(c) *Authority.* Asylum officers conducting credible fear interviews shall have the authorities described in § 208.9(c).

(d) *Referral for an asylum hearing.* If an alien, other than an alien stowaway, is found to have a credible fear of persecution, the asylum officer will so inform the alien and issue a Form I–862, Notice to Appear, for full consideration of the asylum claim in proceedings under section 240 of the Act. Parole of the alien may only be considered in accordance with section 212(d)(5) of the Act and § 212.5 of this chapter. If an alien stowaway is found to have a credible fear of persecution, the asylum officer will so inform the alien and issue a Form I–863, Notice to Referral to Immigration Judge, for full consideration of the asylum claim in proceedings under § 208.2(b)(1).

(e) *Removal of aliens with no credible fear of persecution.* If an alien is found not to have a credible fear of persecution, the asylum officer shall provide the alien with a written notice of decision and inquire whether the alien wishes to have an immigration judge review the negative decision, using Form I–869, Record of Negative Credible Fear Finding and Request for Review by Immigration Judge, on which the alien shall indicate whether he or she desires such review. If the alien is not a stowaway, the officer shall also order the alien removed and issue a Form I–860, Notice and Order of Expedited Removal. If the alien is a stowaway and the alien does not request a review by an immigration judge, the asylum officer shall also refer the alien to the district director for completion of removal proceedings in accordance with section 235(a)(2) of the Act.

(f) *Review by immigration judge.* The asylum officer's negative decision regarding credible fear shall be subject to review by an immigration judge upon the applicant's request, in accordance with section 235(b)(1)(B)(iii)(III) of the Act. If the alien requests such review, the asylum officer shall arrange for the detention of the alien and serve him or her with a Form I–863, Notice of Referral to Immigration Judge. The record of determination, including copies of the Form I–863, the asylum officer's notes, the summary of the material facts, and other materials upon which the determination was based shall be provided to the immigration judge with the negative determination. Upon review of the asylum officer's negative credible fear determination:

(1) If the immigration judge concurs with the determination of the asylum officer that the alien does not have a credible fear of persecution, the case shall be returned to the Service for removal of the alien.

(2) If the immigration judge finds that the alien, other than an alien stowaway, possesses a credible fear of persecution, the immigration judge shall vacate the order of the asylum officer issued on Form I–860 and the Service may commence removal proceedings under section 240 of the Act, during which time the alien may file an asylum application in accordance with § 208.4(b)(3)(i).

(3) If the immigration judge finds that an alien stowaway possesses a credible fear of persecution, the alien shall be allowed to file an asylum application before the immigration judge in accordance with § 208.4(b)(3)(iii). The immigration judge shall decide the asylum application as provided in that section. Such decision may be appealed by either the stowaway or the Service to the Board of Immigration Appeals. If and when a denial of the asylum application becomes final, the alien shall be removed from the United States in accordance with section 235(a)(2) of the Act. If and when an approval of the asylum application becomes final, the Service shall terminate removal proceedings under section 235(a)(2) of the Act.

PART 209—ADJUSTMENT OF STATUS OF REFUGEES AND ALIENS GRANTED ASYLUM

43. The authority citation for part 209 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1157, 1158, 1159, 1228, 1252, 1282; 8 CFR part 2.

§ 209.1 [Amended]

44. In § 209.1, paragraph (a)(1) is amended in the first sentence by revising the reference to ", 236, and 237" to read "and 240".

45. In § 209.2, the last sentence of paragraph (c) is revised to read as follows:

§ 209.2 Adjustment of status of alien granted asylum.

* * * * *

(c) *Application.* * * * If an alien has been placed in deportation, exclusion, or removal proceedings under any section of this Act (as effective on the date such proceedings commenced), the application can be filed and considered only in those proceedings.

* * * * *

PART 211—DOCUMENTARY REQUIREMENTS: IMMIGRANTS; WAIVERS

46. Part 211 is revised to read as follows:

Sec.
211.1 Visas.
211.2 Passports.
211.3 Expiration of immigrant visas, reentry permits, refugee travel documents, and Forms I–551.
211.4 Waiver of documents for returning residents.
211.5 Alien commuters.

Authority: 8 U.S.C. 1101, 1103, 1181, 1182, 1203, 1225, 1257; 8 CFR part 2.

§ 211.1 Visas.

(a) *General.* Except as provided in paragraph (b) of this section, each arriving alien applying for admission (or boarding the vessel or aircraft on which he or she arrives) into the United States for lawful permanent residence, or as a lawful permanent resident returning to an unrelinquished lawful permanent residence in the United States, shall present one of the following:

(1) A valid, unexpired immigrant visa;

(2) A valid, unexpired Form I–551, Alien Registration Receipt Card, if seeking readmission after a temporary absence of less than 1 year, or in the case of a crewmember regularly serving on board a vessel or aircraft of United States registry seeking readmission after any temporary absence connected with his or her duties as a crewman;

(3) A valid, unexpired Form I–327, Permit to Reenter the United States;

(4) A valid, unexpired Form I–571, Refugee Travel Document, properly endorsed to reflect admission as a lawful permanent resident;

(5) An expired Form I–551, Alien Registration Receipt Card, accompanied by a filing receipt issued within the previous 6 months for either a Form I–751, Petition to Remove the Conditions on Residence, or Form I–829, Petition by Entrepreneur to Remove Conditiops, if seeking admission or readmission after a temporary absence of less than 1 year;

(6) A Form I–551, whether or not expired, presented by a civilian or military employee of the United States Government who was outside the United States pursuant to official orders, or by the spouse or child of such employee who resided abroad while the employee or serviceperson was on overseas duty and who is preceding, accompanying or following to join within 4 months the employee, returning to the United States; or

(7) Form I–551, whether or not expired, or a transportation letter issued by an American consular officer,

presented by an employee of the American University of Beirut, who was so employed immediately preceding travel to the United States, returning temporarily to the United States before resuming employment with the American University of Beirut, or resuming permanent residence in the United States.

(b) *Waivers.* (1) A waiver of the visa required in paragraph (a) of this section shall be granted without fee or application by the district director, upon presentation of the child's birth certificate, to a child born subsequent to the issuance of an immigrant visa to his or her accompanying parent who applies for admission during the validity of such a visa; or a child born during the temporary visit abroad of a mother who is a lawful permanent resident alien, or a national, of the United States, provided that the child's application for admission to the United States is made within 2 years of birth, the child is accompanied by the parent who is applying for readmission as a permanent resident upon the first return of the parent to the United States after the birth of the child, and the accompanying parent is found to be admissible to the United States.

(2) For an alien described in paragraph (b)(1) of this section, recordation of the child's entry shall be on Form I–181, Memorandum of Creation of Record of Admission for Lawful Permanent Residence. The carrier of such alien shall not be liable for a fine pursuant to section 273 of the Act.

(3) If an immigrant alien returning to an unrelinquished lawful permanent residence in the United States after a temporary absence abroad believes that good cause exists for his or her failure to present an immigrant visa, Form I–551, or reentry permit, the alien may file an application for a waiver of this requirement with the district director in charge of the port-of-entry. To apply for this waiver, the alien must file Form I–193, Application for Waiver of Passport and/or Visa, with the fee prescribed in § 103.7(b)(1) of this chapter, except that if the alien's Form I–551 was lost or stolen, the alien shall instead file Form I–90, Application to Replace Alien Registration Receipt Card, with the fee prescribed in § 103.7(b)(1) of this chapter, provided the temporary absence did not exceed 1 year. In the exercise of discretion, the district director in charge of the port-of-entry may waive the alien's lack of an immigrant visa, Form I–551, or reentry permit and admit the alien as a returning resident, if the district director is satisfied that the alien has established good cause for the alien's failure to present an immigrant visa, Form I–551, or reentry permit. Filing the Form I–90 will serve as both application for replacement and as application for waiver of passport and visa, without the obligation to file a separate waiver application.

(c) *Immigrants having occupational status defined in section 101(a)(15) (A), (E), or (G) of the Act.* An immigrant visa, reentry permit, or Form I–551 shall be invalid when presented by an alien who has an occupational status under section 101(a)(15) (A), (E), or (G) of the Act, unless he or she has previously submitted, or submits at the time he or she applies for admission to the United States, the written waiver required by section 247(b) of the Act and 8 CFR part 247.

(d) *Returning temporary residents.* (1) Form I–688, Temporary Resident Card, may be presented in lieu of an immigrant visa by an alien whose status has been adjusted to that of a temporary resident under the provisions of § 210.1 of this chapter, such status not having changed, and who is returning to an unrelinquished residence within one year after a temporary absence abroad.

(2) Form I–688 may be presented in lieu of an immigrant visa by an alien whose status has been adjusted to that of a temporary resident under the provisions of § 245a.2 of this chapter, such status not having changed, and who is returning to an unrelinquished residence within 30 days after a temporary absence abroad, provided that the aggregate of all such absences abroad during the temporary residence period has not exceeded 90 days.

§ 211.2 Passports.

(a) A passport valid for the bearer's entry into a foreign country at least 60 days beyond the expiration date of his or her immigrant visa shall be presented by each immigrant except an immigrant who:

(1) Is the parent, spouse, or unmarried son or daughter of a United States citizen or of an alien lawful permanent resident of the United States;

(2) Is entering under the provisions of § 211.1(a)(2) through (a)(7);

(3) Is a child born during the temporary visit abroad of a mother who is a lawful permanent resident alien, or a national, of the United States, provided that the child's application for admission to the United States is made within 2 years of birth, the child is accompanied by the parent who is applying for readmission as a permanent resident upon the first return of the parent to the United States after the birth of the child, and the accompanying parent is found to be admissible to the United States;

(4) Is a stateless person or a person who because of his or her opposition to Communism is unwilling or unable to obtain a passport from the country of his or her nationality, or is the accompanying spouse or unmarried son or daughter of such immigrant; or

(5) Is a member of the Armed Forces of the United States.

(b) Except as provided in paragraph (a) of this section, if an alien seeking admission as an immigrant with an immigrant visa believes that good cause exists for his or her failure to present a passport, the alien may file an application for a waiver of this requirement with the district director in charge of the port-of-entry. To apply for this waiver, the alien must file Form I–193, Application for Waiver of Passport and/or Visa, with the fee prescribed in § 103.7(b)(1) of this chapter. In the exercise of discretion, the district director in charge of the port-of-entry may waive the alien's lack of passport and admit the alien as an immigrant, if the district director is satisfied that the alien has established good cause for the alien's failure to present a passport.

§ 211.3 Expiration of immigrant visas, reentry permits, refugee travel documents, and Forms I–551.

An immigrant visa, reentry permit, refugee travel document, or Form I—551 shall be regarded as unexpired if the rightful holder embarked or enplaned before the expiration of his or her immigrant visa, reentry permit, or refugee travel document, or with respect to Form I—551, before the first anniversary of the date on which he or she departed from the United States, provided that the vessel or aircraft on which he or she so embarked or enplaned arrives in the United States or foreign contiguous territory on a continuous voyage. The continuity of the voyage shall not be deemed to have been interrupted by scheduled or emergency stops of the vessel or aircraft en route to the United States or foreign contiguous territory, or by a layover in foreign contiguous territory necessitated solely for the purpose of effecting a transportation connection to the United States.

§ 211.4 Waiver of documents for returning residents.

(a) Pursuant to the authority contained in section 211(b) of the Act, an alien previously lawfully admitted to the United States for permanent residence who, upon return from a temporary absence was inadmissible because of failure to have or to present

a valid passport, immigrant visa, reentry permit, border crossing card, or other document required at the time of entry, may be granted a waiver of such requirement in the discretion of the district director if the district director determines that such alien:

(1) Was not otherwise inadmissible at the time of entry, or having been otherwise inadmissible at the time of entry is with respect thereto qualified for an exemption from deportability under section 237(a)(1)(H) of the Act; and

(2) Is not otherwise subject to removal.

(b) Denial of a waiver by the district director is not appealable but shall be without prejudice to renewal of an application and reconsideration in proceedings before the immigration judge.

§ 211.5 Alien commuters.

(a) *General.* An alien lawfully admitted for permanent residence or a special agricultural worker lawfully admitted for temporary residence under section 210 of the Act may commence or continue to reside in foreign contiguous territory and commute as a special immigrant defined in section 101(a)(27)(A) of the Act to his or her place of employment in the United States. An alien commuter engaged in seasonal work will be presumed to have taken up residence in the United States if he or she is present in this country for more than 6 months, in the aggregate, during any continuous 12-month period. An alien commuter's address report under section 265 of the Act must show his or her actual residence address even though it is not in the United States.

(b) *Loss of residence status.* An alien commuter who has been out of regular employment in the United States for a continuous period of 6 months shall be deemed to have lost residence status, notwithstanding temporary entries in the interim for other than employment purposes. An exception applies when employment in the United States was interrupted for reasons beyond the individual's control other than lack of a job opportunity or the commuter can demonstrate that he or she has worked 90 days in the United States in the aggregate during the 12-month period preceding the application for admission into the United States. Upon loss of status, Form I–551 or I–688 shall become invalid and must be surrendered to an immigration officer.

(c) *Eligibility for benefits under the immigration and nationality laws.* Until he or she has taken up residence in the United States, an alien commuter cannot satisfy the residence requirements of the naturalization laws and cannot qualify for any benefits under the immigration laws on his or her own behalf or on behalf of his or her relatives other than as specified in paragraph (a) of this section. When an alien commuter takes up residence in the United States, he or she shall no longer be regarded as a commuter. He or she may facilitate proof of having taken up such residence by notifying the Service as soon as possible, preferably at the time of his or her first reentry for that purpose. Application for issuance of a new alien registration receipt card to show that he or she has taken up residence in the United States shall be made on Form I–90.

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

47. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1227, 1228, 1252; 8 CFR part 2.

48. Section 212.5 is amended by:

a. Revising paragraph (a) and (b);

b. Revising introductory text in paragraph (c);

c. Revising paragraph (c)(1); and by

d. Revising paragraph (d)(2)(i), to read as follows:

§ 212.5 Parole of aliens into the United States.

(a) The parole of aliens within the following groups who have been or are detained in accordance with § 235.3(b) or (c) of this chapter would generally be justified only on a case-by-case basis for "urgent humanitarian reasons" or "significant public benefit," provided the aliens present neither a security risk nor a risk of absconding:

(1) Aliens who have serious medical conditions in which continued detention would not be appropriate;

(2) Women who have been medically certified as pregnant;

(3) Aliens who are defined as juveniles in § 236.3(a) of this chapter. The district director or chief patrol agent shall follow the guidelines set forth in § 236.3(a) of this chapter and paragraphs (a)(3)(i) through (iii) of this section in determining under what conditions a juvenile should be paroled from detention:

(i) Juveniles may be released to a relative (brother, sister, aunt, uncle, or grandparent) not in Service detention who is willing to sponsor a minor and the minor may be released to that relative notwithstanding that the juvenile has a relative who is in detention.

(ii) If a relative who is not in detention cannot be located to sponsor the minor, the minor may be released with an accompanying relative who is in detention.

(iii) If the Service cannot locate a relative in or out of detention to sponsor the minor, but the minor has identified a non-relative in detention who accompanied him or her on arrival, the question of releasing the minor and the accompanying non-relative adult shall be addressed on a case-by-case basis;

(4) Aliens who will be witnesses in proceedings being, or to be, conducted by judicial, administrative, or legislative bodies in the United States; or

(5) Aliens whose continued detention is not in the public interest as determined by the district director or chief patrol agent.

(b) In the cases of all other arriving aliens, except those detained under § 235.3(b) or (c) of this chapter and paragraph (a) of this section, the district director or chief patrol agent may, after review of the individual case, parole into the United States temporarily in accordance with section 212(d)(5)(A) of the Act, any alien applicant for admission, under such terms and conditions, including those set forth in paragraph (c) of this section, as he or she may deem appropriate. An alien who arrives at a port-of-entry and applies for parole into the United States for the sole purpose of seeking adjustment of status under section 245A of the Act, without benefit of advance authorization as described in paragraph (e) of this section shall be denied parole and detained for removal in accordance with the provisions of § 235.3(b) or (c) of this chapter. An alien seeking to enter the United States for the sole purpose of applying for adjustment of status under section 210 of the Act shall be denied parole and detained for removal under § 235.3(b) or (c) of this chapter, unless the alien has been recommended for approval of such application for adjustment by a consular officer at an Overseas Processing Office.

(c) *Conditions.* In any case where an alien is paroled under paragraph (a) or (b) of this section, the district director or chief patrol agent may require reasonable assurances that the alien will appear at all hearings and/or depart the United States when required to do so. Not all factors listed need be present for parole to be exercised. The district director or chief patrol agent should apply reasonable discretion. The consideration of all relevant factors includes:

(1) The giving of an undertaking by the applicant, counsel, or a sponsor to ensure appearances or departure, and a bond may be required on Form I–352 in such amount as the district director or chief patrol agent may deem appropriate;

* * * * *

(d) * * *

(2)(i) *On notice.* In cases not covered by paragraph (d)(1) of this section, upon accomplishment of the purpose for which parole was authorized or when in the opinion of the district director or chief patrol agent in charge of the area in which the alien is located, neither humanitarian reasons nor public benefit warrants the continued presence of the alien in the United States, parole shall be terminated upon written notice to the alien and he or she shall be restored to the status that he or she had at the time of parole. When a charging document is served on the alien, the charging document will constitute written notice of termination of parole, unless otherwise specified. Any further inspection or hearing shall be conducted under section 235 or 240 of the Act and this chapter, or any order of exclusion, deportation, or removal previously entered shall be executed. If the exclusion, deportation, or removal order cannot be executed by removal within a reasonable time, the alien shall again be released on parole unless in the opinion of the district director or the chief patrol agent the public interest requires that the alien be continued in custody.

* * * * *

49. In § 212.6, paragraph (a)(2) is revised to read as follows:

§ 212.6 Nonresident alien border crossing cards.

(a) * * *

(2) *Mexican border crossing card, Form I–186 or I–586.* The rightful holder of a nonresident alien Mexican border crossing card, Form I–186 or I–586, may be admitted under § 235.1(f) of this chapter if found otherwise admissible. However, any alien seeking entry as a visitor for business or pleasure must also present a valid passport and shall be issued Form I–94 if the alien is applying for admission from:

(i) A country other than Mexico or Canada, or

(ii) Canada if the alien has been in a country other than the United States or Canada since leaving Mexico.

* * * * *

PART 213—ADMISSION OF ALIENS ON GIVING BOND OR CASH DEPOSIT

50. The authority citation for part 213 is revised to read as follows:

Authority: 8 U.S.C. 1103; 8 CFR part 2.

§ 213.1 [Amended]

51. Section 213.1 is amended in the last sentence by revising the term "part 103" to read "§ 103.6".

PART 214—NONIMMIGRANT CLASSES

52. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282; 8 CFR part 2.

53. Section 214.1 is amended by revising paragraph (c)(4)(iv) to read as follows:

§ 214.1 Requirements for admission, extension, and maintenance of status.

* * * * *

(c) * * *

(4) * * *

(iv) The alien is not the subject of deportation proceedings under section 242 of the Act (prior to April 1, 1997) or removal proceedings under section 240 of the Act.

* * * * *

PART 216—CONDITIONAL BASIS OF LAWFUL PERMANENT RESIDENCE STATUS

54. The authority citation for part 216 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1154, 1184, 1186a, 1186b, and 8 CFR part 2.

55. Section 216.3 is revised to read as follows:

§ 216.3 Termination of conditional resident status.

(a) *During the two-year conditional period.* The director shall send a formal written notice to the conditional permanent resident of the termination of the alien's conditional permanent resident status if the director determines that any of the conditions set forth in section 216(b)(1) or 216A(b)(1) of the Act, whichever is applicable, are true, or it becomes known to the government that an alien entrepreneur who was admitted pursuant to section 203(b)(5) of the Act obtained his or her investment capital through other than legal means (such as through the sale of illegal drugs). If the Service issues a notice of intent to terminate an alien's conditional resident status, the director shall not adjudicate Form I–751 or Form I–829 until it has been determined that the alien's status will not be terminated. During this time, the alien shall continue to be a lawful conditional permanent resident with all the rights, privileges, and responsibilities provided to persons possessing such status. Prior to issuing the notice of termination, the director shall provide the alien with an opportunity to review and rebut the evidence upon which the decision is to be based, in accordance with § 103.2(b)(2) of this chapter. The termination of status, and all of the rights and privileges concomitant thereto (including authorization to accept or continue in employment in this country), shall take effect as of the date of such determination by the director, although the alien may request a review of such determination in removal proceedings. In addition to the notice of termination, the director shall issue a notice to appear in accordance with 8 CFR part 239. During the ensuing removal proceedings, the alien may submit evidence to rebut the determination of the director. The burden of proof shall be on the Service to establish, by a preponderance of the evidence, that one or more of the conditions in section 216(b)(1) or 216A(b)(1) of the Act, whichever is applicable, are true, or that an alien entrepreneur who was admitted pursuant to section 203(b)(5) of the Act obtained his or her investment capital through other than legal means (such as through the sale of illegal drugs).

(b) *Determination of fraud after two years.* If, subsequent to the removal of the conditional basis of an alien's permanent resident status, the director determines that an alien spouse obtained permanent resident status through a marriage which was entered into for the purpose of evading the immigration laws or an alien entrepreneur obtained permanent resident status through a commercial enterprise which was improper under section 216A(b)(1) of the Act, the director may institute rescission proceedings pursuant to section 246 of the Act (if otherwise appropriate) or removal proceedings under section 240 of the Act.

56. Section 216.4 is amended by:

a. Revising paragraphs (a)(6), and (b)(3);

b. Revising paragraph, (c)(4);

c. Removing the unnumbered paragraph immediately after paragraph (c)(4); and by

d. Revising paragraph (d)(2) to read as follows:

§ 216.4 Joint petition to remove conditional basis of lawful permanent resident status for alien spouse.

(a) * * *

(6) *Termination of status for failure to file petition.* Failure to properly file Form I–751 within the 90-day period immediately preceding the second anniversary of the date on which the alien obtained lawful permanent residence on a conditional basis shall result in the automatic termination of the alien's permanent residence status and the initiation of proceedings to remove the alien from the United States. In such proceedings the burden shall be on the alien to establish that he or she complied with the requirement to file the joint petition within the designated period. Form I–751 may be filed after the expiration of the 90-day period only if the alien establishes to the satisfaction of the director, in writing, that there was good cause for the failure to file Form I–751 within the required time period. If the joint petition is filed prior to the jurisdiction vesting with the immigration judge in removal proceedings and the director excuses the late filing and approves the petition, he or she shall restore the alien's permanent residence status, remove the conditional basis of such status and cancel any outstanding notice to appear in accordance with § 239.2 of this chapter. If the joint petition is not filed until after jurisdiction vests with the immigration judge, the immigration judge may terminate the matter upon joint motion by the alien and the Service.

(b) * * *

(3) *Termination of status for failure to appear for interview.* If the conditional resident alien and/or the petitioning spouse fail to appear for an interview in connection with the joint petition required by section 216(c) of the Act, the alien's permanent residence status will be automatically terminated as of the second anniversary of the date on which the alien obtained permanent residence. The alien shall be provided with written notification of the termination and the reasons therefor, and a notice to appear shall be issued placing the alien under removal proceedings. The alien may seek review of the decision to terminate his or her status in such proceedings, but the burden shall be on the alien to establish compliance with the interview requirements. If the alien submits a written request that the interview be rescheduled or that the interview be waived, and the director determines that there is good cause for granting the request, the interview may be rescheduled or waived, as appropriate. If the interview is rescheduled at the request of the petitioners, the Service shall not be required to conduct the interview within the 90-day period following the filing of the petition.

(c) * * *

(4) A fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) in connection with the filing of the petition through which the alien obtained conditional permanent residence. If derogatory information is determined regarding any of these issues, the director shall offer the petitioners the opportunity to rebut such information. If the petitioners fail to overcome such derogatory information the director may deny the joint petition, terminate the alien's permanent residence, and issue a notice to appear to initiate removal proceedings. If derogatory information not relating to any of these issues is determined during the course of the interview, such information shall be forwarded to the investigations unit for appropriate action. If no unresolved derogatory information is determined relating to these issues, the petition shall be approved and the conditional basis of the alien's permanent residence status removed, regardless of any action taken or contemplated regarding other possible grounds for removal.

(d) * * *

(2) *Denial.* If the director denies the joint petition, he or she shall provide written notice to the alien of the decision and the reason(s) therefor and shall issue a notice to appear under section 239 of the Act and 8 CFR part 239. The alien's lawful permanent resident status shall be terminated as of the date of the director's written decision. The alien shall also be instructed to surrender any Alien Registration Receipt Card previously issued by the Service. No appeal shall lie from the decision of the director; however, the alien may seek review of the decision in removal proceedings. In such proceedings the burden of proof shall be on the Service to establish, by a preponderance of the evidence, that the facts and information set forth by the petitioners are not true or that the petition was properly denied.

57. Section 216.5 is amended by revising paragraphs (a), (d), (e)(1), (e)(3)(ii), and (f) to read as follows:

§ 216.5 Waiver of requirement to file joint petition to remove conditions by alien spouse.

(a) *General.* (1) A conditional resident alien who is unable to meet the requirements under section 216 of the Act for a joint petition for removal of the conditional basis of his or her permanent resident status may file Form I–751, Petition to Remove the Conditions on Residence, if the alien requests a waiver, was not at fault in failing to meet the filing requirement, and the conditional resident alien is able to establish that:

(i) Deportation or removal from the United States would result in extreme hardship;

(ii) The marriage upon which his or her status was based was entered into in good faith by the conditional resident alien, but the marriage was terminated other than by death, and the conditional resident was not at fault in failing to file a timely petition; or

(iii) The qualifying marriage was entered into in good faith by the conditional resident but during the marriage the alien spouse or child was battered by or subjected to extreme cruelty committed by the citizen or permanent resident spouse or parent.

(2) A conditional resident who is in exclusion, deportation, or removal proceedings may apply for the waiver only until such time as there is a final order of exclusion, deportation or removal.

* * * * *

(d) *Interview.* The service center director may refer the application to the appropriate local office and require that the alien appear for an interview in connection with the application for a waiver. The director shall deny the application and initiate removal proceedings if the alien fails to appear for the interview as required, unless the alien establishes good cause for such failure and the interview is rescheduled.

(e) *Adjudication of waiver application.* (1) *Application based on claim of hardship.* In considering an application for a waiver based upon an alien's claim that extreme hardship would result from the alien's removal from the United States, the director shall take into account only those factors that arose subsequent to the alien's entry as a conditional permanent resident. The director shall bear in mind that any removal from the United States is likely to result in a certain degree of hardship, and that only in those cases where the hardship is extreme should the application for a waiver be granted. The burden of establishing that extreme hardship exists rests solely with the applicant.

* * * * *

(3) * * *

(ii) A conditional resident or former conditional resident who has not departed the United States after termination of resident status may apply for the waiver. The conditional resident may apply for the waiver regardless of his or her present marital status. The conditional resident may still be residing with the citizen or permanent resident spouse, or may be divorced or separated.

* * * * *

(f) *Decision.* The director shall provide the alien with written notice of the decision on the application for waiver. If the decision is adverse, the director shall advise the alien of the reasons therefor, notify the alien of the termination of his or her permanent residence status, instruct the alien to surrender any Alien Registration Receipt Card issued by the Service and issue a notice to appear placing the alien in removal proceedings. No appeal shall lie from the decision of the director; however, the alien may seek review of such decision in removal proceedings.

PART 217—VISA WAIVER PILOT PROGRAM

58. The authority citation for part 217 continues to read as follows:

Authority: 8 U.S.C. 1103, 1187; 8 CFR part 2.

59. Section 217.1 is revised to read as follows:

§ 217.1 Scope.

The Visa Waiver Pilot Program (VWPP) described in this section is established pursuant to the provisions of section 217 of the Act.

60. Section 217.2 is revised to read as follows:

§ 217.2 Eligibility.

(a) *Definitions.* As used in this part, the term:

Carrier refers to the owner, charterer, lessee, or authorized agent of any commercial vessel or commercial aircraft engaged in transporting passengers to the United States from a foreign place.

Designated country refers to Andorra, Argentina, Australia, Austria, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, the Netherlands, New Zealand, Norway, San Marino, Spain, Sweden, Switzerland, and the United Kingdom. The United Kingdom refers only to British citizens who have the unrestricted right of permanent abode in the United Kingdom (England, Scotland, Wales, Northern Ireland, the Channel Islands and the Isle of Man); it does not refer to British overseas citizens, British dependent territories' citizens, or citizens of British Commonwealth countries. Effective April 1, 1995, until September 30, 1998, or the expiration of the Visa Waiver Pilot Program, whichever comes first, Ireland has been designated as a Visa Waiver Pilot Program country with Probationary Status in accordance with section 217(g) of the Act.

Round trip ticket means any return trip transportation ticket in the name of an arriving Visa Waiver Pilot Program applicant on a participating carrier valid for at least 1 year, electronic ticket record, airline employee passes indicating return passage, individual vouchers for return passage, group vouchers for return passage for charter flights, and military travel orders which include military dependents for return to duty stations outside the United States on U.S. military flights. A period of validity of 1 year need not be reflected on the ticket itself, provided that the carrier agrees that it will honor the return portion of the ticket at any time, as provided in Form I–775, Visa Waiver Pilot Program Agreement.

(b) *Special program requirements.* (1) *General.* In addition to meeting all of the requirements for the Visa Waiver Pilot Program specified in section 217 of the Act, each applicant must possess a valid, unexpired passport issued by a designated country and present a completed, signed Form I–94W, Nonimmigrant Visa Waiver Arrival/Departure Form.

(2) *Persons previously removed as deportable aliens.* Aliens who have been deported or removed from the United States, after having been determined deportable, require the consent of the Attorney General to apply for admission to the United States pursuant to section 212(a)(9)(A)(iii) of the Act. Such persons may not be admitted to the United States under the provisions of this part notwithstanding the fact that the required consent of the Attorney General may have been secured. Such aliens must secure a visa in order to be admitted to the United States as nonimmigrants, unless otherwise exempt.

(c) *Restrictions on manner of arrival.* (1) *Applicants arriving by air and sea.* Applicants must arrive on a carrier that is signatory to a Visa Waiver Pilot Program Agreement and at the time of arrival must have a round trip ticket that will transport the traveler out of the United States to any other foreign port or place as long as the trip does not terminate in contiguous territory or an adjacent island; except that the round trip ticket may transport the traveler to contiguous territory or an adjacent island, if the traveler is a resident of the country of destination.

(2) *Applicants arriving at land border ports-of-entry.* Any Visa Waiver Pilot Program applicant arriving at a land border port-of-entry must provide evidence to the immigration officer of financial solvency and a domicile abroad to which the applicant intends to return. An applicant arriving at a land-border port-of-entry will be charged a fee as prescribed in § 103.7(b)(1) of this chapter for issuance of Form I–94W, Nonimmigrant Visa Waiver Arrival/Departure Form. A round-trip transportation ticket is not required of applicants at land border ports-of-entry.

(d) *Aliens in transit.* An alien who is in transit through the United States is eligible to apply for admission under the Visa Waiver Pilot Program, provided the applicant meets all other program requirements.

61. Section 217.3 is revised to read as follows:

§ 217.3 Maintenance of status.

(a) *Satisfactory departure.* If an emergency prevents an alien admitted under this part from departing from the United States within his or her period of authorized stay, the district director having jurisdiction over the place of the alien's temporary stay may, in his or her discretion, grant a period of satisfactory departure not to exceed 30 days. If departure is accomplished during that period, the alien is to be regarded as having satisfactorily accomplished the visit without overstaying the allotted time.

(b) *Readmission after departure to contiguous territory or adjacent island.* An alien admitted to the United States under this part may be readmitted to the United States after a departure to foreign contiguous territory or adjacent island for the balance of his or her original Visa Waiver Pilot Program admission period if he or she is otherwise admissible and meets all the conditions of this part with the exception of arrival on a signatory carrier.

62. Section 217.4 is amended by:

a. Revising the section heading;

b. Removing paragraph (a);

c. Redesignating paragraphs (b), (c), and (d) as paragraphs (a), (b), and (c) respectively;

d. Revising newly redesignated paragraph (a)(1);

e. Adding a new paragraph (a)(3);

f. Revising newly redesignated paragraph (b); and by

g. Revising newly redesignated paragraph (c) to read as follows:

§ 217.4 Inadmissibility and deportability.

(a) *Determinations of inadmissibility.* (1) An alien who applies for admission under the provisions of section 217 of the Act, who is determined by an immigration officer not to be eligible for

admission under that section or to be inadmissible to the United States under one or more of the grounds of inadmissibility listed in section 212 of the Act (other than for lack of a visa), or who is in possession of and presents fraudulent or counterfeit travel documents, will be refused admission into the United States and removed. Such refusal and removal shall be made at the level of the port director or officer-in-charge, or an officer acting in that capacity, and shall be effected without referral of the alien to an immigration judge for further inquiry, examination, or hearing, except that an alien who presents himself or herself as an applicant for admission under section 217 of the Act, who applies for asylum in the United States must be issued a Form I–863, Notice of Referral to Immigration Judge, for a proceeding in accordance with § 208.2(b)(1) and (2) of this chapter.

* * * * *

(3) Refusal of admission under paragraph (a)(1) of this section shall not constitute removal for purposes of the Act.

(b) *Determination of deportability.* (1) An alien who has been admitted to the United States under the provisions of section 217 of the Act and of this part who is determined by an immigration officer to be deportable from the United States under one or more of the grounds of deportability listed in section 237 of the Act shall be removed from the United States to his or her country of nationality or last residence. Such removal shall be determined by the district director who has jurisdiction over the place where the alien is found, and shall be effected without referral of the alien to an immigration judge for a determination of deportability, except that an alien admitted as a Visa Waiver Pilot Program visitor who applies for asylum in the United States must be issued a Form I–863 for a proceeding in accordance with § 208.2(b)(1) and (2) of this chapter.

(2) Removal by the district director under paragraph (b)(1) of this section is equivalent in all respects and has the same consequences as removal after proceedings conducted under section 240 of the Act.

(c)(1) *Removal of inadmissible aliens who arrived by air or sea.* Removal of an alien from the United States under this section may be effected using the return portion of the round trip passage presented by the alien at the time of entry to the United States as required by section 217(a)(7) of the Act. Such removal shall be on the first available means of transportation to the alien's point of embarkation to the United States. Nothing in this part absolves the carrier of the responsibility to remove any inadmissible or deportable alien at carrier expense, as provided in the carrier agreement.

(2) *Removal of inadmissible and deportable aliens who arrived at land border ports-of-entry.* Removal under this section will be by the first available means of transportation deemed appropriate by the district director.

§ 217.5 [Removed and reserved]

63. Section 217.5 is removed and reserved.

64. Section 217.6 is revised to read as follows:

§ 217.6 Carrier agreements.

(a) *General.* The carrier agreements referred to in section 217(e) of the Act shall be made by the Commissioner on behalf of the Attorney General and shall be on Form I–775, Visa Waiver Pilot Program Agreement.

(b) *Termination of agreements.* The Commissioner, on behalf of the Attorney General, may terminate any carrier agreement under this part, with 5 days notice to a carrier, for the carrier's failure to meet the terms of such agreement. As a matter of discretion, the Commissioner may notify a carrier of the existence of a basis for termination of a carrier agreement under this part and allow the carrier a period not to exceed 15 days within which the carrier may bring itself into compliance with the terms of the carrier agreement. The agreement shall be subject to cancellation by either party for any reason upon 15 days' written notice to the other party.

PART 221—ADMISSION OF VISITORS OR STUDENTS

65. The authority citation for part 221 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1201; 8 CFR part 2.

§ 221.1 [Amended]

66. Section 221.1 is amended in the last sentence by revising the term "part 103" to read "§ 103.6".

PART 223—REENTRY PERMITS, REFUGEE TRAVEL DOCUMENTS, AND ADVANCE PAROLE DOCUMENTS

67. The authority citation for part 223 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1181, 1182, 1186a, 1203, 1225, 1226, 1227, 1251; Protocol Relating to the Status of Refugees, November 1, 1968, 19 U.S.T. 6223 (TIAS) 6577; 8 CFR part 2.

68. In § 223.1, paragraph (b) is revised to read as follows:

§ 223.1 Purpose of documents.

* * * * *

(b) *Refugee travel document.* A refugee travel document is issued pursuant to this part and article 28 of the United Nations Convention of July 29, 1951, for the purpose of travel. Except as provided in § 223.3(d)(2)(i), a person who holds refugee status pursuant to section 207 of the Act, or asylum status pursuant to section 208 of the Act, must have a refugee travel document to return to the United States after temporary travel abroad unless he or she is in possession of a valid advance parole document.

69. In § 223.2, paragraph (b)(2) is revised to read as follows:

§ 223.2 Processing.

* * * * *

(b) * * *

(2) *Refugee travel document.* (i) *General.* Except as otherwise provided in this section, an application may be approved if filed by a person who is in the United States at the time of application, and either holds valid refugee status under section 207 of the Act, valid asylum status under section 208 of the Act, or is a permanent resident and received such status as a direct result of his or her asylum or refugee status.

(ii) *Discretionary authority to adjudicate an application from an alien not within the United States.* As a matter of discretion, a district director having jurisdiction over a port-of-entry or a preinspection station where an alien is an applicant for admission, or an overseas district director having jurisdiction over the place where an alien is physically present, may accept and adjudicate an application for a refugee travel document from an alien who previously had been admitted to the United States as a refugee, or who previously had been granted asylum status in the United States, and who had departed from the United States without having applied for such refugee travel document, provided:

(A) The alien submits a Form I–131, Application for Travel Document, with the fee required under § 103.7(b)(1) of this chapter;

(B) The district director is satisfied that the alien did not intend to abandon his or her refugee status at the time of departure from the United States;

(C) The alien did not engage in any activities while outside the United States that would be inconsistent with continued refugee or asylee status; and

(D) The alien has been outside the United States for less than 1 year since his or her last departure.

* * * * *

70. In § 223.3, paragraph (d)(2) is revised to read as follows:

§ 223.3 Validity and effect on admissibility.

* * * * *

(d) * * *

(2) *Refugee travel document.* (i) *Inspection and immigration status.* Upon arrival in the United States, an alien who presents a valid unexpired refugee travel document, or who has been allowed to file an application for a refugee travel document and this application has been approved under the procedure set forth in § 223.2(b)(2)(ii), shall be examined as to his or her admissibility under the Act. An alien shall be accorded the immigration status endorsed in his or her refugee travel document, or (in the case of an alien discussed in § 223.2(b)(2)(ii)) which will be endorsed in such document, unless he or she is no longer eligible for that status, or he or she applies for and is found eligible for some other immigration status.

(ii) *Inadmissibility.* If an alien who presents a valid unexpired refugee travel document appears to the examining immigration officer to be inadmissible, he or she shall be referred for proceedings under section 240 of the Act. Section 235(c) of the Act shall not be applicable.

PART 232—DETENTION OF ALIENS FOR PHYSICAL AND MENTAL EXAMINATION

71. The heading for part 232 is revised to read as set forth above.

72. The authority citation for part 232 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1222, 1224, 1252; 8 CFR part 2.

§ 232.1 [Redesignated and revised]

73. Section 232.1 is redesignated as § 232.3, and is revised to read as follows:

§ 232.3 Arriving aliens.

When a district director has reasonable grounds for believing that persons arriving in the United States should be detained for reasons specified in section 232 of the Act, he or she shall, after consultation with the United States Public Health Service at the port-of-entry, notify the master or agent of the arriving vessel or aircraft of his or her intention to effect such detention by serving on the master or agent Form I–259 in accordance with § 235.3(a) of this chapter.

§§ 234.1 and 234.2 [Redesignated as §§ 232.1 and 232.2 respectively]

74. Sections 234.1 and 234.2 are redesignated as §§ 232.1 and 232.2 respectively.

PART 234—[REMOVED]

75. Part 234 is removed.

76. The following parts are redesignated as set forth in the table below:

Old part	New part
Part 238	Part 233.
Part 239	Part 234.

PART 233—CONTRACTS WITH TRANSPORTATION LINES

77. The authority citation for newly designated part 233 continues to read as follows:

Authority: 8 U.S.C. 1103, 1228; 8 CFR part 2.

78. Newly redesignated § 233.1 is revised to read as follows:

§ 233.1 Contracts.

The contracts with transportation lines referred to in section 233(c) of the Act may be entered into by the Executive Associate Commissioner for Programs, or by an immigration officer designated by the Executive Associate Commissioner for Programs on behalf of the government and shall be documented on Form I–420. The contracts with transportation lines referred to in section 233(a) of the Act shall be made by the Commissioner on behalf of the government and shall be documented on Form I–426. The contracts with transportation lines desiring their passengers to be preinspected at places outside the United States shall be made by the Commissioner on behalf of the government and shall be documented on Form I–425; except that contracts for irregularly operated charter flights may be entered into by the Associate Commissioner for Examinations or an immigration officer designated by the Executive Associate Commissioner for Programs and having jurisdiction over the location where the inspection will take place.

79. In newly redesignated § 233.3, paragraph (b) is revised to read as follows (the list of agreements is removed):

§ 233.3 Aliens in immediate and continuous transit.

* * * * *

(b) *Signatory lines.* A list of currently effective Form I–426 agreements is maintained by the Service's Headquarters Office of Inspections and is available upon written request.

* * * * *

80. Newly redesignated § 233.4 is revised to read as follows:

§ 233.4 Preinspection outside the United States.

(a) *Form I–425 agreements.* A transportation line bringing applicants for admission to the United States through preinspection sites outside the United States shall enter into an agreement on Form I–425. Such an agreement shall be negotiated directly by the Service's Headquarters Office of Inspections and the head office of the transportation line.

(b) *Signatory lines.* A list of transportation lines with currently valid transportation agreements on Form I–425 is maintained by the Service's Headquarters Office of Inspections and is available upon written request.

81. Newly redesignated § 233.5 is revised to read as follows:

§ 233.5 Aliens entering Guam pursuant to section 14 of Public Law 99–396, "Omnibus Territories Act."

A transportation line bringing aliens to Guam under the visa waiver provisions of § 212.1(e) of this chapter shall enter into an agreement on Form I–760. Such agreements shall be negotiated directly by the Service's Headquarters and head offices of the transportation lines.

PART 234—DESIGNATION OF PORTS OF ENTRY FOR ALIENS ARRIVING BY CIVIL AIRCRAFT

82. The heading for newly redesignated part 234 is revised as set forth above.

83. The authority citation for newly designated part 234 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1221, 1229; 8 CFR part 2.

§ 234.3 [Amended]

84. Newly redesignated § 234.3 is amended by removing the last sentence.

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

85. The authority citation for part 235 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1183, 1201, 1224, 1225, 1226, 1227, 1228, 1252; 8 CFR part 2.

86. Section 235.1 is revised to read as follows:

§ 235.1 Scope of examination.

(a) *General.* Application to lawfully enter the United States shall be made in

person to an immigration officer at a U.S. port-of-entry when the port is open for inspection, or as otherwise designated in this section.

(b) *U.S. citizens.* A person claiming U.S. citizenship must establish that fact to the examining officer's satisfaction and must present a U.S. passport if such passport is required under the provisions of 22 CFR part 53. If such applicant for admission fails to satisfy the examining immigration officer that he or she is a U.S. citizen, he or she shall thereafter be inspected as an alien.

(c) *Alien members of United States Armed Forces and members of a force of a NATO country.* Any alien member of the United States Armed Forces who is in the uniform of, or bears documents identifying him or her as a member of, such Armed Forces, and who is coming to or departing from the United States under official orders or permit of such Armed Forces is not subject to the removal provisions of the Act. A member of the force of a NATO country signatory to Article III of the Status of Forces Agreement seeking to enter the United States under official orders is exempt from the control provision of the Act. Any alien who is a member of either of the foregoing classes may, upon request, be inspected and his or her entry as an alien may be recorded. If the alien does not appear to the examining immigration officer to be clearly and beyond a doubt entitled to enter the United States under the provisions of the Act, the alien shall be so informed and his or her entry shall not be recorded.

(d) *Alien applicants for admission.* (1) Each alien seeking admission at a United States port-of-entry shall present whatever documents are required and shall establish to the satisfaction of the immigration officer that he or she is not subject to removal under the immigration laws, Executive Orders, or Presidential Proclamations and is entitled under all of the applicable provisions of the immigration laws and this chapter to enter the United States. A person claiming to have been lawfully admitted for permanent residence must establish that fact to the satisfaction of the inspecting immigration officer and must present proper documents in accordance with § 211.1 of this chapter.

(2) An alien present in the United States who has not been admitted or paroled or an alien who seeks entry at other than an open, designated port-of-entry, except as otherwise permitted in this section, is subject to the provisions of section 212(a) of the Act and to removal under section 235(b) or 240 of the Act.

(3) An alien who is brought to the United States, whether or not to a designated port-of-entry and regardless of the means of transportation, after having been interdicted in international or United States waters, is considered an applicant for admission and shall be examined under section 235(b) of the Act.

(4) An alien stowaway is not an applicant for admission and may not be admitted to the United States. A stowaway shall be removed from the United States under section 235(a)(2) of the Act. The provisions of section 240 of the Act are not applicable to stowaways, nor is the stowaway entitled to further hearing or review of the removal, except that an alien stowaway who indicates an intention to apply for asylum shall be referred to an asylum officer for a determination of credible fear of persecution in accordance with section 235(b)(1)(B) of the Act and § 208.30 of this chapter. An alien stowaway who is determined to have a credible fear of persecution shall have his or her asylum application adjudicated in accordance with § 208.2(b)(2) of this chapter. Nothing in this section shall be construed to require expedited removal proceedings in accordance with section 235(b)(1) of the Act. A stowaway who absconds either prior to inspection by an immigration officer or after being ordered removed as a stowaway pursuant to section 235(a)(2) of the Act is not entitled to removal proceedings under section 240 of the Act and shall be removed under section 235(a)(2) of the Act as if encountered upon arrival. A stowaway who has been removed pursuant to section 235(a)(2) of the Act and this section shall be considered to have been formally removed from the United States for all purposes under the Act.

(e) *U.S. citizens, lawful permanent residents of the United States, Canadian nationals, and other residents of Canada having a common nationality with Canadians, entering the United States by small craft.* Upon being inspected by an immigration officer and found eligible for admission as a citizen of the United States, or found eligible for admission as a lawful permanent resident of the United States, or in the case of a Canadian national or other resident of Canada having a common nationality with Canadians being found eligible for admission as a temporary visitor for pleasure, a person who desires to enter the United States from Canada in a small pleasure craft of less than 5 net tons without merchandise may be issued, upon application and payment of a fee prescribed under § 103.7(b)(1) of this chapter, Form I–68, Canadian Border Boat Landing Card, and may thereafter enter the United States along with the immediate shore area of the United States on the body of water designated on the Form I–68 from time to time for the duration of that navigation season without further inspection. In the case of a Canadian national or other resident of Canada having a common nationality with Canadians, the Form I–68 shall be valid only for the purpose of visits not to exceed 72 hours and only if the alien will remain in nearby shopping areas, nearby residential neighborhoods, or other similar areas adjacent to the immediate shore area of the United States. If the bearer of Form I–68 seeks to enter the United States by means other than small craft of less than 5 net tons without merchandise, or if he or she seeks to enter the United States for other purposes, or if he or she is an alien, other than a lawful permanent resident alien of the United States, and intends to proceed beyond an area adjacent to the immediate shore area of the United States, or remains in the United States longer than 72 hours, he or she must apply for admission at a United States port-of-entry.

(f) *Form I–94, Arrival Departure Record.* (1) Unless otherwise exempted, each arriving nonimmigrant who is admitted to the United States shall be issued, upon payment of a fee prescribed in § 103.7(b)(1) of this chapter for land border admissions, a Form I–94 as evidence of the terms of admission. A Form I–94 issued at a land border port-of-entry shall be considered issued for multiple entries unless specifically annotated for a limited number of entries. A Form I–94 issued at other than a land border port-of-entry, unless issued for multiple entries, must be surrendered upon departure from the United States in accordance with the instructions on the form. Form I–94 is not required by:

(i) Any nonimmigrant alien described in § 212.1(a) of this chapter and 22 CFR 41.33 who is admitted as a visitor for business or pleasure or admitted to proceed in direct transit through the United States;

(ii) Any nonimmigrant alien residing in the British Virgin Islands who was admitted only to the U.S. Virgin Islands as a visitor for business or pleasure under § 212.1(b) of this chapter;

(iii) Any Mexican national in possession of a valid nonresident alien Mexican border crossing card, or a valid Mexican passport and a multiple-entry nonimmigrant visa issued under section 101(a)(15)(B) of the Act, who is admitted as a nonimmigrant visitor at a Mexican border port of entry for a

period not to exceed 72 hours to visit within 25 miles of the border;

(iv) Bearers of Mexican diplomatic or official passports described in § 212.1(c–1) of this chapter.

(2) *Paroled aliens.* Any alien paroled into the United States under section 212(d)(5) of the Act, including any alien crewmember, shall be issued a completely executed Form I–94, endorsed with the parole stamp.

87. Section 235.2 is revised to read as follows:

§ 235.2 Parole for deferred inspection.

(a) A district director may, in his or her discretion, defer the inspection of any vessel or aircraft, or of any alien, to another Service office or port-of-entry. Any alien coming to a United States port from a foreign port, from an outlying possession of the United States, from Guam, Puerto Rico, or the Virgin Islands of the United States, or from another port of the United States at which examination under this part was deferred, shall be regarded as an applicant for admission at that onward port.

(b) An examining immigration officer may defer further examination and refer the alien's case to the district director having jurisdiction over the place where the alien is seeking admission, or over the place of the alien's residence or destination in the United States, if the examining immigration officer has reason to believe that the alien can overcome a finding of inadmissibility by:

(1) Posting a bond under section 213 of the Act;

(2) Seeking and obtaining a waiver under section 211 or 212(d)(3) or (4) of the Act; or

(3) Presenting additional evidence of admissibility not available at the time and place of the initial examination.

(c) Such deferral shall be accomplished pursuant to the provisions of section 212(d)(5) of the Act for the period of time necessary to complete the deferred inspection.

(d) Refusal of a district director to authorize admission under section 213 of the Act, or to grant an application for the benefits of section 211 or section 212(d) (3) or (4) of the Act, shall be without prejudice to the renewal of such application or the authorizing of such admission by the immigration judge without additional fee.

(e) Whenever an alien on arrival is found or believed to be suffering from a disability that renders it impractical to proceed with the examination under the Act, the examination of such alien, members of his or her family concerning whose admissibility it is necessary to have such alien testify, and any accompanying aliens whose protection or guardianship will be required should such alien be found inadmissible shall be deferred for such time and under such conditions as the district director in whose district the port is located imposes.

88. Section 235.3 is revised to read as follows:

§ 235.3 Inadmissible aliens and expedited removal.

(a) *Detention prior to inspection.* All persons arriving at a port-of-entry in the United States by vessel or aircraft shall be detained aboard the vessel or at the airport of arrival by the owner, agent, master, commanding officer, person in charge, purser, or consignee of such vessel or aircraft until admitted or otherwise permitted to land by an officer of the Service. Notice or order to detain shall not be required. The owner, agent, master, commanding officer, person in charge, purser, or consignee of such vessel or aircraft shall deliver every alien requiring examination to an immigration officer for inspection or to a medical officer for examination. The Service will not be liable for any expenses related to such detention or presentation or for any expenses of a passenger who has not been presented for inspection and for whom a determination has not been made concerning admissibility by a Service officer.

(b) *Expedited removal.* (1) *Applicability.* The expedited removal provisions shall apply to the following classes of aliens who are determined to be inadmissible under section 212(a)(6)(C) or (7) of the Act:

(i) Arriving aliens, as defined in § 1.1(q) of this chapter, except for citizens of Cuba arriving at a United States port-of-entry by aircraft;

(ii) As specifically designated by the Commissioner, aliens who arrive in, attempt to enter, or have entered the United States without having been admitted or paroled following inspection by an immigration officer at a designated port-of-entry, and who have not established to the satisfaction of the immigration officer that they have been physically present in the United States continuously for the 2-year period immediately prior to the date of determination of inadmissibility. The Commissioner shall have the sole discretion to apply the provisions of section 235(b)(1) of the Act, at any time, to any class of aliens described in this section. The Commissioner's designation shall become effective upon publication of a notice in the **Federal Register**. However, if the Commissioner determines, in the exercise of discretion, that the delay caused by publication would adversely affect the interests of the United States or the effective enforcement of the immigration laws, the Commissioner's designation shall become effective immediately upon issuance, and shall be published in the **Federal Register** as soon as practicable thereafter. When these provisions are in effect for aliens who enter without inspection, the burden of proof rests with the alien to affirmatively show that he or she has the required continuous physical presence in the United States. Any absence from the United States shall serve to break the period of continuous physical presence. An alien who was not inspected and admitted or paroled into the United States but who establishes that he or she has been continuously physically present in the United States for the 2-year period immediately prior to the date of determination of inadmissibility shall be detained in accordance with section 235(b)(2) of the Act for a proceeding under section 240 of the Act.

(2) *Determination of inadmissibility.* (i) *Record of proceeding.* An alien who is arriving in the United States, or other alien as designated pursuant to paragraph (b)(1)(ii) of this section, who is determined to be inadmissible under section 212(a)(6)(C) or 212(a)(7) of the Act (except an alien for whom documentary requirements are waived under § 211.1(b)(3) or § 212.1 of this chapter), shall be ordered removed from the United States in accordance with section 235(b)(1) of the Act. In every case in which the expedited removal provisions will be applied and before removing an alien from the United States pursuant to this section, the examining immigration officer shall create a record of the facts of the case and statements made by the alien. This shall be accomplished by means of a sworn statement using Form I–867AB, Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act. The examining immigration officer shall read (or have read) to the alien all information contained on Form I–867A. Following questioning and recording of the alien's statement regarding identity, alienage, and inadmissibility, the examining immigration officer shall record the alien's response to the questions contained on Form I–867B, and have the alien read (or have read to him or her) the statement, and the alien shall sign and initial each page of the statement and each correction. The examining immigration officer shall advise the alien of the charges against him or her

on Form I–860, Notice and Order of Expedited Removal, and the alien shall be given an opportunity to respond to those charges in the sworn statement. After obtaining supervisory concurrence in accordance with paragraph (b)(7) of this section, the examining immigration official shall serve the alien with Form I–860 and the alien shall sign the reverse of the form acknowledging receipt. Interpretative assistance shall be used if necessary to communicate with the alien.

(ii) *No entitlement to hearings and appeals.* Except as otherwise provided in this section, such alien is not entitled to a hearing before an immigration judge in proceedings conducted pursuant to section 240 of the Act, or to an appeal of the expedited removal order to the Board of Immigration Appeals.

(iii) *Detention and parole of alien in expedited removal.* An alien whose inadmissibility is being considered under this section or who has been ordered removed pursuant to this section shall be detained pending determination and removal, except that parole of such alien, in accordance with section 212(d)(5) of the Act, may be permitted only when the Attorney General determines, in the exercise of discretion, that parole is required to meet a medical emergency or is necessary for a legitimate law enforcement objective.

(3) *Additional charges of inadmissibility.* In the expedited removal process, the Service may not charge an alien with any additional grounds of inadmissibility other than section 212(a)(6)(C) or 212(a)(7) of the Act. If an alien appears to be inadmissible under other grounds contained in section 212(a) of the Act, and if the Service wishes to pursue such additional grounds of inadmissibility, the alien shall be detained and referred for a removal hearing before an immigration judge pursuant to sections 235(b)(2) and 240 of the Act for inquiry into all charges. Once the alien is in removal proceedings under section 240 of the Act, the Service is not precluded from lodging additional charges against the alien. Nothing in this paragraph shall preclude the Service from pursuing such additional grounds of inadmissibility against the alien in any subsequent attempt to reenter the United States, provided the additional grounds of inadmissibility still exist.

(4) *Claim of asylum or fear of persecution.* If an alien subject to the expedited removal provisions indicates an intention to apply for asylum, a fear of persecution, or a fear of return to his or her country, the inspecting officer shall not proceed further with removal of the alien until the alien has been referred for an interview by an asylum officer in accordance with § 208.30 of this chapter to determine if the alien has a credible fear of persecution. The examining immigration officer shall record sufficient information in the sworn statement to establish and record that the alien has indicated such intention, fear, or concern, and to establish the alien's inadmissibility.

(i) *Referral.* The referring officer shall provide the alien with a written disclosure on Form M–444, Information About Credible Fear Interview, describing:

(A) The purpose of the referral and description of the credible fear interview process;

(B) The right to consult with other persons prior to the interview and any review thereof at no expense to the United States Government;

(C) The right to request a review by an immigration judge of the asylum officer's credible fear determination; and

(D) The consequences of failure to establish a credible fear of persecution.

(ii) *Detention pending credible fear interview.* Pending the credible fear determination by an asylum officer and any review of that determination by an immigration judge, the alien shall be detained. Parole of such alien in accordance with section 212(d)(5) of the Act may be permitted only when the Attorney General determines, in the exercise of discretion, that parole is required to meet a medical emergency or is necessary for a legitimate law enforcement objective. Prior to the interview, the alien shall be given time to contact and consult with any person or persons of his or her choosing. Such consultation shall be made available in accordance with the policies and procedures of the detention facility where the alien is detained, shall be at no expense to the government, and shall not unreasonably delay the process.

(5) *Claim to lawful permanent resident, refugee, or asylee status or U.S. citizenship.*—(i) *Verification of status.* If an applicant for admission who is subject to expedited removal pursuant to section 235(b)(1) of the Act claims to have been lawfully admitted for permanent residence, admitted as a refugee under section 207 of the Act, granted asylum under section 208 of the Act, or claims to be a U.S. citizen, the immigration officer shall attempt to verify the alien's claim. Such verification shall include a check of all available Service data systems and any other means available to the officer. An alien whose claim to lawful permanent resident, refugee, asylee status, or U.S. citizen status cannot be verified will be advised of the penalties for perjury, and will be placed under oath or allowed to make a declaration as permitted under 28 U.S.C. 1746, concerning his or her lawful admission for permanent residence, admission as a refugee under section 207 of the Act, grant of asylum status under section 208 of the Act, or claim to U.S. citizenship. A written statement shall be taken from the alien in the alien's own language and handwriting, stating that he or she declares, certifies, verifies, or states that the claim is true and correct. The immigration officer shall issue an expedited order of removal under section 235(b)(1)(A)(i) of the Act and refer the alien to the immigration judge for review of the order in accordance with paragraph (b)(5)(iv) of this section and § 235.6(a)(2)(ii). The person shall be detained pending review of the expedited removal order under this section. Parole of such person, in accordance with section 212(d)(5) of the Act, may be permitted only when the Attorney General determines, in the exercise of discretion, that parole is required to meet a medical emergency or is necessary for a legitimate law enforcement objective.

(ii) *Verified lawful permanent residents.* If the claim to lawful permanent resident status is verified, and such status has not been terminated in exclusion, deportation, or removal proceedings, the examining immigration officer shall not order the alien removed pursuant to section 235(b)(1) of the Act. The examining immigration officer will determine in accordance with section 101(a)(13)(C) of the Act whether the alien is considered to be making an application for admission. If the alien is determined to be seeking admission and the alien is otherwise admissible, except that he or she is not in possession of the required documentation, a discretionary waiver of documentary requirements may be considered in accordance with section 211(b) of the Act and § 211.1(b)(3) of this chapter or the alien's inspection may be deferred to an onward office for presentation of the required documents. If the alien appears to be inadmissible, the immigration officer may initiate removal proceedings against the alien under section 240 of the Act.

(iii) *Verified refugees and asylees.* If a check of Service records or other means indicates that the alien has been granted refugee status or asylee status, and such status has not been terminated in deportation, exclusion, or removal proceedings, the immigration officer shall not order the alien removed pursuant to section 235(b)(1) of the Act. If the alien is not in possession of a valid, unexpired refugee travel document, the examining immigration officer may accept an application for a refugee travel document in accordance with § 223.2(b)(2)(ii) of this chapter. If accepted, the immigration officer shall readmit the refugee or asylee in accordance with § 223.3(d)(2)(i) of this chapter. If the alien is determined not to be eligible to file an application for a refugee travel document the immigration officer may initiate removal proceedings against the alien under section 240 of the Act.

(iv) *Review of order for claimed lawful permanent residents, refugees, asylees, or U.S. citizens.* A person whose claim to U.S. citizenship has been verified may not be ordered removed. When an alien whose status has not been verified but who is claiming under oath or under penalty of perjury to be a lawful permanent resident, refugee, asylee, or U.S. citizen is ordered removed pursuant to section 235(b)(1) of the Act, the case will be referred to an immigration judge for review of the expedited removal order under section 235(b)(1)(C) of the Act and § 235.6(a)(2)(ii). If the immigration judge determines that the alien has never been admitted as a lawful permanent resident or as a refugee, granted asylum status, or is not a U.S. citizen, the order issued by the immigration officer will be affirmed and the Service will remove the alien. There is no appeal from the decision of the immigration judge. If the immigration judge determines that the alien was once so admitted as a lawful permanent resident or as a refugee, or was granted asylum status, or is a U.S. citizen, and such status has not been terminated by final administrative action, the immigration judge will terminate proceedings and vacate the expedited removal order. The Service may initiate removal proceedings against such an alien, but not against a person determined to be a U.S. citizen, in proceedings under section 240 of the Act. During removal proceedings, the immigration judge may consider any waivers, exceptions, or requests for relief for which the alien is eligible.

(6) *Opportunity for alien to establish that he or she was admitted or paroled into the United States.* If the Commissioner determines that the expedited removal provisions of section 235(b)(1) of the Act shall apply to any or all aliens described in paragraph (b)(2)(ii) of this section, such alien will be given a reasonable opportunity to establish to the satisfaction of the examining immigration officer that he or she was admitted or paroled into the United States following inspection at a port-of-entry. The alien will be allowed to present evidence or provide sufficient information to support the claim. Such evidence may consist of documentation in the possession of the alien, the Service, or a third party. The examining immigration officer will consider all such evidence and information, make further inquiry if necessary, and will attempt to verify the alien's status through a check of all available Service data systems. The burden rests with the alien to satisfy the examining immigration officer of the claim of lawful admission or parole. If the alien establishes that he or she was lawfully admitted or paroled, the case will be examined to determine if grounds of deportability under section 237(a) of the Act are applicable, or if paroled, whether such parole has been, or should be, terminated, and whether the alien is inadmissible under section 212(a) of the Act. An alien who cannot satisfy the examining officer that he or she was lawfully admitted or paroled will be ordered removed pursuant to section 235(b)(1) of the Act.

(7) *Review of expedited removal orders.* Any removal order entered by an examining immigration officer pursuant to section 235(b)(1) of the Act must be reviewed and approved by the appropriate supervisor before the order is considered final. Such supervisory review shall not be delegated below the level of the second line supervisor, or a person acting in that capacity. The supervisory review shall include a review of the sworn statement and any answers and statements made by the alien regarding a fear of removal or return. The supervisory review and approval of an expedited removal order for an alien described in section 235(b)(1)(A)(iii) of the Act must include a review of any claim of lawful admission or parole and any evidence or information presented to support such a claim, prior to approval of the order. In such cases, the supervisor may request additional information from any source and may require further interview of the alien.

(8) *Removal procedures relating to expedited removal.* An alien ordered removed pursuant to section 235(b)(1) of the Act shall be removed from the United States in accordance with section 241(c) of the Act and 8 CFR part 241.

(9) *Waivers of documentary requirements.* Nothing in this section limits the discretionary authority of the Attorney General, including authority under sections 211(b) or 212(d) of the Act, to waive the documentary requirements for arriving aliens.

(10) *Applicant for admission under section 217 of the Act.* The provisions of § 235.3(b) do not apply to an applicant for admission under section 217 of the Act.

(c) *Arriving aliens placed in proceedings under section 240 of the Act.* Except as otherwise provided in this chapter, any arriving alien who appears to the inspecting officer to be inadmissible, and who is placed in removal proceedings pursuant to section 240 of the Act shall be detained in accordance with section 235(b) of the Act. Parole of such alien shall only be considered in accordance with § 212.5(a) of this chapter. This paragraph shall also apply to any alien who arrived before April 1, 1997, and who was placed in exclusion proceedings.

(d) *Service custody.* The Service will assume custody of any alien subject to detention under paragraph (b) or (c) of this section. In its discretion, the Service may require any alien who appears inadmissible and who arrives at a land border port-of-entry from Canada or Mexico, to remain in that country while awaiting a removal hearing. Such alien shall be considered detained for a proceeding within the meaning of section 235(b) of the Act and may be ordered removed in absentia by an immigration judge if the alien fails to appear for the hearing.

(e) *Detention in non-Service facility.* Whenever an alien is taken into Service custody and detained at a facility other than at a Service Processing Center, the public or private entities contracted to perform such service shall have been approved for such use by the Service's Jail Inspection Program or shall be performing such service under contract in compliance with the Standard Statement of Work for Contract Detention Facilities. Both programs are administered by the Detention and Deportation section having jurisdiction over the alien's place of detention. Under no circumstances shall an alien be detained in facilities not meeting the four mandatory criteria for usage. These are:

(1) 24-Hour supervision,

(2) Conformance with safety and emergency codes,

(3) Food service, and

(4) Availability of emergency medical care.

(f) *Privilege of communication.* The mandatory notification requirements of consular and diplomatic officers pursuant to § 236.1(e) of this chapter apply when an inadmissible alien is detained for removal proceedings, including for purpose of conducting the credible fear determination.

89. Section 235.4 is revised to read as follows:

§ 235.4 Withdrawal of application for admission.

(a) The Attorney General may, in his or her discretion, permit any alien applicant for admission to withdraw his or her application for admission in lieu of removal proceedings under section 240 of the Act or expedited removal under section 235(b)(1) of the Act. The alien's decision to withdraw his or her application for admission must be made voluntarily, but nothing in this section shall be construed as to give an alien the right to withdraw his or her application for admission. Permission to withdraw an application for admission should not normally be granted unless the alien intends and is able to depart the United States immediately. An alien permitted to withdraw his or her application for admission shall normally remain in carrier or Service custody pending departure, unless the district director determines that parole of the alien is warranted in accordance with § 212.5(a) of this chapter.

(b) An immigration judge may allow only an arriving alien to withdraw an application for admission. Once the issue of inadmissibility has been resolved, permission to withdraw an application for admission should ordinarily be granted only with the concurrence of the Service. An immigration judge shall not allow an alien to withdraw an application for admission unless the alien, in addition to demonstrating that he or she possesses both the intent and the means to depart immediately from the United States, establishes that factors directly relating to the issue of inadmissibility indicate that the granting of the withdrawal would be in the interest of justice. During the pendency of an appeal from the order of removal, permission to withdraw an application for admission must be obtained from the immigration judge or the Board.

90. Section 235.5 is revised to read as follows:

§ 235.5 Preinspection.

(a) *In United States territories and possessions.* In the case of any aircraft proceeding from Guam, Puerto Rico, or the United States Virgin Islands destined directly and without touching at a foreign port or place, to any other of such places, or to one of the States of the United States or the District of Columbia, the examination of the passengers and crew required by the Act may be made prior to the departure of the aircraft, and in such event, final determination of admissibility shall be made immediately prior to such departure. The examination shall be conducted in accordance with sections 232, 235, and 240 of the Act and 8 CFR parts 235 and 240. If it appears to the examining immigration officer that any person in the United States being examined under this section is prima facie removable from the United States, further action with respect to his or her examination shall be deferred and further proceedings regarding removability conducted as provided in section 240 of the Act and 8 CFR part 240. When the foregoing inspection procedure is applied to any aircraft, persons examined and found admissible shall be placed aboard the aircraft, or kept at the airport separate and apart from the general public until they are permitted to board the aircraft. No other person shall be permitted to depart on such aircraft until and unless he or she is found to be admissible as provided in this section.

(b) *In foreign territory.* In the case of any aircraft, vessel, or train proceeding directly, without stopping, from a port or place in foreign territory to a port-of-entry in the United States, the examination and inspection of passengers and crew required by the Act and final determination of admissibility may be made immediately prior to such departure at the port or place in the foreign territory and shall have the same effect under the Act as though made at the destined port-of-entry in the United States.

91. Section 235.6 is revised to read as follows:

§ 235.6 Referral to immigration judge.

(a) *Notice.* (1) *Referral by Form I–862, Notice to Appear.* An immigration officer or asylum officer will sign and deliver a Form I–862 to an alien in the following cases:

(i) If, in accordance with the provisions of section 235(b)(2)(A) of the Act, the examining immigration officer detains an alien for a proceeding before an immigration judge under section 240 of the Act; or

(ii) If, in accordance with section 235(b)(1)(B)(ii) of the Act, an asylum officer determines that an alien in expedited removal proceedings has a credible fear of persecution and refers the case to the immigration judge for consideration of the application for asylum.

(iii) If, in accordance with section 235(b)(1)(B)(iii)(III) of the Act, the immigration judge determines that an alien in expedited removal proceedings has a credible fear of persecution and vacates the expedited removal order issued by the asylum officer pursuant to section 235(b)(1)(B)(iii) of the Act.

(iv) If an immigration officer verifies that an alien subject to expedited removal under section 235(b)(1) of the Act has been admitted as a lawful permanent resident refugee, or asylee, or upon review pursuant to § 235.3(b)(5)(iv) an immigration judge determines that the alien was once so admitted, provided that such status has not been terminated by final administrative action, and the Service initiates removal proceedings against the alien under section 240 of the Act.

(2) *Referral by Form I–863, Notice of Referral to Immigration Judge.* An immigration officer will sign and deliver a Form I–863 to an alien in the following cases:

(i) If, in accordance with section 235(b)(1)(B)(iii)(III) of the Act, an asylum officer determines that an alien does not have a credible fear of persecution, and the alien requests a review of that determination by an immigration judge; or

(ii) If, in accordance with section 235(b)(1)(C) of the Act, an immigration officer refers an expedited removal order entered on an alien claiming to be a lawful permanent resident, refugee, asylee, or U.S. citizen for whom the officer could not verify such status to an immigration judge for review of the order.

(iii) If an immigration officer refers an applicant described in § 208.2(b)(1) of this chapter to an immigration judge for an asylum hearing under § 208.2(b)(2) of this chapter.

(b) *Certification for mental condition; medical appeal.* An alien certified under sections 212(a)(1) and 232(b) of the Act shall be advised by the examining immigration officer that he or she may appeal to a board of medical examiners of the United States Public Health Service pursuant to section 232 of the Act. If such appeal is taken, the district director shall arrange for the convening of the medical board.

§ 235.7 [Removed]

92. Section 235.7 is removed.

§ 235.13 [Redesignated as § 235.7]

93. Section 235.13 is redesignated as § 235.7.

94. Section 235.8 is revised to read as follows:

§ 235.8 Inadmissibility on security and related grounds.

(a) *Report.* When an immigration officer or an immigration judge suspects that an arriving alien appears to be inadmissible under section 212(a)(3)(A) (other than clause (ii)), (B), or (C) of the

Act, the immigration officer or immigration judge shall order the alien removed and report the action promptly to the district director who has administrative jurisdiction over the place where the alien has arrived or where the hearing is being held. The immigration officer shall, if possible, take a brief sworn question-and-answer statement from the alien, and the alien shall be notified by personal service of Form I–147, Notice of Temporary Inadmissibility, of the action taken and the right to submit a written statement and additional information for consideration by the Attorney General. The district director shall forward the report to the regional director for further action as provided in paragraph (b) of this section.

(b) *Action by regional director.* (1) In accordance with section 235(c)(2)(B) of the Act, the regional director may deny any further inquiry or hearing by an immigration judge and order the alien removed by personal service of Form I–148, Notice of Permanent Inadmissibility, or issue any other order disposing of the case that the regional director considers appropriate.

(2) If the regional director concludes that the case does not meet the criteria contained in section 235(c)(2)(B) of the Act, the regional director may direct that:

(i) An immigration officer shall conduct a further examination of the alien, concerning the alien's admissibility; or,

(ii) The alien's case be referred to an immigration judge for a hearing, or for the continuation of any prior hearing.

(3) The regional director's decision shall be in writing and shall be signed by the regional director. Unless the written decision contains confidential information, the disclosure of which would be prejudicial to the public interest, safety, or security of the United States, the written decision shall be served on the alien. If the written decision contains such confidential information, the alien shall be served with a separate written order showing the disposition of the case, but with the confidential information deleted.

(c) *Finality of decision.* The regional director's decision under this section is final when it is served upon the alien in accordance with paragraph (b)(3) of this section. There is no administrative appeal from the regional director's decision.

(d) *Hearing by immigration judge.* If the regional director directs that an alien subject to removal under this section be given a hearing or further hearing before an immigration judge, the hearing and all further proceedings in the matter shall be conducted in accordance with the provisions of section 240 of the Act and other applicable sections of the Act to the same extent as though the alien had been referred to an immigration judge by the examining immigration officer. In a case where the immigration judge ordered the alien removed pursuant to paragraph (a) of this section, the Service shall refer the case back to the immigration judge and proceedings shall be automatically reopened upon receipt of the notice of referral. If confidential information, not previously considered in the matter, is presented supporting the inadmissibility of the alien under section 212(a)(3)(A) (other than clause (ii)), (B) or (C) of the Act, the disclosure of which, in the discretion of the immigration judge, may be prejudicial to the public interest, safety, or security, the immigration judge may again order the alien removed under the authority of section 235(c) of the Act and further action shall be taken as provided in this section.

(e) *Nonapplicability.* The provisions of this section shall apply only to arriving aliens, as defined in § 1.1(q) of this chapter. Aliens present in the United States who have not been admitted or paroled may be subject to proceedings under Title V of the Act.

§ 235.9 [Removed]

95. Section 235.9 is removed.

§ 235.12 [Redesignated as § 235.9 and revised]

96. Section 235.12 is redesignated as § 235.9 and is revised to read as follows:

§ 235.9 Northern Marianas identification card.

During the two-year period that ended July 1, 1990, the Service issued Northern Marianas Identification Cards to aliens who acquired United States citizenship when the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States entered into force on November 3, 1986. These cards remain valid as evidence of United States citizenship. Although the Service no longer issues these cards, a United States citizen to whom a card was issued may file Form I–777, Application for Issuance or Replacement of Northern Marianas Card, to obtain replacement of a lost, stolen, or mutilated Northern Marianas Identification Card.

97. Section 235.10 is revised to read as follows:

§ 235.10 U.S. Citizen Identification Card.

(a) *General.* Form I–197, U.S. Citizen Identification Card, is no longer issued by the Service but valid existing cards will continue to be acceptable documentation of U.S. citizenship. Possession of the identification card is not mandatory for any purpose. A U.S. Citizen Identification Card remains the property of the United States. Because the identification card is no longer issued, there are no provisions for replacement cards.

(b) *Surrender and voidance.* (1) *Institution of proceeding under section 240 or 342 of the Act.* A U.S. Citizen Identification Card must be surrendered provisionally to a Service office upon notification by the district director that a proceeding under section 240 or 342 of the Act is being instituted against the person to whom the card was issued. The card shall be returned to the person if the final order in the proceeding does not result in voiding the card under this paragraph. A U.S. Citizen Identification Card is automatically void if the person to whom it was issued is determined to be an alien in a proceeding conducted under section 240 of the Act, or if a certificate, document, or record relating to that person is canceled under section 342 of the Act.

(2) *Investigation of validity of identification card.* A U.S. Citizen Identification Card must be surrendered provisionally upon notification by a district director that the validity of the card is being investigated. The card shall be returned to the person who surrendered it if the investigation does not result in a determination adverse to his or her claim to be a United States citizen. When an investigation results in a tentative determination adverse to the applicant's claim to be a United States citizen, the applicant shall be notified by certified mail directed to his or her last known address. The notification shall inform the applicant of the basis for the determination and of the intention of the district director to declare the card void unless within 30 days the applicant objects and demands an opportunity to see and rebut the adverse evidence. Any rebuttal, explanation, or evidence presented by the applicant must be included in the record of proceeding. The determination whether the applicant is a United States citizen must be based on the entire record and the applicant shall be notified of the determination. If it is determined that the applicant is not a United States citizen, the applicant shall be notified of the reasons, and the card deemed void. There is no appeal from the district director's decision.

(3) *Admission of alienage.* A U.S. Citizen Identification Card is void if the person to whom it was issued admits in a statement signed before an

immigration officer that he or she is an alien and consents to the voidance of the card. Upon signing the statement the card must be surrendered to the immigration officer.

(4) *Surrender of void card.* A void U.S. Citizen Identification Card which has not been returned to the Service must be surrendered without delay to an immigration officer or to the issuing office of the Service.

(c) *U.S. Citizen Identification Card previously issued on Form I–179.* A valid Form I–179, U.S. Citizen Identification Card, continues to be valid subject to the provisions of this section.

98. Section 235.11 is revised to read as follows:

§ 235.11 Admission of conditional permanent residents.

(a) *General.* (1) *Conditional residence based on family relationship.* An alien seeking admission to the United States with an immigrant visa as the spouse or son or daughter of a United States citizen or lawful permanent resident shall be examined to determine whether the conditions of section 216 of the Act apply. If so, the alien shall be admitted conditionally for a period of 2 years. At the time of admission, the alien shall be notified that the alien and his or her petitioning spouse must file a Form I–751, Petition to Remove the Conditions on Residence, within the 90-day period immediately preceding the second anniversary of the alien's admission for permanent residence.

(2) *Conditional residence based on entrepreneurship.* An alien seeking admission to the United States with an immigrant visa as an alien entrepreneur (as defined in section 216A(f)(1) of the Act) or the spouse or unmarried minor child of an alien entrepreneur shall be admitted conditionally for a period of 2 years. At the time of admission, the alien shall be notified that the principal alien (entrepreneur) must file a Form I–829, Petition by Entrepreneur to Remove Conditions, within the 90-day period immediately preceding the second anniversary of the alien's admission for permanent residence.

(b) *Correction of endorsement on immigrant visa.* If the alien is subject to the provisions of section 216 of the Act, but the classification endorsed on the immigrant visa does not so indicate, the endorsement shall be corrected and the alien shall be admitted as a lawful permanent resident on a conditional basis, if otherwise admissible. Conversely, if the alien is not subject to the provisions of section 216 of the Act, but the visa classification endorsed on the immigrant visa indicates that the alien is subject thereto (e.g., if the second anniversary of the marriage upon which the immigrant visa is based occurred after the issuance of the visa and prior to the alien's application for admission) the endorsement on the visa shall be corrected and the alien shall be admitted as a lawful permanent resident without conditions, if otherwise admissible.

(c) *Expired conditional permanent resident status.* The lawful permanent resident alien status of a conditional resident automatically terminates if the conditional basis of such status is not removed by the Service through approval of a Form I–751, Petition to Remove the Conditions on Residence or, in the case of an alien entrepreneur (as defined in section 216A(f)(1) of the Act), Form I–829, Petition by Entrepreneur to Remove Conditions. Therefore, an alien who is seeking admission as a returning resident subsequent to the second anniversary of the date on which conditional residence was obtained (except as provided in § 211.1(b)(1) of this chapter) and whose conditional basis of such residence has not been removed pursuant to section 216(c) or 216A(c) of the Act, whichever is applicable, shall be placed under removal proceedings. However, in a case where conditional residence was based on a marriage, removal proceedings may be terminated and the alien may be admitted as a returning resident if the required Form I–751 is filed jointly, or by the alien alone (if appropriate), and approved by the Service. In the case of an alien entrepreneur, removal proceedings may be terminated and the alien admitted as a returning resident if the required Form I–829 is filed by the alien entrepreneur and approved by the Service.

99. Part 236 is revised to read as follows:

PART 236—APPREHENSION AND DETENTION OF INADMISSIBLE AND DEPORTABLE ALIENS; REMOVAL OF ALIENS ORDERED REMOVED

Subpart A—Detention of Aliens Prior to Order of Removal

Sec.

236.1 Apprehension, custody, and detention.
236.2 Confined aliens, incompetents, and minors.
236.3 Detention and release of juveniles.
236.4 Removal of S–5, S–6, and S–7 nonimmigrants.
236.5 Fingerprints and photographs.
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Subpart B—Family Unity Program

236.10 Description of program.
236.11 Definitions.
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236.18 Termination of Family Unity Program benefits.

Authority: 8 U.S.C. 1103, 1182, 1224, 1225, 1226, 1227, 1362; 8 CFR part 2.

Subpart A—Detention of Aliens Prior to Order of Removal

§ 236.1 Apprehension, custody, and detention.

(a) *Detainers.* The issuance of a detainer under this section shall be governed by the provisions of § 287.7 of this chapter.

(b) *Warrant of arrest.* (1) *In general.* At the time of issuance of the notice to appear, or at any time thereafter and up to the time removal proceedings are completed, the respondent may be arrested and taken into custody under the authority of Form I–200, Warrant of Arrest. A warrant of arrest may be issued only by those immigration officers listed in § 287.5(e)(2) of this chapter and may be served only by those immigration officers listed in § 287.5(e)(3) of this chapter.

(2) If, after the issuance of a warrant of arrest, a determination is made not to serve it, any officer authorized to issue such warrant may authorize its cancellation.

(c) *Custody issues and release procedures.* (1) After the expiration of the Transition Period Custody Rules under Public Law 104–208, no alien described in section 236(c)(1) of the Act shall be released from custody during removal proceedings except pursuant to section 236(c)(2) of the Act.

(2) Any officer authorized to issue a warrant of arrest may, in the officer's discretion, release an alien not described in section 236(c)(1) of the Act, under the conditions at section 236(a)(2) and (3) of the Act; provided that the alien must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding.

(3) When an alien who, having been arrested and taken into custody, has been released, such release may be revoked at any time in the discretion of the district director, acting district director, deputy district director, assistant district director for investigations, assistant district director for detention and deportation, or officer in charge (except foreign), in which event the alien may be taken into physical custody and detained. If

detained, unless a breach has occurred, any outstanding bond shall be revoked and canceled.

(4) The provisions of § 103.6 of this chapter shall apply to any bonds authorized. Subject to the provisions of this section, the provisions of § 3.19 of this chapter shall govern availability to the respondent of recourse to other administrative authority for release from custody.

(5) An immigration judge may not exercise authority provided in this section and the review process described in paragraph (d) of this section shall not apply with respect to:

(i) Arriving aliens, as described in § 1.1(q) of this chapter, including aliens paroled pursuant to section 212(d)(5) of the Act, in removal proceedings,

(ii) Aliens described in section 237(a)(4) of the Act, or

(iii) After the expiration of section 303(b)(3) of Public Law 104–208, aliens described in section 236(c)(1) of the Act.

(d) *Appeals from custody decisions.* (1) *Application to immigration judge.* After an initial custody determination by the district director, including the setting of a bond, the respondent may, at any time before an order under 8 CFR part 240 becomes final, request amelioration of the conditions under which he or she may be released. Prior to such final order, and except as otherwise provided in this chapter, the immigration judge is authorized to exercise the authority in section 236 of the Act to detain the alien in custody, release the alien, and determine the amount of bond, if any, under which the respondent may be released, as provided in § 3.19 of this chapter. If the alien has been released from custody, an application for amelioration of the terms of release must be filed within 7 days of release. Once a removal order becomes administratively final, determinations regarding custody and bond are made by the district director.

(2) *Application to the district director.* (i) After expiration of the 7-day period in paragraph (d)(1) of this section, the respondent may request review by the district director of the conditions of his or her release.

(ii) After an order becomes administratively final, the respondent may request review by the district director of the conditions of his or her release.

(3) *Appeal to the Board of Immigration Appeals.* An appeal relating to bond and custody determinations may be filed to the Board of Immigration Appeals in the following circumstances:

(i) In accordance with § 3.38 of this chapter, the alien or the Service may appeal the decision of an immigration judge pursuant to paragraph (d)(1) of this section.

(ii) The alien, within 10 days, may appeal from the district director's decision under paragraph (d)(2)(i) of this section.

(iii) The alien, within 10 days, may appeal from the district director's decision under paragraph (d)(2)(ii) of this section, except that no appeal shall be allowed when the Service notifies the alien that it is ready to execute an order of removal and takes the alien into custody for that purpose.

(4) *Effect of filing an appeal.* The filing of an appeal from a determination of an immigration judge or district director under this paragraph shall not operate to delay compliance with the order, nor stay the administrative proceedings or removal.

(e) *Privilege of communication.* Every detained alien shall be notified that he or she may communicate with the consular or diplomatic officers of the country of his or her nationality in the United States. Existing treaties with the following countries require immediate communication with appropriate consular or diplomatic officers whenever nationals of the following countries are detained in removal proceedings, whether or not requested by the alien and even if the alien requests that no communication be undertaken in his or her behalf. When notifying consular or diplomatic officials, Service officers shall not reveal the fact that any detained alien has applied for asylum or withholding of removal.

Albania[1]
Antigua
Armenia
Azerbaijan
Bahamas
Barbados
Belarus
Belize
Brunei
Bulgaria
China (People's Republic of)[2]
Costa Rica
Cyprus
Czech Republic
Dominica
Fiji
Gambia, The
Georgia
Ghana
Grenada
Guyana
Hungary
Jamaica
Kazakhstan
Kiribati
Kuwait
Kyrgyzstan
Malaysia
Malta
Mauritius
Moldova
Mongolia
Nigeria
Philippines
Poland
Romania
Russian Federation
St. Kitts/Nevis
St. Lucia
St. Vincent/Grenadines
Seychelles
Sierra Leone
Singapore
Slovak Republic
South Korea
Tajikistan
Tanzania
Tonga
Trinidad/Tobago
Turkmenistan
Tuvalu
Ukraine
United Kingdom[3]
U.S.S.R.[4]
Uzbekistan
Zambia

(f) *Notification to Executive Office for Immigration Review of change in custody status.* The Service shall notify the Immigration Court having administrative control over the Record of Proceeding of any change in custody location or of release from, or subsequent taking into, Service custody of a respondent/applicant pursuant to § 3.19(g) of this chapter.

§ 236.2 Confined aliens, incompetents, and minors.

(a) *Service.* If the respondent is confined, or if he or she is an incompetent, or a minor under the age of 14, the notice to appear, and the warrant of arrest, if issued, shall be served in the manner prescribed in § 239.1 of this chapter upon the person or persons specified by § 103.5a(c) of this chapter.

(b) *Service custody and cost of maintenance.* An alien confined because of physical or mental disability in an institution or hospital shall not be

[1] Arrangements with these countries provide that U.S. authorities shall notify responsible representatives within 72 hours of the arrest or detention of one of their nationals.

[2] When Taiwan nationals (who carry "Republic of China" passports) are detained, notification should be made to the nearest office of the Taiwan Economic and Cultural Representative's Office, the unofficial entity representing Taiwan's interests in the United States.

[3] British dependencies are also covered by this agreement. They are: Anguilla, British Virgin Islands, Hong Kong, Bermuda, Montserrat, and the Turks and Caicos Islands. Their residents carry British passports.

[4] All U.S.S.R. successor states are covered by this agreement. They are: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russian Federation, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

accepted into physical custody by the Service until an order of removal has been entered and the Service is ready to remove the alien. When such an alien is an inmate of a public or private institution at the time of the commencement of the removal proceedings, expenses for the maintenance of the alien shall not be incurred by the Government until he or she is taken into physical custody by the Service.

§ 236.3 Detention and release of juveniles.

(a) *Juveniles.* A juvenile is defined as an alien under the age of 18 years.

(b) *Release.* Juveniles for whom bond has been posted, for whom parole has been authorized, or who have been ordered released on recognizance, shall be released pursuant to the following guidelines:

(1) Juveniles shall be released, in order of preference, to:

(i) A parent;

(ii) Legal guardian; or

(iii) An adult relative (brother, sister, aunt, uncle, grandparent) who is not presently in Service detention, unless a determination is made that the detention of such juvenile is required to secure his or her timely appearance before the Service or the Immigration Court or to ensure the juvenile's safety or that of others. In cases where the parent, legal guardian, or adult relative resides at a location distant from where the juvenile is detained, he or she may secure release at a Service office located near the parent, legal guardian, or adult relative.

(2) If an individual specified in paragraphs (b)(1)(i) through (iii) of this section cannot be located to accept custody of a juvenile, and the juvenile has identified a parent, legal guardian, or adult relative in Service detention, simultaneous release of the juvenile and the parent, legal guardian, or adult relative shall be evaluated on a discretionary case-by-case basis.

(3) In cases where the parent or legal guardian is in Service detention or outside the United States, the juvenile may be released to such person as is designated by the parent or legal guardian in a sworn affidavit, executed before an immigration officer or consular officer, as capable and willing to care for the juvenile's well-being. Such person must execute an agreement to care for the juvenile and to ensure the juvenile's presence at all future proceedings before the Service or an immigration judge.

(4) In unusual and compelling circumstances and in the discretion of the district director or chief patrol agent, a juvenile may be released to an adult, other than those identified in paragraphs (b)(1)(i) through (iii) of this section, who executes an agreement to care for the juvenile's well-being and to ensure the juvenile's presence at all future proceedings before the Service or an immigration judge.

(c) *Juvenile coordinator.* The case of a juvenile for whom detention is determined to be necessary should be referred to the "Juvenile Coordinator," whose responsibilities should include, but not be limited to, finding suitable placement of the juvenile in a facility designated for the occupancy of juveniles. These may include juvenile facilities contracted by the Service, state or local juvenile facilities, or other appropriate agencies authorized to accommodate juveniles by the laws of the state or locality.

(d) *Detention.* In the case of a juvenile for whom detention is determined to be necessary, for such interim period of time as is required to locate suitable placement for the juvenile, whether such placement is under paragraph (b) or (c) of this section, the juvenile may be temporarily held by Service authorities or placed in any Service detention facility having separate accommodations for juveniles.

(e) *Refusal of release.* If a parent of a juvenile detained by the Service can be located, and is otherwise suitable to receive custody of the juvenile, and the juvenile indicates a refusal to be released to his or her parent, the parent(s) shall be notified of the juvenile's refusal to be released to the parent(s), and shall be afforded an opportunity to present their views to the district director, chief patrol agent, or immigration judge before a custody determination is made.

(f) *Notice to parent of application for relief.* If a juvenile seeks release from detention, voluntary departure, parole, or any form of relief from removal, where it appears that the grant of such relief may effectively terminate some interest inherent in the parent-child relationship and/or the juvenile's rights and interests are adverse with those of the parent, and the parent is presently residing in the United States, the parent shall be given notice of the juvenile's application for relief, and shall be afforded an opportunity to present his or her views and assert his or her interest to the district director or immigration judge before a determination is made as to the merits of the request for relief.

(g) *Voluntary departure.* Each juvenile, apprehended in the immediate vicinity of the border, who resides permanently in Mexico or Canada, shall be informed, prior to presentation of the voluntary departure form or being allowed to withdraw his or her application for admission, that he or she may make a telephone call to a parent, close relative, a friend, or to an organization found on the free legal services list. A juvenile who does not reside in Mexico or Canada who is apprehended shall be provided access to a telephone and must in fact communicate either with a parent, adult relative, friend, or with an organization found on the free legal services list prior to presentation of the voluntary departure form. If such juvenile, of his or her own volition, asks to contact a consular officer, and does in fact make such contact, the requirements of this section are satisfied.

(h) *Notice and request for disposition.* When a juvenile alien is apprehended, he or she must be given a Form I–770, Notice of Rights and Disposition. If the juvenile is less than 14 years of age or unable to understand the notice, the notice shall be read and explained to the juvenile in a language he or she understands. In the event a juvenile who has requested a hearing pursuant to the notice subsequently decides to accept voluntary departure or is allowed to withdraw his or her application for admission, a new Form I–770 shall be given to, and signed by the juvenile.

§ 236.4 Removal of S–5, S–6, and S–7 nonimmigrants.

(a) *Condition of classification.* As a condition of classification and continued stay in classification pursuant to section 101(a)(15)(S) of the Act, nonimmigrants in S classification must have executed Form I–854, Part B, Inter-agency Alien Witness and Informant Record, certifying that they have knowingly waived their right to a removal hearing and right to contest, other than on the basis of an application for withholding of deportation or removal, any removal action, including detention pending deportation or removal, instituted before lawful permanent resident status is obtained.

(b) *Determination of deportability.* (1) A determination to remove a deportable alien classified pursuant to section 101(a)(15)(S) of the Act shall be made by the district director having jurisdiction over the place where the alien is located.

(2) A determination to remove such a deportable alien shall be based on one or more of the grounds of deportability listed in section 237 of the Act based on conduct committed after, or conduct or a condition not disclosed to the Service prior to, the alien's classification as an S nonimmigrant under section 101(a)(15)(S) of the Act, or for a violation of, or failure to adhere to, the particular terms and conditions of status in S nonimmigrant classification.

(c) *Removal procedures.* (1) A district director who determines to remove an alien witness or informant in S nonimmigrant classification shall notify the Commissioner, the Assistant Attorney General, Criminal Division, and the relevant law enforcement agency in writing to that effect. The Assistant Attorney General, Criminal Division, shall concur in or object to that decision. Unless the Assistant Attorney General, Criminal Division, objects within 7 days, he or she shall be deemed to have concurred in the decision. In the event of an objection by the Assistant Attorney General, Criminal Division, the matter will be expeditiously referred to the Deputy Attorney General for a final resolution. In no circumstances shall the alien or the relevant law enforcement agency have a right of appeal from any decision to remove.

(2) A district director who has provided notice as set forth in paragraph (c)(1) of this section and who has been advised by the Commissioner that the Assistant Attorney General, Criminal Division, has not objected shall issue a Warrant of Removal. The alien shall immediately be arrested and taken into custody by the district director initiating the removal. An alien classified under the provisions of section 101(a)(15)(S) of the Act who is determined, pursuant to a warrant issued by a district director, to be deportable from the United States shall be removed from the United States to his or her country of nationality or last residence. The agency that requested the alien's presence in the United States shall ensure departure from the United States and so inform the district director in whose jurisdiction the alien has last resided. The district director, if necessary, shall oversee the alien's departure from the United States and, in any event, shall notify the Commissioner of the alien's departure.

(d) *Withholding of removal.* An alien classified pursuant to section 101(a)(15)(S) of the Act who applies for withholding of removal shall have 10 days from the date the Warrant of Removal is served upon the alien to file an application for such relief with the district director initiating the removal order. The procedures contained in §§ 208.2 and 208.16 of this chapter shall apply to such an alien who applies for withholding of removal.

(e) *Inadmissibility.* An alien who applies for admission under the provisions of section 101(a)(15)(S) of the Act who is determined by an immigration officer not to be eligible for admission under that section or to be inadmissible to the United States under one or more of the grounds of inadmissibility listed in section 212 of the Act and which have not been previously waived by the Commissioner will be taken into custody. The district director having jurisdiction over the port-of-entry shall follow the notification procedures specified in paragraph (c)(1) of this section. A district director who has provided such notice and who has been advised by the Commissioner that the Assistant Attorney General, Criminal Division, has not objected shall remove the alien without further hearing. An alien may not contest such removal, other than by applying for withholding of removal.

§ 236.5 Fingerprints and photographs.

Every alien 14 years of age or older against whom proceedings based on deportability under section 237 of the Act are commenced under this part by service of a notice to appear shall be fingerprinted and photographed. Such fingerprints and photographs shall be made available to Federal, State, and local law enforcement agencies upon request to the district director or chief patrol agent having jurisdiction over the alien's record. Any such alien, regardless of his or her age, shall be photographed and/or fingerprinted if required by any immigration officer authorized to issue a notice to appear. Every alien 14 years of age or older who is found to be inadmissible to the United States and ordered removed by an immigration judge shall be fingerprinted, unless during the preceding year he or she has been fingerprinted at an American consular office.

§§ 236.6—236.9 [Reserved]

Subpart B—Family Unity Program

§ 236.10 Description of program.

The family unity program implements the provisions of section 301 of the Immigration Act of 1990, Public Law 101–649. This Act is referred to in this subpart as "IMMACT 90".

§ 236.11 Definitions.

In this subpart, the term:

Eligible immigrant means a qualified immigrant who is the spouse or unmarried child of a legalized alien.

Legalized alien means an alien who:

(1) Is a temporary or permanent resident under section 210 or 245A of the Act; or

(2) Is a permanent resident under section 202 of the Immigration Reform and Control Act of 1986 (Cuban/Haitian Adjustment).

§ 236.12 Eligibility.

(a) *General.* An alien who is not a lawful permanent resident is eligible to apply for benefits under the Family Unity Program if he or she establishes:

(1) That he or she entered the United States before May 5, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2)(C) of section 301 of IMMACT 90), or as of December 1, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(A) of section 301 of IMMACT 90), and has been continuously residing in the United States since that date; and

(2) That on May 5, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2)(C) of section 301 of IMMACT 90), or as of December 1, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(A) of section 301 of IMMACT 90), he or she was the spouse or unmarried child of a legalized alien, and that he or she has been eligible continuously since that time for family-sponsored second preference immigrant status under section 203(a)(2) of the Act based on the same relationship.

(b) *Legalization application pending as of May 5, 1988 or December 1, 1988.* An alien whose legalization application was filed on or before May 5, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2)(C) of section 301 of IMMACT 90), or as of December 1, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(A) of section 301 of IMMACT 90), but not approved until after that date will be treated as having been a legalized alien as of May 5, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2)(C) of section 301 of IMMACT 90), or as of December 1, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(A) of section 301 of IMMACT 90), for purposes of the Family Unity Program.

§ 236.13 Ineligible aliens.

The following categories of aliens are ineligible for benefits under the Family Unity Program:

(a) An alien who is deportable under any paragraph in section 237(a) of the Act, except paragraphs (1)(A), (1)(B), (1)(C), and (3)(A); provided that an alien who is deportable under section 237(a)(1)(A) of such Act is also ineligible for benefits under the Family Unity Program if deportability is based

upon a ground of inadmissibility described in section 212(a)(2) or (3) of the Act;

(b) An alien who has been convicted of a felony or three or more misdemeanors in the United States; or

(c) An alien described in section 241(b)(3)(B) of the Act.

§ 236.14 Filing.

(a) *General.* An application for voluntary departure under the Family Unity Program must be filed at the service center having jurisdiction over the alien's place of residence. A Form I–817, Application for Voluntary Departure under the Family Unity Program, must be filed with the correct fee required in § 103.7(b)(1) of this chapter and the required supporting documentation. A separate application with appropriate fee and documentation must be filed for each person claiming eligibility.

(b) *Decision.* The service center director has sole jurisdiction to adjudicate an application for benefits under the Family Unity Program. The director will provide the applicant with specific reasons for any decision to deny an application. Denial of an application may not be appealed. An applicant who believes that the grounds for denial have been overcome may submit another application with the appropriate fee and documentation.

(c) *Referral of denied cases for consideration of issuance of notice to appear.* If an application is denied, the case will be referred to the district director with jurisdiction over the alien's place of residence for consideration of whether to issue a notice to appear. After an initial denial, an applicant's case will not be referred for issuance of a notice to appear until 90 days from the date of the initial denial, to allow the alien the opportunity to file a new Form I–817 application in order to attempt to overcome the basis of the denial. However, if the applicant is found not to be eligible for benefits under § 236.13(b), the Service reserves the right to issue a notice to appear at any time after the initial denial.

§ 236.15 Voluntary departure and eligibility for employment.

(a) *Authority.* Voluntary departure under this section implements the provisions of section 301 of IMMACT 90, and authority to grant voluntary departure under the family unity program derives solely from that section. Voluntary departure under the family unity program shall be governed solely by this section, notwithstanding the provisions of section 240B of the Act and 8 CFR part 240.

(b) *Children of legalized aliens.* Children of legalized aliens residing in the United States, who were born during an authorized absence from the United States of mothers who are currently residing in the United States under voluntary departure pursuant to the Family Unity Program, may be granted voluntary departure under section 301 of IMMACT 90 for a period of 2 years.

(c) *Duration of voluntary departure.* An alien whose application for benefits under the Family Unity Program is approved will receive voluntary departure for 2 years, commencing with the date of approval of the application. Voluntary departure under this section shall be considered effective from the date on which the application was properly filed.

(d) *Employment authorization.* An alien granted benefits under the Family Unity Program is authorized to be employed in the United States and may apply for an employment authorization document on Form I–765, Application for Employment Authorization. The application may be filed concurrently with Form I–817. The application must be accompanied by the correct fee required by § 103.7(b)(1) of this chapter. The validity period of the employment authorization will coincide with the period of voluntary departure.

(e) *Extension of voluntary departure.* An application for an extension of voluntary departure under the Family Unity Program must be filed by the alien on Form I–817 along with the correct fee required in § 103.7(b)(1) of this chapter and the required supporting documentation. The submission of a copy of the previous approval notice will assist in shortening the processing time. An extension may be granted if the alien continues to be eligible for benefits under the Family Unity Program. However, an extension may not be approved if the legalized alien is a lawful permanent resident, and a petition for family-sponsored immigrant status has not been filed in behalf of the applicant. In such case the Service will notify the alien of the reason for the denial and afford him or her the opportunity to file another Form I–817 once the petition, Form I–130, has been filed in behalf of him or her. No charging document will be issued for a period of 90 days.

(f) *Supporting documentation for extension application.* Supporting documentation need not include documentation provided with the previous application(s). The extension application need only include changes to previous applications and evidence of continuing eligibility since the date of the prior approval.

§ 236.16 Travel outside the United States.

An alien granted Family Unity Program benefits who intends to travel outside the United States temporarily must apply for advance authorization using Form I–131, Application for Travel Document. The authority to grant an application for advance authorization for an alien granted Family Unity Program benefits rests solely with the district director. An alien who is granted advance authorization and returns to the United States in accordance with such authorization, and who is found not to be inadmissible under section 212(a)(2) or (3) of the Act, shall be inspected and admitted in the same immigration status as the alien had at the time of departure, and shall be provided the remainder of the voluntary departure period previously granted under the Family Unity Program.

§ 236.17 Eligibility for Federal financial assistance programs.

An alien granted Family Unity Program benefits based on a relationship to a legalized alien as defined in § 236.11 is ineligible for public welfare assistance in the same manner and for the same period as the legalized alien who is ineligible for such assistance under section 245A(h) or 210(f) of the Act, respectively.

§ 236. 18 Termination of Family Unity Program benefits.

(a) *Grounds for termination.* The Service may terminate benefits under the Family Unity Program whenever the necessity for the termination comes to the attention of the Service. Such grounds will exist in situations including, but not limited to, those in which:

(1) A determination is made that Family Unity Program benefits were acquired as the result of fraud or willful misrepresentation of a material fact;

(2) The beneficiary commits an act or acts which render him or her inadmissible as an immigrant or who are ineligible for benefits under the Family Unity Program;

(3) The legalized alien upon whose status benefits under the Family Unity Program were based loses his or her legalized status;

(4) The beneficiary is the subject of a final order of exclusion, deportation, or removal issued subsequent to the grant of Family Unity benefits unless such final order is based on entry without inspection; violation of status; or failure to comply with section 265 of the Act;

or inadmissibility at the time of entry other than inadmissibility pursuant to section 212(a)(2) or 212(a)(3) of the Act, regardless of whether the facts giving rise to such ground occurred before or after the benefits were granted; or

(5) A qualifying relationship to a legalized alien no longer exists.

(b) *Notice procedure.* Notice of intent to terminate and of the grounds thereof shall be served pursuant to the provisions of § 103.5a of this chapter. The alien shall be given 30 days to respond to the notice and may submit to the Service additional evidence in rebuttal. Any final decision of termination shall also be served pursuant to the provisions of § 103.5a of this chapter. Nothing in this section shall preclude the Service from commencing exclusion or deportation proceedings prior to termination of Family Unity Program benefits.

(c) *Effect of termination.* Termination of benefits under the Family Unity Program, other than as a result of a final order of removal, shall render the alien amenable to removal proceedings under section 240 of the Act. If benefits are terminated, the period of voluntary departure under this section is also terminated.

PART 237—[REMOVED AND RESERVED]

100. Part 237 is removed and reserved.

101. Part 238 is added to read as follows:

PART 238—EXPEDITED REMOVAL OF AGGRAVATED FELONS

Sec.

238.1 Proceedings under section 238(b) of the Act.

Authority: 8 U.S.C. 1228; 8 CFR part 2.

§ 238.1 Proceedings under section 238(b) of the Act.

(a) *Definitions.* As used in this part:

Deciding Service officer means a district director, chief patrol agent, or another immigration officer designated by a district director or chief patrol agent, who is not the same person as the issuing Service officer.

Issuing Service officer means any Service officer listed in § 239.1 of this chapter as authorized to issue notices to appear.

(b) *Preliminary consideration and Notice of Intent to Issue a Final Administrative Deportation Order; commencement of proceedings.*—(1) *Basis of Service charge.* An issuing Service officer shall cause to be served upon an alien a Form I–851, Notice of Intent to Issue a Final Administrative Deportation Order (Notice of Intent), if the officer is satisfied that there is sufficient evidence, based upon questioning of the alien by an immigration officer and upon any other evidence obtained, to support a finding that the individual:

(i) Is an alien;

(ii) Has not been lawfully admitted for permanent residence, or has conditional permanent resident status under section 216 of the Act;

(iii) Has been convicted (as defined in section 101(a)(48) of the Act and as demonstrated by any of the documents or records listed in § 3.41 of this chapter) of an aggravated felony and such conviction has become final; and

(iv) Is deportable under section 237(a)(2)(A)(iii) of the Act, including an alien who has neither been admitted nor paroled, but who is conclusively presumed deportable under section 237(a)(2)(A)(iii) by operation of section 238(c) of the Act ("Presumption of Deportability").

(2) *Notice.* (i) Removal proceedings under section 238(b) of the Act shall commence upon personal service of the Notice of Intent upon the alien, as prescribed by §§ 103.5a(a)(2) and 103.5a(c)(2) of this chapter. The Notice of Intent shall set forth the preliminary determinations and inform the alien of the Service's intention to issue a Form I–851A, Final Administrative Removal Order, without a hearing before an immigration judge. This Notice shall constitute the charging document. The Notice of Intent shall include allegations of fact and conclusions of law. It shall advise that the alien: has the privilege of being represented, at no expense to the Government, by counsel of the alien's choosing, as long as counsel is authorized to practice in deportation proceedings; may inspect the evidence supporting the Notice of Intent; and may rebut the charges within 10 calendar days after service of such Notice (or 13 calendar days if service of the Notice was by mail).

(ii) The Notice of Intent also shall advise the alien that he or she may designate in writing, within the rebuttal period, the country to which he or she chooses to be deported in accordance with section 241 of the Act, in the event that a Final Administrative Removal Order is issued, and that the Service will honor such designation only to the extent permitted under the terms, limitations, and conditions of section 241 of the Act.

(iii) The Service must determine that the person served with the Notice of Intent is the person named on the notice.

(iv) The Service shall provide the alien with a list of available free legal services programs qualified under 8 CFR part 3 and organizations recognized pursuant to 8 CFR part 292, located within the district or sector where the Notice of Intent is issued.

(v) The Service must either provide the alien with a written translation of the Notice of Intent or explain the contents of the Notice of Intent to the alien in the alien's native language or in a language that the alien understands.

(c) *Alien's response.* (1) *Time for response.* The alien will have 10 calendar days from service of the Notice of Intent, or 13 calendar days if service is by mail, to file a response to the Notice of Intent. In the response, the alien may: designate his or her choice of country for removal; submit a written response rebutting the allegations supporting the charge and/or requesting the opportunity to review the Government's evidence; and/or request in writing an extension of time for response, stating the specific reasons why such an extension is necessary. Alternatively, the alien may, in writing, choose to accept immediate issuance of a Final Administrative Removal Order. The deciding Service officer may extend the time for response for good cause shown. A request for extension of time for response will not automatically extend the period for the response. The alien will be permitted to file a response outside the prescribed period only if the deciding Service officer permits it. The alien must send the response to the deciding Service officer at the address provided in the Notice of Intent.

(2) *Nature of rebuttal or request to review evidence.* (i) If an alien chooses to rebut the allegations contained in the Notice of Intent, the alien's written response must indicate which finding(s) are being challenged and should be accompanied by affidavit(s), documentary information, or other specific evidence supporting the challenge.

(ii) If an alien's written response requests the opportunity to review the Government's evidence, the Service shall serve the alien with a copy of the evidence in the record of proceeding upon which the Service is relying to support the charge. The alien may, within 10 calendar days following service of the Government's evidence (13 calendar days if service is by mail), furnish a final response in accordance with paragraph (c)(1) of this section. If the alien's final response is a rebuttal of the allegations, such a final response should be accompanied by affidavit(s), documentary information, or other

specific evidence supporting the challenge.

(d) *Determination by deciding Service officer.* (1) *No response submitted or concession of deportability.* If the deciding Service officer does not receive a timely response and the evidence in the record of proceeding establishes deportability by clear, convincing, and unequivocal evidence, or if the alien concedes deportability, then the deciding Service officer shall issue and cause to be served upon the alien a Final Administrative Removal Order that states the reasons for the deportation decision. The alien may, in writing, waive the 14-day waiting period before execution of the final order of removal provided in a paragraph (f) of this section.

(2) *Response submitted.* (i) *Insufficient rebuttal; no genuine issue of material fact.* If the alien timely submits a rebuttal to the allegations, but the deciding Service officer finds that deportability is established by clear, convincing, and unequivocal evidence in the record of proceeding, the deciding Service officer shall issue and cause to be served upon the alien a Final Administrative Removal Order that states the reasons for the decision of deportability.

(ii) *Additional evidence required.* (A) If the deciding Service officer finds that the record of proceeding, including the alien's timely rebuttal, raises a genuine issue of material fact regarding the preliminary findings, the deciding Service officer may either obtain additional evidence from any source, including the alien, or cause to be issued a notice to appear to initiate removal proceedings under section 240 of the Act. The deciding Service officer may also obtain additional evidence from any source, including the alien, if the deciding Service officer deems that such additional evidence may aid the officer in the rendering of a decision.

(B) If the deciding Service officer considers additional evidence from a source other than the alien, that evidence shall be made a part of the record of proceeding, and shall be provided to the alien. If the alien elects to submit a response to such additional evidence, such response must be filed with the Service within 10 calendar days of service of the additional evidence (or 13 calendar days if service is by mail). If the deciding Service officer finds, after considering all additional evidence, that deportability is established by clear, convincing, and unequivocal evidence in the record of proceeding, the deciding Service officer shall issue and cause to be served upon the alien a Final Administrative Removal Order that states the reasons for the decision of deportability.

(iii) *Conversion to proceedings under section 240 of the Act.* If the deciding Service officer finds that the alien is not amenable to removal under section 238 of the Act, the deciding Service officer shall terminate the expedited proceedings under section 238 of the Act and shall, where appropriate, cause to be issued a notice to appear for the purpose of initiating removal proceedings before an immigration judge under section 240 of the Act.

(3) *Termination of proceedings by deciding Service officer.* Only the deciding Service officer may terminate proceedings under section 238 of the Act, in accordance with this section.

(e) *Proceedings commenced under section 240 of the Act.* In any proceeding commenced under section 240 of the Act which is based on deportability under section 237 of the Act, if it appears that the respondent alien is subject to removal pursuant to section 238 of the Act, the immigration judge may, upon the Service's request, terminate the case and, upon such termination, the Service may commence administrative proceedings under section 238 of the Act. However, in the absence of any such request, the immigration judge shall complete the proceeding commenced under section 240 of the Act.

(f) *Executing final removal order of deciding Service officer.* (1) *Time of execution.* Upon the issuance of a Final Administrative Removal Order, the Service shall issue a Warrant of Removal in accordance with § 241.2 of this chapter; such warrant shall be executed no sooner than 14 calendar days after the date the Final Administrative Removal Order is issued, unless the alien knowingly, voluntarily, and in writing waives the 14-day period.

(2) *Country to which alien is to be removed.* The deciding Service officer shall designate the country of removal in the manner prescribed by section 241 of the Act.

(g) *Arrest and detention.* At the time of issuance of a Notice of Intent or at any time thereafter and up to the time the alien becomes the subject of a Warrant of Removal, the alien may be arrested and taken into custody under the authority of a Warrant of Arrest issued by an officer listed in § 287.5(e)(2) of this chapter. The decision of the Service concerning custody or bond shall not be administratively appealable during proceedings initiated under section 238 of the Act and this part.

(h) *Record of proceeding.* The Service shall maintain a record of proceeding for judicial review of the Final Administrative Removal Order sought by any petition for review. The record of proceeding shall include, but not necessarily be limited to: the charging document (Notice of Intent); the Final Administrative Removal Order (including any supplemental memorandum of decision); the alien's response, if any; all evidence in support of the charge; and any admissible evidence, briefs, or documents submitted by either party respecting deportability. The executed duplicate of the Notice of Intent in the record of proceedings shall be retained as evidence that the individual upon whom the notice for the proceeding was served was, in fact, the alien named in the notice.

102. Part 239 is added to read as follows:

PART 239—INITIATION OF REMOVAL PROCEEDINGS

Sec.
239.1 Notice to appear.
239.2 Cancellation of notice to appear.
239.3 Effect of filing notice to appear.

Authority: 8 U.S.C. 1103, 1221, 1229; 8 CFR part 2.

§ 239.1 Notice to appear.

(a) *Commencement.* Every removal proceeding conducted under section 240 of the Act to determine the deportability or inadmissibility of an alien is commenced by the filing of a notice to appear with the Immigration Court. Any immigration officer performing an inspection of an arriving alien at a port-of-entry may issue a notice to appear to such an alien. In addition, the following officers, or officers acting in such capacity, may issue a notice to appear:

(1) District directors (except foreign);
(2) Deputy district directors (except foreign);
(3) Assistant district directors for investigations;
(4) Deputy assistant district directors for investigations;
(5) Assistant district directors for deportation;
(6) Deputy assistant district directors for deportation;
(7) Assistant district directors for examinations;
(8) Deputy assistant district directors for examinations;
(9) Officers in charge (except foreign);
(10) Assistant officers in charge (except foreign);
(11) Chief patrol agents;
(12) Deputy chief patrol agents;
(13) Associate chief patrol agents;

(14) Assistant chief patrol agents;
(15) Patrol agents in charge;
(16) The Assistant Commissioner, Investigations;
(17) Service center directors;
(18) Deputy center directors;
(19) Assistant center directors for examinations;
(20) Supervisory asylum officers;
(21) Institutional Hearing Program directors; or
(22) Deputy Institutional Hearing Program directors.

(b) *Service of notice to appear.* Service of the notice to appear shall be in accordance with section 239 of the Act.

§ 239.2 Cancellation of notice to appear.

(a) Any officer authorized by § 239.1(a) to issue a notice to appear may cancel such notice prior to jurisdiction vesting with the immigration judge pursuant to § 3.14 of this chapter provided the officer is satisfied that:

(1) The respondent is a national of the United States;
(2) The respondent is not deportable or inadmissible under immigration laws;
(3) The respondent is deceased;
(4) The respondent is not in the United States;
(5) The notice was issued for the respondent's failure to file a timely petition as required by section 216(c) of the Act, but his or her failure to file a timely petition was excused in accordance with section 216(d)(2)(B) of the Act;
(6) The notice to appear was improvidently issued, or
(7) Circumstances of the case have changed after the notice to appear was issued to such an extent that continuation is no longer in the best interest of the government.

(b) A notice to appear issued pursuant to section 235(b)(3) of the Act may be canceled under provisions in paragraphs (a)(2) and (a)(6) of this section only by the issuing officer, unless it is impracticable for the issuing officer to cancel the notice.

(c) *Motion to dismiss.* After commencement of proceedings pursuant to § 3.14 of this chapter, Service counsel, or any officer enumerated in paragraph (a) of this section may move for dismissal of the matter on the grounds set out under paragraph (a) of this section. Dismissal of the matter shall be without prejudice to the alien or the Service.

(d) *Motion for remand.* After commencement of the hearing, Service counsel, or any officer enumerated in paragraph (a) of this section may move for remand of the matter to district jurisdiction on the ground that the foreign relations of the United States are involved and require further consideration. Remand of the matter shall be without prejudice to the alien or the Service.

(e) *Warrant of arrest.* When a notice to appear is canceled or proceedings are terminated under this section any outstanding warrant of arrest is canceled.

(f) *Termination of removal proceedings by immigration judge.* An immigration judge may terminate removal proceedings to permit the alien to proceed to a final hearing on a pending application or petition for naturalization when the alien has established prima facie eligibility for naturalization and the matter involves exceptionally appealing or humanitarian factors; in every other case, the removal hearing shall be completed as promptly as possible notwithstanding the pendency of an application for naturalization during any state of the proceedings.

§ 239.3 Effect of filing notice to appear.

The filing of a notice to appear shall have no effect in determining periods of unlawful presence as defined in section 212(a)(9)(B) of the Act.

§§ 240.1–240.20 [Redesignated as §§ 244.3–244.22]

103. Sections 240.1 through 240.20 are redesignated as §§ 244.3 through 244.22.

104. Part 240 is revised to read as follows:

PART 240—PROCEEDINGS TO DETERMINE REMOVABILITY OF ALIENS IN THE UNITED STATES

Subpart A—Removal Proceedings

Sec.
240.1 Immigration judges.
240.2 Service counsel.
240.3 Representation by counsel.
240.4 Incompetent respondents.
240.5 Interpreter.
240.6 Postponement and adjournment of hearing.
240.7 Evidence in removal proceedings under section 240 of the Act.
240.8 Burdens of proof in removal proceedings.
240.9 Contents of record.
240.10 Hearing.
240.11 Ancillary matters, applications.
240.12 Decision of the immigration judge.
240.13 Notice of decision.
240.14 Finality of order.
240.15 Appeals.
240.16 Application of new procedures or termination of proceedings in old proceedings pursuant to section 309(c) of Public Law 104–208.
240.17–240.19 [Reserved]

Subpart B—Cancellation of Removal

240.20 Cancellation of removal and adjustment of status under section 240A of the Act.
240.21–240.24 [Reserved]

Subpart C—Voluntary Departure

240.25 Voluntary departure—authority of the Service.
240.26 Voluntary departure—authority of the Executive Office for Immigration Review.
240.27–240.29 [Reserved]

Subpart D—Exclusion of Aliens (for proceedings commenced prior to April 1, 1997)

240.30 Proceedings prior to April 1, 1997.
240.31 Authority of immigration judges.
240.32 Hearing.
240.33 Applications for asylum or withholding of deportation.
240.34 Renewal of application for adjustment of status under section 245 of the Act.
240.35 Decision of the immigration judge; notice to the applicant.
240.36 Finality of order.
240.37 Appeals.
240.38 Fingerprinting of excluded aliens.
240.39 [Reserved]

Subpart E—Proceedings to determine deportability of aliens in the United States: Hearing and Appeal (for proceedings commenced prior to April 1, 1997)

240.40 Proceedings commenced prior to April 1, 1997.
240.41 Immigration judges.
240.42 Representation by counsel.
240.43 Incompetent respondents.
240.44 Interpreter.
240.45 Postponement and adjournment of hearing.
240.46 Evidence.
240.47 Contents of record.
240.48 Hearing.
240.49 Ancillary matters, applications.
240.50 Decision of the immigration judge.
240.51 Notice of decision.
240.52 Finality of order.
240.53 Appeals.
240.54 [Reserved]

Subpart F—Suspension of Deportation and Voluntary Departure (for proceedings commenced prior to April 1, 1997)

240.55 Proceedings commenced prior to April 1, 1997.
240.56 Application.
240.57 Extension of time to depart.

Subpart G—Civil Penalties for Failure to Depart [Reserved]

Authority: 8 U.S.C. 1103; 1182, 1186a, 1224, 1225, 1226, 1227, 1251, 1252 note, 1252a, 1252b, 1362; 8 CFR part 2.

Subpart A—Removal Proceedings

§ 240.1 Immigration judges.

(a) *Authority.* In any removal proceeding pursuant to section 240 of the Act, the immigration judge shall have the authority to: determine removability pursuant to section

240(a)(1) of the Act; to make decisions, including orders of removal as provided by section 240(c)(1)(A) of the Act; to determine applications under sections 208, 212(a)(2)(F), 212(a)(6)(F)(ii), 212(a)(9)(B)(v), 212(d)(11), 212(d)(12), 212(g), 212(h), 212(i), 212(k), 237(a)(1)(E)(iii), 237(a)(1)(H), 237(a)(3)(C)(ii), 240A(a) and (b), 240B, 245, and 249 of the Act; to order withholding of removal pursuant to section 241(b)(3) of the Act; and to take any other action consistent with applicable law and regulations as may be appropriate. In determining cases referred for further inquiry, immigration judges shall have the powers and authority conferred upon them by the Act and this chapter. Subject to any specific limitation prescribed by the Act and this chapter, immigration judges shall also exercise the discretion and authority conferred upon the Attorney General by the Act as is appropriate and necessary for the disposition of such cases. An immigration judge may certify his or her decision in any case under section 240 of the Act to the Board of Immigration Appeals when it involves an unusually complex or novel question of law or fact. Nothing contained in this part shall be construed to diminish the authority conferred on immigration judges under sections 101(b)(4) and 103 of the Act.

(b) *Withdrawal and substitution of immigration judges.* The immigration judge assigned to conduct the hearing shall at any time withdraw if he or she deems himself or herself disqualified. If an immigration judge becomes unavailable to complete his or her duties, another immigration judge may be assigned to complete the case. The new immigration judge shall familiarize himself or herself with the record in the case and shall state for the record that he or she has done so.

(c) *Conduct of hearing.* The immigration judge shall receive and consider material and relevant evidence, rule upon objections, and otherwise regulate the course of the hearing.

§ 240.2 Service counsel.

(a) *Authority.* Service counsel shall present on behalf of the government evidence material to the issues of deportability or inadmissibility and any other issues that may require disposition by the immigration judge. The duties of the Service counsel include, but are not limited to, the presentation of evidence and the interrogation, examination, and cross-examination of the respondent or other witnesses. Nothing contained in this subpart diminishes the authority of an immigration judge to conduct proceedings under this part. The Service counsel is authorized to appeal from a decision of the immigration judge pursuant to § 3.38 of this chapter and to move for reopening or reconsideration pursuant to § 3.23 of this chapter.

(b) *Assignment.* In a removal proceeding, the Service shall assign an attorney to each case within the provisions of § 240.10(d), and to each case in which an unrepresented respondent is incompetent or is under 18 years of age, and is not accompanied by a guardian, relative, or friend. In a case in which the removal proceeding would result in an order of removal, the Service shall assign an attorney to each case in which a respondent's nationality is in issue. A Service attorney shall be assigned in every case in which the Commissioner approves the submission of non-record information under § 240.11(a)(3). In his or her discretion, whenever he or she deems such assignment necessary or advantageous, the General Counsel may assign a Service attorney to any other case at any stage of the proceeding.

§ 240.3 Representation by counsel.

The respondent may be represented at the hearing by an attorney or other representative qualified under 8 CFR part 292.

§ 240.4 Incompetent respondents.

When it is impracticable for the respondent to be present at the hearing because of mental incompetency, the attorney, legal representative, legal guardian, near relative, or friend who was served with a copy of the notice to appear shall be permitted to appear on behalf of the respondent. If such a person cannot reasonably be found or fails or refuses to appear, the custodian of the respondent shall be requested to appear on behalf of the respondent.

§ 240.5 Interpreter.

Any person acting as an interpreter in a hearing before an immigration judge under this part shall be sworn to interpret and translate accurately, unless the interpreter is an employee of the United States Government, in which event no such oath shall be required.

§ 240.6 Postponement and adjournment of hearing.

After the commencement of the hearing, the immigration judge may grant a reasonable adjournment either at his or her own instance or, for good cause shown, upon application by the respondent or the Service.

§ 240.7 Evidence in removal proceedings under section 240 of the Act.

(a) *Use of prior statements.* The immigration judge may receive in evidence any oral or written statement that is material and relevant to any issue in the case previously made by the respondent or any other person during any investigation, examination, hearing, or trial.

(b) *Testimony.* Testimony of witnesses appearing at the hearing shall be under oath or affirmation administered by the immigration judge.

(c) *Depositions.* The immigration judge may order the taking of depositions pursuant to § 3.35 of this chapter.

§ 240.8 Burdens of proof in removal proceedings.

(a) *Deportable aliens.* A respondent charged with deportability shall be found to be removable if the Service proves by clear and convincing evidence that the respondent is deportable as charged.

(b) *Arriving aliens.* In proceedings commenced upon a respondent's arrival in the Untied States or after the revocation or expiration of parole, the respondent must prove that he or she is clearly and beyond a doubt entitled to be admitted to the United States and is not inadmissible as charged.

(c) *Aliens present in the United States without being admitted or paroled.* In the case of a respondent charged as being in the United States without being admitted or paroled, the Service must first establish the alienage of the respondent. Once alienage has been established, unless the respondent demonstrates by clear and convincing evidence that he or she is lawfully in the United States pursuant to a prior admission, the respondent must prove that he or she is clearly and beyond a doubt entitled to be admitted to the United States and is not inadmissible as charged.

(d) *Relief from removal.* The respondent shall have the burden of establishing that he or she is eligible for any requested benefit or privilege and that it should be granted in the exercise of discretion. If the evidence indicates that one or more of the grounds for mandatory denial of the application for relief may apply, the alien shall have the burden of proving by a preponderance of the evidence that such grounds do not apply.

§ 240.9 Contents of record.

The hearing before the immigration judge, including the testimony, exhibits, applications, proffers, and requests, the immigration judge's decision, and all written orders, motions, appeals, briefs, and other papers filed in the proceedings shall constitute the record in the case. The hearing shall be recorded verbatim except for statements made off the record with the permission of the immigration judge. In his or her discretion, the immigration judge may exclude from the record any arguments made in connection with motions, applications, requests, or objections, but in such event the person affected may submit a brief.

§ 240.10 Hearing.

(a) *Opening.* In a removal proceeding, the immigration judge shall:

(1) Advise the respondent of his or her right to representation, at no expense to the government, by counsel of his or her own choice authorized to practice in the proceedings and require the respondent to state then and there whether he or she desires representation;

(2) Advise the respondent of the availability of free legal services provided by organizations and attorneys qualified under 8 CFR part 3 and organizations recognized pursuant to § 292.2 of this chapter, located in the district where the removal hearing is being held;

(3) Ascertain that the respondent has received a list of such programs, and a copy of appeal rights;

(4) Advise the respondent that he or she will have a reasonable opportunity to examine and object to the evidence against him or her, to present evidence in his or her own behalf and to cross-examine witnesses presented by the government (but the respondent shall not be entitled to examine such national security information as the government may proffer in opposition to the respondent's admission to the United States or to an application by the respondent for discretionary relief);

(5) Place the respondent under oath;

(6) Read the factual allegations and the charges in the notice to appear to the respondent and explain them in non-technical language; and

(7) Enter the notice to appear as an exhibit in the Record of Proceeding.

(b) *Public access to hearings.* Removal hearings shall be open to the public, except that the immigration judge may, in his or her discretion, close proceedings as provided in § 3.27 of this chapter.

(c) *Pleading by respondent.* The immigration judge shall require the respondent to plead to the notice to appear by stating whether he or she admits or denies the factual allegations and his or her removability under the charges contained therein. If the respondent admits the factual allegations and admits his or her removability under the charges and the immigration judge is satisfied that no issues of law or fact remain, the immigration judge may determine that removability as charged has been established by the admissions of the respondent. The immigration judge shall not accept an admission of removability from an unrepresented respondent who is incompetent or under the age of 18 and is not accompanied by an attorney or legal representative, a near relative, legal guardian, or friend; nor from an officer of an institution in which a respondent is an inmate or patient. When, pursuant to this paragraph, the immigration judge does not accept an admission of removability, he or she shall direct a hearing on the issues.

(d) *Issues of removability.* When removability is not determined under the provisions of paragraph (c) of this section, the immigration judge shall request the assignment of an Service counsel, and shall receive evidence as to any unresolved issues, except that no further evidence need be received as to any facts admitted during the pleading. The alien shall provide a court certified copy of a Judicial Recommendation Against Deportation (JRAD) to the immigration judge when such recommendation will be the basis of denying any charge(s) brought by the Service in the proceedings against the alien. No JRAD is effective against a charge of deportability under former section 241(a)(11) of the Act or if the JRAD was granted on or after November 29, 1990.

(e) *Additional charges in removal hearings.* At any time during the proceeding, additional or substituted charges of inadmissibility and/or deportability and/or factual allegations may be lodged by the Service in writing. The alien in removal proceedings shall be served with a copy of these additional charges and allegations. The immigration judge shall read the additional factual allegations and charges to the alien and explain them to him or her. The immigration judge shall advise the alien, if he or she is not represented by counsel, that the alien may be so represented, and that he or she may be given a reasonable continuance to respond to the additional factual allegations and charges. Thereafter, the provision of § 240.6(b) relating to pleading shall apply to the additional factual allegations and charges.

(f) *Country of removal.* The immigration judge shall notify the alien that if he or she is finally ordered removed, the country of removal will in the first instance be directed pursuant to section 241(b) of the Act to the country designated by the alien, unless section 241(b)(2)(C) of the Act applies, and shall afford him or her an opportunity then and there to make such designation. The immigration judge shall then specify and state for the record the country, or countries in the alternative, to which the alien's removal will be directed pursuant to section 241(b) of the Act if the country of his or her designation will not accept him or her into its territory, or fails to furnish timely notice of acceptance, or if the alien declines to designate a country.

(g) In the event that the Service is unable to remove the alien to the specified or alternative country or countries, the Service may remove the alien to any other country as permitted by section 241(b) of the Act.

§ 240.11 Ancillary matters, applications.

(a) *Creation of the status of an alien lawfully admitted for permanent residence.* (1) In a removal proceeding, an alien may apply to the immigration judge for cancellation of removal under section 240A of the Act, adjustment of status under section 245 of the Act, adjustment of status under section 1 of the Act of November 2, 1966 (as modified by section 606 of Public Law 104–132) or under section 101 or 104 of the Act of October 28, 1977, or for the creation of a record of lawful admission for permanent residence under section 249 of the Act. The application shall be subject to the requirements of § 240.20, and 8 CFR parts 245 and 249. The approval of any application made to the immigration judge under section 245 of the Act by an alien spouse (as defined in section 216(g)(1) of the Act) or by an alien entrepreneur (as defined in section 216A(f)(1) of the Act) shall result in the alien's obtaining the status of lawful permanent resident on a conditional basis in accordance with the provisions of section 216 or 216A of the Act, whichever is applicable. However, the Petition to Remove the Conditions on Residence required by section 216(c) of the Act, or the Petition by Entrepreneur to Remove Conditions required by section 216A(c) of the Act shall be made to the director in accordance with 8 CFR part 216.

(2) In conjunction with any application for creation of status of an alien lawfully admitted for permanent residence made to an immigration judge, if the alien is inadmissible under any provision of section 212(a) of the Act, and believes that he or she meets the eligibility requirements for a waiver of the ground of inadmissibility, he or

she may apply to the immigration judge for such waiver. The immigration judge shall inform the alien of his or her apparent eligibility to apply for any of the benefits enumerated in this chapter and shall afford the alien an opportunity to make application during the hearing.

(3) In exercising discretionary power when considering an application for status as a permanent resident under this chapter, the immigration judge may consider and base the decision on information not contained in the record and not made available for inspection by the alien, provided the Commissioner has determined that such information is relevant and is classified under the applicable Executive Order as requiring protection from unauthorized disclosure in the interest of national security. Whenever the immigration judge believes that he or she can do so while safeguarding both the information and its source, the immigration judge should inform the alien of the general nature of the information in order that the alien may have an opportunity to offer opposing evidence. A decision based in whole or in part on such classified information shall state that the information is material to the decision.

(b) *Voluntary departure.* The alien may apply to the immigration judge for voluntary departure in lieu of removal pursuant to section 240B of the Act and subpart C of this part.

(c) *Applications for asylum and withholding of removal.* (1) If the alien expresses fear of persecution or harm upon return to any of the countries to which the alien might be removed pursuant to § 240.10(f), and the alien has not previously filed an application for asylum or withholding of removal that has been referred to the immigration judge by an asylum officer in accordance with § 208.14 of this chapter, the immigration judge shall:

(i) Advise the alien that he or she may apply for asylum in the United States or withholding of removal to those countries;

(ii) Make available the appropriate application forms; and

(iii) Advise the alien of the privilege of being represented by counsel at no expense to the government and of the consequences, pursuant to section 208(d)(6) of the Act, of knowingly filing a frivolous application for asylum. The immigration judge shall provide to the alien a list of persons who have indicated their availability to represent aliens in asylum proceedings on a *pro bono* basis.

(2) An application for asylum or withholding of removal must be filed with the Immigration Court, pursuant to § 208.4(c) of this chapter. Upon receipt of an application that has not been referred by an asylum officer, the Immigration Court shall forward a copy to the Department of State pursuant to § 208.11 of this chapter and shall calendar the case for a hearing. The reply, if any, from the Department of State, unless classified under the applicable Executive Order, shall be given to both the alien and to the Service counsel representing the government.

(3) Applications for asylum and withholding of removal so filed will be decided by the immigration judge pursuant to the requirements and standards established in 8 CFR part 208 of this chapter after an evidentiary hearing to resolve factual issues in dispute. An evidentiary hearing extending beyond issues related to the basis for a mandatory denial of the application pursuant to § 208.14 or § 208.16 of this chapter is not necessary once the immigration judge has determined that such a denial is required.

(i) Evidentiary hearings on applications for asylum or withholding of removal will be open to the public unless the alien expressly requests that the hearing be closed pursuant to § 3.27 of this chapter. The immigration judge shall inquire whether the alien requests such closure.

(ii) Nothing in this section is intended to limit the authority of the immigration judge to properly control the scope of any evidentiary hearing.

(iii) During the removal hearing, the alien shall be examined under oath on his or her application and may present evidence and witnesses in his or her own behalf. The alien has the burden of establishing that he or she is a refugee as defined in section 101(a)(42) of the Act pursuant to the standards set forth in § 208.13 of this chapter.

(iv) Service counsel may call witnesses and present evidence for the record, including information classified under the applicable Executive Order, provided the immigration judge or the Board has determined that such information is relevant to the hearing. When the immigration judge receives such classified information, he or she shall inform the alien. The agency that provides the classified information to the immigration judge may provide an unclassified summary of the information for release to the alien, whenever it determines it can do so consistently with safeguarding both the classified nature of the information and its sources. The summary should be as detailed as possible, in order that the alien may have an opportunity to offer opposing evidence. A decision based in whole or in part on such classified information shall state whether such information is material to the decision.

(4) The decision of an immigration judge to grant or deny asylum or withholding of removal shall be communicated to the alien and to the Service counsel. An adverse decision shall state why asylum or withholding of removal was denied.

(d) *Application for relief under sections 237(a)(1)(H) and 237(a)(1)(E)(iii) of the Act.* The respondent may apply to the immigration judge for relief from removal under sections 237(a)(1)(H) and 237(a)(1)(E)(iii) of the Act.

(e) *General.* An application under this section shall be made only during the hearing and shall not be held to constitute a concession of alienage or deportability in any case in which the respondent does not admit his or her alienage or deportability. However, nothing in this section shall prohibit the Service from using information supplied in an application for asylum or withholding of deportation or removal submitted to the Service on or after January 4, 1995, as the basis for issuance of a charging document or to establish alienage or deportability in a case referred to an immigration judge under § 208.14(b) of this chapter. The alien shall have the burden of establishing that he or she is eligible for any requested benefit or privilege and that it should be granted in the exercise of discretion. Nothing contained in this section is intended to foreclose the respondent from applying for any benefit or privilege that he or she believes himself or herself eligible to receive in proceedings under this part. Nothing in this section is intended to limit the Attorney General's authority to remove an alien to any country permitted by section 241(b) of the Act.

(f) *Fees.* The alien shall not be required to pay a fee on more than one application within paragraphs (a) and (c) of this section, provided that the minimum fee imposed when more than one application is made shall be determined by the cost of the application with the highest fee.

§ 240.12 Decision of the immigration judge.

(a) *Contents.* The decision of the immigration judge may be oral or written. The decision of the immigration judge shall include a finding as to inadmissibility or deportability. The formal enumeration of findings is not required. The decision shall also contain reasons for granting or denying the request. The decision shall be concluded with the order of the immigration judge.

(b) *Summary decision.* Notwithstanding the provisions of paragraph (a) of this section, in any case where inadmissibility or deportability is determined on the pleadings pursuant to § 240.10(b) and the respondent does not make an application under § 240.11, the alien is statutorily ineligible for relief, or the respondent applies for voluntary departure only and the immigration judge grants the application, the immigration judge may enter a summary decision or, if voluntary departure is granted, a summary decision with an alternate order of removal.

(c) *Order of the immigration judge.* The order of the immigration judge shall direct the respondent's removal, or the termination of the proceedings, or such other disposition of the case as may be appropriate. When removal is ordered, the immigration judge shall specify the country, or countries in the alternate, to which respondent's removal shall be directed. The immigration judge is authorized to issue orders in the alternative or in combination as he or she may deem necessary.

§ 240.13 Notice of decision.

(a) *Written decision.* A written decision shall be served upon the respondent and the Service counsel, together with the notice referred to in § 3.3 of this chapter. Service by mail is complete upon mailing.

(b) *Oral decision.* An oral decision shall be stated by the immigration judge in the presence of the respondent and the Service counsel, if any, at the conclusion of the hearing. A copy of the summary written order shall be furnished at the request of the respondent or the Service counsel.

(c) *Summary decision.* When the immigration judge renders a summary decision as provided in § 240.12(b), he or she shall serve a copy thereof upon the respondent and the Service counsel at the conclusion of the hearing.

(d) *Decision to remove.* If the immigration judge decides that the respondent is removable and orders the respondent to be removed, the immigration judge shall advise the respondent of such decision, and of the consequences for failure to depart under the order of removal, including civil and criminal penalties described at sections 274D and 243 of the Act. Unless appeal from the decision is waived, the respondent shall be furnished with Form EOIR–26, Notice of Appeal, and advised of the provisions of § 240.15.

§ 240.14 Finality of order.

The order of the immigration judge shall become final in accordance with § 3.39 of this chapter.

§ 240.15 Appeals.

Pursuant to 8 CFR part 3, an appeal shall lie from a decision of an immigration judge to the Board of Immigration Appeals, except that no appeal shall lie from an order of removal entered in absentia. The procedures regarding the filing of a Form EOIR 26, Notice of Appeal, fees, and briefs are set forth in §§ 3.3, 3.31, and 3.38 of this chapter. An appeal shall be filed within 30 calendar days after the mailing of a written decision, the stating of an oral decision, or the service of a summary decision. The filing date is defined as the date of receipt of the Notice of Appeal by the Board of Immigration Appeals. The reasons for the appeal shall be stated in the Notice of Appeal in accordance with the provisions of § 3.3(b) of this chapter. Failure to do so may constitute a ground for dismissal of the appeal by the Board pursuant to § 3.1(d)(1–a) of this chapter.

§ 240.16 Application of new procedures or termination of proceedings in old proceedings pursuant to section 309(c) of Public Law 104–208.

The Attorney General shall have the sole discretion to apply the provisions of section 309(c) of Public Law 104–208, which provides for the application of new removal procedures to certain cases in exclusion or deportation proceedings and for the termination of certain cases in exclusion or deportation proceedings and initiation of new removal proceedings. The Attorney General's application of the provisions of section 309(c) shall become effective upon publication of a notice in the **Federal Register**. However, if the Attorney General determines, in the exercise of his or her discretion, that the delay caused by publication would adversely affect the interests of the United States or the effective enforcement of the immigration laws, the Attorney General's application shall become effective immediately upon issuance, and shall be published in the **Federal Register** as soon as practicable thereafter.

§§ 240.17—240.19 [Reserved]

Subpart B—Cancellation of removal

§ 240.20 Cancellation of removal and adjustment of status under section 240A of the Act.

(a) *Jurisdiction.* An application for the exercise of discretion under section 240A of the Act shall be submitted on Form EOIR–42, Application for Cancellation of Removal, to the Immigration Court having administrative control over the Record of Proceeding of the underlying removal proceeding under section 240 of the Act. The application must be accompanied by payment of the filing fee as set forth in § 103.7(b) of this chapter or a request for a fee waiver.

(b) *Filing the application.* The application may be filed only with the Immigration Court after jurisdiction has vested pursuant to § 3.14 of this chapter.

§§ 240.21—240.24 [Reserved]

Subpart C—Voluntary Departure

§ 240.25 Voluntary departure—authority of the Service.

(a) *Authorized officers.* The authority contained in section 240B(a) of the Act to permit aliens to depart voluntarily from the United States may be exercised in lieu of being subject to proceedings under section 240 of the Act by district directors, assistant district directors for investigations, assistant district directors for examinations, officers in charge, chief patrol agents, service center directors, and assistant center directors for examinations.

(b) *Conditions.* The Service may attach to the granting of voluntary departure any conditions it deems necessary to ensure the alien's timely departure from the United States, including the posting of a bond, continued detention pending departure, and removal under safeguards. The alien shall be required to present to the Service, for inspection and photocopying, his or her passport or other travel documentation sufficient to assure lawful entry into the country to which the alien is departing. The Service may hold the passport or documentation for sufficient time to investigate its authenticity. A voluntary departure order permitting an alien to depart voluntarily shall inform the alien of the penalties under section 240B(d) of the Act.

(c) *Decision.* The authorized officer, in his or her discretion, shall specify the period of time permitted for voluntary departure, and may grant extensions thereof, except that the total period allowed, including any extensions, shall not exceed 120 days. Every decision regarding voluntary departure shall be communicated in writing on Form I–210, Notice of Action—Voluntary Departure. Voluntary departure may not be granted unless the alien requests such voluntary departure and agrees to its terms and conditions.

(d) *Application.* Any alien who believes himself or herself to be eligible

for voluntary departure under this section may apply therefor at any office of the Service. After the commencement of removal proceedings, the application may be communicated through the Service counsel. If the Service agrees to voluntary departure after proceedings have commenced, it may either:

(1) Join in a motion to terminate the proceedings, and if the proceedings are terminated, grant voluntary departure; or

(2) Join in a motion asking the immigration judge to permit voluntary departure in accordance with § 240.26.

(e) *Appeals.* An appeal shall not lie from a denial of an application for voluntary departure under this section, but the denial shall be without prejudice to the alien's right to apply to the immigration judge for voluntary departure in accordance with § 240.26 or for relief from removal under any provision of law.

(f) Revocation. If, subsequent to the granting of an application for voluntary departure under this section, it is ascertained that the application should not have been granted, that grant may be revoked without advance notice by any officer authorized to grant voluntary departure under § 240.25(a). Such revocation shall be communicated in writing, citing the statutory basis for revocation. No appeal shall lie from revocation.

§ 240.26 Voluntary departure—authority of the Executive Office for Immigration Review.

(a) *Eligibility: general.* An alien previously granted voluntary departure under section 240B of the Act, including by the Service under § 240.25, and who fails to depart voluntarily within the time specified, shall thereafter be ineligible, for a period of ten years, for voluntary departure or for relief under sections 240A, 245, 248, and 249 of the Act.

(b) *Prior to completion of removal proceedings.*—(1) *Grant by the immigration judge.* (i) An alien may be granted voluntary departure by an immigration judge pursuant to section 240B(a) of the Act only if the alien:

(A) Makes such request prior to or at the master calendar hearing at which the case is initially calendared for a merits hearing;

(B) Makes no additional requests for relief (or if such requests have been made, such requests are withdrawn prior to any grant of voluntary departure pursuant to this section);

(C) Concedes removability;

(D) Waives appeal of all issues; and

(E) Has not been convicted of a crime described in section 101(a)(43) of the Act and is not deportable under section 237(a)(4).

(ii) The judge may not grant voluntary departure under section 240B(a) of the Act beyond 30 days after the master calendar hearing at which the case is initially calendared for a merits hearing, except pursuant to a stipulation under paragraph (b)(2) of this section.

(2) *Stipulation.* At any time prior to the completion of removal proceedings, the Service counsel may stipulate to a grant of voluntary departure under section 240B(a) of the Act.

(3) *Conditions.* (i) The judge may impose such conditions as he or she deems necessary to ensure the alien's timely departure from the United States, including the posting of a voluntary departure bond to be canceled upon proof that the alien has departed the United States within the time specified. The alien shall be required to present to the Service, for inspection and photocopying, his or her passport or other travel documentation sufficient to assure lawful entry into the country to which the alien is departing, unless:

(A) A travel document is not necessary to return to his or her native country or to which country the alien is departing; or

(B) The document is already in the possession of the Service.

(ii) The Service may hold the passport or documentation for sufficient time to investigate its authenticity. If such documentation is not immediately available to the alien, but the immigration judge is satisfied that the alien is making diligent efforts to secure it, voluntary departure may be granted for a period not to exceed 120 days, subject to the condition that the alien within 60 days must secure such documentation and present it to the Service. The Service in its discretion may extend the period within which the alien must provide such documentation. If the documentation is not presented within the 60-day period or any extension thereof, the voluntary departure order shall vacate automatically and the alternate order of removal will take effect, as if in effect on the date of issuance of the immigration judge order.

(c) *At the conclusion of the removal proceedings.*—(1) *Required findings.* An immigration judge may grant voluntary departure at the conclusion of the removal proceedings under section 240B(b) of the Act, if he or she finds that:

(i) The alien has been physically present in the United States for period of at least one year preceding the date the Notice to Appear was served under section 239(a) of the Act;

(ii) The alien is, and has been, a person of good moral character for at least five years immediately preceding the application;

(iii) The alien has not been convicted of a crime described in section 101(a)(43) of the Act and is not deportable under section 237(a)(4); and

(iv) The alien has established by clear and convincing evidence that the alien has the means to depart the United States and has the intention to do so.

(2) *Travel documentation.* Except as otherwise provided in paragraph (b)(3) of this section, the clear and convincing evidence of the means to depart shall include in all cases presentation by the alien of a passport or other travel documentation sufficient to assure lawful entry into the country to which the alien is departing. The Service shall have full opportunity to inspect and photocopy the documentation, and to challenge its authenticity or sufficiency before voluntary departure is granted.

(3) *Conditions.* The judge may impose such conditions as he or she deems necessary to ensure the alien's timely departure from the United States. In all cases under section 240B(b) of the Act, the alien shall be required to post a voluntary departure bond, in an amount necessary to ensure that the alien departs within the time specified, but in no case less than $500. The voluntary departure bond shall be posted with the district director within 5 business days of the immigration judge's order granting voluntary departure, and the district director may, at his or her discretion, hold the alien in custody until the bond is posted. If the bond is not posted within 5 business days, the voluntary departure order shall vacate automatically and the alternate order of removal will take effect on the following day. In order for the bond to be canceled, the alien must provide proof of departure to the district director.

(d) *Alternate order of removal.* Upon granting a request made for voluntary departure either prior to the completion of proceedings or at the conclusion of proceedings, the immigration judge shall also enter an alternate order or removal.

(e) *Periods of time.* If voluntary departure is granted prior to the completion of removal proceedings, the immigration judge may grant a period not to exceed 120 days. If voluntary departure is granted at the conclusion of proceedings, the immigration judge may grant a period not to exceed 60 days.

(f) *Extension of time to depart.* Authority to extend the time within which to depart voluntarily specified initially by an immigration judge or the Board is within the sole jurisdiction of the district director. An immigration judge or the Board may reinstate voluntary departure in a removal proceeding that has been reopened for a purpose other than solely making an application for voluntary departure if reopening was granted prior to the expiration of the original period of voluntary departure. In no event can the total period of time, including any extension, exceed 120 days or 60 days as set forth in section 240B of the Act.

(g) *Administrative Appeals.* No appeal shall lie regarding the length of a period of voluntary departure (as distinguished from issues of whether to grant voluntary departure).

(h) *Reinstatement of voluntary departure.* An immigration judge or the Board may reinstate voluntary departure in a removal proceeding that has been reopened for a purpose other than solely making application for voluntary departure, if reopening was granted prior to the expiration of the original period of voluntary departure. In no event can the total period of time, including any extension, exceed 120 days or 60 days as set forth in section 240B of the Act and paragraph (a) of this section.

§§ 240.27–240.29 [Reserved]

Subpart D—Exclusion of Aliens (for proceedings commenced prior to April 1, 1997)

§ 240.30 Proceedings prior to April 1, 1997.

Subpart D of 8 CFR part 240 applies to exclusion proceedings commenced prior to April 1, 1997, pursuant to the former section 236 of the Act. An exclusion proceeding is commenced by the filing of Form I–122 with the Immigration Court, and an alien is considered to be in exclusion proceedings only upon such filing. All references to the Act contained in this subpart are references to the Act in effect prior to April 1, 1997.

§ 240.31 Authority of immigration judges.

In determining cases referred for further inquiry as provided in section 235 of the Act, immigration judges shall have the powers and authority conferred upon them by the Act and this chapter. Subject to any specific limitation prescribed by the Act and this chapter, immigration judges shall also exercise the discretion and authority conferred upon the Attorney General by the Act as is appropriate and necessary for the disposition of such cases.

§ 240.32 Hearing.

(a) *Opening.* Exclusion hearings shall be closed to the public, unless the alien at his or her own instance requests that the public, including the press, be permitted to attend; in that event, the hearing shall be open, provided that the alien states for the record that he or she is waiving the requirement in section 236 of the Act that the inquiry shall be kept separate and apart from the public. When the hearing is to be open, depending upon physical facilities, reasonable limitation may be placed upon the number in attendance at any one time, with priority being given to the press over the general public. The immigration judge shall ascertain whether the applicant for admission is the person to whom Form I–122 was previously delivered by the examining immigration officer as provided in 8 CFR part 235; enter a copy of such form in evidence as an exhibit in the case; inform the applicant of the nature and purpose of the hearing; advise him or her of the privilege of being represented by an attorney of his or her own choice at no expense to the Government, and of the availability of free legal services programs qualified under 8 CFR part 3 and organizations recognized pursuant to § 292.2 of this chapter located in the district where his or her exclusion hearing is to be held; and shall ascertain that the applicant has received a list of such programs; and request him or her to ascertain then and there whether he or she desires representation; advise him or her that he or she will have a reasonable opportunity to present evidence in his or her own behalf, to examine and object to evidence against him or her, and to cross-examine witnesses presented by the Government; and place the applicant under oath.

(b) *Procedure.* The immigration judge shall receive and adduce material and relevant evidence, rule upon objections, and otherwise regulate the course of the hearing.

(c) *Attorney for the Service.* The Service shall assign an attorney to each case in which an applicant's nationality is in issue and may assign an attorney to any case in which such assignment is deemed necessary or advantageous. The duties of the Service counsel include, but are not limited to, the presentation of evidence and the interrogation, examination, and cross-examination of the applicant and other witnesses. Nothing contained in this section diminishes the authority of an immigration judge to conduct proceedings under this part.

(d) *Depositions.* The procedures specified in § 240.48(e) shall apply.

(e) *Record.* The hearing before the immigration judge, including the testimony, exhibits, applications, proffers, and requests, the immigration judge's decision, and all written orders, motions, appeals, and other papers filed in the proceeding shall constitute the record in the case. The hearing shall be recorded verbatim except for statements made off the record with the permission of the immigration judge.

§ 240.33 Applications for asylum or withholding of deportation.

(a) If the alien expresses fear of persecution or harm upon return to his or her country of origin or to a country to which the alien may be deported after a determination of excludability from the United States pursuant to this subpart, and the alien has not been referred to the immigration judge by an asylum officer in accordance with § 208.14(b) of this chapter, the immigration judge shall:

(1) Advise the alien that he or she may apply for asylum in the United States or withholding of deportation to that other country; and

(2) Make available the appropriate application forms.

(b) An application for asylum or withholding of deportation must be filed with the Immigration Court, pursuant to § 208.4(c) of this chapter. Upon receipt of an application that has not been referred by an asylum officer, the Immigration Court shall forward a copy to the Department of State pursuant to § 208.11 of this chapter and shall calendar the case for a hearing. The reply, if any, from the Department of State, unless classified under the applicable Executive Order, shall be given to both the applicant and to the Service counsel representing the government.

(c) Applications for asylum or withholding of deportation so filed will be decided by the immigration judge pursuant to the requirements and standards established in 8 CFR part 208 after an evidentiary hearing that is necessary to resolve material factual issues in dispute. An evidentiary hearing extending beyond issues related to the basis for a mandatory denial of the application pursuant to § 208.13(c) of this chapter is not necessary once the immigration judge has determined that such denial is required.

(1) Evidentiary hearings on applications for asylum or withholding of deportation will be closed to the public unless the applicant expressly requests that it be open pursuant to § 236.3 of this chapter.

(2) Nothing in this section is intended to limit the authority of the immigration judge properly to control the scope of any evidentiary hearing.

(3) During the exclusion hearing, the applicant shall be examined under oath on his or her application and may

present evidence and witnesses on his or her own behalf. The applicant has the burden of establishing that he or she is a refugee as defined in section 101(a)(42) of the Act pursuant to the standard set forth in § 208.13 of this chapter.

(4) The Service counsel for the government may call witnesses and present evidence for the record, including information classified under the applicable Executive Order, provided the immigration judge or the Board has determined that such information is relevant to the hearing. The applicant shall be informed when the immigration judge receives such classified information. The agency that provides the classified information to the immigration judge may provide an unclassified summary of the information for release to the applicant whenever it determines it can do so consistently with safeguarding both the classified nature of the information and its source. The summary should be as detailed as possible, in order that the applicant may have an opportunity to offer opposing evidence. A decision based in whole or in part on such classified information shall state that such information is material to the decision.

(d) The decision of an immigration judge to grant or deny asylum or withholding of deportation shall be communicated to the applicant and to the Service counsel for the government. An adverse decision will state why asylum or withholding of deportation was denied.

§ 240.34 Renewal of application for adjustment of status under section 245 of the Act.

An adjustment application by an alien paroled under section 212(d)(5) of the Act, which has been denied by the district director, may be renewed in exclusion proceedings under section 236 of the Act (as in effect prior to April 1, 1997) before an immigration judge under the following two conditions: first, the denied application must have been properly filed subsequent to the applicant's earlier inspection and admission to the United States; and second, the applicant's later absence from and return to the United States must have been under the terms of an advance parole authorization on Form I–512 granted to permit the applicant's absence and return to pursue the previously filed adjustment application.

§ 240.35 Decision of the immigration judge; notice to the applicant.

(a) *Decision.* The immigration judge shall inform the applicant of his or her decision in accordance with § 3.37 of this chapter.

(b) *Advice to alien ordered excluded.* An alien ordered excluded shall be furnished with Form I–296, Notice to Alien Ordered Excluded by Immigration Judge, at the time of an oral decision by the immigration judge or upon service of a written decision.

(c) *Holders of refugee travel documents.* Aliens who are the holders of valid unexpired refugee travel documents may be ordered excluded only if they are found to be inadmissible under section 212(a)(2), 212(a)(3), or 212(a)(6)(E) of the Act, and it is determined that on the basis of the acts for which they are inadmissible there are compelling reasons of national security or public order for their exclusion. If the immigration judge finds that the alien is inadmissible but determines that there are no compelling reasons of national security or public order for exclusion, the immigration judge shall remand the case to the district director for parole.

§ 240.36 Finality of order.

The decision of the immigration judge shall become final in accordance with § 3.37 of this chapter.

§ 240.37 Appeals.

Except for temporary exclusions under section 235(c) of the Act, an appeal from a decision of an Immigration Judge under this part may be taken by either party pursuant to § 3.38 of this chapter.

§ 240.38 Fingerprinting of excluded aliens.

Every alien 14 years of age or older who is excluded from admission to the United States by an immigration judge shall be fingerprinted, unless during the preceding year he or she has been fingerprinted at an American consular office.

§ 240.39 [Reserved]

Subpart E—Proceedings to Determine Deportability of Aliens in the United States: Hearing and Appeal (for proceedings commenced prior to April 1, 1997)

§ 240.40 Proceedings commenced prior to April 1, 1997.

Subpart E of 8 CFR part 240 applies only to deportation proceedings commenced prior to April 1, 1997. A deportation proceeding is commenced by the filing of Form I–221 (Order to Show Cause) with the Immigration Court, and an alien is considered to be in deportation proceedings only upon such filing, except in the case of an alien admitted to the United States under the provisions of section 217 of the Act. All references to the Act contained in this subpart pertain to the Act as in effect prior to April 1, 1997.

§ 240.41 Immigration judges.

(a) *Authority.* In any proceeding conducted under this part the immigration judge shall have the authority to determine deportability and to make decisions, including orders of deportation, as provided by section 242(b) and 242B of the Act; to reinstate orders of deportation as provided by section 242(f) of the Act; to determine applications under sections 208, 212(k), 241(a)(1)(E)(iii), 241(a)(1)(H), 244, 245 and 249 of the Act; to determine the country to which an alien's deportation will be directed in accordance with section 243(a) of the Act; to order temporary withholding of deportation pursuant to section 243(h) of the Act; and to take any other action consistent with applicable law and regulations as may be appropriate. An immigration judge may certify his or her decision in any case to the Board of Immigration Appeals when it involves an unusually complex or novel question of law or fact. Nothing contained in this part shall be construed to diminish the authority conferred on immigration judges under section 103 of the Act.

(b) *Withdrawal and substitution of immigration judges.* The immigration judge assigned to conduct the hearing shall at any time withdraw if he or she deems himself or herself disqualified. If an immigration judge becomes unavailable to complete his or her duties within a reasonable time, or if at any time the respondent consents to a substitution, another immigration judge may be assigned to complete the case. The new immigration judge shall familiarize himself or herself with the record in the case and shall state for the record that he or she has done so.

§ 240.42 Representation by counsel.

The respondent may be represented at the hearing by an attorney or other representative qualified under 8 CFR part 292.

§ 240.43 Incompetent respondents.

When it is impracticable for the respondent to be present at the hearing because of mental incompetency, the guardian, near relative, or friend who was served with a copy of the order to show cause shall be permitted to appear on behalf of the respondent. If such a person cannot reasonably be found or fails or refuses to appear, the custodian of the respondent shall be requested to appear on behalf of the respondent.

§ 240.44 Interpreter.

Any person acting as interpreter in a hearing before an immigration judge under this part shall be sworn to interpret and translate accurately, unless the interpreter is an employee of the United States Government, in which event no such oath shall be required.

§ 240.45 Postponement and adjournment of hearing.

After the commencement of the hearing, the immigration judge may grant a reasonable adjournment either at his or her own instance or, for good cause shown, upon application by the respondent or the Service.

§ 240.46 Evidence.

(a) *Sufficiency.* A determination of deportability shall not be valid unless it is found by clear, unequivocal, and convincing evidence that the facts alleged as grounds for deportation are true.

(b) *Use of prior statements.* The immigration judge may receive in evidence any oral or written statement that is material and relevant to any issue in the case previously made by the respondent or any other person during any investigation, examination, hearing, or trial.

(c) *Testimony.* Testimony of witnesses appearing at the hearing shall be under oath or affirmation administered by the immigration judge.

(d) *Depositions.* The immigration judge may order the taking of depositions pursuant to § 3.35 of this chapter.

§ 240.47 Contents of record.

The hearing before the immigration judge, including the testimony, exhibits, applications, proffers, and requests, the immigration judge's decision, and all written orders, motions, appeals, briefs, and other papers filed in the proceedings shall constitute the record in the case. The hearing shall be recorded verbatim except for statements made off the record with the permission of the immigration judge. In his or her discretion, the immigration judge may exclude from the record any arguments made in connection with motions, applications, requests, or objections, but in such event the person affected may submit a brief.

§ 240.48 Hearing.

(a) *Opening.* The immigration judge shall advise the respondent of his or her right to representation, at no expense to the Government, by counsel of his or her own choice authorized to practice in the proceedings and require him or her to state then and there whether he or she desires representation; advise the respondent of the availability of free legal services programs qualified under 8 CFR part 3 and organizations recognized pursuant to § 292.2 of this chapter, located in the district where the deportation hearing is being held; ascertain that the respondent has received a list of such programs, and a copy of Form I–618, Written Notice of Appeal Rights; advise the respondent that he or she will have a reasonable opportunity to examine and object to the evidence against him or her, to present evidence in his or her own behalf and to cross-examine witnesses presented by the Government; place the respondent under oath; read the factual allegations and the charges in the order to show cause to the respondent and explain them in nontechnical language, and enter the order to show cause as an exhibit in the record. Deportation hearings shall be open to the public, except that the immigration judge may, in his or her discretion and for the purpose of protecting witnesses, respondents, or the public interest, direct that the general public or particular individuals shall be excluded from the hearing in any specific case. Depending upon physical facilities, reasonable limitation may be placed upon the number in attendance at any one time, with priority being given to the press over the general public.

(b) *Pleading by respondent.* The immigration judge shall require the respondent to plead to the order to show cause by stating whether he or she admits or denies the factual allegations and his or her deportability under the charges contained therein. If the respondent admits the factual allegations and admits his or her deportability under the charges and the immigration judge is satisfied that no issues of law or fact remain, the immigration judge may determine that deportability as charged has been established by the admissions of the respondent. The immigration judge shall not accept an admission of deportability from an unrepresented respondent who is incompetent or under age 16 and is not accompanied by a guardian, relative, or friend; nor from an officer of an institution in which a respondent is an inmate or patient. When, pursuant to this paragraph, the immigration judge may not accept an admission of deportability, he or she shall direct a hearing on the issues.

(c) *Issues of deportability.* When deportability is not determined under the provisions of paragraph (b) of this section, the immigration judge shall request the assignment of a Service counsel, and shall receive evidence as to any unresolved issues, except that no further evidence need be received as to any facts admitted during the pleading. The respondent shall provide a court certified copy of a Judicial Recommendation Against Deportation (JRAD) to the immigration judge when such recommendation will be the basis of denying any charge(s) brought by the Service in the proceedings against the respondent. No JRAD is effective against a charge of deportability under section 241(a)(11) of the Act or if the JRAD was granted on or after November 29, 1990.

(d) *Additional charges.* The Service may at any time during a hearing lodge additional charges of deportability, including factual allegations, against the respondent. Copies of the additional factual allegations and charges shall be submitted in writing for service on the respondent and entry as an exhibit in the record. The immigration judge shall read the additional factual allegations and charges to the respondent and explain them to him or her. The immigration judge shall advise the respondent if he or she is not represented by counsel that he or she may be so represented and also that he or she may have a reasonable time within which to meet the additional factual allegations and charges. The respondent shall be required to state then and there whether he or she desires a continuance for either of these reasons. Thereafter, the provisions of paragraph (b) of this section shall apply to the additional factual allegations and lodged charges.

§ 240.49 Ancillary matters, applications.

(a) *Creation of the status of an alien lawfully admitted for permanent residence.* The respondent may apply to the immigration judge for suspension of deportation under section 244(a) of the Act; for adjustment of status under section 245 of the Act, or under section 1 of the Act of November 2, 1966, or under section 101 or 104 of the Act of October 28, 1977; or for the creation of a record of lawful admission for permanent residence under section 249 of the Act. The application shall be subject to the requirements of 8 CFR parts 240, 245, and 249. The approval of any application made to the immigration judge under section 245 of the Act by an alien spouse (as defined in section 216(g)(1) of the Act) or by an alien entrepreneur (as defined in section 216A(f)(1) of the Act), shall result in the alien's obtaining the status of lawful permanent resident on a conditional basis in accordance with the provisions of section 216 or 216A of the Act, whichever is applicable. However, the Petition to Remove the Conditions on

Residence required by section 216(c) of the Act or the Petition by Entrepreneur to Remove Conditions required by section 216A(c) of the Act shall be made to the director in accordance with 8 CFR part 216. In conjunction with any application for creation of status of an alien lawfully admitted for permanent residence made to an immigration judge, if the respondent is inadmissible under any provision of section 212(a) of the Act and believes that he or she meets the eligibility requirements for a waiver of the ground of inadmissibility, he or she may apply to the immigration judge for such waiver. The immigration judge shall inform the respondent of his or her apparent eligibility to apply for any of the benefits enumerated in this paragraph and shall afford the respondent an opportunity to make application therefor during the hearing. In exercising discretionary power when considering an application under this paragraph, the immigration judge may consider and base the decision on information not contained in the record and not made available for inspection by the respondent, provided the Commissioner has determined that such information is relevant and is classified under the applicable Executive Order as requiring protection from unauthorized disclosure in the interest of national security. Whenever the immigration judge believes that he or she can do so while safeguarding both the information and its source, the immigration judge should inform the respondent of the general nature of the information in order that the respondent may have an opportunity to offer opposing evidence. A decision based in whole or in part on such classified information shall state that the information is material to the decision.

(b) *Voluntary departure.* The respondent may apply to the immigration judge for voluntary departure in lieu of deportation pursuant to section 244(e) of the Act and § 240.56.

(c) *Applications for asylum or withholding of deportation.* (1) The immigration judge shall notify the respondent that if he or she is finally ordered deported, his or her deportation will in the first instance be directed pursuant to section 243(a) of the Act to the country designated by the respondent and shall afford him or her an opportunity then and there to make such designation. The immigration judge shall then specify and state for the record the country, or countries in the alternative, to which respondent's deportation will be directed pursuant to section 243(a) of the Act if the country of his or her designation will not accept him or her into its territory, or fails to furnish timely notice of acceptance, or if the respondent declines to designate a country.

(2) If the alien expresses fear of persecution or harm upon return to any of the countries to which the alien might be deported pursuant to paragraph (c)(1) of this section, and the alien has not previously filed an application for asylum or withholding of deportation that has been referred to the immigration judge by an asylum officer in accordance with § 208.14(b) of this chapter, the immigration judge shall:

(i) Advise the alien that he or she may apply for asylum in the United States or withholding of deportation to those countries; and

(ii) Make available the appropriate application forms.

(3) An application for asylum or withholding of deportation must be filed with the Immigration Court, pursuant to § 208.4(b) of this chapter. Upon receipt of an application that has not been referred by an asylum officer, the Immigration Court shall forward a copy to the Department of State pursuant to § 208.11 of this chapter and shall calendar the case for a hearing. The reply, if any, of the Department of State, unless classified under the applicable Executive Order, shall be given to both the applicant and to the Service counsel representing the government.

(4) Applications for asylum or withholding of deportation so filed will be decided by the immigration judge pursuant to the requirements and standards established in 8 CFR part 208 after an evidentiary hearing that is necessary to resolve factual issues in dispute. An evidentiary hearing extending beyond issues related to the basis for a mandatory denial of the application pursuant to § 208.13 or § 208.16 of this chapter is not necessary once the immigration judge has determined that such a denial is required.

(i) Evidentiary hearings on applications for asylum or withholding of deportation will be open to the public unless the applicant expressly requests that it be closed.

(ii) Nothing in this section is intended to limit the authority of the immigration judge properly to control the scope of any evidentiary hearing.

(iii) During the deportation hearing, the applicant shall be examined under oath on his or her application and may present evidence and witnesses in his or her own behalf. The applicant has the burden of establishing that he or she is a refugee as defined in section 101(a)(42) of the Act pursuant to the standard set forth in § 208.13 of this chapter.

(iv) The Service counsel for the government may call witnesses and present evidence for the record, including information classified under the applicable Executive Order, provided the immigration judge or the Board has determined that such information is relevant to the hearing. When the immigration judge receives such classified information he or she shall inform the applicant. The agency that provides the classified information to the immigration judge may provide an unclassified summary of the information for release to the applicant, whenever it determines it can do so consistently with safeguarding both the classified nature of the information and its source. The summary should be as detailed as possible, in order that the applicant may have an opportunity to offer opposing evidence. A decision based in whole or in part on such classified information shall state whether such information is material to the decision.

(5) The decision of an immigration judge to grant or deny asylum or withholding of deportation shall be communicated to the applicant and to the Service counsel for the government. An adverse decision will state why asylum or withholding of deportation was denied.

(d) *Application for relief under sections 241(a)(1)(H) and 241(a)(1)(E)(iii) of the Act.* The respondent may apply to the immigration judge for relief from deportation under sections 241(a)(1)(H) and 241(a)(1)(E)(iii) of the Act.

(e) *General.* An application under this section shall be made only during the hearing and shall not be held to constitute a concession of alienage or deportability in any case in which the respondent does not admit his alienage or deportability. However, nothing in this section shall prohibit the Service from using information supplied in an application for asylum or withholding of deportation submitted to an asylum officer pursuant to § 208.2 of this chapter on or after January 4, 1995, as the basis for issuance of an order to show cause or a notice to appear to establish alienage or deportability in a case referred to an immigration judge under § 208.14(b) of this chapter. The respondent shall have the burden of establishing that he or she is eligible for any requested benefit or privilege and that it should be granted in the exercise of discretion. The respondent shall not be required to pay a fee on more than one application within paragraphs (a) and (c) of this section, provided that the minimum fee imposed when more than one application is made shall be determined by the cost of the application with the highest fee. Nothing contained in this section is intended to foreclose the respondent from applying for any benefit or privilege which he or she believes himself or herself eligible to receive in proceedings under this part.

§ 240.50 Decision of the immigration judge.

(a) *Contents.* The decision of the immigration judge may be oral or written. Except when deportability is determined on the pleadings pursuant to § 240.48(b), the decision of the immigration judge shall include a finding as to deportability. The formal enumeration of findings is not required. The decision shall also contain the reasons for granting or denying the request. The decision shall be concluded with the order of the immigration judge.

(b) *Summary decision.* Notwithstanding the provisions of paragraph (a) of this section, in any case where deportability is determined on the pleadings pursuant to § 240.48(b) and the respondent does not make an application under § 240.49, or the respondent applies for voluntary departure only and the immigration judge grants the application, the immigration judge may enter a summary decision on Form EOIR–7, Summary Order of Deportation, if deportation is ordered, or on Form EOIR–6, Summary Order of Voluntary Departure, if voluntary departure is granted with an alternate order of deportation.

(c) *Order of the immigration judge.* The order of the immigration judge shall direct the respondent's deportation, or the termination of the proceedings, or such other disposition of the case as may be appropriate. When deportation is ordered, the immigration judge shall specify the country, or countries in the alternate, to which respondent's deportation shall be directed. The immigration judge is authorized to issue orders in the alternative or in combination as he or she may deem necessary.

§ 240.51 Notice of decision.

(a) *Written decision.* A written decision shall be served upon the respondent and the Service counsel, together with the notice referred to in § 3.3 of this chapter. Service by mail is complete upon mailing.

(b) *Oral decision.* An oral decision shall be stated by the immigration judge in the presence of the respondent and the trail attorney, if any, at the conclusion of the hearing. Unless appeal from the decision is waived, the respondent shall be furnished with Form EOIR–26, Notice of Appeal, and advised of the provisions of § 240.53. A printed copy of the oral decision shall be furnished at the request of the respondent or the Service counsel.

(c) *Summary decision.* When the immigration judge renders a summary decision as provided in § 240.51(b), he or she shall serve a copy thereof upon the respondent at the conclusion of the hearing. Unless appeal from the decision is waived, the respondent shall be furnished with Form EOIR–26, Notice of Appeal, and advised of the provisions of § 240.54.

§ 240.52 Finality of order.

The decision of the immigration judge shall become final in accordance with § 3.39 of this chapter.

§ 240.53 Appeals.

(a) Pursuant to 8 CFR part 3, an appeal shall lie from a decision of an immigration judge to the Board, except that no appeal shall lie from an order of deportation entered in absentia. The procedures regarding the filing of a Form EOIR–26, Notice of Appeal, fees, and briefs are set forth in §§ 3.3, 3.31, and 3.38 of this chapter. An appeal shall be filed within 30 calendar days after the mailing of a written decision, the stating of an oral decision, or the service of a summary decision. The filing date is defined as the date of receipt of the Notice of Appeal by the Board. The reasons for the appeal shall be stated in the Form EOIR–26, Notice of Appeal, in accordance with the provisions of § 3.3(b) of this chapter. Failure to do so may constitute a ground for dismissal of the appeal by the Board pursuant to § 3.1(d)(1-a) of this chapter.

(b) *Prohibited appeals; legalization or applications.* An alien respondent defined in § 245a.2(c)(6) or (7) of this chapter who fails to file an application for adjustment of status to that of a temporary resident within the prescribed period(s), and who is thereafter found to be deportable by decision of an immigration judge, shall not be permitted to appeal the finding of deportability based solely on refusal by the immigration judge to entertain such an application in deportation proceedings.

§ 240.54 [Reserved]

Subpart F—Suspension of Deportation and Voluntary Departure (for proceedings commenced prior to April 1, 1997)

§ 240.55 Proceedings commenced prior to April 1, 1997.

Subpart F of 8 CFR part 240 applies to deportation proceedings commenced prior to April 1, 1997. A deportation proceeding is commenced by the filing of Form I–221 (Order to Show Cause) with the Immigration Court, and an alien is considered to be in deportation proceedings only upon such filing, except in the case of an alien admitted to the United States under the provisions of section 217 of the Act. All references to the Act contained in this subpart are references to the Act in effect prior to April 1, 1997.

§ 240.56 Application.

Notwithstanding any other provision of this chapter, an alien who is deportable because of a conviction on or after November 18, 1988, for an aggravated felony as defined in section 101(a)(43) of the Act, shall not be eligible for voluntary departure as prescribed in 8 CFR part 240 and section 244 of the Act. Pursuant to subpart F of this part and section 244 of the Act, an immigration judge may authorize the suspension of an alien's deportation; or, if the alien establishes that he or she is willing and has the immediate means with which to depart promptly from the United States, an immigration judge may authorize the alien to depart voluntarily from the United States in lieu of deportation within such time as may be specified by the immigration judge when first authorizing voluntary departure, and under such conditions as the district director shall direct. An application for suspension of deportation shall be made on Form EOIR–40.

§ 240.57 Extension of time to depart.

Authority to reinstate or extend the time within which to depart voluntarily specified initially by an immigration judge or the Board is within the sole jurisdiction of the district director, except that an immigration judge or the Board may reinstate voluntary departure in a deportation proceeding that has been reopened for a purpose other than solely making an application for voluntary departure. A request by an alien for reinstatement or an extension of time within which to depart voluntarily shall be filed with the district director having jurisdiction over the alien's place of residence. Written notice of the district director's decision

shall be served upon the alien and no appeal may be taken therefrom.

Subpart G—Civil Penalties for Failure to Depart [Reserved]

105. Part 241 is revised to read as follows:

PART 241—APPREHENSION AND DETENTION OF ALIENS ORDERED REMOVED

Subpart A—Post-hearing Detention and Removal

Sec.

241.1 Final order of removal.
241.2 Warrant of removal.
241.3 Detention of aliens during removal period.
241.4 Continued detention beyond the removal period.
241.5 Conditions of release after removal period.
241.6 Administrative stay of removal.
241.7 Self-removal.
241.8 Reinstatement of removal orders.
241.9 Notice to transportation line of alien's removal.
241.10 Special care and attention of removable aliens.
241.11 Detention and removal of stowaways.
241.12 Nonapplication of costs of detention and maintenance.
241.13—241.19 [Reserved]

Subpart B—Deportation of Excluded Aliens (for hearings commenced prior to April 1, 1997)

241.20 Proceedings commenced prior to April 1, 1997.
241.21 Stay of deportation of excluded alien.
241.22 Notice to surrender for deportation.
241.23 Cost of maintenance not assessed.
241.24 Notice to transportation line of alien's exclusion.
241.25 Deportation.
241.26—241.29 [Reserved]

Subpart C—Deportation of Aliens in the United States (for hearings commenced prior to April 1, 1997)

241.30 Proceedings commenced prior to April 1, 1997.
241.31 Final order of deportation.
241.32 Warrant of deportation.
241.33 Expulsion.

Authority: 8 U.S.C. 1103, 1223, 1227, 1251, 1253, 1255, and 1330; 8 CFR part 2.

Subpart A—Post-hearing Detention and Removal

§ 241.1 Final order of removal.

An order of removal made by the immigration judge at the conclusion of proceedings under section 240 of the Act shall become final:

(a) Upon dismissal of an appeal by the Board of Immigration Appeals;

(b) Upon waiver of appeal by the respondent;

(c) Upon expiration of the time allotted for an appeal if the respondent does not file an appeal within that time;

(d) If certified to the Board or Attorney General, upon the date of the subsequent decision ordering removal;

(e) If an immigration judge orders an alien removed in the alien's absence, immediately upon entry of such order; or

(f) If an immigration judge issues an alternate order of removal in connection with a grant of voluntary departure, upon overstay of the voluntary departure period except where the respondent has filed a timely appeal with the Board. In such a case, the order shall become final upon an order of removal by the Board or the Attorney General, or upon overstay of any voluntary departure period granted or reinstated by the Board or the Attorney General.

§ 241.2 Warrant of removal.

(a) *Issuance of a warrant of removal.* A Form I–205, Warrant of Removal, based upon the final administrative removal order in the alien's case shall be issued by a district director. The district director shall exercise the authority contained in section 241 of the Act to determine at whose expense the alien shall be removed and whether his or her mental or physical condition requires personal care and attention en route to his or her destination.

(b) *Execution of the warrant of removal.* Any officer authorized by § 287.5(e) of this chapter to execute administrative warrants of arrest may execute a warrant of removal.

§ 241.3 Detention of aliens during removal period.

(a) *Assumption of custody.* Once the removal period defined in section 241(a)(1) of the Act begins, an alien in the United States will be taken into custody pursuant to the warrant of removal.

(b) *Cancellation of bond.* Any bond previously posted will be canceled unless it has been breached or is subject to being breached.

(c) *Judicial stays.* The filing of (or intention to file) a petition or action in a Federal court seeking review of the issuance or execution of an order of removal shall not delay execution of the Warrant of Removal except upon an affirmative order of the court.

§ 241.4 Continued detention beyond the removal period.

(a) *Continuation of custody for inadmissible or criminal aliens.* The district director may continue in custody any alien inadmissible under section 212(a) of the Act or removable under section 237(a)(1)(C), 237(a)(2), or 237(a)(4) of the Act, or who presents a significant risk of noncompliance with the order of removal, beyond the removal period, as necessary, until removal from the United States. If such an alien demonstrates by clear and convincing evidence that the release would not pose a danger to the community or a significant flight risk, the district director may, in the exercise of discretion, order the alien released from custody on such conditions as the district director may prescribe, including bond in an amount sufficient to ensure the alien's appearance for removal. The district may consider, but is not limited to considering, the following factors:

(1) The nature and seriousness of the alien's criminal convictions;

(2) Other criminal history;

(3) Sentence(s) imposed and time actually served;

(4) History of failures to appear for court (defaults);

(5) Probation history;

(6) Disciplinary problems while incarcerated;

(7) Evidence of rehabilitative effort or recidivism;

(8) Equities in the United States; and

(9) Prior immigration violations and history.

(b) *Continuation of custody for other aliens.* Any alien removable under any section of the Act other than section 212(a), 237(a)(1)(C), 237(a)(2), or 237(a)(4) may be detained beyond the removal period, in the discretion of the district director, unless the alien demonstrates to the satisfaction of the district director that he or she is likely to comply with the removal order and is not a risk to the community.

§ 241.5 Conditions of release after removal period.

(a) *Order of supervision.* An alien released pursuant to § 241.4 shall be released pursuant to an order of supervision. A district director, acting district director, deputy district director, assistant district director for investigations, assistant district director for detention and deportation, or officer in charge may issue an order of supervision on Form I–220B. The order shall specify conditions of supervision including, but not limited to, the following:

(1) A requirement that the alien report to a specified officer periodically and provide relevant information under oath as directed;

(2) A requirement that the alien continue efforts to obtain a travel document and assist the Service in obtaining a travel document;

(3) A requirement that the alien report as directed for a mental or physical examination or examinations as directed by the Service;

(4) A requirement that the alien obtain advance approval of travel beyond previously specified times and distances; and

(5) A requirement that the alien provide the Service with written notice of any change of address on Form AR–11 within ten days of the change.

(b) *Posting of bond.* An officer authorized to issue an order of supervision may require the posting of a bond in an amount determined by the officer to be sufficient to ensure compliance with the conditions of the order, including surrender for removal.

(c) *Employment authorization.* An officer authorized to issue an order of supervision may, in his or her discretion, grant employment authorization to an alien released under an order of supervision if the officer specifically finds that:

(1) The alien cannot be removed because no country will accept the alien; or

(2) The removal of the alien is impracticable or contrary to public interest.

§ 241.6 Administrative stay of removal.

Any request of an alien under a final order of deportation or removal for a stay of deportation or removal shall be filed on Form I–246, Stay of Removal, with the district director having jurisdiction over the place where the alien is at the time of filing. The district director, in his or her discretion and in consideration of factors such as are listed in § 212.5 of this chapter and section 241(c) of the Act, may grant a stay of removal or deportation for such time and under such conditions as he or she may deem appropriate. Neither the request nor the failure to receive notice of disposition of the request shall delay removal or relieve the alien from strict compliance with any outstanding notice to surrender for deportation or removal. Denial by the district director of a request for a stay is not appealable, but such denial shall not preclude an immigration judge or the Board from granting a stay in connection with a motion to reopen or a motion to reconsider as provided in 8 CFR part 3. The Service shall take all reasonable steps to comply with a stay granted by an immigration judge or the Board. However, such a stay shall cease to have effect if granted (or communicated) after the alien has been placed aboard an aircraft or other conveyance for removal and the normal boarding has been completed.

§ 241.7 Self-removal.

A district director may permit an alien ordered removed (including an alien ordered excluded or deported in proceedings prior to April 1, 1997) to depart at his or her own expense to a destination of his or her own choice. Any alien who has departed from the United States while an order of deportation or removal is outstanding shall be considered to have been deported, excluded and deported, or removed, except that an alien who departed before the expiration of the voluntary departure period granted in connection with an alternate order of deportation or removal shall not be considered to have been so deported or removed.

§ 241.8 Reinstatement of removal orders.

(a) *Applicability.* An alien who illegally reenters the United States after having been removed, or having departed voluntarily, while under an order of exclusion, deportation, or removal shall be removed from the United States by reinstating the prior order. The alien has no right to a hearing before an immigration judge in such circumstances. In establishing whether an alien is subject to this section, the immigration officer shall determine the following:

(1) Whether the alien has been subject to a prior order of removal. The immigration officer must obtain the prior order of exclusion, deportation, or removal relating to the alien.

(2) The identity of the alien, i.e., whether the alien is in fact an alien who was previously removed, or who departed voluntarily while under an order of exclusion, deportation, or removal. In disputed cases, verification of identity shall be accomplished by a comparison of fingerprints between those of the previously excluded, deported, or removed alien contained in Service records and those of the subject alien. In the absence of fingerprints in a disputed case the alien shall not be removed pursuant to this paragraph.

(3) Whether the alien unlawfully reentered the United States. In making this determination, the officer shall consider all relevant evidence, including statements made by the alien and any evidence in the alien's possession. The immigration officer shall attempt to verify an alien's claim, if any, that he or she was lawfully admitted, which shall include a check of Service data systems available to the officer.

(b) *Notice.* If an officer determines that an alien is subject to removal under this section, he or she shall provide the alien with written notice of his or her determination. The officer shall advise the alien that he or she may make a written or oral statement contesting the determination. If the alien wishes to make such a statement, the officer shall allow the alien to do so and shall consider whether the alien's statement warrants reconsideration of the determination.

(c) *Order.* If the requirements of paragraph (a) of this section are met, the alien shall be removed under the previous order of exclusion, deportation, or removal in accordance with section 241(a)(5) of the Act.

(d) *Exception for withholding of removal.* If an alien whose prior order of removal has been reinstated under this section expresses a fear of returning to the country designated in that order, the alien shall be immediately referred to an asylum officer to determine whether the alien's removal to that country must be withheld under section 241(b)(3) of the Act. The alien's claim will be granted or denied by an asylum officer in accordance with § 208.16 of this chapter. If the alien has previously had a claim to withholding of deportation or removal denied, then that decision shall prevail unless the alien can establish the existence of changed circumstances that materially affect the alien's eligibility for withholding. The alien's case shall not be referred to an immigration judge, and there is no appeal from the decision of the asylum officer. If the alien is found to merit withholding of removal, the Service shall not enforce the reinstated order.

(e) *Execution of reinstated order.* Execution of the reinstated order of removal and detention of the alien shall be administered in accordance with this part.

§ 241.9 Notice to transportation line of alien's removal.

(a) An alien who has been ordered removed shall, immediately or as promptly as the circumstances permit, be offered for removal to the owner, agent, master, commanding officer, person in charge, purser, or consignee of the vessel or aircraft on which the alien is to be removed, as determined by the district director, with a written notice specifying the cause of inadmissibility or deportability, the class of travel in which such alien arrived and is to be removed, and with the return of any documentation that will assist in effecting his or her removal. If special care and attention are required, the provisions of § 241.10 shall apply.

(b) Failure of the carrier to accept for removal an alien who has been ordered removed shall result in the carrier being assessed any costs incurred by the

Service for detention after the carrier's failure to accept the alien for removal, including the cost of any transportation as required under section 241(e) of the Act. The User Fee Account shall not be assessed for expenses incurred because of the carrier's violation of the provisions of section 241 of the Act and this paragraph. The Service will, at the carrier's option, retain custody of the alien for an additional 7 days beyond the date of the removal order. If, after the third day of this additional 7-day period, the carrier has not made all the necessary transportation arrangements for the alien to be returned to his or her point of embarkation by the end of the additional 7-day period, the Service will make the arrangements and bill the carrier for its costs.

§ 241.10 Special care and attention of removable aliens.

When, in accordance with section 241(c)(3) of the Act, a transportation line is responsible for the expenses of an inadmissible or deportable alien's removal, and the alien requires special care and attention, the alien shall be delivered to the owner, agent, master, commanding officer, person in charge, purser, or consignee of the vessel or aircraft on which the alien will be removed, who shall be given Forms I–287, I–287A, and I–287B. The reverse of Form I–287A shall be signed by the officer of the vessel or aircraft to whom the alien has been delivered and immediately returned to the immigration officer effecting delivery. Form I–287B shall be retained by the receiving officer and subsequently filled out by the agents or persons therein designated and returned by mail to the district director named on the form. The transportation line shall at its own expense forward the alien from the foreign port of disembarkation to the final destination specified on Form I–287. The special care and attention shall be continued to such final destination, except when the foreign public officers decline to allow such attendant to proceed and they take charge of the alien, in which case this fact shall be recorded by the transportation line on the reverse of Form I–287B. If the transportation line fails, refuses, or neglects to provide the necessary special care and attention or comply with the directions of Form I–287, the district director shall thereafter and without notice employ suitable persons, at the expense of the transportation line, and effect such removal.

§ 241.11 Detention and removal of stowaways.

(a) *Presentation of stowaways.* The owner, agent, master, commanding officer, charterer, or consignee of a vessel or aircraft (referred to in this section as the carrier) bringing any alien stowaway to the United States is required to detain the stowaway on board the vessel or aircraft, at the expense of the owner of the vessel or aircraft, until completion of the inspection of the alien by an immigration officer. If detention on board the vessel or aircraft pending inspection is not possible, the carrier shall advise the Service of this fact without delay, and the Service may authorize that the carrier detain the stowaway at another designated location, at the expense of the owner, until the immigration officer arrives. No notice to detain the alien shall be required. Failure to detain an alien stowaway pending inspection shall result in a civil penalty under section 243(c)(1)(A) of the Act. The owner, agent, master, commanding officer, charterer, or consignee of a vessel or aircraft must present the stowaway for inspection, along with any documents or evidence of identity or nationality in the possession of the alien or obtained by the carrier relating to the alien stowaway, and must provide any available information concerning the alien's boarding or apprehension.

(b) *Removal of stowaways from vessel or aircraft for medical treatment.* The district director may parole an alien stowaway into the United States for medical treatment, but the costs of detention and treatment of the alien stowaway shall be at the expense of the owner of the vessel or aircraft, and such removal of the stowaway from the vessel or aircraft does not relieve the carrier of the requirement to remove the stowaway from the United States once such medical treatment has been completed.

(c) *Repatriation of stowaways*—(1) *Requirements of carrier.* Following inspection, an immigration officer may order the owner, agent, master, commanding officer, charterer, or consignee of a vessel or aircraft bringing any alien stowaway to the United States to remove the stowaway on the vessel or aircraft of arrival, unless it is impracticable to do so or other factors exist which would preclude removal on the same vessel or aircraft. Such factors may include, but are not limited to, sanitation, health, and safety concerns for the crew and/or stowaway, whether the stowaway is a female or a juvenile, loss of insurance coverage on account of the stowaway remaining aboard, need for repairs to the vessel, and other similar circumstances. If the owner, agent, master, commanding officer, charterer, or consignee requests that he or she be allowed to remove the stowaway by other means, the Service shall favorably consider any such request, provided the carrier has obtained, or will obtain in a timely manner, any necessary travel documents and has made or will make all transportation arrangements. The owner, agent, master, commanding officer, charterer, or consignee shall transport the stowaway or arrange for secure escort of the stowaway to the vessel or aircraft of departure to ensure that the stowaway departs the United States. All expenses relating to removal shall be borne by the owner. Other than requiring compliance with the detention and removal requirements contained in section 241(d)(2) of the Act, the Service shall not impose additional conditions on the carrier regarding security arrangements. Failure to comply with an order to remove an alien stowaway shall result in a civil penalty under section 243(c)(1)(A) of the Act.

(2) *Detention of stowaways ordered removed.* If detention of the stowaway is required pending removal on other than the vessel or aircraft of arrival, or if the stowaway is to be removed on the vessel or aircraft of arrival but departure of the vessel or aircraft is not imminent and circumstances preclude keeping the stowaway on board the vessel or aircraft, the Service shall take the stowaway into Service custody. The owner is responsible for all costs of maintaining and detaining the stowaway pending removal, including costs for stowaways seeking asylum as described in paragraph (d) of this section. Such costs will be limited to those normally incurred in the detention of an alien by the Service, including, but not limited to, housing, food, transportation, medical expenses, and other reasonable costs incident to the detention of the stowaway. The Service may require the posting of a bond or other surety to ensure payment of costs of detention.

(d) *Stowaways claiming asylum*—(1) *Referral for credible fear determination.* A stowaway who indicates an intention to apply for asylum or a fear of persecution shall be removed from the vessel or aircraft of arrival in accordance with § 208.5(b) of this chapter. The immigration officer shall refer the alien to an asylum officer for a determination of credible fear in accordance with section 235(b)(1)(B) of the Act and § 208.30 of this chapter. The stowaway shall be detained in the custody of the Service pending the credible fear determination and any review thereof. Parole of such alien, in accordance with section 212(d)(5) of the Act, may be permitted only when the Attorney General determines, in the exercise of discretion, that parole is required to meet a medical emergency or is necessary for a legitimate law enforcement objective. A stowaway who has established a credible fear of persecution in accordance with § 208.30 of this chapter may be detained or paroled pursuant to § 212.5 of this chapter during any consideration of the asylum application. In determining whether to detain or parole the alien, the Service shall consider the likelihood that the alien will abscond or pose a security risk.

(2) *Costs of detention of asylum-seeking stowaways.* The owner of the vessel or aircraft that brought the stowaway to the United States shall reimburse the Service for the costs of maintaining and detaining the stowaway pending a determination of credible fear under section 235(b)(1)(B) of the Act, up to a maximum period of 72 hours. The owner is also responsible for the costs of maintaining and detaining the stowaway during the period in which the stowaway is pursuing his or her asylum application, for a maximum period of 15 working days, excluding Saturdays, Sundays, and holidays. The 15-day period shall begin on the day following the day in which the alien is determined to have a credible fear of persecution by the asylum officer, or by the immigration judge if such review was requested by the alien pursuant to section 235(b)(1)(B)(iii)(III) of the Act, but not later than 72 hours after the stowaway was initially presented to the Service for inspection. Following the determination of credible fear, if the stowaway's application for asylum is not adjudicated within 15 working days, the Service shall pay the costs of detention beyond this time period. If the stowaway is determined not to have a credible fear of persecution, or if the stowaway's application for asylum is denied, including any appeals, the carrier shall be notified and shall arrange for repatriation of the stowaway at the expense of the owner of the vessel or aircraft on which the stowaway arrived.

§ 241.12 Nonapplication of costs of detention and maintenance.

The owner of a vessel or aircraft bringing an alien to the United States who claims to be exempt from payment of the costs of detention and maintenance of the alien pursuant to section 241(c)(3)(B) of the Act shall establish to the satisfaction of the district director in charge of the port of arrival that such costs should not be applied. The district director shall afford the owner a reasonable time within which to submit affidavits and briefs to support the claim. There is no appeal from the decision of the district director.

§§ 241.13—241.19 [Reserved]

Subpart B—Deportation of Excluded Aliens (for hearings commenced prior to April 1, 1997)

§ 241.20 Proceedings commenced prior to April 1, 1997.

Subpart B of 8 CFR part 241 applies to exclusion proceedings commenced prior to April 1, 1997. All references to the Act contained in this subpart are references to the Act in effect prior to April 1, 1997.

§ 241.21 Stay of deportation of excluded alien.

The district director in charge of the port of arrival may stay the immediate deportation of an excluded alien pursuant to sections 237 (a) and (d) of the Act under such conditions as he or she may prescribe.

§ 241.22 Notice to surrender for deportation.

An alien who has been finally excluded pursuant to 8 CFR part 240, subpart D may at any time surrender himself or herself to the custody of the Service and shall surrender to such custody upon notice in writing of the time and place for his or her surrender. The Service may take the alien into custody at any time. An alien taken into custody either upon notice to surrender or by arrest shall not be deported less than 72 hours thereafter without his or her consent thereto filed in writing with the district director in charge of the place of his or her detention. An alien in foreign contiguous territory shall be informed that he or she may remain there in lieu of surrendering to the Service, but that he or she will be deemed to have acknowledged the execution of the order of exclusion and deportation in his or her case upon his or her failure to surrender at the time and place prescribed.

§ 241.23 Cost of maintenance not assessed.

A claim pursuant to section 237(a)(1) of the Act shall be established to the satisfaction of the district director in charge of the port of arrival, from whose adverse decision no appeal shall lie. The district director shall afford the line a reasonable time within which to submit affidavits and briefs to support its claim.

§ 241.24 Notice to transportation line of alien's exclusion.

(a) An excluded alien shall, immediately or as promptly as the circumstances permit, be offered for deportation to the master, commanding officer, purser, person in charge, agent, owner, or consignee of the vessel or aircraft on which the alien is to be deported, as determined by the district director, with a written notice specifying the cause of exclusion, the class of travel in which such alien arrived and is to be deported, and with the return of any documentation that will assist in effecting his or her deportation. If special care and attention are required, the provisions of § 241.10 shall apply.

(b) Failure of the carrier to accept for removal an alien who has been ordered excluded and deported shall result in the carrier being assessed any costs incurred by the Service for detention after the carrier's failure to accept the alien for removal including the cost of any transportation. The User Fee Account shall not be assessed for expenses incurred because of the carrier's violation of the provisions of section 237 of the Act and this paragraph. The Service will, at the carrier's option, retain custody of the excluded alien for an additional 7 days beyond the date of the deportation/exclusion order. If, after the third day of this additional 7-day period, the carrier has not made all the necessary transportation arrangements for the excluded alien to be returned to his or her point of embarkation by the end of the additional 7-day period, the Service will make the arrangements and bill the carrier for its costs.

§ 241.25 Deportation.

(a) *Definitions of terms.* For the purposes of this section, the following terms mean:

(1) *Adjacent island*—as defined in section 101(b)(5) of the Act.

(2) *Foreign contiguous territory*—any country sharing a common boundary with the United States.

(3) *Residence in foreign contiguous territory or adjacent island*—any physical presence, regardless of intent, in a foreign contiguous territory or an adjacent island if the government of such territory or island agrees to accept the alien.

(4) *Aircraft or vessel*—any conveyance and other mode of travel by which arrival is effected.

(5) *Next available flight*—the carrier's next regularly scheduled departure to

the excluded alien's point of embarkation regardless of seat availability. If the carrier's next regularly scheduled departure to the excluded aliens point of embarkation is full, the carrier has the option of arranging for return transportation on other carriers which service the excluded aliens point of embarkation.

(b) *Place to which deported.* Any alien (other than an alien crewmember or an alien who boarded an aircraft or vessel in foreign contiguous territory or an adjacent island) who is ordered excluded shall be deported to the country where the alien boarded the vessel or aircraft on which the alien arrived in the United States. If that country refuses to accept the alien, the alien shall be deported to:

(1) The country of which the alien is a subject, citizen, or national;

(2) The country where the alien was born;

(3) The country where the alien has a residence; or

(4) Any country willing to accept the alien.

(c) *Contiguous territory and adjacent islands.* Any alien ordered excluded who boarded an aircraft or vessel in foreign contiguous territory or in any adjacent island shall be deported to such foreign contiguous territory or adjacent island if the alien is a native, citizen, subject, or national of such foreign contiguous territory or adjacent island, or if the alien has a residence in such foreign contiguous territory or adjacent island. Otherwise, the alien shall be deported, in the first instance, to the country in which is located the port at which the alien embarked for such foreign contiguous territory or adjacent island.

(d) *Land border pedestrian arrivals.* Any alien ordered excluded who arrived at a land border on foot shall be deported in the same manner as if the alien had boarded a vessel or aircraft in foreign contiguous territory.

§§ 241.26–241.29 [Reserved]

Subpart C—Deportation of Aliens in the United States (for hearings commenced prior to April 1, 1997)

§ 241.30 Proceedings commenced prior to April 1, 1997.

Subpart C of 8 CFR part 241 applies to deportation proceedings commenced prior to April 1, 1997. All references to the Act contained in this subpart are references to the Act in effect prior to April 1, 1997.

§ 241.31 Final order of deportation.

Except as otherwise required by section 242(c) of the Act for the specific purposes of that section, an order of deportation, including an alternate order of deportation coupled with an order of voluntary departure, made by the immigration judge in proceedings under 8 CFR part 240 shall become final upon dismissal of an appeal by the Board of Immigration Appeals, upon waiver of appeal, or upon expiration of the time allotted for an appeal when no appeal is taken; or, if such an order is issued by the Board or approved by the Board upon certification, it shall be final as of the date of the Board's decision.

§ 241.32 Warrant of deportation.

A Form I–205, Warrant of Deportation, based upon the final administrative order of deportation in the alien's case shall be issued by a district director. The district director shall exercise the authority contained in section 243 of the Act to determine at whose expense the alien shall be deported and whether his or her mental or physical condition requires personal care and attention en route to his or her destination.

§ 241.33 Expulsion.

(a) *Execution of order.* Except in the exercise of discretion by the district director, and for such reasons as are set forth in § 212.5(a) of this chapter, once an order of deportation becomes final, an alien shall be taken into custody and the order shall be executed. For the purposes of this part, an order of deportation is final and subject to execution upon the date when any of the following occurs:

(1) A grant of voluntary departure expires;

(2) An immigration judge enters an order of deportation without granting voluntary departure or other relief, and the alien respondent waives his or her right to appeal;

(3) The Board of Immigration Appeals enters an order of deportation on appeal, without granting voluntary departure or other relief; or

(4) A Federal district or appellate court affirms an administrative order of deportation in a petition for review or habeas corpus action.

(b) *Service of decision.* In the case of an order entered by any of the authorities enumerated above, the order shall be executed no sooner than 72 hours after service of the decision, regardless of whether the alien is in Service custody, provided that such period may be waived on the knowing and voluntary request of the alien. Nothing in this paragraph shall be construed, however, to preclude assumption of custody by the Service at the time of issuance of the final order.

PART 242—[REMOVED AND RESERVED]

106. Part 242 is removed and reserved.

PART 243—[REMOVED AND RESERVED]

107. Part 243 is removed and reserved.

PART 244—TEMPORARY PROTECTED STATUS FOR NATIONALS OF DESIGNATED STATES

108. The heading for part 244 is revised as set forth above.

109. The authority citation for part 244 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1254, 1254a note, 8 CFR part 2.

§§ 244.1 and 244.2 [Removed]

110. Sections 244.1 and 244.2 are removed.

§§ 244.3 through 244.22 [Redesignated as §§ 244.1 through 244.20]

111. Newly designated §§ 244.3 through 244.22 are further redesignated as §§ 244.1 through 244.20, respectively.

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

112. The authority citation for part 245 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; 8 CFR part 2.

113. Section 245.1 is amended by:

a. Removing the word "and" at the end of the paragraph (c)(3);

b. Removing the "." at the end of paragraphs (c)(4) through (c)(7), and replacing it with a ";";

c. Redesignating paragraph (c)(8) as paragraph (c)(9);

d. Adding a new paragraph (c)(8);

e. Revising newly redesignated paragraph (c)(9) introductory text;

f. Revising newly redesignated paragraphs (c)(9)(i) through (c)(9)(iii); and by

g. Revising paragraph (f), to read as follows:

§ 245.1 Eligibility.

* * * * *

(c) * * *

(8) Any arriving alien who is in removal proceedings pursuant to section 235(b)(1) or section 240 of the Act; and

(9) Any alien who seeks to adjust status based upon a marriage which occurred on or after November 10, 1986, and while the alien was in exclusion, deportation, or removal proceedings, or judicial proceedings relating thereto.

(i) *Commencement of proceedings.* The period during which the alien is in

deportation, exclusion, or removal proceedings or judicial proceedings relating thereto, commences:

(A) With the issuance of the Form I–221, Order to Show Cause and Notice of Hearing prior to June 20, 1991;

(B) With the filing of a Form I–221, Order to Show Cause and Notice of Hearing, issued on or after June 20, 1991, with the Immigration Court;

(C) With the issuance of Form I–122, Notice to Applicant for Admission Detained for Hearing Before Immigration Judge, prior to April 1, 1997,

(D) With the filing of a Form I–862, Notice to Appear, with the Immigration Court, or

(E) With the issuance and service of Form I–860, Notice and Order of Expedited Removal.

(ii) *Termination of proceedings.* The period during which the alien is in exclusion, deportation, or removal proceedings, or judicial proceedings relating thereto, terminates:

(A) When the alien departs from the United States while an order of exclusion, deportation, or removal is outstanding or before the expiration of the voluntary departure time granted in connection with an alternate order of deportation or removal;

(B) When the alien is found not to be inadmissible or deportable from the United States;

(C) When the Form I–122, I–221, I–860, or I–862 is canceled;

(D) When proceedings are terminated by the immigration judge or the Board of Immigration Appeals; or

(E) When a petition for review or an action for habeas corpus is granted by a Federal court on judicial review.

(iii) *Exemptions.* This prohibition shall no longer apply if:

(A) The alien is found not to be inadmissible or deportable from the United States;

(B) Form I–122, I–221, I–860, or I–862, is canceled;

(C) Proceedings are terminated by the immigration judge or the Board of Immigration Appeals;

(D) A petition for review or an action for habeas corpus is granted by a Federal court on judicial review;

(E) The alien has resided outside the United States for 2 or more years following the marriage; or

(F) The alien establishes the marriage is bona fide by providing clear and convincing evidence that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place, was not entered into for the purpose of procuring the alien's entry as an immigrant, and no fee or other consideration was given (other than to an attorney for assistance in preparation of a lawful petition) for the filing of a petition.

* * * * *

(f) *Concurrent applications to overcome grounds of inadmissibility.* Except as provided in 8 CFR parts 235 and 249, an application under this part shall be the sole method of requesting the exercise of discretion under sections 212(g), (h), (i), and (k) of the Act, as they relate to the inadmissibility of an alien in the United States. No fee is required for filing an application to overcome the grounds of inadmissibility of the Act if filed concurrently with an application for adjustment of status under the provisions of the Act of October 28, 1977, and of this part.

* * * * *

114. Section 245.2 is amended by:

a. Revising paragraph (a)(1);

b. Revising paragraph (a)(4)(ii);

c. Revising paragraph (a)(5)(ii) and (iii); and by

d. Revising paragraph (c), to read as follows:

§ 245.2 Application.

(a) * * * (1) *Jurisdiction.* An alien who believes he or she meets the eligibility requirements of section 245 of the Act or section 1 of the Act of November 2, 1966, and § 245.1 shall apply to the director having jurisdiction over his or her place of residence unless otherwise instructed in 8 CFR part 245, or by the instruction on the application form. After an alien, other than an arriving alien, is in deportation or removal proceedings, his or her application for adjustment of status under section 245 of the Act or section 1 of the Act of November 2, 1966 shall be made and considered only in those proceedings. An arriving alien, other than an alien in removal proceedings, who believes he or she meets the eligibility requirements of section 245 of the Act or section 1 of the Act of November 2, 1966, and § 245.1 shall apply to the director having jurisdiction over his or her place of arrival. An adjustment application by an alien paroled under section 212(d)(5) of the Act, which has been denied by the director, may be renewed in removal proceedings under 8 CFR part 240 only if:

(i) The denied application must have been properly filed subsequent to the applicant's earlier inspection and admission to the United States; and

(ii) The applicant's later absence from and return to the United States was under the terms of an advance parole authorization on Form I–512 granted to permit the applicant's absence and return to pursue the previously filed adjustment application.

* * * * *

(4) * * *

(ii) *Under section 245 of the Act.* The departure from the United States of an applicant who is under exclusion, deportation, or removal proceedings shall be deemed an abandonment of the application constituting grounds for termination of the proceeding by reason of the departure. The departure of an applicant who is not under exclusion, deportation, or removal proceedings shall be deemed an abandonment of his or her application constituting grounds for termination, unless the applicant was previously granted advance parole by the Service for such absence, and was inspected upon returning to the United States. If the application of an individual granted advance parole is subsequently denied, the applicant will be treated as an applicant for admission, and subject to the provisions of sections 212 and 235 of the Act.

* * * * *

(5) * * *

(ii) *Under section 245 of the Act.* If the application is approved, the applicant's permanent residence shall be recorded as of the date of the order approving the adjustment of status. An application for adjustment of status, as a preference alien, shall not be approved until an immigrant visa number has been allocated by the Department of State, except when the applicant has established eligibility for the benefits of Public Law 101–238. No appeal lies from the denial of an application by the director, but the applicant, if not an arriving alien, retains the right to renew his or her application in proceedings under 8 CFR part 240. Also, an applicant who is a parolee and meets the two conditions described in § 245.2(a)(1) may renew a denied application in proceedings under 8 CFR part 240 to determine admissibility. At the time of renewal of the application, an applicant does not need to meet the statutory requirement of section 245(c) of the Act, or § 245.1(g), if, in fact, those requirements were met at the time the renewed application was initially filed with the director. Nothing in this section shall entitle an alien to proceedings under section 240 of the Act who is not otherwise so entitled.

(iii) *Under the Act of November 2, 1966.* If the application is approved, the applicant's permanent residence shall be recorded in accordance with the provisions of section 1. No appeal lies from the denial of an application by the director, but the applicant, if not an

arriving alien, retains the right to renew his or her application in proceedings under 8 CFR part 240. Also, an applicant who is a parolee and meets the two conditions described in § 245.2(a)(1) may renew a denied application in proceedings under 8 CFR part 240 to determine admissibility.

* * * * *

(c) *Application under section 214(d) of the Act.* An application for permanent resident status pursuant to section 214(d) of the Act shall be filed on Form I–485 with the director having jurisdiction over the applicant's place of residence. A separate application shall be filed by each applicant. If the application is approved, the director shall record the lawful admission of the applicant as of the date of approval. The applicant shall be notified of the decision and, if the application is denied, of the reasons therefor. No appeal shall lie from the denial of an application by the director but such denial shall be without prejudice to the alien's right to renew his or her application in proceedings under 8 CFR part 240.

115. Section 245.5 is amended by revising the first sentence to read as follows:

§ 245.5 Medical examination.

Pursuant to section 232(b) of the Act, an applicant for adjustment of status shall be required to have a medical examination by a designated civil surgeon, whose report setting forth the findings of the mental and physical condition of the applicant, including compliance with section 212(a)(1)(A)(ii) of the Act, shall be incorporated into the record. * * *

116. Section 245.8 is amended by revising paragraph (e), to read as follows:

§ 245.8 Adjustment of status as a special immigrant under section 101(a)(27)(K) of the Act.

* * * * *

(e) *Removal provisions of section 237 of the Act.* If the Service is made aware by notification from the appropriate executive department or by any other means that a section 101(a)(27)(K) special immigrant who has already been granted permanent residence fails to complete his or her total active duty service obligation for reasons other than an honorable discharge, the alien may become subject to the removal provisions of section 237 of the Act, provided the alien is in one or more of the classes of deportable aliens specified in section 237 of the Act. The Service shall obtain a current Form DD–214, Certificate of Release or Discharge from Active Duty, from the appropriate executive department for verification of the alien's failure to maintain eligibility.

* * * * *

117. Section 245.9 is amended by revising paragraphs (d) and (m), to read as follows:

§ 245.9 Adjustment of Status of Certain Nationals of the People's Republic of China under Public Law 102–404.

* * * * *

(d) *Waivers of inadmissibility under section 212(a) of the Act.* An applicant for the benefits of the adjustment of status provisions of Pub. L. 102–404 is automatically exempted from compliance with the requirements of sections 212(a)(5) and 212(a)(7)(A) of the Act. A Pub. L. 102–404 applicant may also apply for one or more waivers of inadmissibility under section 212(a) of the Act, except for inadmissibility under section 212(a)(2)(C), 212(a)(3)(A), 212(a)(3)(B), 212(a)(3)(C) or 212(a)(3)(E) of the Act.

* * * * *

(m) *Effect of enactment on family members other than qualified family members.* The adjustment of status benefits and waivers provided by Pub. L. 102–404 do not apply to a spouse or child who is not a qualified family member as defined in paragraph (c) of this section. However, a spouse or child whose relationship to the principal alien was established prior to the approval of the principal's adjustment of status application may be accorded the derivative priority date and preference category of the principal alien, in accordance with the provisions of section 203(d) of the Act. The spouse or child may use the priority date and category when it becomes current, in accordance with the limitations set forth in sections 201 and 202 of the Act. Persons who are unable to maintain lawful nonimmigrant status in the United States and are not immediately eligible to apply for adjustment of status may request voluntary departure pursuant to 8 CFR part 240.

118. Section 245.10 is amended by:

a. Revising paragraphs (a) (3) and (6); and by

b. Revising introductory text in paragraph (b), to read as follows:

§ 245.10 Adjustment of status upon payment of additional sum under Public Law 103–317.

(a) * * *

(3) Is not inadmissible from the United States under any provision of section 212 of the Act, or all grounds for inadmissibility have been waived;

* * * * *

(6) Remits the sum specified in section 245(i) of the Act, unless payment of the sum is waived under section 245(i) of the Act; and

* * * * *

(b) *Payment of additional sum.* An applicant filing under the provisions of section 245(i) of the Act must pay the standard adjustment of status filing fee, as shown on Form I–485 and contained in § 103.7(b)(1) of this chapter. The applicant must also pay the additional sum specified in section 245(i) of the Act, unless at the time the application for adjustment of status is filed, the alien is:

* * * * *

119. Section 245.11 is amended by:

a. Revising paragraph (a)(4)(ii)(B);

b. Revising paragraph (b)(1)(iii);

c. Revising the introductory text in paragraph (c); and by

d. Revising paragraphs (h) and (i), to read as follows:

§ 245.11 Adjustment of aliens in S nonimmigrant classification.

(a) * * *

(4) * * *

(ii) * * *

(B) Be admissible to the United States as an immigrant, unless the ground of inadmissibility has been waived;

* * * * *

(b) * * *

(1) * * *

(iii) The family member is not inadmissible from the United States as a participant in Nazi persecution or genocide as described in section 212(a)(3)(E) of the Act;

* * * * *

(c) *Waivers of inadmissibility.* An alien seeking to adjust status pursuant to the provisions of section 101(a)(15)(S) of the Act may not be denied adjustment of status for conduct or a condition that:

* * * * *

(h) *Removal under section 237 of the Act.* Nothing in this section shall prevent an alien adjusted pursuant to the terms of these provisions from being removed for conviction of a crime of moral turpitude committed within 10 years after being provided lawful permanent residence under this section or for any other ground under section 237 of the Act.

(i) *Denial of application.* In the event the district director decides to deny an application on Form I–485 and an approved Form I–854 to allow an S nonimmigrant to adjust status, the Assistant Attorney General, Criminal Division, and the relevant LEA shall be notified in writing to that effect. The Assistant Attorney General, Criminal Division, shall concur in or object to

that decision. Unless the Assistant Attorney General, Criminal Division, objects within 7 days, he or she shall be deemed to have concurred in the decision. In the event of an objection by the Assistant Attorney General, Criminal Division, the matter will be expeditiously referred to the Deputy Attorney General for a final resolution. In no circumstances shall the alien or the relevant LEA have a right of appeal from any decision to deny. A denial of an adjustment application under this paragraph may not be renewed in subsequent removal proceedings.

120. Part 246 is revised to read as follows:

PART 246—RESCISSION OF ADJUSTMENT OF STATUS

Sec.
246.1 Notice.
246.2 Allegations admitted; no answer filed; no hearing requested.
246.3 Allegations contested or denied; hearing requested.
246.4 Immigration judge's authority; withdrawal and substitution.
246.5 Hearing.
246.6 Decision and order.
246.7 Appeals.
246.8 [Reserved]
246.9 Surrender of Form I–551.

Authority: Authority: 8 U.S.C. 1103, 1254, 1255, 1256, 1259; 8 CFR part 2.

§ 246.1 Notice.

If it appears to a district director that a person residing in his or her district was not in fact eligible for the adjustment of status made in his or her case, a proceeding shall be commenced by the personal service upon such person of a notice of intent to rescind which shall inform him or her of the allegations upon which it is intended to rescind the adjustment of his or her status. In such a proceeding the person shall be known as the respondent. The notice shall also inform the respondent that he or she may submit, within thirty days from the date of service of the notice, an answer in writing under oath setting forth reasons why such rescission shall not be made, and that he or she may, within such period, request a hearing before an immigration judge in support of, or in lieu of, his or her written answer. The respondent shall further be informed that he or she may have the assistance of or be represented by counsel or representative of his or her choice qualified under part 292 of this chapter, at no expense to the Government, in the preparation of his or her answer or in connection with his or her hearing, and that he or she may present such evidence in his or her behalf as may be relevant to the rescission.

§ 246.2 Allegations admitted; no answer filed; no hearing requested.

If the answer admits the allegations in the notice, or if no answer is filed within the thirty-day period, or if no hearing is requested within such period, the district director shall rescind the adjustment of status previously granted, and no appeal shall lie from his decision.

§ 246.3 Allegations contested or denied; hearing requested.

If, within the prescribed time following service of the notice pursuant to § 246.1, the respondent has filed an answer which contests or denies any allegation in the notice, or a hearing is requested, a hearing pursuant to § 246.5 shall be conducted by an immigration judge, and the requirements contained in §§ 240.3, 240.4, 240.5, 240.6, 240.7, and 240.9 of this chapter shall be followed.

§ 246.4 Immigration judge's authority; withdrawal and substitution.

In any proceeding conducted under this part, the immigration judge shall have authority to interrogate, examine, and cross-examine the respondent and other witnesses, to present and receive evidence, to determine whether adjustment of status shall be rescinded, to make decisions thereon, including an appropriate order, and to take any other action consistent with applicable provisions of law and regulations as may be appropriate to the disposition of the case. Nothing contained in this part shall be construed to diminish the authority conferred on immigration judges by the Act. The immigration judge assigned to conduct a hearing shall, at any time, withdraw if he or she deems himself or herself disqualified. If a hearing has begun but no evidence has been adduced other than the notice and answer, if any, pursuant to §§ 246.1 and 246.2, or if an immigration judge becomes unavailable to complete his or her duties within a reasonable time, or if at any time the respondent consents to a substitution, another immigration judge may be assigned to complete the case. The new immigration judge shall familiarize himself or herself with the record in the case and shall state for the record that he or she is familiar with the record in the case.

§ 246.5 Hearing.

(a) *Service counsel.* The Government shall be represented at the hearing by a Service counsel who shall have authority to present evidence, and to interrogate, examine, and cross-examine the respondent and other witnesses. The Service counsel is authorized to appeal from a decision of the immigration judge pursuant to § 246.7 and to move for reopening or reconsideration pursuant to § 3.23 of this chapter.

(b) *Opening.* The immigration judge shall advise the respondent of the nature of the proceeding and the legal authority under which it is conducted; advise the respondent of his or her right to representation, at no expense to the Government, by counsel or representative of his or her own choice qualified under part 292 of this chapter and require him or her to state then and there whether he or she desires representation; advise the respondent that he or she will have a reasonable opportunity to examine and object to the evidence against him or her, to present evidence in his or her own behalf, and to cross-examine witnesses presented by the Government; place the respondent under oath; read the allegations in the notice to the respondent and explain them in nontechnical language, and enter the notice and respondent's answer, if any, as exhibits in the record.

(c) *Pleading by respondent.* The immigration judge shall require the respondent to state for the record whether he or she admits or denies the allegations contained in the notice, or any of them, and whether he or she concedes that his or her adjustment of status should be rescinded. If the respondent admits all of the allegations and concedes that the adjustment of status in his or her case should be rescinded under the allegations set forth in the notice, and the immigration judge is satisfied that no issues of law or fact remain, he or she may determine that rescission as alleged has been established by the respondent's admissions. The allegations contained in the notice shall be taken as admitted when the respondent, without reasonable cause, fails or refuses to attend or remain in attendance at the hearing.

§ 246.6 Decision and order.

The decision of the immigration judge may be oral or written. The formal enumeration of findings is not required. The order shall direct either that the proceeding be terminated or that the adjustment of status be rescinded. Service of the decision and finality of the order of the immigration judge shall be in accordance with, and as stated in §§ 240.13 (a) and (b) and 240.14 of this chapter.

§ 246.7 Appeals.

Pursuant to 8 CFR part 3, an appeal shall lie from a decision of an immigration judge under this part to the Board of Immigration Appeals. An appeal shall be taken within 30 days after the mailing of a written decision or the stating of an oral decision. The reasons for the appeal shall be specifically identified in the Notice of Appeal (Form EOIR 26); failure to do so may constitute a ground for dismissal of the appeal by the Board.

§ 246.8 [Reserved]

§ 246.9 Surrender of Form I–551.

A respondent whose status as a permanent resident has been rescinded in accordance with section 246 of the Act and this part, shall, upon demand, promptly surrender to the district director having administrative jurisdiction over the office in which the action under this part was taken, the Form I–551 issued to him or her at the time of the grant of permanent resident status.

PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

121. The authority citation for part 248 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1187, 1258; 8 CFR part 2.

122. Section 248.1 is amended by revising paragraph (b)(4) to read as follows:

§ 248.1 Eligibility.

* * * * *

(b) * * *

(4) The alien is not the subject of removal proceedings under 8 CFR part 240.

* * * * *

PART 249—CREATION OF RECORDS OF LAWFUL ADMISSION FOR PERMANENT RESIDENCE

123. The authority citation for part 249 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1259; 8 CFR part 2.

124. Section 249.2 is amended by revising the first sentence in paragraph (a) and by revising paragraph (b), to read as follows:

§ 249.2 Application.

(a) *Jurisdiction.* An application by an alien, other than an arriving alien, who has been served with a notice to appear or warrant of arrest shall be considered only in proceedings under 8 CFR part 240. * * *

(b) *Decision.* The applicant shall be notified of the decision and, if the application is denied, of the reasons therefor. If the application is granted, a Form I–551, showing that the applicant has acquired the status of an alien lawfully admitted for permanent residence, shall not be issued until the applicant surrenders any other document in his or her possession evidencing compliance with the alien registration requirements of former or existing law. No appeal shall lie from the denial of an application by the district director. However, an alien, other than an arriving alien, may renew the denied application in proceedings under 8 CFR part 240.

PART 251—ARRIVAL MANIFESTS AND LISTS: SUPPORTING DOCUMENTS

125. The authority citation for part 251 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1221, 1281, 1282, 8 CFR part 2.

126. Section 251.1 is revised to read as follows:

§ 251.1 Arrival manifests and lists.

(a) *Vessels*—(1) *General.* The master or agent of every vessel arriving in the United States from a foreign place or an outlying possession of the United States shall present to the immigration officer at the port where the immigration inspection is performed a manifest of all crewmen on board on Form I–418, Passenger List and Crew List, in accordance with the instructions contained thereon.

(2) *Longshore work notations.* The master or agent of the vessel shall indicate in writing immediately below the name of the last alien listed on the Form I–418 whether or not crewmen aboard the vessel will be used to perform longshore work at any United States port before the vessel departs the United States.

(i) If no longshore work will be performed, no further notation regarding longshore work is required.

(ii) If longshore work will be performed, the master or agent shall note which exception listed in section 258 of the Act permits the work. The exceptions are:

(A) The hazardous cargo exception;

(B) The prevailing practice exception in accordance with a port's collective bargaining agreements;

(C) The prevailing practice exception at a port where there is no collective bargaining agreement, but for which the vessel files an attestation;

(D) The prevailing practice exception for automated vessels; and

(E) The reciprocity exception.

(iii) If longshore work will be performed under the hazardous cargo exception, the vessel must either be a tanker or be transporting dry bulk cargo that qualifies as hazardous. All tankers qualify for the hazardous cargo exception, except for a tanker that has been gas-freed to load non-hazardous dry bulk commodities.

(A) To invoke the exception for tankers, the master or agent shall note on the manifest that the vessel is a qualifying tanker.

(B) If the vessel is transporting dry bulk hazardous cargo, the master or agent shall note on the manifest that the vessel's dry bulk cargo is hazardous and shall show the immigration officer the dangerous cargo manifest that is signed by the master or an authorized representative of the owner, and that under 46 CFR 148.02 must be kept in a conspicuous place near the bridge house.

(iv) If longshore work will be performed under the prevailing practice exception, the master or agent shall note on the manifest each port at which longshore work will be performed under this exception. Additionally, for each port the master or agent shall note either that:

(A) The practice of nonimmigrant crewmen doing longshore work is in accordance with all collective bargaining agreements covering 30 percent or more of the longshore workers in the port;

(B) The port has no collective bargaining agreement covering 30 percent or more of the longshore workers in the port and an attestation has been filed with the Secretary of Labor;

(C) An attestation that was previously filed is still valid and the vessel continues to comply with the conditions stated in that attestation; or

(D) The longshore work consists of operating an automated, self-unloading conveyor belt or a vacuum-actuated system.

(v) If longshore work will be performed under the reciprocity exception, the master or agent shall note on the manifest that the work will be done under the reciprocity exception, and will note the nationality of the vessel's registry and the nationality or nationalities of the holders of a majority of the ownership interest in the vessel.

(3) *Exception for certain Great Lakes vessels.* (i) A manifest shall not be required for a vessel of United States, Canadian, or British registry engaged solely in traffic on the Great Lakes or the St. Lawrence River and connecting waterways, herein designated as a Great Lakes vessel, unless:

(A) The vessel employs nonimmigrant crewmen who will do longshore work at a port in the United States; or

(B) The vessel employs crewmen of other than United States, Canadian, or British citizenship.

(ii) In either situation, the master shall note the manifest in the manner prescribed in paragraph (a)(2) of this section.

(iii) After submission of a manifest on the first voyage of a calendar year, a manifest shall not be required on subsequent arrivals unless a nonimmigrant crewman of other than Canadian or British citizenship is employed on the vessel who was not aboard and listed on the last prior manifest, or a change has occurred regarding the performance of longshore work in the United States by nonimmigrant crewmen, or a change has occurred in the exception that the master or agent of the vessel wishes to invoke which was not noted on the last prior manifest.

(4) The master or agent of a vessel that only bunkers at a United States port en route to another United States port shall annotate Form I–418 presented at the onward port to indicate the time, date, and place of bunkering.

(5) If documentation is required to support an exception, as described in § 258.2 of this chapter, it must accompany the manifest.

(b) *Aircraft.* The captain or agent of every aircraft arriving in the United States from a foreign place or from an outlying possession of the United States, except an aircraft arriving in the United States directly from Canada on a flight originating in that country, shall present to the immigration officer at the port where the inspection is performed a manifest on United States Customs Service Form 7507 or on the International Civil Aviation Organization's General Declaration of all the alien crewmembers on board, including alien crewmembers who are returning to the United States after taking an aircraft of the same line from the United States to a foreign place or alien crewmembers who are entering the United States as passengers solely for the purpose of taking an aircraft of the same line from the United States to a foreign port. The captain or agent of an aircraft that only refuels at the United States en route to another United States port must annotate the manifest presented at the onward port to indicate the time, date, and place of refueling. The surname, given name, and middle initial of each alien crewman listed also shall be shown on the manifest. In addition, the captain or agent of the aircraft shall indicate the total number of United States citizen crewmembers and total number of alien crewmembers.

(c) *Additional documents.* The master, captain, or agent shall prepare as a part of the manifest, when one is required for presentation to an immigration officer, a completely executed set of Forms I–95, Conditional Landing Permit, for each nonimmigrant alien crewman on board, except:

(1) A Canadian or British citizen crewman serving on a vessel plying solely between Canada and the United States; or

(2) A nonimmigrant crewman who is in possession of an unmutilated Form I–184, Alien Crewman Landing Permit and Identification Card, or an unmutilated Form I–95 with space for additional endorsements previously issued to him or her as a member of the crew of the same vessel or an aircraft of the same line on his or her last prior arrival in the United States, following which he or she departed from the United States as a member of the crew of the same vessel or an aircraft of the same line.

127. Section 251.2 is revised to read as follows:

§ 251.2 Notification of illegal landings.

As soon as discovered, the master or agent of any vessel from which an alien crewman has illegally landed or deserted in the United States shall inform the immigration officer in charge of the port where the illegal landing or desertion occurred, in writing, of the name, nationality, passport number and, if known, the personal description, circumstances and time of such illegal landing or desertion of such alien crewman, and furnish any other information and documents that might aid in his or her apprehension, including any passport surrendered pursuant to § 252.1(d) of this chapter. Failure to file notice of illegal landing or desertion and to furnish any surrendered passport within 24 hours of the time of such landing or desertion becomes known shall be regarded as lack of compliance with section 251(d) of the Act.

128. Section 251.3 is revised to read as follows:

§ 251.3 Departure manifests and lists for vessels.

(a) *Form I–418, Passenger List-Crew List.* The master or agent of every vessel departing from the United States shall submit to the immigration officer at the port from which such vessel is to depart directly to some foreign place or outlying possession of the United States, except when a manifest is not required pursuant to § 251.1(a), a single Form I–418 completed in accordance with the instructions on the form. Submission of a Form I–418 that lacks any required endorsement shall be regarded as lack of compliance with section 251(c) of the Act.

(b) *Exception for certain Great Lakes vessels.* The required list need not be submitted for Canadian or British crewmembers of Great Lakes vessels described in § 251.1(a)(3).

129. Section 251.4 is revised to read as follows:

§ 251.4 Departure manifests and lists for aircraft.

(a) *United States Customs Service Form 7507 or International Civil Aviation Organization's General Declaration.* The captain or agent of every aircraft departing from the United States for a foreign place or an outlying possession of the United States, except on a flight departing for and terminating in Canada, shall submit to the immigration officer at the port from which such aircraft is to depart a completed United States Customs Service Form 7507 or the International Civil Aviation Organization's General Declaration. The form shall contain a list of all alien crewmen on board, including alien crewmen who arrived in the United States as crewmen on an aircraft of the same line and who are departing as passengers. The surname, given name, and middle initial of each such alien crewman listed shall be shown. In addition, the captain or agent of the aircraft shall indicate the total number of alien crewmembers and the total number of United States citizen crewmembers.

(b) *Notification of changes in employment for aircraft.* The agent of the air transportation line shall immediately notify in writing the nearest immigration office of the termination of employment in the United States of each alien employee of the line furnishing the name, birth date, birthplace, nationality, passport number, and other available information concerning such alien. The procedure to follow in obtaining permission to pay off or discharge an alien crewman in the United States after initial immigration inspection, other than an alien lawfully admitted for permanent residence, is set forth in § 252.1(f) of this chapter.

130. Section 251.5 is revised to read as follows:

§ 251.5 Exemptions for private vessels and aircraft.

The provisions of this part relating to submission of arrival and departure manifests and lists shall not apply to a private vessel or a private aircraft not

engaged directly or indirectly in the carriage of persons or cargo for hire

PART 252—LANDING OF ALIEN CREWMEN

131. The authority citation for part 252 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1184, 1258, 1281, 1282; 8 CFR part 2.

132. Section 252.1 is amended by revising paragraphs (a) through (c) to read as follows:

§ 252.1 Examination of crewmen.

(a) *Detention prior to examination.* All persons employed in any capacity on board any vessel or aircraft arriving in the United States shall be detained on board the vessel or at the airport of arrival by the master or agent of such vessel or aircraft until admitted or otherwise permitted to land by an officer of the Service.

(b) *Classes of aliens subject to examination under this part.* The examination of every nonimmigrant alien crewman arriving in the United States shall be in accordance with this part except that the following classes of persons employed on vessels or aircraft shall be examined in accordance with the provisions of 8 CFR parts 235 and 240:

(1) Canadian or British citizen crewmen serving on vessels plying solely between Canada and the United States; or

(2) Canadian or British citizen crewmen of aircraft arriving in a State of the United States directly from Canada on flights originating in that country. The crew of a vessel arriving at a United States port that may not require inspection by or clearance from the United States Customs Service is, nevertheless, subject to examination under this part; however, the master of such a vessel is not required to present Form I–95 for any crewman who is not an applicant for a conditional landing permit.

(c) *Requirements for landing permits.* Every alien crewman applying for landing privileges in the United States must make his or her application in person before an immigration officer, present whatever documents are required, be photographed and fingerprinted as the district director may require, and establish to the satisfaction of the immigration officer that he or she is not inadmissible under any provision of the law and is entitled clearly and beyond doubt to landing privileges in the United States.

* * * * *

133. Section 252.2 is revised to read as follows:

§ 252.2 Revocation of conditional landing permits; removal.

(a) *Revocation and removal while vessel is in the United States.* A crewman whose landing permit is subject to revocation pursuant to section 252(b) of the Act may be taken into custody by any immigration officer without a warrant of arrest and be transferred to the vessel of arrival, if the vessel is in any port in the United States and has not departed foreign since the crewman was issued his or her conditional landing permit. Detention and removal of the crewman shall be at the expense of the transportation line on which the crewman arrived. Removal may be effected on the vessel of arrival or, if the master of the vessel has requested in writing, by alternate means if removal on the vessel of arrival is impractical.

(b) *Revocation and removal after vessel has departed the United States.* A crewman who was granted landing privileges prior to April 1, 1997, and who has not departed foreign on the vessel of arrival, or on another vessel or aircraft if such permission was granted pursuant to § 252.1(f), is subject to removal proceedings under section 240 of the Act as an alien deportable pursuant to section 237(a)(1)(C)(i) of the Act. A crewman who was granted landing privileges on or after April 1, 1997, and who has not departed foreign on the vessel of arrival, or on another vessel or aircraft if such permission was granted pursuant to § 252.1(f), shall be removed from the United States without a hearing, except as provided in § 208.2(b)(1) of this chapter. In either case, if the alien is removed within 5 years of the date of landing, removal of the crewman shall be at the expense of the owner of the vessel. In the case of a crewman ordered removed more than 5 years after the date of landing, removal shall be at the expense of the appropriation for the enforcement of the Act.

134. Section 252.3 is revised to read as follows:

§ 252.3 Great Lakes vessels and tugboats arriving in the United States from Canada; special procedures.

(a) *United States vessels and tugboats.* An immigration examination shall not be required of any crewman aboard a Great Lakes vessel of United States registry or a tugboat of United States registry arriving from Canada at a port of the United States who has been examined and admitted by an immigration officer as a member of the crew of the same vessel or tugboat or of any other vessel or tugboat of the same company during the current calendar year.

(b) *Canadian or British vessels or tugboats.* An alien crewman need not be presented for inspection if the alien crewman:

(1) Serves aboard a Great Lakes vessel of Canadian or British registry or aboard a tugboat of Canadian or British registry arriving at a United States port-of-entry from Canada;

(2) Seeks admission for a period of less than 29 days;

(3) Has, during the current calendar year, been inspected and admitted by an immigration officer as a member of the crew of the same vessel or tugboat, or of any other vessel or tugboat of the same company;

(4) Is either a British or Canadian citizen or is in possession of a valid Form I–95 previously issued to him or her as a member of the crew of the same vessel or tugboat, or of any other vessel or tugboat of the same company;

(5) Does not request or require landing privileges in the United States beyond the time the vessel or tugboat will be in port; and,

(6) Will depart to Canada with the vessel or tugboat.

135. Section 252.4 is revised to read as follows:

§ 252.4 Permanent landing permit and identification card.

A Form I–184 is valid until revoked. It shall be revoked when an immigration officer finds that the crewman is in the United States in willful violation of the terms and conditions of his or her permission to land, or that he or she is inadmissible to the United States. On revocation, the Form I–184 shall be surrendered to an immigration officer. No appeal shall lie from the revocation of Form I–184.

136. Section 252.5 is revised to read as follows:

§ 252.5 Special procedures for deserters from Spanish or Greek ships of war.

(a) *General.* Under E.O. 11267 of January 19, 1966 (31 FR 807) and 28 CFR 0.109, and E.O. 11300 of August 17, 1966, (31 FR 11009), and 28 CFR 0.110, the Commissioner and immigration officers (as defined in § 103.1(j) of this chapter) are designated as "competent national authorities" on the part of the United States within the meaning of Article XXIV of the 1903 Treaty of Friendship and General Relations between the United States and Spain (33 Stat. 2105, 2117), and "local authorities" and "competent officers" on the part of the United States within the meaning of Article XIII of the Convention between the United States and Greece (33 Stat. 2122, 2131).

(b) *Application for restoration.* On application of a Consul General, Consul, Vice-Consul, or Consular-Agent of the Spanish or Greek Government, made in writing pursuant to Article XXIV of the treaty, or Article XIII of the Convention, respectively, stipulating for the restoration of crewmen deserting, stating that the person named therein has deserted from a ship of war of that government, while in any port of the United States, and on proof by the exhibition of the register, crew list, or official documents of the vessel, or a copy or extract therefrom, duly certified, that the person named belonged, at the time of desertion, to the crew of such vessel, such person shall be taken into custody by any immigration officer without a warrant of arrest. Written notification of charges shall be served on the alien when he or she is taken into custody or as soon as practical thereafter.

(c) *Examination.* Within a reasonable period of time after the arrest, the alien shall be accorded an examination by the district director, acting district director, or the deputy district director having jurisdiction over the place of arrest. The alien shall be informed that he or she may have the assistance of or be represented by a counsel or representative of his or her choice qualified under 8 CFR part 292 without expense to the Government, and that he or she may present such evidence in his or her behalf as may be relevant to this proceeding. If, upon the completion of such examination, it is determined that:

(1) The individual sought by the Spanish or Greek authorities had deserted from a Spanish or Greek ship of war in a United States port;

(2) The individual actually arrested and detained is the person sought;

(3) The individual is not a citizen of the United States; and

(4) The individual had not previously been arrested for the same cause and set at liberty because he or she had been detained for more than 3 months, or more than 2 months in the case of a deserter from a Greek ship of war, from the day of his or her arrest without the Spanish or Greek authorities having found an opportunity to send him or her home, the individual shall be served with a copy of the findings, from which no appeal shall lie, and be surrendered forthwith to the Spanish or Greek authorities if they are prepared to remove him or her from the United States. On written request of the Spanish or Greek authorities, the individual shall be detained, at their expense, for a period not exceeding 3 months or 2 months, respectively, from the day of arrest to afford opportunity to arrange for his or her departure from the United States.

(d) *Timely departure not effected.* If the Spanish authorities delay in sending the individual home for more than 3 months, or if the Greek authorities delay in sending the individual home for more than 2 months, from the day of his or her arrest, the individual shall be dealt with as any other alien unlawfully in the United States under the removal provisions of the Act, as amended.

(e) *Commission of crime.* If the individual has committed any crime or offense in the United States, he or she shall not be placed at the disposal of the consul until after the proper tribunal having jurisdiction in his or her case shall have pronounced sentence, and such sentence shall have been executed.

PART 253—PAROLE OF ALIEN CREWMEN

137. The authority citation for part 253 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1282, 1283, 1285; 8 CFR part 2.

138. In § 253.1, paragraph (f) is revised to read as follows:

§ 253.1 Parole.

* * * * *

(f) *Crewman, stowaway, or alien removable under section 235(c) alleging persecution.* Any alien crewman, stowaway, or alien removable under section 235(c) of the Act who alleges that he or she cannot return to his or her country of nationality or last habitual residence (if not a national of any country) because of fear of persecution in that country on account of race, religion, nationality, membership in a particular social group, or political opinion, is eligible to apply for asylum or withholding of removal under 8 CFR part 208. Service officers shall take particular care to ensure that the provisions of § 208.5(b) of this chapter regarding special duties toward aliens aboard certain vessels are closely followed.

* * * * * *

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

139. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

140. Section 274a.12 is amended by:

a. Revising paragraphs (a)(10) and (12);

b. Revising paragraphs (c)(8) and (10);

c. Revising paragraph (c)(12); and by

d. Revising paragraph (c)(18), to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

(a) * * *

(10) An alien granted withholding of deportation or removal for the period of time in that status, as evidenced by an employment authorization document issued by the Service;

* * * * * *

(12) An alien granted Temporary Protected Status under section 244 of the Act for the period of time in that status, as evidenced by an employment authorization document issued by the Service; or

* * * * * *

(c) * * *

(8) An alien who has filed a complete application for asylum or withholding of deportation or removal pursuant to 8 CFR part 208, whose application:

(i) Has not been decided, and who is eligible to apply for employment authorization under § 208.7 of this chapter because the 150-day period set forth in that section has expired. Employment authorization may be granted according to the provisions of § 208.7 of this chapter in increments to be determined by the Commissioner and shall expire on a specified date; or

(ii) Has been recommended for approval, but who has not yet received a grant of asylum or withholding or deportation or removal;

* * * * * *

(10) An alien who has filed an application for suspension of deportation under section 244 of the Act (as it existed prior to April 1, 1997) or cancellation of removal pursuant to section 240A of the Act. Employment authorization shall be granted in increments not exceeding one year during the period the application is pending (including any period when an administrative appeal or judicial review is pending) and shall expire on a specified date;

* * * * * *

(12) An alien granted benefits under the Family Unity provisions of section 301 of IMMACT 90 and the provisions of part 236, Subpart B of this chapter.

* * * * * *

(18) An alien against whom a final order of deportation or removal exists and who is released on an order of supervision under the authority contained in section 241(a)(3) of the Act may be granted employment authorization in the discretion of the district director only if the alien cannot be removed due to the refusal of all countries designated by the alien or under section 241 of the Act to receive the alien, or because the removal of the alien is otherwise impracticable or

contrary to the public interest. Additional factors which may be considered by the district director in adjudicating the application for employment authorization include, but are not limited to, the following:

(i) The existence of economic necessity to be employed;

(ii) The existence of a dependent spouse and/or children in the United States who rely on the alien for support; and

(iii) The anticipated length of time before the alien can be removed from the United States.

* * * * *

PART 286—IMMIGRATION USER FEE

141. The authority citation for part 286 continues to read as follows:

Authority: 8 U.S.C. 1103, 1356; 8 CFR part 2.

142. In § 286.9, paragraph (b)(3) is revised to read as follows:

§ 286.9 Fee for processing applications and issuing documentation at land border Ports-of-Entry.

* * * * *

(b) * * *

(3) A Mexican national in possession of a valid nonresident alien border crossing card or nonimmigrant B–1/B–2 visa who is required to be issued Form I–94, Arrival/Departure Record, pursuant to § 235.1(f) of this chapter, must remit the required fee for issuance of Form I–94 upon determination of admissibility.

* * * * *

PART 287—FIELD OFFICERS; POWERS AND DUTIES

143. The authority citation for part 287 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1225, 1226, 1251, 1252, 1357; 8 CFR part 2.

144. Section 287.3 is revised to read as follows:

§ 287.3 Disposition of cases of aliens arrested without warrant.

(a) *Examination.* An alien arrested without a warrant of arrest under the authority contained in section 287(a)(2) of the Act will be examined by an officer other than the arresting officer. If no other qualified officer is readily available and the taking of the alien before another officer would entail unnecessary delay, the arresting officer, if the conduct of such examination is a part of the duties assigned to him or her, may examine the alien.

(b) *Determination of proceedings.* If the examining officer is satisfied that there is prima facie evidence that the arrested alien was entering, attempting to enter, or is present in the United States in violation of the immigration laws, the examining officer will refer the case to an immigration judge for further inquiry in accordance with 8 CFR parts 235, 239, or 240, order the alien removed as provided for in section 235(b)(1) of the Act and § 235.3(b) of this chapter, or take whatever other action may be appropriate or required under the laws or regulations applicable to the particular case.

(c) *Notifications and information.* Except in the case of an alien subject to the expedited removal provisions of section 235(b)(1)(A) of the Act, an alien arrested without warrant and placed in formal proceedings under section 238 or 240 of the Act will be advised of the reasons for his or her arrest and the right to be represented at no expense to the Government. The examining officer will provide the alien with a list of the available free legal services provided by organizations and attorneys qualified under 8 CFR part 3 and organizations recognized under § 292.2 of this chapter that are located in the district where the hearing will be held. The examining officer shall note on Form I–862 that such a list was provided to the alien. The officer will also advise the alien that any statement made may be used against him or her in a subsequent proceeding.

(d) *Custody procedures.* Unless voluntary departure has been granted pursuant to subpart C of 8 CFR part 240, a determination will be made within 24 hours of the arrest whether the alien will be continued in custody or released on bond or recognizance and whether a notice to appear and warrant of arrest as prescribed in 8 CFR parts 236 and 239 will be issued.

145. In § 287.4, paragraph (d) is revised to read as follows:

§ 287.4 Subpoena.

* * * * *

(d) *Invoking aid of court.* If a witness neglects or refuses to appear and testify as directed by the subpoena served upon him or her in accordance with the provisions of this section, the officer or immigration judge issuing the subpoena shall request the United States Attorney for the district in which the subpoena was issued to report such neglect or refusal to the United States District Court and to request such court to issue an order requiring the witness to appear and testify and to produce the books, papers, or documents designated in the subpoena.

146. In § 287.5, paragraphs (b) through (f) are revised to read as follows:

§ 287.5 Exercise of power by immigration officers.

* * * * *

(b) *Power and authority to patrol the border.* The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the power to patrol the border conferred by section 287(a)(3) of the Act:

(1) Border patrol agents, including aircraft pilots;

(2) Special agents;

(3) Immigration inspectors (seaport operations only);

(4) Adjudications officers and deportation officers when in the uniform of an immigration inspector and performing inspections or supervising other immigration inspectors performing inspections (seaport operations only);

(5) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(6) Immigration officers who need the authority to patrol the border under section 287(a)(3) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner.

(c) *Power and authority to arrest*—(1) *Arrests of aliens under section 287(a)(2) of the Act for immigration violations.* The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the arrest power conferred by section 287(a)(2) of the Act and in accordance with § 287.8(c):

(i) Border patrol agents, including aircraft pilots;

(ii) Special agents;

(iii) Deportation officers;

(iv) Immigration inspectors;

(v) Adjudications officers;

(vi) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(vii) Immigration officers who need the authority to arrest aliens under section 287(a)(2) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner.

(2) *Arrests of persons under section 287(a)(4) of the Act for felonies regulating the admission or removal of aliens.* The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the arrest power conferred by section 287(a)(4) of the Act and in accordance with § 287.8(c):

(i) Border patrol agents, including aircraft pilots;

(ii) Special agents;

(iii) Deportation officers;

(iv) Immigration inspectors;

(v) Adjudications officers;

(vi) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(vii) Immigration officers who need the authority to arrest persons under section 287(a)(4) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner with the approval of the Deputy Attorney General.

(3) *Arrests of persons under section 287(a)(5)(A) of the Act for any offense against the United States.* The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the arrest power conferred by section 287(a)(5)(A) of the Act and in accordance with § 287.8(c):

(i) Border patrol agents, including aircraft pilots;

(ii) Special agents;

(iii) Deportation officers;

(iv) Immigration inspectors (permanent full-time immigration inspectors only);

(v) Adjudications officers when in the uniform of an immigration inspector and performing inspections or supervising other immigration inspectors performing inspections;

(vi) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(vii) Immigration officers who need the authority to arrest persons under section 287(a)(5)(A) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner with the approval of the Deputy Attorney General.

(4) *Arrests of persons under section 287(a)(5)(B) of the Act for any felony.* (i) Section 287(a)(5)(B) of the Act authorizes designated immigration officers, as listed in paragraph (c)(4)(iii) of this section, to arrest persons, without warrant, for any felony cognizable under the laws of the United States if:

(A) The immigration officer has reasonable grounds to believe that the person to be arrested has committed or is committing such a felony;

(B) The immigration officer is performing duties relating to the enforcement of the immigration laws at the time of the arrest;

(C) There is a likelihood of the person escaping before a warrant can be obtained for his or her arrest; and

(D) The immigration officer has been certified as successfully completing a training program that covers such arrests and the standards with respect to the enforcement activities of the Service as defined in § 287.8.

(ii) The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the arrest power conferred by section 287(a)(5)(B) of the Act and in accordance with § 287.8(c):

(A) Border patrol agents, including aircraft pilots;

(B) Special agents;

(C) Deportation officers;

(D) Immigration inspectors (permanent full-time immigration inspectors only);

(E) Adjudications officers when in the uniform of an immigration inspector and performing inspections or supervising other immigration inspectors performing inspections;

(F) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(G) Immigration officers who need the authority to arrest persons under section 287(a)(5)(B) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner with the approval of the Deputy Attorney General.

(iii) Notwithstanding the authorization and designation set forth in paragraph (c)(4)(ii) of this section, no immigration officer is authorized to make an arrest for any felony under the authority of section 287(a)(5)(B) of the Act until such time as he or she has been certified by the Director of Training as successfully completing a training course encompassing such arrests and the standards for enforcement activities as defined in § 287.8. Such certification shall be valid for the duration of the immigration officer's continuous employment, unless it is suspended or revoked by the Commissioner or the Commissioner's designee for just cause.

(5) *Arrests of persons under section 274(a) of the Act who bring in, transport, or harbor certain aliens, or induce them to enter.* (i) Section 274(a) of the Act authorizes designated immigration officers, as listed in paragraph (c)(5)(ii) of this section, to arrest persons who bring in, transport, or harbor aliens, or induce them to enter the United States in violation of law. When making an arrest, the designated immigration officer shall adhere to the provisions of the enforcement standard governing the conduct of arrests in § 287.8(c).

(ii) The following immigration officers who have successfully completed basic immigration law enforcement training are authorized and designated to exercise the arrest power conferred by section 274(a) of the Act:

(A) Border patrol agents, including aircraft pilots;

(B) Special agents;

(C) Deportation officers;

(D) Immigration inspectors;

(E) Adjudications officers when in the uniform of an immigration inspector and performing inspections or supervising other immigration inspectors performing inspections;

(F) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(G) Immigration officers who need the authority to arrest persons under section 274(a) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner with the approval of the Deputy Attorney General.

(6) *Custody and transportation of previously arrested persons.* In addition to the authority to arrest pursuant to a warrant of arrest in paragraph (e)(3)(iv) of this section, detention enforcement officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to take and maintain custody of and transport any person who has been arrested by an immigration officer pursuant to paragraphs (c)(1) through (c)(5) of this section.

(d) *Power and authority to conduct searches.* The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the power to conduct searches conferred by section 287(c) of the Act:

(1) Border patrol agents, including aircraft pilots;

(2) Special agents;

(3) Deportation officers;

(4) Immigration inspectors;

(5) Adjudications officers;

(6) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(7) Immigration officers who need the authority to conduct searches under section 287(c) of the Act in order to

effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner.

(e) *Power and authority to execute warrants*—(1) *Search warrants.* The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the power conferred by section 287(a) of the Act to execute a search warrant:

(i) Border patrol agents, including aircraft pilots;

(ii) Special agents;

(iii) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph, and

(iv) Immigration officers who need the authority to execute search warrants under section 287(a) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner with the approval of the Deputy Attorney General.

(2) *Issuance of arrest warrants for immigration violations.* A warrant of arrest may be issued only by the following immigration officers:

(i) District directors (except foreign);

(ii) Deputy district directors (except foreign);

(iii) Assistant district directors for investigations;

(iv) Deputy assistant district directors for investigations;

(v) Assistant district directors for deportation;

(vi) Deputy assistant district directors for deportation;

(vii) Assistant district directors for examinations;

(viii) Deputy assistant district directors for examinations;

(ix) Officers in charge (except foreign);

(x) Assistant officers in charge (except foreign);

(xi) Chief patrol agents;

(xii) Deputy chief patrol agents;

(xiii) Associate chief patrol agents;

(xiv) Assistant chief patrol agents;

(xv) Patrol agents in charge;

(xvi) The Assistant Commissioner, Investigations;

(xvii) Institutional Hearing Program directors;

(xviii) Area port directors;

(xix) Port directors; or

(xx) Deputy port directors.

(3) *Service of warrant of arrests for immigration violations.* The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the power pursuant to section 287(a) of the Act to execute warrants of arrest for administrative immigration violations issued under section 236 of the Act or to execute warrants of criminal arrest issued under the authority of the United States:

(i) Border patrol agents, including aircraft pilots;

(ii) Special agents;

(iii) Deportation officers;

(iv) Detention enforcement officers (warrants of arrest for administrative immigration violations only);

(v) Immigration inspectors;

(vi) Adjudications officers when in the uniform of an immigration inspector and performing inspections or supervising other immigration inspectors performing inspections;

(vii) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(viii) Immigration officers who need the authority to execute arrest warrants for immigration violations under section 287(a) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner, for warrants of arrest for administrative immigration violations, and with the approval of the Deputy Attorney General, for warrants of criminal arrest.

(4) *Service of warrant of arrests for non-immigration violations.* The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the power to execute warrants of criminal arrest for non-immigration violations issued under the authority of the United States:

(i) Border patrol agents, including aircraft pilots;

(ii) Special agents;

(iii) Deportation officers;

(iv) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(v) Immigration officers who need the authority to execute warrants of arrest for non-immigration violations under section 287(a) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner with the approval of the Deputy Attorney General.

(f) *Power and authority to carry firearms.* The following immigration officers who have successfully completed basic immigration enforcement training are hereby authorized and designated to exercise the power conferred by section 287(a) of the Act to carry firearms provided that they are individually qualified by training and experience to handle and safely operate the firearms they are permitted to carry, maintain proficiency in the use of such firearms, and adhere to the provisions of the enforcement standard governing the use of force in § 287.8(a):

(1) Border patrol agents, including aircraft pilots;

(2) Special agents;

(3) Deportation officers;

(4) Detention enforcement officers;

(5) Immigration inspectors;

(6) Adjudications officers when in the uniform of an immigration inspector and performing inspections or supervising other immigration inspectors performing inspections;

(7) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(8) Immigration officers who need the authority to carry firearms under section 287(a) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner with the approval of the Deputy Attorney General.

147. Section 287.7 is revised to read as follows:

§ 287.7 Detainer provisions under section 287(d)(3) of the Act.

(a) *Detainers in general.* Detainers are issued pursuant to sections 236 and 287 of the Act and this chapter. Any authorized Service official may at any time issue a Form I–247, Immigration Detainer-Notice of Action, to any other Federal, State, or local law enforcement agency. A detainer serves to advise another law enforcement agency that the Service seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien. The detainer is a request that such agency advise the Service, prior to release of the alien, in order for the Service to arrange to assume custody, in situations when gaining immediate physical custody is either impracticable or impossible.

(b) *Authority to issue detainers.* The following officers are authorized to issue detainers:

(1) Border patrol agents, including aircraft pilots;

(2) Special agents;

(3) Deportation officers;

(4) Immigration inspectors;

(5) Adjudications officers;

(6) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(7) Immigration officers who need the authority to issue detainers under section 287(d)(3) of the Act in order to effectively accomplish their individual missions and who are designated individually or as a class, by the Commissioner.

(c) *Availability of records.* In order for the Service to accurately determine the propriety of issuing a detainer, serving a notice to appear, or taking custody of an alien in accordance with this section, the criminal justice agency requesting such action or informing the Service of a conviction or act that renders an alien inadmissible or removable under any provision of law shall provide the Service with all documentary records and information available from the agency that reasonably relates to the alien's status in the United States, or that may have an impact on conditions of release.

(d) *Temporary detention at Service request.* Upon a determination by the Service to issue a detainer for an alien not otherwise detained by a criminal justice agency, such agency shall maintain custody of the alien for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays in order to permit assumption of custody by the Service.

(e) *Financial responsibility for detention.* No detainer issued as a result of a determination made under this chapter shall incur any fiscal obligation on the part of the Service, until actual assumption of custody by the Service, except as provided in paragraph (d) of this section.

PART 299—IMMIGRATION FORMS

148. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR part 2.

149. Section 299.1 is amended by:

a. Revising the entries for Forms "I–147", "I–205", "I–246", "I–247", "I–259", "I–284", "I–286", "I–291", "I–296", "I–408", "I–541", "I–589", "I–775", "I–851", and "I–851A";

b. Removing the entries for Forms I–122", "I–221", "I–259C", "I–290A", and "I–444", and by

c. Adding the entries for Forms "I–94T", "I–99", "I–148", "I–160", "I–210", "I–213", "I–217", "I–220A", "I–220B", "I–241", "I–261", "I–270", "I–275", "I–294", "I–407", "I–546", "I–701", "I–770", "I–771", "I–826", "I–827B", "I–860", "I–862", "I–863", "I–867AB", and "I–869" in proper numerical sequence, to the listing of forms, to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
•	•	•
I–94T	09–22–87	Arrival-Departure Record (Transit without visa).
•	•	•
I–99	04–01–97	Notice of Revocation and Penalty.
•	•	•
I–147	04–01–97	Notice of Temporary Inadmissibility to U.S.
I–148	04–01–97	Notice of Permanent Inadmissibility.
I–160	04–01–97	Notice of Parole/Lookout Intercept.
•	•	•
I–205	04–01–97	Warrant of Removal.
I–210	04–01–97	Notice of Action—Voluntary Departure.
•	•	•
I–213	04–01–97	Record of Deportable/Inadmissible Alien.
I–217	04–01–97	Information for Travel Document or Passport.
I–220A	04–01–97	Order of Release on Recognizance.
I–220B	04–01–97	Order of Supervision.
•	•	•
I–241	04–01–97	Request for Travel Document to Country Designated by Alien.
•	•	•
I–246	04–01–97	Application for Stay of Removal.
I–247	04–01–97	Immigration Detainer—Notice of Action.
I–259	04–01–97	Notice to Detain, Deport, Remove, or Present Aliens.
•	•	•
I–261	04–01–97	Additional Charges of Removability.
I–270	04–01–97	Request for Consent to Return Person to Canada.
I–275	04–01–97	Withdrawal of Application/Consular Notification.
I–284	04–01–97	Notice to Transportation Line Regarding Deportation and Detention Expenses of Detained Alien.
I–286	04–01–97	Notification to Alien of Conditions of Release or Detention.
•	•	•
I–291	04–01–97	Decision on Application for Status as Permanent Resident.
•	•	•
I–294	04–01–97	Notice of Country to Which Deportation has been Directed and Penalty for Reentry without Permission.
I–296	04–01–97	Notice to Alien Ordered Removed.
•	•	•
I–407	04–01–97	Abandonment by Alien of Status as Lawful Permanent Resident.
I–408	04–01–97	Application to Pay Off or Discharge Alien Crewman.

Form No.	Edition date	Title
I–541	04–01–97	Order of Denial of Application for Extension of Stay or Student Employment or Student Transfer.
I–546	04–01–97	Order to Appear—Deferred Inspection.
I–589	04–01–97	Application for Asylum and Withholding of Removal.
I–701	04–01–97	Detainee Transfer Worksheet.
I–770	04–01–97	Notice of Rights and Request for Disposition.
I–771	04–01–97	Bond Computation Worksheet.
I–775	04–01–97	Visa Waiver Pilot Program Agreement.
I–826	04–01–97	Notice of Rights and Request for Disposition
I–851	04–01–97	Notice of Intent to Issue Final Administrative Removal Order.
I–851A	04–01–97	Final Administrative Removal Order.
I–860	04–01–97	Notice and Order of Expedited Removal.
I–862	04–01–97	Notice to Appear.
I–863	04–01–97	Notice of Referral to Immigration Judge.
I–867AB	04–01–97	Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act.
I–869	04–01–97	Record of Negative Credible Fear Finding and Request for Review by Immigration Judge.

150. Section 299.5 is amended by:
a. Removing the entry for Form "I–259C"; and by
b. Revising the entries for Forms "I–246" and "I–589", and to read as follows:

§ 299.5 Display of control numbers.

INS form no.	INS form title	Currently assigned OMB control no.
I–246	Application for Stay of Removal	1115–0055
I–589	Application for Asylum and Withholding of Removal	1115–0086

PART 316—GENERAL REQUIREMENTS FOR NATURALIZATION

151. The authority citation for part 316 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1181, 1182, 1443, 1447; 8 CFR part 2.

152. Section 316.5 is amended by revising paragraph (c)(3) to read as follows:

§ 316.5 Residence in the United States.

* * * * *

(c) * * *

(3) *Removal and return.* Any departure from the United States while under an order of removal (including previously issued orders of exclusion or deportation) terminates the applicant's status as a lawful permanent resident and, therefore, disrupts the continuity of residence for purposes of this part.

* * * * *

PART 318—PENDING REMOVAL PROCEEDINGS

153. The heading for part 318 is revised as set forth above.

154. The authority citation for part 318 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1252, 1429, 1443; 8 CFR part 2.

155. Section 318.1 is revised to read as follows:

§ 318.1 Warrant of arrest.

For the purposes of section 318 of the Act, a notice to appear issued under 8 CFR part 239 (including a charging document issued to commence proceedings under sections 236 or 242 of the Act prior to April 1, 1997) shall be regarded as a warrant of arrest.

PART 329—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: NATURALIZATION BASED UPON ACTIVE DUTY SERVICE IN THE UNITED STATES ARMED FORCES DURING SPECIFIED PERIODS OF HOSTILITIES

156. The authority citation for part 329 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1440, 1443; 8 CFR part 2.

159 Section 329.2 is amended by revising paragraph (e)(3) to read as follows:

§ 329.2 Eligibility.

* * * * *

(e) * * *

(3) The applicant may be naturalized even if an outstanding notice to appear pursuant to 8 CFR part 239 (including a charging document issued to commence proceedings under sections 236 or 242 of the Act prior to April 1, 1997) exists.

Dated: February 26, 1997.

Janet Reno,

Attorney General.

[FR Doc. 97–5250 Filed 2–28–97; 3:29 pm]

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Part III

Department of Education

34 CFR Part 75, et al.
Direct Grant Programs; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 75, 206, 231, 235, 369, 371, 373, 375, 376, 378, 380, 381, 385, 386, 387, 388, 389, 390, 396, 610, 612, and 630

RIN 1880–AA74

Direct Grant Programs

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Education Department General Administrative Regulations (EDGAR) that govern discretionary grant programs administered directly by the Department. These amendments reduce the need for specific regulations governing individual programs while ensuring that proposed projects meet the highest standards of professional excellence. These amendments establish new selection criteria and make additional changes to allow these new selection criteria to be used in a variety of circumstances. Also, these amendments would remove a number of regulations made unnecessary by the amendments.

EFFECTIVE DATE: These regulations take effect April 7, 1997, except the removal of 34 CFR Part 630 which takes effect on October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Margo Anderson, U.S. Department of Education, 555 New Jersey Avenue, NW., Washington, D.C. 20208-5530. Telephone: (202) 219–2005. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: On July 16, 1996, the Secretary published a notice of proposed rulemaking (NPRM) for these amendments in the **Federal Register** (61 FR 37184).

The NPRM explained why the Department developed a new approach to EDGAR selection criteria and how the Department would use the new criteria. Also, the NPRM discussed other changes the Secretary believes are necessary to permit full use of the flexibility available through the new approach to EDGAR selection criteria. For a more detailed discussion of the major issues concerning these amendments, see pages 37184–37186 of the NPRM.

These final regulations contain one significant change from the NPRM and this change is fully explained in the Analysis of Comments and Changes elsewhere in this preamble. The other changes are minor editorial and technical revisions. Some of these revisions required that certain sections be renumbered or relettered, and, unless otherwise noted, references to these sections elsewhere in this preamble use the new numbers and letters, as appropriate.

Potential applicants are reminded that selection criteria, including any specific factors under those criteria, for a particular program will be announced in the application package or in a notice published in the **Federal Register**.

Analysis of Comments and Changes

In response to the Secretary's invitation to comment in the NPRM, fewer than 10 parties submitted comments on the proposed regulations. An analysis follows of the comments and of the changes in the regulations since publication of the NPRM.

Major issues are grouped according to subject, with appropriate sections of the regulations referenced in parentheses. Technical and other minor changes—and suggested changes that the Secretary is not legally authorized to make under the applicable statutory authority or are outside the scope of the NPRM—generally are not addressed.

New Approach to Selection Criteria (§ 75.200 and § 75.210)

Comment: The majority of commenters favored the changes to EDGAR and the Department's efforts to improve the general selection criteria. Some commenters praised specific additions and others lauded generally the new approach to tailoring selection criteria for each particular competition. These commenters agreed that the new approach would result in improvements in the grant application and evaluation process.

There were two commenters, however, who disagreed with the proposed menu approach to selection criteria. These commenters criticized the approach because the public would not be afforded the opportunity to comment formally on the Department's choice of selection criteria for a particular competition. These commenters believed that the public's opportunity to comment under the Paperwork Reduction Act of 1995 would be inadequate. Also, they were concerned that the new menu approach could lead to arbitrary decision-making by the Department's program managers or that the Secretary would use the new flexibility to supersede statutory provisions or program-specific regulations.

Moreover, these two commenters believed that the new approach would result in lower quality applications and projects. They objected to the approach on the grounds that, without a set of permanently established criteria, applicants could not begin to prepare applications in advance of the announcement of a competition. They also believed the general menu of selection criteria would not provide enough program-specific information for an applicant to prepare a quality application. Finally, they believed that the new approach would favor large applicant organizations with a general mission able to engage in general activities.

Discussion: The Department believes that potential grant applicants will have an adequate opportunity to comment on its choice of selection criteria for a particular program under the procedures required by the Paperwork Reduction Act (PRA). Comments submitted under the PRA will be reviewed not only by the Department, but also by the Office of Management and Budget (OMB), and they will be given careful consideration. Moreover, the Department welcomes comments and suggestions on selection criteria, and the application process generally, apart from the specific requirements of the PRA and formal opportunity to comment. Potential applicants, grantees, program beneficiaries, and others are encouraged to advise the program about their experience with the selection criteria, and to provide recommendations for criteria for future competitions at any time, for the program office's use in designing selection criteria.

Fears that the new approach will allow the Secretary to supersede statutory provisions or program-specific regulations are misplaced. The Secretary is bound by statutory provisions. In evaluating applications, the Department must adhere to selection criteria or other provisions related to the evaluation of applications required by statute. In addition, the Department intends that programs will use the new approach in conjunction with the statute and program-specific regulations, not instead of them.

Rather than leading to arbitrary decision-making, the new approach should lead to better focused and higher quality decision-making. Because the current EDGAR selection criteria are so general, the Department sometimes has difficulty distinguishing those projects that will best address statutory purposes and Departmental priorities from those that merely will address them. On the other hand, program-specific criteria have often proved too narrow and inflexible. By using the new approach, the Department will be able to tailor the selection criteria to favor projects that best address the purposes of the statute and any priorities the Department may establish.

The Secretary believes that the new approach will lead to the selection of higher quality projects and will not favor large applicant organizations. The selection criteria are more focused on important project attributes than the existing EDGAR general selection criteria. The Secretary believes that, if considered in the context of a specific program and in conjunction with any applicable statutory provisions and program regulations, the selection criteria will be clear and will give an applicant enough direction to prepare a quality application. Therefore, the Secretary believes that large applicant organizations that can carry out general activities will not have an advantage. Application reviewers using the focused selection criteria in conjunction with applicable statutory provisions and regulations will evaluate whether these large organizations can carry out the kind of high quality activities that best address the specific purposes and priorities of the statute and the Department.

The Secretary does not believe that the new approach will prevent potential applicants from beginning to prepare applications in advance of an application announcement. Applicants may begin work on the basis of statutory purposes and requirements. In addition, it is unlikely that the selection criteria used in evaluating applications will change from one year to the next for most programs.

Additionally, in reviewing the proposed regulations, the Secretary determined that it would be helpful to make some minor clarifications to § 75.200(b)(3) regarding what selection criteria the Secretary could use in evaluating applications for new grants. The Secretary further determined that § 75.200(b)(3)(iii) and § 75.210(a) (as numbered in the NPRM) were redundant.

Changes: The Secretary revises § 75.200(b)(3) to clarify the selection criteria the Secretary may use in evaluating applications for new grants and removes redundant language from § 75.210.

New Approach to Allocating Points or Weights (§ 75.201)

Comment: The commenters who did not support the new menu approach to selection criteria also did not support the approach of assigning points or weights to criteria on a competition by competition basis. These commenters did not give any reasons in addition to those already given for their opposition to the new menu approach to selection criteria.

The commenters in support of the entire approach also did not give any specific reasons for their support of the flexible allocation of points and weights.

One commenter, however, specifically recommended against limiting the number or percentage of points that could be assigned to any particular criterion or factor. This commenter thought that point weighting should be flexible to address the priorities of a particular grant program.

Discussion: These amendments add only the flexibility of distributing weights among criteria and factors. The Secretary previously amended the EDGAR regulations to allow for the flexible allocation of points and for establishing a total maximum score on a competition by competition basis (see 60 FR 63872, December 12, 1995, Direct Grant Programs). In promulgating that rule, the Secretary did not receive any negative comments regarding points. Some programs used the authority for flexible point allocation and total maximum score and did not receive negative comments. The Secretary believes this flexibility should continue.

Changes: None.

Similar or Overlapping Criteria and Factors (§ 75.210)

Comments: A few commenters stated that particular criteria were redundant, overlap, or may only have subtle differences. Some of those commenters thought the criteria and factors should be organized differently. Commenters made suggestions for rewording various factors.

Commenters also pointed out factors that were unclear or could be improved. Commenters stated that § 75.210(b)(2)(xv) (as renumbered) was overly restrictive and that the meaning of § 388.20(a)(2)(iii) was unclear.

Discussion: The Secretary has reworded and reorganized the criteria to focus on an evaluation of the project to be implemented and of key attributes of the project, rather than on an evaluation of how well the application is written.

Although the entire menu of criteria and factors may seem to overlap or contain factors with only subtle differences, the Department will not use all of the criteria and factors at one time. For example, one commenter thought factors (xiv), (xv), and (xvi) of § 75.210(b)(2)(as renumbered) were redundant and that factor (xvi) should suffice. Although factor (xvi) does encompass factors (xiv) and (xv), the Department would expect only one of these factors to be used in a set of selection criteria for a particular competition. The Secretary believes (xiv) and (xv) are needed to emphasize certain priorities in different program areas. Also, the need criterion (§ 75.210(a), as renumbered) and significance criterion (§ 75.210(b), as renumbered) are similar, but the need criterion is better suited to programs that provide services, and the significance criterion to programs that carry out demonstration projects. In a small number of cases, both criteria may apply.

The Secretary agrees that §§ 75.210(b)(2)(ii)(xv) (as renumbered) and 388.20(a)(2)(iii) should be revised.

Changes: The Secretary changes and clarifies §§ 75.210(b)(2)(ii)(xv) and 388.20(a)(2)(iii).

34 CFR Parts 637, 658, 660, 661, and 669

Comments: None.

Discussion: In the NPRM, the Secretary proposed to remove the selection criteria from 34 CFR parts 637 (Minority Science Improvement Program), 658 (Undergraduate International Studies and Foreign Language Program), 660 (The International Research and Studies Program), 661 (Business and International Education Program), and 669 (Language Resource Centers Program). The Secretary proposed instead that these programs would use the new EDGAR menu of selection criteria to evaluate applications. Also, the Secretary proposed to make corresponding changes in other sections of these parts to reflect the use of the EDGAR selection criteria.

The Secretary published a notice of proposed rulemaking (NPRM) in the **Federal Register** proposing that parts 637, 661, and 669 should be removed completely and that additional sections in parts 658 and 660 should be eliminated. (61 FR 52399, October 7, 1996). The Secretary currently is reviewing the public comments on that NPRM. Therefore, the Secretary has not included changes to parts 637, 658, 660, 661 and 669 in these final regulations.

Changes: The Secretary is removing all references to changes to 34 CFR parts 637, 658, 660, 661, and 669.

Clarifications Regarding Using the Selection Criteria (§ 75.201 and § 75.210)

Comments: None.

Discussion: In reviewing the proposed regulations, the Secretary determined

that it would be helpful to make some minor clarifications regarding the use of the selection criteria. The Secretary believes it is necessary to note in the regulations that the Secretary informs applicants of the selection criteria chosen and the factors selected for considering the selection criteria, if any, in the application package or a notice published in the **Federal Register**. This information was included in the preamble to the NPRM, but not in the regulations.

The Secretary also believes it would be helpful to clarify in the regulations that certain factors are mandatory (§ 75.210 (d)(2) and (e)(2), as renumbered) if the applicable selection criterion is chosen.

Changes: The Secretary amends the language in § 75.201 to add a new paragraph specifying that the Secretary informs applicants of the selection criteria chosen and the factors selected for considering the selection criteria, if any, in the application package or a notice published in the **Federal Register**. Also, the Secretary amends the language in § 75.210 to clarify that factors § 75.210 (d)(2) and (e)(2) (as renumbered) are mandatory factors that are always considered if selection criteria § 75.210 (d) and (e) are chosen.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number assigned to the collection of information in these final regulations is displayed at the end of the affected section of the regulations.

Intergovernmental Review

Many programs affected by these regulations are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 75

Administrative practice and procedure, Continuation funding, Education, Grant programs—education, Grants administration, Incorporation by reference, Performance reports, Reporting and recordkeeping requirements, Unobligated funds.

34 CFR Part 206

Administrative practice and procedure, Colleges and universities, Educational study programs, Grants program—education, Migrant labor, Students, Vocational education.

34 CFR Part 231

Drug abuse, Elementary and secondary education, Grants program—education.

34 CFR Part 235

Drug abuse, Elementary and secondary education, Grants program—education.

34 CFR Part 369

American Indians, Disabled, Grants program—education, Vocational rehabilitation.

34 CFR Part 371

American Indians, Disabled, Employment, Grants program—education, Vocational rehabilitation.

34 CFR Part 373

Blind, Deaf, Disabled, Grants program—education, Vocational rehabilitation.

34 CFR Part 375

Disabled, Grants program—education, Migrant labor, Vocational rehabilitation.

34 CFR Part 376

Disabled, Grants program—education, Vocational rehabilitation, Youth.

34 CFR Part 378

Arts and crafts, Disabled, Grants program—education, Hobbies, Recreation and recreation areas, Vocational rehabilitation.

34 CFR Part 380

Disabled, Grants program—education, Vocational rehabilitation.

34 CFR Part 381

Advocacy, Disabled, Grants program—education.

34 CFR Part 385

Disabled, Grants program—education, Occupational training, Training programs, Vocational rehabilitation.

34 CFR Part 386

Disabled, Grants program—education, Occupational training, Training programs, Vocational education, Vocational rehabilitation.

34 CFR Part 387

Disabled, Grants program—education, Occupational training, Training programs, Vocational education, Vocational rehabilitation.

34 CFR Part 388

Disabled, Grants program—education, Occupational training, Training programs, Vocational education, Vocational rehabilitation.

34 CFR Part 390

Disabled, Grants program—education, Occupational training, Training programs, Vocational education, Vocational rehabilitation.

34 CFR Part 396

Blind, Deaf, Disabled, Grants program—education, Occupational training, Training programs, Vocational education.

34 CFR Part 610

Colleges and universities, Elementary and secondary education, Education of disadvantaged, Education of students with disabilities, Grant programs—education.

34 CFR Part 612

Colleges and universities, Drug abuse, Grant programs—education.

34 CFR Part 630

Colleges and universities, Grant programs—education.

Dated: February 26, 1997.

(Catalog of Federal Domestic Assistance Number does not apply.)

Richard W. Riley,

Secretary of Education.

In accordance with general rulemaking authority under 20 U.S.C. 3474 adn 1221e–3, The Secretary amends Parts 75, 206, 231, 235, 369, 371, 373, 375, 376, 378, 380, 381, 385, 386, 387, 388, 389, 390, 396, 610, 612, and 630 of Title 34 of the Code of Federal Regulations as follows:

PART 75—DIRECT GRANT PROGRAMS

1. The authority citation for Part 75 continues to read as follows:

Authority: 20 U.S.C. 1221–3 and 3474, unless otherwise noted.

2. Section 75.200(b)(3) is revised to read as follows:

§ 75.200 How applications for new grants and cooperative agreements are selected for funding; standards for use of cooperative agreements.

* * * * *

(b) * * *

(3) To evaluate the applications for new grants under the program the Secretary may use:

(i) Selection criteria established under § 75.209.

(ii) Selection criteria in program-specific regulations.

(iii) Selection criteria established under § 75.210.

(iv) Any combination of criteria from paragraphs (b)(3)(i), (b)(3)(ii), and (b)(3)(iii) of this section.

* * * * *

3. Section 75.201 is revised to read as follows:

§ 75.201 How the selection criteria will be used.

(a) In the application package or a notice published in the **Federal Register**, the Secretary informs applicants of—

(1) The selection criteria chosen; and

(2) The factors selected for considering the selection criteria, if any.

(b) If points or weights are assigned to the selection criteria, the Secretary informs applicants in the application package or a notice published in the **Federal Register** of—

(1) The total possible score for all of the criteria for a program; and

(2) The assigned weight or the maximum possible score for each criterion or factor under that criterion.

(c) If no points or weights are assigned to the selection criteria and selected factors, the Secretary evaluates each criterion equally and, within each criterion, each factor equally.

(Authority: 20 U.S.C. 1221e–3 and 3474)

§ 75.209 [Amended]

4. Section 75.209(a) is amended by removing "If a discretionary grant program does not have implementing regulations or has implementing regulations that do not include selection criteria, the" and by adding, instead, "The".

5. Section 75.210 is revised to read as follows:

§ 75.210 General selection criteria.

In determining the selection criteria to be used in each grant competition, the Secretary may select one or more of the following criteria and may select from among the list of optional factors under each criterion. However, paragraphs (d)(2) and (e)(2) of this section are mandatory factors under their respective criteria:

(a) *Need for project.* (1) The Secretary considers the need for the proposed project.

(2) In determining the need for the proposed project, the Secretary considers one or more of the following factors:

(i) The magnitude or severity of the problem to be addressed by the proposed project.

(ii) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(iii) The extent to which the proposed project will provide services or otherwise address the needs of students at risk of educational failure.

(iv) The extent to which the proposed project will focus on serving or otherwise addressing the needs of disadvantaged individuals.

(v) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(vi) The extent to which the proposed project will prepare personnel for fields in which shortages have been demonstrated.

(b) *Significance.* (1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers one or more of the following factors:

(i) The national significance of the proposed project.

(ii) The significance of the problem or issue to be addressed by the proposed project.

(iii) The potential contribution of the proposed project to increased knowledge or understanding of educational problems, issues, or effective strategies.

(iv) The potential contribution of the proposed project to increased knowledge or understanding of rehabilitation problems, issues, or effective strategies.

(v) The likelihood that the proposed project will result in system change or improvement.

(vi) The potential contribution of the proposed project to the development and advancement of theory, knowledge, and practices in the field of study.

(vii) The potential for generalizing from the findings or results of the proposed project.

(viii) The extent to which the proposed project is likely to yield findings that may be utilized by other appropriate agencies and organizations.

(ix) The extent to which the proposed project is likely to build local capacity to provide, improve, or expand services that address the needs of the target population.

(x) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies.

(xi) The likely utility of the products (such as information, materials, processes, or techniques) that will result from the proposed project, including the potential for their being used effectively in a variety of other settings.

(xii) The extent to which the results of the proposed project are to be disseminated in ways that will enable others to use the information or strategies.

(xiii) The potential replicability of the proposed project or strategies, including, as appropriate, the potential for implementation in a variety of settings.

(xiv) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

(xv) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in employment, independent living services, or both, as appropriate.

(xvi) The importance or magnitude of the results or outcomes likely to be attained by the proposed project.

(c) *Quality of the project design.* (1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers one or more of the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(iii) The extent to which there is a conceptual framework underlying the

proposed research or demonstration activities and the quality of that framework.

(iv) The extent to which the proposed activities constitute a coherent, sustained program of research and development in the field, including, as appropriate, a substantial addition to an ongoing line of inquiry.

(v) The extent to which the proposed activities constitute a coherent, sustained program of training in the field.

(vi) The extent to which the proposed project is based upon a specific research design, and the quality and appropriateness of that design, including the scientific rigor of the studies involved.

(vii) The extent to which the proposed research design includes a thorough, high-quality review of the relevant literature, a high-quality plan for research activities, and the use of appropriate theoretical and methodological tools, including those of a variety of disciplines, if appropriate.

(viii) The extent to which the design of the proposed project includes a thorough, high-quality review of the relevant literature, a high-quality plan for project implementation, and the use of appropriate methodological tools to ensure successful achievement of project objectives.

(ix) The quality of the proposed demonstration design and procedures for documenting project activities and results.

(x) The extent to which the design for implementing and evaluating the proposed project will result in information to guide possible replication of project activities or strategies, including information about the effectiveness of the approach or strategies employed by the project.

(xi) The extent to which the proposed development efforts include adequate quality controls and, as appropriate, repeated testing of products.

(xii) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(xiii) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice.

(xiv) The extent to which the proposed project represents an exceptional approach for meeting statutory purposes and requirements.

(xv) The extent to which the proposed project represents an exceptional approach to the priority or priorities established for the competition.

(xvi) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources.

(xvii) The extent to which the proposed project will establish linkages with other appropriate agencies and organizations providing services to the target population.

(xviii) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students.

(xix) The extent to which the proposed project encourages parental involvement.

(xx) The extent to which the proposed project encourages consumer involvement.

(xxi) The extent to which performance feedback and continuous improvement are integral to the design of the proposed project.

(xxii) The quality of the methodology to be employed in the proposed project.

(xxiii) The extent to which fellowship recipients or other project participants are to be selected on the basis of academic excellence.

(d) *Quality of project services.* (1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers one or more of the following factors:

(i) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services.

(ii) The extent to which entities that are to be served by the proposed technical assistance project demonstrate support for the project.

(iii) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice.

(iv) The likely impact of the services to be provided by the proposed project on the intended recipients of those services.

(v) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(vi) The extent to which the training or professional development services to be provided by the proposed project are likely to alleviate the personnel shortages that have been identified or are the focus of the proposed project.

(vii) The likelihood that the services to be provided by the proposed project will lead to improvements in the achievement of students as measured against rigorous academic standards.

(viii) The likelihood that the services to be provided by the proposed project will lead to improvements in the skills necessary to gain employment or build capacity for independent living.

(ix) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services.

(x) The extent to which the technical assistance services to be provided by the proposed project involve the use of efficient strategies, including the use of technology, as appropriate, and the leveraging of non-project resources.

(xi) The extent to which the services to be provided by the proposed project are focused on those with greatest needs.

(xii) The quality of plans for providing an opportunity for participation in the proposed project of students enrolled in private schools.

(e) *Quality of project personnel.* (1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers one or more of the following factors:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator.

(ii) The qualifications, including relevant training and experience, of key project personnel.

(iii) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(f) *Adequacy of resources.* (1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers one or more of the following factors:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(ii) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(iii) The extent to which the budget is adequate to support the proposed project.

(iv) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(v) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits.

(vi) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support.

(vii) The potential for the incorporation of project purposes, activities, or benefits into the ongoing program of the agency or organization at the end of Federal funding.

(g) *Quality of the management plan.* (1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers one or more of the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

(iii) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project.

(iv) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(v) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

(h) *Quality of the project evaluation.* (1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers one or more of the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(ii) The extent to which the methods of evaluation are appropriate to the context within which the project operates.

(iii) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies.

(iv) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(v) The extent to which the methods of evaluation will provide timely guidance for quality assurance.

(vi) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

(vii) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

(Approved by the Office of Management and Budget under control number 1875–0102)

(Authority: 20 U.S.C. 1221e-3 and 3474)

6. A new § 75.211 is added to read as follows:

§ 75.211 Selection criteria for unsolicited applications.

(a) If the Secretary considers an unsolicited application under 34 CFR 75.222(a)(2)(ii), the Secretary uses the selection criteria and factors, if any, used for the competition under which the application could have been funded.

(b) If the Secretary considers an unsolicited application under 34 CFR 75.222(a)(2)(iii), the Secretary selects from among the criteria in 75.210(b), and may select from among the specific factors listed under each criterion, the criteria that are most appropriate to evaluate the activities proposed in the application.

(Authority: 20 U.S.C. 1221e-3 and 3474)

PART 206—SPECIAL EDUCATIONAL PROGRAMS FOR STUDENTS WHOSE FAMILIES ARE ENGAGED IN MIGRANT AND OTHER SEASONAL FARMWORK—HIGH SCHOOL EQUIVALENCY PROGRAM AND COLLEGE ASSISTANCE MIGRANT PROGRAM

7. The authority citation for Part 206 continues to read as follows:

Authority: 20 U.S.C. 1070d-2, unless otherwise noted.

8. Section 206.30 is revised to read as follows:

§ 206.30 How does the Secretary evaluate an application?

The Secretary evaluates an application under the procedures in 34 CFR Part 75.

(Authority: 20 U.S.C. 1070d-2(a) and (e))

§ 206.31 [Removed]

9. Section 206.31 is removed.

PART 231—[REMOVED]

10. Part 231 is removed.

PART 235—[REMOVED]

11. Part 235 is removed.

PART 369—VOCATIONAL REHABILITATION SERVICE PROJECTS

12. The authority citation for Part 369 is revised to read as follows:

Authority: 29 U.S.C. 711(c), 732, 750, 777(a)(1), 777b, 777f and 795g, unless otherwise noted.

§ 369.1 [Amended]

13. Section 369.1 is amended by removing paragraphs (b)(2) and (b)(4), by removing in paragraph (b)(3) "(34 CFR part 373)", in paragraph (b)(5) "(34 CFR part 375)", and in paragraph (b)(7) "(34 CFR part 378)", and by redesignating paragraphs (b)(3), (b)(5), (b)(6), (b)(7), and (b)(8) as paragraphs (b)(2), (b)(3), (b)(4), (b)(5), and (b)(6) respectively.

§ 369.2 [Amended]

14. Section 369.2 is amended by removing paragraphs (b) and (d) and by redesignating paragraphs (c), (e), (f), (g), and (h) as paragraphs (b), (c), (d), (e), and (f) respectively.

§ 369.21 [Amended]

15. Section 369.21 is amended by removing "under 34 CFR parts 372, 373, 374, 375, 376, 378, or 379", and adding, in its place, "covered by this part".

16. Section 369.30 is revised to read as follows:

§ 369.30 How does the Secretary evaluate an application?

The Secretary evaluates an application under the procedures in 34 CFR Part 75.

(Authority: 29 U.S.C. 711(c))

§ 369.31 [Removed]

17. Section 369.31 is removed.

§ 369.32 [Amended]

18. Section 369.32 is amended by removing "listed in § 369.31 and 34 CFR parts 371, 372, 373, 374, 375, 376, 378, and 379", in the introductory text and adding, in its place, "used in accordance with the procedures in 34 CFR part 75".

§ 369.42 [Amended]

19. Section 369.42 paragraph (b) is amended by removing "34 CFR parts 371, 372, 373, 374, 375, 376, 378, or 379", and adding, in its place, "a program covered by this part".

PART 371—VOCATIONAL REHABILITATION SERVICE PROJECTS FOR AMERICAN INDIANS WITH DISABILITIES

20. The authority citation for Part 371 continues to read as follows:

Authority: 29 U.S.C. 711(c) and 750, unless otherwise noted.

§ 371.30 [Removed]

21. Section 371.30 is removed.

PART 373—[REMOVED]

22. Part 373 is removed.

PART 375—[REMOVED]

23. Part 375 is removed.

PART 376—SPECIAL PROJECTS AND DEMONSTRATIONS FOR PROVIDING TRANSITIONAL REHABILITATION SERVICES TO YOUTH WITH DISABILITIES

24. The authority citation for Part 376 continues to read as follows:

Authority: 29 U.S.C. 777a(b), unless otherwise noted.

§ 376.31 [Removed]

25. Section 376.31 is removed.

PART 378—[REMOVED]

26. Part 378 is removed.

PART 380—SPECIAL PROJECTS AND DEMONSTRATIONS FOR PROVIDING SUPPORTED EMPLOYMENT SERVICES TO INDIVIDUALS WITH THE MOST SEVERE DISABILITIES AND TECHNICAL ASSISTANCE PROJECTS

27. The authority citation for Part 380 continues to read as follows:

Authority: 29 U.S.C. 711(c) and 777a(c), unless otherwise noted.

28. Section 380.10 is revised to read as follows:

§ 380.10 How does the Secretary evaluate an application?

The Secretary evaluates an application under the procedures in 34 CFR Part 75.

(Authority: 29 U.S.C. 777a(c))

§§ 380.11, 380.12, and 380.13 [Removed]

29. Sections 380.11, 380.12, and 380.13 are removed.

30. Section 380.14 is revised to read as follows:

§ 380.14 What other factors does the Secretary consider in reviewing an application?

In addition to the selection criteria used in accordance with the procedures in 34 CFR Part 75, the Secretary, in making awards under this part, considers the geographical distribution of projects in each program category throughout the country.

(Authority: 29 U.S.C. 777a(a)(1) and 777a(c))

PART 381—PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS

31. The authority citation for Part 381 continues to read as follows:

Authority: 29 U.S.C. 794e, unless otherwise noted.

32. Section 381.20 is revised to read as follows:

§ 381.20 How does the Secretary evaluate an application?

In any fiscal year in which the amount appropriated for the PAIR program is less than $5,500,000, the Secretary evaluates applications under the procedures in 34 CFR Part 75.

(Authority: 29 U.S.C. 711(c) and 794e (b) and (f))

§ 380.21 [Removed]

33. Section 381.21 is removed.

PART 385—REHABILITATION TRAINING

34. The authority citation for Part 385 continues to read as follows:

Authority: 29 U.S.C. 711(c), 772, and 774, unless otherwise noted.

35. Section 385.31 is revised to read as follows:

§ 385.31 How does the Secretary evaluate an application?

(a) The Secretary evaluates applications under the procedures in 34 CFR Part 75.

(b) The Secretary evaluates each application using selection criteria identified in parts 386, 387, 388, 389 and 390, as appropriate.

(c) In addition to the selection criteria described in paragraph (b) of this section, the Secretary evaluates each application using—

(1) Selection criteria in 34 CFR 75.210;

(2) Selection criteria established under 34 CFR 75.209; or

(3) A combination of selection criteria established under 34 CFR 75.209 and selection criteria in 34 CFR 75.210.

(Authority: 29 U.S.C. 711(c))

§ 385.32 [Removed]

36. Section 385.32 is removed.

§ 385.33 [Amended]

37. Section 385.33 is amended by removing the number "385.32" in the introductory text and adding in its place the number "75.210".

PART 386—REHABILITATION TRAINING: REHABILITATION LONG-TERM TRAINING

38. The authority citation for Part 386 continues to read as follows:

Authority: 29 U.S.C. 711(c) and 774, unless otherwise noted.

39. Section 386.20 is revised to read as follows:

§ 386.20 What additional selection criteria are used under this program?

In addition to the criteria in 34 CFR 385.31(c), the Secretary uses the following additional selection criteria to evaluate an application:

(a) *Relevance to State-Federal rehabilitation service program.* (1) The Secretary reviews each application for information that shows that the proposed project appropriately relates to the mission of the State-Federal rehabilitation service program.

(2) The Secretary looks for information that shows that the project can be expected either—

(i) To increase the supply of trained personnel available to State and other public or nonprofit agencies involved in the rehabilitation of individuals with physical or mental disabilities through degree or certificate granting programs; or

(ii) To improve the skills and quality of professional personnel in the rehabilitation field in which the training is to be provided through the granting of a degree or certificate.

(b) *Nature and scope of curriculum.* (1) The Secretary reviews each application for information that demonstrates the adequacy of the proposed curriculum.

(2) The Secretary looks for information that shows—

(i) The scope and nature of the coursework reflect content that can be expected to enable the achievement of the established project objectives;

(ii) The curriculum and teaching methods provide for an integration of theory and practice relevant to the educational objectives of the program;

(iii) There is evidence of educationally focused practical and other field experiences in settings that ensure student involvement in the provision of vocational rehabilitation, supported employment, or independent living rehabilitation services to individuals with disabilities, especially individuals with severe disabilities;

(iv) The coursework includes student exposure to vocational rehabilitation, supported employment, or independent living rehabilitation processes, concepts, programs, and services; and

(v) If applicable, there is evidence of current professional accreditation by the designated accrediting agency in the professional field in which grant support is being requested.

(Authority: 29 U.S.C. 711(c) and 771a)

PART 387—EXPERIMENTAL AND INNOVATIVE TRAINING

40. The authority citation for Part 387 continues to read as follows:

Authority: 29 U.S.C. 711(c) and 774, unless otherwise noted.

41. Section 387.30 is revised to read as follows:

§ 387.30 What additional selection criteria are used under this program?

In addition to the criteria in 34 CFR 385.31(c), the Secretary uses the following additional selection criteria to evaluate an application:

(a) *Relevance to State-Federal rehabilitation service program.* (1) The Secretary reviews each application for information that shows that the proposed project appropriately relates to the mission of the State-Federal rehabilitation service program.

(2) The Secretary looks for information that shows that the project can be expected either—

(i) To increase the supply of trained personnel available to public and private agencies involved in the rehabilitation of individuals with disabilities; or

(ii) To maintain and improve the skills and quality of rehabilitation workers.

(b) *Nature and scope of curriculum.* (1) The Secretary reviews each application for information that demonstrates the adequacy and scope of the proposed curriculum.

(2) The Secretary looks for information that shows that—

(i) The scope and nature of the training content can be expected to enable the achievement of the established project objectives of the training project;

(ii) The curriculum and teaching methods provide for an integration of theory and practice relevant to the educational objectives of the program;

(iii) There is evidence of educationally focused practicum or other field experiences in settings that assure student involvement in the provision of vocational rehabilitation or independent living rehabilitation services to individuals with disabilities, especially individuals with severe disabilities; and

(iv) The didactic coursework includes student exposure to vocational rehabilitation or independent living rehabilitation processes, concepts, programs, and services.

(Authority: 29 U.S.C. 711(c) and 774)

PART 388—STATE VOCATIONAL REHABILITATION UNIT IN-SERVICE TRAINING

42. The authority citation for Part 388 continues to read as follows:

Authority: 29 U.S.C. 711(c) and 774, unless otherwise noted.

43. Section 388.20 is revised to read as follows:

§ 388.20 What additional selection criterion is used under this program?

In addition to the selection criteria in 34 CFR 385.31(c), the Secretary uses the following additional selection criteria to evaluate an application:

(a) *Evidence of need.* (1) The Secretary reviews each application for information that shows that the need for the in-service training has been adequately justified.

(2) The Secretary looks for information that shows—

(i) How the proposed project relates to the mission of the State-Federal rehabilitation service program and can be expected to improve the competence of all State vocational rehabilitation personnel in providing vocational rehabilitation services to individuals with disabilities that will result in employment outcomes or otherwise contribute to more effective management of the State unit program;

(ii) That the State unit in-service training plan responds to needs identified in their training needs assessment and the proposed training relates to the unit's State plan, particularly the requirements in section 101(a)(7) of the Rehabilitation Act for each designated State unit to develop a comprehensive system of personnel development;

(iii) The need for in-service training methods and materials that will improve the effectiveness of services to individuals with disabilities assisted under the Rehabilitation Act and ensure employment outcomes; and

(iv) The State has conducted a needs assessment of the in-service training needs for all of the State unit employees.

(b) [Reserved.]

(Authority: 29 U.S.C. 711(c), 770, and 771a)

PART 389—REHABILITATION CONTINUING EDUCATION PROGRAMS

44. The authority citation for Part 389 continues to read as follows:

Authority: 29 U.S.C. 711(c) and 774, unless otherwise noted.

45. Section 389.30 is revised to read as follows:

§ 389.30 What additional selection criterion is used under this program?

In addition to the criteria in 34 CFR 385.31(c), the Secretary uses the following additional selection criterion to evaluate an application:

(a) *Relevance to State-Federal rehabilitation service program.*

(1) The Secretary reviews each application for information that shows that the proposed project appropriately relates to the mission of the State-Federal rehabilitation service programs.

(2) The Secretary reviews each application for information that shows that the proposed project includes an assessment of the potential of existing programs within the geographical area (including State vocational rehabilitation unit in-service training) to meet the needs for which support is sought.

(3) The Secretary looks for information that shows that the proposed project can be expected to improve the competence of professional and other personnel in the rehabilitation agencies serving individuals with severe disabilities.

(6) [Reserved.]

(Authority: 29 U.S.C. 711(c))

Thursday

PART 390—REHABILITATION SHORT-TERM TRAINING

46. The authority citation for Part 390 continues to read as follows:

Authority: 29 U.S.C. 711(c) and 774, unless otherwise noted.

47. Section 390.30 is revised to read as follows:

§ 390.30 What additional selection criterion is used under this program?

In addition to the criteria in 34 CFR 385.31(c), the Secretary uses the following additional selection criterion to evaluate an application:

(a) *Relevance to State-Federal rehabilitation service program.* (1) The Secretary reviews each application for information that shows that the proposed project appropriately relates to the mission of the State-Federal rehabilitation service programs.

(2) The Secretary looks for information that shows that the proposed project can be expected to improve the skills and competence of—

(i) Personnel engaged in the administration or delivery of rehabilitation services; and

(ii) Others with an interest in the delivery of rehabilitation services.

(b) [Reserved.]

(Authority: 29 U.S.C. 711(c) and 774)

PART 396—TRAINING OF INTERPRETERS FOR INDIVIDUALS WHO ARE DEAF AND INDIVIDUALS WHO ARE DEAF-BLIND

48. The authority citation for Part 396 continues to read as follows:

Authority: 29 U.S.C. 771a(f), unless otherwise noted.

49. Section 396.30 is revised to read as follows:

§ 396.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates applications under the procedures in 34 CFR Part 75.

(b) The Secretary evaluates each application using selection criteria in § 396.31.

(c) In addition to the selection criteria described in paragraph (b) of this section, the Secretary evaluates each application using—

(1) Selection criteria in 34 CFR 75.210;

(2) Selection criteria established under 34 CFR 75.209; or

(3) A combination of selection criteria established under 34 CFR 75.209 and selection criteria in 34 CFR 75.210.

(Authority: 29 U.S.C. 771a(f))

50. Section 396.31 is revised to read as follows:

§ 396.31 What additional selection criteria are used under this program?

In addition to the criteria in 34 CFR 396.30(c), the Secretary uses the following additional selection criterion to evaluate an application:

(a) *Demonstrated relationships with service providers and consumers.* The Secretary reviews each application to determine the extent to which—

(1) The proposed interpreter training project was developed in consultation with service providers;

(2) The training is appropriate to the needs of both individuals who are deaf and individuals who are deaf-blind and to the needs of public and private agencies that provide services to either individuals who are deaf or individuals who are deaf-blind in the geographical area to be served by the training project;

(3) There is a working relationship between the interpreter training project and service providers; and

(4) There are opportunities for individuals who are deaf and individuals who are deaf-blind to be involved in the training project.

(Authority: 29 U.S.C. 771a(f))

§ 396.32 [Amended]

51. Section 396.32 is amended by adding after the number "396.31" the cross-reference "and 34 CFR 75.210".

PART 610—[REMOVED]

52. Part 610 is removed.

PART 612—[REMOVED]

53. Part 612 is removed.

PART 630—[REMOVED]

54. Part 630 is removed, effective October 1, 1997.

[FR Doc. 97–5242 Filed 3–5–97; 8:45 am]

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Federal Register

Thursday
March 6, 1997

Part IV

The President

Notice of March 5, 1997—Continuation of Iran Emergency

Federal Register
Vol. 62, No. 44
Thursday, March 6, 1997

Presidential Documents

Title 3—

The President

Notice of March 5, 1997

Continuation of Iran Emergency

On March 15, 1995, by Executive Order 12957, I declared a national emergency with respect to Iran pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the threat to the national security, foreign policy, and economy of the United States constituted by the actions and policies of the Government of Iran, including its support for international terrorism, efforts to undermine the Middle East peace process, and acquisition of weapons of mass destruction and the means to deliver them. On May 6, 1995, I issued Executive Order 12959 imposing more comprehensive sanctions to further respond to this threat.

Because the actions and policies of the Government of Iran continue to threaten the national security, foreign policy, and economy of the United States, the national emergency declared on March 15, 1995, must continue in effect beyond March 15, 1997. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Iran. Because the emergency declared by Executive Order 12957 constitutes an emergency separate from that declared on November 14, 1979, by Executive Order 12170, this renewal is distinct from the emergency renewal of October 1996. This notice shall be published in the **Federal Register** and transmitted to the Congress.

William J. Clinton

THE WHITE HOUSE,
March 5, 1997.

[FR Doc. 97–5817
Filed 3–5–97; 11:46 am]
Billing code 3195–01–P

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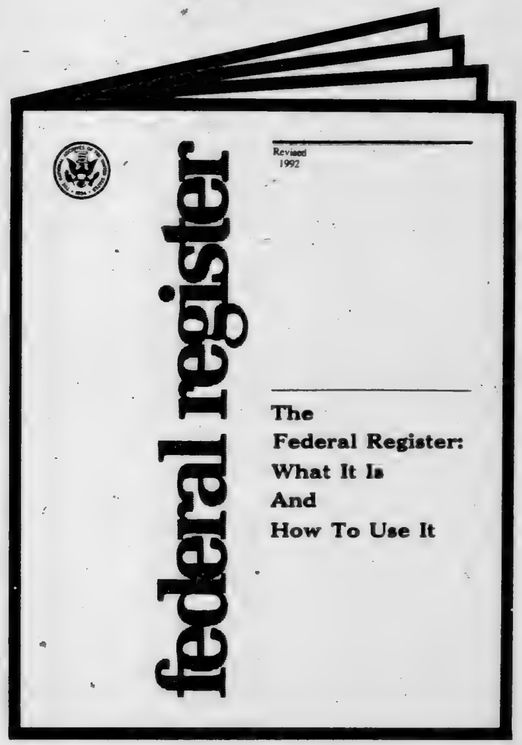

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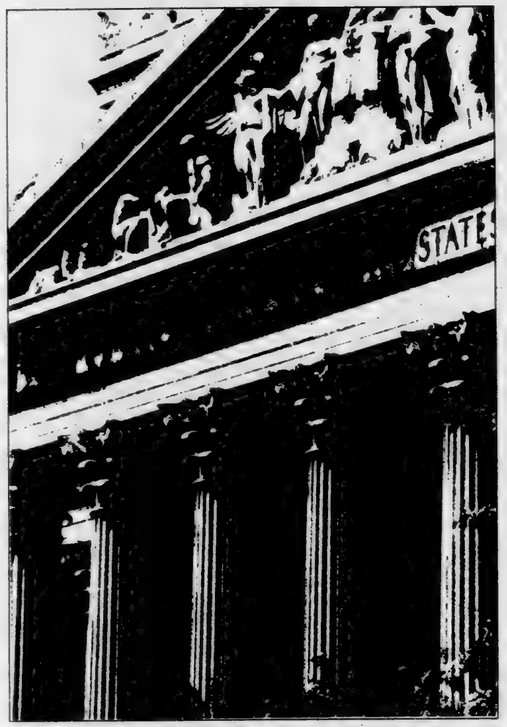

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Reader Aids
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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Rules and Regulations

Federal Register
Vol. 62, No. 45
Friday, March 7, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 20

Export Sales Reporting for Sunflowerseed Oil

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule adds sunflowerseed oil to the list of commodities subject to the export sales reporting requirements of 7 CFR Part 20. Exporters of sunflowerseed oil will be required to report their sales for export each week. Summary information collected will be published in compilation form providing more complete coverage of the oilseed export industry and additional high quality up-to-date information required in making export projections.

EFFECTIVE DATE: April 7, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas B. McDonald, Jr., Chief, Export Sales Reporting Branch, Trade and Economic Analysis Division, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, DC 20250–1025, (202) 720–3273, FAX (202) 690–3275.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule is issued in conformance with Executive Order 12866. It has been determined that it is not a "significant regulatory action" rule because it will not:

(1) Have an annual effect on the economy of $100 million or more;

(2) Adversely effect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(3) Create any serious inconsistencies or otherwise interfere with any action taken or planned by another agency;

(4) Alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; or

(5) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order No. 12866.

Regulatory Flexibility Act

It has been determined that this rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Public Law 96–534 (5 U.S.C. 601 *et seq.*). The time and expense of complying with this final rule is negligible. In addition, data reported under this regulation are maintained as part of the normal course of an export contracting business. A copy of this rule has been sent to the Chief Counsel, Office of Advocacy, U.S. Small Business Administration.

Executive Order 12372

This rule is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 46 FR 29115 (June 24, 1983).

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. This rule would have pre-emptive effect with respect to any state and local laws, regulations, or policies which conflict with such provisions or otherwise impeded their full implementation. This rule would not have retroactive effect. This rule does not require administrative proceedings before parties may file suit in court.

Paperwork Reduction Act

This rule involves the collection of information. FAS uses Forms FAS–97, FAS–98, FAS–99, and FAS–100 for this collection of information. OMB has assigned control number 0551–0007 to these forms and has approved the current information collection activity through March 31, 1998.

Background

Section 602 of the Agricultural Trade Act of 1978, as amended, requires the reporting of information pertaining to the export of certain specified agricultural commodities and other agricultural commodities that may be designated by the Secretary of Agriculture. These reporting requirements are implemented by the Foreign Agricultural Service. Individual reports collected under the export sales reporting program are confidential and are only to be released in compilation form each week following the week of reporting. Reporting under 7 CFR part 20 is mandatory. Any person who knowingly fails to make a report shall be fined not more than $25,000 or imprisoned for not more that 1 year, or both. On July 23, 1996, the Department published a proposed rule that would have required exporters of sunflowerseeds and sunflowerseed oil to report information pursuant to 7 CFR part 20.

Comments were received from four companies involved in the export of sunflowerseed and one trade association. All of the commentors opposed the reporting of sunflowerseed used for confectionary purposes. Their opposition was based on the fact that confectionary sunflowerseeds are of a special quality. Also, contracts in the confectionary sunflowerseed industry are typically for small amounts, often one container (18.144 metric tons). Further, comments suggested that the decline in export activity for the oil-type sunflowerseed indicates that there is not a current need for export reporting for this item.

The trade association and one exporting firm suggested that only exports of sunflowerseed oil should be included in the reporting requirement. The justification for this request was to insure that adequate stocks of sunflowerseed oil are available to cover export sales. In previous years, sunflowerseed oil export sales were publicly announced via the Sunflower Oil Assistance Program (SOAP). However, that program has not been implemented during the last two years, and some other source of information was desirable.

The Department agrees with these suggestions and that the addition of sunflowerseed oil under the mandatory reporting program will provide more

complete coverage of this export industry and provide additional high-quality up-to-date information required in making export projections. These projections are used by private industry as well as the government in making economic decisions concerning the orderly flow of U.S. agricultural commodities in the domestic and export markets. On the other hand, the relatively small volume of exports of confectionary sunflowerseeds and sunflowerseeds for crushing does not justify the burden on the exporters reporting their export sales and related information.

Lists of Subjects in 7 CFR Part 20

Agricultural commodities, Exports, Reporting.

Final Rule

Accordingly, 7 CFR part 20 is amended as follows:

1. The authority citation for part 20 continues to read as follows:

Authority: 7 U.S.C. 5712.

2. Appendix 1 to 7 CFR part 20 is amended by adding the following entry after the entry for "Linseed oil, including raw, boilded" under the indicated column headings:

APPENDIX 1.—COMMODITIES SUBJECT TO REPORTS, UNITS OF MEASURE TO BE USED IN REPORTING, AND BEGINNING AND ENDING DATES OF MARKETING YEARS

Commodity to be reported	Unit of measure to be used in reporting	Beginning of marketing year	End of marketing year
. . . . .	.	.	.
Sunflowerseed Oil-including: crude (including degummed), once refined, sunflowerseed salad oil (including refined and further processed by bleaching, deodorizing or winterizing), hydrogenated.	.....do	Oct. 1	Sept. 30.
. . . . .	.	.	.

Signed at Washington, D.C. February 24, 1997.

August Schumacher, Jr.

Administrator, Foreign Agricultural Service.

[FR Doc. 97–5095 Filed 3–6–97; 8:45 am]

BILLING CODE 3410–10–M

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 96–102–1]

Asian Longhorned Beetle; Quarantine Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are quarantining a small area in the boroughs of Brooklyn and Queens, NY, and a small area in the vicinity of Amityville, NY, because of infestation of the Asian longhorned beetle and restricting the interstate movement of regulated articles from these quarantined areas. These actions are necessary on an emergency basis to prevent the artificial spread of this plant pest from infested areas in the State of New York to noninfested areas of the United States.

DATES: Interim rule effective February 28, 1997. Consideration will be given only to comments received on or before May 6, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 96–102–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 96–102–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald P. Milberg, Operations Officer, Program Support, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236, (301) 734–5255.

SUPPLEMENTARY INFORMATION:

Background

We are amending the "Domestic Quarantine Notices" in 7 CFR part 301 by adding a new subpart 301.51, "Asian Longhorned Beetle" (referred to below as "the regulations"). These regulations quarantine a small area in the Greenpoint section of Brooklyn, NY, and a small area in the vicinity of Amityville, NY, because of Asian longhorned beetle and restrict the interstate movement of regulated articles from the quarantined areas.

The Asian longhorned beetle (ALB) (*Anoplophora glabripennis*), native to China, Japan, Korea, and the Isle of Hainan, is a destructive pest of hardwood trees. It is known to attack healthy trees of maple (including Norway, sugar, silver, red, and others), horse chestnut, poplar, willow, elm, locust, mulberry, chinaberry, apple, cherry, pear, and citrus. It may also attack other species of hardwood trees. ALB bores into the heartwood of host trees, eventually killing the host trees. Immature beetles bore into tree trunks and branches, causing heavy sap flow from wounds and sawdust accumulation at tree bases. They feed on and over-winter in the interior of the trees. Adult beetles emerge in the spring and summer months from large, round holes approximately 3/8-inch in diameter (about the size of a dime) that they bore through the trunks of trees. After emerging, adult beetles fly for 2 to 3 days, when they feed and mate. Adult females then lay eggs in grooves that they make on the branches of trees. A new generation of ALB is produced each year.

First detected in the United States in August 1996, ALB has been found in hardwood trees in an area in the boroughs of Brooklyn and Queens, NY, and in the vicinity of Amityville, NY. In these locations, the beetle appears to prefer maple and horse chestnut trees. However, nursery stock, logs, green lumber, firewood, stumps, roots, branches, and debris of a half an inch or more in diameter are also subject to infestation. Therefore, if this pest moves into the hardwood forests of the northeastern United States, severe economic impact to the nursery and forest products industries in that part of the United States could result.

Officials of the U.S. Department of Agriculture (USDA) and officials of State, county, and city agencies in New York State have begun an intensive survey and eradication program in the infested areas. The State of New York has quarantined the infested areas and is restricting the intrastate movement of certain articles from the quarantined areas to prevent the artificial spread of ALB within the State. However, Federal regulations are necessary to restrict the interstate movement of certain articles from the quarantined areas to prevent the artificial spread of ALB to other States and Canada. This interim rule establishes the Federal quarantine and regulations, which are described below.

Definitions

Section 301.51–1 defines the following terms: "Administrator," "Animal and Plant Health Inspection Service (APHIS)," "Asian longhorned beetle," "Certificate," "Compliance agreement," "Infestation," "Inspector," "Interstate," "Limited permit," "Moved (movement, move)," "Person," "Quarantined area," "Regulated article," and "State."

Regulated Articles

Certain articles present a significant risk of spreading ALB if the articles are moved from quarantined areas without restriction. We call these articles "regulated articles." Regulated articles may not be moved interstate from quarantined areas except in accordance with the conditions specified in §§ 301.51–4 through 301.51–9 of the regulations. Section 301.51–2 designates as regulated articles the following articles: firewood (all hardwood species), and green lumber and other material living, dead, cut, or fallen, inclusive of nursery stock, logs, stumps, roots, branches, and debris of a half an inch or more in diameter of the following genera: Acer (maple), Aesculus (horse chestnut), Malus (apple), Melia (chinaberry), Morus (mulberry), Populus (poplar), Prunus (cherry), Pyrus (pear), Robinia (locust), Salix (willow), Ulmus (elm), and Citrus. We are requiring that all hardwood species of firewood be regulated because as hardwood is dried and cut into firewood, it is difficult to distinguish between species of hardwood. In addition, this section allows designation of any other article, product, or means of conveyance as a regulated article if an inspector determines that it presents a risk of spreading ALB and if an inspector notifies the person in possession of the article, product, or means of conveyance that it is subject to the restrictions in the regulations. This last provision for "any other article, product, or means of conveyance" allows an inspector who discovers evidence of ALB in an article, product, or means of conveyance to take immediate action after informing the person in possession of it that it is being regulated.

Quarantined Areas

Section 301.51–3(a) provides that the Administrator will quarantine each State or portion of a State in which ALB has been found by an inspector, in which the Administrator has reason to believe that ALB is present, or which the Administrator deems necessary to regulate because of its inseparability for quarantine enforcement purposes from localities where ALB has been found. Less than an entire State will be designated as a quarantined area only under certain conditions. Such a designation may be made if the Administrator determines that: (1) The State has adopted and is enforcing restrictions on the intrastate movement of regulated articles listed in § 301.51–2 that are equivalent to the interstate movement restrictions imposed by the regulations in §§ 301.51–1 through 301.51–9; and (2) the designation of less than an entire State as a quarantined area will be adequate to prevent the artificial spread of the ALB.

Section 301.51–3(b) provides that the Administrator or an inspector may temporarily designate any nonquarantined area as a quarantined area, without publication in the **Federal Register**, if there is a basis for listing the area as a quarantined area under § 301.51–3(a), and if the owner or person in possession of the nonquarantined area, or, in the case of publicly owned land, the person responsible for the management of the nonquarantined area, is given written notice of the designation. This is necessary to prevent the spread of ALB before restrictions can be published in the **Federal Register** concerning the interstate movement of regulated articles from the designated area.

In accordance with these criteria, we are designating two areas in the State of New York, one in the boroughs of Brooklyn and Queens in the city of New York and one in the vicinity of Amityville, NY, as quarantined areas. See § 301.51–3(c) of the rule portion of this document for specific descriptions of the quarantined areas.

Conditions governing the interstate movement of regulated articles from quarantined areas.

Section 301.51–4(a)(1) requires regulated articles moved interstate from a quarantined area into or through an area that is not quarantined to be accompanied by a certificate or limited permit issued and attached as prescribed by §§ 301.51–5 and 301.51–8.

Section 301.51–4(a)(2) allows a regulated article to be moved interstate without a certificate or limited permit if the regulated article is moved by the United States Department of Agriculture for experimental or scientific purposes or if the regulated article originates outside the quarantined area and is moved interstate through a quarantined area under the following conditions: (1) the points of origin and destination are indicated on a waybill accompanying the regulated article; (2) the regulated article is moved through the quarantined area without stopping, or has been stored, packed, or handled at locations approved by an inspector; and (3) the article has not been combined or commingled with other articles so as to lose its individual identity.

Section 301.51–4(b) references the authority of an inspector who has probable cause to believe a person or means of conveyance is moving regulated articles in interstate commerce to stop the person or means of conveyance to determine whether regulated articles are present and to inspect the regulated articles. Further, § 301.51–4(b) provides that articles found to be infested by an inspector, and articles not in compliance with the regulations, may be seized, quarantined, treated, subjected to other remedial measures, destroyed, or otherwise disposed of.

Issuance and cancellation of certificates and limited permits.

Under Federal domestic plant quarantine programs, there is a difference between the use of certificates and limited permits. Certificates are issued for regulated articles upon a finding by an inspector that, because of certain conditions (e.g., the article is free of ALB), there is an absence of a pest or disease risk prior to movement. Regulated articles accompanied by a certificate may be moved interstate without further restrictions being imposed. Limited permits are issued for regulated articles when an inspector has determined that, because of possible pest or disease risk, such articles may be safely moved interstate only subject to further restrictions, such as movement to specified areas and movement for specified purposes. Section 301.51–5 explains the conditions for issuing certificates and limited permits and for

canceling certificates and limited permits.

Section 301.51–5(a) provides that an inspector or a person operating under a compliance agreement (discussed below) will issue a certificate for the interstate movement of a regulated article if he or she determines that the regulated article: (1) Is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article; (2) is to be moved in compliance with any additional emergency conditions the Administrator may impose under 7 U.S.C. 150dd to prevent the artificial spread of ALB; and (3) meets one of the following conditions: The article is apparently free of ALB in any stage of development, or the article has been grown, produced, manufactured, stored, or handled in a manner that would prevent infestation or destroy all life stages of ALB.

Section 301.51–5(b) provides for the issuance of a limited permit (in lieu of a certificate), by an inspector or person operating under a compliance agreement, for movement of a regulated article if he or she determines that the regulated article: (1) Is to be moved interstate to a specified destination for specific processing, handling, or utilization (the destination and other conditions to be listed in the limited permit and/or compliance agreement), and this interstate movement will not result in the artificial spread of ALB because ALB will be destroyed or the risk mitigated by the specific processing, handling, or utilization; (2) is to be moved interstate in compliance with any additional emergency conditions the Administrator may impose under 7 U.S.C. 150dd to prevent the artificial spread of ALB; and (3) is eligible for interstate movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

Section 301.51–5(c) provides that an inspector will issue blank certificates and limited permits to a person operating under a compliance agreement or authorize reproduction of the certificates or limited permits on shipping containers, or both, as requested by the person operating under the compliance agreement. These certificates or limited permits may then be completed and used, as needed, for the interstate movement of regulated articles that have met all of the requirements of § 301.51–5(a) or § 301.51–5(b), respectively.

Section 301.51–5(d) explains that a certificate or limited permit may be cancelled by an inspector, orally or in writing, whenever the inspector determines that the holder of the certificate or limited permit has not complied with the regulations. If the cancellation is oral, the cancellation will become effective upon notification by the inspector. The cancellation and the reasons for the cancellation will then be confirmed in writing as soon as circumstances allow after oral notification of the cancellation. Any person whose certificate or limited permit has been canceled may appeal the decision, in writing, within 10 days after receiving the written cancellation notice. The appeal must state all of the facts and reasons that the person wants the Administrator to consider in deciding the appeal. A hearing may be held to resolve a conflict as to any material fact. Rules of practice for the hearing will be adopted by the Administrator. As soon as practicable, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision.

Compliance Agreements and Cancellation

Section 301.51–6 provides for the use and cancellation of compliance agreements. Under § 301.51–6(a), compliance agreements may be entered into by any person engaged in the growing, handling, or movement of regulated articles interstate if such persons review with an inspector each stipulation of the compliance agreement. Any person who enters into a compliance agreement with APHIS must agree to comply with the regulations.

Section 301.51–6(b) explains that a compliance agreement may be cancelled by an inspector, orally or in writing, whenever the inspector determines that the person who entered into the compliance agreement has not complied with the regulations. If the cancellation is oral, the cancellation will become effective upon oral notification by the inspector. The cancellation and the reasons for the cancellation will then be confirmed in writing as soon as circumstances allow after oral notification of the cancellation. Any person whose compliance agreement has been canceled may appeal the decision, in writing, within 10 days after receiving the written cancellation notice. The appeal must state all of the facts and reasons that the person wants the Administrator to consider in deciding the appeal. A hearing may be held to resolve a conflict as to any material fact. Rules of practice for the hearing will be adopted by the Administrator. As soon as practicable, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision.

Assembly and Inspection of Regulated Articles

Section 301.51–7(a) provides that any person who requires certification or other services from an inspector must request the services at least 48 hours before they are needed. Section 301.51–7(b) provides that regulated articles must be assembled at the place and in the manner an inspector designates as necessary to comply with the regulations. Attachment and disposition of certificates and limited permits

Section 301.51–8(a) requires that regulated article intended for interstate movement be plainly marked with the name and address of the consignor and the name and address of the consignee and that the certificate or limited permit issued for the interstate movement of regulated articles must be attached to either: (1) the regulated article, or (2) the container carrying the regulated article, or (3) the accompanying waybill during interstate movement. This section also provides that the certificate or limited permit may be attached to the consignee's copy of the waybill only if the certificate and limited permit, and the waybill, contain a sufficient description of the regulated article to identify the regulated article. This provision is necessary for enforcement purposes.

Section 301.89–9(b) requires the carrier of the article to furnish the certificate or limited permit to the consignee at the shipment's destination.

Costs and Charges

Section 301.51–9 explains the APHIS policy that inspector's services are provided without cost during normal business hours to persons requiring those services to comply with the regulations. The user will be responsible for all costs and charges arising from inspection and other services provided outside of normal business hours.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the spread of ALB into noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis, which is set out below, regarding the impact of this interim rule on small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this interim rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this interim rule.

The Plant Quarantine Act (7 U.S.C. 151–165 and 167) and the Federal Plant Pest Act (7 U.S.C. 105aa–150jj) authorize the Secretary of Agriculture to take measures necessary to prevent the spread of plant pests new to, or not widely prevalent or distributed within and throughout, the United States.

This interim rule quarantines two areas in the State of New York because of ALB, a pest of hardwood trees from Asia that was first detected in the United States in 1996, and restricts the interstate movement of regulated articles from these quarantined areas. The quarantined areas are a small section of New York City, NY, where the pest was first detected in the United States in August 1996, and a small area in the vicinity of Amityville, NY. These regulations are necessary on an emergency basis to prevent the artificial spread of this plant pest from infested areas in the State of New York to noninfested areas of the United States.

Within the areas quarantined for ALB, it is estimated that there are fewer than 100 small businesses, including nurseries, arborists, tree removal services, and firewood dealers, that could be affected by this interim rule. They could be affected in two ways. First, if a business wishes to move regulated articles from a quarantined area to an area outside of New York State, that business must either: (1) enter into a compliance agreement with APHIS for the inspection and certification of regulated articles for interstate movement from a quarantined area; or (2) present its regulated articles for inspection by an APHIS inspector and obtain a certificate or a limited permit, issued by the APHIS inspector, for the interstate movement of regulated articles. In either case, the inspections of regulated articles may be inconvenient, but these inspections do not result in any additional direct costs for businesses because APHIS provides the services of the inspector without cost, as long as those services are administered during normal working hours. There is also no cost for the compliance agreement, certificate, or limited permit for interstate movement of regulated articles.

However, some regulated articles, because of ALB infestation, may not qualify for interstate movement under a certificate or limited permit. In this case, a business wishing to move such regulated articles interstate from the quarantined area would be deprived of the opportunity to benefit from the sale of the affected regulated articles in another State. However, we do not have data to estimate either the potential loss of income or the economic impact of any potential loss of income on small businesses.

If this rule is not implemented, there is potential for serious economic impact to many businesses, both large and small, in the United States. Particularly in the eastern United States, due to proximity to the areas where ALB has been detected, businesses involved in the manufacture of non-nursery forest products have the potential for serious economic losses if ALB is allowed to spread. In 1986, the forest products industry in the northeast consisted of 307,900 employees generating $6.6 billion. In 1992, in seven northeastern States, hardwood accounted for 52 percent of the net volume of growing stock on timberland. The forest industry owned 20 percent of that hardwood timber. Therefore, if ALB were to spread through the 279 million acres of hardwood forests in the eastern United States, the forest products industry in the eastern United States would have the potential for serious economic losses.

Nurseries and greenhouses that rely on healthy hardwood trees also have the potential for economic losses if ALB is allowed to spread. In 1993, sales of plants (trees and shrubs) by nurseries and greenhouses in the United States totaled an estimated $3.1 billion, of which $212 million was derived from sales in seven northeastern states. During the fiscal year ending September 30, 1993, 103.9 million landscape trees were sold in the United States, including 5.7 million in seven northeastern states. Approximately one-half of all landscape trees sold in the United States are hardwood trees.

In addition, the tourism industry in New England has the potential for economic losses if ALB reaches the hardwood forests of the northeastern United States. New England's tourism industry is tied heavily to autumn's leaf color changes, and the maple tree, a preferred host for ALB, is noted for producing some of the most vivid colors. Between mid-September and late October, the hardwood forests of New England draw 1 million tourists and generate $1 billion in revenue. It is estimated that up to one fourth of the tourism revenue generated annually in New England is due to the fall's foliage displays.

Lastly, the maple syrup industry has the potential for economic losses if ALB reaches the forests of New England because the maple syrup industry relies on healthy maple trees, especially the sugar maple, for maple syrup production. In four New England States alone (Maine, Massachusetts, New Hampshire, and Vermont), maple syrup producers tapped 604,000 gallons of maple syrup in 1991, with a value of $17.5 million.

The alternative to this interim rule was to take no action. We rejected this alternative because failure to quarantine two portions of New York State and restrict interstate movement of regulated articles from those quarantined areas could result in economic losses for the forest products, nursery, tourist, and maple syrup industries in the eastern United States.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have

been prepared for this rule. The assessment provides a basis for the conclusion that a Federal quarantine for ALB will not present a risk of introducing or disseminating plant pests and would not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**, by calling the Plant Protection and Quarantine Fax Service at 301–734–3560, or by visiting the following Internet site: http://www.aphis.usda.gov/ppd/ead/ppqdocs.html.

Paperwork Reduction Act

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this interim rule have been submitted for emergency approval to the Office of Management and Budget (OMB). OMB has assigned control number 0579–0122 to the information collection and recordkeeping requirements. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 96–102–1. Please send a copy of your comments to: (1) Docket No. 96–102–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this interim rule.

The paperwork associated with the Asian longhorned beetle program will include the completion of compliance agreements, certificates, and limited permits. There will also be requests for inspections. We are soliciting comments from the public (as well as affected agencies) concerning our information collection and recordkeeping requirements. We need this outside input to help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average .42 hours per response.

Respondents: Growers, handlers, shippers, State plant protection authorities.

Estimated number of respondents: 155.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 132 hours.

Copies of this information collection can be obtained from: Clearance Officer, OIRM, USDA, Room 404–W, 14th Street and Independence Ave., SW, Washington, DC 20250.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 is revised to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. Part 301 is amended by adding a new "Subpart—Asian Longhorned Beetle", §§ 301.51–1 through 301.51–9, to read as follows:

Subpart—Asian Longhorned Beetle

Sec.

301.51–1 Definitions.
301.51–2 Regulated articles.
301.51–3 Quarantined areas.
301.51–4 Conditions governing the interstate movement of regulated articles from quarantined areas.
301.51–5 Issuance and cancellation of certificates and limited permits.
301.51–6 Compliance agreements and cancellation.
301.51–7 Assembly and inspection of regulated articles.
301.51–8 Attachment and disposition of certificates and limited permits.
301.51–9 Costs and charges.

Subpart—Asian Longhorned Beetle

§ 301.51–1 Definitions.

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any individual authorized to act for the Administrator.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

Asian longhorned beetle. The insect known as Asian longhorned beetle (*Anoplophora glabripennis*) in any stage of development.

Certificate. A document which is issued for a regulated article by an inspector or by a person operating under a compliance agreement, and which represents that such article is eligible for interstate movement in accordance with § 301.51–5(a).

Compliance agreement. A written agreement between APHIS and a person engaged in growing, handling, or moving regulated articles that are moved interstate, in which the person agrees to comply with the provisions of this subpart and any conditions imposed under this subpart.

Infestation. The presence of the Asian longhorned beetle in any life stage.

Inspector. Any employee of the Animal and Plant Health Inspection Service, or other individual authorized by the Administrator to enforce the provisions of this subpart.

Interstate. From any State into or through any other State.

Limited permit. A document in which an inspector affirms that the regulated article not eligible for a certificate is eligible for interstate movement only to a specified destination and in accordance with conditions specified on the permit.

Moved (movement, move). Shipped, offered for shipment, received for transportation, transported, carried, or allowed to be moved, shipped, transported, or carried.

Person. Any association, company, corporation, firm, individual, joint stock company, partnership, society, or any other legal entity.

Quarantined area. Any State, or any portion of a State, listed in § 301.51–3(c) of this subpart or otherwise designated as a quarantined area in accordance with § 301.51–3(b) of this subpart.

Regulated article. Any article listed in § 301.51–2(a) of this subpart or otherwise designated as a regulated article in accordance with § 301.51–2(b) of this subpart.

State. The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any State, territory, or possession of the United States.

§ 301.51–2 Regulated articles.

The following are regulated articles:

(a) Firewood (all hardwood species), and green lumber and other material living, dead, cut, or fallen, inclusive of nursery stock, logs, stumps, roots, branches, and debris of a half an inch or more in diameter of the following genera: Acer (maple), Aesculus (horse chestnut), Malus (apple), Melia (chinaberry), Morus (mulberry), Populus (poplar), Prunus (cherry), Pyrus (pear), Robinia (locust), Salix (willow), Ulmus (elm), and Citrus.

(b) Any other article, product, or means of conveyance not covered by paragraph (a) of this section if an inspector determines that it presents a risk of spreading Asian longhorned beetle and notifies the person in possession of the article, product, or means of conveyance that it is subject to the restrictions of this subpart.

§ 301.51–3 Quarantined areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Administrator will list as a quarantined area in paragraph (c) of this section, each State or each portion of a State in which the Asian longhorned beetle has been found by an inspector, in which the Administrator has reason to believe that the Asian longhorned beetle is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities where Asian longhorned beetle has been found. Less than an entire State will be designated as a quarantined area only if the Administrator determines that:

(1) The State has adopted and is enforcing restrictions on the intrastate movement of regulated articles that are equivalent to those imposed by this subpart on the interstate movement of regulated articles; and

(2) The designation of less than an entire State as a quarantined area will be adequate to prevent the artificial interstate spread of the Asian longhorned beetle.

(b) The Administrator or an inspector may temporarily designate any nonquarantined area as a quarantined area in accordance with the criteria specified in paragraph (a) of this section. The Administrator will give written notice of this designation to the owner or person in possession of the nonquarantined area, or, in the case of publicly owned land, to the person responsible for the management of the nonquarantined area. Thereafter, the interstate movement of any regulated article from an area temporarily designated as a quarantined area is subject to this subpart. As soon as practicable, this area either will be added to the list of designated quarantined areas in paragraph (c) of this section, or the Administrator will terminate the designation. The owner or person in possession of, or, in the case of publicly owned land, the person responsible for the management of, an area for which the designation is terminated will be given written notice of the termination as soon as practicable.

(c) The following areas are designated as quarantined areas:

New York

New York City. That area in the boroughs of Brooklyn and Queens in the city of New York that is bounded as follows: Beginning at the point where the Manhattan Bridge intersects the shoreline of the East River; then south from the Manhattan Bridge along Flatbush Avenue to Lafayette Avenue; then east along Lafayette Avenue to Himrod Street continuing northeast along Himrod Street to Myrtle Avenue; then east along Myrtle Avenue to Fresh Pond Road; then north along Fresh Pond Road to Flushing Avenue; then northeast along Flushing Avenue to Grand Avenue; then along Grand Avenue to 69th Street; then north along 69th Street to Queens Boulevard; then west along Queens Boulevard to the Queensbrough Bridge and the East River; then south and west along the shoreline of the East River to the point of beginning.

Nassau and Suffolk Counties. That area in the villages of Amityville, West Amityville, North Amityville, Copiague, Massapequa, Massapequa Park, and East Massapequa; in the towns of Oyster Bay and Babylon; and in the counties of Nassau and Suffolk that is bounded as follows: Beginning at a point where Riviera Drive West intersects with the shoreline of the Great South Bay; then north along Riveria Drive West to Strong Avenue; then north along Strong Avenue to Marconi Boulevard; then west along Marconi Boulevard to Great Neck Road; then north and northwest along Great Neck Road to Southern State Parkway; then west along Southern State Parkway to Broadway; then south along Broadway to Hicksville Road; then south along Hicksville Road to Division Avenue; then south along Division Avenue to the Great South Bay; then east along the shoreline of the Great South Bay to the point of beginning.

§ 301.51–4 Conditions governing the interstate movement of regulated articles from quarantined areas.

(a) Any regulated article may be moved interstate from a quarantined area only if moved under the following conditions:

(1) With a certificate or limited permit issued and attached in accordance with §§ 301.51–5 and 301.51–8;

(2) Without a certificate or limited permit if:

(i) The regulated article is moved by the United States Department of Agriculture for experimental or scientific purposes; or

(ii) The regulated article originates outside the quarantined area and is moved interstate through the quarantined area under the following conditions:

(A) The points of origin and destination are indicated on a waybill accompanying the regulated article; and

(B) The regulated article is moved through the quarantined area without stopping, or has been stored, packed, or handled at locations approved by an inspector as not posing a risk of infestation by Asian longhorned beetle; and

(C) The article has not been combined or commingled with other articles so as to lose its individual identity.

(b) When an inspector has probable cause to believe a person or means of conveyance is moving a regulated article interstate, the inspector is authorized to stop the person or means of conveyance to determine whether a regulated article is present and to inspect the regulated article. Articles found to be infected by an inspector, and articles not in compliance with the regulations in this subpart, may be seized, quarantined, treated, subjected to other remedial

measures, destroyed, or otherwise disposed of.

§ 301.51–5 Issuance and cancellation of certificates and limited permits.

(a) An inspector[1] or person operating under a compliance agreement will issue a certificate for the interstate movement of a regulated article if he or she determines that the regulated article:

(1) (i) Is apparently free of Asian longhorned beetle in any stage of development, based on inspection of the regulated article; or

(ii) Has been grown, produced, manufactured, stored, or handled in such a manner that, in the judgment of the inspector, the regulated article does not present a risk of spreading Asian longhorned beetle; and

(2) Is to be moved in compliance with any additional emergency conditions that the Administrator may impose under section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd)[2] in order to prevent the artificial spread of Asian longhorned beetle; and

(3) Is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated articles.

(b) An inspector or a person operating under a compliance agreement will issue a limited permit for the interstate movement of a regulated article not eligible for a certificate if he or she determines that the regulated article:

(1) Is to be moved interstate to a specified destination for specific processing, handling, or utilization (the destination and other conditions to be listed on the limited permit), and this interstate movement will not result in the spread of Asian longhorned beetle because Asian longhorned beetle will be destroyed by the specific processing, handling, or utilization; and

(2) Is to be moved in compliance with any additional emergency conditions that the Administrator may impose under section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd) in order to prevent the spread of Asian longhorned beetle; and

(3) Is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(c) An inspector shall issue blank certificates and limited permits to a person operating under a compliance agreement in accordance with § 301.51–6 or authorize reproduction of the certificates or limited permits on shipping containers, or both, as requested by the person operating under the compliance agreement. These certificates and limited permits may then be completed and used, as needed, for the interstate movement of regulated articles that have met all of the requirements of paragraph (a) or (b), respectively, of this section.

(d) Any certificate or limited permit may be canceled orally or in writing by an inspector whenever the inspector determines that the holder of the certificate or limited permit has not complied with this subpart or any conditions imposed under this subpart. If the cancellation is oral, the cancellation will become effective immediately, and the cancellation and the reasons for the cancellation will be confirmed in writing as soon as circumstances permit. Any person whose certificate or limited permit has been cancelled may appeal the decision in writing to the Administrator within 10 days after receiving the written cancellation notice. The appeal must state all of the facts and reasons that the person wants the Administrator to consider in deciding the appeal. A hearing may be held to resolve a conflict as to any material fact. Rules of practice for the hearing will be adopted by the Administrator. As soon as practicable, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision.

§ 301.51–6 Compliance agreements and cancellation.

(a) Persons engaged in growing, handling, or moving regulated articles interstate may enter into a compliance agreement[3] if such persons review with an inspector each stipulation of the compliance agreement. Any person who enters into a compliance agreement with APHIS must agree to comply with the provisions of this subpart and any conditions imposed under this subpart.

(b) Any compliance agreement may be canceled orally or in writing by an inspector whenever the inspector determines that the person who has entered into the compliance agreement has not complied with this subpart or any conditions imposed under this subpart. If the cancellation is oral, the cancellation will become effective immediately, and the cancellation and the reasons for the cancellation will be confirmed in writing as soon as circumstances permit. Any person whose compliance agreement has been cancelled may appeal the decision in writing to the Administrator within 10 days after receiving the written cancellation notice. The appeal must state all of the facts and reasons that the person wants the Administrator to consider in deciding the appeal. A hearing may be held to resolve a conflict as to any material fact. Rules of practice for the hearing will be adopted by the Administrator. As soon as practicable, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision.

§ 301.51–7 Assembly and inspection of regulated articles.

(a) Persons requiring certification or other services must request the services from an inspector[4] at least 48 hours before the services are needed.

(b) The regulated articles must be assembled at the place and in the manner that the inspector designates as necessary to comply with this subpart.

§ 301.51–8 Attachment and disposition of certificates and limited permits.

(a) A regulated article must be plainly marked with the name and address of the consignor and the name and address of the consignee and must have the certificate or limited permit issued for the interstate movement of a regulated article securely attached at all times during interstate movement to:

(1) The outside of the container encasing the regulated article;

(2) The article itself, if it is not in a container; or

(3) The consignee's copy of the accompanying waybill; Provided, that the description of the regulated article on the certificate or limited permit, and on the waybill, are sufficient to identify the regulated article; and

(b) The carrier must furnish the certificate or limited permit authorizing interstate movement of a regulated article to the consignee at the destination of the shipment.

[1] Inspectors are assigned to local offices of APHIS, which are listed in local telephone directories. Information concerning such local offices may also be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, Maryland 20737–1236.

[2] Section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd) provides that the Secretary of Agriculture may—under certain conditions—seize, quarantine, treat, destroy, or apply other remedial measures to articles that the Administrator has reason to believe are infested by, infected by, or contain plant pests.

[3] Compliance agreements may be initiated by contacting a local office of APHIS. The addresses and telephone numbers of local offices are listed in local telephone directories and may also be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, Maryland 20737–1236.

[4] See footnote 1 to § 301.51–5.

§ 301.51–9 Costs and charges.

The services of the inspector during normal business hours will be furnished without cost to persons requiring the services. The user will be responsible for all costs and charges arising from inspection and other services provided outside of normal business hours.

Done in Washington, DC, this 28th day of February 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–5518 Filed 3–6–97; 8:45 am]

BILLING CODE 3410–34–P

Agricultural Marketing Service

7 CFR Part 925

[Docket No. FV96–925–1 FIR]

Grapes Grown in a Designated Area of Southeastern California; Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule establishing an assessment rate for the California Desert Grape Administrative Committee (Committee) under Marketing Order No. 925 for the 1997 and subsequent fiscal years. The Committee is responsible for local administration of the marketing order which regulates the handling of table grapes grown in a designated area of southeastern California. Authorization to assess grape handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Tershirra T. Yeager, Program Assistant, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone (202) 720–5127, FAX (202) 720–5698 or Rose Aguayo, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721, telephone (209) 487–5901, FAX (209) 487–5906. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090–6456, telephone (202) 720–2491, FAX (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 925 (7 CFR part 925) regulating the handling of table grapes grown in a designated area of southeastern California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the order now in effect, California table grape handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable grapes beginning January 1, 1997, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 80 producers of table grapes in the production area and approximately 20 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of table grape producers and handlers are not classified as small entities.

The table grape marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of California desert grapes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The Committee met on December 3, 1996, and unanimously recommended 1997 expenditures of $156,865 and an assessment rate of $0.01 per lug of table grapes. In comparison, last year's budgeted expenditures were $114,827. The Committee recommended not to have an assessment rate for the 1996 fiscal year because there was adequate money in the reserve to cover estimated expenses. Major expenditures recommended by the Committee for the 1997 year include $100,000 for research, $25,000 for compliance purposes, and $8,675 for the manager's salary. Budgeted expenses for these items in 1996 were $60,000 for research, $25,000 for the sheriff's patrol and $7,887 for the manager's salary.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of California table grapes. Table grape shipments for the year are estimated at 8,000,000 lugs which should provide $80,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to

cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

An interim final rule regarding this action was published January 17, 1997, issue of the **Federal Register** (62 FR 2547). That rule provided for a 30-day comment period. No comments were received.

While this rule will impose additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1997 budget and those for subsequent fiscal years will be reviewed and, as appropriate, approved by the Department.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1997 fiscal year began on January 1, 1997, and the marketing order requires that the rate of assessment for each fiscal year apply to all assessable table grapes handled during such fiscal year;

(3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) an interim final rule was published on this action and provided a 30-day comment period, no comments were received.

List of Subjects in 7 CFR Part 925

Grapes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 925 is amended as follows:

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 925 which was published at 62 FR 2547 on January 17, 1997, is adopted as a final rule without change.

Dated: March 3, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–5589 Filed 3–6–97; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 959

[Docket No. FV96–959–1 FIR]

Onions Grown in South Texas; Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule establishing an assessment rate for the South Texas Onion Committee (Committee) under Marketing Order No. 959 for the 1996–97 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of onions grown in South Texas. Authorization to assess Texas onion handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

EFFECTIVE DATE: August 1, 1996.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, Marketing Specialist, McAllen Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 East Hackberry, McAllen, TX 78501, telephone 210–682–2833; FAX 210–682–5942, or Martha Sue Clark, Program Assistant, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, telephone 202–720–9918; FAX 202–720–5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone 202–720–2491; FAX 202–720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 143 and Order No. 959, both as amended (7 CFR part 959), regulating the handling of onions grown in South Texas, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, South Texas onion handlers are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable onions beginning August 1, 1996, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. The Act provides that the District court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 48 producers of South Texas onions in the production area and approximately 36 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of South Texas onion producers and handlers may be classified as small entities.

The Texas onion marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of South Texas onions. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The Committee, in a telephone vote, unanimously recommended 1996–97 administrative expenses of $100,000 for personnel, office, and the travel portion of the compliance budget. These expenses were approved in October 1996. The assessment rate and funding for research and promotion projects, and the road guard station maintenance portion of the compliance budget were to be recommended at a later Committee meeting.

The Committee subsequently met on November 19, 1996, and unanimously recommended 1996–97 expenditures of $448,000 and an assessment rate of $0.07 per 50-pound container or equivalent of onions. In comparison, last year's budgeted expenditures were $585,250. The assessment rate of $0.07 is $0.03 lower than last year's established rate. Major expenditures recommended by the Committee for the 1996–97 fiscal period include $80,000 for personnel and administrative expenses, $120,000 for compliance, $150,000 for promotion, and $98,000 for onion breeding research. Budgeted expenses for these items in 1995–96 were $96,250, $144,000, $246,000, and $99,000, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of South Texas onions. Onion shipments for the year are estimated at 5 million 50-pound equivalents, which should provide $350,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

An interim final rule regarding this action was published in the January 7, 1997, issue of the **Federal Register** (62 FR 916). That rule provided for a 30-day comment period. No comments were received.

This action will reduce the assessment obligation imposed on handlers. While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. The Committee's 1996–97 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1996–97 fiscal period began on August 1, 1996, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable onions handled during such fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) an interim final rule was published on this action and provided for a 30-day comment period; no comments were received.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 959 is amended as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

Accordingly, the interim final rule amending 7 CFR part 959 which was published at 62 FR 916 on January 7, 1997, is adopted as a final rule without change.

Dated: March 3, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–5591 Filed 3–6–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS 1806–96]

RIN 1115–AD74

Processing of Certain H–1A Nurses Under Public Law 104–302

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the Immigration and Naturalization Service's (the Service) regulations by describing the procedures for an H–1A nurse to obtain an extension of stay based on Public Law 104–302, "[a]n Act to extend the authorized period of stay within the United States for certain nurses." This is necessary as a response to concerns that certain geographical locations in the United States continue to experience a shortage of registered nurses.

DATES: The interim rule is effective March 7, 1997. Written comments must be submitted on or before May 6, 1997.

ADDRESSES: Please submit written comments, in triplicate to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS number 1806–96 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: John W. Brown, Adjudications Officer, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington, DC 20536, telephone (202) 514–3240.

SUPPLEMENTARY INFORMATION: The H–1A nonimmigrant classification, which provided for the temporary admission of registered nurses to the United States, expired on September 1, 1995. However, on October 11, 1996, Congress enacted Public Law 104–302, "[a]n Act to extend the authorized period of stay within the United States for certain nurses," in response to concerns that certain geographic locations in the United States continue to experience a shortage of registered nurses. The legislation provides for the granting of an extension of stay until September 30, 1997, to certain aliens who: (1) entered the United States as H–1A nurses; (2) were within the United States on or after September 1, 1995, and who were within the United States on October 11, 1996; and (3) whose period of authorized stay has expired or would expire before September 30, 1997, but for the enactment of the legislation. This rule will amend the Service's regulation at 8 CFR 214.2(h)(15)(ii)(A) to include these requirements.

Public Law 104–302 does not provide for the approval of new H–1A petitions and relates solely to extensions of stay for certain aliens who are in, or have previously been accorded, nonimmigrant H–1A status as registered nurses. This rule amends the description of the H–1A classification found at 8 CFR 214.2(h)(1)(ii)(A) and removes the references to the H–1A classification at 8 CFR 214.2(h)(2)(i)(A) and at 8 CFR 214.2(h)(9)(iii)(A) in order to clarify these recently enacted statutory changes. The definition of an H–1B nonimmigrant alien found at 8 CFR 214.2(h)(1)(ii)(B) is amended to reflect that registered nurses are no longer statutorily excluded from the H–1B classification due to the expiration of the H–1A nonimmigrant classification. The rule also amends 8 CFR 214.2(h)(2)(i)(D) and 8 CFR 214.2(h)(13)(ii) to reflect changes affecting employers and travel restrictions, respectively.

Eligibility

The legislation does not make available the H–1A classification for registered nurses seeking initial entry into the United States but merely provides for the extension of stay until September 30, 1997, for those H–1A nurses who meet the above requirements. Under this legislation, the Service may not approve an H–1A petition filed on behalf of an alien who has not previously been accorded H–1A classification. Since the legislation was designed solely to extend the H–1A stay of registered nurses affected by the 1995 sunset of the H–1A classification, an alien must have been employed in H–1A classification as a registered nurse on September 1, 1995, to obtain the benefits of the legislation. An alien who was not employed as a registered nurse in H–1A classification on September 1, 1995, is not eligible for an extension of temporary stay under this legislation. Further, because Pub. L. 104–302 deals solely with extensions of H–1A stay, this provision does not apply to aliens who were previously accorded H–1A classification and subsequently obtained a different nonimmigrant classification.

The legislation effectively overrides the regulatory 5-year limitation of temporary stay previously imposed by the Service on H–1A registered nurses. Thus, an eligible alien may seek an extension of H–1A stay regardless of the length of time that he or she was in the United States in such nonimmigrant classification. The regulation at 8 CFR 214.2(h)(13)(ii) has been amended to reflect this change.

Filing Requirements

This interim regulation requires that an employer seeking the services of an H–1A registered nurse pursuant to Public Law 104–302 file a Form I–129, Petition for Nonimmigrant Worker, at the appropriate Service Center to obtain an extension of the alien's stay in the United States. The purpose of requiring the filing of a petition is to ensure that a nurse is, in fact, eligible for the benefits of the legislation. The filing and subsequent approval of the petition will also provide assurance to the petitioner that the alien's employment will not result in an employer sanctions violation.

This interim rule amends 8 CFR 214.2(h)(15)(ii)(A) by providing a list of the evidence which must be submitted with the request for the extension of the alien's stay in H–1A classification. The interim rule requires that the employer submit evidence that the alien is licensed to practice as a registered nurse in the state of intended employment, that the alien was employed as a registered nurse on September 1, 1995, that the alien was in the United States on or after September 1, 1995, and, for an alien who was no longer in status on October 11, 1996, due to the 1995 sunset of the H–1A classification, that the alien was in the United States on October 11, 1996. In this regard, because the intent of Public Law 104–302 was to avoid disruption of much needed health care services, the Service interprets the requirement that an alien have been "within" the United States on October 11, 1996, to include H–1A registered nurses who, although not physically present in the United States on that date, subsequently were readmitted to this country pursuant to an unexpired H–1A petition.

Affected Groups

The regulation contemplates three separate groups of H–1A nurses who may be affected by this legislation.

The first group of H–1A nurses is comprise of those nurses who are currently in a valid nonimmigrant status but whose stay will expire prior to September 30, 1997. The registered nurses who meet the statutory requirements will have their H–1A nonimmigrant stay extended through September 30, 1997, upon the approval of Form I–129, Petition for Nonimmigrant Worker, filed by their employer at the appropriate Service Center. In accordance with 8 CFR 274a.12(b)(20), such nurses will be authorized to continue employment with the petitioning employer pending Service adjudication of the petition.

The second group of H–1A nurses is comprised of those nurses who were employed in H–1A classification as a registered nurse on September 1, 1995, and whose period of authorized stay in the United States had expired prior to the effective date of this legislation. Provided they meet the statutory requirements, the H–1A stay of these nurses shall also be extended through September 30, 1997, upon the approval of Form I–129 filed by their United States employer at the appropriate Service Center. In accordance with 8 CFR 274a.12(b)(20), such nurses will also be authorized to continue employment with the petitioning employer pending Service adjudication of the petition.

An otherwise qualified registered nurse in this second group who was employed in H–1A classification on September 1, 1995, but is no longer in a valid nonimmigrant status due to the expiration of the H–1A classification, is eligible for an extension of temporary stay regardless of whether the alien continued to work as a registered nurse after September 1, 1995. The petition extension may be filed by any facility as defined in 8 CFR 214.2(h)(3)(i)(B). Further, an alien granted an extension of stay under this provision is considered to have maintained a valid nonimmigrant status through September 30, 1997, for all purposes under the Immigration and Nationality Act, as amended (the "INA").

A third group of H–1A aliens, those whose period of authorized stay will not expire until after September 30, 1997, are not affected by the legislation. These H–1A nurses may remain in the United States until the validity of their petition expires.

This legislation does not affect the status of an alien who was admitted to the United States as an H–1B nonimmigrant alien to perform services in the field of professional nursing. Further, this legislation does not preclude the Service from approving an H–1B petition filed for a professional nurse, if all regulatory and statutory provisions relating to the H–1B classification are met.

Change of Employers

Subsection (b) of the statute specifically provides that an H–1A nurse may not change employers in the United States. The regulation at 8 CFR 214.2(h)(2)(i)(D) has been amended to reflect this restriction. However, a mere change in employer ownership or a change in work location with the same employer does not, for the purposes of the H–1A classification, constitute a change of employers.

Travel Restrictions

The legislation also provides that the extension of the authorized period of stay for certain nurses does not in any way extend the H–1A alien's visa. Further, Public Law 104–302 does not authorize the re-entry of any person who was outside the United States on the date of enactment and who was not the beneficiary of an unexpired, approved H–1A petition to obtain the benefits of the legislation. Hence, an alien who was outside the United States on the date the legislation was enacted and who previously held H–1A nonimmigrant classification which has expired is ineligible for H–1A classification. An alien who obtains an extension of stay based on this legislation and subsequently departs the United States will be required to obtain appropriate documentation from the Department of State in order to apply for admission to the United States in H–1A classification. The regulation at 8 CFR 214.2(h)(13)(ii) has been amended to reflect this change.

Maintenance of Status

An H–1A alien who obtains an extension of stay based on this legislation is considered to have maintained lawful nonimmigrant status through September 30, 1997. This provision also applies to the spouse and child of the H–1A nonimmigrant alien. The regulation at 8 CFR 214.2(h)(15)(ii)(A) has been amended to reflect this change. Upon approval of the extension, such persons shall be accorded H–4 nonimmigrant status. In addition, a spouse or child granted an extension of stay under this section of law is considered to have maintained a valid nonimmigrant status for all purposes under the INA.

This rule also amends the regulation at 8 CFR 214.2(h)(9)(iii) to reflect a technical change in the title of the Chief of the Administrative Appeals Unit, Central Office, to the Director of the Appeals Office, Headquarters.

Good Cause Exception

This interim rule is effective on publication in the **Federal Register**, although the Service invites post-promulgation comments and will address any such comments in a final rule. For the following reasons, the Service finds that good cause exists for adopting this rule without the prior notice and comment period ordinarily required by 5 U.S.C. 553. First, the provisions of Public Law 104–302 require that the Service issue implementing regulations not later than 30 days after the date that the legislation was enacted. As a result of this provision, the Service does not have sufficient time to solicit comments from the public prior to publishing a notice of proposed rulemaking. Second, the Service notes that this provision is intended solely to grant a benefit to eligible aliens and the general public.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities. This interim rule merely clarifies the requirements for obtaining an extension of stay under Public Law 104–302.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulation proposed herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988

This interim rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988.

List of Subjects in 8 CFR Part 214

Adminsistrative practice and procedures, Aliens, Employment, Organization and functions (Government agencies).

Accordingly, part 214 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282; 8 CFR part 2;

2. Section 214.2 is amended by:

a. Revising paragraphs (h)(1)(ii)(A) and (B) (*1*);

b. Revising paragraphs (h)(2)(i)(A) and (D);

c. Removing paragraph (h)(9)(iii)(A);

d. Redesignating paragraphs (h)(9)(iii) (B), (C), and (D) as paragraphs (h)(9)(iii) (A), (B), and (C) respectively;

e. Revising paragraph (h)(13)(ii); and by

f. Revising paragraph (h)(15)(ii)(A); to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(h) * * *

(1) * * *

(ii) *Description of classification.*

(A) An H–1A classification applies to an alien who is coming temporarily to the United States to perform services as a registered nurse, meets the requirements of section 212(m)(1) of the Act, and will perform services at a facility for which the Secretary of Labor has determined and certified to the Attorney General that an unexpired attestation is on file and in effect under section 212(m)(2) of the Act. This classification expired on September 1, 1995, but certain aliens previously accorded H–1A classification are eligible to obtain and extension of stay until September 30, 1997, pursuant to Public Law 104–302.

(B) * * *

(*1*) To perform services in a specialty occupation (except agricultural workers, and aliens described in section 101(a)(15) (O) and (P) of the Act) described in section 214(i)(1) of the Act, that meets the requirements of section 214(i)(2) of the Act, and for whom the Secretary of Labor has determined and certified to the Attorney General that the prospective employer has filed a labor condition application under section 212(n)(1) of the Act;

* * * * *

(2)*Petitions*—(i) *Filing of petitions*—(A) *General.* A United States employer seeking to classify an alien as an H–1B, H–2A, H–2B, or H–3 temporary employee shall file a petition on Form I–129, Petition for Nonimmigrant Worker, only with the Service Center which has jurisdiction in the area where the alien will perform services, or receive training, even in emergent situations, except as provided in this section. Petitions in Guam and the Virgin Islands, and petitions involving special filing situations as determined by Service Headquarters, shall be filed with the local Service office or a designated Service office. The petitioner may submit a legible photocopy of a document in support of the visa petition in lieu of the original document. However, the original document shall be submitted if requested by the Service.

* * * * *

(D) *Change of employers.* If the alien is in the United States and seeks to change employers, the prospective new employer must file a petition on Form I–129 requesting classification and extension of the alien's stay in the United States. If the new petition is approved, the extension of stay may be granted for the validity of the approved petition. The validity of the petition and the alien's extension of stay shall conform to the limits on the alien's temporary stay that are prescribed in paragraph (h)(13) of this section. The alien is not authorized to begin the employment with the new petitioner until the petition is approved. An H–1A nonimmigrant alien may not change employers.

* * * * *

(13) * * *

(ii) *H–1A limitation on admission.* An alien who was previously accorded H–1A nonimmigrant status, which expired on or before October 11, 1996, may not be admitted to the United States after October 11, 1996, in order to apply for an extension of authorized stay as provided in Public Law 104–302. Except as provided in paragraph (15)(ii)(A) of this subsection, and H–1A alien who has spent 5 years in the United States under section 101(a)(15)(H) of the Act may not change status, or be readmitted to the United States in any H classification unless the alien has resided and been physically present outside the United States, except for brief trips for pleasure or business, for the immediate prior year.

* * * * *

(15) * * *

(ii) * * *

(A) *H–1A extension of stay.* An alien who previously entered the United States pursuant to an H–1A visa may receive an extension of H–1A temporary stay until September 30, 1997, provided that the alien was within the United States in valid H–1A classification on or after September 1, 1995, regardless of whether the alien continued to work as a registered nurse after September 1, 1995; that the alien's period of H–1A temporary stay has expired or would expire before September 30, 1997; and, if the alien was not in valid H–1A nonimmigrant status on October 11, 1996, that the alien was within the United States on October 11, 1996. An extension of stay may not be granted to an H–1A nonimmigrant alien beyond September 30, 1997. An H–1A alien granted an extension of stay, and the spouse and child of such nonimmigrant, shall be considered to have maintained nonimmigrant status through September 30, 1997, for all purposes under the Immigration and Nationality Act, as amended. Public Law 104–302 does not apply to an H–1A alien who otherwise failed to maintain his or her valid H–1A nonimmigrant status or has changed from H–1A to another nonimmigrant status. A request for an extension of stay for an H–1A nonimmigrant must be filed on Form I–129, Petition for Nonimmigrant Worker, at the appropriate Service Center with the following:

(*1*) Evidence that the alien was employed as a registered nurse on September 1, 1995:

(*2*) Evidence that the beneficiary is licensed to practice as a registered nurse in the state of intended employment;

(*3*) Evidence that the alien was within the United States on or after September 1, 1995. For purposes of this provision, an alien will be deemed to have been within the United States on September 1, 1995, who, although not physically present in the United States on that date, was subsequently admitted to the United States in H–1A classification pursuant to an unexpired H–1A visa; and

(*4*) If the alien was not in valid H–1A nonimmigrant status on October 11, 1996, evidence that the alien was within the United States on October 11, 1996. For purposes of this provision, an alien will be deemed to have been within the United States on October 11, 1996, who, although not physically present in the United States on that date, was subsequently admitted to the United States in H–1A classification pursuant to an unexpired H–1A visa.

* * * * *

§ 214.2 [Amended]

3. In § 214.2, newly redesignated paragraph (h)(9)(iii)(B)(*2*)(*ii*) is amended in the second sentence by revising the phrase "Chief of the Administrative Appeals Unit, Central Office" to read: "Director, Administrative Appeals Office, Headquarters".

Dated: February 28, 1997.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 97–5660 Filed 3–6–97; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–ANE–44]

Removal of Class D and E Airspace; South Weymouth, MA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This action removes the Class D and Class E airspace areas at South Weymouth, MA due to the closure of the South Weymouth Naval Air Station (KNZW).

EFFECTIVE DATE: This rule was effective 0901 UTC, January 30, 1997.

FOR FURTHER INFORMATION CONTACT: Raymond Duda, Operations Branch, ANE–530.3, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7533; fax (617) 238–7596.

SUPPLEMENTARY INFORMATION: The FAA published this direct final with a request for comments in the **Federal Register** on December 19, 1996 (61 FR 66908). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on January 30. No adverse comments were received, and thus this notice confirms that this final rule became effective on that date.

Issued in Burlington, MA, on February 28, 1997.

David J. Hurley,

Manager, Air Traffic Division, New England Region.

[FR Doc. 97–5716 Filed 3–6–97; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–ANE–46]

Amendment to Class E Airspace; Springfield/Chicopee, MA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This action modifies the Class E airspace at Springfield/Chicopee, MA by removing the Class E airspace extending upward from the surface, effective during the times when the Airport Traffic Control Tower (ATCT) is not operating. This action results from the elimination of continuous weather reporting at Westover ARB/Metropolitan Airport (KCEF).

EFFECTIVE DATE: This rule was effective 0901 UTC, January 30, 1997.

FOR FURTHER INFORMATION CONTACT: Sandra V. Bogosian, Operations Branch, ANE–530.4, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7534; fax (617) 238–7596.

SUPPLEMENTARY INFORMATION: The FAA published this direct final with a request for comments in the **Federal Register** on December 19, 1996 (61 FR 66911). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on January 30. No adverse comments were received, and thus this notice confirms that this final rule became effective on that date.

Issued in Burlington, MA, on February 28, 1997.

David J. Hurley,

Manager, Air Traffic Division, New England Region.

[FR Doc. 97–5714 Filed 3–6–97; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 97–ANE–11]

Amendment to Class E Airspace; Nashua, NH, Newport, RI, Mansfield, MA, Providence, RI, and Taunton, MA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action modifies the Class E airspace at Nashua, HN, Newport, RI, Mansfield, MA, Providence, RI, and Taunton, MA by removing from their descriptions references to Class E airspace areas removed by previous actions. This action is necessary to keep the descriptions of controlled airspace areas operationally current.

DATES: Effective 0901 UTC, May 22, 1997.

Comments for inclusion in the Rules Docket must be received on or before April 7, 1997.

ADDRESSES: Send comments on the rule to: Manager, Operations Branch, ANE–530, Federal Aviation Administration, Docket No. 97–ANE–11, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7530; fax (617) 238–7596.

The official docket file may be examined in the Office of the Assistant Chief Counsel, New England Region, ANE–7, Room 401, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7050; fax (617) 238–7055.

An informal docket may also be examined during normal business hours in the Air Traffic Division, Room 408, by contacting the Manager, Operations Branch at the first address listed above.

FOR FURTHER INFORMATION CONTACT: Raymond Duda, Operations Branch, ANE–530.3, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7533; fax (617) 238–7596.

SUPPLEMENTARY INFORMATION: On February 16, 1996, the FAA published final rule that removed the Class E airspace at Moore Army Airfield, Fort

Devens, MA (61 FR 5937), and on December 19, 1996, a final rule that removed the Class E airspace at Fall River Municipal Airport, Fall River, MA (61 FR 66910). Each of those actions was due to the closure of the airport at those locations. Due to the close proximity of those airports to other airports, however, the descriptions of controlled airspace at other locations in the vicinity of the closed airports still contain references to the removed airspace areas. This action revises the descriptions of Class E airspace areas at Nashua, NH, Newport, RI, Mansfield, MA, Providence, RI, and Taunton, MA by removing from their descriptions references to Class E airspace areas removed by those previous actions. This action is necessary to keep the descriptions of controlled airspace operationally current.

Class E airspace designations for airspace areas extending upward from 700 feet about the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in this Order.

The Direct Final Order Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment, and, therefore, issues it as a direct final rule. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **FEDERAL REGISTER** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit a comment, a document withdrawing the direct final rule will be published in the **FEDERAL REGISTER**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–ANE–11." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as these routine matters will only affect air traffic procedures and air navigation. It is certified that these proposed rules will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Subpart E—Class E Airspace

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet above the surface of the earth.

* * * * *

ANE MA E5 Mansfield, MA

Mansfield Municipal Airport, MA
(Lat. 42°00'00"N, long. 71°11'48"W)

That airspace extending upward from 700 feet above the surface within an 8.3-mile radius of Mansfield Municipal Airport; excluding that airspace within the Boston, MA, Hopedale, MA, North Kingstown, RI, and Pawtucket, RI, Class E airspace areas.

* * * * *

ANE MA E5 Taunton, MA

Taunton Municipal Airport, MA
(Lat. 41°52'28"N, long. 71°01'01"W)

That airspace extending upward from 700 feet above the surface within a 7.3-mile radius of Taunton Municipal Airport; excluding that airspace within the Boston, MA, New Bedford, MA, and Mansfield, MA, Class E airspace areas.

* * * * *

ANE NH E5 Nashua, NH

Nashua, Boire Field, NH
(Lat. 42°46'54"N, long. 71°30'53"W)
CHERN NDB
(Lat. 42°49'24"N, long. 71°36'08"W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Boire Field, and within that area bounded by a line beginning at lat. 42°53'54"N, long. 71°30'47"W; to lat. 43°02'25"N, long. 71°13'28"W; to lat. 42°55'15"N, long. 71°06'58"W; to lat. 42°38'30"N, long. 71°21'48"W; to lat. 42°40'30"N, long. 71°27'03"W, and within 4 miles each side of the CHERN NDB 303° bearing extending from the 7-mile radius to 10 miles northwest of the NDB; excluding that airspace within the Portsmouth, NH, and Boston, MA, Class E airspace areas.

* * * * *

ANE RI E5 Newport, RI

Newport State, RI
(Lat. 41°31'56"N, long. 71°16'53"W)
Providence VORTAC
(Lat. 41°43'28"N, long. 71°25'47"W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Newport State Airport, and within 2.2 miles on each side of the Providence VORTAC 150° radial extending from the 6.3-mile radius to 5.6 miles southeast of the Providence VORTAC, and within 4 miles northwest to 6 miles southeast of Newport State Airport 025° bearing extending from the 6.3-mile radius to 16.2 miles northeast of the Newport State Airport; excluding that airspace within the New Bedford, MA, Class E airspace area.

* * * * *

ANE RI E5 Providence, RI

Providence, Theodore Francis Green State Airport, RI
(Lat. 41°43'25"N, long. 71°25'36"W)
Providence VORTAC
(Lat. 41°43'28"N, long. 71°25'47"W)

That airspace extending upward from 700 feet above the surface within an 8.8-mile radius of Theodore Francis Green State Airport, and within 4 miles northwest to 4.5 miles southeast of the Providence VORTAC 211° radial extending from the 8.8-mile radius to 16.7 miles southwest of the Providence VORTAC, and within 4 miles on each side of the VORTAC 330° radial extending from the 8.8-mile radius to 15.4 miles northwest of the Providence VORTAC, and within 2.9 miles on each side of the Providence VORTAC 132° radial extending from the 8.8-mile radius to 9.6 miles southeast of the Providence VORTAC; excluding that airspace within the North Kingstown, RI, Pawtucket, RI, and Newport, RI, Class E airspace areas.

* * * * *

Issued in Burlington, MA, on February 28, 1997.

David J. Hurley,

Assistant Manager, Air Traffic Division, New England Region.

[FR Doc. 97–5713 Filed 3–6–97; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–ANE–45]

Removal of Class E Airspace; Fall River, MA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This action removes the Class E airspace area at Fall River, MA due to the closure of the Fall River Municipal Airport (KFLR) and the cancellation of the standard instrument approach procedure to that airport.

EFFECTIVE DATE: This rule was effective 0901 UTC, January 30, 1997.

FOR FURTHER INFORMATION CONTACT: Raymond Duda, Operations Branch, ANE–530.3, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7533; fax (617) 238–7596.

SUPPLEMENTARY INFORMATION: The FAA published this direct final with a request for comments in the **Federal Register** on December 19, 1996 (61 FR 66910). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on January 30. No adverse comments were received, and thus this notice confirms that this final rule became effective on that date.

Issued in Burlington, MA, on February 28, 1997.

David J. Hurley,

Manager, Air Traffic Division, New England Region.

[FR Doc. 97–5715 Filed 3–6–97; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Final Rulemaking Concerning Contract Market Rule Review Procedures

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rulemaking.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has adopted amendments to Commission Regulation 1.41(c) that establish procedures for the Commission's review of contract market rules that do not relate to contract terms and conditions. The amendments shorten the Commission's time frame for reviewing complex rules and streamline the rule review process such that rule changes generally can be deemed approved or permitted to be put into effect without Commission approval.

Specifically, all non-term and condition rule changes that meet the form and content requirements will be deemed approved or be permitted to be put into effect without approval ten days after Commission receipt, unless the Commission takes action to commence review of the proposal for a 45-day period (or a 75-day period in the case of rules published for comment in the **Federal Register**) or the contract market agrees to another, specified review period. At the end of the 45-day (or 75-day) review period, a proposed rule meeting the form and content requirements will be deemed approved or become effective without approval unless the Commission informs the submitting contract market of its intention to initiate disapproval proceedings, the contract market withdraws the proposal, or the contract market requests that the review period be extended to the current 180-day period.

EFFECTIVE DATE: April 7, 1997.

FOR FURTHER INFORMATION CONTACT: David P. Van Wagner, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5490.

SUPPLEMENTARY INFORMATION:

I. Introduction

On December 17, 1996, the Commission published for public comment in the **Federal Register** [1] proposed amendments to Commission Regulation 1.41 revising the Commission's procedures for the review of contract market rules that do not relate to terms and conditions.[2] The original comment period was scheduled to end on January 16, 1997, but was extended by the Commission until January 31, 1997.[3]

[1] 61 FR 66241 (December 17, 1996).

[2] On November 22, 1996, the Commission published a separate proposed rulemaking establishing similar "fast-track" review procedures for contract market designation applications and proposed rules relating to contract terms and conditions under Regulation 1.41(b). (61 FR 59386.) The Commission also is adopting that rulemaking today in a separate **Federal Register** release with slight modifications from the original proposed rulemaking (the "fast-track" rulemaking). The two rulemakings establish similar rule review procedures and any differences between the two schemes generally reflect differences set forth in the statute with respect to term and condition rule proposals and non-term and condition rule proposals.

[3] 62 FR 2334 (January 16, 1997).

II. Comments Received

The Commission received seven comment letters. The comment letters were submitted by four futures exchanges (the Chicago Board of Trade ("CBT"), the Chicago Mercantile Exchange ("CME"), the Coffee, Sugar & Cocoa Exchange, Inc. ("CSC"), and the New York Mercantile Exchange ("NYMEX")); two futures trade associations (the Futures Industry Association ("FIA") and the Managed Futures Association ("MFA")); and, a registered futures association (the National Futures Association ("NFA").

The Commission has carefully reviewed the comments received and has decided to issue amended Regulation 1.41(c) as final with three modifications from the original proposal.[4] The comments and an explanation of the Commission's decision to adopt amended Regulation 1.41(c) are discussed below.

III. Commission Regulation 1.41(c)

A. Overview

The following description consists of a section-by-section analysis of the Commission's final rulemaking. Each section describes a provision of the Commission's proposed rulemaking, discusses relevant suggestions made by the commenters, and indicates how the provision has been adopted in the final rulemaking.

In addition to commenting on specific sections of proposed Regulation 1.41(c), several commenters questioned the necessity for Regulation 1.41's basic requirement that contract market rules receive Commission review before being put into effect. As discussed in more detail in the fast-track rulemaking, the Commission believes that prior review of proposed contract market rule changes can be essential to ensuring the financial integrity of the markets and to protecting the public interest. Contract market actions can affect the interests of a large number of non-member market participants and the general public. As self-regulatory organizations, contract markets have a responsibility to comply with and enforce the requirements of the Act and the Commission's regulations. As member organizations, however, contract markets may not always be cognizant of, or sensitive to, the impact of particular rule changes on the general public or on market participants who are not contract market members and who are not involved directly in the contract markets' formulation of such rules. The Commission believes that its prior review procedures help to ensure that contract markets meet their self-regulatory responsibilities with respect to all market participants and that rule changes are not inconsistent with the public interest.

The Commission's prior review procedures also ensure that the Commission is able to solicit the views of market users, other regulators, and other interested parties with respect to rule proposals. These parties often provide valuable insights concerning the impact of rule proposals that are essential to the Commission's completing meaningful analyses of contract market submissions. The Commission believes such oversight also provides additional incentives for the contract markets to take market users' needs and the public interest into account in the first instance, thereby improving the functioning of the self-regulatory process.

The Commission concurs with FIA's comment that Commission disapproval of contract market rule changes after their implementation is not a viable alternative to prior Commission review and approval. The Commission believes that this approach would be inefficient and could impact market users or the public adversely during the pendency of a disapproval proceeding by increasing uncertainty in the marketplace.

Several commenters contended that the Commission's current rule review procedures cause unwarranted delays in the implementation of contract market rule changes and put the contract markets at a competitive disadvantage to foreign futures exchanges and over-the-counter markets. No evidence was provided, however, to suggest that the time frames provided for by the proposed rulemaking would create competitive disadvantages. Notably, all of the commenters conceded that the Commission's proposed rulemaking would further the goal of implementing contract market rule changes more promptly. The commenters differed, however, on whether contract markets would be able to implement their rule changes promptly enough under the proposed rulemaking. The Commission believes that its streamlined procedures will allow contract markets to implement their rule proposals in an expeditious manner, while still ensuring that the public is protected from rules that are discriminatory, anti-competitive, or illegal or that create serious concerns with respect to financial or market integrity.

NFA stated in its comment letter that the need for timely rule review and approval is as important to registered futures associations as it is to contract markets. Accordingly, NFA recommended that the Commission extend proposed Regulation 1.41(c)'s rule review procedures to cover the rule changes of registered futures associations. While the Commission agrees with NFA that it should adopt a streamlined rule review scheme for registered futures associations, it does not believe that it would be appropriate to include registered futures associations within the terms of this rulemaking. Regulation 1.41 was established expressly for contract market rule proposals and includes procedures that are inapplicable to registered futures association rules. However, although the Commission has determined not to make amended Regulation 1.41(c) applicable to registered futures associations, the Commission will propose a rulemaking in the near future to establish similar rule review procedures tailored to the types of rules adopted by registered futures associations. In the interim, the Commission intends to follow Regulation 1.41(c)'s basic review procedures and deadlines when reviewing registered futures association rule changes.

B. Regulation 1.41(c)(1)(i)—Form and Content of Submissions

Proposed Commission Regulation 1.41(c)(1)(i) established form and content requirements for all rules submitted to the Commission pursuant to Regulation 1.41(c). That proposal preserved the form and content requirements that currently apply to rules submitted to the Commission pursuant to Regulation 1.41(b) and Regulation 1.41(c). Proposed Regulation 1.41(c)(1)(i) also required that Regulation 1.41(c) submissions include certain other information to help expedite the Commission's review of such submissions.

Under the current form and content requirements of Commission Regulation 1.41, contract markets must include in their rule submissions any substantive views expressed by their members or others in opposition to a proposed rule.[5] As a clarification of this requirement, proposed amended Regulation 1.41(c)(1)(i)(E) specified that the views

[4] The Commission's original proposal regarding non-term and condition rule changes also proposed to revise the heading to Commission Regulation 1.41(b) so that it expressly applied to term and condition rule changes. That revision has been incorporated in the Commission's separate fast-track rulemaking for term and condition rule changes.

[5] Current Commission Regulation 1.41(b)(5) requires that rule submissions "[n]ote and briefly describe any substantive opposing views expressed by the members of the contract market or others with respect to the proposed rule."

of opposing governing board members also must be included in proposed rule submissions. In addition, proposed amended Regulation 1.41(c)(1)(i)(E) provided that the currently-required description of opposing views must indicate the membership interest categories[6] of persons who were opposed to the proposed contract market rule.

Proposed Regulation 1.41(c)(1)(i)(F) required that contract markets specify in their submissions any sections of the Act or the Commission's regulations that relate to a proposed rule, particularly citing any such provisions that require Commission approval of the rule. To the extent a submission was potentially inconsistent with a provision of the Act or the Commission's regulations, the proposal required that the submission contain a reasoned analysis addressing that issue and supporting adoption of the rule. Proposed Regulation 1.41(c)(1)(i)(G) required that contract markets indicate in their submissions whether they were requesting Commission approval for a proposed rule.

The CBT, CME, and CSC each objected to proposed amended Regulation 1.41(c)(1)(i)(E)'s requirement that contract market rule submissions identify the membership interest categories of persons who opposed a rule proposal. They contended that the provision intruded upon their internal decision making processes without providing any information that would be useful to the Commission in its rule review process. CME and CSC particularly stated that the proposal would force revisions to their boards' deliberative and voting procedures.

FIA supported the proposed amendment to Commission Regulation 1.41(c)(1)(i)(E). The FIA believed that opposing view information is especially important given the fact that contract market rules that are submitted to the Commission pursuant to Regulation 1.41(c) are rarely published for public comment.

The Commission believes that information about the views and categories of persons who oppose rule proposals will help the Commission to ascertain whether others believe that a proposal raises important issues and to identify rules that should be published for comment and, thus, will generally benefit the rule review process overall. Upon receipt, Commission staff now often requests contract markets submitting rule proposals to supplement their submissions with information about the views and identities of persons who have expressed opposition to rule proposals, whether they be board members or members of the contract market. This information helps alert Commission staff to potential regulatory issues that are not apparent from the text of a proposed rule and, thus, helps to focus the staff's analysis of the proposal. In addition, this information allows the Commission to avoid the time-consuming process of publishing rule proposals for public comment, since Commission staff can contact representative members of the appropriate membership interest category to obtain their views on particular rule proposals.[7]

The Commission agrees with the CME's comment that board members do not necessarily vote on issues based upon the membership interest categories they represent. However, the Commission's experience has been that persons from the same membership interest category often have common business circumstances which influence their views on contract market regulatory matters. Accordingly, contract market directors and members who oppose new rule proposals often express views that reflect their membership interest categories. The fact that a contract market member might have views on rule proposals that are particular to his or her membership interest category is recognized in section 5a(a)(14)(A) of the Act and Regulation 1.64 which require that contract markets provide board representation for a diversity of membership interests.

The provision will ensure that the Commission will have opposing view information when it initiates its review of a rule proposal, thus obviating the need for Commission staff to obtain such information from the submitting contract market during the course of a rule's review, which will be especially helpful to assuring that the Commission will meet the compressed time frames established by the proposed rulemaking.

The CME contended that proposed amended Regulation 1.41(c)(1)(i)(E) will put an additional burden on contract market staffs to speak with each board member who votes against a proposed rule to determine the reasons for his or her opposition. To clarify, the proposed rulemaking only will require contract markets to record the views of board members opposing a rule proposal when such views are openly expressed during board deliberations. Contract market staffs will not be required to ascertain the views of an opposing board member when the member does not express any rationale for his or her opposition.

In its comment letter, NYMEX characterized proposed amended Regulation 1.41(c)(1)(i) (E) through (G) as informational burdens that will add to the length of time expended by contract market staff to prepare a submission and will provide Commission staff with additional reasons for remitting a rule submission for failing to meet form and content requirements.

As indicated above, each of these provisions will require contract markets to include in their initial submissions to the Commission information which Commission staff often requests of contract markets during the course of rule reviews. Including this information in Regulation 1.41(c)'s form and content requirements should speed up the rule review process considerably by reducing the need to request such information after a rule is submitted.

For the reasons stated above, the Commission has determined to adopt amended Regulation 1.41(c)(1)(i) (A) through (E) as proposed. The Commission has determined, however, to adopt a revised version of proposed amended Regulation 1.41(c)(1)(F) and not to adopt proposed amended Regulation 1.41(c)(1)(i)(G).

In its final rulemaking, the Commission has revised Regulation 1.41(c)(1)(i)(F) to require that contract markets identify in their submissions any provisions of the Act or the Commission's regulations that may require amendment or interpretation in order to implement a proposed rule change. Under this requirement, contract markets must provide the Commission with a reasoned analysis of why such an amendment or interpretation is necessary. The requirement will permit the Commission to focus on and to address speedily rules which may violate provisions of the Act or regulations or require their amendment or interpretation. The Commission believes that this requirement not only will facilitate its consideration of various contract market rule proposals, but also will enable it, to the extent consistent with the Act and the public interest, to amend its regulations as needed to permit contract market innovation in an evolving marketplace.

The Commission also believes that proposed amended Regulation

[6] See Section 5a(a)(14)(A) of the Act and Commission Regulation 1.64(a)(4).

[7] For example, there have been a number of occasions when contract market submissions have indicated that a rule proposal was the subject of a membership vote and that a substantial minority of members opposed the measure. Based on this information, Commission staff made further inquiries to determine the views of those opposing members and took those views into account while reviewing the rule proposal.

1.41(c)(1)(i)(G), which required a contract market to indicate expressly whether it was requesting approval of a proposed rule, is not necessary and may be deleted from the final rulemaking. Commission staff will review each rule proposal to determine whether or not it requires Commission approval under any provision of the Act or the regulations and will treat it accordingly. Of course, to the extent that a proposed rule does not require Commission approval, but the submitting contract market desires approval, the contract market must clearly request approval in its submission.

C. Regulation 1.41(c)(1)(ii)—Failure To Meet Form and Content Requirements

Proposed Regulation 1.41(c)(1)(ii) permitted the Commission to remit rule proposals that did not comply with the form and content requirements of Regulation 1.41(c)(1)(i). This provision simply replicated the remittal authority set forth in current Regulation 1.41(b) and Regulation 1.41(c). The CBT, CME, and CSC each objected to this provision on the grounds that the Commission uses its remittal authority to delay and to prevent the implementation of contract market rule proposals. The CBT in particular stated that Commission staff uses its remittal authority to raise questions that are unrelated to the threshold question of whether a rule proposal would violate the Act or the Commission's regulations.

The Commission believes that retaining the authority to remit incomplete submissions is essential to its ability to make reasoned analyses as to whether proposed contract market rules are consistent with the Act and the Commission's regulations. The Commission believes that it is sometimes impossible to determine the operation, purpose and effect of proposed rules based solely on their text. Regulation 1.41's form and content requirements have been formulated accordingly. The Commission believes that reserving the authority to remit incomplete submissions disciplines the submission process by assuring that contract markets adequately explain their proposals at the outset. This discipline is even more essential under the proposed rulemaking's compressed time frames.

As previously noted, the public comment process frequently identifies or focuses issues. The Commission's remittal authority also helps to ensure that contract markets will supplement their submissions where necessary to address issues identified by commenters during the comment process.

For the reasons stated above, the Commission has determined to adopt amended Regulation 1.41(c)(1)(ii) as proposed.

D. Regulation 1.41(c)(1)(iii)—Extension of Review Period

Proposed Regulation 1.41(c)(2) provided that proposed non-term and condition rule changes would be deemed approved or be allowed to go into effect without approval, as appropriate, ten days after their receipt by the Commission unless they were retained by the Commission for further review. Proposed Regulation 1.41(c)(1)(iii) specified that the Commission could extend the ten-day review period to 45 days (75 days when a rule was published for public comment), if the Commission determined within ten days of receipt that the rule "raises novel or complex issues which require additional time for review or is of major economic significance" and so notified the submitting contract market. Such types of rule proposals might include:

(1) Rules relating to the financial integrity of markets or their participants (*e.g.*, CME establishment of Globex Foreign Exchange Facility to serve as market maker for certain CME foreign currency futures contracts traded through the Globex system (approved by the Commission on August 9, 1996)); (2) rules establishing novel trading procedures or providing for non-competitive trading (*e.g.*, CME LOX program which substitutes an electronic order execution facility for open outcry execution of large lot currency contracts (approved by the Commission on March 18, 1993), CME rule amendment restricting exchange for physical transactions in Eurodollar futures contracts (approved by the Commission on November 29, 1995), CME rule amendment establishing all-or-none order-filling procedures whereby certain designated orders can only be executed in their entirety (approved by the Commission on May 2, 1996)); (3) rules providing for the differential treatment of different classes of market participants (*e.g.*, broker incentive programs at various contract markets); (4) rules establishing linkages among exchanges (*e.g.*, establishment of mutual offset system between CME and Singapore Monetary Exchange (approved by the Commission on August 28, 1989)); (5) rules relating to the application of new technology to the marketplace (*e.g.*, CME's Globex trading system (approved by the Commission on February 8, 1989), CBT's Project A trading system (approved by the Commission on October 19, 1992), NYMEX's ACCESS trading system (approved by the Commission on December 17, 1992)); and, (6) rules raising customer protection issues (*e.g.*, CME rules allocating liability in connection with the operation of the Globex trading system (allowed to go into effect without approval by the Commission on September 27, 1991), CBT rule establishing post settlement trading sessions (allowed to go into effect without approval by the Commission on April 14, 1992)).

CME commented that the proposed bases for extending Commission review of a rule proposal would not necessarily have any nexus with a determination of whether the proposal would violate the Act or the Commission's regulations. To the contrary, Commission review always is directed towards making such a determination. The Commission believes that these are the types of rules that the Commission may require additional time to review carefully.[8] Indeed, FIA pointed out in its comment letter that the types of rules listed in the Commission's proposed rulemaking release as possibly needing more than ten days of review are precisely the types of rules that FIA saw as raising sufficiently important issues to require it to submit comments to the Commission in the past. Similarly, MFA commented that Commission retention of rule proposals that raise novel or complex issues for further review would be beneficial as it would enable the Commission to focus its inquiries, while still permitting the contract markets to implement rule changes in an efficient manner.

As the CBT pointed out in its comment letter, under section 5a(a)(12)(A) of the Act, Commission staff may not itself extend the ten-day review period for non-term and condition rule changes that do not require approval. Absent the consent of the submitting contract market, the Commission may only retain such rule proposals for further review if "the Commission notifies such contract market in writing of its determination to review such rules for approval." This determination is not delegable to Commission staff.

For the reasons stated above, the Commission has determined to adopt amended Regulation 1.41(c)(1)(iii) as proposed.

[8] Of course, proposed Regulation 1.41(c)(1)(iii) would not mandate Commission retention of all rules that raise such novel or complex issues or that are of major economic significance. The Commission would only have the discretion to retain such rules for further review.

E. Regulation 1.41(c)(2)—Action Within Ten Days

Proposed Regulation 1.41(c)(2) provided that proposed non-term and condition rule changes that required approval or that could be placed into effect without approval would "be deemed approved or be placed into effect, as appropriate, ten days after Commission receipt," unless the Commission notified the submitting contract market otherwise.

NFA in its comment letter requested clarification as to the meaning of "as appropriate" in this provision. Rule changes submitted to the Commission pursuant to proposed Regulation 1.41(c) generally would be deemed approved or be allowed to go into effect without approval, as requested in the contract market's submission, at the conclusion of the ten-day review period. In those instances where a submitting contract market did not request particular treatment for a rule proposal or requested improper treatment (*i.e.*, requested that the Commission allow into effect without approval a rule change that required Commission approval), the Commission would determine what treatment would be appropriate for the submission and would deem approved those rules that required approval and allow into effect those rules that did not require approval.[9] The Commission's use of the term "as appropriate" in proposed Regulation 1.41(c)(2) is intended to cover these various possible applications.

The Commission has determined to adopt amended Regulation 1.41(c)(2) as proposed.

F. Regulation 1.41(c)(3)—Action Within 45 or 75 days

Under proposed Regulation 1.41(c)(3), any proposed rule that the Commission retained for further review under Regulation 1.41(c)(1)(iii) generally would be "deemed approved or placed into effect, as determined by the Commission," 45 days after Commission receipt (or 75 days in the case of rules that were published for comment in the **Federal Register**).

NFA requested clarification as to the meaning of "as determined by the Commission" in proposed Regulation 1.41(c)(3). Any rule proposal that was retained for the extended 45-day (or 75-day) review period would necessarily be considered for Commission approval.[10] Under section 5a(a)(12)(A) of the Act, rule proposals that are being considered for approval must either be approved by the Commission or be subjected to a disapproval proceeding within 180 days of Commission receipt.[11] If the Commission does not take either course of action within 180 days, the proposed rule "may be made effective by the contract market until such time as the Commission disapproves such rule."

By providing the Commission with the discretion to "determine" either to approve a proposed rule or to allow it into effect at the end of the 45-day (or 75-day) review period, proposed Regulation 1.41(c)(3) would replicate the options currently available to the Commission under section 5a(a)(12)(A) of the Act at the end of the 180-day review period. The proposed rulemaking would simply compress the time frame for this determination from 180 to 45 (or 75) days.

The CBT suggested in its comment letter that the Commission does not need to use the public comment process for exchange rule proposals and, therefore, the Commission's proposed rulemaking need not provide for an extended review period for rules published in the **Federal Register**. By contrast, FIA stated that it was essential to retain this process to provide an opportunity for the public to comment on rule proposals that raise novel or complex issues.

The Commission notes that, under section 5a(a)(12)(A) of the Act, it is required to publish in the **Federal Register** for public comment any proposed rule of major economic significance. The Commission also publishes significant rule changes, from time to time, when it believes that it is in the public interest to do so.

The Commission rarely publishes Regulation 1.41(c) proposals for comment.[12] Nonetheless, the Commission believes that it is important for it to solicit the views of persons and entities that might be affected by significant contract market rule proposals. By providing a 30-day extension of the review period for rules that are published in the **Federal Register**, the proposed rulemaking would provide the Commission with a reasonable amount of time to review and analyze contract market rule proposals in light of any comments received. The Commission believes that the ability to extend review to accommodate public comment should balance the need of contract markets to adapt to new circumstances with the Commission's need to assure that the public's concerns and views are considered in appropriate cases. Under revised Regulation 1.41(c), the review period for proposed rules which are published for comment would still be considerably shorter than the current 180-day statutory review period.

For the reasons stated above, the Commission has determined to adopt amended Regulation 1.41(c)(3) as proposed.

G. Regulation 1.41(c)(4)—Disapproval Proceedings

Under proposed Regulation 1.41(c)(4), any Commission notice to a contract market that the Commission intended to commence disapproval proceedings with respect to a proposed rule change would be required to specify the nature of the issues raised by the proposal and the sections of the Act or the Commission's regulations that the rule appeared to violate. Under the provision, the submitting contract market would have 15 days from the issuance of the notification either to withdraw the proposal or to request that the Commission consider the proposal pursuant to the regular 180-day review procedures of section 5a(a)(12)(A) of the Act. If the submitting contract market chose neither of these options, the Commission would commence disapproval proceedings no later than

[9] Regulation 1.41(c) would apply to all non-term and condition rule changes. Accordingly, the provision would cover: (1) Rule changes that do not require Commission approval under section 5a(a)(12)(A) of the Act and may be placed into effect ten days after Commission receipt; (2) rule changes that require approval under a provision of the Act other than section 5a(a)(12)(A); (3) rule changes as to which the submitting contract market requests approval; and (4) changes which the Commission determines to review for approval.

[10] As indicated in footnote 9 above, the Commission would consider two types of rules under proposed Regulation 1.41(c)—rules which would receive Commission approval (based upon either the submitter's request, the Commission's discretion, or a statutory requirement) and rules which could be placed into effect without Commission approval. Under section 5a(a)(12)(A) of the Act, the Commission must act upon rules which may be placed into effect without Commission approval within ten days of receipt. Absent the consent of the submitting contract market, the only way to extend the review period for such types of rule submissions is if the Commission itself decides to review the submission for approval, in which case the Commission has 180 days to act on the rule proposal.

[11] Under section 5a(a)(12)(A), the Commission must "institute" disapproval proceedings within 180 days of receipt.

[12] Since January 1, 1995, the Commission has published only the following three Regulation 1.41(c) submissions for public comment in the **Federal Register**: (1) A CME proposal to revise margin requirements for certain CME members (60 FR 54339 (October 23, 1995)); (2) a CME proposal to establish a wholly-owned subsidiary which would function as a market maker for certain CME foreign exchange currency futures contracts traded through the Globex system (61 FR 9678 (March 11, 1996)); and (3) a CME proposal to permit commodity trading advisors to obtain Globex terminals to trade for their proprietary accounts and the accounts that they manage (61 FR 21162 (May 9, 1996)).

30 days after its issuance of the notification. Thus, under the proposed rulemaking, disapproval proceedings would commence no later than 75 days after a rule's submission (or 105 days in the case of rules that were published for comment in the **Federal Register**).

The Commission received a number of comments asking for clarifications of how proposed Regulation 1.41(c)(4) would be applied.

NFA questioned whether a Commission notice to a contract market to institute disapproval proceedings under Regulation 1.41(c)(4) should be issued publicly. NFA believed that public notification at this stage would be inappropriate given that the submitting contract market might withdraw its proposal or grant the Commission additional review time. Under Regulation 1.41(c)(3), if the Commission decided to institute a disapproval proceeding for a rule proposal, it would notify the submitting contract market no later than 45 days after the rule's submission (or 75 days if the rule was published for comment). While the Commission would not publicize this notice in the **Federal Register**, it would be a matter of public record under Regulation 145.2 and Appendix A to the Part 145 Regulations, unless subject to the confidentiality restrictions of Regulation 145.5. If the contract market did not withdraw its proposal or extend the proposal's review period within 15 days of the issuance of such notice, the Commission would commence formal disapproval proceedings consistent with the procedures required by the Act and the Commission's regulations.[13] When commencing such proceedings, the Commission would provide the submitting contract market and any other possibly interested parties with an opportunity to present their views on the matter to the Commission. However, if the submitting contract market withdrew the rule and offered to amend it, the Commission would not commence such a proceeding while the contract market attempted to resolve any regulatory issues.

NFA also commented that the Commission and submitting contract markets may want to extend any of proposed Regulation 1.41(c)(4)'s various deadlines for disapproval proceedings in order to reach compromise agreements on the disposition of rule proposals. The Commission agrees with NFA and believes that Regulation 1.41(c)'s deadlines, including disapproval proceeding deadlines, could be extended upon the mutual agreement of the Commission and the subject contract market.

FIA asked for clarification on Regulation 1.41(c)(4)'s deadline for the conclusion of a disapproval proceeding. Upon the commencement of a disapproval proceeding under this provision, the Commission would follow the procedures currently mandated by section 5a(a)(12)(A) of the Act. That provision states that the Commission must "conclude a disapproval proceeding with respect to any rule within one year after receipt or within such longer period as the contract market may agree to." If such a proceeding is not concluded within the prescribed time, the rule proposal may be deemed effective until such time as the Commission disapproves the rule.

For the reasons stated above, the Commission has determined to adopt Regulation 1.41(c)(4) with one clarification. Under the final rulemaking, a contract market would have 15 days from the receipt of a disapproval proceedings notice to withdraw or to extend the review period for its proposal. Under the proposed rulemaking, a contract market had to respond within 15 days from the date of issuance of such a notice.

IV. Conclusion

The Commission has determined to adopt Regulation 1.41(c) with three modifications from the original proposed rulemaking. Specifically, Regulation 1.41(c)(1)(i)(F) has been revised to require that contract markets identify any provisions of the Act or the Commission's regulations that may require amendment or interpretation in order to implement a proposed rule change. In addition, the Commission has deleted proposed Regulation 1.41(c)(1)(i)(G) and its requirement that contract markets expressly indicate in their submissions whether they are requesting rule approval. Finally, Regulation 1.41(c)(4) has been revised to clarify when contract markets must respond to notices to institute disapproval proceedings.

Although Commission Regulation 1.41(c), by its own terms, applies only to Commission review of contract market rule proposals, the Commission will propose a regulation with similar rule review procedures for registered futures associations in the near future. In the interim, the Commission will abide by the requirements of Regulation 1.41(c) when reviewing rule proposals from registered futures associations.

In formulating these new rule amendments, the Commission has attempted to balance the objective of meaningful review of contract market rule proposals under the Act with the contract markets' reasonable desire to implement their proposals as expeditiously as possible. Upon the implementation of amended Regulation 1.41(c), the Commission will continue to monitor the rule review process closely and, based upon its experience, may consider further refinements to these procedures in the future.

Amended Commission Regulation 1.41(c) will become effective 30 days after its publication in the **Federal Register**. All contract market rule proposals submitted to the Commission after that date will be subject to Regulation 1.41(c)'s new review procedures. Contract market rules that are pending with the Commission at the time of amended Regulation 1.41(c)'s effective date will continue to be subject to Regulation 1.41's current review procedures.

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies, in promulgating rules, consider the impact of those rules on small businesses. The Commission has previously determined that contract markets are not "small entities" for purposes of the RFA.[14] This rulemaking establishes streamlined procedures for the review of contract market proposed non-term and condition rule changes. Accordingly, the Chairperson, on behalf of the Commission, hereby certifies, pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities.

B. Agency Information Activities: Proposed Collection; Comment Request

The Paperwork Reduction Act of 1980 ("PRA"), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. While this rulemaking has no burden, the group of rules (3038–0022) of which it is a part has the following burden:

Average burden hours per response—3.546.26

Number of respondents—10,971.00

[13] A contract market also could choose to amend its rule proposal and have it considered pursuant to the 180-day review procedures of section 5a(a)(12)(A) of the Act. A contract market could, of course, choose to withdraw its proposal and re-submit an amended version, thereby resetting the time for review.

[14] See 47 FR 18618, 18619 (April 30, 1982).

Frequency of response—On Occasion

Copies of the information collection submission to Office of Management and Budget are available from Gerald P. Smith, Clearance Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5160.

List of Subjects in 17 CFR Part 1

Commodity exchanges, Contract markets, Rule review procedures.

In consideration of the foregoing, and based on the authority contained in the Commodity Exchange Act and, in particular, sections 4c, 5, 5a, 6 and 8a thereof, 7 U.S.C. 6c, 7, 7a, 8 and 12a, the Commission hereby amends title 17, chapter I, part 1 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for part 1 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 8, 9, 12, 12a, 12c, 13a, 13a-1, 16, 16a, 19, 21, 23, and 24.

2. Section 1.41(c) is revised to read as follows:

§ 1.41 Contract market rules; submission of rules to the Commission; exemption of certain rules.

* * * * *

(c) *Rules that do not relate to terms and conditions.* (1)(i) Except as provided in paragraphs (d) and (f) of this section (exempt or temporary emergency rules), each contract market shall submit to the Commission pursuant to section 5a(a)(12)(A) of the Act prior to the proposed effective dates all proposed rules that do not relate to terms and conditions. One copy of the rule shall be furnished to the Commission at its Washington, DC headquarters, and one copy shall be transmitted by the contract market to the regional office of the Commission having local jurisdiction over the contract market. Each such submission under this paragraph (c) shall, in the following order:

(A) State that it is being submitted pursuant to Commission regulation 1.41(c);

(B) Set forth the text of the proposed rule (in the case of any change in, addition to, or deletion from any current rule of the contact market, the current rule shall be fully set forth, with brackets used to indicate words to be deleted and underscoring used to indicate words to be added);

(C) Describe the proposed effective date of the proposed rule and any action taken or anticipated to be taken to adopt the proposed rule by the contract market, or by the governing board thereof or any committee thereof, and cite the rules of the contract market which authorize the adoption of the proposed rule;

(D) Explain the operation, purpose, and effect of the proposed rule, including, as applicable, a description of the anticipated benefits to market participants or others, any potential anticompetitive effects on market participants, or others, how the rule fits into the contract market's scheme of self-regulation, information which demonstrates that the proposed rule is not inconsistent with the policies and purposes of the Act, and any other information which may be beneficial to the Commission in analyzing the proposed rule. If a proposed rule affects, directly or indirectly, the application of any other rule of the contract market, set forth the pertinent text of any such rule and describe the anticipated effect;

(E) Note and briefly describe any substantive opposing views expressed by governing board members, members of the contract market, or others with respect to the proposed rule which were not incorporated into the proposed rule prior to its submission to the Commission. Any such description also should identify the membership interest categories, as that term is defined by Commission regulation 1.64(a)(4), of persons who were opposed to the proposed rule; and,

(F) Identify any sections of the Act or the Commission's regulations that the Commission may need to amend or interpret in order to approve or allow into effect the proposed rule. To the extent that such an amendment or interpretation is necessary to accommodate a proposed rule, the contract market must provide a reasoned analysis supporting its submission.

(ii) The Commission may remit to the contract market, with an appropriate explanation where practicable, and not accept for review any rule submission that does not comply with the form and content requirements of paragraphs (c)(1)(i) (A) through (F) of this section.

(iii) The Commission may notify the contract market within ten days after receipt of a submission filed pursuant to paragraph (c)(1) of this section, that the proposed rule raises novel or complex issues which require additional time for review or is of major economic significance and therefore that the review period has been extended as specified in paragraph (c)(3) of this section. This notification will briefly specify the nature of the issues for which additional time for review is required.

(2) All proposed contract market rules submitted for review under paragraph (c) of this section may be deemed approved or be placed into effect, as appropriate, ten days after Commission receipt (or at such earlier time as may be determined by the Commission) unless:

(i) The Commission notifies the contract market that the submission does not comply with the form and content requirements of paragraph (c)(1)(i) of this section;

(ii) The Commission notifies the contract market that the review period for the submission has been extended pursuant to paragraph (c)(1)(iii) of this section; or

(iii) The contract market agrees to another, specified review period.

(3) Any rule for which the Commission extends the review period pursuant to paragraph (c)(1)(iii) of this section may be deemed approved or be placed into effect, as determined by the Commission, forty-five days after Commission receipt of such rule or seventy-five days after Commission receipt in the case of rules that have been published for comment in the **Federal Register** (or at such earlier time as may be determined by the Commission) unless the Commission notifies the contract market that:

(i) The submission, including any supplementary materials and in consideration of any comments from the public or other government agencies, does not comply with the form and content requirements of paragraph (c)(1)(i) of this section; or

(ii) The Commission intends to institute a proceeding to disapprove the rule pursuant to the procedures specified in section 5a(a)(12)(A) of the Act.

(4) A notice of intention to commence a disapproval proceeding issued pursuant to paragraph (c)(3) of this section will:

(i) Identify the nature of the issues raised by the proposed rule and the specific sections of the Act or the Commission's regulations that the rule appears to violate; and,

(ii) State that the Commission may commence disapproval proceedings for the proposed rule within thirty days after the Commission's issuance of the notification, unless within fifteen days of receipt of such notice the contract market:

(A) Withdraws the rule, or

(B) Requests the Commission to review the rule pursuant to the one

hundred and eighty day review procedures set forth in section 5a(a)(12)(A) of the Act.

* * * * *

Issued in Washington, D.C. on February 27, 1997, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97-5568 Filed 3-6-97; 8:45 am]

BILLING CODE 6351-01-P

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17 CFR Parts 1 and 5

Revised Procedures for Commission Review and Approval of Applications for Contract Market Designation and of Exchange Rules Relating to Contract Terms and Conditions

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rulemaking.

SUMMARY: On November 22, 1996, the Commodity Futures Trading Commission ("Commission") proposed rules amending its procedures relating to the review and approval of applications for contract market designation and proposed exchange rule amendments relating to contract terms and conditions. Based upon its consideration of the comments received in response to its Notice of Proposed Rulemaking, 61 FR 59386 (November 22, 1996), and upon its independent analysis, the Commission is promulgating new rule 5.1.

Rule 5.1 establishes fast-track procedures for Commission review of exchange applications for contract market designation as an alternative to the current review procedures. Under these alternative procedures, applications for designation of cash-settled and other specified futures and option contracts will be deemed to be approved ten days—and all others, forty-five days—after receipt, unless the exchange is notified otherwise. The final rules have been modified, in response to public comment, by including within the ten-day category proposed option contracts based upon futures contracts that are already designated and by confirming explicitly within the rule that exchanges may modify applications nonsubstantively under the fast-track review procedures.

The Commission also is amending rule 1.41, as proposed, to provide an alternative fast-track review of proposed amendments to contract terms or conditions. These procedures are similar to those for contract market designations and include both ten-day and forty-five-day review periods. These review periods can be extended for one thirty-day period in appropriate instances. In a companion notice published separately in the **Federal Register**, the Commission also is adopting fast-track procedures relating to the review of proposed exchange rules which do not relate to contract terms or conditions.

EFFECTIVE DATE: April 7, 1997.

FOR FURTHER INFORMATION CONTACT: Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, (202) 418-5260, or electronically, [PArchitzel@cftc.gov].

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Requirements for Commission Designation of Proposed Contract Markets

The requirement that boards of trade meet specified conditions in order to be designated as contract markets has been a fundamental tool of federal regulation of commodity futures exchanges for the past seventy-five years.[1] Prior to the 1974 amendments to the Commodity Exchange Act, 7 U.S.C. 1 *et seq.* ("Act"), however, the statutory scheme did not require the Commodity Exchange Authority ("CEA"), the Commission's predecessor agency, to approve in advance the trading of all new futures contracts,[2] nor did it require agency approval of exchange rules before they became effective. Rather, exchange rules amending the terms and conditions of futures contracts were subject only to disapproval after becoming effective.

[1] *See,* Futures Trading Act of 1921, Pub. L. 67-66, 42 Stat. 187 (1921). Designation as a contract market under the 1921 Act was contingent upon a board of trade's meeting specified statutory criteria, including providing for the prevention of manipulative activity. Although the constitutionality of this Act was successfully challenged as an improper use of the Congressional taxing power in *Hill* v. *Wallace*, 259 U.S. 44 (1922), all subsequent legislation regulating the futures industry followed this pattern.

[2] Prior to 1974, the Act defined "commodity" by specific enumeration. Accordingly, new contracts that were not so enumerated were unregulated. The definition of commodity periodically would be updated to include additional commodities in which trading had commenced on those exchanges which traded other regulated contracts. For example, livestock and livestock products were added to the Act's definition of "commodity" as part of the 1968 amendments to the Act, after such contracts had already begun trading on the Chicago Mercantile Exchange. Pub. L. 90-258 section 1(a), 49 Stat. 1491 (1968).

Other futures exchanges, including the Commodity Exchange, Inc. and the former Coffee and Sugar and Cocoa exchanges, operated wholly outside of the regulatory scheme. *See,* Pub. L. 90-258, sec. 23, 82 Stat. 33 (1968).

The 1974 amendments to the Act rejected that approach. Instead, as part of Congress' overall intent to strengthen federal regulatory oversight of the futures industry, the 1974 amendments provided for a meaningful government review of all new futures contracts before trading could begin and of proposed amendments to the terms or conditions of existing contracts. *See,* H. Rep. No. 93-975, 93d Cong., 2d Sess. at 78, 82 (1974).

Subsequently, Congress reinforced this determination by enhancing the opportunity for public participation in the Commission's review procedures. As part of the 1978 amendments to the Act, Congress added the provision requiring a public comment period for economically significant proposed exchange rules. That amendment to section 5a(a)(12) of the Act was offered from the floor during debate in the House of Representatives. In offering this amendment, Representative AuCoin reasoned that

> [m]any of the notifications [of changes to exchange rules] approved by this Commission are technical and rather noncontroversial.
>
> However, there are a number of proposed rule changes that are controversial because of their expected impact on the way a particular commodity is traded or on the broader effects that a change may bring about in the production and distribution of that commodity.

124 Cong. Rec. H7312 (July 26, 1978).

Over the years, the Commission has demonstrated flexibility in implementing its regulatory mandate to review and approve new contracts and amendments to existing contracts. Based upon its administrative experience, the Commission periodically has revised and updated its procedures to provide exchanges with more specific criteria for meeting the contract market designation requirements; to reflect new developments in futures trading—such as the introduction of financial futures, futures on aggregates or indices of securities and cash settlement as a substitute for physical delivery; and, where appropriate, to lessen the burden on applicants by reducing the information required and streamlining the form of application.

In this regard, Guideline No. 1, 17 CFR part 5, appendix A, which provides guidance on the information to be included in designation applications and on the criteria for meeting the statutory designation requirements, was last amended in January 1992. The 1992 amendment substantially reduced and streamlined the guideline's requirements. Indeed, much of the application for option contracts has been reduced to the form of a checklist. Moreover, under the 1992 amendments, applications for designation of futures contracts need not duplicate any of the analysis or justification of contract terms which have been previously approved, reducing greatly the length of the justification or analysis required in a typical application for designation.

Despite the progress already made in reducing the paperwork requirements associated with designation applications, the Commission, in proposing these fast-track review rules, gave notice of its intention broadly to reexamine the form and content requirements of Guideline No. 1. This would include consideration of the possible applicability of an option-style checklist to applications for designation of proposed futures contracts. 61 FR 5991.[3] Implementation of fast-track review and approval procedures, separately and together with the planned revision of the format and content requirements for designation applications, should result in significantly streamlining the procedures and regulatory requirements associated with the current contract designation process.[4]

II. The Proposed Rules

The Commission proposed rules streamlining the procedures for the review of applications for contract market designation and of proposed exchange rule amendments relating to the terms and conditions of existing contracts. The thirty-day comment period ended on December 23, 1996, but was extended at the request of several exchanges until January 16, 1997, 61 FR 68175 (December 27, 1996).[5]

[3] Several commenters questioned the Commission's commitment to undertake this review expeditiously, citing the Commission's determination to propose these fast-track review rules separately. Rather than indicating a lack of commitment to its expressed intention, this statement accurately assessed the relative complexity of the undertaking and demonstrated an intention to put improvements to its review and approval procedures in place as soon as possible.

[4] The Commission has also modified many of its internal procedures to expedite further the review and approval of new contracts and proposed amendments to existing contracts. In 1992, the Commission established a policy to notify the public of the availability of proposed contract terms for comment by publication in the **Federal Register** within one week of receipt of an application. In addition, under these procedures, substantive issues are identified and communicated informally to the exchange very shortly after receipt, permitting a prompt resolution.

[5] By Petition dated December 17, 1996, the New York Mercantile Exchange, joined by the Chicago Board of Trade and the Chicago Mercantile Exchange, requested that the thirty-day comment period on fast-track designation procedures be extended.

Although the Commission proposed rules whereby the overall time to review and act on exchange submissions could be significantly shortened, the proposed rules did not alter the underlying legal requirement that these rules be subject to Commission review and prior approval before becoming effective. The Commission reasoned that prior Commission approval of proposed contracts remains in the public interest because,

> [i]n the absence of properly designed contract terms, damage to hedgers or industry pricing may result before corrections to the contract can be made. The impact of a market manipulation or other disruption in a newly introduced futures contract potentially could be far wider than the futures market itself, adversely affecting the underlying cash market, as well. Correcting this type of problem after trading has already begun may require extraordinary measures such as emergency action. At a minimum, such an occurrence would probably result in diminished credibility for futures trading in that contract, and possibly for futures trading, generally.
>
> 61 FR 59386 (footnote deleted).

Specifically, the Commission proposed a new rule 5.1 providing for a ten-day review period, after which—absent any contrary action by the Commission—the contracts would be automatically deemed to be approved. The Commission proposed that this procedure be applicable to all cash-settled futures and option contracts, except those for the domestic agricultural commodities enumerated in section 1a(3) of the Act or subject to the special procedures of the Johnson-Shad jurisdictional accord,[6] and to all futures and option contracts on foreign currency. This is the same time period as provided under the Commission Part 36 exemptive rules. *See,* Commission rule 36.4, 17 CFR 36.4 (1996).

For all other contracts, the Commission proposed to reduce by half the average time now required for contract market designation. These applications for contract market designation would be deemed to be approved by the Commission forty-five days after receipt. As proposed, both the ten-day and forty-five-day review periods could be extended for one thirty-day period, in appropriate instances. The fast-track review periods would be available only for applications for designation that are complete and not substantively amended after filing, except as requested by the Commission. The Commission would continue to publish for public comment notice of the availability of the terms of those applications for designation subject to the forty-five-day review period, but proposed to reduce the public comment period for such fast-track applications from thirty days, as currently provided under appendix D to part 5, to fifteen days.

The Commission proposed to amend its procedures for reviewing proposed exchange rule amendments to the terms and conditions of existing contracts consistent with the proposed changes to its review of applications for new designations.[7] Thus, in light of the existing provisions for ten-day review of many categories of such proposed exchange rule amendments, the Commission proposed to add to Commission rule 1.41(b) a fast-track review procedure consistent with the proposed forty-five-day fast-track review for designation applications.

With regard to publication for public comment, the Commission proposed to reduce the comment period to fifteen days for those rules published as a matter of discretion based upon a finding that "publication * * * is in the public interest and will assist the Commission in considering the views of interested persons." Commission rule 140.96(b), 17 CFR 140.96(b). The Commission determined to maintain a thirty-day comment period for those rules that are published because they are determined to be of major economic significance. *See,* section 5a(a)(12)(A) of the Act.

III. Comments Received and Final Rules

The Commission received seven comment letters from eight commenters. The commenters included four futures exchanges, a securities exchange, an industry association, and two academics. All but two of the commenters advanced the position that the proposed rulemaking, although well-intentioned, did not go far enough to relieve the exchanges from the perceived competitive burden which they argued the approval process entails. These commenters argued that only through amendment of the Act can the exchanges' competitiveness be restored. Those comments are best

[6] *See,* section 2(a)(1)(B) of the Act. Proposed contracts subject to this provision of the Act are not eligible for fast-track treatment generally, under either the ten-day review provision or the forty-five day review period discussed below.

[7] In general, only contract terms and conditions, with the exception of rules setting margin, are required to be submitted for Commission review and approval. *See,* section 5a(a)(12)(A) of the Act. Changes to contract specifications, which can modify a contract significantly, are given the same type of review they would receive if submitted as part of an application for a new designation.

addressed by Congress. Nevertheless, it may be instructive to respond to those comments here, particularly insofar as they are likely based upon assumptions and premises common to those comments which respond to the proposed rules.

a. Competitiveness as the Impetus for Fundamental Restructuring of the Process for Contract and Rule Amendment Approval

The Commission, from its inception, has always been careful to consider the effect of its actions on competition in, and the competitiveness of, the U.S. futures industry. It routinely strives to impose the least restrictive regulatory approach necessary to accomplish the goals and objectives of the Act.[8] After carefully considering the comments, the Commission believes that streamlining the current procedures, while maintaining the current prior approval standards, offers the best balance between protection of the public and cost reduction, as well as best conserving both Commission and exchange staff resources.

In this regard, the Commission carefully and fully analyzed the nature of global competition in the futures industry in a major 1994 study mandated by Congress as part of the 1992 amendments to the Act. That study analyzed the growth of futures trading in non-U.S. markets and the relative decline in the global market share of U.S. exchanges and concluded that U.S. exchanges remain leaders in innovation and generally have reached the global market first with new products.

The Commission is supportive, in general, of initiatives of U.S. exchanges to become more competitive.[9] However, fundamentally restructuring the process for listing new products as advocated by many of the commenters will not address the real factors which explain the growth of foreign markets. Foreign exchanges, by and large, have succeeded by developing products similar to those offered on U.S. exchanges but tailored to their home markets.[10] A second strength enjoyed by foreign competitors arises from time-zone advantages, whereby foreign futures exchanges are open for trading at the same time as important centers for trading in the underlying cash market.

The Commission found no evidence, however, that disparities in the regulatory frameworks of various jurisdictions, and of the procedures for listing new contracts in particular, were a major factor explaining the success of various exchanges in the global market. Moreover, in general, the trend among foreign authorities has been to strengthen their regulatory regimes, rather than to weaken them. This is a process supported and advanced by the Commission.[11] Thus, the appropriateness of the Commission's proposed rules for fast-track review should be analyzed solely on their own merit, and not measured against a vague notion that restructuring the approval process will address the competitive challenges faced by the exchanges.

b. The General Role of Self-Regulation in the Rule Approval Process

In addition to their arguments based on competitiveness, several exchanges also reject the fast-track approach on general philosophical grounds concerning the appropriate scope of government oversight of self-regulatory organizations ("SROs"). The Chicago Board of Trade ("CBT"), for example, argues that the Act's current preapproval framework is premised upon the erroneous presumption that "exchanges are either incapable of acting or cannot be trusted to act as responsible SROs in compliance with (their) obligations under the CEA." The CBT therefore advocates a fundamental legislative restructuring of the Act's review provisions.

The CBT maintains that Commission oversight can, and should, be relaxed because market incentives, such as avoidance of damage to its valuable reputation, will guide exchanges to take appropriate self-regulatory actions. The CBT, in its view, already provides sufficient opportunity for public input into its design of contracts and rule changes as a matter of business self-interest; public participation at a later stage of review under the aegis of government oversight is unnecessary because *"business* judgment tells * * * (the CBT) (to) be careful and diligent in the exercise of (its) *regulatory* judgment * * *." CBT Comment Letter dated January 16, 1997, at 9 (emphasis in original).

The Commission agrees that market incentives, enlightened business judgment and the desire to protect reputation are strong motivations which can lead to a high degree of self-regulation. Far from having a presumption that exchanges are either incapable of acting responsibly or not to be trusted, the Commission presumes that the exchanges will, in fact, act responsibly. Nevertheless, experience demonstrates that there have been instances when government oversight and action have been required to address particular instances where business judgments by the exchange membership did not appear to offer sufficient guidance to inform fully an SRO's regulatory judgment.[12]

The exchanges also argue that replacing prior approval with post-introduction intervention in troubled markets is a superior approach to these issues. For example, although the CBT agrees that "[n]o one questions that contract design flaws could make a contract susceptible to manipulation," it disagrees with the Commission's assessment that review of contracts before they begin to trade is one of the most effective market surveillance tools. The CBT states that, based on its experience, the exchange's "comprehensive market surveillance program is the most effective way to protect our markets."

The Commission advocates careful preapproval review in order to reduce the need to intervene in markets which are trading. The Commission agrees that futures exchanges generally have adequate programs of market surveillance, as is required by the current provisions of the Act and Commission rules. Where contract terms are appropriately set, however, market forces will respond to factors of supply and demand, without the need for regulatory intervention—by either the SRO or the government. Thus, the hand of regulation may be heaviest where preapproval review is lessened in favor of the more drastic forms of intervention necessary to address problems after

[8] See, section 15 of the Act.

[9] The Commission has encouraged industry-wide innovation and modernization in trading systems. In this regard, for example, the Commission sponsored a round-table on October 16, 1996, to highlight issues relating to electronic order routing and trading systems.

[10] For example, many foreign exchanges trade interest-rate contracts based upon the sovereign debt of the nation in which they are located.

[11] The Commission has been a world-leader in promoting the strengthening of regulatory oversight as futures trading becomes more global in nature. This process has accelerated in light of developments in connection with the Barings, Plc. and Sumitomo Corp. situations. *See*, Windsor Declaration issued May 17, 1995, and London Communique on Supervision of Commodity Futures Markets (November 26, 1996).

[12] Often, the Commission receives few or no public comments on contract market designations or on exchange rule changes. This is to be expected. It indicates that the exchange has indeed received and considered input from interested outside sources in connection with a proposal. However, there are more than a few designation applications or proposed exchange rule changes every year that elicit a significant number of comments, casting doubt upon the exchange's theory that its business self-interest will reliably inform all of its regulatory judgements. *See e.g.*, Notification to the CBT to Amend Delivery Specifications, 61 FR 68175 (December 12, 1995).

trading begins. Accordingly, the Commission remains convinced that the current structure of the Act best serves the public interest.

In addition to opposition to the rulemaking in favor of legislative action, certain exchanges raised objections to specific provisions of the proposed rules. For example, the New York Mercantile Exchange ("NYMEX") opined that the ten-day review provision should be applied more broadly, stating that, "if Commission staff can review (cash-settled) contracts within ten days, the same time frame also should apply to contracts involving physical delivery." As explained in the Notice of Proposed Rulemaking, the Commission afforded ten-day treatment to foreign currency and cash-settled contracts based on its many years of administrative experience reviewing applications for designation from all of the nation's futures exchanges. In the Commission's experience, contracts for foreign currency and (with the exception of those agricultural commodities which are enumerated in section 1a(3) of the Act) contracts providing for cash-settlement for the most part raise fewer issues requiring careful analysis than do contracts for physical delivery. This is especially true where the cash-settlement price is determined by a reputable third-party for commercial purposes other than solely for settlement of the futures contract.[13]

NYMEX also questions why the ten-day review period is available only to options on those foreign currency and cash-settled futures contracts eligible for ten-day review. Although options on physicals may raise issues regarding delivery and deliverable supplies, options on futures contracts generally raise few issues independent of the underlying futures contracts. Accordingly, as NYMEX's question suggests, options on futures typically could be included under the ten-day review period.

However, applications for designation of new futures contracts and options on those futures contracts generally are submitted together.[14] Because such an option is exercised into the futures contract, the underlying futures contract must be approved for trading as well. *See*, rule 33.41(a)(1)(ii). Accordingly, both the futures contract and its associated option should be assigned the same review period, notwithstanding the fact that an option on a futures contract raises few independent issues. Nevertheless, there have been rare instances where an option has been proposed to trade subsequent to designation of its underlying futures contract. In those instances, a ten-day review period is appropriate. The final rules reflect this modification.

In addition, all of the exchanges question inclusion in the fast-track procedures of any extension of time, even for novel or complex contracts. The Chicago Mercantile Exchange (CME) complains that the Commission could extend the time because a contract is novel or complex without "any necessary nexus between the nature of such issues and the provisions of the Act and regulations."

This proposed provision was not intended by the Commission to be a means of enlarging the time for review routinely or merely because a contract is novel. The Commission has a laudable record of encouraging innovation and of removing regulatory hurdles to novel contract proposals. However, where more time is needed to determine whether an application meets the requirements for designation because there are questions remaining on complex or novel issues, it would be ill-advised not to provide for a short extension.

Of course, the Commission agrees that extensions of the review period should not be frivolous or unwarranted. Accordingly, it proposed to notify exchanges of such extensions, specifying the particular "issues for which additional time for review is required." Such a requirement is intended to assure against unnecessary extensions of time for review. If after actual experience with this rule, however, the exchanges believe that it has been abused, they can petition the Commission to amend it. Such flexibility is a primary benefit of an agency's establishing such procedures by rule, rather than through congressional statutory amendment.

Several exchanges also commented negatively on including as a proposed ground for terminating fast-track review an application's failure to comply with the applicable form or content requirements. The CME argues that Guideline No. 1 asks for a great deal of information, "much of which may not be relevant to the ultimate question of whether the contract should be disapproved for violating a statutory or regulatory condition of designation." The CBT argues that, "given the level and extent of detail required by Guideline No. 1, coupled with the open-ended obligation Guideline No. 1 imposes * * * the determination of whether an application is 'complete upon submission' is highly subjective and open to misuse." CBT Comment Letter at 11.

The facts, however, do not justify such fears. The informational requirements of Guideline No. 1 are in fact related to whether the terms of a proposed contract violate a provision of the Act or Commission rules. The vast majority of the information required to be provided under Guideline No. 1 relates to consistency of the delivery terms of the proposed contract to the underlying cash market, based upon the statutory requirements that delivery terms be set so that contracts are not readily susceptible to manipulation. *Compare*, Part 5, Appendix A(a)(2)(i)–(v) and (3) to sections 5 and 5a of the Act. Moreover, the number of times that proposed contracts are formally deemed to be materially incomplete are relatively few.[15]

The CME concedes that it "can sympathize with the CFTC's position that it should not be required to give expedited review to an application that contains material deficiencies." It suggests that where such deficiencies exist, rather than the proposed contract's becoming ineligible for fast-track review, the exchange should be afforded an opportunity to correct the deficiency and then resume the fast-track

[13] Many of the exchange commenters complain, as does the CBT, that cash-settled contracts raise issues which are not inherently more or less complicated than those raised by contracts for physical delivery. The Commission agrees that some cash-settled contracts do raise issues which would require more than ten days to analyze. That is why it proposed to maintain a degree of flexibility in the process by permitting the Commission to extend the ten-day review period for those cash-settled contracts that raise novel or complex issues. In this way, the Commission has sought to balance the need for speedy, yet meaningful contract review.

[14] The fees associated with applications for contract market designation recognize the efficiency of reviewing and designating an option and its underlying futures contract together and are set at a lower rate than are fees for a futures contract and a related option contract that are submitted separately.

[15] The Commission rarely deems a contract application to be incomplete on the basis that additional information is needed. Rather, the typical practice is for staff to make targeted requests to exchanges for additional information which is necessary to make clear whether particular terms or conditions violate or may violate a provision of the Act or Commission rules. Generally, applications for designation are found to be "materially incomplete" only when actual modifications to the specific terms that have been submitted for review are required to bring the proposed contract into compliance with the Act or Commission regulations.

Similarly, few proposed amendments to contract terms are remitted for failure to comply with the applicable form or content requirements. No such rule amendments have been remitted in the current fiscal year or in fiscal year 1996.

review process. The statement in the CFTC

designation or amendment of a contract

applications for review prematurely

Indeed, several exchanges requested an extension of the comment period in this

where approval of pending contract applications or proposed rule

In consideration of the foregoing, and pursuant to the authority contained in

review process. The statement in the CFTC proposal that an amendment or supplement to an exchange's application renders the application ineligible for fast-track review seems overly harsh. At worst, an amendment or supplement to the application should cause the clock for the fast-track process to be reset.

CME Comment Letter, dated January 16, 1997, at 7.

A careful reading of the proposed rules reveals that the Commission, under proposed rule 5.1(a)(ii)(6), did indeed leave open the possibility that in appropriate circumstances the Commission could request that exchanges substantively amend the terms of a proposed contract under the fast-track procedures. The Commission anticipates that such requests would be made to exchanges where a term or condition of a proposed contract appears to violate a provision of the Act or Commission rules, but could be cured readily within the time remaining.[16]

In this regard, the thirty-day extension available for certain novel or complex applications should not be viewed by the exchanges as an additional period within which to cure defects in otherwise straightforward applications. Nor is the Commission modifying the proposed rule to provide that in such instances the time for fast-track review be reset. This would add an unnecessary level of complexity to the fast-track review procedures, particularly in light of the relatively prompt review and approval of submissions under current procedures.[17] Where Commission staff identify serious defects in the contract terms that cannot be cured within the time remaining for fast-track review and which would result in a recommendation that the Commission disapprove a proposal, the Commission will terminate fast-track review. Because disapproving applications for designation or proposed exchange amendments requires significant staff resources, this termination provision is intended to offer exchanges the opportunity to supplement an incomplete record or cure a defect in a proposed application for contract designation or amendment of a contract term without engaging in a disapproval proceeding.

Although the Commission would prefer to permit exchanges an opportunity to supplement an incomplete record or to cure a potential defect and then to move forward toward approval of the application, rather than to initiate disapproval proceedings, the final determination in such instances of whether disapproval proceedings should be initiated will rest with the exchange. As the Commission explained in the Notice of Proposed Rulemaking, an exchange may require the Commission to decide either to approve or to initiate disapproval of a contract or proposed exchange rule at the time that fast-track review is terminated. It stated that,

> [w]here a proposed contract originally filed for fast-track review appears to violate a statutory or regulatory requirement, the Commission presumes that the exchange would prefer to convert the application to one for review under current procedures * * *. However, when exchanges prefer that the Commission render a decision whether to disapprove the application as filed, the Commission will institute a formal disapproval proceeding upon notification that the exchange views its application as complete and final as submitted.

61 FR 59389 (footnote omitted).

Finally, several of the exchanges complained that not permitting them substantively to revise their applications or rule submissions penalized them for trying to improve the proposed contract or rule.[18] This argument is somewhat at odds with the exchanges' other arguments that, because they expend such great resources in perfecting their proposed contracts, Commission review is unnecessary and wasteful. The CME argues, somewhat more consistently, that substantive revisions are made to proposed contracts during the review period, but only because exchanges "currently have an incentive to rush new contract applications in as soon as possible to 'start the clock.'"

The exchanges have maintained that, as a consequence of business incentives, new contracts are thoroughly analyzed by the exchanges. If so, one would expect new contract applications to be complete when submitted. Moreover, to the extent that the time period for review at the outset is known to be brief, the incentive to submit incomplete applications for review prematurely should be diminished. In either case, these fast-track procedures will realign the contract approval process along the lines advocated by the exchanges. Complete, well-thought-out proposed contracts, even novel or complex ones, should speed through the review process, validating the quality of the exchanges' proposals and conserving scarce Commission resources.

One commenter, the Futures Industry Association ("FIA"), supported the Commission's proposed fast-track rules as "an essential next step in the evolution of the Commission's rule review procedures." The FIA "estimates that its members effect more than eighty percent of all customer transactions executed on United States contract markets." It notes that "although exchanges have the obligation to act in the public interest and may be expected to do so, the determination with respect to whether a particular contract or rule is in the public interest is properly vested in the Commission."

Moreover, the FIA agrees with the Commission's concern that the procedures applicable to contract market designation and approval of rules retain a measure of flexibility, stating:

> The vast majority of exchange rule submissions, whether in the form of an initial application for designation as a contract market or a subsequent amendment have been approved without controversy, and such rules will benefit from the expedited review procedures. However, * * * from time to time certain exchange rules relating to the terms and conditions of contracts have raised significant concerns for FIA members as well as other market participants. Moreover, the impact of a particular rule has not always been evident on its face, either to the Commission, industry participants or, in some cases, the submitting exchange. It is essential, therefore, that the Commission retain the flexibility inherent in the proposed rules to assure the opportunity for thoughtful analysis and comment in appropriate circumstances.

FIA Comment Letter, dated January 21, 1997 at 3.[19]

In addition, the FIA notes that membership organizations, and the exchanges themselves, will have difficulty in responding within the time frames provided under these rules.

[16] For example, where a contract for foreign currency called for delivery in a manner contrary to the law of the issuing sovereign, but the delivery provisions could be modified to make delivery legal, the Commission could request that the modification be made, provided that there were sufficient time in the ten-day review period for the exchange to comply.

[17] Of course, where an exchange wishes to cure a defect in a proposed contract after submission, it is free to withdraw the original submission and submit a new, amended application for fast-track review. This, in essence, is a mechanism within the contours of the rules as proposed by which an exchange can "reset" the review period simply, without adding undue complexity to these rules.

[18] Both NYMEX and the Coffee, Sugar and Cocoa Exchange noted that, although the preamble stated that exchanges would be permitted to make non-substantive amendments to their submissions, such as correcting typographical errors, the proposed rule did not explicitly include such a provision. The final rule has been modified so to provide.

[19] An additional commenter, the New York Stock Exchange, while not commenting on the fast-track review procedures, noted its interest in preserving the public's ability to comment on particular rule amendments. The NYSE requested that the Commission publish all proposals to amend circuit breakers. It is the Commission's current policy, which it will continue, to publish for public comment all proposed amendments affecting circuit breakers coordinated among markets. *See, e.g.*, 61 FR 68722 (December 30, 1996).

Indeed, several exchanges requested an extension of the comment period in this very proposed rulemaking.[20] Accordingly, the FIA requests that the Commission consider taking steps in addition to publication in the **Federal Register** to disseminate more quickly information regarding matters pending under these fast-track procedures. It suggests, in particular, that the Commission use its internet web site to do so.

The Commission agrees with the FIA's assessment that all interested parties—the Commission, the exchanges, industry member associations and other interested membership organizations or individuals—will have difficulty meeting the shortened time frames of these fast-track procedures and will endeavor to find ways to ease this burden on interested parties. The Commission intends to implement FIA's suggestion and will post notice on the internet of the filing of all proposed designation applications and amendments to contract terms, including the dates when the review period terminates. The Commission also encourages the use of electronic filing of comments and other submissions in order to reduce the time burdens imposed by these rules.

IV. Implementation

These rules constitute a necessary first step in a potentially profound restructuring of the relationship between the Commission and the exchanges with respect to the Commission's oversight and review and approval of contract market applications and proposed rule amendments. Applications for contract market designation that have been submitted in advance of the effective date of these rules may not have been prepared by the exchanges with this new relationship and timetable in mind, with the expectation that adjustments to the pending submissions would be made during the review process.

The Commission, in implementing these rules will offer the exchanges the maximum regulatory relief and flexibility possible. Accordingly, when these rules become effective, the Commission will treat all pending contracts and proposed rule amendments as having been submitted under the fast-track procedures as of the rules' effective date, unless instructed otherwise by the exchange. However, where approval of pending contract applications or proposed rule amendments would be accelerated by using existing procedures, the Commission will continue to process those designation applications or proposed rule amendments under those existing procedures.

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C 601 *et seq.*, requires that agencies, in promulgating rules, consider the impact of these rules on small entities. The Commission has previously determined that contract markets are not "small entities" for purposes of the RFA, 5 U.S.C. 601 et seq. 47 FR 18618 (April 30, 1982). These amendments establish alternative streamlined procedures for Commission review and approval of applications by contract markets for additional designations and of amendments to contract terms and conditions. Accordingly, the Chairperson, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act ("PRA") of 1980 (Act), 44 U.S.C. 501 *et. seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. While this rulemaking imposes no burden, the group of rules (3038–0022) of which these are a part has the following burden:

> Average burden hours per response—3,546,26.
> Number of respondents—10,971.
> Frequency of response—on occasion.

Copies of the OMB-approved information collection package associated with this rule may be obtained from Gerald P. Smith, Clearance Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone: (202) 418–5160.

List of Subjects

17 CFR Part 1

Commodity exchanges, Contract market rules, Rule review procedures.

17 CFR Part 5

Contract markets, Designation application.

[20] As noted above, the thirty-day comment period on these proposed rules was extended pursuant to a petition for extension by NYMEX, joined by several of the exchanges.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 4c, 5, 5a, 6 and 8a thereof, 7 U.S.C. 6c, 7, 7a, 8, and 12a, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for part 1 continues to read as follows:

Authority: 7 U.S.C. 2, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 9, 12, 12a, 12c, 13a–1, 13a–2, 16, 19, 21, 23 and 24.

2. In § 1.41(b), the introductory text, paragraphs (b)(1), (b)(2), (b)(3), (b)(4), (b)(5) and the concluding text are redesignated as (b)(1)(i), (b)(1)(i)(A), (b)(1)(i)(B), (b)(1)(i)(C), (b)(1)(i)(D), (b)(1)(i)(E), and (b)(1)(ii), respectively; the first sentence of newly redesignated paragraph (b)(1)(i) and newly redesignated paragraph (b)(1)(ii) are revised; and paragraphs (b)(2) through (b)(4) are added, to read as follows:

§ 1.41 Contract market rules; submission of rules to the Commission; exemption of certain rules.

* * * * *

(b) *Rules that relate to terms and conditions.* (1)(i) Except as provided herein and in paragraph (f) of this section, all proposed contract market rules that relate to terms and conditions must be submitted to the Commission for approval pursuant to section 5a(a)(12)(A) of the Act prior to their proposed effective dates. * * *

(ii) The Commission may remit to the contract market, with an appropriate explanation where practicable, and not accept for review any rule submission that does not comply with the form and content requirements of paragraphs (b)(1)(i) (A) through (E) of this section.

(2) All proposed contract market rules that relate to terms and conditions submitted for review under paragraph (b)(1) shall be deemed approved by the Commission under section 5a(a)(12)(A) of the Act, forty-five days after receipt by the Commission, unless notified otherwise within that period, if:

(i) The contract market labels the submission as being submitted pursuant to Commission rule 1.41(b)—Fast Track Review;

(ii) The submission complies with the requirements of paragraphs (b)(1)(i) (A) through (E), of this section or for dormant contracts, the requirements of § 5.2 of this chapter;

(iii) The contract market does not amend the proposed rule or supplement

the submission, except as requested by

other such nonsubstantive revisions, during that period; and

(a)(6) and (b)(5) of this section that the contract market amend the proposed

a manual signature.[1] The Commission

the submission, except as requested by the Commission, during the pendency of the review period; and

(iv) The contract market has not instructed the Commission in writing during the review period to review the proposed rule under the usual procedures under section 5a(a)(12)(A) of the Act and paragraph (b)(1) of this section.

(3) The Commission, within forty-five days after receipt of a submission filed pursuant to paragraph (b)(2) of this section, may notify the contract market making the submission that the review period has been extended for a period of thirty days where the proposed rule raises novel or complex issues which require additional time for review. This notification will briefly specify the nature of the specific issues for which additional time for review is required. Upon such notification, the period for fast-track review of paragraph (b)(2) of this section shall be extended for a period of thirty days.

(4) During the forty-five day period for fast-track review, or the thirty-day extension when the period has been enlarged under paragraph (b)(3) of this section, the Commission shall notify the contract market that the Commission is terminating fast-track review procedures and will review the proposed rule under the usual procedures of section 5a(a)(12)(A) of the Act and paragraph (b)(1) of this section, if it appears that the proposed rule may violate a specific provision of the Act, regulation, or form or content requirement of this section. This termination notification will briefly specify the nature of the issues raised and the specific provision of the Act, regulation, or form or content requirement of this section that the proposed rule appears to violate. Within ten days of receipt of this termination notification, the contract market may request that the Commission render a decision whether to approve the proposed rule or to institute a proceeding to disapprove the proposed rule under the procedures specified in section 5a(a)(12)(A) of the Act by notifying the Commission that the contract market views its submission as complete and final as submitted.

* * * * *

3. Section 1.41b is amended by revising paragraph (b) to read as follows:

§ 1.41b. Delegation of authority to the Director of the Division of Trading and Markets and Director of the Division of Economic Analysis.

* * * * *

(b) The Commission hereby delegates, until the Commission orders otherwise: (1) To the Director of the Division of Economic Analysis, with the concurrence of the General Counsel or the General Counsel's delegatee, to be exercised by such Director or by such other employee or employees of the Commission under the supervision of such Director as may be designated from time to time by the Director, the authority to approve, pursuant to section 5a(a)(12)(A) of the Act and § 1.41(b), contract market proposals, submitted pursuant to § 5.2, to list additional trading months or expiration for, or to otherwise recommence trading in, a contract that is dormant within the meaning of § 5.2; and

(2) To the Director of the Division of Economic Analysis, and to the Director of the Division of Trading and Markets, with the concurrence of the General Counsel or the General Counsel's delegatee, to be exercised by such Director or by such other employee or employees of the Commission under the supervision of such Director as may be designated from time to time by the Director, authority to request under § 1.41(b)(2)(iii) that the contract market amend the proposed rule or supplement the submission, to notify a contract market under § 1.41(b)(3) that the time for review of a proposed contract term submitted under that section for fast-track review has been extended, and to notify the contract market under § 1.41(b)(4) that fast-track procedures are being terminated.

PART 5—DESIGNATION OF AND CONTINUING COMPLIANCE BY CONTRACT MARKETS

3. The authority citation for Part 5 is revised it to read as follows:

Authority: 7 U.S.C. 6(c), 6c, 7, 7a, 8 and 12a.

4. Part 5 is amended by adding a new § 5.1, and in Appendix D, by revising the second sentence, to read as follows:

§ 5.1 Fast-track designation review.

(a) *Cash-settled contracts.* Boards of trade seeking designation as a contract market under sections 4c, 5, 5a, and 6 of the Act, and regulations thereunder, shall be deemed to be designated as a contract market under section 6 of the Act ten days after receipt by the Commission of the application for designation, unless notified otherwise within that period, if:

(1) The board of trade labels the submission as being submitted pursuant to Commission rule 5.1—Fast Track Ten-Day Review;

(2)(i) The application for designation is for a futures contract providing for cash settlement or for delivery of a foreign currency for which there is no legal impediment to delivery and for which there exists a liquid cash market; or

(ii) For an option contract that is itself cash-settled, is for delivery of a foreign currency which meets the requirements of paragraph (a)(2)(i) of this section or is to be exercised into a futures contract which has already been designated as a contract market;

(3) The application for designation is for a commodity other than those enumerated in section 1a(3) of the Act or subject to the procedures of section 2(a)(1)(B) of the Act;

(4) The board of trade currently is designated as a contract market for at least one contract which is not dormant within the meaning of this part;

(5) The submission complies with the requirements of Appendix A of this part—Guideline No. 1 and § 1.61 of this chapter;

(6) The board of trade does not amend the terms or conditions of the proposed contract or supplement the application for designation, except as requested by the Commission or for correction of typographical errors, renumbering or other such nonsubstantive revisions, during that period; and

(7) The board of trade has not instructed the Commission in writing during the review period to review the application for designation under the usual procedures under section 6 of the Act.

(b) *Contracts for physical delivery.* Boards of trade seeking designation as a contract market under sections 4c, 5, 5a, and 6 of the Act, and regulations thereunder, shall be deemed to be designated as a contract market under section 6 of the Act forty-five days after receipt by the Commission of the application for designation, unless notified otherwise within that period, if:

(1) The board of trade labels the submission as being submitted pursuant to Commission rule 5.1—Fast Track Forty-Five Day Review;

(2) The application for designation is for a commodity other than those subject to the procedures of section 2(a)(1)(B) of the Act;

(3) The board of trade currently is designated as a contract market for at least one contract which is not dormant within the meaning of this part;

(4) The submission complies with the requirements of Appendix A of this part—Guideline No. 1 and § 1.61 of this chapter;

(5) The board of trade does not amend the terms or conditions of the proposed contract or supplement the application for designation, except as requested by the Commission or for correction of typographical errors, renumbering or other such nonsubstantive revisions, during that period; and

(6) The board of trade has not instructed the Commission in writing during the forty-five day review period to review the application for designation under the usual procedures under section 6 of the Act.

(c) *Notification of extension of time.* The Commission, within ten days after receipt of a submission filed under paragraph (a) of this section, or forty-five days after receipt of a submission filed under paragraph (b) of this section, may notify the board of trade making the submission that the review period has been extended for a period of thirty days where the designation application raises novel or complex issues which require additional time for review. This notification will briefly specify the nature of the specific issues for which additional time for review is required. Upon such notification, the period for fast-track review of paragraphs (a) and (b) of this section shall be extended for a period of thirty days.

(d) *Notification of termination of fast-track procedures.* During the fast-track review period provided under paragraphs (a) or (b) of this section, or of the thirty-day extension when the period has been enlarged under paragraph (c) of this section, the Commission shall notify the board of trade that the Commission is terminating fast-track review procedures and will review the proposed rule under the usual procedures of section 6 of the Act, if it appears that the proposed contract may violate a specific provision of the Act, regulation, or form or content requirement of Appendix A of this part. This termination notification will briefly specify the nature of the issues raised and the specific provision of the Act, regulation, or form or content requirement of Appendix A of this part that the proposed contract appears to violate. Within ten days of receipt of this termination notification, the board of trade may request that the Commission render a decision whether to approve the designation or to institute a proceeding to disapprove the proposed application for designation under the procedures specified in section 6 of the Act by notifying the Commission that the exchange views its application as complete and final as submitted.

(e) *Delegation of authority.* (1) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Economic Analysis or to the Director's delegatee, with the concurrence of the General Counsel or the General Counsel's delegatee, authority to request under paragraphs (a)(6) and (b)(5) of this section that the contract market amend the proposed contract or supplement the application, to notify a board of trade under paragraph (c) of this section that the time for review of a proposed contract term submitted for review under paragraphs (a) or (b) of this section has been extended, and to notify the contract market under paragraph (d) of this section that the fast-track procedures of this section are being terminated.

(2) The Director of the Division of Economic Analysis may submit to the Commission for its consideration any matter which has been delegated in paragraph (e)(1) of this section.

(3) Nothing in the paragraph prohibits the Commission, at its election, from exercising the authority delegated in paragraph (e)(1) of this section.

Appendix D—Internal Procedure Regarding Period for Public Comment

* * * Generally, the Commission will provide for a public comment period of thirty days on such applications for designation; *provided*, however, that the public comment period will be fifteen days for those applications submitted for review under the fast-track procedures of § 5.1(b) of this part.

* * * * *

Issued in Washington, D.C., this 27th day of February, 1997, by the Commodity Futures Trading Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97-5567 Filed 3-6-97; 8:45 am]

BILLING CODE 6351-01-P

17 CFR Parts 1 and 31

Financial Reports of Futures Commission Merchants, Introducing Brokers and Leverage Transaction Merchants

AGENCY: Commodity Futures Trading Commission.

ACTION: Final Rules.

SUMMARY: The Commodity Futures Trading Commission ("CFTC" or "Commission") is amending its Rule 1.10(d)(4), which requires that each Form 1-FR filed with the Commission contain an oath or affirmation attesting that, to the best knowledge and belief of the individual making such oath or affirmation, the information contained therein is true and correct. The amended rule provides that, for the purposes of making this attestation when filing a financial report with the Commission electronically, the use of a personal identification number ("PIN") will be deemed to be the equivalent of a manual signature.[1] The Commission also is amending Rule 1.10(c) to account for the possibility that registrants may choose to file certain financial reports electronically using a Commission issued PIN rather than filing such reports in paper form with the regional office of the Commission nearest the principal place of business of the registrant. Rule 1.10(c) will permit electronic filing of financial reports that are not required to be certified by an independent public accountant provided that the Commission obtains the means to read and process the electronically transmitted data.[2] The Commission also is adding Rule 1.10(b)(2)(iii) to clarify that certified financial reports may not be filed electronically.

In addition, the Commission is amending Rules 1.10(g) and 31.13(m) to clarify that certain portions of the financial reports will be deemed public and other portions nonpublic, and to eliminate the requirement that firms filing financial reports need to separately bind portions of such reports generally treated as nonpublic in order for such portions of the reports to be accorded nonpublic treatment.

EFFECTIVE DATE: April 7, 1997.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, or Lawrence T. Eckert, Attorney Adviser, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington D.C. 20581. Telephone (202) 418-5450.

SUPPLEMENTARY INFORMATION:

I. Background

On October 25, 1996, the Commission published for comment proposed amendments to Rule 1.10 (the "Proposals"),[3] which sets forth the financial reporting requirements for futures commission merchants ("FCMs") and independent introducing brokers ("IBIs").[4] Rule 1.10 requires

[1] Commission Rule 1.10(h) permits registrants that are also registered as securities broker-dealers with the Securities and Exchange Commission to file a copy of their Financial and Operational Combined Uniform Single Report ("FOCUS") with the Commission in lieu of Form 1-FR. The amendments discussed herein are intended to apply equally to registrants who file Form 1-FR or FOCUS with the Commission.

[2] The Commission currently is involved in discussions with the Chicago Mercantile Exchange ("CME") to obtain the electronic filing software co-developed by CME and the Chicago Board of Trade ("CBT") and used by CME, CBT and their members.

[3] 61 FR 55235.

[4] Approximately two-thirds of introducing brokers enter into a guarantee agreement with an FCM and thus are not required to raise their own regulatory capital or file financial reports.

generally that FCMs file with the

filing restrictions in the instructions to

reports solely via electronic

portions of a Form 1-FR.[11] The

generally that FCMs file with the Commission financial reports on Form 1–FR–FCM each quarter and that IBIs file financial reports on Form 1–FR–IB semiannually.[5] The Proposals consisted of several amendments concerning the electronic filing of such financial reports, as well as the treatment of the various portions of financial reports as either public or nonpublic, whether filed electronically or in paper form. Specifically, the Proposals: (1) provide that for the purposes of making the attestation under Rule 1.10(d)(4) as to the truth and correctness of information contained in electronically filed financial reports, the use of a PIN would be deemed to be the equivalent of a manual signature;[6] (2) account for the possibility that registrants may choose to file electronically financial reports which need not be certified by an independent public accountant; (3) clarify that certified financial reports may not be filed electronically; (4) clarify that certain portions of the financial reports will be deemed public and other portions nonpublic; and (5) eliminate the requirement that firms filing financial reports bind separately the portions of such reports generally treated as nonpublic in order for such portions of the reports to be accorded nonpublic treatment.

The 30-day public comment period on the Proposals expired on November 25, 1996. The Commission received one written comment on the Proposals, submitted by National Futures Association ("NFA"). In general, NFA noted its strong support for the Commission's Proposals to allow FCMs and IBIs to file certain financial reports electronically, but requested that the Commission clarify and revise certain aspects of the proposed amendments. The Commission has considered carefully the comments received from NFA. The Commission has determined to adopt the amendments as proposed with one minor modification. Amended Rule 1.10(c) now clarifies that, while the Commission intends to permit the electronic filing of noncertified financial reports, it will permit such electronic filing only after such time as the Commission obtains the necessary computer software to read and process the electronically transmitted data. The Commission also has clarified various matters relevant to the operation of the amended rules in the discussion below.

II. Rule Amendments

A. Electronic Filing Issues

The Commission proposed to amend Rule 1.10(d)(4) such that the use of a PIN in filing a Form 1-FR pursuant to Rule 1.10 will be deemed to be the equivalent of a manual signature under the rule. The Commission did not receive any comments concerning the language of this proposed amendment and is adopting the provision as proposed. The amended rule, therefore, makes clear that the transmission of a financial report to the Commission or an SRO under a PIN constitutes a representation that the person whose PIN is used in such transmission attests that, to the best knowledge and belief of that person, the information contained in the financial report is true, correct and complete.[7] The Commission hopes that this amendment will encourage and facilitate the process of electronic filing of such reports with the Commission but notes that, while it encourages the use of the electronic filing option, the amendments do not mandate electronic filing with the Commission.[8]

In the Proposals, the Commission noted that it intends to adopt procedures for issuing PINs to facilitate electronic filing with the Commission consistent with the procedure currently in use by SROs such as CBT and the CME.[9] In this regard, NFA stated in its comment letter that it fully supports the use of PINs as described in the Proposals. However, NFA recommended that, with respect to those firms that are members of an SRO, the Commission should permit the registrant's SRO to assign one PIN to be used by the registrant to file financial reports with both the Commission and the firm's DSRO. Thus, the Commission could avoid the situation where a registrant would need to use multiple PINs to file electronically. NFA stated its belief that such a situation could be a disincentive to filing electronically with the Commission. The Commission has discussed this issue with CME, which did not provide a written comment on this issue, but would be affected along with the other exchanges by adoption of NFA's proposal. CME stated that, for security reasons, each entity receiving an electronically filed financial report should assign a unique PIN to each filer. If a PIN is too widely known, an issue arises as to the value of the use of the PIN for attestation purposes. Additionally, CME noted that the software used by FCMs would have to be modified in order to allow the PIN number currently used with the exchange also to be used when filing with the Commission. Finally, as NFA's proposed electronic filing system is evolving, it appears that there may not be a need for the Commission to have a PIN for firms for which NFA is the DSRO. NFA is proposing to have the firms for which it is the DSRO file financial reports directly with NFA. Under this framework, NFA would then transmit the electronically filed reports to the Commission. In light of the foregoing, the Commission anticipates that it will issue unique PINs to FCMs that choose to file their financial reports with the Commission electronically.

The Commission also proposed to add new Rule 1.10(b)(2)(iii) and to amend paragraph (c) of Rule 1.10 to provide certain clarifications regarding the Commission's electronic filing program. New Rule 1.10(b)(2)(iii), as set forth in the Proposals, clarified that firms may not file electronically their certified financial reports, which must accompany the application for registration and be submitted as of each fiscal year-end following registration. The amendment to Rule 1.10(c) clarified that a registrant may file non-certified financial reports via electronic transmission using a Commission issued PIN in accordance with instructions issued by the Commission. NFA requested that the Commission delete the proposed addition of Rule 1.10(b)(2)(iii) as well as the reference in the proposed amendment to Rule 1.10(c) with respect to "reports which need not be certified * * *." NFA acknowledged that technology does not yet permit the electronic filing of a complete certified report, but recommended that the Commission include any electronic filing restrictions in the instructions to the forms to be filed rather than in Rule 1.10 itself, in order to accommodate future technology. The Commission believes that references to filing restrictions in the rules themselves promote clarity. Should the Commission wish to permit the filing of certified financial reports in order to accommodate new technology as it becomes available, the Commission could readily amend Rule 1.10 to account for such change. Accordingly, the Commission is adopting new Rule 1.10(b)(2)(iii) as proposed. The Commission is, however, making one minor modification to the proposed amendment to Rule 1.10(c). As adopted, amended Rule 1.10(c) clarifies that the Commission's electronic filing program will begin only if the Commission can obtain the computer software necessary to read and to process the data contained in the electronically filed reports. The Commission wishes to avoid a situation in which registrants would be required to use software to file their financial reports with the Commission that is different from the software used to file such reports with their DSRO. As noted above, the Commission currently is engaged in discussions with CME in an attempt to obtain the computer software co-developed by CME and CBT and used by CME, CBT and their members as part of CME's and CBT's electronic filing programs.

The Commission further noted in the Proposals that, at the outset of its electronic filing program, firms filing non-certified financial reports electronically must continue to file a paper report with the appropriate regional office of the Commission. The Commission explained that, following some experience with electronic transmission of financial data (the "Pilot Period"), it may be permissible for firms to submit non-certified financial reports to the Commission solely via electronic transmission. In this regard, NFA encouraged the Commission to keep its Pilot Period with respect to its electronic filing program brief, stating that firms have little incentive to file with the Commission electronically if they also are required to file their reports in paper form. NFA also requested that the Commission clarify that the Pilot Period is intended for the Commission to gain experience with the electronic filing program itself and is not meant to serve as a testing period for each individual firm's use of the system. The Commission shares NFA's views on these points and anticipates permitting firms to file their non-certified financial reports solely via electronic transmission as quickly as practicable, given an adequate time period in which the Commission can gain experience with the electronic filing program. At the conclusion of its Pilot Period, the Commission intends to change its instructions regarding filing to eliminate the requirement that a firm file a paper copy of its financial report in addition to filing such report electronically. The Commission does not anticipate that additional rulemaking would be necessary to accomplish this.

B. Freedom of Information Act Issues

In the Proposals, the Commission noted that, consistent with current practice, the Commission intends to respond to a Freedom of Information Act ("FOIA") request for a financial report that was filed with the Commission solely by electronic transmission by printing a paper copy of the responsive public data and forwarding it to the requestor. The data which the Commission would print and forward to the requestor would be the public portions of a Form 1–FR. Commission Rule 1.10(g) provides that these public portions are, for FCMs and IBIs, the statement of financial condition and the statement of the computation of the minimum capital requirements, and, in addition, for FCMs only, the statements concerning segregation of customer funds and the secured amount for foreign futures and option customers. The proposed amendments to Rule 1.10(g) would reconfirm the current demarcation as to which portions of the Form 1-FR are generally treated as public and nonpublic and eliminate the need for firms to use a separate binding procedure to receive such treatment for their reports, whether reports are filed in paper form or electronically. The Commission received no comments with respect to the proposed amendments to Rule 1.10(g)[10] and is adopting them as proposed.

The Commission has proposed to clarify, in a separate release, its rules under FOIA and the Government in the Sunshine Act ("GINSA") in order to, among other things: (1) reaffirm that certain portions of the Form 1-FR are generally public and the remainder are nonpublic; and (2) state that it will no longer process petitions for confidential treatment of the generally public portions of a Form 1-FR.[11] The amendments to Rule 1.10(g)(1) and(2)[12] are intended to complement these proposed amendments of the FOIA and GINSA rules and to eliminate a burden on firms to bind separately certain portions of a Form 1-FR to assure nonpublic treatment.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–611 (1988), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The rules discussed herein will affect FCMs, LTMs and IBIs. The Commission already has established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such small entities in accordance with the RFA.[13] FCMs and LTMs[14] have been determined not to be small entities under the RFA.

With respect to IBIs, the Commission has stated that it is appropriate to evaluate within the context of a particular rule proposal whether some or all IBs should be considered to be small entities and, if so, to analyze the economic impact on such entities at that time.[15] These rule amendments do not require any IBI to submit financial reports electronically but only govern the attestation of the completeness and accuracy of such reports so filed. Presumably, an IBI would choose to file a financial report electronically only if it were cost-effective to do so. These rule amendments should impose no additional burden or requirements on an IBI and thus would not have a significant economic impact on a substantial number of IBIs. Accordingly, pursuant to Rule 3(a) of the RFA, 5 U.S.C. 605(b), the Chairperson, on behalf of the Commission, certifies that these amendments will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13 (May 13, 1995) imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of

[5] The Commission recently adopted amendments to certain of its financial reporting requirements for FCMs and IBIs, including time requirements for filing Form 1–FR. *See* 62 FR 4633 (Jan. 31, 1997).

[6] See also, CFTC Interpretative Letter 96–21, [1994–1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,633 (Feb. 29, 1996) (no-action letter issued to the CBT concerning the attestation of financial reports where an FCM is organized as a partnership); Advisory 12–96, reprinted as CFTC Advisory 96–21 in [1994–1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,640 (March 8, 1996) (making relief provided to CBT available to all FCMs, IBIs and self-regulatory organizations ("SROs")); Advisory 28–96, [1994–1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,711 (May 28, 1996) (alerting FCMs, IBs and SROs that to the extent that any SRO program for electronic filing of financial reports approved by the Commission does not require a manual signature for purposes of attestation, the use of a PIN would be deemed to be the equivalent of a manual signature for purposes of attestation under Commission Rule 1.10(d)(4)).

[7] Commission Rule 1.10(c) provides that financial reports must be filed with the Commission and the firm's designated self-regulatory organization ("DSRO").

[8] The Commission may determine to require electronic filing at some later period, but believes such a requirement would be premature at this time. The Commission also encourages the industry to develop a system of electronic filing of financial reports that will provide for the development of a uniform database of financial information with the least burden upon filers, SROs and the Commission.

[9] 61 FR 55235, at 55236.

[10] Although there are currently no registered leverage transaction merchants ("LTMs"), the Commission is also amending Rule 31.13(m) which currently provides for a separate binding procedure similar to that set forth in Rule 1.10(g) with respect to LTMs submitting financial reports on Form 2-FR.

[11] 61 FR 66949 (Dec. 19, 1996).

[12] The Commission has removed and reserved paragraph (g)(3) and revised paragraph (g)(5) of Rule 1.10. 62 FR 4633, 4637 and n.17, 4640. The amendments discussed herein do not interfere with or require further amendment of those earlier amendments.

[13] 47 FR 18618–18621 (April 30, 1982).

[14] See 50 FR 102, 108 n.11 (Jan. 2, 1985).

[15] See 48 FR 35248, 35275–78 (Aug. 3, 1983).

information as defined by the PRA. While these rule amendments have no

regional office of the Commission nearest the principal place of business

must be accompanied by the Commission-assigned Personal

information on such other statements and schedules will be treated as

17 CFR Part 30

subject to the rules of the Exchange." 53 FR 44856, 44857.

information as defined by the PRA. While these rule amendments have no burden, the group of rules (3038–0024) of which they are a part has the following burden:

Average Burden Hours Per Response: 128.

Number of Respondents: 3,988.

Frequency of Response: Quarterly, Monthly or On Occasion.

Copies of the OMB approved information collection package may be obtained from Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB, Washington, DC 20503 (202) 395–7340.

List of Subjects

17 CFR Part 1

Commodity futures; Minimum financial and related reporting requirements.

17 CFR Part 31

Leverage transactions; Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act, and in partic ular, Sections 4f, 4g and 8a(5) thereof, 7 U.S.C. 6f, 6g and 12a(5), the Commission hereby amends parts 1 and 31 of chapter I of title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for part 1 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6m, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23 and 24.

2. Section 1.10 is amended by adding paragraph (b)(2)(iii) and revising paragraphs (c), (d)(4), (g)(1) and (g)(2) to read as follows:

§ 1.10 Financial reports of futures commission merchants and introducing brokers.

* * * * *

(b) * * *

(2) * * *

(iii) A Form 1–FR required to be certified by an independent public accountant in accordance with § 1.16 which is filed by a futures commission merchant, an introducing broker or an applicant for registration in either category, must be filed in paper form and may not be filed electronically.

* * * * *

(c) *Where to file reports.* The reports provided for in this section will be considered filed when received by the regional office of the Commission nearest the principal place of business of the registrant (except that a registrant under the jurisdiction of the Commission's Western Regional Office must file such reports with the Southwestern Regional Office) and by the designated self regulatory organization, if any; and reports required to be filed by this section by an applicant for registration will be considered filed when received by the National Futures Association and by the regional office of the Commission nearest the principal place of business of the applicant (except that an applicant under the jurisdiction of the Commission's Western Regional Office must file such reports with the Southwestern Regional Office): *Provided, however,* That any report filed pursuant to paragraphs (b)(1), (b)(2) or (b)(4) of this section or § 1.12(a) or (b) which need not be certified in accordance with § 1.16 may be submitted to the Commission in electronic form using a Commission-assigned Personal Identification Number, and otherwise in accordance with instructions issued by the Commission, if the Commission has obtained the means necessary to read and to process the information contained in such report: *And, provided further,* That information required of a registrant pursuant to paragraph (b)(4) of this section need be furnished only to the self-regulatory organization requesting such information and the Commission, and that information required of an applicant pursuant to paragraph (b)(4) of this section need be furnished only to the National Futures Association and the Commission: *And, provided further,* That any guarantee agreement entered into between a futures commission merchant and an introducing broker in accordance with the provisions of this section need be filed only with and will be considered filed when received by the National Futures Association.

(d) * * *

(4) Attached to each Form 1–FR filed pursuant to this section must be an oath or affirmation that to the best knowledge and belief of the individual making such oath or affirmation the information contained in the Form 1–FR is true and correct. If the applicant or registrant is a sole proprietorship, then the oath or affirmation must be made by the proprietor; if a partnership, by a general partner; or if a corporation, by the chief executive officer or chief financial officer. In the case of a Form 1–FR filed via electronic transmission in accordance with procedures established by the Commission, such transmission must be accompanied by the Commission-assigned Personal Identification Number of the authorized signer and such Personal Identification Number will constitute and become a substitute for the manual signature of the authorized signer for the purpose of making the oath or affirmation referred to in this paragraph.

* * * * *

(g) *Nonpublic treatment of reports.* (1) The following portions of Forms 1–FR filed pursuant to this section will be public: the statement of financial condition, the statement of the computation of the minimum capital requirements, the statements (to be filed by a futures commission merchant only) of segregation requirements and funds in segregation for customers trading on U.S. commodity exchanges and for customers' dealer options accounts, and the statement (to be filed by a futures commission merchant only) of secured amounts and funds held in separate accounts for foreign futures and foreign options customers in accordance with § 30.7 of this chapter. The other financial statements (including the statement of income (loss)), footnote disclosures and schedules of Form 1–FR, trade secrets and certain other commercial or financial information on such other statements and schedules will be treated as nonpublic for purposes of the Freedom of Information Act and the Government in the Sunshine Act and parts 145 and 147 of this chapter.

(2) The following portions of copies of the Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II or Part IIA filed pursuant to paragraph (h) of this section, will be public: The statement of financial condition, the computations of net capital and the minimum capital requirements, the statements (to be filed by a futures commission merchant only) of segregation requirements and funds in segregation for customers trading on U.S. commodity exchanges and for customers' dealer options accounts, and the statement (to be filed by a futures commission merchant only) of secured amounts and funds held in separate accounts for foreign futures and foreign options customers in accordance with § 30.7 of this chapter. The other financial statements (including the statement of income (loss)), footnote disclosures and schedules of the Financial and Operational Combined Uniform Single Report under the Securities and Exchange Act of 1934, Part II or Part IIA, trade secrets and certain other commercial or financial information on such other statements and schedules will be treated as nonpublic for purposes of the Freedom of Information Act and the Government in the Sunshine Act and parts 145 and 147 of this chapter.

* * * * *

PART 31—LEVERAGE TRANSACTIONS

3. The authority citation for Part 31 continues to read as follows:

Authority: 7 U.S.C. 12a and 23.

4. Section 31.13 is amended by revising paragraph (m) to read as follows:

§ 31.13 Financial reports of leverage transaction merchants.

* * * * *

(m) The following portions of Form 2–FR filed pursuant to this section will be public: The statement of financial condition, the computation of the minimum capital requirements pursuant to § 31.9, the schedule of coverage requirements and cover provided, and the schedule of segregation requirements and funds on deposit in segregation. The other financial statements (including the statement of income (loss)), footnote disclosures and schedules of Form 2–FR, trade secrets and certain other commercial or financial information on such other statements and schedules, will be treated as nonpublic for purposes of the Freedom of Information Act and the Government in the Sunshine Act and parts 145 and 147 of this chapter. All information on such other statements, footnote disclosures and schedules will, however, be available for official use by any official or employee of the United States or any State, by any self-regulatory organization of which the person filing such report is a member, by the National Futures Association in the case of an applicant, and by any other person to whom the Commission believes disclosure of such information is in the public interest. The independent public accountant's opinion filed pursuant to this section will be deemed to be public information.

* * * * *

Issued in Washington, D.C. on February 27, 1997 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–5561 Filed 3–6–97; 8:45 am]

BILLING CODE 6351–01–P

17 CFR Part 30

Foreign Futures and Option Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC"), is clarifying the procedures applicable in its prior Order issued on April 13, 1993 ("1993 Order"), authorizing members of the Sydney Futures Exchange Limited ("Exchange" or "SFE") to solicit and to accept orders from U.S. customers for otherwise permitted transactions on all non-U.S. exchanges where such members are authorized by the Australian Corporations Law ("ACL") to conduct futures business for customers.

This Supplemental Order is issued pursuant to Commission rule 30.10, which permits the Commission to grant an exemption from certain provisions of Part 30 of the Commission's regulations, the Commission's Order dated November 7, 1988 ("Original Order"), granting relief under rule 30.10 to designated members of the Exchange, and the 1993 Order.

EFFECTIVE DATE: March 7, 1997.

FOR FURTHER INFORMATION CONTACT: Jane C. Kang, Esq., or Warren Gorlick, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone: (202) 418–5430.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Supplemental Order:

Supplemental Order Clarifying Conditions Under Which Certain Members of the Sydney Futures Exchange Designated for Relief Under Commission Rule 30.10 May Solicit and Accept Orders From U.S. Customers for Otherwise Permitted Transactions on All Non-U.S. Markets Where Such Members Are Authorized by Australian Law to Conduct Futures Business for Customers

On November 1, 1988, the Commission issued the Original Order under rule 30.10 authorizing designated members of the SFE to offer or sell certain futures and option contracts traded on the Exchange to persons located in the United States. 53 FR 44856 (November 7, 1988). The Original Order limited the scope of permissible brokerage activities undertaken by designated SFE members on behalf of U.S. customers to transactions "on or subject to the rules of the Exchange." 53 FR 44856, 44857.

By letter dated March 11, 1993, counsel to the SFE petitioned the Commission to revise the Original Order to include all non-U.S markets where SFE members are authorized by the ACL to conduct futures business for customers.[1] As represented in that letter, section 1258 of the ACL prohibits futures brokers (including Exchange members confirmed for relief under rule 30.10) from dealing on behalf of another person unless the dealing is effected on an Australian futures exchange or a "recognized" foreign futures exchange. The Recognized Futures Exchanges, as defined in section 9(b) of the ACL as well as Regulation 8.02.02 thereunder, appear in Schedule 11 of such Regulations.

On April 13, 1993, the Commission issued its 1993 Order authorizing members of the SFE designated for rule 30.10 relief to solicit and accept orders from U.S. customers for otherwise permitted transactions on all non-U.S. exchanges[2] where such members are authorized by Australian law to conduct futures business for customers. See 58 FR 19209 (April 13, 1993). The expanded rule 30.10 relief, however, is contingent on the SFE's and SFE members' compliance with the Original Order and their compliance with certain specified conditions.[3]

[1] Letter from Philip McBride Johnson, counsel to the SFE, to William P. Albrecht, Acting Chairman, Commission, dated March 11, 1993.

[2] The term "non-U.S. exchange" refers to a foreign board of trade which is defined in Commission rule 1.3 (ss), 17 C.F.R. § 1.3(ss) (1996) as:

Any board of trade, exchange or market located outside the United States, its territories or possessions, whether incorporated or unincorporated, where foreign futures or foreign options transactions are entered into.

Thus, contracts that are traded on a market that has been designated as a contract market pursuant to section 5 of the Commodity Exchange Act ("CEA" or "Act") are not within the scope of the 1993 Order and this Supplemental Order.

[3] These conditions are the following:

1. SFE will carry out its compliance, surveillance and rule enforcement activities with respect to solicitations and acceptance of orders by designated SFE members of U.S. customers for futures business on Recognized Futures Exchanges, as defined in section 9(b) of the ACL, other than a contract market designated as such pursuant to section 5e of the CEA, to the same extent that it conducts such activities in regard to SFE business;

2. SFE will cooperate with the Commission with respect to any inquiries concerning any activity which is the subject of this [1993 Order], including sharing the information specified in Appendix A to the Part 30 rules on an "as needed" basis, on the same basis as set forth in the Original Order; and

3. Each SFE member firm confirmed for § 30.10 relief seeking to engage in activities which are the subject of this [1993 Order] must agree to provide the books and records related to such transactions required to be maintained under the applicable

Continued

The Commission now seeks to clarify

and Australian laws may be substituted for the secured amount requirement as set forth

17 CFR Part 30

Division of Trading and Markets, Commodity Futures Trading

The Commission now seeks to clarify the procedures with which SFE members should comply in order to operate pursuant to the expanded relief permitting certain SFE member firms to engage in foreign futures and options transactions for U.S. customers other than on the SFE. This Order clarifies that the funds of U.S. foreign futures and options customers must be subject to consistent protection irrespective of whether the SFE member firm effects trades directly on the SFE,[4] or effects trades on another foreign futures and options exchange directly or through the intermediation of a foreign exchange member.[5]

Accordingly, the Commission has determined to clarify that the relief set forth in the expanded relief authorized pursuant to the 1993 Order is applicable only if the Exchange member firm complies with the following procedures, which are consistent with the requirements applicable to Commission registered FCMs concerning the protection of customer funds under the provisions of Commission rule 30.7:[6]

With respect to transactions effected on behalf of U.S. customers on any non-U.S. futures and options exchange other than the NZFOE[7] and the SFE whether by the SFE member directly as a clearing member of such other exchange or through the intermediation of one or more intermediaries, the SFE member complies with paragraphs a, b or c below:

a. (1) Maintains in a separate account or accounts money, securities and property in an amount denominated as the foreign futures or foreign options secured amount, at least sufficient to cover or satisfy all of its current obligations to U.S. customers;

(2) Does not commingle such money, securities and property with the money, securities or property of the member, or with any proprietary account of such member and does not use such money, securities and property to secure or guarantee the obligations of, or extend credit to, the member or any proprietary account of the member;

(3) Provided that it may deposit together with the secured amount required to be on deposit in the separate account or accounts referred to in paragraph a–1 above money, securities or property held for or on behalf of non-U.S. customers of the member for the purpose of entering into foreign futures and options transactions. In such a case, the amount that must be deposited in such separate account or accounts must be no less than the greater of (1) the foreign futures and foreign options secured amount required by paragraph a–1 above plus the amount that would be required to be on deposit if all such customers (including non-U.S. customers) were subject to such requirement, or (2) the foreign futures and foreign options secured amount required by paragraph a–1 above plus the amount required to be held in a separate account or accounts for or on behalf of such non-U.S. customers pursuant to any applicable law, rule, regulation or order, or any rule of any self-regulatory organization;

(4) Maintains the separate account or accounts referred to in paragraph a–1 above under an account name that clearly identifies them as such, with any of the following depositories:

(a) Another person registered with the Commission as an FCM or a firm exempted from FCM registration pursuant to CFTC rule 30.10;

(b) The clearing organization of any foreign board of trade;

(c) Any member and/or clearing member of such foreign board of trade; or

(d) A bank or trust company which any of the depositories identified in (a)–(c) above may use consistent with the applicable laws and rules of the jurisdiction in which the depository is located; and

(5) The separate account or accounts referred to in paragraph a–1 may be deemed located at a good secured amount depository only if the member obtains and retains in its files for the period required by applicable law and Exchange rules a written acknowledgement from such separate account depository that:

(a) It was informed that such money, securities or property are held for or on behalf of customers of the member; and

(b) It will ensure that such money, securities or property will be held and treated at all times in accordance with the provisions of this paragraph; and, *provided further*, that the member assures itself that such separate account depository will not pass on such money, securities or property to any other depository unless the member has assured itself that all such other separate account depositories will treat such funds in a manner consistent with the procedures described in paragraph a hereof;[8] or

b. Sets aside funds constituting the entire secured amount requirement in a separate account as set forth in Commission rule 30.7, 17 C.F.R. 30.7 (1996), and treats those funds in the manner described by that rule; or

c. Complies with the terms and procedures of paragraph a or b, except that the amount required to be segregated under SFE rules

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statutes, regulations and Exchange rules in effect in Australia, on the same basis as set forth in the Original Order.

[4] With respect to transactions on the SFE, applicable Australian laws and regulations and the Original Order require segregation of all money, securities and property deposited on behalf of U.S. customers in respect of such transactions and the accruals thereon. *See* paragraphs 2(f) and (g) of the Original Order, 53 FR 44856, 44858.

[5] The Commission notes that substantially similar conditions were imposed in its Order authorizing members of the New Zealand Futures and Options Exchanges ("NZFOE") that are designated for relief under Commission rule 30.10 to solicit and to accept orders from U.S. customers for otherwise permitted transactions on all non-U.S. exchanges where such members are authorized by the rules of the NZFOE to conduct futures business for customers. See 61 FR 64985 (December 10, 1996).

[6] *See* Commission rule 30.7, 17 C.F.R. § 30.7 (1996). To the extent that a depository is unable to provide the required acknowledgement (for example, as in the case of an intermediary firm which does not segregate customer from house assets), that foreign depository is not a good secured amount depository. To use such an intermediary, an FCM must establish a "mirror" account in the United States to meet its secured amount obligations. Thus, the procedures articulated in this Order are intended to be consistent with the requirements applicable to the treatment of customer funds under rule 30.7 by FCMs and to clarify that these same obligations apply to foreign firms operating under rule 30.10 orders permitting the execution of trades on exchanges outside of their home jurisdiction (see n.5 above).

[7] As noted above, the NZFOE received rule 30.10 relief from the Commission on December 10, 1996. That exchange is a wholly-owned subsidiary of the SFE, and the SFE Clearing House ("SFECH") is the designated clearing house for all transactions effected on the NZFOE. The NZFOE and its members are required to segregate customer funds from money and property belonging to the firm and cannot use customer funds to satisfy the firm's obligations, both at the firm level and at the SFECH. *See* the New Zealand Futures Industry (Client Funds) Regulations (1990) sections 6, 14, and 20 and n.5, above. Consequently, taking into account the common ownership, use of the same clearing house, and relevant segregation requirements on both the SFE and NZFOE, with respect to transactions on the NZFOE on behalf of U.S. foreign futures and options customers, SFE members may comply with existing SFE and NZFOE rules in connection with this paragraph relating to the foreign futures and options secured amount.

[8] This proviso is intended to clarify that the originating member makes reasonable inquiries and understands prior to the initiation of a trade the conditions under which its customers' funds will be held at all subsequent depositories, so that it may determine whether a particular intermediary or clearing house is a good separate account depository for purposes of this Order or must alternatively set aside funds in the manner set forth in paragraph b. The member would be expected to discuss with its immediate intermediary broker whether funds would be transferred to any subsequent depositories and determine the conditions under which such funds would be treated. Compliance with this proviso would be satisfied by the member obtaining relevant information or assurances from appropriate sources such as, for example, the immediate intermediary broker, exchanges or clearinghouses, exchange regulators, banks, attorneys or other relevant references, including regulatory sources.

This Supplemental Order is intended to clarify that funds provided by U.S. customers for foreign futures and options transactions, whether held at a U.S. FCM under rule 30.7(c) or a firm exempted from registration as an FCM under CFTC rule 30.10, will receive equivalent protection at all intermediaries and exchange clearing organizations. Thus, for example, an exchange that does not segregate customer from firm obligations and firms which trade on such exchanges and which do not arrange to comply otherwise with any of the procedures described herein would not be deemed an acceptable separate account. Specifically, such exchange or firms could not provide a valid and binding acknowledgement to a rule 30.10 exempted firm.

This provision is not necessarily intended to create a duty on a rule 30.10 firm that it audit intermediaries it uses for continued compliance with the undertakings it has obtained based on discussions with those relevant intermediaries. It is intended to make clear that firms seeking the benefit of the Commission's 30.10 relief must undertake a due diligence inquiry before customer funds are transferred to another intermediary and must take appropriate action (*i.e.*, set aside funds) in the event that such firms become aware of facts leading them to conclude that customer funds are not being handled consistent with the requirements of Commission rules or this Order by any subsequent intermediary or clearing house.

and Australian laws may be substituted for the secured amount requirement as set forth in such paragraphs.[9]

The expanded rule 30.10 relief already granted to the SFE also is contingent upon the SFE's and SFE members' continued compliance with the Original Order and the 1993 Order, and the enumerated conditions above.

Further, if experience demonstrates that the continued effectiveness of this Order in general, or with respect to a particular member, would be contrary to public policy or the public interest, or that the systems in place for the exchange of information or other circumstances do not warrant continuation of the exemptive relief granted herein, the Commission may condition, modify, suspend, terminate, withhold as to a specific member, or otherwise restrict the exemptive relief granted in this Order, as appropriate, on its own motion. If necessary, provisions will be made for servicing existing client positions.

List of Subjects in 17 CFR Part 30

Commodity Futures, Commodity Options, Foreign Futures.

Accordingly, 17 CFR Part 30 is amended as set forth below:

PART 30—FOREIGN FUTURES AND OPTIONS TRANSACTIONS

1. The authority citation for Part 30 continues to read as follows:

Authority: secs. 2(a)(1)(A), 4, 4c and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 6, 6c and 12a.

2. Appendix C to Part 30 is amended by adding the following citation to the existing entry for the Sydney Futures Exchange to read as follows:

Appendix C—Foreign Petitioners Granted Relief From the Application of Certain Part 30 Rules Pursuant to Rule 30.10

* * * * *

FR date and citation, March 7, 1997, 62 FR.

Issued in Washington, D.C. on March 3, 1997.

Jean Webb,

Secretary of the Commission.

[FR Doc. 97–5658 Filed 3–6–97; 8:45 am]

BILLING CODE 6351–01–P

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[9] Any Australian laws or regulations or SFE rules which permit an SFE member firm to obtain from its customers a waiver, acknowledgement or similar document in which such customer effectively waives the right to segregation protection would be inconsistent with compliance with paragraphs a, b, and c.

has determined to clarify that the relief

amount required by paragraph a–1 above

b. Sets aside funds constituting the entire

Authority: Secs. 2(a)(1)(A), 4, 4c and 8a of

This Supplemental Order is issued

trades on a DIE directly or through the

17 CFR Part 30

Foreign Futures and Option Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC"), is clarifying the procedures applicable in its prior Orders issued on May 15, 1989 (the "Original Orders"), authorizing designated members of The Securities Association ("TSA") and the Association of Futures Brokers and Dealers ("AFBD"),[1] which subsequently merged to form the Securities and Futures Association ("SFA")[2] to solicit and to accept orders from U.S. customers for otherwise permitted transactions on all non-U.S. exchanges which have been designated as a Designated Investment Exchange ("DIE") by the United Kingdom Securities and Investments Board ("SIB").[3]

This Supplemental Order is issued pursuant to (1) Commission rule 30.10, which permits the Commission to grant an exemption from certain provisions of Part 30 of the Commission's regulations, (2) the Commission's Original Orders, granting relief under rule 30.10 to designated members of the AFBD and TSA, and (3) the Commission's SFA Order.

EFFECTIVE DATE: March 7, 1997.

FOR FURTHER INFORMATION CONTACT: Jane C. Kang, Esq., or Warren Gorlick, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone: (202) 418–5430.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Supplemental Order:

Supplemental Order Clarifying Conditions under which Certain Members of the Securities and Futures Authority Designated for Relief Under Commission Rule 30.10 May Solicit and Accept Orders from U.S. Customers for Otherwise Permitted Transactions on All Non-U.S. Markets Where Such Members Are Authorized by United Kingdom Law to Conduct Futures Business for Customers.

In Orders issued on May 15, 1989, the Commission authorized designated members of the TSA and AFBD to offer or sell certain futures and option contracts on or subject to the rules of an RIE in the United Kingdom, or any other non-U.S. exchange[4] which is a DIE.

The Commission now seeks to clarify the procedures with which SFA members should comply in order to operate pursuant to the Original Orders and the SFA Order authorizing SFA member firms to engage in foreign futures and options transactions for U.S. customers on a DIE other than a U.S. exchange designated as a contract market pursuant to section 5 of the Commodity Exchange Act ("CEA" or "Act"). This Order clarifies that the funds of U.S. foreign futures and options customers must be subject to consistent protection irrespective of whether the SFA member firm effects trades directly on an RIE[5] or effects trades on a DIE directly or through the intermediation of a foreign exchange member.[6] Accordingly, the Commission

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[1] See 54 FR 21604 (May 19, 1989) (granting rule 30.10 relief to firms designated by the AFBD) and 54 FR 21609 (May 19, 1989) (granting rule 30.10 relief to firms designated by the TSA).

[2] Following the April 1, 1991 merger of the AFBD and TSA to form the SFA, the Commission issued an Order, which, among other things, confirmed that the earlier Orders granting rule 30.10 relief to the AFBD and TSA and their respective members continued to be effective as to the successor SFA and its designated members. See 56 FR 14017, 14018 (April 5, 1991) (the "SFA Order").

[3] An exchange carrying on investment business in the United Kingdom must be authorized by the SIB as a Recognized Investment Exchange ("RIE"). See United Kingdom Financial Services Act ("FSA") Sections 3, 36, and 37. DIE's are certain non-U.K. exchanges determined by the SIB to meet adequate standards of investor protection. See Financial Services (Glossary and Interpretation) Rules and Regulations 1990. Under the terms of the Original Orders, an SFA member firm may only handle transactions on behalf of U.S. customers on an RIE or DIE. See 54 FR 21604, 21605 and 54 FR 21609, 21610.

The Commission also notes that although a rule 30.10 Order was issued to the SIB concurrently with the Original Orders (54 FR 21599 (May 19, 1989)), there are no firms currently designated by the SIB for rule 30.10 relief. Under the current United Kingdom regulatory structure the SIB no longer has direct supervisory responsibility for any firm engaged in investment business involving derivatives under the FSA. See, *e.g.*, Andrew Large, *Financial Services Regulation—Making the Two Tier System Work* at 21 (SIB, 1993).

[4] The term "non-U.S. exchange" refers to a foreign board of trade which is defined in Commission rule 1.3 (ss), 17 C.F.R. 1.3(ss) (1996) as:

Any board of trade, exchange or market located outside the United States, its territories or possessions, whether incorporated or unincorporated, where foreign futures or foreign options transactions are entered into.

Thus, contracts that are traded on a market that has been designated as a contract market pursuant to section 5 of the CEA are not within the scope of the Original Orders and this Supplemental Order.

[5] With respect to transactions on an RIE, applicable U.K. laws and regulations and the Original Orders require segregation of all money, securities and property deposited on behalf of U.S. customers in respect of such transactions and the accruals thereon. See paragraphs 2(c) and (h) of the Original Orders, 54 FR 21604, 21606, and 54 FR 21609, 21611.

[6] The Commission notes that substantially similar conditions were imposed in its Order authorizing

Continued

has determined to clarify that the relief authorized in its Original Orders with respect to transactions on a DIE is applicable only if an SFA member firm complies with the following procedures, which are consistent with the requirements applicable to Commission-registered futures commission merchants ("FCMs") concerning the protection of customer funds under the provisions of Commission rule 30.7:[7]

With respect to transactions effected on behalf of U.S. customers on any non-U.S. futures and options exchange which is a DIE, whether by the SFA member directly as a clearing member of such other exchange or through the intermediation of one or more intermediaries, the SFA member complies with paragraphs a, b or c below:

a. (1) Maintains in a separate account or accounts money, securities and property in an amount denominated as the foreign futures or foreign options secured amount, at least sufficient to cover or satisfy all of its current obligations to U.S. customers;

(2) Does not commingle such money, securities and property with the money, securities or property of the member, or with any proprietary account of such member and does not use such money, securities and property to secure or guarantee the obligations of, or extend credit to, the member or any proprietary account of the member;

(3) Provided that it may deposit together with the secured amount required to be on deposit in the separate account or accounts referred to in paragraph a–1 above money, securities or property held for or on behalf of non-U.S. customers of the member for the purpose of entering into foreign futures and options transactions. In such a case, the amount that must be deposited in such separate account or accounts must be no less than the greater of (1) the foreign futures and foreign options secured amount required by paragraph a–1 above plus the amount that would be required to be on deposit if all such customers (including non-U.S. customers) were subject to such requirement, or (2) the foreign futures and foreign options secured amount required by paragraph a–1 above plus the amount required to be held in a separate account or accounts for or on behalf of such non-U.S. customers pursuant to any applicable law, rule, regulation or order, or any rule of any self-regulatory organization;

(4) Maintains the separate account or accounts referred to in paragraph a–1 above under an account name that clearly identifies them as such, with any of the following depositories:

(a) Another person registered with the Commission as an FCM or a firm exempted from FCM registration pursuant to CFTC rule 30.10;

(b) The clearing organization of any foreign board of trade;

(c) Any member and/or clearing member of such foreign board of trade; or

(d) A bank or trust company which any of the depositories identified in (a)–(c) above may use consistent with the applicable laws and rules of the jurisdiction in which the depository is located; and

(5) The separate account or accounts referred to in paragraph a–1 may be deemed located at a good secured amount depository only if the member obtains and retains in its files for the period required by applicable law and Exchange rules a written acknowledgement from such separate account depository that:

(a) It was informed that such money, securities or property are held for or on behalf of customers of the member; and

(b) It will ensure that such money, securities or property will be held and treated at all times in accordance with the provisions of this paragraph; and, *provided further*, that the member assures itself that such separate account depository will not pass on such money, securities or property to any other depository unless the member has assured itself that all such other separate account depositories will treat such funds in a manner consistent with the procedures described in paragraph a hereof;[8] or

b. Sets aside funds constituting the entire secured amount requirement in a separate account as set forth in Commission rule 30.7, 17 C.F.R. 30.7 (1996), and treats those funds in the manner described by that rule; or

c. Complies with the terms and procedures of paragraph a or b, except that the amount required to be segregated under SFA rules and United Kingdom laws may be substituted for the secured amount requirement as set forth in such paragraphs.[9]

The rule 30.10 relief already granted to the SFA also is contingent upon SFA and SFA members' continued compliance with the Original Orders and the enumerated conditions above.

Further, if experience demonstrates that the continued effectiveness of this Order in general, or with respect to a particular member, would be contrary to public policy or the public interest, or that the systems in place for the exchange of information or other circumstances do not warrant continuation of the exemptive relief granted herein, the Commission may condition, modify, suspend, terminate, withhold as to a specific member, or otherwise restrict the exemptive relief granted in this Order, as appropriate, on its own motion. If necessary, provisions will be made for servicing existing client positions.

List of Subjects in 17 CFR Part 30

Commodity futures, Commodity options, Foreign futures.

Accordingly, 17 CFR Part 30 is amended as set forth below:

PART 30—FOREIGN FUTURES AND OPTIONS TRANSACTIONS

1. The authority citation for Part 30 continues to read as follows:

Authority: Secs. 2(a)(1)(A), 4, 4c and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 6, 6c and 12a.

2. Appendix C to Part 30 is amended by adding the following citation to the existing entry for the Association of Futures Brokers and Dealers and The Securities Association to read as follows:

Appendix C—Foreign Petitioners Granted Relief from the Application of Certain Part 30 Rules Pursuant to rule 30.10.

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FR date and citation, March 7, 1997, 62 FR.

Issued in Washington, D.C. on March 3, 1997.

Jean Webb,

Secretary of the Commission.

[FR Doc. 97–5668 Filed 3–6–97; 8:45 am]

BILLING CODE 6351–01–P

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members of the New Zealand Futures and Options Exchanges (NZFOE) that are designated for relief under Commission rule 30.10 to solicit and to accept orders from U.S. customers for otherwise permitted transactions on all non-U.S. exchanges where such members are authorized by the rules of the NZFOE to conduct futures business for customers. See 61 FR 64985 (December 10, 1996).

[7] See Commission rule 30.7, 17 C.F.R. 30.7 (1996). To the extent that a depository is unable to provide the required acknowledgement (for example, as in the case of an intermediary firm which does not segregate customer from house assets), that foreign depository is not a good secured amount depository. To use such an intermediary, an FCM must establish a "mirror" account in the United States to meet its secured amount obligations. Thus, the procedures articulated in this Order are intended to be consistent with the requirements applicable to the treatment of customer funds under rule 30.7 by FCMs and to clarify that these same obligations apply to foreign firms operating under rule 30.10 orders permitting the execution of trades on exchanges outside of their home jurisdiction (see n.6 above).

[8] This proviso is intended to clarify that the originating member makes reasonable inquiries and understands prior to the initiation of a trade the conditions under which its customers' funds will be held at all subsequent depositories, so that it may determine whether a particular intermediary or clearing house is a good separate account depository for purposes of this Order or must alternatively set aside funds in the manner set forth in paragraph b. The member would be expected to discuss with its immediate intermediary broker whether funds would be transferred to any subsequent depositories and determine the conditions under which such funds would be treated. Compliance with this proviso would be satisfied by the member obtaining relevant information or assurances from appropriate sources such as, for example, the immediate intermediary broker, exchanges or clearinghouses, exchange regulators, banks, attorneys or other relevant references, including regulatory sources.

This Supplemental Order is intended to clarify that funds provided by U.S. customers for foreign futures and options transactions, whether held at a U.S. FCM under rule 30.7(c) or a firm exempted from registration as an FCM under CFTC rule 30.10, will receive equivalent protection at all intermediaries and exchange clearing organizations. Thus, for example, an exchange that does not segregate customer from firm obligations and firms which trade on such exchanges and which do not arrange to comply otherwise with any of the procedures described herein would not be deemed an acceptable separate account. Specifically, such exchange or firms could not provide a valid and binding acknowledgement to a rule 30.10 exempted firm.

This provision is not necessarily intended to create a duty on a rule 30.10 firm that it audit intermediaries it uses for continued compliance with the undertakings it has obtained based on discussions with those relevant intermediaries. It is intended to make clear that firms seeking the benefit of the Commission's 30.10 relief must undertake a due diligence inquiry before customer funds are transferred to another intermediary and must take appropriate action (*i.e.*, set aside funds) in the event that such firms become aware of facts leading them to conclude that customer funds are not being handled consistent with the requirements of Commission rules or this Order by any subsequent intermediary or clearing house.

[9] Any United Kingdom laws or regulations or SFA rules which permit an SFA member firm to obtain from its customers a waiver, acknowledgement or similar document in which such customer effectively waives the right to segregation protection would be inconsistent with compliance with paragraphs a, b, and c.

17 CFR Part 30

Foreign Futures and Option Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC"), is clarifying the procedures applicable in its prior Order issued on May 15, 1989 (the "Original Order")[1] authorizing designated members of the Investment Management Regulatory Organisation Limited ("IMRO") to solicit and to accept orders from U.S. customers for otherwise permitted transactions on all non-U.S. exchanges which have been designated as a Designated Investment Exchange ("DIE") by the United Kingdom Securities and Investments Board ("SIB").[2]

This Supplemental Order is issued pursuant to (1) Commission rule 30.10, which permits the Commission to grant an exemption from certain provisions of Part 30 of the Commission's regulations, and (2) the Commission's Original Order, granting relief under rule 30.10 to designated members of IMRO.

EFFECTIVE DATE: March 7, 1997.

FOR FURTHER INFORMATION CONTACT: Jane C. Kang, Esq., or Warren Gorlick, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone: (202) 418–5430.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Supplemental Order:

Supplemental Order Clarifying Conditions Under Which Certain Members of the Investment Management Regulatory Organisation Designated for Relief Under Commission Rule 30.10 May Solicit and Accept Orders From U.S. Customers for Otherwise Permitted Transactions on All Non-U.S. Markets Where Such Members Are Authorized by United Kingdom Law to Conduct Futures Business for Customers

In an Order issued on May 15, 1989, the Commission authorized designated members of IMRO to offer or sell certain futures and option contracts on or subject to the rules of an RIE in the United Kingdom, or any other non-U.S. exchange[3] which is a DIE.

The Commission now seeks to clarify the procedures with which IMRO members should comply in order to operate pursuant to the Original Order authorizing certain IMRO member firms to engage in foreign futures and options transactions for U.S. customers on a DIE other than a U.S. exchange designated as a contract market pursuant to section 5 of the Commodity Exchange Act ("CEA" or "Act"). This Order clarifies that the funds of U.S. foreign futures and options customers must be subject to consistent protection irrespective of whether the IMRO member firm effects trades directly on an RIE,[4] or effects trades on a DIE directly or through the intermediation of a foreign exchange member.[5] Accordingly, the Commission has determined to clarify that the relief authorized in its Original Order with respect to transactions on a DIE is applicable only if an IMRO member firm complies with the following procedures, which are consistent with the requirements applicable to Commission registered futures commission merchants ("FCMs") concerning the protection of customer funds under the provisions of Commission rule 30.7:[6]

With respect to transactions effected on behalf of U.S. customers on any non-U.S. futures and options exchange which is a DIE, whether by the IMRO member directly as a clearing member of such other exchange or through the intermediation of one or more intermediaries, the IMRO member complies with paragraphs a, b or c below:

a. (1) Maintains in a separate account or accounts money, securities and property in an amount denominated as the foreign futures or foreign options secured amount, at least sufficient to cover or satisfy all of its current obligations to U.S. customers;

(2) Does not commingle such money, securities and property with the money, securities or property of the member, or with any proprietary account of such member and does not use such money, securities and property to secure or guarantee the obligations of, or extend credit to, the member or any proprietary account of the member;

(3) Provided that it may deposit together with the secured amount required to be on deposit in the separate account or accounts referred to in paragraph a–1 above money, securities or property held for or on behalf of non-U.S. customers of the member for the purpose of entering into foreign futures and options transactions. In such a case, the

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[1] *See* 54 FR 21614 (May 19, 1989).

[2] An exchange carrying on investment business in the United Kingdom must be authorized by the SIB as a Recognized Investment Exchange ("RIE"). *See* United Kingdom Financial Services Act ("FSA") §§ 3, 36, and 37. DIE's are certain non-U.K. exchanges determined by the SIB to meet adequate standards of investor protection. *See* SIB Financial Services (Glossary and Interpretation) Rules and Regulations 1990. Under the terms of the Original Order, an IMRO member firm may only handle transactions on behalf of U.S. customers on an RIE or DIE. *See* 54 FR 21614, 21615.

The Commission also notes that although a rule 30.10 Order was issued to the SIB concurrently with the Original Order (54 FR 21599 (May 19, 1989)), there are no firms currently designated by the SIB for rule 30.10 relief. Under the current United Kingdom regulatory structure the SIB no longer has direct supervisory responsibility for any firm engaged in investment business involving derivatives under the FSA. *See, e.g.*, Andrew Large, *Financial Services Regulation—Making the Two Tier System Work* at 21 (SIB, 1993).

[3] The term "non-U.S. exchange" refers to a foreign board of trade which is defined in Commission rule 1.3 (ss), 17 C.F.R. 1.3(ss) (1996) as:

Any board of trade, exchange or market located outside the United States, its territories or possessions, whether incorporated or unincorporated, where foreign futures or foreign options transactions are entered into.

Thus, contracts that are traded on a market that has been designated as a contract market pursuant to section 5 of the Commodity Exchange Act ("CEA" or "Act") are not within the scope of the Original Order and this Supplemental Order.

[4] With respect to transactions on an RIE, applicable U.K. laws and regulations and the Original Order require segregation of all money, securities and property deposited on behalf of U.S. customers in respect of such transactions and the accruals thereon. *See* paragraphs 2(c) and (h) of the Original Order, 54 FR 21614, 21616.

[5] The Commission notes that substantially similar conditions were imposed in its Order authorizing members of the New Zealand Futures and Options Exchanges (NZFOE) that are designated for relief under Commission rule 30.10 to solicit and to accept orders from U.S. customers for otherwise permitted transactions on all non-U.S. exchanges where such members are authorized by the rules of the NZFOE to conduct futures business for customers. See 61 FR 64985 (December 10, 1996).

[6] *See* Commission rule 30.7, 17 C.F.R. § 30.7 (1996). To the extent that a depository is unable to provide the required acknowledgement (for example, as in the case of an intermediary firm which does not segregate customer from house assets), that foreign depository is not a good secured amount depository. To use such an intermediary, an FCM must establish a "mirror" account in the United States to meet its secured amount obligations. Thus, the procedures articulated in this Order are intended to be consistent with the requirements applicable to the treatment of customer funds under rule 30.7 by FCMs and to clarify that these same obligations apply to foreign firms operating under rule 30.10 orders permitting the execution of trades on exchanges outside of their home jurisdiction (see n.5 above).

amount that must be deposited in such separate account or accounts must be no less than the greater of (1) the foreign futures and foreign options secured amount required by paragraph a–1 above plus the amount that would be required to be on deposit if all such customers (including non-U.S. customers) were subject to such requirement, or (2) the foreign futures and foreign options secured amount required by paragraph a–1 above plus the amount required to be held in a separate account or accounts for or on behalf of such non-U.S. customers pursuant to any applicable law, rule, regulation or order, or any rule of any self-regulatory organization;

(4) Maintains the separate account or accounts referred to in paragraph a–1 above under an account name that clearly identifies them as such, with any of the following depositories:

(a) Another person registered with the Commission as an FCM or a firm exempted from FCM registration pursuant to CFTC rule 30.10;

(b) The clearing organization of any foreign board of trade;

(c) Any member and/or clearing member of such foreign board of trade; or

(d) A bank or trust company which any of the depositories identified in (a)–(c) above may use consistent with the applicable laws and rules of the jurisdiction in which the depository is located; and

(5) The separate account or accounts referred to in paragraph a–1 may be deemed located at a good secured amount depository only if the member obtains and retains in its files for the period required by applicable law and IMRO rules a written acknowledgement from such separate account depository that:

(a) It was informed that such money, securities or property are held for or on behalf of customers of the member; and

(b) It will ensure that such money, securities or property will be held and treated at all times in accordance with the provisions of this paragraph; and, *provided further*, that the member assures itself that such separate account depository will not pass on such money, securities or property to any other depository unless the member has assured itself that all such other separate account depositories will treat such funds in a manner consistent with the procedures described in paragraph a hereof; [7] or

b. Sets aside funds constituting the entire secured amount requirement in a separate account as set forth in Commission rule 30.7, 17 C.F.R. 30.7 (1996), and treats those funds in the manner described by that rule; or

c. Complies with the terms and procedures of paragraph a or b, except that the amount required to be segregated under IMRO rules and United Kingdom laws may be substituted for the secured amount requirement as set forth in such paragraphs.[8]

The rule 30.10 relief already granted to IMRO also is contingent upon IMRO and IMRO members' continued compliance with the Original Order and the enumerated conditions above.

Further, if experience demonstrates that the continued effectiveness of this Order in general, or with respect to a particular member, would be contrary to public policy or the public interest, or that the systems in place for the exchange of information or other circumstances do not warrant continuation of the exemptive relief granted herein, the Commission may condition, modify, suspend, terminate, withhold as to a specific member, or otherwise restrict the exemptive relief granted in this Order, as appropriate, on its own motion. If necessary, provisions will be made for servicing existing client positions.

List of Subjects in 17 CFR Part 30

Commodity Futures, Commodity Options, Foreign Futures.

Accordingly, 17 CFR Part 30 is amended as set forth below:

PART 30—FOREIGN FUTURES AND OPTIONS TRANSACTIONS

1. The authority citation for Part 30 continues to read as follows:

Authority: secs. 2(a)(1)(A), 4, 4c and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 6, 6c and 12a.

2. Appendix C to Part 30 is amended by adding the following citation to the existing entry for the Investment Management Regulatory Organisation to read as follows:

Appendix C—Foreign Petitioners Granted Relief From the Application of Certain Part 30 Rules Pursuant to Rule 30.10

* * * * *

FR date and citation, March 7, 1997, 62 FR.

Issued in Washington, D.C. on March 3, 1997.

Jean Webb,

Secretary of the Commission.

[FR Doc. 97–5680 Filed 3–6–97; 8:45 am]

BILLING CODE 6351–01–P

This Supplemental Order is intended to clarify that funds provided by U.S. customers for foreign futures and options transactions, whether held at a U.S. FCM under rule 30.7(c) or a firm exempted from registration as an FCM under CFTC rule 30.10, will receive equivalent protection at all intermediaries and exchange clearing organizations. Thus, for example, an exchange that does not segregate customer from firm obligations and firms which trade on such exchanges and which do not arrange to comply otherwise with any of the procedures described herein would not be deemed an acceptable separate account. Specifically, such exchange or firms could not provide a valid and binding acknowledgement to a rule 30.10 exempted firm.

This provision is not necessarily intended to create a duty on a rule 30.10 firm that it audit intermediaries it uses for continued compliance with the undertakings it has obtained based on discussions with those relevant intermediaries. It is intended to make clear that firms seeking the benefit of the Commission's 30.10 relief must undertake a due diligence inquiry before customer funds are transferred to another intermediary and must take appropriate action (*i.e.*, set aside funds) in the event that such firms become aware of facts leading them to conclude that customer funds are not being handled consistent with the requirements of Commission rules or this Order by any subsequent intermediary or clearing house.

[7] This proviso is intended to clarify that the originating member makes reasonable inquiries and understands prior to the initiation of a trade the conditions under which its customers' funds will be held at *all* subsequent depositories, so that it may determine whether a particular intermediary or clearing house is a good separate account depository for purposes of this Order or must alternatively set aside funds in the manner set forth in paragraph b. The member would be expected to discuss with its immediate intermediary broker whether funds would be transferred to any subsequent depositories and determine the conditions under which such funds would be treated. Compliance with this proviso would be satisfied by the member obtaining relevant information or assurances from appropriate sources such as, for example, the immediate intermediary broker, exchanges or clearinghouses, exchange regulators, banks, attorneys or other relevant references, including regulatory sources.

[8] Any United Kingdom laws or regulations or IMRO rules which permit an IMRO member firm to obtain from its customers a waiver, acknowledgement or similar document in which such customer effectively waives the right to segregation protection would be inconsistent with compliance with paragraphs a, b, and c.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 300

[Release No. SIPA–163; File No. SIPC–96–1]

Rules of the Securities Investor Protection Corporation

AGENCY: Securities and Exchange Commission.

ACTION: Order approving a proposed rule change of the Securities Investor Protection Corporation.

SUMMARY: The Securities and Exchange Commission ("Commission") is approving a rule change submitted by the Securities Investor Protection Corporation ("SIPC") as required by Section 3(e)(2) of the Securities Investor Protection Act of 1970 ("SIPA"). SIPC's proposed rule change amends two Series 300 SIPC Rules relating to the closeout and completion of contracts for the purchase or sale of securities made by debtors in liquidation under SIPA. Because SIPC rules have the force and effect as if promulgated by the Commission, those rules are published in Title 17 of the Code of Federal Regulations ("CFR").

EFFECTIVE DATE: April 7, 1997.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Associate Director, 202/942–0131, Peter R. Geraghty, Assistant Director 202/942–0177, or Louis A. Randazzo, Special Counsel, 202/942–0191, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to Section 3(e)(2) of SIPA,[1] on October 10, 1996, SIPC [2] filed with the Commission a proposed rule change (File No. SIPC–96–1). The proposed rule change amends SIPC Rules 300 [3] and 301 [4] which relate to the closeout and completion of contracts for the purchase or sale of securities made by debtors in liquidation under SIPA, to make them consistent with Commission Rule 15c6–1 [5] under the Securities Exchange Act of 1934 ("Act"), which established three business days as the standard settlement cycle for most securities transactions.

II. Proposed Rule Change

SIPC Rules 300 and 301 set forth SIPC's requirements and procedures for closing out or completing open contractual commitments for the purchase or sale of securities between a SIPC member broker-dealer undergoing liquidation ("debtor") and other broker-dealers. Currently, under SIPC Rule 301, an open contractual commitment made between a debtor and another broker-dealer in the ordinary course of the debtor's business may be closed out or completed if, among other things, the open contractual commitment (1) had a settlement date on or within 30 calendar days prior to the filing date (*i.e.*, the date SIPC files an application for a protective decree) and the respective obligations of the parties remain outstanding on the filing date or had a settlement date which occurs on or within five business days subsequent to the filing date and (2) had a trade date on or within five business days prior to such settlement date. Rule 300 currently defines open contractual commitments as a failed to receive or a failed to deliver which (1) had a settlement date prior to the filing date and the respective obligations of the parties remained outstanding on the filing date or (2) had a settlement date which occurs on or within five business days subsequent to the filing date.

In June of 1995, Commission Rule 15c6–1 became effective, which established three business days as the standard settlement timeframe for most securities transactions.[6] Because Rules 300 and 301 currently refer to a five business day settlement timeframe, SIPC is amending Rules 300 and 301 by replacing the five business day references with three business days. This will make SIPC Rules 300 and 301 consistent with the three business day settlement period in Commission Rule 15c6–1. In addition, SIPC is making a technical amendment to Rule 300(a),[7] which will replace the reference to section 16(8) of SIPA [8] with section 16(7) of SIPA.[9] This technical correction will conform a statutory citation in Rule 300 to the correct section of SIPA.

Notice of the proposed rule change was published in the **Federal Register** on November 1, 1996.[10] No comments were received.[11]

III. Discussion and Commission Action

For the reasons discussed below, the Commission believes that the amendments are consistent with Sectopms 3(e)(2)(D) [12] and 8(e) [13] of SIPA. Section 3(e)(2)(D) of SIPA requires SIPC rule changes to be in the public interest and consistent with the purposes of SIPA. Section 8(e) requires that SIPC adopt rules with respect to the closeout of contracts with a debtor for the purchase or sale of securities in the ordinary course of its business. Specifically, the commission believes that the proposed amendments make SIPC Rules 300 and 301 consistent with Commission Rule 15c6–1. In addition, the Commission believes that the amendments will ensure that SIPC's rules close off stale transactions from being completed, other than as a possible claim against the debtor's estate, while at the same time ensuring that current securities transactions with the standard three business day settlement period are completed. Finally, SIPC would retain the ability to closeout open contractual commitments that are not covered by SIPC rules. For example, pursuant to SIPC Rule 306,[14] SIPC has discretion, after consulting with the Commission, to direct the closeout or completion of an open contractual commitment, irrespective of whether it is covered by Rules 300 or 301.

Accordingly, the Commission finds that the proposed SIPC rule amendments are in the public interest and are consistent with the purposes of the SIPA.

It is therefore ordered by the Commission, pursuant to Section 3(e)(2) of SIPA, that the above mentioned proposed rule change is approved. In accordance with Section 3(e)(2) of SIPA, the approved rule change shall be given force and effect as if promulgated by the Commission.

IV. List of Subjects in 17 CFR Part 300

Brokers, Securities, Securities Investor Protection Corporation.

In accordance with the foregoing, Title 17 Chapter II of the Code of Federal Regulations is amended as follows:

PART 300—RULES OF THE SECURITIES INVESTOR PROTECTION CORPORATION

1. The authority citation for Part 300 continues to read as follows:

Authority: Section 3, 84 Stat. 1636, as amended; 15 U.S.C. 78ccc.

§ 300.300 [Amended]

2. Section 300.300(a) is amended by removing the reference to "section 16(8)" and in its place adding "section 16(7)," and in § 300.300(c) removing the reference to "five business days" and in its place adding "three business days".

§ 300.301 [Amended]

3. Sections 300.301 (a)(2)(i) and (a)(2)(ii) are amended by removing the references to "five business days" and in their place adding "three business days".

By the Commission.

Dated: March 3, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–5670 Filed 3–6–97; 8:45 am]

BILLING CODE 8010–01–M

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[1] 15 U.S.C. 78ccc(e)(2) (1995).

[2] SIPC is a non-profit membership corporation providing certain protection to customers of member broker-dealers that experience financial difficulty.

[3] 17 CFR 300.300 (1996).

[4] 17 CFR 300.301 (1996).

[5] 17 CFR 240.15c6–1 (1996).

[6] Specifically, Rule 15c6–1 provides, among other things, that a broker-dealer shall not effect or enter into a contract for the purchase or sale of a security that provides for payment of funds and delivery of securities later than the third business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction. Rule 15c6–1 does not apply to an exempted security, municipal security (Municipal Securities Rulemaking Board rules required municipal securities to clear three business days after the date of the contract), commercial paper, bankers' acceptance, commercial bill, or government security. Prior to the effective date of Rule 15c6–1, the settlement cycle for securities transactions was five business days. See securities Exchange Act Release No. 33023 (October 6, 1993), 58 FR 52891 (October 13, 1993).

[7] 17 CFR 300.300(a) (1996).

[8] 15 U.S.C. 78lll(8) (1995).

[9] 15 U.S.C. 78lll(7) (1995).

[10] See Release No. SIPA–160 (October 25, 1996), 61 FR 56485 (November 1, 1996).

[11] SIPC consented to an extension of the Commission's action date for the proposed rule change. See Letter from Kevin H. Bell, Assistant General Counsel, SIPC, to Louis A. Randazzo, Special Counsel, SEC, dated November 25, 1996.

[12] 15 U.S.C. 78ccc(e)(2)(D) (1995).

[13] 15 U.S.C. 78fff–2(e) (1995).

[14] 17 CFR 300.306 (1996).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 176

[Docket No. 96F-0242]

Indirect Food Additives: Paper and Paperboard Components

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the additional safe use of perfluoroalkyl substituted phosphate ester acids, ammonium salts formed by the reaction of 2,2-bis[(γ,ω-perfluoroC$_{4-20}$alkylthio)methyl]-1,3-propanediol, polyphosphoric acid and ammonium hydroxide, as an oil and water repellant for paper and paperboard intended for use in contact with food. This action is in response to a petition filed by Ciba-Geigy Corp.

DATES: Effective March 7, 1997; written objections and requests for a hearing by April 7, 1997.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS-216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of July 18, 1996 (61 FR 37483), FDA announced that a food additive petition (FAP 6B4513) had been filed by Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419-8300. The petition proposed to amend the food additive regulations in § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) to provide for the additional safe use of perfluoroalkyl substituted phosphate ester acids, ammonium salts formed by the reaction of 2,2-bis[(γ,ω-perfluoroC$_{4-20}$alkylthio)methyl]-1,3-propanediol, polyphosphoric acid and ammonium hydroxide, as an oil and water repellant for paper and paperboard intended for use in contact with food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use of the additive in paper and paperboard products in contact with non-alcoholic foods under condition of use C through G as described in Table 2 of § 176.170(c) is safe, that the additive will have the intended technical effect, and, therefore, that § 176.170 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. No comments were received during the 30 day comment period specified in the filing notice for comments on the environmental assessment submitted with the petition.

Any person who will be adversely affected by this regulation may at any time on or before April 7, 1997 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 176

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR part 176 continues to read as follows:

Authority: Secs. 201, 402, 406, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 346, 348, 379e).

2. Section 176.170 is amended in the table in paragraph (a)(5) by revising the entry for "Perfluoroalkyl substituted phosphate ester acids, ammonium salts formed by the reaction of 2,2-bis[(γ,ω-perfluoroC$_{4-20}$alkylthio)methyl]-1,3-propanediol, polyphosphoric acid and ammonium hydroxide" under the heading "Limitations" to read as follows:

§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.

* * * * *

(a) * * *

(5) * * *

List of Substances	Limitations
• • •	• • • •
Perfluoroalkyl substituted phosphate ester acids, ammonium salts formed by the reaction of 2,2-bis[(γ,ω-perfluoroC$_{4-20}$alkylthio)methyl]-1,3-propanediol, polyphosphoric acid and ammonium hydroxide.	For use only as an oil and water repellant at a level not to exceed 0.44 percent perfluoroalkyl actives by weight of the finished paper and paperboard in contact with non-alcoholic foods under condition of use H as described in Table 2 of paragraph (c) of this section; and in contact with food of types III, IV-A, V, VII-A, and IX described in Table 1 of paragraph (c) of this section under conditions of use C through G as described in Table 2 of paragraph (c) of this section.
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Dated: February 7, 1997.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 97-5558 Filed 3-6-97; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08-97-005]

RIN 2115-AE47

Drawbridge Operation Regulation; Inner Harbor Navigation Canal, LA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the regulation for the operation of the L&N Railroad/Old Gentilly Road bascule span drawbridge across the Inner Harbor Navigation Canal, mile 3.4 in New Orleans, Orleans Parish, Louisiana, to authorize it to remain closed to navigation between the hours of 8 a.m. and noon and between the hours of 1 p.m. and 5 p.m. daily, from March 6, 1997 through May 19, 1997. This action is necessary for the fender system to be repaired and portions of it replaced.

DATES: This temporary final rule is effective beginning at 8 a.m. on March 6, 1997 and ending at 5 p.m. on May 19, 1997.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 501 Magazine Street, New Orleans, Louisiana 70130-3396 between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589-2965. Eighth Coast Guard District Bridge Administration Branch maintains the public docket for this temporary final rule.

FOR FURTHER INFORMATION CONTACT: Phil Johnson, Bridge Administration Branch, at the address given above, telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION:

Drafting Information: The principal persons involved in drafting this regulation are Phil Johnson, Project Manager, Eighth Coast Guard District Bridge Administration Branch, and Lieutenant Commander Jim Wilson, Project Attorney, Eighth Coast Guard District Legal Office.

Discussion of Rule

Notice of this repair was not provided in time to issue a notice of proposed rulemaking. Unsafe condition of the bridge fender system warrants the closures so that remedial work can be accomplished. For the same reason, good cause exists to make this temporary rule effective in less than 30 days after publication.

The L&N Railroad/Old Gentilly Road bascule span drawbridge across the Inner Harbor Navigation Canal, mile 3.4 in New Orleans, has a vertical clearance of one foot above high tide in the closed to navigation position. The horizontal clearance of the bridge is only 93 feet. A crane barge will be required to occupy the majority of this very narrow channel in order to reconstruct the fender system. The Coast Guard is temporarily changing the regulation for the operation of the L&N Railroad/Old Gentilly Road bascule span drawbridge across the Inner Harbor Navigation Canal, mile 3.4 in New Orleans, Orleans Parish, Louisiana, to authorize it to remain closed to navigation between the hours of 8 a.m. and noon and between the hours of 1 p.m. and 5 p.m. daily, from March 6, 1997 through May 19, 1997.

This action is necessary for the fender system to be repaired and portions of it replaced. The barged and related equipment will be removed from the channel from noon until 1 p.m. and from 5 p.m. until 8 a.m. daily at which time the bridge may be opened to pass marine traffic.

Navigation on the waterway consists of tugs with tows, including crane barges, jack-up boats, oil industry crew vessels, fishing vessels, sailing vessels and other recreational craft. The fender system of the bridge has sustained considerable damage from numerous vessel strikes, compromising its ability to protect the bridge. It must be rehabilitated for the safety of rail as well as for vehicular traffic.

The Port of New Orleans has requested this temporary final rule so that the fender system can be repaired and portions of it replaced. The short term inconvenience, attributable to a delay of vessel traffic for a maximum of four hours, is outweighed by the long-term benefits to be gained in the interest of safety.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this temporary final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this temporary final rule will have a significant economic impact on a substantial number of small entities. "Small

entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This temporary final rule contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under paragraph 2.B.g(5) of Commandant Instruction M16475.1B, this temporary final rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

Regulation

For the reasons set out in the preamble, the Coast Guard is amending 33 CFR Part 117 as follows:

PART 117—[AMENDED]

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; AND 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. 102–587, 106 Stat. 5039.

§ 117.458 [Amended]

2. Effective March 6, 1997 through May 19, 1997, § 117.458 is amended by adding a new paragraph (c) to read as follows:

§ 117.458 Inner Harbor Navigation Canal, New Orleans.

* * * * *

(c) The draw of the L&N Railroad/Old Gentilly Road bascule span drawbridge across the Inner Harbor Navigation Canal, mile 3.4 shall open on signal; except that between the hours of 8 a.m. and noon and between the hours of 1 p.m. and 5 p.m. daily, from March 6, 1997 through May 19, 1997, the draw need not open for the passage of vessels.

Dated: February 27, 1997.

T. W. Josiah,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 97–5832 Filed 3–5–97; 1:31 pm]

BILLING CODE 4910–14–M

DEPARTMENT OF DEFENSE

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AI53

Veterans Education: Increased Allowances for the Educational Assistance Test Program

AGENCIES: Department of Defense and Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The law provides that rates of subsistence allowance and educational assistance payable under the Educational Assistance Test Program shall be adjusted annually by the Secretary of Defense based upon the average actual cost of attendance at public institutions of higher education in the 12-month period since the rates were last adjusted. After consultation with the Department of Education, the Department of Defense has concluded that the rates for the 1996–97 academic year should be increased by 6% over the rates payable for the 1995–96 academic year. The regulations dealing with these rates are amended accordingly.

EFFECTIVE DATE: March 7, 1997.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, 202–273–7187.

SUPPLEMENTARY INFORMATION: The law (10 U.S.C. 2145) provides that the Secretary of Defense shall adjust the amount of educational assistance which may be provided in any academic year under the Educational Assistance Test Program, and the amount of subsistence allowance authorized under that program. The adjustment is to be based upon the 12-month increase in the average actual cost of attendance at public institutions of higher education. As required by law, the Department of Defense has consulted with the Department of Education. The Department of Defense has concluded that these costs increased by 6% in the 1995–96 academic year. Accordingly, this revision changes 38 CFR 21.5820 and 21.5822 to reflect a 6% increase in the rates payable in the 1996–97 academic year.

Pursuant to 5 U.S.C. 553 there is good cause for finding that notice and public procedure are impractical, unnecessary, and contrary to the public interest and there is good cause for dispensing with a 30-day delay of the effective date. The rates of subsistence allowance and educational assistance payable under the Educational Assistance Test Program are determined based on a statutory formula and, in essence, the calculation of rates merely constitutes a non-discretionary ministerial act.

The Secretary of Veterans Affairs and the Secretary of Defense have certified that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule directly affects only individuals and does not directly affect small entities. Pursuant to 5 U.S.C. 605(b), this final rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

There is no Catalog of Federal Domestic Assistance number for the program affected by these regulations.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs-education, Grant programs-veterans, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: December 18, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

Approved: February 14, 1997.

Normand G. Lezy,

Lieutenant General, USAF, Deputy Assistant Secretary (Military Personnel Policy) Department of Defense.

For the reasons set out above, 38 CFR part 21 (subpart H) is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart H—Educational Assistance Test Program

1. The authority citation for part 21, subpart H, continues to read as follows:

Authority: 10 U.S.C. Ch. 107; 38 U.S.C. 501(a), 3695, 5101,5113,5303A; 42 U.S.C. 2000; Sec. 901, Pub. L. 96–342 94 stat. 1111–1114.

§ 21.5820 [Amended]

2. In § 21.5820, paragraph (b)(1) is amended by removing "1995–96" and adding, in its place, "1996–97", and by removing "$2,761" and adding, in its place, "$2,927"; paragraph (b)(2)(ii) introductory text is amended by removing "1995–96" and adding, in its place, "1996–97"; paragraph (b)(2)(ii)(A) is amended by removing "$306.78" and adding, in its place, "$325.22", and by removing "$153.39" and adding, in its place, "$162.61"; paragraph (b)(2)(ii)(B) is amended by removing "$10.23" and adding, in its place, "$10.84", and by removing "$5.11", and adding, in its place, "$5.42"; paragraph (b)(2)(ii)(C) is amended by removing "decreased" both times it appears and adding, in its place, "increased"; paragraph (b)(3)(ii) introductory text is amended by removing "1995–96" and adding, in its place, "1996–97"; paragraph (b)(3)(ii)(A) is amended by removing "$306.78" and adding, in its place, "$325.22", and by removing "$153.39" and adding, in its place, "$162.61"; paragraph (b)(3)(ii)(B) is amended by removing "$10.23" and adding, in its place "$10.84", and by removing "$5.11" and adding, in its place, "$5.42"; and paragraph (b)(3)(ii)(C) is amended by removing "decreased" both times it appears and adding, in its place, "increased".

§ 21.5822 [Amended]

3. In § 21.5822, paragraph (b)(1)(i) is amended by removing "$688" and adding, in its place, "$729", and by removing "1995–96" and adding, in its place, "1996–97"; paragraph (b)(1)(ii) is amended by removing "$344" and adding, in its place, "$364.50", and by removing "1995–96" and adding, in its place, "1996–97"; paragraph (b)(2)(i) is amended by removing "1995–96" and adding, in its place, "1996–97", and by removing "$688" and adding, in its place, "$729"; and paragraph (b)(2)(ii) is amended by removing "1995–96" and adding, in its place, "1996–97", and by removing "$344", and adding, in its place, "$364.50".

[FR Doc. 97–5579 Filed 3–6–97; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OR59–7274, OR60–7275; FRL–5696–6]

Approval and Promulgation of State Implementation Plans: Oregon

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) approves revisions to the State of Oregon Implementation Plan for two source-specific Reasonably Available Control Technology (RACT) volatile organic compound (VOC) emissions standards: Cascade General, Inc., a ship repair yard in Portland, Oregon; and, White Consolidated, Inc. (doing business as Schrock Cabinet Co.), a wood cabinet manufacturing facility in Hillsboro, Oregon. These revisions are required by the Clean Air Act (CAA) and were submitted to EPA on November 20, 1996.

DATES: This action is effective on May 6, 1997 unless adverse or critical comments are received by April 7, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: Montel Livingston, SIP Manager, Office of Air Quality (OAQ–107), EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101. Documents incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, EPA, 401 M Street, SW, Washington, D.C. 20460. Copies of material submitted to EPA may be examined during normal business hours at the following locations: EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, and the Oregon Department of Environmental Quality, 811 S.W. Sixth Avenue, Portland, Oregon 97204–1390.

FOR FURTHER INFORMATION CONTACT: Denise Baker, Office of Air Quality (OAQ–107), EPA Region 10, Seattle, Washington, (206) 553–8087.

SUPPLEMENTARY INFORMATION:

I. Background

Section 172(a)(2) and (b)(3) of the CAA, as amended in 1977 (1977 Act), required sources of VOC to install, at a minimum, RACT in order to reduce emissions of this pollutant. EPA has defined RACT as the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility (44 FR 53761, September 17, 1979). EPA has developed Control Technology Guidelines (CTGs) for the purpose of informing State and local air pollution control agencies of air pollution control techniques available for reducing emissions of VOC from various categories of sources. Each CTG contains recommendations to the States of what EPA calls the "presumptive norm" for RACT. This general statement of agency policy is based on EPA's evaluation of the capabilities of, and problems associated with, control technologies currently used by facilities within individual source categories. EPA has recommended that the States adopt requirements consistent with the presumptive norm level.

On March 3, 1978, the entire Portland-Vancouver Interstate Air Quality Maintenance Area was designated by EPA as a non-attainment area for ozone. The Portland-Vancouver Interstate Air Quality Maintenance Area contains the urbanized portions of three counties in Oregon (Clackamas, Multnomah, and Washington) and one county (Clark) in the State of Washington.

The 1977 Act required States to submit plans to demonstrate how they would attain and maintain compliance with national ambient air standards for those areas designated non-attainment. The 1977 Act further required these plans to demonstrate compliance with primary standards no later than December 31, 1982. An extension up to December 31, 1987, was possible if the State could demonstrate that, despite implementation of all reasonably available control measures, the December 31, 1982, date could not be met.

On October 7, 1982, EPA approved the Portland-Vancouver area ozone attainment plan, including an extension of the attainment date to December 31, 1987 (47 FR 44262).

On June 15, 1988, pursuant to Section 110(a)(2)(H) of the pre-amended CAA, former EPA Regional Administrator Robie Russell notified the State of Oregon by letter that the State Implementation Plan (SIP) for the Portland-Vancouver area was substantially inadequate to provide for timely attainment of the National Ambient Air Quality Standards (NAAQS). In that letter, EPA identified specific actions needed to correct deficiencies in State regulations representing RACT for sources of VOC. Further, the CAA, as amended in 1990 (amended Act), also requires States to correct deficiencies. In amended Section 182(a)(2)(A), Congress statutorily

adopted the requirement that ozone non-attainment areas fix their deficient RACT rules for ozone. Areas designated non-attainment before the effective date of the amendments, and which retained that designation and were classified as marginal or above as of the effective date, are required to meet the RACT fix-up requirement. Under Section 182(a)(2)(A), States with such non-attainment areas were mandated to correct their RACT requirements by May 15, 1991. The corrected requirements were to be in compliance with Section 172(b), as it existed before the amendments, and as that section was interpreted in the pre-amendment guidance. The SIP call letter interpreted that guidance and indicated corrections necessary for specific non-attainment areas. The Portland part of the Portland-Vancouver non-attainment area is classified as marginal. Therefore, this area is subject to the RACT fix-up requirement and the May 15, 1991, deadline.

On May 15, 1991, the State of Oregon submitted Oregon Administrative Rules (OAR) 340–22–100 through 340–22–220, General Emission Standards for Volatile Organic Compounds, as an amendment to the Oregon SIP. On September 29, 1993, EPA approved these revisions to the Oregon SIP (58 FR 50848). Part of these amended rules included a requirement for RACT for non-CTG sources.

On November 20, 1996, the State of Oregon submitted to EPA source-specific RACT VOC emissions standards for Cascade General, Inc., a ship repair yard in Portland, Oregon; and, White Consolidated, Inc. (doing business as Schrock Cabinet Co.), a wood cabinet manufacturing facility in Hillsboro, Oregon.

The RACT determination for Cascade General modifies their existing permit to contain surface coating performance standards and special conditions for solvent clean-up operations. The permit now provides specific limits for VOC emissions from five different coating types used in ship painting operations (refer to condition 19, Page 2 of 3, of addendum #2 to operating permit #26–3224, issued by the Oregon Department of Environmental Quality).

White Consolidated's RACT determination places limits on the VOC content of coatings used in the finishing steps of wood cabinet production and VOC handling methods used in solvent related cleaning. (For more specific information, see conditions 11, 12, and 13, Pages 5 and 6, of addendum #2 to operating permit #34–2060, issued by the Oregon Department of Environmental Quality.)

This **Federal Register** document approves the rule revision as an amendment to the Oregon SIP.

II. This Action

EPA is approving the revision to the State of Oregon Implementation Plan submitted on November 20, 1996, as an amendment. The RACT determinations for Cascade General, Inc., and White Consolidated, Inc., meet all of the applicable requirements of the Act as determined by EPA.

EPA is not approving the entire permit, but only the conditions necessary for implementation and enforcement of the RACT requirement in OAR 340–22–104(5), (6), and (7). Since the RACT requirements are contained in the approved SIP, the source specific RACT limits will remain in effect, even if the Oregon permit expires as a matter of State law.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective May 6, 1997 unless by April 7, 1997, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective May 6, 1997.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

III. Administrative Review

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D, of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. section 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 6, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2), 42 U.S.C. 7607(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the Implementation Plan for the State of Oregon was approved by the Director of the Office of **Federal Register** on July 1, 1982.

Dated: February 21, 1997.

Jane S. Moore,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart MM—Oregon

2. Section 52.1970 is amended by adding paragraph (c) (117) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(117) On November 20, 1996, the Director of the Oregon Department of Environmental Quality (ODEQ) submitted source-specific Reasonably Available Control Technology (RACT) determinations to EPA as SIP revisions for VOC emissions standards.

(i) Incorporation by reference.

(A) Two letters dated November 20, 1995, from Director of the Oregon Department of Environmental Quality (ODEQ) submitting SIP revisions for RACT determinations for VOC emissions for: Cascade General, Inc., a ship repair yard in Portland, Oregon, Permit No. 26–3224 (issued to the Port of Portland), dated October 4, 1995; and, White Consolidated, Inc. (doing business as Schrock Cabinet Co.), a wood cabinet manufacturing facility in Hillsboro, Oregon, Permit No. 34–2060, dated August 1, 1995.

[FR Doc. 97–5644 Filed 3–6–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 52 and 81

[OR64–7279a, OR36–1–6298a, OR48–1–6802a; FRL–5696–8]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) approves numerous amendments to the Oregon Department of Environmental Quality's (ODEQ's) rules for stationary sources, including new source review and prevention of significant deterioration rules, as revisions to the Oregon State Implementation Plan (SIP). These revisions were submitted by the Director of the ODEQ on May 20, 1988, January 20, 1989, September 14, 1989, October 13, 1989, November 15, 1991, August 26, 1992, November 16, 1992, May 28, 1993, November 15, 1993, December 14, 1993, November 14, 1994, June 1, 1995, September 27, 1995, October 8, 1996, and January 22, 1997, in accordance with the requirements of section 110, Part C, and Part D of the Clean Air Act (hereinafter the Act). EPA is also removing the listings for total suspended particulates nonattainment areas in 40 CFR Part 81.

DATES: This action is effective on May 6, 1997 unless adverse or critical comments are received by April 7, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: Montel Livingston, SIP Manager, Office of Air Quality (OAQ–107), U.S. Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. Copies of material submitted to EPA may be examined during normal business hours at the following locations: EPA, Region 10, Office of Air Quality, 1200 Sixth Avenue, Seattle, Washington 98101, and Oregon Department of Environmental Quality, 811 S.W. Sixth Avenue, Portland, Oregon 97204.

FOR FURTHER INFORMATION CONTACT: David C. Bray, Office of Air Quality (OAQ–107), EPA, Region 10, Seattle, Washington 98101, (206) 553–4253.

SUPPLEMENTARY INFORMATION:

I. Background

On July 1, 1987 (52 FR 24672), in conjunction with the revision to the national ambient air quality standards (NAAQS) for particulate matter (PM_{10}), EPA revised the requirements for state implementation plans. These revisions included changes to the requirements for new source review (NSR) and prevention of significant deterioration (PSD) permitting programs. In response to these new requirements, on May 20, 1988, the Director of the Oregon Department of Environmental Quality (ODEQ) submitted amendments to Oregon's state ambient air quality standards (including its standards for particulate matter), new source review (NSR), and prevention of significant deterioration (PSD) rules.[1] Further amendments to the NSR rules applicable to specific areas which violated the new PM_{10} standards were submitted on September 14, 1989, and October 13, 1989,[2] and additional

[1] Other provisions in the May 20, 1988, submittal regarding commitments for Group II PM_{10} areas and emergency episode plans were acted on in a February 23, 1993, **Federal Register** (58 FR 10972).

[2] Additional provisions regarding the Medford-Ashland and Grants Pass PM_{10} industrial rules

Continued

clarifying changes to the state's ambient air quality standards were submitted on November 15, 1991.[3]

On October 17, 1988 (53 FR 40656), EPA promulgated PSD increments for nitrogen dioxide along with appropriate revisions to the PSD regulations in 40 CFR 51.166. In response to those changes to EPA's requirements for State PSD programs, the Director of the ODEQ submitted revisions to its PSD rules on August 26, 1992.

In response to the Clean Air Act Amendments of 1990 (Pub. L. 101–509), EPA issued guidance on March 11, 1991, July 22, 1992, and September 3, 1992, regarding the necessary changes to State and local PSD and NSR permit rules to comply with the new statutory requirements. In response to this guidance, the Director of the ODEQ submitted additional amendments to the NSR and PSD rules on November 16, 1992.[4]

On September 24, 1993 (58 FR 49931), EPA designated the Lakeview area as a moderate PM_{10} nonattainment area. As a result, Oregon was required to submit, as a SIP revision, a control strategy to bring the area into attainment with the PM_{10} standards. The required control strategy was submitted by the Director of the ODEQ on June 1, 1995.[5] This strategy included, among other things, amendments to the New Source Review rules that apply in nonattainment areas in order to make them apply to the Lakeview PM_{10} Nonattainment Area.

On June 3, 1993 (58 FR 31622), EPA promulgated revisions to the PSD regulations to change the indicator for the particulate matter increments from total suspended particulates (TSP) to PM_{10}. On September 27, 1995, in response to this change in federal requirements, the Director of the ODEQ submitted amendments to Oregon's PSD rules as a revision to the Oregon SIP.[6]

Oregon also made a number of amendments to its PSD and NSR rules on its own initiative. These amendments were submitted as revisions to the Oregon SIP on January 20, 1989, May 28, 1993,[7] November 15, 1993,[8] December 14, 1993,[9] November 14, 1994, October 8, 1996,[10] and January 22, 1997.[11]

II. Description of Plan Revision Submittals

On May 20, 1988, the Director of the ODEQ submitted amendments to Oregon Administrative Rules (OAR) 340–20–220 through 260 (New Source Review Rules), OAR 340–31–005 through 055 (Ambient Air Quality Standards), and OAR 340–31–100 through 130 (Prevention of Significant Deterioration Rules) as revisions to the Oregon state implementation plan (SIP). The amendments to the New Source Review Rules added new definitions of "emission limitation and emission standard," "particulate matter emissions," and "PM_{10} emissions" to OAR 340–20–225. They also amended the existing definitions of "nonattainment area," "significant emission rate," and "significant air quality impact" in OAR 340–20–225. These new and amended definitions were to implement the revised ambient air quality standards for particulate matter. In addition, OAR 340–20–245 (Requirements for Sources in Attainment or Unclassifiable Areas (Prevention of Significant Deterioration)) was amended to implement the revised particulate matter standards and the revised EPA requirements in 40 CFR 51.165(b) and 40 CFR 51.166. Similarly, OAR 340–20–260 (Requirements for Net Air Quality Benefit) was amended to implement the revised particulate matter standards.

The amendments to Oregon's Ambient Air Quality Standards included new definitions of "ambient air monitoring site criteria," "approved method," "Code of Federal Regulations," and "parts per million;" amendments to the existing definitions of "ambient air" and "equivalent method;" and the deletion of the existing definitions of "primary air mass station," "primary ground level monitoring station," and "special station" in OAR 340–31–005. The ambient standards for suspended particulate matter (OAR 340–31–015) were amended by adding standards for PM_{10}. Finally, the ambient standards for total suspended particulates (OAR 340–31–015), sulfur dioxide (OAR 340–31–020), carbon monoxide (OAR 340–31–025), ozone (OAR 340–31–030), nitrogen dioxide (OAR 340–31–040), and lead (OAR 340–31–055) were amended to clarify monitoring methods and averaging times. In addition, the existing ambient standard for hydrocarbons (OAR 340–31–035) was rescinded.

Finally, the Prevention of Significant Deterioration Rules were amended by clarifying that the ambient air increments for particulate matter (OAR 340–31–110) were measured in terms of total suspended particulates.

On January 20, 1989, the Director of the ODEQ submitted amendments to the Air Contaminant Discharge Permit rules to effect changes to the permit fee provisions in OAR 340–20–155, Table 1 and OAR 340–20–165. These changes updated the fee table and clarified that the application processing fee must be submitted with the application for a permit or permit renewal.

On September 14, 1989, the Director of the ODEQ submitted an amendment to the New Source Review Rules as they apply to the Klamath Falls PM_{10} area. This amendment lowered the major source size threshold for new and modified major sources in the Klamath Falls Urban Growth Area from 15 tons of PM_{10} per year to 5 tons of PM_{10} per year by revising the definition of "significant emission rate" in OAR 340–20–225(22). However, the amended rules exempt sources with PM_{10} emissions of less than 15 tons per year from the requirement to apply the lowest achievable emission rate (LAER). In addition, sources with PM_{10} emissions between 5 and 15 tons per year may choose to apply LAER rather than to obtain emission offsets.

On October 13, 1989, the Director of the ODEQ submitted an amendment to the "Specific Air Pollution Control rules for the Medford-Ashland Air Quality Maintenance Area and Grants Pass Urban Growth Area" (OAR 340–30–005 through 111). This amendment added a new OAR 340–30–111 (Emission Offsets) which establishes an emission offset ratio for new or modified sources of 1.2 to 1 for the Medford-Ashland Air Quality Maintenance Area.

On November 15, 1991, the Director of the ODEQ submitted further amendments to Oregon's Ambient Air Quality Standards (OAR 340–31–015 through 030, 040, and 055). These amendments clarified the applicability of the standards to any site in the ambient air.

On August 26, 1992, the Director of the ODEQ submitted amendments to

included in this submittal were acted on in a February 23, 1993, **Federal Register** (58 FR 10972).

[3] Other rule amendments submitted on November 15, 1991, have been acted on in a February 23, 1993, **Federal Register** (58 FR 10972).

[4] The emission statement rules included in the November 16, 1992, submittal were acted on in a March 24, 1994, **Federal Register** (59 FR 13886).

[5] Other provisions of the Lakeview PM_{10} attainment plan will be acted on in a separate **Federal Register**.

[6] Revisions to Oregon's Smoke Management Plan included in the September 27, 1995, submittal will be acted on in a separate **Federal Register**.

[7] Other rule amendments included in the May 28, 1993, submittal will be acted on in separate **Federal Registers**.

[8] Other rule amendments included in the November 15, 1993, submittal will be acted on in a separate **Federal Register**.

[9] Other rule amendments included in the December 14, 1993, submittal will be acted on in a separate **Federal Register**.

[10] Other rule amendments included in the October 8, 1996, submittal will be acted on in a separate **Federal Register**.

[11] Other rule amendments included in the January 22, 1997, submittal will be acted on in a separate **Federal Register**.

Oregon's New Source Review Rules (OAR 340–20–225) and Prevention of Significant Deterioration Rules (OAR 340–31–110) to add provisions implementing the PSD increments for nitrogen dioxide. These amendments revised the definitions of "baseline concentration" (OAR 340–20–225(2)) and "baseline period" (OAR 340–20–225(3)) to accommodate the new nitrogen dioxide increments and added the nitrogen dioxide increments themselves to OAR 340–31–110 (Ambient Air Increments).

On November 16, 1992, the Director of the ODEQ submitted amendments to Oregon's New Source Review Rules (OAR 340–20–220 to 270) to implement the new requirements of the Clean Air Act Amendments of 1990 for nonattainment area (Part D) new source review programs. These amendments revised the definitions of the terms "baseline period," "nonattainment area," "significant emission rate," and "source" in OAR 340–20–225. The amendments also revised the requirements for new and modified major sources proposing to locate in nonattainment areas at OAR 340–20–240 (Requirements for Sources in Nonattainment Areas), OAR 340–20–241 (Growth Increments), OAR 340–20–255 (Baseline for Determining Credit for Offsets), OAR 340–20–260 (Requirements for Net Air Quality Benefit), and OAR 340–20–265 (Emission Reduction Credit Banking).

On May 28, 1993, the Director of the ODEQ submitted numerous amendments to Oregon's permit rules in OAR Chapter 340, Division 14, Division 20, and Division 31. These amendments are nearly all editorial in nature and include updating statutory citations, correcting cross references, and correcting typographical and grammatical errors. The only other changes are minor changes in public notice procedures for consistency with State statutes and a clarification of the requirement for certain sources to register under the State's registration program.

On November 15, 1993, the Director of the ODEQ submitted extensive amendments to the State rules which affect the permitting and regulation of stationary sources, including permits to construct, State operating permits, prevention of significant deterioration, Part D new source review, stack heights and dispersion techniques, excess emissions, and other provisions. These amendments involve the creation of a new OAR Chapter 340, Division 28, Stationary Source Air Pollution Control and Permitting Procedures and the relocation of much of the OAR Chapter 340, Division 20 provisions to this new Division 28. Additionally, conforming amendments were made to OAR Chapter 340, Division 14, and Division 31. Specifically, OAR Chapter 340, Division 14, Procedures for Issuance, Denial, Modification, and Revocation of Permits, Section 007 (Exceptions) was amended to exempt federal operating permits issued pursuant to the new OAR Chapter 340, Division 28, from the requirements of Division 14. OAR Chapter 340, Division 20, General Air Pollution Control Regulations was amended by revising, renumbering, and relocating the following provisions of OAR Chapter 340, Division 20, to the new OAR Chapter 340, Division 28:

- 340–20–001 (Highest and Best Practicable Treatment and Control Required);
- 340–20–005 through –015 (Registration);
- 340–20–020 through –030 (Notice of Construction and Approval of Plans);
- 340–20–032 (Compliance Schedules);
- 340–20–035 (Sampling, Testing and Measurement of Air Contaminant Emissions);
- 340–20–037 (Stack Heights and Dispersion Techniques);
- 340–20–040 (Methods);
- 340–20–045 (Department Testing);
- 340–20–046 (Records; Maintaining and Reporting);
- 340–20–140 through –185 (Air Contaminant Discharge Permits);
- 340–20–220 through –276 (New Source Review);
- 340–20–300 through –320 (Plant Site Emission Limits);
- 340–20–350 through –380 (Excess Emissions);
- 340–20–450 through –480 (Emission Statements for VOC and NO_x Sources); and
- 340–20–500 through –660 (Major Source Interim Emission Fees).

The new OAR Chapter 340, Division 28, Stationary Source Air Pollution Control and Permitting Procedures includes most of Oregon's rules of procedure that apply to stationary sources of air pollution. Specifically, Division 28 includes:

- 340–28–100 (Purpose, Application and Organization);
- 340–28–110 (Definitions);
- 340–28–200 through –400 (Rules Applicable to All Stationary Sources);
- 340–28–500 through –520 (Registration);
- 340–28–600 through –640 (Highest and Best Practicable Treatment and Control Required);
- 340–28–700 (Compliance Schedules);
- 340–28–800 through –820 (Notice of Construction and Approval of Plans);
- 340–28–900 (Rules Applicable to Sources Required to Have Air Contaminant Discharge Permits or Federal Operating Permits);
- 340–28–1000 through –1060 (Plant Site Emission Limits);
- 340–28–1100 through –1140 (Sampling, Testing and Measurement of Air Contaminant Emissions);
- 340–28–1400 through –1460 (Excess Emissions and Emergency Provision);
- 340–28–1500 through –1520 (Emission Statements for VOC and NOx Sources in Ozone Nonattainment Areas);
- 340–28–1600 (Rules Applicable to Sources Required to Have Air Contaminant Discharge Permits);
- 340–28–1700 through –1770 (Air Contaminant Discharge Permits);
- 340–28–1900 through –2000 (New Source Review);
- 340–28–2100 through –2320 (Rules Applicable to Sources Required to Have Federal Operating Permits);
- 340–28–2400 through –2550 (Major Source Interim Emission Fees); and
- 340–28–2560 through –2740 (Federal Operating Permit Fees).

While the provisions relating to the Federal operating permit program are new, the remaining provisions are provisions from OAR Chapter 340, Division 20, that have been revised, renumbered, and relocated into this new Division 28. Note that the provisions relating to the Federal operating permit program (OAR 340–28–1460, 340–28–2100 through –2260, OAR 340–28–2280 through –2320, and 340–28–2560 through –2740) were granted interim approval by EPA on December 2, 1994 (59 FR 61820), and full approval on September 28, 1995 (60 FR 50106), and are not being acted on in this rulemaking which addresses only revisions to the Oregon SIP. Finally, OAR Chapter 340, Division 31 (Air Pollution Control Standards for Air Purity and Quality) was amended by renumbering and relocating the definition of "baseline concentration" from Division 20, renumbering and relocating the definitions located in OAR 340–31–105 to OAR 340–31–005, and by adding new definitions of "particulate matter," "PM_{10}," and "total suspended particulates."

On December 14, 1993, the Director of the ODEQ submitted technical corrections to OAR Chapter 340, Division 28, as submitted on November 15, 1993. These technical corrections clarified the effective dates for OAR 340–28–600 through –640 and the SIP submittal status of OAR 340–28–1520.

On November 14, 1994, the Director of the ODEQ submitted further

amendments to OAR Chapter 340, Division 28. These amendments correct and clarify the requirements for permits to construct for new and modified sources that are not new major stationary sources or major modifications to existing major stationary sources (the "minor" new source review program), specifically, OAR 340–28–110 (Definitions), OAR 340–28–1910 (Procedural Requirements), and OAR 340–28–2270 (Construction/Operation Modification). The amendments also correct an incorrect cross reference in OAR 340–28–1430 (Upsets and Breakdowns).

On June 1, 1995, the Director of the ODEQ submitted additional amendments to the New Source Review Rules as they apply to the Lakeview PM_{10} nonattainment area. First, the amendments lowered the major source size threshold for new and modified major sources in the Lakeview PM_{10} nonattainment area from 15 tons of PM_{10} per year to 5 tons of PM_{10} per year by revising the definition of "significant emission rate" in OAR 340–28–110(105). Second, the amended rules (OAR 340–28–1930(7)) exempt sources with PM_{10} emissions of less than 15 tons per year from the requirement to apply the lowest achievable emission rate (LAER). However, sources with PM_{10} emissions between 5 and 15 tons per year may choose to apply LAER rather than to obtain emission offsets.

On September 27, 1995, the Director of the ODEQ submitted amendments to Oregon's Prevention of Significant Deterioration Rules (OAR 340–31–005 through –155) to change the indicator for the PSD increments for particulate matter from total suspended particulates (TSP) to PM_{10}. These amendments revised the definition of "baseline concentration" in OAR 340–31–005(4) to establish a new PM_{10} baseline date for the Umatilla, Wallowa-Whitman, Ochoco, and Malheur National Forests in northeastern Oregon; changed the indicator for the particulate matter increments in OAR 340–31–110 (Ambient Air Increments) from TSP to PM_{10}; and clarified in OAR 340–31–120 (Restriction on Area Classifications) that the boundaries of Federal Class I areas conform to changes made to the boundaries of the areas after the Clean Air Act Amendments of 1977.

On October 8, 1996, the Director of the ODEQ submitted further amendments to OAR Chapter 340, Division 28. These amendments included technical clarifications and corrections to OAR 340–28–0110 (Definitions), OAR 340–28–1060 (Plant Site Emission Limits for Insignificant Activities), OAR 340–28–1410 (Planned Startup and Shutdown), OAR 340–28–1430 (Upsets and Breakdowns), and OAR 340–28–1720 (Permit Required).

Finally, on January 22, 1996, the Director of the ODEQ submitted further amendments to OAR Chapter 340, Division 28. These amendments included technical clarifications and corrections to OAR 340–28–0110 (Definitions), OAR 340–28–0400 (Information Exempt from Disclosure), OAR 340–28–0630 (Typically Available Control Technology), OAR 340–28–1010 (Requirements for Plant Site Emission Limits), and OAR 340–28–1720 (Permit Required).

III. EPA Findings and Action

EPA has reviewed the submitted amendments to OAR Chapter 340, Divisions 14, 20, 28, 30, and 31, and finds that they comply with the Act and EPA's requirements for SIP programs that regulate stationary sources. EPA's findings on each Division are as follows:

The amendments to OAR Chapter 340, Division 14 (amendments to OAR 340–14–005, –010, –015, –020, –025, –030, –035, –040, –045, and –050, effective on March 10, 1993, and submitted on May 28, 1993, and amendments to OAR 340–14–007 effective on March 10, 1993, and September 24, 1993, and submitted on May 28, 1993, and November 15, 1993, respectively) are all administrative in nature and do not result in any substantive changes to the provisions that are in the currently approved Oregon SIP. As such, EPA is approving these amendments to Division 14, as a revision to the Oregon SIP.

The November 15, 1993, submittal of amendments to OAR Chapter 340, Division 20, was the rescission of provisions that have been amended, renumbered, and relocated to the new OAR Chapter 340, Division 28. Therefore, this submittal entirely supersedes the amendments to OAR Chapter 340, Division 20, which were submitted on May 20, 1988, January 20, 1989, September 14, 1989, August 26, 1992, November 16, 1992, and May 28, 1993. As discussed below, EPA is approving the amended and renumbered provisions now located in OAR Chapter 340, Division 28, and therefore, is approving the rescission of OAR 340–20–001, 340–20–005 through –046, 340–20–140 through –185, and 340–20–220 through –380, as effective on September 24, 1993, and submitted on November 15, 1993, as a revision to the Oregon SIP.

As discussed above, on September 24, 1993, Oregon amended and relocated many of the provisions of OAR Chapter 340, Division 20, to the new OAR Chapter 340, Division 28. The Division 20 provisions that were relocated included all of the amended provisions that were previously submitted to EPA as revisions to the Oregon SIP on May 20, 1988, January 20, 1989, September 14, 1989, August 26, 1992, November 16, 1992, and May 28, 1993, as described above. In addition to the amended and relocated provisions from OAR Chapter 340, Division 20, new provisions to implement the requirements of Title V of the Act and 40 CFR Part 70 were adopted, and new bridging provisions were established to clarify the applicability of the provisions of this new Division 28.[12] The majority of the amendments to the relocated Division 20 provisions were administrative in nature and involved renumbering and corrections to cross-references to reflect the organization in the new Division 28. Other amendments to the relocated Division 20 provisions were changes necessary to reflect the addition of the new Title V operating permits program and to clarify the relationship between Oregon Air Contaminant Discharge Permits and the new Title V operating permits. As described above in the various submittals of amendments to Division 28, substantive changes have since been made to the provisions in OAR 340–28–110 (Definitions), OAR 340–28–600 through -680 (Highest and Best Practicable Treatment and Control Required), OAR 340–28–800 through -820 (Notice of Construction and Approval of Plans), OAR 340–28–1000 through -1060 (Plant Site Emission Limits), OAR 340–28–1100 (Sampling, Testing and Measurement of Air Contaminant Emissions), OAR 340–28–1400 through -1460 (Excess Emissions and Emergency Provision), and OAR 340–28–1700 through -1790 (Air Contaminant Discharge Permits), and a new OAR 340–28–2270 (Construction/Operation Modifications) has been added. Moreover, as discussed above, numerous technical corrections and clarifications have been made throughout the new Division 28. EPA has reviewed the provisions of the new Division 28 and the submitted amendments that have been made since its initial adoption on September 23, 1993, and finds that the rules meet the requirements of the Act and EPA's regulations for SIPs as set forth in 40 CFR Part 51. As such, EPA is approving OAR Chapter 340, Division 28 (except

[12] The provisions related to Title V have been fully approved pursuant to 40 CFR Part 70 (see 60 FR 50106, September 28, 1995), are not included in the Oregon SIP, and are not specifically addressed in this rulemaking.

for those provisions implementing Title V, specifically, OAR 340–28–1460, -2100 through -2260, and -2280 through -2740; except for OAR 340–28–1050 which was not submitted by the State) as a revision to the Oregon SIP.

The amendments to OAR Chapter 340, Division 30 submitted on October 13, 1989, involve the addition of a new section OAR 340–30–111 (Emission Offsets), effective September 26, 1989, which establishes an offset ratio of 1.2 to 1 for new or modified sources located in the Medford-Ashland Air Quality Maintenance Area. Since this offset ratio is greater than that required for the Medford-Ashland PM_{10} nonattainment area, EPA finds the amendment to comply with the requirements of the Act and EPA regulations and is therefore approving the addition of OAR 340–30–111 as a revision to the Oregon SIP.

The amendments to OAR Chapter 340, Division 31, effective on May 19, 1988, and November 13, 1991 (submitted on May 20, 1988, and November 15, 1991, respectively), provided for the addition of PM_{10} ambient standards and clarifying revisions to the Oregon ambient standards for total suspended particulates, sulfur dioxide, carbon monoxide, ozone, nitrogen dioxide, and lead, as well as clarifying that the PSD increments for particulate matter were measured as total suspended particulates. The amendments to OAR Chapter 340, Division 31, effective on March 30, 1992 (submitted August 26, 1992), provided for the addition of PSD increments for NO_2. The amendments to OAR Chapter 340, Division 31, effective on March 10, 1993 (submitted on May 28, 1993), were only technical corrections and clarifications to the rules. The amendments to OAR Chapter 340, Division 31, effective on November 4, 1993 (submitted on November 15, 1993), simply relocated certain definitions from OAR 340–28–110 and OAR 340–31–105 to OAR 340–31–005. The amendments to OAR Chapter 340, Division 31, effective on July 12, 1995 (submitted September 27, 1995), provided for the replacement of the PSD increments for total suspended particulates with PSD increments for PM_{10}, a revision to the PSD baseline date for an area in northeastern Oregon (the area within the boundaries of the Umatilla, Wallowa-Whitman, Ochoco, and Malheur National Forests), and a clarification to the boundaries of the mandatory federal Class I areas (certain National Parks and National Wilderness Areas) in Oregon. These amendments are consistent with EPA's regulations in 40 CFR Part 50 and 40 CFR 51.166 and EPA is therefore approving the amendments to OAR Chapter 340, Division 31, as revisions to the Oregon SIP.

IV. Summary of EPA Action

EPA today approves several amendments to the ODEQ rules as revisions to the Oregon SIP. Specifically, EPA approves:

(1) OAR 340–14–005, –010, –015, –020, –025, –030, –035, –040, –045, and –050, as amended, effective March 10, 1993, and OAR 340–14–007, as amended, effective September 24, 1993;

(2) the rescission of OAR 340–20–001, 340–20–005 through –046, 340–20–140 through –185, and 340–20–220 through –380 as effective on September 24, 1993;

(3) OAR 340–28–500, –510, –520, –810, –1030, –1040, –1120, –1130, –1400, –1450, –1520, –1600, –1700, –1710, and –1920, as amended, effective September 24, 1993; OAR 340–28–100, –200, –300, –700, –800, –820, –900, –1000, –1020, –1100, –1110, –1140, –1420, –1440, –1500, –1510, –1730, –1740, –1750, –1760, –1770, –1900, –1940, –1950, –1960, –1970, –1980, –1990, and –2000, as amended, effective November 4, 1993; OAR 340–28–600, –610, –620, and –640, as amended, effective January 1, 1994; OAR 340–28–1910 and –2270, as amended, effective October 28, 1994; OAR 340–28–1930, as amended, effective May 1, 1995; OAR 340–28–1060, as amended, effective January 29, 1996; OAR 340–28–1410 and –1430, as amended, effective September 24, 1996; OAR 340–28–110, –400, –630, –1010 and –1720, as amended, effective October 22, 1996; the rescission of OAR 340–28–1790 as effective September 24, 1993; and the rescission of OAR 340–28–1780 as effective November 4, 1993;

(4) OAR 340–30–111 as effective September 26, 1989; and

(5) OAR 340–31–010, 340–31–015, 340–31–020, 340–31–025, 340–31–030, 340–31–040, 340–31–055, 340–31–100, 340–31–115, and 340–31–130, as amended, effective March 10, 1993, the rescission of OAR 340–31–105 as effective on November 4, 1993, and OAR 340–31–005, OAR 340–31–110, and 340–31–120, as amended, effective July 12, 1995.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective May 6, 1997 unless, by April 7, 1997, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective May 6, 1997.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. sections 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D, of the Act do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the Act, preparation of a regulatory flexibility

analysis would constitute federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. E.P.A., 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [insert date 60 days from date of publication in the **Federal Register**]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2), 42 U.S.C. 7607(b)(2)).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Note: Incorporation by reference of the Implementation Plan for the State of Oregon was approved by the Director of the Office of the Federal Register on July 1, 1982.

Dated: February 19, 1997.

Jane S. Moore,

Acting Regional Administrator.

Chapter I, title 40, of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart MM—Oregon

2. Section 52.1970 is amended by adding paragraph (c)(118) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(118) On October 13, 1989, the Director of the Oregon Department of Environmental Quality submitted an amendment to OAR Chapter 340, Division 30. On May 28, 1993, the Director of the Oregon Department of Environmental Quality submitted amendments to OAR Chapter 340, Division 14, and Division 31. On November 15, 1993, the Director of the Oregon Department of Environmental Quality submitted amendments to OAR Chapter 340, Division 14, Division 20, and Division 31, and a new Division 28. On November 14, 1994, June 1, 1995, October 8, 1996, and January 22, 1997, the Director of the Oregon Department of Environmental Quality submitted amendments to OAR Chapter 340, Division 28. On September 27, 1995, the Director of the Oregon Department of Environmental Quality submitted amendments to OAR Chapter 340, Division 31.

(i) Incorporation by reference.

(A) OAR 340–14–005, –010, –015, –020, –025, –030, –035, –040, –045, and –050, effective March 10, 1993; and OAR 340–14–007, effective September 24, 1993.

(B) OAR 340–28–500, –510, –520, –810, –1030, –1040, –1120, –1130, –1400, –1450, –1520, –1600, –1700, –1710, and –1920, effective September 24, 1993; OAR 340–28–100, –200, –300, –700, –800, –820, –900, –1000, –1020, –1100, –1110, –1140, –1420, –1440, –1500, –1510, –1730, –1740, –1750, –1760, –1770, –1900, –1940, –1950, –1960, –1970, –1980, –1990, and –2000, effective November 4, 1993; OAR 340–28–600, –610, –620, and –640, effective January 1, 1994; OAR 340–28–1910 and –2270, effective October 29, 1994; OAR 340–28–1930, effective May 1, 1995; OAR 340–28–1060, effective January 29, 1996; OAR 340–28–1410 and –1430, effective September 24, 1996; and OAR 340–28–110, –400, –630, –1010 and –1720, effective October 22, 1996.

(C) OAR 340–30–111, effective September 26, 1989.

(D) OAR 340–31–010, 340–31–015, 340–31–020, 340–31–025, 340–31–030, 340–31–040, 340–31–055, 340–31–100, 340–31–115, and 340–31–130, effective March 10, 1993; and OAR 340–31–005, OAR 340–31–110, and 340–31–120, effective July 12, 1995.

3. Section 52.1987 is amended by revising paragraph (a) to read as follows:

§ 52.1987 Significant deterioration of air quality.

(a) The Oregon Department of Environmental Quality rules for prevention of significant deterioration of air quality in OAR Chapter 340, Division 28, as effective on October 22, 1996, and OAR Chapter 340, Division 31, as effective on July 12, 1995, are approved as meeting the requirements of Part C.

* * * * *

4. Section 52.1988 is revised to read as follows:

§ 52.1988 Air Contaminant discharge permits.

(a) Emission limitations and other provisions contained in Air Contaminant Discharge Permits and Federal Operating Permits issued by the State in accordance with the provisions of the OAR Chapter 340, Division 28, Stationary Source Air Pollution Control and Permitting Procedures incorporated by reference in § 52.1970, except for compliance schedules under OAR 340–28–700 and alternative emission limits (bubbles) under OAR 340–28–1030 for sulfur dioxide or total suspended particulates which involve trades where the sum of the increases in emissions exceeds 100 tons per year, shall be the applicable requirements of the federally-approved Oregon SIP (in lieu of any other provisions) for the purposes of Section 113 of the Clean Air Act and shall be enforceable by EPA and by any person in the same manner as other requirements of the SIP.

(b) Emission limitations and other provisions contained in Air Contaminant Discharge Permits and Federal Operating Permits issued by the Lane Regional Air Pollution Authority in accordance with the provisions of the federally-approved Air Contaminant Discharge Permits rules (Title 34) and Plant Site Emission Limit rules (Title 32, Section 32–100 through –104) and in conjunction with provisions of the OAR Chapter 340, Division 28, Stationary Source Air Pollution Control and Permitting Procedures incorporated by reference in Section 52.1970, except for compliance schedules under Title 15, Section 020, or Title 34, Section 050, and alternative emission limits (bubbles) under Title 32, Section 32–103, for sulfur dioxide or total suspended particulates which involve trades where the sum of the increases in emissions exceeds 100 tons per year, shall be the applicable requirements of the federally-approved Oregon SIP (in lieu of any other provisions) for the purposes of Section 113 of the Clean Air Act and shall be enforceable by EPA and by any person in the same manner as other requirements of the SIP.

PART 81—[AMENDED]

1. The authority citation for Part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 81.338 is amended by removing the table titled Oregon—TSP in its entirety.

3. Section 81.338 is amended by revising the table titled Oregon PM–10 to read as follows:

§ 81.338 Oregon.

* * * * *

OREGON—PM–10

Designated Area	Designation		Classification	
	Date	Type	Date	Type
Central Oregon Intrastate AQCR 190:				
Lakeview (the Urban Growth Boundary area)	10/25/93	Nonattainment	10/25/93	Moderate.
Klamath Falls (the Urban Growth Boundary area)	11/15/90	Nonattainment	11/15/90	Moderate.
Remainder of AQCR 190	11/15/90	Unclassifiable		
Eastern Oregon Intrastate AQCR 191:				
LaGrande (the Urban Growth Boundary area)	11/15/90	Nonattainment	11/15/90	Moderate.
Remainder of AQCR 191	11/15/90	Unclassifiable		
Northwest Oregon Intrastate AQCR 192	11/15/90	Unclassifiable		
Portland Interstate AQCR 193 (Oregon Portion):				
Portland-Vancouver (portion of the Air Quality Maintenance Area)	11/15/90	Unclassifiable		
Eugene/Springfield (the Urban Growth Boundary area)	11/15/90	Nonattainment	11/15/90	Moderate.
Oakridge (the Urban Growth Boundary area)	1/20/94	Nonattainment	1/20/94	Moderate.
Remainder of AQCR 193 (Oregon Portion)	11/15/90	Unclassifiable		
Southwest Oregon Intrastate AQCR 194:				
Medford-Ashland Air Quality Maintenance Area (including White City)	11/15/90	Nonattainment	11/15/90	Moderate.
Grants Pass (the Urban Growth Boundary area)	11/15/90	Nonattainment	11/15/90	Moderate.
Remainder of AQCR 194	11/15/90	Unclassifiable		

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[FR Doc. 97–5645 Filed 3–6–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 81

[OH54–2; FRL–5698–4]

Designation of Areas for Air Quality Planning Purposes: Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: EPA is correcting the ozone designation for Montgomery County, Ohio to attainment. The designation status was not correctly printed in 40 CFR 81.336. EPA published a final rule designating Montgomery, Greene, Miami and Clark Counties, Ohio nonattainment for ozone, see 43 FR 8962 (March 3,1978), 43 FR 45993 (October 5, 1978), and the Code of Federal Regulations, 40 CFR part 81. On November 6, 1991 (56 FR 56694), codified at 40 CFR 81.336, the above areas were classified as moderate nonattainment for ozone. More recently, on May 5, 1995 (60 FR 22289) EPA redesignated the above areas to attainment for ozone due to ambient air monitoring data showing no violations of the ozone National Ambient Air Quality Standards during the period from 1990 through 1992. The designation became effective on July 5, 1995. Inadvertently, however, the revised Montgomery County, Ohio ozone designation status was not correctly printed in 40 CFR 81.336, as intended by the May 5, 1995, **Federal Register** action. It is being corrected in this rule.

EFFECTIVE DATE: March 7, 1997.

FOR FURTHER INFORMATION CONTACT: Fayette Bright, Air Programs Branch, Regulation Development Section (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard (AR–18J), Chicago, Illinois 60604. (312)886–6069.

SUPPLEMENTARY INFORMATION: Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and, is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because EPA is not taking comment on this correction, it is therefore not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a major rule as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Ozone.

Dated: February 7, 1997.

Michelle D. Jordan,

Acting Regional Administrator.

Accordingly, part 81, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 81.336 amended by revising the entry for Montgomery County in the table entitled "Ohio Ozone" to read as follows:

§ 81.336 Ohio

* * * * *

OHIO—OZONE

Designated area	Designation		Classification	
	Date	Type	Date	Type
. . . . .				
Dayton-Springfield Area:				
Montgomery County	July 5, 1995	Attainment		
. . . . .				

[FR Doc. 97–5620 Filed 3–6–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 271

[FRL–5699–5]

Nevada: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: The State of Arizona has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), as amended. The Environmental Protection Agency (EPA) has completed its review of Arizona's application and has made a decision, subject to public review and comment, that Arizona's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Arizona's hazardous waste program revisions. Arizona's application for program revision is available for public review and comment.

DATES: Final authorization for Arizona is effective May 6, 1997 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Arizona's program revision application must be received by the close of business April 7, 1997.

ADDRESSES: Copies of Arizona's program revision application are available during the business hours of 9:00 a.m. to 5:00 p.m. at the following addresses for inspection and copying:

Arizona Department of Environmental Quality, 3033 N. Central Avenue, Phoenix, AZ 85012, Contact: Russell F. Rhoades, Director, Phone: 602/207–4211 or 1–800–234–5677

U.S. EPA Region IX Library-Information Center, 75 Hawthorne Street, San Francisco, CA 94105 Phone: 415/744–1510

Written comments should be sent to: Lisa McClain-Vanderpool, U.S. EPA Region IX (WST–3), 75 Hawthorne Street, San Francisco, CA 94105, Phone: 415/744–2086.

FOR FURTHER INFORMATION CONTACT: Lisa McClain-Vanderpool , U.S. EPA Region IX (WST–3), 75 Hawthorne Street, San Francisco, CA 94105, Phone: 415/744–2086.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 260–266, 268, 124, 270 and 279.

B. Arizona

Arizona received final authorization for the base program on November 20, 1985. Arizona has since received final authorization for revisions to its hazardous waste program, on August 6, 1991, July 13, 1992, and November 23, 1992, October 27, 1993 and June 12, 1995. These revisions include substantially all the Federal RCRA implementing regulations published in the **Federal Register** through July 1, 1993. On September 30, 1996, Arizona submitted an application for additional revision approvals. Today, Arizona is seeking approval of its program revisions in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Arizona's application, and has made an immediate final decision that Arizona's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to approve final authorization for Arizona's hazardous waste program revisions. The public may submit written comments on EPA's immediate final decision up until April 7, 1997. Copies of Arizona's

applications for program revision are available for inspection and copying at the locations indicated in the "Addresses" section of this notice.

Approval of Arizona's program revisions is effective in 60 days unless an adverse comment pertaining to the State's revisions discussed in this notice is received by the end of the comment period. If an adverse comment is received, EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to the comment which either affirms that the immediate final decision takes effect or reverses the decision.

Arizona is applying for authorization for changes and additions to the Federal RCRA implementing regulations that occurred between July 1, 1993 and July 1, 1995, consisting of the following Federal hazardous waste regulations:

Federal requirement	State analog
Boilers and Industrial Furnaces: changes for Consistency with New Air Regulations (58 FR 38816, July 20, 1993).	Arizona Revised Statutes (ARS) 49–922.A&B; Arizona Administrative Code (AAC)R18–8–260.A,B&C and 266.A.
Testing and Monitoring Activities (58 FR 46040, August 31, 1993)	ARS 49–922.A&B; AAC R18–8–260.A,B,C & G, 261.A&B, 264.A, 265.A, 268, 270.A.
Boilers and Industrial Furnaces; Administrative Stay and Interim Standards for Bevill Residues (58 FR 59598, November 9, 1993).	ARS 49–922.A&B; AAC R18–8–266.A.
Wastes from the use of Chlorophenolic Formulations in Wood Surface Protection (59 FR 458, January 4, 1994).	ARS 49–922.A&B; AAC R18–8–260.A,B&C, 261.A&B.
Revision of Conditional Exemption for Small Scale Treatability Studies (59 FR 8362, February 18, 1994).	ARS 49–922.A&B; AAC R18–8–261.A,B&E.
Recordkeeping Instructions; Technical Amendment (59 FR 13891, March 24, 1994)	ARS 49–922.A&B; AAC R18–8–264.A, 265.A.
Wood Surface Protection; Correction (59 FR 28484, June 2, 1994)	ARS 49–922.A&B; AAC R18–8–260.A,B&C.
Letter of Credit Revision (59 FR 29958, June 10, 1994)	ARS 49–922.A&B; AAC R18–8–264.A&L.
Correction of Beryllium Powder (59 FR 31551, June 20, 1994)	ARS 49–922.A&B; AAC R18–8–261.A&B, 268.
Recovered Oil Exclusion (59 FR 38536, July 28, 1994)	ARS 49–922.A&B; AAC R18–8–261.A&B, 266.A&B.
Removal of the Conditional Exemption for Certain Slag Residues (59 FR 43496, August 24, 1994).	ARS 49–922.A&B; AAC R18–8–266.A and 268.
Universal Treatment Standards and Treatment Standards for Organic Toxicity Characteristics Wastes and Newly Listed Wastes (59 FR 47982, September 19, 1994)	ARS 49–922.A&B; AAC R18–8–261.A&B, 264.A, 265.A, 266.A and 268.
Organic Air Emissions Standards for Tanks, Surface Impoundments and Containers (59 FR 62896, December, 6, 1994).	ARS 49–922.A&B; AAC R18–2–901; R18–8–260.A,B&C, 262.A,B&E, 264.A, 265.A and 270.A.
Testing and Monitoring Activities Amendment I (60 FR 3089, January 13, 1995)	ARS 49–922.A&B; AAC R18–8–260.A,B&C.
Carbamate Production*, Identification and Listing of Hazardous Waste (60 FR 7824, February 9, 1995).	ARS 49–922.A&B; AAC R18–8–261.A,B&L.
Testing and Monitoring Activities Amendment II (60 FR 17001, April 4, 1995)	ARS 49–922.A&B; AAC R18–8–260.A,B&C.
Universal Waste Rule (60 FR 25492, May 11, 1995)	ARS 49–922.A&B; AAC R18–8–260.A,B,C,E&F, 261.A,B&G, 262.A&B, 264.A, 265.A, 266.A, 268, 270.A, 273.
Organic Emission Standards for Tanks, Surface Impoundments and Containers: Amendment (60 FR 26828, May 19, 1995).	ARS 49–922.A&B; AAC R18–8–264.A, 265.A and 270.A.
Removal of Legally Obsolete Rules (60 FR 33912, June 29, 1995)	ARS 49–922.A&B; AAC R18–8–261.A&B, 266.A, 270.A,C,E&F.

* Pursuant to the November 1, 1996 decision of the U.S. Court of Appeals for the District of Columbia Circuit in *Dithiocarbamate Task Force* v. *EPA* (No. 95–1249), EPA's waste listing decisions for the following waste numbers in the Carbamate Production and Listing of Hazardous Waste Rule (February, 1995) have been vacated and therefore are not presently part of the Federally authorized program in Arizona approved in this FEDERAL REGISTER notice: (1) 24 challenged U wastes (U277, U365, U366, U375, U377, U376, U378, U379, U381, U382, U383, U384, U385, U386, U390, U391, U392, U393, U396, U400, U401, U402, U403, U407), (2) K160 waste, and (3) K wastes K156, K157 and K158 to the extent they apply to the product IPBC.

The State is responsible for issuing, denying, modifying, reissuing and terminating permits for all hazardous waste treatment, storage and disposal facilities in a manner consistent with all Federal requirements for which Arizona is authorized. Arizona is not being authorized to operate any portion of the hazardous waste program on Indian lands.

C. Decision

I conclude that Arizona's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Arizona is granted final authorization to operate its hazardous waste program as revised.

Arizona is now responsible for permitting treatment, storage, and disposal facilities within its borders and carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984) ("HSWA"). Arizona also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

EPA has determined that this authorization will not have a significant economic impact on a substantial number of small entities. Such small entities which are hazardous waste generators, transporters, or which own and/or operate TSDFs are already subject to the regulatory requirements under existing State law which are

being authorized by EPA. EPA's authorization does not impose any additional burdens on these small entities. This is because EPA's authorization would simply result in an administrative change, rather than a change in the substantive requirements imposed on these small entities.

Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provision at 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization approves regulatory requirements under existing State law to which small entities are already subject. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments and the private sector. Under sections 202 and 205 of the UMRA, EPA generally must prepare a written statement of economic and regulatory alternatives analyses for proposed and final rules with Federal mandates, as defined by the UMRA, that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. The section 202 and 205 requirements do not apply to today's action because it is not a "Federal mandate" and because it does not impose annual costs of $100 million or more.

Today's rule contains no Federal mandates for State, local or tribal governments or the private sector for two reasons. First, today's action does not impose new or additional enforceable duties on any State, local or tribal governments or the private sector because the requirements of the Arizona program are already imposed by the State and subject to State law. Second, the Act also generally excludes from the definition of a "Federal mandate" duties that arise from participation in a voluntary Federal program. Arizona's participation in an authorized hazardous waste program is voluntary.

Even if today's rule did contain a Federal mandate, this rule will not result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. Costs to State, local and/or tribal governments already exist under the Arizona's program, and today's action does not impose any additional obligations on regulated entities. In fact, EPA's approval of state programs generally may reduce, not increase, compliance costs for the private sector.

The requirements of section 203 of UMRA also do not apply to today's action. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, section 203 of the UMRA requires EPA to develop a small government agency plan. This rule contains no regulatory requirements that might significantly or uniquely affect small governments. The Agency recognizes that although small governments may be hazardous waste generators, transporters, or own and/or operate TSDFs, they are already subject to the regulatory requirements under existing state law which are being authorized by EPA, and, thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and Record keeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: February 17, 1997.

Felicia Marcus,

Regional Administrator.

[FR Doc. 97–5622 Filed 3–6– 97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET Docket No. 94–45; FCC 97–31]

Marketing and Equipment Authorizations

AGENCY: Federal Communications Commission

ACTION: Final rule

SUMMARY: By this *Report and Order*, the Commission amends its regulations to consolidate and harmonize the marketing rules, as proposed in the *Notice of Proposed Rule Making* in this proceeding. This amendment permits radio frequency devices, prior to authorization or a determination of compliance with the technical standards, to be announced, advertised, displayed, and operated for compliance testing, demonstrated at trade shows, or evaluated at the manufacturer's facilities. In addition, non-consumer devices that have not been tested or authorized can be offered for conditional sale or supplied to the user for evaluation or compliance testing. The equipment authorizations regulations are also amended to provide clarification, to resolve inconsistencies, to remove unnecessary restrictions and obsolete regulations, and to incorporate several interpretations. These amendments will stimulate economic growth by permitting products to be developed on a cooperative basis by manufacturers and retailers, and by potentially decreasing the time for a product to reach the marketplace.

EFFECTIVE DATE: April 7, 1997.

FOR FURTHER INFORMATION CONTACT: John A. Reed, Office of Engineering and Technology, (202) 418–2455.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* in ET Docket No. 94–45, adopted February 3, 1997, and released February 12, 1997.

The complete text of this *Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

Summary of the Report and Order

1. In the *Report and Order*, the Commission amended Part 2 of its rules regarding the marketing and operation of radio frequency (RF) devices.

Marketing includes the sale or lease, offer for sale or lease, including advertising for sale or lease, and importation, shipment or distribution for the purpose of sale or lease or offering for sale or lease. Previously, the rules prohibited the marketing and operation of an RF device unless it complies with all of the standards and the equipment authorization procedures. Certain exceptions to these rules were provided for verified digital devices and non-consumer ISM products operated under Part 18 of the rules.

2. The order harmonizes the marketing rules by permitting RF devices, prior to authorization or a determination of compliance with the technical standards, to be announced, advertised, displayed, and, if compliant with any Commission license requirements, operated for compliance testing, demonstrated at trade shows, or evaluated at the manufacturer's facilities. In addition, non-consumer RF devices, *i.e.*, products employed at business, commercial, industrial, scientific or medical sites, prior to testing or authorization, may be offered for conditional sale or supplied to the user for evaluation or compliance testing. As under the previous rules, no products may be marketed or supplied to the general public prior to testing or authorization. Further, these products must be designed with the intent of complying with all applicable regulations.

3. On its own motion, the Commission also adopted several additional changes to the equipment authorization rules to resolve inconsistencies, to provide clarification, to remove unnecessary restrictions and obsolete regulations, and to incorporate several interpretations. Specifically, the Commission amended the rules to indicate, explicitly, that, as with any request for authorization, an anti-drug abuse statement is required with requests for permissive changes. In addition, the rules now state that proper labelling of a product is a condition of the grant of equipment authorization and is required prior to marketing. The Commission also clarified that a product is considered to be "electrically identical" if no changes are made to the product or if any changes to the product could be treated as Class I permissive changes. Further, duplicative or outdated regulations, *e.g.*, references to type approval which is no longer employed, were removed, and erroneous rule citations were corrected.

4. The Commission amended its rules to state that any party that modifies an authorized RF device becomes responsible for ensuring that the modified product continues to comply with the appropriate standards and must maintain whatever records are required to demonstrate such compliance. In order to facilitate identification, the Commission also stated that a product modified by someone other than the original responsible party be labelled with the name, address and telephone number of the new responsible party along with a statement that the product has been modified. Alternatively, the party modifying the equipment could obtain a new equipment authorization.

5. Finally, the Commission amended the regulations regarding authorization under the verification procedure to clarify what information needs to be retained by the responsible party, to indicate the time period within which requests by the Commission for product samples must be submitted, and to identify the party that is responsible for submitting those samples.

Final Regulatory Flexibility Analysis

6. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603 ("RFA"), an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated into the *Notice of Proposed Rule Making* ("NPRM"), in ET Docket No. 94–45.[1] The Commission sought written public comments on the proposals in the Notice, including the IRFA. The Commission's Final Regulatory Flexibility Analysis ("FRFA") in this Report and Order conforms to the RFA, as amended by the Contract With America Advancement Act of 1996 (CWAAA), Public Law 104–121, 110 Stat. 847 (1996).[2]

7. Need For and Objective of the Rules

Our objectives are to facilitate the marketing and early use of radio frequency (RF) devices by permitting vendors, manufacturers, and importers to market such devices prior to a demonstration of compliance with applicable technical standards and equipment authorization procedures, and to promote efficiency and equity in our rules by requiring that any party that modifies an RF device be responsible for ensuring compliance with applicable technical standards. This action will also facilitate the retrieval of RF device test records by the Commission, remove outdated regulations, and correct existing errors and ambiguities in the rules.

8. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

No comments were submitted in direct response to the IRFA. However, Alcatel Network Systems, Inc. (ANS), AT&T Corp., Computer and Business Equipment Manufacturer's Association (CBEMA) and International Business Machines Corp. (IBM) suggested changes to our proposed reporting and record keeping requirements for modified RF devices. ANS and CBEMA oppose the proposal that a party modifying equipment be required to label the modified equipment with additional information, *i.e.*, the name, address and telephone number of the party performing the modifications. AT&T, with support from ANS, CBEMA and IBM, requests that the party modifying the equipment not be required to obtain and retain the original equipment design drawings.

9. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

For the purposes of this Order, the RFA defines a "small business" to be the same as a "small business concern" under the Small Business Act, 15 U.S.C. 632, unless the Commission has developed one or more definitions that are appropriate to its activities.[3] Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).[4] These new rules will apply to computer manufacturers and other RF device manufacturers as well as those entities that modify and market RF equipment.

(a) Computer Manufacturers: According to SBA regulations, a computer manufacturer must have 1,000 or fewer employees in order to qualify as a small entity.[5] Census Bureau data indicates that there are 716 firms that manufacture electronic computers and of those, 659 have fewer than 500 employees and qualify as small entities.[6] The remaining 57 firms have 500 or more employees; however, we are unable to determine how many of those have fewer than 1,000 employees

[1] *See* 9 FCC Rcd 2702 (1994), 59 FR 31966, June 21, 1994.

[2] Subtitle II of the CWAAA is "The Small Business Regulatory Enforcement Fairness Act of 1996" (SBREFA), codified at 5 U.S.C. 601 *et seq.*

[3] *See* 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. 632).

[4] *See* 15 U.S.C. 632.

[5] *See* 13 CFR 121.201, (SIC) code 3571.

[6] *See* U.S. Small Business Administration 1995 Economic Census Industry and Enterprise Report, Table 3, SIC Code 3571, (Bureau of the Census data adapted by the Office of Advocacy of the U.S. Small Business Administration).

and therefore also qualify as small entities under the SBA definition.

(b) RF Equipment Manufacturers: The Commission has not developed a definition of small entities applicable to RF equipment manufacturers. Therefore, we will utilize the SBA definition applicable to manufacturers of Radio and Television Broadcasting and Communications Equipment. According to the SBA's regulations, an RF equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern.[7] Census Bureau data indicates that there are 858 U.S. companies that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would be classified as small entities.[8] The Census Bureau category is very broad, and specific figures are not available as to how many of these firms are manufacturers of RF devices. However, we believe that many of them may qualify as small entities.

10. The Commission has not developed a definition of small entities applicable to services which are related specifically to RF devices. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to Communications Services, Not Elsewhere Classified. This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts.[9] The Census Bureau data indicates that of the 848 firms in the "Communications Services, Not Elsewhere Classified" category, 775 are small businesses.[10] We estimate that under this definition the majority of entities that market and modify RF devices may be small entities.

11. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

Our new rules transfer the responsibility for ensuring that a modified RF device complies with our technical standards from the vendor, manufacturer, or importer to the modifying party. However, requirements to measure the equipment to show that it continues to comply with these standards are consistent with the former rules. Further, even under the former rules—while they were not clearly defined—a party modifying an RF device was required to retain its measurement data showing that the modified device complied with these standards. A modifying party must also label the equipment with its name, address and telephone number, unless it obtains a new authorization for the modified equipment. The type of skills needed to label equipment is usually clerical.

12. Under our new rules greater flexibility will be provided to vendors, manufacturers, and importers, thus decreasing the regulatory burden on such entities. Further, when an RF device is modified, any increased reporting and record keeping requirement imposed on the modifying party will be offset by a decreased reporting requirement on the vendor, manufacturer, or importer. Moreover, there is no requirement that any RF device be modified. Therefore, to the extent that a small entity chooses to modify an RF device, it is because that entity believes the benefits of modifying the device outweigh its costs, including reporting and record keeping requirements.

13. Significant Alternatives and Steps Taken to Minimize Significant Economic Impact on a Substantial Number of Small Entities Consistent with Stated Objectives

As proposed in the *NPRM*, any entity that remanufactures or otherwise modifies an authorized RF device would be designated as responsible for ensuring that the device continues to comply with our applicable technical standards, and would be required to retain records of its modification relative to the original design drawings. However, after reviewing comments, we conclude that it is unnecessary for the modifying party to obtain the original design drawings. Accordingly, in this Report and Order, we are requiring only that the modifying party retain records showing the changes made to the device, together with test records demonstrating that the device continues to comply with the applicable standards.[11] We also are changing another proposal in the *NPRM* by not requiring that a modified RF device be labelled with the name, address, and telephone number of the modifying party, provided the party performing the modifications obtains a new equipment authorization. These changes will reduce the impact of our new regulations on small entities.

14. Report to Congress

The Commission shall send a copy of this Final Regulatory Flexibility Analysis, along with this Report and Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 2

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Title 47 of the Code of Federal Regulations, Part 2, is amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for Part 2 continues to read as follows:

Authority: Sections 4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154, 302, 303, and 307, unless otherwise noted.

2. Section 2.803 is revised to read as follows:

§ 2.803 Marketing of radio frequency devices prior to equipment authorization.

(a) Except as provided elsewhere in this section, no person shall sell or lease, or offer for sale or lease (including advertising for sale or lease), or import, ship, or distribute for the purpose of selling or leasing or offering for sale or lease, any radio frequency device unless:

(1) In the case of a device subject to type acceptance, certification, or notification, such device has been authorized by the Commission in accordance with the rules in this chapter and is properly identified and labelled as required by § 2.925 and other relevant sections in this chapter; or

(2) In the case of a device that is not required to have a grant of equipment authorization issued by the Commission, but which must comply with the specified technical standards prior to use, such device also complies with all applicable administrative (including verification of the equipment or authorization under a Declaration of Conformity, where required), technical, labelling and identification requirements specified in this chapter.

(b) The provisions of paragraph (a) of this section do not prohibit conditional sales contracts between manufacturers and wholesalers or retailers where delivery is contingent upon compliance with the applicable equipment authorization and technical requirements, nor do they prohibit agreements between such parties to produce new products, manufactured in accordance with designated specifications.

(c) Notwithstanding the provisions of paragraphs (a), (b), (d) and (f) of this section, a radio frequency device may be advertised or displayed, *e.g.*, at a trade show or exhibition, prior to equipment authorization or, for devices not subject to the equipment authorization requirements, prior to a determination of compliance with the applicable technical requirements *provided* that the advertising contains, and the display is accompanied by, a conspicuous notice worded as follows:

This device has not been authorized as required by the rules of the Federal Communications Commission. This device is not, and may not be, offered for sale or lease, or sold or leased, until authorization is obtained.

(1) If the product being displayed is a prototype of a product that has been properly authorized and the prototype, itself, is not authorized due to differences between the prototype and the authorized product, the following disclaimer notice may be used in lieu of the notice stated in paragraph (c) introductory text of this section:

Prototype. Not for sale.

(2) Except as provided elsewhere in this chapter, devices displayed under the provisions of paragraphs (c) introductory text, and (c)(1) of this section may not be activated or operated.

(d) Notwithstanding the provisions of paragraph (a) of this section, the offer for sale solely to business, commercial, industrial, scientific or medical users (but not an offer for sale to other parties or to end users located in a residential environment) of a radio frequency device that is in the conceptual, developmental, design or pre-production stage is permitted prior to equipment authorization or, for devices not subject to the equipment authorization requirements, prior to a determination of compliance with the applicable technical requirements *provided* that the prospective buyer is advised in writing at the time of the offer for sale that the equipment is subject to the FCC rules and that the equipment will comply with the appropriate rules before delivery to the buyer or to centers of distribution. If a product is marketed in compliance with the provisions of this paragraph, the product does not need to be labelled with the statement in paragraph (c) of this section.

(e)(1) Notwithstanding the provisions of paragraph (a) of this section, prior to equipment authorization or determination of compliance with the applicable technical requirements any radio frequency device may be operated, but not marketed, for the following purposes and under the following conditions:

(i) Compliance testing;

(ii) Demonstrations at a trade show provided the notice contained in paragraph (c) of this section is displayed in a conspicuous location on, or immediately adjacent to, the device;

(iii) Demonstrations at an exhibition conducted at a business, commercial, industrial, scientific, or medical location, but excluding locations in a residential environment, provided the notice contained in paragraphs (c) or (d) of this section, as appropriate, is displayed in a conspicuous location on, or immediately adjacent to, the device;

(iv) Evaluation of product performance and determination of customer acceptability, provided such operation takes place at the manufacturer's facilities during developmental, design, or pre-production states; or

(v) Evaluation of product performance and determination of customer acceptability where customer acceptability of a radio frequency device cannot be determined at the manufacturer's facilities because of size or unique capability of the device, provided the device is operated at a business, commercial, industrial, scientific, or medical user's site, but not at a residential site, during the development, design or pre-production stages. A product operated under this provision shall be labelled, in a conspicuous location, with the notice in paragraph (c) of this section.

(2) For the purpose of paragraphs (e)(1)(iv) and (e)(1)(v) of this section, the term "manufacturer's facilities" includes the facilities of the party responsible for compliance with the regulations and the manufacturer's premises, as well as the facilities of other entities working under the authorization of the responsible party in connection with the development and manufacture, but not marketing, of the equipment.

(3) The provisions of paragraphs (e)(1)(i), (e)(1)(ii), (e)(1)(iii), (e)(1)(iv), and (e)(1)(v) of this section do not eliminate any requirements for station licenses for products that normally require a license to operate, as specified elsewhere in this chapter. Manufacturers should note that station licenses are not required for some products, *e.g.*, products operating under part 15 of this chapter and certain products operating under part 95 of this chapter.

(4) Marketing, as used in this section, includes sale or lease, or offering for sale or lease, including advertising for sale or lease, or importation, shipment, or distribution for the purpose of selling or leasing or offering for sale or lease.

(5) Products operating under the provisions of this paragraph (e) shall not be recognized to have any vested or recognizable right to continued use of any frequency. Operation is subject to the conditions that no harmful interference is caused and that any interference received must be accepted. Operation shall be required to cease upon notification by a Commission representative that the device is causing harmful interference and shall not resume until the condition causing the harmful interference is corrected.

(f) For radio frequency devices subject to verification and sold solely to business, commercial, industrial, scientific, and medical users (excluding products sold to other parties or for operation in a residential environment), parties responsible for verification of the devices shall have the option of ensuring compliance with the applicable technical specifications of this chapter at each end user's location after installation, provided that the purchase or lease agreement includes a proviso that such a determination of compliance be made and is the responsibility of the party responsible for verification of the equipment. If the purchase or lease agreement contains this proviso and the responsible party has the product measured to ensure compliance at the end user's location, the product does not need to be labelled with the statement in paragraph (c) of this section.

(g) The provisions in paragraphs (b) through (f) of this section apply only to devices that are designed to comply with, and to the best of the responsible party's knowledge will, upon testing, comply with all applicable requirements in this chapter. The provisions in paragraphs (b) through (f) of this section do not apply to radio frequency devices that could not be authorized or legally operated under the current rules. Such devices shall not be operated, advertised, displayed, offered for sale or lease, sold or leased, or otherwise marketed absent a license issued under part 5 of this chapter or a special temporary authorization issued by the Commission.

[7] *See* 13 CFR 121.201, (SIC) Code 3663.

[8] *See* U.S. Dept. of Commerce, *1992 Census of Transportation, Communications and Utilities* (issued May 1995), SIC category 3663.

[9] *See* 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4899.

[10] *See* U.S. Small Business Administration 1995 Economic Census Industry and Enterprise Report, Table 2D, SIC Code 3571, (Bureau of the Census data adapted by the Office of Advocacy of the U.S. Small Business Administration).

[11] *See* paras. 28–29 of this Report and Order.

(h) The provisions in subpart K of this part continue to apply to imported radio frequency devices.

§ 2.805 [Removed]

3. Section 2.805 is removed.

§ 2.806 [Removed]

4. Section 2.806 is removed.

5. Section 2.807 is amended by revising the introductory paragraph to read as follows:

§ 2.807 Statutory exceptions.

As provided by Section 302(c) of the Communications Act of 1934, as amended, § 2.803 shall not be applicable to:

* * * * *

§ 2.809 [Removed]

6. Section 2.809 is removed.

7. Section 2.811 is revised to read as follows:

§ 2.811 Transmitters operated under part 73 of this chapter.

Section 2.803(a) through (d) shall not be applicable to a transmitter operated in any of the Radio Broadcast Services regulated under part 73 of this chapter, provided the conditions set out in part 73 of this chapter for the acceptability of such transmitter for use under licensing are met.

8. Section 2.813 is revised to read as follows:

§ 2.813 Transmitters operated in the Instructional Television Fixed Service.

Section 2.803(a) through (d) shall not be applicable to a transmitter operated in the Instructional Television Fixed Service regulated under part 74 of this chapter, provided the conditions in § 74.952 of this chapter for the acceptability of such transmitter for licensing are met.

9. Section 2.815 is amended by revising paragraphs (d) and (e) to read as follows:

§ 2.815 External radio frequency power amplifiers.

* * * * *

(d) The proscription in paragraph (b) of this section shall not apply to the marketing, as defined in paragraph (b) of this section, by a licensed amateur radio operator to another licensed amateur radio operator of an external radio frequency power amplifier fabricated in not more than one unit of the same model in a calendar year by that operator provided the amplifier is for the amateur operator's personal use at his licensed amateur radio station and the requirements of §§ 97.315 and 97.317 of this chapter are met.

(e) The proscription in paragraph (c) of this section shall not apply in the marketing, as defined in paragraph (c) of this section, by a licensed amateur radio operator to another licensed amateur radio operator of an external radio frequency power amplifier if the amplifier is for the amateur operator's personal use at his licensed amateur radio station and the requirements of §§ 97.315 and 97.317 of this chapter are met.

§ 2.901 [Amended]

10. Section 2.901 is amended by removing the words in paragraphs (a) and (b) "type approval,".

§ 2.903 [Removed]

11. Section 2.903 is removed.

12. Section 2.909 is amended by adding a last sentence to paragraphs (a) and (b) and by adding new paragraphs (c)(3) and (d) to read as follows:

§ 2.909 Responsible party.

* * * * *

(a) * * * If the radio frequency equipment is modified by any party other than the grantee and that party is not working under the authorization of the grantee pursuant to § 2.929(b), the party performing the modification is responsible for compliance of the product with the applicable administrative and technical provisions in this chapter.

(b) * * * If subsequent to manufacture and importation, the radio frequency equipment is modified by any party not working under the authority of the responsible party, the party performing the modification becomes the new responsible party.

(c) * * *

(3) If the radio frequency equipment is modified by any party not working under the authority of the responsible party, the party performing the modifications, if located within the U.S., or the importer, if the equipment is imported subsequent to the modifications, becomes the new responsible party.

(d) If, because of modifications performed subsequent to authorization, a new party becomes responsible for ensuring that a product complies with the technical standards and the new party does not obtain a new equipment authorization, the equipment shall be labelled, following the specifications in § 2.925(d), with the following: "This product has been modified by [insert name, address and telephone number of the party performing the modifications]."

13. Section 2.913 is amended by revising paragraph (a) to read as follows:

§ 2.913 Submittal of equipment authorization application or information to the Commission.

(a) Unless otherwise directed, applications with fees attached for the equipment authorization, pursuant to § 1.1103 of this chapter, must be submitted following the procedures described in § 0.401(b) of this chapter. The address for applications submitted by mail is: Federal Communications Commission, Equipment Approval Services, P. O. Box 358315, Pittsburgh, PA 15251–5315. If the applicant chooses to make use of an air courier/package delivery service, the following address must appear on the outside of the package/envelope: Federal Communications Commission, c/o Mellon Bank, Three Mellon Bank Center, 525 William Penn Way, 27th floor, Room 153–2713, Pittsburgh, Pennsylvania 15259–0001, Attention: Wholesale Lockbox Supervisor.

* * * * *

§ 2.915 [Amended]

14. Section 2.915 is amended by removing the words "type approval," in paragraphs (a) introductory text and (c).

§ 2.917 [Amended]

15. Section 2.917 is amended by removing paragraph (d).

16. Section 2.924 is revised to read as follows:

§ 2.924 Marketing of electrically identical equipment having multiple trade names and models or type numbers under the same FCC Identifier.

The grantee of an equipment authorization may market devices having different model/type numbers or trade names without additional authorization from the Commission, provided that such devices are electrically identical and the equipment bears an FCC Identifier validated by a grant of equipment authorization. A device will be considered to be electrically identical if no changes are made to the device authorized by the Commission, or if the changes made to the device would be treated as class I permissive changes within the scope of §§ 2.1001(b)(1) and 2.1043(b)(1). Changes to the model number or trade name by anyone other than the grantee, or under the authorization of the grantee, shall be performed following the procedures in § 2.933.

17. Section 2.925 is amended by removing paragraph (g) and by revising paragraphs (b)(4), (d) introductory text and (f) to read as follows:

§ 2.925 Identification of equipment.

* * * * *

(b) * * *

(4) For a transceiver, the receiver portion of which is subject to verification pursuant to § 15.101 of this chapter, the FCC Identifier required for the transmitter portion shall be preceded by the term "FCC ID".

* * * * *

(d) In order to validate the grant of equipment authorization, the nameplate or label shall be permanently affixed to the equipment and shall be readily visible to the purchaser at the time of purchase.

* * * * *

(f) The term "FCC ID" and the coded identification assigned by the Commission shall be in a size of type large enough to be readily legible, consistent with the dimensions of the equipment and its nameplate. However, the type size for the FCC Identifier is not required to be larger than eight-point.

§ 2.926 [Amended]

18. Section 2.926 is amended by removing the reference in paragraph (e) "§ 15.69" and adding in its place "§ 15.101 of this chapter".

19. Section 2.927 is amended by removing paragraph (d) and by revising paragraphs (a) and (b) to read as follows:

§ 2.927 Limitations on grants.

(a) A grant of equipment authorization is valid only when the FCC Identifier is permanently affixed on the device and remains effective until revoked or withdrawn, rescinded, surrendered, or a termination date is otherwise established by the Commission.

(b) A grant of an equipment authorization signifies that the Commission has determined that the equipment has been shown to be capable of compliance with the applicable technical standards if no unauthorized change is made in the equipment and if the equipment is properly maintained and operated. The issuance of a grant of equipment authorization shall not be construed as a finding by the Commission with respect to matters not encompassed by the Commission's rules, especially with respect to compliance with 18 U.S.C. 2512.

* * * * *

20. Section 2.929 is amended by revising paragraph (b)(1) and its Note to read as follows:

§ 2.929 Nonassignability of an equipment authorization.

* * * * *

(b) * * *

(1) The equipment manufactured by such second party bears the identical FCC Identifier as set out in the grant of the equipment authorization.

Note to paragraph (b)(1): Any change in the FCC Identifier desired as a result of such production or marketing agreement will require the filing of a new application for an equipment authorization as specified in § 2.933.

* * * * *

21. Section 2.931 is revised to read as follows:

§ 2.931 Responsibility of the grantee.

In accepting a grant of an equipment authorization, the grantee warrants that each unit of equipment marketed under such grant and bearing the identification specified in the grant will conform to the unit that was measured and that the data (design and rated operational characteristics) determined by the grantee for notification or filed with the application for type acceptance or certification continues to be representative of the equipment being produced under such grant within the variation that can be expected due to quantity production and testing on a statistical basis.

22. Section 2.932 is amended by adding new paragraph (f) to read as follows:

§ 2.932 Modification of equipment.

* * * * *

(f) All requests for permissive changes submitted to the Commission must be accompanied by the anti-drug abuse certification required under § 1.2002 of this chapter.

23. Section 2.933 is amended by revising paragraphs (a), (b)(7) and (c) to read as follows:

§ 2.933 Change in identification of equipment.

(a) A new application for equipment authorization shall be filed whenever there is a change in the FCC Identifier for the equipment with or without a change in design, circuitry or construction. However, a change in the model/type number or trade name performed in accordance with the provisions in § 2.924 is not considered to be a change in identification and does not require additional authorization from the Commission.

(b) * * *

(7) In the case of certified equipment, the photographs required by § 2.1033(b)(7) showing the exterior appearance of the equipment, including the operating controls available to the user and the identification label. Photographs of the construction, the component placement on the chassis, and the chassis assembly are not required to be submitted unless specifically requested by the Commission.

(c) If the change in the FCC Identifier also involves a change in design or circuitry which falls outside the purview of a permissive change described in §§ 2.977, 2.1001 or 2.1043, a complete application shall be filed pursuant to § 2.911.

§ 2.934 [Amended]

24. Section 2.934 is amended by removing the reference "§ 2.910(b)" and adding in its place "§ 2.913(b)".

25. Section 2.936 is revised to read as follows:

§ 2.936 FCC inspection.

Upon reasonable request, each responsible party shall submit the following to the Commission or shall make the following available for inspection:

(a) The records required by §§ 2.938, 2.955, and 2.1075.

(b) A sample unit of the equipment covered under an authorization.

(c) The manufacturing plant and facilities.

26. Section 2.938 is revised to read as follows:

§ 2.938 Retention of records.

(a) For each equipment subject to the Commission's equipment authorization standards, the responsible party shall maintain the records listed as follows:

(1) A record of the original design drawings and specifications and all changes that have been made that may affect compliance with the standards and the requirements of § 2.931.

(2) A record of the procedures used for production inspection and testing to ensure conformance with the standards and the requirements of § 2.931.

(3) A record of the test results that demonstrate compliance with the appropriate regulations in this chapter.

(b) The provisions of paragraph (a) of this section shall also apply to a manufacturer of equipment produced under the provisions of § 2.929(b). The retention of the records by the manufacturer under these circumstances shall satisfy the grantee's responsibility under paragraph (a) of this section.

(c) The records listed in paragraph (a) of this section shall be retained for one year for equipment subject to authorization under the type acceptance or certification procedure, or for two years for equipment subject to authorization under any other procedure, after the manufacture of said equipment has been permanently discontinued, or until the conclusion of an investigation or a proceeding if the responsible party (or under paragraph (b) of this section the manufacturer) is officially notified that an investigation

or any other administrative proceeding involving its equipment has been instituted.

(d) If radio frequency equipment is modified by any party other than the original responsible party, and that party is not working under the authorization of the original responsible party, the party performing the modifications is not required to obtain the original design drawings specified in paragraph (a)(1) of this section. However, the party performing the modifications must maintain records showing the changes made to the equipment along with the records required in paragraphs (a)(3) of this section. A new equipment authorization may also be required. See, for example, §§ 2.909, 2.924, 2.933, and 2.1043.

27. Section 2.941 is revised to read as follows:

§ 2.941 Availability of information relating to grants.

(a) Grants of equipment authorization, other than for receivers and equipment authorized for use under parts 15 or 18 of this chapter, will be publicly announced in a timely manner by the Commission. Information about the authorization of a device using a particular FCC Identifier may be obtained by contacting the Commission's Office of Engineering and Technology Laboratory.

(b) Information relating to equipment authorizations, such as data submitted by the applicant in connection with an authorization application, laboratory tests of the device, etc., shall be available in accordance with §§ 0.441 through 0.470 of this chapter.

28. Section 2.953 is amended by revising the section heading and paragraphs (a), (b) and (d) to read as follows:

§ 2.953 Responsibility for compliance.

(a) In verifying compliance, the responsible party, as defined in § 2.909 warrants that each unit of equipment marketed under the verification procedure will be identical to the unit tested and found acceptable with the standards and that the records maintained by the responsible party continue to reflect the equipment being produced under such verification within the variation that can be expected due to quantity production and testing on a statistical basis.

(b) The importer of equipment subject to verification may upon receiving a written statement from the manufacturer that the equipment complies with the appropriate technical standards rely on the manufacturer or independent testing agency to verify compliance. The test records required by § 2.955 however should be in the English language and made available to the Commission upon a reasonable request, in accordance with § 2.956.

* * * * *

(d) Verified equipment shall be reverified if any modification or change adversely affects the emanation characteristics of the modified equipment. The party designated in § 2.909 bears responsibility for continued compliance of subsequently produced equipment.

29. Section 2.954 is revised to read as follows:

§ 2.954 Identification.

Devices subject only to verification shall be uniquely identified by the person responsible for marketing or importing the equipment within the United States. However, the identification shall not be of a format which could be confused with the FCC Identifier required on certified, notified or type accepted equipment. The importer or manufacturer shall maintain adequate identification records to facilitate positive identification for each verified device.

30. Section 2.955 is amended by revising the introductory text of paragraph (a) and paragraph (a)(3) to read as follows:

§ 2.955 Retention of records.

(a) For each equipment subject to verification, the responsible party, as shown in § 2.909 shall maintain the records listed as follows:

* * * * *

(3) A record of the measurements made on an appropriate test site that demonstrates compliance with the applicable regulations in this chapter. The record shall:

(i) Indicate the actual date all testing was performed;

(ii) State the name of the test laboratory, company, or individual performing the verification testing. The Commission may request additional information regarding the test site, the test equipment or the qualifications of the company or individual performing the verification tests;

(iii) Contain a description of how the device was actually tested, identifying the measurement procedure and test equipment that was used;

(iv) Contain a description of the equipment under test (EUT) and support equipment connected to, or installed within, the EUT;

(v) Identify the EUT and support equipment by trade name and model number and, if appropriate, by FCC Identifier and serial number;

(vi) Indicate the types and lengths of connecting cables used and how they were arranged or moved during testing;

(vii) Contain at least two drawings or photographs showing the test set-up for the highest line conducted emission and showing the test set-up for the highest radiated emission. These drawings or photographs must show enough detail to confirm other information contained in the test report. Any photographs used must be focused originals without glare or dark spots and must clearly show the test configuration used;

(viii) List all modifications, if any, made to the EUT by the testing company or individual to achieve compliance with the regulations in this chapter;

(ix) Include all of the data required to show compliance with the appropriate regulations in this chapter; and

(x) Contain, on the test report, the signature of the individual responsible for testing the product along with the name and signature of an official of the responsible party, as designated in § 2.909.

* * * * *

31. Section 2.956 is revised to read as follows:

§ 2.956 FCC inspection and submission of equipment for testing.

(a) Each responsible party shall upon receipt of reasonable request:

(1) Submit to the Commission the records required by § 2.955.

(2) Submit one or more sample units for measurements at the Commission's Laboratory.

(i) Shipping costs to the Commission's Laboratory and return shall be borne by the responsible party.

(ii) In the event the responsible party believes that shipment of the sample to the Commission's Laboratory is impractical because of the size or weight of the equipment, or the power requirement, or for any other reason, the responsible party may submit a written explanation why such shipment is impractical and should not be required.

(b) Requests for the submission of the records in § 2.955 or for the submission of sample units are covered under the provisions of § 2.946.

§ 2.957 [Removed]

32. Section 2.957 is removed.

§§ 2.961, 2.963, 2.965, 2.967, 2.969 [Removed]

33. The undesignated centerheading preceding § 2.961 and § 2.961 are removed.

34. Section 2.963 is removed.

35. Section 2.965 is removed.

36. Section 2.967 is removed.

37. Section 2.969 is removed.

38. Section 2.975 is amended by revising paragraphs (b) and (g) to read as follows:

§ 2.975 Application for notification.

* * * * *

(b) The statement required in paragraph (a)(6) of this section shall be signed pursuant to § 2.911(c).

* * * * *

(g) The records of measurement data, measurement procedures, photographs, circuit diagrams, etc. for a device subject to notification shall be retained for two years after the manufacture of said equipment has been permanently discontinued, or, if the responsible party is officially notified that an investigation or any other administrative proceeding involving the equipment has been instituted prior to the expiration of such two year period, until the conclusion of that investigation or proceeding.

§ 2.979 [Removed]

39. Section 2.979 is removed.

§ 2.983 [Amended]

40. Section 2.983 is amended by removing and reserving paragraph (h) and by removing the reference "subpart C of part 97" in the last sentence of paragraph (i) and adding in its place "subpart D of part 97".

§ 2.1003 [Removed]

41. Section 2.1003 is removed.

42. Section 2.1005 is amended by revising paragraph (a), the introductory text of paragraphs (c) and (c)(4) and paragraph (d) to read as follows:

§ 2.1005 Equipment for use in the Amateur Radio Service.

(a) The general provisions of §§ 2.981, 2.983, 2.991, 2.993, 2.997, 2.999, and 2.1001 shall apply to applications for, and grants of, type acceptance for equipment operated under the requirements of part 97 of this chapter, the Amateur Radio Service.

* * * * *

(c) Any supplier of an external radio frequency power amplifier kit as defined by § 97.3(a)(17) of this chapter shall comply with the following requirements:

* * * * *

(4) The identification label required by § 2.925 shall be permanently affixed to the assembled unit and shall be of sufficient size so as to be easily read. The following information shall be shown on the label:

* * * * *

(d) Type acceptance of external radio frequency power amplifiers and amplifier kits may be denied when denial serves the public interest, convenience and necessity by preventing the use of these amplifiers in services other than the Amateur Radio Service. Other uses of these amplifiers, such as in the Citizens Band Radio Service, are prohibited (§ 95.411 of this chapter). Examples of features which may result in the denial of type acceptance are contained in § 97.317 of this chapter.

§ 2.1033 [Amended]

43. Section 2.1033 is amended by removing and reserving paragraph (b)(10) and by removing the reference "§ 15.257(e)" in paragraph (b)(11) and adding in its place "§ 15.247(e)".

§ 2.1045 [Removed]

44. Section 2.1045 is removed.

45. Section 2.1300 is revised to read as follows:

§ 2.1300 Cross reference.

The general provisions of this part, §§ 2.911, 2.923, 2.929, 2.935, 2.936, and 2.946 shall apply to applications for and grants of registration for telephone terminal equipment pursuant to part 68 of this chapter.

[FR Doc. 97-5349 Filed 3-5-97; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 961210346-7035-02; I.D. 120596A]

RIN 0648-XX78

Summer Flounder Fishery; Final Specifications for 1997; Adjustment to 1997 State Quotas; Commercial Quota Harvested for Delaware

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final specifications for the 1997 summer flounder fishery and adjustments to state commercial quotas.

SUMMARY: NMFS issues the final specifications for the 1997 summer flounder fishery that include commercial catch quotas and an increase in commercial minimum fish size, makes adjustments to the commercial quota for the 1997 summer flounder fishery as a result of overages in the 1996 fishing year and, as a consequence of these overages, announces that the summer flounder quota available to the State of Delaware for 1997 has been harvested. The intent of this document is to comply with implementing regulations for the summer flounder fishery that require NMFS to publish measures for the upcoming fishing year that will prevent overfishing of this species, require overages in any state to be deducted from that state's commercial quota for the following year, require publication of a notice to advise the State of Delaware that its quota has been harvested, and to advise vessel and dealer permit holders that no commercial quota is available for landing summer flounder in Delaware.

EFFECTIVE DATE: March 4, 1997 through December 31, 1997, except for § 648.103(a) which will be effective April 7, 1997.

ADDRESSES: Copies of the Environmental Assessment and supporting documents used by the Monitoring Committee are available from: Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 S. New Street, Dover, DE 19901-6790.

FOR FURTHER INFORMATION CONTACT: Dana Hartley, Fishery Management Specialist, 508-281-9226.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Summer Flounder Fishery (FMP) was developed jointly by the Atlantic States Marine Fisheries Commission (Commission) and the Mid-Atlantic Fishery Management Council (Council) in consultation with the New England and South Atlantic Fishery Management Councils. The management unit for the FMP is summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina northward to the Canadian border. Implementing regulations for the fishery are found at 50 CFR part 648, subparts A and G.

Section 648.100(a) of the regulations implementing the FMP specifies the process for setting annual management measures in order to achieve the fishing mortality (F_{66}) rates specified in the FMP. Under Amendment 7 to the FMP, the schedule of F rates sets a target fishing mortality rate of 0.41 in 1996, 0.3 in 1997, and 0.23 in 1998 and thereafter, provided the allowable levels of fishing in 1996 and 1997 may not exceed 18.51 million lb (8.4 million kg), unless the fishing mortality rate (F) of 0.23 is met.

Pursuant to § 648.100, the Regional Administrator, Northeast Region, NMFS, implements certain measures for the fishing year to ensure achievement of the appropriate fishing mortality rate.

With the exception of the proposed increase in codend mesh requirements, the measures remain unchanged from the proposed 1997 specifications that were published in the **Federal Register** on December 18, 1996 (61 FR 66646). These measures include: (1) A coastwide harvest limit of 18.51 million lb (8.40 million kg); (2) a coastwide commercial quota of 11.11 million lb (5.04 million kg); (3) a coastwide recreational harvest limit of 7.41 million lb (3.36 million kg); and (4) an increase in the minimum commercial fish size from 13 inches (33.0-cm) to 14 inches (35.6 cm).

Detailed background information regarding the development of this rule was provided in the proposed specifications for the 1997 summer flounder fishery and is not repeated here.

Section 648.100(d)(2) provides that all landings for sale in a state shall be applied against that state's annual commercial quota. Any landings in excess of the state's quota will be deducted from that state's annual quota for the following year. Based on dealer reports and other information, NMFS has determined that the States of Maine, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Virginia, and North Carolina have exceeded their 1996 quotas. The remaining States of New Hampshire and Maryland did not exceed their 1996 quotas. A complete summary of 1996 quota overages is shown in Table 1.

After the proposed 1997 specifications were published, a document was published adjusting the State of Delaware's 1996 quota based on data that indicated additional landings in that State in 1995 (61 FR 67497, December 23, 1996). Consequently, Delaware's 1996 commercial quota was adjusted to reflect those landings. The resulting quota was 278 lb (126 kg). Landings in 1996 were well in excess of that number, and the resulting overage leaves no quota available for 1997.

Commercial Quota

The coastwide commercial quota is allocated among the states based on historical catch shares specified in the regulations. Table 2 presents the 1997 commercial quota (11,111,298 lb; 5,040,000 kg) apportioned among the states according to the percentage shares specified in § 648.100(d)(1), and the resulting quotas after deductions were made for 1996 overages.

TABLE 1.—1996 STATE COMMERCIAL QUOTAS, LANDINGS AND OVERAGES

State	1996 Quota		1996 Landings		1996 Overages	
	lb	(kg)[1]	lb	(kg)	lb	(kg)
ME	5,284	1,062	8,226	3,731	2,942	1,334
NH	51	23	0	0	0	0
MA	752,092	328,350	780,297	353,940	28,205	12,794
RI	1,620,342	715,390	1,663,520	754,560	43,178	19,585
CT	250,791	113,757	278,776	126,451	27,985	12,694
NY	844,976	345,723	927,763	420,826	82,787	37,552
NJ	1,858,363	621,996	2,345,460	1,063,883	487,097	220,943
DE	278	126	7,153	3,245	6,875	3,118
MD	226,570	102,770	225,051	102,081	0	0
VA[2]	2,200,681	962,062	2,280,457	1,034,398	79,776	36,186
NC	2,451,068	1,111,786	3,688,217	1,672,947	1,237,149	561,161
Totals	10,210,496	4,631,403	12,204,920	5,536,059	1,995,994	905,368

[1] Kilograms are as converted from pounds, and may not necessarily add due to rounding.
[2] Includes preliminary inshore landings data provided by the Commonwealth of Virginia.

TABLE 2.—1997 STATE COMMERCIAL QUOTAS, AS ADJUSTED FOR 1996 OVERAGES

State	Share percent	Initial 1997 quota		Adjusted 1997 quota	
		lb	(kg)[1]	lb	(kg)
ME	0.04756	5,284	2,397	2,342	1,062
NH	0.00046	51	23	51	23
MA	6.82046	757,8413	43,751	729,636	330,957
RI	15.68298	1,742,583	790,422	1,699,405	770,837
CT	2.25708	250,791	113,757	222,806	101,063
NY	7.64699	849,680	385,408	766,893	347,857
NJ	16.72499	1,858,363	842,939	1,371,266	621,996
DE	0.01779	1,977	897	[2](4,898)	(2,222)
MD	2.03910	226,570	102,770	226,570	102,770
VA	21.31676	2,368,569	1,074,365	2,288,793	1,038,179
NC	27.44584	3,049,589	1,383,270	1,812,440	822,109
Totals		11,111,298	5,040,000	9,115,304	4,134,632

[1] Kilograms are as converted from pounds, and may not necessarily add due to rounding.
[2] Numbers in parentheses are negative.

Recreational catch data for 1996 are not yet available. The Council and Commission will consider modifications to the recreational possession limit and recreational season after a review of that information.

Changes From the Proposed Rule

In response to public, state agency, and Council comments, NMFS has decided not to implement the proposed measure that would have increased the present minimum codend mesh regulation of 5.5-inch diamond (14.0-cm) to 6-inch (15.2-cm) diamond. The measure was opposed by a majority of the commenters. An alternative measure is proposed in Amendment 10 to the FMP to require 5.5-inch (14.0-cm) mesh throughout the net. This amendment is under development by the Council, and the Council has requested implementation of this measure through the new interim measure provision of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Action on that request is pending.

In the meantime, the current net restrictions coupled with the increase in commercial minimum fish size will provide some reductions in F. During public participation at the Council meetings, and in the comments received on the proposed rule, industry members made the point that net violations (the use of liners and tying off the codend) have occurred because fisherman felt that the existing mesh regulation (5.5-inch (14.0-cm) codend) was too large to retain sufficiently 13-inch (33.0-cm) fish. Increasing the minimum fish size should reduce the incentive for these violations, as 13-inch (33.0-cm) fish cannot be retained.

Lastly, the Council's proposal to require 5.5-inch (14.0-cm) mesh throughout the net, if approved, will require a considerable financial investment on the part of the industry. Although many industry members that fish for summer flounder in the northern part of its range may already own 6-inch (15.2-cm) codends, commenters indicated that the limited availability of 6-inch (15.2-cm) codends and expense of meeting this requirement for Federal permit holders in other areas would present some problems. Industry members have also stated in their comments that because the measure to require 5.5-inch (14.0-cm) mesh throughout the net has been discussed so much at Commission and Council meetings, many fishermen have been gearing up for this change. Requiring an increase to a 6-inch (15.2-cm) codend at this time would only compound the expense of gear modifications.

Comments and Responses

Comments regarding the 1997 proposed annual specifications for summer flounder were received from 24 organizations or individuals. These included Congressional representatives, industry members and associations, state agencies, various individuals, and the Mid-Atlantic Fishery Management Council. Three commenters approved of all the proposed measures. Ten commenters indicated opposition to the proposed increase in the codend mesh to 6 inches (15.2-cm) but approved of the proposed increase in minimum fish size and supported or accepted the coastwide harvest limit and the commercial quota. Two commenters expressed disapproval for the proposed increase in the codend mesh, as well as the commercial quota, but supported the proposed increase in commercial minimum fish size. Three commenters expressed opposition to the proposed increases in commercial minimum fish size, and codend mesh, but supported or accepted the proposed commercial quota. One commenter expressed concern and opposition to the proposed 1997 commercial quota because of the impacts after the deduction of quota overages from the previous year. Four commenters opposed the 1997 commercial quota based on indications of stock biomass strength early in January 1997. They also were dissatisfied with the rationale used to decide that the measures would not significantly impact a substantial number of small entities. One commenter, representing a fisheries association, opposed all measures. Several letters offered suggestions for future management that are not within the scope of this final rule.

Comment 1. A vessel captain, a former commercial fisherman, and a U.S. Congressman wrote to extend their support for all measures. All expressed concern about the overages in the commercial fishery and urged NMFS to approve the proposed specifications. One commenter noted that, although there may be a lot of political pressure to the contrary, it is essential to "finally regulate a fishing industry that is on the verge of self destruction."

Response 1. NMFS agrees that regulation is needed to rebuild the summer flounder resource, but in establishing such measures, must balance the benefits of conservation with the impact on industry. For the reasons outlined in the preamble, NMFS has determined not to implement the codend mesh increase at this time.

Comment 2. Sixteen of the comments were in opposition to the proposed increase in codend mesh from the present 5.5 inches (14.0-cm) to 6 inches (15.2-cm). Of these, 14 were in favor of replacing this measure with one that would require 5.5-inch (14.0-cm) mesh throughout the net. This measure has been proposed in an upcoming plan amendment (Amendment 10) and appears to be widely supported by the Council, the Commission, and industry members. The Council seeks earlier implementation of this measure through an interim management measure procedure contained in the Magnuson-Stevens Act. The Council and a North Carolina fisheries association would also like to see the option for a 6-inch (15.2-cm) codend as part of this pending amendment to aid industry members who already own them.

Many industry members commented that because the measure to go to 5.5-inch (14.0-cm) mesh throughout the net has been discussed and supported by the Council and Commission, many industry members have made an initial investment in constructing nets that meet these specifications. Further, a marine supply distributor noted that the proposed measure for 6-inch (15.2-cm) codend mesh would present some problems in his industry and for the manufacturer. He stated that the polyethylene used to construct codends requires 3 or 4 months to manufacture. He feels that it may be difficult to acquire 6-inch (15.2-cm) mesh if the proposed measure is approved. He stressed that the time it takes to meet these proposed gear changes should be considered in the management process.

The Connecticut Department of Environmental Protection and a Council member stated that the proposed increase in the codend would have significant negative impacts on Federal permit holders who fish primarily in state waters, especially for those dependent upon the winter flounder fishery. Similarly, Federal permit holders from the more southern states within the management unit emphasized that raising the minimum mesh size for summer flounder would be a *de facto* increase in the minimum mesh requirement for the Mid-Atlantic groundfish fishery. The regulations in the Fishery Management Plan for the Northeast Multispecies Fishery declare that the minimum mesh requirement for vessels fishing in the Mid-Atlantic regulated mesh area (the area bounded on the east by a line running from the shoreline along 72°30′ west long.) is the mesh requirement specified in the summer flounder regulations. Meeting this required change would be a considerable expense for the industry. Many of the commenters stressed the need for net retention studies.

Response 2. NMFS intends to pursue the possibility of implementing the measure for 5.5-inch (14.0-cm) mesh throughout the net via the interim management measure process. Because this process was only recently made available through the Magnuson Stevens Act, guidelines governing its use are presently being developed. Similarly, it

is unclear until the guidelines are promulgated how much time it will take to implement this measure through the interim management measure process. NMFS agrees that there appears to be wide support for 5.5-inch (14.0-cm) mesh throughout the net, but this measure has yet to be taken to public hearing.

NMFS is aware that the codend mesh requirement for the Mid-Atlantic groundfish fishery is dependent upon the mesh requirement set for the summer flounder fishery and acknowledges some costs would have accompanied the proposed increase in codend mesh for both fisheries. Similarly, depending upon the state requirement for minimum mesh in the multispecies winter flounder fishery (state waters exemption program), Federal permit holders who fish primarily in state waters for winter flounder would have to purchase new codends to meet the proposed increase in minimum codend mesh for the summer flounder fishery.

NMFS makes every effort to anticipate the costs of proposed measures to the industry. In addition, proposed measures are subject to public hearing and a comment period so that concerns such as these can be expressed and addressed. For the reasons presented by commenters here and addressed in the preamble, NMFS has determined not to implement the proposed increase in codend mesh.

NMFS is currently unaware of any ongoing summer flounder net retention studies and acknowledges the need for these studies for many of the regulated fisheries. NMFS funds are limited and unless monies can be made available, NMFS must rely on the industry and other sources to procure accurate catch information associated with mesh size.

Comment 3. Four commenters opposed the proposed increase in commercial minimum fish size. Reasons for this opposition centered around the issue of increased discard mortality. An industry advisor to the Council used discard rates given in Amendment 2 to the FMP for summer flounder to illustrate this. Those that oppose the increase would rather see 13-inch (33.0-cm) fish count toward the quota rather than toward discards.

Response 3. Amendment 2 to the FMP for summer flounder implemented a 5.5-inch (14.0-cm) codend mesh and a 13-inch (33.0-cm) total length minimum fish size for the commercial fishery. At the time of Amendment 2, these measures were intended to target 14-inch (35.6-cm) fish. However, the Council and Commission recognized that a 5.5-inch (14.0-cm) mesh would retain some 13-inch (33.0-cm) fish and decided that allowing fishermen to land 13-inch (33.0-cm) fish would be less wasteful. Unfortunately, this allowance has resulted in the unintended targeting of 13-inch (33.0-cm) fish. Mortality has increased for fish of this size well beyond the mortality associated with an incidental take of this size fish.

Many industry members have indicated that the current minimum codend mesh is too large to target sufficiently 13-inch (33.0-cm) fish. They have also indicated that raising the minimum mesh size would discourage cheating and lessen the impacts and discard mortality on still smaller fish captured in nets that are fished with liners or with codends that have been tied off. NMFS agrees that, initially, it would appear that discard values will increase under the proposed specifications. However, successful regulations require the support of those subject to them. NMFS has received many indications that the previous minimum fish size has not worked to conserve 13-inch (33.0-cm) summer flounder. NMFS anticipates improved compliance with net regulations because the increase in minimum size will act as a disincentive to target 13-inch (33.0-cm) fish with illegal mesh or other net modifications (such as tying off the net) since these fish cannot be retained. Thus, increasing the minimum fish size will serve to reduce mortality on younger fish.

Comment 4. Fifteen commenters supported the proposed increase in commercial minimum fish size. They felt that the measure would contribute toward conservation of younger fish and would eliminate the incentive for net violations (tying off the codend or using liners).

Response 4. For the reasons outlined in the response above and presented in the preamble, NMFS agrees with this comment.

Comment 5. Seven commenters felt that the proposed commercial quota is too low. They suggest alternate commercial quotas that range from 18.51 million lb (8.4 million kg) to 30 million lb (13.6 million kg) and stress the economic hardships associated with the proposed quota level. Many participants believe that biomass has been underrepresented in the stock assessments and believe that NMFS is being overly cautious at the expense of the industry. They cite various factors that may have contributed to an inaccurate assessment, including aging discrepancies, data collection problems, and cyclical environmental events.

Response 5. Scientists have noted the increase in biomass. This increase was forecast in their projections. NMFS expects that harvesters would also note the increase in biomass, and NMFS commits substantial resources to compiling observations from industry members. These observations, through biological sampling, interviews with captains, vessel logbooks, and other methods, contribute toward stock assessments. Although biomass has increased, the age structure of the stock remains compressed in that it only contains the younger age classes. NMFS, the Council, and Commission are committed to the conservation of these younger age classes to improve the long-term viability of the stock and ultimately the industry.

The 1997 commercial quota for summer flounder is set at the upper limit authorized by the FMP, which does not allow the commercial quota to exceed this "cap" unless the fishing mortality rate of 0.23 is met. The target fishing mortality rate for 1997, as part of the rebuilding schedule implemented under the FMP, is 0.30. In every year since 1993, the fishing mortality rate has exceeded the goal of the rebuilding schedule. Therefore, increasing the quota is not allowed under the regulations implementing the FMP and is not advised based on the best available scientific information.

Comment 6. A U.S. Senator from North Carolina noted that the summer flounder fishery is extremely valuable to the State and its residents and noted that, although the summer flounder stock is at 80 percent of its historic peak level, the 1997 North Carolina quota will be the lowest in history. The Senator also expressed concern about the impact that overage deductions will have on the State.

Response 6. The 22nd Stock Assessment Workshop (SAW) reported that the stock is at the medium level of historical abundance. The coastwide harvest limit and commercial quota level are set at the FMP's "cap." The process of overage deductions for landings that exceed the quota in any state is also outlined in the regulations. The Council recommended the commercial quota level in an attempt to balance stock conservation with economic impact. NMFS acknowledges that overharvest in prior years will have an impact on the quota level for North Carolina in 1997 and advises that the State consider management measures used by other states to prolong the harvest of the quota and support the price per pound paid to fishermen. For instance, states with a small share percentage of the commercial quota use trip limit systems that effectively extend their quota, spread catches over various fleet sectors, and maximize ex-vessel and market values.

Comment 7. Several commenters raised the issue that the proposed increase in minimum fish size and codend mesh would force longer tow times because these measures would result in the loss of 30 percent of 14-inch (35.6-cm) fish. This increased effort would, in turn, raise fuel and crew costs.

Response 7. NMFS has determined not to implement the mesh increase. Therefore, decreases in relative catch will be less than anticipated. Raising the minimum fish size may increase effort but because of this measure, landing larger, more valuable fish may offset these costs.

Comment 8. A commenter from North Carolina contested the statement that larger fish bring a higher price and, therefore, offset any increased costs associated with the proposed rule. The commenter also contended that this conclusion of the impacts of this measure on small businesses is unsatisfactory.

Response 8. Data supplied by both the commenter and NMFS weighout database indicate that summer flounder prices tend to increase with the size of the fish landed. Weighout data in 1993 indicate prices ranged from $1.10 per lb for small summer flounder to $2.41 per lb for jumbos. Preliminary figures for 1997 indicate that nearly 90 percent of the summer flounder landed in North Carolina were in the medium and large size ranges. Medium fish average between 14 and 16.1 inches (35.6–40.8 cm) and large fish average between 16.5 and 18.2 inches (42–46.2-cm). If the market were to be "flooded" with large or jumbo fish sufficient to drive down the price of those fish, the net effect would still be positive, as a large or jumbo fish would still hold more value than a medium or large fish, even if all the categories were priced the same, based on the weight of those fish.

The Regulatory Flexibility Act (RFA) requires that agencies consider the economic impact of their rulemakings on small entities, including small businesses. Based on the best available data, NMFS concluded that this rule would not have a significant economic impact on a substantial number of small entities. As explained above, the data presented by the commenter, supports this conclusion.

Comment 9. Several commenters stressed that most North Carolina fishermen do not participate in the groundfish fishery and do not have 6-inch (15.2-cm) codends. Therefore, costs would increase.

Response 9. Approximately 75 percent of the North Carolina vessels that hold commercial summer flounder permits also hold permits for the Northeast Multispecies fishery. Presuming such vessels do not fish outside of the Mid-Atlantic regulated mesh area (described in Comment 1), the need for a 6-inch (15.2-cm) mesh (the mesh size required throughout the net in areas other than the Mid-Atlantic regulated mesh area) would not arise and the vessel might not possess the 6-inch (15.2-cm) diamond mesh. While NMFS still contends that any costs associated with the change would be minor because codends are routinely replaced as part of normal operating expenses, the Council has repeatedly stressed its desire for a mesh requirement of 5.5 inches (14.0-cm) throughout the net. For this and other reasons as described in the preamble of this rule, NMFS has determined that the 6-inch (15.2-cm) codend mesh would be inappropriate at this time.

Comment 10. Several commenters contend that North Carolina is receiving only 42 percent of its historical landings since 1989 and that a 58-percent reduction is significant under the RFA.

Response 10. NMFS is required to conduct a regulatory flexibility analysis to consider the needs and concerns of small entities, unless, as in this case, it makes a determination that the rule will not have a significant impact on a substantial number of small entities. The determination of significance of a rule is made regarding the impact of the rule on the recent or current situation of small entities. The RFA does not require NMFS to compare the level of the 1997 summer flounder quota with the amount of summer flounder harvested in 1989 to determine if the 1997 quota is significant. The RFA requires NMFS to determine the incremental impact of the 1997 summer flounder quota relative to the impacts of the 1996 summer flounder quota on those same entities, as last year's quota represents the baseline under which these small entities operated. The impact of the incremental change from 1996 to 1997 has been determined to be not significant.

With respect to the incremental impact of this action on North Carolina, the coastwide harvest limit and commercial quota for 1997 are no different than those set for 1996. Thus, the impact of the 1997 quota on North Carolina is not significant. North Carolina's adjusted quota for 1997 reflects deductions to the 1997 quota due to overages in excess of its quotas in 1995 and 1996.

Comment 11. A commenter wanted to know how vessels, unable to take advantage of a season as brief as the 10-day season in North Carolina in 1997, were accounted for in the regulatory flexibility analysis.

Response 11. The RFA requires analysis of the economic impacts of a regulatory action, in total. To the extent that the various sectors are impacted differently by a regulatory action, the regulatory flexibility analysis should address the impacts on those sectors. However, nothing in the RFA requires analysis of the economic impact of a regulation on an individual small entity. In fact, such an evaluation would be impossible to conduct. For the industry as a whole, the economic impacts of the proposed quota are not significant because the total quota is the same for 1997 as it was in 1996 (before overages). The "cap" on the quota established under Amendment 7, which revised the rebuilding schedule, was deemed to have significant positive impacts on the industry relative to the quota that would have been implemented had the amendment not been passed. The quota implemented by this action is set equal to that "cap." The State of North Carolina, as with all the states implementing the quota, has the ability to further manage its allocation through trip limits and/or seasons, as the State deems appropriate for its fishery. How a state chooses to utilize its allocation is beyond the scope of the economic analysis and the regulations implemented here.

Comment 12. One commenter questioned the combined effects under the RFA of regulations in other fisheries, particularly striped bass and weakfish, on the North Carolina summer flounder fishery and remarked on a reduction in permit holders fishing in the State.

Response 12. While various regulations may impact fishery participants differently, the RFA does not require an analysis of cumulative impacts of regulations other than those being proposed in a given action. NMFS acknowledges that there may be such cumulative effects. However, it would be nearly impossible to anticipate behavioral changes by the industry in response to every regulatory change. While there may be a reduction of permit holders in North Carolina, this does not necessarily mean a reduction in fishing effort. Some vessel owners may have shifted their vessels to other states but remain in the fishery.

Comment 13. Many commenters voiced concerns about state commercial quota overages and urged NMFS to improve the quota monitoring system. Similarly, NMFS was advised to

improve enforcement and to reduce underreporting and high levels of discards associated with the summer flounder fishery.

Response 13. At the September 1996 Council meeting, the Council discussed the need for improved enforcement and quota monitoring. At that meeting, the Council proposed to establish a committee of enforcement personnel and quota system administrators to evaluate the commercial reporting requirements of the Summer Flounder FMP. The goal of this committee was to develop by January 1, 1997, an investigation and enforcement strategy to ensure compliance with vessel owner and dealer permit and reporting requirements. The committee has met several times to discuss ways to improve compliance on the part of the states, federally permitted dealers, and fishermen. NMFS anticipates that the Commission will adopt compliance criteria in Amendment 10 to the FMP.

NMFS has limited authority under the current regulations to improve quota monitoring. NMFS has taken steps to secure direct landings reports from federally permitted dealers in states that have been late in reporting those landings. This will constitute a duplication of effort (double reporting), but NMFS believes this is the only effective alternative available at present.

NMFS law enforcement personnel review proposed regulations and work with the Council to facilitate plan development with enforceability as a central component. Additionally, law enforcement personnel work proactively with industry and the Coast Guard to promote training and education concerning fishery regulations. NMFS law enforcement personnel continue to conduct periodic random checks for compliance of federally permitted dealers and vessels. Further, NMFS maintains cooperative agreements with several states that provide for increased and improved enforcement coverage.

Comment 14. One commenter contended that the statement that net violations (tying off the codend) have occurred in the summer flounder fishery is largely unsubstantiated in NMFS law enforcement records.

Response 14. Although NMFS has relatively few records of this type of violation for the summer flounder fishery in 1996, harvesters and other industry members have given every indication that violations involving the use of liners or tying off the codend are a concern. In addition, the 22nd SAW reports that high discards probably contributed to the pattern of underestimating the fishing mortality in the present assessment and in past assessments. These net infractions contribute directly and substantially to the discard rate.

Classification

This action is authorized by 50 CFR part 648 and complies with the National Environmental Policy Act.

These final specifications are exempt from review under E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the management measures contained in this rule would not have a significant economic impact on a substantial number of small entities. The reasons for this determination were discussed in the proposed rule published in the **Federal Register** on December 18, 1996 (61 FR 66646). NMFS received four comments, addressed above, regarding this certification. These comments did not cause NMFS to change its determination regarding the certification. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Reporting and record keeping requirements.

Dated: March 3, 1997.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Effective April 7, 1997 § 648.103, paragraph (a), is revised to read as follows:

§ 648.103 Minimum fish sizes.

(a) The minimum size for summer flounder is 14 inches (35.6 cm) TL for all vessels issued a moratorium permit under § 648.4 (a)(3), except on board party and charter boats carrying passengers for hire or carrying more than three crew members, if a charter boat, or more than five crew members, if a party boat;

* * * * *

[FR Doc. 97–5698 Filed 3–4–97; 3:06 pm]

BILLING CODE 3510–22–P

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 961126330–7039–02; I.D. 110796H]

RIN: 0648–XX72

Atlantic Mackerel, Squid, and Butterfish Fisheries; 1997 Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final 1997 initial specifications.

SUMMARY: NMFS issues final initial specifications for the 1997 fishing year for Atlantic mackerel, squid, and butterfish (SMB). Regulations governing these fisheries require NMFS to publish specifications for each fishing year. This action is intended to promote the development of the U.S. SMB fisheries.

EFFECTIVE DATE: January 1, 1997, through December 31, 1997.

ADDRESSES: Copies of the Mid-Atlantic Fishery Management Council's quota paper and recommendations and the Environmental Assessment are available from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, 508–281–9104.

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) prepared by the Mid-Atlantic Fishery Management Council (Council) appear at 50 CFR part 648. These regulations stipulate that NMFS publish a document specifying the initial annual amounts of the initial optimum yield (IOY), as well as the amounts for allowable biological catch (ABC), domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), and total allowable levels of foreign fishing (TALFF) for the species managed under the FMP. No reserves are permitted under the FMP for any of these species. Procedures for determining the initial annual amounts are found in § 648.21.

Proposed 1997 initial specifications, requesting public comment were published on December 11, 1996 (61 FR 65192). No public comments were received. Therefore, the final 1997 initial specifications are unchanged from those that were proposed. An analysis of these specifications and a discussion of current Council actions that may affect the 1997 specifications of maximum optimum yield for *Loligo* and *Illex* squid and ABC for Atlantic mackerel are contained in the proposed rule and are not repeated here.

The following table contains the final initial specifications for the 1997 Atlantic mackerel, *Loligo* and *Illex* squids, and butterfish fisheries.

FINAL INITIAL ANNUAL SPECIFICATIONS FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR THE FISHING YEAR JANUARY 1 THROUGH DECEMBER 31, 1997

[mt]

Specifications	Squid		Atlantic mackerel	Butterfish
	Loligo	*Illex*		
Max OY[1]	[2]36,000	[3]30,000	N/A	16,000
ABC[4]	21,000	19,000	[5]1,178,000	7,200
IOY	21,000	19,000	90,000	5,900
DAH	21,000	19,000	[6]90,000	5,900
DAP	21,000	19,000	50,000	5,900
JVP			25,000	
TALFF				

[1] Maximum optimum yield (Max OY) equals Maximum Sustainable Yield.
[2] 26,000 mt if overfishing threshold in Amendment 6 is approved.
[3] 24,000 mt if overfishing threshold in Amendment 6 is approved.
[4] IOY can increase to this amount.
[5] 383,000 if overfishing definition in Council's resubmission of measures disapproved in Amendment 5 is approved.
[6] Contains 15,000 estimated recreational catch.

NMFS also announces that four special conditions imposed in previous years continue to be imposed on the 1997 Atlantic mackerel fishery as follows: (1) Joint ventures would be allowed south of 37°30′ N. latitude, but river herring bycatch may not exceed 0.25 percent of the over-the-side transfers of Atlantic mackerel; (2) the Administrator, Northeast Region, NMFS (Regional Administrator) should ensure that impacts on marine mammals are reduced in the prosecution of the Atlantic mackerel fishery; (3) the mackerel OY may be increased during the year, but the total should not exceed ABC; and (4) applications from a particular nation for a joint venture for 1997 will not be decided on until the Regional Administrator determines, based on an evaluation of performances, that the nation's purchase obligations for previous years have been fulfilled.

Classification

The Regional Administrator has determined that this final rule is necessary for the conservation and management of the Atlantic mackerel, squid, and butterfish fisheries and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable law.

This action is authorized by 50 CFR part 648, and these final initial specifications are exempt from review under E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. The reasons were discussed in the proposed rule published December 11, 1996 (61 FR 65192). No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 3, 1997.

Nancy Foster,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97–5694 Filed 3–6–97; 8:45 am]

BILLING CODE 3510–22–P

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961107312–7012–02; I.D. 022897D]

Fisheries of the Exclusive Economic Zone Off Alaska; Species in the Rock Sole/Flathead Sole/"Other Flatfish" Fishery Category by Vessels Using Trawl Gear in Bycatch Limitation Zone 1

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for species in the rock sole/flathead sole/"other flatfish" fishery category by vessels using trawl gear in Bycatch Limitation Zone 1 (Zone 1) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 1997 bycatch allowance of *C. bairdi* Tanner crab apportioned to the trawl rock sole/flathead sole/"other flatfish" fishery category in Zone 1.

EFFECTIVE DATE: 1200 hrs, Alaska local time (A.l.t.), March 4, 1997, until 2400 hrs, A.l.t., December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The bycatch allowance of red king crab for the BSAI trawl rock sole/flathead sole/"other flatfish" fishery category, which is defined at § 679.21(e)(3)(iv)(B)(2), was established by the Final 1997 Harvest Specifications of Groundfish (62 FR 7168, February 18, 1997) as 394,736 animals.

In accordance with § 679.21(e)(7)(ii), the Administrator, Alaska Region, NMFS, has determined that the 1997 bycatch allowance of *C. bairdi* Tanner crab apportioned to the trawl rock sole/flathead sole/"other flatfish" fishery in

Zone 1 has been caught. Consequently, NMFS is prohibiting directed fishing for species in the rock sole/flathead sole/"other flatfish" fishery category by vessels using trawl gear in Zone 1.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 679.20(e) and (f).

Classification

This action is required by 50 CFR 679.21 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 3, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–5697 Filed 3–4–97; 3:06 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1240

[FV–96–704PR]

Honey Research, Promotion, and Consumer Information Order; Proposed Amendment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule gives notice of a proposed amendment to the Honey Research, Promotion, and Consumer Information Order (Order) and its rules and regulations issued thereunder. The amendment would require producers to maintain, retain, and make available to the Honey Board and the Secretary of Agriculture such books and records which are appropriate or necessary to the administration or enforcement of the Honey Research, Promotion, and Consumer Information Act, as amended (Act).

DATES: Comments must be received by May 6, 1997.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to: Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2535–S, Washington, DC 20090–6456. Three copies of all written materials should be submitted, and they will be made available for public inspection in the Research and Promotion Branch during regular working hours. All comments should reference Docket Number FV–96–704PR and the date and the page number of this issue of the **Federal Register**. Also, pursuant to the Paperwork Reduction Act, send comments regarding the accuracy of the burden estimate, ways to minimize the burden, or any other aspect of this collection of information to the above address.

FOR FURTHER INFORMATION CONTACT: Richard Schultz at the above address, telephone (202) 720–5976 or (888) 720–9917 (toll free), or fax (202) 205–2800.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under the Honey Research, Promotion, and Consumer Information Act, as amended [7 U.S.C. 4601 *et seq.*], hereinafter referred to as the Act. This action would amend the Honey Research, Promotion, and Consumer Information Order (Order) [7 CFR Part 1240] to reflect an amendment to the Act as specified in the Federal Agriculture Improvement and Reform Act of 1996 (FAIR) [Pub. L. 104–127, April 4, 1996].

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 10 of the Act, a person subject to an order may file a petition with the Secretary of Agriculture (Secretary) stating that such order, any provision of such order, or any obligation imposed in connection with such order is not in accordance with law; and requesting a modification of the order or an exemption from the order. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which such person is an inhabitant, or has a principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided that a complaint is filed within 20 days after the date of entry of the ruling.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been determined not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

In accordance with the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*], the Agricultural Marketing Service (AMS) is required to examine the impact of the proposed rule on small entities.

Congress recently amended the Act by inserting the term "producer" into Section 9(f). Under Section 9(f) of the Act, handlers, importers, producer-packers, and now producers are required to maintain and make available to the Honey Board (Board) and the Secretary such books and records which are appropriate or necessary to the administration or enforcement of the Act or of any order or regulation issued pursuant to the Act. The primary intent of the amendment is to require producers to maintain and make available books and records to facilitate enforcement of the Act. The estimated cost to the 5,000 producers who would be responsible for maintaining and retaining such information would be $25,000 or $5.00 per producer. There are approximately 5,000 producers, 510 producer-packers, 350 importers, and 145 handlers who are currently subject to the provisions of the Order.

The majority of these producers may be classified as small agricultural producers. Small agricultural producers are defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000. In 1995, there were an estimated 4,960 producers who had annual receipts of less that $500,000 and 40 producers who had annual receipts of more than $500,000.

U.S. honey production in 1995 totaled 210.4 million pounds. California produced 19 percent of the total, followed by North Dakota (11 percent), South Dakota (10 percent), Florida (9 percent), and Minnesota (6 percent). Forty-four other States accounted for the remaining 45 percent of domestic production. The value in sales in 1995 was $135.5 million.

In 1995, exports of U.S. honey packaged for retail sales totaled nearly 3.3 million pounds, with a value of $2.8 million. Bulk honey exports totaled over 6 million pounds, with a value of $4.9 million. Sizeable quantities of honey are exported to a wide range of countries in Europe, the Middle East, and the Far East.

Also during this period, honey imports into the United States totaled about 88.6 million pounds. China, Argentina, and Canada had about equal shares and together accounted for about 92 percent of the honey imported into

the United States. About 6 percent came from Mexico, and the reminder came from an assortment of countries around the world. The value of imports was about $47.1 million.

The impact of this proposed rule on small entities would be minimal due to its focus on recordkeeping. This recordkeeping requirement is consistent with prudent business practices and should not impose any undue costs or significant burdens on a vast majority of the small entities affected. It is anticipated that a significant number of these small entities currently practice such recordkeeping for commercial and/or tax purposes.

While the AMS has performed this initial Regulatory Flexibility Analysis regarding the impact of this proposed rule on small entities, in order to have additional data that may be helpful for further analysis of the effects of this rule on small entities, we are inviting comments concerning potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from implementation of this proposed rule and information on the expected benefits and costs.

Paperwork Reduction Act

In accordance with the OMB regulation [5 CFR 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the recordkeeping requirement contained in this rule will be submitted to OMB for approval.

Title: National Research, Promotion, and Consumer Information Programs.

OMB Number: 0581–0093.

Expiration Date of Approval: October 31, 1997.

Type of Request: Revision of currently approved information collection for research and promotion programs.

Abstract: The recordkeeping requirement in this request is essential to carry out an amendment to the Act.

The Order currently imposes recordkeeping requirements on handlers, importers, and producer-packers. Such persons are required to maintain and retain their books and records for at least two years beyond the marketing year of their applicability. In conformance with the Act, as amended in the FAIR, producers would also be required to maintain and retain books and records. It is anticipated that producers currently maintain and retain such books and records for commercial and/or tax purposes. Therefore, this recordkeeping requirement is consistent with prudent business practices and should not impose any undue costs or significant burdens on a vast majority of producers.

The estimated cost to the 5,000 producers who would be responsible for maintaining and retaining their books and records would be $25,000 or $5.00 per producer. This total has been estimated by multiplying 2,500 (total burden hours) by $10.00, a sum deemed to be reasonable should the producers be compensated for their time.

The recordkeeping requirement contained in this rule is:

(1) *A requirement to maintain books and records to facilitate administration or enforcement of the Order.*

Estimate of Burden: Public recordkeeping burden for keeping this information is estimated to average .5 hours per recordkeeper maintaining such records.

Respondents (Recordkeepers): Producers.

Estimated Number of Respondents (Recordkeepers): 5,000.

Estimated Number of Responses per Respondent (Recordkeepers): 1.

Estimated Total Annual Burden on Respondents (Recordkeepers): 2,500 hours.

Comments are invited on: (1) Whether the proposed recordkeeping is necessary for administration or enforcement of the Act; (2) the accuracy of the AMS's estimate of the recordkeeping burden, including the validity of the methodology and assumption used; (3) ways to enhance the quality, utility, and clarity of the recordkeeping requirement; and (4) ways to minimize the burden of the recordkeeping requirement on those who are affected, including the use of appropriate automated, electronic, mechanical, or other technology collection techniques or other forms of information technology.

Comments should reference OMB No. 0581–0093, Docket Number FV–96–704PR, and the date and page number of this issue of the **Federal Register**. Comments should be sent to Richard Schultz at the address listed above by May 6, 1997. All comments received will be available for public inspection during regular business hours at the same address. All responses to this notice will be summarized in the request for OMB approval and included in the request for OMB approval.

Background

This proposed rule invites comments on amending the Order and its rules and regulations to reflect an amendment to the Act requiring producers to maintain and make available to the Board, the administrative body appointed by the Secretary to operate the Order, and the Secretary such books and records which are appropriate or necessary to the administration or enforcement of the Act [7 U.S.C. 4601 *et seq.*]. The Order needs to be amended to reflect the amendment to the Act. Therefore, this rule would add to the Order and its rules and regulations this requirement. Pursuant to § 1240.52 of the Order, all information obtained from these books and records would be kept confidential.

This action would amend sections 1240.41 and 1240.51 of the Order and sections 1240.120, 1240.121, and 1240.122 of the rules and regulations under the Order. It would also correct a paragraph reference in § 1240.41 of the Order, remove and amend § 1240.106 and § 1240.116 of the rules and regulations under the Order, respectively.

Section 1240.41(h) of the Order currently provides that should a first handler or the Secretary fail to collect an assessment from a producer, the producer shall be responsible for the payment of assessment to the Board. The amended paragraph would add that producers shall maintain records for their honey produced.

Section 1240.41(j) of the Order currently makes incorrect reference to paragraph (h) rather than to paragraph (i) of this section. The corrected paragraph would change this reference from paragraph (h) to paragraph (i).

Section 1240.51 of the Order currently provides that handlers, importers, producer-packers, or any persons who receive an exemption from assessments shall maintain and make available for inspection by the Board or the Secretary such books or records as are necessary to carry out the provisions of the Order and the regulations issued thereunder, including such records as are necessary to verify any required reports. It further provides that such records shall be maintained for two years beyond the first period of their applicability. The amended paragraph would add producers to those covered by this recordkeeping requirement. It would also clarify that such records shall be maintained for at least two years beyond the marketing year of their applicability rather than for two years beyond the first period of their applicability.

Section 1240.106 of the rules and regulations provides that communications concerning the program should be addressed to the National Honey Board. Since the address in the text of the section is subject to change, it is preferable that it be deleted to avoid confusion. The correct address for the National Honey Board is 390 Lashley Street, Longmont, Colorado 80501. Therefore, the language in § 1240.106 is obsolete and would be removed.

Section 1240.116(b) of the rules and regulations provides that each first handler and producer-packer shall pay their required assessment to the Board at the address referenced in Section 1240.106. Since § 1240.106 is obsolete and would be removed, reference to the Board's address in § 1240.116(b) would also be removed.

Section 1240.120 of the rules and regulations currently provides that first handlers, producer-packers, importers, or any persons who receive an exemption from assessments are required to make reports pursuant to the Order and shall maintain and retain such reports for at least two years beyond the marketing year of their applicability. The amended section would designate the existing text in this section as paragraph (a) and add a new paragraph (b). The new paragraph would provide that producers shall maintain and retain books and records for at least two years beyond the marketing year of their applicability. Such books and records shall include, but not be limited to, information on annual sales and production.

Section 1240.121 of the rules and regulations currently provides that first handlers, producer-packers, importers, or any persons who receive an exemption from assessments and are required to make reports pursuant to the Order shall make available to the Board or the Secretary such records as are appropriate and necessary to verify reports required under the Order. The amended section would designate the existing text in this section as paragraph (a) and add a new paragraph (b). The new paragraph would provide that producers are required to maintain and retain books and records pursuant to the Order and shall make available to the Board or the Secretary such records as are appropriate and necessary to verify the information in § 1240.120(b) of the rules and regulations.

Section 1240.122 of the rules and regulations currently provides that all information obtained from the books, records, and reports of handlers, producer-packers, or any persons who receive an exemption from assessments shall be kept confidential and all information with respect to refunds of assessments made to individual producers and importers shall be kept confidential. The paragraph would be amended to indicate that information obtained from producers would be covered by this confidentiality provision. Reference to all information with respect to refunds of assessments made to individual producers and importers would be removed from the paragraph. In 1991, following amendment of the Act, producers and importers voted to terminate the authority for producers and importers to obtain a refund of assessments. Therefore, such language is now obsolete and would be removed.

All written comments received in response to this proposed rule by the date specified herein will be considered prior to the issuance of any final rule on this action.

List of Subjects in 7 CFR Part 1240

Advertising, Agricultural research, Honey, Imports, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 1240 is proposed to be amended as follows:

PART 1240—HONEY RESEARCH, PROMOTION, AND CONSUMER INFORMATION ORDER

1. The authority citation for 7 CFR Part 1240 continues to read as follows:

Authority: 7 U.S.C. 4601–4612.

2. In § 1240.41, paragraph (h) is revised to read as follows:

§ 1240.41 Assessments.

* * * * *

(h) Should a first handler or the Secretary fail to collect an assessment from a producer, the producer shall be responsible for the payment of the assessment to the Board. The producer shall maintain records for the honey produced by said producer.

* * * * *

§ 1240.41 [Amended]

3. In § 1240.41, paragraph (j) is amended by removing the words "paragraph (h)" and adding in their place the words "paragraph (i)".

§ 1240.51 [Amended]

4. In § 1240.51, the word "producer," is added following the word "importer" and the words "two years beyond the first period" are removed and the words "at least two years beyond the marketing year" are added in their place.

§ 1240.106 [Removed and reserved.]

5. Section 1240.106 is removed and reserved.

§ 1240.116 [Amended]

6. In § 1240.116, paragraph (b), the words "at the address referenced in § 1240.106," are removed.

§ 1240.120 [Amended]

7. In § 1240.120, the existing undesignated text is designated as paragraph (a) and a new paragraph (b) is added to read as follows:

§ 1240.120 Retention period for records.

* * * * *

(b) Each producer required to maintain books and records pursuant to this subpart shall maintain and retain books and records for at least two years beyond the marketing year of their applicability. Such books and records shall include, but not be limited to, information on annual production and sales. Information on annual sales shall include such information as the name and address of each handler, the quantity sold to the handler, and the date of sale.

8. In § 1240.121 the existing undesignated text is designated as paragraph (a) and a new paragraph (b) is added to read as follows:

§ 1240.121 Availability of records.

* * * * *

(b) Each producer who is required to maintain books and records pursuant to this subpart shall make available for inspection by authorized employees of the Board or the Secretary during regular business hours such books and records as are appropriate and necessary to verify the information in § 1240.120(b) of this subpart.

§ 1240.122 [Amended]

9. In § 1240.122, the word "producers," is added following the word "importers" and the words "and all information with respect to refunds of assessments made to individual producers and importers" are removed.

Dated: February 28, 1997.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 97–5590 Filed 3–6–97; 8:45 am]

BILLING CODE 3410–02–P

Rural Telephone Bank

7 CFR Part 1610

Rural Utilities Service

7 CFR Parts 1735, 1737, 1739, and 1746

Rural Telephone Bank and Telecommunications Program Loan Policies, Types of Loans, Loan Requirements

AGENCY: Rural Utilities Service and Rural Telephone Bank, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS) proposes to amend its regulations to incorporate changes to the telecommunications loan program

required by the 1996 Farm Bill and the regulatory reinvention initiative of the Vice President's National Performance Review. RUS has reviewed the regulations concerning the telecommunications program and the Rural Telephone Bank loan policies and requirements to determine whether they are necessary, impose the least possible burden consistent with safety and soundness, and are written in a clear, straightforward manner. As a result of this review, the RUS telecommunications program proposes to update and streamline its regulations and policy statements. In addition, this regulation proposes to eliminate some policies and procedures that have become obsolete.

DATES: Written comments must be received by RUS or carry a postmark or equivalent not later than May 6, 1997.

ADDRESSES: Submit written comments to Jonathan Claffey, Acting Deputy Director, Advanced Telecommunications Services Staff, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1701, Room 2919, South Building, Washington, DC 20250–1701. RUS requests a signed original and three copies of all comments (7 CFR part 1700). All comments received will be made available for public inspection at room 4034, South Building, U.S. Department of Agriculture, Washington, DC, between 8:00 a.m. and 4:00 p.m. (7 CFR part 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Cheryl Gamboney, Analyst, Advanced Telecommunications Services Staff, (address as above). Telephone: (202) 720–0415. Facsimile: (202) 720–2734.

SUPPLEMENTARY INFORMATION:

Classification

This proposed rule has been determined to be not significant and has not been reviewed by the Office of Management and Budget under Executive Order 12866.

Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this proposed rule meets the applicable standards provided in Sec. 3. of the Executive Order.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), RUS certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The application for loans under the RUS telecommunications program are discretionary, regulatory requirements will, therefore, apply only to those entities which choose to apply for funding.

This action is being taken as part of the National Performance Review program to eliminate excess regulations and to improve the quality of those that remain in effect. This proposed rule simply reduces the Times Interest Earned Ratio requirement for all borrowers, simplifies current cash distribution and investment requirements for all borrowers, and standardizes determination of loan maturity. This proposed rule is consistent with RUS' continuing effort to devolve, in particular, cash management authority to the borrowers. It is also consistent with the goals of the regulatory reinvention initiative of the National Performance Review.

Information Collection and Recordkeeping Requirements

A notice of public comments was issued in the **Federal Register** on February 25, 1997, at 62 FR 8421 requesting approval by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) under control number 0572–0079.

Send questions or comments regarding this burden or any other aspect of these collections of information, including suggestions for reducing the burden, to F. Lamont Heppe, Jr., Director, Program Support and Regulatory Analysis, Rural Utilities Service, STOP 1522, Washington, DC 20250–1522.

National Environmental Policy Act Certification

RUS has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Program Affected

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance Programs under 10.851, Rural Telecommunications Loans and Loan Guarantees, and 10.582, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402.

Intergovernmental Review

This program is excluded from the scope of Executive Order 12372, Intergovernmental Consultation. A Notice of Final Rule entitled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts RUS and Rural Telephone Bank loans and loan guarantees to governmental and non-governmental entities from coverage under this Order.

Unfunded Mandate

This rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandate Reform Act) for State, local, and tribal governments or the private sector. Thus today's rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandate Reform Act.

Background

The Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. 104–127) amended Section 309 of the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*)(RE Act), by eliminating the provision that allows RUS telecommunications borrowers to determine the term of a loan made under Title 3 of the RE Act at the time the loan application is submitted.

The present maximum loan period is 35 years. With rapidly changing technology, obsolescence is occurring more quickly; therefore, borrowers are depreciating their facilities at a faster rate. If plant financed is retired and replaced by new plant before the loan is repaid, earnings from this new plant will have to be used to pay the old loan and any new loan used to finance the replacement facilities. If the loan period is longer than the depreciation period and the capital recovered through depreciation is not used to replace plant, the loan could be undercollateralized and the borrower's rate base would be eroded.

RUS is, therefore, proposing that the loan period for RUS and Rural Telephone Bank (Bank) loans not exceed the expected composite economic life of the facilities to be financed; expected composite economic life means the depreciated life plus three years. Bank borrowers may request a repayment period that is longer than the expected composite economic life of the facilities financed by the loan. Such borrowers, however, will be required to provide additional security for the loan by maintaining a funded reserve. The maximum loan period for all loans will remain at 35 years.

Further, under existing regulations, if the loan maturity period selected by the borrower exceeds the expected composite economic life of the facilities financed by a period of more than three years, the loan would be conditioned upon the borrower electing to maintain either a net plant to secured debt ratio of at least 1.2, or a funded reserve in such amount that the balance of the reserve plus the value of the facilities less depreciation be at least equal to the remaining principal payments on the loan. RUS is proposing to offer, subject to certain conditions, borrowers subject to the funded reserve or net plant to secured debt ratio requirements an option to replace those notes with notes that match the remaining composite economic life of the facilities financed, as determined by the feasibility study prepared in connection with the loan. Borrowers meeting these conditions replacing Bank notes will not be required to pay a prepayment premium, if such requirement is contained in the original note.

To optimize the use of loan funds, RUS proposes to limit the size of RUS cost-of-money loans and Bank loans made to individual borrowers in order to distribute the amount of RUS cost-of-money and Bank funds appropriated among a greater number of borrowers. Section 201 of the RE Act, in part, clearly states that, "* * * The Administrator in making such loans shall, insofar as possible, obtain assurance that the telecommunications service to be furnished or improved thereby will be made available to the widest practical number of rural users * * *".

In fiscal years 1991 through 1995, the Agriculture Appropriation Acts had established loan levels for the Bank in amounts insufficient to provide for the total number of applications completed and on hand at the end of those fiscal years. If the Bank had limited the amount of individual loans to no more than 10 percent of the lending authority, approximately $35.6 million of Bank funding over those five years would have been available to other borrowers. Correspondingly, approximately $25.6 million of RUS cost-of-money funding also would have been available to other borrowers.

Moreover, recent Federal action affecting RUS and Bank borrowers is the Telecommunications Act of 1996, a broad and far-reaching reform of communications law that is expected to change notably the telecommunications industry. The Telecommunications Act will provide for a more competitive, deregulated national telecommunications policy framework. Of greatest immediate relevance for RUS and Bank borrowers are forthcoming regulations by the Federal Communications Commission concerning certain provisions of the Telecommunications Act. Pending the outcome of these forthcoming regulations, RUS borrowers have temporarily delayed plans for major network construction. However, now more than ever, the need and importance of RUS telecommunications loans is crucial for future development of telecommunications infrastructure in rural America. As a direct result of RUS's telecommunications loans, rural communities have been enjoying access to advanced telecommunications services.

To continue fulfilling RUS's mission of ensuring that rural telecommunications providers have the means to modernize their networks, to fully effect the mandated area coverage provision of the RE Act, and to achieve maximum use of funds available, RUS is proposing to limit the loan amount to any single borrower in a fiscal year to, generally, no more than 10 percent of the lending authority from appropriations in any fiscal year. This proposed regulation would optimize the use of a limited source of loan funding by distributing the amount of funding available among the greatest number of applicants in an economical, efficient, and orderly manner.

In general, the security documents required in connection with RUS loans, Bank loans, and RUS guarantees contain provisions requiring borrowers to maintain a certain Times Interest Earned Ratio (TIER) level. In particular, under existing regulations, borrowers are required to maintain after the end of the Forecast Period a TIER equal to the projected TIER determined by the feasibility study prepared in connection with the loan, but not greater than 1.75. RUS proposes to reduce the maximum TIER maintenance requirement to no more than 1.50 for all borrowers receiving any type of loan after the effective date of the final rule. In 1995 almost ninety percent of RUS's reporting borrowers had a TIER greater than 1.5.

Section 205 of the RE Act and the RUS mortgage documents, contain RUS's policy regarding investments and distributions of assets by borrowers. In general, borrowers with a certain minimum net worth requirement are permitted to make capital distributions without RUS approval in a cumulative amount up to a limit set by a formula that considers the borrowers past financial performance. The calculation used to determine a borrower's allowable distribution level has, over the years, become exceedingly complex. RUS is simplifying its policy by eliminating the complex formula used to determine the allowable level of distributions and investments and replacing it with a more straightforward process which can readily be calculated from a borrower's current financial statements. The new requirements limit the amount of distributions and investments relative to the borrower's current net worth. To facilitate the availability of cash flow to support diversified activities, RUS proposes predefined tests, using current annual financial data only, for determining the level of permitted distributions and investments. This approach would recognize and provide for diversity among borrowers without creating undue complexity. RUS's new policy regarding investments and distributions of assets by borrowers will be in all mortgages for loans approved after the effective date of the final rule. Borrowers that have not received a loan after the effective date of the final rule may request the Administrator to apply the new requirements to them.

For over 25 years it has been the RUS preferred design to bury outside plant (e.g., buried wire and cable telecommunications facilities and associated material) whenever economically feasible. This method of construction minimizes potential impairment of borrowers' facilities due to damage caused by storms and other natural catastrophes. Based on its long experience in this type of design, RUS proposes to adopt the policy that it will finance only buried plant for all loans unless RUS determines that buried plant is not economically feasible.

RUS further proposes to make technical corrections to final regulations which were reorganized and redesignated on September 27, 1990, at 55 FR 39393. In particular, certain regulations contained cross references which inadvertently had not been updated. This action is simply a correction to these regulations with no change to substance. Changes to regulatory text are merely to update cross references. As currently published, the final regulations may prove to be misleading.

On August 27, 1991, at 56 FR 42461, RUS published 7 CFR parts 1739 and 1746 that established pre-and post-loan policies for 90 percent RUS guarantees

of certain loans from qualified private lenders. This program was authorized under section 314 of the RE Act. The Rural Electrification Loan Restructuring Act of 1993, Public Law 103–129, signed by President Clinton on November 1, 1993, amended section 314 of the RE Act to abolish this 90 percent guarantee program. RUS is, therefore, removing 7 CFR parts 1739 and 1746.

List of Subjects

7 CFR Part 1610

Accounting, Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telecommunications.

7 CFR Part 1735

Accounting, Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telecommunications.

7 CFR Part 1737

Accounting, Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telecommunications.

7 CFR Part 1739

Accounting, Guaranteed program, Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telecommunications.

7 CFR Part 1746

Accounting, Guaranteed program, Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telecommunications.

For the reasons set forth in the preamble, and under the authority of 7 U.S.C. 901 *et. seq.*, chapters XVI and XVII of Title 7 of the Code of Federal Regulations are proposed to be amended as follows:

CHAPTER XVI

PART 1610—LOAN POLICIES

1. The authority citation for part 1610 continues to read as follows:

Authority: 7 U.S.C. 941 *et seq.*; Pub. L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941, *et. seq.*).

2. In § 1610.6, new paragraph (d) is added to read as follows:

§ 1610.6 Concurrent Bank and RUS cost-of-money loans.

* * * * *

(d) Generally, no more than 10 percent of lending authority from appropriations in any fiscal year for Bank and RUS cost-of-money loans may be loaned to a single borrower. The Bank will publish by notice in the **Federal Register** the dollar limit that may be loaned to a single borrower in that particular fiscal year based on approved Bank and RUS lending authority.

3. In § 1610.11, a new paragraph (c) is added to read as follows:

§ 1610.11 Prepayments.

* * * * *

(c) Borrowers that qualify to issue a refunding note or notes in accordance with 7 CFR 1735.43, Payments on loans, shall not be required to pay a prepayment premium on all payments made in accordance with the new payment schedule.

CHAPTER XVII

PART 1735—GENERAL POLICIES, TYPES OF LOANS, LOAN REQUIREMENTS—TELECOMMUNICATIONS PROGRAM

1. The part heading for part 1735 is revised as set forth above.

1a. The authority citation for part 1735 is revised to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*; Pub. L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et. seq.*).

2. In § 1735.2, the definition of *Construction fund* is amended by removing the reference "See 7 CFR part 1758.", the definitions for *Adjusted assets* and *Adjusted net worth* are removed, and new definitions *Cash distribution*, *Net worth*, and *Total assets* are added in alphabetical order to read as follows:

§ 1735.2 Definitions.

* * * * *

Cash distribution means investments, guarantees, extensions of credit, advances, loans, non-affiliated company joint ventures, and affiliated company investments. Not included in this definition are qualified investments (see 7 CFR part 1744, subpart D).

* * * * *

Net worth has the meaning as defined in the mortgage with RUS.

* * * * *

Total assets has the meaning as defined in the mortgage with RUS.

3. In § 1735.3, the first sentence is revised to read as follows:

§ 1735.3 Availability of forms.

Single copies of RUS forms and publications cited in this part are available from Program Support Regulatory Analysis, Rural Utilities Service, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522.

* * *

4. In § 1735.17, paragraph (c) is revised to read as follows:

§ 1735.17 Facilities financed.

* * * * *

(c) RUS will not make any type of loan to finance the following items:

(1) Station apparatus (including PBX and key systems) not owned by the borrower and any associated inside wiring;

(2) Certain duplicative facilities, see § 1735.12;

(3) Facilities to serve subscribers outside the local exchange service area of the borrower unless those facilities are necessary to furnishing or improving telecommunications service within the borrower's service areas;

(4) Facilities to provide service other than 1-party; and

(5) System designs or facilities to provide service that cannot withstand or are not designed to minimize damage caused by storms and other natural catastrophes, including, but not limited to hurricanes, floods, tornadoes, mudslides, lightning, windstorms, hail, fire, and smoke.

* * * * *

5. In § 1735.22, paragraph (g) is redesignated as new paragraph (i), paragraph (f) is revised, and new paragraphs (g) and (h) are added to read as follows:

§ 1735.22 Loan security.

* * * * *

(f) For purposes of determining compliance with TIER requirements, unless a borrower whose existing mortgage contains TIER maintenance requirements notifies RUS in writing differently, RUS will apply the requirements described in paragraph (g) of this section to the borrower regardless of the provisions of the borrower's existing mortgage.

(g) For loans approved after [effective date of final rule] loan contracts and mortgages covering hardship loans, RUS cost-of-money loans, RTB loans, and guaranteed loans will contain a provision requiring the borrower to maintain a TIER of at least 1.0 during the Forecast Period. At the end of the Forecast Period, the borrower shall be required to maintain, at a minimum, a TIER at least equal to the projected TIER determined by the feasibility study prepared in connection with the loan, but at least 1.0 and not greater than 1.5.

(h) Nothing in this section shall affect any rights of supplemental lenders under the RUS mortgage, or other creditors of the borrower, to limit a borrower's TIER requirement to a level above that established in paragraph (g) of this section.

* * * * * *

6. In § 1735.31, paragraphs (d) and (e) are redesignated as new paragraphs (e) and (f), and new paragraph (d) is added to read as follows:

§ 1735.31 RUS cost-of-money and RTB loans.

* * * * *

(d) Generally, no more than 10 percent of lending authority from appropriations in any fiscal year for RUS cost-of-money and RTB loans may be loaned to a single borrower. RUS will publish by notice in the **Federal Register** the dollar limit that may be loaned to a single borrower in that particular fiscal year based on approved RUS and RTB lending authority.

* * * * *

7. Section 1735.33 is added to read as follows:

§ 1735.33 Variable interest rate loans.

After June 10, 1991, and prior to November 1, 1993, RUS made certain variable rate loans at interest rates less than 5 percent but not less than 2 percent. For those borrowers that received variable rate loans, this section describes the method by which interest rates are adjusted. The interest rate used in determining feasibility is the rate charged to the borrower until the end of the Forecast Period for that loan. At the end of the Forecast Period, the interest rate for the loan may be annually adjusted by the Administrator upward to a rate not greater than 5 percent, or downward to a rate not less than the rate determined in the feasibility study on which the loan was based, based on the borrower's ability to pay debt service and maintain a minimum TIER of 1.0. Downward and upward adjustments will be rounded down to the nearest one-half or whole percent. To make this adjustment, projections set forth in the loan feasibility study will be revised annually by RUS (beginning within four months after the end of the Forecast Period) to reflect updated revenue and expense factors based on the borrower's current operating condition. Any such adjustment will be effective on July 1 of the year in which the adjustment was determined. If the Administrator determines that the borrower is capable of meeting the minimum TIER requirements of § 1735.22(f) at a loan interest rate of 5 percent on a loan made as described in this section, then the loan interest rate shall be fixed, for the remainder of the loan repayment period , at the standard interest rate of 5 percent.

8. In § 1735.43, paragraph (a) is revised, paragraph (b) is redesignated as new paragraph (f), and new paragraphs (b) through (e) are added to read as follows:

§ 1735.43 Payments on Loans.

(a) Except as described in this paragraph (a), RUS loans approved after [effective date of final rule] must be repaid with interest within a period that, rounded to the nearest whole year, equals the expected composite economic life of the facilities to be financed, as calculated by RUS; expected composite economic life means the depreciated life plus three years. The expected composite economic life shall be based on the depreciation rates for the facilities financed by the loan. In states where the borrower must obtain state regulatory commission approval of depreciation rates, the depreciation rates used shall be the rates currently approved by the state commission or rates for which the borrower has received state commission approval. In cases where a state regulatory commission does not approve depreciation rates, the expected composite economic life shall be based on the most recent median depreciation rates published by RUS for all borrowers (see 7 CFR 1737.70). Borrowers may request a repayment period that is longer or shorter than the expected composite economic life of the facilities financed. If the Administrator determines that, if a shorter period is likely to cause the borrower to experience hardship, the Administrator may agree to approve a period longer than requested. A shorter period may be approved as long as the Administrator determines that the loan remains feasible.

(b) Borrowers with RTB loans approved after [effective date of final rule] with a maturity that exceeds the expected composite economic life of the facilities to be financed by the loan by a period of more than three years, release of funds included in the loan shall be conditioned upon the borrower establishing and maintaining, pursuant to a plan approved by RUS, a funded reserve in such an amount that the balance of the reserve plus the value of the facilities less depreciation shall at all times be at least equal to the remaining principal payments on the loan. Funding of the reserve must begin within one year of approval of release of funds and must continue regularly over the expected composite economic life of the facilities financed.

(c) Borrowers that have demonstrated to the satisfaction of the Administrator an inability to maintain the funded reserve or net plant to secured debt ratio requirements, if any, contained in their mortgage, may elect to replace notes with an original maturity that exceeded the composite economic life of the facilities financed with notes bearing a shorter maturity approximating the expected composite economic life of the facilities financed, if this will result in a shorter maturity for the loan. The principal balance of the notes (hereinafter in this section called the "refunding notes") issued to refund and substitute for the original notes would be the unpaid principal balance of the original notes. The refunding notes would mature at a date no later than the remaining economic life of the facilities financed by the loan, plus three years. Interest on the original note must continue to be paid through the closing date. All other payment terms, including the rate of interest on the refunding notes, would remain unchanged. Disposition of funds in the funded reserve will be determined by RUS at the closing date. RUS will notify the borrower in writing of the amendment of loan payment requirements and the terms and conditions thereof.

(d) A borrower qualifying under paragraph (c) of this section shall not be required to pay a prepayment premium on such portion of the payments under its new notes as exceeds the payments required under the notes being replaced.

(e) To apply for refunding notes, borrowers must send to the Area Office the following:

(1) A certified copy of a board resolution requesting an amendment of loan payment requirements and that certain notes be replaced;

(2) If applicable, evidence of approval by the regulatory body with jurisdiction over the telecommunications service provided by the borrower to issue refunding notes; and

(3) Such other documents as may be required by the RUS.

* * * * *

9. In § 1735.46, paragraphs (b), (c) and (d) are revised, paragraphs (e) and (f) are removed, and paragraphs (g) and (h) are redesignated as paragraphs (e) and (f) to read as follows:

§ 1735.46 Loan security documents.

* * * * *

(b) Loan security documents of borrowers with loans approved after [effective date of final rule] will provide limits on allowable cash distributions in any calendar year as follows:

(1) No more than 25 percent of the prior calendar year's net earnings or margins if the borrower's net worth is at

least 1 percent of its total assets after the distribution is made;

(2) No more than 50 percent of the prior calendar year's net earnings or margins if the borrower's net worth is at least 20 percent of its total assets after the distribution is made;

(3) No more than 75 percent of the prior calendar year's net earnings or margins if the borrower's net worth is at least 30 percent of its total assets after the distribution is made; or

(4) No limit on distributions if the borrower's net worth is at least 40 percent of its total assets after the distribution is made.

(c) Borrowers that have not received a loan after [effective date of final rule] may request the Administrator to apply these requirements to them. Borrowers may request in writing that RUS substitute the new requirements described in paragraphs (b)(1) through (b)(4) of this section. Upon request by the borrower, the provisions of the borrower's loan documents restricting cash distributions or investments shall not be enforced to the extent that such provisions are inconsistent with this section.

(d) Rural development investments meeting the criteria set forth in 7 CFR part 1744, subpart D, will not be counted against a borrower's allowable cash distributions in any calendar year (7 U.S.C. 926).

* * * * *

§ 1735.60 [Amended]

10. § 1735.60, paragraph (a) introductory text is amended by removing the reference "(see 7 CFR part 1758)" and paragraph (a)(3) is removed.

§ 1735.76 [Amended]

11. § 1735.76, the second "or" is removed and the word "of" is added in its place.

PART 1737—PRE-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED TELECOMMUNICATIONS LOANS

12. The part heading for part 1737 is revised as set forth above.

13. The authority citation for part 1737 is revised to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*; Pub. L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et. seq.*).

§ 1737.70 [Amended]

14. In § 1737.70, paragraph (d) is removed and reserved.

PART 1739—[REMOVED]

15. Part 1739 is removed.

PART 1746—[REMOVED]

16. Part 1746 is removed.

Dated: February 24, 1997.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 97–5223 Filed 3–6–97; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–120–AD]

RIN 2120–AA64

Airworthiness Directives; Construcciones Aeronauticas, S.A. (CASA) Model C–212 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all CASA Model C–212 series airplanes. This proposal would require an initial inspection of the restrictor pistons on the shock absorbers of the left and right main landing gear (MLG) to determine the number and condition of threaded screw pins that are installed; replacement of any discrepant pin; and repetitive inspections of certain pistons. Modification of certain pistons by the installation of two additional pins would terminate these inspections. This proposal is prompted by reports indicating that the threaded screw pin that holds the restrictor piston on the slide tube of the shock absorber has been found to have loosened on some airplanes. The actions specified by the proposed AD are intended to prevent the loss of hydraulic damping in the MLG, due to failure of the screw pins that hold the restrictor pistons on the slide tubes of the shock absorbers, and consequent structural damage to the airplane.

DATES: Comments must be received by April 16, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–120–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Gregory Dunn, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2799; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–120–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–120–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Dirección General de Aviación (DGAC), which is the airworthiness authority for Spain, has notified the FAA that an unsafe condition may exist on all CASA Model C–212 series airplanes. The DGAC advises that it has

received reports indicating that threaded screw pins that hold the restrictor pistons on the slide tubes of the shock absorbers of the left and right main landing gear (MLG) have been found to have loosened.

The piston is held on the slide tube by either one or three screw pins. On some pistons, two of the three screw pin holes have been drilled and sealed with epoxy; on other pistons, only one screw pin hole exists.

Should the pin on a single-pin configuration become loose, the union between the piston and the slide tube may fail, causing the loss of hydraulic dampening in the MLG. This loss of hydraulic dampening, if not prevented, could result in structural damage to the airplane.

Explanation of Relevant Service Information

CASA has issued Service Bulletin SB–212–32–38, dated June 16, 1994, which describes procedures for inspecting and installing the th aded screw pins that attach the restrictor pistons to the slide tubes of the shock absorbers of the left and right MLG. This service bulletin also describes procedures for modifying restrictor pistons on which only one threaded pin is installed. This modification entails the drilling of two new holes or the unsealing of two previously-drilled holes, and the installation of two more pins. Accomplishment of this modification will strengthen the union and resistance between the piston and the slide tube, and eliminate the need for repetitive inspections.

The DGAC classified this service bulletin as mandatory and issued Spanish airworthiness directive 07/94, dated October 1994, in order to assure the continued airworthiness of these airplanes in Spain.

FAA's Conclusions

This airplane model is manufactured in Spain and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require an initial inspection of the restrictor pistons on the shock absorbers of the left and right MLG to determine the number and condition of threaded screw pins that are installed; replacement of discrepant pins; and repetitive inspections of certain pistons. Pistons on which one pin is installed would be required to be modified by drilling two new holes or unsealing two previously drilled holes, and installing two pins. This modification would terminate the requirement for repetitive inspections. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

The FAA estimates that 41 CASA Model C–212 series airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 20 work hours per airplane to accomplish the proposed actions, and the average labor rate is $60 per work hour. Required parts would cost approximately $11 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $49,651, or $1,211 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Construcciones Aeronauticas, S.A. (CASA): Docket 96–NM–120–AD.

Applicability: All Model C–212 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of hydraulic damping in the main landing gear, due to failure of the screw pins that hold the restrictor pistons on the slide tubes of the shock absorbers, and consequent structural damage to the airplane, accomplish the following:

(a) Prior to the accumulation of 600 hours time-in-service after the effective date of this AD, conduct an inspection of each restrictor piston to detect the number and condition of installed threaded screw pins; in accordance with CASA Service Bulletin SB–212–32–38, dated June 16, 1994. Prior to further

flight, replace any loose pin, in accordance with the service bulletin and accomplish the following, as applicable:

(1) For any piston on which three threaded screw pins are installed: No further action is required by this AD for this piston.

(2) For any piston on which one pin is installed and two holes are sealed with epoxy: Remove the epoxy, and install two additional threaded screw pins, in accordance with the service bulletin. Thereafter, no further action is required by this AD for this piston.

(3) For any piston on which one pin is installed and no other holes exist:

(i) Repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 600 hours time-in-service until the modification required by paragraph (a)(3)(ii) of this AD is accomplished.

(ii) Prior to the accumulation of 1,800 hours time-in-service after the effective date of this AD, or within 3 years after the effective date of this AD, whichever occurs later, modify this piston in accordance with the service bulletin. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirements of paragraph (a)(3)(i) of this AD. Thereafter, no further action is required by this AD with regard to that piston.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 28, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–5574 Filed 3–6– 97; 8:45 am]

BILLING CODE 4910–13–U

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–201–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all McDonnell Douglas Model MD–90–30 airplanes. This proposal would require revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness [MD–90–30 Airworthiness Limitations Instructions (ALI)]. The revision would incorporate certain compliance times for inspections to detect fatigue cracking of principal structural elements (PSE) and to add PSE's to the ALI. This proposal is prompted by analysis of data that identified reduced initial inspection thresholds, reduced repetitive inspection intervals for PSE's, and other PSE's to be added to the ALI. The actions specified by the proposed AD are intended to ensure that fatigue cracking of various PSE's are detected and corrected; such fatigue cracking could adversely affect the structural integrity of these airplanes.

DATES: Comments must be received by April 16, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–201–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Brent Bandley, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5237; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–201–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–201–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In accordance with airworthiness standards requiring "damage tolerance assessments" [reference current section 1529 of parts 23, 25, 27, and 29 of the Federal Aviation Regulations (FAR); section 4 of parts 33 and 35 of the FAR; section 82 of part 31 of the FAR; and the Appendices referenced in those sections], all products certificated to comply with those sections must have Instructions for Continued Airworthiness (or, for some products, maintenance manuals), that include an Airworthiness Limitations Section. That section must set forth:

- mandatory replacement times for structural components,
- structural inspection intervals, and
- related approved structural inspection procedures necessary to show compliance with the damage-tolerance requirements.

Compliance with the terms specified in the Airworthiness Limitations Sections is required by FAR sections 43.16 (for persons maintaining products) and 91.403 (for operators).

As airplanes gain service experience, or as the result of post-certification testing and evaluation, it may become necessary to add additional life limits or structural inspections in order to ensure the continued structural integrity of the airplane. The manufacturer may revise the Airworthiness Limitations Section to include new or more restrictive life limits and inspections. However, in order to require compliance with those revised life limits and/or inspection intervals, the FAA must engage in rulemaking.

Because loss of structural integrity would result in an unsafe condition, it is appropriate to impose these requirements through the AD process.

Actions Taken by the Manufacturer

McDonnell Douglas recently has completed extensive analyses and testing of fatigue cracking of Principal Structural Elements (PSE) on Model MD–90–30 airplanes, which included:

- crack growth analysis,
- service experience analysis,
- crack growth testing,
- fatigue testing, and
- analysis of the effectiveness of applicable non-destructive inspection techniques to detect cracking and other anomalies.

The analyses and testing were similar to methods used to develop the initial MD–90 Airworthiness Limitations Instructions (ALI), Document No. MDC–94K9000, dated November 1994.

The results of the testing and analyses demonstrated the need to revise certain inspections contained in the current ALI.

New Revisions of Airworthiness Limitations Instructions (ALI)

The FAA has reviewed and approved MD–90 ALI, Revision 1, dated January 1995, and Revision 2, dated July 1996. These revisions describe specific reduced initial inspection thresholds and reduced repetitive inspection intervals for certain PSE's. They also include additional PSE's to be inspected.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require operators to revise the MD–90 ALI to incorporate Revision 1, dated January 1995, and Revision 2, dated July 1996.

Explanation of Action Taken by the FAA

As stated previously, in order to require compliance with these inspection intervals and life limits, the FAA must engage in rulemaking, namely the issuance of an AD. For products certificated to comply with the referenced part 25 requirements, it is within the authority of the FAA to issue an AD requiring a revision to the Airworthiness Limitations Section that includes reduced life limits, or new or different structural inspection requirements. These revisions then are mandatory for operators under section 91.403(c) of the FAR, which prohibits operation of an airplane for which Airworthiness Limitations have been issued unless the inspection intervals specified in those limitations have been complied with.

Once that document is revised, as required, and the AD has been fully complied with, the life limit or structural inspection change remains enforceable as a part of the Airworthiness Limitations. (This is analogous to AD's that require changes to the Limitations Section of the Airplane Flight Manual.)

Requiring a revision of the Airworthiness Limitations, rather than requiring individual inspections, is advantageous for operators because it allows them to record AD compliance status only once—at the time they make the revision—rather than after every inspection. It also has the advantage of keeping all Airworthiness Limitations, whether imposed by original certification or by AD, in one place within the operator's maintenance program, thereby reducing the risk of non-compliance because of oversight or confusion.

Cost Impact

There are approximately 15 Model MD–90 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 11 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $660, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 96–NM–201–AD.

Applicability: All Model MD–90–30 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area

subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure continued structural integrity of these airplanes, accomplish the following:

(a) Within 180 days after the effective date of this AD, revise the Airworthiness Limitations Section of the Instructions for Continued Airworthiness [Airworthiness Limitations Instructions (ALI), McDonnell Douglas Report No. MDC–94K9000, dated November 1994] to incorporate the Item, Location, and Inspection Interval of the following principal structural elements: This may be accomplished by inserting a copy of Revision 1 of the ALI, dated January 1995, or a copy of this AD into the ALI.

Item	Location	Inspection interval (in landings)	
		Initial	Repeat
Item 53.30.02.3	Skin Panels, STA 237 to 1395 Fuselage Skin in Constant Section from Longeron 3 Left to Longeron 3 Right.	60,000	11,000
Item 53.30.02.4	Skin Panels, STA 237 to 1395 Fuselage Hoop Skin Splice in Constant Section from Longeron 5 Left to Longeron 5 Right.	60,000	30,000
Item 54.10.04.1	Thrust Bulkhead, Pylon—STA Yn 170.5—Rear Spar and Engine Thrust Support Fitting (Upper and Lower).	15,000	4,500

(b) Within 180 days after the effective date of this AD, revise the Airworthiness Limitations Section of the Instructions for Continued Airworthiness [Airworthiness Limitations Instructions (ALI), McDonnell Douglas Report No. MDC–94K9000, dated November 1994] to incorporate the Item, Location, and Inspection Interval of the following principal structural elements: This may be accomplished by inserting a copy of Revision 2 to the ALI, dated July 1996, or a copy of this AD into the ALI.

Item	Location	Inspection interval (in landings)	
		Initial	Repeat
Item 55.13.01.1	Plates/Skin—Upper STA Xh 27.2 Left to Xh 27.2 Right—Upper Aft Skin Plank with Integral Stringers from Xh 7.234 to Xh 26.859.	60,000	8,100

(c) Except as provided in paragraph (d) of this AD: After the actions specified in paragraphs (a) and (b) of this AD have been accomplished, no alternative inspections or inspection intervals may be approved for the parts specified in paragraphs (a) and (b) of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 28, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–5573 Filed 3–6–97; 8:45 am]

BILLING CODE 4910–13–U

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–203–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9 and DC–9–80 Series Airplanes, Model MD–88 Airplanes, and C–9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to McDonnell Douglas Model DC–9 and DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (military) series airplanes. This proposal would require repetitive high frequency eddy current inspections of the external areas of the fuselage to detect cracks of the skin and/or longeron, and various follow-on actions. The proposal also would require the installation of a preventative modification, which would terminate the repetitive inspections. This proposal is prompted by reports indicating that, due to material fatigue caused by installation preload and cabin pressurization cycles, fatigue cracks were found in the skin and longerons of the fuselage. The actions specified by the proposed AD are intended to prevent such fatigue cracks, which could result in loss of the structural integrity of the fuselage and, consequently, lead to rapid depressurization of the airplane.

DATES: Comments must be received by April 16, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No.96–NM–203–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Brent Bandley, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5237; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–203–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–203–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received several reports indicating that, on certain McDonnell Douglas Model DC–9 series airplanes, cracks were found in the skin and longerons of the fuselage. The cracked fuselage skin was found on airplanes that had accumulated 61,345 or more total landings. The cracked fuselage longerons were found on airplanes that had accumulated 45,850 or more total landings. The cracking occurred between longeron 5 left and longeron 8 right, between stations Y=160.000 and Y=218.000. Investigation revealed that the apparent cause of such cracking has been attributed to material fatigue, as a result of installation preload and cabin pressurization cycles. This condition, if not detected and corrected in a timely manner, could result in loss of the structural integrity of the fuselage and, consequently, lead to rapid depressurization of the airplane.

The subject area on certain McDonnell Douglas Model DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (military) series airplanes is identical to that on the affected Model DC–9 series airplanes. Therefore, all of these airplanes may be subject to the same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Service Bulletin 53–235, dated September 15, 1993. The service bulletin describes procedures for performing repetitive high frequency eddy current (HFEC) inspections of the external areas of the fuselage skin to detect cracks of the skin and/or longeron between stations Y=160.000 and Y=218.000 and various follow-on actions. (These follow-on actions include repetitive inspections or installation of a preventative modification, and repair of cracked skin or longerons.) The service bulletin also describes procedures for installation of a preventative modification, which would eliminate the need for repetitive inspections. The preventative modification involves installation of clips and doublers between certain stations. Accomplishment of the preventative modification will minimize the possibility of further crack development.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require repetitive HFEC inspections of the external areas of the fuselage skin to detect cracks of the skin and/or longeron between stations Y=160.000 and Y=218.000, and various follow-on actions. The proposed AD also would require the installation of a preventative modification, which would constitute terminating action for the repetitive inspection requirements. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Differences Between the Proposal and the Referenced Service Information

This proposed AD would differ from the referenced service bulletin in that it would mandate the accomplishment of the terminating preventative modification for the repetitive inspections. The service bulletin provides that action only as optional procedure.

Mandating the terminating action is based on the FAA's determination that long term continued operational safety will be better assured by modifications or design changes to remove the source of the problem, rather than by repetitive inspections. Long term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has led the FAA to consider placing less emphasis on special procedures and more emphasis on design improvements. The proposed modification requirement is in consonance with these considerations.

Cost Impact

There are approximately 1,728 McDonnell Douglas Model DC–9 and DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (military) series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,152 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 16 work hours per airplane to accomplish the proposed HFEC inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the HFEC inspection proposed by this AD on U.S. operators is estimated to be $1,105,920, or $960 per airplane, per inspection cycle.

It would take approximately 89 work hours per airplane to accomplish the proposed modification, at an average labor rate of $60 per work hour. The cost of required parts would range from $13,771 to $15,292 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be between $22,015,872

($19,111 per airplane) and $23,768,064 ($20,632 per airplane).

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 96–NM–203–AD.

Applicability: Model DC–9–10, -20, -30, -40, and -50 series airplanes; Model DC–9–81 (MD–81), -82 (MD–82), -83 (MD–83), and -87 (MD–87) series airplanes; Model MD–88 airplanes; and C–9 (military) series airplanes; as listed in McDonnell Douglas DC–9 Service Bulletin 53–235, dated September 15, 1993; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracks in the skin and longerons of the fuselage, which could result in loss of the structural integrity of the fuselage and, consequently, lead to rapid depressurization of the airplane, accomplish the following:

(a) Prior to the accumulation of 30,000 total landings, or within 8,000 landings after the effective date of this AD, whichever occurs later, perform a high frequency eddy current (HFEC) inspection of the external areas of the fuselage to detect cracks of the skin and/or longeron between stations Y=160.000 and Y=218.000, in accordance with McDonnell Douglas DC–9 Service Bulletin 53–235, dated September 15, 1993.

(b) *Condition 1 (No Cracks).* If no crack is detected during any inspection required by this AD, accomplish either paragraph (b)(1) or (b)(2) of this AD, in accordance with McDonnell Douglas DC–9 Service Bulletin 53–235, dated September 15, 1993.

(1) *Condition 1, Option I (Repetitive Inspection).* Repeat the HFEC inspection required by paragraph (a) of this AD, and the aided visual inspection specified in paragraph 2.E. of the Accomplishment Instructions of the service bulletin, at intervals not to exceed 10,000 landings.

(2) *Condition 1, Option II (Terminating Action Modification).* Accomplish the preventative modification installation of clips and doublers between stations Y=160.000 and Y=218.000, in accordance with the service bulletin. Accomplishment of the modification constitutes terminating action for the repetitive inspection requirements of this AD.

(c) *Condition 2 (Skin Cracks).* If any skin crack is detected during any inspection required by this AD, prior to further flight, repair it in accordance with McDonnell Douglas DC–9 Service Bulletin 53–235, dated September 15, 1993. After repair, accomplish either paragraph (b)(1) or (b)(2) of this AD.

(d) *Condition 3 (Longeron Cracks).* If any longeron crack is detected during any inspection required by this AD, prior to further flight, repair it in accordance with McDonnell Douglas DC–9 Service Bulletin 53–235, dated September 15, 1993. After repair, accomplish either paragraph (b)(1) or (b)(2) of this AD.

(e) Prior to the accumulation of 100,000 total landings, or within 4 years after the effective date of this AD, whichever occurs later, accomplish the preventative modification specified in paragraph 2.J. of the Accomplishment Instructions of McDonnell Douglas DC–9 Service Bulletin 53–235, dated September 15, 1993. Accomplishment of the modification constitutes terminating action for the requirements of this AD.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 28, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–5572 Filed 3–6–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

RIN 1076–AD14

25 CFR Part 290

Tribal Revenue Allocation Plans

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed Rule; Extension of Comment Period; Correction.

SUMMARY: This notice corrects a discrepancy in the notice published on February 20, 1997, that extended the comment period for the proposed rule. The proposed rule would establish procedures for submission, review, and approval of tribal plans for distributing revenues from gaming activities.

DATES: Comments must be received on or before March 24, 1997.

ADDRESSES: Mail comments to George Skibine, Director, Indian Gaming Management Staff Office, Bureau of Indian Affairs, 1849 C Street NW, MS 2070–MIB, Washington, DC 20240.

Comments may be hand delivered to the same address from 9:00 a.m. to 4:00 p.m. Monday through Friday or sent by facsimile to 202–273–3153.

FOR FURTHER INFORMATION CONTACT: Nancy Pierskalla, Management Analyst, Indian Gaming Management Staff Office, at 202–219–4068.

SUPPLEMENTARY INFORMATION: On Friday, June 7, 1996, the Bureau of Indian Affairs published a proposed rule, 61 FR 29044, concerning Tribal Revenue Allocation Plans. The deadline for receipt of comments was August 6, 1996. On Thursday, February 20, 1997, the Bureau published a notice at 62 FR 7742 to extend the comment period until March 24, 1997. The notice published on February 20 incorrectly stated in the **SUPPLEMENTARY INFORMATION** section of the preamble that the deadline for receipt of comments was March 7, 1997. Accordingly, on page 7742, in the first and second column, the final sentence in the **SUPPLEMENTARY INFORMATION** section is corrected to read: "The comment period is reopened to allow consideration of the comments received after August 6, 1996, and additional comments received on or before March 24, 1997."

Dated: March 3, 1997.

George Skibine,

Director, Indian Gaming Management Staff.

[FR Doc. 97–5588 Filed 3–6–97; 8:45 am]

BILLING CODE 4310–02–M

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 130–97]

Exemption of Records Systems Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice proposes to exempt a Privacy Act system of records from subsections (c)(3) and (4); (d); (e)(1), (2), (3), (5) and (8); and (g) of the Privacy Act, 5 U.S.C. 552a. This system of records is maintained by the Immigration and Naturalization Service (INS) and is entitled "Office of Internal Audit Investigations Index and Records, JUSTICE/INS–002." Information in this system relates to official Federal investigations and law enforcement matters of the Office of Internal Audit of the INS, pursuant to the Inspector General Act of 1978, 5 U.S.C. App., as amended by the Inspector General Act amendments of 1988. The exemptions are necessary to avoid interference with certain internal law enforcement functions of the INS for which records falling within the scope of subsections (j)(2) and (k)(2) may be generated. Specifically, the exemptions are necessary to prevent subjects of investigations from frustrating the investigatory process; to preclude the disclosure of investigative techniques; to protect the identities and physical safety of confidential informants and of law enforcement personnel; to ensure OIA's ability to obtain information from information sources; and to protect the privacy of third parties.

DATES: Submit any comments by April 7, 1997.

ADDRESSES: Address all comments to Patricia E. Neely, Program Analyst, Information Management and Security Staff, Justice Management Division, Department of Justice, Washington, D.C. 20530 (Room 850, WCTR Building).

FOR FURTHER INFORMATION CONTACT: Patricia E. Neeley 202–616–0178.

SUPPLEMENTARY INFORMATION: In the notice section of today's **Federal Register,** the Department of Justice provides a description of the "Office of Internal Audit Investigations Index and Records, JUSTICE/INS–002."

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–602, it is hereby stated that the order will not have "a significant economic impact on a substantial number of small entities."

List of Subjects in Part 16

Administrative practices and procedures, Courts, Freedom of Information Act, Government in the Sunshine Act, and the Privacy Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, it is proposed to amend part 16, of title 28 of the Code of Federal Regulations as set forth below.

Dated: February 11, 1997.

Stephen R. Colgate,

Assistant Attorney General for Administration.

1. The authority for part 16 continues to read as follows:

Authority: 5 U.S.C. 401, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534, 31 U.S.C. 3717, 9701.

2. It is proposed to amend 28 CFR 16.99 by adding paragraphs (g) and (h) to read as follows:

§ 16.99 Exemption of the Immigration and Naturalization Service Systems-limited access.

* * * * *

(g) The Office of Internal Audit Investigations Index and Records (Justice/INS–002) system of records is exempt under the provisions of 5 U.S.C. 552a(j)(2) from subsections (c) (3) and (4); (d); (e) (1), (2), (3), (5) and (8); and (g), but only to the extent that this system contains records within the scope of subsection (j)(2), and to the extent that records in the system are subject to exemption therefrom. In addition, this system of records is also exempt under the provisions of 5 U.S.C. 552a(k)(2) from subsections (c)(3); (d); and (e)(1), but only to the extent that this system contains records within the scope of subsection (k)(2), and to the extent that records in the system are subject to exemption therefrom.

(h) The following justifications apply to the exemptions from particular subsections:

(1) From subsection (c)(3) because the release of the disclosure accounting for disclosure could permit the subject of an actual or potential criminal or civil investigation to obtain valuable information concerning the existence and nature of the investigation, the fact that individuals are subjects of the investigation, and present a serious impediment to law enforcement.

(2) From subsection (c)(4) to the extent that the exemption from subsection (d) is applicable. Subsection (c)(4) will not be applicable to the extent that records in the system are properly withholdable under subsection (d).

(3) From the access and amendment provisions of subsection (d) because access to the records contained in this system of records could inform the subject of a criminal or civil investigation of the existence of that investigation; of the nature and scope of the information and evidence obtained as to their activities; of the identity of confidential sources, witnesses and law enforcement personnel; and of information that may enable the subject to avoid detection or apprehension. Such disclosures would present a serious impediment to effective law enforcement where they prevent the successful completion of the investigation; endanger the physical safety of confidential sources, witnesses, and law enforcement personnel; and/or lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony. In addition, granting access to these records could result in a disclosure that would constitute an unwarranted invasion of the privacy of third parties.

Amendment of the records would interfere with ongoing investigations and law enforcement activities and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(4) From subsection (e)(1) because in the course of criminal or civil investigations, the Immigration and Naturalization Service often obtains information concerning the violation of laws other than those relating to violations over which INS has investigative jurisdiction. In the interests of effective law enforcement, it is necessary that INS retain this information since it can aid in establishing patterns of criminal activity and provide valuable leads for those law enforcement agencies that are charged with enforcing other segments of the criminal law.

(5) From subsection (e)(2) because in a criminal investigation, the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be placed on notice of the existence of the investigation and would therefore be able to avoid detection or apprehension.

(6) From subsection (e)(3) because the requirement that individuals supplying information be provided with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to criminal law enforcement in that it could compromise the existence of a confidential investigation, reveal the identify of confidential sources of information and endanger the life or physical safety of confidential informants.

(7) From subsection (e)(5) because in the collection of information for criminal law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined in a court of law. The restrictions of subsection (e)(5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment in reporting on investigations and impede the development of criminal intelligence necessary for effective law enforcement.

(8) From subsection (e)(8) because the individual notice requirements of subsection (e)(8) could present a serious impediment to criminal law enforcement as this could interfere with the Immigration and Naturalization Service's ability to issue administrative subpoenas and could reveal investigative techniques and procedures.

(9) From subsection (g) for those portions of this system of records that were compiled for criminal law enforcement purposes and which are subject to exemption from the access provisions of subsection (d) pursuant to subsection (j)(2).

[FR Doc. 97–5663 Filed 3–6–97; 8:45 am]
BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP MIAMI 96–054]

RIN 2115–AA97

Safety Zone; Port Everglades; Fort Lauderdale, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish moving safety zones around naval aircraft carriers transiting the waters of Port Everglades, Fort Lauderdale, Florida. These proposed regulations are needed to protect all vessels and the public from the safety hazards associated with the arrival and departure of naval aircraft carriers making port calls. During arrival and departure, these types of vessels require the use of the center channel in Port Everglades for safe navigation and leave no room for other vessels to safely pass. Therefore, these proposed regulations are necessary for the safety of life on the navigable waters.

DATES: Comments must be received on or before May 6, 1997.

ADDRESSES: Comments may be mailed to Commanding Officer, U.S. Coast Guard, Marine Safety Office, Claude Pepper Federal Building., 51 SW 1st Ave., 5th Floor, Miami, FL 33130–1608, or may be hand delivered to Room 501 at the same address, between 8 A.M. and 4 P.M., Monday through Friday, except federal holidays. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: CDR R.M. Miles, Chief, Port Management and Response Department, USCG Marine Safety Office Miami at (305) 535–8743.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice [COTP MIAMI 96–054], the specific section of this proposal to which their comments apply and give reasons for each comment. The Coast Guard requests that all comments and attachments be submitted in an 8½" × 11" unbound format suitable for copying and electronic filing. If that is not practical, a second copy of any bound material is requested. Persons requesting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelop. The Coast Guard will consider all comments received during the comment period. The regulations may be changed in view of the comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal.

No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will add to the rulemaking process.

Discussion of Proposed Regulations

These proposed regulations are needed to provide for the safety of life on the navigable waters during the arrival and departure of naval aircraft carriers in Port Everglades, Fort Laurderdale, Florida. These moving safety zones are necessary, because of the significant risks associated with naval aircraft carriers transiting the area due to their size, draft, and channel restrictions. Historically, the Coast Guard has established a moving safety zone each time these class of naval vessels has transited the waters of Port Everglades both to and from a port call. Given the recurring nature of these port calls and the safety dangers associated with naval aircraft carriers, the Coast Guard proposes to establish a moving safety zone around these vessels during their arrival and departure from Port Everglades, Fort Lauderdale, Florida.

The proposed moving safety zone would be established in an area 700 yards forward, 500 yards astern and 350 yards on either side of naval aircraft carriers entering or departing Port Everglades. The proposed safety zone regulations would only be established for a period of one and a half hours during the arrival and departure of these vessels. The Coast Guard would assign a patrol and issue a Broadcast Notice to Mariners to advise mariners of established safety zone in advance of the naval aircraft carrier's arrival and departure. This proposed safety zone would be effective only during the time indicated in the Broadcast Notice to Mariners.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the limited duration of the moving safety zone, the extensive advisories that would be made to the affected maritime community and the minimal restrictions the safety zone regulations would place on vessel traffic. These regulations would be effective for a total of approximately 1½ hours for each inbound or outbound transit by a total of naval aircraft carrier.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under Section 3 of the Small Business Act (15 U.S.C. 632).

The Coast Guard certifies under 5 U.S.C. 605 (b) that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities. These proposed regulations would have a limited effect on small entities, because of the limited duration of the proposed regulations, the extensive advisories that would be made to the affected maritime community and the minimal restrictions the safety zone regulations would place on vessel traffic.

Collection of Information

These proposed regulations contain no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This proposal has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that the proposed rulemaking does not have sufficient Federalism implication to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal and has concluded that under paragraph 2.B.2.e(34)(b) of Commandant Instruction M16475.1B (as revised by 59 FR 38654, July 29 1994), this proposal is categorically excluded from further environmental documentation. Pursuant to 2.B.2.e(34)(g) of Commandant Instruction M16475.1B, a Categorical Exclusion Determination and Environmental Analysis Checklist has been created. Both the Categorical Exclusion Determination and Environmental Analysis Checklist are available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

Proposed Regulations

For the reasons stated in the Preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new section § 165.711 is added to read as follows:

§ 165.711 Safety Zone; Port Everglades, Fort Lauderdale, Fl.

(a) *Regulated Area.* A moving safety zone is established in the following area:

(1) Around naval aircraft carriers entering Port Everglades in an area 700 yards forward, 560 yards astern and 350 yards on either side of the vessel beginning at the Port Everglades Sea Buoy, in approximate position 26°–05.5′N, 80°–04.8′W, and continuing until the vessel is safely moored, in approximate position 26°–04.9′N, 80°–06.9′W. All coordinates referenced use datum: NAD 83.

(2) Around naval aircraft carriers departing Port Everglades in an area 700 yards forward, 500 yards astern and 350 yards on either side beginning at the pier, in approximate position 26°–04.9′N, 80°–06.9′W, and continuing until the stern passes the Port Everglades Sea Buoy, in approximate position 26°–05.5′N, 80°–04.8′W. All coordinates referenced use datum: NAD 83.

(b) *Regulations.* (1) No person or vessel may enter, transit, or remain in the safety zone unless authorized by the Captain of the Port, Miami, Florida, or a Coast Guard commissioned, warrant, or petty officer designated by him.

(2) Vessels encountering emergencies which require transit through the moving safety zone should contact the Coast Guard patrol craft on VHF Channel 16. In the event of an emergency, the Coast Guard patrol craft may authorize a vessel to transit through the safety zone with a Coast Guard designated escort.

(3) All persons and vessels shall comply with the instructions of on-scene patrol personnel. On-scene patrol personnel include Coast Guard commissioned, warrant, or petty officers. Coast Guard Auxiliary and local or state officials may be present to inform vessel operators of this regulation and other applicable laws.

Dated: December 6, 1996.

D.F. Miller,

Captain, U.S. Coast Guard, Captain of the Port, Miami, FL.

[FR Doc. 97–5718 Filed 3–6–97; 8:45 am]
BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 098–4032; FRL–5700–1]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; 15 Percent Rate-of-Progress Plan and 1990 VOC Emission Inventory for the Pittsburgh Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking, correction.

SUMMARY: This action corrects and clarifies the proposed action which was published on Wednesday, January 22, 1997 (62 FR 3254–3260). This action pertains to the State Implementation

Plan (SIP) revision submitted by Pennsylvania on March 22, 1996 consisting of the 15% Rate-of-Progress Plan and the 1990 Volatile Organic Compound 1990 Emission Inventory (the 15% Plan SIP) for the Pittsburgh-Beaver Valley ozone nonattainment area.

DATES: March 7, 1997.

FOR FURTHER INFORMATION CONTACT: Marcia L. Spink, (215)566–2104.

SUPPLEMENTARY INFORMATION:

Background

On January 22, 1997 (62 FR 3254–3260), EPA published a notice of proposed rulemaking proposing conditional approval of the 15% Plan SIP revision submitted by the Pennsylvania Department of Environmental Protection (PADEP) on March 22, 1996 consisting of the 15% Plan and 1990 Volatile Organic Compound (VOC) Emission Inventory for the Pittsburgh-Beaver Valley ozone nonattainment area (the Pittsburgh area).

Need for Correction/Clarification

As published, the January 22, 1997 proposal notice states that EPA is proposing conditional approval of the 15% Plan SIP revision for the Pittsburgh area. In fact, the notice should read that EPA is proposing conditional interim approval of this SIP revision. The error is typographical in nature; the notice clearly indicates and fully explains that this 15% Plan SIP relies upon reductions from the enhanced Inspection & Maintenance (I/M) SIP submitted by Pennsylvania. Therefore, as indicated in the January 22, 1997 proposal notice, approval of the 15% Plan SIP for the Pittsburgh area approval is dependent upon approval of Pennsylvania's enhanced I/M SIP. On October 3, 1996 (61 FR 51638), EPA proposed conditional interim approval of Pennsylvania's enhanced I/M SIP. On January 28, 1997 (62 FR 4019), EPA promulgated final conditional interim approval of Pennsylvania's enhanced I/M SIP. Given that full final approval of the 15% Plan SIP is dependent and conditioned upon full final approval of enhanced I/M SIP, EPA must keep its actions on both SIP revisions consistent.

Correction/Clarification of Publication

Accordingly, the notice of proposed rulemaking published on January 22, 1997 (62 FR 3254–3260, FR Doc. 97–1493), is being corrected throughout its text to read that EPA is proposing conditional interim approval of the 15% Plan SIP for the Pittsburgh area.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and, is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

EPA does not believe that it is necessary to subject this corrective action pertaining to the 15% Plan SIP for the Pittsburgh area to notice-and-comment requirements. Under the Administrative Procedure Act or any other statute, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: February 25, 1997.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

[FR Doc. 97–5621 Filed 3–6–97; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[OR59–7274b, OR60–7275b; FRL–5696–7]

Approval and Promulgation of State Implementation Plans: Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by the State of Oregon for the purpose of approving two source-specific Reasonably Available Control Technology (RACT) volatile organic compound (VOC) emissions standards: Cascade General, Inc., a ship repair yard in Portland, Oregon; and, White Consolidated, Inc. (doing business as Schrock Cabinet Co.) a wood cabinet manufacturing facility in Hillsboro, Oregon. These SIP revisions are required by the Clean Air Act (CAA) and were submitted by the State. In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP revisions as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action.

DATES: Comments on this proposed rule must be received in writing by April 7, 1997.

ADDRESSES: Written comments should be addressed to Montel Livingston, Environmental Protection Specialist (OAQ–107), Office of Air Quality, at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 10, Office of Air Quality, 1200 6th Avenue, Seattle, WA 98101.

Oregon Department of Environmental Quality, 811 S.W. Sixth Avenue, Portland, OR 97204–1390.

FOR FURTHER INFORMATION CONTACT: Denise Baker, Office of Air Quality (OAQ–107), EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553–8087.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

Dated: February 21, 1997.

Jane S. Moore,

Acting Regional Administrator.

[FR Doc. 97–5643 Filed 3–6–97; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[OR65–7280; FRL–5700–8]

Approval and Promulgation of Air Quality Implementation Plans: Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the State of Oregon

Implementation Plan. This revision establishes and requires a source-specific Reasonably Available Control Technology (RACT) volatile organic compound (VOC) emissions standard for PCC Structurals, Inc., Large Parts Campus, at 4600 SE Harney Drive, Portland, Oregon. This action is being taken under Part D of the Clean Air Act.

DATES: Comments must be received on or before April 7, 1997.

ADDRESSES: Written comments should be addressed to: Montel Livingston, SIP Manager, Office of Air Quality (OAQ–107), U. S. Environmental Protection Agency (EPA), Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101. Copies of the documents relevant to this action are available for public inspection during normal business hours at EPA Region 10, Office of Air Quality, 1200 Sixth Avenue, Seattle, Washington, 98101, and the Oregon Department of Environmental Quality, 811 S.W. Sixth Avenue, Portland, Oregon 97204–1390.

FOR FURTHER INFORMATION CONTACT: Denise Baker, Office of Air Quality (OAQ–107), EPA, Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101, phone (206) 553–8087.

SUPPLEMENTARY INFORMATION:

Background

Section 172 (a)(2) and (b)(3) of the Clean Air Act (CAA), as amended in 1977 (1977 Act), required sources of VOC to install, at a minimum, RACT in order to reduce emissions of this pollutant. EPA has defined RACT as the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility (44 FR 53761, September 17, 1979). EPA has developed Control Technology Guidelines (CTGs) for the purpose of informing State and local air pollution control agencies of air pollution control techniques available for reducing emissions of VOC from various categories of sources. Each CTG contains recommendations to the States of what EPA calls the "presumptive norm" for RACT. This general statement of agency policy is based on EPA's evaluation of the capabilities of, and problems associated with, control technologies currently used by facilities within individual source categories. EPA has recommended that the States adopt requirements consistent with the presumptive norm level.

On March 3, 1978, the entire Portland-Vancouver Interstate Air Quality Maintenance Area was designated by EPA as a non-attainment area for ozone. The Portland-Vancouver Interstate Air Quality Maintenance Area contains the urbanized portions of three counties in Oregon (Clackamas, Multnomah, and Washington) and one county (Clark) in the State of Washington.

The 1977 Act required States to submit plans to demonstrate how they would attain and maintain compliance with national ambient air standards for those areas designated non-attainment. The 1977 Act further required these plans to demonstrate compliance with primary standards no later than December 31, 1982. An extension up to December 31, 1987, was possible if the State could demonstrate that, despite implementation of all reasonably available control measures, the December 31, 1982, date could not be met.

On October 7, 1982, EPA approved the Portland-Vancouver area ozone attainment plan, including an extension of the attainment date to December 31, 1987 (47 FR 44262).

On June 15, 1988, pursuant to Section 110(a)(2)(H) of the pre-amended CAA, former EPA Regional Administrator Robie Russell notified the State of Oregon by letter that the State Implementation Plan (SIP) for the Portland-Vancouver area was substantially inadequate to provide for timely attainment of the National Ambient Air Quality Standards (NAAQS). In that letter, EPA identified specific actions needed to correct deficiencies in State regulations to require RACT for sources of VOC. When the CAA was amended in 1990, it required States to correct deficiencies. In amended Section 182(a)(2)(A), Congress statutorily adopted the requirement that ozone non-attainment areas fix their deficient RACT rules for ozone. Areas designated non-attainment before the effective date of the amendments, and which retained that designation and were classified as marginal or above as of the effective date, are required to meet the RACT fix-up requirement. Under Section 182(a)(2)(A), States with such non-attainment areas were mandated to correct their RACT requirements by May 15, 1991. The corrected requirements were to be in compliance with Section 172(b), as it existed before the amendments, and as that section was interpreted in the pre-amendment guidance. The Portland part of the Portland-Vancouver non-attainment area is classified as marginal. Therefore, this area is subject to the RACT fix-up requirement and the May 15, 1991, deadline.

On May 15, 1991, the State of Oregon submitted Oregon Administrative Rules (OAR) 340–22–100 through 340–22–220, General Emission Standards for Volatile Organic Compounds, as an amendment to the Oregon SIP. On September 29, 1993, EPA approved these revisions to the Oregon SIP (58 FR 50848). Part of these amended rules included a requirement for RACT for non-CTG sources.

On February 3, 1997, the Oregon Department of Environmental Quality (ODEQ) submitted to EPA a proposed revision to its SIP. This proposed revision was a draft source-specific revision to the State of Oregon Clean Air Act Implementation Plan, OAR 340–020–0047, and was submitted pursuant to 40 CFR 51.103.

The proposed revision consists of a RACT determination for PCC Structurals, Inc., Large Parts Campus, at 4600 SE Harney Drive, Portland, Oregon. This RACT determination establishes requirements that are part of the Portland-Vancouver Air Quality Maintenance Plan which EPA is proposing to approve in a separate action. As this RACT determination is still in draft, ODEQ has requested that it be approved through the parallel processing procedures contained in 40 CFR Part 51, Appendix V.

The proposed RACT determination for PCC Structurals, Inc., would modify existing operating permit #26–1867 by: 1) requiring (within one year of approval of RACT determination by EPA) that PCC Structurals, Inc., provide controls to reduce the VOC emissions from the Large Parts Campus Steel and Titanium (LPC–S and LPC–T) investment casting operations by a minimum of 90 percent; 2) requiring PCC Structurals, Inc., to submit (within 90 days of EPA approval) to ODEQ a final control strategy concerning the VOC emissions from the investment casting operations. [This plan would include a schedule and dates of the project interim steps leading up to compliance with 1, above.]; and 3) stipulating the method by which PCC Structurals, Inc., may demonstrate compliance with 1, above. (For more information, see conditions 12, 13, and 19 through 22, of addendum #2 to operating permit #26–1867, issued by ODEQ.)

This **Federal Register** document proposes to approve these permit conditions as amendments to the SIP. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rule-making

procedure by submitting written comments to the EPA Regional Office listed in the **ADDRESSES** section of this notice.

This revision is being proposed under a procedure called parallel processing, whereby EPA proposes rule-making action concurrently with the State's procedures for amending its regulations. If the proposed revision is substantially changed in areas other than those identified in this notice, EPA will evaluate those changes and may publish another notice of proposed rule-making. If no substantial changes are made other than those areas cited in this notice, ODEQ will publish a Final Rule-making Notice on the revisions. The final rule-making action by EPA will occur only after the SIP revision has been adopted by ODEQ and submitted formally to EPA for incorporation into the SIP.

Proposed Action

EPA is proposing to approve the revisions to the State of Oregon Implementation Plan submitted on February 3, 1997, that establish RACT requirements for PCC Structurals, Inc. EPA is proposing this rule-making action concurrently with the State's procedures for amending its regulations. EPA will take final action on this proposal after ODEQ submits its RACT determination to EPA for approval.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

III. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, EPA Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR Part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D, of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted on by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

The Administrator's decision to approve the SIP revision will be based on whether it meets the requirements of section 110(a)(2) (A)–(K) and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 27, 1997.

Charles E. Findley,

Acting Regional Administrator.

[FR Doc. 97–5873 Filed 3–6–97; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Parts 52 and 81

[OR64–7279b, OR36–1–6298b, OR46–1–6802b; FRL–5696–9]

Approval and Promulgation of State Implementation Plans and Designation of Areas for Air Quality Planning Purposes: Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve numerous amendments to the Oregon Department of Environmental Quality's (ODEQ's) rules for stationary sources, including new source review and prevention of significant deterioration rules, as revisions to the Oregon State Implementation Plan (SIP). These revisions were submitted by the Director of the ODEQ on May 20, 1988, January 20, 1989, September 14, 1989, October 13, 1989, November 15, 1991, August 26, 1992, November 16, 1992, May 28, 1993, November 15, 1993, December 14, 1993, November 14, 1994, June 1, 1995, September 27, 1995, October 8, 1996, and January 22, 1997, in accordance with the requirements of section 110, Part C and Part D, of the Clean Air Act. EPA is also proposing to remove the listings for total suspended particulates nonattainment areas in 40 CFR Part 81. In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP revisions and removing the total suspended particulate nonattainment area listings as a direct final rule without prior proposal because the Agency views these as noncontroversial revisions and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action.

DATES: Comments on this proposed rule must be received in writing by April 7, 1997.

ADDRESSES: Written comments should be addressed to Montel Livingston, Environmental Protection Specialist, U.S. Environmental Protection Agency, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101

Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations: EPA, Region 10, Office of Air Quality, 1200 Sixth Avenue, Seattle, Washington 98101, and Oregon Department of Environmental Quality, 811 S.W. Sixth Avenue, Portland, Oregon 97204. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: David C. Bray, Office of Air Quality (OAQ–107), EPA, Region 10, Seattle, Washington 98101, (206) 553–4253.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

Dated: February 19, 1997.

Jane S. Moore,

Acting Regional Administrator.

[FR Doc. 97–5641 Filed 3–6–97; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Parts 52 and 81

[WA63–7138; WA58–7133; OR57–7272; FRL–5700–2]

Approval and Promulgation of Implementation Plans and Redesignation of Areas for Air Quality Planning Purposes; States of Washington and Oregon

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) invites public comment on its proposed approval of revisions to the Washington and Oregon State Implementation Plans (SIPs), and EPA's proposed redesignation to attainment of the Portland/Vancouver (Pdx/Van) interstate ozone (O3) nonattainment area. Under the Clean Air Act (CAA) as amended in 1990, designations can be revised if sufficient data are available to warrant such revisions. EPA is proposing to approve the Washington and Oregon maintenance plans and other redesignation submittals because they meet the maintenance plan and redesignation requirements and will ensure that the area remains in attainment. The approved maintenance plans will become a federally enforceable part of the Oregon and Washington SIPs. In this action, EPA is also proposing to approve the Washington and Oregon 1990 baseline emission inventories for this area, revisions to the approved Inspection and Maintenance (I/M) SIPs of both States, and a number of revisions to both SIPs.

DATES: Comments must be postmarked on or before April 7, 1997.

ADDRESSES: Written comments should be addressed to: Montel Livingston, SIP Manager, EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101.

Copies of the States' requests and other information supporting this proposed action are available for inspection during normal business hours at the following locations: EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, and at the States' offices: Washington State Department of Ecology, P.O. Box 47600, Olympia, WA 98504–7600, and Oregon State Department of Environmental Quality, 811 SW Sixth Avenue, Portland, OR 97204–1390.

FOR FURTHER INFORMATION CONTACT: Sue Ennes, Office of Air Quality (OAQ–107), EPA, Seattle, Washington, (206) 553–6249.

SUPPLEMENTARY INFORMATION

EPA's discussion of the proposed approval is in the following order:

I. Background
II. Evaluation Criteria
III. Review of State Submittal
A. Attainment of the O3 National Ambient Air Quality Standards (NAAQS)
B. The Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA
1. New Source Review (NSR)
2. Conformity
3. Emissions Inventory
4. Reasonably Available Control Technologies (RACT) Requirements
5. Emission Statement
6. Vehicle Inspection and Maintenance (I/M) Program
C. Section 107 (d)(3)(E)(iii), Permanent and Enforceable Emission Reductions
D. Section 107 (d)(3)(E)(iv), Fully Approved Maintenance Plan
1. Attainment Emission Inventory
2. Maintenance Demonstration
3. Verification of Continued Attainment
4. Contingency Plan
5. Subsequent Maintenance Plan Revisions
IV. Supporting Rules
A. NSR Changes For Maintenance Plan
1. SWAPCA 400 "General Regulations for Air Pollution Sources"
2. OAR Chapter 340 Division 28 "Stationary Source Air Pollution Control and Permitting Procedures"
B. SWAPCA 490 "Emission Standards and Controls for Sources Emitting Volatile Organic Compounds"
C. SWAPCA 491 "Emission Standards and Controls for Sources Emitting Gasoline Vapors
D. SWAPCA 493 "VOC Area Source Rules"
E. Inspection and Maintenance (I/M)
1. Oregon I/M Submittal
12. Washington I/M Submittal
F. Oregon Miscellaneous O3 Supporting Rules
1. Background
2. Discussion
V. Proposed Action
VI. Interim Implementation Policy (IIP) Impact
VII. Administrative Review
A. Executive Order 12866
B. Regulatory Flexibility Act
C. Unfunded Mandates

I. Background

The Oregon Department of Environmental Quality (ODEQ) and the Washington Department of Ecology (WDOE) submitted maintenance plans and requested redesignation of the Pdx/Van interstate nonattainment area from nonattainment to attainment for O3. The SIP revision requests were submitted by the WDOE on June 13, 1996, and by ODEQ on August 30, 1996. No tribal lands are within the maintenance plan area nor have any tribal lands been identified as being affected by the maintenance plans.

The Pdx/Van air quality maintenance area (AQMA) was designated an interstate O3 nonattainment area in 1978 under the 1977 CAA. On November 15, 1990, the CAA Amendments of 1990 were enacted. (Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q). Under section 181(a)(1) of the 1990 CAA, the area was further classified as a "marginal" O3 nonattainment area, and an attainment deadline of November 15, 1993, was established. This interstate nonattainment area consists of the southern portion of Clark County, Washington, and portions of Multnomah, Clackamas, and Washington Counties in Oregon.

The AQMA has ambient monitoring data that show no violations of the O3

national ambient air quality standards (NAAQS) during the period of 1991 to the present. Public hearings on the redesignation requests were held in Portland, OR, and Tigard, OR, on May 22, and 23, 1996, respectively.

On October 18, 1996, EPA Region 10 determined that the information received from the WDOE and ODEQ constituted a complete redesignation request under the federal completeness criteria of 40 CFR part 51, appendix V, sections 2.1 and 2.2.

II. Evaluation Criteria

Section 107(d)(3)(E) of the CAA, as amended in 1990, specifies that the Administrator may not redesignate an area from nonattainment to attainment unless certain conditions have been met. These conditions are as follows:

A. Section 107(d)(3)(E)(i)—the Administrator determines that the NAAQS has been attained in that area for the pollutant.

B. Section 107(d)(3)(E)(ii)and (v)—the Administrator has fully approved the applicable implementation plan for the area under section 110(k) and the State has met all relevant requirements under section 110 and Part D.

C. Section 107(d)(3)(E)(iii)—the Administrator determines that the improvement in air quality is due to permanent and enforceable emission reductions.

D. Section 107(d)(3)(E)(iv)—the Administrator has fully approved a maintenance plan for the area.

III. Review of State Submittal

EPA proposes to find that the Washington and Oregon redesignation requests for the Pdx/Van interstate area meets the requirements of section 107(d)(3)(E), noted above. Following is a brief description of how each of the 107(d)(3)(E) requirements is met. A Technical Support Document (TSD), on file at the EPA Region 10 office (dockets OR57–7272 and WA58–7133), contains additional analysis of this redesignation proposal.

A. Attainment of the O3 National Ambient Air Quality Standards (NAAQS)

An area may be considered as attaining the NAAQS for O3 if the quality assured ambient air quality monitored data show that the average annual number of "expected" O3 exceedances is less than or equal to 1.0. There were no violations of the standard based on the three year period 1991–1993. The ODEQ and WDOE submitted data from all four of their monitoring locations in the Pdx/Van area which indicate that no violations of the O3 standard have been measured since 1990. Because the nonattainment area has complete quality-assured data showing no violations of the O3 NAAQS over the most recent consecutive three calendar year period, the area has met the condition of attainment of the O3 NAAQS.

B. The Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA

Section 107(d)(3)(E) requires that, for an area to be redesignated, an area must have met all applicable requirements under section 110 and Part D and that EPA may not approve redesignation of a nonattainment area to attainment unless EPA has fully approved all of the SIP requirements that were due under the 1990 CAA. Although section 110 was amended in 1990, the Washington and Oregon SIPs approved by EPA for the O3 marginal nonattainment area meet the requirements of amended section 110(a)(2). A number of the requirements did not change in substance and, therefore, EPA believes that the pre-amendment SIPs met these requirements.

The 1990 CAA required that nonattainment areas achieve specific new requirements depending on the severity of the nonattainment classification. As noted earlier, Pdx/Van was classified as a marginal O3 nonattainment area. For the purposes of evaluating the request for redesignation to attainment, EPA has approved all but the following elements of the Pdx/Van SIP: the NSR programs; the 1990 base year emission inventories; minor local Reasonably Available Control Technology (RACT) rule changes (Washington only); and outstanding source-specific RACT determinations ODEQ identified after submittal of the redesignation request (OR only), (see discussion under 1, 3 and 4 below for details).

1. New Source Review (NSR)

The CAA required all classified nonattainment areas to meet several requirements regarding NSR, including provisions to ensure that increased emissions of VOCs will not result from any new or major source modifications, and a general offset rule. Current guidance does not require State NSR programs to be approved by EPA before approving redesignation requests (see policy announced in the memorandum, "Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment," dated October 14, 1994, from Mary D. Nichols to Air Division Directors I-X,) . However, because the Pdx/Van maintenance plan is relying on credit from a new hybrid NSR/Prevention of Significant Deterioration (PSD) program, the State NSR programs need EPA approval prior to redesignation.

The NSR program for WDOE was approved on June 2, 1995 (60 FR 28726). Further revisions to the Oregon NSR program and the Southwest Air Pollution Control Agency (SWAPCA) NSR regulations are being approved separately in a direct final action. SWAPCA is the local air pollution control authority that developed and will be implementing the maintenance plan in Vancouver, WA. In this notice, EPA is proposing to approve the new hybrid PSD/NSR programs for both States.

Upon redesignation of the Pdx/Van area to attainment, the PSD provisions contained in Part C of Title I of the CAA are applicable. EPA's PSD regulations in 40 CFR 52.21 will apply to the Vancouver area and Oregon's PSD rules will apply in the Portland area.

2. Conformity

The WDOE submitted its transportation conformity SIP revision to EPA on December 1, 1995. A determination that the submittal is administratively and technically complete has not yet been made. The WDOE has not submitted its general conformity SIP revision.

The ODEQ submitted its transportation conformity SIP revision to EPA on April 14, 1995. EPA approved the transportation conformity rules as a SIP revision on May 16, 1996. In addition, general conformity requirements were submitted to EPA on September 27, 1995. A completeness determination letter dated March 18, 1996, was sent to ODEQ.

Although these four conformity SIP revisions have not all been approved, EPA may approve this redesignation request. EPA has modified its national policy regarding the interpretation of the provisions of section 107(d)(3)(E) concerning the applicable requirements for purposes of reviewing a carbon monoxide (CO) redesignation request and the same modification applies to O3. (See 61 FR 2918, January 30, 1996.) The federal transportation and general conformity rules are applicable until the EPA approves the State established conformity regulations. Because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment, and must implement conformity under Federal rules if State rules are not yet adopted, EPA believes it is reasonable to view these requirements as not being applicable requirements for purposes of evaluating a redesignation request. It is noted that approval of the Pdx/Van redesignation request does not obviate the need for the WDOE to submit the required general conformity SIP revision to EPA.

3. Emissions Inventory

The CAA required an inventory of all actual emissions from all sources, as described in section 172(c)(3), by November 15, 1992. Both States submitted their original base year 1990 emission inventories (EIs) on November 16, 1992. As part of the redesignation request, ODEQ and WDOE submitted corrections to the base year 1990 emission inventory for the Pdx/Van area. EPA guidance document from John Calcagni and William Laxon entitled, "Public Hearing Requirements for 1990 Base Year Emission Inventories for Ozone and CO Nonattainment areas," 9/10/92, states that for a moderate O3 nonattainment area the 1990 EI is not subject to public review requirements until a Redesignation Request/Maintenance Plan is submitted. Both State EIs went through public review with the redesignation request and maintenance plans and met this requirement. The EIs of both States have addressed all EPA comments and meet all requirements identified by EPA. In this notice, EPA is proposing to approve both emission inventories.

4. Reasonably Available Control Technologies (RACT) Requirements

Areas designated nonattainment before the 1990 CAA amendments and which retained that designation and were classified as marginal or above as of enactment are required by section 182(a)(2)(A) of the CAA to meet the RACT fix-up requirements. The Pdx/Van area was first designated nonattainment in 1978 by the 1977 CAA, and, therefore, this area is subject to the RACT fix-up requirement (requirements in place before the 1990 CAA amendments).

SWAPCA adopted regulations on October 15, 1996, to meet the RACT fix-up requirement (SWAPCA 400 and 490). These regulations are titled "General Regulations for Air Pollution Sources" and "Emission Standards and Controls for Sources Emitting Volatile Organic Compounds." EPA is proposing to approve these regulations in this notice.

Oregon submitted to EPA its RACT fix-up rules on May 14, 1991, and the rules were approved by EPA on September 29, 1993.

EPA proposes to approve the redesignation request as meeting the requirements of section 107(d)(3)(E), based in part upon Oregon's approved general RACT rule and other source-specific RACT rules for which no categorical RACT requirements exist (non-Control Technology Guidelines (CTG) sources). The ODEQ already has implemented most of the RACT program, and is in the process of establishing RACT requirements for a few remaining sources that require source-specific RACT determinations. The ODEQ general RACT rule, which has been approved by EPA, provides that ODEQ "shall have RACT requirements developed on a case-by-case basis." Oregon Administrative Rule (OAR) 340–22-104(5). The rules establish a requirement that all non-CTG sources apply RACT requirements, and they must apply for a RACT determination within three months following notification by ODEQ. The RACT established by ODEQ must be approved by EPA, and will be included in the source's operating air permit.

EPA acknowledges that Oregon has not completed the process of making RACT determinations for a few non-CTG sources in the nonattainment area. While EPA guidance generally requires full adoption, submission, and approval of these RACT determinations prior to approval of a redesignation request, EPA has established an exception to this general policy which it intends to invoke here. This exception and its rationale were articulated in the **Federal Register** Notice approving the redesignation request of Grand Rapids, Michigan, 61 FR 31831, 31833–34.

A requirement under section 107(d)(3)(E)(v) is that the State comply with section 182(b)(2)(A) by submitting a SIP revision requiring the implementation of RACT for certain sources. While EPA's redesignation policy generally requires that these rules be adopted prior to redesignation, upon redesignation they can become part of the contingency plan portion of the maintenance plan. In its recent approval of the redesignation request for Grand Rapids, EPA determined that the requirement for RACT could be met in the form of the submission and approval of a commitment to adopt and implement these rules as contingency measures in the maintenance plan. Thus, EPA created an exception to its general policy, which it justified in terms of several factors: first, the RACT rules at issue were not needed to bring about attainment of the O3 standard; second, the State demonstrated maintenance of the standard without the implementation of the measures at issue; and third, in the case of Grand Rapids, the State committed to include the RACT rules as contingency measures in the maintenance plan, while including other effective contingency measures in the maintenance plan.

EPA believes that the rationale and justification for the exception created in Grand Rapids apply with equal or greater force to Portland-Vancouver. The Portland/Vancouver submission satisfies the first two factors articulated as the basis for the Grand Rapids exception: the RACT rules at issue are not necessary for attainment and maintenance of the standard. As for the third factor, in lieu of contingency measures, Oregon has committed to submit the adopted RACT determinations for approval into the SIP. (See Docket File for letter dated February 7, 1997.)

At this time, ODEQ has notified all non-CTG sources that a RACT determination is required. In a letter to EPA, ODEQ has committed to initiate the public hearing process within three months of getting a response from a source and, within six weeks, after the permit revisions are finalized, to submit such source specific determinations to EPA. ODEQ has established RACT rules for three non-CTG sources; EPA has approved one and is processing the other two as direct final rules in a separate action. ODEQ is in the process of proposing RACT determinations for three other sources. In a separate parallel action EPA is proposing to approve one of these three ODEQ RACT determinations. ODEQ also sent initiating letters to seven recently identified non-CTG sources, notifying them of the requirement to submit a complete analysis of RACT requirements within three months, in accordance with the ODEQ rules.

In addition, the non-CTG sources for which ODEQ has not yet established RACT requirements are relatively minor sources and the implementation of RACT requirements is not necessary for maintenance of the NAAQS in the maintenance plan area, i.e., the maintenance plan did not take credit for reductions and is not depending on these reductions for maintenance. However, before EPA takes final action to approve the redesignation, EPA will approve the specific RACT rules for two sources whose emission reductions are identified and credited in the maintenance plan. EPA notes that the area proposed for redesignation is a marginal O3 nonattainment area which has not violated the NAAQS since 1991.

Therefore, the only difference between the Pdx/Van request and the exception proposed for Grand Rapids is the commitment to complete the adoption of RACT rules for sources that

it has identified, rather than a commitment to adopt such rules merely as contingency measures. Since Oregon has already initiated and committed to the adoption of RACT rules which will become part of the SIP, and not merely contingency measures, the justification for applying this exception here is equally as compelling as, if not more compelling than, the case of Grand Rapids. EPA believes that there is no significant environmental consequence to this application of the exception here, and that it is legally permissible under the statutory provisions governing redesignation. The VOC RACT rules remain applicable requirements under section 107 and EPA believes that ODEQ's initiation of the process for all sources, which it and the sources are bound to complete under Oregon rules, meets the redesignation requirements.

5. Emission Statement

Under section 182(a)(3)(B) of the CAA, a State must require each owner of a stationary source of volatile organic compounds (VOC) or nitrogen oxides (NO_x) located in a marginal nonattainment area to submit an annual statement of actual emissions from that source. EPA approved Washington's emission statement program on November 14, 1994, and approved Oregon's program on March 24, 1994.

6. Vehicle Inspection and Maintenance (I/M) Program

Section 182(a)(2)(b) of the CAA requires that any O3 nonattainment area which has been classified as "marginal" or worse have an I/M program. The original federal I/M regulations were codified at 40 CFR part 51, Subpart S, and required States to submit an I/M SIP revision which included all necessary legal authority and the items specified in 40 CFR 51.372 (a)(1) through (a)(8) by November 15, 1993.

EPA has previously determined that the two States" I/M programs (currently in operation) met the applicable regulations established in 40 CFR part 51, Subpart S. A basic I/M program has been in operation in Portland since 1975 and became operational in the Vancouver portion of the nonattainment area on June 1, 1993. Portland submitted I/M "fix ups" on November 15, 1993, and June 13, 1994, to meet EPA basic I/M requirements. These were approved by EPA on January 29, 1994, and September 9, 1994. Information on the existing Washington I/M program can be found in the **Federal Register** notice (61 FR 38086; July 23, 1996) finalizing EPA's approval of the program. These elements will not be enumerated here. in EPA's view, the new revisions EPA proposes to approve in this action also meet the applicable federal requirements (see discussion below in IV.E).

C. Section 107(d)(3)(E)(iii), Permanent and Enforceable Emission Reductions

There are several control measures that were responsible for the Pdx/Van nonattainment area achieving attainment of the O3 NAAQS. The major measures are:

—The Federal Motor Vehicle Control Program which reduces VOC and NOx emissions as newer, cleaner vehicles replace older, high emitting vehicles;
—Summertime Reid Vapor Pressure (RVP) of 7.8 psi required for gasoline for the Oregon portion of the AQMA. (Gasoline for Vancouver area service stations is supplied by Portland bulk terminals and therefore the area receives gasoline with 7.8 psi RVP);
—The major source NSR program which requires Lowest Achievable Emission Rate and offsets;
—The Portland basic vehicle emission Inspection and Maintenance program;
—Stage I vapor recovery for Portland and Vancouver;
—RACT applied to major industrial sources of VOC.

Emission reductions achieved through the implementation of these control measures are permanent and enforceable when approved by EPA as part of the SIP. In addition, there are a number of State and local measures that are part of the maintenance plan which, upon EPA approval, will be federally enforceable, including stage I & II gasoline vapor recovery requirements, improvements in public transit, transportation demand management measures, and traffic flow improvements.

The ODEQ and WDOE have demonstrated that actual enforceable emission reductions are responsible for the air quality improvement and that O3 emissions are not artificially low due to a local economic downturn or unusual or extreme occurrences in the weather patterns. Data in the maintenance plan show the area has grown rapidly since the early 1980's. The Pdx/Van area initially attained the NAAQS in 1991, with monitored attainment through 1996 despite this growth. Also, meteorological conditions during the attainment time period were conducive to O3 formation. EPA finds that the combination of existing EPA-approved SIP and federal measures contribute to the permanence and enforceability of reduction in ambient O3 levels that have allowed the area to attain the NAAQS.

D. Section 107(d)(3)(E)(iv), Fully Approved Maintenance Plan

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the States must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation, adequate to assure prompt correction of any air quality problems.

In this notice, EPA is proposing approval of the Oregon and Washington maintenance plans for the Pdx/Van marginal nonattainment area because EPA finds that the submittal meets the requirements of section 175A.

1. Attainment Emission Inventory

The maintenance plan should include an emission inventory representative of the time period when monitoring data indicated attainment. The attainment inventory uses 1992 as its base year and was developed consistent with EPA guidance. Since air monitoring recorded attainment in 1992, 1992 is an acceptable year for the attainment inventory. A summary of the base year and projected maintenance year inventories are shown in the tables below by pollutant for point, area, biogenic, and mobile sources. Detailed inventory data are contained in the docket maintained by EPA.

2. Maintenance Demonstration

The ODEQ and WDOE included in their submittals projected emission inventories showing that future emissions will not exceed the levels determined to ensure maintenance throughout the 10 year maintenance time period. The States also performed modeling, although not required, for this marginal nonattainment area. (Refer to EPA's TSD prepared for this notice for more details regarding the projected inventories and modeling for the Pdx/Van area.)

a. Projected Year Inventory. The States projected emission inventories for the end of the maintenance period using appropriate growth factors, consistent with EPA guidance. In addition, the States made projections for the interim years of 1996, 1999, 2001, and 2003 to supplement the 2006 projections. As shown in the tables below, the 2006 VOC and NO_x emission levels are below the 1992 attainment emissions.

	1990	1992	1996	1999	2001	2003	2006
Vancouver, WA, VOC Emission Projections (tons/day)							
Point Sources	5	4	4	4	4	5	5
Area Sources	15	14	14	14	15	15	16
On-road	22	16	13	11	9	9	9
Non-road	8	8	9	9	10	9	9
Biogenic	17	17	17	17	17	17	17
Total	67	59	57	55	55	55	56
Portland, OR, VOC Emissions Projections (tons/day)							
Point Sources	40	36	37	41	42	45	48
Area Sources	58	57	56	56	57	59	61
On-road	114	92	70	52	47	44	41
Non-road	38	39	41	38	41	39	36
Biogenic	46	46	46	46	46	46	46
Total	296	270	250	233	233	233	232
Vancouver, WA, NO_x Emission Projections (tons/day)							
Point Sources	6	5	5	6	5	6	7
Area Sources	1	1	1	1	1	1	1
On-road	14	15	14	12	12	12	11
Non-road	7	7	7	7	7	7	6
Total	28	28	27	26	26	26	25
Portland, OR, NO_x Emission Projections (tons/day)							
Point Sources	13	15	16	18	20	21	21
Area Sources	12	12	13	13	13	13	14
On-road	76	75	68	56	54	52	51
Non-road	33	35	37	36	36	35	35
Total	134	137	134	123	123	121	121

b. Modeled Attainment. EPA does not require modeling for marginal nonattainment areas. However, the States performed modeling using the Empirical Kinetics Modeling Approach (EKMA). EKMA calculates the VOC control requirement to attain the O3 standard considering expected changes in emissions and transport of O3 precursors. (The EPA model, OZIPM–4, was used to conduct the EKMA analysis.)

The historical trend of the measured ambient O3 data was characterized using a regression analysis. The airshed capacity for the AQMA was divided between the two States based on each area achieving approximately an equal percent reduction from forecast emissions in 2006, the last year of the maintenance plan.

c. Control Measures. The States have adopted a number of new control measures which include credit for some federal rules. Additional information may be found on the following control measures in part IV, or the TSD. The control measures are:

(1) Hybrid low enhanced vehicle inspection including On Board Diagnostics (OBD).
(2) Expanded vehicle inspection boundary.
(3) RVP, fleet turnover, and National Low Emission Vehicles (NLEV) (see below for additional details on NLEV).
(4) Employee commute options.
(5) Voluntary parking ratio program.
(6) Transportation control measures.
(7) New EPA nonroad engine rules.
(8) VOC Area Source Rules.
(9) Industrial permit limit (PSEL) donation program.
(10) Major NSR/PSD program.
(11) Source specific RACT requirements and a gasoline pipeline (see part III. B. 4 for additional information on RACT).
(12) Public education and incentive program.

NLEV additional information: ODEQ and WDOE have included emission reduction credits for the proposed NLEV (previously known as FedLEV) program in on-road emission forecasts beginning in 2001. The NLEV program was proposed by automobile manufacturers as an alternative to the California LEV program recommended by States comprising the Ozone Transport Commission (OTC). While it appears likely that NLEV will be available in Oregon by 2001, implementation of the NLEV program depends on negotiations among the automobile manufacturers and the OTC States, and is not under the direct control of EPA.

Because the OTC States and automobile manufacturers have not yet committed to the NLEV program and the program is not yet in place, EPA has not authorized SIP credit for the program. This policy will change in the near future if the NLEV program agreement is finalized. EPA, however, is proposing approval of the Pdx/Van O3 maintenance plan because:

—The maintenance year emission inventories are below the attainment

year (1992) emission inventories without taking any credit for potential NLEV reductions.
—The maintenance plans have been designed to address the most adverse meteorological conditions that might be expected during the maintenance period.
—ODEQ and SWAPCA have committed to adopt a backup measure by 1999 if NLEV will be delayed beyond 2001. (The back-up measure alone is not sufficient justification for approval.)

3. Verification of Continued Attainment

Continued attainment of the O3 NAAQS in the marginal nonattainment area depends, in part, on the efforts of the States of Washington and Oregon in tracking indicators of continued attainment during the maintenance period. The ODEQ and WDOE will analyze annually the O3 air quality monitoring data to verify continued attainment of the O3 standard in accordance with 40 CFR Part 50 and EPA's redesignation guidance. Permanent O3 monitoring stations are operated in compliance with EPA monitoring guidelines set forth in 40 CFR Part 58 and, in addition to periodic monitoring saturation studies, SWAPCA and ODEQ are working on a "future study" which could result in recommendations to add permanent additional monitors.

The ODEQ and WDOE have also committed to perform periodic emission inventory reviews of the O3 maintenance plan. In preparing the updates, ODEQ and SWAPCA will review the emission factors, growth factors, rule effectiveness, and penetration factors, and other significant assumptions used to prepare the emission forecast. Factors will be confirmed or adjusted where more accurate information is available. Any new emission sources will be included in the update. Updates will be prepared for 1996, 1999, 2001, 2003, and 2006 and will be submitted to EPA for review.

4. Contingency Plan

Section 175A requires a State to provide a contingency measure that it will put into effect within some specified period of time after a triggering event (e.g., exceedance or violation of a standard). In addition, section 175A(d) of the CAA requires that all control measures contained in the SIP prior to redesignation be retained as contingency measures in the O3 maintenance plan. In both Oregon and Washington, the following measures will be implemented in the Pdx/Van area if an actual violation of the O3 NAAQS is recorded and validated:
—The NSR requirements for proposed major sources and major modifications in the AQMA (and the area of significant air quality impact) will change: specifically, the requirement to install Best Available Control Technology (BACT) in the AQMA will be replaced with a requirement for Lowest Achievable Emission Rate (LAER) controls and the growth allowance will be eliminated and replaced with offsets. In addition, in the Portland area, rules will be adopted to implement requirements for reformulated gasoline, congestion pricing, or equivalent emission reduction measures. These requirements will take effect upon validation of a NAAQS violation.
—With an additional violation, area rules in Vancouver will be adopted to implement a remote sensing I/M program, and further enhancements to the I/M program, or an equivalent measure.

The Oregon and Washington contingency plans meet EPA's requirements for redesignation.

5. Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the CAA, Oregon and Washington have agreed to develop the next ten-year maintenance plan (2007–2016) and submit it to EPA by December 31, 2004. Such a revised SIP will provide for maintenance for an additional ten years.

IV. Supporting Rules

A. NSR Changes for Maintenance Plan

1. SWAPCA 400 "General Regulations for Air Pollution Sources"

On December 11, 1996, WDOE submitted a revision of the SIP for the State of Washington which consisted of various amended regulations for a local air agency authority, SWAPCA. SWAPCA has amended its Permit to Construct rules in SWAPCA 400 to establish a new program for "maintenance areas" (nonattainment areas which have been redesignated by EPA to attainment). This new program, which EPA is proposing to approve as a SIP revision, is basically a combination of nonattainment area (Part D NSR) requirements and attainment area PSD requirements for new major sources and major modifications to existing major sources in attainment areas. Specifically, a new section—SWAPCA 400–111 "Requirements for Sources in a Maintenance Area"—was added which requires new major sources and major modifications to existing sources in maintenance areas to: comply with all applicable new source performance standards (NSPS), national emission standards for hazardous air pollutants (NESHAP), and State and local emission standards; not cause any ambient air quality standard to be exceeded, not violate the requirements for reasonable further progress, not delay the attainment date for a nonattainment area, and not exceed emission levels or other requirements in the maintenance plan; apply best available control technology (BACT) for each maintenance pollutant (or precursor); demonstrate that all major sources owned or operated by the source in the State are in compliance with applicable requirements; provide emission offsets (which may be met in whole or in part by an allocation from the growth allowance in the SIP maintenance plan); demonstrate that offsets will produce a net air quality benefit; conduct an alternatives analysis; and comply with the PSD requirements, visibility requirements, and SWAPCA air toxics requirements if applicable. The new section also includes provisions which specify how the growth allowance will be managed and allocated and specific requirements for acceptable emission offsets. Finally, this new section includes a contingency plan element that changes the BACT requirement to a LAER requirement, and prohibits the use of any growth allowance if the contingency plan is implemented due to a violation of an ambient air quality standard. SWAPCA also made conforming changes to SWAPCA 400–030 "Definitions," SWAPCA 400–040 "General Standards for Maximum Emissions," SWAPCA 400–050 "Emission Standards for Combustion and Incineration Units," SWAPCA 400–060 "Emission Standards for General Process Units," SWAPCA 400–070 "Emission Standards for Certain Source Categories," SWAPCA 400–101 "Sources Exempt from Registration Requirements," SWAPCA 400–105 "Records, Monitoring and Reporting," SWAPCA 400–109 "Notice of Construction Application," SWAPCA 400–110 "New Source Review," SWAPCA 400–112 "Requirements for new Sources in Nonattainment Areas," SWAPCA 400–113 "Requirements for New Sources in Attainment or Nonclassifiable Areas," SWAPCA 400–114 "Requirements for Replacement or Substantial Alteration of Emission Control Technology at an Existing Stationary Source," SWAPCA 400–171 "Public Involvement," SWAPCA 400–190 "Requirements for Nonattainment Areas," SWAPCA 400–230 "Regulatory Actions and Civil Penalties," and SWAPCA 400–270 "Confidentiality of Records and Information," and added new sections SWAPCA 400–116 "Maintenance of Equipment," and SWAPCA 400–290 "Severability." A complete description of the changes and EPA's review is found in the TSD.

2. OAR Chapter 340 Division 28 "Stationary Source Air Pollution Control And Permitting Procedures"

Oregon has amended its NSR Rules in OAR 340 Division 28 to establish a new program for "maintenance areas" (nonattainment areas which have been redesignated by EPA to attainment), which EPA proposes to approve as part of the Oregon SIP. This new program is basically a combination of nonattainment area (Part D NSR) requirements and attainment area PSD requirements for new major sources and for major modifications to existing major sources in attainment areas. Specifically, a new section, OAR 340–028–1935 "Requirements for Sources in Maintenance Areas," was added which requires new major sources and major modifications to existing sources in maintenance areas to apply BACT for each maintenance pollutant (or precursor); demonstrate that all major sources owned or operated by the source in the State are in compliance; provide emission offsets (which may be met in whole or in part by an allocation from the growth allowance in the SIP maintenance plan); demonstrate that offsets will produce a net air quality benefit; conduct an alternatives analysis; and comply with the PSD requirements if applicable. This new section also includes a contingency plan element that changes the BACT requirement to a LAER requirement, and prohibits the use of any growth allowance if the contingency plan is implemented due to a violation of an ambient air quality standard. This section also includes requirements for allocation of a growth allowance and clarifies that the nonattainment area NSR provisions and not the maintenance plan NSR provisions continue to apply until such time as EPA approves a request to redesignate an area from nonattainment to attainment. Conforming changes were made to OAR 340–028–0110 "Definitions," OAR 340–028–1900 "Applicability," OAR 340–028–1910 "Procedural Requirements," OAR 340–028–1920 "Review of New Sources and Modifications for Compliance with Regulations," OAR 340–028–1930 "Requirements for Sources in Nonattainment Areas," OAR 340–028–1940 "Prevention of Significant Deterioration Requirements for Sources in Attainment or Unclassified Areas," OAR 340–028–1960 "Baseline for Determining Credit for Offsets," OAR 340–028–1970 "Requirements for Net Air Quality Benefit," OAR 340–028–2000 "Visibility Impact," and OAR 340–030–0111 "Emissions Offsets." A complete description of the changes and EPA's review is found in the TSD.

B. SWAPCA 490 "Emission Standards and Controls For Sources Emitting Volatile Organic Compounds"

EPA proposes approval of changes to the SWAPCA 490 VOC Area Source RACT Fix-up regulations to support the O3 maintenance plan. The proposed changes include updated citations and technical clarification to the whole of SWAPCA 490. The key modifications are: addition of language to incorporate revised federal requirements of 40 CFR 63.420 for leak testing gasoline tankers; revision of the certification sticker issuance to provide for a full year of applicability; and clarification of the applicability of the rule to address the maintenance plan area in addition to the nonattainment area.

The changes were locally effective November 1, 1996, and were submitted to EPA on December 11, 1996. The submittal satisfies the requirements of 40 CFR 63.420. The SWAPCA rules are at least as stringent as the WDOE rules and thereby meet the requirements of the CAA.

C. SWAPCA 491 "Emission Standards and Controls for Sources Emitting Gasoline Vapors"

On December 11, 1996, WDOE submitted a revision of the Washington SIP which consisted of various amended SWAPCA regulations. EPA is proposing to approve SWAPCA 491 "Emission Standards and Controls for Sources Emitting Gasoline Vapors," as part of the Washington SIP because it is consistent with EPA policy and strengthens the Washington SIP. The changes include: clarification to existing language and definitions; removal of obsolete compliance dates; changes consistent with WDOE's federally approved regulations for Stage I requirements; and provision of references to testing and reporting requirements. The sections are as follows:

491–010 "Policy and Purpose" (explains the emission categories that apply to this regulation).
491–015 "Applicability" (explains the type of gasoline movements to which the regulation applies).
491–020 "Definitions" (clarifications/explanations specific to the regulation).
491–030 "Registration" (provides for annual registration and fees of owner or operator of gasoline loading terminal, bulk gasoline tank, or gasoline dispensing facilities).
491–040 "Gasoline Vapor Control Requirements" (specifies: capacity or throughput criteria for application of rule; and, permissible uses for fixed-roof gasoline storage tanks, gasoline loading terminals, bulk gasoline plants and transport tanks, gasoline dispensing facilities (Stage I), and gasoline dispensing facilities (Stage II).
491–050 "Failures, Certification, Testing and Recordkeeping" (specifies: conditions where facilities are discontinued; certifications needed for operation; performance criteria of vapor collection systems; and, test procedure and test recordkeeping requirements).
491–060 "Severability" (provides for separation of the rule into parts should any provision be held invalid).

In this action today, EPA is proposing to approve all the sections in SWAPCA 491 "Emission Standards and Controls for Sources Emitting Gasoline Vapors," which became State-effective on November 1, 1996.

D. SWAPCA 493 "VOC Area Source Rules"

EPA proposes approval of SWAPCA 493. SWAPCA's rules are as stringent as Oregon's rules which are discussed and proposed for approval in this Federal Register action (OAR 340–022–0700 through –340–022–1130 "Area Source VOC Regulations"). SWAPCA rules are also proposed for approval because they are at least as stringent as Oregon's rules. These rules cover spray paints, architectural coatings, motor vehicle refinishing, and area source common provisions. EPA is allowing Vancouver, WA, to take credit for the consumer products federal rule in the same way as allowed in the Grand Rapids maintenance plan April 2, 1996, proposed rulemaking, page 14529.

E. Inspection and Maintenance (I/M)

As part of this action, EPA is also proposing to approve certain modifications to Oregon's and Washington's I/M programs. The changes affect the Pdx/Van maintenance plan in that the emission reduction credit claimed for each State's I/M program effectiveness will, if approved,

change from what EPA has allowed for these States in the past.

In Oregon the I/M modifications are directly solely at the Portland I/M area. In Washington the revisions are directed to the statewide I/M program, which includes Vancouver, Spokane, and the Puget Sound Area.

1. Oregon I/M Submittal

EPA proposes to approve the SIP revision submitted by the State of Oregon. This revision continues to require the implementation of a basic motor vehicle I/M program in the Portland Metropolitan Service district and the Medford-Ashland AQMA. The intended effect of this action is revision of the I/M test type for certain vehicles in the Portland area. Under this plan, certain vehicles would be subject to "enhanced" testing even though EPA regulations for the area itself only require compliance with a basic standard. In addition, EPA proposes to approve the State's request to expand the Portland I/M area boundary. This action is being taken under Section 110 of the Clean Air Act.

a. *Oregon I/M and Clean Air Act Requirements Background.* The CAA requires States to make changes to improve existing I/M programs or implement new ones. Section 182(a)(2)(B) requires any O3 nonattainment area which has been classified as "marginal" (pursuant to section 181(a) of the Act) or worse to have an I/M program. All CO nonattainment areas were also subject to this requirement.

In addition, Congress directed the EPA in section 182(a)(2)(B) to publish updated guidance for State I/M programs, taking into consideration findings of the Administrator's audits and investigations of these programs. The States were to incorporate this guidance into the SIPs for all areas required by the Act to have an I/M program.

On November 5, 1992 (57 FR 52950), the EPA published a final regulation establishing the I/M requirements, pursuant to section 182 and 187 of the Act. The I/M regulation was codified at 40 CFR part 51, Subpart S, and requires States to submit I/M SIP revisions which include all necessary legal authority and the items specified in 40 CFR 51.372 (a)(1) through (a)(8) by November 15, 1993. Oregon has met these requirements; see **Federal Register** (FR) notice 59 FR 46557, published on September 9, 1994.

On December 12, 1996, Oregon submitted additional revisions to portions of the SIP concerned with I/M program modification, implementation, and operation. These SIP revisions were reviewed by EPA to determine completeness shortly after submittal, in accordance with the completeness criteria set out at 40 CFR Part 51, Appendix V. The submittals were found to be complete, and letters dated February 10, 1997, were forwarded to the Director of ODEQ indicating the completeness of the submittal.

EPA has previously designated two areas as CO nonattainment in Oregon, one of which is also an O3 nonattainment area. The Portland CO nonattainment area, classified as "moderate," with a design value less than or equal to 12.7 ppm, contains portions of the following three counties: Clackamas, Multnomah, and Washington. The Portland O3 nonattainment area, classified as "marginal," consists of the AQMA. The Medford CO nonattainment area, classified as "moderate," also with a design value less than or equal to 12.7 ppm, contains a portion of Jackson County. The nonattainment designations for CO and O3 were published in the **Federal Register** on November 6, 1991, and November 30, 1992, and have been codified in the CFR. See 56 FR 56694 (November 6, 1991) and 57 FR 56762 (November 30, 1992), codified at 40 CFR, sections 81.300–81.437. Based on these nonattainment designations, basic I/M programs have been required in both the Portland area and the Medford area.

By this action, EPA is proposing to approve Oregon's submittal, revising the I/M program in the Portland area. EPA has reviewed the State submittal against the statutory requirements and for consistency with the Agency's regulations. EPA summarizes below the requirements of the Federal I/M regulations, as found in 40 CFR Part 51.350–51.373, and its analysis of the State submittal. Parties desiring additional details on the Federal I/M regulations are referred to the November 5, 1992, **Federal Register** notice (57 FR 52950) or 40 CFR Part 51.350–51.373.

The State's December 12, 1996, submittal provides for replacement of the existing I/M test type, for certain vehicles and model years, in the Portland area beginning on September 1, 1997. Though Oregon will continue to conduct a biennial, test-only I/M program in Portland, following approval of the State's maintenance plan and redesignation request, the program will be more effective than the current program, and will meet the emission reduction requirements of the proposed O3 maintenance plan. Since the Portland area has not yet been designated as in attainment of the CO NAAQS, the I/M program in that area will also be required to continue meeting EPA's basic performance standard and other basic program requirements contained in the Federal I/M rule. No changes to the Medford basic program are proposed. (Refer to the February 12, 1997, TSD in the docket for a complete description of the SIP provisions which are not being changed.)

Testing will continue to be performed by ODEQ (with the exception of those fleets which are self-tested). Other aspects of the Oregon I/M program that will only change as noted below include: testing of 1975 and newer vehicles in Portland; test fees to ensure the State has adequate resources to implement the program; enforcement by registration denial; a repair effectiveness program; commitment to testing convenience, quality assurance, data collection, zero waiver rate, reporting, and test equipment and procedure specification for the basic test; commitment to developing "enhanced" test procedure specifications; commitment to ongoing public information and consumer protection programs; inspector training and certification; and penalties against inspector incompetence. An analysis of how the revisions to the Oregon I/M program will meet the Federal SIP requirements by section of the Federal I/M rule is provided below.

(1) Applicability. The SIP needs to describe the applicable areas in detail and, consistent with 40 CFR 51.372, needs to include the legal authority or rules necessary to establish program boundaries.

Portland's I/M program, specified in Oregon's Revised Statutes (ORS) 815.300 and OAR 340–024–0301, has been implemented in portions of Clackamas, Multnomah, and Washington Counties. In this action the area proposed for expansion includes portions of the three aforementioned counties, plus the area within the counties of Columbia and Yamhill. The legal authority for Oregon's Environmental Quality Commission (EQC) to establish geographic boundaries is found in ORS 468A.390 and 815.300.

(2) Basic I/M Performance Standard. The Medford and Portland I/M programs provided for in the existing CO SIP are required to meet a performance standard for basic I/M for the pollutants that caused the affected area to come under I/M requirements. The performance standard sets an emission reduction target that must be met by a program in order for the SIP to be approvable. The SIP must also provide that the program will meet the performance standard in actual operation, with provisions for appropriate adjustments if the standard is not met.

As part of the 1994 SIP package, the State submitted a modeling demonstration using the EPA computer model MOBILE5a, and showing that the basic performance standard is met in both Portland and Medford. The State has recently submitted a demonstration supporting the claimed effectiveness of the proposed revision to the Portland program. The proposed modifications to the Portland program are, in EPA's view, sufficient to meet both the declared needs of the proposed Portland/Vancouver O3 maintenance plan and the federal requirements for a basic I/M program.

(3) Adequate Tools and Resources. The SIP needs to include a description of the resources that will be used for program operation, which includes:

—A detailed budget plan which describes the source of funds for personnel, program administration, program enforcement, purchase of necessary equipment, and any other requirements discussed throughout, for the period prior to the next biennial self-evaluation required in the Federal I/M rule, and;

—A description of personnel resources, the number of personnel dedicated to overt and covert auditing, data analysis, program administration, enforcement, and other necessary functions, and the training attendant to each function.

Oregon's I/M program, as set forth in ORS 468A.400, is funded solely by collection of fees from vehicle owners at the time of passing the I/M test. The fee has been $10 per certificate issued for ODEQ-inspected vehicles, and $5 each from certificates issued by fleets. Under the revision, these fees may be increased to: a maximum amount of $10 for vehicles in Medford, a maximum of $21 for Portland vehicles, and a range of from $5 to $10 per vehicle for fleets. No other changes have been proposed in this action. EPA proposes to find that the Oregon I/M program provides for adequate tools and resources to implement the program.

(4) Test Frequency and Convenience. The SIP needs to include the test schedule in detail, including the test year selection scheme if testing is other than annual. Also, the SIP needs to include the legal authority necessary to implement and enforce the test frequency requirement and explain how the test frequency will be integrated with the enforcement process.

The Oregon I/M program requires biennial inspections for all subject motor vehicles (see ORS 468A.365). For new, Oregon licensed vehicles the first test is required for reregistration two years after initial registration. In addition, all gasoline powered heavy duty trucks and most motor vehicles registered as government-owned vehicles are required to be certified annually. Short waiting times and short driving distances relating to network design are satisfactorily addressed in the existing SIP.

EPA proposes to approve the following changes in this action: continuation of the basic test for Portland area vehicles from three to five years old (i.e., model years from three to five years old), and model years between and including 1975 and 1980; modification to the Portland program so that vehicles from six years old to model year 1981 will be required to undergo "enhanced" testing (including a purge test); and, pressure tests on Portland-area gas caps as part of the overall I/M testing.

(5) Vehicle Coverage. The SIP needs to include a detailed description of the number and types of vehicles to be covered by the program, and a plan for how those vehicles are to be identified, including vehicles that are routinely operated in the area but may not be registered in the area. EPA proposes to approve the following changes to Portland area vehicle coverage, anticipated to be effective by September 1, 1997: basic tests for light duty vehicles (LDVs) less than or equal to five years old and between (and including) the model years of 1975 and 1980; enhanced tests for light duty vehicles greater than or equal to six years old, but less than model year 1981; annual certification of government-owned vehicles which are part of fleets numbering more than 50 vehicles; bi-annual certification of government-owned vehicles which are part of fleets numbering less than 50 vehicles; and, annual certification of U.S. Government vehicles—except for tactical military vehicles—operated in either the Portland or Medford areas.

(6) Test Procedures and Standards. The SIP needs to include a description of each test procedure used. The SIP also needs to include the rule, ordinance, or law describing and establishing the test procedures.

In the Portland I/M area all 1975 model and newer vehicles have been subject to a two speed idle test. This action proposes to approve modification of the Portland test type to include the existing idle test and a new transient loaded test called "BAR31." The new test would be used on the model years of LDVs discussed above. The BAR31 test involves a maximum of four tests (second order equation, symmetrical peak, acceleration/deceleration modes) of approximately 31 seconds of duration each. In OAR 340–024–0312(4)(a), Oregon also proposed an additional test that would allow vehicles that failed all four cycles to have their emissions extrapolated out to six cycles; if the extrapolated "sixth hill" emissions passed the cutpoints, the vehicle would pass. EPA proposes to disapprove this additional test. As explained in the TSD, following negotiations between the State and EPA concerning the type of BAR31 test to be administered, and the level of credit appropriate for the implemented test, the State decided to eliminate the sixth hill test. The agreed-upon level of credit allotted to Oregon's BAR31 program does not, therefore, include this option. Although State regulations still include this language regarding the sixth hill extrapolation, ODEQ indicates it has no plans to allow its use.

The Oregon BAR31 test has been reviewed by EPA, and approved. Its application in Oregon's program has been accorded an initial level of effectiveness (credit) commensurate with the State's supporting documentation (available for review in the docket). The credit found to be appropriate is approximately 90% of that accorded to IM240, the Agency's recommended enhanced test-type. Specifically, it has 90%, 95%, and 95% of the effectiveness of IM240 for reducing, respectively, hydrocarbons, carbon monoxide, and nitrogen oxides. It is appropriate, therefore, that the State refers to the BAR31 test as an "enhanced" test. Following implementation of the program, the State has committed to auditing 0.1% of its fleet for four years with an IM240 test to better quantify the actual effectiveness of the BAR31 test. Detailed procedures for the BAR31 test will be developed pursuant to receipt of the equipment.

The only change proposed to Portland's (or Medford's) basic program test procedures EPA proposes to approve is the introduction of a gas cap pressure test in Portland. OBD system checks for 1996 and newer vehicles will start in the year 1998 for both basic and BAR31 tests.

(7) Test Equipment. The SIP needs to include written technical specifications for all test equipment used in the program and shall address each of the requirements in 40 CFR 51.358 of the Federal I/M rule. On June 21, 1996, the State received authorization from the

State Emergency Board to purchase the new enhanced testing equipment. However, no revisions to the technical specifications of the equipment to be used for I/M purposes have been proposed in this action. It is anticipated that the State will document specifications for the new enhanced equipment following purchase.

(8) Quality Control. The SIP needs to include a description of quality control and record keeping procedures. The SIP needs to include the procedures manual, rule, and ordinance or law describing and establishing the procedures of quality control and requirements.

The existing Oregon I/M SIP narrative contains descriptions and requirements establishing the quality control procedures in accordance with the Federal I/M rule. These requirements help ensure that equipment calibrations are properly performed and recorded, as well as maintaining compliance document security. No revisions to the SIP have been proposed in this action for the basic I/M program. Details about the proposed Portland area's BAR31 enhanced testing methods are contained in (new) OAR 340–024–0312.

(9) Inspector Training and Licensing or Certification.

The SIP needs to include a description of the training program, the written and hands-on tests, and the licensing or certification process.

The Oregon I/M SIP provides for the implementation of training, certification, and refresher programs for emission inspectors. Training will include all elements required by 51.367(a) of the EPA I/M rule. All inspectors are required to be certified to inspect vehicles in the Oregon I/M program. The only change EPA proposes to approve as part of this action to accept training credit is the calculation of overall I/M emission reduction effectiveness.

(10) Improving Repair Effectiveness. The SIP needs to include a description of the technical assistance program to be implemented, and a description of the repair technician training resources available in the community. Only one general update to the SIP has been proposed in this action for "improving repair effectiveness." The update EPA proposes to approve is actually an addition to a previous program that met federal requirements. The addition notes that since November 1995 an advisory committee has been working to develop a ODEQ Auto Technician Emissions Training. The training program envisioned will be voluntary and will issue certifications for two levels of repair proficiency.

2. Washington I/M Submittal

EPA proposes to approve the SIP revision submitted by the State of Washington for the purpose of approving changes to the I/M program for Washington State. EPA proposes to approve changes to the Washington I/M program that apply to Vancouver, Spokane, and the Puget Sound areas. On December 20, 1996, Washington submitted SIP revision requests to the EPA to satisfy the requirements of sections 182(b)(4) and 182(c)(3) of the Clean Air Act, as amended, 42 U.S.C. 7511a(b)(4) and 7511a(c)(3) (1990), and the Federal I/M rule (40 CFR Part 51, Subpart S). These SIP revisions will change certain provisions of the existing approved SIP that require vehicle owners to comply with the Washington I/M program in portions of the Washington counties of Clark, King, Pierce, Snohomish, and Spokane. The three I/M areas currently operating programs are associated with: (1) the Vancouver O3 nonattainment area, proposed for re-designation, but currently classified as "marginal," (2) the Spokane CO nonattainment area, classified as "moderate," and (3) the Puget Sound O3 attainment area. In addition, both the Puget Sound area and Vancouver are now in attainment for CO, and have continued I/M in their areas under an approved maintenance plan. The revisions relate primarily to an additional allowable I/M test type, allowable gas cap leak tests, and new federal OBD requirements.

a. *Washington I/M and Clean Air Act Requirements Background* Section 182(a)(2)(B) of the Clean Air Act requires any O3 nonattainment area which has been classified as "marginal" or worse (pursuant to section 181(a) of the Act) to establish an I/M program. These areas must implement basic or enhanced I/M programs depending upon their specific classifications. In particular, O3 nonattainment areas classified as "serious" or worse, with populations of 200,000 or more, and CO "moderate" or "serious" nonattainment areas, with design values above 12.7 ppm and populations of 200,000 or more, are required to meet EPA guidance for enhanced I/M programs.

Additionally, areas which have been re-designated from non-attainment to attainment may continue to use I/M to reduce emissions. I/M requirements within those areas" maintenance plans seeking to advance the air quality of the respective areas to attainment may, therefore, be very similar to those requirements contained in previous SIPs.

Prior to November 25, 1996, EPA had designated two areas as O3 nonattainment in the State of Washington. The Puget Sound O3 nonattainment area was classified as marginal, and contained portions of King, Pierce, and Snohomish Counties. The Vancouver non-attainment area was also classified as marginal, and contained a portion of Clark County. In an action taken on November 25, 1996, however, the Puget Sound area was re-designated to attainment, leaving only one area in nonattainment.

Likewise, prior to October 21, 1996, three areas in Washington State were designated as CO nonattainment areas. Both the Spokane CO nonattainment area (Spokane County) and the Puget Sound CO nonattainment area (portions of King, Pierce, and Snohomish Counties) had design values greater than 12.7 ppm and were designated as "moderate plus." In addition, the Vancouver area was a "moderate" CO nonattainment area, with a design value below 12.7 ppm. The central Puget Sound area had, and continues to have, an urbanized area population of over one million, and Spokane had, and continues to have, an urbanized area population in excess of 200,000.

Based on these nonattainment designations and populations, basic I/M programs were required in the Vancouver and Puget Sound O3 nonattainment areas, while enhanced I/M programs were required in the Puget Sound and Spokane CO nonattainment areas. On November 25, 1996, however, the Puget Sound area was redesignated to attainment for CO and O3, and on October 21, 1996, the Vancouver area was redesignated to attainment for CO.

As a result of the redesignations of the Puget Sound area for O3 attainment, only one Washington area—Vancouver—continues to be (until EPA approves the Pdx/Van maintenance plan and redesignation request) classified as marginal O3 nonattainment. Vancouver is part of the larger Pdx/Van nonattainment area. In addition, subsequent to the re-designations noted above, only one area in Washington—Spokane—remains designated as a CO ("moderate plus") nonattainment area. Based on these nonattainment designations and populations, an enhanced I/M program continues to be required in Spokane, a basic program continues to be required in Vancouver, and a program is still required by the Puget Sound maintenance plan.

The I/M action being proposed herein (received by EPA on December 20, 1996) includes proposed changes to the I/M program in the State of Washington. If the Vancouver area is redesignated to attainment and the I/M proposals are approved, Washington will no longer have any O3 nonattainment areas and I/M, for the purposes of reducing ambient O3 levels, will only be required in Vancouver and Puget Sound to meet reduction targets in the respective maintenance plans. Only Spokane will remain a CO nonattainment area, and require an enhanced I/M program. The Puget Sound and Vancouver areas, which continue to be in CO attainment, will need I/M programs only to meet the reduction targets of their maintenance plans.

EPA has reviewed the December 20, 1996, State submittal for compliance with statutory requirements and for consistency with the Agency's regulations. A summary of the EPA's analysis of why it is proposing to approve the SIP revision is provided below. In addition, a history and a summary to support approval of the Washington and Oregon State submittals are contained in a TSD, dated February 12, 1997, which is available from the EPA Region 10 Office (address provided above).

I/M programs have been running in the Puget Sound area since 1982, in Spokane since 1985, and in Vancouver since 1993. Washington State's current centralized, test only, biennial program meets the requirements of EPA's low enhanced performance standard, and of other requirements contained in the Federal I/M rule in the applicable nonattainment areas. On December 20, 1996, Washington submitted an I/M SIP revision that would provide for the continued implementation of I/M programs in the Puget Sound, Spokane, and Vancouver areas, but revises State regulations to allow for implementation of a different I/M test in those areas. Emission testing is, and will continue to be, overseen by the WDOE and performed by its I/M contractor. Public hearings for the State's submittal were held in Vancouver, Bellevue, and Spokane on July 16, 17, and 18, 1996, respectively. A description of the existing Washington I/M program can be found in the **Federal Register** notice (61 FR 38086; July 23, 1996) finalizing EPA's approval of the program. These elements will not be enumerated here.

In EPA's view, the December 20 I/M SIP revisions continue to ensure that Washington's centralized, test only, biennial program meets the requirements of EPA's low enhanced performance standard, other requirements contained in 40 CFR Subpart S in the applicable nonattainment counties, the needs of the Spokane nonattainment area, and the needs of the Puget Sound and (existing and newly proposed) CO and O3 Vancouver maintenance plans.

The revisions to the State I/M program in the Puget Sound area which EPA proposes to approve include:

- A loaded idle test (i.e., continued operation of the current testing regime), and the possibility of adopting an accelerated simulation mode (ASM) and gas cap check test;
- A program to continue evaluating on-road testing which is designed to meet the EPA 0.5% requirement for the State's enhanced program areas, or for areas seeking maintenance plan credit for such testing; and,
- A check of the OBD system for all vehicles 1996 and newer (starting in 1998).

The proposed I/M program revisions in Spokane that EPA proposes to approve include:

- A loaded idle test (i.e., continued use of the current test) and an ASM test; and,
- A check of the OBD system for all vehicles 1996 and newer (starting in 1998).

The I/M program revisions in Vancouver that EPA proposes to approve include:

- Continued operation of the current testing regime until replaced by an ASM test;
- An ASM and gas cap check test by 1998;
- A check of the OBD system for all vehicles 1996 and newer (starting in 1998);
- Expansion of the Clark County testing area; and,
- Exemption of vehicles three years old or newer in the expanded Clark County area.

Although in Spokane and Vancouver the State plans by 1998 to implement the ASM tests, and in all three areas implement OBD checks, the regulations supporting this intention simply provide for the "allowance" of such tests. Gas cap checking is also a test which new State regulations now "allow," rather than commit to. The emissions benefits to be gained by such enhancements are proposed in the Pdx/Van maintenance plan. Implementation in Vancouver is scheduled for no later than 1998.

An analysis of how the Washington I/M program continues to meet EPA's I/M regulations is provided below. For the most part, the Washington program has not been modified significantly; specific information about portions of the program that have not been modified are presented in the TSD.

(1) Applicability. The SIP needs to describe the applicable areas in detail and, consistent with 40 CFR 51.372, needs to include the legal authority or rules necessary to establish program boundaries.

The Washington I/M regulations specify that I/M programs will be implemented in the areas described above. Although Vancouver has been required to implement only a basic I/M program for its O3 and, previously, for its CO nonattainment areas (and in the existing SIP the performance of Vancouver's program was compared to EPA's basic performance standard), the State chose to implement a "low enhanced" program in all areas that required I/M programs. The action proposed in this notice, if approved, would allow the use of an ASM2525 low enhanced I/M test in all three State areas (as well as other, more minor I/M modifications noted above). The proposed O3 maintenance plan for the Pdx/Van area, in fact, relies to a degree on the adoption of ASM2525 in Vancouver by 1998.

(2) Enhanced and Basic I/M Performance Standard. The federal I/M performance standard sets an emission reduction target that must be met by a program in order for the SIP to be approvable. The SIP must also provide that the program will meet the performance standard in actual operation, with provisions for appropriate adjustments if the standard is not met. The I/M programs in Vancouver and Spokane have been required to meet a performance standard—basic and low enhanced, respectively—for the pollutants that caused the affected areas to come under 40 CFR Part 51, Subpart S, I/M Requirements. If the redesignation of Vancouver is approved, the area will no longer need to meet the basic performance standard, except as specified in the maintenance plan.

The State has submitted a modeling demonstration using the EPA computer model MOBILE5a showing that the low enhanced performance standard will continue to be met for Spokane if ASM2525 is implemented. The State has also submitted modeling for the areas of Vancouver and Puget Sound that demonstrate to EPA's satisfaction that implementation of the new ASM2525 program will either meet or exceed the previously calculated emission reductions expected from the current I/M test types.

(3) Vehicle coverage. The SIP needs to include a detailed description of the number and types of vehicles to be covered by the program, and a plan for how those vehicles are to be identified, including vehicles that are routinely operated in the area but may not be registered in the area. Also, the SIP

needs to include a description of any special exemptions which will be granted by the program, and an estimate of the percentage and number of subject vehicles which will be affected. Such exemptions need to be accounted for in the emission reduction analysis. In addition, the SIP needs to include the legal authority or rule necessary to implement and enforce the vehicle coverage requirement.

The State has not proposed any SIP revisions for these I/M elements, other than to exempt all vehicles from testing in the expanded Vancouver area (i.e., the new additional area included by the expansion) if they are newer than four years old. The Washington program continues to include coverage of all 1968 and newer model year gasoline powered LDVs and light-duty and heavy-duty trucks registered or required to be registered within the nonattainment areas, and fleets primarily operated within an I/M program area. The starting model year of a vehicle testing program may be changed each year to include the most recent 24 model years. I/M testing exemptions are granted for alternative fuel vehicles, electric vehicles, and motorcycles.

All subject fleets must complete the emission inspection process, without a waiver option being available. Fleets may be inspected in facilities other than the State's inspection stations, provided that WDOE approves the alternative tests. Vehicles operated on federal installations are required to be tested regardless of whether the vehicles are registered in the State or local I/M area. Legal authority for the vehicle coverage is contained in the Washington statutes and I/M rule.

(4) Test procedures and standards. The SIP needs to include a description of each test procedure used. The SIP also needs to include the rule, ordinance, or law describing and establishing the test procedures.

The existing Washington I/M SIP establishes test vehicle procedures and standards that at a minimum are consistent with EPA regulations. Test procedures and standards are specified in WAC 173–422–070. In Washington, all 1968 and newer gasoline or diesel-fueled vehicles are tested. Under the revised SIP, the State will test vehicles on a steady-state dynamometer, or by a two-speed idle and 2500 RPM unloaded test, or by ASM2525. Diesel vehicles will continue to be tested for exhaust opacity only. Specified vehicles are tested using a transient emissions test. In addition, starting in 1998, the State plans to perform OBD checks of vehicles of model year 1996 or later.

(5) Test equipment. The SIP needs to include written technical specifications for all test equipment used in the program and shall address each of the requirements in 40 CFR 51.358 of the Federal I/M rule. The specifications need to describe the emission analysis process, the necessary test equipment, the required features, and written acceptance testing criteria and procedures.

The existing Washington I/M SIP describes the performance features of computerized test systems, and exhaust gas analyzer specifications. For transient emissions tests, EPA's "High Tech I/M Test Procedures, Emission Standards, Quality Control Requirements and Equipment Specifications" Final Technical Guidance is followed. Regulations covering ASM2525 specifications are included in WAC 173–422–070. EPA understands that more detailed ASM2525, gas cap check, and OBD operational and QA/QC equipment specifications and protocols will be developed after the State has procured the test equipment.

(6) Quality control.

The SIP needs to include a description of quality control (QC) and recordkeeping procedures. The SIP needs to include the procedures manual, rule, and ordinance or law describing and establishing the procedures of QC.

The Washington I/M SIP continues to include a QC Plan that specifies QC and periodic maintenance procedures. No changes have been proposed, other than those new ASM2525 QC regulations contained in WAC 173–422–070. QC procedures for the existing program tests are specified in WAC 173–422–120. The WDOE Emission Check staff perform inspections to ensure that operation of the emission testing facilities, calibration and maintenance of exhaust analyzers, test procedures, and training of management and inspection personnel meet the standards outlined in WAC 173–422.

F. Oregon Miscellaneous O3 Supporting Rules

EPA is proposing approval of the additions to OAR Chapter 340, Divisions 22–0400 through –1130, 24–301, 30–0700 through –1190, and 31–0500 through—0530.

The additions to Divisions 22, 24, 30 and 31 submitted to the EPA on August 30, 1996, satisfy the requirements of section 110 of the CAA and 40 CFR Part 51.

The EPA is also proposing approval of Oregon's request for modification of Test Method 24 for Morton Traffic Markings' use of methacrylate multicomponent coatings, as submitted on September 23, 1996. This request for modification was to assist in determining compliance with Oregon OAR 340–22–1020.

1. Background

The ODEQ submitted to EPA additions to OAR, Divisions 22, 24, 30, and 31 on August 30, 1996. The additions were State-effective on: August 12, 1996, for Division 24; August 14, 1996, for Divisions 22 and 30; and August 19, 1996, for Division 31.

The additions contained supporting regulations to ODEQ's O3 maintenance plan and redesignation request for the Portland AQMA. The submittals included Oregon's Stage II regulations (OAR 340–022–0400 through –0403), Area Source VOC regulations (OAR 340–022–0700–1130), Motor Vehicle Inspection Boundary (OAR–340–024 0301), Industrial Emissions Management program (OAR–340–030–0700 through –0740), Employee Commute Options Program (OAR 340–030–0800 through –1040), Voluntary Maximum Parking Ratios Program (OAR–340–030–1100 through –1190), and Boundary Descriptions and Nonattainment and Maintenance Area Designations (OAR 340–031–0500, –520, and –0530).

2. Discussion

Stage II Vapor Recovery Regulations (OAR 340–22–0400 through –0403) and Area Source VOC Regulations for General Gaseous Emissions (OAR 340–22–0700 through –1130) were submitted for Federal approval for the first time. These new rules included statements of purpose, definitions, general provisions, applicability, compliance schedules, standards and exemptions, requirements, inspection and testing procedures, recordkeeping and reporting, and other exemptions for gasoline vapors from gasoline transfer and dispensing operations, motor vehicle refinishing, consumer products, spray paints, and architectural coatings. The cited VOC emissions limits within these regulations are at least as stringent as the Federal rules which have been promulgated and approved. The EPA does not have emissions limits promulgated for spray paints and only has proposed rules for architectural coatings and consumer products.

Oregon also submitted a request for modification of Test Method 24 for Morton Traffic Markings' determination of VOC content for methacrylate multicomponent coatings. Upon review of that modification, EPA is proposing approval of the modification, with the condition added that a limit be set at ten percent for how much sample can be lost while breaking up the compounds.

Motor Vehicle Inspection and Maintenance Area Boundary (OAR 340–024–0301) was submitted for Federal approval for the first time. This new rule described the boundary designations for motor vehicle emission control inspection, test criteria, methods and standards. These boundary designations have been reviewed and are proposed for approval.

Industrial Emissions Management Program Regulations (OAR 340–030–0700 through –0740); Employee Commute Options Program Regulations (OAR 340–030–0800 through –1040); and Voluntary Maximum Parking Ratios Program Regulations (OAR 340–030–1100 through –1190) were submitted for Federal approval for the first time. OAR 340–030–0700 through –0740 contained: statement of application, definition of terms, unused Plant Site Emission Limit (PSEL) donation program, industrial growth allowances, and industrial growth allowance allocation. These have been reviewed and are proposed for approval. The TSD contains additional discussion.

Definitions of Boundaries (OAR 340–031–0500), Nonattainment Area (OAR 340–031–0520), and Maintenance Areas (OAR 340–031–0530) were submitted for Federal approval for the first time. An identical copy of these rules was also submitted as part of the CO redesignation request for the Portland Metro area. The definitions of boundaries, nonattainment areas, and maintenance areas listed in these rules have been reviewed and are proposed for approval.

V. Proposed Action

EPA proposes to approve the Portland, Oregon, and Vancouver, Washington, interstate O3 maintenance plan and request for redesignation to attainment because ODEQ and WDOE have demonstrated compliance with the requirements of section 107(d)(3)(E) for redesignation. EPA also proposes to approve the 1990 O3 Emission Inventories, changes to the NSR programs, regulations implementing the hybrid low enhanced I/M programs, an expanded vehicle inspection boundary, minor RACT rule changes (Vancouver only), Employee Commute Options rule (Portland only), voluntary parking ratio rule (Portland only), PSEL management rules (Portland only), and local area source supporting rules.

The regulations EPA proposes to approve for the Vancouver, Washington, portion are found in the following: SWAPCA 400 "General Regulations for Air Pollution Sources"; SWAPCA 490 "Emission Standards and Controls for Sources Emitting Volatile Organic Compounds"; SWAPCA 491 "Emission Standards and Controls for Sources Emitting Gasoline Vapors"; and SWAPCA 493, "VOC Area Source Rules." The amendments to SWAPCA 400, 490, and 491 became effective on November 21, 1996. The amendments to SWAPCA 493 became effective on May 25, 1996. The Washington I/M SIP revision (WAC 173–422, sections –030, –050, –060, –070, –170, and –190) was adopted by the State on November 9, 1996.

The regulations EPA proposes to approve for the Portland, Oregon, portion are found in the following: Stage II Vapor Recovery Regulations (OAR 340–022–0400 through –340–022–0404); Area Source VOC Regulations (OAR 340–022–0700 through –340–022 1130); Industrial Emissions Management Program Regulations (OAR 340–030–0700 through –340–030–0740); Employee Commute Options Program Regulations (OAR 340–030–0800 through –340–030–1040); Voluntary Maximum Parking Ratios Program Regulations (OAR 340–030–1100 through –340–030–1190). The above five amendments to the OAR became effective on August 14, 1996. The following three amendments became effective on August 19, 1996: Definitions of Boundaries (OAR 340–031–0500); Nonattainment Areas (OAR 340–031–0520); Maintenance Areas (OAR 340–031–0530). The amendment to Motor Vehicle Inspection and Maintenance Area Boundary (OAR 340–024–0301) became effective August 12, 1996. The Oregon I/M revisions (Section 3.1, OAR 340–24–300 through –340–24–355; and section 5.4) were adopted by the State on November 14, 1996. Oregon NSR revisions were submitted by ODEQ on or before January 22, 1997.

EPA is soliciting public comment on its proposed approval of revisions to the Washington and Oregon SIPs and their request to redesignate to attainment the Pdx/Van O3 area. Comments will be considered before taking final action.

Interested parties are invited to comment on all aspects of this proposed approval. Comments should be submitted to the address listed in the front of this Notice. Public comments postmarked by April 7, 1997 will be considered in the final rulemaking action taken by EPA.

VI. Interim Implementation Policy (IIP) Impact

On December 13, 1996, EPA published proposed revisions to the O3 and particulate matter (PM) NAAQS. Also on December 13, 1996, EPA published its proposed policy regarding the interim implementation requirements for O3 or PM during the time period following any promulgation of a revised O3 or PM NAAQS (61 FR 65751). This IIP includes proposed policy regarding O3 redesignation actions submitted to and approved by EPA prior to promulgation of a new O3 standard, as well as those submitted prior to and approved by EPA after the promulgation date of a new or revised O3 standard.

Complete redesignation requests, submitted by States and processed by EPA prior to the promulgation date of the new or revised O3 standard, will be approved based on the maintenance plan's ability to demonstrate attainment of the current 1-hour standard and compliance with existing redesignation criteria. Any redesignation requests submitted prior to promulgation, which are not acted upon by EPA prior to that promulgation date, must then also include a maintenance plan which demonstrates attainment of both the current one-hour standard and the new or revised O3 standard to be considered for redesignation.

As discussed previously, the Pdx/Van redesignation request demonstrates attainment under the current one-hour O3 standard. Since the EPA plans to approve this request prior to the promulgation date of the new or revised O3 standard, the Pdx/Van redesignation request meets the proposed IIP.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

VII. Administrative Review

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the EPA Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, EPA Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or

final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D, of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted on by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Authority: 42 U.S.C. 7401–7671q.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: February 26, 1997.

Charles Findley,

Acting Regional Administrator, EPA Region 10.

[FR Doc. 97–5642 Filed 3–6–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 95–93, Notice 3]

RIN 2127–AF76

Federal Motor Vehicle Safety Standards; Withdrawal of Proposed Rule, Announcement of Technical Workshop on Accelerator Control Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Withdrawal of notice of proposed rulemaking, and announcement of a technical workshop.

SUMMARY: In this document, NHTSA withdraws a proposal to amend the safety standard on accelerator control systems that would have deleted a provision that specifies return-to-idle times for a normally operating accelerator control system. The proposal was part of NHTSA's efforts to implement the President's Regulatory Reinvention Initiative.

NHTSA has decided to withdraw its proposal in order to focus on the broader issue of making the accelerator control system standard more relevant for electronic accelerator systems. NHTSA announces a technical workshop, tentatively scheduled for March 24, 1997, to discuss electronic accelerator control technology and potential methods of assuring fail-safe performance.

DATES: Technical workshop: The technical workshop is tentatively scheduled for March 24, 1997. Those persons wishing to participate in the workshop should contact Mr. Patrick Boyd (at the address given below) not later than March 24, 1997.

Written comments. Written comments on the subject matter of the workshop are due April 24, 1997.

ADDRESSES: The technical workshop will be held at the U.S. Department of Transportation building, 400 Seventh Street, SW., Washington, DC. A notice announcing the room number, and confirming the workshop date, will be published shortly after the deadline for the public to advise the agency of their intent to participate.

Written comments. Written comments concerning the subject matter of the technical workshop should refer to the docket number and notice number cited at the beginning of this notice, and be submitted to: Docket Section, Room 5109, 400 Seventh Street, SW., Washington, DC 20590 (Docket hours are from 9:30 a.m. to 4 p.m.) It is requested, but not required, that 10 copies of the comment be provided.

FOR FURTHER INFORMATION CONTACT: For technical issues: Mr. Patrick Boyd, Office of Crash Avoidance Standards, NPS–21, telephone (202) 366–6346.

For legal issues: Ms. Dorothy Nakama, Office of Chief Counsel, NCC–20, (202) 366–2992.

Both may be reached at the National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC, 20590. Comments should not be sent to these persons, but should be mailed to the Docket Section.

SUPPLEMENTARY INFORMATION:

President's Regulatory Reinvention Initiative

Pursuant to the President's March 4, 1995 directive, "Regulatory Reinvention Initiative," to the heads of departments and agencies, NHTSA undertook a review of all its regulations and directives. During the course of this review, the agency identified rules that it could propose to eliminate as unnecessary or to amend to improve their comprehensibility, application or appropriateness. As described below, NHTSA identified Federal Motor Vehicle Safety Standard No. 124 *Accelerator control systems* (49 CFR 571.124) as one rule that might benefit from being amended.

Background of Standard No. 124

Standard No. 124's purpose is to reduce deaths and injuries resulting from loss of control of the engine speed of a moving vehicle due to malfunctions in the vehicle's accelerator control system. Since 1972, Standard No. 124

has specified requirements for ensuring the return of a vehicle's throttle to the idle position under each of the following two circumstances: (1) When the driver removes the actuating force (typically, the driver's foot or cruise control) from the accelerator control, and (2) when there is a severance or disconnection in the accelerator control system. Standard No. 124 applies to passenger cars, multipurpose passenger vehicles, trucks, and buses.

Paragraph S5.1 of Standard No. 124 requires that, under any load condition, and within the time specified in S5.3, the throttle must return to the idle position from any accelerator position or any speed of which the engine is capable, whenever the driver removes the actuating force. The standard defines the throttle as "the component of the fuel metering device that connects to the driver-operated accelerator control system and that by input from the driver-operated accelerator control system controls the engine speed."

Standard No. 124 has two further requirements to provide safety in the event of accelerator control failure. The first, specified at S5.1, requires "at least two sources of energy," each capable of returning the throttle to idle position within the time limit for normal operation, from any accelerator position or speed whenever the driver removes the opposing actuating force. The second, specified at S5.2, requires that the throttle return to idle "whenever any one component of the accelerator control system is disconnected or severed at a single point" and the driver releases the pedal.

Paragraph S5.3 requires that the throttle return to idle within 1 second for vehicles of 4536 kilograms or less gross vehicle weight rating (GVWR) and within 2 seconds for vehicles with a GVWR greater than 4536. The maximum allowable time is increased to 3 seconds for any vehicle that is exposed to ambient air at −18 degrees to −40 degrees Celsius during the test or for any portion of a 12 hour conditioning period.

Prior Request for Comments and Public Response

The agency published a request for comments (60 FR 62061) on December 4, 1995 to initiate a discussion of the accelerator control issues frequently raised by manufacturers in requests for interpretation.

The questions involved two aspects of the standard: The return-to-idle requirement and the single-point failure requirement. In their requests for interpretation, manufacturers had sought assurance that the presence of controls that lock the engine speed above the idle level to facilitate the use of auxiliary equipment for dumping, mixing, compacting, etc. would not be considered violations of the return-to-idle timing requirements. Manufacturers had similar concerns about the degree of repeatability of idle speed necessary for compliance with the return-to-idle provisions. Some manufacturers were concerned that since the speed to which a vehicle returns may vary from one occasion to the next, the agency might regard speeds at the high end of the range of normal variations of idle speeds as a violation of the return-to-idle requirement. The agency requested comment on these issues to determine whether it should amend the standard to eliminate concern that the normal operation of accelerator controls could be confused with instances of failure.

The second aspect of concern arises from the emerging technology of electronic accelerator control systems. The agency had received requests for interpretation expressing the belief that electronic accelerator control systems were not subject to the requirement that the engine return to idle in the event of a single point disconnection or severance of the system. Although NHTSA had written a letter to Isuzu in 1988 confirming that the single-point failure requirement applies to both electronic and mechanical accelerator controls, the agency requested comments on the need for language in the standard to clarify how the requirement applies to electronic accelerator controls.

In the request for comments, NHTSA discussed clarifying the existing standard's language with specific performance requirements for enumerated types of disconnections and severances of mechanical and electronic accelerator controls. Most auto industry commenters voiced a preference for rescinding the standard, suggesting that market forces would assure safety without the need for Standard No. 124. However, they commented that, should the agency disagree about recision, a standard specifying fail-safe performance in the least design-specific terms would be preferable to the solution suggested in the notice. Industry commenters expressed a desire to participate in a public technical meeting with NHTSA concerning electronic accelerator controls and potential regulatory language regarding fail-safe performance.

Notice of Proposed Rulemaking

NHTSA tentatively agreed with the commenters that market forces are likely to prevent the introduction of accelerator controls whose normal mode of operation is a threat to safety, but it disagreed that market forces would necessarily assure adequate fail-safe performance. Consequently, in a notice published on April 30, 1996 (61 FR 19020), NHTSA proposed to eliminate section S5.3, which contains the return-to-idle timing tests for the normal operation of accelerator controls. As a rationale for the proposed removal of S5.3, NHTSA pointed out that its standards compliance test program has revealed no noncompliances with S5.3 for at least the past eight years. NHTSA stated that with the elimination of S5.3, Standard No. 124 would be concerned solely with fail-safe requirements for engine controls. An effort to define idle speed tolerances and the normal operation of controls for operating special equipment would no longer be necessary.

NHTSA further stated its belief that the market force argument cannot be made for the fail-safe performance of accelerator controls. The normal operating characteristics of a vehicle's accelerator control system are immediately and constantly apparent to the buyer and user. An unsatisfactory design would be met with criticism and rejection. However, the vehicle owner has no easy way to experience directly the consequences of severances of the control circuits on loss of engine control and little motivation to do so.

Public Comments on the NPRM

In response to the NPRM, NHTSA received comments from the Advocates for Highway and Auto Safety (Advocates), Allied Signal Inc., Chrysler, General Motors, Mr. Honore J. Lartigue, and Volkswagen. Industry comments to the NPRM were positive but perfunctory. Chrysler and Allied Signal pointed out that the return-to-idle time required for partially disabled systems by the retained fail-safe performance requirements would be no different than the normal operation requirements for trucks proposed for elimination. Advocates for Highway and Auto Safety characterized the proposal as an abuse of agency discretion. It criticized NHTSA's tentative opinion of the lack of need for requirements for the normal operation of accelerator controls as unsupported with appeals to specific data, studies, or other evidence. 1

Generally, the industry commenters expressed more interest in the electronic accelerator control issues, which were not the specific subject of the NPRM, than in the proposed elimination of S5.3. Allied Signal, Volkswagen and General Motors cited the difficulty of applying the language of the current

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standard to electronic accelerator controls, including even the basic terms "throttle" and "idle position." General Motors" comment dismissed the proposal as unimportant and instead presented useful ideas about fail-safe provisions it considered applicable to electronic accelerator controls. It stated that with electronic engine controls, throttle position is no longer the singular factor that controls engine speed. It is possible to exploit control of spark advance and/or fuel metering as alternative means of preventing uncontrolled engine speed. Therefore, General Motors suggested that the present requirement of two sources of energy to return the throttle to the idle position be replaced by a more general requirement of two means capable of returning the engine to idle in the event of the disconnection or severance of the other. It also suggested a second provision that if two means of returning the engine to idle cannot be provided, then a fail-safe feature would either shut-down the engine or automatically shift the transmission into neutral in the event of a disconnection or severance of the accelerator control.

General Motors' suggestions invite questions about their applicability to diesel engines and about the desirability of shifting the transmission into neutral, but they represent constructive thought about the preservation of fail-safe performance in the face of changing technology for accelerator control.

Agency Withdrawal of NPRM

After carefully reviewing the public comments, NHTSA has decided to withdraw its proposal to remove S5.3 from Standard No. 124. The public commenters addressing the issue have highlighted the fact that there are many unresolved areas involving electronic accelerator controls. NHTSA is withdrawing the proposal so that it can fully review the issue of making the standard more relevant to electronic systems prior to considering any other amendments to the Standard.

Technical Workshop

As stated in its December 4, 1995 request for comments (60 FR 62061), NHTSA plans to hold a technical workshop on the need to amend Standard No. 124. NHTSA tentatively plans to hold the workshop on March 24, 1997, at the U.S. Department of Transportation Building (400 Seventh Street, SW.) in Washington, DC. NHTSA believes its long range plans for Standard No. 124 will be facilitated if workshop participants and submitters of written comments discuss the questions raised in the December 1995 request for comments.

The agency wishes workshop participants to discuss:

(1) The principles of operation of existing and potential electronic accelerator control systems for gasoline and diesel engines;

(2) The principles of operation of existing and potential means of providing fail-safe performance in the event of loss of accelerator control by the primary system; and

(3) Suggestions for regulatory requirements that will assure the fail-safe performance of electronic accelerator control systems.

The agency therefore asks those persons interested in participating to make their interest known by contacting Mr. Boyd, and describing the topic(s) the person wishes to address. Although NHTSA expects to hold the technical workshop in March 1997, it would appreciate being informed if any interested persons need more time to prepare remarks. If many people state that more time is necessary, NHTSA will pick a later date. The two persons mentioned at the beginning of this termination notice are available to answer questions.

NHTSA will issue another notice announcing the room number of the workshop and agenda items to be discussed. If necessary, the date for the workshop and submission of written comments will be adjusted.

Accordingly, as discussed in the preamble, the notice of proposed rulemaking published in the **Federal Register** on April 30, 1996 (61 FR 19020) is withdrawn.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: March 4, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–5727 Filed 3–6–97; 8:45 am]

BILLING CODE 4910–59–P

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49 CFR Part 572

[Docket No. 96–65; Notice 3]

RIN 2127–AG58

Federal Motor Vehicle Safety Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of request for extension of comment due date.

FOR FURTHER INFORMATION CONTACT: Z. Taylor Vinson, Office of Chief Counsel, NHTSA, Room 5219, 400 7th Street SW, Washington, D.C. 20590 (telephone 202–418–8142).

SUPPLEMENTARY INFORMATION: This document denies a petition for extension of time to comment on proposed Federal Motor Vehicle Safety Standard No. 100 *Low-speed vehicles.*

On January 8, 1997, the National Highway Traffic Safety Administration published a notice of proposed rulemaking that would apply a new Federal motor vehicle safety standard to motor vehicles whose maximum speed does not exceed 25 mph (Docket No. 96–65; Notice 2, 62 FR 1077). February 24, 1997, was established as the due date for comments on the proposal.

Advocates for Highway and Auto Safety petitioned the agency to extend the comment period for an additional 30 days. The reason for the request is the temporary closure of the docket room, Room 5109 of the Nassif Building, from February 10 to March 10, 1997. Advocates argued that dockets will be unavailable for public inspection during this period and that comments filed in response to the proposal will likewise be unavailable for inspection for two weeks before the closing date of February 24, 1997.

Although Room 5109 is closed for the period indicated, comments filed in response to Notice 2 and other pending notices are available for inspection in Room 6130 of the Nassif Building during ordinary business hours of 9:30 a.m. to 4:00 p.m. as before. Thus, the temporary closure of Room 5109 will not affect the ability of the public to inspect comments being submitted to dockets during the period February 10 to March 10, 1997. Visitors to the Nassif Building have been advised of the temporary change of the NHTSA docket room from Room 5109 to Room 6130 by signs posted on or before February 10 in the Department's Central Docket Room and in each of the four street-level entrances to the Nassif Building.

Advocates also avers that the proposal to allow a new class of Low Speed Vehicles to operate on the public roads without full conformity to current Federal motor vehicle safety standards has serious implications and itself warrants an extension of the comment period for an additional 30 days.

NHTSA denies the petition by Advocates for additional time in which to comment on Notice 2. The public has had full access to comments filed in response to Notice 2 of Docket No. 96–65 during the comment period (in fact only two comments had been filed by February 19, 1997). Before issuing the notice of proposed rulemaking, NHTSA

conducted two public meetings and received comments from interested persons, including Advocates, on safety and other issues involving the regulation of low speed vehicles. These issues were thoroughly discussed in the preamble to the proposed rule. NHTSA deems it unlikely that providing an additional 30 days in which to comment would result in it receiving comments that differ materially from those submitted on or before the stated due date for comments, especially since no other person has requested an extension of time.

This denial does not affect NHTSA's long-standing policy of accepting comments filed after the due date, and considering them to the extent practicable before issuance of further rulemaking notices.

Authority: 49 U.S.C. 322, 30111, 30115, 30166; delegation of authority at 49 1.50 and 501.8.

Issued on: March 4, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–5724 Filed 3–6–97; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register

Vol. 62, No. 45

SUPPLEMENTARY INFORMATION: On December 30, 1996, the Committee for Purchase From People Who Are Blind or Severely Disabled published a notice (61 FR 68743) of proposed addition to the Procurement List. Comments were to be received on or before February 28, 1997.

The following pertain to the proposed addition:

1. The Committee has been advised that the mandatory source for the commodities and services proposed for addition to the Procurement List is not subject to the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

2. The action does not appear to have a severe adverse impact on current contractors for the commodities and

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration, USDA

Proposed Posting of Stockyards

The Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in Section 302 of the Packers and Stockyards Act (7 U.S.C. 202), and should be made subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*).

AR–172 Lafayette County Livestock Auction, South Lewisville, Arkansas
AZ–116 Arizona Livestock Auction, Inc., Phoenix, Arizona
GA–220 Henderson Event Center, Inc., College Park, Georgia
GA–221 Ranger Horse Auction, Ranger, Georgia
OH–152 Rushcreek Stable & Auction, Bremen, Ohio
WI–146 Bloomington Livestock Exchange, Bloomington, Wisconsin

Pursuant to the authority under Section 302 of the Packers and Stockyards Act, notice is hereby given that it is proposed to designate the stockyards named above as posted stockyards subject to the provisions of said Act.

Any person who wishes to submit written data, views or arguments concerning the proposed designation may do so by filing them with the Director, Livestock Marketing Division, Grain Inspection, Packers and Stockyards Administration, Room 3408–South Building, U. S. Department of Agriculture, Washington, DC 20250, by March 24, 1997.

All written submissions made pursuant to this notice will be made available for public inspection in the office of the Director of the Livestock Marketing Division during normal business hours.

Done at Washington, DC this 3rd day of March 1997.

Daniel L. Van Ackeren,
Director, Livestock Marketing Division, Packers and Stockyards Programs.

[FR Doc. 97–5666 Filed 3–6–97; 8:45 am]
BILLING CODE 3410–EN–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.
ACTION: Additions to the procurement list.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: April 7, 1997.
ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.
FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.
SUPPLEMENTARY INFORMATION: On December 6, 30, 1996 and January 10, 1997, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (61 FR 64666, 68706 and 62 FR 1426) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.
2. The action will not have a severe economic impact on current contractors for the services.
3. The action will result in authorizing small entities to furnish the services to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Grounds Maintenance, Mountain Home Air Force Base, Idaho
Janitorial/Custodial, Edward Hines, Jr. VA Hospital, Consolidated Mail Outpatient Pharmacy, Building #37, Hines, Illinois
Linen Distribution, VA Medical Center, 1900 E. Main Street, Danville, Illinois
Litter Pick-Up, Robins Air Force Base, Georgia
Operation of SERVMART Store, Naval Air Station, Whiting Field, Milton, Florida
Operation of SERVMART Store, Naval Air Station, Pensacola, Florida

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,
Executive Director.

[FR Doc. 97–5687 Filed 3–6–97; 8:45 am]
BILLING CODE 6353–01–P

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.
ACTION: Additions to the procurement list.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: April 7, 1997.
ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.
FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On December 30, 1996, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (61 FR 68706) of proposed addition to the Procurement List. Comments were received from counsel for the previous contractor for this service, which was the current contractor at the time the service was proposed for addition to the Procurement List. The contractor claimed that loss of the contract was potentially devastating, and asked that an impact analysis be done by the Committee on the basis of the information the contractor had submitted.

Until a year ago, the service was performed by Government personnel. The contracting activity for this service has informed the Committee that if the service is not added to the Procurement List at this time, it will be placed with the Small Business Administration (SBA)'s 8(a) Program. The contracting office also furnished a letter from the regional SBA office requesting it to begin negotiations with a designated 8(a) firm to perform the service. Because the service will not be competitively procured in the future regardless of whether or not the Committee adds it to the Procurement List, the commenting contractor will not be eligible to provide it. Consequently, the Committee has concluded that addition of the service to the Procurement List will not be the cause of any adverse impact the contractor may suffer.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service and impact of the additions on the current or most recent contractors, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.
2. The action will not have a severe economic impact on current contractors for the service.
3. The action will result in authorizing small entities to furnish the service to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to the Procurement List:

Janitorial/Custodial, Richmond (Hunter Holmes McGuire) VAMC, Richmond, Virginia

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,
Executive Director.

[FR Doc. 97–5688 Filed 3–6–97; 8:45 am]
BILLING CODE 6353–01–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.
ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: April 7, 1997.
ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.
FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.
SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.
2. The action does not appear to have a severe adverse impact on current contractors for the commodities and services.
3. The action will result in authorizing small entities to furnish the commodities and services to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Office and Miscellaneous Supplies
(Requirements for Brooks Air Force Base, Texas)
NPA: San Antonio Lighthouse, San Antonio, Texas

Office and Miscellaneous Supplies
(Requirements for the Defense Supply Service—Washington, Arlington, Virginia at the following locations: Park Center #4, 4501 Ford Avenue, Alexandria, Virginia; Skyline #3, 5109 Leesburg Pike, Alexandria, Virginia; Rosslyn, 1401 Wilson Boulevard, Arlington, Virginia)
NPA: Virginia Industries for the Blind, Richmond, Virginia

Cover, Helmet, Reversible
8415–00–NIB–0064
(Requirements for the U.S. Army Soldiers Systems Command, Natick, Massachusetts)
NPA: Lions Volunteer Blind Industries, Inc., Morristown, Tennessee

Services

Janitorial/Custodial
Davis-Monthan Air Force Base, Arizona
NPA: J. P. Industries, Tucson, Arizona

Janitorial/Custodial
NASA Goddard Space Flight Center, Greenbelt, Maryland
NPA: Melwood Horticultural Training Center, Upper Marlboro, Maryland

Beverly L. Milkman,
Executive Director.

[FR Doc. 97–5689 Filed 3–6–97; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for

clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Southwest Region Permit Family of Forms.

Form Number(s): None prescribed.

OMB Approval Number: 0648–0204.

Type of Request: Revision of a currently approved collection.

Burden: 65 hours.

Number of Respondents: 95.

Avg Hours Per Response: Ranges between 30 minutes and 2 hours depending on the requirement.

Needs and Uses: Permits are required for persons to participate in Federally-managed fisheries in the Western Pacific Region. The permit applications forms provide basic information about permit holders and the vessels and gear being used. This information is important to understand the nature of the fisheries, entry and exit patterns, and the extent to which fishing is likely to effect the stocks and businesses related to the fishery. Permitting actions provide an important link to the participants so that the National Marine Fisheries Service officials can explain the regulations that apply to the fishery as well as emphasize the importance of complying with the regulations and reporting requirements. This collection covers three types of permits—basic permits, limited entry permits and experimental permits.

Affected Public: Businesses or other for-profit organizations, individuals or households.

Frequency: Annually, on occasion, variable.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Adele Morris, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this Notice to Adele Morris, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: February 27, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–5705 Filed 3–6–97; 8:45 am]

BILLING CODE 3510–22–P

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Northwest Region Federal Fisheries Permits.

Form Numbers(s): None prescribed.

OMB Approval Number: 0648–0203.

Type of Request: Revision of a currently approved collection.

Burden: 530 hours.

Number of Respondents: 1,018.

Avg Hours Per Response: Ranges between 20 minutes and 2 hours depending on the requirement.

Needs and Uses: One of the steps taken to manage regulated fisheries is to issue permits to resource users. In the Northwest Region, there are three types of permits issued under the Fishery Management Plan for the groundfish fishery off Washington, Oregon and California. They are: experimental fishing permits, limited entry permits; and permits for groundfish processing vessels over 125 feet in length and any catcher vessels that deliver to them. Without this information and the use of permits, this fishery could not be managed effectively.

Affected Public: State local or tribal government, businesses or other for-profit organizations.

Frequency: On occasion, annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Adele Morris, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this Notice to Adele Morris, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: February 27, 1997.

Linda Engelmeier,

Department Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–5706 Filed 3–6–97; 8:45 am]

BILLING CODE 3510–22–P

Foreign-Trade Zones Board

[Order No. 872]

Expansion of Foreign-Trade Zone 126; Reno, NV

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the Economic Development Authority of Western Nevada, grantee of Foreign-Trade Zone No. 126, for authority to expand its general-purpose zone in Reno, Nevada, within the Reno Customs port of entry, was filed by the Foreign-Trade Zones (FTZ) Board on March 15, 1996 (Docket 24–96, 61 FR 14289, 4/1/96);

Whereas, notice inviting public comment was given in the **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board has found that the requirements of the Act and the regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The grantee is authorized to expand its zone as requested in the application, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 25th day of February 1997.

Robert S. LaRussa,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 97–5633 Filed 3–6–97; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 871]

Expansion of Foreign-Trade Zone 147; Reading, Pennsylvania, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the Foreign Trade Zone Corporation of Southeastern Pennsylvania, grantee of Foreign-Trade Zone 147, for authority to expand Foreign-Trade Zone 147 to expand an existing site and include additional sites in Berks and York Counties, Pennsylvania, was filed by the Board on January 17, 1996 (FTZ Docket 3–96, 61 FR 2487, 1/26/96); and,

Whereas, notice inviting public comment was given in **Federal Register** and the application has been processed

pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 147 is approved, subject to the Act and the Board's regulations, including Section 400.28, and subject to the standard 2,000-acre activation limit.

Signed at Washington, DC, this 25th day of February 1997.

Robert S. LaRussa,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 97–5631 Filed 3–6–97; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 875]

Grant of Authority for Subzone Status; Ohmeda Caribe Inc./Ohmeda Pharmaceutical Manufacturing Inc. (Pharmaceutical Products) Guayama, Puerto Rico

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Commercial Farm Credit and Development Corporation of Puerto Rico, grantee of Foreign-Trade Zone 61, for authority to establish special-purpose subzone status at the pharmaceutical manufacturing plant of Ohmeda Caribe Inc./Ohmeda Pharmaceutical Manufacturing Inc., in Guayama, Puerto Rico, was filed by the Board on June 22, 1995, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 33–95, 60 FR 34510, 7–3–95); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application for a five-year period, subject to extension, is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status at the pharmaceutical manufacturing plant of Ohmeda Caribe Inc./Ohmeda Pharmaceutical Manufacturing Inc., located in Guayama, Puerto Rico (Subzone 61H), at the location described in the application, for a period of 5 years from the date of this Board Order, subject to extension upon application, and subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 25th day of February 1997.

Robert S. LaRussa,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–5632 Filed 3–6–97; 8:45 am]

BILLING CODE 3510–DS–P

[Docket A(32b1)–1–97]

Foreign-Trade Zone 62—Brownsville, TX; Request for Manufacturing Authority AMFELS, Inc. (Offshore Drilling Platforms/Shipbuilding)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Brownsville Navigation District, grantee of FTZ 62, pursuant to § 400.32(b)(1) of the Board's regulations (15 CFR Part 400), requesting authority on behalf of AMFELS, Inc. (AMFELS)(a subsidiary of FELS Offshore PTE Ltd., of Singapore), for the manufacture, refurbishment and repair of mobile offshore drilling and other oceangoing vessels under FTZ procedures within FTZ 62. It was formally filed on February 25, 1997.

AMFELS operates a 133-acre facility (800 employees) within FTZ 62-Site 8 (Brownsville Navigation District) for the manufacture, refurbishment and repair of offshore petroleum drilling/production platforms (HTSUS#8905.20), classified as oceangoing vessels. Up to 70 percent of the components of the platforms are purchased from foreign sources, including steel plates, high pressure pipes and fittings, electric cables, and steel cable anchor chains (1997 duty rate range: free–6.2%, ad valorem).

This application requests authority to allow AMFELS to conduct the activity under FTZ procedures, subject to the "standard shipyard restriction" applicable to foreign-origin steel mill products, which requires that full duties be paid on such items.

FTZ procedures would exempt AMFELS from Customs duty payments on the foreign components used in export activity (currently 100% of shipments). On its domestic sales, the company would be able to choose the duty rate that applies to finished oceangoing vessels (duty free) for the foreign electric cables and cable anchor chains noted above. Foreign-sourced steel mill products, such as pipe and plate, would be subject to the full Customs duties applicable to those items. FTZ procedures would also exempt certain merchandise from certain ad valorem inventory taxes. The application indicates that the savings from FTZ procedures would help improve the facility's international competitiveness.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is April 7, 1997. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to April 21, 1997).

A copy of the application will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th Street & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: February 27, 1997.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–5630 Filed 3–6–97; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or

countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 353.22 or 355.22 of the Department of Commerce (the Department) Regulations (19 CFR 353.22/355.22 (1993)), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review:

Not later than the last day of March 1997, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in March for the following periods:

	Period
Antidumping Proceedings:	
Australia: Canned Barlett Pears, A–602–039	3/1/96–2/28/97
Bangladesh: Shop Towels, A–538–802	3/1/96–2/28/97
Brazil: Ferrosilicon, A–351–820	3/1/96–2/28/97
Lead and Bismuth Steel, A–351–811	3/1/96–2/28/97
Canada: Construction Castings, A–122–503	3/1/96–2/28/97
Chile: Standard Carnations, A–337–602	3/1/96–2/28/97
Colombia: Fresh Cut Flowers, A–301–602	3/1/96–2/28/97
Ecuador: Fresh Cut Flowers, A–331–602	3/1/96–2/28/97
Finland: Rayon Staple Fiber, A–405–071	3/1/96–2/28/97
France:	
Brass Sheet and Strip, A–427–602	3/1/96–2/28/97
Lead and Bismuth Steel, A–427–804	3/1/96–2/28/97
Germany:	
Brass Sheet and Strip, A–428–602	3/1/96–2/28/97
Lead and Bismuth Steel, A–428–811	3/1/96–2/28/97
India: Sulfanilic Acid, A–533–806	3/1/96–2/28/97
Israel: Oil Country Tubular Goods, A–508–602	3/1/96–2/28/97
Italy:	
Certain Valves and Connections of Brass, for Use in Fire Protection Equipment, A–475–401	3/1/96–2/28/97
Brass Sheet and Strip, A–475–601	3/1/96–2/28/97
Japan:	
Defrost Timers, A–588–829	3/1/96–2/28/97
Stainless Steel Pipe Fittings, A–588–702	3/1/96–2/28/97
Color Televisions, A–588–015	3/1/96–2/28/97
Mexico: Steel Wire Rope, A–201–806	3/1/96–2/28/97
South Korea: Steel Wire Rope, A–580–811	3/1/96–2/28/97
Spain: Stainless Steel Bar, A–469–805	3/1/96–2/28/97
Sweden: Brass Sheet and Strip, A–401–601	3/1/96–2/28/97
Taiwan: Light-Walled Welded Rectangular Carbon Steel Tubing, A–583–803	3/1/96–2/28/97
Thailand: Circular Welded Pipes and Tubes, A–549–502	3/1/96–2/28/97
The People's Republic of China:	
Chloropicrin, A–570–002	3/1/96–2/28/97
Ferrosilicon, A–570–819	3/1/96–2/28/97
Glycine, A–570–836	3/1/96–2/28/97
The United Kingdom: Lead and Bismuth Steel, A–412–810	3/1/96–2/28/97
Countervailing Proceedings:	
Brazil:	
Cotton Yarn, C–351–037	1/1/96–12/31/96
Certain Castor Oil Products, C–351–029	1/1/96–12/31/96
Lead and Bismuth Steel, C–351–812	1/1/96–12/31/96
Chile: Standard Carnations, C–337–601	1/1/96–12/31/96
France:	
Brass Sheet and Strip, C–427–603	1/1/96–12/31/96
Lead and Bismuth Steel, C–427–805	1/1/96–12/31/96
Germany: Lead and Bismuth Steel, C–428–812	1/1/96–12/31/96
India: Sulfanilic Acid, C–533–807	1/1/96–12/31/96
Iran: In-Shell Pistachios, C–507–501	1/1/96–12/31/96
Israel: Oil Country Tubular Goods, C–508–601	1/1/96–12/31/96
Netherlands: Standard Chrysanthemums, C–421–601	1/1/96–12/31/96
Pakistan: Shop Towels, C–535–001	1/1/96–12/31/96
Turkey:	
Certain Welded Carbon Steel Pipe and Tube, C–489–502	1/1/96–12/31/96
Welded Carbon Steel Line Pipe, C–489–502	1/1/96–12/31/96
The United Kingdom: Lead and Bismuth Steel, C–412–811	1/1/96–12/31/96

In accordance with sections 353.22(a) and 355.22(a) of the regulations, an interested party as defined by section 353.2(k) may request in writing that the Secretary conduct an administrative review. The Department has changed its requirements for requesting reviews for countervailing duty orders. Pursuant to 19 C.F.R. 355.22(a) of the regulations, an interested party must specify the individual producers or exporters covered by the order or suspension agreement for which they are requesting a review (Interim Regulations, 60 FR 25130, 25137 (May 11, 1995)). Therefore, for both antidumping and countervailing duty reviews, the interested party must specify for which individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin, and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 353.31(g) or 355.3(g) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation," for requests received by the last day of March 1997. If the Department does not receive, by the last day of March 1997, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: February 25, 1997.

Joseph A. Spetrini,

Deputy Assistant Secretary for Group III.

[FR Doc. 97–5627 Filed 3–6–97; 8:45 am]

BILLING CODE 3510–DS–M

Determination Not To Revoke Antidumping Duty Orders and Findings Nor To Terminate Suspended Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Determination not to revoke antidumping duty orders and findings nor to terminate suspended investigations.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty orders and findings nor to terminate the suspended investigations listed below.

EFFECTIVE DATE: March 7, 1997.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld or the analyst listed under Antidumping Proceeding at: Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an antidumping duty order or finding or terminate a suspended investigation, pursuant to 19 CFR § 353.25(d)(4)(iii), if no interested party has requested an administrative review for four consecutive annual anniversary months and no domestic interested party objects to the revocation or requests an administrative review.

We had not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months. Therefore, pursuant to § 353.25(d)(4)(i) of the Department's regulations, on November 27, 1996, we published in the **Federal Register** a notice of intent to revoke these antidumping duty orders and findings and to terminate the suspended investigations and served written notice of the intent to each domestic interested party on the Department's service list in each case. Within the specified time frame, we received objections from domestic interested parties to our intent to revoke these antidumping duty orders and findings and to terminate the suspended investigations. Therefore, because domestic interested parties objected to our intent to revoke or terminate, we no longer intend to revoke these antidumping duty orders and findings or to terminate the suspended investigations.

Antidumping Proceeding

A–351–602
Brazil
Certain Carbon Steel Butt-Weld Pipe Fittings
Objection Date: December 12, 1996, December 13, 1996
Objector: Hackney Inc., Tube Forgings of America Inc., et al
Contact: Thomas Schauer at (202) 482–4852

A–428–062
Germany
Animal Glue and Inedible Gelatin
Objection Date: December 27, 1996
Objector: Hudson Industries Corporation
Contact: Tom Killiam at (202) 482–2704

A–588–809
Japan
Business Telephone Systems
Objection Date: December 30, 1996
Objector: Lucent Technologies Inc.
Contact: Hermes Pinilla at (202) 482–4733

A–588–405
Japan
Cellular Mobile Telephones and Subassemblies
Objection Date: December 11, 1996
Objector: Motorola Inc.
Contact: Charles Riggle at (202) 482–0650

A–588–811
Japan
Drafting Machines and Parts Thereof
Objection Date: December 6, 1996
Objector: Vemco Corporation
Contact: Mathew Blaskovich at (202) 482–5831

A–588–068
Japan
Steel Wire Strand
Objection Date: December 18, 1996
Objector: Florida Wire & Cable Company
Contact: Kris Campbell at (202) 482–3813

A–614–502
New Zealand
Low-Fuming Brazing Copper Rod & Wire
Objection Date: December 6, 1996
Objector: Copper & Brass Fabricators Council
Contact: Tamara Underwood at (202) 482–0197

A–583–508
Taiwan
Porcelain-On-Steel Cooking Ware
Objection Date: December 23, 1996
Objector: General Housewares Corporation

Contact: Amy Wei at (202) 482–1131

Dated: February 26, 1997.

Richard W. Moreland,

Acting Deputy Assistant Secretary for AD/CVD Enforcement.

[FR Doc. 97–5628 Filed 3–6–97; 8:45 am]

BILLING CODE 3510–DS–P

Determination Not To Revoke Antidumping Duty Orders and Findings Nor To Terminate Suspended Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Determination not to revoke antidumping duty orders and findings nor to terminate suspended investigations.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty orders and findings nor to terminate the suspended investigations listed below.

EFFECTIVE DATE: March 7, 1997.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld or the analyst listed under Antidumping Proceeding at: Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an antidumping duty order or finding or terminate a suspended investigation, pursuant to 19 CFR § 353.25(d)(4)(iii), if no interested party has requested an administrative review for four consecutive annual anniversary months and no domestic interested party objects to the revocation or requests an administrative review.

We had not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months. Therefore, pursuant to § 353.25(d)(4)(i) of the Department's regulations on January 6, 1997, we published in the **Federal Register** a notice of intent to revoke these antidumping duty orders and findings and to terminate the suspended investigations and served written notice of the intent to each domestic interested party on the Department's service list in each case. Within the specified time frame, we received objections from domestic interested parties to our intent to revoke these antidumping duty orders and findings and to terminate the suspended investigations. Therefore, because domestic interested parties objected to our intent to revoke or terminate, we no longer intend to revoke these antidumping duty orders and findings or to terminate the suspended investigations.

Antidumping Proceeding

A–351–603
Brazil
Brass Sheet and Strip
Objection Date: January 6, 1997
Objector: Copper & Brass Fabricators Council, Inc.
Contact: Tom Killiam at (202) 482–2704

A–122–605
Canada
Color Picture Tubes
Objection Date: January 31, 1997
Objector: AFL-CIO et al
Contact: Valerie Owenby at (202) 482–0145

A–559–601
Singapore
Color Picture Tubes
Objection Date: January 31, 1997
Objector: AFL-CIO et al
Contact: Michael Heaney at (202) 482–4475

A–791–502
South Africa
Brazing Copper Wire and Rod
Objection Date: January 6, 1997
Objector: Copper & Brass Fabricators Council, Inc.
Contact: Valerie Owenby at (202) 482–0145

A–580–603
South Korea
Brass Sheet and Strip
Objection Date: January 6, 1997
Objector: Copper & Brass Fabricators Council, Inc.
Contact: Tom Killiam at (202) 482–2704

A–580–605
South Korea
Color Picture Tubes
Objection Date: January 17, 1997; January 31, 1997
Objector: Thompson Consumer Electronics, AFL-CIO et al
Contact: Tamara Underwood at (202) 482–0197

A–583–603
Taiwan
Stainless Steel Cooking Ware
Objection Date: January 9, 1997; January 14, 1997; January 16, 1997
Objector: Regal Ware, Inc., Revere Ware Corporation; Fair Trade Committee of the Cookware Manufacturers Association
Contact: Valerie Owenby at (202) 482–0145

A–122–701
Canada
Potassium Chloride
Objection Date: January 21, 1997; January 30, 1997
Objector: Agrium (US), Inc., Mississippi Potash, Inc.
Contact: James Rice at (202) 482–1374

Dated: February 26, 1997.

Richard W. Moreland,

Acting Deputy Assistant Secretary for AD/CVD Enforcement.

[FR Doc. 97–5629 Filed 3–6–97; 8:45 am]

BILLING CODE 3510–DS–P

[A–421–805]

Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide (PPD–T) From the Netherlands; Preliminary Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of the antidumping duty administrative review; Aramid fiber formed of poly para-phenylene terephthalamide from The Netherlands.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on aramid fiber formed of poly para-phenylene terephthalamide (PPD–T aramid) from the Netherlands in response to requests by respondent, Akzo Nobel Aramid Products, Inc. and Aramid Products V.o.F. (Akzo) and petitioner, E.I. du Pont de Nemours and Company. This review covers sales of this merchandise to the United States during the period June 1, 1995 through May 31, 1996, by Akzo Nobel V.o.F. The results of the review indicate the existence of dumping margins for the above period.

We invite interested parties to comment on these preliminary results. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: March 7, 1997.

FOR FURTHER INFORMATION CONTACT: Nithya Nagarajan at (202) 482–0193, Eugenia Chu at (202) 482–3964, or Ellen Knebel at (202) 482–1398, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

SUPPLEMENTARY INFORMATION:

Background

The Department published in the **Federal Register** the antidumping duty order on PPD–T aramid from the Netherlands on June 24, 1994 (59 FR 32678). On June 6, 1996, we published in the **Federal Register** (61 FR 28840) a notice of opportunity to request an administrative review of the antidumping duty order on PPD–T aramid from the Netherlands covering the period June 1, 1995, through May 31, 1996.

In accordance with 19 CFR 353.22(a)(1), Akzo and petitioner requested that we conduct an administrative review for the aforementioned period. On August 8, 1996, the Department published a notice of "Initiation of Antidumping Review" (60 FR 41373). The Department is now conducting this administrative review pursuant to section 751 of the Act.

Scope of Review

The products covered by this review are all forms of PPD–T aramid from the Netherlands. These consist of PPD–T aramid in the form of filament yarn (including single and corded), staple fiber, pulp (wet or dry), spun-laced and spun-bonded nonwovens, chopped fiber, and floc. Tire cord is excluded from the class or kind of merchandise under review. This merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) item numbers 5402.10.3020, 5402.10.3040, 5402.10.6000, 5503.10.1000, 5503.10.9000, 5601.30.0000, and 5603.00.9000. The HTS item numbers are provided for convenience and Customs purposes. The written description of the scope remains dispositive.

Verification

As provided in section 782(i) of the Act, we verified information provided by the respondent, using standard verification procedures, including on-site inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in public versions of the verification reports, available to the public in Room B–099 of the H.C. Hoover Building (the main Commerce Building).

Transactions Reviewed

In accordance with section 751 of the Act, the Department is required to determine the normal value (NV) and export price (EP) or constructed export price (CEP) of each entry of subject merchandise. Because there can be a significant lag between entry date and sale date for CEP sales, it has been the Department's practice to examine U.S. CEP sales during the period of review. *See Gray Portland Cement and Clinker from Japan; Final Results of Antidumping Duty Administrative Review*, 58 FR 48826 (1993) (the Department did not consider ESP (now CEP) entries which were sold after the POR). The Court of International Trade (CIT) has upheld the Department's practice in this regard. *See The AD Hoc Committee of Southern California Producers of Gray Portland Cement v. United States*, Slip Op. 95–195 (CIT December 1, 1995).

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondent in the home market during the POR, (and covered by the Scope of the Review) to be foreign like products for purposes of product comparisons to U.S. sales. Where there were no sales of identical or similar merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the constructed value (CV) of the product sold in the U.S. market during the comparison period.

Normal Value Comparisons

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Akzo's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because Akzo's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market provides a viable basis for calculating NV for Akzo.

To determine whether sales of PPD–T aramid by Akzo to the United States were made at less than NV, we compared the CEP (Akzo had no EP sales) to the NV, as described in the "Constructed Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(2), we calculated monthly weighted-average prices for NV and compared them to individual U.S. transactions.

Constructed Export Price

The Department based its margin calculation on CEP, as defined in section 772 (b), (c), and (d) of the Act, for those sales to the first unaffiliated purchaser that took place after importation into the United States.

We calculated CEP based on delivered prices in connection with sales to unaffiliated purchasers in the United States. When appropriate, the Department made adjustments for discounts, rebates, credit expenses, and direct selling expenses. We deducted those indirect selling expenses, including inventory carrying costs, that related to commercial activity in the United States. We also made deductions for movement expenses (international freight, brokerage and handling, U.S. duties, domestic inland freight, and insurance). Finally, pursuant to section 772(d)(3), an adjustment was made for CEP profit.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because Akzo's aggregate volume of the home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market provides a viable basis for calculating NV on home market sales.

Where appropriate, we adjusted for discounts, credit expenses, warranty expenses, inland freight, and inland insurance. We also adjusted the starting price for billing adjustments to the invoice price.

We made adjustments, where appropriate, for physical differences in merchandise (DIFMER) in accordance with section 773(a)(6)(C)(ii) of the Act. A weighted-average (upward, if applicable) DIFMER adjustment was applied, as reported by respondent. In addition, in accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs.

Arm's Length Sales

Sales to affiliated customers in the home market not made at arm's length were excluded from our analysis, in accordance with 19 CFR 353.45(a). To test whether these sales were made at arm's length, we compared the starting prices of sales to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, discounts, and packing. Where the price to the affiliated party was, on average, 99.5 percent or more of the price to the unaffiliated party, we determined that the sales made to the affiliated party were at arm's length.

Cost of Production Analysis

In the most recently completed administrative review of Akzo, we disregarded sales found to be below the cost of production (COP). Therefore, in accordance with section 773(b)(2)(A)(ii) of the Act, the Department has reasonable grounds to believe or suspect that sales below the COP may have occurred during this review period. Thus, pursuant to section 773(b) of the Act, we initiated a COP investigation of Akzo in the instant review.

In accordance with section 773(b)(3) of the Act, we calculated an average COP, by model, based on the sum of the cost of materials and fabrication employed in producing the foreign like product, plus amounts for home market general and administrative expenses (G&A) and packing costs in accordance with section 773(b)(3) of the Act. We used the home market sales data and COP information provided by Akzo in its questionnaire responses.

After calculating a weighted-average COP, we tested whether home market sales of PPD–T aramid were made at prices below COP within an extended period of time in substantial quantities, and whether such prices permit recovery of all costs within a reasonable period of time. We compared model-specific COP to the reported home market prices less any applicable movement charges, discounts, rebates, and direct and indirect selling expenses.

Pursuant to section 773(b)(2)(C), where less than 20 percent of Akzo's sales of a given model were at prices less than COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." In accordance with sections 773(b)(2) (B) and (D), where 20 percent or more of home market sales of a given product were at prices less than the COP, we disregarded only the below-cost sales where such sales were found to be made within an extended period of time and at prices which would not permit recovery of all costs within a reasonable period of time.

We found that, for certain types of PPD–T aramid, more than 20 percent of the home market sales were sold at below-cost prices in substantial quantities within the period of review. We therefore find that these below-cost sales were made in substantial quantities within an extended period of time. To determine whether prices were such as to provide for recovery of costs within a reasonable period of time, we tested whether the per unit price was above the weighted average per unit cost of production for the POR. If it was, we disregarded those below cost sales and used the remaining above-cost sales as the basis of determining NV if such sales existed, in accordance with section 773(b)(1). For those models of PPD–T aramid for which there were no above-cost sales available for matching purposes, we compared CEP to CV.

Price-to-Price Comparisons

Pursuant to section 777A(d)(2), we compared the CEPs of individual U.S. transactions to the monthly weighted-average NV of the foreign like product where there were sales at prices above COP, as discussed above. We based NV on packed, ex-factory or delivered prices to unaffiliated purchasers in the home market. We made adjustments, where applicable, in accordance with section 773(a)(6) of the Act. Where applicable, we made adjustments to home market price for discounts, rebates, inland freight and insurance. To adjust for differences in circumstances of sale between the home market and the United States, we reduced home market prices by an amount for home market credit expenses. In order to adjust for differences in packing between the two markets, we adjusted home market price by deducting HM packing costs and adding U.S. packing costs. Prices were reported net of value added taxes (VAT) and, therefore, no deduction for VAT was necessary. We made adjustments, where appropriate, for physical differences in merchandise in accordance with section 773(a)(6)(C)(ii) of the Act.

Level of Trade

As set forth in section 773(a)(1)(B)(i) of the Act and in the Statement of Administrative Action (SAA) at 829–831, to the extent practicable, the Department will calculate NV based on sales at the same level of trade as U.S. sales. (For both EP and CEP, "U.S. Sale" refers to the transition between the foreign exporter and the importer, whether affiliated or independent.) When the Department is unable to find sales in the comparison market at the same level of trade as the U.S. sales, the Department will adjust the NV to account for the difference in level of trade if two conditions are met. First, there must be differences between the actual selling functions performed by the seller at the level of trade of the U.S. sale and at the level of trade of the NV sale. Second, the difference must affect price comparability as evidenced by a pattern of consistent price differences between sales at different levels of trade in the country in which NV is determined.

When CEP is applicable, section 773(a)(7)(B) of the Act establishes the procedure for making a CEP offset when NV is established at level of trade which constitutes a more advanced stage of distribution than the CEP level of trade, but the data available does not provide an appropriate basis for a level of trade adjustment. In addition, to qualify for a CEP offset, the level of trade in the home market must also constitute a more advanced stage of distribution than the level of trade of the CEP sale.

Akzo reported one level of trade and one channel of distribution in the home market (direct to end users/converters). For the U.S. market, Akzo reported that all sales were made on a CEP basis. The level of trade of the U.S. sale is determined for the CEP rather than for the starting price. The CEP sales do not reflect certain selling functions such as customer sales contacts, technical services, and inventory maintenance, that are reflected in Akzo's home market sales to end users/converters. Therefore, the selling functions performed for Akzo's CEP sales are sufficiently different than those performed for Akzo's home market sales to consider CEP sales and home market sales to be at a different level of trade.

Because we compared these CEP sales to home market sales at a different level of trade, we examined whether a level of trade adjustment may be appropriate. In this case, Akzo only sold at one level of trade in the home market; therefore, there is no basis upon which to discern whether there is a pattern of consistent price differences between levels of trade. Further, we do not have information which would allow us to examine pricing patterns on Akzo's sales of other products and there are no other respondents or other record information on which such an analysis could be based.

Because the data available do not provide an appropriate basis for making a level of trade adjustment but the level of trade of the home market sale is a more advanced stage of distribution than the level of trade of the CEP sale, a CEP offset is appropriate. Akzo has claimed a CEP offset. We applied the CEP offset to NV or CV, as appropriate.

We based the CEP offset amount on the amount of the home market indirect selling expenses. We limited the home market indirect selling expense deduction by the amount of the indirect selling expenses incurred on sales to the United States, in accordance with section 772(d)(1)(D).

Constructed Value

In accordance with section 773(e) of the Act, we calculated CV based on the sum of Akzo's cost of materials and fabrication employed in producing the subject merchandise, SG&A and profit incurred and realized in connection with production and sale of the foreign like product, and U.S. packing costs. In accordance with section 773(e)(2)(A), we based SG&A and profit on the amounts incurred and realized by Akzo in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. We used the costs of materials, fabrication, and SG&A as reported in the CV portion of Akzo's questionnaire response. We used the U.S. packing costs as reported in the U.S. sales portion of Akzo's questionnaire response. We based selling expenses and profit on the information reported in the home market sales portion of Akzo's questionnaire response. See *Certain Pasta from Italy; Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 61 FR 1344, 1349 (January 19, 1996). For selling expenses, we used the average of the home market selling expenses weighted by the total quantity sold. For actual profit, we first calculated the difference between the home market sales value and home market COP for all home market sales in the ordinary course of trade, and divided the sum of these differences by the total home market COP for these sales. We then multiplied this percentage by the COP for each U.S. model to derive an actual profit.

We derived the CEP offset amount from the amount of the indirect selling expenses on sales in the home market. We limited the home market indirect selling expense deduction by the amount of the indirect selling expenses incurred on sales to the United States.

Preliminary Results of the Review

As a result of our comparison of CEP and NV, we preliminarily determine that the following weighted-average dumping margin exists:

Manufacturer/exporter	Period	Margin (percent)
Akzo	06/01/95–05/31/96	28.40

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. Parties who submit argument are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. The Department will publish a notice of final results of this administrative review, including its analysis of issues raised in any written comments or at a hearing, not later than 120 days after the date of publication of this notice.

Upon issuance of the final results of review, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Because the inability to link sales with specific entries prevents calculations of duties on an entry-by-entry basis, we will calculate an importer-specific ad valorem duty assessment rate for each class or kind of merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of that particular importer made during the POR. (This is equivalent to dividing the total amount of the antidumping duties, which are calculated by taking the difference between statutory NV and statutory CEP, by the total statutory CEP value of the sales compared, and adjusting the result by the average difference between CEP and customs value for all merchandise examined during the POR).

Furthermore, the following deposit requirements will be effective for all shipments of PPD–T aramid from the Netherlands entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(c) of the Act: (1) The cash deposit rate for the reviewed company will be the rate established in the final results of this review; (2) if the exporter is not a firm covered in this review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (3) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 66.92 percent, the "all others" rate established in the LTFV investigation (59 FR 32678, June 24, 1994), as explained before. These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are published pursuant to section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(c)(5).

Dated: February 27, 1997.

Robert S. LaRussa

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–5700 Filed 3–6–97; 8:45 am]

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[A–580–807]

Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Termination in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce and Termination in Part.

ACTION: Notice of preliminary results of antidumping duty administrative review, and termination in part.

SUMMARY: In response to a request from two respondents and three U.S. producers, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET film) from the Republic of Korea. The review covers two manufacturers/exporters of the subject merchandise to the United States and the period June 1, 1995 through May 31, 1996. The review indicates the existence

of sales below normal value during the period of review.

If these preliminary results are adopted in our final results of review, we will instruct the U.S. Customs Service to assess antidumping duties equal to the difference between the United States Price and NV.

On November 14, 1996, in accordance with 19 CFR 353.25, we issued a revocation of the order with respect to Kolon Industries (Kolon). Accordingly, we are terminating this review of Kolon.

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument (no longer than five pages, including footnotes).

EFFECTIVE DATE: March 7, 1997.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or Linda Ludwig, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4475/3833.

APPLICABLE STATUTE: Unless otherwise indicted, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

SUPPLEMENTARY INFORMATION:

Background

The Department published an antidumping duty order on PET film from the Republic of Korea on June 5, 1991 (56 FR 25660). The Department published a notice of "Opportunity To Request Administrative Review" of the antidumping duty order for the 1995/1996 review period on June 6, 1996 (61 FR 28840). On June 29, 1996, the petitioners, E.I. DuPont Nemours & Co., Inc., Hoescht Celanese Corporation, and ICI Americas, Inc. requested reviews of Kolon, SKC Limited (SKC), and STC Corporation (STC). SKC and Kolon filed requests for review on June 27, 1996 and June 28, 1996, respectively. We initiated the review on August 8, 1996 (61 FR 41373).

On November 14, 1996, the Department revoked the order in part with respect to Kolon. Accordingly, we are terminating this review with respect to Kolon.

Scope of the Review

Imports covered by this review are shipments of all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet, and strip, whether extruded or coextruded. The films excluded from this review are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches (0.254 micrometers) thick. Roller transport cleaning film which has at least one of its surfaces modified by the application of 0.5 micrometers of SBR latex has also been ruled as not within the scope of the order.

PET film is currently classifiable under Harmonized Tariff Schedule (HTS) subheading 3920.62.00.00. The HTS subheading is provided for convenience and for U.S. Customs purposes. The written description remains dispositive as to the scope of the product coverage.

The review covers the period June 1, 1995 through May 31, 1996. The Department is conducting this review in accordance with section 751 of the Act, as amended.

United States Price (USP)

In calculating USP, the Department treated respondents' sales as export price (EP) sales, as defined in section 772(a) of the Act, when the merchandise was sold to unaffiliated U.S. purchasers prior to the date of importation. The Department treated respondents' sales as constructed export price (CEP) sales, as defined in section 772(b) of the Act, when the merchandise was sold to unrelated U.S. purchasers after importation.

EP was based on the f.o.b. or delivered, packed prices to unrelated purchasers in the United States. We made adjustments, where applicable, for Korean and U.S. brokerage charges, terminal handling charges, truck loading charges, containerization charges, Korean and U.S. inland freight, ocean freight, wharfage expenses, U.S. duties, and rebates in accordance with section 772(c) of the Act.

CEP was based on f.o.b. customer's specific delivery point, or delivered, packed prices to unrelated purchasers in the United States. We made adjustments, where applicable, for Korean and U.S. brokerage charges, terminal handling charges, Korean and U.S. inland freight, ocean freight, rebates, wharfage expenses, and U.S. duties, in accordance with section 772(c) of the Act. In accordance with section 772(d)(1) of the Act, we made deductions for selling expenses associated with economic activities in the United States, including warranties, credit, commissions, postage expenses, bank charges and indirect selling expenses. Pursuant to section 772(d)(3) of the Act, the price was further reduced by an amount for profit to arrive at the CEP.

For SKC, we made an offset to interest of interest revenue, and for post-sale cost and quantity adjustments that were not reflected in the gross price. With respect to subject merchandise to which value was added in the United States by SKC prior to sale to unrelated customers, we deducted any increased value in accordance with section 772(d)(2) of the Act.

Normal Value

In order to determine whether there were sufficient sales of PET film in the home market (HM) to serve as a viable basis for calculating NV, we compared the volume of home market sales of PET film to the volume of PET film sold in the United States, in accordance with section 773(a)(1)(C) of the Act. Each respondent's aggregate volume of HM sales of the foreign like product was greater than five percent of its respective aggregate volume of U.S. sales of the subject merchandise. Therefore, we have based NV on HM sales.

Based on the fact that the Department had disregarded sales in the third administrative review because they were made below the cost of production (COP), the Department initiated a sales-below-cost of production (COP) investigation for each of the respondents in accordance with section 773(b) of the Act. (The third administrative review was the most recently completed review at the time that we issued our antidumping questionnaire.)

We performed a model-specific COP test in which we examined whether each HM sale was priced below the merchandise's COP. We calculated the COP of the merchandise using SKC's, and STC's cost of materials and fabrication for the foreign like product, plus amounts for home market selling, general and administrative (SG&A) expenses and packing costs in accordance with section 773(b)(3) of the Act.

In accordance with section 773(b)(1) of the Act, in determining whether to disregard home market sales made at prices below COP, we examined whether such sales were made within an extended period of time in substantial quantities, and whether such sales were made at prices which would permit recovery of all costs within a reasonable period of time. We compared model-specific prices less any applicable movement charges.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given model where at prices less than COP, we did not disregard any below-cost sales of that model because these below-cost sales were not made in substantial quantities, within an extended period of time. Where 20 percent or more of a respondent's home market sales of a given model were at prices less than the COP, we disregarded the below-cost sales because such sales were found to be made (1) in substantial quantities within the POR (*i.e.*, within an extended period of time) and (2) at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act (*i.e.*, the sales were made at prices below the weighted-average per unit COP for the POR). We found that, for certain models of PET film, 20 percent or more of the home market sales were sold at below-cost prices. We therefore excluded these sales from our analysis and used the remaining above-cost sales as the basis of determining NV if such sales existed, in accordance with section 773(b)(1). For those models of the subject merchandise for which there were no above-cost sales available for matching purposes, we compared U.S. price to constructed value (CV).

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of the respondent's cost of materials, fabrication, and SG&A expenses. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondents in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. For selling expenses we used the weighted-average HM selling expenses. Pursuant to section 773(e)(3) of the Act, we included U.S. packing.

In accordance with section 773(a)(6), we adjusted NV, where appropriate, by deducting home market packing expenses and adding U.S. packing expenses. We also adjusted NV to reflect deductions for HM inland freight, loading charges, and credit expenses. For comparisons to EP, we made an addition to NV for differences in warranty and credit expenses as circumstance-of-sale adjustments pursuant to section 773(a)(6)(C) of the Act.

Level of Trade and CEP Offset

As set forth in section 773(a)(1)(B)(i) of the Act and in the Statement of Administrative Action (SAA) accompanying the URAA, reprinted in H.R. Doc. No. 316, 103d Cong., 2d Session 829–831 (1994), to the extent practicable, the Department will calculate NV based on sales at the same level of trade as the U.S. sale. When the Department is unable to find sale(s) in the comparison market at the same level of trade as the U.S. sale(s), the Department may compare sales in the U.S. and foreign markets at a different level of trade.

In accordance with section 773(a)(7)(A) of the Act, if we compare a U.S. sale at one level of trade to NV sales at a different level of trade, the Department will adjust the NV to account for differences in level of trade if two conditions are met. First there must be differences between the actual selling functions performed by the seller at the level of trade of the U.S. sale and at the level of trade of comparison market sale used to determine NV. Second, the differences must affect price comparability as evidenced by a pattern of consistent price differences between sales at the different levels of trade in the market in which NV is determined. When CEP is applicable, section 773(a)(7)(B) of the Act establishes the procedures or making a CEP "offset" when two conditions exist: (1) NV is established at a level of trade which constitutes a more advanced stage of distribution than the level of trade of the CEP; and (2) the data available do not provide an appropriate basis for a level-of-trade adjustment.

In order to determine whether sales in the comparison market are at a different level of trade than the CEP, we examined whether the comparison sales were at different stages in the marketing process than the CEP. We made this determination on the basis of a review of the distribution system in the comparison market, including selling functions, class of customer, and the level of selling expenses for each type of sale. Different stages of marketing necessarily involve differences in selling functions, but differences in selling functions, even substantial ones, are not alone sufficient to establish a difference in level of trade. Similarly, while customer categories such as "distributor" and "wholesaler" may be useful in identifying different levels of trade, they are insufficient in themselves to establish that there is a difference in level of trade. *See Certain Corrosion Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada: Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 51896 (October 4, 1996).

In order to implement these principles, each of the respondents provided information with respect to its selling activities associated with each stage of marketing. Both of the respondents identified two stages of marketing in the home market: (1) wholesalers/distributors and (2) end-users. For both stages, SKC and STC perform similar selling functions such as market research and after sales warranty services. Because customer description do not necessarily qualify as separate levels of trade when the selling functions performed for each customer class are sufficiently similar, we determined that there exists one level of trade for each of the respondent's home market sales. Because STC and SKC performed similar marketing functions on EP and home market sales, we determined that EP and HM sales were at the same the level of trade for both respondents.

SKC made CEP and EP sales to the United States market and claimed either a level of trade adjustment for its CEP sales, or a CEP offset. For both EP and CEP the relevant transaction for determining the level of trade is the sale from the exporter to the importer, whether unaffiliated or affiliated. Based on SKC's questionnaire responses and response to our request for supplemental information, we determined a difference between the actual selling functions performed by SKC for the CEP sales and those performed for HM sales. SKC provides engineering services, and inventory maintenance services on its HM sales. SKC does not provide these services on its CEP sales. SKC also provides a greater degree of computer, legal, accounting, audit and/or business systems development services on its home market sales than it does on its CEP sales. Therefore, the selling functions performed by SKC for CEP sales are sufficiently different than for HM sales so as to establish different levels of trade. In addition, these differences in selling functions indicated that the home market sales occur at a more advanced stage of distribution than the CEP sales.

Because we compared SKC's CEP sales to HM sales at a different level of trade, we examined whether a level-of-trade adjustment may be appropriate. In this case SKC only sold at one level of trade in the home market; therefore, there is no basis upon which to discern whether there is a pattern of consistent price differences between levels of

trade. Further, we do not have the information which would allow us to examine pricing patterns of SKC's sales of other products, and there is no other respondent's or other information on the record to analyze whether the adjustment is appropriate.

Because the data available do not provide an appropriate basis for making a level-of-trade adjustment but the level of trade in Korea for SKC is at a more advanced stage than the level of trade of the CEP sales, a CEP offset is appropriate in accordance with section 773(a)(7)(B) of the Act. SKC claimed a CEP offset, which we applied to NV. To calculate the CEP offset, we took the amount of home market indirect selling expenses, and deducted this amount from NV, on home market comparison sales. We limited HM indirect selling expenses to the amount of indirect selling expenses incurred on sales in the United States.

Fair Value Comparisons

To determine whether sales of PET film in the United States were made at less than fair value, we compared USP to the NV, as described in the "United States Price" and "Normal Value" sections of this notice. In accordance with section 777(A) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions.

Preliminary Results of Review

We preliminarily determine that the following margins exist for the period June 1, 1995 through May 31, 1996:

Manufacturer/exporter	Margin
SKC	1.57
STC	0.37

Parties to this proceeding may request disclosure within five days of publication of this notice and any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication. The Department will publish the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments or at a hearing, within 120 days after the publication of this notice.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. Because the inability to link sales with specific entries prevents calculation of duties on an entry-by-entry basis, we have calculated an importer specific *ad valorem* duty assessment rate for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate these duties. This rate will be assessed uniformly on all entries of that particular importer made during the POR. (This is equivalent to dividing the total amount of antidumping duties, which are calculated by taking the difference between NV and U.S. Price, by the total U.S. value of the sales compared, and adjusting the result by the average difference between U.S. price and customs value for all merchandise examined during the POR.) The Department will issue appraisement instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties.

Furthermore, the following deposit requirements will be effective upon completion of the final results of these administrative reviews for all shipments of PET film from the Republic of Korea entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for reviewed firms will be the rate established in the final results of administrative review, except if the rate was less than 0.50 percent, and therefore, de minimis within the meaning of 19 CFR 353.6, in which case the cash deposit rate will be zero; (2) for merchandise exported by manufacturers or exporters not covered in these reviews but covered in the original less-than-fair-value (LTFV) investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in these reviews, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of these reviews, or the LTFV investigation; and (4) if neither the exporter nor the manufacturer is a firm covered in these or any previous reviews, the cash deposit rate will be 4.82%, the "all others" rate established in the LTFV investigation.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26(b) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: March 3, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–5710 Filed 3–6–97; 8:45 am]

BILLING CODE 3510–DS–M

[A–570–825]

Sebacic Acid From the People's Republic of China; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On September 3, 1996, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on sebacic acid from the People's Republic of China (PRC). This review covers shipments of this merchandise to the United States during the period July 13, 1994 through June 30, 1995. We gave interested parties an opportunity to comment on our preliminary results. Based upon our analysis of the comments received we have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: March 7, 1997.

FOR FURTHER INFORMATION CONTACT: Elizabeth Patience or Jean Kemp, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3793.

APPLICABLE STATUTE AND REGULATIONS: Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

SUPPLEMENTARY INFORMATION:

Background

On September 3, 1996, the Department published in the **Federal Register** (61 FR 46440) the preliminary results of its administrative review of the antidumping duty order on sebacic acid from the PRC (59 FR 35909, July 14, 1994). We gave interested parties an opportunity to comment on our preliminary results and, at the request of respondents and the petitioner, held a public hearing on November 5, 1996. We received written comments from Tianjin Chemicals Import and Export Corporation (Tianjin), Guangdong Chemicals Import and Export Corporation (Guangdong) and Sinochem International Chemicals Company, Ltd. (SICC) (collectively, respondents); and from the petitioner, Union Camp Corporation. On October 29, 1996, after case and rebuttal briefs were filed, respondents submitted "newly discovered" information regarding sebacic acid production in India. Due to the importance of this issue in this case, we accepted the submission over petitioner's argument that it was untimely. We subsequently gave both parties an opportunity to submit additional information regarding the production of sebacic acid in India. On November 13, 1996 and November 21, 1996, both parties submitted information and rebuttal comments regarding this issue. We have now completed the administrative review in accordance with section 751 of the Act.

Scope of the Review

The products covered by this order are all grades of sebacic acid, a dicarboxylic acid with the formula (CH2)8(COOH)2, which include but are not limited to CP Grade (500ppm maximum ash, 25 maximum APHA color), Purified Grade (1000ppm maximum ash, 50 maximum APHA color), and Nylon Grade (500ppm maximum ash, 70 maximum ICV color). The principal difference between the grades is the quantity of ash and color. Sebacic acid contains a minimum of 85 percent dibasic acids of which the predominant species is the C10 dibasic acid. Sebacic acid is sold generally as a free-flowing powder/flake.

Sebacic acid has numerous industrial uses, including the production of nylon 6/10 (a polymer used for paintbrush and toothbrush bristles and paper machine felts), plasticizers, esters, automotive coolants, polyamides, polyester castings and films, inks and adhesives, lubricants, and polyurethane castings and coatings.

Sebacic acid is currently classifiable under subheading 2917.13.00.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding remains dispositive.

This review covers the period July 13, 1994, through June 30, 1995, and four exporters of Chinese sebacic acid.

Analysis of Comments Received

Comment 1

Respondents assert that certain sales treated by the Department in its preliminary results as sales by Sinochem Jiangsu Import and Export Corporation (Jiangsu), another company subject to this antidumping duty order, should be considered SICC sales. According to respondents, SICC was acting as a sales agent for Jiangsu. In its capacity as sales agent, SICC negotiated the sale price with the U.S. importer, set the price of the sales, arranged the shipment of the merchandise to the U.S. importer, and purchased the cargo transportation insurance. In addition, the U.S. importer sent the purchase order to SICC rather than Jiangsu. Citing *Sulfanilic Acid from the People's Republic of China: Final Results and Partial Recission of Antidumping Duty Administrative Review*, 61 FR 53702 (October 15, 1996) (*Sulfanilic Acid*) and *Final Determination of Sales at Not Less Than Fair Value; Canned Mushrooms from the People's Republic of China*, 48 FR 45445 (October 5, 1983) (*Canned Mushrooms*), respondents argue that a margin should be calculated for these sales based on SICC's data as the exporter rather than assigning Jiangsu's 243 percent rate to these sales.

In the alternative, respondents argue that, if the Department determines that these sales were Jiangsu sales, these sales should be removed from the calculation of SICC's rate.

Respondents assert that in prior cases, such as *Manganese Sulfate from China*, 60 FR 52155 (October 5, 1995) (*Manganese Sulfate*), and *Polyvinyl Alcohol from the People's Republic of China*, 61 FR 14057 (March 29, 1996) (*Polyvinyl Alcohol from the PRC*), where the Department has determined that certain sales were made by another exporter, it has dropped those sales from the U.S. sales base of the respondent exporter.

Respondents contend that SICC has cooperated with the Department in each stage of this review and that SICC's dealings with Jiangsu are an accepted way of doing business in China. Respondents assert that SICC and U.S. importers are being punished because SICC fully disclosed its business dealings to the Department. Respondents argue that the Department is including these sales into SICC's dumping margin so as to curb circumvention by Chinese exporters. Respondents assert that Commerce's actions should reflect the remedial intention on the statute. According to respondents, the remedial purpose of the statute is not served by applying the country-wide rate to SICC's sales in this case and the Department has exceeded its authority by doing so.

Petitioner supports the Department's treatment of the Jiangsu sales exported by SICC. Petitioner argues that respondents' reliance on *Sulfanilic Acid* to support its argument that SICC is the seller is misplaced. In that case, the Department decided that two producers were the proper respondents because the producers established the price with the U.S. importer, not the trading company through which the sales were made. The trading company's role was limited to processing paperwork. Petitioner argues that the same fact pattern does not exist in the present case. Petitioner notes that Jiangsu is not a producer of sebacic acid but is an export trading company that received its own dumping margin in the LTFV investigation.

Petitioner also argues that respondents incorrectly rely on *Canned Mushrooms*. Petitioner contends that there is no discussion in that case on how to value sales that an exporter misrepresents as its own so that another exporter can avoid a larger dumping margin. Petitioner contends that *Manganese Sulfate* is not applicable because in that case it was clear from documents on the record that the trading company in question did not have any knowledge at the time the sale was made that the sale was destined for the United States. Petitioner also notes that a similar situation existed in *Polyvinyl Alcohol from the PRC* where the Department excluded certain sales of an exporter because, at the time the sales were made, the exporter did not know that the sales were destined for the United States.

Petitioner replies that because these two sales were blatant and admitted attempts to circumvent the antidumping duty order, the Department correctly valued these two sales with the country-wide dumping margin of 243.40 percent. Petitioner argues SICC received a commission from Jiangsu for acting as Jiangsu's sales agent.

Petitioner contends that, unlike in *Manganese Sulfate* and *Polyvinyl Alcohol from the PRC*, in the instant case both SICC and Jiangsu knew that the two sales were destined for the United States. Petitioner argues in order to enforce the antidumping duty statute, the Department must assign the country-wide rate to the two Jiangsu sales. Petitioner contends that SICC clearly attempted to circumvent the antidumping duty laws by cooperating with Jiangsu by acting as a sales agent for two sales of sebacic acid to a U.S. importer. Consequently, petitioner maintains the Department was justified in using the country-wide antidumping rate for those two sales. *See* 19 U.S.C. Section 1677e(b).

Department Position

We disagree with respondents. It was clear from statements made by SICC officials at verification that SICC considered these sales to be Jiangsu's sales. *See* SICC Verification Report at 6–7. Therefore, it is not appropriate to calculate a margin on these sales based on SICC's data as the exporter. However, because SICC reported these sales as their own in the questionnaire responses and played a significant role in the sale of this merchandise, including identifying itself as the exporter on U.S. Customs documentation and accepting and subsequently converting payment for Jiangsu, the Department has included these two sales in the calculation of SICC's margin.

However, we disagree with petitioner's and respondents" characterization of our treatment of these sales as punitive use of facts available to "punish" an uncooperative respondent. Our use of the rate of 243 percent was not punitive. Because these are Jiangsu sales, we applied the rate that Jiangsu would have received on the sales to the United States. That the rate is 243 percent is reflective only of Jiangsu's failure to respond to the Department's questionnaire and the Department's application of the country-wide rate to Jiangsu consistent with its normal practice. *See* Preliminary Results, 61 FR 46442.

In this review, SICC knowingly engaged in sales to the United States of another respondent's material, according to statements by SICC at verification, as an attempt to assist Jiangsu in avoiding posting of Jiangsu's higher antidumping duty cash deposits. Therefore, it is appropriate and consistent with the remedial nature of the statute, to apply the Jiangsu rate to these transactions in calculating SICC's rate. SICC's margin should reflect any dumping on sales in which it is the exporter of record. Respondents" reliance on *Asociacion Columbiana de Exportadores de Flores* v. *United States*, 717 F.Supp. 834, 837 (1989), *C.J. Tower and Sons* v. *United States*, 71 F.2d 438 (CCPA 1934), and *Helwig* v. *United States*, 188 U.S. 605 (1903) is misplaced. The Department has assigned the Jiangsu rate to the Jiangsu sales reported by, and entered into the United States by SICC. The Department's determination to do so is a direct result of the actions taken by SICC and Jiangsu and should not be characterized as punitive.

Respondents' reliance on *Sulfanilic Acid* is misguided. In that case, the Department rejected petitioner's argument that a trading company should be designated the respondent and not the producers of the subject merchandise. The trading company's role was limited to processing paperwork. In the instant case, SICC received a commission on the sales, accepted payment for the sales, converted this payment to Chinese currency, and claimed that it was the exporter of the merchandise to the U.S. Customs Service. SICC's role, therefore, was much more extensive than simply processing paperwork. SICC's role in making the sales, in combination with its agreement with Jiangsu to sell the merchandise to Jiangsu's U.S. customer at prices and terms set by Jiangsu, led to the Department's determination in this case to include the Jiangsu sales in SICC's margin calculation.

Respondents' reference to *Canned Mushrooms* is similarly misplaced. In that case, petitioner was arguing that the Department should calculate purchase price using respondent's prices to PRC customers instead of prices to US customers. The Department disagreed and based purchase price on the prices which respondent sells the product to US customers. This decision is not relevant to the current discussion of sales by one exporter made through another in order to reduce payment of cash deposits and antidumping duties.

Additionally, the facts of *Manganese Sulfate* and *Polyvinyl Alcohol from the PRC* are readily distinguishable from this case. In contrast to the companies in these cases, Jiangsu and SICC both knew the subject merchandise was being shipped to the United States. The agreement between SICC and Jiangsu identified the U.S. customer and outlined which party was responsible for export-related charges as well as which party was responsible for obtaining payment from the U.S. customer. *See* SICC Verification Report at 6.

Comment 2

Petitioner argues that India should not be used as the surrogate country for valuing factors of production in this review because there is no production of sebacic acid or a comparable product in India. Petitioner contends that it would be inconsistent with the statute to use India as a surrogate because: (1) India is not a producer of sebacic acid; and (2) there is no evidence on the record to support that India is a producer of a comparable product. Petitioner argues that there is no evidence on the record to support the Department's conclusion that oxalic acid (1) is produced in India or (2) is comparable to sebacic acid. Petitioner states that while it is true that both oxalic and sebacic acid are dicarboxylic acids, oxalic acid has two carbon atoms and sebacic acid has ten carbon atoms, giving the two acids completely different properties and uses. Petitioner contends that the inputs for the two acids are very different. Additionally, petitioner argues that the commercial values of imported sebacic acid is nearly 20 times greater than the imported Indian value for oxalic acid.

Petitioner suggests that the Department should value the factors of production based on either U.S. or Japanese values, the only two market economies in which sebacic acid is produced using the caustic fusion process. *See Natural Bristle Paint Brushes and Brush Heads from China*, 50 FR 52812 (Dec. 26, 1985) (*Natural Bristle Paint Brushes*) (the Department used a U.S. import price as the foreign market value for certain paint brushes because there was no comparable product in the surrogate country).

Respondents maintain that the Department has the option to choose as a surrogate a country that does not produce the same, or even comparable, merchandise if there is no country that meets both criteria in the statute (*i.e.*, comparable level of economic development and producer of comparable merchandise). Otherwise, respondents contend, if Union Camp is correct, no country in the world meets the statutory criteria as a surrogate country.

On October 29, 1996, respondents submitted a letter from an Indian chemical company offering to sell

sebacic acid. Respondents argue that this is evidence that sebacic acid is produced in India. However, respondents argue that even if sebacic acid is not produced in India, oxalic acid is produced in India. Respondents maintain that many of the inputs required to produce sebacic acid, including castor oil, also are produced in India and exported to China. Respondents contend that interchangeableness is not needed to make a product comparable. Respondents state that both oxalic and sebacic acids are used in the rubber manufacturing industry. Additionally, respondents quote the International Trade Commission, stating that sebacic acid has physical characteristics similar to those of other dicarbolic acids in the chemical series. *See Sebacic Acid from the People's Republic of China*, Inv. No. 731–TA–653 (Preliminary), USITC Pub. 2676 (1993) at I–4–4.

Respondents argue that petitioner's reference to the 1985 *Natural Bristle Paint Brushes* case is inappropriate because it was decided before the nonmarket economy statute was amended in 1988 to provide for a factors of production approach. Respondents state that since 1988, the Commerce Department has never used the United States or Japan as a surrogate country in an antidumping case involving China because they are not at a comparable level of economic development.

Department Position

In valuing factors of production, the Department used surrogate values from India. In accordance with section 773(c)(4) of the Act, the Department chose India as its surrogate because it was most comparable to the PRC in terms of overall economic development based on per capita gross national product (GNP), the national distribution of labor, and growth rate in per capita GNP, and because it was a significant producer of comparable merchandise (oxalic acid).

The statute and the regulations instruct the Department to value factors of production in an appropriate surrogate country. The Department rarely departs from use of a surrogate value from a country comparable to the NME in terms of overall economic development. *See Final Determination of Sales at Less Than Fair Value: Beryllium Metal and High Beryllium Alloys from the Republic of Kazakstan*, 62 FR 2648 (January 17, 1997). Surrogate values from countries at a similar level of development are considered to be the most appropriate and comparable for valuation of the factors in the similarly situated nonmarket economy country. While the Department may use values from the United States or other countries not at a comparable level of development for individual factors, its practice is to do so only if it cannot find those values in a comparable economy that produce comparable merchandise. Use of the United States, Japan or other country not on the list of recommended surrogate countries proposed by the Department's Office of Policy is the last and least suitable option specifically because surrogate values from countries not at a level of economic development comparable to that of the nonmarket economy are not considered representative of the nonmarket economy country's costs and prices. *See* Memorandum from David Mueller to Laurie Parkhill, Serbacic (sic) Acid from the People's Republic of China: Nonmarket Economy Status and Surrogate Country Selection, March 4, 1996.

The fact that sebacic acid is produced in the United States or Japan does not make either an appropriate surrogate. A U.S. or Japanese value in this case is not representative of a PRC value because neither the U.S. nor Japan are at a level of economic development comparable to that of the PRC. Moreover, the Department has concluded that using values from India is appropriate because India is at a comparable level of development and is a significant producer of comparable merchandise—oxalic acid. Though sebacic acid and oxalic acid may have different end uses, both are dicarboxylic acids and both are used in the rubber manufacturing industry. *See* Petitioner's Brief at Exhibit 1, October 10, 1997. Many of the inputs used to produce sebacic acid are also used to produce oxalic acid (*e.g.*, sodium hydroxide). *See* Petitioner's Brief at Exhibit 1, October 10, 1997. U.S. import statistics for the POR indicate that India is a significant producer of oxalic acid. *See* Memorandum to the File from Elizabeth Patience and N. Gerald Zapiain, Analysis Memorandum for the Final Results of the 1994/1995 Review, February 24, 1997 (Final Analysis Memorandum). In addition, a cable from the U.S. embassy in Bombay, submitted during the LTFV investigation, identifies 15 Indian producers and nine exporters of oxalic acid, which also indicates that India is a significant producer of oxalic acid. *See* Final Analysis Memorandum.

Petitioner's argument that we should value factors of production based on either U.S. or Japanese values because they are the only countries which use the caustic fusion process to produce sebacic acid is irrelevant. According to the ITC report from the LTFV investigation, Chinese producers do not use caustic oxidation to produce sebacic acid. *See Sebacic Acid from the People's Republic of China*, Inv. No. 731–TA–653 (Preliminary), USITC Pub. 2676 (1993) at II–7. Therefore, we are not concerned with finding the identical production process in our chosen surrogate country.

Finally, the documents submitted by interested parties on October 29, 1996, November 13, 1996, and November 21, 1996, did not conclusively demonstrate that sebacic acid was produced in India during the period of review (POR). Therefore, these documents were not a basis for our decision to use India as the surrogate country for this review.

Comment 3

Petitioner argues that the Department should value capryl alcohol consistent with the CIT's decision in *Union Camp* v. *United States*, Slip Op. 96–123 at 8, 10 (August 5, 1996). Specifically, petitioner argues that the Department should value capryl alcohol (octanol-2) based on an appropriate cost of crude octanol-2 rather than the Indian selling price for refined octanol-1.

Petitioner argues neither of the two surrogate prices for capryl alcohol submitted by respondent is appropriate. Petitioner contends that the first value, Rs 76/kg, from Indian *Chemical Weekly*, must be a value for octanol-1, not octanol-2, because sebacic acid is not produced in India. Petitioner contends that because sebacic acid is not produced in India, octanol-2 must not be produced in India, since octanol-2 is a subsidiary product of sebacic acid production.

Moreover, petitioner rejects respondents' second surrogate price for 98 percent pure capryl alcohol, $0.68/lb., from the *Chemical Marketing Reporter*, because it is the same as Union Camp's offering price for refined capryl alcohol. Petitioner contends that crude capryl alcohol, the subsidiary product of the sebacic acid process, must be further processed to achieve the 98 percent purity. The Chemical Marketing Reporter reported the market value of octanol-1 at $0.925/lb. during the POR. Petitioner argues that the U.S. value of octanol-1 during the POR was 36 percent higher than the U.S. value of refined capryl alcohol and that the value difference between octanol-1 and crude capryl alcohol is even larger.

Petitioner concludes that because octanol-1 is not comparable to octanol-2 either chemically or commercially, the Department should not use octanol-1 as a surrogate value for octanol-2. Petitioner contends that Union Camp and all three respondents treat octanol-

2 as a by-product. However, because the Department used an overvalued publicly available, published value in its preliminary results, the Department determined octanol-2 to be of such a significant value in relation to sebacic acid that it categorized it as a co-product rather than a by-product. Petitioner contends that using octanol-1 values distorts the by-product/co-product analysis and results in artificially lower margins for the respondents. Petitioner offers its own by-product credit value for crude capryl alcohol, $0.15/lb., as the best available surrogate price for the subsidiary product. However, petitioner states that if the Department chooses to use the $0.68/lb price, it should make adjustments for input costs incurred in converting crude capryl alcohol to refined capryl alcohol. Petitioner supplies such a calculation where the resulting value is $0.1544/lb.

Respondents argue that the Department should reject petitioner's submission of surrogate value information in its case brief as it is untimely and petitioner had opportunities prior to the publication of the preliminary results to submit this information. Respondents maintain that the surrogate value of $0.15/lb. is unverified and that there is no support on the record of this review that these internal costs represent actual market prices in the United States. Respondents argue the Department should use the Indian publicly available, published value of Rs 76/kg value they submitted for the period of review rather than the surrogate value of Rs 56/kg that was used in the less-than-fair-value investigation.

Respondents contend that comparing the $0.68/lb. octanol-2 price from the *Chemical Marketing Reporter*, to the internal Union Camp price of $0.15/lb. supports respondents' argument that Union Camp's internal costs do not reflect the market price of these chemicals. Respondents maintain that Union Camp's internal cost should not be used as it is not from an appropriate surrogate country and the value is not a published or public figure. Respondents contend that use of unverified, internal costs does not provide respondents with greater certainty and predictability in the administration of the antidumping law. Respondents maintain that use of such internal costs give the Chinese respondents no opportunity to determine their dumping margins.

Additionally, respondents contest petitioner's assertion that the CIT held that octanol-1 and octanol-2 are not comparable products. Respondents maintain that the Court held that there was not substantial evidence on the record of the LTFV investigation to support the Department's determination in the LTFV investigation that the two products are comparable.

Respondents argue that the term octanol does not necessarily mean octanol-2. Respondents maintain that octanol is a generic term, which includes all isomers having eight carbon atoms and one alcohol functional group. Thus, respondents contend, the term "octanol" in the Indian *Chemical Weekly* does not necessarily refer only to octanol-1, but could also include octanol-2. Respondents maintain that there is no evidence on the record of this review, and Union Camp has made no effort to find evidence, that octanol-2 is not sold in India.

Respondents argue that petitioner made no effort to provide publicly available, published values during the course of this review. Therefore, respondents maintain that the Department should not reward petitioner for its decision not to submit surrogate value information by using petitioner's late-submitted internal value for octanol-2. Respondents contend that, pursuant to 19 CFR 353.37, the Department is justified in using the Indian surrogate value for octanol in the Indian *Chemical Weekly* as the best information available.

Moreover, respondents argue that the Department should not use petitioner's proposed calculation for adjusting the *Chemical Marketing Reporter* octanol-2 value for additional costs. Respondents maintain that the Chinese factorie' factors of production already include the labor and energy used to produce the subsidiary products. According to Zhong He's March 8, 1996 submission to the Department, Zhong He is unable to separate these factors from those used to produce sebacic acid. Additionally, the verification report indicates that the Workshop No. 2 (where sebacic acid is produced) production report includes all the consumption of raw materials, and records the production of sebacic acid and each of the three subsidiary products.

Respondents provide additional statements by Mr. Hoegl of Ivanhoe Industries to state that petitioner's conversion of capryl alcohol to refined capryl alcohol should possibly be higher than $0.15/lb. Mr. Hoegl states that the co-product of the distillation process, methyl hexyl ketone, has a market value of approximately $2.50/lb. Therefore, Mr. Hoegl argues, the value of the crude capryl alcohol stream is much greater than $0.15/lb. and "may even be higher than the published $0.68/lb. price for refined capryl alcohol."

Department Position

In valuing factors of production, the Department's practice is to rely, to the extent possible on publicly available information. The Department prefers to use publicly available information because: (1) It alleviates difficulties in obtaining, and concerns about the quality of, cable data from embassies and consulates (previously often used as sources for surrogate values); (2) it allows interested parties an opportunity to actively submit and comment on surrogate value data; (3) the establishment of a clear surrogate values hierarchy, with a preference for surrogate values from a single country based on publicly available information, increases the certainty and predictability of the outcome of the Department's factor valuations; (4) the methodological framework helps to focus comments made by petitioner and respondent in the case and rebuttal briefs and reduces miscellaneous submissions throughout the course of proceedings regarding the appropriateness of various surrogate values; and (5) it alleviates the administrative burden on U.S. embassies and consulates caused by requests for large amounts of data. *See Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China*, 57 FR 21058, 21062 (May 18, 1992). In determining which surrogate value to use for valuing each factor of production, therefore, the Department selects, where possible, publicly available information which is: (1) An average non-export value; (2) representative of a range of prices within the period of review if submitted by an interested party, or most contemporaneous with the POR; (3) product-specific; and (4) tax-exclusive.

In this review, the Department was unable to locate an Indian value for octanol-2. In addition, the Department specifically asked interested parties to submit any publicly available, published values for octanol-2. Neither the petitioner, Union Camp, nor the respondents were able to locate an Indian value, specifically for octanol-2. As a result, the Department used an Indian price for octanol-1 as a surrogate value for octanol-2 as the best available information after the Department concluded that, for purposes of factor valuation, octanol-1 was comparable to octanol-2. We find that octanol-1 and capryl alcohol (octanol-2) share very similar molecular formulae though they are not identical products. Since product-specific price information is not available from our recommended surrogate countries, we must rely on the price of the closest product we could obtain to value capryl alcohol. Additionally, we agree with respondents that it is not clear from the Indian *Chemical Weekly* whether their listed price for "octanol" refers to octanol-1, octanol-2, or a combination of the two products.

Union Camp's statements that octanol-1 is derived from a process entirely unrelated to the sebacic acid process and that octanol-1 is a high-priced petrochemical are not necessarily dispositive on the issue of the comparability of octanol-1 and octanol-2 for purposes of factor valuation. In a nonmarket economy case, the Department may need to value anywhere from 10 to hundreds of factors of production; in this case we needed to value approximately 25. If we were *required* to find an exact match for each factor, the administrative burden would be enormous and, in many instances, the task would be impossible. Therefore, although we strive to locate exact surrogate matches in our preferred surrogate country, we often are unable to do so. In those instances, the Department's practice is to use the most comparable surrogate match that meets our publicly available information criteria in an appropriate surrogate country.

There is no basis in the statute or legislative history to suggest that the Department is required to research or consider the production process or use for each factor so as to locate a surrogate match with an identical or even similar production process or use. In valuing factors of production, the Department is attempting to assign a market-economy value, *i.e.*, a price or a cost, to some non-market economy factor, *e.g.*, 50 kilograms of chemical "x", 12 nuts and bolts, 3 plastic bags, 7 hours of labor. The Department does not delve into intricacies of the production and use of every potential surrogate precisely because production and use are not necessarily relevant to *valuation* of factors of production. The Department foremost is concerned about assigning an appropriate surrogate *value* to a specific factor of production. As a result, the Department will consider rejecting a potential surrogate where it has evidence that a possible surrogate value does not reasonably reflect the "value" of the factor. For example, if the Department had evidence that a surrogate price was significantly higher than other potential surrogate prices for a particular factor, the Department might find that it was not reasonable to use that particular price as a surrogate value.

Similarly, the Department is not required to consider interchangeableness in determining whether to use a particular surrogate to value a factor of production. The CIT's opinion in *Union Camp* suggests that because octanol-1 and octanol-2 are not "interchangeable" they are not comparable for factor valuation purposes. If interchangeableness were a prerequisite, however, the Department would have extreme difficulty in valuing factors of production. The Department would be required to locate precise matches between surrogates and factors —an impracticable if not virtually impossible task given the amount of data the Department would have to collect and analyze for each factor. The very nature of chemicals, in particular, is such that a small difference in grade or a change in molecular structure would preclude ever finding two different chemicals comparable for purposes of factor valuation. In this case, for example, the Department recognizes that octanol-1 and octanol-2 are two different products, and, hence not interchangeable. Interchangeableness, however, is not the test for comparability for factor valuation.

As stated in Comment 2 above, the statutue and the regulations instruct the Department to value factors of production in an appropriate surrogate country. In addition to the United States and Japan not being appropriate surrogate countries in this case, there is no evidence on the record that octanol-2 is *sold* in either country. The only U.S. value on the record for octanol-2 is the internal accounting cost *Union Camp* assigns to octanol-2. The Department normally would not consider using such a value because it is not a value from an appropriate surrogate country and the value is not a public or published figure. As explained above, the Department's practice is to use public, published figures because, among other reasons, it increases the certainty and predictability of the outcome of the Department's factor valuations in NME cases and it affords all interested parties an opportunity to submit and comment on surrogate value data. Use of an unpublished, internal cost from a country not on the list of recommended surrogates is contrary to the Department's established practice. *See Magnesium Corp.* versus *United States*, 938 F. Supp. 885 (CIT 1996) ("It is Commerce's standard practice to disregard petitioners' costs because they are not 'an appropriate benchmark by which to test the accuracy of surrogate country values.' ") Our preference is for values from the selected surrogate country. Additionally, there is no conclusive evidence on the record of this review that respondents' octanol-1 value is not a reasonable substitute for octanol-2 in our calculations, given the limited public and published data from India available to the Department. Therefore, we are using the Rs 76/kg value from the Indian *Chemical Weekly* as a surrogate value for capryl alcohol as the best information available to the Department.

Comment 4

The verification report for Zhong He includes the statement that "Zhong He began producing sebacic acid for outside parties in January 1995." Petitioner interprets this to mean that SICC's six reported sales occurring prior to January 1995 could not have been manufactured by Zhong He. Petitioner argues that because SICC apparently misreported the manufacturer of its sebacic acid for six sales during the POR, the Department should assign the country-wide rate of 243.40 percent to these six sales as best information available.

Respondents argue that the sentence quoted in petitioner's brief refers to Zhong He's toll production of sebacic acid using Indian castor oil which had been purchased and imported by certain parties. This toll production began in January 1995. Respondents maintain that prior to and after January 1995, Zhong He produced sebacic acid from castor oil which it had purchased from Chinese castor oil producers. Respondents contend that during verification the Department traced 1994 sales of sebacic acid from Zhong He to SICC. Respondents maintain that there is no indication on the record of this review that SICC did not use Zhong He as a supplier for these sales to the United States.

Department Position

We agree with respondents. The statement in the verification report refers to Zhong He's tolling operation in which it accepted castor oil from outside parties in exchange for sebacic acid. It is this operation that did not begin until January 1995. We verified that Zhong He had produced and sold sebacic acid to SICC throughout the administrative review period. *See* Memorandum to the File from Elizabeth Patience and Rebecca Trainor: Verification of the Response of Tianjin Zhong He Chemical Plant With Regard to the Factors of Production of Sebacic Acid, August 26, 1996.

Comment 5

Respondents contend that the surrogate values used in our calculations of their antidumping duty margins should be valued on a tax-exclusive basis. Respondents state that our source for values for caustic soda, cresol, sulfuric acid, sodium chloride and zinc oxide, *Chemical Weekly*, indicated that these values were tax-inclusive. Respondents point to number of recent cases involving the PRC in which we excluded taxes from the surrogate values used in our calculations. *See, e.g., Sulfanilic Acid From the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 61 FR 53702 (October 15, 1996).

Petitioner argues that if the Department excludes Indian taxes from the valuation of the factors of production, it should include any Chinese taxes applied to such factors of production in China. Petitioner maintains that PRC taxes that are not rebated upon export do affect PRC sales to the United States.

Department Position

We agree with respondents that the surrogate values used to value the raw materials and by-products should be exclusive of taxes. *See, e.g., Sulfanilic Acid*. The issues of *Chemical Weekly* used to determine the surrogate values of all by-products and raw materials in the preliminary results of this review, state that the prices reported for these inputs are inclusive of Excise and Maharshtra taxes. Accordingly, we have adjusted the surrogate values of all raw materials and by-products to exclude taxes for the final results of review. To adjust the prices to exclude taxes, we have used the *Central Excise Tariff of India, 1994–95*, and the *Bombay Sales Tax Act of 1959*. These documents show that the tax rates are 20 percent and 4 percent, respectively. *See* Memorandum to the File from Karin Price, Analysis for the final results of the 1994/1995 administrative review of sulfanilic acid from the People's Republic of China—Yude Chemical Industry Company and Zhenxing Chemical Industry Company, October 7, 1996 and Final Analysis Memorandum.

We disagree with petitioner that PRC taxes should replace Indian taxes in our calculations. The normal value being calculated (by applying Indian surrogate values to the PRC factors) is a surrogate for material costs in the PRC for comparison to U.S. sales of Chinese merchandise. Therefore, Indian value-added taxes, which do not affect PRC sales to the United States, should be removed from such surrogate costs. Alternatively, PRC taxes should not be used because they are not based on market economy considerations. They are also not relevant to the value of material inputs in India. In constructing a market-based cost for merchandise exported to the United States, we must recognize that virtually all countries of the world employ indirect tax rebate schemes to prevent double-taxation from placing their exports at an unfair competitive disadvantage in world markets.

Comment 6

Respondents argue that the Department understated the cost of manufacturing and overstated factory overhead and SG&A percentages. Respondents note that, in determining surrogate values for overhead, SG&A expenses, and profit, the Department used data contained in the April 1995 *Reserve Bank of India Bulletin*. In making its calculation, respondents argue that the Department arbitrarily and without explanation allocated 50 percent of the expenses in three categories, "provident fund," "salaries, wages and bonuses," and "employees, welfare expenses," to SG&A expenses and 50 percent to the cost of manufacture. As a result, the cost of manufacturing is understated and the overhead rate, SG&A rate, and profit rate are overstated. They contend that 100 percent of these three categories should be applied to the cost of manufacture, consistent with *Polyvinyl Alcohol from the PRC* and *Sulfanilic Acid*.

Department Position

We agree with respondents that 100 percent of these labor categories should be included in the cost of manufacturing. In the absence of any information to the contrary, it makes sense that most of these expenses are costs of manufacturing rather than to SG&A expenses. In addition, we note that in *Polyvinyl Alcohol from the PRC*, although we did not use information from the *Reserve Bank of India Bulletin* as surrogate values for overhead, SG&A expenses and profit, we compared expenses from this source to values from financial statements from Indian producers and, as a result, in each instance, we allocated 100 percent of these labor-cost categories to the cost of manufacturing. We have also reexamined our classification of other categories in the *Reserve Bank of India Bulletin*, and have determined that several categories were misclassified in the preliminary results of review. This has been corrected for the final results. *See* Final Analysis Memorandum.

Comment 7

Petitioner argues that the Department should not have valued overhead as a percentage of cost of manufacture. Instead, petitioner contends that overhead should have been calculated as a percentage of raw materials, labor, power and fuel, the three surrogate value categories used in the factors of production. *See* Valuation Memorandum: Final Antidumping Duty Determination: Polyvinyl Alcohol from the PRC at 2 and Attachment 5 (March 22, 1996).

Petitioner contends that "Stores and Spares Consumed" is more properly categorized as an overhead expense rather than a cost of manufacture as they are indirect materials and should be treated as a part of factory overhead. *See* Memorandum from Manganese Metal Team to Barbara R. Stafford re: Antidumping Investigation of Manganese Metal from the PRC: Major Final Determination Issues, October 16, 1995 at 7. Petitioner contends that the new overhead ratio should be 20.18 percent.

Moreover, petitioner contends that the Department improperly omitted "Other expenses" and "Other provisions" from its calculation of SG&A. Petitioner maintains that these expenses are integral to, and should be included in the calculation of SG&A expenses. *See* Valuation Memorandum: Preliminary Antidumping Duty Determination: Polyvinyl Alcohol from the PRC at 7 and Attachment 9 (October 2, 1995). Petitioner argues that if the Department excludes these expenses then it must adjust the profit calculation upward by the same amount. Petitioner states that profit in the *Reserve Bank of India Bulletin* equals revenue minus costs (including other expenses and other provisions). Therefore, petitioner concludes, all costs associated with the reported profit must be included as overhead or SG&A, or the profit must be increased by the value of any costs that are excluded.

Department Position

We agree with petitioner that the category for stores and spares consumed should be classified as an overhead expense. Additionally, we have included the categories "Other Expenses" and "Other Provisions" as SG&A expenses, consistent with *Sulfanilic Acid*. We have made adjustments to our calculations for these categories in our final results. However, we disagree with petitioner's argument that overhead should be valued as a percentage of raw materials, labor, power and fuel. Instead, we calculated overhead, less power and fuel, as a percentage of cost of manufacture, consistent with *Sulfanilic Acid*.

Comment 8

Respondents contend that the Department did not properly adjust for Hengshui Chemical factory's use of both purchased and self-produced castor oil in the production of sebacic acid. Respondents maintain that the Department double-counted amounts for raw material and energy inputs consumed by Hengshui in the production of castor oil. Respondents propose two methods to account for the castor oil produced by Hengshui. One method is to not add amounts for the inputs consumed in castor oil production. Alternatively, respondents recommend a methodology which they argue more accurately reflects Hengshui's operations and Department practice. *See Polyvinyl Alcohol from the PRC*.

Moreover, respondents argue that the Department used the incorrect value for castor seed in Hengshui's constructed value calculation. The Department used a value of Rs 9.36/kg for castor seed. Respondents contend the value should be Rs 9.23/kg.

Petitioner contends that the Department incorrectly deducted the value of castor seed cake as a by-product credit from the foreign market value calculation of sebacic acid because Hengshui produces some of its own castor oil. Petitioner contends that this is an incorrect adjustment because castor seed cake is a by-product of the castor oil process, not the sebacic acid process. Petitioner maintains that the by-product adjustment should be an adjustment to the price of castor oil and not to the value of sebacic acid.

Department Position

We agree with respondents and petitioner and have revised our calculations to accurately reflect Hengshui's production of castor oil consistent with *Polyvinyl Alcohol from the PRC*. *See* Final Analysis Memorandum. Additionally, we have used the Rs 9.23/kg value for castor seeds for our final results calculations.

Comment 9

Respondents argue that the Department failed to deduct amounts for the by-products glycerine and castor seed cake in our calculations of constructed value. Respondents maintain that analysis memorandum and notice of preliminary results, we indicated that we would be deducting these values but in the calculation worksheets attached to the analysis memorandum, no deduction was made. *See Preliminary Results*, 61 FR 46440 and Memorandum from Case Analyst to the File: Analysis Memorandum; August 27, 1996.

Department Position

We agree with respondents and deducted these amounts in our calculations for the final results of review.

Comment 10

Respondents maintain that the Department was incorrect in individually valuing a separate value for water. They contend that the Indian overhead number used in our calculations already includes a value for water. *See, e.g., Polyvinyl Alcohol from the PRC*.

Petitioner argues that the Department correctly treated water as an input in the sebacic acid process rather than an overhead expense. Petitioner maintains that respondents' reported water consumption factors indicate that water is a significant factor in the production of sebacic acid that varies directly with output. Petitioner contends that the cost of water for each company is greater than the costs for certain other factors of production so water should likewise be separately valued. Petitioner argues, using examples from Indian chemical companies' annual reports, that Indian chemical companies typically account for water as a direct cost in the same manner as power and fuel. According to petitioner, this treatment of water as a direct expense contradicts the Department's past practice of presuming that it is "normal" practice to include water as an overhead item and the Department's past statement that there was nothing in the *Reserve Bank of India Bulletin* financial statement to indicate that water is not included in overhead. *See, e.g., Final Determination of Sales at Less Than Fair Value: Disposable Pocket Lighters from the People's Republic of China*, 60 FR 22359, 22367–68 (May 5, 1995).

The Department was unable to locate a contemporaneous value for water in India or Pakistan so chose to adjust the Pakistani value used in the LTFV investigation. Petitioner offers the value for water from the *Water Utilities Data Book*, Asian and Pacific Region, Asian Development Bank (November 1993). Petitioner maintains that the Department should use an average of the Indian water values reported, adjusted for inflation, as a more appropriate surrogate value than the value for Pakistani water.

Department Position

We agree with respondents. Consistent with Department practice, we have presumed that the overhead value from the *Reserve Bank of India Bulletin* includes an expense for water. Therefore, consistent with *Sulfanilic Acid* and *Polyvinyl Alcohol from the PRC* we have not valued water as a separate production input.

Comment 11

Respondents note that the Department only verified one of three respondents in this review, Zhong He Chemical Factory. Accordingly, respondents contend that it was inappropriate for the Department, in our preliminary results, to use the weights of bags at Zhong He in our calculations of all three companies in place of the values originally reported to the Department. Respondents contend that the Department should not assign the packing bag weights, revised from information gained at verification of Zhong He, to the other factories. Respondent argues that there is no evidence that the packing bag weights that they submitted for Tianjin and Guangdong were incorrect.

Petitioner contends that the Department correctly used the verified weights of Zhong He's plastic bags as the weight for Handan's and Hengshui's plastic bags. Petitioner points out that the Department found at verification that Zhong He had under-reported the weight of its plastic bags. Petitioner also points to the fact that Handan reported the same weight as Zhong He and that Hengshui reported even lighter weights for plastic bags. Petitioner argues that the Department, using the facts available, correctly replaced the weights of the plastic bags reported by Handan and Hengshui with the verified weights.

Department Position

We agree with respondents. Each responding company submitted differing weights for its packing bags, indicating that each company uses different bags for packing. Therefore, for our final results, we have used the revised Zhong He packing bag weights for Zhong He only. For Handan and Hengshui, we have used packing bag weights reported on March 22, 1996.

Comment 12

Respondents maintain that the value we used from *Chemical Weekly* for caustic soda is based on a 100 percent purity value. Respondents contend that the three responding factories all use caustic soda of considerably less than 100 percent purity. Therefore, respondents maintain that to properly value the caustic soda used by the three

factories, the Department should multiply the *Chemical Weekly* price (exclusive of tax) by the purity percentage for each factory. See *Polyvinyl Alcohol from the PRC.*

Department Position

We agree with respondents and have adjusted for caustic soda purity levels.

Comment 13

Petitioner states that the Department incorrectly used a value for Indian oxalic acid, instead of sebacic acid, in our by-product/co-product analysis. Additionally, petitioner argues that the Department erroneously misplaced the decimal point in calculating the actual value of oxalic acid. Petitioner concludes that correcting this error shows that oxalic acid should not serve as a surrogate for sebacic acid because of the relative value of oxalic acid compared to the values for the three subsidiary products. Petitioner also protests the use of an oxalic acid value based on imports from the PRC to India. Petitioner argues that it is inconsistent with Department practice to use a value from an NME as a surrogate value. Due to these concerns, petitioner contends that the Department should use the import value of sebacic acid from Japan into India rather than the Indian oxalic acid value from the PRC.

Respondents contend that the Department should not use the Japanese sebacic acid value, as suggested by petitioner. Respondents cite the *Chemical Marketing Reporter* and a fax from Ivanhoe Industries, a U.S. importer of subject merchandise, to argue that the Japanese value does not reflect the actual price of normal sebacic acid in India. According to the *Chemical Marketing Reporter*, the U.S. price for sebacic acid is between $2.04 to $2.05 per pound. However, using the Indian import price for sebacic acid from Japan indicates that the price is almost $5.00/lb. for the Japanese imports into India. According to John Hoegl of Ivanhoe Industries, the sebacic acid from Japan is a special repurified grade, which is higher in quality than either Chinese or Union Camp products, and is sold at premium prices to specific end users.

Department Position

We agree with petitioner in part. It is inconsistent with Department practice to use a surrogate value from a non-market economy country (*e.g.*, PRC). Additionally, we agree with respondents that the Indian import value from Japan overstates the value of the product. Therefore, we selected the Indian import value for sebacic acid from the United States as our surrogate value for sebacic acid to determine whether the subsidiary products are by-products or co-products.

Comment 14

Petitioner contends that if Zhong He used benzene sulfuric acid in its production of sebacic acid, as the Department found at verification, the Department must include a value for benzene sulfuric acid in its factors of production calculation.

Department Position

We agree with petitioner. However, as neither petitioner nor Zhong He provided a publicly available value for benzene sulfuric acid, we have used an average value for benzene from Indian Chemical Weekly, contemporaneous with the POR.

Comment 15

The Department derived the value of caustic soda from the Indian *Chemical Weekly*. Petitioner states that the selected values indicate a price of Rs 9.50/kg for the weeks between October 25, 1994 and February 1, 1995. Petitioner also states that no other prices are given for 1995 until April 12, 1995, when the price for caustic soda (lye) is reported as Rs 21.50/kg. Petitioner argues that the Department failed to factor this increase in the caustic soda price. Petitioner maintains that the Department should average the two values and use the price of Rs 15.5/kg in its calculations.

Respondents argue that the *Chemical Weekly* price of Rs 9.5 was from five months (October, November, and December 1994; January and February 1995), whereas the price of Rs 21.5 was only documented for one month, April 1995. Therefore, respondents contend that an average accounting for the months each value was reported should be used, *i.e.*, Rs 11.50/kg. Respondents argue that this price should then be converted to a tax-exclusive basis and multiplied by the purity percentage applicable to each factory.

Department Position

We examined all copies of the Indian *Chemical Weekly* for the POR available to the Department. We found 27 values for caustic soda (lye) between October 19, 1994 and June 28, 1995. A simple average of these values is Rs 14.59/kg. We have used this value in our calculations.

Comment 16

The Department based the price of zinc oxide upon the published market prices reported in *Chemical Weekly*. See, Final Analysis Memorandum. Respondents provided market price information for zinc oxide on March 28, 1995. Petitioner argues that the price for zinc oxide reported on four other dates in *Chemical Weekly* are significantly higher than the Rs 48/kg figure submitted by respondents. Petitioner maintains that the Department should use the higher price of Rs 75/kg as the surrogate price for zinc oxide as it represents a wider range over the POR rather than one price for one date during the POR.

Department Position

We agree with petitioner in part and have revised our surrogate value for zinc oxide. We have used an average of all reported values for zinc oxide in the POR for our final results.

Comment 17

Petitioner contends that the value for coal used by the Department in its calculations is not contemporaneous with the POR. Petitioner contends the Department should use the steam coal value of Rs 1461.87/mt from the *Polyvinyl Alcohol from the PRC* investigation because it is contemporaneous to the POR and publicly available information.

Respondents argue that the alternative proposed by petitioner should be rejected because it is less representative than the *Gazette of India* data, used in the preliminary results. Respondents argue that the *Polyvinyl Alcohol from the PRC* value was based on the average value from only two Indian companies. Respondents argue alternatively, the *Gazette of India* data, based on all but five Indian states, is much more representative than the *Polyvinyl Alcohol from the PRC* data because the former is basically an average for the entire country while the latter is from just two companies (selected by petitioner) which may be located in high cost areas. Respondents also argue that the *Polyvinyl Alcohol from the PRC* values should be rejected because the tax and freight status of these prices is unknown, thereby prohibiting the Department from making appropriate adjustments to these coal values.

Department Position

We agree with respondents. Consistent with *Sulfanilic Acid*, we used the *Gazette of India* data in our final results calculations. As we did in our preliminary results, we are adjusting the June 16, 1994 coal value to account for inflation.

Comment 18

In the Analysis Memorandum the Department stated that it used an electricity value from the July 1995 *Current Energy Scene in India.* However, in the Memo to the File, the Department included different electricity values from "State-wise Electricity Rates for Different Categories of Consumers" from *India's Energy Sector*, Centre for Monitoring Indian Economy (July 1995). This publication includes three values for electricity, one each for small, medium and large industries. Petitioner contends that the Department should use the value for medium industries, Rs 1.92/kwh, rather than the Rs 0.732/kwh used in the preliminary results of review. Petitioner maintains that the medium industry rate is applicable because all respondents reported using more than 14,600/kwh/month (medium industries) but less than 2,190,000/kwh/month (large industries).

Department Position

We agree with petitioner and have used the electricity value for medium industries in our calculations for the final results.

Comment 19

Petitioner maintains that, for Hengshui, the Department used an incorrect freight rate for plastic bags. Petitioner contends that the Department used a freight rate of Rs 250 rather than the correct rate of Rs 750 listed in the freight calculation charts.

Department Position

We agree with petitioner and have used the rate of Rs 750 in our calculations for the final results.

Comment 20

In its preliminary results, the Department used ocean freight information provided by respondents from common rates tariff filed by Nippon Yusen Kaisha with the Federal Maritime Commission for rates from China to New York. Petitioner contends that this rate does not include appropriate delivery destination and fuel adjustment factor charges. Therefore, petitioner argues that the Department should use the rate from the LTFV investigation because it does include these charges and more accurately reflects ocean freight charges.

Respondents contend that the Department should exclude the delivery destination charge of $485.00 except for shipments to inland destinations. Respondents suggest that the Department check directly with the Federal Maritime Commission or a freight company to determine the freight rates for this product.

Department Position

We contacted the Federal Maritime Commission to request additional information about the ocean freight charge respondents submitted for this review. In addition to the $1705 charge respondents reported, our research indicates that a $485 delivery destination charge and a $62 fuel adjustment factor should be included as ocean freight expenses as they are assessed on all shipments. We chose to use the sum of these charges ($2252) in our final results, rather than the rate used in the LTFV investigation as the new figure is contemporaneous with the POR.

Comment 21

Petitioner contends that the Department failed to adjust the foreign brokerage and handling expense for inflation.

Department Position

We agree with petitioner and have adjusted foreign brokerage and handling for inflation in our calculations of the final results.

Comment 22

Petitioner maintains that if the Department insists on categorizing capryl alcohol as a co-product rather than a by-product, the Department should allocate capryl alcohol based on its value relative to sebacic acid rather than its quantity relative to sebacic acid. Petitioner contends that allocations based on quantity can lead to significant distortions. Petitioner argues that sebacic acid and capryl alcohol have significantly different revenue-producing powers. Therefore, citing the *Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Taiwan*, 61 FR 14064, 14071 (March 29, 1996) (*Polyvinyl Alcohol from Taiwan*), petitioner contends that the co-product allocation should be based on value rather than volume.

Department Position

Consistent with *Polyvinyl Alcohol from Taiwan* we based our determination of co-products and by-products on their value relative to sebacic acid rather than their volume. Although that case was a market economy case, in both that case and the present case, sebacic acid has a significantly higher per-unit value than any of the subsidiary products. Therefore, production costs should be allocated to the co-products based upon their relative sales values. As in *Polyvinyl Alcohol from Taiwan*, we found that basing the allocation of costs solely on production volume ignores the vastly different revenue-producing powers of joint products (*i.e.*, sebacic acid and the co-products). *See* Final Analysis Memorandum.

Final Results of Review

As a result of our review of the comments received, we have changed the results from those presented in our preliminary results of review. Therefore, we determine that the following margins exist as a result of our review:

Manufacturer/exporter	Time period	Margin (percent)
Tianjin Chemicals I/E Corp.	7/13/94–6/30/95	0
Guangdong Chemicals I/E Corp.	7/13/94–6/30/95	13.54
Sinochem International Chemicals Corp.	7/13/94–6/30/95	70.54
PRC Rate	7/13/94–6/30/95	243.40

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and normal value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following cash deposit requirements will be effective upon publication of these final results for all shipments of sebacic acid from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) For Tianjin, Guangdong, and SICC, which have separate rates, the cash deposit rates will be the company-specific rates stated above; (2) for the company which

did not respond to our questionnaire (Jiangsu), and for all other PRC exporters, the cash deposit rate will be the PRC rate stated above; (3) for non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter.

These deposit rates shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d)(1). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Department's regulations.

Dated: February 28, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97-5711 Filed 3-6-97; 8:45 am]

BILLING CODE 3510-DS-P

[A-351-806]

Silicon Metal From Brazil; Extension of Time Limit for Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of extension of time limit for antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) is extending the time limits for its preliminary results in the administrative review of the antidumping order on silicon metal from Brazil. The review covers the period July 1, 1995, through June 30, 1996.

EFFECTIVE DATE: March 7, 1997.

FOR FURTHER INFORMATION CONTACT: Alexander Braier or James Doyle, AD/CVD Enforcement, Group III, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Ave. N.W., Washington, D.C. 20230; telephone: (202) 482-3818.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete this review within the original time limit, the Department is extending the time limit for the completion of the preliminary results to May 14, 1997, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA). (See Memorandum from Joseph A. Spetrini to Robert S. LaRussa on file in the public file of the Central Records Unit, Room B-099 of the Department of Commerce).

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the URAA (19 USC 1675(a)(3)(A)).

Dated: February 5, 1997.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 97-5626 Filed 3-6-97; 8:45 am]

BILLING CODE 3510-DS-P

[A-533-810]

Stainless Steel Bar From India: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review: Stainless steel bar from India.

SUMMARY: The Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on stainless steel bar from India in response to a request by one manufacturer/exporter, Isibars Limited ("Isibars"). This review covers sales of the subject merchandise to the United States during the period August 4, 1994 through January 31, 1996.

We have preliminarily determined that sales have not been made below normal value ("NV"). If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service to liquidate subject entries without regard to antidumping duties.

Interested parties are invited to comment on these preliminary results. Parties who submit argument are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: March 7, 1997.

FOR FURTHER INFORMATION CONTACT: Jennifer Yeske or Zak Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482-0189 or (202) 482-1279, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

SUPPLEMENTARY INFORMATION:

Background

On February 29, 1996, the Department received a request from Isibars to conduct an administrative review of the antidumping duty order on stainless steel bar from India. The Department published in the **Federal Register**, on March 19, 1996, a notice of initiation of an administrative review of Isibars covering the period August 4, 1994 through January 31, 1996 (61 FR 11184). In a notice published on August 20, 1996, the Department extended the time limit for the preliminary results of the review until February 28, 1997 (61 FR 43042). The Department is now conducting this review in accordance with section 751 of the Act and section 353.22 of its interim regulations.

Scope of Review

Imports covered by this review are shipments of stainless steel bar ("SSB"). SSB means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. SSB includes cold-finished SSBs that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The SSB subject to these orders is currently classifiable under subheadings 7222.10.0005, 7222.10.0050, 7222.20.0005, 7222.20.0045, 7222.20.0075, and 7222.30.0000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of these orders is dispositive.

Period of Review

This review covers one manufacturer/exporter, Isibars, and the period August 4, 1994 through January 1, 1996.

Verification

As provided in section 782(i) of the Act, we verified information provided by the respondent by using standard verification procedures, including on-site inspection of the respondent's facilities, the examination of appropriate sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public version of the verification report.

United States Price

In calculating United States Price ("USP"), we used export price ("EP"), in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation into the United States and constructed export price was not otherwise indicated.

We calculated EP based on the price from Isibars to an unaffiliated customer prior to importation into the United States. In accordance with section 772(c)(2) of the Act, we made deductions for foreign inland freight, international freight, and containerization/handling charges.

Isibars claimed an upward adjustment to USP for a "duty drawback" scheme. Under this scheme the Indian government grants import duty credits equal to a certain percentage of the FOB value of SSB exports. The amount of the credit is intended to reflect the amount of duties that would have been paid on the input product, wire rod, had the input actually been imported. However, there is no requirement that Isibars actually import the input product, and in fact, Isibars did not import wire rod during the POR. The import credits can be used to offset import duties on any products imported by Isibars. It is the Department's practice to allow an upward adjustment to USP for duty drawback only if there is a reasonable link between the duties imposed and those rebated. In this case, there is no such link. Therefore, we have not made the adjustment.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a) of the Act. Because the aggregate volume of home market sales of the foreign like product was greater than five percent of the aggregate volume of U.S. sales of the subject merchandise, we determined that the home market provides a viable basis for calculating NV. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the prices at which the foreign like product was first sold for consumption in the exporting country, in the usual commercial quantities, in the ordinary course of trade and at the same level of trade as the U.S. sales. Isibars reported, and we verified, no difference in the level of trade between home market and U.S. sales; therefore, an adjustment pursuant to section 773(a)(7)(A) is unwarranted.

We compared the EPs of individual transactions, pursuant to section 777A(d)(2) of the Act, to the weighted-average price of contemporaneous sales of the foreign like product. We based NV on ex-factory prices to unaffiliated purchasers in the home market. We adjusted for differences in packing costs between the two markets. We made circumstance-of-sale adjustments for differences in credit costs and bank charges between the two markets. Isibars reported that it paid commissions in the home market, but not the U.S. market. We have not adjusted for the home market commissions, however, because Isibars failed to report the U.S. indirect selling expenses which would be used to offset the home market commissions.

Preliminary Results of the Review

As a result of our comparison of EP and NV, we preliminarily determine that the following weighted-average dumping margin exists:

Manufacturer/exporter	Period	Margin
Isibars	8/4/94-1/1/96	0.00

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 34 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 20 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 27 days after the date of publication of this notice. Parties who submit argument are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results.

Upon completion of this administrative review, the Department will issue appraisement instructions directly to the Customs Service. The results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise sold during the POR and covered by the determination and for future deposits of estimated duties.

The following deposit requirement will be effective upon publication of the final results of this antidumping duty administrative review for all shipments of stainless steel bar from India entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate established in the final results of this review; (2) if the exporter is not a firm covered in this review, but was covered in a previous review or the original less-than-fair-value ("LTFV") investigation, the cash deposit rate will

continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers and/or exporters of this merchandise, shall be 12.45 percent, the "all others" rate established in the LTFV investigation (59 FR 66915, December 28, 1994).

These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(c).

Dated: February 28, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–5701 Filed 3–6–97; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Extension of Time Limit of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit of antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results in the administrative review of the antidumping duty order on tapered roller bearings (TRBs) from the People's Republic of China, covering the period June 1, 1995, through May 31, 1996. The Department has determined that it is not practicable to complete this review within the time limits mandated by Section 751(a)(3)(A) of the Tariff Act of 1930 (the Tariff Act), as amended.

EFFECTIVE DATE: March 7, 1997.

FOR FURTHER INFORMATION CONTACT: Kris Campbell or Kristie Strecker, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act.

Background

On August 8, 1996, the Department initiated an administrative review of the antidumping duty order on tapered roller bearings from the People's Republic of China, covering the period June 1, 1995, through May 31, 1996 (61 FR 41375). In our notice of initiation we stated that we intended to issue the preliminary results of this reviews not later than March 3, 1997.

Postponement of Preliminary Results of Review

Section 751(a)(3)(A) of the Tariff Act requires the Department to issue preliminary results within 245 days after the last day of the anniversary month of an order for which a review is requested. However, if it is not practicable to issue the preliminary results in 245 days, section 751(a)(3)(A) allows the Department to extend this time period to 365 days.

We determine that it is not practicable to issue the preliminary results of this review within 245 days because we must address complicated issues related to separate rates, valuation of factors of production, and facts available. See Memorandum from Deputy Assistant Secretary for AD/CVD Enforcement to Acting Assistant Secretary for Import Administration, March 3, 1997, on file in Room B–099 at the Department.

Accordingly, we are extending the deadline for issuing the preliminary results of this review. We intend to issue the preliminary results of this review by June 30, 1997. We will issue the final results of review within 120 days after publication of the preliminary results. This extension is in accordance with section 751(a)(3)(A) of the Tariff Act.

Dated: March 3, 1997.

Richard Moreland,

Acting Deputy Assistant Secretary for AD/CVD Enforcement.

[FR Doc. 97–5709 Filed 3–6–97; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

U.S. Environmental Protection Agency; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 96–120. *Applicant:* U.S. Environmental Protection Agency, Cincinnati, OH 45268. *Instrument:* ICP Mass Spectrometer, Model PlasmaQuad 3. *Manufacturer:* Fisons Instruments, United Kingdom. *Intended Use:* See notice at 61 FR 66018, December 16, 1996.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides sensitivities to 200×10^6 counts per second per ppm with a detection limit of 2.0 ng/L for Hg. This capability is pertinent to the applicant's intended purposes and we know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–5636 Filed 3–6–97; 8:45 am]

BILLING CODE 3510–DS–P

Penn State University; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 96–072R. *Applicant:* Penn State University, University Park, PA 16802. *Instrument:* Nano Indentor System, Model UMIS 2001. *Manufacturer:* CISRO, Australia. *Intended Use:* See notice at 61 FR 41773, August 12, 1996.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, was being manufactured in the United States at the time the instrument was ordered (September 21, 1995). *Reasons:* The foreign instrument provides a spherical indentor to permit making stress/strain measurements.

A domestic manufacturer of similar equipment advised on February 11, 1997 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which was being manufactured in the United States at the time the instrument was ordered.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–5634 Filed 3–6–97; 8:45 am]

BILLING CODE 3510–DS–P

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 97–011. Applicant: The University of Chicago, 5640 S. Ingleside Avenue, Chicago, IL 60637. Instrument: ICP Mass Spectrometer, Model ELEMENT. Manufacturer: Finnigan MAT, Germany. Intended Use: The article is intended to be used for studies of a wide range of natural and synthetic materials including components in meteorites, lunar samples, rocks and minerals, and natural waters. Application accepted by Commissioner of Customs: February 6, 1997.

Docket Number: 97–012. Applicant: University of California, Santa Barbara, Marine Science Institute, Santa Barbara, CA 93106. Instrument: UV Microprobe Laser Ablation System. Manufacturer: VG Elemental, United Kingdom. Intended Use: The instrument will be used in conjunction with a mass spectrometer to analyze calcified materials (fish ear bones, molluscan shells) for their trace element and isotopic content, typically including elements such as Ba, Sr, Mn and Pb. In addition, the instrument will be used for educational purposes in a course designed to provide training and instruction for students in marine biology and geochemistry interested in applying LA–ICPMS techniques in their dissertation research. Application accepted by Commissioner of Customs: February 6, 1997.

Docket Number: 97–013. Applicant: Norfolk State University, 2401 Corprew Avenue, Norfolk, VA 23504. Instrument: Q-Band ESR Spectrometer with Accessories. Manufacturer: Bruker Instruments Inc., Germany. Intended Use: The article is intended to be used for investigations of the defect structures and dopant charge states in organic crystals including YAlO and YAG grown under various conditions with various active ions. The objective of these studies is to elucidate the mechanisms affecting the efficiencies of crystals for laser and scintillating applications. Future studies include the investigation of thermomechanically generated paramagnetic sites in polymers to determine the nature of the sites and studies of potential catalytic polymers. In addition, the instrument will be used for educational purposes by undergraduate physics and chemistry majors and graduate students. Application accepted by Commissioner of Customs: February 6, 1997.

Docket Number: 97–015. Applicant: North Carolina State University, Campus Box 7212, 206 Alumni Building, Raleigh, NC 27695–7212. Instrument: Photoelectron Emission Microscope. Manufacturer: ELMITEC, Germany. Intended Use: The article is intended to be used for studies of epitaxial growth of wide bandgap semiconductors, in particular the III-nitrides and SiC and formation of quantum dots of Co-silicides. The objective of these investigations will be to observe in real-time growth modes of wide bandgap semiconductors and surface reactions vital to understanding processing issues of electronic materials and in device fabrication. Application accepted by Commissioner of Customs: February 11, 1997.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–5625 Filed 3–6–97; 8:45 am]

BILLING CODE 3510–DS–P

University of Pennsylvania; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 96–119. *Applicant:* University of Pennsylvania, Philadelphia, PA 19104–6272. *Instrument:* Electron Microscope, Model JEM–2010F. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 62 FR 979, January 7, 1997.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as the instrument is intended to be used, was being manufactured in the United States at the time the instrument was ordered. *Reasons:* The foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of the instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–5635 Filed 3–6–97; 8:45 am]

BILLING CODE 3510–DS–P

University of Nebraska-Lincoln; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and

Constitution Avenue, N.W., Washington, D.C.

Docket Number: 96–122. *Applicant:* University of Nebraska-Lincoln, Lincoln, NE 68588–0304. *Instrument:* Diamond Anvil Cells, Model Diacell. *Manufacturer:* Diacell, United Kingdom. *Intended Use:* See notice at 62 FR 979, January 7, 1997.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides: (1) high pressure capability to 750 kbar, (2) metal membrane drive for precise control and (3) hemispherically movable diamond cups for superior alignment. A domestic manufacturer of similar equipment advised on February 3, 1997 that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–5637 Filed 3–6–97; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 030397A]

Advisory Panel on Atlantic Billfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent; request for nominations.

SUMMARY: NMFS solicits nominations for the Atlantic billfish advisory panel (AP). The purpose of the AP will be to assist NMFS in the collection and evaluation of information relevant to the amendment of the billfish management plan. The AP will include representatives from all interests in Atlantic billfish fisheries.

DATES: Nominations must be submitted on or before April 7, 1997.

ADDRESSES: Nominations should be submitted to Rebecca Lent, Highly Migratory Species Management Division, NMFS, 1315 East-West Highway, Silver Spring, MD, 20910. Nominations may be submitted by fax; 301–713–1917.

FOR FURTHER INFORMATION CONTACT: John Kelly, 301–713–2347.

SUPPLEMENTARY INFORMATION:

Introduction

In accordance with the Magnuson-Stevens Fishery Conservation and Management Act, (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*, as amended by the Sustainable Fisheries Act, Public Law 104–297, an Advisory Panel (AP) will be established to consult with NMFS in the collection and evaluation of information relevant to the amendment of the Atlantic billfish fishery management plan.

The purpose of the AP is to assist NMFS in the development of an amendment to the billfish management plan. The first action will be development of definitions (i.e., bycatch, overfishing) and other requirements of the Magnuson-Stevens Act.

Procedures and Guidelines

A. *Procedures for Establishing the Advisory Panel.*

Individuals with definable interests in the recreational and commercial fishing and related industries, environmental community, academia, governmental and quasi-governmental entities will be considered as members of the AP. Selection of AP members will not be limited to those that are nominated.

Nominations are invited from all individuals and constituent groups. The nomination should include:

1. The name of the applicant or nominee and a description of their interest in or connection with highly migratory species (HMS) and billfish in particular;

2. A statement of background and/or qualifications;

3. A written commitment that the applicant or nominee shall actively participate in good faith in the tasks of the AP.

B. *Participants.*

The AP shall consist of not less than seven (7) members who are knowledgeable about the pelagic fisheries for Atlantic HMS, particularly billfish fisheries. Nominations will be accepted to allow representation from recreational and commercial fishing interests, the conservation community, and the scientific community. NMFS does not believe that each potentially affected organization or individual must necessarily have its own representative, but each interest must be adequately represented. The intent is to have a group that, as a whole, reflects an appropriate balance and mix of interests given the responsibilities of the AP. Criteria for membership include one or more of the following: a) Experience in the recreational fishing industry involved in catching billfish; b) experience in the commercial fishing industry involved in billfish bycatch; c) experience in connected industries (marinas, bait and tackle shops); d) experience in the scientific community working with HMS; e) former or current representative of a private, regional, state, national, or international organization representing marine fisheries interests dealing with billfish.

NMFS will provide the necessary administrative support, including technical assistance, for the AP. However, we will be unable to compensate participants with monetary support of any kind, because no funds were appropriated to support this activity in fiscal year 1997. Members will be expected to pay for travel costs related to the AP.

C. *Tentative Schedule.*

Meetings of the AP will be held twice or thrice yearly. The initial activities include consideration of definitions of overfishing, etc., to be developed for amendments to the Billfish Management Plan. Amendments and regulations will be submitted for Secretarial review by October 11, 1998.

Dated: March 3, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–5695 Filed 3–6–97; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 022897F]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of an application for modification to research permit 900 (P770#66).

SUMMARY: Notice is hereby given that the Coastal Zone and Estuarine Studies Division, Northwest Fisheries Science Center, NMFS in Seattle, WA (CZESD) has applied in due form for a modification to a permit authorizing takes of endangered and threatened species for scientific research purposes.

DATES: Written comments or requests for a public hearing on any of these applications must be received on or before April 7, 1997.

ADDRESSES: The application and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Environmental and Technical Services Division, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

Written comments or requests for a public hearing should be submitted to the Chief, Environmental and Technical Services Division, Portland.

SUPPLEMENTARY INFORMATION: CZESD requests a modification to a permit under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–227).

For the modification to permit 900 (P770#66), CZESD requests takes of juvenile, threatened, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*); juvenile, threatened, Snake River fall chinook salmon (*Oncorhynchus tshawytscha*); and juvenile, endangered, Snake River sockeye salmon (*Oncorhynchus nerka*) associated with a new study designed to determine the relative survival of juvenile salmon passing through the spillway of The Dalles Dam. The takes associated with the study is requested for a duration of three years. ESA-listed fish will be captured at Bonneville Dam, anesthetized, tagged with passive integrated transponders, transported to The Dalles Dam, allowed to recover from the anesthetic, released in front of the spillway and downstream from the dam, and electronically detected at Bonneville Dam. This request for modification to permit 900 supplements a previous request for modification 4 to permit 900 (62 FR 9178, February 28, 1997).

Those individuals requesting a hearing on the permit modification request should set out the specific reasons why a hearing would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the above application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Dated: March 3, 1997.

Robert C. Ziobro,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–5696 Filed 3–6–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Control Number: Navy Advertising Effectiveness Study (NAES); OMB Control No. 0703–0032.

Type of Request: Revision of a Currently Approved Collection.

Number of Respondents: 2,000.

Responses Per Respondent: 1.

Annual Responses: 2,000.

Average Burden Per Response: 30 minutes.

Annual Burden Hours: 1,000 hours.

Needs and Uses: This collection of information measures advertising effectiveness and provides data for strategies to be used in advertising. This information is used by the Navy Recruiting Command to determine management decisions on objectives and strategies of advertising, media selection, and the evaluation of the advertising and recruiting process.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: March 4, 1997.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–5652 Filed 3–6–97; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Extension of Comment Period on the Draft Environmental Impact Statement (DEIS) for Proposed Projects at the Massachusetts Military Reservation, Cape Cod, MA

AGENCY: National Guard Bureau, Department of the Army.

ACTION: Notice.

SUMMARY: The public comment period for the DEIS will be extended for 30 days from the date of this announcement's publication in the **Federal Register**.

This 30-day extension is to provide all interested persons additional time to review and provide comments on the DEIS.

The DEIS was originally released for a 90-day public comment period from the Department of the Army in 61 FR 63832 (Monday, December 2, 1996) and the Environmental Protection Agency in 61 FR 64742 (Friday, December 6, 1996).

COPIES Copies of the DEIS can be obtained from the EIS Project Officer at the below listed address.

FOR FURTHER INFORMATION CONTACT: The EIS Project Officer, Captain Tracy Norris, Massachusetts National Guard, Unified Environmental Planning Office, Building #1204, Camp Edwards, Massachusetts 02542, telephone: (508) 968–5824.

Dated: March 3, 1997.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety, and Occupational Health) OASA (I,L&E).

[FR Doc. 97–5656 Filed 3–6–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

List of Approved "Ability-to-Benefit" Tests and Passing Scores

AGENCY: The Department of Education.

ACTION: Correction notice.

SUMMARY: This document corrects the passing scores for the Test of Adult Basic Education (TABE)—Forms 5 and 6, Level A for both the Survey Version and the Complete Battery Version; and the Test of Adult Basic Education (TABE)—Forms 7 and 8, Level A, for

both the Survey Version and Complete Battery Version. Only the paper and pencil formats for these tests were approved. These tests and their incorrect passing scores were included in the "List of Approved "Ability-to-Benefit" Tests and Passing Scores" that was published in the **Federal Register** on October 25, 1996.

FOR FURTHER INFORMATION CONTACT: Lorraine Kennedy, U.S. Department of Education, 600 Independence Avenue, S.W., Regional Office Building 3, Room 3045, Washington, D.C. 20202–5451. Telephone: (202) 708–7888. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: On October 25, 1996, the Secretary published a notice in the **Federal Register** (61 FR 55542—555423) that provided a list of "ability-to-benefit" tests that the Secretary has approved under section 484(d) of the Higher Education Act of 1965, as amended (HEA), and the regulations that the Secretary promulgated to implement that section, 34 CFR Part 668, Subpart J. The notice also included approved passing scores for the approved tests.

The Secretary provided incorrect passing scores for the listed TABE tests and is correcting those scores in this notice, as follows:

List of Approved "Ability-to-Benefit" Tests and Passing Scores

6. Test of Adult Basic Education (TABE): (Reading Total, Total Mathematics, Total Language)—Forms 5 and 6, Level A, Survey Version and Complete Battery Version.

Passing Scores: The approved passing scores on these tests are as follows: Reading Total (768), Total Mathematics (783), Total Language (714).

Publisher: The test publisher and the address, contact person, telephone, and fax number of the test publisher are: CTB/McGraw-Hill, 20 Ryan Ranch Road, Monterey, CA 93940–5703, Contact: Ms. Veronika Henderson, Telephone: (408) 393–7197, Fax: (408) 393–7128.

7. Test of Adult Basic Education (TABE): (Reading, Total Mathematics, Language)—Forms 7 and 8, Level A, Survey Version and Complete Battery Version.

Passing Scores: The approved passing scores on these tests are as follows: Reading (559), Total Mathematics (562), Language (545).

Publisher: The test publisher and the address, contact person, telephone, and fax number of the test publisher are: CTB/McGraw-Hill, 20 Ryan Ranch Road, Monterey, CA 93940–5703, Contact: Ms. Veronika Henderson, Telephone: (408) 393–7197, Fax: (408) 393–7128.

Users are referred to the test publisher's technical manual for computing these scores.

If an institution used the above TABE tests for an ability-to-benefit determination under section 484(d) of the HEA, and received a notice from the test publisher or an assessment center that a student achieved at least a passing score on that test, the institution may rely on that notice. The student does not have to retake that test.

However, if the institution was notified by the test publisher or an assessment center between October 25, 1996 and the date of the present notice that the student failed to qualify for the ATB program, the institution may have the student's TABE test rescored by the test publisher or the assessment center with the composite scores listed in the present **Federal Register**.

Dated: February 28, 1997.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 97–5686 Filed 3–6–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Kirtland Area Office (Sandia)

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board, Kirtland Area Office (Sandia).

DATES: Wednesday, March 19, 1997: 6:50 p.m.–9:30 p.m. (Mountain Standard Time).

ADDRESSES: Bear Canyon Senior Citizen Center, 4645 Pitt NE, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Mike Zamorski, Acting Manager, Department of Energy Kirtland Area Office, P.O. Box 5400, Albuquerque, NM 87185, (505) 845–4094.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

6:50 p.m. Public Comment Period
7:00 p.m. Approval of Agenda; Approval of 02/19/97 Minutes
7:05 p.m. Chair's Report
7:15 p.m. Future Land Management Area 3, 4, 5, & 6; Committee Recommendation Report
7:40 p.m. Issues Committee Formation—Discussion/Approval
7:55 p.m. Board Membership—Board Terms—Discussion
8:10 p.m. Break
8:20 p.m. DOE FY 1997 Budget Presentation
8:35 p.m. Chemical Waste Landfill Update
8:50 p.m. Sandia Proposed Wastewater Discharge Presentation
9:05 p.m. New/Other Business
9:10 p.m. Agenda Items for Next Meeting
9:20 p.m. Public Comment
9:30 p.m. Announcement of Next Meeting/Adjourn

A final agenda will be available at the meeting Wednesday, March 19, 1997.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Mike Zamorski's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Mike Zamorski, Department of Energy Kirtland Area Office, P.O. Box 5400, Albuquerque, NM 87185, or by calling (505) 845–4094.

Issued at Washington, DC, on March 4, 1997.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 97–5639 Filed 3–6–97; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site-Specific Advisory Board, Idaho National Engineering Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho National Engineering and Environmental Laboratory (INEEL).

DATES: Tuesday, March 18, 1997 from 8:00 a.m. to 6:00 p.m. Mountain Standard Time (MST). Wednesday, March 19, 1997 from 8:00 a.m. to 5:00 p.m. MST. There will be a public comment availability session Tuesday, March 18, 1997 from 5:00 p.m. to 6:00 p.m. MST.

ADDRESSES: Holiday Inn Westbank (Bannock Room), 475 River Parkway, Idaho Falls, Idaho 83402, (208) 523–8000.

FOR FURTHER INFORMATION CONTACT: INEEL Information (1–800–708–2680) or Stephanie Meyers, Jason Associates Corporation Staff Support (1–208–522–1662).

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

The EM SSAB, INEEL will be developing a recommendation on the INEEL Waste Area Group 3 Remedial Investigation/Feasibility Study and beginning studies of the Plutonium Focus Area, the Mixed Waste Focus Area, and INEEL privatization activities. For a most current copy of the agenda, contact Woody Russell, DOE-Idaho, (208) 526–0561, or Stephanie Meyers, Jason Associates, (208) 522–1662. The final agenda will be available at the meeting.

Public Participation

The two-day meeting is open to the public, with a Public Comment Availability session scheduled for Tuesday, March 18, 1997 from 5:00 p.m. to 6:00 p.m. MST. The Board will be available during this time period to hear verbal public comments or to review any written public comments. If there are no members of the public wishing to comment or no written comments to review, the board will continue with it's current discussion. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the INEEL Information line or Stephanie Meyers, Jason Associates, at the addresses or telephone numbers listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that needed to be resolved prior to publication.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays.

Issued at Washington, DC on March 4, 1997.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 97–5640 Filed 3–6–97; 8:45 am]

BILLING CODE 6450–01–P

Office of Energy Efficiency and Renewable Energy

[Case No. DH–008]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver From the Vented Home Heating Equipment Test Procedure to CFM Majestic Inc.

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: Notice is given of the Decision and Order (Case No. DH–008) granting a Waiver to CFM Majestic Inc. (CFM Majestic) from the existing Department of Energy (DOE or Department) test procedure for vented home heating equipment. The Department is granting CFM Majestic's Petition for Waiver regarding the use of pilot light energy consumption in calculating the Annual Fuel Utilization Efficiency (AFUE), and the input rate at which the weighted average steady state efficiency and AFUE for manually controlled heaters with various input rates are calculated for its models A120, A125, A130, A132, A230, A232, AB132, D130, D132, D230, D232, D332, D334, D336, DR333, DR336, DR339, DT336, DT339, DT343, DVR33, DVR36, DVR39, DVRS3, DVT36, DVT39, DVT43, DVTS2, FS22, FS32, FSDV22, FSDV32, HE25, HE32, HEB32, and HEDV32.

FOR FURTHER INFORMATION CONTACT: Mr. William W. Hui, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–43, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9145; or Mr. Eugene Margolis, U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0103, (202) 586–9507.

SUPPLEMENTARY INFORMATION: In accordance with Title 10 CFR 430.27(j), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, CFM Majestic has been granted a Waiver for its models A120, A125, A130, A132, A230, A232, AB132, D130, D132, D230, D232, D332, D334, D336, DR333, DR336, DR339, DT336, DT339, DT343, DVR33, DVR36, DVR39, DVRS3, DVT36, DVT39, DVT43, DVTS2, FS22, FS32, FSDV22, FSDV32, HE25, HE32, HEB32, and HEDV32 manually controlled vented heaters, permitting the company to use an alternate test method in determining AFUE.

Issued in Washington, DC, on March 3, 1997.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order—Department of Energy, Office of Energy Efficiency and Renewable Energy

In the Matter of: CFM Majestic Inc. (Case No. DH–008).

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act, Public Law 94–163, 89 Stat. 917, as amended (EPCA), which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including vented home heating equipment. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions, and will determine whether a product complies with the applicable energy conservation standard. These test procedures appear at Title 10 CFR Part 430, Subpart B.

The Department amended the prescribed test procedures by adding Title 10 CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter, DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

CFM Majestic filed a "Petition for Waiver," dated October 31, 1996, in accordance with section 430.27 of Title 10 CFR Part 430. The Department published in the **Federal Register** on January 6, 1997, CFM Majestic's Petition and solicited comments, data and information respecting the Petition. 62 FR 742, January 6, 1997. CFM Majestic also filed an "Application for Interim Waiver" under section 430.27(b)(2), which DOE granted on December 27, 1996. 62 FR 742, January 6, 1997.

No comments were received concerning either the "Petition for Waiver" or the "Interim Waiver." The Department consulted with The Federal Trade Commission (FTC) concerning the CFM Majestic Petition. The FTC does not have any objections to the issuance of the waiver to CFM Majestic.

Assertions and Determinations

CFM Majestic's Petition seeks a waiver from the DOE test provisions regarding (a) the use of pilot light energy consumption in calculating the AFUE and (b) the input rate at which the weighted average steady state efficiency and AFUE for manually controlled heaters with various input rates are calculated. The DOE test provisions in section 3.5 of Title 10 CFR Part 430, Subpart B, Appendix O require measurement of energy input rate to the pilot light (Q_P) with an error no greater than 3 percent for vented heaters, and use of this data in section 4.2.6 for the calculation of AFUE using the formula: $AFUE=[4400\eta_{SS}\eta_u Q_{in-max}]/[4400\eta_{SS}Q_{in-max}+2.5(4600)\eta_u Q_P]$. CFM Majestic requests that, in essence, it be allowed to delete Q_P and, accordingly, the $[2.5(4600)\eta_u Q_P]$ term in the calculation of AFUE. CFM Majestic states that its models A120, A125, A130, A132, A230, A232, AB132, D130, D132, D230, D232, D332, D334, D336, DR333, DR336, DR339, DT336, DT339, DT343, DVR33, DVR36, DVR39, DVRS3, DVT36, DVT39, DVT43, DVTS2, FS22, FS32, FSDV22, FSDV32, HE25, HE32, HEB32, and HEDV32 manually controlled vented heaters are designed with a transient pilot which is to be turned off by the user when the heater is not in use.

The control knob on the combination gas control in these heaters has three positions: "OFF," "PILOT," and "ON." Gas flow to the pilot is obtained by rotating the control knob from "OFF" to "PILOT," depressing the knob, holding in, pressing the piezo igniter. When the pilot heats a thermocouple element, sufficient voltage is supplied to the combination gas control for the pilot to remain lit when the knob is released and turned to the "ON" position. The main burner can then be ignited by moving an ON/OFF switch to the "ON" position. Since the current DOE test procedure does not address this issue, and others have received the same waiver under the same circumstances, CFM Majestic asks that the Waiver be granted. Previous Petitions for Waiver have been granted by DOE to Appalachian Stove and Fabricators, Inc., 56 FR 51711, October 15, 1991; Valor Inc., 56 FR 51714, October 15, 1991; CFM International Inc., 61 FR 17287, April 19, 1996; Vermont Castings, Inc., 61 FR 17290, April 19, 1996; Superior Fireplace Company, 61 FR 17885, April 23, 1996; Vermont Castings, Inc., 61 FR 57857, November 8, 1996; and Heat-N-Glo Fireplace Products, Inc., 61 FR 64519, December 5, 1996.

Based on DOE's review of how CFM Majestic's models A120, A125, A130, A132, A230, A232, AB132, D130, D132, D230, D232, D332, D334, D336, DR333, DR336, DR339, DT336, DT339, DT343, DVR33, DVR36, DVR39, DVRS3, DVT36, DVT39, DVT43, DVTS2, FS22, FS32, FSDV22, FSDV32, HE25, HE32, HEB32, and HEDV32 manually controlled vented heaters operate and the fact that the user can turn off the pilot light when the heater is not in use, DOE grants CFM Majestic its Petition for Waiver to exclude the pilot light energy input in the calculation of AFUE.

This decision is subject to the condition that the heaters shall have an easily read label near the gas control knob instructing the user to turn the valve to the off-position when the heaters are not in use.

CFM Majestic also seeks a Waiver from the DOE test provisions in section 3.1.1 of Title 10 CFR Part 430, Subpart B, Appendix O which require steady state efficiency of manually controlled heaters with various flow rates to be determined at a fuel input rate of 50 percent 5 percent of the maximum fuel input rate, and the use of this data in section 4.2.4 to determine the weighted average steady state efficiency needed in the calculation of AFUE.

CFM Majestic states that its manually controlled heaters utilize a gas control with a variable pressure regulator that allows the user to select various fuel input rates by varying the range of pressures of the heaters, and requests that it be allowed to determine weighted average steady state efficiency used in the calculation of AFUE at a minimum fuel input rate of no greater than two-thirds of the maximum fuel input rate instead of the specified 50 percent ±5 percent of the maximum fuel input rate. Also, previous Petitions for Waiver under the same circumstances have been granted by DOE to Appalachian Stove and Fabricators, Inc., 56 FR 51711, October 15, 1991; Valor Inc., 56 FR 51714, October 15, 1991; CFM International Inc., 61 FR 17287, April 19, 1996; Vermont Castings, Inc., 61 FR 17290, April 19, 1996; Superior Fireplace Company, 61 FR 17885, April 23, 1996; and Vermont Castings, Inc., 61 FR 57857, November 8, 1996.

Based on DOE having granted similar waivers in the past to heaters utilizing a variable pressure regulator control that allows a user to set various fuel input rates, DOE agrees that a waiver should be granted to allow for the determination of the weighted average steady state efficiency used in the calculation of AFUE at a minimum fuel input rate of no greater than two-thirds of the maximum fuel input rate instead of the specified 50 percent ± 5 percent of the maximum fuel input rate for CFM Majestic models A120, A125, A130, A132, A230, A232, AB132, D130, D132, D230, D232, D332, D334, D336, DR333, DR336, DR339, DT336, DT339, DT343, DVR33, DVR36, DVR39, DVRS3, DVT36, DVT39, DVT43, DVTS2, FS22, FS32, FSDV22, FSDV32, HE25, HE32, HEB32, and HEDV32 manually controlled vented heaters.

It is, therefore, ordered that:

(1) The "Petition for Waiver" filed by CFM Majestic, Inc. (Case No. DH–008) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4), and (5).

(2) Notwithstanding any contrary provisions of Appendix O of Title 10 CFR Part 430, Subpart B, CFM Majestic, Inc. shall be permitted to test its models A120, A125, A130, A132, A230, A232, AB132, D130, D132, D230, D232, D332, D334, D336, DR333, DR336, DR339, DT336, DT339, DT343, DVR33, DVR36, DVR39, DVRS3, DVT36, DVT39, DVT43, DVTS2, FS22, FS32, FSDV22, FSDV32, HE25, HE32, HEB32, and HEDV32 manually controlled vented heaters on the basis of the test procedure specified in Title 10 CFR Part 430, with modifications set forth below:

(i) Delete paragraph 3.5 of Appendix O.

(ii) The last paragraph of 3.1.1 of Appendix O is revised to read as follows:

3.1.1 (a) For manually controlled gas fueled vented heaters with various input rates, determine the steady-state efficiency at:

(1) A fuel input rate within 50 percent ±5 percent of the maximum fuel input rate or,

(2) The minimum fuel input rate if the design of the heater is such that 50 percent ±5 percent of the maximum fuel input rate can not be set, provided this minimum input rate is no greater than two-thirds of the maximum input rate of the heater.

(b) If the heater is designed to use a control that precludes operation at other than maximum output (single firing rate), determine the steady state efficiency at the maximum input rate only.

(iii) Delete paragraph 4.2.4 of Appendix O and replace with the following paragraph:

4.2.4 Weighted Average Steady-State Efficiency. (a) For manually controlled heaters with various input rates, the weighted average steady-state efficiency ($\eta_{SS\text{-}WT}$) is:

(1) At 50 percent ±5 percent of the maximum fuel input rate as measured in either section 3.1.1 to this appendix for manually controlled gas vented heaters or section 3.1.2 to this appendix for manually controlled oil vented heaters, or

(2) At the minimum fuel input rate as measured in either section 3.1.1 to this appendix for manually controlled gas vented heaters or section 3.1.2 to this appendix for manually controlled oil vented heaters if the design of the heater is such that 50 percent ±5 percent of the maximum fuel input rate can not be set, provided the tested input rate is no greater than two-thirds of maximum input rate of the heater.

(b) For manually controlled heaters with one single firing rate, the weighted average steady-state efficiency is the steady-state efficiency measured at the single firing rate.

(iv) Delete paragraph 4.2.6 of Appendix O and replace with the following paragraph:

4.2.6 Annual Fuel Utilization Efficiency. For manually controlled vented heaters, calculate the Annual Fuel Utilization Efficiency (AFUE) as a percent and defined as:

$AFUE = \eta_u$

Where η_u is defined in section 4.2.5 of this appendix.

(v) With the exception of the modification set forth above, CFM Majestic, Inc. shall comply in all respects with the test procedures specified in Appendix O of Title 10 CFR Part 430, Subpart B.

(3) The Waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to models A120, A125, A130, A132, A230, A232, AB132, D130, D132, D230, D232, D332, D334, D336, DR333, DR336, DR339, DT336, DT339, DT343, DVR33, DVR36, DVR39, DVRS3, DVT36, DVT39, DVT43, DVTS2, FS22, FS32, FSDV22, FSDV32, HE25, HE32, HEB32, and HEDV32 manually controlled vented heaters manufactured by CFM Majestic, Inc.

(4) This Waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This Waiver may be revoked or modified at any time upon a determination that a factual basis underlying the Petition is incorrect.

(5) Effective March 3, 1997, this Waiver supersedes the Interim Waiver granted CFM Majestic, Inc. on December 27, 1996. 62 FR 742, January 6, 1997. (Case No. DH–008).

Issued in Washington, DC, on March 3, 1997.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 97–5657 Filed 3–6–97; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket Nos. EC97–11–000 and ER97–1346–000]

American Ref-Fuel Company of Delaware County, L.P. and Delaware Resources Management, Inc., Notice of Filing

March 3, 1997.

Take notice that on February 27, 1997, American Ref-Fuel Company of Delaware County, L.P. (ARC) and Delaware Resource Management, Inc. (DRMI) (collectively "Applicants") submitted for filing with the Federal Energy Regulatory Commission ("Commission") pursuant to 18 CFR Part 33, a letter notifying the Commission of a change in fact related to the joint petition Applicants filed with the Commission for an order under Section 203 of the Federal Power Act approving the transfer of jurisdictional assets ("Joint Petition").

The Joint Petition stated that ARC is owned equally by Air Products and Chemicals, Inc. ("Air Products") and Browning-Ferris Industries, Inc. ("BFI"). The Joint Petition also stated that Air Products has announced that it is seeking purchasers for its share of ARC and certain affiliates of ARC. The letter notified the Commission that in the event that Air Products declines to continue as a 50% owner of ARC, BFI would assume 100% of the ownership of ARC (through subsidiaries). The letter stated that ARC would either be owed (1) wholly by BFI or (2) 50% by Air Products and 50% by BFI.

Applicants requested that the Commission issue an order approving the transfer as soon as possible but not later than March 11, 1997.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 10, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5655 Filed 3–6–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER97–1663–000]

Commonwealth Edison Company; Notice of Filing

March 3, 1997.

Take notice that on February 12, 1997, Commonwealth Edison Company (Edison) submitted Amendment No. 4, dated January 15, 1997, to the Electric Coordination Agreement, dated December 21, 1988 (ECA), between Edison and the Village of Winnetka, Illinois (Village). The ECA provides for the interchange of power and energy between Edison and Village. The Commission has previously designated the Interconnection Agreement as Edison's FERC Rate Schedule No. 37.

Edison requests an effective date of December 31, 1996, for Amendment No 4 and, accordingly, seeks waiver of the Commission's notice requirements. Copies of this filing were served upon the Village and the Illinois Commerce Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests must be filed on or before March 13, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5613 Filed 3–6–97; 8:45 am]

BILLING CODE 6717–01–M

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 3, 1997.

Take notice that on February 27, 1997, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed in Appendix A to the filing, to be effective April 1, 1997.

National Fuel states that this filing is to supplement its December 23, 1996 and February 24, 1997, Section 4 filing at Docket No. RP97–201. National Fuel states that the purpose of the filing is to insert the same tariff changes proposed in its February 24, 1997 filing into the tariff sheets which will be proposed in National Fuel's next GISB compliance filing in Docket No. RP97–1.

National states that it is serving copies of the filing upon all parties to this proceeding, firm customers and interested state commissions. National states that copies are also being served on all interruptible customers as of the date of the filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5617 Filed 3–6–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER97–1507–000]

Northern Indiana Public Service Company, Notice of Filing

March 3, 1997.

Take notice that on February 24, 1997, Northern Indiana Public Service Company tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before march 14, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5614 Filed 3–6–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–690–000]

Northern Natural Gas Company; Notice of Meeting and Site Visit

March 3, 1997.

On March 12, 1997, the Office of Pipeline Regulation (OPR) staff will conduct a meeting with the applicants, concerned Federal and state agencies, and all interested parties to discuss Northern's proposed Mississippi River Crossing. The meeting will begin at 9:30 a.m. at the Minnesota Valley National Wildlife Refuge-Visitor Center in Classroom B located at 3815 E. 80th Street, Bloomington, Minnesota. The phone number is (612) 854–5900.

OPR staff will also conduct a site visit of the proposed route for the Mississippi River Crossing in Washington and Dakota Counties, Minnesota with Northern Natural Gas Company.

All parties may attend. Those planning to attend must provide their own transportation.

For additional information, contact Paul McKee at (202) 208–1088.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5611 Filed 3–6–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–306–000]

Paiute Pipeline Company; Notice of Informal Settlement Conference

March 3, 1997.

Take notice that an informal settlement conference will be convened in this proceeding on March 10, 1997 at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC, 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Irene E. Szopo at (202) 208–1602 or Anja M. Clark at (202) 208–2034.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5616 Filed 3–6–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–265–000]

Transcontinental Gas Pipe Line Corporation; Notice of Request Under Blanket Authorization

March 3, 1997.

Take notice that on February 25, 1997, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, pursuant to Sections 157.205 and 157.211 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act and Transco's blanket certificate issued in Docket No. CP82–426–000, filed in the above docket, a request for authorization to construct a sales tap to Cherokee County Cogeneration Partners LP (Cherokee), an electric cogeneration facility, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transco states that the sales tap will consist of dual 6-inch valve tap assemblies, two 6-inch dual chamber orifice meter tubes with six inch valves at each end, a meter station with two 12-inch headers and other appurtenant facilities, at or near milepost 1234.07 on Transco's mainline in Cherokee County, South Carolina. A single hot tap will be made on Mainline "A" in the vicinity of this milepost. A welded-tee will be placed on the proposed Mainline "D" facilities (which line is being constructed as part of the SunBelt Project facilities authorized in docket No. CP96–16–000 in the same vicinity. Transco states that Cherokee will construct, or cause to be constructed, appurtenant facilities to enable it to receive gas from Transco at such point and move the gas to Cherokee's cogeneration facilities.

Transco states that the gas delivered through the new sales tap will be used by Cherokee as fuel for its electric cogeneration processes. Transco further states that Cherokee is not currently a transportation customer of Transco, but upon completion of the sales tap Transco will commence interruptible transportation service to Cherokee pursuant to Transco's Rate Schedule IT and part 284(g) of the Commission's Regulations. Transco states that the addition of the sales tap will have no significant impact on Transco's peak day or annual deliveries, and is not prohibited by Transco's FERC Gas Tariff.

Transco has estimated the total costs of Transco's proposed facilities to be approximately $435.100.00, which Cherokee will reimburse Transco for all costs associated with such facilities.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity is deemed to be authorized effective on the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5612 Filed 3–6–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER97–1671–000, et al.]

Interstate Power Company, et al.; Electric Rate and Corporate Regulation Filings

February 28, 1997.

Take notice that the following filings have been made with the Commission:

1. Interstate Power Company

[Docket No. ER97–1671–000]

Take notice that on February 12, 1997, Interstate Power Company (IPW), tendered for filing a Power Sales Service Agreement between IPW and Wisconsin Power & Light Company (WPL). Under the Agreement, IPW will sell Capacity & Energy to WPL as agreed to by both companies.

Comment date: March 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Arizona Public Service Company

[Docket No. ER97–1672–000]

Take notice that on February 12, 1997, Arizona Public Service Company (APS), submitted for filing a market-based Market Rate Tariff No. 1 to permit APS to make wholesale sales to eligible customers of electric power at market-determined prices, including sales not involving APS' generation or transmission.

Comment date: March 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Kansas City Power & Light Company

[Docket No. ER97–1673–000]

Take notice that on February 12, 1997, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated January 15, 1997, between KCPL and TransCanada Power Corp.(TCPC). KCPL proposes an effective date of January 15, 1997, and requests waiver of the Commission's notice requirement. This Agreement provides for the rates and charges for Non-Firm Transmission Service between KCPL and TCPC.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order No. 888 in Docket No. OA96–4–000.

Comment date: March 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Tucson Electric Power Company

[Docket No. ER97–1674–000]

Take notice that on February 12, 1997, Tucson Electric Power Company, tendered for filing a service agreement with Public Service Company of New Mexico for non-firm point-to-point transmission service under Part II of its Open Access Transmission Tariff filed in Docket No. OA96–140–000. TEP requests waiver of notice to permit the service agreement to become effective as of January 19, 1997.

A copy of this filing was served upon Public Service Company of New Mexico.

Comment date: March 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Cinergy Services, Inc.

[Docket No. ER97–1675–000]

Take notice that on February 12, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing, on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Interchange Agreement, dated January 1, 1997

between Cinergy, CG&E, PSI and America Energy Solutions, Inc. (American Energy).

The Interchange Agreement provides for the following service between Cinergy and American Energy.

1. Exhibit A—Power Sales by American Energy.

2. Exhibit B—Power Sales by Cinergy.

Cinergy and American Energy have requested an effective date of one day after this initial filing of the Interchange Agreement.

Copies of the filing were served on American Energy Solutions, Inc., the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: March 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. UtiliCorp United Inc.

[Docket No. ER97–1677–000]

Take notice that on February 12, 1997, UtiliCorp United Inc. (UtiliCorp), filed a service agreement with Arizona Public Service Company for service under its non-firm point-to-point open access service tariff for its operating division WestPlains Energy-Colorado.

Comment date: March 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Ohio Valley Electric Corporation and Indiana-Kentucky Electric Corporation

[Docket No. ER97–1678–000]

Take notice that on February 12, 1997, Ohio Valley Electric Corporation (including its wholly-owned subsidiary, Indiana-Kentucky Electric Corporation) (OVEC), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service, dated December 17, 1996 (the Service Agreement) between Cleveland Electric Illuminating Co. (CEI) and OVEC. OVEC proposes an effective date of December 17, 1996 and requests waiver of the Commission's notice requirement to allow the requested effective date. The Service Agreement provides for non-firm transmission service by OVEC to CEI.

In its filing, OVEC states that the rates and charges included in the Service Agreement are the rates and charges set forth in OVEC's Order No. 888 compliance filing (Docket No. OA96–190–000).

Copies of this filing were served upon the Pennsylvania Public Utility Commission, the Public Utilities Commission of Ohio and CEI.

Comment date: March 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Public Service Electric and Gas Company

[Docket No. ER97–1679–000]

Take notice that on February 12, 1997, Public Service Electric and Gas Company (PSE&G), tendered for filing an agreement to provide non-firm transmission service to Equitable Power Services Company, pursuant to PSE&G's Open Access Transmission Tariff presently on file with the Commission in Docket No. OA96–80–000.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of February 1, 1997.

Comment date: March 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Ohio Valley Electric Corporation and Indiana-Kentucky Electric Corporation

[Docket No. ER97–1680–000]

Take notice that on February 12, 1997, Ohio Valley Electric Corporation (including its wholly-owned subsidiary, Indiana-Kentucky Electric Corporation) (OVEC), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission service, dated December 17, 1996 (the Service Agreement) between Toledo Edison Co. (Toledo Edison) and OVEC. OVEC proposes an effective date of December 17, 1996 and requests waiver of the Commission's notice requirement to allow the requested effective date. The Service Agreement provides for non-firm transmission service by OVEC to Toledo Edison.

In its filing, OVEC states that the rates and charges included in the Service Agreement are the rates and charges set forth in OVEC's Order No. 888 compliance filing (Docket No. OA96–190–000).

Copies of this filing were served upon the Pennsylvania Public Utility Commission, the Public Utilities Commission of Ohio and Toledo Edison.

Comment date: March 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Southern Company Services, Inc.

[Docket No. ER97–1681–000]

Take notice that on February 12, 1997, Southern Company Services, Inc. ("SCS"), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern Companies) filed two (2) service agreements between SCS, as agent for Southern Companies, and i) Union Electric Company and ii) Wisconsin Electric Power Company for non-firm point-to-point transmission service under Part II of the Open Access Transmission Tariff of Southern Companies.

Comment date: March 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Public Service Company of New Mexico

[Docket No. ER97–1682–000]

Take notice that on February 12, 1997, Public Service Company of New Mexico (PNM) submitted for filing executed service agreements under the terms of PNM's Open Access Transmission Tariff with the following customers: Southern Energy Trading and Marketing, Inc. (2 agreements); Pan Energy Trading & Marketing Services, L.L.C. (2 agreements); Duke/Louis Dreyfus L.L.C. (2 agreements); Salt River Project Agricultural Improvement & Power District (2 agreements); El Paso Electric Company (2 agreements); Pacificorp (2 agreements); Citizens Lehman Power Sales; and CNG Power Services Corporation. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Comment date: March 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Southern Company Services, Inc.

[Docket No. ER97–1683–000]

Take notice that on February 13, 1997, Southern Company Services, Inc. ("SCSI"), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (collectively referred to as Southern Companies) filed five (5) service agreements under Southern Companies' Market-Based Rate Power Sales Tariff (FERC Electric Tariff, Original Volume No. 4) with the following entities: (i) NorAm Energy Services; (ii) West Texas Utilities; (iii) Southwestern Electric Power Company; (iv) Central Power and Light; and (v) Public Service Company of Oklahoma. SCSI states that the service agreements will enable Southern Companies to engage in short-term market-based rate transactions with this entity.

Comment date: March 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Louisville Gas and Electric Company

[Docket No. ER97–1684–000]

Take notice that on February 13, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement between LG&E and American Municipal Power—Ohio, Inc. under LG&E's Open Access Transmission Tariff.

Comment date: March 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Potomac Electric Power Company

[Docket No. ER97–1685–000]

Take notice that on February 13, 1997, Potomac Electric Power Company (Pepco), tendered for filing service agreements pursuant to Pepco FERC Electric Tariff, Original Volume No. 4, entered into between Pepco and Coastal Electric Services Company, VTEC Energy Inc., and WPS Energy Services Inc. An effective date of February 12, 1997 for these service agreements, with waiver of notice, is requested.

Comment date: March 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Cataula Generating Company, L.P.

[Docket No. ER97–1686–000]

Take notice that on February 13, 1997, Cataula Generating Company, L.P. ("Cataula"), owner of a natural gas-fired electric generating facility planned to be constructed in Georgia, submitted for filing pursuant to Rule 205 of the Commission's Rules of Practice and Procedure, 18 CFR 385.205, an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting its Electric Rate Schedule FERC No. 1.

Copies of the filing were served upon Georgia Power Company and the Georgia Public Service Commission.

Comment date: March 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Virginia Electric and Power Company

[Docket No. ER97–1696–000]

Take notice that on February 14, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing an unexecuted Service Agreement between Virginia Power and Wisconsin Power & Light Company under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994, as revised on December 31, 1996. Under the tendered Service Agreements Virginia Power agrees to provide services to Wisconsin Power & Light Company under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission, the North Carolina Utilities Commission, and the Wisconsin Public Service Commission.

Comment date: March 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Wisconsin Public Service Corporation

[Docket No. ER97–1697–000]

Take notice that on February 14, 1997, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Transmission Service Agreement with itself for its own off-system sales. The Agreement provides for transmission service under the Open Access transmission Service Tariff, FERC Original Volume No. 11.

Comment date: March 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Northern States Power Company (Minnesota Company)

[Docket No. ER97–1698–000]

Take notice that on February 14, 1997, Northern States Power Company (Minnesota)(NSP), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement between NSP and Sleepy Eye Public Utilities.

NSP requests that the Commission accept the agreement effective February 4, 1997, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: March 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Wisconsin Public Service Corporation

[Docket No. ER97–1699–000]

Take notice that on February 14, 1997, Wisconsin Public Service Corporation ("WPSC"), tendered for filing additional terms and conditions for WPSC's Coordination Tariff CS–1, FERC Volume No. 5. WPSC requests that the Commission make the additions effective on February 14, 1997.

Comment date: March 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Maine Electric Power Company

[Docket No. ER97–1700–000]

Take notice that on February 14, 1997, Maine Electric Power Company (MEPCO), tendered for filing a service agreement for Non-Firm Point-to-Point Transmission Service with CNG Power Services Corporation. Service will be provided to MEPCO's Open Access Transmission Tariff, designated rate schedule MEPCO—FERC Electric Tariff, Original Volume No. 1, as supplemented.

Comment date: March 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Central Maine Power Company

[Docket No. ER97–1701–000]

Take notice that on February 14, 1997, Central Maine Power Company (CMP), tendered for filing a service agreement for Non-Firm Point-to-Point Transmission Service with Green Mountain Power Corporation. Service will be provided pursuant to CMP's Open Access Transmission Tariff, designated Rate Schedule CMP—FERC Electric Tariff, Original Volume No. 3, as supplemented.

Comment date: March 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Central Maine Power Company

[Docket No. ER97–1702–000]

Take notice that on February 14, 1997, Central Maine Power Company (CMP), tendered for filing a service agreement for Non-Firm Point-to-Point Transmission Service with Niagara Mohawk Power Corporation. Service will be provided pursuant to CMP's Open Access Transmission Tariff, designated rate schedule CMP—FERC Electric Tariff, Original Volume No. 3, as supplemented.

Comment date: March 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Maine Electric Power Company

[Docket No. ER97–1703–000]

Take notice that on February 14, 1997, Maine Electric Power Company (MEPCO), tendered for filing a service agreement for Non-Firm Point-to-Point Transmission Service with Plum Street Energy Marketing, Inc. Service will be provided pursuant to MEPCO's Open Access Transmission Tariff, designated rate schedule MEPCO—FERC Electric Tariff, Original Volume No. 1, as supplemented.

Comment date: March 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Maine Electric Power Company

[Docket No. ER97–1704–000]

Take notice that on February 14, 1997, Maine Electric Power Company (MEPCO), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement with Niagara Mohawk Power Corporation. Service will be provided pursuant to MEPCO's

Open Access Transmission Tariff, designated rate schedule MEPCO—FERC Electric Tariff, Original Volume No. 1, as supplemented.

Comment date: March 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Northern States Power Company (Minnesota Company)

[Docket No. ER97–1705–000]

Take notice that on February 14, 1997, Northern States Power Company (Minnesota)(NSP), tendered for filing a Non-Firm Point-to-Point Transmfission Service Agreement between NSP and United Power Association.

NSP requests that the Commission accept the agreement effective February 1, 1997, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: March 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Northern States Power Company (Minnesota Company)

[Docket No. ER97–1706–000]

Take notice that on February 14, 1997, Northern States Power Company (Minnesota)(NSP), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement between NSP and Duke/Louis Dreyfus L.L.C.

NSP requests that the Commission accept the agreement effective January 27, 1997, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: March 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Northern States Power Company (Minnesota Company)

[Docket No. ER97–1707–000]

Take notice that on February 14, 1997, Northern States Power Company (Minnesota)(NSP), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement between NSP and TransCanada Power, a division of TransCanada Energy Ltd.

NSP requests that the Commission accept the agreement effective January 27, 1997, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: March 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Pacific Northwest Generating Cooperative

[Docket No. ER97–1708–000]

Take notice that on February 14, 1997, Pacific Northwest Generating Cooperative (PNGC), filed an umbrella service agreement for short-term transactions with Enron Power Marketing, Inc. under PNGC's Rate Schedule FERC No. 3 (market-based rate schedule).

PNGC requests an effective date of January 18, 1997, which is when it began service to Enron under its market-based rate schedule.

Comment date: March 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. Virginia Electric and Power Co.

[Docket No. ER97–1709–000]

Take notice that on February 14, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement between Virginia Electric and Power Company and Wisconsin Electric Power Company under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994, as revised on December 31, 1996. Under the tendered Service Agreement Virginia Power agrees to provide services to Wisconsin Electric Power Company under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Also, Virginia Electric and Power Company tendered for filing the executed Service Agreement between Virginia Electric and Power Company and Consumers Power Company dba Consumers Energy Company and The Detroit Edison Company (the Michigan Companies) that should be substituted for the unexecuted version that was filed on January 7, 1997.

Copies of the filing were served upon the Virginia State Corporation Commission, the North Carolina Utilities Commission, and the Wisconsin Public Service Commission.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

30. Union Electric Company

[Docket No. ER97–1710–000]

Take notice that on February 14, 1997, Union Electric Company (UE), tendered for filing Service Agreements for Non-Firm Point-to-Point Transmission Services between UE and Central & Southwest Services, Minnesota Power & Light Company, NIPSCO Energy Services, Inc., Sonat Power Marketing L.P., Southern Energy Trading & Marketing, Inc., TransCanada Energy Ltd., Western Resources and Wisconsin Public Service Corporation. UE asserts that the purpose of the Agreements is to permit UE to provide transmission service to the parties pursuant to UE's Open Access Transmission Tariff filed in Docket No. OA96–50.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

31. Virginia Electric and Power Company

[Docket No. ER97–1711–000]

Take notice that on February 14, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing Service Agreements for Non-Firm Point-to-Point Transmission Service with Potomac Electric Power Company, TransCanada Power Corporation, and Vitol Gas & Electric L.L.C. and a Service Agreement for Firm Point-to-Point Transmission Service with Carolina Power & Light Company under the Open Access Transmission Tariff to Eligible Purchasers dated July 9, 1996. Under the tendered Service Agreement Virginia Power will provide non-firm/firm point-to-point service to the Transmission Customers as agreed to by the parties under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission, the North Carolina Utilities Commission, the District of Columbia Public Service Commission, and the Maryland Public Service Commission.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

32. The United Illuminating Company

[Docket No. ER97–1712–000]

Take notice that on February 14, 1997, The United Illuminating Company ("UI"), tendered for filing amendments to its informational filing submitted on May 31, 1996, and containing all individual Purchase Agreements executed under UI's Wholesale Electric Sales Tariff, FERC Electric Tariff, Original Volume No. 2, as amended, during the six-month period November 1, 1995 through April 30, 1996.

Comment date: March 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

33. New York State Electric & Gas Corporation

[Docket No. ER97–1713–000]

Take notice that New York State Electric & Gas Corporation (NYSEG) on February 14, 1997, tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35.12, as an initial rate schedule, an agreement with Equitable Power Services Company (Equitable). The agreement provides a mechanism pursuant to which the parties can enter into separately scheduled transactions under which NYSEG will sell to Equitable and Equitable will purchase from NYSEG either capacity and associated energy or energy only as the parties may mutually agree.

NYSEG requests that the agreement become effective on February 15, 1997, so that the parties may, if mutually agreeable, enter into separately scheduled transactions under the agreement. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission and Equitable.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

34. Western Resources, Inc.

[Docket No. ER97–1714–000]

Take notice that on February 14, 1997, Western Resources, Inc., tendered for filing a non-firm transmission agreement between Western Resources and CNG Power Services Corporation. Western Resources states that the purpose of the agreement is to permit non-discriminatory access to the transmission facilities owned or controlled by Western Resources in accordance with Western Resources' open access transmission tariff on file with the Commission. The agreement is proposed to become effective February 11, 1997.

Copies of the filing were served upon CNG Power Services Corporation and the Kansas Corporation Commission.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

35. New York State Electric & Gas Corporation

[Docket No. ER97–1715–000]

Take notice that on February 14, 1997, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35.12, as an initial rate schedule, an agreement with Plum Street Energy Marketing, Inc. (PSEM). The agreement provides a mechanism pursuant to which the parties can enter into separately scheduled transactions under which NYSEG will sell to PSEM and PSEM will purchase from NYSEG either capacity and associated energy or energy only as the parties may mutually agree.

NYSEG requests that the agreement become effective on February 15, 1997, so that the parties may, if mutually agreeable, enter into separately scheduled transactions under the agreement. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission and PSEM.

Comment date: March 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

36. North Atlantic Utilities, Inc.

[Docket No. ER97–1716–000]

Take notice that on February 14, 1997, North Atlantic Utilities, Inc. (NAU), petition the Commission for (1) blanket authorization to sell electricity at market-based rates; (2) acceptance of NAU's Rate Schedule FERC No. 1; (3) waiver of certain Commission Regulations; and (4) such other waivers and authorizations as have been granted to other power marketers, all as more fully set forth in NAU's petition on file with the Commission.

NAU states that it intends to engage in electric power transactions as a broker and as a marketer. In transactions where NAU acts as a power marketer, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with purchasing parties.

Comment date: March 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

37. Northern States Power Company (Minnesota Company)

[Docket No. ER97–1717–000]

Take notice that on February 14, 1997, Northern States Power Company (Minnesota) (NSP), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement between NSP and Illinois Power Company.

NSP requests that the Commission accept the agreement effective January 20, 1997, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

38. Delmarva Power & Light Company

[Docket No. ER97–1718–000]

Take notice that on February 14, 1997, Delmarva Power & Light Company (Delmarva), tendered for filing executed umbrella service agreements with Engelhard Power Marketing, Inc., Morgan Stanley Capital Group, Inc., Potomac Electric Power Company, and Sonat Power Marketing L.P. under Delmarva's market rate sales tariff, FERC Electric Tariff, Original Volume No. 14, filed by Delmarva in Docket No. ER96–2571–000.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

39. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER97–1719–000]

Take notice that on February 14, 1997, Ohio Edison Company and Pennsylvania Power Company (together, Ohio Edison), tendered for filing revisions to certain rate terms and conditions of Ohio Edison's Open Access Transmission Tariff (Tariff) filed on July 9, 1996 in Docket No. OA96–197–000 and designated as Ohio Edison's FERC Electric Tariff Original Volume No. 1.

Ohio Edison states that a copy of the filing has been served on the public utility commissions of Ohio and Pennsylvania, current customers under the Tariff, and participants in the ongoing proceeding in Docket No. OA96–197–000 relating to rate issues under the Tariff.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

40. Texas-New Mexico Power Company

[Docket No. ER97–1720–000]

Take notice that on February 17, 1997, Texas-New Mexico Power Company (TNP), tendered for filing proposed revised tariff sheets applicable to its open access transmission tariff. TNP states that the purpose of the filing is to add to the tariff a provision covering charges for costs associated with distribution facilities; the provision is to be applicable in those situations in which the Transmission customer requests service that requires use of TNP distribution facilities.

Comment date: March 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions

or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5610 Filed 3–6–97; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 11175–002 Minnesota]

Crown Hydro Company; Notice of Availability of Draft Environmental Assessment

March 3, 1997.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Hydropower Licensing has reviewed the application for major license for the proposed Crown Mill Project to be located on the Mississippi River in the City of Minneapolis, Hennepin County, Minnesota, and has prepared a Draft Environmental Assessment (DEA) for the proposed project. In the DEA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

Comments should filed within 30 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Please affix Project No. 11175–002 to all comments. For further information, please contact Rainer Feller, Environmental Assessment Coordinator, at (202) 219–2796.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5615 Filed 3–6–97; 8:45 am]

BILLING CODE 6717–01–M

Notice of Declaration of Intention

February 21, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Declaration of Intention.

b. Docket No.: DI97–3–000.

c. Date Filed: February 4, 1997.

d. Applicant: Bill Clark.

e. Name of Project: Burro Cabin Project.

f. Location: El Paso Creek, Hinsdale County, Colorado, Section 4, T43N, R5W.

g. Filed Pursuant to: Section 23(b) of the Federal Power Act, 16 U.S.C. § 817(b).

h. Applicant Contact: Bill Clark, 296 Sandy Drive, Boulder, CO 80302–9636, (303) 939–9073.

i. FERC Contact: Hank Ecton, (202) 219–2678.

j. Comment Date: April 4, 1997.

k. Description of Project: The proposed project will consist of: (1) An under-the-river trench in-take; (2) an 8-inch diameter, 295-foot-long penstock; (3) a 6-foot-by-8-foot powerhouse containing dual crossflow turbines on a single shaft, driving a single, self-excited, power-factor corrector 8-pole induction generator, with turbines engineered specifically for the site; (4) generator output will be 1.8 or 3.5 kW corresponding to flow; (5) a 10-inch-diameter, 18-foot-long tailrace pipe; and (6) appurtenant facilities. There is no connection with the grid, all power will be consumed on site.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether the project: (1) would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre–1935 design or operation.

l. Purpose of Project: All power produced will be consumed by local residence.

m. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents: Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments: Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5609 Filed 3–6–97; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Notice of Cases Filed During the Week of January 6 Through January 10, 1997

During the Week of January 6 through January 10, 1997, the appeals, applications, petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in any of these cases may file written comments on the application within ten days of publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585–0107.

Dated: February 27, 1997.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of January 6 through January 10, 1997]

Date	Name and location of applicant	Case No.	Type of submission
1/10/97	Energy Market & Policy Analysis, Inc., Reston, VA.	VFA–0259	Appeal of an Information Request Denial. If Granted: The December 5, 1996 Freedom of Information Request Denial issued by the Office of Executive Secretariat would be rescinded, and Energy Market & Policy Analysis, Inc. would receive access to certain DOE information.
1/10/97	Marine Drilling Companies, Sugar Land, TX.	RR272–273	Request for Modification/Rescission in the Crude Oil Refund Proceeding. If Granted: The November 6, 1996 Dismissal, Case No. RF272–95276, issued to Marine Drilling Companies would be modified regarding the firm's Application for Refund submitted in the Crude Oil refund proceeding.

[FR Doc. 97–5638 Filed 3–6–97; 8:45 am]

BILLING CODE 6450–01–P 1

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00472; FRL–5591–8]

Pesticides Worker Protection Standards; Request for Comments on Renewal of Agency Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that the following Information Collection Request (ICR) is coming up for renewal. This ICR, entitled "Pesticides Worker Protection Standard Training and Notification," EPA ICR No. 1759.02, OMB No. 2070-0148, will expire on May 31, 1997. Before submitting the renewal packages to the Office of Management and Budget (OMB), EPA is soliciting comments on specific aspects of the collection as described below.

DATES: Comments must be submitted on or before May 6, 1997.

ADDRESSES: Submit written comments identified by the docket control number OPP–00472 and the appropriate ICR number by mail to: Public Response Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments directly to the OPP docket which is located in Rm. 1132 of Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. Copies of the complete ICR and accompanying appendices may be obtained from the OPP docket at the above address or by contacting the person whose name appears under FOR FURTHER INFORMATION CONTACT.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form or encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number "OPP–00472" and the appropriate ICR number. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this document may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit III. of this document.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the Virginia address given above from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Ellen Kramer, Policy and Special Projects Staff, Office of Pesticide Programs, Environmental Protection Agency, Mail Code (7501C), 401 M St., SW., Washington, DC 20460, Telephone: (703) 305–6475, e-mail: kramer.ellen@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document and the ICR are available from the EPA home page at the Environmental Sub-Set entry for this document under "Regulations" (http://www.epa.gov/fedrgstr/).

I. Information Collection Requests

EPA is seeking comments on the following Information Collection Request (ICR).

Title: Pesticides Worker Protection Standard Training and Notification (40 CFR Parts 156 and 170).

ICR Numbers: EPA No. 1759.02 and OMB No. 2070-0148.

Expiration Date: Current OMB approval expires on May 31, 1997.

Affected Entities: Parties affected by this information collection are agricultural employers, including employers in farms as well as nursery, forestry, and greenhouse establishments.

Abstract: EPA is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The Worker Protection Standard (WPS) for agricultural pesticides, 40 CFR part 170 and 40 CFR part 156, subpart K, includes requirements for protection of agricultural workers and pesticide handlers from hazards of pesticides used on farms, on forests, in nurseries, and in greenhouses. 40 CFR part 170 contains the standard and workplace practices and 40 CFR part 156 prescribes the statements that must be placed on the pesticide label and in pesticide labeling. The WPS workplace practices are designed to reduce or eliminate exposure to pesticides and establish procedures for responding to exposure-related emergencies. The practices include prohibitions against applying pesticides in a way that would cause exposure to workers and others; a waiting period before workers can return to areas treated with pesticides (restricted entry period); basic safety

training and distribution and posting of information about pesticide hazards, as well as pesticide application information; arrangements for the supply of soap, water, and towels in case of pesticide exposure; and provisions for emergency assistance.

Prior to September 1995, the WPS information collection activities were covered under OMB ICR No. 2070–0060. In September 1995, however, OMB approved an ICR that consolidated all the WPS information collection activities under a new ICR (EPA No. 1759; OMB No. 2070–0148). The information collection activity associated with the pesticides WPS includes a voluntary program to verify that training has been provided; the WPS provisions for display of basic pesticide safety information and pesticide-specific treatment (application) information at a central location on the agricultural establishment; the provisions requiring that employers provide employees with pesticide-specific treatment (application) information in the form of oral or written (posted) notification; the provisions that require the actual training for which the verification program was established or that basic pesticide safety information be provided to employees who have not completed the full WPS pesticide safety training and before they enter a treated area; the provisions requiring that pesticide handler employers provide pesticide-specific information to agricultural employers prior to treatment, that pesticide handler employers provide notification to handler employees regarding the safe operation and repair of equipment to be used in handling activities, and that pesticide handler employers provide emergency information on pesticide treatments to employees believed to be poisoned or those treating them; and the provisions requiring that employers provide employees with notification when exceptions/exemptions to the early entry restrictions are being implemented. (The major WPS labeling program was a one-time collection and is completed. Registrants of EPA-registered products may request that the Agency amend their previously approved label. Future requests from registrants for label amendments are covered as part of routine label amendments under a separate ICR approved by OMB under 2070–0060 (EPA ICR No. 277)).

The WPS requires that agricultural employers assure that agricultural workers and pesticide handlers are trained in basic pesticide safety practices to reduce the risk of pesticide poisoning and other injuries. The EPA Training Verification Program is intended to achieve this by requiring the issuance of safety information to workers and handlers. Upon the completion of the training, the WPS provides for the issuance of "EPA-Approved Worker Protection Standard Training Certificates" to workers and handlers to allow employers to verify that workers and handlers have received WPS safety training. The initial burden for this collection activity (24,990 burden hours) is predicted to taper off to a much lower annual burden.

Burden Statement: The annual respondent burden for providing the notifications associated with this activity is estimated to total 3,443,705 hours, including all third party WPS training and notification requirements, such as provisions requiring employers to provide employees pesticide-specific treatment (application) information in the form of oral or written notification, provisions requiring that employers assure that employees receive basic pesticide safety information or training, a voluntary program to verify training and relieve duplication of training, provisions requiring handler notification to employers regarding pesticide treatments (applications) and provision for emergency information on pesticide treatments, and provisions requiring employers to notify employees when an exception/exemption to the WPS is being implemented.

II. Request for Comments

The Agency would appreciate any comments or information that could be used to:

(i) Evaluate whether the proposed collections of information described above are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

(ii) Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.

(iii) Enhance the quality, utility, and clarity of the information to be collected.

(iv) Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

The Agency is particularly interested in comments and information about the burden estimates, including examples that could be used to reflect the burdens imposed. Send comments regarding these matters, or any other aspect of these information collections, including suggestions for reducing the burdens, to the docket under ADDRESSES listed above.

III. Public Record

A record has been established for this action under docket control number "OPP-00472" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this action, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ADDRESSES at the beginning of this document.

List of Subjects

Environmental protection, Information collection requests, Pesticides, and Worker protection standards.

Dated: February 28, 1997.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 97–5682 Filed 3–6–97; 8:45 am]

BILLING CODE 6560–50–F

[ER–FRL–5478–1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed February 24, 1997 Through February 28, 1997 Pursuant to 40 CFR 1506.9.

EIS No. 970065, Draft EIS, BLM, CA, Interlakes Special Recreation Management Area Plan, Implementation, Federal and Private Lands Issues, Shasta County, CA, *Due:* April 21, 1997, *Contact:* Eric A. Morgan (916) 224–2100.

EIS No. 970066, Draft EIS, FHW, GA, Harry S. Truman Parkway, Construction from the Abercorn Street Extension (GA–204) to Derenne Avenue, COE Section 404 Permit and U.S. Coast Guard Permit, Chatham County, GA, *Due:* April 21, 1997, *Contact:* Larry R. Dreihaup (404) 562–3630.

EIS No. 970067, Draft Supplement, BLM, MT, SD, ND, Standards for Rangeland Health and Guidelines for Livestock Grazing Management on Bureau of Land Management Administered Lands, Implementation, MT, ND and SD, *Due:* May 03, 1997, *Contact:* Sandy Brooks (406) 255–2929.

EIS No. 970068, Draft EIS, GSA, CO, Denver Federal Center Master Site Plan, Implementation, City of Lakewood, Jefferson County, CO, *Due:* April 28, 1997, *Contact:* Lisa Morpurgo (303) 236–7131.

EIS No. 970069, Final EIS, BLM, NV, Denton-Rawhide Mine Expansion Project, Plan of Operation Approval, Implementation, Minerial County, NV, *Due:* April 07, 1997, *Contact:* Terri Knutson (702) 885–6156.

EIS No. 970070, Draft EIS, AFS, NH, Waterville Valley Ski Resort Project, Development of Snowmaking Water Impoundments Project, Special-Use-Permits, Dredge and Fill Permit and COE Section 404 Permit, White Mountain National Forest, Pemigewasset Ranger District, Town of Waterville Valley, Grafton County, NH, *Due:* April 21, 1997, *Contact:* Jerome E. Perez (802) 767–4261.

EIS No. 970071, Draft EIS, USA, CA, Fleet and Industrial Supply Center/ Vision 2000 Maritime Development, Disposal and Reuse, Funding, NPDES Permit, COE Section 10 and 404 Permits, City of Oakland, Alameda County, CA, *Due:* April 21, 1997, *Contact:* Gary J. Munekawa (415) 244–3022.

EIS No. 970072, Final EIS, BLM, NM, Roswell Resource Area Management Plan and Carlsbad Resource Area Management Plan Amendment, Implementation, Quay, Curry, DeBaca, Roosevelt, Lincoln, Guadalupe, Chaves, Eddy, and Lea Counties, NM, *Due:* April 07, 1997, *Contact:* David Stout (505) 627–0272.

EIS No. 970073, Draft EIS, AFS, AK, Chasina Timber Sale, Harvesting Timber and Road Construction, Tongass National Forest, Craig Ranger District, Ketchikan Administrative Area, AK, *Due:* April 25, 1997, *Contact:* Norm Matson (907) 228–6273.

EIS No. 970074, Final EIS, DOE, NV, CA, Sierra Nevada Region 2004 Power Marketing Program, Implementation, 1,480 megawatts (MW) Power from the Central Valley and Washoe Project, NV and CA, *Due:* April 07, 1997, *Contact:* Jerry Toenyes (916) 353–4418.

Dated: March 4, 1997.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–5703 Filed 3–6–97; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–5478–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared February 17, 1997 Through February 21, 1997 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 5, 1996 (61 FR 15251).

Draft EISs

ERP No. D–FHW–G40144–AR Rating LO, US 71 Relocation, Construction extending from US 70 in DeQueen to I–40 near Alma, AR, Funding and COE Section 404 Permit, Sevier, Polk, Scott, Sebastian and Crawford Counties, AR.

Summary: EPA had no objection to the selection of the preferred alternative described in the draft EIS. ERP No. D–FHW–G50008–00 Rating LO, Great River Bridge, Construction, US 65 in Arkansas to MS–8 in Mississippi, Funding, COE Section 404 Permit and US Coast Guard Bridge Permit, Desha and Arkansas Counties, AR and Bolivar County, MS.

Summary: EPA had no objection to the proposed bridged river crossing. EPA supports the selection of an alternative alignment south of Big Island as the preferred route.

ERP No. D–NPS–K65194–AS Rating LO, National Park of American Samoa, Implementation, General Management Plan, Islands of Tutulla, Ta'u and Ofu, Territory of American Samoa.

Summary: EPA had no objection to the action, however additional clarification was requested to be included in the final EIS.

Dated: March 4, 1997.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–5704 Filed 3–6–97; 8:45 am]

BILLING CODE 6560–50–U

[FRL–5699–9]

Meeting To Create a Successor Organization to the Grand Canyon Visibility Transport Commission

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The United States Environmental Protection Agency (U.S. EPA) is announcing an organizational meeting of the successor organization to the Grand Canyon Visibility Transport Commission (Commission). The meeting will be held on March 12–13, 1997 at the Atlantis Hotel, 3800 South Virginie Street, Reno, Nevada. The meeting will begin at 9:00 am on the 12th and end at noon on the 13th.

The Commission made recommendations to EPA per Section 169B of the Clean Air Act in June, 1996. At that time the Commission determined that a successor organization was necessary to track and coordinate the implementation of its recommendations. Subsequently the Commission approved, by mail ballot, the membership and general characteristics of such an organization.

At the meeting in Reno, the new organization will adopt by-laws governing its goals, principles and operating procedures. Whereas the principal function of the organization will be to foster the implementation of the Grand Canyon Visibility Transport Commission's recommendations, it will also consider additional functions relating to air quality in the western United States.

The Commission was established by U.S. EPA on November 13, 1991 (see 56 FR 57522, November 12, 1991). All meetings are open to the public. These meetings are not subject to the provisions of the Federal Advisory Committee Act, Pub. L. 92–463, as amended.

FOR FURTHER INFORMATION CONTACT: Mr. John T. Leary, Project Manager for the Grand Canyon Visibility Transport

Commission, Western Governors' Association, 600 17th Street, Suite 1705, South Tower, Denver, Colorado 80202; telephone number (303) 623–9378; facsimile machine number (303) 534–7309; e-mail, jleary@westgov.org.

Dated: February 28, 1997.

John Wise,

Acting Regional Administrator, Region 9.

[FR Doc. 97–5623 Filed 3–6–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget (OMB) for Review

February 28, 1997.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1995, 44 U.S.C. Section 3507. Persons wishing to comment on the following collections should contact Timothy Fain, Office of Management and Budget, Room 10236, NEOB, Washington, D.C. 20503, (202) 395–0651. For further information, contact Dorothy Conway, Federal Communications Commission, (202) 418–0217.

Please note: The Commission has requested emergency review of these Automated Reporting Management Information System ("ARMIS") collections by March 7, 1997, under the provisions of 5 CFR 1320.13.

Title: The ARMIS Annual Summary Report (formerly titled, "The ARMIS Quarterly Report").
Form No.: FCC Report 43–01.
OMB Control No.: 3060–0512.
Action: Revised Collection.
Respondents: Businesses or other for profit entities.
Estimated Annual Burden: 150 respondents; 220 hours per response (avg.); 33,000 total annual burden hours.
Needs and Uses: ARMIS was implemented to facilitate the timely and efficient analysis of revenue requirements and rate of return, to provide an improved basis for audits and other oversight functions, and to enhance the Commission's ability to quantify the effects of alternative policy. The ARMIS Annual Summary Report contains financial and operating data and is used to monitor the local exchange carrier industry and to perform routine analyses of costs and revenues on behalf of the Commission. It is one of ten reports.

Title: The ARMIS Customer Satisfaction Report (formerly titled "The ARMIS Semi-Annual Service Quality Report").
Form No.: FCC Report 43–06.
OMB Control No.: None.
Action: New Collection.
Respondents: Businesses or other for profit entities.
Estimated Annual Burden: 8 respondents; 900 hours per response (avg.); 7,200 total annual burden hours.
Needs and Uses: The Customer Satisfaction Report, formerly the Semi-Annual Quality Report, is based on telephone surveys indicating a percentage of satisfied customers, and is collected by the carriers from residential and business customers.

Title: The ARMIS Operating Data Report.
Form No.: FCC Report 43–08.
OMB Control No.: 3060–0496.
Action: Revised Collection.
Respondents: Businesses or other for profit entities.
Estimated Annual Burden: 50 respondents; 160 hours per response (avg.); 8,000 total annual burden hours.
Needs and Uses: The ARMIS Operating Data Report consists of statistical schedules previously contained in FCC Form M which are needed by the Commission to monitor network growth, usage, and reliability.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–5654 Filed 3–6–97; 8:45 am]

BILLING CODE 6712–01–F

Public Information Collections Approved by Office of Management and Budget

February 28, 1997.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission.

OMB Control No.: 3060–0730.
Expiration Date: 02/28/2000.
Title: Toll Free Service Access Codes, 800/888 Number Release Procedures.
Form No.: N/A .
Estimated Annual Burden: 18,660 total annual hours; 1 hour per respondent (avg.); 18,660 respondents.
Estimated Annual Reporting and Recordkeeping Cost Burden: $0.
Description: The Commission has instructed Database Service Management, Inc. (DSMI) to collect authorization from the current 800 number subscriber and its Responsible Organization or the Toll Free Service Provider declining interim protection for the corresponding 888 number. In order to protect the interests of the involved parties, DSMI will not release the 888 number from the pool of unavailable numbers into the general pool of toll free numbers until it receives these authorizations.

OMB Control No.: 3060–0514.
Expiration Date: 02/28/2000.
Title: Holding Company Annual Report—Section 43.21(c).
Form No.: N/A.
Estimated Annual Burden: 20 total annual hours; 1 hour per respondent; 20 respondents.
Estimated Annual Reporting and Recordkeeping Cost Burden: $0.
Description: Filing of SEC Form 10–K is required by Sections 1.785 and 43.31(c) of the FCC Rules and authorized by Section 219 of the Communications Act of 1934, as amended. Filing of the form is required. Each company, not itself a communication common carrier, that directly or indirectly controls any communication common carrier having annual revenues of $100 million or more must file annually with the Commission, no later than the date prescribed by SEC for its purposes two complete copies of any Form 10–K annual report. The information filed pursuant to Section 43.21(c) is used by staff members to regulate and monitor the telephone industry and by the public to analyze the industry. Selected information is compiled and published in the Commission's annual common carrier statistical publication.

OMB Control No.: 3060–0478.
Expiration Date: 06/30/97.
Title: Informational Tariffs.
Form No.: N/A.
Estimated Annual Burden: 16,500 total annual hours; 50 hours per respondent (avg.); 330 respondents.
Estimated Annual Reporting and Recordkeeping Cost Burden: $0.
Description: Providers of interstate operator services are directed by Section 226(h)(1)(A) of the Communications Act of 1934, as amended, 47 U.S.C. Section 226(h)(1)(A), to file informational tariffs with the Commission and to update these tariffs regularly. The informational tariffs will be maintained for public inspection. The Common Carrier Bureau, at the direction of Congress, will also use the informational tariffs in assessing the compliance of the rates charged by operator service providers with the requirements of the Communications Act.

OMB Control No.: 3060–0395.
Expiration Date: 02/28/2000.
Title: Automated Reporting and Management Information Systems (ARMIS)—Sections 43.21 and 43.22.
Form No.: FCC Report 43–02, FCC Report 43–05, FCC Report 43–07.
Estimated Annual Burden: 62,464 total annual hours; 1250 hours per respondent (avg.); 50 respondents.
Description: ARMIS is needed to administer our accounting, jurisdictional separations, access charges and joint cost rules and rules to analyze revenue requirements and rates of return, service quality and infrastructure development. It collects financial and operating data from all Tier 1, Class A local exchange carriers with annual revenues over $100 million and carriers who elect incentive regulation. The information contained in the reports provides the necessary detail to enable this Commission to fulfill its regulatory responsibilities. FCC Report 43–02, the ARMIS USOA Report, provides the annual operating results of the carriers' activities for every account in the USOA. FCC Report 43–05, the ARMIS Service Quality Report, provides service quality information in the areas of interexchange access service installation and repair intervals, local service installation and repair intervals, trunk blockage and total switch downtime for price cap companies. FCC Report 43–07, the ARMIS Infrastructure Report, provides switch deployment and capabilities data. FCC Reports 43–02, 43–05 and 43–07 have been updated to incorporate the OMB expiration date. Copies of these reports may be obtained by contacting Barbara Van Hagen at 202–418–0849.

OMB Control No.: 3060–0511.
Expiration Date: 02/28/2000.
Title: ARMIS Access Report.
Form No.: FCC Report 43–04.
Estimated Annual Burden: 172,500 hours. 1,150 total annual hours; hours per respondent; 150 respondents.
Description: The ARMIS Access Report is needed to administer our accounting, jurisdictional separations and access charge rules, and to analyze revenue requirements and rates of return and to collect financial and operating data from all Tier 1 local exchange carriers. The ARMIS Access Report has been updated to incorporate the OMB expiration date. A copy of the report may be obtained by contacting Barbara Van Hagen at 202–418–0849.

OMB Control No.: 3060–0513.
Expiration Date: 02/28/2000.
Title: ARMIS Joint Cost Report.
Form No.: FCC Report 43–03.
Estimated Annual Burden: 30,000 total annual hours; 200 hours per respondent; 150 respondents.
Description: The Joint Cost Report is needed to administer our joint cost rules (Part 64) and to analyze data in order to prevent cross-subsidization of nonregulated operations by the regulated operations of Tier 1 carriers. The Joint Cost Report has been updated to incorporate the OMB expiration date. A copy of the report may be obtained by contacting Barbara Van Hagen at 202–418–0849.

OMB Control No.: 3060–0748.
Expiration Date: 12/31/99.
Title: Disclosure Requirements for Information Services Provided Through Toll-Free Numbers, 47 CFR 64.1504.
Form No.: N/A.
Estimated Annual Burden: 10,500 total annual hours; 2.8 hours per respondent (avg.); 3750 respondents.
Description: Section 64.1504 incorporates in the Commission's rules the requirements of Sections 228(c)(7)-(10) that restrict the manner in which toll-free numbers may be used to charge telephone subscribers for information services. Common carriers must prohibit the use of toll free numbers in a manner that would result in the calling party being charged for information conveyed during the call, unless the calling party (1) has executed a written agreement that specifies the material terms and conditions under which the information is provided or (2) pays for the information by means of a credit, prepaid, debit, charge, or calling card and the information service provider includes in response to each call an introductory message disclosing specified information detailing the cost and other terms and conditions for the service. Sections 228(c(8)A) and (c)(9) list, respectively, required elements of the written agreement and the introductory message. The disclosure requirements are intended to ensure that consumers know when charges will be levied for calls to toll-free numbers and are able to obtain information necessary to make informed choices about whether to purchase toll-free information services.

OMB Control No.: 3060–0710.
Expiration Date: 02/28/2000.
Title: Policy and Rules Concerning the Implementation of the Local Competition Provisions in the Telecommunications Act of 1996—CC Docket No. 96–98, First Report and Order.
Form No.: N/A.
Estimated Annual Burden: 1,574,820 total annual hours; 128.55 hours per respondent (avg.); 12,250 respondents.
Description: In the First Report and Order in CC Docket No. 96–98, The Commission adopts rules and regulations to implement parts of Sections 251 and 252 that effect local competition. The Order requires incumbent local exchange carriers (LECs) to offer interconnection, unbundled network elements, transport and termination and wholesale rates for retain services to new entrants; that incumbent LECs price such services at rates that are cost-based and just and reasonable; and that they provide access to rights-of-way as well as establish reciprocal compensation arrangements for the transport and termination of telecommunications traffic. All of the requirements would be used to ensure that local exchange carriers comply with their obligations under the Telecommunications Act of 1996.

OMB Control No.: 3060–0536.
Expiration Date: 08/31/97.
Title: Rules and Requirements for Telecommunications Relay Services (TRS) Interstate Cost Recovery.
Form No.: FCC Form 431.
Estimated Annual Burden: 15,593 total annual hours; 3.1 hours per respondent (avg.); 5,000 respondents.
Description: Title IV of the Americans with Disabilities Act of 1990 (ADA) requires the Commission to ensure that telecommunications relay services are available, to the extent possible, to individuals with hearing and speech disabilities in the United States. To fulfill this mandate, the Commission adopted rules that require the provision of TRS service beginning July 26, 1993. The Commission set minimum standards for TRS providers and established a shared-funding mechanism (TRS Fund) for recovering the costs of providing interstate TRS. The Commission also appointed the National Exchange Carrier Association (NECA) the TRS fund administrator, and directed NECA to establish a non-paid, voluntary advisory committee to monitor cost recovery matters.

The Commission's rules require all carriers providing interstate telecommunications services to contribute to the TRS Fund. The amount contributed is the product of the carrier's gross interstate revenues for the previous year and a contribution factor determined annually by the Commission. Contributions are calculated in accordance with a TRS Fund Worksheet which is prepared each

year by the Commission and published in the Federal Register. The TRS Fund Worksheet, FCC Form 431, is being updated for the 1997 reporting year. A public notice will be issued when the revised FCC Form 431 is available for public use.

Public reporting burden for the collections of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to the Records Management Branch, Washington, D.C. 20554.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–5633 Filed 3–6–97; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL ELECTION COMMISSION

[Notice 1997–2]

Filing Dates for the New Mexico Special Elections

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special elections.

SUMMARY: New Mexico has scheduled a special election on May 13, 1997, to fill the U.S. House seat in the Third Congressional District vacated by Ambassador Bill Richardson.

Committees required to file reports in connection with the Special General Election on May 13 should file a 12-day Pre-General Election Report on May 1, 1997; a 30-day Post-General Report on June 12, 1997; and a Mid-Year Report on July 31, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Werfel, Information Division, 999 E Street, N.W., Washington, D.C. 20463, Telephone: (202) 219–3420; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION: All principal campaign committees of candidates who participate in the New Mexico Special General Election and all other political committees not filing monthly which support candidates in the Special Election shall file a 12-day Pre-General Report on May 1, 1997, with coverage dates from the close of the last report filed, or the day of the committee's first activity, whichever is later, through April 23, 1997; a Post-General Report on June 12, 1997, with coverage dates from April 24 through June 2, 1997; and a Mid-Year Report on July 31, 1997, with coverage dates from June 3 through June 30, 1997.

CALENDAR FOR REPORTING DATES FOR NEW MEXICO SPECIAL ELECTIONS FOR COMMITTEES INVOLVED IN THE SPECIAL GENERAL

Report	Close of books*	Reg./Cert. mailing date**	Filing date
Pre-General	04/23/97	04/28/97	05/01/97
Post-General	06/02/97	06/12/97	06/12/97
Mid-Year	06/30/97	07/31/97	07/31/97

* The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the Committee's first activity.

** Reports sent by registered or certified mail must be postmarked by the mailing date; otherwise, they must be received by the filing date.

Dated: March 4, 1997.

John Warren McGarry,

Chairman Federal Election Commission.

[FR Doc. 97–5651 Filed 3–6–97; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 224–200974–002

Title: Tampa Port Authority/Tampa Bay International Terminals Wharfage Incentive Agreement

Parties:

Tampa Port Authority

Tampa Bay International Terminals Inc.

Synopsis: The proposed modification extends the parties' current wharfage Incentive Agreement through February 25, 1998.

Agreement No.: 224–201018

Title: DRS/PRPA Terminal Agreement

Parties:

Delaware River Stevedores, Inc. (DRS)

Philadelphia Regional Port Authority (PRPA)

Synopsis: Under the proposed agreement, PRPA will provide certain berthing rights as well as storage space at the Tioga Marine Terminal to DRS for a period of sixty (60) days.

Dated: March 3, 1997.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 97–5662 Filed 3–6–97; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Edward Mittelstaedt, Inc., 55 Margarita Drive, San Rafael, CA 94901, Officer: Edward O. Mittelstaedt, President

Demar Freight Forwarding, 888 N. Central Avenue, Wood Dale, IL 60191, Officers: Gene Doerr, President, William A. Behrens, Vice President

Dated: March 3, 1997.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 97–5661 Filed 3–6–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency information collection activities: Proposed collection; comment request

AGENCY: Board of Governors of the Federal Reserve System

ACTION: Notice

Background:

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number. Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the OMB 83–I and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and

d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before May 6, 1997.

ADDRESSES: Comments, which should refer to the OMB control number or agency form number, should be addressed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room M–P–500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Mary M. McLaughlin, Chief, Financial Reports Section (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Dorothea Thompson (202–452–3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension, without revision, of the following reports:

1. Report title: Report of Bank Holding Company Intercompany Transactions and Balances

AGENCY FORM NUMBER: FR Y–8

OMB control number: 7100–0126

Frequency: Semiannually, and interim reporting required for certain large asset transfers

Reporters: Domestic, top-tier bank holding companies with assets of $300 million or more

Annual reporting hours: 4,080 burden hours

Estimated average hours per response: 3 burden hours

Number of respondents: 645 semiannual respondents; 70 interim respondents

Small businesses are not affected.

General description of report: This information collection is required by section 5(c) of the Bank Holding Company Act (12 U.S.C. 1844 (c)) and section 225.5(b) of Regulation Y (12 CFR 225.5(b)) and is given confidential treatment pursuant to the Freedom of Information Act (5 U.S.C. 552 (b)(8)).

Abstract: The report collects information on assets transferred between subsidiary banks and other entities of the bank holding company organization (that is, the bank holding company and its nonbank subsidiaries). This report also collects information on the income recognized by subsidiary banks from other bank holding company members. This information is required in order to identify categories of funds flows and internal transactions and balances that could adversely affect the safety and soundness of insured depository institutions.

2. Report title: Report of Intercompany Transactions for Foreign Banking Organizations and Their U.S. Bank Subsidiaries

Agency form number: FR Y–8f

OMB control number: 7100–0127

Frequency: Semiannually, and interim reporting required for certain large asset transfers

Reporters: Bank holding companies as defined by Section 2(a) of the Bank Holding Company Act with at least $300 million in total consolidated assets that are organized under the laws of a foreign country and principally engaged in banking outside the United States

Annual reporting hours: 360 burden hours

Estimated average hours per response: 3 burden hours

Number of respondents: 58 semiannual respondents; 4 interim respondents

Small businesses are not affected.

General description of report: This information collection is required by section 5(c) of the Bank Holding Company Act (12 U.S.C. 1844 (c)) and section 225.5(b) of Regulation Y (12 CFR 225.5(b)) and is given confidential treatment pursuant to the Freedom of Information Act (5 U.S.C. 552 (b)(8)).

Abstract: This report provides the Board and the Reserve Banks with information on intercompany transactions between foreign banking organizations and their U.S. bank subsidiaries. It enables the Federal Reserve to monitor and supervise intercompany flows of funds to ensure that U.S. subsidiary banks are not engaging in any unsafe and unsound practices with their foreign owners. This report supplements the Board's global framework for the supervision of the U.S. operations of foreign banks. In addition, it aids in determining whether a foreign banking organization serves as a source of strength to its U.S. subsidiary.

Board of Governors of the Federal Reserve System, March 3, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–5586 Filed 3–6–97; 8:45AM]

Billing Code 6210–01–P

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 21, 1997.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Richard J. McConnell, Franklin, Indiana; to acquire an additional .82 percent, for a total of 10.71 percent, of the voting shares of FSB Financial Corporation, Francisco, Indiana, and thereby indirectly acquire FSB Bank, Francisco, Indiana.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Kennis R. Baskin, Houston, Texas; to acquire a total of 0.89 percent; Michael A. Bloome, Houston, Texas, to acquire a total of 0.35 percent; Joan R. Brochstein, Houston, Texas, to acquire a total of 0.35 percent; Robert D. Duncan, Houston, Texas, to acquire a total of 1.97 percent; Raymond H. Durham, Sr., Houston, Texas, to acquire a total of 0.89 percent; Curtis M. Garver, Houston, Texas, to acquire a total of 9.19 percent; Charles E. Harrell, Jr., Houston, Texas, to acquire a total of 0.89 percent; Raymond P. & Helen Hart, Laredo, Texas, to acquire a total of 0.79 percent; John R. Huff, Houston, Texas, to acquire a total of 5.91 percent; Joe Ince, Houston, Texas, to acquire a total of 0.92 percent; J. M. Partners (John S. Bace), Houston, Texas, to acquire a total of 0.71 percent; Earl L. Lester, Jr., Houston, Texas, to acquire a total of 3.94 percent; Robert R. Logan, Houston, Texas, to acquire a total of 0.92 percent; O. Wayne Massey, Houston, Texas, to acquire a total of 7.88 percent; M. Dale McGill, Houston, Texas, to acquire a total of 14.71 percent; James W. Newton, Houston, Texas, to acquire a total of 0.89 percent; Edward C. Norwood, Houston, Texas, to acquire a total of 1.77 percent; Harris J. Pappas, Houston, Texas, to acquire a total of 5.91 percent; W. Merwyn Pittman, Houston, Texas, to acquire a total of 1.97 percent; William H. Quayle, Houston, Texas, to acquire a total of 0.89 percent; Harold P. Rabalais, Houston, Texas, to acquire a total of 0.89 percent; Robert L. Richardson, Houston, Texas, to acquire a total of 0.89 percent; Chester P. Sappington, Jr., Houston, Texas, to acquire a total of 3.94 percent; Mark T. Scully, Houston, Texas, to acquire a total of 2.13 percent; John L. Shea, Philadelphia, Pennsylvania, to acquire a total of 0.35 percent; George R. Speaks, Houston, Texas, to acquire a total of 9.19 percent; Dane H. Stewart, Houston, Texas, to acquire a total of 0.79 percent; Robert H. Stewart, Jr., Houston, Texas, to acquire a total of 0.85 percent; Howard T. Tellespen, Jr., Houston, Texas, to acquire a total of 7.10 percent; Charles F. Thomas, Houston, Texas, to acquire a total of 4.42 percent; G. Cole Thomson, Houston, Texas, to acquire a total of 1.44 percent; Tim A. Tully, Houston, Texas, to acquire a total of 0.99 percent; and Ronald W. Woliver, Houston, Texas, to acquire a total of 3.94 percent, of the voting shares of Farmers and Merchants Bancshares, Inc., Mart, Texas, and thereby indirectly acquire Farmers and Merchants Bank, Mart, Texas.

Board of Governors of the Federal Reserve System, March 3, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97-5587 Filed 3-6-97; 8:45 am]

BILLING CODE 6210-01-F

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, March 12, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 5, 1997.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 97-5870 Filed 3-5-97; 2:21 pm]

BILLING CODE 6210-01-P

FEDERAL TRADE COMMISSION

[File No. 971-0013]

Cooperative Computing, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the Austin, Texas-based company, upon completing its merger with Triad Systems Corporation, to divest, through an exclusive, royalty-free, and perpetual license, its electronic parts catalog to MacDonald Computer Systems or another Commission-approved buyer. The complaint accompanying the consent agreement alleges that Cooperative Computing's proposed acquisition of Triad would have substantially lessened competition in the development and sale of management information systems and electronic parts catalogs for the automotive parts aftermarket and would likely have resulted in increased prices and reduced services, in violation of antitrust laws.

DATES: Comments must be received on or before May 6, 1997.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

William J. Baer, Federal Trade Commission, H-374, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580. (202) 326-2932.

George S. Cary, Federal Trade Commission, H-374, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580. (202) 326-3741.

M. Howard Morse, Federal Trade Commission, S-3627, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580. (202) 326-2949.

Joseph G. Krauss, Federal Trade Commission, S-3627, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580. (202) 326-2713.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for February 26, 1997), on the World Wide Web, at "http://www.ftc.gov/os/actions/htm." A paper copy can be obtained from the FTC Public Reference Room, Room H-130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326-3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis To Aid Public Comment on the Provisionally Accepted Consent Order

The Federal Trade Commission ("the Commission") has accepted, subject to final approval, an Agreement Containing Consent Order ("Agreement") from Cooperative Computing, Inc. ("CCI").

The proposed Order has been placed on the public record for sixty (60) days for reception of comments from interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the Agreement and the comments received and will decide whether it should withdraw from the Agreement or make final the Agreement's proposed Order. The purpose of this analysis is to facilitate public comment on all aspects of the proposed Order, including public comment with respect to the suitability of MacDonald Computer Systems ("MacDonald") as a proposed licensee.

The Commission's investigation of this matter concerns a proposed acquisition by CCI of Triad Systems Corporation ("Triad"). In October 1996, CCI entered into a merger agreement with Triad and commenced a tender offer for all of the outstanding voting securities of Triad. Under the terms of the tender offer, Triad shareholders will receive $9.25 per share, or a total of approximately $181 million. Immediately prior to the CCI acquisition of Triad, Hicks, Muse, Tate & Furst ("Hicks Muse"), a private investment firm based in Dallas, Texas, will acquire over 50 percent of CCI stock and gain control of CCI.

The Agreement Containing Consent Order would, if finally accepted by the Commission, settle charges that the CCI acquisition of Triad may substantially lessen competition in the development and sale of (1) electronic catalogs and (2) management information systems or "MIS" systems integrated with an electronic catalog, in the United States or in North America. The Commission has reason to believe that CCI's agreement to acquire Triad violates Section 5 of the Federal Trade Commission Act and that the acquisition, if consummated, would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act, unless an effective remedy eliminates likely anticompetitive effects.

The Proposed Complaint

According to the Commission's proposed complaint, CCI is a privately-held company that develops and markets management information system software for the automotive aftermarket, with annual sales of approximately $43 million. CCI offers a portfolio of software products that assist auto parts distributors and retailers to track their parts inventory. CCI has developed and markets with its software a proprietary database of auto parts for domestic and foreign automobiles.

Triad, a publicly-held Livermore, California-based company, similarly develops and markets management information system software for the automotive aftermarket and for other industries. Triad also develops and sells a proprietary database of auto parts for domestic and foreign automobiles. Triad has had annual sales of approximately $175 million, including approximately $90 million attributable to sales to the automotive parts aftermarket.

According to the Commission's proposed complaint, one relevant line of commerce within which to analyze the effects of CCI's acquisition of Triad is the market for electronic catalogs. The complaint alleges that there are no economic substitutes for electronic catalogs. Paper catalogs, the only theoretical alternative, are inadequate substitutes because paper catalogs are cumberstone and time consuming to use. The ability of warehouse distributors and jobbers to access information about parts availability and supply the required product is critical to their success, since the industry standard for same day repair service causes service dealers to require delivery of needed parts within 30 minutes. Electronic catalogs are sold as stand-alone products and as parts of integrated MIS systems.

The proposed complaint alleges that a second relevant line of commerce within which to analyze the effects of CCI's acquisition of Triad is the market for MIS systems integrated with an electronic catalog. According to the complaint, an MIS integrated with an electronic catalog enables users to access the vast inventory of automotive part numbers of hundreds of automotive part manufacturers on the same computer terminal as the MIS. Customers often demand an MIS integrated with an electronic catalog to be able to electronically transfer automotive parts data from the electronic catalog to a purchase order in the MIS. This transfer of data is important because it saves times and eliminates any risk of human error during the process of rekeying automotive part numbers into purchase orders.

The Commission's proposed complaint further alleges that CCI and Triad are the dominant providers of electronic catalogs and of management information systems integrated with an electronic catalog and alleges that the relevant U.S. or North American markets for electronic catalogs and for MIS systems integrated with an electronic catalog are highly concentrated.

According to the complaint, in addition to CCI and Triad, there is only one firm, Profit-Pro, Inc. ("Profit-Pro"), which develops and sells an electronic catalog for the independent automotive aftermarket. Triad sells both a stand-alone catalog and a catalog integrated with an MIS system, while CCI only sells its catalog integrated with an MIS system. The proposed complaint alleges that CCI and Triad have, nonetheless, been substantial, direct competitors. According to the complaint, the electronic catalog offered by Profit Pro is considered inferior compared to the CCI and Triad catalogs, in the size of its database, the accuracy of the part numbers in the database, and the speed with which it is updated.

According to the proposed complaint, Triad and CCI are the dominant providers of MIS systems integrated with an electronic catalog, together controlling approximately 70% of the market. The merger of CCI and Triad would increase the Herfindahl-Hirschman Index ("HHI") over 1200 points to over 3900. Aside from CCI and Triad, all other firms selling an MIS integrated with an electronic catalog rely upon Triad or Profit-Pro for their electronic catalog. The complaint alleges that these fringe firms do not constrain pricing nor in any other way substantially impact competition for the development and sale of MIS systems integrated with an electronic catalog.

The complaint further alleges that de novo entry or fringe expansion into the relevant markets which would be sufficient to deter or defeat reductions in competition resulting from the CCI acquisition of Triad would not be timely or likely. According to the proposed complaint, developing an electronic catalog would require an expenditure of substantial sunk costs and would be time-consuming. Electronic catalog data must be entered manually into a database because the electronic parts data is received in a different format from each of hundreds of automotive parts manufacturers. Entry with a catalog covering only a fraction of available automotive parts would not be acceptable to most warehouse distributors and jobbers.

The proposed complaint alleges, finally, that the acquisition by CCI of Triad may substantially lessen competition by, among other things, eliminating substantial, direct head-to-head competition between CCI and Triad, likely resulting in increased prices and reduced services for electronic catalogs and MIS systems integrated with an electronic catalog.

The Proposed Consent Agreement

The proposed Order accepted for public comment contains provisions that would require CCI to divest CCI's electronic catalog to MacDonald. The proposed Order would specifically require CCI to divest, absolutely and in good faith, through a perpetual, royalty-free, transferable, assignable, and exclusive license with the right to use for any purpose, combine with other information, reproduce, modify, market and sublicense, CCI's PartFinder® electronic catalog database, CCI's J–CON® application program interface, CCI software utilized to retrieve vehicle data from the CCI Database, and support software and documentation.

MacDonald is a California-based privately-held company which on February 13, entered into a confidential license agreement with CCI fulfilling the requirements of the proposed Order. MacDonald currently sells MIS systems to the automotive aftermarket and has previously offered customers the option of utilizing the Triad catalog with its MIS system.

The purpose of the divestiture of the CCI electronic catalog is to ensure the continued use of that catalog in competition with the merged CCI/Triad, to ensure MacDonald operates as an independent competitor in the development and sale of electronic catalogs and MIS systems integrated with an electronic catalog, and to remedy the lessening of competition as alleged in the Commission's complaint.

The proposed order would require CCI to offer updates to MacDonald for the electronic catalog for a period of two years. The proposed order would also require that CCI provide to MacDonald technical assistance for electronic catalog maintenance for a period of one year. The purpose of these provisions is to ensure that MacDonald becomes a viable competitor to CCI, thereby fostering a competitive environment for the sale of MIS systems integrated with an electronic catalog.

In the event that CCI fails to divest the CCI Products to MacDonald because MacDonald, unilaterally and through no fault of CCI, breaches the License Agreement, CCI is required under the proposed Order to divest to another acquirer that is approved beforehand by the Commission, within sixty (60) days after the date on which the Order is made final. If CCI fails to divest, the proposed Order provides for the appointment of a trustee, to accomplish the required divestiture.

Pending the required divestiture, CCI is required, under the proposed Order, to maintain the viability and marketability of the CCI electronic catalog, by among other things, updating the CCI database on a regular schedule. In order to assist the acquirer, the proposed Order prohibits CCI from preventing employees from working for the acquirer, and from entering into long-term contracts with firms in the business of distributing hardware and/or software systems to warehouses, jobber/retail stores and/or service dealers in the automotive aftermarket, that might interfere with the acquirer's ability to obtain customers

This analysis is not intended to constitute an official interpretation of the Agreement or the proposed Order or in any way to modify the terms of the Agreement or the proposed Order.

Donald S. Clark,

Secretary.

[FR Doc. 97–5707 Filed 3–6–97; 8:45 am]

BILLING CODE 6750–01–M

[File No. 961–0085]

Mahle GmbH; Mahle, Inc.; Metal Leve S.A.; Metal Leve, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, Mahle, Inc., the Morristown, Tennessee-based subsidiary of a German company, and Metal Leve, Inc., the Ann Arbor, Michigan-based subsidiary of a Brazilian firm, to divest Metal Leve's United States piston business. The complaint accompanying the consent agreement alleges that, by acquiring Metal Leve, Mahle would become a monopolist in the research, development, manufacture, and sale of (1) articulated pistons in the United States, and (2) large bore two-piece pistons worldwide. Pursuant to a separate federal court stipulation, Mahle and Metal Leve will pay in excess of $5 million for failing to give antitrust enforcers advance notice of Mahle's acquisition of a controlling interest in Metal Leve.

DATES: Comments must be received on or before May 6, 1997.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT:

William J. Baer, Federal Trade Commission, H–374, 6th St. and Pa. Ave., NW., Washington, DC 20580, (202) 326–2932.

George S. Cary, Federal Trade Commission, H–374, 6th St. and Pa. Ave., NW., Washington, DC 20580, (202) 326–3741.

Howard Morse, Federal Trade Commission, S–3627, 6th St. and Pa. Ave., NW., Washington, DC 20580, (202) 326–2949.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for February 27, 1997), on the World Wide Web, at "http://www.ftc.gov/os/actions/htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, DC 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Order ("Agreement") from Mahle GmbH, Mahle, Inc., Metal Leve, S.A., and Metal Leve, Inc. ("Proposed Respondents").

The proposed Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the Agreement and the comments received and will decide whether it should withdraw from the Agreement or make final the Agreement's proposed Order.

Mahle GmbH, a German piston manufacturer, operates in the United States through its wholly-owned subsidiary Mahle, Inc., while Metal Leve, S.A., a competing Brazilian piston manufacturer, operates in the United States through its wholly-owned subsidiary Metal Leve, Inc. On June 26, 1996, Mahle GmbH acquired a controlling interest in Metal Leve, S.A. for approximately $40 million without first filing notification and report forms with the Federal Trade Commission or the Department of Justice Antitrust Division as required by the Hart-Scott-Rodino Act, Section 7A of the Clayton Act, 15 U.S.C. § 18a. The Commission has approved a Stipulation providing for civil penalties under the Hart-Scott-Rodino Act for Mahle and Metal Leve's failure to file the required notifications, and has accepted, subject to final approval, the Agreement Containing Consent Order resolving administrative charges that the acquisition may substantially lessen competition in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

The Stipulation provides for maximum civil penalties from both Mahle and Metal Leve from the date of the acquisition until Proposed Respondents file an application for divestiture as required by the proposed Order, which application is subsequently approved by the Commission and which divestiture is thereafter accomplished. Mahle and Metal Leve will each pay civil penalties of $10,000 per day from June 26, 1996, through November 20, 1996, and $11,000 per day thereafter, pursuant to the Debt Collection Improvement Act of 1996, Pub. L. 104–134 § 31001(s) and FTC Rule 1.98, 16 CFR 1.98, 61 FR 54549 (Oct. 21, 1996). The Stipulation, along with a complaint alleging a cause of action under Section 7A(g)(1) of Clayton Act, 15 U.S.C. 18A(g)(1), will be filed, with the concurrence of the Department of Justice Antitrust Division, by Commission attorneys acting as special attorneys to the Attorney General, on behalf of the United States.

The proposed administrative complaint alleges that the acquisition may substantially lessen competition in the research, development, manufacture, and sale of articulated pistons in the United States and large bore two-piece pistons worldwide. The proposed complaint alleges a market of articulated pistons up to 150 millimeter in diameter used in diesel engine applications, such as Class 8 truck engines for buses and big highway rigs, which require pistons that can withstand high temperatures and pressures to maintain engine performance while meeting increasingly stringent government emissions requirements. The proposed complaint also alleges a market of large bore two-piece pistons of more than 150 millimeters in diameter that are used in high output diesel and natural gas engines, such as locomotive engines and stationary power generators as well as engines for various marine and industrial applications. The proposed complaint alleges that the relevant geographic market for evaluating the acquisition's effect on articulated pistons is the United States, while the relevant geographic market for evaluating the acquisition's effect on large bore two-piece pistons is worldwide.

The proposed complaint alleges that, prior to the acquisition, Mahle had more than a 50 percent share and Metal Leve had nearly a 45 percent share of the articulated piston market, producing a combined market share of more than 95 percent. The only other firm in the market is a weak competitor that has been losing business to Mahle and Metal Leve. Thus, the Mahle/Metal Leve acquisition results in a monopoly or near monopoly in the articulated pistons market.

The proposed complaint alleges that the market for two-piece large bore pistons is also highly concentrated. There are only four producers of two-piece large bore pistons in the world. The proposed complaint alleges that Mahle and one other firm dominate the market, while Metal Leve has gained sales and is aggressively bidding.

The proposed complaint alleges that entry into the relevant piston markets would not be timely, likely, or sufficient to deter or offset the adverse effects of Mahle's acquisition of Metal Leve on competition, because an entrant would have to develop manufacturing expertise, satisfy time-consuming customer qualification requirements, and acquire manufacturing equipment at a significant sunk cost. Entry would likely take three to five years or more.

The proposed complaint alleges that Mahle's acquisition of Metal Leve substantially lessened competition in both the articulated and large bore two-piece piston markets, by among other things, eliminating Metal Leve as an independent competitor that has been a substantial, direct, head-to-head competitor with Mahle and a maverick in the relevant markets. In the articulated piston market, the acquisition has created a monopoly or near monopoly. The proposed complaint alleges that the Mahle/Metal Leve acquisition substantially lessened competition in the large bore two-piece piston market, by giving control of Metal Leve, an aggressive and innovative competitor, to Mahle, one of only two firms that together have dominated the market for large bore two-piece pistons.

The proposed Order would remedy the alleged violation by restoring the competition lost as a result of Mahle's acquisition. The proposed Order would require divestiture of Metal Leve's U.S. piston business, which is defined to include, among other things, assets used by Metal Leve for the manufacture and sale of pistons in the United States,

including plants in Orangeburg and Sumter, South Carolina, and a research and development center in Ann Arbor, Michigan, as well as technology outside the United States which supports that business. Metal Leve and Mahle will cease to have any rights to what was formerly the Metal Leve articulated piston technology once the divestiture required by the proposed Order has been accomplished.

The proposed Order requires that the divestiture be completed within ten days of the Order becoming final. Thus, the Proposed Respondents must file an acceptable application for divestiture well before the proposed Order is made final, so that the application can be placed on the public record for thirty days, the Commission can determine whether to approve it, and Respondents can complete the required divestiture within the time period set forth in the proposed Order.

If the required divestiture is not accomplished within ten days of the Order being made final, then a trustee may be appointed to divest the business. The trustee may add some or all of the Metal Leve, S.A. piston business to accomplish the divestiture. This crown jewel provision ensures that the required divestiture will be accomplished in a timely manner.

A Hold Separate Agreement accepted by the Commission on August 30, 1996, will continue in effect until the divestiture required by the proposed Order is accomplished. The Hold Separate requires Metal Leve to be operated independently of Mahle on a worldwide basis and requires Metal Leve, Inc. to be maintained as a viable competitor in the business in which it was engaged prior to Mahle's acquisition of Metal Leve.

Finally, the proposed Order prohibits Mahle or Metal Leve from acquiring any interest in any other company engaged in the manufacture or sale of articulated pistons in the United States, without prior notice to the Commission, for a period of ten (10) years.

The purpose of this analysis is to facilitate public comment on the proposed Order. This analysis is not intended to constitute an official interpretation of the Agreement or the proposed Order or in any way to modify the terms of the Agreement or the proposed Order.

Donald S. Clark,

Secretary.

[FR Doc. 97–5708 Filed 3–6–97; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of Meeting of the National Bioethics Advisory Commission (NBAC), Genetics Subcommittee

Correction notice for previously published notice (Published on February 26, 1997, Page 8743, 2nd Column). The date is corrected to read: Date: Wednesday, March 5, 1997, 7:00 a.m. to 1:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Henrietta Hyatt-Knorr, National Bioethics Advisory Commission, MSC–7508, 6100 Executive Boulevard, Suite 3C01, Rockville, Maryland 20892–7508, telephone 301–402–4242, fax number 301–480–6900.

Dated: February 26, 1997.

Henrietta Hyatt-Knorr,

Acting Deputy Director, National Bioethics Advisory Commission.

[FR Doc. 97–5690 Filed 3–4–97; 2:25 pm]

BILLING CODE 4160–17–M

Meeting of the National Bioethics Advisory Commission (NBAC)

SUMMARY: Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of a meeting of the National Bioethics Advisory Commission. The Commission members will address the bioethical issues arising from the research on human biology and behavior, and in the applications of that research including clinical. They will also begin a review of the legal and ethical issues associated with the recent report of a technique of cloning sheep. The public is invited to speak on any of these issues and opportunities for statements will be provided.

DATES: Thursday, March 13, 1997, 8 a.m. to 4:30 p.m., and Friday, March 14, 1997, 8 a.m. to 4:30 p.m.

LOCATION: The Commission will meet at the Watergate Hotel, Continental Chesapeake Extender Room, 2650 Virginia Avenue, NW, Washington, DC.

SUPPLEMENTARY INFORMATION: The President established the National Bioethics Advisory Commission (NBAC) by Executive Order 12975 on October 3, 1995. The charter of the Commission was signed on July 26, 1996. The first meeting took place on October 4, 1996. The mission of the NBAC is to advise and make recommendations to the National Science and Technology Council and other entities on bioethical issues arising from the research on human biology and behavior, and in the applications of that research. On February 24, 1997, the President instructed the Commission to undertake a review of the legal and ethical issues associated with the recent report of a technique for cloning sheep. This scientific discovery raises a host of important issues including serious ethical questions, in particular the possible use of this technique to clone human embryos, as well as the promise of benefits in a number of areas.

Tentative Agenda

The Commission will 1) receive reports from its subcommittees, 2) discuss and plan the Commission's 90-day report to the President on issues of cloning, and 3) listen to presentations from the public.

Public Participation

The meeting is open to the public with attendance limited by the availability of space. Members of the public who wish to present oral statements should contact the Acting Deputy Executive Director of the NBAC by telephone, fax machine, or mail as shown below as soon as possible, prior to the meeting. The Chair of the NBAC will reserve time for presentations by persons requesting an opportunity to speak. The order of speakers will be assigned either on a first come, first serve basis or along other considerations. Individuals unable to make oral presentations are encouraged to mail or fax their comments to the NBAC at least two business days prior to the meeting for distribution to the subcommittee members and inclusion in the record. We urge anyone planning to speak to call the NBAC office two or three days before the meeting to obtain information on the final logistical arrangements.

Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact NBAC staff at the address or telephone number listed below as soon as possible.

FOR FURTHER INFORMATION CONTACT: Ms. Henrietta D. Hyatt-Knorr, National Bioethics Advisory Commission, MSC–7508, 6100 Executive Boulevard, Suite 3C01, Rockville, Maryland 20892–7508, telephone 301–402–4242, fax number 301–480–6900.

Dated: February 25, 1997.

Henrietta Hyatt-Knorr,

Acting Deputy Executive Director, National Bioethics Advisory Commission.

[FR Doc. 97–5691 Filed 3–6–97; 8:45 am]

BILLING CODE 4160–17–P

Office of the Secretary

Privacy Act of 1974; Revision to Existing System of Records

AGENCY: Employee Assistance Program, Office of the Assistant Secretary for Management and Budget, Office of the Secretary, HHS.

ACTION: Notice of revision of Privacy Act systems of records.

SUMMARY: In accordance with the Privacy Act, HHS is giving notice that it is revising one of its system of records, 09–90–0010, Employee Assistance Program, HHS/OS/ASMB. It was most recently published on August 11, 1992. The notice is being revised to clarify certain procedures, and update the list of system managers. Records in this system contain information on employees Assistance Program (EAP). It also contains information on employees and their family members from other federal agencies that are contracting with HHS EAPs.

EFFECTIVE DATE: This amendment modifies the language of the routine uses but does not change them in substance. Although there is no substantive change, the modified language for the routine uses will take effect April 7, 1997, unless comments are received that result in a different conclusion. Other aspects of this amendment are effective on March 7, 1997.

FOR FURTHER INFORMATION CONTACT: EAP Team Leader, Office of Human Resources, Room 5–36E, 200 Independence Avenue, SW., Washington, DC 20201. Telephone number (202) 690–8229 or (202) 690–7954.

SUPPLEMENTARY INFORMATION: Some procedure in the previous notice needed further clarification to assure consistent handling of records. In addition, this notice reflects the re-organization of HHS and the resulting changes to the system managers.

The notice is published below in its entirety, as amended.

Dated: December 30, 1996.

Eugen Kinlow,

Deputy Assistant Secretary for Human Resources

09–90–0010

SYSTEM NAME:

Employee Assistance Program (EAP) Records, HHS/OS/ASMB/OHR.

SYSTEM LOCATION:

Office designated to provide counseling and/or other EAP services for employees of HHS and their family members and employees of other federal agencies contracting with HHS for EAP services and their family members. Since there are thousands of counselors available to provide EAP services, contact the appropriate system manager in Appendix 1 for more details about specific locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system covers the records of any HHS employee and their family member(s) using the services of the EAP. It also covers the records of any other federal employee and their family member(s) whose agency has contracted with HHS for EAP services. (The remainder of this notice will refer to all persons covered by the system as "EAP client(s)".)

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains a written or electronic record on each EAP client. These record typically contain demographic data such as client name, date of birth, grade, job title, home address, telephone numbers, and supervisor's name and telephone number. The system includes records of services provided by HHS staff and services provided by contractors.

Certain clinical information is also normally maintained in each record including a psychosocial history, assessment of personal problem(s), information regarding referrals to facilities in the community, and all intervention outcomes.

If the client was referred to the EAP by a supervisor due to work performance or conduct problems or if there is anther reason to be concerned about these issues, the record may contain information such as leave usage, work quality, inappropriate behavior, and reason for referral. It may also contain information about previous and on-going supervisory/organizational interventions to correct the problem.

When the client was referred to the EAP because of a positive drug or alcohol test (as required by the drug-free workplace provisions or Department of Transportation regulations), the record will also contain information about substance abuse assessment, treatment, aftercare, and substance use monitoring results.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7361, 7362, 7901, 7904; 44 U.S.C. 3101.

PURPOSES:

The information contained in each record is a documentation of the nature and extent of the client's problem(s). This information is necessary for the clinician to formulate and implement an intervention plan for resolving the problem(s). When the intervention plan includes referral(s) to the treatment or other facilities outside the EAP, the record also documents this referral information.

The information contained in each record is also used for monitoring the client's progress in resolving the problems(s).

Anonymous information from each record is also used to prepare statistical reports and conduct research that help with program management.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) HHS contemplates that it will contract with a private organization, individual, or other group such as an EAP consortium, for the purpose of providing EAP services for HHS employees and their family members and/or for employees of other Federal agencies and their family members. Relevant records will be disclosed to, as well as created and maintained by these contractors.

(2) HHS may disclose information from this system of records for litigation purposes when

(A) HHS, or any of its components, or

(B) Any HHS employee in his or her official capacity, or

(C) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee, or

(D) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components

is a party to litigation, and HHS determines that such use of records is relevant and necessary to the litigation and would help in the effective representation of the government party. The disclosure may be made to the Department of Justice. Except where the records are covered by the Confidentiality of Alcohol and Drug Abuse Patient Records regulations, 42 CFR part 2, the disclosure may be made to a court or other tribunal, or to another party before such tribunal. Any disclosure of records covered by 42 CFR part 2 must be pursuant to a qualified service organization agreement that meets the requirements of that part *and* must also comply with all other aspects of those regulations. The EAP Team Leader (in ASMB) must personally approve any disclosure made under this routine use based on his or her determination that it is compatible with

the purpose for which the records were collected.

(3) Records may be disclosed to student volunteers, individuals working under a personal services contract, and other individuals performing functions for the Department but technically not having the status of agency employees, if they need access to the records in order to perform their assigned agency functions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in written folders, computers, and on index type cards. The are stored according to a number of physical safeguards described below.

RETRIEVABILITY:

Records are retrieved by a case code number, unique to the client utilizing the program. These numbers are cross-indexed by name.

SAFEGUARDS:

(1) *Authorized users:* Access to these records is limited to EAP Administrators who work directly with clients of the program and their immediate staffs (including counselors, secretaries, and contract or consortia administrators, counselors or secretaries). HHS EAP Administrators and HHS EAP headquarters staff in OS/ASMB/OHR as well as EAP Administrators and Coordinators from other federal agencies who contract with HHS, whether or not they directly provide clinical services, may have access to the records for the purposes of program evaluation, destroying records at the end of the period of maintenance, and transferring records from one contractor to another.

(2) *Physical safeguards:* All records are stored in metal filing cabinets equipped with at least combination locks, and preferably locking crash bars. These file cabinets are in secured areas, accessible only to EAP staff, and are locked when not in use. Computers containing records are discrete from other computer systems and/or are password protected. Computers are also stored in secured areas, accessible only to the EAP staff. Records are always maintained separate from other systems of record.

(3) *Procedural safeguards:* All persons having access to these records shall already have been trained in the proper handling of records covered by the Privacy Act and 42 CFR part 2 (Confidentiality of Alcohol and Drug Abuse Patient Records).

These acts restrict disclosures to unique situations, such as medical emergencies, except where the client has consented in writing to such disclosure. Clients of the EAP will be informed in writing of the confidentiality provisions. Secondary disclosure of information which was released is prohibited without client consent.

RETENTION AND DISPOSAL:

Records are retained until three years after the client has ceased contact with the EAP or until any litigation is finally resolved. This will be true whether or not the client has terminated employment with HHS or another agency contracting with HHS for EAP services.

Some HHS EAPs provide Substance Abuse Professional evaluations as part of Department of Transportation regulations. These records will be retained for five years after contact with the program has ceased or any litigation is completed.

Files on HHS employees and their family members will be destroyed only by an HHS EAP Administrator, with a witness present, and only after the required period of maintenance. The witness must be an HHS employee familiar with handling confidential records and, whenever possible, another EAP staff member. This includes electronic deletions. Written records will be destroyed by shredding or burning.

Records located away from the EAP Administrator's site shall be transferred to the EAP Administrator in the confidential manner required by HHS and GSA policies. The case coding number of the destroyed record will be maintained on a list of other destroyed case coding numbers. No other information about EAP clients may be maintained once these files have been destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

The records of individuals participating in the EAP are managed by the EAP Administrators in the various regional and headquarters offices (Appendix 1).

NOTIFICATION PROCEDURES

If an HHS employee and/or family member wishes to inquire about his or her record, a written inquiry should be addressed to the HHS system manager responsible for the area where the counseling was provided (see Appendix 1). The individual should provide his or her name, organization where employed, date of birth, location of counseling, and approximate date of counseling. If a third party is making the request, a written consent from the client must accompany the request.

If an inquiry is made from an employee and/or family member from another federal agency serviced by the HHS EAP, a written inquiry shall be made using the same procedures described above. If the agreement to obtain services from HHS has terminated, the request should be made through the designated EAP representative at the other Federal agency.

In some limited situations, an EAP record is considered a medical record. A client who requests notification or access to a medical record shall, at the time the request is made, designate in writing a responsible individual who would be willing to review the record. Upon receiving a request, the EAP Administrator shall weigh the need for disclosure against the potential injury to the EAP client, to other affected persons, to the physician-patient relationship, and to the treatment services. The EAP Administrator will then determine whether to disclose the record directly to the client or to the designated individual. If disclosed to the designated individual, he or she will inform the client of its content but only at his or her discretion.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURES:

Contact the EAP Administrator at the address found in Appendix 1, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction.

RECORD SOURCE CATEGORIES:

Information in this system of records is: (1) Supplied directly by the individual using the program, or (2) supplied by a member of the employee's family, or (3) derived from information supplied by the employee, or (4) supplied by sources to/from whom the individual has been referred for assistance, or (5) supplied by Department officials (including drug testing officers), or (6) supplied by EAP counselors, or (7) supplied by other sources involved with the case.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix 1

All Regional Offices (except CDC and NIH)

Employee Assistance Program Team Leader, Office of the Secretary, ASMB, HHS EAP Headquarters, 200 Independence Avenue, SW, Room 5–35E, Washington, DC 20201

Centers for Disease Control and Prevention

CDC Employee Assistance Program Administrator, Personnel Management Office, 1600 Clifton Road, NE, Mail Stop K17, Atlanta, GA 30333

Southwest Complex

Employee Assistance Program Administrator, Program Support Center, 330 C Street, SW, Room 1036 Washington, DC 20201

Health Care Financing Administration

HCFA Employee Assistance Program Administrator, 7500 Security Boulevard, C2–15–05, Baltimore, MD 21244

National Institutes of Health

NIH Employee Assistance Program Administrator, Building 31, Room 1C02, 9000 Rockville Pike, Bethesda, MD 20892

Parklawn/Hyattsville Complex

Employee Assistance Program Team Leader, Office of the Secretary, ASMB, HHS EAP Headquarters, 200 Independence Avenue, SW, Room–35E, Washington, DC 20201

[FR Doc. 97–5571 Filed 3–6–97; 8:45 am]

BILLING CODE 4150–04–M

Centers for Disease Control and Prevention

Advisory Committee for Injury Prevention and Control: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Committee for Injury Prevention and Control (ACIPC).

Times and Dates: 2 p.m.–4 p.m., March 24, 1997. 8:30 a.m.–3:30 p.m., March 25, 1997.

Place: The Ritz-Carlton, Atlanta (Downtown), 181 Peachtree Street, NE, Atlanta, Georgia 30303.

Status: Closed: 2 p.m.–3 p.m., March 24, 1997, and 8:30–9 a.m., March 25, 1997; Open: 3 p.m.–4 p.m., March 24, 1997, and 9 a.m.–3:30 p.m., March 25, 1997.

Purpose: This committee makes recommendations regarding policies, strategies, objectives, and priorities, and reviews progress toward injury prevention and control. The Committee provides advice on the appropriate balance and mix of intramural and extramural research, including laboratory research, and provides guidance on intramural and extramural scientific program matters, both present and future, particularly from a long-range viewpoint. The Committee provides second-level scientific and programmatic review for applications for research grants, cooperative agreements, and training grants related to injury control and violence prevention, and recommends approval of projects that merit further consideration for funding support. The Committee recommends areas of research to be supported by contracts and provides concept review of program proposals and announcements.

Matters to be Discussed: The meeting will convene in closed session from 2 p.m. to 3 p.m. on March 24, 1997. The purpose of this closed session is for the Science and Program Review Work Group to consider Injury Control Research Center grant applications recommended for further consideration by the CDC Injury Research Grant Review Committee. On March 25, 1997, from 8:30 a.m. to 9 a.m., the meeting will convene in closed session in order for the full Committee to vote on a funding recommendation. These portions of the meeting will be closed to the public in accordance with provisions set forth in section 552(c)(4) and (6) title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463. Following the closed session there will be discussions on future grant program announcements, ad hoc committee reports, and updates on further progress on standing Work Group issues. The Committee will also discuss (1) an update from the Director, National Center for Injury Prevention and Control (NCIPC); (2) Safe America: Advancing the Initiative; and (3) a report from the Science and Program Review Work Group which will include reports on the motor vehicle programmatic review and poison control centers.

Agenda items are subject to change as priorities dictate.

Contace Person for More Information: Mr. Thomas A. Blakeney, Acting Executive Secretary, ACIPC, NCIPC, CDC, 4770 Buford Highway, NE, M/S K61, Atlanta, Georgia 30341–3724, telephone 770/488–1481.

Dated: March 4, 1997.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–5818 Filed 3–6–97; 8:45 am]

BILLING CODE 4163–18–P

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Detailed Case Data Component (DCDC) of the National Child Abuse and Neglect Data System.

OMB No.: 0980–0256.

Description: The Detailed Case Data Component of the National Child Abuse and Neglect Data System compiles automated case-level data on child maltreatment investigated by State child protective services agencies. Data are collected on reports of abuse and neglect, characteristics of victims, risk factors associated with victims and their families, and the development of polices and programs relating the child abuse and neglect at the National, State and local levels.

Respondents: State, Local or Tribal Govt.

Annual Burden Estimates

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
DCDC	56	1	110	6,160

Estimated Total Annual Burden Hours: 6,160.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paper work Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to

comments and suggestions submitted within 60 days of this publication.

Dated: March 3, 1997.

Bob Sargis,

Acting Reports Clearance Officer

[FR Doc. 97–5570 Filed 3–6–97; 8:45 am]

BILLING CODE 4184–01–M

Food and Drug Administration

[Docket No. 97N–0022]

Agency Information Collection Activities: Proposed Collection; Reinstatements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish a notice in the **Federal Register** concerning each collection of information, including each proposed reinstatement of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on reporting and recordkeeping requirements relating to the manufacture and distribution of hearing aid devices, reporting requirements for firms that provide electronic product samples to FDA for research and testing purposes, reporting requirements for firms that intend to export certain unapproved medical devices, and reporting and recordkeeping requirements relating to shipment of nonsterile devices that are to be sterilized elsewhere or are shipped to other establishments for further process labeling or repacking.

DATES: Submit written comments on the collection of information requirements by May 6, 1997.

ADDRESSES: Submit written comments on the collection of information requirements to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Judith V. Bigelow, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–1479.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collections of information listed below.

With respect to the following collections of information, FDA invites comments on: (1) Whether the proposed collections of information are necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burdens of the proposed collections of information, including the validity of the methodologies and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burdens of the collections of information on respondents, including through the use of appropriate automated collection techniques, when appropriate, and other forms of information technology.

1. Hearing Aid Devices: Professional and Patient Package Labeling and Conditions for Sale—21 CFR 801.420 and 801.421 (OMB Control No. 0910–0171—Reinstatement)

Under section 520(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(e)), the Secretary of the Department of Health and Human Services (the Secretary) may, under certain conditions, require by regulation that a device be restricted to sale, distribution, or use only upon authorization of a licensed practitioner or upon other prescribed conditions. Sections 801.420 and 801.421 (21 CFR 801.420 and 801.421) implement this authority for hearing aids, which are restricted devices. The regulations require that the manufacturer or distributor provide to the user data useful in selecting, fitting, and checking the performance of a hearing aid through distribution of a User Instructional Brochure. The User Instructional Brochure must also contain technical data about the device, instructions for its use, maintenance, and care, a warning statement, a notice about the medical evaluation requirement, and a statement if the aid is rebuilt or used.

Hearing aid dispensers are required to provide the prospective user, before the sale of a hearing aid, with a copy of the User Instructional Brochure for the hearing aid model that has been, or may be, selected for the prospective user and to review the contents of the brochure with the buyer. In addition, upon request by an individual who is considering the purchase of a hearing aid, the dispenser is required to provide a copy of the User Instructional Brochure for that model hearing aid or the name and address or telephone number of the manufacturer or distributor from whom a User Instructional Brochure for the hearing aid may be obtained. Under conditions of sale of hearing aid devices, manufacturers or distributors shall provide sufficient copies of the User Instructional Brochure to sellers for distribution to users and prospective users and provide a copy of the User Instructional Brochure to any health care professional, user, or prospective users who requests a copy in writing. The regulations also require that the patient provide a written statement that he or she has undergone a medical evaluation within the previous 6 months before the hearing aid is dispensed, although informed adults may waive the medical evaluation requirement by signing a written statement. Finally, the regulation requires that the dispenser retain for 3 years copies of all physician statements or any waivers of medical evaluations.

The information obtained through this collection of information is used by FDA to ensure that hearing aids are sold and used in a way consistent with the public health.

The information contained in the User Instructional Brochure is intended not only for the hearing aid user but also for the physician, audiologist, and dispenser. The data is used by these health care professionals to evaluate the suitability of a hearing aid, to permit proper fitting of it, and to facilitate repairs. The data also permits the comparison of the performance characteristics of various hearing aids. Noncompliance could result in a substantial risk to the hearing impaired because the physician, audiologist, or dispenser would not have sufficient data to match the aid to the needs of the user.

The respondents to this collection of information are hearing aid manufacturers, distributors, dispensers, health professionals, or other for profit organizations.

On September 29, 1993, FDA conducted an audit of hearing aid dispensers in four FDA districts to determine the level of compliance with existing hearing aid requirements. The estimates relating to §§ 801.421(a)(1) and 801.420(a)(2) in the reporting and recordkeeping burden tables below are based on information obtained in this audit. This audit revealed that medical evaluations were obtained in 32 percent of the sales and signed waivers were obtained in 60 percent of the sales.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
801.420(c)	40	5	200	40	8,000
801.421(a)(1)	9,900	52	514,800	0.10	51,480
801.421(a)(2)	9,900	97	960,300	0.30	288,090
801.421(b)	9,900	162	1,600,000	0.30	480,000
801.421(c)	9,940	5	49,700	0.17	8,449
Total Burden Hours					836,019

There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
801.421(d)	9,900	162	1,600,000	0.25	400,000
Total					400,000

There are no capital costs or operating and maintenance costs associated with this collection of information.

2. Notice of Availability of Sample Electronic Product—21 CFR Parts 1020, 1030, 1040, and 1050 and FDA Form 2767 (OMB Control No. 0910–0048—Reinstatement)

Under sections 532 to 542 of the act (21 U.S.C. 360ii to ss), FDA is authorized to protect the public from unnecessary exposure to radiation from electronic products. Section 532 of the act directs the Secretary to establish and carry out an electronic product radiation control program designed to protect the public health and safety from electronic radiation, and authorizes the Secretary to procure (by negotiation or otherwise) electronic products for research and testing purposes and to sell or otherwise dispose of such products.

The Center for Devices and Radiological Health (CDRH) conducts laboratory compliance testing of products covered by regulations for product standards in parts 1020, 1030, 1040, and 1050 (21 CFR parts 1020, 1030, 1040, and 1050). The "Notice of Availability of Sample Electronic Product"(Form FDA 2767) is used to inform CDRH of the location of sample products that are being requested for testing to confirm that the products comply with performance standards. Form FDA 2767 is a summary form which reports information required by parts 1020, 1030, 1040, and 1050.

FDA also uses this information to locate and select sample products to ensure conformance with regulations. In the event this information were not collected by CDRH, each manufacturer would have to respond in letter format with all the data now being recorded on Form FDA 2767, which would require more time and expense. Testing an appropriate percentage of these products to protect the public would also be hindered by the slower process.

The respondents to this collection of information are manufacturers of electronic products.

FDA estimates the burden of this collection of information as follows:

TABLE 3.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Part and Form Number	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
1020, 1030, 1040, 1050, and Form FDA 2767	145	11.03	1,600	0.09	144
Totals					144

There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA's estimates are based on actual data collected from industry over the past 3 years, where there has been an average of 1,600 annual responses to FDA from 145 respondents each year.

3. Export of Medical Devices—Foreign Letters of Approval—21 U.S.C. 381(e)(2) (OMB Control No. 0910–0264—Reinstatement)

Section 801(e)(2) of the act (21 U.S.C. 381(e)(2)) provides for the exportation of an unapproved device under certain circumstances if the exportation is not contrary to the public health and safety and it has the approval of the foreign country to which it is intended for export.

Requesters communicate (either directly or through a business associate in the foreign country) with a representative of the foreign government to which they seek exportation, and written authorization must be obtained from the appropriate office within the foreign government approving the importation of the medical device.

The written authorization from the foreign country is used by the Office of Compliance, CDRH in determining if the foreign country has any objection to the importation of the device into their country. In FY 95, the Office of Compliance received approximately 800 requests from U.S. firms to export medical devices under section 801(e)(2) of the act. If approval letters from foreign governments were not submitted by the requesting firm, CDRH would then have had to contact various embassies (via telephone, for example) to seek their approval, which would have been time consuming and costly.

The respondents to this collection of information are companies that seek to export medical devices.

The foreign letters of approval are submitted under a statutory information collection requirement only. Because there is no additional burden attributable to a regulation, no burden chart is included.

4. Agreement for Shipment of Devices for Sterilization—21 CFR 801.150(a)(2) and (e) (OMB Control No. 0910–0131—Reinstatement)

Under sections 501(c) and 502(a) of the act (21 U.S.C. 351(c) and 352(a)), nonsterile devices that are labeled as sterile but are in interstate transit to a facility to be sterilized are adulterated and misbranded. FDA regulations in § 801.150(a)(2) and (e) (21 CFR 801.150(a)(2) and (e)) establish a control mechanism by which firms may manufacture and label medical devices as sterile at one establishment and ship the devices in interstate commerce for sterilization at another establishment, a practice that facilitates the processing of devices and is economically necessary for some firms. Under § 801.150(a)(2) and (e), manufacturers and sterilizers may sign an agreement containing the following: (1) Instructions for maintaining accountability of the number of units in each shipment; (2) acknowledgment that the devices are nonsterile, being shipped for further processing; and (3) specifications for sterilization processing.

This agreement allows the manufacturer to ship misbranded products to be sterilized without initiating regulatory action and provides FDA with a means to protect consumers from use of nonsterile products. During routine plant inspections, FDA normally reviews agreements that must be kept for 2 years after final shipment or delivery of devices. To discontinue this reporting and recordkeeping procedure would place an economic hardship on the industry and an additional burden on FDA to monitor product in interstate commerce for failure to comply with adulteration and misbranding provisions of the act.

The respondents to this collection of information are device manufacturers and contract sterilizers.

FDA estimates the reporting burden of this collection of information as follows:

TABLE 4.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
801.150	90	20	1,800	4	7,200

There are no capital costs or operating and maintenance costs associated with this collection of information.

No burden has been estimated for the recordkeeping requirement in § 801.150(a)(2) because these records are maintained as a usual and customary part of normal business activities. Under 5 CFR 1320.3(b)(2), the time, effort, and financial resources necessary to comply with a collection of information are excluded from the burden estimate if the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary because they would occur in the normal course of activities.

FDA's estimate of the burden is based on actual data obtained from industry during the past 3 years where there are approximately 90 firms subject to this requirement.

Dated: February 25, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–5646 Filed 3–6–97; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project

Drug Pricing Program Reporting Requirements (OMB No. 0915–0176)—Extension, No Change—Section 602 of Public Law 102–585, the Veterans Health Care Act of 1992, enacted section 340B of the Public Health Service Act (PHS Act), Limitation on Prices of Drugs Purchased by Covered Entities. Section 340B provides that a manufacturer who sells covered outpatient drugs to eligible entities must sign a pharmaceutical pricing agreement with the Secretary of Health and Human Services in which the manufacturer agrees to charge a price for covered outpatient drugs that will not exceed an amount determined under a statutory formula.

Covered entities which choose to participate in the section 340B drug discount program must comply with the requirements of section 340B(a)(5) of the PHS Act. Section 340B(a)(5)(A) prohibits a covered entity from accepting a discount for a drug that would also generate a Medicaid rebate. Further, section 340B(a)(5)(B) prohibits a covered entity from reselling or otherwise transferring a discounted drug to a person who is not a patient of the entity.

Because of the potential for disputes and/or audits involving covered entities and participating drug manufacturers; the HRSA Office of Drug Pricing Program has developed an informal dispute resolution process for manufacturers and covered entities as well as manufacturer guidelines for audit of covered entities.

Audit guidelines: A manufacturer will be permitted to conduct an audit only when there is reasonable cause to believe a violation of section 340B(a)(5)(A) or (B) has occurred. The manufacturer must submit a request for an audit of a covered entity to the HRSA Office of Drug Pricing Program. The manufacturer must then submit an audit work plan describing the audit to the HRSA Office of Drug Pricing Program for review. The manufacturer will submit copies of the audit report to the HRSA Office of Drug Pricing Program for review and resolution of the findings, as appropriate. The manufacturer will also submit an informational copy of the audit report to the HHS Office of Inspector General.

Dispute resolution guidelines: Because of the potential for audit and other disputes involving covered entities and participating drug manufacturers, the HRSA Office of Drug Pricing Program has developed an informal dispute resolution process, which can be used if an entity or manufacturer is believed to be in violation of section 340B. Prior to filing a request for resolution of a dispute with the HRSA Office of Drug Pricing Program, the parties must attempt, in good faith, to resolve the dispute. All parties involved in the dispute must maintain written documentation as evidence of a good faith attempt to resolve the dispute. If the dispute is not resolved and dispute resolution is desired, a party must submit a written request for a review of the dispute to the HRSA Office of Drug Pricing Program. A committee appointed to review the documentation will send a letter to the party alleged to have committed a violation. The party will be asked to provide a response to or a rebuttal of the allegations.

To date, there have been no requests for audits, and no disputes have reached the level where a committee review was needed. As a result, the estimates of annualized hour burden for audits and disputes have been reduced to the level shown in the table below.

Reporting requirement	Number of respondents	Responses per respondent	Total responses	Hours/response	Total burden hours
Audits:					
Audit request [1]	2	1	2	4	8
Audit workplan [1]	1	1	1	8	8
Audit report [1]	1	1	1	1	1
Entity response	1	1	1	16	16
Dispute resolution:					
Mediation request	5	1	5	8	40
Rebuttal	2	1	2	16	32
Total	10	1.2	12	8.75	105

[1] Prepared by the manufacturer.

Recordkeeping requirement	Number of recordkeepers	Hours of recordkeeping	Total burden
Dispute records	8	.5	4

Send comments to Patricia Royston, HRSA Reports Clearance Officer, Room 14–36, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: February 26, 1997.

J. Henry Montes,

Director, Office of Policy and Information Coordination.

[FR Doc. 97–5560 Filed 3–6–97; 8:45 am]

BILLING CODE 4160–15–P

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Customer Survey of Entities Eligible To Participate in the Drug Pricing Program—New

Section 602 of the Veterans Health Care Act of 1992 enacted Section 340B of the Public Health Service (PHS) Act, "Limitation of Prices of Drugs Purchased by Covered Entities." This section provides that a manufacturer that sells outpatient drugs to covered

entities must agree to charge a price that will not exceed the amount determined under a statutory formula. The covered entities—certain PHS grantees, disproportionate share hospitals (DSHs), and other selected entities, total approximately 11,000 sites. Most of these entities serve the economically disadvantaged or medically uninsured. The legislative intent of Section 340B is "to enable * * * certain Federally-funded clinics to obtain lower prices on the drugs that they provide to their patients."

Because of the significant savings that covered entities can realize if they are able to access Section 602 pricing, it is imperative to know the degree of satisfaction with various aspects of the program service and where improvements can be made; and to identify the barriers to access and what changes can be made to reduce them. The HRSA Office of Drug Pricing Program (ODPP)administers the program and has designed a survey with questions that relate to the two areas that they can modify readily: The availability of information about the program, and the design of the program. The survey also includes questions on the amount of savings realized by participating entities, how the savings are used, and factors affecting satisfaction with savings. Participating and non-participating entities will be surveyed, and the results will be used to guide program changes that will increase customer satisfaction and ultimately increase program participation.

The estimated burden is as follows:

Respondents	Number of Respondents	Responses per respondent	Burden per response (hours)	Total burden hours
Covered entities	1,508	1	.25	377

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Laura Oliven, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: March 3, 1997.

J. Henry Montes,

Director, Office of Policy and Information Coordination.

[FR Doc. 97–5559 Filed 3–6–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4124–N–28]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: March 7, 1997.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: February 27, 1997.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 97–5296 Filed 3–6–97; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget (OMB) for Extension Approval Under the Paperwork Reduction Act

SUMMARY: The proposal for the collection of information listed below has been submitted to OMB for extension approval under the provisions of the Paperwork Reduction Act. Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service Information Collection Clearance Officer at the address listed below.

DATES: Comments must be submitted on or before April 7, 1997.

ADDRESSES: Comments and suggestions on the requirement should be sent directly to the Office of Information and Regulatory Affairs; Office of Management and Budget; Attention: Interior Desk Officer; Washington, DC 20503; and a copy of the comments should be sent to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 224–ARLSQ; 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Phyllis H. Cook, Service Information Collection Clearance Officer, 703/358–1943; 703/358–2269 (fax).

SUPPLEMENTARY INFORMATION: Comments are invited on (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and, (4) ways to minimize the burden of the collection of information on respondents.

Title: Federal Subsistence Hunt Application and Permit and Designated Hunter Permit Application and Permit.

OMB Approval Number: 1018–0075.

Service Form Number(s): 7–FS 1 (Federal Subsistence Hunt Application and 7–FS 2 (Federal Subsistence Application for the Designated Hunter).

Description and Use: The Alaska National Interest Lands Conservation Act (ANILCA) and Fish and Wildlife Service regulations found in 50 CFR (Code of Federal Regulations) 100, require that persons engaged in taking fish and wildlife must comply with reporting provisions of the Federal Subsistence Board. The harvest activity must be reported. In many cases, a special permit is required for the rural resident to be able to participate in special hunts. The harvest information is needed in order to evaluate subsistence harvest success; the effectiveness of season lengths, harvest quotas, and harvest restrictions; hunting patterns and practices; and hunter use. Once harvest success information is evaluated, the Federal Subsistence Board utilizes this information, along with other information, to set future seasons and harvest limits for Federal subsistence resource users. These seasons and harvest limits are set in order to meet the needs of subsistence hunters without adversely impacting the health of existing wildlife populations.

The Federal Subsistence Hunt Application and Permit also provides a mechanism to allow Federal subsistence users the opportunity to participate in special hunts that are not available to the general public but are mandated by Title VIII of ANILCA. Both reports provide for the collection of the necessary information; however, the Designated Hunter report is unique in that it allows the reporting of the harvest of multiple animals by a single hunter who is acting for others. The Designated Hunter Application and Permit also serves as a special permit allowing qualified subsistence users to harvest fish or wildlife for others.

Frequency of Collection: On occasion.

Description of Respondents: Individuals or households.

Estimated Completion Time: .25 hours (15 minutes each).

Annual Responses: 4,500 (Federal Subsistence Hunt Application and Permit; 7,000 (Designated Hunter Permit Application and Report).

Total Annual Burden Hours: 2,875.

Dated: February 28, 1997.

Phyllis H. Cook,

Information Collection Clearance Officer.

[FR Doc. 97–5583 Filed 3–6–97; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[AZ–040–7122–00–5514; AZA 28789]

Availabiltiy of the Record of Decision (ROD) for the Morenci Land Exchange Final Environmental Impact Statement, Case Number AZA 28789, Safford Field Office, Greenlee County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the Record of Decision (ROD) for the Morenci Land Exchange Final Environmental Impact Statement, Case Number AZA 28789, Safford Field Office, Greenlee County, Arizona.

SUMMARY: The Safford Field Office, United States Department of the Interior, Bureau of Land Management has prepared a Record of Decision for the Morenci Land Exchange Final Environmental Impact Statement. The Record of Decision was signed by the Arizona BLM State director on February 7, 1997, and approves a land exchange between the United States Department of the Interior, Bureau of Land Management, Safford Field Office and Phelps Dodge Morenci, Inc.

The approved exchange involves trading 3,604.79 acres of Bureau of Land Management administered public land located in Greenlee County, Arizona for 1,040.00 acres of private lands owned by Phelps Dodge Morenci, Inc., located in Graham, Greenlee, Cochise and Pima Counties. The public and private lands involved in this trade have been appraised, by methods approved by the Federal Government, and are substantially equal in dollar value. The appraised value of the offered lands and the selected lands are within 3 percent of each other.

Approval of the land exchange will bring lands with important resource and public land management values into public ownership, and transfer BLM managed public lands to private ownership. Resource values of the private lands, transferred to Federal ownership, include an important riparian area as well as critical, occupied, and potential habitat for threatened and endangered species. The public lands, transferred to Phelps Dodge Morenci, Inc., ownership, are expected to be used for mining purposes that will enable Phelps Dodge to expand and continue operation of some features of the Morenci copper mine.

This ROD was prepared to comply with the Council on Environmental Quality's regulations (40 CFR Part 1500–1508) for implementing the National Environmental Policy Act of 1969, 43 U.S.C. at 1701.

DATES: February 21, 1997.

ADDRESSES: Safford Field Office, 711 14th Avenue, Safford, Arizona 85546.

SUPPLEMENTARY INFORMATION: Phelps Dodge Morenci, Inc., will acquire title to 26 parcels (3,604.79 acres) of public lands located in Greenlee County, adjacent to the existing Morenci mine. Fourteen of these parcels are less than 1 acre in size and are surrounded by private land. The remaining 11 parcels range in size from 5 acres to about 2,560 acres. The value of these lands has been appraised, using a federally-approved methodology, at $450,598.75.

The Bureau of Land Management will acquire title to 4 parcels of private land (1,040.00 acres) located in Greenlee, Graham, Cochise, and Pima Counties. These properties consist of: the 280 acre Eagle Creek parcel located in Greenlee/Graham Counties; the 360 acre Stewart Trust property located in Cochise County; the 320 acre Peterson parcel located in Cochise County; and 80 acres of the 240 acre Clyne parcel located in Pima County. The value of these lands has been appraised, using a federal approved methodology, at $464,000.00.

Since the appraised value of the selected (public) lands is $13,401.25 less than the appraised value of the offered (private) lands, the Bureau of Land Management must either pay Phelps Dodge Morenci, Inc., the difference or receive a waiver of payment. The Bureau of Land Management has requested a waiver, and Phelps Dodge Morenci, Inc., has agreed to waive the balancing payment of $13,401.25 pursuant to 43 CFR 2201.6.

FOR FURTHER INFORMATION CONTACT: Scott Evans, Project Manager, or Mike McQueen, Environmental Coordinator, at the Bureau of Land Management, Safford Field Office, 711 14th Avenue, Safford, Arizona 85546; telephone number (520) 428–4040. Internet address sevans@az.blm.gov or mmcqueen@az.blm.gov.

Dated: February 21, 1997.

Frank L. Rowley,

Acting Field Office Manger.

[FR Doc. 97–4976 Filed 3–6–97; 8:45 am]

BILLING CODE 4310–32–M

[AZ–040–7122–00–5514; AZA 28789]

Notice of Decision of Exchange of Lands in Greenlee, Graham, Cochise and Pima Counties, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that on February 7, 1997 Denise Meridith, Arizona State Director, Bureau of Land Management, approved the proposed land exchange between the Safford Field Office and Phelps Dodge Morenci, Inc. The Record of Decision describes the selected alternative and other alternatives considered.

The Record of Decision is available for public review at the Safford Field Office, 711 14th Avenue, Safford, Arizona 85546. Copies can also be obtained by calling Scott Evans, Project Manager, or Mike McQueen, Environmental Coordinator, at (520) 428–4040.

The following described public land has been determined to be suitable for disposal by exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), as amended:

Gila and Salt River Meridian, Arizona

T. 4 S., 28 E.,
Sec. 12, lot 15.
T. 3 S., R., 29 E.,
Sec. 15, all;
Sec. 21, SE¼SW¼, SE¼;
Sec. 22, N½NE¼, SE¼NE¼, S½;
Sec. 23, S½SW¼, SW¼SE¼;
Sec. 26, lots 1, 2, 3 and 5, W½NE¼, SE¼NE¼, NW¼, NE¼SE¼;
Sec. 27, lots 1 to 5, inclusive, N½NE¼, SE¼NE¼, NW¼NW¼;
Sec. 27, lots 1 to 6, inclusive, lots 10 and 11, N½NE¼, SW¼NE¼, NE¼NW¼;
Sec. 31, lots 1, 4, 5, and 8, W½E½;
Sec. 32, lots 22, 23, 24, 25 and 26;
Sec. 35, lots 9 to 12, inclusive, lots 17 and 18.
T. 4 S., R. 29 E.,
Sec. 1, lots 7 and 8;
Sec. 5, lots 11 and 14;
Sec. 6, lots 2, 11, 21, 24 and 25;
Sec. 7, lots 19, 20, 22, 23, 25 and 26;
Sec. 8, lots 13, 14, 16 and 17;
Sec. 11, lots 8 and 9;
Sec. 12, lots 16 to 19, inclusive;
Sec. 17, lot 15;
Sec. 18, lots 22, 25 and 26;
Sec. 20, lots 3, 9, and 14 to 19, inclusive, SW¼SW¼.
T. 5 S., R. 29 E.,
Sec. 12, lots 19, 21, 22, 23 and 24.

The areas described aggregate 3,604.79 acres.

In exchange the United States will acquired the following described land from Phelps Dodge Morenci, Inc.

Gila and Salt River Meridian, Arizona

T. 19 S., R. 18 E.,
Sec. 9, SE¼NE¼;
Sec. 10, SW¼NW¼, SW¼.
T. 14 S., R. 28 E.,
Sec. 3, E½SW¼, SW¼SW¼, SE¼;
Sec. 7, E½E½, NW¼NE¼, W½,SE¼;
Sec. 8, S½SW¼;
Sec. 10, NW¼NW¼.
T. 5 S., R. 29 E.,
Sec. 30, SW¼, W½SE¼;
Sec. 31, NW¼NE¼.

The areas described aggregate 1,040 acres.

Approval of the land exchange will bring lands with important resource and public land management values into public ownership, and transfer BLM-managed public lands to private ownership. Resource values of the private lands, transferred to Federal ownership, include an important riparian area as well as critical, occupied, and potential habitat for threatened and endangered species. The public lands, transferred to Phelps Dodge Morenci, Inc., are expected to be used for mining purposes that will enable Phelps Dodge to expand and continue operation of some features of the Morenci copper mine. The public interest will be well-served by consummating the exchange. Interested parties may submit comments concerning the Decision for the exchange to the Field Manager, Safford Field Office, 711 14th Avenue, Safford, Arizona 85546. Comments must be in writing to the field Office Manager, and be postmarked within 45 days from the publication of this notice in the **Federal Register**.

Dated: February 27, 1997.

Frank L. Rowley,

Field Office Manager.

[FR Doc. 97–5523 Filed 3–6–97; 8:45 am]

BILLING CODE 4310–32–M

[NM–060–07–1610–00 (0003)]

Availability of Proposed Roswell Resource Management Plan/Final Environmental Impact Statement and Proposed Carlsbad Resource Management Plan Amendment/Final Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM) announces the availability for public review of the Proposed Roswell Resource Management Plan (RMP)/Final Environmental Impact Statement (FEIS) and the Proposed Carlsbad Resource Management Plan Amendment (RMPA)/ Final Environmental Impact Statement. The proposed plans are combined in a single document consisting of two volumes. A 30-day protest period is provided according to the BLM's land use planning regulations at 43 CFR 1610.5–2.

The Proposed Roswell RMP describes the future management of all uses on about 1,490,000 acres of public lands in the Roswell Resource Area where both the surface and subsurface estates are in federal ownership and are administered by the BLM. The Proposed Roswell RMP also describes management for an additional 8.4 million acres of federal mineral estate where the surface is managed by other surface management agencies of the federal or New Mexico state governments, or is in private ownership. In these cases, the leasing of fluid minerals (i.e., oil and gas) is administered by the BLM. The public lands covered by the Proposed Roswell RMP, including the mineral estate, are administered by the BLM through its Roswell Resource Area Office. The Roswell Resource Area encompasses Chaves County (except for the "bootheel") and all of Lincoln, DeBaca, Roosevelt, Curry, Quay and Guadalupe counties in southeastern and east-central New Mexico.

The Proposed Carlsbad RMPA describes the future management for oil and gas resources and use on about 2,197,000 acres in the Carlsbad Resource Area where both the surface and subsurface estates are in federal ownership and are administered by the BLM. The Proposed Plan Amendment also describes management for an additional 1.9 million acres of federal mineral estate where the surface is managed by other surface management agencies of the federal or New Mexico State governments, or is in private ownership. In these cases, the leasing of fluid minerals (i.e., oil and gas) is administered by the BLM. The public lands covered by the Carlsbad RMPA, including the mineral estate, are administered by the BLM through its Carlsbad Resource Area Office. The Carlsbad Resource Area encompasses the "bootheel" of Chaves County and all of Eddy and Lea counties in southeastern New Mexico.

The Proposed Roswell Resource Management Plan/Final Environmental Impact Statement includes the designation of five areas of critical environmental concern (ACEC) totalling 64,669 surface acres. Within the boundaries of the proposed ACECs are lands that are privately-owned or owned by the State of New Mexico. The ACEC designations would pertain only to the federally-owned land surface and mineral estate managed by the BLM and to the BLM-administered federal mineral estate under state and privately-owned lands. The non-federal land surface would not be affected by the ACEC designations. The Proposed RMP designates 10 special recreation management areas (SRMA) totalling ~ 71,725 acres. Under the Proposed Plan, off-highway vehicle (OHV) use designations of open, closed or limited use would be made for the entire Roswell Resource Area. Under OHV management, 1,546 acres would be open; 1,449,878 acres would be limited to designated roads or trails; and, 38,576 acres would be closed to OHV use. Existing designations would be retained for: Outstanding Natural Area (Mescalero Sands, 6,713 acres), National Natural Landmark (Mescalero Sands, 3,280 acres; Border Hill, 150 acres; Mathers, 242 acres; Torgac Cave, 120 acres; and, Fort Stanton Cave, 985 acres), and Research Natural Area (Mathers, 242 acres).

The Proposed RMP and the Proposed RMPA are modified versions of the Preferred Alternative in the Draft RMP/ EIS and Draft RMPA/EIS. Comments on the draft plans received from the public and internal BLM review were incorporated in the Proposed RMP/FEIS and the Proposed RMPA/FEIS.

All parts of the Proposed RMP and Proposed RMPA may be protested by parties who participated in the planning process. A protesting party may raise only those issues which he or she submitted for the record during the planning process. Specific protest procedures are described in the User's Guide section of the Proposed RMP/ RMPA/FEIS. Protest procedures also can be obtained on the Internet at http://www.nm.blm.gov, or by contacting the Roswell District Office at the address listed below under **FURTHER INFORMATION.**

DATES: Protests on the Proposed Roswell RMP/FEIS or the Proposed Carlsbad RMPA/FEIS must be postmarked no later than the last day of the protest period, which is April 5, 1997.

ADDRESSES: Protests on the Proposed Roswell RMP/FEIS or the Proposed Carlsbad RMPA/FEIS must be filed in writing to: Director (WO–210), Bureau of Land Management, Attn: Brenda Williams, 1849 C Street, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: David Stout, Bureau of Land Management, Roswell District Office, 2909 West Second Street, Roswell, New Mexico, 88201, telephone 505–627–0272.

SUPPLEMENTARY INFORMATION: The Proposed Roswell RMP/FEIS and the Proposed Carlsbad RMP/FEIS are published as a single document composed of two volumes. Volume 1 contains the Proposed Plan and Proposed Plan Amendment, and supporting material. Volume 2 contains public comments and the BLM's responses to those comments. The alternatives considered in the Draft RMP/EIS and Draft RMPA/EIS, the environmental effects of those alternatives, the affected environment discussion, some appendixes and the references have not been reprinted in the Proposed RMP/RMPA/FEIS. It is necessary, therefore, to use both the Draft and Final EIS documents for a complete review of the EIS.

Copies of the Draft RMP/RMPA/EIS and the Proposed RMP/RMPA/FEIS may be obtained from the Roswell District Office, at the address listed above in **FURTHER INFORMATION.** Volume 1 of the Proposed RMP/RMPA/FEIS can be viewed on, and downloaded from, the Internet at http://www.nm.blm.gov.

The Proposed Plan is a complete, comprehensive management proposal for the public surface and mineral estate in the Roswell Resource Area. The Proposed Plan Amendment is a complete, comprehensive management proposal for oil and gas resources on public lands in the Carlsbad Resource Area. The Proposed Plan and Proposed Plan Amendment are refinements of the BLM's Preferred Alternative presented in the Draft RMP/RMPA/EIS, which was made available for public review in November 1994. Comments from the public, review by BLM staff, and new information developed since the distribution of the draft have prompted some changes in the Preferred Alternative. The environmental effects of the Proposed Plan and Proposed Plan Amendment are not greatly different from those of the Preferred Alternative.

The Proposed Plan focuses on the comprehensive management of the public lands and the resolution of four key issues and two management opportunities, which were identified with public involvement early in the planning processes. The issues are: (1) Oil and Gas Operations; (2) Land Tenure Adjustment; (3) Access; and, (4) Special Management Areas. The management opportunities are: (1) Recreation; and, (2) Wildlife Habitat Management.

The Proposed Plan Amendment focuses on comprehensive management of the oil and gas resources on public lands and the resolution of the key issue of Oil and Gas Operations, which was identified with public involvement early in the planning processes.

At the end of the 30-day protest period, the Proposed RMP and the Proposed RMPA will become final. If protests are filed, however, approval of the entire RMP or RMPA, or both, will be withheld pending resolution of the protests. The Approved RMP and Approved RMPA will be published following approval of the Record of Decision (ROD) for each plan. Individuals wanting to comment on one or both of the plans, but not wanting to file a protest, may send comments to the BLM, Roswell District Office, 2909 West Second Street, Roswell, New Mexico, 88201, within the 30-day protest period. Comments received will be considered in the preparation of the RODs.

Copies of the Proposed RMP/RMPA/ FEIS have been distributed to a mailing list of participants in the planning process and other interested parties. Single copies of the Proposed RMP/ RMPA/FEIS may be obtained from the Roswell District Office at the address listed above under **FURTHER INFORMATION.** Copies may be reviewed at any BLM office in New Mexico or Oklahoma; at public libraries in Alamogordo, Albuquerque, Artesia, Carlsbad, Clovis, Eunice, Fort Sumner, Hobbs, Jal, Lovington, Portales, Roswell, Ruidoso, Santa Rosa, Tatum, and Tucumcari, New Mexico; in school libraries in Capitan, Carrizozo, Corona, and Vaughn, New Mexico; and in university libraries in Las Cruces, Carlsbad, Roswell, and Portales, New Mexico.

In accordance with the provisions of 36 CFR Part 800, parties who are interested in and who wish to be involved in future activity planning and implementation of management actions that may involve or affect the archeological and historical resource aspects addressed in the Proposed Plan or Proposed Plan Amendment are requested to identify themselves. Contact the Roswell District Office at the address listed above under **FURTHER INFORMATION** to be placed on a future contact list.

Dated: February 24, 1997.

Edwin L. Roberson,

District Manager.

[FR Doc. 97–5513 Filed 3–6–97; 8:45 am]

BILLING CODE 4310–VA–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decrees Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that three proposed consent decrees in *United States* v. *Farmer Oil, et al.*, Civil Action No. 95–CV–3231, were lodged on February 14, 1997, with the United States District Court for the Northern District of Georgia. The consent decrees settle claims against separate defendants brought under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9607(a), for response costs incurred by the United States at the Daytona Antifreeze site (the "Daytona site") in Marietta, Georgia. Under the proposed consent decrees, defendant Houghton International, Inc. ("Houghton") will pay $133,000 to the United States in reimbursement of response costs incurred by the Environmental Protection Agency ("EPA") in connection with the Daytona site, while defendants Farmer Oil Company, Inc. ("Farmer") and American Environmental Contractors, Inc. ("American") will each pay $20,000 in reimbursement. EPA has incurred costs in excess of $357,000 in connection with the Daytona site.

Previous settlements with defendants Watkins Omega, Inc. and Enterprise Waste Oil Company, Inc. have secured $45,000 in reimbursement.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decrees. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Farmer Oil, et al.*, DOJ Ref. #90–11–2–1145A.

The proposed consent decrees may be examined at the Office of the United States Attorney, Richard Russell Federal Building, Suite 1800, 75 Spring Street, S.W., Atlanta, Georgia 30335; the Region 4 Office of the Environmental Protection Agency, 100 Alabama Street, S.W., Atlanta, Georgia 30303; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decrees may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $3.50 for the Consent Decree between the U.S. and Houghton International; $3.75 for the Consent Decree between the U.S. and American Environmental Contractors, Inc.; and $4.00 for the Consent Decree between the U.S. and Farmer Oil, Inc. (25 cents per page reproduction costs) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–5593 Filed 3–6–97; 8:45 am]

BILLING CODE 4410–15–M

Notice of Lodging of Two Consent Decrees Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as Amended

In accordance with Department of Justice policy and 42 U.S.C. 9622(i), notice is hereby given that a proposed partial consent decree in *United States* v. *International Paper Company, et al.*, Civil No. 94–4681 (BDP); *Warwick Administrative Group, et al.* v. *Avon Products, Inc., et al.*, Civil No. 92–9469 (BDP) (Consolidated Cases), was lodged on *February 14*, 1997, with the United States District Court for the Southern District of New York. The decree resolves claims of the United States against Revere Smelting and Refining Corporation and Lightron Corporation in the above-referenced action under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") for contamination at the Warwick Superfund Site in the Town of Warwick, Orange County, New York (the "Site"). In the proposed partial consent decree, Revere Smelting and Refining Corporation agrees to pay the United States $1,070, and Lightron Corporation agrees to pay the United States $5,704 in settlement of the United States' claims for response costs incurred and to be incurred by the Environmental Protection Agency at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *International Paper Company, et al.*, DOJ Ref. Number 90–11–3–812.

The proposed consent decree may be examined at the Office of the United States Attorney, 100 Church Street, New York, NY 10007; the Region II Office of the Environmental Protection Agency, 290 Broadway, New York, NY 10278; and the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $6.00 for the partial consent decree (25 cents per page reproduction costs) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–5594 Filed 3–6–97; 8:45 am]

BILLING CODE 4410–15–M

[AAG/A Order No. 128–97]

Privacy Act System of Records

This notice is provided as required by the Privacy Act (5 U.S.C. 552a). The Department of Justice, Immigration and Naturalization Service (INS), is republishing Subsection M. of "The Immigration and Naturalization Service Index System, Justice/INS–001,"—last published October 5, 1993 (58 FR 51847)—as a separate system of records to be entitled "Office of Internal Audit Investigations Index and Records, JUSTICE/INS–002." Subsection M. is being redescribed as a separate system of records to improve the clarity and accuracy of the system description, e.g., to remove inapplicable routine use disclosure provisions and exemptions, re-evaluate and promulgate the appropriate exemptions, and add two new routine use disclosure provisions identified as C. and H.

5 U.S.C. 552a(e) (4) and (11) provide that the public be given a 30-day period in which to comment on new routine use disclosures. The Office of Management and Budget (OMB), which has oversight responsibilities under the Act, requires a 40-day period in which to conclude its review of the proposal.

Therefore, please submit any comments by April 7, 1997. The public, OMB, and the Congress are invited to send written comments to Patricia E. Neely, Program Analyst, Information Management and Security Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 850, WCTR Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress.

Dated: February 11, 1997.

Stephen R. Colgate,

Assistant Attorney General for Administration.

JUSTICE/INS–002

SYSTEM NAME:

Office of Internal Audit Investigations Index and Records

SYSTEM LOCATION:

Headquarters office, Immigration Naturalization Service (INS), 425 I Street, NW, Washington, DC In addition, field offices of the INS have access only to hardcopy files during an investigation. A complete address list is detailed in JUSTICE/INS–999.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

In connection with its investigative duties, the Office of Internal Audit (OIA) will maintain records on the following categories of individuals:

(a) Individuals or entities who are or have been the subject of inquiries or investigations conducted by the INS including current or former employees; current and former consultants, contractors, and subcontractors with whom the agency has contracted and their employees; and such other individuals or entities whose association with the INS relates to alleged violation(s) of the INS' rules of conduct, the Civil Service merit system, and/or criminal or civil law, which may affect the integrity of the INS.

(b) Individuals who are witnesses; complainants; confidential or nonconfidential informants; and parties who have been identified by the INS or by other Federal Government agencies, or parties to an investigation under the jurisdiction of the INS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information relating to investigations, including:

a. Letters, memoranda, and other documents citing complaints of alleged criminal, civil or administrative misconduct.

b. Investigative files which include: Reports of investigations to resolve allegations of misconduct or violations of law with related exhibits, statements, affidavits or records obtained during investigations; prior criminal or noncriminal records of individuals as they relate to the investigations; reports from or to other law enforcement bodies; information obtained from informants and identifying data with respect to such informants; nature of allegations made against suspects and identifying data concerning such subjects; and public source materials.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) Sections 103, 265 and 290 and Title III of the Immigrations and Nationality Act (66 Stat. 163), as amended (8 U.S.C. 1103; 8 U.S.C. 135; 8 U.S.C. 1360), and the regulations pursuant thereto; and (2) Inspector General Act of 1978, 5 U.S.C. App., as amended by the Inspector General Act Amendments of 1988.

PURPOSE(S):

The INS OIA will maintain this system of records in order to meet its responsibilities as assigned pursuant to the Inspector General Act of 1978, 5 U.S.C. App., as amended by the Inspector General Act Amendments of 1988. Records in this system are used in the course of investigating individuals and entities suspected of having committed illegal or unethical acts and in the course of conducting related criminal prosecutions, civil proceedings, or administrative actions. Further, this system of records is used to monitor case assignment, disposition, status, and results.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant information contained in this system of records may be disclosed as follows:

A. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

B. To General Services Administration and National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

C. To complainants and/or victims to the extent necessary to provide such persons with information and explanations concerning the progress and/or results of the investigation or case arising from the matters of which they complained and/or of which they were a victim.

D. In the event that records indicate a violation or potential violation of law, whether arising by general statute or particular program statute, or by rule, regulation, or order pursuant thereto, or if records indicate a violation or potential violation of the terms of a contract or grant, the relevant records may be disclosed to the appropriate agency, whether Federal, State, local, foreign, or international, charged with the responsibility of investigating or prosecuting such contract or grant.

E. To a Federal, State, local, foreign or international agency, or to an individual or organization when necessary to elicit information which may assist an INS investigation, inspection or audit.

F. To a Federal, State, local, foreign, or international agency maintaining civil, criminal or other relevant information if necessary to obtain information relevant to an INS decision concerning the reassignment, promotion or retention of an individual, the issuance or revocation of a security clearance, the reporting of an investigaiton of an individual, the letting of a contract, or the issuance or revocation of a license or other benefit.

G. To a Federal, State, local, foreign or international agency in response to its request in connection with the assignment, hiring or retention of an individual, the issuance or revocation of a security clearance, the reporting of an investigation of an individual, letting of a contract, or the issuance or revocation of a license, grant or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

H. To an administrative forum, including forums which may or may not include an Administrative Law Judge, and which may or may not convene public hearings/proceedings, or to other established adjudicatory or regulatory agenices, e.g., the Merit System Protection Board, the National Labor Relations Board, or other agencies with similar or related statutory responsibilities, where necessary to adjudicate decisions affecting individuals who are the subject of OIA investigations and/or who are covered by this system, including (but not limited to) decisions to effect any necessary remedial actions; e.g., the initiation of debt collection activity, disciplinary and/or other appropriate personnel actions, and/or other law enforcement related actions, where appropriate.

I. A record, or any facts derived therefrom, may be disseminated in a proceeding before a court or adjudicative body before which INS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by INS to be arguably relevant to the litigation: (i.) INS, or any subdivision thereof, or (ii.) any employee of INS in his or her official capacity, or (iii.) any employee of INS in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (iv.) the United States, where INS determines that the litigation is likely to afford it or any of its subdivisions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in locked file cabinets and in a computerized environment.

RETRIEVABILITY:

Generally, records are indexed and retrieved by OIA Case Number, Office of the Inspector General (OIG) Case Number, and surnames of the individuals covered by the system. These items are cross referenced within the data base and can be used alone or in conjunction with each other to retrieve a file.

SAFEGUARDS:

INS offices are located in buildings under security guard, and access to premises is by official identification. All records are stored in spaces which are locked outside of normal office hours. Many records are stored in cabinets or machines which are locked outside of normal office hours. Access to the automated system is controlled by restricted password for use of remote terminals in secured areas.

RETENTION AND DISPOSAL:

Records in this system are retained and disposed of in accordance with General Records Schedule 22.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Internal Audit, Immigration and Naturalization Service, 425 I Street, NW Washington, DC 20536.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to the system manager noted above or to the FOIA/PA Officer at the INS office where the record is maintained or the FOIA/PA Officer at 425 I Street NW, Washington, DC, 20536.

RECORD ACCESS PROCEDURE:

The major part of this system is exempted from this requirement pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). To the extent that this system of records is not subject to exemption, it is subject to access. A determination as to the granting or denial of access shall be made at the time a request is received. Requests for access to records in this system shall be in writing, and should be addressed to the System Manager or the appropriate FOIA/PA Officer. Such request may be submitted either by mail or in person. If a request for access is made in writing, the envelope and letter shall be clearly marked "Privacy Access Request." The requester shall include a description of the general subject matter and, if known, the related file number. To identify a record relating to an individual, the requester should provide his or her full name, date and place of birth, verification of identity (in accordance with 8 CFR 103.21(b)), and any other identifying information which may be of assistance in locating the record. The requester shall also provide a return address for transmitting the records to be released.

CONTESTING RECORD PROCEDURES:

The major part of this system is exempted from this requirement pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to the granting or denial of a request shall be made at the time a request is received. An individual desiring to request amendment of records maintained in the system should direct his or her request to the System Manager or the appropriate FOIA/PA officer at the INS office where the record is maintained or (if unknown) to the INS FOIA/PA Officer at 425 I Street, NW, Washington, DC 20536. The request should state clearly what information is being contested, the reasons for contesting it, and the proposed amendment to the information.

RECORD SOURCE CATEGORIES:

The subjects of investigations; individuals with whom the subjects of investigations are associated; current and former INS officers and employees; officials of Federal, State, local and foreign law enforcement and non-law enforcement agencies; private citizens, witnesses; confidential and nonconfidential informants; and public source materials.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c) (3) and (4); (d); (e) (1), (2), (3), (5) and (8); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the system has been exempted from subsections (c)(3); (d) and (e)(1) pursuant to 5 U.S.C. 552a(k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c), and (e) and have been published in the **Federal Register** as additions to Title 28, Code of Federal Regulations (28 CFR 16.99).

[FR Doc. 97–5664 Filed 3–6–97; 8:45 am]

BILLING CODE 4410–10–M

[AAG/A Order No. 129–97]

Privacy Act of 1974; Modified System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the Immigration and Naturalization Service (INS), Department of Justice, proposes to modify the following system of records which was previously published on April 8, 1996, (61 FR 15518): The Immigration and Naturalization Service (INS) Alien File (A-File) and Central Index System (CIS), Justice/INS–001A.

Specifically, INS is adding a new routine use disclosure identified as routine use Q.

Title 5 U.S.C. 552a(e) (4) and (11) provide that the public be given a 30-day period in which to comment on proposed new routine use disclosures. The Office of Management and Budget (OMB), which has oversight responsibilities under the Act, requires a 40-day period in which to conclude its review of the proposal.

Therefore, please submit any comments April 7, 1997. The public, OMB, and the Congress are invited to send written comments to Patricia E. Neely, Program Analyst, Information Management and Security Staff, Justice Management Division, Department of Justice, Washington, D.C. 20530 (Room 850, WCTR Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress on the proposed modification.

Dated: February 13, 1997.

Stephen R. Colgate,

Assistant Attorney General for Administration.

JUSTICE/INS–001A

SYSTEM NAME:

The Immigration and Naturalization Service (INS) Alien File (A-File) and Central Index System (CIS).

SYSTEM LOCATION:

Headquarters, Regional, District, and other INS file control offices in the United States and foreign countries as detailed in JUSTICE/INS–999. Remote access terminals will also be located in other components of the Department of Justice and in the Department of State on a limited basis.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A. Individuals covered by provisions of the Immigration and Nationality Act of the United States.

B. Individuals who are under investigation, were investigated in the past, or who are suspected of violating the criminal or civil provisions of treaties, statutes, Executive Orders, and Presidential proclamations administered by INS, and witnesses and informants having knowledge of such violations.

CATEGORIES OF RECORDS IN THE SYSTEM;

A. The computerized indexing system contains personal identification data such as A-File number, name, date, and place of birth, date and port of entry, as well as the location of each official hardcopy paper file known as the "A-file." Microfilm records contain naturalization certificates and any supporting documentation prior to April 1, 1956; however, after that date, this type of information is maintained in the "A-File" which is described in B below.

B. The hard copy A-file (prior to 1940 were called Citizenship File (C-File)) contains all the individual's official record material such as naturalization certificates; various forms, applications and petitions for benefits under the immigration and nationality laws; reports of investigations; statements; reports; correspondence; and memorandums on each individual for whom INS has created a record under the Immigration and Nationality Act.

AUTHORITY FOR MAINTENANCE OF RECORDS:

Sections 103 and 290 of the Immigration and Nationality Act, as amended (18 U.S.C. 1103 and 8 U.S.C. 1360), and the regulations pursuant thereto.

PURPOSE:

The system is used primarily by INS and other Department of Justice employees to administer and enforce the immigration and nationality laws, and related statutes, including the processing of applications for benefits under these laws, detecting violations of these laws, and the referral of such violations for prosecution.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant information contained in this system of records may be disclosed as follows:

A. To clerks and judges of courts exercising naturalization jurisdiction for the purpose of filing petitions for naturalization and to enable such courts to determine eligibility for naturalization or grounds for revocation of naturalization.

B. To the Department of State in the processing of petitions or applications for benefits under the Immigration and Nationality Act, and all other immigration and nationality laws, including treaties and reciprocal agreements.

C. To other Federal, State, and local government law enforcement and regulatory agencies and foreign governments, including the Department of Defense and all components thereof, the Department of State, the Department of the Treasury, the Central Intelligence Agency, the Selective Service System, the United States Coast Guard, the United Nations, and INTERPOL, and individuals and organizations during the course of investigation in the processing of a matter or during a proceeding with the purview of the immigration and nationality laws to elicit information required by INS to carry out its functions and statutory mandates.

D. To a Federal, State, local or foreign government agency or organization, or international organization, lawfully engaged in collecting law enforcement intelligence information, whether civil or criminal, and/or charged with investigating, prosecuting, enforcing or implementing civil and/or criminal laws, related rules, regulations or orders, to enable these entities to carry out their law enforcement responsibilities, including the collection of law enforcement intelligence.

E. A record, or any facts derived therefrom, may be disseminated in a proceeding before a court or adjudicative body before which INS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by INS to be arguably relevant to the litigation: (i.) INS, or any subdivision thereof, or (ii.) any employee of INS in his or her official capacity, or (iii.) any employee of INS in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (iv.) the United States, where INS determines that the litigation is likely to affect it or any of its subdivisions.

F. To a Federal, State, local or foreign government agency in response to its request, in connection with the hiring or retention by such agency of an employee, the issuance of a security clearance, the reporting of an investigation of such an employee, the letting of a contract, or the issuance of a license, grant, loan or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

G. To a Federal, State, local or foreign government agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a decision of INS concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit.

H. To the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in the Circular.

I. To other Federal agencies for the purpose of conducting national intelligence and security investigations.

J. To an applicant, petitioner or respondent or to his or her attorney or representative as defined in 8 CFR 1.1(j) in connection with any proceeding before INS.

K. To a Federal, State, or local government agency to assist such agencies in collecting the repayment of loans, or fraudulently or erroneously secured benefits, grants, or other debts owed to them or to the United States Government, and/or to obtain information that may assist INS in collecting debts owed to the United States government: to a foreign government to assist such government in collecting the repayment of loans, or fraudulently or erroneously secured benefits, grants, or other debts owed to it provided that the foreign government in question: (1) provides sufficient documentation to establish the validity of the stated purpose of its request, and (2) provides similar information to the United States upon request.

L. To student volunteers whose services are accepted pursuant to 5 U.S.C. 3111 or to students enrolled in a college work study program pursuant to 42 U.S.C. 2751 et seq.

M. To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of a personal privacy.

N. To a Member of Congress or staff acting on the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

O. To the General Services Administration and the National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

P. To an obligor, any information which may aid the obligor in locating an individual for purposes of appearing at a deportation hearing, exclusion or other similar proceeding, and for whom the obligor had posted an immigration bond in an effort to secure such appearance by such individual.

Q. To an official coroner for purposes of affirmatively identifying a deceased individual (whether or not such individual is deceased as a result of a crime).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Most A-file and C-file records are paper documents and are stored in file folders. Some microfilm and other records are stored in manually operated machines, file drawers, and filing cabinets. Those index records which can be accessed electronically are stored in a data base on magnetic disk and tape.

RETRIEVABILITY:

These records are indexed and retrieved by A-file or C-file number, name, and/or date of birth.

SAFEGUARDS:

INS offices are located in buildings under security guard, and access to premises is by official identification. All records are stored in spaces which are locked during non-duty office hours. Many records are stored in cabinets or machines which are also locked during non-duty office hours. Access to

automated records is controlled by passwords and name identifications.

RETENTION AND DISPOSAL:

A-file records are retained for 75 years from the closing date or date of last action and then destroyed. C-file records are to be destroyed 100 years from March 31, 1956. Automated index records are retained only as long as they serve a useful purpose and then they are deleted from the system disk and/or tape.

SYSTEM MANAGER(S) AND ADDRESS:

The Servicewide system manager is the *Assistant Commissioner, Office of Records, Office of Examinations,* Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager identified above, the nearest INS office, or the INS office maintaining desired records, if known, by using the list of principal offices of the Immigration and Naturalization Service Appendix: JUSTICE/INS–999, published in the **Federal Register**.

RECORD ACCESS PROCEDURE:

Make all requests for access in writing to the Freedom of Information Act/Privacy Act (FOIA/PA) officer at one of the addresses identified above. Clearly mark the envelope and letter "Privacy Act Request." Provide the A-file number and/or the full name, date and place of birth, and notarized signature of the individual who is the subject of the record, and any other information which may assist in identifying and locating the record, and a return address. For convenience, INS Form G–639, FOIA/PA Request, may be obtained from the nearest INS office and used to submit a request for access.

CONTESTING RECORDS PROCEDURES:

Direct all requests to contest or amend information to the FOIA/PA Officer at one of the addresses identified above. State clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment thereof. Clearly mark the envelope "Privacy Act Request." The record must be identified in the same manner as described for making a request for access.

RECORD SOURCE CATEGORIES:

Basic information contained in INS records is supplied by individuals on Department of State and INS applications and forms. Other information comes from inquiries and/or complaints from members of the general public and members of congress; referrals of inquiries and/or complaints directed to the White House or Attorney General; INS reports to investigations, sworn statements, correspondence and memorandums; official reports, memorandums, and written referrals from other entities, including Federal, State, and local governments, various courts and regulatory agencies, foreign government agencies and international organizations.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c) (3) and (4); (d); (e) (1), (2), and (3); (e)(4) (G) and (H); (e) (5) and (8); and (g) of the Privacy Act. These exemptions apply to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552 (j) and (k). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c), and (e) and have been published in the **Federal Register** and codified as additions to Title 28, Code of Federal Regulations (28 CFR 16.99).

[FR Doc. 97–5665 Filed 3–6–97; 8:45 am]
BILLING CODE 4410–10–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Commercenet Consortium

Notice is hereby given that, on December 16, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), CommerceNet Consortium, ("CommerceNet") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing certain changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the following organizations have joined CommerceNet as Associate Members: Balcom Systems Technology, Santa Clara, CA; BaseX Systems, Inc., Dallas, TX; Identicator, San Bruno, CA; Isadra, Inc., Palo Alto, CA; Korea Information & Communications Co., Seoul, KOREA; SpaceWorks, Inc., Rockville, MD; TEN–IO, Campbell, CA; TIAA–CREF, New York, NY; and YY Software Corporation, Palo Alto, CA.

No other changes have been made in either the membership or planned activities of CommerceNet. Membership remains open and CommerceNet intends to file additional written notifications disclosing all changes in membership.

On June 13, 1994, CommerceNet filed its original notification pursuant to § 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to § 6(b) of the Act on August 31, 1994 (59 FR 45012).

The last notification was filed with the Department on November 15, 1996. A notice was published in the **Federal Register** on January 2, 1997 (62 FR 106).

Constance K. Robinson
Director of Operations, Antitrust Division.
[FR Doc. 97–5597 Filed 3–6–97; 8:45 am]
BILLING CODE 4410–11–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993 Consortium for Plasma Science, LLC

Notice is hereby given that, on February 5, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Consortium for Plasma Science, LLC has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objective of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Alpha Therapeutic Corporation, Los Angeles, CA; Baxter Healthcare Corporation, Deerfield, IL; Bayer Corporation, West Haven CN; Centeon L.L.C., King of Prussia, PA; and NABI, Boca Raton, CA. The general area of planned activity is to develop, promote and conduct research and development to address improvements in safety in blood plasma and blood plasma products.

Constance K. Robinson,
Director of Operations Antitrust Division.
[FR Doc. 97–5596 Filed 3–6–97; 8:45 am]
BILLING CODE 4410–11–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Frame Relay Forum

Notice is hereby given that, on December 26, 1996, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Frame Relay Forum ("Forum") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following have joined the Forum as new members: ACSI, Annapolis Junction, MD; Control Resources Corporation, Fair Lawn, NJ; Turk Telekom A.S., Ankara, Turkey; DHL Worldwide Express, Burlingame, CA; Farallon Communications, Alameda, CA; and Telecomm Multimedia, Irvine, CA.

No other changes have been made in either the membership or planned activity of the forum. Membership remains open and the Forum intends to file additional written notifications disclosing all membership changes.

On April 10, 1992, the Forum filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 2, 1992 (57 FR 29537). The last notification was filed on October 3, 1996. A notice was published in the **Federal Register** on November 5, 1996 (61 FR 56970).

Constance K. Robinson,
Director of Operations, Antitrust Division.
[FR Doc. 97–5599 Filed 3–6–97; 8:45 am]
BILLING CODE 4410–11–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Microelectronics and Computer Technology Corporation

Notice is hereby given that, on December 18, 1996, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Microelectronics and Computer Technology Corporation ("MCC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new Associate Members are as follows: Science Applications International Corporation ("SAIC"), La Jolla, CA; NationsBank, Charlotte, NC; and Bolt, Baranek and Newman ("BBN") Corporation, Cambridge, MA.

No other changes have been made in either the membership or planned activity of MCC. Membership remains open and MCC intends to file additional written notifications disclosing all membership changes.

On December 21, 1984, MCC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 17, 1985 (50 FR 2633). The last notification was filed with the Department on August 30, 1996 and appeared in the **Federal Register** on September 27, 1996 (61 FR 50876).

Constance K. Robinson,
Director of Operations, Antitrust Division.
[FR Doc. 97–5595 Filed 3–6–97; 8:45 am]
BILLING CODE 4410–11–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Motorola Electronic Systems Manufacturing Consortium

Notice is hereby given that, on January 10, 1997, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Motorola Electronic Systems Manufacturing Consortium ("Consortium") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are: Motorola, Inc., Schaumburg, IL; Georgia Tech Research Corporation, Atlanta, GA; and Electronic Packaging Services, Atlanta, GA.

The Consortium's area of planned activity is to develop mechanical design and analysis methodology using advanced computer simulation and modeling capabilities allowing rapid development of low cost mixed mode modules.

Membership in the Consortium will remain open and the Consortium will file additional written notifications disclosing all changes in membership.

Constance K. Robinson,
Director of Operations, Antitrust Division.
[FR Doc. 97–5600 Filed 3–6–97; 8:45 am]
BILLING CODE 4410–11–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—the Salutation Consortium, Inc.

Notice is hereby given that, on January 9, 1997, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (" the Act"), the Salutation Consortium, Inc. ("Consortium") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following have joined the Consortium: Sun Microsystems, Inc., Palo Alto, CA; and Justsystem, Tokyo, JAPAN.

No other changes have been made in the membership or the planned activity of the Consortium. Membership remains open and the Consortium intends to file additional written notifications disclosing all changes in membership.

On March 30, 1995, the Consortium filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 27, 1995 (60 FR 33233). The last notification was filed on October 15, 1996. The Department of Justice published a notice in the **Federal Register** on December 11, 1996 (61 FR 65239).

Constance K. Robinson,
Director of Operations, Antitrust Division.
[FR Doc. 97–5598 Filed 3–6–97; 8:45 am]
BILLING CODE 4410–11–M

Office of Justice Programs

Bureau of Justice Assistance

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; Church arson prevention grant program final reporting form.

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on December 23, 1996, in accordance with emergency review procedures and the 60 day public comment period.

The purpose of this notice is to allow an additional 30 days for public

comments on or until April 7, 1997. This process is conducted in accordance with the Code of Federal Regulations 5 CFR 1320.10. Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street NW., Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to 202–514–1590. Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) enhance the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of information collection: New data collection.

(2) The title of the form/collection: Church Arson Prevention Final Reporting Form.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection. Form: None. Bureau of Justice Assistance, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract. Primary: County units of government. Other: None. This data collection will gather information from each jurisdiction on general spending operations within the purpose areas of the grant.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 587 respondents at 30 minutes per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 293 annual burden hours.

Public comment on this proposed information collection is strongly encouraged.

Dated: March 4, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–5667 Filed 3–6–97; 8:45 am]

BILLING CODE 4410–18–M

National Institute of Corrections

Request for Applications

Authority: Public Law 93–415.

Summary: The Department of Justice (DOJ), National Institute of Corrections (NIC) announces the availability of funds in FY '97 for a cooperative agreement to deliver the project, Intermediate Sanctions for Women Offenders: A Program of Training and Technical Assistance for Selected Local Jurisdictions.

Purpose: The National Institute of Corrections is seeking proposals for a cooperative agreement to assist four, high population local jurisdictions in examining their sentencing practices for women offenders and developing a system of correctional options that is more effective and appropriate for women.

A cooperative agreement is an assistance relationship in which the National Institute of Corrections is substantially involved in all aspects of the project during the performance of the award. An award is made to an organization who will, in concert with the Institute, provide technical assistance to selected jurisdictions. No funds are transferred to State or local governments.

Project Objectives

The objectives of the Project are to work collaboratively with jurisdictions to:

1. Develop a sound information base regarding the offense and background characteristics of the jurisdiction's women offenders; current sentencing practices, supervision processes, and programs; and responses to women offenders' needs by community corrections and human service agencies.

2. Use the databases and the experiences of the team members and others to explore the existing community sanctioning options and their outcomes for women offenders and identify gaps in the range of sanctions and services.

3. Develop a sound conceptual plan for creating a range of desired intermediate sanctions that includes both concrete action steps for initiation of the plan within six months and a statement of where the community corrections system should be in 3 to 5 years with its sanctioning policies and services for women offenders.

4. Document the policy and program development process.

Design and Content of the Project

In broad outline, the Project will provide training and technical assistance to support policy and program development, on intermediate sanctions for women offenders, by system-wide actors in four jurisdictions. Applicants may be any adult probation, parole or other community based corrections agency in a local jurisdiction with a population of 200,000 or more.

The focus of the Project's work will be a policy group or team of key criminal justice decision makers, human services administrators, and public and private local corrections managers. The community corrections agency will be expected to take the lead in forming a policy team or working with an existing or modified policy forum. The agencies must be willing to involve these critical decision makers in a process of exploring current sentencing practices for women offenders, and developing consensus on gaps or problems with intermediate sentencing options and appropriate solutions to those problems. The process must be grounded in the use of sound information on sentencing practices and program outcomes.

Project assistance will consist of three national meetings for a leadership team of three members from each jurisdiction, facilitation of the site specific policy team work, the technical assistance tailored to the needs of each jurisdiction. A complete description of the Project can be found on pages 6–7 in the NIC Annual Program Plan, Fiscal Year 1997. To obtain a copy of the Program Plan, please call Judy Evens at 1–800–995–6423, ext. 159.

Project Status

Five jurisdictions responded to the Project announcement by the October 15, 1996, deadline. Applications were received from counties/cities in California, Illinois, Massachusetts, New York and Ohio.

The Community Corrections Division has completed both an initial review of the applications and site-visits to some of the jurisdictions in order to obtain a more complete picture of the level of interest, the presenting problems and the commitment of key members of the policy teams. Decisions regarding applicant selection will be made by February 28, 1997.

Cooperative Agreement Scope of Work

Applicants should propose an integrated training and technical assistance approach which will accomplish the following tasks:

1. National Meetings for Site Teams

The awardee will design and conduct three national meetings for three to four person teams from each of the participating sites. The meetings will be 2–3 days in length. The purposes of the meetings are to clarify and develop: the project's conceptual framework and problem-solving activities; information base development and analysis; strategies to effectively manage work groups; approaches to establishing links with community resources; individual site action plans; and other critical issues in sentencing and managing women offenders. The work will include:

a. Planning the meeting agendas, preparing faculty, and conducting the two or three day meetings for up to four team members from each site. NIC will retain final approval of the meeting goals, curricula and faculty selection.

b. Identifying meeting locations, making all logistical arrangements, and paying the per diem, lodging and ground transportation of faculty and participants. The travel expenses (airline or train) for these meetings for three persons from each site and faculty will be paid directly by NIC through individual authorization letters. This arrangement allows the use of lower cost Government fares and the scheduling of meetings on those days of the week which are most convenient for all involved. Sites may send additional team members at their own expense.

2. Site Coordination and Technical Assistance

The awardee will provide the expertise to support the ongoing work of the sites. This will include designating a staff contact/facilitator for each site team who serves as a co-strategist to the leadership team, assesses technical assistance needs and arranges other critical, technical assistance between the national meetings.

Site specific technical assistance may include issues such as: maintaining productive policy teams; strategic planning and the policy development process; information development; and developing strategies for building public support. Applicants are encouraged to explore the use of video conferencing to augment on-site activities when the technology satisfies project needs and is cost effective. Actual costs have not been determined on the basis of experience. The awardee will work with NIC to determine precise costs; however, the following cost estimates are believed to be representative:

a. Video conferencing can be scheduled and initiated from NIC offices in Washington, D.C., and Longmont, Colorado—in some instances at no cost to the project. There may be a $130 per hour connection fee if the receiving location is a commercial site. An additional $55 per hour connection fee may be charged for each location on a multi point call. These costs would be the responsibility of the awardee.

b. Costs at the receiving end—or for calls initiated from other than NIC locations—would be the responsibility of the grantee or participating jurisdiction. Some jurisdictions may have free access to their own video conference equipment.

c. It is estimated that receiving end, commercial rental rates per site can range from $150 to $180 per hour for point-to-point conferences; and from $210–$240 per hour for multi point conferences. Estimated costs for initiating SPRINT compatible video conferences from commercial locations would need to be determined locally, and that cost would be the responsibility of the awardee.

3. Quarterly Updates with NIC Management and Final Report

NIC and the awardee will hold quarterly update sessions to review progress in the sites and make decisions regarding further site-specific technical assistance. At least one of these sessions will be a face-to-face meeting in the NIC Washington Offices. The others may be audio- or video-conferences. The awardee must also prepare a final report on the Project's activities and achievements.

4. Additional Requirements

In the proposal, applicants must:

a. Identify the principal members of the technical assistance provider team and their specific, relevant expertise.

b. Address how they will perform the project tasks in collaboration with NIC.

Background Materials

The following materials are available on request from the NIC Information Center, 1860 Industrial Circle, Suite A, Longmont, CO 80501, telephone 800–877–1461.

Intermediate Sanctions for Women Offenders, March, 1995. Prepared for Oregon Criminal Justice Council and the Department of Correction by the (Oregon) Intermediate Sanctions for Female Offenders Policy Group.

Intermediate Sanctions for Women Offenders—Working Papers: Recruitment Criteria Checklist, and Program Goals and Project Approach.

Funding Level

Funding for this project has been set at $127,000 (direct and indirect costs) for the first ten months of a 20 month effort. This amount will support one cooperative agreement award. Subject to satisfactory performance in the first 10-months, the approval of a cooperative agreement proposal for the second ten-month period, and the availability of funds; an award will be made to the successful applicant from this solicitation for the subsequent phase of this twenty-month project. Funding for the second phase is projected at roughly the same level.

The total dollar amount of the indirect costs proposed in an applicants application cannot exceed the current indirect cost rate negotiated and approved by a cognizant Federal agency. NIC cannot approve charges for indirect costs which have not been negotiated or approved as stated above.

Funds may not be used for construction, or to acquire or build real property.

Application Procedures

Applicants must be prepared in accordance with the instructions in the NIC packet titled *Process for Applying for Cooperative Agreements*. Applicants are advised that the narrative description of their program, not including the budget justification or OMB Standard Form 424 (Application for Federal Assistance), attachments and appendices should not exceed forty (40), double-spaced, typed pages in length. Applicants should be received in six copies by the Grants Control Office, National Institute of Corrections, 320 First Street, N. W., Room 5007, Washington, D. C. 20534, no later than 4:00 pm, Eastern time, Friday, March 21, 1997. The street address for overnight mail or hand delivery of applications is 500 First Street, N.W., Room 700, Washington, D.C. 20534. If you have any questions regarding the solicitation, please write or call: Phyllis Modley, Community Corrections Division, 800–995–6423, x133.

Addresses and Further Information

Requests for the application kit should be directed to Judy Evens, Grants Control Office, National Institute of Corrections, 320 First Street, N. W., Room 5007, Washington, D. C. 20534 or by calling 800–995–6423, ext. 159. All technical and/or programmatic information should be directed to Phyllis Modley at the above address or by calling 800–995–6423, ext. 133.

Number of Awards: One (1).

NIC Application Number: 97C07. This number should appear as a reference line on your cover letter and also in box 11 of OMB Standard Form 424.

(The Catalog of Federal Domestic Assistance No. is: 16.603)

Dated: February 27, 1997.

Morris L. Thigpen,

Director, National Institute of Corrections.

[FR Doc. 97–5699 Filed 3–6–97; 8:45 am]

BILLING CODE 4410–36–M

PAROLE COMMISSION

Sunshine Act Meeting

Public Announcement

Pursuant To The Government In the Sunshine Act (Public Law 94–409) [5 U.S.C. Section 552b]

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

DATE AND TIME: 9:30 a.m., Tuesday, March 11, 1997.

PLACE: 5550 Friendship Boulevard, Suite 400, Chevy Chase, Maryland 20815.

STATUS: Closed—Meeting.

MATTERS CONSIDERED: The following matter will be considered during the closed portion of the Commission's Business Meeting:

Appeal to the Commission involving approximately three cases decided by the National Commissioners pursuant to a reference under 28 C.F.R. 2.27. These cases were originally heard by an examiner panel wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

AGENCY CONTACT: Tom Kowalski, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: March 4, 1997.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 97–5844 Filed 3–5–97; 1:15 pm]

BILLING CODE 4410–01–M

Sunshine Act Meeting

Public Announcement

Pursuant To The Government In the Sunshine Act (Public Law 94–409) [5 U.S.C. Section 552b]

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

TIME AND DATE: 1:30 p.m., Tuesday, March 11, 1997.

PLACE: 5550 Friendship Boulevard, Suite 400, Chevy Chase, Maryland 20815.

STATUS: Open.

MATTER TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of minutes of previous Commission meeting.
2. Reports from the Chairman, Commissioners, Legal, Chief of Staff, Case Operations, and Administrative Sections.
3. Discussion of Refinement of Item G of the Salient Factor Score.
4. Proposed Continuation of Expedited Revocation Project.
5. Consideration Of a Final Rule for Transfer Treaty Prisoners Who are Released Too Soon After Transfer For the Commission to Conduct a Hearing.
6. Revision of the Commission's Special Procedures For Special Parole Terms to Include Cases in the Fourth Judicial Circuit.

AGENCY CONTACT: Tom Kowalski, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: March 4, 1997.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 97–5845 Filed 3–5–97; 1:15 pm]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

March 4, 1997.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Theresa M. O'Malley ((202) 219–5096 ext. 143). Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Mine Safety and Health Administration.

Title: Hearing Conservation Plan.

OMB Number: 1219–0017 (reinstatement without change).

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 280.

Estimated Time Per Respondent: 4.1 hours.

Total Burden Hours: 5,280.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (operating/maintaining systems or purchasing services): $51,000.

Description: Within 60 days after receiving a citation for noise levels in excess of the permissible standard, coal mine operators are required to submit to the Mine Safety and Health Administration a plan for the administration of a continuing, effective hearing conservation program.

Agency: Employment and Training Administration.

Title: Unemployment Insurance Denied Claim Accuracy Measurement Pilot Project.

OMB Number: 1205–0 new.

Frequency: Weekly.

Affected Public: Individuals or households; business or other for-profit; farms; Federal Government; State, Local or Tribal Government.

Number of Respondents: 9,990.

Estimated Time Per Respondent: 1 hour 39 minutes.

Total Burden Hours: 16,335.

Total Annualized capital/startup costs: $457,500.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The Benefits Accuracy Measurement (BAM) program provides reliable estimates of the accuracy of benefit payment in the Unemployment Insurance program and identifies the sources of mispayments so that their causes can be eliminated. It does not measure the accuracy of decisions denying benefits and therefore is incomplete. This is an operational pilot to prepare for nationwide measurement of denials accuracy.

Agency: Employment and Training Administration.

Title: Baker v. Reich.

OMB Number: 1205–0372 (revision).

Frequency: Quarterly.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 40.

Estimated Time Per Respondent: 2 minutes.

Total Burden Hours: 168.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: This information collection is necessary to comply with a Federal Court Order to obtain data on number of workers that may be entitled to Trade Readjustment Allowances (TRA) under the North American Free Trade Agreement—Transitional Adjustment Assistance (NAFTA–TAA) program.

Theresa M. O'Malley,

Departmental Clearance Officer.

[FR Doc. 97–5679 Filed 3–6–97; 8:45 am]

BILLING CODE 4510–30–M

All Items Consumer Price Index for All Urban Consumers; United States City Average

Pursuant to Section 112 of the 1976 amendments to the Federal Election Campaign Act (Pub. L. 94–283, 2 U.S.C. 441a), the Secretary of Labor has certified to the Chairman of the Federal Election Commission and publishes this notice in the **Federal Register** that the United States City Average All Items Consumer Price Index for All Urban Consumers (1967=100) increased 218.1 percent from its 1974 annual average of 147.7 to its 1996 annual average of 469.9. Using 1974 as a base (1974=100), I certify that the United States City Average All Items Consumer Price Index for All Urban Consumers thus increased 218.1 percent from its 1974 annual average of 100 to its 1996 annual average of 318.1.

Signed at Washington, D.C., on the 19th day of February 1997.

Cynthia A. Metzler,

Acting Secretary of Labor.

[FR Doc. 97–5650 Filed 3–6–97; 8:45 am]

BILLING CODE 4510–24–M

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Withdrawn General Wage Determination Decisions

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Determination Nos. OK970047 and OK970048 dated February 14, 1997.

Agencies with construction projects pending, to which these wage decisions would have been applicable, should utilize Wage Decisions OK970040 and OK970044. Contracts for which bids

have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6© (l) (A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effective unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis—Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts
MA970001 (Feb. 14, 1997)
MA970002 (Feb. 14, 1997)
MA970003 (Feb. 14, 1997)
MA970006 (Feb. 14, 1997)
MA970007 (Feb. 14, 1997)
MA970013 (Feb. 14, 1997)
MA970017 (Feb. 14, 1997)
MA970018 (Feb. 14, 1997)
MA970019 (Feb. 14, 1997)
MA970020 (Feb. 14, 1997)
MA970021 (Feb. 14, 1997)
Maine
ME970022 (Feb. 14, 1997)
New Jersey
NJ970002 (Feb. 14, 1997)
NJ970003 (Feb. 14, 1997)

Volume II

West Virgina
WV970003 (Feb. 14, 1997)

Volume III

Georgia
GA970053 (Feb. 14, 1997)
Kentucky
KY970035 (Feb. 14, 1997)

Volume IV

Illinois
IL970009 (Feb. 14, 1997)
IL970018 (Feb. 14, 1997)
Indiana
IN970001 (Feb. 14, 1997)
IN970002 (Feb. 14, 1997)
IN970003 (Feb. 14, 1997)
IN970004 (Feb. 14, 1997)
IN970005 (Feb. 14, 1997)
IN970006 (Feb. 14, 1997)
IN970016 (Feb. 14, 1997)
IN970018 (Feb. 14, 1997)
IN970059 (Feb. 14, 1997)

Volume V

Kansas
KS970008 (Feb. 14, 1997)
KS970012 (Feb. 14, 1997)
KS970013 (Feb. 14, 1997)
KS970015 (Feb. 14, 1997)
KS970016 (Feb. 14, 1997)
KS970022 (Feb. 14, 1997)
Nebraska
NE970001 (Feb. 14, 1997)
NE970019 (Feb. 14, 1997)
NE970057 (Feb. 14, 1997)
New Mexico
NM970001 (Feb. 14, 1997)
NM970005 (Feb. 14, 1997)

Volume VI

Colorado
CO970001 (Feb. 14, 1997)
Washington
WA970001 (Feb. 14, 1997)
WA970002 (Feb. 14, 1997)
Wyoming
WY970005 (Feb. 14, 1997)
WY970006 (Feb. 14, 1997)
WY970007 (Feb. 14, 1997)

Volume VII

California
CA970055 (Feb. 14, 1997)
CA970094 (Feb. 14, 1997)
CA970095 (Feb. 14, 1997)
CA970098 (Feb. 14, 1997)
CA970101 (Feb. 14, 1997)
CA970102 (Feb. 14, 1997)
CA970103 (Feb. 14, 1997)
CA970104 (Feb. 14, 1997)
CA970106 (Feb. 14, 1997)
CA970108 (Feb. 14, 1997)
CA970111 (Feb. 14, 1997)
CA970112 (Feb. 14, 1997)
CA970113 (Feb. 14, 1997)
CA970115 (Feb. 14, 1997)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 28th day of February 1997.

Margaret Washington,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 97–5393 Filed 3–6–97; 8:45 am]

BILLING CODE 4510–27–M

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Ground Control Plan

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed reinstatement of the information collection related to Ground Control Plans. MSHA is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request may be obtained by contacting the employee listed below in the For Further Information Contact section of this notice.

DATES: Submit comments on or before May 6, 1997.

ADDRESSES: Send comments to Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 627, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via E-mail to psilvey@msha.gov, along with an original printed copy. Ms. Silvey can be reached at (703) 235–1910 (voice) or (703) 235–5551 (facsimile).

FOR FURTHER INFORMATION CONTACT: George M. Fesak, Director, Office of Program Evaluation and Information Resources, U.S. Department of Labor, Mine Safety and Health Administration, Room 715, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Mr. Fesak can be reached at gfesak@msha.gov (Internet E-mail), (703) 235–8378 (voice), or (703) 235–1563 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Each operator of a surface coal mine is required under 30 CFR 77.1000 to establish and follow a ground control plan that is consistent with prudent engineering design and which will ensure safe working conditions. The plans are based on the type of strata expected to be encountered, the height and angle of highwalls and spoil banks, and the equipment to be used at the mine. Ground control plans are required by 30 CFR 77.1000–1 to be filed with the MSHA District Manager in the district in which the mine is located. The plans are reviewed by MSHA to ensure that highwalls and spoil banks are maintained in safe condition through the use of sound engineering design.

II. Current Actions

MSHA is seeking to continue the requirement for mine operators to submit ground control plans to ensure that highwalls and spoil banks are maintained in safe condition so that a safe working environment is provided for miners.

Type of Review: Reinstatement (without change).

Agency: Mine Safety and Health Administration.

Title: Ground Control Plan.

OMB Number: 1219–0026.

Affected Public: Business or other for-profit institutions.

Cite/Reference/Form/etc: 30 CFR 77.1000 and 77.1000–1.

Total Respondents: 159.

Frequency: On occasion.

Total Responses: 159.

Average Time per Response: 39 hours.

Estimated Total Burden Hours: 6,204 hours.

Estimated Total Burden Cost: $204.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: February 27, 1997.

George M. Fesak,

Director, Program Evaluation and Information Resources.

[FR Doc. 97–5647 Filed 3–6–97; 8:45 am]

BILLING CODE 4510–43–M

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Identification of Independent Contractors

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed reinstatement of the information collection related to the Identification of Independent Contractors. MSHA is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

DATES: Submit comments on or before May 6, 1997.

ADDRESSES: Send comments to Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard,Room 627, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via E-mail to psilvey@msha.gov, along with an original printed copy. Ms. Silvey can be reached at (703) 235–1910 (voice) or (703) 235–5551 (facsimile).

FOR FURTHER INFORMATION CONTACT: George M. Fresak, Director, Office of Program Evaluation and Information Resources, U.S. Department of Labor, Mine Safety and Health Administration, Room 715, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Mr. Fresak can be reached at gfesak@msha.gov (Internet E-mail), (703) 235–8379 (voice), or (703) 235–1563 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Title 30 CFR 45.3 provides that independent contractors may voluntarily obtain a permanent MSHA identification number by submitting to MSHA their trade name and business address, a telephone number, an estimate of the annual hours worked by the contractor on mine property for the previous calendar year, and the address of record for service of documents upon the contractor. Independent contractors performing services or construction at mines are subject to the Federal Mine Safety and Health Act and are responsible for violations of the Act committed by them or their employees.

Although independent contractors are not required to apply for the identification number, they will be assigned one by MSHA the first time they are cited fro a violation of the Mine act. MSHA used the information to issue a permanent MSHA identification number to the independent contractor.

II. Current Actions

MSHA uses the information to issue a permanent MSHA identification number to the independent contractor. This number allows MSHA to keep track of a contractor's violation history so that appropriate civil penalties can be assessed for violations of the Mine Act or its accompanying mandatory health and safety standards.

There are no revisions to this existing collection, MSHA is requesting that the approval be extended for three years.

Type of Review: Reinstatement.
Agency: Mine Safety and Health Administration.
Title: Identification of Independent Contractors.
OMB Number: 1219–0043.
Affected Public: Business or other for-profit.
Cite/Reference/Form/etc: 30 CFR 45.3.
Total Respondents: 1,207.
Frequency: On occasion.
Total Responses: 1,207.
Average Time per Response: 8 minutes.
Estimated Total Burden Hours: 161 hours.
Estimated Total Burden Cost: $387.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: February 28, 1997.

George M. Fesak,
Director, Program Evaluation and Information Resources.

[FR Doc. 97–5648 Filed 3–6–97; 8:45 am]
BILLING CODE 4510–43–M

Occupational Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Electric Power Generation, Transmis sion and Distribution; Electrical Protective Equipment (1218–0190)

ACTION: None.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and impact of collection requirements on respondents can be properly assessed. Currently, the Occupational Safety and Health Administration (OSHA) is soliciting comments concerning the proposed extension of approval for the paperwork requirement of 29 CFR 1910.269 and 1910.137, Electric power generation, transmission, and distribution; and electrical protective equipment.

DATES: Written comments must be submitted on or before May 6, 1997.

Written comments should:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR–97–2, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW, Washington, D.C. 20210, telephone: (202) 219–7894. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue, NW, Washington, D.C. 20210, telephone: (202) 219–8148. Copies of the referenced information collection request are available for inspection and copying in the Docket Office and will be mailed immediately to persons who request copies by telephoning Vivian Allen at (202) 219–8076. For electronic copies, contact OSHA's WebPage on Internet at http://www.osha.gov/.

SUPPLEMENTARY INFORMATION:

I. Background

OSHA issued this standard to address the work practices to be used during the operation and maintenance of electric power generation, transmission, and distribution facilities [59 FR 4320, January 31, 1984. This standard includes requirements relating to enclosed spaces, hazardous energy control, working near energized parts, grounding for employee protection, work on underground and overhead installations, line-clearance tree trimming, work in substations and generating plans, and other special conditions and equipment unique to the generation, transmission, and distribution of electric energy. Compliance with these requirements will prevent injuries to employees working on electric power systems.

OSHA, at the same time, revised the electrical protective equipment requirements contained in the General Industry Standards. The revision replaced the incorporation of out-of-date consensus standards with a set of performance-oriented requirements. Additionally, OSHA issued new requirements for the safe use and care of electrical protective equipment to complement the equipment design provisions. These revisions will prevent accidents caused by inadequate electrical protective equipment.

OSHA currently has approval from the Office of Management and Budget (OMB) for certain information collection requirements contained in 29 CFR 1910.269 and 1910.137. That approval will expire on March 31, 1997, unless OSHA applies for an extension of the OMB approval. This notice initiates the process for OSHA to request an extension of the current OMB approval. This notice also solicits public comment on OSHA's existing paperwork burden estimates from those interested parties and to seek public response to several questions related to the development of OSHA's estimation. Interested parties are requested to review OSHA's existing estimates, which are based upon information available during rulemaking, and to comment on their accuracy or appropriateness in today's workplace situation.

II. Current Actions

This notice requests an extension of the current OMB approval of the paperwork requirements in 29 CFR 1910.269, Electric power generation, transmission, and distribution; and 29 CFR 1910.137, Electrical protective equipment.

Type of Review: Extension of currently approved collection.
Agency: U.S. Department of Labor, Occupational Safety and Health Administration.
Title: Electric Power Generation, Transmission, and Distribution; Electrical Protective Equipment.
OMB Number: 1218–0190.
Agency Number: Docket No. ICR–97–2.
Frequency: Annually.
Affected Public: Individuals or households; State or local governments; Business or other for-profit; Federal Agencies or employees; Non-profit institutions; Small businesses or organizations.
Number of respondents: 12,074.
Estimated Time Per Respondent: 0.30 hours.
Total Estimated Cost: $1,002,150.
Total Burden Hours: 40,086.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request. They will also become a matter of public record.

Dated: February 28, 1997.

John F. Martonik,
Acting Director, Directorate of Safety Standards Programs.

[FR Doc. 97–5649 Filed 3–6–97; 8:45 am]
BILLING CODE 4510–26–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303a(a).

DATES: Requests for copies must be received in writing on or before April 21, 1997. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Civilian Appraisal Staff (NWRC), National Archives and Records Administration, College Park, MD 20740–6001. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of Agriculture, Forest Service (N1–95–96–2). Routine and facilitative records of Forest Supervisors Offices, dated 1946–1959.
2. Department of Commerce, U.S. Travel and Tourism Administration (N1–377–96–1 and 2). Textual records of the Office of the Under Secretary, the Office of Tourism Marketing, the Travel and Tourism Advisory Board, and the Office of Research, and audiovisual records of marketing and publicity campaigns.
3. Department of Justice, Immigration and Naturalization Service (N1–85–96–5). Agreements between transportation lines and the United States.
4. Department of Transportation, Federal Highway Administration (N1–406–97–2). Microform copies of certain motor carrier certificates.
5. National Archives and Records Administration (N1–GRS–97–1). Government-wide retention standards for alternate worksite records.
6. National Archives and Records Administration (N1–64–96–3). Comprehensive revision of Appendix 11, records maintained in the General Counsel's office.
7. National Labor Relations Board (N1–25–97–1). Agency disciplinary case files on nonemployees.
8. Panama Canal Commission (N1–185–97–8). Travel, transportation and Shipping records.
9. Tennessee Valley Authority (N1–142–97–6). Confrontational situations database.

Dated: March 3, 1997.

Michael J. Kurtz,
Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 97–5676 Filed 3–6–97; 8:45 am]
BILLING CODE 7515–01–P

NATIONAL INSTITUTE FOR LITERACY

Proposed Agency Information Collection Activities; Comment Request

AGENCY: National Institute for Literacy.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.),* this notice announces an information Collection Request (ICR) by the National Institute for Literacy (NIFL). The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before May 6, 1997.

ADDRESSES: Submit written comments to: National Institute for Literacy, 800 Connecticut Avenue, NW, Suite 200, Washington, DC 20006, Attention: Jaleh

Behroozi Soroui. Copies of the complete ICR and accompanying appendixes may be obtained from the above address or by contacting Jaleh Behroozi Soroui at (202) 632–1506. Comments may also be submitted electronically by sending electronic mail (e-mail) to: jsoroui@NIFL.gov.

All written comments will be available for public inspection from 8:00 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

SUPPLEMENTARY INFORMATION:

Title

Application for LINCS Content Hub Awards to organizations to support the creation of subject specific sets of literacy-related information on the Internet.

Abstract

The National Literacy Act of established the National Institute for Literacy and required that the Institute conduct basic and applied research and demonstrations on literacy; collect and disseminate information to Federal, State and local entities with respect to literacy; and improve and expand the system for delivery of literacy services. The form will be used by organizations to apply for funding to create literacy contents hubs that will be in-depth collections of subject specific information on the Internet. Evaluations to determine successful applications will be made by a panel of literacy experts and information specialists using the published criteria. The Institute will use this information to make a maximum of four cooperative agreement awards for a period of up two years.

Burden Statement: The burden for this collection of information is estimated at 15 hours per response. This estimate includes the time needed to review instructions, complete the ICR, and review the collection of information.

Respondents: Governors of States and Trust Territories, State Departments of Adult Education, other pubic and non-profit Literacy and Adult Basic Education organizations.

Estimated Number of Respondents: 20.

Estimated Number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 80 hours.

Frequency of Collection: One time. Send comments regarding the burden estimate or any other aspect of the information collection, including suggestions for reducing the burden to: Jaleh Behroozi Soroui, National Institute for Literacy, 800 Connecticut Ave., NW, Suite 200, Washington, DC 20006.

Request for Comments: NIFL solicits comments to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility. (ii) Evaluate the accuracy of the agency's estimates of the burden of the proposed collection of information. (iii) Enhance the quality, utility, and clarity of the information to be collected. (iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies of other forms of information technology, e.g., permitting electronic submission of responses.

Dated: March 3, 1997.

Andrew J. Hartman,

Director.

[FR Doc. 97–5618 Filed 3–6–97; 8:45 am]

BILLING CODE 6055–01–M

NATIONAL SCIENCE FOUNDATION

Submission for OMB Review: Comment Request

Title of Proposed Collection: An Evaluation of Design and Manufacturing Research Program Awards made in FY 1986.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Science Foundation (NSF) is publishing this announcement of its intention to collect evaluation data from Principal Investigators receiving awards under the Design, Manufacture and Industrial Innovation (DMII) program for the fiscal year cited above. Such a notice was published at **Federal Register** 59468, dated November 22, 1996. No comments were received.

The materials are now being sent to OMB for review. Send any written comments to Desk Officer, OIRA, OMB, Washington, DC 20503. Comments should be received by April 1, 1997.

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information from respondents, including the use of automated collection techniques or other forms of information technology.

Proposed Project: An Evaluation of DMII Awards made in FY 1986. The ability of the National Science Foundation to continue a high level of support for university-based research is becoming increasingly dependent on the ability of the NSF and its research partners to explain the impact of funded research on the lives of the U.S. citizens who provide those funds. While NSF has anecdotal accounts of manufacturing-related NSF projects that ultimately led to major new technologies with a significant impact on commerce, the Foundation has no systematic evidence regarding the frequency of such events, nor the process by which these outcomes may have occurred. Therefore, the NSF Director has requested that a pilot project be initiated to perform an exhaustive study of the outcomes of design and manufacturing-related awards made in FY1986.

Some 200 Principal Investigators who were recipients of an award from DMII in FY1986 will be asked to provide a one-page narrative describing the impact of their work. They will need to consider their project in light of their knowledge of progress in the broad field in which it may have been applied. For instance, did their work provide key insights which led to important follow-on projects, in their lab or at other labs, carried out by the PI, by his or her students or industry engineers with whom they consulted? If so, they will be asked to describe the chain of discovery in their narrative.

The DMII is asking that PIs assist in this evaluation by providing the following information:

(1) A brief one page narrative regarding the outcomes and impacts of the project;

(2) Citations to no more than 3 key journal articles, books or patents that resulted from the project, or in which the project played an important role;

(3) The names, addresses and telephone numbers of between 3 and 5 other individuals who are familiar with the work carried out under the project, and who could provide additional insights as to its outcomes and impacts; and

(4) One hard copy of each of the journal articles and patent(s) that are cited.

With regard to the narrative materials, the following information will be requested:

(A) Complete project title.

(B) PI, Co–PI and institutional affiliations.

(C) Time frame during which project was conducted.

(D) Principal outputs or results of the project.

(E) Longer term outcomes and follow-on impacts of the project.

(F) The PI's best assessment of the impact of this NSF-funded research on the current (1996) state of design and manufacturing technology, including any known commercial implementations.

(G) Any other observations that the PI wishes to make (e.g., regarding the promotion of a significant discovery, creation of a significant research capability, promotion of new knowledge flowing to society).

The narratives, citations, and names of others knowledgeable about the project may be submitted using the Internet or regular mail.

The DMII will organize a panel of experts in the field who are knowledgeable about the types of projects funded, and the nature of innovations that have occurred over the past decades. The expert panel's first assignment will be to conduct a thorough review and assessment of the narratives submitted by the PIs. Once the narratives have been reviewed, a subset of 20 outstanding examples of awards with significant impacts will be chosen, and brief case studies will be prepared by the contractor in order to better understand the process by which the impacts occurred.

Under the final phase of this evaluation, the expert panel will then review the case studies and, based upon findings from both the project narratives and the individual case studies, prepare an overall assessment of the contributions made by these awards. The DMII program staff will then review the findings and assess their implications for future program priorities and actions.

DMII has contracted with Abt Associates Inc. of Cambridge, Massachusetts, to assist it in the survey and reports preparation process.

Use of Information: The information collected will be used to assist the Foundation in the evaluation of this program, and in considering various program priorities and selection procedures for future projects in this area. NSF will also consider how best to satisfy the Government Performance and Results Act (GPRA) in reporting outcomes and impacts of programs of this type. Finally, NSF will determine how to improve future evaluation activities applied to subsequent awards made under this program.

Confidentiality: Copies of the narratives will be reviewed by a panel of experts selected by NSF. The subsequent case studies will also be reviewed by this expert panel. Some materials may be disseminated by NSF as a part of the program evaluation process. No sensitive information is being requested in the survey.

Burden on the Public: The Foundation estimates that, on average, two hours will be required to prepare the narratives, or a total of 400 hours for all PIs. In addition, it anticipates 4 hours of interviews for each of 20 case studies, or 80 hours. Thus, total burden is estimated at 480 hours.

Dated: February 28, 1997.

Gail A. McHenry,

Reports Clearance Officer.

[FR Doc. 97–5575 Filed 3–6–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Biological Sciences: Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Biological Sciences (1754).

Date and Time: March 24–25, 1997; 8:30 a.m. to 6:00 p.m.

Place: Room 340, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

Type of Meeting: Closed.

Contact Person: Dr. Eve Ida Barak, Program Director for Cellular Organization, Division of Molecular and Cellular Biosciences, Room 655, National Science Foundation, Arlington, VA 22230 Telephone: 703/306–1442.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research in Molecular and Cellular Biosciences.

Agenda: To review and evaluate proposals submitted to the Division of Molecular and Cellular Biosciences in responses to Program Announcement number 93–130, as part of the selection process for awards.

Reason for Closing: The proposal being reviewed include information of a proprietary or confidential nature, including: technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under (4) and (6) of 5 U.S.C. 552b(c) Government in the Sunshine Act.

Dated: March 3, 1997.

Linda Allen-Benton,

Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.

[FR Doc. 97–5578 Filed 3–6–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Cross Disciplinary Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Cross Disciplinary Activities (1193).

Date and Time: March 25, 1997 8:30 am–5:00 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 1150, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person(s): Rita V. Rodriguez, Program Director, CISE/CDA, Room 1160, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1980.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate CISE Minority Institutions Infrastructure proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 3, 1997.

Linda Allen-Benton,

Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.

[FR Doc. 97–5577 Filed 3–6–97; 8:45 am]

BILLING CODE 7555–01–M

Partial Differential Equations in Mathematical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Partial Differential Equations in Mathematical Sciences (1204).

Dates and Times: March 24–26, 1997; 8:30 a.m. until 5:00 p.m.

Place: Room 1060, National Science Foundation, 4201 Wilson Boulevard Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. William Faris, Program Director, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1879.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate the Analysis/Applied Program nominations/

applications as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: March 3, 1997.

Linda Allen Benton,

Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.

[FR Doc. 97–5576 Filed 3–6–97; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

DEPARTMENT OF ENERGY

[Docket No. 72–9]

Notice of Consideration of Transfer of the Materials License SNM–2504 and Subsequent License Amendment for the Fort St. Vrain Independent Spent Fuel Storage Installation From the Public Service Company of Colorado to the U.S. Department of Energy and Notice of Opportunity for a Hearing

The Nuclear Regulatory Commission is considering the issuance of an order approving an application from the U.S. Department of Energy, Idaho Operations Office (the applicant or DOE–ID) dated December 17, 1996, and supplemented February 4, February 5, and February 18, 1997, for the transfer of a materials license (SNM–2504), under the provisions of 10 CFR Part 72. The applicant is seeking NRC approval to take possession of spent nuclear fuel and other radioactive materials associated with spent nuclear fuel storage presently in the possession of the Public Service Company of Colorado (PSCo) at its Fort St. Vrain (FSV) independent spent fuel storage installation (ISFSI) located in Weld County, Colorado, and to own and operate the FSV ISFSI. The transfer of an ISFSI license is subject to NRC approval under 10 CFR 72.50, "Transfer of License." Pursuant to the provisions of 10 CFR Part 72, the term of the license for the ISFSI would remain as is currently licensed, and the license would expire on November 30, 2011. If the application for transfer is approved, the Commission will issue an order consenting to the transfer. The NRC is also considering an amendment to the materials license to reflect DOE–ID as the new licensee for the FSV ISFSI and the addition of revised Appendices A, B, and C to the license.

Prior to approval of the requested license transfer, and the license amendment reflecting the transfer, the NRC will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the NRC's rules and regulations. The transfer of the materials license and the license amendment will not be approved until the NRC has reviewed the application and concluded, *inter alia*, that approval of the license will not be inimical to the common defense and security and will not constitute an unreasonable risk to public health and safety. The NRC, in accordance with 10 CFR Part 51, will complete an environmental assessment. This action will be the subject of a subsequent notice in the **Federal Register**.

Pursuant to 10 CFR 2.105, by April 7, 1997, the applicant may file a request for a hearing on the license transfer application and on the proposed license amendment; and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene with respect to the subject materials license in accordance with the provisions of 10 CFR 2.714. If a request for hearing or petition for leave to intervene is filed by the above date, an Atomic Safety and Licensing Board designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order. In the event that no request for hearing or petition for leave to intervene is filed by the above date, and upon satisfactory completion of all required evaluations, the NRC may consent to the transfer of the materials license and issue the license amendment without further prior notice.

A petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend a petition, without requesting leave of the Board, up to 15 days prior to the holding of the first pre-hearing conference scheduled in the proceeding. Such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the action under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement that satisfies these requirements with respect to at least one contention will not be permitted to participate as a party. Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, Gelman Building, 2120 L Street, NW, Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the NRC by a toll-free telephone call to Western Union at 1–800–248–5100 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Mr. Charles J. Haughney, Acting Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards; petitioner's name and telephone number; date petition was mailed; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, as well as the applicant's legal counsel, Robin A. Henderson, U.S. Department of Energy, 1000 Independence Avenue, SW, GC–52, Washington, DC 20585; and Simon S. Martin, U.S. Department of Energy, Idaho Operations Office, 850 Energy Drive, MS–1209, Idaho Falls, ID 83401.

Non-timely filings of petitions for leave to intervene, amended petitions, supplemental petitions, and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer, or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application dated December 17, 1996, as supplemented February 4, February 5, and February 18, 1997, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC 20555, and at the Local Public Document Room at the Weld Library District, Lincoln Park Branch, 919 7th Street, Greeley, Colorado 80631.

Dated at Rockville, Maryland, this 27th day of February 1997.

For the U.S. Nuclear Regulatory Commission

Charles J. Haughney,

Acting Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–5659 Filed 3–6–97; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

Sunshine Act Meeting

NAME OF AGENCY: Postal Rate Commission.

TIME AND DATE: 10:30 a.m., April 2, 1997.

PLACE: Conference Room, 1333 H Street, NW, Suite 300, Washington, DC 20268.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Docket No. MC97–1, Experimental Fees for Nonletter-Size Business Reply Mail, 1996.

CONTACT PERSON FOR MORE INFORMATION: Margaret P. Crenshaw, Secretary, Postal Rate Commission, Suite 300, 1333 H Street, NW, Washington, DC 20268–0001, Telephone (202) 789–6840.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 97–5769 Filed 3–4–97; 4:56 pm]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

Request for Public Comment

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension	SEC File No.	OMB Control No.
Rule 6a–1 and Form 1	270–18	3235–0017
Rule 6a–2 and Form 1–A	270–13	3235–0022
Rule 15Ba2–1 and Form MSD	270–88	3235–0083
Rule 17Ac2–2 and Form TA–2	270–298	3235–0337

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is publishing the following summary of collections for public comment.

Rule 6a–1 and Form 1 states that the Commission may not grant registration to an exchange as a national securities exchange unless it finds, among other things, that the exchange is organized so that it has the capacity to carry out the purposes and to comply with the Securities Exchange Act of 1934 ("Exchange Act"). Form 1 is necessary because it required the information needed by the Commission to determine whether granting registration to an exchange would be appropriate.

Because Form 1 is filed on a one-time basis by an exchange, it is estimated that approximately 1 respondent incurs an average of 45 burden hours annually to comply with the rule.

Rule 6a–2 requires that registered and exempted national securities exchanges file Form 1–A on an annual basis. Form 1–A is necessary because it informs the Commission of any changes to Form 1 during the exchange's preceding fiscal year.

Form 1–A is required to be filed annually by a registered or exempted exchange to update information required to be filed on Form 1 which has changed during the exchange's preceding fiscal year. Such information is elicited, pursuant to the requirements of Rule 6a–1 under the Exchange Act, on Form 1. It is estimated that approximately 9 respondents incur a total of 270 burden hours annually to comply with the rule.

Rule 15Ba2–1 provides that an application for registration by a bank municipal securities dealer must be filed on Form MSD. The information required to be disclosed on Form MSD is necessary for the Commission to determine whether or not registration as a municipal securities dealer should be granted.

It is estimated that approximately 40 respondents will utilize this application procedure annually, with a total burden of 60 hours, based upon past submissions.

Rule 17Ac2–2 requires transfer agents, who are not exempt, to file an annual report of their business activities on Form TA–2 with the Commission, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation.

It is estimated that approximately 1,000 respondents are exempt from providing certain information contained in the annual report. An additional 400 non-exempt respondents will file an annual report. The total annual burden is 1,000 hours for exempt respondents and 2,000 hours for non-exempt respondents, based upon past submissions.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Directive, Office of Information Technology, Securities and Exchange

Commission, 450 5th Street, N.W. Washington, DC 20549.

Dated: February 28, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–5673 Filed 3–6–97; 8:45 am]

BILLING CODE 8010–01–M

Submission for OMB Review; Comment Request

Upon written request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Revision: Rule 17a–4, SEC File No. 270–198, OMB Control No. 3235–0279.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for approval of revision on the following rule:

Rule 17a–4 (17 CFR 240.17a–4) requires exchange members, brokers and dealers to preserve for prescribed periods of time certain records required to be made by Rule 17a–3. In addition, Rule 17a–4 requires the preservation of records required to made by other Commission rules and other kinds of records which firms make or receive in the ordinary course of business. These include, but are not limited to, bank statements, cancelled checks, bills receivable and payable, originals of communications, and descriptions of various transactions. Rule 17a–4 now permits broker-dealers to employ, under certain conditions, electronic storage media to maintain records required to be maintained under Rules 17a–3 and 17a–4.

There are approximately 8,500 broker-dealers. Based on conversations with members of the securities industry and based on the Commission's experience in this area, it is estimated that the average amount of time necessary to preserve the books and records as required by Rule 17a–4 is one hour per broker per working days. Therefore, because there are approximately 250 business days per year, the total compliance burden for 8,500 respondents is 2,125,000 hours. In addition, the average amount of time necessary to comply with the final amendments will be 15 minutes per year. Accordingly, the total burden of compliance will be increased by 2,125 hours per year to 2,127,125.

The Commission estimates that typical employee of a broker-dealer charged with ensuring compliance with Commission regulation receives annual compensation of $100,000. This compensation is the equivalent of $48.08 per hour ($100,000 divided by 2,080 payroll hours per year). Since the rule amendment would require an additional 2,125 hours per year to comply, at $48.08 per hour, the total cost of compliance for these respondents would be $102,170.

General comments regarding the estimated burden hours should be directed to the Desk Officer for the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: February 26, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–5592 Filed 3–6–97; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22536; 811–3993]

CharterCapital Blue Chip Growth Fund, Inc.; Notice of Application

March 3, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: CharterCapital Blue Chip Growth Fund, Inc. (formerly, ADTEK Fund, Inc.).

RELEVANT ACT SECTION: Order requested under section 8(f) of the Act.

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on October 24, 1996 and amended on January 6, 1997 and February 26, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 28, 1997, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 4920 West Vliet Street, Milwaukee, Wisconsin 53208.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Knisely, Staff Attorney, at (202) 942–0517 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified investment management company organized as a Wisconsin corporation. On March 21, 1984, applicant filed a Notification of Registration on Form N–8A pursuant to section 8(a) of the Act and a registration statement on Form N–1A pursuant to section 8(b) of the Act. The registration statement became effective on July 16, 1984 and the initial public offering commenced immediately thereafter.

2. On January 27, 1996, the board of directors of applicant approved the dissolution of applicant pursuant to a plan of liquidation. The board of directors believed that applicant had not achieved, and was unlikely to achieve, the necessary asset size for applicant to be a viable investment alternative given the effect of its size on its expense ratio.

3. Applicant advised its shareholders of the decision of its board of directors to dissolve applicant in its annual report to shareholders for the fiscal year which ended December 31, 1995. Commencing May 31, 1996, applicant sent follow-up letters indicating to shareholders that applicant intended to dissolve. Shortly thereafter, applicant's shareholders began to voluntarily redeem shares of applicant.

4. As of June 30, 1996, applicant's total assets amounted to $899,974 on an unaudited basis. As of that date, applicant had 56,336 shares outstanding and a net asset value of $15.79. Applicant sold the equity portfolio securities held by it through unaffiliated broker-dealers in agency transactions paying competitive commission rates.

5. On August 31, 1996, there were 132.93 shares of applicant outstanding, with an aggregate net asset value of $2,056.66 and a net asset value per share of $15.47. On September 3, 1996, applicant paid an income dividend in cash to its shareholders in the amount of $1,898.03, or approximately $17.37 per share. On September 23, 1996, applicant's two remaining shareholders unanimously approved the dissolution of applicant by written consent. All of applicant's shareholders voluntarily redeemed their shares and final redemption occurred on September 27, 1996. On this date, the net asset value of applicant was $15.47 per share.

6. The expenses incurred and to be incurred in connection with the liquidation are estimated to be $14,500. To the extent that these expenses and other expenses of applicant resulted in the expense ratio of applicant exceeding 2.80%, the expenses were paid by Charter Capital Management, Inc., applicant's investment adviser. Since the expense ratio exceeded the foregoing percentage during the liquidation period, all present and future liquidation expenses will be paid by Charter Capital Management, Inc.

7. Applicant has no securityholders, liabilities or assets. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

8. On September 27, 1996, applicant filed Articles of Dissolution with the State of Wisconsin.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–5674 Filed 3–6–97; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22537; 812–10428]

First American Investment Funds, Inc., et al.; Notice of Application

March 3, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: First American Investment Funds, Inc. ("FAIF"), First American Funds, Inc. ("FAF"), First American Strategy Funds, Inc. ("FASF"), each existing and future series of FAIF, FAF, FASF, and existing and future registered investment companies or series thereof that, now or in the future, are advised by First Bank National Association (collectively, the "Companies"); and First Bank National Association ("First Bank").

RELEVANT ACT SECTION: Order requested under section 17(d) of the Act and rule 17d–1 thereunder.

SUMMARY OF THE APPLICATION: Applicants request an order to permit certain investment companies to deposit their uninvested cash balances and their cash collateral in one or more joint accounts to be used to enter into short-term investments.

FILING DATES: The application was filed on November 15, 1996 and amended on February 26, 1997. By letter dated February 28, 1997, applicants have agreed to file an additional amendment during the notice period, the substance of which is incorporated herein.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 27, 1997, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants c/o James D. Alt, esq., Dorsey & Whitney LLP, 220 South Sixth Street, Minneapolis, Minnesota 55402.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Knisely, Staff Attorney, at (202) 942–0517, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. FAIF and FAF are registered under the Act as open-end management investment companies and are incorporated under the laws of the States of Maryland and Minnesota, respectively. FAIF currently offers twenty series with varying objectives and policies. FAF currently offers three series, each of which is a money market fund subject to the requirements of rule 2a–7 under the Act.

2. FASF, organized under Minnesota law, is registered under the Act as an open-end management investment company. FASF is comprised of four series and operates as a "fund of funds," the principal investments of which are shares of certain series of FAIF and FAF.[1]

3. First Bank,[2] a national banking association, serves as investment adviser for each of the existing Companies, subject to general oversight of the boards of directors of the Companies (each a "Board" and collectively, the "Boards"). First Bank is a wholly owned subsidiary of First Bank System, Inc. ("FBS"), a bank holding company. First Bank has engaged a sub-adviser for FAIF's International Fund, Marvin & Palmer Associates, Inc., which is not affiliated with First Bank or any affiliates of First Bank.

4. All of the Funds are currently authorized by their investment policies and restrictions to invest at least a portion of their uninvested cash balances in short-term liquid assets including repurchase agreements, rated commercial paper, U.S. government securities, and other short-term debt. Each of the Funds also may invest cash balances in those Funds which hold themselves out as money market funds.[3]

5. Several of the Funds are authorized to engage in securities lending transactions. In connection with such transactions, such Funds may receive collateral in the form of either cash ("Cash Collateral") or securities. When Cash Collateral is received, it is expected to be invested in a manner consistent with customary securities lending practices.

6. First Trust National Association ("First Trust"), a wholly-owned subsidiary of FBS, serves as custodian for the assets of each of the Funds. First Trust also may act as securities lending agent ("Securities Lending Agent") for

[1] *See First American Strategy Funds, Inc.*, Investment Company Release Nos. 22173 (Aug. 26, 1996) (notice) and 22245 (Sept. 24, 1996) (order).

[2] The term "First Bank" includes any other entity controlling, controlled by or under common control with First Bank that acts in the future as investment adviser for the Companies or other investment companies and intends to rely on any order issued by the Commission in connection with the application.

[3] *See First American Investment Funds, Inc.*, Investment Company Act Release Nos. 21722 (Jan. 30, 1996) (notice) and 21784 (Feb. 27, 1996) (order).

the Fund's securities lending transactions.[4]

7. Applicants propose to deposit uninvested: (a) Cash balances of the Funds that remain at the end of the trading day, (b) cash for investment purposes, and/or (c) Cash Collateral into one or more joint accounts (the "Joint Accounts") established at the Funds' custodian. The Funds that are eligible to participate in a Joint Account and that elect to participate in a Joint Account are referred to herein collectively as "Participants."

8. The daily balance of the Joint Accounts will be invested in the following short-term investments: (a) Repurchase agreements "collateralized fully" as defined in rule 2a–7 under the Act; (b) interest-bearing or discounted commercial paper, including dollar denominated commercial paper of foreign issuers; and (c) any other short-term taxable and tax-exempt money market instruments, including variable rate demand notes, that constitute "Eligible Securities" (as defined in rule 2a–7 under the Act) (collectively, "Short-Term Investments").

9. A Participant's decision to use a Joint Account would be based on the same factors as its decision to make any other short-term liquid investment. The sole purpose of the Joint Accounts would be to provide a convenient means of aggregating what otherwise would be one or more daily transactions for some or all Participants necessary to manage their respective daily account balances.

10. First Bank would be responsible for investing funds held by the Joint Accounts, establishing accounting and control procedures, operating the Joint Accounts in accordance with the procedures discussed below, and ensuring fair treatment of Participants. First Bank would manage investments in the Joint Accounts in essentially the same manner as if it had invested in such instruments on an individual basis for each Participant. In addition, all purchases through the Joint Accounts will comply with all present and future SEC staff positions relating to the investment of cash collateral in connection with securities lending activities.

11. Any repurchase agreements entered into through the Joint Accounts will comply with the terms of the Investment Company Act Release No. 13005 (February 2, 1983).[5] Applicant's acknowledge that they have a continuing obligation to monitor the Commission's published statements on repurchase agreements, and represent that repurchase agreement transactions would comply with future positions of the Commission to the extent that such positions set forth different or additional requirements regarding repurchase agreements. In the event that the Commission sets forth guidelines with respect to other Short-term Investments, all such investments made through the Joint Accounts would comply with those guidelines.

Applicants' Legal Analysis

1. Section 17(d) and rule 17d–1 thereunder prohibit an affiliated person of a registered investment company, or an affiliated person of such a person, from participating in any joint enterprise or arrangement in which such investment company is a participant, without an SEC order. Applicants believe that grating the requested order is consistent with the provisions, policies, and purposes of the Act, and that the Funds would participate in the Joint Accounts on a basis no different from or less advantageous than that of any other Participant.

2. The Participants, by participating in the proposed Joint Accounts, and First Bank, by managing the proposed Joint Accounts, could be deemed to be "joint participants" in a transaction within the meaning of section 17(d) of the Act. In addition, the proposed Joint Accounts could be deemed to be a "joint enterprise or other joint arrangement" within the meaning of rule 17d–1 under the Act.

3. Applicants state that the Participants may earn a higher rate of return on investments through the Joint Accounts relative to the returns they could earn individually. Under most market conditions, it is generally possible to negotiate a rate of return on larger repurchase agreements and other Short-Term Investments that is higher than the rate available on smaller repurchase agreements and other Short-Term Investments. The Joint Accounts also may increase the number of dealers and issuers willing to enter into Short-Term Investments with such Participants.

4. Applicants assert that no Participant would be in a less favorable position as a result of participating in the Joint Accounts. Applicants believe that each Participant's investment in a Joint Account would not be subject to the claims of creditors, whether brought in bankruptcy, insolvency or other legal proceeding, or any other Participant. Each Participant's liability on any Short-Term Investment would be limited to its interest in such investment; no Participant would be jointly liable for the investments of any other Participant.

5. Applicants state that the Joint Accounts may result in certain administrative efficiencies and a reduction of the potential for errors by reducing the number of trade tickets and cash wires that must be processed by the counterparties to the transactions and the Participant's custodian and administrator.

6. Applicants represent that the proposed operation of the Joint Accounts would not result in any conflicts of interest between any of the Participants or First Bank. In making investments for the Joint Accounts, First Bank will be obligated to take into account each Participant's investment objective, policies, and restrictions; its obligation to fairly allocate investment opportunities among Participants; the need for diversification; and the time that cash becomes available for investment.

7. The Boards will have determined, prior to participation by any Fund, that the procedures for operating a Joint Account are reasonably designed to ensure: (a) That the Joint Account is not inherently biased in favor of one Participant over another and should eliminate any bias due to size or lack thereof in any transaction; and (b) that the anticipated benefits to each Participant would be within an acceptable range of fairness.

8. For the reasons set forth above, applicants believe that the Funds' participation in the proposed Joint Accounts is consistent with the provisions, policies and purposes of the Act, and that the granting of the requested order would meet the criteria set forth in rule 17d–1.

Applicants' Conditions

Applicants would comply with the following as conditions to any order granted by the SEC:

1. The Joint Accounts would not be distinguishable from any other accounts maintained by Participants at their custodian, except that monies from Participants will be deposited in the Joint Accounts on a commingled basis. The Joint Accounts will not have a separate existence and will not have indicia of a separate legal entity. The sole function of the Joint Accounts will be to provide a convenient way of aggregating individual transactions which would otherwise require daily management of uninvested cash balances.

2. Cash in the Joint Accounts would be invested in one or more of the following, as directed by First Bank (or, in the case of Cash Collateral, the Securities Lending Agent): (a) Repurchase agreements "collateralized fully" as defined in Rule 2a–7 under the Act; (b) interest-bearing or discounted commercial paper, including dollar denominated commercial paper of foreign issuers; and (c) any other short-term taxable and tax-exempt money market instruments, including variable rate demand notes, that constitute "Eligible Securities" (as defined in rule 2a–7 under the Act). Short-Term Investments that are repurchase agreements would have a remaining maturity of 60 days or less and other Short-Term Investments would have a remaining maturity of 90 days or less, each as calculated in accordance with rule 2a–7 under the Act. Cash Collateral in a Joint Account would be invested in Short-Term Investments which have a remaining maturity of 397 days or less, as calculated in accordance with rule 2a–7 under the Act.

3. All assets held in the Joint Accounts would be valued on an amortized cost basis to the extent permitted by applicable SEC releases, rules, or orders.

4. Each Participant valuing its net assets in reliance on rule 2a–7 under the Act will use the average maturity of the instruments in the Joint Accounts in which such Participant has an interest (determined on a dollar weighted basis) for the purpose of computing its average portfolio maturity with respect to its portion of the assets held in a Joint Account on that day.

5. In order to assure that there will be no opportunity for any Participant to use any part of a balance of a Joint Account credited to another Participant, no Participant will be allowed to create a negative balance in any Joint Account for any reason, although each Participant would be permitted to draw down its entire balance at any time. Each Participant's decision to invest in a Joint Account would be solely at its option, and no Participant will be obligated to invest in the Joint Account or to maintain any minimum balance in the Joint Account. In addition, each Participant will retain the sole rights of ownership to any of its assets invested in the Joint Account, including interest payable on such assets in the Joint Account.

6. First Bank would administer the investment of cash balances in and operation of the Joint Accounts as part of its general duties under its existing or any future investment advisory or sub-advisory agreements with Participants and will not collect any additional or separate fees for advising any Joint Account.

7. The administration of the Joint Accounts would be within the fidelity bond coverage required by section 17(g) of the Act and rule 17g–1 thereunder.

8. Each Board will adopt procedures pursuant to which the Joint Accounts will operate, which will be reasonably designed to provide that the requirements of the application will be met. Each Board will make and approve such changes as it deems necessary to ensure that such procedures are followed. In addition, each Board will determine, no less frequently than annually, that the Joint Accounts have been operated in accordance with the proposed procedures and will permit a Fund to continue to participate therein only if it determines that there is a reasonable likelihood that the Fund and its shareholders will benefit from the Fund's continued participation.

9. Any Short-Term Investments made through the Joint Accounts will satisfy the investment criteria of all Participants in that investment.

10. First Bank and the custodian of each Participant will maintain records documenting, for any given day, each Participant's aggregate investment in a Joint Account and each Participant's pro rata share of each investment made through such Joint Account. The records maintained for each Participant shall be maintained in conformity with section 31 of the Act and the rules and regulations thereunder.

11. Short-Term Investments held in a Joint Account generally will not be sold prior to maturity except if: (a) First Bank believes the investment no longer presents minimal credit risks; (b) the investment no longer satisfies the investment criteria of all Participants in the investment because of downgrading or otherwise; or (c) in the case of a repurchase agreement, the counterpart defaults. First Bank may, however, sell any Short-Term Investment (or any fractional portion thereof) on behalf of some or all Participants prior to the maturity of the investment if the cost of such transactions will be borne solely by the selling Participants and the transaction will not adversely affect other Participants participating in that Joint Account. In no case would an early termination by less than all Participants be permitted if it would reduce the principal amount or yield received by other Participants in a particular Joint Account or otherwise adversely affect the other Participants. Each Participant in a Joint Account will be deemed to have consented to such sale and partition of the investments in the Joint Account.

12. Short-Term Investments held through a Joint Account with a remaining maturity of more than seven days, as calculated pursuant to rule 2a–7 under the Act, would be considered illiquid and would be subject to the restriction that a Fund may not invest more than 15% or, in the case of a money market fund, more than 10% (or, in either such case, such other percentage as set forth by the Commission from time to time) of its net assets in illiquid securities, if First Bank cannot sell the instrument, or the Fund's fractional interest in such instrument, pursuant to the preceding condition.

13. Not every Participant participating in the Joint Accounts will necessarily have its cash invested in every Joint Account. However, to the extent a Participant's cash is applied to a particular Joint Account, the Participant will participate in and own a proportionate share of the investment in such Joint Account, and the income earned or accrued thereon, based upon the percentage of such investment in such Joint Account purchased with monies contributed by the Participant.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–5675 Filed 3–6–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38350; File No. SR–NSCC–96–20]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Revise Rules

February 27, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], notice is hereby given that on November 14, 1996, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[4] See *First American Investment Funds, Inc.*, Investment Company Act Release Nos. 21722 (Jan. 30, 1996) (notice) and 21784 (Feb. 27, 1996) (order).

[5] Repurchase agreements will be entered into on a "hold-in-custody" basis (i.e., where the counterparty or one of its affiliated persons may have possession of, or control over, the collateral subject to the agreement) only if cash is received very late in the business day and otherwise would be unavailable for investment.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change revises NSCC's rules to modify the definition of "Clearing Agency Cross-Guaranty Agreement".

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In 1993, the Commission approved a proposed rule change filed by NSCC to establish a Netting Contract and Limited Cross-Guaranty Agreement between it and The Depository Trust Company ("DTC").[3] In connection with the implementation of the NSCC–DTC Agreement, a definition of a "Clearing Agency Cross-Guaranty Agreement" was added to NSCC's rules. The definition was limited to registered clearing agencies because NSCC and DTC believed that only registered clearing agencies would enter into such arrangements.

In 1995, the Commission approved a proposed rule change filed by NSCC to establish the Collateral Management Service ("CMS").[4] In order to provide their participants with a more accurate and broader picture of the aggregate amount of their clearing fund deposits and collateral, NSCC and other participating clearing entities recognized that other types of clearing entities should be included in the CMS. This broad category of participating entities is reflected in Rule 53 (CMS Rule) of NSCC's rules which includes clearing organizations affiliated with or designated by contract markets trading specific futures products under the oversight of the Commodity Futures Trading Commission. NSCC believes the rationale of providing a broad range of clearing entities in the scope of the CMS should be similarly applied to NSCC's ability to enter into limited cross-guaranty agreements.[5] Therefore, the purpose of the proposed rule change is to modify the definition of "Clearing Agency Cross-Guaranty Agreement" to permit NSCC to enter into limited cross guaranty agreements with the same broad category of clearing entities as provided in the CMS.

NSCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it makes technical modifications to rules so that they coincide with intended practice.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which DTC consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–96–20 and should be submitted by March 28, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–5671 Filed 3–6–97; 8:45 am]

BILLING CODE 8010–01–M

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] Securities Exchange Act Release No. 33145 (November 3, 1993), 58 FR 59766 [File No. SR–NSCC–93–07] (order approving proposed rule change relating to a netting contract and limited cross guaranty agreement ("NSCC-DTC Agreement")).

[4] Securities Exchange Act Release No. 35809 (June 5, 1995), 60 FR 30912 [File No. SR–NSCC–93–06] (order approving proposed rule change establishing CMS).

[5] The rules of the International Securities Clearing Corporation (Rule 1—Definition of "Limited Cross-Guaranty Agreement"), the MBS Clearing Corporation (Rule 1—Definition of "Limited Cross-Guaranty Agreement"), and the Government Securities Clearing Corporation (Rule 1—Definition of "Limited Cross-Guaranty Agreement") permit entering into cross-guaranty agreements with futures clearing entities.

[6] 17 CFR 200.30–3(a)(12).

[Release No. 34–38352; File No. SR–NSCC–97–01]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change To Eliminate NSCC's Securities Transfer Service

February 28, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 22, 1997, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–NSCC–97–01) as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to permit NSCC to eliminate its Securities Transfer Service ("STS").

[1] 15 U.S.C. 78s(b)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to permit NSCC to eliminate its STS.[3] NSCC Rule 42, which established STS, will be deleted. STS was originally developed by NSCC in 1976 to provide assistance with the manual processing of items that were ineligible at The Depository Trust Company ("DTC"). It was established as an optional service to be used by full settling participants for the high volume transfer of DTC ineligible items and for the high volume transfer and reregistration of physical securities through various transfer agencies. STS was also designed to deliver book closing items, legal transfers, and accommodation transfers. Once STS is eliminated, participants will process items directly through the appropriate transfer agent.

The STS process is primarily manual. STS participants first physically send envelopes containing securities certificates to an NSCC office. Pursuant to the participant's transfer instructions, the envelopes are next forwarded by NSCC to the offices of the indicated transfer agents, which are located throughout the United States and Canada. Upon completion of the reregistration, the transfer agents return the certificates to NSCC's office for pick up.

A review of STS' volume during the 1980s shows that STS processed approximately 670 securities certificates per day. As a high volume service, STS was able to take advantage of economies of scale for the broker-dealer community. However, after 1987 volume fell dramatically because DTC began increasing the number of DTC eligible securities and because the Group of 30 initiatives caused the brokerage industry to move towards a book-entry registration environment which decreased the movement of physical securities.[4] By 1994, STS' volume fell 82% to 120 securities certificates processed per day. The downward trend continues today. STS processed just over twenty-five items per day in October 1996 or about an 80% decrease from its 1994 volume and a 96% decrease from its 1980s volume.

NSCC expects to eliminate STS thirty business days after notification to participants that this proposed rule change is approved by the Commission. NSCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act[5] and the rules and regulations thereunder because the rule proposal will facilitate the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which NSCC consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to the file number SR–NSCC–97–01 and should be submitted by March 28, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–5672 Filed 3–6–97; 8:45 am]

BILLING CODE 8010–01–M

[2] The Commission has modified the text of the summaries submitted by NSCC.

[3] STS is commonly referred to as the National Transfer Service.

[4] The Group of Thirty, established in 1978, is an independent, non partisan organization composed of international financial leaders whose focus is on international economic and financial issues. In March 1989, the Group of Thirty issued a report containing nine recommendations to improve clearance and settlement systems.

[5] 15 U.S.C. 78q–1.

[6] 17 CFR 200.20–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[License No. 06/06–0288]

Wesbanc Ventures, Ltd; Notice of License Surrender

Notice is hereby given that Wesbanc Ventures, Ltd. ("WBV"), 6411 Rutgers Street, Houston, Texas 77005, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). WBV was licensed by the Small Business Administration on May 28, 1985.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on December 12, 1996, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: February 27, 1997.

Don Christensen,

Associate Administrator for Investment.

[FR Doc. 97–5601 Filed 3–6–97; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–16]

WTO Dispute Settlement Proceeding Regarding European Communities' Tariff Treatment of Some Computer Equipment

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: Pursuant to section 127(b)(1) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)), the Office of the United States Trade Representative (USTR) is providing notice that the United States has requested the establishment of a dispute settlement panel under the Agreement Establishing the World Trade Organization (WTO), to examine tariff increases by the European Communities (EC) and its member States on certain local area network (LAN) equipment and personal computers (PCs) with multimedia capacity. More specifically, the United States has requested the establishment of a panel to determine whether the EC has acted inconsistently with its obligations under Article II of the General Agreement on Tariffs and Trade 1994 (GATT 1994) in that the EC and its member States have increased tariffs above rates bound during the Uruguay Round for (1) LAN adapter cards, (2) other LAN equipment and (3) PCs with multimedia capability (including PCs with CD–ROM drives and cards enabling television reception.) USTR also invites written comments from the public concerning the issues raised in the dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before April 2, 1997, to be assured of timely consideration by USTR in preparing its first written submission to the panel.

ADDRESSES: Comments may be submitted to Ileana Falticeni, Office of Monitoring and Enforcement, Room 501, Attn: EC LAN Dispute, Office of the U.S. Trade Representative, 600 17th Street, N.W., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Andrea Casson, Attorney, 202–395–3582 or Matthew Rohde, Director for Customs Affairs, 202–395–3063, Office of the U.S. Trade Representative, 600 17th Street, N.W., Washington, DC 20508.

SUPPLEMENTARY INFORMATION: On February 11, 1997, the United States requested establishment of a WTO dispute settlement panel to examine whether the following measures are inconsistent with the EC's obligations under Article II of the GATT 1994: (1) Regulation No. (EC) 1165/95, which reclassifies certain LAN adapter cards from category 8471, "automatic data processing machines and units thereof," to category 8517, "telecommunications apparatus;" (2) the actions of customs authorities in EC member States in reclassifying and increasing tariffs on imports of all types of LAN equipment—including hubs, in-line repeaters, converters concentrators, bridges and routers; and (3) the actions of customs authorities in EC member States in reclassifying and increasing tariffs on imports of PCs with multimedia capacity.

The WTO Dispute Settlement Body (DSB) considered the U.S. request at its meeting on February 25, at which time a panel was established. Members of the panel are currently being selected. Under normal circumstances, the panel would be expected to issue a report detailing its findings and recommendations within six to nine months after it is established.

Major Issues Raised by the United States and Legal Basis of Complaint

In its schedule of tariff concessions under the GATT 1994, the EC and its member States have agreed to a bound tariff rate for automatic data processing (ADP) equipment and units, staged from the base rate of 4.4 percent ad valorem in 1995 to 2.5 percent ad valorem in 1999. The EC's adoption in June 1995 of the regulation reclassifying certain LAN adapter cards from the ADP category to the category for telecommunications apparatus resulted in an increase in tariffs on imports of such products to rates above the bound rate for ADP equipment.

In addition, since 1995, customs authorities in EC member States, including but not limited to those in the United Kingdom and Ireland, have reclassified all other types of LAN equipment from the ADP category to the telecommunications category, increasing the tariffs on these products above the bound ADP rate. Also, customs authorities in EC member States, particularly those in the United Kingdom, have reclassified certain PCs with multimedia capacity, formerly dutiable under the ADP category, to the "video apparatus" or "television" categories, dutiable at rates above the bound rate for ADP equipment.

Article II of the GATT 1994 provides that each WTO Member shall afford the trade of other WTO Members treatment that is no less favorable than that provided for in the importing Member's schedule of tariff concessions, and that imports shall be not be subject to duties in excess of those provided for in that schedule. The United States contends that, in reclassifying imports of LAN equipment and multimedia PCs, the EC and its member States have increased duties on these products above the bound rates, and have afforded products imported from the United States treatment less favorable than that provided for in the EC schedule. In the view of the United States, these actions are inconsistent with the EC's obligations under Article II of the GATT 1994.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments must be in English and provided in fifteen copies. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page of each copy.

A person requesting that information or advice contained in a comment submitted by that person, other than business confidential information, be treated as confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155)—

(1) Must so designate that information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA, USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, N.W., Washington DC 20508. The public file will include a listing of any comments received by USTR from the public with respect to the proceeding; the U.S. submissions to the panel in the proceeding; the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the dispute settlement panel and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/DS–16–EC LAN) may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

Irving Williamson,

Acting General Counsel.

[FR Doc. 97–5569 Filed 3–6–97; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 27590 (Sub–No.2)]

TTX Co., et al.—Application for Approval of the Pooling of Car Service With Respect to Flat Cars

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of request for comments.

SUMMARY: In this proceeding, the Interstate Commerce Commission (ICC) provided for the monitoring of TTX Company (TTX) during the 10-year term of its pooling extension. The Board now proposes to reopen this proceeding to take comments from interested parties on whether any of TTX's activities require any action or particular oversight on the Board's part at this time.

DATES: Comments are due on May 6, 1997.

ADDRESSES: Send comments (an original and 10 copies) referring to STB Finance Docket No. 27590 (Sub-No.2) to: Surface Transportation Board, Office of the Secretary, Case Control Branch, 1925 K. Street, NW., Washington, DC 20423–0001. Two copies of all filings should be sent separately to the Board's Office of Compliance and Enforcement, at the above address, Suite 780.

FOR FURTHER INFORMATION CONTACT: Melvin F. Clemens, Jr., (202) 927–5500. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: In a 1994 decision approving a 10-year extension of TTX's pooling authority,[1] the ICC required its Office of Compliance and Enforcement (OCE) to monitor TTX's operations and to report on any problems at the end of the third and seventh years. Pursuant to the ICC Termination Act of 1995, Public Law 104–88, 109 Stat. 803 (1995) (ICCTA), effective January 1, 1996, the ICC was abolished; a number of its functions were eliminated; and its remaining rail and certain non-rail functions were transferred to the Surface Transportation Board (Board), newly established under ICCTA.

Because the authority over TTX's pooling arrangement was transferred to the Board under ICCTA, the Board is now responsible for monitoring TTX's activities. To carry out that responsibility, the Board requests comments on whether any of TTX's activities require any action or particular oversight on the Board's part at this time. Any commenter wishing to express a concern about any of TTX's activities should fully describe the activity, the Concern, and the type of Board action that the commenter believes is appropriate. The comments will be reviewed by OCE, and, based on the issues raised, the Board will determine whether any further action is appropriate.

Request for Comments

We invite comments on these matters. We encourage any commenter that has the necessary technical wherewithal to submit its comments as computer data on a 3.5-inch floppy diskette formatted for WordPerfect 7.0, or formatted so that it can be readily converted into WordPerfect 7.0. Any such diskette submission (one diskette will be sufficient) should be in addition to the written submission (an original and 10 copies for the Board and two copies for OCE).

Environment

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Applicants, shippers, and other interested parties may file comments with the Board, as described above, on whether any of TTX's activities require any action or particular oversight on the Board's part at this time.

2. Comments are due May 6, 1997.

3. This decision is being served on all parties appearing on the service list in Finance Docket No. 27590 (Sub-No.2).

4. This decision is effective on the date of service.

Decided: February 26, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–5685 Filed 3–6–97; 8:45 am]

BILLING CODE 4915–00–P

[1] This pooling authority was approved in Finance Docket No. 27590 (Sub-No.2), *TTX Company, Et.Al.—Application For Approval of the Pooling of Car Service With Respect to Flat Cars*, served August 31, 1994.

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, (DOT).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act 1995 (44 USC Chapter 35), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on November 22, 1996 [FR 61, page 59483].

DATES: Comments must be submitted on or before April 7, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Chandler, Office of Motor Carrier Research and Standards, (202) 366–4009, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Federal Highway Administration (FHWA)

Title: Time Records.

OMB Number: 2125–0196.

Affected Public: Commercial Motor Vehicle Drivers (CMV).

Abstract: The Secretary has adopted regulations that establish hours of service (HOS) limitations for CMV drivers. Time records generally used by motor carriers are time cards or time sheets. Time records may be used in lieu of records of duty status by drivers who operate within a 100 air-mile radius of their normal work reporting location, 49 CFR 395.1(e). Time records must show: (1) The time the driver reports for duty each day; (2) The total number of hours the driver is on duty each day; (3) The time the driver is released from duty each day; and (4) The total time on duty for the preceding 7 days (for drivers used intermittently or

for the first time). The time record is used by the FHWA and its State and local partners in the Motor Carrier Safety Assistance Program to determine whether CMV drivers have violated the HOS limitations. The regulations allow motor carriers to prepare electronic time records, in lieu of preparing paper time records.

Need: Title 49 U.S.C. 31502 authorizes the Secretary of Transportation to promulgate regulations that establish maximum HOS for employees of motor carriers.

Estimated Annual Burden: No annual burden.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention DOT Desk Officer.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on March 3, 1997.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 97–5702 Filed 3–6–97; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Notice of Comment Period Extension for Updated Draft Air Quality Conformity Determination, for Seattle-Tacoma International Airport, Seattle, WA

AGENCY: Federal Aviation Administration.

ACTION: Notice of comment period extension.

SUMMARY: On February 7, 1997, the Federal Aviation Administration and the Port of Seattle, acting as joint lead agencies, released for public and agency review and comment, a Draft Supplemental Environmental Impact Statement (DSEIS) for the Master Plan Update at Seattle-Tacoma International Airport. This DSEIS is a combined Federal National Environmental Policy Act and Washington State Environmental Policy Act document.

The comment period on the Updated Draft Air Quality Conformity Determination, contained in the DSEIS has been extended to March 31, 1997. Therefore, comments on both the Updated Draft Air Quality Conformity Determination and the DSEIS are due on March 31, 1997. Comments should be sent to Mr. Dennis Ossenkop, ANM–611, Federal Aviation Administration, Northwest Mountain Region, Airports Division, 1601 Lind Avenue, SW., Renton, WA 98055–4056.

Issued in Renton, Washington on February 28, 1997.

Matthew Cavanaugh,

Acting Manager, Airports Division, Federal Aviation Administration, Northwest Mountain Region, Renton, Washington.

[FR Doc. 97–5712 Filed 3–6–97; 8:45 am]

BILLING CODE 4910–13–M

Federal Railroad Administration

[Docket No. RSAC–96–1, Notice No. 4]

Railroad Safety Advisory Committee; Notice of Meeting

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Railroad Safety Advisory Committee ("RSAC") meeting.

SUMMARY: As required by Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), and 41 CFR 101–6.1015(b), the Federal Railroad Administration (FRA) gives notice of a meeting of the Railroad Safety Advisory Committee ("RSAC'). The meeting is designed to accomplish several things: (1) The RSAC's evaluation for consensus approval of the Railroad Communications working group's proposal for the revision of the railroad communications standards contained in 49 CFR part 220; (2) the RSAC's receipt of status reports, containing progress information, from the Power Brake working group (to revise the power brake regulations contained in 49 CFR part 232), the Locomotive Engineer Certification working group (to revise the locomotive engineer certification regulations contained in 49 CFR part 240), and the Tourist and Historic Railroads working group's Steam Standards task force (to revise the steam locomotive inspection and testing standards contained in 49 CFR part 230); (3) the RSAC's receipt of status reports from the locomotive crew safety planning group (to evaluate the agency's report to Congress on locomotive crashworthiness and crew working conditions and to assess possible future action); (4) the RSAC's receipt of status reports on several issues which are not currently tasked to the RSAC, but which are in exploratory data gathering stages: (a) the dispatcher training task force; (b) the track motor vehicles and self-propelled roadway equipment task force; (c) AAR Event recorder data survivability progress; and (d) the address of several administrative matters before the RSAC.

DATES: The meeting of the RSAC is scheduled to commence at 8:30 a.m. and conclude at 5:00 p.m. on Monday, March 24.

ADDRESSES: The meeting of the RSAC will be held at the Westin Hotel, formerly the Washington Vista Hotel, 1400 M. Street, N.W., Washington, D.C. The meeting is open to the public on a first-come, first-served basis and is accessible to individuals with disabilities. Sign language interpreters will be available for individuals with hearing impediments.

FOR FURTHER INFORMATION CONTACT: Vicky McCully, FRA, 400 7th Street, S.W. Washington, D.C. 20590, (202) 632–3330, Grady Cothen, Deputy Associate Administrator for Safety Standards and Program Development, FRA, 400 7th Street, S.W., Washington, D.C. 20590, (202) 632–3309, or Lisa Levine, Office of Chief Counsel, FRA, 400 7th Street, S.W., Washington, D.C. 20590, (202) 632–3189.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), FRA is giving notice of a meeting of the Railroad Safety Advisory Committee ("RSAC'). The meeting is scheduled to begin at 8:30 a.m. and conclude at 5:00 p.m. on Monday, March 24, 1997. The meeting will be held at the Westin Hotel, formerly the Washington Vista Hotel, 1400 M. Street, N.W., Washington, D.C. All times noted are Eastern Standard Time.

RSAC was established to provide advice and recommendations to the FRA on railroad safety matters. The Committee consists of 48 individual representatives, drawn from among 27 organizations representing various rail industry perspectives, and 2 associate non-voting representatives from the agencies with railroad safety regulatory responsibility in Canada and Mexico.

During this meeting, the RSAC will be considering, for consensus approval, the Railroad Communications working group's proposal for the revision of the railroad communications standards contained in 49 CFR part 220. The Committee will also be receiving status reports, containing progress

information, from the Power Brake working group (to revise the power brake regulations contained in 49 CFR part 232), the Locomotive Engineer Certification working group (to revise the locomotive engineer certification regulations contained in 49 CFR Part 240), and the Tourist and Historic Railroads working group's Steam Standards task force (to revise the steam locomotive inspection and testing standards contained in 49 CFR part 230). The RSAC will also be receiving a report from the locomotive crew safety planning group (evaluating the agency's report to Congress on locomotive crashworthiness and crew working conditions and to assess possible future action).

Finally, the agency will engage in exploratory discussion with the RSAC regarding the following issues, which may be tasked to the RSAC in the future: (1) The dispatcher training task force; (2) the track motor vehicles and self-propelled roadway equipment task force; and (3) AAR Event recorder data survivability progress; and (4) the address of several administrative matters before the RSAC.

Please refer to the notice published in the **Federal Register** on March 11, 1996 (61 FR 9740) for more information about the RSAC.

Issued in Washington, D.C. on March 4, 1997.

Bruce Fine,

Associate Administrator for Safety.

[FR Doc. 97–5738 Filed 3–6–97; 8:45 am]

BILLING CODE 4910–06–P

National Highway Traffic Safety Administration

[Docket No. 74–40; Notice 9]

Insurance Cost Information Regulation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of text and data for 1997 Insurance Cost Information Booklet.

SUMMARY: This notice provides the 1997 text and data that new car dealers must include in an insurance cost information booklet that they must make available to prospective purchasers, pursuant to 49 CFR 582.4. This information may assist prospective purchasers in comparing differences in passenger vehicle collision loss experience that could affect auto insurance costs.

FOR FURTHER INFORMATION CONTACT: Mr. Orron Kee, Office of Market Incentives, NHTSA, 400 Seventh Street S.W., Washington, DC 20590 (202–366–4936).

SUPPLEMENTARY INFORMATION: Pursuant to section 201(e) of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 1941(e), on March 5, 1993, 58 FR 12545, the National Highway Traffic Safety Administration (NHTSA) amended 49 CFR Part 582, Insurance Cost Information Regulation, to require dealers of new automobiles to distribute to prospective customers information that compares differences in insurance costs of different makes and models of passenger cars based on differences in damage susceptibility. On March 17, 1994, NHTSA denied a petition submitted by the National Automobile Dealers Association (NADA) for NHTSA to reconsider Part 582 insofar as it requires new automobile dealers to prepare the requisite number of copies for distribution of the insurance cost information to prospective purchasers. 59 FR 13630. On March 24, 1995, NHTSA published a Final Rule to amend Part 582 in a number of respects. 60 FR 15509.

Pursuant to 49 CFR § 582.4, new automobile dealers are required to make available to prospective purchasers booklets that include this comparative information as well as certain mandatory explanatory text that is set out in section 582.5. Early each year, NHTSA publishes updated annual data in the Notices section of the **Federal Register**. Booklets reflecting the updated data must be available for distribution to prospective purchasers without charge within 30 days from the date of publication of the data in the **Federal Register**.

NHTSA has mailed a sample copy of the 1997 booklet to each dealer on the mailing list that the Department of Energy uses to distribute the "Gas Mileage Guide." Dealers will have the responsibility of reproducing a sufficient number of copies of the booklet to assure that they are available for retention by prospective purchasers by April 7, 1997. Dealers who do not receive a copy of the booklet within 15 days of the date of this notice should contact Mr. Orron Kee of NHTSA's Office of Planning and Consumer Programs ((202) 366–0846) to receive a copy of the booklet and to be added to the mailing list.

The required text and data are as follows:

FEBRUARY 1997

COMPARISON OF DIFFERENCES IN INSURANCE COSTS FOR PASSENGER CARS, STATION WAGONS/PASSENGER VANS, PICKUPS AND UTILITY VEHICLES ON THE BASIS OF DAMAGE SUSCEPTIBILITY

The National Highway Traffic Safety Administration (NHTSA) has provided the information in this booklet in compliance with Federal law as an aid to consumers considering the purchase of a new car. The booklet compares differences in insurance costs for different makes and models of passenger cars, station wagons/passenger vans, pickups, and utility vehicles on the basis of damage susceptibility. However, it does not indicate a vehicle's relative safety.

The following table contains the best available information regarding the effect of damage susceptibility on auto insurance premiums. It was taken from data compiled by the Highway Loss Data Institute (HLDI) in its December 1996 *Insurance Collision Report*, and reflects the collision loss experience of passenger cars, utility vehicles, light trucks, and vans sold in the United States in terms of the average loss payment per insured vehicle year for model years 1994–1996. NHTSA has not verified the data in this table.

The table presents vehicles' collision loss experience in relative terms, with 100 representing the average for all passenger vehicles. Thus, a rating of 122 reflects a collision loss experience that is 22 percent higher (worse) than average while a rating of 96 reflects a collision loss experience that is 4 per cent lower (better) than average. The table is not relevant for models that have been substantially redesigned for 1997, and it does not include information about models without enough insurance claims experience.

Although many insurance companies use the HLDI information to adjust the "base rate" for the *collision portion* of their auto insurance premiums, the amount of any such adjustment is usually small. It is unlikely that your total premium will vary more than ten per cent depending upon the collision loss experience of a particular vehicle. If you do not purchase collision coverage or your insurance company does not use the HLDI information, your premium will not vary at all in relation to these rankings.

In addition, different insurance companies often charge different premiums for the same driver and vehicle. Therefore, you should contact insurance companies or their agents directly to determine the actual

premium that you will be charged for insuring a particular vehicle.

Please Note: In setting auto insurance premiums, insurance companies mainly rely on factors that are not directly related to the vehicle itself (except for its value). Rather, they mainly consider driver characteristics (such as age, gender, marital status, and driving record), the geographic area in which the vehicle is driven, how many miles are traveled, and how the vehicle is used. Therefore, to obtain complete information about insurance premiums, you should contact insurance companies or their agents directly.

Insurance companies do not generally adjust their premiums on the basis of data reflecting the crashworthiness of different vehicles. However, some companies adjust their premiums for personal injury protection and medical payments coverage if the insured vehicle has features that are likely to improve its crashworthiness, such as air bags and automatic seat belts.

Test data relating to vehicle crashworthiness are available from NHTSA's New Car Assessment Program (NCAP). NCAP test results demonstrate relative frontal crash protection in new vehicles. Information on vehicles that NHTSA has tested in the NCAP program can be obtained by calling the agency's toll-free Auto Safety Hotline at (800) 424–9393. This information also is available on NHTSA's Web site on the internet (http://www.nhtsa.dot.gov).

COLLISION INSURANCE LOSSES, MODEL YEAR 1994–96 PASSENGER MOTOR VEHICLES *

Make	Model	Relative loss payment
Small Cars—Two Door Models		
Average for small two-door models		122
Saturn	SC	100
Geo	Metro	111
Volkswagen	Cabrio convertible	114
Subaru	Impreza 4WD	125
Subaru	Impreza	125
Ford	Escort	126
Eagle	Summit	130
Hyundai	Accent	133
Mitsubishi	Eclipse	134
Toyota	Tercel	140
Ford	Aspire	140
Suzuki	Swift	140
Mitsubishi	Mirage	142
Eagle	Talon	142
Eagle	Talon 4WD	151
Volkswagen	GTI	160
Mitsubishi	Eclipse 4WD	178
Nissan	240SX	183
Four-Door Models		
Average for small four-door models		119
Subaru	Impreza 4WD	105
Ford	Escort	106
Subaru	Impreza	110
Mercury	Tracer	112
Volkswagen	Golf III	112
Geo	Prizm	117
Toyota	Corolla	118
Hyundai	Accent	128
Eagle	Summit	130
Volkswagen	Jetta III	131
KIA	Sephia	132
Ford	Aspire	136
Geo	Metro	137
Mitsubishi	Mirage	144
Toyota	Tercel	152
Station Wagons/Passenger Vans		
Average for small station wagons/passenger vans		84
Eagle	Summit	62
Mercury	Tracer	80
Ford	Escort	81
Subaru	Impreza 4WD	89
Toyota	Corolla	111
Eagle	Summit 4WD	116
Sports Models		
Average for small sports models		150
Mazda	MX–5 Miata convertible	106

COLLISION INSURANCE LOSSES, MODEL YEAR 1994–96 PASSENGER MOTOR VEHICLES *—Continued

Make	Model	Relative loss payment
Honda	Civic Del Sol convertible	128
Dodge	Stealth	143
Mercedes	SL Class convertible	152
Mitsubishi	3000 GT	160
Chevrolet	Corvette	166
Chevrolet	Corvette convertible	166
Nissan	300ZX	211
Porsche	911 convertible	238
Porsche	911 Targa/Coupe	256
Mitsubishi	3000 GT 4WD	325
Dodge	Viper convertible	445
Mid-Size Cars—Two-Door Models		
Average for mid-size two-door models		111
Chrysler	Sebring convertible	69
Buick	Regal	69
Buick	Skylark	80
Oldsmobile	Cutlass Supreme	81
Toyota	Celica convertible	87
Chevrolet	Monte Carlo	88
Oldsmobile	Achieva	88
Pontiac	Grand Prix	90
Pontiac	Grand Am	94
Honda	Accord	105
Chevrolet	Beretta	108
Nissan	200SX	110
Saab	900	111
Honda	Civic	111
Toyota	Camry	112
Chevrolet	Cavalier	112
Plymouth	Neon	116
Honda	Civic Coupe	121
Pontiac	Sunfire	121
Dodge	Neon	123
Chrysler	Sebring	123
Dodge	Avenger	125
Acura	Integra	141
Mazda	MX–6	145
Toyota	Celica	147
BMW	318ti	150
Ford	Probe	157
Honda	Prelude	162
Four-Door Models		
Average for mid-size four-door models		94
Buick	Regal	64
Oldsmobile	Cutlass Supreme	69
Mercury	Sable	69
Oldsmobile	Cutlass Ciera	71
Chevrolet	Lumina	71
Chrysler	Cirrus	76
Ford	Taurus	77
Buick	Century	77
Buick	Skylark	78
Saturn	SL	80
Mercury	Mystique	80
Pontiac	Grand Prix	81
Dodge	Stratus	82
Ford	Contour	84
Pontiac	Grand Am	86
Plymouth	Breeze	86
Chevrolet	Corsica	87
Chevrolet	Cavalier	88
Oldsmobile	Achieva	89
Infiniti	I30	92
Honda	Civic	95
Toyota	Avalon	97
Honda	Accord	98

COLLISION INSURANCE LOSSES, MODEL YEAR 1994–96 PASSENGER MOTOR VEHICLES *—Continued

Make	Model	Relative loss payment
Dodge	Neon	98
Pontiac	Sunfire	100
Plymouth	Neon	102
Mitsubishi	Diamante	103
Toyota	Camry	106
Nissan	Altima	108
Subaru	Legacy	109
Volvo	850	110
Mitsubishi	Galant	111
Nissan	Sentra	113
Subaru	Legacy 4WD	113
Volkswagen	Passat	113
Mazda	Protégé	118
Lexus	ES 300	120
Audi	A4 Quattro	120
Mazda	626	121
Nissan	Maxima	123
Mazda	Millenia	125
Infiniti	G20	130
Acura	Integra	131
Hyundai	Sonata	131
Saab	900	142
Audi	A4	168
Station Wagons/Passenger Vans		
Average for mid-size station wagons/passenger vans		86
Mercury	Sable	59
Oldsmobile	Cutlass Ciera	63
Saturn	SW	69
Buick	Century	75
Honda	Accord	87
Mitsubishi	Expo	93
Ford	Taurus	98
Toyota	Camry	100
Volvo	850	112
Subaru	Legacy 4WD	114
Volkswagen	Passat	118
Sports Models		
Average for mid-size sports models		150
Saab	900 convertible	137
Ford	Mustang convertible	138
Nissan	300ZX 2+2	139
Pontiac	Firebird convertible	140
Chevrolet	Camaro convertible	145
Pontiac	Firebird	148
Ford	Mustang	151
Chevrolet	Camaro	153
Subaru	SVX 4WD	159
Audi	Cabriolet convertible	178
Toyota	Supra	268
Luxury Models		
Average for mid-size luxury models		139
Lincoln	Continental	94
Cadillac	Eldorado	104
Audi	A6 four-door	106
Volvo	940/960 station wagon	119
Volvo	940/960 four-door	125
Audi	A6/S6 Quattro 4-door	128
BMW	3 Series convertible	137
Mercedes	C Class four-door	143
Infiniti	J30	150
BMW	3 Series four-door	151
Lexus	SC 300/400	159
Saab	9000 four-door	171
Lexus	GS 300	183
BMW	3 Series two-door	186

COLLISION INSURANCE LOSSES, MODEL YEAR 1994–96 PASSENGER MOTOR VEHICLES *—Continued

Make	Model	Relative loss payment
Jaguar	XJ–S convertible	191
BMW	8 Series two-door	422
Large Cars—Two-Door Models		
Average for large two-door models		89
Buick	Riviera	74
Mercury	Cougar	85
Ford	Thunderbird	92
Four-Door Models		
Average for large four-door models		80
Mercury	Grand Marquis	67
Ford	Crown Victoria	69
Buick	LeSabre	76
Oldsmobile	Eighty-Eight	77
Chrysler	Concorde	77
Eagle	Vision	82
Buick	Park Avenue	82
Pontiac	Bonneville	83
Chevrolet	Caprice	83
Oldsmobile	Ninety-Eight	84
Dodge	Intrepid	86
Buick	Roadmaster	89
Chrysler	New Yorker	91
Acura	TL	134
Station Wagons/Passenger Vans		
Average for large station wagons/passenger vans		69
GMC	Safari Van	61
Chevrolet	Astro Van	61
Pontiac	Trans Sport	65
Dodge	Caravan	65
Chevrolet	Astro Van 4WD	65
Chrysler	Town & Country	67
GMC	Safari Van 4WD	67
Plymouth	Voyager	67
Chevrolet	Lumina APV	69
Honda	Odyssey Wagon	70
Mercury	Villager Wagon	70
Nissan	Quest Wagon	71
Ford	Aerostar Van	74
Ford	Windstar Wagon	77
Oldsmobile	Silhouette	77
Buick	Roadmaster Wagon	84
Ford	Aerostar Van 4WD	88
Chevrolet	Caprice	90
Toyota	Previa Van	90
Toyota	Previa Van 4WD	99
Luxury Models		
Average for large luxury models		110
Oldsmobile	Aurora	81
Lincoln	Town Car	84
Cadillac	De Ville 4-door	87
Chrysler	LHS	99
BMW	7 Series four-door	107
Cadillac	Seville	109
Cadillac	Brougham	115
Lincoln	Mark VIII	122
Mercedes	E Class 4-door	150
Mercedes	S Class LWB 4-door	151
Lexus	LS 400	160
Mercedes	S Class two-door	167
Jaguar	XJ four-door	167
Mercedes	S Class SWB 4-door	168

COLLISION INSURANCE LOSSES, MODEL YEAR 1994–96 PASSENGER MOTOR VEHICLES*—Continued

Make	Model	Relative loss payment
Infiniti	Q45	173
Small Pickups		
Average for small pickups		84
Mazda	Regular/ext. Cab 4X4	63
Mazda	Regular/ext. Cab	69
Dodge	Dakota Series	70
GMC	T15 Series two-door 4X4	75
Dodge	Dakota Series 4X4	76
Ford	Ranger Series	78
GMC	S15 Series two-door	81
Chevrolet	S10 Series two-door	82
Chevrolet	T10 Series two-door 4X4	84
Mitsubishi	Regular/ext. Cab	95
Ford	Ranger Series 4X4	103
Nissan	Regular/ext. Cab	108
Toyota	Tacoma Regular/ext. Cab 4X4	109
Toyota	Tacoma Regular/ext. Cab	120
Standard Pickups		
Average for standard pickups		69
Ford	F–150 Series 4X4 (1997)	52
Chevrolet	1500 Series	58
Ford	F–150 Series (1997)	59
Ford	F–250 Series	60
GMC	2500 Series 4X4	61
Ford	F–250 (with air bag)	62
Ford	F–350 Series	63
Chevrolet	2500 Series	63
GMC	1500 Series	64
Chevrolet	1500 Series 4X4	64
GMC	1500 Series 4X4	64
Chevrolet	2500 Series 4X4	65
GMC	3500 Series 4X4	66
Ford	F–150 Series	68
GMC	3500 Series	69
GMC	2500 Series	71
Ford	F–250 Series 4X4	72
Chevrolet	3500 Series 4X4	72
Chevrolet	3500 Series	73
Ford	F–150 Series 4X4	73
Dodge	Ram 1500 Series	79
Ford	F–350 Series	84
Dodge	Ram 1500 Series 4X4	89
Dodge	Ram 2500 Series	92
Dodge	Ram 2500 Series 4X4	98
Toyota	T100 Reg/ext cab	99
Dodge	Ram 3500 Series	99
Toyota	T100 Reg/ext cab 4X4	103
Dodge	Ram 3500 Series 4X4	119
Utility Vehicles—Small Utility Vehicles		
Average for small utility vehicles		92
Geo	Tracker 4-door 4X4	73
Geo	Tracker 2-door 4X4	103
Suzuki	Sidekick 4-door 4X4	104
Toyota	RAV4 4-door 4X4	129
Intermediate Utility Vehicles		
Average for intermediate utility vehicles		89
Chevrolet	Tahoe 4-door	39
GMC	Yukon 4-door 4WD	54
Chevrolet	Tahoe 4-door 4WD	54
GMC	Yukon 4-door	57
Land Rover	Range Rover	59

COLLISION INSURANCE LOSSES, MODEL YEAR 1994–96 PASSENGER MOTOR VEHICLES*—Continued

Make	Model	Relative loss payment
GMC	Yukon 2-door 4X4	63
Jeep	Cherokee 2-door	66
Chevrolet	Tahoe 2-door 4X4	67
Jeep	Grand Cherokee 4-door	73
Jeep	Cherokee 4-door	75
Jeep	Cherokee 2-door 4X4	76
Ford	Explorer 4-door	77
Chevrolet	S10 Blazer 4-door	78
Chevrolet	T10 Blazer 4-door 4X4	81
Ford	Bronco	82
Jeep	Cherokee 4-door 4X4	82
GMC	S15 Jimmy 4-door	84
Jeep	Grand Cherokee 4-door 4X4	85
Ford	Explorer 4-door 4X4	86
GMC	T15 Jimmy 4-door 4X4	86
Isuzu	Trooper 4-door 4X4	92
Ford	Explorer 2-door	95
Toyota	4 Runner 4-door	95
GMC	S15 Jimmy 2-door	96
Isuzu	Rodeo 4-door 4X4	103
Chevrolet	T10 Blazer 2-door 4X4	106
Honda	Passport 4-door	111
Chevrolet	S10 Blazer 2-door	112
Ford	Explorer 2-door 4X4	114
Toyota	4 Runner 4-door 4X4	116
Mitsubishi	Montero 4-door 4X4	118
Nissan	Pathfinder 4-door 4X4	118
GMC	T15 Jimmy 2-door 4X4	122
Honda	Passport 4-door	122
Isuzu	Rodeo 4-door	124
Land Rover	Discovery	150
Toyota	Land Cruiser	168
Large Utility Vehicles		
Average for large utility vehicles		60
GMC	Suburban 1500	45
Chevrolet	Suburban 1500	49
GMC	Suburban 2500 4X4	54
Chevrolet	Suburban 1500 4X4	55
GMC	Suburban 1500 4X4	56
Chevrolet	Suburban 2500 4X4	58
Chevrolet	Suburban 2500	86
Large Vans		
Average for all large vans		64
Dodge	B250	34
Chevrolet	Astro Cargo Van 4X4	51
Ford	E–150 Club Wagon	52
GMC	Safari Cargo Van 4X4	53
Chevrolet	Lumina Cargo APV	55
Ford	E–150 Econoline	59
Ford	E–350 Club Wagon	62
GMC	Safari Cargo Van	63
Chevrolet	Astro Cargo Van	63
Dodge	B250 Cargo Van	65
Ford	E–250 Econoline	65
Dodge	B150	72
GMC	Vandura 3500	73
Ford	Aerostar Cargo Van	79
Chevrolet	Chevy Van 3500	83
Dodge	B150 Cargo Van	84
Ford	E–350 Econoline	114

*Note: Every model represents over 1,000 insured vehicle years and at least 100 claims.

If you would like more details about the information in this table, or wish to obtain the complete *Insurance Collision Report*, please contact HLDI directly, at: Highway Loss Data Institute, 1005 North Glebe Road, Arlington, VA 22201, Tel: (703) 247–1600.

(49 U.S.C. 32302; delegation of authority at 49 CFR 1.50(f).)

Issued on: March 3, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 96–5721 Filed 3–6–96; 8:45 am]

BILLING CODE 4910–59–P

National Highway Traffic Safety Administration

Research and Development Programs Meeting Agenda

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice provides the agenda for a public meeting at which the National Highway Traffic Safety Administration (NHTSA) will describe and discuss specific research and development projects.

DATES AND TIMES: As previously announced, NHTSA will hold a public meeting devoted primarily to presentations of specific research and development projects on March 11, 1997, beginning at 1:30 p.m. and ending at approximately 5:00 p.m.

ADDRESSES: The meeting will be held at the Hilton Suites, Detroit Metro Airport, 8600 Wickham Road, Romulus, Michigan 48174.

SUPPLEMENTARY INFORMATION: This notice provides the agenda for the sixteenth in a series of public meetings to provide detailed information about NHTSA's research and development programs. This meeting will be held on March 11, 1997. The meeting was announced on February 18, 1997 (62 FR 7293). For additional information about the meeting consult that announcement.

Starting at 1:30 p.m. and concluding by 5:00 p.m., NHTSA's Office of Research and Development will discuss the following topics:

Status of air bag aggressiveness and advanced air bag research, including child restraint/air bag interaction (CRABI) dummy testing,

Demonstration of CD ROM for child restraint/vehicle compatibility,

Status and plans for the 1997 calendar year for the National Automotive Sampling System Crashworthiness Data Base (NASS CDS),

Special crash investigation studies of air bag cases, Status and plans for anti-lock brake systems research, and Status of research on restraint systems for rollover protection.

NHTSA has based its decisions about the agenda, in part, on the suggestions it received by February 21, 1997, in response to the announcement published February 18, 1997.

As announced on February 18, 1997, in the time remaining at the conclusion of the presentations, NHTSA will provide answers to questions on its research and development programs, where those questions have been submitted in writing by February 27, 1997, to Ralph J. Hitchcock, Acting Associate Administrator for Research and Development, NRD–01, National Highway Traffic Safety Administration, Washington, DC 20590. Fax number: 202–366–5930.

FOR FURTHER INFORMATION CONTACT: Rita I. Gibbons, Staff Assistant, Office of Research and Development, 400 Seventh Street, SW, Washington, DC 20590. Telephone: 202–366–4862. Fax number: 202–366–5930.

Issued: March 3, 1997.

Ralph J. Hitchcock,

Acting Associate Administrator for Research and Development.

[FR Doc. 97–5603 Filed 3–6–97; 8:45 am]

BILLING CODE 4910–59–P

National Highway Traffic Safety Administration

Docket No. 96–114; Notice 1

Notice of Tentative Decision That Certain Noncomplying Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Request for comments on tentative decision that certain noncomplying vehicles are eligible for importation into the United States.

SUMMARY: This notice requests comments on a tentative decision by the National Highway Traffic Safety Administration (NHTSA) that certain vehicles that do not comply with all applicable Federal motor vehicle safety standards, but that are certified by their original manufacturer as complying with all applicable Canadian motor vehicle safety standards, are eligible for importation into the United States. The vehicles in question either (1) are substantially similar to vehicles that were certified by their manufacturers as complying with the U.S. safety standards and are capable of being readily altered to conform to those standards, or (2) have safety features that comply with, or are capable of being altered to comply with all U.S. safety standards. This notice also requests comments on a proposal to rescind the existing vehicle eligibility number applicable to all vehicles certified by their original manufacturer as complying with Canadian safety standards (eligibility number VSA–1), and to assign four separate eligibility numbers, based on vehicle classification and weight.

DATE: The closing date for comments on this tentative decision is April 7, 1997.

ADDRESS: Comments should refer to the docket number and notice number and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. (Docket hours are from 9:30 am to 4 pm.)

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards (FMVSS) shall be refused admission into the United States unless NHTSA has decided, that the vehicle is substantially similar to a motor vehicle of the same model year that was originally manufactured for importation into and sale in the United States and was certified as complying with all applicable FMVSS, and also finds that the noncompliant vehicle is capable of being readily altered to conform to all applicable FMVSS. Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if NHTSA decides that its safety features comply with, or are capable of being altered to comply with, all applicable FMVSS.

A. First Decision on Canadian Vehicles

On August 13, 1990, NHTSA published a **Federal Register** notice at 55 FR 32988 announcing that it had made a final determination on its own initiative that certain motor vehicles that are certified by their original manufacturer as complying with all applicable Canadian motor vehicle safety standards (CMVSS) are eligible for importation into the United States. The agency made this determination under the precursor to 49 U.S.C. 30141(a)(1)(A), on the basis that the Canadian-certified vehicles involved are substantially similar to U.S.-certified vehicles, and are capable of being readily modified to conform to all applicable FMVSS. As identified in the notice, the Canadian-certified vehicles determined to be eligible for importation include:

all passenger cars manufactured on or after September 1, 1989 which are equipped by their original manufacturer with an automatic restraint system that complies with Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection*.

The notice explained that NHTSA had examined the CMVSS and found that, in most essential respects, they are identical to the FMVSS, and that the most significant difference between the two sets of standards concerned occupant protection requirements. NHTSA noted that CMVSS No. 208, *Occupant Restraint Systems*, does not require a passenger car to be equipped with automatic restraints, in contrast to FMVSS No. 208, *Occupant Crash Protection*, which requires automatic restraints in front designated seating positions for all passenger cars manufactured on and after September 1, 1989. Owing to this difference, and the agency's uncertainty that Canadian-certified vehicles could be retrofitted with automatic restraint systems, NHTSA limited its eligibility determination to passenger cars manufactured before September 1, 1989, or those manufactured on or after that date that are equipped by their original manufacturer with an automatic restraint system that complies with FMVSS No. 208.

B. Second Decision on Canadian Vehicles

1. Passenger Cars

On October 8, 1991, NHTSA published a **Federal Register** notice at 56 FR 50749 announcing that it had made a final determination on its own initiative that certain other motor vehicles certified by their original manufacturer as complying with all applicable CMVSS are eligible for importation into the United States. This determination was made under the precursor to 49 U.S.C. 30141(a)(1)(B), on the basis that there was no U.S.-certified vehicle substantially similar to the Canadian-certified vehicles involved, but that those Canadian-certified have safety features that comply with, or are capable of being altered to comply with, all applicable FMVSS based on destructive test data or such other evidence deemed adequate by NHTSA. As identified in that notice, the Canadian-certified vehicles determined to be eligible for importation include:

all passenger cars manufactured on or after September 1, 1989, and before September 1, 1996, which are equipped with an automatic restraint system that complies with FMVSS No. 208, *Occupant Crash Protection*.

The notice observed that the CMVSS did not contain dynamic side impact requirements (found in FMVSS No. 214, *Side Impact Protection*) that would become effective for all passenger cars on September 1, 1996. Owing to this difference, passenger cars manufactured on or after that date were not included in the agency's import eligibility determination. Because this determination effectively restricts the importation of Canadian-certified passenger cars manufactured on or after September 1, 1996 that are not the subject of import eligibility petitions granted by NHTSA under 49 CFR 593.7(f), the agency recognizes the need for a new eligibility decision on the Administrator's initiative, covering such vehicles that are manufactured to comply with FMVSS Nos. 208 and 214.

2. Vehicles Other Than Passenger Cars

On October 8, 1991, NHTSA also determined the following Canadian-certified vehicles to be eligible for importation under the precursor to 49 U.S.C. 30141(a)(1)(B):

All multipurpose passenger vehicles, trucks, and buses manufactured on and after September 1, 1991, by their original manufacturer to comply with the requirements of FMVSS Nos. 202 and 208 to which they would have been subject had they been manufactured for sale in the United States.

56 FR 50750. As the notice explained, September 1, 1991 was selected as the cutoff date in response to a comment from the Ford Motor Company (Ford), which observed that there would be significant changes to FMVSS No. 208 and to FMVSS No. 202, *Head Restraints*, affecting vehicles other than passenger cars beginning with the 1992 model year, and that these changes would not be reflected in the corresponding CMVSS. As described in the notice, these changes would require multipurpose passenger vehicles (MPVs) and trucks with a gross vehicle weight rating (GVWR) of 8,500 pounds or less having an unloaded vehicle weight of 5,500 pounds or less to comply with FMVSS No. 208's frontal crash test requirements using, in Ford's words, either "active belts or passive restraints." The notice additionally stated that for 1992 and subsequent model years, "MPVs (except for motor homes), trucks and buses (except school buses) with a GVWR of 10,000 pounds or less, must be equipped with rear seat lap/shoulder belts at the outboard seating positions." 56 FR 50749. Finally, the notice observed that "MPVs, trucks, and buses with a GVWR of 10,000 pounds or less must comply with head restraint requirements" of FMVSS No. 202 that were not added to the Canadian standards. Ibid.

C. Amendment to Prior Determination on Vehicles Other Than Passenger Cars

NHTSA stated in the October 8, 1991 final determination notice that Ford's comments would also require the agency to amend a determination that it had published on August 13, 1990 at 55 FR 32988 concerning Canadian trucks, buses, and MPVs that it found eligible for importation under the precursor to 49 U.S.C. 30141(a)(1)(A). 56 FR 50750. A notice announcing that amendment was published on October 26, 1992 at 57 FR 48539. The vehicles identified in that notice as being eligible for importation included the following:

All multipurpose passenger vehicles, trucks, and buses manufactured on and after September 1, 1991, and before September 1, 1993, by their original manufacturer to comply with the requirements of U.S. FMVSS Nos. 202 and 208 to which they would have been subject had they been manufactured for sale in the United States; and

All multipurpose passenger vehicles, trucks and buses manufactured on or after September 1, 1993, by their original manufacturer to comply with the requirements of U.S. FMVSS Nos. 202, 208, and 216 to which they would have been subject had they been manufactured for sale in the United States.

57 FR 48539. The notice stated that September 1, 1993 was selected as a cutoff date in light of "significant changes" that had been made to FMVSS No. 216 *Roof Crush Resistance* affecting vehicles other than passenger cars beginning with the 1994 model year, and that corresponding changes had not been made to the CMVSS. Ibid. As described in the notice, those changes would require multipurpose passenger vehicles, trucks, and buses whose GVWR is less than 6,000 pounds manufactured on and after September 1, 1993 to comply with the standard's roof crush resistance requirements.

D. Amendments Omitted From Annual Lists

Under 49 U.S.C. 30141(b)(2), NHTSA is required to publish annually in the **Federal Register** a list of all vehicles for which import eligibility decisions have been made. Through an oversight, the amendments to NHTSA's

determinations concerning Canadian trucks, buses, and MPVs that were announced in the October 26, 1992 notice were not reflected in the annual lists that the agency published on February 23, 1994 (at 59 FR 8671), February 13, 1995 (at 60 FR 8268), and March 1, 1996 (at 61 FR 8097). Those amendments were also not reflected in the final rule published by NHTSA on October 1, 1996 at 61 FR 51242, which amended the agency's regulations establishing procedures for import eligibility decisions at 49 CFR Part 593 by adding an appendix listing all vehicles that have been decided to be eligible for importation. Because these publications of the list of eligible vehicles merely identified vehicles that had been determined eligible for importation, but did not make any such determinations or amend those previously made, they do not affect the validity of the omitted October 26, 1992 amendments to NHTSA's import eligibility determinations concerning Canadian trucks, buses, and MPVs.

E. Need for New Import Eligibility Decision on Vehicles Other Than Passenger Cars

In addition to the regulatory changes that led NHTSA to amend its prior import eligibility determination for Canadian trucks, buses, and MPVs on October 26, 1992, another anticipated change has raised the need for the agency to make a new decision regarding the import eligibility of these vehicles. Dynamic side impact requirements that are not found in the corresponding CMVSS have recently been added to FMVSS No. 214, *Side Impact Protection*, and will become effective on September 1, 1998 for certain MPVs, trucks, and buses with a GVWR of 6,000 pounds or less. These requirements will apply to all such vehicles, except for walk-in vans, motor homes, tow trucks, dump trucks, ambulances and other emergency rescue/medical vehicles (including vehicles with fire-fighting equipment), vehicles equipped with wheelchair lifts, and vehicles which have no doors or exclusively have doors that are designed to be easily attached or removed so the vehicle can be operated without doors. To accommodate this regulatory change, NHTSA has tentatively decided to limit its previous import eligibility decision covering Canadian MPVs, trucks, and buses to those manufactured before September 1, 1998, and to make a new decision that those manufactured on or after that date must comply with FMVSS Nos. 202, 208, 214, and 216 to be eligible for importation.

F. Need to Limit Currently Open-Ended Import Eligibility Decisions

To avoid the need for additional amendments of prior eligibility decisions in the event that there are any further requirements imposed under the FMVSS that are not carried into the corresponding CMVSS, NHTSA has tentatively decided to limit all currently open-ended import eligibility decisions for Canadian-certified passenger cars, MPVs, trucks, and buses to such vehicles manufactured before September 1, 2002. That is the date on which revised interior impact protection requirements that are to be phased in under FMVSS No. 201, *Occupant Protection in Interior Impact*, and that are not found in the corresponding CMVSS, will become effective for all passenger cars and for MPVs, trucks, and buses with a GVWR of 10,000 pounds or less. The agency intends to issue new decisions covering vehicles manufactured on or after September 1, 2002 within a sufficient period before that date is reached.

Tentative Decision

Pending its review of any comments submitted in response to this notice, NHTSA hereby tentatively decides that:

(a) All passenger cars manufactured on or after September 1, 1996 and before September 1, 2002, that, as originally manufactured, are equipped with an automatic restraint system that complies with Federal Motor Vehicle Safety Standard (FMVSS) No. 208, and that comply with FMVSS No. 214;

(b) All multipurpose passenger vehicles, trucks and buses manufactured on or after September 1, 1993, and before September 1, 1998, that, as originally manufactured, comply with FMVSS Nos. 202, 208, and 216; and

(c) All multipurpose passenger vehicles, trucks and buses manufactured on or after September 1, 1998, and before September 1, 2002, that, as originally manufactured, comply with FMVSS Nos. 202, 208, 214, and 216;

that are certified by their original manufacturer as complying with all applicable Canadian motor vehicle safety standards, are eligible for importation into the United States on the basis that either:

1. They are substantially similar to vehicles of the same make, model, and model year originally manufactured for importation into and sale in the United States, or originally manufactured in the United States for sale there, and certified as complying with all applicable FMVSS, and are capable of being readily altered to conform to all applicable FMVSS, or

2. They have safety features that comply with, or are capable of being altered to comply with, all applicable FMVSS.

Vehicle Eligibility Number

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. If this tentative decision is made final, NHTSA proposes to rescind Vehicle Eligibility Number VSA–1, which currently applies to all eligible vehicles certified by their original manufacturer as complying with all applicable CMVSS, and assign the following eligibility numbers to those vehicles:

VEHICLES CERTIFIED BY THEIR ORIGINAL MANUFACTURER AS COMPLYING WITH ALL APPLICABLE CANADIAN MOTOR VEHICLE SAFETY STANDARDS

Number	Vehicles
VSA–80	All passenger cars less than 25 years old that were manufactured before September 1, 1989; All passenger cars manufactured on or after September 1, 1989, and before September 1, 1996, that, as originally manufactured, are equipped with an automatic restraint system that complies with Federal Motor Vehicle Safety Standard (FMVSS) No. 208; All passenger cars manufactured on or after September 1, 1996 and before September 1, 2002, that, as originally manufactured, are equipped with an automatic restraint system that complies with FMVSS Nos. 208, and that comply with FMVSS No. 214.
VSA–81	All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4536 kg. (10,000 lbs.) or less that are less than 25 years old and that were manufactured before September 1, 1991; All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4536 kg. (10,0000 lbs.) or less that were manufactured on and after September 1, 1991, and before September 1, 1993, and that, as originally manufactured, comply with FMVSS Nos. 202 and 208;

VEHICLES CERTIFIED BY THEIR ORIGINAL MANUFACTURER AS COMPLYING WITH ALL APPLICABLE CANADIAN MOTOR VEHICLE SAFETY STANDARDS—Continued

Number	Vehicles
	All multipurpose passenger vehicles, trucks and buses with a GVWR of 4536 kg. (10,000 lbs.) or less that were manufactured on or after September 1, 1993, and before September 1, 1998, and that, as originally manufactured, comply with FMVSS Nos. 202, 208, and 216; All multipurpose passenger vehicles, trucks and buses with a GVWR of 4536 kg. (10,000 lbs.) or less, that were manufactured on or after September 1, 1998, and before September 1, 2002, and that, as originally manufactured, comply with the requirements of FMVSS Nos. 202, 208, 214, and 216.
VSA–82	All multipurpose passenger vehicles, trucks and buses with a GVWR greater than 4536 kg. (10,000 lbs.) that are less than 25 years old.
VSA–83	All trailers, and all motorcycles that are less than 25 years old.

Readers should note that in the preparation of this list, some changes were made from the language used in some prior import eligibility decisions. For example, prior eligibility decisions generally identify multipurpose passenger vehicles, trucks, and buses that are eligible for importation as those "certified by their original manufacturer to comply with [specified standards] to which they would have been subject had they been manufactured for sale in the United States." For the sake of clarity, the above list identifies eligible vehicles as those "that, as originally manufactured, comply with" specified standards. Although this language replaces text that was previously used only in decisions pertaining to multipurpose passenger vehicles, trucks, and buses, it is also being used in the list to describe passenger cars that must comply with specified standards to be eligible for importation. This is being done to achieve consistency in the description of vehicles eligible for importation, and to better reflect the agency's intent when it made the pertinent eligibility decisions.

Readers should also note that NHTSA is proposing to assign different vehicle eligibility numbers to multipurpose passenger vehicles, trucks, and buses, based on whether their gross vehicle weight rating (GVWR) is greater than, or at or below, 4536 kg. (10,000 lbs.). This proposal reflects the agency's awareness that there are differences between Canadian and U.S. standards that apply to multipurpose passenger vehicles, trucks, and buses with a GVWR at or below 4536 kg., but that these differences do not exist for vehicles of the same class that are above that weight rating.

Because of these proposed modifications to the text of its prior import eligibility decisions, NHTSA believes there is a need to replace the existing vehicle eligibility number, VSA–1, that is now applied to all eligible vehicles certified by their original manufacturer as complying with all applicable CMVSS. The agency proposes to replace this single eligibility number with four separate numbers, based on vehicle classification, and, in the case of multipurpose passenger vehicles, trucks and buses, by weight. This will allow for easier modification in the event that there are any future changes in the standards that affect only certain classes of vehicles.

Comments

Section 30141(b) of Title 49, U.S. Code requires NHTSA to provide a minimum period for public notice and comment on decisions made on its own initiative consistent with ensuring expeditious, but full consideration and avoiding delay by any person. NHTSA believes that a minimum comment period of 30 days is appropriate for this purpose. Interested persons are invited to submit comments on the tentative decisions described above. It is requested, but not required, that five copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of NHTSA's final decision will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A), (a)(1)(B), and (b)(1); 49 CFR 593.8; delegation of authority at 49 CFR 1.50.

Issued on: March 4, 1997.

Ricardo Martinez,

Administrator.

[FR Doc. 97–5726 Filed 3–6–97; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 97–014; Notice 1]

Accuride Corporation; Receipt of Application for Decision of Inconsequential Noncompliance

Accuride Corporation (Accuride) has determined that certain one-piece, tubeless aluminum dual wheels fail to conform to the requirements of 49 CFR 571.120, Federal Motor Vehicle Safety Standard (FMVSS) No. 120, "Tire Selection and Rims for Motor Vehicles Other Than Passenger Cars," and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." Accuride has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301 "Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 CFR Part 556 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

FMVSS No. 120, Paragraph 5.2, *Rim Marking*, states that "On or after August 1, 1977, each rim or, at the option of the manufacturer in the case of a singlepiece wheel, wheel disc shall be marked with the information listed in paragraphs (a) through (e) of this paragraph, in lettering not less than 3 millimeters high, impressed to a depth or, at the option of the manufacturer, embossed to a height of not less than 0.125 millimeters. The information listed in paragraphs (a) through (c) of this paragraph shall appear on the weather side. In the case of rims of multipiece construction, the information listed in paragraphs (a) through (e) of this paragraph shall appear on the rim base and the information listed in paragraphs (b) and (d) of this paragraph shall also appear on each other part of the rim."

Accuride's description of the noncompliance follows:

The motor vehicle equipment in issue are Accu-Forge 22.5 & 24.5×8.25 inch 15° Drop Center, One-piece, Tubeless Aluminum Dual Wheels, produced by Kaiser Aluminum and Chemical Corporation at its Erie, Pennsylvania, forging plant and machined at Ultra Forge, Inc. at Cuyahoga Falls, Ohio, were misstamped on the marking of the rim. The symbol "DOT" and the designation which indicates the source of the rim's published nominal dimensions, in this case "T" were not included. All other stampings specified by FMVSS 120 and by Accuride, including the part number and the loading rating, were correctly stamped on the product.

Accuride provides the following information in support of its petition:

"1. Accuride Corporation is a Delaware corporation and is a subsidiary of Phelps Dodge Corporation. Accuride is headquartered in Henderson, Kentucky and is a major manufacturer of truck rims and wheels.

"2. The motor vehicle equipment in question are a small number of Accu-Forge 22.5 & 24.5×8.25 inch, 15° drop center, one-piece tubeless dual wheels produced by Kaiser Aluminum and Chemical Corporation at its Erie, Pennsylvania forging plant and machined at Ultra Forge, Inc. in Cuyahoga Falls, Ohio. In issue are an estimated 478 of the total 1,256 wheels of this size produced between January 6, 1997 and January 10, 1997. Six wheels manufactured December 23, 1996 were also stamped during this time frame. The non-compliance relates to the mis-stamping of the marking of the rim. The symbol "DOT" and the designation which indicates the source of the rim's published nominal dimensions, in this case "T", were not included. All other stampings and markings required by FMVSS 120 and Accuride, including the part number and load rating, are correctly identified on each of the components in questions.

"3. The rim marking is for information only and there is no safety-related issue potentially arising from the exclusion of these symbols on the wheels."

Interested persons are invited to submit written data, views, and arguments on the application of Accuride, described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW, Washington, D.C., 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below. Comment closing date: April 7, 1997.

(49 U.S.C. 30118, 30120; delegation of authority at 49 CFR 1.50 and 501.8)

Issued on: March 3, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–5720 Filed 3–6–97; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 97–113; Notice 1]

General Motors Corporation; Receipt of Application for Decision of Inconsequential Noncompliance

General Motors Corporation (GM) has determined that certain of its 1996 J/L/N model cars fail to comply with the requirements of 49 CFR 571.101, Federal Motor Vehicle Safety Standard (FMVSS) No. 101, "Controls and Displays," and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Information Report." GM has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 CFR Part 573 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

Paragraph S5.3.5 of FMVSS No. 101 requires that sources of illumination forward of a transverse vertical plane 4.35 inches rearward of the manikin "H" point, with the driver's seat in its rearmost driving position, that are not used for controls and displays, are not a telltale, and are capable of being illuminated while a vehicle is in motion, have either (1) light intensity which is manually or automatically adjustable to provide at least two levels of brightness, (2) a single intensity that is barely discernible to a driver who has adapted to dark ambient roadway conditions, or (3) a means of being turned off.

The purpose of this requirement is to ensure the accessibility and visibility of motor vehicle controls and displays and to facilitate their selection under daylight and nightitme conditions, in order to reduce the safety hazards caused by the diversion of the driver's attention from the driving task, and by mistakes in selecting controls.

GM's description of the non-compliance follows:

"*Vehicles involved:* Certain of these 1996 makes and models (with estimated number of cars): Chevrolet Cavalier and Pontiac Sunfire (J cars) coupes and convertibles from start of production to January 16, 1996 (115,351 cars); Pontiac Grand Am, Oldsmobile Achieva, and Buick Skylark (N cars) from start of production to October 31, 1995 (74,902 cars); and Chevrolet Corsica and Chevrolet Beretta (L cars) from start of production to November 13, 1995 (61,738 cars).

Noncompliance: "These vehicles are equipped with interior lights that illuminate when a door is opened or when the driver activates a switch. Power to the lights is turned on and off by a control module, rather than by direct action of the door or light switches. One of the parts in the control module is a field effect transistor (FET).

"Because of manufacturing variances in the FETs, the condition of the FET in some modules, in combination with the programming of the module, can cause a situation where the module will not turn on the lights when the door is opened. Five minutes later, there is a fifty percent chance that the lights will turn on. If that does not happen, there is an increasing chance at ten, fifteen, twenty, twenty-five, and thirty minutes that the lights will turn on. If the lights are turned on at one of those five minute increments, they will then remain on for up to thirty minutes, unless the fuse is removed to cut power to the module. Moving the light switch or ignition to "off" will not cause the module to turn off the lights.

"In August 1995, GM found on 1996 N car in which the interior lights failed to turn on when a door was opened. In September, GM determined the cause of the problem and its supplier of FETs began inspecting 10% of them. In October, GM started its own screening of all incoming FETs. In January 1996, GM learned of and began investigating the potential for the lights to come on and stay on.

"Even in the affected cars, this condition is intermittent. The incidence is higher during cold weather and in vehicles with interior light configurations that place a higher load on the circuit.

"This table identifies the lights in these vehicles that are forward of a transverse vertical plane 4.35 inches rearward of the mannequin "H" point with the driver's seat in its rearmost driving position:

Chassis	Body type and options	Dome lamp	Map lights in rearview mirror	Footwell lamps
J	Coupe	X		
	Coupe and GT w/sunroof		X	
N	Convertible		X	
	Base trim			X
	Uplevel trim	X		X
	With sunroof		X	X
L	All			X

"Based on GM's examination of cars and modules, no more than 9.5% of the vehicles with modules built before 100% inspection of FETs began have a FET that could lead to this problem.

"Field experience indicates the actual incidence is much lower. Within the total estimated population of 251,991 cars that are potentially affected, GM has paid for replacement of the modules in just under one percent (2,464) under warranty (through October 31, 1996). For cars with modules made after the 100% inspection of FETs began, the rate is about 0.5%. Because the module performs several functions, there are other unrelated malfunctions that could lead to replacement of the module and, absent the FET problem, the rate of warranty replacements for cars of comparable age is 0.3%. Therefore the rates attributable to the FET estimated to be approximately 0.7 and 0.2% respectively.

"GM has received no reports of accidents or injuries related to this condition.

"To help assess the magnitude of the interior light during nighttime driving, GM measured the luminance values (light on windshield surface) from the driver's eye position in representative vehicles, with the exterior lights on (low beam) and with the interior lights both off and on. The test setup is shown in Attachment B."

"The measurements were made in a darkened laboratory with a flat black surface ten feet ahead of the cars. A white paper target was placed on the windshield, so that the total light impinging on the windshield was measured, not just what was reflected from the glass surface. The instrument panel illumination was at the maximum setting. A Minolta Luminance Meter, Model LS–1200 (range:0.001 to 299900 cd/m(2), was used.

"These values are in foot-lamberts and are the average of two readings for each car:

Car	Interior lights off	Interior lights on
J coupe with sunroof	.03	.16
N coupe with sunroof	.03	.16

Car	Interior lights off	Interior lights on
J convertible	.05	.12
N with base trim	.05	.23
J coupe	.03	.21
N with uplevel trim	.04	.38
L	.07	.14
Average	.04	.20

"Attachment C shows the range of luminance levels for human vision and the zones of photopic, mesopic, and scotopic vision. Adaptation occurs when the luminance changes from one zone to another. The levels with the interior lights both off and on within the mesopic ("rod and cone") zone." [Attachments B and C are on file with the application in NHTSA's Docket Room.]

GM supported its application for inconsequential noncompliance with the following:

"1. Driving in total darkness, with no lights from other vehicles, no street lighting, and no light from buildings is the worst case, but it is also infrequent. Daylight is half of the day, but only 18.3% of vehicle trips and 20.2% of vehicle miles occur from 7:00 p.m. through 6:00 a.m. (From 1990 NPTS Databook, Nationwide Personal Transportation Survey, vol. II, figure 5.27). Based on 1993 data from the Federal Highway Administration, 1.045 billion of the annual 1.623 billion passenger car miles traveled were on "urban" roads, streets, and highways (from Highway Statistics 1993, Table VM–1).

"2. As measured in GM's test, the change in luminance level that a driver would experience is small and, significantly, does not cross one of the adaptation boundaries.

"3. Glare is an undesirable, but inevitable feature of night-time driving and drivers can successfully adapt to it. A recent report for NHTSA by Jan Theeuwes and John Alferdinck, The Relationship Between Discomfort Glare and Driving Behavior, DOT HS 808 452 (1996), shows that adaptation includes driving more slowly and investing more effort. Major sources of glare include the lights of other vehicles, street lights, and lights on building, parking lots, signs, and billboards adjoining streets and highways. The headlights of a nearby vehicle can easily be many times brighter than any of these interior lights.

"4. On some of these cars, the only affected lights are in the footwells, below the instrument panel. While they are in the area covered by the standard, they are not in the driver's forward field of view and, as a matter of common sense, are less likely to be a source of troublesome glare. On other cars, map lights mounted in the rearview mirror assembly are involved. These lights point downward and are also much less likely to be a source of troublesome glare.

"5. This condition cannot occur in 90.5% of the cars. Field data shows that the actual incidence is much lower.

"6. Many drivers will be alerted to the presence of a problem because they will notice that the interior lights are not on when they enter their cars. Because the absence of interior lights when entering the cars at night is an inconvenience, drivers will be likely to return the cars to dealers for repair. Many cars are likely to be repaired before the driver experience illumination of the interior lights during night-time driving.

"7. GM has received no reports associating this condition with any kind of an accident or injury.

"To reach the worst case condition, several low probability events have to coincide—the car has to be one of the 9.5% potentially affected, the car has to be driven at night, the illumination from external sources must be unusually low, and the condition must manifest itself. Further, even if this series of unlikely events occurs, data indicate the driver should be able to successfully adapt to the increased light, as he/she does on a regular basis to other sources of light. Therefore, because the expected coincidence of these events is extremely low and the effects on the driver are minimal; this condition is inconsequential to motor vehicle safety."

Interested persons are invited to submit written data, views, and arguments on the application of GM,

described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW, Washington, DC., 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: April 7, 1997.

(49 U.S.C. 30118, 30120; delegation of authority at 49 CFR 1.50 and 501.8)

Issued on: March 3, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–5719 Filed 3–6–97; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 96–119; Notice 2]

Michelin North America, Inc.; Grant of Application for Decision of Inconsequential Noncompliance

This notice grants the application by Michelin North America, Inc. (Michelin) of Greenville, South Carolina, to be exempted from the notification and remedy requirements of 49 U.S.C. 30118 and 30120 for a noncompliance with 49 CFR 571.119, Federal Motor Vehicle Safety Standard (FMVSS) No. 119, "New Pneumatic Tires for Vehicles Other Than Passenger Cars." The basis of the petition is that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published on November 22, 1996, and an opportunity afforded for comment (Vol. 61, No. 227, CFR 59487).

Paragraph S6.5, Tire markings, of Standard No. 119, requires that tires be marked on each sidewall with specific information. The markings shall be placed between the maximum section width (exclusive of sidewall decorations or curb ribs) and the bead on at least one sidewall, unless the maximum section width of the tire is located in an area which is not more than one-fourth of the distance from the bead to the shoulder of the tire. If the maximum section width falls within that area, the markings shall appear between the bead and a point one-half the distance from the bead to the shoulder of the tire, on at least one sidewall.

Michelin's description of non-compliance follows:

"During the period of the 48th week of 1995 through the 1st week of 1996, the Opelika, Alabama, plant of Uniroyal Goodrich Tire Manufacturing, a division of Michelin North America, Inc., produced tires with the markings required by 49 CFR 571.119 S6.5 (f) and (g) marked only on one side of the tire. Additionally, on the same side of the tire as the missing information, the word "Radial" as required by S6.5(i) appears above the maximum section width instead of between the maximum section width and the bead. However, all marking on the opposite side of the tire meets the requirements of S6.5. Furthermore, all performance requirements of FMVSS #119 are met or exceeded.

"Approximately 1,041 LT245/75R16 Uniroyal Laredo LTL LR E tires were produced without the aforementioned information on one sidewall of the tire. Of this total, as many as 559 were shipped to an Original Equipment Vehicle Manufacturer or to the replacement market. The remaining 482 tires have been isolated in our warehouses and will be brought into full compliance with the marking requirements of FMVSS #119 or scrapped."

Michelin supported its application for inconsequential noncompliance with the following:

"[Michelin] does not believe that this minor error on the one tire sidewall will impact motor vehicle safety:

"1. The marking of number and composition of ply cord material required by S6.5(f) is contained on one side of the tire instead of both sides. When previously granting a petition for inconsequential noncompliance (see e.g., Bridgestone, IP82–8, 47 FR 51269, November 12, 1982) NHTSA has concluded that ". . . the number of plies, and the composition of the ply material had an inconsequential relationship to motor vehicle safety . . ." and has stated that ". . . the failure to state the number of plies and composition of ply material is an informational failure and does not affect the ability of the tires to meet the performance requirements . . ."

"2. The absence of the word "tubeless" on one tire sidewall (as required by S6.5(g) for both sidewalls) will not impact motor vehicle safety since it is merely an informational failure on one sidewall and does not impact tire performance. The tires in question are only produced in a "tubeless" configuration. However, should these tires be mounted with a tube, performance of the tires would be perfectly satisfactory.

"3. The word "radial" on one sidewall of the tire appears above the maximum section width instead of between the bead and maximum section width. Again, this does not affect the ability of the tire to perform. Additionally, the "R" located in the size designation LT245/75R16 which is marked between the bead and sidewall is recognized by the International Standards Organization, the Tire and Rim Association, the Rubber Manufacturers Association and others, including the general public, as being the standard designation for a radial tire. Thus it would be obvious to anyone looking at either sidewall of this tire that it was indeed a radial tire."

No comments were received on the application.

Michelin has acknowledged noncompliance in manufacturing approximately 1,041 LT245/75R16 Uniroyal Laredo LTL FR E tires at the plant of Uniroyal Goodrich Tire Manufacturing, a division of Michelin North America, Inc.. The tires in question were produced with specified tire markings on only one tire sidewall instead of both tire sidewalls as the Standard requires. Also, the word "Radial" appears on the tire sidewall in a location not specified by the Standard.

Safety Performance Standards agrees that the noncompliance reported by Michelin is inconsequential to motor vehicle safety. The informational tire markings that appear on the tire sidewall meets the requirements of the Standard. Absence of this information on both tire sidewalls will not affect the performance of the tire or compromise motor vehicle safety.

Michelin has assured the agency that if a decision is made to bring the remaining 482 tires into compliance, an after-branding procedure used throughout the tire industry known as "hot branding," will be used to bring the tires into compliance. This branding procedure will not affect the performance of the tires or compromise motor vehicle safety.

Accordingly, for the reasons expressed above, the petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and the agency grants Michelin's application for exemption from notification of the noncompliance as required by 49 U.S.C. 30118 and from remedy as required by 49 U.S.C. 30120. (49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: March 3, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–5717 Filed 3–6–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

February 25, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0919.

Regulation Project Number: PS–105–75 Final.

Type of Review: Extension.

Title: Limitations on Percentage Depletion in the Case of Oil and Gas Wells.

Description: The regulations require each partner to separately keep records of his share of the adjusted basis of partnership oil and gas property and require each partnership, trust, estate, and operator to provide information necessary to compute depletion with respect to oil or gas to certain persons.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 1,500,000.

Estimated Burden Hours Per Respondent/Recordkeeper: 1 hour.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 1 hour.

OMB Number: 1545–0928.

Regulation Project Number: EE–35–85 Final (TD 8219).

Type of Review: Revision.

Title: Income Tax: Taxable Years Beginning After December 31, 1953; OMB Control Number Under the Paperwork Reduction Act; Survivor Benefits, Distribution Restriction and Various Other Issues Under the Retirement Equity Act of 1984.

Description: The notices referred to in this Treasury decision are required by statute and must be provided by employers to retirement plan participants to inform participants of their rights under the plan or under the law. Failure to timely notify participants of their rights may result in loss of plan benefits.

Respondents: Business or other for-profit, Not-for-profit institutions, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 750,000.

Estimated Burden Hours Per Respondent: 31 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 385,000 hours.

OMB Number: 1545–1218.

Regulation Project Number: CO–25–96 (formerly CO–132–87) NPRM and Temp.

Type of Review: Extension.

Title: Regulations Under Section 1502 of the Internal Revenue Code of 1986; Limitations on Net Operating Loss Carryforwards and Certain Built-In Losses and Credits Following an Ownership Change of a Consolidated Group.

Description: Section 1502 provides for the promulgation of regulations with respect to corporations that file consolidated income tax returns. Section 382 limits the amount of income that can be offset by loss carryovers after an ownership change. These regulations provide rules for applying section 382 to groups filing consolidated returns.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 9125.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: Other (changes in group membership).

Estimated Total Reporting Burden: 380 hours.

OMB Number: 1545–1233.

Regulation Project Number: IA–14–91 Final.

Type of Review: Extension.

Title: Adjusted Current Earnings.

Description: This regulation affects business and other for-profit institutions. This information is required by the IRS to ensure the proper application of section 1.56(g)–1 of the regulation. It will be used to verify that taxpayers have properly elected the benefits of section 1.56(g)–1(r) of the regulation.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 1,000.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Other (once only).

Estimated Total Reporting Burden: 1,000 hours.

OMB Number: 1545–1431.

Regulation Project Number: IA–74–93 Final.

Type of Review: Extension.

Title: Substantiation Requirements for Certain Contributions.

Description: The regulations provide that, for purposes of substantiation for certain charitable contributions, consideration does not include de minimis goods and services. It also provides guidance on how taxpayers may satisfy the substantiation requirement for contributions of $250 or more.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions. *Estimated Number of Respondents:* 16,000.

Estimated Burden Hours Per Respondent: 3 hours, 13 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 51,500 hours.

OMB Number: 1545–1506.

Notice Number: Notice 96–65.

Type of Review: Extension.

Title: Treatment of a Trust as Domestic or Foreign—Changes Made by the Small Business Job Protection Act.

Description: Notice 96–65 announces that a domestic trust may avoid an involuntary change in status caused by operation of the Small Business Act of 1996 by reforming within a reasonable period of time. The notice also announces how to elect to apply the new trust status rules retroactively.

Respondents: Individuals or households. Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 1,200.

Estimated Burden Hours Per Respondent: 28 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 550 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 97–5604 Filed 3–6–97; 8:45 am]

BILLING CODE 4830–01–P

Submission for OMB review; comment request

February 28, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request: In order to complete the survey described below on March 21, 1997 the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by March 7, 1997. To obtain a copy of this survey, please contact the FMS Clearance Officer at the address listed below.

Financial Management Service (FMS)

OMB Number: New.
Form Number: None.
Type of Review: New collection.
Title: Socioeconomic and Demographic Study (Telephone Survey of Federal Benefit Program Check Recipients).
Description: Public Law 104–134 directs Treasury to study the socioeconomic and demographic characteristics of those who do not have Direct Deposit and determine how best to increase usage. The focus groups will aid in the design of a telephone survey which will support the development of a Direct /deposit marketing/media plan. Respondents will be individuals who currently receive Federal Government program payments by check.
Respondent: Individuals or households.
Estimated Number of Respondents: 9,008.
Estimated Burden Hours Per Response: 15 minutes.
Frequency of Response: Other (one time).
Estimated Total Reporting Burden: 402 hours.
Clearance Officer: Jacqueline R. Perry (301) 344–8577, Financial Management Service, 3361–L 75th Avenue, Landover, MD 20785.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 97–5605 Filed 3–6–97; 8:45 am]

BILLING CODE 4810–35–P

Submission for OMB Review; Comment Request

February 28, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request: In order to begin the study described below in early April 1997, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by March 12, 1997. To obtain a copy of this study, please contact the IRS Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1349.
Project Number: SOI–26.
Type of Review: Revision.
Title: Internal Revenue Service (IRS) 4868 (Extension to File) TeleFile Script Study.
Description: The purpose of the development and support of the 4868 script is to facilitate the use of a Touchtone Data Entry (TDE) system which allows tax preparers to extend the first filing fate of their clients' tax returns in a "paperless" environment. Additionally, this study is expected to examine cognitive issues involved in TDE procedures, using specific research methodologies, in order to assess error associated with the extension to file process in a timely and accurate manner.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 13.
Estimated Burden Hours Per Respondent:
Pretest—4.5 minutes.
Cognitive test—15 minutes.
Frequency of Response: Other.
Estimated Total Reporting Burden: 20 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–5606 Filed 3–6–97; 8:45 am]

BILLING CODE 4830–01–P

Submission for OMB Review; Comment Request

February 28, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request: In order to begin the surveys described below April 1997, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by March 12, 1997. To obtain a copy of this study, please contact the IRS Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1349.
Project Number: SOI–27.
Type of Review: Revision.
Title: 1997 941 TeleFile User and Non-user Customer Satisfaction Surveys.
Description: The 941 TeleFile Quality Measurement Team with the assistance of the Bureau of Labor Statistics Behavioral Research Science Laboratory has developed two mail-out/mail back customer satisfaction surveys. A non-user customer survey will collect data from a sample of businesses that did not (or could not) use the 941 TeleFile system during the first filing quarter (April-May 1997). The user survey will collect data from a sample of businesses that successfully used 941 TeleFile during the second 1997 filing quarter (July-August 1997). The surveys will be conducted as part of a four quarter pilot test of the 941 TeleFile system in the Tennessee Computing Center starting in April 1997 and concluding in May 1998. The purpose of the surveys is to obtain feedback from businesses on the IRS marketing effort, reasons why businesses used or did not use TeleFile, and receive suggestions on how the IRS can improve the 941 TeleFile system.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 2,788.
Estimated Burden Hours Per Respondent:
1997 First Quarter Non-User Customer Survey—5 minutes.
1997 Second Quarter User Customer Survey—10 minutes.
Frequency of Response: Other.
Estimated Total Reporting Burden: 369 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–5607 Filed 3–6–97; 8:45 am]

BILLING CODE 4830–01–P

Submission to OMB for Review; Comment Request

February 28, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–1505.
Form Number: IRS Form 8820.
Type of Review: Extension.
Title: Orphan Drug Credit.
Description: Filers use this form to elect to claim the orphan drug credit, which is 50% of the qualified clinical testing expenses paid or incurred with respect to low or unprofitable drugs for rare diseases and conditions, as designated under section 526 of the Federal Food, Drug, and Cosmetic Act.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 20.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—5 hours, 44 minutes.
Learning about the law or the form—1 hour, 17 minutes.
Preparing and sending the form to the IRS—1 hour, 26 minutes.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 169 hours.
OMB Number: 1545–1508.
Form Number: IRS Form 8851.
Type of Review: Extension.
Title: Summary of Medical Savings Accounts.
Description: This form will be used by the IRS to determine whether numerical limits set forth in section 220(j)(1) have been exceeded.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 200,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—3 hours, 51 minutes.
Learning about the law or the form—6 minutes.
Preparing, copying, and sending the form to the IRS—10 minutes.
Frequency of Response: Annually, Other (additional report for 1997).
Estimated Total Reporting/Recordkeeping Burden: 1,540,000 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–5608 Filed 3–6–97; 8:45 am]

BILLING CODE 4830–01–P

Office of the Comptroller of the Currency

Proposed Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the OCC is soliciting comments concerning an information collection titled Leasing (12 CFR 23).

DATES: Written comments should be submitted by May 6, 1997.

ADDRESSES: Direct all written comments to the Communications Division, Attention: 1557–0206, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. In addition, comments may be sent by facsimile transmission to (202) 874–5274, or by electronic mail to REGS.COMMENTS@OCC.TREAS.GOV.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the collection may be obtained by contacting Jessie Gates or Dionne Walsh, (202) 874–5090, Legislative and Regulatory Activities Division (1557–0206), Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Title: Leasing (12 CFR 23).
OMB Number: 1557–0206.
Form Number: None.
Abstract: National banks need these information collections to ensure that they conduct their operations in a safe and sound manner and in accordance with Federal banking statutes and regulations. These information collections also provide needed information for examiners and protections for banks. The OCC uses this information to verify compliance.
Type of Review: Renewal of OMB approval.
Affected Public: Businesses or other for-profit.
Number of Respondents: 660.
Total Annual Responses: 710.
Frequency of Response: Occasional.
Total Annual Burden Hours: 1,820.

COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital of startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 3, 1997.

Karen Solomon,

Director, Legislative and Regulatory Activities Division.

[FR Doc. 97–5741 Filed 3–6–97; 8:45 am]

BILLING CODE 4810–33–P

Proposed Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the OCC is soliciting comments concerning an information collection titled Investment Securities (12 CFR part 1).

DATES: Written comments should be submitted by May 6, 1997.

ADDRESSES: Direct all written comments to the Communications Division, Attention: 1557–0205, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by facsimile transmission to (202) 874–5274, or by electronic mail to REGS.COMMENTS@OCC.TREAS.GOV.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the collection may be obtained by contacting John Ference or Jessie Gates, (202) 874–5090, Legislative and Regulatory Activities Division (1557–0106), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Title: (MA)—Investment Securities (12 CFR 1).

OMB Number: 1557–0205.

Form Number: None.

Abstract: National banks need these information collections to ensure that they invest in entities that are exempt from registration as an investment company. They also use these information collections to ensure that banks do not hold securities for time periods that would be unsafe and unsound. The OCC uses this information to ensure compliance with Federal laws and regulations.

Type of Review: Renewal of OMB approval.

Affected Public: Businesses or other for-profit.

Number of Respondents: 25.

Total Annual Responses: 25.

Frequency of Response: Occasional.

Total Annual Burden Hours: 460.

COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology.

(e) Estimates of capital of startup costs and costs of operations, maintenance, and purchase of services to provide information.

Dated: March 3, 1997.

Karen Solomon,

Director, Legislative & Regulatory Activities Division.

[FR Doc. 97–5742 Filed 3–6–97; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Geriatrics and Gerontology; Notice of Meeting

The Department of Veterans Affairs gives notice that a meeting of the Geriatrics and Gerontology Advisory Committee (GGAC) will be held on March 20–21, 1997, at the Department of Veterans Affairs, in Room C–7 (B&C) located at 810 Vermont Avenue, NW, Washington, DC. The purpose of the GGAC is to advise the Secretary of Veterans Affairs and the Under Secretary of Health on issues relative to the care and treatment of the aging veterans, and to evaluate the Geriatric Research, Education, and Clinical Centers (RECCs). The Committee will begin at 9:00 a.m. (EST) until 5:00 p.m. (EST) on March 20 and will begin at 9:00 a.m. (EST) until 12:00 noon (EST) on March 21.

The agenda for March 20 will begin with updates on activities in the Office of Geriatrics and Extended Care. The agenda will also cover an overview of activities in the offices of Research and Development, Employee Education, Academic Affiliations, and Policy.

On March 21 the Committee will review the three reports of site visits of the GRECCS, the activities in the Office of Primary Care and the status of GGAC projects as well as plan future activities.

The meeting will be open to the public. Those wishing to attend should contact Jacqueline Holmes, Program Assistant, Geriatrics and Extended Care Strategic Healthcare Group at (202) 273–8539 not later than March 17, 1997.

Dated: February 28, 1997.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 97–5584 Filed 3–6–97; 8:45 am]

BILLING CODE 8320–01–M

Medical Research Service Cooperative Studies Evaluation Committee; Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 (Federal Advisory Committee Act) as amended, by section 5 of Public law 94–409, that a meeting of the Medical Research Service Cooperative Studies Evaluation Committee will be held at the Balboa Bay Club, 1221 West Coast Highway, Newport Beach, CA 92663, April 10–11 1997. The session on April 10 is scheduled to begin at 7:30 a.m. and end at 5:00 p.m. and on April 11 from 7:30 a.m. to 12:45 p.m. The meeting will be for the purpose of reviewing the following four new protocols for multi-hospital clinical trial: groin hernia management, prevention of access thrombosis on hemodialysis patient, positron emission tomography (PET) imaging for lung neoplasm, management of bipolar mental disorder and the progress of on-going cooperative study on treatment of alcoholic liver disease.

The Committee advises the Chief Research and Development Officer through the Chief of the Cooperative Studies Program on the relevance and feasibility of the studies, the adequacy of the protocols, and the scientific validity and propriety of technical details, including protection of human subjects.

The meeting will be open to the public from 7:30 a.m. to 8:00 a.m. on both days to discuss the general status of the program. Those who plan to attend should contact Dr. Ping Huang, Coordinator, Medical Research Service Cooperative Studies Evaluation Committee, Department of Veterans Affairs, Washington, DC, (202–273–8295), prior to April 3, 1997.

The meeting will be closed from 8:00 a.m. to 5:00 p.m. on April 10, 1997, and from 8:00 a.m. to 12:45 p.m., on April 11, 1997, for consideration of specific proposals in accordance with provisions set forth in section 10(d) of Public Law 92–463, as amended by section 5 of Public Law 94–409, and 5 U.S.C. 552b6.

During this portion of the meeting, discussions and recommendations will deal with qualifications of personnel conducting the studies, staff and consultant critiques of research protocols, and similar documents, and the medical records of patients who are study subjects, the disclosures of which would constitute a clearly unwarranted invasion of personal privacy.

Dated: February 26, 1997.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 97–5580 Filed 3–6–97; 8:45 am]

BILLING CODE 8320–01–M

Associated Health Professions Review Subcommittee of the Special Medical Advisory Group, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice that a meeting of the Associated Health Professions Review Subcommittee of the Special Medical Advisory Group will be held March 11 and 12, 1997. This subcommittee is established to review and recommend changes in Veterans Health Administration's (VHA) role and priorities in education and training, specifically with reference to the use of associated health professionals in the delivery of healthcare. Associated health disciplines are defined as all healthcare providers other than physicians. The meeting on both days will be held at the Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 830, Washington, DC. The meeting will convene on March 11 from 7:00 p.m. until 9:00 p.m. and on March 12 from 8:30 a.m. until approximately 3:00 p.m.

On March 11, the subcommittee will review the previously identified opportunities and barriers related to accomplishing the subcommittee's charge and will develop strategies to overcome the barriers.

On March 12, the subcommittee will identify consultants and additional information needed by the subcommittee. The will analyze information from various sources to begin developing the recommendations related to the subcommittee's charge.

The meeting will be open to the public. Those who plan to attend or who have questions concerning the meeting should contact Linda Johnson, Ph.D., R.N., Acting Director, Associated Health Professions Office (143), at 202–273–8372.

Dated: February 24, 1997.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 97–5585 Filed 3–6–97; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 62, No. 45
Friday, March 7, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 100

RIN 0909-AA36

National Vaccine Injury Compensation Program: Revisions and Additions to the Vaccine Injury Table-II

Correction

In rule document 97–4088 beginning on page 7685 in the issue of Thursday, February 20, 1997, make the following correction:

§ 100.3 [Corrected]

On page 7690, in the first column, in § 100.3(b)(10), in the eighth line "stoll" should read "stool".

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN 3150–AF 55

Revision of Fee Schedules; 100% Fee Recovery, FY 1997

Correction

In proposed rule document 97–4704, beginning on page 8885 in the issue of Thursday, February 27, 1997, make the following corrections:

1. On page 8887, the table that begins in the second column and ends in the third column should read as follows:

TABLE I.—CALCULATION OF THE PERCENTAGE CHANGE TO THE FY 1996 ANNUAL FEES

[Dollars in millions]

	FY96	FY97
Total Budget	$473.3	$476.8
Less NWF	−11.0	−11.0
Less General Fund (Hanford Tanks)		−3.5
Total Fee Base	462.3	462.3
Less Part 170 Fees	114.5	96.0
Less other receipts	6.0[1]	
Part 171 Fee Collections Required	341.8	366.3
Part 171 Billing Adjustments:[2]		
Small Entity Allowance	4.9	5.0
Unpaid FY 1997 bills		3.0
Payments from prior year bills		−2.0
Subtotal	4.9	6.0
Total Part 171 Billing	346.7	372.3

[1] $6 million in excess collections from FY 1995 were available to reduce FY 1996 annual fees.

[2] These adjustments are necessary to ensure that the "billed" amount results in the required collections. Positive amounts indicate amounts billed that will not be collected in FY 1997.

2. On page 8891, in the first column, in the table, in the "Annual fees" column, the fifth entry "490 to 23,5001 1" should read "490 to 23,500 1".

§ 170.31 [Corrected]

3. On page 8896, in § 170.31, in the table, Item 4. "Waste disposal and processing" should read as follows:

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees[1]	Fee[2 3]
• • • • •	
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material:	
License, renewal, amendment	Full Cost.
Inspections	Full Cost.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38324; File No. SR-Amex-97-05]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Disclaimer Provisions of Amex Rule 902c

Correction

In notice document 97–5028 beginning on 9224 page in the issue of Friday, February 28, 1997 make the following correction:

On page 9225, in the second column, under **V. CONCLUSION**, following the second paragraph insert the signature line "Margaret H. McFarland, Deputy Secretary.".

BILLING CODE 1505-01-D

Friday
March 7, 1997

federal register

Part II

United States Information Agency

22 CFR Part 505
Privacy Act; Implementation;
Republication of Notice of Systems of Records; Interim Rule and Notice

VOL
62
NUMBER
45
MONDAY
MARCH
7
1997
SUMI

UNITED STATES INFORMATION AGENCY

22 CFR Part 505

Privacy Act Policy and Procedures

AGENCY: United States Information Agency.

ACTION: Interim final rule.

SUMMARY: This document will update and replace the Agency's prior regulation implementing the Privacy Act of 1974, as amended. This update and replacement was made necessary by changes during USIA's reorganization and realignment of functions and responsibilities when the Agency changed names and again when the Agency began to reinvent itself in response to government downsizing.

The Agency's regulation has not been updated since 1975 and changes in nomenclature and differences in processing Privacy Act requests have necessitated these changes. The changes primarily update the definitions; the processes for receiving and handling requests; and, to whom to send requests for Privacy Act records. It also better explains the exemptions that the United States Information Agency is allowed to use and its routine uses.

DATES: Effective: April 16, 1997. Persons wishing to comment on the newly published Privacy Act Regulation may do so by April 7, 1997.

ADDRESSES: Send comments to Les Jin, General Counsel, USIA, 301 4th Street, SW, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Lola L. Secora, Chief, FOIA/Privacy Act Unit, Office of the General Counsel, USIA, 301 4th Street, SW, Washington, DC 20547.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974 (5 U.S.C. 552a) is a Federal law only. It requires Federal agencies to limit the manner in which they collect, use and disclose information about individuals, but only if they are American citizens or resident aliens. The key provision of the Privacy Act requires that no Federal agency may disclose any record about an individual to any person or agency without the written permission of that individual. The Privacy Act also provides that, upon request, an individual has the right to access any record maintained on herself/himself in an agency's files, and has the right to request correction of an amendment to that record.

List of Subjects in 22 CFR Part 505

Privacy.

For the reasons set forth above, Title 22, Part 505 is revised to read as follows:

PART 505—PRIVACY ACT POLICIES AND PROCEDURES

Sec.
505.1 Purpose and scope.
505.2 Definitions.
505.3 Procedures and requests.
505.4 Requirements and identification for making requests.
505.5 Disclosure of information.
505.6 Medical records.
505.7 Correction or amendment of record.
505.8 Agency review of requests for changes.
505.9 Review of adverse Agency determination.
505.10 Disclosure to third parties.
505.11 Fees.
505.12 Civil remedies and criminal penalties.
505.13 General exemptions (Subsection (j)).
505.14 Specific exemptions (Subsection (k)).
505.15 Exempt systems of records used.

Authority: Pub. L. 93–579, 88 Stat. 1897; 5 U.S.C. 552a; 55 FR 31940, Aug. 6, 1990, as amended.

§ 505.1 Purpose and scope.

The United States Information Agency will protect individuals' privacy from misuse of their records, and grant individuals access to records concerning them which are maintained by the Agency's domestic and overseas offices, consistent with the provisions of Public Law 93–579, 88 Stat. 1897; 5 U.S.C. 552a, the Privacy Act of 1974, as amended. The Agency has also established procedures to permit individuals to amend incorrect records, to limit the disclosure of personal information to third parties, and to limit the number of sources of personal information. The Agency has also established internal rules restricting requirements of individuals to provide social security account numbers.

§ 505.2 Definitions.

(a) *Access Appeal Committee (AAC)*—the body established by and responsible to the Director of USIA for reviewing appeals made by individuals to amend records held by the Agency.

(b) *Agency or USIA or USIA*—The United States Information Agency, its offices, divisions, branches and its Foreign Service establishments.

(c) *Amend*—To make a correction to or expunge any portion of a record about an individual which that individual believes is not accurate, relevant, timely or complete.

(d) *Individual*—A citizen of the United States or an alien lawfully admitted for permanent residence.

(e) *Maintain*—Collect, use, store, disseminate or any combination of these record-keeping functions; exercise of control over and hence responsibility and accountability for systems of records.

(f) *Record*—Any information maintained by the Agency about an individual that can be reproduced, including finger or voice prints and photographs, and which is retrieved by that particular individual's name or personal identifier, such as a social security number.

(g) *Routine use*—With respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected. The common and ordinary purposes for which records are used and all of the proper and necessary uses, even if any such uses occur infrequently.

(h) *Statistical record*—A record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided in 13 U.S.C. 8.

(i) *System of records*—A group of records under the maintenance and control of the Agency from which information is retrieved by the name or personal identifier of the individual.

(j) *Personnel record*—Any information about an individual that is maintained in a system of records by the Agency that is needed for personnel management or processes such as staffing, employee development, retirement, grievances and appeals.

(k) *Post*—Any of the foreign service branches of the Agency.

§ 505.3 Procedures for requests.

(a) The agency will consider all written requests received from an individual for records pertaining to herself/himself as a request made under the Privacy Act of 1974, as amended (5 U.S.C. 552a) whether or not the individual specifically cites the Privacy Act when making the request.

(b) All requests under the Privacy Act should be directed to the USIA, Office of the General Counsel, FOIA/Privacy Act Unit (GC/FOI), 301 4th Street, SW, Washington, DC 20547, which will coordinate the search of all systems of records specified in the request. Requests should state name, date of birth, and social security number.

(c) Requests directed to the Agency's overseas posts which involve routine unclassified, administrative and personnel records available only at those posts may be released to the individual by the post if the post determines that such release is authorized by the Privacy Act. All other requests shall be submitted by the post to the Office of the General Counsel, FOIA/Privacy Act Unit (GC/FOI), 301 4th Street, SW, Washington, DC 20547, and the individual shall be so notified of this section in writing, when possible.

(d) In those instances where an individual requests records pertaining to herself/himself, as well as records pertaining to another individual, group, or some other category of the Agency's records, only that portion of the request which pertains to records concerning the individual will be treated as a Privacy Act request. The remaining portions of such a request will be processed as a Freedom of Information Act request by the office noted in paragraph (b) of this section.

§ 505.4 Requirements and identification for making requests.

(a) Individuals seeking access to Agency records may present their written request or may mail their request to the USIA, Office of General Counsel, FOI/Privacy Act (GC/FOI) Unit, 301 4th Street, SW, Washington, DC 20547. The GC/FOI Unit may be visited between the hours of 9 a.m. and 4 p.m., Monday through Friday, except for legal holidays.

(b) Individuals, seeking access to Agency records, will be requested to present some form of identification. Individuals should state their full name, date of birth and a social security number. An individual must also include her/his present mailing address and zip code, and if possible a telephone number.

(c) When signing a statement confirming one's identity, individuals should understand that knowingly and willfully seeking or obtaining access to records about another individual under false pretenses is punishable by a fine of up to $5,000.

§ 505.5 Disclosure of information.

(a) In order to locate the system of records that an individual believes may contain information about herself/himself, an individual should first obtain a copy of the Agency's Notice of Systems of Records. By identifying a particular record system and by furnishing all the identifying information requested by that record system, it will enable the Agency to more easily locate those records which pertain to the individual. At a minimum, any request should include the information specified in § 505.4(b) above.

(b) In certain circumstances, it may be necessary for the Agency to request additional information from the individual to ensure that the retrieved record does, in fact, pertain to the individual.

(c) All requests for information on whether or not the Agency's system(s) of records contain information about the individual will be acknowledged within ten working days of receipt of the request. The requested records will be provided as soon as possible thereafter.

(d) If the Agency determines that the substance of the requested record is exceptionally sensitive, the Agency will require the individual to furnish a signed, notarized statement that she/he is in fact the person named in the file before granting access to the records.

(e) Original records will not be released from the custody of the records system manager. Copies will be furnished subject to and in accordance with fees established in § 505.11.

(f) Denial of access to records:

(1) The requirements of this section do not entitle an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(2) Under the Privacy Act, the Agency is not required to permit access to records if the information is not retrievable by the individual's name or other personal identifier; those requests will be processed as Freedom of Information Act requests.

(3) The Agency may deny an individual access to a record, or portion thereof, if following a review it is determined that the record or portion falls within a system of records that is exempt from disclosure pursuant to 5 U.S.C. 552a(j) and 552a(k). See §§ 505.13 and 505.14 for a listing of general and specific exemptions.

(4) The decision to deny access to a record or a portion of the record is made by the Agency's Privacy Act Officer, Office of the General Counsel. The denial letter will advise the individual of her/his rights to appeal the denial (See § 505.9 on Access Appeal Committee's review).

§ 505.6 Medical records.

If, in the judgment of the Agency, the release of medical information directly to the requester could have an adverse effect on the requester, the Agency will arrange an acceptable alternative to granting access of such records to the requester. This normally involves the release of the information to a doctor named by the requester. However, this special procedure provision does not in any way limit the absolute right of the individual to receive a complete copy of her or his medical record.

§ 505.7 Correction or amendment of record.

(a) An individual has the right to request that the Agency amend a record pertaining to her/him which the individual believes is not accurate, relevant, timely, or complete. At the time the Agency grants access to a record, it will furnish guidelines for requesting amendments to the record.

(b) Requests for amendments to records must be in writing and mailed or delivered to the USIA Privacy Act Officer, Office of the General Counsel, 301 4th Street, SW, Washington, DC 20547, who will coordinate the review of the request to amend a record with the appropriate office(s). Such requests must contain, at a minimum, identifying information needed to locate the record, a brief description of the item or items of information to be amended, and the reason for the requested change. The requester should submit as much documentation, arguments or other data as seems warranted to support the request for amendment.

(c) The Agency will review all requests for amendments to records within 10 working days of receipt of the request and either make the changes or inform the requester of its refusal to do so and the reasons therefore.

§ 505.8 Agency review of requests for changes.

(a) In reviewing a record in response to a request to amend or correct a file, the Agency shall incorporate the criteria of accuracy, relevance, timeliness, and completeness of the record in the review.

(b) If the Agency agrees with an individual's request to amend a record, it shall:

(1) Advise the individual in writing;

(2) Correct the record accordingly;

(3) And, to the extent that an accounting of disclosure was maintained, advise all previous recipients of the record of the corrections.

(c) If the Agency disagrees with all or any portion of an individual's request to amend a record, it shall:

(1) Advise the individual of the reasons for the determination;

(2) Inform the individual of her/his right to further review (see § 505.9).

§ 505.9 Review of adverse agency determination.

(a) When the Agency determines to deny a request to amend a record, or portion of the record, the individual may request further review by the Agency's Access Appeal Committee.

The written request for review should be mailed to the Chairperson, Access Appeal Committee, USIA, Office of Public Liaison, 301 4th Street, SW, Washington, DC 20547. The letter should include any documentation, information or statement which substantiates the request for review.

(b) The Agency's Access Appeal Committee will review the Agency's initial denial to amend the record and the individual's documentation supporting amendment, within 30 working days. If additional time is required, the individual will be notified in writing of the reasons for the delay and the approximate date when the review is expected to be completed. Upon completion of the review, the Chairperson will notify the individual of the results.

(c) If the Committee upholds the Agency's denial to amend the record, the Chairperson will advise the individual of:

(1) The reasons for the Agency's refusal to amend the record;

(2) Her/his right and the procedure to add to the file a concise statement supporting the individual's disagreement with the decision of the Agency;

(3) Her/his right to seek judicial review of the Agency's refusal to amend the file.

(d) When an individual files a statement disagreeing with the Agency's refusal to amend a record, the Agency will clearly annotate the record so that the fact that the record is disputed is apparent to anyone who may subsequently have access to, use of, or reason to disclose the file. If information is disclosed regarding the area of dispute, the Agency will provide a copy of the individual's statement in the disclosure. Any statement which may be included by the Agency regarding the dispute will be limited to the reasons given to the individual for not amending the record. Copies of the Agency's statement shall be treated as part of the individual's record, but will not be subject to amendment by the individual under these regulations.

§ 505.10 Disclosure to third parties.

The Agency will not disclose any information about an individual to any person or another agency without the prior consent of the individual about whom the information is maintained, except as provided for in the following paragraphs.

(a) *Medical records.* May be disclosed to a doctor or other medical practitioner, named by the individual, as prescribed in § 505.6 above.

(b) *Accompanying individual.* When a requester is accompanied by any other person, the agency will require that the requester sign a statement granting consent to the disclosure of the contents of the record to that person.

(c) *Designees.* If a person requests another person's file, she or he must present a signed statement from that person of record which authorizes and consents to the release of the file to the designated individual.

(d) *Guardians.* Parent(s) or legal guardian(s) of dependent minors or of an individual who has been declared by a court to be incompetent due to physical, mental or age incapacity, may act for and on behalf of the individual on whom the Agency maintains records.

(e) *Other disclosures.* A record may be disclosed without a request by or written consent of the individual to whom the record pertains if such disclosure conditions are authorized under the provisions of 5 U.S.C. 552a(b). These conditions are:

(1) *Disclosure within the Agency.* This condition is based upon a "need-to-know" concept which recognizes that Agency personnel may require access to discharge their duties.

(2) *Disclosure to the public.* No consent by an individual is necessary if the record is required to be released under the Freedom of Information Act (FOIA), 5 U.S.C. 552. The record may be exempt, however, under one of the nine exemptions of the FOIA.

(3) *Disclosure for a routine use.* No. consent by an individual is necessary if the condition is necessary for a "routine use" as defined in S505.2(g). Information may also be released to other government agencies which have statutory or other lawful authority to maintain such information. (See Appendix I—Prefatory Statement of General Routine Uses).

(4) *Disclosure to the Bureau of the Census.* For purposes of planning or carrying out a census or survey or related activity. Title 13 U.S.C. Section 8 limits the uses which may made of these records and also makes them immune from compulsory disclosure.

(5) *Disclosure for statistical research and reporting.* The Agency will provide the statistical information requested only after all names and personal identifiers have been deleted from the records.

(6) *Disclosure to the National Archives.* For the preservation of records of historical value, pursuant to 44 U.S.C. 2103.

(7) *Disclosure for law enforcement purposes.* Upon receipt of a written request by another Federal agency or a state or local government describing the law enforcement purpose for which a record is required, and specifying the particular record. Blanket requests for all records pertaining to an individual are not permitted under the Privacy Act.

(8) *Disclosure under emergency circumstances.* For the safety or health of an individual (e.g., medical records on a patient undergoing emergency treatment).

(9) *Disclosure to the Congress.* For matters within the jurisdiction of any House or Senate committee or subcommittee, and/or joint committee or subcommittee, pursuant to a written request from the Chairman of the committee or subcommittee.

(10) *Disclosure to the General Accounting Office (GAO).* For matters within the jurisdiction of the duties of the GAO's Comptroller General.

(11) *Disclosure pursuant to court order.* Pursuant to the order of a court of competent jurisdiction. This does not include a subpoena for records requested by counsel and issued by a clerk of court.

§ 505.11 Fees.

(a) The first copy of any Agency record about an individual will be provided free of charge. A fee of $0.15 per page will be charged for any additional copies requested by the individual.

(b) Checks or money orders should be made payable to the United States Treasurer and mailed to the Freedom of Information Act/Privacy Act Unit, Office of the General Counsel, 301 4th Street, SW, Washington, DC 20547. The Agency will not accept cash.

§ 505.12 Civil remedies and criminal penalties.

(a) *Grounds for court action.* An individual will have a remedy in the Federal District Courts under the following circumstances:

(1) *Denial of access.* Individuals may challenge an Agency decision to deny them access to records to which they consider themselves entitled.

(2) *Refusal to amend a record.* Under conditions prescribed in 5 U.S.C. 552a(g), an individual may seek judicial review of the Agency's refusal to amend a record.

(3) *Failure to maintain a record accurately.* An individual may bring suit against the Agency for any alleged intentional and willful failure to maintain a record accurately, if it can be shown that the individual was subjected to an adverse action resulting in the denial of a right, benefit, entitlement or employment the individual could reasonably have expected to be granted if the record had not been deficient.

(4) *Other failures to comply with the Act.* An individual may bring an action for any alleged failure by the Agency to comply with the requirements of the Act or failure to comply with any rule published by the Agency to implement the Act provided it can be shown that:

(i) The action was intentional or willful;

(ii) The Agency's action adversely affected the individual; and

(iii) The adverse action was caused by the Agency's actions.

(b) *Jurisdiction and time limits.* (1) Action may be brought in the district court for the jurisdiction in which the individual resides or has a place of residence or business, or in which the Agency records are situated, or in the District of Columbia.

(2) The statute of limitations is two years from the date upon which the cause of action arises, except for cases in which the Agency has materially and willfully misrepresented any information requested to be disclosed and when such misrepresentation is material to the liability of Agency. In such cases the statute of limitations is two years from the date of discovery by the individual of the misrepresentation.

(3) A suit may not be brought on the basis of injury which may have occurred as a result of the Agency's disclosure of a record prior to September 27, 1975.

(c) *Criminal penalties.*—(1) *Unauthorized disclosure.* It is a criminal violation of the provisions of the Act for any officer or employee of the Agency knowingly and willfully to disclose a record in any manner to any person or agency not entitled to receive it, for failure to meet the conditions of disclosure enumerated in 5 U.S.C. 552a(b), or without the written consent or at the request of the individual to whom the record pertains. Any officer or employee of the Agency found guilty of such misconduct shall be fined not more than $5,000.

(2) *Failure to publish a public notice.* It is a criminal violation of the Act to willfully maintain a system of records and not to publish the prescribed public notice. Any officer or employee of the Agency found guilty of such misconduct shall be fined not more than $5,000.

(3) *Obtaining records under false pretenses.* The Act makes it a criminal offense to knowingly and willfully request or gain access to a record about an individual under false pretenses. Any person found guilty of such an offense may be fined not more than $5,000.

§ 505.13 General exemptions (Subsection (j)).

(a) General exemptions are available for systems of records which are maintained by the Central Intelligence Agency (Subsection (j)(1)), or maintained by an agency which performs as its principal function any activity pertaining to the enforcement of the criminal laws (Subsection (j)(2)).

(b) The Act does not permit general exemption of records complied primarily for a noncriminal purpose, even though there are some quasi-criminal aspects to the investigation and even though the records are in a system of records to which the general exemption applies.

§ 505.14 Specific exemptions (Subsection (k)).

The specific exemptions focus more on the nature of the records in the systems of records than on the agency. The following categories of records may be exempt from disclosure:

(a) *Subsection (k)(1).* Records which are specifically authorized under criteria established under an Executive Order to be kept secret in the interest of national defense or foreign policy, and which are in fact properly classified pursuant to such Executive Order;

(b) *Subsection (k)(2).* Investigatory records compiled for law enforcement purposes (other than material within the scope of subsection (j)(2) as discussed in § 505.13(a)). If any individual is denied any right, privilege, or benefit for which she/he would otherwise be eligible, as a result of the maintenance of such material, the material shall be provided to the individual, unless disclosure of the material would reveal the identify of a source who has been pledged confidentiality;

(c) *Subsection (k)(3).* Records maintained in connection with protection of the President and other VIPs accorded special protection by statute;

(d) *Subsection (k)(4).* Records required by statute to be maintained and used solely as statistical records;

(e) *Subsection (k)(5).* Records complied solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only if disclosure of the material would reveal the identify of a confidential source that furnished information to the Government;

(f) *Subsection (k)(6).* Testing or examination records used solely to determine individual qualifications for appointment or promotion in the Federal service when the disclosure of such would compromise the objectivity or fairness of the testing or examination process;

(g) *Subsection (k)(7).* Evaluation records used to determine potential for promotion in the armed services, but only if disclosure would reveal the identify of a confidential source.

§ 505.15 Exempt systems of records used.

USIA is authorized to use exemptions (k)(1), (k)(2), (k)(4), (k)(5), and (k)(6). The following Agency components currently maintain exempt systems of records under one or more of these specific exemptions: Executive Secretariat; Education and Cultural Exchange Program; Legal Files; Privacy Act and Freedom of Information Act Files; Employee Grievance Files; Recruitment Records; Employee Master Personnel Records; Foreign Service Selection Board Files; Employee Training Files; Personnel Security and Integrity Records; International Broadcasting Bureau Director's Executive Secretariat Files; and International Broadcasting Bureau Employee Personnel Files.

Dated: February 26, 1997.

Les Jin,

General Counsel.

[FR Doc. 97–5285 Filed 3–6–97; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Privacy Act of 1974: Republication of Notice of Systems of Records

AGENCY: United States Information Agency.

ACTION: Republication of Notice of Systems of Records.

SUMMARY: This document republishes in full the United States Information Agency's Systems of Records maintained under the Privacy Act of 1974 (5 U.S.C. 552a), as amended. It will update and replace the United States Information Agency section in the **Federal Register**'s Privacy Act Issuances, 1995 Compilation.

This update and replacement was made necessary by changes during the United States information Agency's reorganization and realignment of functions and responsibilities within the Agency.

DATES: Effective date: Unless otherwise noted in the **Federal Register**, this notice shall become final on April 16, 1997. Persons wishing to comment on the newly published systems may do so by April 7, 1997.

ADDRESSES: Send comments to Les Jin, General Counsel, USIA, 301 4th Street, SW, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Lola Secora, Chief, FOIA/Privacy Act Unit, Office of the General Counsel, USIA, 301 4th Street, SW, Washington, DC 20547.

United States Information Agency

Narrative Statement: The United States Information Agency (USIA) is republishing its entire systems of records in order to update and replace the 1990 compilation. This update is necessary because of USIA's reorganization and realignment of functions.

The authority for maintaining these systems is the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

It is hoped that the reprinting of USIA's systems of records will better enable individuals to determine if there may be records about them maintained by the Agency. Additionally, the reprinting of the Agency's systems notices has reemphasized to Agency personnel the importance of protecting and regulating the collection, maintenance, use and dissemination of personal information.

There have been no routine uses added or subtracted to this republication of USIA's systems notices.

OMB clearance is pending; the "Republication of Notice of Systems of Records" was submitted to OMB on November 7, 1996. The new systems notices will be published 40 days from that date.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974, as amended, is a Federal law, only. It requires Federal agencies to limit the manner in which they collect, use and disclose information about individuals, but only if they are American citizens or resident aliens. The Privacy Act provides that, upon request, an individual has the right to access any record maintained on her/him in an agency's files. The Privacy Act requires each agency to publish in the **Federal Register** the existence and character of each system of records it maintains and the routine uses of the records contained in each system, so that an individual may be able to more easily find those files within an agency where records about them may be located.

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USIA–1

SYSTEM NAME:

IBB Director's Executive Secretariat Files—B.

SYSTEM LOCATION:

International Broadcasting (IBB) Bureau Director's Office, Executive Secretariat, 330 Independence Avenue, SW, Washington, DC 20547.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the White House Staff, Members of Congress and their staff, heads of other executive agencies of the Federal government and members of the general public.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence addressed to the Director of IBB, as well as the Director of USIA, and copies of responses to requests for reports, information and/or assistance of various kinds prepared by the IBB Director of designated representative.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Records Act of 1950, as amended, 44 U.S.C. 3101–3167; Records Disposal Act of 1943, as amended, 44 U.S.C. 3301–3314.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Reference file to provide oversight of the flow of requests of the IBB Director for reports on programming effectiveness of IBB broadcasts, information and/or assistance of various kinds, and to monitor the accomplishment of responses to such requests.

Also see Prefatory Statement of General Routine Uses.

Information is made available on a need-to-know basis to personnel of the IBB and the USIA as may be required in the performance of their official duties.

The information may also be released to other government agencies who have statutory or other lawful authority to maintain such information.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in a computer maintained by and located within the IBB Secretariat and maintained as paper records in file folders in the Secretariat.

RETRIEVABILITY:

Records are cross-indexed by individual name, organization, subject file and by computer reference number.

SAFEGUARDS:

Computer records are accessible only to authorized employees of the IBB Director's staff. Paper records are kept in locked file cabinets which are contained in a secure area.

RETENTION AND DISPOSAL:

Records are maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Supervisory Staff Analyst, Executive Secretariat, IBB, USIA, 330 Independence Avenue, SW, Washington, DC 20547.

NOTIFICATION PROCEDURE:

Executive Secretariat, IBB, USIA, 330 Independence Avenue, SW, Washington, DC 20547.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to: Chief, FOIA/Privacy Act Unit, USIA, 301 4th Street, SW, Washington, DC 20547. To request another individual's file, the requester must have a notarized signed statement from the individual to whom the file pertains.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access and for contesting contents and appealing determinations by the individual concerned.

RECORD SOURCE CATEGORIES:

Unsolicited correspondence from U.S. Government officials and members of the general public addressed to the Director of the VOA of the Director of the USIA concerning VOA.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4), (g), (h) and (f). See 22 CFR 505.15.

USIA–2

SYSTEM NAME:

Contract Talent Vendor Files—B/PA.

SYSTEM LOCATION:

International Broadcasting Bureau (IBB), United States Information Agency (USIA), Cohen Building, 330 Independence Avenue, SW, Washington, DC 20547. IBB, USIA, Switzer Building, 330 C Street, SW, Washington, DC 20547.

SECURITY CLASSIFICATION:

Individual documents up to Confidential.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All contract talent vendors who perform free-lance services for the International Broadcasting Bureau (IBB).

CATEGORIES OF RECORDS IN THE SYSTEM:

Records and information pertaining to the testing and qualification of vendors; security clearance applications and approvals; copies of contracts, and detailed record of services performed by vendors and payments made by IBB for these services.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 80–402; United States Information and Educational Exchange Act of 1948, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Provide necessary reference information for use by IBB administrative offices in meeting their daily responsibilities of advising on and coordinating programming and fiscal activities relating to contracting in free-lance talent vendors.

Also see Prefatory Statement of General Routine Uses.

Information is made available on a need-to-know basis to personnel of the USIA as may be required in the performance of their official duties.

Information in these records is not normally available to individuals or agencies outside the USIA but records may be released to other government agencies who have statutory or other lawful authority to maintain such information.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is retained in document form in file folders and in automated data base system.

RETRIEVABILITY:

Document and computer files are indexed by vendor's name.

SAFEGUARDS:

Document files are locked in security-approved file cabinets. Computer records require appropriate password to gain access. General access to files is permitted only to administrative staffs and other top management officials having a need to know such information in the normal performance of their duties.

RETENTION AND DISPOSAL:

Files are retained for three to four years after last date of services rendered by vendor, after which time files are then destroyed in accordance with established USIA records disposition procedures.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Administration, International Broadcasting Bureau (IBB), USIA, Cohen Building, 330 Independence Avenue, SW, Washington, DC 20547.

NOTIFICATION PROCEDURE:

Director of Administration, International Broadcasting Bureau (IBB), USIA, 301 4th Street, SW, Washington, DC 20547.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to: Chief, FOIA/Privacy Act Unit, USIA, 301 4th Street, SW, Washington, DC 20547. To request another individual's file, the requester must have a notarized signed statement from the individual to whom the file pertains.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access and for contesting contents and appealing determinations by the individual concerned appeal in 22 CFR part 505.

RECORD SOURCE CATEGORIES:

Information is received from vendor (application forms); from USIA Security Office (approval of security clearance

request); from documents generated through the normal process of using a vendor and making payments for services rendered (purchase orders and payment records).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Not applicable.

USIA–3

SYSTEM NAME:

Employee Personnel Files—B/PA.

SYSTEM LOCATION:

International Broadcasting Bureau (IBBB), United States Information Agency (USIA), Cohen Building, 330 Independence Avenue, SW., Washington DC. 20547.

SECURITY CLASSIFICATION:

Individual documents up to Confidential.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

International Broadcasting Bureau (IBB) domestic employees and overseas American employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records and information pertaining to the testing, recruitment and appointment of employees (application forms, fiscal documents covering related expenses); records concerning post-appointment changes in employee skills, qualifications, and experience; copies of SF–50 "Notice of Personnel Action" and payroll change slips.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 80–402, United States Information and Exchange Act of 1948, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USERS:

Files maintained for convenience due to physical separation from Personnel Office; provide necessary background/reference information for use by IBB Administrative Offices in meeting their daily responsibilities of advising on and coordinating programming, personnel and fiscal activities relating to recruitment, hiring and employment of staff employees. Also see Prefatory Statement of General Routine Uses.

Information is made available on a need-to-know basis to personnel of the USIA as may be required in the performance of their official duties. Information in these records is not normally available to individuals or agencies outside the USIA but records may be released to other government agencies who have statutory or other lawful authority to maintain such information.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All information is retained in document form in file folders and is retained electronically.

RETRIEVABILITY:

Files are indexed alphabetically by employee name.

SAFEGUARDS:

All files are locked in security-approved file cabinets, automated systems require appropriate security procedures for access. Access to files is permitted only to administrative staffs and other top management officials having a need to know such information in the normal performance of their duties.

RETENTION AND DISPOSAL:

Files may be retained for up to two years then destroyed in accordance with established USIA records disposal procedures. Copies of documents for which originals exist in Office of Personnel Folders and which are removed from official personnel folders when an employee resigns, are also removed from administrative files and destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, International Broadcasting Bureau (IBB), United States Information Agency (USIA), Cohen Building, 330 Independence Avenue, SW, Washington, DC 20547.

NOTIFICATION PROCEDURE:

Director of Personnel, International Broadcasting Bureau (IBB), United States Information Agency (USIA), Cohen Building, 330 Independence Avenue, SW, Washington, DC 20547.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to: Chief, FOIA/Privacy Act Unit, USIA, 301 4th Street, SW, Washington, DC 20547. To request another individual's file, the requester must have a notarized signed statement from the individual to whom the file pertains.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access and for contesting contents and appealing determinations by the individual concerned appear in 22 CFR Part 505.

RECORD SOURCE CATEGORIES:

Information is received from employees (application forms); from employees' supervisors (employees' experience, performance, and recommendations for promotions, etc:); from organizational personnel and fiscal elements (SF 50 personnel actions, payroll change clips, etc.).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Not applicable.

USIA–4

SYSTEM NAME:

Congressional Liaison—CL.

SYSTEM LOCATION:

Office of Congressional Liaison, United States Information Agency (USIA), 301 4th Street, SW, Washington, DC 20547.

SECURITY CLASSIFICATION:

None for the system. However, portions of the records are classified at the level of confidential and secret.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Members of Congress and their staffs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Incoming and outgoing correspondence to Members of Congress, including requests for information and referral of job applicants by Members. Also included are Agency records, cables and memorandums dealing with individual Members and congressional staff and their involvement in Agency programs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Records Act of 1950, as amended, 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Reference file for oversight of Congressional reports. Also see Prefatory Statement of General Routine Uses. Information is made available on a need-to-know basis to personnel of the U.S. Information Agency, but records may be released to other government agencies who have statutory or other lawful authority to maintain such information.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and data base storage in mainframe computer system.

RETRIEVABILITY:

Indexed alphabetically by individual name.

SAFEGUARDS:

Maintained in bar-lock file cabinets and data base access is password

controlled at several levels of access by authorized personnel as determined by the Director of USIA.

RETENTION AND DISPOSAL:

Records are kept in active status as long as the individual is a Member of Congress or the files are of active interest. Thereafter, the records become inactive but are still maintained.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Congressional Liaison, USIA, 301 4th Street, SW, Washington DC 20547.

NOTIFICATION PROCEDURE:

Director, Congressional Liaison, USIA, 301 4th Street, SW, Washington, DC 20547.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to: Chief, FOIA/PA Unit, Office of General Counsel, USIA, 301 4th Street, SW, Washington, DC 20547.

To request another individual's file, the requester must have a notarized signed statement from the individual to whom the file pertains.

CONTESTING RECORD CATEGORIES:

The Agency's rules for access and for contesting contents and appealing determinations by the individual concerned appeal in 22 CFR part 505.

RECORD SOURCE CATEGORIES:

Communications from Members of Congress and copies of responses generated by various Agency personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Not applicable.

USIA–5

SYSTEM NAME:

Director's Secretariat Staff Files—D/SS.

SYSTEM LOCATION:

Executive Secretariat, United States Information Agency (USIA), 301 4th Street, SW, Washington, DC 20547.

SECURITY CLASSIFICATION:

Some documents may be classified confidential, secret and top secret.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the White House Staff, Members of Congress, heads of other executive agencies of the Federal Government, Federal Judges and members of the general public.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence addressed to the Director of USIA, and copies of responses to requests for reports, information and/or assistance of various kinds prepared by the Director or her/his designated representative.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Federal Records Act of 1950, as amended, 44 U.S.C. 3101–3107; Records Disposal Act of 1943, as amended. 4 U.S.C. 3301–3314.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Reference file to provide oversight of the flow of requests to the USIA Director for reports, information and/or assistance of various kinds' and to monitor the accomplishment of responses to such requests. Also see Prefatory Statement of General Routine Uses. Information is made available on a need-to-know basis to personnel of the USIA as may be required in the performance of their official duties. The information may also be released to other government agencies who have statutory or other lawful authority to maintain such information.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in a computer maintained by and located within the USIA and maintained as paper records in file folders in USIA.

RETRIEVABILITY:

Records are cross-indexed by individual names, titles, agencies and by computer reference number.

SAFEGUARDS:

Computer records are accessible only to authorized employees of the USIA or the Department of State. Paper records are kept in locked file cabinets.

RETENTION AND DISPOSAL:

Records are maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Secretary, USIA, 301 4th Street, SW, Washington, DC 20547.

NOTIFICATION PROCEDURE:

Executive Secretary, USIA, 301 4th Street, SW, Washington, DC 20547.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to the Director, FOIA/Privacy Act Unit, Office of the General Counsel, USIA, 301 4th Street, SW, Washington, DC 20547.

To request another individual's file, the requester must have a notarized signed statement from the individual to whom the file pertains.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access and for contesting contents and appealing determinations by the individual concerned appear in 22 CFR part 505.

RECORD SOURCE CATEGORIES:

Unsolicited correspondence from U.S. Government officials and members of the general public addressed to the Director, USIA.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from 5 U.S.C. 522a (c)(3), (d), (e)(1), (e)(4) (G), (H) and (f). See 22 CFR, Ch. V, § 505.15.

USIA–6

SYSTEM NAME:

Educational and Cultural Exchange Program—E.

SYSTEM LOCATION:

Bureau of Educational and Cultural Affairs, United States Information Agency (USIA), 301 4th Street, SW, Washington, DC 20547.

SECURITY CLASSIFICATION:

Confidential.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants, recipients, and prospective recipients of Educational and Cultural Exchange grants; members of the J. William Fulbright Foreign Scholarship Board: American Executive Secretaries of Fulbright Foundations and Commissions; individuals who may be asked to participate in educational advising workshops.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographic information; project descriptions; evaluations of the performances of former grantees; evaluations of performing artists who may be potential grantees; copies of press releases; news clippings; information related to the grant; related correspondence; academic transcripts; letters of reference.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Mutual Educational and Cultural Exchange Act of 1961; 22 U.S.C. 2451–58; 22 U.S.C. 2054–57; 22 U.S.C. 1431.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The primary function of the Educational and Cultural Exchange Program records is the aiding in the selection of individuals for educational and cultural exchange grants and for the administration of such grants.

Information from these records is also used to develop statistics for use in the operation of the exchange program. The principal users of this information outside USIA are: Office of Personnel Management; Congress; the news media; relative of the grantee trying to reach the individual for bona fide personal reasons; the grantee. In connection with the selection process, information may be released to Binational Commissions; the J. William Fulbright Foreign Scholarship Board; foreign host institutions; contract agencies. Fulbright-Hays alumni names and addresses may be made available to American institutions, organizations or individuals assisting in the organizing and functioning of an association of alumni of the exchange program. Excerpts from the files may be used by non-governmental panels of experts in rating candidates. This information may also be released to other government agencies having statutory or other lawful authority to maintain such information.

Also see Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard copy; magnetic computer media.

RETRIEVABILITY:

By name of the individual.

SAFEGUARDS:

Records are maintained in secured file cabinets or in restricted areas, access to which is limited to authorized personnel.

RETENTION AND DISPOSAL:

Retention of these records varies from 3 years to an indefinite period of time, depending upon the specific kind of record involved. Records of non-recommended candidates are only maintained for up to 12 months after submission of the application. They are retired or destroyed in accordance with published schedules of the USIA.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Bureau of Educational and Cultural Affairs, USIA, 301 4th Street, SW, Washington, DC 20547.

NOTIFICATION PROCEDURE:

Associate Director, Bureau of Educational and Cultural Affairs, USIA, 301 4th Street, SW, Washington, DC 20547.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to: Chief, FOIA/Privacy Act Unit, Office of the General Counsel, USIA, 301 4th Street, SW, Washington, DC 20547. To request another individual's file, the requester must have a notarized signed statement from the individual to whom the file pertains.

CONTESTING RECORDS PROCEDURES:

The Agency's rules for access and for contesting contents and appealing determinations by the individual concerned appear in 22 CFR part 505.

RECORD SOURCE CATEGORIES:

The individual public reference; other offices within the other government agencies; other public and professional institutions possessing relevant information.

EXEMPTION CLAIMED FOR THE SYSTEM:

Certain records contained within this system of records are exempted from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (H), (I), and (F).

USIA–7

SYSTEM NAME:

Office of Arts America—E/D.

SYSTEM LOCATION:

Office of Arts America, United States Information Agency (USIA), 301 4th Street, SW, Washington, DC 20547.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have traveled at U.S. Government expense under USIA Private Sector grants in the performance of grant requirements and biographic information on individuals nominated for the Agency's Artistic Ambassador Program from eligible graduate music schools and conservatories in the United States.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, position, organizational affiliation, grantee organization, grant number, date, destination, purpose of travel; biographic data where nominee will perform, nominee's repertoire, past concerts and performances, address, telephone number, education, date and place of birth and citizenship.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information relating to American Travelers in this system will be used to compile an annual report for the Speaker of the House of Representatives and the Chairman of the Senate Foreign Relations Committee as required by Pub. L. 98–164. This file has no other use. Users of this file will be employees of the USIA Office of Arts America having a need to access the information.

The Artistic Ambassador Program file will be used by employees of the USIA Office of Arts America in performance of their duties and by judges to record information on the technical and artistic ability of the artist, which information is ultimately used in selecting winners of competition.

Also see Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information will be maintained in a word processor on list processing with limited access and in file folders under individual names.

RETRIEVABILITY:

records are retrieved by name and organizational affiliation.

SAFEGUARDS:

Records of American travelers are maintained on a word processor located in the USIA Office of Arts America and are password protected so that the file can only be accessed by employees having a need to obtain information which is available only in the file.

RETENTION AND DISPOSAL:

Files will be retained for a minimum of 5 years but no longer than 7 years, at which time they will be disposed of in accordance with the USIA Disposition Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Arts America (E/D), USIA, 301 4th Street, SW, Washington, DC 20547.

NOTIFICATION PROCEDURE:

Director, Office of Arts American, E/D, USIA, 301 4th Street, SW, Washington, DC 20547.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to: Chief, FOIA/Privacy Act Unit, Office of the General Counsel, USIA, 301 4th Street, SW, Washington, DC 20547.

To request another individual's file, the requester must have a notarized signed statement from the individual to whom the file pertains.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access and for contesting contents and appealing

determinations by the individual concerned appear in CFR part 505.

RECORD SOURCE CATEGORIES:

Information obtained from grantee organizations and individual grantee.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Not applicable.

USIA–8

SYSTEM NAME:

Cultural Property Advisory Committee—E/ZC.

SYSTEM LOCATION:

Cultural Property Advisory Committee, United States Information Agency (USIA), 301 4th Street, SW, Washington, DC 20547.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former members of the Cultural Property Advisory Committee. The Committee is comprised of experts in the international sale of cultural property; experts in archaeology, anthropology, ethnology or related fields; representatives of museums; and representatives of the general public. They are private citizens appointed by the President to three year terms.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel, correspondence, travel. Incorporated therein are curriculum vitae, correspondence between staff and members of the Committee, travel and other documents generated during the members' service on the Committee. Some documents are duplicated by other agency elements, some are not.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Records Act of 1950, as amended, 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information relating to Committee members in this system is used by the Committee staff. Also records may be used, on a need-to-know basis, by USIA's administrative, personnel and security offices; and, by the Director of USIA who may wish to make recommendations to White House Personnel regarding appointments to the Committee.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Information is stored in file folders under individuals' names.

RETRIEVABILITY:

Records are indexed alphabetically by individual name under three separate categories: personnel; correspondence; and travel.

SAFEGUARDS:

Records are maintained in bar-lock file cabinets.

RETENTION AND DISPOSAL:

Records are kept in active status as long as the Committee member serves. Thereafter, the records become inactive but are maintained until they are disposed of in accordance with the USIA disposition schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Director, Cultural Property Advisory Committee (E/PAC); USIA, 301 4th Street, SW, Washington, DC 20547.

NOTIFICATION PROCEDURE:

Executive Director, Cultural Property Advisory Committee (E/ZC); USIA, 301 4th Street, SW, Washington, DC 20547.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to: Chief, FOIA/Privacy Act Unit, Office of the General Counsel, USIA, 301 4th Street, SW, Washington, DC 20547.

To request another individual's file the requester must have a notarized signed statement from the individual to whom the file pertains.

CONTESTING RECORD PROCEDURE:

The Agency's rules for access and for contesting contents and appealing determinations by the individual concerned appear in 22 CFR part 505.

RECORD SOURCE CATEGORIES:

Some information is obtained from individual Committee members, some is staff/Agency generated, and some is obtained from the White House.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Not applicable.

USIA–9

SYSTEM NAME:

Employee Statements of Financial Interest and Confidential Statements of Employment and Financial Interest—GC.

SYSTEM LOCATION:

Office of the General Counsel, United States Information Agency (USIA), 301 4th Street, SW, Washington, DC 20547.

SECURITY CLASSIFICATION:

None for the system. However, some documents may be classified confidential.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Experts or consultants, employees, paid at the Executive Schedule level; employees classified at GS–13, and the Foreign Service equivalent or above, who are in positions of responsibility for a government decision or taking a government action in regard to: (1) Contracting or procurement; (2) administering or monitoring grants or subsidies; (3) regulating or auditing private or other non-Federal enterprise; (4) required to report employment and financial interest in order to avoid possible conflicts of interest.

CATEGORIES OF RECORDS IN THE SYSTEM:

Statements of personal and family shareholdings and other interest in business enterprises; copies of blind trust and other agreements pertaining to such interests; correspondence as to insulation of control of conflicts of interests; opinions of counsel, including recommendations on waivers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order (E.O.) 11222; 5 U.S.C. 7301; 18 U.S.C. 208; Ethics in Government Act of 1948, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Review by Assistant General Counsel for possible conflict of interest. Provide necessary reference information should allegations of conflicts of interest arise. Also see Prefatory Statement of General Routine Uses.

Information is made available on a need-to-know basis to personnel of the USIA as may be required in the performance of their official duties.

Information is made available on a need-to-know basis to personnel of the USIA as may be required in performance of their official duties.

Information in Confidential Statements of Employment and Financial Interest is not normally made available to individuals or agencies outside USIA, but records may be released to other government agencies who have statutory or other lawful authority to maintain such information. Information in Statements of Financial Interest is generally subject to public disclosure.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Alphabetically by name and by Agency element or geographic area.

SAFEGUARDS:

Maintained in bar-lock cabinets.

RETENTION AND DISPOSAL:

Disposed of six years after employee leaves a position in which a statement is required.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, USIA, 301 4th Street, SW, Washington, DC 02547.

NOTIFICATION OF PROCEDURE:

General Counsel, USIA, 301 4th Street, SW, Washington, DC 20547.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to: Chief, FOIA/Privacy Act Unit, Office of the General Counsel, USIA, 301 4th Street, SW, Washington, DC 20547.

To request another individual's Confidential Statement, the requester must have a notarized signed statement from the individual to whom the file pertains.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access and for contesting contents and appealing determinations by the individual concerned appear in 22 CFR part 505.

RECORD SOURCE CATEGORIES:

From the individual who filed the statement.

EXEMPTIONS CLAIMED BY THE SYSTEM:

Not applicable.

USIA–10

SYSTEM NAME:

Legal Files—GC.

SYSTEM LOCATION:

United States Information Agency (USIA), Office of the General Counsel, 301 4th Street, SW, Washington, DC 20547.

SECURITY CLASSIFICATION:

None for the system. However, some documents may be classified confidential.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed grievances or discrimination complaints; employees separated or considered for separation for cause; officers selected out; individuals taking legal action against the Agency or its employees; tort claimants and accident victims; employees and related persons for whom legislative action is sought; personal property loss claimants; employees and applicants raising legal issues concerning rights or benefits.

CATEGORIES OF RECORDS IN THE SYSTEM:

Investigatory reports; litigation reports; pre-hearing and trial prefatory material; evidence for discovery and submission to hearing officers or courts; pleadings, briefs, transcripts, decisions and other related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Federal Records Act, as amended, 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To represent the Agency in claims and other actions; to issue legal opinions or determinations on further Agency action. Also see Prefatory Statement of General Routine Uses.

Information is made available on a need-to-know basis to personnel of the USIA as may be required in the performance of their official duties.

The principal users of this information outside the Agency are the Department of Justice, Department of State, Office of Personnel Management, Foreign Service Grievance Board and the Employee Management Relations Committee.

Records contained in these files may be released to agencies outside the USIA who have statutory or other lawful authority to maintain such information.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By the name of the individual and the nature of the legal action.

SAFEGUARDS:

Maintained in locked file cabinets.

RETENTION AND DISPOSAL:

Records may be retained indefinitely or disposed of when no longer useful or current.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, USIA, 301 4th Street, SW, Washington, DC 20547.

NOTIFICATION PROCEDURE:

General Counsel, USIA, 301 4th Street, SW, Washington, DC 20547.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to: Chief, FOIA/Privacy Act Unit, Office of the General Counsel, USIA, 301 4th Street, SW, Washington, DC 20547.

To request another individual's Confidential Statement, the requester must have a notarized signed statement from the individual to whom the file pertains.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access and for contesting contents and appealing determinations by the individual concerned appear in 22 CFR part 505.

RECORD SOURCE CATEGORIES:

Information provided by the individual and their attorneys or representatives, and by employees of the Agency; information produced in the processing of a claim, grievance, legal action or issue.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552 a(k)(2) and (k)(5), all investigatory material in the record which meets the criteria of these subsections is exempted from the notice, access and contest requirements (under 5 U.S.C. 552a (c)(3), (d)(e)(1), (e)(4) (G), (H) and (I) and (f) of the Agency regulations) in order for the Agency's legal staff to properly perform its functions. See also 22 CFR 505.15.

USIA–11

SYSTEM NAME:

Recruitment Records—GC.

SYSTEM LOCATION:

Office of the General Counsel, United States Information Agency (USIA), 301 4th Street, SW, Washington, DC 20547.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for legal and summer intern positions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Inquiries from attorneys and law students seeking employment with the Office of the General Counsel, resumes and responses to inquiries.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Records Act of 1950, as amended, 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

For reference and screening of candidates for vacancies on the Agency's legal staff.

Aiso see Prefatory Statement of General Routine Uses.

Information is made available on a need-to-know basis to personnel of the Agency, as may be required in the performance of their official duties.

Information in these records is not normally made available to individuals or agencies outside the USIA, although it may be released to other agencies who have statutory or other lawful authority to maintain such information.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in the file folders.

RETRIEVABILITY:

Filed alphabetically by name.

SAFEGUARDS:

Maintained in locked file cabinets.

RETENTION AND DISPOSAL:

Records may be retained indefinitely or disposed of when no longer useful or current.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the General Counsel, USIA, 301 4th Street, SW, Washington, DC 20547.

NOTIFICATION PROCEDURE:

Office of the General Counsel, USIA, 301 4th Street, SW, Washington, DC 20547.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the Chief, FOIA/Privacy Act Unit, USIA, 301 4th Street, SW, Washington, DC 20547.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access and for contesting contents and appealing determinations by the individual concerned appear in 22 CFR part 505.

RECORD SOURCE CATEGORIES:

Unsolicited inquiries and job applications received from individuals who are seeking employment with USIA's legal staff.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Not applicable.

USIA–12

SYSTEM NAME:

Privacy and Freedom of Information Acts Files—GC/FOI.

SYSTEM LOCATION:

Office of the General Counsel, FOIA/PA Unit, United States Information Agency (USIA), 301 4th Street, SW, Washington, DC 20547.

SECURITY CLASSIFICATION:

Some documents may be classified Confidential, Secret and Top Secret.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have requested documents, records or other information concerning themselves from the Agency pursuant to the Privacy Act of 1974 (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552).

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal information that may be contained in reports, memoranda, letters, or any other official or unofficial documents that are relevant to the requests.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552a and 5 U.S.C. 552.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

For processing of requests received pursuant to the Privacy Act and the Freedom of Information Act.

Also see Prefatory Statement of General Routine Uses.

Information is made available on a need-to-know basis to personnel of the USIA as may be required in the performance of their official duties.

Information in these records is not normally available to individuals or agencies outside the USIA but records may be released to other government agencies who have statutory or other lawful authority to maintain such information.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronically.

RETRIEVABLILTY:

By name of individual or personal identifier.

SAFEGUARDS:

Records are under surveillance by authorized employees during working hours and are stored in combination-lock cabinets and combination-lock file rooms when not in use.

RETENTION AND DISPOSAL:

Retired and destroyed in accordance with record disposition schedules of the USIA.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, FOIA/Privacy Act Unit, Office of the General Counsel, USIA, 301 4th Street, SW, Washington, DC 20547.

NOTIFICATION PROCEDURES:

Chief, FOIA/Privacy Act Unit, Office of General Counsel, USIA, 301 4th Street, SW, Washington, DC 20547.

RECORD ACCESS PROCEDURE:

Requests from individual should be addressed to: Chief, FOIA/Privacy Act Unit, Office of the General Counsel, USIA, 301 4th Street, SW, Washington, DC 20547. To request another individual's file the requester must have a notarized signed statement from the individual to whom the file pertains.

CONTESTING RECORD PROCEDURES:

The right to contest records is limited to information which is incomplete, irrelevant, incorrect or untimely. An individual may contact the following official in order to request correction of or amendment to the individual's records: Chief, FOIA/Privacy Act Unit, Office of General Counsel, USIA, 301 4th Street, SW, Washington, DC 20547.

RECORD SOURCE CATEGORIES:

Compiled as a result of requests under the Privacy Act and the Freedom of Information Act.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Certain records contained within the system of records may be exempted from 5 U.S.C. 552a (c)(3), (d), (e)(1), (c)(4) (G), (H), (I) and (f). See 22 CFR 505.15.

USIA–13

SYSTEM NAME:

Service Contributors—I/G.

SYSTEM LOCATION:

U.S. Information Agency (USIA), 301 4th Street, SW, Washington, DC 20547.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Free-lance writers and translators who are available to USIA on an intermittent, fixed-fee basis to perform services for the Agency and authors of newspaper and magazine articles.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of purchase orders issued to contributors; addresses, phone numbers, specialities of contributors; data on number of time contributors have been used and fees paid for services.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM

IAPR–191.103 issued under authority of 5 U.S.C., Chap. 3 and Federal Property and Administrative Services Act of 1949 (Pub.L. 152, 81st Congress), as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Reference material used to select writers, as required, to provide coverage of newsworthy events, such as interviews, with foreign visitors and

students, and coverage of conferences; used to check on completion of assignment before payment for services is approved; for office reference in identifying articles, locating authors.

Information is made available on a need-to-know basis to personnel of USIA as may be required in the performance of their official duties.

Information in these files is not normally available to individuals or agencies outside the Agency, but records may be released to other government agencies who have statutory or other lawful authority to maintain such information.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Purchase order paper records in file folders.

RETRIEVABILITY:

By name and geographic location of the contribution; author files maintained alphabetically by name.

SAFEGUARDS:

Maintained in locked file cabinets.

RETENTION AND DISPOSAL:

Purchase orders retained for two years and then destroyed. Names, addresses and phone numbers retained until contributor is no longer available.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Office, Press and Publications Services, USIA, 301 4th Street, SW, Washington, DC 20547.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to: Chief, FOIA/Privacy Act Unit, USIA, 301 4th Street, SW, Washington, DC 20547. To request another individual's file, the requester must have a notarized signed statement from the individual to whom the file pertains.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access and for contesting contents and appealing determinations by the individual concerned appear in 22 CFR part 505.

RECORD SOURCE CATEGORIES:

Referrals by city editors of local newspapers; other free-lance contributors; data on authors obtained from the newspaper or magazine article in which the original article appeared, from the author directly or from standard references such as "Who's Who" and "Editor and Publisher."

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Not applicable.

USIA–14

SYSTEM NAME:

Speaker Databank/Name—I/T.

SYSTEM LOCATION:

Office of Thematic Programs, United States Information Agency (USIA), 301 4th Street, SW, Washington, DC 20547.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUAL COVERED BY THE SYSTEM:

American specialists and experts in a variety of fields who have participated or been considered for participation in the Speaker/Specialist Programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

A typical file contains the following information on or about speakers and prospective speakers in the Speaker/Specialist Program administered by USIA: Biographic data including education and professional experience, countries visited, travel dates, Grant Authorization number and type, cost, fiscal year, correspondence between the speaker and I/T, and communications between the Agency and its overseas posts regarding the speaker's participation in the program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 11034, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Speakers Databank is maintained as a historical record of the Speaker/Specialist Program. Both the Speaker Databank and the files are used routinely by program development officers, program assistants and clerical personnel in the daily conduct of the Speaker/Specialist Program. They are occasionally consulted by other Agency personnel for such purposes as preparing advance publicity on speakers who will lecture abroad under USIA auspices.

Also see Prefatory Statement of General Routine Uses.

Information is made available on a need-to-know basis to personnel of the USIA as may be required in the performance of their official duties.

Information in these records is not normally available to individuals or agencies outside the USIA but records may be released to other government agencies who have statutory or other lawful authority to maintain such information.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The Speaker Databank is maintained on a personal computer. The files are stored in individual folders by name and consist of the types of information specified under "Categores of Records."

RETRIEVABILITY:

Information can be retrieved from the Speaker Databank as needed. File folders are indexed alphabetically by name.

SAFEGUARDS:

The files are kept in locked file cabinets, and when open during office hours are always tended by one or more employees. Only appropriate personnel are allowed to consult these files routinely. Other Agency personnel interested are allowed to consult them only for legitimate speaker recruitment activities. U.S. Government personnel other than USIA very rarely seek access to these files. When then do, they are asked to produce specific identification and justification.

RETENTION AND DISPOSAL:

These records are normally maintained for approximately three years. Afterward, they are retired to the USIA archives for a period of from 5–7 years.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director for programs, USIA, 301 4th Street, SW, Washington, DC 20547.

NOTIFICATION PROCEDURE:

Associate Director for Programs, USIA, 301 4th Street, SW, Washington, DC 20547.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to: Chief, FOIA/Privacy Act Unit, USIA, 301 4th Street, SW, Washington, DC 20547. To request another individual's file, the requester must have a notarized signed statement from the individual to whom the file pertains.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access and for contesting contents and appealing determinations by the individual concerned appear in 22 CFR part 505.

RECORD SOURCE CATEGORIES:

Without significant exceptions, the information on individuals maintained in these files has come from the individual concerned or, occasionally, from others at the request of that individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Not applicable.

USIA–15

SYSTEM NAME:

Electronic Media Photographer—I/TEM.

SYSTEM LOCATION:

Press and Publications Service, United States Information Agency (USIA), 301 4th Street, SW, Washington, DC 20547.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Free-lance photographers and picture agents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal data on free-lance photographers and picture agents such as name, address, telephone number, prices charged for products and services, specialities, availability of rights, evaluations of previous USIA assignments and purchases.

AUTHORITY FOR MAINTANCE OF THE SYSTEM:

Federal Records Act of 1950, as amended, 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To select photographers for specific assignments; to acquire existing pictures; for general photo research—all for use in the Agency's overseas information program. Also see Prefactor Statement of General Routine Uses.

Information is made available on a need-to-know basis to personnel of the USIA but records may be released to other government agencies who have statutory or other lawful authority to maintain such information.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS BY THE SYSTEM:

STORAGE:

Card file and paper records in file folders.

RETRIEVABILITY

Indexed alphabetically by individual name.

SAFEGUARDS:

Maintained in desk drawers and locked file cabinets.

RETENTION AND DISPOSAL:

Records are maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Press and publications Service, USIA 301 4th Street, SW, Washington, DC 20547.

NOTIFICATION PROCEDURE:

Director, Press and Publications Service, USIA, 301 4ht Street, SW, Washington, DC 20547.

RECORD ACCESS PROCEDURE:

Request from individuals should be addresses to: Chief, FOIA/Privacy Act Unit, USIA, 301 4th Street, SW, Washington, DC 20547. To request another individual's file, the requester must have a notarized signed statement from the individual to whom the file pertains.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access and for contesting contents and appealing determinations by the individual concerned appear in 22 CFR part 505.

RECORD SOURCE CATEGORIES:

From the individual's concerned; from publications; photo agencies, and photographer associations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Not applicable.

USIA–16

SYSTEM NAME:

Employee Parking USIA—M/A.

SYSTEM LOCATION:

Office of Administration, Bureau of Management, United States Information Agency (USIA), 301 4th Street, SW, Washington, DC 20547.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Agency employees assigned USIA controlled parking spaces; employees awaiting assignment of vacated parking spaces.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, office locations and telephone number of employees assigned parking space; participants in carpools; records on employees with physical handicaps and doctors or others to contact in case of emergency; waiting list of employees desiring assignment of official parking space.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Code of Federal Regulations (41 CFR part 101) prescribing regulations regarding the use of federally controlled parking spaces.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Assignment of parking space to Agency executives; to assure fairness in the assignment of parking space to employees and to give priority to the handicapped and to carpools. Also see Prefatory Statement of General Routine Uses.

Information is made available on a need-to-know basis to personnel to the USIA as may be required in the performance of their official duties.

The information may also be released to other government agencies who have statutory or other lawful authority to maintain such information.

POLICIES AND PRACTICES AND STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS BY THE SYSTEM:

STORAGE:

Paper records maintained in file folders and word processing lists in mainframe computer system.

RETRIEVABILITY:

By name of the employee.

SAFEGUARDS:

Maintained in bar-lock cabinets and computer access is password controlled.

RETENTION AND DISPOSAL:

Records destroyed three months after employee relinquishes assigned parking space or is separated from the Agency. GRS–11.4(a).

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Administration, United States Information Agency (USIA), 301 4th Street, SW, Rm. 618, Washington, DC 20547.

NOTIFICATION PROCEDURE:

Director, Office of Administration, United States Information Agency (USIA), 301 4th Street, SW, Rm. 618, Washington, DC 20547.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to: Chief, FOIA/Privacy Act Unit, USIA, 301 4th Street, SW, Washington, DC 20547. To request another individual's file, the requester must have a notarized signed statement from the individual to whom the file pertains.

CONTESTING RECORD PROCEDURE:

The Agency's rules for access and for contesting contents and appealing initial determination by the individual concerned appear in 22 CFR part 505.

RECORD SOURCE CATEGORIES:

Information obtained from individuals concerned, and responses generated by various Agency personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Not applicable.

USIA–17

SYSTEM NAME:

Mailing Lists—M/ADM.

SYSTEM LOCATION:

Office of Administration, Mail and Telephone Branch, United States Information Agency (USIA), 301 4th Street, SW, Washington, DC 20547.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

USIA/USIA domestic and Foreign Service Officers; radio station managers and technicians, foreign correspondents; American and foreign diplomats; librarians; scholars; Members of Congress; Information counselors of other Federal agencies and the military; officers of international organizations; American journalists; newspaper and magazine editors and publishers; public relations officers; musicians; historians.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain name, address, occupation, title and profession of individuals who need to have access to, or have requested information concerning: Agency publication; news pictures; reports on current issues and other reports; messages for overseas distribution; press releases; USIA Manual of Operations and Administration.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 402.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Mailing lists are used by Agency elements to distribute printed materials to Agency personnel who need access to such information in the performa..ce of their duties, and to members of the public listed under Categories of Individuals Covered by the System as shown above who have requested such information or who have a professional need and interest in acquiring such information. Also see Prefatory Statement of General Routine Uses.

Information is made available on a need-to-know basis to personnel of the USIA as may be required in the performance of their official duties.

Information in these records is not normally available to individuals or agencies outside the USIA but records may be released to other government agencies who have statutory or other lawful authority to maintain such information.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS BY THE SYSTEM:

STORAGE:

Computer database.

RETRIEVABILITY:

By code number of the distribution list and the subject matter of the printed material, and then by name arranged alphabetically.

SAFEGUARDS:

Computer Security System.

RETENTION AND DISPOSAL:

Records of database are updated frequently.

SYSTEM MANAGERS AND ADDRESS:

Chief, Mail and Telephone Branch, USIA, 301 4th Street, SW, Rm. 146, Washington, DC 20547.

NOTIFICATION PROCEDURE:

Chief, Mail and Telephone Branch, USIA, 301 4th Street, SW, Rm. 146, Washington, DC 20547.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to: Chief, FOIA/Privacy Act Unit, USIA, 301 4th Street, SW, Washington, DC 20547. To request another individual's file, the requester must have a notarized signed statement from the individual to whom the file pertains.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access and for contesting contents and appealing initial determinations by the individual concerned appear in 22 CFR part 505.

RECORD SOURCE CATEGORIES:

From the individual concerned and from public documents such as Congressional and professional directories and journals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Not applicable.

USIA–18

SYSTEM NAME:

Official Travel Records—M/ADT.

SYSTEM LOCATION:

Office of Administration, Travel and Transportation Branch, United States Information Agency (USIA), 301 4th Street, SW, Washington, DC 20547.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Past and present USIA employees and private citizens who have traveled under Agency auspices.

CATEGORIES OF RECORDS IN THE SYSTEM:

(a) Travel documents and correspondence relating to shipment and storage of personal effects and automobiles; (b) records of active passports and visa requests from foreign embassies; and (c) records of temporary duty travel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Supplemental Appropriation Act of 1995, Public Law 663, S1331 (82 Congress) (31 U.S.C. 200); section 367, the Revised Statutes, as amended, Anti-deficiency Act (31 U.S.C. 665).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used by the staff of the Travel and Transportation Branch: (a) To make payments for travel services provided Agency travelers and the packing and storage or shipment of their household effects and automobiles; (b) to obtain passports and visas for Agency employees and other Agency travelers; and (c) to prepare various reports on Agency travel activities.

Also see Prefatory Statement of General Routine Uses.

Information is made available on a need-to-know basis to personnel of the USIA as may be required in the performance of their official duties.

Information in these records is not normally available to individuals or agencies outside the USIA but records may be released to other government agencies who have statutory or other lawful authority to maintain such information.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS BY THE SYSTEM:

STORAGE:

Paper records maintained in file folders in Lektriever storage file, loose leaf binders, and index cards. Computer files also maintained for the shipment and storage of household effects.

RETRIEVABILITY:

Indexed alphabetically by name.

SAFEGUARDS:

Passports and related material as well as all other classified material are kept in bar-lock cabinets. Other records are kept in unlocked files which are under surveillance of authorized employees during the working day, and by security guards after official working hours.

RETENTION AND DISPOSAL:

Temporary duty travel authorizations are maintained for four years and then sent to a Federal records center. Household effects records are

maintained for approximately seven years. Passport records are kept for ten years for Agency employees and five years for other travelers.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Travel and Transportation Branch, United States Information Agency (USIA), 301 4th Street, SW, Washington, DC 20547.

NOTIFICATION PROCEDURE:

Chief, Travel and Transportation Branch, United States Information Agency (USIA), 301 4th Street, SW, Washington, DC 20547.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to: Chief, FOIA/Privacy Act Unit, USIA, 301 4th Street, SW, Washington, DC 20547. To request another individual's file, the requester must have a notarized signed statement from the individual to whom the file pertains.

CONTESTING RECORD PROCEDURE:

The Agency's rules for access and for contesting contents and appealing determinations by the individual concerned appear in 22 CFR part 505.

RECORD SOURCE CATEGORIES:

Travel request forms initiated by various Agency elements, information regarding personal and household effects obtained from the traveler and from carriers, and passport information received from the Department of State's Passport Office.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Not applicable.

USIA–19

SYSTEM NAME:

Salary Computation Records—M/CB.

SYSTEM LOCATION:

Office of the Comptroller, United States Information Agency (USIA), 301 4th Street, SW, Washington, DC 20547.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons employed by the Agency during any past fiscal year and the current fiscal year.

CATEGORIES OF RECORDS IN THE SYSTEM:

Bi-weekly liquidation abstract data; staffing patterns.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10477 of August 1, 1953; Executive Order 10822 of May 20, 1953, implementing section 2(s) of the Reorganization Plan No 8 of 1953; Budget-Treasury Regulation No. 1 (revised); The Economy Act (31 U.S.C. 686), section 601; section 3679 of the revised statutes as amended (31 U.S.C. 665).

PURPOSE(S):

For the use of the Program Support Branch only for salary computations for Agency budget purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

For the use of the Program Support Branch only for salary computations for Agency budget purposes.

Information is made available on a need-to-know basis to personnel of the USIA as may be required in the performance of their official duties.

Information in these records is not normally available to individuals or agencies outside the USIA but records may be released to other government agencies who have statutory or other lawful authority to maintain such information.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS BY THE SYSTEM:

STORAGE:

Paper records maintained in files.

RETRIEVABILITY:

By name of individual.

SAFEGUARDS:

1. *Authorized users:* accounts analyst and supervisor.

2. *Physical Safeguards:* security provided by surveillance of authorized employees during working hours and by security guards after working hours.

3. *Procedural (or technical) safeguards:* access to records is strictly limited to those staff members who have a need-to-know.

4. *Implemeniation guidelines:* USIA Manual of Operations.

RETENTION AND DISPOSAL:

Retained until no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Program Support Branch, Budget Operations Division, USIA, 301 4th Street, SW, Washington, DC 20547.

NOTIFICATION PROCEDURE:

Chief, Program Support Branch, Budget Operations Division, USIA, 301 4th Street, SW, Washington, DC 20547.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to: Chief, FOIA/Privacy Act Unit, USIA, 301 4th Street, SW, Washington, DC 20547. To request another individual's file, the requester must have a notarized signed statement from the individual to whom the file pertains.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access and for contesting contents and appealing determinations by the individual concerned appear in 22 CFR part 505.

RECORD SOURCE CATEGORIES:

Office of Personnel Services; Agency's Payroll Department.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Not applicable.

USIA–20

SYSTEM NAME:

Employee Payroll and Retirement System—M/CF.

SYSTEM LOCATION:

Office of the Comptroller, United States Information Agency (USIA), 301 4th Street, SW, Washington, DC 20547.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees currently on Agency rolls (payroll); all employees on Agency rolls (retirement).

CATEGORIES OF RECORDS IN THE SYSTEM:

Civil Service Retirement System, Foreign Service Retirement and Disability System. Federal Employees Retirement System (FERS), and Foreign Service Pension System; time and attendance records (domestic employees only); master employee registers (domestic only); payroll folders.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 113 of the budget and Accounting Procedures Act of 1950, as amended.

PURPOSES:

To assure proper salary payment to domestic Agency employees and for reference regarding salary history; master record of domestic employee accumulation of annual and sick leave, recording of employee contributions to the Civil Service Retirement System and FERS; recording of employee withholdings for transmission to Federal, State and local taxing authorities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To assure proper salary payment to (domestic) employees and for reference

regarding salary history; master record of (domestic) employee accumulation of annual and sick leave; recording of employee contributions to the Civil Service Retirement, Foreign Service Retirement and Disability, Federal Employees Retirement and Foreign Service Pension Systems; to record and transmit on a biweekly basis employee Thrift Savings Plan contributions to the Federal Retirement Thrift Investment Board; recording of employee withholdings for transmission to Federal, State and local taxing authorities.

Information is made available on a need-to-know basis to personnel of the USIA as may be required in the performance of their official duties.

The principal users of this information outside the USIA are the U.S. Treasury, the Office of Personnel Management, and the Director General of the Foreign Service, U.S. Department of State. The information may also be released to other government agencies who have statutory or other lawful authority to maintain such information.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS BY THE SYSTEM:

STORAGE:

Time and attendance is maintained on 8½×11 time and attendance sheets or electronically; retirement records are recorded on 8½×11 cards and maintained in a file cabinet or on the mainframe computer; the master employee register is a computer report; payroll records are maintained in manila folders; overseas pay cards are manually prepared or maintained as a computer report, depending upon the facilities at various overseas locations.

RETRIEVABILITY:

By the name of the individual employee (payroll); by name and/or social security number (retirement).

SAFEGUARDS:

1. *Authorized Users:* Limited access to staff members on a need to-know basis.
2. *Physical Safeguards:* security provided by surveillance of authorized employees during working hours and by security guards after working hours.
3. *Procedural (or technical) safeguards:* access to records is strictly limited to those staff members who have a need-to-know.
4. *Implementation guidelines:* USIA Manual of Operations.

RETENTION AND DISPOSAL:

Retirement records are forwarded to the Office of Personnel Management for domestic employees, and the State Department for foreign service employees, upon retirement, resignation or transfer of employee. Payroll records are retired to Federal Records Center, St. Louis, after three years.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Financial Operations Division, USIA, 301 4th Street, SW, Washington, DC 20547.

NOTIFICATION PROCEDURE:

Chief, Financial Operations Division, USIA, 301 4th Street, SW, Washington, DC 20547.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to: Chief, FOIA/Privacy Act Unit, USIA, 301 4th Street, SW., Washington, DC 20547. To request another individual's file, the requester must have a notarized signed statement from the individual to whom the file pertains.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access and for contesting contents and appealing initial determinations by the individual concerned appeal in 22 CFR part 505.

RECORD SOURCE CATEGORIES:

Various forms provided by individual and by USIA's Office of Personnel, i.e., personnel action forms, payroll change forms, Federal and State withholding exemption certificates, employee allotment deduction forms, time and attendance sheets.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Not applicable.

USIA–21

SYSTEM NAME:

Records on Shipment of Effects, Unaccompanied Baggage and Automobiles—M/CF.

SYSTEM LOCATION:

Office of the Comptroller, Financial Operations, United States Information Agency (USIA), 301 4th Street, SW, Washington, DC 20547.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Foreign service employees authorized to ship effects and automobiles overseas at USIA expense.

CATEGORIES OF RECORDS IN THE SYSTEM:

Paper cards listing payments made to packers, carriers, etc., in connection with shipment of effects, baggage and automobiles pursuant to travel authorizations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 66a.

PURPOSE(S):

To determine if unauthorized charges were incurred due to excess shipments, indirect routing or other reasons.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To determine if unauthorized charges were incurred due to excess shipments, indirect routing or other reasons.

Information is made available on a need-to-know basis to personnel of the USIA as may be required in the performance of their official duties.

Information in these records is not normally available to individuals or agencies outside the USIA but records may be released to other government agencies who have statutory or other lawful authority to maintain such information.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS BY THE SYSTEM:

STORAGE:

Paper records maintained in tub file.

RETRIEVABILITY:

Filed alphabetically by company name.

SAFEGUARDS:

1. *Authorized Users:* Accounts analyst and supervisor.
2. *Physical Safeguards:* Security provided by surveillance of authorized employees during working hours and by security guards after working hours.
3. *Procedural (or technical) safeguards:* Access to records is strictly limited to those staff members who have a need-to-know.
4. *Implementation guidelines:* USIA Manual of Operations.

RETENTION AND DISPOSAL:

Records destroyed four years after the fiscal year in which shipment is authorized.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Financial Operations Division, USIA, 301 4th Street, SW, Washington, DC 20547

NOTIFICATION PROCEDURE:

Chief, Financial Operations Division, USIA, 301 4th Street, SW, Washington, DC 20547.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to: Chief, FOIA/Privacy Act Unit, USIA, 301 4th Street, SW., Washington, DC 20547. To request another individual's file, the requester must have a notarized signed statement from the individual to whom the file pertains.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access and for contesting contents and appealing initial determinations by the individual concerned appeal in 22 CFR part 505.

RECORD SOURCE CATEGORIES:

USIA offices offering travel authorizations, travel vouchers submitted by employees; invoices submitted by carriers for payment.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Not applicable.

USIA–22

SYSTEM NAME:

Travel Authorization Obligation File—M/CF.

SYSTEM LOCATION:

Office of the Comptroller, Financial Operations Division, United States Information Agency (USIA), 301 4th Street, SW, Washington, DC 20547.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals authorized to travel for which costs of travel are chargeables to USIA appropriations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of travel authorizations and copies of paid vouchers and/or abstracts or other documents relating to payments for authorized travel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 66a.

PURPOSE(S):

To support recording of obligations of funds for travel; for audit of travel and transportation vouchers prior to certification and payment control to avoid duplicate payment of claims.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To support recording of obligations of funds for travel; for audit of travel and transportation vouchers prior to certification and payment; control to avoid duplicate payment of claims. Also see Prefatory Statement of General Routine Uses.

Information is made available on a need-to-know basis to personnel of the USIA as may be required in the performance of their official duties.

Information in these records is not normally available to individuals or agencies outside the USIA but records may be released to other government agencies who have statutory or other lawful authority to maintain such information.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS BY THE SYSTEM:

STORAGE:

Paper files maintained in file cabinets, tubs, or accordion folders.

RETRIEVABILITY:

By name, date and/or social security number; cross-reference to travel authorization number filed by appropriation/allotment chargeable.

SAFEGUARDS:

1. *Authorized users:* Limited to those staff members who have a need-to-know.
2. *Physical safeguards:* Security provided by surveillance of authorized employees during working hours and by security guards after working hours.
3. *Procedural (or technical) safeguards:* Access to records is strictly limited to those staff members who have a need-to-know.
4. *Implementation guidelines:* USIA Manual of Operations.

RETENTION AND DISPOSAL:

Alphabetical copy of travel authorizations destroyed after 3 years after close of fiscal year in which issued. Folders destroyed between 4 and 10 years after the close of the fiscal year, depending upon the type of travel.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Financial Operations Division, USIA, 301 4th Street SW, Washington, DC 20547.

NOTIFICATION PROCEDURE:

Chief, Financial Operations Division, USIA, 301 4th Street SW, Washington, DC 20547.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to: Chief, FOIA/Privacy Act Unit, USIA, 301 4th Street, SW, Washington, DC 20547. To request another individual's file, the requester must have a notarized signed statement from the individual to whom the file pertains.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access and for contesting contents and appealing initial determinations by the individual concerned appeal in 22 CFR part 505.

RECORD SOURCE CATEGORIES:

Standard forms and Agency forms prepared in connection with official travel by personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Not applicable.

USIA–23

SYSTEM NAME:

Recruitment Record—M/HR.

SYSTEM LOCATION:

Office of Personnel Services, United States Information Agency (USIA), 301 4th Street, SW., Washington, DC 20547.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for foreign service or domestic employment; applicants for personnel or management intern positions; employees hired under the worker-trainee program, individuals certified by the Office of Personnel Management (OPM) for appointment consideration.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employment application forms; resumes and replies to employment inquiries; personnel security data forms; results of written examination; notes on interviews by selection panels; records on availability of job applicants; OPM employment certificates.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101; FPM 333 Subchapter 1–1; FPM Chapter 713. FPM Bulletin 713–31, FPM 332, Appendix B, FPM Chapter 731, FPM Chapter 732.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

Used for recruitment and evaluating employment applicants; to determine Agency employment needs; evaluation of minority hiring practices; selection of candidates for intern and other programs; evaluation of progress of employees on worker-trainee programs; monitor status of pre-employment security investigation. Also see Prefatory Statement of General Routine Uses.

Information is made available on a need-to-know basis to personnel of the USIA as may be required in the performance of their official duties. The principle users of this information outside the USIA are the Office of Personnel Management, the Director General of the Foreign Service, Department of State, accredited investigators; and the Board of Examiners for the Foreign Service.

The information may also be released to other government agencies who have statutory or other lawful authority to maintain such information.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders:

RETRIEVABILITY:

By name of the individual.

SAFEGUARDS:

Maintained in locked file cabinets.

RETENTION AND DISPOSAL:

Records of successful employment candidates transferred to official personnel folder; records of unsuccessful candidates destroyed after two years; OPM certificates retained indefinitely; security files destroyed after candidate is given security clearance; other records retained indefinitely or disposed of in accordance with Agency's internal regulations.

SYSTEMS MANAGER(S) AND ADDRESS:

Chief, Employment Branch, Office of Personnel Services, USIA, 301 4th Street, SW., Washington, DC 20547.

NOTIFICATION PROCEDURE:

Chief, Employment Branch, Office of Personnel Services, USIA, 301 4th Street, SW., Washington, DC 20547.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to: Chief, FOIA/Privacy Act Unit, USIA, 301 4th Street, SW., Washington, DC 20547. To request another individual's file, the requester must have a notarized signed statement from the individual to whom the file pertains.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access and for contesting contents and appealing determinations by the individual concerned appear in 22 CFR part 505.

RECORD SOURCE CATEGORIES:

Employment applicants; college transcripts and other recruitment sources; test scores provided by testing Agency; notes prepared by selection panels; the OPM; and the USIA Office of Security.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), (I) and (f). See 22 CFR 505.15.

USIA–24

SYSTEM NAME:

Employment Requests—M/HRF and M/HRCO.

SYSTEM LOCATION:

Office of Personnel, United States Information Agency (USIA), 301 4th Street, SW, Washington, DC 20547.

SECURITY CLASSIFICATION:

None.

CATEGORIES AND INDIVIDUALS COVERED BY THE SYSTEM:

Certain individuals seeking employment with the Agency such as Congressional referrals, referrals of Director, etc.

CATEGORIES AND RECORDS IN THE SYSTEM:

Letters, memos, resumes, recommendation, biographic Personnel, for the purpose of soliciting employment with the Agency.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Federal Records Act, 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

To answer inquiries from Members of Congress regarding employment opportunities for constituents; referrals to Agency elements for qualification evaluations. Also see Prefatory Statement of General Routine uses.

Information is made available on a need-to-know basis to personnel to the USIA as may be required in the performance of their official duties.

Information in these records is not normally available to individuals or agencies outside the USIA but records may be released to other government agencies who have statutory or other lawful authority to maintain such information.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS BY THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By name of individual and month of response.

SAFEGUARDS:

Maintained in bar-lock file cabinets.

RETENTION AND DISPOSAL:

Records retained until no longer useful, or until after two years from date of submission, whichever is first. Records are destroyed by burning.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Special Services Branch (M/PDS), Domestic Personnel Division, Office of Personnel, USIA, 301 4th Street, SW, Washington, DC 02547.

NOTIFICATION PROCEDURE:

Chief, Special Services Branch (M/PDS), Domestic Personnel Division, Office of Personnel, USIA, 301 4th Street, SW, Washington, DC 20547.

RECORD ACCESS PROCEDURE;

Requests from individuals should be addressed to: Chief, FOIA/Privacy Act Unit, USIA, 301 4th Street, SW, Washington, DC 20547. To request another individual's file, the requester must have a notarized signed statement from the individual to whom the file pertains.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access and for contesting contents and appealing determinations by the individual concerned appear in 22 CFR part 505.

RECORD SOURCE CATEGORIES:

Unsolicited information or referrals submitted to the Agency by individuals seeking information on employment possibilities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Not applicable.

USIA–25

SYSTEM NAME:

Employee Master Personnel Records—M/HRCS.

SYSTEM LOCATION:

Office of Personnel, United States Information Agency (USIA), 301 4th Street, SW., Washington, DC 20547. Computer tape and disc records are located in M/PPS at same address.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Agency employees and reimbursables from other agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Data on employee's work experience, assignments, promotions, transfers, within-grade increases, personnel actions, commendations, evaluations of work performance, medical information, training certificates, home address, next-of-kin information, information related to security clearance, suspense reports on various events, such as appointment expiration dates, date probation ends, date promotion eligibility, expiration of LWOP, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10561; FPM Chapter 291–93; 5 U.S.C. 13–2, 2951, 4118, 4308, 4506, FPM Chapter 713, Subchapter 3; Executive Order 14492; 44 U.S.C. 3101; FPM Chapter 732.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

To prepare reports required by the Office of Personnel Management (OPM), Congress and OMB; used by OPM and investigatory agencies to verify employee statements on applications for employment with other agencies; investigation of discrimination complaints; statistical reporting to OPM on minority employment, handicap programs, and other special programs; control of personnel ceilings; project and assess personnel movement dynamics; conducting security checks and updating security clearances; preparation of employee performance ratings and evaluations; used by Selection Boards and Merit Promotion Panels to determine whether employees should be recommended for promotion; used for routine personnel management and administration. Also see Prefatory Statement of General Routine Uses.

Information is made available on a need-to-know basis to personnel of USIA as may be required in the performance of their official duties.

Principal users of this information outside USIA are: The Office of Personnel Management (OPM); the Department of State; the Office of Management and Budget (OMB); the General Accounting Office (GAO); and personnel offices of other government agencies when an employee seeks transfer or detail; accredited investigators.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer disc and magnetic tape; computer printouts, visual card files, paper records in file folders.

RETRIEVABILITY:

By employee name, agency element, employee identification number, grade/class, tenure code, and other date elements.

SAFEGUARDS:

Computer files are stored internally in the computer or in locked tape file cabinets and cannot be physically accessed except by authorized personnel; paper files and card trays in metal cabinets secured in a locked room; access controlled by "sign out" records; computer access restricted to those with user identification and pass words.

RETENTION AND DISPOSAL:

Computer printouts destroyed by shredding or burning when new listings are produced; computer tapes retained indefinitely; other records retained until employee is separated, and then disposed of by transfer to OPM, other employing agency, Federal Records Center, or destruction as directed by internal agency regulations.

SYSTEM MANAGERS AND ADDRESS:

For paper or automated records—Chief, Special Services Branch M/HRCS, Office of Human Resources, USIA, 301 4th Street, SW., Washington, DC 20547.

NOTIFICATION PROCEDURE:

Chief, Special Services Branch, Office of Human Resources, USIA, 301 4th Street, SW., Washington, DC 20547.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to: Chief, FOIA/Privacy Act Unit, USIA, 301 4th Street, SW., Washington, DC 20547. To request another individual's file, the requester must have a notarized signed statement from the individual to whom the file pertains.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access and for contesting contents and appealing determinations by the individual concerned appear in 22 CFR part 505.

RECORD SOURCE CATEGORIES:

Employee; employment application; official personnel records, personnel action forms; administrative file; budget and personnel authorizations; employees' supervisors; USIA Office of Security; training officers and other officials involved in personnel management.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from 5 U.S.C. 552a (c)(3), (d), (e), (1), (e)(4) (G), (H), (I) and (f). See 22 CFR 505.15.

USIA–26

SYSTEM NAME:

Foreign Service Location File—M/HRF.

SYSTEM LOCATION:

Foreign Service Lounge, United States Information Agency (USIA), 301 4th Street, SW, Washington, DC 20547.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUAL COVERED BY THE SYSTEM:

All Agency foreign service employees and foreign service retirees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Foreign service employees' nature of assignment overseas; position held, home address, address of next-of-kin, employee's personal bank (if requested the Agency deposit checks); last home address of retirees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Federal Records Act, 44 U.S.C. 3101; Foreign Service Act of 1980, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used by USIA officials to locate a Foreign Service employee; make salary deposits; inform next-of-kin in emergency situations.

Also see Prefatory Statement of General Routine Uses.

Information is made available on a need-to-know basis to personnel of the USIA as may be required in the performance of their official duties.

Information in these records is not normally available to individuals or agencies outside the USIA but records may be released to other government agencies who have statutory or other lawful authority to maintain such information.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information maintained on 5×8 index cards in metal cabinets.

RETRIEVABILITY:

By the Foreign Service employee's name.

SAFEGUARDS:

Records are under surveillance by authorized employee during the working hours; in locked metal cabinets after hours.

RETENTION AND DISPOSAL:

Locator information destroyed when employee separates, except by retirement, in which case card maintained indefinitely.

SYSTEM MANAGERS AND ADDRESS:

Chief, Foreign Service Personnel Division, USIA, 301 4th Street, SW, Washington, DC 20547.

NOTIFICATION PROCEDURE:

Chief, Foreign Service Personnel Division, USIA, 301 4th Street, SW, Washington, DC 20547.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to: Chief, FOIA/Privacy Act Unit, USIA, 301 4th Street, SW, Washington, DC 20547. To request another individual's file, the requester must have a notarized signed statement from the individual to whom the file pertains.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access and for contesting contents and appealing determinations by the individual concerned appear in 22 CFR part 505.

RECORD SOURCE CATEGORIES:

From the officer concerned; copies of Personnel Action Forms (SF–50); travel memos.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Not applicable.

USIA–27

SYSTEM NAME:

Foreign Service Selection Board Files—M/HRF.

SYSTEM LOCATION:

Foreign Service Personnel Division, United States Information Agency (USIA), 301 4th Street, SW, Washington, DC 20547.

SECURITY CLASSIFICATION:

Confidential.

CATEGORIES OF INDIVIDUALS IN THE SYSTEM:

5×8 cards containing data such as name, class, specialty code, position; date OER received by N/P; as appropriate, letters of commendation or low-ranking and comments of the selection boards on foreign service promotions contained in letter files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Foreign Service Act of 1946, as amended, sec. 611; 44 U.S.C. 3101 and Foreign Service Act of 1980.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Preparation of promotion and limited career extension projections and Foreign Service Officer commissioning actions; used to monitor and control receipt of Officer Evaluation Reports by M/HRF; used to prepare files and other information for Selection Boards; maybe by Agency's Equal Employment Opportunity Officer, or the Labor Relations Branch (grievance examiners) in the event of an employee grievance.

Also see Prefatory Statement of General Routine Uses.

Information is made available on a need-to-know basis to personnel of the USIA as may be required in the performance of their official duties. The principal user of this information outside USIA is the Director General of the Foreign Service, United States Department of State.

The information may be released to other government agencies who have statutory or other lawful authority to maintain such information.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OR RECORDS IN THE SYSTEM:

STORAGE:

Paper and card records are in file folders or metal card files. Some material derived from these records has been computerized.

RETRIEVABILITY:

Paper files manually retrieved by individual names and classes; statistical material retrieved from computer base.

SAFEGUARDS:

Paper records maintained in locked file cabinets. Computer material retrieval requires use of appropriate keys. This section adequately describes all safeguards which are applicable to records in the system, including the categories of employees who have access to the records.

RETENTION AND DISPOSAL:

Maintained during period of employment with the Agency; records destroyed upon separation of the employee.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Secretary for the Selection and Commissioning Boards, Foreign Service Personnel Division, USIA, 301 4th Street, SW, Washington, DC 20547.

NOTIFICATION PROCEDURE:

Executive Secretary for the Selection and Commissioning Boards, Foreign Service Personnel Division, USIA, 301 4th Street, SW, Washington, DC 20547.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to: Chief, FOIA/Privacy Act Unit, USIA, 301 4th Street, SW, Washington, DC 20547. To request another individual's file, the requester must have a notarized signed statement from the individual to whom the file pertains.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access and for contesting contents and appealing determinations by the individual concerned appear in 22 CFR part 505.

RECORD SOURCES CATEGORIES:

Reports of Selection Boards on the review of pertinent promotion documentation such as officer evaluations; notification of personnel action; foreign service residency and dependency reports; notification to officers of low ranking; materials submitted by officers on their own behalf. All current record sources are included and are correctly stated.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Certain records contained in this system of records may be exempted from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), (I) and (f). See 22 CFR 505.15.

USIA–28

SYSTEM NAME:

Career Counseling Records—M/HRF.

SYSTEM LOCATION:

Office of Personnel Services, United States Information Agency (USIA), 301 4th Street, SW, Washington, DC 20547.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Computer listing of work experience; biographic data; assignment history date; education data; position data; grade; title; post of assignment; date of employment; dependents' proposed position detail to "pipeline" complement; roster of personnel available for domestic assignments; notes of personnel discussions between counselors and individual clients on preferences and other factors bearing on assignments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Foreign Service Act of 1980, as amended; 22 U.S.C. 4023.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used by career counselors and personnel officers for assignment, detail or rotation of Agency Foreign Service Officers, within USIA or to other Federal agencies. Also see Prefatory Statement of General Routine Uses.

Information is made available on a need-to-know basis to personnel of the USIA as may be required in the performance of their official duties.

Information in these records is not normally available to individuals or agencies outside the USIA but records may be released to other government agencies who have statutory or other lawful authority to maintain such information.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS BY THE SYSTEM:

STORAGE:

Card records and paper records in file folders.

RETRIEVABILITY:

By individual name, by date or place of assignment or both.

SAFEGUARDS:

Maintained in bar-locked file cabinets.

RETENTION AND DISPOSAL:

Biographic data and personnel statistical data subject to update periodically; old records destroyed by shredding when no longer needed or when employee separates.

SYSTEM MANAGER(S) AND ADDRESS:

Career Counselors, Foreign Service Personnel Division (M/HRF), USIA, 301 4th Street, SW, Washington, DC 20547.

NOTIFICATION PROCEDURE:

Chief, Foreign Service Personnel Division (M/HRF), USIA, 301 4th Street, SW, Washington, DC 20547.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to: Chief, FOIA/Privacy Act Unit, USIA, 301 4th Street, SW, Washington, DC 20547. To request another individual's file, the requester must have a notarized signed statement from the individual to whom the file pertains.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access and for contesting contents and appealing determinations by the individual concerned appear in 22 CFR part 505.

RECORD SOURCE CATEGORIES:

Officer Evaluation Reports, Official Personnel File (OPF); records of interviews and correspondence with officer, minutes of meeting of the career management staff held to discuss assignment of Foreign Service Officers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Not applicable.

USIA–29

SYSTEM NAME:

Officer/Specialist Assignment Requests—M/HRF.

SYSTEM LOCATION:

Foreign Service Personnel Division (M/HRF), United States Information Agency (USIA), 301 4th Street, SW, Washington, DC 20547.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Agency officers who have written or spoken to the Director, Office of Personnel Services, regarding assignment preferences or problems.

CATEGORIES OF RECORDS IN THE SYSTEM:

Letters, memos, and occasionally biographic data submitted by the individual seeking particular assignments; written answers to specific requests.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Federal Records Act, 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used exclusively by the Director and the Deputy Director, Office of Personnel Services, for discussion of assignments and officer career interests.

Also see Prefatory Statement of General Routine Uses. Information is made available on a need-to-know basis to personnel of the USIA as may be required in the performance of their official duties.

Information in these records is not normally available to individuals or agencies outside the USIA but records may be released to other government agencies who have statutory or other lawful authority to maintain such information.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS BY THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By the name of the individual.

SAFEGUARDS:

Maintained in metal bar-locked file cabinets. System scheduled to be automated.

RETENTION AND DISPOSAL:

Usually retained until officer is assigned or for longer period depending upon the assignment actions; destroyed when no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Foreign Service Personnel Division (M/HRF), USIA, 301 4th Street, SW, Washington, DC 20547.

NOTIFICATION PROCEDURE:

Chief, Foreign Service Personnel Division (M/HRF), USIA, 301 4th Street, SW, Washington, DC 20547.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to: Chief, FOIA/Privacy Act Unit, USIA, 301 4th Street, SW, Washington, DC 20547. To request another individual's file, the requester must have a notarized signed statement from the individual to whom the file pertains.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access and for contesting contents and appealing determinations by the individual concerned appear in 22 CFR part 505.

RECORD SOURCE CATEGORIES:

From the officer requesting assignment consultation; replies of the Director, Office of Personnel Services, to such requests.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Not applicable.

USIA–30

SYSTEM NAME:

Advisory, Referral and Counseling Records—M/HRL.

SYSTEM LOCATION:

Office of Personnel Service, United States Information Agency (USIA), 301 4th Street, SW, Washington, DC 20547.

SECURITY CLASSIFICATION:

Confidential.

CATEGORIES OF INDIVIDUALS COVERED IN THE SYSTEM:

Employees with serious personal, job related or medical problems such as alcoholism, drug abuse, or behavioral problems.

CATEGORIES OF RECORDS IN THE SYSTEM:

Confidential statements relating to specific problems.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 91–616, section 201 (Comprehensive Alcohol Abuse and Alcoholism Prevention Treatment and Rehabilitation Act of 1970); Pubic Law 92–255, section 413 (Drug Abuse Treatment Act of 1972).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Used on occasion to provide necessary background to medical personnel to arrange for medical examinations, treatment of employees, or for in-house counseling purposes. The program is a confidential resource within the Agency available voluntarily to employees for assistance with personal or job related problems. Employees are advised of rights, obligations as well as benefits available; referrals of employees to professional resources within the government and in

the community; continuing on-the-job counseling available.

Also see Prefatory Statement of General Routine Uses.

Without the express written consent of the employee, this information is not available to other personnel of the USIA. The only users of this information outside the USIA are appropriate medical personnel of the Department of State and appropriate health professionals in the community, only with the employee's consent.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By the name of the individual.

SAFEGUARDS:

Records are maintained in a combination bar-locked cabinet at all times, accessible only to the Advisory, Referral and Counseling personnel.

RETENTION AND DISPOSAL:

Records retained as long as individual is an employee of the Agency; file destroyed by shredding when employee is separated, or when ARCS personnel considers there is no need to retain file, or when incumbent counselor is separated from the Agency; exceptions to rules for retention can be made only with the concerned employee's specific approval.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Policies and Services Staff (M/HRL), Office of Personnel Services, USIA, 301 4th Street, SW, Washington, DC 20547.

NOTIFICATION PROCEDURE:

Chief, Policies and Services Staff (M/HRL), Office of Personnel Services, USIA, 301 4th Street, SW, Washington, DC 20547.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to: Chief, FOIA/Privacy Act Unit, USIA, 301 4th Street, SW, Washington, DC 20547. To request another individual's file, the requester must have a notarized signed statement from the individual to whom the file pertains.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access and for contesting contents and appealing determinations by the individual concerned appear in 22 CFR part 505.

RECORDS SOURCE CATEGORIES:

Principally from the individual employee concerned; background information provided by the person who initiates referral of the employee, such as supervisors, union representatives, or medical personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Not applicable.

USIA–31

SYSTEM NAME:

Employee Grievance Files—M/HRL.

SYSTEM LOCATION:

Office of Personnel, United States Information Agency (USIA), 301 4th Street, SW, Washington, DC 20547.

SECURITY CLASSIFICATION:

Top secret.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Agency employees who have filed informal grievances or complaints, or who have filed formal grievances for Agency level review; employees for whom special disciplinary action is in process.

CATEGORIES OF RECORDS IN THE SYSTEM:

All documents necessary in the processing of a grievance or special disciplinary actions, such as position descriptions, performance evaluations, grievance investigation reports, special investigation reports, OIG reports, Post Audit and Inspection Report; statements of supervisors, witnesses, representatives of grievants; arbitration awards, Foreign Service Grievance Board letters and decisions; and miscellaneous housekeeping records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 3301, 3302, 7301; 22 U.S.C. 3901; 5 U.S.C. 7121; 44 U.S.C. 3101; Public Law 93–181; Agency's Manual of Operations and Administration (MOA); FPM 511-Subchapter 6; FPM— Letter 630–22; FPM Chapter 335, 752, 831; Foreign Affairs Manual (3 FAM 660).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Investigation and resolution of employee grievances; to provide information and documentation to the greivant's counsel or representatives, Arbitrators, the Foreign Service Grievance Board, Federal Appeals Board, United States Courts, and to Members of Congress on the written request of the individual; to provide information to the Agency's General Counsel in connection with the processing of a grievance, an appeal, or an adverse action. Information is also available on a need-to-know basis to personnel of the USIA in the performance of their official duties. The principal users of this information outside the USIA are: The Office of Personnel Management (OPM); Department of Justice; other government agencies which have statutory or legal authority to access or maintain such information. Also see Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICE FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, filed alphabetically, and stored in metal cabinets with bar-locks.

RETRIEVABILITY:

Alphabetically by name of individuals.

SAFEGUARDS:

Authorized users—personnel of the USIA on a substantial need-to-know basis and in the performance of their official duties, e.g., General Counsel staff, Labor Relations Officers (grievance examiners and investigators); "deciding officials" (under negotiated or Agency Grievance Procedures); members of the Foreign Service Grievance Board and Staff; grievants and representative of grievants.

Physical Safeguards: Documents classified in the national security interest pursuant to E.O. 12958, thus the files are afforded a high level of protection against unauthorized access. Security guards perform random checks on the physical security of the files data.

Procedural Safeguards: Access to records is strictly limited to those staff members with substantial need-to-know, who have been thoroughly indoctrinated on Privacy Act provisions and requirements. Staff members are also responsible for protecting grievance records from the general public entering the grievance office areas.

Implementation Guidelines: Safeguards implemented are developed in accordance with "Access to and Protection of Records on Individuals," USIA MOA V–A (Domestic), Sections 560–565.

RETENTION AND DISPOSAL:

Records are maintained in the active file for 3 years or until no longer needed; records removed from the "active files" are stored in metal file cabinets, bar-locked, and in a secure, locked room with controlled access.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Labor Relations Staff (M/HRL), Office of Human Resources, USIA, 301 4th Street, SW, Washington, DC 20547.

NOTIFICATION PROCEDURE:

Office of Human Resources, USIA, 301 4th Street, SW, Washington, DC 20547.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to: Chief, FOIA/Privacy Act Unit, USIA, 301 4th Street, SW, Washington, DC 20547. To request another individual's file, the requester must have a notarized signed statement from the individual to whom the file pertains.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access and for contesting contents and appealing determinations by the individual concerned appear in 22 CFR Part 505.

RECORD SOURCE CATEGORIES:

Individual employee concerned, Agency officials, testimony of witnesses, employee's representative, relevant documents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Certain records in the system may be exempted from 5 U.S.C. 552 (a), (c)(3), (d), (e)(1), (e)(4), (G), (H), (I), and (f). See 22 CFR 505.15.

USIA–32

SYSTEM NAME:

Incentive Awards File—M/HRL.

SYSTEM LOCATION:

Office of Labor, Policies and Benefits, United States Information Agency (USIA), 301 4th Street, SW, Washington, DC 20547.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees who are nominated for Special, Honor, Unit, Cash or other incentive awards; employees who are to receive Length-of-Service Certificates.

CATEGORIES OF RECORDS IN THE SYSTEM:

Nomination forms or narratives; copies of award certificates with citations; cards containing name, award, and date awarded.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

3 FAM 640; 5 CFR part 451; FPM Chapter 451; MOOA V–A/B 570.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used only by awards staff selection committee and approving officials to process and record nominations and for presentation of incentive and length of service awards; used to prepare annual statistical reports for the OPM. Also see Prefatory Statement of General Routine Uses.

Information is made available on a need-to-know basis to personnel of the USIA as may be required in the performance of their official duties.

Information in these records is not normally available to individuals or agencies outside the USIA but records may be released to other government agencies who have statutory or other lawful authority to maintain such information.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS BY THE SYSTEM::

STORAGE:

Temporary paper records in file folders.

RETRIEVABILITY:

Manually by name and/or type of award.

SAFEGUARDS:

File folders maintained in locked file cabinets.

RENTENTION AND DISPOSAL:

Record cards, a copy of the award nomination and the award certificate, if one was issued, are maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Labor, Policies and Benefits Staff, United States Information Agency (USIA), 301 4th Street, SW, Washington, DC 20547.

NOTIFICATION PROCEDURE:

Chief, Labor, Policies and Benefits Staff, United States Information Agency (USIA), 301 4th Street, SW, Washington, DC 20547.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to: Chief, FOIA/Privacy Act Unit, USIA, 301 4th Street, SW, Washington, DC 20547. To request another individual's file, the requester must have a notarized signed statement from the individual to whom the file pertains.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access and for contesting contents and appealing determinations by the individual concerned appear in 22 CFR part 505.

RECORD SOURCE CATEGORIES:

Nominations; supervisors; official personnel folders; awards committee and approving officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Not applicable.

USIA–33

SYSTEM NAME:

Retirement and Insurance Records—M/HRL.

SYSTEM LOCATION:

Office of Human Resources, United States Information Agency (USIA), 301 4th Street, SW, Washington, DC 20547.

SECURITY CLASSIFICATION:

None for the system. Treated as privacy sensitive.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

USIA employees in retirement processing, approaching mandatory retirement, or actually retired from USIA. (Contact VOA/P for VOA employees.)

CATEGORIES OF RECORDS IN THE SYSTEM:

Retirement service history (USIA only); computer listings of: (1) Persons retiring mandatorily; (2) persons who are projected to retire within 5 years. Lists give name, date of birth, service computation date, grade/step, salary, location code, and retirement code.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

From Supplement 830–1; 3 FAM 670; Federal Records Act of 1950, as amended, 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Processing retirement applications and counseling prospective retirees on annuities and other benefits. Also see Prefatory Statement of General Routine Uses.

Information is made available on a need-to-know basis to personnel of the USIA as may be required in the performance of their official duties.

Information in these records is not normally available to individuals or agencies outside the USIA but records may be released to other government agencies who have statutory or other lawful authority to maintain such information.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS BY THE SYSTEM:

STORAGE:

Paper records in individual file folders.

RETRIEVABILITY:

Manually by name of employee.

SAFEGUARDS:

Maintained in locked file cabinets.

RETENTION AND DISPOSAL:

Employee retirement files retained indefinitely. After retirement, retained one year and then destroyed since records transferred to the retirement system. Old computer listings destroyed when updated; individual retirement computation worksheets filed in employee's retirement file.

SYSTEM MANAGERS AND ADDRESS:

Chief, Retirement and Insurance Section (M/HRL), Special Service Branch, Domestic Personnel Division, Office of Human Resources, USIA, 301 4th Street, SW, Washington, DC 20547.

NOTIFICATION PROCEDURE:

Chief, Special Services Branch, Office of Human Resources, USIA, 301 4th Street, SW, Washington, DC 20547.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to: Chief, FOIA/Privacy Act Unit, USIA, 301 4th Street, SW, Washington, DC 20547. To request another individual's file, the requester must have a notarized signed statement from the individual to whom the file pertains.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access and for contesting contents and appealing determinations by the individual concerned appear in 22 CFR part 505.

RECORD SOURCE CATEGORIES:

Employees; Official Personnel File; supervisors; Agency's payroll and leave office; appropriate retirement systems of the Office of Personnel Management, or Department of State.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Not applicable.

USIA–34

SYSTEM NAME:

Senior Officer Files—M/HRL.

SYSTEM LOCATION:

Office of Human Resources, United States Information Agency (USIA), 301 4th Street, SW., Washington, DC 20547.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees in grades GS–14, 15, 16, 17, 18 and Foreign Service Officer Class equivalents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographical, professional and experience information on employees nominated for senior level positions, position descriptions and position evaluations.

AUTHORITY FOR MAINTENANCE IN THE SYSTEM:

FPM 305, Supp. 305–1, FPM–300, Subchapter 3.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

Reference material for the Director's staff, element heads and personnel officers; placement of high level employees in proper management positions and to ensure their consideration for vacancies governmentwide; used by personnel officers for personnel management functions; requested from time to time by OPM, and OMB, and Congress for position control of supergrade employees. Also see Prefatory Statement of General Routine Uses.

Information is made available on a need-to-know basis to personnel of the USIA as may be required in the performance of their official duties. The principal users of this information outside the USIA are: The Office of Personnel Management (OPM); the Office of Management and Budget (OMB); the Congress; personnel officers in other government agencies as a result of a transfer or potential transfer of the individual to whom the record pertain.

The information may also be released to other government agencies who have statutory or other lawful authority to maintain such information.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By name and grade of individual, or combinations of name and grade

SAFEGUARDS:

Maintained in locked file cabinet.

RETENTION AND DISPOSAL:

Records maintained indefinitely, or until employee is separated, at which time pertinent information is filed in the Official Personnel File; all other material is destroyed as provided in Agency internal regulations.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Domestic Personnel Division, USIA, 301 4th Street, SW., Washington, DC 20547.

NOTIFICATION PROCEDURE:

Chief, Domestic Personnel Division, USIA, 301 4th Street, SW., Washington, DC 20547.

RECORD ACCESS PROCEDURE:

Request from individuals should be addressed to: Chief, FOIA/Privacy Act Unit, USIA, 301 4th Street, SW., Washington, DC 20547. To request another individual's file, the requester must have a notarized signed statement from the individual to whom the file pertains.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access and for contesting contents and appealing determinations by the individual concerned appear in 22 CFR Part 505.

RECORD SOURCE CATEGORIES:

Official Personnel Files; from the employee; element heads; position classifiers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Not applicable.

USIA–35

SYSTEM NAME:

Solicitation Mailing List Application—M/K.

SYSTEM LOCATION:

Office of Contracts, United States Information Agency (USIA), 301 4th Street, SW, Washington, DC 20547.

SECURITY CLASSIFICATION

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Prospective government contractors and Agency contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information is contained on a standard form which requests the individual's name and address, type of business, number of employees, average annual sales or receipts, facilities (space), net worth, security clearances held, and a certification of the accuracy of the information provided on the form.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Acquisition Regulation (48 CFR 14.205–1(c) and 53.214(e)).

ROUTINE USES OR RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To prepare the Agency's Solicitation Mailing List and for use of contracting specialists to determine adequacy of facilities, and financial responsibility of prospective contractors. Also see Prefatory Statement of General Routine Uses.

Information is made available on a need-to-know basis to personnel of the USIA as may be required in the performance of their official duties.

The information may also be released to other government agencies who have statutory or other lawful authority to maintain such information.

The principal user of this information outside the USIA is the General Services Administration.

POLICIES AND PRACTICES AND STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OR RECORDS IN THE SYSTEM:

STORAGE:

Information included on Standard Form 129 is maintained in a lektriever filing system. Records are also fully automated on the Agency's VS–100 "D" system. Records are backed up daily to computer tape and stored in the Agency's computer library.

RETRIEVABILITY:

By the name of the individual.

SAFEGUARDS:

1. *Authorized users:* Contracting personnel and other authorized Agency personnel.

2. *Physicial safeguards:* All records are stored in a lektriever filing system in a secured area. Automated records are maintained in the Agency's computer library.

3. *Procedural safeguards.* All users of the information stored in these systems protect the information from public view and unauthorized personnel. Data stored in computers are accessed through the use of passwords known only to authorized personnel.

4. *Implementation guidelines:* USIA Manual of Operations and Administration (MOA) III–500; Records Management Handbook (Domestic) Section 560–565.

RETENTION AND DISPOSAL:

A routine update of information is conducted approximately every 3 years. Outdated information is disposed of internally.

SYSTEM MANAGERS AND ADDRESS:

Director, Office of Contracts, USIA, 301 4th Street, SW, Washington, DC 20547.

NOTIFICATION PROCEDURES:

Director, Office of Contracts, USIA, 301 4th Street, SW, Washington, DC 20547.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to: Chief, FOIA/Privacy Act Unit, USIA, 301 4th Street, SW, Washington, DC 20547. To request another individual's file, the requester must have a notarized signed statement from the individual to whom the file pertains.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access and for contesting contents and appealing determinations by the individual concerned appear in 22 CFR part 505.

RECORD SOURCE CATEGORIES:

Information provided by individuals, companies and corporations.

EXEMPTION CLAIMED FOR THE SYSTEM:

Not applicable.

USIA–36

SYSTEM NAME:

United States Information Agency (USIA) Procurement Personnel Information System—M/K.

SYSTEM LOCATION:

Office of Contracts, United States Information Agency (USIA), 301 4th Street, SW, Washington, DC 20547.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

USIA employees involved with procurement activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, office, position title, series and grade, service computation date, position description, education, training, experience, professional recognition, career objectives.

AUTHORITY FOR MAINTENANCE IN THE SYSTEM:

Authority for this system is derived from the Federal Records Act, 44 U.S.C. 3101, and Federal Acquisition Regulation, subpart 1–6.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

Identification of employees who have met standards of experience, education, and training for appointment as Contracting Officers and to analyze procurement system performance such as functional placement, system training needs, and workforce size. Information is available to personnel of the USIA as may be required for performance of official duties. Information on individual will not normally be available outside the USIA as it falls within the expected guidelines of the Privacy Act (PA).

Also see Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All information will be maintained in a paper hard copy file which will be automated as soon as possible.

RETRIEVABILITY:

Records are retrieved by name, office, series and grade.

SAFEGUARDS:

1. *Authorized users:* Office of Contracts personnel.

2. *Physical safeguards:* Files are kept in the Office of Contracts in a bar-locked cabinet.

3. *Procedural Safeguards:* All users of personal information in connection with the performance of their jobs protect information from public view and from unauthorized personnel entering into the office. Access to records is strictly limited to the Office of Contract Personnel.

4. *Implementation guidelines:* USIA Manual of Operations and Administration (MOA) III–500, Records Management Handbook (Domestic) Section 560–565.

RETENTION AND DISPOSAL:

Files will be retained as long as the individual remains an employee of the USIA, and will be destroyed upon the employee's separation.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Contracts, USIA, 301 4th Street, SW, WAshington, DC 20547.

NOTIFICATION PROCEDURE:

Director, Office of Contracts, USIA, 301 4th Street, SW, Washington, DC 20547.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to: Chief, FOIA/Privacy Act Unit, 301 4th Street, SW, Washington, DC 20547. To request another individual's file, the requester must have a notarized signed statement from the individual to whom the file pertains.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access and for contesting contents and appealing determinations by the individual concerned appear in 22 CFR part 505.

RECORD SOURCE CATEGORIES:

Information is provided by the individual concerned.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Not applicable.

USIA–37

SYSTEM NAME:

Employee Training Files—M/PT.

SYSTEM LOCATION:

Training and Development Division, Office of Human Resources, United States Information Agency (USIA), 330 C Street, SW, Washington, DC 20547.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Agency employees receiving training: Workshops, language, lectures, or seminars, university or service colleges, personnel and management interns.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee training applications, biographic data, educational background, record of training received by the Agency, outline of training program, performance evaluation extracts; language proficiency and test scores, course grade, and employee's evaluation of training courses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 85–507, 72 Stat. 335, Reorganization Plan No. 8 of 1953, 22 U.S.C. 1461, 67 Stat. 642, Pub. L. 79–724, Foreign Service Act of 1980, as amended, FPM 410, Subchapter 3.

PURPOSE(S):

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

Background material used to determine eligibility for training; assignment and progress in language courses; used by career counselors to determine training needs; justification of training reports and record-keeping; evaluation of intern training and potential for job growth; used to evaluate and select lecturers for agency workshops or seminars; preparation of reports to Congress and other government agencies on training provided and costs, as well as projected training needs and costs. Also see Prefatory Statement of General Routine Uses.

Information is made available on a need-to-know basis to personnel of the USIA as may be required in the performance of their official duties. The principal users of this information outside the USIA are: The Office of Personnel Management (OPM); personnel officers in other government agencies as a result of transfer of the individual to whom the records pertain; other agencies considering employees for detail purposes; accredited investigators.

The information may also be released to other government agencies who have statutory or other lawful authority to maintain such information.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records stored in file folders. Computer records stored on magnetic tape or disc.

RETRIEVABILITY:

Manually retrieved by name, by computer generated lists of training statistics or by training course title.

SAFEGUARDS:

1. *Authorized users:* Access to files is limited to only authorized USIA individuals having a substantiated need for the information.

2. *Physical safeguards:* All files are maintained in locked cabinets during non-duty hours and are protected by office personnel when being used during duty hours.

3. *Procedural safeguards:* All users of personal information in connection with the performance of their jobs protect information from public view and from unauthorized personnel entering an unsupervised office. Access to records is strictly limited to those staff members trained in accordance with the Privacy Act.

4. *Implementation guidelines:* Privacy Act guidelines covered in the USIA Manual of Operations and Administration (MOA) are strictly observed.

RETENTION AND DISPOSAL:

Training records maintained until employee is separated, at which time records are included with official personnel folder, other records are included with official personnel folder, other records are retained indefinitely or until no longer needed; budget records and cost statistics retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Training and Development Division (M/PT), Office of Human Resources, USIA, 330 C Street, SW, Washington, DC 20547.

NOTIFICATION PROCEDURES:

Chief, Training and Development Division (M/PT), Office of Human Resources, USIA, 330 C Street, SW, Washington, DC 20547.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to: Chief, FOIA/Privacy Act Unit, USIA, 301 4th Street, SW, Washington, DC 20547. To request another individual's file, the requester must have a notarized signed statement from the individual to whom the file pertains.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access and for contesting contents and appealing determinations by the individual concerned appear in 22 CFR part 505.

RECORD SOURCE CATEGORIES:

The employee; employment applications; official personnel records; personnel action forms; personnel officers; training officers and other officers involved in personnel management; supervisors; training records; application for training; trainee evaluation of courses.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), (I), and (f). See 22 CFR 505.15.

USIA–38

SYSTEM NAME:

Personnel Security and Integrity Records—M/S.

SYSTEM LOCATION:

Office of Security, Untied States Information Agency (USIA), 301 4th Street, SW, Washington, DC 20547. Retired records stored at Washington National Records Center, 4205 Suitland Road, Suitland, Maryland 20409.

SECURITY CLASSIFICATION:

Most records are unclassified, but include records classified confidential, secret and top secret.

SYSTEM LOCATION:

Office of Security, United States Information Agency (USIA), 301 4th Street, SW, Washington, DC 2000547. Retired records stored at Washington National Records Center, 4205 Suitland Road, Suitland, Maryland 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons currently or formerly employed by USIA in the United States; all Americans currently or formerly employed by USIA in other countries; some but not all foreign nationals currently or formerly employed in other countries; some but not all persons currently or formerly used under contract, both in the United States and in other countries; some persons whose services are or were otherwise utilized by USIA, whether compensated or not; some former applicants who were not employed; some prospective spouses of

USIA employees; some other persons who were significantly identified with persons whose services were at one time utilized or considered in one or more of the capacities described herein; some persons who were significantly involved in non-security related administrative inquiries conducted by M/S; some persons of counterintelligence interest whose names appeared in the press, or are contained in documents furnished by other agencies of the U.S. Government.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application and security forms provided by subject of records; reports of investigation conducted by M/S, and by other Government agencies; Personnel Security Worksheet Records evaluating investigative material; security clearance and security certification forms; intra-office, intra-Agency and inter-agency correspondence relating to investigations security and suitability determinations, and administrative matters; correspondence to and from Federal law enforcement and counterintelligence agencies; correspondence to and from state and local law enforcement jurisdictions, credit bureaus, private employers, schools, and individuals relating to investigative inquiries; records regarding briefings and debriefings, security certifications to other agencies, contact reports, and security violations; photographs, Cross Reference Sheets, and Records of Release of Information; records from Security Identification Card System (USIA–39) concerning former employees; not all files, however, contain all of the above elements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The authority of M/S to collect and maintain security data is based on section 1001 of the U.S. Information and Education Act of 1948, 62 Stat. 13, 22 U.S.C. 1434, as amended, 66 Stat. 43 (1952); Reorganization Plan No. 8 of 1953. 67 Stat. 642; Executive Order 10477 of August 1, 1953, as amended; the Act of August 26, 1950, 64 Stat. 476; 5 U.S.C.A. 3571, 7312, 7501, 7412 and 7532; Executive Order 10450 of April 27, 1953, as amended; Executive Order 10450 of April 27, 1953, as amended; Executive Order 12048 of March 27, 1978; the Act of August 24, 1982, 96 Stat. 291, and Executive Order 12968 of August 2, 1995 and Executive Order 12958 of April 17, 1995, the authority of M/S to collect and maintain certain administrative data, as an investigative arm of the USIA is based on 22 U.S.C. 1494; the Foreign Service Act of 1946, sec. 611; Reorganization Plan No. 8; Executive Order 10477, and 5 U.S.C. Chap. 33.

PURPOSE:

To collect and maintain record information necessary to make security and suitability determinations regarding applicants for employment with and employees of the USIA; make security determinations regarding the advisability of assigning certain employees to certain areas of the world, or to certain positions within the USIA domestically; make security determinations regarding the advisability of certain promotions, as required by USIA regulations; make determinations regarding the advisability of granting employees special clearances, as required for certain jobs; make determinations regarding the effect on an employee's security clearance of marriage to a non-U.S. citizen; make determinations whether certain non-citizen employees of USIA abroad should be granted security certification; disclose information to the Office of Inspector General as necessary for that office to carry out its investigative and other responsibilities; disclose information to certain officials of the Office of Personnel and other USIA elements, as necessary for them to make required decisions.

Records are used by the Director and Deputy Director of M/S as reference in contacts and correspondence with USIA Director, Deputy Director, General Counsel, Associate Directors, and other Agency officials when necessary to resolve specific personnel security matters.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Data may be disclosed to Foreign Service Board of Examiners as necessary to determine qualifications and suitability of an applicant; data may be disclosed to the Department of State, Office of Medical Services, as necessary to determine whether applicant or employee should be granted or retain medical clearance; data may be disclosed to other Government agencies as necessary for those agencies to determine whether employees should be granted special clearances required in connection with USIA duties; relevant data may be disclosed in advising duly authorized security officers of other agencies of significant security information in the file of a USIA employee or applicant; relevant data may be disclosed in advising the Office of Personnel Management that significant security or suitability information was developed or obtained regarding an applicant or employee; USIA investigative material having counter-intelligence significance may be disclosed to other U.S. Government agencies with responsibilities in that area; records may be used by the Director of M/S in correspondence and contacts with officials of other Government agencies when it becomes necessary to inform them of information available to the USIA Office of Security.

Also see Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records kept in file folders.

RETRIEVABILITY:

By name of individual to whom record pertains, and number assigned (chronologically) to each file. Names are filed alphabetically in card index, and index cards provide file numbers.

SAFEGUARDS:

1. *Authorized Users:* Employees of the Records Management Unit, and all other employees of M/S, with the exception of Guard Staff.

2. *Physical safeguards:* Files are maintained in a secure which during duty hours is staffed by Records Unit personnel. Room is locked and alarmed during non-duty hours. Files in possession of other authorized users are kept in approved safe or locked cabinets when not in use and during non-duty hours. Entire building is secured during non-duty hours, and security guards patrol.

3. *Procedural (or technical) safeguards:* Records management Unit personnel furnish files to other authorized users in exchange for properly executed "Chargeout Record" form. Records Management Unit is provided properly executed "Recharge" form if file is passed from one authorized user to another. All personnel having routine access to records have top secret security clearances.

4. *Citation of Implementing Guidelines:* Volume 12, Foreign Affairs Manual, Chapter 500, Executive Order 12958, and the Privacy Act of 1974 (5 U.S.C. 552a). Top secret records are maintained separately in accordance with provisions of 12 FAM 500.

RETENTION AND DISPOSAL:

Files pertaining to employees, contractors, and others whose relationship with USIA required a

security clearance or certification may be transferred to Washington National Records Center after individual leaves Agency. Records may be destroyed upon notification of death or not later than five years after separation or transfer of employee or termination of contract, whichever is applicable. Files pertaining to unsuccessful applicants may be transferred to Washington National Records Center 120 days after non-selection, and destroyed ten years after date of last action; index and cross-index cards may be destroyed as files are destroyed. All destruction under appropriate security controls.

SYSTEM MANAGERS AND ADDRESS:

Director, Office of Security, USIA, 301 4th Street., SW, Washington, DC 20547.

NOTIFICATION PROCEDURES:

Director, Office of Security, USIA, 301 4th Street, SW., Washington, DC 20547. Provide full name, name(s) used while affiliated with or an applicant to USIA, and date and place of birth.

RECORD ACCESS PROCEDURE:

Persons requesting access should furnish full name, including name(s) while affiliated with or when applicant was with USIA, date and place of birth, present mailing address including zip code, and telephone number (optional) to the Chief, FOIA/Privacy Act Unit, USIA, 301 4th Street, SW., Washington, DC 20547. To request another individual's file, the requester must have a notarized signed statement from the individual to whom the file pertains.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access and for contesting contents and appealing determinations by the individual concerned appear in 22 CFR part 505. The right to contest records is limited to information which is incomplete, irrelevant incorrect or untimely.

RECORD SOURCE CATEGORIES:

Biographic and personal history information furnished voluntarily by the subject individual on application and security forms; the subject individual during personal interviews; reports of investigation conducted by M/S; reports of investigation conducted by the Office of Personnel Management, Department of State, Federal Bureau of Investigation and other Government agencies; other Federal agencies, state and local law enforcement agencies, credit bureaus, current and former employers, supervisors, co-workers, schools, teachers, rental and real estate agencies, landlords, neighbors, references and other acquaintances; records of professional organizations, baptismal records and medical records; counterintelligence reports relating to USIA interests which are furnished by other Federal agencies; various public records and indices such as those produced by committees of Congress; other elements of USIA; employees of USIA, employees of other Government agencies, nongovernment entities, and members of the public at large who occasionally furnish information to M/S in the interests of national security or the integrity of the Federal service; photographs from Security Identification Card File (USIA–39).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records in this system of the types described in 5 U.S.C. 552a(k)(1), (k)(2) and (k)(5) may be exempted from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and/or (f). See 22 CFR 505.15.

USIA–39

SYSTEM NAME:

Security Identification Cards and Automated Access Control Files—M/S.

SYSTEM LOCATION:

Office of Security, United States Information Agency (USIA), 301 4th Street, SW., Washington, DC 20547.

SECURITY CLASSIFICATION:

All records are unclassified.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current employees of USIA, some contractors, members of advisory committees, student interns, and persons on detail from other Government agencies. System also contains photographs of dependents of some employees traveling overseas.

CATEGORIES OF RECORDS IN THE SYSTEM:

Identificaiton card and related information including full face photograph, electronic signature, social security number, date of birth, access code(s), citizenships code, department, position sensitivity, security clearance, M/S file number (USIA–38), authorized access in USIA buildings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10450 dated April 27, 1953, as amended, and Executive Order 12968 dated April 2, 1995, and Executive Order 12958 of April 17, 1995.

PURPOSE(S):

Provide positive identification of employees, contractors and others for entry into and movement within USIA premises.

Provide passport and visa photographs to employees and their dependents for use during official travel.

Provide photographs for use by the Office of Public Liaison and other USIA elements having official need for visual identification records.

Provide photographs to employees for other official uses. Provide automated records of access to select areas/facilities within USIA buildings.

ROUTINE USES OF RECORDS MAINTAINED, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Employees may use identification cards to verify USIA employment when seeking entry to other U.S. Government agencies with which they have official business.

Disclosure may be made to other Government agencies having statutory authority or other lawful authority to receive such information.

Also see Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records and photographs are stored in/on paper envelopes if identification card issued before June 1995. All other records and photographs are stored in electronic form (magnetic disk).

RETRIEVABILITY:

Name, social security number, ID card number, and any combination of search criteria formed from other related fields (see Categories of Records in the System) which are met.

SAFEGUARDS:

1. *Authorized users:* Access is limited to employees of the Physical Security Division and authorized investigative personnel.

2. *Physical safeguards:* Records and photographs are stored in lockable steel cabinets located in rooms with limited access during duty hours. During non-duty hours, the room is locked and alarmed.

3. *Procedural (or Technical) Safeguards:* Electronic records are safeguarded from unauthorized disclosure/modification through use of physical access controls and ID/password usage.

RETENTION AND DISPOSAL:

Records remain in system as long as person to whom they pertain is employed by or affiliated with USIA, Records of former employees and persons with past affiliations are placed in security files (USIA–37) and retained and destroyed with those records and/or are retained in their electronic format for five years. All destruction is accomplished under appropriate security controls.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Physical Security Division, Office of Security, USIA, 301 4th Street, SW, Washington, DC 20547.

NOTIFICATION PROCEDURES:

Chief, Physical Security Division, Office of Security, USIA, 301 4th Street, SW, Washington, DC 20547.

RECORD ACCESS PROCEDURE:

Persons requesting access should furnish full name, date of birth, present mailing address (including zip code), and telephone number to the Chief, FOI/Privacy Act Unit, USIA, 301 4th Street, SW, Washington, DC 20547. Documentary proof of identity may be required if there is reason to question whether the requester is the subject of the record.

Subject of record may request an accounting of disclosures.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access and for contesting contents and appealing determinations by the individual concerned appear in 22 CFR part 505. The right to contest records is limited to information which is incomplete, irrevelant, incorrect or untimely.

RECORD SOURCE CATEGORIES:

Personnel Security and Integrity Records (USIA—38), photographs, and access control readers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Not applicable.

USIA–40

SYSTEM NAME:

Locator Cards—M/TN.

SYSTEM LOCATION:

Office of Technology, Networks and System Support Division, United States Information Agency (USIA), 301 4th Street, SW, Washington, DC 20547.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUAL COVERED BY THE SYSTEM:

Past and present domestic employees of USIA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Locator card prepared for each domestic employee, containing the name, social security number, office location, telephone number, home address and telephone number of person to contact in case of emergency.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

USIA's Manual of Operations and Administration, part II 495.1.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To assist USIA elements and others in locating employees; basic input source for telephone directory; also see Prefatory Statement of General Routine Uses.

Information is made available on a need-to-know basis to personnel of the USIA as may be required in the performance of their official duties.

The information may also be released to other government agencies who have statutory or other lawful authority to maintain such information.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Material maintained on index cards.

RETRIEVABILITY:

Filed alphabetically by name, sorted as active and inactive.

SAFEGUARDS:

Card maintained in index card boxes which are locked in bar-lock cabinets after working hours.

RETENTION AND DISPOSAL:

Cards retained for one year after departure of employee and disposed of by shredding.

SYSTEM MANAGERS AND ADDRESS:

Chief, Operations Branch, USIA, 301 4th Street, SW, Washington, DC 20547

RECORD ACCESS PROCEDURE:

Persons requesting access should furnish full name, including names(s) while affiliated with or when applicant was with USIA, date and place of birth, present mailing address including zip code, and telephone number (optional) to the Chief, FOIA/Privacy Act Unit, USIA, 301 4th Street, SW, Washington, DC 20547. To request another individual's file, the requester must have a notarized signed statement from the individual to whom the file pertains.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access and for contesting contents and appealing determinations by the individual concerned appear in 322 CFR part 505.

RECORD SOURCE CATEGORIES:

The individual on whom information is maintained.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Not applicable.

USIA–34

SYSTEM NAME:

Office of Civil Rights Complaint Files—OCR.

SYSTEM LOCATION:

Office of Civil Rights, United States Information Agency (USIA), 301 4th Street, SW, Washington, DC 20547.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any grieved employee with USIA who believes she or he has been discriminated against because of race, color, religion, sex, national original, age, and/or handicap, or retaliated against for having filed a previous compliant of discrimination, and who has consulted with an Office of Civil Rights Counselor of the Agency or a member of the OCR staff about the matter.

AUTHORITY FOR MAINTENANCE IN THE SYSTEM:

42 U.S.C. 2000e–16; 29 U.S.C. 633a; 29 U.S.C. 206(d).

PURPOSE(S):

To record actions taken, with verifying statements, regarding employees' and employment applicants' complaints of discrimination.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USERS:

Principal users of this information outside the Agency are the Department of Justice and the Merit Systems Protection Board. The information may also be released to other government agencies having statutory or other lawful authority to maintain such information.

Information is made available on a need-to-know basis to personnel of the Agency as may be required in the performance of their official duties. Also see Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Partially automated system. Most information is stored in paper folders; however, some is also maintained on computer disks.

SAFEGUARDS:

Access is limited to OCR staff and contract EEO investigators. Records are stored in cabinets with bar locks. Files are not removed from the OCR office; however, copies are provided to

complainant and/or complainant representative, and may be provided to authorized government agencies. Computer-stored data is accessed by use of password known only to OCR officials. Maintained as per USIA MOA, V–A (Domestic), Sections 560–565.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Civil Rights, USIA, 301 4th Street, SW, Washington, DC 20547.

NOTIFICATION PROCEDURES:

Director, Office of Civil Rights, USIA, 301 4th Street, SW, Washington, DC 20547.

The individual must furnish name, status (current or former employee, applicant, etc.), reason for inquiry, address and telephone number, and social security number.

RECORD ACCESS PROCEDURE:

Persons requesting access should furnish full name, including name(s) while affiliated with or when applicant was with USIA, date and place of birth, present mailing address including zip code, and telephone number (optional) to the Chief, FOIA/Privacy Act Unit, USIA, 301 4th Street, SW, Washington, DC 20547. To request individual's file, the requester must have a notarized signed statement from the individual to whom the file pertains.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access and for contesting contents and appealing determinations by the individual concerned appear in 22 CFR part 505.

RECORD SOURCE CATEGORIES:

Personal interviews, affidavits, USIA Personnel and Employment Records and Procedures. Transcript of Hearings, and related correspondence.

EXEMPTION CLAIMED FOR THE SYSTEM:

Not applicable.

USIA–42

SYSTEM NAME:

Office of Civil Rights General Files—OCR.

SYSTEM LOCATION:

Office of Civil Rights, United States Information Agency (USIA), 301 4th Street, SW., Washington, DC 20547.

SECURITY CLASSIFICATION:

Some documents may be classified confidential.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Agency, applicants for positions in the Agency, organizations and institutes of higher education applying for grants from the Agency, recruitment contacts, prominent individuals who may be appropriate contacts for promotion panels, speakers, Amparts, electronic media experts, and other individuals with whom the office is in contact, such as contractors and consultants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of applications, resumes, correspondence and bibliographical information regarding the individuals covered by the system, including memoranda to the files of employees covered by the system, who seek career counseling. General administrative files, including those dealing with travel, budget, training and personnel matters. Various affirmative action plans, correspondence with Agency officials, and others such as correspondence with other agencies and individuals requesting information. Chron files and historical files outlining a variety of actions taken by the office and others in the area of EEO and Civil Rights. Computer generated lists of employees, and statistical studies of various parts of the Agency. Medical records of applicants and employees with disabling conditions and compliance records containing information about the EEO status of Agency grantee organizations and action taken on their applications.

AUTHORITY FOR MAINTENANCE IN THE SYSTEM:

29 CFR parts 1613 et seq.

PURPOSE(S):

To enable the office to carry out activities designed to recruit, hire, train, promote, assign and otherwise provide equal employment opportunity to employees of and applicants for employment in the USIA. Compliance Review files containing information about grant applicant's implementation of Titles VI, VII, and IX of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1974, as amended, and the Age Discrimination in Employment Act, as amended, enable the office to monitor and implement Federal regulations as stipulated in these statutes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

See Standardized General Routine Uses (not including 12 through 18). Also this information is made available on a need-to-know basis to Personnel Officers of the USIA as may be required in the performance of their duties. It may also be provided to Congressional Committees, individual Members of Congress, the White House, the Department of Justice, the Office of Personnel Management, the Equal Employment Opportunity Commission and to other government entities who have statutory or other lawful authority to maintain such information. Compliance Review information may also be released to grant applicants on request. Also see Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The system is partially automated. Some information is also maintained on discs, and some in paper folders:

RETRIEVABILITY:

Records are retrieved by name and types of activities, i.e., affirmative action plans, travel, training, Amparts, etc.

SAFEGUARDS:

1. Authorized users include OCR staff members and contract EEO investigators who are authorized to have access to the system of records in the performance of their duties.

2. Physical safeguards include bar-locked safes, back-up discs, fire extinguisher within twenty feet, security guard patrol (off-duty hours).

3. Procedural safeguards include separate maintenance of tables linking codes, data encryption, security software providing restricted commands programs, employee training, procedures for recording and reporting security violations, computer log-on codes. Contract investigator has security clearance and is supervised by an OCR staff member.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Civil Rights, USIA 301 4th Street, SW., Washington, DC 20547.

NOTIFICATION PROCEDURE:

Director, Office of Civil Rights, USIA, 301 4th Street, SW., Washington, DC 20547.

The individual must furnish name, status (current or former employee, applicant, etc.), reason for inquiry, address and telephone number, and social security number.

RECORD ACCESS PROCEDURE:

Persons requesting access should furnish full name, including name(s) while affiliated with or when applicant was with USIA, date and place of birth, present mailing address including zip code, and telephone number (optional) to the Chief, FOIA/Privacy Act Unit, USIA, 301 4th Street, SW., Washington,

DC 20547. To request another individual's file, the requester must have a notarized signed statement from the individual to whom the file pertains.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access and for contesting contents and appealing determinations by the individual concerned appear in 22 CFR part 505.

RECORD SOURCE CATEGORIES:

Correspondence, memos of conversation, Agency records of personnel actions, published biographical sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Not applicable.

USIA–43

SYSTEM NAME:

Minority Group Data—OCR.

SYSTEM LOCATION:

Office of Civil Rights, United States Information Agency (USIA), 301 4th Street, SW, Washington, DC 20547.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees of USIA and some applicants for employment in USIA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records are categorized by name, race, sex, national origin, age, grade or wage level, handicap or lack thereof and may contain medical records.

AUTHORITY FOR MAINTENANCE IN THE SYSTEM:

29 CFR 1613.301, 29 CFR 1613.302.

PURPOSE(S):

To compile statistical records of women, minorities, and individuals with disabling conditions who are considered for employment, hired, promoted, assigned, training, awarded, disciplined, and/or separated or who resign from USIA. To measure EEO progress and to identify problems.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

Information is made available on a need-to-know basis to personnel of the USIA as may be required in the performance of their official duties, in implementing affirmative action plans and in processing complaints of discrimination. Information is not normally available to individuals or agencies outside the USIA, but records may be released to other government agencies having a statutory or other lawful authority to maintain such information. The principal users of this information outside of USIA are the Equal Employment Opportunity Commission, the Office of Personnel Management, the Department of Justice, the Department of State, and the Congress. Also see Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and computer disks.

RETRIEVABILITY:

By name, race, sex, age, handicap, national origin, agency location, date of entry or separation, date of last promotion, grade or wage level.

SAFEGUARDS:

1. Authorized users are members of the OCR staff and certain authorized members of the Office of Personnel, Policy and Services Staff.

2. Physical safeguards include bar-locked safes, back-up discs, fire extinguisher within twenty feet, security guard patrol (off-duty hours).

3. Procedural safeguards include separate maintenance of tables linking codes, data encryption, security software providing restricted commands programs, employee training, procedures for recording and reporting security violations. Contractors are supervised by employees with security clearances.

4. The source of security standards is 29 CFR 1613.301 et seq.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Civil Rights, USIA, 301 4th Street, SE, Washington, DC 20547.

NOTIFICATION PROCEDURE:

Director, Office of Civil Rights, USIA, 301 4th Street, SW, Washington, DC 20547.

RECORD ACCESS PROCEDURE:

Persons requesting access should furnish full name, including name(s) while affiliated with or when applicant was with USIA, date and place of birth, present mailing address including zip code, and telephone number (optional) to the Chief, FOIA/Privacy Act Unit, USIA, 301 4th Street, SW, Washington, DC 20547. To request another individual's file, the requester must have a notarized signed statement from the individual to whom the file pertains.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access and for contesting contents and appealing determinations by the individual concerned appear in 22 CFR part 505.

RECORD SOURCE CATEGORIES:

From the employee or applicant concerned, USIA personnel data, visual inspection of the employee or applicant.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Not applicable.

USIA–44

SYSTEM NAME:

Senior Officer and Prominent Employee Information—PL/USIA.

SYSTEM LOCATION:

Office of Public Liaison (PL), United States Information Agency (USIA), 301 4th Street, SW., Washington, DC 20547.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Leaders of the USIA and other prominent employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Photographs, biographic data sheets and press releases.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Records Act, 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

For responding to press inquiries and in the preparation of Agency press releases concerning leaders of the USIA and prominent employees. Also see Prefatory Statement of General Routine Uses.

Information is made available on a need-to-know basis to personnel of the USIA as may be required in the performance of their official duties.

Information in these records is not normally available to individuals or agencies outside the USIA but records may be released to other government agencies who have statutory or other lawful authority to maintain such information.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and photographs in file folders.

RETRIEVABILITY:

By name of the individual employee.

SAFEGUARDS:

Maintained in locked file cabinets.

RETENTION AND DISPOSAL:

Records are disposed of in accordance with Federal Records Management procedures.

SYSTEM MANAGERS AND ADDRESS:

Director, Office of Public Liaison (PL), USIA, 301 4th Street, SW., Washington, DC 20547.

NOTIFICATION PROCEDURE:

Director, Office of Public Liaison (PL), USIA, 301 4th Street, SW., Washington, DC 20547.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to: Chief, FOIA/Privacy Act Unit, USIA, 301 4th Street, SW., Washington, DC 20547. To request another individual's file, the requester must have a notarized signed statement from the individual to whom the file pertains.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access and for contesting contents and appealing determinations by the individual concerned appear in 22 CFR part 505.

RECORD SOURCE CATEGORIES:

The Department of State Biographic Register, "Who's Who;" from the individual concerned; and from press releases concerning the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Not applicable.

USIA–45

SYSTEM NAME:

Office of Research—R.

SYSTEM LOCATION:

Office of Research, United States Information Agency (USIA), 301 4th Street, SW, Washington, DC 20547.

SECURITY CLASSIFICATION:

None. However a portion of the records are classified at the level of Confidential and Secret.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Job applicants, prospective contractors or vendors, and any other individuals from whom services (compensated or not) may be formally solicited by the Office of Research.

CATEGORIES OF RECORDS IN THE SYSTEM:

Résumés, employment inquiries, and related correspondence, and records on the security clearance status of prospective vendors.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Record Act of 1950, as amended, 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To review qualifications of candidates for employment, to comply with security regulations in procurement actions or when soliciting services from outsiders. Also see Prefatory Statement of General Routine Uses.

Information in these records is not normally available to individuals or agencies outside the USIA but records may be released to other government agencies who have statutory or other lawful authority to maintain such information.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Indexed alphabetically by individual name.

SAFEGUARDS:

Maintained in bar-locked file cabinets or combination lock safes.

RETENTION AND DISPOSAL:

Records on security clearance status of contractors and vendors are maintained indefinitely; employee applications and inquiries are retained for two years or as long as there is an interest or prospect of employment of the individual with disposal in accordance with internal disposal requirements.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Research, USIA, 301 4th Street, SW, Washington, DC 20547.

NOTIFICATION PROCEDURE:

Director, Office of Research, USIA, 301 4th Street, SW, Washington, DC 20547.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to: Chief, FOIA/Privacy Act Unit, USIA, 301 4th Street, SW, Washington, DC 20547. To request another individual's file, the requester must have a notarized signed statement from the individual to whom the file pertains.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access and for contesting contents and appealing determinations by the individual concerned appear in 22 CFR part 505.

RECORD SOURCE CATEGORIES:

From the individuals concerned and from USIA's Office of Security.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Not applicable.

USIA–46

SYSTEM NAME:

Americans Residing in Foreign Countries—USIA.

SYSTEM LOCATION:

The United States Information Agency (USIA) maintains establishments overseas in 147 foreign countries which are designated as mission posts, branch posts, regional service centers, VOA relay stations and media extensions. A current listing of names and addresses of overseas establishments is not considered practical for Privacy Act purposes due to the fact that such a list would require frequent amendment. Changing of office locations, opening of new offices, closing of established offices and realignment of geographic areas have become practical realities in conducing the Agency's mission overseas. Individuals who feel that records pertaining to themselves are maintained at any of our overseas locations may contact the Director, USIA, 301 4th Street, SW, Washington, DC 20547. The Agency maintains a current listing of overseas posts, which is available to the public as indicated in 22 CFR ch. V, § 504.2.

SECURITY CLASSIFICATION:

None.

CATEGORIES AND INDIVIDUALS COVERED BY THE SYSTEM:

American citizens and aliens admitted for permanent U.S. residence who are residing overseas, i.e., journalists, businessmen, scholars, artists, representatives of other U.S. government agencies, missionaries.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and addresses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 80–402, Information and Educational Exchange Act of 1948, as amended; Federal Records Act 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Distribution of printed matter; invitation lists of official social functions and programs; selection of candidates for temporary employment, as needed; location of specialists to arrange, conduct, appear in or appraise Agency programs organized overseas; press briefings for American journalists residing in foreign countries; appraisal for American specialists whose services are utilized in Agency programming overseas.

Also see Prefatory Statement of General Routine Uses.

Information is made available on a need-to-know basis to personnel of the USIA as may be required in the performance of their official duties.

Information in these records is not normally available to individuals or agencies outside the USIA but records may be released to other government agencies who have statutory or other lawful authority to maintain such information.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Addressograph plates or paper records in file folders.

RETRIEVABILITY:

By name of the individual.

SAFEGUARDS:

Records are kept in locked file cabinets or in locked rooms when not is use.

RETENTION AND DISPOSAL:

Records are updated regularly and plates or paper files no longer useful or current are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

See "System Location" above.

NOTIFICATION PROCEDURE:

Director, USIA, 301 4th Street, SW, Washington, DC 20547.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to: Chief, FOIA/Privacy Act Unit, USIA, 301 4th Street, SW, Washington, DC 20547. To request another individual's file, the requester must have a notarized signed statement from the individual to whom the file pertains.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access and for contesting contents and appealing determinations by the individual concerned appear in 22 CFR part 505.

RECORD SOURCE CATEGORIES:

Information obtained from the individuals concerned.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Not applicable.

USIA–47

SYSTEM NAME:

Overseas Personnel Files and Records—USIA.

SYSTEM LOCATION:

The United States Information Agency (USIA) maintains establishments overseas in 147 foreign countries which are designated as mission posts, branch posts, regional service centers, VOA relay stations and media extensions. A current listing of names and addresses of overseas establishments is not considered practical for Privacy Act purposes due to the fact that such a list would require frequent amendment. Changing of office locations, opening of new offices, closing of established offices and realignment of geographic areas have become practical realities in conducting the Agency's mission overseas. Individuals who feel that records pertaining to themselves are maintained at nay of our overseas locations may contact the Freedom of Information Unit (GC/FOI) of the United States Information Agency (USIA), 301 4th Street, SW, Washington, DC 20547.

SECURITY CLASSIFICATION:

Some of the records are classified at the level of Confidential and Secret.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Foreign Service employees of the U.S. Information Agency who are serving or have served at any of the Agency's overseas establishments.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel evaluation reports, travel orders, personnel action forms, payroll change forms, residency and dependency reports, correspondence related to transfer of duty station or training assignments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Foreign Service Act of 1980.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Maintained for convenience due to separation from main office; for use by senior USIA officers at overseas establishments in evaluating the performance of subordinate officers; for planning future staffing requirements, dates of reassignment of officers, entitlement to foreign service allowances, home address and next of kin in the United States in case of emergency, settlement of personal business after departure of employee from the overseas establishment. Also see Prefatory Statement of General Routine Uses.

Information is made available on a need-to-know basis to personnel of the USIA as may be required in the performance of their official duties.

Information in these records is not normally available to individuals or agencies outside the USIA but records may be released to other government agencies who have statutory or other lawful authority to maintain such information.

The principal user of this information outside the USIA is the Department of State.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Alphabetically by name of individual.

SAFEGUARDS:

Maintained in locked file cabinets.

RETENTION AND DISPOSAL:

Some information is kept as long as an employee remains with USIA, while other information is destroyed three years after employee's departure from post. (Reference USIA's Manual of Operations and Administration, Part III, Exhibit 630–A–3, page 3.)

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Foreign Service Personnel Division, Office of Human Resources, USIA, 301 4th Street, SW, Washington, DC 20547.

NOTIFICATION PROCEDURE:

Chief, Foreign Service Personnel Division, Office of Human Resources, USIA, 301 4th Street, SW., Washington, DC 20547.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to: Chief, FOIA/Privacy Act Unit, USIA, 301 4th Street, SW., Washington, DC 20547. To request another individual's file, the requester must have a notarized signed statement from the individual to whom the file pertains.

CONTESTING RECORD PROCEDURES:

The Agency's rules fro access and for contesting contents and appealing determinations by the individual concerned appear in 22 CFR part 505.

RECORD SOURCE CATEGORIES:

Documents contained in these records include both materials generated by the Agency's Foreign Service Personnel Division and by other elements of the U.S. Information Agency or, in some instances, by the Department of State.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Not applicable.

Appendix I—Prefatory Statement of General Routine Uses

The following routine uses apply to and are incorporated by reference into each system of records set forth above.

1. In the event that a system of records maintained by the Agency to carry out its function indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

2. A record from this system of records may be disclosed, as a routine use, to a Federal, state, or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an Agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

3. A record from this system of records may be disclosed, as a routine use, to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

4. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate or administrative tribunal, including disclosure to opposing counsel in the course of settlement negotiations.

5. A record in this system of records which contains medical information may be disclosed, as a routine use, to the medical advisor of any individual submitting a request for access to the record under the Act and 22 CFR part 505 if, in the sole judgment of the Agency, disclosure could have an adverse effect upon the individual, under the provisions of 5 U.S.C. 552a(f)(3) and implementing regulations at 22 CFR 505.6.

6. The information contained in this system of records will be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

7. A record from this system of records may be disclosed to an authorized appeal grievance examiner; a formal complaints examiner; an equal employment opportunity investigator; an arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint or appeal filed by an employee. A record from this system of records may be disclosed to the Office of Personnel Management in accordance with the Agency's responsibility for evaluation and oversight of Federal personnel management.

8. A record from this system of records may be disclosed to authorized employees of a Federal agency for purposes of audit.

9. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

10. A record from this system of records may be disclosed, as a routine use, to the Department of State and its posts abroad for the purpose of transmission of information between organizational units of the Agency, or for purposes related to the responsibilities of the Department of State in conducting foreign policy or protecting United States citizens, such as the assignment of employees to positions abroad, the reporting of accidents abroad, evacuation of employees and dependents, and other purposes for which officers and employees of the Department of State have a need for the records in the performance of their official duties.

11. A record in this system of records may be disclosed, as a routine use, to a foreign government or international agency when necessary to facilitate the conduct of U.S. relations with that government or agency through the issuance of such documents as visas, country clearances, identification cards, drivers' licenses, diplomatic lists, licenses to import or export personal effects, and other official documents and permits routinely required in connection with the official service or travel abroad of the individual and her or his dependents.

12. A record in this system of records may be disclosed, as a routine use, to Federal agencies with which the Agency has entered into an agreement to provide services to assist the Agency in carrying out its functions under the Foreign Assistance Act of 1961, as amended. Such disclosures would be for transmitting information between organizational units of the Agency, for providing to the original employing agency information concerning the services of its employee while under the supervision of the Agency, including performance evaluations, reports of conduct, awards and commendations and information normally obtained in the course of personnel administration and employee supervision, or for providing other information directly related to the purpose of the inter-agency agreement as set forth therein, and necessary and relevant to its implementation.

13. A record in this system of records may be disclosed, as a routine use, to the Department of Justice to determine whether disclosure thereof is required by the Freedom of Information Act (5 U.S.C. 552).

14. A record in this system of records may be disclosed, as a routine use, when the information is subject to exemption under the Freedom of Information Act (5 U.S.C. 552), but the Agency, in its discretion, determines not to assert the exemption.

15. A record from this system of records may be disclosed, as a routine use, only to state and local taxing authorities with which the Secretary of the Treasury has entered into agreements and only to those state and local taxing authorities for which the employee is subject to tax (whether or not tax is withheld).

Signed at Washington, DC, this 26th day of February 1997.

Les Jin,

General Counsel, United States Information Agency.

[FR Doc. 97–5287 Filed 3–6–97; 8:45 am]

BILLING CODE 8230–01–M

federal register

Friday
March 7, 1997

Part III

Department of Labor

Benefits Review Board

20 CFR Parts 801 and 802

Change of Address; Final Rule

DEPARTMENT OF LABOR

Benefits Review Board

20 CFR Parts 801 and 802

Change of Address

AGENCY: Benefits Review Board, Labor.

ACTION: Technical amendment.

SUMMARY: This document amends two sections of the Benefits Review Board's regulation in order to notify the public that the Board will be soon be moving to a new address, and that correspondence and legal pleadings are to be mailed to and filed at this new address.

EFFECTIVE DATE: March 7, 1997.

FOR FURTHER INFORMATION CONTACT: Lisa Lahrman, Associate General Counsel, telephone (202) 565–7500.

SUPPLEMENTARY INFORMATION: By March 10, 1997, the Benefits Review Board will have moved to new offices in the Frances Perkins Department of Labor Building in Washington, D.C. The new address is: Benefits Review Board, U.S. Department of Labor, 200 Constitution Avenue, N.W., Rooms N–5101 and S–5220, Washington, DC 20210, Telephone (202) 565–7500.

This document amends the two relevant sections in the Code of Federal Regulations in order to present the new address.

Publication in Final

The Department has determined that these amendments need not be published as a proposed rule, as generally required by the Administrative Procedure Act (APA) (5 U.S.C. 553) since this rulemaking merely reflects agency organization, procedure, or practice. It is thus exempt from notice and comment by virtue of section 553(b)(A) of the APA (5 U.S.C. 553(b)(A)).

Effective Date

This document will become effective upon publication pursuant to 5 U.S.C. 553(d). The undersigned have determined that good cause exists for waiving the customary requirement for delay in the effective date of a final rule for 30 days following its publication. This determination is based upon the fact that the rule is technical and non-substantive, and merely reflects agency organization, practice and procedure.

Executive Order 12866

This rule is not classified as a "rule" under Executive Order 12866 on federal regulations, because it is a regulation relating to agency organization, management or personnel. See section 3(d)(3).

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule under section 553(b) of the APA, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601) pertaining to regulatory flexibility analysis do not apply to this rule. See 5 U.S.C. 601(2).

Paperwork Reduction Act

This final rule is not subject to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501) since it does not contain any new collection of information requirements.

Small Business Regulatory Enforcement Fairness Act

This rule is not classified as a "rule" under the Small Business Reduction Regulatory Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) (SBREFA) because it is a regulation relating to agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties. See section 804 (3)(C) of SBREFA.

List of Subjects in 20 CFR Parts 801 and 802

Coal mine workers, Longshore and harbor workers, Worker's compensation.

Accordingly, parts 801 and 802 of Title 20 of the *Code of Federal Regulations* are amended as follows:

PART 801—ESTABLISHMENT AND OPERATION OF THE BOARD

1. The authority citation for Part 801 is revised to read as follows:

Authority: 5 U.S.C. 301; 30 U.S.C. 901 *et seq.*; 33 U.S.C. 901 *et seq.*; Reorganization Plan No. 6 of 1950, 15 FR 3174; Secretary of Labor's Order 38–72, 38 FR 90, January 3, 1973.

2. Section 801.303 is revised to read as follows:

§ 801.303 Location of Board's proceedings.

The Board shall hold its proceedings at 200 Constitution Avenue, NW., Room N–5101, Washington, DC 20210, unless for good cause the Board orders that proceedings in a particular matter be held in another location.

PART 802—RULES OF PRACTICE AND PROCEDURE

3. The authority citation for Part 802 is revised to read as follows:

Authority: 5 U.S.C. 301; 30 U.S.C. 901 *et seq.*; 33 U.S.C. 901 *et seq.*; Reorganization Plan No. 6 of 1950, 15 FR 3174; Secretary of Labor's Order 38–72, 38 FR 90, January 3, 1973.

4. Section 802.204 is amended by revising the first sentence to read as follows:

§ 802.204 Place for filing notice of appeal

Any notice of appeal shall be sent by mail to the U.S. Department of Labor, Benefits Review Board, P.O. Box 37601, Washington, DC 20013–7601, or otherwise presented to the Clerk of the Board at 200 Constitution Avenue, NW., Room S–5220, Washington, DC 20210.

* * *

Signed at Washington, D.C. this 26th day of February, 1997.

Cynthia A. Metzler,

Acting Secretary of Labor.

Betty Jean Hall,

Chairman of the Board and Chief Administrative Appeals Judge.

[FR Doc. 96–5261 Filed 3–6–96; 8:45 am]

BILLING CODE 4510–32–M

federal register

Friday
March 7, 1997

Part IV

Department of the Treasury

Community Development Financial Institutions Fund

12 CFR Part 1806

Bank Enterprise Award Program; Interim Rule; Notice of Funds Availability (NOFA) Inviting Applications for the Bank Enterprise Awards (BEA) Program

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

12 CFR Part 1806

Bank Enterprise Award Program; Interim Rule; Notice of Funds Availability (NOFA) Inviting Applications for the Bank Enterprise Awards (BEA) Program

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Interim rule; notice of funds availability (NOFA) inviting applications for the Bank Enterprise Awards (BEA) Program.

SUMMARY: The Department of the Treasury finds that exempt from the proposed rule-making

1500 Pennsylvania Avenue NW.,

III. Bank Enterprise Award Program

affordable housing goal standards established for housing-related

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

12 CFR Part 1806

RIN 1505–AA71

Bank Enterprise Award Program

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Revised interim rule with request for comment.

SUMMARY: The Department of the Treasury is issuing a revised interim rule implementing the Bank Enterprise Award Program administered by the Community Development Financial Institutions Fund. The program was authorized by the Community Development and Financial Institutions Act of 1994. The programs of the CDFI Fund are intended to facilitate the flow of lending and investment capital into distressed communities and to individuals who have been unable to take full advantage of the financial services industry.

DATES: Interim rule effective March 7, 1997; comments must be received on or before July 7, 1997.

ADDRESSES: All comments concerning this interim rule should be addressed to the Director, Community Development Financial Institutions Fund, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Washington, DC 20220. Comments may be inspected at the above address between 9:30 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Kirsten S. Moy, Director, the Community Development Financial Institutions Fund at (202) 622–8662. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION:

I. General

Executive Order (E.O.) 12866

It has been determined that this regulation is not a significant regulatory action as defined in E.O. 12866. Because no substantive changes were made to this regulation subsequent to submission to the Office of Management and Budget (OMB), the provisions of section 6(a)(3)(E) of the E.O. do not apply.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this revised interim rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Moreover, the Department of the Treasury finds that any economic or other consequence of this revised interim rule is a direct result of the implementation of statutory provisions.

Paperwork Reduction Act

The Department of the Treasury is issuing these revised interim regulations without notice and public comment pursuant to the Administrative Procedures Act (5 U.S.C. 553). For this reason, the collections of information contained in these revised regulations have been reviewed and pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1505–0153 (expires 08/31/97). Comments concerning the collections of information, the accuracy of the estimated average annual burden, and the reduction of such burden should be directed to the Office of Management and Budget, Paperwork Reduction Projection (OMB Paperwork control number 1505–0153), Washington, DC 20503, with copies to the Community Development Financial Institutions Fund, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220. Any such comments should be submitted not later than July 7, 1997.

Provisions requiring the collection of information can be found in §§ 1806.206, 1806.301, 1806.304, and 1806.305 of these regulations. The information requested in such provisions is necessary to evaluate applications, monitor the performance of entities receiving assistance, and ensure compliance with statutory and program requirements. The anticipated respondents and recordkeepers are financial institutions that may apply for and receive assistance.

Estimated total annual reporting and/or recordkeeping burden: 750 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: 10 hours.

Estimated number of respondents and/or recordkeepers: 75.

Estimated annual frequency of responses: 1–2.

National Environmental Policy Act

Pursuant to Treasury Directive 75–02 (Department of the Treasury Environmental Quality Program), the Department has determined that these revised interim regulations are categorically excluded from the National Environmental Policy Act and do not require an environmental review.

Administrative Procedures Act

Pursuant to the provisions of 5 U.S.C. 553(a)(2), these revised regulations are exempt from the proposed rule-making requirements of 5 U.S.C. 553(b) and are being issued as revised interim regulations without opportunity for notice and public comment prior to their effective date. Furthermore, the Department for good cause finds that notice and public comment prior to effect are impracticable and contrary to the public interest. Congress appropriated funds for the CDFI Fund in FY 1996 and required such funds to be obligated by September 30, 1997. The Fund is required by statute to make one-third of each fiscal year's appropriated program funds available in order to implement the Bank Enterprise Award (BEA) Program. Such actions clearly indicate Congress' intent that the BEA Program be implemented in an expeditious manner. The amendments to the interim rule originally issued on October 19, 1995, and subsequently amended on January 23, 1996, February 29, 1996, and November 25, 1996, herein are intended to make the program easier for Applicants to participate and reduce regulatory burden. If the Department does not issue these regulations for effect, it will not be feasible to implement the program, as amended prior to September 30, 1997, in a manner that better achieves the results intended by Congress.

Catalog of Federal Financial Assistance Numbers

Bank Enterprise Award Program—21.021.

II. Background

The CDFI Fund was established as a wholly owned government corporation by the Community Development Banking and Financial Institutions Act of 1994 (the CDFI Act). Subsequent legislation placed the Fund within the Department of the Treasury and gave the Secretary of the Treasury all powers and rights of the Administrator of the Fund as set forth in the authorizing statute.

Consistent with the placement and administration of the Fund within the Department's organizational structure, the Department of the Treasury's Inspector General will serve as the Inspector General for the Fund. Any individual who becomes aware of the existence or apparent existence of fraud, waste, or abuse of assistance provided by the Fund is encouraged to report it to the Department of the Treasury's Office of Inspector General in writing or on the Inspector General's Hotline (toll free 1–800–359–3898). All telephone calls will be handled confidentially. Written complaints should be addressed to the U.S. Department of the Treasury, Office of Inspector General, Room 2412, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

All records and materials pertaining to the selection and awarding of assistance by the Fund shall be fully subject to the Freedom of Information Act. Interested parties should contact the U.S. Department of the Treasury, Office of the Assistant Secretary for Management, Disclosure Services at (202) 622–1500.

The CDFI Fund's programs are designed to facilitate the flow of lending and investment capital into distressed communities and to individuals who have been unable to take full advantage of the financial services industry. This initiative is an important step in rebuilding poverty-stricken and transitional communities and creating economic opportunity for people often left behind by the economic mainstream.

Access to credit and investment capital is an essential ingredient for creating and retaining jobs, revitalizing neighborhoods, developing affordable housing, and unleashing the economic potential of small businesses. The CDFI Fund recognizes the important role traditional financial institutions have played, and should continue to play, in serving the credit needs of distressed communities and their residents. As a means of facilitating increased activity and innovation among traditional financial institutions, these revised regulations will implement the BEA Program. The BEA Program has its roots in the Federal Deposit Insurance Corporation Improvement Act of 1991. The Program was significantly modified as part of the CDFI Act to enable it to function as a companion to the CDFI Program. Together, the CDFI Program and BEA Program will promote activity among the spectrum of financial institutions that serve distressed communities.

The following revised interim regulations amend the BEA Program. Elsewhere in this issue of the **Federal Register** is a separate Notice of Funds Availability (NOFA) for this program. Final regulations will be published after receipt and consideration of public comments. Such public comments are extremely important to the development of the final regulations. The remainder of this background section provides a summary of the revised interim rule and the major amendments to the interim regulations that were originally published on October 19, 1995, and subsequently amended on January 23, 1996, February 29, 1996, and November 25, 1996.

III. Bank Enterprise Award Program

Subpart A—Overview

Section 114 of the CDFI Act is based on the Bank Enterprise Act of 1991 and gives the Fund authority to implement, with some modifications, its provisions. The Bank Enterprise Act of 1991, though enacted in 1991, had not previously received appropriated funds for implementation.

The purpose of the BEA Program (12 CFR Part 1806) is to encourage insured depository institutions to increase loans, services, and technical assistance within distressed communities and to make Equity Investments or engage in CDFI Support Activities. The BEA Program rewards participating insured depository institutions for increasing their activities in economically distressed communities and investing in CDFIs. Applicants are selected to participate in the Program through a competitive process which evaluates applications based on the value of proposed increases in their specified activities. Program participants receive monies only after successful completion of the specified activities.

Subpart B—Public Comments on Previous Interim Rule

The Fund received a modest number (3) of formal comments on the interim rule to this part published in the **Federal Register** on October 19, 1995, and amended on January 23, 1996, February 29, 1996, and November 25, 1996. The Fund also sought input on Program improvements from the approximately 50 Applicants to the Program during the first round and held a focus group in Chicago with several Program participants in October 1996 to solicit additional input. The Fund also solicited input at meetings and conferences of national community development trade organizations, as well as regional workshops hosted by the Federal Reserve System. Most of the revisions to the interim rule are based on comments received through these avenues.

Most of the issues raised by the formal comments involved elements of the Program which cannot be changed without statutory amendments. For example, all commenters expressed concerns that the "Distressed Community" (as defined in § 1806.200) designation requirements were difficult for both urban and rural communities to meet. Several suggestions were made to amend these requirements to correspond to the standards established by other Federal programs or agencies (i.e. Community Reinvestment Act, Home Mortgage Disclosure Act, HUD affordable housing goal standards established for housing-related government-sponsored enterprises). Suggestions for technical amendments to the Program's statutory provisions to make it more compatible with the statutory provisions dealing with the CDFI Program were also put forth. In addition, commenters expressed a desire for a reduction in the information-tracking and reporting burden associated with the BEA Program.

The BEA statute requires the use of *both* U.S. Bureau of the Census and the U.S. Bureau of Labor Statistics (BLS). Furthermore, the BLS data specified in the statute is not available on a census tract basis. Thus, it was difficult for many Applicants to satisfy the Program requirements. Furthermore, although the BEA Program and the Community Development Financial Institutions Program (12 CFR part 1805) are intended to be companion programs, the criteria for designating communities is different.

One commenter expressed concern that small banks in rural communities may experience greater difficulty in meeting the application requirements due to limitations on resources of smaller institutions. The Fund has responded by simplifying some of the Application and Program requirements in this revised rule. One commenter suggested that for the purpose of calculating BEA award amounts, grants to CDFIs used for operating purposes should be given the same consideration as grants used for building the capital of a CDFI. The Fund responded by removing this distinction. All commenters expressed a desire to simplify and streamline the Program requirements. The Fund has attempted to address these concerns with the changes discussed below.

The Fund informally solicited comments from Applicants participating in the Program. Participants cited several elements of the Program that they considered favorable. For example, the Program provides a new vehicle of opportunity for getting recognition for community development activities. Many Awardees indicated that they engaged in activities that support CDFIs for the first time or significantly increased the level of support provided to CDFIs over their historical support levels. Some Awardees reported that they intend to use their BEA funding to support future community development activities. However, the Fund received mixed feedback on the application process. Many Applicants expressed the opinion that the requirements for applying for assistance or reporting their

activities was simple and straightforward; others found it burdensome.

Some Applicants had difficulty with the eligibility requirements (as did many institutions that considered applying for assistance but did not submit an application because they could not meet the eligibility requirements). Specifically, the authorizing statute permits only insured depository institutions to apply. Insured depository institution Applicants can only report their Qualified Activities and the activities of their subsidiaries (not holding companies or non-insured depository institution subsidiaries of holding companies). However, many banks and thrifts carry out their community development activities through subsidiaries of their holding companies that are not insured depository institutions. Other Program participants expressed a desire to make the Program structure more flexible. Several suggestions were made to provide grants on a prospective basis (rather than retrospectively) so the Program could be used to catalyze different types of activity. Participants suggested that rather than looking at only one aspect of community development lending—increases in activity—the Program could be amended to give greater consideration to innovation, impact, or other qualitative aspects of an institution's activities. Implementation of many of the suggestions discussed above will require a statutory change and therefore are not reflected in the revised interim rule that follows.

In this revised interim rule, the Fund has sought to address difficulties experienced by Program participants during the first funding round that may be addressed without any statutory changes. First, the revised rule includes numerous changes that seek to streamline and simplify the Program and Application requirements. The revised rule clarifies the requirements for reporting and documenting eligible activities. The Fund will provide a BEA Help Desk that will be available to provide data and assistance to Applicants in designating their Distressed Communities and will provide a list of certified CDFIs as part of the application packet.

Subpart C—Findings From the First Funding Round

In the first funding round of the BEA Program, the Fund set aside $15.5 million to distribute in awards to qualifying institutions. Approximately 50 institutions applied for assistance totaling $13.5 million in requests at the time the applications were submitted. The Fund received applications from institutions located in 18 states and the District of Columbia. Of these Applicants, 38 institutions received awards totaling $13.1 million. Since the Program was undersubscribed, all Applicants that met the Program's basic statutory and regulatory requirements received an award. Applicants did not need to be competitively rated and ranked. Twelve institutions that applied for assistance did not receive awards because they did not meet the program requirements.

The awards ranged from $3,750 to $2.7 million; the median award received was approximately $100,000. With respect to the types of institutions that received awards, 39% were national banks, 34% were state chartered commercial banks, 24% were Federal savings banks or thrifts, and 3% (1 Awardee) was a state chartered mutual savings bank. Awardees ranged in asset size from more than $21 million to $320 billion, as of the time that awards were obligated (16% under $250 million in total assets; 14% between $250 million and $1 billion in total assets; 74% over $1 billion in total assets).

Awardees engaged in a variety of activities. With regard to Equity Investments or other activities that support CDFIs, the Fund found that nearly two-thirds (63%) of all Awardees engaged in activities that support CDFIs. These Awardees provided support to 49 community based financial intermediaries through their BEA activities which generated nearly $66 million in support for CDFIs. Of the support provided to CDFIs: 78% of all support was provided in the form of equity investments or capital grants; 21% was provided in the form of loans; and approximately 1% was provided in the form of operating grants, nonmember deposits in credit unions, and technical assistance. Thirty-seven percent of the Awardees engaged in the provision of direct lending or services within distressed neighborhoods. Through the Program, these Awardees reported a total of $60.1 million in lending and service activities during the Assessment Period.

Subpart D—General Provisions

Section 1806.102 describes the Program's relationship to the CDFI Program (part 1805). To prevent Applicants from receiving more than one Federal award for a single activity, no CDFI may receive an award under the BEA Program if it: (1) Has an application pending under the CDFI Program; (2) has received assistance from the CDFI Program within the preceding 12 months; or (3) has ever received assistance under the CDFI Program for the same activities proposed in a BEA Program application. Assistance provided to a CDFI by a BEA Program participant may be used by the CDFI as matching funds for the CDFI Program.

Section 1806.103(m) is amended to provide that any organization that is certified as a CDFI as of the end of the Assessment Period, and is a CDFI at the time of the Qualified Activity, shall be considered a CDFI for the purposes of the BEA Program. If an Applicant is proposing to make an Equity Investment in or engage in CDFI Support Activities with respect to an entity that has not been certified as a CDFI, such uncertified CDFI shall submit the information described in § 1805.701(b) of this chapter. Such information shall be submitted to the Fund as specified in the applicable NOFA published in the **Federal Register**. Certification must be completed by the end of the applicable Assessment Period as specified in the applicable NOFA. A list of organizations with current certifications may be obtained at the offices of the Fund. An Applicant should be aware that if it closes on an Equity Investment or CDFI Support Activity transaction prior to an uncertified CDFI's certification, such transaction may not be considered a Qualified Activity. The uncertified CDFI must qualify as a CDFI at the time of the transaction and must be certified as a CDFI by no later than the end of the applicable Assessment Period in order for the transaction to be deemed a Qualified Activity.

This revised interim rule makes technical amendments and clarifications to several terms. The term Eligible Development Activity is changed to Development and Services Activity. The term Commercial Real Estate Loan is modified to clarify the distinction between Business Loan and Agriculture Loans. The term Community Service is added as a new Development and Service Activity and includes the provision of technical assistance, counseling, and other services. These activities were described as Qualified Activities in Section 1806.201(x) through (xiii) of the interim rule published on October 19, 1995, as heretofore amended on January 23, 1996, February 29, 1996, and November 25, 1996, and must take place within a Distressed Community. The term CDFI Support Activity is added and includes loans, certain deposits, and technical assistance provided to CDFIs integrally involved with a Distressed Community. The term Equity Investment is amended to include all types of grants regardless of use by recipients and the purchase of a partnership or limited liability company membership interest. The term Equity Investment is further clarified to describe various instruments that will be considered to be an Equity Investment including grants made to CDFIs. The Fund finds that grants are commonly used like equity (and often is more favorable) by a recipient CDFI to support its lending, investment, or other activities. Since the large majority of CDFIs are non-profit organizations and the Fund's authorizing statute intended that non-profit CDFIs benefit from its programs, the Fund has determined that it is consistent with the purposes of this Program to consider a grant to be a form of Equity Investment.

Subpart E—Awards

Distressed Community

Section 1806.200 describes the community eligibility and designation process. In the previous rule, an Applicant proposing to make Equity Investments in a CDFI in a Distressed Community was required to designate a Distressed Community (or Communities) at the time of application. In the revised rule, an insured depository institution applying for an award is required to designate a Distressed Community (or Communities) if it proposes to carry out Development and Services Activities and CDFI Support Activities. As a means of reducing the paperwork burden for Applicants, the Fund has eliminated the requirement that an Applicant that proposes to make an Equity Investment designate a Distressed Community at the time of application. In the event that the Fund's resources are oversubscribed, the Fund reserves the right to request that such Applicants provide this information.

The statute mandates that each designated Distressed Community meet certain geographic requirements and distress criteria. Under the geographic requirements, the community must be located within certain boundaries, its boundaries must be contiguous, and its population must meet certain requirements or must be located entirely within an Indian Reservation (as defined in the regulations). The distress criteria require that at least 30 percent of the residents have incomes which are less than the national poverty level and the unemployment rate for the area must be at least 1.5 times the national average (as determined by the Bureau of Labor Statistics" most recent figures). Such criteria are intended to ensure that BEA Program resources are targeted to some of the most Distressed Communities in the nation.

Qualified Activities

In § 1806.201 the activities that Program participants may engage in are categorized as CDFI Related Activities and Development and Service Activities. Development and Service Activities include certain consumer, commercial real estate, single family, multi-family, business and agricultural loans, and Project Investments. Additional Development and Service Activities are deposit taking activities, Financial Service provision, and Community Services. Each of these activities is defined and must serve a Distressed Community. Each Development and Service Activity is assigned a priority factor based on the Fund's assessment of its degree of difficulty, the extent of innovation involved, and the extent of benefits provided to a Distressed Community by the activity. In developing the categories of Development and Service Activities, the Fund sought to minimize recordkeeping and reporting burdens. The CDFI Related Activities include Equity Investments and CDFI Support Activities.

The rule is amended to prohibit an Applicant from receiving an award for activities for which the Applicant may receive a benefit through the Low Income Housing Tax Credit. In no case shall such activities be considered an Equity Investment, Project Investment, or other Qualified Activity for the purpose of calculating an award. The Department of the Treasury is fully supportive of the Low Income Housing Tax Credit (LIHTC) as a critical tool for promoting investment in affordable housing. However, for the purposes of the BEA Program, investments made by an Applicant for which such Applicant receives a benefit through the LIHTC shall not be considered a Qualified Activity for several reasons. First, a well established market already exists for the LIHTC among investors, and the LIHTC provides sufficient returns to such investors that additional Federal subsidy is not necessary to prompt banks or thrifts to become investors in such an instrument. Second, generally in recent years, the LIHTC program has reached its statutorily-imposed limit. Thus, it is not clear that providing additional Federal subsidy through the BEA Program will result in affordable housing in addition to what would occur without such incentive. In the interests of using scarce Federal resources in a more effective manner, the Fund has determined that it is prudent to prohibit activities involving the LIHTC from being counted as Qualified Activities for the purposes of this Program.

Measuring Activities

Section 1806.202 describes the methodology used to measure activities for the purpose of ranking Applications and determining award amounts. All Qualified Activities will be measured by the increases in value of the activities between a retroactive Baseline Period (for which the Applicant will provide historical data) and a prospective Assessment Period (for which the Applicant must project future activity levels). Dates for the Baseline and Assessment Periods will be published in the NOFA for each funding round.

Section 1806.202(d) clarifies that, for the purpose of reporting Qualified Activities occurring during the Baseline Period or the Assessment Period, an Applicant may only report activities on the basis of the date a final "closing" transaction occurred. The rule specifies that the evidence of such a transaction must constitute a legally binding agreement between the Applicant and a borrower or investee which, among other things, specifies the final terms and conditions of the agreement. The rule establishes some limitations on the amount of a transaction that an Applicant may claim of the purpose of calculating an award in the event of a multi-year disbursement. The rule excludes from consideration for an award loan transactions involving a renewal, rollover, or refinancing of a loan made by an Applicant or an affiliate of the Applicant in amounts that are equal to or less than the principal outstanding of such loan at the time of refinancing.

Estimated Award Amounts

In § 1806.203, procedures are established for calculating estimated award amounts. In general, the estimated award amount for Equity Investments, CDFI Support Activities carried out by an Applicant that is not a CDFI, and CDFI Support Activities carried out by an Applicant that is a CDFI will be equal to 15, 11 and 33 percent, respectively, of an Applicant's anticipated increase in such activities. For Development and Service Activities, a seven step procedure is established under which a total score is calculated. Generally, if the Applicant is a CDFI, the total score is multiplied by 15 percent to determine the estimated award. If the Applicant is not a CDFI, the total score is multiplied by five percent.

Selection Process

A selection process is established in § 1806.204 which reflects the funding priorities discussed in the statute. In the event that the amount of funding requests exceeds the amount of funds available, first priority in selection will go to Applications that propose to engage in CDFI Related Activities. Of such Applicants, funding consideration will be given to Applicants in the following order: (1) Applicants proposing to make Equity Investments in CDFIs in Distressed Communities; (2) Applicants proposing to make Equity Investments in CDFIs not in Distressed Communities; and (3) Applicants proposing to engage in CDFI Support Activities. Applicants proposing to make Equity Investments in CDFIs may be ranked based on the extent to which an Applicant proposes to reduce its award below 15 percent, but in no case shall an Applicant reduce its award to less than 12 percent. Ties will be broken using the ratio of proposed Equity Investments to the asset size of the institution. Applicants proposing to engage in CDFI Support Activities will be ranked based on the ratio of the proposed CDFI Support Activity to the asset size of the Applicant. The second priority in selection will go to Applicants proposing to engage in Development and Service Activities. Applications in the last category of funding priorities may be ranked according to the ratio of an Applicant's total score to its asset size. Any ties between such Applicants will be broken using the poverty rates of the Distressed Communities.

Actual Award Amounts

Section 1806.205 establishes the award calculation process. In general, awards will be calculated on a pro-rata basis with respect to the increase in activities actually carried out. In the event that the amount of funds available for a specific funding round are insufficient to cover all estimated award amounts, the Fund, at its sole discretion, may limit the amount of or deny an award to an Applicant that has achieved less than 75 percent of its projected activities. This provision is intended to prevent Applicants from over-estimating projected activities to enhance their competitiveness in the selection process.

Application Process

Section 1806.206 describes the Application process for Bank Enterprise Awards. Each funding round will be preceded by a NOFA published in the **Federal Register**. The NOFA will contain specific information on requirements or restrictions applicable to such round. As indicated above, the Fund has sought to minimize its application and reporting requirements and seeks comment on how these requirements might be improved.

Subpart F—Terms and Conditions of Assistance

Section 1806.300 requires that each Awardee execute an award agreement with the Fund. The agreement will establish requirements for receiving funds and appropriate sanctions for failure to comply with Program requirements. Section 1806.301 specifies that, at the end of the Assessment Period, each Awardee will submit evidence of its completed activities. The rule clarifies the Program's documentation requirements. Upon receipt of final reports and documentation, the Fund will make the appropriate disbursement of funds to the Awardee.

List of Subjects in 12 CFR Part 1806

Banks, banking, Community development, Grant programs—housing and community development, Reporting and recordkeeping requirements, Savings associations.

Dated: March 4, 1997.

Kirsten S. Moy,

Director, Community Development Financial Institutions Fund.

For the reasons set forth in the preamble, chapter XVIII of title 12 of the Code of Federal Regulations is amended by revising part 1806 to read as follows:

PART 1806—BANK ENTERPRISE AWARD PROGRAM

Subpart A—General Provisions

Sec.

1806.100 Purpose.
1806.101 Summary.
1806.102 Relationship to the Community Development Financial Institutions Program.
1806.103 Definitions.
1806.104 Waiver authority.
1806.105 OMB control number.

Subpart B—Awards

1806.200 Community eligibility and designation.
1806.201 Qualified Activities.
1806.202 Measuring activities.
1806.203 Estimated award amounts.
1806.204 Selection process.
1806.205 Actual award amounts.
1806.206 Applications for Bank Enterprise Awards.

Subpart C—Terms and Conditions of Assistance

1806.300 Award Agreement; sanctions.
1806.301 Records, reports and audits of Awardees.
1806.302 Compliance with government requirements.
1806.303 Fraud, waste and abuse.
1806.304 Books of account, records and government access.
1806.305 Retention of records.

Authority: 12 U.S.C. 4703, 4717; chapter X, Pub. L. 104–19, 108 Stat. 237 (12 U.S.C. 4703 note).

Subpart A—General Provisions

§ 1806.100 Purpose.

The purpose of the Bank Enterprise Award Program is to encourage insured depository institutions to make Equity Investments and carry out CDFI Support Activities and Development and Service Activities to revitalize distressed urban and rural communities.

§ 1806.101 Summary.

(a) Under the Bank Enterprise Awards Program, the Fund makes awards to selected Applicants that:

(1) Invest in or otherwise support Community Development Financial Institutions;

(2) Increase lending and investment activities within Distressed Communities; or

(3) Increase the provision of certain services and assistance.

(b) Distressed Communities must meet minimum poverty and unemployment criteria. Applicants are selected to participate in the program through a competitive application process. Awards are based on increases in Qualified Activities that are carried out by the Applicant during an Assessment Period. Bank Enterprise Awards are distributed after successful completion of projected Qualified Activities. All awards shall be made subject to the availability of funding.

§ 1806.102 Relationship to the Community Development Financial Institutions Program.

(a) *Prohibition against double funding.* No CDFI may receive a Bank Enterprise Award if it has:

(1) An application pending for assistance under the Community Development Financial Institutions Program (part 1805 of this chapter);

(2) Received assistance from the Community Development Financial Institutions Program within the preceding 12-month period; or

(3) Ever received assistance under the Community Development Financial Institutions Program for the same activities for which it is seeking a Bank Enterprise Award.

(b) *Matching funds.* Equity Investments and CDFI Support Activities (except technical assistance) provided to a CDFI under this part can be used by the CDFI to meet the matching funds requirements of the Community Development Financial Institutions Program.

§ 1806.103 Definitions.

For the purpose of this part:

(a) *Act* means the Community Development Banking and Financial Institutions Act of 1994, as amended (12 U.S.C. 4701 et seq.);

(b) *Agricultural Loan* means an origination of a loan secured by farm land (including farm residential and other improvements), a loan to finance agricultural production, or a loan to a farmer (other than a Single Family Loan or Consumer Loan);

(c) *Applicant* means any insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813)) that is applying for a Bank Enterprise Award;

(d) *Appropriate Federal Banking Agency* has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(e) *Assessment Period* means an annual or semi-annual period specified in the applicable Notice of Funds Availability (NOFA) in which an Applicant will carry out Qualified Activities;

(f) *Award Agreement* means a formal agreement between the Fund and an Awardee pursuant to § 1806.300;

(g) *Awardee* means an Applicant selected by the Fund to receive a Bank Enterprise Award;

(h) *Bank Enterprise Award* means an award made to an Applicant pursuant to this part;

(i) *Bank Enterprise Award Program* means the program authorized by section 114 of the Act and implemented under this part;

(j) *Baseline Period* means an annual or semi-annual period specified in the applicable NOFA in which an Applicant has previously carried out Qualified Activities;

(k) *Business Loan* means an origination of a loan used for commercial or industrial activities (other than an Agricultural Loan, Commercial Real Estate Loan, Multi-Family Loan or Single Family Loan);

(l) *Commercial Real Estate Loan* means an origination of a loan (other than a Multi-Family Loan or a Single Family Loan) used for commercial purposes to finance construction and land development or an origination of a loan that is secured by real estate and used to finance the acquisition or rehabilitation of a building used for commercial purposes;

(m) *Community Development Financial Institution* (or CDFI) means an entity whose certification as a CDFI under § 1805.201 of this chapter is in effect as of the end of the applicable Assessment Period (the Assessment Period in which the Qualified Activity takes place) and that meets the requirements of § 1805.200 (b) through (h) of this chapter at the time of the Qualified Activity, subject to the rest of this paragraph (m). If an Applicant is proposing to make an Equity Investment or engage in CDFI Support Activities with an uncertified CDFI, the uncertified CDFI may apply for certification by submitting the information described in § 1805.701(b) of this chapter. In order for the Applicant to be eligible to receive an award for its activity, the required information with respect to the uncertified CDFI shall be submitted to the Fund as specified in the applicable NOFA published in the **Federal Register**, and certification must be completed by the end of the applicable Assessment Period as specified in the applicable NOFA. Notwithstanding anything in this paragraph (m) to the contrary, an Applicant may receive an award pursuant to this part for assistance provided to an uncertified CDFI that, at the time of the Qualified Activity, does not meet the requirements of § 1805.200 (b) through (h) of this chapter if:

(1) The Applicant requires the uncertified CDFI to refrain from using the assistance provided until the entity is certified;

(2) The uncertified CDFI is certified by the end of the applicable Assessment Period; and

(3) The Applicant retains the option of recapturing said assistance in the event that the uncertified CDFI is not certified by the end of the applicable Assessment Period;

(n) *CDFI Related Activities* means Equity Investments and CDFI Support Activities;

(o) *CDFI Support Activity* means assistance provided by an Applicant or its Subsidiary to a CDFI that is integrally involved in a Distressed Community in the form of the origination of a loan, technical assistance, or deposits if such deposits are:

(1) Uninsured and committed for a term of at least three years; or

(2) Insured, committed for a term of at least three years, and provided at an interest rate that is materially (in the determination of the Fund) below market rates;

(p) *Community Services* means the following forms of assistance:

(1) Provision of technical assistance to Residents in managing their personal finances through consumer education programs (either sponsored or offered by the Applicant);

(2) Provision of technical assistance and consulting services to newly formed small businesses located in the Distressed Community;

(3) Provision of technical assistance to, or servicing the loans of, Low-or Moderate-Income homeowners and homeowners located in the Distressed Community; and

(4) Other services provided for Low- and Moderate-Income persons in a Distressed Community or enterprises integrally involved in a Distressed Community deemed appropriate by the Fund;

(q) *Consumer Loan* means an origination of a loan to one or more individuals for household, family, or other personal expenditures;

(r) *Distressed Community means* a geographic community which meets the minimum area eligibility requirements specified in § 1806.200;

(s) *Development and Service Activities means* activities described in § 1806.201(b)(4) that are carried out by the Applicant or its Subsidiary;

(t) *Equity Investment means* financial assistance provided by an Applicant or its Subsidiary to a CDFI in the form of a grant, a stock purchase, a purchase of a partnership interest, a purchase of a limited liability company membership interest, a loan made on such terms that it has characteristics of equity (and is considered as such by the Fund and is consistent with requirements of the Applicant's Appropriate Federal Banking Agency), or any other investment deemed to be an Equity Investment by the Fund;

(u) *Financial Services means* check-cashing, providing money orders and certified checks, automated teller machines, safe deposit boxes, and other comparable services as may be specified by the Fund that are provided to Low- and Moderate-Income persons in the Distressed Community or enterprises integrally involved with the Distressed Community;

(v) *Fund* means the Community Development Financial Institutions Fund established under section 104(a) of the Act (12 U.S.C. 4703(a));

(w) *Geographic Units* means counties (or equivalent areas), incorporated places, minor civil divisions that are units of local government, census tracts, block numbering areas, block groups, and American Indian or Alaska Native areas (as each is defined by the U.S.

Bureau of the Census) or other areas deemed appropriate by the Fund;

(x) *Indian Reservation* means a geographic area that meets the requirements of section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)), and shall include land held by incorporated Native groups, regional corporations, and village corporations, as defined in and pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), public domain Indian allotments, and former Indian Reservations in the State of Oklahoma;

(y) *Low-and Moderate-Income* means income that does not exceed 80 percent of the median income of the area involved, as determined by the Secretary of Housing and Urban Development with adjustments for smaller and larger families pursuant to section 102(a)(20) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(20));

(z) *Metropolitan Area* means an area designated as such (as of the date of the application) by the Office of Management and Budget pursuant to 44 U.S.C. 3504(d)(3), 31 U.S.C. 1104(d), and Executive Order 10253 (3 CFR, 1949–1953 Comp., p. 758), as amended;

(aa) *Multi-Family Loan* means an origination of a loan secured by a five- or more family residential property;

(bb) *Project Investment* means providing financial assistance in the form of a purchase of stock, limited partnership interest, other ownership instrument, or a grant to an entity that is integrally involved with a Distressed Community and formed for the sole purpose of engaging in a project or activity, approved by the Fund, related to commercial real estate, single family housing, multi-family housing, business or agriculture (as defined in this part);

(cc) *Qualified Activities* means CDFI Related Activities and Development and Service Activities;

(dd) *Resident* means an individual domiciled in a Distressed Community;

(ee) *Single Family Loan* means an origination of a loan secured by a one-to-four family residential property;

(ff) *Subsidiary* has the same meaning as in section 3 of the Federal Deposit Insurance Act, except that a CDFI shall not be considered a subsidiary of any insured depository institution or any depository institution holding company that controls less than 25 percent of any class of the voting shares of such corporation and does not otherwise control, in any manner, the election of a majority of directors of the corporation; and

(gg) *Unit of General Local Government means* any city, county, town, township, parish, village, or other general purpose political subdivision of a State or Commonwealth of the United States, or general purpose subdivision thereof, and the District of Columbia.

§ 1806.104 Waiver authority.

The Fund may waive any requirement of this part that is not required by law, upon a determination of good cause. Each such waiver shall be in writing and supported by a statement of the facts and grounds forming the basis of the waiver. For a waiver in any individual case, the Fund must determine that application of the requirement to be waived would adversely affect the achievement of the purposes of the Act. For waivers of general applicability, the Fund will publish notification of granted waivers in the **Federal Register**.

§ 1806.105 OMB control number.

The collection of information requirements in this part have been approved by the Office of Management and Budget and assigned OMB control number 1505–0153 (expires September 30, 1998).

Subpart B—Awards

§ 1806.200 Community eligibility and designation.

(a) *General.* If an Applicant proposes to carry out CDFI Support Activities or Development and Service Activities, the Applicant shall designate one or more Distressed Communities in which it proposes to carry out those activities. If an Applicant proposes to carry out CDFI Support Activities, the Applicant shall provide evidence that the CDFI it is proposing to support is integrally involved with such a Distressed Community. In the case of an Applicant proposing to make an Equity Investment, the Fund reserves the right to request information on Distressed Communities served by such a CDFI should such information be deemed necessary by the Fund to complete the selection process described in § 1806.204. In the case of an Applicant that proposes to carry out both CDFI Support Activities and Development and Service Activities it may designate different Distressed Communities for these two categories of activity.

(b) *Minimum area eligibility requirements.* A Distressed Community must meet the minimum area eligibility requirements contained in this paragraph (b).

(1) *Geographic requirements.* A Distressed Community must be a geographic area:

(i) That is located within the boundaries of a Unit of General Local Government;

(ii) The boundaries of which are contiguous; and

(iii) (A) The population of which must be at least 4,000 if any portion of the area is located within a Metropolitan Area with a population of 50,000 or greater;

(B) The population must be at least 1,000 if no portion of the area is located within such a Metropolitan Area; or

(C) The area is located entirely within an Indian Reservation.

(2) *Distress requirements.* A Distressed Community must be a geographic area where:

(i) At least 30 percent of the Residents have incomes which are less than the national poverty level, as published by the U.S. Bureau of the Census in the 1990 decennial census; and

(ii) The unemployment rate is at least 1.5 times greater than the national average, as determined by the U.S. Bureau of Labor Statistics' most recent data including estimates of unemployment developed using the U.S. Bureau of Labor Statistics' Census Share calculation method. U.S. Bureau of Labor Statistics data and information necessary for Census Share calculations may be obtained from the Fund.

(c) *Area designation.* An Applicant shall designate an area as a Distressed Community by:

(1) Selecting Geographic Units which individually meet the minimum area eligibility requirements; or

(2) Selecting two or more Geographic Units which, in the aggregate, meet the minimum area eligibility requirements set forth in paragraph (b) of this section provided that no Geographic Unit selected by the Applicant within the area has a poverty rate of less than 20 percent.

(d) *Designation and notification process.* Upon request, the Fund will provide a prospective Applicant with data and other information to help it identify areas eligible to be a Distressed Community. A prospective Applicant is encouraged to contact the Fund prior to filing an application to determine if an area meets the minimum area eligibility requirements.

§ 1806.201 Qualified Activities.

(a) *CDFI Related Activities.* An Applicant may receive a Bank Enterprise Award for making an Equity Investment or carrying out CDFI Support Activities during an Assessment Period.

(b) *Development and Service Activities.* (1) *General.* An Applicant may receive a Bank Enterprise Award for carrying out Development and Service Activities during an Assessment Period.

(2) *Area served.* The Development and Service Activities listed in paragraphs (b)(4) (i) through (x) of this section must serve a Distressed Community. An activity is considered to serve a Distressed Community if it is:

(i) Undertaken in the Distressed Community; or

(ii) Provided to Low- and Moderate-Income Residents or enterprises integrally involved in the Distressed Community.

(3) *Priority factors.* Each Development and Service Activity is assigned a priority factor. A priority factor represents the Fund's assessment of the degree of difficulty, the extent of innovation, and the extent of benefits accruing to the Distressed Community for each type of activity.

(4) *Development and Service Activities.* Development and Service Activities are listed in this paragraph with their corresponding priority factors:

(i) Deposit liabilities in the form of savings or other demand or time accounts accepted from Residents at offices located within the Distressed Community (priority factor = 1.0);

(ii) Financial Services (priority factor = 1.2);

(iii) Community Services (priority factor = 1.4);

(iv) Consumer Loans (priority factor = 1.2);

(v) Single Family Loans and related Project Investments (priority factor = 1.4);

(vi) Multi-Family Loans and related Project Investments (priority factor = 1.6);

(vii) Commercial Real Estate Loans and related Project Investments (priority factor = 1.6);

(viii) Business Loans, Agricultural Loans, and related Project Investments of $100,000 or less (priority factor = 1.9);

(ix) Business Loans, Agricultural Loans, and related Project Investments of more than $100,000 through $250,000 (priority factor = 1.8);

(x) Business Loans and related Project Investments of more than $250,000 through $1,000,000 and Agricultural Loans and related Project Investments of more than $250,000 through $500,000 (priority factor = 1.7).

(c) *Limitation.* Financial assistance provided by an Applicant for which the Applicant receives benefits through the Low Income Housing Tax Credit authorized pursuant to Section 42 of the Internal Revenue Code of 1986, as amended (26 U.S.C. 42), shall not constitute an Equity Investment, Project Investment, or other Qualified Activity, as defined in this part, for the purposes of calculating or receiving an award.

§ 1806.202 Measuring activities.

(a) *General.* Qualified Activities shall be measured by comparing the Qualified Activities carried out during the Baseline Period with the Qualified Activities projected to be carried out during the Assessment Period. Increases in the values of Qualified Activities between the Baseline Period and Assessment Period will be used in determining award amounts. If an Applicant is seeking assistance only for CDFI Related Activities, it should only report its activities for CDFI Related Activities categories. If an Applicant is seeking assistance only for Development and Service Activities, it should only report its activities for Development and Service Activities categories. If An Applicant is seeking assistance for both CDFI Related Activities and Development and Service Activities, it should report its activities for both types of categories. If an applicant is unable to report its activities in the aforementioned manner, the Applicant shall provide an explanation satisfactory to the Fund as to why it cannot report required information and simultaneously submit to the Fund a certification that during the Assessment Period the Applicant did not reduce its total activity in any unreported categories. The form and content of any certification shall be determined by the Fund. The dates of the Baseline Period and Assessment Period will be published in a Notice for each funding round.

(b) *Exception.* An Applicant may select not to report its deposit liabilities as described in § 1806.201(b)(4)(i). In such a case, an Applicant's deposit liabilities will not be considered in calculating the service score pursuant to § 1806.203(c).

(c) *Value.* The Fund will assess the value of:

(1) Equity Investments, loans (excluding any renewal, roll over, or refinancing of a loan made by the Applicant or an affiliate of the Applicant in an amount equal to or less than the principal outstanding of such loan at the time of refinancing), grants and deposits described in § 1806.103 at the original amount of such investments, loans, grants or deposits;

(2) Deposit liabilities at the face dollar amount of monies deposited as measured by comparing the net change in the amount of applicable funds (as described in § 1806.201(b)(4)(i)) on deposit at the Applicant institution during the period described in this paragraph (c)(2). An Applicant shall measure the net changes in deposit liabilities during:

(i) The Baseline Period, by comparing the amount of applicable funds on deposit at the close of business the day before the beginning of the Baseline Period and at the close of business on the last day of the Baseline Period; and

(ii) The Assessment Period, by comparing the amount of applicable funds on deposit at the close of business the day before the beginning of the Assessment Period and at the close of business on the last day of the Assessment Period;

(3) Financial Services, Community Services, and CDFI Support Activities consisting of technical assistance based on the administrative costs of providing such services; and

(4) Project Investments at the original amount of the purchase of stock, limited partnership interest, other ownership interest, or grant.

(d) *Closed Transactions.* A transaction shall be considered to have been carried out during the Baseline Period or the Assessment Period if:

(1) The documentation evidencing the transaction:

(i) Is executed on a date within the applicable Baseline Period or Assessment Period, respectively, as specified in the applicable NOFA; and

(ii) Constitutes a legally binding agreement between the Applicant and a borrower or investee which specifies the final terms and conditions of the transaction, except that any contingencies included in the final agreement must be typical of such transaction and acceptable (both in the judgment of the Fund); and

(2) An initial disbursement of loan or investment proceeds has occurred in a manner that is consistent with customary business practices and is reasonable given the nature of the transaction, (both as determined by the Fund).

(e) *Reporting.* An Applicant shall report Qualified Activities on the basis of transactions that were:

(1) Completed during the Baseline Period; and

(2) Are expected to be completed during the Assessment Period and disbursed by the Applicant to a borrower or investee within the period described in § 1806.205(a).

§ 1806.203 Estimated award amounts.

Award amounts will be determined at the sole discretion of the Fund and estimated as described in this section.

(a) *Equity Investments.* The estimated award amount for an Equity Investment

will be equal to 15 percent (or such estimated award amounts, an Awardee Activities but insufficient for all

use any deobligated funds or funds not (3) A narrative summary of each The Award Agreement shall provide

will be equal to 15 percent (or such lower percentage as may be requested by the Applicant) of the anticipated increase in the value of such investment between the Baseline Period and Assessment Period.

(b) *CDFI Support Activities.* If an Applicant is not a CDFI, the estimated award amount for CDFI Support Activities will be equal to 11 percent of the anticipated increase in the dollar amount of such support between the Baseline Period and Assessment Period. If Applicant is a CDFI, the estimated award amount for CDFI Support Activities will be equal to 33 percent of the anticipated increase in the dollar amount of such support between the Baseline Period and Assessment Period.

(c) *Development and Service Activities.* The estimated award amount for Development and Service Activities will be calculated as follows:

(1) *Step 1.* For each type of Development and Service Activity, subtract the value in the Baseline Period from the estimated value for the Assessment Period to yield a remainder;

(2) *Step 2.* Multiply the remainder for each Development and Service Activity by the assigned priority factor to yield a weighted value for each activity;

(3) *Step 3.* Add the weighted values for deposit liabilities and Financial Services to yield a service score;

(4) *Step 4.* Add the weighted values for all other categories of Development and Service Activities to yield a development score. If the development score is negative, an Applicant will be ineligible to receive a Bank Enterprise Award. If the development score is positive, go to Step 5;

(5) *Step 5.* If the service score is greater than the development score, reduce the service score to equal the same amount as the development score to yield an adjusted service score. (The Act prohibits an Applicant from receiving more assistance for its deposit taking activities than for other Qualified Activities.);

(6) *Step 6.* Add the service score (or adjusted service score if applicable) and the development score to yield a total score; and

(7) *Step 7.* If the Applicant is:

(i) A CDFI, multiply the total score by 15 percent to yield an estimated award amount; or

(ii) Not a CDFI, multiply the total score by 5 percent to yield an estimated award amount.

§ 1806.204 Selection process.

(a) *Availability of funds.* All awards are subject to the availability of funds. If the amount of funds available during a funding round is sufficient for all estimated award amounts, an Awardee that meets all of the program requirements specified in this part shall receive an award that is calculated in the manner specified in § 1806.205. If the amount of funds available during a funding round is insufficient for all estimated award amounts, Awardees will be selected based on the process described in this section.

(b) *Priority of categories.*—(1) *General.* The Fund will rank an Applicant's estimated award amount for Qualified Activities according to the priority categories described in this paragraph. All Applicants in the first priority category will be selected as Awardees before Applicants in the second priority category. Selections within each priority category will be based on the relative rankings within each such category, subject to the availability of funds.

(2) *First priority.* (i) If the amount of funds available during a funding round is insufficient for all estimated award amounts, first priority will be given to Applicants that propose to engage in CDFI Related Activities in the following order:

(A) Equity Investments in CDFIs serving Distressed Communities;

(B) Equity Investments in CDFIs not serving Distressed Communities; and

(C) CDFI Support Activities.

(ii) *Ranking Equity Investments.* Estimated awards for Equity Investments may be ranked within each applicable priority subcategory based on the extent to which an Applicant proposes to reduce the percentage used to calculate its award amount (e.g., an Applicant that chooses to reduce its award to 13 percent will be ranked higher than an Applicant that reduces its award to 14 percent). The Applicant, however, may not reduce its award percentage below 12 percent. For Applicants that propose the same percentage, estimated awards will be ranked by the ratio of the proposed Equity Investment to the asset size of the Applicant (as reported in the Applicant's most recent Report of Condition or Thrift Financial Report) at the time of submission of an application.

(iii) *Ranking CDFI Support Activities.* Estimated awards for CDFI Support Activities may be ranked based on the ratio of the proposed CDFI Support Activity to the asset size of the Applicant (as reported in the Applicant's most recent Report of Condition or Thrift Financial Report) at the time of submission of an application.

(3) *Second priority.* (i) If the amount of funds available during a funding round is sufficient for all CDFI Related Activities but insufficient for all estimated award amounts, second priority will go to Applicants that propose to engage in Development and Service Activities.

(ii) *Ranking Development and Service Activities.* Estimated awards for Development and Service Activities may be ranked by the ratio of the total score to the asset size of the Applicant (as reported in the Applicant's most recent Report of Condition or Thrift Financial Report) at the time of the submission of an application. If the ratios of two Applicants are the same, the estimated awards will be ranked based on the degree of the poverty of each Applicant's Distressed Community.

(4) *Combined awards.* If an Applicant receives an award for more than one priority category described in this section, the award amounts will be combined into a single Bank Enterprise Award.

§ 1806.205 Actual award amounts.

(a) *General.* The Fund will assess an Applicant's success in achieving the Qualified Activities projected in its application. The extent of such success will be measured based on the activities that were actually carried out during the Assessment Period and expected to be disbursed to an investee, borrower, or other recipient within three years of the end of the applicable Assessment Period. The Fund reserves the right to extend this period on a case-by-case basis where it has a high degree of confidence that disbursement will occur and the activity will promote the purposes of the Act. Subject to § 1806.204 and any recapture sanction for failure to perform pursuant to this part, the actual award amount that an Awardee shall receive will be equal to the estimated award previously calculated and (if necessary) adjusted pursuant to this section.

(b) *Achievement.* If an Awardee carries out all or a portion of its projected Qualified Activities and satisfies all program requirements described in this part, its award amount will be calculated on a pro-rata basis to reflect the increase in activities actually carried out except that if:

(1) The amount of funds available is insufficient for all estimated award amounts; and

(2) An Applicant carries out less than 75 percent of its projected Qualified Activities, the Fund in its sole discretion, may limit the amount or deny an award.

(c) *Unobligated or deobligated funds.* The Fund, in its sole discretion, may use any deobligated funds or funds not obligated during a funding round:

(1) Using the calculation and selection process contained in this part:

(i) To increase an award amount of an Awardee for achievement in excess of the projected Qualified Activities; or

(ii) To select Applicants not previously selected;

(2) To make additional monies available for a subsequent funding round; or

(3) As otherwise authorized by the Act.

(d) *Limitation.* The Fund, in its sole discretion, may deny or limit the amount of an award for any reason, including if an Awardee submits an application based on unrealistic Assessment Period projections.

§ 1806.206 Applications for Bank Enterprise Awards.

(a) *Notice of Funds Availability.* An Applicant shall submit an application for a Bank Enterprise Award in accordance with this section and the applicable NOFA published by the Fund in the **Federal Register**. The NOFA will advise potential Applicants with respect to obtaining an application packet and will establish submission deadlines. The NOFA also will establish any other requirements or restrictions applicable for the funding round including any restrictions on award amounts. After receipt of an application, the Fund may request clarifying or technical information on materials submitted as part of such application.

(b) *Application contents.* Each application must contain the information required in the application packet, which includes:

(1) A copy of the Applicant's certificate of insurance issued by the Federal Deposit Insurance Corporation and a copy of the Applicant's incorporation, charter, organizing, formation, or otherwise establishing documents to be used to establish eligibility for an award;

(2) A completed Bank Enterprise Award Rating and Calculations worksheet (If an Applicant intends to complete a merger with another institution during the Assessment Period, it shall submit a separate Baseline Period worksheet for each subject institution and one Assessment Period worksheet that represents the projected activities of the merged institutions. If such a merger is unexpectedly delayed beyond the Assessment Period, the Fund reserves the right to withhold distribution of an award until the merger has been completed.);

(3) A narrative summary of each Qualified Activity expected to be performed in the Assessment Period;

(4) The asset size of the Applicant, as reported in its most recent Report of Condition or Thrift Financial Report, to its Appropriate Federal Banking Agency;

(5) Information necessary for the Fund to complete its environmental review requirements pursuant to part 1815 of this chapter;

(6) Certifications that the Applicant will comply with all relevant provisions of this chapter and all applicable Federal, State, and local laws, ordinances, regulations, policies, guidelines, and requirements;

(7) A copy of the Applicant's most recent annual report;

(8) In the case of an Applicant proposing to engage in Development and Service Activities, a completed Distressed Community Designation worksheet and a map and narrative description of the Distressed Community;

(9) In the case of an Applicant proposing to engage in CDFI Related Activities:

(i) *Equity Investment.* An Applicant shall submit:

(A) A narrative description of each CDFI in which the Applicant proposes to make an Equity Investment and a description of the amount, terms and conditions of any Equity Investment to be provided; or

(B) A list of potential CDFIs to which assistance may be provided and a description of the Applicant's investment criteria.

(ii) *CDFI Support Activities.* An Applicant shall submit:

(A) A narrative description of each CDFI to which the Applicant proposes to provide CDFI Support Activities and a description of the amount, terms and conditions of the assistance to be provided; or

(B) A list of potential CDFIs to which assistance may be provided and a description of the Applicant's lending or selection criteria; and

(C) Information that indicates that each CDFI to which a Applicant proposes to provide CDFI Support Activities is integrally involved with a Distressed Community and a map and narrative description of the Distressed Community.

Subpart C—Terms and Conditions of Assistance

§ 1806.300 Award Agreement; sanctions.

(a) *General.* After the Fund selects an Awardee, the Fund and the Awardee will enter into an Award Agreement. The Award Agreement shall provide that an Awardee shall:

(1) Carry out its Qualified Activities in accordance with applicable law, the approved application, and all other applicable requirements;

(2) Comply with such other terms and conditions (including record keeping and reporting requirements) that the Fund may establish; and

(3) Not receive any monies until the Fund has determined that the Awardee has fulfilled all applicable requirements.

(b) *Sanctions.* In the event of any fraud, misrepresentation, or noncompliance with the terms of the Award Agreement by the Awardee, the Fund may terminate, reduce, or recapture the Award and pursue any other available legal remedies.

(c) *Notice.* Prior to imposing any sanctions pursuant to this section or an Award Agreement, the Fund shall, to the maximum extent practicable, provide the Awardee with written notice of the proposed sanction and an opportunity to comment. Nothing in this section, however, shall provide an Awardee with the right to any formal or informal hearing or comparable proceeding not otherwise required by law.

§ 1806.301 Records, reports and audits of Awardees.

(a) At the end of an Assessment Period, each Awardee shall submit to the Fund:

(1) *Worksheet.* A Bank Enterprise Award worksheet that reports the Qualified Activities actually carried out during the Assessment Period;

(2) *Certification.* A certification that the information provided to the Fund is true and accurately reflects the Qualified Activities carried out during an Assessment Period; and

(3) *Documentation.* The Applicant shall make available the following:

(i) With respect to Equity Investments and CDFI Support Activities, the Applicant shall submit documentation that meets the conditions described in § 1806.202(d);

(ii) With respect to Development and Services Activities where the original amount of the value of the activity is $250,000 or greater, the Applicant shall submit documentation that meets the conditions described in § 1806.202(d);

(iii) With respect to Development and Services Activities where the original amount of the value of the activity is less than $250,000, the Applicant shall submit a schedule that describes the original amount, census tract served, and the dates of execution, initial disbursement, and final disbursement of the instrument; and

(iv) Any other information reasonably requested by the Fund in order to document or otherwise assess the validity of information provided by the Applicant to the Fund.

§ 1806.302 Compliance with government requirements.

In carrying out its responsibilities pursuant to an Award Agreement, the Awardee shall comply with all applicable Federal, State, and local laws, regulations and ordinances, OMB Circulars, and Executive Orders.

§ 1806.303 Fraud, waste and abuse.

Any person who becomes aware of the existence or apparent existence of fraud, waste, or abuse of assistance provided under this part should report such incidences to the Office of Inspector General of the U.S. Department of the Treasury.

§ 1806.304 Books of account, records and government access.

An Awardee shall submit such financial and activity reports, records, statements, and documents at such times, in such forms, and accompanied by such supporting data, as required by the Fund and the U.S. Department of the Treasury to ensure compliance with the requirements of this part. The United States Government, including the U.S. Department of the Treasury, the Comptroller General, and its duly authorized representatives, shall have full and free access to the Awardee's offices and facilities, and all books, documents, records, and financial statements relevant to the award of the Federal funds and may copy such documents as they deem appropriate.

§ 1806.305 Retention of records.

An Awardee shall comply with all record retention requirements as set forth in OMB Circular A–110 (as applicable). This circular may be obtained from Office of Administration, Publications Office, 725 17th Street, NW., Room 2200, New Executive Office Building, Washington, DC 20503.

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DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Funds Availability (NOFA) Inviting Applications for the Bank Enterprise Awards (BEA) Program

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of Funds Availability (NOFA) inviting applications.

SUMMARY: The Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 et seq.) authorizes the Community Development Financial Institutions Fund (hereafter referred to as "the Fund") to provide a reward to insured depository institutions for the purpose of promoting investments in or other support to Community Development Financial Institutions ("CDFIs") and facilitating increased lending and provision of financial and other services in economically distressed communities. Insured depository institutions and CDFIs are defined terms in an interim rule (12 CFR part 1806) published elsewhere in this issue of the **Federal Register**. The Fund reserves the right to award funds under this Notice up to the maximum amount authorized by law. As of the date of this Notice and subject to funding availability, the Fund intends to award up to $16.25 million in Bank Enterprise Award (BEA) Program funds. The Fund reserves the right to award in excess of $16.25 million if it deems it appropriate. The BEA Program shall be subject to the revised interim rule. The revised interim rule establishes the Program requirements.

DATES: Applications may be submitted at any time after March 7, 1997. The deadline for receipt of an application is 6 p.m. Eastern Standard Time on Friday, April 25, 1997. Applications received after that date and time will not be accepted and will be returned to the sender. Any entity seeking certification as a Community Development Financial Institution (as defined in 12 CFR 1805.200) for the purposes of 12 CFR part 1806 are strongly encouraged to submit the materials described in 12 CFR 1805.701(b) by Friday, April 25, 1997. If such an entity fails to submit such materials by this deadline, the Fund cannot guarantee that it will have sufficient time to complete a certification review for the purposes of the current funding round of the BEA Program. In addition, with respect to all requests for certification, the Fund reserves the right to request clarifying or technical information after reviewing materials submitted as described in 12 CFR 1805.701(b). If the entity seeking certification does not respond to such requests in a timely manner, the Fund cannot guarantee that it will have sufficient time to complete a certification review for the purposes of the current funding round of the BEA program.

ADDRESSES: Applications must be sent to: The Community Development Financial Institutions Fund, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington DC 20220. Applications sent by FAX will not be accepted.

FOR FURTHER INFORMATION CONTACT: The Community Development Financial Institutions Fund, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington DC 20220, (202) 622–8662. (This is not a toll free number.) To request an application packet, please send by facsimile a written request to (202) 622–2599. Such request must include the name of the requester, organization, mailing address, phone number, and facsimile number. Questions about the BEA regulation, this Notice and the application can also be sent by facsimile to (202) 622–2599. (Please note that this facsimile number has been established for the purpose of accepting application requests and questions.)

SUPPLEMENTARY INFORMATION:

I. Background

As part of a national strategy to facilitate revitalization and increased availability of credit and investment capital in distressed communities, the Community Development Banking and Financial Institutions Act of 1994 authorizes a portion of funds appropriated to the Fund to be made available for distribution through the BEA Program. The BEA Program is largely based on the Bank Enterprise Act of 1991 although Congress significantly amended the program to facilitate greater coordination with other activities of the Fund. The BEA Program and the Community Development Financial Institutions Program (12 CFR part 1805) are intended to be complementary initiatives that support a wide range of community development activities and facilitate partnerships between traditional lenders and CDFIs. This Notice invites applications from insured depository institutions for the purpose of promoting community development activities and revitalization.

II. Eligibility

The Act specifies that eligible applicants must be insured depository institutions as defined under section (3)(c)(2) of the Federal Deposit Insurance Act.

III. Designation Factors

The revised interim rule published separately in this issue of the **Federal Register** (12 CFR part 1806) describes the process for selecting applicants to receive assistance and for determining award amounts. The rating and selection process will give priority to applicants in the following order: Equity Investments in CDFIs in Distressed Communities, Equity Investment in CDFIs not serving Distressed Communities, CDFI Support Activities, and Development and Services Activities (as such activities are defined in the revised interim rule). Assistance amounts will be calculated based on increases in Qualified Activities that occur during a 6-month Assessment Period in excess of activities that occurred during a 6-month Baseline Period. In general, estimated award amounts for applicants making equity investments in CDFIs will be equal to 15 percent of the anticipated increase in such activities. An applicant may choose to accept less than the maximum amount of assistance in order to increase the ranking of its application. Estimated award amounts for CDFI applicants for carrying out CDFI Support Activities will be equal to 33 percent of the anticipated increase in such activities. Estimated award amounts for non-CDFI applicants for carrying out CDFI Support Activities will be equal to 11 percent of the anticipated increase in such activities. The revised interim rule establishes the ranking and selection process. For an applicant pursuing Development and Service Activities, a multi-step procedure is outlined in the interim rule that will be used to calculate the estimated award amount. In general, if an applicant is a CDFI, such estimated award amount will be equal to 15 percent of the total score calculated in the multi-step procedure. If an applicant is not a CDFI, such estimated award amount will be equal to 5 percent of the total score calculated in the multi-step procedure. In ranking and funding such applicants, the Fund will take into consideration the total score, the asset size of the applicant, and other relevant factors. The Fund, in its sole discretion, may adjust the estimated award amount that an applicant may receive prior to the end of the Assessment Period. The Fund may, in its sole discretion,

establish any limitations on the maximum amount that may be awarded to an applicant. The Fund reserves the right to limit the amount of an award to any Awardee if deemed appropriate.

IV. Baseline Period and Assessment Period Dates

As part of its application, an applicant shall report the Qualified Activities that it actually carried out during a 6-month Baseline Period. Such Baseline Period will begin on January 1, 1996, and end on June 30, 1996. An applicant shall also project the Qualified Activities that it expects to carry out during a 6-month Assessment Period. Such Assessment Period will begin on March 1, 1997, and end on August 31, 1997. Applicants selected to participate in the program during the Assessment Period will be required to report the Qualified Activities that it actually carried out during the Assessment Period. Applicants will be required to submit their end of the Assessment Period report by Monday, September 8, 1997. If applicants do not have final activity numbers for the month ending August 31, 1997, by the reporting deadline, they may submit an estimate for the month of August with actual activity data for the months of March through July 1997. In such a circumstance, the applicant must submit its actual activities for the month of August 1997, not later than September 15, 1997. The Fund will evaluate the performance of applicants in carrying out projected activities to determine actual award amounts. Because the Fund had not certified any organizations as CDFIs during the Baseline Period for this funding round, the Fund will consider all Applicants that propose to engage in CDFI Related Activities to have engaged in no such activities during the Baseline Period for the purpose of calculating awards.

V. Other Matters

(a) Paperwork Reduction Act. For details on the information collection requirements of the rule and this Notice, the reader should refer to the interim rule (12 CFR part 1806) published elsewhere in this issue of the **Federal Register**.

(b) Environmental Impact. Pursuant to Treasury Directive 75–02, the Department of the Treasury has determined that implementation of the BEA Program under the interim rule is categorically excluded from the National Environmental Policy Act of 1969 (42 U.S.C. 4332) and does not require environmental review. The determination is available to public inspection between 9:30 a.m. and 4:30 p.m. weekdays at the office of the Fund.

Authority: 12 U.S.C. 4703, 4717; Chapter X, Pub. L. 104–19, 108 Stat. 237; 12 CFR 1806.206(a).

Dated: March 4, 1997.

Kirsten S. Moy,

Director, Community Development Financial Institutions Fund.

[FR Doc. 97–5677 Filed 3–6–97; 8:45 am]

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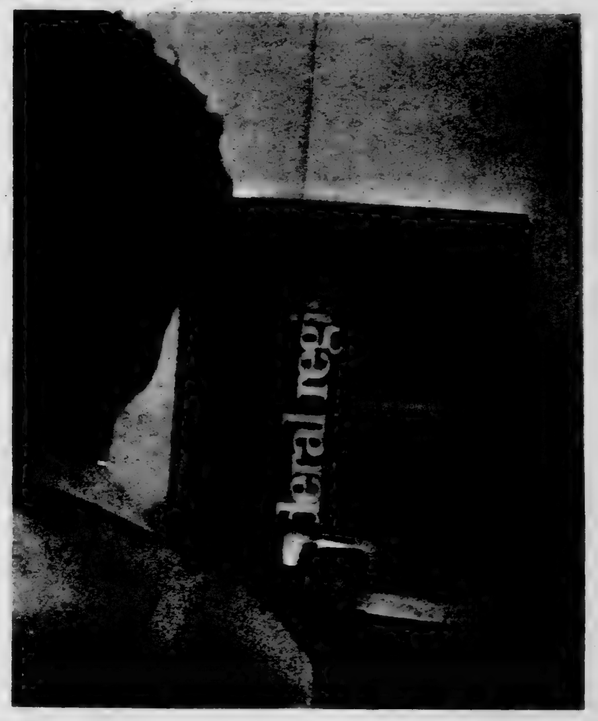

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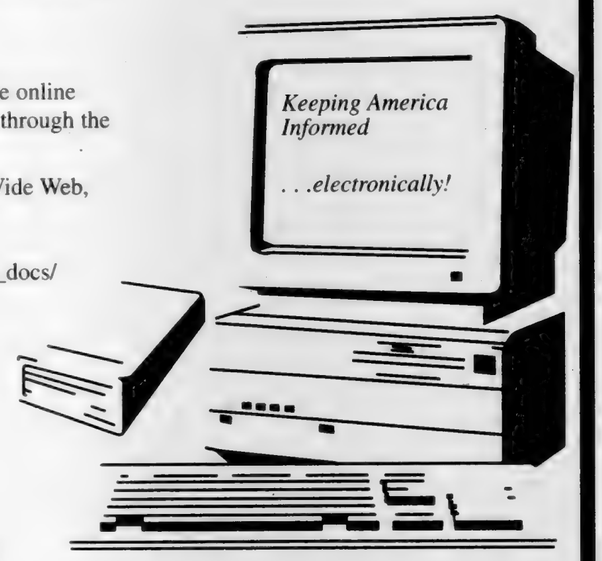

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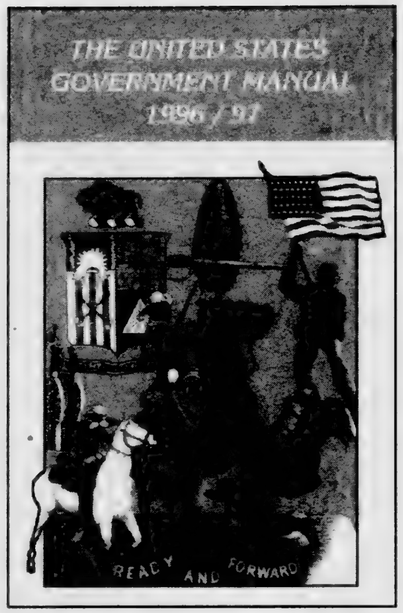

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 351 and 630

RIN 3206–AH64

Reduction In Force and Mandatory Exceptions

AGENCY: Office of Personnel Management.

ACTION: Interim rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations that implement recent legislation giving employees the right to use annual leave to establish initial retirement eligibility for employees in reduction in force and other restructuring situations. These regulations also implement related provisions concerning the availability of annual leave to qualify for continuance of health benefits in the same situation.

DATES: These regulations are effective March 10, 1997. Comments must be received on or before May 9, 1997.

ADDRESSES: Send or deliver written comments to: Mary Lou Lindholm, Associate Director for Employment Service, Room 6F08, Officer of Personnel Management, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: (part 351) Thomas A. Glennon or Edward P. McHugh, (202) 606–0960, FAX (202) 606–2329; (part 630) Jo Ann Perrini, (202) 606–2858, FAX (202) 606–0824.

SUPPLEMENTARY INFORMATION: Section 634 of the Treasury, Postal Service, and General Government Appropriations Act, 1997, as contained in section 101(f) of the Omnibus Consolidated Appropriations Act, 1997 (P.L. 104–208, approved September 30, 1996), provides that an employee who is being involuntarily separated from an agency due to reduction in force or transfer of function may elect to use annual leave and remain on the agency's rolls after the effective date the employee would otherwise have been separated in order to establish initial eligibility for immediate retirement, including discontinued service or voluntary early retirement. The same option is also available to acquire eligibility to continue health benefits into retirement. These provisions are codified in new 5 U.S.C. 6302(g).

Since January 1993, OPM has provided similar benefits by regulation. Presently, an agency may elect to retain on annual leave an employee who has received a specific reduction in force notice so that the employee may establish initial eligibility for retirement, and/or for continuance of health benefits into retirement (58 FR 5563, January 22, 1993, as amended at 60 FR 2678, January 11, 1995). For an employee to achieve initial eligibility in a reduction in force situation, agencies use a "Permissive Temporary Exception" under authority of section 5 CFR 351.608(d) to retain an employee past the effective date that the employee would have been separated.

The new 5 U.S.C. 6302(g) required two major changes to OPM's regulatory provisions: (1) an employee who is being involuntarily separated now has a right to use his or her annual leave to achieve initial eligibility for retirement and/or continued health benefits coverage; and (2) this right extends to transfer of function relocation situations.

To implement 5 U.S.C. 6302(g), section 5 CFR 351.606, Mandatory exceptions, is revised by adding a new paragraph (b).

Section 5 CFR 351.606(b)(1) provides that an employee who is being involuntarily separated from an agency because of reduction in force under authority of 5 CFR part 351 may elect to use annual leave past the date that the employee would otherwise have been separated for the purpose of establishing initial eligibility under sections 5 U.S.C. 8336, 8412, or 8414 for immediate retirement, including discontinued service or voluntary early retirement.

Section 5 CFR 351.606(b)(1) also provides the same election option so that an employee who is being involuntarily separated from an agency because of reduction in force may use annual leave for the purpose of acquiring initial eligibility under 5 U.S.C. 8905 to continue health benefits into retirement.

Section 5 CFR 351.606(b)(2) provides that an employee who is being involuntarily separated as an adverse action because of the employee's decision to decline relocation (including transfer of function) may use annual leave to remain on the agency's rolls after the effective date of the relocation to establish initial eligibility for immediate retirement under 5 U.S.C. 8336, 8412, or 8414 (including discontinued service or voluntary early retirement), and/or to establish initial eligibility under 5 U.S.C. 8905 to continue health benefits coverage into retirement.

Section 5 CFR 351.606(b)(3) provides that the entitlements under 5 U.S.C. 6302(g) apply to employees covered by chapter 63 of title 5, United States Code.

Section 5 CFR 351.606(b)(4) provides that an agency may not retain any employee under the provisions of 5 U.S.C. 6302(g) past the date that the employee first becomes eligible for immediate retirement, and/or for continuation of health benefits into retirement.

Section 5 CFR 351.606(b)(5) provides that, except as permitted by 5 CFR 351.608(d), an agency may not approve an employee's use of any other type of leave after the employee has been retained under a temporary exception.

Section 5 CFR 351.606(b)(6) clarifies that the annual leave that may be used for the purpose of remaining on an agency's rolls to establish eligibility for immediate retirement and/or establish initial eligibility to continue health benefits coverage into retirement is described in 5 CFR 630.212.

Section 630.212 states that all accumulated, accrued, and restored annual leave to an employee's credit prior to the effective date of a reduction in force or relocation and annual leave earned by an employee while in a paid leave status after the effective date of the reduction in force or relocation may be used for these purpose. However, annual leave that is advanced to an employee under 5 U.S.C. 6302(d) may not be used for these purposes. In addition, an employing agency may permit an approved leave recipient to use for these purposes any or all annual leave donated under 5 CFR part 630,

subpart I, or made available under 5

Regulatory Flexibility Act

part, and who elects to use annual leave

otherwise provided in paragraphs (c)

(2) An agency may not approve an

Stat. 2834, and Pub. L. 103–103, 107 Stat.

subpart I, or made available under 5 CFR part 630, subpart J, as of the effective of the reduction in force or relocation.

In conforming changes, section 5 CFR 351.606(a) is revised with a reference label, and former section 5 CFR 351.606(b) is found in a new section 5 CFR 351.606(c), also with a reference label.

In another conforming change, section 5 CFR 351.608 is revised as a result of the entitlements provided under 5 U.S.C. 6302(g). Also, a new section 5 CFR 351.608(e) provides that an employee who is not covered by chapter 63 of title 5, United States Code, but who is being involuntarily separated from an agency because of reduction in force under part 5 CFR 351, may, at the agency's discretion, elect to use annual leave past the date that the employee would otherwise have been separated for the purpose of establishing initial eligibility under sections 5 U.S.C. 8336, 8412, or 8414 (or other authority) for immediate retirement, including discontinued service or voluntary early retirement, and/or establishing eligibility under 5 U.S.C. 8905 (or other authority) to continue health benefits coverage into retirement.

An additional conforming change revises section 351.506(b) to provide, consistent with prior policy, that the retention standing of each employee retained in a competitive level as an exception under section 351.606(b), as well as sections 351.607 or section 351.608, is determined as of the date the employee would have been released had the exception not been used. The retention standing of each employee retained under any of these three exceptions remains fixed until completion of the reduction in force action which resulted in the mandatory or permissive temporary retention.

Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking because it would be contrary to the public interest to delay access to benefits. Also, pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to make this amendment effective in less than 30 days. The delay in the effective date is being waived because these regulations provide a benefit authorized by statute rather than eliminating or modifying existing benefits. This amendment gives full effect to the benefits extended by the amended provisions of the statute at the earliest practicable date.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it only affects Federal employees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in Parts 351 and 630

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending parts 351 and 630 of title 5, Code of Federal Regulations, as follows:

PART 351—REDUCTION IN FORCE

1. The authority citation for part 351 continues to read as follows:

Authority: 5 U.S.C. 1302, 3502, 3503; sec. 351.801 also issued under E.O. 12828, 58 FR 2965.

2. In § 351.506, paragraph (b) is revised to read as follows:

§ 351.506 Effective date of retention standing.

* * * * *

(b) The retention standing of each employee retained in a competitive level as an exception under § 351.606(b), § 351.607, or § 351.608, is determined as of the date the employee would have been released had the exception not been used. The retention standing of each employee retained under any of these provisions remains fixed until completion of the reduction in force action which resulted in the temporary retention.

* * * * *

3. § 351.606 is revised to read as follows:

§ 351.606 Mandatory exceptions.

(a) *Armed Forces restoration rights.* When a agency applies § 351.601 or § 351.605, it shall give retention priorities over other employees in the same subgroup to each group I or II employee entitled under 38 U.S.C. 2021 or 2024 to retention for, as applicable, 6 months or 1 year after restoration, as provided in part 353 of this chapter.

(b) *Use of annual leave to reach initial eligibility for retirement or continuance of health benefits.* (1) An agency shall make a temporary exception under this section to retain an employee who is being involuntarily separated under this part, and who elects to use annual leave to remain on the agency's rolls after the effective date the employee would otherwise have been separated by reduction in force, in order to establish initial eligibility for immediate retirement under 5 U.S.C. 8336, 8412, or 8414, and/or to establish initial eligibility under 5 U.S.C. 8905 to continue health benefits coverage into retirement.

(2) An agency shall make a temporary exception under this section to retain an employee who is being involuntarily separated under authority of part 752 of this chapter because of the employee's decision to decline relocation (including transfer of function), and who elects to use annual leave to remain on the agency's rolls after the effective date the employee would otherwise have been separated by adverse action, in order to establish initial eligibility for immediate retirement under 5 U.S.C. 8336, 8412, or 8414, and/or to establish initial eligibility under 5 U.S.C. 8905 to continue health benefits coverage into retirement.

(3) An employee retained under paragraph (b) by this section must be covered by chapter 63 of title 5, United States Code.

(4) An agency may not retain an employee under paragraph (b) of this section past the date that the employee first becomes eligible for immediate retirement, or for continuation of health benefits into retirement, except that an employee may be retained long enough to satisfy both retirement and health benefits requirements.

(5) Except as permitted by 5 CFR 351.608(d), an agency may not approve an employee's use of any other type of leave after the employee has been retained under a temporary exception authorized by paragraph (b) of this section.

(6) Annual leave for purposes of paragraph (b) of this section is described in § 630.212 of this chapter.

(c) *Documentation.* Each agency shall record on the retention register, for inspection by each employee, the reasons for any deviation from the order of release required by § 351.601 or § 351.605.

4. Section 351.608 is revised to read as follows:

§ 351.608 Permissive temporary exceptions.

(a) *General.* (1) In accordance with this section, an agency may make a temporary exception to the order of release in § 351.601, and to the action provisions of § 351.603, when needed to retain an employee after the effective date of a reduction in force. Except as otherwise provided in paragraphs (c) and (e) of this section, an agency may not make a temporary exception for more than 90 days.

(2) After the effective date of a reduction in force action, an agency may not amend or cancel the reduction in force notice of an employee retained under a temporary exception so as to avoid completion of the reduction in force action. This does not preclude the employee from receiving or accepting a job offer in the same competitive area in accordance with a Reemployment Priority List established under part 330, subpart B, of this chapter, or under a Career Transition Assistance Plan established under part 330, subpart E, of this chapter, or equivalent programs.

(b) *Undue interruption.* An agency may make a temporary exception for not more than 90 days when needed to continue an activity without undue interruption.

(c) *Government obligation.* An agency may make a temporary exception to satisfy a Government obligation to the retained employee without regard to the 90-day limit set forth under paragraph (a)(1) of this section.

(d) *Sick leave.* An agency may make a temporary exception to retain on sick leave a lower standing employee covered by chapter 63 of title 5, United States Code (or other applicable leave system for Federal employees), who is on approved sick leave on the effective date of the reduction in force, for a period not to exceed the date the employee's sick leave is exhausted. Use of sick leave for this purpose must be in accordance with the requirements in part 630, subpart D, of this chapter (or other applicable leave system for Federal employees). Except as authorized by § 351.606(b), an agency may not approve an employee's use of any other type of leave after the employee has been retained under this paragraph (d).

(e)(1) An agency may make a temporary exception to retain on accrued annual leave a lower standing employee who:

(i) Is being involuntarily separated under this part;

(ii) Is covered by a Federal leave system under authority other than chapter 63 of title 5, United States Code; and,

(iii) Will attain first eligibility for an immediate retirement benefit under 5 U.S.C. 8336, 8412, or 8414 (or other authority), and/or establish eligibility under 5 U.S.C. 8905 (or other authority) to carry health benefits coverage into retirement during the period represented by the amount of the employee's accrued annual leave.

(2) An agency may not approve an employee's use of any other type of leave after the employee has been retained under this paragraph (e).

(3) This exception may not exceed the date the employee first becomes eligible for immediate retirement or for continuation of health benefits into retirement, except that an employee may be retained long enough to satisfy both retirement and health benefits requirements.

(4) Accrued annual leave includes all accumulated, accrued, and restored annual leave, as applicable, in addition to annual leave earned and available to the employee after the effective date of the reduction in force. When approving a temporary exception under this provision, an agency may not advance annual leave or consider any annual leave that might be credited to an employee's account after the effective date of the reduction in force other than annual leave earned while in an annual leave status.

(f) *Other exceptions.* An agency may make a temporary exception under this section to extend an employee's separation date beyond the effective date of the reduction in force when the temporary retention of a lower standing employee does not adversely affect the right of any higher standing employee who is released ahead of the lower standing employee. The agency may establish a maximum number of days, up to 90 days, for which an exception may be approved.

(g) *Notice to employees.* When an agency approves an exception for more than 30 days, it must:

(1) Notify in writing each higher standing employee in the same competitive level reached for release of the reasons for the exception and the date the lower standing employee's retention will end; and

(2) List opposite the employee's name on the retention register the reasons for the exception and the date the employee's retention will end.

PART 630—ABSENCE AND LEAVE

5. The authority citation for part 630 continues to read as follows:

Authority: 5 U.S.C. 6311; § 630.301 also issued under Pub. L. 103–356, 108 Stat. 3410; § 630.303 also issued under 5 U.S.C. 6133(a); §§ 630.306 and 630.308 also issued under 5 U.S.C. 6304(d)(3), Pub. L. 102–484, 106 Stat. 2722, and Pub. L. 103–337, 108 Stat. 2663; subpart D also issued under Pub. L. 103–329, 108 Stat. 2423; § 630.501 and subpart F also issued under E.O. 11228, 30 FR 7739, 3 CFR 1974 Comp., p. 163; subpart G also issued under 5 U.S.C. 6305; subpart H also issued under 5 U.S.C. 6326; subpart I also issued under 5 U.S.C. 6332, Pub. L. 100–566, 102 Stat. 2834, and Pub. L. 103–103, 107 Stat. 1022, subpart J also issued under 5 U.S.C. 6362, Pub. L. 100–566, and Pub. L. 103–103; subpart K also issued under Pub. L. 102–25, 105 Stat. 92; and subpart L also issued under 5 U.S.C. 6387 and Pub. L. 103–3, 107 Stat. 23.

6. In part 630, § 630.212 is added to read as follows:

§ 630.212 Use of annual leave to establish initial eligibility for retirement or continuation of health benefits.

(a) An employee may elect to use annual leave and remain on the agency's rolls in order to establish initial eligibility for immediate retirement under 5 U.S.C. 8336, 8412, or 8414, and/or to establish initial eligibility under 5 U.S.C. 8905 to continue health benefits coverage into retirement, as provided in:

(1) Section 351.606(b)(1) for an employee who would otherwise have been separated by reduction in force procedures under part 351 of this chapter; or

(2) Section 351.606(b)(2) of this chapter for an employee who would otherwise have been separated by adverse action procedures under authority of part 752 of this chapter because of the employee's decision to decline relocation (including transfer of function).

(b)(1) Annual leave that may be used for the purposes described in paragraph (a) of this section includes all accumulated, accrued, and restored annual leave to the employee's credit prior to the effective date of the reduction in force or relocation (including transfer of function) and annual leave earned by an employee while in a paid leave status after the effective date of the reduction in force or relocation (including transfer of function).

(2) Annual leave that is advanced to an employee under 5 U.S.C. 6302(d), including any advance annual leave that may be credited to an employee's leave account after the effective date of the reduction in force or relocation (including transfer of function), may not be used for purpose of this section.

(3) For purposes of this section, the employing agency may approve the use of any or all annual leave donated to an employee under part 630, subpart I, of this chapter (Voluntary Leave Transfer Program), or made available to the employee under part 630, subpart J, of this chapter (Voluntary Leave Bank Program), as of the effective date of the reduction in force or relocation.

[FR Doc. 97–5835 Filed 3–7–97; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–AGL–18]

Establishment of Class E2 Airspace; Sawyer Airport, Gwinn, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects the previous airport name from K.I. Sawyer AFB, Marquette, MI, to Sawyer Airport, Gwinn, MI, as stated in Docket 96–AGL–18. Also, the legal description has been changed to reflect the correct wording for a 24 hour service due to an AWOS being installed to provide continuous weather reporting. A minor correction is also being made in the geographic coordinates of the final rule that was published in the **Federal Register** on January 16, 1997 (62 FR 2265).

EFFECTIVE DATE: 0901 UTC, March 27, 1997.

FOR FURTHER INFORMATION CONTACT:

John A. Clayborn, Air Traffic Division, Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 97–1115, Airspace Docket No. 96–AGL–18, published on January 16, 1997 (62 FR 2265), revised the airport name and the seconds of the longitude for Sawyer Airport, Gwinn, MI. This action corrects those errors.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the airport name, geographic coordinates and the legal description for the Class E2 airspace area at Gwinn, MI, as published in the **Federal Register** on January 16, 1997 (62 FR 2265), (**Federal Register** Document 97–1115; page 2265, column 3), are corrected as follows:

§ 71.71 [Corrected]

* * * * *

AGL MI E2 Sawyer, MI [Revised]

By removing "(lat. 46°21'13" N, long. 87°23'43" W.)" and substituting "(lat. 46°21'13" N, long. 87°23'45" W.)."

Within a 4.6 mile radius of Sawyer Airport.

* * * * *

Issued in Des Plaines, IL, on February 26, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–5551 Filed 3–7–97; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–AGL–19]

Revision of Class E5 Airspace; Sawyer Airport, Gwinn, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects the previous airport name from K.I. Sawyer AFB, Marquette, MI, to Sawyer Airport, Gwinn, MI, as stated in Docket 96–AGL–19. Also, corrects an error in the geographic coordinates of the final rule that was published in the **Federal Register** on January 16, 1997 (62 FR 2265).

EFFECTIVE DATE: 0901 UTC, March 27, 1997.

FOR FURTHER INFORMATION CONTACT:

John A. Clayborn, Air Traffic Division, Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 97–1114, Airspace Docket No. 96–AGL–19, published on January 16, 1997 (62 FR 2265), revised the airport name and the seconds of the latitude for Sawyer Airport, Gwinn, MI. An error was discovered in the title, Summary and The Rule of the docket. This action corrects the title, Summary and The Rule to indicate the docket action to be modification versus establishment. Class E airspace existed prior to accommodate the Instrument Landing System (ILS).

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the airport name and the geographic coordinates for the Class E5 airspace area at Gwinn, MI, as published in the **Federal Register** on January 16, 1997 (62 FR 2265), (**Federal Register** Document 97 97–1114; page 2266, column 2), are corrected as follows:

§ 71.71 [Revised]

* * * * *

AGL MI E5 Sawyer, MI [Revised]

By removing "(lat. 46°21'13" N, long. 87°23'43" W.)" and substituting "(lat. 46°21'13" N, long. 87°23'45" W.)."

* * * * *

Issued in Des Plaines, IL, on February 26, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–5550 Filed 3–7–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM96–1–004; Order No. 587–C]

Standards for Business Practices of Interstate Natural Gas Pipelines

Issued March 4, 1997.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is amending its open access regulations by incorporating by reference standards promulgated by the Gas Industry Standards Board (GISB). These standards require interstate natural gas pipelines to publish specified information on Internet Web pages and to follow certain new and revised business practices procedures. These business practices standards supplement standards adopted by the Commission in Order No. 587. 61 FR 39053 (Jul. 26, 1996).

DATES: This rule is effective April 9, 1997.

Pipelines are to make *pro forma* tariff filings to implement the business practices standards by May 1, 1997. Implementation of the Internet Web page standards must take place by August 1, 1997, and the revised and new business practices standards by November 1, 1997.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, N.E., Washington DC, 20426.

FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 208–2294.

Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208–1283.

Kay Morice, Office of Pipeline Regulation, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208–0507.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 2A, 888 First Street, NE., Washington DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing 202–208–1397 if dialing locally or 1–800–856–3920 if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this order will be available on CIPS in ASCII and WordPerfect 5.1 format. CIPS user assistance is available at 202–208–2474.

CIPS is also available on the Internet through the Fed World system. Telnet software is required. To access CIPS via the Internet, point your browser to the URL address: http://www.fedworld.gov and select the "Go to the FedWorld Telnet Site" button. When your Telnet software connects you, log on to the FedWorld system, scroll down and select FedWorld by typing: 1 and at the command line and type: /go FERC. FedWorld may also be accessed by Telnet at the address fedworld.gov.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, La Dorn Systems Corporation. La Dorn Systems Corporation is also located in the Public Reference Room at 888 First Street, N.E., Washington, DC 20426.

Standards for Business Practices of Interstate Natural Gas Pipelines; Order No. 587–C—Final Rule.

Docket No. RM96–1–004

Issued March 4, 1997.

The Federal Energy Regulatory Commission (Commission) is amending its open access regulations to adopt standards requiring interstate natural gas pipelines to publish certain information on Internet Web Pages and to implement new business practice standards covering nominations and flowing gas. The regulations incorporate by reference standards promulgated by the Gas Industry Standards Board (GISB), a private standards organization devoted to developing standards representing a consensus of the interests in the natural gas industry.

I. Background

In Order No. 587,[1] the Commission incorporated by reference consensus standards developed by GISB covering certain industry business practices—Nominations, Flowing Gas, Invoicing, and Capacity Release—as well as datasets that detailed the data requirements needed to conduct business transactions in these areas. On November 13, 1996, the Commission issued a Notice of Proposed Rulemaking (NOPR)[2] proposing to adopt additional standards submitted by GISB (on September 30, 1996) in three general areas: communication standards for conducting standardized business transactions across the Internet, standards for providing other information on Internet Web pages, and five revisions to existing business practices standards and 25 new principles, definitions, and standards covering nominations and flowing gas. The Commission already has issued, on January 30, 1997, a final rule incorporating by reference the standards for conducting the business transactions over the Internet. With respect to the remaining two areas—publication of information on Internet Web pages and the supplemental business practices standards, the NOPR proposed to follow GISB's proposed schedule of a final rule to be issued in March 1997, with implementation of the additional Internet standards in August of 1997 and pipeline tariff filings for the business practices standards to be made in May, June, and July of 1997, with implementation in November 1997.

In addition, the NOPR gave notice of a staff technical conference that would be convened to discuss the future direction of standardization and certain issues that had been disputed during the GISB meetings. The technical conference was held on December 12 and 13, 1996, with comments on the conference to be submitted by February 21, 1997.

Fifteen comments were filed on the NOPR from Natural Gas Supply Association, Williams Interstate Natural Gas System (WINGS), Burlington Resources Oil & Gas Company (Burlington Resources), Natural Gas Clearinghouse, Conoco, Inc., and Vastar Gas Marketing Inc.(filing jointly) (NGC/Conoco/Vastar), Pacific Gas and Electric Company (PG&E), Williston Basin Interstate Pipeline Company (Williston Basin), Altra Energy Technologies, L.L.C. (Altra), Energy Managers Association (Energy Managers), Gas Industry Standards Board (GISB), NorAm Gas Transmission Company and Mississippi River Transmission Corporation (filing jointly) (NorAm), ANR Pipeline Company and Colorado Interstate Gas Pipeline Company (filing jointly), Enron Capital & Trade Resources Corp. (Enron Capital & Trade Resources), TransCapcity Limited Partnership (limited to technical conference issues), Southern California Edison Company (SoCal Edison), and the PanEnergy Companies. On February 21, 1997, comments on the technical conference were filed.

II. Discussion

The Commission is incorporating by reference the GISB standards for providing information on Internet Web pages, with the exception of Standard 4.3.5, which provides that the documents posted on pipeline Web pages will be downloadable in a GISB-specified electronic structure. The Commission is not adopting this standard because GISB has failed to approve the requisite electronic structure.

The Commission is incorporating by reference the revisions to and the new business practices principles, definitions, and standards, with the exception of three standards, Nomination Standard 1.3.32 dealing with intra-day nominations and Flowing Gas Standards 2.3.29 and 2.3.30 dealing the obligation of pipelines to enter into operational balancing agreements (OBAs) and the ability of shippers to net imbalances across contracts, respectively. While the Commission agrees that standards are needed in these areas, it is not accepting these standards at this time because the scope of the pipelines" obligations to comply are not clear.

The Commission also is making one change to the schedule proposed by GISB. Rather than staggered compliance filings in May, June, and July, all pipelines must file their *pro forma* tariff sheets on May 1, 1997. Pipelines are

[1] Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587, 61 FR 39053 (Jul. 26, 1996), III FERC Stats. & Regs. Regulations Preambles ¶ 31,038 (Jul. 17, 1996), *reh'g denied*, Order No. 587–A, 61 FR 55208 (Oct. 25, 1996), 77 FERC ¶ 61,061 (Oct. 21, 1996), Order No. 587–B, 62 FR 5521 (Feb. 6, 1997), 78 FERC ¶ 61076 (1997).

[2] Standards For Business Practices Of Interstate Natural Gas Pipelines, Notice of Proposed Rulemaking, 61 FR 58790 (Nov. 19, 1996), IV FERC Stats. & Regs. Proposed Regulations ¶ 32,521 (Nov. 13, 1996).

required to implement the requirements to publish information on Web pages by August 1, 1997 and to implement the business practices standards by November 1, 1997.

NGC/Conoco/Vastar and Energy Managers contend that GISB was unable to satisfactorily resolve issues in several hotly disputed areas, and they ask the Commission to act now to adopt standards in these areas that they have proposed.[3] These suggested standards are all within the areas discussed at the December 12 and 13, 1996 technical conference on which comments were filed on February 21, 1997.

The Commission, therefore, will not act in these areas until it has an opportunity to review the technical conference comments. The Commission, however, is firmly committed to standardizing those elements of pipeline service that will increase the efficiency of the interstate pipeline grid as well as the competitive position of the natural gas industry as a whole. As the Commission recognized in Order No. 587, standardization is an on-going process, with new standards being developed and refinements and enhancements made to existing standards as experience is gained.[4]

The Commission recognizes that GISB too is continuing to consider revisions and new standards in some of the same areas.[5] If progress in developing standards is impeded by intractable disputes over policy issues, the Commission will resolve these policy issues to expedite the process. The Commission urges GISB to identify such issues as soon as they are manifest. Once the Commission makes a determination, GISB can then develop the technical standards needed for implementation.

A. Posting of Information on Internet Web Pages

GISB passed two standards relating to the posting of information on Internet Web pages. Standard 4.3.6 requires pipelines to establish a World Wide Web home page that provides the following information: notices (critical notices, operation notices, system-wide notices); Order No. 566 affiliated marketer information (affiliate allocation log, discount postings); operationally available and unsubscribed capacity; Index of Customers; and the pipeline's tariff. Standard 4.3.5 requires that the documents maintained on the pipeline's designated Web site will be downloadable on demand in a GISB specified electronic structure. All commenters support these requirements.

However, in the November 13, 1996 NOPR, the Commission stated that GISB needed to file the electronic structures referenced in Standard 4.3.5 prior to the issuance of the final rule, so these structures could be included in the rule.[6] Since GISB has not yet approved these electronic structures, the Commission cannot adopt Standard 4.3.5.

The Commission will adopt Standard 4.3.6, since specification of the electronic structure for file downloads is not required for pipelines to implement this standard's requirement for publishing the specified information on Web pages. The ability to download information, however, is critical for customers who do not want to read the information on-line or who want the information in computer-readable form. GISB, therefore, needs to adopt the required electronic structure quickly. A rapid determination will still enable the Commission to issue a final rule in time for the download structure to be implemented on August 1, 1997, at the same time as the requirement for publishing the information on Web pages.

Williston Basin raises questions about the portion of Standard 4.3.6 which states that pipelines should make all pertinent information and functions now performed or contained on the pipelines" proprietary Electronic Bulletin Boards (EBBs) available in one mode of communication (either through the Internet or another technology) within a reasonable time after standards are developed for such functions. Williston Basin contends that, while EBB information is being transferred to the Internet, pipelines should not have to develop GISB-approved procedures for both the Internet and EBBs because to do so would be burdensome and cost prohibitive. Williston Basin also requests clarification of the terms "pertinent EBB functions" and a "reasonable amount of time," claiming that they do not provide pipelines with specific direction to implement the standards.

Standard 4.3.6 applies only to providing information at pipeline Web sites. Thus, Williston Basin is not required by this standard to make any changes to its EBB procedures.[7] There is no need to interpret the terms referenced by Williston Basin. This portion of the standard is hortatory, establishing the consensus of the industry on the goals to be achieved. The standard requires no further implementation by the pipelines until additional standards are developed. Williston Basin will have the opportunity at that time to raise any concerns with implementation.

B. Business Practices Standards

The revised and new business practices principles, definitions, and standards[8] clarify and supplement the standards adopted in Order No. 587.[9] In part, these standards require pipelines to honor shippers" determinations of delivery priorities, clarify shipper's abilities to correct operational flow orders (OFOs), and standardize the methods for calculating the amount of gas needed to reimburse pipelines for compressor fuel, so that shippers can accurately submit nominations for transportation across multiple pipelines, with many zones.

Out of the 30 business practices standards passed by GISB, the Commission is not adopting three of the standards at this time, because the pipelines' obligations under the standards are unclear. The lack of clarity in these standards is understandable given the tight deadlines on GISB and the obvious need for the various segments of the industry to reach compromises. However, during the process of reviewing the filings to comply with Order No. 587, it became clear that adoption of imprecise standards can sometimes cause more harm than good. When obligations are not fully defined by the standard, pipelines propose divergent and non-standardized approaches. The adoption of divergent approaches often runs counter to the very purpose of standardization—the creation of efficiency through adoption of uniform procedures.

For these three standards, the Commission has been unable to discern from the GISB documentation the intended scope and meaning of a standard. The discrepancies in implementation, therefore, make the compliance filings much more difficult to process because the Commission has difficulty, on an individual case basis, trying to reconcile the divergent approaches, especially given the short time frames established for compliance filings.

Rather than approving standards which are vague and then try to create standardization during the compliance process, the Commission will not accept the standards at this time. Standards in these areas are needed. The Commission, however, will give GISB and the industry more time—until September 1, 1997—in which to reconsider and devise standards that delineate clearly the pipelines' obligations in these areas. If no resolution is reached by then, the Commission will take appropriate action to devise the needed standards.

The Commission will address below the specifics of the three standards that are not being accepted. It will also address the comments regarding a standard the Commission is accepting—Nomination Standard 1.3.28 dealing with the posting of fuel rate standards.

1. Intra-Day Nominations and Standard 1.3.32

GISB proposed one additional definition and a new intra-day nomination standards. Definition 1.2.7 provides for two types of intra-day nominations: (i) A nomination received during the gas day for the same day of gas flow, and (ii) A nomination received after the nomination deadline for the following gas day. Standard 1.3.32 provides that:

> All pipelines should allow at least one intra-day nomination per day for each transportation service that allows for intra-day nominations. Additional intra-day nominations should be permitted on a best efforts basis.

WINGS, NGC/Conoco/Vastar, Energy Managers, and Burlington Resources raise questions about the intra-day nomination process. WINGS comments that additional standards for intra-day nominations are needed, to avoid discrepancies in pipeline implementation of the two kinds of intra-day nominations defined by GISB. Energy Managers contends that Standard 1.3.32 is a poor standard and should not be adopted, and it suggests three replacement standards. NGC/Conoco/Vastar and Burlington Resources contend further intra-day nomination standards are needed. NGC/Conoco/Vastar seek standards to ensure that intra-day nominations are available for all rate schedules and to deal with rescheduling of service that is bumped by a higher priority firm service. Burlington Resources argues that since GISB has not established standards on whether firm intra-day nominations can bump scheduled interruptible service, the Commission should establish a policy on this issue. It maintains that firm service should be given bumping rights to reflect the higher priority of that service, for which shippers are paying a premium price.

The Commission agrees with WINGS that Standard 1.3.32 does not provide sufficient clarity as to what is expected of the pipelines. The term "best efforts" as used in this context does not describe exactly when pipelines can decline to process intra-day nominations. For instance, it may mean that pipelines have to process intra-day nominations whenever submitted as long as such nominations do not affect scheduled quantities for other shippers.[10]

The Commission is particularly chary about adopting another non-specific intra-day nomination standard given the lack of standardization in the implementation of the intra-day nomination standards adopted in Order No. 587. Nomination Standard 1.3.10 provides that "at least one (1) intra-day nomination can be submitted 4 hours prior to gas flow." The standard, however, did not specify the method of implementation, and pipelines chose two divergent models: a "rolling intra-day" nomination permitting the shipper to choose the time at which it submits the intra-day nomination, which the pipeline then processes in four hours from the time of submission; and a "batch process" in which the pipeline sets a specified time for processing intra-day nominations and all intra-day nominations submitted before that time are accumulated and processed together. The batch process also differs from pipeline to pipeline. Pipelines, for instance, have established different times for batching intra-day nominations. In addition, on some pipelines using the batch process, intra-day nominations for firm service bump scheduled interruptible gas.[11] Other batch pipelines propose only that the firm intra-day nominations will be given priority over interruptible intra-day nominations.[12]

This diverse approach means that shippers will be unable to coordinate effectively their intra-day nominations, since an intra-day nomination may be due at one time on one pipeline, while a different time is specified on an interconnecting pipeline. In addition, during the staff technical conference held on December 12 and 13, 1996, other issues relating to intra-day nominations were raised. Some participants favored the rolling intra-day nomination approach over the batch process because it gave shippers more flexibility in scheduling their intra-day nominations.[13] Others raised the question of whether a rolling approach to intra-day nominations can be implemented without a no-bump rule. They claimed that permitting firm intra-day nominations to bump scheduled interruptible transportation would create scheduling difficulties, because each intra-day nomination potentially would affect other nominations, causing a ripple effect up and down the pipeline and interconnecting pipelines.[14]

GISB itself appears to recognize that its current standards do not achieve the necessary standardization. The GISB Executive Committee has voted to establish a task force to examine the lack of coordination in intra-day nomination procedures.

In order to achieve the efficiencies that derive from uniform nomination procedures, greater standardization of intra-day nomination procedures clearly is required. Clarification of the intended meaning of Standard 1.3.32 may not

[3] The proposed standards involve pooling, title transfer tracking, ranking of gas packages, predetermined allocations, intra-day nominations, operation flow orders, fuel sales, and imbalance trading.

[4] Order No. 587, 61 FR at 39057, III FERC Stats. & Regs. Preambles at 30,060.

[5] For instance, during the technical conference, participants pointed out that the disputed issues relating to pooling, title transfer tracking, and gas package rankings, are part of a pilot test being conducted by GISB on title transfer tracking. Transcript of December 12, 1996 Conference, at 183. The results of this pilot test are due in September of 1997.

[6] 61 FR at 58793, IV FERC Stats. & Regs. Proposed Regulations at 33,259.

[7] Pipelines have to make changes to their EBBs when required by other standards. For instance, Invoicing Standard 3.3.2 requires that all paper and electronic transactions use standard field name descriptors. This would apply both to paper and EBB invoicing procedures. *See* GISB Interpretation C96012, approved February 6, 1997, http://www.NeoSoft.com/~gisb/gisb.htm (Committees, Sub-Committees, and Task Forces) (Feb. 20, 1997).

[8] The revised standards are 1.3.7, 1.3.14, 1.3.23, 2.3.9, and 5.3.22. The new principles are 1.1.12 through 1.1.16, and 2.1.2 and 2.1.3. The new definitions are 1.2.5 through 1.2.7 and 2.2.1. The new standards are 1.3.24 through 1.3.31, 1.3.33, 1.3.34, and 2.3.31.

[9] After issuance of the November 13, 1996 NOPR, GISB approved a change to Flowing Gas Standard 2.3.9 that clarified the language, but did not change the meaning of the standard. The Commission is adopting the revised language.

[10] The Commission already has dealt with the imprecision in the phrase "for each transportation service that allows for intra-day nominations." In Tennessee Gas Pipeline Company, 78 FERC ¶ 61,007, slip op. at 9, the Commission held that all regular open-access services, including interruptible service, must be accorded the right to submit intra-day nominations. The Commission concluded, however, that pipelines could propose a service eliminating the intra-day nomination right for a reduced rate.

[11] Tennessee, for instance, has a batch intra-day process and permits bumping of interruptible with four hours notice to the interruptible shipper. It does not, however, permit bumping for its hourly intra-day nominations (available to firm shippers). Tennessee Gas Pipeline Company, *Pro Forma* Tariff, Article III, section 4 (d)–(m), Sheets 312–314c.

[12] *See* Northern Border Pipeline Company, *Pro Forma* Second Revised Volume No. 1, Pro Forma Sheet Nos. 100 and 101 (when intra-day nominations exceed the capacity of the pipeline firm intra-day nominations have priority over interruptible).

[13] Transcript of December 12, 1996 conference, at 116, 213; Transcript of December 13, 1996 conference, at 127.

[14] Transcript of December 12, 1996 conference, at 117; transcript of December 13, 1996 conference, at 136.

create the needed standardization, and the focus, therefore, should not be on clarifying the existing standard, but on achieving the needed uniformity in the intra-day nomination process. Accordingly, the Commission will review the comments submitted on February 21, 1997 along with any recommendations from GISB filed on September 1, 1997 in determining how to proceed on this issue.

2. Flowing Gas Standards 2.3.29 and 2.3.30

GISB Standard 2.3.29 states:

> At a minimum, transportation service providers should enter into Operational Balancing Agreements at all pipeline-to-pipeline (interstate and intrastate) interconnects, where economically and operationally feasible.

GISB Standard 2.3.30 states:

> All transportation service providers should allow service requesters (in this instance, service requester excludes agents) to net similarly situated imbalances on and across contracts with the service requester. In this context, "similarly situated imbalances" includes contracts with substantially similar financial and operational implications to the transportation service provider.

Energy Managers suggests that the phrase "economically and operationally feasible" waters down, and therefore should be removed from, Standard 2.3.29. NGC/Conoco/Vastar state that they support Standard 2.3.30 as long as the term "similarly situated" is not read so narrowly as to defeat the purpose of the standard.

While the Commission finds that standards requiring OBAs and netting of imbalances are necessary, the use of the terms "economically and operationally feasible" and "similarly situated financial and operational implications" do not define precisely enough the pipelines' obligations under the standards. For example, there is no basis for determining whether shippers should be able to net imbalances between an interruptible contract and a firm contract in the same zone. Also, the terms economically feasible and similarly situated financial implications are undefined and seem unnecessary in both standards. If "financial" in Standard 2.3.30 refers to the rate paid for service, for instance, there seems no basis for treating a discounted contract differently from a full-rate contract in terms of netting imbalances.[15]

Rather than attempting to deal with the meaning of these terms in individual compliance filings, GISB needs to define precisely the circumstances in which pipelines can decline to permit netting of imbalances. Therefore, the Commission will not be accepting this standard in this rule and will give GISB until September 1, 1997 to clarify these standards.

3. Nomination Standard 1.3.28

Two comments raise questions about Standard 1.3.28, which provides that fuel rates for in-kind fuel reimbursement should be made effective only at the beginning of the month. WINGS expresses concern about this standard because one of its pipelines, Kern River, has little or no system storage. Without storage, WINGS contends that the pipeline may, on rare occasions, have to adjust fuel rates in the middle of the month. WINGS suggests that this standard be made a principle or that, if adopted as a standard, the Commission should not preclude a pipeline from filing to change fuel rates in mid-month upon a showing of need.

The Commission will not change this standard to a principle as requested by WINGS. Standardizing the in-kind reimbursement process for fuel is important to simplify the nomination process, particularly when shippers are transporting gas across many pipelines, with a multiplicity of zones. A consensus of the industry found that to simplify the nomination process, all pipelines must set fuel rates at the beginning of the month. With this limitation on fuel rate changes, shippers can obtain the correct fuel rates at one time and update their computer programs to reflect these rates on a set schedule, without having to be concerned about mid-month, random changes on select pipelines. WINGS fails to provide data or other evidence that pipelines without storage are unable to make adjustments or other arrangements so that they can comply with the standard. For example, Great Lakes Gas Transmission Limited Partnership, another pipeline without storage, posts monthly fuel percentages and makes adjustments for actual fuel use in the percentages for subsequent months.[16]

Enron Capital & Trade Resources seeks clarification that in implementing this standard, pipelines should notify shippers of fuel rate changes no less than 30 days prior to the proposed effective date. Enron Capital & Trade Resources contends that 30-days notice is in accord with the notice requirement for tariff changes contained in section 154.207 of the Commission's regulations.

The Commission will not grant the requested clarification. The standard itself specifies no advance notice period. The purpose of the standard is to establish one date when shippers can obtain fuel reimbursement percentages so that they can program their computers once for the entire month. Thus, the fuel rates need to be posted in sufficient time for shippers to use these rates in making nominations subject to the new rate. To the extent that pipelines make tariff filings to change fuel reimbursement rates, they would have to comply with the Commission filing and notice regulations. Some pipelines, however, have fuel tracking or other provisions in their tariffs which permit changes in fuel rates without tariff filings.[17]

III. Implementation Schedule

Pipelines will be required to implement the Internet Web page standards by August 1, 1997, and the revised and new business practices standards on November 1, 1997. Rather than adopting the staggered schedule for pipeline tariff filings proposed by GISB, the pipelines will be required to make their *pro forma* tariff filings to comply with the standards by May 1, 1997.

The Commission's experience based on the first set of compliance filings is that it takes a substantial period of time to review all of the filings. Under the proposed staggered schedule, 60 tariff filings would be due on July 1, 1997, which would not provide the Commission with sufficient time to review these filings and issue the two rounds of orders in time to meet a November 1, 1997 implementation date.

The Commission recognizes that some pipelines may be in the process of implementing the standards adopted in Order No. 587 at the same time they are making *pro forma* tariff filings to comply with this rule. However, there are many fewer business practices standards adopted in this rule than in Order No. 587, and, more important, implementation of these standards do not require fundamental changes in pipeline operations. They merely build upon the standards previously adopted. Thus, pipelines should not face major obstacles in making the required filings on May 1, 1997, and the Commission will require all filings on this date to ensure that the filings can be reviewed and processed in a timely fashion.

In making their *pro forma* tariff filings, pipelines must file the *pro forma* sheets as if they are proposed revisions of sheets in the existing tariff volume (with changes identified as provided in § 154.201 of the Commission's regulations) with the words "Pro Forma" before the volume name.[18] In addition, in complying with § 154.203 of the Commission's regulations, a pipeline must file as part of its statement of the nature, the reasons, and the basis for the filing, a complete table showing for each GISB standard adopted by the Commission, in this rule, the complying tariff sheet number, and an explanatory statement, if necessary, describing any reasons for deviations from or changes to each GISB standard. Any pipeline seeking waiver or extension of the requirements of this rule is required to file its request within 30 days of the issuance of this rule. Comments on these filings will be due 21 days from the date of filing.

IV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980 (RFA)[19] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The regulations adopted in this rule impose requirements only on interstate pipelines, which are not small businesses, and, these requirements are, in fact, designed to reduce the difficulty of dealing with pipelines by all customers, including small businesses. Accordingly, pursuant to section 605(b) of the RFA, the Commission hereby certifies that the regulations adopted in this rule will not have a significant adverse impact on a substantial number of small entities.

V. Environmental Analysis

The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[20] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[21] The action taken here falls within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.[22] Therefore, an environmental assessment is unnecessary and has not been prepared in this rulemaking.

VI. Information Collection Statement

OMB's regulations in 5 CFR 1320.11 require that it approve certain reporting and recordkeeping requirements (collections of information) imposed by an agency. Upon approval of a collection of information, OMB shall assign an OMB control number and an expiration date. Respondents subject to the filing requirements of this Rule shall not be penalized for failing to respond to these collections of information unless the collections of information display valid OMB control numbers.

The collections of information related to the subject Final Rule fall under the existing reporting requirements of FERC–549C, Standards for Business Practices of Interstate Natural Gas Pipelines (OMB Control No. 1902–0174) and FERC–545, Gas Pipeline Rates: Rate Change (Non-Formal) (OMB Control No. 1902–0154). The following estimates of reporting burden are related only to this Rule and include the costs for pipelines to comply with the new and revised business practice standards and the additional costs of implementing the requirement for posting additional information on an Internet Web page. The burden estimates are primarily related to start-up and will not be on-going costs.

Public Reporting Burden: (Estimated Annual Burden).

Affected data collection	Number of respondents	Total responses (annual)	Estimated hours per response	Estimated total hours (annual)
FERC–545	86	86	58	4,988
FERC–549C	86	86	3,147	270,642
Total	86	86	3,205	275,630

The total annual hours for collection (including record keeping, if appropriate) is estimated to total 275,630. The average annualized cost per respondent is projected to be the following:

Affected data collection	Annualized capital/start-up costs per respondent	Annualized costs (operations and maintenance) per respondent	Number of respondents	Total annualized costs
FERC–545	$2,900	0	86	$249,400
FERC–549C	157,350	0	86	13,532,100
Total	160,250	0	86	13,781,500

The business practices standards and Internet protocols adopted in this Rule are necessary to establish a more efficient and integrated pipeline grid. Requiring such standards on an industry-wide basis will reduce the variations in pipeline business and communication practices and will allow buyers to easily and efficiently obtain

[15] A review of the discussions at the GISB Executive Committee meeting, where the language was developed, does not clarify the intended meaning of the standards. Volume IV, Report of the Gas Industry Standards Board, Docket No. RM96–1–000, 398–99, 412–428 (September 30, 1996). For instance, examples are discussed of situations that might fall within or without the Standards, there was no delineation or agreement on the full scope of the intended meaning.

[16] Great Lakes Gas Transmission Limited Partnership, 76 FERC ¶ 61,260, at 62,333 (1996).

[17] *Id.*

[18] *E.g.* Fourth Revised Sheet No. 150, FERC Gas Tariff, Pro Forma Third Revised Volume No. 1. For the electronically filed tariff sheets, "Pro Forma" must be inserted at the beginning of the name field (VolumeID) in the Tariff Volume Record, i.e., the TF02 record.

[19] 5 U.S.C. 601–612.

[20] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[21] 18 CFR 380.4.

[22] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27).

and transport gas from all potential

submit by that date. These requirements

EPA at 40 CFR Part 81. Longmont was

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and transport gas from all potential sources of supply. The standardization of business practices conforms to the Commission's plan for efficient information collection, communication, and management within the natural gas industry. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

The information required in this Final Rule will be reported directly to the industry users and later be subject to audit by the Commission. The implementation of these data requirements will help the Commission carry out its responsibilities under the Natural Gas Act and coincide with the current regulatory environment which the Commission instituted under Order No. 636 and the restructuring of the natural gas industry.

Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426 [Attention: Michael Miller, Information Services Division, 202–208–1415] or the Office of Management and Budget [Attention: Desk Officer for the Federal Energy Regulatory Commission 202–395–3087].

VII. Effective Date

These regulations are effective April 9, 1997. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a "major rule" as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 18 CFR Part 284

Continental shelf, Incorporation by reference, Natural gas, Reporting and recordkeeping requirements.

By the Commission.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, the Commission amends Part 284, Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for Part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7532; 43 U.S.C. 1331–1356.

2. In § 284.10, paragraphs (b)(1)(i) through (b)(1)(v) are revised to read as follows:

§ 284.10 Standards for Pipeline Business Operations and Communications.

* * * * *

(b) * * *

(1) * * *

(i) Nominations Related Standards (Version 1.1, January 31, 1997), with the exception of Standard 1.3.32;

(ii) Flowing Gas Related Standards (Version 1.1, January 31, 1997), with the exception of Standards 2.3.29 and 2.3.30;

(iii) Invoicing Related Standards (Version 1.1, January 31, 1997);

(iv) Electronic Delivery Mechanism Related Standards (Version 1.0, October 24, 1996), with the exception of Standard 4.3.5; and

(v) Capacity Release Related Standards (Version 1.1, January 31, 1997).

* * * * *

[FR Doc. 97–5786 Filed 3–7–97; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[CO–001–0011; CO–001–0012; CO–001–0013; CO–001–0014; FRL–5692–3]

Clean Air Act Approval and Promulgation of State Implementation Plan for Colorado; Carbon Monoxide Attainment Demonstrations and Related SIP Elements for Denver and Longmont; Clean Air Act Reclassification; Oxygenated Gasoline Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: In this document, EPA is approving the State Implementation Plan (SIP) revisions submitted by the State of Colorado for the purpose of bringing about the attainment of the national ambient air quality standards (NAAQS) for carbon monoxide (CO). The implementation plan revisions were submitted by the State on July 11 and 13, 1994, September 29, 1995, and December 22, 1995 to satisfy certain Federal requirements for an approvable nonattainment area CO SIP for Denver and Longmont. This action includes approval of revisions to Colorado Regulations 11 (vehicle inspection and maintenance (I/M)) and 13 (oxygenated fuels) submitted to satisfy conditions in the SIP, and further revisions to Regulation 13 to shorten the effective period of the oxygenated fuels program. It also includes reclassification of the Denver CO nonattainment area from Moderate to Serious. EPA proposed to approve the July 1994 and September 1995 SIP submissions and to reclassify the Denver area to Serious in the **Federal Register** on July 9, 1996. EPA published a supplemental proposal to approve the December 22, 1995 SIP submission shortening the oxygenated fuels program period and to approve the Denver and Longmont CO SIPs based on the shortened period on December 6, 1996. The rationale for the final approvals and reclassification are set forth in this document. Additional information is available at the address indicated below.

EFFECTIVE DATE: This action is effective on April 9, 1997.

ADDRESSES: Copies of the State's submittals and other information are available for inspection during normal business hours at the following locations: Environmental Protection Agency, Region VIII, Air Programs, 999 18th Street, 3rd Floor, South Terrace, Denver, Colorado 80202–2466; and Colorado Air Pollution Control Division, 4300 Cherry Creek Dr. South, Denver, Colorado 80222–1530.

FOR FURTHER INFORMATION CONTACT: Jeff Houk at (303) 312–6446.

SUPPLEMENTARY INFORMATION:

I. Background

The air quality planning requirements for CO nonattainment areas are set out in sections 186–187 of the Clean Air Act (Act) Amendments of 1990 (CAAA) which pertain to the classification of CO nonattainment areas and to the submission requirements of the SIPs for these areas, respectively. The EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under Title I of the Act, [see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)]. Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in today's rulemaking action. In today's action on the Denver and Longmont CO SIPs, EPA is applying its interpretations taking into consideration the specific factual issues presented and comments received from the public.

This **Federal Register** document addresses several requirements of the 1990 CAAA which were required to be submitted no later than November 15, 1992, and which the State did not submit by that date. These requirements include an attainment demonstration, contingency measures and, for Denver, a vehicle miles travelled forecasting and tracking program and transportation control measures. EPA made a formal finding that the State had failed to submit these SIP revisions in a letter to Governor Roy Romer dated January 15, 1993. This **Federal Register** document also addresses revisions to Regulations 11 and 13, submitted by the State of Colorado to implement portions of the control strategy relied upon by the attainment demonstration.

Section 187(a)(7) required those States containing CO nonattainment areas with design values greater than 12.7 parts per million (ppm) to submit, among other things, an attainment demonstration by November 15, 1992, demonstrating that the plan will provide for attainment by December 31, 1995 for Moderate CO nonattainment areas and December 31, 2000 for Serious CO nonattainment areas. The attainment demonstration must include a SIP control strategy, which is also due by November 15, 1992. The SIP control strategy for a given nonattainment area must be designed to ensure that the area meets the specific annual emissions reductions necessary for reaching attainment by the deadline. In addition, section 187(a)(3) requires these areas to implement contingency measures if any estimate of actual vehicle miles travelled (VMT) or any updated VMT forecast for the area contained in an annual report for any year prior to attainment exceeds the number predicted in the most recent VMT forecast. Contingency measures are also triggered by failure to attain the NAAQS for CO by the attainment deadline. Contingency measures must be submitted with the CO SIP by November 15, 1992. Finally, a vehicle miles travelled forecasting and tracking program is required by Section 187(a)(2)(A), and transportation control measures are required for Denver by Section 187(a)(2)(B). These requirements are discussed in more detail in EPA's July 9, 1996 (61 FR 36004) and December 6, 1996 (61 FR 64647) **Federal Register** documents proposing action on the SIP revisions.

Longmont had been designated as unclassifiable/attainment prior to passage of the 1990 CAAA. However, a special monitoring study in 1988–89 recorded an exceedance of the NAAQS in Longmont. As a result, EPA Region VIII recommended that the Governor designate this area nonattainment, and on March 15, 1991, the Governor submitted a nonattainment designation for this area that was later codified by EPA at 40 CFR Part 81. Longmont was classified as a Moderate area in 40 CFR Part 81. Since this area had never had a SIP, EPA interpreted Section 172 of the Act to require an attainment demonstration for Longmont. Contingency measures under Section 172(c)(9) were also required. On January 15, 1993, EPA made a formal finding that the State had failed to submit these SIP revisions for Longmont.

On July 11, 1994 and July 13, 1994, Governor Roy Romer submitted comprehensive revisions to the Colorado SIP. The carbon monoxide SIP element submittals for Denver and Longmont addressed the outstanding CAAA requirements discussed above, as well as other CAAA mandates.

The State submitted revisions to Regulations 11 and 13 on September 29, 1995, to implement the I/M and oxygenated fuels program revisions committed to in the CO SIP. EPA proposed approval of these revisions in its July 9, 1996 **Federal Register** document, and is today taking final action to approve these revisions.

The State submitted additional revisions to Regulation 13 on December 22, 1995, shortening the effective period of the oxygenated fuels program. EPA published a **Federal Register** document on December 6, 1996, proposing approval of these revisions and re-proposing approval of the Denver and Longmont CO SIPs to provide an opportunity for public comment on the impact of this revision to Regulation 13 on the CO SIPs. EPA is today taking final action to approve the revisions to Regulation 13 that the State submitted on December 22, 1995.

II. Response to Public Comments

EPA received numerous comments on its proposed approval of the Denver CO SIP and the proposed reclassification of Denver from Moderate to Serious for CO. No comments were received specifically regarding the Longmont CO SIP. EPA received one set of comments regarding its proposed approval of the shortening of the effective period of the oxygenated fuels program. The comments and EPA's responses follow.

Extension of the Comment Period

Several parties requested that EPA extend its comment period on the proposed approval of the SIP to allow more time for the preparation and submission of comments. In response to these requests, EPA extended the comment period for an additional 30 days (see 61 FR 43501, August 23, 1996).

Legality of the SIP Submission Under State Law

Several parties commented that EPA should return the Denver CO SIP to the State without action, because it was submitted to EPA in conflict with the requirements of State law. These comments generally concern the nature of the Air Quality Control Commission's (AQCC's) submission of the SIP to Legislative Council for review, and the AQCC's and the Governor's response to Legislative Council's actions.

EPA's acceptance of the SIP through its July 14, 1994 determination of SIP completeness was based on the June 30, 1994 letter from the State Attorney General's Office submitted with the SIP. This letter certifies that the SIP was adopted and submitted in compliance with State law. Specifically, Section 25–7–133, C.R.S., required the submission of SIPs "regarding the regulation of mobile sources" to Legislative Council for review 45 days prior to submission to EPA. The CO SIP arguably did not fall within this criterion, as it did not include any regulatory content regarding mobile sources. Revisions to Regulations 11 and 13 (I/M and oxygenated fuels programs) to implement the provisions of the CO SIP were discussed in the SIP, but were not adopted or submitted with it. These revisions were adopted later in 1994 by the AQCC, received full Legislative Council review and were submitted to EPA in September 1995. Nevertheless, the AQCC chose to submit the CO SIP to Legislative Council for review even though it did not contain any mobile source regulation revisions.

The June 30, 1994 letter from the AG's office concedes that the SIP was not submitted to Legislative Council 45 days prior to submittal to EPA, but notes that the Council acted on the SIP at its June 21, 1994 meeting and, in effect, waived the 45 day requirement. Also, according to the June 30, 1994 letter, the actions by Legislative Council at its meeting were not fully in compliance with State law:

"The Council may act in one of two ways: it can return the SIP in its entirety and it is then deemed approved, or it can submit it to the General Assembly (via petition for special session if the General Assembly is not in session)* * * The Legislative Council, on June 21, 1994 took action by motion, wherein it voted to postpone review of the CO SIP submission, voted to return the plan for revisions by the Commission, and voted to conduct a final review no later than January 15, 1995. Pursuant to statute, because no special assembly was called by the

Council [the General Assembly was not in session], the SIP is deemed returned and approved."

EPA finds the State Attorney General's Office's interpretation reasonable, and thus, EPA accepts that Office's conclusion that the SIP was, in fact, submitted to EPA for action in compliance with State law.

Oxygenated Fuels Program

Several comments were received with respect to the oxygenated fuels program. These comments and EPA's responses follow.

(1) The submission violates Section 25–7–105.1, C.R.S., which states that any regulation that is more stringent than Federal law shall not constitute part of a state implementation plan.

Putting aside for the purposes of this response the question of what EPA's role should be with respect to this State law, EPA does not believe that the 3.1% oxygenated fuels program is more stringent than is required under the Act. First, EPA does not believe section 211(c) of the Act preempts the State from requiring a 3.1% minimum oxygen content standard and, thus, does not believe a finding of necessity is required under section 211(c)(4)(C) of the Act (see discussion in response to comment 6 below). Second, the State is relying on the 3.1% oxygenated fuels program as one measure to help demonstrate attainment of the NAAQS for CO, as required by sections 110(a) and 187(a)(7) of the Act. Without the 3.1% oxygenated fuels program, the SIP would be unable to demonstrate attainment of the NAAQS. Thus, the 3.1% oxygenated fuels program is not more stringent than the Act requires.

(2) Subsequent to AQCC adoption of the CO SIP, the AQCC adopted revisions to Regulation 13 which shortened the control period during which the oxygenated fuels program is in effect. EPA's approval of the CO SIP does not address this revision.

Based on this comment, EPA reproposed approval of the Denver and Longmont CO SIPs, incorporating the shortened oxygenated gasoline season, and also proposed approval of the revisions to Regulation 13 shortening the season (see 61 FR 64647, December 6, 1996). EPA is now approving the shortening of the oxygenated gasoline season and is approving the Denver and Longmont CO SIPs based on the shortened season.

(3) EPA approval of the 3.1% oxygenated fuels program would be contrary to *Exxon Corp.* v. *City of New York*, 548 F.2d 1088 (2nd Cir. 1977).

The *Exxon* v. *City of New York* decision was based on pre-1990 CAA language, EPA regulations that have since been amended, and in part, different factual circumstances that bear no relevance to the situation here. Moreover, the changes in section 211(c)(4) and the 40 CFR Part 80 fuel regulations since the *Exxon* decision directly modify the provisions that the court relied on in a way that limits the scope of preemption of state fuel controls. Thus, this decision is not relevant to the current situation.

In *Exxon Corp.* v. *City of New York*, the court found that New York City's lead and volatility regulations were preempted under section 211(c)(4). In the Part 80 regulations, EPA had set out the federal fuel requirements and stated that they prescribed regulations for the control and/or prohibition of fuels and additives. EPA also had promulgated specific lead regulations, less stringent than the New York City regulations, but did not address volatility. At the time of the court's decision, section 211(c)(4) preempted "any control or prohibition respecting use of a fuel or fuel additive." The court found that EPA had promulgated regulations respecting the use of fuels, and thus, New York City's more stringent regulations were preempted.

In the 1990 CAAA, Congress amended the language of section 211(c)(4) to preempt "any control or prohibition respecting any characteristic or component of a fuel or fuel additive." After the court's decision, EPA also modified the Part 80 regulations to make it clear that they are not intended to preempt states' ability to regulate fuels and fuel additives that EPA has not addressed. Section 80.1(b) states: "Nothing in this part is intended to preempt the ability of State or local governments to control or prohibit any fuel or additive for use in motor vehicles and motor vehicle engines which is not explicitly regulated by this part." Thus, both Congress and the Agency have clearly indicated that EPA's fuel requirements do not preempt states from regulating a specific characteristic or component that the Agency has not addressed. As discussed below, there are no federal regulations applicable to oxygen content in the Denver area, and hence *Exxon* v. *City of New York* is not applicable here.

(4) EPA approval of the 3.1% oxygenated fuels program could lead to oxygenate shortages which could interfere with the federal reformulated gasoline program.

During the two winter seasons since the CO SIP was submitted to EPA, the average oxygen content in Denver has been well above 3.1%. The federal reformulated gasoline program took effect on January 1, 1995, and thus has been in effect coincident with the Denver oxygenated fuels program for over two years. No documented oxygenate shortages have occurred as a result of Denver's program. Furthermore, the commentor did not provide any indication that a change in circumstances may occur that could produce any problems in the future.

(5) EPA approval of the 3.1% oxygenated fuels program could lead to an increase in NO_X emissions, which could jeopardize public health by increasing ozone concentrations.

Several parties have contacted EPA in the past with regard to potential NO_X increases from use of oxygenated fuels. No good scientific information exists that conclusively documents an increase in fleet NO_X emissions from use of oxygenated fuels. The laboratory studies to date have generally had poor control of other fuel characteristics that affect NO_X emissions, making the results unreliable.

Increases in NO_X emissions from the use of oxygenates would not be expected to generate exceedances of the ozone NAAQS, as asserted by the commentor. Oxygenate use is only required during the winter season, when climatic conditions are not favorable to the formation of tropospheric (ground-level) ozone. No exceedances of the ozone NAAQS have occurred at any time during the ten winter seasons in which oxygenated fuels have been used in the Denver area.

(6) The 3.1% oxygen content is higher than is necessary to attain the CO NAAQS, and other reasonable, practicable means of attainment are available, so EPA cannot approve this program under section 211(c)(4)(C) of the CAA. Moreover, section 211(m) provisions occupy the field for regulation of oxygen content of gasoline and thereby preempt any different regulation by a state.

Section 211(c)(4)(C) provides that states are preempted from regulating motor vehicle fuels where EPA has already acted, either to regulate the fuel or to find that no regulation is necessary. If preemption applies, the state may regulate the fuel only if EPA finds the state requirement necessary to achieve the NAAQS for the relevant pollutant. Here, EPA has neither regulated fuel oxygen content in Colorado nor made a finding that no such regulation is necessary. Therefore, the state regulation is not preempted and there is no need to find necessity. In the absence of federal preemption, states are free to regulate to control air pollution, and EPA must approve lawful state requirements into SIPs, as long as the state submission meets all applicable requirements under Title I of the Act.

Section 211(c)(4)(A) preempts a state from "prescrib[ing] or attempt[ing] to enforce * * * any control or prohibition respecting any characteristic or component of a fuel or fuel additive" under two circumstances. Section 211(c)(4)(A)(i) provides for preemption if EPA has found that no control or prohibition of the characteristic is necessary and has published that finding in the **Federal Register**. Section 211(c)(4)(A)(ii) provides that a state is preempted from regulating if EPA has prescribed under section 211(c)(1) a control or prohibition applicable to such characteristic or component, unless the state control or prohibition is identical to EPA's control or prohibition. Thus, to preempt state regulation under 211(c)(4), either EPA must publish a finding that a control is unnecessary, or EPA must promulgate a control of the same characteristic or component under section 211(c)(1).

EPA has not made any finding under section 211(c)(4)(A)(i) that control of fuel oxygen content is unnecessary. There is no preemption of the Regulation 13 requirement for a 3.1% oxygen content under this provision.

The only requirement that EPA has promulgated applicable to fuel oxygen content under 211(c)(1) is in the reformulated gasoline (RFG) regulations. EPA promulgated the RFG regulations under both sections 211(c)(1) and 211(k). However, Colorado is neither required to use RFG by statute, nor has it voluntarily opted into the RFG program. Thus, the RFG regulations do not apply in Colorado.

The statute is ambiguous as to whether federal regulation of a fuel characteristic in certain areas of the country preempts state regulation only in those areas, or whether it preempts any state regulation of that characteristic nationwide. The statute simply refers to "a control or prohibition applicable to such characteristic or component." The language does not indicate whether it means any control in any area or at any time generally applicable to a fuel characteristic, or a control actually applicable to a fuel characteristic in a given time and place. The statute is also ambiguous as to whether "characteristic or component of a fuel or fuel additive" should be read generally, as in "oxygen content," or specifically, as in "oxygen content in RFG areas." In delegating authority to the Agency to administer section 211(c), Congress has also implicitly delegated the authority to reasonably interpret the provision in light of any ambiguity. *Chevron, USA* v. *NRDC*, 467 U.S. 837 (1984).

EPA believes that the better reading of the statute is that preemption by the RFG regulations applies more narrowly, only in the areas where the federal RFG regulation applies. First, the RFG regulations arguably are not a control "applicable" to fuel oxygen content outside of RFG areas. Secondly, this interpretation is consistent with the judicial cannon of statutory construction by which courts construe preemption narrowly. Thirdly, as a policy matter, EPA's decision to regulate fuel oxygen content in RFG areas did not encompass a determination that states should not or need not regulate that characteristic outside of those areas. Section 211(c)(4) applies only where EPA has affirmatively decided to regulate a particular fuel characteristic or component, or has affirmatively found that no such regulation is necessary and has published such a finding in the **Federal Register**. The RFG rulemaking never considered whether fuel oxygen content requirements were needed for CO control outside RFG areas, but merely incorporated the statutory requirement to set a 2.0 percent oxygen content for RFG. Moreover, whether RFG applies to an area depends solely on its status as an ozone nonattainment area; its status for CO is irrelevant. This further reinforces the conclusion that oxygen content requirements under RFG do not represent any EPA or Congressional decision on the need for such requirements outside of RFG areas. Finally, the purpose of the section 211(c)(4) preemption provision is to strike an appropriate balance between states' ability to freely adopt control measures, and avoidance of a variety of different state standards, potentially disrupting the national motor vehicle fuel market and federal regulation of such fuels. This purpose is not served by applying preemption where there is no federal regulatory scheme, as here in Colorado.

Finally, section 211(m) does not constitute federal regulation of oxygen content, which could occupy the field for regulation of oxygen content and hence preempt state regulation. Section 211(m) requires states with certain CO nonattainment areas to submit a SIP revision requiring gasoline "to contain not less than 2.7 percent oxygen content by weight." The statute requires state regulation, not federal, and explicitly sets a minimum standard for such state regulation, leaving the state free to adopt more stringent requirements if it so chooses. There is no indication in the statute or the legislative history that by specifying a minimum oxygen level that states should require, Congress intended the federal government to occupy the field of oxygen content regulation and preempt states from establishing a more stringent standard.

Because the federal RFG fuel oxygen content provision does not apply to Colorado, section 211(c)(4) does not preempt the state from promulgating its own average fuel oxygen content standard of 3.1%. Nor does section 211(m) explicitly or implicitly impose such a restriction. Moreover, EPA must approve into a SIP any lawful provision concerning control of a criteria pollutant that is submitted by a State and that otherwise meets the requirements of section 110. *See Union Electric Co.* v. *EPA*, 427 U.S. 246 (1976). Thus, Colorado was free to adopt a 3.1% oxygen content standard as a control strategy to help attain the CO NAAQS.

(7) EPA approval of the 3.1% oxygenated fuels program in Colorado would be a *de facto* mandate that at least 50% of the gasoline in the Denver area contain ethanol. contrary to *American Petroleum Institute* vs. *United States Environmental Protection Agency*, 52 F.3d 1113 (D.C. Cir. 1995).

In *API* v. *EPA*, the issue was whether EPA has the authority to mandate use of a particular oxygenate in RFG. The court held that EPA does not have such authority because § 211(k) lays out the specific criteria that EPA is to consider in promulgating the RFG requirements, and the ethanol mandate was not established pursuant to those criteria. This holding has no relevance for whether a state, rather than EPA, could directly mandate use of a particular oxygenate. Moreover, the state here has not mandated use of any particular oxygenate. It has merely established oxygen content requirements, and the industry may use any oxygenate capable of meeting those requirements, subject to the maximum blending restrictions. In addition, these are the same oxygen content requirements as the CAA mandates for certain areas, which indicates that Congress contemplated that such higher oxygen content levels may be needed in some areas. In the absence of federal preemption, states are free to adopt fuel controls for emission reductions. *API* identifies no additional limit on EPA's authority to approve such state requirements in SIPs.

(8) Recent studies have demonstrated that oxygenated fuels have little or no effect on CO air quality. EPA should facilitate an independent review of the impacts of oxygenated fuels on CO air quality before acting to approve the CO SIP.

The White House Office of Science and Technology Policy (OSTP) has recently issued a draft report on oxygenated fuels, which compiles the results of a number of other studies ("Interagency Assessment of Oxygenated Fuels," September 1996). While not yet final, the draft report concludes that oxygenated fuels produce approximately a 10.0% to 13.5% ambient CO reduction benefit. The National Academy of Sciences (NAS) has also issued a recent report commenting on the OSTP report. The NAS report found that oxygenated fuels programs have a benefit of zero to 10 percent in reducing ambient CO. Of the 10 existing "real world" studies of oxygenated fuels' ambient air impacts cited in the NAS report, eight show a statistically significant benefit from the program, and two studies (both in North Carolina) showed no significant benefit or did not attempt to quantify a benefit. Likewise, virtually all laboratory studies of oxygenated fuels, including some conducted by the automotive and petroleum industries, show a significant carbon monoxide reduction at the tailpipe from use of these fuels.

EPA recently conducted an analysis of carbon monoxide air quality data from cities around the country ("Impact of the Oxyfuel Program on Ambient CO Levels," J. Richard Cook et al, EPA420–R–96–002). In this report, EPA compared data from a number of cities which used oxygenated fuels beginning in the winter of 1992–93 to data from several cities which did not. Using this approach, EPA found an immediate and sustained reduction of carbon monoxide concentrations in the range of 3.1% to 13.6% in cities using oxygenated fuels, in excess of the reductions expected from new cars entering the fleet. This reduction was not seen in cities not using oxygenated fuels. This level of benefit is consistent with that found in other studies. A subsequent regression modeling analysis by Dr. Gary Whitten of SAI of ambient CO data in oxygenated fuels areas ("Regression Modeling of Oxyfuel Effects on Ambient CO Concentrations," SYSAPP–96/78, January 8, 1997) found a 14% reduction in ambient CO concentrations due to implementation of the program.

These analyses are significant because they are based on measurements of actual air quality data in these cities over at least two winter periods. Many interested parties have criticized laboratory studies as not being representative of the real world; however, in attempting to carry out a "real world" study in a single urban area, it is very difficult to separate the influence of oxygenated fuels from all of the other factors that affect carbon monoxide concentrations (including weather, congestion, and changes in the mix of cars and trucks in the fleet).

The National Academy of Science's report points out some areas where additional research would be useful, and EPA and the State are working to design a study to address some of the uncertainties surrounding the use of oxygenated fuels. However, the NAS report and the available scientific data support continuing the oxygenated fuels program.

While not a factor in EPA's decision, readers may be interested to know that oxygenated fuels is one of the least expensive carbon monoxide control strategies available. In terms of dollars per ton of pollution eliminated, it is much cheaper than other alternatives, such as transportation control measures, mandatory employee trip reduction, conversion of vehicles to run on alternative fuels like propane or natural gas, or industrial controls. The program also serves as an important defense against factors that increase carbon monoxide emissions in the Denver area, including growth in daily vehicle miles travelled, growth in the amount of time that vehicles spend in congestion, and growth in the number of sport utility vehicles and other types of higher-emitting light-duty trucks on the road. EPA has substantial evidence at this time that oxygenated fuels are an effective means to control carbon monoxide, and hence it is appropriate to approve this provision of the CO SIP at this time.

Shortening of the Oxygenated Fuels Season

One party submitted comments in response to EPA's December 6, 1996 supplemental notice of proposed rulemaking, proposing approval of the revisions to Regulation 13 removing the last two weeks of the oxygenated fuels season and reproposing approval of the CO SIPs to incorporate this revision. This commentor supported EPA's action to approve the shortening of the oxygenated fuels season. The commentor also raised other issues with respect to the oxygenated fuels program which have been addressed above.

Abandoned and Impounded Vehicle Program

One commentor expressed concern that the SIP provision preventing re-registration of abandoned or impounded pre-1982 vehicles would negatively impact the collector car industry of the Denver region and would prevent owners from recovering stolen vehicles. Another commentor expressed concern that this program would unnecessarily harm lower-income individuals and artificially increase demand for new cars. While EPA understands these concerns, the Act prohibits EPA from basing its actions concerning SIPs on considerations involving the economic reasonableness of State actions. *See Union Electric Co.* v. *EPA*, 427 U.S. 246, 256–266 (1976); 42 U.S.C. section 7410(a)(2).

While EPA is prohibited from basing its action on the SIP on economic grounds, EPA has concluded for other reasons that it should not act on this element of the SIP. The provision is not well-defined in the SIP, with the design and implementation of this program left up to the discretion of local jurisdictions, and no credit was taken for this measure in the attainment demonstration (see SIP page IX–4). Therefore, EPA is not taking action on this element of the SIP.

Revised Emissions Standards for Pre-1982 Vehicles

One commentor stated that the requirement for tighter emissions testing cutpoints for pre-1982 was arbitrary and capricious, and unduly impacted owners of these model year vehicles in the Denver region. Again, EPA is prohibited by law from basing its actions on SIPs on considerations involving the economic reasonableness of State actions. However, pre-1982 vehicles were targeted for tighter cutpoints because 1982 and newer vehicles are already subject to the more stringent provisions of the enhanced vehicle inspection and maintenance program. Tighter cutpoints for pre-1982 vehicles should result in more high-emitting vehicles being identified and repaired through the requirements of Regulation 11. Data from the enhanced I/M program show that the average older vehicle emits carbon monoxide at levels many times higher than the level at which they were certified for sale. However, there is no presumption that all older vehicles are high emitters, and vehicles in good operating condition should not fail the tighter cutpoints.

This commentor also stated that the State and EPA had failed to consider the smaller proportion of total VMT generated by pre-1982 vehicles. The mobile source emissions modeling conducted for the SIP is based on estimates of annual mileage accumulation and share of daily VMT for each model year. Thus, the SIP modeling inputs reflect the smaller proportion of total VMT generated by pre-1982 vehicles. While it is true that pre-1982 vehicles do represent a relatively small proportion of total

regional VMT, emissions generated by these vehicles are still significant because these vehicles are required to meet less stringent emissions standards by the State and EPA, and thus, per-vehicle emissions are higher. The SIP estimates that this measure would provide a CO emission reduction benefit of 20 tons per day in 1995. EPA believes the estimates of pre-1982 VMT share and emissions reductions from the SIP provision are reasonable.

Another commentor stated that EPA should give the State the option of eliminating the I/M program and the prohibition on re-registration of abandoned and impounded vehicles in favor of an enforceable system of user fees or other economic incentives that would address the actual contribution of individual vehicles and drivers to the region's pollution problems. The Clean Air Act requires the State to implement an enhanced I/M program that meets certain minimum requirements. However, the Act would allow the State to revise its SIP at any time to add the type of program mentioned by the commentor, as long as the program meets the SIP requirements of Section 110. EPA does not have to take any type of action in order to enable the State to develop and submit this type of SIP revision. As noted above, EPA is not acting on the SIP provision that prohibits re-registration of abandoned and impounded vehicles.

Transportation Control Measures (TCMs)

One commentor felt that EPA's description of the relationship of the TCMs to the SIP as a whole was unclear. This commentor felt that EPA was interpreting the SIP to incorporate the TCMs as part of the attainment demonstration, in addition to incorporating the TCMs as contingency measures.

Further review of the SIP confirms that the TCMs are only meant to be incorporated as contingency measures. This intent is clearly stated in the SIP on pages VI–3 and X–1. The SIP states the intent of the area to implement the contingency measures early, as allowed by EPA policy, to obtain additional emission reductions. Chapter XII of the SIP, Attainment Demonstration, clearly demonstrates that these measures are not necessary for the Denver area to attain the CO NAAQS by December 31, 2000. Thus, EPA is clarifying that the TCMs are intended to be enforceable provisions of the SIP only as contingency measures, with implementation required only in the event that the contingency measures are triggered (through the mechanisms discussed in the proposal). The State has made an adequate showing that TCMs are not needed for attainment, as required by section 187(a)(2)(B) of the Act.

Another commentor stated that the requirements of the Act for TCMs in Denver had not been met. EPA believes that the State and the Regional Air Quality Council have correctly interpreted the Act's requirements for TCMs, that the TCM provisions of the SIP are adequate, and that the SIP contains an adequate showing that TCMs are not necessary for attainment.

This commentor also stated that EPA should require annual reporting on the effectiveness and implementation of TCMs and other control strategies. EPA notes that periodic reporting is already required for a number of control measures and does not believe that further reporting is necessary at this time. For example, the Act requires annual reporting of VMT and a comparison of actual VMT with the SIP forecasts. The State has complied with these requirements. The Act and EPA's transportation conformity rule (58 FR 62188, November 24, 1993) also require that the Denver Regional Council of Governments (DRCOG) report on the implementation status of TCMs each time a conformity determination is made, and prohibit conformity findings if TCMs are not being implemented as required by the SIP. The State also produces annual reports on the effectiveness of the SIP's two major control strategies, the I/M and oxygenated fuels programs, as required by State law. EPA's I/M regulations (40 CFR Part 51, Subpart S) also require periodic evaluation of and reporting on the effectiveness of the I/M program.

Contingency Measures

One commentor stated that the SIP does not contain adequate contingency measures, and that EPA should require the State to implement the contingency measures based on the Denver area's failure to attain. This commentor also stated that it was insufficient for the SIP to describe existing conditions as contingency measures which have already been implemented.

As discussed in the proposal (61 FR 36009, July 9, 1996), the SIP TCMs exceed the minimum emission reductions established in EPA guidance, and EPA considers these measures adequate. Although the State has chosen to voluntarily implement many of the contingency measures, and thus obtain the benefits of early emissions reductions, the commentor is correct that EPA is not requiring the State to implement the contingency measures in the SIP based on the area's failure to attain the standard by the end of 1995. EPA believes it is neither necessary nor appropriate to do so. This is because EPA's approval of this Serious area CO SIP, which the State has been implementing since 1994, obviates the need for Moderate area contingency measures. Contingency measures for a Moderate CO nonattainment area with a design value greater than 12.7 ppm are intended to provide emissions reductions while the State revises its SIP to meet Serious area SIP requirements. Here the State has already submitted a Serious area SIP that demonstrates attainment of the CO standard by the end of 2000, and EPA is approving it.

In addition, there is no EPA-approved Moderate area CO SIP for the Denver area on which EPA can base a requirement that the State implement contingency measures for the failure to attain the CO standard by the end of 1995. If an EPA-approved Moderate area CO SIP had been in place at the time the area violated the CO standard in 1995, EPA would have required the State to implement the contingency measures contained in that SIP. In the Serious area SIP that the State has submitted and that EPA is approving today, contingency measures are tied to the 2000 attainment date. There is no basis or necessity for EPA to require the State to implement contingency measures based on the area's failure to attain the CO standard by the end of 1995.

The SIP envisions that the TCMs identified as contingency measures will be implemented early. This is acceptable to EPA. EPA policy (August 13, 1993 memorandum from G.T. Helms to regional Air Branch Chiefs entitled "Early Implementation of Contingency Measures for Ozone and Carbon Monoxide Nonattainment Areas") encourages the early implementation of contingency measures for the additional emission reductions and progress toward attainment that they provide. EPA believes that requiring states to adopt additional contingency measures to replace measures that were implemented early would only discourage early implementation and the resulting additional emission reductions.

Reclassification to Serious

Two commentors expressed concern over EPA's proposed reclassification of the Denver area from Moderate to Serious for CO, given the small number and low absolute value of violations in recent years. These commentors felt that EPA should recognize Denver's progress toward attainment of the CO NAAQS in

recent years. EPA recognizes that

other location in the Denver metro

on-site meteorology data for the periods

appropriately given the effects of nearby

demand model (used for transportation

behind the original VMT estimates in

recent years. EPA recognizes that Denver has taken significant steps to reduce CO levels and make progress toward attainment, including implementation of a comprehensive woodburning control program, the nation's first oxygenated fuels program, and an effective enhanced I/M program. However, as explained in the proposed rulemaking, the unambiguous provisions of the CAA and recent ambient values for CO in Denver compel EPA to take this action.

One commentor stated that the SIP does not contain the elements required for a Serious area SIP. As discussed in detail in the proposal, EPA believes that the SIP does contain all required elements.

Attainment Demonstration

One commentor submitted extensive comments on the adequacy of the attainment demonstration. This commentor felt that the attainment demonstration was inadequate because it did not consider other downtown intersections with the potential of experiencing high concentrations of CO and because growth projections used in the modeling underestimate the amount of growth in traffic that has occurred in the Denver area since the attainment demonstration was submitted to EPA.

The State performed preliminary CAL3QHC modeling of CO concentrations at three intersections in the downtown area: Speer and Auraria Boulevard, Broadway and Colfax, and Broadway and Champa. The CAMP air quality/meteorology monitoring station, which has historically recorded the highest levels of CO in the Denver area, is located adjacent to the intersection of Broadway and Champa. The preliminary modeling results showed predicted concentrations at the Speer/Auraria and Broadway/Colfax intersections that were up to 6 parts per million (ppm) higher than concentrations predicted at the CAMP intersection. However, the State selected only Broadway and Champa (CAMP) for use in the SIP attainment demonstration because the on-site air quality and meteorological data available at this location provided more confidence in the modeling results. To ensure that higher concentrations exceeding the NAAQS do not occur at other downtown locations the State has performed supplemental CO monitoring studies at all three intersections and elsewhere in the Denver urban core. The results to date have continued to support the use of CAMP as the maximum concentration downtown site; CAMP continues to record higher CO design value concentrations than any other location in the Denver metro monitoring network.

The commentor stated that EPA has not applied its modeling standards, guidance, and protocols consistently to the choice of intersections or to the attainment demonstration generally. EPA (both Region VIII and the national Model Clearinghouse) reviewed the State's analysis and found that it was consistent with national modeling policy and other recent Urban Airshed Model/CAL3QHC modeling applications. EPA believes that modeled concentrations at Speer/Auraria and Broadway/Colfax are unreliable and therefore is not requiring the State to use the preliminary CAL3QHC intersection modeling results to demonstrate attainment at these two intersections. EPA's position is based on the following factors: (1) Saturation CO monitoring studies in the downtown area and continuous wintertime monitoring since 1994 at Speer/Auraria do not support the modeled predictions of higher concentrations at these locations; (2) estimated wind speeds at Speer/Auraria and Broadway/Colfax during both episodes modeled were frequently below the stated threshold of the CAL3QHC model and are not considered valid for use in the model; (3) there is a possibility that "cold start" vehicle emissions may have been overestimated at these intersections, artificially increasing predicted concentrations; and (4) micro-meteorological effects of high-rise office buildings significantly increase modeling uncertainties at these intersections, where on-site meteorological data was not available.

EPA also notes that the State followed the criteria contained in the Guideline for Modeling Carbon Monoxide from Roadway Intersections (EPA–454/R–92–005) in identifying the six busiest intersections for the SIP analysis. State modeling of these intersections showed compliance with the NAAQS. However, these intersections are all located outside of the downtown area; downtown is where the highest concentrations have historically been measured. EPA subsequently requested the State to model an additional intersection in the downtown urban core in order to assure attainment of the NAAQS. However, the State's compliance with this request goes beyond the usual requirements for a CO SIP attainment demonstration analysis.

The commentor suggested that meteorological and other data are available that are more than adequate for modeling intersections other than CAMP. To EPA's knowledge, CAMP is the only intersection with representative on-site meteorology data for the periods that were modeled. Off-site meteorology was available at the Tivoli site for portions of the SIP episodes modeled, but this site is located several hundred meters south of the current intersection of Speer and Auraria. EPA reviewed the Tivoli site and determined that meteorological data collected at this location would not be representative of conditions at the intersection. Winds at the Speer and Auraria intersection would be affected to a far greater degree by building wake effects than the Tivoli site. In addition, there have been extensive changes to the roadway and construction of additional structures in the area since the Tivoli data were obtained in 1988. No data whatsoever were available for the Broadway and Colfax intersection.

The commentor referred to critiques of the attainment demonstration developed by State staff and by outside sources. EPA has not been provided with and is not aware of any State or outside critiques of the attainment demonstration. EPA was provided with preliminary modeling results for the Speer and Auraria and Broadway and Colfax intersections by APCD staff members that were based on the Tivoli and CAMP meteorological/air quality data. In addition to using non-representative data, the analysis contained a number of modeling assumptions that were not consistent with the EPA Guideline on Air Quality Models or the CAL3QHC Model Users Manual, including incorrect atmospheric stabilities and wind speeds lower than the acceptable threshold for the CAL3QHC model. The final CAL3QHC modeling submitted by the APCD did not contain intersection modeling for the two intersections where on-site data were not available. EPA concurs with the final modeling analysis submitted by the State. This decision is supported by the supplemental CO monitoring studies that have been performed in the downtown area. These studies support the continued use of CAMP as the maximum concentration downtown site.

The commentor also suggested that EPA applied a different set of review criteria to the downtown intersections than to suburban sites, because the downtown intersections showed high CO concentrations that would trigger more stringent control strategies, and suggested that these different criteria led to high concentration intersections downtown being dropped from the SIP analysis. The reason the modeling results for the two intersections in the downtown area were dropped is that the CAL3QHC model could not be applied appropriately given the effects of nearby downtown buildings on wind flow and the lack of representative on-site data. Building effects were not an issue at the six suburban intersections modeled in the SIP.

The commentor implied that EPA was basing its decision to approve the SIP on "voluntary" compliance with EPA requests, "understandings" between State and EPA staff, and written and unwritten EPA "guidance". The commentor suggested that EPA was honoring a "deal" that violates the letter and intent of the Act. EPA believes that the attainment demonstration meets the requirements of the Act. EPA addresses the commentor's specific concerns regarding the attainment demonstration in other portions of this response. EPA is not basing its decision to approve the SIP on any "deals" or improper "understandings" reached with the State, but on the SIP's compliance with the Act. EPA does not know what the commentor is referring to when it writes about "voluntary" compliance with EPA requests. To the extent EPA has offered guidance to the State, EPA believes such guidance has been consistent with the Act or a reasonable interpretation of the Act.

The commentor noted that many large projects have been planned or built since the attainment demonstration was submitted to EPA, and that newer growth projections show higher levels of traffic than those considered in the SIP. Two of the facilities specifically mentioned by the commentor (Coors Field and Elitch's) would not be expected to affect Denver's ability to attain the CO standard, since they are not operational during the winter season when the highest values of CO are measured in Denver. The proposed Pepsi Center, which could impact Denver's ability to attain the NAAQS due to its potential proximity to one of the downtown intersections where elevated values of CO have been monitored, has not been approved by the City and County of Denver, and there is apparently some possibility that this facility may not be located downtown at all. Denver is currently examining the traffic and air quality impacts of a wide range of potential development in the lower downtown area through its Central Platte Valley Multimodal Access and Air Quality Study.

The comment regarding newer projections of traffic growth apparently refers to revised estimates of daily vehicle miles travelled produced by DRCOG in the summer and fall of 1996. In early 1996, DRCOG made some improvements to its transportation demand model (used for transportation planning, and to produce estimates of future VMT and speeds for air quality planning purposes) and validated the model with actual 1995 traffic counts recorded in Denver. These adjustments led to revised estimates of approximately 49 million miles per day of traffic in the Denver area (the previous modeled estimate had been approximately 45 million miles per day). Part of this estimated increase is due to actual growth in traffic in the Denver region, and part of it is due to use of improved methodologies for traffic counting in the region.

In November 1996, Colorado submitted its 1996 report of 1995 actual annual VMT, as required by the SIP's VMT tracking provisions and the Act. This report showed that actual 1995 VMT were 4.4% greater than the SIP projections and 1.3% greater than the most recent revised projection for 1995. These exceedances are within the allowable limits of EPA's VMT Tracking Program guidance (5.0% and 3.0% for the respective VMT projections). EPA established these tolerances in recognition of the uncertainty inherent in attempting to measure actual VMT in a large urban area. Since the most recent reported actual annual VMT is within these allowable tolerances, the State is not required to implement its contingency measures, and no revision to the SIP is required. If a subsequent VMT tracking report shows that the SIP VMT projections (or updated forecasts) are exceeded by greater than the margins of error allowed by EPA guidance, implementation of the contingency measures will be required, along with a revision to the SIP if necessary.

EPA believes that the State has followed the proper procedures (as outlined in EPA's guidance and the SIP's VMT Tracking Program protocol) in generating the annual VMT reports that EPA is relying on for its approval of the SIP. Several factors are involved in comparing estimates of daily VMT to estimates of annual VMT, including: (1) The geographic area covered by the different estimates; (2) whether average daily traffic or average weekday traffic are used; (3) the differences between the traffic counting network used by DRCOG for its model validation, and the network required for use by the Colorado Department of Transportation in generating the Highway Performance Monitoring System (HPMS) VMT data that the VMT Tracking Program traffic estimates are based on (use of HPMS data is required by EPA and U.S. Department of Transportation guidance); and (4) the assumptions behind the original VMT estimates in the SIP.

There are a number of other factors that protect the SIP's attainment demonstration from growth in VMT. First, under the requirements of the EPA/DOT transportation conformity rule, DRCOG's transportation plans and transportation improvement programs must comply with the emissions budget for CO contained in the CO SIP, even if unexpected increases in VMT occur after the SIP is adopted. This budget protects the Denver area against future violations of the CO NAAQS in the face of growing VMT. If the budget cannot be met, DRCOG cannot adopt any new plans and TIPs, and no new regionally significant projects can be approved. Thus, failure to meet the budget has the same or greater effect as the imposition of highway sanctions under section 179 of the Act. Second, it is important to note that virtually all of the growth in the metro area has occurred not in the downtown area, where the violations of the NAAQS have been monitored, but in outlying portions of the metro area. Thus, EPA would expect that VMT in the downtown area would increase at a lower rate than VMT for the metro area as a whole. This is supported by traffic counts at locations near downtown, which show that traffic in the central area increased at a rate of approximately 2–3% per year between 1990 and 1995, even though DRCOG estimates that traffic has increased approximately 4.5% per year regionwide. Finally, the air quality trends information submitted with the State's March 1996 milestone report shows that the Denver area is ahead of schedule to attain the CO NAAQS even with the higher-than-expected estimates of daily VMT.

Based on its conclusion that the attainment demonstration was inadequate, this commentor further concluded that the control strategies submitted with the SIP are insufficient to provide for attainment of the NAAQS. EPA's general response to this assertion is that the attainment demonstration is adequate, and that the modeling summarized in Chapter XII of the SIP and submitted to EPA demonstrates that the SIP will provide for attainment with the control measures included in the SIP.

The commentor stated that the SIP does not include a requirement that gasoline sold during the winter months include a level of oxygen sufficient to attain the NAAQS. As discussed above, the SIP includes a requirement for a 3.1% minimum oxygen content; the attainment demonstration shows that this level of oxygen is necessary and

sufficient to provide for attainment of the NAAQS.

The commentor stated that there is no indication that the State will apply the requirements for content and analysis of transportation plans, programs and projects contained in the conformity regulations. These requirements for nonattainment areas classified as serious and above are enforceable through the EPA/DOT conformity regulation, and DRCOG must comply with them when they take effect. There is no requirement in the conformity rule or in the Act that these provisions be incorporated into the CO SIP. However, they are mentioned on page I–4 of the SIP.

The commentor stated that the SIP does not satisfy section 110(a)(2) of the Act. As outlined in detail in the Technical Support Document for EPA's proposed action, the SIP does satisfy the SIP content requirements of section 110(a)(2).

The commentor stated that the SIP does not contain adequate measures to control stationary source emissions. Stationary point source emissions represent only 1.1% of base case emissions (based on actual emissions) and 5.6% of attainment year emissions (based on allowable emissions). None of the major sources are located in close proximity to the downtown monitors which record high concentrations, and these sources have little or no impact on Denver's ability to attain the NAAQS. However, stationary point sources of CO are regulated by Colorado Regulation No. 1 (Particulates, Smokes, CO and Sulfur Oxides). As noted above, woodburning is already regulated by Regulation No. 4; woodburning also has very little impact on the downtown monitoring sites. The remaining stationary sources of emissions are natural gas combustion and structural fires, which contribute a total of less than 1% to the attainment year inventory and again have very little impact on the high concentration monitoring sites.

The commentor stated that the SIP should include a mandatory employer-based trip reduction program, or demonstrate that such a program is not necessary to demonstrate attainment of the NAAQS. As noted in the proposal, Congress revised the Act in 1995 to make submittal of trip reduction programs voluntary. Thus, EPA could not require the State to submit such a program even if the attainment demonstration were to be found inadequate.

The commentor noted that the SIP does not contain an adequate milestone, nor does it contain an economic incentive program for implementation should the milestone not be met. Neither the Act nor EPA policy establish requirements for milestones, so the State was free to adopt its 1995 base case emission inventory as the milestone. The base case represents progress toward attainment (emissions in the 1995 base case were substantially lower than 1990 emissions), which is the intent of this requirement of the Act. Also, the Act does not require submittal of an economic incentive program until after either (1) the milestone has been missed or (2) the Denver area fails to attain by December 31, 2000. Thus, the SIP is not deficient in this regard.

Finally, the commentor stated that EPA should expressly incorporate the baseline (pre-existing) control strategies in its approval of this SIP, that EPA should make it clear that its approval of the SIP is based on the understanding that these control strategies will remain in place, and that EPA should withdraw its approval of the SIP should these control strategies be weakened. As noted in the proposal, the baseline strategies relied upon in the attainment demonstration have already been incorporated into the Colorado SIP, making them federally enforceable; the new control strategies will also be incorporated into the SIP with EPA's final action on the SIP. EPA's approval is based on the enforceability of these measures and the SIP's stated intention that these measures continue to be implemented. If, subsequent to EPA approval, control measures are weakened or discontinued, EPA's available responses include making a finding of SIP non-implementation under section 179(a)(4) and/or section 113(a)(2) of the Act, or making a finding of SIP inadequacy and issuing a call for a SIP revision under Section 110(k)(5) of the Act. EPA believes that these mechanisms, along with EPA's and citizens' ability to directly enforce SIP requirements, are adequate to ensure that pre-existing control measures continue to be implemented.

Approval of the SIP

While several parties requested that EPA disapprove the SIP, for reasons discussed above, two commentors supported EPA's approval of the SIP. EPA is proceeding with final approval of the CO SIP for the reasons discussed above and in our July 9, 1996 and December 6, 1996 notices of proposed rulemaking.

III. Implications of Today's Final Action

In today's action, EPA is approving SIP revisions submitted by the Governor on July 11, 1994, July 13, 1994, September 29, 1995, and December 22, 1995. Specifically, EPA is (1) approving the July 11, 1994 attainment demonstration, VMT tracking and forecasting program, TCM, and contingency measures submittals for Denver; (2) approving the July 13, 1994 attainment demonstration and contingency measures submittals for Longmont; (3) approving the control strategies for Denver, including the September 29, 1995 submittal of revisions to Regulations 11 and 13 (I/M and oxygenated fuels); and (4) approving the further revisions to Regulation 13 submitted on December 22, 1995 that shorten the effective period of the oxygenated fuels program. For the reasons discussed in Section II of this document, EPA is not taking action on the SIP provision submitted on July 11, 1994 that calls for a prohibition of the re-registration of abandoned and impounded vehicles.

In this document, EPA is also making a finding that the Denver/Boulder carbon monoxide nonattainment area did not attain the NAAQS by the required attainment date of December 31, 1995, and is revising the area's classification for carbon monoxide in 40 CFR Part 81 from Moderate to Serious. This finding is based on air quality data revealing more than one exceedance of the CO NAAQS during calendar year 1995, resulting in a design value higher than the NAAQS for the period 1994–95. By action dated December 20, 1994, the EPA Administrator delegated to the Regional Administrators the authority to determine whether CO nonattainment areas attained the NAAQS, and to reclassify those that did not.

EPA has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the Act. EPA has determined that this action conforms with those requirements.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to any State Implementation Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Executive Order (EO) 12866

Under EO 12866, 58 FR 51735 (October 4, 1993), EPA is required to determine whether regulatory actions are significant and therefore should be subject to OMB review, economic analysis, and the requirements of the

EO. The EO defines a "significant regulatory action" as one that is likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Today's SIP-related actions have been classified as Table 3 actions for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted these regulatory actions from EO 12866 review.

Likewise, EPA has determined that today's finding of failure to attain would result in none of the effects identified in section 3(f) of the EO. Under Section 186(b)(2) of the Clean Air Act, findings of failure to attain and reclassification of nonattainment areas are based upon air quality considerations and must occur by operation of law in light of certain air quality conditions. They do not, in and of themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, findings of failure to attain and reclassification cannot be said to impose a materially adverse impact on State, local, or tribal governments or communities.

V. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. section 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. sections 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisidiction over populations that are less than 50,000.

SIP revision approvals under Section 110 and Subchapter I, Part D, of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval process does not impose any new requirements, EPA certifies that this final rule would not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State actions. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. U.S.E.P.A., 427 U.S. 246, 256–266 (S. Ct. 1976); 42 U.S.C. section 7410(a)(2).

As discussed in section IV of this document, findings of failure to attain and reclassification of nonattainment areas under Section 186(b)(2) of the CAA do not, in and of themselves, create any new requirements. Therefore, I certify that today's final action does not have a significant impact on small entities.

VI. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that today's final approval actions do not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local or tribal governments in the aggregate, or to the private sector. These Federal actions approve pre-existing requirements under State or local law, and impose no new requirements. Accordingly, no additional costs to State, local or tribal governments, or to the private sector, result from these actions.

Likewise, EPA believes, as discussed in section IV of this document, that the finding of failure to attain and reclassification to Serious are factual determinations based upon air quality data and must occur by operation of law and, hence, do not impose any federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act.

VII. Small Business Regulatory Enforcement Fairness Act (SBREFA)

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

VIII. Petitions for Judicial Review

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 9, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see Section 307(b)(2)).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, and Reporting and recordkeeping requirements.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: January 31, 1997.

Max H. Dodson,

Acting Regional Administrator.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart G—Colorado

2. Section 52.320 is amended by adding paragraph (c)(80) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(80) On July 11, 1994, July 13, 1994, September 29, 1995, and December 22, 1995, the Governor of Colorado submitted revisions to the Colorado State Implementation Plan (SIP) to satisfy those CO nonattainment area SIP requirements for Denver and Longmont, Colorado due to be submitted by November 15, 1992, and further revisions to the SIP to shorten the effective period of the oxygenated fuels program. EPA is not taking action on the SIP provision submitted on July 11, 1994 that calls for a prohibition of the re-registration of abandoned and impounded vehicles.

(i) Incorporation by reference.

(A) Regulation No. 11, Motor Vehicle Emissions Inspection Program, 5 CCR 1001–13, as adopted on September 22, 1994, effective November 30, 1994. Regulation No. 13, Oxygenated Fuels Program, 5 CCR 1001–16, as adopted on October 19, 1995, effective December 20, 1995.

PART 81—[AMENDED]

1. The authority citation for Part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. In 81.306, the Carbon Monoxide table is amended by revising the entry for "Denver-Boulder Area" to read as follows:

§ 81.306 Colorado.

* * * * *

COLORADO—CARBON MONOXIDE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Denver-Boulder Area: The boundaries for the Denver nonattainment area for carbon monoxide (CO) are described as follows: Start at Colorado Highway 52 where it intersects the eastern boundary of Boulder County; Follow Highway 52 west until it intersects Colorado Highway 119; Follow northern boundary of Boulder city limits west to the 6000-ft. elevation line; Follow the 6000-ft. elevation line south through Boulder and Jefferson Counties to US 6 in Jefferson County; Follow US 6 west to the Jefferson County-Clear Creek County line; Follow the Jefferson County western boundary south for approximately 16.25 miles; Follow a line east for approximately 3.75 miles to South Turkey Creek; Follow South Turkey Creek northeast for approximately 3.5 miles; Follow a line southeast for approximately 2.0 miles to the junction of South Deer Creek Road and South Deer Creek Canyon Road; Follow South Deer Creek Canyon Road northeast for approximately 3.75 miles; Follow a line southeast for approximately five miles to the northern-most boundary of Pike National Forest where it intersects the Jefferson County-Douglas County line; Follow the Pike National Forest boundary southeast through Douglas County to the Douglas County-El Paso County line; Follow the southern boundary on Douglas County east to the Elbert County line; Follow the eastern boundary of Douglas County north to the Arapahoe County line; Follow the southern boundary of Arapahoe County east to Kiowa Creek; Follow Kiowa Creek northeast through Arapahoe and Adams Counties to the Adams-Weld County line; Follow the northern boundary of Adams County west to the Boulder County line; Follow the eastern boundary of Boulder County north to Highway 52.				
Adams County (part)	.....	Nonattainment	4/9/97	Serious.
Arapahoe County (part)	.....	Nonattainment	4/9/97	Serious.
Boulder County (part)	.....	Nonattainment	4/9/97	Serious.
Denver County (part)	.....	Nonattainment	4/9/97	Serious.
Douglas County (part)	.....	Nonattainment	4/9/97	Serious.
Jefferson County (part)	.....	Nonattainment	4/9/97	Serious.

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 97–5765 Filed 3–7–97; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 82

[FRL–5701–1]

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency.

ACTION: Notice of acceptability.

SUMMARY: This notice expands the list of acceptable substitutes for ozone-depleting substances (ODS) under the U.S. Environmental Protection Agency's (EPA) Significant New Alternatives Policy (SNAP) program.

EFFECTIVE DATE: March 10, 1997.

ADDRESSES: Information relevant to this notice is contained in Air Docket A–91–42, Central Docket Section, South Conference Room 4, U.S. Environmental Agency, 401 M Street, S.W., Washington, D.C. 20460. Telephone: (202) 260–7548. The docket may be inspected between 8:00 a.m. and 5:30 p.m. weekdays. As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Sally Rand at (202) 233–9739 or fax (202) 233–9577, U.S. EPA, Stratospheric Protection Division, 401 M Street, S.W., Mail Code 6205J, Washington, D.C. 20460; EPA Stratospheric Ozone Protection Hotline at (800) 296–1996; EPA World Wide Web Site at http://www.epa.gov/ozone/title6/snap/snap.html.

SUPPLEMENTARY INFORMATION:

I. Section 612 Program
A. Statutory Requirements
B. Regulatory History
II. Listing of Acceptable Substitutes
A. Refrigeration and Air Conditioning: Substitutes for Class I Substances
B. Foam Blowing
III. Additional Information
Appendix A— Summary of Acceptable Decisions

I. Section 612 Program

A. Statutory Requirements

Section 612 of the Clean Air Act authorizes EPA to develop a program for evaluating alternatives to ozone-depleting substances. EPA refers to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

Rulemaking—Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, methyl bromide, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.

Listing of Unacceptable/Acceptable Substitutes—Section 612(c) also requires EPA to publish a list of the substitutes unacceptable for specific uses. EPA must publish a corresponding list of acceptable alternatives for specific uses.

Petition Process—Section 612(d) grants the right to any person to petition EPA to add a substance to or delete a substance from the lists published in accordance with section 612(c). The Agency has 90 days to grant or deny a petition. Where the Agency grants the petition, EPA must publish the revised lists within an additional 6 months.

90-day Notification—Section 612(e) requires EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's unpublished health and safety studies on such substitutes.

Outreach—Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.

Clearinghouse—Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

B. Regulatory History

On March 18, 1994, EPA published the Final Rulemaking (FRM) (59 FR 13044) which described the process for administering the SNAP program and issued EPA's first acceptability lists for substitutes in the major industrial use sectors. These sectors include: Refrigeration and air conditioning; foam blowing; solvent cleaning; fire suppression and explosion protection; sterilants; aerosols; adhesives, coatings and inks; and tobacco expansion. These sectors compose the principal industrial sectors that historically consumed the largest volumes of ozone-depleting compounds.

As described in the final rule for the SNAP program (59 FR 13044), EPA does not believe that rulemaking procedures are required to list alternatives as acceptable with no limitations. Such listings do not impose any sanction, nor do they remove any prior license to use a substance. Consequently, by this notice EPA is adding substances to the list of acceptable alternatives without first requesting comment on new listings.

EPA does, however, believe that Notice-and-Comment rulemaking is required to place any substance on the list of prohibited substitutes, to list a substance as acceptable only under certain conditions, to list substances as acceptable only for certain uses, or to remove a substance from either the list of prohibited or acceptable substitutes. Updates to these lists are published as separate notices of rulemaking in the **Federal Register**.

The Agency defines a "substitute" as any chemical, product substitute, or alternative manufacturing process, whether existing or new, that could replace a class I or class II substance. Anyone who produces a substitute must provide the Agency with health and safety studies on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative. This requirement applies to substitute manufacturers, but may include importers, formulators or end-users, when they are responsible for introducing a substitute into commerce.

EPA published Notices listing acceptable alternatives on August 26, 1994 (59 FR 44240), January 13, 1995 (60 FR 3318), July 28, 1995 (60 FR 38729), February 8, 1996 (61 FR 4736), and September 5, 1996 (61 FR 47012), and published Final Rulemakings restricting the use of certain substitutes on June 13, 1995 (60 FR 31092), May 22, 1996 (61 FR 25585), and October 16, 1996 (61 FR 54030).

II. Listing of Acceptable Substitutes

This section presents EPA's most recent acceptable listing decisions for substitutes for class I and class II substances in the following industrial sectors: refrigeration and air conditioning, and foam blowing. In this Notice, EPA has split the refrigeration and air conditioning sector into two parts: substitutes for class I substances and substitutes for class II substances. For copies of the full list, contact the EPA Stratospheric Protection Hotline at (800) 296–1996.

Parts A through C below present a detailed discussion of the substitute listing determinations by major use sector. Tables summarizing today's listing decisions are in Appendix A. The comments contained in Appendix A provide additional information on a substitute, but for listings of acceptable substitutes, they are not legally binding under section 612 of the Clean Air Act. Thus, adherence to recommendations in the comments is not mandatory for use as a substitute. In addition, the comments should not be considered comprehensive with respect to other legal obligations pertaining to the use of the substitute. However, EPA encourages users of acceptable substitutes to apply all comments to their use of these substitutes. In many instances, the comments simply allude to sound operating practices that have already been identified in existing industry and/or building-code standards. Thus, many of the comments, if adopted, would not require significant changes in existing operating practices for the affected industry.

A. Refrigeration and Air Conditioning: Class I

1. Secondary Loop Systems

In the Notice published September 5, 1996 (61 FR 47012) EPA solicited information about fluids used in secondary loop systems. EPA believes that the use of secondary fluids offers potential environmental and safety benefits, and requested this information to determine whether it would be

appropriate to list secondary fluids formally under the SNAP program.

EPA received no comments or information supporting the listing of these fluids under SNAP. In fact, one company provided information urging EPA to not list secondary fluids under SNAP. The company expressed concern that listing secondary fluids would discourage their use and would be extremely burdensome to the Agency and the regulated community. The company also indicated that EPA had vastly underestimated the number and variety of fluids used as secondary fluids.

EPA has decided not to list secondary fluids under SNAP based on the above discussion and the lack of information or data suggesting that the use of these fluids in secondary loops poses any environmental or safety risk. EPA is also sensitive to the resources required for preparing submissions, reviews, and listings and to the disincentive that regulating them may create. However, EPA will keep abreast of new secondary fluids as they are introduced in the market, and may revisit this decision as appropriate. EPA will also include information about secondary fluids in outreach materials and encourage their use where the potential for environmental and safety benefits could be attained.

2. Acceptable Substitutes

Note that EPA acceptability does not mean that a given substitute will work in a specific type of equipment within an end-use. Engineering expertise must be used to determine the appropriate use of these and any other substitutes. In addition, although some alternatives are listed for multiple refrigerants, they may not be appropriate for use in all equipment or under all conditions.

a. HFC–236fa. HFC–236fa, when manufactured using any process that does not convert perfluoroisobutylene (PFIB) directly to HFC–236fa in a single step, is acceptable as a substitute for CFC–114 in industrial process refrigeration. HFC–236fa does not harm the ozone layer because it does not contain chlorine. HFC–236fa has an extremely high 100-year GWP of 6,300, but its lifetime is considerably shorter than that of perfluorocarbons. HFC–236fa is the only alternative submitted to date that is safe for the ozone layer, is low in toxicity, and can be a substitute in industrial process heat pumps. Note that the prohibition on venting, which applies to all substitute refrigerants, was mandated in section 608(c)(2) and took effect on November 15, 1995.

EPA is aware of several methods for manufacturing HFC–236fa, including one that produces HFC–236fa directly from PFIB. PFIB is an extremely toxic substance that could pose risks in very small concentrations. Thus, EPA believes it is appropriate to distinguish among the different methods for producing HFC–236fa.

B. Foam Blowing

1. Acceptable Substitutes

a. Polyisocyanurate and Polyurethane Rigid Boardstock Foam. (a) Saturated Light Hydrocarbons C3–C6. Saturated Light Hydrocarbons C3–C6 are acceptable substitutes for HCFCs in polyisocyanurate and polyurethane rigid boardstock foam. Hydrocarbons are more flammable than CFCs and HCFCs and use would likely require additional investment to assure safe handling, use and shipping. These hydrocarbons have zero global warming potential (GWP) but are volatile organic compounds (VOCs) and must be controlled as such under Title I of the Clean Air Act. Relevant building codes and other safety requirements necessary for use of hydrocarbon-blown boardstock foam would have to be met.

b. Polyurethane Rigid Appliance Foam. (a) HFC–134a. HFC–134a (or blends thereof) is an acceptable substitute for HCFCs in polyurethane rigid appliance foam. HFC–134a has low toxicity and is non-flammable. However, HFC–134a has relatively high thermal conductivity and has the potential to contribute to global warming.

(b) Saturated light hydrocarbons C3–C6. Saturated light hydrocarbons C3–C6 (or blends thereof) are acceptable substitutes for HCFCs in polyurethane rigid appliance foam. Hydrocarbons are more flammable than CFCs and HCFCs and use would likely require additional investment to assure safe handling and use. These hydrocarbons have zero global warming potential (GWP) but are volatile organic compounds (VOCs) and must be controlled as such under Title I of the Clean Air Act.

(c) Carbon dioxide. Carbon dioxide (or blends thereof) is an acceptable alternative to HCFCs in polyurethane appliance foam.

III. Additional Information

Contact the Stratospheric Protection Hotline at 1–800–296–1996, Monday–Friday, between the hours of 10:00 a.m. and 4:00 p.m. (Eastern Standard Time).

For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the SNAP final rulemaking published in the **Federal Register** on March 18, 1994 (59 FR 13044). **Federal Register** notices can be ordered from the Government Printing Office Order Desk (202) 783–3238; the citation is the date of publication. This Notice may also be obtained on the World Wide Web at http://www.epa.gov/ozone/title6/snap/snap.html.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: February 28, 1997.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

Note: The following Appendix will not appear in the Code of Federal Regulations.

APPENDIX A: SUMMARY OF ACCEPTABLE DECISIONS, REFRIGERATION SECTOR

[Acceptable Decisions]

End-use	Substitute	Decision	Comments
CFC–114, Industrial Process Refrigeration.	HFC–236fa	Acceptable when manufactured using any process that does not convert perfluoroisobutylene (PFIB) directly to HFC–236fa in a single step, is acceptable as a substitute for CFC–114 in industrial process refrigeration.	

APPENDIX A: SUMMARY OF ACCEPTABLE DECISIONS, REFRIGERATION SECTOR—Continued

[Acceptable Decisions]

End-use	Substitute	Decision	Comments
Foam Sector—Acceptable Decisions			
HCFCs Rigid polyurethane and polyisocyanurate laminated boardstock.	Saturated Light Hydrocarbons C3–C6.	Acceptable	Zero ODP and GWP but must adhere to VOC regulations. Flammable.
HCFCs Rigid polyurethane appliance.	HFC–134a	Acceptable	Non-flammable and low toxicity but may contribute to global warming.
Saturated Light Hydrocarbons C3–C6	Acceptable	Zero ODP and GWP but must adhere to VOC regulations. Flammable..	
	Carbon Dioxide	Acceptable	High thermal conductivity.

[FR Doc. 97–5887 Filed 3–7–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[OPP–300459; FRL–5591–9]

RIN AB–78

Sulfentrazone; Establishment of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes tolerances for residues of the herbicide sulfentrazone (N-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl]phenyl]methanesulfonamide) and its major metabolite 3-hydroxymethyl sulfentrazone (N-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-hydroxymethyl-5-oxo-1H-1,2,4-triazol-1-yl]phenyl]methanesulfonamide), in or on the raw agricultural commodity soybean seed at 0.05 ppm and for combined inadvertent residues of sulfentrazone, and its metabolites, 3-hydroxymethyl sulfentrazone and 3-desmethyl sulfentrazone [N-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-5-oxo-1H-1,2,4-triazol-1-yl]phenyl]methanesulfonamide] in cereal grains (excluding sweet corn) forage at 0.2 ppm, straw at 0.6 ppm, hay at 0.2 ppm, grain at 0.1 ppm, stover at 0.1 ppm, bran at 0.15 ppm and hulls at 0.30 ppm. FMC Corporation submitted a petition to EPA under the Federal Food, Drug and Cosmetic Act as amended by the Food Quality Protection Act of 1996 (Pub. L. 104-170) requesting the tolerances.

EFFECTIVE DATE: This regulation becomes effective March 10, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [PF–670/OPP–300459], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled Tolerance Petition Fees and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the docket control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically to the OPP by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov.

Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number PF–670/OPP–300459. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Product Manager (PM) 23, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6224; e-mail: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 6, 1996 (60 FR 57420) (FRL–5571–4), EPA issued a notice pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), announcing the filing of a pesticide tolerance petition by FMC Corporation, 1735 Market Street, Philadelphia, PA 19103. The petition requested to amend 40 CFR part 180 by establishing a tolerance for residues of the herbicide sulfentrazone (N-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl] phenyl]methanesulfonamide) in or on raw agricultural commodity soybean seed at 0.05 ppm and rotational crop tolerances in cereal grains from 0.1 to 0.5 ppm. There were no comments received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data listed below were considered in support of these tolerances.

I. Toxicological Profile

1. A battery of acute toxicity studies placed technical sulfentrazone in Toxicity Categories III and IV. No evidence of sensitization was observed following dermal application in guinea pigs.

2. A 90–day subchronic toxicity study was conducted in rats, with dietary intake levels of 0, 3.3, 6.7, 19.9, 65.8, 199.3, or 534.9 mg/kg/day for males and 0, 4, 7.7, 23.1, 78.1, 230.5, or 404.3 milligrams/kilograms/day (mg/kg/day) for females respectively. No Observed Effect Levels (NOELs) of 19.9 mg/kg/day in males and 23.1 mg/kg/day in females were based on clinical anemia.

3. A 90–day subchronic feeding study was conducted in mice by dietary admix

at doses of 0, 10.3, 17.8, 60.0, 108.4, or 194.4 mg/kg/day for males and 0, 13.9, 29.0, 79.8, 143.6, or 257.0 mg/kg/day for females, respectively. NOELs of 60 mg/kg/day (males) and 79.8 mg/kg/day (females) were based on decreases in body weights and/or gains; decreased erythrocytes, hemoglobin and hematocrit values; and splenic microscopic pathology.

4. In a 90–day subchronic feeding study in dogs administered by dietary admix at doses of 0, 10, 28, or 57 mg/kg/day for males and 0, 10, 28, or 73 mg/kg/day for females, a NOEL of 28 mg/kg/day was determined for both males and females based on decreases in hemoglobin and hematocrit, elevated alkaline phosphatase levels, increased liver weights and microscopic liver as well as splenic changes.

5. A 12–month feeding study in dogs was dosed at levels of 0.0, 9.9, 24.9, or 61.2 mg/kg/day for male dogs and 0.0, 10.4, 29.6, or 61.9 mg/kg/day for female dogs in the control through high-dose groups, respectively, with a NOEL of 24.9 mg/kg/day for males and 29.6 mg/kg/day for females based on hematology effects and microscopic liver changes.

6. An 18–month feeding/carcinogenicity study in mice was conducted with dietary intake of 0, 46.6, 93.9, 160.5, or 337.6 mg/kg/day for males and 0, 58.0, 116.9, 198.0, or 407.1 mg/kg/day for females. A NOEL of 93.9 mg/kg/day in males and 116.9 mg/kg/day in females was based on decreases in hemoglobin and hematocrit. There were no treatment-related increases in tumors of any kind observed at any dose level.

7. In a 24–month chronic feeding/oncogenicity study in rats at dietary doses of 0, 24.3, 40.0, 82.8, or 123.5 mg/kg/day for males and 0, 20.0, 36.4, 67.0, or 124.7 mg/kg/day for females, an overall NOEL of 40.0 mg/kg/day in males and 36.4 mg/kg/day in females was based on hematology effects and reduced body weights. There was no evidence of an oncogenic response.

8. A prenatal oral developmental toxicity study in the rat with dose levels at 25.0 or 50.0 mg/kg/day established a maternal NOEL of 25 mg/kg/day based on decreased body weight gain, increased spleen weight, and microscopic changes in the spleen, and a fetal NOEL of 10 mg/kg/day was based on fetal death, reduced body weights, and alterations in skeletal development at higher doses.

9. A supplemental oral developmental toxicity study conducted in rats at oral dose levels of 25.0 and 50.0 mg/kg/day to test for cardiac effects at the request of the EPA, did not reveal any significant effects on fetal cardiac development. The results of this study confirmed the maternal and fetal findings of the previously-conducted developmental study on sulfentrazone in rats and did not alter the study conclusions.

10. In a dermal developmental study in the rat at doses of 0, 5, 25, 50, 100 and 250 mg/kg/day, a maternal (systemic) No Observed Adverse Effect Level (NOAEL) was established at 250 mg/kg/day. Significant treatment-related increases in the fetal and litter incidences of incompletely ossified lumbar vertebral arches, hypoplastic or wavy ribs, and incompletely ossified or nonossified ischia or pubes occurred at the high-dose (250 mg/kg/day). An additional significant increase in the high-dose fetal incidence of variations in the sternebrae (incompletely ossified or unossified) was not judged to be treatment-related. At 250 mg/kg/day, the mean numbers of thoracic vertebral and rib ossification sites were significantly decreased, a high-dose effect of treatment with sulfentrazone consistent with the significant treatment-related hypoplasia observed in the skeletal evaluation of the ribs. Therefore, the developmental (fetal) Lowest Observed Effect Level (LOEL) is 250 mg/kg/day based on decreased fetal body weight; increased incidences of fetal variations: hypoplastic or wavy ribs, incompletely ossified lumbar vertebral arches, and incompletely ossified ischia or pubes; and reduced number of thoracic vertebral and rib ossification sites. The developmental (fetal) NOEL is 100 mg/kg/day.

11. A developmental toxicity study in rabbits was conducted at gavage dose levels of 0, 100, 250, or 375 mg/kg/day. Treatment-related incidences of decreased feces and hematuria were noted at 250 mg/kg/day or greater. In addition, at the 375 mg/kg/day dose level, five rabbits aborted. Significant reductions in mean body weight change were observed for the dosing period (GD 7- 19) and for the study duration (GD 0-29, both before and after adjustment for gravid uterine weight) at the 250 and 375 mg/kg/day dose levels. Therefore, the maternal (systemic) LOEL is 250 mg/kg/day, based upon increased abortions, clinical signs (hematuria and decreased feces), and reduced body weight gain. The maternal (systemic) NOEL is 100 mg/kg/day. Skeletal evaluation in fetuses revealed dose- and treatment-related findings at the 375 mg/kg/day dose level. These included significant increases in both the fetal and litter incidences of fused caudal vertebrae (a malformation) and of partially fused nasal bones (a variation). In addition, at 375 mg/kg/day, significant treatment-related reductions in ossification site averages were observed for metacarpals and both fore- and hindpaw phalanges. Therefore, the developmental (fetal) LOEL is 250 mg/kg/day, based upon increased resorptions, decreased live fetuses per litter, and decreased fetal weight. The developmental (fetal) NOEL is 100 mg/kg/day.

12. A two-generation reproduction study in the rat at dietary levels of 14, 33, or 46 mg/kg/day in males and 16, 40, or 56 mg/kg/day in females established a NOEL for systemic and reproductive/developmental parameters of 14 mg/kg/day for males and 16 mg/kg/day for females. The LOEL for systemic and reproductive/development parameters was 33 mg/kg/day for males and 40 mg/kg/day for females. Systemic effects were comprised of decreased body weight gains, while reproductive/developmental effect at the LOEL included degeneration and/or atrophy in the testes, with epididymal sperm deficits, in the second (F1) generation males. Male fertility in the F1 generation was reduced at higher doses; litter size, pup survival, and pup body weight for both generations were also effected at higher doses.

13. A supplemental two-generation rat reproduction study was conducted at dietary intake levels of 50, 100, 200, or 500 ppm with a NOEL for reproductive parameters of 200 ppm. This study confirmed the reproductive/developmental effects observed in the first two-generation reproductive toxicity study. It was the conclusion of the RfD/Peer Review Committee that, under the conditions of the studies reviewed, sulfentrazone caused developmental and reproductive toxicity. The results of these studies elicited a high level of concern by the Committee, since the developmental toxicity studies demonstrated embryo/fetal toxicity at treatment levels that were not maternally toxic, and significant toxic effects were observed primarily in the second generation animals of the reproduction study. Because these animals had been exposed to sulfentrazone *in utero*, the possibility that the observed reproductive toxicity resulted from a developmental and/or genotoxic mechanism was suggested.

14. A reverse gene mutation assay (*salmonella typhimurium*) yielded negative results, both with and without metabolic activation.

15. A mouse lymphoma forward gene mutation assay yielded negative results with equivocal results without activation.

16. A mouse micronucleus assay test was negative following intraperitoneal injection of 340 mg/kg.

17. In an acute neurotoxicity study in rats at gavage doses of 0, 250, 750, or 2,000 mg/kg, a NOEL of 250 mg/kg and a LOEL of 750 mg/kg were based upon increased incidences of clinical signs, Functional Observation Battery (FOB) findings, and decreased motor activity which were reversed by day 14 post-dose. There was no evidence of neuropathology.

18. A 90–day subchronic neurotoxicity study in the rat was conducted at dietary levels of 30, 150, or 265 mg/kg/day in males, and 37, 180, or 292 mg/kg/day in females, with a NOEL of 30 mg/kg/day in males and 37 mg/kg/day in females. The LOEL was 150 mg/kg/day for males and 180 mg/kg/day for females based on increased incidences of clinical signs, decreased body weights, body weight gains, and food consumption in females and increased motor activity in females at week 13. There were no neurohistopathological effects on the peripheral or central nervous system.

19. A metabolism study in rats indicated that approximately 84 to 104% of the orally administered dose of sulfentrazone was excreted in the urine, and that the pooled urinary radioactivity consisted almost entirely of 3-hydroxymethyl sulfentrazone. Pooled fecal radioactivity showed that the major metabolite consisted of 3-hydroxymethyl-sulfentrazone (1.26 to 2.55% of the administered dose). The proposed metabolic pathway appeared to be conversion of the parent compound mainly to 3-hydroxymethyl-sulfentrazone (excreted in urine and feces).

II. Aggregate Exposures

1. *Food and feed uses.* The primary source for human exposure to sulfentrazone will be from ingestion of both raw and processed agricultural commodities from soybeans. A DRES chronic exposure analysis was performed using tolerance level residues and 100% crop treated information to estimate the Theoretical Maximum Residue Contribution (TMRC) for the general population and 22 subgroups. The chronic analysis showed that exposure from the proposed new tolerance, in/on soybeans, on cereal grains (excluding sweet corn), on bran of cereal grains, milk, eggs, and meat for children 1 to 6 years old (the subgroup with the highest exposure) would be 38.8% of the RfD. The exposure for the general U.S. population would be 16.7% of the RfD.

The analysis for sulfentrazone is a worst case estimate of dietary exposure with all residues at tolerance level and 100 percent of the commodities assumed to be treated with sulfentrazone. Even without refinements, the chronic dietary risk exposure to sulfentrazone appears to be minimal for this petition.

2. *Potable water.* A ground water exposure estimate for sulfentrazone is based on findings from a voluntary prospective ground water study conducted in a sandy (worst case) site in North Carolina. Although this single ground water monitoring study was incomplete, enough data were collected to confirm that sulfentrazone leaches substantially to ground water in areas with sandy soils. Sulfentrazone was found in ground water at concentrations as high as 37 parts per billion (ppb) in shallow wells and 19 ppb in deeper wells. Residues in shallow ground water were highly persistent and only slowly dissipated, with little change in concentrations over a 1-year period, at which time sampling was terminated. The use of 37 ppb in estimating dietary exposure through ground water represents the worst case. The worst case is based on soil type (sandy) and a limited population that would obtain their drinking water from wells in this type of soil. However, HED feels that due to sulfentrazone's mobility (Koc = 43; Kd = 0.2-0.8) and persistence (≈9 year half life), over time the worst case values may be approached in more typical ground water settings. Using 37 ppb, the dietary exposure from potable water is 0.00105 mg/kg/day to adults and 0.0037 mg/kg/day for children 1 to 6 years old.

3. *Non-dietary uses.* Since the petition for use of sulfentrazone is limited to commercial soybean production, no non-dietary exposures are expected for the general population.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." While the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the capability to resolve the scientific issues concerning common mechanism of toxicity in a meaningful way. EPA is commencing a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will enable the Agency to apply common mechanism issues to its pesticide risk assessments. At present, however, the Agency does not know how to apply the information in its files concerning common mechanism issues to risk assessments, and therefore believes that in most cases there is no "available information" concerning common mechanism that can be scientifically applied to tolerance decisions. Where it is clear that a particular pesticide may share a significant common mechanism with other chemicals, or where it is clear that a pesticide does not share a common mechanism with other chemicals, a tolerance decision may be affected by common mechanism issues. The Agency expects that most tolerance decisions will fall into the area in between, where EPA cannot reasonably determine whether a pesticide does or does not share a common mechanism of toxicity with other chemicals (and, if so, how that common mechanism should be factored into a risk assessment). In such circumstances, the Agency will reach a tolerance decision based on the best, currently-available and usable information, without regard to common mechanism issues. However, the Agency will also revisit such decisions when the Agency determines how to apply common mechanism information to pesticide risk assessments.

In the case of sulfentrazone, EPA has determined that it does not now have the capability to apply the information in its files to a resolution of common mechanism issues in a manner that would be useful in a risk assessment. This tolerance determination therefore does not take into account common mechanism issues. The Agency will reexamine the tolerances for sulfentrazone, if reexamination is appropriate, after the Agency has determined how to apply common mechanism issues to its pesticide risk assessments.

III. Determination of Safety for U.S. Population and Children

1. *The U.S. population.* Based on a NOEL of 14 mg/kg/day body weight (bwt)/day from a two-generation rat reproduction study that demonstrated histopathological findings in testes and epididymides of second generation males as an endpoint, and using an uncertainty factor of 1,000, the Agency has determined a reference dose (RfD) of 0.014 mg/kg bwt/day for this assessment of risk. The extra factor of 10 and the uncertainty factor of 1,000 is to provide

added protection for infants and

litter size, pup survival and pup body

of confidence in the endpoints and dose

followed by gas chromatographic

appropriate adjustments to reflect the

Crystal Mall #2, 1921 Jefferson Davis

added protection for infants and children. Based on the available toxicity data and the available exposure data identified above, the proposed tolerances will utilize 16.7% of the RfD for the U.S. population. Including an estimated exposure of 37 ppb in potable water, and assuming the injection of two liters of water per day, the dietary exposure for the U.S. adult population is increased and utilizes approximately 25% of the RfD.

2. *Children (1 to 6 years old).* Using the RfD of 0.014 mg/kg bwt/day, as described above, and a Theoretical Maximum Residue Contribution (TMRC) of 0.005437 mg/kg bwt/day determined for children (1 to 6 years old), the proposed tolerances will utilize 38.8% of the RfD. Including an estimated exposure of 37 ppb in potable water, and assuming the injection of 1 liter of water per day, the dietary exposure for children (1 to 6 years old) population is increased and utilizes approximately 65% of the RfD.

3. *Non-food uses.* There are no non-food uses of sulfentrazone registered under the Federal Insecticide, Fungicide and Rodenticide Act, as amended.

IV. Determination of Safety for Infants and Children

Risk to infants and children was determined by use of developmental toxicity studies in rats and a two-generation reproduction study in rats. The oral developmental toxicity studies resulted in a maternal NOEL of 25 mg/kg/day based on decreased body weight gain, increased spleen weight, and microscopic changes in the spleen, and a fetal NOEL of 10 mg/kg/day based on fetal death, reduced body weights, and alterations in skeletal development at higher doses. A dermal developmental toxicity study in rats resulted in a developmental (fetal) NOEL of 100 mg/kg/day based on decreased fetal body weight and increased incidences of fetal alterations, comprised primarily of skeletal variations and reductions in mean numbers of ossification sites. A two-generation reproduction study in rats resulted in a NOEL for systemic and reproductive/developmental parameters of 14 mg/kg/day for males and 16 mg/kg/day for females. The LOEL for systemic and reproductive/development parameters was 33 mg/kg/day for males and 40 mg/kg/day for females. Systemic effects were comprised of decreased body weight gains, and reproductive/developmental effects at the LOEL included degeneration and/or atrophy of the testes, with epididymal sperm deficits in the second (F1) generation males. Male fertility in the F1 generation was reduced at higher doses; litter size, pup survival and pup body weight for both generations were also effected at higher doses.

FFDCA section 408 provides that EPA shall apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the data base, unless EPA determines that such an additional factor is not necessary to protect the safety of infants and children. Based on current data requirements, the data base relative to pre- and post-natal toxicity is complete. EPA has determined that the toxicology data profile for sulfentrazone contains clear, unequivocal evidence that this chemical causes developmental and reproductive toxicity. Based upon the available data and toxicity profile, the Agency RfD Peer Review Committee considered sulfentrazone to be a relatively potent reproductive/developmental toxicant, and determined that an additional 10-fold uncertainty factor for the protection of infants and children was warranted.

This decision was based upon the data described above. The following facts were considered in reaching this conclusion:

(1) The lowest NOEL for chronic exposure, which is used to determine the RfD, is based upon severe, irreversible reproductive/developmental effects, observed in the two-generation reproduction study in rats.

(2) Developmental toxicity was observed in the absence of maternal effects in the prenatal developmental toxicity studies in rats (developmental NOELs were lower than maternal NOELs). This apparent increased sensitivity of the fetuses occurred following administration of sulfentrazone by either the dermal or the oral route, both of which are relevant to human exposure.

(3) A steep dose-response curve exists for the reproductive and developmental endpoints of concern. The reproductive and/or developmental LOELs for the prenatal developmental toxicity studies in rats and the two-generation reproduction study are only approximately 2.5 times greater than the corresponding NOELs in each of these studies. The reproductive and developmental NOELs are extremely low (i.e., in the range of 10 to 13 mg/kg/day). Additionally, in the rat prenatal developmental toxicity and two-generation reproduction studies, the reproductive/developmental effects increase in incidence and/or severity at higher doses.

(4) The reproductive/developmental toxicity profile is consistent and reproducible, providing a large measure of confidence in the endpoints and dose levels.

The percent of the RfD that will be utilized by the aggregate exposure to sulfentrazone for the most exposed subgroup would be 65% for children (1 to 6 years old) Therefore, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure.

V. Other Considerations

1. *Endocrine effects.* An evaluation of the potential effects on the endocrine systems of mammals has not been determined; however, no evidence of such effects were reported in the chronic or reproductive toxicology studies described above. There was no observed pathology of the endocrine organs in these studies. There is no evidence at this time that sulfentrazone causes endocrine effects.

2. *Metabolism in plants and animals.* The metabolism of sulfentrazone in plants and animals is adequately understood for the purposes of these tolerances. Crop residues found after the pre-emergence use were the major metabolites 3-hydroxymethyl sulfentrazone and 3-desmethyl sulfentrazone. In rotational crops, sulfentrazone is metabolized via four different pathways: (i) Oxidation of the 3-methyl group to form 3-hydroxymethyl sulfentrazone, followed by further oxidation to form sulfentrazone carboxylic acid which is decarboxylated to 3-desmethyl sulfentrazone; (ii) hydrolysis of the trifluoromethyl group to form desdifluoromethyl sulfentrazone which is oxidized and decarboxylated to form desdifluoromethyl desmethyl sulfentrazone; (iii) hydrolysis of the sulfonamide group to form desmethylsulfonyl sulfentrazone; and (iv) scission of the phenyl and triazole rings to produce methyl triazole. The corresponding phenyl metabolites are believed to remain bound. In animal metabolism sulfentrazone *per se* was the predominant component of the residue. The metabolite 3-hydroxymethyl sulfentrazone was also identified. It was determined by EPA that a soybean tolerance based on the parent and 3-hydroxymethyl sulfentrazone is therefore appropriate.

3. *Analytical method.* There is a practical analytical method for detecting and measuring levels of sulfentrazone and its metabolites in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances. The proposed analytical method for determining residues is hydrolysis

followed by gas chromatographic separation. EPA will provide information on this method to the Food and Drug Administration. Because of the long lead time from establishing these tolerances to publication the enforcement methodology is being made available in the interim to anyone interested in pesticide enforcement when requested by mail from: Calvin Furlow, Public Response Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1130A, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305-5937.

4. *International tolerances.* There are no Codex Alimentarius Commission (Codex) Maximum Residue Levels (MRLs) for sulfentrazone.

5. *Data Gaps.* Data gaps currently exist for a 21-day dermal study in rabbits, *in vivo* cytogenetics dominant lethal assay in rats, a wheat processing study, additional rice field trials and residue data for sorghum aspirated grain fractions. Based on the toxicological data and the levels of exposure, EPA has determined that the proposed tolerances will be safe.

VI. Summary of Findings

The analysis for sulfentrazone using tolerance level residues shows the proposed uses on soybeans will not cause exposure to exceed the levels at which the Agency believes there is an appreciable risk. All population subgroups examined by EPA are exposed to sulfentrazone residues at levels below 100% of the RfD for chronic effects.

Based on the information cited above, the Agency has determined that the establishment of the tolerances by adding a new section to 40 CFR part 180 will be safe; therefore, the tolerances are established as set forth below.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (1)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which governs the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by May 9, 1997, file written objections to any aspect of this regulation (including the automatic revocation provision) and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Docket

A record has been established for this rulemaking under docket control number PF-670/OPP-300459. A public version of this record, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operation Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. EPA has also established a special record for post-FQPA tolerances which contains documents of general applicability. This record can be found in the same location.

The official record for this rulemaking, as well as the public version, as described above, is kept in paper form. Accordingly, in the event there are objections and hearing requests, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

IX. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), this action is not a "significant regulatory action" and since this action does not impose any information collection requirements subject to approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, it is not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, or contain any "unfunded mandates" as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because tolerances established on the basis of a petition under section 408(d) of FFDCA do not require issuance of a proposed rule, the regulatory flexibility analysis requirements of the Regulatory Flexibility Act (RFA), 5 U.S.C. 604(a), do not apply. Prior to the recent amendment of the FFDCA, EPA had treated such rulemakings as subject to the RFA; however, the amendments to the FFDCA clarify that no proposal is required for such rulemakings and hence that the RFA is inapplicable.

Pursuant to 5 U.S.C. 801(a)(1)(A), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a major rule as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

FOR FURTHER INFORMATION CONTACT:

PART 302-1—APPLICABILITY, GENERAL RULES, AND ELIGIBILITY

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13474, 3 CFR, 1971-1975

$$Y = \frac{.28}{.20}(\$20{,}000)$$

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 27, 1997.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By adding § 180.498 to read as follows:

§ 180.498 Sulfentrazone; tolerances for residues.

(a) *Tolerance–general.* A tolerance is established for combined residues of the herbicide sulfentrazone N-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl]phenyl]methanesulfonamide and its major metabolite 3-hydroxymethyl sulfentrazone N-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-hydroxymethyl-5-oxo-1H-1,2,4-triazol-1-yl]phenyl]methanesulfonamide in or on the following raw agricultural commodity:

Commodity	Parts per million
Soybean, seed	0.05

(b) *Tolerances--inadvertent and indirect residues.* Tolerances are established for inadvertent and indirect combined residues of the herbicide sulfentrazone (N-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl]phenyl]methanesulfonamide) and its metabolites 3-hydroxymethyl sulfentrazone (N-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-hydroxymethyl-5-oxo-1H-1,2,4-triazol-1-yl]phenyl]methanesulfonamide) and 3-desmethyl sulfentrazone (N-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-5-oxo-1H-1,2,4-triazol-l-yl]phenyl]methanesulfonamide) in or on the following raw agricultural commodities when present therein as a result of the application of sulfentrazone to growing crops.

Commodity	Parts per million
Cereal Grains (excluding sweet corn), Bran	0.15
Cereal Grains (excluding sweet corn), Forage	0.2
Cereal Grains (excluding sweet corn), Grain	0.1
Cereal Grains (excluding sweet corn), Hay	0.2
Cereal Grains (excluding sweet corn), Hulls	0.30
Cereal Grains (excluding sweet corn), Stover	0.1
Cereal Grains (excluding sweet corn), Straw	0.6

[FR Doc. 97–5874 Filed 3–7–97; 8:45 am]

BILLING CODE 6560–50–F

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 302–1, 302–2, 302–3, 302–7, 302–8, 302–9, and 302–11

[FTR Amendment 58]

RIN 3090–AG17

Federal Travel Regulation; Authority for the Administrator of General Services To Issue Regulations; Authority To Waive Limitations on Relocation Allowances When an Employee Is Relocated To or From a Remote or Isolated Location; Technical Correction To Relocation Income Tax (RIT) Allowance

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Travel Regulation (FTR) to reflect the direct authority conferred by statute on the Administrator of General Services to issue regulations implementing subchapter II of chapter 57 of title 5, United States Code, and to authorize agencies to waive certain statutory and regulatory limitations for an employee relocating to or from a remote or isolated location. This amendment also makes a technical correction to the RIT allowance. The amendment implements statutory changes, and is intended to improve the treatment of an employee transferred to a remote or isolated location.

DATES: This final rule is effective March 22, 1997.

Applicability: This rule applies to an employee whose effective date of transfer (date the employee reports for duty at the new official station) is on or after March 22, 1997.

FOR FURTHER INFORMATION CONTACT: Robert A. Clauson, Travel and Transportation Management Policy Division (MTT), Washington, DC 20405, telephone 202–501–0299.

SUPPLEMENTARY INFORMATION: On September 23, 1996, the President signed into law the Federal Employee Travel Reform Act of 1996 (Pub. L. 104–201). Section 1722 of the Act transfers from the President to the Administrator of General Services authority to issue regulations implementing subchapter II of chapter 57 of title 5, United States Code, unless otherwise specified in subchapter II. Previously, the Administrator had exercised implementation authority under E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586; E.O. 12466, 49 FR 7349, 3 CFR, 1984 Comp., p. 165; and E.O. 12522, 50 FR 26337, 3 CFR, 1985 Comp., p. 375. This amendment reflects the statutory change of authority.

Section 1722 of the Act also directs the Administrator to authorize heads of agencies or their designees to waive any limitation in subchapter II of chapter 57 of title 5, United States Code, or in any implementing regulation for an employee relocating to or from a remote or isolated location who otherwise would suffer hardship. This amendment implements the limitation waiver provisions of section 1722 of the Act.

This amendment also makes a technical correction to the RIT allowance. The withholding rate for supplemental wages was raised from 20 percent to 28 percent in 1995. This amendment modifies the withholding tax allowance (WTA) provisions to reflect the 28 percent withholding rate.

The General Services Administration has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993. This final rule is not required to be published in the **Federal Register** for notice and comment. Therefore, the Regulatory Flexibility Act does not apply. This rule also is exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Parts 302–1, 302–2, 302–3, 302–7, 302–8, 302–9, and 302–11

Government employees, Income taxes, Relocation allowances and entitlements, Transfers.

For the reasons set out in the preamble, 41 CFR parts 302–1, 302–2, 302–3, 302–7, 302–8, 302–9, and 302–11 are amended to read as follows:

PART 302–1—APPLICABILITY, GENERAL RULES, AND ELIGIBILITY CONDITIONS

1. The authority citation for part 302–1 is revised to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13474, 3 CFR, 1971–1975 Comp., p. 586.

Subpart A—New Appointees and Transferred Employees

2. Section 302–1.15 is added to subpart A to read as follows:

§ 302–1.15 Waiver of limitations for an employee relocating to or from a remote or isolated location.

The head of an agency or his/her designee may waive any limitation contained in subchapter II of chapter 57 of title 5, United States Code, or in any regulation (including this chapter) implementing those statutory provisions, for any employee relocating to or from a remote or isolated location when the following conditions are met:

(a) The limitation if not waived would cause the employee to suffer a hardship; and

(b) The head of the agency or his/her designee certifies in writing that the limitation is waived and the reason(s) for the waiver.

PART 302–2—ALLOWANCES FOR SUBSISTENCE AND TRANSPORTATION

2. The authority citation for part 302–2 is revised to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13474, 3 CFR, 1971–1975 Comp., p. 586.

PART 302–3—ALLOWANCE FOR MISCELLANEOUS EXPENSES

3. The authority citation for part 302–3 is revised to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13474, 3 CFR, 1971–1975 Comp., p. 586.

PART 302–7—TRANSPORTATION OF MOBILE HOMES

4. The authority citation for part 302–7 is revised to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13474, 3 CFR, 1971–1975 Comp., p. 586.

PART 302–8—TRANSPORTATION AND TEMPORARY STORAGE OF HOUSEHOLD GOODS AND PROFESSIONAL BOOKS, PAPERS, AND EQUIPMENT

5. The authority citation for part 302–8 is revised to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13474, 3 CFR, 1971–1975 Comp., p. 586.

PART 302–9—ALLOWANCES FOR NONTEMPORARY STORAGE OF HOUSEHOLD GOODS

6. The authority citation for part 302–9 is revised to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13474, 3 CFR, 1971–1975 Comp., p. 586.

PART 302–11—RELOCATION INCOME TAX (RIT) ALLOWANCE

7. The authority citation for part 302–11 is revised to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13474, 3 CFR, 1971–1975 Comp., p. 586.

8. Section 302–11.7 is amended by revising paragraphs (c) and (d) to read as follows:

§ 302–11.7 Procedures for determining the WTA in Year 1.

* * * * *

(c) *Determination of Federal withholding tax rate (FWTR).* Moving expense reimbursements constitute supplemental wages for Federal income tax purposes. Therefore, an agency must withhold at the withholding rate applicable to supplemental wages. Currently, the supplemental wages withholding rate is 28 percent. The supplemental wages withholding rate should be used in calculating the WTA unless under an agency's withholding procedures a different withholding rate is used pursuant to IRS tax regulations. In such cases, the applicable withholding rate shall be substituted for the supplemental wages withholding rate in the calculation shown in paragraph (d) of this section.

(d) *Calculation of the WTA.* The WTA is calculated by substituting the amounts determined in paragraphs (b) and (c) of this section into the following WTA gross-up formula:

Formula:

$$Y = \frac{X}{1-X}(N)$$

Where:
Y = WTA
X = FWTR (generally, 28 percent)
N = nondeductible moving expenses/covered taxable reimbursements

Example:
If:
X = 28 percent
N = $20,000
Then:

$$Y = \frac{.28}{1-.28}(\$20{,}000)$$

Y = .3889($20,000)
Y = $7778.00

* * * * *

Dated: February 18, 1997.

David J. Barram,

Acting Administrator of General Services.

[FR Doc. 97–5843 Filed 3–7–97; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 3, 5, 6, 9, 11, 12, 13, 15, 19, 33, 36, 37, 42, and 52

[FAC 90–45 Correction]

Federal Acquisition Regulation; Corrections

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Corrections.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are issuing corrections to Federal Acquisition Circular 90–45 published at 62 FR 224, January 2, 1997, to correct miscellaneous editorial and technical errors.

EFFECTIVE DATE: January 1, 1997, except for the correction to § 33.103, which is effective March 3, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly Fayson at (202) 501–4755, General Services Administration, FAR Secretariat, Washington, DC 20405.

Corrections

In the final and interim rule documents appearing in the issue of January 2, 1997:

1. On page 226, third column, third full paragraph, first line, the word "interim" should read "final".

3.104–3 [Corrected]

2. On page 228, in the first column, under the definition for *In excess of $10,000,000*, paragraph (3) is corrected

by removing the period at the end and inserting a semicolon.

15.509 [Corrected]

3. On page 233, first column, amendatory instruction 19 is corrected to read as follows: "Section 15.509 is amended by revising paragraph (f)(4); at the end of paragraph (h)(1) by inserting the word and; in paragraph (h)(2) by removing '; and' and inserting a period in its place; and by removing paragraph (h)(3) to read as follows:"

37.103 [Amended]

4. On page 233, in the second column, the second line from the top should appear as set forth above.

52.203–8 [Corrected]

5. In that same column, under section 52.203–8, in the clause, paragraph (a) is corrected by removing "1996" the first time it appears; and in paragraph (a)(2)(ii), in the last line, "subsections" should be singular.

6. On the same page, in the third column, amendatory instruction 29 is corrected to read as follows:

52.203–13 [Removed]

29. Section 52.203–13 is removed.

9.507–1 [Corrected]

7. On page 235, third column, amendatory instruction 10 is corrected to read as follows: "Section 9.507–1 is amended by removing the paragraph (a) designation; redesignating paragraphs (a)(1) through (a)(4) as (a) through (d), respectively; and removing paragraphs (b), (c), and (d)."

12.503 [Corrected]

8. On page 236, first column, in 12.503(b)(4), the word "Requirements" should read "Requirement".

19.303 [Corrected]

9. On page 236, first column, amendatory instruction 17 is corrected to read as follows: "Section 19.303 is amended by revising the introductory text of paragraph (c)(2); at the end of paragraph (c)(2)(iv) by removing the word 'and'; in paragraph (c)(2)(vi) by removing 'certifying' and inserting 'acknowledging' in its place; and by revising the second sentence of paragraph (c)(3) to read as follows:"

42.703–2 [Corrected]

10. On page 237, in the second column, 42.703–2(f)(1) is corrected in the fourth line by inserting "Final" after "Certification of".

52.216–3 [Corrected]

11. On page 261, in the first column, in the second line of the clause title, the word "STANDARD" should read "SEMISTANDARD".

52.225–21 [Corrected]

12. On page 262, second column, amendatory instruction 5 is corrected to read as follows: "Section 52.225–21 is amended by revising the dates of the clause and Alternate I to read '(JAN 1997)' and by removing the word 'specifying' from the fourth sentence of paragraph (c) of the clause and of Alternate I and inserting "certifying"."

5.203 [Corrected]

13. On page 263, in the second column, in 5.203, the fourth line of paragraph (a), the word "when" should be removed.

6.001 [Corrected]

14. On page 263, third column, amendatory instruction 4 is corrected to read as follows: "Section 6.001 is amended by revising paragraph (a); in paragraph (d) by removing the word 'or'; and at the end of paragraph (e)(2) by removing the period and inserting '; or' in its place."

15. On page 263, third column, the twenty-fifth line from the bottom, the heading of Part 11 should read **"PART 11—DESCRIBING AGENCY NEEDS".**

11.104 [Corrected]

16. On page 263, third column, amendatory instruction 6 is corrected to read as follows: "Section 11.104 is amended by revising paragraph (a); and removing the period at the end of paragraph (b) and inserting '; and' in its place. The revised text reads as follows:"

17. Also in 11.104(a) on page 264, in the first column, on the eighth line, the word "and" should be removed.

13.106–2 [Corrected]

18. On page 265, second column, under section 13.106–2, in the tenth line of (a)(3), remove the word "only" the first time it is used.

19. In the same section, on the same page, in the third column, in the third line of paragraph (a)(5), "Contracting" should read "contracting".

20. Also on page 265, third column, in the seventeenth line of paragraph (b)(1), the word "offices" should read "officers".

21. On page 267, second column, fifth line from the bottom of the page, "0174" should read "017".

33.103 [Corrected]

22. In 33.103, on page 271, first column, in the sixth line of paragraph (f)(4), the word "agencies" should read "agency".

23. On page 271, second column, in the last line under **FOR FURTHER INFORMATION CONTACT,** "FAC 90–5" should read "FAC 90–45".

24. Also on page 271, second column, the last line under *Background* should read "FAR 36.303–2(a)".

36.303–1 [Corrected]

25. In 36.303–1, on page 273, first column, the second line of paragraph (a) in introductory text, the word "include" is misspelled.

Subpart 36.4 [Reserved]

26. Also on page 273, at the bottom of the first column, the subpart heading should appear as set forth above.

Dated: March 5, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 97–5842 Filed 3–7–97; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 95–28; Notice 10]

RIN 2127–AF73

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This document amends Standard No. 108, the Federal motor vehicle safety standard on lighting, to afford an option to existing headlamp aiming specifications which is intended to improve the objectivity and accuracy of motor vehicle headlamp aim when headlamps are aimed visually and/or optically. The rule reflects the consensus of NHTSA's Advisory Committee on Regulatory Negotiation concerning the improvement of headlamp aimability performance and visual/optical headlamp aiming. The Committee was composed of representatives of government, industry, and consumer interest groups.

DATES: The rule is effective May 1, 1997. Petitions for reconsideration must be filed not later than April 24, 1997.

ADDRESSES: Petitions for reconsideration should refer to Docket No. 95–28; Notice 10, and must be submitted to: Docket Section, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. (Docket hours are from 9:30 a.m. to 4:00 p.m.).

FOR FURTHER INFORMATION CONTACT: (NHTSA Advisory Committee representative) Steve Kratzke, Office of Safety Performance Standards, NHTSA (Phone: 202–366–5203; FAX: 202–366–4329); (technical information) Rich Van Iderstine, Office of Safety Performance Standards, NHTSA (Phone: 202–366–5275; FAX: 202–366–4329); (legal information) Taylor Vinson, Office of Chief Counsel, NHTSA (Phone: 202–366–5263; FAX: 202–366–3820).

SUPPLEMENTARY INFORMATION:

I. Background

On June 9, 1995, at 60 FR 30506, the National Highway Traffic Safety Administration (NHTSA) published a notice of intent to establish an advisory committee ("the Committee") for regulatory negotiation to develop recommended specifications for altering the lower beam patterns of Federal Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices and Associated Equipment* to be more sharply defined. Such a pattern would facilitate visual/optical aimability of headlamps. During 1995–96, the Committee met at intervals to develop these specifications. On the basis of the Committee's recommendations, NHTSA published a notice of proposed rulemaking on July 10, 1996 at 61 FR 36334. This was followed by a correction notice published on August 20, 1996 (61 FR 43033). The reader is referred to these notices for further background information.

Because this was a negotiated rulemaking, NHTSA did not expect to receive many comments of a substantive nature. Comments were received from Valeo Vision, Hella KG Hueck & Co., Robert Bosch GmbH, Volkswagen, Stanley Electric Co. Ltd, Groupe de Travail "Bruxelles 1952" (GTB), Koito Manufacturing Co. Ltd., American Automobile Manufacturers Association (AAMA), Cooper Industries Wagner Lighting Division (Wagner), Advocates for Auto and Highway Safety (Advocates), Calcoast—ITL, and Volvo Cars of North America, Inc. As anticipated, all commenters supported the proposal, and the rule is adopted as proposed. However, some important points were raised in the comments, which will be discussed in the course of this notice.

II. Proposed Requirements and Their Rationales

The final rule will ensure that the visually/optically aimable lower beam of a headlamp meets the following criteria, as developed by the Committee:

A. Vertical Aim of Lower Beam

A visual cue (cutoff) is required in the lower beam pattern to permit accurate aiming. The cutoff marks a transition between the areas of higher and lower luminous intensities. The cutoff in the lower beam pattern is a horizontal line composed of maximum vertical logarithmic gradients of the screen illumination.

Vertical aim requires both a laboratory specification for headlamps before installation and a field specification for headlamps after installation. Under the final rule, the laboratory specifications are incorporated into Standard No. 108. The field specifications represent the Committee's recommendations to all persons who perform visual/optical headlamp aiming in the field and were set forth in the preamble to the NPRM.

1. Laboratory Specification for the Vertical Visual Aim of the Lower Beam

Several factors must be considered to ensure accurate and repeatable results that also relate to the requirements for field aimability. Accuracy for laboratory aim is specified to be within +/−0.1 degree. This is based on the test equipment positioning capability of +/−0.01 degree along with the associated lamp-to-lamp and laboratory-to-laboratory variances. The specification for the gradient is based on a required +/−0.1 degree laboratory aim accuracy and a 0.25 degree field aim accuracy with confidence limits of +/−2 sigma. A University of Michigan Transportation Research Institute (UMTRI) study titled "Visual Aiming of European and U.S. Low-Beam Headlamps" (Report No. UMTRI–91–34, by Sivak, Flannagan, Chandra, and Gellatly) provided the information needed to establish the necessary gradient within the confidence levels defined.

Measurement of the specific gradients may be carried out using traditional photometric measurement equipment; however, photometric distance may vary between companies. A procedure which has been developed by the Groupe de Travail "Bruxelles 1952" (GTB) Short-term Scientific Studies Working Group (SSST WG) provides a baseline system for this test. (This may be found in "Draft Minutes of the Meeting held at Budapest 1995 October 3" on file in the docket as attachment 3–9 to the Committee's minutes of Meeting No. 3.)

The cutoff can be on either the right or left side of the lower beam pattern. When so located, it provides the necessary reference for placing the beam in the appropriate vertical location for correct aim. In order to achieve a cutoff in a beam, there must be a distinct difference in illumination levels above and below the cutoff. This may be achieved by numerous methods in the design of a headlamp. For the purposes defined by the Committee, a horizontally oriented cutoff is necessary. Based on work done by the Society of Automotive Engineers" (SAE) Beam Pattern Task Force (in developing SAE J1735 "Harmonized Vehicle Headlamp Performance Requirements'), UMTRI, Commission Internationale de l'Eclairage Working Group on Vehicle Lighting (CIE TC4.10) ("Definition of the Vertical Cut-off of Vehicle Headlights" draft 1993–3–15), and the GTB SSST WG, and reviewed by the Committee, the method for describing the cutoff is as follows.

Scientific studies by Blackwell, Olson, Forbes, Sivak, Flannigan, et.al., have shown that the human eye responds to the logarithm (to base 10) of the gradient of screen luminance. This mathematical expression simulates in the laboratory where human vision perceives the cutoff on a screen during field aiming. A vertical scan of the lower beam pattern at a specified number of degrees to the right or left of the headlamp beam pattern's vertical axis, where the cutoff is located, is taken to gather data on the intensity values. This data is then analyzed using the mathematical expression to determine where the greatest rate of change of illumination occurs; the vertical location of the cutoff is thus defined. For example, a person could use a goniophotometer to record data in small vertical increments at the locations at 2.5 degree left or 2.0 degrees right in order to determine the cutoff location.

For effective field aiming, the cutoff needs to be finitely long so that the person looking at the cutoff has a sufficient cue to find it. This range should extend at least one degree on each side of the specified measurement point of the cutoff and should be approximately straight and horizontal.

The cutoff on the left side of the beam pattern can be achieved by putting more light below the horizontal on the left rather than reducing the intensity of light above the cutoff. This added light provides more illumination to detect objects on the left side of the beam pattern and more uniformity of the total light output from the vehicle. The light above the horizontal would not be decreased. The right side of the beam needs no such enhancement to achieve an adequate gradient for the cutoff. In addition to the above, these changes cause small effects in other areas of the beam that will be addressed below.

To accomplish these purposes, the Agency is adopting the changes to the existing photometric figures in Standard No. 108 for all headlamps designed for visual/optical aiming, as described below. In the final rule, existing photometric Figures 15A, 17A, 27, and 28, have been redesignated respectively Figures 15–1, 17–1, 27–1, and 28–1. Proposed Figures 15B, 17B, 27A and 28A have been adopted as Figures 15–2, 17–2, 27–2 and 28–2. The changes added to the "-1" Figures to achieve the "-2" Figures are:

(a) Elimination of the 0.5 deg. D–1.5 deg. L to L test points,

(b) Elimination of the 1.0 deg. D–6.0 deg. L test point,

(c) Addition of an 0.86 deg. D–3.5 deg. L test point with intensity requirements of 1800 cd. minimum, and 12000 cd. maximum, and

(d) Addition of an 0.86 deg D–V test point with intensity requirements of 4500cd. minimum,

(e) Addition of an 0.6 deg D–1.3 deg R test point replacing the current test point at 0.5 deg D–1.5 deg R with intensity requirements shown below:

New test point: 0.6 deg. D—1.3 deg. R	Source:	Replaced test point: 0.5 deg. D—1.5 deg. R		Source:
Cd minimum	Standard No. 108 figures	Cd minimum	Cd maximum	Standard No. 108 figures
10000	15–2 & 17–2	10000	20000	15–1 & 17–1.
10000	27–2 & 28–2	8000	20000	27–1 & 28–1.

(f) And modification of the 4 degree D–V test point in the Figure 15–2 lower beam maximum candela column from 7000 cd to 10000 cd.

In Figures 27–1 and 28–1, the maximum value at 0.5 degree D–1.5 degrees L is 2500 cd. In Figures 15–1 and 17–1 the maximum value at 0.5 degree D–1.5 degrees L is 3000 cd. The value of the 1.0 degree D–6.0 degrees L test point is 750 cd minimum, and it becomes superfluous because of the additional illumination provided by the new test point specified at 0.86 degree D–3.5 degrees L.

The three test points: 0.86 degree D–3.5 degrees L; 0.86 degree D–V; and 0.6 degree D–1.3 degree R being added have all been the subject of low beam headlamp harmonization activities with GTB, GRE, JASIC, and SAE. A research study, UMTRI 94–27 "Evaluation of the SAE J1735 Draft Proposal for a Harmonized Low-Beam Headlighting Pattern" reports that these three test points contribute to better performance of the lower beam headlamp. Incorporation of these test points also contributes to current worldwide harmonization for lower beam headlamps.

In the past there has been one "seeing light" test point at 0.5 degree D–1.5 degree R. This is being replaced by three new "seeing light" test points: 0.6 degree D–1.3 degrees R; 0.86 degree D–V; and 0.86 degree D–3.5 degree L. The new 0.86 degree D–V test point with the 4500 cd minimum will increase uniformity of the beam pattern below the horizontal line between the high intensity zones on the left and right. The new 0.6 degree D–1.3 degree R test point represents a relocation of a current test point by 0.1 degree D (from 0.5 degree D to 0.6 degree D) and 0.2 degree L (from 1.5 degree R to 1.3 degree R). These changes represent a significant improvement in providing more light to the left side of the beam pattern and will promote harmonization. There is a maximum (20000cd) requirement at the 0.5 degree D–1.5 degree R test point. Because of significantly greater control of minimum and maximum illumination above the horizontal axis, there is no continuing need for a maximum at this location.

The modification of the test point value at 4D–V in Fig. 15–2 from 7000 cd maximum to 10000 cd maximum is based on the substantial increase of light resulting from the test point modifications above which extend the high intensity zone on the right side of the beam pattern to the left side of the beam. The previous test point value at 0.5 degree D–1.5 degree L to L limited not only the light to the left region of the roadway, but also to the foreground area. Directing more light to the left will increase foreground light levels. Studies performed by UMTRI have shown that very high levels of foreground light can depreciate the driver's distance seeing performance. A modest increase in the maximum candela level at this test point from 7000 to 10000 will allow the additional left lane light yet not create undue foreground illumination.

As proposed, the cutoff location is positioned at 0.4 degree below the H–H line for headlamps designed to be aimed using the left side of the beam pattern. This causes the top edge of the main part of the beam pattern on the left to intersect the road surface at approximately 90 m. (300 feet) from the vehicle with headlamps mounted at 635 mm. (25 inches) above the road surface. This distance is increased from present headlamps that are limited by the 0.5 degree D–1.5 degrees L to L test point that exists today. The new test point is taken from SAE J1735.

The specific mathematical expression for identifying the cutoff is: $G = \log E(\alpha) - \log E(\alpha+0.1)$, where "G" is the gradient, "E" is illumination and "α" is the vertical angular position. The maximum value of the gradient "G" determines the angular location of the cutoff.

B. Horizontal Aim of Lower Beam

1. Eliminating Horizontal Aim Adjustability

Horizontal aimability is mandatory for mechanically-aimed headlamps under Standard No.108. Because the lower beam of a headlamp designed to conform to Standard No. 108 does not have any visual cues for achieving correct horizontal aim when aimed visually or optically, and because it is not possible to add such visual features without damaging the beam pattern, horizontal aim should be either fixed and nonadjustable, or have a horizontal VHAD.

When horizontal aim is nonadjustable, horizontal aim will not be compromised because most state laws require that headlamps be correctly aimed at the time of the first sale of the vehicle. Generally, the vehicle's manufacturer accepts the responsibility for assuring correct aim of new motor vehicles. Further, proper realignment of front-end components of collision-damaged vehicles will assure correct placement of headlamps and thus maintain proper horizontal aim. Thus, no further specifications are necessary for field use, except to note that horizontal aim may not be adjustable on some lamps marked "VOR" or "VOL" on the lens.

Standard No. 108 specifies for the lower beam, test points at 15 and 9 degrees left and right, with minimum candela of 850 and 1000 (test points 15 and 9 degrees, Figures 15–1 and 17–1) and 700 and 750 (test points 15 and 9 degrees, Figures 27–1 and 28–1). NHTSA's new Figures 15–2, 17–2, 27–2, and 28–2 increase these values. New test points added at 20 degrees left and right further widen the beam. In addition to the substitution of the above mentioned 0.86D–3.5L test point for the 0.5D–1.5L to L, to facilitate the cutoff, these changes make the new beam pattern less sensitive to horizontal positioning. The modifications and additions that have been adopted are:

9 deg L&R–2 deg D—1250 cd. min.
15 deg L&R–2 deg D—1000 cd. min.
20 deg L&R–4 deg D—300 cd. min.

These locations and values were taken from SAE J1735 which achieves a wider beam pattern as a result of these test points.

2. Horizontal Aim of Lower Beam for Laboratory Photometry tests.

The headlamp shall be mounted onto a fixture which simulates its actual design orientation on any vehicle for which the headlamp is intended. The fixture, with the headlamp installed, shall be attached to the goniometer table in such a way that the fixture alignment axes are coincident with the goniometer axes. Shimming or adjustment of the headlamp's attachment to the test fixture to comply with the photometric requirements is not allowed. If there is a VHAD, the aim of the headlamp shall be adjusted, using the headlamp's horizontal aiming adjusters so the VHAD reads zero. When the headlamp has been aimed vertically, the lamp is ready to be tested for photometric compliance.

C. Vertical Aim of Upper Beam

As with vertical aim of the lower beam, vertical aim of the upper beam requires both a laboratory specification for headlamps before installation and a field specification for headlamps after installation; however, the aim of the upper beam is not nearly as critical as it is for the lower beam. The laboratory specification is being incorporated into Standard No. 108 for visually/optically aimable headlamps. For a headlamp that incorporates both a lower beam and an upper beam, the laboratory procedure and the field procedure for upper beam are not applicable, because the headlamp must be aimed using the lower beam, and, by design, both beams are photometered in that position.

For a headlamp that has only an upper beam, the following apply:

1. Laboratory Specification for Vertical Visual Aim of Upper Beam

The vertical aim of the upper beam shall be adjusted so that the maximum beam intensity is located on the H–H axis.

2. Laboratory Specification for Horizontal Visual Aim of Upper Beam

The horizontal aim of the upper beam shall be adjusted so that the maximum beam intensity is located on the V–V axis unless the headlamp has fixed horizontal aim or a VHAD. In these cases, it shall be mounted onto a fixture which simulates its actual design orientation on any vehicle for which the headlamp is intended. The fixture, with the headlamp installed, shall be attached to the goniometer table in such a way that the fixture alignment axes are coincident with the goniometer axes. Shimming or adjustment of the headlamp's attachment to the test fixture to comply with the photometric requirements is not allowed. If there is a VHAD, the aim of the headlamp shall be adjusted, using the headlamp's horizontal aiming adjusters so that the VHAD reads zero. When the headlamp has been aimed vertically, the lamp is ready to be tested for photometric compliance.

D. Movable Reflector Headlamps

Movable reflector headlamps have a lens and headlamp housing that do not move with respect to the surrounding car structure when headlamps are aimed. Therefore, the range of headlamp aim limits does not need to be as large to cover repairs from vehicle collisions. Requirements for the aiming of movable reflector headlamps have been clarified and expanded to cover headlamps which are visually/optically aimable. The vertical aim range limits will now cover only the full range of pitch on the vehicle on which the headlamp system is installed (full range of pitch on the vehicle is defined in S7.8.3 of Standard No. 108). When horizontal aim is incorporated in a headlamp the horizontal aim range limits will remain 2.5 degrees. Photometry will then be done over the applicable aim limits used for the headlamp system.

E. Marking Requirements

1. Headlamp Optical Axis Mark

The accuracy and reliability of headlamp aim depends upon the correct placement of aiming equipment in front of the vehicle and its headlamps. To assure that this placement is correct and precise, it is necessary for the headlamps to have an indication of the optical axis to act as a geometric reference for measuring distances to the floor and between the headlamps and the vehicle's longitudinal axis. This may be done by a mark on the interior or exterior of the lens, or by a mark or central structure on the interior or exterior of the headlamp. Thus, Standard No. 108 is amended to require that a headlamp have this mark.

While the mark is necessary for visual/optical aim headlamps, it is also desirable for all headlamps because people who aim headlamps use visual/optical aim even though today's headlamps are not designed to be aimed by this method. In the interest of promoting correct aim, this optical axis mark is recommended for all future headlamp designs. This final rule may require changes in headlamps for existing production vehicles, however, it is not intended to be a retroactive requirement. Adequate leadtime is required for implementation, and commenters were invited to discuss leadtime concerns. These concerns and the effective date adopted for the optical axis mark requirement are discussed in the section of this notice called "Effective Dates"

2. Visual/Optical Aimability Identification Mark

Marking of headlamps would indicate that the lamp is visually/optically aimable according to the means specified in the final rule. Thus, Standard No. 108 will require that the visible part of the lens of each original and replacement equipment headlamp and headlamp lens, and of each original equipment and replacement equipment beam contributor, designed to be visually/optically aimable, manufactured on or after March 1, 1997, the effective date of the final rule, be marked with the symbols "VOL", "VOR", or "VO" either horizontally or vertically. The Committee determined that "VOR" and "VO" respectively should be the only marking used for all lower beam and upper beam sealed beam and integral beam headlamp types existing before the effective date of the final rule if these types are ever redesigned to be visually/optically aimable. This will ensure that replacement headlamps are identically marked.

NHTSA proposed that manufacturers which introduce new visually/optically aimed headlamp types after the effective date be required to determine the aim method and apply the required marking. This aim method and marking must be followed by all subsequent manufacturers of this headlamp type.

Under the final rule, a lower beam headlamp will be marked "VOL" if the manufacturer designs it to be visually/optically aimed using the left side of the lower beam pattern, and "VOR" if using the right side. If a sealed beam or an

integral beam headlamp system is currently being produced, the lens of any lamp in such system that is manufactured on or after March 1, 1997, the effective date of the final rule, must be marked "VOR", and have the gradient on the right side, if the system is ever redesigned so that its lamps are visually/optically aimable. A headlamp will be marked "VO" if it is solely an upper beam headlamp and intended to be visually/optically aimed.

The discussion above relates to the proper marking of existing headlamp designs should their photometric performance be redesigned to be visually/optically aimable as described in this final rule. This does not mean that existing designs can be changed from being mechanically aimable to being visually/optically aimable. It means that existing designs, all of which are mechanically aimable, can be redesigned to include visual/optical aiming in addition to mechanical aim. Mechanical aim must be retained on existing designs to ensure that replacement equipment provide the same performance as original equipment. Thus, any current headlamp design that is modified to include visual/optical aimability must still provide mechanical aimability if that headlamp is intended to be a replacement in vehicles in which the lamp was used before its redesign.

Should a headlamp be redesigned without mechanical aiming features and replace an earlier version of the headlamp, one of two distinct safety consequences will occur, depending on whether the headlamp incorporated an external aiming system or an on-board one. If the headlamp incorporated an external aiming system and if one of the headlamps were replaced with a visual/optical aim only headlamp, the remaining headlamp would not be capable of being aimed with a mechanical aimer. This would occur because the external aimer must be attached to two headlamps, one on each side of the vehicle, in order to measure horizontal aim location. Additionally, the new visual/optical aim headlamp would be capable of being adjusted horizontally because there would be horizontal aiming screws. This is not permitted for visual/optical aim headlamps unless the headlamp has a horizontal VHAD. If the headlamp had an on-board mechanical aiming system, the safety consequence would be the inability to aim correctly a replacement headlamp offering visual/optical aimability only. In this case, the visual/optical headlamp would have horizontal aiming screws, but there would be no valid manner in which to aim the headlamp horizontally unless it continues to be equipped with a horizontal VHAD. For this headlamp, the presumed saving might be the deletion of the vertical VHAD. However, S5.8 *Replacement Equipment* prohibits replacement equipment that differs from original equipment.

In accordance with other marking requirements of Standard No. 108, the letters will be not less than 3 mm high.

III. Allowing Existing Headlamps to Use the New Photometrics

The Committee also decided that the improved photometrics represented by Figures 15–2, 17–2, 27–2, and 28–2 should be available to manufacturers of headlamps that are not visually/optically aimable within the meaning of this rulemaking action, but which presently are designed to meet the photometrics of Figures 15A, 17A, 27 or 28. This raises no safety issues regarding glare or compatibility of replacement equipment, and NHTSA is adopting appropriate amendments to implement the Committee's decision.

In commenting on the proposal for new photometrics, AAMA recommended that the definitions of "integral beam headlamp" and "replaceable bulb headlamp" be modified to assure that headlamps with removable lenses may be designed to have visual/optical aiming. In its view, visual/optical aiming of headlamps with replaceable lenses is an acceptable alternative to VHAD aiming. The agency concurs, and is amending the definitions in the manner suggested. Even though these specific changes were not proposed, the NPRM did cover integral beam headlamps and replaceable bulb headlamps with fixed lenses the agency sees no substantive distinction that would warrant a separate notice and an opportunity to comment on the inclusion of replaceable lens headlamps in this rulemaking action.

IV. Comments Relating to the NPRM

Stanley, Koito, AAMA, and Wagner called the agency's attention to the inconsistency between the proposed requirement that on-board vehicle headlamp horizontal aiming devices (VHADs) be permanently calibrated, and the lack of a proposal to amend the existing requirement that requires horizontal aiming VHADs to be capable of being recalibrated in the field (S7.8.5.2(a)(2)(iv)).

Permanent calibration was proposed to help prevent further misaim that can occur when vehicle repair technicians attempt to calibrate visually the VHADs of mechanically aimable headlamps that were never intended to be visually aimed. The Committee decided that recalibration should be prohibited because today's lower beam headlamps are not yet capable of being properly visually/optically aimed in the field due to the lack of visual cues in the beam pattern. Visual/optical aim is the only method available in the field today for VHAD calibration and it cannot be performed with any acceptable precision. Thus, there is no safety value from the current requirement for recalibration capability, whereas there would be one for permanent calibration. Permanent calibration retains the precision necessary for aiming; once calibration is lost it cannot be recovered. Maintaining calibration permits the vehicle repair technician to measure physically the mounting locations of the headlamp relative to the vehicle references so that the repaired substructure onto which the headlamp is mounted is restored to near its original alignment. Doing so permits the horizontal VHAD to establish horizontal aim location with reliability and accuracy. For these reasons, NHTSA is adopting S7.8.5.2(c) as proposed and eliminating the inconsistency by deleting the last part of the sentence of S7.8.5.2(a)(2)(iv).

In Stanley's opinion, the formula specified in SAE J1735 "Harmonized Vehicle Headlamp Performance Requirements" defining the cut-off of the beam is more practical than the formula that was proposed. This issue was thoroughly discussed by the Committee in its negotiating sessions.

The formula proposed represents the consensus of these meetings including the views of the Japanese Automobiles Standards Internationalization Center (JASIC), which represented the Japanese vehicle and lighting industries. NHTSA affirms its conclusion that the formula is practicable, for the reasons given in both the NPRM and this notice.

One issue for which NHTSA sought answers was whether the optional visual/optical headlamp aiming standard should become mandatory in due course, and, if so, on what date it should become effective. Three comments were received. Wagner believed that the standard should be mandatory, and asked for a 3-year leadtime. Volvo objected to a mandatory requirement. AAMA did not support a mandatory requirement until such time as data are available from field and use experience. On the basis of these comments, the agency concludes that resolution of the issue requires data that is not yet available and is not making the aiming standard mandatory. The agency may revisit the issue at a later date.

AAMA also suggested minor wording and typographical changes to paragraphs S5.5.8, S7.3.8(b), S7.3.9, S7.4.2(a)(2(i), S10(a), and Figure 26 all of which are adopted.

Proposed paragraphs S7.8.1(b) and S7.8.5.3(f) would require fiduciary markings "that are visible from the front of the headlamp * * *" The final rule clarifies that the markings are "visible from the front of the headlamp when installed on the vehicle," implementing a recommendation from AAMA.

V. Comments Not Relating to the NPRM

Several comments concerned issues beyond the scope of the NPRM and the issues that were part of the consensus achieved by the Committee, but NHTSA will comment briefly on them.

Valeo suggested permitting a visual horizontal aim adjustment feature in the beam for visually/optically aimable headlamps, and adding a definition of a "kink" in the cut off of the VOL lower beams. In Valeo's opinion, the prohibition of horizontal aim adjustment mechanisms will compel the manufacture of design-specific headlamps for the ECE and U.S. markets. Valeo deems the alternative permitted in the proposal of providing a horizontal VHAD to be considerably more expensive than basic aiming means, but without benefit to the user.

NHTSA notes that the Committee considered features for horizontal visual/optical aiming but none were deemed sufficiently developed and designed to be usable, hence none were included in the NPRM. The agency believes that Valeo's claims of a considerable cost increase are incorrect. Today, with two different beam patterns required for the ECE and U.S. markets, two different headlamp designs are often necessary to meet the needs of each market. With the issuance of this final rule and its visual/optical beam pattern, manufacturers have stated that a beam pattern may be possible that complies with the requirements of both markets. Because ECE headlamps at the current time are required to have both vertical and horizontal aiming screws, an ECE headlamp, to be sold as a visual/optical aim headlamp in the U.S.; will need to have a horizontal VHAD. While this would mean a slight cost increase for the ECE headlamp, Valeo will realize overall a significant cost savings from not having to design a separate product for the U.S. market. On balance, the agency estimates that Valeo's cost savings are in the range of $10,000,000 per design for development and tooling costs. The incremental cost of adding a horizontal VHAD is small in comparison to the significant savings afforded by this rulemaking. Additionally, GTB indicates that it will petition NHTSA for rulemaking to include a horizontal aim feature after it has completed research on the nature of horizontal gradients necessary for horizontal visual/optical aim.

Valeo requested clarification of allowance of a re-aim of 0.25 degree in all directions around the test point being measured, even if the visually/optically aimable headlamp does not have a VHAD. Standard No. 108 has always allowed a re-aim of 0.25 degree in any direction for every test point during photometric testing, and will continue to do so. There is no reason not to allow visually/optically aimable headlamps to be similarly reaimable during compliance testing.

Hella and Bosch suggested further aspects to be considered that will be important to the future of harmonization. Both believe that future requirements should be added to permit a visual cue or vertical "kink" to be used for horizontal visual/optical aiming of the lower beam. However, as NHTSA has discussed above, this is not technically feasible at this point. Both also suggested that NHTSA allow an increased maximum intensity in upper beam headlamps. Recently NHTSA denied a petition for rulemaking on this subject (61 FR 45359) because of a lack of information supporting an increase beyond the maximum established by NHTSA in 1978. Finally, Hella believes that NHTSA should regulate fog lamps. NHTSA has already asked for comments on this issue (60 FR 54833) and intends to publish a further notice with its views on fog lamps in the near future.

Stanley asked whether the proposal applies to headlamps designed exclusively for motorcycle use. The answer is no; this rulemaking was not intended to address the amiability of motorcycle headlamps.

Calcoast offered a suggestion to improve proper horizontal positioning when photometering a visually/optically aimable headlamp: to add a lens marking identifying the horizontal angle at which the vertical scan is to be performed. NHTSA believes that this marking would add little to assist horizontal positioning, because the cut-off must occur in a 2-degree wide area either to the left or right of the vertical line so that field personnel can identify the cut-off and use it for aiming purposes. It is doubtful that service personnel could accurately and repeatably determine by observation where the cut-off is sharpest and use that as a horizontal aiming reference.

VI. Housekeeping Amendments

In reviewing the text of Standard No. 108 (49 CFR 571.108) as published in the Code of Federal Regulations, revised as of October 1, 1995, NHTSA has discovered several errors that it is taking this opportunity to correct.

The first is a clarification of S5.3.1.1.1 as it relates to the location of clearance lamps. The first sentence of the preceding paragraph, S5.3.1.1, requires, in part, that each lamp "be located so that it meets the visibility requirements specified in any applicable SAE Standard." The second sentence of paragraph S5.3.1.1 states, in part and in essence, that "no part of a vehicle shall * * * prevent [a clearance lamp] from meeting the photometric output specified in [the] applicable SAE Standard."

Paragraph S5.3.1.1.1 allows an alternative location for clearance lamps under the conditions expressed in the paragraph and specifies that "at such a location they need not be visible at 45 degrees inboard." The SAE Standard that applies to clearance lamps is J592e, "Clearance, Side Marker, and Identification Lamps", July 1972. SAE J592e does not contain installation requirements that specify inboard visibility performance for clearance lamps, within NHTSA's understanding of the first sentence of S5.3.1.1, unlike the standards for turn signal lamps which require "signals from lamps on both sides of the vehicle [to] be visible through a horizontal angle from 45 deg. to the left for the left lamp to 45 deg to the right for the right lamp." (paragraph 5.4.1, SAE Standard J1395 APR85 "Turn Signal Lamps for use on Motor Vehicles 2032 mm or More in Overall Width"). Instead, SAE J592e specifies photometric performance requirements to be met at test points 45 Left and 45 Right, within the meaning of the second sentence of S5.3.1.1. NHTSA does not wish to confuse the visibility of a lamp with maintenance of its photometric performance as mounted on a vehicle. For this reason, NHTSA believes that S5.3.1.1.1 would be more accurately expressed as specifying that clearance lamps alternatively located "need not meet photometric requirements at 45 degrees inboard." Accordingly this change is made in paragraph S5.3.1.1.1.

In paragraph S5.5.4, the second sentence relating to activation of the high-mounted stop lamp is revised to substitute the word "vehicle" for "passenger car". This amendment should have been made when Standard No. 108 was amended to require center high-mounted stop lamps on vehicles other than passenger cars.

Paragraph S5.8.10 is revised by correcting its reference to "S5.7.1" to "S5.8.1." NHTSA notes that Standard No. 108, as it appears in 49 CFR Parts 400 to 999, revised as of October 1, 1995, contains two paragraphs designated as S7.1 (page 231). The first that is printed specifies headlamp photometric requirements that apply on and after September 1, 1994, while the second contains requirements that apply both before and after that date. Only the first paragraph S7.1 will appear in 49 CFR Parts 400 to 999, revised as of October 1, 1996.

Paragraph S7.2(a) on headlamp lens marking explains that the DOT symbol is the certification required by "15 U.S.C. 1403." This statutory requirement was recodified in 1994 as "49 U.S.C. 30115" and the paragraph is being revised to reflect the change. The effective date of December 1, 1989, is also being removed from this paragraph as it is superfluous.

Paragraphs S7.4(i) and S7.5(j) are added to clarify that integral beam headlamps and replaceable bulb headlamps may also incorporate replaceable light sources used for purposes other than headlighting.

Finally, in paragraph S10(a), "SAE" is inserted before "Standard".

VII. Effective Dates

The amendments that allow headlamps to be visually/optically aimable as an alternative to existing aimability requirements are effective April 1, 1997, approximately 60 days after publication of the final rule in the **Federal Register**. Because of the desire of all interests affected by the rule that it be issued as soon as practicable to permit an optional means of compliance, it is found for good cause shown that an effective date earlier than 180 days after issuance is in the public interest.

AAMA, Koito, and GTB asked for an additional year of leadtime to comply with requirements that are mandatory within the option, which are fixed calibration and optical axis marking. These requirements were proposed to become effective one year following the September 1 that follows publication of the final rule. Since this final rule is one that is published between September 1, 1996, and August 31, 1997, the effective date for the mandatory requirements is September 1, 1998. NHTSA confirmed in phone conversations that the concern of the commenters is that a late issuance date allowing a lead time of 13 months would be impracticable whereas as earlier one would not. Since this final rule is being published around March 1, the effective date of September 1, 1998, as discussed below for mandatory requirements affords a leadtime of approximately 18 months. NHTSA has concluded that this meets the needs of the commenters and therefore is taking no action on the request.

The amendments to S7.8.1(b) amending the fiducial marking to require an optical axis mark for headlamps that are not visually/optically aimable are effective September 1, 1998, which, as proposed, is September 1 of the year following one year after publication of the final rule. For the same reason, the amendments to S7.8.5.2(c) amending the calibration requirements for the VHAD are also effective September 1, 1998. On the basis of comments demonstrating that it is impracticable to comply with these requirements within 360 days after issuance of the rule, it is found for good cause shown that an effective date for these requirements that is later than 360 days after issuance of the rule is in the public interest.

There is no retroactive effect on existing headlamps or their replacements.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures.

This rulemaking action was not reviewed under Executive Order 12866. Further, it has been determined that the rulemaking action is not significant under Department of Transportation regulatory policies and procedures. The purpose of the rulemaking action is to provide an alternative and more objective means of determining the accuracy of headlamp aim. As an alternative, the provisions are not mandatory unless a manufacturer chooses to install visually/optically aimable headlamps on a motor vehicle that it intends to sell. Because of offsetting benefits to vehicle manufacturers when choosing this option, it is likely that greater benefits than costs will occur. The costs of the final rule are so minimal as not to warrant preparation of a full regulatory evaluation.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The final rule will not have a significant effect upon the environment. The composition of headlamps will not change from those presently in production.

Regulatory Flexibility Act

The agency has also considered the impacts of this rulemaking action in relation to the Regulatory Flexibility Act. For the reasons stated above and below, I certify that this rulemaking action will not have a significant economic impact upon a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. Manufacturers of motor vehicles and motor vehicle equipment, those affected by the rulemaking action, are generally not small businesses within the meaning of the Regulatory Flexibility Act.

Executive Order 12612 (Federalism)

This rulemaking action has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and NHTSA has determined that this rulemaking action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice

The final rule will not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Tires.

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.108 is amended by:

a. Amending Section S4 to add new definitions: "Cutoff" and "Visually/optically aimable headlamp" in alphabetical order to read as set forth below;

b. revising the definition in S4 of "Integral beam headlamp", "Replaceable bulb headlamp", and "Vehicle headlamp aiming device", to read as set forth below;

c. revising paragraph S5.3.1.1.1 to read as set forth below;

d. revising paragraph S5.5.4 to read as set forth below;

e. revising paragraph S5.5.8 to read as set forth below;

f. revising paragraph S5.8.10 to read as set forth below;

g. revising paragraph S7.2(a) to read as set forth below;

h. revising paragraphs S7.3.2(a)(3); 7.3.3(a); S7.3.4; S7.3.5(a); S7.3.6(a); the first sentence of S7.3.7(b); S7.3.7(d); S7.3.7(h)(1); the last sentence of S7.3.8(b); S7.3.9(a); S7.4(a)(1)(i); S7.4(a)(1)(ii); S7.4(a)(1)(iii); S7.4(a)(2)(i); S7.4(a)(2)(ii); and the first sentence of S7.4 (a)(3) to read as set forth below;

i. adding new paragraph S7.4(i) to read as set forth below:

j. revising paragraphs S7.5(d)(2)(i)(A)(*1*); S7.5(d)(2)(i)(A)(*2*), S7.5(d)(2)(ii)(A)(*1*), S7.5(d)(2)(ii)(A)(*2*), S7.5(d)(3)(i)(A), S7.5(d)(3)(i)(B); S7.5(d)(3)(ii)(A); S7.5(d)(3)(ii)(B); S7.5(e)(2)(i)(A); S7.5(e)(2)(i)(B); S7.5(e)(2)(ii)(A); S7.5(e)(2)(ii)(B); S7.5(e)(3)(i) and S7.5(e)(3)(ii) to read as set forth below;

k. adding new paragraph S7.5(j) to read as set forth below;

l. revising paragraphs; S7.6.2; S7.6.3, S7.8.1; and S7.8.2 to read as set forth below;

m. adding new paragraph S7.8.2.1(c) to read as set forth below;

n. redesignating existing paragraph S7.8.2.2 as S7.8.2.3;

o. adding new paragraph S7.8.2.2 to read as set forth below;

p. revising paragraphs S7.8.4 and S7.8.5 to read as set forth below;

q. redesignating existing paragraph S7.8.5.2(c) as S7.8.5.2(d);

r. adding new paragraphs S7.8.5.2(c) and S7.8.5.3 to read as set forth below;

s. revising the fourth sentence of paragraph S10 (a) and the third sentence of paragraph S10(b) to read as set forth below;

t. redesignating Figures 15A, 17A, 27 and 28, as Figures 15–1, 17–1, 27–1, and 28–1, revising their titles, and republishing them as set forth below;

u. adding new Figures 15–2, 17–2, 27–2, and 28–2, to read as set forth below: and

v. revising Figure 26 to read as set forth below:

§ 571.108 Standard No. 108; Lamps, reflective devices, and associated equipment.

* * * * *

S4 *Definitions.*

* * * * *

Cutoff means a generally horizontal, visual/optical aiming cue in the lower beam that marks a separation between areas of higher and lower luminance.

* * * * *

Integral beam headlamp means a headlamp (other than a standardized sealed beam headlamp designed to conform to paragraph S7.3 or a replaceable bulb headlamp designed to conform to paragraph S7.5) comprising an integral and indivisible optical assembly including lens, reflector, and light source, except that a headlamp conforming to paragraph S7.8.5.2 or paragraph S7.8.5.3 may have a lens designed to be replaceable.

* * * * *

Replaceable bulb headlamp means a headlamp comprising a bonded lens and reflector assembly and one or two replaceable headlamp light sources, except that a headlamp conforming to paragraph S7.8.5.2 or paragraph S7.8.5.3 may have a lens designed to be replaceable.

* * * * *

Vehicle headlamp aiming device or VHAD means motor vehicle equipment, installed either on a vehicle or headlamp, which is used for determining the horizontal or vertical aim, or both the vertical and horizontal aim of the headlamp.

* * * * *

Visually/optically aimable headlamp means a headlamp which is designed to be visually/optically aimable in accordance with the requirements of paragraph S7.8.5.3 of this standard.

* * * * *

S5 *Requirements.*

* * * * *

S5.3.1.1.1 Clearance lamps may be located at a location other than on the front and rear if necessary to indicate the overall width of a vehicle, or for protection from damage during normal operation of the vehicle, and at such a location they need not meet the photometric output at any test point that is 45 degrees inboard.

* * * * *

S5.5.4 The stop lamps on each vehicle shall be activated upon application of the service brakes. The high-mounted stop lamp on each vehicle shall be activated only upon application of the service brakes.

* * * * *

S5.5.8 On a motor vehicle equipped with a headlighting system designed to conform to the photometric requirements of Figure 15–1 or Figure 15–2, the lamps marked "L" or "LF" may be wired to remain permanently activated when the lamps marked "U" or "UF" are activated. On a motor vehicle equipped with an Integral Beam headlighting system meeting the photometric requirements of paragraph S7.4(a)(1)(ii), the lower beam headlamps shall be wired to remain permanently activated when the upper beam headlamps are activated. On a motor vehicle equipped with a headlighting system designed to conform to the requirements of Figure 17–1 or Figure 17–2, a lower beam light source may be wired to remain activated when an upper beam light source is activated if the lower beam light source contributes to compliance of the headlighting system with the upper beam requirements of Figure 17–1 or Figure 17–2.

* * * * *

S5.8.10 Unless otherwise specified in this standard, each lamp, reflective device, or item of associated equipment to which paragraph S5.8.1 applies may be labeled with the symbol DOT, which shall constitute a certification that it conforms to applicable Federal motor vehicle safety standards.

* * * * *

S7 *Headlighting requirements.*

* * * * *

S7.2(a) The lens of each original and replacement equipment headlamp, and of each original equipment and replacement equipment beam contributor shall be marked with the symbol "DOT" either horizontally or vertically which shall constitute the certification required by 49 U.S.C. 30115.

* * * * *

S7.3.2 *Type A headlighting system.*

* * *

(a) * * *

(3) In paragraphs 4.5.2 and 5.1.6, the words "Figure 28–1 or 28–2 of Motor Vehicle Safety Standard No. 108" are substituted for "Table 3."

* * * * *

S7.3.3 *Type B headlighting system.*

* * *

(a) The requirements of paragraph S7.3.2 (a) through (c), except that the words "Figure 27–1 or Figure 27–2" are substituted for "Table 3" in paragraph S7.3.2(a)(3).

* * * * *

S7.3.4 *Type C headlighting system.* A Type C headlighting system consists of two Type 1C1 and two Type 2C1 headlamps and associated hardware, which are designed to conform to the requirements of paragraph S7.3.2 (a) through (d), except that the words "Figure 28–1 or Figure 28–2" are substituted for "Table 3" in paragraph S7.3.2(a)(3).

S7.3.5 *Type D headlighting system.* (a) A Type D headlighting system consists of two Type 2D1 headlamps and associated hardware, which are designed to conform to the requirements

of paragraph S7.3.2 (a) through (c), except that the words "Figure 27–1 or Figure 27–1" are substituted for "Table 3" in paragraph S7.3.2(a)(3).

* * * * *

S7.3.6 *Type E headlighting system.* (a) A Type E headlighting system consists of two Type 2E1 headlamps and associated hardware, which are designed to conform to the requirements of paragraph S7.3.2 (a) through (c), except that the words "Figure 27–1 or Figure 27–1" are substituted for "Table 3" in paragraph S7.3.2(a)(3).

* * * * *

S7.3.7 *Type F headlighting system.* * * *

(b) The photometric requirements of Figure 15–1 or Figure 15–2 of this standard. * * *

* * * * *

(d) When tested in accordance with section (c), the mounted assembly (either Type UF or Type LF headlamps, respective mounting ring, aiming ring, and aim adjustment mechanism) shall be designed to conform to the requirements of Figure 15–1 or Figure 15–2 for upper or lower beams respectively without reaim when any conforming Type UF or LF headlamp is tested and replaced by another conforming headlamp of the same Type.

* * * * *

(h) * * *

(1) The assembly (consisting of the Type UF and LF headlamps, mounting rings, the aiming/seating rings, and aim adjustment mechanism) shall be designed to conform to the test points of Figure 15–1 or Figure 15–2.

* * * * *

S7.3.8 *Type G headlighting system.* * * *

* * * * *

(b) * * * In paragraph 4.5.2, the words "either Figure 28–1, or Figure 28–2" are substituted for "Table 3".

* * * * *

S7.3.9 *Type H headlighting system.* * * *

(a) Paragraphs S7.3.8 (a) through (d) except that in paragraph S7.3.8(b), the words "Figure 27–1 or Figure 27–2" are substituted for "Table 3."

* * * * *

S7.4 *Integral beam headlighting systems.* * * *

(a) * * *

(1) * * *

(i) Figure 15–1 or Figure 15–2; or

(ii) Figure 15–1 or Figure 15–2, except that the upper beam test value at 2.5 D–V and 2.5D–12R and 12L, shall apply to the lower beam headlamp and not to the upper beam headlamp, and the upper beam test point value at 1.5D–9R and 9L shall be 1000; or

(iii) Figure 28–1 or Figure 28–2.

(2) * * *

(i) Figure 17–1 or Figure 17–2; or

(ii) Figure 27–1 or Figure 27–2.

(3) In a system in which there is more than one beam contributor providing a lower beam, and/or more than one beam contributor providing an upper beam, each beam contributor in the system shall be designed to meet only the photometric performance requirements of Figure 15–1 or Figure 15–2 based upon the following mathematical expression: conforming test point value = 2 (Figure 15–1 or Figure15–2 test point value)/total number of lower or upper beam contributors for the vehicle, as appropriate. * * *

* * * * *

(i) An integral beam headlamp may incorporate replaceable light sources that are used for purposes other than headlighting.

S7.5 *Replaceable bulb headlamp systems.* * * *

* * * * *

(d) * * *

* * * * *

(2) * * *

(i) * * *

(A) * * *

(*1*) The lower beam requirements of Figure 27–1 or Figure 27–2, or Figure 17–1 or Figure 17–2, if the light sources in the headlamp system are any combination of dual filament replaceable light sources other than Type HB2; or

(*2*) The lower beam requirements of Figure 17–1 or Figure17–2 if the light sources are Type HB2, or any dual filament replaceable light sources that include Type HB2; or

* * * * *

(ii) * * *

(A) * * *

(*1*) The upper beam requirements of Figure 27–1 or Figure 27–2, or Figure 17–1 or Figure 17–2 if the light sources in the headlamp system are any combination of dual filament replaceable light sources that include Type HB2, or

(*2*) The upper beam requirements of figure 17–1 or Figure 17–2 if the light sources are type HB2, or any combination of replaceable light sources that include Type HB2; or

* * * * *

(3) * * *

(i) * * *

(A) The lower beam requirements of Figure 27–1 or Figure 27–2, or Figure 15–1 or Figure 15–2 if the light sources in the headlamp system are any combination of dual filament light sources other than Type HB2; or

(B) The lower beam requirements of Figure 15–1 or Figure 15–2 if the light sources are Type HB2, or dual filament light sources other than Type HB1 and HB5. The lens of each such headlamp shall be marked with the letter "L".

(ii) * * *

(A) The upper beam requirements of Figure 27–1 or Figure 27–2, of Figure 15–1 or Figure 15–2 if the light sources in the headlamp system are any combination of dual filament light sources other than Type HB2; or

(B) The upper beam requirements of Figure 15–1 or Figure 15–2 if the light sources are Type HB2, or dual filament light sources other tha Type HB1 and Type HB5. The lens of each such headlamp shall be marked with the letter "u".

(e) * * *

* * * * *

(2) * * *

(i) * * *

(A) By the outboard light source (or the uppermost if arranged vertically) designed to conform to the lower beam requirements of Figure 17–1 or Figure 17–2; or

(B) By both light sources, designed to conform to the lower beam requirements of Figure 17–1 or Figure 17–2.

(ii) * * *

(A) By the inboard light source (or the lower one if arranged vertically) designed to conform to the upper beam requirements of Figure 17–1 or Figure 17–2; or

(B) By both light sources, designed to conform to the upper beam requirements of Figure 17–1 or Figure 17–2.

(3) * * *

(i) The lower beam shall be produced by the outboard lamp (or upper one if arranged vertically), designed to conform to the lower beam requirements of Figure 15–1 or Figure 15–2. The lens of each headlamp shall be permanently marked with the letter "L".

(ii) The upper beam shall be produced by the inboard lamp (or lower one of arranged vertically), designed to conform to the upper beam requirements of Figure 15–1 or Figure 15–2. The lens of each headlamp shall be permanently marked with the letter "U".

* * * * *

(j) A replaceable bulb headlighting system may incorporate replaceable light sources that are used for purposes other than headlighting.

* * * * *

S7.6.2 In a combination headlighting system consisting of two headlamps, each headlamp shall be designed to conform to Figure 17–1 or Figure 17–2 and shall be a combination of two different headlamps chosen from the following types: a Type F headlamp, an integral beam headlamp, and a replaceable bulb headlamp.

* * * * *

S7.6.3 In a combination headlighting system consisting of four headlamps, each headlamp shall be designed to conform to Figure 15–1 or Figure 15–2, or if an integral beam headlamp in which there is more than one beam contributor, designed to conform to Figure 15–1 or Figure 15–2 in the manner required by S7.4(a)(3) of this standard.

* * * * *

S7.8.1 (a) Each headlamp or beam contributor that is not visually/optically aimable in accordance with S7.8.5.3 of this standard shall be equipped with fiducial marks, aiming pads, or similar references of sufficient detail and accuracy, for determination of an appropriate vehicle plane to be used with the photometric procedures of SAE J1383 APR85 for correct alignment with the photometer axis when being tested for photometric compliance, and to serve for the aiming reference when the headlamp or beam contributor is installed on a motor vehicle. The fiducial marks, aiming pads, or similar references are protrusions, bubble vials, holes, indentations, ridges, scribed lines, or other readily identifiable marks established and described by the vehicle or headlamp manufacturer.

(b) Each motor vehicle manufactured on and after September 1, 1998, shall be equipped with headlamps or beam contributors which have a mark or markings that are visible from the front of the headlamp when installed on the vehicle to identify the optical axis of the headlamp to assure proper horizontal and vertical alignment of the aiming screen or optical aiming equipment. The manufacturer is free to choose the design of the mark or markings. The mark or markings may be on the interior or exterior of the lens or indicated by a mark or central structure on the interior or exterior of the headlamp.

(c) Each headlamp that is visually/optically aimable in accordance with S7.8.5.3 of this standard shall be marked in accordance with S7.8.5.3(f).

S7.8.2 Except as provided in this paragraph, each headlamp shall be installed on a motor vehicle with a mounting and aiming mechanism that allows aim inspection and adjustment of both vertical and horizontal aim, and is accessible for those purposes without removal of any vehicle parts, except for protective covers removable without the use of tools.

S7.8.2.1

* * * * *

(c) A visually/optically aimable headlamp that has a lower beam shall not have a horizontal adjustment mechanism unless such mechanism meets the requirements of paragraph S7.8.5.2 of this standard.

S7.8.2.2 If the headlamp is aimed by moving the reflector relative to the lens and headlamp housing, or vice versa, it shall:

(a) allow movement of the headlamp system, when tested in the laboratory, to be not less than the full range of pitch on the vehicle on which the headlamp system is installed and for the horizontal aim range limits of S7.8.4,

(b) Conform with the photometrics applicable to it with the lens at any position relative to the reflector within the range limits as specified in S7.8.2.2(a),

(c) Be exempted from the aim range limits for testing in a laboratory in S7.8.3, and

(d) Be exempted from S7.8.4 if it is visually/optically aimable and has fixed horizontal aim.

* * * * *

S7.8.4 When a headlamp system is tested in a laboratory, the range of its horizontal aim shall be not less that +/ -2.5 degrees from the nominal correct aim position for the intended vehicle application.

S7.8.5 When activated in a steady-burning state, headlamps shall not have any styling ornament or other feature, such as a translucent cover or grill, in front of the lens. Headlamp wipers may be used in front of the lens provided that the headlamp system is designed to conform with all applicable photometric requirements with the wiper stopped in any position in front of the lens. When a headlamp system is installed on a motor vehicle, it shall be aimable with at least one of the following: An externally applied aiming device, as specified in S7.8.5.1; an on-vehicle headlamp aiming device installed by the vehicle or lamp manufacturer, as specified in S7.8.5.2; or by visual/optical means, as specified in S7.8.5.3.

* * * * *

S7.8.5.2

* * * * *

(c) Each headlamp equipped with a VHAD that is manufactured for use on motor vehicles manufactured on or after September 1,1998, shall be manufactured with its calibration permanently fixed by its manufacturer. Calibration in this case means the process of accurately aligning the geometry of the VHAD devices with the beam pattern for the purposes of compliance with the standard.

* * * * *

S7.8.5.3 *Visual/optical aiming.* Each visually/optically aimable headlamp shall be designed to conform to the following requirements:

(a) *Vertical aim, lower beam.* Each lower beam headlamp shall have a cutoff in the beam pattern. It may be either on the left side or the right side of the optical axis, but once chosen for a particular headlamp system's design, the side chosen for the cutoff shall not be changed for any headlamps intended to be used as replacements for those system's headlamps.

(1) *Vertical position of cutoff.* The headlamp shall be aimed vertically so that the cutoff is on the left side, at 0.4 degree down from the H–H line, or on the right side, at the H–H line.

(2) *Vertical gradient.* The gradient of the cutoff measured at either 2.5 degrees L or 2.0 degrees R shall be not less than 0.13 based on the procedure of S7.8.5.3, paragraph (a)(5).

(3) *Horizontal position of the cutoff.* The width shall be not less than two degrees, with not less than two degrees of its actual width centered at either 2.5 degrees L, or 2.0 degrees R.

(4) *Maximum inclination of cutoff.* The vertical location of the highest gradient at the ends of the minimum width shall be within +/-0.2 degree of the vertical location of the maximum gradient measured at the appropriate vertical line (at either 2.5 degrees L for a left side cutoff, or 2.0 degrees R for a right side cutoff.)

(5) *Measuring the cutoff parameter.* (i) The headlamp shall be mounted on a fixture which simulates its actual design location on any vehicle for which the headlamp is intended. The fixture, with the headlamp installed shall be attached to the goniometer table in such a way that the fixture alignment axes are coincident with the goniometer axes. The headlamp shall be energized at the specified test voltage.

(ii) The headlamp beam pattern shall be aimed with the cutoff at the H-H axis. There shall be no adjustment, shimming, or modification of the horizontal axis of the headlamp or test fixture, unless the headlamp is equipped with a VHAD. In this case the VHAD shall be adjusted to zero.

(iii) A vertical scan of the beam pattern shall be conducted for a headlamp with a left side gradient by aligning the goniometer on a vertical line at 2.5 degrees L and scanning from 1.5 degrees U to 1.5 degrees D. For a headlamp with a right side gradient, a vertical scan of the beam pattern shall be conducted by aligning the goniometer on a vertical line at 2.0 degrees R and scanning from 1.5 degrees U to 1.5 degrees D.

(iv) Determine the maximum gradient within the range of the scan by using the formula: G = log E(*a*)-log E(*a*+0.1), where "G" is the gradient, "E" is illumination and "*a*" is vertical angular position. The maximum value of the gradient "G" determines the vertical angular location of the cutoff. Perform vertical scans at 1.0 degree L and R of the measurement point of the maximum gradient to determine the inclination.

(b) *Horizontal aim, lower beam.* There shall be no adjustment of horizontal aim unless the headlamp is equipped with a horizontal VHAD. If the headlamp has a VHAD, it shall be set to zero.

(c) *Vertical aim, upper beam.* (1) If the upper beam is combined in a headlamp with a lower beam, the vertical aim of the upper beam shall not be changed from the aim set using the procedures of paragraphs S7.8.5.3(a) and (b) used for the lower beam.

(2) If the upper beam is not combined in a headlamp with a lower beam, the vertical aim of the upper beam shall be adjusted so that the maximum beam intensity is located on the H-H axis.

(d) *Horizontal aim, upper beam.* (1) If the upper beam is combined in a headlamp with a lower beam, the horizontal aim of the upper beam shall not be changed from the aim set using the procedures of paragraphs S7.8.5.3 (a) and (b) used for the lower beam.

(2) If the upper beam is not combined in a headlamp with the lower beam and has fixed horizontal aim or has a horizontal VHAD, then the headlamp shall be mounted on a fixture which simulates its actual design location on any vehicle for which the headlamp is intended. The fixture, with the headlamp installed shall be attached to the goniometer table in such a way that the fixture alignment axes are coincident with the goniometer axes. The headlamp shall be energized at 12.8 ± 0.20 mV. There shall be no adjustment, shimming, or modification of the horizontal axis of the headlamp or test fixture, unless the headlamp is equipped with a VHAD. In this case the VHAD shall be adjusted to zero.

(3) If the upper beam is not combined in a headlamp with a lower beam, and it does not have a VHAD, the horizontal aim of the upper beam shall be adjusted so that the maximium beam intensity is located on the V-V axis.

(e) *Photometric Requirements and Measurement.* (1) Instead of being designed to conform to the photometric requirements of Figures 15–1, 17–1, 27–1 or 28–1, a visually/optically aimable headlamp shall be designed to conform to the requirements of Figures 15–2, 17–2, 27–2 or 28–2 when tested in accordance with paragraph (2) and SAE J575 DEC88, with the distance from the photometer to the headlamp no less than 18.3 m.

(2) If the lower beam has a left side cutoff, reaim the headlamp vertically to place the maximum gradient found in paragraph S7.8.5.3 at 0.4 degree below the H-H line. For a headlamp with a lower beam right side cutoff, place the maximum gradient found in paragraph S7.8.5.3 at the H–H line. For an upper beam, the headlamp would already be aimed at the end of the procedure found in paragraph S7.8.5.3. A 0.25 degree reaim is permitted in any direction at any test point.

(f) *Marking*—(1) *Headlamp optical axis mark.* There shall be a mark or markings identifying the optical axis of the headlamp visible from the front of the headlamp when installed on the vehicle, to assure proper horizontal and vertical alignment of the aiming screen or optical aiming equipment with the headlamp being aimed. The manufacturer is free to choose the design of the mark or markings. The mark or markings may be on the interior or exterior of the lens or indicated by a mark or central structure on the interior or exterior of the headlamp.

(2) *Visual/optical aimability identification marks.* (i) The lens of a lower beam headlamp shall be marked "VOL" if the headlamp is intended to be visually/optically aimed using the left side of the lower beam pattern.

(ii) The lens of a lower beam headlamp shall be marked "VOR" if the headlamp is intended to be visually/optically aimed using the right side of the lower beam pattern.

(iii) The lens of each sealed beam or integral beam headlamp shall be marked "VOR" if the headlamp is of a type that was manufactured before May 1, 1997, and if such headlamp type has been redesigned since then to be visually/optically aimable.

(iv) The lens of a headlamp that is solely an upper beam headlamp and intended to be visually/optically aimed using the upper beam shall be marked "VO".

(v) Each letter used in marking according to this paragraph shall be not less than 3 mm. high.

* * * * *

S10. *Simultaneous aim photometry tests.*

(a) *Type F headlamp systems.* * * * Photometry measurements of the UF photometry unit shall be completed using the aiming plane so established, and the procedures of section 4.1 and 4.1.4 Standard J1383 APR85, and Figure 15–1 or Figure 15–2. * * *

(b) Integral beam headlamp systems. * * * Photometric compliance of the lower beam shall be determined with all lower beam contributors illuminated and in accordance with sections 4.1 and 4.1.6 of SAE Standard J1383 APR85, and Figure 15–1 or Figure 15–2. * * *

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FIGURE 15-1

PHOTOMETRIC TEST POINT VALUES

FOR MECHANICAL AIM HEADLIGHTING SYSTEMS

UPPER BEAM

Test Points (degrees)	Candela maximum	Candela minimum
2U-V	–	1,500
1U-3L and 3R	–	5,000
H-V	70,000	40,000
H-3L and 3R	–	15,000
H-6L and 6R	–	5,000
H-9L and 9R	–	3,000
H-12L and 12R	–	1,500
1.5D-V	–	5,000
1.5D-9L and 9R	–	2,000
2.5D-V	–	2,500
2.5D-12L and 12R	–	1,000
4D-V	5,000	–

LOWER BEAM

Test Points (degrees)	Candela maximum	Candela minimum
10U-90U	125	–
4U-8L and 8R	–	64
2U-4L	–	135
1.5U-1R to 3R	–	200
1.5U-1R to R	1,400	–
1U-1.5L to L	700	–
0.5U-1.5L to L	1,000	–
0.5U-1R to 3R	2,700	500
H-4L	–	135
H-8L	–	64
0.5D-1.5L to L	3,000	–
0.5D-1.5R	20,000	10,000
1D-6L	–	1,000
1.5D-2R	–	15,000
1.5D-9L and 9R	–	1,000
2D-15L and 15R	–	850
4D-4R	12,500	–
4D-V	7,000	–
H-V	5,000	–

FIGURE 15-2

PHOTOMETRIC TEST POINT VALUES

FOR VISUAL/OPTICAL AIM HEADLIGHTING SYSTEMS

UPPER BEAM

Test Points (degrees)	Candela maximum	Candela minimum
2U-V	–	1,500
1U-3L and 3R	–	5,000
H-V	70,000	40,000
H-3L and 3R	–	15,000
H-6L and 6R	–	5,000
H-9L and 9R	–	3,000
H-12L and 12R	–	1,500
1.5D-V	–	5,000
1.5D-9L and 9R	–	2,000
2.5D-V	–	2,500
2.5D-12L and 12R	–	1,000
4D-V	5,000	–

LOWER BEAM

Test Points (degrees)	Candela maximum	Candela minimum
10U-90U	125	–
4U-8L and 8R	–	64
2U-4L	–	135
1.5U-1R to 3R	–	200
1.5U-1R to R	1,400	–
1U-1.5L to L	700	–
0.5U-1.5L to L	1,000	–
0.5U-1R to 3R	2,700	500
H-V	5,000	–
H-4L	–	135
H-8L	–	64
0.6D-1.3R	–	10,000
0.86D-V	–	4,500
0.86D-3.5L	12,000	1,800
1.5D-2R	–	15,000
2D-9L and 9R	–	1,250
2D-15L and 15R	–	1,000
4D-V	10,000	–
4D-4R	12,500	–
4D-20L and 20R	–	300

FIGURE 17-1

PHOTOMETRIC TEST POINT VALUES

FOR MECHANICAL AIM HEADLIGHTING SYSTEMS

UPPER BEAM

Test Points (degrees)	Candela maximum	Candela minimum
2U-V	–	1,500
1U-3L and 3R	–	5,000
H-V	75,000	40,000
H-3L and 3R	–	15,000
H-6L and 6R	–	5,000
H-9L and 9R	–	3,000
H-12L and 12R	–	1,500
1.5D-V	–	5,000
1.5D-9L and 9R	–	2,000
2.5D-V	–	2,500
2.5D-12L and 12R	–	1,000
4D-V	12,000	–

LOWER BEAM

Test Points (degrees)	Candela maximum	Candela minimum
10U-90U	125	–
4U-8L and 8R	–	64
2U-4L	–	135
1.5U-1R to 3R	–	200
1.5U-1R to R	1,400	–
1U-1.5L to L	700	–
0.5U-1.5L to L	1,000	–
0.5U-1R to 3R	2,700	500
H-4L	–	135
H-8L	–	64
0.5D-10.5L to L	3,000	–
0.5D-1.5R	20,000	10,000
1D-6L	–	1,000
1.5D-2R	–	15,000
1.5D-9L and 9R	–	1,000
2D-15L and 15R	–	850
4D-4R	12,500	–

FIGURE 17-2

PHOTOMETRIC TEST POINT VALUES

FOR VISUAL/OPTICAL AIM HEADLIGHTING SYSTEMS

UPPER BEAM

Test Points (degrees)	Candela maximum	Candela minimum
2U-V	–	1,500
1U-3L and 3R	–	5,000
H-V	75,000	40,000
H-3L and 3R	–	15,000
H-6L and 6R	–	5,000
H-9L and 9R	–	3,000
H-12L and 12R	–	1,500
1.5D-V	–	5,000
1.5D-9L and 9R	–	2,000
2.5D-V	–	2,500
2.5D-12L and 12R	–	1,000
4D-V	12,000	–

LOWER BEAM

Test Points (degrees)	Candela maximum	Candela minimum
10U-90U	125	–
4U-8L and 8R	–	64
2U-4L	–	135
1.5U-1R to 3R	–	200
1.5U-1R to R	1,400	–
1U-1.5L to L	700	–
0.5U-1.5L to L	1,000	–
0.5U-1R to 3R	2,700	500
H-4L	–	135
H-8L	–	64
0.6D-1.3R	–	10,000
0.86D-V	–	4,500
0.86D-3.5L	12,000	1800
1.5D-2R	–	15,000
2D-9L and 9R	–	1,250
2D-15L and 15R	–	1,000
4D-4R	12,500	–
4D-20L and 20R	–	300

FIGURE 26

TABLE FOR DETERMINING THE PHOTOMETRIC REQUIREMENTS OF REPLACEABLE BULB HEADLAMP SYSTEMS

	Any dual filament type used HB2 used alone or with any other dual filament type filed in Docket No. 93-11	HB2 or any single filament type used alone or with any other single or dual filament type, filed in Docket No. 93-11
Four-Headlamp Systems	Fig. 27-1 or 27-2 Fig. 15-1 or 15-2	Fig. 15-1 or 15-2
Two-Headlamp Systems	Fig. 27-1 or 27-2 Fig. 17-1 or 17-2	Fig. 17-1 or 17-2

FIGURE 27-1

PHOTOMETRIC TEST POINT VALUES

FOR MECHANICAL AIM HEADLIGHTING SYSTEMS

UPPER BEAM

Test Points (degrees)	Candela maximum	Candela minimum
2U-V	–	1,000
1U-3L and 3R	–	2,000
H-V	75,000	20,000
H-3L and 3R	–	10,000
H-6L and 6R	–	3,250
H-9L and 9R	–	1,500
H-12L and 12R	–	750
1.5D-V	–	5,000
1.5D-9L and 9R	–	1,500
2.5D-V	–	2,500
2.5D-12L and 12R	–	750
4D-V	5,000	–

LOWER BEAM

Test Points (degrees)	Candela maximum	Candela minimum
10U-90U	125	–
4U-8L and 8R	–	64
2U-4L	–	135
1.5U-1R to 3R	–	200
1.5U-1R to R	1,400	–
1U-1.5L to L	700	–
0.5U-1.5L to L	1,000	–
0.5U-1R to 3R	2,700	500
H-4L	–	135
H-8L	–	64
0.5D-1.5L toL	2,500	–
0.5D-1.5R	20,000	8,000
1D-6L	–	750
1.5D-2R	–	15,000
1.5D-9L and 9R	–	750
2D-15L and 15R	–	700
4D-4R	12,500	–

FIGURE 27-2

PHOTOMETRIC TEST POINT VALUES

FOR VISUAL/OPTICAL AIM HEADLIGHTING SYSTEMS

UPPER BEAM

Test Points (degrees)	Candela maximum	Candela minimum
2U-V	--	1,000
1U-3L and 3R	--	2,000
H-V	75,000	20,000
H-3L and 3R	--	10,000
H-6L and 6R	--	3,250
H-9L and 9R	--	1,500
H-12L and 12R	--	750
1.5D-V	--	5,000
1.5D-9L and 9R	--	1,500
2.5D-V	--	2,500
2.5D-12L and 12R	--	750
4D-V	5,000	--

LOWER BEAM

Test Points (degrees)	Candela maximum	Candela minimum
10U-90U	125	--
4U-8L and 8R	--	64
2U-4L	--	135
1.5U-1R to 3R	--	200
1.5U-1R to R	1,400	--
1U-1.5L to L	700	--
0.5U-1.5L to L	1,000	--
0.5U-1R to 3R	2,700	500
H-4L	--	135
H-8L	--	64
0.6D-1.3R	--	10,000
0.86D-V	--	4,500
0.86D-3.5L	12,000	1,800
1.5D-2R	--	15,000
2D-9L and 9R	--	1,250
2D-15L and 15R	--	1,000
4D-4R	12,500	--
4D-20L and 20R	--	300

FIGURE 28-1

PHOTOMETRIC TEST POINT VALUES

FOR MECHANICAL AIM HEADLIGHTING SYSTEMS

UPPER BEAM

Headlamp Type	1A1, 1C1, and	1G1	2A1, 2C1, and	2G1
Test Points (degrees)	Candela maximum	Candela minimum	Candela maximum	Candela minimum
2U-V	–	750	–	750
1U-3L and 3R	–	3,000	–	2,000
H-V	60,000	18,000	15,000	7,000
H-3L and 3R	–	12,000	–	3,000
H-6L and 6R	–	3,000	–	2,000
H-9L and 9R	–	2,000	–	1,000
H-12L and 12R	–	750	–	750
1.5D-V	–	3,000	–	2,000
1.5D-9L and 9R	–	1,250	–	750
2.5D-V	–	1,500	–	1,000
2.5D-12L and 12R	–	600	–	400
4D-V	5,000	–	2,500	–

LOWER BEAM

Headlamp Type	2A1, 2C1, and 2G1	
Test Points (degrees)	Candela maximum	Candela minimum
10U-90U	125	–
4U-8L and 8R	–	64
2U-4L	–	135
1.5U-1R to 3R	–	200
1.5U-1R to R	1,400	–
1U-1.5L to L	700	–
0.5U-1.5L to L	1,000	–
0.5U-1R to 3R	2,700	500
H-4L	–	135
H-8L	–	64
0.5D-1.5L to L	2,500	–
0.5D-1.5R	20,000	8,000
1D-8L	–	750
1.5D-2R	–	15,000
1.5D-9L and 9R	–	750
2D-15L and 15R	–	700
4D-4R	12,500	–

FIGURE 28-2

PHOTOMETRIC TEST POINT VALUES

FOR VISUAL/OPTICAL AIM HEADLIGHTING SYSTEMS

UPPER BEAM

Headlamp Type	1A1, 1C1, and	1G1	2A1, 2C1, and	2G1
Test Points (degrees)	Candela maximum	Candela minimum	Candela maximum	Candela minimum
2U-V	–	750	–	750
1U-3L and 3R	–	3,000	–	2,000
H-V	60,000	18,000	15,000	7,000
H-3L and 3R	–	12,000	–	3,000
H-6L and 6R	–	3,000	–	2,000
H-9L and 9R	–	2,000	–	1,000
H-12L and 12R	–	750	–	750
1.5D-V	–	3,000	–	2,000
1.5D-9L and 9R	–	1,250	–	750
2.5D-V	–	1,500	–	1,000
2.5D-12L and 12R	–	600	–	400
4D-V	5,000	–	2,500	–

LOWER BEAM

Headlamp Type	2A1, 2C1, and	2G1
Test Points (degrees)	Candela maximum	Candela minimum
10U-90U	125	–
4U-8L and 8R	–	64
2U-4L	–	135
1.5U-1R to 3R	–	200
1.5U-1R to R	1,400	–
1U-1.5L to L	700	–
0.5U-1.5L to L	1,000	–
0.5U-1R to 3R	2,700	500
H-4L	–	135
H-8L	–	64
0.6D-1.3R	–	10,000
0.86D-V	–	4,500
0.86D-3.5L	12,000	1,800
1.5D-2R	–	15,000
2D-9L and 9R	–	1250
2D-15L and 15R	–	1000
4D-4R	12,500	–
4D-20L and 20R	–	300

Issued on March 4, 1997.

Ricardo Martinez,

Administrator.

[FR Doc. 97–5723 Filed 3–7–97; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC85

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Cactus Ferruginous Pygmy-Owl in Arizona

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) determines endangered status for the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) in Arizona, pursuant to the Endangered Species Act of 1973, as amended (Act). The Service also determines that the cactus ferruginous pygmy-owl population in Texas does not warrant listing as a threatened species and is not finalizing that portion of the proposal. The Service originally proposed to list the cactus ferruginous pygmy-owl as endangered in Arizona with critical habitat, and threatened in Texas without critical habitat.

New information was received during comment periods indicating that population levels are higher in Arizona and Texas than was known at the time of the proposed rule. This information has been considered in making this final determination. However, the Service still determines that the Arizona population warrants endangered status. Conversely, the new information indicates that listing the species as threatened in Texas is not warranted. This rule implements the Federal protection and recovery provisions afforded by the Act for the Arizona population of this subspecies.

EFFECTIVE DATE: April 9, 1997.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona, 85021–4951.

FOR FURTHER INFORMATION CONTACT: For Arizona, Mary E. Richardson, Arizona Ecological Services Field Office (see **ADDRESSES** section) (telephone 602/640–2720; facsimile 602/640–2730). For Texas, William Seawell, U.S. Fish and Wildlife Service, (telephone 512/994–9005; facsimile 512/994–8262).

SUPPLEMENTARY INFORMATION:

Background

The cactus ferruginous pygmy-owl (Order Strigiformes—Family Strigidae) is a small bird, approximately 17 centimeters (cm) (6¾ inches (in)) long. Males average 62 grams (g) (2.2 ounces (oz)), and females average 75 g (2.6 oz). The cactus ferruginous pygmy-owl is reddish-brown overall, with a cream-colored belly streaked with reddish-brown. Some individuals are grayish, rather than reddish-brown. The crown is lightly streaked, and paired black-and-white spots on the nape suggest eyes. There are no ear tufts, and the eyes are yellow. The tail is relatively long for an owl and is colored reddish-brown with darker brown bars. The call of this diurnal owl, heard primarily near dawn and dusk, is a monotonous series of short notes.

The cactus ferruginous pygmy-owl is one of four subspecies of the ferruginous pygmy-owl. It occurs from lowland central Arizona south through western Mexico, to the States of Colima and Michoacan, and from southern Texas south through the Mexican States of Tamaulipas and Nuevo Leon. South of these regions and through Central America, *G. b. ridgwayi* replaces *G. b. cactorum*.

Throughout South America, *G. b. brasilianum* is the resident subspecies (Fisher 1893, van Rossem 1937, Friedmann *et al.* 1950, Schaldach 1963, Phillips *et al.* 1964, de Schauensee 1966, Karalus and Eckert 1974, Oberholser 1974, Johnsgard 1988). Additionally, Konig and Wink (1995) have identified a fourth subspecies of pygmy-owl from central Argentina (*G.b. stranecki*).

The cactus ferruginous pygmy-owl (hereafter "pygmy-owl" unless otherwise noted) was described by van Rossem (1937), based on specimens from Arizona and Sonora. It is distinguished from *G. b. ridgwayi* and *G. b. brasilianum* by its shorter wings and longer tail, and by generally lighter coloration (van Rossem 1937, Phillips *et al.* 1964). *G. b. cactorum* occurs in several color phases, with distinct differences between regional populations (Sprunt 1955, Burton 1973, Tyler and Phillips 1978, Hilty and Brown 1986, Johnsgard 1988). Some investigators (e.g., van Rossem 1937, Tewes 1993) have suggested that further taxonomic investigation may be needed, however, *G. b. cactorum* is widely recognized as a valid subspecies (e.g., Friedmann *et al.* 1950, Blake 1953, Sprunt 1955, Phillips *et al.* 1964, Monson and Phillips 1981, Millsap and Johnson 1988, Binford 1989). The American Ornithologists' Union (AOU) recognized *G. b. cactorum* in its 1957 Checklist of North American Birds (AOU 1957), but subsequent lists did not include subspecies (AOU 1983). Based on these authorities, the Service accepted *G. b. cactorum* as a subspecies in 1991 (56 FR 58804), and again in 1993 (58 FR 13045). The Service accepts that there is only one subspecies (*G. b. cactorum*) of cactus ferruginous pygmy-owl in Arizona.

The pygmy-owl nests in a cavity in a tree or large columnar cactus. Cavities may be naturally formed (e.g., knotholes) or excavated by woodpeckers. No nest lining material is used. The pygmy-owl also has nested in fabricated nest boxes (Proudfoot *et al.* 1994a, Proudfoot 1996). Three, four, five, and occasionally six eggs are laid (Bent 1938, Heintzelman 1979, Glenn Proudfoot, Texas A&M University at Caesar Kleberg Wildlife Research Institute, unpubl. data 1996) and incubated for approximately 28 days. The young fledge about 28 days after hatching. The pygmy-owl begins nesting activities in late winter to early spring. It is nonmigratory throughout its range (Bendire 1888, Griscom and Crosby 1926, Oberholser 1974, Johnson et al. 1979). The pygmy-owl's diverse diet includes birds, lizards, insects, small mammals (Bendire 1888, Sutton 1951, Sprunt 1955, Earhart and Johnson 1970, Oberholser 1974), and frogs (Proudfoot *et al.* 1994b).

The pygmy-owl occurs in a variety of subtropical, scrub, and woodland communities, including riverbottom woodlands, woody thickets ("bosques"), coastal plain oak associations, thornscrub, and desertscrub. Unifying habitat characteristics among these communities are fairly dense woody thickets or woodlands, with trees and/or cacti large enough to provide nesting cavities. Throughout its range, the pygmy-owl occurs at low elevations, generally below 1,200 meters (m) (4,000 feet (ft)) (Swarth 1914, Karalus and Eckert 1974, Monson and Phillips 1981, Johnsgard 1988, Enriquez-Rocha *et al.* 1993).

In southern Texas, the pygmy-owl's habitat includes coastal plain oak associations as well as the Tamaulipan thornscrub of the lower Rio Grande Valley region, which consists of mesquite (*Prosopis glandulosa*), hackberry (*Celtis* spp.), oak (*Quercus* spp.), and Texas ebony (*Pithecellobium ebano*) (Griscom and Crosby 1926, Bent

1938, Oberholser 1974, Tewes 1992, Wauer *et al.* 1993). In northeastern Mexico it occurs in lowland thickets, thornscrub communities, riparian woodlands, and second-growth forest (van Rossem 1945, AOU 1983, Enriquez-Rocha *et al.* 1993, Tewes 1993). In central and southern Arizona the pygmy-owl's primary habitats were riparian cottonwood (*Populus* spp.) forests, mesquite bosques, and Sonoran desertscrub, but the subspecies currently occurs primarily in Sonoran desertscrub associations of palo verde (*Cercidium* spp.), bursage (*Ambrosia* spp.), ironwood (*Olneya tesota*), mesquite (*Prosopis juliflora*), acacia (*Acacia* spp.), and giant cacti such as saguaro (*Cereus giganteus*), and organpipe (*Cereus thurberi*) (Gilman 1909, Bent 1938, van Rossem 1945, Phillips *et al.* 1964, Monson and Phillips 1981, Johnson-Duncan *et al.* 1988, Millsap and Johnson 1988). In northwestern Mexico the pygmy-owl occurs in Sonoran desertscrub, Sinaloan thornscrub, and Sinaloan deciduous forest as well as riverbottom woodlands, cactus forests, and thornforest (Enriquez-Rocha *et al.* 1993).

The available information indicates that distinct eastern and western populations of the pygmy-owl are definable. The pygmy-owl occurs along the lower Rio Grande and the coastal plain of southern Texas and northeastern Mexico. It also occurs in lowland areas of northwestern Mexico and southern Arizona. The pygmy-owl's elevational distribution, the distribution of habitat, and recorded locations indicate that these eastern and western ranges of the pygmy-owl are geographically isolated from each other and are ecologically distinct. In the United States, eastern and western portions of the pygmy-owl's range are separated by the basin-and-range mountains and intervening Chihuahuan Desert basins of southeastern Arizona, southern New Mexico, and western Texas. The pygmy-owl has never been recorded in this 805 kilometer (km) (500 mile (mi)) wide area (Bailey 1928, Phillips *et al.* 1964, Oberholser 1974, Sartor O. Williams, New Mexico Department of Game and Fish, *in litt.* 1991).

In Mexico, the eastern and western populations are separated by the highlands of the Sierra Madre Oriental and Occidental, and the Mexican Plateau. The pygmy-owl is considered rare on the Mexican Plateau at/or above elevations of 1,200 m (4,000 ft) on the west, and above 300 m (1,000 ft) on the east (Friedman *et al.* 1950). Some sources describe the eastern and western ranges as contiguous at the southern end of its range, near the southern end of the Mexican Plateau in central Mexico (Johnsgard 1988). Other sources describe these two ranges as disjunct (Burton 1973). In his description of the subspecies, van Rossem (1937) found that Texas specimens exhibited characteristics of both *G. b. cactorum* and *G. b. ridgwayi*. Ultimately, he did not assign Texas ferruginous pygmy-owls to *G. b. cactorum*, but noted that Ridgeway (1914, in Van Rossem 1937) considered them distinct from *G. b. ridgwayi*, and left the taxonomy of Texas pygmy-owls to be *G. b. cactorum* (e.g., Oberholser 1974, Millsap and Johnson 1988).

In addition to geographic separation, the pygmy-owl's eastern and western populations occupy different habitats. Although some broad similarities in habitat physiognomy are apparent (e.g., dense woodlands and thickets), floristically, these eastern and western habitats are very dissimilar. The desertscrub and thornscrub associations in Arizona and western Mexico are unlike any habitats occupied by the pygmy-owl in eastern Mexico and southern Texas. Also, the oak association habitat occupied on coastal plains in southern Texas is unlike any habitat available in the western portion of the pygmy-owl's range. However, the Tamaulipan thornscrub habitat of the east and the riverbottom mesquite-cottonwood bosque habitat in Arizona are more similar in physiognomy and to a slight degree in floristic makeup.

The potential for genetic distinctness further supports a distinction between eastern and western pygmy-owl populations. The fact that the pygmy-owl is nonmigratory throughout its range suggests that genetic mixing across wide areas may be infrequent. In addition, considerable variation in plumage between regional populations has been noted, including specific distinctions between Arizona and Texas pygmy-owls (van Rossem 1937, Burton 1973, Tyler and Phillips 1978, Johnsgard 1988).

These eastern and western populations of the pygmy-owl may be considered separately for listing under the Act. The Act defines "species" as any subspecies . . . and any distinct population segment of any species of vertebrate which interbreeds when mature (section 3(16)). Further, the Service's policy on vertebrate population segments (61 FR 4722) requires that, to be a listable entity under the Act, the population be "discrete" and significant. A population segment is "discrete" if it is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. A population also can be considered "discrete" if it is delimited by international boundaries across which exist differences in management control of the species. The above information indicates that eastern and western populations of the cactus ferruginous pygmy-owl are distinct based on geographic isolation, distribution and status of habitat, and potential morphological and genetic distinctness.

A population segment is considered "significant" if its loss would constitute a significant gap in the range of the taxon. The above criteria lead the Service to consider the four separate populations of *G. b. cactorum* for listing purposes—western United States (Arizona), eastern United States (Texas), western Mexico, and eastern Mexico to be both discrete and significant. The Service herein proposes separate actions for these various population segments because the levels of threat, habitats occupied, quality of information, and overall status differ among these four populations.

Previous Federal Action

The Service included the pygmy-owl on its Animal Notice of Review as a category 2 candidate species throughout its range on January 6, 1989 (54 FR 554). After soliciting and reviewing additional information, the Service elevated *G. b. cactorum* to category 1 status throughout its range on November 21, 1991 (56 FR 58804). A category 1 species was, at that time, defined as a species for which the Service had on file substantial information to support listing, but for which a proposal to list had not been issued as it was precluded by other listing activities. The Service has since discontinued the practice of maintaining a list of species regarded as "category 1" or "category 2" candidates. Candidates are now considered only those species for which the Service has on file sufficient information to support issuance of a proposed listing rule (61 FR 64481).

Based on an extensive review of information on the subspecies, the Service has determined that it is now appropriate to list the Arizona population as endangered, not to finalize the proposed listing in Texas, and to continue reviewing the pygmy-owl in Mexico to determine whether Mexican populations should be proposed for listing. Recent information from Mexico indicates that the subspecies may be more abundant, at least in the southern portion of its range, than originally thought.

On May 26, 1992, a coalition of conservation organizations (Galvin *et al.* 1992) petitioned the Service requesting listing of the pygmy-owl as an endangered subspecies under the Act. The petitioners also requested designation of critical habitat. In accordance with Section 4(b)(3)(A) of the Act, on March 9, 1993, the Service published a finding that the petition presented substantial scientific or commercial information indicating that listing may be warranted, and initiated a status review on the pygmy-owl (58 FR 13045). In conducting its status review, the Service solicited additional comments and biological data on the status of the cactus ferruginous pygmy-owl through mailings, a notice in the **Federal Register** (58 FR 13045), and other means.

Section 4(b)(3)(B) of the Act requires the Secretary of the Interior to determine whether listing a petitioned species is warranted within 12 months of the petition's receipt (16 U.S.C. S 1531 *et seq.*). On December 12, 1994, the Service published a 12-month finding on the petitioned action (59 FR 63975). This finding indicated that listing of the cactus ferruginous pygmy-owl was warranted and a proposed rule was published on the same date to list the pygmy-owl as endangered in Arizona with critical habitat and as threatened in Texas without critical habitat.

The processing of this final rule conforms with the Service's final listing priority guidance published on December 5, 1996 (61 FR 64475). The guidance clarifies the order in which the Service will process rulemakings during fiscal year 1997. The guidance calls for giving highest priority to emergency listings (Tier 1) and the second highest priority (Tier 2) to finalizing proposed listings. This final rule falls under Tier 2. At this time there are no pending Tier 1 actions.

Summary of Comments and Recommendations

In the December 12, 1994, proposed rule (59 FR 63975) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to development of a final rule. The original comment period closed April 11, 1995, then was reopened from May 1, 1995, to May 30, 1995 (60 FR 19013), and again from October 10, 1996, to November 12, 1996 (60 FR 53187).

Appropriate State agencies and representatives, County and City governments, Federal agencies and representatives, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper/media notices inviting public comment were published in the following newspapers—in the State of Arizona, the Indian Country Today, the Tucson Citizen, the Arizona Republic, the Arizona Silver Belt, the Green Valley News/Sun, and the Eastern Arizona Courier; and for the State of Texas, in the Laredo Morning Times, the Corpus Christi Caller-Times, the Valley Morning Star, the Monitor, and the Brownsville Herald. The inclusive dates of publications were January 6–18, 1995, for the initial comment period; and April 21–26 and October 15–30, 1995, for the first and second extensions of the comment period, respectively.

In response to requests from the public, the Service held two public hearings. Notices of hearing dates and locations were published in the **Federal Register** on April 14, 1995 (60 FR 19013). Appropriate State agencies and representatives, County and City governments, Federal agencies and representatives, scientific organizations, and other interested parties were contacted regarding the hearings. Approximately 300 people attended the hearing in Tucson, Arizona and approximately 30 people attended the hearing in Weslaco, Texas. Transcripts of these hearings are available for inspection (see **ADDRESSES** section).

A total of 123 written comment letters were received at the Service's Ecological Services Field Office in Phoenix, Arizona—30 supported the proposed listing; 1 supported the proposed listing in Arizona only; 1 supported the proposed listing in Texas but was opposed to listing in Arizona; 8 opposed the proposed listing; 14 opposed the proposed listing and proposed critical habitat; 45 opposed only the proposed critical habitat; and 24 either commented on information in the proposed rule but stated neither support nor opposition, provided additional information only, or were nonsubstantive or irrelevant to the proposed listing.

Oral comments were received from 20 parties at the hearings. Written comments received at the hearings or given to Service representatives prior to the hearings are included within the discussion above. Of the oral comments at the hearings, 3 supported the proposed listing; 4 opposed the proposed listing; and 9 expressed neither support nor opposition, provided additional information only, or were nonsubstantive or irrelevant to the proposed listing.

In total, oral or written comments were received from 15 Federal and State agencies and officials, 11 local officials, and 126 private organizations, companies, and individuals. All comments, both oral and written, received during the comment period are addressed in the following summary with the exception of those pertaining to finalizing critical habitat and the proposed special rule. In accordance with the Service's published listing priority guidance, finalizing critical habitat is of the lowest priority and would only be addressed upon the completion of higher priorities. All comments regarding critical habitat will remain on file with the Service. Since the Service is not finalizing the proposed listing of the pygmy-owl as threatened in Texas, the associated proposed special rule and comments regarding it are now moot. Comments of a similar nature are grouped into a number of general issues. These issues and the Service's responses are discussed below.

Issue 1: Other processes, especially conservation agreements in lieu of listing, could be more effective at protecting these species, and would impose fewer regulations and restrictions on land use as compared to Federal listing.

Comment: One commenter asked what local, City, and County officials the Service had coordinated with on this action.

Service Response: The Service has maintained an active mailing list that includes local, City, and County officials, as well as State and Federal officials and private individuals who have expressed an interest in the pygmy-owl listing process. We have provided copies of **Federal Register** notices, including those announcing public hearing dates, throughout the listing process to individuals on this mailing list. Numerous local, City, County, State, and Federal agencies provided comments during open comment periods, and these comments have been considered in developing the final recommendation for this listing action. The administrative record is available for review, by appointment, during normal business hours (see **ADDRESSES** section).

Comment: Several commenters recommended doing conservation agreements in lieu of listing.

Service Response: The Service does not believe that a conservation agreement, sufficient to preclude listing in Arizona, is feasible at this time because of the extremely small population size and the numerous threats faced by the species. However, it should be noted that listing of the species does not preclude the future development of habitat conservation plans or other conservation agreements with private individuals or agencies.

Comment: Several commenters understood that the Director of the Service has said that states should take the lead on matters of sensitive species, and therefore, the Service should follow its policy and let the states take the lead in addressing the habitat needs of the pygmy-owl and not list it.

Service Response: The Service is required to follow the provisions of the Act, and in regard to this action, its implementing regulations on listing in 50 CFR 424. Section 4(a) of the Act clearly assigns the responsibility of making listing decisions to the Secretaries of the Interior and Commerce. However, in making those decisions, the Secretaries are required to take into account conservation actions (section 4(b)(1)(A)), notify and invite comment from states, counties, and others on the proposed rules (section 4(b)(5)), hold one public hearing on the proposed rule, if requested (section 4(b)(5)(E)), and take other steps to ensure that the concerns of local governments, citizens, and others are considered in the listing decision. The Service has complied with all these requirements for listing the pygmy-owl.

The Service recognizes that unless preempted by Federal authority, states possess primary authority and responsibility for protection and management of fish, wildlife, and plants and their habitats. The Service has and will continue to solicit and utilize the expertise and information provided by the states. The Service will work closely with residents and officials in the management and recovery of the pygmy-owl. The Service invites others to work with us on voluntary conservation programs as well.

Issue 2: Economic, social, and cultural impacts of listing need to be evaluated and considered in the listing process.

Comment: Several commenters requested that the Service study the indirect and direct economic, social, and/or cultural costs and effects of listing the pygmy-owl. Concern was expressed that listing of the species would affect use and value of private property, use of areas of agricultural concern, new construction, trade and landowner rights, minorities, and off-road tour companies. Concern also was expressed that there would be no land owner compensation from the effects of listing. Some commenters stated that the results of this analysis should be weighed with threats, status, and other listing factors in determining whether these species should be listed.

Service Response: 50 CFR 424.11(b) requires the Secretaries of the Interior and Commerce to make decisions on listing based on "the best available scientific and commercial information regarding a species' status, without reference to possible economic or other impacts of such determination." The Service is required to solicit comments from the public on proposed listings and consider those comments in final decisions (50 CFR 424.16), as we have done here. The Service does not have the authority or a regulatory mandate to conduct impact analyses on listing decisions, provide compensation to affected landowners, or take other actions outside of its authority.

Comment: Several commenters were concerned that the increased cost and delay associated with projects affected by the proposed rule will cause unreasonable consequences for future developments and/or needed public improvement projects.

Service Response: Any discretionary action funded, carried out, or authorized by a Federal agency that may affect a listed species would be subject to the section 7 consultation process. If a Federal agency is involved in developments and/or needed public improvement projects, it would need to evaluate its actions and possible effects on listed species. The Service is required to deliver a biological opinion, which concludes consultation, to the action agency within 135 days of receipt of a request for consultation (50 CFR 402.14(e)). If the action agency incorporates consultation into their planning process and consultation is initiated early, project delays are unlikely. Some additional costs may accrue resulting from meetings with the Service, preparation of documents, and implementation of any reasonable and prudent alternatives or measures in the biological opinion. Private actions that do not require Federal funds, actions, or authorization, such as a private individual building a house with private funds, are not subject to section 7.

Comment: Another commenter stated that the proposed listing of the pygmy-owl was an attempt to take property rights away from land owners, to gain more power, to increase personnel, and to control all of the rivers, creeks, washes, and water in the country.

Service Response: The purpose of this listing is to extend the protection of the Act to the pygmy-owl. This protection does not authorize the Service to increase personnel or assert jurisdiction over water rights, and the Service does not anticipate significant impacts to local economies or to the well-being of citizens. The listing of the pygmy-owl does not, in itself, restrict groundwater pumping or water diversions, does not in any way limit or usurp water rights, or violate State or Federal water law. Through section 7 consultations, extraction or use of water that is funded, carried out, or authorized by Federal agencies that might adversely affect the pygmy-owl could be modified through reasonable and prudent measures or alternatives in a biological opinion, pursuant to 50 CFR 402.14 (h) and (i).

As described in "Available Conservation Measures" section, with the promulgation of this rule, Federal agencies will be required to comply with section 7 of the Act to ensure their activities do not jeopardize the continued existence of these species. Compliance with section 7 or other provisions of the Act has never resulted in the wrongful taking of property. The Service does not envision a regulatory scenario that would result in such actions.

Issue 3: Information presented in the proposed rule was insufficient to support listing or was in error.

Comment: The pygmy-owl warrants an endangered listing in Texas, as opposed to threatened. The species has declined throughout a significant portion of its range in Texas and is now rare, significant threats continue to exist within that state and habitat continues to be low, and future threats to habitat in Texas are significant due to increasing human population near the border with Mexico.

Service Response: In Texas, the threats to the species are less prevalent than in Arizona. The Service does not believe listing is warranted at this time. Further discussion of the Service's decision not to finalize the listing proposal in Texas is discussed in the "Summary of Factors Affecting the Species" section, and elsewhere in this final rule.

Comment: Routine ranching activities have contributed to the decline of the species in Texas, yet the Service asserts that "present land management by private (Texas) landowners is generally compatible with the well-being of the owl." This assertion cannot be squared with all the evidence indicating that the pygmy-owl is in grave danger of extinction in Texas.

Service Response: In Texas, pygmy-owl records are from two distinct areas. The first area is along the Rio Grande. Agricultural activities have historically resulted in clearing of 95 percent of the native Tamaulipan brushland in this area, as noted in the proposed rule. The second area is north of the Rio Grande Valley, in and around Kenedy County. The owls in these areas occupy coastal oak associations. As noted in this document, impacts to these areas are

lesser, with only limited oak clearing occurring. It is the land management by private landowners in the coastal oak association that is considered generally compatible with the well-being of the pygmy-owl. It is in these areas that the Service anticipates developing conservation agreements with private landowners to ensure conservation of the species.

The Service also will consider developing conservation agreements with willing landowners in the Rio Grande Valley. However, the Service believes that the ongoing establishment of native vegetation along the Rio Grande, as implemented by the Service's National Wildlife Refuge System, holds the most promise for conserving the species in the Rio Grande Valley.

Comment: Several commenters stated that Arizona and Texas represent the northern edge of the pygmy-owl's distribution and that most species are uncommon or of marginal occurrence at the edges of their range.

Service Response: The Service agrees that Arizona and Texas represent the northernmost portion of the pygmy-owl's range. However, we believe the information reviewed and discussed in the final rule indicates that pygmy-owls occurred in higher numbers in Arizona and Texas in the past, and that loss of habitat and other factors have led to their decline. The continued presence of birds in Arizona, including those that are successfully reproducing, indicates a persistent population. In addition, there is a significant population of nesting birds in Texas. The Service believes that listing the Arizona population at this time is necessary to prevent extirpation of the species from that portion of its range within the United States.

Comment: Several commenters claimed that the Service misrepresents the work of all nine authors it cites in support of its three subspecies claim. Not one of these authors cited by the Service discusses three subspecies of this owl.

Service Response: The use of the scientific name *Glaucidium brasilianum cactorum* in and of itself indicates recognition of a subspecies. Of the authors cited in the proposed and final rules on the discussion of taxonomy, van Rossem (1937), Friedmann *et al.* (1950), Sprunt (1955), AOU (1957), Schaldach (1963), Karalus and Eckert (1974), Johnsgard (1988), and Millsap and Johnson (1988) use *G. b. cactorum* in referencing the pygmy-owl. The leading authority on bird taxonomy, the AOU, recognized the cactus ferruginous pygmy-owl as a subspecies in its 1957 publication. As noted in the proposed rule and this and final rule, subsequent publications of the AOU have not addressed any subspecies, including that of the pygmy-owl.

Comment: Several commenters stated that the Service's analysis of the pygmy-owl's habitat preferences was flawed. They questioned whether deciduous riparian woodland is the preferred habitat for the pygmy-owl, and stated that their presence in Sonoran desertscrub is uncommon to rare and unpredictable. It also is possible that the apparent "shift" from riparian areas to upland areas closely correlates with the increase in woody brush in Arizona's grasslands that occurred throughout the central and southern portions of the State after the advent of cattle grazing in the late 1800's and early 1900's. There actually may be more suitable habitat now than in historic times when the riparian areas represented the only brushy habitat in what was otherwise primarily a desert grassland setting. Based on its erroneous assumption that the pygmy-owl prefers riparian habitats, the Service has focused its analysis on such habitats and not provided a discussion of threats to other habitat types.

Service Response: The proposed rule noted that the majority of the historical records came from along waterways such as the Rillito or Santa Cruz rivers, but also noted that Sonoran desertscrub provided suitable habitat for the pygmy-owl in central and southern Arizona. As noted within this final rule, naturalists collecting specimens have indicated that the pygmy-owl was rare in Sonoran desertscrub (see references to Kimball 1921, Johnson and Haight 1985, and Taylor 1986 within the text of the final rule). Since publishing the proposed rule, additional birds were found in Arizona, and the text within this final rule has been adjusted accordingly. The majority of the birds in the Arizona population occur in Sonoran desertscrub habitat.

While there may be more "woody brush" in Arizona today as a result of cattle grazing, not all of this vegetation is suitable pygmy-owl habitat. The pygmy-owl is known to occur in Sonoran desertscrub where that desertscrub is particularly dense and supports either saguaro cactus, organ pipe cactus, or mesquites of sufficient size for cavity nesting. In those Sonoran desertscrub areas where the pygmy-owl has been found in the last few years, a density of understory vegetation is also present. Surveys have occurred in areas known to support this vegetation, with negative results in some instances.

This final rule includes modifications to language in the proposed rule to indicate that pygmy-owls historically and currently use Sonoran desertscrub within the State of Arizona. The proposed rule also was modified to include language on the threats to this Sonoran desertscrub habitat, which are primarily from urban development.

Comment: One commenter stated that endangerment of the pygmy-owl in the Verde River area is due to the absence of federally placed signs, patrols, and follow-ups on shooting incidents.

Service Response: There are no known current records of pygmy-owls in the Verde River area and the Service is unaware of any shooting incidents that involved the pygmy-owl. The Service does not believe that posting of signs and conducting patrols in this area would benefit the owl at this time. Currently, with the exception of a few birds located on Organ Pipe Cactus National Monument (OPCNM), the pygmy-owl occurs on private land, and it is not within the Service's authority to place signs or conduct patrols on private property.

Comment: Some commenters suggested that the pygmy-owl is not in danger of extinction in all or a significant part of its range and that the Service overstates the threats to the species. The Service has failed to present any evidence of a particular threat to the pygmy-owl that has suddenly arisen and that is likely to lead to extinction unless curtailed. One commenter stated that the Service failed to establish that the removal of riparian forests and the diversion and channelization of natural watercourses, and pumping groundwater may also cause the diminishment of the species. One commenter claimed the Service overstates the effects of groundwater pumping and surface water diversions upon particular species of wildlife, and fails to distinguish among such water uses. Some commenters claimed the Service did not support assertions of habitat loss from traditional, historical, public and private land uses with reference to any scientific facts. One commenter asserted that there is no threat of destruction, modification, or curtailment of habitat.

Service Response: The Service does not believe that the threat to this species or its habitat in Arizona has been overstated. As noted within this final rule, the Service must evaluate the best scientific and commercial information available and determine if the proposal meets the definition of endangered or threatened based on any of the five listing factors. The Service completed this evaluation and finds that the pygmy-owl in Arizona meets the definition of endangered, owing to three

of the five factors, namely the present or threatened destruction, modification, or curtailment of its habitat or range, the inadequacy of existing regulatory mechanisms, and other natural or manmade factors affecting its existence.

The historic loss of riparian habitat in Arizona is well documented. Because of the current location of the largest known Arizona pygmy-owl population and pending developments in this key area, the Service believes that imminent threats have been identified. The factors related to this listing are provided in detail in the final rule under the "Summary of Factors Affecting the Species" section.

In response to the comment that the Service failed to establish that the removal of riparian forests, and the factors that cause it, also may cause the diminishment of the species, the Service notes that a variety of activities has been responsible for the loss of riparian habitat in the State of Arizona. Through historic records, the pygmy-owl is noted to have occurred in riparian areas prior to the mid-1900's and was described as a "common," "abundant," "not uncommon," and "fairly numerous" resident of lowland central and southern Arizona in cottonwood forests, mesquite-cottonwood woodlands, and mesquite bosques along the Gila, Salt, Verde, San Pedro, and Santa Cruz rivers, and various tributaries. We believe, therefore, the statement is justified that the loss of riparian habitat has led to its decline. Numerous authors were cited with respect to this statement, and their names are provided in the final rule. Should all or a significant portion of the habitat within the range of a given species be removed or altered, diminishment of the species is not an unlikely result. The Service believes the link between habitat loss and the decline of the pygmy-owl has been made in the text of this final rule. The Service believes that the assertions of habitat loss from traditional, historical, public, and private land uses are well documented within the final rule under the section "Summary of Factors Affecting the Species," particularly that section under the "Western Populations" subsection.

Comment: Several commenters suggested that no evidence exists to support the statement that the pygmy owl is declining, and others noted that the listing of a species should be based upon something more than the rarity of that species in a particular part of the United States.

Service Response: The Service has completed a review of available literature and believes that the information indicates that there has been a decline of the species in both Arizona and Texas. However, the Service does not believe the pygmy owl's decline is significant enough in Texas to warrant listing the species as threatened.

As discussed in the final rule, the pygmy-owl was described as a "common," "abundant," "not uncommon," and "fairly numerous" resident of lowland central and southern Arizona, in riparian habitat along numerous drainages prior to the mid-1900's. In most instances, observations of pygmy-owls were made during site visits where the author was documenting all species observed over a given area, without focusing on the pygmy-owl. In contrast, Hunter (1988) found fewer than 20 verified records of pygmy-owls in Arizona for the period of 1971 to 1988, and recent survey efforts, focusing specifically on pygmy-owls, have located a total of 19 individuals at the highest, with most annual survey results being 2 to 3 birds.

It should be noted that there are five listing factors, as detailed in the text of this rule. While the pygmy-owl could be called rare, and while the Service believes the decline in numbers of individual birds to be an important piece of information, the recommendation to add the pygmy-owl in Arizona to the endangered species list was based on an analysis of the five listing factors.

Comment: Even the few reports that the Service did examine with respect to historic abundance were reported incorrectly or were not found in the Service files.

Service Response: Coues (1872) has been removed as a reference from that section of the listing that addresses species abundance in the early 1900's. However, the Service has verified that the remainder of the literature citations (Bendire 1888, Fisher 1893, Breninger 1898 *in* Bent 1938, Gilman 1909, Swarth 1914) were correctly quoted. All literature cited within this final rule is on file at the Service's Arizona Field Office (see **ADDRESSES** section).

It is important to note that, while the Service believes the number of birds has declined, the decision to list the pygmy-owl does not depend entirely on population trends of the pygmy-owl. It also is necessary to assess current threats to the remaining birds, through evaluation of the five listing factors. If this evaluation indicates that the number of birds known to currently occur in Arizona and Texas are under sufficient threat to cause them to be in danger of extinction or endangerment, the Service must make the decision to list the species. As outlined in this final rule, the Service believes analysis of the best scientific and commercial data indicates that the pygmy-owl is threatened with extinction in Arizona and warrants listing as an endangered species.

Comment: Not a single source listed by the Service ever conducted any analysis that would allow one to conclude that 90 percent of the riparian areas have been lost or modified. The fact that the Service presents an unfounded conclusion as scientific fact, without appropriate qualification, undermines the credibility of every other conclusion it has expressed and provides evidence that the rule is intended to further a political or other agenda unrelated to necessary protection for the pygmy-owl.

Service Response: The State of Arizona has twice recognized the loss of riparian habitat. The Governor's Riparian Task Force concluded that 90 percent of the riparian habitat in Arizona had been lost. This document is cited in the proposed rule and this final rule. Additionally, the Arizona Game and Fish Department (AGFD) stated that 90 percent of the State's riparian habitat had been lost in their November 1988 issue of Wildlife Views (AGFD 1988). This source has been added to this final rule. The Service has previously published literature (Department of Interior 1988) on the loss of riparian habitat indicating that an estimated 10 percent of the original riparian on the Colorado River remains, while 5 percent of the original riparian on the Gila River remains. This document states that only approximately 15 percent of the original riparian area in Arizona remains in its natural form. This citation also has been added to this final rule. The final rule has been modified to reflect this figure, as well as the 90 percent figure. The remainder of the references in this section address disturbance of riparian areas due to various activities, and address losses, although percentages are not provided.

Comment: The Service's statement that the pygmy-owl is now rare or absent in northern Sonora, within 150 miles of the United States-Mexico border, is incorrect. The Service inaccurately cites Russell and incorrectly assesses the status of the pygmy-owl in northern Sonora.

Service Response: The Service believes the literature cited in this final rule supports this statement. The reference to Monson and Russell, however, has been deleted.

Comment: Some commenters were concerned that the available information was not sufficient to accurately identify all areas or habitats with the potential

to support the species. Others suggested that more surveys, genetic data, information on pygmy-owls from Mexico, and dispersal data are needed.

Service Response: The Service agrees that many aspects of the ecology of this species are poorly understood and need further study. These aspects are treated as uncertainties here and in the proposed rule. Despite these uncertainties, sufficient surveys have been conducted to adequately assess the current status of the species, its perceived threats, and whether or not listing is warranted. The Service is not required to study and answer all questions concerning the ecology or status of a species before it may be listed. Rather, the Service is required to make listing determinations on the basis of the best scientific and commercial data available (section 4(b)(1)(A) of the Act).

Comment: One commenter stated that prey or lack of prey would not be a hindrance to the population. Similarly, one commenter asked what would happen if the prey items on which the pygmy-owl feeds were to become endangered.

Service Response: The Service interprets this comment to mean that it is not a lack of prey that has led to the decline of the pygmy-owl. The Service concurs with this statement. Studies have indicated that the pygmy-owl is a generalist with a diverse diet, including a variety of species of birds, insects, reptiles, small mammals, and amphibians. Therefore, it is unlikely that a lack of prey items, in and of itself, has contributed to a decline in the subspecies. Similarly, because the pygmy-owl uses a wide variety of prey items, it is unlikely that its feeding habitats would lead to the endangerment or extinction of a species. Should one of its prey items become extinct for other reasons, it should not have an adverse effect on the pygmy-owl.

Comment: One commenter stated that pygmy-owls were not extirpated in Arizona.

Service Response: The Service concurs with this statement. Surveys for 1996 indicated a total of 19 known birds, with 2 additional unconfirmed sightings. The final rule has been modified to amend the statement on extirpation that appeared in the proposed rule.

Comment: One commenter stated that a source for the map in the proposed rule was not given.

Service Response: The Service used various published and unpublished information to develop the **Federal Register** map.

Issue 4: The Services information is not based on the best scientific or commercial information.

Comment: A commenter stated that riparian loss is being addressed through various means, and listed several examples. It was further stated that the State of Arizona is committed to statutorily mandating riparian conservation so no other protection is necessary.

Service Response: The Service supports rehabilitation of riparian areas. However, the acres of riparian habitat that have been altered or removed since the early 1900's exceed those which have been rehabilitated. In addition, these projects have only recently been funded, and many years will be needed to determine their effectiveness in restoring riparian habitat and the resulting effect on pygmy-owl populations. Further, riparian loss is only one of many factors affecting the pygmy-owl.

Comment: Some commenters claimed that the Service "mis-cites" several authors to support the claim that the pygmy-owl's habitat is threatened by destruction and modification, that it was a commonly found inhabitant of mesquite bosques in Arizona, and that river bottom forests and bosques supported the greatest populations of pygmy-owls.

Service Response: Additional information has been added to the final rule to indicate that pygmy-owls were found historically in Sonoran desertscrub in central and southern Arizona. However, the Service believes that the available literature indicates that the majority of birds found by early naturalists were found in the riparian and mesquite bosque habitat along the major drainages in central and southern Arizona.

Comment: One commenter questioned the importance of mesquite habitat in Texas.

Service Response: As noted in this final rule, the pygmy-owl historically occurred in dense mesquite thickets along the Rio Grande. Further, as noted under section A, "The present or threatened destruction, modification, or curtailment of its habitat or range" for Texas, pygmy-owls have been detected in 1994 and 1995 on two of the ranches in Texas that support mesquite woodlands.

Comment: The Service has failed to examine the reports of many other early explorers who surveyed for wildlife but found few or no pygmy-owls. The Service only reviewed reports of early naturalists and ornithologists that actually referenced the pygmy-owl in their reports.

Service Response: The absence of a reference to pygmy-owls in the published reports of early naturalists does not establish absence of the species. It is possible that a naturalist who did not indicate that pygmy-owls were seen may not have known the species or may not have observed the species when the species was, in fact, present.

Comment: The Service has proposed the listing of the pygmy-owl without due regard to the studies currently being conducted by Dr. Sam Beasom of Texas A&M University.

Service Response: Although the proposed rule did not quote Dr. Beasom's studies, information from these studies has been included in the final rule. This information has been considered in reaching a final decision on listing of the pygmy-owl.

Comment: Much of what the Service assumes is true regarding the effects of groundwater pumping and surface water diversions is an ongoing debate among hydrologists, geologists and other experts. The Service's failure to consult the Arizona Department of Water Resources and other experts is a failure to consider the best scientific data available.

Service Response: The text of the final rule cites several sources indicating that pumping of groundwater, along with several other activities, has led to the reduction of riparian habitat. The Service believes that the connection between groundwater pumping and its effects on riparian habitat have been adequately documented through these sources. In addition, information was solicited from State and Federal agencies, as well as the public, and comments received during the open comment periods were evaluated as part of this analysis.

Comment: The Service has not completed any groundtruthing of data or notified the landowners of groundtruthing.

Service Response: For obvious reasons, the Service cannot groundtruth historical observation data. However, survey efforts conducted by the OPCNM, the AGFD, and the Service since 1990 have been conducted on the ground. The AGFD, which has conducted the work in the Tucson area, has contacted private landowners regarding their survey work in that area.

Comment: Some commenters felt that the rule was based on assumptions, hearsay, speculative observations, and anecdotal evidence, not scientific data, and that the Act does not provide for listing based on this type of information.

Service Response: The Service has used the best scientific and commercial information available in its determination to list the pygmy-owl. The threats have been documented under the "Summary of Factors Affecting the Species" section. The Service believes there are adequate references within the final rule to document the detrimental effects of overgrazing, as well as other activities, on riparian habitat in the Southwest. Evidence presented in the literature and summarized in the final rule, including recent studies on the pygmy-owl in Texas and Arizona, indicate the importance of the different habitat types to pygmy-owls in the two different populations. The Service believes that the historical information referenced in the final rule, while potentially considered anecdotal or speculative, is important in developing an understanding of the subspecies. However, the Service did not rely solely on this information in developing a recommendation to list.

Comment: The rule suggests that different population segments tend to inhabit different habitat, although the various habitats do appear to share some basic characteristics. The rule then seems to suggest that within a specific area, the bird seems to need specific vegetation criteria. It seems the bird is far more adaptable than the Service gives it credit.

Service Response: As noted in the proposed rule and in this final rule, the eastern and western populations of the pygmy-owl inhabit different vegetation communities. Although these communities consist of different plant species (for example, live oak-honey mesquite and ebony in Texas, versus saguaros and cottonwood-willow in Arizona), there are common characteristics in the two communities, such as some form of vegetation large enough to support cavity nesting and a dense understory.

Comment: The cactus ferruginous pygmy-owl is not a separate species of the ferruginous pygmy owl.

Service Response: The Service considers the cactus ferruginous pygmy-owl to be a subspecies of the ferruginous pygmy-owl. The Service refers the commenter to the discussion on taxonomy under the "Background" section.

Comment: DNA analysis suggests lack of differentiation between Mexican and Texas populations, so there is no need to list.

Service Response: As noted in the proposed and final rules, the Service will continue to evaluate information on the pygmy-owl in Mexico and Texas. The Service's responses under Issue 5 explain the purpose in considering the separate populations identified in the proposed and final rules.

Issue 5: The designation of four distinct population segments for the pygmy-owl has no scientific or regulatory basis.

Comment: Several commenters stated that there is no biological reason or regulatory authority which would allow the Service to draw a distinct vertebrate population segment boundary at the international border.

Service Response: The Service's policy on distinct vertebrate population segments (61 FR 4722) recognizes that the use of international boundaries as a measure of discreteness of a population may introduce an artificial and nonbiological element to the recognition of distinct population segments. However, the Service has determined that it is reasonable to recognize units delimited by international boundaries when these units coincide with differences in the management, status, or exploitation of a species. With respect to the pygmy-owl, the Service believes the status of the species in Arizona is different from that in Sonora, with records currently indicating a higher number of individuals in Sonora as discussed in this final rule.

While the area classified as the range of the Arizona population may only represent a small percentage of its total range, it is the area within which the United States Government, through the Department of the Interior, can affect protection and recovery for this species. The Service believes that data indicate a decline of this species within its United States range, and that listing in Arizona is warranted.

Comment: Several commenters stated that the Service did not support its determination that the Arizona, Texas, eastern Mexico, and western Mexico populations of pygmy-owls meet the definition of discrete populations.

Service Response: The Service believes that the potential for genetic distinctness of the Arizona and Texas populations exists because the pygmy-owl is nonmigratory throughout its range and genetic mixing across the area separating the Arizona and Texas populations is likely infrequent. The Arizona and Texas portions of the pygmy-owl's range are separated by the basin and range mountains and intervening Chihuahuan Desert basins of southeastern Arizona, southern New Mexico, and western Texas.

In addition to geographic separation, the pygmy-owl's Texas and Arizona populations occupy different habitats. Although some broad similarities in habitat physiognomy are apparent (e.g., dense woodlands and thickets), floristically, these eastern and western habitats are very dissimilar. The desertscrub and thornscrub associations in Arizona are unlike any habitats occupied by the pygmy-owl in eastern Mexico and southern Texas. Also, the oak association habitat occupied on coastal plains in southern Texas is unlike any habitat available in the Arizona portion of the pygmy-owl's range. In addition, considerable variation in plumage between regional populations has been noted, including specific distinctions between Arizona and Texas pygmy-owls.

Comment: Several commenters stated that the Service did not show that the Arizona, Texas, eastern Mexico, and western Mexico populations of pygmy-owls were significant.

Service Response: The Service's policy on distinct vertebrate population segments requires it to consider the elements of discreteness, significance, and status. In determining whether or not a population meets the significance element, the Service must consider—(1) Whether a discrete population segment persists in an ecological setting unusual or unique for the taxon; (2) whether there is evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon; (3) whether there is evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; or (4) whether there is evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

The Arizona and Texas populations of the cactus ferruginous pygmy-owl are unique due to their geographic separation, potential morphological and genetic distinctness, and the floristics, distribution, and status of habitat. Should the loss of either the Arizona or Texas populations occur, the remaining population would not fill the resulting gap as the remaining population would not be genetically or morphologically identical, and would require different habitat parameters. The loss of either population also would decrease the genetic variability of the taxon and would result in a significant gap in the range.

Issue 6: The existing regulations and management of the land by landowners are satisfactory for protecting the pygmy-owl.

Comment: Several commenters stated that both Arizona and Texas were adequately protecting the pygmy-owl so federally listing it would not be necessary. The State of Arizona is

committed to statutorily mandate riparian conservation so no other protection is necessary. The pygmy-owl already is listed as threatened by the State of Texas.

Service Response: While the Service recognizes the efforts of the State of Arizona in protecting potential pygmy-owl habitat, laws have yet to be finalized and potential benefits of these efforts have not yet been realized. Thus, these efforts have not yet affected the status of the species. However, these actions are expected to contribute to recovery.

Listing a species as threatened by Texas requires that permits be obtained for propagation, zoological gardens, aquariums, rehabilitation purposes, and scientific purposes, as noted in the final rule, but there are no provisions for habitat protection. However, the Service also believes that current land-use practices in the area of the main Texas pygmy-owl population are not detrimental to the species.

Comment: Several commenters felt that current landowners have protected and enhanced lands and that they are being penalized for being good stewards. They felt that the Service should be more interested in helping them and learning from them.

Service Response: The Service recognized, in the proposed rule and this final rule, that the major portion of the population in Texas exists today because present land management by private landowners is generally compatible with the well-being of the pygmy-owl. The Service will continue to work with landowners in developing management plans and agreements with the objective of conserving the Texas population.

Conversely, there is an imminent threat of extirpation of the subspecies in Arizona. The Service believes that listing of the pygmy-owl as endangered in Arizona provides protection of the pygmy-owl, as mandated by provisions of the Act.

Issue 7: The Service failed to follow Federal or other regulations in regard to the listing of these species.

Comment: The Service violates the Act's requirement for the Secretary to make his decision regarding listing of the species within 12 months of receiving the petition. The proposed rule was not published until some 17 months after the petition was filed. The *Idaho Farm Bureau Federation* v. *Babbitt* court ruling stated that if a proposal to promulgate a final regulation is not made within the statutory 12 months (or 18 months if an extension is declared), then the proper course is for the Secretary to find there is insufficient evidence at that time to justify the listing and to withdraw the listing.

Service Response: The petition to list these species was received by the Service on May 26, 1992. Regulations at 50 CFR 424.14(b) require the Service to publish, within 12 months of receipt, a notice in the **Federal Register** determining whether the petitioned action is warranted. If the action is warranted, the Service must promptly publish a proposed rule, with certain exceptions (50 CFR 424.14(b)(3)). In this case, the Service opted to publish a proposed rule at the same time as the 12-month finding. The date of that finding and proposed rule was December 12, 1994. In accordance with 50 CFR 424.17, the Service is required to publish a final determination or an extension within 1 year of the date of the proposed rule. In this case, the final rule was published well over a year after the proposed rule; however, this was due in part to legislation preventing the Service from issuing final rules from April 10, 1995, to October 1, 1995; a near cessation of final and other listing actions from October 1, 1995, to April 26, 1996, due to budget limitations and legislation; and a backlog and lack of personnel to complete final rules after April 26, 1996. Although the 12-month finding/proposed rule and this final rule were not published within the allotted timeframes, neither the Act nor the implementing regulations at 50 CFR 424 invalidate rules that are published late. The *Idaho Farm Bureau Federation* v. *Babbitt* court ruling was vacated by the U.S. Court of Appeals (*Idaho Farm Bureau Federation* v. *Babbitt*, Nos. 94–35164, 94–35230, U.S. Ct. App. (June 29, 1995). The court held that violating the time limit was not a prohibition on listing, but rather, that the "time limits were designed as an impetus to act rather than as a bar on subsequent action." The court held that because the Act specified no consequences to violating the time limit, Congress intended to merely compel agency action rather than discard the listing process.

Comment: Several commenters stated that the Service did not provide adequate time for the public to comment on the proposed rule. The Service violated the Act and the Administrative Procedures Act (APA) by not notifying or providing the public with sufficient opportunity to comment. The Service also violated both Act and the APA by denying public access to materials upon which the proposed rule was based.

Service Response: Regulations at 50 CFR 424.16(c)(2) require the Service to allow a minimum of 60 days for public comment on proposed rules. Three comment periods were provided on the proposed rule, including a 120-day period from December 12, 1994, to April 11, 1995; 30 days from May 1 to May 30, 1995; and 34 days from October 10 to November 12, 1995; for a total of 184 days.

Regulations at 50 CFR 424.16(c)(3) require the Service to hold at least one public hearing if any person so requests within 45 days of publication of a proposed rule. The Service received nine requests for a public hearing within the 45-day request period. In response, public hearings were held in Tucson, Arizona, and in Weslaco, Texas. Additional requests for a public hearing were received more than 45 days after publication of the proposed rule. Although no additional public hearings were conducted, the Service twice reopened the comment period to accept additional comments and information.

In response to requests from the public, and in accordance with the Act and its implementing regulations, the Freedom of Information Act (FOIA), and the APA, the Service provided copies of documents to several members of the public and lent the administrative record for copying. Some requests for information were not promptly addressed because they were contained within comment letters on the proposed rule. In accordance with Service guidance on implementation of Public Law 104–6 that halted work on final rules, comment letters were filed and not read; thus granting of some information requests was delayed. However, the Service did not deny any information requests, with the exception of information withheld in accordance with the FOIA.

Comment: Listing of the pygmy-owl would constitute a violation of NEPA because the Service did not analyze the economic impacts of the action. Both the letter of the law and interpretive case law require the Service prepare NEPA planning documents and submit them for public review and input, which the Service did not do.

Service Response: As discussed in "National Environmental Policy Act" in this rule, the Service has determined that neither environmental assessments nor environmental impact statements need to be prepared for proposed or final listing actions.

Comment: One commenter stated that the notice was irretrievably flawed on a legal and technical basis by its use of an obsolete address to which comments and requests for public hearings on the proposed rule were to be sent. Additionally, this commenter stated that comments and materials received were not available for public inspection at the old address; therefore, the Service must, by law, withdraw the proposed rule.

Service Response: Between the time the proposed rule was prepared and its publication, the Service moved its office within Phoenix, Arizona. The proposed rule listed the old address and facsimile number (the telephone number was correct in the proposed rule), but cover letters to interested parties and newspaper notices soliciting comment gave the correct address. The Service received some comment letters addressed to the old address; thus, the Post Office was forwarding our mail. A recorded phone message at the old phone number also informed callers of the new number in the event the old office was contacted. The Service is unaware of any comment letters, requests for hearings, or requests to inspect records that were returned to the sender.

In **Federal Register** notices announcing subsequent comment periods, from May 1 to May 30, 1995, and October 10 to November 12, 1995, the correct address and phone numbers were published. Because mail was forwarded and callers were informed of our new number, cover letters and newspaper notices included the correct address, and the latter two comment periods totaling 64 days were announced by **Federal Register**, newspaper notices, and cover letters with the correct address and phone number, the Service believes the public was provided adequate opportunity to provide comment on the proposed rule and inspect supporting information.

Comment: One commenter questioned if agency peer review policy was followed and whether the review is effective in weeding out hearsay from good science.

Service Response: The Service requested and/or received comments on the proposed rule from a variety of Federal, State, County, and private individuals. All parties the Service is aware of with expertise regarding the pygmy-owl have obtained copies of the proposed rule, and many have commented. All comments have been considered and new information was incorporated into this final rule.

Comment: Some commenters were concerned that the listing of this species would unnecessarily restrict public access on Federal lands.

Service Response: The Service does not foresee restricting access on Federal lands based on this listing.

Issue 8: The Service should not list the species because recovery of the species is too costly, puts an unfair burden on land owners in the United States, and is not guaranteed. Also listing the species would not benefit endangered species protection as a whole.

Comment: Several commenters stated that money and effort should not be given to list a species that the Service was not 100 percent sure could be recovered. Another commenter stated that attempting to recover a species in a highly-modified and degraded habitat, surrounded by an increasingly urbanized environment, creates a cognitive dissonance that begs a concise, logical, and irrefutable justification.

Service Response: Regulations at 50 CFR 424.11(b) require the Secretary of the Interior to make decisions on listing based on "the best available scientific and commercial information regarding a species' status, without reference to possible economic or other impacts of such determination." There is nothing in the Act or implementing regulations that allows the Service to consider the recovery potential of a species in determining whether a species should be listed.

Comment: Without an immediate halt to the urbanization of the Phoenix and Tucson metropolitan areas, the potential impacts from such limiting factors will only increase in intensity and quite possibly negate any positive advances made rehabilitating this habitat.

Service Response: While the urbanization of the Phoenix and Tucson metropolitan areas have resulted in a decline in riparian areas where the pygmy-owl was historically found (i.e., the Gila, Salt, Rillito, and Santa Cruz rivers, and Canada del Oro Wash), it is not the intention of the Act to halt urbanization. In fact, the largest Arizona population of pygmy-owls is located in a developed section of Tucson, indicating that the pygmy-owl can coexist with certain levels of development. The recovery of this, or any other species, will require a variety of measures including project review through section 7 consultation, section 10 Habitat Conservation Plans, and development of conservation agreements where possible.

Comment: One commenter stated that the Service admitted that 70 to 80 percent of the pygmy-owl's habitat is in Mexico and questioned why the landowners in Arizona, Texas, and New Mexico should have to sacrifice their land to take care of Mexico's wildlife.

Service Response: As a point of clarification, the pygmy-owl is not known to occur in New Mexico, and this listing action is limited to Texas and Arizona. Neither the final rule, proposed rule, nor presentations at public hearings referenced the fact that 70 to 80 percent of the pygmy-owl's habitat is in Mexico, or that less than one-fifth of its range is in Arizona, and it is unclear what these figures are based on. Regardless of these figures, it is important to note that, although the Service is concerned with protecting populations in Mexico, the immediate concern is for populations within the boundaries of the United States. Listing of endangered species is the first of many steps, followed by mitigation of threats facing the species, and eventual recovery. It is more feasible for the United States Government to list, mitigate, and recover a species within our own jurisdiction. The Service has noted that we will continue to evaluate the status of the species in Mexico. We have not eliminated the possibility of cooperating with Mexico in implementing needed protection in that country.

Additionally, the Act does not authorize "takings" of private lands, and many of the provisions of the Act apply only to Federal agencies. Regardless of land ownership, the Act prohibits taking of a listed species. It should be noted that, through proper Federal actions, cooperation with private landowners, development of conservation agreements, and a variety of other measures, landowners will not have to "sacrifice" any lands to aid in the recovery of the pygmy-owl.

Comment: One commenter stated that listing species has created bitterness toward the Act and the Service and that listing species would give people a reason to kill endangered species and destroy habitat. One commenter recommended the Service not list the pygmy-owl because the current political climate would heat up even more against conservation and endangered species.

Service Response: Regulations at 50 CFR 424.11(b) require the Secretary of the Interior to make decisions on listing based on "the best available scientific and commercial information regarding a species' status, without reference to possible economic or other impacts of such determination." The Service is aware that there are segments of the public that disagree with determinations made; however, the Service has no authority to base a listing decision on the possible aftereffects of listing.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the

procedures for adding species to the Federal List of Endangered and Threatened Wildlife and Plants. A species may be determined to be endangered or threatened owing to one or more of the five factors described in Section 4(a)(1) of the Act. These factors and their application to the cactus ferruginous pygmy-owl are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The pygmy-owl is threatened by past, present, and potential future destruction and modification of its habitat, throughout a significant portion of its range in Arizona (Phillips *et al.* 1964, Johnson *et al.* 1979, Monson and Phillips 1981, Johnson and Haight 1985a, Hunter 1988, Millsap and Johnson 1988). The severity of habitat loss and threats varies across the pygmy-owl's range. Population numbers have been drastically reduced in Arizona, which once constituted its major United States range. In Texas, pygmy-owl populations have experienced significant declines, from the lower Rio Grande Valley but persists in oak associations on the coastal plain north of the Rio Grande Valley.

The majority of these losses are due to destruction and modification of riparian and thornscrub habitats. It is estimated that between 85 and 90 percent of low-elevation riparian habitats in the southwestern United States have been modified or lost. These alterations and losses are attributed to urban and agricultural encroachment, woodcutting, water diversion and impoundment, channelization, livestock overgrazing, groundwater pumping, and hydrologic changes resulting from various land-use practices (e.g., Phillips *et al.* 1964, Carothers 1977, Kusler 1985, AGFD 1988a, DOI 1988, General Accounting Office 1988, Jahrsdoerfer and Leslie 1988, Szaro 1989, Dahl 1990, State of Arizona 1990, Bahre 1991).

Status information for pygmy owls in Mexico is very limited, but some observations suggest that although habitat loss and reductions in numbers are likely to have occurred in northern portions of the two subspecies in Mexico, the pygmy-owl persists as a locally common bird in southern portions of Mexico. Habitat loss and population status are summarized below for the four populations of the pygmy-owl.

Western Population

Several habitat types are used by the pygmy-owl in the western portion of its range. These include riparian woodlands and bosques dominated by mesquite and cottonwood, Sonoran desertscrub (usually with relatively dense saguaro cactus forests), and Sinaloan deciduous Forest (van Rossem 1945, Phillips *et al.* 1964, Karalus and Eckert 1974, Millsap and Johnson 1988).

1. Arizona

The northernmost record for the pygmy-owl is from New River, Arizona, approximately 55 km (35 mi) north of Phoenix, where Fisher (1893) found it to be "quite common" in thickets of intermixed mesquite and saguaro cactus. Prior to the mid-1900's, the pygmy-owl also was described as "not uncommon," "of common occurrence," and a "fairly numerous" resident of lowland central and southern Arizona in cottonwood forests, mesquite-cottonwood woodlands, and mesquite bosques along the Gila, Salt, Verde, San Pedro, and Santa Cruz rivers, and various tributaries (Breninger 1898 *in* Bent 1938, Gilman 1909, Swarth 1914). Bendire (1988) noted that he had taken "several" along Rillito Creek near Fort Lowell, in the vicinity of Tucson, Arizona. The pygmy-owl also occurs in Sonoran desertscrub associations in southern and southwestern Arizona, consisting of palo verde, ironwood, mesquite, acacia, bursage, and columnar cacti such as the saguaro and organpipe (Phillips *et al.* 1964, Davis and Russell 1984 and 1990, Monson and Phillips 1981, Johnson and Haight 1985a, Johnsgard 1988).

In the past, the pygmy-owl's occurrence in Sonoran desertscrub was apparently less common and predictable. It was more often found in xeroriparian habitats (very dense desertscrub thickets bordering dry desert washes) than more open, desert uplands (Monson and Phillips 1981, Johnson and Haight 1985a, Johnson-Duncan *et al.* 1988, Millsap and Johnson 1988, Davis and Russell 1990). The pygmy-owl also was noted to occur at isolated desert oases supporting small pockets of riparian and xeroriparian vegetation (Howell 1916, Phillips *et al.* 1964).

The trend of Sonoran desertscrub habitats and pygmy-owl occupancy is not as clear. Historical records from this habitat in Arizona are few. This may be due to disproportionate collecting along rivers where humans were concentrated, while the upland deserts were less intensively surveyed. Johnson and Haight (1985a) suggested that the pygmy-owl adapted to upland associations and xeroriparian habitats in response to the demise of Arizona's riverbottom woodlands. However, conclusive evidence to support this hypothesis is not available. It may be that desertscrub habitats simply are of lesser quality and have always been occupied by pygmy-owls at lower frequency and density (Johnson and Haight 1985b, Taylor 1986). While historical records of pygmy-owls do exist for Sonoran desertscrub in areas such as the Santa Catalina foothills, they generally note that the birds are rare in these areas (Kimball 1921).

Both riparian and desertscrub habitats are likely to provide several requirements of the pygmy-owl ecology. Trees and large cacti provide cavities for nesting and roosting. Also, these habitats along watercourses are known for their high density and diversity of animal species that constitute the pygmy-owl's prey base (Carothers 1977, Johnson *et al.* 1977, Johnson and Haight 1985b, Stromberg 1993).

The pygmy-owl has declined throughout Arizona to the degree that it is now extremely limited in distribution in the State (Davis and Russell 1979, Johnson *et al.* 1979, Monson and Phillips 1981, AGFD 1988a, Johnson-Duncan *et al.* 1988, and Millsap and Johnson 1988). Riverbottom forests and bosques, which supported the greatest abundance of pygmy-owls, have been extensively modified and destroyed by clearing, urbanization, water management, and hydrological changes (Willard 1912, Brown *et al.* 1977, Rea 1983, Szaro 1989, Bahre 1991, Stromberg *et al.* 1992, Stromberg 1993). Cutting for domestic and industrial fuelwood was so extensive throughout southern Arizona that, by the late 19th century, riparian forests within tens of miles of towns and mines had been decimated (Bahre 1991). Mesquite was a favored species, because of its excellent fuel qualities. The famous, vast forests of "giant mesquites" along the Santa Cruz River in the Tucson area described by Swarth (1905) and Willard (1912) fell to this threat, as did the "heavy mesquite thickets" where Bendire (1888) collected pygmy-owl specimens along Rillito Creek, a Santa Cruz River tributary, also in what is now Tucson. Only remnant fragments of these bosques remain.

Cottonwoods also were felled for fuelwood, fenceposts, and for the bark, which was used as cattle feed (Bahre 1991). In recent decades, the pygmy-owl's riparian habitat has continued to be modified and destroyed by agricultural development, woodcutting, urban expansion, and general watershed degradation (Phillips *et al.* 1964, Brown *et al.* 1977, State of Arizona 1990, Bahre 1991, Stromberg *et al.* 1992, Stromberg 1993). Sonoran desertscrub has been affected to varying degrees by urban and agricultural development, woodcutting, and livestock grazing (Bahre 1991).

In addition to clearing woodlands, the pumping of groundwater and the diversion and channelization of natural watercourses are also likely to have reduced pygmy-owl habitat. Diversion and pumping result in diminished surface flows, and consequent reductions in riparian vegetation are likely (Brown *et al.* 1977, Stromberg *et al.* 1992, Stromberg 1993). Channelization often alters stream banks and fluvial dynamics necessary to maintain native riparian vegetation. The series of dams along most major southwestern rivers (e.g., the Colorado, Gila, Salt, and Verde) have altered riparian habitat downstream of dams through hydrological and vegetational changes, and have inundated former habitat upstream.

Livestock overgrazing in riparian habitats is one of the most common causes of riparian degradation (e.g., Ames 1977, Carothers 1977, Behnke and Raleigh 1978, Forest Service 1979, General Accounting Office 1988). Effects of overgrazing include changes in plant community structure, species composition, relative species abundance, and plant density. These changes are often linked to more widespread changes in watershed hydrology (Brown *et al.* 1977, Rea 1983, GAO 1988), and are likely to affect the habitat characteristics critical to the pygmy-owl.

Hunter (1988) found fewer than 20 verified records of pygmy-owls in Arizona for the period of 1971 to 1988. Although pygmy-owls are diurnal and frequently vocalize in the morning, the species was not recorded or reported in any breeding bird survey data in Arizona (Robbins *et al.* 1986). Formal surveys for the pygmy-owl on OPCNM began in 1990, with one bird located that year. Beginning in 1992, in survey efforts conducted in cooperation with the AGFD, three single pygmy-owls were located on the Monument (Fish and Wildlife Service and National Park Service, unpubl. data 1992). In 1993, more extensive surveys again located three single pygmy-owls in Arizona (AGFD unpubl. data 1993, Felley and Corman 1993). During 1993–1994 surveys, one pair of owls was detected in north Tucson, near the sightings in 1992 and 1993 (Collins and Corman 1995). Two individual owls were found in northwest Tucson during 1995 surveys, and an additional owl was detected at OPCNM (Lesh and Corman 1995).

In 1996, the AGFD focused survey efforts in northwest Tucson and Marana, and detected a total of 16 birds, two of which were a pair, and two of which were fledglings. Three additional pygmy-owls were detected on OPCNM in 1996, with three additional, but unconfirmed, reports (Harold Smith, National Park Service, OPCNM, *in litt.* 1996).

Potential threats to pygmy-owl habitat in Arizona persist. Through the public comment period, the Service was made aware of five specific housing and development projects operating or in the planning stages that would affect habitat where the majority of birds in Arizona currently exist. Housing and industrial developments continue to expand in the Tucson area, and the northwest portion of the Tucson area is experiencing rapid growth. It was estimated that only 60 percent of the people living in the Tucson area are within the city of Tucson, even though the city limits continue to be expanded to keep up with urban expansion (Sierra Club 1988, Duane Shroufe, AGFD, *in litt.* 1996).

The AGFD (D. Shroufe, *in litt.* 1996) estimated that 22,032 hectares (ha) (54,400 acres (ac)) of suitable habitat exists in the northwest Tucson area, where the majority of birds are found for the western population. Surveys completed in 1996 covered 44.2 square km (17.0 square mi) of this area (Abbate 1996). The AGFD notes that, while 60 percent of this land is in State Trust or Bureau of Land Management (BLM) ownership, much of the land may be subject to development as the Town of Marana is developing a general plan for future growth that may incorporate these areas. In addition, the BLM is evaluating a proposal to exchange all of its land within this area to a developer.

At OPCNM, potential threats include the increased risk of wildfire associated with an invasion of the OPCNM by nonnative grasses such as red brome (*Bromus tectorum*) and buffelgrass (*Pennisetum ciliare*). Sonoran desertscrub is not generally considered fire adapted, and fire can lead to loss of saguaros. An additional threat in this area is the increasing visitation and through-traffic from the international port of entry at Lukeville (H. Smith, *in litt.* 1996).

In summary, very few pygmy-owls remain throughout the pygmy-owl's historic range in Arizona due to extensive loss of habitat. In addition, the remaining pygmy-owl habitat faces numerous and significant threats.

2. Western Mexico

The pygmy-owl occurs in the more arid lower elevations (below 1,200 m (4,000 ft) elevation) in western Mexico in riparian woodlands and communities of thornscrub and large cacti. The pygmy-owl is absent or rare in the highlands of Mexico's central plateau (Friedmann *et al.* 1950), where the least (*G. minutissima*) and northern (*G. gnoma*) pygmy-owls occur.

In the mid-20th century, the pygmy-owl was generally described as "common" in western Mexico (van Rossem 1945, Friedmann *et al.* 1950, Blake 1953). Schaldach (1963) considered the pygmy-owl abundant at the southern extreme of its range in Colima 30 years ago, and 50 years ago the pygmy-owl was considered "fairly common" in the lower elevations of western Sonora (van Rossem 1945). Current information on the status of the pygmy-owl and its habitat in western Mexico is incomplete, but suggests that trends vary within different geographic areas. The pygmy-owl can still be located fairly easily in southern Sonora (Babbitt 1985, Troy Corman, AGFD, pers. comm. 1994), but its distribution is somewhat erratic. Christmas Bird Count data from 1972 through 1995 from Alamos, Sonora, and San Blas, Nayarit, indicate that the pygmy-owl is common, but detections varied widely from year to year, possibly due to variations in the time spent per count and the number of searchers participating in the count. The count for Alamos, Sonora never exceeded four individuals, and no sightings were recorded in 10 out of 14 years (National Audubon Society 1972–1995). In recent years, pygmy-owls have been found in abundance in some areas but not detected in other areas of apparently similar habitat. Abundance also varies between habitat types, being more abundant in thorn forest than cactus forest (Taylor 1986).

The pygmy-owl is now rare or absent in northern Sonora, within 241 km (150 mi) of the United States-Mexico border (Hunter 1988, D. Shroufe, *in litt.* 1996). Extensive conversion of desertscrub and thornscrub to the exotic, buffelgrass, for livestock forage is now taking place, but quantification is not currently available. It is possible that the factors causing declines in Arizona also are affecting western Mexico (Deloya 1985, Hunter 1988). The region of Sonoita, Mexico, immediately south of OPCNM currently is undergoing extensive urban and agricultural development that may result in modification or destruction of movement corridors for the pygmy-owl between southern Arizona and northern Sonora (H. Smith, *in litt.* 1996). However, further information is needed before determining whether this subspecies should be listed in western Mexico.

Eastern Populations

Several habitat types also are used by the pygmy-owl in the eastern portion of

its range. These include coastal plain

same area, historically known as the

Ranch supports honey mesquite

Program with the Natural Resources

and the number of individuals involved

not likely to have eaten the eggs. Nest

its range. These include coastal plain oak associations in south Texas (Tewes 1993, Wauer *et al.* 1993), Tamaulipan thornscrub in the lower Rio Grande Valley and other lowland areas, and thick forest and second-growth forest in the Mexican States of Nuevo Leon and Tamaulipas. The use of cypress trees by pygmy-owls along the Rio Grande also has been noted (Tewes 1993).

1. Texas

The pygmy-owl's historical range in Texas included the lower Rio Grande Valley, where it was considered a common resident of dense mesquite, cottonwood-ebony woodlands, and Tamaulipan Brushland (Griscom and Crosby 1926, Bent 1938, Friedmann *et al.* 1950, Stillwell and Stillwell 1954, Oberholser 1974, Heintzelman 1979, Hunter 1988, Millsap and Johnson 1988). Pygmy-owls also occur in coastal plain oak associations between Brownsville and Corpus Christi (Oberholser 1974), where it has recently been found in higher numbers than previously known (Texas A&M University, *in litt.* 1993, Wauer *et al.* 1993, P. Palmer, *in litt.* 1993, Mays 1996, Proudfoot 1996).

Until recently, formal surveys in Texas were lacking, but pygmy-owls were reported as occurring generally in two areas: the Rio Grande floodplain below Falcon Dam; and along U.S. Highway 77, north of the lower Rio Grande Valley. Wauer *et al.* (1993) note that pygmy-owls have been reported almost annually from the Rio Grande floodplain downstream of Falcon Dam to the Santa Anna National Wildlife Refuge in Starr and Hidalgo counties. Two pygmy-owls were reported below the dam in April 1993 (ABA 1993). These records generally are for 1 bird or 1 pair of birds, with the exception of a report of 10 birds from below the Dam in 1989 (unpubl. data). More recently, pygmy-owls have been located in Kenedy, Brooks and adjacent south Texas counties (Wauer *et al.* 1993). Oberholser (1974) reported birds on the Norias Division of the King Ranch as having been discovered in 1968.

A larger population of birds occurs on the King Ranch and surrounding ranches, approximately 112 km (70 mi) north of Brownsville. Caesar Kleberg Wildlife Research Institute at Texas A&M University (*in litt.* 1996) states that the most consistently used habitat, of which the King Ranch is a part, is a 4,660 square km (1800 square mi) oblong area of sandy soils, which support live oak (*Quercus virginiana*), honey mesquite (*Prosopis glandulosa*), and live oak mottes (small groupings of live oaks). Beasom (1993) described this same area, historically known as the Wild Horse Desert, as an intrusion of deep, coastal sands that protrudes inland for approximately 81 km (50 mi) from the Laguna Madre and covers portions of northern Willacy, Kenedy, and Brooks counties. This area was recognized as a distinct vegetational region in Texas by Blair (1950), who noted that brush in this area thins out as available moisture declines inland, and that there was a difference in plant composition in this area due to the extensive sand strip.

Four recent studies have been completed in Texas on the pygmy-owl, with three of these focusing on the Norias Division of the King Ranch (Tewes 1993, Wauer *et al.* 1993, Mays 1996, Proudfoot 1996). Tewes (1993) conducted a study by contacting individuals with possible information on the pygmy-owl, reviewing museum specimen records, and conducting a survey. Tewes noted that his contacts believed the most accessible pygmy-owls in Texas were those below Falcon Dam in Starr County, but noted additional sighting records for other Texas counties were fewer and often accompanied by reports of unsuccessful surveys. This was true for Hidalgo (four sightings, one unsuccessful search), Zapata (one sighting, one unsuccessful search), and Cameron (zero sightings, one unsuccessful search) counties.

Surveys were conducted as part of this study at 27 sites in Mexico and 11 sites in Texas, with 12 positive responses noted. However, these responses were all in Mexico. Survey efforts in Texas that yielded no responses occurred on the Laguna Atascosa and Santa Anna National Wildlife Refuges, along Highways 77 and 281, and at the Falcon Recreation Area, Kelly Wildlife Management Area, Bentsen State Park, and Los Penitas Wildlife Management Area (Tewes 1993).

Additional survey results from work completed in 1993 found 116 individual, nonredundant pygmy-owl records on and around the King Ranch in mature mixed live oak-mesquite habitats. The highest density of birds found in this survey was on the Norias Division of the King Ranch (Wauer *et al.* 1993).

Mays (1996) also focused study efforts on the Norias Division of the King Ranch, and included portions of the Kenedy Ranch, the Encino Division of the King Ranch, the Canelo Ranch, and the Runnels Ranch. Habitat on the Norias Division is live oak, while the Kenedy Ranch and the Encino Division of the King Ranch support live oak-honey mesquite woodland. The Canelo Ranch supports honey mesquite woodland, but no live oak, as does the Runnels Ranch. Mays recorded 166 responses during 1994 and 1995 on the King, Kenedy, Canelo, and Runnels ranches. The TPWD conducted additional studies during this 2-year period and reported three responses on the Mariposa Ranch, and no responses for the LaCopa, Cage, and Hopper ranches. During 1995, TPWD sampled but recorded no responses for the Mariposa, LaCopa, Cage, Hopper, Los Compadres, Singer, Jones, Myrick, Rancho Isabela or Mills Bennett ranches.

Proudfoot (Glenn, pers. comm. 1996) has trapped and banded pygmy-owls on the Norias Division of the King Ranch, focusing on a 29,000 ha (71,393 ac) portion of the King Ranch supporting a live oak-honey mesquite forest. This effort resulted in the trapping and banding of 111 pygmy-owls. It should be noted that there is overlap between work completed by Mays and that completed by Proudfoot, so that the number of individuals recorded by each are not additive. Of the estimated 101,250 ha (250,000 ac) of live oak habitat surrounding the King, Kenedy, and other nearby ranches, it is estimated that all but a 4,050 ha (10,000 ac) parcel on one ranch have been surveyed for pygmy-owls (G. Proudfoot, pers. comm.).

While the number of known individuals ranges from 111 (Glenn, pers. Comm. 1996) to 166 (Mays, 1996), the estimated population is much higher. Mays (1996) estimated between 745 and 1,823 pygmy-owls on the Norias Division of the King Ranch alone. Wauer *et al.* (1993) estimated 1,308 birds in the habitat available in Kenedy, Brooks, and Willacy counties. The Caesar Kleberg Institute of Texas A&M University believes that pygmy-owl populations in Texas are viable and probably exceed 1,300 birds.

The Service believes that the habitat for pygmy-owls along the coastal plain of southern Texas is stable, and may be increasing as former grasslands are invaded by oaks and the oaks mature to form the structural characteristics favored by pygmy-owls. Further, the habitat on the large, privately-owned ranches in this area is largely managed for wildlife (e.g., hunting, birding), conversion for agricultural use is considered uneconomical and unlikely, and other threats to this habitat are low or nonexistent (Caesar Kleberg Wildlife Institute *in litt.* 1996).

Through the Santa Ana/Lower Rio Grande Valley National Wildlife Refuge Complex in Texas, the Service has recently started a Wetlands Reserve Program with the Natural Resources Conservation Service. Using grant monies, the Service will pursue the purchase of easements with willing landowners. The focus of the easement agreements will be on habitat protection and restoration. Additional tracts of land are being evaluated for purchase in river frontage areas in Starr and Hidalgo counties. These efforts will result in a corridor of riparian woodlands, which may serve as pygmy-owl habitat in the future (L. Ditto, pers. comm. 1996).

In summary, there remains a significant population of pygmy-owls in the coastal plain area of Texas, and a substantial amount of habitat exists. That habitat is largely managed for wildlife. The economic feasibility of conversion to agricultural use makes threats to the habitat low or nonexistent. Finally, habitat acquisition and rehabilitation underway in the lower Rio Grande Valley should provide substantial pygmy-owl habitat. For these reasons, the Service determines that the cactus ferruginous pygmy-owl in Texas is not likely to become endangered in the foreseeable future throughout all or a significant portion of its range. There is not sufficient evidence to justify finalizing that portion of the proposed rule.

2. Eastern Mexico

The pygmy-owl occurs in lowland regions (below 330 m (1,000 ft)) along the Gulf Coast of Mexico (Friedmann *et al.* 1950), in the states of Tamaulipas and Nuevo Leon. Its primary habitat in this region is Tamaulipan thornscrub, forest edge, riparian woodlands, thickets, and lowland tropical deciduous forest (Webster 1974, Enriquez Rocha *et al.* 1993, Tewes 1993). The pygmy-owl is absent or rare in the highlands of Mexico's central plateau (Friedmann *et al.* 1950), where the least and northern pygmy-owls occur.

In the mid-20th century, the pygmy-owl was generally described as having been common in eastern Mexico (Friedman *et al.* 1950, Blake 1953). Current information on the status of the pygmy-owl and its habitat in eastern Mexico is incomplete. In 1976, the pygmy-owl was reported to be "fairly common" in the Sierra Picachos of Nuevo Leon (Arvin 1976). In 1991, Tewes located pygmy-owls at 13 of 27 survey sites in northeastern Mexico.

Christmas Bird Count data from 1972 through 1996 from Rancho Los Colorados, Rio Corona, and Gomez Farias, all in Tamaulipas, indicate the pygmy-owl was common, but detections varied widely from year to year, probably due to time spent per count and the number of individuals involved in the count effort (National Audubon Society 1972–1996). Christmas Bird Count data indicated the same for ferruginous pygmy-owls at El Naranjo in San Louis Potosi, at the zone of probable intergradation between *G. b. cactorum* and *G. b. ridgwayi*.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The pygmy-owl is highly sought by birders who concentrate at several of the remaining known locations of pygmy-owls in the United States. Limited, careful birding is probably not harmful; however, excessive attention by birders may at times harass and affect the occurrence and behavior of the pygmy-owl (Oberholser 1974, Tewes 1993). For example, in early 1993, one of the few areas in Texas known to support the pygmy-owl continued to be widely publicized (American Birding Association 1993). The resident pygmy-owls were detected at this highly-visited area only early in the breeding season and not thereafter. O'Neil (1990) also indicated that five birds initially detected in southern Texas failed to respond after repeated visits by birding tours. Additionally, Oberholser (1974) and Hunter (1988) indicated that, in southern Texas, recreational birding may disturb owls at highly visited areas.

C. *Disease or Predation.* One disease potentially affecting the pygmy-owl is trichomoniasis, as identified by the AGFD (D. Shroufe, *in litt.* 1996). Because owls prey on finches, sparrows, and other seed-eating birds known to carry trichomoniasis, they are at risk of contracting the disease. According to Boal and Mannan (1996), raptors in urban areas experience a higher exposure rate to trichomoniasis, and the result is high mortality of raptor nestlings. No studies have been completed to date on the pygmy-owl in urban or other areas to determine if, in fact, pygmy-owls have been affected by this disease.

Recent work by Proudfoot (1996) indicates that snake predation may be an additional factor adversely affecting the pygmy-owl population on the Norias Division of the King Ranch. Proudfoot noted that nest boxes previously containing eggs would later be discovered empty, without sufficient time having elapsed to allow for fledging to occur. A lack of egg shell remains in nest boxes may indicate that snakes have depredated nests containing pygmy-owl eggs. Although long-tailed weasels (*Mustela frenata*) also occur in this study area, the lack of egg shell remains and the nest box configuration indicate that weasels are not likely to have eaten the eggs. Nest boxes are typically 14 x 14 x 46 cm (5.5 x 5.5 x 18 in.) with a 5.13 cm (2.0 in.) entrance hole placed 31 cm (12 in.) above the box bottom.

Proudfoot (1996) has observed the indigo snake (*Drymarchon corais*) climbing trees on the King Ranch and notes that the indigo snake is known to prey on cavity nesting green-cheeked Amazon parrots (*Amazona viridigenalis*). Proudfoot notes that, from 1993 to 1996, eight out of 112 available nest boxes (or 232 nest box opportunities) were used. Where flashing was placed around trees to prevent the possibility of predation by snakes, eggs were not disturbed. For the four nest boxes left unprotected, three were depredated before the eggs hatched, while one was depredated following hatching. Proudfoot further noted that fecundity (the number of young successfully raised per year), for natural cavities was approximately one-third that of fecundity for nest boxes, and speculates that eggs and birds in natural cavities were likely to have been depredated by both snakes and long-tailed weasels, resulting in a lower fecundity rate (G. Proudfoot, pers. comm. 1996). However, it is unknown what the effect of nest predation is on mortality rates of the pygmy-owl population, nor whether predation notes are unnaturally high.

D. *The inadequacy of existing regulatory mechanisms.* Although the pygmy-owl is considered nonmigratory, it is protected under the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703–712). The MBTA is the only direct, current Federal protection provided for the cactus ferruginous pygmy-owl. The MBTA prohibits "take" of any migratory bird. "Take" is defined as "* * * to pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect." However, unlike the Act, there are no provisions in the MBTA preventing habitat destruction unless direct mortality or destruction of active nests occurs.

The Federal Clean Water Act contains provisions for regulating impacts to river systems and their tributaries. These mechanisms have been insufficient to prevent major losses of riparian habitat, including habitats occupied by the pygmy-owl.

The Barry M. Goldwater Range, which overlaps the historical distributional range of the pygmy-owl, has an existing policy stating that, for any species that have been identified as state or Federal species of concern, the range will be inventoried, and potential impacts to those species analyzed with other

information gathered. Projects can then

any general agency policies adequately

in floodplain areas that are now largely

Critical Habitat

behavior, and reproductive success of

designated. Regulations implementing

information gathered. Projects can then be modified to avoid or minimize impacts to the species. The Goldwater Range also has identified any habitats that are unique or significant on the range, including desert washes, bajadas, and dunes. The Goldwater Range has the flexibility to create management plans for any species of concern; however, no such policy currently exists for the pygmy-owl.

The OPCNM, the second major location for pygmy-owls in the State of Arizona, provides protection for the pygmy-owl, as it does for all other natural and cultural resources. This protection has been compared as similar to the takings prohibitions of the MBTA and wildlife taking regulations for the State of Arizona (H. Smith, *in litt.* 1996).

The State of Arizona lists the ferruginous pygmy-owl (subspecies not defined) as endangered (AGFD 1988). However, this designation does not provide special regulatory protection. Arizona regulates the capture, handling, transportation, and take of most wildlife, including *G. b. cactorum*, through game laws, special licenses, and permits for scientific investigation. There are no provisions for habitat protection under Arizona endangered species law.

The State of Texas lists the ferruginous pygmy-owl (subspecies not defined) as threatened (TPWD 1978 and 1984). This designation requires permits for take for propagation, zoological gardens, aquariums, rehabilitation purposes, and scientific purposes (State of Texas 1991). Again, however, there are no provisions for habitat protection. The TPWD has indicated that they have a Memorandum of Understanding with the Texas Department of Transportation (TXDOT), which provides that it is the responsibility of TPWD to protect wildlife resources. Under this Memorandum, TPWD and TXDOT will coordinate on any project within range and in suitable habitat of any State or federally listed threatened or endangered species. Additionally, TPWD reviews seismic exploration on State lands through coordination with the Texas General Land Office. The pygmy-owl is also on the Texas Organization for Endangered Species (TOES) "watch list" (TOES 1984).

Most Federal agencies have policies to protect species listed by states as threatened or endangered, and some also protect species that are candidates for Federal listing. However, until agencies develop specific protection guidelines, evaluate their effectiveness, and institutionalize their implementation, it is uncertain whether any general agency policies adequately protect the pygmy-owl and its habitat.

No conservation plans or habitat restoration projects specific to the cactus ferruginous pygmy-owl exist for lands managed by the United States Government, Indian Nations, State agencies, or private parties. The Forest Service, BLM, and Bureau of Reclamation have focussed some attention on modifying livestock grazing practices in recent years, particularly as they affect riparian ecosystems. Several of these projects are in the former range of the pygmy-owl, including some historical nesting locations. In addition, some private landowners in southern Texas are accommodating and funding research and have expressed an interest in carrying out conservation measures to benefit the pygmy-owl.

In summary, individual owls are protected from taking by one or more State and Federal statutes, and some Federal agencies are developing programs to protect riparian areas. However, there are currently no regulatory mechanisms in place that specifically protect pygmy-owl habitat.

E. *Other natural or manmade factors affecting its continued existence.* Environmental, demographic, and genetic vulnerability to random extinction are recognized as interacting factors that might contribute to a population's extinction (Hunter 1996). Environmental random extinction refers to random events, climate, nutrients, water, cover, pollutants, and relationships with other species such as prey, predators, competitors, or pathogens, that may affect habitat quality.

To date, the Service is aware of only one genetic study completed on pygmy-owls in the United States. Using toe clippings or blood samples, Zink *et al.* (1996) extracted DNA from pygmy-owls on the Norias Division of the King Ranch and from Rio Corona, Tamaulipas, Mexico. Data obtained from this study indicate that there is very little genetic difference between birds on the King Ranch and those in Tamaulipas. The authors concluded that any division between the two populations would therefore have occurred recently, likely within the last 75 years.

In addition, the data indicate low levels of genetic variation in the pygmy-owls. Populations without genetic variation are often considered imperiled due to either the effect of low population numbers, increased chance of inbreeding, or both (Soule 1986, Meffe and Carroll 1994).

Pesticides may pose an additional threat to the pygmy-owl where it occurs in floodplain areas that are now largely agricultural. Jahrsdoerfer and Leslie (1988) note that more than 100 pesticides are used on agricultural crops throughout the lower Rio Grande Valley. Pesticide application occurs year-round. Because crops, such as cotton, are grown repeatedly year after year, an accumulation of resistant pesticides may result.

Pesticide contamination is described as "widespread" throughout the inland waters of the lower Rio Grande Valley, and includes concentrations of DDT, dieldrin, endrin, lindane, endosulfan, Guthion, and PCB's which exceeded 1976 EPA criteria for propagation of fish and wildlife. Without appropriate precautions, these agents may potentially affect pygmy-owls through direct toxicity or effects on their food base. No quantitative data on the effects of this potential threat on the pygmy-owl are known at this time. While the effects of pesticides such as DDT on the reproductive success of other bird species are well known, there are no data on whether pesticides are currently affecting the pygmy-owl.

The pygmy-owl nests in cavities excavated by woodpeckers in trees or large cacti. Some sources (AGFD 1988) believe that increasing competition with exotic European starling (*Sturnus vulgaris*) for nest cavities may be a threat to cavity nesters like the pygmy-owl. Starlings were first reported as occurring in Arizona in 1946 (Monson 1948).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this subspecies in relation to the Act's definitions of "endangered" and "threatened." An endangered species is defined as one which is in danger of extinction throughout all or a significant portion of its range (section 3(6) of the Act). A threatened species is one which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (section 3(19) of the Act).

In Arizona, the pygmy-owl exists in extremely low numbers, the vast majority of its former habitat can no longer support the species, and much of the remaining habitat is under immediate and significant threat. The Service thus determines that the cactus ferruginous pygmy-owl faces imminent extinction and therefore meets the definition of endangered under the Act. The Service has determined that the pygmy-owl in Texas does not warrant listing as a threatened species. The Service will continue to review the status of this subspecies in Mexico.

Critical Habitat

Critical habitat, is defined in section 3 of the Act as—(i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and; (ii) specific areas outside the geographical area which are occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 242.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. Critical habitat was proposed for the cactus ferruginous pygmy-owl in Arizona in the proposed rule. However, because the pygmy-owl has been a sought after species for birding enthusiasts, the Service now believes that the designation of critical habitat and the subsequent publication of location maps and detailed locality descriptions would harm the species rather than aid in its conservation. The Service determines that designation of critical habitat for the cactus ferruginous pygmy-owl in Arizona is not prudent.

Although the Service is not finalizing the portion of the proposed rule to list the Texas population as threatened and critical habitat designation is not an issue for that population, the Service is aware that the Texas population may be impacted by birding activities, as well. However, pygmy-owls in Texas are located on private land, which benefits from bird enthusiasts. The Texas population does not face the same potential harm or harassment threats as the Arizona pygmy-owls occurring on public land because of more limited access to the Texas population. Additionally, some areas of private land that allow birding excursions may be specifically managed to benefit pygmy owls in Texas.

As noted in factor B "Overutilization for commercial, recreational, scientific, or educational purposes" in this rule, the pygmy-owl is highly sought by birders concentrating on the remaining known localities in the United States. Excessive uncontrolled attention by birders may affect the occurrence, behavior, and reproductive success of the pygmy-owl. A recently advertised birding excursion in southeast Arizona specifically mentions pygmy-owls as a target species. The Service feels that although the proposed rule and the proposed critical habitat designation contained therein provided maps and detailed location descriptions, no new pygmy-owl localities discovered since the publication of the proposed rule have been disclosed. Pygmy-owl locations in Arizona should not be disclosed because of the potential for harassment and harm.

Additionally, the Service is concerned that the publication of specific pygmy-owl localities in Arizona would make the species and specifically pygmy-owl nests, more vulnerable to acts of vandalism, and increase the difficulties of enforcement. Because of the increased pressures exerted by birding enthusiasts and the possibility of acts of vandalism, the Service believes that conservation of the pygmy-owl is better addressed through the recovery process and through the section 7 consultation process. Designation of critical habitat for the pygmy owl in Arizona is not prudent.

Special Rule

The Service included a proposed special rule under section 4(d) of the Act for the proposed threatened pygmy-owl population in Texas. (See the proposed rule for a discussion of the proposed special rule). However, the Service has determined that the cactus ferruginous pygmy-owl in Texas does not warrant threatened status and thus the special rule is no longer under consideration.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the states and authorizes recovery plans for all listed species. The protection required for Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all endangered and threatened wildlife, respectively. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and the State conservation agencies.

Regulations at 50 CFR 17.3 define the terms "harm" and "harass" as used under the Act's definition of "take." "Harm" is defined as an act which actually kills or injures wildlife. Such acts may include significant habitat modification that impairs essential behavioral patterns, including breeding, feeding, or sheltering. "Harass" is defined as an intentional or negligent act or omission which creates a likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns, including, but not limited to, breeding, feeding, or sheltering.

Permits may be issued to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection

with otherwise lawful activities. For

(3) Clearing or significant

requirements. This rulemaking was not

Dated: February 28, 1997.

requirement that all mobile gear vessels

action is expected to reduce gear

with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purpose of the Act.

Service policy published in the **Federal Register** on July 1, 1994 (59 FR 34272), requires, to the maximum practicable extent at the time a species is listed, identification of those activities that would or would not likely constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range.

The Service believes that, based on the best available information, the following actions will not result in a violation of section 9—

(1) Clearing of unoccupied habitat;

(2) Removal of trees within occupied habitat that are not known to be used for nesting, and as long as the number removed would not result in significant habitat fragmentation or substantially diminish the overall value of the habitat;

(3) One-time or short-term noise disturbance during the breeding season;

(4) Clearing of vegetation in or along previously disturbed areas, such as fences or roads;

(5) Low level flights more than one mile to the side of or greater than 300 m (1000 ft) above occupied habitat;

(6) Grazing, to a level that does not seriously deplete understory vegetation.

Activities that the Service believes could potentially harm, harass, or otherwise take the pygmy-owl include, but are not limited to—

(1) Removal of nest trees;

(2) Removal of a nest box in use by the pygmy-owl;

(3) Clearing or significant modification of occupied habitat, whether or not the nest tree is included;

(4) Sustained noise disturbance during the breeding season;

(5) Pursuit or harassment of individual birds;

(6) Frequent or lengthy low-level flights over occupied habitat during the breeding season;

(7) Severe overgrazing that results in the removal of understory vegetation.

Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Arizona Ecological Services Field Office (see **ADDRESSES** section). Requests for copies of the regulations concerning listed species and general inquiries regarding prohibitions and permits may be addressed to the Fish and Wildlife Service, Ecological Services, Endangered Species Permits, P.O. Box 1306, Albuquerque, New Mexico, 87103-1306 (505/248–6282).

National Environmental Policy Act

The Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements. This rulemaking was not subject to review by the Office of Management and Budget under Executive Order 12866.

References Cited

A complete list of all references cited herein is available upon request from the Field Supervisor, Arizona Ecological Services Field Office (see **ADDRESSES** section).

Author: The primary authors of this final rule are Mary E. Richardson for Arizona at 602/640–2720 and Bill Seawell for Texas at (512/997–9005 (see **ADDRESSES SECTION**).

Lists of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.11(h) is amended by adding the following, in alphabetical order under Birds, to the list of Endangered and Threatened Wildlife, to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
•	•	•	•	•	•		•
BIRDS							
•	•	•	•	•	•		•
Pygmy-owl, cactus ferruginous.	*Glaucidium brasilianum cactorum.*	U.S.A. (AZ, TX), Mexico.	AZ	E	610	NA	NA
•	•	•	•	•	•		•

Dated: February 28, 1997.

J.L. Gerst,

Acting Director, Fish and Wildlife Service.

[FR Doc. 97–5788 Filed 3–7–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 648 and 649

[Docket No. 970221036–7036–01; I.D. 012797D]

RIN 0648–AJ48

Fisheries of the Northeastern United States; Framework Adjustments to the Northeast Multispecies and American Lobster Fishery Management Plans

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement measures contained in Framework Adjustment 22 to the Northeast Multispecies Fishery Management Plan (FMP) and Framework Adjustment 4 to the American Lobster FMP. This rule will close certain areas to specific gear types, thereby alleviating the gear conflicts in Southern New England.

EFFECTIVE DATE: March 17, 1997.

ADDRESSES: Copies of Amendment 7 to the Northeast Multispecies FMP, Amendment 5 to the American Lobster FMP, the regulatory impact review and the initial regulatory flexibility analysis, its final supplemental environmental impact statement (FSEIS), and the supporting documents for Framework Adjustment 22 to the Northeast Multispecies FMP and Framework 4 to the American Lobster FMP are available from Christopher B. Kellogg, Acting Executive Director, New England Fishery Management Council, 5 Broadway, (Route 1), Saugus, MA 01906–1097.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 508–281–9273.

SUPPLEMENTARY INFORMATION: An emergency interim rule to the American Lobster FMP was published on March 27, 1996 (61 FR 13454). This action implemented a prohibition on mobile gear vessels fishing in Restricted Gear Areas I and II, a prohibition on lobster pot vessels fishing in and lobster pots in Restricted Gear Area III, and a requirement that all mobile gear vessels in Restricted Gear Areas I and II and all lobster pot (fixed gear) vessels in Restricted Gear Area III stow their gear while transiting the restricted gear areas. This action became necessary after a New England Fishery Management Council (Council) and Industry-negotiated voluntary agreement concerning gear conflicts failed to resolve the problem.

Regulations implementing Amendment 8 to the Northeast Multispecies, Amendment 6 to the Atlantic Sea Scallop, and Amendment 6 to the American Lobster FMPs became effective on February 10, 1997 (62 FR 1403, January 10, 1997). The regulations added to each FMP a list of management measures from which the Council could select future solutions to gear conflicts through the framework adjustment process. The regulations authorize the Council to recommend adjustments to any of the measures currently in the FMPs.

Framework Adjustment 22 to the Northeast Multispecies FMP and Framework Adjustment 4 to the American Lobster FMP closes four small, defined areas to fishers using certain gears during certain times of the year. Specifically, the action implements a prohibition on mobile gear vessels fishing in Restricted Gear Area I during October 1 through June 15, in Restricted Gear Area IV during June 16 through September 30, in Restricted Gear Area II during November 27 through June 15, and in Restricted Gear Area III during June 16 through November 26, and a prohibition on lobster pot vessels fishing in Restricted Gear Area I during June 16 through September 30, in Restricted Gear Area II during June 16 through November 26, and in Restricted Gear Area III during January 1 through April 30. Vessels may transit these areas provided that all mobile gear is on board the vessel while inside these areas.

This action is necessary because substantial harm and disruption to the fishery is again occurring through gear conflicts since the emergency action expired on June 25, 1996. These conflicts are occurring because of increased targeting of monkfish by mobile gear vessels since the emergency action and the failure of the Council's voluntary industry agreement. The framework measures build upon the emergency action and provisions of the Council's voluntary industry agreement. The measures in this rulemaking were selected from among other options because they are relatively less controversial, as evidenced by the near unanimous support of the Council. The action is expected to reduce gear damage and economic loss.

Direct economic losses to individual lobster vessels from gear loss are reported by the Council to be as high as $125,780. As reported to the Council by eight lobster vessels, the value of lost gear for a partial season totaled more than $290,000. There are approximately 50 active lobster vessels fishing within the gear conflict areas. If the above data are representative of the fleet, the direct economic loss as the result of lost gear was potentially $1.8 million, or more than $36,000 per lobster vessel.

The value of lobster landings during October through June, when lobster vessels move their gear inshore, averaged more than $8.5 million for 1991–93. Landings data showing the magnitude of lost fishing opportunity during 1994 and 1995 are unavailable. Lobster fishers, however, reported setting their gear in a severely restricted band that had a significant effect on catch per trap. Even if the number of traps remained constant and catch per trap only declined 25 percent, the lost revenue could have totaled more than $2.1 million. The total estimated economic loss that could be prevented by taking this action is, therefore, nearly $4 million. Furthermore, the action is consistent with the American Lobster FMP objectives to minimize social, cultural, and economic dislocation in the lobster fishery.

The Council requests publication of the management measures as a final rule after considering the required factors stipulated in the regulations governing the Northeast multispecies fishery and the American lobster fishery and providing supporting analysis for each factor considered. The Regional Administrator, Northeast Region, NMFS, concurs with the Council's recommendation and has determined the framework adjustments should be published as a final rule.

NMFS is amending the multispecies and lobster regulations following the procedure for framework adjustments codified in 50 CFR parts 648 and 649. The Council followed this procedure when making adjustments to the FMPs by developing and analyzing the actions at two Council meetings held on August 21–22 and October 2, 1996.

Comments and Responses

The August 21–22, 1996, Council meeting was the first of two meetings that provided an opportunity for public comment on the frameworks. A draft document containing the proposed management measures and their rationale was available to the public during the second week in August 1996

and notice of the initial and final

regulation. Implementation of this

§ 648.14 Prohibitions.

Point	Latitude	Longitude

(2) *Duration.* (i) *Mobile gear.* From

Point	Latitude	Longitude

and notice of the initial and final Council meetings were mailed to approximately 1,900 people and published in the **Federal Register**. The final public hearing was held on October 2, 1996. Testimony provided by industry members at the public meetings favored the framework adjustments.

Classification

This final rule has been determined to be not significant for the purposes of E.O. 12866.

NMFS recently reinitiated consultation on the Northeast Multispecies and American Lobster FMPs. These consultations were reinitiated as the result of new information concerning the status of the northern right whale and concluded that: (1) The fishing activities carried out under the Northeast Multispecies and American Lobster FMPs are likely to jeopardize the continued existence of the northern right whale; (2) the prosecution of the multispecies and lobster fisheries will not adversely modify right whale critical habitat; and (3) the current fishing practices allowed under the American Lobster and Northeast Multispecies FMPs may affect, but are not likely to jeopardize the continued existence of the harbor porpoise and the distinct population segment of Atlantic salmon stocks found in certain Maine rivers that are both currently proposed to be listed as threatened. The new information provided above does not change the basis for the conclusions of the 1996 Biological Opinion regarding right whales nor does this information change the basis for, or conclusions that, the fishing activities carried out under the American Lobster and Northeast Multispecies FMPs may affect, but are not likely to jeopardize the continued existence of the other endangered and threatened whale and sea turtle species under NMFS jurisdiction.

Public meetings held by the Council to discuss the management measures implemented by this rule provided prior notice and an opportunity for public comment to be heard and considered. The Council considered this action at public meetings on August 21–22, 1996, and October 2, 1996. Therefore, the Assistant Administrator for Fisheries, NOAA (AA), finds cause, under 5 U.S.C. 553(b)(B), to waive the requirement to provide prior notice and an opportunity for public comment as such procedures are unnecessary. The AA finds that under 5 U.S.C. 553(d)(1), the need to have this regulation in place by March 17, 1997, is good cause to waive the 30-day delay in effectiveness of this regulation. Implementation of this regulation by March 17, 1997, will alleviate the increased gear conflicts in Southern New England, while providing enough time to notify fishermen to be prepared for the new requirements.

Because a general notice of proposed rulemaking is not required to be published for this rule by 5 U.S.C. 553 or by any other law, this rule is exempt from the requirement to prepare an initial or final regulatory flexibility analysis under the Regulatory Flexibility Act. As such, none has been prepared.

List of Subjects

50 CFR Part 649

Fisheries.

50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 28, 1997.

Gary Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 648 and 649 are amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.2, definitions for "Beam trawl," "Mobile gear," and "Trawl" are added, in alphabetical order, to read as follows:

§ 648.2 Definitions.

* * * * *

Beam trawl means gear, consisting of a twine bag attached to a beam attached to a towing wire, designed so that the beam does not contact the bottom. The beam is constructed with sinkers or shoes on either side that support the beam above the bottom or any other modification so that the beam does not contact the bottom. The beam trawl is designed to slide along the bottom rather than dredge the bottom.

* * * * *

Mobile gear means trawls, beam trawls, and dredges that are designed to maneuver with that vessel.

* * * * *

Trawl means gear consisting of a net that is towed, including but not limited to beam trawls, pair trawls, otter trawls, and Danish and Scottish seine gear.

* * * * *

3. In § 648.14, paragraphs (a)(97), (a)(98), and (a)(99) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(97) Fish, or be in the areas described in § 648.81(j)(1), (k)(1), (l)(1), and (m)(1) on a fishing vessel with mobile gear during the time periods specified in § 648.81(j)(2), (k)(2), (l)(2), and (m)(2), except as provided in § 648.81(j)(2), (k)(2), (l)(2), and (m)(2).

(98) Fish, or be in the areas described in § 648.81(j)(1), (k)(1), and (l)(1) on a fishing vessel with lobster pot gear during the time periods specified in § 648.81(j)(2), (k)(2), and (l)(2).

(99) Deploy in or fail to remove lobster pot gear from the areas described in § 648.81(j)(1), (k)(1), and (l)(1), during the time periods specified in § 648.81(j)(2), (k)(2), and (l)(2).

* * * * *

4. In § 648.81, paragraphs (j), (k), (l), and (m) are added to read as follows:

§ 648.81 Closed areas.

* * * * *

(j) *Restricted Gear Area I.* (1) Restricted Gear Area I is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
Inshore Boundary		
to 120		
69	40°07.9′ N.	68°36.0′ W.
70	40°07.2′ N.	68°38.4′ W.
71	40°06.9′ N.	68°46.5′ W.
73	40°08.1′ N.	68°51.0′ W.
74	40°05.7′ N.	68°52.4′ W.
75	40°03.6′ N.	68°57.2′ W.
76	40°03.65′ N.	69°00.0′ W.
77	40°04.35′ N.	69°00.5′ W.
78	40°05.2′ N.	69°00.5′ W
79	40°05.3′ N.	69°01.1′ W.
80	40°08.9′ N.	69°01.75′ W.
81	40°11.0′ N.	69°03.8′ W.
82	40°11.6′ N.	69°05.4′ W.
83	40°10.25′ N.	69°04.4′ W.
84	40°09.75′ N.	69°04.15′ W.
85	40°08.45′ N.	69°03.6′ W.
86	40°05.65′ N.	69°03.55′ W.
87	40°04.1′ N.	69°03.9′ W.
88	40°02.65′ N.	69°05.6′ W.
89	40°02.00′ N.	69°08.35′ W.
90	40°02.65′ N.	69°11.15′ W.
91	40°00.05′ N.	69°14.6′ W.
92	39°57.8′ N.	69°20.35′ W.
93	39°56.65′ N.	69°24.4′ W.
94	39°56.1′ N.	69°26.35′ W.
95	39°56.55′ N.	69°34.1′ W.
96	39°57.85′ N.	69°35.5′ W.
97	40°00.65′ N.	69°36.5′ W.
98	40°00.9′ N.	69°37.3′ W.
99	39°59.15′ N.	69°37.3′ W.
100	39°58.8′ N.	69°38.45′ W.
102	39°56.2′ N.	69°40.2″W.
103	39°55.75′ N.	69°41.4′ W.
104	39°56.7′ N.	69°53.6′ W.
105	39°57.55′ N.	69°54.05′ W.
106	39°57.4′ N.	69°55.9′ W.
107	39°56.9′ N.	69°57.45′ W.
108	39°58.25′ N.	70°03.0′ W.
110	39°59.2′ N.	70°04.9′ W.
111	40°00.7′ N.	70°08.7′ W.
112	40°03.75′ N.	70°10.15′ W.
115	40°05.2′ N.	70°10.9′ W.
116	40°02.45′ N.	70°14.1′ W.
119	40°02.75′ N.	70°16.1′ W.
to 181		
Offshore Boundary		
to 69		
120	40°06.4′ N.	68°35.8′ W.
121	40°05.25′ N.	68°39.3′ W.
122	40°05.4′ N.	68°44.5′ W.
123	40°06.0′ N.	68°46.5′ W.
124	40°07.4′ N.	68°49.6′ W.
125	40°05.55′ N.	68°49.8′ W.
126	40°03.9′ N.	68°51.7′ W.
127	40°02.25′ N.	68°55.4′ W.
128	40°02.6′ N.	69°00.0′ W.
129	40°02.75′ N.	69°00.75′ W.
130	40°04.2′ N.	69°01.75′ W.
131	40°06.15′ N.	69°01.95′ W.
132	40°07.25′ N.	69°02.0′ W.
133	40°08.5′ N.	69°02.25′ W.
134	40°09.2′ N.	69°02.95′ W.
135	40°09.75′ N.	69°03.3′ W.
136	40°09.55′ N.	69°03.85′ W.
137	40°08.4′ N.	69°03.4′ W.
138	40°07.2′ N.	69°03.3′ W.
139	40°06.0′ N.	69°03.1′ W.
140	40°05.4′ N.	69°03.05′ W.
141	40°04.8′ N.	69°03.05′ W.
142	40°03.55′ N.	69°03.55′ W.
143	40°01.9′ N.	69°03.95′ W.
144	40°01.0′ N.	69°04.4′ W.
146	39°59.9′ N.	69°06.25′ W.
147	40°00.6′ N.	69°10.05′ W.
148	39°59.25′ N.	69°11.15′ W.
149	39°57.45′ N.	69°16.05′ W.
150	39°56.1′ N.	69°20.1′ W.
151	39°54.6′ N.	69°25.65′ W.
152	39°54.65′ N.	69°26.9′ W.
153	39°54.8′ N.	69°30.95′ W.
154	39°54.35′ N.	69°33.4′ W.
155	39°55.0′ N.	69°34.9′ W.
156	39°56.55′ N.	69°36.0′ W.
157	39°57.95′ N.	69°36.45′ W.
158	39°58.75′ N.	69°36.3′ W.
159	39°58.8′ N.	69°36.95′ W.
160	39°57.95′ N.	69°38.1′ W.
161	39°54.5′ N.	69°38.25′ W.
162	39°53.6′ N.	69°46.5′ W.
163	39°54.7′ N.	69°50.0′ W.
164	39°55.25′ N.	69°51.4′ W.
165	39°55.2′ N.	69°53.1′ W.
166	39°54.85′ N.	69°53.9′ W.
167	39°55.7′ N.	69°54.9′ W.
168	39°56.15′ N.	69°55.35′ W.
169	39°56.05′ N.	69°56.25′ W.
170	39°55.3′ N.	69°57.1′ W.
171	39°54.8′ N.	69°58.6′ W.
172	39°56.05′ N.	70°00.65′ W.
173	39°55.3′ N.	70°02.95′ W.
174	39°56.9′ N.	70°11.3′ W.
175	39°58.9′ N.	70°11.5′ W.
176	39°59.6′ N.	70°11.1′ W.
177	40°01.35′ N.	70°11.2′ W.
178	40°02.6′ N.	70°12.0′ W.
179	40°00.4′ N.	70°12.3′ W.
180	39°59.75′ N.	70°13.05′ W.
181	39°59.3′ N.	70°14.0′ W.
to 119		

(2) *Duration.* (i) *Mobile gear.* From October 1 through June 15, no fishing vessel with mobile gear or person on a fishing vessel with mobile gear may fish, or be in Restricted Gear Area I unless transiting. Vessels may transit this area provided that mobile gear is on board the vessel while inside the area.

(ii) *Lobster pot gear.* From June 16 through September 30, no fishing vessel with lobster pot gear or person on a fishing vessel with lobster pot gear may fish, and no lobster pot gear may be deployed or remain, in Restricted Gear Area I.

(k) *Restricted Gear Area II.* (1) Restricted Gear Area II is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
Inshore Boundary		
to 1		
49.	40°02.75′ N.	70°16.1′ W.
50.	40°00.7′ N.	70°18.6′ W.
51.	39°59.8′ N.	70°21.75′ W.
52.	39°59.75′ N.	70°25.5′ W.
53.	40°03.85′ N.	70°28.75′ W.
54.	40°00.55′ N.	70°32.1′ W.
55.	39°59.15′ N.	70°34.45′ W.
56.	39°58.9′ N.	70°38.65′ W.
57.	40°00.1′ N.	70°45.1′ W.
58.	40°00.5′ N.	70°57.6′ W.
59.	40°02.0′ N.	71°01.3′ W.
60.	39°59.3′ N.	71°18.4′ W.
61.	40°00.7′ N.	71°19.8′ W.
62.	39°57.5′ N.	71°20.6′ W.
63.	39°53.1′ N.	71°36.1′ W.
64.	39°52.6′ N.	71°40.35′ W.
65.	39°53.1′ N.	71°42.7′ W.
66.	39°46.95′ N.	71°49.0′ W.
67.	39°41.15′ N.	71°57.1′ W.
68.	39°35.45′ N.	72°02.0′ W.
69.	39°32.65′ N.	72°06.1′ W.
70.	39°29.75′ N.	72°09.8′ W.
to 48		
Offshore Boundary		
to 49		
1.	39°59.3′ N.	70°14.0′ W.
2.	39°58.85′ N.	70°15.2′ W.
3.	39°59.3′ N.	70°18.4′ W.
4.	39°58.1′ N.	70°19.4′ W.
5.	39°57.0′ N.	70°19.85′ W.
6.	39°57.55′ N.	70°21.25′ W.
7.	39°57.5′ N.	70°22.8′ W.
8.	39°57.1′ N.	70°25.4′ W.
9.	39°57.65′ N.	70°27.05′ W.
10.	39°58.58′ N.	70°27.7′ W.
11.	40°00.65′ N.	70°28.8′ W.
12.	40°02.2′ N.	70°29.15′ W.
13.	40°01.0′ N.	70°30.2′ W.
14.	39°58.58′ N.	70°31.85′ W.
15.	39°57.05′ N.	70°34.35′ W.
16.	39°56.42′ N.	70°36.8′ W.
21.	39°58.15′ N.	70°48.0′ W.
24.	39°58.3′ N.	70°51.1′ W.
25.	39°58.1′ N.	70°52.25′ W.
26.	39°58.05′ N.	70°53.55′ W.
27.	39°58.4′ N.	70°59.6′ W.
28.	39°59.8′ N.	71°01.05′ W.
29.	39°58.2′ N.	71° 05.85′ W.
30.	39°57.45′ N.	71°12.15′ W.
31.	39°57.2′ N.	71°15.0′ W.
32.	39°56.3′ N.	71°18.95′ W.
33.	39°51.4′ N.	71°36.1′ W.
34.	39°51.75′ N.	71°41.5′ W.
35.	39°50.05′ N.	71°42.5′ W.
36.	39°50.0′ N.	71°45.0′ W.
37.	39°48.95′ N.	71°46.05′ W.
38.	39°46.6′ N.	71°46.1′ W.
39.	39°43.5′ N.	71°49.4′ W.
40.	39°41.3′ N.	71°55.0′ W.
41.	39°39.0′ N.	71°55.6′ W.
42.	39°36.72′ N.	71°58.25′ W.
43.	39°35.15′ N.	71°58.55′ W.
44.	39°34.5′ N.	72°00.75′ W.
45.	39°32.2′ N.	72°02.25′ W.
46.	39°32.15′ N.	72°04.1′ W.
47.	39°28.5′ N.	72°06.5′ W.
48.	39°29.0′ N.	72°09.25′ W. to 70

(2) *Duration.* (i) *Mobile Gear.* From November 27 through June 15, no fishing vessel with mobile gear or person on a fishing vessel with mobile gear may fish, or be in Restricted Gear Area II unless transiting. Vessels may transit this area provided that all mobile gear is on board the vessel while inside the area.

(ii) *Lobster pot gear.* From June 16 through November 26, no fishing vessel with lobster pot gear or person on a fishing vessel with lobster pot gear may fish, and no lobster pot gear may be deployed or remain, in Restricted Gear Area II.

(l) *Restricted Gear Area III.* (1) Restricted Gear Area III is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
Inshore Boundary		
to 49		
182	40°05.6′ N.	70°17.7′ W.
183	40°06.5′ N.	70°40.05′ W.
184	40°11.05′ N.	70°45.8′ W.
185	40°12.75′ N.	70°55.05′ W.
186	40°10.7′ N.	71°10.25′ W.
187	39°57.9′ N.	71°28.7′ W.
188	39°55.6′ N.	71°41.2′ W.
189	39°55.85′ N.	71°45.0′ W.
190	39°53.75′ N.	71°52.25′ W.
191	39°47.2′ N.	72°01.6′ W.
192	39°33.65′ N.	72°15.0′ W.
to 70		
Offshore Boundary		
to 182		
49	40°02.75′ N.	70°16.1′ W.
50	40°00.7′ N.	70°18.6′ W.
51	39°59.8′ N.	70°21.75′ W.
52	39°59.75′ N.	70°25.5′ W.
53	40°03.85′ N.	70°28.75′ W.
54	40°00.55′ N.	70°32.1′ W.
55	39°59.15′ N.	70°34.45′ W.
56	39°58.9′ N.	70°38.65′ W.

Point	Latitude	Longitude
57	40°00.1′ N.	70°45.1′ W.
58	40°00.5′ N.	70°57.6′ W.
59	40°02.0′ N.	71°01.3′ W.
60	39°59.3′ N.	71°18.4′ W.
61	40°00.7′ N.	71°19.8′ W.
62	39°57.5′ N.	71°20.6′ W.
63	39°53.1′ N.	71°36.1′ W.
64	39°52.6′ N.	71°40.35′ W.
65	39°53.1′ N.	71°42.7′ W.
66	39°46.95′ N.	71°49.0′ W.
67	39°41.15′ N.	71°57.1′ W.
68	39°35.45′ N.	72°02.0′ W.
69	39°32.65′ N.	72°06.1′ W.
70	39°29.75′ N.	72°09.8′ W.
to 48		
Offshore Boundary		
to 49		
1	39°59.3′ N.	70°14.0′ W.
2	39°58.85′ N.	70°15.2′ W.
3	39°59.3′ N.	70°18.4′ W.
4	39°58.1′ N.	70°19.4′ W.
5	39°57.0′ N.	70°19.85′ W.
6	39°57.55′ N.	70°21.25′ W.
7	39°57.5′ N.	70°22.8′ W.
8	39°57.1′ N.	70°25.4′ W.
9	39°57.65′ N.	70°27.05′ W.
10	39°58.58′ N.	70°27.7′ W.
11	40°00.65′ N.	70°28.8′ W.
12	40°02.2′ N.	70°29.15′ W.
13	40°01.0′ N.	70°30.2′ W.
14	39°58.58′ N.	70°31.85′ W.
15	39°57.05′ N.	70°34.35′ W.
16	39°56.42′ N.	70°36.8′ W.
21	39°58.15′ N.	70°48.0′ W.
24	39°58.3′ N.	70°51.1′ W.
25	39°58.1′ N.	70°52.25′ W.
26	39°58.05′ N.	70°53.55′ W.
27	39°58.4′ N.	70°59.6′ W.
28	39°59.8′ N.	71°01.05′ W.
29	39°58.2′ N.	71° 05.85′ W.
30	39°57.45′ N.	71°12.15′ W.
31	39°57.2′ N.	71°15.0′ W.
32	39°56.3′ N.	71°18.95′ W.
33	39°51.4′ N.	71°36.1′ W.
34	39°51.75′ N.	71°41.5′ W.
35	39°50.05′ N.	71°42.5′ W.
36	39°50.0′ N.	71°45.0′ W.
37	39°48.95′ N.	71°46.05′ W.
38	39°46.6′ N.	71°46.1′ W.
39	39°43.5′ N.	71°49.4′ W.
40	39°41.3′ N.	71°55.0′ W.
41	39°39.0′ N.	71°55.6′ W.
42	39°36.72′ N.	71°58.25′ W.
43	39°35.15′ N.	71°58.55′ W.
44	39°34.5′ N.	72°00.75′ W.
45	39°32.2′ N.	72°02.25′ W.
46	39°32.15′ N.	72°04.1′ W.
47	39°28.5′ N.	72°06.5′ W.
48	39°29.0′ N.	72°09.25′ W. to 70

Point	Latitude	Longitude
Inshore Boundary		
to 49		
182	40°05.6′ N.	70°17.7′ W.
183	40°06.5′ N.	70°40.05′ W.
184	40°11.05′ N.	70°45.8′ W.
185	40°12.75′ N.	70°55.05′ W.
186	40°10.7′ N.	71°10.25′ W.
187	39°57.9′ N.	71°28.7′ W.
188	39°55.6′ N.	71°41.2′ W.
189	39°55.85′ N.	71°45.0′ W.
190	39°53.75′ N.	71°52.25′ W.
191	39°47.2′ N.	72°01.6′ W.
192	39°33.65′ N.	72°15.0′ W.
to 70		
Offshore Boundary		
to 182		
49	40°02.75′ N.	70°16.1′ W.
50	40°00.7′ N.	70°18.6′ W.
51	39°59.8′ N.	70°21.75′ W.
52	39°59.75′ N.	70°25.5′ W.
53	40°03.85′ N.	70°28.75′ W.
54	40°00.55′ N.	70°32.1′ W.
55	39°59.15′ N.	70°34.45′ W.
56	39°58.9′ N.	70°38.65′ W.

Point	Latitude	Longitude
57	40°00.1′ N.	70°45.1′ W.
58	40°00.5′ N.	70°57.6′ W.
59	40°02.0′ N.	71°01.3′ W.
60	39°59.3′ N.	71°18.4′ W.
61	40°00.7′ N.	71°19.8′ W.
62	39°57.5′ N.	71°20.6′ W.
63	39°53.1′ N.	71°36.1′ W.
64	39°52.6′ N.	71°40.35′ W.
65	39°53.1′ N.	71°42.7′ W.
66	39°46.95′ N.	71°49.0′ W.
67	39°41.15′ N.	71°57.1′ W.
68	39°35.45′ N.	72°02.0′ W.
69	39°32.65′ N.	72°06.1′ W.
70	39°29.75′ N.	72°09.8′ W.
to 192		

(2) *Duration.* (i) *Mobile gear.* From June 16 through November 26, no fishing vessel with mobile gear or person on a fishing vessel with mobile gear may fish, or be in Restricted Gear Area III unless transiting.
Vessels may transit this area provided that all mobile gear is on board the vessel while inside the area.

(ii) *Lobster pot gear.*
From January 1 through April 30, no fishing vessel with lobster pot gear or person on a fishing vessel with lobster pot gear may fish, and no lobster pot gear may be deployed or remain, in Restricted Gear Area III.

(m) *Restricted Gear Area IV.* (1) Restricted Gear Area IV is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
Inshore Boundary		
193	40°13.60′ N.	68°40.60′ W.
194	40°11.60′ N.	68°53.00′ W.
195	40°14.00′ N.	69°04.70′ W.
196	40°14.30′ N.	69°05.80′ W.
197	40°05.50′ N.	69°09.00′ W.
198	39°57.30′ N.	69°25.10′ W.
199	40°00.40′ N.	69°35.20′ W.
200	40°01.70′ N.	69°35.40′ W.
201	40°01.70′ N.	69°37.40′ W.
202	40°00.50′ N.	69°38.80′ W.
203	40°01.30′ N.	69°45.00′ W.
204	40°02.10′ N.	69°45.00′ W.
205	40°07.60′ N.	70°04.50′ W.
206	40°07.80′ N.	70°09.20′ W.
to 119		
Offshore Boundary		
69	40°07.90′ N.	68°36.00′ W.
70	40°07.20′ N.	68°38.40′ W.
71	40°06.90′ N.	68°46.50′ W.
72	40°08.70′ N.	68°49.60′ W.
73	40°08.10′ N.	68°51.00′ W.
74	40°05.70′ N.	68°52.40′ W.
75	40°03.60′ N.	68°57.20′ W.
76	40°03.65′ N.	69°00.00′ W.
77	40°04.35′ N.	69°00.50′ W.
78	40°05.20′ N.	69°00.50′ W.
79	40°05.30′ N.	69°01.10′ W.
80	40°08.90′ N.	69°01.75′ W.
81	40°11.00′ N.	69°03.80′ W.
82	40°11.60′ N.	69°05.40′ W.
83	40°10.25′ N.	69°04.40′ W.
84	40°09.75′ N.	69°04.15′ W.
85	40°08.45′ N.	69°03.60′ W.
86	40°05.65′ N.	69°03.55′ W.
87	40°04.10′ N.	69°03.90′ W.
88	40°02.65′ N.	69°05.60′ W.
89	40°02.00′ N.	69°08.35′ W.
90	40°02.65′ N.	69°11.15′ W.
91	40°00.05′ N.	69°14.60′ W.
92	39°57.80′ N.	69°20.35′ W.
93	39.56.75′ N.	69°24.40′ W.
94	39°56.50′ N.	69°26.35′ W.
95	39.56.80′ N.	69°34.10′ W.
96	39°57.85′ N.	69°35.05′ W.
97	40°00.65′ N.	69°36.50′ W.
98	40°00.90′ N.	69°37.30′ W.
99	39°59.15′ N.	69°37.30′ W.
100	39°58.80′ N.	69°38.45′ W.
102	39°56.20′ N.	69°40.20′ W.
103	39°55.75′ N.	69°41.40′ W.
104	39°56.70′ N.	69°53.60′ W.
105	39°57.55′ N.	69°54.05′ W.
106	39°57.40′ N.	69°55.90′ W.
107	39°56.90′ N.	69°57.45′ W.
108	39°58.25′ N.	70°03.00′ W.
110	39°59.20′ N.	70°04.90′ W.
111	40°00.70′ N.	70°08.70′ W.
112	40°03.75′ N.	70°10.15′ W.
115	40°05.20′ N.	70°10.90′ W.
116	40°02.45′ N.	70°14.1′ W.
119	40°02.75′ N.	70°16.1′ W.
to 206		

(2) *Duration.* (i) *Mobile gear.* From June 16 through September 30, no fishing vessel with mobile gear or person on a fishing vessel with mobile gear may fish, or be in Restricted Gear Area IV unless transiting.
Vessels may transit this area provided that all mobile gear is on board the vessel while inside the area.

PART 649—AMERICAN LOBSTER FISHERY

5. The authority citation for part 649 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

6. In § 649.2, definitions for "Beam trawl," "Mobile gear," and "Trawl" are added, in alphabetical order, to read as follows:

§ 649.2 Definitions.

* * * * *

Beam trawl means gear, consisting of a twine bag attached to a beam attached to a towing wire, designed so that the beam does not contact the bottom. The beam is constructed with sinkers or shoes on either side that support the beam above the bottom or any other modification so that the beam does not contact the bottom. The beam trawl is designed to slide along the bottom rather than dredge the bottom.

* * * * *

Mobile gear means trawls, beam trawls, and dredges that are designed to maneuver with that vessel.

* * * * *

Trawl means gear consisting of a net that is towed, including but not limited to beam trawls, pair trawls, otter trawls, and Danish and Scottish seine gear.

* * * * *

7. In § 649.8, paragraphs (c)(11), (c)(12), and (c)(13) are added to read as follows:

§ 649.8 Prohibitions.

* * * * *

(c) * * *

(11) Fish, or be in the areas described in § 649.23(a)(1), (b)(1), (c)(1), and (d)(1) on a fishing vessel with mobile gear during the time periods specified in § 649.23(a)(2), (b)(2), (c)(2), and (d)(2), except as provided in § 649.23(a)(2), (b)(2), (c)(2), and (d)(2).

(12) Fish, or be in the areas described in § 649.23(a)(1), (b)(1), and (c)(1) on a fishing vessel with lobster pot gear during the time periods specified in § 649.23(a)(2), (b)(2), and (c)(2).

(13) Deploy or fail to remove lobster pot gear in the areas described in § 649.23(a)(1), (b)(1), and (c)(1) during the time periods specified in § 649.23(a)(2), (b)(2), and (c)(2).

* * * * *

8. Section 649.23 is added to Subpart B to read as follows:

§ 649.23 Restricted gear areas.

(a) *Restricted Gear Area I.* (1) Restricted Gear Area I is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
Inshore Boundary		
to 120		
69	40°07.9′ N.	68°36.0′ W.
70	40°07.2′ N.	68°38.4′ W.
71	40°06.9′ N.	68°46.5′ W.
72	40°08.7′ N.	68°49.6′ W.
73	40°08.1′ N.	68°51.0′ W.
74	40°05.7′ N.	68°52.4′ W.
75	40°03.6′ N.	68°57.2′ W.
76	40°03.65′ N.	69°00.0′ W.
77	40°04.35′ N.	69°00.5′ W.
78	40°05.2′ N.	69°00.5′ W.
79	40°05.3′ N.	69°01.1′ W.
80	40°08.9′ N.	69°01.75′ W.
81	40°11.0′ N.	69°03.8′ W.
82	40°11.6′ N.	69°05.4′ W.
83	40°10.25′ N.	69°04.4′ W.
84	40°09.75′ N.	69°04.15′ W.
85	40°08.45′ N.	69°03.6′ W.
86	40°05.65′ N.	69°03.55′ W.
87	40°04.1′ N.	69°03.9′ W.
88	40°02.65′ N.	69°05.6′ W.
89	40°02.00′ N.	69°08.35′ W.
90	40°02.65′ N.	69°11.15′ W.
91	40°00.05′ N.	69°14.6′ W.

Point	Latitude	Longitude
92	39°57.8′ N.	69°20.35′ W.
93	39°56.65′ N.	69°24.4′ W.
94	39°56.1′ N.	69°26.35′ W.
95	39°56.55′ N.	69°34.1′ W.
96	39°57.85′ N.	69°35.5′ W.
97	40°00.65′ N.	69°36.5′ W.
98	40°00.9′ N.	69°37.3′ W.
99	39°59.15′ N.	69°37.3′ W.
100	39°58.8′ N.	69°38.45′ W.
102	39°56.2′ N.	69°40.2′ W.
103	39°55.75′ N.	69°41.4′ W.
104	39°56.7′ N.	69°53.6′ W.
105	39°57.55′ N.	69°54.05′ W.
106	39°57.4′ N.	69°55.9′ W.
107	39°56.9′ N.	69°57.45′ W.
108	39°58.25′ N.	70°03.0′ W.
110	39°59.2′ N.	70°04.9′ W.
111	40°00.7′ N.	70°08.7′ W.
112	40°03.75′ N.	70°10.15′ W.
115	40°05.2′ N.	70°10.9′ W.
116	40°02.45′ N.	70°14.1′ W.
119	40°02.75′ N.	70°16.1′ W.
to 181		
Offshore Boundary		
to 69		
120	40°06.4′ N.	68°35.8′ W.
121	40°05.25′ N.	68°39.3′ W.
122	40°05.4′ N.	68°44.5′ W.
123	40°06.0′ N.	68°46.5′ W.
124	40°07.4′ N.	68°49.6′ W.
125	40°05.55′ N.	68°49.8′ W.
126	40°03.9′ N.	68°51.7′ W.
127	40°02.25′ N.	68°55.4′ W.
128	40°02.6′ N.	69°00.0′ W.
129	40°02.75′ N.	69°00.75′ W.
130	40°04.2′ N.	69°01.75′ W.
131	40°06.15′ N.	69°01.95′ W.
132	40°07.25′ N.	69°02.0′ W.
133	40°08.5′ N.	69°02.25′ W.
134	40°09.2′ N.	69°02.95′ W.
135	40°09.75′ N.	69°03.3′ W.
136	40°09.55′ N.	69°03.85′ W.
137	40°08.4′ N.	69°03.4′ W.
138	40°07.2′ N.	69°03.3′ W.
139	40°06.0′ N.	69°03.1′ W.
140	40°05.4′ N.	69°03.05′ W.
141	40°04.8′ N.	69°03.05′ W.
142	40°03.55′ N.	69°03.55′ W.
143	40°01.9′ N.	69°03.95′ W.
144	40°01.0′ N.	69°04.4′ W.
146	39°59.9′ N.	69°06.25′ W.
147	40°00.6′ N.	69°10.05′ W.
148	39°59.25′ N.	69°11.15′ W.
149	39°57.45′ N.	69°16.05′ W.
150	39°56.1′ N.	69°20.1′ W.
151	39°54.6′ N.	69°25.65′ W.
152	39°54.65′ N.	69°26.9′ W.
153	39°54.8′ N.	69°30.95′ W.
154	39°54.35′ N.	69°33.4′ W.
155	39°55.0′ N.	69°34.9′ W.
156	39°56.55′ N.	69°36.0′ W.
157	39°57.95′ N.	69°36.45′ W.
158	39°58.75′ N.	69°36.3′ W.
159	39°58.8′ N.	69°36.95′ W.
160	39°57.95′ N.	69°38.1′ W.
161	39°54.5′ N.	69°38.25′ W.
162	39°53.6′ N.	69°46.5′ W.
163	39°54.7′ N.	69°50.0′ W.
164	39°55.25′ N.	69°51.4′ W.
165	39°55.2′ N.	69°53.1′ W.
166	39°54.85′ N.	69°53.9′ W.
167	39°55.7′ N.	69°54.9′ W.
168	39°56.15′ N.	69°55.35′ W.
169	39°56.05′ N.	69°56.25′ W.
170	39°55.3′ N.	69°57.1′ W.
171	39°54.8′ N.	69°58.6′ W.
172	39°56.05′ N.	70°00.65′ W.
173	39°55.3′ N.	70°02.95′ W.
174	39°56.9′ N.	70°11.3′ W.
175	39°58.9′ N.	70°11.5′ W.
176	39°59.6′ N.	70°11.1′ W.
177	40°01.35′ N.	70°11.2′ W.
178	40°02.6′ N.	70°12.0′ W.
179	40°00.4′ N.	70°12.3′ W.
180	39°59.75′ N.	70°13.05′ W.
181	39°59.3′ N.	70°14.0′ W.
to 119		

(2) *Duration*—(i) *Mobile Gear.* From October 1 through June 15, no fishing vessel with mobile gear or person on a fishing vessel with mobile gear may fish, or be in Restricted Gear Area I unless transiting. Vessels may transit this area provided that all mobile gear is on board the vessel while inside the area.

(ii) *Lobster pot gear.* From June 16 through September 30, no fishing vessel with lobster pot gear or person on a fishing vessel with lobster pot gear may fish, and no lobster pot gear may be deployed or remain, in Restricted Gear Area I.

(b) *Restricted Gear Area II.* (1) Restricted Gear Area II is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
Inshore Boundary		
to 1		
49	40°02.75′ N.	70°16.1′ W.
50	40°00.7′ N.	70°18.6′ W.
51	39°59.8′ N.	70°21.75′ W.
52	39°59.75′ N.	70°25.5′ W.
53	40°03.85′ N.	70°28.75′ W.
54	40°00.55′ N.	70°32.1′ W.
55	39°59.15′ N.	70°34.45′ W.
56	39°58.9′ N.	70°38.65′ W.
57	40°00.1′ N.	70°45.1′ W.
58	40°00.5′ N.	70°57.6′ W.
59	40°02.0′ N.	71°01.3′ W.
60	39°59.3′ N.	71°18.4′ W.
61	40°00.7′ N.	71°19.8′ W.
62	39°57.5′ N.	71°20.6′ W.
63	39°53.1′ N.	71°36.1′ W.
64	39°52.6′ N.	71°40.35′ W.
65	39°53.1′ N.	71°42.7′ W.
66	39°46.95′ N.	71°49.0′ W.
67	39°41.15′ N.	71°57.1′ W.
68	39°35.45′ N.	72°02.0′ W.
69	39°32.65′ N.	72°06.1′ W.
70	39°29.75′ N.	72°09.8′ W.
to 48		
Offshore Boundary		
to 49		
1	39°59.3′ N.	70°14.0′ W.
2	39°58.85′ N.	70°15.2′ W.
3	39°59.3′ N.	70°18.4′ W.
4	39°58.1′ N.	70°19.4′ W.
5	39°57.0′ N.	70°19.85′ W.
6	39°57.55′ N.	70°21.25′ W.
7	39°57.5′ N.	70°22.8′ W.
8	39°57.1′ N.	70°25.4′ W.
9	39°57.65′ N.	70°27.05′ W.
10	39°58.58′ N.	70°27.7′ W.
11	40°00.65′ N.	70°28.8′ W.
12	40°02.2′ N.	70°29.15′ W.
13	40°01.0′ N.	70°30.2′ W.
14	39°58.58′ N.	70°31.85′ W.
15	39°57.05′ N.	70°34.35′ W.
16	39°56.42′ N.	70°36.8′ W.
21	39°58.15′ N.	70°48.0′ W.
24	39°58.3′ N.	70°51.1′ W.
25	39°58.1′ N.	70°52.25′ W.
26	39°58.05′ N.	70°53.55′ W.
27	39°58.4′ N.	70°59.6′ W.
28	39°59.8′ N.	71°01.05′ W.
29	39°58.2′ N.	71°05.85′ W.
30	39°57.45′ N.	71°12.15′ W.
31	39°57.2′ N.	71°15.0′ W.
32	39°56.3′ N.	71°18.95′ W.
33	39°51.4′ N.	71°36.1′ W.
34	39°51.75′ N.	71°41.5′ W.
35	39°50.05′ N.	71°42.5′ W.
36	39°50.0′ N.	71°45.0′ W.
37	39°48.95′ N.	71°46.05′ W.
38	39°46.8′ N.	71°46.1′ W.
39	39°43.5′ N.	71°49.4′ W.
40	39°41.3′ N.	71°55.0′ W.
41	39°39.0′ N.	71°55.6′ W.
42	39°36.72′ N.	71°58.25′ W.
43	39°35.15′ N.	71°58.55′ W.
44	39°34.5′ N.	72°00.75′ W.
45	39°32.2′ N.	72°02.25′ W.
46	39°32.15′ N.	72°04.1′ W.
47	39°28.5′ N.	72°06.5′ W.
48	39°29.0′ N.	72°09.25′ W.
to 70		

(2) *Duration*—(i) *Mobile Gear.* From November 27 through June 15, no fishing vessel with mobile gear or person on a fishing vessel with mobile gear may fish, or be in Restricted Gear Area II unless transiting Vessels may transit this area provided that all mobile gear is on board the vessel while inside the area.

(ii) *Lobster pot gear.* From June 16 through November 26, no fishing vessel with lobster pot gear or person on a fishing vessel with lobster pot gear may fish, and no lobster pot gear may be deployed or remain, in Restricted Gear Area II.

(c) *Restricted Gear Area III.* (1) Restricted Gear Area III is defined by straight lines connecting the following points in the order stated, except as specified in paragraph (c)(3) of this section:

Point	Latitude	Longitude
Inshore Boundary		
to 49		
182	40°05.6′ N.	70°17.7′ W.
183	40°06.5′ N.	70°40.05′ W.

Point	Latitude	Longitude
184	40°11.05′ N.	70°45.8′ W.
185	40°12.75′ N.	70°55.05′ W.
186	40°10.7′ N.	71°10.25′ W.
187	39°57.9′ N.	71°28.7′ W.
188	39°55.6′ N.	71°41.2′ W.
189	39°55.85′ N.	71°45.0′ W.
190	39°53.75′ N.	71°52.25′ W.
191	39°47.2′ N.	72°01.6′ W.
192	39°33.65′ N.	72°15.0′ W.
to 70		
Offshore Boundary		
to 182		
49	40°02.75′ N.	70°16.1′ W.
50	40°00.7′ N.	70°18.6′ W.
51	39°59.8′ N.	70°21.75′ W.
52	39°59.75′ N.	70°25.5′ W.
53	40°03.85′ N.	70°28.75′ W.
54	40°00.55′ N.	70°32.1′ W.
55	39°59.15′ N.	70°34.45′ W.
56	39°58.9′ N.	70°38.65′ W.
57	40°00.1′ N.	70°45.1′ W.
58	40°00.5′ N.	70°57.6′ W.
59	40°02.0′ N.	71°01.3′ W.
60	39°59.3′ N.	71°18.4′ W.
61	40°00.7′ N.	71°19.8′ W.
62	39°57.5′ N.	71°20.6′ W.
63	39°53.1′ N.	71°36.1′ W.
64	39°52.6′ N.	71°40.35′ W.
65	39°53.1′ N.	71°42.7′ W.
66	39°46.95′ N.	71°49.0′ W.
67	39°41.15′ N.	71°57.1′ W.
68	39°35.45′ N.	72°02.0′ W.
69	39°32.65′ N.	72°06.1′ W.
70	39°29.75′ N.	72°09.8′ W.
to 192		

(2) *Duration*—(i) *Mobile Gear.* From June 16 through November 26, no fishing vessel with mobile gear or person on a fishing vessel with mobile gear may fish, or be in Restricted Gear Area III unless transiting. Vessels may transit this area provided that all mobile gear is on board the vessel while inside the area.

(ii) *Lobster pot gear.* From January 1 through April 30, no fishing vessel with lobster pot gear or person on a fishing vessel with lobster pot gear may fish, and no lobster pot gear may be deployed or remain, in Restricted Gear Area III.

(d) *Restricted Gear Area IV.* (1) Restricted Gear Area IV is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
Inshore Boundary		
193	40°13.60′ N.	68°40.60′ W.
194	40°11.60′ N.	68°53.00′ W.
195	40°14.00′ N.	69°04.70′ W.
196	40°14.30′ N.	69°05.80′ W.
197	40°05.50′ N.	69°09.00′ W.
198	39°57.30′ N.	69°25.10′ W.
199	40°00.40′ N.	69°35.20′ W.
200	40°01.70′ N.	69°35.40′ W.
201	40°01.70′ N.	69°37.40′ W.
202	40°00.50′ N.	69°38.80′ W.
203	40°01.30′ N.	69°45.00′ W.
204	40°02.10′ N.	69°45.00′ W.
205	40°07.60′ N.	70°04.50′ W.
206	40°07.80′ N.	70°09.20′ W.
to 119		
Offshore Boundary		
to 193		
69	40°07.90′ N.	68°36.00′ W.
70	40°07.20′ N.	68°38.40′ W.
71	40°06.90′ N.	68°46.50′ W.
72	40°08.70′ N.	68°49.60′ W.
73	40°08.10′ N.	68°51.00′ W.
74	40°05.70′ N.	68°52.40′ W.
75	40°03.60′ N.	68°57.20′ W.
76	40°03.65′ N.	69°00.00′ W.
77	40°04.35′ N.	69°00.50′ W.
78	40°05.20′ N.	69°00.50′ W.
79	40°05.30′ N.	69°01.10′ W.
80	40°08.90′ N.	69°01.75′ W.
81	40°11.00′ N.	69°03.80′ W.
82	40°11.60′ N.	69°05.40′ W.
83	40°10.25′ N.	69°04.40′ W.
84	40°09.75′ N.	69°04.15′ W.
85	40°08.45′ N.	69°03.60′ W.
86	40°05.65′ N.	69°03.55′ W.
87	40°04.10′ N.	69°03.90′ W.
88	40°02.65′ N.	69°05.60′ W.
89	40°02.00′ N.	69°08.35′ W.
90	40°02.65′ N.	69°11.15′ W.
91	40°00.05′ N.	69°14.60′ W.
92	39°57.80′ N.	69°20.35′ W.
93	39.56.75′ N.	69°24.40′ W.
94	39°56.50′ N.	69°26.35′ W.
95	39.56.80′ N.	69°34.10′ W.
96	39°57.85′ N.	69°35.05′ W.
97	40°00.65′ N.	69°36.50′ W.
98	40°00.90′ N.	69°37.30′ W.
99	39°59.15′ N.	69°37.30′ W.
100	39°58.80′ N.	69°38.45′ W.
102	39°56.20′ N.	69°40.20′ W.
103	39°55.75′ N.	69°41.40′ W.
104	39°56.70′ N.	69°53.60′ W.
105	39°57.55′ N.	69°54.05′ W.
106	39°57.40′ N.	69°55.90′ W.
107	39°56.90′ N.	69°57.45′ W.
108	39°58.25′ N.	70°03.00′ W.
110	39°59.20′ N.	70°04.90′ W.
111	40°00.70′ N.	70°08.70′ W.
112	40°03.75′ N.	70°10.15′ W.
115	40°05.20′ N.	70°10.90′ W.
116	40°02.45′ N.	70°14.1′ W.
119	40°02.75′ N.	70°16.1′ W.
to 206		

(2) *Duration*—(i) *Mobile Gear.* From June 16 through September 30, no fishing vessel with mobile gear or person on a fishing vessel with mobile gear may fish, or be in Restricted Gear Area IV unless transiting. Vessels may transit this area provided that all mobile gear is on board the vessel while inside the area.

[FR Doc. 97–5478 Filed 3–5–97; 10:22 am]

BILLING CODE 3510–22–P

50 CFR Part 679

[Docket No. 961107312–7021–02; I.D. 030497A]

Fisheries of the Exclusive Economic Zone Off Alaska; Inshore Component Pollock in the Aleutian Islands Subarea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason adjustment; request for comments.

SUMMARY: NMFS issues an inseason adjustment closing directed fishing for pollock by vessels catching pollock for processing by the inshore component in the Aleutian Islands subarea (AI) of the Bering Sea and Aleutian Islands management area (BSAI). An adjustment to the normal time of closure is necessary to prevent the underharvest of pollock by vessels catching pollock for processing by the inshore component in the AI of the BSAI.

DATES: 2400 hrs, Alaska local time (A.l.t.), March 4, 1997, until 2400 hrs, A.l.t., December 31, 1997. Comments must be received no later than 1630 hrs, A.l.t., March 19, 1997 (see **ADDRESSES**).

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn. Lori Gravel, or be delivered to the fourth floor of the Federal Building, 709 West 9th Street, Juneau, AK.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(c)(3)(iii), the allocation of the poilock total allowable catch for vessels catching pollock for processing by the inshore component in the AI was established by the Final 1997 Harvest Specifications for Groundfish of the BSAI (62 FR 7168, February 18, 1997) as 9,065 metric tons (mt).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the allocation of the pollock total allowable catch for vessels catching pollock for processing by the inshore component in the AI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 8,565 mt, and is setting aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the inshore component in the AI.

Current information shows the catching capacity of vessels catching pollock for processing by the inshore component is in excess of 1,400 mt per day.

Section 679.23(b) specifies that the time of all openings and closures of fishing seasons other than the beginning and end of the calendar fishing year is 1200 hrs, A.l.t. The Regional Administrator has determined that the remaining portion of the allocation to the inshore component would be underharvested if a 1200 hrs closure were allowed to occur.

In accordance with § 679.25(a)(1)(i), NMFS is adjusting the season for pollock by vessels catching pollock for processing by the inshore component in the AI subarea of the BSAI by closing directed fishing at 2400 hrs, A.l.t., March 4, 1997. NMFS is taking this action to prevent the underharvest of the pollock allocation to vessels catching pollock for processing by the inshore component in the AI of the BSAI as authorized by § 679.25(a)(2)(i)(C). In accordance with § 679.25(a)(2)(iii), NMFS has determined that closing the season at 2400 hrs, A.l.t., on March 4, 1997, is the least restrictive management adjustment to harvest the pollock allocated to vessels catching pollock for processing by the inshore component in the AI of the BSAI and will allow other fisheries to continue in noncritical areas and time periods.

The Assistant Administrator for Fisheries, NOAA, finds for good cause that providing prior notice and public comment or delaying the effective date of this action is impracticable and contrary to the public interest. Without this inseason adjustment, the pollock allocation for vessels catching pollock for processing by the inshore component in the AI of the BSAI would be underharvested, resulting in an economic loss of more than 600,000 dollars. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until March 19, 1997.

Classification

This action is required by § 679.25 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 4, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–5764 Filed 3–4–97; 4:43 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register

Vol. 62, No. 46

Monday, March 10, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–CE–17–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Britten-Norman Ltd. BN–2, BN–2A, BN–2B, and BN–2T Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to Pilatus Britten-Norman Ltd. (Pilatus) BN–2, BN–2A, BN–2B, and BN–2T series airplanes. The proposed action would require modifying the upper engine mounting brackets on the wing front spar as terminating action for the repetitive inspections that were required in AD 84–23–06, which is the subject of a proposal to eliminate the Pilatus BN–2, BN–2A, BN–2B, and BN–2T series airplanes from its applicability in a separate action. The proposed action is prompted by several reports of cracks in the upper engine mounting brackets and a new terminating action to eliminate the repetitive inspections for Pilatus BN–2, BN–2A, BN–2B, and BN–2T series airplanes. The actions specified by the proposed AD are intended to prevent the failure of the engine mounting brackets on the wing mounted engines which could possibly cause structural failure of the airplane.

DATES: Comments must be received on or before May 12, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–17–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Pilatus Britten-Norman Ltd., Bembridge, Isle of Wight, United Kingdom PO35 5PR; telephone 44–1983 872511; facsimile 44–1983 873246. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Project Engineer, FAA, Brussels Aircraft Certification Division, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; telephone (322) 513.3830, ext. 2716; facsimile (322) 230.6899; or Mr. S. M. Nagarajan, Project Officer, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64105; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 96–CE–17–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–17–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Events Leading to the Proposed Action

The Civil Airworthiness Authority (CAA), which is the airworthiness authority for the United Kingdom (UK), notified the FAA that an unsafe condition may exist on Pilatus BN–2, BN–2A, BN–2B, and BN–2T series airplanes. The UK CAA reports cracking in the upper engine mounting brackets on the wing mounted engines attached to the wing front spar. This condition, if not detected and corrected, could result in failure of the engine mounting brackets of the wing mounted engines and possible structural failure and loss of control of the airplane.

The Pilatus BN–2, BN–2A, BN–2B, and BN–2T series airplanes are included in the applicability section of AD 84–23–06. A proposal to remove these airplanes from the applicability of AD 84–23–06 is being issued in a separate revised Notice of Proposed Rulemaking. The repetitive inspections that have been required by AD 84–23–06 would be terminated with a modifying action that is only applicable to the BN–2, BN–2A, BN–2B, and BN–2T series airplanes in this proposed action.

The FAA's Aging Aircraft Policy

The FAA has determined that reliance on critical repetitive inspections on aging commuter-class airplanes carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections. In determining what inspections are critical, the FAA considers (1) the safety consequences if the known problem is not detected during the inspection; (2) the probability of the problem not being detected during the inspection; (3) whether the inspection area is difficult to access; and (4) the possibility of damage to an adjacent structure as a result of the problem.

These factors have led the FAA to establish an aging commuter-class aircraft policy that requires incorporating a known design change when it could replace a critical repetitive inspection.

Based on its aging commuter-class aircraft policy and after reviewing all available information, the FAA has determined that AD action should be taken to modify the upper engine wing mounting brackets of the affected airplanes to eliminate the repetitive short-interval inspections, and to prevent failure of the upper engine wing mounting brackets on wing mounted engines which could possibly cause structural failure of the airplane.

Related Service Information

Pilatus issued Service Bulletin No. BN–2/SB.61, Issue 5, dated December 9, 1981, which specifies procedures for modifying the engine mounting brackets on the wing mounted engines and terminating the repetitive inspection after accomplishing the modification.

The UK CAA classified these service bulletins as mandatory and has issued AD No. 0619 in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Determination

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the UK CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the UK CAA, reviewed all available information including the service information referenced above, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop in other Pilatus BN–2, BN–2A, BN–2B, and BN–2T series airplanes of the same type design registered in the United States, the proposed AD would require initially inspecting the upper engine mounting brackets on the wing mounted engines for:

(1) Cracks at the bolt-holes,
(2) Elongation of the bolt holes,
(3) Fretting within the holes,
(4) Cracks at the rivet holes,
(5) Distortion or delamination of the lugs, and that
(6) The bearings are the correct length and the bolts are not threadbound.

If there is no evidence of damage or defects similar to any of the above-mentioned items, continue to repetitively inspect at regular intervals until the accumulation of 2,000 hours time-in-service after the effective date of the proposed AD, at which time the proposed AD would require accomplishing Pilatus Modification NB/M/1147.

If any damage or defects are found similar to any of the six items previously mentioned, prior to further flight, the proposed action would require accomplishing Pilatus Modification NB/M/1147. This modification consists of replacing damaged brackets, bolts, and bushes with parts of an improved design. Accomplishing this modification is considered a terminating action to the proposed repetitive inspections.

Cost Impact

The FAA estimates that 112 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 37 workhours per airplane to accomplish the initial inspection and modification, and that the average labor rate is approximately $60 an hour. Parts cost approximately $800 per airplane to accomplish the modification. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $338,240 or $3,020 per airplane. This figure is based on the initial inspection and modification only. It does not take into account the cost for the repetitive inspections that may be incurred over the life of the airplane until the modification is accomplished. The FAA has no way to determine the number of owners/operators that may have already accomplished the proposed action.

The Proposed Action's Impact Utilizing the FAA's Aging Commuter Class Aircraft Policy

The intent of the FAA's aging commuter airplane program is to ensure safe operation of commuter-class airplanes that are in commercial service without adversely impacting private operators. Of the approximately 112 airplanes in the U.S. registry that would be affected by the proposed AD, the FAA has determined that approximately 18 percent are operated in scheduled passenger service by 11 different operators. A significant number of the remaining 82 percent are operated in other forms of air transportation such as air cargo and air taxi.

The proposed AD allows 2,000 hours time-in-service (TIS) after the effective date of the proposed AD before mandatory accomplishment of the design modification. The average utilization of the fleet for those airplanes in commercial commuter service is approximately 25 to 50 hours TIS per week. Based on these figures, operators of commuter-class airplanes involved in commercial operation would have to accomplish the proposed modification within 5 to 10 calendar months after the proposed AD would become effective. For private owners, who typically operate between 100 to 200 hours TIS per year, this would allow 5 to 10 years before the proposed modification would be mandatory.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Pilatus Britten-Norman Ltd.: Docket No. 96–CE–17–AD.

Applicability: Models BN–2 (serial numbers 1 through 2033), BN–2T (serial numbers 419, and 2030 through 2033), and Models BN–2A and BN–2B (serial numbers 1 through 2116), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 500 hours time-in-service (TIS) after the last compliance with AD 84–23–06, or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished.

To prevent failure of the upper mounting brackets on both wing mounted engines which could possibly cause structural failure of the airplane, accomplish the following:

(a) Inspect the upper mounting brackets, bolts, and bushings on both wing mounted engines for:

(1) Cracks at the bolt holes,

(2) Elongation of the bolt holes,

(3) Fretting within the bolt holes,

(4) Cracks at the rivet holes,

(5) Distortion or delamination of the lugs, and

(6) Correct bearing length and inspect for bolts that are threadbound, in accordance with the "ACTION—Inspection" section in Pilatus Britten-Norman (Pilatus) Service Bulletin (SB) No. BN–2/SB.61, Issue 5, dated December 9, 1981.

(b) If the inspection reveals any evidence of damage or defects similar to the items in paragraphs (a)(1) through (a)(6), prior to further flight, accomplish Pilatus Modification NB/M/1147 by replacing the brackets, bushes, and bolts with brackets (part number (P/N) NB–20–D–7165), bushes (P/N NB–20–A4–7171), and bolts of improved design in accordance with paragraphs 1, 2, 3, and 5 of the "ACTION—Rectification/Modification" section in Pilatus SB No. BN–2/SB.61, Issue 5, dated December 9, 1981.

(c) If damage or defects are found on just one of the two brackets on each engine, then both brackets must be replaced, prior to further flight, in accordance with paragraph 1 of the "ACTION—Rectification/Modification" section in Pilatus SB No. BN–2/.SB.61, Issue 5, dated December 9, 1981.

(d) If no damage or defects are found similar to the items in paragraphs (a)(1) through (a)(6) of this AD, continue to inspect at intervals not to exceed 500 hours TIS until the accumulation of 2,000 hours TIS after the effective date of this AD, at which time Modification NB/M/1147 must be accomplished on both upper mounting brackets on both engines in accordance with paragraphs 1, 2, 3, and 5 of the "ACTION—Rectification/Modification" section of Pilatus SB No. BN–2/SB.61, Issue 5, dated December 9, 1981.

(e) Accomplishing Modification NB/M/1147 in the "ACTION—Rectification/Modification" section of Pilatus SB No. BN–2/SB.61, Issue 5, dated December 9, 1981, is considered terminating action to the repetitive inspections required in paragraph (d) of this AD.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Division, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium or the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Division or the Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Brussels Aircraft Certification Division or the Small Airplane Directorate.

(h) All persons affected by this directive may obtain copies of the document referred to herein upon request to Pilatus Britten-Norman Ltd., Bembridge, Isle of Wight, United Kingdom PO35 5PR; or may examine this document at the FAA, central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on February 28, 1997.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–5846 Filed 3–7–97; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 84–CE–18–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Britten-Norman Ltd. BN–2, BN–2A, BN–2B, BN–2T, and BN–2A Mk 111 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise 84–23–06, which currently requires repetitively inspecting the upper mounting brackets, bolts, and bushings on wing mounted engines for cracks, wear, and insufficient fit on certain Pilatus Britten-Norman Ltd. (Pilatus) BN–2, BN–2A, BN–2B, BN–2T, and BN–2A Mk 111 series airplanes, and replacing any cracked, worn, or ill-fitting part. The proposed action would retain the same action required in AD 84–23–06, except the action would only be applicable to the BN–2A Mk 111 series airplanes. The proposed action is prompted by a terminating modification only applicable to the Pilatus BN–2, BN–2A, BN–2B, BN–2T series airplanes that would remove them from the applicability of AD 84–23–06. The actions specified by the proposed AD are intended to prevent failure of the upper mounting brackets on wing mounted engines which could possibly cause structural failure of the airplane.

DATES: Comments must be received on or before May 12, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 84–CE–18–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR; telephone 44–1983 872511; facsimile 44–1983 873246. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT:

Mr. Tom Rodriguez, Program Officer, Brussels Aircraft Certification Division, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, b–1000 Brussels, Belgium; telephone (322) 508–2715; facsimile (322) 230–6899;

or

Mr. S. M. Nagarajan, Project Officer, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 84–CE–18–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 84–CE–18–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Civil Airworthiness Authority (CAA), which is the airworthiness authority for the United Kingdom (UK), notified the FAA that an unsafe condition may exist on certain Pilatus BN–2A Mk 111 series airplanes. The CAA reports that several incidents have revealed cracking, wear, and ill-fitting parts in the upper wing mount brackets on the wing mounted engines which could eventually result in structural failure of the wing. This condition, if not detected and corrected, could result in failure of the engine mounting brackets of the wing mounted engines and possible structural failure and loss of control of the airplane. Pilatus has issued service bulletin BN–2/SB.61, Issue 5, dated December 9, 1981, which specifies inspecting for cracked, worn, or ill-fitting parts, and if found, repair and continue to repetitively inspect.

This service bulletin is also referenced in AD 84–23–06. The proposed action would be a revision to AD 84–23–06 to remove the Pilatus BN–2, BN–2A, BN–2B and BN–2T series airplanes from the applicability of AD 84–23–06. Since publication of this AD, a modification terminating the repetitive inspections became available to the Pilatus BN–2, BN–2A, BN–2B and BN–2T series airplanes that is not applicable to the BN–2A Mk 111 series airplanes. The terminating modification is proposed in a Notice for Proposed Rulemaking (NPRM) Docket No. 96–CE–17–AD. The Pilatus Service Bulletin (SB) BN–2/SB.61, Issue 5, dated December 9, 1981, is also referenced in this NPRM for the terminating action applicable to the Pilatus BN–2, BN–2A, BN–2B and BN–2T series airplanes.

The UK CAA classified this service bulletin as mandatory and issued AD No. 0619 in order to assure the continued airworthiness of these airplanes in the United Kingdom.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the UK CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the UK CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop in other Pilatus BN–2A Mk 111 series airplanes of the same type design registered for operation in the United States, the proposed AD would revise AD 84–23–06 to eliminate Pilatus BN–2, BN–2A, BN–2B, BN–2T series airplanes from the applicability of this AD and would retain the Pilatus BN–2A Mk 111 series airplanes in the applicability section of the proposed AD, and would also retain the requirement for:

(1) Visually inspecting the upper engine to wing mounting brackets for minimum lug bolt hole-to-edge distance (0.2625 inches),

(2) Inspecting for elongation of the bolt holes, distortion, delamination, cracks, flaking, and corrosion, and

(3) Inspecting the bolts for correct bearing length, and loose and fretted bushings.

If the lug bolt hole-to-edge distance is less than the specified minimum, prior to further flight, correct the defects. If the bolt holes are elongated, or if any bushings are loose or fretted, modify and correct. If any mounting bracket is cracked, modify both brackets on the same engine installation (left side engine or right side engine) concurrently (even if only one bracket is defective). If any lug is distorted or delaminated, replace the deficient part. If any part is corroded or flaking, replace the part. If any of the bolts are of incorrect length or damaged, replace with new units of the correct length and continue to repetitively inspect.

Cost Impact

The FAA estimates that 9 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 2 workhours per airplane to accomplish the proposed action and the average labor rate is approximately $60 an hour. There are no parts required for the initial inspection. Based on these figures, the total cost impact for the initial inspection of the proposed AD on U.S. operators is estimated to be $1,080 or $120 per airplane. This figure is based on the proposed initial inspection cost and does not include workhours for repetitive inspections. The FAA has no way to determine how many of these airplanes have already accomplished this action.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 84–23–06, Amendment 39–4942, (49 FR 43621, October 31, 1984), and adding a new AD to read as follows:

Pilatus Britten-Norman Ltd.: Docket No. 84–CE–18–AD; Revises AD 84–23–06, Amendment 39–4942.

Applicability: BN–2T Mk 111 series airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Note 2: The paragraph structure of this AD is as follows:

Level 1: (a), (b), (c), etc.
Level 2: (1), (2), (3), etc.
Level 3: (i), (ii), (iii), etc.
Level 2 and Level 3 structures are designations of the Level 1 paragraph they immediately follow.

Compliance: Required initially upon the accumulation of 500 hours time-in-service (TIS) or within the next 50 hours TIS, whichever occurs later, unless already accomplished (compliance with AD 84–23–06) and thereafter at intervals not to exceed 500 hours TIS.

To prevent failure of the upper mounting brackets on both wing mounted engines which could possibly cause structural failure of the airplane, accomplish the following:

(a) Visually inspect in accordance with paragraphs 1 through 6 of the "Inspection" section of the Pilatus Britten-Norman (Pilatus) Service Bulletin (SB) No. BN–2/SB.61, Issue 5, dated December 9, 1981 the following areas:

(1) The upper engine to wing mounting brackets for:

(i) Minimum lug bolt hole-to-edge distance (0.2625 inches), elongation of the bolt holes, distortion, delamination, cracks, flaking, and corrosion;

(ii) The bolts for correct bearing length; and

(iii) Loose and fretted bushings.

(2) Prior to further flight, correct defects in accordance with the following:

(i) If the lug bolt hole-to-edge distance is less than the specified minimum, correct in accordance with paragraph 3 of the "Rectification/Modification" section of Pilatus SB No. BN–2/SB.61, Issue 5, dated December 9, 1981;

(ii) If the bolt holes are elongated, or if any bushings are loose or fretted, modify and correct in accordance with paragraph 4 of the "Rectification/Modification" section of Pilatus SB No. BN–2/SB.61, Issue 5, dated December 9, 1981;

(iii) If any mounting bracket is cracked, modify both brackets on the same engine installation (left side engine or right side engine) concurrently (even if only one bracket is defective) in accordance with paragraph 1 of the "Rectification/Modification" section of Pilatus SB No. BN–2/SB.61, Issue 5, dated December 9, 1981;

(iv) If any lug is distorted or delaminated, replace the deficient part in accordance with paragraphs 1 and 2 of the "Rectification/Modification" section of Pilatus SB No. BN–2/SB.61, Issue 5, dated December 9, 1981;

(v) If any inspected part is corroded or flaking, replace the part in accordance with paragraph 1 of the "Rectification/Modification" section of Pilatus SB No. BN–2/SB.61, Issue 5, dated December 9, 1981; and

(vi) If any of the bolts are of incorrect length or damaged, replace with new units of the correct length in accordance with paragraphs 1 and 2 of the "Rectification/Modification" section of Pilatus SB No. BN–2/SB.61, Issue 5, dated December 9, 1981.

(b) The intervals between the repetitive inspections required by this AD may be adjusted up to 10 percent of the specified interval to allow for accomplishing these inspections concurrent with the other scheduled maintenance of the airplane.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Division, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; telephone (322) 508.2715; facsimile(322) 230.6899; or Mr. S. M. Nagarajan, Project Officer, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Office or the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Brussels Aircraft Certification Division or the Small Airplane Directorate.

(e) All persons affected by this directive may obtain copies of the document referred to herein upon request to Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR; telephone 44–1983 872511; facsimile 44–1983 873246; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on February 28, 1997.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–5840 Filed 3–7–97; 8:45 am]

BILLING CODE 4910–13–U

Office of the Secretary

14 CFR Parts 221, 250, 293

[Docket No. OST–97–2050; Notice No. 97–1]

RIN 2105–AC61

Exemption From Passenger Tariff-Filing Requirements in Certain Instances

AGENCY: Office of International Aviation, Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department proposes to exempt U.S. and foreign air carriers from the statutory and regulatory duty to file with DOT international passenger tariffs in certain instances, subject to the reimposition of the duty in specific cases when consistent with the public interest. In addition, the Department proposes to reissue a new version of part 221 that eliminates most of the traditional paper format and filing procedures set forth in the present version of 14 CFR part 221. This proposal is made on the Department's initiative in order to streamline government operations and eliminate unjustified regulatory burdens.

DATES: Comments should be received no later than May 9, 1997. Since the proposal eliminates various requirements and creates no additional burdens, a final rule based on this proposal would be effective immediately upon issuance. However, the cancellation of certain tariff rules would take place 90 days after the date of effectiveness of the notice provided in § 293.10 of new part 293.

ADDRESSES: Five (5) copies of any comments should be sent to the Documentary Services Division, C–55, U.S. Department of Transportation, 400 7th Street, SW, Washington, D.C. 20590–0002, and should refer to this docket. Acknowledgment of comments require you to include a stamped, self-addressed postcard that the Docket Clerk will time and date-stamp, and return.

FOR FURTHER INFORMATION CONTACT: Mr. John H. Kiser or Mr. Keith A. Shangraw, Office of the Secretary, Office of International Aviation, X–43, Department of Transportation, at the address above. Telephone: (202) 366–2435.

SUPPLEMENTARY INFORMATION:

Background

Section 41504 of Title 49 of the United States Code (the Code), formerly section 403(a) of the Federal Aviation Act of 1958, as amended, requires every U.S. and foreign air carrier to file with the Department, and to keep open for public inspection, tariffs showing all prices for "foreign air transportation" between points served by that carrier, as well as all rules relating to that transportation to the extent required by the Department. This includes passenger fares, related charges and governing rules. 14 CFR part 221 establishes the detailed tariff-filing rules and authority for approvals, rejections and waivers. Once approved by the respective government aviation authorities, if required under the relevant bilateral agreements and/or the Code, these tariffs become legally binding terms in the contract of carriage for international air transportation.

In his Regulatory Reinvention Initiative Memorandum of March 4, 1995, President Clinton directed Federal agencies to conduct a page-by-page review of all of their regulations and to "eliminate or revise those that are outdated or otherwise in need of reform." In response to that directive, the Department has undertaken a review of its aviation economic regulations contained in 14 CFR Chapter II to determine whether changes should be made to promote economic growth, create jobs, or eliminate unnecessary costs or other burdens on the economy. Among the regulations reviewed are those governing the filing of tariffs by airlines for their foreign air transportation, set forth in 14 CFR part 221.

In two recently completed rulemaking proceedings, the Department has determined that the amount of tariff material filed by carriers exceeds our regulatory requirements in certain respects, that alternative methods exist for protecting consumers and other elements of the public interest which are more effective than filed tariffs, and that procedures should be developed to permit the electronic filing and review of those tariffs which should continue to be filed. On November 30, 1995, the Department published a final rule exempting carriers from their regulatory duty to file tariffs for the foreign air transportation of cargo. On April 24, 1996, the Department published a final rule establishing procedures for the electronic filing of passenger rules tariffs.

In this, the third rulemaking proceeding involving the tariff system undertaken as part of the President's directive, the Department has tentatively determined that the filing of certain tariffs with the Department for the foreign air transportation of passengers is no longer necessary or appropriate, and it accordingly proposes to grant another exemption to the tariff-filing requirement set forth in part 221. In addition, the Department has tentatively identified a substantial number of provisions in part 221 that are redundant, contain obsolete references, or are out-dated given present regulatory practices and needs. Accordingly, the Department proposes a general revision of part 221 to eliminate redundancies, excess verbiage and obsolete provisions, to make necessary technical changes, and to reorganize the subparts in a more logical order.

Regulation of Carrier Pricing

The Standard Foreign Fare Level (SFFL)

Section 41509 of the Code establishes a fare flexibility (or "no suspend") zone centered on a Standard Foreign Fare Level (SFFL). The SFFL is the fare(s) in effect on or after October 1, 1979 for the city-pair in question, as adjusted for inflation.[1]/ Fare increases of up to five percent above the SFFL, and fare decreases of up to 50 percent below the SFFL, may not be suspended on the grounds that the resulting new fare levels are too low or too high, although suspension is still possible even for fares within the zone on certain other statutory grounds. Approval of fares outside the zone is subject to Department discretion.

Premium and Promotional Fares

Although the law permits the Department to establish a separate SFFL for each fare class or type, and to regulate fare levels outside the zone for each class or type, the Department has generally permitted carriers to set premium fares (first and business class) and discount fares at the levels they wish. Market forces are usually sufficient to ensure that these fares are reasonably priced without government intervention. However, in cases where foreign government policies or actions seriously degrade competitive forces, the Department may be required to look more closely at premium and discount fare pricing in the affected markets.

Normal Economy Fares

As opposed to premium and discount fares, where the Department intervenes only rarely, it maintains regulatory supervision over normal economy fares (NEF's).[2] These fares are the lowest prices available without restrictions. As such, they are the fares used by travelers who must travel and cannot adjust their plans to comply with the various conditions attached to discount fares. The Department believes the public interest favors ensuring access to these fares at reasonable levels, especially so in markets where competitive forces are weak. The Department relies primarily on the SFFL regulatory mechanism to achieve this.[3]

Normal economy fare proposals in direct service markets at or below the cost-based regulatory ceiling are automatically approved. Fare proposals above the ceiling are subject to disapproval. However, we generally approve NEF's above the ceilings in markets governed by double-disapproval bilateral pricing articles.

Carriers are always free to present economic justification to support

[1] The statute established all fares in effect as of October 1, 1979 as the SFFL base fares. Seasonal fares were to maintain the same percent difference between seasons that prevailed in 1978. We discuss the mechanics of the SFFL process in greater detail in footnote 3, below.

[2] By normal economy fares, we are referring to the lowest point-to-point one-way fare available for on-demand service in each market. These are sometimes also called "restricted" normal economy fares, or, in markets where these are not available, "unrestricted" normal economy fares.

[3] The SFFL mechanism consists of two parts. The first part is comprised of the base fare level which represents the lowest available normal economy fare filed by a direct service carrier in a given city-pair market, and approved for effectiveness on October 1, 1979. For those markets without direct service on October 1, 1979, the fare filed by a carrier instituting direct service becomes the base level. The second part is the cost adjustment factor to be applied to the base fare. This factor is derived from the latest estimated total cost per available seat mile (ASM), divided by the actual total costs per ASM at October 1, 1979, for each Form 41 reporting entity. The statute requires us to adjust the SFFL index every two months for fuel cost changes, and every six months for other cost changes. In practice, we have always made adjustments for both fuel and non-fuel costs every two months. The base fares are than multiplied by the appropriate SFFL index. The product is then increased by the amount of upward flexibility for the market concerned to produce the regulatory ceiling. Discretionary grants of upward flexibility in excess of the statutory five percent have been made for markets where sufficient competition has been found to exist.

proposed fares that exceed SFFL ceilings. Typically, such case-by-case justification follows a more traditional rate-of-return methodology used in public utility regulation. Upon a sufficient showing of a need for additional revenue and a determination that it is in the public interest, we will permit normal economy fares to exceed the regulatory ceilings.

Carrier Pricing—International Liberalization

The U.S. Government has actively pursued the liberalization of international aviation markets, including the right of carriers to set their prices based on managements discretion, free of regulatory intervention. To this end it has concluded air transport agreements containing "double-disapproval" pricing articles which effectively deregulate passenger prices in certain markets. Under these double-disapproval provisions, both governments must agree in order to disapprove a fare. Since the first double-disapproval pricing articles were signed in the late 1970's, cases where a Party has sought the agreement of its bilateral partner to disapprove a fare have been extremely rare. In these circumstances, we now question whether any purpose is served in burdening U.S. and foreign carriers with continuing to file passenger fares for approval in markets where pricing has been effectively deregulated by government agreement, and the evolution of competitive market forces.

We have already taken other actions to reduce the industry's costs of complying with the Department's filing requirements. In December of 1989, we permitted carriers to file their official international passenger fare tariffs electronically, relieving the industry and the Department of the burden of producing, filing and processing thousands of tariff pages each year. As indicated above, in November 1995, we exempted carriers from filing international cargo tariffs, and in April 1996, we promulgated a final rule to permit the electronic filing of international passenger service rules, in a further effort to reduce the costs of compliance with tariff filing requirements.

Against this background, we tentatively believe the opportunity now exists to reduce the tariff filing burden on both industry and the government even further by eliminating superfluous and burdensome tariff-filing requirements. Selectively exempting U.S. and foreign air carriers from the statutory and regulatory duty to file international passenger tariffs would appear to be the next logical step in the continuing evolution of a policy where we rely on market forces rather than continual government oversight to set prices for air transportation. In many cases, tariffs continue to be filed in markets where all prices have been effectively deregulated. In others, market forces are usually sufficient to ensure that most fares are reasonably priced without government intervention. Indeed, the continued filing of passenger fares serves a meaningful regulatory purpose only in those markets where foreign government policies or actions seriously hinder competitive forces, or where we continue to supervise normal economy fares.

A. The Scope of the New Tariff-Filing Requirement

Fares and Related Fare Rules

We propose to selectively exempt carriers from their statutory and regulatory duty to file passenger tariffs, both for fares and for related rules that apply to specific fares as follows:

Category A: Third and fourth-freedom carriers would not file any tariffs for travel to and/or from countries where the United States has air transport agreements in force that contain double-disapproval pricing rules, under which agreement of both Parties is required to disapprove an existing or a proposed price, and where the country's government is honoring the provisions of the aviation agreement and there are no significant bilateral problems. At the present time these would include the following 31 countries:

Western Hemisphere: Aruba, Canada, Chile, Costa Rica, El Salvador, Dominican Republic, Guatemala, Jamaica, Trinidad & Tobago.

Europe & Middle East: Austria, Belgium, Czech Republic, Denmark, Finland, Germany, Iceland, Ireland, Israel, Jordan, Luxembourg, Netherlands, Norway, Pakistan, Russia, Sweden, and Switzerland.

Pacific: Fiji, Korea, Malaysia, Singapore, Taiwan.

Category B: All third and fourth-freedom carriers must file tariffs only for regulated normal economy fares applicable to travel to and/or from countries without double-disapproval pricing rules, but where carriers generally have unfettered discretion in pricing initiatives, and where the United States has no outstanding, significant bilateral aviation problems. In this instance, the Department's only regulatory concern is the level of normal economy fares set under existing SFFL legislation. Because carriers frequently make changes in levels, fare codes and other provisions applicable to both "restricted" and "unrestricted" normal economy fares, we would require continued filing of all one-way economy class fares in these markets. This approach would appear to be the most practical administratively for both the industry and the Department. This category would encompass all countries not specifically listed in Categories A and C.

Category C: All carriers must file tariffs for all fare types applicable to travel to/from various markets where pricing initiatives have been frustrated in recent years and/or where the U.S. has other serious bilateral problems and/or very restrictive agreements. These would include Brazil, China, Ecuador, France (including overseas dependencies), Hong Kong, India, Italy, Japan, Spain, and the United Kingdom (including overseas dependencies), for a total of 10 markets.

Carriers offering fares on a fifth or sixth freedom basis in Category A or Category B markets would not have to file any tariffs in those markets unless they are nationals of restrictive countries identified in Category C. We have tentatively decided to retain existing filing requirements for carriers of restrictive countries in order to prevent free-rider problems. As long as the market for air transportation between the United States and such countries is constrained by government interference with airline pricing initiatives, highly restrictive entry and capacity regimes, or significant, unresolved bilateral problems, it would not be appropriate to permit their carriers to routinely take advantage of the liberal, virtually deregulated pricing regime in Category A markets or the liberal regime that exists for promotional and premium fares in Category B markets. Although we allow all carriers, regardless of nationality, to match fares offered by other carriers in the market (subject to reciprocity), how we treat price leadership proposals by carriers of restrictive countries is entirely a matter of our discretion. For this reason we tentatively conclude that we have a continuing need to supervise all fares of such carriers and would retain existing tariff filing requirements for them.

Under the proposed rule in a new part 293, the Assistant Secretary for Aviation and International Affairs would issue a notice specifying the terms of the exemptions for markets in Category A (no fare filing) and Category B (NEF filing only), and enumerating the countries included in Category A and Category C; countries not listed in Categories A or C would be assumed to be in Category B. Under the rule, the Assistant Secretary would consider the following factors in listing countries in each category: (1) Whether the U.S. has an aviation agreement in force with that country providing double-disapproval treatment of prices filed by the carriers of the Parties; (2) Whether the country's government has disapproved or deterred U.S. carrier price leadership or matching tariff filings in any market; (3) Whether the country's government has placed significant restrictions on carrier entry or capacity in any market; and (4) Whether the country's government is honoring the provisions of the bilateral aviation agreement and whether there are any significant bilateral problems.[4]

After the initial determination, countries could be transferred between categories by subsequent notice of the Assistant Secretary, by petition, or on the Department's own initiative. For example, entry into force of a double-disapproval bilateral agreement would warrant placing a country into Category A (no fare filing); conversely, action by a foreign government denying U.S. carrier pricing initiatives could justify re-institution of full tariff filing requirements by placing that market in Category C.

General Rules Relating to Conditions of Carriage: In addition to fares and fare-specific rules, existing passenger tariffs also set forth—usually in a separate "general rules tariff" —provisions governing the general "conditions of carriage" of each passenger. These rules include such general subjects as notice of terms of contract of carriage; carrier liability and limitations thereof; refund and claims procedures; refusal to carry; denied boarding procedures; carriage of passengers with disabilities; and other matters of general significance to consumers of international passenger air transportation.

With the exception of carrier liability limits under the Warsaw Convention, discussed below, we see little need or justification for the continued filing of such material in official tariffs by any carrier, regardless of the nature of the market. First, the Department has regulations in place that directly govern carrier conduct in certain of these areas, such as denied boarding and with respect to U.S. carriers, transportation of passengers with disabilities. Second, to the extent that passengers might have questions about the application or interpretation of certain provisions, it is likely that they would consult the carrier directly, rather than its tariffs. And third, to the extent that tariffs might set forth certain material in greater detail than travel documents, the Department already has an alternate framework in place to permit its incorporation into a contract of carriage with adequate notice to passengers. Under current section 221.177, carriers may incorporate all material not actually printed on the ticket or other travel document by reference, provided that they make the full text of all such incorporated terms readily available for public inspection, in either electronic or printed medium, at each airport or other sales office of the carrier. This procedure preempts any conflicting state laws establishing incorporation-by-reference standards, as did 14 CFR part 253 in the case of interstate passenger air transportation.

In the 14 years since the filing of domestic passenger tariffs was discontinued, incorporation by reference has generally worked well to protect consumers, and we adopted the same regime for international cargo transportation in November 1995. We see no reason not to apply the same approach to all foreign air transportation of passengers. Unlike the prices charged to passengers, which reflect the differing competitive conditions and regulatory regimes that vary among markets and thus justify differing filing requirements, general rules tend to be uniform across markets. We are not aware of particular conditions or issues in any market where continuation of rules tariffs would be superior to a notice regime. The graduated system of written notice and right of immediate inspection for general terms, coupled with direct notice and/or a right to an immediate explanation of certain more important terms, constitutes a deliberate balance between ease of contract formation and the importance of informed assent. Once given actual notice that terms may be incorporated by reference, the customer is under an obligation to inquire about them, and the carrier is under an obligation to make the information available to an inquiring customer.

For these reasons, we tentatively conclude that general rules material setting forth general conditions of carriage should not be filed in official tariffs by any carrier. We propose to cancel this material by operation of law 90 days following the Assistant Secretary's notice setting forth the country categories; the notice will also include an initial description of general conditions of carriage.[5] Each governing rules tariff would be required to contain a statement that rules therein containing general conditions of carriage are not part of the official tariff. This process will provide a transition period for the industry comparable to that we provided in canceling cargo rules tariffs.[6]

We also propose to include provisions in new part 293 which will expressly authorize carriers to incorporate any terms by reference into their contracts for the carriage of passengers in foreign air transportation upon compliance with all of the notice, inspection, explanation and other requirements set forth in 14 CFR 221.107. Completing the basic parallel to 14 CFR parts 253 and 292, we will also expressly provide that passengers are not bound by terms incorporated without compliance with these notice requirements, and that the notice requirements are intended to preempt any conflicting State requirements governing incorporation of contract terms by reference.

However, the Department has specific provisions governing public notice of carrier limitations on passenger and baggage liability, as well as regulations and orders perfecting a required waiver of the passenger liability limits and certain defenses provided by the Warsaw Convention.[7] The latter contain tariff-filing requirements independent of those set forth in part 221. In particular, 14 CFR part 203 requires all direct U.S. and foreign air carriers, except certain "air taxis," to file with the Department a signed counterpart to the Montreal Agreement, and section 203.4 further provides that each carrier include the Agreement's terms as part of its conditions of carriage and that it file and maintain a tariff containing such terms with the Department. Although generally exempt from filing tariffs, most air taxis are also subject to this special requirement. (See 14 CFR 298.11(b) and 298.21(c)(4).)

For several reasons we do not propose to eliminate these special tariff

[4] Our proposed exemption from tariff-filing requirements would not affect our treatment of IATA agreements, which will continue to be reviewed by the Department under existing procedures.

[5] No new filings on applications to file tariffs covered by the exception would be permitted after the date of effectiveness of the notice.

[6] We also propose to delete section 250.4 of 14 CFR Part 250 (Oversales), which requires carriers to file tariffs governing denied-boarding compensation.

[7] Section 221.38(j) of current part 221 requires carriers to state in their tariffs whether they avail themselves of the limitation on liability to passengers as provided in Article 22(1) of the Warsaw Convention or whether they have elected to agree to a higher limit of liability through the tariff, and in either case what the limit is. Sections 221.175 and 221.176 set forth requirements for special notices of passenger and/or baggage liability limitations to be provided at ticket offices and with travel documents.

requirements or to modify the current language on liability notices in part 221. The passenger liability regime established by the Warsaw Convention and subsequent agreements has been under active reexamination by various governments and carrier organizations, and certain carrier agreements to waive Warsaw provisions have been approved pendente lite by the Department, subject to conditions, with exemptions from our regulations and orders sufficient to permit their implementation.[8] Some changes to part 221 as well as other regulations may become necessary, but it is premature to attempt to resolve such issues here. Therefore, subject to the waiver-agreement implementation exemption, the existing tariff-filing requirements, and the special notice provisions of sections 221.175 and 221.176, would remain in effect.[9] By proposing to retain the existing requirements, carriers are not precluded from retaining the passenger liability tariffs as specified in orders of the Department. We recognize, however, that the proposed elimination of other general rules tariffs may necessitate some changes in filing format for any continuing requirement. We are therefore proposing to delegate to the Director, Office of International Aviation, the authority to approve non-substantive format changes for the refiling or new filing of authorized tariff provisions.

Other General Rules and Unpublished Fare Rules: In addition to market-specific fares themselves, prices for international passenger air transportation include a number of provisions filed in current rules tariffs. These include free baggage allowances and excess baggage charges, fare construction rules, surcharges for government-imposed fees or extraordinary costs authorized by the Department, and various "unpublished" fares specified as a percentage of published fares,[10] or fares applicable in more than one market, such as spouse, air/sea, special event and countrywide excursion fares. Similarly, there are a number of "general fare rules" which, while they are not prices themselves, are essential to our understanding of the applicability of particular published prices as well as to our evaluation of the differences among published prices. These include definitions of important terms such as "stopover," as well as currency provisions, classes of service, and capacity limitations. We tentatively believe that a regulatory need exists for the continued filing of such "price-defining" terms and provisions.

We will continue to scrutinize such prices through the tariff system to the same extent, and for the same reasons, as we review the market-specific fares themselves. This means that we will continue to require such unpublished fare rules and general fare rules to be filed in Category C markets, and in Category B markets to the extent that they have applicability to the benchmark normal economy fares filed in the latter markets. At the same time, we recognize that these rules are not market-specific. We believe that it would be an unnecessary burden on carriers to require each such rule to carry a notation specifying the markets and fares to which it applies. Instead, we propose to allow such rules to continue to be included in rules tariffs subject to a clear general disclaimer, published as part of each separate rules tariff, that the rules contained therein apply only to the market-specific fares that the Department requires to be filed as tariffs, or, in the case of baggage and other ancillary charges, to the services covered by such fares.[11]

B. The General Revision of Part 221

The Department has tentatively determined that many provisions in part 221 are obsolete in terms of current regulatory practices and needs, that an additional exemption to certain tariff-filing requirements is warranted to reduce unnecessary burdens on government and industry, and that technical and editorial changes to many other provisions in part 221 are necessary to make them current.

The last general revision of part 221 was in 1965, over thirty years ago, and the last editorial review was in 1985 to reflect both the statutory elimination of domestic tariffs and the transfer of the economic functions of the former Civil Aeronautics Board to the Department.

Since that time, the Department has exempted carriers from cargo tariff-filing requirements, and both the Department and the industry have made significant progress toward the goal of replacing the traditional system of filing, reviewing, and publishing paper tariffs with a far more efficient electronic system. We are also proposing a further exemption to tariff-filing requirements here, including, for all carriers, the extensive category of tariffs relating to the "conditions of carriage."

While the industry has not completed its development of an acceptable format for the electronic filing of certain general fare rules and unpublished fare rules discussed in the previous section, we tentatively find that the volume of residual paper filings for those rules does not warrant retention of the detailed requirements of part 221, which was designed for a fully-regulated and exclusively paper tariff system to meet the needs of a previous era.

General. The proposed revisions to part 221 are extensive, involving at least a 50 percent reduction in the number of existing provisions. In addition, a number of provisions are being consolidated and rewritten, and the various subparts are being reorganized for clarity. Because of the extent and number of changes being made, we propose to reissue part 221 in its entirety.

Major Changes

1. To reflect the exemption from the requirement to file cargo tariffs, current subpart F is deleted in its entirety, as well as all other references to cargo rates and rules throughout part 221. Should the Department find it necessary to reimpose a cargo tariff filing requirement in specific circumstances, pursuant to the procedures specified in 14 CFR part 292, the necessary filing procedures and formats will be specified in the Department's order.

2. To the extent that passenger fares, charges and other prices remain subject to the tariff-filing requirement, the proposed rule would dictate that all such filings be made electronically. See proposed section 221.30. Currently, only a few of the smaller carriers still file prices in a paper format. Should a carrier or tariff agent be able to demonstrate exceptional circumstances which require that it continue to file in a paper format, the Department will consider applications for a temporary waiver of the electronic filing requirement on a case-by-case basis. Any necessary procedural and format requirements for authorized paper filings will be established as part of the Department's authorization.

3. Filing procedures and requirements specifically relating to contract of carriage provisions will be deleted, reflecting our proposal to exempt carriers from the filing of such tariffs for the foreign air transportation of passengers. As in the case of cargo, should the Department reimpose a filing requirement with regard to any passenger contract of carriage provisions pursuant to the procedures set forth in the proposed new part 293, any necessary filing procedures and formats would be specified in the Department's order.

4. To the extent that passenger fare rules (as opposed to passenger prices that are required to be filed electronically) remain subject to the tariff-filing requirement, section 221.31 provides that such rules may be filed electronically, if approved electronic formats exist; or alternatively, that they may be filed in a paper format, subject to the simplified requirements set forth in other provisions of the proposed rule.

5. Most of the detailed format and justification specifications originally designed for paper tariffs and related filings, such as those set forth in current Subpart U and to varying degrees in current subparts C, D, H, L, M, R, S, and T, have been eliminated. Many such specifications are obsolete because they pertain to tariff material no longer required to be filed, while many others go into much more detail than is necessary for current or proposed tariff filing needs.[12] The Department does not intend that the elimination of current format specifications will render material filed in such formats unacceptable to the extent such material must still be filed. If carriers find it economically advantageous to continue using the same formats, they may do so. Or, they may propose other formats that meet the basic requirements set forth in the simplified provisions of the proposed rule.

6. The proposed rule retains the language of current sections 221.38(h) and (j), 221.175 and 221.176. These sections set forth requirements for filing tariffs and posting special notices of passenger and/or baggage liability limitations under the Warsaw Convention and other U.S. law. As noted above, changes are in the process of being made to the current passenger liability regime. Moreover, the Department has, by order, granted carriers appropriate exemptions to implement waivers of the Warsaw passenger liability limits to the extent that the current provisions of part 221 and other regulations might be construed to be inconsistent with the approved changes.

Conclusion

This rule will not materially lessen the Department's ability to intervene in passenger pricing matters should it be necessary.[13] First, the review of IATA passenger fare agreements will continue. Second, the Department has always had the statutory authority to take action directly against unfiled passenger fares and rules under a variety of circumstances.[14] And third, the Department will reserve the option under the proposed rule of revoking the exemption, and thus of reinstating the tariff-filing obligation, with regard to a particular carrier or carriers, or for specific markets, where consistent with the public interest. This would make available to the Department, upon short notice, the full panoply of tariff-filing requirements and review procedures, although the Department would not necessarily implement them all in any particular case.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

The Department has determined that this proposed rule is not a significant regulatory action under Executive Order 12866. However, the proposed rule is significant under the Department's Regulatory Policies and Procedures (44 CFR 11034; Feb. 26, 1979), because it will reduce the paperwork and filing burden for all U.S. and foreign air carriers submitting international passenger tariffs to the Department. The Department anticipates that the proposal could save international scheduled service passenger airlines as much as $3.23 million in tariff-filing and preparation expenses, based on figures submitted to OMB under the Paperwork Reduction Act for reinstatement of the part 221 information collection. The Department does not expect there to be any additional costs associated with this rule.

Executive Order 12612

This proposal has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"), and the Department has determined the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

I certify that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities, because the tariff filing requirements apply to scheduled service air carriers. The vast majority of the air carriers filing international ("foreign") air passenger tariffs are large operators with revenues in excess of several million dollars each year. Small air carriers operating aircraft with 60 seats or less and 18,000 pounds payload or less that offer on-demand air-taxi service are not required to file such tariffs.

Paperwork Reduction Act

With respect to the Paperwork Reduction Act, the proposed reissue of part 221 would eliminate any residual paper tariff format and filing procedures and replace them with more efficient electronic filing procedures. In addition, the proposed new part 293 would exempt carriers from their statutory and regulatory duty to file international passenger tariffs in certain specific markets, subject to reimposition of this duty when required by the public interest. Thus, this rule will significantly reduce the paperwork and filing burden on government and industry, even though it does not totally eliminate information collection requirements that require the approval of the Office of Management and Budget pursuant to the Act. While not estimated, we expect that costs of governmental review, filing and archiving of paper tariff rule filings will be similarly reduced.

The reporting and recordkeeping requirement associated with this rule are being submitted to OMB for approval in accordance with The Paperwork Reduction Act of 1995 (Pub. L. 104–113) under OMB No. 2105, formerly 2105–0009; Administration: Department of Transportation; *Title:* Exemption from Passenger Tariff-Filing Requirements in Certain Instances, and Mandatory Electronic Filing of Residual

[8] See Orders 96–10–7 and 96–11–6 in Dockets OST–95–232 and OST–96–1607.

[9] There being no specific requirement that carriers file baggage liability tariffs, such tariffs would no longer be filed, or remain on file, under the general tariff rules exemption proposed here. Carriers' tariffs merely restate the baggage liability provisions of the Warsaw Convention and their printed conditions of carriage, which apply to the extent they are consistent with the Department's review of IATA agreements, and other relevant orders. As in other areas, the absence of tariffs does not relieve carriers of their obligations to conform their contracts of carriage and related practices to the Department's regulations and orders. Should exceptional circumstances arise in which tariff rules on the subject would be appropriate, the Department retains the authority to require them on an ad hoc basis.

[10] For example, child, youth and senior citizen discounts.

[11] We propose to delegate to the Director, Office of International Aviation, the authority to determine which rules are covered by the general exemption from tariff filing of conditions of carriage, and which rules continue to be subject to tariff filing in Category B and C markets.

[12] For example, we have eliminated the prescribed forms for items such as tariff transmittal letters, special tariff permission applications, concurrences, and powers of attorney, as well as the detailed specifications for economic data and information supporting tariff changes. In the latter case, although all tariff changes must still be explained and supported by adequate information and/or data, we have aligned the requirements of part 221 with actual industry practice, and eliminated the disparate justification requirements for U.S. and foreign carrier filings.

[13] As in other instances where we have exempted carriers from routine tariff filing requirements, we will rely primarily upon competitors and users to bring any problems to our attention.

[14] See, for example, 49 U.S.C. sections 41712, 41507 and 41310.

Passenger Tariffs; *Need For Information:* Exempts carriers from their statutory and regulatory duty to file international passenger tariffs in certain specific markets, subject to reimposition of this duty when required by the public interest; and eliminates residual paper tariff format and filing procedures, replacing them with more efficient electronic filing procedures; *Proposed Use of Information:* Exemption is based on evolution in regulatory circumstances, while elimination of residual paper tariff filing procedures is based on the need to extend the efficiencies of electronic data transmission and processing to the filing of all passenger tariffs; *Frequency:* An initial passenger tariff rule filing is required of each respondent; changes are voluntary, whenever an air carrier elects; *Estimated Total Annual Burden Under Proposal:* 650,000 hours; *Respondents:* 230; *Form(s)* 13,340 electronic filings or applications per annum; *Average Burden Hours Per Respondent:* 2,826 hours.

For further information on paperwork reduction contact: The Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–4735 or DOT Desk Officer, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503.

Regulation Identifier Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

14 CFR Part 221

Air fare, Agents, Reporting and recordkeeping requirements.

14 CFR Part 250

Oversales, Denied boarding.

14 CFR Part 293

Air transportation, Exemptions, Tariffs.

The proposed rule is being issued under the authority contained in 49 CFR 1.56(j)(2)(ii). For the reasons set forth herein, 14 CFR Chapter II would be amended as follows:

1. Part 221 is revised.

PART 221—TARIFFS

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Authority: 49 U.S.C. 40101, 40109, 40113, 46101, 46102, Chapter 411, Chapter 413, Chapter 415 and Subchapter I of Chapter 417, unless otherwise noted.

Subpart A—General

§ 221.1 Applicability of this part.

All tariffs and amendments to tariffs of air carriers and foreign air carriers filed with the Department pursuant to chapter 415 of the statute shall be constructed, published, filed, posted and kept open for public inspection in accordance with the regulations in this part and orders of the Department.

§ 221.2 Carrier's duty.

(a) *Must file tariffs.* Except as provided in paragraph (d) of this section, every air carrier and every foreign air carrier shall file with the Department, and provide and keep open to public inspection, tariffs showing all fares, and charges for foreign air transportation between points served by it, and between points served by it and points served by any other air carrier or foreign air carrier, when through service and through rates shall have been established, and showing to the extent required by regulations and orders of the Department, all classifications, rules, regulations, practices, and services in connection with such foreign air transportation. Tariffs shall be filed, and provided in such form and manner, and shall contain such information as the Department shall by regulation or order prescribe. Any tariff so filed which is not consistent with chapter 415 of the statute and such regulations and orders may be rejected. Any tariff so rejected shall be void, and may not be used.

(b) *Must observe tariffs.* No air carrier or foreign air carrier shall charge or demand or collect or receive a greater or less or different compensation for foreign air transportation or for any service in connection therewith, than the fares and charges specified in its currently effective tariffs; and no air carrier or foreign air carrier shall, in any manner or by any device, directly or indirectly, or through any agent or broker, or otherwise, refund or remit any portion of the fares, or charges so specified, or extend to any person any privileges or facilities, with respect to matters required by the Department to be specified in such tariffs, except those specified in such tariffs.

(c) *No relief from violations.* Nothing contained in this part shall be construed as relieving any air carrier or foreign air carrier from liability for violations of the statute, nor shall the filing of a tariff, or amendment thereto, relieve any air carrier or foreign air carrier from such violations or from violations of regulations issued under the statute.

(d) *Exemption authority.* Air carriers and foreign air carriers, both direct and indirect, are exempted from the requirement of section 41504 of the statute and any requirement of this chapter to file, and shall not file with the Department, tariffs for operations under the following provisions:

(1) Part 291, Domestic Cargo Transportation;

(2) Part 296, Indirect Air Transportation of Property;

(3) Part 297, Foreign Air Freight Forwarders and Foreign Cooperative Shippers Association;

(4) Part 298, Exemption for Air Taxi Operations, except to the extent noted in § 298.11(b);

(5) Part 380, Public Charters;

(6) Part 207, Charter Trips and Special Services;

(7) Part 208, Terms, Conditions, and Limitations of Certificates to Engage in Charter Air Transportation;

(8) Part 212, Charter Trips by Foreign Air Carriers;

(9) Part 292, International Cargo Transportation, except as provided in part 292.

(10) Part 293 International Passenger Transportation, except as provided in part 293.

§ 221.3 Definitions.

As used in this part, terms shall be defined as follows:

Add-on means an amount published for use only in combination with other fares for the construction of through fares. It is also referred to as "proportional fare" and "arbitrary fare".

Add-on tariff means a tariff which contains add-on fares.

Area No. 1 means all of the North and South American Continents and the islands adjacent thereto; Greenland; Bermuda; the West Indies and the islands of the Caribbean Sea; and the Hawaiian Islands (including Midway and Palmyra).

Area No. 2 means all of Europe (including that part of the former Union of the Soviet Socialist Republics in Europe) and the islands adjacent thereto; Iceland; the Azores; all of Africa and the islands adjacent thereto; Ascension Island; and that part of Asia lying west of and including Iran.

Area No. 3 means all of Asia and the islands adjacent thereto except that portion included in Area No. 2; all of the East Indies, Australia, New Zealand, and the islands adjacent thereto; and the islands of the Pacific Ocean except those included in Area No. 1.

Bundled Normal Economy Fare means the lowest one-way fare available for unrestricted, on-demand service in any city-pair market.

Capacity controlled fare means a fare for which a carrier limits the number of seats available for sale.

Carrier means an air carrier or foreign air carrier subject to section 41504 of the Statute.

Charge means the amount charged for baggage, in excess of the free allowance, accompanying or checked by a passenger or for any other service ancillary to the passenger's carriage.

Conditions of carriage means those rules of general applicability that define the rights and obligations of the carrier(s) and any other party to the contract of carriage with respect to the transportation services provided.

Contract of carriage means those fares, rules, and other provisions applicable to the foreign air transportation of passengers or their baggage, as defined in the statute.

CRT means a video display terminal that uses a cathode ray tube as the image medium.

Department means the Department of Transportation.

Direct-service market means an international market where the carrier

provides service either on a nonstop or single-flight-number basis, including change-of-gauge.

Electronic tariff means an international passenger fares or rules tariff or a special tariff permission application transmitted to the Department by means of an electronic medium, and containing fares for the transportation of persons and their baggage, and including such associated data as arbitraries, footnotes, routings, and fare class explanations.

Fare means the amount per passenger or group of persons stated in the applicable tariff for the air transportation thereof and includes baggage unless the context otherwise requires.

Field means a specific area of a record used for a particular category of data.

Filer means an air carrier, foreign air carrier, or tariff publishing agent of such a carrier filing tariffs on its behalf in conformity with this subpart.

Item means a small subdivision of a tariff and identified by a number, a letter, or other definite method for the purpose of facilitating reference and amendment.

Joint fare means a fare that applies to transportation over the joint lines or routes of two or more carriers and which is made and published by arrangement or agreement between such carriers evidenced by concurrence or power of attorney.

Joint tariff means a tariff that contains joint fares.

Local fare means a fare that applies to transportation over the lines or routes of one carrier only.

Local tariff means a tariff that contains local fares.

Machine-Readable Data means encoded computer data, normally in a binary format, which can be read electronically by another computer with the requisite software without any human interpretation.

On-line Tariff Database means the remotely accessible, on-line version, maintained by the filer, of (1) the electronically filed tariff data submitted to the Department pursuant to this part and Department orders, and (2) the Departmental approvals, disapprovals, and other actions, as well as any Departmental notation concerning such approvals, disapprovals, or other actions, that subpart R of this part requires the filer to maintain in its database.

Original tariff refers to the tariff as it was originally filed exclusive of any supplements, revised records or additional records.

Passenger means any person who purchases, or who contacts a ticket office or travel agent for the purpose of purchasing, or considering the purchase of, foreign air transportation.

Passenger tariff means a tariff containing fares, charges, or governing provisions applicable to the foreign air transportation of persons and their baggage.

Publish means to display tariff material in either electronic or paper media.

Record means an electronic tariff data set that contains information describing one (1) tariff price or charge, or information describing one (1) related element associated with that tariff price or charge.

SFFL means the Standard Foreign Fare Level as established by the Department of Transportation under 49 U.S.C. 41509.

Statute means Subtitle VII of Title 49, United States Code.

Statutory Notice means the number of days required for tariff filings in § 221.160(a).

Tariff publication means a tariff, a supplement to a tariff, or an original or revised record of a tariff, including an index of tariffs and an adoption notice (§ 221.161).

Through fare means the total fare from point of origin to destination. It may be a local fare, a joint fare, or combination of separately established fares.

Ticket Office means a station, office or other location where tickets are sold or similar documents are issued, that is under the charge of a person employed exclusively by the carrier, or by it jointly with another person.

Unbundled Normal Economy Fare means the lowest one-way fare available for on-demand service in any city-pair market which is restricted in some way, *e.g.*, by limits set and/or charges imposed for enroute stopovers or transfers, exclusive of capacity control.

United States means the several States, the District of Columbia, and the several Territories and possessions of the United States, including the Territorial waters and the overlying air space thereof.

Warsaw Convention means the Convention for the Unification of Certain Rules Relating to International Transportation by Air, 49 Stat. 3000.

§ 221.4 English language.

All tariffs and other documents and material filed with the Department pursuant to this part shall be in the English language.

§ 221.5 Unauthorized air transportation.

Tariff publications shall not contain fares or charges, or their governing provisions, applicable to foreign air transportation which the issuing or participating carriers are not authorized by the Department to perform, except where the Department expressly requests or authorizes tariff publications to be filed prior to the Department's granting authority to perform the foreign air transportation covered by such tariff publications. Any tariff publication filed pursuant to such express request or authorization which is not consistent with chapter 415 and this part may be rejected; any tariff publication so rejected shall be void.

Subpart B—Who is Authorized to Issue and File Tariffs

§ 221.10 Carrier.

(a) *Local or joint tariffs.* A carrier may issue and file, in its own name, tariff publications which contain:

(1) Local fares of such carrier only, and provisions governing such local fares, and/or

(2) Joint fares which apply jointly via such issuing carrier in connection with other carriers (participating in the tariff publications under authority of their concurrences given to the issuing carrier as provided in ' 221.140) and provisions governing such joint fares. Provisions for account of an individual participating carrier may be published to govern such joint fares provided ' 221.40(a)(9) is complied with. A carrier shall not issue and file tariff publications containing local fares of other carriers, joint rates or fares in which the issuing carrier does not participate, or provisions governing such local or joint fares.

(3) Rules and regulations governing foreign air transportation to the extent provided by this part and/or Department order. Rules and regulations may be published in separate governing tariffs, as provided in subpart G.

(b) *Issuing officer.* An officer or designated employee of the issuing carrier shall be shown as the issuing officer of a tariff publication issued by a carrier, and such issuing officer shall file the tariff publication with the Department on behalf of the issuing carrier and all carriers participating in the tariff publication.

§ 221.11 Agent.

An agent may issue and file, in his or its own name, tariff publications naming local fares and/or joint fares, and provisions governing such fares, and rules and regulations governing foreign air transportation to the extent provided by this part and/or Department order, for account of carriers participating in such tariff publications, under authority of their powers of attorney given to such issuing agent as provided in ' 221.150. The issuing agent shall file such tariff publications with the Department on behalf of all carriers participating therein. Only one issuing agent may act in issuing and filing each such tariff publication.

Subpart C—Specifications of Tariff Publications

§ 221.20 Specifications applicable to tariff publications.

(a) *Numerical order.* All items in a tariff shall be arranged in numerical or alphabetical order. Each item shall bear a separate item designation and the same designation shall not be assigned to more than one item.

(b) *Carrier's name.* Wherever the name of a carrier appears in a tariff publication, such name shall be shown in full exactly as it appears in the carrier's certificate of public convenience and necessity, foreign air carrier permit, letter of registration, or whatever other form of operating authority of the Department to engage in air transportation is held by the carrier, or such other name which has specifically been authorized by order of the Department. A carrier's name may be abbreviated, provided the abbreviation is explained in the tariff.

(c) *Agent's name and title.* Wherever the name of an agent appears in tariff publications, such name shall be shown in full exactly as it appears in the powers of attorney given to such agent by the participating carriers and the title "Agent" or "Alternate Agent" (as the case may be) shall be shown immediately in connection with the name.

(d) *Statement of prices.* All fares and charges shall be clearly and explicitly stated and shall be arranged in a simple and systematic manner. Complicated plans and ambiguous or indefinite terms shall not be used. So far as practicable, the fares and charges shall be subdivided into items or similar units, and an identifying number shall be assigned to each item or unit to facilitate reference thereto.

(e) *Statement of rules.* The rules and regulations of each tariff shall be clear, explicit and definite, and except as otherwise provided in this part, shall contain:

(1) Such explanatory statements regarding the fares, charges, rules or other provisions contained in the tariff as may be necessary to remove all doubt as to their application.

(2) All of the terms, conditions, or other provisions which affect the fares or charges for air transportation named in the tariff.

(3) All provisions and charges which in any way increase or decrease the amount to be paid by any passenger, or which in any way increase or decrease the value of the services rendered to the passenger.

(f) *Separate rules tariff.* If desired, rules and regulations may be published in separate governing tariffs to the extent authorized and in the manner required by subpart G.

(g) *Rules of limited application.* A rule affecting only a particular fare or other provision in the tariff shall be specifically referred to in connection with such fare or other provision, and such rule shall indicate that it is applicable only in connection with such fare or other provision. Such rule shall not be published in a separate governing rules tariff.

(h) *Conflicting or duplicating rules prohibited.* The publication of rules or regulations which duplicate or conflict with other rules or regulations published in the same or any other tariff for account of the same carrier or carriers and applicable to or in connection with the same transportation is prohibited.

(i) Each tariff shall include:

(1) A prominent D.O.T. or other number identifying the tariff in the sequence of tariffs published by the carrier or issuing agent;

(2) The name of the issuing carrier or agent;

(3) The cancellation of any tariffs superseded by the tariff;

(4) A description of the tariff contents, including geographic coverage;

(5) Identification by number of any governing tariffs;

(6) The date on which the tariff is issued;

(7) The date on which the tariff provisions will become effective; and

(8) the expiration date, if applicable to the entire tariff.

Subpart D—Manner of Filing Tariffs

§ 221.30 Passenger fares and charges.

(a) Fares tariffs, including associated data, shall be filed electronically in conformity with subpart R. Associated data includes arbitraries, footnotes, routing numbers and fare class explanations. See § 221.202(b)(8).

(b) Upon application by a carrier, the Department's Office of International Aviation shall have the authority to waive the electronic filing requirement in this paragraph and in subpart R in whole or in part, for a period up to one year, and to permit, under such terms and conditions as may be necessary to carry out the purposes of this part, the applicant carrier to file fare tariffs in a paper format. Such waivers shall only be considered where electronic filing, compared to paper filing, is impractical and will produce a significant economic hardship for the carrier due to the limited nature of the carrier's operations subject to the requirements of this part, or other unusual circumstances. Paper filings pursuant to this paragraph shall normally conform to the requirements of § 221.195 and other applicable requirements of this part.

§ 221.31 Rules and regulations governing passenger fares and services.

(a) Tariff rules and regulations governing passenger fares and services other than those subject to § 221.30 may be filed electronically in conformity with subpart R. Such filings shall conform to criteria approved by the Department's Office of International Aviation as provided in § 221.180 and shall contain at a minimum the information required by § 221.202(b)(9).

(b) Applications for special tariff permission may be filed electronically, as provided in § 221.212.

(c) Tariff publications and applications for special tariff permission covered by paragraphs (a) and (b) of this section may be filed in a paper format, subject to the requirements of this part and Department orders.

Subpart E—Contents of Tariff

§ 221.40 Specific requirements.

(a) In addition to the general requirements in § 221.20, the rules and regulations of each tariff shall contain:

(1) *Aircraft and seating.* For individually ticketed passenger service, the name of each type of aircraft used in rendering such service by manufacturer model designation and a description of the seating configuration (or configurations if there are variations) of each type of aircraft. Where fares are provided for different classes or types of passenger service (that is, first class, coach, day coach, night coach, tourist, economy or whatever other class or type of service is provided under the tariff), the tariff shall specify the type of aircraft and the seating configuration used on such aircraft for each class or type of passenger service. When two or more classes or types of passenger service are performed in a single aircraft, the seating configuration for each type or class shall be stated and described.

(2) *Rule numbers.* Each rule or regulation shall have a separate designation. The same designation shall not be assigned to more than one rule in the tariff.

(3) *Penalties.* Where a rule provides a charge in the nature of a penalty, the rule shall state the exact conditions under which such charge will be imposed.

(4) *Vague or indefinite provisions.* Rules and regulations shall not contain indefinite statements to the effect that traffic of any nature will be "taken only by special arrangements", or that services will be performed or penalties imposed "at carrier's option", or that the carrier "reserves the right" to act or to refrain from acting in a specified manner, or other provisions of like import; instead, the rules shall state definitely what the carrier will or will not do under the exact conditions stated in the rules.

(5) *Personal liability rules.* Except as provided in this part, no provision of the Department's regulations issued under this part or elsewhere shall be construed to require the filing of any tariff rules stating any limitation on, or condition relating to, the carrier's liability for personal injury or death. No subsequent regulation issued by the Department shall be construed to supersede or modify this rule of construction except to the extent that such regulation shall do so in express terms.

(6) *Notice of limitation of liability for death or injury under the Warsaw Convention.* Notwithstanding the provisions of paragraph (a)(5) of this section, each air carrier and foreign air carrier shall publish in its tariffs a provision stating whether it avails itself of the limitation on liability to passengers as provided in Article 22(1) of the Warsaw Convention or whether it has elected to agree to a higher limit of liability by a tariff provision. Unless the carrier elects to assume unlimited liability, its tariffs shall contain a statement as to the applicability and effect of the Warsaw Convention, including the amount of the liability limit in dollars. Where applicable, a statement advising passengers of the amount of any higher limit of liability assumed by the carrier shall be added.

(7) *Extension of credit.* Air carriers and foreign air carriers shall not file tariffs that set forth charges, rules, regulations, or practices relating to the extension of credit for payment of charges applicable to air transportation.

(8) *Individual carrier provisions governing joint fares.* Provisions governing joint fares may be published for account of an individual carrier participating in such joint fares provided that the tariff clearly indicates how such individual carrier's provisions apply to the through transportation over the applicable joint routes comprised of such carrier and other carriers who either do not maintain such provisions or who maintain different provisions on the same subject matter.

(9) *Passenger property which cannot lawfully be carried in the aircraft cabin.* Each air carrier shall set forth in its tariffs governing the transportation of persons, including passengers' baggage, charges, rules, and regulations providing that such air carrier receiving as baggage any property of a person traveling in air transportation, which property cannot lawfully be carried by such person in the aircraft cabin by reason of any Federal law or regulation, shall assume liability to such person, at a reasonable charge and subject to reasonable terms and conditions, within the amount declared to the air carrier by such person, for the full actual loss or damage to such property caused by such air carrier.

(b) [Reserved]

§ 221.41 Routing.

(a) *Required routing.* The route or routes over which each fare applies shall be stated in the tariff in such manner that the following information can be definitely ascertained from the tariff:

(1) The carrier or carriers performing the transportation,

(2) The point or points of interchange between carriers if the route is a joint route (via two or more carriers),

(3) The intermediate points served on the carrier's or carriers' routes applicable between the origin and destination of the fare and the order in which such intermediate points are served.

(b) *Individually stated routings—Method of publication.* The routing required by paragraph (a) of this section shall be shown directly in connection with each fare or charge for transportation, or in a routing portion of the tariff (following the fare portion of the tariff), or in a governing routing tariff. When shown in the routing portion of the tariff or in a governing routing tariff, the fare from each point of origin to each point of destination shall bear a routing number and the corresponding routing numbers with their respective explanations of the applicable routings shall be arranged in numerical order in the routing portion of the tariff or in the governing routing tariff.

Subpart F—Requirements Applicable to All Statements of Fares and Charges

§ 221.50 Currency.

(a) *Statement in United States currency required.* All fares and charges shall be stated in cents or dollars of the United States except as provided in paragraph (b) of this section.

(b) *Statements in both United States and foreign currencies permitted.* Fares and charges applying between points in the United States, on the one hand, and points in foreign countries, on the other hand, or applying between points in foreign countries, may also be stated in the currencies of foreign countries in addition to being stated in United States currency as required by paragraph (a) of this section: Provided, that:

(1) The fares and charges stated in currencies of countries other than the United States are substantially equivalent in value to the respective fares and charges stated in cents or dollars of the United States.

(2) Each record containing fares and charges shall clearly indicate the respective currencies in which the fares and charges thereon are stated, and

(3) The fares and charges stated in cents or dollars of the United States are published separately from those stated in currencies of other countries. This shall be done in a systematic manner and the fares and charges in the respective currencies shall be published in separate records.

§ 221.51 Territorial application.

(a) *Specific points of origin and destination.* Except as otherwise provided in this part, the specific points of origin and destination from and to which the fares apply shall be specifically named directly in connection with the respective fares.

(b) *Directional application.* A tariff shall specifically indicate directly in connection with the fares therein whether they apply "from" and "to" or "between" the points named. Where the fares apply in one direction, the terms "From" and "To" shall be shown in connection with the point of origin and point of destination, respectively, and, where the fares apply in both directions between the points, the terms "Between" and "And" shall be shown in connection with the respective points.

§ 221.52 Airport to airport application, accessorial services.

Tariffs shall specify whether or not the fares therein include services in addition to airport-to-airport transportation.

§ 221.53 Proportional fares.

(a) *Definite application.* Add-on fares shall be specifically designated as "add-on" fares on each page where they appear.

(b) A tariff may provide that fares from (or to) particular points shall be determined by the addition of add-ons to, or the deduction of add-ons from, fares therein which apply from (or to) a base point. Provisions for the addition or deduction of such add-ons shall be shown either directly in connection with the fare applying to or from the base point or in a separate provision which shall specifically name the base point. The tariff shall clearly and definitely state the manner in which such add-ons shall be applied.

(c) *Restrictions upon beyond points or connecting carriers.* If an add-on fare is intended for use only on traffic originating at and/or destined to particular beyond points or is to apply only in connection with particular connecting carriers, such application shall be clearly and explicitly stated directly in connection with such add-on fare.

§ 221.54 Fares stated in percentages of other fares; other relationships prohibited.

(a) Fares for foreign air transportation of persons or property shall not be stated in the form of percentages, multiples, fractions, or other relationships to other fares except to the extent authorized in paragraphs (b), (c), and (d) of this section with respect to passenger fares and baggage charges.

(b) A basis of fares for refund purposes may be stated, by rule, in the form of percentages of other fares.

(c) Transportation rates for the portion of passengers' baggage in excess of the baggage allowance under the applicable fares may be stated, by rule, as percentages of fares.

(d) Children's, infants' and senior citizen's fares, may be stated, by rule, as percentages of other fares published specifically in dollars and cents (hereinafter referred to as base fares): Provided, that:

(1) Fares stated as percentages of base fares shall apply from and to the same points, via the same routes, and for the same class of service and same type of aircraft to which the applicable base fares apply, and shall apply to all such base fares in a fares tariff.

(2) Fares shall not be stated as percentages of base fares for the purpose of establishing fares applying from and to points, or via routes, or on types of aircraft, or for classes of service different from the points, routes, types of aircraft, or classes of service to which the base fares are applicable.

§ 221.55 Conflicting or duplicating fares prohibited.

The publication of fares or charges of a carrier which duplicate or conflict with the fares of the same carrier published in the same or any other tariff for application over the same route or routes is hereby prohibited.

§ 221.56 Applicable fare when no through local or joint fares.

Lowest combination fare applicable. Where no applicable local or joint fare is provided from point of origin to point of destination over the route of movement, whichever combination of applicable fares provided over the route of movement produces the lowest charge shall be applicable, except that a carrier may provide explicitly that a fare cannot be used in any combination or in a combination on particular traffic or under specified conditions, provided another combination is available.

Subpart G—Governing Tariffs

§ 221.60 When reference to governing tariffs permitted.

(a) *Reference to other tariffs prohibited except as authorized.* A tariff shall not refer to nor provide that it is governed by any other tariff, document, or publication, or any part thereof, except as specifically authorized by this part.

(b) *Reference by fare tariff to governing tariffs.* A fare tariff may be made subject to a governing tariff or governing tariffs authorized by this subpart: Provided, that reference to such governing tariffs is published in the fare tariff in the manner required by § 221.20(h).

(c) *Participation in governing tariffs.* A fare tariff may refer to a separate governing tariff authorized by this subpart only when all carriers participating in such fare tariff are also shown as participating carriers in the governing tariff: Provided, that:

(1) If such reference to a separate governing tariff does not apply for account of all participating carriers and is restricted to apply only in connection with local or joint fares applying over routes consisting of only particular carriers, only the carriers for whom such reference is published are required to be shown as participating carriers in the governing tariff to which such qualified reference is made.

(2) [Reserved].

(d) *Maximum number of governing tariffs.* A single fare tariff shall not make reference to conflicting governing tariffs.

§ 221.61 Rules and regulations governing foreign air transportation.

Instead of being included in the fares tariffs, the rules and regulations governing foreign air transportation required to be filed by §§ 221.20 and 221.30 and/or Department order which do not govern the applicability of particular fares may be filed in separate governing tariffs, conforming to this subpart. Governing rules tariffs shall contain an index of rules.

§ 221.62 Explosives and other dangerous or restricted articles.

Carriers may publish rules and regulations governing the transportation of explosives and other dangerous or restricted articles in separate governing tariffs, conforming to this subpart, instead of being included in the fares tariffs or in the governing rules tariff authorized by § 221.61. This separate governing tariff shall contain no other rules or governing provisions.

§ 221.63 Other types of governing tariffs.

Subject to approval of the Department, carriers may publish other types of governing tariffs not specified in this subpart, such as routing guides.

Subpart H—Amendment of Tariffs

§ 221.70 Who may amend tariffs.

A tariff shall be amended only by the carrier or agent who issued the tariff (except as otherwise authorized in subparts P and Q).

§ 221.71 Requirement of clarity and specificity.

Amendments to tariffs shall identify with specificity and clarity the material being amended and the changes being made. Amendments to paper tariffs shall be accomplished by reissuing each page upon which a change occurs with the change made and identified by uniform amendment symbols. Each revised page shall identify and cancel the previously effective page, show the effective date of the previous page, and show the intended effective date of the revised page. Amendments in electronic format shall conform to the requirements of § 221.202 and other applicable provisions of subpart R.

§ 221.72 Reinstating canceled or expired tariff provisions.

Any fares, rules, or other tariff provisions which have been canceled or which have expired may be reinstated only by republishing such provisions and posting and filing the tariff publications (containing such republished provisions) on lawful notice in the form and manner required by this part.

Subpart I—Suspension of Tariff Provisions by Department

§ 221.80 Effect of suspension by Department.

(a) *Suspended matter not to be used.* A fare, charge, or other tariff provision which is suspended by the Department, under authority of chapter 415 of the

statute, shall not be used during the period of suspension specified by the Department's order.

(b) *Suspended matter not to be changed.* A fare, charge, or other tariff provision which is suspended by the Department shall not be changed in any respect or withdrawn or the effective date thereof further deferred except by authority of an order or special tariff permission of the Department.

(c) *Suspension continues former matter in effect.* If a tariff publication containing matter suspended by the Department directs the cancellation of a tariff or any portion thereof, which contains fares, charges, or other tariff provisions sought to be amended by the suspended matter, such cancellation is automatically suspended for the same period insofar as it purports to cancel any tariff provisions sought to be amended by the suspended matter.

(d) *Matter continued in effect not to be changed.* A fare, charge, or other tariff provision which is continued in effect as a result of a suspension by the Department shall not be changed during the period of suspension unless the change is authorized by order or special tariff permission of the Department, except that such matter may be reissued without change during the period of suspension.

§ 221.81 Suspension supplement.

(a) *Suspension supplement.* Upon receipt of an order of the Department suspending any tariff publication in part or in its entirety, the carrier or agent who issued such tariff publication shall immediately issue and file with the Department a consecutively numbered supplement for the purpose of announcing such suspension.

(b) The suspension supplement shall not contain an effective date and it shall contain the suspension notice required by paragraph (c) of this section.

(c) *Suspension notice.* The suspension supplement shall contain a prominent notice of suspension which shall:

(1) Indicate what particular fares, charges, or other tariff provisions are under suspension,

(2) State the date to which such tariff matter is suspended,

(3) State the Department's docket number and order number which suspended such tariff matter, and

(4) Give specific reference to the tariffs (specifying their D.O.T. or other identifying numbers), original or revised records and paragraphs or provisions which contain the fares, charges, or other tariff provisions continued in effect.

§ 221.82 Reissue of matter continued in effect by suspension to be canceled upon termination of suspension.

When tariff provisions continued in effect by a suspension are reissued during the period of such suspension, the termination of the suspension and the coming into effect of the suspended matter will not accomplish the cancellation of such reissued matter. In such circumstances, prompt action shall be taken by the issuing agent or carrier to cancel such reissued provisions upon the termination of the suspension in order that they will not conflict with the provisions formerly under suspension.

§ 221.83 Tariff must be amended to make suspended matter effective.

(a) When the Department vacates an order which suspended certain tariff matter in full or in part, such matter will not become effective until the termination of the suspension period unless the issuing agent or carrier amends the pertinent tariffs in the manner prescribed in this subpart (except as provided in paragraph (b) of this section).

(b) If the Department vacates its suspension order prior to the original published effective date of the tariff provisions whose suspension is vacated, such provisions will become effective on their published effective date.

§ 221.84 Cancellation of suspended matter subsequent to date to which suspended.

(a) *Endeavor to cancel prior to expiration of suspension period.* When an order of the Department requires the cancellation of tariff provisions which were suspended by the Department and such cancellation is required to be made effective on or before a date which is after the date to which such tariff provisions were suspended, the issuing carrier or agent shall, if possible, make the cancellation effective prior to the date to which such tariff provisions were suspended.

(b) *When necessary to republish matter continued in effect by suspension.* If suspended tariff provisions become effective upon expiration of their suspension period and thereby accomplish the cancellation of the tariff provisions continued in effect by the suspension, the issuing agent or carrier shall republish and reestablish such canceled tariff provisions effective simultaneously with the cancellation of the suspended provisions in compliance with the Department's order. The tariff amendments which reestablish such canceled tariff provisions shall bear reference to this subpart and the Department's order.

Subpart J—Filing Tariff Publications With Department

§ 221.90 Required notice.

(a) *Statutory notice required.* Unless otherwise authorized by the Department or specified in a bilateral agreement between the United States and a foreign country, all tariff filings shall be made on the following schedule, whether or not they effect any changes:

(1) At least 30 days before they are to become effective, for tariffs stating a passenger fare within the zone created by section 41509(e) of the statute or stating a rule that affects only such a fare;

(2) At least 25 days before they are to become effective, for matching tariffs that are to become effective on the same date as the tariff to be matched and that meet competition as described in § 221.94(c)(1)(v); and

(3) At least 60 days before they are to become effective, for all other tariffs.

(b) *Computing number of days' notice.* A tariff publication shall be deemed to be filed only upon its actual receipt by the Department, and the first day of any required period of notice shall be the day of actual receipt by the Department.

(c) *Issued date.* All tariff publications must be received by the Department on or before the designated issued date.

§ 221.91 Delivering tariff publications to Department.

Tariff publications will be received for filing only by delivery thereof to the Department electronically, through normal mail channels, or by delivery thereof during established business hours directly to that office of the Department charged with the responsibility of processing tariffs. No tariff publication will be accepted by the Department unless it is delivered free from all charges, including claims for postage.

§ 221.92 Number of copies required.

Two copies of each paper tariff, tariff revision and adoption notice to be filed shall be sent to the Office of International Aviation, Department of Transportation, Washington, DC 20428. All such copies shall be included in one package and shall be accompanied by a letter of tariff transmittal.

§ 221.93 Concurrences or powers of attorney not previously filed to accompany tariff transmittal.

When a tariff is filed on behalf of a carrier participating therein under authority of its concurrence or power of attorney, such concurrence or power of attorney shall, if not previously filed with the Department, be transmitted at the same time such tariff is submitted for filing.

§ 221.94 Explanation and data supporting tariff changes and new matter in tariffs.

When a tariff is filed with the Department which contains new or changed local or joint fares or charges for foreign air transportation, or new or changed classifications, rules, regulations, or practices affecting such fares or charges, or the value of the service thereunder, the issuing air carrier, foreign air carrier, or agent shall submit with the filing of such tariff:

(a) An explanation of the new or changed matter and the reasons for the filing, including (if applicable) the basis of rate making employed. Where a tariff is filed pursuant to an intercarrier agreement approved by the Department, the explanation shall identify such agreement by DOT Docket number, DOT order of approval number, IATA resolution number, or if none is designated, then by other definite identification. Where a tariff is filed on behalf of a foreign air carrier pursuant to a Government order, a copy of such order shall be submitted with the tariff.

(b) Appropriate Economic data and/or information in support of the new or changed matter.

(c) Exceptions: (1) The requirement for data and/or information in paragraph (b) of this section will not apply to tariff publications containing new or changed matter which are filed:

(i) In response to Department orders or specific policy pronouncements of the Department directly related to such new or changed matter;

(ii) Pursuant to an intercarrier agreement approved by the Department setting forth the fares, charges (or specific formulas therefor) or other matter: Provided that the changes are submitted with the number of the DOT order of approval and fully comply with any conditions set forth in that order;

(iii) To the extent fares for scheduled passenger service are within a statutory or Department-established zone of fare flexibility; and

(iv) To meet competition: Provided, that

(A) Changed matter will be deemed to have been filed to meet competition only when it effects decreases in fares or charges and/or increases the value of service so that the level of the fares or charges and the services provided will be substantially similar to the level of fares or charges and the services of a competing carrier or carriers.

(B) New matter will be deemed to have been filed to meet competition only when it establishes or affects a fare or charge and a service which will be substantially similar to the fares or charges and the services of a competing carrier or carriers.

(C) When new or changed matter is filed to meet competition over a portion of the filing air carrier's system and is simultaneously made applicable to the balance of the system, such matter, insofar as it applies over the balance of the system, will be deemed to be within the exception in this paragraph (c)(1)(iv) of this section only if such carrier submits an explanation as to the necessity of maintaining uniformity over its entire system with respect to such new or changed matter.

(D) In any case where new or changed matter is filed to meet competition, the filing carrier or agent must supply, as part of the filing justification, the complete tariff references which will serve to identify the competing tariff matter which the tariff purports to meet. In such case the justification or attachment shall state whether the new or changed matter is identical to the competing tariff matter which it purports to meet or whether it approximates the competing tariff matter. If the new or changed matter is not identical, the transmittal letter or attachment shall contain a statement explaining, in reasonable detail, the basis for concluding that the tariff publication being filed is substantially similar to the competing tariff matter.

(2) [Reserved].

Subpart K—Availability of Tariff Publications for Public Inspection

§ 221.100 Public notice of tariff information.

Carriers must make tariff information available to the general public, and in so doing must comply with either:

(a) Sections 221.101, 221.102, 221.103, 221.104, 221.105, and 221.106, or

(b) Sections 221.105, 221.106 and 221.107 of this subpart.

§ 221.101 Inspection at stations, offices, or locations other than principal or general office.

(a) Each carrier shall make available for public inspection at each of its stations, offices, or other locations at which tickets for passenger transportation are sold and which is in charge of a person employed exclusively by the carrier, or by it jointly with another person, all tariffs applicable to passenger traffic from or to the point where such station, office, or location is situated, including tariffs covering any terminal services, charges, or practices whatsoever, which apply to passenger traffic from or to such point.

(b) A carrier will be deemed to have complied with the requirement that it "post" tariffs, if it maintains at each station, office, or location a file in complete form of all tariffs required to be posted; and in the case of tariffs involving passenger fares, rules, charges or practices, notice to the passenger as required in § 221.105.

(c) Tariffs shall be posted by each carrier party thereto no later than the filed date designated thereon except that in the case of carrier stations, offices or locations situated outside the United States, its territories and possessions, the time shall be not later than five days after the filed date, and except that a tariff which the Department has authorized to be filed on shorter notice shall be posted by the carrier on like notice as authorized for filing.

§ 221.102 Accessibility of tariffs to the public.

Each file of tariffs shall be kept in complete and accessible form. Employees of the carrier shall be required to give any desired information contained in such tariffs, to lend assistance to seekers of information therefrom, and to afford inquirers opportunity to examine any of such tariffs without requiring the inquirer to assign any reason for such desire.

§ 221.103 Notice of tariff terms.

Each carrier shall cause to be displayed continuously in a conspicuous public place at each station, office, or location at which tariffs are required to be posted, a notice printed in large type reading as follows:

Public Inspection of Tariffs

All the currently effective passenger tariffs to which this company is a party and all passenger tariff publications which have been issued but are not yet effective are on file in this office, so far as they apply to traffic from or to. (Here name the point.) These tariffs may be inspected by any person upon request and without the assignment of any reason for such inspection. The employees of this company on duty in this office will lend assistance in securing information from the tariffs.

In addition, a complete file of all tariffs of this company, with indexes thereof, is maintained and kept available for public inspection at . (Here indicate the place or places where complete tariff files are maintained, including the street address, and where appropriate, the room number.)

§ 221.105 Special notice of limited liability for death or injury under the Warsaw Convention.

(a)(1) In addition to the other requirements of this subpart, each air carrier and foreign air carrier which, to any extent, avails itself of the limitation on liability to passengers provided by

the Warsaw Convention, shall, at the

carriers providing for such higher limit,

forth in the Warsaw Convention and has

provisions of paragraphs (a) and (b) of this section.

are available in this office. These provisions may be inspected by any person upon request and for any reason. The employees of this

changes, substitution of alternate carrier or aircraft, and rerouting.

(c) *Explanation of incorporated terms.*

the Warsaw Convention, shall, at the time of delivery of the ticket, furnish to each passenger whose transportation is governed by the Convention and whose place of departure or place of destination is in the United States, the following statement in writing:

Advice to International Passengers on Limitations of Liability

Passengers embarking upon a journey involving an ultimate destination or a stop in a country other than the country of departure are advised that the provisions of a treaty known as the Warsaw Convention may be applicable to their entire journey including the portion entirely within the countries of departure and destination. The Convention governs and in most cases limits the liability of carriers to passengers for death or personal injury to approximately $10,000.

Additional protection can usually be obtained by purchasing insurance from a private company. Such insurance is not affected by any limitation of the carrier's liability under the Warsaw Convention. For further information please consult your airline or insurance company representative.

(2) Provided, however, That when the carrier elects to agree to a higher limit of liability to passengers than that provided in Article 22(1) of the Warsaw Convention, such statement shall be modified to reflect the higher limit. The statement prescribed herein shall be printed in type at least as large as 10-point modern type and in ink contrasting with the stock on:

(i) Each ticket;

(ii) A piece of paper either placed in the ticket envelope with the ticket or attached to the ticket; or

(iii) The ticket envelope.

(b) Each air carrier and foreign air carrier which, to any extent, avails itself of the limitation on liability to passengers provided by the Warsaw Convention, shall also cause to be displayed continuously in a conspicuous public place at each desk, station, and position in the United States which is in the charge of a person employed exclusively by it or by it jointly with another person, or by any agent employed by such air carrier or foreign air carrier to sell tickets to passengers whose transportation may be governed by the Warsaw Convention and whose place of departure or destination may be in the United States, a sign which shall have printed thereon the statement prescribed in paragraph (a) of this section: Provided, however, That an air carrier, except an air taxi operator subject to part 298 of this subchapter, or foreign air carrier which provides a higher limitation of liability than that set forth in the Warsaw Convention and has signed a counterpart of the agreement among carriers providing for such higher limit, which agreement was approved by the Civil Aeronautics Board by Order E–23680, dated May 13, 1966 (31 FR 7302, May 19, 1966), may use the alternate form of notice set forth in the proviso to § 221.106(a) of this chapter in full compliance with the posting requirements of this paragraph. And provided further, That an air taxi operator subject to part 298 of this subchapter, which provides a higher limitation of liability than that set forth in the Warsaw Convention and has signed a counterpart of the agreement among carriers providing for such higher limit, which agreement was approved by the Civil Aeronautics Board by Order E–23680, dated May 13, 1966 (31 FR 7302, May 19, 1966), may use the following notice in the manner prescribed by this paragraph in full compliance with the posting requirements of this paragraph. Such statements shall be printed in bold faced type at least one-fourth of an inch high.

Advice to International Passengers on Limitation of Liability

Passengers traveling to or from a foreign country are advised that airline liability for death or personal injury and loss or damage to baggage may be limited by the Warsaw Convention and tariff provisions. See the notice with your ticket or contact your airline ticket office or travel agent for further information.

§ 221.106 Notice of limited liability for baggage; alternative consolidated notice of liability limitations.

(a)(1) Each air carrier and foreign air carrier which, to any extent, avails itself of limitations on liability for loss of, damage to, or delay in delivery of baggage shall cause to be displayed continuously in a conspicuous public place at each desk, station, and position in the United States which is in the charge of a person employed exclusively by it or by it jointly with another person, or by any agent employed by such air carrier or foreign air carrier to sell tickets to persons or accept baggage for checking, a sign which shall have printed thereon the following statement:

Notice of Limited Liability for Baggage

For most international travel (including domestic portions of international journeys) liability for loss, delay, or damage to baggage is limited to approximately $9.07 per pound for checked baggage and $400 per passenger for unchecked baggage unless a higher value is declared and an extra charge is paid. Special rules may apply for valuables. Consult your carrier for details.

(2) Provided, however, that an air carrier or foreign air carrier which provides a higher limitation of liability for death or personal injury than that set forth in the Warsaw Convention and has signed a counterpart of the agreement approved by the Civil Aeronautics Board by Order E–23680, dated May 13, 1966 (31 FR 7302, May 19, 1966), may use the following notice in full compliance with the posting requirements of this paragraph and of § 221.105(b):

Advice to Passengers on Limitations of Liability

Airline liability for death or personal injury may be limited by the Warsaw Convention and tariff provisions in the case of travel to or from a foreign country.

For most international travel (including domestic portions of international journeys) liability for loss, delay or damage to baggage is limited to approximately $9.07 per pound for checked baggage and $400 per passenger for unchecked baggage unless a higher value is declared and an extra charge is paid. Special rules may apply to valuable articles.

See the notice with your tickets or consult your airline or travel agent for further information.

(3) Provided, however, That carriers may include in the notice the parenthetical phrase "($20.00 per kilo)" after the phrase "$9.07 per pound" in referring to the baggage liability limitation for most international travel. Such statements shall be printed in bold-face type at least one-fourth of an inch high and shall be so located as to be clearly visible and clearly readable to the traveling public.

(b)(1) Each air carrier and foreign air carrier which, to any extent, avails itself of limitations of liability for loss of, damage to, or delay in delivery of, baggage shall include on or with each ticket issued in the United States or in a foreign country by it or its authorized agent, the following notice printed in at least 10 point type:

Notice of Baggage Liability Limitations

For most international travel (including domestic portions of international journeys) liability for loss, delay, or damage to baggage is limited to approximately $9.07 per pound for checked baggage and $400 per passenger for unchecked baggage unless a higher value is declared in advance and additional charges are paid. Excess valuation may not be declared on certain types of valuable articles. Carriers assume no liability for fragile or perishable articles. Further information may be obtained from the carrier.

(2) Provided, however, that carriers may include in their ticket notice the parenthetical phrase "($20.00 per kilo)" after the phrase "$9.07 per pound" in referring to the baggage liability limitation for most international travel.

(c) It shall be the responsibility of each carrier to insure that travel agents authorized to sell air transportation for such carrier comply with the notice

provisions of paragraphs (a) and (b) of this section.

(d) Any air carrier or foreign air carrier subject to the provisions of this section which wishes to use a notice of limited liability for baggage of its own wording, but containing the substance of the language prescribed in paragraphs (a) and (b) of this section may substitute a notice of its own wording upon approval by the Department.

(e) The requirements as to time and method of delivery of the notice (including the size of type) specified in paragraphs (a) and (b) of this section and the requirement with respect to travel agents specified in paragraph (c) may be waived by the Department upon application and showing by the carrier that special and unusual circumstances render the enforcement of the regulations impractical and unduly burdensome and that adequate alternative means of giving notice are employed.

(f) Applications for relief under paragraphs (d) and (e) of this section shall be filed with the Department's Office of International Aviation not later than 15 days before the date on which such relief is requested to become effective.

(g) Notwithstanding any other provisions of this section, no air taxi operator subject to part 298 of this subchapter shall be required to give the notices prescribed in this section, either in its capacity as an air carrier or in its capacity as an agent for an air carrier or foreign air carrier.

§ 221.107 Notice of contract terms.

(a) *Terms incorporated in the contract of carriage.* (1) A ticket, or other written instrument that embodies the contract of carriage for foreign air transportation shall contain or be accompanied by notice to the passenger as required in paragraphs (b) and (d) of this section.

(2) Each carrier shall make the full text of all terms that are incorporated in a contract of carriage readily available for public inspection at each airport or other ticket sales office of the carrier: Provided, That the medium, *i.e.*, printed or electronic, in which the incorporated terms and conditions are made available to the consumer shall be at the discretion of the carrier.

(3) Each carrier shall display continuously in a conspicuous public place at each airport or other ticket sales office of the carrier a notice printed in large type reading as follows:

Explanation of Contract Terms

All passenger (and/or cargo as applicable) contract terms incorporated into the contract of carriage to which this company is a party are available in this office. These provisions may be inspected by any person upon request and for any reason. The employees of this office will lend assistance in securing information, and explaining any terms.

In addition, a file of all tariffs of this company, with indexes thereof, from which incorporated contract terms may be obtained is maintained and kept available for public inspection at. (Here indicate the place or places where tariff files are maintained, including the street address and, where appropriate, the room number.)

(4) Each carrier shall provide to the passenger a complete copy of the text of any/all terms and conditions applicable to the contract of carriage, free of charge, immediately, if feasible, or otherwise promptly by mail or other delivery service, upon request at any airport or other ticket sales office of the carrier. In addition, all other locations where the carrier's tickets may be issued shall have available at all times, free of charge, information sufficient to enable the passenger to request a copy of such term(s).

(b) *Notice of incorporated terms.* Each carrier and ticket agent shall include on or with a ticket or other written instrument given to the passenger, that embodies the contract of carriage, a conspicuous notice that:

(1) The contract of carriage may incorporate terms and conditions by reference; passengers may inspect the full text of each applicable incorporated term at any of the carrier's airport locations or other ticket sales offices of the carrier; and passengers, shippers and consignees have the right to receive, upon request at any airport or other ticket sales office of the carrier, a free copy of the full text of any/all such terms by mail or other delivery service;

(2) The incorporated terms may include, among others, the terms shown in paragraphs (b)(2) (i) through (iv) of this section. Passengers may obtain a concise and immediate explanation of the terms shown in paragraphs (b)(2) (i) through (iv) of this section from any location where the carrier's tickets are sold.

(i) Limits on the carrier's liability for personal injury or death of passengers (subject to § 221.105), and for loss, damage, or delay of goods and baggage, including fragile or perishable goods.

(ii) Claim restrictions, including time periods within which passengers must file a claim or bring an action against the carrier for its acts or omissions or those of its agents.

(iii) Rules about re-confirmations or reservations, check-in times, and refusal to carry.

(iv) Rights of the carrier and limitations concerning delay or failure to perform service, including schedule changes, substitution of alternate carrier or aircraft, and rerouting.

(c) *Explanation of incorporated terms.* Each carrier shall ensure that any passenger can obtain from any location where its tickets are sold or any similar documents are issued, a concise and immediate explanation of any term incorporated concerning the subjects listed in paragraph (b)(2) or identified in paragraph (d) of this section.

(d) *Direct notice of certain terms.* A passenger must receive conspicuous written notice, on or with the ticket, or other similar document, of the salient features of any terms that restrict refunds of the price of the transportation, impose monetary penalties on customers, or permit a carrier to raise the price or impose more restrictive conditions of contract after issuance of the ticket.

§ 221.108 Transmission of tariff filings to subscribers.

(a) Each carrier required to file tariffs in accordance with this part shall make available to any person so requesting a subscription service as described in paragraph (b) of this section for its passenger tariffs issued by it or by a publishing agent on its behalf.

(b) Under the required subscription service one copy of each new tariff publication, including the justification required by § 221.94, must be transmitted to each subscriber thereto by first-class mail (or other equivalent means agreed upon by the subscriber) not later than one day following the time the copies for official filing are transmitted to the Department. The subscription service described in this section shall not preclude the offering of additional types of subscription services by carriers or their agents.

(c) The carriers or their publishing agents at their option may establish a charge for providing the required subscription service to subscribers: Provided, That the charge may not exceed a reasonable estimate of the added cost of providing the service.

Subpart L—Rejection of Tariff Publications

§ 221.110 Department's authority to reject.

The Department may reject any tariff which is not consistent with section 41504 of the statute, with the regulations in this part, or with Department orders.

§ 221 111 Notification of rejection.

When a tariff is rejected, the issuing carrier or agent thereof will be notified electronically or in writing that the tariff is rejected and of the reason for such rejection.

§ 221.112 Rejected tariff is void and must

established zone of fare flexibility

(a) Specify (by section and paragraph)

(c) *Number of copies.* Each Notice of

its Board of Directors designating by name and title the person responsible

§ 221.112 Rejected tariff is void and must not be used.

A tariff rejected by the Department is void and is without any force or effect whatsoever. Such rejected tariff must not be used.

Subpart M—Special Tariff Permission to File on Less Than Statutory Notice

§ 221.120 Grounds for approving or denying Special Tariff Permission applications.

(a) *General authority.* The Department may permit changes in fares, charges or other tariff provisions on less than the statutory notice required by section 41505 of the statute.

(b) *Grounds for approval.* The following facts and circumstances constitute some of the grounds for approving applications for Special Tariff Permission in the absence of other facts and circumstances warranting denial:

(1) *Clerical or typographical errors.* Clerical or typographical errors in tariffs constitute grounds for approving applications for Special Tariff Permission to file on less than statutory notice the tariff changes necessary to correct such errors. Each application for Special Tariff Permission based on such grounds shall plainly specify the errors and contain a complete statement of all the attending facts and circumstances, and such application shall be presented to the Department with reasonable promptness after issuance of the defective tariff.

(2) *Rejection caused by clerical or typographical errors or unintelligibility.* Rejection of a tariff caused by clerical or typographical errors constitute grounds for approving applications for Special Tariff Permission to file on less than statutory notice, effective not earlier than the original effective dates in the rejected tariff, all changes contained in the rejected tariff but with the errors corrected. Each application for the grant of Special Tariff Permission based on such grounds shall plainly specify the errors and contain a complete statement of all the attending facts and circumstances, and such application shall be filed with the Department within five days after receipt of the Department's notice of rejection.

(3) *Newly authorized transportation.* The fact that the Department has newly authorized a carrier to perform foreign air transportation constitutes grounds for approving applications for Special Tariff Permission to file on less than statutory notice the fares, rates, and other tariff provisions covering such newly authorized transportation.

(4) The fact that a passenger fare is within a statutory or Department-established zone of fare flexibility constitutes grounds for approving an application for Special Tariff Permission to file a tariff stating that fare and any rules affecting them exclusively, on less than statutory notice. The Department's policy on approving such applications is set forth in § 399.35 of this chapter.

(5) *Lowered fares and charges.* The prospective lowering of fares or charges to the traveling public constitutes grounds for approving an application for Special Tariff Permission to file on less than statutory notice a tariff stating the lowered fares or charges and any rules affecting them exclusively. However, the Department will not approve the application if the proposed tariff raises significant questions of lawfulness, as set forth in § 399.35 of this chapter.

(c) *Filing notice required by formal order.* When a formal order of the Department requires the filing of tariff matter on a stated number of days' notice, an application for Special Tariff Permission to file on less notice will not be approved. In any such instance a petition for modification of the order should be filed in the formal docket.

§ 221.121 How to prepare and file applications for Special Tariff Permission.

(a) *Form.* Each application for Special Tariff Permission to file a tariff on less than statutory notice shall conform to the requirements of § 221.212 if filed electronically.

(b) *Number of paper copies and place of filing.* For paper format applications, the original and one copy of each such application for Special Tariff Permission, including all exhibits thereto and amendments thereof, shall be sent to the Office of International Aviation, Department of Transportation, Washington, DC 20590.

(c) *Who may make application.* Applications for Special Tariff Permission to file fares, or other tariff provisions on less than statutory notice shall be made only by the issuing carrier or agent authorized to issue and file the proposed tariff. Such application by the issuing carrier or agent will constitute application on behalf of all carriers participating in the proposed fares, or other tariff provisions.

(d) *When notice is required.* Notice in the manner set forth in paragraph (e) of this section is required when a carrier files an application for Special Tariff Permission:

(1) To offer passenger fares that would be outside a Department-established zone of price flexibility or, in markets for which the Department has not established such a zone, outside the statutory zone of price flexibility; or

(2) To file any price increase or rule change that the carrier believes is likely to be controversial.

(e) *Form of notice.* When notice of filing of a Special Tariff Permission application affecting passenger fares is required by paragraph (d) of this section, the carrier shall, when it files the application, give immediate telegraphic notice or other notice approved by the Office of International Aviation, to all certificated and foreign route carriers authorized to provide nonstop or one-stop service in the markets involved, and to civic parties that would be substantially affected. The application shall include a list of the parties notified.

§ 221.122 Special Tariff Permission to be used in its entirety as granted.

Each Special Tariff Permission to file fares, or other tariff provisions on less than statutory notice shall be used in its entirety as granted. If it is not desired to use the permission as granted, and lesser or more extensive or different permission is desired, a new application for Special Tariff Permission conforming with § 221.121 in all respects and referring to the previous permission shall be filed.

§ 221.123 Re-use of Special Tariff Permission when tariff is rejected.

If a tariff containing matter issued under Special Tariff Permission is rejected, the same Special Tariff Permission may be used in a tariff issued in lieu of such rejected tariff provided that such re-use is not precluded by the terms of the Special Tariff Permission, and is made within the time limit thereof or within seven days after the date of the Department's notice of rejection, whichever is later, but in no event later than fifteen days after the expiration of the time limit specified in the Special Tariff Permission.

Subpart N—Waiver of Tariff Regulations

§ 221.130 Applications for waiver of tariff regulations.

Applications for waiver or modification of any of the requirements of this part 221 or for modification of chapter 415 of the statute with respect to the filing and posting of tariffs shall be made by the issuing carrier or issuing agent.

§ 221.131 Form of application for waivers.

Applications for waivers shall be in the form of a letter addressed to the Office of International Aviation, Department of Transportation Washington, DC 20590, and shall:

(a) Specify (by section and paragraph) the particular regulation which the applicant desires the Department to waive.

(b) Show in detail how the proposed provisions will be shown in the tariff under authority of such waiver if granted (submitting exhibits of the proposed provision where necessary to clearly show this information).

(c) Set forth all facts and circumstances on which the applicant relies as warranting the Department's granting the authority requested. No tariff or other documents shall be filed pursuant to such application prior to the Department's granting the authority requested.

Subpart O—Giving and Revoking Concurrences to Carriers

§ 221.140 Method of giving concurrence.

(a) A concurrence prepared in a manner acceptable to the Office of International Aviation shall be used by a carrier to give authority to another carrier to issue and file with the Department tariffs which contain joint fares or charges, including provisions governing such fares or charges, applying to, from, or via points served by the carrier giving the concurrence. A concurrence shall not be used as authority to file joint fares or charges in which the carrier to whom the concurrence is given does not participate, and it shall not be used as authority to file local fares or charges.

(b) *Number of copies.* Each concurrence shall be prepared in triplicate. The original of each concurrence shall be filed with the Department, the duplicate thereof shall be given to the carrier in whose favor the concurrence is issued, and the third copy shall be retained by the carrier who issued the concurrence.

(c) *Conflicting authority to be avoided.* Care should be taken to avoid giving authority to two or more carriers which, if used, would result in conflicting or duplicate tariff provisions.

§ 221.141 Method of revoking concurrence.

(a) A concurrence may be revoked by filing with the Department a Notice of Revocation of Concurrence prepared in a form acceptable to the Office of International Aviation.

(b) *Sixty days' notice required.* Such Notice of Revocation of Concurrence shall be filed on not less than sixty days' notice to the Department. A Notice of Revocation of Concurrence will be deemed to be filed only upon its actual receipt by the Department, and the period of notice shall commence to run only from such actual receipt.

(c) *Number of copies.* Each Notice of Revocation of Concurrence shall be prepared in triplicate. The original thereof shall be filed with the Department and, at the same time that the original is transmitted to the Department, the duplicate thereof shall be sent to the carrier to whom the concurrence was given. The third copy shall be retained by the carrier issuing such notice.

(d) *Amendment of tariffs when concurrence revoked.* When a concurrence is revoked, a corresponding amendment of the tariff or tariffs affected shall be made by the issuing carrier of such tariffs, on not less than statutory notice, to become effective not later than the effective date stated in the Notice of Revocation of Concurrence. In the event of failure to so amend the tariff or tariffs, the provisions therein shall remain applicable until lawfully canceled.

§ 221.142 Method of withdrawing portion of authority conferred by concurrence.

If a carrier desires to issue a concurrence conferring less authority than a previous concurrence given to the same carrier, the new concurrence shall not direct the cancellation of such previous concurrence. In such circumstances, such previous concurrence shall be revoked by issuing and filing a Notice of Revocation of Concurrence in a form acceptable to the Office of International Aviation. Such revocation notice shall include reference to the new concurrence.

Subpart P—Giving and Revoking Powers of Attorney to Agents

§ 221.150 Method of giving power of attorney.

(a) *Prescribed form of power of attorney.* A power of attorney prepared in accordance with a form acceptable to the Office of International Aviation shall be used by a carrier to give authority to an agent and (in the case of the agent being an individual) such agent's alternate to issue and file with the Department tariffs which contain local or joint fares or charges, including provisions governing such fares or charges, applicable via and for account of such carrier. Agents may be only natural persons or corporations (other than incorporated associations of air carriers). The authority conferred in a power of attorney may not be delegated to any other person.

(b) *Designation of tariff issuing person by corporate agent.* When a corporation has been appointed as agent it shall forward to the Department a certified excerpt of the minutes of the meeting of its Board of Directors designating by name and title the person responsible for issuing tariffs and filing them with the Department. Only one such person may be designated by a corporate agent, and the title of such designee shall not contain the word "Agent". When such a designee is replaced the Department shall be immediately notified in like manner of his successor. An officer or employee of an incorporated tariff-publishing agent may not be authorized to act as tariff agent in his/her individual capacity. Every tariff issued by a corporate agent shall be issued in its name as agent.

(c) *Number of copies.* Each power of attorney shall be prepared in triplicate. The original of each power of attorney shall be filed with the Department, the duplicate thereof shall be given to the agent in whose favor the power of attorney is issued, and the third copy shall be retained by the carrier who issued the power of attorney.

(d) *Conflicting authority prohibited.* In giving powers of attorney, carriers shall not give authority to two or more agents which, if used, would result in conflicting or duplicate tariff provisions.

§ 221.151 Method of revoking power of attorney.

(a) A power of attorney may be revoked only by filing with the Department in the manner specified in this section a Notice of Revocation of Power of Attorney in a form acceptable to the Office of International Aviation.

(b) *Sixty days' notice required.* Such Notice of Revocation of Power of Attorney shall be filed on not less than sixty days' notice to the Department. A Notice of Revocation of Power of Attorney will be deemed to be filed only upon its actual receipt by the Department, and the period of notice shall commence to run only from such actual receipt.

(c) *Number of copies.* Each Notice of Revocation of Power of Attorney shall be prepared in triplicate. The original thereof shall be filed with the Department and, at the same time that the original is transmitted to the Department, the duplicate thereof shall be sent to the agent in whose favor the power of attorney was issued (except, if the alternate agent has taken over the tariffs, the duplicate of the Notice of Revocation of Power of Attorney shall be sent to the alternate agent). The third copy of the notice shall be retained by the carrier.

(d) *Amendment of tariffs when power of attorney is revoked.* When a power of attorney is revoked, a corresponding amendment of the tariff or tariffs affected shall be made by the issuing

agent of such tariffs, on not less than statutory notice, to become effective not later than the effective date stated in the Notice of Revocation of Power of Attorney. In the event of failure to so amend the tariff or tariffs, the provisions therein shall remain applicable until lawfully canceled.

§ 221.152 Method of withdrawing portion of authority conferred by power of attorney.

If a carrier desires to issue a power of attorney conferring less authority than a previous power of attorney issued in favor of the same agent, the new power of attorney shall not direct the cancellation of such previous power of attorney. In such circumstances, such previous power of attorney shall be revoked by issuing and filing a Notice of Revocation of Power of Attorney in a form acceptable to the Office of International Aviation. Such revocation notice shall include reference to the new power of attorney.

Subpart Q—Adoption Publications Required to Show Change in Carrier's Name or Transfer of Operating Control

§ 221.160 Adoption notice.

(a) When the name of a carrier is changed or when its operating control is transferred to another carrier (including another company which has not previously been a carrier), the carrier which will thereafter operate the properties shall immediately issue, file with the Department, and post for public inspection, an adoption notice in a form and containing such information as is approved by the Office of International Aviation. (The carrier under its former name or the carrier from whom the operating control is transferred shall be referred to in this subpart as the "former carrier", and the carrier under its new name or the carrier, company, or fiduciary to whom the operating control is transferred shall be referred to in this subpart as the "adopting carrier".)

(b) The adoption notice shall be prepared, filed, and posted as a tariff. The adoption notice shall be issued and filed by the adopting carrier and not by an agent.

(c) *Copies to be sent to agents and other carriers.* At the same time that the adoption notice is transmitted to the Department for filing, the adopting carrier shall send copies of such adoption notice to each agent and carrier to whom the former carrier has given a power of attorney or concurrence. (See § 221.163.)

§ 221.161 Notice of adoption to be filed in former carrier's tariffs.

At the same time that the adoption notice is issued, posted, and filed pursuant to § 221.160, the adopting carrier shall issue, post and file with the Department a notice in each effective tariff issued by the former carrier providing specific notice of the adoption in a manner authorized by the Office of International Aviation and which shall contain no matter other than that authorized.

§ 221.162 Receiver shall file adoption notices.

A receiver shall, immediately upon assuming control of a carrier, issue and file with the Department an adoption notices as prescribed by §§ 221.160 and 221.161 and shall comply with the requirements of this subpart.

§ 221.163 Agents' and other carriers' tariffs shall reflect adoption.

If the former carrier is shown as a participating carrier under concurrence in tariffs issued by other carriers or is shown as a participating carrier under power of attorney in tariffs issued by agents, the issuing carriers and agents of such tariffs shall, upon receipt of the adoption notice, promptly file on statutory notice the following amendments to their respective tariffs:

(a) Cancel the name of the former carrier from the list of participating carriers.

(b) Add the adopting carrier (in alphabetical order) to the list of participating carriers. If the adopting carrier already participates in such tariff, reference to the substitution notice shall be added in connection with such carrier's name in the list of participating carriers.

§ 221.164 Concurrences or powers of attorney to be reissued.

(a) Adopting carrier shall reissue adopted concurrences and powers of attorney. Within a period of 120 days after the date on which the change in name or transfer of operating control occurs, the adopting carrier shall reissue all effective powers of attorney and concurrences of the former carrier by issuing and filing new powers of attorney and concurrences, in the adopting carrier's name, which shall direct the cancellation of the respective powers of attorney and concurrences of the former carrier. The adopting carrier shall consecutively number its powers of attorney and concurrences in its own series of power of attorney numbers and concurrence numbers (commencing with No. 1 in each series if it had not previously filed any such instruments with the Department), except that a receiver or other fiduciary shall consecutively number its powers of attorney or concurrences in the series of the former carrier. The cancellation reference shall show that the canceled power of attorney or concurrence was issued by the former carrier.

(b) If such new powers of attorney or concurrences confer less authority than the powers of attorney or concurrences which they are to supersede, the new issues shall not direct the cancellation of the former issues; in such instances, the provisions of § 221.142 and 221.152 shall be observed. Concurrences and powers of attorney which will not be replaced by new issues shall be revoked in the form and manner and upon the notice required by §§ 221.141 and 221.151.

(c) *Reissue of other carriers' concurrences issued in favor of former carrier.* Each carrier which has given a concurrence to a carrier whose tariffs are subsequently adopted shall reissue the concurrence in favor of the adopting carrier. If the carrier which issued the concurrence to the former carrier desires to revoke it or desires to replace it with a concurrence conferring less authority, the provisions of §§ 221.141 and 221.142 shall be observed.

§ 221.165 Cessation of operations without successor.

If a carrier ceases operations without having a successor, it shall:

(a) File a notice in each tariff of its own issue and cancel such tariff in its entirety.

(b) Revoke all powers of attorney and concurrences which it has issued.

Subpart R—Electronically Filed Tariffs

§ 221.170 Applicability of the subpart.

(a) Every air carrier and foreign air carrier shall file its international passenger fares tariffs consistent with the provisions of this subpart, and part 221 generally. Additionally, any air carrier and any foreign air carrier may file its international passenger rules tariffs electronically in machine-readable form as an alternative to the filing of printed paper tariffs as provided for elsewhere in part 221. This subpart applies to all carriers and tariff publishing agents and may be used by either if the carrier or agent complies with the provisions of subpart R. Any carrier or agent that files electronically under this subpart must transmit to the Department the remainder of the tariff in a form consistent with part 221, subparts A through Q, on the same day that the electronic tariff would be deemed received under § 221.190(b).

(b) To the extent that subpart R is inconsistent with the remainder of part 221, subpart R shall govern the filing of electronic tariffs. In all other respects, part 221 remains in full force and effect.

§ 221.180 Requirements for electronic filing of tariffs.

(a) No carrier or filing agent shall file an electronic tariff unless, prior to filing, it has signed a maintenance agreement or agreements, furnished by the Department of Transportation, for the maintenance and security of the on-line tariff database.

(b) No carrier or agent shall file an electronic tariff unless, prior to filing, it has submitted to the Department's Office of International Aviation, Pricing and Multilateral Affairs Division, and received approval of, an application containing the following commitments:

(1) The filer shall file tariffs electronically only in such format as shall be agreed to by the filer and the Department. (The filer shall include with its application a proposed format of tariff. The filer shall also submit to the Department all information necessary for the Department to determine that the proposed format will accommodate the data elements set forth in § 221.202.)

(2) The filer shall provide, maintain and install in the Public Reference Room at the Department (as may be required from time to time) one or more CRT devices and printers connected to its on-line tariff database. The filer shall be responsible for the transportation, installation, and maintenance of this equipment and shall agree to indemnify and hold harmless the Department and the U.S. Government from any claims or liabilities resulting from defects in the equipment, its installation or maintenance.

(3) The filer shall provide public access to its on-line tariff database, at Departmental headquarters, during normal business hours.

(4) The access required at Departmental headquarters by this subpart shall be provided at no cost to the public or the Department.

(5) The filer shall provide the Department access to its on-line tariff database 24 hours a day, 7 days a week, except, that the filer may bring its computer down between 6:00 a.m. and 6:00 p.m. Eastern Standard Time or Eastern Daylight Saving Time, as the case may be, on Sundays, when necessary, for maintenance or for operational reasons.

(6) The filer shall ensure that the Department shall have the sole ability to approve or disapprove electronically any tariff filed with the Department and the ability to note, record and retain electronically the reasons for approval or disapproval. The carrier or agent shall not make any changes in data or delete data after it has been transmitted electronically, regardless of whether it is approved, disapproved, or withdrawn. The filer shall be required to make data fields available to the Department in any record which is part of the on-line tariff database.

(7) The filer shall maintain all fares and rules filed with the Department and all Departmental approvals, disapprovals and other actions, as well as all Departmental notations concerning such approvals, disapprovals or other actions, in the on-line tariff database for a period of two (2) years after the fare or rule becomes inactive. After this period of time, the carrier or agent shall provide the Department, free of charge, with a copy of the inactive data on a machine-readable tape or other mutually acceptable electronic medium.

(8) The filer shall ensure that its on-line tariff database is secure against destruction or alteration (except as authorized by the Department), and against tampering.

(9) Should the filer terminate its business or cease filing tariffs, it shall provide to the Department on a machine-readable tape or any other mutually acceptable electronic medium, contemporaneously with the cessation of such business, a complete copy of its on-line tariff database.

(10) The filer shall furnish to the Department, on a daily basis, on a machine-readable tape or any other mutually acceptable electronic medium, all transactions made to its on-line tariff database.

(11) The filer shall afford any authorized Departmental official full, free, and uninhibited access to its facilities, databases, documentation, records, and application programs, including support functions, environmental security, and accounting data, for the purpose of ensuring continued effectiveness of safeguards against threats and hazards to the security or integrity of its electronic tariffs, as defined in this subpart.

(12) The filer must provide a field in the Government Filing File for the signature of the approving U.S. Government Official through the use of a Personal Identification Number (PIN).

(13) The filer shall provide a leased dedicated data conditioned circuit with sufficient capacity (not less than 28.8K baud rate) to handle electronic data transmissions to the Department. Further, the filer must provide for a secondary or a redundancy circuit in the event of the failure of the dedicated circuit. The secondary or redundancy circuit must be equal to or greater than 14.4K baud rate. In the event of a failure of the primary circuit the filer must notify the Chief of the Pricing and Multilateral Affairs Division of the Department's Office of International Aviation, as soon as possible, after the failure of the primary circuit, but not later than two hours after failure, and must provide the name of the contact person at the telephone company who has the responsibility for dealing with the problem.

(c) Each time a filer's on-line tariff database is accessed by any user during the sign-on function the following statement shall appear:

> The information contained in this system is for informational purposes only, and is a representation of tariff data that has been formally submitted to the Department of Transportation in accordance with applicable law or a bilateral treaty to which the U.S. Government is a party.

§ 221.190 Time for filing and computation of time periods.

(a) A tariff, or revision thereto, or a special tariff permission application may be electronically filed with the Department immediately upon compliance with § 221.180, and anytime thereafter, subject to § 221.400. The actual date and time of filing shall be noted with each filing.

(b) For the purpose of determining the date that a tariff, or revision thereto, filed pursuant to this subpart, shall be deemed received by the Department:

(1) For all electronic tariffs, or revisions thereto, filed before 5:30 p.m. local time in Washington, DC, on Federal business days, such date shall be the actual date of filing.

(2) For all electronic tariffs, or revisions thereto, filed after 5:30 p.m. local time in Washington, DC, on Federal business days, and for all electronic tariffs, or revisions thereto, filed on days that are not Federal business days, such date shall be the next Federal business day.

§ 221.195 Requirement for filing printed material.

(a) Any tariff, or revision thereto, filed in paper format which accompanies, governs, or otherwise affects, a tariff filed electronically, must be received by the Department on the same date that a tariff or revision thereto, is filed electronically with the Department under § 221.190(b). Further, such paper tariff, or revision thereto, shall be filed in accordance with the requirements of subparts A through Q of part 221. No tariff or revision thereto, filed electronically under this subpart, shall contain an effective date which is at variance with the effective date of the

supporting paper tariff, except as authorized by the Department.

(b) Any printed justifications, or other information accompanying a tariff, or revision thereto, filed electronically under this subpart, must be received by the Department on the same date as any tariff, or revision thereto, filed electronically.

(c) If a filer submits a filing which fails to comply with paragraph (a) of this section, or if the filer fails to submit the information in conformity with paragraph (b) of this section, the filing will be subject to rejection, denial, or disapproval, as applicable.

§ 221.200 Content and explanation of abbreviations, reference marks and symbols.

(a) *Content.* The format to be used for any electronic tariff must be that agreed to in advance as provided for in § 221.180, and must include those data elements set forth in § 221.202. Those portions that are filed in paper form shall comply in all respects with part 221, subparts A through Q.

(b) *Explanation of abbreviations, reference marks and symbols.* Abbreviations, reference marks and symbols which are used in the tariff shall be explained in each tariff.

(1) The following symbols shall be used:

R—Reduction
I—Increase
N—New Matter
X—Canceled Matter
C—Change in Footnotes, Routings, Rules or Zones
E—Denotes change in Effective Date only.

(2) Other symbols may be used only when an explanation is provided in each tariff and such symbols are consistent throughout all the electronically filed tariffs from that time forward.

§ 221.201 Statement of filing with foreign governments to be shown in air carrier's tariff filings.

(a) Every electronic tariff filed by or on behalf of an air carrier that contains fares which, by international convention or agreement entered into between any other country and the United States, are required to be filed with that country, shall include the following statement:

The rates, fares, charges, classifications, rules, regulations, practices, and services provided herein have been filed in each country in which filing is required by treaty, convention, or agreement entered into between that country and the United States, in accordance with the provisions of the applicable treaty, convention, or agreement.

(b) The statement referenced in § 221.201(a) may be included with each filing advice by the inclusion of a symbol which is properly explained.

(c) The required symbol may be omitted from an electronic tariff or portion thereof if the tariff publication that has been filed with any other country pursuant to its tariff regulations bears a tariff filing designation of that country in addition to the D.O.T. number appearing on the tariff.

§ 221.202 The filing of tariffs and amendments to tariffs.

All electronic tariffs and amendments filed under this subpart, including those for which authority is sought to effect changes on less than bilateral/statutory notice under § 221.212, shall contain the following data elements:

(a) A Filing Advice Status File—which shall include:
(1) Filing date and time;
(2) Filing advice number;
(3) Reference to carrier;
(4) Reference to geographic area;
(5) Effective date of amendment or tariff;
(6) A place for government action to be recorded; and
(7) Reference to the Special Tariff Permission when applicable.

(b) A Government Filing File—which shall include:
(1) Filing advice number;
(2) Carrier reference;
(3) Filing date and time;
(4) Proposed effective date;
(5) Justification text; reference to geographic area and affected tariff number;
(6) Reference to the Special Tariff Permission when applicable;
(7) Government control data, including places for:
(i) Name of the government analyst, except that this data shall not be made public, notwithstanding any other provision in this or any other subpart;
(ii) Action taken and reasons therefor.
(iii) Remarks, except that internal Departmental data shall not be made public, notwithstanding any other provision in this or any other subpart;
(iv) Date action is taken; and
(v) Personal Identification Number; and
(8) Fares tariff, or proposed changes to the fares tariffs, including:
(i) Market;
(ii) Fare code;
(iii) One-way/roundtrip (O/R);
(iv) Fare Amount;
(v) Currency;
(vi) Footnote (FN);
(vii) Rule Number, provided that, if the rule number is in a tariff, reference shall be made to that tariff containing the rule;
(viii) Routing (RG) Number(s), provided that the abbreviation MPM (Maximum Permissible Routing) shall be considered a number for the purpose of this file;
(ix) Effective date and discontinue date if the record has been superseded;
(x) Percent of change from previous fares; and
(xi) Expiration date.
(9) Rules tariff, or proposed changes to the rules tariffs.
(i) Rules tariffs shall include:
(A) *Title:* General description of fare rule type and geographic area under the rule;
(B) *Application:* Specific description of fare class, geographic area, type of transportation (one way, round-trip, etc.);
(C) *Period of Validity:* Specific description of permissible travel dates and any restrictions on when travel is not permitted;
(D) *Reservations/ticketing:* Specific description of reservation and ticketing provisions, including any advance reservation/ticketing requirements, provisions for payment (including prepaid tickets), and charges for any changes;
(E) *Capacity Control:* Specific description of any limitation on the number of passengers, available seats, or tickets;
(F) *Combinations:* Specific description of permitted/restricted fare combinations;
(G) *Length of Stay:* Specific description of minimum/maximum number of days before the passenger may/must begin return travel;
(H) *Stopovers:* Specific description of permissible conditions, restrictions, or charges on stopovers;
(I) *Routing:* Specific description of routing provisions, including transfer provisions, whether on-line or inter-line;
(J) *Discounts:* Specific description of any limitations, special conditions, and discounts on status fares, e.g. children or infants, senior citizens, tour conductors, or travel agents, and any other discounts;
(K) *Cancellation and Refunds:* Specific description of any special conditions, charges, or credits due for cancellation or changes to reservations, or for request for refund of purchased tickets;
(L) *Group Requirements:* Specific description of group size, travel conditions, group eligibility, and documentation;
(M) *Tour Requirements:* Specific description of tour requirements, including minimum price, and any stay or accommodation provisions;

(N) *Sales Restrictions:* Specific description of any restrictions on the sale of tickets;
(O) *Rerouting:* Specific description of rerouting provisions, whether on-line or inter-line, including any applicable charges; and
(P) *Miscellaneous provisions:* Any other applicable conditions.
(ii) Rules tariffs shall not contain the phrase "intentionally left blank".
(10) Any material accepted by the Department for informational purposes only shall be clearly identified as "for informational purposes only, not part of official tariff", in a manner acceptable to the Department.
(c) A Historical File—which shall include:
(1) Market;
(2) Fare code;
(3) One-way/roundtrip (O/R);
(4) Fare amount;
(5) Currency;
(6) Footnote (FN);
(7) Rule Number, provided that, if the rule number is in a tariff other than the fare tariff, reference shall be made to that tariff containing the rule;
(8) Rule text applicable to each fare at the time that the fare was in effect.
(9) Routing (RG) Number(s), provided that the abbreviation MPM (Maximum Permissible Routing) shall be considered a number for the purpose of this file;
(10) Effective Date;
(11) Discontinue Date;
(12) Government Action;
(13) Carrier;
(14) All inactive fares (two years);
(15) Any other fare data which is essential; and
(16) Any necessary cross reference to the Government Filing File for research or other purposes.

§ 221.203 Unique rule numbers required.

(a) Each "bundled" and "unbundled" normal economy fare applicable to foreign air transportation shall bear a unique rule number.

(b) The unique rule numbers for the fares specified in this section shall be set by mutual agreement between the filer and the Department prior to the implementation of any electronic filing system.

§ 221.204 Adoption of provisions of one carrier by another carrier.

When one carrier adopts the tariffs of another carrier, the effective and prospective fares of the adopted carrier shall be changed to reflect the name of the adopting carrier and the effective date of the adoption. Further, each adopted fare shall bear a notation which shall reflect the name of the adopted carrier and the effective date of the adoption, provided that any subsequent revision of an adopted fare may omit the notation.

§ 221.205 Justification and explanation for certain fares.

Any carrier or its agent must provide, as to any new or increased bundled or unbundled (whichever is lower) on-demand economy fare in a direct-service market, a comparison between, on the one hand, that proposed fare and, on the other hand, the ceiling fare allowed in that market based on the SFFL.

§ 221.206 Statement of fares.

All fares filed electronically in direct-service markets shall be filed as single factor fares.

§ 221.210 Suspension of tariffs.

(a) A fare, charge, rule or other tariff provision that is suspended by the Department pursuant to section 41509 of the statute shall be noted by the Department in the Government Filing File and the Historical File.

(b) When the Department vacates a tariff suspension, in full or in part, and after notification of the carrier by the Department, such event shall be noted by the carrier in the Government Filing File and the Historical File.

(c) When a tariff suspension is vacated or when the tariff becomes effective upon termination of the suspension period, the carrier or its agent shall refile the tariff showing the effective date.

§ 221.211 Cancellation of suspended matter.

When, pursuant to an order of the Department, the cancellation of rules, fares, charges, or other tariff provision is required, such action shall be made by the carrier by appropriate revisions to the tariff.

§ 221.212 Special tariff permission.

(a) When a filer submits an electronic tariff or an amendment to an electronic tariff for which authority is sought to effect changes on less than bilateral/statutory notice, and no related tariff material is involved, the submission shall bear a sequential filing advice number. The submission shall appear in the Government Filing File and the Filing Advice Status File, and shall be referenced in such a manner to clearly indicate that such changes are sought to be made on less than bilateral/statutory notice.

(b) When a filer submits an electronic tariff or an amendment to the electronic tariff for which authority is sought to effect changes on less than bilateral/statutory notice, and it contains related paper under § 221.195, the paper submission must bear the same filing advice number as that used for the electronic submission. Such paper submission shall be in the form of a revised tariff page rather than as a separate request for Special Tariff Permission. All material being submitted on a paper tariff page as part of an electronic submission will clearly indicate the portion(s) of such tariff page that is being filed pursuant to, and in conjunction with, the electronic submission on less than bilateral/statutory notice.

(c) Departmental action on the Special Tariff Permission request shall be noted by the Department in the Government Filing File and the Filing Advice Status File.

(d) When the paper portion of a Special Tariff Permission that has been filed with the Department pursuant to paragraph (b) of this section is disapproved or other action is taken by the Department, such disapproval or other action will be reflected on the next consecutive revision of the affected tariff page(s) in the following manner:

(1) The portion(s) of _____ Revised Page _____ filed under EFA No. _____ was/were disapproved by DOT.

(2) Example of other action: the portion(s) _____ Revised Page _____ filed under EFA No. _____ was/were required to be amended by DOT.

(e) When the Department disapproves in whole or in part or otherwise takes an action against any submission filed under this part, the filer must take corrective action within two business days following the disapproval or notice of other action.

(f) All submissions under this section shall comply with the requirements of § 221.202.

§ 221.300 Discontinuation of electronic tariff system.

In the event that the electronic tariff system is discontinued, or the source of the data is changed, or a filer discontinues its business, all electronic data records prior to such date shall be provided immediately to the Department, free of charge, on a machine-readable tape or other mutually acceptable electronic medium.

§ 221.400 Filing of paper tariffs required.

(a) After approval of any application filed under § 221.180 of this subpart to allow a filer to file tariffs electronically, the filer in addition to filing electronically must continue to file printed tariffs as required by subparts A through Q of part 221 for a period of 90

days, or until such time as the Department shall deem such filing no longer to be necessary: Provided that during the period specified by this section the filed printed tariff shall continue to be the official tariff.

(b) Upon notification to the filer that it may commence to file its tariffs solely in an electronic mode, concurrently with the implementation of filing electronically the filer shall:

(1) Furnish the Department with a copy of all the existing effective and prospective records on a machine-readable tape or other mutually acceptable electronic medium accompanied by an affidavit attesting to the accuracy of such records; and

(2) Simultaneously cancel such records from the paper tariff in the manner prescribed by subparts A through Q of part 221.

§ 221.500 Transmission of electronic tariffs to subscribers.

(a) Each filer that files an electronic tariff under this subpart shall make available to any person so requesting, a subscription service meeting the terms of paragraph (b) of this section.

(b) Under the required subscription service, remote access shall be allowed to any subscriber to the on-line tariff database, including access to the justification required by § 221.205. The subscription service shall not preclude the offering of additional services by the filer or its agent.

(c) The filer at its option may establish a charge for providing the required subscription service to subscribers: Provided that the charge may not exceed a reasonable estimate of the added cost of providing the service.

(d) Each filer shall provide to any person upon request, a copy of the machine-readable data (raw tariff data) of all daily transactions made to its on-line tariff database. The terms and prices for such value-added service may be set by the filer: Provided that such terms and prices shall be non-discriminatory, i.e., that they shall be substantially equivalent for all similarly-situated persons.

§ 221.550 Copies of tariffs made from filer's printer(s) located in Department's public reference room.

Copies of information contained in a filer's on-line tariff database may be obtained by any user at Departmental Headquarters from the printer or printers placed in Tariff Public Reference Room by the filer. The filer may assess a fee for copying, provided it is reasonable and that no administrative burden is placed on the Department to require the collection of the fee or to provide any service in connection therewith.

§ 221.600 Actions under assigned authority and petitions for review of staff action.

(a) When an electronically filed record which has been submitted to the Department under this subpart, is disapproved (rejected), or a special tariff permission is approved or denied, under authority assigned by the Department of Transportation's Regulations, 14 CFR 385.13, such actions shall be understood to include the following provisions:

(1) *Applicable to a Record or Records Which is/are Disapproved (rejected):* The record(s) disapproved (rejected) is/are void, without force or effect, and must not be used.

(2) *Applicable to a record or records which is/are disapproved (rejected), and to special tariff permissions which are approved or denied:* This action is taken under authority assigned by the Department of Transportation in its Organization Regulations, 14 CFR 385.13. Persons entitled to petition for review of this action pursuant to the Department's Regulations, 14 CFR 385.50, may file such petitions within seven days after the date of this action. This action shall become effective immediately, and the filing of a petition for review shall not preclude its effectiveness.

(b) [Reserved]

PART 250—OVERSALES

2. The authority citation for part 250 continues to read as follows:

Authority: 49 U.S.C. chapters 401, 411, 413, 417.

§ 250.4 [Removed]

3. Section 250.4—Denied boarding compensation tariffs for foreign air transportation is removed.

PART 293—[ADDED]

4. A new part 293 is added as follows:

PART 293—INTERNATIONAL PASSENGER TRANSPORTATION

Subpart A—General

Sec.
293.1 Applicability.
293.2 Definitions.

Subpart B—Exemption From Filing of Tariffs

293.10 Exemption.
293.11 Required statement.
293.12 Revocation of exemption.

Subpart C—Effect of Exemption

293.20 Rule of construction.
293.21 Incorporation of contract terms by reference.
293.22 Effectiveness of tariffs on file.

Authority: 49 U.S.C. 40101, 40105, 40109, 40113, 40114, 41504, 41701, 41707, 41708, 41709, 41712, 46101; 14 CFR 1.56(j)(2)(ii).

Subpart A General

§ 293.1 Applicability.

This part applies to air carriers and foreign air carriers providing scheduled transportation of passengers and their baggage in foreign air transportation.

§ 293.2 Definitions.

For purposes of this part the definitions in § 221.3 of this chapter apply.

Subpart B—Exemption from Filing Tariffs

§ 293.10 Exemption.

(a) Air carriers and foreign air carriers are exempted from the duty to file passenger tariffs with the Department of Transportation, as required by 49 U.S.C. 41504 and 14 CFR part 221, as follows:

(1) The Assistant Secretary for Aviation and International Affairs will, by notice, issue and periodically update a list establishing the following categories of markets:

(i) In Category A markets, carriers are exempted from the duty to file all passenger tariffs, unless they are nationals of countries listed in Category C;

(ii) In Category B markets, carriers are exempted from the duty to file all passenger tariffs except those setting forth one-way economy-class fares and governing provisions pertaining thereto, unless they are nationals of countries listed in Category C;

(iii) In Category C markets, carriers shall continue to file all passenger tariffs, except as provided in § 293.10(b).

(2) The Assistant Secretary will list country-pair markets falling in Categories A and C, based on the determining factors in paragraphs (a)(2)(i) through (iv). All country-pair markets not listed in Categories A or C shall be considered to be in Category B and need not be specifically listed.

(i) Whether the U.S. has an aviation agreement in force with that country providing double-disapproval treatment of prices filed by the carriers of the Parties;

(ii) Whether the country's government has disapproved or deterred U.S. carrier price leadership or matching tariff filings in any market;

(iii) Whether the country's government has placed significant restrictions on carrier entry or capacity in any market; and

(iv) Whether the country's government is honoring the provisions of the bilateral aviation agreement and there are no significant bilateral problems.

(b) By petition or on the Department's own initiative, new country-pair markets will be listed in the appropriate category, and existing country-pair markets may be transferred between categories.

(c) Air carriers and foreign air carriers are exempted from the duty to file governing rules tariffs containing general conditions of carriage with the Department of Transportation, as required by 49 U.S.C. 41504 and 14 CFR part 221. An initial description of the general conditions of carriage will be included in the Assistant Secretary's notice.

(d) Notwithstanding paragraph (c) of this section, air carriers and foreign air carriers shall file and maintain a tariff with the Department to the extent required by 14 CFR § 203.4 and other implementing regulations.

(f) Authority for determining what rules are covered by paragraph (c) and for determining the filing format for the tariffs required by paragraph (d) is delegated to the Director of the Office of International Aviation.

§ 293.11 Required statement.

Each governing rules tariff shall include the following statements:

(a) "Rules herein containing general conditions of carriage are not part of the official U.S. D.O.T. tariff."

(b) "The rules and provisions contained herein apply only to the passenger fares and charges that the U.S. Department of Transportation requires to be filed as tariffs."

§ 293.12 Revocation of exemption.

(a) The Department, upon complaint or upon its own initiative, may, immediately and without hearing, revoke, in whole or in part, the exemption granted by this part with respect to a carrier or carriers, when such action is in the public interest.

(b) Any such action will be taken in a notice issued by the Assistant Secretary for Aviation and International Affairs, and will identify the tariff matter to be filed, and the deadline for carrier compliance.

(c) Revocations under this section will have the effect of reinstating all applicable tariff requirements and procedures specified in the Department's Regulations for the tariff material to be filed, unless otherwise specified by the Department.

Subpart C—Effect of Exemption

§ 293.20 Rule of construction.

To the extent that a carrier holds an effective exemption from the duty to file tariffs under this part, it shall not, unless otherwise directed by order of the Department, be subject to tariff posting, notification or subscription requirements set forth in 49 U.S.C. 41504 or 14 CFR part 221, *except* as provided in § 293.21.

§ 293.21 Incorporation of contract terms by reference.

Carriers holding an effective exemption from the duty to file tariffs under this part may incorporate contract terms by reference (*i.e.*, without stating their full text) into the passenger ticket or other document embodying the contract of carriage for the scheduled transportation of passengers in foreign air transportation, *provided that:*

(a) The notice, inspection, explanation and other requirements set forth in 14 CFR 221.107, paragraphs (a), (b), (c) and (d) are complied with, to the extent applicable;

(b) In addition to other remedies at law, a carrier may not claim the benefit under this section as against a passenger, and a passenger shall not be bound by incorporation of any contract term by reference under this part unless the requirements of paragraph (a) of this section are complied with, to the extent applicable; and

(c) The purpose of this section is to set uniform disclosure requirements, which preempt any conflicting State requirements on the same subject, for incorporation of terms by reference into contracts of carriage for the scheduled transportation of passengers in foreign air transportation.

§ 293.22 Effectiveness of tariffs on file.

(a) Ninety days after the date of effectiveness of the Assistant Secretary's notice, passenger tariffs on file with the Department covered by the scope of the exemption will cease to be effective as tariffs under 49 U.S.C. 41504 and 41510, and the provisions of 14 CFR part 221, and will be canceled by operation of law.

(b) Ninety days after the date of effectiveness of the Assistant Secretary's notice, pending applications for filing and/or effectiveness of any passenger tariffs covered by the scope of the exemption, will be dismissed by operation of law. No new filings or applications will be permitted after the date of effectiveness of the Assistant Secretary's notice except as provided under § 293.12.

Issued in Washington, DC, on February 27, 1997.

Charles A. Hunnicutt,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 97–5361 Filed 3–7–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 163

[Docket Nos. 86P–0297 and 93P–0091]

White Chocolate; Proposal to Establish a Standard of Identity

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to establish a standard of identity for white chocolate. The proposed standard will provide for the use of the term "white chocolate" as the common or usual name of products made from cacao fat, milk solids, nutritive carbohydrate sweeteners, and other safe and suitable ingredients, but containing no nonfat cacao solids. This action responds principally to citizen petitions submitted separately by the Hershey Foods Corp. (Hershey) and by the Chocolate Manufacturers Association of the United States of America (CMA). FDA tentatively concludes that this action will promote honesty and fair dealing in the interest of consumers and, to the extent practicable, will achieve consistency with existing international standards of identity for white chocolate.

DATES: Written comments by May 27, 1997. The agency proposes that any final rule that may be issued based upon this proposal become effective January 1, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Geraldine A. June, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 5, 1992 (57 FR 23989), FDA published a

tentative final rule (hereinafter referred to as the 1992 tentative final rule) to amend the standards of identity for cacao products in part 163 (21 CFR part 163). In section II.B. of the 1992 tentative final rule, FDA noted that it had received a comment that requested that the agency adopt a standard of identity for white chocolate. In support of that request, the comment argued that the absence of a standard of identity for this food had limited the introduction of "white chocolate" products into the market. The comment also noted the likelihood that consumer confusion would develop about the content of products informally referred to as "white chocolate" that may or may not contain any cacao-derived ingredients.

The comment observed that, in the absence of a standard of identity for this product, the term "white chocolate" would be prohibited under the existing standards of identity in part 163. Further, the comment stated that when such products have been introduced, firms have been forced to use alternative names to avoid the labeling constraints in the standards of identity.

In response to the comment, FDA recognized the dilemma faced by U.S. manufacturers of those confections that may be labeled "white chocolate" in other countries but stated that the adoption of a standard of identity for white chocolate was outside the scope of that rulemaking. The agency suggested that the manufacturer petition the agency to adopt a standard for this food. FDA pointed out that, in fact, in the **Federal Register** of September 16, 1991 (56 FR 46798), the agency had granted Hershey a temporary marketing permit (TMP) to test market a product called "white chocolate." The permit provided for the temporary market testing of 23,608 kilograms (kg) (52,000 pounds (lb)) of the product for a period of 15 months.

Since publication of the 1992 tentative final rule, the agency has received several applications from chocolate manufacturers for TMP's for "white chocolate." In the **Federal Register** of November 5, 1993 (58 FR 59050), the agency granted Hershey a new TMP for test products designated as "white chocolate." The purpose of the new permit was to permit Hershey to collect data on consumer acceptance of the product over a wider area of distribution. Hershey said that it intended to use these data to support its citizen petition (filed December 15, 1992, Docket No. 86P–0297/CP2) (hereinafter referred to as the 1992 Hershey petition) for a standard of identity for white chocolate. In the November 5, 1993 notice, the agency announced that it had received a citizen petition from CMA (filed March 2, 1993, Docket No. 93P–0091) (hereinafter referred to as the 1993 CMA petition) that also requested that FDA establish a standard of identity for white chocolate.

In addition to Hershey, the agency has granted TMP's to Ganong Bros., Ltd., St. Stephen NB, Canada E3L 2X5 (58 FR 59050, November 5, 1993), the Pillsbury Co. (59 FR 32443, June 23, 1994), and Kraft General Foods, Inc. (59 FR 33976, July 1, 1994).

In the **Federal Register** of December 29, 1994 (59 FR 67302), FDA published a notice extending Hershey's TMP (Docket No. 93P–0310) and inviting interested persons to participate in the extended market test under the same conditions that applied under that TMP. Since January 1995, FDA has issued letters to The Proctor and Gamble Co., Brach and Brock (formerly E. J. Brach Corp.), Mauna Loa Macadamia Nut Corp., Nestlé Food Co., Kraft General Foods, MacFarms of Hawaii, Van Leer Chocolate Corp., and Wilbur Chocolate Co. acknowledging the firms' acceptance of the agency's invitation to participate in the extended market test of products identified as being or containing white chocolate. The aggregate effect of these TMP's is that up to 75 million kg (166 million lb) per annum of product consisting, in large part, of white chocolate has been, or will be, market tested. The majority of the firms are conducting nationwide market tests. The agency is currently evaluating requests from other firms to participate in the extended market test.

II. Petitions and Grounds

A. The 1992 Hershey Petition

Hershey, in its 1992 petition requesting that FDA establish a standard of identity for white chocolate, described the product named "white chocolate" as a food that deviates from the standardized cacao products in part 163 in that: (1) It is prepared without the nonfat components of the ground cacao nibs but contains the fat (cocoa butter) expressed from the ground cacao nibs; and (2) it may contain safe and suitable antioxidants. The petition further described "white chocolate" as the solid or semiplastic food prepared by mixing and grinding cocoa butter with one or more nutritive sweeteners and one or more of the optional dairy ingredients provided in part 163. It contains not less than 20 percent cocoa butter, not less than 14 percent of total milk solids, not less than 3.5 percent milkfat, and not more than 55 percent nutritive carbohydrate sweeteners. It may contain emulsifying agents, spices, natural and artificial flavorings and other seasonings, and antioxidants approved for food use. It contains no coloring material.

In support of its request, Hershey contended that, because there is currently no standard of identity for white chocolate, virtually all uses of the term "white chocolate" would be prohibited by the existing standards of identity for chocolate because they prescribe the presence of chocolate liquor (ground cacao nibs). Hershey argued that this requirement has acted as a practical deterrent to companies that have considered developing and marketing white chocolate products in the United States. The Hershey petition noted that when such products have been introduced and marketed in the United States, manufacturers have had to resort to labeling such products with descriptive terms other than "white chocolate" (e.g., "white confection") to avoid standardized food labeling issues. Hershey contended that, in many cases, the use of such alternative terminology has obscured the true nature of the product and could potentially mislead consumers. Therefore, Hershey maintained that the absence of a standard of identity for white chocolate, and the resulting uncertainty over nomenclature on labeling, have proven to be factors limiting the introduction of new products to meet consumer demand.

In further support of its petition, Hershey maintained that there exists a good likelihood of consumer confusion with regard to the content of products that are referred to informally as "white chocolate" but that may or may not contain any cacao-derived ingredients. According to Hershey, consumers expecting to purchase a white chocolate product may, in fact, be purchasing a vegetable fat coating-type product made from fats other than cacao fat, which may contain little or no cacao ingredients.

The Hershey petition also included a summary of the results of a consumer survey conducted in 1990 to determine the most common name used by adult candy consumers when shown a variety of confection products, including a white confection bar. The survey was conducted by personal interviews with 216 adults who eat candy regularly. After an introductory statement on how people use different names for the same product, respondents were shown a product and asked what they would call it. The procedure was repeated for two or more products—jelly beans, lollipops, and a white confection bar. Over 61 percent of the respondents used the term "white chocolate" to describe the white confection bar that they were shown. An additional 10 percent of the respondents associated the bar product to chocolate. Hershey contended that, based on these results, it appears that the majority of candy consumers tend to identify the white confection as either "white chocolate" specifically or as some variety of chocolate.

Hershey pointed out that many countries that have adopted standards for cacao products have also recognized and established a standard of identity for white chocolate. Hershey argued that, in countries that have established a standard of identity for white chocolate, in contrast to the United States, consumers are able to evaluate the quality and value of the white chocolate products they purchase without having to resort to an analysis of the product ingredient declaration.

Hershey maintained that establishing a U.S. standard of identity for white chocolate would promote honesty and fair dealing in the interest of consumers and build consumer confidence in the food supply by establishing minimal criteria for a class of products that is becoming popular with consumers. According to Hershey, adoption of the suggested standard of identity for white chocolate will also enhance the ability of American manufacturers to compete in world markets. Hershey maintained that a U.S. standard will result in greater consistency in the international regulation of cacao products, while ensuring that domestic consumers are buying and consuming "the real thing."

B. The 1993 CMA Petition

In all substantive respects, the 1993 CMA petition agrees with the 1992 Hershey petition. In support of its request for a white chocolate standard, CMA noted that the standards of identity for cacao products permit only those products that contain a minimum level of chocolate liquor to be identified as chocolate. CMA maintained that, because there exists a product that consumers identify as "white chocolate," it is essential that the industry define this product, and that FDA establish and enforce a standard of identity for white chocolate products to avoid economic deception and promote honesty and fair dealing in the interest of consumers.

Like Hershey, CMA contended that consumers are being presented with products that often contain low levels of cocoa butter (if any at all) and relatively high levels of noncacao vegetable fats which, except for coatings made with vegetable fats, are not permitted in standardized chocolate products. CMA further stated that products that identify themselves as "white chocolate," but that do not meet CMA's suggested standard, represent a true deception of the consumer. According to CMA, consumer deception distorts individual purchasing decisions and prevents consumers from satisfying their product preferences. CMA asserted that FDA can reduce or prevent the continuation of such deception by establishing a standard of identity for white chocolate.

CMA further maintained that the absence of a standard of identity for white chocolate denies consumers the benefit of knowing that a white chocolate-type product that they purchase is, indeed, a true cacao product. In the absence of such a standard, the U.S. chocolate industry is unable to provide consumers with an identifiable white chocolate product that meets both their expectations and the industry's definition of quality.

CMA stated that the adoption of their suggested standard would have a positive effect on the marketability of, and competition among, chocolate products. CMA also acknowledged the submission to FDA of a similar petition by Hershey and noted that CMA's suggested white chocolate standard of identity is generally consistent with that in the Hershey petition. CMA further noted that while its suggested standard is generally based on FDA standards of identity for cacao products, the specific minimum levels of cacao fat, milkfat, and total milk solids are based on those found in the European Union (EU) white chocolate standard published in the *Official Journal of European Communities*.

CMA explained that although antioxidants are not permitted in cacao products under the current standards of identity for these foods, they are needed in the proposed white chocolate standard. CMA maintained that in making white chocolate, cocoa butter is typically deodorized to achieve the desired flavor. In the process, the natural antioxidants are removed. Therefore, CMA contended, the addition of antioxidants to white chocolate is necessary to preserve the product flavor.

CMA suggested that because Canada is proposing a standard for white chocolate that is also based on the EU standard, adoption of its proposed standard would increase harmonization of U.S. requirements with those of Canada. Such harmonization, CMA maintained, is consistent with the goals of the North American Free Trade Agreement.

III. The Proposal

Both petitioners agree that a standard of identity for white chocolate would promote honesty and fair dealing in the interests of consumers, eliminate a deterrent to firms introducing new products, enhance international marketability of the product, and be consistent with the white chocolate standard of the EU and that proposed by Canada.

The agency finds merit in the petitioners' request and tentatively concludes that creating a standard of identity for white chocolate would promote honesty and fair dealing in the interests of consumers because the standard would eliminate the potential for economic fraud and consumer deception through the substitution of cheaper ingredients for cacao-derived ingredients.

Establishing a standard of identity for white chocolate will alleviate the need for companies to request TMP's to market products bearing the name "white chocolate" that deviate from the standards of identity for other chocolate products or, in lieu of requesting a TMP, crafting identity statements using descriptive names other than "chocolate." A standard also will enhance international marketability of the product and increase harmonization with the EU and Canada.

While the agency tentatively agrees with the petitioners that a standard for white chocolate should be established, it notes that it is reviewing its existing standards of identity in response to the Administration's Regulatory Reinvention Initiative that seeks to streamline Government to ease the burden on regulated industry and consumers. In the **Federal Register** of December 29, 1995 (60 FR 67492), FDA published an advance notice of proposed rulemaking (ANPRM) in which it requested comments on whether food standards of identity should be retained, revised, or revoked. In the ANPRM, the agency specifically asked for comments on whether, if it institutes a broad rulemaking on reinventing food standards, it is appropriate in the interim to have a moratorium on food standard actions, i.e., on the issuance of TMP's and on the development of new or revised food standard regulations. Several comments submitted by industry to the ANPRM opposed a moratorium on the creation of new standards of identity while the agency is reviewing existing food standards in response to the Regulatory Reinvention Initiative. The comments asserted that a moratorium would disadvantage firms by delaying the introduction of new products and would not be in the consumer's best interest.

Although FDA is reviewing existing food standards in response to the Regulatory Reinvention Initiative, the agency tentatively concludes that there are compelling reasons to establish a standard for white chocolate at this time. First, the number of requests for TMP's for white chocolate has demonstrated to the agency that there is a consumer demand for this product. As discussed in section I. of this document, the agency has granted TMP's for the market testing of up to 166 million lb of product containing white chocolate. Second, the establishment of a standard for white chocolate seemingly will benefit industry by making it easier to introduce new products containing white chocolate. It will eliminate the need for firms to obtain a TMP to market the products and to send labels to the agency for review whenever they wish to market a new product containing white chocolate or a different size product than those allowed by their TMP. Third, as stated above, the establishment of the standard will benefit U.S. firms by enhancing the international marketability of their product. Finally, the adoption of a standard will ease FDA's burden because it will end the flow of paper from firms seeking, or operating under a TMP. Thus, the agency tentatively concludes that establishing a standard of identity for white chocolate will be beneficial to consumers and to industry and will also result in more efficient use of the agency's limited resources.

However, FDA advises that if a standard of identity for white chocolate is established, the agency will review it along with all other standards of identity as part of the Regulation Reinvention Initiative. The standard of identity for white chocolate would be retained, revised, or revoked consistent with decisions regarding other standards of identity for cacao products.

The proposed standard of identity for white chocolate is slightly different from the standards of identity for other chocolate products in part 163. As described in the 1993 CMA petition, safe and suitable antioxidants are needed to help preserve the product's flavor. The agency has no information that shows that the addition of safe and suitable antioxidants to this product should be prohibited. Therefore, FDA is proposing to provide for the use of antioxidants in proposed § 163.124(b)(5).

FDA tentatively concludes that it is reasonable to establish the term "white chocolate" as the common or usual name for the standardized food described below. The public has become familiar with the term "white chocolate" through the recent market testing of products that consist, in whole or in part, of this food. The agency further tentatively concludes that use of this term will aid consumer recognition of the food and will promote honesty and fair dealing in the interest of consumers by eliminating the potential for economic fraud and consumer deception through the substitution of cheaper ingredients for cacao-derived ingredients. Finally, the agency tentatively concludes that the consumer confusion engendered by the use of alternative names for white chocolate-type confections will also be eliminated, and that the use of the standardized term "white chocolate" in the product name will enhance the international marketability of such products.

Therefore, the agency is proposing to revise part 163 by establishing a standard of identity for white chocolate in new § 163.124. Specifically, FDA is proposing to provide that "white chocolate" have the following description:

1. White chocolate is the solid or semiplastic food prepared by intimately mixing and grinding cacao fat with one or more of the optional dairy ingredients and one or more optional nutritive carbohydrate sweeteners and may contain one or more of the other optional ingredients specified in the standard. White chocolate shall be free of coloring material.

2. White chocolate shall contain not less than 20 percent by weight of cacao fat, not less than 3.5 percent by weight of milkfat, not less than 14 percent by weight of total milk solids, and not more than 55 percent by weight nutritive carbohydrate sweetener.

3. White chocolate may contain the following optional ingredients:

a. Nutritive carbohydrate sweeteners;

b. Dairy ingredients:

i. Cream, milkfat, butter;

ii. Milk, dry whole milk, concentrated milk, evaporated milk, sweetened condensed milk;

iii. Skim milk, concentrated skim milk, evaporated skim milk, sweetened condensed skim milk, nonfat dry milk;

iv. Concentrated buttermilk, dried buttermilk; and

v. Malted milk;

c. Emulsifying agents, used singly or in combination, the total amount of which does not exceed 1 percent by weight;

d. Spices, natural and artificial flavorings, ground whole nut meats, ground coffee, dried malted cereal extract, salt, and other seasonings that do not either singly or in combination impart a flavor that imitates the flavor of chocolate, milk, or butter; or

e. Antioxidants.

IV. Effective Date

To allow companies time to make any mandatory changes, the agency proposes that any final rule that may be issued based on this proposal become effective January 1, 1998. The final rule would apply to affected products initially introduced or initially delivered for introduction into interstate commerce on or after the effective date.

V. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select the regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million, adversely affecting in a material way a sector of the economy, competition, or jobs, or raising novel legal or policy issues. If a rule has a significant impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze options that would minimize the economic impact of that rule on small entities. FDA finds that this proposed rule is not a significant rule as defined by Executive Order 12866. The agency acknowledges that under some circumstances this proposed rule may have significant impact on a substantial number of small entities. It has been determined that this rule is not a major rule for the purpose of congressional review (Pub. L. 104–121).

A. Alternatives

FDA is proposing to establish a standard of identity for white chocolate so that only products meeting the criteria described in the proposal may be called "white chocolate." One alternative is to not establish a standard and allow manufacturers to market products bearing the name "white chocolate" only with TMP's. Another alternative is to establish a standard for white chocolate that is consistent with the standard described in the petitions where the levels of the ingredients are prescribed. A third alternative is to establish a standard of identity for white chocolate with different criteria than those proposed in the petitions. While the agency has no explicit information on the exact formulations or attributes that consumers associate with the term "white chocolate," the agency has written the proposed standard of identity to be as consistent as possible with the existing standards of identity for chocolate products while making the necessary allowances to accommodate the formulations described in the petitions. FDA requests comments on these and other alternatives to the proposed standard of identity.

B. Benefits

The largest benefit of this proposed standard of identity for white chocolate is that it will eliminate a manufacturer's need to prepare and submit requests for TMP's in order to market products bearing the name "white chocolate." Another benefit is that it would eliminate the need to divert scarce agency resources to the evaluation of these TMP requests. Currently, manufacturers are required to obtain TMP's to use the term "chocolate" to market products that meet the proposed standard because they deviate from the existing standards of identity for chocolate products. The agency has received more than 1 dozen requests for TMP's for white chocolate in the last year. The establishment of the proposed standard of identity would save hours of manufacturer and FDA time required for the preparation and evaluation of each TMP.

Additionally, the benefits usually attributed to the establishment of standards of identity are reductions in the potential for consumer confusion and deception. Well defined standards of identity, which establish consistent product names, can assist consumers in finding and comparing products by the name of the food. Finally, the proposed standard will establish a new product name that, according to the petitions, is consistent with the name that a majority of consumers are already using to describe this product.

C. Costs

The establishment of a standard of identity requires that all products that meet the standard bear the standardized name. If there are products that are formulated in accordance with the proposed standard but are not currently marketed under a TMP allowing use of the term "white chocolate," then those products will have to be relabeled. Because "white chocolate" will need to appear on each product's principal display panel, the cost for label changes will depend on the number of products needing to be relabeled and the amount of time manufacturers are given to complete the label changes. The actual cost of relabeling will be determined largely by the length of time between the date that the proposed rule becomes final and the effective date of the final rule (the compliance period). In general, the large chocolate manufacturers are already marketing their products under TMP's. For small firms the cost of relabeling ranges from $12,750 with a 6-month compliance period to $1,550 with a 24-month compliance period. The agency has no information on the number of products that will need to be relabeled. There are approximately 250 firms that produce chocolate products in the United States, however, the number of products that meet the proposed standard of identity is unknown. This proposal will not affect products that do not meet the standard, because they may continue to be produced and marketed as they currently are. FDA is not able to estimate the total cost of this proposal and requests that comments supply information on this issue.

D. Initial Regulatory Flexibility Analysis

If finalized, this proposed rule will establish a standard of identity for white chocolate. Depending upon the length of the compliance period, this proposal may or may not impose significant compliance costs on industry and there may or may not be a significant impact of these provisions on a substantial number of small businesses. However, because there is some uncertainty related to the costs of compliance, FDA is voluntarily doing this Initial Regulatory Flexibility Analysis. The agency requests comment on this judgment.

FDA believes that the only provision of this proposed rule that may have a significant impact on a substantial number of small businesses is related to the compliance period. There are approximately 250 firms that produce chocolate products (Standard Industry Classification Code 206603) in the United States. Almost all of these businesses have fewer than 500 employees. The agency has no data on the number of products that will meet the proposed standard and that, therefore, may need to be relabeled. The relabeling costs are the primary costs of the rule. Relabeling costs vary inversely to the length of the compliance period. FDA has estimated the compliance costs based on three alternatives for the length of the compliance period.

With a 6-month compliance period, the costs to small firms that produce one product that would meet the proposed standard are estimated to be $12,750 ($3,400 for administrative costs, $3,200 for printing costs, and $6,150 for costs of lost label inventory). With a 12-month compliance period the costs to small firms that produce one product that would meet the proposed standard are estimated to be $3,300 ($1,700 for administrative costs, $1,100 for printing costs, and $500 for costs of lost label inventory). With a 24-month compliance period the costs to small firms that produce one product that would meet the proposed standard are estimated to be $1,550 ($850 for administrative costs, $700 for printing costs, and nothing for costs of lost label inventory). The agency requests comments on the impact of the compliance period on small chocolate producers and suggestions for minimizing the impact of this proposed rule on small businesses.

VI. Environmental Impact

The agency has determined under 21 CFR 25.24(b)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Paperwork Reduction Act

FDA tentatively concludes that this proposed rule contains no reporting, recordkeeping, labeling, or other third party disclosure requirements. Thus, there is no "information collection" necessitating clearance by the Office of Management and Budget. However, to ensure the accuracy of this tentative conclusion, FDA is asking for comment on whether this proposed rule imposes any paperwork burden.

VIII. Comments

Interested persons may, on or before May 27, 1997, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 163

Cacao products, Food grades and standards.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to

the Director, Center for Food Safety and Applied Nutrition, it is proposed that 21 CFR part 163 be amended as follows:

PART 163—CACAO PRODUCTS

1. The authority citation for 21 CFR part 163 continues to read as follows:

Authority: Secs. 201, 301, 401, 403, 409, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 341, 343, 348, 371, 379e).

2. New § 163.124 is added to subpart B to read as follows:

§ 163.124 White chocolate.

(a) *Description.* (1) White chocolate is the solid or semiplastic food prepared by intimately mixing and grinding cacao fat with one or more of the optional dairy ingredients and one or more optional nutritive carbohydrate sweeteners and may contain one or more of the other optional ingredients specified in paragraph (b) of this section. White chocolate shall be free of coloring material.

(2) White chocolate contains not less than 20 percent by weight of cacao fat as calculated by subtracting from the weight of the total fat the weight of the milkfat, dividing the result by the weight of the finished white chocolate, and multiplying the quotient by 100. The finished white chocolate contains not less than 3.5 percent by weight of milkfat and not less than 14 percent by weight of total milk solids, calculated by using only those dairy ingredients specified in paragraph (b)(2) of this section, and not more than 55 percent by weight nutritive carbohydrate sweetener.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) Nutritive carbohydrate sweeteners;

(2) Dairy ingredients:

(i) Cream, milkfat, butter;

(ii) Milk, dry whole milk, concentrated milk, evaporated milk, sweetened condensed milk;

(iii) Skim milk, concentrated skim milk, evaporated skim milk, sweetened condensed skim milk, nonfat dry milk;

(iv) Concentrated buttermilk, dried buttermilk; and

(v) Malted milk;

(3) Emulsifying agents, used singly or in combination, the total amount of which does not exceed 1 percent by weight;

(4) Spices, natural and artificial flavorings, ground whole nut meats, ground coffee, dried malted cereal extract, salt, and other seasonings that do not either singly or in combination impart a flavor that imitates the flavor of chocolate, milk, or butter; or

(5) Antioxidants.

(c) *Nomenclature.* The name of the food is "white chocolate" or "white chocolate coating." When one or more of the spices, flavorings, or seasonings specified in paragraph (b)(4) of this section are used, the label shall bear an appropriate statement, e.g., "Spice added", "Flavored with _____", or "With _____ added", the blank being filled in with the common or usual name of the spice, flavoring, or seasoning used, in accordance with § 101.22 of this chapter.

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

Dated: January 6, 1997.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 97–5734 Filed 3–7–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 982

[Docket No. FR–4149–P–01]

RIN 2577–AB73

Section 8 Rental Voucher and Certificate Programs Restrictions on Leasing to Relatives

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would limit the circumstances under which a landlord could lease a unit with Section 8 certificate or voucher assistance to a relative of the landlord. It would permit such leasing only if an HA determines that the leasing would accommodate a person with disabilities. The rule is intended to reduce the potential for misuse of Section 8 assistance. It would reduce the likelihood of families that have the ability to assist a family member from seeking Federal rental assistance and, thereby, would help to direct scarce Federal financial assistance to the more needy.

DATES: Comment due date: May 9, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Office of the General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Comments should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m. Eastern time) at the above address.

FOR FURTHER INFORMATION CONTACT: Gerald Benoit, Director, Operations Division, Office of Rental Assistance, Public and Indian Housing, Department of Housing and Urban Development, Room 4220, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–0477. Hearing or speech impaired individuals may call HUD's TTY number (202) 708–4594 or 1–800–877–8399 (Federal Information Relay Service TTY). (Other than the "800" number, these are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Discussion

Currently, neither the statute nor HUD regulations place any restriction on an owner leasing a unit with Section 8 certificate or voucher assistance to a relative. All parties, of course, would have to meet requirements generally applicable to any certificate or voucher assisted tenancy. These requirements include: the applicant meets income and other eligibility requirements; the applicant is selected in appropriate order from the HA's waiting list; the unit meets housing quality standards, and the rent to the owner is reasonable.

This policy of no restrictions on leasing with assistance to relatives has been in effect since the inception of the Certificate Program in the mid-1970s. Historically, it has been viewed by the Department as consistent with an over-arching policy of promoting maximum housing choice for assisted families.

The Department does not have systematic data on the extent to which, or the circumstances under which, owners have been leasing to family members. Nonetheless, it must be recognized that a policy of allowing leasing between closely related individuals creates a potential for misallocation of scarce program resources. It can encourage families that can house family members to seek and obtain Federal assistance that otherwise would be available for more needy families. In short, it can shift, too readily, responsibility for housing a close relative from a relative with available housing or financial resources to the Federal Government.

Recent newspaper articles have described a number of examples of relatives leasing to other relatives with

Section 8 assistance. The Department's review of these cases did not disclose any violation of program requirements. In a number of the examples the total rent received by an owner, from the assisted tenant and the HUD subsidy, was lower than rent the owner previously charged for the unit. In addition, a number of examples involved seriously ill close family members. Other examples, however, did appear to involve owners who should have had the financial ability to assist a close family member, but were nonetheless receiving Section 8 assistance payments.

Section 982.306 of title 24 CFR sets out the restrictions on a housing agency (HA) approving a unit based on facts concerning the owner. The Department proposes to amend § 982.306 so that an HA may not approve a unit for lease if the owner is the parent, child, grandparent, grandchild, sister, or brother of the certificate or voucher holder that is seeking to rent the unit. (Under § 982.306(e), "owner" includes a principal or other interested party.) The HA, however, could still approve the unit for lease, if the HA determines that approving the unit would provide reasonable accommodation for a family member who is a person with disabilities. The Department specifically invites comments on whether there should be other exceptions to the general policy.

When implemented, the policy would apply to new admissions and to moves with continued assistance. HUD would add to HAP contract forms a simple certification by the owner that the owner is not a parent, child, grandparent, grandchild, sister, or brother of any member of the family. HUD would also add a comparable certification to the rental certificate and rental voucher.

II. Findings and Certifications

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Regulatory Planning and Review

This proposed rule has been reviewed in accordance with Executive Order 12866, issued by the President on September 30, 1993 (58 FR 51735, October 4, 1993). Any changes to the proposed rule resulting from this review are available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Regulatory Flexibility Act

The Secretary has reviewed this proposed rule before publication and by approving it certifies, in accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), that this proposed rule does not have a significant economic impact on a substantial number of small entities because it simply restricts leasing with assistance between certain related individuals and does not otherwise restrict or impose burdens on the use or availability of Section 8 rental certificate or rental voucher assistance.

Unfunded Mandates Reform Act

The Secretary has reviewed this proposed rule before publication and by approving it certifies, in accordance with the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), that this proposed rule does not impose a Federal mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this proposed rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. The proposed rule does not alter the relationship between HUD and the HAs. Rather, it simply amends one of the conditions for receipt of Federal assistance.

Family Impact

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this proposed rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. This proposed rule furthers the purposes of the Executive Order by revising program requirements to recognize the primary right and responsibility of families themselves to assist needy family members and by increasing the likelihood that Federal assistance is limited to those circumstances where it is most needed.

Catalog

The Catalog of Federal Domestic Assistance numbers are 14.855 and 14.857.

List of Subjects in 24 CFR Part 982

Grant programs—housing and community development, Housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 982 is proposed to be amended as follows:

PART 982—SECTION 8 TENANT-BASED ASSISTANCE: UNIFIED RULE FOR TENANT-BASED ASSISTANCE UNDER THE SECTION 8 RENTAL CERTIFICATE PROGRAM AND THE SECTION 8 RENTAL VOUCHER PROGRAM

1. The authority citation for part 982 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d).

2. In § 982.306, paragraphs (d) and (e) are redesignated as paragraphs (e) and (f) and a new paragraph (d) is added to read as follows:

§ 982.306 HA disapproval of owner.

* * * * *

(d) The HA must not approve a unit if the owner is the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless the HA determines that approving the unit would provide reasonable accommodation for a family member who is a person with disabilities.

* * * * *

Dated: December 24, 1996.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

[FR Doc. 97–5737 Filed 3–7–97; 8:45 am]

BILLING CODE 4210–33–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1625

Waiver of Rights and Claims Under the Age Discrimination in Employment Act (ADEA)

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: EEOC is publishing its notice of proposed rulemaking on agreements waiving rights and claims under the Age

Discrimination in Employment Act, in order to set forth procedures for complying with the Older Workers Benefit Protection Act of 1990.

DATES: To be assured of consideration by EEOC, comments must be in writing and must be received on or before May 9, 1997.

ADDRESS: Written comments should be submitted to Frances M. Hart, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 1801 L Street, NW, Washington, DC 20507.

FOR FURTHER INFORMATION CONTACT: Joseph N. Cleary, Assistant Legal Counsel, or Paul E. Boymel, Senior Attorney-Advisor, ADEA Division, Office of Legal Counsel, 202–663–4692 (voice), 202–663–7026 (TDD).

SUPPLEMENTARY INFORMATION:

A. History

Congress amended the ADEA by enacting the Older Workers Benefit Protection Act of 1990 (OWBPA), Pub. L. No. 101–433, 104 Stat. 983 (1990), to clarify the prohibitions against discrimination on the basis of age. In Title II of OWBPA, Congress addressed waivers of rights and claims under the ADEA, amending section 7 of the ADEA by adding a new subsection (f), 29 U.S.C. sec. 626(f).

Section 7(f)(1) provides that "an individual may not waive any right or claim under the [ADEA] unless the waiver is knowing and voluntary." Section 7(f) sets out the minimum criteria for determining whether a waiver is knowing and voluntary.

In light of the OWBPA amendments, EEOC published an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register**, 57 FR 10626 (March 27, 1992), seeking information from the public on various issues under both titles of OWBPA. In response to the ANPRM, EEOC received approximately 40 comments, many of which presented detailed analyses of Title II issues, requesting EEOC to provide formal guidance on waivers of rights and claims under the ADEA. Since the publication of the ANPRM, EEOC also has received numerous written and telephone inquiries requesting information on how to comply with Title II.

On August 31, 1995, EEOC announced in the **Federal Register**, 60 FR 45388 (August 31, 1995), its intent to use negotiated rulemaking to develop a proposed Title II rule.

B. Purpose of Negotiated Rulemaking

Negotiated rulemaking, under procedures set out in the Negotiated Rulemaking Act, 5 U.S.C. 561 *et seq.*, Pub. L. 101–648, is a relatively new tool used by agencies in connection with the development of regulations. In using negotiated rulemaking, EEOC has reached out to employers, employees, and their representatives to take into account the concerns of all interested communities in the development and drafting of the proposed rule. This procedure contrasts with the more traditional "notice and comment" rulemaking where an agency receives public input only after the proposed rule is published for comment. The advantages of negotiated rulemaking include:

1. The negotiated rulemaking process allows public input from the start, permitting the stakeholders—individuals, organizations, and businesses actually affected by the rule—to explain their concerns and help shape the rule;

2. The agency gains the benefit of the expertise of the stakeholders, enabling it to draft a rule that reflects the realities of the workplace, not just the agency's views;

3. The negotiated rulemaking process requires consensus of the committee members. By involving stakeholders from all sides of the issues to be addressed, the stakeholders will be more willing to accept the regulation without legal challenge. While no stakeholder will be happy with every provision of a rule, each will know that the rule represents a reasonable solution to shared problems.

C. Negotiated Rulemaking on Title II of OWBPA

The August 31, 1995 **Federal Register** notice set out nine issues that EEOC suggested might be discussed during the negotiated rulemaking process. EEOC left open the possibility that the Negotiated Rulemaking Committee would add other issues to the proposed rule and/or choose not to address one or more of the enumerated issues.

The notice also invited members of the public who were interested in serving on the Committee to inform EEOC of their interest and qualifications. EEOC received over 70 requests to participate on the Committee, representing a wide diversity of interests and backgrounds. EEOC chose 18 Committee participants from members of the public representing labor, management, and employee interests, along with 2 EEOC representatives to serve on the Committee. The members of the Committee were:

Elizabeth M. Barry, Esq., Harvard University, Cambridge, MA
William H. Brown, Esq., Schnader, Harrison, Segal & Lewis, Philadelphia, PA
Joseph N. Cleary, Esq., Equal Employment Opportunity Commission, Washington, DC
John C. Dempsey, Esq., AFSCME, AFL–CIO, Washington, DC
Raymond C. Fay, Esq., Bell Boyd & Lloyd, Washington, DC
Burton D. Fretz, Esq., National Senior Citizens Law Center, Washington, DC
Peter Kilgore, Esq., National Restaurant Association, Washington, DC
Lloyd C. Loomis, Esq., Atlantic Richfield Co., Los Angeles, CA
Benton J. Mathis, Esq., Drew, Eckl & Farnham, Atlanta, GA
Thomas R. Meites, Esq., Meites, Frackman, Mulder & Burger, Chicago, IL
Niall A. Paul, Esq., Spilman, Thomas & Battle, Charleston, WV
Markus L. Penzel, Esq., Garrison, Phelan, Levin-Epstein & Penzel, and National Employment Lawyers Assn. New Haven, CT
L. Steven Platt, Esq., Arnold and Kadjan, and National Employment Lawyers Assn., Chicago, IL
Pamela S. Poff, Esq., Paine Webber Inc., Weehawken, NJ
Michele C. Pollak, Esq., American Association of Retired Persons, Washington, DC
Jaime Ramon, Esq., Jackson Walker, Dallas, TX
Patrick W. Shea, Esq., Paul Hastings, Janofsky & Walker, Society for Human Resource Management, Stamford, CT
Paul H. Tobias, Esq., Tobias Kraus & Torchia, Cincinnati, OH
Ellen J. Vargyas, Esq., Equal Employment Opportunity Commission, Washington, DC
Robert Williams, Esq., McGuiness & Williams, Equal Employment Advisory Council, Washington, DC

The Negotiated Rulemaking Committee began work on December 6, 1995. Committee meetings were held on December 6–7, 1995, January 23–24, 1996, March 6–7, 1996, April 16–17, 1996, June 18–19, 1996, and July 23–24, 1996. The Committee discussed in detail the issues set out in the August 31, 1995, **Federal Register** notice, as well as other issues that the Committee considered needed to be resolved. The Committee functioned by consensus which it defined as the absence of objection by any Committee member.

The Committee unanimously forwarded a recommended proposed rule to EEOC for its consideration. As a result of the recommendations received from the Committee, and its deliberations regarding such recommendations, EEOC is publishing for public comment the Committee's negotiated rule in this Notice of Proposed Rulemaking.

Because the recommendation was based on a consensus of the Committee members, it did not include issues on which the Committee could not reach a consensus. EEOC recognizes that this Notice of Proposed Rulemaking does not address certain issues that arise under Title II of OWBPA. EEOC emphasizes that no inference should be drawn on any issue by reason of the proposed regulation's silence with respect to that issue.

Following the end of the 60 day comment period, members of the Negotiated Rulemaking Committee will be given a period of 30 days to provide EEOC with their written views relating to the proposed rule and the comments received. At the expiration of that 30 day period, EEOC will review all comments and determine the content of the final regulation.

As a convenience to commentors, the Executive Secretariat will accept public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is 202–663–4114. (Telephone numbers published in this Notice are not toll-free). Only public comments of six or fewer pages will be accepted via FAX transmittal. This limitation is necessary in order to assure access to the equipment. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff on 202–663–4078.

Comments received will be available for public inspection in the EEOC Library, Room 6502, 1801 L Street, NW, Washington, DC 20507, by appointment only, from 9:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays. Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers. Copies of this notice of proposed rulemaking are available in the following alternative formats: Large print, braille, electronic file on computer disk, and audio-tape. To schedule an appointment or receive a copy of the notice in an alternative format, call 202 663–4630 (voice), 202–663–4399 (TDD).

Executive Order 12866, Regulatory Planning and Review

Under section 3(f)(4) of Executive Order 12866, EEOC has determined that this regulation would be a "significant regulatory action;" therefore, EEOC has coordinated this NPRM with the Office of Management and Budget. However, under section 3(f)(1) of Executive Order 12866, EEOC has determined that the regulation will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State or local or tribal governments or communities. The rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Therefore, EEOC has not needed to prepare a detailed cost-benefit assessment of the regulation.

Paperwork Reduction Act

The rule as proposed does not require the collection of information by EEOC or by any other agency of the United States Government. However, the provisions of Title II of OWBPA do require employers to provide certain information to employees (but not to EEOC) in writing.

Accordingly, EEOC, as part of its continuing effort to reduce paperwork and respondent burden, is, as required by the Paperwork Reduction Act for all collections of information, soliciting comments concerning the proposed rule with regard to the paperwork requirements contained in Title II of OWBPA. The provisions of the proposed rule dealing with informational requirements have been submitted to the Office of Management and Budget for review under section 3507 of the Paperwork Reduction Act.

The public reporting and recordkeeping burden for this collection of information is estimated to be 41,139 hours in order for employers to collect the information and to determine: (1) what information must be given to employees; (2) which employees must be given the information; (3) how the information should be organized.

The estimated burden of collecting and distributing the information was calculated as follows:

Collection Title: Informational requirements under Title II of the Older Workers Benefit Protection Act of 1990 (OWBPA), 29 CFR Part 1625.

Form Number: None.

Frequency of Report: None required.

Type of Respondent: Business, state or local governments, not for profit institutions.

Description of the Affected Public: Any employer with 20 or more employees that seeks waiver agreements in connection with exit incentive or other employment termination programs (hereinafter, "Programs").

Responses: 13,713.

Reporting Hours: 41,139.

Number of Forms: None.

Abstract: This requirement does not involve record keeping. It consists of providing adequate information in waiver agreements offered to a group or class of persons in connection with a Program, to satisfy the requirements of the OWBPA.

Burden Statement: There is no reporting requirement nor additional record keeping associated with this rule. The only paperwork burden involved is the inclusion of the relevant data in waiver agreements. The rule applies only to those employers who have 20 or more employees and who offer waivers to a group or class of employees in connection with a Program.

There are 542,000 employers who have at least 20 employees. Programs come into play when, as a result of business activity, employers are forced to cut their work force. Based on statistics from EEOC's private employer survey, it is estimated that in any one year 4.6% of employers are involved in activities, such as mergers or downsizing, which occasion the use of Programs. It is further estimated, based on figures from a General Accounting Office study, and the Bureau of Labor Statistics, that at most 55% of those who use Programs require waivers and thus are affected by this rule.

Applying the above factors to the total number of employers: [(542,000×.046×.55)=13,713] yields 13,713 employers that are affected by this requirement. The larger employers are assumed to have computerized record keeping, and thus can produce the requisite notification with a minimum of effort, while smaller employers have far less information to process.

Therefore, it is estimated that, on the average, a notification can be produced in approximately 3 hours. This would then produce a maximum of (13,713×3)=41,139 hours annually.

Organizations and individuals desiring to submit comments on the information collection requirements should submit written comments on or before April 9, 1997. This deadline does not affect the deadline for the public to comment to EEOC on the proposed regulation itself. Address comments to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, D.C. 20503, Attention: Desk Officer for the United States Equal Employment Opportunity Commission. Comments also should be sent to EEOC at the address listed at the beginning of this Notice.

EEOC will consider comments by the public on this proposed regulation to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of EEOC, including whether the information shall have practical utility;
- Evaluate the accuracy of EEOC's estimate of the burden of the proposed collection of information;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

EEOC certifies under 5 U.S.C. 605(b), enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this regulation will not result in a significant economic impact on a substantial number of small entities. For this reason, a regulatory flexibility analysis is not required. A copy of this proposed rule was furnished to the Small Business Administration.

In addition, in accordance with Executive Order 12067, EEOC has solicited the views of affected Federal agencies.

List of Subjects in 29 CFR Part 1625

Advertising, Age, Employee benefit plans, Equal employment opportunity, Retirement.

Signed at Washington, DC this 4th day of March, 1997.

Gilbert F. Casellas,

Chairman.

It is proposed to amend chapter XIV of title 29 of the Code of Federal Regulations as follows:

PART 1625—AGE DISCRIMINATION IN EMPLOYMENT ACT

1. The authority citation for part 1625 continues to read as follows:

Authority: 81 Stat. 602; 29 U.S.C. 621, 5 U.S.C. 301, Secretary's Order No. 10–68; Secretary's Order No. 11–68; sec. 12, 29 U.S.C. 631, Pub. L. 99–592, 100 Stat. 3342; sec. 2, Reorg. Plan No. 1 of 1978, 43 FR 19807.

2. In part 1625, § 1625.22 would be added to Subpart B—Substantive Regulations to read as follows:

§ 1625.22 Waivers of rights and claims under the ADEA.

(a) *Introduction.* (1) Congress amended the ADEA in 1990 to clarify the prohibitions against discrimination on the basis of age. In Title II of OWBPA, Congress addressed waivers of rights and claims under the ADEA, amending section 7 of the ADEA by adding a new subsection (f).

(2) Section 7(f)(1) of the ADEA expressly provides that waivers may be valid and enforceable under the ADEA only if the waiver is "knowing and voluntary". Sections 7(f) (1) and 7(f) (2) of the ADEA set out the minimum requirements for determining whether a waiver is knowing and voluntary.

(3) Other facts and circumstances may bear on the question of whether the waiver is knowing and voluntary, as, for example, if there is a material mistake, omission, or misstatement in the information furnished by the employer to an employee in connection with the waiver.

(b) *Wording of waiver agreements.* (1) Section 7(f)(1)(A) of the ADEA provides, as part of the minimum requirements for a knowing and voluntary waiver, that:

> The waiver is part of an agreement between the individual and the employer that is written in a manner calculated to be understood by such individual, or by the average individual eligible to participate.

(2) The entire waiver agreement must be in writing.

(3) Waiver agreements must be drafted in plain language geared to the level of understanding of the individual party to the agreement or individuals eligible to participate. Employers should take into account such factors as the level of comprehension and education of typical participants. Consideration of these factors usually will require the limitation or elimination of technical jargon and of long, complex sentences.

(4) The waiver agreement must not have the effect of misleading, misinforming, or failing to inform participants and affected individuals. Any advantages or disadvantages described shall be presented without either exaggerating the benefits or minimizing the limitations.

(5) Section 7(f)(1)(H) of the ADEA, relating to exit incentive or other employment termination programs offered to a group or class of employees, also contains a requirement that information be conveyed "in writing in a manner calculated to be understood by the average plan participant." The same standards applicable to the similar language in section 7(f)(1)(A) of the ADEA apply here as well.

(6) Section 7(f)(1)(B) of the ADEA provides, as part of the minimum requirements for a knowing and voluntary waiver, that "the waiver specifically refers to rights or claims under this Act." Pursuant to this subsection, the waiver agreement must refer to the Age Discrimination in Employment Act (ADEA) by name in connection with the waiver.

(7) Section 7(f)(1)(E) of the ADEA requires that an individual must be "advised in writing to consult with an attorney prior to executing the agreement."

(c) *Waiver of future rights.* (1) Section 7(f)(1)(C) of the ADEA provides that:

> A waiver may not be considered knowing and voluntary unless at a minimum * * * the individual does not waive rights or claims that may arise after the date the waiver is executed.

(2) The waiver of rights or claims that arise following the execution of a waiver is prohibited. However, section 7(f)(1)(C) of the ADEA does not bar, in a waiver that otherwise is consistent with statutory requirements, the enforcement of agreements to perform future employment-related actions such as the employee's agreement to retire or otherwise terminate employment at a future date.

(d) *Consideration.* (1) Section 7(f)(1)(D) of the ADEA states that:

> A waiver may not be considered knowing and voluntary unless at a minimum * * * the individual waives rights or claims only in exchange for consideration in addition to anything of value to which the individual already is entitled.

(2) "Consideration in addition" means anything of value in addition to that to which the individual is already entitled in the absence of a waiver.

(3) If a benefit or other thing of value was eliminated in contravention of law or contract, express or implied, the subsequent offer of such benefit or thing of value in connection with a waiver will not constitute "consideration" for purposes of section 7(f)(1) of the ADEA. Whether such elimination as to one employee or group of employees is in contravention of law or contract as to other employees, or to that individual employee at some lator time, may vary depending on the facts and circumstances of each case.

(4) An employer is not required to give a person age 40 or older a greater amount of consideration than is given to a person under the age of 40, solely because of that person's membership in the protected class under the ADEA.

(e) *Time periods.* (1) Section 7(f)(1)(F) of the ADEA states that:

> A waiver may not be considered knowing and voluntary unless at a minimum * * *
> (i) The individual is given a period of at least 21 days within which to consider the agreement; or
> (ii) If a waiver is requested in connection with an exit incentive or other employment termination program offered to a group or class of employees, the individual is given a period of at least 45 days within which to consider the agreement.

(2) Section 7(f)(1)(G) of the ADEA states:

> A waiver may not be considered knowing and voluntary unless at a minimum * * * the agreement provides that for a period of at least 7 days following the execution of such agreement, the individual may revoke the agreement, and the agreement shall not become effective or enforceable until the revocation period has expired.

(3) The term "exit incentive or other employment termination program" includes both voluntary and involuntary programs.

(4) The 21 or 45 day period runs from the date of the employer's final offer. Material changes to the final offer restart the running of the 21 or 45 day period; changes made to the final offer that are not material do not restart the running of the 21 or 45 day period. The parties may agree that changes, whether material or immaterial, do not restart the running of the 21 or 45 day period.

(5) The 7 day revocation period cannot be shortened by the parties, by agreement or otherwise.

(6) An employee may sign a release prior to the end of the 21 or 45 day time period, thereby commencing the mandatory 7 day revocation period. This is permissible as long as the employee's decision to accept such shortening of time is knowing and voluntary and is not induced by the employer through fraud, misrepresentation, a threat to withdraw or alter the offer prior to the expiration of the 21 or 45 day time period, or by providing different terms to employees who sign the release prior to the expiration of such time period. However, if an employee signs a release before the expiration of the 21 or 45 day time period, the employer may expedite the processing of the consideration provided in exchange for the waiver.

(f) Informational requirements.

(1) Introduction. (i) Section 7(f)(1)(H) of the ADEA provides that:

> A waiver may not be considered knowing and voluntary unless at a minimum * * * if a waiver is requested in connection with an exit incentive or other employment termination program offered to a group or class of employees, the employer (at the commencement of the period specified in subparagraph (F)) [which provides time periods for employees to consider the waiver] informs the individual in writing in a manner calculated to be understood by the average individual eligible to participate, as to—
> (i) Any class, unit, or group of individuals covered by such program, any eligibility factors for such program, and any time limits applicable to such program; and
> (ii) The job titles and ages of all individuals eligible or selected for the program, and the ages of all individuals in the same job classification or organizational unit who are not eligible or selected for the program.

(ii) Section 7(f)(1)(H) of the ADEA addresses two principal issues: to whom must information be provided, and what information must be disclosed to such individuals.

(iii)(A) Section 7(f)(1)(H) of the ADEA references two types of "programs" under which employers seeking waivers must make written disclosures: "exit incentive programs" and "other employment termination programs." Usually an "exit incentive program" is a voluntary program offered to a group or class of employees where such employees are offered consideration in addition to anything of value to which the individuals are already entitled (hereinafter in this section, "additional consideration") in exchange for their decision to resign voluntarily and sign a waiver. Usually "other employment termination program" refers to a group or class of employees who were involuntarily terminated and who are offered additional consideration in return for their decision to sign a waiver.

(B) The question of the existence of a "program" will be decided based upon the facts and circumstances of each case. A "program" exists when an employer offers additional consideration for the signing of a waiver pursuant to an exit incentive or other employment termination (e.g., a reduction in force) to two or more employees. Typically, an involuntary termination program is a standardized formula or package of benefits that is available to two or more employees, while an exit incentive program typically is a standardized formula or package of benefits designed to induce employees to sever their employment voluntarily. In both cases, the terms of the programs generally are not subject to negotiation between the parties.

(C) Regardless of the type of program, the scope of the terms "class," "unit," "group," "job classification," and "organizational unit" is determined by examining the "decisional unit" at issue. (*See* paragraph (f)(3) of this section, "The Decisional Unit," below).

(D) A "program" for purposes of the ADEA need not constitute an "employee benefit plan" for purposes of the Employee Retirement Income Security Act of 1974 (ERISA). An employer may or may not have an ERISA severance plan in connection with its OWBPA program.

(iv) The purpose of the informational requirements is to provide an employee with enough information regarding the program to allow the employee to make an informed choice whether or not to sign a waiver agreement.

(2) To whom must the information be given. The required information must be given to each person in the decisional unit who is asked to sign a waiver agreement.

(3) The decisional unit. (i)(A) The terms "class," "unit," or "group" in section 7(f)(1)(H)(i) of the ADEA and "job classification or organizational unit" in section 7(f)(1)(H)(ii) of the ADEA refer to examples of categories or groupings of employees affected by a program within an employer's particular organizational structure. The terms are not meant to be an exclusive list of characterizations of an employer's organization.

(B) When identifying the scope of the "class, unit, or group," and "job classification or organizational unit," an employer should consider its organizational structure and decision-making process. A "decisional unit" is that portion of the employer's organizational structure from which the employer chose the persons who would be offered consideration for the signing of a waiver and those who would not be offered consideration for the signing of a waiver. The term "decisional unit" has been developed to reflect the process by which an employer chose certain employees for a program and ruled out others from that program.

(ii)(A) The variety of terms used in section 7(f)(1)(H) of the ADEA demonstrates that employers often use differing terminology to describe their organizational structures. When identifying the population of the decisional unit, the employer acts on a case-by-case basis, and thus the determination of the appropriate class, unit, or group, and job classification or organizational unit for purposes of section 7(f)(1)(H) of the ADEA also must be made on a case-by-case basis.

(B) The examples in paragraph (f)(3)(iii) of this section demonstrate that in appropriate cases some subgroup of a facility's work force may be the decisional unit. In other situations, it may be appropriate for the decisional unit to comprise several facilities. However, as the decisional unit is typically no broader than the facility, in general the disclosure need be no broader than the facility. "Facility" as it is used throughout this section generally refers to place or location. However, in some circumstances terms such as "school," "plant," or "complex" may be more appropriate.

(C) Often, when utilizing a program an employer is attempting to reduce its workforce at a particular facility in an effort to eliminate what it deems to be excessive overhead, expenses, or costs from its organization at that facility. If

the employer's goal is the reduction of its workforce at a particular facility and that employer undertakes a decision-making process by which certain employees of the facility are selected for a program, and others are not selected for a program, then that facility generally will be the decisional unit for purposes of section 7(f)(1)(H) of the ADEA.

(D) However, if an employer seeks to terminate employees by exclusively considering a particular portion or subgroup of its operations at a specific facility, then that subgroup or portion of the workforce at that facility will be considered the decisional unit.

(E) Likewise, if the employer analyzes its operations at several facilities, specifically considers and compares ages, seniority rosters, or similar factors at differing facilities, and determines to focus its workforce reduction at a particular facility, then by the nature of that employer's decision-making process the decisional unit would include all considered facilities and not just the facility selected for the reductions.

(iii) The following examples are not all-inclusive and are meant only to assist employers and employees in determining the appropriate decisional unit. Involuntary reductions in force typically are structured along one or more of the following lines:

(A) Facility-wide: Ten percent of the employees in the Springfield facility will be terminated within the next ten days;

(B) Division-wide: Fifteen of the employees in the Computer Division will be terminated in December;

(C) Department-wide: One-half of the workers in the Keyboard Department of the Computer Division will be terminated in December;

(D) Reporting: Ten percent of the employees who report to the Vice President for Sales, wherever the employees are located, will be terminated immediately;

(E) Job Category: Ten percent of all accountants, wherever the employees are located, will be terminated next week.

(iv) In the examples in paragraph (f)(3)(iii) of this section, the decisional units are, respectively: (A) the Springfield facility; (B) the Computer Division; (C) the Keyboard Department; (D) all employees reporting to the Vice President for Sales; and (E) all accountants.

(v) While the particular circumstances of each termination program will determine the decisional unit, the following examples also may assist in determining when the decisional unit is other than the entire facility:

(A) A number of small facilities with interrelated functions and employees in a specific geographic area may comprise a single decisional unit;

(B) If a company utilizes personnel for a common function at more than one facility, the decisional unit for that function (i.e., accounting) may be broader than the one facility;

(C) A large facility with several distinct functions may comprise a number of decisional units; for example, if a single facility has distinct internal functions with no employee overlap (i.e., manufacturing, accounting, human resources), and the program is confined to a distinct function, a smaller decisional unit may be appropriate.

(vi)(A) For purposes of this section, higher level review of termination decisions generally will not change the size of the decisional unit unless the reviewing process alters its scope. For example, review by the Human Resources Department to monitor compliance with discrimination laws does not affect the decisional unit. Similarly, when a regional manager in charge of more than one facility reviews the termination decisions regarding one of those facilities, the review does not alter the decisional unit, which remains the one facility under consideration.

(B) However, if the regional manager in the course of review determines that persons in other facilities should also be considered for termination, the decisional unit becomes the population of all facilities considered. Further, if, for example, the regional manager and his three immediate subordinates jointly review the termination decisions, taking into account more than one facility, the decisional unit becomes the populations of all facilities considered.

(vii) This regulatory section is limited to the requirements of section 7(f)(1)(H) and is not intended to affect the scope of discovery or of substantive proceedings in the processing of charges of violation of the ADEA or in litigation involving such charges.

(4) Presentation of information. (i) The information provided must be in writing and must be written in a manner calculated to be understood by the average individual eligible to participate.

(ii) Information regarding ages should be broken down according to the age of each person eligible or selected for the program and each person not eligible or selected for the program. The use of age bands broader than one year (such as "age 20–30") does not satisfy this requirement.

(iii) In a termination of persons in several established grade levels and/or other established subcategories within a job category or job title, the information shall be broken down by grade level or other subcategory.

(iv) If an employer in its disclosure combines information concerning both voluntary and involuntary terminations, the employer shall present the information in a manner that distinguishes between voluntary and involuntary terminations.

(v) If the terminees are selected from a subset of a decisional unit, the employer must still disclose information for the entire population of the decisional unit. For example, if the employer decides that a 10% RIF in the Accounting Department will come from the accountants whose performance is in the bottom one-third of the Division, the employer still must disclose information for all employees in the Accounting Department, even those who are the highest rated.

(vi) An involuntary termination program in a decisional unit may take place in successive increments over a period of time. Special rules apply to this situation. Specifically, information supplied with regard to the involuntary termination program should be cumulative, so that later terminees are provided ages and job titles or job categories, as appropriate, for all persons in the decisional unit at the beginning of the program and all persons terminated to date. There is no duty to supplement the information given to earlier terminees so long as the disclosure, at the time it is given, conforms to the requirements of this section.

(vii) The following example demonstrates one way in which the required information could be presented to the employees. [This example is not presented as a prototype notification agreement that automatically will comply with the ADEA. Each information disclosure must be structured based upon the individual case, taking into account the corporate structure, the population of the decisional unit, and the requirements of section 7(f)(1)(H)) of the ADEA: Example: Y Corporation lost a major construction contract and determined that it must terminate 10% of the employees in the Construction Division. Y decided to offer all terminees $20,000 in severance pay in exchange for a waiver of all rights. The waiver provides the section 7(f)(1)(H) of the ADEA information as follows:

(A) The decisional unit is the Construction Division.

(B) All persons in the Construction Division are eligible for the program. All persons who are being terminated in our November RIF are selected for the program.

(C) All persons who are being offered consideration under a waiver agreement must sign the agreement and return it to the Personnel Office within 45 days after receiving the waiver. Once the signed waiver is returned to the Personnel Office, the employee has 7 days to revoke the waiver agreement.

(D) The following is a listing of the ages and job titles of persons in the Construction Division who were and were not selected for termination and the offer of consideration for signing a waiver:

Job title	Age	Number selected	Number not selected
(1) Mechanical Engineers, I	25	21	48
	26	11	73
	.	.	.
	63	4	18
	64	3	11
(2) Mechanical Engineers, II	28	3	10
	29	11	17
	(1)		
(3) Structural Engineers, I	21	5	8
	(1)		
(4) Structural Engineers, II	23	2	4
	(1)		
(5) Purchasing Agents	26	10	11
	(1)		

[1] etc., for all ages.

(g) *Waivers settling charges and lawsuits. (1) Section 7(f)(2) of the ADEA provides that:*

A waiver in settlement of a charge filed with the Equal Employment Opportunity Commission, or an action filed in court by the individual or the individual's representative, alleging age discrimination of a kind prohibited under section 4 or 15 may not be considered knowing and voluntary unless at a minimum—

(A) Subparagraphs (A) through (E) of paragraph (1) have been met; and

(B) The individual is given a reasonable period of time within which to consider the settlement agreement.

(2) The language in section 7(f)(2) of the ADEA, "discrimination of a kind prohibited under section 4 or 15" refers to allegations of age discrimination of the type prohibited by the ADEA.

(3) The standards set out in section (f) of these regulations for complying with the provisions of section 7(f)(1)(A)-(E) of the ADEA also will apply for purposes of complying with the provisions of section 7(f)(2)(A) of the ADEA.

(4) The term "reasonable time within which to consider the settlement agreement" means reasonable under all the circumstances, including whether the individual is represented by counsel or has the assistance of counsel.

(5) However, while the time periods under section 7(f)(1) of the ADEA do not apply to subsection 7(f)(2) of the ADEA, a waiver agreement under this subsection that provides an employee the time periods specified in section 7(f)(1) of the ADEA will be considered "reasonable" for purposes of section 7(f)(2)(B) of the ADEA.

(6) A waiver agreement in compliance with this section that is in settlement of an EEOC charge does not require the participation or supervision of EEOC.

(h) *Burden of proof.* In any dispute that may arise over whether any of the requirements, conditions, and circumstances set forth in section 7(f) of the ADEA, subparagraph (A), (B), (C), (D), (E), (F), (G), or (H) of paragraph (1), or subparagraph (A) or (B) of paragraph (2), have been met, the party asserting the validity of a waiver shall have the burden of proving in a court of competent jurisdiction that a waiver was knowing and voluntary pursuant to paragraph (1) or (2) of section 7(f) of the ADEA.

(i) *EEOC's enforcement powers.* (1) Section 7(f)(4) of the ADEA states:

No waiver agreement may affect the Commission's rights and responsibilities to enforce [the ADEA]. No waiver may be used to justify interfering with the protected right of an employee to file a charge or participate in an investigation or proceeding conducted by the Commission.

(2) No waiver agreement may include any provision prohibiting any individual from:

(i) Filing a charge or complaint, including a challenge to the validity of the waiver agreement, with EEOC, or

(ii) Participating in any investigation or proceeding conducted by EEOC.

(3) No waiver agreement may include any provision imposing any condition precedent, any penalty, or any other limitation adversely affecting any individual's right to:

(i) File a charge or complaint, including a challenge to the validity of the waiver agreement, with EEOC, or

(ii) Participate in any investigation or proceeding conducted by EEOC.

(j) *Effective date of this section.* (1) This section is effective [30 days after publication of the final rule in the **Federal Register**.]

(2) This section applies to waivers offered by employers on or after the effective date specified in paragraph (j)(1) of this section.

(3) No inference is to be drawn from this section regarding the validity of waivers offered prior to the effective date.

(k) *Statutory authority.* The regulations in this section are legislative regulations issued pursuant to section 9 of the ADEA and Title II of OWBPA.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 96–186; FCC 97–49]

Assessment and Collection of Regulatory Fees For Fiscal Year 1997

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Commission is proposing to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress has required it to collect for fiscal year 1997. Section 9 of the Communications Act of 1934, as amended, provides for the annual assessment and collection of

regulatory fees. For fiscal year 1997 sections 9(b) (2) and (3) provide for annual "Mandatory Adjustments" and "Permitted Amendments" to the Schedule of Regulatory Fees. These revisions will further the National Performance Review goals of reinventing Government by requiring beneficiaries of Commission services to pay for such services.

DATES: Comments are due on or before March 25, 1997 and Reply Comments are due on or before April 4, 1997.

ADDRESSES; Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Peter W. Herrick, Office of Managing Director at (202) 418–0443, or Terry D. Johnson, Office of Managing Director at (202) 418–0445.

SUPPLEMENTARY INFORMATION: Adopted: February 14, 1997; Released: March 5, 1997.

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I. Introduction

1. By this *Notice of Proposed Rulemaking*, the Commission commences a proceeding to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress, pursuant to Section 9(a) of the Communications Act, as amended, has required it to collect for Fiscal Year (FY) 1997. *See* 47 U.S.C. § 159 (a).

2. Congress has required that we collect $152,523,000 through regulatory fees in order to recover the costs of our enforcement, policy and rulemaking, international and user information activities for FY 1997. Public Law 104–208 and 47 U.S.C. § 159(a)(2). This amount is $26,123,000 or nearly 21% more than the amount that Congress designated for recovery through regulatory fees for FY 1996. *See Assessment and Collection of Regulatory Fees for Fiscal Year 1996*, FCC 96–295, released July 5, 1996, 61 FR 36629 (July 12, 1996). Thus, we are proposing to revise our fees in order to collect the increased amount that Congress has required that we collect. Additionally, we propose to amend the Schedule in order to assess regulatory fees upon licensees and/or regulatees of services not previously subject to payment of a fee, to simplify and streamline the Fee Schedule, and to clarify and/or revise certain payment procedures. 47 U.S.C. § 159(b)(3).

3. In proposing to revise our fees, we adjusted the payment units and revenue requirement for each service subject to a fee, consistent with Sections 159(b)(2) and (3). In addition, we have made changes to the fees pursuant to public interest considerations. The current Schedule of Regulatory Fees is set forth in sections 1.1152 through 1.1156 of the Commission's rules. 47 CFR §§ 1.1152 through 1.1156.

II. Background

4. Section 9(a) of the Communications Act of 1934, as amended, authorizes the Commission to assess and collect annual regulatory fees to recover the costs, as determined annually by Congress, that it incurs in carrying out enforcement, policy and rulemaking, international, and user information activities. 47 U.S.C. 159(a). See Attachment I for a description of feeable activities. In our *FY 1994 Fee Report and Order*, 59 FR 30984 (June 16, 1994), we adopted the Schedule of Regulatory Fees that Congress established and we prescribed rules to govern payment of the fees, as required by Congress. 47 U.S.C. § 159(b), (f)(1). Subsequently, in our *FY 1995 and FY 1996 Fee Reports and Orders*, 60 FR 34004 (June 29, 1995) and 61 FR 36629 (July 12, 1996), we modified the Schedule to increase by approximately 93 percent and 9 percent, respectively, the revenue generated by these fees in accordance with the amounts Congress required us to collect in FY 1995 and FY 1996. Also, in both our *FY 1995 and FY 1996 Fee Reports and Orders*, we amended certain rules governing our regulatory fee program based upon our experience administering the program in prior years. *See* 47 CFR §§ 1.1151 *et seq.*

5. As noted above, for FY 1994 we adopted the Schedule of Regulatory Fees established in Section 9(g) of the Act. For fiscal years after FY 1994, however, Sections 9(b)(2) and (3), respectively, provide for "Mandatory Adjustments" and "Permitted Amendments" to the Schedule of Regulatory Fees. 47 U.S.C. § 159(b)(2), (b)(3). Section 9(b)(2), entitled "Mandatory Adjustments," requires that we revise the Schedule of Regulatory Fees whenever Congress changes the amount that we are to recover through regulatory fees. 47 U.S.C. § 159(b)(2).

6. Section 9(b)(3), entitled "Permitted Amendments," requires that we determine annually whether adjustments to the fees are warranted based upon the requirements of this subsection and that, whenever we make such adjustments, we take into account factors that are reasonably related to the payer of the fee and factors that are in the public interest. In making these amendments, we are to "add, delete, or reclassify services in the Schedule to reflect additions, deletions or changes in the nature of its services." 47 U.S.C. § 159(b)(3).

7. Section 9(i) requires that we develop accounting systems necessary to adjust our fees pursuant to changes in the costs of regulation of the various services subject to a fee and for other purposes. 47 U.S.C. § 9(i). In this proceeding, we are proposing for the first time to rely on cost accounting data to identify our regulatory costs and to develop our FY 1997 fees based upon these costs. Also, as noted, we are proposing to limit the increase in the amount of the fee for any service in order to phase in our reliance on cost-based fees for those services whose proposed revenue requirement would be more than 25 percent above the revenue requirement which would have resulted from the "mandatory adjustments" to the FY 1996 fees without incorporation of costs. The methodology we propose enables us to develop regulatory fees which more closely reflect our costs of regulating a service and also allows us to make annual revisions to our fees based to the fullest extent possible, and consistent with the public interest, on the actual costs of regulating those services subject to a fee. Finally, Section 9(b)(4)(B) requires that we notify Congress of any permitted amendments 90 days before those amendments go into effect. 47 U.S.C. § 159(b)(4)(B).

III. Discussion

A. Summary of FY 1997 Fee Methodology

8. As noted above, Congress has required that the Commission recover $152,523,000 for FY 1997 through the collection of regulatory fees, representing the costs applicable to our enforcement, policy and rulemaking, international, and user information activities. 47 U.S.C. § 159(a). Congress' increase does not fall equally on all payers due to revised payment units and revenue requirement allocations resulting from the cost accounting system.

9. In developing our proposed FY 1997 fee schedule, we first estimated payment units[1] for FY 1997 in order to determine the aggregate amount of revenue we would collect without any revision to our FY 1996 fees. Next, we compared this revenue amount to the $152,523,000 that Congress has required us to collect in FY 1997 and pro-rated the shortfall among all the existing fee categories. We then adjusted the projected revenue requirements so that they equaled the actual costs of each service, using data generated by our cost accounting system, described *infra*, to ensure that revenues equaled our regulatory costs for each fee category.

10. We next examined the impact of using actual costs to establish regulatory fees for each class of regulatees to determine whether any regulatees experienced an unduly large fee increase. We found that, in many cases, cost-based fees result in fee payments dramatically higher in FY 1997 than they were in FY 1996. Therefore, rather than proposing fully cost-based fees for FY 1997, we are proposing to phase in full reliance on cost-based fees and, for FY 1997, to establish a revenue ceiling in each service no higher than 25 percent above the revenue that payers within a fee category would have paid if FY 1997 fees had remained at FY 1996 levels adjusted only for changes in volume and the increase required by Congress. Our proposed methodology would reduce fees for services whose regulatory costs have declined while increasing fees for services experiencing higher regulatory costs in order to begin eliminating disparities disclosed by our cost accounting system between a service's current costs and fees ascribed to these services in prior fiscal years.

11. Once we established our tentative FY 1997 fees, we evaluated various proposals made by Commission staff concerning other adjustments to the Fee Schedule and to our collection procedures. The proposals are discussed in Paragraphs 20–40 and are factored into our proposed FY 1997 Schedule of Regulatory Fees, set forth in Attachment F.

12. Finally, we have incorporated, as Attachment H, proposed Guidance containing detailed descriptions of each fee category, information on the individual or entity responsible for paying a particular fee and other critical information designed to assist potential fee payers in determining the extent of their fee liability, if any, for FY 1997.[2]

In the following paragraphs, we describe in greater detail our methodology for establishing our FY 1997 regulatory fees.

B. Development of FY 1997 Fees

1. Adjustment of Payment Units

13. As the first step in calculating individual service regulatory fees for FY 1997, we adjusted the estimated payment units for each service because payment units for many services have changed substantially since we adopted our FY 1996 fees. We obtained our estimated payment units through a variety of means, including our licensee data bases, actual prior year payment records, and industry and trade group projections. Whenever possible, we verified these estimates from multiple sources to ensure the accuracy of these estimates. Attachment B provides a summary of how revised payment units were determined for each fee category.[3]

2. Calculation of Revenue Requirements

14. We next multiplied the revised payment units for each service by our FY 1996 fee amounts in each fee category to determine how much revenue we would collect without any change to the existing Schedule of Regulatory Fees. The amount of revenue we would collect is approximately $136.5 million. This amount is approximately $16.0 million less than the amount the Commission is required to collect in FY 1997. We then adjusted these revenue requirements for each fee category on a proportional basis, consistent with Section 9(b)(2) of the Act, to obtain an estimate of revenue requirements for each fee category at the $152,523,000 level required by Congress for FY 1997. Attachment C provides detailed calculations showing how we determined the revised revenue amount for each service.

3. Calculation of Regulatory Costs

15. On October 1, 1995, the Commission established, in accordance with 47 U.S.C. § 159(i), a cost accounting system designed, in part, to provide us with useful data, in combination with other information, to help ensure that fees closely reflected our actual costs of regulation. The Commission's cost accounting system, which is integrated with our personnel/payroll system to ensure accuracy and

[1] Payment units are the number of subscribers, mobile units, pagers, cellular telephones, licenses, call signs, adjusted gross revenue dollars, etc. which represent the base volumes against which fee amounts are calculated.

[2] We also will incorporate a similar Attachment in the *Report and Order* concluding this rulemaking. That Attachment will contain updated information concerning any changes made to the proposed fees adopted by the *Report and Order*.

[3] It is important to note also that, due to revised payment units, Congress' required revenue increase in regulatory fee payments of approximately 21 percent in FY 1997 will not fall equally on all payers.

timeliness of cost information, accumulates both personnel and non-personnel costs on a service-by-service basis.

16. In order to utilize actual costs for fee development purposes, we first had to add indirect support costs to the direct costs[4] and then adjust the results to approximate the amount of revenue that Congress requires us to collect in FY 1997 ($152,523,000).[5] Thus, we adjusted the actual cost data pertaining to regulatory fee activities recorded for the period October 1, 1995 through September 30, 1996 proportionally among the fee categories so that total costs approximated $152,523,000. For fee categories where fees are further differentiated by class or market (e.g., Markets 1–10 under the general VHF and UHF Commercial Television fee category), we distributed the costs to the class or market group by maintaining the same ratios between the classes or market groups as between the fees in the FY 1996 schedule.[6] The results of these calculations are shown in detail in Attachment D and represent our best estimate of actual total attributable costs relative to each fee category for FY 1997.[7]

[4] One feature of the cost accounting system is that it separately identifies direct and indirect costs. Direct costs include salary and expenses for (a) staff directly assigned to our operating Bureaus and performing regulatory activities and (b) staff assigned outside the operating Bureaus to the extent that their time is spent performing regulatory activities pertinent to an operating Bureau. These costs include rent, utilities and contractual costs attributable to such personnel. Indirect costs include support personnel assigned to overhead functions such as field and laboratory staff and certain staff assigned to the Office of Managing Director. The combining of direct and indirect costs is accomplished on a proportional basis among all fee categories as shown on Attachment D.

[5] Congress' estimate of costs to be recovered through regulatory fees is generally determined twelve months before the end of the fiscal year to which the fees actually apply. As such, year-end actual activity costs for FY 1996 do not equal exactly the amount Congress designated for collection for FY 1997.

[6] While some might argue that the Commission should further distinguish our work activities by fee category (e.g., television markets or radio classes), it would not be practical to use small, time-consuming incremental breakouts of work time.

[7] For example, under the FM Radio fee classification, the actual costs attributable to FM radio are $8,452,323. This amount is allocated to FM Classes C,C1,C2,B; Classes A,B1,C3; and FM Construction Permits (CP) as follows:

(1) First we determine the relationships between the three categories by dividing the smallest of the FY 1996 FM fees into each of the FY 1996 FM fees to determine the appropriate ratios for allocation of the revenue requirement.

(a) FY 1996 FM CP fee=$690

FY 1996 FM Classes A, B1, and C3=$830

FY 1996 FM Classes C, C1, C2, and B=$1,250

(b) FM CP ratio is $690 divided by $690=1:1

FM Classes A, B1, and C3 ratio is $830 divided by $690=1:1.2

FM Classes C, C1, C2, and B ratio is $1,250 divided by $690=1:1.8

(2) Next we add the three ratios and divide the sum into the total revenue requirement for FM to determine the amount corresponding to the ratio of 1.

(a) 1+1.2+1.8=4

(b) $8,452,323 divided by 4=$2,113,081

(3) Finally, we determine the fee for each of the three by multiplying the amount calculated in step (2)(b) by each of the ratios.

FM CP revenue requirement=1 times $2,113,081=$2,113,081

FM Classes A, B1, and C3 revenue requirement=1.2 times $2,113,081=$2,535,697

FM Classes C, C1, C2, and B revenue requirement=1.8 times $2,113,081=$3,803,546

[8] For example, the regulatory cost associated with the Aviation (Aircraft) service is $933,492. If no change were made to this service's FY 1996 regulatory fee ($3 per year), the total revenue collected from licensees in this service would be only $117,327 in FY 1997, a shortfall of $816,165. Application of the proposed 25 percent revenue ceiling to this service results in a capped revenue ceiling of $146,659 ($117,327×125%).

4. Establishment of 25% Revenue Ceiling

17. Our next step was to determine whether reliance on actual costs to develop FY 1997 regulatory fees would result in fees which are too disparate from corresponding FY 1996 fees. As a result of this analysis, we are proposing to establish a ceiling of 25 percent on the increase in the revenue requirement of any service over and above the Congressionally mandated increase in the overall revenue requirement and the difference in unit counts.[8] Because Congress has increased our overall fee collection requirement, we are already required to collect substantially more than we collected in FY 1996. Nevertheless, capping each service's revenue requirement at no more than a 25 percent increase enables us to begin the process of reducing fees for services with lower costs and increasing fees for services with higher costs in order to close the gap between actual costs and fees designed to recover these costs. We are not suggesting that fee increases be limited to a 25 percent increase over the FY 1996 fees. The 25 percent increase is over and above the revenue which would be required after adjusting for the projected FY 1997 payment units and the proportional share of the 21 percent increase in the amount that Congress requires us to collect. Thus, FY 1997 fees may increase more than 25 percent over FY 1996 fees depending upon the number of payment units.

18. An important consideration in proposing the establishment of a revenue ceiling is the impact on other fee payers. Because the Commission is required to collect a full $152,523,000 in FY 1997 regulatory fees, the additional revenue ($28,024,533) that would have been collected from classes of licensees subject to the revenue ceiling had there been no ceiling, needs to be collected instead from licensees not subject to the ceiling. This results in a certain amount of subsidization between fee payer classes.[9] We believe, however, that the public interest is best served by adopting our proposed revenue ceiling methodology. To do otherwise would subject several entities to unexpected major increases which would severely impact the economic well being of certain licensees who will not be able to adjust their business plans accordingly. Attachment E displays the step-by-step process we used to calculate adjusted revenue requirements for each fee category for FY 1997, including the reallocation of revenue requirements resulting from the application of our proposed revenue ceilings.[10] We invite comments on our proposed methodology to incorporate actual costs into the computation of regulatory fees and to establish the 25% revenue ceiling.

5. Recalculation of Fees

19. Once we determined the amount of fee revenue necessary to collect from each class of licensee, we divided the revenue requirement by the number of payment units (and by the license term, if applicable, for "small" fees) to obtain actual fee amounts for each fee category. These calculated fee amounts were then rounded in accordance with Section 9(b)(3) of the Act. See Attachment E.

6. Other Proposed Change—Consolidation of Private Microwave & Domestic Public Fixed Fee Categories

20. We examined the results of our calculations made in Paragraphs 15–19 to determine if further adjustments of the fees and/or changes to payment procedures were warranted based upon the public interest and other criteria established in 47 U.S.C. 159(b)(3). As a result of this review, we are proposing the following change to our Fee Schedule:

[9] Revenues from current fee payers already offset costs attributable to regulatees exempt from payment of a fee or otherwise not subject to a fee pursuant to section 9(h) of the Act or the Commission's rules. For example, CB and ship radio station users, amateur radio licensees, governmental entities, licensees in the public safety radio services, and all non-profit groups are not required to pay a fee. The costs of regulating these entities is borne by those regulatees subject to a fee requirement.

[10] Application of the 25% ceiling was accomplished by choosing a "target" fee revenue requirement for each individual fee category. This "target" was either the actual calculated revenue requirement (for those categories at or below the 25% ceiling) or, in the case where the calculated revenue exceeded the ceiling, an amount equal to the ceiling. The shortfall created by reducing the revenue requirement of those whose revenue requirement exceeded the revenue ceiling was proportionately spread among those fee categories whose revenue requirements were below the ceiling. This computation required more than one round of adjustment because the allocation of this revenue, in a few instances, caused the new revenue requirement amount to exceed the 25% ceiling. After two iterations (rounds), all the revenue requirements were at or below the revenue ceiling. See Attachment E.

21. In our FY 1994, FY 1995 and FY 1996 fee schedules, Private Microwave licensees were required to pay a "small" regulatory fee, in advance, for the entire license term at the time of application. In contrast, the Domestic Public Fixed category was considered a "large" regulatory fee subject to an annual payment. The domestic public fixed category is comprised of several commercial microwave services; e.g., microwave multiple address, microwave common carrier fixed, microwave digital electronic message, and microwave local TV transmission.[11]

22. Since inception of the regulatory fee program, many parties holding microwave licenses have expressed confusion concerning which fee they are required to pay. In order to alleviate this confusion and because operational and technical characteristics of private microwave and commercial microwave systems are similar, we are proposing to combine these two fee categories into a single Microwave category for FY 1997.

23. Accordingly, we are proposing to adjust the anticipated number of payment units and combine the revenue requirements for the Private Microwave and Domestic Public Fixed categories and establish a "small" fee, payable in advance for the entire license term, for the new consolidated Microwave category. The annual regulatory fee for all microwave licensees would be $10 per license. This new fee was calculated as follows:

(a) From Attachments C and E:

(1) 5,350 private microwave stations (units) (Revenue requirement = $523,083)

(2) 18,845 commercial microwave/ public fixed stations (units) (Revenue requirement = $118,026)

(b) Converting from annual payment ("large fee") to license term payment ("small fee"):

(1) 18,845 commercial microwave units divided by 10 year license term = 1,885 commercial microwave units to be licensed each year.

(c) Calculation of new microwave fee: The sum of the two revenue requirements divided by the sum of the units to be licensed and divided by the license term as follows:

(1) (($523,083 + $118,026) divided by (5,350 + 1,885)) divided by 10 years = $8.86

(d) Round fee to the nearest $5 = $10 (47 U.S.C § 159(b)(2)).

24. We invite comments on our proposal to combine the Private Microwave and Domestic Public Fixed (Commercial Microwave) service categories for regulatory fee purposes into a single Microwave category and to establish an appropriate "small" fee for this single category.

7. Effect of Revenue Redistributions on Major Constituencies

25. The chart below illustrates the relative percentages of the revenue requirements borne by the major constituencies since inception of regulatory fees in FY 1994.

REVENUE REQUIREMENT PERCENTAGES BY CONSTITUENCIES

	FY 1994 (Actual)	FY 1995 (Actual)	FY 1996 (Actual)	FY 1997 (Proposed)
Cable TV Operators (Inc. CARS Licenses)	41.36	24.02	28.19	23.74
Broadcast Licensees	23.84	13.76	14.77	14.96
Satellite Operators (Inc. Earth Stations)	3.32	3.62	4.28	4.28
Common Carriers	25.01	44.52	45.54	46.27
Wireless Licensees	6.47	14.07	7.23	10.75
Total	100.00	99.99	100.01	100.00

C. Other Issues

1. Commercial AM/FM Radio

26. In November 1996 the Commission released a *Notice of Inquiry* to determine if, in FY 1997, it is feasible to utilize a methodology based on market size and class of station to assess annual regulatory fees upon licensees of commercial AM and FM broadcast radio stations. We invited interested parties to comment upon a methodology proposed by the Montana Broadcasters Association (Montana), or to propose any other methodology for assessing AM and FM fees they believe would serve the public interest. See *Amendment of Part 1 of the Commission's Rules Pertaining to the Schedule of Annual Regulatory Fees for Mass Media Services*, FCC 96–422, released November 6, 1996, 61 FR 59397 (November 22, 1996).

27. In establishing our regulatory fee program, we recognized that Congress had required the Commission to adopt the Schedule of Regulatory Fees for FY 1994 contained in Section 9(g) of the Communications Act, as amended. 47 U.S.C. § 159(g). The Schedule assessed AM and FM radio fees based upon class of station. Thus, each licensee paid a fee identical to other licensees with the same class of station, without regard to the size or population of its service area. *See Implementation of Section 9 of the Communications Act*, 9 FCC Rcd 5333, 5339 (1994), 59 FR 30984 (June 16, 1994). We declined to consider any revision to the fee schedule for FY 1994, but we invited interested parties to propose alternative methodologies for various services subject to the regulatory fees, including AM and FM radio, for consideration in our proceeding to adopt the FY 1995 Schedule of Regulatory Fees. 9 FCC Rcd 5360. Subsequently, in our *NPRM* proposing fees for FY 1995, we recognized that "population density of a [AM or FM] station's geographic location was also a public interest factor warranting recognition in the fee schedule." Therefore, we proposed for consideration by interested parties a methodology incorporating market size in the calculation of AM and FM fees, by assessing higher fees for radio stations located in Arbitron Rating Co. (Arbitron) designated markets. We proposed a two-tiered fee schedule with stations in Arbitron rated markets paying higher fees than the same classes of stations located in smaller, non-

[11] Although the Multipoint Distribution Service (MDS) and the Multichannel Multipoint Distribution Service (MMDS) were originally grouped with Domestic Public Fixed services, we have, since FY 1995, listed them separately in our Fee Schedule.

Arbitron rated markets. See *Notice of Proposed Rulemaking in the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1995*, MD Docket No. 95–3, FCC 95–14, released January 12, 1995 at Paragraph 29. In our *Report and Order* establishing our FY 1995 fees, we declined to adopt this proposed method because, after consideration of the public comments, we found that it did not provide a "sufficiently accurate and equitable methodology for determining fees." See *Assessment and Collection of Regulatory Fees for Fiscal Year 1995*, 10 FCC Rcd 13512, 13531–32 (1996), 60 FR 34004 (June 29, 1995).

28. In our *Notice of Proposed Rulemaking* to establish regulatory fees for FY 1996, we stated, with regard to the fees for AM and FM radio stations, that we "were particularly interested in a proposal which would associate population density and service area contours with license data" and we again requested interested parties to propose viable alternative methodologies for assessment of AM and FM fees. *Assessment and Collection of Regulatory Fees for Fiscal Year 1996*, FCC 96–153, at Paragraphs 20–21 (April 9, 1996), 61 FR 16432 (April 15, 1996). In response, Montana filed comments proposing an AM and FM fee structure based on class of station and on market size. We received no comments addressing Montana's proposal. However, following our own review of the proposal, we decided not to take any action until we had an opportunity to evaluate more extensively the impact of Montana's proposal on AM and FM licensees through a *Notice of Inquiry*. *Assessment and Collection of Regulatory Fees for Fiscal Year 1996*, FCC 96–295, at Paragraphs 23–29, July 5, 1996, 61 FR 36629 (July 12, 1996).

29. Montana's proposed methodology utilizes broad groupings of radio markets determined by Arbitron market size, with the fee for each market grouping predicated on the ratios that Congress initially established in Section 9(g) of the Act (47 U.S.C. § 159(g)) for assessing fees for licensees of television stations serving different sized markets. Montana proposed four specific radio market classifications: Markets 1–25; Markets 26–50; Markets 51–100; and Remaining Markets. Montana's proposal assigned stations to each market grouping based upon Arbitron television market designations and relied on an analysis of broadcast markets prepared by Dataworld MediaXpert Service ("Dataworld"), which grouped radio stations by class of station within a particular market size. It then calculated the fees for stations in different markets utilizing the ratios between the fees for television markets in Section 9(g). Montana argued that its proposal was more equitable than the groupings based on class of station relied on by the Commission because, under its proposal, stations in smaller markets would pay lower fees than stations serving more populous markets.

30. In order to collect the total aggregate fees to be recovered from AM and FM radio stations as proposed in the FY 1995 *NPRM*, Montana's proposed methodology would have allocated fees among radio stations as follows:

Markets	AM Class A	AM Class B	AM Class C	AM Class D	FM Class I[12]	FM Class II[13]
1–25	$2,890	$1,710	$645	$815	$2,890	$1,940
26–50	2,040	1,140	455	575	2,040	1,370
51–100	1,360	760	305	385	1,360	910
Remaining	850	475	190	240	850	570

[12] Class I includes FM Classes C, C1, C2 and B.
[13] Class II includes FM Classes A, B1 and C3.

31. However, subsequent to the filing of Montana's proposal, Congress increased the aggregate amount of fees to be recovered by the Commission and amended the Commission's regulatory fee schedule for television stations to increase the fees paid by licensees in larger markets and to reduce the fees paid by licensees located in Markets 51–100 and the Remaining Markets. Public Law 104–134. *See Assessment and Collection of Regulatory Fees for Fiscal Year 1996, supra* at Paragraph 14. This substantially changed the ratios between the fees for television stations in different sized markets used by Montana to compute its proposed radio fees. Substituting the actual ratios between the regulatory fees for television stations in different sized markets for the old ratios utilized in Montana's proposal would have produced the following radio fees for FY 1996: [14]

Markets	AM Class A	AM Class B	AM Class C	AM Class D	FM Class I[15]	FM Class II[16]
1–25	$11,500	$6,325	$2,575	$3,150	$4,875	$3,250
26–50	6,675	3,675	1,500	1,850	2,850	1,900
51–100	3,550	1,975	800	980	1,525	1,000
Remaining	1,000	555	225	275	430	285

[15] Class I includes FM Classes C, C1, C2 and B.
[16] Class II includes FM Classes A, B1 and C3.

32. The above fees illustrate the impact of the Montana proposal when the changes mandated by Congress to the Regulatory Fee Schedule are considered. We are particularly concerned about the size of the increases in larger markets which, in addition to having more potential listeners, have greater concentrations of stations, thereby increasing the competition for listeners in those markets. Moreover, the accuracy of both sets of calculations are predicated on assumptions that the total aggregate amount of fees to be collected remains unchanged, that the revenue requirement allocated to all broadcast licensees remains unchanged, and that

[14] By contrast, according to the FY 1996 Schedule of Regulatory Fees, AM class A stations are assessed a fee of $1,250; Class B stations $690; Class C stations $280; and Class D stations $345. Similarly, FM Class C, C1, C2 and B stations (Montana's FM Class I) are assessed a fee of $1,250; and FM Class A, B1 and C3 stations (Montana's FM Class II) a fee of $830.

there are no changes in the numbers and classes of licensees subject to broadcast fees. The calculations presented herein are illustrative only, because the fees are predicated on assumptions that will not recur in FY 1997. A change in any or all three of these factors would result in individual fees different than those illustrated in Paragraphs 30 and 31.

33. In response to the *NOI*, the National Association of Broadcasters ("NAB") submitted a proposed fee table for AM and FM radio stations relying on a database prepared by Dataworld. NAB states that Dataworld developed its database by using the engineering specifications for every operating AM and FM radio station to calculate the populations served by those stations using 1990 census information. Under NAB's proposal, stations with more powerful signals would generally pay higher fees because they usually serve more people than stations with weaker signals. NAB maintains that a fee schedule based on the Dataworld information would equitably allocate fees among all stations.

34. In support of its proposal, NAB notes that Congress has recognized the importance of service classes in the fee schedule it enacted in Section 9(g) of the Act, and that there are significant differences in the value and revenue potential of stations in different classes. 47 U.S.C. § 159(g). Thus, NAB contends that radio station fees should not be calculated on the basis of predicted audience alone. Moreover, NAB recognizes that Dataworld's data does not reflect population changes since 1990 and that, in certain instances, there will be discrepancies between the Dataworld calculations and some stations' actual engineering characteristics. Thus, NAB proposes fees based on the estimate of population served and the class of station rather than strictly on the basis of population served.

35. The proposed NAB fee table includes 24 fee levels for AM and 12 fee levels for FM. NAB's proposed fee table would collect $6,104,196 from FM licensees and $2,235,956 from AM licensees, as follows:

Population served	AM Class A	AM Class B	AM Class C	AM Class D
<= 100,000	$325	$260	$125	$165
100,001–250,000	375	325	175	225
250,001–500,000	575	450	250	325
500,001–1,500,000	975	650	325	425
1,500,001–3,000,000	1,500	950	450	575
> 3,000,000	1,800	1,300	650	750

Population served	FM classes A, B1, C3	FM Classes B, C, C1, C2
<= 40,000	$300	$450
40,001–100,000	450	925
100,001–250,000	925	1,350
250,001–750,000	1,150	1,750
750,001–1,750,000	1,300	2,000
> 1,750,000	1,650	2,750

36. While the NAB proposal has merit, further study and refinement of its methodology is required. First, we note that the NAB proposal increases fees based on the average increase in the amount that Congress has required us to collect for FY 1997 without taking into account our cost of regulation of AM and FM stations as measured by our cost accounting system. As a result, its proposal would fail to raise sufficient revenue to cover the pro rata share of the Commission's revenue requirements for AM and FM radio. Moreover, NAB's proposal does not disclose the number of stations in each of its payment categories so that its proposal can be modified to meet our revenue requirements, there are discrepancies between our estimate of the number of stations and the number of stations included in Dataworld's database, and it is not clear whether the Dataworld station count includes government and non-commercial stations which are exempt from regulatory fee requirements. In addition, NAB has not presented an explanation or rationale for its specific fee classifications. Nor is there sufficient information to permit the Commission to determine how NAB's proposed fee table can be modified to cover changes in station characteristics and populations. If we were to adopt NAB's proposal, we would also be required to develop a methodology for advising each individual station of its fee based on our estimate of the population in its service area.

37. Thus, while the Montana and NAB proposals hold the promise of a more equitable fee schedule, there are problems with these proposals that must be addressed before they can be relied on to develop a revised fee schedule for AM and FM radio. Therefore, interested parties are invited to comment not only on both the NAB and Montana proposals, but also on any alternative methods for assessing radio station fees. Parties who have filed comments on the *NOI* need not duplicate them in this proceeding. Comments are also invited with respect to the revised schedule for AM and FM radio stations set forth in Attachment F based on the general methodology for calculating FY 1997 fees.

2. Personal Communications Service (PCS)

38. Our FY 1996 *Report and Order* deferred assessing a regulatory fee upon licensees in the Personal Communications Service ("PCS") in FY 1996 because the service was in a very early start-up phase. See *FY 1996 Report and Order* at Appendix F, Paragraph 15. We now believe that there are sufficient operational PCS systems to justify their inclusion among those licensees who are assessed fees in the CMRS Mobile Services and CMRS One-Way Paging fee categories for FY 1997. We have therefore incorporated fees for PCS in Paragraphs 14 and 15 of Attachment H.

3. Commercial Mobile Radio Services (CMRS)

39. In our FY 1996 *Report and Order* at Paragraph 22, we discussed a proposal offered by Destineer, Inc., a PCS licensee, that we establish a CMRS Messaging Service fee category to

replace our CMRS One-Way Paging fee category. Destineer stated that, with the exception of two-way paging services, our CMRS Mobile Services fee category includes only broadband services which provide two-way interactive voice communications. Destineer recommended establishing a CMRS Messaging Service to include all narrowband services, including two-way paging services. We invite interested parties to file comments on Destineer's proposal or propose alternative methods to assess CMRS fees for FY 1997. We are particularly interested in the number of estimated units associated with an alternative proposal and the impact the proposed changes would have on projected revenues.

4. Intelsat & Inmarsat Signatories

40. The Commission incurs regulatory costs for satellite policy and rulemaking, enforcement and user information activities. As directed by Congress, these costs must be recovered through the collection of regulatory fees. In accordance with the provisions of Section 9, the Commission's overall goal is to recover all of the costs associated with satellite regulatory activities and to distribute these costs fairly amongst fee payers, taking into account factors reasonably related to the benefits provided by the payer, and "other factors we determine are necessary in the public interest."

41. In FY 1994 and FY 1995 the Commission recovered satellite regulatory costs by collecting fees from satellite earth station and geosynchronous space station regulatees (Part 25) only. Satellite providers using international bearer circuits to provide service were assessed a separate fee under the International Bearer Circuits category in order to recover the regulatory costs associated with international telecommunications policy and rulemaking, enforcement and user information activities. The Commission received comments during both years' regulatory fees proceedings concerning the distribution of the burden of costs. In an effort to explore alternative methods of fee collection the Commission conducted focus group sessions in FY 1995 which were attended by satellite industry representatives. One of the major issues raised was a perceived inequity in the distribution of the total satellite regulatory fee burden. Commission activities associated with Intelsat, Inmarsat and the U.S. signatory to both were identified as areas where space and earth station regulatees were unfairly bearing the regulatory fee burden.

42. In response to distribution issues raised in the focus group sessions and comments filed in previous years, we examined satellite regulatory activities and determined that since the Commission incurs regulatory costs associated with Signatory-related activities, a regulatory fee for Signatories was the proper vehicle for recovering these costs. In its comments on the proposed FY 1996 fees, Comsat challenged the Commission's proposal regarding the Signatory fee, contending that it would be unlawful and excessive. Each of these arguments was discussed in our FY 1996 *Report and Order*, in which we adopted the Signatory fee. However, in Paragraph 47 of the FY 1996 *Report and Order*, we indicated our intent to explore alternative means of recovering these costs and to seek public comment on such alternatives. We therefore request interested parties to comment on alternative methods of collecting costs associated with Signatories. We request that comments specify whether other regulatees should be assessed a portion of the fee applicable to the signatory category, and, if so, the estimated percentage of the fee that should be assessed upon other regulatees. We are particularly interested in ways to recover our costs without unfairly burdening other regulatees. If no specific alternative is identified, we propose to retain the current Signatory fee category for FY 1997.

5. Non-Common Carrier International Bearer Circuits

43. International bearer circuit fees are currently assessed upon domestic and international common carriers only. In its comments responding to proposals contained in our FY 1996 *NPRM*, Comsat contended that payment of international bearer circuit fees should be expanded to non-common carriers providing international services. See FY 1996 *Report and Order* at Paragraph 65. In our FY 1996 *Report and Order* we declined to expand collection of international bearer circuit fees to non-common carriers. As we noted at that time, the Commission is unable, due to lack of appropriate data, to calculate a fee applicable to bearer circuits provided directly to end users over non-common carrier domestic and international facilities. The foregoing situation has not changed. We, therefore, are proposing to assess the international bearer circuit fee only on domestic and international common carriers in FY 1997. However, we invite interested parties to comment on Comsat's proposal. We are especially interested in information concerning the number of bearer circuits provided directly to end users over non-common carrier domestic and international facilities.

D. Procedures for Payment of Regulatory Fees

44. Generally, we propose to retain the procedures that we have established for the payment of regulatory fees. Section 9(f) requires that we permit "payment by installments in the case of fees in large amounts, and in the case of small amounts, shall require the payment of the fee in advance for a number of years not to exceed the term of the license held by the payer." *See* 47 U.S.C. § 159(f)(1). Consistent with Section 9(f), we are again establishing three categories of fee payments, based upon the category of service for which the fee payment is due and the amount of the fee to be paid. The fee categories are (1) "standard" fees, (2) "large" fees, and (3) "small" fees.

1. Annual Payments of Standard Fees

45. Standard fees are those regulatory fees that are payable in full on an annual basis. Payers of standard fees are not required to make advance payments for their full license term and are not eligible for installment payments. All standard fees are payable in full on the date we establish for payment of fees in their regulatory fee category. The payment dates for each regulatory fee category will be announced either in the *Report and Order* in this proceeding or by public notice in the **Federal Register** following the termination of this proceeding.

2. Installment Payments for Large Fees

46. While we are mindful that time constraints may preclude an opportunity for installment payments, we propose that regulatees in any category of service with a liability of $12,000 or more be eligible to make installment payments and that eligibility for installment payments be based upon the amount of either a single regulatory fee payment or combination of fee payments by the same licensee or regulatee. We propose that regulatees eligible to make installment payments may submit their required fees in two equal payments (on dates to be announced) or, in the alternative, in a single payment on the date that their final installment payment is due. Due to statutory constraints concerning notification to Congress prior to actual collection of the fees, however, it is unlikely that there will be sufficient time for installment payments, and that regulatees eligible to make installment payments will be required to pay these fees on the last date that fee payments may be submitted. The dates for installment payments, or a single payment, will be announced either in the *Report and Order* terminating this proceeding or by public notice published pursuant to delegated authority in the **Federal Register**.

3. Advance Payments of Small Fees

47. As we have in the past, we are proposing to treat regulatory fee payments by certain licensees as "small" fees subject to advance payment consistent with the requirements of Section 9(f)(2). Advance payments will be required from licensees of those services that we decided would be subject to advance payments in our FY 1994 *Report and Order*, and to those additional payers set forth herein.[17] Payers of advance fees will submit the entire fee due for the full term of their licenses when filing their initial, renewal, or reinstatement application. Regulatees subject to a payment of small fees shall pay the amount due for the current fiscal year multiplied by the number of years in the term of their requested license. In the event that the required fee is adjusted following their payment of the fee, the payer would not be subject to the payment of a new fee until filing an application for renewal or reinstatement of the license. Thus, payment for the full license term would be made based upon the regulatory fee applicable at the time the application is filed. The effective date for payment of small fees established in this proceeding will be announced in our *Report and Order* terminating this proceeding or by public notice published pursuant to delegated authority in the **Federal Register**.

4. Minimum Fee Payment Liability

48. Regulatees whose total fee liability, including all categories of fees for which payment is due by an entity, amounts to less than $10 are exempted from fee payment in FY 1997.

5. Standard Fee Calculations and Payment Dates

49. As noted, the time for payment of standard fees and any installment payments will be published in the **Federal Register** pursuant to delegated authority. For licensees, permittees and holders of other authorizations in the Common Carrier, Mass Media, and Cable Services whose fees are not based on a subscriber, unit, or circuit count, fees should be submitted for any authorization held as of *October 1, 1996*. October 1 is the date to be used for establishing liability for payment of standard fees since it is the first day of the federal government's fiscal year.

50. In the case of regulatees whose fees are based upon a subscriber, unit or circuit count, the number of a regulatees' subscribers, units or circuits on *December 31, 1996*, will be used to calculate the fee payment.[18] We have selected the last date of the calendar year because many of these entities file reports with us as of that date. Others calculate their subscriber numbers as of that date for internal purposes. Therefore, calculation of the regulatory fee as of that date will facilitate both an entity's computation of its fee payment and our verification that the correct fee payment has been submitted.

E. Schedule of Regulatory Fees

51. The Commission's proposed Schedule of Regulatory Fees for FY 1997 is contained in Attachment F of this *NPRM*.

IV. Procedural Matters

A. Comment Period and Procedures

52. Pursuant to procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before March 25, 1997, and reply comments on or before April 4, 1997. All relevant comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments and supporting materials. If participants want each Commissioner to receive a personal copy of their comments, an original and nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Interested parties, who do not wish to formally participate in this proceeding, may file informal comments at the same address. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20054.

B. Ex Parte Rules

53. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed pursuant to the Commission's rules. *See* 47 CFR §§ 1.1202, 1.1203 and 1026(a).

C. Initial Regulatory Flexibility Analysis

54. As required by section 603 of the Regulatory Flexibility Act (Public Law 96–354, 94 Stat. 1165, 5 U.S.C. § 601 *et seq.* (1981)), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth in Attachment A. Written public comments are requested with respect to the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the rest of the *NPRM*, but they must have a separate and distinct heading, designating the comments as responses to the IRFA. The Secretary shall send a copy of this *NPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act.

D. Paperwork Reduction Act Compliance

55. The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected, and (d) ways to minimize the burden of the collection of information on the respondents, including the use of

[17] Applicants for new, renewal and reinstatement licenses in the following services will be required to pay their regulatory fees in advance: Land Mobile Services, Microwave services, Marine (Ship) Service, Marine (Coast) Service, Private Land Mobile (Other) Services, Aviation (Aircraft) Service, Aviation (Ground) Service, General Mobile Radio Service (GMRS). In addition, applicants for Amateur Radio vanity call signs will be required to submit an advance payment.

[18] Cable system operators are to compute their subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, etc.) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. Note: Bulk-Rate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Cable system operators may base their count on "a typical day in the last full week" of December 1996, rather than on a count as of December 31, 1996.

automated collection techniques or other forms of information technology.

56. Written comments should be submitted on or before May 9, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

57. Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St. NW., Washington, DC 20554 or via internet to dconway@fcc.gov, and Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th St. NW., Washington, DC 20503 or via internet to fain_t@a1.eop.gov.

58. For Further Information Contact: For additional information or copies of the information collections, contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

OMB Approval Number: (Number should be included if it is a revision to an existing collection).

Title:

Form No.:

Type of Review: (i.e. new collection, revision of existing collection)

Respondents:

Number of Respondents:

Estimated Time Per Response:

Total Annual Burden:

Needs and Uses: (Brief description of how the information will be used)

E. Authority and Further Information

59. Authority for this proceeding is contained in sections 4(i) and (j), 9, and 303(r) of the Communications Act of 1934 as amended, 47 U.S.C. §§ 154(1) and (j) and 159 and 303(r).

60. Further information about this proceeding may be obtained by contacting the Fees Hotline at (202) 418–0192.

List of Subjects in 47 CFR Part 1

Administrative practice and procedures, Communications common carriers, Penalties, Radio, Telecommunications, Television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Attachment A—Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA),[19] as amended by the Contract with America Advancement Act (CWAAA), Public Law 104–121, 110 Stat. 847 (1996),[20] the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rulemaking In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1997.* Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* provided above in Paragraph 53.

I. Need for and Objectives of the Proposed Rule

2. This rulemaking proceeding is initiated to obtain comments concerning the Commission's proposed amendment of its Schedule of Regulatory Fees in order to collect regulatory fees in the amount of $152,523,000, the amount that Congress has required the Commission to recover through regulatory fees in Fiscal Year 1997. The Commission seeks to collect the necessary amount through its proposed revised regulatory fees, as contained in the attached Schedule of Regulatory Fees, in the most efficient manner possible and without undue burden to the public.

II. Legal Basis

3. The proposed action is authorized under Sections (4)(i) and (j), 9 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and (j), 159, and 303(r).

III. Description and Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

4. The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction" and "the same meaning as the term 'small business concern' under the Small Business Act unless the Commission has developed one or more definitions that are appropriate for its activities.[21] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[22] The Small Business Enforcement Fairness Act of 1996 (SBREFA) provision of the RFA also applies to nonprofit organizations and to governmental organizations such as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000.[23] There are 85,006 governmental entities in the United States.[24] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."

Cable Services or Systems

5. The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating $11 million or less in revenue annually.[25] This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau, there were 1,788 total cable and other pay television services and 1,423 had less than $11 million in revenue.[26]

6. The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company," is one serving fewer than 400,000 subscribers nationwide.[27] Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995.[28] Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators.

7. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000."[29] The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate.[30] Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1,450.[31] We do not request nor do we collect information concerning whether cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000,[32] and thus are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act. It should be further noted that recent industry estimates project that there will be a total 65,000,000 subcribers, and we have based our fee revenue estimates on that figure.

8. Other Pay Services. Other pay television services are also classified under SIC 4841, which includes cable systems operators, closed circuit television services, direct broadcast satellite services (DBS),[33] multipoint distribution systems (MDS),[34] satellite master antenna systems (SMATV), and subscription television services.

Common Carrier Services and Related Entities

9. According to the *Telecommunications Industry Revenue: Telecommunications Relay Service Fund Worksheet Data (TRS Worksheet),* there are 2,847 interstate carriers. These carriers include, *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

10. The SBA has defined a small business for Radiotelephone Communications (SIC 4812) and Telephone Communications, Except Radiotelephone (4813), to be small entities when they have fewer than 1,500 employees.[35] We first discuss generally the total number of small telephone companies falling within both of those SIC categories. Then, we discuss the number of small businesses within the two subcategories, and attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

11. Because the small incumbent LECs subject to these rules are either dominant in their field of operations or are not independently owned and operated, consistent with our prior practice, they are excluded from the definition of "small entitiy" and "small business concerns."[36] Accordingly, our use of the terms "small entities" and "small businesses" does not encompass small incumbent LECs. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will consider small incumbent LECs within this analysis and use the term "small incumbent LECs" to refer to any incumbent LECs that arguably might be defined by the SBA as "small business concerns."[37]

12. Total Number of Telephone Companies Affected. The United States Bureau of the Census ("the Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.[38] This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, personal communications services providers, covered specialized mobile radio providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated."[39] For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to tentatively conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent local exchange carriers.

13. Wireline Carriers and Service Providers. The SBA has developed a definition of small entities for telephone communications companies except radiotelephone (wireless) companies. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992.[40] According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing fewer than 1,500 persons.[41] All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. We do not have information on the number of carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 2,295 small telephone

[19] 5 U.S.C. § 603.

[20] Title II of the CWAAA is "The Small Business Regulatory Enforcement Fairness Act of 1996" (SBREFA), codified at 5 U.S.C. § 601 et seq.

[21] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."

[22] Small Business Act, 15 U.S.C. § 632 (1996).

[23] 5 U.S.C. § 601(5).

[24] United States Dept. of Commerce, Bureau of the Census, *1992 Census of Governments* (1992 Census).

[25] 13 CFR § 121.201, SIC 4841.

[26] *1992 Economic Census Industry and Enterprise Receipts Size Report*, Table 2D, SIC 4841 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

[27] 47 CFR § 76.901(e). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of $100 million or less. *Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration*, 10 FCC Rcd 7393 (1995), 60 FR 10534 (February 27, 1995).

[28] Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for December 30, 1995).

[29] 47 U.S.C. § 543(m)(2).

[30] 47 CFR § 76.1403(b).

[31] Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

[32] We do receive such information on a case-by-case basis only if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to section 76.1403(b) of the Commission's rules. *See* 47 CFR § 76.1403(d).

[33] Direct Broadcast Services (DBS) are discussed in depth with the international services *infra*.

[34] Multipoint Distribution Services (MDS) are discussed in depth with the mass media services *infra*.

[35] 13 CFR § 121.201.

[36] See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order*, 11 FCC Rcd 15499 (1996), 61 FR 45476 (August 29, 1996), *motion for stay of the FCC's rules pending judicial review denied, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Order*, 11 FCC Rcd 11754 (1996), 61 FR 54099 (October 17, 1996), *partial stay granted, Iowa Utilities Board* v. *FCC*, No. 96–3321, 1996 WL 589204 (8th Cir. 1996) at paragraphs 1328–1330 and 1342.

[37] See id.

[38] United States Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size*, at Firm Size 1–123 (1995) (1992 Census).

[39] 15 U.S.C. § 632(a)(1).

[40] 1992 Census, supra, at Firm Size 1–123.

[41] 13 CFR § 121.201, SIC Code 4812.

communications companies other than radiotelephone companies.

14. Local Exchange Carriers. Neither the Commission nor the SBA has developed a definition for small providers of local exchange services (LECs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[42] The most reliable source of information regarding the number of LECs nationwide is the data that we collect annually in connection with the *TRS Worksheet*. According to our most recent data, 1,347 companies reported that they were engaged in the provision of local exchange services.[43] We do not have information on the number of carriers that are not independently owned and operated, nor what carriers have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,347 small incumbent LECs.

15. Interexchange Carriers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA rules is for telephone communications companies except radiotelephone (wireless) companies.[44] The most reliable source of information regarding the number of IXCs nationwide is the data that we collect annually in connection with the *TRS Worksheet*. According to our most recent data, 130 companies reported that they were engaged in the provision of interexchange services.[45] We do not have information on the number of carriers that are not independently owned and operated, nor have more than 1,500 employees, and thus we are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 130 small entity IXCs.

16. Competitive Access Providers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of competitive access services (CAPs). The closest applicable definition under the SBA rules is for telephone communications companies except radiotelephone (wireless) companies.[46] The most reliable source of information regarding the number of CAPs nationwide is the data that we collect annually in connection with the *TRS Worksheet*. According to our most recent data, 57 companies reported that they were engaged in the provision of competitive access services.[47] We do not have information on the number of carriers that are not independently owned and operated, nor have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 57 small CAPs.

17. Operator Service Providers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under the SBA rules is for telephone communications companies except radiotelephone (wireless) companies.[48] The most reliable source of information regarding the number of operator service providers nationwide is the data that we collect annually in connection with the *TRS Worksheet*. According to our most recent data, 25 companies reported that they were engaged in the provision of operator services.[49] We do not have information on the number of carriers that are not independently owned and operated, nor have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 25 small operator service providers.

18. Pay Telephone Operators. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under SBA rules is for telephone communications companies except radiotelephone (wireless) companies.[50] The most reliable source of information regarding the number of pay telephone operators nationwide is the data that we collect annually in connection with the *TRS Worksheet*. According to our most recent data, 271 companies reported that they were engaged in the provision of pay telephone services.[51] We do not have information on the number of carriers that are not independently owned and operated, nor have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 271 small pay telephone operators.

19. Resellers (including debit card providers). Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable SBA definition for a reseller is a telephone communications company except radiotelephone (wireless) companies.[52] However, the most reliable source of information regarding the number of resellers nationwide is the data that the Commission collects annually in connection with the *TRS Worksheet*. According to our most recent data, 260 companies reported that they were engaged in the resale of telephone service.[53] We do not have information on the number of carriers that are not independently owned and operated, nor have more than 1,500 employees, and thus we are unable at this time to estimate with greater precision the number of resellers that would qualify as small entities or small incumbent LEC concerns under the SBA's definition. Consequently, we estimate that there are fewer than 260 small entity resellers.

20. 800 Subscribers.[54] Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to 800 subscribers. The most reliable source of information regarding the number of 800 subscribers is data we collect on the number of 800 numbers in use.[55] According to our most recent data, at the end of 1995, the number of 800 numbers in use was 6,987,063. We do not have information on the number of carriers not independently owned and operated, nor have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of 800 subscribers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 6,987,063 small entity 800 subscribers.

[42] 13 CFR § 121.201, SIC Code 4813.

[43] Federal Communications Commission, CCB, Industry Analysis Division, *Telecommunications Industry Revenue: TRS Fund Worksheet Data*, Tbl. 1 (Average Total Telecommunications Revenue Reported by Class of Carrier) (December 1996) (TRS Worksheet).

[44] 13 CFR § 121.201, SIC 4813.

[45] TRS Worksheet.

[46] 13 CFR § 121.201, SIC 4813.

[47] TRS Worksheet.

[48] 13 CFR § 121.201, SIC 4813.

[49] Id.

[50] 13 CFR § 121.201, SIC 4813.

[51] TRS Worksheet.

[52] 13 CFR § 121.201, SIC 4813.

[53] TRS Worksheet.

[54] We include all toll-free number subscribers in this category, including 888 numbers.

[55] Federal Communications Commission, CCB, Industry Analysis Division, *FCC Releases, Study on Telephone Trends*, Tbl. 20 (May 16, 1996).

International Services

21. The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC). This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts.[56] According to the Census Bureau, there were a total of 848 communications services, NEC in operation in 1992, and a total of 775 had annual receipts of less than $9,999 million.[57] The Census report does not provide more precise data.

22. International Broadcast Stations. Commission records show that there are 20 international broadcast station licensees. We do not request nor collect annual revenue information, and thus are unable to estimate the number of international broadcast licensees that would constitute a small business under the SBA definition. However, the Commission estimates that only six international broadcast stations are subject to regulatory fee payments.

23. International Public Fixed Radio (Public and Control Stations).

There are 15 licensees in this service. We do not request nor collect annual revenue information, and thus are unable to estimate the number of international broadcast licensees that would constitute a small business under the SBA definition.

24. Fixed Satellite Transmit/Receive Earth Stations. There are approximately 4200 earth station authorizations, a portion of which are Fixed Satellite Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and thus are unable to estimate the number of the earth stations that would constitute a small business under the SBA definition.

25. Fixed Satellite Small Transmit/Receive Earth Stations. There are 4200 earth station authorizations, a portion of which are Fixed Satellite Small Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and thus are unable to estimate the number of fixed satellite transmit/receive earth stations may constitute a small business under the SBA definition.

26. Fixed Satellite Very Small Aperture Terminal (VSAT) Systems. These stations operate on a primary basis, and frequency coordination with terrestrial microwave systems is not required. Thus, a single "blanket" application may be filed for a specified number of small antennas and one or more hub stations. The Commission has processed 377 applications. We do not request nor collect annual revenue information, and thus are unable to estimate the number of VSAT systems that would constitute a small business under the SBA definition.

27. Mobile Satellite Earth Stations. There are two licensees. We do not request nor collect annual revenue information, and thus are unable to estimate of the number of mobile satellite earth stations that would constitute a small business under the SBA definition.

28. Radio Determination Satellite Earth Stations. There are four licensees. We do not request nor collect annual revenue information, and thus are unable to estimate of the number of radio determination satellite earth stations that would constitute a small business under the SBA definition.

29. Space Stations (Geostationary). Commission records reveal that there are 37 space station licensees. We do not request nor collect annual revenue information, and thus are unable to estimate of the number of geostationary space stations that would constitute a small business under the SBA definition.

30. Space Stations (Non-Geostationary). There are six Non-Geostationary Space Station licensees, of which only one system is operational. We do not request nor collect annual revenue information, and thus are unable to estimate of the number of non-geostationary space stations that would constitute a small business under the SBA definition.

31. Direct Broadcast Satellites. Because DBS provides subscription services, DBS falls within the SBA definition of Cable and Other Pay Television Services (SIC 4841). This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts. [58] As of December 1996, there were eight DBS licensees. However, the Commission does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. Although DBS service requires a great investment of capital for operation, we acknowledge that there are several new entrants in this field that may not yet have generated $11 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

Mass Media Services

32. Commercial Radio and Television Services. The proposed rules and policies will apply to television broadcasting licensees and radio broadcasting licensees. [59] The SBA defines a television broadcasting station that has $10.5 million or less in annual receipts as a small business. [60] Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. [61] Included in this industry are

[56] 13 CFR § 120.121, SIC Code 4899.

[57] *1992 Economic Census Industry and Enterprise Receipts Size Report*, Table 2D, SIC 4899 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

[58] 13 CFR 121.201, SIC 4841.

[59] We tentatively conclude that the SBA's definition of "small business" greatly overstates the number of radio and television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the proposals on small television and radio stations. However, for purposes of this *Policy Statement*, we utilize the SBA's definition in determining the number of small businesses to which the proposed rules would apply, but we reserve the right to adopt a more suitable definition of "small business" as applied to radio and television broadcast stations or other entities subject to this *Policy Statement* and to consider further the issue of the number of small entities that are radio and television broadcasters or other small media entities in the future. *See Report and Order in MM Docket No. 93–48 (Children's Television Programming)*, 11 FCC Rcd 10660, 10737–38 (1996), 61 FR 43981 (August 27, 1996), citing 5 U.S.C. 601(3). We have pending proceedings seeking comment on the definition of and data relating to small businesses. In our *Notice of Inquiry in GN Docket No. 96–113 (Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses)*, FCC 96–216, released May 21, 1996, we requested commenters to provide profile data about small telecommunications businesses in particular services, including television, and the market entry barriers they encounter, and we also sought comment as to how to define small businesses for purposes of implementing Section 257 of the Telecommunications Act of 1996, which requires us to identify market entry barriers and to prescribe regulations to eliminate those barriers. Additionally, in our *Order and Notice of Proposed Rule Making in MM Docket No. 96–16 (In the Matter of Streamlining Broadcast EEO Rule and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines)*, 11 FCC Rcd 5154 (1996), 61 FR 9964 (March 12, 1996), we invited comment as to whether relief should be afforded to stations: (1) based on small staff and what size staff would be considered sufficient for relief, *e.g.*, 10 or fewer full-time employees; (2) based on operation in a small market; or (3) based on operation in a market with a small minority work force.

[60] 13 CFR 121.201, SIC 4833.

[61] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92–S–1*, Appendix A–9 (1995).

commercial, religious, educational, and other television stations.[62] Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.[63] Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number.[64] There were 1,509 television stations operating in the nation in 1992.[65] That number has remained fairly constant as indicated by the approximately 1,550 operating television broadcasting stations in the nation as of August, 1996.[66] For 1992,[67] the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments.[68] Only commercial stations are subject to regulatory fees.

33. Additionally, the Small Business Administration defines a radio broadcasting station that has $5 million or less in annual receipts as a small business.[69] A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.[70] Included in this industry are commercial, religious, educational, and other radio stations.[71] Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included.[72] However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another SIC number.[73] The 1992 Census indicates that 96 percent (5,861 of 6,127) radio station establishments produced less than $5 million in revenue in 1992.[74] Official Commission records indicate that 11,334 individual radio stations were operating in 1992.[75] As of August 1996, official Commission records indicate that 12,088 radio stations were operating.[76] Only commercial stations are subject to regulatory fees.

34. Thus, the NPRM adopted today will affect approximately 1,550 full power television stations; approximately 1,194 of those stations are considered small businesses,[77] and 12,088 full power radio stations, approximately 11,605 of which are small businesses.[78] These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television or non-radio affiliated companies. There are also 1,954 low power television stations (LPTV).[79] Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA definition.

Alternative Classification of Small Stations

35. An alternative way to classify small radio and television stations is the number of employees. The Commission currently applies a standard based on the number of employees in administering its Equal Employment Opportunity Rule (EEO) for broadcasting.[80] Thus, radio or television stations with fewer than five full-time employees are exempted from certain EEO reporting and record keeping requirements.[81] We estimate that the total number of broadcast stations with 4 or fewer employees is approximately 4,239.[82]

Auxiliary, Special Broadcast and Other Program Distribution Services

36. This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to radio broadcasting stations (SIC 4832) and television broadcasting stations (SIC 4833).

37. There are currently 2,720 FM translators and boosters, 4,952 TV translators.[83] The FCC does not collect financial information on any broadcast facility and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe, however, that most, if not all, of these auxiliary facilities could be classified as small

[62] Id. *See Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987)*, at 283, which describes "Television Broadcasting Stations" (SIC Code 4833) as:

Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

[63] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *1992 Census of Transportation, Communications And Utilities, Establishment and Firm Size, Series UC92–S–1*, Appendix A–9 (1995).

[64] Id. SIC 7812 (Motion Picture and Video Tape Production); SIC 7922 (Theatrical Producers and Miscellaneous Theatrical Services) (producers of live radio and television programs).

[65] FCC News Release No. 31327, January 13, 1993; Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce.

[66] FCC News Release No. 64958, September 6, 1996.

[67] Census for Communications' establishments are performed every five years ending with a "2" or "7". See Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce.

[68] The amount of $10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at $9,999,999 and began at $10,000,000. No category for $10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

[69] 13 CFR 121.201, SIC 4832.

[70] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce.

[71] Id.

[72] Id.

[73] Id.

[74] The Census Bureau counts radio stations located at the same facility as one establishment. Therefore, each co-located AM/FM combination counts as one establishment.

[75] FCC News Release No. 31327, January 13, 1993.

[76] FCC News Release No. 64958, September 6, 1996.

[77] We use the 77 percent figure of TV stations operating at less than $10 million for 1992 and apply it to the 1996 total of 1550 TV stations to arrive at 1,194 stations categorized as small businesses.

[78] We use the 96% figure of radio station establishments with less than $5 million revenue from the Census data and apply it to the 12,088 individual station count to arrive at 11,605 individual stations as small businesses.

[79] FCC News Release, *Broadcast Station Totals as of December 31, 1996*, No. 71831, January 21, 1997.

[80] The Commission's definition of a small broadcast station for purposes of applying its EEO rules was adopted prior to the requirement of approval by the SBA pursuant to Section 3(a) of the Small Business Act, 15 U.S.C. § 632 (a), as amended by Section 222 of the Small Business Credit and Business Opportunity Enhancement Act of 1992, Public Law 102–366, § 222(b)(1), 106 Stat. 999 (1992), as further amended by the Small Business Administration Reauthorization and Amendments Act of 1994, Public Law 103–403, § 301, 108 Stat. 4187 (1994). However, this definition was adopted after the public notice and the opportunity for comment. *See Report and Order* in Docket No. 18244, 23 FCC 2d 430 (1970), 35 FR 8925 (June 6, 1970).

[81] *See, e.g.*, 47 CFR § 73.3612 (Requirement to file annual employment reports on Form 395 applies to licensees with five or more full-time employees); First Report and Order in Docket No. 21474 *(Amendment of Broadcast Equal Employment Opportunity Rules and FCC Form 395)*, 70 FCC 2d 1466 (1979), 50 FR 50329 (December 10, 1985). The Commission is currently considering how to decrease the administrative burdens imposed by the EEO rule on small stations while maintaining the effectiveness of our broadcast EEO enforcement. *Order and Notice of Proposed Rule Making in MM Docket No. 96–16 (Streamlining Broadcast EEO Rule and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines)*, 11 FCC Rcd 5154 (1996), 61 FR 9964 (March 12, 1996). One option under consideration is whether to define a small station for purposes of affording such relief as one with ten or fewer full-time employees.

[82] Compilation of 1994 Broadcast Station Annual Employment Reports (FCC Form 395B), Equal Opportunity Employment Branch, Mass Media Bureau, FCC.

[83] FCC News Release, *Broadcast Station Totals as of December 31, 1996*, No. 71831, January 21, 1997.

businesses by themselves. We also recognize that most translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business (either $5 million for a radio station or $10.5 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a "small business concern" because they are not independently owned and operated.[84]

38. Multipoint Distribution Service (MDS). This service involves a variety of transmitters, which are used to relay programming to the home or office, similar to that provided by cable television systems.[85] In connection with the 1996 MDS auction the Commission defined small businesses as entities who had annual average gross revenues for the three preceding years not in excess of $40 million.[86] This definition of a small entity in the context of MDS auctions has been approved by the SBA.[87] These stations were licensed prior to implementation of Section 309(j) of the Act. Licenses for new MDS facilities are now awarded to auction winners in Basic Trading Areas (BTAs) and BTA-like areas.[88] The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 BTAs. Of the 67 auction winners, 61 meet the definition of a small business. There are 1,573 previously authorized and proposed MDS stations currently licensed. Thus, we conclude that there are 1,634 MDS providers that are small businesses as deemed by the SBA and the Commission's auction rules. It is estimated, however, that only 1,145 MDS licensees are subject to regulatory fees and the number which are small businesses is unknown.

Wireless and Commercial Mobile Services

39. Cellular Licensees. Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. The closest applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies (SIC 4812). The most reliable source of information regarding the number of cellular services carriers nationwide of which we are aware appears to be the data that the Commission collects annually in connection with the *TRS Worksheet*.[89] According to the most recent data, 792 companies reported that they were engaged in the provision of cellular services.[90] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of cellular services carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 792 small cellular service carriers.

40. 220 MHz Radio Services. Since the Commission has not yet defined a small business with respect to 220 MHz radio services, we will utilize the SBA's definition applicable to radiotelephone companies—i.e., an entity employing less than 1,500 persons.[91] With respect to the 220 MHz services, the Commission has proposed a two-tiered definition of small business for purposes of auctions: (1) For Economic Area (EA) licensees,[92] a firm with average annual gross revenues of not more than $6 million for the preceding three years; and (2) for regional and nationwide licensees, a firm with average annual gross revenues of not more than $15 million for the preceding three years.[93] Since this definition has not yet been approved by the SBA, we will utilize the SBA's definition applicable to radiotelephone companies. Given the fact that nearly all radiotelephone companies employ fewer than 1,500 employees,[94] with respect to the approximately 3,800 incumbent licensees in this service, we will consider them as small businesses under the SBA definition.

41. Private and Common Carrier Paging. The Commission has proposed a two-tier definition of small businesses in the context of auctioning licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. Under the proposal, a small business will be defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million, or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. Since the SBA has not yet approved this definition for paging services, we will utilize the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing fewer than 1,500 persons.[95] At present, there are approximately 24,000 Private Paging licensees and 74,000 Common Carrier Paging licensees. We estimate that the majority of private and common carrier paging providers would qualify as small businesses under the SBA definition.

42. Mobile Service Carriers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. The closest applicable definition under the SBA rules is for radiotelephone (wireless) companies. The most reliable source of information regarding the number of mobile service carriers nationwide of which we are aware appears to be the data that the Commission collects annually in connection with the *TRS Worksheet*. According to the most recent data, 117 companies reported that they were engaged in the provision of mobile services.[96] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of mobile service carriers that would qualify under the SBA's definition.

[84] 15 U.S.C. § 632.

[85] For purposes of this item, MDS also includes single channel Multipoint Distribution Service (MDS) and Multipoint Distribution Service (MMDS) application and authorizations collectively.

[86] *See* 47 CFR § 1.2110 (a)(1).

[87] *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, 10 FCC Rcd 9589 (1995), 60 FR 36524 (July 17, 1995).

[88] Id. A Basic Trading Area (BTA) is the geographic area by which the Multipoint Distribution Service is licensed. *See* Rand McNally *1992 Commercial Atlas and Marketing Guide*, 123rd Edition, pp. 36–39.

[89] Federal Communications Commission. CCB industry Analysis Division. *Telecommunication Industry Revenue: TRS Worksheet Data*, Tbl. 1 (Average Total Telecommunication Revenue Reported by Class of Carrier) (December 1996) (TRS Worksheet).

[90] Id.

[91] 13 CFR § 121.201, SIC 4812.

[92] Economic Area (EA) licenses refer to the 60 channels in the 172 geographic areas as defined by the Bureau of Economic Analysis, Department of Commerce. *See Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service, Second Memorandum Opinion and Order and Third Notice of Proposed Rule Making*, GN Docket 93–252, 10 FCC Rcd 6880 (1995), 60 FR 26861 (May 19, 1995).

[93] Id.

[94] *See* U.S. Bureau of the Census, U.S. Department of Commerce, 1992 *Census of Transportation, Communications, and Utilities, UC92–S–1*, Subject Series, Establishment and Firm Size, Tbl. 5, Employment Size of Firms; 1992, SIC 4812 (issued May 1995).

[95] 13 CFR § 121.201, SIC 4812.

[96] Id.

Consequently, we estimate that there are fewer than 117 small entity mobile service carriers.

43. Broadband Personal Communications Service (PCS). The broadband PCS spectrum is divided into six frequency blocks designated A through F and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[97] For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[98] These regulations defining "small entity" in the context of broadband PCS auctions have been approved by the SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F.[99] However, licenses for blocks C through F have not been awarded fully, therefore there are few, if any, small businesses currently providing PCS services. Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small PCS providers as defined by the SBA and the Commission's auction rules.

44. Narrowband PCS. The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded in the auctions. Those auctions, however, have not yet been scheduled. Given the facts that nearly all radiotelephone companies have fewer than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

45. Rural Radiotelephone Service. The Commission has not adopted a definition of small business specific to the Rural Radiotelephone Service, which is defined in Section 22.99 of the Commission's Rules.[100] A significant subset of the Rural Radiotelephone Service is BETRS, or Basic Exchange Telephone Radio Systems (the parameters of which are defined in Sections 22.757 and 22.759 of the Commission's Rules). Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing fewer than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA's definition of a small business.[101]

46. Air-Ground Radiotelephone Service. The Commission has not adopted a definition of small business specific to the Air-Ground Radiotelephone Service, which is defined in Section 22.99 of the Commission's Rules.[102] Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing fewer than 1,500 persons.[103] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA definition.

47. Specialized Mobile Radio Licensees (SMR). Pursuant to 47 CFR § 90.814(b)(1), the Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz Specialized Mobile Radio (SMR) licenses to firms that had revenues of less than $15 million in each of the three previous calendar years. This regulation defining "small entity" in the context of 800 MHz and 900 MHz SMR has been approved by the SBA.[104]

48. The proposed fees in the NPRM applies to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than $15 million. We do know that one of these firms has over $15 million in revenues. We assume that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA.

49. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we conclude that the number of geographic area SMR licensees affected includes these 60 small entities.

50. Private Land Mobile Radio Licensees (PLMR). These radios are used by companies of all sizes operating in all U.S. business categories. Because of the vast array of PLMR users, the Commission has not developed nor would it be possible to develop a definition of small entities specifically applicable to PLMR users. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area.

51. The Commission is unable at this time to estimate the number of small businesses which could be impacted by the rules. However, the Commission's 1994 Annual Report on PLMRs[105] indicates that at the end of fiscal year 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Further, because any entity engaged in a commercial activity is eligible to hold a PLMR license, these rules could potentially impact every small business in the U.S.

[97] *See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order*, FCC 96–278, WT Docket No. 96–59, paras. 57–60 (released June 24, 1996), 61 FR 33859 (July 1, 1996); *see also* 47 CFR § 24.720(b).

[98] *See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commerical Mobile Radio Service Spectrum Cap, Report and Order*, FCC 96–278, WT Docket No. 96–59, para. 60 (1996), 61 FR 33859 (July 1, 1996).

[99] FCC News, *Broadband PCS, D, E and F Block Auction Closes*, No. 71744 (released January 14, 1997).

[100] 47 CFR § 22.9.

[101] 13 CFR § 121.201, SIC 4812.

[102] Id.

[103] Id.

[104] *See Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896–901 MHz and the 935–940 MHz Bands Allotted to the Specialized Mobile Radio Pool, PR Docket No. 89–583, Second Order on Reconsideration and Seventh Report and Order*, 11 FCC Rcd 2639, 2693–702 (1995), 60 FR 48913 (September 21, 1995); *Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93–144, First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rule Making*, 11 FCC Rcd 1463 (1995), 61 FR 6212 (February 16, 1996).

[105] Federal Communications Commission, *60th Annual Report, Fiscal Year 1994* at 116.

52. Amateur Radio Service. We estimate that 10,000 applicants will apply for vanity call signs in FY 1997. All are presumed to be individuals. All other amateur licensees are exempt from payment of regulatory fees.

53. Aviation and Marine Radio Service. Small businesses in the aviation and marine radio services use a marine very high frequency (VHF) radio, any type of emergency position indicating radio beacon (EPIRB), and/or radar, a VHF aircraft radio, and/or any type of emergency locator transmitter (ELT). The Commission has not developed a definition of small entities specifically applicable to these small businesses. Therefore, the applicable definition of small entity is the definition under the Small Business Administration rules applicable to water transportation and transportation by air. This definition provides that a small entity is any entity employing less than 500 persons for water transportation, and 1,500 for transportation by air.[106] The Commission is unable at this time to make a meaningful estimate of the number of potential small businesses.

54. Most applicants for individual recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. Therefore, for purposes of our evaluations and conclusions in this FRFA, we estimate that there may be at least 712,000 potential licensees which are small businesses, as that term is defined by the SBA. We estimate, however, that only 22,250 will be subject to FY 1997 regulatory fees.

55. Microwave Video Services. Microwave services includes common carrier,[107] private operational fixed,[108] and broadcast auxiliary radio services.[109] At present, there are 22,015 common carrier licensees, approximately 61,670 private operational fixed licensees and broadcast auxiliary radio licensees in the microwave services. Inasmuch as the Commission has not yet defined a small business with respect to microwave services, we will utilize the SBA's definition applicable to radiotelephone companies—i.e., an entity with less than 1,500 persons.[110] As for estimates regarding small businesses within the broadcast service, we rely on our estimates as discussed under mass media services. Although some of these companies may have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of microwave service providers other than broadcast licensees that would qualify under the SBA's definition.

56. Public Safety Radio Services. Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.[111] There are a total of approximately 127,540 licensees within these services. Governmental entities as well as private businesses comprise the licensees for these services. As we indicated in the introductory paragraph, all governmental entities with populations of less than 50,000 fall within the definition of a small business.[112] There are approximately 37,566 governmental entities with populations of less than 50,000.[113] All of these licensees are exempt from payment of regulatory fees.

57. Personal Radio Services. Personal radio services provide short-range, low power radio for personal communications, radio signalling and business communications not provided for in other services. These services include citizen band (CB) radio service, general mobile radio service (GMRS), radio control radio service, and family radio service (FRS).[114] Inasmuch as the CB, GMRS, and FRS licensees are individuals, no small business definition applies for these services. We are unable at this time to estimate the number of licensees that would qualify as small under the SBA's definition, however, only GMRS licensees are subject to regulatory fees.

58. Offshore Radiotelephone Service. This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico.[115] At present, there are approximately 55 licensees in this service. We are unable at this time to estimate the number of licensees that would qualify as small under the SBA's definition.

IV. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

59. With certain exceptions, the Commission's Schedule of Regulatory Fees applies to all Commission licensees and regulatees. Most licensees will be required to count the number of licenses or call signs authorized, complete and submit an FCC Form 159, "FCC Remittance Advice," and pay a regulatory fee based on the number of licenses or call signs.[116] Interstate

[106] *See* 13 CFR § 121.201, SIC Major Group Code 44—Water Transportation (4491, 4492, 4493, 4499) and 45—Transportation by Air (4522, 4581).

[107] 47 CFR § 101 *et seq* (formerly part 21 of the Commission's rules).

[108] Persons eligible under Parts 80 and 90 of the Commission's rules can use private Operational Fixed Microwave services. *See* 47 CFR §§ 80 *et seq*, 90 *et seq*. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use an operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[109] Broadcast Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's rules. *See* 47 CFR § 74 *et seq*. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points, such as a main studio and an auxiliary studio. The broadcast auxiliary microwave services also include mobile TV pickups which relay signals from a remote location back to the studio.

[110] 13 CFR § 121.201, SIC 4812.

[111] With the exception of the special emergency service, these services are governed by subpart B of Part 90 of the Commission's rules. 47 CFR §§ 90.15 through 90.27. The police service includes 26,608 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes 22,677 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service that is presently comprised of 40,512 licensees that are state, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are 7,325 licensees within the forestry service which is comprised of licensees from state departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The 9,480 state and local governments are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The 1,460 licensees in the Emergency Medical Radio Service (EMRS) use the 39 channels allocated to this service for emergency medical service communication related to the actual delivery of emergency medical treatment. 47 CFR §§ 90.15 through 90.27. The 19,478 licensees in the special emergency service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. 47 CFR §§ 90.33 through 90.55.

[112] 5 U.S.C. § 601(5).

[113] United States Dept. of Commerce, Bureau of the Census, *1992 Census of Governments* (1992 Census).

[114] Licensees in the Citizens Band (CB) Radio Service, General Mobile Radio Service (GMRS), Radio Control (R/C) Radio Service and Family Radio Service (FRS) are governed by subpart D, subpart A, subpart C, and subpart B, respectively, of Part 95 of the Commission's rules. 47 CFR §§ 95.401 through 95.428; §§ 95.1 through 95.181; §§ 95.201 through 95.225; 47 CFR §§ 95.191 through 95.194.

[115] These licensees are governed by subpart I of part 22 of the Commission's rules. 47 CFR § 22.1001 through 22.1037.

[116] The following categories are exempt from the Commission's Schedule of Regulatory Fees: Amateur radio licensees (except applicants for vanity call signs) and operators in other non-licensed services (e.g., Personal Radio, part 15, ship and aircraft). Governments and non-profit (exempt under Section 501(c) of the Internal Revenue Code)

Continued

telephone service providers must compute their annual regulatory fee based on their adjusted gross interstate revenue using information they already supply to the Commission in compliance with the TRS Fund, and they must complete and submit the FCC Form 159. Compliance with the fee schedule will require some licensees to tabulate the number of units (e.g., cellular telephones, pagers, cable TV subscribers) they have in service, complete and submit an FCC Form 159. Licensees ordinarily will keep a list of the number of units they have in service as part of their normal business practices. No additional outside professional skills are required to complete the FCC Form 159, and it can be completed by the employees responsible for an entity's business records.

60. Each licensee must submit the FCC Form 159 to the Commission's lockbox bank after computing the number of units subject to the fee. As an option, licensees are permitted to file electronically or on computer diskette to minimize the burden of submitting multiple copies of the FCC Form 159. Although not mandatory, the latter procedure may require additional technical skills. Licensees who pay small fees in advance supply fee information as part of their application and do not need to use the FCC Form 159.

61. Licensees and regulatees are advised that failure to submit the required regulatory fee in a timely manner will subject the licensee or regulatee to a late payment fee of an additional 25% in addition to the required fee.[117] Until payment is received, no new or pending applications will be processed, and existing authorizations may be subject to rescission.[118] Further, in accordance with the Debt Collection Improvement Act of 1996, federal agencies may bar a person or entity from obtaining a federal loan or loan insurance guarantees if that person or entity fails to pay a delinquent debt owed to any federal agency.[119] Thus, debts owed to the Commission may result in a person or entity being denied a federal loan or loan guarantee pending before another federal agency until such obligations are paid.[120]

62. The Commission's rules currently make provision for relief in exceptional circumstances. Persons or entities that believe they have been placed in the wrong regulatory fee category or are experiencing extraordinary and compelling financial hardship, upon a showing that such circumstances override the public interest in reimbursing the Commission for its regulatory costs, may request a waiver, reduction or deferment of payment of the regulatory fee.[121] However, timely submission of the required regulatory fee must accompany requests for waivers or reductions. This will avoid any late payment penalty if the request is denied. The fee will be refunded if the request is granted. In exceptional and compelling instances (where payment of the regulatory fee along with the waiver or reduction request could result in reduction of service to a community or other financial hardship to the licensee), the Commission will accept a petition to defer payment along with a waiver or reduction request.

V. Significant Alternatives To Proposed Rule Which Minimize Significant Economic Impact on Small Entities and Accomplish Stated Objectives

63. *The Omnibus Consolidated Appropriation Act*, Public Law 104–208, requires the Commission to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress, pursuant to Section 9(a) of the Communications Act, as amended, has required it to collect for Fiscal Year (FY) 1997. *See! 47 U.S.C. § 159 (a). We seek comment on the proposed methodology for implementing these statutory requirements and any other potential impact of these proposals on small business entities.*

64. With the introduction of actual cost accounting data for computation of regulatory fees, we found that some fees which were very small in previous years would have increased dramatically. The methodology proposed in this *NPRM* minimizes this impact by limiting the amount of increase and shifting costs to other services which, for the most part, are larger entities. We seek comment on this proposal.

65. Conversely, we have found that our costs for regulating commercial microwave (domestic public fixed) services are significantly lower than previously thought. We are, therefore, proposing to eliminate the annual "large" regulatory fee for domestic public fixed services and combining this fee category with the private microwave service with a single "microwave" designation. The impact on domestic public fixed licensees will be a reduction of the fee to a "small" up front payment for the entire license term applied only to new, modification and renewal applicants. Current domestic public fixed licensees would be exempt from payment of a regulatory fee until such time as they apply for a modification or renewal of their license.

66. This item also solicits alternative methodologies for assessing fees to recover the regulatory costs attributable to AM and FM radio stations. The radio industry has requested relief for small stations, and we currently have received two alternative proposals which are being evaluated. One would segment licensees by Arbitron radio markets in addition to station class.[122] The other proposal would segment licensees by service area population in addition to station class.[123] The impact of adoption of either alternative proposal is unknown at this time, although either proposal could be expected to result in lower fees for smaller, less powerful stations relative to larger, more powerful stations in the same radio market; or stations potentially serving a larger population. We seek comment on these alternative proposals and the impact they may have on small entities.

67. Several categories of licensees and regulatees are exempt from payment of regulatory fees. See Footnote 3 supra.

VI. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

68. None.

Attachment B—Sources of Payment Unit Estimates for FY 1997

In order to calculate individual service fees for FY 1997, we adjusted FY 1996 payment units for each service to more accurately reflect expected FY 1997 payment liabilities. We obtained our updated estimates through a variety of means. For example, we used Commission licensee data bases, actual prior year payment records and industry and trade association projections when available. We tried to obtain verification for these estimates from multiple sources and, in all cases, we compared FY 1997 estimates with actual FY 1996 payment units to ensure that our revised estimates were reasonable. Where it made sense, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units cannot yet be estimated exactly. These include an unknown number of waivers and/or exemptions that may occur in FY 1997 and the fact that, in many services, the number of actual licensees or station operators fluctuates from time to time due to economic, technical or other reasons. Therefore, when we note, for example, that our estimated FY 1997 payment units are based on FY 1996 actual payment units, it does not necessarily mean that our FY 1997 projection is *exactly* the same number as FY 1996. It means that we have either rounded the FY 1997 number or adjusted it slightly to account for these variables.

Fee category	Sources of payment unit estimates
Land Mobile (All), Microwave, IVDS[124], Marine (Ship & Coast), Aviation (Aircraft & Ground), GMRS, Amateur Vanity Call Signs, Domestic Public Fixed.	Based on Wireless Telecommunications Bureau (WTB) projections of new applications and renewals taking into consideration existing Commission licensee data bases. Aviation (Aircraft) and Marine (Ship) estimates have been adjusted to take into consideration proposals to license portions of these services on a voluntary basis.
CMRS Mobile Services (incl. Cellular/Public Mobile Radio Services and Two Way Paging Services)[125].	Based on actual FY 1996 payment units adjusted to take into consideration industry estimates of growth between FY 1996 and FY 1997 and Wireless Telecommunications Bureau projections of new applications and average number of mobile units associated with each application.
CMRS One Way Paging Services	Based on industry estimates of the number of pager units in operation.
AM/FM Radio Stations	Based on actual FY 1996 payment units.
UHF/VHF Television Stations	Based on actual FY 1996 payment units.
AM/FM/TV Construction Permits	Based on actual FY 1996 payment units.
LPTV, Translators and Boosters	Based on actual FY 1996 payment units.
Auxiliaries	Based on actual FY 1996 payment units.
MDS/MMDS	Based on actual FY 1996 payment units.
Cable Antenna Relay Service (CARS)	Based on actual FY 1996 payment units.
Cable Television System Subscribers	Based on Cable Services Bureau and industry estimates of subscribership.
IXCs/LECs,CAPs, Other Service Providers	Based on actual FY 1996 interstate revenues associated with contributions to the Telecommunications Relay System (TRS) Fund, adjusted to take into consideration FY 1997 revenue growth in this industry as estimated by the Common Carrier Bureau.
Earth Stations	Based on actual FY 1996 payment units.
Space Stations & LEOs	Based on International Bureau licensee data bases.
International Bearer Circuits	Based on International Bureau estimate.
International HF Broadcast Stations, International Public Fixed Radio Service.	Based on actual FY 1996 payment units.

[124] The Wireless Telecommunications Bureau's staff advises that they do not anticipate receiving any applications for IVDS in FY 1997. Therefore, since there is no volume, there will be no regulatory fee in the IVDS category for FY 1997.

[125] Licensees in the PMRS were given until August of 1996 to decide whether to convert to CMRS. For FY 1997, we anticipate a substantial increase in the volume of licensees in the CMRS categories and a corresponding decrease in the number of licensees remaining in the PMRS category.

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entities are exempt from payment of regulatory fees and need not submit payment. Non-commercial educational broadcast licensees are exempt from regulatory fees as are licensees of auxiliary broadcast services such as low power auxiliary stations, television auxiliary service stations, remote pickup stations and aural broadcast auxiliary stations where such licenses are used in conjunction with commonly owned non-commercial educational stations. Emergency Alert System licenses for auxiliary service facilities are also exempt as are instructional television fixed service licensees. Regulatory fees are automatically waived for the licensee of any translator station that: (1) is not licensed to, in whole or in part, and does not have common ownership with, the licensee of a commercial broadcast station; (2) does not derive income from advertising; and (3) is dependent on subscriptions or contributions from members of the community served for support. Receive only earth station permittees are exempt from payment of regulatory fees. A regulatee will be relieved of its fee payment requirement if its total fee due, including all categories of fees for which payment is due by the entity, amounts to less than $10.

[117] 47 U.S.C. § 1.1164(a).

[118] 47 U.S.C. § 1.1164(c).

[119] Public Law 104–134, 110 Stat. 1321 (1996).

[120] 31 U.S.C. § 7701(c)(2)(B).

[121] 47 U.S.C. § 1.1166.

[122] See discussion of Montana Broadcasters Association Comments at NPRM paragraphs 29–32 supra.

[123] See discussion of NAB Comments at NPRM paragraphs 33–36 supra.

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Attachment C

CALCULATION OF REVENUE REQUIREMENTS

Fee Category	FY 1997 Payment Units	(times) FY 1996 Fee	(times) Payment Years	(equals) Computed FY 1997 Revenue Requirement	Pro-Rated Revenue Requirement
LM (220 MHz, >470 MHZ-Base, SMRS)	14,175	7	5	496,125	554,370
Private Microwave	5,350	7	10	374,500	418,466
IVDS	0	7	5	0	0
Marine (Ship)	18,750	3	10	562,500	628,538
GMRS/Other LM	81,500	3	5	1,222,500	1,366,022
Aviation (Aircraft)	3,500	3	10	105,000	117,327
Marine (Coast)	1,340	3	5	20,100	22,460
Aviation (Ground)	1,610	3	5	24,150	26,985
Amateur Vanity Call Signs	10,000	3	10	300,000	335,220
AM Class A	110	1,250	1	137,500	153,649
AM Class B	1,353	690	1	933,570	1,043,171
AM Class C	1,128	280	1	315,840	352,920
AM Class D	1,375	345	1	474,375	530,067
AM Construction Permits	38	140	1	5,320	5,945
FM Classes C,C1,C2,B	2,404	1,250	1	3,006,000	3,357,787
FM Classes A,B1,C3	3,140	830	1	2,606,200	2,912,168
FM Construction Permits	307	690	1	211,830	236,699
Satellite TV	101	690	1	69,690	77,872
Satellite TV Construction Permit	7	250	1	1,750	1,955
VHF Markets 1-10	43	32,000	1	1,376,000	1,537,542
VHF Markets 11-25	64	26,000	1	1,664,000	1,859,354
VHF Markets 26-50	78	17,000	1	1,326,000	1,481,672
VHF Markets 51-100	137	9,000	1	1,233,000	1,377,754
VHF Remaining Markets	225	2,500	1	562,500	628,538
VHF Construction Permits	5	5,550	1	27,750	31,008
UHF Markets 1-10	89	25,000	1	2,225,000	2,486,215
UHF Markets 11-25	86	20,000	1	1,720,000	1,921,928
UHF Markets 26-50	106	13,000	1	1,378,000	1,539,777
UHF Markets 51-100	163	7,000	1	1,141,000	1,274,953
UHF Remaining Markets	165	2,000	1	330,000	368,742
UHF Construction Permits	50	4,425	1	221,250	247,225
Auxiliaries	20,000	35	1	700,000	782,180
International HF Broadcast	6	280	1	1,680	1,877
LPTV/Translators/Boosters	2,200	190	1	418,000	467,073
CARS	1,640	325	1	533,000	595,574
Cable Systems	65,000,000	0.55	1	35,750,000	39,947,050
IXC, LECs, CAPS, Others	59,685,000,000	0.00098	1	58,491,300	65,358,179
CMRS Mobile Services (Cellular/Public Mobile	46,000,000	0.17	1	7,820,000	8,738,068
CMRS - One Way Paging	28,800,000	0.02	1	576,000	643,622
Domestic Public Fixed/Commercial Microwave	18,845	155	1	2,920,975	3,263,897
MDS/MMDS	1,144	155	1	177,320	198,137
International Circuits	164,000	4	1	656,000	733,014
International Public Fixed	15	225	1	3,375	3,771
Earth Stations	2,500	370	1	925,000	1,033,595
Space Stations (Geosynchronous)	41	70,575	1	2,893,575	3,233,281
Space Stations (Low Earth Orbit)	1	97,725	1	97,725	109,198
INTELSAT/INMARSAT Signatory	2	233,425	1	466,850	521,658
------ Total Estimated Revenue Collected				136,501,250	152,526,497
------ Total Revenue Requirement				152,523,000	152,523,000
Difference				(16,021,750)	3,497

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Attachment B

CALCULATION OF REGULATORY COSTS

Fee Category	Annual FY 1996 Regulatory Costs	Overhead & Other Indirect Pro Rated	Total Costs With Overhead & Other Indirect Pro Rated	Total Costs Pro-Rated To $109 Million**	Adjusted Pro-Rated Costs***
LM (220 MHz, >470 MHZ-Base, SMRS)	536,000	209,000	745,000	701,000	701,000
Private Microwave	807,318	308,797	1,346,116	1,266,000	1,266,000
IVDS	330,000	127,000	457,000	430,000	430,000
Marine (Ship)	4,016,000	1,557,000	5,573,000	5,211,772	5,211,772
GMRS/Other LM	4,534,000	1,772,000	6,306,000	5,930,231	5,930,231
Aviation (Aircraft)	633,000	247,000	880,000	828,000	828,000
Marine (Coast)	485,919	189,000	674,000	634,000	634,000
Aviation (Ground)	338,000	132,000	470,000	442,000	442,000
Amateur Vanity Call Signs	186,171	84,000	270,171	254,000	254,000
AM Radio	3,397,000	1,334,000	4,731,000	4,450,000	
AM Class A					2,137,000
AM Class B					1,557,720
AM Class C					574,000
AM Class D					338,000
AM Construction Permits					223,280
FM Radio	5,734,351	2,241,749	7,976,097	6,488,000	
FM Classes C,C1,C2,B					3,000,000
FM Classes A,B1,C3					2,000,000
FM Construction Permits					2,112,000
Satellite TV					70,000
Satellite TV Construction Permit					10,000
VHF Television	3,800,000	1,439,000	5,091,139	5,200,000	
VHF Markets 1-10					1,500,000
VHF Markets 11-25					1,600,000
VHF Markets 26-50					900,000
VHF Markets 51-100					900,000
VHF Remaining Markets					340,000
VHF Construction Permits					200,000
UHF Television	2,340,000	906,000	3,346,027	3,700,000	
UHF Markets 1-10					1,500,000
UHF Markets 11-25					1,600,000
UHF Markets 26-50					900,000
UHF Markets 51-100					900,000
UHF Remaining Markets					900,000
UHF Construction Permits					200,000
Auxiliaries	342,897	94,000	327,000	300,000	300,000
International HF Broadcast	211,916	82,000	293,911	311,000	400,000
LPTV/Translators/Boosters	300,397	103,000	399,000	300,000	300,000
CARS	81,147	31,000	78,000	69,000	69,000
Cable Systems	18,571,916	7,277,743	25,849,000	27,027,000	27,027,000
IXC, LECs, CAPS, Others	37,116,000	14,511,000	51,627,000	54,723,000	54,723,000
CMRS Mobile Services (Cellular/Public Mobile)	8,666,700	3,394,272	12,041,000	12,765,120	12,765,120
CMRS - One Way Paging	640,000	250,000	889,000	900,000	900,000
Domestic Public Fixed/Commercial Microwave	61,000	24,000	85,000	91,043	91,043
MDS/MMDS	788,729	312,000	1,110,000	1,177,200	1,177,200
International Circuits	4,700,000	1,800,000	6,500,000	7,000,000	3,000,000
International Public Fixed	22,631	8,000	31,000	33,000	100,000
Earth Stations	176,172	68,000	245,000	260,000	1,400,000
Space Stations (Geosynchronous)	4,500,427	1,700,000	6,200,427	6,775,170	5,000,000
Space Stations (Low Earth Orbit)	4,461	1,700	6,161	6,661	3,000,000
INTELSAT/INMARSAT Signatory	7,461	3,000	10,461	10,000	1,000,000
Overhead & Other Indirect Costs	40,402,779				
------ Total	143,927,117	40,402,274	143,927,113	152,522,400	152,522,400
------ Total Revenue Requirement	152,523,000		152,523,000	152,523,000	152,523,000
Difference	(8,595,883)		(8,595,888)	(000)	(71)

** 1.0027 factor applied

*** The pro rated costs shown in the previous column needed to be adjusted to correctly reflect full-year costs attributable to each instrument fee category. This was necessary because certain cost accounting functions associated with international activities were outlined for only a small portion of FY 1996. This resulted in a skewed allocation of costs. Actual company FTEs were utilized to make this adjustment. In making these adjustments to international fee costs, overall costs attributable to international activities did not change. Additionally, adjustments were made in this column to sub-allocate annual TV and radio costs to markets and station class, respectively. This was accomplished on a proportional basis by the same ratios between the markets and classes as those which existed in the FY 1996 regulatory fees.

Note: Columns may not add due to rounding.

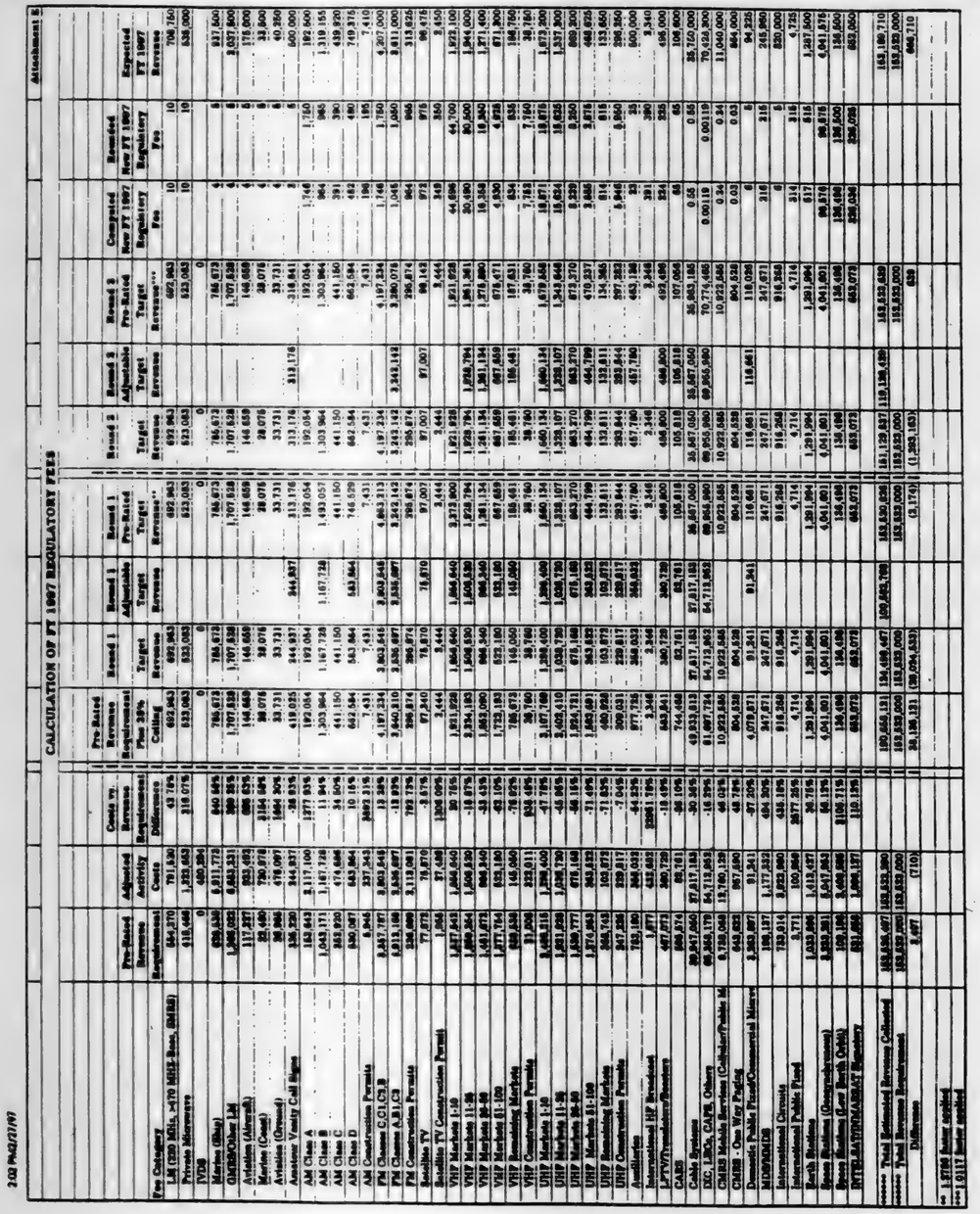

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Attachment F—FY 1997 Schedule of Regulatory Fees

Fee category	Annual regulatory fee
PMRS (per license) (Formerly Land Mobile—Exclusive Use at 220–222 MHz, above 470 MHz, Base Station and SMRS) (47 CFR Part 90)	10
Microwave (per license) (47 CFR Part 101)	10
Interactive Video Data Service (per license) (47 CFR Part 95)	[1]
Marine (Ship) (per station) (47 CFR Part 80)	5
Marine (Coast) (per license) (47 CFR Part 80)	5
General Mobile Radio Service (per license) (47 CFR Part 95)	5
Land Mobile (per license) (all stations not covered by PMRS and CMRS)	5
Aviation (Aircraft) (per station) (47 CFR Part 87)	5
Aviation (Ground) (per license) (47 CFR Part 87)	5
Amateur Vanity Call Signs (per call sign) (47 CFR Part 97)	.24
CMRS Mobile Services (per unit) (47 CFR Parts 20, 22, 24, 80 and 90)	.03
CMRS One-Way Paging (per unit) (47 CFR Parts 20, 22 and 90)	215
Multipoint Distribution Services (per call sign) (47 CFR Part 21)	
AM Radio (47 CFR Part 73):	
Class A	1,750
Class B	985
Class C	390
Class D	480
Construction Permits	195
FM Radio (47 CFR Part 73):	
Classes C, C1, C2, B	1,750
Classes A, B1, C3	1,050
Construction Permits	965
TV (47 CFR Part 73) VHF Commercial:	
Markets 1–10	44,700
Markets 11–25	30,500
Markets 26–50	16,350
Markets 51–100	4,925
Remaining Markets	835
Construction Permits	7,750
TV (47 CFR Part 73) UHF Commercial:	
Markets 1–10	18,875
Markets 11–25	15,625
Markets 26–50	8,250
Markets 51–100	2,875
Remaining Markets	815
Construction Permits	5,950
Satellite Television Stations (All Markets)	975
Construction Permits—Satellite Television Stations	350
Low Power TV, TV/FM Translators & Boosters (47 CFR Part 74)	225
Broadcast Auxiliary (47 CFR Part 74)	25
Cable Antenna Relay Service (47 CFR Part 78)	65
Cable Television Systems (per subscriber) (47 CFR Part 76)	.55
Interstate Telephone Service Providers (per revenue dollar)	.00119
Earth Stations (47 CFR Part 25)	515
Space Stations (per operational station in geosynchronous orbit) (47 CFR Part 25) also includes Direct Broadcast Satellite Service (per operational station) (47 CFR Part 100)	98,575 136,500
Low Earth Orbit Satellite (per operational system) (47 CFR Part 25)	326,025
INMARSAT/INTELSAT Signatory (per signatory)	5
International Circuits (per active 64KB circuit)	315
International Public Fixed (per call sign) (47 CFR Part 23)	390
International (HF) Broadcast (47 CFR Part 73)	

[1] No fee.

Attachment G—Comparison Between FY 1996 and FY 1997 Proposed Regulatory Fees

Fee category	Annual regulatory fee FY 1996	NPRM proposed fee FY 1997
PMRS (per license) (Formerly Land Mobile-Exclusive Use at 220–222 Mhz, above 470 Mhz, Base Station and SMRS) (47 CFR Part 90)	7	10
Microwave (per license) (47 CFR Part 101)	7	10
Interactive Video Data Service (per license) (47 CFR Part 95)	7	[1]

Fee category	Annual regulatory fee FY 1996	NPRM proposed fee FY 1997
Marine (Ship) (per station) (47 CFR Part 80)	3	5
Marine (Coast) (per license) (47 CFR Part 80)	3	5
General Mobile Radio Service (per license) (47 CFR Part 95)	3	5
Land Mobile (per license) (all stations not covered by PMRS and CMRS)	3	5
Aviation (Aircraft) (per station) (47 CFR Part 87)	3	5
Aviation (Ground) (per license) (47 CFR Part 87)	3	5
Amateur Vanity Call Signs (per call sign) (47 CFR Part 97)	3	5
CMRS Mobile Services (per unit) (47 CFR Parts 20, 22, 24, 80 and 90)	.17	.24
CMRS One-Way Paging (per unit) (47 CFR Parts 20, 22, and 90)	.02	.03
Domestic Public Fixed Radio	155	(2)
Multipoint Distribution Services (per call sign) (47 CFR Part 21)	155	215
AM Radio (47 CFR Part 73):		
Class A	1,250	1,750
Class B	690	965
Class C	280	390
Class D	345	480
Construction Permits	140	195
FM Radio (47 CFR Part 73):		
Classes C, C1, C2, B	1,250	1,750
Classes A, B1, C3	830	1,050
Construction Permits	690	965
TV (47 CFR Part 73) VHF Commercial:		
Markets 1–10	32,000	44,700
Markets 11–25	26,000	30,500
Markets 26–50	17,000	16,350
Markets 51–100	9,000	4,925
Remaining Markets	2,500	835
Construction Permits	5,550	7,750
TV (47 CFR Part 73) UHF Commercial:		
Markets 1–10	25,000	18,875
Markets 11–25	20,000	15,625
Markets 26–50	13,000	8,250
Markets 51–100	7,000	2,875
Remaining Markets	2,000	815
Construction Permits	4,425	5,950
Satellite Television Stations (All Markets)	690	975
Construction Permits—Satellite Television Stations	250	350
Low Power TV, TV/FM Translators & Boosters (47 CFR Part 74)	190	225
Broadcast Auxiliary (47 CFR Part 74)	35	25
Cable Antenna Relay Service (47 CFR Part 78)	35	65
Earth Stations (47 CFR Part 25)	370	515
Cable Television Systems (per subscriber) (47 CFR Part 76)	.55	.55
Interstate Telephone Service Providers (per revenue dollar)	.00098	.00119
Space Stations (per operational station in geosynchronous orbit) (47 CFR Part 25) also includes Direct Broadcast Satellite Service (per operational station) (47 CFR Part 100)	70,575	98,575
Low Earth Orbit Satellite (per operational system) (47 CFR Part 25)	97,725	136,500
INMARSAT/INTELSAT Signatory (per signatory)	233,425	326,025
International Circuits (per active 64KB circuit)	4	5
International Public Fixed (per call sign) (47 CFR Part 23)	225	315
International (HF) Broadcast (47 CFR Part 73)	280	390

[1] No fee.
[2] See microwave.

Attachment H—Detailed Guidance on Who Must Pay Regulatory Fees

1. The guidelines below provide an explanation of regulatory fee categories established by the Schedule of Regulatory Fees in section 9 (g) of the Communications Act, 47 U.S.C. § 159(g) as modified in the instant *Report and Order*. Where regulatory fee categories need interpretation or clarification, we have relied on the legislative history of section 9, our own experience in establishing and regulating the Schedule of Regulatory Fees for Fiscal Years (FY) 1994 and 1995 and the services subject to the fee schedule, and the comments of the parties in our proceeding to adopt fees for FY 1995. The categories and amounts set out in the schedule have been modified to reflect changes in the number of payment units, additions and changes in the services subject to the fee requirement and the benefits derived from the Commission's regulatory activities, and to simplify the structure of the schedule. The schedule may be similarly modified or adjusted in future years to reflect changes in the Commission's budget and in the services regulated by the Commission. *See* 47 U.S.C. § 159(b)(2), (3).

2. *Exemptions.* Governments and nonprofit entities are exempt from paying regulatory fees and should not submit payment. A nonprofit entity may be asked to submit a current IRS Determination Letter documenting that it is exempt from taxes under Section 501 of the Internal Revenue Code or the certification of a governmental authority attesting to its nonprofit status. The governmental exemption applies even where the government-owned or community-owned facility is in competition with a commercial operation. Other specific exemptions are discussed below in the descriptions of other particular service categories.

1. Private Wireless Radio Services

3. Two levels of statutory fees were established for the Private Wireless Radio Services—exclusive use services and shared use services. Thus, licensees who generally receive a higher quality communication channel due to exclusive or lightly shared frequency assignments will pay a higher fee than those who share marginal quality assignments. This dichotomy is consistent with the directive of Section 9, that the regulatory fees reflect the benefits provided to the licensees. *See* 47 U.S.C. § 159(b)(1)(A). In addition, because of the generally small amount of the fees assessed against Private Wireless Radio Service licensees, applicants for new licenses and reinstatements and for renewal of existing licenses are required to pay a regulatory fee covering the entire license term, with only a percentage of all licensees paying a regulatory fee in any one year. Applications for modification or assignment of existing authorizations do not require the payment of regulatory fees. The expiration date of those authorizations will reflect only the unexpired term of the underlying license rather than a new license term.

a. Exclusive Use Services

4. *Private Mobile Radio Services (PMRS) (Formerly Land Mobile Services):* Regulatees in this category include those authorized under Part 90 of the Commission's Rules to provide limited access Wireless Radio service that allows high quality voice or digital communications between vehicles or to fixed stations to further the business activities of the licensee. These services, using the 220–222 MHz band and frequencies at 470 MHz and above, may be offered on a private carrier basis in the Specialized Mobile Radio Services (SMRS).[126] For FY 1997, we are proposing that PMRS licensees will pay a $10 annual regulatory fee per license, payable for an entire five or ten year license term at the time of application for a new, renewal, or reinstatement license.[127] The total regulatory fee due is either $50 for a license with a five year term or $100 for a license with a 10 year term.

5. *Microwave Services:* These services include private and commercial microwave systems and private and commercial carrier systems authorized under Part 101 of the Commission's Rules to provide telecommunications services between fixed points on a high quality channel of communications. Microwave systems are often used to relay data and to control railroad, pipeline, and utility equipment. Commercial systems typically are used for video or data transmission or distribution. For FY 1997, we are proposing that Microwave licensees will pay a $10 annual regulatory fee per license, payable for an entire ten year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $100 for the ten year license term.

6. *Interactive Video Data Service (IVDS):* The IVDS is a two-way, point-to-multi-point radio service allocated high quality channels of communications and authorized under Part 95 of the Commission's Rules. The IVDS provides information, products, and services, and also the capability to obtain responses from subscribers in a specific service area. The IVDS is offered on a private carrier basis. The Commission does not anticipate receiving any applications in the IVDS during FY 1997. Therefore, for FY 1997, we are proposing that there be no regulatory fee established for IVDS licensees.

b. Shared Use Services

7. *Marine (Ship) Service:* This service is a shipboard radio service authorized under Part 80 of the Commission's Rules to provide telecommunications between watercraft or between watercraft and shore-based stations. Radio installations are required by domestic and international law for large passenger or cargo vessels. Radio equipment may be voluntarily installed on smaller vessels, such as recreational boats. The Telecommunications Act of 1996 gave the Commission the authority to license certain ship stations by rule rather than by individual license. Private boat operators sailing entirely within domestic U.S. waters and who are not otherwise required by treaty or agreement to carry a radio, are no longer required to hold a marine license, and they will not be required to pay a regulatory fee. For FY 1997, we are proposing that parties required to be licensed and those choosing to be licensed for Marine (Ship) Stations will pay a $5 annual regulatory fee per station, payable for an entire ten-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $50 for the ten year license term.

8. *Marine (Coast) Service:* This service includes land-based stations in the maritime services, authorized under Part 80 of the Commission's Rules, to provide communications services to ships and other watercraft in coastal and inland waterways. For FY 1997, we are proposing that licensees of Marine (Coast) Stations will pay a $5 annual regulatory fee per call sign, payable for the entire five-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $25 per call sign for the five-year license term.

9. *Private Land Mobile (Other) Services:* These services include Land Mobile Radio Services operating under Parts 90 and 95 of the Commission's Rules. Services in this category provide one-or two-way communications between vehicles, persons or fixed stations on a shared basis and include radiolocation services, industrial radio services, and land transportation radio services. For FY 1997, we are proposing that licensees of services in this category will pay a $5 annual regulatory fee per call sign, payable for an entire five-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $25 for the five-year license term.

10. *Aviation (Aircraft) Service:* These services include stations authorized to provide communications between aircraft and between aircraft and ground stations and include frequencies used to communicate with air traffic control facilities pursuant to Part 87 of the Commission's Rules. The Telecommunications Act of 1996 gave the Commission the authority to license certain aircraft radio stations by rule rather than by individual license. Private aircraft operators flying entirely within domestic U.S. airspace and who are not otherwise required by treaty or agreement to carry a radio are no longer required to hold an aircraft license, and they will not be required to pay a regulatory fee. For FY 1997, we are proposing that parties required to be licensed and those choosing to be licensed for Aviation (Aircraft) Stations will pay a $5 annual regulatory fee per station, payable for the entire ten-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is

[126] This category only applies to licensees of shared-use private 220–222 MHz and 470 MHz and above in the Specialized Mobile Radio (SMR) service who have elected not to change to the Commercial Mobile Radio Service (CMRS). Those who have elected to change to the CMRS are referred to paragraph 14 of this Attachment.

[127] Although this fee category includes licenses with ten-year terms, the estimated volume of ten-year license applications in FY 1997 is less than one-tenth of one percent and, therefore, is statistically insignificant.

$50 per station for the ten-year license term.

11. *Aviation (Ground) Service:* This service includes stations authorized to provide ground-based communications to aircraft for weather or landing information, or for logistical support pursuant to Part 87 of the Commission's Rules. Certain ground-based stations which only serve itinerant traffic, i.e., possess no actual units on which to assess a fee, are exempt from payment of regulatory fees. For FY 1997, we are proposing that licensees of Aviation (Ground) Stations will pay a $5 annual regulatory fee per license, payable for the entire five-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee is $25 per call sign for the five-year license term.

12. *General Mobile Radio Service (GMRS):* These services include Land Mobile Radio licensees providing personal and limited business communications between vehicles or to fixed stations for short-range, two-way communications pursuant to Part 95 of the Commission's Rules. For FY 1997, we are proposing that GMRS licensees will pay a $5 annual regulatory fee per license, payable for an entire five-year license term at the time of application for a new, renewal or reinstatement license. The total regulatory fee due is $25 per license for the five-year license term.

c. Amateur Radio Vanity Call Signs

13. *Amateur Vanity Call Signs:* This fee covers voluntary requests for specific call signs in the Amateur Radio Service authorized under part 97 of the Commission's Rules. For FY 1997, we are proposing that applicants for Amateur Vanity Call-Signs will pay a $5 annual regulatory fee per call sign, payable for an entire ten-year license term at the time of application for a vanity call sign. The total regulatory fee due would be $50 per license for the ten-year license term.[128]

d. Commercial Wireless Radio Services

14. *Commercial Mobile Radio Services (CMRS) Mobile Services:* The Commercial Mobile Radio Service (CMRS) is an "umbrella" descriptive term attributed to various existing services authorized to provide interconnected mobile radio services for profit to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public. CMRS Mobile Services include certain licensees which formerly were licensed as part of the Private Radio Services (e.g., Specialized Mobile Radio Services) and others formerly licensed as part of the Common Carrier Radio Services (e.g., Public Mobile Services and Cellular Radio Service). While specific rules pertaining to each covered service remain in separate Parts 22, 24, 80 and 90, general rules for CMRS are contained in Part 20. CMRS Mobile Services will include: qualifying Business Radio Services, 220–222 MHz Land Mobile Systems, Specialized Mobile Radio Services (Part 90);[129] Personal Communications Services (Part 24), Public Coast Stations (Part 80); Public Mobile Radio (Cellular, 800 MHz Air-Ground Radiotelephone, and Offshore Radio Services) (Part 22). Each licensee in this group will pay an annual regulatory fee for each mobile or cellular unit (mobile or cellular call sign or telephone number), including two-way paging units, assigned to its customers, including resellers of its services. For FY 1997, we are proposing that the regulatory fee be $.24 per unit.

15. *Commercial Mobile Radio Services (CMRS) One-Way Paging Services:* The Commercial Mobile Radio Service (CMRS) is an "umbrella" descriptive term attributed to various existing services authorized to provide interconnected mobile radio services for profit to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public. CMRS One-Way Paging Services include certain licensees which formerly were licensed as part of the Private Radio Services (e.g., Private Paging), licensees formerly licensed as part of the Common Carrier Radio Services (e.g., Public Mobile One-Way Paging), and licensees of Personal Communications Service (PCS) one-way paging. While specific rules pertaining to each covered service remain in separate Parts 22, 24 and 90, general rules for CMRS are contained in Part 20. We have replaced the Public Mobile One-Way Paging regulatory fee category with a CMRS One-Way Paging Services category for regulatory fee collection purposes. Each licensee in the CMRS One-Way Paging Services will pay an annual regulatory fee for each paging unit assigned to its customers, including resellers of its services. For FY 1997, we are proposing that the regulatory fee be $.03 per unit.

2. Mass Media Services

16. The regulatory fees for the Mass Media fee category apply to broadcast licensees and permittees. Noncommercial Educational Broadcasters are exempt from regulatory fees.

a. Commercial AM and FM Radio

17. These categories include licensed Commercial AM (Classes A, B, C, and D) and FM (Classes A, B, B1, C, C1, C2, and C3) Radio Stations operating under Part 73 of the Commission's Rules.[130] We are proposing that the regulatory fees for AM and FM Stations for FY 1997 are as follows:

AM Radio	
Class A	$1,750
Class B	965
Class C	390
Class D	480
FM Radio	
Classes C, C1, C2, B	$1,750
Classes A, B1, C3	1,050

b. Construction Permits—Commercial AM Radio

18. This category includes holders of permits to construct new Commercial AM Stations. For FY 1997, we are proposing that permittees will pay a fee of $195 for each permit held. Upon issuance of an operating license, this fee would no longer be applicable and licensees would be required to pay the applicable fee for the designated class of the station.

c. Construction Permits—Commercial FM Radio

19. This category includes holders of permits to construct new Commercial FM Stations. For FY 1997, we are proposing that permittees will pay a fee of $965 for each permit held. Upon issuance of an operating license, this fee would no longer be applicable. Instead, licensees would pay a regulatory fee based upon the designated class of the station.

[128] Section 9(h) exempts "amateur radio operator licenses under Part 97 of the Commission's rules (47 CFR Part 97)" from the requirement. However, Section 9(g)'s fee schedule explicitly includes "Amateur vanity call signs" as a category subject to the payment of a regulatory fee.

[129] This category does not include licensees of private shared-use 220 MHz and 470 MHz and above in the Specialized Mobile Radio (SMR) service who have elected to remain non-commercial. Those who have elected not to change to the Commercial Mobile Radio Service (CMRS) are referred to paragraph 4 of this Attachment. Further, Congress provided for a three year transition period until August 10, 1996, for conversion to CMRS. *See* Omnibus Budget Reconciliation Act of 1993, Public Law 103–66, Title VI § 6002(b), 107 Stat. 312,392. Therefore, licensees who had not converted to CMRS prior to December 31, 1995, are not subject to the CMRS Mobile Services fee for FY 1996.

[130] The Commission acknowledges that certain stations operating in Puerto Rico and Guam have been assigned a higher level station class than would be expected if the station were located on the mainland. Although this results in a higher regulatory fee, we believe that the increased interference protection associated with the higher station class is necessary and justifies the fee.

d. Commercial Television Stations

20. This category includes licensed Commercial VHF and UHF Television Stations covered under Part 73 of the Commission's Rules, except commonly owned Television Satellite Stations, addressed separately below. Markets are Nielsen Designated Market Areas (DMA) as listed in the *Television & Cable Factbook*, Stations Volume No. 64, 1996 Edition, Warren Publishing, Inc. We are proposing that the fees for each category of station are as follows:

VHF Markets 1–10	$44,700
VHF Markets 11–25	30,500
VHF Markets 26–50	16,350
VHF Markets 51–100	4,925
VHF Remaining Markets	835
UHF Markets 1–10	18,875
UHF Markets 11–25	15,625
UHF Markets 26–50	8,250
UHF Markets 51–100	2,875
UHF Remaining Markets	815

e. Commercial Television Satellite Stations

21. We are proposing that commonly owned Television Satellite Stations in any market (authorized pursuant to Note 5 of Section 73.3555 of the Commission's Rules) that retransmit programming of the primary station be assessed a fee of $975 annually. Those stations designated as Television Satellite Stations in the 1996 Edition of the *Television and Cable Factbook* are subject to the fee applicable to Television Satellite Stations. All other television licensees are subject to the regulatory fee payment required for their class of station and market.

f. Construction Permits—Commercial VHF Television Stations

22. This category includes holders of permits to construct new Commercial VHF Television Stations. For FY 1997, we are proposing that VHF permittees will pay an annual regulatory fee of $7,750. Upon issuance of an operating license, this fee would no longer be applicable. Instead, licensees would pay a fee based upon the designated market of the station.

g. Construction Permits—Commercial UHF Television Stations

23. This category includes holders of permits to construct new UHF Television Stations. For FY 1997, we are proposing that UHF Television permittees will pay an annual regulatory fee of $5,950. Upon issuance of an operating license, this fee would no longer be applicable. Instead, licensees would pay a fee based upon the designated market of the station.

h. Construction Permits—Satellite Television Stations

24. We are proposing that the fee for UHF and VHF Television Satellite Station construction permits for FY 1997 be $350. An individual regulatory fee payment is to be made for each Television Satellite Station construction permit held.

i. Low Power Television, FM Translator and Booster Stations, TV Translator and Booster Stations

25. This category includes Low Power UHF/VHF Television stations operating under Part 74 of the Commission's Rules with a transmitter power output limited to 1 kW for a UHF facility and, generally, 0.01 kW for a VHF facility. Low Power Television (LPTV) stations may retransmit the programs and signals of a TV Broadcast Station, originate programming, and/or operate as a subscription service. This category also includes translators and boosters operating under Part 74 which rebroadcast the signals of full service stations on a frequency different from the parent station (translators) or on the same frequency (boosters). The stations in this category are secondary to full service stations in terms of frequency priority. We have also received requests for waivers of the regulatory fees from operators of community based Translators. These Translators are generally not affiliated with commercial broadcasters, are nonprofit, nonprofitable, or only marginally profitable, serve small rural communities, and are supported financially by the residents of the communities served. We are aware of the difficulties these Translators have in paying even minimal regulatory fees, and we have addressed those concerns in the ruling on reconsideration of the FY 1994 *Report and Order*. Community based Translators are exempt from regulatory fees. For FY 1997, we are proposing that licensees in low power television, FM translator and booster, and TV translator and booster category will pay a regulatory fee of $225 for each license held.

j. Broadcast Auxiliary Stations

26. This category includes licensees of remote pickup stations (either base or mobile) and associated accessory equipment authorized pursuant to a single license, Aural Broadcast Auxiliary Stations (Studio Transmitter Link and Inter-City Relay) and Television Broadcast Auxiliary Stations (TV Pickup, TV Studio Transmitter Link, TV Relay) authorized under Part 74 of the Commission's Rules. Auxiliary Stations are generally associated with a particular television or radio broadcast station or cable television system. This category does not include translators and boosters (see paragraph 26). For FY 1997, we are proposing that licensees of Commercial Auxiliary Stations will pay a $25 annual regulatory fee on a per call sign basis.

k. Multipoint Distribution Service

27. This category includes Multipoint Distribution Service (MDS), and Multichannel Multipoint Distribution Service (MMDS), authorized under Part 21 of the Commission's Rules to use microwave frequencies for video and data distribution within the United States. For FY 1997, we are proposing that MDS and MMDS stations will pay an annual regulatory fee of $215 per call sign.

3. Cable Services

a. Cable Television Systems

28. This category includes operators of Cable Television Systems, providing or distributing programming or other services to subscribers under Part 76 of the Commission's Rules. For FY 1997, we are proposing that Cable Systems will pay a regulatory fee of $.55 per subscriber.[131] Payments for Cable Systems are to be made on a per subscriber basis as of December 31, 1995. Cable Systems should determine their subscriber numbers by calculating the number of single family dwellings, the number of individual households in multiple dwelling units, *e.g.*, apartments, condominiums, mobile home parks, etc., paying at the basic subscriber rate, the number of bulk rate customers and the number of courtesy or fee customers. In order to determine the number of bulk rate subscribers, a system should divide its bulk rate charge by the annual subscription rate for individual households. See FY 1994 *Report and Order*, Appendix B at Paragraph 31.

b. Cable Antenna Relay Service

29. This category includes Cable Antenna Relay Service (CARS) stations used to transmit television and related audio signals, signals of AM and FM Broadcast Stations, and cablecasting from the point of reception to a terminal point from where the signals are distributed to the public by a Cable Television System. For FY 1997, we are proposing that licensees will pay an

[131] Cable systems are to pay their regulatory fees on a per subscriber basis rather than per 1,000 subscribers as set forth in the statutory fee schedule. See FY 1994 *Report and Order* at Paragraph 100.

annual regulatory fee of $65 per CARS license.

4. Common Carrier Services

a. Domestic Public Fixed Radio Service

30. This category includes licensees in the Point-to-Point Microwave Radio Service, Local Television Transmission Radio Service, and Digital Electronic Message Service, authorized under Part 101 of the Commission's Rules to use microwave frequencies for video and data distribution within the United States. These services are now included in the Microwave category (see paragraph 5 above).

b. Interstate Telephone Service Providers

31. This category includes Inter-Exchange Carriers (IXCs), Local Exchange Carriers (LECs), Competitive Access Providers (CAPs), domestic and international carriers that provide operator services, Wide Area Telephone Service (WATS), 800, 900, telex, telegraph, video, other switched, interstate access, special access, and alternative access services either by using their own facilities or by reselling facilities and services of other carriers or telephone carrier holding companies, and companies other than traditional local telephone companies that provide interstate access services to long distance carriers and other customers. This category also includes pre-paid calling card providers. These common carriers, including resellers, must submit fee payments based upon their proportionate share of gross interstate revenues using the methodology that we have adopted for calculating contributions to the TRS fund. *See Telecommunications Relay Services*, 8 FCC Rcd 5300 (1993), 58 FR 39671 (July 26, 1993). In order to avoid imposing any double payment burden on resellers, we will permit carriers to subtract from their gross interstate revenues, as reported to NECA in connection with their TRS contribution, any payments made to underlying common carriers for telecommunications facilities and services, including payments for interstate access service, that are sold in the form of interstate service. For this purpose, resold telecommunications facilities and services are only intended to include payments that correspond to revenues that will be included by another carrier reporting interstate revenue. For FY 1997, we are proposing that carriers multiply their adjusted gross revenue figure (gross revenue reduced by the total amount of their payments to underlying common carriers for telecommunications facilities or services) by the factor 0.00119 to determine the appropriate fee for this category of service. Regulatees may want to use the following worksheet to determine their fee payment:

	Total	Interstate
(1) Revenue reported in TRS Fund worksheets		
(2) Less: Access charges paid		
(3) Less: Other telecommunications facilities and services taken for resale		
(4) Adjusted revenues (1)minus(2)minus(3)		
(5) Fee factor		0.00119
(6) Fee due (4)times(5)		

5. International Services

a. Earth Stations

32. Very Small Aperture Terminal (VSAT) Earth Stations, equivalent C-Band Earth Stations and antennas, and earth station systems comprised of very small aperture terminals operate in the 12 and 14 GHz bands and provide a variety of communications services to other stations in the network. *VSAT* systems consist of a network of technically-identical small Fixed-Satellite Earth Stations which often include a larger hub station. VSAT Earth Stations and C-Band Equivalent Earth Stations are authorized pursuant to Part 25 of the Commission's Rules. *Mobile Satellite Earth Stations*, operating pursuant to Part 25 of the Commission's Rules under blanket licenses for mobile antennas (transceivers), are smaller than one meter and provide voice or data communications, including position location information for mobile platforms such as cars, buses, or trucks.[132] *Fixed-Satellite Transmit/Receive and Transmit-Only Earth Station antennas*, authorized or registered under Part 25 of the Commission's Rules, are operated by private and public carriers to provide telephone, television, data, and other forms of communications. Included in this category are telemetry, tracking and control (TT&C) earth stations, and earth station uplinks. For FY 1997, we are proposing that licensees of VSATs, Mobile Satellite Earth Stations, and Fixed-Satellite Transmit/Receive and Transmit-Only Earth Stations will pay a fee of $515 per authorization or registration *as well as a separate fee of $515 for each associated Hub Station.*

33. *Receive-only earth stations.* For FY 1997, we are proposing that there be no regulatory fee for receive-only earth stations.

b. Space Stations (Geosynchronous)

34. Geosynchronous Space Stations are domestic and international satellites positioned in orbit to remain approximately fixed relative to the earth. Most are authorized under Part 25 of the Commission's Rules to provide communications between satellites and earth stations on a common carrier and/or private carrier basis. In addition, this category includes Direct Broadcast Satellite (DBS) Service which includes space stations authorized under Part 100 of the Commission's rules to transmit or re-transmit signals for direct reception by the general public encompassing both individual and community reception. For FY 1997, we are proposing that entities authorized to operate geosynchronous space stations (including DBS satellites) will be assessed an annual regulatory fee of $98,575 per operational station in orbit. Payment is required for any geosynchronous satellite that has been launched and tested and is authorized to provide service.

c. Low Earth Orbit Satellites (LEOs)

35. Low Earth Orbit Satellite Systems are space stations that orbit the earth in non-geosynchronous orbit. They are authorized under Part 25 of the Commission's rules to provide communications between satellites and earth stations on a common carrier and/or private carrier basis. For FY 1997, we are proposing that entities authorized to operate Low Earth Orbit Satellite Systems will be assessed an annual regulatory fee of $136,500 per operational system in orbit. Payment is required for any LEO System that has one or more operational satellites.

[132] Mobile earth stations are hand-held or vehicle-based units capable of operation while the operator or vehicle is in motion. In contrast, transportable units are moved to a fixed location and operate in a stationary (fixed) mode. Both are assessed the same regulatory fee for FY 1997.

d. Signatories

36. A *Signatory to INMARSAT* is an Administration or government, or the telecommunications entity designated as sole operating entity by an Administration or government, which participates in the International Mobile Satellite Organization (INMARSAT) in order to develop and operate a global maritime satellite telecommunication system which serves maritime commercial and safety needs of the United States and foreign countries. A *Signatory to INTELSAT* is an Administration or government, or the telecommunications entity designated as sole operating entity by an Administration or government, which participates in the International Telecommunications Satellite Organization (INTELSAT) in order to develop, construct, operate, and maintain the space segment of the global commercial telecommunications satellite system established under the Interim Agreement and Special Agreement signed by Governments on August 20, 1964. For FY 1997, we are proposing that Signatories to INMARSAT and INTELSAT will be assessed an annual regulatory fee of $326,025 in order to recover the cost of the Commission's regulatory activities associated with such entities.

e. International Bearer Circuits

37. Regulatory fees for International Bearer Circuits are to be paid by the facilities-based common carriers (either domestic or international) activating the circuit in any transmission facility for the provision of service to an end user or resale carrier. Payment of the fee for bearer circuits by private submarine cable operators is required for circuits sold on an indefeasible right of use (IRU) basis or leased to any customer other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. *Compare* FY 1994 *Report and Order* at 5367. The fee is based upon active 64 Kbps circuits, or their equivalent circuits. Under this formulation, 64 Kbps circuits or their equivalent will be assessed a fee. Equivalent circuits include the 64 Kbps circuit equivalent of larger bit stream circuits. For example, the 64 Kbps circuit equivalent of a 2.048 Mbps circuit is 30 64 Kbps circuits. Analog circuits such as 3 and 4 KHz circuits used for international service are also included as 64 Kbps circuits. However, circuits derived from 64 Kbps circuits by the use of digital circuit multiplication systems are not equivalent 64 Kbps circuits. Such circuits are not subject to fees. Only the 64 Kbps circuit from which they have been derived will be subject to payment of a fee. For FY 1997, we are proposing that the regulatory fee be $5.00 for each active 64 Kbps circuit or equivalent. For analog television channels we will assess fees as follows:

Analog television channel size in MHz	No. of equivalent 64 Kbps circuits
36	630
24	288
18	240

f. International Public Fixed

38. This fee category includes common carriers authorized under Part 23 of the Commission's Rules to provide radio communications between the United States and a foreign point via microwave or HF troposcatter systems, other than satellites and satellite earth stations, but not including service between the United States and Mexico and the United States and Canada using frequencies above 72 MHz. For FY 1997, we are proposing that International Public Fixed Radio Service licensees will pay a $315 annual regulatory fee per call sign.

g. International (HF) Broadcast

39. This category covers International Broadcast Stations licensed under Part 73 of the Commission's Rules to operate on frequencies in the 5,950 KHz to 26,100 KHz range to provide service to the general public in foreign countries. For FY 1997, we are proposing that International HF Broadcast Stations will pay an annual regulatory fee of $390 per station license.

Attachment I—Description of FCC Activities

Authorization of Service: The authorization or licensing of radio stations, telecommunications equipment, and radio operators, as well as the authorization of common carrier and other services and facilities. Includes policy direction, program development, legal services, and executive direction, as well as support services associated with authorization activities.[133]

Policy and Rulemaking: Formal inquiries, rulemaking proceedings to establish or amend the Commission's rules and regulations, action on petitions for rulemaking, and requests for rule interpretations or waivers; economic studies and analyses; spectrum planning, modeling, propagation-interference analyses, and allocation; and development of equipment standards. Includes policy direction, program development, legal services, and executive direction, as well as support services associated with policy and rulemaking activities.

Enforcement: Enforcement of the Commission's rules, regulations and authorizations, including investigations, inspections, compliance monitoring, and sanctions of all types. Also includes the receipt and disposition of formal and informal complaints regarding common carrier rates and services, the review and acceptance/rejection of carrier tariffs, and the review, prescription and audit of carrier accounting practices. Includes policy direction, program development, legal services, and executive direction, as well as support services associated with enforcement activities.

Public Information Services: The publication and dissemination of Commission decisions and actions, and related activities; public reference and library services; the duplication and dissemination of Commission records and databases; the receipt and disposition of public inquiries; consumer, small business, and public assistance; and public affairs and media relations. Includes policy direction, program development, legal services, and executive direction, as well as support services associated with public information activities.

[133] Although Authorization of Service is described in this exhibit, it is *not* one of the activities included as a feeable activity for regulatory fee purposes pursuant to Section 9(a)(1) of the Act. 47 U.S.C. § 159(a)(1).

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 630 and 678

[I.D. 022897G]

Atlantic Swordfish Fishery; Atlantic Shark Fishery; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public hearings; request for comments.

SUMMARY: The Highly Migratory Species Division (HMS Division) will convene 12 hearings to obtain comments from the public on Draft Amendment 1 to the

Fishery Management Plan for Atlantic Swordfish (Swordfish FMP), on Draft Amendment 1 to the Fishery Management Plan for Sharks of the Atlantic Ocean (Shark FMP) and proposed rules implementing a limited access system for each fishery. The proposed rule for the Shark FMP was published in the **Federal Register** on December 27, 1996 and the proposed rule for the Swordfish FMP was published on February 26, 1997. NMFS is also requesting written comments on Draft Amendment 1 to the Swordfish FMP, the Draft Amendment 1 to the Shark FMP and on the proposed rules.

DATES: Written comments will be accepted until April 28, 1997. Public hearings will be held in March and April. See **SUPPLEMENTARY INFORMATION** for specific dates and times of the hearings.

ADDRESSES: Written comments should be sent to Dr. Rebecca Lent, Chief, HMS Division, Office of Sustainable Fisheries (F/SF1), 1315 East-West Highway, Silver Spring, MD 20910 (FAX: 301–713–1917). Clearly mark the outside of the envelope "Limited Access Comments." Copies of the proposed rule and Draft Amendment 1 to the Swordfish FMP, which includes an environmental assessment and regulatory impact review, are available from James Chambers at the same address. Public hearings will be held in Maine, Rhode Island, New York, New Jersey, Maryland, North Carolina, Florida, Louisiana, the U.S. Virgin Islands and Puerto Rico. See **SUPPLEMENTARY INFORMATION** for locations of the hearings.

FOR FURTHER INFORMATION CONTACT: James Chambers, Fishery Management Specialist, or Margo Schulze, Fishery Biologist, HMS Division, 301–713–2347.

SUPPLEMENTARY INFORMATION: Issues that are addressed in Draft Amendment 1 to the Swordfish FMP include: Proposed implementation of a two-tiered permit system consisting of directed and incidental permits for the commercial fishery, eligibility criteria for these permits based on historical participation, transferability provisions, the permitting process, upgrading restrictions and ownerships limits.

A complete description of the measures, including the purpose and need for the proposed action concerning Atlantic swordfish, is contained in the proposed rule published February 26, 1997 (62 FR 8672), and is not repeated here. Copies of the proposed rule and Draft Amendment 1 to the Swordfish FMP may be obtained by writing (see **ADDRESSES**) or calling one of the contact persons (see **FOR FURTHER INFORMATION CONTACT**). Draft Amendment 1 to the Shark FMP and its proposed rule were published December 27, 1996 (61 FR 68202), and address similar issues to those in proposed rule and Draft Amendment 1 to the Swordfish FMP.

To accommodate people unable to attend a hearing or wishing to provide additional comments, NMFS also solicits written comments on the proposed rules.

The public hearings are scheduled as follows:

1. Friday, March 21, 1997—City Hall (Commission Chambers, 1st floor), 100 North Andrews Avenue, Ft. Lauderdale, FL 33301, (954) 761–5002, 3 p.m.–6 p.m.

2. Monday, March 31, 1997—West Bank Regional Library Meeting Room (1st floor), 2751 Manhattan Boulevard (near Lapalco Boulevard), Harvey, LA 70058–6144, (504) 364–3972, 3 p.m.–6 p.m.

3. Tuesday, April 1, 1997—Town Hall Auditorium, 19305 Gulf Boulevard, Indian Shores, FL 33785, (813) 595–4020, 7 p.m.–10 p.m.

4. Wednesday, April 2, 1997—Monroe County Public Library (Auditorium), 700 Flemming Street, Key West, FL 33040 (305) 292–3595, 4 p.m.–6 p.m.

5. Thursday, April 3, 1997—Pan Am Dock (East), Isla Grande, San Juan, PR 00907, (803) 522–1509, 4 p.m.–7 p.m.

6. Saturday, April 5, 1997—Town Hall at the Caravelle Hotel, 44A Queen Cross Street, Saint Croix, USVI 00820, (809) 773–0687, 3 p.m.–6 p.m.

7. Tuesday, April 8, 1997—Portland Public Library (Room 316), 5 Monument Square, Portland, ME 04101, (207) 871–1755, 7 p.m.–10 p.m.

8. Wednesday, April 9, 1997—Providence Biltmore Hotel

State Suite C (2nd level), Kennedy Plaza, Providence RI 02903,

(401) 455–3027, 3 p.m.–6 p.m.

9. Thursday, April 10, 1997—Montauk Fire Hall, 12 Flamingo Avenue, Montauk, NY 11954, (516) 668–5695, 7 p.m.–10 p.m.

10. Friday, April 11, 1997—Barnegat Light Firehouse, 10th and Boulevard Streets, Long Beach Island, Barnegat Light, NJ 08006, (609) 494–1280, 7 p.m.–10 p.m.

11. Sunday, April 13, 1997—North Carolina Aquarium (Auditorium), Airport Road, Manteo, NC 27954, (919) 473–3494, 7 p.m.–10 p.m.

12. Monday, April 28, 1997—NOAA, First Floor Conference Room (1W611), Silver Spring Metro Center Building 4,

1305 East-West Highway, Silver Spring, MD 20910, (301) 713–2227, 10 a.m.–12 p.m.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to James Chambers or Margo Schulze (see **ADDRESSES**) at least 15 days before the hearing date.

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 971 *et seq.*

Dated: March 4, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–5783 Filed 3–7–97; 8:45 am]

BILLING CODE 3510–22–F

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50 CFR Part 648

[I.D. 022797A]

New England Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 2-day public meeting on March 12 and 13, 1997, to consider actions affecting New England fisheries in the exclusive economic zone.

DATES: The meeting will be held on Wednesday, March 12, 1997, at 10 a.m. and on Thursday, March 13, 1997, at 8:30 a.m.

ADDRESSES: The meeting will take place at the King's Grant Inn, Route 128 and Trask Lane, Danvers, MA; telephone (508) 774-6800. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906-1097; telephone: (617) 231-0422.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council, (617) 231-0422.

SUPPLEMENTARY INFORMATION:

March 12, 1997

The March 12 session will begin with Enforcement Committee recommendations on cod trip limits and fishing vessels transiting closed areas. In addition to reviewing NMFS and Coast Guard reports to the Council on recent enforcement actions, the Enforcement Committee will provide an update on a Vessel Tracking System trial program and an evaluation of the current scallop regulations. The Scallop Committee will review its most recent discussion of

fishing effort consolidation. The day will conclude with a report by the Groundfish Committee chairman. His briefing on the committee's discussions will include: Maintaining or opening groundfish closed areas to scallop dredging; consideration of a framework adjustment to the Northeast Multispecies Fishery Management Plan (FMP) that would contain measures to protect incoming year classes of winter flounder; development of a timetable for winter flounder stock rebuilding and for whiting management; consideration of a year-round fishery for small scallop dredges in the Nantucket Shoals Dogfish Exemption Area; the August 15 through September 13 Northeast Closure Area for groundfish, as it relates to the gillnet fishery requirement to take 21 days off from groundfish fishing between June and September; and initial action on a framework adjustment to the FMP under the framework for abbreviated rulemaking procedure contained in 50 CFR 648.82. In addition to allowing fishing in the North Atlantic Fisheries Organization regulated area without using multispecies days-at-sea (DAS) allocations, this framework adjustment would provide incentives to fish offshore through several means including not counting steaming time against multispecies DAS allocations.

March 13, 1997

The Council Chairman; Executive Director; Regional Administrator, Northeast Region, NMFS; representatives from the Northeast Fisheries Science Center; Atlantic States Marine Fisheries Commission (ASMFC); U.S. Coast Guard; and the Mid-Atlantic Fishery Management Council liaison will report on recent activities. There will be a briefing on the Atlantic Coastal Cooperative Statistics Program followed by an update on public comments received to date on monkfish management proposals. During the latter portion of the meeting, the Responsible Fishing Committee will discuss fishermen's training and certification programs. There will be an update on ASMFC's lobster management program and a NMFS update on actions to restrict lobster gear to reduce the risk of northern right whale entanglements.

Announcement of Experimental Fishery Applications

There will be a discussion of several experimental fisheries that have been recently submitted to NMFS for review and approval. Among the proposed experiments are extensions of two previous experiments, two expansions of previously conducted experiments and two new experiments. The Regional Administrator has conducted preliminary reviews of the experimental fishery proposals and is seeking Council and industry comments on the proposals.

The New Jersey Department of Environmental Protection, Division of Fish Game and Wildlife conducted studies on food habits and digestive systems of lobsters taken from artificial reef systems off of New Jersey. One fishing vessel was issued an experimental fishing permit (EFP) that exempted it from the possession limit for vessels without a Federal American lobster permit, size limit, and prohibition on possession of lobster parts. The investigators were not able to collect their target numbers of 150 lobsters and have therefore requested an extension of the EFP to cover the period from June through October of 1997.

The Research Foundation of the State University of New York (SUNY) has been issued an EFP for a fishing vessel that it has chartered to conduct studies on interactions between juvenile groundfish and their habitats. The study is funded under the Saltonstall/Kennedy Grant program and the EFP expires on April 30, 1997. SUNY has requested that the EFP be extended to cover the duration of the funded activities. The project involves collection of samples of juvenile fish in the New York Bight area with small mesh trawl gear. An EFP is required to exempt the participating vessel from DAS, gear and mesh size restrictions, and minimum fish size limits of the FMP.

A member of the fishing industry has requested that the seasonal experimental whiting separator trawl fishery conducted in the Northern Shrimp Small Mesh Exemption Area be extended to allow fishing under the experiment for the entire year. In addition, the applicant has requested the use of a grate bar spacing of 2 inches (5.08 cm) instead of the previous 1–9/16 - inch (4–cm) bar spacing used in the previous fishery. EFPs would be necessary to exempt participating vessels from mesh size, DAS, and bycatch restrictions of the FMP.

The Massachusetts Division of Marine Fisheries (MADMF) has requested that its experimental small mesh raised footrope trawl whiting fishery conducted in Cape Cod Bay be expanded to allow two to three vessels to fish in three additional distinct areas within the GOM/GB Regulated Mesh Area. MADMF would monitor the vessels and the trawl gear to determine if the raised footrope trawl is an appropriate gear to reduce bycatch of regulated species in areas outside of Cape Cod Bay. EFPs would be required to exempt vessels from mesh size, DAS, and bycatch restrictions of the multispecies FMP.

The MADMF and an industry member have submitted an application to conduct comparisons of catch rates of yellowtail flounder using diamond and square mesh trawls. The purpose of the study is to determine the selectivity of diamond or square mesh trawls on yellowtail flounder. An EFP would be required to exempt the vessel from possession limits, DAS, and mesh size restrictions of the FMP. While the vessel will be using the regulated 6–inch (15.24–cm) mesh trawls, small mesh codend covers will be used to measure the catches of the fish for each type of trawl. The applicants have further requested that the vessel be allowed to retain and land legal sized regulated multispecies on the experimental trips.

The Maine Department of Marine Resources (MEDMR) had requested that fishing vessels and recreational fishers be allowed to catch and retain juvenile tagged regulated multispecies that were raised and released by MEDMR. Participating fishers would return the tagged fish to MEDMR. The purpose of the tagged fish recovery effort is to measure the survivability of released fish. Those catching and returning tagged juvenile regulated species would be required to be exempted from the minimum fish size limits and possibly DAS and possession limits of the multispecies FMP.

Prior to the conclusion of the meeting, the Council will discuss policy advice to the Mid-Atlantic Council on mackerel joint ventures and comments on NMFS' proposed swordfish fishery limited access program.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Authority: 16 U.S. C. 1801 *et seq.*

Dated: March 4, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–5784 Filed 3–7–97; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 62, No. 46
Monday, March 10, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

National Sheep Industry Improvement Center; Notice of Board Meetings and Public Hearings on Policy Objectives.

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice of board meetings and public hearings.

SUMMARY: The Board of Directors of the National Sheep Industry Improvement Center announces three public hearings seeking input on policy objectives to be used in the strategic plan for accomplishing the purposes of the Center. The Board of Directors also announces two Board meetings in conjunction with the hearings. (The Board meetings are open to the public.)

DATES: The hearing and/or meeting dates are:

1. March 26, 1997, 7:30 p.m., Columbus, OH; Board meeting.
2. March 27, 1997, 8:30 a.m. to 12:00 noon, Columbus, OH; public hearing.
3. May 6, 1997, 8:30 a.m to 12:30 p.m., San Angelo, TX; public hearing.
4. May 7, 1997, 8:30 a.m. to 12:30 p.m., Salt Lake City, UT; public hearing followed by Board of Directors meeting at 2:00 p.m.

Other deadlines are:

1. May 5, 1997, written testimony must be received by the Board on or before date to receive consideration at the May 7, 1997, Board meeting.
2. Written comments should be received by May 16, 1997, to receive consideration in developing the strategic plans.

ADDRESSES: The meeting locations are:

1. Columbus, OH—Ohio State University Fawcett Center, 2400 Olentangy River Road, Columbus, Ohio
2. San Angelo, TX—Texas A&M University, Agricultural Research and Extension Center, 7887 Highway 87 North, San Angelo, Texas
3. Salt Lake City, UT—Airport Hilton, 5151 Wiley Post Way, Salt Lake City, UT

Written comments:

Submit written comments in duplicate to Thomas H. Stafford, Director, Cooperative Marketing Division, Cooperative Services, RBS, USDA, Stop 3252, 1400 Independence Ave. SW, Washington, DC 20080–3252. Comments may also be submitted via the Internet by addressing them to tstaff@rurdev.usda.gov and must contain "Sheep Industries" in the subject.

FOR FURTHER INFORMATION CONTACT: Thomas H. Stafford, Director, Cooperative Marketing Division, Cooperative Services, RBS, USDA, Stop 3252, Room 4204, 1400 Independence Ave. SW, Washington, DC 20080–3252, telephone (202) 690–0368. (This is not a toll free number.) E-mail: tstaff@rurdev.usda.gov. The Federal Information Relay service on 1–800–877–8339 may be used by TDD users.

SUPPLEMENTARY INFORMATION: The National Sheep Industry Improvement Center is seeking input into policy objectives that will guide the Center's assistance in strengthening the Nation's sheep and goat industries. The board is not looking for specific proposals at this time.

Background

In response to challenges facing the sheep and goat industries, the 1996 Farm Bill established the National Sheep Industry Improvement Center to assist and strengthen the U.S. sheep and goat industries through projects and assistance financed through the Center's revolving fund. The Center will manage a revolving fund of up to $50 million in Federal funds to facilitate the production and marketing of sheep and goats, and their products.

Treasury has deposited the initial $20 million into the Center's fund. This fund is capped at $50 million Federal funds—where authorization was provided for an additional $30 million in appropriated funds. After 10 years or upon receipt of $50 million in Federal funds to the revolving fund, the Center and its activities shall be privatized and no additional Federal funds shall be used to carry out the activities of the Center.

The Center is managed by a nine member (7 voting and 2 nonvoting members), non-compensated board. The seven voting members were chosen by the Secretary of Agriculture from the sheep and goat industries and the two non-voting members from the USDA are the Under Secretary for Rural Development and the Under Secretary for Research, Education and Economics. The Board of Directors may use the monies in the fund to make grants, and intermediate and long-term loans, contracts, cooperative repayable agreements, or cooperative agreements in accordance with an annual strategic plan submitted to the Secretary of Agriculture. Funds may be used to participate with Federal and State agencies, other public and private funding sources, and in regional efforts. Funding activities include providing security for, or making principal or interest payments on, revenue or general obligation bond issues, accruing interest, guaranteeing or purchasing insurance for local obligations, and selling acquired assets or loans.

Puposes of the Center

The purposes of the Center are to:

(1) promote strategic development activities and collaborative efforts by private and State entities to maximize the impact of Federal assistance to strengthen and enhance production and marketing of sheep or goat products in the United States;

(2) optimize the use of available human capital and resources within the sheep or goat industries;

(3) provide assistance to meet the needs of the sheep or goat industry for infrastructure development, business development, production, resource development, and market and environmental research;

(4) advance activities that empower and build the capacity of the United States sheep or goat industry to design unique responses to the special needs of the sheep or goat industries on both a regional and national basis; and

(5) adopt flexible and innovative approaches to solving the long-term needs of the United States sheep and goat industries.

Public Hearing Procedure

Interested persons may present data, information, or views, orally or in writing, on issues pertaining to the development of a strategic plan for the National Sheep Industry Improvement Center. Those desiring to make formal presentations should notify the contact person two (2) business days prior to the hearing, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments. Any person attending the hearing who does not, in advance of the hearing, request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion if time permits, at the chairperson's discretion. If more time is needed than currently scheduled, at the discretion of the chairperson, presentations will be limited in time and/or hearing time will be extended. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Authority: 7 USC 2008j, Pub.L. 104.130.

Dated: **February 28, 1997.**

Dayton J. Watkins,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 97–5748 Filed 3–7–97; 8:45 am]

BILLING CODE 3410–XY–P

Rural Utilities Service

Navajo Tribal Utility Authority; Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) has made a Finding of No Significant Impact (FONSI) with respect to the potential environmental impact related to the construction, operation and maintenance of the Burnside Junction to Coalmine 115 kV Transmission Line Project proposed by the Navajo Tribal Utility Authority (NTUA) of Fort Defiance, Arizona.

RUS has concluded that the environmental impacts from the proposed project would not be significant and that the proposed action is not a major Federal action significantly affecting the quality of the human environment. Therefore, the preparation of an environmental impact statement is not required.

FOR FURTHER INFORMATION CONTACT: Dennis E. Rankin, Environmental Protection Specialist, RUS, Engineering and Environmental Staff, Stop 1571, 1400 Independence Avenue SW, Washington, DC 20250–1571, telephone (202) 720–1784.

SUPPLEMENTARY INFORMATION: The proposed 40-mile transmission line would extend from the Coalmine Substation located near Tse Bonito, New Mexico (east of Window Rock, Arizona) to tap an existing 69 kV transmission line in the vicinity of Burnside Junction (located west of Ganado, Arizona). The transmission line will be designed and built for 115 kV operation, but will initially be operated at 69 kV. The primary structure type would be H-frame structures located on a 100-foot right-of-way.

The Bureau of Indian Affairs (BIA) and its environmental consultant prepared an environmental assessment report (EAR) reflecting the potential impacts of the proposed facilities. The BIA EAR, which includes input from Federal, State and local agencies and the public, has been adopted as RUS's Environmental Assessment (EA) for the project in accordance with 7 CFR 1794.61. RUS has concluded that the EA represents an accurate assessment of the environmental impacts of the project. The proposed project should have no impact on cultural resources, floodplains, wetlands, important farmland and federally listed or proposed for listing threatened or endangered species or their critical habitat.

Alternatives considered to the project included no action, localized generating facilities, wind and solar generation and alternative routes. RUS has considered these alternatives and concluded that the project as proposed meets the needs of NTUA to provide adequate service to the central section of the Navajo Nation.

Copies of the EA and FONSI are available for review at RUS at the address provided herein; or can be reviewed at or obtained from the offices of NTUA, P.O. Box 170, Fort Defiance, Arizona 86504, telephone (520) 729–5721, during normal business hours.

Dated: March 3, 1997.

Adam M. Golodner,

Deputy Administrator, Program Operations.

[FR Doc. 97–5850 Filed 3–7–97; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Board of Overseers of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Board of Overseers of the Malcolm Baldrige National Quality Award (MBNQA) will meet on Wednesday, April 2, 1997, from 10:30 a.m. to 4:00 p.m. The Board of Overseers is composed of nine members prominent in the field of quality management and appointed by the Secretary of Commerce. The members of the Board of Overseers will meet jointly with the members of the Judges Panel of the MBNQA. The Board will receive and then discuss reports from the Judges Panel and the National Institute of Standards and Technology (NIST) on the Award process. These reports and discussions will cover the following topics: review of roles/responsibilities of Judges and Overseers; status of the 1996/1997 Award Cycles; health care and education award progress; information transfer on winners' responsibility, application trend, and Quest for Excellence IX Conference and regional conferences.

DATES: The meeting will convene April 2, 1997, at 10:30 a.m. and adjourn at 4:00 p.m. on April 2, 1997.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building Conference Room (seating capacity 36, includes 24 participants), Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director for Quality Programs, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

Dated: March 3, 1997.

Elaine Bunten-Mines,

Director, Program Office.

[FR Doc. 97–5855 Filed 3–7–97; 8:45 am]

BILLING CODE 3510–13–M

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Judges Panel of the Malcolm Baldrige National Quality Award (MBNQA) will meet on Tuesday, April 1, 1997, from 8:30 a.m. to 5:30 p.m., and on Wednesday, April 2, 1997, from 8:30 a.m. to 10:30 a.m. The Judges Panel is composed of nine members prominent in the field of quality management and appointed by the Secretary of Commerce. The Judges

Panel will meet on April 1, 1997, to review the summary of the 1996 Award cycle, establish the 1997 Award application review cycle, review survey of former applicants, review improvements on the feedback and judging processes, and discuss future plans for the Award program. On April 2, 1997, the Panel will discuss its reports to the Board of Overseers of the MBNQA and to the National Institute of Standards and Technology. The Panel's discussions will cover the following topics: review of roles/responsibilities of Judges and Overseers; status of the 1996/1997 Award Cycles; health care and education award progress; information transfer on winners' responsibility, application trend, and Quest for Excellence IX Conference and regional conferences. The discussions on April 1, 1997, beginning at 8:30 a.m., and ending at 5:30 p.m., will be closed.

DATES: The meeting will convene April 1, 1997, at 8:30 a.m. and adjourn at 10:30 p.m. on April 2, 1997.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building Conference Room (seating capacity 36, includes 24 participants), Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT:

Dr. Harry Hertz, Director for Quality Programs, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 10, 1997, that the meeting of the Judges Panel will be closed pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by Section 5(c) of the Government in the Sunshine Act, P.L. 94–409. The meeting, which involves examination of records and discussion of Award applicant data, may be closed to the public in accordance with Section 552b(c)(4) of the Title 5, United States Code, since the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential.

Dated: March 3, 1997.

Elaine Bunten-Mines,

Director, Program Office.

[FR Doc. 97–5867 Filed 3–7–97; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[I.D. 022597D]

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold a joint meeting of its Crustaceans Plan Team and Hawaii Crustaceans Advisory Panel.

DATES: The meeting will be held on March 18 and 19, 1997, from 8:30 a.m. to 5:00 p.m., each day.

ADDRESSES: The meeting will be held at the Ilikai Hotel, Yacht Harbor Tower, Room 262, 1777 Ala Moana Blvd., Honolulu, HI; telephone: (808) 949–3811.

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1405, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The plan team and advisory panel will discuss and may make recommendations to the Council on the following agenda items:

1. Review of the Northwestern Hawaiian Island lobster fishery and stock status;
2. Estimation of annual harvest guideline, including: (a) review of model to estimate exploitable population size, (b) review of risk analysis estimation procedure, and (c) review panel recommendations;
3. Review of NMFS report, including: (a) assessment of methods and results to estimate high-grading in 1996 season, and (b) possible economic pros/cons of high-grading;
4. Review of adjustment mechanisms to correct for significant high-grading, including: (a) trap modification, (b) lower risk level to include grater uncertainty, (c) incorporate high-grading as additional component of M in model estimates, (d) use of observers to document level of high-grading, (e) other possible adjustments, and (f) statistically valid sampling and design to estimate high-grading;
5. Sampling considerations for expanding live lobster fishery;
6. Determination of Harvest Guideline for 1997 season; and
7. Other business as required.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: March 3, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–5785 Filed 3–7–97; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of a New Export Visa Arrangement for Certain Wool Textile Products Produced or Manufactured in the Slovak Republic

March 5, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing export visa requirements.

EFFECTIVE DATE: April 1, 1997.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

In an exchange of notes dated November 18, 1996 and January 31, 1997, the Governments of the United States and the Slovak Republic agreed to establish a new Export Visa Arrangement for certain wool textile products, produced or manufactured in the Slovak Republic and exported on and after April 1, 1997. Goods exported during the period April 1, 1997 through April 30, 1997 shall not be denied entry for lack of a visa. All goods exported after April 30, 1997 must be accompanied by an appropriate export visa.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to prohibit entry of certain textile products, produced or manufactured in the Slovak Republic and exported to the United States for which the Government of the Slovak Republic has not issued an appropriate export visa.

A facsimile of the export visa stamp is on file at the U.S. Department of Commerce in Room 3100.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996).

Interested persons are advised to take all necessary steps to ensure that textile products that are entered into the United States for consumption, or withdrawn from warehouse for consumption, will meet the visa requirements set forth in the letter published below to the Commissioner of Customs.

Dated: March 5, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 5, 1997.

Commissioner of Customs, *Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act, the Uruguay Round Agreement on Textiles and Clothing (ATC), and the Export Visa Arrangement, effected by exchange of notes dated November 18, 1996 and January 31, 1997 between the Governments of the United States and the Slovak Republic; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 1, 1997, entry into the Customs territory of the United States (i.e., the 50 states, the District of Columbia and the Commonwealth of Puerto Rico) for consumption and withdrawal from warehouse for consumption of wool textile products in Categories 410, 433, 435 and 443, produced or manufactured in Slovakia and exported on and after April 1, 1997 for which the Government of the Slovak Republic has not issued an appropriate export visa fully described below. Should merged categories or part categories become subject to import quota the merged or part categories shall be automatically included in the coverage of this arrangement. Merchandise in the merged or part category(s) exported on or after the date the merged or part category(s) becomes subject to import quotas shall require a visa. Goods exported during the period April 1, 1997 through April 30, 1997 shall not be denied entry for lack of an export visa.

A visa must accompany each commercial shipment of the aforementioned textile products. A circular stamped marking in blue ink will appear on the front of the original commercial invoice or successor document. The original visa shall not be stamped on duplicate copies of the invoice. The original invoice with the original visa stamp will be required to enter the shipment into the United States. Duplicates of the invoice and/or visa may not be used for this purpose.

Each visa stamp shall include the following information:

1. The visa number. The visa number shall be in the standard nine digit letter format, beginning with one numeric digit for the last digit of the year of export, followed by the two character alpha country code specified by the International Organization for Standardization (ISO) (the code for Slovakia is "SK"), and a six digit numerical serial number identifying the shipment; e.g., 7SK123456.
2. The date of issuance. The date of issuance shall be the day, month and year on which the visa was issued.
3. The original signature of the issuing official and the printed name of the issuing official of the Government of the Slovak Republic.
4. The correct category(s), merged category(s), part category(s), quantity(s) and unit(s) of quantity in the shipment as set forth in the U.S. Department of Commerce Correlation and in the Harmonized Tariff Schedule of the United States, annotated or successor documents shall be reported in the spaces provided within the visa stamp (e.g., "Cat. 340–510 DOZ").

Quantities must be stated in whole numbers. Decimals or fractions will not be accepted. Merged category quota merchandise may be accompanied by either the appropriate merged category visa or the correct category visa corresponding to the actual shipment (e.g., Categories 347/348 may be visaed as 347/348 or if the shipment consists solely of 347 merchandise, the shipment may be visaed as "Cat. 347," but not as "Cat. 348."). If, however, a merged quota category such as 340/640 has a quota sublimit on Category 340, then there must be a "Category 340" visa for the shipment if it includes Category 340 merchandise.

U.S. Customs shall not permit entry if the shipment does not have a visa, or if the visa number, date of issuance, signature, printed name of the signer, category, quantity or units of quantity are missing, incorrect or illegible, or have been crossed out or altered in any way. If the quantity indicated on the visa is less than that of the shipment, entry shall not be permitted. If the quantity indicated on the visa is more than that of the shipment, entry shall be permitted and only the amount entered shall be charged to any applicable quota.

The complete name and address of a company actually involved in the manufacturing process of the textile product covered by the visa shall be provided on the textile visa document.

If the visa is not acceptable then a new correct visa or a visa waiver must be presented to the U.S. Customs Service before any portion of the shipment will be released. A visa waiver may be issued by the U.S. Department of Commerce at the request of the Embassy in Washington for the Government of Slovakia. The waiver, if used, only waives the requirement to present a visa with the shipment. It does not waive the quota requirements. Visa waivers will only be issued for classification purposes or for one time special purpose shipments that are not part of an ongoing commercial enterprise.

If the visaed invoice is deficient, the U.S. Customs Service will not return the original document after entry, but will provide a certified copy of that visaed invoice for use in obtaining a new correct original visaed invoice, or a visa waiver.

If import quotas are in force, U.S. Customs Service shall charge only the actual quantity in the shipment to the correct category limit. If a shipment from Slovakia has been allowed entry into the commerce of the United States with either an incorrect visa or no visa, and redelivery is requested but cannot be made, the shipment will be charged to the correct category limit whether or not a replacement visa or waiver is provided.

Merchandise imported for the personal use of the importer and not for resale, regardless of value, and properly marked commercial sample shipments valued at U.S.$250 or less do not require an export visa for entry and shall not be charged to agreement levels, if applicable.

A facsimile of the visa stamp is enclosed.

The actions taken concerning the Government of the Slovak Republic with respect to imports of textiles and textile products in the foregoing categories have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1). This letter will be published in the **Federal Register**.

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–5863 Filed 3–7–97; 8:45 am]

BILLING CODE 3510–DR–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Collection: Comment Request

March 4, 1997.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. § 3508(c)(2)(A)). This program helps to ensure that requested data can be provided in the

desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed. Currently, the Corporation for National and Community Service is soliciting comments concerning the forms and instructions to be included in its proposed applications entitled: The 1998 Application Guidelines for Learn and Serve America: Higher Education; The 1998 Application Guidelines for School- and Community-Based Programs; and the 1998 Application Guidelines for AmeriCorps National, State and Indian Tribes and U.S. Territories. Copies of the information collection requests (forms and instructions) can be obtained by contacting the office listed below in the address section of this notice.

DATES: Written comments must be submitted to the office listed in the addresses section on or before May 15, 1997.

The Corporation for National and Community Service is particularly interested in comments which:

Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;

Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

Enhance the quality, utility and clarity of the information to be collected; and

Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Send comments to Margaret Rosenberry, Corporation for National and Community Service, 1201 New York Ave., NW., Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: Jeffrey Gale, (202) 606–5000, ext. 188.

SUPPLEMENTARY INFORMATION:

Part I

I. Background

The 1998 Application Guidelines for Learn and Serve America, Higher Education provide the background, requirements and instructions that potential applicants need to apply to the Corporation for grants to operate Learn and Serve America service-learning programs for college-age youth.

II. Current Action

The Corporation for National and Community Service seeks public comment on the forms, the instructions for the forms, and the instructions for the narrative portions of these application guidelines.

Type of Review: New.
Agency: Corporation for National and Community Service.
Title: The 1998 Application Guidelines for Learn and Serve America, Higher Education.
OMB Number: None.
Agency Number: None.
Affected Public: Eligible applicants to the Corporation for grant funds.
Total Respondents: 400.
Frequency: Once per year.
Average Time Per Response: six (6) hours.
Estimated Total Burden Hours: 2400 hours.
Total Burden Cost (capital/startup): 0.
Total Burden Cost (operating/maintenance): 0.

Part II

I. Background

The 1998 Application Guidelines for School- and Community-Based Programs provide the background, requirements and instructions that potential applicants need to apply to the Corporation for grants to operate Learn and Serve America service-learning programs for school-age youth.

II. Current Action

The Corporation for National and Community Service seeks public comment on the forms, the instructions for the forms, and the instructions for the narrative portions of these application guidelines.

Type of Review: New.
Agency: Corporation for National and Community Service.
Title: The 1998 Application Guidelines for School- and Community Based Programs.
OMB Number: None.
Agency Number: None.
Affected Public: Potential applicants to the Corporation for grant funds.
Total Respondents: 225.
Frequency: Once per year.
Average Time Per Response: Ten (10) hours.
Estimated Total Burden Hours: 2250 hours.
Total Burden Cost (capital/startup): 0.
Total Burden Cost (operating/maintenance): 0.

Part III

I. Background

The 1998 Application Guidelines for AmeriCorps National, State, Indian Tribes and U.S. Territories provide the background, requirements and instructions that potential applicants need to complete an application to the Corporation for funds to operate AmeriCorps programs.

II. Current Action

The Corporation for National and Community Service seeks public comment on the forms, the instructions for the forms, and the instructions for the narrative portions of these application guidelines.

Type of Review: New.
Agency: Corporation for National and Community Service.
Title: The 1998 Application Guidelines for AmeriCorps National, State and Indian Tribes and U.S. Territories.
OMB Number: None.
Agency Number: None.
Affected Public: Eligible applications to the Corporation for funding.
Total Respondents: 2000.
Frequency: Once per year.
Average Time Per Response: Ten (10) hours.
Estimated Total Burden Hours: 20,000.
Total Burden Cost (capital/startup): 0.
Total Burden Cost (operating/maintenance): 0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 4, 1997.

Magaret Rosenberry,

Planning and Program Development Director.

[FR Doc. 97–5847 Filed 3–7–97; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and Associated Form: Pentagon Reservation Parking Permit Application, DD Form 1199, OMB Number 0704—(to be added).

Type of Request: New Collection.
Number of Respondents: 20,000.
Responses Per Respondent: 1.
Annual Responses: 20,000.
Average Burden Per Response: 15 minutes.
Annual Burden Hours: 5,000.
Needs and Uses: This collection of information is necessary for the administration and management of the Pentagon's Parking Control Program, and is designed to meet the requirements of the Federal Government mandated car pool program. The information collected hereby, will enable parking management personnel to validate parking requirements and monitor authorized parking on the Pentagon reservation.

Affected Public: Individuals or households.
Frequency: On occasion and annually.
Respondent's Obligation: Required to obtain or retain benefits.
OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: March 5, 1997.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–5871 Filed 3–7–97; 8:45 am]

BILLING CODE 5000–04–M

Strategic Environmental Research and Development Program; Scientific Advisory Board Meeting

ACTION: Modification of notice published on February 14, 1997 (62 FR 6954).

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee meeting.

DATE OF MEETING: April 22, 1997 from 0830 to approximately 1700 and April 23, 1997 from 0800 to approximately 1600.

PLACE: Crown Plaza Hotel, 15 West Sixth Street, Cincinnati, OH.

Matters to be Considered: Research and Development proposals and continuing projects requesting Strategic Environmental Research and Development Program funds in excess of $1M will be reviewed.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Kay, 8000 Westpark Drive, Suite 400, McLean, VA 22102, or telephone 703 506–1400 extension 552.

Dated: March 5, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–5872 Filed 3–7–97; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Supplemental Environmental Assessment and Finding of no Significant Impact for the Relocation of the 1111th Signal Battalion, The 1108th Signal Brigade, Information Systems Engineering Command-Conus Elements, and Related Units (MP Company) and Discretionary Moves of Technical Applications Office and Information Mission Area BRAC Office From Fort Ritchie, Maryland, to Fort Detrick, Maryland

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: In accordance with Public Law 101–510, the Defense Base Closure and Realignment Act of 1990, the Defense Base Closure and Realignment Commission recommended the relocation of the 1111th Signal Battalion, the 1108th Signal Brigade, a portion of the Information Systems Engineering Command-CONUS, and associated Base Operations support personnel from Fort Ritchie, Maryland, to Fort Detrick, Maryland. The Army will also relocate the Technical Applications Office (TAO) and the Information Mission Area Base Realignment and Closure Office (IMA BRAC Office) to Fort Detrick, Maryland, pursuant to this recommendation.

An Environmental Assessment (EA) was prepared in June 1996 resulting in a Finding of No Significant Impact (FNSI). Since that EA was prepared, the number of personnel affected by the realignment has changed slightly for a net increase of 17 personnel (1,164 total). Additionally, several new construction projects have been added including a military police company operations building; a separate storage facility as an addition to the administration building described in the June 1996 EA; a physical fitness center; and a proposed dining facility. Also, renovations to existing facilities will accommodate the TAO secure administration space and administrative space for the IMA BRACO. These changes resulted in the need for this supplemental EA.

The supplemental EA identified no significant adverse environmental impacts. There is a potential for only minor or insignificant impacts in the areas of noise, water quality, stormwater, geology, soil, asbestos management, radon management, and visual and aesthetic values. Minor adverse impacts will be avoided by implementing best management practices during construction, such as a stormwater management plan and a soil erosion control plan and by restricting construction to the hours of 7 a.m. to 7 p.m. Potential asbestos, lead-based paint, or radon impacts will be mitigated by conducting the proper testing before renovation (for asbestos and lead-based paint) or after construction (for radon) and taking mitigation actions as necessary. Geology and soil impacts will be avoided by conducting geotechnical studies before site development. Visual impacts will be avoided by grading and landscaping the construction sites that may be visible from the Nallin Farm complex and by turning off the lights on the physical fitness center playing fields by 10 p.m. Therefore, based on the analysis found in the supplemental EA, which is hereby incorporated into the Finding of No Significant Impact (FNSI), it is determined the implementation of the proposed action will not have significant individual or cumulative impacts on the quality of the natural or the human environment. Because no significant environmental impacts would result from implementation of the proposed action, an Environmental Impact Statement is not required and will not be prepared.

DATES: Public comments will be accepted on or before April 9, 1997.

ADDRESSES: Copies of the supplemental EA/FNSI may be obtained by writing to, and any inquiries and comments concerning the same should be addressed to, the Commander, U.S. Army Corps of Engineers, Baltimore District, ATTN: CENAB–PL–EM (Ms. Elizabeth Quarrick), P.O. Box 1715, Baltimore, Maryland 21203–1715, or by calling (410) 962–2886, or by sending a telefax to 410–962–4698. Copies of the supplemental EA/FNSI will also be available at the Fort Detrick Post Library

(Building 501) and the Fort Detrick U.S. Army Garrison Headquarters Public Affairs Office (Building 810). There will be a 30-day comment period on the supplemental EA/FNSI before the Army proceeds with the proposed action.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Quarrick at 410–962–2886.

Dated: March 4, 1997.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA (I,L&E).

[FR Doc. 97–5862 Filed 3–7–97; 8:45 am]

BILLING CODE 3710–08–M

Department of the Army, Corps of Engineers

Transfer of Jurisdiction of a Portion of Joliet Army Ammunition Plant to the Department of Agriculture for the Midewin National Tallgrass Prairie

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice.

SUMMARY: On November 6, 1996, in accordance with Pub. L. 104–106, Title XXIX, Subtitle A, entitled "Illinois Land Conservation Act of 1995", the Department of the Army signed a Secretariat Memorandum to transfer approximately 15,080.53 acres of land and improvements at Joliet Army Ammunition Plant, Illinois to the Department of Agriculture for use by the Forest Service as the Midewin National Tallgrass Prairie. The purpose of this notice is to effect that transfer pursuant to the provisions of Sec. 2912 (e)(2) of Pub. L. 104–106.

This is a partial transfer of the entire acreage contemplated by the statute. Additional transfers will be made in the future. A map dated December 4, 1996 and a legal description dated December 3, 1996 of the property which is the subject of the subject transfer, are on file with the U.S. Army Engineer District, Corps of Engineers, Louisville, Kentucky and the Office of the Regional Forester, USDA, Forest Service.

FOR FURTHER INFORMATION CONTACT: Mr. Charles E. Woods, 502–625–7104.

ADDRESSES: Documents are on file at locations:

1. U.S. Army Engineer District, Louisville, Corps of Engineers, P.O. Box 59, Louisville, Kentucky 40201–9889.
2. Office of the Regional Forester, USDA, Forest Service 310 W. Wisconsin Avenue, Milwaukee, Wisconsin 53203.

SUPPLEMENTARY INFORMATION: None.

Michael G. Barter,

Chief, Real Estate Division.

[FR Doc. 97–5869 Filed 3–7–97; 8:45 am]

BILLING CODE 3710–JB–M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Columbia River System Operation Review on Selecting an Operating Strategy for the Federal Columbia River Power System (FCRPS)

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of Availability of Record of Decision (ROD).

SUMMARY: This notice announces the availability of the ROD to select a system operating strategy for the FCRPS, as analyzed in the Columbia River System Operation Review (SOR) Environmental Impact Statement (EIS). To meet the need for a review of the multiple-purpose management of the FCRPS, four proposed actions were considered in the SOR EIS. This ROD applies solely to the decision BPA is making on the first of the four actions, selection of a system operating strategy. In response to the need to develop and implement a coordinated system operating strategy for the FCRPS, BPA has decided to: (1) Support recovery of fish species listed under the Endangered Species Act (ESA) by storing water during the fall and winter to meet spring and summer flow targets; (2) protect other resources by managing detrimental effects caused by operations for ESA species by establishing minimum summer reservoir levels, providing public safety through flood protection, and other actions; and (3) provide for reasonable power generation.

ADDRESSES: Copies of the ROD and EIS may be obtained by calling BPA's toll-free document request line: 1–800–622–4520.

FOR FURTHER INFORMATION CONTACT: Philip Thor, SOR Manager, Bonneville Power Administration, P.O. Box 3621—PGF, Portland, Oregon, 97208–3621, phone number (503) 230–4235.

Issued in Portland, Oregon, on February 21, 1997.

Randall W. Hardy,

Administrator and Chief Executive Officer.

[FR Doc. 97–5829 Filed 3–7–97; 8:45 am]

BILLING CODE 6450–01–P

Office of Energy Research

Energy Research Financial Assistance Program Notice 97–08: Innovations in Fusion Energy Confinement Systems

AGENCY: Office of Energy Research, U.S. Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Fusion Energy Sciences (OFES) of the Office of Energy Research, U.S. Department of Energy (DOE) announces its interest in receiving grant applications for innovative experiments in fusion energy confinement systems. Organizations with research projects funded under previous Notice 95–10 which are now due for continuation funding need not submit; however, those seeking renewal funding should submit a renewal application under this Notice. Successful applications will be funded early in FY 1998.

The Office of Fusion Energy Sciences is interested in applications for innovative experimental research that has the possibility of leading to improved fusion energy power plants (this includes tokamak based power plants with qualitatively improved performance). The research should be aimed at experimentally elucidating the physics principles involved. Research projects are sought which are unique, first of a kind and which provide new scientific insights. Although the main thrust of this initiative is experimental, consideration will be given to applications which are directed at scientific assessment of new concepts which are not ready for experimental investigation. Applications for research on existing large tokamaks, separate theory investigations, or initiatives in Inertial Fusion Energy should not be submitted in response to this notice. Collaborative applications submitted from different institutions which are directed at a single proposed experiment will be "bundled" and reviewed collectively.

DATES: To permit timely consideration for awards in Fiscal Year 1998 , applications submitted in response to this notice must be received no later than 4:30 p.m., May 15, 1997. No electronic submissions of formal applications will be accepted.

ADDRESSES: Completed formal applications referencing Program Notice 97–08 should be forwarded to: U.S. Department of Energy, Office of Energy Research, Grants and Contracts Division, ER–64, 19901 Germantown Road, Germantown, Maryland 20874–1290, ATTN: Program Notice 97–08.

The above address must also be used when submitting applications by U.S. Postal Service Express, any commercial mail delivery service, or when hand carried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Blanken, Science Division, ER–55, Office of Fusion Energy Sciences, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, Telephone: (301) 903–3306 or 3287, or by Internet address, ronald.blanken@mailgw.er.doe.gov.

SUPPLEMENTARY INFORMATION: In selecting applications for funding, the DOE Office of Fusion Energy Sciences will give priority to applications that can produce experimental results within three to five years after grant initiation. Theoretical research will be accepted for consideration under this Notice when "bundled" with and in support of an experimental application. The detailed description of the proposed project should contain the following items: (1) A detailed experimental research plan, (2) The specific results or deliverable expected at the end of the project period, (3) Goal of the experiment, (4) Synopsis of the experimental program plan, (5) Adequacy of the facilities and budget, (6) Discussion of why this research would have an important impact on the prospects for fusion energy power plants, and (7) Discussion of how the experiment would elucidate the physics principles of the innovation.

Applications concerned with scientific assessment of new concepts which are not ready for experimental investigation should have a well defined scope and a duration of no more than two years. These applications will be considered non-renewable. The product of such assessment would be a clear scientific description of the concept and its operation, its physics and engineering basis, critical analysis of major difficulties to be overcome in developing the concept as a net producer of energy through the fusion process, and an analysis of what would be achieved by moving to experimental research.

It is anticipated that up to $3,000,000 in FY 1998 will be available to start new projects from applications received in response to this Notice. The number of awards and range of funding will depend on the number of applications received and selected for award. Future year funding is anticipated to be greater but will depend on the nature of the applications, suitable experimental progress and the availability of funds. Because of the total amount of anticipated available funding and because of the intent to have a broadly based program, experimental applications with an annual requirement in any year in excess of $1,500,000 are unlikely to be funded. The cost-effectiveness of the application will be considered when comparing applications with differing funding requirements. Applications for scientific assessment of new concepts will be limited to a maximum of $150,000 in any year. Applications requiring annual funding as low as $50,000 are welcome and encouraged. To enable all reviewers to read all applications, the application must be limited to a maximum of twenty (20) pages (including text and figures) plus not more than one page each of biographical information and publications of the principal investigator, plus any additional forms required as a part of the standard grant application. An original and seven copies of each application must be submitted. Due to the anticipated number of reviewers, it would be helpful for each applicant to submit an additional seven copies of each application. In lieu of the seven additional copies, applicants may provide a 3.5-inch diskette containing the application in Portable Document Format (PDF). The label on the diskette must clearly identify the institution, principal investigator, and title of the application. (If the applicant elects to submit a diskette, an original and seven copies of the application must still be submitted.) Applications will be subjected to formal merit review and will be evaluated against the following criteria, which are listed in descending order of importance as set forth in 10 CFR Part 605:

1. Scientific and/or technical merit of the project;
2. Appropriateness of the proposed method or approach;
3. Competency of the applicant's personnel and adequacy of the proposed resources; and
4. Reasonableness and appropriateness of the proposed budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and the agency's programmatic needs. General information about development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures may be found in the Application Guide for the Office of Energy Research Financial Assistance Program and 10 CFR Part 605. Electronic access to the Application Guide is possible via the Internet using the following Web site address: http://www.er.doe.gov/ production/grants/grants.html.

The Catalog of Federal Domestic Assistance number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, DC, on February 27, 1997.

John Rodney Clark,

Associate Director for Resource Management, Office of Energy Research.

[FR Doc. 97–5830 Filed 3–7–97; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. RP97–63–002]

Notice of Tariff Compliance Filing

March 4, 1997.

Take notice that on February 28, 1997, Colorado Interstate Gas Company (CIG), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed in Appendix A to the filing, to be effective May 1, 1997.

CIG states the tariff sheets are filed in compliance with Order No. 587, and the order issued January 16, 1997, in Docket No. RP97–63–000, as well as Section 154.203 of the Commission's regulations. CIG further states the tariff sheets filed are the same as the pro forma tariff sheets filed by CIG on November 1, 1996 to comply with Order No. 487 except (1) the tariff sheets have been revised to reflect tariff filings made between the November 1, 1996 filing and the date of this filing, (2) changes have been made to comply with the requirements of the order issued January 16, 1997 in Docket No. RP97–63–000 and, (3) as required in Order No. 587–B issued January 30, 1997, CIG is incorporating by reference into its tariff the Electronic Delivery Mechanism (EDM) standards adopted in that rule.

CIG has further requested any waivers necessary to change its Gas Day to the GISB Standard effective April 7, 1997.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protests must be filed on or before March 21, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are

available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5757 Filed 3–7–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–8–23–000]

Eastern Shore Natural Gas Company; Notice of Tariff Filing

March 4, 1997.

Take notice that on February 27, 1997, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, certain revised tariff sheets, with a proposed effective date of April 1, 1997.

Eastern Shore states that the purpose of the filing is to track the cost of storage service purchased from Columbia Gas Transmission Corporation under their Rate Schedules FSS and SST, the costs of which are included in the rates payable under Eastern Shore's Rate Schedules CWS and CFSS, respectively.

Eastern Shore states that copies of the filing are being mailed to affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5761 Filed 3–7–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–366–004]

Florida Gas Transmission Company; Notice of Filing of Revised Rates and Motion To Place Suspended Rates, As Revised, and Suspended Tariff Sheets Into Effect

Take notice that on February 27, 1997, the Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 the revised tariff sheets identified on Attachment A hereto.

FGT states that pursuant to Section 4(e) of the Natural Gas Act (NGA) and Sections 154.7, 154.201, et seq., and 154.301, et seq. of the Regulations of the Federal Regulatory Commission (Commission), it filed on August 30, 1996 in the instant docket, revised tariff sheets to effectuate increases in rates and changes in the terms and conditions applicable to FGT's jurisdictional services, proposed to become effective on October 1, 1996.

FGT states that by order dated September 30, 1996 (September 30 Order), the Commission accepted the revised tariff sheets for filing and suspended them to become effective on March 1, 1997, subject to refund and subject to conditions stated in the September 30 Order. Ordering Paragraph (A) of the September 30 Order directed FGT to refile tariff sheets to reflect the correct Annual Charge Adjustment (ACA) and the elimination of costs of facilities not in service by the end of the test period, at the time FGT filed its motion to place the suspended rates into effect.

FGT also states that on December 10, 1996, FGT and its customers filed a settlement in the instant docket, which resolved certain operational issues (Operational Settlement). The Operational Settlement was approved by the Commission order dated January 16, 1997 (January 16 Order). The Operational Settlement provided that FGT would withdraw its request to acquire third party storage capacity and remove the costs associated with such storage from its proposed rates.

FGT states that the rates contained on the tariff sheets filed herewith reflect the elimination of the costs of facilities not in service by the end of the test period and the removal of the costs associated with FTS's proposed acquisitions of third party storage capacity. FGT has moved that such rates be placed in effect on March 1, 1997.

In addition, FGT states that it is moving into effect the tariff sheets listed on Attachment B hereto which have not been revised from FGT's filing on August 30, 1996.

Any person desiring to protest said filing should file a motion protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before March 11, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public Reference Room.

Lois D. Cashell,

Secretary.

Attachment A

2nd Substitute Eighteenth Revised Sheet No. 8A
2nd Substitute Eleventh Revised Sheet No. 8A.01
2nd Substitute Tenth Revised Sheet No. 8A.02
2nd Substitute 16th Revised Sheet No. 8B
2nd Substitute Ninth Revised Sheet No. 8B.01

Attachment B

Third Revised VOlume No. 1

First Revised Sheet No. 35
Third Revised Sheet No. 37
Third Revised Sheet No. 39
Fourth Revised Sheet No. 46 [1]
Second Revised Sheet No. 181
Fifth Revised Sheet No. 183
First Revised Sheet No. 197D [1]
First Revised Sheet No. 482
First Revised Sheet No. 484
Third Revised Sheet No. 486
First Revised Sheet No. 488
Second Revised Sheet No. 490
First Revised Sheet No. 492
First Revised Sheet No. 511
First Revised Sheet No. 513
Third Revised Sheet No. 515
First Revised Sheet No. 517
Second Revised Sheet No. 519
First Revised Sheet No. 521
Third Revised Sheet No. 36
First Revised Sheet No. 38
Third Revised Sheet No. 40
First Revised Sheet No. 149D
Fourth Revised Sheet No. 182
Third Revised Sheet No. 184
First Revised Sheet No. 481
Second Revised Sheet No. 483
Second Revised Sheet No. 485
First Revised Sheet No. 487
First Revised Sheet No. 489
First Revised Sheet No. 491
First Revised Sheet No. 510
Second Revised Sheet No. 512
Second Revised Sheet No. 514
First Revised Sheet No. 516
First Revised Sheet No. 518
First Revised Sheet No. 520

Original Volume No. 3

Substitute Tenth Revised Sheet No. 181
Substitute First Revised Sheet No. 182
Substitute Tenth Revised Sheet No. 395
Substitute Second Revised Sheet No. 452
Substitute Tenth Revised Sheet No. 453
Substitute Seventh Revised Sheet No. 486
Substitute Seventh Revised Sheet No. 549
Substitute Seventh Revised Sheet No. 584

[1] As to the elimination of revenue crediting; the changes to these sheets related to Western Division provisions were approved by Commission Order issued January 16, 1997 in Docket No. RP96–366–002.

[FR Doc. 97–5753 Filed 3–7–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–21–002]

Florida Gas Transmission Company; Notice of Compliance Filing

March 4, 1997.

Take notice that on February 28, 1997, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 the tariff sheets referenced on Attachment A to the filing, with an effective date of April 1, 1997.

FGT states that the instant filing is to (i) make effective the changes to the General Terms and Conditions ("GTC") of FGT's Tariff which are necessary to implement Gas Industry Standards Board ("GISB") standards which have been previously approved on a pro forma basis in Docket Nos. RP97–21–000 and RP97–21–001, (ii) incorporate the GISB data dictionary standards not previously incorporated by FGT as required by the February 12 Order, and (iii) incorporate the GISB Electronic Delivery Mechanism ("EDM") standards adopted by the Commission in Order No. 587–B, all as required by the Commission's February 12, 1997 Order in Docket No. RP97–21–001.

In addition, in compliance with Order No. 587–B, FGT states that it is filing a complete table showing for each GISB standard adopted by the Commission in Order Nos. 587 and 587–B, the complying tariff sheet number.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5755 Filed 3–7–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER97–1315–000]

HorizEn Energy Corp.; Notice of Issuance of Order

March 5, 1997.

HorizEn Energy Corp. (HorizEn) submitted for filing a rate schedule under which HorizEn will engage in wholesale electric power and energy transactions as a marketer. HorizEn also requested waiver of various Commission regulations. In particular, HorizEn requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by HorizEn.

On February 24, 1997, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by HorizEn should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, HorizEn is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance of assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of HorizEn's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is March 26, 1997. Copies of the full text of the order are available from the Commission's Rules Reference Branch, 888 First Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5826 Filed 3–7–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–257–000]

Koch Gateway Pipeline Company; Notice of Application

March 4, 1997.

Take notice that on February 21, 1997, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77521–1478, filed in Docket No. CP97–257–000 pursuant to Section 7(b) of the Natural Gas Act and Section 157.18 of the Commission's Regulations for permission and approval to abandon approximately 893 feet of 10-inch pipeline and 95 feet of 14-inch pipeline, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Koch Gateway seeks to abandon by removal approximately 150 feet of 10-inch pipeline and 2 feet of 14-inch pipeline, and abandon in place approximately 743 feet of 10-inch pipeline and 93 feet of 14-inch pipeline. The pipeline proposed for abandonment is the northernmost tube of three tubes which run parallel and are known as the Sabine River Crossing on Koch Gateway's Call Junction Line, in Beauregard Parish, Louisiana and Newton County, Texas. Koch Gateway states that the northernmost tube is damaged and out of service. Further, Koch Gateway says that a 150 foot segment of the pipeline which would be abandoned is exposed on the east side of the river.

Any person desiring to be heard or to make any protest with reference to said application should, on or before March 25, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the

Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval of abandonment is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedures herein provided for, unless otherwise advised, it will be unnecessary for Koch Gateway to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5749 Filed 3–7–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–64–002]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

March 4, 1997.

Take notice that on February 28, 1997, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, certain tariff sheets to be effective May 1, 1997.

Natural states that the purpose of the filing is to: (1) Reflect changes in its tariff to conform to the standards adopted by the Gas Industry Standards Board and incorporated into the Federal Energy Regulatory Commission's (Commission) Regulations by Order Nos. 587 and 587–B; and (2) comply with the Commission's Order issued December 23, 1996, in Docket No. RP97–64–000.

Natural states that copies of the filing are being mailed to its jurisdictional customers, all parties set out on the official service list at Docket No. RP97–64–000, and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before March 21, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5758 Filed 3–7–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–270–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

March 4, 1997.

Take notice that on February 26, 1997, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68103, filed in Docket No. CP97–270–000 a request pursuant to Sections 157.205 and 157.216 (b) of the Commission's Regulations and Northern's blanket certificate issued at Docket No. CP82–401–000 for authorization to abandon the Jefferson #3 TBS in Union County, South Dakota, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern states that they have been advised by the local distribution company that this station is no longer being used.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5750 Filed 3–7–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–3–28–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

March 4, 1997.

Take notice that on February 28, 1997, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective April 1, 1997.

Panhandle states that this filing is made in accordance with Section 24 (Fuel Reimbursement Adjustment) of the General Terms and Conditions in Panhandle's FERC Gas Tariff, First Revised Volume No. 1. The revised tariff sheets filed herewith reflect the following changes to the Fuel Reimbursement Percentages:

(1) No change in the Gathering Fuel Reimbursement Percentage;

(2) a 0.03% increase in the Field Zone Fuel Reimbursement Percentage;

(3) a 0.08% increase in the Market Zone Fuel Reimbursement Percentage;

(4) No change in the Field Area Storage Reimbursement Percentages; and

(5) No change in the Market Area Storage Fuel Reimbursement Percentages.

Panhandle states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5758 Filed 3–7–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER97–1064–000]

Power Access Management, Notice of Issuance of Order

March 5, 1997.

Power Access Management (PAM) submitted for filing a rate schedule under which PAM will engage in wholesale electric power and energy transactions as a marketer. PAM also requested waiver of various Commission regulations. In particular, PAM requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by PAM.

On February 19, 1997, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by PAM should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, PAM is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of PAM's issuances of securities or assumptions of liability.

Notice is hereby given that he deadline for filing motions to intervene or protests, as set forth above, is March 21, 1997. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5824 Filed 3–7–97; 8:45 am]

BILLING CODE 6717–01–N

[Docket No. ER97–1117–000]

TC Power Solutions; Notice of Issuance of Order

March 5, 1997.

TC Power Solutions (TC Power) submitted for filing a rate schedule under which TC Power will engage in wholesale electric power and energy transactions as a marketer. TC Power also requested waiver of various Commission regulations. In particular, TC Power requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by TC Power.

On February 18, 1997, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by TC Power should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, TC Power is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of TC Power's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is March 20, 1997. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5825 Filed 3–7–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–338–002]

Texas Eastern Transmission Corporation; Notice of Compliance Filing

March 4, 1997.

Take notice that on February 28, 1997, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets to become effective March 1, 1997:

Substitute Original Sheet No. 606
Substitute Original Sheet No. 607
Original Sheet No. 608
Sheet Nos. 609–615

Texas Eastern asserts that the purpose of this filing is to comply with the Commission's order issued February 18, 1997 in Docket Nos. RP96–338–000 and RP96–338–001.

Texas Eastern states that in compliance with the February 18 Order, this filing reflects in the General Terms and Conditions (GT&C) of its FERC Gas Tariff (1) the pro forma revisions that were submitted in its November 1, 1996 initial comments in this proceeding and (2) a provision stating that "MDDO" and/or "MDRO" capacity is not considered to be "Section 14.9 Firm Capacity" and is therefore not subject to potential reduction pursuant to GT&C Section 14.10.

Texas Eastern states that copies of the filing were served on firm customers of Texas Eastern, interested state commissions and parties to the proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5752 Filed 3–7–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP95–197–026 AND RP96–211–009]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

March 4, 1997.

Take notice that on February 26, 1997, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed in Appendix A to that filing, to become effective January 3, 1997.

Transco asserts that the purpose of this filing is to comply with the Commission's "Order on Compliance Filing," issued on January 31, 1997, in Docket Nos. RP95–197–021 and RP96–211–006 which directed Transco to file

revised tariff sheets within 30 days from the date of the order to modify certain tariff provisions governing exemptions from pro rata capacity allocation for shippers in emergency curtailment situations.

Transco states that copies of the filing have been served upon its affected customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, Washington, DC 20426, in accordance with Section 385.211 of the Commission's rules and regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5751 Filed 3–7–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–18–003]

Transwestern Pipeline Company; Notice of Compliance Filing

March 4, 1997.

Take notice that on February 28, 1997, Transwestern Pipeline Company (Transwestern), tendered for filing to become part of Transwestern's FERC Gas Tariff the following tariff sheets proposed to become effective on April 1, 1997:

Second Revised Volume No. 1

Third Revised Sheet No. 49
Fourth Revised Sheet No. 58
Second Revised Sheet No. 61
Second Revised Sheet No. 62
Seventh Revised Sheet No. 63
Second Revised Sheet No. 63A
Seventh Revised Sheet No. 64
Second Revised Sheet No. 71
Twelfth Revised Sheet No. 80
Sixth Revised Sheet No. 80A
Seventh Revised Sheet No. 81A
First Revised Sheet No. 81E
Second Revised Sheet No. 95
Fifth Revised Sheet No. 95A
Fourth Revised Sheet No. 95B
Second Revised Sheet No. 95B.1
Sixth Revised Sheet No. 95C
Fifth Revised Sheet No. 95D
Fifth Revised Sheet No. 95E
Fifth Revised Sheet No. 95F
Fourth Revised Sheet No. 95G
Fourth Revised Sheet No. 95H
Second Revised Sheet No. 95I
Fourth Revised Sheet No. 95K
Third Revised Sheet No. 95L
Third Revised Sheet No. 95M–95P

Transwestern states that the instant filing is to (i) make effective changes to the General Terms and Conditions of Transwestern's tariff which are necessary to implement Gas Industry Standards Board ("GISB") standards which have been previously approved by the Commission on a pro forma basis in Transwestern's compliance proceeding in Docket Nos. RP97–18–000 et al., filed on October 1, 1996 and December 16, 1996, (ii) incorporate the requirements of Order No. 587–B, issued January 30, 1997 in Docket No. RM96–1–003, and (iii) include references to the GISB definitions, datasets and standards not previously incorporated by Transwestern, all as required by the February 14 Order.

Transwestern states that copies of the filing were served upon Transwestern's customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestant a party to the proceeding. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5754 Filed 3–7–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–4–30–000]

Trunkline Gas Company; Notice of Proposed Changes in FERC Gas Tariff

March 4, 1997.

Take notice that on February 28, 1997, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to become effective April 1, 1997:

Twentieth Revised Sheet No. 6
Nineteenth Revised Sheet No. 7
Twentieth Revised Sheet No. 8
Twentieth Revised Sheet No. 9
Second Revised Sheet No. 9A
Nineteenth Revised Sheet No. 10
Fifth Revised Sheet No. 10A

Trunkline states that this filing is being made in accordance with Section 22 (Fuel Reimbursement Adjustment) of Trunkline's FERC Gas Tariff, First Revised Volume No. 1. The revised tariff sheets reflect: a (0.14)% decrease (Field Zone to Zone 2), a (0.18)% decrease (Zone 1A to Zone 2), a (0.05)% decrease (Zone 1B to Zone 2), a 0.04% increase (Zone 2 only), a (0.19)% decrease (Field Zone to Zone 1B), a (0.23)% decrease (Zone 1A to Zone 1B), a (0.10)% decrease (Zone 1B only), a (0.10)% decrease (Field Zone to Zone 1A), a (0.14)% decrease (Zone 1A only) and a 0.03% increase (Field Zone only) to the currently effective fuel reimbursement percentages.

Trunkline states that copies of this filing are being served on all affected shippers and interested state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5760 Filed 3–7–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–62–002]

Wyoming Interstate Company Ltd.; Notice of Tariff Compliance Filing

March 4, 1997.

Take notice that on February 28, 1997, Wyoming Interstate Company Ltd. (WIC), tendered for filing to become part of its FERC gas tariff, Second Revised Volume No. 2, the tariff sheets listed in Appendix A to the filing, to be effective May 1, 1997.

WIC states the tariff sheets are filed in compliance with Order No. 587, and the order issued January 16, 1997 in Docket No. RP97–62–000, as well as Section 154.203 of the Commission's regulations. WIC further states the tariff sheets filed are the same as the pro forma tariff sheets filed by WIC on November 1, 1996 to comply with Order No. 587 except (1) the tariff sheets have been revised to reflect tariff filings made between the November 1, 1996 filing and the date of this filing (2) changes have been made to comply with the requirements of the order issued January 16, 1997 in Docket No. RP97–62–000 and, (3) as required in Order No. 587–B issued January 30, 1997, WIC is incorporating by reference into its tariff the Electronic Delivery Mechanism (EDM) standards adopted in that rule.

WIC has further requested any waivers necessary to change its Gas Day to the GISB Standard effective April 7, 1997.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protests must be filed on or before March 21, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5756 Filed 3–7–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER97–1693–000, et al.]

Commonwealth Edison Company, et al.; Electric Rate and Corporate Regulation Filings

March 4, 1997.

Take notice that the following filings have been made with the Commission:

1. Commonwealth Edison Company

[Docket No. ER97–1693–000]

Take notice that on February 14, 1997, Commonwealth Edison Company (ComEd), submitted for filing Service Agreements for various firm transactions established Duke/Louis Dreyfus L.L.C. (D/LD), Commonwealth Edison Company, in its wholesale merchant function (ComEd WMD), and Sonat Power Marketing LP (Sonat), as transmission customers under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests various effective dates, corresponding to the date each service agreement was entered into, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon D/LD, ComEd WMD, Sonat, and the Illinois Commerce Commission.

Comment date: March 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Central Illinois Light Company

[Docket No. ER97–1740–000]

Take notice that on February 18, 1997, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission a substitute Index of Customers under its Coordination Sales Tariff and service agreements for two new customers.

CILCO requested an effective date of February 15, 1997.

Copies of the filing were served on all affected customers parties and the Illinois Commerce Commission.

Comment date: March 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Florida Power & Light Company

[Docket No. ER97–1742–000]

On February 18, 1997, Florida Power & Light Company, filed Service Agreements with City of Homestead, Florida, Sonat Power Marketing L.P., and Tennessee Valley Authority for service pursuant to Tariff No. 1 for Sales of Power and Energy by Florida Power & Light. FPL requests that each Service Agreement be made effective on January 17, 1997.

Comment date: March 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Cinergy Services, Inc.

[Docket No. ER97–1746–000]

Take notice that on February 18, 1997, Cinergy Services, Inc., tendered for filing a Schematic and Exhibit Update to the Interconnection Agreement between PSI Energy, Inc. (PSI), the United States of America, Hoosier Energy Rural Electric Cooperative, Inc. (Hoosier), and Southern Indiana Gas and Electric Company (SIGECO).

Copies of the filing were served on Hoosier Energy Rural Electric Cooperative, Inc., Southern Indiana Gas and Electric Company and the Indiana Utility Regulatory Commission.

Comment date: March 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Pennsylvania Power & Light Company

[Docket No. ER97–1762–000]

Take notice that on February 19, 1997, Pennsylvania Power & Light Company (PP&L), filed a Service Agreement dated January 7, 1997, with Public Service Electric and Gas Company (Public) for non-firm point-to-point transmission service under PP&L's Open Access Transmission Tariff. The Service Agreement adds Public as an eligible customer under the Tariff.

PP&L requests an effective date of February 19, 1997, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Public and to the Pennsylvania Public Utility Commission.

Comment date: March 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Minnesota Power & Light Company

[Docket No. ER97–1763–000]

Take notice that on February 19, 1997, Minnesota Power & Light Company (MP), tendered for filing a copy of umbrella service agreements under which short-term transactions may be made in accordance with MP's market-based Wholesale Coordination Sales Tariff WCS–2, which was accepted for filing by the Commission in Docket No. ER96–1823–000 for the following:

Cinergy Services, Inc.
Citizens Lehman Power Sales
Coastal Electric Services Company
Duke/Louis Dreyfus LLC
Entergy
InterCoast Power Marketing Company
Interstate Power Company
PacifiCorp
The Power Company of America
Rainbow Energy Marketing Corporation
Sonat Power Marketing L.P.
Upper Peninsula Power Company
Western Power Services, Inc.
Western Resources Inc.

Comment date: March 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Pennsylvania Power & Light Co.

[Docket No. ER97–1764–000]

Take notice that on February 19, 1997, Pennsylvania Power & Light Company (PP&L), filed a Service Agreement dated December 17, 1996, with Northeast Utilities Marketing (Northeast) for non-firm point-to-point transmission service under PP&L's Open Access Transmission Tariff. The Service Agreement adds Northeast as an eligible customer under the Tariff.

PP&L requests an effective date of February 1, 1997, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Northeast and to the Pennsylvania Public Utility Commission.

Comment date: March 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Pennsylvania Power & Light Company

[Docket No. ER97–1765–000]

Take notice that on February 19, 1997, Pennsylvania Power & Light Company (PP&L), filed a Service Agreement dated December 27, 1996, with Cenerprise, Inc. (Cenerprise) for non-firm point-to-point transmission service under PP&L's Open Access Transmission Tariff. The Service Agreement adds Cenerprise as an eligible customer under the Tariff.

PP&L requests an effective date of February 19, 1997, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Cenerprise and to the Pennsylvania Public Utility Commission.

Comment date: March 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Consolidated Edison Company of New York, Inc.

[Docket No. ER97–1766–000]

Take notice that on February 19, 1997, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing an amendment to Rate Schedule 68, an agreement with Morgan Stanley Capital Group, Inc. (Morgan Stanley) for the sale and purchase of energy and capacity.

Con Edison states that a copy of this filing has been served by mail upon Morgan Stanley.

Comment date: March 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Southern Indiana Gas and Electric Company

[Docket No. ER97–1767–000]

Take notice that on February 19, 1997, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing one (1) service agreement for market based rate power sales under its Market Based Rate Tariff with Williams Energy Services Company.

Copies of the filing were served upon each of the parties to the service agreements.

Comment date: March 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Commonwealth Electric Company

[Docket No. ER97–1768–000]

Take notice that on February 19, 1997, Commonwealth Electric Company (Commonwealth), tendered for filing a non-firm point-to-point transmission service agreement between Commonwealth and Green Mountain Power Corporation (Green Mountain). Commonwealth states that the service agreement sets out the transmission arrangements under which Commonwealth will provide non-firm point-to-point transmission service to Green Mountain under Commonwealth's FERC Electric Tariff, Original Volume No. 6, accepted for filing in Docket No. OA96–167–000.

Comment date: March 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Minnesota Power & Light Company

[Docket No. ER97–1769–000]

Take Notice that on February 19, 1997, Minnesota Power & Light Company (MP), tendered for filing Supplement No. 4 to its Electric Service Agreement with Public Utilities Commission of Brainerd, Minnesota (Brainerd). MP states that the amendment extends the term of the Agreement to December 31, 2011.

Comment date: March 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Pacific Northwest Generating Cooperative

[Docket No. ER97–1770–000]

Take notice that on February 19, 1997, Pacific Northwest Generating Cooperative (PNGC), filed a service agreement for a short-term transaction with Citizens Lehman Power Sales. The service agreement incorporated terms and conditions of the Western Systems Power Pool Agreement and was made on price terms conforming to PNGC's Rate Schedule FERC No. 3 (market-based rate schedule).

Comment date: March 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Wisconsin Power and Light Company

[Docket No. ER97–1772–000]

Take notice that on February 19, 1997, Wisconsin Power and Light Company (WP&L), tendered for filing Form of Service Agreements for Customers who have signed WP&L's Final Order pro forma transmission tariff submitted in Docket No. OA96–20–000. The customers are Madison Gas and Electric Company and WPS Energy Services, Inc. The customers previously signed earlier versions of WP&L's transmission tariffs.

WP&L requests an effective date of July 9, 1996, and accordingly seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: March 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

[Docket No. ES97–24–000]

15. American REF-FUEL Company of Hempstead

Take notice that on February 21, 1997, American REF-FUEL Company of Hempstead ("Hempstead"), tendered for filing pursuant to § 204 of the Federal Power Act, 16 U.S.C. 824c, and Part 34 of the Federal Energy Regulatory Commission's Regulations, 18 CFR Part 34, an Application requesting authority for Hempstead to assume a March 1, 1997, obligation as a guarantor in connection with the issuance of long-term Series 1997 Bonds ("1997 Bonds") in the principal amount of $246,805,000 by the Town of Hempstead Industrial Development Agency ("Agency").

The 1997 Bonds are being issued to refund all outstanding bonds issued by the Agency in 1985. Pursuant to a Lessee Guaranty and Security Agreement, Hempstead has guaranteed the payment of the principal of, premium, if any, and interest on the 1997 Bonds. Hempstead's payment obligation is, however, limited to the amount that Hempstead is required to make as lease payments under the Lease Agreement between Hempstead and the Agency. Hempstead has also pledged, assigned, and granted a security interest to Chase Manhattan Bank, as Trustee, in all of Hempstead's right, title and interest in the Service Agreement, Energy Purchase Agreement, and the Company Support Agreement.

Comment date: March 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

[Docket No. ID–2859–001]

16. William J. Gremp

Take notice that on February 24, 1997, William J. Gremp (Applicant), tendered for filing an application under Section 305(b) to hold the following positions:

Director—St. Joseph Light & Power Company ("St. Joseph"), 520 Francis Street, St. Joseph, Missouri 64502

Senior Vice President and Managing Director, Utilities and Strategic Finance Group—First Union Corporation 301 South College Street Charlotte, North Carolina 28288–0735.

Comment date: March 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

[Docket No. OA97–499–000]

17. Cleveland Electric Illuminating Company

Take notice that on January 13, 1997, The Cleveland Electric Illuminating Company ("CEI") tendered for filing an Amended and Restated Power Sales Agreement ("Agreement") by and between CL Power Sales Two, L.L.C. ("CL Two") and CEI. The Agreement originally was filed on September 19, 1995 in Docket No. ER95–1795–000 and is designated as CEI's FERC Electric Rate Schedule No. 32.

CEI states that a copy of the filing has been served on CL Two and the Public Utilities Commission of Ohio.

Comment date: March 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

[Docket No. OA97–530–000]

18. Ohio Edison Company Pennsylvania Power Company

Take notice that on February 21, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Supplement to the rate schedule to the Agreement for System Power Transactions with AES Power, Incorporated. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: March 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

[Docket No. OA97–531–000]

19. Ohio Edison Company Pennsylvania Power Company

Take notice that on February 21, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Supplement to the rate schedule to the Agreement for System Power Transactions with Aquila Power Corporation. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: March 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

[Docket No. OA97–532–000]

20. Ohio Edison Company Pennsylvania Power Company

Take notice that on February 21, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Supplement to the rate schedule to the Agreement for System Power Transactions with Morgan Stanley Capital Group, Inc. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: March 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

[Docket No. OA97–533–000]

21. Ohio Edison Company Pennsylvania Power Company

Take notice that on February 21, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Supplement to the rate schedule to the Agreement for System Power Transactions with NorAm Energy Services, Inc. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: March 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

[Docket No. OA97–534–000]

22. Ohio Edison Company Pennsylvania Power Company

Take notice that on February 21, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Supplement to the rate schedule to the Agreement for System Power Transactions with Carolina Power & Light Company. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: March 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Ohio Edison Company, Pennsylvania Power Company

[Docket No. OA97–535–000]

Take notice that on February 21, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Supplement to the rate schedule to the Agreement for System Power Transactions with CNG Power Services Corp. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: March 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Ohio Edison Company, Pennsylvania Power Company

[Docket No. OA97–536–000]

Take notice that on February 21, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Supplement to the rate schedule to the Agreement for System Power Transactions with Old Dominion Electric Cooperative. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: March 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Ohio Edison Company, Pennsylvania Power Company

[Docket No. OA97–537–000]

Take notice that on February 21, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Supplement to the rate schedule to the Agreement for System Power Transactions with Coastal Electric Services Company. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: March 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Ohio Edison Company, Pennsylvania Power Company

[Docket No. OA97–538–000]

Take notice that on February 21, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Supplement to the rate schedule to the Agreement for System Power Transactions with PECO Energy Company. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: March 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Ohio Edison Company, Pennsylvania Power Company

[Docket No. OA97–540–000]

Take notice that on February 21, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Supplement to the rate schedule to the Agreement for System Power Transactions with Western Power Services, Inc. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: March 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Ohio Edison Company, Pennsylvania Power Company

[Docket No. OA97–541–000]

Take notice that on February 21, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Supplement to the rate schedule to the Agreement for System Power Transactions with Vitol Gas & Electric, LLC. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: March 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. Ohio Edison Company, Pennsylvania Power Company

[Docket No. OA97–542–000]

Take notice that on February 21, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Supplement to the rate schedule to the Agreement for System Power Transactions with Heartland Energy Services, Inc. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: March 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

30. Ohio Edison Company, Pennsylvania Power Company

[Docket No. OA97–543–000]

Take notice that on February 21, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Supplement to the rate schedule to the Agreement for System Power Transactions with City of Dover. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: March 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

31. Ohio Edison Company, Pennsylvania Power Company

[Docket No. OA97–544–000]

Take notice that on February 21, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Supplement to the rate schedule to the Agreement for System Power Transactions with LG&E Power Marketing, Inc. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: March 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

32. Ohio Edison Company, Pennsylvania Power Company

[Docket No. OA97–545–000]

Take notice that on February 21, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Supplement to the rate schedule to the Agreement for System Power Transactions with Enron Power Marketing, Inc. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: March 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

33. Ohio Edison Company, Pennsylvania Power Company

[Docket No. OA97–546–000]

Take notice that on February 21, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Supplement to the rate schedule to the Agreement for System Power Transactions with Atlantic City Electric Company. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: March 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

34. Ohio Edison Company, Pennsylvania Power Company

[Docket No. OA97–547–000]

Take notice that on February 21, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Supplement to the rate schedule to the Agreement for System Power Transactions with Electric Clearinghouse, Inc. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: March 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

35. Ohio Edison Company, Pennsylvania Power Company

[Docket No. OA97–548–000]

Take notice that on February 21, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Supplement to the rate schedule to the Agreement for System Power Transactions with Federal Energy Sales, Inc. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: March 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

36. Ohio Edison Company, Pennsylvania Power Company

[Docket No. OA97–549–000]

Take notice that on February 21, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Supplement to the rate schedule to the Agreement for System Power Transactions with Stand Energy Corporation. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: March 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

37. Ohio Edison Company, Pennsylvania Power Company

[Docket No. OA97–550–000]

Take notice that on February 21, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Supplement to the rate schedule to the Agreement for System Power Transactions with Koch Power Services, Inc. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: March 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

38. Ohio Edison Company, Pennsylvania Power Company

[Docket No. OA97–551–000]

Take notice that on February 21, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Supplement to the rate schedule to the Agreement for System Power Transactions with Louis Dreyfus Electric Power, Inc. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: March 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5822 Filed 3–7–97; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER94–931–011, et al.]

PowerNet, et al.; Electric Rate and Corporate Regulation Filings

March 3, 1997.

Take notice that the following filings have been made with the Commission:

1. PowerNet, Valero Power Services Company, Delhi Gas Pipeline Corporation, ProGas Power, SCANA Energy Marketing, Inc., KinEr–G Power Marketing, Inc., NIPSCO Energy Services, Inc.

[Docket Nos. ER94–931–011, ER94–1394–010, ER95–940–007, ER95–968–003, ER96–1086–003, ER96–1139–003, ER96–1431–003 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On February 24, 1997, PowerNet filed certain information as required by the Commission's April 22, 1994, order in Docket No. ER94–931–000.

On February 24, 1997, Valero Power Services Company filed certain information as required by the Commission's August 24, 1994, order in Docket No. ER94–1394–000.

On February 24, 1997, Delhi Gas Pipeline Corporation filed certain information as required by the Commission's June 1, 1995, order in Docket No. ER95–940–000.

On February 18, 1997, ProGas Power filed certain information as required by the Commission's July 7, 1995, order in Docket No. ER95–968–000.

On January 28, 1997, SCANA Energy Marketing, Inc. filed certain information as required by the Commission's May 13, 1996, order in Docket No. ER96–1086–000.

On January 8, 1997, KinEr–G Power Marketing, Inc. filed certain information as required by the Commission's April 30, 1996, order in Docket No. ER96–1139–000.

On January 31, 1997, NIPSCO Energy Services, Inc. filed certain information as required by the Commission's May 29, 1996, order in Docket No. ER96–1431–000.

2. EDC Power Marketing, Inc., Power Clearinghouse, Inc., PacifiCorp Power Marketing, Inc., Proler Power Marketing, Inc., Energy West Power Co., LLC, Ensource, AYP Energy, Inc.

[Docket Nos. ER94–1538–009, ER95–914–007, ER95–1096–008, ER95–1433–005, ER96–392–005, ER96–1919–002, ER96–2673–001, (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On January 30, 1997, EDC Power Marketing, Inc. filed certain information as required by the Commission's September 14, 1994, order in Docket No. ER94–1538–000.

On January 10, 1997, Power Clearinghouse, Inc. filed certain information as required by the Commission's May 11, 1995, order in Docket No. ER95–914–000.

On January 16, 1997, PacifiCorp Power Marketing, Inc. filed certain information as required by the Commission's February 2, 1996, order in Docket No. ER95–1096–000.

On January 30, 1997, Proler Power Marketing, Inc. filed certain information as required by the Commission's October 16, 1995, order in Docket No. ER95–1433–000.

On January 30, 1997, Energy West Power Co., LLC filed certain information as required by the Commission's December 28, 1995, order in Docket No. ER96–392–000.

On January 27, 1997, Ensource filed certain information as required by the Commission's July 10, 1996, order in Docket No. ER96–1919–000.

On January 30, 1997, AYP Energy, Inc. filed certain information as required by the Commission's October 8, 1996, order in Docket No. ER96–2673–000.

3. Northwest Regional Transmission Association

[Docket No. ER95–19–011]

Take notice that on January 30, 1997, Northwest Regional Transmission Association (NRTA) tendered for filing the Member Signature Page of the NRTA executed by Public Utility District No. 1, of Franklin Co. WA, and Public Utility, District No. 1, of Benton County, for membership in NRTA.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Northwest Regional Transmission Association

[Docket No. ER95–19–012]

Take notice that on February 12, 1997, Northwest Regional Transmission Association (NRTA) tendered for filing the Member Signature Page of the NRTA executed by Public Utility District No. 1, of Chelan County, Washington, for membership in NRTA.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Florida Power Corporation

[Docket No. ER97–356–000]

Take notice that on February 4, 1997, Florida Power Corporation tendered for filing an amendment in the above-referenced docket.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Wisconsin Power & Light Company

[Docket No. ER97–985–000]

Take notice that on February 19, 1997, Wisconsin Power & Light Company tendered for filing an amendment in the above-referenced docket.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Illinois Power Company

[Docket No. ER97–1687–000]

Take notice that on February 14, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing non-firm transmission agreements under which Western Resources, Inc. will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of February 7, 1997.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Illinois Power Company

[Docket No. ER97–1688–000]

Take notice that on February 14, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which Engelhard Power Marketing, Inc. will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Northeast Utilities Service Company

[Docket No. ER97–1690–000]

Take notice that on February 14, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with The United Illuminating Company (UI) under the NU System Companies' System Power Sales/Exchange Tariff No. 6. NUSCO requested deferral of Commission action on the filing until NUSCO made its filing for functional unbundling of services under the Tariff pursuant to the Commission's Order No. 888.

NUSCO states that a copy of this filing has been mailed to UI.

NUSCO requests that the Service Agreement become effective February 1, 1997.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Northeast Utilities Service Company

[Docket No. ER97–1691–000]

Take notice that on February 14, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with Cinergy Corp. (Cinergy) under the NU System Companies' System Power Sales/Exchange Tariff No. 6. NUSCO requested deferral of Commission action on the filing until NUSCO made its filing for functional unbundling of services under the Tariff pursuant to the Commission's Order No. 888.

NUSCO states that a copy of this filing has been mailed to Cinergy.

NUSCO requests that the Service Agreement become effective February 1, 1997.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Pennsylvania Power & Light Company

[Docket No. ER97–1692–000]

Take notice that on February 14, 1997, Pennsylvania Power & Light Company (PP&L), filed a Service Agreement dated January 15, 1997, with Duke Louis/Dreyfus L.L.C. (Duke) for non-firm point-to-point transmission service under PP&L's Open Access Transmission Tariff. The Service Agreement adds Duke as an eligible customer under the Tariff.

PP&L requests an effective date of January 15, 1997, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Duke and to the Pennsylvania Public Utility Commission.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Western Resources, Inc.

[Docket No. ER97–1694–000]

Take notice that on February 12, 1997, Western Resources, Inc., tendered for filing a non-firm transmission agreement between Western Resources and Electric Clearinghouse, Inc. Western Resources states that the purpose of the agreement is to permit non-discriminatory access to the transmission facilities owned or controlled by Western Resources in accordance with Western Resources' open access transmission tariff on file with the Commission. The agreement is proposed to become effective January 9, 1997.

Copies of the filing were served upon Electric Clearinghouse, Inc. and the Kansas Corporation Commission.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Wisconsin Electric Power Company

[Docket No. ER97–1721–000]

Take notice that on February 18, 1997, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing two daily firm transmission service agreements with Rainbow Energy Marketing Corporation (Rainbow).

Wisconsin Electric respectfully requests an effective date of January 10 and January 16, 1997, in order to permit the transmission service undertaken. The Transmission Customer supports the requested effective dates.

Copies of the filing have been served on Rainbow, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Ohio Power Company

[Docket No. ER97–1722–000]

Take notice that on February 18, 1997, Ohio Power Company (OPCO), submitted for filing with the Commission Modification No. 1 to the agreement between Ohio Power Company (OPCO) and the City of Dover, Ohio (Dover) which provides for the establishment of a new delivery point between OPCO and Dover. Also submitted for filing is an Operating and Maintenance Agreement between OPCO and Dover which contains provisions for OPCO to operate and maintain, per Dover's request, certain of Dover's 138 kV facilities at the new delivery point established in Modification No. 1.

A copy of the filing was served upon the City of Dover, Ohio and the Public Utility Commission of Ohio.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Kansas City Power & Light Company

[Docket No. ER97–1723–000]

Take notice that on February 18, 1997, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated January 15, 1997, between KCPL and Illinova Power Marketing, Inc. (IPMI). KCPL proposes an effective date of January 15, 1997, and requests waiver of the Commission's notice requirement. This Agreement provides for the rates and charges for Non-Firm Transmission Service between KCPL and IPMI.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order 888 in Docket No. OA96–4–000.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Public Service Electric and Gas Company

[Docket No. ER97–1724–000]

Take notice that on February 18, 1997, Public Service Electric and Gas Company (PSE&G), tendered for filing an agreement to provide non-firm transmission service to itself, pursuant to PSE&G's Open Access Transmission Tariff presently on file with the Commission in Docket No. OA96–80–000.

PSE&G further requests waiver of the Commission's regulations such that the agreement can be made effective as of July 9, 1997.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Central Maine Power Company

[Docket No. ER97–1725–000]

Take notice that on February 18, 1997, Central Maine Power Company (CMP), tendered for filing a service agreement for Non-Firm Point-to-Point Transmission Service with Citizens Lehman Power Sales. Service will be provided pursuant to CMP's Open Access Transmission Tariff, designated rate schedule CMP—FERC Electric Tariff, Original Volume No. 3, as supplemented.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Maine Electric Power Company

[Docket No. ER97–1726–000]

Take notice that on February 18, 1997, Maine Electric Power Company (MEPCO), tendered for filing a service agreement for Non-Firm Point-to-Point Transmission Service with Citizens Lehman Power Sales. Service will be provided pursuant to CMP's Open Access Transmission Tariff, designated rate schedule CMP—FERC Electric Tariff, Original Volume No. 3, as supplemented.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Baltimore Gas & Electric Company

[Docket No. ER97–1727–000]

Take notice that on February 18, 1997, Baltimore Gas & Electric Company (BG&E) tendered for filing a Service Agreement for non-firm point-to-point transmission service between BG&E and Morgan Stanley Capital Group, Inc.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Baltimore Gas & Electric Company

[Docket No. ER97–1728–000]

Take notice that on February 18, 1997, Baltimore Gas & Electric Company (BG&E) tendered for filing a Service Agreement for non-firm point-to-point transmission service between BG&E and Citizens Lehman Power Sales.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Baltimore Gas & Electric Company

[Docket No. ER97–1729–000]

Take notice that on February 18, 1997, Baltimore Gas & Electric Company (BG&E) tendered for filing a Service Agreement for non-firm point-to-point transmission service between BG&E and DuPont Power Marketing, Inc.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Baltimore Gas & Electric Company

[Docket No. ER97–1730–000]

Take notice that on February 18, 1997, Baltimore Gas & Electric Company (BG&E) tendered for filing a Service Agreement for non-firm point-to-point transmission service between BG&E and Western Power Services, Inc.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Baltimore Gas & Electric Company

[Docket No. ER97–1731–000]

Take notice that on February 18, 1997, Baltimore Gas & Electric Company (BG&E) tendered for filing a Service Agreement for non-firm point-to-point transmission service between BG&E and Virginia Electric and Power Company.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. UtiliCorp United Inc.

[Docket No. ER97–1732–000]

Take notice that on February 18, 1997, UtiliCorp United Inc. (UtiliCorp), filed service agreements with AIG Trading Corporation for service under its non-firm point-to-point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Portland General Electric Company

[Docket No. ER97–1733–000]

Take notice that on February 18, 1997, Portland General Electric Company (PGE), tendered for filing under PGE's Final Rule pro forma tariff, (Docket No. OA96–137–000) an executed Service Agreement for Non-firm Point-to-Point Transmission Service and an executed Service Agreement for Short Term Firm Point-to-Point Transmission Service with the Pacific Gas & Electric Company.

Pursuant to 18 CFR 35.11 and the Commission's order issued July 30, 1993 (Docket No. PL93–2–002), PGE respectfully requests the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the Service Agreements to become effective February 1, 1997.

A copy of this filing was caused to be served upon the Pacific Gas & Electric Company as noted in the filing letter.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Northeast Utilities Service

[Docket No. ER97–1734–000]

Company)

Take notice that on February 18, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with Plum Street Energy Marketing, Inc., under the NU System Companies' Sale for Resale, Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to the Plum Street Energy Marketing, Inc.

NUSCO requests that the Service Agreement become effective February 1, 1997.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Northeast Utilities Service Company

[Docket No. ER97–1736–000]

Take notice that on February 18, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with Niagara Mohawk Power Corporation under the NU System Companies' Sale for Resale, Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to the Niagara Mohawk Power Corporation.

NUSCO requests that the Service Agreement become effective February 1, 1997.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Southern Company Services, Inc.

[Docket No. ER97–1737–000]

Take notice that on February 18, 1997, Southern Company Services, Inc. ("SCSI"), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (collectively referred to as "Southern Companies") filed one (1) service agreement under Southern Companies' Market-Based Rate Power Sales Tariff (FERC Electric Tariff, Original Volume No. 4) with the following entity: Electric Clearinghouse, Inc. SCSI states that the service agreement will enable Southern Companies to engage in short-term market-based rate transactions with this entity.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. Carolina Power & Light Company

[Docket No. ER97–1738–000]

Take notice that on February 18, 1997, Carolina Power & Light Company (CP&L), tendered for filing separate Service Agreements for Non-Firm Point to Point Transmission Service executed between CP&L and the following Eligible Transmission Customers: Southern Energy Trading and Marketing, Inc.; CNG Power Services Corporation; and a Service Agreement for Short-Term Firm Point-to-Point Transmission Service with CNG Power Services Corporation. Service to each Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

30. Northeast Utilities Service Company

[Docket No. ER97–1739–000]

Take notice that on February 18, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with Niagara Mohawk Power Corporation, under the NU System Companies' System Power Sales/Exchange Tariff No. 6.

NUSCO states that a copy of this filing has been mailed to the Niagara Mohawk Power Corporation.

NUSCO requests that the Service Agreement become effective February 1, 1997.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

31. Boston Edison Company

[Docket No. ER97–1743–000]

Take notice that on February 18, 1997, Boston Edison Company (Boston Edison), tendered for filing a Service Agreement and Appendix A under Original Volume No. 6, Power Sales and Exchange Tariff (Tariff) for TransCanada Energy Limited (TransCanada). Boston Edison requests that the Service Agreement become effective as of February 1, 1997.

Edison states that it has served a copy of this filing on TransCanada and the Massachusetts Department of Public Utilities.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

32. Cinergy Services, Inc.

[Docket No. ER97–1744–000]

Take notice that on February 18, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Consumers Power Company/The Detroit Edison Company.

Cinergy and Consumers Power Company/The Detroit Edison Company are requesting an effective date of January 20, 1997.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

33. Cinergy Services, Inc.

[Docket No. ER97–1745–000]

Take notice that on February 18, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Non-Firm Power Sales Standard Tariff (the Tariff) entered into between Cinergy and Wolverine Power Supply Cooperative, Inc.

Cinergy and Wolverine Power Supply Cooperative, Inc. are requesting an effective date of January 20, 1997.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

34. Cinergy Services, Inc.

[Docket No. ER97–1747–000]

Take notice that on February 18, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), a Power Service Agreement, dated January 22, 1997 between Cinergy, CG&E, PSI and Southwestern Electric Cooperative, Inc. (Southwestern).

The Power Service Agreement provides for sale on a market basis.

Cinergy and Southwestern have requested an effective date of one day after this initial filing of the Power Service Agreement.

Copies of the filing were served on Southwestern Electric Cooperative, Inc., Central Illinois Public Service Company, Illinois Power Company, Illinois Commerce Commission, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

35. Consolidated Edison Company of New York, Inc.

[Docket No. ER97–1757–000]

Take notice that on February 18, 1997, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to American Energy Solutions, Inc. (American Energy).

Con Edison states that a copy of this filing has been served by mail upon American Energy.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

36. Consolidated Edison Company of New York, Inc.

[Docket No. ER97–1758–000]

Take notice that on February 18, 1997, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to USGen Power Services, L.P. (USGen).

Con Edison states that a copy of this filing has been served by mail upon USGen.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

37. Rig Gas, Inc.

[Docket No. ER97–1759–000]

Take notice that on February 18, 1997, Rig Gas, Inc., tendered for filing a Notice of Termination of Electric Rate Schedule No. 1, with a proposed effective date of February 18, 1997.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

38. Interstate Power Company

[Docket No. ER97–1760–000]

Take notice that on February 19, 1997, Interstate Power Company, tendered for filing a Notice of Cancellation of Service Agreement No. 16 under FERC Electric Tariff, Original Volume No. 7.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

39. Nelson Industrial Steam Company

[Docket No. QF95–41–000]

On February 25, 1997, Nelson Industrial Steam Company (Applicant) tendered for filing a supplement to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The supplement provides additional information pertaining primarily to the ownership and operation of the cogeneration facility.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5823 Filed 3–7–97; 8:45 am]

BILLING CODE 6717–01–P

Hydroelectric Applications [Ketchikan Public Utilities, et al.]; Notice of Applications

[Project Nos. 11597–000, et al.]

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11597–000.

c. *Date filed:* January 23, 1997.

d. *Applicant:* Ketchikan Public Utilities.

e. *Name of Project:* Whitman Lake.

f. *Location:* On Whitman Creek, in Ketchikan Gateway Borough Alaska, partially within the Tongass National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r)

h. *Applicant Contact:* John A. Magyar, General Manager, Ketchikan Public Utilities, 2930 Tongass Avenue, Ketchikan, AK 99901, (907) 225–1000.

i. *FERC Contact:* Mr. Hector M. Perez, (202) 219–2843.

j. *Comment Date:* April 28, 1997.

k. *Description of Project:* The proposed project would consist of: (1) The existing 45-foot-high and 220-foot-long concrete arch Whitman Lake Dam ½ mile upstream from the entrance of Whitman Creek into Herring Bay; (2) Whitman Lake with a surface area of 152 acre, a proposed usable storage capacity of 6,500 acre-feet, and normal maximum water surface elevation of 380 feet above mean sea level; (3) an intake structure 80 feet below normal water surface about 1,500 feet west of the dam; (4) an 8-foot-diameter and 1,680-foot-long tunnel; (5) a 60-inch-diameter and 950-foot-long steel and steel-lined tunnel penstock; (6) a powerhouse with an installed capacity of 4,500 kilowatts; (7) a 34.5-kilovolt and 1,500-foot-long transmission line; and other appurtenant facilities.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

2 a. *Type of Application:* Proposal for Angler Access Facility at Port Sheldon.

b. *Project No:* 2680–039.

c. *Date Filed:* January 22, 1997.

d. *Applicant:* Consumers Power Company.

e. *Name of Project:* Ludington Project.

f. *Project location:* Lake Michigan, Mason County, Michigan.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. T.A. McNish, Consumers Power Company, 212 West Michigan Avenue, Jackson, MI 49201, (517) 788–0550.

i. *FERC Contact:* Patti Pakkala, (202) 219–0025.

j. *Comment Date:* April 11, 1997.

k. *Description of Project:* Consumers Power Company, co-licensee for the Ludington Project, has filed a proposal for an angler access facility on Lake Michigan, near the community of Port Sheldon, Michigan. The facility is intended to provide public pedestrian fishing access to an existing pier located on the north shore of the Pigeon Lake Channel. The proposal contains provisions for a 40- to 50-car parking area, restroom facility, and 3,500 feet of accessible fishing boardwalk extending between the parking area and north pier. The pier will be improved to accommodate fishing access and a restroom facility will also be provided at the pier. In addition, the proposal includes provisions for expanding the parking area at an existing State-owned access site on nearby Lakeshore Drive. The proposal has been filed pursuant to the Ludington Pumped Storage Project Settlement Agreement—FERC Offer of Settlement. The Detroit Edison Company is co-licensee for the project.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

3 a. *Type of Application:* Revised, As-Built Exhibit M.

b. *Project No.:* 2309–002.

c. *Date Filed:* August 21, 1996.

d. *Applicant:* Jersey Central Power & Light Co., Public Service Gas & Electric Co.

e. *Name of Project:* Yards Creek Project.

f. *Location:* On Yards Creek, a tributary of Paulins Kill, in Warren County, New Jersey.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Jeffrey Geuther, Yards Creek Generating Station, Walnut Valley Road, Blairstown, NJ 07825, (908) 362–6163.

i. *FERC Contact:* Paul Shannon, (202) 219–2866.

j. *Comment Date:* April 11, 1997.

k. *Description of Filings:* Jersey Central Power & Light Company and Public Service Gas & Electric Company filed a revised as-built exhibit M that shows upgrades recently performed on the project's three generating units. The upgrades increased each unit's installed capacity from 120,000 kW (turbine maximum capacity) to 121,500 kW (turbine best gate capacity). The upgrades also increased each unit's maximum hydraulic capacity from 2,705 cfs to 2,835 cfs while generating and from 2,145 cfs to 2,245 cfs while pumping.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

4 a. *Type of Filing:* Request for Extension of Time to Commence Project Construction.

b. *Applicant:* City of Grafton.

c. *Project No.:* The proposed Tygart Dam Hydroelectric Project, FERC No. 7307–040, is to be located on the Tygart River in Taylor County, West Virginia.

d. *Date Filed:* January 24, 1997.

e. *Pursuant to:* Public Law 104–246.

f. *Applicants Contact:* Mr. Jeffery M. Kossak, City of Grafton, 1370 Avenue of the Americas, Suite 3300, New York, NY 10019, (212) 245–2722.

g. *FERC Contact:* Mr. Lynn R. Miles, (202) 219–2671.

h. *Comment Date:* April 11, 1997.

i. *Description of the Request:* The licensee for the subject project has requested that the deadline for commencement of construction be extended. The deadline to commence project construction for FERC Project No. 7307 would be extended to January 30, 1998. The deadline for completion of construction would be extended to January 30, 2000.

j. This notice also consists of the following standard paragraphs: B, C1, and D2.

5 a. *Type of Application:* Surrender of Exemption.

b. *Project No.:* 7513–002.

c. *Date Filed:* January 27, 1997.

d. *Applicant:* Rockfish Corporation, Inc.

e. *Name of Project:* Old Mill Hydroelectric Project.

f. *Location:* On the North River, in the Town of Bridgewater in Rockingham, Virginia.

g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791 (a)–825 (r).

h. *Contact:* John K. Pollock, President, Rockfish Corporation, Inc., P.O. Box 265, Batesville, VA 22924, (703) 828–6821.

i. *FERC Contact:* Mr. Lynn R. Miles, (202) 219–2671.

j. *Comment Date:* April 14, 1997.

k. *Description of the Proposed Action:* The exemptee requests to surrender the exemption for its existing project.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

6 a. *Type of Applications:* Original Major License.

b. *Project Nos.:* (1) 10865–001 and (2) 11495–000.

c. *Dates filed:* (1) September 7, 1993, and (2) August 26, 1994.

d. *Applicants:* (1) Warm Creek Hydro Inc., Bothel, WA; (2) Nooksack River Hydro Inc., Bothel, WA.

e. *Names of Projects:* (1) Warm Creek Hydroelectric; (2) Clearwater Creek Hydroelectric .

f. *Locations:*

(1) On Warm Creek, near Deming, in Whatcom County, WA.

(2) On Clearwater Creek, near Deming, Whatcom County, WA.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant's Contact:* Mr. Martin W. Thompson, 19515 N. Creek Parkway, Bothell, WA 98011–8208, (206) 487–6541.

i. *FERC Contact:* Mr. Surender M. Yepuri, P.E., (202) 219–2847.

j. *Deadline Date:* See attached paragraph D10.

k. *Status of Environmental Analysis:* These applications have been accepted

for filing and are ready for environmental analysis at this time—see attached standard paragraph D10.

Note: The Commission will be preparing a Multiple Environmental Assessment for these two hydroelectric projects in accordance with the National Environmental Policy Act.

l. *Descriptions of Projects:*

(1) The proposed Warm Creek Project would consist of: (a) a 10-foot-high, 50-foot-long concrete diversion dam impounding a 0.9-acre reservoir at elevation 2,729.9 (msl); (b) a concrete intake structure; (c) a 6,035-foot-long steel penstock; (d) a 42-foot-long, 32-foot-wide, and 18-foot-high concrete powerhouse containing a generator unit with a rated capacity of 3.7 MW; (e) a 19,300-foot-long, 35-kV transmission line; and (f) appurtenant structures.

(2) The proposed Clearwater Creek Project would consist of: (a) a 10-foot-high, 75-foot-long concrete diversion weir with a crest elevation of 1,665 feet (msl); (b) a 40-foot-wide, 80-foot-long, and 18-foot-high concrete intake structure; (c) a 63-inch-diameter, 8,785-foot-long steel penstock; (d) a 48-foot-wide, 48-foot-long, and 35-foot-high concrete powerhouse equipped with a turbine generator unit with a rated capacity of 6.0 MW; (e) a 80-foot-long tailrace; (f) a 35-kV, 11.4-mile-long transmission line; and (g) appurtenant structures.

m. *Purpose of Projects:* Project power would be sold to a local utility.

n. This notice also consists of the following standard paragraphs: A4 and D10.

o. *Available Locations of Applications:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, N.E., Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the applicant's office (see item (h) above).

7 a. *Type of Application:* Surrender of Exemption.

b. *Project No.:* 8825–007.

c. *Date filed:* January 29, 1997.

d. *Applicant:* Neshkoro Power Associates.

e. *Name of Project:* Morley.

f. *Location:* On the Muskegon River, in Mecosta County, Michigan.

g. *File Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Mr. Chuck Alsberg, Neshkoro Power Associates, P.O. Box 167, Neshkoro, Wisconsin 54960, (414) 293–4628.

i. *FERC Contact:* Thomas F. Papsidero, (202) 219–2715.

j. *Comment Date:* April 18, 1997.

k. *Description of Filing:* The exemptee requests to surrender the exemption for the Morley Project.

l. This notice also consists of the following standard paragraphs: B, C2 & D2.

Standard Paragraphs

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C2. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "PROTEST," or "MOTION TO INTERVENE," as applicable, and the Project Number of the particular application to which the filing refers. Any of these documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of a notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D10. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice (April 29, 1997 for Project No. 10865–001). All reply comments must be filed with the Commission within 105 days from the date of this notice (June 13, 1997 for Project No. 10865–001). Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Dated: March 4, 1997.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5821 Filed 3–7–97; 8:45 am]

BILLING CODE 6717–01–P

Sunshine Act Meeting

March 5, 1997.

THE FOLLOWING NOTICE OF MEETING IS PUBLISHED PURSUANT TO SECTION 3(A) OF THE GOVERNMENT IN THE SUNSHINE ACT (PUB. L. NO. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: FEDERAL ENERGY REGULATORY COMMISSION.

DATES AND TIME: MARCH 12, 1997 10:00 A.M.

PLACE: ROOM 2C, 888 FIRST STREET, N.E., WASHINGTON, D.C. 20426.

STATUS: OPEN.

MATTERS TO BE CONSIDERED: AGENDA. * NOTE—ITEMS LISTED ON THE AGENDA MAY BE DELETED WITHOUT FURTHER NOTICE.

CONTACT PERSON FOR MORE INFORMATION: LOIS D. CASHELL, SECRETARY, TELEPHONE (202) 208–0400. FOR A RECORDING LISTING ITEMS STRICKEN FROM OR ADDED TO THE MEETING, CALL (202) 208–1627

THIS IS A LIST OF MATTERS TO BE CONSIDERED BY THE COMMISSION. IT DOES NOT INCLUDE A LISTING OF ALL PAPERS RELEVANT TO THE ITEMS ON THE AGENDA; HOWEVER, ALL PUBLIC DOCUMENTS MAY BE EXAMINED IN THE REFERENCE AND INFORMATION CENTER.

CONSENT AGENDA—HYDRO 670TH MEETING—MARCH 12, 1997, REGULAR MEETING (10:00 A.M.)

CAH–1.
DOCKET# P–2389, 026, EDWARDS MANUFACTURING COMPANY, INC., AND CITY OF AUGUSTA, MAINE

CAH–2.
DOCKET# P–2538, 003, BEEBEE ISLAND CORPORATION

CAH–3.
DOCKET# P–2569, 012, NIAGARA MOHAWK POWER CORPORATION

CAH–4.
DOCKET# P–2587, 003, NORTHERN STATE POWER COMPANY

CAH–5.
DOCKET# P–6901, 039, CITY OF NEW MARTINSVILLE, WEST VIRGINIA; DOCKET# P–6901, 040, CITY OF NEW MARTINSVILLE, WEST VIRGINIA

CAH–6.
OMITTED

CONSENT AGENDA—ELECTRIC

CAE–1.
OMITTED

CAE–2.
OMITTED

CAE–3.
DOCKET# ER97–1418, 000, ROCHESTER GAS AND ELECTRIC CORPORATION

CAE–4.
DOCKET# ER96–2703, 000, CITIZENS UTILITIES COMPANY

CAE–5.
OMITTED

CAE–6.
DOCKET# ER96–2572, 000, CHEYENNE LIGHT, FUEL AND POWER COMPANY AND PUBLIC SERVICE COMPANY OF COLORADO, ET AL.

CAE–7.
DOCKET# oa96–11, 000, LONG SAULT, INC.

CAE–8.
OMITTED

CAE–9.
DOCKET# ER96–749, 000, PENNSYLVANIA POWER COMPANY; OTHER#S EL96–72, 000, PENNSYLVANIA POWER COMPANY

CAE–10.
DOCKET# ER97–137, 000, DESERET GENERATION & TRANSMISSION CO-OPERATIVE

CAE–11.
OMITTED

CAE–12.

DOCKET# ER97–504, 001, PACIFIC NORTHWEST GENERATING COOPERATIVE;
OTHERS#S OA97–32, 001, PACIFIC NORTHWEST GENERATING COOPERATIVE
CAE–13.
OMITTED
CAE–14.
OMITTED
CAE–15.
DOCKET# EL96–52, 000, MUNICIPAL ELECTRIC AUTHORITY OF GEORGIA V. GEORGIA POWER COMPANY

CONSENT AGENDA—GAS AND OIL

CAG–1.
DOCKET# RP97–3, 002, TEXAS EASTERN TRANSMISSION CORPORATION;
OTHER#S RP97–3, 003, TEXAS EASTERN TRANSMISSION CORPORATION
CAG–2.
DOCKET# RP97–4, 002, PANHANDLE EASTERN PIPE LINE COMPANY;
OTHER#S RP97–4, 003, PANDHANDLE EASTERN PIPE LINE COMPANY
CAG–3.
DOCKET# RP97–5, 002, ALGONQUIN GAS TRANSMISSION COMPANY;
OTHER#S RP97–5, 003, ALGONQUIN GAS TRANSMISSION COMPANY
CAG–4.
OMITTED
CAG–5.
DOCKET# RP97–230, 000, FLORIDA GAS TRANSMISSION COMPANY
CAG–6.
OMITTED
CAG–7.
DOCKET# RP96–6, 000, GULF STATES PIPELINE CORPORATION;
OTHER#S RP96–6, 001, GULF STATES PIPELINE CORPORATION
CAG–8.
DOCKET# RP96–10, 000, DOW INTRASTATE GAS COMPANY;
OTHER#S RP96–10, 001, DOW INTRASTATE GAS COMPANY
CAG–9.
DOCKET# RP96–389, 001, COLUMBIA GULF TRANSMISSION COMPANY;
DOTHER#S RP96–390, 001, COLUMBIA GAS TRANSMISSION CORPORATION
CAG–10.
DOCKET# RP97–6, 002, TRUNKLINE GAS COMPANY;
OTHER#S RP97–6, 003, TRUNKLINE GAS COMPANY
CAG–11.
DOCKET# RP97–71, 003, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–12.
DOCKET# TM96–3–48, 001, ANR PIPELINE COMPANY;
OTHER#S TM96–3–48, 000, ANR PIPELINE COMPANY
CAG–13.
OMITTED
CAG–14.
DOCKET# RP97–102, 001, MISSISSIPPI RIVER TRANSMISSION CORPORATION
CAG–15.
DOCKET# RP97–129, 000, QUESTAR PIPELINE COMPANY
CAG–16.
DOCKET# RP97–131, 000, OVERTHRUST PIPELINE COMPANY
CAG–17.
DOCKET# RP97–142, 000, K N INTERSTATE GAS TRANSMISSION COMPANY
CAG–18.
DOCKET# RP97–168, 000, TUSCARORA GAS TRANSMISSION COMPANY
CAG–19.
DOCKET# RP97–211, 000, K N INTERSTATE GAS TRANSMISSION COMPANY
CAG–20.
DOCKET# RP97–247, 000, NORTHERN NATURAL GAS COMPANY
CAG–21.
DOCKET# RP93–5, 026, NORTHWEST PIPELINE CORPORATION;
OTHER#S RP93–96, 006, NORTHWEST PIPELINE CORPORATION
CAG–22.
OMITTED
CAG–23.
OMITTED
CAG–24.
DOCKET# RP96–211, 008, TRANSCONTINENTAL GAS PIPE LINE CORPORATION;
OTHER#S RP96–211, 007, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–25.
DOCKET# RP97–88, 001, ALABAMA–TENNESSEE NATURAL GAS COMPANY;
OTHER#S RP97–89, 002, ALABAMA–TENNESSEE NATURAL GAS COMPANY;
RP97–89, 001, ALABAMA–TENNESSEE NATURAL GAS COMPANY
CAG–26.
OMITTED
CAG–27.
DOCKET# RP94–96, 018, CNG TRANSMISSION CORPORATION
CAG–28.
DOCKET# CP92–522, 001, TARPON TRANSMISSION COMPANY
CAG–29.
DOCKET# CP95–218, 001, TEXAS EASTERN TRANSMISSION CORPORATION
CAG–30.
DOCKET# CP96–113, 001, SHELL GAS PIPELINE COMPANY;
OTHER#S CP96–307, 001, SHELL GAS PIPELINE COMPANY
CAG–31.
DOCKET# CP96–189, 000, COLUMBIA GAS TRANSMISSION CORPORATION
CAG–32.
DOCKET# CP96–506, 000, TRAILBLAZER PIPELINE COMPANY
CAG–33.
DOCKET# CP96–576, 000, NORTHWEST PIPELINE CORPORATION;
OTHER#S CP96–576, 001, NORTHWEST PIPELINE CORPORATION
CAG–34.
DOCKET# CP94–628, 004, NORAM GAS TRANSMISSION COMPANY;
OTHER#S– RP95–94, 006, NORAM GAS TRANSMISSION COMPANY
CAG–35.
DOCKET# CP96–557, 000, GREEN CANYON GATHERING COMPANY
CAG–36.
DOCKET# CP97–77, 000, COPANO FIELD SERVICES/COPANO BAY, L.P.;
OTHER#S CP97–52, 000, FLORIDA GAS TRANSMISSION COMPANY

HYDRO AGENDA

HI–1.
RESERVED

ELECTRIC AGENDA

E–1.
DOCKET# EC96–2, 000, PUBLIC SERVICE COMPANY OF COLORADO AND SOUTHWESTERN PUBLIC SERVICE COMPANY;
OTHER#S EC96–2, 001, PUBLIC SERVICE COMPANY OF COLORADO AND SOUTHWESTERN PUBLIC SERVICE COMPANY
ORDER ON MERGER APPLICATION, SETTLEMENT AND REHEARING.

OIL AND GAS AGENDA

I.
PIPELINE RATE MATTERS
PR–1.
RESERVED
II.
PIPELINE CERTIFICATE MATTERS
PC–1.
RESERVED

Lois D. Cashell,

Secretary.

[FR Doc. 97–5988 Filed 3–6–97; 11:27 am]

BILLING CODE 6717–01–M

Sunshine Act Meeting

March 5, 1997.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: March 12, 1997. Following adjournment of the Commission's 10:00 a.m. open meeting.

PLACE: Room 2C, 888 First Street, N.E., Washington, D.C. 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Koch Gateway Pipeline Company.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400.

Lois D. Cashell,

Secretary.

Certification

I hereby certify that, in my opinion, Commission deliberations concerning a preliminary investigation, *Koch Gateway Pipeline Company*, scheduled for February 26, 1997, [and any subsequent meetings on the same matter that qualify under 18 C.F.R. § 375.206(a)] may properly be closed to public observation.

Discussions are likely to involve disclosure of investigative records compiled for law enforcement purposes, or information which if written would be contained in such records, the disclosure of which would interfere with enforcement proceedings. Discussions are also likely to specifically concern the Commission's participation in a civil action or proceeding or the conduct of a particular case involving a determination on the record after opportunity for a hearing.

The relevant exemptions on which this certification is based are set forth in the following provisions of law:

Section 552b(c) of Title 5 of the United States Code, (7)(A), (10)
Section 375.205(a) of Title 18 of the Code of Federal Regulations, (7)(i), (10)(ii)

Dated: February 19, 1997.

David N. Cook,

Deputy General Counsel.

[FR Doc. 97–5989 Filed 3–6–97; 11:27 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[AMS–FRL–5699–8]

Air Pollution Control; Motor Vehicle Emission Factors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public workshop.

SUMMARY: The Environmental Protection Agency is now in the process of developing revision and improvements to the highway vehicle emission factor model (the MOBILE model). The current version of the model, MOBILE5a, was released for use March 26, 1993. The next version of the model, MOBILE6, is tentatively planned for completion early in 1998 and release for use in the summer of 1998. This notice announces the first public workshop for the purpose of discussing issues raised by the pending revisions to the model, and provides the first formal opportunity for comment and reaction to the plans for data collection, analysis, and proposed model revisions. There will be at least one additional MOBILE6 workshop, most probably to be held late this year. The workshop will also include a short presentation concerning EPA's plans for development of a nonroad mobile source emission inventory model.

DATES: The workshop will be held Wednesday, March 19 and Thursday, March 20, 1997. The times are from 8:30 am to 5:00 pm March, and 8:30 am to 3:00 pm March 20. Al times are Eastern Standard Time.

ADDRESSES: The workshop will be held in Powsley Auditorium of the Morris Lawrence Building, Washtenaw Community College, 400 East Huron River Drive, Ann Arbor, MI 48106. Directions to the workshop can be requested from the contact person listed below, or from the EPA Technology Transfer Network (TTN) bulletin board system (BBS), or through accessing the OMS World Wide Web (WWW) site. Information on how to electronically access this and other workshop-related information appears immediately below.

FOR FURTHER INFORMATION CONTACT: Ms. Betty Measley, U.S. EPA Office of Mobile Sources, Assessment and Modeling Division, Emission Inventory Group, 2565 Plymouth Road, Ann Arbor MI 48105. Telephone: (313) 741–7903; fax (313) 741–7939.

SUPPLEMENTARY INFORMATION: This notice, as well as related information concerning the workshop, may be found in the OMS section of the EPA TTN BBS. To access this information using the WWW:

http://www.epa.gov/OMSWWW/models.htm
gopher:
gopher.epa.gov menus→Offices: Air:OMS
ftp: ftp.epa.gov Chg Dir→pub/gopher/OMS

For those directly accessing the TTN BBS by modem connection:

TTNBBS Dial-in: (919) 541–5742 [Voice help: (919) 541–5384]
Web access to TTN: http://ttnwww.rtpnc.epa.gov
telnet: ttnbbs.rtpnc.epa.gov (for reading/leaving messages)
ftp: ttnftp.rtpnc.epa.gov Chg Dir→H-Drive/OMS

Workshop-related files, including a copy of this notice, a map showing the location of WCC, and later additional information as described in the body of this announcement, will be found at the OMS Section, Models & Utilities Subsection

Under Section 130 of the Clean Air Act Amendments of 1990, EPA is required to review, and to revise a necessary, the emission factors used to estimate emissions of volatile organic compounds (VOC), carbon monoxide (CO), and oxides of nitrogen (NO_X) from area and mobile sources. In the case of highway vehicles, emission factors for these pollutants as a function of various parameters are estimated using the highway vehicle emission factor model, commonly referred to as MOBILE. This model, which was first developed in the late 1970s, has been revised, updated, and improved periodically since that time to account for increasing data and analyses concerning in-use emissions performance of highway vehicles, changes in vehicle and emission control technology, changes in fuel composition, strengthening of applicable emission standards, refinements to applicable test procedures, and other items that affect emission levels in use.

Section 130 of the Act requires that this emission factor review, and revision as needed, be performed at least every three years. As noted above, the current official version of the model, MOBILE5a, was released in March 1993. Since that time, one interim update to the model has been developed, MOBILE5a_H, released in November 1995. While not involving revision and update to the entire model, this version and developed to address specific needs on the part of emission factor users. MOBILE5a_H incorporated a number of changes intended to improve the ability of modelers, particularly States and local/regional governments, in estimating the benefits of various innovative inspection and maintenance (I/M) programs and to improve the accuracy of modeling situations in which such programs change over time or different programs are applied to different subsets of the covered fleet.

The time elapsed since the last complete revision to the model and the additional test data and analyses available since that time warrant another thorough update and revision to the model. OMS plans significant changes not only to the underlying emission factor estimates, but to how emissions factors are modeled to account for things such as a separation of start and running exhaust emissions, roadway facility type, average traffic speeds, and a number of other important changes that will affect the input information required to use the model as well as the type of information produced by the model. Thus, this first MOBILE6 workshop will present an overview of the more important model revisions being planned. The tentative agenda for this workshop is discussed below. Other aspects of the modeling of highway vehicle emission that are not specifically included within the following discussion may also be briefly addressed in this workshop; however, the agenda discussed below is intended to illustrate the major areas of discussion for the workshop.

The workshop being announced by today's notice will span two days. In an effort to facilitate travel plans on the part of attendees, a preliminary agenda for the two days is presented below. Note that the first day (March 19) is largely devoted to "technical" issues involved in updating and revising the model, while the second part-day

(March 20) is focused more on "user changes," meaning those revisions planned that will affect the input data requirements and file structure and output changes. Many attendees will likely want to be present for both sessions, however, some may find that they can limit their attendance to one or the other days based on their specific interests and needs.

Topics To Be Discussed on March 19

The first day of the workshop is planned to include presentations on the new facility-specific speed correction cycles, start emissions and separation of start from running exhaust emissions, technology fractions for future model years, the findings of the in-use deterioration team, effects of fuel oxygenates and sulfur content on emissions, "real-time" diurnal evaporative emissions, and revisions to the modeling of emissions from heavy-duty vehicles. Each presentation will be followed by a short discussion/question and answer period, and there should be some time left at the end of the day for more general open discussion of the material that has been presented.

New Facility-Specific Driving Cycles

One area of concern with respect to the accuracy of modeled emission factors has been the methods used to correct emission estimates based on the Federal Test Procedure (FTP), intended to represent overall urban area driving and with an average speed of 19.6 mph, for other average speeds. EPA is designing a plan for a much different approach to this issue that we hope to include in MOBILE6, which should both improve the accuracy of emission estimates over the range of travel speeds of interest and improve the integration of emission factor modeling with transportation planning and modeling. This would represent a major departure from the approach taken in previous versions of the model, and will result in significant changes to both the input data requirements and output emission factor estimates relative to earlier versions.

Start Emissions and Separation of Start From Running Emissions

MOBILE has used operating mode fractions (describing the portion of overall vehicle miles travelled (VMT) by vehicles in cold-start, hot-start, or stabilized operation) as an input to provide exhaust emission factors in grams per mile that include start emissions. Based on the needs of the air quality and transportation planning communities and the availability of data suitable for this type of analysis, EPA is proposing to make two major changes in this area: Provision of start emissions (in grams per vehicle per start) and stabilized running exhaust emissions (in grams per mile) at the option of the model user, and basing start emission estimates on time that a vehicle has been off (rather than simply "cold" and "hot" starts, start emissions will be modeled as a function of time that vehicles have been off, or "soak time").

Technology Fractions

Emissions from highway vehicles are estimated on a fleetwide basis using information on the fractions of each model years' fleet that use different technologies (e.g., fuel delivery systems, catalytic converter type). Projecting future year emission requires that projections of future technology fractions by model year be included in the MOBILE model. A contractor working for EPA has developed such estimates for future years, which will be presented and discussed.

In-Use Deterioration Team Findings

A team within OMS has spent considerable effort reexamining the extent of and causes of in-use deterioration, or the increase in emissions over time as vehicles accumulate mileage and components, including emission control components, age and degrade in performance. The team has worked in cooperation with the In-Use Deterioration Work Group of the Mobile Source Technical Advisory Subcommittee (a subcommittee to the Clean Air Advisory Committee established under the Federal Advisory Committee Act). All available data on in-use emissions performance over time have been used in an attempt to better quantify the extent of in-use emissions deterioration. An overview of the findings of the team to date, and some of the potential implications for the modeling of in-use deterioration of emissions in MOBILE6, will be presented and discussed at this workshop.

Fuel Sulfur and Oxygenate Content Effects

EPA has known for some time that other aspects of fuel (gasoline) composition, beyond volatility as measured by Reid vapor pressure (RVP), have an impact on emissions. MOBILE5a included the ability for the modeler to specify the effects of RVP, and of oxygenate type (i.e., alcohol or ether blends) and content (% by wgt), on emissions. At this workshop, information on revising and improving the modeling of oxygenate type of content on emissions, and on the impacts of sulfur on emissions, will be presented and discussed.

Onboard Diagnostic System Effects

With the introduction of second generation onboard diagnostic systems (OBD–II) to the light-duty fleet, EPA needs to develop methods of modeling the impact of these systems on reducing in-use deterioration of both exhaust and evaporative emissions, in both inspection/maintenance (I/M) program areas and non-I/M areas. Proposed approaches to including such effects on MOBILE6, based on part on previous work by the California Air Resources Board and recommendations made by the Modeling Work Group of the Mobile Source Technical Advisory Subcommittee, will be presented and discussed.

Heavy-Duty Vehicle Emission Estimates

The estimation of in-use emissions from heavy-duty vehicles is complicated by the fact that such engines are regulated on a mass/work basis (grams per brake horsepower-hour), while users of emission factors generally need emissions on a mass/activity basis (i.e., grams per mile). This necessitates the use of conversion factors to adjust g/bhp-hr emissions to g/mi. These conversion factors will be updated for MOBILE6. In addition, plans are to expand the number of vehicle categories for which specific emission factors are estimated by the model, replacing "heavy-duty gas vehicle" and "heavy-duty diesel vehicle" emission factors with estimates specific to a number of subcategories (e.g., by GVW class, with buses treated separately), EPA's plans for revisions in these areas will be presented and discussed.

Fleet Characteristics

In order to model emission factors for the entire in-use fleet of highway vehicles, information on the total numbers of vehicles by vehicle type, the registration distributions by age of each vehicle type, and the annual mileage accumulation rates by age of each vehicle type are required. Wile modelers often substitute locality-specific data for the national data that is included in MOBILE, particularly for registration distributions by age, it is still important for national modeling and estimation of the impact of new rules, standards, and test procedures to update these types of information periodically. EPA has retained a contractor to develop more recent information on fleet characteristics, including detailed information on the various subclasses of heavy-duty gas and diesel vehicles, and buses, for use in MOBILE6. A progress report on results to date and plans for incorporating such data into MOBILE6 will be presented and discussed.

Real-Time Diurnal Emissions

For gasoline-fueled vehicle types, non-exhaust emissions are a significant portion of total emissions of volatile organic compounds (VOC). Non-exhaust, or evaporative, emissions consist of diurnal emissions, hot soak (trip-end) emissions, refueling emissions, and running and resting losses. Diurnal emissions, generated during times that a vehicle is not being driven and ambient temperatures are increasing, have in the past been based on data obtained during one-hour forced heat builds, with the temperature increase representative of an entire eight-hour period being performed over one hour. More recent testing has shown that if the emissions are measured over longer periods of time, more representative of the rate and duration of temperature increases actually experienced by in-use vehicles, the results are not the same. To improve the accuracy of diurnal emissions estimates, and to provide users with the ability to better model emissions over shorter periods of time than full days (e.g., airshed models typically require emissions on an hour-by-hour basis), MOBILE6 will incorporate so-called "real time" diurnal emissions estimates and means of estimating such emissions over shorter time periods and lesser temperature increases characteristic of such shorter times. Plans for implementing this approach in MOBILE6 will be presented and discussed.

Liquids Leaks, Trip Characteristics

Plans are for the new version of the model to have means of explicitly accounting for, and estimating emissions due to evaporation of, liquid leaks of fuel. Modeling liquid leaks explicitly in MOBILE would have an impact on estimates for other nontailpipe emission factors (diurnals, hot soaks, running and resting losses), as the presumption is that liquid leaks, if and when encountered, have been included within these other emission source categories. All of these evaporative emission estimates are affected by trip characteristics, or travel patterns, such as average number of trips per day, miles per day, miles per trip, and so forth. EPA plans to have updated these trip characteristics in MOBILE6 on the basis of analysis of data obtained from instrumented vehicles.

These are the main areas in which presentations are planned for the first day of the workshop. Results of test programs and data analyses will be presented where available, and in all subject areas plans for additional work and proposed revisions to the model's treatment of each area will be discussed.

Topics To Be Discussed on March 20

As noted above, the focus of the presentations and discussion on the second day of the workshop will be more toward changes that impact the input data requirements and file structure and on proposed output changes. The second day will also include a presentation concerning EPA's plans for development of a nonroad emission inventory model.

Inspection/Maintenance (I/M) Programs and Credits

One of the more important aspects of the model from the perspective of many States and local/regional entities is the modeling of the benefits of various types of periodic I/M programs. MOBILE5a_H was released in 1995 to provide an interim tool for use in modeling certain types of tests and combinations of programs that could not be modeled adequately using MOBILE5a. The increasing variety of test types (e.g., idle tests, IM240 tests, use of remote sensing devices in conjunction with other I/M programs, the ASM and BAR90 tests), the tendency toward greater use of multiple sets of cutpoints (based, for example, on age of vehicle at time of test), and the frequency with which a given area is using more than one type of I/M program, whether simultaneously or sequentially, all suggest that there is a need for changes in how the emission benefits resulting from such programs are estimated and reflected in MOBILE emission factors. In MOBILE6, EPA is considering significant changes to the means by which credits for I/M programs are modeled. EPA will present proposals for changes in the modeling of I/M programs for discussion and comment.

Input/Output Structure Changes

In past updates to the MOBILE model, EPA has made a strong effort to maintain upward compatibility of input data files used to run the model. That is, a MOBILE4.1 input file, for example, can be used to run MOBILE5a, although some features of MOBILE5a have no corresponding feature in MOBILE4.1. This has been accomplished through adding new options as either (i) additional permitted values assigned to existing control flags, or (ii) additional optional variables appended to the end (right side) of existing input file lines, set up so that if they are missing (as would be the case if an input file for an older MOBILE version not having that feature) this in interpreted as "new option not to be included in modeling." The extent of changes planned and proposed for MOBILE6 are such that it wil not longer be possible to maintain this "upward compatibility" of input files. The output files are also likely to change significantly.

Because this is likely to be of great interest of State and local/regional modelers in particular, EPA will devote one presentation to specifically outlining all of the input and output changes implied by the model revisions noted above, as well as others not the subject of specific presentations at this workshop. This information is still in the proposal stage, and the input of and reaction from modelers at and after the workshop will assist in determining the precise nature of these changes in MOBILE6.

Nonroad Model—Overview of Plans

The final presentation at the workshop will not be directly related to MOBILE6, but instead will present an overview of EPA's plans for the development of a nonroad mobile source emission inventory (as versus emission factor) model. Current nonroad inventory development practices are based on EPA's Nonroad Engine and Vehicle Emissions Study (NEVES), done under the 1990 Clean Air Act Amendment requirements, and "Procedures for Emission Inventory Preparation, Volume IV: Mobile Sources (EPA–450/4–81–026d (revised), 1992). In consideration of the increased recognition of the importance of emissions from nonroad sources in terms of overall emissions and air quality, and the considerable practical difficulty of implmenting the current guidance, EPA is planning to develop a SIP-related nonroad emissions inventory model to meet the needs of the modeling audidence. EPA will present its plans and proposals for development of a nonroad mobile source emission inventory model, and will be especially interested in input from workshop attendees as to their needs and preferences for such a model. Specifically, EPA would lke to know the types of locality-specific input data (e.g., equipment populations) that users of such a model would anticipate developing and using in order to customize nonroad emission inventories for the geographic domain of interest. Such information obtained at the workshop will assist EPA in determining the best approaches to use

in a nonroad emission inventory model to maximize its utility.

Additional Information

To the extent possible, EPA will post material at the TTN BBS site described under **FOR FURTHER INFORMATION CONTACT** above in advance of the workshop. Those planning to attend, and those interested in following the progress of workshop planning more closely, should periodically visit the workshop information site. For example, some of the presentation materials that will be used at the workshop will be posted in advance to facilitate discussion and comment at the workshop.

Dated: February 28, 1997.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 97–5884 Filed 3–7–97; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5700–7]

National Advisory Council for Environmental Policy and Technology Information Impacts Committee; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, PL 92463, EPA gives notice of a two-day meeting, of the National Advisory Council for Environmental Policy and Technology (NACEPT) Information Impacts Committee (IIC). NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy issues. The IIC has been asked to review information requirements, and provide recommendations on how to effectively position information resources to support new, comprehensive and long-term Agency initiatives. This meeting is being held to commence development of the committee's recommendations to the Agency.

DATES: The two-day public meeting will be held on Tuesday, April 15, 1997 from 9:00 a.m. to 5:00 p.m. and Wednesday, April 16, 1997 from 9:00 a.m. to 3:00 p.m. The meeting will be held at the Channel Inn Hotel 650 Water Street, SW., Washington, DC 20024.

ADDRESSES: Although time will be limited, there will be opportunity for public comment. Interested parties may submit written materials or comments, or may choose to address the committee directly. In either case, requests for participation must be submitted no later than March 31, 1997 to Joe Sierra, Designated Federal Officer, NACEPT/IIC, U.S. EPA, Office of the Cooperative Environmental Management (1601F), 401 M Street, S.W., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Joseph Sierra, Designated Federal Officer for the Information Impacts Committee at 202–260–5839.

Dated: February 25, 1997.

Joseph A. Sierra,

Designated Federal Official.

[FR Doc. 97–5888 Filed 3–7–97; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5700–6]

National Advisory Council for Environmental Policy and Technology Reinvention Criteria Committee; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, PL 92463, EPA gives notice of a two-day meeting of the National Advisory Council for Environmental Policy and Technology (NACEPT) Reinvention Criteria Committee (RCC). NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy issues. The RCC has been asked to identify criteria the Agency can use to measure the progress and success of specific reinvention projects and its overall reinvention efforts; and to identify criteria to promote opportunities for self-certification, similar to the concept used for pesticide registration. This meeting is being held to provide the EPA with perspectives from representatives of state and local government, academia, industry, environmental organizations, and NGOs.

DATES: The two-day public meeting will be held on Wednesday, April 2, 1997 from 8:30 am to 5:00 pm and on Thursday, April 3, 1997 from 8:30 am to 4:00 pm. The meeting will be held at the Ramada Plaza Hotel Old Town, 901 N. Fairfax Street, Alexandria, Virginia.

ADDRESSES: Materials, or written comments, may be transmitted to the Committee through Gwendolyn Whitt, Designated Federal Officer, NACEPT/RCC, U.S. EPA, Office of Cooperative Environmental Management (1601–F), 401 M Street, SW, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Gwendolyn Whitt, Designated Federal Officer for the NACEPT Reinvention Criteria Committee at 202–260–9484.

Dated: February 25, 1997.

Gwendolyn C.L. Whitt,

Designated Federal Official.

[FR Doc. 97–5890 Filed 3–7–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5701–4]

National Drinking Water Advisory Council, Small Systems Working Group; Notice of Open Meeting

Under Section 10(a)(2) of Public Law 92–423, "The Federal Advisory Committee Act," notice is hereby given that a meeting of the Small Systems Working Group of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (42 U.S.C. S300f *et seq.*), will be held on March 20 and 21, 1997 from 8:30 am to 5:30 pm, at the Channel Inn, 650 Water Street, S.W., Washington, DC 20024. The meeting is open to the public, but due to past experience, seating will be limited.

The purpose of this meeting is to review and discuss options for how EPA might implement the capacity development and state affordability information provisions of the Safe Drinking Water Act Amendments of 1996. The meeting is open to the public to observe. The working group members are meeting to gather information, analyze relevant issues and facts and discuss options. Statements will be taken from the public at this meeting, as time allows.

For more information, please contact, Peter E. Shanaghan, Designated Federal Officer, Small Systems Working Group, U.S. EPA, Office of Ground Water and Drinking Water (4606), 401 M Street SW, Washington, D.C. 20460. The telephone number is 202–260–5813 and the email address is shanaghan.peter@epamail.epa.gov.

Dated: March 3, 1997.

Charlene Shaw,

Designated Federal Officer, National Drinking Water Advisory Council.

[FR Doc. 97–5880 Filed 3–7–97; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5701–5]

National Drinking Water Advisory Council, Source Water Protection Working Group; Notice of Open Meeting

Under Section 10(a)(2) of Public Law 92–423, "The Federal Advisory Committee Act," notice is hereby given that a meeting of Source Water Protection Working Group of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (42 U.S. C. S300f *et seq.*), will be held on March 13 and 14, 1997 from 9:00 a.m. to 4:30 p.m. at the Ramada Inn Governor's House, 1615 Rhode Island Ave, NW., Washington, D.C. The meeting is open to the public, but due to past experience, seating will be limited.

The purpose of this meeting is to review and discuss options on the coordinated implementation of the source water assessment and protection provisions of the 1996 Amendments to the Safe Drinking Water Act. The meeting is open to the public to observe. The working group members are meeting to analyze relevant issues and facts. Therefore, no statements will be taken from the public at this meeting.

For more information, please contact, Beth Hall, U.S. EPA, Office of Ground Water and Drinking Water , 4606, 401 M Street SW, Washington, D.C. 20460. The telephone number is Area Code (202) 260–5553. The e-mail address is hall.beth@epamail.epa.gov.

Dated: March 3, 1997.

Charlene Shaw,

Designated Federal Official, National Drinking Water Advisory Council.

[FR Doc. 97–5882 Filed 3–7–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5701–2]

Science Advisory Board; Notification of Public Advisory Committee Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that several committees of the Science Advisory Board (SAB) will meet on the dates and times described below. All times noted are Eastern Daylight Time unless otherwise noted. All meetings are open to the public, however, due to limited space, seating at meetings will be on a first-come basis. For further information concerning specific meetings, please contact the individuals listed below. Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office.

1. The Human Exposure and Health Subcommittee (HEHS) of the Science Advisory Board's (SAB) Integrated Risk Project (IRP) will meet on March 26–28, 1997, in room 3075, Building 90, at the Ernest O. Lawrence Berkeley National Laboratory, 1 Cyclotron Road, Berkeley CA 947720. The meeting will begin at 9:00 a.m. and end no later than 5:00 p.m. Pacific Time on each day. This meeting is open to the public, but prior registration is required (see below).

The main purpose of the meeting is to continue discussions of a methodology for assessing and ranking human health risks from exposure to environmental stressors. Subcommittee members will discuss relative risk ranking criteria, stressor-specific data sheets that will serve as the basis for relative risk ranking, and approaches for generating risk rankings from a broad group of environmental health scientists. The Subcommittee's activities are part of the SAB's Integrated Risk Project, begun in an effort to update the 1990 SAB report, Reducing Risk: Setting Priorities and Strategies for Environmental Protection. In a letter dated October 25, 1995, to Dr. Matanoski, Chair of the SAB Executive Committee, Deputy Administrator Fred Hansen charged the SAB to: (a) develop an updated ranking of the relative risk of different environmental problems based upon explicit scientific criteria; (b) provide an assessment of techniques and criteria that could be used to discriminate among emerging environmental risks and identify those that merit serious, near-term Agency attention; (c) assess the potential for risk reduction and propose alternative technical risk reduction strategies for the environmental problems identified; and (d) identify the uncertainties and data quality issues associated with the relative rankings. The Integrated Risk Project is being conducted by several SAB panels, including the HEHS, working at the direction of an ad hoc Steering Committee established by the SAB's Executive Committee.

Single copies of Reducing Risk can be obtained by contacting the SAB's Committee Evaluation and Support Staff (1400), 401 M Street, SW, Washington, DC 20460, telephone (202) 260–8414, or fax (202) 260–1889. Members of the public desiring additional information about the meeting, including an agenda, should contact Ms. Mary Winston, Staff Secretary, Committee Operations Staff, Science Advisory Board (1400), US EPA, 401 M Street, SW, Washington DC 20460, by telephone at (202) 260–6552, fax at (202) 260–7118, or via the INTERNET at: Winston.Mary@EPAMAIL.EPA.GOV.

Anyone wishing to attend the meeting, and/or make an oral presentation to the Committee must register with Mr. Samuel Rondberg, Designated Federal Official for the HEHS, no later than 4:00 p.m., March 19, 1997, at (202) 260–2559 or via the INTERNET at Rondberg.Sam@EPAMAIL.EPA.GOV. Prior registration is required for admission to the Lawrence Berkeley Laboratory complex. The registration request should include name and affiliation of the attendee, and indicate if parking space at the laboratory complex will be required. Anyone wishing to make a presentation to the Subcommittee should also provide an outline in writing to Mr. Rondberg by March 19, 1997 of the issues to be addressed. At least 35 copies of any written comments to the Committee are to be given to Mr. Rondberg no later than the time of the presentation for distribution to the Subcommittee and the interested public. See below for additional information on providing comments to the SAB.

2. The Valuation Subcommittee (VS) of the Science Advisory Board's (SAB) Integrated Risk Project (IRP) will meet April 2–4, 1997, from 8:00 am on April 2 to no later than 5:00 pm (Eastern Daylight Time) on April 4 at the Holiday Inn—Baltimore Inner Harbor, located at 301 W. Lombard Street, Baltimore MD 21201. This meeting is open to the public, however, due to limited space, seating will be on a first-come basis. The purpose of the meeting is to continue Committee efforts in support of the larger IRP effort of the SAB.

In a letter dated October 25, 1995, Deputy Administrator Fred Hansen requested the SAB (see information provided above) to update the assessment of environmental risks, priorities, and risk reduction opportunities contained in the 1990 SAB report, *Reducing Risk: Setting Priorities and Strategies for Environmental Protection* (EPA–SAB–EC–90–021). In subsequent discussions with the Deputy Administrator, the SAB has also agreed to provide insights on economic analysis of risk reduction options and ecosystem valuation. In summary, the current charge to the Valuation Subcommittee is to propose a new framework for assessing the value of ecosystems to humans, including ecological services and environmentally mediated health and quality of life values.

Single copies of the information provided to the Committee can be obtained by contacting Ms. Diana Pozun, Staff Secretary, Committee Operations Staff, Science Advisory Board (1400), US EPA, 401 M Street SW., Washington, DC 20460, telephone (202) 260–6552, fax (202) 260–7118, or via the Internet at: Pozun.Diana@EPAMAIL.EPA.GOV. Single copies of *Reducing Risk*, the report of the previous relative risk ranking effort of

the SAB, can be obtained by contacting the SAB's Committee Evaluation and Support Staff (1400), 401 M Street, SW, Washington, DC 20460, telephone (202) 260–8414, or fax (202) 260–1889.

Anyone wishing to make an oral presentation at the meeting must contact Mr. Thomas Miller, Designated Federal Official for the Valuation Subcommittee, in *writing* no later than 4:00 pm (Eastern Daylight Time) March 21, 1997, at the above address, via fax (202) 260–7118, or via the Internet at: Miller.Tom@EPAMAIL.EPA.GOV. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. At least 35 copies of any written comments to the Committee are to be given to Mr. Miller no later than the time of the presentation for distribution to the Committee and the interested public. To discuss technical aspects of the meeting, please contact Mr. Miller by telephone at (202) 260–5886.

3. The Ecological Risk Subcommittee (ERS) of the Science Advisory Board's Integrated Risk Project will hold a *teleconference* meeting on March 31, 1997 from 11:00 a.m.–1:00 p.m. Eastern Time. The purpose of the meeting is to complete revisions to a proposed Subcommittee methodology for assessing the relative risks from ecological stressors. A limited number of lines will be available for members of the public who wish to call in.

For more information on the teleconference meeting, please contact Ms. Stephanie Sanzone, Designated Federal Official for the Ecological Risk Subcommittee at (202) 260–6557, via fax at (202) 260–7118 or via the Internet at Sanzone.Stephanie@EPAMAIL.EPA.GOV. Anyone wishing to provide oral comments to the Subcommittee must contact Ms. Sanzone no later than 4:00 p.m. on March 26, 1997. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. Oral comments will be limited to five minutes per person.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. For conference call meetings, opportunities for oral comment will be limited to no more than five minutes per speaker and no more than fifteen minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date, may be mailed to the relevant SAB committee or subcommittee prior to its meeting; comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

Dated: February 28, 1997.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 97–5883 Filed 3–7–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5701–9]

Public Meetings of the Urban Wet Weather Flows Advisory Committee, the Storm Water Phase II Advisory Subcommittee, and the Sanitary Sewer Overflow Advisory Subcommittee

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is given that the Environmental Protection Agency (EPA) has postponed the Sanitary Sewer Overflow (SSO) Advisory Subcommittee meeting scheduled for April 21–22, 1997 at the National Airport Hilton. This meeting was listed in the **Federal Register** of February 3, 1997.

The public meetings for the Urban Wet Weather Flows (UWWF) Advisory Committee and the Storm Water Phase II Advisory Subcommittee which were also listed in the **Federal Register** of February 3, 1997 *remain unchanged.*

FOR FURTHER INFORMATION CONTACT: Charles Vanderlyn, Office of Wastewater Management, at (202) 260–7277 or Internet: vanderlyn.charles@epamail.epa.gov.

Dated: March 3, 1997.

Michael B. Cook,

Director, Office of Wastewater Management, Designated Federal Official.

[FR Doc. 97–5881 Filed 3–7–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5700–5]

Proposed Settlement Under Section 122(h) of Comprehensive Environmental Response, Compensation and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and opportunity for public comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to enter into an administrative settlement to resolve claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. This settlement is intended to resolve liabilities of one party for costs incurred by EPA at the M & T Delisa Superfund Site.

DATE: Comments must be provided on or before April 9, 1997.

ADDRESS: Comments should be addressed to the U.S. Environmental Protection Agency, Office of Regional Counsel, New Jersey Superfund Branch, 17th Floor, New York, New York 10007–1866 and should refer to: In the Matter of: M & T Delisa Site, U.S. EPA Index No. II–CERCLA–97–0102.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, Office of Regional Counsel, New Jersey Superfund Branch, Superfund Branch, 17th Floor, New York, New York 10007–1866. Attention: Denise Finn, Esq., (212) 637–3135.

SUPPLEMENTARY INFORMATION: In accordance with Section 122(i)(1) of CERCLA, notice is hereby given of a proposed administrative settlement concerning the M & T Delisa Superfund Site which is located in Ocean Township, Monmouth County, New Jersey. Section 122(h) of CERCLA provides EPA with authority to consider, compromise, and settle certain claims for costs incurred by the United States.

The Equitable Life Assurance Society of the United States is committed to participate in this settlement. The Settling Party will pay a total of $251,324 under this agreement to reimburse EPA for response costs incurred at the M & T Delisa Site.

A copy of the proposed administrative settlement agreement, as well as background information relating to the settlement, may be obtained in person or by mail from EPA's Region II Office of Regional Counsel, New Jersey Superfund Branch, 290 Broadway, 17th Floor, New York, NY 10007–1866.

Dated: February 5, 1997.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 97–5889 Filed 3–7–97; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

Federal Register Citation of Previous Announcement, 62 FR 9430, Monday, March 3, 1997.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (Eastern Time), Tuesday, March 11, 1997.

CHANGE IN THE MEETING:

Closed Session

The closed session of the meeting has been canceled.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer, on (202) 663–4070.

Dated: March, 5 1997.

This Notice Issued March 5, 1997.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 97–5952 Filed 3–5–97; 4:59 pm]

BILLING CODE 6750–06–M

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting; Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the March 13, 1997 regular meeting of the Farm Credit Administration Board (Board) will not be held.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 97–5968 Filed 3–6–97; 10:26 am]

BILLING CODE 6705–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, March 11, 1997, to consider the following matters:

Discussion Agenda

Memorandum and resolution re:

Proposed Final Rule on Government Securities Sales Practices, 12 CFR Part 368.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2449 (Voice); (202) 416–2004 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Jerry L. Langley, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: March 6, 1997.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 97–6012 Filed 3–6–97; 12:34 pm]

BILLING CODE 6714–01–M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Use of Large-Value Funds Transfers for Money Laundering; Rescission of Policy Statement

AGENCY: Federal Financial Institutions Examination Council (FFIEC).

ACTION: Rescission of Policy Statement.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC); Office of the Comptroller of the Currency (OCC), Department of the Treasury; Board of Governors of the Federal Reserve System (FRB); Office of Thrift Supervision (OTS), Department of the Treasury; and the National Credit Union Administration (NCUA) (Agencies) each is rescinding its policy statement (Statement) concerning the problem of the use of large-value funds transfers for money laundering. The Statement recommended that banks obtain and maintain certain records with respect to funds transfers sent or received in the normal course of business. The Agencies are rescinding the Statement because it is duplicative of a recent amendment to the Bank Secrecy Act regulations.

DATES: This Statement is rescinded on March 10, 1997.

FOR FURTHER INFORMATION CONTACT:

FDIC: R. Eugene Seitz, Review Examiner, (202) 898–6793, Division of Supervision; Barbara Katron, Counsel, (202) 736–0564, Legal Division, FDIC, 550 17th Street, N.W., Washington, D.C. 20429.

OCC: John McDowell, Senior Advisor, Compliance Management (202) 874–4846, Office of the Chief National Bank Examiner, OCC, 250 E. Street, S.W., Washington, D.C. 20219.

FRB: Richard A. Small, Special Counsel, (202) 452–5235, Division of Banking Supervision, FRB, 20th and C Streets, N.W., Washington, D.C. 20551

OTS: Larry A. Clark, Senior Manager, Compliance Trust Programs, (202) 906–5628, OTS, 1700 G Street, N.W., Washington, D.C. 20552.

NCUA: Kim Iverson, Program Officer, (703) 518–6375, NCUA, 1775 Duke Street, Alexandria, Virginia 22314–3428.

SUPPLEMENTARY INFORMATION: FFIEC consists of representatives from the FDIC, OCC, FRB, OTS, and NCUA. On December 8, 1992, upon the recommendation of the Financial Action Task Force, FFIEC adopted a policy statement concerning the problem of the use of large value funds transfers, and recommended that the five member agencies adopt the Statement. As a means to assist law enforcement agencies in the identification and documentation of parties to funds transfers, the Statement recommended that banks obtain and maintain certain records concerning funds transfers originated or received. The FDIC, OCC, FRB, OTS, and NCUA subsequently adopted the Statement which was published in the **Federal Register** on March 17, 1993 (58 FR 14400).

On January 3, 1995, the Department of the Treasury and the Board of Governors of the Federal Reserve System jointly published in the **Federal Register** an amendment to the Bank Secrecy Act ("BSA") regulations that requires financial institutions to obtain and maintain records concerning funds transfers originated or received by the institutions. The recordkeeping requirements contained in the amendment to the BSA regulations are the same as those recommended in the Statement. The amendment to the BSA regulations became effective May 28, 1996; the Statement has become duplicative and, therefore, unnecessary.

On September 13, 1996, by notational vote, the FFIEC voted to rescind the Statement on behalf of the Agencies.

The Agencies' Action

The Agencies hereby withdraw the Statement.

Dated at Washington, D.C., this 5th day of March, 1997.

Federal Financial Institutions Examination Council

Joe M. Cleaver,

Executive Secretary.

[FR Doc. 97–5848 Filed 3–7–97; 8:45 am]

BILLING CODE 6210–01–P, 6720–01–P, 6714–01–P, 4810–33–P, 7535–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 24, 1997.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. Larry W. Jochim, Bigfork, Montana; to acquire an additional 9.6 percent, for a total of 11.7 percent, of the voting shares of Mountain Bank System, Inc., Whitefish, Montana, and thereby indirectly acquire Valley Bank of Belgrade, Belgrade, Montana.

Board of Governors of the Federal Reserve System, March 4, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–5763 Filed 3–7–97; 8:45 am]

BILLING CODE 6210-01-F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 3, 1997.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. ABC Employee Stock Ownership Plan, Anchor, Illinois; to acquire through a redemption of stock, an additional 18.23 percent, for a total of 59.31 percent, of the voting shares of Anchor Bancorporation, Inc., Anchor, Illinois, and thereby indirectly acquire Anchor State Bank, Anchor, Illinois.

Board of Governors of the Federal Reserve System, March 4, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–5762 Filed 3–7–97; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. HHS Acquisition Regulations —HHSAR Subpart 315 Solicitation and Receipt of Proposals and Quotations—0990–0139—extension with no change—Subpart 315.4 is needed to ensure consistency in all Departmental solicitations and to ensure that all solicitations describe all of the information which an offeror would need to submit an acceptable proposals. *Respondent:* State of local governments, Businesses or other for-profit organizations, non-profit institutions, small businesses; *Total Number of Respondents:* 6,645 *Frequency of Response:* one time; *Average Burden per Response:* 2 hours; *Estimated Annual Burden:* 23,290 hours.

OMB Desk Officer: Allison Eydt.

Copies of the information collection packages listed above can be obtained by calling OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street N.W., Washington, D.C. 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue S.W., Washington DC, 20201. Written comments should be received within 30 days of this notice.

Dated: February 18, 1997.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 97–5733 Filed 3–7–97; 8:45 am]

BILLING CODE 4150–04–M

Annual Update of the HHS Poverty Guidelines

AGENCY: Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice provides an update of the HHS poverty guidelines to account for last (calendar) year's increase in prices as measured by the Consumer Price Index.

EFFECTIVE DATE: These guidelines go into effect on March 10, 1997 (unless an office administering a program using the guidelines specifies a different effective date for that particular program).

ADDRESSES: Office of the Assistant Secretary for Planning and Evaluation, Room 438F, Humphrey Building, Department of Health and Human Services (HHS), Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: *For information about how the poverty guidelines are used in a particular program*, contact the Federal (or other) office which is responsible for that program.

For general information about the poverty guidelines (but not for information about how they are used in a particular program), contact Gordon Fisher, Office of the Assistant Secretary for Planning and Evaluation, Room 438F, Humphrey Building, Department of Health and Human Services, Washington, D.C. 20201—telephone: (202) 690–6141.

For information about the Hill-Burton Uncompensated Services Program (no-fee or reduced-fee health care services at certain hospitals and other health care facilities for certain persons unable to pay for such care), contact the Office of the Director, Division of Facilities Compliance and Recovery, HRSA, HHS, Room 7–47, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857—telephone: (301) 443–5656 or 1–800–638–0742 (for callers outside Maryland) or 1–800–492–0359 (for callers in Maryland). The Division of Facilities Compliance and Recovery notes that as set by 42 CFR 124.505(b), the effective date of this update of the poverty guidelines for facilities obligated under the Hill-Burton Uncompensated Services Program is sixty days from the date of this publication.

Under an amendment to the Older Americans Act, the figures in this notice are the figures that state and area agencies on aging should use to determine "greatest economic need" for Older Americans Act programs. *For information about Older Americans Act programs*, contact Carol Crecy, Administration on Aging, HHS—telephone: (202) 619–0011.

For information about the Department of Labor's Lower Living Standard Income Level (an alternative eligibility criterion with the poverty guidelines for certain Job Training Partnership Act programs), contact Theodore W. Mastroianni, Administrator, Office of Job Training Programs, U.S. Department of Labor—telephone: (202) 219–6236.

For information about the number of persons in poverty or about the Census Bureau (statistical) poverty thresholds, contact the Income, Poverty, and Labor Force Information Staff, HHES Division, Room 416, Iverson Mall, U.S. Bureau of the Census, Washington, D.C. 20233—telephone: (301) 763–8578.

1997 POVERTY GUIDELINES FOR THE 48 CONTIGUOUS STATES AND THE DISTRICT OF COLUMBIA

Size of family unit	Poverty guideline
1	$7,890
2	10,610
3	13,330
4	16,050
5	18,770
6	21,490
7	24,210
8	26,930

For family units with more than 8 members, add $2,720 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)

1997 POVERTY GUIDELINES FOR ALASKA

Size of family unit	Poverty guideline
1	$9,870
2	13,270
3	16,670
4	20,070
5	23,470
6	26,870
7	30,270
8	33,670

For family units with more than 8 members, add $3,400 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)

1997 POVERTY GUIDELINES FOR HAWAII

Size of family unit	Poverty guideline
1	$9,070
2	12,200
3	15,330
4	18,460
5	21,590
6	24,720
7	27,850
8	30,980

For family units with more than 8 members, add $3,130 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)

(Separate poverty guideline figures for Alaska and Hawaii reflect Office of Economic Opportunity administrative practice beginning in the 1966–1970 period. Note that the Census Bureau poverty thresholds—the primary version of the poverty measure—have never had separate figures for Alaska and Hawaii. The poverty guidelines are not defined for Puerto Rico, the U.S. Virgin Islands, American Samoa, Guam, the Republic of the Marshall Islands, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, and Palau. In cases in which a Federal program using the poverty guidelines serves any of those jurisdictions, the Federal office which administers the program is responsible for deciding whether to use the contiguous-states-and-D.C. guidelines for those jurisdictions or to follow some other procedure.)

The preceding figures are the 1997 update of the poverty guidelines required by section 673(2) of the Omnibus Budget Reconciliation Act (OBRA) of 1981 (Pub.L. 97–35). As required by law, this update reflects last year's change in the Consumer Price Index (CPI–U); it was done using the same procedure used in previous years.

Section 673(2) of OBRA–1981 (42 U.S.C. 9902(2)) requires the use of the poverty guidelines as an eligibility criterion for the Community Services Block Grant program. The poverty guidelines are also used as an eligibility criterion by a number of other Federal programs (both HHS and non-HHS). Due to confusing legislative language dating back to 1972, the poverty guidelines have sometimes been mistakenly referred to as the "OMB" (Office of Management and Budget) poverty guidelines or poverty line. In fact, OMB has never issued the guidelines; the guidelines are issued each year by the Department of Health and Human Services (formerly by the Office of Economic Opportunity/Community Services Administration). The poverty guidelines may be formally referenced as "the poverty guidelines updated annually in the **Federal Register** by the U.S. Department of Health and Human Services under authority of section 673(2) of the Omnibus Budget Reconciliation Act of 1981."

The poverty guidelines are a simplified version of the Federal Government's statistical poverty thresholds used by the Bureau of the Census to prepare its statistical estimates of the number of persons and families in poverty. The poverty guidelines issued by the Department of Health and Human Services are used for administrative purposes—for instance,

for determining whether a person or family is financially eligible for assistance or services under a particular Federal program. The poverty thresholds are used primarily for statistical purposes. Since the poverty guidelines in this notice—the 1997 guidelines—reflect price changes through calendar year 1996, they are approximately equal to the poverty thresholds for calendar year 1996 which the Census Bureau will issue in late summer or autumn 1997. (A preliminary version of the 1996 thresholds is now available from the Census Bureau.)

In certain cases, as noted in the relevant authorizing legislation or program regulations, a program uses the poverty guidelines as only one of several eligibility criteria, or uses a percentage multiple of the guidelines (for example, 125 percent or 185 percent of the guidelines). Non-Federal organizations which use the poverty guidelines under their own authority in non-Federally-funded activities also have the option of choosing to use a percentage multiple of the guidelines such as 125 percent or 185 percent.

Some programs, while not using the guidelines to exclude non-lower-income persons as ineligible, use them for the purpose of giving priority to lower-income persons or families in the provision of assistance or services.

In some cases, these poverty guidelines may not become effective for a particular program until a regulation or notice specifically applying to the program in question has been issued.

The poverty guidelines given above should be used for both farm and nonfarm families. Similarly, these guidelines should be used for both aged and non-aged units. The poverty guidelines have never had an aged/non-aged distinction; only the Census Bureau (statistical) poverty thresholds have separate figures for aged and non-aged one-person and two-person units.

Definitions

There is no universal administrative definition of "income," "family," "family unit," or "household" that is valid for all programs that use the poverty guidelines. Federal programs may use administrative definitions that differ somewhat from the statistical definitions given below; the Federal office which administers a program has the responsibility for making decisions about administrative definitions. Similarly, non-Federal organizations which use the poverty guidelines in non-Federally-funded activities may use administrative definitions that differ from the statistical definitions given below. In either case, to find out the precise definitions used by a particular program, one must consult the office or organization administering the program in question.

The following statistical definitions (derived for the most part from language used in U.S. Bureau of the Census, Current Population Reports, Series P60–185 and earlier reports in the same series) are made available for illustrative purposes only; in other words, these statistical definitions are not binding for administrative purposes.

(a) *Family.* A family is a group of two or more persons related by birth, marriage, or adoption who live together; all such related persons are considered as members of one family. For instance, if an older married couple, their daughter and her husband and two children, and the older couple's nephew all lived in the same house or apartment, they would all be considered members of a single family.

(b) *Unrelated individual.* An unrelated individual is a person 15 years old or over (other than an inmate of an institution) who is not living with any relatives. An unrelated individual may be the only person living in a house or apartment, or may be living in a house or apartment (or in group quarters such as a rooming house) in which one or more persons also live who are not related to the individual in question by birth, marriage, or adoption. Examples of unrelated individuals residing with others include a lodger, a foster child, a ward, or an employee.

(c) *Household.* As defined by the Bureau of the Census for statistical purposes, a household consists of all the persons who occupy a housing unit (house or apartment), whether they are related to each other or not. If a family and an unrelated individual, or two unrelated individuals, are living in the same housing unit, they would constitute two family units (see next item), but only one household. Some programs, such as the food stamp program and the Low-Income Home Energy Assistance Program, employ administrative variations of the "household" concept in determining income eligibility. A number of other programs use administrative variations of the "family" concept in determining income eligibility. Depending on the precise program definition used, programs using a "family" concept would generally apply the poverty guidelines separately to each family and/or unrelated individual within a household if the household includes more than one family and/or unrelated individual.

(d) *Family unit.* "Family unit" is not an official U.S. Bureau of the Census term, although it has been used in the poverty guidelines **Federal Register** notice since 1978. As used here, either an unrelated individual or a family (as defined above) constitutes a family unit. In other words, a family unit of size one is an unrelated individual, while a family unit of two/three/etc. is the same as a family of two/three/etc.

(e) *Income.* Programs which use the poverty guidelines in determining eligibility may use administrative definitions of "income" (or "countable income") which differ from the statistical definition given below. Note that for administrative purposes, in many cases, income data for a part of a year may be annualized in order to determine eligibility—for instance, by multiplying by four the amount of income received during the most recent three months.

For statistical purposes—to determine official income and poverty statistics—the Bureau of the Census defines income to include total annual cash receipts before taxes from all sources, with the exceptions noted below. Income includes money wages and salaries before any deductions; net receipts from nonfarm self-employment (receipts from a person's own unincorporated business, professional enterprise, or partnership, after deductions for business expenses); net receipts from farm self-employment (receipts from a farm which one operates as an owner, renter, or sharecropper, after deductions for farm operating expenses); regular payments from social security, railroad retirement, unemployment compensation, strike benefits from union funds, workers' compensation, veterans' payments, public assistance (including Aid to Families with Dependent Children or Temporary Assistance for Needy Families, Supplemental Security Income, and non-Federally-funded General Assistance or Generai Relief money payments), and training stipends; alimony, child support, and military family allotments or other regular support from an absent family member or someone not living in the household; private pensions, government employee pensions (including military retirement pay), and regular insurance or annuity payments; college or university scholarships, grants, fellowships, and assistantships; and dividends, interest, net rental income, net royalties, periodic receipts from estates or trusts, and net gambling or lottery winnings.

For official statistical purposes, income does not include the following types of money received: capital gains; any assets drawn down as withdrawals from a bank, the sale of property, a house, or a car; or tax refunds, gifts, loans, lump-sum inheritances, one-time insurance payments, or compensation for injury. Also excluded are noncash benefits, such as the employer-paid or union-paid portion of health insurance or other employee fringe benefits, food or housing received in lieu of wages, the value of food and fuel produced and consumed on farms, the imputed value of rent from owner-occupied nonfarm or farm housing, and such Federal noncash benefit programs as Medicare, Medicaid, food stamps, school lunches, and housing assistance.

Dated: February 28, 1997.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 97–5731 Filed 3–7–97; 8:45 am]

BILLING CODE 4110–60–P

Centers for Disease Control and Prevention

[Announcement 729]

National Institute for Occupational Safety and Health; Research and Demonstration Grants Occupational Safety and Health

Introduction

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) is soliciting grant applications for research and demonstration projects related to occupational safety and health (see the section **Availability of Funds**).

CDC is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health. (For ordering a copy of Healthy People 2000," see the section **Where To Obtain Additional Information.**)

Authority

This program is authorized under the Public Health Service Act, as amended, Section 301 (42 U.S.C. 241); the Occupational Safety and Health Act of 1970, Sections 20(a) and 22 (29 U.S.C. 669 and 671); and the Federal Mine Safety and Health Act of 1977, Section 501 (30 U.S.C. 951). The applicable program regulations are in 42 CFR Part 52.

Eligible Applicants

Eligible applicants include domestic and foreign non-profit and for-profit organizations, universities, colleges, research institutions, and other public and private organizations, including State and local governments and small, minority and/or woman-owned businesses. Exceptions: applicants for the Special Emphasis Research Career Award (SERCA) Grant and Small Grant programs must be citizens or persons lawfully admitted to the United States for permanent residence (resident alien) at the time of application and must be employed by a domestic institution.

Note: An organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible to receive Federal funds constituting an award, grant, contract, loan, or any other form.

Smoke-Free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds and in which education, library, day care, health care, and early childhood development services are provided to children.

Availability of Funds

For fiscal year (FY) 1997, the budget is projected to be $10,500,000. Of that amount, $7,700,000 is committed to support 41 non-competing continuing awards. Therefore, $2,800,000 is available for new and competing renewal awards. The overall budget includes funds for Small Business Innovation Research (SBIR) grants and for health and safety research related to the construction industry. Target amounts (continuing and new awards) for certain grant mechanisms are as follows: 10 R03 grants (about $375,000), 10 K01 grants (about $540,000), and 5 R29 grants (about $500,000).

Grant applications should be focused on the research priorities described in the section **Funding Priorities** that includes new research priorities developed in a process which resulted in defining a National Occupational Research Agenda.

Background

In today's society, Americans are working more hours than ever before. The workplace environment profoundly affects health. Each of us, simply by going to work each day, may face hazards that threaten our health and safety. Risking one's life or health should never be considered merely part of the job.

In 1970, Congress passed the Occupational Safety and Health Act to ensure Americans the right to "safe and healthful working conditions," yet workplace hazards continue to inflict a tremendous toll in both human and economic costs.

Employers reported 6.3 million work injuries in 1994 and 515,000 cases of occupational illness. An average of 17 American workers die each day from injuries on the job. Moreover, even the most conservative estimates find that about 137 additional workers die each day from workplace diseases.

Additionally, in 1994 occupational injuries and deaths cost $120.7 billion in wages and lost productivity, administrative expenses, health care and other costs. This does not include the cost of occupational disease.

Occupational injury and disease create needless human suffering, a tremendous burden upon health care resources, and an enormous drain on U.S. productivity. Yet, to date, this mainstream public health problem has escaped mainstream public attention.

The philosophy of NIOSH is articulated in the Institute's vision statement: Delivering on the Nation's Promise: Safety and Health at Work for All People * * * Through Research and Prevention. To identify and reduce hazardous working conditions, the Institute carries out disease, injury, and hazard surveillance and conducts a wide range of field and laboratory research. Additionally, NIOSH sponsors extramural research in priority areas to complement and expand its efforts. These are listed in the section **Funding Priorities.**

Purpose

The purpose of this grant program is to develop knowledge that can be used in preventing occupational diseases and injuries. Thus, NIOSH will support the following types of applied research projects: causal research to identify and investigate the relationships between hazardous working conditions and associated occupational diseases and injuries; methods research to develop more sensitive means of evaluating hazards at work sites, as well as methods for measuring early markers of adverse health effects and injuries; control research to develop new protective equipment, engineering control technology, and work practices to reduce the risks of occupational hazards; and demonstrations to evaluate the technical feasibility or application of a new or improved occupational safety and health procedure, method, technique, or system.

Mechanisms of Support

Applications responding to this announcement will be reviewed by staff for their responsiveness to the following program requirements. Grants are funded for 12-month budget periods in project periods up to five years for research project grants and demonstration project grants; three years for SERCA grants; and two years for small grants. Continuation awards within the project period are made on the basis of satisfactory progress and on the availability of funds. The types of grants NIOSH supports are as follow:

1. Research Project Grants (R01)

A research project grant application should be designed to establish, discover, develop, elucidate, or confirm information relating to occupational safety and health, including innovative methods, techniques, and approaches for dealing with problems. These studies may generate information that is readily available to solve problems or contribute to a better understanding of the causes of work-related diseases and injuries.

2. Demonstration Project Grants (R18)

A demonstration project grant application should address, either on a pilot or full-scale basis, the technical or economic feasibility of implementing a new/improved innovative procedure, method, technique, or system for preventing occupational safety or health problems. The project should be conducted in an actual workplace where a baseline measure of the problem will be defined, the new/improved approach will be implemented, a follow-up measure of the problem will be documented, and an evaluation of the benefits will be conducted.

3. First Independent Research Support and Transition (FIRST) Grants (R29)

The FIRST grant is to provide a sufficient period of research support for newly independent investigators to initiate their own research and demonstrate the merit of their own research ideas. These grants are intended to underwrite the first independent investigative efforts of an individual; to provide a reasonable opportunity to demonstrate creativity, productivity, and further promise; and to help in the transition to traditional types of research project grants. The award is not intended for individuals in mid-career who may be in transition to another undertaking. It is for a distinct research endeavor and may not be used merely to supplement or broaden an ongoing project.

Candidates must (1) be genuinely independent of a mentor, yet at the same time be at the beginning stages of their research careers, (2) have no more than 5 years of research experience since completing post-doctoral research training or its equivalent, (3) not be in training status at the time of the award, (4) have never been the principal investigator (PI) on any Public Health Service grant except a Small Grant (R03) or a Special Emphasis Research Career Award Grants (K01), and (5) not necessarily be U.S. citizens, although the applicant organizations must be domestic.

The PI must request 5 years of support; otherwise, the application will be reviewed as a traditional research project (R01). There must be a commitment of no less than 50 percent effort to the proposed project. The total direct cost for the 5-year period may not exceed $350,000. The direct cost award in any budget period may not exceed $100,000. FIRST awards are not renewable; however, a PI may submit an R01 application to continue and extend the research supported by a FIRST award. Replacement of the PI on a FIRST award will not be approved.

The application must include the following documentation: (1) A letter or memorandum is needed from a suitable department head or dean which addresses the eligibility of the proposed PI to lead a research project independently at the applicant organization (i.e., Is the proposed PI otherwise qualified to be the PI on a traditional project grant?). When the application is from the institution where the proposed PI received post-doctoral research training, it must be made absolutely clear that the FIRST award would be to support a research endeavor independent of that conducted in the former training environment. Details of the intended commitment of the institution to the project for the 5-year period should be provided. (2) At least three letters of reference must be submitted. FIRST applicants are to request the letters well in advance of the application submission, advising the referees to return the reference letters to the applicant in sealed envelopes as soon as possible. To protect the utility and confidentiality of reference letters, applicants are not to open the envelopes. The sealed envelopes must be attached to the front of the original application. Reference letters should reflect the investigator's research originality and potential for independent investigation. A list of individuals providing letters must be included as Section 10 of the Research Plan. Names, titles, and institutional affiliation is needed for each person.

4. Special Emphasis Research Career Award (SERCA) Grants (K01)

The SERCA grant is intended to provide opportunities for individuals to acquire experience and skills while under the direction of at least one mentor, and in so doing, create a pool of highly qualified investigators who can make future contributions to research in the area of occupational safety and health. SERCA grants are not intended for individuals without research experience, or for productive, independent investigators with a significant number of publications and of senior academic rank. Moreover, the award is not intended to substitute one source of salary support for another for an individual who is already conducting full-time research; nor is it intended to be a mechanism for providing institutional support.

Candidates must: (1) Hold a doctoral degree; (2) have research experience at or above the doctoral level; (3) not be above the rank of associate professor; (4) be employed at a domestic institution; and (5) be citizens or persons lawfully admitted to the United States for permanent residence (resident alien) at the time of application.

This non-renewable award provides support for a three-year period for individuals engaged in full-time research and related activities. Awards will not exceed $50,000 per year in direct costs for salary support (plus fringe benefits), technical assistance, equipment, supplies, consultant costs, domestic travel, publications, and other costs. The indirect cost rate applied is limited to 8 percent of the direct costs, excluding tuition and related fees and equipment expenses, or to the actual indirect cost rate, whichever results in the lesser amount.

A minimum of 60 percent time must be committed to the proposed research project, although full-time is desirable. Other work in the area of occupational safety and health will enhance the candidate's qualifications but is not a substitute for this requirement. Related activities may include research career development activities as well as involvement in patient care to the extent that it will strengthen research skills. Fundamental/basic research will not be supported unless the project will make an original contribution for applied technical knowledge in the identification, evaluation, or control of occupational safety and health hazards (e.g., development of a diagnostic technique for early detection of an occupational disease). Research project proposals must be of the applicants' own design and of such scope that independent investigative capability will be evident within three years. At the completion of this three-year award, it is intended that awardees should be better able to compete for individual research project grants awarded by NIOSH.

SERCA grant applications should be identified as such on the application form. Section 2 of the application (the Research Plan) should include a statement regarding the applicant's career plans and how the proposed research will contribute to a career in occupational safety and health research. This section should also include a letter of recommendation from the proposed advisor(s).

5. Small Grants (R03)

The small grant program is intended to stimulate proposals from individuals who are considering a research career in occupational safety and health; as such, the minimum time commitment is 10%. It is expected that a recipient would subsequently compete for other grant mechanisms which are described above in items 1 to 4. The award is not intended to supplement ongoing or other proposed research; nor is it intended to be a mechanism for providing institutional support. Please note that fundamental/basic research is generally not supported.

The small grant investigators must be United States citizens or persons lawfully admitted to the United States for permanent residence (resident alien) at the time of application who are predoctoral students, post-doctoral researchers (within 3 years following completion of doctoral degree or completion of residency or public health training), or junior faculty members (no higher than assistant professor). If university policy requires that a more senior person be listed as principal investigator, it should be clear in the application which person is the small grant investigator. Except for applicants who are assistant professors, there must be one or more named mentors to assist with the project. A biographical sketch is required for the small grant investigator, as well as for the supervisor and other key consultants, as appropriate.

This non-renewable award provides support for project periods of up to two years to carry out exploratory or pilot studies, to develop or test new techniques or methods, or to analyze data previously collected. Awards will not exceed $25,000 per year in direct costs for salary support (plus fringe benefits), technical assistance, equipment, supplies, consultant costs, domestic travel, publications, and other costs. The indirect costs will be based upon the negotiated indirect cost rate of the applicant organization. An individual may not receive more than two small grant awards, and then, only if the awards are at different stages of development (e.g., doctoral student, post-doctoral researcher, or junior faculty member).

Funding Priorities

The NIOSH program priorities, listed below, are applicable to all of the above types of grants listed under the section **Mechanisms of Support**. These priority areas were developed by NIOSH and its partners in the public and private sectors to provide a framework to guide occupational safety and health research in the next decade—not only for NIOSH but also for the entire occupational safety and health community. Approximately 500 organizations and individuals outside NIOSH provided input into the development of the National Occupational Research Agenda (NORA). This attempt to guide and coordinate research nationally is responsive to a broadly perceived need to address systematically those topics that are most pressing and most likely to yield gains to the worker and the nation. Fiscal constraints on occupational safety and health research are increasing, making even more compelling the need for a coordinated and focused research agenda. NIOSH intends to support projects that facilitate progress in understanding and preventing adverse effects among workers. The conditions or examples listed under each category are selected examples, not comprehensive definitions of the category. Investigators may also apply in other areas related to occupational safety and health, but the rationale for the significance of the research to the field of occupational safety and health must be presented in the grant application.

Potential applicants with questions concerning the acceptability of their proposed work are strongly encouraged to contact the "Technical Information Contact," Dr. Roy M. Fleming, listed in this announcement under the section **Where To Obtain Additional Information.**

The Agenda identifies 21 research priorities. These priorities reflect a remarkable degree of concurrence among a large number of stakeholders. The NORA priority research areas are grouped into three categories: Disease and Injury, Work Environment and Workforce, and Research Tools and Approaches. The NORA document is available through the NIOSH Home Page; http://www.cdc.gov/ niosh/ nora.html.

NORA Priority Research Areas

Disease and Injury
- Allergic and Irritant Dermatitis
- Asthma and Chronic Obstructive Pulmonary Disease
- Fertility and Pregnancy Abnormalities
- Hearing Loss
- Infectious Diseases
- Low Back Disorders
- Musculoskeletal Disorders of the Upper Extremities
- Traumatic Injuries

Work Environment and Workforce
- Emerging Technologies
- Indoor Environment
- Mixed Exposures
- Organization of Work
- Special Populations at Risk

Research Tools and Approaches
- Cancer Research Methods
- Control Technology and Personal Protective Equipment
- Exposure Assessment Methods
- Health Services Research
- Intervention Effectiveness Research
- Risk Assessment Methods
- Social and Economic Consequences of Workplace Illness and Injury
- Surveillance Research Methods

Applications Submission and Deadlines and Review Dates

The research grant application Form PHS–398 (OMB Number 0925–0001) is to be used in applying for these grants. These forms are available at most institutional offices of sponsored research; from the Extramural Outreach and Information Resources Office, Office of Extramural Research, 6701 Rockledge Drive, MS-C7910, Bethesda, MD 20892–7910, telephone (301) 435–0714; fax (301) 480–8443; Internet girg@drgpo.drg.nih.gov; and from the contacts listed under the section **Where To Obtain Additional Information**.

The original and five copies of the PHS–398 must be submitted to Division of Research Grants, National Institutes of Health, Suite 1040, 6701 Rockledge Drive, MS–C7710, Bethesda, MD 20892–7710, on or before the specified receipt dates provided below. A mailing label is provided in the Form PHS–398 application package.

The timetable for receiving applications and awarding grants is given below. This is a continuous announcement, consequently, these receipt dates will be on-going until further notice.

Receipt date*	Initial review	Secondary review	Earliest possible start date
Research and Demonstration Project Grants:			
Feb. 1	June/July	Sept.	Dec. 1.
June 1	Oct./Nov.	Jan.	Apr. 1.
Oct. 1	Feb./Mar.	May	Aug. 1.
SERCA and Small Grants:			
Mar. 1	June/July	Aug.	Nov. 1.
July 1	Oct./Nov.	Dec.	Mar..1.
Nov. 1	Feb./Mar.	Apr.	July 1.

*Deadlines for competing continuation applications or revised applications are 1 month later.

Applications must be received by the above receipt dates. To prevent problems caused by carrier delays, retain a legible proof-of-mailing receipt from the carrier, dated no later than one week prior to the receipt date. If the receipt date falls on a weekend, it will be extended to Monday; if the date falls on a holiday, it will be extended to the following work day. The receipt date will be waived only in extenuating circumstances. To request such a waiver, include an explanatory letter with the signed, completed application. No request for a waiver will be considered prior to receipt of the application.

Evaluation Criteria

Applications will be reviewed for scientific and technical merit by the CDC/NIOSH Occupational Safety and Health Chartered Study Section (SOH), in accordance with the standard peer review procedures. Following scientific technical review, the applications will receive a second-level programmatic review. Notification of the review recommendations will be sent to the applicants after the initial review. Awards will be made based on results of the initial and secondary reviews, as well as availability of funds.

Applications that are complete and responsive to the program announcement will be evaluated for scientific merit by the SOH peer review group. As part of the initial merit review, all applications will receive a written critique and undergo a process in which only those applications deemed to have the highest scientific merit, generally the top half of applications under review, will be discussed, assigned a priority score, and receive a second level review by the Institute programmatic review committee.

1. The initial (peer) review is based on scientific merit and significance of the project, competence of the proposed staff in relation to the type of research involved, feasibility of the project, likelihood of its producing meaningful results, appropriateness of the proposed project period, adequacy of the applicant's resources available for the project, and appropriateness of the budget request.

Demonstration grant applications will be reviewed additionally on the basis of the following criteria:

- Degree to which project objectives are clearly established, obtainable, and for which progress toward attainment can and will be measured.
- Availability, adequacy, and competence of personnel, facilities, and other resources needed to carry out the project.
- Degree to which the project can be expected to yield or demonstrate results that will be useful and desirable on a national or regional basis.
- Documentation of cooperation from industry, unions, or other participants in the project, where applicable.

SERCA grant applications will be reviewed additionally on the basis of the following criteria:

- The review process will consider the applicant's scientific achievements, the applicant's research career plan in occupational safety and health, and the degree to which the applicant's institution offers a superior research environment (supportive nature, including letter(s) of reference from advisor(s) which should accompany the application).

Consideration will be given to the fact that the applicants for small grants do not have extensive experience with the grants process.

2. In the secondary review, the following factors will be considered:

- The results of the initial review.
- The significance of the proposed study to the mission of NIOSH.

(1) Relevance to occupational safety and health by contributing to achievement of research objectives specified in Sections 20(a) and 22 of the Occupational Safety and Health Act of 1970 and Section 501 of the Federal Mine Safety and Health Act of 1977,

(2) Magnitude of the problem in terms of numbers of workers affected,

(3) Severity of the disease or injury in the worker population,

(4) Potential contribution to applied technical knowledge in the identification, evaluation, or control of occupational safety and health hazards,

(5) Program balance, and

(6) Policy and budgetary considerations.

Questions regarding the above criteria should be addressed to the Programmatic Technical Information Contact listed under **Where To Obtain Additional Information**.

Technical Reporting Requirements

Progress reports are required annually as part of the continuation application (75 days prior to the start of the next budget period). The annual progress reports must contain information on accomplishments during the previous budget period and plans for each remaining year of the project. Financial status reports (FSR) are required no later than 90 days after the end of the budget period. The final performance and financial status reports are required 90 days after the end of the project period. The final performance report should include, at a minimum, a statement of original objectives, a summary of research methodology, a summary of positive and negative findings, and a list of publications resulting from the project. Research papers, project reports, or theses are acceptable items to include in the final report. The final report should stand alone rather than citing the original application. Three copies of reprints of publications prepared under the grant should accompany the report.

Executive Order 12372 Review

Applications are not subject to review as governed by Executive Order 12372.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.262.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Other Requirements

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR Part 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and forms provided in the application kit.

Women and Racial and Ethnic Minorities

It is the policy of the Centers for Disease Control and Prevention (CDC) to ensure that women and racial and ethnic groups will be included in CDC/ATSDR-supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian, Alaska Native, Asian, Pacific Islander, Black and Hispanic. Applicants shall ensure that women and racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is inappropriate or not feasible, this situation must be explained as part of the application. In conducting review for scientific merit, review groups will evaluate proposed plans for inclusion of minorities and both sexes as part of the scientific assessment and scoring. This policy does not apply to research studies when the investigator cannot control the race, ethnicity and/or sex of subjects. Further guidance to this policy is contained in the **Federal Register**, Vol. 60, No. 179, pages 47947–47951, and dated Friday, September 15, 1995.

Where To Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and telephone number and will need to refer to announcement 729. You will receive a complete program description, information on application procedures, and application. Business management information may be obtained from Georgia Jang, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., MS-E13, Atlanta, GA 30305, telephone (404) 842–6814; fax: (404) 842–6513; Internet: glj2@cdc.gov.

Programmatic technical assistance may be obtained from Roy M. Fleming, Sc.D., Associate Director for Grants, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Building 1, Room 3053, MS-D30, Atlanta, GA 30333, telephone: (404) 639–3343; fax: (404) 639–4616; Internet: rmf2@cdc.gov.

Please Refer to Announcement Number 729 When Requesting Information and Submitting an Application.

This and other CDC Announcements can be found on the CDC home page at http://www.cdc.gov.

CDC will not send application kits by facsimile or express mail.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC, 20402–9325, telephone (202) 512–1800.

Dated: March 4, 1997.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–5831 Filed 3–7–97; 8:45 am]

BILLING CODE 4163–19–P

[Announcement 725]

National Institute for Occupational Safety and Health; Childhood Agricultural Safety and Health Research, Notice of Availability of Funds for Fiscal Year 1997

Introduction

The Centers for Disease Control and Prevention (CDC) announces that applications are being accepted for research on childhood agricultural safety and health. Projects are sought to conduct research on etiology, outcomes, and intervention strategies, and to rigorously evaluate the effectiveness of commonly used educational materials and methods in preventing childhood agricultural injuries and illnesses. Findings from these projects are intended to advance the scientific base of knowledge needed to maximize the safety and health of children exposed to agricultural production hazards.

CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of "Occupational Safety and Health" and "Unintentional Injuries." (For ordering a copy of "Healthy People 2000," see the section **Where to Obtain Additional Information**.)

Authority

This program is authorized under the Public Health Service Act, as amended, Section 301(a) (42 U.S.C. 241(a)) and the Occupational Safety and Health Act of 1970, Section 20(a) (29 U.S.C. 669(a)). The applicable program regulation is 42 CFR Part 52.

Eligible Applicants

Eligible applicants include non-profit and for-profit organizations, universities, colleges, research institutions, and other public and private organizations, including State and local governments, and small, minority and/or woman-owned businesses.

Note: An organization described in Section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible to receive Federal funds constituting an award, grant, contract, loan, or any other form.

Smoke-Free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Availability of Funds

About $2,500,000 is available in fiscal year (FY) 1997 to fund approximately 11 to 15 project grants in four priority research areas: (1) etiology (3–4 awards); (2) outcomes (3–4 awards); (3) intervention strategies (3–4 awards); and (4) rigorous evaluations of commonly available and used childhood educational or training programs to determine effectiveness in influencing safety and health behaviors and consequently preventing agricultural injuries and illnesses among children and adolescents (2–3 awards).

Awards for the first three areas are anticipated to range from $150,000 to $200,000 in total costs (direct and indirect) per year. Awards for the fourth priority area are anticipated to range from $200,000 to $300,000 in total costs (direct and indirect) per year.

The amount of funding available may vary and is subject to change. Awards are expected to begin on or about September 30, 1997. Awards will be made for a 12-month budget period within a project period not to exceed 3 years. Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds.

Background

Agricultural production, which consistently ranks among the industries with the highest rates of work-related injuries and deaths in the United States, is unique with respect to children and adolescents. Compared to nonagricultural industries, coverage and protections of Federal child labor laws are limited, work by youth under 14 years of age is common, and childhood exposures to work hazards are not confined to working youths. Research is needed to facilitate the appropriate prioritization of efforts to prevent childhood injuries and illnesses associated with agricultural production, and expand the knowledge base for the development and implementation of effective and appropriate intervention strategies.

Federal child labor laws are organized by agricultural and nonagricultural work. Whereas the minimum age for employment in nonagricultural industries is 14 years, there are provisions which allow for agricultural employment of children as young as 10 years of age. Although work declared hazardous by the Secretary of Labor is prohibited for youths less than 18 years of age in nonagricultural industries, in agriculture, it is prohibited for youths less than 16 years of age, and only then for youths formally employed off the family farm. Federal child labor regulations contain a statutory exemption which permits the children of farmers to perform any job at any age on a family farm.

Data on employment of youths less than 15 years of age are not routinely collected or reported. Children less than 15 years of age are known to work, especially in agriculture. In 1995, an estimated 275,000 youths 16–19 years of age were employed in agriculture, accounting for 4% of working youths in this age group. It is reported that 72% of these agricultural youth workers were wage and salary workers, 24% were self-employed, and 5% were unpaid family workers. The Bureau of Labor Statistics (BLS) reports 89 agricultural work-related deaths of youths 16–19 years of age for the years 1992–1995, accounting for a disproportionate 15% of work-related deaths among this age group during this period. Further, BLS reports 66 agricultural work-related deaths of youth less than 16 years of age during this period, a group for which employment data are not available.

An estimated 2,100 injuries serious enough to require time away from work occurred among working youth 14–19 years of age on farms with at least 11 employees in 1994. Estimates of serious injuries on farms with fewer than 11 employees are not available. A couple of studies have suggested that among youth, work-related injuries in agriculture tend to be more serious than injuries in other industries. Farm machinery, stored grain, power lines, manure pits, ponds, and livestock are among injury hazards in agricultural workplaces.

Children and adolescents may be exposed to agricultural production hazards not only through work activities, but by virtue of living on a farm or ranch, accompanying their parents to work, or visiting farms or ranches. In 1991, an estimated 1.3 million youth less than 20 years of age resided on farms or ranches. Another 800,000 children lived in households of hired farm workers. Data from the early 1980s suggested that 300 children and adolescents die annually from farm injuries, with about 35% of the deaths occurring among youth less than 9 years of age. Recent data suggest that about 100,000 children suffer a nonfatal injury associated with agricultural production each year. The monetary and social costs of these injuries are unknown, but they are needed to form and evaluate prevention efforts.

In April 1996, the National Committee for Childhood Agricultural Injury Prevention (NCCAIP) published a National Action Plan towards maximizing the safety and health of all children and adolescents who may be exposed to agricultural hazards. This National Action Plan, which includes 13 objectives and 43 recommended action steps, was based on input from 42 members representing the public and private sector. The National Action Plan calls for funding of research and safety programs by the Federal government, foundations, agribusiness, and other private-sector groups.

Congress allocated FY 1997 funds to NIOSH to facilitate the implementation of this National Action Plan. This announcement and expected awards are one component in the process of NIOSH implementation of the National Action Plan. Research studies which result from this announcement are intended to advance the following objectives in the proposed National Action Plan: establish guidelines for children's and adolescents' work in the industry of agriculture; conduct research on costs, risk factors, and consequences associated with children and adolescents who participate in agricultural work; use systematic evaluation to ensure that educational materials and methods targeted toward childhood agricultural safety and health have demonstrated positive results; influence adult behaviors which affect protection of children and adolescents through the use of incentives and adoption of voluntary safety guidelines; and, provide a protective and supportive environment for children exposed as bystanders to agricultural hazards.

Purpose

NIOSH seeks to maximize the safety and health of children and adolescents exposed to agricultural production hazards by expanding the knowledge base regarding etiology, outcomes, intervention strategies, and the effectiveness of commonly utilized educational materials and methods. Research may address children directly involved in work tasks and/or other children exposed to agricultural production hazards. The funded research projects should cover a variety of types of agricultural production in different geographical regions (e.g. tomato harvesting in California, dairy farms in Wisconsin, and blueberry picking in Maine).

Programmatic Interest

The focus of these grants should facilitate progress in maximizing the safety and health of children and adolescents exposed to agricultural hazards. The rationale for the significance of the research and application to the prioritization, development, or implementation of intervention efforts must be developed in the proposal. Proposals are being accepted which focus on one of three research areas (etiology, outcomes, intervention strategies), or that involve rigorous evaluations of commonly used childhood educational materials or methods. Applications should identify the focus or foci of the research proposal (etiology, outcomes, intervention strategies, evaluation of commonly used childhood educational materials or methods); types and geographical distribution of agricultural production which will be addressed, and size and characteristics of child and adolescent populations which can potentially be impacted by research findings.

1. Etiology Research

Etiologic research into contributors to injury and illness among children in agricultural production settings, with specific attention to risk factors unique to child and adolescent development e.g. physical, cognitive and behavioral. Research which can form the development of age-and developmentally-appropriate guidelines for work and protection of non-working children are of particular interest. Potential research areas follow for illustrative purposes only, and should not be considered boundaries for proposed research questions. Youths who are still maturing may not meet the anthropometric and strength requirements of various agricultural machines, tools, personal protective equipment, and work tasks. Physical maturation and growth may result in unique susceptibilities to physical and chemical work exposures. Cognitive requirements of tasks and safe negotiation of agricultural hazards may exceed cognitive capabilities of children and adolescents. Feelings of invulnerability, lack of perception of risk, and a desire to demonstrate competence and independence may contribute to childhood exposures to agricultural hazards. Fatigue resulting from balancing demands of school and work, the need for intensive work during harvest periods, and inadequate sleep may contribute to injury. Safety awareness and adequate supervision of children and adolescents may protect children from agricultural injury and illness. Both laboratory-and field-based research are appropriate for this priority area of research.

2. Outcomes Research

Research into the consequences, both positive and negative, of children's and adolescents' involvement in agriculture. Outcomes of interest include: physical outcomes related to exposure to health hazards; impact of agricultural injuries on youth's lives and futures; positive and negative psychosocial outcomes for children; and societal and economic costs and consequences associated with childhood agricultural injury. Examples of research efforts which are appropriate under this priority area include, but are not limited to: studies to estimate the societal and economic costs and consequences associated with childhood agricultural injury; assessments of short-and long-term disability from injuries; assessment of short-and long-term psychosocial outcomes related to children's and adolescents' participation in different types of agricultural work; physical assessments of children and adolescents who have been exposed to agricultural hazards such as agricultural chemicals, organic dusts, toxic gases, nitrates, volatile organic compounds, oils and solvents; and, studies of the impact of noise, vibration, cumulative trauma, and other work-induced health hazards on children and adolescents participating in agricultural work.

3. Intervention Strategies Research

Research to form the development and implementation of interventions to protect children and adolescents from agricultural injury. This research may include studies into aids and barriers for implementing a variety of forms of intervention, from control technology to regulations to behavioral change; the development, implementation, and evaluation of new and innovative intervention strategies; and, the relative effectiveness of different intervention strategies. Examples of research efforts which are appropriate under this priority area include, but are not limited to: identification of barriers to implementing prevention measures; identification of innovative methods for removing barriers; identification of effective methods to influence positive safety behaviors of farm and ranch owners and operators, farm workers, parents, caregivers, and manufacturers, children and adolescents; identification of the types and levels of incentives that are most likely to influence protection of children; planning, implementation, and evaluation of structural and machinery design options to provide a protective environment for children at the farm work site; design, implementation and evaluation of community-based programs to enhance the safety and well-being of children who may be exposed as bystanders to agricultural hazards; studies to determine the relative effectiveness of education, engineering, voluntary incentives, and mandatory standards on childhood agricultural injury reduction.

4. Evaluation of Commonly Used Childhood Educational Materials or Methods

Rigorous evaluations of commonly available and used education or training programs to determine effectiveness in influencing safety and health behaviors and consequently preventing agricultural injuries among children and adolescents. Existing childhood education or training programs which require evaluation include, but are not limited to, school curricula, farm safety day camps, and tractor and/or machine operator safety certification programs. Research projects need to include process and outcome evaluations. The process evaluation will document the implementation of the intervention using the educational materials and methods, including identification of key activities, and monitoring delivery of the educational materials and methods to the target population. Outcomes of interest are exposure to injury hazards, knowledge about safety hazards, safety and health behaviors, and the incidence of childhood agricultural injuries. Outcome evaluations should be based on pre-and post-intervention data. The sustainability of intervention effects should be assessed over time, and should not be limited to assessments directly after the delivery of the educational intervention. The research proposals need to demonstrate that the study design and size is sufficient to detect intervention effects, and to evaluate the association of changes in outcome variables with the intervention versus natural change, extraneous events, etc.

The research needs identified in this announcement are consistent with the National Occupational Research Agenda (NORA) developed by NIOSH and partners in the public and private sectors to provide a framework to guide occupational safety and health research in the next decade towards topics which are most pressing and most likely to yield gains to the worker and the nation. The agenda identifies 21 research priorities. Research priorities with specific relevance to this announcement are: traumatic injuries; special populations at risk; control technology and personal protective equipment; intervention effectiveness research; and social and economic consequences of workplace illness and injury. The NORA document is available through the NIOSH Home Page; http://www.cdc.gov/ niosh/nora.html.

Potential applicants with questions concerning the acceptability of their proposed work are strongly encouraged to contact the technical information contact listed in this announcement in the section **Where to Obtain Additional Information.**

Reporting Requirements

Progress reports are required annually as part of the continuation application (75 days prior to the start of the next budget period). The annual progress reports must contain information on accomplishments during the previous budget period and plans for each remaining year of the project. Financial status reports (FSR) are required no later than 90 days after the end of the budget period.

The final performance and financial status reports are required 90 days after the end of the project period. The final performance report should include, at a minimum, a statement of original objectives, a summary of research methodology, a summary of positive and negative findings, and a list of publications resulting from the project. Research papers, project reports, or theses are acceptable items to include in the final report. The final report should stand alone rather than citing the original application. Three copies of reprints of publications prepared under the grant should accompany the report.

Evaluation Criteria

Upon receipt, applications will be reviewed by CDC for completeness and responsiveness. Applications determined to be incomplete or unresponsive to this announcement will be returned to the applicant without further consideration. If the proposed project involves organizations or persons other than those affiliated with the applicant organization, letters of support and/or cooperation must be included.

Applications that are complete and responsive to the announcement will be reviewed by an initial review group in which applications will be determined to be competitive or non-competitive, based on the review criteria relative to other applications received. Applications determined to be non-competitive will be withdrawn from further consideration and the principal investigator/program director and the official signing for the applicant organization will be promptly notified. Applications judged to be competitive will be discussed and assigned a priority score.

Review criteria for technical merit are as follows:

1. Technical significance and originality of proposed project.
2. Appropriateness and adequacy of the study design and methodology proposed to carry out the project.
3. Qualifications and research experience of the Principal Investigator and staff, particularly but not exclusively in the area of the proposed project.
4. Availability of resources necessary to perform the project.
5. Documentation of cooperation from collaborators in the project, where applicable.
6. Adequacy of plans to include both sexes and minorities and their subgroups as appropriate for the scientific goals of the project. (Plans for the recruitment and retention of subjects will also be evaluated.)
7. Appropriateness of budget and period of support.
8. Human Subjects—Procedures adequate for the protection of human subjects must be documented. Recommendations on the adequacy of protections include: (1) protections appear adequate and there are no comments to make or concerns to raise, (2) protections appear adequate, but there are comments regarding the protocol, (3) protections appear inadequate and the Initial Review Group has concerns related to human subjects, or (4) disapproval of the application is recommended because the research risks are sufficiently serious and protection against the risks are inadequate as to make the entire application unacceptable.

Secondary review criteria for programmatic importance are as follows:

1. Results of the initial review.
2. Magnitude of the problem in terms of numbers of workers affected.
3. Severity of the disease or injury in the worker population.
4. Usefulness to applied technical knowledge in the evaluation, or control of agricultural safety and health hazards.
5. Degree to which the project can be expected to yield or demonstrate results that will be useful on a national or regional basis.

The following will be considered in making funding decisions:

1. Quality of the proposed project as determined by peer review.
2. Availability of funds.
3. Program balance among priority areas of the announcement.
4. Program balance among types and geographical distribution of agriculture.

Executive Order 12372 Review

Applications are not subject to the review requirements of Executive Order 12372.

Public Health System Reporting Requirement

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.262.

Other Requirements

Human Subjects

The applicant must comply with the Department of Health and Human Services Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurances must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

Women and Racial and Ethnic Minorities

It is the policy of the CDC to ensure that women and racial and ethnic groups will be included in CDC-supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian, Alaskan Native, Asian, Pacific Islander, Black and Hispanic. Applicants shall ensure that women and racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is not feasible, this situation must be explained as part of the application. In conducting the review of applications for scientific merit, review groups will evaluate proposed plans for inclusion of minorities and both sexes as part of the scientific assessment and assigned score. This policy does not apply to research studies when the investigator cannot control the race, ethnicity and/or sex of subjects. Further guidance to this policy is contained in the **Federal Register**, Vol. 60, No. 179, Friday, September 15, 1995, pages 47947–47951.

Application Submission and Deadlines

A. Preapplication Letter of Intent

Although not a prerequisite of application, a non-binding letter of intent-to-apply is requested from potential applicants. The letter should be submitted to the Grants Management Officer (whose address is reflected in section B, "Applications"). It should be postmarked no later than April 10, 1997. The letter should identify the announcement number, name of principal investigator, and specify the priority area to be addressed by the proposed project. The letter of intent does not influence review or funding decisions, but it will enable CDC to plan the review more efficiently, and will ensure that each applicant receives timely and relevant information prior to application submission.

B. Applications

Applicants should use Form PHS–398 (OMB Number 0925–0001) and adhere to the ERRATA Instruction Sheet for Form PHS–398 contained in the Grant Application Kit. Please submit an original and five copies on or before June 10, 1997 to: Ron Van Duyne, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 321, MS–E13, Atlanta, GA 30305.

C. Deadlines

1. Applications shall be considered as meeting a deadline if they are either:

A. Received at the above address on or before the deadline date, or

B. Sent on or before the deadline date to the above address, and received in time for the review process.

Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be accepted as proof of timely mailings.

2. Applications which do not meet the criteria above are considered late applications and will be returned to the applicant.

Where to Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked your name, address, and telephone number and will need to refer to Announcement 725. You will receive a complete program description, information on application procedures, and application forms. In addition, this announcement is also available through the CDC Home Page on the Internet. The address for the CDC Home Page is http://www.cdc.gov.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Georgia L. Jang, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., MS–E13, Atlanta, GA 30305, telephone (404) 842–6814; fax 404–842–6513; internet: glj2@cdc.gov.

Programmatic technical assistance may be obtained from Roy M. Fleming, Sc.D., Associate Director for Grants, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Building 1, Room 3053, MS–D30, Atlanta, GA 30333, telephone 404–639–3343; fax 404–639–4616; internet: rmf2@cdc.gov.

Please refer to announcement number 725 when requesting information and submitting an application.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Useful References

The following documents may also provide useful information:

National Committee for Childhood Agricultural Injury Prevention. Children and Agriculture: Opportunities for Safety and Health. Marshfield, WI: Marshfield Clinic, 1996.

National Institute for Occupational Safety and Health. National Occupational Research Agenda. Cincinnati, OH: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, DHHS (NIOSH) Publication No. 96–115.

Dated: March 4, 1997.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–5789 Filed 3–7–97; 8:45 am]

BILLING CODE 4163–18–P

Translation Advisory Committee for Diabetes Prevention and Control Programs: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Translation Advisory Committee for Diabetes Prevention and Control Programs.

Times and Dates: 1 p.m.–5 p.m., March 26, 1997. 8 a.m.–5 p.m., March 27, 1997.

Place: San Diego Marriott Mission Valley, 8757 Rio San Diego Drive, San Diego, California 92108, telephone 619/692–3800.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: This committee is charged with advising the Director, CDC, regarding policy issues and broad strategies for diabetes translation activities and control programs designed to reduce risk factors, health services utilization, costs, morbidity, and mortality associated with diabetes and its complications. The Committee identifies research advances and technologies ready for translation into widespread community practice; recommends broad public health strategies to be implemented through public health interventions; identifies opportunities for surveillance and epidemiologic assessment of diabetes and related complications; and for the purpose of assuring the most effective use and organization of resources, maintains liaison and coordination of programs within the Federal, voluntary, and private sectors involved in the provision of services to people with diabetes.

Matters to be Discussed: Agenda items include a discussion on the public health issues surrounding screening for undiagnosed diabetes mellitus, issues in chronic disease screening, salient issues for program development, and goals and future areas of emphasis for the Division of Diabetes Translation.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Jay Allen, Program Analyst, Division of Diabetes Translation, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, NE, M/S K–10, Atlanta, Georgia 30341–3724, telephone 770/488–5004.

Dated: March 3, 1997.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–5827 Filed 3–7–97; 8:45 am]

BILLING CODE 4163–18–P

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Runaway and Homeless Youth Management Information System.

OMB No.: 0970–0123.

Description: In the Runaway and Homeless Youth Act (42 U.S.C. 5701 *et seq.*) Congress mandated that the Department of Health and Human Services (HHS) report regularly on the status of HHS-funded programs serving runaway and homeless youth. In the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11801 *et seq.*) Congress mandated that HHS report regularly on the status of HHS-funded Drug Abuse and Prevention Programs (DAPP) serving runaway and homeless youth. Organizations funded under the Runaway and Homeless Youth Program and/or Drug Abuse and Prevention Program are required by statute (42 U.S.C. 5712, 42 U.S.C. 5714–2 and/or 42 U.S.C. 11824) to meet several data collection and reporting requirements, including maintaining client statistical records and submitting annual program reports with regard to the profile of youth and families served and the

services provided to them. The RHY MIS data support these organizations as they carry out a variety of integrated, ongoing responsibilities and projects, including legislative reporting requirements, planning and public policy development for runaway and homeless youth programs, accountability monitoring, program management, research, and evaluation.

Respondents: Runaway and Homeless Youth Grantees and Drug Abuse and Prevention Program Grantees.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Youth Program Status	400	4	2.2	3,466.67
Youth Profile	400	4	29.1	46,501.00
Agency Profile	400	1	0.17	66.67
Program Profile	400	1	1.0	400
Staff Profile	400	1	1.2	466.67
Coordinating Agency	400	1	0.3	133.33
Community Education	400	1	0.4	166.67
Promotional/Instructional Materials	400	1	0.2	66.67
Estimated Total Annual Burden Hours				51,267.67

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Ms. Wendy Taylor.

Dated: March 4, 1997.

Bob Sargis,

IRM Staff.

[FR Doc. 97–5730 Filed 3–7–97; 8:45 am]

BILLING CODE 4184–01–M

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Agenda/Purpose: To review and evaluate grant applications and/or contract proposals.

Name of Committee: National Human Genome Research Institute Review Group, Ethical, Legal, and Social Implications Subcommittee.

Date: March 27, 1997.

Time: 10:00 a.m.

Place: National Human Genome Research Institute, National Institutes of Health, Building 38A, Room 609, Bethesda, MD 20892 (Teleconference).

Contact Person: Rudy Pozzatti, Ph.D., Office of Scientific Review, National Center for Human Genome Research, National Institutes of Health, Building 38A, Room 604, Bethesda, Maryland 20892, (301) 402–0838.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The applications and/or contract proposals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalogue of Federal Domestic Assistance Program No. 93.172, Human Genome Research.)

Dated: March 4, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–5771 Filed 3–7–97; 8:45 am]

BILLING CODE 4140–01–M

National Human Genome Research Institute; Notice of Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Agenda/Purpose: To consider the biological questions that can be addressed by analysis of human DNA sequence polymorphism and the technology required for such studies.

Name of Committee: National Human Genome Research Institute, Special Emphasis Panel (M1).

Date: March 31–April 1, 1997.

Time: 8:30 am.

Place: NIH, Natcher (Building 45), Room C1, 9000 Rockville Pike, Bethesda, Maryland.

Contact Person: Mark Guyer, Ph.D., National Human Genome Research Institute, National Institutes of Health, Building 38A, Room 604, Bethesda, Maryland 20892, (301) 402–5407.

(Catalogue of Federal Domestic Assistance Program No. 93.172, Human Genome Research.)

Dated: March 4, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–5773 Filed 3–7–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Environmental Health Sciences Special Emphasis Panel (SEP) meeting:

Name of SEP: Community-Based Prevention/Intervention Research in Environmental Health Sciences.

Date: March 31–April 2, 1997.

Time: 8:00 P.M.

Place: National Institute of Environmental Health Sciences, South Campus, Bldg. 101, Conference Center 101–B, Research Triangle Park, NC 27709.

Contact Person: Dr. Carol Shreffler, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–1445.

Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Grant applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.113, Biological Response to Environmental Agents; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Resource and Manpower Development, National Institutes of Health.)

Dated: March 4, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–5770 Filed 3–7–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 United States Code Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

Date: March 19, 1997.

Time: 2 pm to adjournment.

Place: 6120 Executive Blvd., Rockville MD 20892 (telephone conference call).

Contact Person: Melissa Stick, Ph.D., M.P.H., Scientific Review Administrator, NIDCD/DEA/SRB, EPS Room 400C, 6120 Executive Boulevard, Bethesda MD 20892–7180, 301–496–8693.

Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, United States Code. The applications and/or proposals and the discussion could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders.)

Dated: March 4, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–5772 Filed 3–7–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Child Health and Human Development Special Emphasis Panel (SEP) meeting:

Name of SEP: Hyperglycemia and Adverse Pregnancy Outcome (Teleconference).

Date: March 24, 1997.

Time: 1:30 p.m. (est)—Adjournment.

Place: 6100 Executive Boulevard, 6100 Building—Room 5E01D, Rockville, Maryland 20852.

Contact Person: Edgar E. Hanna, Ph.D., Scientific Review Administrator, NICHD, 6100 Executive Boulevard, 6100 Building, Room 5E01D, Rockville, Maryland 20852, Telephone: 301–496–1485.

Purpose/Agenda To evaluate and review grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. [93.864, Population Research and No. 93.865, Research for Mothers and Children, National Institutes of Health)

Dated: March 4, 1997.

LaVerne Y. Stringfield,

Committee Management officer, NIH.

[FR Doc. 97–5774 Filed 3–7–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: March 14, 1997.

Time: 3 p.m.

Place: Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Maureen L. Eister, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: March 19, 1997.

Time: 3 p.m.

Place: Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Shirley H. Maltz, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: March 24, 1997.

Time: 3 p.m.

Place: Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: W. Gregory Zimmerman, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–4868.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: March 4, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–5775 Filed 3–7–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Environmental Health Sciences Special Emphasis Panel (SEP) meeting:

Name of SEP: Conference Grant on Bioavailability and Cleanup.

Date: March 17, 1997.

Time: 1:00 p.m.

Place: National Institute of Environmental Health Sciences, Bldg. 1, Rm. 103, Research Triangle Park, NC 27709.

Contact Person: Mr. David P. Brown, National Institute of Environmental Health Sciences, PO Box 12233, Research Triangle Park, NC 27709, (919) 541–4964.

Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs.

552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Grant applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Programs Nos. 93.113, Biological Response to Environmental Agents; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Resource and Manpower Development, National Institutes of Health)

Dated: March 3, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–5776 Filed 3–7–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel meetings:

Name of SEP: Cystic Fibrosis.
Date: March 21, 1997.
Time: 8:30 a.m.—Adjournment.
Place: Sheraton International Airport Hotel at BWI Airport, 7032 Elm Road, Baltimore, Maryland 21240.
Contact Person: William E. Elzinga, Ph.D., Scientific Review Administrator, Natcher Building, Room 6as–37A, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: 301–594–8895.
Purpose/Agenda: To review and evaluate a contract proposal.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of SEP: Diabetes Prevention in Yupik Eskimos.
Date: March 27, 1997.
Time: 3:00 p.m. EST.
Place: Room 6as–25E, Natcher Building, NIH, (Telephone Conference Call).
Contact Person: Sharee Pepper, Ph.D., Scientific Review Administrator, Natcher Building, Room 6as–25E, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: (301) 594–7798.
Purpose/Agenda: To review and evaluate grant applications.

Name of SEP: Prevention of Diabetes in African Americans and Minorities Conference.
Date: April 1, 1997.
Time: 4:15 p.m. EST.
Place: Room 6as–25E, Natcher Building, NIH, (Telephone Conference Call).
Contact Person: Sharee Pepper, Ph.D., Scientific Review Administrator, Natcher Building, Room 6as–25E, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone (301) 594–7798.
Purpose/Agenda: To review and evaluate grant applications.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health.)

Dated: March 4, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–5778 Filed 3–7–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meeting of the Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), April 16–18, 1997, National Institutes of Health, Building 5, Room 127, Bethesda, Maryland 20892.

In accordance with the provisions set forth in secs. 552b(c)(6), Title 5 U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on April 16 from 7:00 p.m. to adjournment on April 18 for the review, discussion and evaluation of individual intramural programs and projects conducted by the NIDDK, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

A summary of the meeting and roster of members will be provided, upon request by the Committee Management Office, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, Natcher Building, Room 6AS–37J, Bethesda, Maryland 20892, (301) 594–8892. For any further information, please contact Dr. Allen Spiegel, Scientific Review Administrator, Board of Scientific Counselors, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, Building 10, Room 9N–222, Bethesda, Maryland 20892, (301) 496–4128, at least two weeks prior to the meeting date.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health.)

Dated: March 4, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–5779 Filed 3–7–97; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Behavioral and Neurosciences.
Date: March 18, 1997.
Time: 9:00 a.m.
Place: Ramada Inn, Rockville, MD.
Contact Person: Dr. Herman Teitelbaum, Scientific Review Administrator, 6701 Rockledge Drive, Room 5190, Bethesda, Maryland 20892, (301) 435–1254.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of SEP: Clinical Sciences.
Date: March 25, 1997.
Time: 8:30 a.m.
Place: NIH, Rockledge 2, Room 5216, Telephone Conference.
Contact Person: Dr. Nancy Shinowara, Scientific Review Administrator, 6701 Rockledge Drive, Room 5216, Bethesda, Maryland 20892, (301) 435–1173.

Name of SEP: Biological and Physiological Sciences.
Date: March 27, 1997.
Time: 8:30 a.m.
Place: Grand Hyatt Hotel, Washington, DC.
Contact Person: Ms. Carol Campbell, Scientific Review Administrator, 6701 Rockledge Drive, Room 5196, Bethesda, Maryland 20892, (301) 435–1257.

Name of SEP: Clinical Sciences.
Date: April 9, 1997.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 4104, Telephone Conference.
Contact Person: Dr. Priscilla Chen, Scientific Review Administrator, 6701 Rockledge Drive, Room 4104, Bethesda, Maryland 20892, (301) 435–1787.

Name of SEP: Clinical Sciences.
Date: April 14, 1997.
Time: 3:00 p.m.
Place: NIH, Rockledge 2, Room 4104, Telephone Conference.
Contact Person: Dr. Priscilla Chen, Scientific Review Administrator, 6701 Rockledge Drive, Room 4104, Bethesda, Maryland 20892, (301) 435–1787.

Name of SEP: Clinical Sciences.
Date: April 22, 1997.
Time: 3:00 p.m.
Place: NIH, Rockledge 2 Room 4104, Telephone Conference.
Contact Person: Dr. Priscilla Chen, Scientific Review Administrator, 6701 Rockledge Drive, Room 4104, Bethesda, Maryland 20892, (301) 435–1787.

Purpose/Agenda: To review Small Business Innovation Research.
Name of SEP: Behavioral and Neurosciences.
Date: April 3–4, 1997.
Time: 1:00 p.m.
Place: Holiday Inn—Capitol, Washington, DC.
Contact Person: Dr. Jane Hu, Scientific Review Administrator, 6701 Rockledge Drive, Room 5168, Bethesda, Maryland 20892, (301) 435–1245.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93,893, National Institutes of Health, HHS)

Dated: March 3, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–5777 Filed 3–7–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*).

Applicant: Houston Zoological Gardens, Houston, TX, PRT–825689.

The applicant request a permit to import one male captive born Pink pigeon (*Columba mayeri*) from Jersey Wildlife Preservation Trust for the purpose of enhancement of the species through propagation.

Applicant: Lance K. Parks, Billings, MT, PRT–825893.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Duke University Primate Center, Durham, NC, PRT–825870.

The applicant requests a permit to export the frozen cadaver of one captive-born female mongoose lemur (Eulemur coronatus), which died of natural causes, to the Institute for Experimental Pathology, Muenster, Germany, for the purpose of enhancement of the species through genetic research.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: March 4, 1997.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 97–5819 Filed 3–7–97; 8:45 am]

BILLING CODE 4310–55–P

Revised Procedures for Selecting and Funding Federal Aid in Sport Fish and Wildlife Restoration Administrative Projects

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Service is announcing procedures for obtaining funding for Federal Aid administrative projects and availability of an estimated $2,000,000 for Wildlife Restoration projects and $2,000,000 for Sport Fish projects. This year's program changes the application deadline, updates focus areas, and clarifies documentation needs from the previous year.

DATES: Applications/proposals must be received by May 1, 1997.

ADDRESSES: Proposals must be submitted to: U.S. Fish and Wildlife Service, Chief, Division of Federal Aid, MS 140 ARLSQ, 4401 North Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Mr. Robert E. Lange, Jr., Chief, Division of Federal Aid, U.S. Fish and Wildlife Service; (703) 358–2156.

SUPPLEMENTARY INFORMATION: The Service publishes a notice in the **Federal Register** each year announcing the deadline for project propsoals, the amount of money available for Sport Fish and Wildlife Restoration projects, and the focus areas identified for the year. Focus areas are used to promote and encourage efforts that address priority needs of the State fish and wildlife agencies.

The focus areas contained in this notice were developed in cooperation with the Grants-in-Aid Committee of the International Association of Fish and Wildlife Agencies and represent that group's assessment of priority projects. The focus areas are provided as a guide so that applicants will know the types of projects that will likely score higher in the rankings.

Changes made since last year's program include a new application deadline of May 1, 1997, revised focus areas, and the requirement for applicants to submit a completed Application for Federal Assistance (Standard Form 424) including Budget Information—Non-Construction Programs (Standard Form 424A) and Assurances—Non-Construction Programs (Standard Form 424B).

States, local governments, charitable and educational institutions, and other authorized recipients are authorized to apply for grants according to these procedures. The Department of the Interior has promulgated rules (43 CFR Part 12) adopting common rules developed by the Office of Management and Budget as required by OMB Circulars A–102 and A–110 that contain administrative requirements that apply to these grants. This annual grant program does not contain information collection requirements for which approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995, as specified in 43 CFR Part 12.4 are required. The information collection requirements for this grant program are those necessary to comply with 43 CFR Part 12, which include (a) project narrative; and (b)

compliance with Federal laws, regulations, and policies. Record keeping includes the tracking of costs and accomplishments, monotoring progress and evaluating accomplishments, and reporting requirements. The Standard Form 424 series prescribed by OMB Circulars A–102 and A–110 have the OMB clearance number 0348–0043.

Dated: February 28, 1997.

Jay L. Gerst,

Acting Director.

Procedures for Selecting and Funding Federal Aid in Sport Fish and Wildlife Restoration Administrative Projects

A. Purpose

This statement establishes procedures for selecting administrative projects to be funded by the Federal Aid in Sport Fish Restoration and Federal Aid in Wildlife Restoration programs. These projects are funded by grants to States, local governments, charitable and educational institutions, or other authorized recipients to accomplish public purposes relating to administering the Sport Fish and Wildlife Restoration Programs and to facilitate the efforts of the States in implementing these programs.

B. Background

The mission of the two grant programs is to strengthen the ability of State and Territorial fish and wildlife agencies to meet effectively the consumptive and nonconsumptive needs of the public for fish and wildlife resources. The Federal Aid in Sport Fish Restoration Act and the Federal Aid in Wildlife Restoration Act authorize the Secretary of the Interior to cooperate with the States and to use administrative funds for carrying out the purposes of the Acts. The Fish and Wildlife Coordination Act (16 U.S.C. 661) provides the authority to provide financial assistance to Federal, State, and public or private parties to facilitate fish and wildlife programs.

Administrative funds are deducted each year from the total amounts of funds available under the Federal Aid in Sport Fish Restoration Act and the Federal Aid in Wildlife Restoration Act. The statutory provisions related .o administrative deductions are as follows:

Federal Aid in Sport Fish Restoration (SFR)

Federal Aid Administrative Funds for sport fish restoration may not exceed 6 percent of the deposits in the SFR Account of the Aquatic Resources Trust Fund. These funds may be used for administrative projects for the "conduct of necessary investigations, administration, and the execution of this Act and for the aiding in the formulation, adoption, or administration of any compact between two or more States for the conservation and management of migratory fishes in marine or fresh waters." (Section 4 of the Act as amended by P.L. 98–369, 16 U.S.C. 777c)

Federal Aid in Wildlife Restoration (WR)

Federal Aid Administrative Funds for wildlife restoration may not exceed 8 percent of the excise tax receipts deposited in the WR Fund. These funds may be used for the "administration and execution of this Act and the Migratory Bird Conservation Act." (Section 4 of the Act, 16 U.S.C. 669c)

After making administrative deductions as specified above, the remainder of the funds will be apportioned to the States in accordance with the formulas contained in the Acts. The Service will strive to minimize administrative deductions in order to maximize apportionments to the States.

C. Availability of Funds

In fiscal year 1998, the amounts of funds estimated to be available for administrative projects are $2,000,000 for sport fish restoration and $2,000,000 for wildlife restoration.

D. Interstate Compacts

The Service also will make available a total of $600,000 annually, without competition, for funding The Atlantic States Marine Fisheries Commission, Gulf States Marine Fisheries Commission, and pacific States marine Fisheries Commission, as authorized by law. Requests for additional amounts that may be eligible, must compete with other proposals for Administrative Funds. Proposals will be subject to all of the requirements in Section E.

E. Eligibility Requirements

The Service's Division of Federal Aid will review each proposal to determine if proposals are eligible for funding. To be eligible for funding, proposals must meet the following:

1. Authority—The project being proposed must be consistent with the missions of the programs authorized by the SFR/WR laws and regulations.

2. Scope—The problem or need addressed in the proposal is of direct concern to one-half or more of the States or of national significance, but confined to a lesser geographic area. The scope of marine resources proposals must also address a need that is of direct concern to a majority of States on a specific coast.

3. Significance—The problem or need addressed is deserving of the level of attention proposed.

4. Feasibility—The proposed objectives can be attained in the amount of time and with the personnel and resources requested.

5. Cost-effectiveness—The expected results of accomplishing the proposal are worth the costs to be expended.

6. Period—The maximum duration for any approved projects will be three years. New proposals may be submitted to extend a project beyond the original three-year period.

7. Documentation—Proposals must address each section of the documentation as listed under Submission Requirements, Section G.

F. Application Process

1. All proposals including funding requests for administrative projects must be submitted to the Chief, Division of Federal Aid, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, ARLSQ. 140, Arlington, Virginia, 22203. Proposals originating within the Service must have prior approval by the appropriate Regional Director or Assistant Director.

2. Each year, a Notice will be published in the **Federal Register** announcing the deadline for submitting proposals. The Notice will also announce total funds available for wildlife and sport fish restoration projects. A table with the approximate dates for each step of the process is provided in Appendix A.

G. Submission Requirements

An original and two copies of each proposal for Federal Aid Administrative funds must be submitted in the following format:

1. *Application for Federal Assistance* Standard form 424 is prescribed by Office of Management and Budget Circular A–110 and the common rule (Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Government). The SF 424 consists of a coversheet, the SF 424A consists of a budget sheet, and the SF 424B consists of compliance assurances. Proposals received without these forms will not be accepted.

2. *Title*—A short descriptive name of the proposal.

3. *Objective*—What will this proposal do? State a concise statement of the purpose of the proposal in quantified terms where possible.

4. *Need*—Why address this problem?

a. State the problem or need that this proposal is intended to address. Make references to any focus areas that the proposal addresses.

b. Describe the number of states affected by the project, how they will benefit, and expressed support for the proposal. If the proposal is confined to a specific geographic area, describe the national significance of the proposal.

c. Brief status report on the history of previous work conducted by the proposer or others to address this need.

5. *Expected Results or Benefits*—What will be gained by funding this proposal? Describe the significance of accomplishing the project relative to the stated need. Relate benefits of satisfactorily completing the project to the States' fish and wildlife programs. In addition to stating how the results will be useful, describe provisions for making the product or results available and usable to those affected by the problem of need. Benefits should be expressed in quantified terms, i.e., angler days, harvest per unit effort, improvements to State administration, dollars saved, etc.

6. *Approach*—How will the proposed project be conducted? Describe how the work will be conducted including a description of techniques and methods to be used, milestones, and a schedule of accomplishments.

7. *Resumes*—What are the qualifications of key personnel? Include resumes and names of key individuals who will be involved in the project, stating their particular qualifications for undertaking the project.

8. *Project Costs*—Submit a completed SF 424A, Budget Information—Non-Construction Programs. Multi-year proposals must include an itemized budget showing funds required for each severable part of the proposal. A severable part is defined as that portion of a proposal that results in a completed product or service.

H. Focus Areas

Focus areas are those specific areas in which the States are seeking information and assistance in administering or implementing the Sport Fish and Wildlife Restoration programs. Focus areas will be announced each year by the Service, based on recommendations from the Grants-In-Aid Committee (GIAC) in accordance with the bylaws of the International Association of Fish and Wildlife Agencies (IAFWA). Each year, the GIAC will be asked to submit recommendations for focus areas after its September meeting. Each year a **Federal Register** Notice will announce the Focus Areas, along with the amount of funds available for administrative projects.

The following focus areas were identified as priority needs of the States and those proposals addressing these needs will likely be given priority by the States during the ranking in 1997.

1. Outreach

Providing public information on fishing, hunting, trapping, and wildlife-associated recreation.

a. Provide innovative approaches to introducing people to hunting and fishing including emphasis on families.

b. Create public awareness of the value of Sport Fish and Wildlife Restoration Funds.

c. Focus public attention on and enhance public awareness of the economic value of managing fish and wildlife resources for both consumptive and non-consumptive recreation.

d. Provide better understanding of how to reach constituents with information.

2. Education

Teaching or training people about fish and wildlife resources and the responsible use of the resources.

a. Advance the public's understanding of importance of actively managing fish and wildlife resources.

b. Promote natural resources and environmental education of "K through 12" students.

c. Advance public understanding of the importance of biological diversity in maintaining diverse hunting and fishing opportunities.

d. Provide for continuing education and training for state fish and wildlife biologists.

3. Management

Handling, directing, manipulating, and managing fish and wildlife populations and providing improved public access to these populations. These focus areas relate to hands-on responsibilities of fish and wildlife management agencies.

a. Restore, create, enhance, and protect fish and wildlife.

b. Protect, create, and enhance fish and wildlife recreational opportunities.

c. Provide, enhance, or maintain public access to fish and wildlife resources.

4. Research

Conducting investigations, inquiries, searches, examinations, and experiments for the discovery and interpretation of facts.

a. Evaluate effectiveness of incorporating constituent involvement and information in fish and wildlife resource management.

b. Measure effectiveness of habitat restoration, creation, and enhancement techniques.

5. Administration

Providing service, supervisory, and management responsibilities that directly link to supporting fish and wildlife agency affairs.

a. Provide better understanding of constituents and their needs.

b. Measure changing social, economic, and political environment within which fish and wildlife must be managed.

c. Advance automated licensing and fiscal data collections for fish and wildlife agencies.

I. Proposal Review and Selection Process

1. Each proposal will be reviewed for eligibility as defined in section E. The review will be conducted by the Washington Office staff. The final determination for eligibility will be made at a meeting that includes staff from Washington, with the Chair of the GIAC as an observer.

2. All applicants will be notified that their proposal has been determined eligible or ineligible.

3. Copies of eligible proposals will be forwarded to the Chair, GIAC, along with lists of ongoing grants and ineligible proposals. The Chair, GIAC, will forward copies to the voting members of the GIAC.

4. Voting members of the GIAC will review and rate each eligible proposal high, medium or low.

5. All ratings from GIAC voting members and comments from Service Offices will be returned to the Division of Federal Air in Washington.

6. The Division of Federal Aid will summarize the ratings and comments.

7. A summary of the comments and ratings will be provided to the Chair, GIAC, for review at the GIAC September meeting.

8. During the September meeting of IAFWA, the GIAC will evaluate and rank eligible proposals based on the needs of the States. The GIAC will forward its rankings and recommendations to the Service in accordance with IAFWA procedures.

9. The Division of Federal Aid will summarize and consolidate all rankings and comments and develop recommendations for proposal selections and awards. The recommendations may be for partial funding of any proposal.

10. The Aid Division's recommendations will be forwarded to the Director of the Service. The Director will review the recommendations and make the final decision on project selections and funding.

11. The Service will notify each eligible applicant in writing of the final disposition of their proposal.

12. The Director will notify the Regional Directors and the Chair, GIAC, of the proposals selected for funding.

J. Lobbying Restrictions

During the review of proposals, grant applicants may not engage in any activities that might be considered as attempts to influence Federal reviewers or approving officials. If the activities are determined to be lobbying, the proposal will be disqualified for Federal Aid Administrative Funds.

K. Awards and Funding

1. The Service's Division of Contracting and General Services will prepare and sign the formal award agreements. The Federal Aid Office, may provide technical assistance to the Division of Contracting and General Services in finalizing the award agreements. The formal award agreements will be forwarded to the awardees for signature and must be signed by the Service and authorized awardee officials before they become valid agreements. This process may require up to 60 days to complete. The Service is not responsible for costs incurred prior to the effective date of a signed agreement; therefore, the starting date for all projects should be planned accordingly.

2. All funding must comply with the bone fide need rule established by 31 USC 1502a requiring that the entire amount of a project must be obligated in the fiscal year the grant is approved unless the project is severable. A project is severable only if it can be separated into components that independently meet a separate need.

3. Non-profit grantees must maintain a financial management system in accordance with the Office of Management and Budget Circular A–110. State and local governments must maintain a financial management system in accordance with OMB Circular A–102 and 43 CFR Part 12.

L. Project Administration

Proposals awarded funding will be assigned to a Project Officer. Project Officers are those persons representing the Contracting Officer on technical matters relating to the responsibilities of the grantee. They provide assistance that includes:

1. Assisting Service contracting officials in completing the award agreement;

2. Serving as the Service's point of contact after the award agreement is signed;

3. Receiving and approving bills; and

4. Monitoring project performance and assuring that the awardee adheres to the award agreement.

SUMMARY OF EVENTS—APPENDIX A

Target date	Event
March 14	**Federal Register** Notice announcing availability of Federal Aid Funds and focus areas for grant applications.
May 1	Washington Office receives proposals.
June 16	Washington Office with assistance from the Regions determines eligibility (Chair of the Grants-In-Aid Committee (GIAC) participates as an observer).
July 1	Service forwards copies of eligible proposals to voting members of the GIAC (includes summary list of ongoing grants and list of ineligible proposals)
July 1	Service sends letters to all applicants informing them that their proposal is eligible or ineligible.
August 15	Voting members of the GIAC forward comments and ratings to Chief, FA (Ratings of High, Medium or Low).
September 1	Chief, FA, summarizes comments and ratings and forwards to Chair, GIAC, for review at the September meeting.
September 15	GIAC reviews and ranks proposals and forwards rankings and recommendations to Service, along with recommendations for Focus Areas for the following years.
October 31	Federal Aid summarizes all rankings and recommendations for consideration by the Director.
November 15	Director selects proposals for funding.
November 30	Federal Aid notifies applicants and Chair, GIAC, of the final disposition of proposals.
March 1	Contracting and General Services awards grants.

[FR Doc. 97–5868 Filed 3–7–97; 8:45 am]

BILLING CODE 4310–55–M

Issuance of Permit for Marine Mammals

On November 7, 1996, a notice was published in the **Federal Register**, Vol. 61, No. 217, Page 57694, that an application had been filed with the Fish and Wildlife Service by the Chicago Zoological Park, Brookfield Zoo for a permit (PRT–821744) to import 3 juvenile walrus for public display.

Notice is hereby given that on February 19, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On November 29, 1996, a notice was published in the **Federal Register**, Vol. 61, No. 231, Page 60722, that an application had been filed with the Fish and Wildlife Service by the Alaska Science Center for renewal of a permit (PRT–766818) to take (capture) sea otters for scientific research.

Notice is hereby given that on February 7, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On December 20, 1996, a notice was published in the **Federal Register**, Vol. 61, No. 246, Page 67340, that an application had been filed with the Fish and Wildlife Service by the Oregon Coast Aquarium for a permit (PRT–823259) to import 2 sea otters for the purpose of public display.

Notice is hereby given that on January 27, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On December 11, 1996, a notice was published in the **Federal Register**, Vol. 61, No. 239, Page 65229, that an application had been filed with the Fish and Wildlife Service by the Point Defiance Zoo for a permit (PRT–822531) to import 2 polar bears for the purpose of public display.

Notice is hereby given that on January 21, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Rm. 430, Arlington, Virginia 22203, phone (703) 358–2104 or Fax (703) 358–2281.

Dated: March 4, 1997.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 97–5820 Filed 3–7–97; 8:45 am]

BILLING CODE 4310–55–M

Propylene and Ethylene Pipeline Right-of-Way Permit Application Crossing Fish and Wildlife Service National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service (Service) advises the public that BASF Corporation of Freeport, Texas has applied for the installation of an 8.625" O.D. welded steel pipeline across Service land tracts 40c and 40g in Brazoria County, Texas. The pipeline will be installed solely within an existing pipeline 300 foot right-of-way corridor, known as the "Dow Corridor". The project will temporarily impact 4.3 acres. An Environmental Analysis and Cultural Resource Review has been prepared and is on file. This notice informs the public that the Service will be proceeding with the processing of the application, the compatibility determination and the approval processing which includes the preparation of the terms and conditions of the permit.

DATES: Written comments should be received on or before April 9, 1997 to receive consideration by the Service.

ADDRESSES: Comments should be addressed to: Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, (RE), Albuquerque, New Mexico 87103–1306. Attention: Wanda McKean, Realty Specialist.

FOR FURTHER INFORMATION CONTACT: Wanda McKean, Realty Specialist, at the above Albuquerque, New Mexico address (505 248–7415 or FAX 505 248–6803).

SUPPLEMENTARY INFORMATION: The refuge manager, for the Brazoria National Wildlife Refuge has approved the route of the pipeline that lies within an existing 300 foot wide right-of-way corridor known as the "Dow Corridor". It crosses the northwest corner portion of the Refuge known as Hoskins Mound.

Right-of-way applications for pipelines are to be filed in accordance with section 28 of the Mineral Leasing Act of 1920 (30 U.S.C.), as amended by the Act of November 16, 1973 (37 Stat. 576, Pub. L. 93–153).

Dated: February 27, 1997.

Nancy Kaufman,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 97–5828 Filed 3–7–97; 8:45 am]

BILLING CODE 4310–55–M

Notice of Receipt of Application for Approval

The following applicant has applied for approval to conduct certain activities with birds that are protected in accordance with the Wild Bird Conservation Act of 1992. This notice is provided pursuant to Section 112(4) of the Wild Bird Conservation Act of 1992, 50 CFR 15.26(c).

Applicant: Heather Bright, Psittacine Central, Dover, FL. The applicant wishes to establish a cooperative breeding program for the Monk or Quaker parakeet (Myiopsitta monachus). Ms. Bright wishes to be an active participant in this program with one other private individual. The Greater Orlando Bird Club has assumed the responsibilty for the oversight of the program.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203 and must be received by the Director on or before April 9, 1997.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: March 4, 1997.

Susan Lieberman,

Chief, Branch of Operations, Office of Management Authority.

[FR Doc. 97–5839 Filed 3–7–97; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Land Management

[AZ–910–0777–61–241A]

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Arizona Resource Advisory Council Meeting, notice of meeting cancellation.

SUMMARY: This notice announces the cancellation of the March 20, 1997 meeting of the Arizona Resource Advisory Council. The meeting was scheduled to begin at 8:30 a.m. in the 1A Conference Room at the Bureau of Land Management Arizona State Office, 222 North Central Avenue, Phoenix, Arizona. For Further Information Contact: Deborah Stevens or Ken Mahoney Bureau of Land Management, Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004–2203, (602) 417–9512.

Gina Ramos,

Acting Deputy State Director, Resources Division.

[FR Doc. 97–5787 Filed 3–7–97; 8:45 am]

BILLING CODE 4316–32–M

NATIONAL PARK SERVICE

Notice of Intention To Issue a Concession Contract for Crater Lake National Park

SUMMARY: Notice is hereby given in accordance with the requirements of 36 CFR 51.5 that the National Park Service intends to issue a 3-year concession contract to continue operations currently conducted at Crater Lake National Park to provide park visitors with hotel, food, gift, touring, and other services. This action is necessary to avoid disruption of the provision of these services and to satisfy requirements that concession contracts do not extend for a continuous period exceeding 30 years. In accordance with the requirements of Public Law 89–249 (16 U.S.C. 20d), the current concessioner, having operated to the satisfaction of the Secretary, has a right to a preference in this renewal action.

SUPPLEMENTARY INFORMATION: Notwithstanding the short term action which is the subject of this notice, it is the intention of the National Park Service that a Prospectus for a long term concession contract at Crater Lake will be issued no less than one year prior to the expiration of the 3-year contract to be issued. Before this action is taken,

the National Park Service must complete certain planning actions that will determine what specific services will be required and what changes from current operations will be necessary. That planning is currently underway, but is not complete. Additionally, with any change of concessioner, payment will be due to the current concessioner from the successor for real property assets at a level that is likely to exceed $3,000,000, but has not yet been definitively estimated. Additional sums for personal property would also be due and have not yet been estimated. Also, it is necessary in the short contract that the operating concessioner invest an additional $650,000 in furniture and fixtures to equip dormitory buildings that are under construction. Given these collective circumstances, it is not believed to be practical to expect a competitive successor offer at this time.

Therefore, to effect the necessary investment and to allow for the necessary planning to be completed, it is the intention of the National park Service to enter into a 3-year contract with the current, preference holding concessioner.

Information about this notice can be sought from: National Park Service, Assistant Field Director, Operations, Pacific West Region, Attention: Mr. Stephen G. Crabtree, 600 Harrison Street, Suite 600, San Francisco, California 94107–1372, or call: (415) 427–1366.

Dated: February 21, 1997.

Patricia Neubacher,

Acting Regional Director, Pacific West Region.

[FR Doc. 97–5857 Filed 3–7–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Issue a Prospectus for the Operation of Stables and Pack Station Services and Facilities Within Kings Canyon National Park

SUMMARY: The National Park Service is seeking a concessioner to operate, under a 4-year permit, a pack station providing pack and saddle animal services and facilities within the Cedar Grove area of Kings Canyon National Park, as well as guided day-ride services and facilities within the Grant Grove area of Kings Canyon National Park. Both the Cedar Grove Pack Station and Grant Grove Stables would be operated for the public under the provisions of a Concession Permit. This notice is the formal announcement of the availability of this business opportunity and the initiation of the contracting process.

SUPPLEMENTARY INFORMATION: The pack station is located at an elevation of 4,500 feet and the stables at 6,500 feet in the Southern Sierra Nevada. Both is a summer seasonal operation serving visitors to Sequoia and Kings Canyon National Parks. The existing operator has a preference in the renewal of this concession permit. The award will be fully competitive based upon the requirements of this Prospectus.

If you are interested in this business opportunity, please ask to be placed on the mailing list by writing or calling: National Park Service, Concession Management Office, Sequoia National Park, Three Rivers, CA 93271, or call: (209) 565–3103—Peggy Williams.

When the Prospectus is issued, submittals will be accepted for a forty-five (45) day period under terms that will be described in the Prospectus. The release of the Prospectus is expected to occur shortly after the publication of this notice.

Dated: February 11, 1997.

Michael J. Tollefson,

Superintendent, Sequoia and Kings Canyon National Parks.

[FR Doc. 97–5865 Filed 3–7–97; 8:45 am]

BILLING CODE 4310–70–P

Notice of the Intention To Issue a Concession Contract at Callville Bay, Lake Mead National Recreation Area

SUMMARY: Pursuant to the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20 et seq.), notice is hereby given that the National Park Service intends to issue a concession contract at Lake Mead National Recreation Area for a period of two years. This short contract is necessary to allow the continuation of public services during the completion period of the planning documents for the Callville Bay location in the park. The current concessioner has performed its obligation to the satisfaction of the Secretary and retains its right of preference under this administrative action.

SUPPLEMENTARY INFORMATION: The concession contract at Lake Mead National Recreation Area expired on December 31, 1996. The National Park Service will not renew this contract for an extended period until planning can be completed to determine the future direction for concession services at the Callville Bay location within Lake Mead National Recreation Area. This necessary planning process has begun and will have a direct affect on future concession activities. It is anticipated that this planning process will conclude within the next several months. Until that planning process is completed, it will not be in the best interest of Lake Mead National Recreation Area to enter into a long term concession contract. For these reasons, it is the intention of the National Park Service to issue a short term contract at this time, complete the planning process and then to conduct a public contracting process for selection of a concessioner for an extended period.

Information regarding this notice can be sought from Mr. Mac Foreman, Office of Concession Program Management, Pacific Great Basin System Support Office, 600 Harrison Street, Suite 145, San Francisco, California 94107–1372, or by calling (415) 744–3981.

Dated: January 29, 1997.

Stephen G. Crabtree,

Acting Field Director, Pacific West Area.

[FR Doc. 97–5866 Filed 3–7–97; 8:45 am]

BILLING CODE 4310–70–P

Notice of Intent To Issue a Prospectus for the Operation of Pack Station Services and Facilities Within Sequoia National Park

SUMMARY: The National Park Service is seeking a concessioner to operate, under a 4-year permit, a pack station providing pack and saddle animal services and facilities within the Wolverton area of Sequoia National Park. These facilities would be operated for the public under the provisions of a Concession Permit. This notice is the formal announcement of the availability of this business opportunity and the initiation of the contracting process.

SUPPLEMENTARY INFORMATION: The pack station is located at an elevation of 7,000 feet in the southern Sierra Nevada. It is a summer seasonal operation serving visitors to Sequoia National Park. The existing operator does not have a preference in the renewal of this concession permit. The award will be fully competitive based upon the requirements of this Prospectus.

If you are interested in this business opportunity, please ask to be placed on the mailing list by writing or calling: National Park Service, Concession Management Office, Sequoia National Park, Three Rivers, CA 93271, or call: (209) 565–3103—Peggy Williams.

When the Prospectus is issued, submittals will be accepted for a SIXTY (60) day period under terms that will be described in the Prospectus. The release of the Prospectus is expected to occur shortly after the publication of this notice.

Dated: February 11, 1997.

Michael J. Tollefson,

Superintendent, Sequoia and Kings Canyon National Parks.

[FR Doc. 97–5858 Filed 3–7–97; 8:45 am]

BILLING CODE 4310–70–M

National Park Service

Notice of Intent To Issue a Prospectus for the Operation of Pack Station Services and Facilities Within Sequoia National Park

SUMMARY: The National Park Service is seeking a concessioner to operate, under a 4-year permit, a pack station providing pack and saddle animal services and facilities within the Mineral King area of Sequoia National Park. These facilities would be operated for the public under the provisions of a Concession Permit. This notice is the formal announcement of the availability of this business opportunity and the initiation of the contracting process.

SUPPLEMENTARY INFORMATION: The pack station is located at an elevation of 7,800 feet in the Southern Sierra Nevada. It is a summer seasonal operation serving visitors to Sequoia National Park. The existing operator does not have a preference in the renewal of this concession permit. The award will be fully competitive based upon the requirements of this Prospectus.

If you are interested in this business opportunity, please ask to be placed on the mailing list by writing or calling: National Park Service, Concession Management Office, Sequoia National Park, Three Rivers, CA 93271, or call: (209) 565–3103—Peggy Williams.

When the Prospectus is issued, submittals will be accepted for a Sixty (60) day period under terms that will be described in the Prospectus. The release of the Prospectus is expected to occur shortly after the publication of this notice.

Dated: February 11, 1997.

Michael J. Tollefson,

Superintendent, Sequoia and Kings Canyon National Parks.

[FR Doc. 97–5859 Filed 3–7–97; 8:45 am]

BILLING CODE 4310–70–M

National Park Service

Cape Cod National Seashore South Wellfleet, Massachusetts Cape Cod National Seashore Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, section 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held on Friday, March 28, 1997.

The Commission was reestablished pursuant to Public Law 99–349, Amendment 24. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of the Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The Commission members will convene at Headquarters, Marconi Station at 10:00 a.m. for a field trip to the former North Truro Air Force Station.

The Commission members will then meet at 1:00 p.m. at Headquarters, Marconi Station, for their regular business meeting which will be held for the following reasons:

1. Adoption of Agenda
2. Approval of Minutes of Previous Meeting (01/31/97)
3. Reports of Officers
   Use & Occupancy
   GMP
   Nickerson Fund
4. Superintendent's Report
   Site Planning—(Fort Hill, Pamet Cranberry Bog, former North Truro AFS)
   Dune Shacks
   Hatches Harbor/Airport
   News from Washington
5. Old Business—Advisory Commission Handbook
6. New Business—Follow-up discussions—Former North Truro AFS—New name?
7. Agenda for next meeting
8. Date for next meeting
9. Public comment
10. Adjournment

The meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to the Commission members.

Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent at least seven days prior to the meeting. Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667.

Richard Obernesser,

Acting Superintendent.

[FR Doc. 97–5856 Filed 3–7–96; 8:45 am]

BILLING CODE 4310–70–P

Native American Graves Protection and Repatriation Act Review Committee: Meeting—Revised Notice

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix (1988), that a meeting of the Native American Graves Protection and Repatriation Act (NAGPRA) Review Committee will be held on March 25–27, 1997 in Norman, OK.

The Review Committee will meet at the Oklahoma Center for Continuing Education (OCCE) on the campus of the University of Oklahoma in Norman. Meetings will begin each day at 8:30 a.m. and conclude not later than 5:00 p.m.

The Native American Graves Protection and Repatriation Act Review Committee was established by Public Law 101–601 to monitor, review, and assist in implementation of the inventory and identification process and repatriation activities required under the statute.

This notice amends the meeting agenda to include presentation of additional information regarding a dispute over the disposition of a carved wooden figure from Hawaii in the possession of the City of Providence and preparation of the committee's 1995–1996 report to Congress. The agenda will also include discussion of the compliance by Federal agencies, implementation of the statute in the States of Oklahoma and Texas, and the disposition of culturally unidentifiable human remains.

This meeting will be open to the public. However, facilities and space for accommodating the public are limited. Any member of the public may file a written statement concerning the matters to be discussed with Dr. Francis P. McManamon, Departmental Consulting Archeologist.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact Dr. Francis P. McManamon, Departmental Consulting Archeologist, Archeology and Ethnography Program (MS 2275), National Park Service, P.O.

Box 37127, Washington, DC 20013–7127; telephone: (202) 343–4101. Draft summary minutes of the meeting will be available for public inspection approximately eight weeks after the meeting at the office of the Departmental Consulting Archeologist, 800 North Capitol St. NW, Suite 210, Washington, DC.

Dated: February 26, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 97–5782 Filed 3–7–97; 8:45 am]

BILLING CODE 4310–70–P

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects From Chautauqua and Onondaga Counties, NY, in the Possession of the Springfield Science Museum, Springfield, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of human remains and associated funerary objects in the possession of the Springfield Science Museum, Springfield, MA.

A detailed assessment of the human remains was made by Springfield Science Museum professional staff in consultation with representatives of the Onondaga Nation, the Seneca Nation of Indians, and the Tonawanda Band of Senecas.

In 1925, human remains representing two individuals were donated to the Springfield Science Museum by Mr. J.T. Bowne. No known individuals were identified. The approximately 165 associated funerary objects include mammal bone implements, stone implements; stone pendants; coral fossils; red ochre; a brass triangular point; a metal ax; glass beads; shells and shell beads; charred corn and beans; pottery; a red paint stick; and sheet brass.

In 1907, Mr. J.T. Bowne purchased these human remains and associated funerary objects from M.R. Harrington, who obtained these remains from the Silverheels Site and the Page Jimmerson Site, in Chautauqua County, NY.

These two sites, Silverheels Site and the Page Jimmerson Site were all used as cemetery areas between the late precontact period into the mid-nineteenth century. The associated funerary objects and manner of interments indicate a continuity of occupation throughout this period consistent with known traditional Iroquoian practices. Consultation evidence presented by the Seneca Nation indicates these associated funerary objects and burial practices are identical to Iroquoian, specifically Seneca, traditional practices.

Based on the above mentioned information, officials of the Springfield Science Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of the Springfield Science Museum have also determined that, pursuant to 25 U.S.C. 3001 (3)(A), the approximately 165 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Springfield Science Museum have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Seneca Nation of Indians.

In 1861, human remains representing one individual was donated to the Springfield Science Museum by Mr. H.O. Marcy. No known individual was identified. No associated funerary objects are present.

H.O. Marcy removed these human remains from the "Fort Lot Site", Onondaga County, NY. Consultation evidence presented by the Onondaga Nation and the Haudenosunee Standing Committee on Burial Rules and Regulations indicates that this site is likely one of several early Onondaga historic villages in Onondaga County, NY which dated from the seventeenth and eighteenth centuries. These historic villages are often referred to as "forts" or "lots" in nineteenth century historical documents.

Based on the above mentioned information, officials of the Springfield Science Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Springfield Science Museum have also determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Onondaga Nation.

This notice has been sent to officials of the Haudenosaunee Standing Committee on Burial Rules and Regulations, the Onondaga Nation, the Seneca-Cayuga Tribe of Oklahoma, the Seneca Nation of Indians, and the Tonawanda Band of Senecas. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact John Pretola, Curator of Anthropology, Springfield Science Museums, 236 State Street, Springfield, MA 01103; telephone: (413) 263–6800, before April 7, 1997. Repatriation of the human remains and associated funerary objects to the Seneca Nation of Indians and the Onondaga Nation may begin after that date if no additional claimants come forward.

Dated: February 24, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 97–5781 Filed 3–7–97; 8:45 am]

BILLING CODE 4310–70–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Meeting; March 11, 1997 Board of Directors Meeting

TIME AND DATE: Tuesday, March 11, 1997, 1:00 p.m. (OPEN Portion) 1:30 p.m. (CLOSED Portion).

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

STATUS: Meeting OPEN to the Public from 1:00 p.m. to 1:30 p.m. Closed portion will commence at 1:30 p.m. (approx.)

MATTERS TO BE CONSIDERED:

1. President's Report
2. New Appointment
3. Approval of December 10, 1996 Minutes (Open Portion)
4. Meeting schedule through December, 1997

FURTHER MATTERS TO BE CONSIDERED: (Closed to the Public 1:30 p.m.).

1. Finance Project in Russia
2. Insurance Project in Bangladesh
3. Pending Major Projects
   Finance Project in Venezuela
4. Approval of December 10, 1996 Minutes (Closed Portion)

CONTACT PERSON FOR INFORMATION: Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Dated: February 25, 1997.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 97–6060 Filed 3–6–97; 2:38 pm]

BILLING CODE 3210–01–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Bureau of Justice Assistance

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Bureau of Justice Assistance, Office of Justice Programs, Justice Department.

ACTION: Notice of information collection under review; Local law enforcement block grants progress reporting form.

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on December 24, 1996 and allowed 60 days for public comment.

The purpose of this notice is to allow an additional 30 days for public comments until April 9, 1997. This process is conducted in accordance with the Code of Federal Regulations, 5 Part 1320.10. Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC, 20503. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC, 20530. Additionally, comments may be submitted to DOJ via facsimile to 202–514–1534. Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of information collection: New data collection.

(2) The title of the form/collection: Local Law Enforcement Block Grants Progress Reporting Form.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection. Form: None. Bureau of Justice Assistance, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract. Primary: State and local units of government. Other: None. This data collection will gather information from each jurisdiction on general spending operations within the purpose areas of the grant.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 3200 respondents at 45 minutes per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 4800 annual burden hours.

Public comment on this proposed information collection is strongly encouraged.

Dated: March 4, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–5736 Filed 3–7–97; 8:45 am]

BILLING CODE 4410–18–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (97–026)]

National Environmental Policy Act; Cassini Mission

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of intent to prepare a supplemental environmental impact statement (SEIS) for implementation of the Cassini mission to Saturn and its moons.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508), and NASA's policy and procedures (14 CFR Part 1216 Subpart 1216.3), NASA intends to prepare a supplement to the Cassini mission Final Environmental Impact Statement (FEIS). The SEIS will focus on updated information pertinent to the consequence and risk analyses of potential accidents during the launch and cruise phases of the mission. Such accidents could result in a release of plutonium dioxide from the three Radioisotope Thermoelectric Generators (RTG's) and the potential 157 Radioisotope Heater Units (RHU's) onboard the Cassini spacecraft. The currently planned mission involves the launch of the Cassini spacecraft from Cape Canaveral Air Station (CCAS), Florida, during the primary launch opportunity in October 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Mark R. Dahl, NASA Headquarters, Code SD, Washington, DC 20546–0001; 202–358–0306.

SUPPLEMENTARY INFORMATION: The planned Cassini mission is an international cooperative effort of NASA, the European Space Agency, and the Italian Space Agency, to explore the planet Saturn and its environment. Saturn is the second-largest and second-most massive planet in the solar system and has the largest, most visible dynamic ring structure of all the planets. The planned mission is an important part of NASA's program for exploration of the solar system, the goal of which is to understand the system's birth and evolution. The Cassini mission would involve a 4-year scientific exploration of Saturn, its atmosphere, moons, rings, and magnetosphere. The Cassini spacecraft consists of the Cassini Orbiter and the detachable Huygens Probe.

For several months, prior to its arrival at Saturn in June 2004, the spacecraft would perform scientific observations of the planet. The planned arrival date at Saturn provides a unique opportunity to have a distant flyby of Saturn's outer satellite Phoebe. About 3 weeks before its first flyby of Titan, Saturn's largest moon, the Huygens Probe would be released for a 2.5 hour parachute descent into Titan's atmosphere. The probe would sample and determine the composition of Titan's atmosphere during its descent, and gather data on

the moon's landscape. The Cassini Orbiter would then continue its Saturn orbital tour, providing opportunities for ring imaging, magnetospheric coverage, and radio (Earth), solar, and stellar occultations of Saturn, Titan, and the ring system. A total of 35 close Titan flybys have also been planned for the 4-year tour, along with 4 close flybys of selected icy satellites, and 29 more distant satellite encounters. The scientific information gathered by the Cassini mission could help provide clues to the evolution of the solar system and the origin of life on Earth.

The Cassini spacecraft would carry three RTG's that use the heat of decay of plutonium dioxide to generate electric power for the spacecraft and its instruments. The spacecraft would also use up to 157 RHU's, each containing a small amount of plutonium dioxide, to generate heat for controlling the thermal environment of the spacecraft and several of its instruments.

The Cassini FEIS was made available to Federal, state, and local agencies, the public, and other interested parties on July 21, 1995. In addition to the No-Action alternative, the FEIS addressed in detail three alternatives for completing preparations for, and operating the Cassini mission to Saturn and its moons. On October 20, 1995, utilizing the analyses in the FEIS along with other important considerations such as programmatic, technical, economic, international relations, and other factors, the Record of Decision selecting the Proposed Action was rendered.

The Proposed Action consists of completing preparations for and implementing the Cassini mission to Saturn and its moons, with a launch of the Cassini spacecraft onboard a Titan IV(SRMU)/Centaur. The launch would take place at CCAS during the primary launch opportunity in October 1997. A secondary launch opportunity occurs in December 1997, with a backup opportunity in March 1999, both using the Titan IV(SRMU)/Centaur. The primary launch opportunity would employ a Venus-Venus-Earth-Jupiter-Gravity-Assist trajectory to Saturn; the secondary and backup opportunities would both employ a Venus-Earth-Earth-Gravity-Assist (VEEGA) trajectory. The Proposed Action would allow the Cassini spacecraft to gather the full science return desired to accomplish mission objectives.

Along with the No-Action alternative (ceasing preparations and not implementing the Cassini mission), the FEIS evaluated in detail two other mission alternatives. The March 1999 alternative would have used two Shuttle flights with on-orbit integration of the spacecraft and upper stage, followed by injection of the spacecraft into a VEEGA trajectory to Saturn. Due to the long lead-time in developing and certifying the new upper stage that would be needed to implement it, this alternative is no longer considered reasonable. Also, this alternative would have returned less science than the primary launch opportunity of the Proposed Action. The other mission alternative considered in the FEIS was the 2001 alternative, which would use a Titan IV(SRMU)/Centaur to launch the spacecraft from CCAS in March 2001 on a Venus-Venus-Venus-Gravity-Assist trajectory. A backup opportunity in May 2002 would use a VEEGA trajectory. The 2001 alternative would require completing development and testing of a new high-performance rhenium engine for the spacecraft, as well as adding about 20 percent more propellant to the spacecraft. Science returns from this alternative would meet the minimum acceptable level for the mission.

The FEIS analyses demonstrated that completing preparations for and implementing a normal Cassini mission would not significantly impact the human environment. The principal concern associated with all mission alternatives (except No-Action) was with accidents during launch and operation of the mission that have the potential to result in a release of plutonium dioxide from the RTG's and/or RHU's onboard the spacecraft. In response, NASA and the U.S. Department of Energy (DOE), using the best information available at that time, developed an array of representative accident scenarios that could potentially result in a release of plutonium dioxide from the RTG's. NASA and DOE analyzed the representative accident scenarios with respect to the consequences and risks. The results of those analyses were presented in the Cassini FEIS.

Updated results from the continuing tests and analysis have recently become available for NASA review. This updated data indicates that there is new information relevant to environmental concerns and bearing on the impacts of the Proposed Action. NASA has determined that the purposes of NEPA will be furthered by preparation and issuance of an SEIS.

The SEIS will address NASA's consideration of the updated data resulting from the ongoing analysis. The SEIS will compare the updated data with those in the FEIS and will focus on the areas where the largest differences in risk are estimated. The SEIS will address the Proposed Action, the No Action alternative, and the 2001 mission alternative which is still available to NASA.

Benita A. Cooper,

Associate Administrator for Management Systems and Facilities.

[FR Doc. 97–5735 Filed 3–7–97; 8:45 am]

BILLING CODE 7510–01–M

[Notice (97–027)]

NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, Microgravity Science and Applications Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting cancellation.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 62 FR 7072, Notice Number 97–014, February 14, 1997.

PREVIOUSLY ANNOUNCED DATES OF MEETING: March 5, 1997, 10:00 a.m. to 5:00 p.m. Meeting has been canceled.

CONTACT PERSON FOR MORE INFORMATION: Dr. Bradley M. Carpenter, Code UG, National Aeronautics and Space Administration, Washington, DC 20546, 202–358–0813.

Dated: March 4, 1997.

Leslie M. Nolan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 97–5854 Filed 3–5–97; 1:16 pm]

BILLING CODE 7510–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting; Notice of Change in Subject of Meeting

The National Credit Union Administration Board determined that its business requires the deletion of the following item from the previously announced open meeting (**Federal Register**, 62 FR 10086, March 5, 1997) scheduled for 8:10 a.m., Friday, March 7, 1997.

3. Charter Application from the Proposed First Combined Community Federal Credit Union.

The Board voted (2-to-0, Vice Chairman Bowné was unavailable) that Agency business required that this item be deleted from the open agenda. Earlier announcement of this change was not possible.

The previously announced items were:

1. Approval of Minutes of Previous Open Meeting.

2. Requests from Federal Credit Unions to Convert to a Community Charter.

3. Charter Application from the Proposed First Combined Community Federal Credit Union.

4. Request from a Corporate Federal Credit Union for a Field of Membership amendment.

5. Final Rule: Part 704, NCUA's Rules and Regulations, Corporate Credit Unions.

6. Proposed Rule: Request for Comments on Federal Credit Union Bylaws.

7. Advance Notice of Proposed Rulemaking: Request for Comments on Interpretive Rulings and Policy Statements (IRPS).

8. Proposed Rule: Amendments to Sections 701.26(b), 701.27, and 740.3(c), and addition of Part 712, NCUA's Rules and Regulations, Credit Union Service Contracts, Credit Union Service Organizations, and Advertising.

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 97–5922 Filed 3–5–97; 4:21 pm]

BILLING CODE 7535–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meetings:

Name and Committee Code: Special Emphasis Panel in Materials Research #1203.

Date & Time: March 26, 1997; 8:30 a.m.–5:00 p.m.

Place: National Science Foundation, Room 360, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Carmen Huber, Program Director, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 306–1996.

Purpose of Meeting: To provide advice and recommendations concerning support for proposals focusing on integration of research and education in materials.

Agenda: Presentations and evaluation of progress.

Reason for Closing: The activity being evaluated may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: March 5, 1997.

Linda Allen-Benton,

Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.

[FR Doc. 97–5861 Filed 3–7–97; 8:45 am]

BILLING CODE 7585–01–M

Special Emphasis Panel in Networking & Communications Research & Infrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis for Connections to the Internet Panel (#1207).

Date and Time: March 24–25, 1997; 2:00 p.m. to 4:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 1175, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person(s): Mark Luker, Program Director, CISE/NCRI, Room 1175, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1950.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review & evaluate proposals submitted for the Connections to the Internet Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: March 5, 1997.

Linda Allen-Benton,

Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.

[FR Doc. 97–5860 Filed 3–7–97; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–267]

Notice of Receipt of the Public Service Company of Colorado Decommissioning/Termination Plan for the Fort St. Vrain Nuclear Generating Station

AGENCY: Nuclear Regulatory Commission.

SUMMARY: The U.S. Nuclear Regulatory Commission is noticing the receipt and reapproval of the Public Service Company's (PSC) of Colorado Decommissioning Plan (DP) as the Termination Plan for the Fort St. Vrain (FSV) Nuclear Generating Station, located near Platteville, Colorado.

BACKGROUND: NRC initially published a Notice of Consideration of Issuance of Orders to Authorize Decommissioning and Termination of Possession-Only License in the **Federal Register** on March 13, 1992 (57 FR 8940) and no comments or requests for hearing were received. On November 23, 1992, NRC issued Amendment No. 85, to License No. DPR–34, which incorporated the DP into the license, and issued an Order Approving the DP and Authorizing Decommissioning. In addition, on November 12, 1996, NRC published in the **Federal Register** (61 FR 58087) a Notice of a Public Meeting with the PSC to discuss the decommissioning and license termination of the FSV. The Public Meeting was held on December 3, 1996, in the vicinity of the plant, and no comments or requests for a hearing were received.

ACTION: In accordance with NRC's revised decommissioning regulations, specifically 10 CFR 50.82(a)(9)(iii), and based upon the comprehensive nature of DP, as amended, NRC is accepting the approved DP as the licensee's Termination Plan, and noticing the receipt of the FSV DP and its availability for public comment. Pursuant to a request by the licensee, an amendment is being considered to the license redesignating the FSV DP as the Termination Plan, as now required by NRC's regulations, and approving the Termination Plan. See 10 CFR 50.82(a)(10).

HEARING: The scope of 10 CFR Part 2, Subpart L, "Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings," includes a hearing on power reactor decommissioning license amendments subsequent to permanent removal of the fuel from the reactor. Accordingly, pursuant to 10 CFR 2.1205(a), any person whose interest may be affected by this proceeding, may request a hearing in accordance with 10 CFR 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

In accordance with 10 CFR 2.1205(e), a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requester in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requester

should be permitted a hearing, with particular reference to the factors set out in 10 CFR 2.1205(h);

(3) The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.1205(d).

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Public Service Company of Colorado, 16805 WCR 19 ½, Platteville, Colorado, Attention: Mr. A. Clegg Crawford, Vice President, Engineering and Operations Support, and

(2) NRC staff, by delivery to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Docketing and Service Branch; or hand-deliver comments to: 11555 Rockville Pike, Rockville, MD between 7:45 a.m. and 4:15 p.m., Federal workdays.

If no request for a Subpart L hearing is received, the license will be amended to approve the Termination Plan, after the thirty (30) day period for requesting a hearing has expired. Thereafter, once the determinations required under 10 CFR 50.82(a)(11) have been made, NRC will terminate the license without further opportunity for hearing.

A copy of the DP is avaiiable for public inspection and copying at NRC's Public Document Room, 2120 L Street, NW., Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Mr. Clayton L. Pittiglio, Project Manager, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T–7–F27, Washington, DC 20555–0001. Telephone (301) 415–6702.

Dated at Rockville, MD this 4th day of March 1997.

For the U.S. Nuclear Regulatory Commission.

John W.N. Hickey,

Chief.

[FR Doc. 97–5853 Filed 3–7–97; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Thermal Hydraulic Phenomena

The ACRS Subcommittee on Thermal Hydraulic Phenomena will hold a meeting on March 28, 1997, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

Most of the meeting will be closed to public attendance to discuss Westinghouse Electric Corporation proprietary information pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Friday, March 28, 1997—8:30 a.m. Until the Conclusion of Business

The Subcommittee will continue its review of the Westinghouse (W) Test and Analysis Program being conducted in support of the AP600 design certification, especially the *W* approach for modeling long-term cooling accident scenarios using the *W* COBRA/TRAC code. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, the Westinghouse Electric Corporation, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the scheduling of sessions which are open to the public, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Paul A. Boehnert (telephone 301/415–8065) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: March 4, 1997.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 97–5851 Filed 3–7–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–255, 50–266/301, 50–313/368, 72–5, 72–7, 72–13]

Consumers Power Company, Palisades Nuclear Plant, Wisconsin Electric Power Company, Point Beach Nuclear Plant, Units 1 and 2, Entergy Operations, Inc., Arkansas Nuclear One, Units 1 and 2; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a Director's Decision concerning a Petition dated November 17, 1995, filed Ms. Fawn Shillinglaw (Petitioner) under Section 2.206 of Title 10 of the Code of Federal Regulations (10 CFR 2.206). The Petition requested that the NRC prohibit loading of spent nuclear fuel into VSC–24 dry storage casks at any nuclear site until the multi-assembly sealed basket (MSB) #4 at the Palisades Nuclear Plant is unloaded and the unloading process is evaluated.

The Director of the Office of Nuclear Reactor Regulation has determined that Petition should be denied for the reasons stated in the "Director's Decision Under 10 CFR 2.206" (DD–97–05), the complete text of which follows this notice. The decision and documents cited in the decision are available for public inspection and copying in the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC.

A copy of this decision has been filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c). As provided therein, this decision will become the final action of the Commission 25 days after issuance unless the Commission, on its own motion, institutes review of the decision within that time.

Dated at Rockville, Maryland, this 4th day of March 1997.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

DIRECTOR'S DECISION UNDER 10 CFR 2.206

I. Introduction

On November 17, 1995, Ms. Fawn Shillinglaw (Petitioner) filed a Petition pursuant to Section 2.206 of Title 10 of the Code of Federal Regulations (10 CFR 2.206) requesting that the U.S. Nuclear Regulatory Commission (NRC) take action to prohibit loading of VSC–24 casks at any nuclear site until the multi-assembly sealed basket (MSB) #4 at the Palisades plant has been unloaded and the experience evaluated for potential safety improvements. In addition to Consumers Power Company, the licensee for Palisades, other licensees that use the VSC–24 cask system are Wisconsin Electric Power Company at its Point Beach Nuclear Plant, Units 1 and 2, and Entergy Operations, Inc., at Arkansas Nuclear One, Units 1 and 2.

The Petition has been referred to me pursuant to 10 CFR 2.206. The NRC letter to you dated January 18, 1996, acknowledged receipt of the Petition. Notice of receipt was published in the **Federal Register** on January 25, 1996 (61 FR 2269).

On the basis of the NRC staff's evaluation of the issues and for the reasons given below, the Petitioner's request is denied.

II. Background

NRC regulations contain a general license that authorizes nuclear power plants licensed by the NRC to store spent nuclear fuel at the reactor site in storage casks approved by the NRC. (See 10 CFR Part 72, Subpart K.) In regard to dry cask storage of spent nuclear fuel at Palisades, Point Beach, and Arkansas Nuclear One, the licensees opted to use the VSC–24 Cask Storage System designed by Sierra Nuclear Corporation. The VSC–24 Cask Storage System was added to the list of NRC certified casks in May 1993 (58 FR 17948). The associated certificate of compliance, Certificate Number 1007, specifies the conditions for use of VSC–24 casks under the general license provisions of 10 CFR Part 72. Section 1.1.2, "Operating Procedures," in the certificate of compliance for the VSC–24 casks requires that licensees prepare an operating procedure related to cask unloading. Specifically, the condition states—

> Written operating procedures shall be prepared for cask handling, loading, movement, surveillance, and maintenance. The operating procedures suggested generically in the SAR [safety analysis report] are considered appropriate, as discussed in Section 11.0 of the SER [safety evaluation report], and should provide the basis for the user's written operating procedures. The following additional written procedures shall also be developed as part of the user operating procedures:
>
> 1. A procedure shall be developed for cask unloading, assuming damaged fuel. If fuel needs to be removed from the multi-assembly sealed basket (MSB), either at the end of service life or for inspection after an accident, precautions must be taken against the potential for the presence of oxidized fuel and to prevent radiological exposure to personnel during this operation. This activity can be achieved by the use of the Swagelok valves, which permit a determination of the atmosphere within the MSB before the removal of the structural and shield lids. If the atmosphere within the MSB is helium, then operations should proceed normally, with fuel removal, either via the transfer cask or in the pool. However, if air is present within the MSB, then appropriate filters should be in place to permit the flushing of any potential airborne radioactive particulate from the MSB, via the Swagelok valves. This action will protect both personnel and the operations area from potential contamination. For the accident case, personnel protection in the form of respirators or supplied air should be considered in accordance with the licensee's Radiation Protection Program.

In July 1994, the licensee for Palisades discovered radiographic indications of possible defects in a weld in MSB #4. MSB #4 had been loaded with spent fuel earlier that month and placed inside a ventilated concrete cask on the independent spent fuel storage installation (ISFSI) storage pad. The licensee evaluated the flaw indications and determined that the MSB continued to meet its design basis and was capable of safely storing spent fuel for the duration of the certificate (20 years). Nevertheless, the licensee stated that MSB #4 would be unloaded to support additional inspections and evaluations related to its future use.[1] In preparation for the unloading of MSB #4, the licensee reviewed the unloading procedure issued in May 1993 (Revision 0) and identified several technical deficiencies. A revision of the unloading procedure (Revision 1) was subsequently developed to resolve the identified technical deficiencies. The revised unloading procedure is the subject of an ongoing NRC inspection.[2]

Through inspections at Palisades and other facilities, the NRC staff identified a number of concerns regarding licensees' procedures for unloading spent fuel from dry storage casks. The NRC staff identified examples of procedural inadequacies and quality assurance shortcomings experienced during preoperational tests and actual cask loading operations at several facilities. In addition, the staff observed that some unloading procedures implemented by licensees neglected to consider contingencies and assumptions on possible fuel degradation, gas sampling techniques, cask design issues, radiation protection requirements, and the thermal-hydraulic behavior of a cask during the process of cooling and filling it with water from the spent fuel pool. To address these concerns, the following item titled "Cask Loading and Unloading," was included in the NRC dry cask storage action plan implemented in July 1995.[3]

Issue: Cask Loading and Unloading

As licensees have implemented their ISFSI plans, several issues have been identified related to the loading and unloading of casks. Loading issues have centered on procedural inadequacies and quality assurance shortcomings. The unloading procedures developed by licensees tend to be simplistic. This has resulted in neglecting to consider contingencies and assumptions on failed fuel, air sampling techniques, disassembly requirements, design problems, and radiation protection requirements. The importance of these procedures should be emphasized to licensees, and technical issues related to unloading problems resolved. This issue should also be addressed for shipping casks.

The NRC action plan developed for dry cask storage was formulated to manage the resolution of a variety of technical and process issues associated with the expanding use of that technology for the storage of spent nuclear fuel. The item related to the loading and unloading of dry storage casks was added to the action plan, in part, to ensure that the importance of the unloading procedures was emphasized to licensees and technical issues related to unloading problems were resolved.

[1] The unloading of MSB #4 was originally planned for several months after the discovery of the radiographic indications of possible weld defects in July 1994. However, the unloading has been delayed several times and in its letter of January 17, 1997, the licensee informed the NRC staff that the unloading has been postponed until the fuel in MSB #4 can be reloaded into a certified storage and transportation cask. The licensee also indicated it intends to pursue development and licensing of such a cask, has solicited and received bids from vendors, and plans to award a contract before the end of the first quarter of 1997.

[2] In regard to the original (Revision 0) unloading procedure at Palisades, the NRC staff concluded that, had the licensee attempted to unload a cask using the original unloading procedure, the licensee would have needed to suspend activities at one or more times during the unloading process in order to implement revisions to the procedure. The NRC staff found that this was a violation of requirements that all activities affecting quality be prescribed by procedures appropriate for the circumstances and that procedures are reviewed for adequacy. However, given the limited safety significance of the procedural deficiencies and the fact that the licensee identified and corrected the deficiencies, the NRC dispositioned the violation as a Non-Cited Violation in accordance with the NRC Enforcement Policy. (See NRC Inspection Report 50–255/96014 and Director's Decision 97–01.)

[3] Action plans are used by the NRC staff to manage the resolution of significant generic issues. Such plans are prepared when the anticipated resources that will be required to resolve generic or potentially generic issues exceed certain thresholds or when the NRC staff determines that an action plan would improve its efficiency and effectiveness.

To implement the plan, the NRC staff

continue to be limited by the licensees'

deal with the potential hazards associated

allow interested parties to attend, and

revised procedures at Point Beach and

OFFICE OF PERSONNEL MANAGEMENT

To implement the plan, the NRC staff formed a working group to identify issues associated with loading and unloading processes for dry storage casks and to propose means of informing the industry and the NRC staff of those issues. The working group considered industry experiences, concerns identified during reviews and inspections, and other issues related to loading and unloading procedures. The working group completed its reviews in April 1996. The concerns related to unloading procedures reviewed by the working group were found to involve either (1) isolated occurrences that had been adequately resolved by site-specific corrective actions or (2) generic issues which were addressed by incorporating remedial measures into ongoing staff activities, such as the preparation of revised inspection procedures or other guidance documents.

In May 1996, an event occurred at the Point Beach plant involving the ignition of hydrogen gas during the loading of a VSC–24 cask.[4] Completion of the NRC inspection of the revised unloading procedure for Palisades was postponed following the event at Point Beach in order to allow licensees and the NRC staff to identify the cause of the hydrogen ignition and implement appropriate corrective actions.

Following the event, the NRC issued confirmatory action letters (CALs) to those licensees using or planning to use VSC–24 casks for the storage of spent nuclear fuel (i.e., licensees for Point Beach, Palisades, and Arkansas Nuclear One). The CALs documented the licensees' commitments not to load or unload a VSC–24 cask without resolution of material compatibility issues identified in NRC Bulletin 96–04, "Chemical, Galvanic, or Other Reactions in Spent Fuel Storage and Transportation Casks," and subsequent confirmation of corrective actions by the NRC.

On December 3, 1996, the NRC staff informed the licensee for Arkansas Nuclear One that it had completed its reviews and inspections associated with that facility and found that the licensee had satisfactorily completed the commitments documented in the CAL. Shortly thereafter, the licensee initiated cask-loading activities. The review of responses to the bulletin related to Palisades and Point Beach is ongoing and cask operations at those facilities continue to be limited by the licensees' commitments described in CALs.

[4] On May 28, 1996, a hydrogen gas ignition occurred during the welding of the shield lid on a VSC–24 cask at the Point Beach Nuclear Plant. The hydrogen was formed by a chemical reaction between a zinc-based coating (Carbo Zinc 11) and the borated water in the spent fuel pool.

III. Discussion

In support of the Petitioner's request that VSC–24 casks not be loaded until MSB #4 at Palisades has been unloaded and the unloading process has been evaluated, the Petitioner cites the action plan prepared by the NRC staff that included the staff's observation that some unloading procedures developed by licensees tended to be simplistic. The Petitioner asserts that because problems are discovered through experience, the proper way to unload casks will not be known until a cask is actually unloaded. The Petitioner also claims that the unloading procedures should not be left to the licensees to develop and implement but should be the subject of detailed NRC evaluations.

The NRC staff's concerns about the quality of licensees' unloading procedures led it to include the issue in the dry cask storage action plan. The action plan provided a framework for the identification and resolution of various technical and administrative issues related to the use of dry storage casks. The previously mentioned actions taken by the NRC staff and licensees adequately resolved the identified issues pertaining to cask unloading procedures. In the specific case of the unloading procedure at Palisades, the licensee's revised procedure addressed many of the generic staff activities on cask unloading and is currently the subject of a thorough NRC inspection that will be completed in the near future.

To fulfill some of the goals included in the action plan, the NRC staff has emphasized the importance of unloading procedures and shared observations with licensees using or considering dry cask storage during opportunities such as the Spent Fuel Storage and Transportation Workshop held in May 1996 and meetings with individual licensees. On the basis that these discussions with the industry and other staff actions had conveyed important operating experiences to NRC licensees, the staff deferred issuance of an NRC information notice on the subject of loading and unloading of dry storage casks. The staff revised inspection procedures to specifically instruct NRC inspectors to review unloading procedures developed by licensees and to identify those issues that warrant particular attention. Guidance included in NRC Inspection Procedure 60855, "Operation of an ISFSI," issued February 1, 1996, states—

> For unloading activities, attention should be paid to how the licensee has prepared to deal with the potential hazards associated with that task. Some potential issues may include: The radiation exposure associated with drawing and analyzing a sample of the canister's potentially radioactive atmosphere; steam flashing and pressure control as water is added to the hot canister; and filtering or scrubbing the hot steam/gas mixture vented from the canister, as it is filled with water.

Similar guidance was included in NUREG–1536, "Standard Review Plan for Dry Cask Storage Systems, Draft Report for Comment," issued in February 1996 and will be included in the final version of the standard review plan that is currently being prepared. The revised guidance documents ensure that recent and future reviews will address the adequacy of unloading procedures developed by licensees.

The NRC staff also reviewed the inspection history for existing ISFSIs to determine if unloading procedures were reviewed with due consideration given to the potential complications that may arise during the unloading process. The NRC staff performed audits or inspections of those licensee programs for which the inspection record did not document whether the unloading procedures adequately addressed the major issues included in the action plan. In regard to the users of the VSC–24 cask system, inspections of unloading procedures at Arkansas Nuclear One (NRC Inspection Report 50–313/96–16; 50–368/96–16; 72–13/96–01 and Notice of Violation, dated July 31, 1996) and Point Beach (NRC Inspection Report 50–266/95011; 50–301/95011, dated November 15, 1995) considered the concerns included in the NRC action plan.

As previously mentioned, the revised unloading procedure at Palisades is the subject of an ongoing inspection, completion of which was delayed as a result of the hydrogen ignition event at Point Beach. The NRC inspection of the revised unloading procedure at Palisades is being coordinated with the staff's review of the licensee's response to NRC Bulletin 96–04 and is expected to be completed in the near future, notwithstanding the licensee's decision to postpone unloading MSB #4 pending the availability of a certified storage and transportation cask.[5] Further, the NRC has committed to State officials and members of the public that the exit meeting for the inspection of the revised unloading procedure at Palisades will be open to the public, the meeting will be noticed sufficiently in advance to allow interested parties to attend, and the NRC staff will allocate time to discuss issues with the public following the meeting with the licensee.

[5] The licensee for Palisades responded to NRC Bulletin 96–04 by letters dated August 19 and November 12, 1996. The NRC staff is awaiting the licensee's response to a request for information that was issued on February 12, 1997.

The NRC staff agrees with the Petitioner that learning from experience is an essential part of improving the safety of nuclear power plant activities, including those associated with dry cask storage of spent nuclear fuel. This principle is reflected in the regulatory requirements pertaining to preoperational testing of dry cask storage activities, as well as various provisions of NRC-approved quality assurance programs. The issuance of Bulletin 96–04 and the CALs for licensees using VSC–24 casks is another example of the NRC staff's efforts to ensure that applicable operating experience is incorporated into procedures at facilities licensed by the NRC. In this case, the licensees using the VSC–24 cask revised procedures to address the technical concerns identified after the event at Point Beach and agreed to defer cask operations pending the NRC's review of responses to the bulletin and confirmation of corrective actions.

As previously mentioned, the licensee for Arkansas Nuclear One loaded VSC–24 casks following the NRC staff's determination that the licensee had satisfactorily completed the commitments documented in the CAL. On the basis of reviews and inspections performed to verify corrective actions associated with the bulletin, in combination with reviews performed for cask certification and previous inspections of preoperational testing and other aspects of the licensee's dry cask storage program, the NRC staff determined that the licensee for Arkansas Nuclear One could perform either cask loading or unloading operations without undue risk to the health and safety of the public or its own personnel. The NRC staff, through reviews and inspections to verify corrective actions associated with NRC Bulletin 96–04, must have confidence in the procedures implemented by the licensee for Point Beach before the NRC permits that licensee to resume loading or unloading of VSC–24 casks. The staff must also obtain the necessary confidence that the licensee for Palisades has implemented the corrective actions related to NRC Bulletin 96–04 as well as the issues included in the NRC action plan before permitting the licensee to resume loading or unloading VSC–24 casks.

Thus, only after resolution of the issues identified in NRC Bulletin 96–04 and other questions that may arise during the inspections of the licensees' revised procedures at Point Beach and Palisades, will the NRC permit them to unload casks. As part of its review, the NRC staff will consider matters such as the dry-run exercises licensees performed to verify key aspects of unloading procedures, as well as licensees' actual experience in the loading and unloading of transportation casks, loading of storage casks, handling of spent fuel assemblies under various conditions, and performing relevant maintenance and engineering activities associated with reactor facilities. Given that the NRC staff will not permit unloading of any casks unless it obtains reasonable assurance of each licensee's ability to do so safely, the NRC does not have reason to require unloading of MSB #4 at Palisades before allowing resumption of normal activities under the general licenses at Arkansas Nuclear One, Point Beach, or Palisades.

The Petitioner's request is, therefore, denied.

IV. Conclusion

The Petitioner requested that the NRC prohibit loading of VSC–24 casks at any nuclear site until MSB #4 at the Palisades plant has been unloaded and the experience evaluated for potential safety concerns. Each of the claims by the Petitioner has been reviewed. I conclude that, for the reasons discussed above, no adequate basis exists for granting Petitioner's request for suspension of the licensees' use of the general licenses for dry cask storage of spent nuclear fuel at Palisades, Point Beach, or Arkansas Nuclear One until the MSB at Palisades has been unloaded and the experience evaluated for potential safety improvements.

A copy of this decision will be filed with the Secretary of the Commission for the Commission to review in accordance with 10 CFR 2.206(c).

As provided by this regulation, this decision will constitute the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes a review of the decision within that time.

Dated at Rockville, Maryland, this 4th day of March 1997.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–5852 Filed 3–7–97; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

The National Partnership Council; Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

TIME AND DATE: 9:30 a.m., March 21, 1997.

PLACE: Sheraton Premiere Hotel at Tyson's Corner, 8661 Leesburg Pike, Vienna, Virginia 22182.

STATUS: This meeting will be open to the public. Seating will be available on a first-come, first-served basis. Individuals with special access needs wishing to attend should contact OPM at the number shown below to obtain appropriate accommodations.

MATTERS TO BE CONSIDERED: The National Partnership Council (NPC) will receive a briefing on the Blair House Papers, President Clinton's plan for reinvention. Also, there will be a follow-up presentation on the NPC Facilitation Project plan for working with labor-management partnerships that are facing difficulties, and a presentation by the Federal Managers Association.

CONTACT PERSON FOR MORE INFORMATION: Michael Cushing, Director, Center for Partnership and Labor-Management Relations, Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Room 7H28, Washington, DC 20415–0001, (202) 606–0810.

SUPPLEMENTARY INFORMATION: The date and location of the Council's March meeting was chosen to coincide with the Federal Managers Association's (FMA) 59th annual national convention, which meets March 20–26, 1997 at the Sheraton Premiere Hotel at Tyson's Corner in Vienna, Virginia. The Council's meeting is scheduled to take place at the start of FMA's convention.

PUBLIC PARTICIPATION: We invite interested persons and organizations to submit written comments. Mail or deliver your comments to Michael Cushing at the address shown above. To be considered at the March 21 meeting, written comments should be received by March 17.

Office of Personnel Management.

James B. King,

Director.

[FR Doc. 97–5834 Filed 3–7–97; 8:45 am]

BILLING CODE 6325–01–M

POSTAL RATE COMMISSION

March 5, 1997—Commission Notice and

ACTION: Notice of application for

interest. The registration statement was

requesting the vote of each shareholder

[Rel. No. IC–22538; 811–6410]

POSTAL RATE COMMISSION

[Docket No. A97–13]

In the Matter of: Stanley, Iowa 50671 (Steve Falck, Petitioner); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued March 5, 1997.

Before Commissioners: Edward J. Gleiman, Chairman; H. Edward Quick, Jr., Vice-Chairman; George W. Haley; W.H. "Trey" LeBlanc III

Docket Number: A97–13.
Name of Affected Post Office: Stanley, Iowa 50671.
Name(s) of Petitioner(s): Steve Falck.
Type of Determination: Consolidation.
Date of Filing of Appeal Papers: March 3, 1997.
Categories of Issues Apparently Raised:

1. Effect on the community [39 U.S.C. 404(b)(2)(A)].
2. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. 404 (b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission orders:

(a) The Postal Service shall file the record in this appeal by March 18, 1997.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Margaret P. Crenshaw,
Secretary.

Appendix

March 3, 1997—Filing of Appeal letter
March 5, 1997—Commission Notice and Order of Filing of Appeal
March 28, 1997—Last day of filing of petitions to intervene [see 39 C.F.R. 3001.111(b)]
April 7, 1997—Petitioner's Participant Statement or Initial Brief [see 39 C.F.R. 3001.115 (a) and (b)]
April 28, 1997—Postal Service's Answering Brief [see 39 C.F.R. 3001.115(c)]
May 13, 1997—Petitioner's Reply Brief should Petitioner choose to file one [see 39 C.F.R. 3001.115(d)]
May 20, 1997—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 C.F.R. 3001.116]
July 1, 1997—Expiration of the Commission's 120-day decisional schedule [see 39 U.S.C. 404(b)(5)]

[FR Doc. 97–5833 Filed 3–7–97; 8:45 am]
BILLING CODE 7710–FW–P

PRESIDENT'S COMMISSION ON CRITICAL INFRASTRUCTURE PROTECTION

Public Meeting

ACTION: Los Angeles PCCIP *Public Meeting.*

TIME & DATE: 10:00 am–1:00 pm, Thursday, March 13, 1997.

PLACE: Public Works Hearing Room, City Hall, Room 350, 3rd Floor, 200 N. Spring Street, Los Angeles CA 90012.

MATTERS TO BE CONSIDERED: Any concerned citizen, group or activity with advice/comments on assuring America's critical infrastructures.

CONTACT PERSON FOR MORE INFORMATION: Nelson McCouch, Public Affairs Director, (703) 696–9395, nelson.mccouch@pccip.gov.

Robert E. Giovagnoni,
General Counsel, President's Commission on Critical Infrastructure Protection.

[FR Doc. 97–5743 Filed 3–7–97; 8:45 am]
BILLING CODE 3110–$$–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Rel. No. 22539; 811–5779]

New World Investment Fund; Notice of Application

March 4, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: New World Investment Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on October 29, 1996, and amended on February 7, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 31, 1997, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC 450 Fifth Street, NW., Washington, DC 20549. Applicant, 11100 Santa Monica Boulevard, Los Angeles, California, 90025.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Counsel, at (202) 942–0583, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a Massachusetts business trust, is a closed-end management investment company. Applicant filed a notification of registration on Form N–8A under section 8(a) of the Act on March 1, 1989, and filed a registration statement on Form N–2 under section 8(b) of the Act on March 28, 1989.

2. Applicant filed a registration statement on Form N–2 under the Securities Act of 1933 with respect to 3,458,684 shares of beneficial interest on September 25, 1992. On March 8, 1993, applicant filed a pre-effective amendment with respect to an additional 447,543 shares of beneficial interest. The registration statement was declared effective on June 4, 1993, and applicant commenced the initial public offering of its securities immediately thereafter. On March 15, 1995, applicant filed a registration statement on Form N–2 with respect to an additional 595,821 shares of beneficial interest, and filed a pre-effective amendment with respect to 3,167,380 shares of beneficial interest on September 26, 1995. This registration statement was declared effective on November 28, 1995.

3. On February 16, 1996, applicant's board of trustees ("Trustees") approved by unanimous written consent an agreement and plan of reorganization ("Plan"), providing for the transfer of all of applicant's assets in exchange for shares of common stock of Emerging Markets Growth Fund, Inc. ("Acquiring Fund"), a closed-end investment company. In approving the Plan, the Trustees considered: (a) The potential benefits of the Plan to applicant's shareholders, (b) the compatibility of investment objectives, policies, restrictions and investment holdings of applicant and the Acquiring Fund, (c) the terms and conditions of the Plan that might affect the price of applicant's outstanding shares, and (d) the direct or indirect costs to be incurred by applicant or its shareholders. The Trustees concluded that participation in the Plan was in the best interests of applicant and its shareholders.

4. Applicant and the Acquiring Fund may be deemed affiliated persons of each other within the meaning of the Act because they have two common shareholders, each of whom owned more than 5% of the outstanding shares of applicant and the Acquiring Fund. Because applicant and Acquiring Fund were unable to rely on the exemption provided in rule 17a–8,[1] applicant, the Acquiring Fund, and two affiliated shareholders of both funds received an order under section 17(b) of the Act granting an exemption from section 17(a), which permitted the Acquiring Fund to acquire all of applicant's assets.[2]

5. On May 31, 1996, an information statement/prospectus was mailed to all shareholders of record as of April 30, 1996. This information statement contained a consent solicitation requesting the vote of each shareholder on the approval of the Plan, the distribution of such shares to applicant's shareholders in liquidation of applicant, and applicant's subsequent dissolution. A registration statement on Form N–14 containing the information statement/prospectus was filed with the Commission on April 24, 1996. Approval of the Plan required the written consent of a majority of the shares outstanding and entitled to vote; holders of 12,205,648 shares (100% of the outstanding shares) provided their written consent to the Plan.

6. As of June 21, 1996, applicant had 12,663,070 shares outstanding with a net asset value of $22.03 and an aggregate net asset value of $278,920,093.23. To effect the liquidation of applicant, an open account was established on the share records of the Acquiring Fund in the name of each of applicant's shareholders representing the number of shares of common stock of the Acquiring Fund with a net asset value equal to the net asset value of applicant's shares owned of record by the shareholder as of June 21, 1996. The number of Acquiring Fund shares issued (including fractional shares) in exchange for applicant's assets was determined by dividing the value of applicant's net assets by the per share not asset value of the Acquiring Fund on that date.

7. Expenses incurred in connection with the Plan, including fees for legal and accounting services, amounted to $160,226.77. Under the Plan, applicant and the Acquiring Fund were each responsible for one half of the costs incurred.

8. At the time of the application, applicant had no shareholders, assets, or liabilities, nor was applicant a party to any litigation or administrative proceeding. Applicant is not engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

9. Upon issuance of the order requested, applicant will file a termination of trust with the Massachusetts Secretary of State, deregistering applicant as a Massachusetts business trust.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 97–5836 Filed 3–7–97; 8:45 am]
BILLING CODE 8010–01–M

[1] Rule 17a–8 provides relief from the affiliated transaction prohibition of section 17(a) of the Act for a merger of investment companies that may be affiliated persons of each other solely by reason of having a common investment adviser, common directors, and/or common officers.

[2] Investment Company Act Release Nos. 21952 (May 10, 1996) (notice) and 22006 (June 5, 1996) (order).

[Rel. No. IC–22538; 811–6410]

Strong Insured Municipal Bond Fund, Inc.; Notice of Application

March 4, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption Under the Investment Company Act of 1940 (the "Act").

APPLICANT: Strong Insured Municipal Bond Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on November 20, 1996 and amended on February 25, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 31, 1997, and should be accompanied by proof of service on applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, DC 20549. Applicant, 100 Heritage Reserve, Menomonee Falls, Wisconsin 53051.

FOR FURTHER INFORMATION CONTACT: Suzanne Krudys, Senior Counsel, at (202) 942–0641, or Mercer E. Bullard, Branch Chief, (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a registered open-end investment company, was organized as a Wisconsin corporation on December 12, 1990. On September 13, 1991, applicant registered under the Act and filed a registration statement under section 8(b) of the Act and the Securities Act of 1933. The registration statement was declared effective on November 25, 1991 and applicant's initial public offering commenced that same day.

Applicant initially registered under the name Strong B Fund, Inc. and changed its name to Strong Insured Municipal Bond Fund, Inc. on November 4, 1991.

2. At a meeting held on April 24, 1996, the board of directors of applicant unanimously approved the Agreement and Plan of Reorganization ("Reorganization Agreement") whereby applicant would exchange its assets for shares of Strong Municipal Bond Fund, Inc. ("Bond Fund"). The Reorganization Agreement provided: (i) for the transfer of all of applicant's assets to the Bond Fund less a reserve for liabilities in exchange for shares of Bond fund ("Bond Fund Shares") equal in value to applicant's net assets; (ii) the pro rata distribution of the Bond Fund Shares to applicant's shareholders in liquidation of applicant; (iii) the cancellation of applicant's shares; and (iv) deregistration of applicant as an investment company under the Act.

3. At the April 24 meeting, applicant's directors, (i) in reliance on rule 17a–8 under the Act,[1] found that participation in the reorganization was in the best interest of applicant and its shareholders and that the interests of applicant's shareholders would not be diluted as a result of the reorganization, (ii) authorized the preparation and filing of proxy solicitations, and (iii) called a shareholders meeting. In making its determination that the reorganization was in the best interest of applicant's shareholders, the board noted that the relatively small size of applicant had prevented it from realizing significant economies of scale or reducing its expense ratio, and had been a factor in causing its performance to lag its competitors in recent periods. The board also considered that, because of heightened competition in the insurance industry, most municipal securities are now insurable. As a result, the board recognized that applicant, which sought to keep its assets in insured municipal securities, was no longer unique and therefore was less attractive to investors. The board determined that the reorganization offered the greatest likelihood of addressing the asset size and growth problem while reorganizing applicant into an investment company with an identical investment objective and similar investment policies and restrictions. The board further noted that the reorganization would result in continuity of investment services (advisory, transfer agent and distributor services) and no sales or other charges would be imposed on any shares of the Bond Fund acquired by shareholders in the reorganization.

4. On May 24, 1996, the Reorganization Agreement was entered into by applicant, the Bond Fund, and with respect to certain matters, Strong Capital Management, Inc., the investment adviser of both applicant and the Bond Fund. Proxy materials relating to the merger (which were contained in the Bond Fund's registration statement on Form N–14) were filed with the SEC on May 24, 1996, and mailed to applicant's shareholders on July 3, 1996. The Reorganization Agreement was approved by applicant's shareholders on August 27, 1996.

5. As of August 30, 1996, the date of the transfer of assets, there was an aggregate of 2,885,713.293 shares of outstanding common stock of applicant having an aggregate net asset value of $29,090,061.39 and a per share value of $10.08. In accordance with the Reorganization Agreement, applicant transferred its assets to the Bond Fund in exchange for 3,235,825.05 shares of the Bond Fund. Such shares were equal in value to applicant's net asset value. Such Bond Fund Shares received by applicant were then distributed pro rata to applicant's shareholders in complete liquidation of applicant. No brokerage commissions were paid in the exchange.

6. The total expenses incurred in connection with the Reorganization, consisting of legal, accounting, proxy solicitation, liquidation, and other related administrative fees and expenses, were approximately $92,903. The applicant and Bond Fund each paid for their own expenses in connection with entering into and carrying out the transactions contemplated by the Reorganization Agreement. The adviser waived all of applicant's unamortized organizational expenses of $3,600.

7. The applicant has no shareholders, assets, debts or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–5838 Filed 3–7–97; 8:45 am]

BILLING CODE 8010–01–M

[1] Section 17(a) of the Act generally prohibits sales or purchases of securities between registered investment companies and any affiliated person of that company. Rule 17a–8 provides an exemption from section 17(a) for certain reorganizations among registered investment companies that may be affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers

[Release No. 34–38353; File No. SR–CBOE–96–59]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1 and 2 to Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Listing and Trading of Options on the Morgan Stanley Multinational Company Index

February 28, 1997.

I. Introduction

On October 1, 1996, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade cash-settled, European-style stock index options on the Morgan Stanley Multinational Company Index ("Index"),[3] a broad-based, capitalization-weighted index comprised of 50 large domestic companies, as more fully described below.

The proposed rule change appeared in the **Federal Register** on October 15, 1996.[4] No comments were received on the proposed rule change. The Exchange subsequently filed Amendment Nos. 1 and 2 to the proposed rule change on December 23, 1996 and on February 5, 1997, respectively.[5] This order approves the CBOE's proposal, as amended, and solicits comments on Amendment Nos. 1 and 2.

II. Description

The Exchange is proposing to list and trade cash-settled, European-style stock index options on the Morgan Stanley Multinational Company Index, a broad-based, capitalization-weighted index composed of 50 high-capitalization domestic stocks.[6] According to the Exchange, the 50 companies that comprise the Index are multinational in nature as they each derive a substantial portion of their earnings from foreign income and have cash flows denominated in multiple currencies. Each of the component securities are traded on the American Stock Exchange, Inc. ("Amex"), the New York Stock Exchange, Inc. ("NYSE"), or through the facilities of the National Association of Securities Dealers ("NASD") Automated Quotation system ("Nasdaq") and are reported national market system securities ("Nasdaq/NMS").

A. Index Design

The Morgan Stanley Multinational Company Index has been designed to measure the performance of certain high capitalization stocks. The Morgan Stanley Multinational Company Index is a capitalization-weighted index with each stock affecting the Index in proportion to its market capitalization. Each stock in the Index is eligible for options trading.

On July 17, 1996, the 50 stocks ranged in capitalization from $138.2 billion (General Electric Co.) to $4.7 billion (Becton Dickinson Inc.). The median capitalization of the firms in the Index was $29.33 billion, while the average capitalization of the Index components was $37.1 billion. The largest stock accounted for 7.33% of the total weighting of the Index, while the smallest accounted for 0.25%. The five highest weighted stocks accounted for 28.8% The average daily trading volume for Index components during the six-month period ending July 16, 1996 was 1.93 million shares.

B. Calculation

The methodology used to calculate the value of the Index is similar to the methodology used to calculate the value of other well-known broad-based indices. The level of the Index reflects the total market value of the component stocks relative to a particular base period. The Morgan Stanley Multinational Company Index base date is December 31, 1991, when the Index value was set to 200. The Index had a closing value of 405.60 on January 6, 1997. The daily calculation of the Morgan Stanley Multinational Company Index is computed by dividing the total market value of the companies in the Index by the Index divisor. The divisor keeps the Index comparable over time and is adjusted periodically to maintain the Index. The values of the Index will be calculated by the CBOE and disseminated at 15-second intervals during regular CBOE trading hours to market information vendors via the Options Price Reporting Authority ("OPRA").

C. Maintenance

Index maintenance includes monitoring and completing the adjustments for company additions and deletions, share changes, stock splits, stock dividends (other than ordinary cash dividends), and stock price adjustments due to company restructurings or spinoffs. Routine corporate actions, such as stock splits and stock dividends, require simple changes in the common shares outstanding and the stock prices of the companies in the Index and will be handled by CBOE. Non-routine corporate actions, such as share issuances, change the market value of the Index and require an Index divisor adjustment as well. The CBOE will refer all such non-routine matters and other material changes to the Index to Morgan Stanley.[7] Over time the number of component securities in the Index may change. In the event of a stock replacement, the divisor will be adjusted to provide continuity in values of the Index. In addition, whenever a component change is made to the Index, every effort will be made to substitute a component that maintains the character of the Index.[8] Lastly, the CBOE will notify the Commission if: (i) less than 75% of the weight of the Index is comprised of stocks that are eligible for options trading; or (ii) the number of securities in the Index is decreased to less than 35.[9]

D. Index Option Trading

In addition to regular Index options, the Exchange may provide for the listing of long-term index option series ("LEAPS") and reduced-value LEAPS on the Index (all such LEAPS series are hereinafter referred to as "LEAPS"). For reduced-value LEAPS, the underlying value would be computed at one-tenth of the Index level. The current and closing Index value of any such reduced-value LEAP will, after such initial computation, be rounded to the nearest one-hundredth.

Strike prices will be set to bracket the Index in 2½ point increments for strikes below 200 and 5 point increments above 200. The minimum tick size for series trading below $3 will be 1/16th and for series trading above $3 the minimum tick will be 1/8th. The trading hours for options on the Index will be from 8:30 a.m. to 3:15 p.m. (Chicago time).

E. Exercise and Settlement

The proposed options on the Index will expire on the Saturday following the third Friday of the expiration month. Trading in the expiring contract month will normally cease at 3:15 p.m. (Chicago time) on the business day preceding the last day of trading in the component securities of the Index (ordinarily the Thursday before expiration Saturday, unless there is an intervening holiday). The exercise settlement value of the Index at option expiration will be calculated by the Exchange based on the opening prices of the component securities on the business day prior to expiration. If a stock fails to open for trading, the last available price on the stock will be used in the calculation of the Index, as is done for other currently listed indexes.[10] When the last trading day is moved because of Exchange holidays (such as when the CBOE is closed on the Friday before expiration), the last trading day for expiring options will be Wednesday and the exercise settlement

[1] 15 U.S.C. § 78s(b)(1)(1988).

[2] 17 CFR 240.19b–4.

[3] The CBOE has clarified that the name of the Index will be the Morgan Stanley Multinational Company Index. *See* letter from Scott Lyden, Research & Product Development, CBOE, to Stephen M. Youhn, Division of Market Regulation ("Division"), Commission, dated February 5, 1997 ("Amendment No. 2").

[4] *See* Securities Exchange Act Release No. 37790 (October 4, 1996), 61 FR 53774 (October 15, 1996).

[5] *See* letter from William M. Speth, Senior Research Analyst, Product Development, Research Department, CBOE, to Stephen M. Youhn, Division, Commission, dated December 23, 1996 ("Amendment No. 1"). In Amendment No. 1, the CBOE emended its rule filing regarding, among other things, its maintenance procedures. *See infra* notes 8 and 9, and accompanying text.

[6] A list of Index components is available at the Commission and at the CBOE.

[7] Since Morgan Stanley may be consulted regarding the maintenance of the Index, a "chinese wall" has been erected around the personnel at Morgan Stanley who have access to information concerning changes and adjustments to the Index. Details of Morgan Stanley's chinese wall procedures, which are closely modeled on existing procedures for other Morgan Stanley indexes underlying standardized options, have been submitted to the Commission under separate cover.

[8] *See* Amendment No. 1. The Commission expects CBOE to maintain the character of the Index as represented in its proposal, *i.e.*, as an index comprised of very highly capitalized U.S. stocks that are multinational in nature, as defined above. Failure to maintain the Index in this manner would raise issues as to whether additional approval pursuant to Section 19(b) of the Act would be necessary in order for CBOE to continue trading the product. *See also* note 9, *infra*.

[9] *Id.* The Commission notes that its and the CBOE's regulatory responses for failure to meet the above maintenance criteria could include, but are not limited to, the removal of the securities from the Index, prohibiting opening transactions, or discontinuing the listing of new series of Index options. In addition, if the composition of the Index's underlying securities was to substantially change, the Commission's decision regarding the appropriateness of the Index's current maintenance standards would be reevaluated, and whether additional approval under Section 19(b) is necessary to continue to trade the product. *See also* note 8, *supra*.

[10] The Commission notes that pursuant to Article XVII, Section 4 of the Options Clearing Corporation's ("OCC") by-laws, the OCC is empowered to fix an exercise settlement amount in the event it determines a current index value is unreported or otherwise unavailable. Further, the OCC has the authority to fix an exercise settlement amount whenever the primary market for the securities representing a substantial part of the value of the underlying index is not open for trading at the time when the current index value (*i.e.*, the value used for exercise settlement purposes) ordinarily would be determined. *See* Securities Exchange Act Release No. 37315 (June 17, 1996), 61 FR 42671 (OCC–95–19).

value of Index options at expiration will be determined at the opening of regular Thursday trading.

F. Surveillance

The Exchange will use the same surveillance procedures currently utilized for each of the Exchange's other index options to monitor trading in Index options and Index LEAPS on the Morgan Stanley Multinational Company Index. For surveillance purposes, the Exchange will have complete access to information regarding trading activity in the underlying securities.

G. Position Limits

The Exchange proposes to establish position limits for options on the Morgan Stanley Multinational Company Index at 50,000 contracts on either side of the market, and no more than 30,000 of such contracts may be in the series in the nearest expiration month. These limits are roughly equivalent, in dollar terms, to the limits applicable to options on other indices.

H. Other Exchange Rules and Matters

As modified herein, the Exchange Rules in Chapter XXIV will be applicable to Morgan Stanley Multinational Company Index options. In addition, broad-based margin rules will apply to the Index.

The CBOE is also proposing to amend Exchange Rule 24.14 in order to include specific reference to Morgan Stanley as entitled to the benefit of the disclaimer of liability in respect of the Index.

The CBOE believes that it has the necessary systems capacity to support new series that would result from the introduction of Morgan Stanley Multinational Company Index options. The CBOE has also been informed that OPRA has the capacity to support the new series.

III. Findings and Conclusions

The Commission finds that the proposed rule chang is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[11] Specifically, the Commission finds that the trading of options on the Morgan Stanley Multinational Company Index, includes LEAPS, will serve to promote the public interest as well as to help remove impediments to a free and open securities market. Further, the trading of options on the Index will allow investors holding positions in some or all of the securities underlying the Index to hedge the risks associated with their portfolios. Accordingly, the Commission believes that the Index options will provide investors with an important trading and hedging mechanism. By broadening the hedging and investment opportunities of investors, the Commission believes that the trading of Index options will serve to protect investors, promote the public interest, and contribute to the maintenance of a fair market.[12]

Nevertheless, the trading of options on the Index raises several issues related to the design and structure of the Index, customer protection, surveillance, and market impact. The Commission believes, however, for the reasons discussed below, that the CBOE has adequately addressed these rules.

A. Index Design and Structure

The Commission believes that it is appropriate for the Exchange to designate the Morgan Stanley Multinational Company Index as a broad-based index for purposes of index option trading. Specifically, the Commission believes that the Index is broad-based because, among other reasons, it contains 50 actively-traded stocks representing 27 industry groups, and thus reflects a substantial segment of the U.S. equities market. Accordingly, the Commission believes that it is appropriate for the Exchange to apply its rules governing broad-based index options to trading in the Index options.

The Commission also finds that the large capitalizations, liquid markets, and relative weightings of the Index's component stocks significantly minimize the potential for manipulation of the Index as well as provide a sufficient basis for the Index's maintenance standards.[13] First, the Index represents and consists of the common stock values of 50 actively-traded domestic companies. Second, as of July 17, 1996, no one stock comprised more than 7.33% of the Index's value, and the five highest weighted stocks accounted for only 28.8% of the Index's value. Third, the stocks that comprise the index are actively-traded, with an average daily trading volume for Index components during the six-month period ending July 16, 1996 of 1.93 million shares. Fourth, as of July 17, 1996, the market capitalizations of the stocks in the Index were substantial, ranging from high of $138.2 billion (General Electric Co.) to a low of $4.7 billion (Becton Dickinson Inc.). The median capitalization of th efirms in the Index was $29.33 billion, while the average capitalization of the Index components was $37.1 billion. Fifth, the Index is comprised of stocks representing a diverse group of 27 industries, including pharmaceuticals (15.57%), crude/petroleum (9.26%), and beverages (9.00%). Sixth, all of the component securities currently are eligible for options trading and the maintenance standards require that at least 75% of the index components remains options eligible.[14] Finally, the Commissoin believes that, as discussed below, existing mechanisms to monitor trading actvity in those securities will help to deter as well as to detect illegal trading activity involving Index options.

B. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as options on the Morgan Stanley Multinational Company Index (including full-value and reduced value LEAPS), can commence on a national securities exchange. The Commission notes that the trading of standardized, exchange-traded options occurs in an environment that is designed to ensure, among others things, that: (1) the special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risks of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because the Index options will be subject to the same regulatory regime as the other standardized options currently traded on the CBOE, the Commission believes that adequate safeguards are in place to ensure the protection of investors in

[11] 15 U.S.C. § 78f(b) (1988).

[12] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new securities product upon a finding that the introduciton of such product is in the public interest. Such finding would be difficult with respect to a product that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[13] The Commission notes, however, that if the composition of the Index's underlying securities was to substantially change, its decision regarding the appropriateness of the Index's current maintenance standards would be reevaluated.

[14] The Exchange's options listing standards, which are uniform among the options exchange, provide that a security underlying an option must, among other things, meet the following requirements. (1) the public float must be at least 7 million shares; (2) there must be a minimum of 2,000 stockholders; (3) trading volume must have been at least 2.4 million shares over the preceding twelve months; and (4) the market price per share must have been at least $7.50 for a majority of business days during the preceding three calendar months. *See* Interpretation .01 to Exchange Rule 5.3. *See also* note 8, *supra*.

options on the Morgan Stanley Multinational Company Index.

C. Surveillance

The Commission believes that a surveillance-sharing agreement between an exchange proposing to list a stock index derivative and the exchange(s) trading the stocks underlying the derivative product is an important measure for the surveillance of the derivatives and underlying securities markets. Such agreements ensure the availability of information necessary to detect and to deter potential manipulations and other trading abuses, thereby making the stock index product less readily susceptible to manipulation.[15] In this regard, the markets upon which all of the Index component stocks trade are members of the Intermarket Surveillance Group ("ISG").[16] Similarly, the options on the individual component securities trade on markets which are ISG members. In addition, the Exchange will apply the same surveillance procedures as those used for existing broad-based index option trading on the CBOE.

The Commission notes that certain concerns are raised when a broker-dealer, such as Morgan Stanley, is involved in the development and maintenance of a stock index that underlies an exchange-traded derivative product. For several reasons, however, the Commission believes that the CBOE has adequately addressed this concern with respect to options on the Morgan Stanley Multinational Company Index.

First, the value of the Index, including the final settlement values, are to be calculated and disseminated independent of Morgan Stanley by the CBOE. Accordingly, neither Morgan Stanley nor any of its affiliates or other persons (except CBOE) will be in receipt of the values prior to their public dissemination. Second, the Commission believes that the procedures Morgan Stanley has established to detect and to prevent material non-public information concerning the Index from being improperly used by members of Morgan Stanley's Equity Research Department, as well as other persons within Morgan Stanley, adequately serve to minimize the susceptibility to manipulation of the index as well as the securities underlying the Index. Finally, the Exchange's existing surveillance produceures for stock index options will apply to the options on the Index and should provide the CBOE with adequate information to detect and to deter trading abuses that may occur. In summary, the Commission believes that the procedures outlined above will ensure that Morgan Stanley will not be able to take advantage of any informational advantages concerning modifications to the composition of the Index due to its role in the maintenance of the Index.

D. Market Impact

The Commission believes that the listing and trading of options on the Morgan Stanley Multinational Company Index, including LEAPS, will not adversely impact the underlying securities, markets.[17] First, as descried above, the Index is broad-based and comprised of 50 stocks with no one stock dominating the Index. Second, as noted above, the stocks contained in the Index have relatively large capitalizations and are relatively actively-traded. Third, the 50,000 contract position and exercise limits, with no more than 30,000 contracts in the nearest expiration month, will serve to minimize potential manipulation and market impact concerns. Fourth, the risk to investors of contra-party non-performance will be minimized because the Index options and LEAPS will be issued and guaranteed by the Options Clearing Corporation ("OCC"), similar to all other standardized option traded in the United States. Fifth, existing CBOE stock index options rules and surveillance procedures will apply to options on the Morgan Stanley Multinational Company Index.

Lastly, the Commission believes that settling expiring Morgan Stanley Multinational Company Index options, including LEAPS, based on the opening prices of component securities is reasonable and consistent with the Act. As noted in other contexts, valuing options for exercise settlement on expiration based on opening prices rather than on closing prices may help reduce adverse effects on markets for stocks underlying options on the Index.[18]

The Commission finds good cause to approve Amendment Nos. 1 and 2 to the proposed rule filing prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 1 to the CBOE's proposal describes details of certain Index maintenance procedures. In this regard, the Commission believes that the Exchange's review of the Index's component securities will help to ensure that the Index maintains its intended market character as well as remains an appropriate trading vehicle for public customers. In addition, Amendment No. 2, which changes the name of the Index to the Morgan Stanley Multinational Company Index, raises no substantive issues and will help to avoid investor confusion regarding the components of the Index. The Commission also notes that no comments were recevied on the original CBOE proposal, which was subject to the full 21-day notice and comment period. Accordingly, the Commission believes that it is consistent with Section 6(b)(5) of the Act to approve Amendment Nos. 1 and 2 to the proposed rule change on an accelerated basis.

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1 and 2 to the rule proposal. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–96–59 and should be submitted by March 31, 1997.

[15] *See, e.g.*, Securities Exchange Act Release No. 31243 (September 28, 1992), 57 FR 45849 (October 5, 1992) (CBOE-91-51) (order approving the listing of options on the CBOE Biotech Index).

[16] The ISG was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. *See* Intermarket Surveillance Group Agreement, dated July 14, 1983, amended January 29, 1990. The members of the ISG are the following: the American Stock Exchange, Inc.; the Boston Stock Exchange, Inc.; the CBOE; the Chicago Stock Exchange, Inc.; the National Association of Securities Dealers, Inc.; the New York Stock Exchange, Inc.; the Securities Stock Exchange Inc.; and the Philadelphia Stock Exchange, Inc. The major stock index futures exchanges (including the Chicago Mercantile Exchange and the Chicago Board of Trade) joined the ISG as affiliate members in 1990.

[17] In addition, the CBOE has represented that it and OPRA have the necessary systems capacity to support those new series of index options that would result from the introduction of Index options and LEAPS.

[18] *See, e.g.*, Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992) (CBOE–92–09) (order approving position limits for European-style Standard & Poor's 500 Stock Index options settled based on the opening prices of component securities).

IV. Conclusion

For the foregoing reasons, the Commission finds that the CBOE's proposal to list and trade options on the Morgan Stanley Multinational Company Index is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–CBOE–96–59), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–5746 Filed 3–7–97; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket OST–96–1334]

Application of Arriva Air International, Inc. for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause (Order 97–3–4).

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Arriva Air International, Inc., fit, willing, and able, and awarding it a certificate of public convenience and necessity to engage in interstate charter air transportation of property and mail.

DATES: Persons wishing to file objections should do so no later than March 19, 1997.

ADDRESSES: Objections and answers to objections should be filed in Docket OST–96–1334 and addressed to the Department of Transportation Dockets (SVC–120.30, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Delores King, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2343.

[19] 15 U.S.C. § 78s(b)(2) (1988).

[20] 17 CFR 200.30–3(a)(12).

Dated: March 4, 1997.

Patrick V. Murphy,

Deputy Assistant Secretary for Aviation and International Affairs.

[FR Doc. 97–5849 Filed 3–7–97; 8:45 am]

BILLING CODE 4910–62–P

Privacy Act of 1974: Deletion of Systems of Records Notices

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice to delete Privacy Act systems of records.

SUMMARY: The Department of Transportation is deleting the following systems from its inventory of Privacy Act systems of records notices.

EFFECTIVE DATE: March 10, 1997.

FOR FURTHER INFORMATION CONTACT: Crystal M. Bush, Privacy Coordinator, U.S. Department of Transportation, Washington, DC 20590. Telephone: (202) 366–9713.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, the Department of Transportation conducted a review of several of its Privacy Act systems of records and determined the following records are covered by DOT/ALL 8, Employee Transportation Facilitation.

System No.	System name
DOT/OST 024 ..	Parking Permit Application Files and Vanpool Application Files.
DOT/OST 025 ..	Parking Permit Management System.

Dated: February 25, 1997.

Crystal M. Bush,

Privacy Act Coordinator.

[FR Doc. 97–5766 Filed 3–7–97; 8:45 am]

BILLING CODE 4910–62–P

Surface Transportation Board

[STB Finance Docket No. 33361]

Wheeling & Lake Erie Railway Company; Trackage Rights Exemption; Consolidated Rail Corporation

Consolidated Rail Corporation (Conrail) has agreed to grant non-exclusive overhead trackage rights to the Wheeling & Lake Erie Railway Company (W&LE) in Canton, OH, between Conrail's Canton Yard and the connection with W&LE's Aultman Line at McKinley, as follows: (1) over Conrail's Track 96 between the connection with W&LE's East End Yard and the connection with Conrail's Fort Wayne Line at milepost 97.8±; (2) over Conrail's Fort Wayne Line between milepost 97.8± and milepost 96.8± at CP Fairhope; and (3) over Conrail's Reed Runner Track (including the crossover connection to the Fort Wayne Line and the portion of the northwest quadrant interchange track at McKinley owned by Conrail) between milepost 96.8± at CP Fairhope and milepost 102.1± at McKinley, together with necessary head and tail room, a total distance of approximately 6.8 miles.

The transaction is scheduled to be consummated on March 3, 1997.

The trackage rights will provide W&LE with an alternate route to its Aultman Line at McKinley, and will allow retirement of three deteriorated crossing diamonds at the McKinley interlocking.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33361, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423.[1] In addition, a copy of each pleading must be served on Thomas J. Litwiler, Esq., Oppenheimer Wolff & Donnelly, Two Prudential Plaza, 45th Floor, 180 North Stetson Avenue, Chicago, IL 60601.

Decided: February 28, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–5864 Filed 3–7–97; 8:45 am]

BILLING CODE 4915–00–P

[1] Due to the Board's scheduled relocation on March 16, 1997, any filings made after March 16, 1997, must be filed with the Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423–0001.

DEPARTMENT OF THE TREASURY

Office of International Investment

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Office of International Investment within the Department of the Treasury is soliciting comments concerning the information collection provisions of the Regulations Pertaining to Mergers, Acquisitions and Takeovers by Foreign Persons, 31 CFR § 800.402.

DATES: Written comments should be received on or before May 2, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments to Gay Sills Hoar, Director, Office of International Investment, ICC Building, Suite 7354, 12th St. and Constitution Ave., N.W., Washington, D.C. 20044, (Tel.: 202/622–1860).

FOR FURTHER INFORMATION CONTACT: Jack Dempsey, Economist (Tel.: 202/622–1860), ICC Building, Suite 7354, 12th St. and Constitution Ave., N.W., Washington, D.C. 20044; Francine McNulty Barber, Attorney-Adviser, Department of the Treasury, 15th St. and Pennsylvania Ave., N.W., Washington, D.C. 20220, (202/622–1947).

SUPPLEMENTARY INFORMATION:

Title: Regulations Pertaining to Mergers, Acquisitions and Takeovers by Foreign Persons.

OMB Number: 1505–0121.

Abstract: The collection of information provided for in this proposed rule is in section 800.402. The information collected under these regulations is used by the Committee on Foreign Investment in the United States (CFIUS), an inter-agency committee chaired by the Secretary of the Treasury and comprised of the Secretaries of State, Defense, Treasury and Commerce, the Attorney General, the U.S. Trade Representative. the Director of the Office of Management and Budget, the Chairman of the Council of Economic Advisers, and the Assistants to the President for National Security, National Economic Policy, and Science and Technology. The President has delegated to CFIUS the President's authority under section 721 of the Defense Production Act to determine the effects on the national security of acquisitions proposed or pending after the date of enactment (August 23, 1988) by or with foreign persons that could result in foreign control of persons engaged in interstate commerce in the United States.

Current Actions: Extension.

Type of Review: Extension.

Affected Public: Foreign businesses and foreign individuals.

Estimated Number of Responses: 100.

Estimated Time Per Respondent: This varies, depending on individual circumstances, with an average of 60 hours.

Estimated Total Annual Burden Hours: 6000 hours.

Requests for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 28, 1997.

Francine McNulty Barber,

Attorney-Adviser, Office of the Assistant General Counsel for International Affairs.

[FR Doc. 97–5841 Filed 3–7–97; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF VETERANS AFFAIRS

Medical Research Service Merit Review Committee, Notice of Meetings

The Department of Veterans Affairs gives notice under the Federal Advisory Committee Act, 5 U.S.C. App:, of the following meetings to be held from 8 a.m. to 5 p.m. as indicated below:

Subcommittee for	Date	Location
Oncology	Mar. 20–21, 1997	Governor's House.
Alcohlism and Drug Dependence	Mar. 24–25, 1997	Governor's House.
Gastroenterology	Mar. 24–25, 1997	Governor's House.
Respiration	Mar. 24–25, 1997	Holiday Inn Central.
Immunology	Mar. 31–Apr. 1, 1997	Governor's House.
Mental Health and Behavioral Sciences	Apr. 3–4, 1997	Governor's House.
Cardiovascular Studies	Apr. 7–8, 1997	Holiday Inn Central.
Neurobiology	Apr. 7–9, 1997	Governor's House.
Hematology	Apr. 9, 1997	Governor's House.
Surgery	Apr. 12, 1997	Governor's House.
Endocrinology	Apr. 14–15, 1997	Governor's House.
Infectious Diseases	Apr. 14–15, 1997	Governor's House.
Nephrology	Apr. 17–18, 1997	Governor's House.
General Medical Science	Apr. 21–22, 1997	Governor's House.
Aging and Clinical Geriatrics	Apr. 25, 1997	Governor's House.
Medical Research Service Merit Review Committee	June 3, 1997	Governor's House.

Governor's House, 1615 Rhode Island Avenue, NW., Washington, DC 20036.
Holiday Inn Central, 1501 Rhode Island Avenue, NW., Washington, DC 20005.

These meetings will be for the purpose of evaluating the scientific merit of research conducted in each specialty by Department of Veterans Affairs (VA) investigators working in VA Medical Centers and Clinics.

These meetings will be open to the public up to the seating capacity of the rooms at the start of each meeting to discuss the general status of the program. All of the Merit Review Subcommittee meetings will be closed to the public after approximately one hour from the start for the review, discussion, and evaluation of initial and renewal projects.

The closed portion of the meeting involves discussion, examination, reference to, and oral review of site visits, staff and consultant critiques of research protocols and similar documents. During this portion of the meeting, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which be likely to significantly frustrate implementation of proposed agency action regarding such research projects. As provided by subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, closing portions of these meetings is in accordance with 5 U.S.C., 552b(c) (6) and (9)(B). Because of the limited seating capacity of the rooms, those who plan to attend should contact Dr. LeRoy Frey, Chief, Program Review Division, Medical Research Service, Department of Veterans Affairs, Washington, DC, (202) 565–5942, at least five days prior to each meeting. Minutes of the meetings and rosters of the members of the Subcommittees may be obtained from this source.

Dated: March 4, 1997.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 97–5747 Filed 3–7–97; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 62, No. 46

Monday, March 10, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EG97–34–000, et al.]

Atlantis Energy Systems-Germany AG et al.; Electric Rate and Corporate Regulation Filings

Correction

In notice document 97–5339, beginning on page 10033, in the issue of Wednesday, March 5, 1997, make the following correction:

On page 10033, in the second column, in item 3, in the first line of the docket section, docket number "ER94–1690–11" should read "ER94–1690–011".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–258–000]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tarrif

Correction

In notice document 97–5323, appearing on page 10032, in the issue of Wednesday, March 5, 1997, make the following correction:

On page 10032, in the second column, "[Docket No. RP97-258-000]" should be inserted before the subject line.

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federal register

Monday
March 10, 1997

Part II

Securities and Exchange Commission

17 CFR Part 230, et al.
Registration Form Used by Open-End Management Investment Companies; Proposed Rule
Proposed New Disclosure Option for Open-End Management Investment Companies; Proposed Rule
Investment Company Names; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 239, 270, and 274

[Release Nos. 33–7398; 34–38346; IC–22528; S7–10–97]

RIN 3235–AE46

Registration Form Used by Open-End Management Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is proposing amendments to Form N–1A, the form used by open-end investment companies to register under the Investment Company Act of 1940 and to offer their shares under the Securities Act of 1933. The proposed amendments would revise disclosure requirements for fund prospectuses. Among other things, the proposed amendments seek to minimize prospectus disclosure about technical, legal, and operational matters that generally are common to all funds and, in keeping with the purpose of Form N–1A, to focus prospectus disclosure on essential information about a particular fund that would assist an investor in deciding whether to invest in that fund. The proposed amendments are intended to improve fund prospectuses and to promote more effective communication of information about funds.

DATES: Comments must be received on or before June 9, 1997.

ADDRESSES: Submit comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549–6009. Comments can be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–10–97; this file number should be included on the subject line if E-mail is used. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW, Washington, DC 20549–6009. Electronically submitted comment letters will be posted on the Commission's Internet Web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Jonathan F. Cayne, Attorney, John M. Ganley, Senior Counsel, Markian M.W. Melnyk, Senior Counsel, David U. Thomas, Senior Counsel, Kathleen K. Clarke, Special Counsel, or Elizabeth R. Krentzman, Assistant Director, (202) 942–0721, Office of Disclosure and Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 5th Street, NW, Mail Stop 10–2, Washington, DC 20549–6009.

SUPPLEMENTARY INFORMATION:

The Securities and Exchange Commission ("Commission") is proposing for comment amendments to Form N–1A (17 CFR 274.11A), the registration form used by open-end management investment companies ("funds") to register under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) ("Investment Company Act") and to offer their shares under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) ("Securities Act"). The Commission also is proposing technical amendments to rules 481 and 497 under the Securities Act (17 CFR 230.481, .497). In a companion release, the Commission is proposing new rule 498 under the Securities Act and the Investment Company Act, which would permit an investor to buy a fund's shares based on a short-form document, or "profile," that contains a summary of key information about the fund; each investor purchasing fund shares based on a profile would receive a copy of the fund's prospectus with the purchase confirmation.[1] In another companion release, the Commission is proposing new rule 35d–1 under the Investment Company Act, which would require a fund with a name suggesting that it focuses on a particular type of investment (*e.g.*, a fund that calls itself the ABC Stock Fund, the XYZ Bond Fund, or the QRS U.S. Government Fund) to invest at least 80% of its assets in the type of investment suggested by its name.[2]

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VII. Text of Proposed Amendments

I. Introduction and Executive Summary

Over the last decade, the fund industry has experienced enormous growth both in total assets and in the number of funds.[3] Today, fund assets exceed the deposits of commercial banks.[4] Coincident with the explosive growth of fund investments, the business operations of many funds have become increasingly complex as funds seek to offer investors new investment options and a wider variety of shareholder services. These factors, combined with new and more sophisticated fund investments, have resulted in fund prospectuses that often include long and complicated disclosure, as funds explain their operations, investments, and services to investors.

Many have criticized fund prospectuses, finding them unintelligible, tedious, and legalistic.[5] Although the prospectus remains the most complete source of information about a fund, technical and unnecessarily lengthy prospectus disclosure often obscures important information relating to a fund investment and does not serve the information needs of the majority of fund investors.[6] As millions of Americans have turned to funds as an investment vehicle of choice,[7] investors need to be provided with clear and comprehensible information that will help them evaluate and compare fund investments.

The Commission is committed to improving the disclosure provided to fund investors [8] and is proposing two major initiatives to meet this objective. First, the Commission is proposing changes to fund disclosure requirements in an effort to focus prospectus disclosure on essential information about a particular fund that would assist an investor in deciding whether to invest in that fund.[9] Second, in a companion release, the Commission is proposing a new rule to permit investors to buy fund shares based on a fund profile (the "profile") that would provide a summary of key information about a fund, including the fund's investment objectives, strategies, risks, performance, and fees.[10] Under this proposal, investors would receive the fund's prospectus upon request or no later than with delivery of the purchase confirmation.

These two initiatives are intended to improve fund disclosure by requiring prospectuses to focus on information central to investment decisions, to provide new disclosure options for investors, and to enhance the comparability of information about funds. Taken together, the proposals seek to promote more effective communication of information about funds without reducing the amount of information available to investors.

As part of its commitment to give investors improved disclosure documents, the Commission recently proposed rule amendments to require the use of plain English principles in drafting prospectuses and to provide other guidance on improving the readability of prospectuses.[11] The Commission intends that the plain English initiatives serve as the standard for all disclosure documents, and the plain English proposals are an important counterpart of the proposed fund disclosure initiatives. If adopted, the plain English requirements would apply to fund prospectuses and the profile.

The Commission's efforts to improve fund disclosure are long-standing. In 1983, the Commission introduced an innovative approach to prospectus disclosure by adopting a two-part disclosure format.[12] Under this format, the Commission intended that a fund would provide investors with a simplified prospectus designed to contain essential information about the fund that assists an investor in making an investment decision. The Commission contemplated that more extensive information and detailed discussions of matters included in the prospectus would be available in a Statement of Additional Information ("SAI") that investors could obtain upon request. In adopting this new format, the Commission's goal was to provide investors with more useful information in "a prospectus that is substantially shorter and simpler, so that the prospectus clearly discloses the fundamental characteristics of the particular investment company. . . ." [13]

Since 1983, the Commission has adopted a number of other initiatives to improve fund disclosure, including a uniform fee table and a requirement for management's discussion of fund performance ("MDFP").[14] While these changes have provided investors with clear and helpful information about fund expenses and performance, they were not intended to address overall prospectus disclosure requirements. The Commission has concluded that a comprehensive review and revision of fund disclosure requirements is necessary to improve the information provided in fund prospectuses.[15]

The Commission's consideration of disclosure issues has included evaluating the use of the profile as a standardized, summary disclosure document. The Commission, with the cooperation of the Investment Company Institute ("ICI") and several large fund groups, conducted a pilot program permitting funds to use profiles ("pilot profiles") together with their prospectuses.[16] The pilot profiles (like the profile proposed today) contain a summary of key information about the fund. The program's purpose was to determine whether investors found the pilot profiles helpful in making investment decisions. Focus groups conducted on the Commission's behalf

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[1] Investment Company Act Release No. 22529 (Feb. 27, 1997) ("Profile Release").

[2] Investment Company Act Release No. 22530 (Feb. 27, 1997) ("Fund Names Release"). Proposed rule 35d–1 would apply to all registered investment companies, including funds, closed-end investment companies, and unit investment trusts.

[3] Investment Company Institute ("ICI"), Mutual Fund Fact Book 29–37 (36th ed. 1996) ("ICI Fact Book") (between 1987 and 1996, assets increased from $769.9 billion to $3.5 trillion and the number of funds increased from 2,317 to 6,243).

[4] *Compare* ICI, *Trends in Mutual Fund Investing: November 1996* at 3 (Dec. 1996) (ICI News No. ICI–96–107) (fund net assets exceeded $3.5 trillion as of Nov. 1996) *with* 82 Fed. Res. Bull. 12, table 1.21, at A13 (1996) (commercial bank deposits were approximately $2.5 trillion as of Sept. 1996).

[5] *See, e.g.*, "The SEC and the Mutual Fund Industry: An Enlightened Partnership," Remarks by Arthur Levitt, Chairman, SEC, before the ICI's General Membership Meeting at the Washington Hilton Hotel, Washington, D.C. (May 19, 1995); *Simple Concept from SEC: Use Plain English in Fund Prospectuses, L.A. Times*, Mar. 2, 1995, at D14; J. Bogle, Bogle on Mutual Funds 147 (1994); Rothchild, *The War on Gobbledygook, Time*, Oct. 31, 1994, at 51; Skrzycki, *Prospectuses to be in English, Donkeys to Fly Tomorrow, Wash. Post*, Oct. 21, 1994, at B1.

[6] A 1995 survey conducted on behalf of the Commission and the Office of the Comptroller of the Currency ("OCC") found that, although fund investors consulted the prospectus more than any other source of information about the fund they bought, they considered the prospectus only the fifth-best source of information, behind employer-provided written materials, financial publications, family or friends, and brokers. Report on the OCC/SEC Survey of Mutual Fund Investors 12–13 (June 26, 1996). *See also* ICI, The Profile Prospectus: An Assessment by Mutual Fund Shareholders 4 (1996) ("ICI Profile Survey") (about half of fund shareholders surveyed had not consulted a prospectus before making a fund investment).

[7] Over 30 million U.S. households own funds. ICI Fact Book, *supra* note 3, at 92.

[8] *See* "Taking the Mystery Out of the Marketplace: The SEC's Consumer Education Campaign," Remarks by Arthur Levitt, Chairman, SEC, at the National Press Club, Washington, D.C. (Oct. 13, 1994); "Investor Protection: Tips from an SEC Insider," Remarks by Arthur Levitt, Chairman, SEC, before the Investors' Town Meeting at the Adam's Mark Hotel, Philadelphia, Pa. (June 11, 1996).

[9] As part of the improvements to prospectus disclosure, the Commission is proposing a new rule intended to address certain broad categories of investment company names that are likely to mislead investors about an investment company's investments and risks. The new rule would require funds and other registered investment companies with names suggesting a particular investment emphasis to invest at least 80% of their assets in the type of investment suggested by their name.

[10] Profile Release, *supra* note 1.

[11] Securities Act Release No. 7380 (Jan. 14, 1997) (62 FR 3152) ("Plain English Release"). In conjunction with these proposals, the Commission's Office of Investor Assistance has issued a draft of *A Plain English Handbook: How to Create Clear SEC Disclosure Documents* to explain the plain English principles of the proposed amendments and other techniques for preparing clear disclosure documents. *See also* "Plain English: A Work in Progress," Remarks by Isaac C. Hunt, Commissioner, SEC, before the First Annual Institute on Mergers and Acquisition: Corporate, Tax, Securities, and Related Aspects, Key Biscayne, Fla. (Feb. 6, 1997).

[12] Investment Company Act Release No. 13436 (Aug. 12, 1983) (48 FR 37928) ("Form N–1A Adopting Release").

[13] Investment Company Act Release No. 12927 (Dec. 27, 1982) (48 FR 813, 814) ("Form N–1A Proposing Release").

[14] Investment Company Act Release Nos. 16244 (Feb. 1, 1988) (53 FR 3192) ("Fee Table Adopting Release") and 19382 (Apr. 6, 1993) (58 FR 19050) ("MDFP Adopting Release"). *See also* Investment Company Act Release Nos. 21216 (July 19, 1995) (60 FR 38454) ("Money Market Fund Prospectus Release") (proposing amendments designed to make money market fund prospectuses simpler and more informative) and 16245 (Feb. 2, 1988) (53 FR 3868) ("Performance Release") (adopting a uniform formula for calculating fund performance).

[15] *See, e.g.*, SEC, Report of the Advisory Committee on the Capital Formation and Regulatory Processes (July 24, 1996); SEC, Report of the Task Force on Disclosure Simplification (1996) ("Disclosure Simplification Task Force Report") (recommending specific improvements in the disclosure provided by corporate issuers).

[16] *See* Investment Company Institute (pub. avail. July 31, 1995) ("1995 Profile Letter"). The Division of Investment Management (the "Division") has permitted the pilot program, with some modifications, to continue for another year. *See* Investment Company Institute (pub. avail. July 29, 1996) ("1996 Profile Letter"). The Division also has permitted variable annuity registrants to use "variable annuity profiles" together with their prospectuses. National Association for Variable Annuities (pub. avail. June 4, 1996).

("Focus Groups") responded very positively to the profile concept. Fund investors participating in a survey sponsored by the ICI also strongly favored the pilot profiles.[17]

In another recent initiative, the Commission issued a release requesting comment on ways to improve risk disclosure and comparability of fund risk levels ("Risk Concept Release").[18] The Commission received over 3,700 comment letters, mostly from individual investors. Commenters confirmed the importance of risk disclosure to investors when evaluating and comparing funds and highlighted the need to improve prospectus disclosure of fund risks. In particular, commenters indicated that current risk disclosure is difficult to understand and does not fully convey to investors the risks associated with an investment in a fund.

The Commission remains committed to the same goals articulated in adopting Form N–1A. The initiatives proposed today are intended to further these goals and achieve clear and concise disclosure that would assist fund investors in making investment decisions. Based on the Commission's review of current fund prospectuses and related disclosure requirements, the Commission has identified 5 major objectives that form the basis for today's initiatives:

- *Improved prospectus disclosure:* Although some funds have made significant and commendable efforts to improve their prospectuses,[19] prospectus disclosure relating to a fund tends to be overly complex and difficult to follow and should be revised to focus on essential information about the fund to help an investor make an informed investment decision.
- *Fund names:* Although a fund's name (like any other single piece of information about an investment) cannot tell the whole story about a fund investment, names may communicate a great deal to an investor, and investors should have greater assurance that a fund whose name suggests that the fund focuses on certain investments will make those investments.
- *Investor choice:* Different investors prefer different amounts of information before making an investment decision, and regulatory requirements should not foreclose options that respond to prospective investors' information needs.
- *Standardized fund summaries:* Investors have expressed a strong preference for summary information about funds in a standard format; summaries should provide investors with additional tools to help them make better use of the extensive information available about funds.
- *Clearer risk disclosure:* The risks of investing in a fund often are not readily apparent to investors and should be communicated more effectively.

The proposed disclosure initiatives address these objectives.

Improved Prospectus Disclosure

The proposed amendments would change the disclosure requirements for fund prospectuses. The Commission regards the prospectus as an investor's primary source of information about a fund. A prospectus, however, is not useful to investors if it is in a form that discourages investors from reading it. The prospectus is intended to provide information about matters of fundamental importance to most investors.[20] The Commission's proposals are intended to update and streamline prospectus disclosure requirements to focus on essential information about a particular fund and make the prospectus less technical and easier to read.[21] This initiative is designed to eliminate prospectus clutter that tends to obscure information that could help an investor make an investment decision. The proposed amendments would:

- Move certain disclosure about fund organization and legal requirements from the prospectus to the SAI to focus prospectus disclosure on essential information about a fund, while continuing to assure that the information is available to those interested in reviewing it;
- Permit a fund that is offered as an investment alternative in a participant-directed defined contribution plan to tailor its prospectus for use by plan participants;
- Update and incorporate certain staff disclosure requirements into the amended registration form and include guidance about legal, interpretive, and operational matters in a new "Investment Company Registration Package," which, together, would provide more effective guidance about disclosure and legal matters; [22] and
- Simplify current disclosure instructions to provide clearer guidance for preparing and filing fund registration statements.

Fund Names and Investments

In a companion release, the Commission is proposing a new rule under the Investment Company Act that would address certain broad categories of investment company names that are likely to mislead investors about an investment company's investments and risks. The rule would require a fund or any other registered investment company with a name that suggests a particular investment emphasis (*e.g.*, a fund that calls itself the ABC Stock Fund, the XYZ Bond Fund, or the QRS U.S. Government Fund) to invest at least 80% of its assets in the type of investment suggested by its name.[23] Under current positions of the Division of Investment Management (the "Division"), these funds and investment companies generally are subject to a 65% investment requirement. The rule would address investment companies with names that suggest the company focuses its investments in a particular country or geographic region and investment companies with names that indicate the company's distributions are exempt from income tax. In addition, the rule would prohibit an investment company from using a name that suggests that the company or its shares are guaranteed or approved by the U.S. Government.

Investor Choice

The proposed initiatives would give investors new disclosure options so that they could determine the amount of information they want to review before investing in a fund. The proposed profile would contain a summary of key information about a fund and enable investors who are comfortable with that level of information to purchase a fund's shares based on the profile.[24] Each investor using the profile to make an investment decision would receive the fund's prospectus with the confirmation of his or her investment. Investors also would have the option to request and review the fund's prospectus and other information about the fund (*e.g.*, the fund's shareholder reports and SAI) before making an investment decision.

Standardized Fund Summaries

The proposals would require standardized information in the profile and in a new risk/return summary at the beginning of all fund prospectuses. The profile would include disclosure of 9 items in a specific order and in a question-and-answer format designed to help investors evaluate and compare funds.[25] The risk/return summary at the beginning of the prospectus (also included as the first 4 items in the proposed profile) would highlight information about a fund's investment objectives, strategies, risks and performance, and fees, and make this information readily available to investors in a consistent presentation.

Clearer Risk Disclosure

The proposals seek to improve prospectus disclosure about the risks of investing in a particular fund. Based in large part on comments received in response to the Risk Concept Release,[26] the proposals would improve risk disclosure as follows:

Overall fund risks—A fund would be required to discuss in the prospectus the overall risks of investing in the fund. The proposed amendments are designed to minimize the detailed and technical descriptions of the risks associated with specific portfolio securities typically included in a fund's prospectus and to elicit risk disclosure that relates to the particular fund and would be more useful to investors.

Narrative risk summary—The profile and the prospectus risk/return summary would include a narrative risk summary. The risk summary would provide a concise description of a fund's overall risks that could be used to evaluate and compare the risks of different funds.

Graphic presentation of risk—The profile and prospectus risk/return summary would include a bar chart reflecting a fund's returns over a ten-year period, which would illustrate fund risks by showing changes in the fund's performance from year to year. To help investors evaluate a fund's risks and returns relative to "the market," a table accompanying the bar chart would compare the fund's performance to that of a broad-based securities market index.

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The proposed initiatives are designed to promote more effective communication of information about funds without reducing the amount of information available to investors and other interested parties (*e.g.*, financial analysts and advisers). The proposals would further Commission actions to improve prospectus disclosure beginning with the two-part disclosure format adopted in 1983. Permitting funds to use profiles would respond to investor support for a concise disclosure document highlighting key fund information. The profile would complement the revised prospectus, which, as the primary disclosure document, would be delivered to all investors that purchase fund shares. Taken together, these initiatives are intended to better realize the Commission's commitment to improving disclosure for fund investors.

II. Discussion

Release Organization. The revised Form would retain the overall structure of current Form N–1A. To make the proposed requirements of revised Form N–1A easy to follow and to highlight the proposed changes, this release addresses revised Items in the order that they would appear in the Form. While some Items in proposed Part A (the prospectus) would not be changed (except for technical revisions to improve clarity), other Items would be new or extensively revised. Certain disclosure currently required in the prospectus would be moved to Part B (the SAI), where the information would continue to be available to investors and others who are interested in the information.[27] The proposed amendments would incorporate certain disclosure requirements from the Guidelines for Form N–1A (the "Guides") and the Generic Comment Letters ("GCLs") that have been issued over time by the Division.[28]

The proposed amendments also would revise the General Instructions to Form N–1A to update the Instructions and make them easier to use. The release discusses in detail the proposed changes to the General Instructions after discussing changes to the Form's disclosure requirements.[29] The proposed amendments would add several definitions to the General Instructions to standardize certain terms used in the Form. In particular, a new definition of "fund" would accommodate the use of Form N–1A by series funds.[30] The General Instructions also would address other matters regarding the use of Form N–1A, including disclosure relating to multiple funds and classes, prospectuses used in the defined contribution plan market, and incorporation by reference.

Plain English. Investment company registration statement forms currently include instructions, which govern all prospectus disclosure, directing a fund to provide information in the prospectus in a clear, concise, understandable manner by, among other things, avoiding the use of technical or legal terms, complex language, or excessive detail.[31] The Commission's plain English proposals also would apply to prospectus disclosure.[32] Initially, the proposed plain English principles would apply to the front and back cover pages of a fund's prospectus and to the summary of the prospectus, if any.[33] Because the Commission issued the plain English release before this release proposing amendments to Form N–1A, the proposed requirement for plain English risk factors disclosure does not specifically identify the proposed risk/return summary, which is the parallel type of disclosure for funds and is not a summary of the prospectus. If the proposed plain English requirements and the proposed risk/return summary are adopted, the Commission intends to clarify that plain English disclosure principles apply to the risk/return summary.[34] The Commission also requested comment whether the plain English disclosure principles should be modified for fund prospectuses.

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[17] *See* ICI Profile Survey, *supra* note 6, at 31–32.

[18] Investment Company Act Release No. 20974 (Mar. 29, 1995) (60 FR 17172).

[19] *See, e.g.*, McTague, Simply Beautiful: Shorn of Legalese, Even Prospectuses Make Sense, Barron's, Oct. 7, 1996, at F10 (about the recent efforts of the John Hancock funds and other fund groups to improve their prospectuses).

[20] *See* Form N–1A Proposing Release, *supra* note 13, at 814.

[21] Under the authority in section 10(a) of the Securities Act (15 U.S.C. 77j(a)), the Commission is proposing amendments to current prospectus disclosure requirements based on its determination that certain disclosure requirements result in information that, while useful to some investors, is not necessary in the public interest or for the protection of investors to be included in the prospectus.

[22] Incorporating certain staff disclosure requirements into the revised form is intended to formally identify those disclosure requirements that would apply to all funds regardless of their particular circumstances. Among other things, the proposed approach seeks to address disclosure requirements that have been developed in connection with an issue presented by a specific fund, but applied to all funds regardless of their particular circumstances. *See* Securities Act Release No. 5906 (Feb. 15, 1978) (regarding a 1977 report of the Advisory Committee on Corporate Disclosure, which, among other things, recommended that, after identifying a disclosure problem of general significance, the Commission initiate rulemaking and not rely for prolonged periods on ad hoc procedures such as commenting on filings and enforcement actions).

[23] Fund Names Release, *supra* note 2.

[24] The profile would be a summary prospectus adopted under sections 10(b) of the Securities Act (15 U.S.C. 77j(b)) and 24(g) of the Investment Company Act (15 U.S.C. 80a-24(g)).

[25] The profile would include disclosure about a fund's investment objectives, strategies, risks and performance, fees, investment adviser and portfolio manager, purchase and redemption procedures, tax implications, and the services available to shareholders. *See* Profile Release, *supra* note .

[26] The Commission also considered other information about fund risk disclosure, including the results of an investor survey sponsored by the ICI. *See* ICI, Shareholder Assessment of Risk Disclosure Methods (1996) ("ICI Risk Survey").

[27] In addition, Parts B and C of proposed Form N–1A would include a number of technical revisions to clarify and simplify the Form's requirements.

[28] *See* Letters to Registrants (Jan. 11, 1990) ("1990 GCL"); (Jan. 3, 1991) ("1991 GCL"); (Jan. 17, 1992) ("1992 GCL"); (Feb. 22, 1993) ("1993 GCL"); (Feb. 25, 1994) ("1994 GCL"); (Feb. 3, 1995) ("1995 GCL"); (Feb. 16, 1996) ("1996 GCL"). For a discussion of the Guides and GCLs, *see infra* notes 255–261 and accompanying text.

[29] *See infra* Part II.D.

[30] Funds often organize as series funds and offer investors an opportunity to invest in one or more "portfolios," each of which has a specific investment objective. The revised Form would define a "fund" to include both the registrant and a series of the registrant unless otherwise indicated.

[31] *See, e.g.*, General Instruction G of Form N–1A.

[32] *See* Plain English Release, *supra* note 11.

[33] *Id.* (proposing amendments to add new paragraph (d) to rule 421 under the Securities Act (17 CFR 230.421)).

[34] To improve the clarity of prospectus disclosure, the Plain English Release also proposed revisions to Regulation S–K (17 CFR 229.10 *et seq.*), which sets out general disclosure requirements for corporate issuers. Similar requirements are included in specific rules for funds, and conforming changes to these rules would be made in connection with this and other fund disclosure initiatives. *See* proposed amendments to rule 481(b)(1) (disclaimer about the Commission's approval of securities offered in a prospectus), *infra* note 31.

A. Part A—Information in the Prospectus

1. Item 1—Front and Back Cover Pages

Form N–1A requires certain information to appear on the outside front cover page of a fund's prospectus. In an effort to "unclutter" the prospectus cover page and avoid repeating information contained in the proposed risk/return summary at the beginning of the prospectus, the proposed amendments would simplify the disclosure currently required on the front cover page and require certain information to be included on the outside back cover page.

The front cover page would be required to include a fund's name.[35] The front cover page also would include the disclaimer about the Commission's approval of the securities being offered and the accuracy and adequacy of the information included in the prospectus. The wording of the disclaimer would be simplified and the disclaimer would no longer be required to be in large capital letters and bold-faced type.[36]

The proposed amendments would not require cover page disclosure that would repeat information required to be disclosed in the proposed risk/return summary. This information would include the identification of the type of fund offered (or a brief statement of the fund's investment objectives) and certain disclosure required for money market funds.[37] The proposed amendments also would no longer require a fund to provide statements that the prospectus sets forth concise information about the fund that a prospective investor ought to know before investing and should be retained for future reference.[38] These statements do not appear to be particularly helpful to investors.

The proposed amendments would consolidate disclosure regarding the availability of additional information about a fund on the back cover page of the fund's prospectus. The back cover page would include disclosure about the availability and date of the SAI, which would be revised to require a telephone number that investors could use to obtain the SAI without charge. To ensure prompt delivery of the SAI to those investors who request it, a new Instruction would require a fund to send the SAI within 3 days of the receipt of a request.[39] The back cover page would include information (if applicable) regarding the incorporation by reference of a fund's SAI or financial information from the annual report into the prospectus and disclosure that other information about the fund has been filed with, and is available from, the Commission.[40] The back cover page also would include disclosure about how a shareholder can make inquires about the fund.[41]

2. Item 2—Risk/Return Summary: Investments, Risks, and Performance

The proposed amendments would require at the beginning of every prospectus a risk/return summary that would provide key information about a fund's investment objectives, principal strategies, risks, performance, and fees. This information would be required to appear in a specific sequence and to be presented in a question-and-answer format.[42] The proposed question-and-answer format, frequently used by many funds, is intended to help communicate the required information effectively. The Commission requests comment on this format and whether funds instead should be permitted to choose the type of heading for the prescribed disclosure topics.

The risk/return summary, like the profile, is intended to respond to investors' strong preference for summary information about a fund in a standardized format.[43] Since the profile would be optional, the proposed risk/return summary in the prospectus would provide all investors with key information about a fund in a standardized, easily accessible place that could be used to evaluate and compare fund investments.

a. Investment Objectives and Principal Strategies

The proposed amendments would require a fund to disclose in the risk/return summary its investment objectives and to summarize, based on the information provided in the prospectus, how the fund intends to achieve those objectives. The summary would be required to identify the fund's principal investment strategies, including the particular types of securities in which the fund invests or will invest principally, and any policy of the fund to concentrate in an industry or group of industries.[44]

A fund also would be required to inform investors about the availability of additional information about the fund's investments in the fund's shareholder reports. Fund annual reports typically include the MDFP, which discusses a fund's strategies that materially affected the fund's performance during the most recent fiscal year.[45] The Division's review of and experience with MDFP disclosure indicates that the annual report may be a valuable resource for investors.[46] The proposed amendments would require the risk/return summary to contain disclosure to the following effect:

Additional information about the fund's investments is available in the fund's annual and semi-annual reports to shareholders. In particular, the fund's annual report discusses the relevant market conditions and investment strategies used by the fund's investment adviser that materially affected the fund's performance during the last fiscal year. You may obtain these reports at no cost by calling _____.[47]

The proposed amendments would require this disclosure to appear in the context of information about a fund's investments. The Commission requests comment on this approach. For example, would disclosure about the availability of additional information about the fund (*e.g.*, the fund's shareholder reports, SAI, or any other information) be more helpful to investors if the disclosure was presented under a separate caption in the risk/return summary or on the back cover page of the prospectus? Should this disclosure include an explanation about the various types of information available to investors?[48]

b. Risks

Narrative Risk Disclosure. The proposed amendments would require a fund to summarize the principal risks of investing in the fund based on the information provided in the prospectus. More than 75% of the individual investors commenting on the Risk Concept Release specifically favored requiring a risk summary in fund prospectuses. This disclosure would be required to focus on the risks to which the fund's particular portfolio as a whole is subject and the circumstances reasonably likely to affect adversely the fund's net asset value, yield, and total return.[49] The risk section of the risk/return summary also would include disclosure about the risk of losing money and identify the types of investors for whom the fund may be an appropriate or inappropriate investment (based on, for example, an investor's risk tolerance and time horizon).[50] A fund, at its option, could discuss in the risk section the potential rewards of investing in the fund as long as the discussion provides a balanced presentation of the fund's risks and rewards.[51]

Special Risk Disclosure Requirements. Certain types of funds are required to provide special disclosure on the cover page of their prospectuses. Form N–1A requires a money market fund to disclose on the cover page of its prospectus that an investment in the fund is neither insured nor guaranteed by the U.S. Government, and that there can be no assurance that the fund will be able to maintain a stable net asset value of $1.00 per share.[52] The Form requires a tax-exempt money market fund that concentrates its investments in a particular state (a "single state money market fund") to disclose that the fund may invest a significant percentage of its assets in a single issuer and that investing in the fund may be riskier than investing in other types of money market funds.[53] The disclosure required for all money market funds is intended to alert investors that investing in a money market fund is not without risk.[54] The disclosure required for single state money market funds seeks to inform investors about the particular risks associated with a single state money market fund and to distinguish these funds from other money market funds.[55] In addition, a fund that is advised by or sold through a bank is required to disclose on the cover page of its prospectus that the fund's shares are not deposits or obligations of, nor guaranteed or endorsed by, the bank, and that the shares are not insured by the Federal Deposit Insurance Corporation ("FDIC") or any other government agency.[56] This disclosure is intended to alert investors that funds advised by or sold through banks are not federally insured.[57]

The proposed amendments would move the required disclosure for all money market funds, single state money market funds, and funds advised by or sold through banks to the risk section of the risk/return summary. Since this disclosure relates directly to a particular fund's risks, it would appear to be more meaningful to investors when presented in the context of information about the fund's risks. The proposed approach also would help streamline the prospectus cover page and avoid repeating information on the cover page and in the risk section of the risk/return summary.

The proposed amendments would revise the wording of the current disclosure required for all money market funds and funds advised by or sold through banks. The proposed amendments would simplify the disclosure that fund shares are not federally insured as follows:

An investment in the fund is not insured or guaranteed by the FDIC or any other government agency.

The proposed amendments also would simplify the technical disclosure that a money market fund may not be able to maintain a stable net asset value. The revised disclosure would state:

Although the fund seeks to preserve the value of your investment at $1.00 per share,

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[35] When a prospectus relates to one or more series, both the name of the registrant and the series would be required to appear on the back cover page. The name of the registrant may assist investors in obtaining additional information about a particular series or the registrant.

[36] Proposed amendments to rule 481(b)(1) under the Securities Act (17 CFR 230.481(b)(1)). Amended rule 481(b)(1) would require disclosure to the effect that: The Securities and Exchange Commission has not approved or disapproved these securities or passed upon the adequacy of this prospectus and any representation to the contrary is a criminal offense. The same revisions to Item 501 of Regulation S–K (17 CFR 229.501) were recently proposed for corporate registrants. *See* Plain English Release, *supra* note 11. *See also* Disclosure Simplification Task Force Report, *supra* note 15, at 18.

[37] *See infra* notes 52–58 and accompanying text.

[38] *See* Disclosure Simplification Task Force Report, *supra* note 15, at 19 (recommending elimination of many legal warnings to make the cover page more inviting and present any necessary legal warnings in a more readable style and format). *See also* Plain English Release, *supra* note 11, at 3160.

[39] *See* Letter from Paul Schott Stevens, Senior Vice President and General Counsel, ICI, to Barry P. Barbash, Director, Division of Investment Management, SEC, at 11 (May 20, 1996) ("ICI Survey Letter") (recommending that funds be required to *deliver* shareholder reports within 3 days of a request); Form N–2 (17 CFR 274.11a-1) (requiring closed-end investment companies to include a telephone number for investors to request a SAI and to send the SAI within 2 days of a request).

[40] The disclosure would be revised to indicate, among other things, that information about the fund (including the SAI) is available on the Commission's Internet Web site. Currently, only funds that disseminate prospectuses electronically are required to provide disclosure about the Commission's Web site. *See* Investment Company Act Release No. 21946 (May 9, 1996) (61 FR 24652).

[41] This information currently is required by Item 6(e) to be disclosed in the prospectus. To assist the Division in responding to investor inquiries, the proposed amendments would require a fund to include its Investment Company Act file number on the back cover page.

[42] The information in the risk/return summary would be substantially the same as the first 4 items of the proposed profile. *See* Profile Release, *supra* note 1.

[43] Focus Group participants, for example, expressed strong support for summary information in a standardized format. In addition, in connection with the profile initiative, many individual investors have written to the Commission about the need for concise, summary information relating to a fund. *See also Profile Prospectuses: An Idea Whose Time Has Come*, Mutual Funds Magazine, Aug. 1996, at 11. In keeping with the goal of providing key information in a standardized summary, proposed General Instruction C.2(b) would not permit a fund to include in the risk/return summary information that is not required or otherwise permitted.

[44] The criteria for determining whether a particular strategy is a principal strategy and disclosure about concentration policies are discussed *infra* notes—and accompanying text.

[45] *See* proposed Item 5 (current Item 5A) (requiring the MDFP to be disclosed in the prospectus unless disclosed in the annual report).

[46] Commenters also have cited the annual report as a source of valuable information. *See* Voss Sanders, *Dear Shareholder*, Morningstar Mutual Funds, Apr. 26, 1996, at 1 (commenting on improved annual report disclosure).

[47] If applicable, a fund could indicate that its annual and semi-annual reports are available on its Internet site or by E-mail. In addition, a fund that provides its MDFP in the prospectus or a money market fund (which is not required to prepare a MDFP) would omit the second sentence of this disclosure.

[48] As proposed, the back cover page of the prospectus would include more general disclosure about the availability of additional information.

[49] *See infra* notes 133–138 and accompanying text. The proposed amendments also would require a fund to disclose, if applicable, that it is non-diversified. *See* section 5(b) of the Investment Company Act (15 U.S.C. 80a–5(b)) (regarding diversified and non-diversified funds). To help investors understand this disclosure, a non-diversified fund would be required to describe the effects and to summarize the risks of non-diversification.

[50] Information about whether a fund is appropriate for particular types of investors is designed to help investors evaluate and compare funds based on their investment goals and individual circumstances. In the pilot profiles, this information is presented under a separate caption relating to the appropriateness of an investment for certain investors. Because this information is closely related to the risks of investing in a fund, the proposed amendments would integrate this disclosure into the risk section of the risk/return summary.

[51] The 1996 Profile Letter, in contrast, permits disclosure about the rewards of investing in a fund only if presented separately from disclosure about the fund's risks. 1996 Profile Letter, *supra* note 16, at 2.

[52] Item 1(a)(vi).

[53] Item 1(a)(vii). This disclosure is not required if the fund limits its investments in a single issuer to no more than 5% of the fund's assets.

[54] *See* Investment Company Act Release Nos. 17589 (July 17, 1990) (55 FR 30239, 30247) and 18005 (Feb. 20, 1991) (56 FR 8113, 8123) (proposing and adopting revisions to rules relating to money market funds).

[55] Unlike other money market funds, a single state money market fund is not subject to the issuer diversification requirements of rule 2a–7 (17 CFR 270.2a–7). In March 1996, the Commission adopted amendments to rule 2a–7 that would require a single state money market fund, with respect to 75% of its assets, to invest no more than 5% of its assets in securities of a single issuer. Investment Company Act Release No. 21837 (Mar. 21, 1996) (61 FR 13956). The Commission has suspended the compliance date for these amendments pending the adoption of technical changes to amended rule 2a–7. Investment Company Act Release Nos. 22135 (Aug. 13, 1996) (61 FR 42786) and 22283 (Dec. 10, 1996) (61 FR 66621).

[56] 1994 GCL, *supra* note 28, at II.B; Letter to Registrants from Barbara J. Green, Deputy Director, Division of Investment Management, SEC (May 13, 1993) ("Division Bank Letter").

[57] *See* Division Bank Letter, *supra* note 56. *See also Testimony of Ricki Helfer, Chairman, FDIC, on FDIC Survey of Nondeposit Investment Sales at FDIC-Insured Institutions Before the Subcomm. on Capital Markets, Securities, and Government Sponsored Enterprises of the House Comm. on Banking and Financial Services*, 104th Cong., 2d Sess. (June 26, 1996) (citing surveys in October 1995 and April 1996 indicating that approximately one-third of bank customers either thought that, or did not know whether, funds sold through banks were insured).

it is possible to lose money by investing in the fund.[58]

The Commission requests comment whether the disclosure required for all money market funds, single state money market funds, and funds advised by or sold through banks should be moved from the prospectus cover page to the risk/return summary. If the disclosure is moved from the cover page, should it be highlighted in a typographically distinctive manner (*e.g.*, boldface or italics)? The Commission also requests comment on the wording of the proposed disclosure. In addition, the Commission requests comment whether the disclosure for single state money market funds should continue to be required. The disclosure, for example, may exaggerate the risks of a single state money market fund since these funds, like all money market funds, may purchase only those portfolio instruments that meet the credit quality and maturity requirements of rule 2a–7.[59]

Risk/Return Bar Chart and Table. The proposed amendments would require a bar chart showing a fund's annual returns for each of the last 10 calendar years and a table comparing the fund's average annual returns for the last one, five, and ten fiscal years to those of a broad-based securities market index.[60] The bar chart would illustrate graphically a fund's past risks by showing changes in the fund's returns over time. The information in the table would enable investors to evaluate a fund's performance and risks relative to "the market." Over 75% of individual investors responding to the Risk Concept Release favored a bar chart presentation of fund risks.[61] Focus Group participants found both a bar chart and tabular presentation of fund performance helpful in evaluating and comparing fund investments, particularly when the table included return information for a broad-based index.

The proposed amendments would require the bar chart and table to be included in the risk section of the risk/return summary under a subheading that refers to both risk and performance.[62] To help investors use the information in the bar chart and table, the proposed amendments would require a fund to explain how the information illustrates the fund's risks and performance.

An example of the risk/return bar chart and table is set forth below:

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[58] The proposed disclosure, which would be required to be given by a money market fund in place of the proposed general risk disclosure about losing money, seeks to strike a balance between the potential to lose money in a money market fund and the relative risk of losing money in a money market fund as compared to other types of funds.

[59] Among other things, rule 2a–7 requires a money market fund to invest in securities that are rated in one of the two highest categories by a nationally recognized statistical rating organization (or, if unrated, to be of comparable quality) and have a maturity of 13 months or less. Rules 2a–7 (a)(9) and (c)(3).

[60] Proposed Item 2(c)(2).

[61] Risk Concept Release, *supra* note 18. *See also* ICI Risk Survey, *supra* note 26, at 21, 37 (51% of survey participants indicated they were very confident about using a bar chart to compare the risks of different funds and 49% of survey participants indicated they were very confident in using a bar chart to assess the risks of a single fund). In addition, all commenters responding to the Commission's initiative to simplify money market fund prospectuses supported the proposal to replace the financial highlights information in money market fund prospectuses with a ten-year bar chart reflecting a money market fund's returns. *See* Summary of Comment Letters on Proposed Amendments to the Rules Regulating Money Market Fund Prospectuses Made in Response to Investment Company Act Release No. 21216, at 2 (File No. S7–21–95) ("Money Market Prospectus Comment Summary").

[62] The 1996 Profile Letter, in contrast, requires the bar chart and table to appear under a caption relating to a fund's past performance. 1996 Profile Letter, *supra* note 16, at 2.

RISK AND PERFORMANCE INFORMATION

The bar chart and table shown below illustrate the XYZ Stock Fund's risks and performance by showing changes in the Fund's performance from year to year over a 10-year period and by showing how the Fund's average annual returns for one, five, and ten years compare to those of a broad-based securities market index. How the Fund has performed in the past is not necessarily an indication of how the Fund will perform in the future.

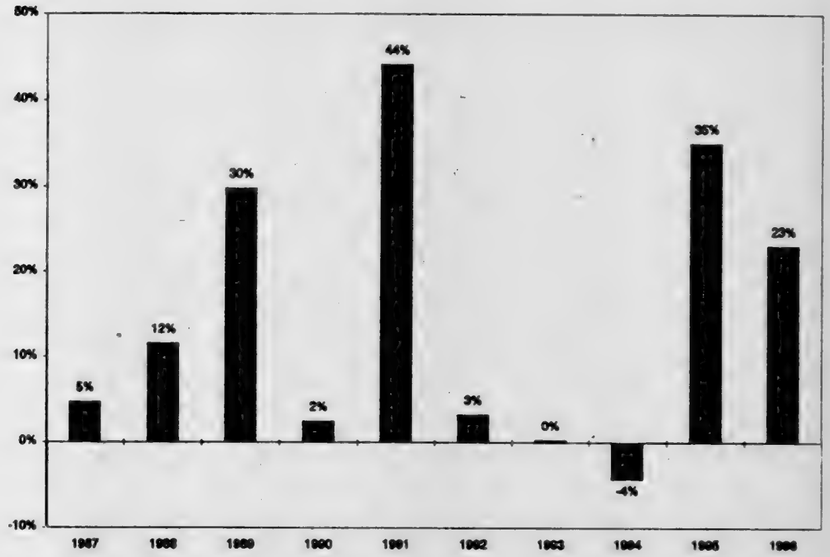

Average Annual Total Returns (for the periods ending December 31, 1996)	Past One Year	Past 5 Years	Past 10 Years
XYZ Stock Fund	23.2%	11.5%	15%
S & P 500	20.26%	12.87%	12.58%

The S & P 500® is the Standard & Poor's Composite Index of 500 Stocks, a widely recognized, unmanaged index of common stock prices.

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Bar Chart Return Information. [63] The proposed amendments would require the bar chart to reflect annual returns for a fund's last 10 calendar years. [64] Requiring calendar year returns is intended to help investors compare the risks of different funds over similar time periods.

A fund would calculate the annual returns in the bar chart by using the same method required for calculating annual returns in the financial highlights information included in fund prospectuses. [65] Like the returns in the financial highlights information, the returns in the bar chart would not reflect sales loads. Sales loads can be accurately and fairly reflected in return information of the type contained in the table by deducting sales loads at the beginning (or end) of particular periods from a hypothetical initial fund investment. [66] Reflecting sales loads in the bar chart, however, may be impracticable. In addition, reflecting the payment of sales loads may be less important in the bar chart than in the table, since the bar chart is intended primarily to depict fund risks graphically. The proposed amendments would require a fund that charges sales loads to disclose that sales loads are not reflected in the bar chart and that if the loads were included, returns would be less than those shown. [67]

The Commission requests comment on the proposed bar chart. In particular, the Commission requests comment whether the bar chart communicates information about fund risks effectively or whether the bar chart has limitations that detract from its usefulness. [68] The Commission requests comment whether the bar chart should include return information for additional or different time periods. For example, should the bar chart reflect return information for shorter time periods (*e.g.*, calendar quarters) or longer time periods (*e.g.*, for the life of the fund when more than 10 years)? The Commission also requests comment whether the return information in the bar chart should include sales loads and, specifically, how sales loads could be accurately and fairly reflected.

Bar Chart Presentation for More than One Fund. The proposed amendments would not limit the number of funds for which return information could be included in a single bar chart. While the proposed approach would give funds flexibility in preparing the bar chart, including return information in a single bar chart for a number of funds could make the graphic presentation of the bar chart complex and difficult to follow. [69] Bar charts included in the pilot profiles reflect information for only one fund. [70] In addition, Focus Group participants found prototype bar charts that included information for 6 funds (*i.e.*, 6 bars per year) to be confusing. The Commission requests comment whether the number of funds that could be included in a single bar chart should be limited to one fund or to some other number of funds (*e.g.*, 2, 4, or no more than 6 funds). This approach could enhance the clarity of the bar chart presentation. Limiting the number of funds that could be included in a single bar chart, however, could require a prospectus offering several funds to include more than one chart, which, in turn, could complicate bar chart disclosure and lengthen the prospectus.

Multiple Class Funds. In contrast to the proposed approach with respect to the bar chart presentation for funds, the proposed amendments would require a multiple class fund to include annual return information in the bar chart for only one class. [71] Unlike individual funds, classes represent interests in the same investment portfolio, and the returns of each class differ only to the extent the classes do not have the same expenses. Including return information for all classes appears to be unnecessary to illustrate the risks of investing in the fund. In addition, the proposed amendments would require the table accompanying the bar chart to provide return information for each class so that investors would be able to identify and compare the performance of the classes offered in the prospectus.

The proposed amendments would require the bar chart to reflect annual return information for the class offered in the prospectus that has returns for the longest period over the last 10 years. This approach is intended to provide the greatest amount of information about changes in the fund's returns. When two or more classes have returns for at least 10 years or returns for the same period but fewer than 10 years, the fund would be required to provide annual returns for the class with the greatest net assets as of the end of the most recent calendar year. Focusing on the class with the greatest net assets is intended to provide returns in the bar chart for a "representative" class offered in the prospectus.

The proposed requirements may result in including returns in the bar chart for a class that has lower annual operating expenses (and better performance) than other classes offered in the prospectus. The Commission considered several other approaches, including requiring a fund to show returns in the bar chart for the class with the highest annual operating expenses. The Commission has not proposed these alternatives because they would make the bar chart requirements too complex and difficult to apply. In addition, the bar chart primarily is designed to show graphically the risks of investing in a fund and not the costs of investing in the fund. The Commission requests comment whether the bar chart presentation for multiple class funds should be limited to one class. If so, should the selection of the class be made on a basis other than that proposed?

Tabular Presentation of Fund and Index Returns. The proposed amendments would require the table accompanying the bar chart to present the fund's average annual returns for the last one, five, and ten fiscal years (or for the life of the fund, if shorter) [72] and to compare that information to the returns of a broad-based securities market index. [73] Requiring comparative return information for a broad-based securities market index would provide investors with a basis for evaluating a fund's performance and risks relative to the market. [74] The proposed approach also would be consistent with the line graph presentation of fund performance required in MDFP disclosure. [75]

Consistent with the requirements for preparing the MDFP line graph, the proposed amendments would allow a fund to include return information for other indexes, including a "peer group" index of comparable funds. [76] Focus Group participants indicated that comparing fund returns to a broad-based securities market index and a peer group index could be useful in evaluating and comparing fund investments. [77]

The Commission believes that a comparison of a fund's performance to a broad-based securities market index can assist investors in evaluating the risk of a fund investment. The proposed amendments would include this information in the table accompanying the bar chart to minimize the complexity of the graphic presentation of a fund's risks and returns. The Commission recognizes that other presentations could improve fund risk disclosure and requests comment on alternative approaches. [78] Specifically, the Commission requests comment on requiring the annual returns of a broad-based securities market index (and any optional peer group or other index) to appear in the bar chart instead of the table. By providing investors with a graphic illustration of the relationship between the returns of the fund and the index(es), this approach could help investors evaluate the comparative risk of the fund and the index(es). Including additional bars or lines for index comparisons in the bar chart, however, could complicate the chart (especially if the chart included return information for more than one fund) and make it difficult for investors to follow.

As an alternative to, or in addition to the bar chart, the Commission requests comment on requiring a fund to show its highest and lowest annual returns (or "range" of returns) over a ten-year or other period compared with the same information for a broad-based market index (and any optional peer group or other index). This information, which could be presented as a separate table or included in the proposed table showing a fund's average annual returns, could help investors assess fund risks.

3. Item 3—Risk/Return Summary: Fee Table

Form N–1A would continue to require a fee table in the prospectus, which summarizes the sales loads and expenses associated with an investment in a fund. The fee table seeks to provide uniformity, simplicity, and comparability in fee disclosure. [79] Consistent with this objective, the Commission is proposing several amendments designed to improve fee table disclosure.

a. Fee Table Example

Form N–1A requires an "Example" to accompany the fee table that discloses the cumulative amount of fund expenses over one, three, five, and ten year periods based on a hypothetical investment of $1,000 and an annual 5% return. The Example primarily is intended to provide information about the cost of investing in one fund that can be compared with similar information about another fund. [80] Focus Group participants, however, had difficulty understanding and using the information in the Example.

The proposed amendments seek to improve the Example by requiring a fund to provide a specific narrative description that explains the purpose of the information presented. The revised Form would require a narrative explanation to the following effect:

> This Example is intended to help you compare the cost of investing in the fund to the cost of investing in other mutual funds. [81]

To further assist investors in understanding the Example, the proposed amendments would revise the description of how the Example is calculated. [82]

The proposed amendments also would increase the initial hypothetical investment in the Example from $1,000 to $10,000. The increase is intended to reflect a typical fund investment (many funds have minimum investments exceeding $1,000) and more closely approximate the amount of expenses that may be paid over time. [83] Using the $10,000 figure in the Example also would be consistent with the $10,000

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[63] Funds generally file Form N–1A electronically on the Commission's electronic data gathering analysis and retrieval system ("EDGAR"). Although EDGAR currently does not reproduce graphic images like the bar chart, the EDGAR rules require a fair and accurate narrative description or tabular presentation in the place of any omitted material. Rule 304(a) of Regulation S–T (17 CFR 232.304(a)). The Commission anticipates future modifications that would permit EDGAR to reflect graphic images on electronically-filed documents.

[64] A fund also would be required to present the corresponding numerical return next to each bar. The proposed amendments would require a fund to have at least one calendar year of returns before including the bar chart. A fund that includes a single bar in the bar chart or a fund that does not include the bar chart because the fund does not have annual returns for a full calendar year would be required to modify, as appropriate, the narrative explanation accompanying the bar chart and table (*e.g.*, by stating that the information shows the fund's risks and performance by comparing the fund's performance to a broad measure of market performance). The proposed amendments would require the bar chart of a fund in operation for fewer than 10 years to include annual returns for the life of the fund.

[65] Instruction 1(a) to proposed Item 2(c)(2). *See also* Instruction 3 to proposed Item 9(a) (regarding the calculation of total returns provided in financial highlights information).

[66] As a consequence, the fund's average annual returns in the table would reflect the payment of sales loads (if any).

[67] Instruction 1(a) to proposed Item 2(c)(2) (requiring similar disclosure if a fund charges account fees).

[68] *See, e.g.*, Remarks by Steven M.H. Wallman, Commissioner, SEC, before the ICI's 1995 Investment Company Directors Conference and New Directors Workshop, Washington, DC. (Sept. 22, 1995) (discussing circumstances when a bar chart's presentation of fund risks may be confusing to investors, such as when bar charts use different scales).

[69] While the proposed amendments would not impose a specific limit on the number of funds included in a bar chart, the presentation of the bar chart would be subject to the general requirement that information in the prospectus be set forth in a clear and understandable manner. *See* proposed General Instruction C.1(a).

[70] *See* 1995 Profile Letter, *supra* note 16 (permitting the pilot profiles to include disclosure for a single fund or series of a fund).

[71] Instruction 3(a) to proposed Item 2(c)(2).

[72] The proposed amendments would require a money market fund to provide its 7-day yield in the table. A non-money market fund would be permitted to disclose its yield, and any fund (including a money market fund) would be permitted to disclose its tax-equivalent yield. When yield information is disclosed, a fund would be required to include a telephone number that investors can use without charge to obtain current yield information.

[73] A fund's average annual returns would be calculated using the same method required to calculate fund performance included in advertisements, which reflects the payment of sales loads and recurring shareholder account fees. Instruction 2(a) to proposed Item 2(c)(2) (incorporating the requirements of proposed Item 21). *See also* proposed Item 5 (requiring sales loads and recurring shareholder account fees to be reflected in the return information shown in the MDFP line graph). Consistent with the preparation of the MDFP line graph, if a fund has not had the same adviser for the last 10 years, the fund would be permitted to begin the bar chart and performance information in the table on the date the new adviser began to provide advisory services to the fund so long as certain conditions are met.

[74] *See* MDFP Adopting Release, *supra* note 14, at 19054. Consistent with the preparation of the MDFP line graph, if a fund changes indexes, the fund would be required to explain the reasons for the change and provide information for both the newly selected and the former index.

[75] *See* Instruction 5 to proposed Item 5(b) (defining "appropriate broad-based securities market index"). *See also* 1996 Profile Letter, *supra* note 16, at 3 (permitting a fund, at its option, to compare its returns to those of an appropriate broad-based securities market index).

[76] If an additional index is included, the fund would be required to discuss the additional index in the narrative explanation accompanying the bar chart and table. Instruction 2(b) to proposed Item 2(c)(2).

[77] Other commenters have suggested different ways to provide comparative return information. *See* Letter from John C. Bogle, Chairman of the Board, The Vanguard Group, to Jonathan G. Katz, Secretary, SEC, at 3 (July 28, 1995) (File No. S7–10–95) (recommending disclosure of fund and market index returns on a quarterly basis over a 10-year period); Letter from Daniel Pierce, Chairman of Board, Scudder, Stevens & Clark, Inc., to Jonathan G. Katz, Secretary, SEC, at 2 (July 28, 1995) (recommending that a fund's returns be compared to both a benchmark index (*e.g.*, the S&P 500) and a risk-free measure (*e.g.*, the yield on 3-month U.S. Treasury bills)); ICI Survey Letter, *supra* note 39, at 8–9 (recommending that a fund be permitted to show *either* a broad-based market index or an appropriate index of fund performance).

[78] Focus Group participants did not express a preference as to the placement of this information in the bar chart or accompanying table.

[79] *See* Fee Table Adopting Release, *supra* note 14, at 3194.

[80] *Id.* (also noting that the Example provides information about the cost of a fund investment).

[81] Like the current Form, the proposed amendments would require a fund that charges sales loads on reinvested dividends to disclose that these loads are not reflected in the Example and that, if the loads were included, the expenses reflected in the Example would be higher. Instruction 4(d) to proposed Item 3 would require this disclosure to *follow* the Example to avoid informing investors about what is not included in the Example before they have an opportunity to review what is included.

[82] *See* proposed Item 3. Instruction 4(a) to proposed Item 3 also would permit a fund to adjust the expenses included in the Example to reflect the completion of the amortization period for expenses associated with the initial organization of the fund. *See* Money Market Fund Prospectus Release, *supra* note 14, at 38458 (proposing this change).

[83] *See* Letter from John C. Bogle, Chairman of the Board, The Vanguard Group, to Barry P. Barbash, Director, Division of Investment Management, SEC (Sept. 16, 1996) (suggesting that few investors have as little as $1,000 invested in a given fund, and that the average fund investment typically amounts to $10,000–25,000, with the median investment probably in the range of $6,000–7,000).

hypothetical initial account value used in the MDFP line graph.[84]

The Commission requests comment on the proposed amendments. The Commission also requests comment whether the Example communicates useful information to investors and, specifically, whether the Example should continue to be required. The Commission requests comment about other ways to provide information that investors can use to compare the costs of fund investments.

b. Shareholder Account Fees

Instructions to the fee table require a fund to include, under the caption "Other Expenses," fees that are charged to all shareholder accounts.[85] Funds that have account fees (*e.g.*, account maintenance fees) typically charge these fees as a fixed dollar amount and disclose the fees in a separate line item to the fee table.[86] Because account fees are paid directly by shareholders and are not fund operating expenses, the proposed amendments would create a new line item in the shareholder transaction section of the fee table that would describe the type of account fees charged by a fund.[87] Like the fee table requirements applicable to sales loads, the proposed amendments would require a fund to show the maximum account fee imposed.[88]

[84] *See* proposed Item 5(b).

[85] Instruction 10 to Item 2(a).

[86] Certain funds charge shareholder account fees as a percentage of assets invested. A small number of funds charge account fees based on the fund's average net assets.

[87] Instruction 2(d) to proposed Item 3. This Instruction would address when account fees must be included in the fee table. For example, account fees would be required in the fee table even if a fund waived the fees for certain shareholders, such as employees of the fund's investment adviser and investors with large account balances. In certain circumstances, case-by-case determinations would continue to be made regarding the inclusion (or exclusion) of account fees from the fee table based on the number and type of shareholders subject to the fee and the services provided.

[88] If an account fee is charged only to accounts that do not meet a certain threshold (*e.g.*, accounts under $2,500) or if an account fee is non-recurring (*e.g.*, it is paid to open or close an account), a fund would be permitted to disclose the threshold or the type of fee imposed in a parenthetical to the caption or in a footnote to the fee table.

In computing the expenses shown in the Example, Instruction 4(d) to proposed Item 3 would allow the allocation of account fees when they are charged to invest in more than one fund. *See* Money Market Fund Prospectus Release, *supra* note 14, at 38461 (proposing this change). In addition, a fund that charges account fees based on a minimum investment requirement would be permitted to prorate its account fees for purposes of the Example if the fund's minimum account requirement exceeds $10,000 (the proposed hypothetical investment). For instance, adjusting an account fee of $100 to $50 would be appropriate to avoid overstating the fee in the Example when the fund's minimum investment requirement is $20,000.

c. Improving and Simplifying Fee Table Presentation

Fee Table Narrative. Form N–1A requires a fund to provide a narrative description following the fee table explaining the purpose of the table.[89] To help investors use the information presented, the proposed amendments would require the narrative explanation to appear before (rather than after) the fee table and to include disclosure to the following effect:

> This table describes the fees and expenses you may pay in connection with an investment in the fund.

New Fee Table Headings and Captions. The fee table is divided into two sections: "Shareholder Transaction Expenses" and "Annual Fund Operating Expenses." Captions beneath the two general headings list the fees that make up transaction and operating expenses. The general heading for the shareholder transaction section of the fee table refers to shareholder transaction "expenses" and captions underneath this heading refer to sales "loads" and redemption and exchange "fees." The proposed amendments would revise the shareholder transaction section so that the general heading and captions consistently refer to "fees." As a result of this change, captions relating to sales loads would refer to "sales fees." Since some investors are familiar with the term "load" and many funds use the term "no load" in marketing materials, however, these captions would include the term "load" in parentheses (*e.g.*, "Maximum Sales Fee (Load) Imposed on Purchases').[90]

The proposed amendments also would revise the caption "12b-1 Fees," which includes any distribution and other expenses a fund pays under a rule 12b-1 plan.[91] The proposed amendments would change the caption to "Marketing (12b-1) Fees."[92] Retaining the designation "12b-1" would enable investors familiar with rule 12b-1 plans to identify those fees in the fee table. The Commission requests comment whether another caption (*e.g.*, "Distribution (12b-1) Fees") would be more appropriate.

To help explain the difference between the fees paid by shareholders and expenses paid by the fund, the proposed amendments would require the following parentheticals after each heading: "Shareholder Fees (fees paid directly from your account)" and "Annual Fund Operating Expenses (expenses that are deducted from the fund's assets)."[93]

Fee Schedules. Instructions to the fee table permit a fund to include a tabular presentation within the fee table that shows a range of deferred sales loads over time and a range of exchange fees.[94] Since the presentation of a table within the larger fee table tends to complicate the fee disclosure and may discourage investors from reviewing the information presented, the proposed amendments would no longer permit this disclosure in the fee table. Like the current Form, the proposed amendments would continue to permit a fund to explain the range of deferred sales loads or exchange fees in a footnote.[95]

Expense Reimbursement and Fee Waiver Arrangements. Instructions to the fee table require a fund that has an expense reimbursement or fee waiver arrangement to reflect the arrangement in the fee table if the reimbursement or waiver will continue.[96] The proposed amendments would clarify that a fund is required to reflect expense reimbursement and fee waiver arrangements without regard to whether the arrangement has been guaranteed for a full fiscal year.[97] This approach is intended to assure that investors are informed about decreases in expense reimbursement and fee waiver arrangements that could affect the fund's performance.

Other Expenses. Instructions to the fee table permit a fund to subdivide the line item for "Other Expenses" into 3 subcategories of its own choosing.[98] Since some funds identify the fees that make up this line item by adding a parenthetical following the "Other Expenses" caption, the proposed amendments would permit a fund to

[89] Instruction 1 to Item 2(a).

[90] *See* ICI Survey Letter, *supra* note 39 (changing the caption from "sales load" to "sales charge," without using the term "load').

[91] 17 CFR 270.12b-1.

[92] Focus Group participants indicated that the term "marketing fees" would help them understand the expenses included in the line item.

[93] *See* ICI Survey Letter, *supra* note 39 (enclosing a prototype profile that includes similar explanatory information).

[94] Instructions 5 and 7 to Item 2(a).

[95] Instructions 2(a)(i) and 2(c) to proposed Item 3. The GCLs require a fund to disclose wire redemption charges in a footnote to the fee table. 1991 GCL, *supra* note 28, at II.G. Given the small amount of these fees (typically $5 to $10 per redemption) and since these fees are charged only when shareholders elect to receive redemption proceeds by wire, the proposed amendments would not *require* disclosure of wire redemption charges in the fee table. A fund may include this disclosure in a footnote to the table or together with other prospectus disclosure regarding redemption procedures.

[96] Instruction 13 to Item 2(a).

[97] Instruction 3(e) to proposed Item 3. *See* Money Market Fund Prospectus Release, *supra* note 14, at 38458 (proposing this clarification).

[98] Instruction 10(b) to Item 2(a).

identify the expenses that comprise this line item *either* under separate subcaptions or in a parenthetical following the "Other Expenses" caption.[99] When subcaptions are provided, the proposed amendments would clarify that the subcaptions must identify the 3 largest expenses that comprise "Other Expenses."

4. Item 4—Investment Strategies and Risk Disclosure

Prospectus disclosure about fund investments and risks typically consists of descriptions of each type of security in which a fund may invest and the risks associated with those securities. The investments described often include instruments, such as illiquid securities, repurchase agreements, and options and futures contracts, that do not have a significant role in achieving a fund's investment objectives. Disclosing information about each type of security in which a fund might invest does not appear to help investors evaluate how the fund's portfolio will be managed or the risks of investing in the fund. This disclosure also adds substantial length and complexity to fund prospectuses, contributing to investor perceptions that prospectuses are too complicated and discouraging investors from reading a fund's prospectus.[100]

The Commission believes that prospectus disclosure would be more useful to investors if it emphasized the principal investment strategies of a fund and the principal risks of investing in the fund, rather than the characteristics and risks of each type of instrument in which the fund may invest.[101] Since funds are intended to offer investors professional investment management,[102] the focus of investment disclosure should be on the fund's investment objectives and the principal means used by the fund's adviser to achieve those objectives. Consistent with this view, the proposed amendments seek to encourage prospectus disclosure that would help investors understand how a fund's portfolio will be managed. The proposed amendments are designed to be consistent with, and to implement more effectively, the Commission's intention in adopting Form N–1A that the prospectus should describe a fund's "fundamental characteristics."[103]

a. Investment Objectives and Implementation of Investment Objectives

To assist investors in identifying funds that meet their investment needs, the proposed amendments, like the current Form, would require prospectus disclosure of a fund's investment objectives.[104] The proposed amendments, however, would change the disclosure requirements regarding how a fund intends to achieve its investment objectives. Form N–1A currently requires a fund to disclose the types of securities in which it invests or will invest principally as well as any "special investment practices and techniques" that will be used in connection with investing in those securities.[105] Form N–1A also requires disclosure about "significant investment policies or techniques" that a fund intends to use, subject to certain limitations.[106]

One of those limitations directs a fund to limit prospectus disclosure about practices that place no more than 5% of a fund's assets at risk.[107] Many funds disclose in their prospectuses information about securities and investment practices that do not and may not ever place more than 5% of a fund's assets at risk, often to retain the flexibility to exceed the 5% threshold in the future.[108]

The proposed amendments would eliminate the 5% standard. Instead, the revised Form would require a fund to disclose in the prospectus the principal strategies to be used to achieve its investment objectives, including the particular type or types of securities in which the fund will invest principally.[109] This approach is designed to shift prospectus disclosure away from an inventory of the various investments a fund may make and to focus disclosure on a fund's overall portfolio management. Whether a particular strategy (including a strategy to invest in a particular type of security) would constitute a principal strategy that must be disclosed in the fund's prospectus would depend upon the strategy's anticipated importance in achieving the fund's investment objectives and how the strategy affects the fund's potential risks and returns.[110] In determining what is a principal strategy, a fund would consider, among other things, the amount of assets expected to be committed to the strategy, the amount of assets expected to be placed at risk by the strategy, and the likelihood of losing some or all of those assets.[111] The proposed amendments would require disclosure about non-principal strategies to appear in the SAI.[112]

Focusing disclosure requirements on a fund's principal strategies is intended to improve prospectus disclosure by eliminating the need for disclosure about securities and strategies that do not have an important role in achieving the fund's investment objectives. Under the revised Form, for example, it generally would be unnecessary to include in the prospectus disclosure about a fund's cash management

[99] Instruction 3(c)(iii) to proposed Item 3.

[100] *See* Money Market Fund Prospectus Release, *supra* note 14, at 38456 (giving examples of lengthy and technical disclosure about portfolio holdings frequently found in money market fund prospectuses).

[101] The ICI has recommended that prospectus disclosure focus primarily on a fund's broad investment objectives, practices, and associated risks, and not on particular types of securities in which the fund invests. *See, e.g.*, Letter from Paul Schott Stevens, General Counsel, ICI, to Jonathan G. Katz, Secretary, SEC, at 4–6 (July 28, 1995) ("1995 ICI Risk Comment Letter"); Letter from Amy B.R. Lancellotta, Associate Counsel, ICI, to C. Gladwyn Goins, Associate Director, Division of Investment Management, SEC, at 7 (Mar. 7, 1995) ("1995 ICI Disclosure Letter').

[102] *See, e.g.*, 1 T. Lemke, G. Lins & A.T. Smith III, Regulation of Investment Companies § 1.01, at 1–1 (1996).

[103] *See* Form N–1A Proposing Release, *supra* note 13, at 815; Form N–1A Adopting Release, *supra* note 12, at 39729. *See also* Money Market Fund Prospectus Release, *supra* note 14 (proposing amendments that would permit money market funds to include in their prospectuses "basic, general statements about their investment objectives and portfolio composition").

[104] Proposed Item 4(a). A fund may refer to its investment objectives as investment goals. If a fund's investment objectives can be changed without a shareholder vote, the proposed amendments would continue to require disclosure of this fact in the prospectus. Although not required by Form N–1A, some funds disclose in the prospectus that their investment objectives may *not* be changed without a shareholder vote. Since investors generally do not expect fund investment objectives to change, this disclosure does not appear to help investors evaluate and compare funds. This disclosure would be moved to the SAI and proposed Item 12(c)(1)(vii) would require a fund to disclose when its investment objectives may not be changed without a shareholder vote.

[105] Item 4(a)(ii)(B)(1).

[106] Item 4(a)(ii)(D).

[107] Item 4(b)(ii). Item 4(b)(i) directs a fund not to disclose so-called "negative" practices (*i.e.*, practices in which a fund may not or does not intend to engage). Instruction 3 to proposed Item 4(b)(1) would retain this limitation by providing that a negative strategy is not a principal strategy. Avoiding disclosure about negative strategies should help keep prospectus disclosure focused on what the fund will do to achieve its investment objectives, rather than on what the fund will not do.

[108] A fund, within a short period of time, may increase its holdings of a particular type of security from less than 5% of its assets to more than 5%, which, under the current Form, requires a different level of disclosure about the security. To avoid having to amend their prospectuses in response to changes in portfolio holdings, many funds include information in their prospectuses about any security or strategy that might at some point place more than 5% of the fund's assets at risk.

[109] Proposed Item 4(b)(1). A bond fund, for example, typically would discuss the maturities, durations, ratings, and issuers of the bonds in which the fund principally invests.

[110] Instruction 1 to proposed Item 4(b)(1) would define a strategy to include any policy, practice, or technique used to achieve a fund's investment objectives.

[111] Instruction 2 to proposed Item 4(b)(1).

[112] Proposed Item 12(b).

practices (*e.g.*, entering into overnight repurchase agreements) since these practices are not typically among a fund's principal strategies.[113]

To further focus prospectus disclosure on a fund's principal strategies, the proposed amendments would require the prospectus to explain in general terms how the fund's adviser decides what securities to buy and sell.[114] This disclosure is intended to provide investors with general information about the fund's investment approach and how the fund's portfolio will be managed. The information might describe, for example, whether an equity fund emphasizes value or growth, or blends the two approaches, or whether the fund invests in stocks based on a "top-down" analysis of economic trends or a "bottom-up" analysis that focuses on the financial condition and competitiveness of individual companies.[115]

Concentration. Form N–1A requires a fund to disclose in its prospectus any policy to concentrate (*i.e.*, invest 25% or more of its total assets) in a particular industry or group of industries. The proposed amendments would retain this requirement since concentrating in an industry or group of industries is likely to be a principal strategy in achieving a fund's investment objectives.[116] The proposed amendments also would continue to require a single state money market fund to discuss its concentration in securities issued by a particular state or by issuers located within a state.

Temporary Defensive Positions. Many funds adopt policies permitting them to take "temporary defensive positions" to avoid losses in response to adverse market, economic, political, or other conditions. When a fund assumes a temporary defensive position, the fund may depart from its usual investment strategies without a shareholder vote or specific notice to shareholders. The GCLs require a fund to disclose, if applicable, certain information about the possibility of taking temporary defensive positions.[117]

The proposed amendments would continue to require disclosure about temporary defensive positions to alert investors of potential changes in a fund's investments.[118] In particular, the proposed amendments would require a fund to disclose the percentage of its assets that may be committed to temporary defensive positions (*e.g.*, up to 100% of the fund's assets), the risks, if any, associated with the positions, and the likely effect of these positions on the fund's performance. The Commission requests comment on requiring this information given the temporary nature of defensive positions and the proposed approach of focusing prospectus disclosure on a fund's principal strategies.[119]

Portfolio Turnover. The Guides require a fund that has had in the past year, or anticipates having, a portfolio turnover rate of approximately 100% or more to disclose in the prospectus any tax and brokerage consequences that will result from the fund's "high" portfolio turnover rate.[120] The proposed amendments would require prospectus disclosure only when a fund anticipates having a portfolio turnover rate of 100% or more in the coming year.[121] This approach is designed to focus prospectus disclosure on a fund's expected portfolio practices, not past practices.[122]

The proposed amendments would require disclosure of the fund's anticipated portfolio turnover rate and what that rate means (*e.g.*, that a portfolio turnover rate of 200% is equivalent to the fund buying and selling all of the securities in its portfolio twice in the course of a year).[123] Disclosing the anticipated turnover rate and explaining its meaning are intended to enable investors to evaluate how actively a fund buys and sells portfolio securities and to compare the anticipated portfolio turnover rates of different funds.

The proposed amendments also would require a fund to explain the tax consequences to shareholders of the fund's high portfolio turnover rate. In addition, the proposed amendments would require a fund to explain how trading costs associated with the fund's high portfolio turnover may affect the fund's performance.

The Commission requests comment on the proposed requirements. In particular, the Commission requests comment whether a fund with a portfolio turnover rate of 100% should be viewed as having a high portfolio turnover rate. An informal review by the Division of fund portfolio turnover rates suggests that nearly half of all funds have portfolio turnover rates exceeding 100%. The Commission also requests comment whether specific information about portfolio turnover should be required in connection with prospectus disclosure about a fund's investment strategies. In response to current disclosure requirements, for example, funds often make generic statements that do not appear to help investors evaluate and compare fund investments.[124]

Classification and Subclassification. All funds that register on Form N–1A are classified as management companies and subclassified as open-end companies under sections 4 and 5 of the Investment Company Act.[125] Funds may be further subclassified as diversified or non-diversified under section 5. Form N–1A requires a fund to disclose its classification and subclassifications in the prospectus.[126]

The proposed amendments would move to the SAI disclosure about a fund's legal status as an open-end management company.[127] This information is technical and repetitive of information required to be disclosed in the prospectus. A fund's classification as a management company is communicated to investors through

[113] Similarly, in most cases, a fund would be able to move to the SAI disclosure about hedging strategies that limit downside risk, securities lending, purchasing securities on a "when-issued" basis, short selling "against the box" to defer recognition of gains or losses, and investing in illiquid or restricted securities, since these strategies typically are not principal strategies.

[114] Proposed Item 4(b)(2). The prospectus of a value-oriented fund might state, for example, that the fund's adviser selects stocks it considers to be undervalued by recognized measures of economic value such as earnings, cash flow, and book value. A growth and income fund might state that it invests in the stock of issuers whose earnings have increased from year to year and issuers that have paid dividends continuously for a certain period of time.

[115] Because proposed Item 4(b)(2) would require the prospectus to explain *in general terms* how the fund's adviser decides what securities to buy and sell, a fund (or its adviser) would not be required to provide proprietary information about its investment strategies.

[116] Proposed Item 4(b)(3).

[117] 1994 GCL, *supra* note 28, at II.E.

[118] Proposed Item 4(e). *See also* Fund Names Release, supra note 2 (permitting a fund with a name suggesting that the fund focuses on a particular type of investment to make other investments while assuming a temporary defensive position).

[119] In light of these considerations, the revised Form, unlike the 1994 GCL, *supra* note 28, would not require a fund to disclose the types of securities in which it may invest while taking a temporary defensive position.

[120] Guide 5.

[121] Proposed Item 4(b)(4). A fund that expects its portfolio turnover rate to be less than 100% would continue to be required to disclose the anticipated rate of its portfolio turnover in the SAI. As under the current requirements, a money market fund would not be required to discuss portfolio turnover in either the prospectus or the SAI. *See* MDFP Adopting Release, *supra* note 14, at 19051 n.3.

[122] Information about a fund's portfolio turnover rate in previous fiscal years is disclosed in the financial highlights table. *See* proposed Item 9.

[123] Like any other fund, a "balanced" fund would discuss its anticipated turnover rate with respect to its entire portfolio. Guide 5, in contrast, requires a balanced fund to discuss portfolio turnover separately for the stock and bond portions of the fund's portfolio.

[124] Prospectuses, for example, state that high portfolio turnover rates will likely result in higher transaction costs and may increase taxable gains.

[125] *See* 15 U.S.C. 80a–4, –5.

[126] Item 4(a)(i)(B).

[127] Proposed Item 12(a).

disclosure about the fund's investment adviser and portfolio management. A fund's open-end status is communicated through disclosure about the redeemability of the fund's shares.

The proposed amendments also would move to the SAI disclosure that a fund is diversified under section 5. Since most funds are diversified, this information (which often includes a technical description of the diversification requirements under the Investment Company Act) does not appear to provide investors with useful information about a particular fund. A non-diversified fund would continue to be required to disclose its non-diversified status in the prospectus.[128] To avoid technical disclosure, the proposed amendments would require a non-diversified fund to describe the effects of non-diversification (*e.g.*, by indicating that, compared to diversified funds, the fund may invest a greater percentage of its assets in a particular issuer) and to disclose the risks of investing in the fund.

Section 8 Policies. Section 8 requires a fund to disclose in its registration statement the fund's policies with respect to borrowing money, issuing senior securities, underwriting securities issued by other persons, investing in real estate or commodities, and making loans.[129] Most funds do not engage in these practices to a significant extent, because the Investment Company Act limits their use by funds.[130] Although they are not required to do so, some funds disclose in the prospectus their policies with respect to the practices identified under section 8.[131] To provide a clearer directive to disclose this information in the SAI, the proposed amendments specifically would require disclosure about these policies in the SAI.[132]

b. Risk Disclosure

Risk disclosure in fund prospectuses typically consists of detailed, and often technical, descriptions of the risks associated with particular securities in which a fund may invest. Just as disclosure about each type of security in which a fund may invest does not appear to effectively communicate how the fund's portfolio will be managed, disclosure about the risks associated with each type of security in which the fund may invest does not appear to effectively communicate the overall risks of investing in the fund. Disclosing the risks of each portfolio investment, rather than the overall risks of investing in a fund, does not appear to help investors evaluate a particular fund or compare the risks of different funds.

Consistent with the proposal to shift prospectus disclosure away from an inventory of the various securities that may be held by a fund, the proposed amendments would revise Form N–1A to shift prospectus disclosure away from the risks associated with specific securities. The revised Form would require a fund to disclose the risks to which the fund's particular portfolio as a whole is expected to be subject.[133] As part of this disclosure, a fund would be required to discuss the circumstances that are reasonably likely to affect adversely the fund's net asset value, yield, or total return.

The proposed approach is intended to improve fund risk disclosure. Comments from both individual investors and members of the fund industry responding to the Risk Concept Release strongly supported improving narrative discussions of fund risks. In a survey of fund investors sponsored by the ICI ("ICI Risk Survey"), respondents were asked to consider various methods that could be used to describe risk and expressed the greatest overall confidence about using narrative information.[134]

The Risk Concept Release requested comment whether quantitative risk measures, such as standard deviation, beta, and duration, would help investors evaluate and compare fund risks.[135] While more than half of the individual commenters and some industry members expressed a desire for some form of quantitative risk information, commenters did not broadly support any one risk measure. In addition, a number of commenters strongly opposed requiring disclosure of quantitative risk information.[136] These commenters, among other things, questioned the value of quantitative risk measures, suggesting that investors have too wide a range of investment goals and ideas of what "risk" means to be well-served by a single quantitative risk measure.[137] The ICI Risk Survey suggests that investors who use quantitative measures may not understand the measures well enough to use them for the special purposes for which they were designed.[138]

Based on these and other considerations, the Commission is not proposing at this time to require funds to use quantitative risk measures. The proposed prospectus risk/return summary and the proposed amendments to the narrative discussion of risk within the prospectus are designed to improve fund risk disclosure, without raising the issues associated with Commission-mandated quantitative information. The Commission's determination not to require quantitative risk information is not intended to suggest, however, that this information is not useful to some investors. Funds that wish to include quantitative risk disclosure in their prospectuses may continue to do so.

Item 5—Management's Discussion of Fund Performance

The proposed amendments would continue to require a fund to provide its MDFP and the related line graph comparing the fund's returns to a broad-based securities market index in either the prospectus or the annual report. The Division's review of and experience with MDFP disclosure indicates that the discussion of fund performance and the line graph have been successful in providing fund shareholders with useful, comparative information about a fund's performance. Other than technical and conforming changes, the proposed amendments would not modify these disclosure requirements.

[128] Proposed Item 4(d).

[129] 15 U.S.C. 80a–8. Section 8 also requires a fund to disclose in the registration statement its policies on concentration and portfolio turnover, *see supra* note 121 and accompanying text, and any other policies that the fund deems fundamental or that may not be changed without shareholder approval.

[130] *See, e.g.*, section 18(f) (15 U.S.C. 80a-18(f)) (limiting a fund's ability to issue senior securities and borrow money); section 12(c) (15 U.S.C. 80a-12(c)) (limiting the underwriting practices of a diversified fund).

[131] *See* Items 4(a)(ii)(C), 4(b); Guides 3, 14.

[132] Proposed Item 12(c). If a policy specified in section 8 is a principal strategy, Instruction 4 to proposed Item 4(b)(1) would require the fund to disclose the policy in the prospectus.

[133] Proposed Item 4(c). *See supra* note 101. The requirement that a fund disclose the risks to which its *particular* portfolio as a whole is subject is intended to elicit risk disclosure specific to that fund. In meeting this requirement, a growth fund, for example, would have to disclose the risks of the growth stocks in which the fund invests as opposed to describing the general risks of equity securities.

[134] ICI Risk Survey, *supra* note 26, at 21, 37.

[135] Risk Concept Release, *supra* note 18, at 17176. Standard deviation measures the volatility of a fund's total return; beta measures the sensitivity of a fund's total return to the market's performance; and duration measures the sensitivity of a bond fund's return to changes in interest rates. *Id.* at 17174–76.

[136] *See, e.g.*, 1995 ICI Risk Comment Letter, *supra* note 101, at 10–16 (questioning, among other things, the feasibility of developing a single, all-encompassing measure of fund risks and whether quantitative information would be understood and accurately used by fund investors).

[137] *See also* P. Bernstein, Against the Gods: The Remarkable Story of Risk 269–303 (1996) (suggesting it is inaccurate to assume that investors evaluate investments based on risk and return and that investors' attitudes towards risk may overrule a decision that may be appropriate based on quantitative measures).

[138] ICI Risk Survey, *supra* note 26, at 14–18 (*e.g.*, 45% of respondents who had used duration, 44% of those who used standard deviation, and 23% of those who used beta reported using these measures to estimate future performance).

Funds typically include the MDFP in their annual reports, rather than in their prospectuses, which may be, in part, due to the relevance of the MDFP to other current financial information appearing in annual reports. As a result of recent legislation, the Commission has more flexibility to specify the content of annual reports and to require additional disclosure in annual and semi-annual reports as necessary or appropriate in the public interest or for the protection of investors.[139] The Commission is not proposing to modify fund shareholder report disclosure requirements in this release, but recognizes that revisions to shareholder report requirements could further enhance the disclosure provided to fund investors. The Division currently is evaluating whether funds should be required to include the MDFP in the annual report. The Division also is considering whether certain disclosure required by Form N–1A would be more useful to investors in shareholder reports. An "integrated" approach to registration and reporting requirements could improve the overall information about a fund available to investors.[140] Shareholder reports, for example, could disclose information about a fund's investments and operations for a current period (such as information about the fund's portfolio turnover or the tax consequences of investing in the fund). Fund prospectuses could disclose more general information about the fund's intended investments and operations (such as its investment objectives, anticipated risks, and fees). The Commission requests comment on specific prospectus disclosure that could be more appropriately disclosed in a fund's shareholder reports.

[139] National Securities Markets Improvement Act of 1996, Pub. L. No. 104–290 (1996) (the "1996 Securities Act"), section 206(f) (amending section 30 of the Investment Company Act (15 U.S.C. 80a–29)) to add new paragraph (f)).

[140] In the past, the concept of "integrated" disclosure for funds has addressed eliminating duplicative registration requirements under the Investment Company Act and the Securities Act. *See* Investment Company Act Release No. 10378 (Aug. 28, 1978) (43 FR 39548) ("Integrated Registration Statement Release") (adopting integrated registration statements for funds and closed-end investment companies by replacing separate registration statement forms under the Investment Company Act and Securities Act). New "integrated" disclosure initiatives for funds could expand the concept of integrated disclosure to include an approach similar to that adopted for corporate issuers, which integrates registration statement disclosure requirements with periodic reports. *See* Securities Act Release Nos. 6235 (Sept. 2, 1980) (45 FR 63693) and 6383 (Mar. 3, 1982) (47 FR 11386) (proposing and adopting new forms for the offering of securities under the Securities Act).

Item 5—Management, Organization, and Capital Structure

a. Management and Organization

The proposed amendments would streamline the current disclosure requirements concerning a fund's management and organization. Consistent with the intent of Form N–1A to provide investors with essential information about a fund, the revised Form would require prospectus disclosure about the fund's investment adviser, the advisory fee paid by the fund, and the person or persons primarily responsible for the day-to-day management of the fund's portfolio.[141] As in the current Form, the revised Form would require prospectus disclosure of fees paid to any sub-adviser.[142] The Commission requests comment whether information about individual sub-advisory fees helps investors evaluate and compare fund investments or whether this disclosure obscures the aggregate investment advisory fee associated with investing in a particular fund. The Commission requests specific comment whether a fund should be required to disclose only the fund's aggregate investment advisory fee.

The revised Form would continue to require prospectus disclosure of any material pending legal proceedings involving the fund, investment adviser, or principal underwriter, which would be incorporated in the management and organization Item because the disclosure is related to the other management information required to be disclosed.[143] The proposed amendments would modify or move to the SAI other disclosure requirements relating to the management and organization of a fund because this information generally is common to all funds and does not appear to assist an investor in evaluating a particular fund or comparing different funds.

Board of Directors. Form N–1A requires a fund's prospectus to include a brief description of the responsibilities of the fund's board of directors under the applicable laws of the jurisdiction where the fund is organized.[144] The proposed amendments would move this disclosure to the SAI.[145] The responsibilities of fund directors are governed by the Investment Company Act and state law.[146] The summary, generic disclosure typically provided in fund prospectuses about the responsibilities of directors does not appear to assist an investor in deciding whether to invest in a particular fund.

The Commission requests comment whether disclosure in the prospectus of the names, experience, and compensation of a fund's directors, along with an address, telephone number, or other means to contact the directors would be more useful to investors. The Commission also requests comment whether this information should be given only for a fund's independent directors, accompanied by disclosure of the number of independent directors in relation to the number of directors on the fund's board.[147] The Commission requests specific comment whether information about a fund's directors is essential information that should be required to be disclosed in the prospectus to assist investors in deciding whether to invest in a fund. The Commission also requests specific comment whether information about the compensation paid to directors warrants prospectus disclosure in light of the relatively small portion of a fund's total expenses represented by director compensation.

Controlling Persons. Form N–1A requires disclosure of the name of any person that controls the fund's investment adviser and the name of any person that controls the fund.[148] The proposed amendments would no longer require this information in the prospectus. Transactions between controlling persons and a fund are subject to restrictions under the Investment Company Act.[149] When transactions with controlling persons are permitted, a fund's board of directors is responsible for reviewing and approving the arrangements.[150] Disclosure about controlling persons of the investment adviser and the fund would continue to be available in the SAI.[151]

Affiliated Brokers. Form N–1A requires a fund to state, if applicable, that the fund engages in brokerage transactions with affiliated persons and allocates brokerage transactions based on the sale of fund shares.[152] The proposed amendments would no longer require this disclosure in the prospectus. The information called for by the Form typically results in disclosure that restates applicable legal requirements.[153] This type of generic disclosure does not appear to assist investors in deciding whether to invest in a particular fund. Payment of commissions to affiliated brokers is governed by section 17(e) of the Investment Company Act and rule 17e–1. In addition, the SAI requires disclosure about affiliated brokers and how brokers are selected to effect the fund's portfolio transactions.[154]

[141] Proposed Items 6(a)(1), (2).

[142] *See* section 2(a)(20) (15 U.S.C. 80a–2(a)(20)) (defining "investment adviser" to include a sub-adviser).

[143] Item 9. The legal proceedings disclosure is intended to be substantially the same as Item 103 of Regulation S–K under the Securities Act (17 CFR 229.103) and would be modified to conform to Item 103. *See* Investment Company Act Release No. 19155 (Nov. 30, 1992) (57 FR 56862) (modifying Form N–2 to conform to Item 103).

[144] Item 5(a).

[145] Proposed Item 13(a).

[146] These responsibilities include, among other things: (i) Evaluating and approving the fund's investment advisory and principal underwriting contracts (sections 15 (a), (c) (15 U.S.C. 80a–15 (a), (c)) and the use of fund assets to pay for the distribution of fund shares (rule 12b–1); (ii) selecting the fund's independent public accountants (section 32(a)(1) (15 U.S.C. 80a–31(a)(1))); and (iii) reviewing and approving transactions with affiliates under various rules (*e.g.*, rule 10f–3 (17 CFR 270.10f–3); rule 17a–7 (17 CFR 270.17a–7); rule 17e–1 (17 CFR 270.17e–1)). Directors have fiduciary duties to the fund and its shareholders under section 36(a) of the Investment Company Act (15 U.S.C. 80a–35(a)) and under state law. *See* 3 W. Fletcher, Cyclopedia of the Law of Private Corporations § 838 (rev. perm. ed. 1994); Hanson Trust PLC v. ML SCM Acquisition, Inc., 781 F.2d 264, 275 (2d Cir. 1986). *See also* Burks v. Lasker, 441 U.S. 471 (1979) (upholding the authority of independent directors to take actions under state law to the extent not inconsistent with the policies of the Investment Company Act and the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*) (the "Advisers Act")).

[147] Section 10(a) of the Investment Company Act (15 U.S.C. 80a–10(a)) requires that at least 40% of a fund's board of directors consist of individuals who are not "interested persons," as defined in section 2(a)(19) (15 U.S.C. 80a–2(a)(19)).

[148] Items 5(b)(i) and 6(b).

[149] *See, e.g.*, section 17 (15 U.S.C. 80a–17) and rules 17a–6, 17d–1 (17 CFR 270.17a–6, .17d–1).

[150] *See supra* note 146.

[151] Items 14(a), 15(a)(1). In addition, information about any person who owns 10% or more of a fund's voting stock is required to be disclosed in a proxy statement seeking shareholder approval of the fund's investment adviser, which provides more timely information about the possibility that a person could influence the approval of the advisory contract. Item 22(c)(4) of Schedule 14A (17 CFR 240.14a–101) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (the "Securities Exchange Act").

[152] Item 5(g).

[153] Some funds, for example, state that an affiliated broker may effect portfolio transactions for the fund on an exchange or board of trade, if the commissions, fees, or other remuneration received by the affiliated broker are reasonable and fair compared to the commissions, fees, or other remuneration paid to other brokers or futures commission merchants in connection with comparable transactions involving similar securities being purchased or sold on an exchange or board of trade during a comparable period of time. With respect to allocation of brokerage transactions, funds typically disclose that they may consider sales of fund shares as a factor in selecting brokers to execute portfolio transactions.

[154] Item 16. The Commission has undertaken initiatives designed to improve disclosure about fund brokerage transactions by requiring certain expenses paid by directed brokerage to be treated as an expense in a fund's financial statements and fee table and by requiring average commission rates to be disclosed in the financial highlights information. Investment Company Act Release No. 21221 (July 21, 1995) (60 FR 38918).

Form of Organization. Form N–1A requires disclosure about a fund's form of organization (along with the date) and state of incorporation.[155] Since most funds are organized in one of a few states as corporations or business trusts that seek to provide limited liability to their shareholders,[156] disclosure about a fund's organization does not appear to help investors evaluate a particular fund or compare different funds. The proposed amendments would move this disclosure to the SAI,[157] unless a fund is organized outside the United States and registered under the Investment Company Act pursuant to section 7(d).[158]

Expenses. Form N–1A requires a fund to provide a statement about its expenses.[159] The proposed amendments would no longer require this disclosure since it duplicates information about the fund's expenses required in the fee table. Expense information also would continue to be available in the fund's financial statements and SAI.[160]

b. Capital Structure

Form N–1A requires certain information to be disclosed in the prospectus about a fund's shares and capital structure. The proposed amendments would reorganize and revise these disclosure requirements consistent with the intent of Form N–1A to focus prospectus disclosure on essential information about a particular fund that would assist an investor in deciding whether to invest in that fund.

Transferability, Material Obligations, and Potential Liabilities. Form N–1A requires disclosure about any limits on the transferability of, and material obligations or potential liabilities associated with, a fund's shares. Funds rarely restrict share transferability and generally are organized as corporations or business trusts to provide limited liability to their shareholders. If, however, any restrictions or special liabilities applied to the purchase of a fund's shares, information about the restrictions or liabilities would appear to help an investor decide whether to invest in the fund. As a consequence, the proposed amendments would continue to require this information in the prospectus.[161] The Commission requests comment on the types and likelihood of restrictions and liabilities imposed on fund shares and on what disclosure, if any, should be required.

Shareholder Voting Rights. Form N–1A requires a fund to discuss shareholder voting rights and disclose if the rights of shareholders can be modified by other than a majority vote.[162] Because the Investment Company Act requires all fund shares to have equal voting rights[163] and prescribes the vote required for significant matters,[164] voting rights disclosure typically is generic and does not appear to assist investors in evaluating and comparing funds. The proposed amendments would move this disclosure to the SAI.[165]

Senior Securities. Form N–1A requires disclosure about any class of senior securities issued by a fund.[166] The proposed amendments would delete this requirement. Senior securities issued by funds are limited to borrowings, which are subject to significant legal restrictions under the Investment Company Act[167] and

[155] Item 4(a).

[156] *See* SEC, Division of Investment Management, Protecting Investors: A Half Century of Investment Company Regulation, Investment Company Governance 275 (May 1992) (reporting that in 1991 over 84% of funds were organized as Maryland corporations or Massachusetts business trusts) (*citing* Lipper Analytical Services, The "Form" Used by Mutual Funds to Organize State by State (Mar. 1991) (survey prepared for the ICI)).

[157] Proposed Item 11(a). Information about a fund's operating history (including information about the lack of an operating history for a newly organized fund) would continue to be provided in the bar chart, performance table, and the fee table in the risk/return summary, and in the financial highlights information.

[158] 15 U.S.C. 80a–7(d). *See* proposed Item 6(b).

[159] Item 5(f).

[160] Item 15.

[161] For funds organized as business trusts under Massachusetts law, prospectuses sometimes include disclosure that, under Massachusetts law, fund shareholders may, under certain limited circumstances, be held personally liable as partners for the fund's obligations. In adopting Form N–1A, the Commission stated that disclosure of possible contingent shareholder liability under this form of organization should not be required if a fund believes that, because of arrangements to protect shareholders, the likelihood of loss or expense to shareholders is remote. Form N–1A Adopting Release, *supra* note 12, at 37933–34. *See* 3 T. Frankel, The Regulation of Money Managers 79 (1980) (for funds organized as Massachusetts business trusts, personal liability generally is considered remote). The Division's review of fund prospectuses indicates that certain funds include disclosure about Massachusetts business trusts and state that shareholder liability is remote. Funds should continue to evaluate whether this disclosure is necessary.

[162] Item 6 (a), (c).

[163] Section 18(i) (15 U.S.C. 80a–18(i)).

[164] *See, e.g.*, section 15(a) (approval of investment advisory contract); section 16(a) (15 U.S.C. 80a–16(a)) (election of directors); section 13(a) (15 U.S.C. 80a–13(a)) (changes in fundamental investment policies). *See also* section 2(a)(42) (15 U.S.C. 80a–2(a)(42)) (defining "voting security" and a "vote of a majority of the outstanding voting securities" for purposes of the Investment Company Act); rules 18f–2, 18f–3 (17 CFR 270.18f–2, –3) (specifying certain voting rights with respect to series funds and multiple class funds, respectively).

[165] Proposed Item 17(a).

[166] Item 3(b).

[167] Section 18(f)(1) (requiring, for example, asset coverage of at least 300% for bank borrowings).

required to be disclosed in a fund's financial statements.[168]

Fund Classes. Form N–1A requires disclosure about "other classes" of fund shares (excluding borrowings that are not senior securities).[169] The proposed amendments would delete this requirement. Funds are not permitted to issue other classes of shares except for series funds under section 18f–2 and related rule 18f–2, and multiple class funds under rule 18f–3. When a series or class is offered in the prospectus, disclosure about the series or class would be required to be given.

7. Item 7—Shareholder Information

Form N–1A requires prospectus disclosure about a fund's purchase and redemption procedures, dividends and distributions, and the tax consequences of investing in the fund. While most of these disclosure requirements would remain substantially the same, the proposed amendments would make certain revisions, particularly with respect to tax disclosure, to focus this disclosure on essential information about a fund.[170]

a. Purchase and Redemption

Pricing of Fund Shares. Form N–1A requires a fund to explain that the price of fund shares is based on the fund's net asset value and to identify the methods used to value the fund's assets.[171] The proposed amendments would no longer require this information in the prospectus because it does not appear to assist investors in deciding whether to invest in a particular fund. The pricing of fund shares and the valuation of portfolio securities are technical, subject to legal requirements, and disclosed in the SAI.[172]

The proposed amendments would continue to require a fund to state when calculations of net asset value are made and that the price at which a purchase is effected is based on the next calculation of net asset value after the order is placed. A fund also would continue to be required to identify in a general manner any national holidays when shares will not be priced and to identify specifically any additional local or regional holidays when the fund will be closed.[173]

Although not specifically required, many funds disclose in their prospectuses how net asset value is determined. Funds, for example, often disclose that net asset value equals assets minus liabilities divided by the number of outstanding shares.[174] Although this disclosure tends to be generic because the calculation of net asset value is the same for all funds, the Commission requests comment whether disclosure about what constitutes net asset value would be helpful to investors.

Principal Underwriter. Form N–1A requires a fund to disclose the name and address of the fund's principal underwriter, and whether any affiliated person of the principal underwriter is an affiliated person of the fund.[175] This information would be moved to the SAI because it does not appear to provide investors with essential information that would assist them in deciding whether to invest in a particular fund.[176] The name and address of the underwriter typically are not necessary for investors to purchase and redeem a fund's shares.[177] The fund's board of directors is responsible for approving the fund's contract with the principal underwriter. Conflicts of interest that could influence transactions between a principal underwriter and a fund are governed by legal protections in the Investment Company Act.[178]

Service Providers. Form N–1A requires a fund to disclose the identity of any person (other than the investment adviser) who provides significant administrative or business management services for the fund (*e.g.*, an administrator), including a description of, and the fees paid for, the services.[179] The Form also requires the name and address of the fund's transfer agent and dividend paying agent.[180] The proposed amendments would move this disclosure to the SAI.[181] While a fund could include in the prospectus information about its service providers in describing the fund's purchase and redemption procedures, disclosure about persons that perform administrative or "back-office" functions unrelated to the purchase and sale of fund shares does not appear to assist investors in evaluating and comparing fund investments. The fund's investment adviser or board of directors is responsible for overseeing the fund's contractual arrangements with service providers and their costs to the fund. In addition, the costs incurred for services provided to the fund are included in the prospectus fee table and in the fund's financial statements.[182]

Account Transfers. The GCLs require certain information about transfers of shares held in street name accounts.[183] This disclosure would be retained in a simplified form in the prospectus. In particular, the proposed amendments would require a fund to disclose any restrictions on, or costs associated with, transferring shares held in street name to inform investors holding shares in street name about these restrictions and costs.[184]

b. Tax Consequences

General Tax Disclosure. Form N–1A requires a fund to describe in its prospectus the tax consequences of an investment in the fund.[185] Prospectus tax disclosure often includes lengthy information about the tax treatment of the fund and, in some cases, the tax treatment of specific securities held by a fund.[186] This disclosure tends to obscure information about the tax treatment of a fund's distributions and the direct tax consequences to investors of investing in the fund.

The proposed amendments would revise the tax disclosure required in fund prospectuses. In particular, the proposed amendments would require information about a fund's qualification under Subchapter M of the Internal Revenue Code to appear in the SAI.[187] Subchapter M confers pass-through tax treatment for funds that meet certain conditions.[188] Disclosure about Subchapter M, which relates to the tax treatment of the fund, does not appear to help investors evaluate the tax consequences of investing in the fund. In addition, because virtually all funds qualify for pass-through tax treatment, disclosure about the conditions of, or a fund's qualification under, Subchapter M does not appear to help investors evaluate or compare fund investments.[189]

To focus prospectus disclosure on the tax consequences of investing in a particular fund, the proposed amendments would require a description of the tax consequences to shareholders of buying, holding, exchanging, and selling the fund's shares.[190] The proposed amendments would require a fund to state, as applicable, that the fund intends to make distributions that may be taxed as ordinary income and capital gains. If a fund, as a result of its investment objectives or strategies, expects its distributions primarily to consist of ordinary income (or short-term capital gains that are taxed as ordinary income) or long-term capital gains, the fund would be required to provide disclosure to that effect. Providing specific disclosure about the anticipated tax consequences of a fund's distributions could help investors decide whether to invest in a particular fund and to compare fund investments.[191] The proposed amendments also would require a fund to state that it will provide each shareholder by a specified date (typically, January 31 of each year) with specific information about the amount of ordinary income and capital gains, if any, distributed during the prior calendar year.[192]

The proposed amendments would require a fund to disclose that its distributions will be taxable whether received in cash or reinvested in additional shares. The proposed amendments also would require a fund offering exchange privileges to disclose that exchanging shares of one fund for shares of another fund will be treated as a sale and that any gain from the transaction may be subject to federal income tax. Disclosure about the tax treatment of reinvested dividends and share exchanges would alert investors that reinvested distributions and exchange transactions are subject to tax.

Special Tax Disclosure for Tax-Exempt Funds. The proposed amendments would require a tax-exempt fund to inform investors of the special tax consequences associated with investing in the fund.[193] Because investors may be unaware that a portion of the distributions received from a tax-exempt fund may be subject to federal, state, or local income taxes, the proposed amendments would require a tax-exempt fund to disclose, as applicable, that:

(1) The fund may invest a portion of its assets in securities that generate income that is not exempt from federal or state income tax;[194]

(2) Income exempt from federal income tax may be subject to state and local income tax;

(3) Any capital gains distributed by the fund may be taxable; and

(4) A portion of the tax-exempt income distributed by the fund may be treated as a tax preference item for purposes of determining whether the shareholder is subject to the federal alternative minimum tax.[195]

Item 8—Distribution Arrangements

a. Placement of Prospectus Disclosure

Rule 12b–1 fees and sales loads directly affect an investor's return on a fund investment, and information about these charges is important to many investors. Currently, narrative explanations about a fund's distribution arrangements may appear in different places in the prospectus, making it difficult for investors to review and compare additional information about rule 12b–1 fees and sales loads.[196] The proposed amendments would require information about distribution arrangements to appear together in the prospectus.[197] This approach would help investors locate information designed to assist them in evaluating a

[168] The financial statement requirements in Regulation S–X specify that a fund disclose in its balance sheet any amounts payable to banks and others for borrowings. Rule 6–04 of Regulation S–X (17 CFR 210.6–04).

[169] Item 6(d).

[170] Information about purchase and redemption procedures typically takes up a number of pages in fund prospectuses and may contribute to the perception that prospectuses are too long and complicated. At the same time, this disclosure (*e.g.*, information on dividend reinvestment plans, automatic investment programs, and checkwriting privileges) appears to be included in prospectuses in response to investor interest in the information.

[171] Item 7(b)(i).

[172] Item 19(b). A fund's securities are required to be valued based on market quotations or, in the absence of market quotations, at fair value as determined by the board of directors. *See* section 2(a)(41) (15 U.S.C. 80a–2(a)(41)) (defining "value"). *See also* rule 2a–7 (regarding the amortized cost method of valuation for money market funds).

[173] *See* Guide 28; proposed Item 7(a)(2). The Instruction to proposed Item 7(a)(2) would incorporate the disclosure required by Guide 28 concerning funds with portfolio securities listed on foreign exchanges that trade on weekends and U.S. holidays. If a fund does not price on days when foreign securities are traded, the Instruction would require the fund to disclose in the prospectus that the net asset value of the fund's shares may change on days when shareholders cannot purchase or redeem fund shares.

[174] *See* section 2(a)(41) (15 U.S.C. 80a–2(a)(41)) and rule 2a–4 (17 CFR 270.2a–4).

[175] Item 7(a).

[176] Proposed Item 15(b).

[177] Fund investors often effect purchases and redemptions through financial intermediaries (such as broker-dealers and banks) without the involvement of the fund's underwriter. When information about the underwriter is necessary to effect purchase and redemption requests, a fund would disclose this information in the prospectus in connection with the description of how to purchase and redeem the fund's shares.

[178] *See supra* note .

[179] Item 5(d).

[180] Item 5(e).

[181] Proposed Item 15(h). In addition, Item 5(b)(ii) requires a statement, if applicable, that the investment adviser is responsible for overall management of the fund's business. This disclosure would be provided in the SAI in response to proposed Item 15(c)(1).

[182] Rule 6–07 of Regulation S-X (17 CFR 210.6–07); Instruction 3(c) to proposed Item 3.

[183] 1990 GCL, *supra* note 28, at II.D.

[184] Proposed Item 7(b)(7).

[185] Item 6(g). Form N–1A provides guidance about the tax disclosure to be provided in the prospectus, indicating, among other things, that if a fund intends to qualify under Subchapter M of the Internal Revenue Code (I.R.C. 851 *et seq.*), the fund should state that it will distribute all of its net income and gains to shareholders and that these distributions are taxable.

[186] Many prospectuses, for example, include information about the conditions a fund must meet to qualify for pass-through tax treatment under Subchapter M and, when applicable, the tax treatment of private activity bonds, foreign currency contracts, and other fund investments. In addition, tax disclosure frequently includes technical jargon by referring, for example, to a fund's status as a "regulated investment company" and the fund's payment of "spillback distributions" and "net investment income." *See* proposed General Instruction C.1(a), which would continue to instruct a fund not to use technical or legal terminology in the prospectus.

[187] Proposed Item 19(a). The proposed amendments would eliminate the requirement that a fund disclose in the SAI any special tax consequences resulting from offering more than one class of capital stock or being a series fund, since the tax consequences of investing in a multiple class or series fund are no different from those of investing in a single class or single series. While in the past a series fund could offset the gains of one portfolio against the losses of another, a series fund no longer may offset the gains and losses of its various portfolios. *See* I.R.C. 851(h)(1) (treating each portfolio of a series fund as a separate entity for tax purposes).

[188] To qualify for pass-through tax treatment under Subchapter M, a fund must, among other things: derive at least 90% of its gross income from certain specified sources; derive less than 30% of its gross income from the sale of securities and certain other specified investments held for less than 3 months; meet certain diversification requirements; and distribute at least 90% of its taxable income (which does not include capital gains) and net tax-exempt income for the year. *See* I.R.C. 512(a)(5), 851.

[189] In the rare case of a fund that does not expect to qualify for pass-through tax treatment under Subchapter M, proposed Item 7(d)(3) would require the fund to explain in the prospectus the tax consequences of not qualifying (*e.g.*, by disclosing that income and gains realized by the fund would be subject to double taxation—that is, both the fund and shareholders could be subject to tax liability). This disclosure would distinguish the fund from other funds and help investors appreciate the tax consequences of investing in the fund. Similarly, a fund that expects to pay an excise tax under the Internal Revenue Code with respect to its distributions would be required to disclose in the prospectus the consequences of paying the tax. *See* I.R.C. 4982.

[190] Proposed Item 7(d).

[191] The proposed disclosure requirement would apply to funds that have investment objectives or strategies that make it possible to anticipate the tax consequences of the fund's distributions (*e.g.*, funds described as "tax-managed," "tax-sensitive," or "tax-advantaged" often have investment strategies to maximize long-term capital gains and minimize ordinary income; conversely, money-market funds have investment objectives and strategies to maximize ordinary income).

[192] See Item 6(g)(iii) (consistent with this requirement).

[193] The proposed amendments also would require a tax-exempt fund to amend the general tax disclosures discussed above to reflect that the fund intends to distribute tax-exempt income.

[194] A fund that holds itself out as a tax-exempt fund can invest up to 20% of its assets in securities that generate taxable income. *See* Investment Company Act Release No. 9785 (May 31, 1977) (42 FR 29130); Guide 1. *See also* Fund Names Release, *supra* note .

[195] *See* Guide 30 (requiring substantially the same disclosure); Letter from Mary Joan Hoene, Associate Director, SEC, to Matthew P. Fink, Senior Vice President and General Counsel, ICI (Nov. 3, 1987) (if a fund uses a name that implies its distributions will be exempt from federal income tax, it may not consider any investments in municipal obligations that pay interest subject to the alternative minimum tax as part of the 80% of the fund's assets that must be invested in tax-exempt securities).

[196] A summary of a fund's fees and expenses, which includes information about rule 12b–1 fees and sales loads, is contained in the fee table.

[197] Proposed General Instruction C.2(a). Proposed Item 8 would consolidate prospectus disclosure requirements for rule 12b–1 fees, sales loads, and multiple class and master-feeder funds. Consistent with the proposed amendments to the fee table requirements, rule 12b–1 fees and sales loads would be referred to as "marketing (12b–1) fees" and "sales fees (loads)" in the narrative discussion of a fund's distribution arrangements in the prospectus.

particular fund and comparing fund investments).[209] The proposed

Form N–1A requires a fund to provide

proposed amendments seek to simplify

multiple class and master-feeder

underwriter has incurred unreimbursed

particular fund and comparing fund investments.

b. Rule 12b–1 Plans

Prospectus Disclosure. Form N–1A requires detailed prospectus disclosure about rule 12b–1 plans.[198] The technical nature of this disclosure tends to obscure information about the amount of fees paid under a fund's rule 12b–1 plan. Although distribution fees are charged on an on-going basis in lieu of, or in addition to, sales loads, investors may not appreciate the continuing nature of distribution fees or that distribution fees cumulatively could exceed other types of sales charges.[199]

The proposed amendments would revise disclosure requirements for rule 12b–1 plans to focus prospectus disclosure on the fees paid under these plans. Focusing disclosure on fee information, rather than on technical, legal matters relating to a fund's rule 12b–1 plan, would appear to provide greater assistance to an investor in deciding whether to invest in the fund. In particular, the prospectus of a fund with a rule 12b–1 plan would be required to state the amount of the fee and provide disclosure to the following effect:

- The fund has a rule 12b–1 plan that allows the fund to pay fees for the sale and distribution of its shares; and
- Since these fees are paid out of the fund's assets on an on-going basis, over time these fees will increase the cost of your investment and may cost you more than paying other types of sales loads.

The proposed requirement to disclose that, over time rule 12b–1 fees will increase investment costs and may exceed other types of sales loads is intended to help an investor appreciate the continuing effect of rule 12b–1 fees on an investment in a fund. Similar, but more complex, disclosure is required by rules of the National Association of Securities Dealers, Inc. ("NASD').[200] The proposed amendments seek to simplify the disclosure so that it may be more readily understood by investors. The Commission requests comment on the proposed disclosure and whether the disclosure should appear with the narrative explanation about rule 12b–1 fees or in connection with the fee table disclosure of these fees.[201]

A fund may pay "service fees" alone or combined with fees for the sale and distribution of its shares.[202] If a fund pays service fees under a rule 12b–1 plan, the fund would reflect the payment of service fees in its rule 12b–1 disclosure. When service fees are paid outside of a rule 12b–1 plan, the fund would be required to disclose the amount and purpose of the fee in connection with information in the prospectus about any sales loads and rule 12b–1 fees charged by the fund.

Additional Information. Form N–1A requires a fund with a rule 12b–1 plan to describe the plan briefly and list the principal activities for which payments under the plan will be made. A fund also must disclose the relationship between amounts paid to and expenses incurred by the distributor (*i.e.*, whether the plan reimburses the distributor only for expenses incurred or compensates the distributor regardless of its expenses).[203] The Form requires additional disclosure if the fund engages in joint distribution activities with another fund[204] or if the fund's underwriter has incurred unreimbursed expenses under the fund's 12b–1 plan.[205]

The proposed amendments would move this disclosure to the SAI. The information adds unnecessary complexity to rule 12b–1 disclosure and, as a consequence, tends to obscure the amount and purpose of rule 12b–1 fees, which does not appear to help investors evaluate and compare fund investments.[206] Rule 12b–1 establishes requirements for a rule 12b–1 plan. In particular, a fund's board of directors must approve the rule 12b–1 plan and related fees.[207] NASD rules provide additional protection by limiting rule 12b–1 fees (including the payment of unreimbursed expenses) to a percentage of the fund's new gross sales.[208]

c. Sales Loads

Form N–1A requires disclosure in the prospectus about the amount of any sales load charged on an investment in a fund and when a sales load may be reduced or eliminated (*e.g.*, for larger

[198] Item 7(e), (f).

[199] *See* Updegrave, *Fund Investors Need to Go Back to School*, Money, Feb. 1996, at 98, 100 (of approximately 1,400 investors surveyed by Money magazine and The Vanguard Funds Group, only 22% knew that rule 12b–1 fees are charged against fund assets to pay for distribution of fund shares). Based on information compiled by the Division from Form N–SAR (17 CFR 274.101) filings, approximately 50% of funds charge rule 12b–1 fees.

[200] Rule 2830(d)(4) of the NASD Conduct Rules (NASD Manual (CCH) 4624) (requiring a fund with a rule 12b–1 plan to disclose adjacent to the fee table that "long-term shareholders may pay more than the economic equivalent of the maximum front-end sales charges permitted by (NASD rules)"). Rule 2830(d)(2) of the NASD Conduct Rules (NASD Manual (CCH) 4623) limits aggregate front-end, deferred, and asset-based sales charges to 6.25% of total new gross sales for funds that pay service fees and to 7.25% of total new gross sales for funds that do not pay service fees. Because these aggregate caps apply on a fund-wide basis, over time an individual investor may pay fees exceeding the applicable cap. The NASD disclosure is intended to address this issue. *See* Securities Exchange Act Release No. 30897 (July 7, 1992) [57 FR 30985, 30987].

[201] If the proposed disclosure requirement is adopted, the Commission intends to discuss with the NASD its disclosure requirement so that similar disclosure is not required to be repeated in the prospectus. More generally, the Commission intends to discuss with the NASD other prospectus disclosure requirements imposed by NASD rules with the goal of incorporating these requirements, when appropriate, in applicable Commission rules or forms. In addition to streamlining disclosure requirements, this approach would give the Commission an opportunity to reassess NASD disclosure requirements in light of the Commission's broad initiatives to improve fund disclosure.

[202] *See* Rule 2830(b)(9) of the NASD Conduct Rules (NASD Manual (CCH) 4622) (defining "service fees" as payments for personal service and/or the maintenance of shareholder accounts). Rule 2830(d)(5) of the NASD Conduct Rules (NASD Manual (CCH) 4624) limits service fees to .25% of a fund's average annual net assets. *See also* Item 7(e) (requiring prospectus disclosure about the amount or rate of any trail fees paid out of fund assets to dealers or other persons that provide investors with advice concerning the purchase, sale, or holding of fund shares).

[203] Guide 29.

[204] A fund that engages in joint distribution activities must disclose that its rule 12b–1 fees may be used to finance another fund's distribution activities and how it allocates costs between funds.

[205] A fund must disclose both the amount of unreimbursed expenses and the amount as a percentage of the fund's net assets, and indicate whether it is obligated to pay the expenses. In addition, under Generally Accepted Accounting Principles, the amount of any unreimbursed expenses under a rule 12b–1 plan is provided in the fund's financial statements. For a fund that has agreed to pay unreimbursed expenses if its rule 12b–1 plan is terminated, any unreimbursed expenses appear as a liability on the fund's financial statements. *See* Financial Accounting Standards Board, Statement of Financial Accounting Standards No. 5 — Accounting for Contingencies (Mar. 1975); American Institute of Certified Public Accountants, Statement of Position 95–3, at 5–8 (July 28, 1995).

[206] Fund prospectuses typically include lengthy and generic descriptions of rule 12b–1 plans and related distribution activities. Prospectus disclosure, for example, consists of statements that distribution fees will be used to compensate broker-dealers and other financial intermediaries for providing distribution assistance and administrative, accounting, and other services to fund shareholders and to promote sales of fund shares through the printing and distribution of prospectuses, sales literature, and advertising materials. Some prospectuses include detailed descriptions of the requirements of rule 12b–1.

[207] *See* rule 12b–1(e) (permitting a fund's directors to implement or continue a rule 12b–1 plan only if they conclude that there is a reasonable likelihood that the plan will benefit the fund and its shareholders). *See also* rule 12b–1(d) (requiring directors to request and evaluate information reasonably necessary to make an informed decision about whether to adopt or continue a rule 12b–1 plan); rule 12b–1(a)(3)(ii) (requiring a rule 12b–1 plan to provide that directors review, at least quarterly, the amount and purposes of expenditures under the plan).

[208] *See supra* note 200. The Commission previously expressed concerns about the carryover of a large amount of unreimbursed expenses under a rule 12b–1 plan. Investment Company Act Release No. 16431 (June 13, 1988) (53 FR 23258, 23267) (proposing amendments to rule 12b–1). These concerns generally have been addressed by the NASD sales charge rule.

investments).[209] The proposed amendments would continue to require most of this disclosure to appear in the prospectus.[210] The proposed amendments, however, would modify certain requirements that call for detailed and technical information about sales loads because the disclosure tends to obscure information about the amount of the sales load charged by a fund and does not appear to help investors evaluate and compare fund investments.

Dealer Reallowances. A fund is required to include a table in the prospectus showing any front-end load as a percentage of both the offering price and the net amount invested for each breakpoint, and any amounts reallowed to dealers as a percentage of the offering price. The proposed amendments would move disclosure about dealer reallowances to the SAI[211] because it adds unnecessary complexity to sales load disclosure and does not appear to provide helpful information to investors. NASD rules address concerns about financial incentives brokers may have in recommending that customers buy or hold fund shares. These rules require a broker who recommends investments to a customer to have reasonable grounds for believing that the recommendation is suitable for that customer.[212]

Waivers and Sales Load Breakpoints. Sales loads often are waived when fund directors and other affiliated persons of the fund (*e.g.*, employees of the fund's adviser) purchase the fund's shares.[213] Form N–1A requires a fund to provide information about these arrangements in the prospectus. The proposed amendments would move this disclosure to the SAI because the disclosure concerns arrangements that are not available to the majority of investors and, as a consequence, adds unnecessary length to fund prospectuses.[214]

The proposed amendments also would move to the SAI disclosure about sales load breakpoints and waivers in connection with a merger or other reorganization.[215] This information does not appear to be important to investors unless and until a reorganization is announced. Because fund reorganizations generally require shareholder approval, this information would be provided to investors in proxy materials at a time when it would be more meaningful to them.[216]

Third-Party Fees. Form N–1A requires a fund to disclose in the prospectus any fees charged by a bank, broker-dealer or other person in connection with the purchase of the fund's shares, if the fees are charged with the fund's knowledge.[217] The proposed amendments would no longer require this disclosure, since these fees are not charged by the fund.[218] Investors are informed of (and pay) the fees as part of their relationship with, and the services provided by, the third party.[219]

d. Multiple Class and Master-Feeder Funds

Form N–1A requires certain information to be included in the prospectus about the different distribution and service arrangements of multiple class and master-feeder funds.[220] Consistent with the proposed approach for sales loads and rule 12b–1 fees, the proposed amendments would require this information to appear in one place in the prospectus. The proposed amendments also would simplify prospectus disclosure requirements for master-feeder funds by eliminating the requirement that a feeder fund discuss the possibility and consequences of no longer investing in the master fund (*e.g.*, if the master fund changes its investment objectives to be inconsistent with those of the feeder fund). Since master-feeder arrangements typically are designed to accommodate feeder funds, the possibility of a feeder fund not investing in the master fund is likely to be remote.[221]

Item 9.—Financial Highlights Information

Condensed Financial Information. The financial highlights information currently required at the beginning of the prospectus provides summary financial information about a fund, including the fund's total return for each of the last 10 fiscal years.[222] The proposed amendments would retain the table, but no longer require this information to appear at the front of the prospectus.[223] Requiring detailed financial information at the beginning of a fund's prospectus may unnecessarily impede a fund's ability to present prospectus disclosure in an effective format.

Form N–1A requires a brief explanation of the nature and source of the information included in the financial highlights table as well as a statement that the auditor's report is available upon request. To meet this requirement, funds generally disclose that the table presents financial information and how shareholders can obtain the auditor's report. The proposed amendments seek to assist investors in using the financial highlights information by requiring a narrative explanation to the following effect:

[209] Item 7(b), (c). *See* section 22(d) [15 U.S.C. 80a–22(d)] (prohibiting the sale of fund shares other than at the current public offering price described in the prospectus) and rule 22d–1 (17 CFR 270.22d–1) (requiring disclosure about sales load breakpoints and waivers).

[210] The proposed amendments would clarify that a fund is required to disclose any sales loads imposed on shares purchased with reinvested dividends or other distributions. The proposed amendments also would codify the requirement in Guide 28 to explain in the prospectus that the term "offering price" includes a front-end load.

[211] Proposed Item 15(f).

[212] Rule 2310 of the NASD Conduct Rules (NASD Manual (CCH) 4261). When the Commission proposed amendments to rule 6c–10 (17 CFR 270.6c–10) in 1995, it requested comment whether reallowances to dealers in connection with deferred sales loads should be disclosed in fund prospectuses. Investment Company Act Release No. 20917 (Mar. 2, 1995) (60 FR 11890, 11894). In adopting amended rule 6c–10, the Commission deferred consideration of reallowances because the NASD is studying dealer compensation practices. Investment Company Act Release No. 22202 (Sept. 9, 1996) (61 FR 49011, 49016). Consistent with this approach, the proposed amendments would not revise the SAI disclosure of dealer reallowances to include deferred sales loads.

[213] For example, sales loads may be waived for investment advisory employees who are already knowledgeable about the fund, which may render marketing and other services unnecessary.

[214] Proposed Item 13(e).

[215] Proposed Item 18(b).

[216] Form N–14 under the Securities Act (17 CFR 239.23), which is used by funds to register securities issued in a merger or other reorganization and as the proxy statement for the transaction, requires disclosure about material information concerning the transaction. *See* Item 4(a) of Form N–14. *See also* Item 14(a)(3) of Schedule 14A under the Securities Exchange Act (requiring the same information in proxy statements).

[217] Item 7(b). Prospectus disclosure is not required if the fees are "adequately disclosed" in a wrapper to the prospectus.

[218] In some cases, fees charged by a third party, in effect, represent fees of the fund (*e.g.*, when the fees are charged to all shareholders to invest in the fund) and would be required to be disclosed in the prospectus.

[219] For fee disclosure requirements applicable to banks, broker-dealers and investment advisers, *see* Board of Governors of the Federal Reserve System, FDIC, Office of the Comptroller of the Currency, and Office of Thrift Supervision, Interagency Statement on Retail Sales of Nondeposit Products, 6 Fed. Banking L. Rep. (CCH) ¶ 70–113, at 82,598 (Feb. 15, 1994); rule 2230 of the NASD Conduct Rules (NASD Manual (CCH) 4211); rule 204–3(a) under the Advisers Act (17 CFR 275.204–3(a)) and Item 1 of Form ADV, Part II (17 CFR 279.1).

[220] General Instruction I; Item 6(h); Guide 34.

[221] Potential changes in fund operations and investments also are not unique to a feeder fund. With any fund investment, changes may occur that significantly affect the nature of the fund. The interests of all fund shareholders, including those of feeder funds, are represented by a board of directors. In addition, as with all shareholders, a feeder fund's shareholders would receive notice of and have an opportunity to vote on fundamental changes relating to the master fund's operations and investments.

[222] Item 3(a); General Instruction G to Form N–1A.

[223] Proposed Item 9; proposed General Instruction C.2(a).

The financial highlights table is intended to help you understand the fund's financial

effective date of its registration

defined in the Investment Company Act

to add unnecessary length and complexity to fund prospectuses and

The financial highlights table is intended to help you understand the fund's financial performance for the past 10 years (or, if shorter, for the period of the fund's operations). Certain information reflects financial results for a single fund share. The total returns in the table represent the rate an investor would have earned (or lost) on an investment in the fund for the period indicated (assuming reinvestment of all dividends and distributions). This information has been audited by _____, whose report, along with the fund's financial statements, is included in (the SAI or annual report), which is available upon request.[224]

The financial highlights disclosure requires performance information for a partial year to be annualized. The proposed amendments would require performance information for a period of less than a year to be stated without annualization. As previously indicated, the Commission is concerned that annualization of performance information may result in a performance figure that could mislead investors.[225]

Apart from certain other technical and conforming changes, the proposed amendments would not revise the requirements for financial highlights disclosure. The Commission recognizes, however, that additional changes may further improve the financial highlights information, which often takes up a full page or more in the prospectus. The Commission intends to revisit this disclosure in a separate rulemaking initiative that would revise fund financial statement requirements generally and requests specific comment on simplifying and updating the financial highlights information. In particular, the Commission requests comment on reducing the number of captions to simplify the table and decreasing the period for which information is required from 10 years to 5 years. Because the proposed amendments would require a bar chart illustrating a fund's returns for a 10-year period, the Commission requests comment whether the financial highlights information should be moved to the SAI, eliminated for certain or all funds,[226] or provided in other disclosure, such as in a fund's Form N–SAR filings.

Calculation of Performance Data. Form N–1A requires a brief explanation in the prospectus of how the fund calculates performance data if it includes performance information in advertisements permitted under rule 482 of the Securities Act.[227] This disclosure was required because an advertisement under rule 482 is an omitting prospectus under section 10(b) of the Securities Act and, as an omitting prospectus, was required to contain information "the substance of which" is contained in the prospectus. The proposed amendments would eliminate this disclosure requirement. Recent legislation added section 24(g) to the Investment Company Act, which authorizes the Commission to adopt rules permitting a fund to use a summary or omitting prospectus that includes information the substance of which is not included in the prospectus.[228] In the near future, the Commission intends to propose to amend rule 482 to eliminate the "substance of which" requirement, which would make the disclosure of performance data unnecessary. Disclosure about how performance is calculated does not appear to assist investors in deciding whether to invest in a particular fund and would continue to be available in the SAI.[229]

Part B—Statement of Additional Information

The SAI provides a more detailed discussion of matters described in the prospectus as well as additional information about a fund.[230] The proposed amendments would make a number of technical and conforming revisions to the SAI disclosure requirements to reflect the proposed changes in the prospectus disclosure requirements. After completion of the prospectus initiative, the Commission intends to review the SAI requirements and propose amendments to simplify and update SAI disclosure.

Part C—Other Information

Part C of Form N–1A contains information in support of a fund's registration statement that is not included in the prospectus or the SAI.[231] The proposed amendments would revise Part C to eliminate unnecessary filing requirements.[232] As amended, Part C would no longer require a fund to file model retirement plans that are used to offer the fund's shares[233] because funds routinely offer their shares in connection with retirement plans and the terms and other aspects of these plans are governed by the Employee Retirement Income Security Act of 1974 ("ERISA") and by the Internal Revenue Code.[234] Amended Part C also would no longer require a fund to file a schedule showing how it calculates performance data,[235] since these calculations have become routine and the Commission staff can verify a fund's performance calculations during a fund examination.[236]

Part C requires a newly organized fund to provide an undertaking to file a post-effective amendment to its registration statement containing updated financial statements within 4 to 6 months of the effective date of the registration statement.[237] The purpose of this requirement is to assure the availability of financial information reflecting the fund's operations and investment of the fund's assets in accordance with its investment objectives and strategies. The Division has provided limited relief with respect to the timing of filing the updated financial information in two circumstances: (i) When a fund defers commencement of operations after the effective date of its registration statement; and (ii) when the 4 to 6 month period following the effective date of the registration statement ends near the date of the financial statements to be used in the fund's next annual or semi-annual report.[238] The proposed amendments would codify the requirement to file updated financial information.[239] The proposed amendments would permit a fund to file a post-effective amendment within 4 to 6 months from the date the fund commences operations. The amendments also would give a fund up to 8 months to file updated financial statements that are included in the fund's semi-annual or annual report, if the post-effective amendment is filed within 30 days of the date of the latest balance sheet included in the annual or semi-annual report. The Commission requests comment whether the requirement to provide updated financial information should be retained. In particular, because the financial information may reflect a fund's operations for a very short period of time, is this information useful to investors?

[224] Since the financial highlights information is required to be audited for the latest 5 years, the standardized narrative would continue to refer to the auditor's report and its location.

[225] *See, e.g.*, Money Market Fund Prospectus Release, *supra* note 14, at 38458.

[226] In connection with the proposal to simplify money market fund prospectuses, the Commission proposed to replace the financial highlights table with a 10-year bar graph of fund returns. *See* Money Market Fund Prospectus Release, *supra* note 14, at 38455. The summary financial information does not appear to be useful for money market funds because these funds typically do not have changes in net assets or realized capital gains.

[227] Item 3(c); 17 CFR 230.482(a).

[228] *See* 1996 Securities Act *supra* note 139, at section 204.

[229] Proposed Item 21. For a money market fund, SAI disclosure would include, when applicable, the calculation of the fund's 7-day tax-equivalent yield and tax-effective yield. *See* Money Market Prospectus Release, *supra* note 14, at 38458.

[230] *See* proposed General Instruction C.1(b) (current General Instruction G). *See also supra* notes 39 and 47 accompanying text.

[231] Items 24 to 32.

[232] The proposed amendments also would eliminate the "Instructions as to Summary Prospectuses" that follow Part C. To the Commission's knowledge, no fund has used a summary prospectus under these instructions and the proposed profile would give funds the flexibility, at their option, to provide a summary disclosure document to investors. *See* Profile Release, *supra* note 1.

[233] Item 24(b)(14) (also requiring information about the costs and fees charged under the plans).

[234] *See* 29 U.S.C. 1104(c); I.R.C. 401–409. The Commission adopted this requirement in 1978, when the use of funds as vehicles for retirement planning was relatively new. Integrated Registration Statement Release, *supra* note 140, at 39553, 39557.

[235] Item 24(b)(16).

[236] *See* Money Market Fund Prospectus Release, *supra* note 14, at 38458 (proposing to eliminate this requirement). The Commission required funds to file these calculations in connection with the standardization of performance information used in fund advertisements to assure that funds would follow the formula correctly. Performance Release, *supra* note 14, at 3876.

The proposed amendments also would eliminate the requirement in Item 23(b)(3) to file voting trust agreements, because funds are not permitted to use these agreements under section 20(b) (15 U.S.C. 80a–20(b)). The undertaking required by Item 32(c) relating to the delivery of a fund's annual reports would be deleted because the requirement would be incorporated in proposed Item 5.

[237] Item 32(b).

[238] 1994 GCL, *supra* note 28, at V.

[239] Proposed Item 22(a)(2). A conforming change would be made to rule 485(b)(1)(iv) under the Securities Act (17 CFR 230.485(b)(1)(iv)), which currently includes a reference to the undertaking required by Item 32(b) of Part C.

[240] Certain information would be deleted as unnecessary (*e.g.*, current Instruction H (Electronic Filers) would be deleted since this Instruction includes only a cross-reference to Item 24(b)(17), which requires a financial data schedule to accompany an electronic filing as an exhibit).

D. General Instructions

1. Reorganizing and Simplifying the Instructions

The General Instructions to Form N–1A provide guidance on the use and content of the Form. The proposed amendments would update and reorganize the General Instructions to make the Instructions easier to use.[240] The revised General Instructions would consist of: (1) Definitions; (2) Filing and Use of Form N–1A; (3) Preparation of the Registration Statement; and (4) Incorporation by Reference.

Definitions. Proposed General Instruction A would define certain terms generally used in Form N–1A. The definitions would provide greater clarity and avoid repeated references throughout the Form (for example, to the Investment Company Act). The proposed amendments would specify that all sections and rules used in Form N–1A refer to sections and rules under the Investment Company Act, unless otherwise indicated, and that all terms defined in the Investment Company Act and related rules have the same meaning in Form N–1A, unless otherwise defined.

The proposed amendments would add several definitions to standardize certain terms, which would be capitalized throughout the Form. The term "Fund" would be defined as a registrant or a series of the registrant.[241] General Instruction A also would define "Registrant" and "Series" and these terms would be used when information is specifically required for a registrant or a series.[242]

Filing and Use of Form N–1A; Preparation of the Registration Statement. Proposed General Instruction B would incorporate a more user-friendly, question-and-answer format regarding the filing and use of Form N–1A and would replace current Instructions A through D and F. Proposed General Instruction C would provide streamlined requirements for preparing the registration statement and would replace Instruction G. The new Instruction would continue to emphasize the need to provide clear and concise prospectus disclosure and permit a fund to include in its prospectus or SAI additional information that is not misleading and that does not, because of its nature, quantity, or manner of presentation, obscure the information required to be included. Instructions to the Form permitting information to be added to the prospectus and SAI would be deleted, with Instruction C providing this guidance for purposes of all fund disclosure.[243]

Instruction C also would instruct a fund to avoid referring to the SAI or shareholder reports in the prospectus, unless specifically required by the Form.[244] Repeated cross-references to the SAI and shareholder reports appear to add unnecessary length and complexity to fund prospectuses and detract from the purpose of prospectus disclosure, which is to provide essential information that enables fund investors to make informed investment decisions. Instruction C would allow cross-references to be used within the prospectus when the cross-reference would assist investors in understanding the information presented and would not add complexity to prospectus disclosure. The Commission requests comment on the proposed approach to cross-references.

Instruction C would provide guidance on the use of Form N–1A by more than one fund and a multiple class fund. Fund prospectuses frequently contain information for multiple series and classes that offer investors different investment alternatives and distribution arrangements. Because this practice was not common in 1983 when Form N–1A was adopted, certain Form requirements may have the unintended effect of making prospectus disclosure for multiple funds and classes more complex than necessary.[245] When information is presented clearly, prospectuses offering more than one fund may make it easier for investors to compare funds and may be more efficient for funds and investors by eliminating the need to provide investors with multiple prospectuses containing repetitive information. Instruction C generally would give funds the flexibility to organize information about multiple funds and classes in an effective manner based on their particular circumstances as long as the presentation is consistent with the goal of providing clear and concise information about a fund.[246]

Instruction C would permit a fund that is offered as an investment alternative in a participant-directed defined contribution plan qualified under the Internal Revenue Code ("plan") to modify its prospectus for use

[241] Form N–1A generally calls for disclosure about the "Registrant" (meaning the investment company registered under the Investment Company Act), although the Form sometimes refers to a series. Because the Form may be filed for one or more series of a registered investment company, the current references may cause confusion about the entity for which disclosure is required.

[242] General Instruction A would define a "Master-Feeder Fund" and a "Multiple Class Fund," which currently are defined in Instruction I. The proposed amendments also would define a "Money Market Fund" as a fund that holds itself out as a money market fund and meets the maturity, quality, and diversification requirements of rule 2a-7.

[243] *See, e.g.*, Item 1(b) (permitting other information to be included on the cover page of the prospectus). Similarly, specific Instructions in Part A that call for brief and concise prospectus disclosure would be deleted, since Instruction C would include this requirement for purposes of all prospectus disclosure.

[244] *See supra* notes 39–40, 45, and 224 and accompanying text.

[245] *See* John Hancock Funds, Inc. (pub. avail. June 28, 1996).

[246] A fund, for example, may decide that using a horizontal rather than vertical presentation for the fee table would provide the most effective presentation of the required fee information. In responding to the proposed risk/return summary requirements, a fund may find that different formats communicate the required information effectively. Depending on the number and type of funds offered in the prospectus, for example, a fund may find it useful to group the required information for all funds together under each caption or to present the information sequentially for each fund. *See id.* (using a two-page disclosure format for each of 7 funds offered in a single prospectus).

by plan participants.[247] Certain prospectus disclosure appears to be

Proposed General Instruction D would address incorporation by reference and

connection with the adoption of various

Package ("Registration Package").[260] The

in accordance with this

the collection of information is "Form N–1A Under the Investment Company

by plan participants.[247] Certain prospectus disclosure appears to be unnecessary for plan participants because of the way plans are structured and regulated. The requirements of ERISA and the Internal Revenue Code and the terms of individual plans govern, among other things, participant investments and plan distributions (including the tax consequences of distributions).[248] A prospectus used to offer fund shares to plan participants would be permitted to omit the information required by proposed Items 7 (shareholder information) and 8 (distribution arrangements). The Commission requests comment whether it would be appropriate to omit or modify other disclosure requirements for prospectuses provided to plan participants. The Commission also requests comment whether the flexibility to omit certain disclosure requirements should be expanded to non-qualified participant-directed defined contribution plans.[249]

Incorporation by Reference. By adopting a two-part disclosure format for Form N–1A, the Commission intended Part A of the registration statement to provide investors with a simplified prospectus that, standing alone, would meet the requirements of section 10(a) of the Securities Act.[250] Part B, the SAI (which is available to investors upon request), includes additional information that the Commission has determined may be useful to some investors, but is not necessary in the public interest or for the protection of investors to be in the prospectus.[251] Form N–1A currently permits, but does not require, a fund to incorporate the SAI by reference into the prospectus. The two-part disclosure format has been widely used by funds, and the Commission has found that the current approach to incorporation by reference supports the intended purpose of Form N–1A and should be retained.[252]

Proposed General Instruction D would address incorporation by reference and replace current Instruction E.[253] Instruction D would continue to permit, but not require, a fund to incorporate the SAI by reference into the prospectus. The revised Instruction would clarify that incorporating information by reference from the SAI is not permitted as a response to information required to be included in the prospectus. Permitting the SAI to be incorporated by reference into the prospectus was meant to allow funds to *add* material the Commission determined not to require in the prospectus, not to permit funds to *subtract* required information from the prospectus and place it in the SAI. The proposed amendments to Form N–1A also seek to provide funds with clearer directions for allocating disclosure between the prospectus and the SAI.[254]

2. Form N–1A Guidelines and Related Staff Positions

The Guides were prepared by the Division and published by the Commission when it adopted Form N–1A in 1983.[255] The Guides, which generally restate Division positions that may affect fund disclosure, were intended to assist funds in preparing and filing their registration statements. Additional Division positions on disclosure matters are included in the GCLs.[256]

Although certain Guides have been revised and new ones added in connection with the adoption of various rules, the Guides collectively have not been reviewed since 1983. Certain Division positions in the Guides and GCLs have become outdated.[257] Other Guides and GCLs explain or restate legal requirements and may encourage generic disclosure about fund operations that does not appear to help investors evaluate and compare funds.[258] In addition, the presentation of information in 35 Guides and 7 GCLs is not organized in the most useful or effective manner.

To address these issues, the proposed amendments would incorporate certain disclosure requirements from the Guides and GCLs. Other disclosure requirements in the Guides and the GCLs would not be incorporated in the revised Form because, among other things, they are outdated or result in disclosure about technical, legal, and operational matters generally common to all funds. In addition, certain requirements calling for specific disclosure about individual fund investments would not be incorporated in the revised Form because they have tended to standardize disclosure about certain securities without regard to how a particular fund intends to use the securities in achieving its investment objectives. The proposed amendments seek to provide investors with information about how a fund's particular portfolio will be managed and elicit disclosure tailored to a fund's particular investment objectives and strategies.[259]

Information in the Guides and GCLs about legal requirements (including information about fund organization and operations), interpretive positions, and descriptions of filing procedures would be updated and reorganized in a new Investment Company Registration Package ("Registration Package").[260] The Registration Package would be made available to all funds and updated on a regular basis.[261]

E. Technical Rule Amendments

The Commission is proposing several technical rule amendments, primarily to implement the recommendations of the Commission's Task Force on Disclosure Simplification ("Task Force") that apply to funds.[262] The Task Force has recommended eliminating the cross-reference sheet requirements in registration statements because similar information is available in the table of contents required in the prospectus.[263] To implement this recommendation for funds, the proposed amendments would delete the cross-reference sheet requirements in rules 481, 485, and 497 under the Securities Act.[264] The Task Force also has recommended, and the Commission has adopted, modified signature requirements to allow corporate issuers to include typed, duplicated, or faxed signatures on paper filings if a manual signature is retained by a registrant for a period of 5 years.[265] The proposed amendments would revise signature requirements for funds in accordance with this recommendation.[266]

F. Transition Period

If the Commission adopts the proposed amendments to Form N–1A, the revised Form would replace current Form N–1A. The Commission expects to provide for a transition period after the effective date of revised Form N–1A to give funds sufficient time to prepare their registration statements under the proposed amendments. A fund filing a new registration statement would be required to comply with the proposed amendments 6 months after the effective date of the amendments. A fund with an effective registration statement would be required to comply with the amendments at the time of the next annual update of its registration statement, but no later than 16 months after the effective date of the proposed amendments. A fund also, at its option, could comply with the revised Form at any time after the effective date of the amendments. The Commission requests comment on the proposed transition period.

III. General Request for Comments

The Commission requests that any interested persons submit comments on the proposed amendments that are the subject of this release, suggest additional changes (including changes to related provisions of rules and forms that the Commission is not proposing to amend), or submit comments on other matters that might affect the proposed amendments. Commenters suggesting alternative approaches are encouraged to submit proposed rule or form text. For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), the Commission also is requesting information regarding the potential impact of the proposed rule on the economy on an annual basis. Commenters should provide empirical data to support their views.

IV. Paperwork Reduction Act

The proposed Form contains "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), and the Commission has submitted the amendments to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information is "Form N–1A Under the Investment Company Act of 1940 and the Securities Act of 1933, Registration Statement of Open-End Management Investment Companies."

A registration statement on Form N–1A must contain information the Commission has determined to be necessary or appropriate in the public interest or for the protection of investors. The proposed amendments to Form N–1A seek to minimize prospectus disclosure about technical, legal, and operational matters that generally are common to all funds and to focus disclosure on essential information about a particular fund that would assist an investor in deciding whether to invest in that fund.

The proposed amendments would move certain disclosure about fund organization and legal requirements under the Investment Company Act to the SAI, simplify and clarify the instructions for completing the Form, and improve risk disclosure by requiring a discussion of the overall risks of investing in a fund, a narrative risk summary, and a graphic presentation of risk. Other technical amendments are proposed that would not impose any additional recordkeeping or reporting burden on funds.

The Commission estimates that there are approximately 2,700 registered open-end investment companies that file registration statements on Form N–1A, representing approximately 7,500 investment portfolios ("portfolios"). The Commission estimates, based on the current number of registration statements filed on Form N–1A, that approximately 4,649 registration statements, including post-effective amendments, would be filed on Form N–1A annually for a total burden of 990,000 hours. This represents a decrease of 2,205,824 hours, which is primarily to eliminate the Form N–1A burden hour estimates related to preparing financial statements because that burden is reflected in the burden hours attributable to annual and semi-annual reports required under rule 30d–1. The information collection requirements imposed by Form N–1A are mandatory. Responses to the collection of information will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

Under 44 U.S.C. 3506(c)(2)(B), the Commission solicits comment to: (i) Evaluate whether the proposed collection of information is necessary

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[247] *See* Profile Release, *supra* note 1 (permitting a profile to be modified for use by plan participants).

[248] *See supra* note 234.

[249] *E.g.*, eligible plans under section 457 of the Internal Revenue Code sponsored by a state, a political subdivision of a state, or certain nongovernmental tax-exempt organizations.

[250] Form N–1A Adopting Release, *supra* note 12, at 37930.

[251] *Id. See* White v. Melton, 757 F. Supp. 267 (S.D.N.Y. 1991) (citing the Form N–1A Adopting Release, *supra* note 12, as authority for the principle that certain matters are required to appear in the prospectus and others may be appropriately disclosed in the SAI, which may be incorporated by reference into the prospectus).

[252] *See* Form N–1A Proposing Release, *supra* note 13, at 818 (suggesting that prohibiting incorporation by reference of the SAI into the prospectus or, alternatively, requiring delivery of the SAI with the prospectus, would "vitiate the Commission's attempt to provide shorter, simpler prospectuses").

[253] The proposed amendments would make technical revisions to Instruction D to simplify its requirements. The specific instruction regarding incorporation by reference of condensed financial information from reports to shareholders in General Instruction E would be incorporated in proposed Item 9 (condensed financial information). The instruction allowing incorporation of financial information in response to Item 23 of Form N–1A from reports to shareholders would be deleted as unnecessary because the Form does not limit incorporation of information into the SAI. The requirement that a shareholder report incorporated by reference into the SAI be delivered with the SAI would be added to the SAI cover page requirements.

[254] Section 19(a) of the Securities Act [15 U.S.C. 77q(a)] protects a fund from liability under the Securities Act for actions taken in good faith in conformity with Commission rules. The proposed amendments to Form N–1A are designed to provide better guidance to funds for purposes of section 19(a). *See* Form N–1A Adopting Release, *supra* note 12, at 37930.

[255] Form N–1A Adopting Release, *supra* note 12, at 37938 (stating that publication of the Guides was not intended to elevate their status beyond that of staff guidance). The Commission initially adopted guidelines in 1972 to assist funds in preparing and filing registration statements. Investment Company Act Release Nos. 7220, 7221 (June 9, 1972) (37 FR 12790) ("Guides Releases").

[256] *See supra* note 28.

[257] *See, e.g.*, Guide 9 (Short Sales) (for short sales, funds no longer are required to maintain amounts in segregated accounts at a level that, with the amount deposited with the broker as collateral, is at least equal to the market value of the securities at the time they are sold short, *see* Robertson Stephens Investment Trust (pub. avail. Aug. 24, 1995)); Guide 30 (Tax Consequences) (each series is now treated as a separate entity for tax purposes and may not, as suggested by the Guide, offset gains of one series against losses of another); *supra* note 28, 1990 GCL at I.B (undertakings), 1991 GCL at II.A.2 (country, international, and global funds), and 1992 GCL at II.F (segregated accounts).

[258] *See, e.g.*, Guides 8 (Senior Securities, Reverse Repurchase Agreements, Firm Commitment Agreements and Standby Commitment Agreements), 9 (Short Sales), 15 (Qualification for Treatment Under Subchapter M of the Internal Revenue Code), and 28 (Valuation of Securities Being Offered); *supra* note 28, 1994 GCL at III.C (redemption fees) and 1995 GCL at II.A (MDFP disclosure).

[259] *See supra* section II.A.4.

[260] Similar guidance currently is available in the Investment Adviser Registration Package. Because the Registration Package would provide guidance on the preparation of Form N–1A, the Guides would not be republished with Form N–1A, and the GCLs no longer would apply. The Commission also is proposing to rescind the Guides Releases, *supra* note 255.

[261] The Registration Package would include requirements discussed in the GCLs relating to closed-end investment companies and unit investment trusts, and other matters not relevant to Form N–1A (*e.g.*, proxy disclosure). Information traditionally addressed in the GCLs would be considered when the Registration Package is updated, unless the nature of the information warrants immediate dissemination. The Registration Package would serve as a "small entity compliance guide," which the Commission is required to publish under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C.S. 601 note (Supp. July 1996)).

[262] *See supra* note 36 (proposing to amend rule 481(b)(1) to require a simplified cover page legend that neither fund shares nor the prospectus have been approved by the Commission). Disclosure Simplification Task Force Report, *supra* note 15, at 18.

[263] Disclosure Simplification Task Force Report, *supra* note 15, at 90. *See, e.g.*, rule 481(c) (17 CFR 230.481(c)) (requiring a table of contents in fund prospectuses). The Commission has adopted amendments to Item 501(b) of Regulation S–K (17 CFR 229.501(b)) to eliminate the cross-reference sheet requirement for companies other than funds. Securities Act Release No. 7300 (June 14, 1996) (61 FR 30397, 30398) ("Release 7300").

[264] 17 CFR 230.495.

[265] Release 7300, *supra* note 263, at 30400. This change would make available to paper filers the additional signature options currently permitted for corporate issuers filing electronically.

[266] Proposed revisions to rule 8b-11 (17 CFR 270.8b-11). The proposed amendments also would update a Note appearing before rule 480 (17 CFR 230.480), which explains the applicability of certain rules in Regulation C to funds.

for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Those who want to submit comments on the collection of information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and also should send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–6009 with reference to File No. S7–10–97. The OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if the OMB receives it within 30 days of publication.

V. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("Analysis") in accordance with 5 U.S.C. 603 regarding the proposed amendments to Form N–1A. The Analysis explains that the proposed amendments would revise disclosure requirements for fund prospectuses to minimize prospectus disclosure about technical, legal, and operational matters that generally are common to all funds, and to focus prospectus disclosure on essential information about a particular fund that would assist an investor in deciding whether to invest in that fund. The Analysis also explains that the proposed amendments are intended to improve fund prospectuses and to promote more effective communication of information about funds.

The Analysis discusses the impact of the proposed rule on small entities, which are defined, for the purposes of the Securities Act and the Investment Company Act, as investment companies with net assets of $50 million or less as of the end of the most recent fiscal year (17 CFR 230.157(b) and 270.0–10). The Commission estimates that approximately 2,700 registered open-end management investment companies are subject to the requirements of Form N–1A and of these, approximately 620 (23%) are investment companies that would be small entities.

The Analysis explains that the proposed amendments would not impose any substantial additional compliance burdens for small entities because most of the changes do not require new information, although, initially, the changes would require small entities to revise their prospectuses to present the information in the amended format. The proposed amendments primarily would clarify and simplify the instructions for completing Form N–1A, shift information from the prospectus to the SAI, and require new formats for certain information. On balance, the Commission believes that preparing and updating the revised Form should take the same amount of time (or possibly less time) as preparing and updating the current Form.

As stated in the Analysis, the Commission considered several alternatives to the amendments proposed for Form N–1A, including, among others, establishing different compliance or reporting requirements for small entities or exempting them from all or part of the proposed rule. Because the amendments to Form N–1A are intended to improve prospectus disclosure for all investors, whether they invest in funds that are small entities or others, the Commission believes that separate treatment for small entities is inconsistent with the protection of investors.

The Commission encourages the submission of comments on the Analysis, including specific comment on (i) the number of small entities that would be affected by the proposed amendments and (ii) the discussion of the impact of the proposed amendments on small entities. Comments will be considered in the preparation of the Final Regulatory Flexibility Analysis if the proposed amendments are adopted. You may obtain a copy of the Analysis from John M. Ganley, Senior Counsel, Securities and Exchange Commission, 450 5th Street, NW., Mail Stop 10–2, Washington, DC 20549–6009.

VI. Statutory Authority

The amendments to the Commission's rules and forms are being proposed pursuant to sections 5, 7, 8, 10, and 19(a) of the Securities Act (15 U.S.C. 77e, 77g, 77h, 77j, and 77s(a)), and sections 8, 22, 24(g), 30 and 38 of the Investment Company Act (15 U.S.C. 80a–8, 80a–22, 80a–24(g), 80a–29, and 80a–37). The authority citations for the amendments to the rules precede the text of the amendments.

VII. Text of Proposed Amendments

List of Subjects in 17 CFR Parts 230, 239, 270, and 274

Advertising, Investment companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Commission proposes to amend Chapter II, Title 17 of the Code of Federal Regulations as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

The authority citation for Part 230 is revised to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78d, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 78t, 80a–8, 80a–24, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

Revise the note immediately preceding § 230.480 to read as follows:

Note: The rules in this section of Regulation C (§§ 230.480 to 230.488 and §§ 230.495 to 230.498) apply only to investment companies and business development companies. Section 230.489 applies to certain entities excepted from the definition of investment company by rules under the Investment Company Act of 1940. The rules in the rest of Regulation C (§§ 230.400 to 230.479 and §§ 230.490 to 230.494), unless the context specifically indicates otherwise, also apply to investment companies and business development companies. *See* § 230.400.

Amend § 230.481 to revise the section heading and paragraphs (a) and (b)(1) to read as follows:

§ 230.481 Information required in prospectuses.

* * * * *

(a) The facing page of every registration statement must indicate the approximate date of proposed sale to the public.

(b) * * *

(1) Disclosure in a legend that indicates that the Commission has not approved the securities or passed upon the adequacy of disclosure in the prospectus and that any representation to the contrary is a criminal offense. The legend may be in one of the following formats or other clear and concise language:

The Securities and Exchange Commission has not approved or disapproved these securities or passed upon the adequacy of this prospectus. Any representation to the contrary is a criminal offense.; or

The Securities and Exchange Commission has not approved or disapproved these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.; and

* * * * *

Amend § 230.485 to revise paragraph (b)(1)(iv) to read as follows:

§ 230.485 Effective date of post-effective amendments filed by certain registered investment companies.

* * * * *

(b) * * *

(1) * * *

(iv) Filing financial statements after the effective date of the registration statement under Item 22(a)(2) of Form N–1A (17 CFR 239.15A or 274.11A);

* * * * *

§ 230.495 [Amended]

5. Amend § 230.495 to remove the words "cross-reference sheet;" from paragraph (a).

§ 230.497 [Amended]

6. Amend § 230.497 to remove the words ", together with 5 copies of a cross reference sheet similar to that previously filed, if changed" from paragraph (d) and ", together with five copies of a cross-reference sheet similar to that previously filed, if changed" from paragraph (e).

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

The authority citation for part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a-1 *et seq.*, 80a-37, 80a-39 unless otherwise noted;

* * * * *

8. Amend § 270.8b-11 to remove the word "manually" from paragraph (c) and to revise paragraph (e) to read as follows:

§ 270.8b-11 Number of copies; signatures; binding.

* * * * *

(e) *Signatures.* Where the Act or the rules thereunder, including paragraph (c) of this section, require a document filed with or furnished to the Commission to be signed, the document should be manually signed, or signed using either typed signatures or duplicated or facsimile versions of manual signatures. When typed, duplicated or facsimile signatures are used, each signatory to the filing shall manually sign a signature page or other document authenticating, acknowledging, or otherwise adopting his or her signature that appears in the filing. Execute each such document before or at the time the filing is made and retain for a period of five years. Upon request, the registrant shall furnish to the Commission or its staff a copy of any or all documents retained pursuant to this section.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

9. The authority citation for part 239 is revised to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a-8, 80a-24, 80a-29, 80a-30 and 80a-37, unless otherwise noted.

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

10. The authority citation for part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a-8, 80a-24, and 80a-29, unless otherwise noted.

11. Revise Form N–1A (referenced in §§ 239.15A and 274.11A) (including the Guidelines to the Form) to read as follows:

Note: The text of Form N–1A does not and this amendment will not appear in the Code of Federal Regulations.

OMB Approval

OMB Number:
Expires:
Estimated average burden hours per response

Securities and Exchange Commission

Washington, D.C. 20549

FORM N–1A

REGISTRATION STATEMENT
UNDER THE SECURITIES ACT OF 1933 ..... [ ]
Pre-Effective Amendment No. ____ [ ]
Post-Effective Amendment No. ____ [ ]
and/or
REGISTRATION STATEMENT
UNDER THE INVESTMENT COMPANY ACT OF 1940 ..... [ ]
Amendment No. ____ ..... [ ]

(Check appropriate box or boxes.)

_____
(Exact Name of Registrant as Specified in Charter)

_____
(Address of Principal Executive Offices) (Zip Code)

Registrant's Telephone Number, including Area Code _____

(Name and Address of Agent for Service)

Approximate Date of Proposed Public Offering _____

It is proposed that this filing will become effective (check appropriate box)

[ ] immediately upon filing pursuant to paragraph (b)
[ ] on (date) pursuant to paragraph (b)
[ ] 60 days after filing pursuant to paragraph (a)(1)
[ ] on (date) pursuant to paragraph (a)(1)
[ ] 75 days after filing pursuant to paragraph (a)(2)
[ ] on (date) pursuant to paragraph (a)(2) of rule 485.

If appropriate, check the following box:

[ ] This post-effective amendment designates a new effective date for a previously filed post-effective amendment.

Calculation of Registration Fee Under the Securities Act of 1933

Title of Securities Being Registered	Amount Being Registered	Proposed Maximum Offering Price Per Unit	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee

Omit from the facing sheet reference to the other Act if the Registration Statement or amendment is filed under only one of the Acts. Include the "Approximate Date of Proposed Public Offering" and the table showing the calculation of the registration fee only where shares are being registered under the Securities Act of 1933. Registrants that are registering an indefinite number of shares under the Securities Act of 1933 in accordance with the provisions of rule 24f-2 under the Investment Company Act of 1940 (17 CFR 270.24f-2) should include the declaration required by rule 24f-2(a)(1) on the facing sheet, in lieu of the table showing the calculation of the registration fee under the Securities Act of 1933 or in combination with the calculation as appropriate.

No response to the collection of information contained in this form is required unless the form displays a currently valid OMB control number.

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General Instructions

A. Definitions

References to sections and rules in this Form N–1A are under the Investment Company Act of 1940 (15 U.S.C. 80a–1, *et seq.*) (the "Investment Company Act") unless otherwise indicated. Terms used in this Form N–1A have the same meaning as in the Investment Company Act or the related rules unless otherwise indicated. As used in this Form N–1A, the terms set forth below have the following meanings:

"Fund" means the Registrant, or if the Registrant offers more than one Series, a separate Series of the Registrant. When a form item specifically applies to a Registrant or a Series, those terms will be used.

"Master-Feeder Fund" means a two-tiered arrangement in which one or more Funds (each a "Feeder Fund") holds shares of a single Fund (the "Master Fund") as its only securities in accordance with section 12(d)(1)(E) (15 U.S.C. 80a–12(d)(1)(E)).

"Money Market Fund" means a Fund that holds itself out as money market fund and meets the maturity, quality, and diversification requirements of rule 2a–7 (17 CFR 270.2a–7).

"Multiple Class Fund" means a Fund that issues more than one class of shares, each of which represents interests in the same portfolio of securities under rule 18f–3 (17 CFR 270.18f–3) or an order exempting the Fund from sections 18(f), 18(g), and 18(i) (15 U.S.C. 80a–18(f), 18(g), and 18(i)).

"Registrant" means an open-end management investment company registered under the Investment Company Act.

"SAI" means the Statement of Additional Information required by Part B of this Form.

"Securities Act" means the Securities Act of 1933 (15 U.S.C. 77a *et seq.*).

"Securities Exchange Act" means the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

"Series" means a series of shares offered by a Registrant that represents undivided interests in a portfolio of investments and that is preferred over all other series of shares in respect of assets specifically allocated to that series in accordance with rule 18f–2(a) (17 CFR 270.18f–2(a)).

B. Filing and Use of Form N–1A

1. What is Form N–1A used for?

Form N–1A is used by Funds, except insurance company separate accounts and small business investment companies licensed under the United States Small Business Administration, to file:

(a) An initial registration statement under the Investment Company Act and amendments to the registration statement, including amendments required by rule 8b–16 under the Investment Company Act (17 CFR 270.8b–16);

(b) An initial registration statement under the Securities Act and amendments to the registration statement, including amendments required by section 10(a)(3) of the Securities Act (15 U.S.C. 77j(a)(3)); or

(c) Any combination of the filings in paragraph (a) or (b).

2. What does the registration statement consist of?

(a) For registration statements or amendments filed under both the Investment Company Act and the Securities Act or only under the Securities Act (except as set forth in (c) below), the registration statement consists of the facing sheet of the Form, Parts A, B, and C, and the required signatures.

(b) For registration statements or amendments filed only under the Investment Company Act, the registration statement consists of the facing sheet of the Form, responses to all Items of Parts A (except Items 1, 2, 3, 5, and 9), B, and C (except Items 23(e) and (i)–(k)), and the required signatures.

(c) For amendments to registration statements filed under the Securities Act solely for the purpose of registering additional securities, the registration statement consists of the facing sheet of the Form, the required signatures, and if the amendment is filed pursuant to section 24(e) (15 U.S.C. 80a–24(e)) of the Investment Company Act, a response to Item 23(i).

3. What are the filing fees for Form N–1A?

(a) A Fund must pay a registration fee, calculated in accordance with section 6(b) of the Securities Act (15 U.S.C. 77f(b)) and rule 24f–2 under the Investment Company Act, to register securities under that Act.

(b) No filing fees are required to register under the Investment Company Act.

4. What rules apply to the filing of a registration statement on Form N–1A?

(a) For registration statements and amendments filed under both the Investment Company Act and the Securities Act or only under the Securities Act, the general rules regarding the filing of registration statements in Regulation C under the Securities Act (17 CFR 230.400–230.497) apply to the filing of Form N–1A. Specific requirements concerning Funds are set forth in rules 480–485 and 495–497 of Regulation C.

(b) For registration statements and amendments filed only under the Investment Company Act, the general rules in rules 8b–1—8b–32 (17 CFR 270.8b–1—270.8b–32) apply to the filing of Form N–1A.

(c) Regulation S–T (17 CFR 232.10–232.903) applies to all filings on the Commission's Electronic Data Gathering, Analysis, and Retrieval system ("EDGAR").

C. Preparation of the Registration Statement

1. Form N–1A is divided into three parts:

(a) *Part A.* Part A sets forth the information that must be included in a Fund's prospectus under section 10(a) of the Securities Act. The purpose of the prospectus is to provide essential information about the Fund in a way that will assist investors in making informed decisions about whether to purchase the securities being offered. Because investors who rely on the prospectus may not be sophisticated in legal or financial matters, provide the information in the prospectus in a clear, concise, and understandable manner. For example, using excessive detail, technical or legal terminology, complex language, and lengthy sentences and paragraphs may make the prospectus difficult for many investors to understand and detract from its usefulness. In responding to the Items in Part A:

(i) Respond as simply and directly as reasonably possible and include only as much information as is necessary to an understanding of the fundamental and particular characteristics of the Fund. Brevity is especially important in describing practices or aspects of the Fund's operations that do not differ materially from those of other investment companies.

(ii) Avoid detailed descriptions of practices that are required or otherwise affected by legal requirements.

(iii) Avoid, except when specifically required, cross-references to the SAI or shareholder reports in connection with disclosure provided in the prospectus. The Fund may provide cross-references within the prospectus when the use of cross-references assists investors in understanding the information presented and does not add complexity to the prospectus.

(b) *Part B.* Part B sets forth the information that must be included in a Fund's SAI. The purpose of the SAI is to provide additional information about the Fund that the Commission has concluded is not necessary or appropriate in the public interest or for the protection of investors to be in the prospectus, but that some investors may find useful. Part B affords the Fund an opportunity to expand discussions of the matters described in the prospectus by including additional information that the Fund believes may be of interest to some investors. The Fund should not duplicate in the SAI information that is provided in the prospectus, unless necessary to make the SAI comprehensible as a document independent of the prospectus.

(c) *Part C.* Part C sets forth other information that must be included in a Fund's registration statement.

2. Additional Matters:

(a) *Organization of Information.* A Fund should organize the information in the prospectus and SAI to make it easy for investors to understand. Disclose the information required by Items 2 and 3 (the Risk/Return Summary) in numerical order at the front of the prospectus. Do not precede these Items by any other Item except the Cover Page (Item 1) and the table of contents required by rule 481(c) under the Securities Act (17 CFR 230.481(c)). Disclose the information required by Item 8 (Distribution Arrangements) in one place in the prospectus.

(b) *Other Information.* Except for the Risk/Return Summary, a Fund may include other information in the prospectus or the SAI, including, for example, charts, graphs or tables, so long as the information is not incomplete, inaccurate, or misleading and does not, because of its nature, quantity, or manner of presentation, obscure or impede understanding of the information that is required to be included. The Risk/Return Summary may not include disclosure other than that required or permitted by Items 2 and 3.

(c) *Use of Form N–1A by More Than One Registrant or Series or by a Multiple Class Fund.* Form N–1A may be used by one or more Registrants, Series, or classes of a Multiple Class Fund.

(i) When disclosure is provided for more than one Fund or class of shares, disclosure should be presented in a format designed to communicate the information effectively. To meet this requirement, Funds may order or group the response to any Item in any manner that organizes the information into readable and comprehensible segments and is consistent with the intent of the prospectus to provide clear and concise information about the Funds or classes. Funds are encouraged to use, as appropriate, tables, side-by-side comparisons, captions, bullet points, or other organizational techniques in presenting disclosure for multiple Funds or classes.

(ii) Paragraph (a) requires Funds to disclose the information required by Items 2 and 3 in numerical order at the front of the prospectus and not to precede the Items by other information. As a general matter, multiple Funds or Multiple Class Funds may depart from that requirement if necessary to present the required information clearly and effectively (although the order of information required by each Item must remain the same). For example, the prospectus may present all the Item 2 information for several Funds followed by all the Item 3 information for the Funds, or may present Items 2 and 3 for each of several Funds sequentially. Other presentations also would be acceptable if they are consistent with the Form's intent to disclose the information required by Items 2 and 3 in a standard order at the beginning of the prospectus.

(d) *Defined Contribution Plans.* Form N–1A may be used by a Fund that is offered as an investment alternative in a participant-directed defined contribution plan that meets the requirements for qualification under the Internal Revenue Code. A Fund may omit the information required by Items 7 and 8 of this Form from a Fund's prospectus that is used to offer Fund shares to plan participants.

(e) *Dates.* The requirements for dating the prospectus under rule 423 under the Securities Act (17 CFR 230.423) apply equally to dating the SAI. The SAI should be made available at the same time the prospectus becomes available for purposes of rules 430 and 460 under the Securities Act (17 CFR 230.430 and 230.460).

(f) *Sales Literature.* Sales literature may be included in the prospectus so long as the amount of this information does not add substantial length to the prospectus or its placement does not obscure essential disclosure.

D. Incorporation by Reference

1. Specific rules for incorporation by reference in Form N–1A:

(a) A Fund may not incorporate by reference into a prospectus information that Part A of this Form requires to be included in a prospectus, except as specifically permitted by Part A of the Form.

(b) A Fund may incorporate by reference any or all of the SAI into the prospectus (but not to provide any information required by Part A to be in the prospectus) without delivering the SAI with the prospectus.

(c) A Fund may incorporate by reference into the SAI or Other Information sections information that Parts B and C of this Form require to be included in the SAI or Other Information sections of a Fund's registration statement.

2. General Requirements:

All incorporation by reference must comply with the requirements of this Form and the Commission's rules on

incorporation by reference including: rule 10(d) of Regulation S-K under the Securities Act (17 CFR 229.10(d)) (general rules on incorporation by reference, which, among other things, prohibit, unless specifically required by this Form, incorporating by reference a document that includes incorporation by reference to another document, and limits incorporation to documents filed within the last 5 years, with certain exceptions); rule 411 under the Securities Act (17 CFR 230.411) (general rules on incorporation by reference in a prospectus); rule 303 of Regulation S–T (17 CFR 232.303) (specific requirements for electronically filed documents); and rules 0–4, 8b–23 and 8b–32 under the Investment Company Act (17 CFR 270.0–4, 270.8b–23 and 270.8b–32) (additional rules on incorporation by reference for Funds).

PART A INFORMATION REQUIRED IN A PROSPECTUS

Item 1. Front and Back Cover Pages

(a) *Front Cover Page.* Include the following information on the outside front cover page of the prospectus:

(1) The Fund's name.

(2) The date of the prospectus.

(3) The statement required by rule 481(b)(1) under the Securities Act.

(b) *Back Cover Page.* Include the following information on the outside back cover page of the prospectus:

(1) The Fund's name, the Registrant's Investment Company Act file number, and if the Fund is a Series, also provide the Registrant's name.

(2) The date of the SAI and a statement that the SAI includes additional information about the Fund that is available, without charge, upon request. Also explain how shareholder inquiries can be made. Provide a toll-free (or collect) telephone number to call to request the SAI, the Fund's annual report if required by Item 5, or other information required to be provided to investors, and to make shareholder inquiries.

Instructions.

1. If applicable, a Fund may indicate that this information is available on its Internet site and by E-mail request.

2. When a request for the SAI is received, the Fund should send the SAI, by first-class mail or other means designed to ensure equally prompt delivery, within 3 business days of receipt of the request.

(3) A statement whether and from where information is incorporated by reference into the prospectus as permitted by General Instruction D and, unless delivered with the prospectus, explain that the Fund will provide information incorporated by reference without charge, upon request (referencing the telephone number provided in response to paragraph (b)(2)).

Instruction. The information about incorporation by reference can be combined with the statement required under paragraph (b)(2).

(4) A statement that information about the Fund (including the SAI) can be reviewed and copied at the Commission's Public Reference Room in Washington, D.C. Also state that information on the operation of the public reference room may be obtained by calling the Commission at 1–800–SEC–0330. State that reports and other information about the Fund are available on the Commission's Internet site at http://www.sec.gov and that copies of this information may be obtained, upon payment of a duplicating fee by writing the Public Reference Section of the Commission, Washington, D.C. 20549–6009.

Item 2. Risk/Return Summary: Investments, Risks, and Performance

Include the following information in the same order and in the same or substantially similar question-and-answer format:

(a) *What are the Fund's goals?*

Disclose the Fund's investment objectives. A Fund also may identify its type or category (*e.g.*, that it is a Money Market Fund or balanced fund).

(b) *What are the Fund's main investment strategies?*

(1) Based on the information given in response to Item 4(a), summarize how the Fund intends to achieve its investment objectives by identifying the Fund's principal investment strategies (including the type or types of securities in which the Fund invests or will invest principally) and any policy to concentrate in securities of issuers in a particular industry or group of industries.

(2) Provide disclosure to the following effect: Additional information about the Fund's investments is available in the Fund's annual and semi-annual reports to shareholders. In particular, the Fund's annual report discusses the relevant market conditions and investment strategies used by the Fund's investment adviser that materially affected the Fund's performance during the last fiscal year. You may obtain these reports at no cost by calling (_____).

Instructions

1. Provide a toll-free (or collect) telephone number for investors to request the annual or semi-annual reports. If applicable, a Fund may indicate that its annual or semi-annual reports are available on its Internet site and by E-mail request.

2. For a Fund that provides the information required by Item 5 (Management's Discussion of Fund Performance) in its prospectus (and not the annual report) or for a Money Market Fund, do not provide the disclosure required by the second sentence of paragraph (b)(2).

3. When a request for an annual or semi-annual report is received, the Fund should send the applicable report, by first-class mail or other means designed to ensure equally prompt delivery, within 3 business days of the request.

(c) *What are the main risks of investing in the Fund?*

(1) *Narrative Risk Disclosure.*

(i) Based on the information given in response to Item 4(c), summarize the principal risks of investing in the Fund, including the risks to which the Fund's portfolio as a whole is subject and the circumstances reasonably likely to affect adversely the Fund's net asset value, yield, and total return. Unless the Fund is a Money Market Fund, disclose that loss of money is a risk of investing in the Fund. If the Fund is a Money Market Fund, see paragraph (c)(1)(iii) below.

Instruction. A Fund also may discuss the potential rewards of investing in the Fund so long as the discussion provides a balanced presentation of the Fund's risks and rewards.

(ii) Describe the characteristics of an investor for whom the Fund may be an appropriate or inappropriate investment (e.g., based on the investor's time horizon, willingness to tolerate fluctuations in principal, or on the tax consequences of investing in the Fund).

(iii) If the Fund is a Money Market Fund, state that: "An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. Although the Fund seeks to preserve the value of your investment at $1.00 per share, it is possible to lose money by investing in the Fund." If a Money Market Fund is a single state fund under rule 2a-7, disclose that investing in the Fund is riskier than investing in other types of Money Market Funds, because the Fund may invest a significant portion of its assets in a single issuer.

Instruction. A Fund may omit the disclosure required by the last sentence of paragraph (c)(1)(iii) if the Fund limits its investments in a single issuer to no more than 5% of the Fund's assets in a single issuer.

(iv) If the Fund is not a Money Market Fund but is advised by or sold through a bank, state that: "An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency."

(v) If applicable, state that the Fund is non-diversified, describe the effect of non-diversification (*e.g.*, disclose that, compared to other funds, the Fund may invest a greater percentage of its assets in a particular issuer), and summarize the risks of investing in a non-diversified fund.

(2) *Risk/Return Bar Chart and Table.*

(i) Include the bar chart and table required by paragraphs (c)(2)(ii) and (iii) of this section under a subheading that refers to both risk and performance. Explain how the information illustrates the Fund's risks and performance (*e.g.*, by stating that the information illustrates the Fund's risks and performance by showing changes in the Fund's performance from year to year and by showing how the Fund's average annual returns for 1, 5, and 10 years compare to those of a broad measure of market performance). Provide a statement to the effect that how the Fund has performed in the past is not necessarily an indication of how the Fund will perform in the future.

(ii) If the Fund has annual total returns for at least one calendar year, provide a bar chart showing the Fund's annual total returns for each of the last 10 calendar years (or for the life of the Fund if less than 10 years), but only for periods subsequent to the effective date of the Fund's registration statement. Present each return in numerical form next to each bar.

(iii) Accompany the bar chart with a table showing the Fund's average annual total returns for 1, 5, and 10 year periods ending on the date of the most recently completed fiscal year (or for the life of the Fund, if shorter) and the returns of an appropriate broad-based securities market index as defined in Instruction 5 to Item 5(b) for the same periods. For a Money Market Fund, provide the Fund's 7-day yield ending on the date of the most recently completed fiscal year and a toll-free (or collect) telephone number that investors can use to obtain the Fund's current 7-day yield.

Instructions.

1. Bar Chart.

(a) Provide annual returns beginning with the latest calendar year, but only for periods subsequent to the effective date of the Fund's registration statement. Calculate annual returns using the Instructions to Item 9(a), except base the calculations on calendar years. If the Fund charges sales loads or account fees, state that sales fees (loads) or account fees are not reflected in the bar chart and that, if these fees were included, returns would be less than those shown.

(b) For a Fund that provides annual total returns for only one calendar year or for a Fund that does not include the bar chart because it does not have annual total returns for a full calendar year, modify, as appropriate, the narrative explanation required by paragraph (c)(2)(i) (*e.g.*, by stating that the information shows the Fund's risks and performance by comparing the Fund's performance to a broad measure of market performance).

2. Table.

(a) Calculate the Fund's average annual total returns under Item 21(b)(1) and a Money Market Fund's 7-day yield under Item 21(a).

(b) In addition to the required broad-based securities market index, a Fund may include information for one or more additional indexes as permitted by Instruction 6 to Item 5(b). If an additional index is included, disclose information about the additional index in the narrative explanation accompanying the bar chart and table (e.g., by stating that the information shows how the Fund's performance compares to the returns of an index of funds with similar investment objectives).

(c) If the Fund selects a different index from an index used in a table for the immediately preceding period, explain the reason(s) for the change and provide information for both the newly selected and the former index.

(d) A Fund (other than a Money Market Fund) may include the Fund's yield calculated under Item 21(b)(2). Any Fund may include its tax-equivalent yield calculated under Item 21. If a Fund's yield is included, provide a toll-free (or collect) telephone number that investors can use to obtain current yield information.

3. Multiple Class Funds.

(a) When a Multiple Class Fund offers more than one class of shares in the prospectus, provide annual total returns in the bar chart for the class that has annual total return information for the longest period of time over the last 10 years. When the prospectus offers two or more classes that have annual total returns for at least 10 years or annual total returns for the same time period but less than 10 years, provide returns for the class with the greatest net assets as of the end of the Fund's most recent calendar year. Identify the class of shares for which returns are shown.

(b) Provide average annual total returns in the table for each class offered in the prospectus.

4. Change in Investment Adviser. If the Fund has not had the same adviser during the last 10 calendar years, the Fund may begin the bar chart and the performance information in the table on the date that the current adviser began to provide advisory services to the Fund subject to the conditions in Instruction 11 of Item 5(b).

Item 3. Risk/Return Summary: Fee Table

Include the following information in the same question-and-answer format required by Item 2 (unless the Fund offers its shares exclusively to one or more separate accounts):

What are the Fund's fees and expenses?

This table describes the fees and expenses you may pay in connection with an investment in the Fund.

Shareholder Fees (fees paid directly from your account)

Maximum Sales Fee (Load) Imposed on Purchases (as a percentage of offering price)	_____%
Maximum Deferred Sales Fee (Load) (as a percentage of ____)	_____%
Maximum Sales Fee (Load) Imposed on Reinvested Dividends (and other Distributions) (as a percentage of ____)	_____%
Redemption Fee (as a percentage of amount redeemed, if applicable)	_____%
Exchange Fee	_____%
Maximum Account Fee	_____%

Annual Fund Operating Expenses (expenses that are deducted from Fund assets)

Management Fees	_____%
Marketing (12b–1) Fees	_____%
Other Expenses	_____%
_____	_____%
_____	_____%
_____	_____%
Total Annual Fund Operating Expenses	_____%

Example

This Example is intended to help you compare the cost of investing in the Fund to the cost of investing in other mutual funds.

The Example assumes that you invest $10,000 in the Fund for the time periods indicated and then redeem all your shares at the end of those periods. The Example also assumes a 5% return on your investment each year and that the Fund's operating expenses remain the same. Although your actual costs may be higher or lower, based on these assumptions your costs would be:

1 year	3 years	5 years	10 years
$_____	$_____	$_____	$_____

You would pay the following expenses if you did not redeem your shares:

1 year	3 years	5 years	10 years
$_____	$_____	$_____	$_____

The Example does not reflect sales fees (loads) on reinvested dividends [and other distributions]. If these fees were included, your costs would be higher.

Instructions.

1. *General.*

(a) Round all dollar figures to the nearest dollar and all percentages to the nearest hundredth of one percent.

(b) Include the narrative explanations in the order indicated. A Fund may modify the narrative explanations if the explanation contains comparable information to that shown.

(c) Include the caption "Maximum Account Fees" only if the Fund charges these fees. A Fund may omit other captions if the Fund does not charge the fees or expenses covered by the captions.

(d)(i) If the Fund is a Feeder Fund, reflect the aggregate expenses of the Feeder Fund and the Master Fund in a single fee table using the captions provided. In a footnote to the fee table, state that the table and Example reflect the expenses of both the Feeder and Master Funds.

(ii) If the prospectus offers more than one class of a Multiple Class Fund or more than one Feeder Fund that invests in the same Master Fund, provide a separate response for each class or Feeder Fund.

2. *Shareholder Fees (Loads).*

(a)(i) "Maximum Deferred Sales Fee (Load)" includes the maximum total deferred sales load payable upon redemption, in installments, or both, expressed as a percentage of the amount or amounts stated in response to Item 8(a), except that, for a sales load based on net asset value at the time of purchase, show the sales load as a percentage of the *offering price* at the time of purchase. If applicable, a Fund may include in a footnote to the table a tabular presentation showing the amount of deferred sales loads over time or a narrative explanation of the loads (*e.g.*, ____% in the first year after purchase, declining to ____% in the ____ year and eliminated thereafter).

(ii) If more than one type of sales load is charged (*e.g.*, a deferred sales load and a front-end sales load), the first caption in the table should read "Maximum Sales Fee (Load)" and show the maximum cumulative percentage. Show the percentage amounts and the terms of each sales charge comprising that figure on separate lines below.

(iii) If a sales load is imposed on shares purchased with reinvested capital gains distributions or returns of capital, include the bracketed words in the third caption.

(b) "Redemption Fee" includes a fee charged for any redemption of the Fund's shares, but does not include a deferred sales load charged upon redemption.

(c) "Exchange Fee" includes the maximum fee charged for any exchange or transfer of interest from the Fund to another fund. If applicable, the Fund may include in a footnote to the table a tabular presentation of the range of exchange fees or a narrative explanation of the fees.

(d) "Maximum Account Fees." If all shareholders are charged an account fee, include a caption describing the maximum account fee (*e.g.*, "Maximum Account Maintenance Fee" or "Maximum Cash Management Fee"). State the maximum annual account fee as either a fixed dollar amount or a percentage of assets and include in a parenthetical to the caption the basis on which any percentage is calculated. If an account fee is charged only to accounts that do not meet a certain threshold (*e.g.*, accounts under $2,500), the Fund may include the threshold in a parenthetical to the caption or footnote to the table. The Fund may include an explanation of any non-recurring account fee in a parenthetical to the caption or in a footnote to the table. For purposes of this Instruction, all shareholders are deemed to pay an account fee:

(i) Despite waiver of the fee for certain shareholders, such as employees of the Fund's investment adviser and investors with large account balances; and

(ii) Unless any shareholder not wishing to use the services covered by the fee may avoid the fee and a significant number of shareholders do, in fact, avoid the fee.

3. *Annual Fund Operating Expenses.*

(a) "Management Fees" include investment advisory fees (including any fees based on the Fund's performance), any other management fees payable to the investment adviser or its affiliates, and administrative fees payable to the investment adviser or its affiliates not included as "Other Expenses."

(b) "Marketing (12b–1) Fees" include all distribution or other expenses incurred during the most recent fiscal year under a plan adopted pursuant to rule 12b–1 (17 CFR 270.12b–1). Disclose the amount of any distribution or similar expenses deducted from the Fund's assets other than pursuant to a rule 12b–1 plan under an appropriate caption or a subcaption of "Other Expenses."

(c)(i) "Other Expenses" include all expenses not otherwise disclosed in the table that are deducted from the Fund's assets or charged to all shareholder accounts. The amount of expenses deducted from the Fund's assets are the amounts shown as expenses in the Fund's statement of operations (including increases resulting from complying with paragraph 2(g) of rule 6–07 of Regulation S–X (17 CFR 210.6–07).

(ii) "Other Expenses" do not include extraordinary expenses as determined by using generally accepted accounting principles (*see* Accounting Principles Board Opinion No. 30). If extraordinary expenses were incurred that materially affected the Fund's "Other Expenses," disclose in a footnote to the table what "Other Expenses" would have been had the extraordinary expenses been included.

(iii) The Fund may subdivide this caption into no more than three subcaptions that identify the largest expense or expenses comprising "Other Expenses," but must include a total of all "Other Expenses." Alternatively, the Fund may include the components of "Other Expenses" in a parenthetical to the caption.

(d) (i) Base the percentages of "Annual Fund Operating Expenses" on amounts incurred during the most recent fiscal year. If the Fund has changed its fiscal year and as a result, the most recent fiscal year is less than three months, use the fiscal year prior to the most recent fiscal year as the basis for determining "Annual Fund Operating Expenses."

(ii) If there have been any changes in "Annual Fund Operating Expenses" that would materially affect the information disclosed in the table:

(A) Restate the expense information using the current fees as if they had been in effect during the previous fiscal year; and

(B) In a footnote to the table, disclose that the expense information in the table has been restated to reflect current fees.

(iii) A change in "Annual Fund Operating Expenses" means either an increase or a decrease in expenses that occurred during the most recent fiscal year or that is expected to occur during the current fiscal year. It includes the elimination of any expense reimbursement or fee waiver arrangement, in which case include in the table the expenses that would have been incurred had there been no reimbursement or waiver. A change in "Annual Fund Operating Expenses" does not include:

(A) Circumstances when expenses decrease in relation to the Fund's size so as to make any reimbursement or waiver arrangement inoperative; or

(B) A decrease in operating expenses as a percentage of assets due to economies of scale or breakpoints in a fee arrangement resulting from an increase in the Fund's assets.

(e) If there were expense reimbursement or fee waiver arrangements that reduced any Fund operating expenses and will continue to reduce them in the current fiscal year (regardless of whether the arrangement has been guaranteed):

(i) Revise the appropriate caption by adding "After Expense Reimbursements" or a similar phrase;

(ii) State the amount of actual expenses incurred (*i.e.*, net of the amount reimbursed or waived); and

(iii) Disclose in a footnote to the table the amount the expenses or fees would have been absent the reimbursement or waiver.

4. *Example.*

(a) Assume that the percentage amounts listed under "Annual Fund Operating Expenses" remain the same in each year of the 1, 3, 5, and 10 year periods, except that an adjustment may be made to reflect reduced annual expenses resulting from completion of the amortization of initial organization expenses.

(b) For any breakpoint in any fee, assume that the amount of the Fund's assets remains constant as of the level at the end of the most recently completed fiscal year.

(c) Assume reinvestment of all dividends and distributions.

(d) Reflect recurring and non-recurring fees charged to all investors other than any exchange fees or any sales loads on shares purchased with reinvested dividends or other distributions. If the Fund charges sales loads on reinvested dividends or other distributions, include the narrative explanation following the Example and include the bracketed words when sales loads are charged on reinvested capital gains distributions or returns of capital. Reflect any shareholder account fees collected by dividing the total amount of the fees collected during the most recent fiscal year by all Funds whose shareholders are subject to the fees by the total average net assets of the Funds. Add the resulting percentage to "Annual Fund Operating Expenses" and assume that it remains the same in each of the 1, 3, 5, and 10 year periods. A Fund that charges account fees based on a minimum account requirement exceeding $10,000 may adjust its account fees based on the amount of the fee in relation to the Fund's minimum account requirement.

(e) Reflect any deferred sales load by assuming redemption of the entire account at the end of the year in which the load is due. In the case of a deferred sales load that is based on the Fund's net asset value at the time of payment, assume that the net asset value at the end of each year includes the 5% annual return for that and each preceding year.

(f) Include the second 1, 3, 5, and 10 year periods and related narrative explanation only if a sales load or other fee is charged upon redemption.

5. *New Funds.* A new Fund is a Fund that does not include in Form N–1A financial statements reporting operating results or that includes financial statements for the Fund's initial fiscal year reporting operating results for a period of less than 10 months. The following Instructions apply to new Funds.

(a) Base the percentages expressed in "Annual Fund Operating Expenses" on payments that will be made, estimating amounts of "Other Expenses" (after any expense reimbursement or waiver). Disclose in a footnote to the table that "Other Expenses" are based on estimated amounts for the current fiscal year.

(b) If expense reimbursement or waiver arrangements are expected to reduce any Fund operating expense or the estimate of "Other Expenses" (regardless of whether the arrangement has been guaranteed):

(i) Revise the appropriate caption by adding "After Expense Reimbursements" or a similar phrase;

(ii) State the amount of actual expenses expected to be incurred or the actual estimate (*i.e.*, net of the amount expected to be reimbursed or waived); and

(iii) Disclose in a footnote to the table what the expenses (or estimates) would have been absent the reimbursement or waiver.

(c) Complete only the one and three year period portions of the Example and estimate any shareholder account fees collected.

Item 4. Investment Objectives, Principal Strategies, and Related Risks

(a) *Investment Objectives.* State the Fund's investment objectives and, if applicable, state that those objectives may be changed without shareholder approval.

(b) *Implementation of Investment Objectives.* Describe how the Fund intends to achieve its investment objectives. As part of the discussion:

(1) Describe the Fund's principal strategies, including the particular type or types of securities in which the Fund principally invests or will invest.

Instructions.

1. A strategy includes any policy, practice, or technique used by the Fund to achieve the Fund's investment objectives.

2. Whether a particular strategy, including a strategy to invest in a particular type of security, is a principal strategy depends on the strategy's anticipated importance in achieving the Fund's investment objectives, and how the strategy affects the Fund's potential risks and returns. In determining what is a principal strategy, consider, among other things, the amount of the Fund's assets expected to be committed to the practice, the amount of the Fund's assets expected to be placed at risk by the practice, and the likelihood of losing some or all of those assets.

3. A negative strategy (*e.g.*, a strategy not to invest in a particular type of security or not to borrow money) is not a principal strategy.

4. Disclose any policy specified in Item 12(c)(1) that is a principal strategy. A Fund, at its option, may disclose that

the policy may not be changed without shareholder approval.

(2) Explain in general terms how the Fund's adviser decides what securities to buy and sell (*e.g.*, for an equity fund, discuss the factors that the adviser considers in deciding to buy the stock of one company rather than another, and how the adviser decides when to sell that stock).

(3) Disclose any policy to concentrate (*i.e.*, invest 25% or more of the Fund's total assets) in securities of issuers in a particular industry or group of industries. For a Money Market Fund that is a single state fund as defined in rule 2a–7, discuss the Fund's concentration in securities issued by a particular state (or particular subdivision of the state) or by issuers located within the state (or subdivision).

(4) For a Fund (other than a Money Market Fund) that expects its portfolio turnover rate to equal or exceed 100% in the coming year:

(i) Disclose the anticipated rate of the Fund's portfolio turnover for the coming year and explain what that rate means (*e.g.*, that a turnover rate of 200% is equivalent to the Fund buying and selling all of the securities in its portfolio twice in the course of a year).

(ii) Explain the tax consequences to shareholders of the Fund's portfolio turnover, and how trading costs associated with the Fund's portfolio turnover may affect the Fund's performance.

(c) *Risks.* Disclose the principal risks of investing in the Fund, including the risks to which the Fund's particular portfolio as a whole is expected to be subject and the circumstances reasonably likely to affect adversely the Fund's net asset value, yield, or total return.

(d) *Non-Diversified Funds.* If applicable, state that the Fund is non-diversified, describe the effect of non-diversification (*e.g.*, disclose that, compared to other funds, the Fund may invest a greater percentage of its assets in a particular issuer) and disclose the risks of investing in a non-diversified fund.

(e) *Temporary Defensive Positions.* Disclose, if applicable, that the Fund, to avoid losses in response to adverse market, economic, political, or other conditions, may take temporary defensive positions that depart from the Fund's principal strategies. Indicate the percentage of the Fund's assets that may be committed to temporary defensive positions, the risks, if any, associated with these positions and the likely effect of these positions on the Fund's performance.

Item 5. Management's Discussion of Fund Performance

Disclose the following information unless the Fund is a Money Market Fund or the information is included in the Fund's latest annual report to shareholders under rule 30d–1 (17 CFR 270.30d–1) and the Fund provides a copy of the annual report, upon request and without charge, to each person to whom a prospectus is delivered.

(a) Discuss the factors that materially affected the Fund's performance during the most recently completed fiscal year, including the relevant market conditions and the investment strategies and techniques used by the Fund's investment adviser.

(b)(1) Provide a line graph comparing the initial and subsequent account values at the end of each of the most recently completed 10 fiscal years of the Fund (or for the life of the Fund, if shorter) but only for periods subsequent to the effective date of the Fund's registration statement. Assume a $10,000 initial investment at the beginning of the first fiscal year in an appropriate broad-based securities market index for the same period.

(2) In a table placed within or next to the graph, provide the Fund's average annual total returns for the 1, 5, and 10 year periods as of the end of the last day of the most recent fiscal year computed in accordance with Item 21(b)(1). Include a statement accompanying the graph that past performance does not predict future performance.

Instructions.

1. *Line Graph Computation.*

(a) Assume that the initial investment was made at the offering price last calculated on the business day before the first day of the first fiscal year.

(b) Base subsequent account values on the net asset value of the Fund last calculated on the last business day of the first and each subsequent fiscal year.

(c) Calculate the final account value by assuming the account was closed and redemption was at the price last calculated on the last business day of the most recent fiscal year.

(d) Base the line graph on the Fund's required minimum initial investment if that amount exceeds $10,000.

2. *Sales Load.* Reflect any sales load (or any other fees charged at the time of purchasing shares or opening an account) by beginning the line graph at the amount that actually would be invested (*i.e.*, assume that the maximum sales load (and other charges deducted from payments) is deducted from the initial $10,000 investment). For a Fund that charges a contingent deferred sales load, assume the deduction of the maximum deferred sales load (or other charges) that would be applicable for a complete redemption that received the price last calculated on the last business day of the most recent fiscal year. For any other deferred sales load, assume the deduction in the amount(s) and at the time(s) the load actually would have been deducted.

3. *Dividends and Distributions.* Assume all of the Fund's dividends and distributions are reinvested on the reinvestment dates during the period, and reflect any sales load charged upon reinvestment of dividends or distributions or both.

4. *Account Fees.* Reflect recurring fees that are charged to all accounts.

(a) For any account fees that vary with the size of the account, assume a $10,000 account size.

(b) Reflect, as appropriate, any recurring fees charged to shareholder accounts that are paid other than by redemption of the Fund's shares.

(c) Reflect an annual account fee that applies to more than one Fund by allocating the fee in the following manner: divide the total amount of account fees collected during the year by the Funds' total average net assets, multiply the resulting percentage by the average account value for each Fund and reduce the value of each hypothetical account at the end of each fiscal year during which the fee was charged.

5. *Appropriate Index.* For purposes of this Item, an "appropriate broad-based securities market index" is one that is administered by an organization that is not an affiliated person of the Fund, its investment adviser or principal underwriter, unless the index is widely recognized and used. Adjust the index to reflect the reinvestment of dividends on securities in the index, but do not reflect the expenses of the Fund.

6. *Additional Indexes.* In addition to the required broad-based index comparison, a Fund is encouraged to compare its performance to other more narrowly based indexes that reflect the market sectors in which the Fund invests. A Fund also may compare its performance to an additional broad-based index, or to a non-securities index (*e.g.*, the Consumer Price Index), so long as the comparison is not misleading.

7. *Change in Index.* If the Fund uses a different index from the one used for the immediately preceding fiscal year, explain the reason(s) for the change and compare the Fund's annual change in the value of an investment in the hypothetical account with the new and former indexes.

8. *Other Periods.* The line graph may cover earlier fiscal years and may compare the ending values of interim periods (*e.g.*, monthly or quarterly ending values), so long as those periods are after the effective date of the Fund's registration statement.

9. *Scale.* The axis of the graph measuring dollar amounts may use either a linear or a logarithmic scale.

10. *New Funds.* A Fund is not required to include the information specified by this Item in its prospectus (or annual report), unless Form N–1A (or the annual report) contains audited financial statements covering a period of at least 6 months.

11. *Change in Investment Adviser.* If the Fund has not had the same investment adviser for the previous 10 fiscal years, the Fund may begin the line graph on the date the current adviser began to provide advisory services to the Fund so long as:

(a) Neither the current adviser nor any affiliate is or has been in "control" of the previous adviser under section 2(a)(9) (15 U.S.C. 80a–2(a)(9));

(b) The current adviser employs no officer(s) of the previous adviser or employees of the previous adviser who were responsible for providing investment advisory or portfolio management services to the Fund; and

(c) The graph is accompanied by a statement explaining that previous periods during which the Fund was advised by another investment adviser are not shown.

(c) Discuss the effect of any policy or practice of maintaining a specified level of distributions to shareholders on the Fund's investment strategies and per share net asset value during the last fiscal year and the extent to which the Fund's distribution policy resulted in distributions of capital.

Item 6. Management, Organization, and Capital Structure

(a) *Management.*

(1) *Investment Adviser.*

(i) Provide the name and address of each investment adviser. Describe the investment adviser's experience as an investment adviser and the advisory services it provides to the Fund.

(ii) Describe each investment adviser's compensation as follows:

(A) If the Fund has operated for a full fiscal year, state the fee paid to the adviser for the most recent fiscal year as a percentage of average net assets. If the Fund has not operated for a full fiscal year, state what the adviser's fee will be as a percentage of average net assets, including any breakpoints.

(B) If the adviser's fee is not based on a percentage of average net assets (*e.g.*, the adviser receives a performance-based fee), describe the basis of the adviser's compensation.

Instructions.

1. If the Fund changed advisers during the fiscal year, describe the compensation and the dates of service for each adviser.

2. Explain any changes in the basis of computing the adviser's compensation during the fiscal year.

(2) *Portfolio Manager.* State the name, title, and length of service of the person or persons employed by or associated with the Fund's investment adviser (or the Fund) who are primarily responsible for the day-to-day management of the Fund's portfolio and each person's business experience during the past 5 years.

Instructions.

1. This requirement does not apply to a Money Market Fund or to a Fund that has an investment objective to replicate the performance of an index.

2. Information is required only about the person(s) who serves as the Fund's portfolio manager even though the manager may be subject to the oversight, approval, or ratification of a committee.

3. Indicate that a committee makes investment decisions for the Fund if the organizational arrangements of the adviser (or the Fund, if internally managed) require all investment decisions to be made by a committee and no person(s) is primarily responsible for making recommendations to that committee.

(3) *Legal Proceedings.* Describe any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the Fund or the Fund's investment adviser or principal underwriter is a party. Include the name of the court in which the proceedings are pending, the date instituted, the principal parties involved, a description of the factual basis alleged to underlie the proceeding, and the relief sought. Include similar information as to any proceedings instituted, or known to be contemplated, by a governmental authority.

Instruction. For purposes of this requirement, legal proceedings are material only to the extent that they are likely to have a material adverse effect on the Fund or the ability of the investment adviser or principal underwriter to perform its contract with the Fund.

(b) *Fund Organization.* If the Fund is organized outside the United States, disclose the country where the Fund is organized.

(c) *Capital Stock.* Disclose any:

(1) Restrictions on the right freely to retain or dispose of the Fund's shares; and

(2) Material obligations or potential liabilities associated with owning the Fund's shares (not including investment risks).

Item 7. Shareholder Information

(a) *Purchase of Fund Shares.* Describe the procedures for purchasing the Fund's shares, including:

(1) A statement as to when calculations of net asset value are made and that the price at which a purchase is effected is based on the next calculation of net asset value after the order is placed.

(2) A statement identifying in a general manner any national holidays when shares will not be priced and specifying any additional local or regional holidays when the Fund will be closed.

Instruction. If the Fund has portfolio securities primarily listed on foreign exchanges that trade on weekends or other days when the Fund does not price its shares, disclose that the net asset value of the Fund's shares may change on days when shareholders will not be able to purchase or redeem the Fund's shares.

(3) Any minimum initial or subsequent investment.

(b) *Redemption of Fund Shares.* Describe the procedures for redeeming the Fund's shares, including:

(1) Any restrictions on redemptions.

(2) Any redemption charges, including how these charges will be collected and under what circumstances the charges will be waived.

(3) An explanation if the Fund, under normal circumstances, intends to redeem in kind.

Instruction. If applicable, a Fund may describe redemption procedures under rule 18f–1.

(4) Any procedure that a shareholder can use to sell shares to the Fund or its underwriter through a broker-dealer noting any charges that may be imposed for such service.

Instruction. The specific fees for such service need not be disclosed.

(5) The circumstances, if any, under which the Fund may redeem shares involuntarily in accounts below a certain number or value of shares.

(6) The circumstances, if any, under which the Fund may delay honoring a request for redemption for a certain time after a shareholder's investment.

(7) Any restrictions on, or costs associated with, transferring shares held in street name accounts.

(c) *Dividends and Distributions.* Describe the Fund's policy with respect

to dividends and distributions, including any options shareholders may have as to the receipt of dividends and distributions.

(d) *Tax Consequences.*

(1) Describe the tax consequences to shareholders of buying, holding, exchanging and selling the Fund's shares, including, as applicable, that:

(i) The Fund intends to make distributions that may be taxed as ordinary income and capital gains. If the Fund, as a result of its investment objectives or strategies, expects its distributions to consist primarily of ordinary income (or short-term gains that are taxed as ordinary income) or capital gains, provide disclosure to that effect.

(ii) The Fund will provide each shareholder by [specify a date] with specific information about the amount of ordinary income and capital gains distributed to the shareholder during the prior calendar year.

(iii) The Fund's distributions, whether received in cash or reinvested in additional shares of the Fund, may be subject to federal income tax.

(iv) An exchange of the Fund's shares for shares of another fund will be treated as a sale of the Fund's shares and any gain on the transaction may be subject to federal income tax.

(2) For a Fund that holds itself out as investing in securities generating tax-exempt income:

(i) Modify the disclosure required by paragraph (d)(1) to reflect that the Fund intends to distribute tax-exempt income.

(ii) Also disclose, as applicable, that:

(A) The Fund may invest a portion of its assets in securities that generate income that is not exempt from federal or state income tax;

(B) Income exempt from federal tax may be subject to state and local income tax;

(C) Any capital gains distributed by the Fund may be taxable; and

(D) A portion of the tax-exempt income received from the Fund may be treated as a tax preference item for purposes of determining whether a shareholder is subject to the federal alternative minimum tax.

(3) If the Fund does not expect to qualify as a regulated investment company under Subchapter M of the Internal Revenue Code (I.R.C. 851 *et seq.*), explain the tax consequences of not qualifying. If the Fund expects to pay an excise tax under the Internal Revenue Code (I.R.C. 4982) with respect to its distributions, explain the consequences of paying the excise tax.

Item 8. Distribution Arrangements

(a) *Sales Loads.*

(1) Describe any sales loads, including deferred sales loads, charged to purchasers of the Fund's shares. Include in a table any front-end sales load (and each breakpoint in the load, if any) as a percentage of both the offering price and the net amount invested.

Instructions.

1. In providing the information required by this paragraph, refer to sales loads as "sales fees (loads)."

2. If the Fund charges a front-end load, explain that the term "offering price" includes the front-end load.

3. Disclose, if applicable, that sales loads are imposed on shares, or amounts representing shares, that are purchased with reinvested dividends or other distributions.

4. Discuss, if applicable, how deferred sales loads are charged and calculated, including:

(a) Whether the specified percentage of the load is based on the offering price, or the lesser of the offering price or net asset value at the time the load is paid.

(b) The amount of the load as a percentage of both the offering price and the net amount invested.

(c) A description of how the load is calculated (*e.g.*, in the case of a partial redemption, whether or not the load is calculated as if shares or amounts representing shares not subject to a load are redeemed first, and other shares or amounts representing shares are then redeemed in the order purchased).

(d) If applicable, the method of paying an installment load (*e.g.*, by withholding of dividend payments, involuntary redemptions, or separate billing of a shareholder's account).

(2) Unless disclosed in response to paragraph (a)(1) or in the SAI, describe any other arrangements that result in breakpoints in, or elimination of, sales loads (*e.g.*, letters of intent, accumulation plans, dividend reinvestment plans, withdrawal plans, exchange privileges, employee benefit plans, and redemption reinvestment plans). Identify each class of individuals or transactions to which the arrangements apply and state each different breakpoint as a percentage of both the offering price and the amount invested.

(b) *Rule 12b–1 Fees and Service Fees.*

(1) If the Fund has adopted a plan under rule 12b–1, state the amount of the fee payable under the plan and provide disclosure to the following effect:

(i) The Fund has adopted a plan under rule 12b–1 that allows the Fund to pay marketing fees for the sale and distribution of its shares; and

(ii) Because these fees are paid out of the Fund's assets on an on-going basis, over time these fees will increase the cost of your investment and may cost you more than paying other types of sales loads.

Instructions.

1. If the Fund pays service fees under its rule 12b–1 plan, modify this disclosure to reflect the payment of these fees (*e.g.*, by indicating that the Fund pays marketing and other fees for the sale of its shares and for services provided to shareholders). For purposes of this paragraph, service fees have the same meaning given that term under rule 2830(b)(9) of the NASD Conduct Rules (NASD Manual (CCH) 4622).

2. In providing the information required by this paragraph, refer to rule 12b–1 fees as "marketing fees."

(2) If the Fund pays service fees other than pursuant to a plan under rule 12b–1, disclose the amount of the fee and indicate that the fees are used to provide services to shareholders.

(c) *Multiple Class and Master-Feeder Funds.*

(1) Describe the main features of the structure of the Multiple Class Fund or Master-Feeder Fund.

(2) If more than one class of a Multiple Class Fund is offered in the prospectus, provide the information required by paragraphs (a) and (b) for each of those classes.

(3) If a Multiple Class Fund offers in the prospectus shares that provide for conversions or exchanges from one class to another class, provide the information required by paragraphs (a) and (b) for both the shares offered and the class into which the shares may be converted or exchanged.

(4) If a Multiple Class Fund publicly offers any other classes of its shares in another prospectus, or if any publicly offered feeder fund that invests in the same Master Fund as the Fund is offered in another prospectus, include the following disclosure:

(i) That the Fund has other classes or that other funds invest in the same Master Fund (using the same names for classes and feeder funds as elsewhere in the prospectus);

(ii) That those classes or feeder funds may have different sales fees (loads) and other expenses, which may affect performance;

(iii) A telephone number investors may call to obtain more information concerning the other classes or feeder funds available to them through their sales representative; and

(iv) That investors may obtain information concerning those classes or feeder funds from (as applicable) their sales representative or any other person, such as the principal underwriter, a broker-dealer or bank, which is offering or making available to them the shares offered in the prospectus.

Item 9. Financial Highlights Information

(a) Provide the following information for the Fund, or for the Fund and its subsidiaries, audited for at least the latest 5 years and consolidated as required in Regulation S–X (17 CFR 210).

Financial Highlights

The financial highlights table is intended to help you understand the Fund's financial performance for the past 10 years [or, if shorter, the period of the Fund's operations]. Certain information reflects financial results for a single Fund share. The total returns in the table represent the rate an investor would have earned [or lost] on an investment in the Fund (assuming reinvestment of all dividends and distributions). This information has been audited by _____, whose report, along with the Fund's financial statements, are included in [the SAI or annual report], which is available upon request.

Net Asset Value, Beginning of Period

Income From Investment Operations

Net Investment Income
Net Gains or Losses on Securities (both realized and unrealized)
Total From Investment Operations

Less Distributions

Dividends (from net investment income)
Distributions (from capital gains)
Returns of Capital
Total Distributions
Net Asset Value, End of Period

Total Return

Ratios/Supplemental Data

Net Assets, End of Period
Ratio of Expenses to Average Net Assets
Ratio of Net Income to Average Net Assets
Portfolio Turnover Rate
Average Commission Rate Paid

Instructions.

1. *General.*

(a) Present the information in comparative columnar form for each of the last 10 fiscal years of the Fund (or for such shorter period as the Fund has been in operation), but only for periods subsequent to the effective date of the Fund's registration statement. Also present the information for the period between the end of the latest fiscal year and the date of the latest balance sheet or statement of assets and liabilities. When the period for which the Fund provides financial highlights is less than a full fiscal year, the ratios in the table may be annualized. If applicable, disclose that the ratios are annualized in a note to the table.

(b) List per share amounts at least to the nearest cent. If the offering price is expressed in tenths of a cent or more, then state the amounts in the table in tenths of a cent. Present the information using a consistent number of decimal places.

(c) Include the narrative explanation before the financial information. A Fund may modify the explanation if the explanation contains comparable information to that shown.

2. *Per Share Operating Performance.*

(a) Derive net investment income data by adding (deducting) the increase (decrease) per share in undistributed net investment income for the period to (from) dividends from net investment income per share for the period. The increase (decrease) per share may be derived by comparing the per share figures obtained by dividing undistributed net investment income at the beginning and end of the period by the number of shares outstanding on those dates. Other methods of computing net investment income may be acceptable. Provide an explanation in a note to the table of any other method used to compute net investment income.

(b) The amount shown at the Net Gains or Losses on Securities caption is the balancing figure derived from the other amounts in the statement. The amount shown at this caption for a share outstanding throughout the year may not agree with the change in the aggregate gains and losses in the portfolio securities for the year because of the timing of sales and repurchases of Fund's shares in relation to fluctuating market values for the portfolio.

(c) For any distributions made from sources other than net investment income and capital gains, state the per share amounts separately at the Returns of Capital caption and note the nature of the distributions.

3. *Total Return.*

(a) Assume an initial investment made at the net asset value calculated on the last business day before the first day of each period shown.

(b) Do not reflect sales loads or account fees in the initial investment, but, if the Fund charges sales load or account fees, note that they are not reflected in total return.

(c) Reflect any sales load charged upon reinvestment of dividends or distributions.

(d) Assume a redemption at the price calculated on the last business day of each period shown.

(e) For a period less than a full fiscal year, state the total return for the period and disclose that total return is not annualized in a note to the table.

4. *Ratios/Supplemental Data.*

(a) Calculate "average net assets" based on the value of the net assets determined no less frequently than the end of each month.

(b) Calculate the Ratio of Expenses to Average Net Assets using the amount of expenses shown in the Fund's statement of operations for the relevant fiscal period, including increases resulting from complying with paragraph 2(g) of rule 6–07 of Regulation S–X and reductions resulting from complying with paragraphs 2(a) and (f) of rule 6–07 regarding fee waivers and reimbursements. If a change in the methodology for determining the ratio of expenses to average net assets results from applying paragraph 2(g) of rule 6–07, explain in a note that the ratio reflects fees paid with brokerage commissions and fees reduced in connection with specific agreements only for periods ending after September 1, 1995.

(c) A Fund that is a Money Market Fund may omit the Portfolio Turnover Rate.

(d) Calculate the Portfolio Turnover Rate as follows:

(i) Divide the lesser of amounts of purchases or sales of portfolio securities for the fiscal year by the monthly average of the value of the portfolio securities owned by the Fund during the fiscal year. Calculate the monthly average by totaling the values of portfolio securities as of the beginning and end of the first month of the fiscal year and as of the end of each of the succeeding 11 months and dividing the sum by 13.

(ii) Exclude from both the numerator and the denominator amounts relating to all securities, including options, whose maturities or expiration dates at the time of acquisition were one year or less. Include all long-term securities, including long-term U.S. Government securities. Purchases include any cash paid upon the conversion of one portfolio security into another and the cost of rights or warrants. Sales include net proceeds of the sale of rights and warrants and net proceeds of portfolio securities that have been called or for which payment has been made through redemption or maturity.

(iii) If the Fund acquired the assets of another investment company or of a personal holding company in exchange for its own shares during the fiscal year

in a purchase-of-assets transaction, exclude the value of securities acquired from purchases and securities sold from sales to realign the Fund's portfolio. Adjust the denominator of the portfolio turnover computation to reflect these excluded purchases and sales and disclose them in a footnote.

(iv) Include in purchases and sales any short sales that the Fund intends to maintain for more than one year and put and call options with expiration dates more than one year from the date of acquisition. Include proceeds from a short sale in the value of the portfolio securities sold during the period; include the cost of covering a short sale in the value of portfolio securities purchased during the period. Include premiums paid to purchase options in the value of portfolio securities purchased during the reporting period; include premiums received from the sale of options in the value of the portfolio securities sold during the period.

5. *Average Commission Rate Paid.*

(a) A Fund that invests not more than 10% of the value of its average net assets in equity securities on which commissions are charged on trades may omit Average Commission Rate Paid. Calculate average net assets by totaling the amounts invested at the beginning and end of the first quarter of the fiscal year and at the end of each succeeding quarter and dividing the sum by 5.

(b) Calculate the average commission rate paid by dividing the total dollar amount of commissions paid during the fiscal year by the total number of shares purchased and sold during the fiscal year for which commissions were charged. Carry the amount of the average commission rate paid to no fewer than four decimal places. Convert commissions paid in foreign currency into U.S. dollars using consistently either the prevailing exchange rate on the date of the transaction or average exchange rate over the period the transactions took place. Do not include markups, mark-downs, or spreads paid on shares traded on a principal basis unless they are disclosed on confirmations prepared in accordance with rule 10b–10 under the Securities Exchange Act (17 CFR 240.10b–10).

(b) A Fund may incorporate by reference the Financial Highlights Information from a report to shareholders under rule 30d–1 into the prospectus in response to this Item if the Fund delivers the shareholder report with the prospectus, or if the report has been previously delivered (*e.g.*, to a current shareholder), the Fund includes the statement required by Item 1(b)(3).

PART B INFORMATION REQUIRED IN A STATEMENT OF ADDITIONAL INFORMATION

Item 10. Cover Page and Table of Contents

(a) *Front Cover Page.* Include the following information on the outside front cover page of the SAI:

(1) The Fund's name and, if the Fund is a Series, also provide the Registrant's name.

(2) A statement or statements:

(i) That the SAI is not a prospectus;

(ii) That the SAI should be read in conjunction with the prospectus;

(iii) How the prospectus may be obtained; and

(iv) Whether and from where information is incorporated by reference into the SAI, as permitted by General Instruction D.

Instruction. Any information incorporated by reference into the SAI must be delivered with the SAI unless the information has been previously delivered in a shareholder report (*e.g.*, to a current shareholder), and the Fund states that the shareholder report is available, without charge, upon request. Provide a toll-free (or collect) telephone number to call to request the report.

(3) The date of the SAI and of the prospectus to which the SAI relates.

(b) *Table of Contents.* Include under appropriate captions (and subcaptions) a list of the contents of the SAI and, when useful, provide cross-references to related disclosure in the prospectus.

Item 11. Fund History

(a) Provide the date and form of organization of the Fund and the name of the state or other jurisdiction where the Fund is organized.

(b) If the Fund has engaged in a business other than that of an investment company during the past 5 years, state the nature of the other business and give the approximate date on which the Fund commenced business as an investment company. If the Fund's name was changed during that period, state its former name and the approximate date on which it was changed. Briefly describe the nature and results of any change in the Fund's business or name that occurred in connection with any bankruptcy, receivership, or similar proceeding, or any other material reorganization, readjustment or succession.

Item 12. Description of the Fund and Its Investments and Risks

(a) *Classification.* State that the Fund is an open-end, management investment company and indicate, if applicable, that the Fund is diversified.

(b) *Investment Strategies and Risks.* Describe any strategies, including a strategy to invest in a particular type of security, used by the Fund's investment adviser that are not principal strategies and the risks of those strategies.

(c) *Fund Policies.*

(1) Describe the Fund's policy with respect to each of the following:

(i) Issuing senior securities;

(ii) Borrowing money, including the purpose for which the proceeds will be used;

(iii) Underwriting securities of other issuers;

(iv) Concentrating investments in a particular industry or group of industries;

(v) Purchasing or selling real estate or commodities;

(vi) Making loans; and

(vii) Any other policy that the Fund deems fundamental or that may not be changed without shareholder approval, including, if applicable, the Fund's investment objective.

Instruction. If the Fund reserves freedom of action with respect to any practice specified in paragraph (c)(1), state the maximum percentage of assets to be devoted to the practice and disclose the risks of the practice.

(2) State whether shareholder approval is necessary to change any policy specified in paragraph (c)(1). If so, describe the vote required to obtain this approval.

(d) *Temporary Defensive Position.* Disclose, if applicable, the types of investments a Fund may make while assuming a temporary defensive position.

(e) *Portfolio Turnover.*

(1) If a Fund expects its portfolio turnover rate to be less than 100% for the coming year, disclose the anticipated rate of portfolio turnover for the coming year.

(2) Explain any significant variation in the Fund's portfolio turnover rates over the most recent two fiscal years or any anticipated variation in the portfolio turnover rate from that reported for the last fiscal year in response to Item 9.

Instruction. This paragraph does not apply to a Money Market Fund.

Item 13. Management of the Fund

(a) *Board of Directors.* Briefly describe the responsibilities of the board of directors with respect to the Fund's management.

Instruction. A Fund may respond to this paragraph by providing a general statement as to the responsibilities of the board of directors with respect to the Fund's management under the applicable laws where the Fund is organized.

(b) *Management Information.* Provide the information required by the following table for each director and officer of the Fund, and, if the Fund has an advisory board, for each member of the board. Explain in a footnote to the table any family relationship between persons listed.

(1) Name, Address, and Age	(2) Position(s) Held with Fund	(3) Principal Occupation(s) During Past 5 Years

Instructions.

1. For purposes of this paragraph, the term "officer" means the president, vice-president, secretary, treasurer, controller, and any other officers who perform policy-making functions for the Fund. The term "family relationship" means any relationship by blood, marriage, or adoption, not more remote than first cousin.

2. State the principal business of any corporation or other organization listed under column (3) unless the principal business is implicit in its name.

3. Identify members of any executive or investment committee, and provide a concise statement of the duties and functions of each committee.

4. Indicate with an asterisk the directors who are interested persons.

(c) For each individual listed in column (1) of the table required by paragraph (b), describe any positions held with affiliated persons or principal underwriters of the Fund.

Instruction. When an individual holds the same position(s) with two or more registered investment companies that are part of a "Fund Complex" as that term is defined in Item 22(a) of Schedule 14A under the Securities Exchange Act (17 CFR 240.14a-101), the Fund may, rather than listing each investment company, identify the Fund Complex and provide the number of positions held.

(d) *Compensation.* For all directors of the Fund and for all members of any advisory board who receive compensation from the Fund, and for each of the three highest paid executive officers or any affiliated person of the Fund who received aggregate compensation from the Fund for the most recently completed fiscal year exceeding $60,000 ("Compensated Persons"):

(1) Provide the information required by the following table:

COMPENSATION TABLE

(1) Name of Person, Position	(2) Aggregate Compensation From Fund	(3) Pension or Retirement Benefits Accrued As Part of Fund Expenses	(4) Estimated Annual Benefits Upon Retirement	(5) Total Compensation From Fund and Fund Complex Paid to Directors

Instructions.

1. For column (1), indicate, as necessary, the capacity in which the remuneration is received. For Compensated Persons that are directors of the Fund, compensation is amounts received for service as a director.

2. If the Fund has not completed its first full year since its organization, provide the information for the current fiscal year, estimating future payments that would be made under an existing agreement or understanding. Disclose in a footnote to the Compensation Table the period for which the information is given.

3. Include in column (2) amounts deferred at the election of the Compensated Person, whether under a plan established under section 401(k) of the Internal Revenue Code (I.R.C. 401(k)) or otherwise, for the fiscal year in which earned. Disclose in a footnote to the Compensation Table the total amount of deferred compensation (including interest) payable to or accrued for any Compensated Person.

4. Include in columns (3) and (4) all pension or retirement benefits proposed to be paid under any existing plan in the event of retirement at normal retirement date, directly or indirectly, by the Fund, any of its subsidiaries, or other investment companies in the Fund Complex. Omit column (4) when retirement benefits are not determinable.

5. For any defined benefit or actuarial plan under which benefits are determined primarily by final compensation (or average final compensation) and years of service, provide the information required in column (4) in a separate table showing estimated annual benefits payable upon retirement (including amounts attributable to any defined benefit supplementary or excess pension award plans) in specified compensation and years of service classifications. Also provide the estimated credited years of service for each Compensated Person.

6. Include in column (5) only aggregate compensation paid to a director for service on the board and all other boards of investment companies in a Fund Complex specifying the number of any other investment companies.

(2) Describe briefly the material provisions of any pension, retirement, or other plan or any arrangement, other than fee arrangements disclosed in paragraph (d)(1), under which the Compensated Persons are or may be compensated for services provided, including amounts paid, if any, to the Compensated Person under these arrangements during the most recently completed fiscal year. Specifically include the criteria used to determine amounts payable under the plan, the length of service or vesting period required by the plan, the retirement age or other event that gives rise to payment under the plan, and whether the payment of benefits is secured or funded by the Fund.

(e) *Sales Loads.* Disclose any arrangements that result in breakpoints in, or elimination of, sales loads for directors and other affiliated persons of the Fund. Identify each class of individuals and transactions to which the arrangements apply and state each different breakpoint as a percentage of both the offering price and the net amount invested of the Fund's shares. Explain, as applicable, the reasons for the difference in the price at which securities are offered generally to the public, and the prices at which securities are offered to directors and other affiliated persons of the Fund.

Item 14. Control Persons and Principal Holders of Securities

Provide the following information as of a specified date no more than 30 days prior to the date of filing the registration statement or an amendment.

(a) *Control Persons.* State the name and address of each person who controls the Fund and explain the effect of that control on the voting rights of other security holders. For each control person, state the percentage of the Fund's voting securities owned or any other basis of control. If the control person is a company, give the jurisdiction under the laws of which it

is organized. List all parents of the control person.

Instruction. For the purposes of this paragraph, "control" means (i) the beneficial ownership, either directly or through one or more controlled companies, of more than 25% of the voting securities of a company; (ii) the acknowledgement or assertion by either the controlled or controlling party of the existence of control; or (iii) an adjudication under section 2(a)(9), which has become final, that control exists.

(b) *Principal Holders.* State the name, address, and percentage of ownership of each person who owns of record or is known by the Fund to own of record or beneficially 5% or more of any class of the Fund's outstanding equity securities.

Instructions.

1. Calculate the percentages based on the amount of securities outstanding.

2. If securities are being registered under or in connection with a plan of acquisition, reorganization, readjustment or succession, indicate, as far as practicable, the ownership that would result from consummation of the plan based on present holdings and commitments.

3. Indicate whether the securities are owned of record, beneficially, or both. Show the respective percentage owned in each manner.

(c) *Management Ownership.* State the percentage of the Fund's equity securities owned by all officers, directors, and members of any advisory board of the Fund as a group. If the amount owned by directors and officers as a group is less than 1% of the class, provide a statement to that effect.

Item 15. Investment Advisory and Other Services

(a) *Investment Advisers.* Disclose the following information with respect to each investment adviser:

(1) The name of any person who controls the adviser, the basis of the person's control, and the general nature of the person's business. Also disclose, if material, the business history of any organization that controls the adviser.

(2) The name of any affiliated person of the Fund, who also is an affiliated person of the adviser and a list of all capacities in which the person is affiliated with the Fund and with the adviser.

Instruction. If an affiliated person of the Fund alone or together with others controls the adviser, state that fact. It is not necessary to provide the amount or percentage of the outstanding voting securities owned by the controlling person.

(3) The method of calculating the advisory fee payable by the Fund including:

(i) The total dollar amounts the Fund paid to the adviser under the investment advisory contract for the last three fiscal years;

(ii) If applicable, any credits that reduced the advisory fee for any of the last three fiscal years; and

(iii) Any expense limitation provision.

Instructions.

1. If the advisory fee payable by the Fund varies depending on the Fund's investment performance in relation to a standard, set forth the standard along with a fee schedule in tabular form. The Fund may include examples showing the fees the adviser would earn at various levels of performance as long as the examples include calculations showing the maximum and minimum fee percentages that could be earned under the contract.

2. State separately each type of credit or offset.

3. When a Fund is subject to more than one expense limitation provision, describe only the most restrictive provision.

4. For a Series or Multiple Class Fund, describe the methods of allocation and payment of advisory fees for each Series or class.

(b) *Principal Underwriter.* State the name and principal business address of any principal underwriter for the Fund. Disclose, if applicable, that an affiliated person of the Fund is an affiliated person of the principal underwriter and identify the affiliated person.

(c) *Services Provided by the Investment Adviser and Fund Expenses Paid by Third Parties.*

(1) Describe all services performed for or on behalf of the Fund supplied or paid for wholly or in substantial part by the investment adviser.

(2) Describe all fees, expenses, and costs of the Fund that are to be paid by persons other than the investment adviser or the Fund, and identify those persons.

(d) *Service Agreements.* Summarize the substantive provisions of any other management-related service contract that may be of interest to a purchaser of the Fund's securities, under which services are provided to the Fund, indicating the parties to the contract, and the total dollars paid and by whom for the past three years.

Instructions.

1. The term "management-related service contract" includes any contract with the Fund to keep, prepare, or file accounts, books, records, or other documents required under federal or state law, or to provide any similar services with respect to the daily administration of the Fund, but does not include the following:

(a) Any contract with the Fund to provide investment advice;

(b) Any agreement with the Fund to perform as custodian, transfer agent, or dividend-paying agent for the Fund; and

(c) Any contract with the Fund for outside legal or auditing services, or contract for personal employment entered into with the Fund in the ordinary course of business.

2. No information need be given in response to this paragraph with respect to the service of mailing proxies or periodic reports to the Fund's shareholders.

3. In summarizing the substantive provisions of any management-related service contract, include the following:

(a) The name of the person providing the service;

(b) The direct or indirect relationships, if any, of the person with the Fund, its investment adviser or its principal underwriter; and

(c) The nature of the services provided, and the basis of the compensation paid for the services for the last three fiscal years.

(e) *Other Investment Advice.* If any person (other than a director, officer, member of an advisory board, employee, or investment adviser of the Fund), through any understanding, whether formal or informal, regularly advises the Fund or the Fund's investment adviser with respect to the Fund's investing in, purchasing, or selling securities or other property, or has the authority to determine what securities or other property should be purchased or sold by the Fund, and receives direct or indirect remuneration, provide the following information:

(1) The person's name;

(2) A description of the nature of the arrangement, and the advice or information provided; and

(3) Any remuneration (including, for example, participation, directly or indirectly, in commissions or other compensation paid in connection with transactions in the Fund's portfolio securities) paid for the advice or information, and a statement as to how the remuneration was paid and by whom it was paid for the last three fiscal years.

Instruction. Do not include information for the following:

(a) Persons who advised the investment adviser or the Fund solely through uniform publications distributed to subscribers;

(b) Persons who provided the investment adviser or the Fund with only statistical and other factual information, advice about economic factors and trends, or advice as to occasional transactions in specific securities, but without generally advising about the purchase or sale of securities by the Fund;

(c) A company that is excluded from the definition of "investment adviser" of an investment company under section 2(a)(20)(iii) (15 U.S.C. 80a–2(a)(20)(iii));

(d) Any person the character and amount of whose compensation for these services must be approved by a court; or

(e) Other persons as the Commission has by rule or order determined not to be an "investment adviser" of an investment company.

(f) *Dealer Reallowances.* Disclose any front-end sales load reallowed to dealers as a percentage of the offering price of the Fund's shares.

(g) *Rule 12b–1 Plans.* If the Fund has adopted a plan under rule 12b–1, describe the material aspects of the plan, and any agreements relating to the implementation of the plan, including:

(1) A list of the principal types of activities for which payments are or will be made, including the dollar amount and the manner in which amounts paid by the Fund under the plan during the last fiscal year were spent on:

(i) Advertising;

(ii) Printing and mailing of prospectuses to other than current shareholders;

(iii) Compensation to underwriters;

(iv) Compensation to broker-dealers;

(v) Compensation to sales personnel;

(vi) Interest, carrying, or other financing charges; and

(vii) Other (specify).

(2) The relationship between amounts paid to the distributor and the expenses it incurs (*e.g.*, whether the plan reimburses the distributor only for expenses incurred or compensates the distributor regardless of its expenses).

(3) The amount of any unreimbursed expenses incurred under the plan in a previous year and carried over to future years, in dollars and as a percentage of the Fund's net assets on the last day of the previous year.

(4) Whether the Fund participates in any joint distribution activities with another series or investment company. If so, disclose, if applicable, that fees paid under the Fund's rule 12b–1 plan may be used to finance the distribution of the shares of another series or investment company, and state the method of allocating distribution costs (*e.g.*, relative net asset size, number of shareholder accounts).

(5) Whether any of the following persons had a direct or indirect financial interest in the operation of the plan or related agreements:

(i) Any interested person of the Fund; or

(ii) Any director of the Fund who is not an interested person of the Fund.

(6) The anticipated benefits to the Fund that may result from the plan.

(h) *Other Service Providers.*

(1) Unless disclosed in response to paragraph (d), identify any person who provides significant administrative or business affairs management services for the Fund (*e.g.*, an "Administrator"), describe the services provided, and the compensation paid for the services.

(2) State the name and principal business address of the Fund's transfer agent and the dividend paying agent.

(3) State the name and principal business address of the Fund's custodian and independent public accountant and describe generally the services performed by each. If the Fund's portfolio securities are held by a person other than a commercial bank, trust company, or depository registered with the Commission as custodian, state the nature of the business of that person or persons.

(4) If an affiliated person of the Fund, or an affiliated person of the affiliated person, acts as custodian, transfer agent, or dividend-paying agent for the Fund, describe the services the person performs and the basis for remuneration.

Item 16. Brokerage Allocation and Other Practices

(a) *Brokerage Transactions.* Describe how transactions in portfolio securities are effected, including a general statement about brokerage commissions and markups on principal transactions and the aggregate amount of any brokerage commissions paid by the Fund during the three most recent fiscal years. If, during either of the two years preceding the Fund's most recent fiscal year, the aggregate dollar amount of brokerage commissions paid by the Fund differed materially from the amount paid during the most recent fiscal year, state the reason(s) for the difference(s).

(b) *Commissions.*

(1) Identify, disclose the relationship, and state the aggregate dollar amount of brokerage commissions paid by the Fund during the three most recent fiscal years to any broker:

(i) That is an affiliated person of the Fund or an affiliated person of that person; or

(ii) An affiliated person of which is an affiliated person of the Fund, its investment adviser, or principal underwriter.

(2) For each broker identified in response to paragraph (b)(1), state:

(i) The percentage of the Fund's aggregate brokerage commissions paid to the broker during the most recent fiscal year; and

(ii) The percentage of the Fund's aggregate dollar amount of transactions involving the payment of commissions effected through the broker during the most recent fiscal year.

(3) State the reasons for any material difference in the percentage of brokerage commissions paid to, and the percentage of transactions effected through, a broker disclosed in response to paragraph (b)(1).

(c) *Brokerage Selection.* Describe how the Fund will select brokers to effect securities transactions for the Fund and how the Fund will evaluate the overall reasonableness of brokerage commissions paid, including the factors the Fund will consider in making these determinations.

Instructions.

1. If the Fund will consider the receipt of products or services other than brokerage or research services in selecting brokers, specify those products and services.

2. If the Fund will consider the receipt of research services in selecting brokers, identify the nature of those research services.

3. State whether persons acting on the Fund's behalf are authorized to pay a broker a higher brokerage commission than another broker might have charged for the same transaction in recognition of the value of (a) brokerage or (b) research services provided by the broker.

4. If applicable, explain that research services provided by brokers through whom the Fund effects securities transactions may be used by the Fund's investment adviser in servicing all of its accounts and that not all of these services may be used by the adviser in connection with the Fund. If other policies or practices are applicable to the Fund with respect to the allocation of research services provided by brokers, explain those policies and practices.

(d) *Directed Brokerage.* If, during the last fiscal year, the Fund or its investment adviser, through an agreement or understanding with a broker, or otherwise through an internal allocation procedure, directed the Fund's brokerage transactions to a broker because of research services provided, state the amount of the transactions and related commissions.

(e) *Regular Broker-Dealers.* If the Fund has acquired during its most recent fiscal year or during the period of

time since organization, whichever is shorter, securities of its regular brokers or dealers as defined in rule 10b-1 (17 CFR 270.10b-1) or of their parents, identify those brokers or dealers and state the value of the Fund's aggregate holdings of the securities of each issuer as of the close of the Fund's most recent fiscal year.

Instruction. The Fund need only disclose information about an issuer that derived more than 15% of its gross revenues from the business of a broker, a dealer, an underwriter, or an investment adviser during its most recent fiscal year.

Item 17. Capital Stock and Other Securities

(a) *Capital Stock.* For each class of capital stock of the Fund, provide:

(1) The title of each class; and

(2) A full discussion of the following provisions or characteristics of each class, if applicable:

(i) Dividend rights;

(ii) Voting rights (including whether the rights of shareholders can be modified by other than a majority vote);

(iii) Liquidation rights;

(iv) Preemptive rights;

(v) Conversion rights;

(vi) Redemption provisions;

(vii) Sinking fund provisions; and

(viii) Liability to further calls or to assessment by the Fund.

Instructions.

1. If any class described in response to this paragraph possesses cumulative voting rights, disclose the existence of those rights and explain the operation of cumulative voting.

2. If the rights evidenced by any class described in response to this paragraph are materially limited or qualified by the rights of any other class, explain those limitations or qualifications.

(b) *Other Securities.* Describe the rights of any authorized securities of the Fund other than capital stock. If the securities are subscription warrants or rights, state the title and amount of securities called for, and the period during which and the prices at which the warrants or rights are exercisable.

Item 18. Purchase, Redemption, and Pricing of Shares

(a) *Purchase of Shares.* Describe how the Fund's shares are offered to the public. Include any special purchase plans or methods not described in the prospectus or elsewhere in the SAI, including letters of intent, accumulation plans, withdrawal plans, exchange privileges, and services in connection with retirement plans.

(b) *Fund Reorganizations.* Disclose any arrangements that result in breakpoints in, or elimination of, sales loads in connection with the terms of a merger, acquisition, or exchange offer made under a plan of reorganization. Identify each class of individuals to which the arrangements apply and state each different sales load available as a percentage of both the offering price and the net amount invested.

(c) *Offering Price.* Describe the method followed or to be followed by the Fund in determining the total offering price at which its shares may be offered to the public and the method(s) used to value the Fund's assets.

Instructions.

1. Describe the valuation procedure the Fund uses in determining the net asset value and public offering price of its shares.

2. Explain how the excess of the offering price over the net amount invested is distributed among the Fund's principal underwriters or others and the basis for determining the total offering price.

3. Explain the reasons for any difference in the price at which securities are offered generally to the public, and the prices at which securities are offered for any class of transactions or to any class of individuals.

4. Unless provided as a continuation of the balance sheet in response to Item 22, include a specimen price-make-up sheet showing how the Fund calculates the total offering price per unit. Base the calculation on the value of the Fund's portfolio securities and other assets and its outstanding securities as of the date of the balance sheet filed by the Fund.

(d) *Redemption in Kind.* If the Fund has received an order of exemption from section 18(f) or has filed a notice of election under rule 18f-1 that has not been withdrawn, describe the nature, extent, and effect of the exemptive relief or notice unless the information has been disclosed in the prospectus.

Item 19. Taxation of the Fund

(a) If applicable, state that the Fund is qualified or intends to qualify under Subchapter M of the Internal Revenue Code.

(b) Disclose any special or unusual tax aspects of the Fund, such as taxation resulting from foreign investment or from status as a personal holding company, or any tax loss carry-forward to which the Fund may be entitled.

Item 20. Underwriters

(a) *Distribution of Securities.* For each principal underwriter distributing securities of the Fund, state:

(1) The nature of the obligation to distribute the Fund's securities;

(2) Whether the offering is continuous; and

(3) The aggregate dollar amount of underwriting commissions and the amount retained by the principal underwriter for each of the last three fiscal years.

(b) *Compensation.* Provide the information required by the following table with respect to all commissions and other compensation received by each principal underwriter, who is an affiliated person of the Fund or an affiliated person of that affiliated person, directly or indirectly, from the Fund during the Fund's most recent fiscal year:

(1) Name of Principal Underwriter	(2) Net Underwriting Discounts and Commissions	(3) Compensation on Redemptions and Repurchases	(4) Brokerage Commissions	(5) Other Compensation

Instruction. Disclose in a footnote to the table the type of services rendered in consideration for the compensation listed under column (5).

(c) *Other Payments.* With respect to any payments made by the Fund to an underwriter or dealer in the Fund's shares during the last fiscal year, disclose the name and address of the underwriter or dealer, the amount paid and basis for determining that amount, the circumstances surrounding the payments, and the consideration received by the Fund. Do not include information about:

(1) Payments made through deduction from the offering price at the time of sale of securities issued by the Fund;

(2) Payments representing the purchase price of portfolio securities acquired by the Fund;

(3) Commissions on any purchase or sale of portfolio securities by the Fund; or

(4) Payments for investment advisory services under an investment advisory contract.

Instructions.

1. Do not include in response to this paragraph information provided in response to paragraph (b) or with respect to service payments under Item 8(b). Do not include any payment for a service excluded by Instructions 1 and 2 to Item 15(d) or by Instruction 2 to Item 30.

2. If the payments were made under an arrangement or policy applicable to dealers generally, describe only the arrangement or policy.

Item 21. Calculation of Performance Data

(a) *Money Market Funds.* If a Money Market Fund advertises a yield quotation(s), disclose, as applicable, the yield quotation(s) calculated according to paragraphs (a)(1)–(4). Use the same calculations for a yield quotation(s) included in the prospectus.

(1) *Yield Quotation.* Based on the 7 days ended on the date of the most recent balance sheet included in the registration statement, calculate the Fund's yield by determining the net change, exclusive of capital changes, in the value of a hypothetical pre-existing account having a balance of one share at the beginning of the period, subtracting a hypothetical charge reflecting deductions from shareholder accounts, and dividing the difference by the value of the account at the beginning of the base period to obtain the base period return, and then multiplying the base period return by (365/7) with the resulting yield figure carried to at least the nearest hundredth of one percent.

(2) *Effective Yield Quotation.* Based on the 7 days ended on the date of the most recent balance sheet included in the registration statement, calculate the Fund's effective yield, carried to at least the nearest hundredth of one percent, by determining the net change, exclusive of capital changes, in the value of a hypothetical pre-existing account having a balance of one share at the beginning of the period, subtracting a hypothetical charge reflecting deductions from shareholder accounts, and dividing the difference by the value of the account at the beginning of the base period to obtain the base period return, and then compounding the base period return by adding 1, raising the sum to a power equal to 365 divided by 7, and subtracting 1 from the result, according to the following formula:

$$\text{EFFECTIVE YIELD} = [(\text{BASE PERIOD RETURN} + 1)^{365/7}] - 1.$$

(3) *Tax Equivalent Current Yield Quotation.* Calculate the Fund's tax equivalent current yield by dividing that portion of the Fund's yield (as calculated under paragraph (a)(1)) that is tax-exempt by 1 minus a stated income tax rate and adding the quotient to that portion, if any, of the Fund's yield that is not tax-exempt.

(4) *Tax Equivalent Effective Yield Quotation.* Calculate the Fund's tax equivalent effective yield by dividing that portion of the Fund's effective yield (as calculated under paragraph (a)(2)) that is tax-exempt by 1 minus a stated income tax rate and adding the quotient to that portion, if any, of the Fund's effective yield that is not tax-exempt.

(5) State:

(i) The length of and the last day in the base period used in calculating the quotation(s);

(ii) A description of the method(s) by which the yield quotation(s) is calculated; and

(iii) The income tax rate used in the calculation, if applicable.

Instructions.

1. When calculating yield or effective yield quotations, the calculation of net change in account value must include:

(a) The value of additional shares purchased with dividends from the original share and dividends declared on both the original shares and additional shares; and

(b) All fees, other than nonrecurring account or sales charges, that are charged to all shareholder accounts in proportion to the length of the base period. For any account fees that vary with the size of the account, assume an account size equal to the Fund's mean (or median) account size.

2. Exclude realized gains and losses from the sale of securities and unrealized appreciation and depreciation from the calculation of yield and effective yield.

3. Disclose the amount or specific rate of any nonrecurring account or sales charges not included in the calculation of the yield.

4. If the Fund holds itself out as distributing income that is exempt from federal, state, or local income taxation, in calculating yield and effective yield (but not tax equivalent yield or tax equivalent effective yield), reduce the yield quoted by the effect of any income taxes on the shareholder receiving dividends, using the maximum rate for individual income taxation. For example, if the Fund holds itself out as distributing income exempt from federal taxation and the income taxes of State A, but invests in some securities of State B, it must reduce its yield by the effect of state income taxes that must be paid by the residents of State A on that portion of the income attributable to the securities of State B.

(b) *Other Funds.* If the Fund advertises performance data, disclose, as applicable, the performance information calculated according to paragraphs (b)(1)–(4). Use the same calculations for performance information included in the prospectus.

(1) *Average Annual Total Return Quotation.* For the 1, 5, and 10 year periods ended on the date of the most recent balance sheet included in the registration statement (or for the periods the Fund has been in operation), calculate the Fund's average annual total return by finding the average annual compounded rates of return over the 1, 5, and 10 year periods (or for the periods of the Fund's operations) that would equate the initial amount invested to the ending redeemable value, according to the following formula:

$$P(1+T)^n = ERV$$

Where:

P=a hypothetical initial payment of $1,000.

T=average annual total return.

n=number of years.

ERV=ending redeemable value of a hypothetical $1,000 payment made at the beginning of the 1, 5, or 10 year periods at the end of the 1, 5, or 10 year periods (or fractional portion).

Instructions.

1. Assume the maximum sales load (or other charges deducted from payments) is deducted from the initial $1,000 payment. If shareholders are charged a deferred sales load, assume the maximum deferred sales load is deducted at the times, in the amounts, and under the terms disclosed in the prospectus.

2. Assume all dividends and distributions by the Fund are reinvested at the price stated in the prospectus (including any sales load charged upon reinvestment of dividends) on the reinvestment dates during the period.

3. Include all recurring fees that are charged to all shareholder accounts. For any account fees that vary with the size of the account, assume an account size equal to the Fund's mean (or median) account size. Reflect, as appropriate, any recurring fees charged to shareholder accounts that are paid other than by redemption of the Fund's shares.

4. Determine the ending redeemable value by assuming a complete redemption at the end of the 1, 5, or 10 year periods and the deduction of all nonrecurring charges deducted at the end of each period.

5. State the total return quotation to the nearest hundredth of one percent.

6. Total return information in the prospectus need only be current to the end of the Fund's most recent fiscal year.

(2) *Yield Quotation.* Based on a 30-day (or one month) period ended on the date of the most recent balance sheet included in the registration statement, calculate the Fund's yield by dividing the net investment income per share earned during the period by the maximum offering price per share on the last day of the period, according to the following formula:

$$YIELD = 2\left[\left(\frac{a-b}{cd}+1\right)^{6}-1\right]$$

Where:

a=dividends and interest earned during the period.

b=expenses accrued for the period (net of reimbursements).

c=the average daily number of shares outstanding during the period that were entitled to receive dividends.

d=the maximum offering price per share on the last day of the period.

Instructions.

1. To calculate interest earned on debt obligations for purposes of "a" above:

(a) Calculate the yield to maturity of each obligation held by the Fund based on the market value of the obligation (including actual accrued interest) at the close of business on the last business day of each month or, with respect to obligations purchased during the month, the purchase price (plus actual accrued interest). The maturity of an obligation with a call provision(s) is the next call date on which the obligation reasonably may be expected to be called, or if none, the maturity date.

(b) Divide the yield to maturity by 360 and multiply the quotient by the market value of the obligation (including actual accrued interest) to determine the interest income on the obligation for each day of the subsequent month that the obligation is in the portfolio. Assume that each month has 30 days.

(c) Total the interest earned on all debt obligations and all dividends accrued on all equity securities during the 30-day (or one month) period. Although the period for calculating interest earned is based on calendar months, a 30-day yield may be calculated by aggregating the daily interest on the portfolio from portions of 2 months. In addition a Fund may recalculate daily interest income on the portfolio more than once a month.

(d) For a tax-exempt obligation issued without original issue discount and having a current market discount, use the coupon rate of interest in lieu of the yield to maturity. For a tax-exempt obligation with original issue discount in which the discount is based on the current market value and exceeds the then-remaining portion of original issue discount (market discount), base the yield to maturity on the imputed rate of the original issue discount calculation. For a tax-exempt obligation with original issue discount, where the discount based on the current market value is less than the then-remaining portion of original issue discount (market premium), base the yield to maturity on the market value.

2. For discount and premium on mortgage or other receivables-backed obligations that are expected to be subject to monthly payments of principal and interest ("paydowns"):

(a) Account for gain or loss attributable to actual monthly paydowns as an increase or decrease to interest income during the period; and

(b) The Fund may elect:

(i) To amortize the discount and premium on the remaining securities, based on the cost of the securities, to the weighted average maturity date, if the information is available, or to the remaining term of the securities, if the weighted average maturity date is not available; or

(ii) Not to amortize the discount or premium on the remaining securities.

3. Solely for the purpose of calculating yield, recognize dividend income by accruing 1/360 of the stated dividend rate of the security each day that the security is in the portfolio.

4. Do not use equalization accounting in calculating yield.

5. Include expenses accrued under a plan adopted under rule 12b-1 in the expenses accrued for the period. Reimbursement accrued under the plan may reduce the accrued expenses, but only to the extent the reimbursement does not exceed expenses accrued for the period.

6. Include in the expenses accrued for the period all recurring fees that are charged to all shareholder accounts in proportion to the length of the base period. For any account fees that vary with the size of the account, assume an account size equal to the Fund's mean (or median) account size.

7. If a broker-dealer or an affiliate of the broker-dealer (as defined in rule 1-02(b) of Regulation S-X (17 CFR 210.1-02(b)) has, in connection with directing the Fund's brokerage transactions to the broker-dealer, provided, agreed to provide, paid for, or agreed to pay for, in whole or in part, services provided to the Fund (other than brokerage and research services as those terms are used in section 28(e) of the Securities Exchange Act (15 U.S.C. 78bb(e)), add to expenses accrued for the period an estimate of additional amounts that would have been accrued for the period if the Fund had paid for the services directly in an arm's length transaction.

8. Undeclared earned income, calculated in accordance with generally accepted accounting principles, may be subtracted from the maximum offering price. Undeclared earned income is the net investment income that, at the end of the base period, has not been declared as a dividend, but is reasonably expected to be and is declared as a dividend shortly thereafter.

9. Disclose the amount or specific rate of any nonrecurring account or sales charges.

10. If a Fund imposes, in connection with sales of its shares, a deferred sales load payable in installments, the "maximum public offering price" includes the aggregate amount of the installments ("installment load amount").

(3) *Tax Equivalent Yield Quotation.* Based on a 30-day (or one month) period ended on the date of the most recent balance sheet included in the registration statement, calculate the Fund's tax equivalent yield by dividing that portion of the Fund's yield (as calculated under paragraph (b)(2)) that is tax-exempt by 1 minus a stated income tax rate and adding the quotient to that portion, if any, of the Fund's yield that is not tax-exempt.

(4) *Non-Standardized Performance Quotation.* A Fund may calculate performance using any other historical measure of performance (not subject to any prescribed method of computation) if the measurement reflects all elements of return.

(5) State:

(i) The length of and the last day in the base period used in calculating the quotation(s);

(ii) A description of the method(s) by which the performance data is calculated; and

(iii) The income tax rate used in the calculation, if applicable.

Item 22. Financial Statements

(a) *Registration Statement.*

(1) Include, in a separate section following the responses to the preceding Items, the financial statements and schedules required by Regulation S-X. The specimen price-make-up sheet required by Instruction 4 to Item 18(c)) may be provided as a continuation of the balance sheet specified by Regulation S-X.

Instructions.

1. The statements of any subsidiary that is not a majority-owned subsidiary required by Regulation S-X may be omitted from Part B and included in Part C.

2. In addition to the requirements of rule 3-18 of Regulation S-X (17 CFR 210.3-18), any Fund registered under the Investment Company Act that has not previously had an effective registration statement under the Securities Act must include in its initial registration statement under the Securities Act any additional financial statements and condensed financial information (which need not be audited) necessary to make the financial statements and condensed financial information included in the registration statement current as of a date within 90 days prior to the date of filing.

(2) File a post-effective amendment containing financial statements, which do not have to be audited, within 4 to 6 months of the effective date of the Fund's registration statement or the date the Fund commences operations (*i.e.*, begins selling shares to the public or investing assets in accordance with its investment objectives).

Instruction. A Fund may file the post-effective amendment within 8 months of the effective date of the Fund's registration statement if the post-effective amendment is filed within 30 days of the date of the latest balance sheet included in the Fund's annual or semi-annual report to shareholders.

(b) *Annual Report.* Every annual report to shareholders required under rule 30d-1 must contain the following:

(1) The audited financial statements required, and for the periods specified, by Regulation S-X.

(2) The condensed financial information required by Item 9(a), for the 5 most recent fiscal years, with at least the most recent fiscal year audited.

(3) Unless shown elsewhere in the report as part of the financial statements required by paragraph (b)(1), the aggregate remuneration paid by the Fund during the period covered by the report to:

(i) All directors and all members of any advisory board for regular compensation;

(ii) Each director and each member of an advisory board for special compensation;

(iii) All officers; and

(iv) Each person of whom any officer or director of the Fund is an affiliated person.

(4) The information concerning changes in and disagreements with accountants and on accounting and financial disclosure required by Item 304 of Regulation S-K (17 CFR 229.304).

(c) *Semi-Annual Report.* Every semi-annual report to shareholders required by rule 30d-1 must contain the following information (which need not be audited):

(1) The financial statements required by Regulation S-X for the period commencing either with:

(i) The beginning of the Fund's fiscal year (or date of organization, if newly organized); or

(ii) A date not later than the date after the close of the period included in the last report under rule 30d-1 and the most recent preceding fiscal year.

(2) The condensed financial information required by Item 9(a), for the period of the report as specified by paragraph (c)(1), and the most recent preceding fiscal year.

(3) Unless shown elsewhere in the report as part of the financial statements required by paragraph (c)(1), the aggregate remuneration paid by the Fund during the period covered by the report to the persons specified under paragraph (b)(3).

(4) The information concerning changes in and disagreements with accountants and on accounting and financial disclosure required by Item 304 of Regulation S-K.

Part C Other Information

Item 23. Exhibits

Subject to General Instruction H regarding incorporation by reference and rule 483 under the Securities Act (17 CFR 230.483), file the exhibits listed below as part of the registration statement. Letter or number the exhibits in the sequence indicated and file copies rather than originals, unless otherwise required by rule 483. Reflect any exhibit incorporated by reference in the list below and identify the previously filed document containing the incorporated material.

(a) *Articles of Incorporation.* The Fund's current articles of incorporation, charter, declaration of trust or corresponding instruments and any related amendment.

(b) *By-laws.* The Fund's current by-laws or corresponding instruments and any related amendment.

(c) *Instruments Defining Rights of Security Holders.* Instruments defining the rights of holders of the securities being registered, including the relevant portion of the Fund's articles of incorporation or by-laws.

(d) *Investment Advisory Contracts.* Investment advisory contracts relating to the management of the Fund's assets.

(e) *Underwriting Contracts.* Underwriting or distribution contracts between the Fund and a principal underwriter, and agreements between principal underwriters and dealers.

(f) *Bonus or Profit Sharing Contracts.* Bonus, profit sharing, pension, or similar contracts or arrangements in whole or in part for the benefit of the Fund's directors or officers in their official capacity. Describe in detail any plan not included in a formal document.

(g) *Custodian Agreements.* Custodian agreements and depository contracts under section 17(f) (15 U.S.C. 80a-17(f)) concerning the Fund's securities and similar investments, including the schedule of remuneration.

(h) *Other Material Contracts.* Other material contracts not made in the ordinary course of business to be performed in whole or in part on or after the filing date of the registration statement.

(i) *Legal Opinion.* An opinion and consent of counsel regarding the legality of the securities being registered, stating whether the securities will, when sold, be legally issued, fully paid, and nonassessable.

(j) *Other Opinions.* Any other opinions, appraisals, or rulings, and related consents relied on in preparing the registration statement and required by section 7 of the Securities Act (15 U.S.C. 77g).

(k) *Omitted Financial Statements.* Financial statements omitted from Item 22.

(l) *Initial Capital Agreements.* Any agreements or understandings made in consideration for providing the initial capital between or among the Fund, the underwriter, adviser, promoter or initial shareholders and written assurances from promoters or initial shareholders that purchases were made for investment purposes and not with the intention of redeeming or reselling.

(m) *Rule 12b-1 Plan.* Any plan entered into by the Fund under rule 12b-1 and any agreements with any person relating to the plan's implementation.

(n) *Financial Data Schedule.* A Financial Data Schedule meeting the requirements of rule 483 under the Securities Act.

(o) *Rule 18f-3 Plan.* Any plan entered into by the Fund under rule 18f-3, any agreement with any person relating to the plan's implementation, any amendment to the plan or an agreement, and the relevant minutes from a meeting of the Fund's directors describing any action taken to revoke the plan.

Item 24. Persons Controlled by or Under Common Control with the Fund

Provide a list or diagram of all persons directly or indirectly controlled by or under common control with the

Fund. For any person controlled by another person, disclose the percentage of voting securities owned by the immediately controlling person or other basis of that person's control. For each company, also provide the state or other sovereign power under the laws of which the company is organized.

Instructions.

1. Include the Fund in the list or diagram and show the relationship of each company to the Fund and to the other companies named, using cross-references if a company is controlled through direct ownership of its securities by two or more persons.

2. Indicate with appropriate symbols subsidiaries that file separate financial statements, subsidiaries included in consolidated financial statements, or unconsolidated subsidiaries included in group financial statements. Indicate for other subsidiaries why financial statements are not filed.

Item 25. Number of Holders of Securities

State in a tabular form similar to the one below, as of a specified date within 90 days prior to filing, the number of record holders of each class of the Fund's securities.

(1) Title of class	(2) Number of record holders

Item 26. Indemnification

State the general effect of any contract, arrangements or statute under which any director, officer, underwriter or affiliated person of the Fund is insured or indemnified against any liability incurred in their official capacity, other than insurance provided by any director, officer, affiliated person, or underwriter for their own protection.

Item 27. Business and Other Connections of the Investment Adviser

Describe any other business, profession, vocation or employment of a substantial nature that each investment adviser, and each director, officer or partner of the adviser, is or has been engaged within the last two fiscal years for his or her own account or in the capacity of director, officer, employee, partner, or trustee.

Instructions.

1. Disclose the name and principal business address of any company for which a person listed above serves in the capacity of director, officer, employee, partner, or trustee, and the nature of the relationship.

2. The names of investment advisory clients need not be given in answering this Item.

Item 28. Principal Underwriters

(a) State the name of each investment company (other than the Fund) for which each principal underwriter currently distributing the Fund's securities also acts as a principal underwriter, depositor, or investment adviser.

(b) Provide the information required by the following table for each director, officer, or partner of each principal underwriter named in the response to Item 20:

(1) Name and principal business address	(2) Positions and offices with underwriter	(3) Positions and offices with fund

(c) Provide the information required by the following table for all commissions and other compensation received, directly or indirectly, from the Fund during the last fiscal year by each principal underwriter who is *not* an affiliated person of the Fund or any affiliated person of an affiliated person:

(1) Name of principal underwriter	(2) Net underwriting discounts and commissions	(3) Compensation on redemption and repurchases	(4) Brokerage commissions	(5) Other compensation

Instructions.

1. Disclose the type of services rendered in consideration for the compensation listed under column (5).

2. Instruction 1 to Item 20(c) also applies to this Item.

Item 29. Location of Accounts and Records

State the name and address of each person maintaining physical possession of each account, book, or other document required to be maintained by section 31(a) (15 U.S.C. 80a–30(a)) and the rules thereunder.

Item 30. Management Services

Provide a summary of the substantive provisions of any management-related service contract not discussed in Part A or B, disclosing the parties to the contract and the total amount paid and by whom for the last three fiscal years.

Instructions.

1. The instructions to Item 15 also apply to this Item.

2. Exclude information about any service provided for payments totalling less than $5,000 during each of the last three fiscal years.

Item 31. Undertakings

In initial registration statements filed under the Securities Act, provide an undertaking to file an amendment to the registration statement with certified financial statements showing the initial capital received before accepting subscriptions from more than 25 persons if the Fund intends to raise its initial capital under section 14(a)(3) (15 U.S.C. 80a–14(a)(3)).

SIGNATURES

Pursuant to the requirements of (the Securities Act and) the Investment Company Act, the Fund (certifies that it meets all of the requirement for effectiveness of this registration statement under rule 485(b) under the Securities Act and) has duly caused this registration statement to be signed on its behalf by the undersigned, duly authorized, in the City of _____, and State of _____ on the day of _____, _____ (Year).

_____

Fund

By _____

(Signature and Title)

Pursuant to the requirements of the Securities Act, this registration statement has been signed below by the following persons in the capacities and on the date indicated.

_____

(Signature)

_____

(Title)

_____

(Date)

By the Commission

Dated: February 27, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–5368 Filed 3–7–97; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release Nos. 33–7399; IC–22529; File No. S7–18–96]

RIN 3235–AH03

Proposed New Disclosure Option for Open-End Management Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is proposing a new rule to permit open-end management investment companies to provide investors with a "fund profile." The profile would present a summary of key information about a fund, including the fund's investment strategies, risks, performance, and fees, in a concise, standardized format. A fund that provides a profile would be able to offer investors a choice of the amount of information they wish to consider before making an investment decision; investors would have the option of purchasing the fund's shares based on the information in the profile or requesting and reviewing the fund's prospectus (and other information). An investor deciding to purchase fund shares based on the information in a profile would receive the fund's prospectus with the confirmation of purchase.

DATES: Comments must be received on or before June 9, 1997.

ADDRESSES: Submit comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–6009. Comments can be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–18–96; include this file number on the subject line if E-mail is used. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW., Washington, DC 20549–6009. Electronically-submitted comment letters will be posted on the Commission's Internet Web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: David U. Thomas, Senior Counsel, Markian M.W. Melnyk, Senior Counsel, Kathleen K. Clarke, Special Counsel, or Elizabeth R. Krentzman, Assistant Director, (202) 942–0721, Office of Disclosure and Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 5th Street, NW., Mail Stop 10–2, Washington, DC 20549–6009.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (the "Commission") today is proposing for comment rule 498 (17 CFR 230.498) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) ("Securities Act") and the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) ("Investment Company Act"). The new rule would permit an open-end management investment company that registers on Form N–1A (17 CFR 274.11A) (a "fund") to provide at its option a fund profile ("profile") to investors that contains a summary of key information about a fund. The Commission also is proposing amendments to rule 497 under the Securities Act (17 CFR 230.497) that would require a fund to file a profile with the Commission at least 30 days prior to its first use. In a companion release, the Commission is proposing revisions to the prospectus disclosure requirements in Form N–1A, the registration statement used by funds. These amendments seek to minimize prospectus disclosure about technical, legal, and operational matters that generally are common to all funds and to focus prospectus disclosure on essential information about a particular fund that would assist an investor in deciding whether to invest in that fund.[1] In another companion release, the Commission is proposing new rule 35d–1 under the Investment Company Act, which would, among other things, require a fund with a name suggesting that it focuses on a particular type of investment (*e.g.*, an investment company that calls itself the ABC Stock Fund, the XYZ Bond Fund, or the QRS U.S. Government Fund) to invest at least 80% of its assets in the type of investment suggested by its name.[2]

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I. Executive Summary and Introduction

Over the last decade, the fund industry has grown tremendously. With over 6,000 funds available and over 130 million shareholder accounts, fund assets exceed the deposits of commercial banks.[3] As more Americans turn to funds for professional management of current and retirement savings, funds have introduced new investment options and shareholder services to meet the needs of investors. While benefitting from these developments, investors also face an increasingly difficult task in choosing suitable fund investments. The Commission, fund investors, and others have recognized the need to improve fund disclosure to help investors evaluate and compare funds.[4] In the Commission's view, the growth of the fund industry and the diversity of fund investors warrant a new approach to fund disclosure that would offer more choices in the format and amount of information available about fund investments.

The Commission's commitment to improve the information provided in fund disclosure documents is long-standing, and the Commission has taken a number of steps to meet this goal.[5]

[1] Investment Company Act Release No. 22528 (Feb. 27, 1997) ("Form N–1A Release").

[2] Investment Company Act Release No. 22530 (Feb. 27, 1997) ("Fund Names Release"). Proposed rule 35d–1 would apply to all registered investment companies, including funds, closed-end investment companies, and unit investment trusts.

[3] *See* Investment Company Institute ("ICI"), *Trends in Mutual Fund Investing: November 1996* at 3 (Dec. 1996) (ICI News No. 96–107) ("ICI Trends") and ICI, *Memorandum on Supplementary Data* at 22 (Jan. 13, 1997) (as of November 1996, there were 6,243 funds and 148.5 million shareholder accounts); *compare* ICI Trends at 1 (fund net assets exceeded $3.5 trillion as of November 1996) *with* 82 Fed. Res. Bull. 12, table 1.21, at A13 (1996) (commercial bank deposits were approximately $2.5 trillion as of Sept. 1996).

[4] *See, e.g.*, "From Security to Self-Reliance: American Investors in the 1990s," Remarks by Arthur Levitt, Chairman, SEC, before the ICI's General Membership Meeting, Wash., D.C. (May 22, 1996); Remarks by Steven M.H. Wallman, Commissioner, SEC, before the ICI's 1995 Investment Company Directors Conference and New Directors Workshop, Wash., D.C. (Sept. 22, 1995); "Toward Better Disclosure," Remarks by Isaac C. Hunt, Jr., Commissioner, SEC, before the American Society of Corporate Secretaries, Seattle, Wash. (June 26, 1996). *See also* McTague, *Simply Beautiful: Shorn of Legalese, Even Prospectuses Make Sense*, Barron's, Oct. 7, 1996, at F10 (concerning the recent efforts of the John Hancock funds and other fund groups to simplify their prospectuses).

[5] *See* Investment Company Act Release No. 20974 (Mar. 29, 1995) (60 FR 17172) (requesting comment on ways to improve risk disclosure and comparability of fund risk levels) ("Risk Concept Release"); Investment Company Act Release No. 21216 (July 19, 1995) (60 FR 38454) (proposing

Continued

Today, the Commission is proposing new rule 498, which would permit a fund to provide investors with a profile. The profile would include a summary of key information about a fund, including a fund's investment objectives, strategies, risks, performance, fees, investment adviser and portfolio manager, purchase and redemption procedures, tax implications, and the services available to the fund's investors. The profile is designed to permit investors at their option to purchase a fund's shares based on the information in the profile or to request and review the fund's prospectus (and other information about the fund) before making an investment decision. Investors deciding to purchase fund shares based on a profile would receive the fund's prospectus with their purchase confirmation.

In connection with the profile initiative, the Commission also is proposing, in the first of two companion releases, changes to prospectus disclosure requirements ("Form N–1A Release"). This proposal seeks to focus prospectus disclosure on essential information about a particular fund that would assist an investor in deciding whether to invest in that fund.[6] In the other companion release, the Commission is proposing a new rule that would address investment company names. This rule would require funds and other registered investment companies with names suggesting a particular investment emphasis to invest at least 80% of their assets in the type of investment suggested by their names.[7] Taken together, the initiatives proposed today are intended to allow funds flexibility to respond to the diverse information needs of investors, improve and streamline prospectus disclosure, and address fund names that are likely to mislead investors about a fund's investments and risks.

In a related initiative, the Commission recently proposed rule amendments to require the use of plain English principles in drafting prospectuses and to provide other guidance on improving the readability of prospectuses.[8] The Commission intends that the plain English initiatives serve as the standard for all disclosure documents, and the plain English proposals are an important counterpart of the proposed fund disclosure initiatives. If adopted, the plain English requirements would apply to fund prospectuses and the profile.

As part of a broad review of fund disclosure requirements, the Commission conducted a pilot program that permits funds to use profiles ("pilot profiles") with their prospectuses.[9] The Investment Company Institute ("ICI") and several large fund groups participated in the pilot program. The pilot profiles, like the profile proposed today, provide a summary of key information about a fund. The purpose of the pilot program was to assess whether investors found the pilot profiles helpful in making investment decisions. Focus groups conducted on the Commission's behalf ("Focus Groups") responded very positively to the profile concept, indicating that a profile would assist them in making investment decisions. Fund investors participating in a survey sponsored by the ICI strongly supported the pilot profiles.[10] In addition, many commenters, including individual investors, have endorsed the profile's goal of providing standardized, summary information about a fund.[11]

Proposed rule 498 would implement the pilot program and give investors a new option of purchasing fund shares based on a profile, which would be a summary disclosure document. Each investor using the profile to make an investment decision would receive the full prospectus with the purchase confirmation. Since a fund's prospectus and other information about the fund would be available upon request, the profile would not reduce the information available to investors (or securities professionals). The profile also would not modify the protections afforded investors under the federal securities laws for misleading statements in fund disclosure documents. As an additional safeguard against misleading statements, rule 498 would require a fund to file the profile with the Commission before its first use, which would allow the Commission to monitor compliance with the profile disclosure requirements.

The profile would meet the Commission's goal of improving fund disclosure by providing:

• *A new disclosure choice for investors:* Focus Group participants and information from other sources indicate that different investors prefer different amounts of information before making an investment decision.[12] The profile would allow investors to choose the amount and format of information they want before making an investment decision. An investor comfortable with the level of information contained in a profile could purchase fund shares based on that information (and receive the fund's prospectus with the purchase confirmation). An investor who prefers more information before investing in a fund could use the profile to request the fund's prospectus and other information about the fund.

As a short, summary document, the profile could be a more efficient and less costly means of providing information to investors. A fund would have the flexibility to use diverse methods to distribute a profile (*e.g.*, by direct mail or by electronic media). To respond to investor interest, a fund could make the profile available and incur lower printing and mailing costs than it pays when sending a prospectus to every investor who is selecting among a number of similar or different types of funds. Investors, for example, could use the profile to narrow the number of funds being considered for investment and request prospectuses only for those funds about which the investor would like additional information before making a final investment decision.[13]

• *Standardized fund summaries:* Investors and others have expressed a strong preference for summary information about a fund in a standardized format.[14] The profile would meet this goal by requiring concise disclosure of 9 items of key information in a specific order and a question-and-answer format. These items would include a risk/return summary (also proposed to be required at the beginning of all fund prospectuses), which would summarize the fund's investment objectives, strategies, risks, performance, and fees.

Disclosure about a fund's risks would include a concise narrative description of the fund's overall risks and a bar chart that would illustrate graphically the fund's past risks by showing changes in the fund's returns from year to year. A table accompanying the bar chart would compare the average annual returns of the fund to those of a broad-based securities market index so that investors could evaluate the fund's performance and risks relative to the market.

Requiring profiles to present information in a standardized format should help investors identify key information about a fund and make comparisons among different funds. Rule 498 also would allow a fund to adapt the profile for use by investors in participant-directed defined contribution plans, who could use the summary information to evaluate and compare the investment alternatives offered by a plan.[15]

II. Discussion

A. General

The proposed requirements for the profile would be based on the current no-action letter of the Commission's Division of Investment Management ("Division") permitting the pilot profiles ("1996 Profile Letter").[16] Rule 498 would modify certain requirements in the 1996 Profile Letter in light of both the Commission's experience with the pilot program and its broad consideration of fund disclosure requirements.[17] As in the pilot program, use of the profile would be limited to funds because the profile appears to be particularly well-suited to the structure and operation of funds and the way fund shares are marketed. Based on, among other things, the Commission's experience with the use of the profile by funds, the Commission may consider in the future extending rule 498 to other types of investment companies, including separate accounts and unit investment trusts.[18] The Commission requests comment whether and why the profile as proposed for funds would be appropriate for other types of investment companies.

Rule 498 would require 9 items of information to appear in a specific sequence and in a question-and-answer format. Standardizing the order of profile disclosure is designed to help investors locate information and compare the profiles of various funds.[19] The proposed question-and-answer format, frequently used by many funds, is intended to help communicate the required information effectively. The Commission is not proposing to limit funds to specific questions, and rule 498 would give funds the flexibility to substitute substantially similar questions to those included in the rule. The Commission requests comment on the proposed question-and-answer format and whether rule 498 instead should permit funds to choose the type of heading for the prescribed disclosure topics.

The profile would be a summary prospectus within the meaning of section 10(b) of the Securities Act.[20] As a summary disclosure document, the profile is intended to provide a concise, standardized summary of key information disclosed in a fund's prospectus.[21] Rule 498 would identify the subjects to be covered and provide guidance about the degree of detail that is appropriate for a summary document. Rule 498 would require funds to include only the information specified by the rule.[22] The 9 items of required disclosure in the profile are intended to summarize key information in a fund's prospectus. As a result, a fund would not be able to use a profile when material information relating to its particular circumstances is not addressed by the instructions for the 9 items of required disclosure. The Commission believes that the goal of achieving a short, summary disclosure document that investors can use to evaluate and compare funds would not be met unless the rule establishes certain limits on the information included in a profile. The Commission requests comment on the types of disclosure proposed to be required in the 9 items and whether other or additional items would be appropriate.

The Commission's plain English proposal, which would modify the general rule under the Securities Act addressing prospectus disclosure,[23] would apply to the profile.[24] While the release proposing the plain English

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amendments designed to make money market fund prospectuses simpler and more informative); Investment Company Act Release No. 19382 (Apr. 6, 1993) (58 FR 19050) (simplifying financial highlights information and requiring management's discussion of fund performance); Investment Company Act Release No. 16245 (Feb. 2, 1988) (53 FR 3868) ("Fund Performance Release") (adopting a uniform formula for calculating fund performance); Investment Company Act Release No. 16244 (Feb. 1, 1988) (53 FR 3182) (adopting a uniform fee table in fund prospectuses). *See also* SEC, Report of the Advisory Committee on the Capital Formation and Regulatory Processes (July 24, 1996); SEC, Report of the Task Force on Disclosure Simplification (1996) (recommending specific improvements in the disclosure provided by corporate issuers).

[6] Form N–1A Release, *supra* note 1.

[7] Fund Names Release, *supra* note 2.

[8] Securities Act Release No. 7380 (Jan. 14, 1997) (62 FR 3152) ("Plain English Release"). In conjunction with these proposals, the Commission's Office of Investor Assistance has issued a draft of *A Plain English Handbook: How to Create Clear SEC Disclosure Documents* to explain the plain English principles of the proposed amendments and other techniques for preparing clear disclosure documents. *See also* "Plain English: A Work in Progress," Remarks by Isaac C. Hunt, Commissioner, SEC, before the First Annual Institute on Mergers and Acquisition: Corporate, Tax, Securities, and Related Aspects, Key Biscayne, Fla. (Feb. 6, 1997).

[9] *See* Investment Company Institute (pub. avail. July 31, 1995) ("1995 Profile Letter"). The Division of Investment Management has permitted the pilot program, with some modifications, to continue for another year. *See* Investment Company Institute (pub. avail. July 29, 1996) ("1996 Profile Letter").

[10] Letter from Paul Schott Stevens, Senior Vice President and General Counsel, ICI, to Barry P. Barbash, Director, Division of Investment Management, SEC, at 5–6 (May 20, 1996) ("ICI Survey Letter") (enclosing Investment Company Institute, The Profile Prospectus: An Assessment by Mutual Fund Shareholders (1996) (survey of over 1,000 fund investors)).

[11] A number of individual investors have written to the Commission expressing strong support for the profile. *See also Profile Prospectuses: An Idea Whose Time Has Come*, Mutual Funds Magazine, Aug. 1996, at 11.

[12] *See, e.g.*, ICI Survey Letter, *supra* note 10, at 4–6.

[13] Focus Group participants indicated that they would use the profile to narrow their investment options.

[14] Focus Group participants identified the standardized, summary fund information in the profile as particularly helpful in evaluating and comparing fund investments. *See also* ICI Survey Letter, *supra* note 10, at 4.

[15] *See infra* note 97 and accompanying text.

[16] 1996 Profile Letter, *supra* note 9. Any fund that has an effective registration statement and a current prospectus would be eligible to use a profile under rule 498.

[17] *See* Form N–1A Release, *supra* note 1. *See also* ICI Survey Letter, *supra* note 10.

[18] Currently, a profile of a fund that offers shares to a separate account registered on Forms N–4 (17 CFR 274.11c) or S–6 (17 CFR 239.16) must be accompanied by the separate account's prospectus. *See* National Association for Variable Annuities (pub. avail. June 4, 1996) (permitting variable annuity registrants to use "variable annuity profiles" together with their prospectuses).

[19] The profile would be subject to the font size and other legibility requirements for prospectuses under rule 420 of the Securities Act (17 CFR 230.420), which requires prospectuses to be in roman type at least as large and as legible as 10-point modern type.

[20] 15 U.S.C. 77j(b). *See also* section 24(g) of the Investment Company Act, 15 U.S.C. 80a–24(g). The Commission has long-encouraged summary prospectuses under section 10(b) to supply investors with a condensed statement of the more important information included in the prospectus. In 1956, the Commission adopted a rule permitting the use of a summary prospectus under section 10(b), which was extended to investment companies in 1972. *See* Securities Act Release No. 3722 (Nov. 23, 1956) (adopting rule 434A (17 CFR 230.434A) to permit the use of a summary prospectus); Securities Act Release No. 5248 (May 9, 1972) (37 FR 10071) (extending rule 434A to investment companies); Securities Act Release No. 6383 (Mar. 3, 1982) (47 FR 11380) (renumbering rule 434A as rule 431 (17 CFR 230.431). Rule 498 is intended to replace the summary prospectuses that funds are permitted to use under rule 431, and the Commission is proposing to revise rule 431 to clarify that it is not applicable to funds. In keeping with this approach, the Commission is proposing to eliminate the "Instructions as to Summary Prospectuses" that accompany Form N–1A. *See* Form N–1A Release, *supra* note 1.

[21] The profile generally would provide a summary of the material elements in the prospectus, while the prospectus would provide a fuller description of each of these items. The prospectus, for example, would disclose the amount of any rule 12b–1 fees charged by a fund in the fee table and would include a narrative discussion about the fund's rule 12b–1 fees. In contrast, the profile as a summary disclosure document would disclose the amount of the fund's rule 12b–1 fees as part of the fee table disclosure. Similarly, a prospectus would identify each sub-adviser, if any, that manages a fund's portfolio while, in certain cases, a profile could disclose the number of sub-advisers managing the fund's portfolio without identifying each sub-adviser. *See* Form N–1A Release, *supra* note 1, and *infra* notes 58 and 65 and accompanying text.

[22] Proposed rule 498(b). In addition, a fund would not be allowed to use footnotes or to include cross-references within the profile or to other information, unless specifically required or permitted.

[23] Rule 421 under the Securities Act (17 CFR 230.421).

[24] In addition, an Instruction to rule 498 would advise a fund to present profile disclosure clearly and concisely, without using excessive details, legal or technical terms, complex language, or long sentences and paragraphs.

amendments was issued before this release and does not refer specifically to the profile, the Commission intends that the plain English requirements apply to all disclosure in the profile. If the proposed profile and the plain English requirements are adopted, the Commission intends to apply the plain English requirements specifically to the profile.

Under rule 498, a profile could describe more than one fund. The pilot profile, in contrast, contains information about a single fund.[25] The Commission's assessment of the pilot program and the Focus Groups conducted on the Commission's behalf indicate that a profile that describes more than one fund can achieve the goal of providing a summary disclosure document that assists investors in evaluating and comparing funds.[26] In particular, describing more than one fund in a profile can be a useful means of providing investors with investment alternatives offered by a fund group. The Commission recognizes, however, that too much information could make the profile lengthy, complex, and difficult to understand. Therefore, the Commission requests comment whether the number of funds described in a profile should be limited to one fund or some other number of funds to assure clear and concise disclosure.

B. Profile Disclosure

1. Cover Page

Rule 498 would require the cover page of the profile to include certain basic information about the fund and to disclose that the profile is a summary disclosure document.[27] The cover page would include the fund's name and, at a fund's option, could disclose the fund's investment objectives or the type of fund offered (*e.g.*, that the fund is a growth fund or invests its assets in a particular country). The profile cover page also would identify the disclosure document as a 'profile'[28] and include a legend explaining the profile's purpose. The profile legend is intended to make it clear that investors may obtain the fund's prospectus and other information about the fund before making an investment decision. In keeping with this objective, rule 498 would require a fund to provide the following legend:

> This Profile summarizes key information about the Fund that is included in the Fund's prospectus. If you would like more information before you invest, you may obtain the Fund's prospectus and other information about the Fund at no cost by calling _____.[29]

The Commission requests comment on the substance and wording of this legend. As an alternative, the Commission requests comment whether the legend should state the following:

> This Profile summarizes key information about the Fund that is included in the Fund's prospectus. The prospectus includes additional material information about the Fund that you may want to consider before you invest. You may obtain the Fund's prospectus and other information about the Fund at no cost by calling _____.

The Commission requests comment whether this statement would better inform an investor of the profile's nature as a summary document and the availability of a fuller description about the fund and its operations in the prospectus.

To assure that investors receive additional information promptly, rule 498 would require a fund to send the prospectus within 3 business days of a request. The Commission views compliance with this requirement as an essential component of the profile initiative and the goal of promoting effective communication of information about funds. The Commission's Office of Compliance Inspections and Examinations would examine a fund's compliance with the 3-day requirement and the Commission would bring an enforcement action in an appropriate case for failing to comply with the requirement.[30]

2. Risk/Return Summary

The first 4 items of the profile would be substantially identical to the disclosure required in the proposed risk/return summary at the beginning of fund prospectuses.[31] The Form N–1A Release discusses these disclosure requirements in detail and requests specific comment about certain requirements. Commenters, therefore, also should review the discussion of the risk/return summary in the Form N–1A Release.[32] The Commission expects that if the requirements for the risk/return summary change in response to comments or otherwise, conforming amendments would be made to both rule 498 and Form N–1A.

The proposed first 4 items in the profile would require disclosure in response to the following questions:

- What are the fund's goals?

To assist investors in identifying funds that meet their general investment needs, rule 498 would require a fund to disclose its investment objectives.[33] A fund, at its option, also could disclose the type of fund offered.

- What are the fund's main investment strategies?

Rule 498 would require a fund to summarize, based on the information provided in the fund's prospectus, how the fund intends to achieve its investment objectives. The summary would be required to identify the fund's principal investment strategies, including the particular type or types of securities in which the fund invests or will invest principally, and any policy of the fund to concentrate in an industry or group of industries.[34]

A fund also would be required to inform investors about the availability of additional information about the fund's investments in the fund's shareholder reports. Fund annual reports typically include management's discussion of fund performance ("MDFP"), which describes a fund's strategies that materially affected the fund's returns during the most recent fiscal year.[35] The Division's review of and experience with MDFP disclosure indicate that the annual report may be a valuable resource for investors.[36] The proposed rule would require the section of the profile relating to a fund's investment strategies to contain disclosure to the following effect:

> Additional information about the fund's investments is available in the fund's annual and semi-annual reports to shareholders. In particular, the fund's annual report discusses the relevant market conditions and investment strategies used by the fund's adviser that materially affected the fund's performance during the last fiscal year. You may obtain these reports at no cost by calling _____.[37]

This disclosure would be required to appear in the context of information about a fund's investments.[38] The Commission requests comment on this approach. For example, would it be more helpful to investors if the profile included under a separate caption an explanation of the various types of additional information available to investors (*e.g.*, the fund's shareholder reports and SAI)?

- What are the main risks of investing in the fund?

Narrative Disclosure. Rule 498 would require a fund to summarize the principal risks of investing in the fund based on the risk disclosure provided in the fund's prospectus.[39] The risk section of the profile would provide an overview of the risks to which the fund's particular portfolio as a whole is expected to be subject and the circumstances reasonably likely to affect adversely the fund's net asset value and performance. The risk section also would include disclosure about the risk of losing money[40] and identify the types of investors for whom the fund may be an appropriate or inappropriate investment (based on, for example, an investor's risk tolerance or time horizon). Information about whether the fund is appropriate for particular types of investors is designed to help investors evaluate and compare funds based on their investment objectives and individual circumstances.[41] A fund, at its option, also could discuss in the risk section the potential rewards of investing in the fund as long as the discussion provides a balanced presentation of the fund's risks and rewards.[42]

Special Disclosure Requirements. A money market fund and a fund advised by or sold through a bank would be required to disclose in the risk section of the profile that an investment in the fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. A tax-exempt money market fund that concentrates its investments in a particular state would be required to disclose that investing in the fund may be riskier than investing in other types of money market funds, since the fund may invest a significant portion of its assets in a single issuer.

Similar disclosure for these funds currently is required to appear on the cover page of their prospectuses.[43] Consistent with the proposed risk/return summary in the prospectus, rule 498 would require this disclosure to appear in the risk section of the profile. Since the disclosure relates directly to a fund's risks, it would appear to be more meaningful to investors when presented in the context of information about the fund's risks. The proposed approach also would help streamline the profile cover page and avoid repeating information on the cover page and in the risk section of the profile.

Rule 498 would require a fund to disclose in the risk section of the profile (if applicable) that it is non-diversified.[44] To help investors understand this disclosure, rule 498 would require a non-diversified fund to describe the effects of non-diversification (*e.g.*, that, compared to diversified funds, the fund may invest a greater percentage of its assets in a particular issuer) and to summarize the risks of this practice.[45]

Risk/Return Bar Chart and Table. Rule 498 would require the risk section of the profile to include a bar chart showing a fund's calendar year returns and a table comparing the fund's average annual returns to those of a broad-based securities market index.[46] The proposed rule would require the bar chart and table to be included in the risk section of the profile under a subheading that refers to both risk and performance.[47] Over 75% of individual investors responding to a Commission release requesting comment about ways to improve risk disclosure favored a bar chart presentation of fund risks.[48] Focus Group participants found both the bar chart and a tabular presentation of fund performance (particularly when the table included return information for a broad-based securities market index) helpful in evaluating and comparing fund investments.

The bar chart would present a fund's returns for each of the last 10 calendar years and would illustrate graphically a fund's past risks by showing changes in the fund's returns over time.[49] The table would present the fund's average annual

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[25] 1995 Profile Letter, *supra* note 9, at 2.

[26] *See* General Instruction C of proposed Form N–1A, *supra* note 1, for guidance on disclosing information for more than one fund in the same prospectus.

[27] Proposed rule 498. The cover page also would include the date of the profile. *See infra* note 84 and accompanying text regarding the proposed dating requirements. If the profile is distributed electronically or as part of another document (*e.g.*, when the profile is printed in a magazine), rule 498 would require cover page information to appear at the beginning of the profile.

[28] In identifying the document as a "profile," a fund would be instructed not to use the term "prospectus." Proposed rule 498(c)(1)(ii).

[29] *See* 1996 Profile Letter, *supra* note 9, at 1 (requiring a similar legend). A fund would be required to provide a toll-free or collect telephone number for investors to request the prospectus or other information. If applicable, a fund could indicate that the prospectus is available on its Internet site or by E-mail. When an application to purchase the fund's shares accompanies the profile, rule 498 would require the application to present with equal prominence the option to invest in the fund based on the information included in the profile or request the prospectus before making an investment decision. *See infra* text accompanying note 72. The profile disclosure about the fund's investment strategies also would inform investors about the availability of additional information in the fund's shareholder reports. *See infra* note 37 and accompanying text.

[30] Proposed rule 498(b). In addition to the 3-day mailing requirement for prospectuses, rule 498 would require a fund to send within 3 business days of a request its annual or semi-annual shareholder report and Statement of Additional Information ("SAI"). The Commission staff also would examine a fund's compliance with this requirement and the Commission would bring an enforcement action in an appropriate case for failing to comply with this requirement.

[31] *See* Items 2 and 3 of proposed Form N–1A. *See also* General Instruction C.2.(a) of proposed Form N–1A.

[32] Form N–1A Release, *supra* note 1.

[33] Proposed rule 498 (incorporating Item 2(a) of proposed Form N–1A). In providing this disclosure, a fund could refer to its investment objectives as investment goals.

[34] The criteria for determining whether a particular strategy is a principal strategy and disclosure about concentration policies are discussed in the Form N–1A Release, *supra* note 1.

[35] *See* Item 5 of proposed Form N–1A.

[36] Commenters also have cited the annual report as a source of valuable information. *See* Voss Sanders, *Dear Shareholder*, Morningstar Mutual Funds, Apr. 26, 1996, at 1 (commenting on improved annual report disclosure).

[37] If applicable, a fund could indicate that its annual and semi-annual reports are available on its Internet site or by E-mail request. In addition, a fund that provides its MDFP in the prospectus or a money market fund (which is not required to prepare a MDFP) would omit the second sentence of this disclosure.

[38] The 1996 Profile Letter, *supra* note 9, at 1, contemplates that information about the availability of a fund's shareholder reports appear at the beginning of the profile.

[39] Proposed rule 498(c)(2)(iii) (incorporating Item 2(c) of proposed Form N–1A). *See also* Form N–1A Release, *supra* note 1 (regarding fund risk disclosure proposed to be required in the prospectus).

[40] In recognition of the relative safety of money market funds, a money market fund would be required to state that: Although the fund seeks to preserve the value of your investment at $1.00 per share, it is possible to lose money by investing in the fund.

[41] The 1996 Profile Letter, *supra* note 9, at 2, requires information about the appropriateness of the fund for particular types of investors to be presented under a separate caption. Because this information is closely related to the risks of investing in a fund, rule 498 would integrate this disclosure into the discussion of a fund's risks.

[42] The 1996 Profile Letter, *supra* note 9, at 2, permits disclosure about the rewards of investing in a fund only if presented separately from disclosure about the fund's risks.

[43] *See* Item 1(a)(vi) and (vii) of Form N–1A; Letter to Registrants from Carolyn B. Lewis, Assistant Director, Division of Investment Management, SEC, at II.B (Feb. 25, 1994).

[44] *See* Investment Company Act section 5(b) (15 U.S.C. 80a–5(b)) (regarding diversified and non-diversified funds).

[45] The 1996 Profile Letter, *supra* note , at 2, requires a fund to disclose without further explanation that it is non-diversified.

[46] Proposed rule 498 (incorporating Item 2(c) of proposed Form N–1A).

[47] The 1996 Profile Letter, *supra* note , at 2–3, requires the bar chart and table to appear under a caption relating to a fund's past performance. To help investors use the information in the bar chart and table, the proposed rule would require a fund to explain how the information illustrates the fund's risks and performance. Item 2 of proposed Form N–1A would provide the following example of this explanation: This information illustrates the fund's risks and performance by showing changes in the fund's performance from year to year and by showing how the fund's average annual returns for one, five, and ten years compare to those of a broad measure of market performance. A fund also would be required to disclose that how the fund has performed in the past is not necessarily an indication of how the fund will perform in the future.

[48] *See* Risk Concept Release, *supra* note .

[49] The proposed rule would require the bar chart of a fund in operation for fewer than 10 years to include annual returns for the life of the fund. In addition, a fund would be required to have at least one calendar year of returns before including the bar chart. A fund that includes a single bar in the bar chart or a fund that does not include the bar chart because the fund does not have annual returns for a full calendar year would be required to modify, as appropriate, the narrative explanation accompanying the bar chart and table (*e.g.*, by stating that the information shows the fund's risks and performance by comparing the fund's performance to a broad measure of market performance). *See* Item 2 of proposed Form N–1A.

returns for the last one, five, and ten fiscal years (or for the life of the fund, if shorter) and would provide comparable return information for a broad-based securities market index.[50] Requiring comparative return information for a broad-based market index would provide investors with a basis for evaluating a fund's performance and risks relative to the market.[51] The proposed approach also would be consistent with the line graph presentation of fund performance required in MDFP disclosure. Rule 498 would permit a fund to include return information for other indexes, including a "peer group" index of comparable funds.

While the average annual return information for the fund in the table would reflect the payment of any sales loads charged by the fund, the return information in the bar chart would not reflect sales loads.[52] Sales loads can be accurately and fairly reflected in return information of the type contained in the table by deducting sales loads at the beginning (or end) of particular periods from a hypothetical initial fund investment. Reflecting sales loads in the bar chart, however, may be impracticable. In addition, reflecting the payment of sales loads may be less important in the bar chart than in the table, since the bar chart is intended primarily to depict fund risks graphically. A fund that charges sales loads would be required to disclose that sales loads are not reflected in the bar chart and that, if the loads were included, returns would be less than those shown.[53]

Rule 498 would require a multiple class fund to include return information in the bar chart for only one class. Because the returns of each class differ only to the extent the classes do not have the same expenses, including return information in the bar chart for all classes appears to be unnecessary to illustrate the risks of investing in the fund.[54] Rule 498 would require the bar chart to reflect annual return information for the class offered in the profile that has returns for the longest period over the last 10 years. This approach is intended to provide the greatest amount of information about changes in the fund's returns.[55]

Rule 498 would require a fund to provide in the table its average annual returns and those of a broad-based securities market index as of the end of the most recent calendar quarter prior to the profile's first use. A fund would be required to update this information for each succeeding calendar quarter as soon as reasonably practicable following the completion of the quarter. To avoid having to reprint the profile, a fund would be permitted to update performance information by using, for example, a sticker or stamp reflecting the updated information.

- What are the fund's fees and expenses?

Consistent with current prospectus disclosure, the profile would include a fee table summarizing a fund's fees and expenses, including any sales loads charged in connection with an investment in the fund.[56] Fees and expenses directly affect a fund's performance and can be important elements of an investment decision for fund investors. The fee table is designed to help investors understand the costs of investing in a fund and compare those costs with the costs of other funds.[57]

Other Disclosure Requirements

Rule 498 would require the profile to include disclosure about additional key aspects of a fund investment in response to the following questions:

- Who are the fund's investment adviser and portfolio manager?

Rule 498 would require a fund to identify its investment adviser and the person or persons primarily responsible for the day-to-day management of the fund's portfolio ("portfolio manager").[58] Rule 498 also would require information about the length of time the portfolio manager has managed the fund and a summary of the portfolio manager's business experience for the last 5 years. Focus Group participants indicated that information about a fund's portfolio manager was important in evaluating and comparing fund investments.[59]

When several persons act together to manage a fund's portfolio, profile disclosure, like the portfolio manager disclosure required in fund prospectuses, would indicate that a committee has primary responsibility for the fund's portfolio management.[60] When 3 or more persons each manage *a portion* of the portfolio, rule 498 would permit a fund to identify the number of persons managing the portfolio without naming each manager, except that, if a portfolio manager manages 40% or more of the fund's portfolio, information about that manager would be require to be disclosed.[61] When portions of a fund's portfolio are managed by several persons, the fund's risks and returns generally are less dependent on the activities of a particular person. Focusing profile disclosure on the number of a fund's portfolio managers would inform investors about the shared responsibility for the fund's portfolio management without adding unnecessary length to the profile. In addition, requiring information about any portfolio manager who manages 40% or more of a fund's portfolio would assure that disclosure would be provided when a portfolio manager has

[50] A money market fund would be required to include its 7-day yield in the table. A non-money market fund would be permitted to disclose its yield, and any fund (including a money market fund) would be permitted to disclose its tax-equivalent yield. When yield information is disclosed, a fund would be required to include a toll-free (or collect) telephone number that investors can use to obtain current yield information.

[51] *See* 1996 Profile Letter, *supra* note , at 3 (permitting a fund, at its option, to compare its returns to those of an appropriate broad-based securities market index).

[52] The annual returns in the bar chart would be calculated using the same method required by Item 9 of proposed Form N–1A to calculate annual returns in the financial highlights information included in fund prospectuses. As in the case of annual returns in the financial highlights information, the returns in the bar chart would not reflect sales loads or account fees. The average annual returns included in the table would be calculated using the same method required by Item 21 of proposed Form N–1A to calculate fund performance included in advertisements, which reflects the payment of sales loads and recurring shareholder account fees. *See also* Item 5 of proposed Form N–1A (requiring sales loads and recurring shareholder account fees to be reflected in the return information shown in the line graph in the MDFP).

[53] Similar disclosure would be required if a fund charges account fees.

[54] In addition, the table accompanying the bar chart would provide return information for each class offered in the profile.

[55] When two or more classes included in the profile have returns for at least 10 years or returns for the same period but fewer than 10 years, the fund would be required to provide annual returns for the class with the greatest net assets as of the end of the fund's most recent fiscal year. Focusing on the class with the greatest net assets is intended to provide returns in the bar chart for a "representative" class offered in the profile.

[56] Proposed rule 498 (incorporating Item 3 of proposed Form N–1A). *See also* Item 2(a) of Form N–1A.

[57] *See* Form N–1A Release, *supra* note (proposing amendments to improve fee table disclosure).

[58] Proposed rule 498. Consistent with Item 6(a)(2) of proposed Form N–1A, rule 498 would not require information about the portfolio manager of a money market fund or an index fund.

[59] *See also* ICI Survey Letter, *supra* note , at 9 (recommending that the profile include this information).

[60] *See* Instruction 3 to Item 6(a)(2) of proposed Form N–1A.

[61] The 1996 Profile Letter, *supra* note , at 3, permits a fund to disclose that 3 or more persons manage the fund's portfolio, without regard to the percentage of the portfolio managed by any one person.

significant responsibilities with respect to the fund's portfolio.

A fund would be required to identify a sub-adviser (if any) subject to two exceptions.[62] First, rule 498 would not require a fund to identify a sub-adviser whose sole responsibility for the fund is limited to routine cash management.[63] Responsibility for routine cash management generally is incidental to a fund's investment objectives and unlikely to affect the fund's overall portfolio management and risks.[64] Second, consistent with the proposed approach for portfolio manager disclosure, rule 498 would permit a fund with 3 or more sub-advisers, each of which manages a portion of the fund's portfolio to disclose the number of sub-advisers without giving the name of each sub-adviser, except that the identity of any sub-adviser that manages 40% or more of the fund's portfolio would be required to be disclosed.[65]

The Commission requests comment on the proposed approach when 3 or more portfolio managers or sub-advisers each manage a portion of a fund's portfolio. The Commission requests specific comment on the proposed exceptions for providing information about any portfolio manager and the identity of any sub-adviser that manages 40% or more of a fund's portfolio. In particular, the Commission requests comment whether a lower or higher percentage would be appropriate. The Commission also requests comment on alternatives that would simplify this disclosure while continuing to provide information about a portfolio manager or sub-adviser that has significant responsibilities for management of a fund's portfolio.

- How do I buy the fund's shares? How do I sell the fund's shares?

Rule 498 would require a fund to describe in the profile under two separate questions how to purchase and how to redeem the fund's shares.[66] The purchase section of the profile would include information on minimum investment requirements (*e.g.*, initial and minimum account balances) and, when applicable, any breakpoints in or waivers of sales loads.[67]

Apart from the general requirement to provide summary information and concise disclosure, rule 498 would not limit the extent of purchase and redemption information included in a profile. Funds participating in the pilot program disclosed this information concisely when the profile accompanied the prospectus. When a profile is used without the prospectus, however, a fund may find it necessary to disclose more extensive information about purchase and redemption procedures and, in particular, sales load breakpoints and waivers.[68] Including detailed purchase, redemption, and sales load information in the profile would appear to be inconsistent with the profile's purpose as a summary disclosure document. For this reason, the Commission requests comment whether rule 498 should impose any restrictions on the disclosure of purchase and redemption information. Commenters favoring limiting this disclosure are asked to provide specific suggestions for requirements that would serve to limit the disclosure while providing information that would assist fund investors in making investment decisions. Should the rule, for example, require a fund to summarize sales load information by showing the highest and lowest sales load breakpoints?

- How are the fund's distributions made and taxed?

Rule 498 would require the profile to describe how frequently a fund intends to make distributions and what reinvestment options (if any) are available to investors. Rule 498 also would require a fund other than a tax-exempt fund to state, as applicable, that the fund intends to make distributions that may be taxed as ordinary income and capital gains.[69] A tax-exempt fund would be required to state that it intends to distribute tax-exempt income and to disclose, as applicable, that a portion of its distributions may be taxable.[70]

- What other services are available from the fund?

Rule 498 would require the profile to summarize or list the services available to the fund's investors (*e.g.*, any exchange privileges or automated information services).[71] Funds increasingly offer a wide variety of shareholder services. Information about the services offered by a particular fund may be useful to investors and help investors compare the services offered by different funds.

Application to Purchase Shares

Rule 498 would permit a fund to include an application with the profile to purchase the fund's shares.[72] To make

[62] *See* section 2(a)(20) (15 U.S.C. 80a–2(a)(20)) (defining "investment adviser" to include a sub-adviser).

[63] In contrast, the 1996 Profile Letter, *supra* note 9, at 3, requires disclosure about a sub-adviser only if it manages a material portion of a fund's portfolio.

[64] Information about a fund's cash management practices generally would not be disclosed in the section of the profile that discusses the fund's main investment strategies. *See* Form N–1A Release, *supra* note (prospectus disclosure would focus on a fund's principal strategies, which generally would not include the fund's cash management practices).

[65] *See* 1996 Profile Letter, *supra* note , at 3 (permitting a fund to provide disclosure to the effect that 3 or more sub-advisers manage the fund's portfolio without regard to the percentage of the portfolio managed by any one sub-adviser). To further limit the scope of this exception, a sub-adviser solely responsible for managing a fund's cash positions would not be counted in determining whether 3 or more sub-advisers manage the fund's portfolio.

[66] Proposed rule 498, (vii).

[67] To help investors understand the meaning of the term "sales load," proposed Form N–1A would require the fee table and narrative discussion of sales loads in the prospectus to refer to "sales fees (loads)." This approach also would apply to profile disclosure.

[68] Fund prospectuses, for example, often include detailed information about automatic investment programs, telephone and wire redemption requests, rights of accumulation and letters of intent that can be used to reduce sales loads, and sales load waivers for particular classes of investors and transactions. *See also* Form N–1A Release, *supra* note 1 (proposing to modify certain prospectus disclosure requirements to focus prospectus disclosure on the amount of the sales load charged in connection with a fund investment).

[69] Proposed rule 498(c)(2)(iii). If a fund, as a result of its investment objectives or strategies, expects its distributions primarily to consist of ordinary income (or short-term capital gains that are taxed as ordinary income) or capital gains, the fund would be required to provide disclosure to that effect.

[70] Rule 498 would give a tax-exempt fund the option of providing specific disclosure about its taxable distributions or a general statement that a portion of its distributions may be taxable. A fund choosing to disclose specific information would be required to provide the disclosure required by Item 7(d)(2)(ii) of proposed Form N–1A (*i.e.*, The fund would be required to state, as applicable, that: (1) the fund may invest a portion of its assets in securities that generate income that is not exempt from federal or state income tax; (2) income exempt from federal income tax may be subject to state and local income tax; (3) any capital gains distributed by the fund may be taxable; and (4) a portion of the tax-exempt income distributed by the fund may be treated as a tax preference item for purposes of determining whether the shareholder is subject to the federal alternative minimum tax).

[71] Proposed rule 498(c)(2)(ix). Some funds using pilot profiles disclosed services relating to the purchase and redemption of the fund's shares (*e.g.*, telephone redemption procedures) in the purchase and redemption sections of the profile, while other funds disclosed this information in the section of the profile relating to the services offered by the fund. Rule 498 would continue to give a fund the flexibility to disclose, as appropriate, information about its services in the purchase, redemption, or fund services sections of the profile. To keep profile disclosure concise, rule 498 would not permit information discussed in the purchase and redemption sections to be repeated in the section relating to fund services.

[72] Proposed rule 498(c)(3). Rule 482 under the Securities Act (17 CFR 230.482) prohibits a fund from including an application to purchase the fund's shares in an advertisement. This prohibition was based on concerns that an application would be inconsistent with the purpose of rule 482, which was to provide certain information about a fund and a means of requesting a fund's prospectus. *See* Fund Performance Release, supra note 5. In 1993, the Commission proposed to amend rule 482 to permit advertisements containing significantly

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it clear that investors may review the prospectus before investing, rule 498 would require the application to present with equal prominence the options of investing in the fund based on the information in the profile or requesting the fund's prospectus before making an investment decision.

Disclosure Safeguards

The federal securities laws specifically contemplate the use of a summary prospectus, such as the profile, for offering securities.[73] As a consequence, existing protections under the federal securities laws would apply to false or misleading statements in a profile. The general provisions of sections 12(a)(2) and 17(a) of the Securities Act, which impose civil and criminal liability upon any person who offers or sells securities based on false or misleading statements, would apply to a profile as a summary prospectus.[74] The anti-fraud provisions of section 10(b) of the Securities Exchange Act of 1934 and rule 10b–5 under that Act also would apply.[75] Section 10(b) of the Securities Act also authorizes the Commission to suspend the use of a summary prospectus if it includes false or misleading statements.[76]

Rule 498 would not permit a profile to incorporate by reference the information included in the fund's prospectus or any other disclosure document filed with the Commission.[77] The profile is designed to summarize prospectus information in a self-contained format that would assist an investor in making an investment decision or in deciding to request additional information. Permitting a fund to incorporate by reference into the profile information included in the prospectus would mean that information in the prospectus would be considered to be part of the profile disclosure.[78] This result would not be consistent with the purpose of the profile, which is to offer investors the option to make an investment in a fund based solely on the information in the profile.

Although investors would be able to purchase a fund's shares based on the summary information contained in a profile, the prospectus would remain the primary disclosure document under the federal securities laws. To inform investors about the availability of the prospectus, the profile would be required to include a legend on the cover page stating that more information is available in the prospectus, and the application accompanying the profile would be required to give equal prominence to the options of requesting a prospectus or investing in the fund. A fund would be required to deliver its prospectus either in response to an investor's request or with the purchase confirmation.[79]

D. Filing Requirements

Rule 498 would require a fund to file the profile with the Commission at least 30 days before its first use.[80] The pre-use filing requirement would allow the Commission to monitor compliance with rule 498's disclosure requirements and reduce the possibility of misleading information in a profile.[81] Subsequently, a fund would have to file any profile containing substantive changes to a previously filed profile 30 days before use.[82] No filing would be required for a previously filed profile that is revised only to update return information. The Commission requests comment on the proposed filing requirements, including whether the pre-use filing period of 30 days should be shorter or longer.

Rule 498 would require the profile filed with the Commission to be dated approximately as of the date of its first use.[83] Rule 498 also would require a fund to add the date of the most recent performance information included in the profile.[84] This requirement would alert investors to the updated performance information in the profile, while assisting the Commission staff in responding to inquiries by identifying the date of the profile filed with the Commission.

The profile would be filed electronically on the Commission's electronic data gathering analysis and retrieval system ("EDGAR").[85] The availability of the profile on EDGAR would permit public access to fund information in profiles. Although EDGAR does not currently reproduce graphic images (such as the profile bar chart),[86] the EDGAR rules require a fair and accurate narrative description or tabular representation in the place of any omitted material.[87] To assist the Commission's review of the content, use, and effectiveness of the profile, including the bar chart, a fund would be required to file 2 copies of the profile in the primary form intended to be distributed to investors (*e.g.*, paper or electronic media).[88] This requirement would expire 2 years after the effective date of rule 498 because the Commission expects that the format and use of the profile would become largely routine and standardized by that time, and the pre-use filing of the profile on EDGAR would be sufficient to monitor compliance with the profile disclosure requirements.

E. Dissemination of Profiles

Rapidly changing technology, particularly the electronic distribution of information, has enhanced investors' access to securities-related information. The Commission has recognized these developments by allowing funds (and other registrants) maximum flexibility in the choice and use of distribution media.[89] In keeping with this approach, rule 498 would not limit a fund's use of any particular medium for disseminating the profile. A profile could be made available through direct mail and mass print (*e.g.*, magazines and newspapers), broadcast, and electronic media. Permitting broad dissemination of the profile would be consistent with and further the purposes for which the profile is designed—to provide information about a fund in a standardized and readily accessible format.

As in the case of other disclosure documents, the general requirements of the federal securities laws would impose certain limitations on the distribution of a profile. The means of distributing the profile would be required to communicate the information in the profile effectively and to enable an investor to review the disclosed information.[90] Each version of a profile (*e.g.*, electronic or paper) would be required to contain all of the information required by rule 498.[91] In addition, while the profile may be delivered without a prospectus, a profile accompanied by sales literature cannot be delivered without the prospectus.[92]

Electronic media, such as the Internet, may be particularly well-suited for the delivery of the profile to investors.[93] Including the profile together with the prospectus (and other information) at a fund's Internet site also may be a more efficient method for funds to disseminate disclosure documents. Electronic availability of both the profile and prospectus could mean that investors could easily invest in a fund and access the fund's prospectus for more information.[94] An investor's use of an electronic application in the profile would create a presumption of delivery of the prospectus if both the profile and the prospectus are available at the same electronic site.[95] A fund that does not electronically disseminate the profile and prospectus together could not rely on this presumption and would be required to provide a copy of the prospectus with the purchase confirmation.

F. Defined Contribution Plans

Investors in participant-directed defined contribution plans ("plans") may find a profile helpful in evaluating and comparing the funds offered as investment alternatives in a plan.[96] Certain information required by rule 498, however, appears to be unnecessary for plan participants because of the way these plans are structured and regulated. The requirements of the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code, and the terms of individual plans govern, among other things, participant investments and plan distribution, (including the tax consequences of distributions).[97]

To enable a fund to use a profile that is tailored for use by plan participants, rule 498 would permit a profile to omit information relating to the purchase and

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more information about a fund and a purchase application. Investment Company Act Release No. 19342 (Mar. 5, 1993) (58 FR 16141). Unlike the proposed amendments to rule 482, rule 498 would require a profile to present a summary of key information about a fund in a standardized format and is being proposed by the Commission in conjunction with proposed amendments to Form N–1A that are designed to improve the disclosure provided in fund prospectuses. In connection with proposed rule 498, the Commission is proposing to amend rule 482 to clarify that it would not apply to profiles.

[73] Section 10(b) of the Securities Act permits the use of a summary prospectus (which provides information the substance of which is included in the prospectus) to communicate information for purposes of an offer under section 5(b)(1) of the Securities Act (15 U.S.C. 77e(b)(1)). Section 5(b)(2) of the Securities Act (15 U.S.C. 77e(b)(2)) requires, as a condition of selling a security, the delivery to investors of a prospectus that meets the requirements of section 10(a) of the Securities Act (15 U.S.C. 77j(a)). To meet this requirement, rule 498 would require a fund to provide its section 10(a) prospectus in response to an investor's request or, as required by section 5(b)(2), to provide the prospectus prior to or with the purchase confirmation. Recent legislation added new section 24(g) to the Investment Company Act authorizing the Commission to adopt rules permitting a fund to use a summary prospectus that includes information the substance of which is not included in the prospectus. National Securities Markets Improvement Act of 1996, Pub. L. No. 104–290 (1996), section 204 (amending section 24 to add new paragraph (g)).

[74] 15 U.S.C. 77*l*(a)(2); 15 U.S.C. 77q(a).

[75] 15 U.S.C. 78j(b); 17 CFR 240.10b–5. *See also* Fund Performance Release, *supra* note 5, at 3878 (for anti-fraud purposes, disclosure in a section 10(a) prospectus will not cure a false or misleading advertisement (or "omitting prospectus" under section 10(b) of the Securities Act) permitted under rule 482).

[76] This administrative remedy supplements the Commission's stop order authority under section 8 of the Securities Act (15 U.S.C. 77h). Section 10(b) of the Securities Act specifically excludes summary prospectuses from section 11 of the Securities Act (15 U.S.C. 77k), which imposes strict liability for misleading statements in a prospectus. Congress adopted this exception to encourage the use of summary prospectuses. The exception was justified on the basis that the Commission's review of summary prospectuses would disclose deficiencies that could be corrected, and that the section 10(a) prospectus has to be delivered at or before the time a buyer receives the securities. *See* I L. Loss & J. Seligman, Securities Regulation 480 & n.214 (3d ed. 1989) (*citing* S. Rep. 1036, 83d Cong., 2d Sess. 17–18 (1954) and H.R. Rep. 1542, 83d Cong., 2d Sess. 26 (1954)). If a misleading statement is included in both the prospectus and a profile, section 11 would apply to the sale of the fund's securities. *See id.*

[77] Proposed rule 498(b). *See* General Instruction D to proposed Form N–1A (permitting the SAI to be incorporated by reference in the prospectus, and other documents filed with the Commission to be incorporated by reference in the SAI and other parts of the Form N–1A registration statement).

[78] *See* White v. Melton, 757 F. Supp. 267, 271 (S.D.N.Y. 1991). *See also* Investment Company Act Release No. 13436 (Aug. 12, 1983) (48 FR 37928, 37930).

[79] *See also supra* note 30 and accompanying text (a fund would be required to send the prospectus within 3 business days of a request).

[80] Rule 498 would require a fund to file the profile under rule 497, which sets out general filing requirements for fund prospectuses. New paragraph (k) to rule 497 would include the profile filing requirements. If the profile is revised during the 30-day period, a fund would be required to file a definitive copy of the profile within 5 business days of its use so that the Commission has a filed copy that is the same as the profile given to investors.

[81] The Commission has determined that it is not necessary or appropriate in the public interest or for the protection of investors to require that the profile be filed as part of a registration statement. Filing the profile as part of a registration statement would impose unnecessary burdens, would restrict the flexible use of the profile, and would not add to the Commission's ability to monitor the disclosure in the profile.

[82] Non-substantive changes to a profile would not require a filing before use of the profile, although a copy would be required to be filed within 5 days of use.

[83] Proposed rule 498(c)(1)(iii).

[84] A profile, for example, showing January 1, 1998 as its date of first use could include a parenthetical below the January date indicating that the profile has been "updated as of March 31, 1998."

[85] Rule 101(a)(1)(i) of Regulation S–T (17 CFR 232.101(a)(1)(i)) requires prospectuses filed pursuant to the Securities Act to be submitted in electronic format.

[86] The Commission anticipates future modifications that would permit EDGAR to reflect graphic images in electronically filed documents.

[87] Rule 304(a) of Regulation S–T (17 CFR 232.304(a)). Immaterial differences between delivered and electronically filed documents, such as pagination, color, type size, or corporate logo, need not be described.

[88] Proposed rule 497(k)(5).

[89] *See* Investment Company Act Release No. 21399 (Oct. 6, 1995) (60 FR 53458, 53460 & n.20) ("Electronic Distribution Release") (providing guidance on the electronic delivery of documents, including prospectuses, shareholder reports, and proxies, under the Securities Act, the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), and the Investment Company Act); Investment Company Act Release No. 21945 (May 9, 1996) (61 FR 24644) (addressing the use of electronic media by broker-dealers, transfer agents, and investment advisers); Investment Company Act Release No. 21946 (May 9, 1996) (61 FR 24652) ("Release 21946") (adopting technical amendments to rules premised on the delivery of paper documents).

[90] Electronic Distribution Release, *supra* note 89, at 53460 & n.20. Some media, particularly broadcast media, may be inappropriate for disseminating the profile because they may not communicate the profile information effectively (*e.g.*, the bar chart may not be effectively conveyed by a radio broadcast) or provide a meaningful opportunity for retaining the information (*e.g.*, a short television commercial).

[91] Release 21946, *supra* note 89, at 24653. A document, whether delivered electronically or on paper, must contain all required information and, if the order of information has been specified, must present the information in substantially the prescribed order. Electronic Distribution Release, *supra* note 89, at 53460 n.20.

[92] *See* section 2(a)(10)(a) of the Securities Act (15 U.S.C. 77b(a)(10)(a)) (excluding sales literature from the definition of a "prospectus" (and from the filing requirements under the Securities Act) if a section 10(a) prospectus (but not a summary prospectus under section 10(b)) precedes or accompanies the sales literature).

[93] Electronic media include, for example, electronic bulletin boards, E-mail, facsimiles, Internet sites, audiotapes, and videotapes. Electronic Distribution Release, *supra* note 89, at 53458 n.9.

[94] A fund could provide a hyperlink to the prospectus from the profile. A hyperlink in a document (which, for example, may be an underlined word or phrase) permits a viewer to "jump" to another document (or part of the same document) with a mouse click. The words "investment strategies" in the profile, for example, could be set up as a hyperlink to the discussion of investment strategies in the prospectus. Using hyperlinks would promote the profile's role as a gateway for fund investors to obtain additional information in the prospectus and other documents.

[95] *Cf.* Electronic Distribution Release, *supra* note 89, at 53465–66 (example (39)) ("If the fund can identify the application form as coming from the electronic system that contains both the application and the prospectus, electronic delivery of the prospectus can be inferred.").

[96] In 1995, the Division issued a no-action letter confirming that certain informational materials about a fund offered as an investment option in a plan could be treated as an omitting prospectus under rule 482 of the Securities Act. Fidelity Institutional Retirement Services Company, Inc. (pub. avail. Apr. 5, 1995). The informational materials, which were intended to be distributed to plan participants, disclosed only information included in the fund's prospectus (*i.e.*, the fund's investment objectives, policies and risks, expenses, past performance, and distribution practices) and contained a legend informing participants of the availability of the fund's prospectus.

[97] *See* 29 U.S.C. 1104(c). The most prevalent type of defined contribution plan is the 401(k) plan (26 U.S.C. 401(k)), which allows an employee to defer receipt and taxation of a portion of his or her salary and permits an employer to match a percentage of the employee's contributions. A 401(k) plan typically provides for individual accounts and permits a participant to exercise control over the assets in his or her account. These plans often provide several investment options, frequently including one or more funds. *See* Investment Company Institute, Mutual Fund Fact Book 87 (36th ed. 1996) (at the end of 1995, more than $161 billion, or 31%, of 401(k) assets were invested in funds). Section 404(c) of the Employee Retirement Income Security Act of 1974 and related rule 404c–1 (29 CFR 2550.404c–1) exempt fiduciaries of a 401(k) plan from liability for investment losses if a plan participant exercises control over the assets in his or her account. A participant is deemed to "exercise control" if, among other things, the plan offers at least 3 investment alternatives and a participant is provided or has the opportunity to obtain sufficient information to make informed decisions about the plan's investment alternatives.

sale of fund shares, fund distributions, and tax consequences.[98] In addition, since some fund services (*e.g.*, exchange privileges) may not apply to plan participants, rule 498 would permit a fund to omit this information. Rule 498 would permit a fund to include the plan's enrollment form in lieu of the application form because the plan effects purchases and sales of a fund's shares on behalf of plan participants.[99] The cover page of the profile would disclose, as required by rule 498, that a fund's prospectus and other disclosure documents are available upon request.[100] The Commission requests comment whether other information required by rule 498 may not be useful for plan participants and could be omitted when a profile is used in connection with a plan.

General Request for Comments

The Commission requests that any interested persons submit comments on proposed rule 498 and other proposed amendments that are the subject of this release, suggest additional changes (including changes to related rules and forms that the Commission is not proposing to amend), or submit comments on other matters that might affect the proposed changes. Commenters suggesting alternative approaches are encouraged to submit proposed rule or form text. For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), the Commission also is requesting information regarding the potential impact of the proposed rule on the economy on an annual basis. Commenters should provide empirical data to support their views.

IV. Paperwork Reduction Act

Proposed rule 498 contains "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), and the Commission has submitted the proposed rule to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information is "Profiles for Open-End Management Investment Companies." Responses to the collection of information will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Section 10(a) of the Securities Act describes the type of information required in a prospectus used to offer securities for sale under section 5(b)(1) of the Securities Act. Sections 10(b) of the Securities Act and 24(g) of the Investment Company Act permit the Commission to allow the use of a prospectus by a fund that omits or summarizes information required by section 10(a). The Commission is proposing the profile as a summary prospectus under this authority.

Under proposed rule 498, the profile would present a summary of key information about a fund, including the fund's investment strategies, risks, performance, and fees, in a concise, standardized format. Investors would have the option of purchasing a fund's shares based on information in the profile or reviewing the fund's prospectus (and other information) before investing.

Under rule 498, use of the profile is permissive, but the rule is mandatory for those funds that elect to use a profile. The Commission expects funds would not choose to prepare and use a profile for every investment portfolio ("portfolio") they offer. In addition, a prospectus, and if used, a profile, may offer the securities of several portfolios. If a fund chooses to use a profile, it would be filed before its first use. Subsequent filings may be necessary if there are significant changes to the profile.

The Commission estimates that there are approximately 180 *new* registration statements filed by funds annually and that approximately 300 investment portfolios are included in initial registrations. The Commission estimates that funds would elect to use a profile for approximately one-third of these portfolios and a profile would include information for approximately two portfolios. Based on these estimates, the preparation and filing of profiles under rule 498 for these funds would represent a total annual burden of 1,250 hours (50 profiles x 25 hours per profile). The Commission estimates that there are approximately 2,700 registered open-end investment companies that have *effective* registration statements on Form N–1A representing approximately 7,500 portfolios. The Commission estimates that these funds would elect to use a profile for approximately one-third of these portfolios and that a profile would include approximately two portfolios. Based on these estimates, the total annual burden for preparing, filing, and updating a profile would be 12,500 hours (1,250 profiles x 10 hours per profile) for funds with effective registration statements. For these two categories of filers (*i.e.*, funds filing new registration statements and funds with effective registration statements), the total annual burden of preparing, filing, and updating profiles is 13,750 hours.

Under 44 U.S.C. 3506(c)(2)(B), the Commission solicits comment to: (i) evaluate whether the proposed collection of information is necessary for the proper performance of the Commission's function, including whether the information shall have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons desiring to submit comments on the collection of information requirements should direct them to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, D.C. 20503, and should also send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th St., NW., Mail Stop 6–9, Washington, DC 20549–6009, with a reference to S7–18–96. The OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if the OMB receives it within 30 days of publication.

Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("Analysis") in accordance with 5 U.S.C. 603 regarding proposed rule 498. The Analysis explains that the proposal would permit a fund to provide prospective investors with a profile, which would be a summary prospectus under section 10(b) of the Securities Act and section 24(g) of the Investment Company Act. The Analysis explains that a profile would include a summary of key information about a fund and give investors the option of purchasing the fund's shares based on the information in the profile or requesting the fund's prospectus before making an investment decision. The Analysis also explains that the profile is intended to provide a standardized summary of 9 items of information about a fund in a specific order and in a question-and-answer format designed to help investors evaluate and compare funds.

The Analysis discusses the impact of the proposed rule on small entities, which are defined, for the purposes of the Securities Act and Investment Company Act, as investment companies with net assets of $50 million or less as of the end of the most recent fiscal year (17 CFR 230.157(b) and 270.0–10). The Commission estimates that there are approximately 620 small entity investment companies, and that approximately one-third (207) could choose to use proposed rule 498. As explained in more detail in the Analysis, the Commission estimates that the total hour burden on small entities to prepare, file, and update the profile annually would be approximately 2,420 hours. While the profile would include a summary of information about the fund included in the prospectus, the disclosure requirements for the profile and the prospectus are designed for different purposes. The Commission believes that there are no other duplicative, overlapping, or conflicting federal rules.

The Analysis explains that proposed rule 498 would not be significantly burdensome for small entities because use of the profile is optional and the profile is intended to be a standardized summary of information required to be disclosed in a fund's prospectus. In addition, some investors may use profiles instead of prospectuses to narrow their choices among funds, which would reduce printing and distribution costs. Lower printing and distribution costs could benefit small entities as much or more than large funds.

As stated in the Analysis, the Commission considered several alternatives to proposed rule 498, including, among others, establishing different compliance or reporting requirements for small entities or exempting them from all or part of the proposed rule. Because use of the profile would be optional, and the profile, if used, would contain the same disclosure that other funds are required to include in the profile, the Commission believes that the proposed rule would not impose additional burdens on small entities and separate treatment for small entities would be inconsistent with the protection of investors.

The Commission encourages the submission of comments on the Analysis, including specific comment on (i) the number of small entities that would be affected by the proposed rule and (ii) the discussion of the impact of the proposed rule on small entities. Comments will be considered in the preparation of the Final Regulatory Flexibility Analysis if the proposed rule is adopted. A copy of the Analysis may be obtained by contacting Markian M.W. Melnyk, Senior Counsel, Securities and Exchange Commission, 450 5th Street, NW., Mail Stop 10–2, Washington, DC. 20549–6009.

VI. Statutory Authority

The Commission is proposing rule 498 under sections 5, 7, 8, 10, and 19(a) of the Securities Act (15 U.S.C. 77e, 77g, 77h, 77j, and 77s(a)) and sections 8, 22, 24(g), 30, and 38 of the Investment Company Act (15 U.S.C. 80a–8, 80a–22, 80a–24(g), 80a–29, and 80a–37). The authority citations for the rule precede the text of the amendments.

VII. Text of Proposed Rule

List of Subjects in 17 CFR Part 230

Investment companies, Reporting and recordkeeping requirement, Securities.

For the reasons set out in the preamble, the Commission proposes to amend Chapter II, Title 17 of the Code of Federal Regulations as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 77d, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. Amend § 230.431 to revise the introductory text of paragraph (a) to read as follows:

§ 230.431 Summary prospectuses.

(a) A summary prospectus prepared and filed (except a summary prospectus filed by an open-end management investment company registered under the Investment Company Act of 1940) as part of a registration statement in accordance with this section shall be deemed to be a prospectus permitted under section 10(b) of the Act (15 U.S.C. 77j(b)) for the purposes of section 5(b)(1) of the Act (15 U.S.C. 77e(b)(1)) if the form used for registration of the securities to be offered provides for the use of a summary prospectus and the following conditions are met:

* * * * *

3. Amend § 230.482 to revise the introductory text of paragraph (a) to read as follows:

§ 230.482 Advertising by an investment company as satisfying requirements of section 10.

(a) An advertisement shall be deemed to be a prospectus under section 10(b) of the Act (15 U.S.C. 77j(b)) for the purpose of section 5(b)(1) of the Act (15 U.S.C. 77e(b)(1)), unless the advertisement is a profile under § 230.498 or is excepted from the definition of prospectus by section 2(10) of the Act (15 U.S.C. 77b(10)) and related § 230.134, if:

* * * * *

4. Amend § 230.497 to revise paragraph (a) and to add paragraph (k) to read as follows:

§ 230.497 Filing of investment company prospectuses, number of copies.

(a) Five copies of every form of prospectus sent or given to any person prior to the effective date of the registration statement that varies from the form or forms of prospectus included in the registration statement filed pursuant to § 230.402(a) shall be filed as part of the registration statement not later than the date that form of prospectus is first sent or given to any person, except that:

(1) An investment company advertisement under § 230.482 shall be filed under this paragraph (but not as part of the registration statement) unless filed under paragraph (i) of this section; and

(2) A profile under § 230.498 shall be filed in accordance with paragraph (k) of this section and not as part of the registration statement.

* * * * *

(k)(1) A form of profile under § 230.498 shall not be used unless:

(i) The form of profile is filed with the Commission at least 30 days before the date it is first sent or given to any person. No additional filing is required during the 30-day period for changes (substantive or otherwise) to a form of profile filed under this paragraph if copies of the changes are submitted to the Commission under paragraph (k)(5) of this section.

(ii) A form of profile that has a substantive change from or an addition to the information in the last form of profile filed under paragraph (k)(1)(i) of this section or under this paragraph (except a profile that is changed to update quarterly return information) is filed with the Commission at least 30 days before the date it is sent or given to any person. No additional filing is required during the 30-day period for

[98] Proposed rule 498.

[99] The enrollment form would not be required to be filed with the Commission because the form would be the responsibility of the company offering the plan and prepared in accordance with the plan's requirements and applicable law.

[100] General Instruction C of proposed Form N–1A would include similar revisions to prospectus disclosure requirements to allow funds to omit certain information from prospectuses that are limited to use in the retirement plan market. Form N–1A Release, *supra* note 1.

changes (substantive or otherwise) to a form of profile filed under this paragraph if copies of the changes are submitted to the Commission under paragraph (k)(5) of this section.

(2) The form of profile filed under paragraph (k)(1)(ii) of this section can be used on the later of 30 days after the date of filing or, if the changes or additions reflect changes to a prospectus included in a post-effective amendment filed to update a registration statement under § 230.485, the date the post-effective amendment becomes effective.

(3) File with the Commission a definitive form of a profile that varies from the profile filed under paragraph (k)(1) of this section no later than the fifth business day after the date it is used.

(4) Any form of profile that does not contain substantive changes from or additions to a definitive profile that was filed under paragraph (k)(3) of this section does not need to be filed with the Commission before use if it is filed no later than the fifth business day after the date it is used. A form of profile in which the only changes are updated quarterly return information does not need to be filed with the Commission.

(5) Send two additional copies of a form of profile filed electronically under paragraph (k)(3) of this section to the Commission, in the primary form intended to be used for distribution to investors (*e.g.*, paper, electronic media), by mail or other means reasonably calculated to result in receipt by the Commission, no later than the fifth business day after the date the profile is first sent or given to any person. Send copies to the following address: Assistant Director, Office of Disclosure and Review, Division of Investment Management, U.S. Securities and Exchange Commission, 450 5th St. NW., Mail Stop 10–2, Washington, DC 20549–6009. Note prominently that the submission is made under § 230.497(k)(5) of Regulation C. If the profile is distributed primarily on the Internet, supply, in lieu of copies, the electronic address ("URL") of the profile pages(s) in an exhibit to the electronic filing under this paragraph (k). This additional filing requirement shall expire on March 10, 1999.

5. Add § 230.498 to read as follows:

§ 230.498 Profiles for Certain Open-End Management Investment Companies.

(a) *Definitions.* A *Fund* means an open-end management investment company, or any series of the company, that has or is included in an effective registration statement on Form N–1A (§§ 274.11A and 239.15A of this chapter) and that has a current prospectus under section 10(a) of the Act (15 U.S.C. 77j(a)).

(2) A *Profile* means a prospectus that is authorized under section 10(b) of the Act (15 U.S.C. 77j(b)) and section 24(g) of the Investment Company Act (15 U.S.C. 80a–24(g)) for the purpose of section 5(b)(1) of the Act (15 U.S.C. 77e(b)(1)).

(b) *General profile requirements.* A Fund may provide a Profile to investors, which may contain an application that investors may use to purchase the Fund's shares, if:

(1) The Profile contains only the information required or permitted by paragraph (c) of this section and does not incorporate any information by reference to another document.

(2) The Fund responds within 3 business days to a request for its prospectus, annual or semi-annual report, or Statement of Additional Information by first-class mail or other means designed to assure equally prompt delivery.

Instructions to paragraph (b).

1. The Profile is intended to be a standardized summary of key information in the Fund's prospectus. Additional information is available in the prospectus and in the Fund's annual and semi-annual shareholder reports and Statement of Additional Information. Do not include cross-references to this (or other) additional information or use footnotes in the Profile, unless specifically required or permitted.

2. Provide clear and concise information in the Profile. Avoid excessive detail, technical or legal terms, complex language, and long sentences and paragraphs.

3. File the Profile with the Commission as required by § 230.497(k).

(c) *Specific profile requirements.* (1) Include on the cover page of the Profile or at the beginning of the Profile if the Profile is distributed electronically or as part of another document:

(i) The Fund's name and, at the Fund's option, the Fund's investment objectives or the type of fund offered or both;

(ii) A statement identifying the document as a "Profile," without using the term "prospectus";

(iii) The approximate date of the Profile's first use and, if applicable, the date of the most recent updated performance information included in the Profile;

(iv) The following legend:

This Profile summarizes key information about the Fund that is included in the Fund's prospectus. If you would like more information before you invest, you may obtain the Fund's prospectus and other information about the Fund at no cost by calling _____.

Instruction to paragraph (c)(1)(iv).

Provide a toll-free (or collect) telephone number that investors can use to obtain the prospectus or other information. If applicable, the Fund may indicate that the prospectus is available on its Internet site or by E-mail request.

(2) Provide the information required by paragraphs (c)(2) (i) through (ix) of this section in the order indicated and in the same or substantially similar question-and-answer format shown:

(i) *What are the Fund's goals?* Provide the information about the Fund's investment objectives under Item 2(a) of Form N–1A.

(ii) *What are the Fund's main investment strategies?* Provide the information about the Fund's principal investment strategies under Item 2(b) of Form N–1A.

(iii) *What are the main risks of investing in the Fund?* Provide the narrative disclosure, bar chart, and table under Item 2(c) of Form N–1A. Provide the Fund's average annual returns and, if applicable, yield as of the end of the most recent calendar quarter prior to the Profile's first use and update the information as of the end of each succeeding calendar quarter as soon as practicable after the completion of the quarter.

(iv) *What are the Fund's fees and expenses?* Include the fee table under Item 3 of Form N–1A.

(v) *Who are the Fund's investment adviser and portfolio manager?* (A) Identify the Fund's investment adviser and any sub-adviser, unless the sub-adviser's responsibility is limited to routine cash management. When 3 or more sub-advisers each manage a portion of the Fund's portfolio (other than cash positions), the Fund may disclose the number of sub-advisers managing the portfolio, without identifying each sub-adviser, except that the identity of any sub-adviser that manages 40% or more of the Fund's portfolio must be disclosed.

(B) Using the Instructions to Item 6(a)(2) of Form N–1A, state the name and length of service of the person or persons employed by or associated with the Fund's investment adviser (or the Fund) who are primarily responsible for the day-to-day management of the Fund's portfolio and summarize each person's business experience for the last 5 years. When 3 or more persons each manage a portion of the Fund's portfolio, the Fund may disclose the number of persons managing the portfolio, without identifying each person, except that the information required by this paragraph must be disclosed for any person that manages 40% or more of the Fund's portfolio.

(vi) *How do I buy the Fund's shares?* Provide information about how to purchase the Fund's shares, including any minimum investment requirements. If applicable, disclose any breakpoints in or waivers of sales loads (referring to sales loads as "sales fees (loads)').

(vii) *How do I sell the Fund's shares?* Provide information about how to redeem the Fund's shares.

(viii) *How are the Fund's distributions made and taxed?* Describe how frequently the Fund intends to make distributions and what reinvestment options (if any) are available to investors. State, as applicable, that the Fund intends to make distributions that may be taxed as ordinary income and capital gains or that the Fund intends to distribute tax-exempt income. If a Fund, as a result of its investment objectives or strategies, expects its distributions primarily to consist of ordinary income (or short-term capital gains that are taxed as ordinary income) or capital gains, provide disclosure to that effect. For a Fund that holds itself out as investing in securities generating tax-exempt income, provide, as applicable, the information required by Item 7(d)(2)(ii) of Form N–1A or a general statement to the effect that a portion of the Fund's distributions may be subject to tax.

(ix) *What other services are available from the Fund?* Summarize or list the services available to the Fund's shareholders (*e.g.*, any exchange privileges or automated information services), unless otherwise disclosed in response to paragraphs (c)(2) (i) through (viii) of this section.

(3) The Profile may include an application that a prospective investor can use to purchase the Fund's shares if the application presents with equal prominence the option to invest in the Fund or request the Fund's prospectus.

(4) A Profile of a Fund available as an investment option for participants in a defined contribution plan that meets the requirements for qualification under the Internal Revenue Code of 1986 may omit the information required by paragraphs (c)(2) (vi) through (ix) of this section. In lieu of the application permitted by paragraph (c)(3) of this section, the Fund may include the plan's enrollment form, which does not have to be filed with the Commission.

By the Commission.

Dated: February 27, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–5376 Filed 3–7–97; 8:45 am]

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17 CFR Part 270

[Release No. IC–22530; File No. S7–11–97]

RIN 3235–AH11

Investment Company Names

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is proposing a new rule under the Investment Company Act of 1940 that would require a registered investment company with a name suggesting that the company focuses on a particular type of investment (*e.g.*, an investment company that calls itself the ABC Stock Fund, the XYZ Bond Fund, or the QRS U.S. Government Fund) to invest at least 80% of its assets in the type of investment suggested by its name. Under current positions of the Commission's Division of Investment Management, these investment companies generally must invest only 65% of their assets in the types of investments suggested by their names. The proposed rule also would address names that suggest an investment company focuses its investments in a particular country or geographic region, names that indicate a company's distributions are exempt from income tax, and names that suggest a company or its shares are guaranteed or approved by the U.S. government. The new rule is intended to address certain broad categories of investment company names that are likely to mislead investors about an investment company's investments and risks.

DATES: Comments must be received on or before June 9, 1997.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC. 20549–6009. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–11–97; this file number should be included on the subject line if E-mail is used. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW., Washington, DC. 20549–6009. Electronically-submitted comment letters will be posted on the Commission's Internet site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: David U. Thomas, Senior Counsel, or Elizabeth R. Krentzman, Assistant Director, (202) 942–0721, Office of Disclosure and Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 5th Street, NW., Mail Stop 10–2, Washington, DC. 20549–6009.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today is proposing for comment new rule 35d–1 (17 CFR 270.35d–1) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (the "Investment Company Act"). The new rule would apply to all registered investment companies and would require an investment company with a name that suggests that the company focuses on a particular type of investment to invest at least 80% of its assets in the type of investment suggested by its name. In addition, the rule would apply an 80% investment requirement to investment companies with names that suggest the company focuses its investments in a particular country (*e.g.*, the ABC Japan Fund) or geographic region (*e.g.*, the ABC Latin America Fund) and investment companies with names that indicate the company's distributions are exempt from federal income tax (*e.g.*, the XYZ Tax-Exempt Fund) or exempt from both federal and state income tax (*e.g.*, the XYZ New York Tax-Exempt Fund). The rule also would prohibit an investment company from using a name that suggests that the company or its shares are guaranteed or approved by the U.S. government.

In separate companion releases, the Commission is proposing two initiatives designed to improve the disclosure provided to investors by open-end management investment companies ("funds"). First, the Commission is proposing significant amendments to the prospectus disclosure requirements of Form N–1A (17 CFR 274.11A), the registration statement used by funds.[1] These amendments seek to minimize prospectus disclosure about technical, legal, and operational matters that generally are common to all funds and to focus prospectus disclosure on essential information about a particular fund that would assist an investor in deciding whether to invest in that fund. Second, the Commission is proposing new rule 498 under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) and the Investment Company Act, which would permit an investor to buy a fund's shares based on a summary document, or "profile," that contains key

[1] Investment Company Act Release No. 22528 (Feb. 27, 1997) ("Form N–1A Release").

information about the fund.[2] Under this proposal, investors would receive the fund's prospectus upon request or with the purchase confirmation.

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I. Introduction

Section 35(d) of the Investment Company Act, as amended by the recently enacted National Securities Markets Improvement Act of 1996, prohibits a registered investment company from using a name that the Commission finds by rule to be materially deceptive or misleading.[3] Before section 35(d) was amended, the Commission was required to declare by order that a particular name was misleading and, if necessary, obtain a federal court injunction prohibiting further use of the name. In adopting amended section 35(d), Congress reaffirmed its concern that investors may focus on an investment company's name to determine the company's investments and risks, and recognized that investor protection would be improved by giving the Commission rulemaking authority to address potentially misleading investment company names.[4]

The Commission is proposing new rule 35d-1 to address certain investment company names that are likely to mislead an investor about a company's investment emphasis. The Commission believes that investors should not rely on an investment company's name as the sole source of information about a company's investments and risks.[5] An investment company's name, like any other single piece of information about an investment, cannot tell the whole story about the investment company.[6] As Congress has recognized, however, the name of an investment company may communicate a great deal to an investor.

The proposed rule would apply to all registered investment companies, including funds, closed-end investment companies, and unit investment trusts, and would require an investment company with a name that suggests a particular investment emphasis to invest in a manner consistent with its name. The rule, for example, would require an investment company with a name that suggests that the company focuses on a particular type of security (*e.g.*, an investment company that calls itself the ABC Stock Fund, the XYZ Bond Fund, or the QRS U.S. Government Fund) to invest at least 80% of its assets in the type of security indicated by its name. An investment company seeking maximum flexibility with respect to its investments would be free to select a name that does not connote a particular investment emphasis.

Under current positions of the Division of Investment Management ("Division") an investment company with a name suggesting that the company focuses on a particular type of investment generally is required to invest only 65% of its assets in the type of investment suggested by its name.[7] Division positions with respect to investment company names have evolved over time. Division guidelines accompanying Form N–8B–1, a predecessor of Form N–1A, required a fund to invest at least 80% of its assets in the type of investment indicated by its name.[8] When the Commission adopted Form N–1A in 1983, the Division instituted the 65% investment requirement to give funds greater flexibility with respect to their names and investments.[9]

The Commission is proposing the 80% investment requirement to guard against the use of misleading investment company names and to implement Congress's intent in amending section 35(d).[10] Requiring an investment company to invest at least 80% of its assets in the type of investment suggested by its name would provide an investor greater assurance that the company's investments will be consistent with its name. The need for investment companies to invest in a manner consistent with their names would appear to have become more important in recent years as more and more investors have invested in investment companies to meet their retirement goals. These investors typically place greater emphasis on allocating their investment company holdings in well-defined types of investments, such as stocks, bonds, and money market instruments.[11] Given the substantial growth of the investment company industry over the last decade, investors face an increasingly diverse universe of investment companies to evaluate when choosing a company suitable for their investment needs.[12]

[2] Investment Company Act Release No. 22529 (Feb. 27, 1997).

[3] 15 U.S.C. 80a-34(d); Pub. L. No. 104–290, sec. 208, 110 Stat. 3416, 3432 (1996).

[4] *See* S. Rep. No. 293, 104th Cong., 2d Sess. 8–9 (1996).

[5] *See generally* "Investor Protection: Tips from an SEC Insider," Remarks by Arthur Levitt, Chairman, SEC, before the Investors" Town Meeting at the Houstonian Hotel, Washington, D.C. (Apr. 12, 1995) ("An informed investor looks beyond the packaging of a fund, and also sees what's inside."); "The SEC and the Mutual Fund Industry: An Enlightened Partnership," Remarks by Arthur Levitt, Chairman, SEC, before the General Membership Meeting of the Investment Company Institute ("ICI") at the Washington Hilton Hotel, Washington, D.C. (May 19, 1995) ("some fund names can leave investors with the wrong impression about [the fund's] safety.").

[6] *See* Millman, *First pop the hood: A fund's name may tell you nothing about how it acts*, U.S. News & World Rep., Feb. 3, 1997, at 70.

[7] *See, e.g.*, Guide 1 to Form N–1A (regarding certain names used by funds). The Division also has addressed certain investment company names in various "Letters to Registrants" ("GCLs").

[8] Investment Company Act Release No. 7221 (June 9, 1972) (37 FR 12790) (applying the 80% requirement with respect to a fund's assets exclusive of cash, government securities, and short-term commercial paper).

[9] Investment Company Act Release No. 13436 (Aug. 12, 1983) (48 FR 37928) (applying the 65% requirement with respect to a fund's total assets, but allowing funds to depart from the 65% requirement based on adverse market conditions).

[10] Rule 35d-1 would address misleading investment company names. In contrast, fund professionals and others may categorize investment companies based on a company's investment objectives or strategies and actual portfolio holdings. A fund investing principally in equity securities, for example, may be categorized as an aggressive stock fund or a small-capitalization fund. These categories develop over time and are used by industry and rating services such as Lipper Analytical Services, Inc. and Morningstar, Inc. Morningstar, Inc., for example, currently is revising its investment company classification system to classify a company by its portfolio holdings over a 3-year period (or life of the fund, if shorter). Morningstar, *Morningstar Introduces New Fund Categories* (Oct. 29, 1996) (press rel.).

[11] *See, e.g.*, Vickers, *A Price of Success: An Unbalanced Portfolio*, N.Y. Times, Jan. 12, 1997, at F6; Glassman, *With New Year, Stock Up a 401(k) for the Long Term*, Wash. Post, Jan. 1, 1997, at C13. The amount of retirement assets invested in funds increased 145% between 1992 and 1995, with these assets totalling $1.01 trillion at the end of 1995. ICI, Mutual Fund Retirement Assets (Dec. 6, 1996) (ICI News No. ICI–96–98). The ICI estimates that, in 1995, 84% of fund shareholders invested for retirement purposes. *Id.*

[12] According to Division estimates based on data from the ICI and Lipper Analytical Services, between September 1985 and November 1996, investment company assets increased from $591 billion to $4.0 trillion and the number of investment companies (including the individual series of funds) increased from 9,200 to 24,661.

The proposed 80% investment requirement could help reduce confusion when an investor selects an investment company for specific investment needs and asset allocation goals.

The proposed rule would address certain broad categories of investment company names that, in the Commission's view, are likely to mislead investors about a company's investments and risks. The Division would continue to evaluate investment company names not covered by proposed rule 35d–1 (*e.g.*, a name that includes words, such as "international" or "global," that a reasonable investor may conclude suggest more than one investment focus). In determining whether a particular name is misleading, the Division would consider whether the name would lead a reasonable investor to conclude that the company invests in a manner that is inconsistent with the company's intended investments or the risks of those investments.

II. Discussion

A. General

1. Names Indicating an Investment Emphasis in Certain Securities or Industries

Proposed rule 35d–1 would require an investment company with a name that suggests that the company focuses its investments in a particular type of security (*e.g.*, the ABC Stock Fund or XYZ Bond Fund) or in securities of issuers in a particular industry (*e.g.*, the ABC Utilities Fund or the XYZ Health Care Fund) to invest at least 80% of its assets in the indicated investment.[13] The 80% requirement would allow an investment company to maintain up to 20% of its assets in other investments. In the case of funds, these assets, for example, could include cash and cash equivalents that could be used to meet redemption requests.

The proposed rule would require the 80% investment requirement to be a fundamental policy of the investment company (*i.e.*, a policy that may not be changed without shareholder approval).[14] Consistent with other requirements under the Investment Company Act, the requirement to adopt the 80% investment requirement as a fundamental policy would prevent a company from changing its name and its investment emphasis without the consent of shareholders.[15] The Commission requests comment on the proposed 80% investment requirement and whether the 80% requirement should be a fundamental policy.

Under the proposed rule, an investment company that includes the words "Treasury" or "government" in its name (*e.g.*, the ABC U.S. Treasury Fund or the XYZ U.S. Government Fund) would be required to invest, as applicable, at least 80% of its assets in U.S. Treasury securities or U.S. government securities.[16] The Commission requests comment whether an investor may infer from a name that includes the words "Treasury" that the investment company invests exclusively in obligations backed by the full faith and credit of the U.S. government. If so, should the proposed rule require these investment companies to invest exclusively in U.S. Treasury obligations?

Under the proposed rule, an investment company with the word "government" in its name could satisfy the 80% investment requirement by investing in government securities, which include many types of instruments ranging, for example, from U.S. Treasury bonds to derivative securities, such as Government National Mortgage Association collateralized mortgage obligations. Investors may not anticipate the extent to which the net asset value of an investment company that invests in government securities may increase or decrease in response to changes in interest rates. In 1994, certain funds with the word "government" in their names declined sharply in value in response to interest rate changes.[17] The Commission requests comment whether, to address the degree of interest-rate sensitivity of the shares of these companies, the rule should restrict the types of government securities that may be used to satisfy the 80% requirement and, if so, what restrictions would be appropriate. For example, the rule could require an investment company with a name that includes the word "government" to invest at least 80% of its assets in U.S. Treasury securities and other comparable government instruments. This approach, however, could have the practical effect of subjecting investment companies with the words "government" and "Treasury" in their names to substantially the same 80% investment requirement and eliminate any differences among these funds. In addition, these types of restrictions would create a separate, narrower definition of "government securities" for the purposes of the rule than that used in the marketplace. Commenters favoring a limitation on the types of instruments that could be used to meet the 80% requirement should suggest specific limitations and discuss why those limitations would be appropriate.[18]

2. Names Indicating an Investment Emphasis in Certain Countries or Geographic Regions

The proposed rule would address investment companies with names that suggest that they focus their investments in a particular country (*e.g.*, the ABC Japan Fund) or in a particular geographic region (*e.g.*, the XYZ Latin America Fund) by requiring these companies to meet a two-part 80% investment requirement.[19] First, these companies would be required to have a fundamental policy to invest, as applicable, at least 80% of their assets in securities of issuers that are tied economically to the particular country or geographic region indicated by their names. Consistent with this requirement, a company also would be required to invest in securities that meet any one of the following criteria: (i) Securities of issuers that are organized under the laws of the country or of a

[13] Proposed rule 35d–1(a)(2). A fund that uses a name suggesting that it is a money market fund would continue to be subject to the maturity, quality, and diversification requirements of rule 2a–7(b) under the Investment Company Act (17 CFR 270.2a–7(b)).

[14] *See* section 8(b)(3) of the Investment Company Act, 15 U.S.C. 80a–8(b)(3) (regarding policies deemed fundamental by an investment company), and section 13(a)(3) of the Investment Company Act, 15 U.S.C. 80a–13(a)(3) (requiring shareholder approval to change a policy deemed fundamental under section 8(b)(3)). Under current Division positions, only investment companies with names suggesting that their distributions are exempt from tax are required to adopt fundamental policies with respect to their investments or distributions. *See* Guide 1 to Form N–1A (regarding tax-exempt funds).

[15] *See* section 13(a) of the Investment Company Act (requiring, among other things, an investment company to obtain shareholder approval to change its status from a diversified company to a nondiversified company). *See also infra* note 49.

[16] *See* section 2(a)(16) of the Investment Company Act (15 U.S.C. 80a–2(a)(16)) (defining government securities as those issued or guaranteed by the U.S. government or any U.S. government agency or instrumentality). The requirement to invest, as applicable, in U.S. Treasury securities or U.S. government securities would apply only to investment companies with names that connote investments in U.S. obligations. An investment company with a name that suggests the company invests in government obligations other than those of the United States (*e.g.*, the ABC French Government Fund) would be required to invest at least 80% of its assets in the type of government securities by its name.

[17] *See Mutual Funds*, Consumer Reports, June 1995, at 415 (a fund with the words "government income" in its name that lost 28% in 1994 "seemed to imply that shareholders would be investing in safe government bonds that produce income").

[18] *See also infra* "Names Suggesting Guarantee or Approval by the U.S. Government.".

[19] Proposed rule 35d–1(a)(3).

country within the geographic region suggested by the company's name or that maintain their principal place of business in that country or region; (ii) securities that are traded principally in the country or region suggested by the company's name; or (iii) securities of issuers that, during the issuer's most recent fiscal year, derived at least 50% of their revenues or profits from goods produced or sold, investments made, or services performed in the country or region suggested by the company's name or that have at least 50% of their assets in that country or region. Substantially the same 3 criteria have been used to date by the Division to determine whether names of investment companies that focus their investments in particular countries or geographic regions are consistent with section 35(d).[20] Since these criteria are relatively broad, the proposed rule would impose the general requirement that a company's investments be tied economically to the country or region indicated by its name.

The Commission requests comment on the proposed approach. In particular, the Commission requests comment on using specific criteria alone to determine whether a company's investments are consistent with its name and, if so, whether the proposed 3 criteria appropriately describe investments in securities of a particular country or region.[21] Alternatively, the Commission requests comment whether the rule should impose only the general requirement that a company invest at least 80% of its assets in securities of issuers that are tied economically to the country or geographic region indicated by the company's name.[22] This approach may give a company the flexibility to invest in additional types of securities that are not addressed by the 3 proposed (or other specific) criteria, but expose the company's assets to the economic fortunes and risks of the country or geographic region indicated by its name.[23] The Commission requests comment whether this result would be appropriate.

Tax-Exempt Investment Companies

The proposed rule would codify current Division positions applicable to an investment company with a name that suggests that the company's distributions are not subject to income tax. In particular, rule 35d-1 would require a company that uses a name suggesting that its distributions are exempt from federal income tax or from both federal and state income taxes to adopt a fundamental policy: (i) To invest at least 80% of its assets in securities the income from which is exempt, as applicable, from federal income tax or from both federal and state income tax; or (ii) to invest its assets so that at least 80% of the income that it distributes will be exempt, as applicable, from federal income tax or from both federal and state income tax.[24] Consistent with current Division positions, the proposed requirements would apply to a company's investments or distributions that are exempt from federal income tax under both the regular tax rules and the alternative minimum tax rules.[25]

Applying the 80% Investment Requirement

The proposed 80% investment requirement would apply at the time a company invests its assets.[26] This approach would be consistent with other investment requirements under the Investment Company Act.[27] Under the proposed approach, for example, an investment company subject to the 80% investment requirement would not have to sell portfolio holdings that have increased in value.[28] The proposed rule would require an investment company that no longer meets the 80% investment requirement (*e.g.*, as a result of changes in the value of its portfolio holdings or other circumstances beyond its control) to make future investments in a manner that would bring the company into compliance with the 80% requirement. The Commission requests comment on the proposed approach.

The proposed 80% investment requirement would be based on a company's net assets plus any borrowings that are senior securities under section 18 of the Investment Company Act.[29] Division positions that require an investment company to invest at least 65% of its assets in the type of investment suggested by its name apply the 65% requirement based on a company's total assets.[30] Total assets may include non-investment assets (such as receivables for shares sold or expense reimbursements) and exclude liabilities that reduce the amount of a company's investments. Certain types of routine transactions, such as unsettled securities transactions and securities loans, may increase a company's total assets because total assets do not reflect certain liabilities.[31] These transactions have no net effect on a company's portfolio investments and may result in a company failing to satisfy an 80% investment requirement based on total assets, even though, in effect, 80% of the company's portfolio holdings would be invested in a manner consistent with the company's name. Basing the 80% investment requirement on net assets rather than total assets is intended to reflect more closely a company's portfolio investments.

Net assets do not include liabilities such as a company's borrowings, if any. The proposed rule would use net assets plus the amount of any borrowings that are senior securities. This approach seeks to prevent a company from circumventing the 80% investment requirement by investing borrowed funds in securities that are not consistent with the company's name.[32] The Commission requests comment on the proposed approach and whether there are other transactions that, like borrowings, could increase the amount of assets that a company could invest and should be added to net assets. Alternatively, the Commission requests comment whether using total assets excluding certain transactions, such as unsettled securities transactions and securities loans, would be a more effective basis for the 80% requirement and, if so, what transactions should be excluded from total assets.

Consistent with current Division positions, the proposed rule would contemplate that an investment company may take a "temporary defensive position" to avoid losses in response to adverse market, economic, political, or other conditions.[33] When an investment company assumes a temporary defensive position, the company would be permitted to depart from the 80% requirement and invest in other securities. The Commission requests comment on the proposed approach. In particular, the Commission requests comment whether the Commission should provide specific guidance on when an investment company could appropriately assume a temporary defensive position.[34] Commenters favoring this approach should consider whether the rule should establish specific time periods during which a company would be permitted to take a temporary defensive position. Alternatively, the Commission requests comment whether the rule should give investment companies greater flexibility to assume temporary defensive positions. For example, should an investment company simply disclose the circumstances under which, and the potential length of time during which, the company may assume a temporary defensive position and depart from the 80% investment requirement?

The Commission also requests comment whether certain investment companies may require more flexibility than others in meeting the 80% investment requirement. For example, an investment company with a name that suggests the company invests in securities associated with a developing country may need the flexibility to invest significant portions of its assets in other securities pending the availability of suitable investments in the developing country indicated by its name. The Commission requests comment whether and how these or other circumstances should be addressed.

B. Names Suggesting Guarantee or Approval by the U.S. Government

Consistent with the requirements of section 35(a) of the Investment Company Act, the proposed rule would prohibit an investment company from using a name that suggests that the company or its shares are guaranteed or approved by the U.S. government or any U.S. government agency or instrumentality.[35] The proposed rule also would codify a Division position that prohibits an investment company from using a name that includes the words "guaranteed" or "insured" or similar terms in conjunction with "United States" or "U.S. government." The Division adopted this position to address concerns that names with these terms may lead investors to conclude erroneously that the value of an investment company's shares is guaranteed or insured by the U.S. government.[36]

U.S. government securities differ among themselves with respect to the amount of credit support provided by the U.S. government. Including the word "guarantee" or similar terms in an investment company's name could be used to address the degree of credit risk associated with the types of government securities in which a particular company invests. For example, while U.S. Treasury bonds are supported by the full faith and credit of the United States, government securities issued by the Federal National Mortgage Association ("Fannie Mae") are supported by Fannie Mae's ability to borrow from the U.S. Treasury. The proposed rule, however, would prohibit a company from using a name such as the "ABC Fund for Investing in U.S. Guaranteed Assets," even though the company invests at least 80% of its assets in government obligations that are, in fact, guaranteed as to payment of principal and interest by the full faith and credit of the U.S. government. The Commission requests comment whether the proposed prohibition is appropriate. In addition, since the fund industry distinguishes between Treasury and other government funds and investors may understand the differences between these funds, the Commission requests comment whether a reasonable investor would understand that using terms such as "guaranteed" or "insured" in conjunction with the words "U.S. government" reflect the credit risk of a company's investments. Alternatively, would a reasonable investor be misled into believing that names using these terms mean that an investment in the company is guaranteed or insured by the U.S. government from any risk of loss, including the risk that the value of the company's shares may decrease in response to interest rate changes?

C. Other Investment Company Names

In General

The proposed rule would not codify Division positions with respect to certain investment company names. The Division, for example, has provided guidance in the past about the use of a name that includes words such as "balanced," "index," "small, mid, or large capitalization," "international,"

[20] Letter to Registrants at II.A (Feb. 22, 1993) (using substantially the same 3 criteria, but indicating that the Division would consider other criteria).

[21] *See "The Scope of the US Mutual Fund Industry: Its Regulation and Industry Trends,"* Remarks by Isaac C. Hunt, Jr., Commissioner, SEC, before the Business Roundtable on "The Development of the Russian Mutual (Unit) Fund Industry and Related Investment Opportunities" at the General Consulate of the Russian Federation, New York, New York (Sept. 20, 1996) (discussing St. Petersburg Long Distance Telephone company, which is organized in Canada and whose securities are traded outside of Russia). *See also, e.g.*, rule 3b-4 under the Securities Exchange Act of 1934 (17 CFR 240.3b-4) (defining a "foreign issuer").

[22] Under this approach, an investment company would describe in its prospectus the specific criteria that it uses to select investments that meet the general standard.

[23] For example, an investment company may seek to replicate the currency exposure associated with investing in a particular country by investing in securities denominated in the currencies of other countries.

[24] Proposed rule 35d-1(a)(4).

[25] Letter from Mary Joan Hoene, Deputy Director, Division of Investment Management, SEC, to Matthew P. Fink, Senior Vice President and General Counsel, ICI (Nov. 3, 1987).

[26] Proposed rule 35d-1(b)(1).

[27] *See* section 5(c) of the Investment Company Act (15 U.S.C. 80a-5(c)) (providing that a diversified investment company under section 5(b)(1) of the Act will not lose its status as a diversified company because of changes in the value of its investment since the time of purchase).

[28] Similarly, the proposed approach would enable a fund, pending investment of its assets, to meet the 80% investment requirement despite an influx of cash from new investors. Guide 1 to Form N-1A, in contrast, requires a fund "to have invested" at least 80% of its assets in a manner consistent with its name, which could suggest that a fund would be required to sell portfolio securities in order to *maintain* 80% of its assets in the type of investment suggested by its name.

[29] 15 U.S.C. 80a-18. *See* proposed rule 35d-1(b)(2)(ii) (defining assets for the purposes of the 80% investment requirement).

[30] *See* Guide 1 to Form N-1A (also applying an 80% investment requirement for tax-exempt funds based on a fund's *net* assets).

[31] For example, when a company sells a security for settlement in 3 days and simultaneously commits the sale proceeds to purchase another security, the company's total assets would include as receivables amounts for the security sold and the security purchased, although, during the 3-day settlement period, the company's total assets would not reflect the liability for the price of the securities that the company is obligated to purchase. Similarly, when a company lends its securities, total assets would include a receivable for the security loaned and the collateral for the loan, but not the corresponding payable for the loan.

[32] Section 18 of the Investment Company Act restricts the issuance of senior securities, which include borrowings (except bank borrowings that satisfy certain asset coverage conditions). Investment companies may borrow without being deemed to have created a senior security by establishing a segregated account with liquid assets that collateralize 100% of the market value of the borrowing. *See* Investment Company Act Release No. 10666 (Apr. 18, 1979) (44 FR 25128); Merrill Lynch Asset Management, L.P. (pub. avail. July 2, 1996). For purposes of the rule, net assets would include only those borrowings that are senior securities (*i.e.*, any borrowings that are not fully collateralized by amounts maintained in a segregated account). By virtue of segregating assets to collateralize the borrowing, an investment company should not be able to circumvent the 80% requirement because the amount of company's assets available for investment would not be increased.

[33] Proposed rule 35d-1(b)(3). *See* Letter to Registrants at II.E (Feb. 25, 1994) ("1994 GCL"). See also Form N-1A Release, *supra* note (proposing to require a fund to disclose, if applicable, certain information in its prospectus about the possibility of taking temporary defensive positions).

[34] Many investment companies have the flexibility to assume temporary defensive positions and depart from investment policies unrelated to their names. *See* 1994 GCL, *supra* note (noting that investment companies may depart from a policy to concentrate in a particular industry or group of industries to avoid losses in response to adverse market, economic, political, or other conditions).

[35] Proposed rule 35d-1(a)(1). *See* section 35(a) of the Investment Company Act [15 U.S.C. 80a-34(a)] (prohibiting an investment company from representing or implying in any manner that the company or its shares are guaranteed or approved by the U.S. government).

[36] *See* Letter from William R. McLucas, Director, Division of Enforcement, and Gene A. Gohlke, Acting Director, Division of Investment Management, SEC, to Registrants (Oct. 25, 1990). A similar concern may be raised when an investment company has a name that is the same as or similar to the name of a bank that advises the company or through which the company's shares are sold. The Division has taken the position that, absent disclosure informing investors that the investment company is not federally insured, these names are misleading because an investor is likely to believe that an investment in the company is insured by the Federal Deposit Insurance Corporation or otherwise protected against loss. *See* Letter to Registrants from Barbara J. Green, Deputy Director, Division of Investment Management, SEC (May 13, 1993). The proposed amendments to Form N-1A would continue to require a fund with a name that is the same as or similar to a bank's name to disclose that it is not federally insured. *See* Form N-1A Release, *supra* note 1.

and "global."[37] The Commission believes that a reasonable investor could conclude that these names suggest more than one investment focus. For example, while an investment company with a name that includes the words "international" or "global" generally suggests that the company invests in more than one country, these terms may describe a number of investment companies that have significantly different investment portfolios. Among other things, the number of countries in which an "international" or "global" investment company may invest at any one time may appropriately differ from company to company.[38]

The Division would continue to give interpretive advice with respect to investment company names not covered by the proposed rule.[39] In determining whether a particular name is misleading, the Division would consider whether the name would lead a reasonable investor to conclude that the company invests in a manner that is inconsistent with the company's intended investments or the risks of those investments.[40]

[37] *See* Guide 4 to Form N–1A (funds that use the word "balanced" in their names); Letter to Registrants at II.A (Jan. 17, 1992) (investment companies that include the word "index" in their names); 1994 GCL, *supra* note 33, at II.D (investment companies with names that include the terms "small, mid, or large capitalization"). The Commission does not license the use of a particular investment company name, although the Division has considered and would continue to address whether the use of a particular name would be misleading because it is the same as or similar to the name of an existing registered investment company. *See* Guide 1 to Form N–1A.

[38] In the past, the Division distinguished "global" and "international" investment companies by suggesting that an investment company with "global" in its name invest in securities of at least 3 different countries (which may *include* the United States) and that an investment company with "international" in its name invest in securities of at least 3 countries *outside* the United States. Letter to Registrants at II.A.2 (Jan. 3, 1991). The Division no longer distinguishes the terms "global" and "international."

[39] As a general matter, an investment company should define the terms used in its name in discussing its investment objectives and strategies in the prospectus. *See* 1994 GCL, *supra* note 33, at II.D (using this approach for investment companies that include the words "small, mid, and large capitalization" in their names).

[40] 3See In re Alliance North Am. Gov't Income Trust, Inc. Securities Litigation, No. 95 Civ. 0330 (LLM), 1996 U.S. Dist. LEXIS 14209, at *8 (S.D.N.Y. Sept. 27, 1996); The Private Investment Fund for Governmental Personnel, Inc., 37 S.E.C. 484, 487–88 (1957). The 80% investment requirement generally would apply to a company's investment focus as disclosed in the company's prospectus. The Commission, however, recognizes that the 80% investment requirement would not be appropriate in all cases (e.g., with respect to an investment company that uses the word "balanced" in its name).

In connection with the proposed amendments to Form N–1A, information about the organization and operations of investment companies and Division interpretive positions is proposed to be incorporated in a new "Investment Company Registration Package," which would be prepared by the Division. *See* Form N–1A Release, *supra* note 1. The Investment Company Registration Package would include general guidance about avoiding the use of a name that is the same as or similar to the name of another investment company and about names that a reasonable investor may conclude suggest more than one investment focus including, for example, use of names that include the terms "small, mid, or large capitalization."

2. Names and Average Weighted Portfolio Maturity and Duration

Investment companies investing in debt obligations often seek to distinguish themselves by limiting the maturity of the instruments they hold. These investment companies may call themselves, for example, "short-term," "intermediate-term," or "long-term" bond or debt funds.[41] The Division has required investment companies with these types of names to have average weighted portfolio maturities of specified lengths. The Division, for example, has required an investment company that includes the words "short-term," "intermediate-term," or "long-term" in its name to have a dollar-weighted average maturity of, respectively, no more than 3 years, more than 3 years but less than 10 years, or more than 10 years.[42] The Division no longer intends to use these criteria because it believes a reasonable investor would not necessarily expect that investment companies with these names would be limited in this manner.[43] In addition, the Division and Commission believe that the average weighted maturity of an investment company's portfolio securities may not accurately reflect the sensitivity of the company's share prices to changes in interest rates.[44]

In view of the shortcomings associated with analyzing interest rate volatility based on average weighted maturity, investment companies and investment professionals increasingly evaluate bond portfolios based on "duration," which reflects the sensitivity of an investment company's returns to changes in interest rates.[45] In a concept release on improving risk disclosure, the Commission requested comment whether, if an investment company's name or investment objective refers to maturity, the maturity of the company's investments should be required to be consistent with the duration of the company's portfolio.[46] A number of commenters supported this approach, and the Division is in the process of developing recommendations relating to duration and the maturity of an investment company's investments. As part of its consideration of this issue, the Division requested the Investment Company Institute ("ICI") to consider various methods of calculating duration and asked the ICI to report its findings.[47] In response, the ICI formed a committee to consider this issue and the committee has agreed to inform the Division of its findings. As the Division continues to consider this issue, the Commission requests further comment whether the maturity of a company's portfolio suggested by the company's name should be consistent with the portfolio's duration.[48] The Commission requests specific comment on an appropriate method or methods to calculate portfolio duration.

D. Effective Date

The Commission proposes to allow an investment company up to one year from the effective date of the proposed rule to comply with the rule's requirements. A one-year period is intended to give an investment company sufficient time to make any necessary adjustments to its portfolio holdings to comply with proposed rule 35d–1 or, if the company does not wish to be bound by the requirements of the new rule, to change its name.[49] The

[41] The term "bond," by itself, does not imply that the security has a particular maturity. *See also* 1994 GCL, *supra* note, 33, at III.A (indicating that a fund should describe in its prospectus what it considers to be a "bond").

[42] *See* Investment Company Act Release No. 15612 (Mar. 9, 1987) [52 FR 8268, 8301] (proposing to codify these positions in a guideline).

[43] As in the case of other investment company names, the Division would address these terms on a case-by-case basis in light of the disclosure provided by the investment company.

[44] In 1994, some investors did not anticipate how certain investment companies would perform when interest rates declined over a relatively short period of time. *See, e.g.*, Antilla, *A New Concept in Fund Ads: Truth*, N.Y. Times, July 10, 1994, at C13 (regarding the performance of certain short-term bond funds).

[45] *See, e.g.*, Rekenthaler, *Duration Arrives*, Morningstar Mutual Funds 1–2 (Jan. 21, 1994).

[46] Investment Company Act Release No. 20974 (Mar. 29, 1995) (60 FR 17172, 17175–76).

[47] Letter to Paul Schott Stevens, General Counsel, ICI, from Barry P. Barbash, Director, Division of Investment Management, SEC (Feb. 15, 1996) (File No. S7–10–95); Letter to Barry P. Barbash, Director, Division of Investment Management, SEC, from Paul Schott Stevens, Senior Vice President and General Counsel, ICI (Mar. 11, 1996) (File No. S7–10–95). *See also* Letter to Barry P. Barbash, Director, Division of Investment Management, SEC, from Craig Tyle, Vice President and Senior Counsel, ICI (Dec. 17, 1996) (enclosing preliminary recommendations relating to a standardized methodology for calculating portfolio duration) (File No. S7–10–95).

[48] Pending further action on this issue, the Division would consider, on a case-by-case basis, an investment company's use of duration in connection with the maturity suggested by the company's name.

[49] Certain investment companies have fundamental policies to invest at least 65% of their assets in the type of investments suggested by their names. The Investment Company Act does not require shareholder approval to adopt a new fundamental policy. *See* section 13(a)(3) of the Investment Company Act (requiring shareholder approval to *deviate* from a fundamental policy). An investment company that has a fundamental policy to invest *at least* 65% of their assets in the type of investment suggested by its name generally would be expected to meet the higher 80% investment requirement. A company would decide, based on its individual circumstances, whether it is necessary to seek shareholder approval to change its investment policy.

Commission requests comment on the proposed transition period.

III. General Request for Comments

The Commission requests that any interested persons submit comments on proposed rule 35d–1, suggest additional changes (including changes to related rules that the Commission is not proposing to amend), or submit comments on other matters that might affect the proposed rule. Commenters suggesting alternative approaches are encouraged to submit proposed rule or form text. For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), the Commission also is requesting information regarding the potential impact of the proposed rule on the economy on an annual basis. Commenters should provide empirical data to support their views.

IV. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("Analysis") in accordance with 5 U.S.C. 603 regarding proposed rule 35d–1. The Analysis explains that the proposed rule would require a registered investment company with a name suggesting that the company focuses on a particular type of investment to invest at least 80% of its assets in the type of investment suggested by its name. The Analysis also explains that the proposed rule is intended to address investment company names that are likely to mislead investors about an investment company's investments and risks.

The Analysis discusses the impact of the proposed rule on small entities, which are defined, for the purposes of the Investment Company Act, as investment companies with net assets of $50 million or less as of the end of the most recent fiscal year (17 CFR 270.0–10). The Commission estimates that approximately 3,846 investment companies would be subject to the proposed rule. Of these, approximately, 771 (20%) are investment companies that would be small entities. The Commission believes that there are no other duplicative, overlapping, or conflicting federal rules.

Only those investment companies that have names suggesting a particular investment emphasis would be required to comply with the proposal. To comply with the proposed rule, an investment company with a name that suggests the company focuses on a particular type of investment would have to adopt a fundamental policy to invest at least 80% of its assets in the type of investment suggested by its name. The 80% requirement would allow an investment company to maintain up to 20% of its assets in other investments. An investment company seeking maximum flexibility with respect to its investments would be free to use a name that does not connote a particular investment emphasis.

As stated in the Analysis, the Commission considered several alternatives to proposed rule 35d–1 including, among others, establishing different compliance or reporting requirements for small entities or exempting them from all or part of the proposed rule. Because an investment company could choose to use a name that does not suggest a particular investment, the Commission believes that the proposed rule would not impose additional burdens on small entities and that separate treatment for small entities would be inconsistent with the protection of investors.

The Commission encourages the submission of comment on the Analysis, including specific comment on (i) the number of small entities that would be affected by the proposed rule and (ii) the discussion of the impact of the rule on small entities. Comments will be considered in the preparation of the Final Regulatory Flexibility Analysis if the proposed rule is adopted. A copy of the Analysis may be obtained from John M. Ganley, Senior Counsel, Securities and Exchange Commission, 450 5th Street, NW., Mail Stop 10–2, Washington, DC 20549–6009.

V. Statutory Authority

The Commission is proposing rule 35d–1 under sections 5, 7, 8, 10, and 19(a) of the Securities Act (15 U.S.C. 77e, 77g, 77h, 77j, and 77s(a)) and sections 8, 30, 35, and 38 of the Investment Company Act (15 U.S.C. 80a–8, 80a–29, 80a–34, and 80a–37). The authority citations for the rule precede the text of the amendments.

VI. Text of Proposed Rule

List of Subjects in 17 CFR Part 270

Investment companies, Securities.

For the reasons set out in the preamble, the Commission is proposing to amend Chapter II, Title 17 of the Code of Federal Regulations as follows:

PART 270—GENERAL RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

The authority citation for part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–37, and 80a–39 unless otherwise noted;

* * * * *

2. Add § 270.35d–1 to read as follows:

§ 270.35d–1 Investment company names.

(a) For purposes of section 35(d) of the Act (15 U.S.C. 80a–34(d)), a materially deceptive and misleading name of a Fund includes:

(1) *Names suggesting guarantee or approval by the U.S. government.* A name suggesting that the Fund or the securities issued by it are guaranteed, sponsored, recommended, or approved by the U.S. government or any U.S. government agency or instrumentality, including any name that uses the words "guaranteed" or "insured" or similar terms in conjunction with the words "United States" or "U.S. government."

(2) *Names suggesting investment in certain securities or industries.* A name suggesting that the Fund focuses its investments in a particular type of security or securities or in securities of issuers in a particular industry or group of industries, unless the Fund has adopted a fundamental policy under section 8(b)(3) of the Act (15 U.S.C. 80–8(b)(3)) to invest, as applicable, at least 80% of the value of its Assets in the particular securities or in securities of issuers in the particular industry or industries suggested by its name.

(3) *Names suggesting investment in certain countries or geographic regions.* A name suggesting that the Fund focuses its investments in a particular country or geographic region, unless the Fund has adopted a fundamental policy under section 8(b)(3) of the Act to invest, as applicable, at least 80% of the value of its Assets in securities of issuers that are tied economically to the particular country or geographic region suggested by its name. In meeting this requirement, a Fund must invest, as applicable, in:

(i) Securities of issuers that are organized under the laws of the country or of a country within the geographic region suggested by the Fund's name or that maintain their principal place of business in that country or region;

(ii) Securities that are traded principally in the country or region suggested by the Fund's name; or

(iii) Securities of issuers that, during the issuer's most recent fiscal year, derived at least 50% of their revenues or profits from goods produced or sold, investments made, or services performed in the country or region suggested by the Fund's name or that have at least 50% of their assets in that country or region.

(4) *Tax-exempt Funds.* A name suggesting that the Fund's distributions are exempt from federal income tax or from both federal and state income tax, unless the Fund has adopted a fundamental policy under section 8(b)(3) of the Act:

(i) To invest at least 80% of the value of its Assets in securities the income from which is exempt, as applicable, from federal income tax or from both federal and state income tax; or

(ii) To invest its Assets so that at least 80% of the income that it distributes will be exempt, as applicable, from federal income tax or from both federal and state income tax.

(b)(1) The requirements of paragraphs (a)(2) through (4) of this section apply at the time a Fund invests its Assets. If, subsequent to an investment, these requirements are no longer met, the Fund's future investments must be made in a manner that will bring the Fund into compliance with those paragraphs.

(2) For purposes of this section:

(i) *Fund* means a registered investment company and any series of the investment company.

(ii) *Assets* means net assets plus the amount of any borrowings of the Fund that are senior securities under section 18 of the Act (15 U.S.C. 80a–18).

(3) Notwithstanding the requirements of paragraphs (a)(2) through (4) of this section, a Fund may, to the extent permitted by its fundamental policies, make other investments to avoid losses while assuming a temporary defensive position in response to adverse market, economic, political, or other conditions.

Dated: February 27, 1997.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

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federal register

Monday
March 10, 1997

Part III

Department of Health and Human Services

Administration for Children and Families

Runaway and Homeless Youth Program (RHYP): Fiscal Year (FY) 1997 Final Program Priorities, Availability of Financial Assistance for Fiscal Year 1997, and Request for Applications for FY 1997 and FY 1998; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACF/ACYF/RHYP 97–1]

Runaway and Homeless Youth Program (RHYP): Fiscal Year (FY) 1997 Final Program Priorities, Availability of Financial Assistance for Fiscal Year 1997, and Request for Applications for FY 1997 and FY 1998

AGENCY: Family and Youth Services Bureau (FYSB), Administration on Children, Youth and Families (ACYF), ACF, HHS.

ACTION: Notice of Fiscal Year 1997 Final Runaway and Homeless Youth (RHY) Program Priorities, announcement of availability of financial assistance, and request for applications for the FY 1997 Basic Center Program for Runaway and Homeless Youth (BCP), FY 1997 Street Outreach Program (SOP), and the Transitional Living Program for Homeless Youth (TLP) for FY 1998.

SUMMARY: The Family and Youth Services Bureau of the Administration on Children, Youth and Families is publishing final program priorities and announcing the availability of funds for:

1. The Basic Center Program for Runaway and Homeless Youth. The purpose of the Basic Center Program is to provide financial assistance to establish or strengthen locally-controlled centers that address the immediate needs (outreach, temporary shelter, food, clothing, counseling, aftercare, and related services) of runaway and homeless youth and their families.

2. The Street Outreach Program. The purpose of the Street Outreach Program is to provide financial assistance to prevent sexual abuse and exploitation of runaway, homeless and street youth. Street-based outreach and education services, including treatment, counseling, and the provision of information and referral assistance are allowable services under this program.

3. Transitional Living Program for Homeless Youth. The overall purpose of the Transitional Living Program for Homeless Youth is to support programs which assist older homeless youth in making a successful transition to self-sufficient living and to prevent long-term dependency on social services.

DATES: The deadlines for RECEIPT by DHHS of applications for new grants under this announcement are as follows:

Programs	Closing dates
BCP	May 2, 1997.
SOP	May 16, 1997.
TLP	May 30, 1997.

ADDRESSES: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the DEADLINE date and time at the: U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Mail Stop 6C–462, Washington, DC 20447. Attention: Basic Center Program for Runaway and Homeless Youth, Street Outreach Program or Transitional Living Program for Homeless Youth.

Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date. Applications received after 4:30 p.m. (Eastern Time Zone) on the closing date will be classified as late. Postmarks and other similar documents do not establish receipt of an application.

Applications handcarried by applicants, applicant couriers, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the receipt date, between the hours of 8 a.m. and 4:30 p.m. (EST), at the: U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, ACF Mailroom, 2nd Floor Loading Dock, Aerospace Center, 901 D Street, SW., Washington, DC. 20024 between Monday and Friday (excluding Federal Holidays). (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.) ACF cannot accommodate transmission of applications by fax. Therefore, applications faxed to ACF will not be accepted regardless of date or time of submission and time of receipt. Envelopes containing applications must clearly indicate the specific program that the application is addressing: Basic Center Program (BCP), Street Outreach Program (SOP) or Transitional Living Program for Homeless Youth (TLP).

FOR FURTHER INFORMATION CONTACT: Administration on Children, Youth and Families, Family and Youth Services Bureau, PO Box 1182, Washington, DC 20013; Telephone: 1–800–351–2293. You may also locate a copy of this program announcement on the FYSB website at http://www.acf.dhhs.gov/programs/FYSB on the FYSB homepage under Policy and Announcements.

SUPPLEMENTARY INFORMATION: Grant awards of FY 1997 funds will be made by September 30, 1997 for the Basic Center and the Street Outreach Program. Subject to the availability of resources in FY 1998 and the number of acceptable applications received as a result of this program announcement, the Federal government may elect to select recipients for new FY 1998 SOP grant awards out of the pool of Street Outreach Program applications submitted under this program announcement. Transitional Living Program awards under this announcement will be made after October 1, 1997 with FY 1998 funds.

This single announcement for the three programs has been developed in order to save the field and the Federal government significant resources. Also, the single announcement provides the field with the application due dates for each program, providing interested agencies the means to forecast the workload and resources needed to apply for these grants. Potential applicants should note that separate applications must be submitted for each program applied for.

This announcement contains all the necessary information and application materials to apply for funds under these three grant programs. The estimated funds available for new starts and the approximate number of new grants that have been or are to be awarded under this program announcement are as follows:

Program	Fiscal year	New start funds available (million)	Number of new grants
BCP	FY 1997	$14.2	150
SOP	FY 1997	4.4	50
TLP	FY 1998	7.3	40

In addition to the competitive new start grants, the Administration on Children, Youth and Families anticipates providing FY 1997 non-competitive, continuation funds to current grantees as follows:

Program	Continuation funds available (million)	Number of continuation grants
BCP	$25.1	300
SOP	3.0	33
TLP	6.6	36

Grantees eligible for these continuation grants will receive letters to that effect from the appropriate Regional grants management offices and should not submit their continuation applications in response to this announcement. Only applications for new grants are solicited through this announcement.

This program announcement consists of six parts. Part I provides general information for potential applicants who wish to apply to operate programs serving runaway and homeless youth. Part II contains the evaluation criteria against which all applications will be competitively reviewed, evaluated and rated. Part III contains specific information necessary to apply for funds under each of the three programs. Part IV describes the application process. Part V provides instructions on the assembly and submission of applications. Part VI contains appendices to be consulted in preparation of applications. All forms needed to prepare applications for the two programs are found in Part VI, Appendix I, of this announcement.

The following outline is provided to assist in the review of this **Federal Register** announcement:

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C. Purpose, Goals and Objectives of the Federal Runaway and Homeless Youth Grant Programs
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Part I. General Information

A. Background on Runaway and Homeless Youth

The Family and Youth Services Bureau (FYSB), within the Administration on Children, Youth and Families (ACYF), administers programs that support services to an adolescent population of runaway and homeless youth. Estimates of this population vary from 500,000 to 1,300,000 million. Many of these youth have left home to escape abusive situations, or because their parents could not meet their basic needs for food, shelter and a safe supportive environment. Many live on the streets.

While living on the streets or away from home without parental supervision, these youth are highly vulnerable. They may become victims of street violence, may be exploited by dealers of illegal drugs, or may become members of gangs who provide protection and a sense of extended family. Usually lacking marketable skills, they may be drawn into shoplifting, prostitution, or dealing drugs in order to earn money for food, clothing, and other daily expenses. Without a fixed address or regular place to sleep, they often drop out of school, forfeiting their opportunities to learn and to become independent, self-sufficient, contributing members of society. As street people, they may try to survive with little or no contact with medical professionals, the result being that health problems may go untreated and may worsen. Without the support of family, schools, and other community institutions, they may not acquire the personal values and work skills that will enable them to enter or advance in the world of work at other than the most minimal levels. Finally, as street people, they may create substantial law enforcement problems, endangering both themselves and the communities in which they are located. All these problems, real and potential, call for a comprehensive, nationwide, community-based program to address the needs of runaway and homeless youth.

B. Legislative Authority

Grants for the Basic Center Program for Runaway and Homeless Youth are authorized by Part A of the Runaway and Homeless Youth Act (RHY Act), 42 U.S.C. 5701 et seq. Grants for the Transitional Living Program for Homeless Youth are authorized under Part B of the Runaway and Homeless Youth Act. Part B was established in 1988 as part of Public Law 100–690. The RHY Act was enacted as Title III of the Juvenile Justice and Delinquency Prevention Act of 1974 (Pub. L. 93–415), and amended by the Juvenile Justice Amendments of 1977 (Pub. L. 95–115), the Juvenile Justice Amendments of 1980 (Pub. L.96–509), the Juvenile Justice Amendments of 1984 (Pub. L. 98–473), and the Juvenile Justice and Delinquency Prevention Act Amendments of 1992 (Pub. L. 102–586). Grants for coordinating, training and technical assistance, research, demonstration, evaluation and service projects are authorized under Part D of the RHY Act.

Grants for the Street Outreach Program are authorized by the Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103–322, Sec. 40155) which amended Part A of the Runaway and Homeless Youth Act (42 USC 5711 *et seq.*) by creating Section

316, Grants for Prevention of Sexual Abuse and Exploitation.

Information collection requirements made in this announcement are covered under OMB Control Number 0970–0139.

C. Purpose, Goals and Objectives of the Federal Runaway and Homeless Youth Grant Programs

1. Basic Center Program for Runaway and Homeless Youth

The overall purpose of the BCP is to provide financial assistance to establish or strengthen community-based centers that address the immediate needs (outreach, temporary shelter, food, clothing, counseling, aftercare, and related services) of runaway and homeless youth and their families. Services supported by this program are to be outside the law enforcement, the child welfare, the mental health, and the juvenile justice systems. The program goals and objectives of Part A of the RHY Act are to:

a. Alleviate problems of runaway and homeless youth,

b. Reunite youth with their families and encourage the resolution of intrafamily problems through counseling and other services,

c. Strengthen family relationships and encourage stable living conditions for youth, and

d. Help youth decide upon constructive courses of action.

2. Street Outreach Program for Runaway and Homeless Youth

The overall purpose of SOP is to provide education and prevention services to reduce the incidence of sexual abuse of runaway, homeless, and street youth. This program is designed to support services for youth who are living on the street or in other unsafe environments and are at-risk of sexual abuse and/or exploitation.

3. Transitional Living Program for Homeless Youth

The overall purpose of TLP for homeless youth is to establish and operate transitional living projects for homeless youth. This program is structured to help older, homeless youth achieve self-sufficiency and avoid long-term dependency on social services. Transitional living projects provide shelter, skills training, and support services to homeless youth ages 16 through 21 for a continuous period not exceeding 18 months.

Transitional Living Program funds are to be used for the purpose of enhancing the capacities of youth-serving agencies in local communities to effectively address the service needs of homeless, older adolescents and young adults. Goals, objectives and activities that may be maintained, improved and/or expanded through a TLP grant must include, but are not necessarily limited to:

- Providing stable, safe living accommodations while a homeless youth is a program participant;
- Providing the services necessary to assist homeless youth in developing both the skills and personal characteristics needed to enable them to live independently;
- Providing education, information and counseling aimed at preventing, treating and reducing substance abuse among homeless youth;
- Providing homeless youth with appropriate referrals and access to medical and mental health treatment; and
- Providing the services and referrals necessary to assist youth in preparing for and obtaining employment.

Specifics regarding grant awards in each of these three programs are found in Part III, Sections A, B and C, of this announcement.

D. Definitions

1. The term "homeless youth" is defined differently for different programs.

Under Part A of the RHY Act, which authorizes the BCP, the term "homeless youth" means a person under 18 years of age who is in need of services and without a place of shelter where he or she receives supervision and care. This definition applies to all Basic Center projects and can be found in 45 CFR 1351.1(f).

Under Part B of the RHY Act, which authorizes the TLP, "homeless youth" means an individual who is not less than 16 years of age and not more than 21 years of age; for whom it is not possible to live in a safe environment with a relative; and who has no other safe alternative living arrangement. This definition applies to all Transitional Living programs and can be found in section 321(b)(1) of the RHY Act.

2. The term *public agency* means any State, unit of local government, combination of such States or units, or any agency, department, or instrumentality of any of the foregoing. This definition applies to all runaway and homeless youth programs funded under this announcement.

3. The term *runaway youth* means a person under 18 years of age who absents himself or herself from home or place of legal residence without the permission of parents or legal guardian. This definition applies to all Basic Center program grantees and can be found in 45 CFR 1351.1(k).

4. The term *shelter* includes host homes, group homes and supervised apartments. This definition applies to all RHY program grantees and is referenced in Section 322(1) of the RHY Act. As currently understood in the field:

Host homes are facilities providing shelter, usually in the home of a family, under contract to accept runaway and/or homeless youth assigned by the BCP service provider, and are licensed according to State or local laws.

Group homes are single-site residential facilities designed to house BCP clients who may be new to the program or may require a higher level of supervision. These dwellings operate in accordance with State or local housing codes and licensure.

A *supervised apartment* is a single unit dwelling or multiple unit apartment house operated under the auspices of the TLP service provider for the purpose of housing program participants.

5. The term *State* means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Marianas. This definition applies to the Basic Center Program and the Transitional Living Program and can be found in section 3601(10) of the Anti-Drug Abuse Act, incorporating by reference section 103(7) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended.

6. The term *street-based outreach and education* includes education and prevention efforts directed at youth that are victims of offenses committed by offenders who are not known to the victim as well as offenders who are known to the victim.

7. The term *street youth* means a juvenile who spends a significant amount of time on the street or in other areas of exposure to encounters that may lead to sexual abuse.

8. The term *temporary shelter* means the provision of short-term (maximum of 15 days) room and board and core crisis intervention services on a 24 hour basis. This definition applies to all Basic Center Program grantees and can be found in 45 CFR 1351.1(o).

9. The term *transitional living youth project* means a project that provides shelter and services designed to promote transition to self-sufficient living and to prevent long-term dependency on social services. This definition applies to all TLP program grantees and is found in section 321(b)(2) of the RHY Act.

E. Final Priorities

Section 364 of the Runaway and Homeless Youth Act (RHY Act) requires the Department to publish annually for public comment a proposed plan specifying priorities the Department will follow in awarding grants and contracts under the RHY Act. The proposed plan for FY 1997 was published in the **Federal Register** on Thursday, December 19, 1997, and requested comments and recommendations from the field.

1. Public Comments

The Family and Youth Services Bureau (FYSB) usually receives approximately 20 written responses from a number of sources, principally Runaway and Homeless Youth Program grantees. The responses are generally supportive.

To the extent feasible, ACYF takes these and all other public comments into account when preparing the final priorities.

2. Final Program Priorities for Fiscal Year 1997

The Department will award new and continuation grants for provision of Basic Center, Street Outreach and Transitional Living services.

The Department will also award continuation funding to the National Communications System, to the ten Regional Training and Technical Assistance providers, and to a number of related program support activities.

The Final Program Priorities continue to support and emphasize a comprehensive youth development approach to services to youth and their families.

a. *Basic Center Program Grants*

Approximately 450 Basic Center grants, of which about 150 will be competitive new starts and 300 will be non-competitive continuations, will be funded in FY 1997.

Section 385(a)(2) of the Act requires that 90 percent of the funds appropriated under Part A (The Runaway and Homeless Youth Grant Program) be used to establish and strengthen runaway and homeless youth Basic Centers. Total funding under Part A of the Act for FY 1997 is expected to be approximately $43.6 million. This sum triggers the provision in the Act calling for a minimum award of $100,000 to each State, the District of Columbia, and Puerto Rico, and a minimum award of $45,000 to each of the four insular areas: the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Marianas.

b. *Street Outreach Program Grants*

In FY 1997, approximately $4.4 million will be used to fund new Street Outreach Program grants and $3.0 million will be used to fund non-competitive continuation Street Outreach Program grants.

c. *Transitional Living Program Grants*

In FY 1997, approximately $7.3 million has been used to fund new TLP grants and $6.6 million to fund TLP continuation grants. In FY 1998, total funding for TLP is expected to be approximately $14.9 million. Approximately $6.6 million will be awarded for new grants and $7.3 million will be awarded as continuation grants.

d. National Communications System

Part C, Section 331 of the Runaway and Homeless Youth Act, as amended, mandates support for a National Communications System to assist runaway and homeless youth in communicating with their families and with service providers. In FY 1994, a five-year grant was awarded to the National Runaway Switchboard, Inc., in Chicago, Illinois, to operate the system. Subject to the availability of funding, non-competitive continuation funding will be awarded to the grantee in FY 1997.

e. *Support Services for Runaway and Homeless Youth Programs*

(1) Training and Technical Assistance

Part D, Section 342 of the Act authorizes the Department to make grants to statewide and regional nonprofit organizations to provide training and technical assistance (T&TA) to organizations that are eligible to receive service grants under the Act. Eligible organizations include the Basic Centers authorized under Part A of the Act (The Runaway and Homeless Youth Grant Program) and the service grantees authorized under Part B of the Act (The Transitional Living Grant Program). The purpose of this T&TA is to strengthen the programs and to enhance the knowledge and skills of youth service workers.

In FY 1994, the Family and Youth Services Bureau awarded ten Cooperative Agreements, one in each of the ten Federal Regions, to provide T&TA to agencies funded by the Family and Youth Services Bureau to provide services to runaway and homeless youth. Each Cooperative Agreement is unique, being based on the characteristics and different T&TA needs in the respective Regions. Each has a five-year project period that will expire in FY 1999.

Subject to availability of funds, non-competitive continuation funding will be awarded to the ten T&TA grantees in FY 1997.

(2) National Clearinghouse on Families and Youth

In June 1992, a five-year contract was awarded by the Department to establish and operate the National Clearinghouse on Families and Youth. The purpose of the Clearinghouse is to serve as a central information point for professionals and agencies involved in the development and implementation of services to runaway and homeless youth. To this end, the Clearinghouse:

- Collects, evaluates and maintains reports, materials and other products regarding service provision to runaway and homeless youth;
- Develops and disseminates reports and bibliographies useful to the field;
- Identifies areas in which new or additional reports, materials and products are needed; and
- Carries out other activities designed to provide the field with the information needed to improve services to runaway and homeless youth.

The contract with the National Clearinghouse on Families and Youth expires in Fiscal Year 1997. Subject to availability of funds, a Request for Proposals will be published and a new contract will be awarded this Fiscal Year to sustain the Clearinghouse services.

(3) Runaway and Homeless Youth Management Information System (RHYMIS)

The Family and Youth Services Bureau awarded a three-year contract, which expires in Fiscal Year 1997, for the development and implementation of the Runaway and Homeless Youth Management Information System (RHYMIS) for FYSB programs. The data generated by the system are used to produce reports and information regarding the programs, including information for the required reports to Congress. The RHYMIS also serves as a management tool for FYSB and for individual programs.

Subject to availability of funds, in Fiscal Year 1997, a request for proposals to maintain RHYMIS services will be published and a new contract awarded.

(4) Monitoring Support for FYSB Programs

The Family and Youth Services Bureau uses a standardized, comprehensive monitoring instrument

and site visit protocols, including a pre-review component for monitoring runaway and homeless youth programs. The Bureau awarded a three year contract, which expires in Fiscal Year 1997, to provide logistical support for the peer review monitoring process, including nationwide distribution of the monitoring instrument. The findings from the monitoring visits are being used by the Regional Offices and the T/TA providers as a basis for their activities.

Subject to the availability of funds, in Fiscal Year 1997, a procurement to sustain this activity will be published and a new contract awarded.

f. *Research and Demonstration Initiatives*

Section 315 of the Act authorizes the Department to make grants to States, localities, and private entities to carry out research, demonstration, and service projects designed to increase knowledge concerning and to improve services for runaway and homeless youth. These activities serve to identify emerging issues and to develop and test models which address such issues.

(1) Improved Access to Services and Supports for Youth With Developmental Disabilities

The Family and Youth Services Bureau and the Administration of Developmental Disabilities are collaborating to address the needs of youth with developmental disabilities. In 1995, a competitive review process resulted in jointly funded grant awards to three demonstration projects designed to improve local coordination of services to youth with developmental disabilities.

Subject to the availability of funds, non-competitive continuation funding will be awarded to the three grantees in Fiscal Year 1997.

(2) Analysis, Synthesis, and Interpretation of New Information Concerning Runaway and Homeless Youth Programs

Over the past few years, considerable new knowledge and information has been developed concerning the runaway and homeless youth programs administered by FYSB, and concerning the youth and families served. The main sources of this new information are the Runaway and Homeless Youth Management Information System (RHYMIS) and a number of evaluation studies underway or recently completed. The RHYMIS and the evaluation studies contain descriptions of FYSB's grantee agencies, along with detailed data on the youth and families served.

A contract was awarded in Fiscal Year 1995 to analyze and synthesize this valuable data and to explore program and policy implications. Results from this contract effort will be available in Fiscal Year 1997.

g. *Comprehensive Youth Development Framework.*

A youth development approach has become central to all FYSB activities and programs since 1995. In Fiscal Year 1995, a contract was awarded to develop a youth development framework from a theoretical perspective. This framework is intended to enhance the capacity of policy and program developers, program managers, and youth services professionals to develop service models and approaches that will redirect youth in high risk situations toward positive pathways of development.

It is our hope and expectation that this document will serve as a basis for securing consensus on a working definition of youth development and for increasing awareness of the importance and benefits of a youth development perspective in serving youth.

The report from this contract will be available later in Fiscal Year 1997 and will receive wide distribution.

h. *Priorities for Administrative Changes*

To support the increased emphasis on youth development, two management or administrative changes will continue:

- Regional Offices have and will continue to play a significant role in the assessment of grant applications. This role includes Regional staff involvement (1) as chairpersons for peer review panels and (2) in conduct of administrative reviews of new start applications that take into account knowledge about the applicants' experience, effectiveness, and potential and of the geographic distribution of the grantees in their respective States and Regions. Final funding decisions will remain the responsibility of the Commissioner of the Administration on Children, Youth and Families.
- Efforts will be continued to avoid the problems of gaps in financial support between the expiration of one grant and the beginning of a new grant for current grantees that are successful in competition.

F. Eligible Applicants

The various legislative Acts that authorize the runaway and homeless youth programs addressed in this **Federal Register** announcement identify "eligible applicants" differently.

Accordingly, refer to the definition of eligible applicants appropriate to each FYSB RHY program described in Part III of this announcement. In addition please refer to Part VI, Appendix D for a listing of current grantees that are NOT eligible to apply under each of the grant programs.

Any non-profit organization submitting an application must submit proof of its non-profit status with its application. Proof can include a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code, *or* a copy of the currently valid IRS tax-exemption certificate, *or* a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

G. Availability of Competitive New-Start Funds

1. Basic Center Program for Runaway and Homeless Youth

The Administration on Children, Youth and Families expects to award approximately $14.2 million for new competitive, Basic Center Program grants. In accordance with the RHY Act, the funds will be divided among the States in proportion to their respective populations under the age of 18, with a minimum award of $100,000 to each State, the District of Columbia, and Puerto Rico, and a minimum award of $45,000 to each of the four insular areas: Guam, American Samoa, the Commonwealth of the Northern Marianas and the Virgin Islands.

The funds available for both continuations and new starts in each of the States and insular areas is listed in the Table of Allocations by State (Part VI, Appendix H). In this Table, the amounts shown in the column labeled "New Starts" are the amounts available for competition in the respective States.

The number of new awards made within each State will depend upon the funds available (i.e., the State's total allotment less the amount required for non-competing continuations), as well as on the number of acceptable applications. Therefore, where the amount required for non-competing continuations in any State equals the State's total allotment, no new awards will be made.

All applicants under this announcement will compete with other applicants in the State in which their services would be provided. In the event that an insufficient number of acceptable applications is approved for funding from any State or jurisdiction, the Commissioner, ACYF, will reallocate the unused funds.

Further information on the BCP application requirements is presented in Part III, Section A, and in Part IV.

2. Street Outreach Program for Runaway and Homeless Youth

The Administration on Children, Youth and Families expects to award approximately $4.4 million for new competitive Street Outreach Program grants.

Further information on the SOP application requirements is presented in Part III, Section B, and in Part IV.

3. Transitional Living Program for Homeless Youth

In FY 1998, the Administration on Children, Youth and Families expects to award approximately $7.3 million in new competitive Transitional Living Program grants.

Further information on the TLP application requirements is presented in Part III, Section C, and in Part IV.

H. Duration of Projects

This announcement solicits applications for projects of up to three years (36-month project periods) for the BCP, the SOP and the TLP. Initial grant awards, made on a competitive basis, will be for one-year (12-month) budget periods. Applications for continuation grants beyond the one-year budget periods, but within the 36-month project periods, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantees, and determination that continued funding would be in the best interest of the government.

I. Maximum Federal Award and Grantee Share of the Project

The maximum amount of Federal funds for which an applicant can apply is specified in the program descriptions found in Part III of this announcement. The non-Federal share requirements for each of the three programs are also found in Part III of this announcement.

The non-Federal share may be met by cash or in-kind contributions. Federal funds provided to States and services or other resources purchased with Federal funds may not be used to match project grants. Applicants which do not provide the required percentage of non-Federal share *will not be funded.* For-profit applicants for Basic Center Program grants are reminded that no grant funds may be paid as profit to any recipient of a grant or sub-grant (45 CFR 74.705).

Part II. Evaluation Criteria

The five criteria that follow will be used to review and evaluate each application under the BCP, the SOP and the TLP and should be addressed in developing the program narratives. The point values following each criterion heading indicate the numerical weight each criterion will be accorded in the review process. Note that the highest possible value BCP, SOP and TLP applications can receive is 105 points. See Criterion 4 for more specific information.

Criterion 1. Objectives and Need for Assistance (15 Points)

Pinpoint any relevant physical, economic, social, financial, institutional, or other problems requiring a solution. Demonstrate the need for the assistance and state the goals or service objectives of the project. Supporting documentation or other testimonies from concerned interests other than the applicant may be used. Give a precise location of the project site(s) and area(s) to be served by the proposed project. Maps or other graphic aids may be attached. (The applicant should refer to Part I, Section C, of this announcement for a description of each program's purpose.)

Criterion 2. Results or Benefits Expected (20 Points)

Identify the results and benefits to be derived from the project. State the numbers of runaway and homeless youth and their families to be served, and describe the types and quantities of services to be provided. Identify the kinds of data to be collected and maintained, and discuss the criteria to be used to evaluate the results and success of the project.

Criterion 3. Approach (35 Points)

Outline a plan of action pertaining to the scope of the project and detail how the proposed work will be accomplished. Describe any unusual features of the project, such as extraordinary social and community involvements, and how the project will be maintained after termination of Federal support. Explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved.

Criterion 4. Staff Background and Organizational Experience (20–25 Points)

List the organizations, cooperators, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution. Summarize the background and experience of the project director and key project staff and the history of the organization. Demonstrate the ability to effectively manage the project and to coordinate activities with other agencies. Applicants are encouraged to discuss staff and organizational experience in working with runaway and homeless youth populations and may include information regarding their past performance under RHYP grants. Applicants may refer to the staff resumes and to the Organizational Capability Statement included in the submission.

Legislation authorizing each of the Federal Runaway and Homeless Youth Programs requires that priority for funding be given to agencies with experience in providing direct services to runaway and homeless youth. In line with this requirement, BCP, SOP and TLP applicants having three (3) or more years of continuous effort serving runaway and homeless youth in one or more areas set forth in Section 312 of the Act are eligible to receive an additional five (5) points on this criterion.

Criterion 5. Budget Appropriateness (10 Points)

Demonstrate that the project's costs (overall costs, average cost per youth served, costs for different services) are reasonable in view of the anticipated results and benefits. (Applicants may refer (1) to the budget information presented in Standard Forms 424 and 424A and in the associated budget justification, and (2) to the results or benefits expected as identified under Criterion 2.)

The Program Narrative information provided by the applicant in response to any one or more of the three priority area descriptions identified in Part III of this announcement should be organized and presented according to these five evaluation criteria.

Part III. Program Areas

A. Basic Center Program for Runaway and Homeless Youth

Eligible Applicants: Any State, unit of local government, combination of units of local government, public or private agency, organization, institution, or other non-profit entity is eligible to apply for these funds. Federally recognized Indian Tribes are eligible to apply for Basic Center grants. Non-Federally recognized Indian Tribes and urban Indian organizations are also

eligible to apply for grants as private, non-profit agencies.

Current Basic Center Program grantees with project periods ending by September 30, 1997 and all other eligible applicants not currently receiving Basic Center funds may apply for a new competitive Basic Center grant under this announcement.

Basic Center Program Grantees (including subgrantees) with one or two years remaining on their current grant and the expectation of continuation funding in Fiscal Year 1997 may not apply for a new Basic Center grant under this announcement. These grantees are eligible to apply for non-competitive continuation funding in FY 1997 and will receive instructions from their respective ACF Regional Offices on the procedures for applying for continuation grants.

Please refer to Part VI, Appendix D.1 for a listing of current grantees that are NOT eligible to apply for new Basic Center Program grants under this announcement.

As required by runaway and homeless youth legislation, priority for funding will be given to agencies with demonstrated experience establishing and operating centers that provide direct services to runaway and homeless youth in a manner that is outside the law enforcement system, the child welfare system, the mental health system and the juvenile justice system. Demonstrated experience providing direct services means three (3) or more years of continuous effort serving runaway and homeless youth in one or more areas set forth in Section 312 of the Act. Applicants claiming credit for this preference must include a statement of no more than one page documenting the relevant experience.

Program Purpose, Goals, and Objectives: The Administration on Children, Youth and Families will award approximately 150 new service grants to establish or strengthen existing or proposed runaway and homeless youth Basic Centers. These programs must be locally controlled efforts that provide temporary shelter, counseling and related services to juveniles who have left home without permission of their parents or guardians or to other homeless juveniles.

Applications are solicited under this program area to provide direct services that fulfill the program purposes, goals and objectives set forth in the legislation and as specified in Part I, section C.1 of this announcement.

Background: The Runaway Youth and Homeless Youth Act of 1974 was a response to widespread concern regarding the alarming number of youth who were leaving home without parental permission, crossing State lines, and who, while away from home, were exposed to exploitation and other dangers of street life.

Each Basic Center funded under the authorizing legislation is required to provide outreach to runaway and homeless youth; temporary shelter for up to fifteen days; food; clothing; individual, group, and family counseling; and related services. Many Basic Centers provide their services in residential settings with a capacity for no more than 20 youth. Some centers also provide some or all of their shelter services through host homes (usually private homes under contract to the centers), with counseling and referrals being provided from a central location.

In FY 1996, approximately 50,000 youth received shelter and non-shelter services through ACYF-funded Basic Centers. The primary presenting problems of these youth include conflict with parents or other adults, including physical and sexual abuse; other family crises such as divorce, death, or sudden loss of income; and personal problems such as drug use, or problems with peers, school attendance and truancy, bad grades, inability to get along with teachers, and learning disabilities.

Low self-esteem is a major problem among youth participating in the Basic Center Program. Slightly more than half gave an indication of clinical depression; and 14 percent reported having made at least one suicide attempt.

After receiving services from Basic Center programs, approximately 65 percent of the youth return to their families; approximately 25 percent go to a variety of other situations such as Job Core, independent living programs, drug treatment programs and other institutional programs; and approximately 10 percent return to the streets or leave the centers with no known destination.

Minimum Requirements for Project Design: As part of addressing the evaluation criteria outlined in Part II of this announcement, each applicant must address the following items in the program narrative section of the proposal.

Objectives and Need for Assistance

1. Applicant must specify the goals and objectives of the project and how implementation will fulfill the purposes of the legislation identified in Part I, section C.1. of this announcement.

2. Applicant must describe the conditions of youth and families in the area to be served, with an emphasis on the incidence and characteristics of runaway and homeless youth and their families. The discussion must consider matters of family functioning, along with the health, education, employment, and social conditions of the youth, including at-risk conditions or behaviors such as drug use, school failure, and delinquency.

3. Applicant must discuss the existing support systems for at-risk youth and families in the area, with specific references to law enforcement, health and mental health care, social services, school systems, and child welfare. In addition, other agencies providing shelter and services to runaway and homeless youth in the area must be identified.

4. Within the context of the existing support systems, applicant must demonstrate the need for the center and indicate the objectives that the program would work toward fulfilling.

5. Applicant must describe the area to be served by the proposed center, and must demonstrate that the center is or will be located in an area which is frequented by and/or easily accessible by runaway and homeless youth.

Results and Benefits Expected

1. Applicant must specify the numbers of runaway and homeless youth and their families to be served, the number of beds available for runaway and homeless youth and the types and quantities of services to be provided.

2. Applicant must describe the anticipated changes in attitudes, values and behavior, and improvements in individual and family functioning that will occur as a consequence of the services provided by the center.

3. Applicant must discuss the expected impact of the project on the availability of services to runaway and homeless youth in the local community and indicate how the project will enhance the organization's capacity to provide services that address the needs of runaway and homeless youth in the community.

Approach

1. Applicant must describe the center's youth development approach or philosophy and indicate how it underlies and integrates all proposed activities, including provision of services to runaway and homeless youth and involvement of the youth's parents or legal guardians. Specific information must be provided on how youth will be involved in the design, operation and evaluation of the program.

2. Applicant must describe how runaway and homeless youth and their families will be reached, and how services will be provided in compliance with the Program Performance Standards listed in Part VI, Appendix A.

3. Applicant must include detailed plans for implementing direct services based upon a youth development approach and upon identified goals and objectives. Applicant must identify the strategies that will be employed and the activities that will be implemented, including innovative approaches to securing appropriate center services for the runaway and homeless youth to be served, for involving family members as an integral part of the services provided, for periodic review and assessment of individual cases, and for encouraging awareness of and sensitivity to the diverse needs of runaway and homeless youth who represent particular ethnic and racial backgrounds, sexual orientations, or who are street youth.

4. Applicant must describe the center's plans for conducting an outreach program that, where applicable, will attract members of ethnic and racial minorities and/or persons with limited ability to speak English.

5. Applicant must describe the center's plans and procedures for intake and assessment of the youth upon arrival at the center.

6. Applicant must describe the center's plans for contacting the parents or other relatives of the youth they serve, for ensuring the safe return of the youth to their parents, relatives or legal guardians if it is in their best interests, for contacting local governments pursuant to formal or informal arrangements established with such officials, and for providing alternative living arrangements when it is not safe or appropriate for the youth to return home.

7. Applicant must describe the type of shelter that will be available, the shelter capacity of the center and the system of staff supervision to be implemented in the shelter.

8. Applicant must describe the center's plans for ensuring proper coordination with law enforcement personnel, health and mental health care personnel, social service personnel, and welfare personnel.

9. Applicant must describe the center's plans for ensuring coordination with the schools to which runaway and homeless youth will return, and for assisting the youth to stay current with the curricula of these schools.

10. Applicant must describe the center's procedures for dealing with youth who have run from foster care placements.

11. Applicant must describe procedures for dealing with youth who have run from correctional institutions, and must show that procedures are in accordance with Federal, State and local laws.

12. Applicant must describe the center's plans and procedures for providing aftercare services and for ensuring, whenever possible, that aftercare services will also be provided to those youth who are returned beyond the State in which the center is located.

13. Applicant must agree to gather and submit program and client data required by FYSB through the Runaway and Homeless Youth Management Information System (RHYMIS). If applicant is a current recipient of a BCP or TLP grant, applicant must describe the extent to which it now gathers and submits required data to the RHYMIS. Current recipients of a FYSB grant who are not submitting the required data are at risk of not being considered for a new grant award.

While the computer software and training for the implementation of the RHYMIS will be provided by FYSB to grantees, applicant should include a request for funds in its budget (within the maximum Federal funds allowed) for any computer equipment needed for implementation of the RHYMIS.

To determine whether an agency's current computer equipment is adequate, or whether purchase of an upgrade or of new equipment is necessary, potential applicants are invited to contact the RHYMIS Technical Support Group at Information Technology Incorporated, Bethesda, MD, telephone: 1–800–392–2395.

14. Applicant must agree to cooperate with any research or evaluation efforts sponsored by the Administration for Children and Families.

15. Applicant must describe how the activities implemented under this project will be continued by the agency once Federal funding for the project has ended. The applicant must describe specific plans for accomplishing program phase-out for the last two quarters of the 36-month project period in the event the applicant does not receive a new award.

STAFF BACKGROUND AND ORGANIZATIONAL EXPERIENCE

1. As priority for funding will be given to agencies and organizations that have documented experience in establishing and operating centers that provide direct services to runaway and homeless youth, applicant must include a brief description of the organization and its experience in providing services to this client population.

2. Applicant must include a description of current and proposed staff skills and knowledge regarding runaway and homeless youth and indicate how staff will be utilized in achieving the goals and objectives of the program. Information on proposed staff training and brief resumes or job descriptions may be included.

3. Applicant must describe procedures for maintaining confidentiality of records on the youth and families served. Procedures must insure that no information on the youth and families is disclosed without the consent of the individual youth, parent or legal guardian. Disclosures without consent can be made to another agency compiling statistical records if individual identities are not provided or to a government agency involved in the disposition of criminal charges against an individual runaway or homeless youth.

4. Applicant must describe how the project has established or will establish formal service linkages with other social service, law enforcement, educational, housing, vocational, welfare, legal service, drug treatment and health care agencies in order to ensure appropriate referrals for the project clients when needed.

5. Applicant must describe how community and other support will be secured to continue the project at the conclusion of the Federal grant period.

Budget Appropriateness

1. Applicant must discuss and justify the costs of the proposed project in terms of numbers of youth and families to be served, types and quantities of services to be provided, and the anticipated outcomes for the youth and families.

2. The applicant must describe the fiscal control and accounting procedures that will be used to ensure prudent use, proper disbursement, and accurate accounting of funds received under this program announcement.

Duration of Project: This announcement solicits applications for Basic Center projects of up to three years duration (36-month project periods). Initial grant awards, made on a competitive basis, will be for one-year (12-month) budget periods. Applications for continuation grants beyond the one-year budget periods, but within the 36-month project periods, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee, and determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: Priority will be given to applicants

which apply for less than $200,000 per year. The maximum Federal share for a 3-year project period is $600,000.

Applicant Share of Project Costs: Basic Center grantees must provide a non-Federal share or match of at least ten percent of the Federal funds awarded. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a three-year project costing $300,000 in Federal funds (based on an award of $100,000 per 12-month budget period) must include a match of at least $30,000 ($10,000 per budget period).

B. Street Outreach Program for Runaway and Homeless Youth

Eligible Applicants: Any private, nonprofit agency is eligible to apply for these funds. Non-Federally recognized Indian Tribes and urban Indian organizations are eligible to apply for grants as private, non-profit agencies.

Current Street Outreach Program grantees with Basic Center Program project periods ending September 30, 1997 and all other eligible applicants not currently receiving SOP funds may apply for a new competitive SOP grant under this announcement.

Current Street Outreach Program grant recipients with one or two years remaining on their Basic Center Program grant and the expectation of non-competitive continuation Basic Center Program funding in Fiscal Year 1997 may not apply for a new Street Outreach Program grant under this announcement. These grantees are eligible to apply for non-competitive continuation funding in FY 1997 and will receive instructions from their respective ACF Regional Offices on the procedures for applying for continuation grants.

Please note that public agencies are NOT eligible to apply for these funds.

Please refer to Part VI, Appendix D.2 for a listing of current grantees that are NOT eligible to apply for new Street Outreach Program grants under this announcement.

As required by the legislation, priority for funding will be given to agencies that have experience in providing services to runaway, homeless, and street youth. Demonstrated experience providing direct services means three (3) or more years of continuous effort serving runaway, homeless or and street youth.

Applicants claiming credit for this preference must include a statement of no more than one page documenting the relevant experience. Applicants with 3 years of demonstrated experience providing direct services to the target population are eligible to receive an additional five (5) points in the Staff Background and Organizational Experience evaluation criterion section.

Program Purpose, Goals, and Objectives: The Administration on Children, Youth and Families will award approximately 50 new SOP grants for street-based outreach and education. The programs must provide services that focus on establishing and building relationships between street youth and program staff with the goal of helping youth leave the streets. These services might include treatment, counseling, provision of information, and referral services for runaway, homeless, and street youth who have been subjected to or are at risk of being subjected to exploitation or sexual abuse. These programs must have access to local emergency shelter space that can be made available for youth willing to come in off the streets. In addition, street outreach staff must have access to the shelter in order to maintain important and constant interaction with the youth during the time they are in the shelter.

Applications are solicited under this program area to provide direct services that fulfill the program purposes, goals and objectives set forth in the legislation and as specified in Part I, Section C.2 of this announcement.

Background

In response to the needs of street youth who are subjected, or at risk of being subjected, to sexual abuse, Congress amended the Runaway and Homeless Youth Act by authorizing the Education and Prevention Services to Reduce Sexual Abuse of Runaway, Homeless, and Street Youth Program as part of the Violent Crime Control and Law Enforcement Act of 1994. This program is referred to as the Street Outreach Program (SOP) for Runaway, Homeless and Street Youth.

The array of social, emotional and health problems faced by youth on the street are dramatically compounded by incidence of exploitation and/or sexual abuse. Street youth are victimized by strangers as well as by individuals known to the youth, and a significant number of homeless youth are exploited as they participate in survival sex and prostitution to meet their basic needs for food and shelter. Because of these issues, sexually exploited youth often need more intensive services. Youth must be afforded the opportunity to slowly build trust relationships with caring and responsible adults as the first step to successfully encouraging them to leave the streets.

Minimum Requirements for Project Design: As a part of addressing the evaluation criteria outlined in Part II of this announcement, each applicant must address the following items in the program narrative section of their application.

Objectives and Need for Assistance

1. Applicant must specify the goals and objectives of the project and how implementation will fulfill the purposes of the legislation identified in Part I, section C.2 of this announcement.

2. Applicant must describe the specific geographic area frequented by street youth and the incidence and characteristics of these youth, including their social needs and health problems.

3. The applicant must demonstrate that the area that the program will serve is or will be located in the area which is frequented by and /or easily accessible by these street youth.

4. The applicant must describe currently available services for street youth. Service gaps must be addressed and considered in developing program objectives.

5. The applicant must describe the objectives of the program and the manner in which these objectives will help to encourage youth to leave the streets.

Results and Benefits

1. Applicant must provide detailed information on the expected results and benefits of the program in terms of the number and frequency of youth served annually and in terms of the benefits and outcomes that will accrue to the street youth.

2. The applicant must describe barriers to effective delivery of services that currently exist or are anticipated and identify actions the program will take to overcome the barriers to serving this population.

Approach

1. The applicant must describe a youth development approach to serving street youth including how youth will be involved in the design, operation and evaluation of the program.

2. Applicant must describe its current or proposed street outreach effort, including: framework and philosophy, hours of operation, staffing pattern and support, services provided, and expertise in approaching and addressing issues of victims of sexual abuse.

3. The applicant must describe a plan to provide street-based outreach services during hours when youth will most likely avail themselves of those services (late afternoon, evenings, nights, and weekends).

4. The applicant must show that there is guaranteed access to emergency shelter services that can be made available to street youth. In addition, they must show that street outreach workers will have guaranteed access to the street youth that are taking advantage of the shelter's services.

5. The applicant must describe the range of services that will be offered to street youth and methods of their provision by demonstrating that, at a minimum, emergency shelter, street-based outreach and education, survival aid, individual assessment, counseling, prevention and education activities and information, information and referral services, crisis intervention and follow-up support will be available. Applicant must specify which services (excluding shelter services) will be provided through contracts.

6. The applicant must demonstrate that supportive training and appropriate street-based outreach supervision is provided to outreach staff and volunteers. This supervision must include guidance on policies and boundaries regarding their job responsibilities and their contact with and responsibilities to young people; training that will assist them in abiding by policies and maintaining appropriate boundaries; as well as training on youth development, sexual abuse, and other topics relevant to street life.

7. The applicant must show that the relationship of staff and volunteer gender, ethnicity and life experiences are relevant to those of the young people being served.

8. The applicant must describe current efforts or plans to work with organizations that serve victims of domestic violence and sexual assault in order to tap into their expertise and to coordinate services.

9. Applicant must describe how the project has established or will establish formal service linkages with other social service, law enforcement, educational, housing, vocational, welfare, legal service, drug treatment, other health care and other relevant service agencies in order to ensure appropriate service referrals for the project clients.

10. Applicant must agree to gather and submit program and client data required by FYSB through the Runaway and Homeless Youth Management Information System (RHYMIS). If applicant is a current recipient of a BCP or TLP grant, applicant must describe the extent to which it now gathers and submits required data to the RHYMIS. Current recipients of a FYSB grant who are not submitting the required data are at risk of not being considered for a new grant award.

While the computer software and training for the implementation of the RHYMIS will be provided by FYSB to grantees, applicant should include a request for funds in its budget (within the maximum Federal funds allowed) for any computer equipment needed for implementation of the RHYMIS. To determine whether an agency's current computer equipment is adequate, or whether purchase of an upgrade or of new equipment is necessary, potential applicants are invited to contact the RHYMIS Technical Support Group at Information Technology Incorporated, Bethesda, MD, Telephone: 1–800–392–2395.

11. Applicant must agree to cooperate with any research or evaluation efforts sponsored by the Administration for Children and Families.

Staff Background and Organizational Experience

1. As priority for funding will be given to organizations with experience in providing services to runaway, homeless, and street youth, applicant must describe the organization and the current services it provides to this specific target population including the direct provision of emergency shelter and supportive services.

2. Applicant must include a description of current and proposed staff skills and knowledge regarding runaway, homeless and street youth and indicate how staff will be utilized in achieving the goals and objectives of the program. Information on proposed staff training and brief resumes or job descriptions may be included.

3. Applicant must describe procedures for maintaining confidentiality of records on the youth served and families served. Procedures must insure that no information on the youth and families is disclosed without the consent of the individual youth, parent or legal guardian. Disclosures without consent can be made to another agency compiling statistical records if individual identities are not provided or to a government agency involved in the disposition of criminal charges against an individual runaway, homeless or street youth.

4. Applicant must describe how community and other resources will be secured to continue the project at the conclusion of the Federal grant period.

Budget Appropriateness

1. Applicant must discuss and justify the costs of the proposed project in terms of the number of youth to be served, the types and quantities of services to be provided, and the anticipated outcomes for youth.

2. Applicant must describe the fiscal control and accounting procedures that will be used to ensure prudent use, proper disbursement, and accurate accounting of funds received under the Street Outreach Program.

Duration of Project: This announcement solicits applications for Street Outreach Program projects of up to three years (36-month project periods). Initial grant awards, made on a competitive basis, will be for one-year (12-month) budget periods. Applications for non-competing continuation grants beyond the one-year budget periods, but within the 36-month project periods, will be considered subject to the availability of funds, satisfactory progress of the grantee, and determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: Applicants may apply for up to $100,000 in Federal support each year, which equals a maximum of $300,000 for a 3-year project period. The Maximum Federal share of project costs is $100,000 for 12 months.

Applicant Share of Project Cost: The applicant is required to provide 10 percent of the Federal Project costs each year. For example, a project requesting $100,000 in Federal funds must include a match of at least $10,000.

The non-Federal share may be met by cash and/or in-kind contributions. Federal funds provided to States and services or other resources purchased with Federal funds may not be used to match project grants. Applicants which do not provide the required percentage of non-Federal share will not be funded.

Background

C. Transitional Living Program for Homeless Youth (TLP)

Eligible Applicants: Any State, units of local government (or a combination of units of local government), public or non-profit, private agency organizations, institutions or other non-profit entities. Federally recognized Indian Tribes are eligible to apply for TLP grants. Non-Federally recognized Indian Tribes and urban Indian organizations are also eligible to apply for grants as private, non-profit agencies.

Current TLP grantees with project periods ending by September 30, 1997 and all other eligible applicants not currently receiving TLP funds may apply for a new competitive TLP grant under this announcement.

TLP grantees (including subgrantees) with one or two years remaining on their current awards and the expectation of continuation funding in Fiscal Year

1998 may not apply for a new TLP grant under this announcement. These grantees are eligible to apply for non-competitive continuation funding in FY 1997. These continuation grantees will receive instructions from their respective ACF Regional Offices on the procedures for applying for continuation grants.

Please refer to Part VI, Appendix D.3 for a listing of current grantees which are ineligible to apply for new TLP grants under this announcement.

As required by runaway and homeless youth legislation, priority for funding will be given to agencies with demonstrated experience in providing direct services to runaway and homeless youth. In line with this requirement, applicants which have three (3) or more years of continuous effort serving runaway and homeless youth in one or more areas set forth in Section 312 of the Act are eligible to receive an additional five (5) points in the Staff Background and Organizational Experience evaluation criterion section.

Program Purpose, Goals and Objectives: The Administration on Children, Youth and Families will award approximately 40 new service grants to provide shelter, skill training and support services to assist homeless youth in making a smooth transition to self-sufficiency and to prevent long-term dependency on social services.

Applications are solicited under this priority area to carry out direct service projects designed to carry out the program purpose, goals and objectives set forth in the legislation and as specified in Part I, section C.2 of this announcement.

Background: It is estimated that about one-fourth of the youth served by all runaway and homeless youth programs are homeless. This means that the youth cannot return home or to another safe living arrangement with a relative. Other homeless youth have "aged out" of the child welfare system and are no longer eligible for foster care.

These young people are often homeless through no fault of their own. The families they can no longer live with are often physically and sexually abusive and involved in drug and alcohol abuse. They cannot meet the youth's basic human needs (shelter, food, clothing), let alone provide the supportive and safe environment needed for the healthy development of self-image and the skills and personal characteristics which would enable them to mature into a self-sufficient adult.

Homeless youth, lacking a stable family environment and without social and economic supports, are at high risk of being involved in dangerous lifestyles and problematic or delinquent behaviors. More than two-thirds of homeless youth served by ACYF-funded programs report using drugs or alcohol and many participate in survival sex and prostitution to meet their basic needs.

Homeless youth are in need of a support system that will assist them in making the transition to adulthood and independent living. While all adolescents are faced with adjustment issues as they approach adulthood, homeless youth experience more severe problems and are at greater risk in terms of their ability to successfully make the transition to independent living.

The Transitional Living Program for Homeless Youth specifically targets services to homeless youth and affords youth service agencies with an opportunity to serve homeless youth in a manner which is comprehensive and geared towards ensuring a successful transition to self-sufficiency. The TLP also improves the availability of comprehensive, integrated services for homeless youth, which reduces the risks of exploitation and danger to which these youth are exposed while living on the streets without positive economic or social supports.

Minimum Requirements for Project Design: As a part of addressing the evaluation criteria outlined in Part II of this announcement, each applicant must address the following items in the program narrative section of their application.

Objectives and Need for Assistance

1. Applicant must specify the goals and objectives of the program and how the implementation of the objectives will fulfill the requirements of the legislation identified in Part I, section C.3. of this announcement.

2. Applicant must discuss the issue of youth homelessness in the community to be served, the present availability of services for homeless youth and provide documentation of the incidence of homeless youth.

3. Applicant must describe the system that will be used to ensure that individual clients will meet the eligibility criteria of need for service as established by the Act. This may include a discussion of the intake and assessment activities which will be conducted with a client prior to acceptance into the TLP project. The applicant is encouraged to include samples of any forms to be used to determine eligibility and appropriate services.

Results and Benefits Expected

1. Applicant must describe how homeless youth will be reached and identify the number who will be served annually on both a residential and non-residential basis.

2. Applicant must provide information on the expected results and benefits of the program in terms of the number of youth who will successfully complete the program as well as potential problems or barriers to program implementation that might be possible reason(s) for non-success. Applicant must also discuss the organization's policy on termination and re-entry of youth out of and into the program.

3. Applicant must discuss the expected impact of the project on the availability of services to homeless youth in the local community and indicate how the project will enhance the organization's capacity to provide services to address youth homelessness in the community.

Approach

Applicant must discuss how they will implement the statutory requirements of the Act. Specifically, the applicant must describe plans for the provision of shelter and services and for program administration. In addition, the applicant must describe the program's youth development approach or philosophy and indicate how it underlies and integrates all proposed activities.Specific information must be provided on how youth will be involved in the design, operation and evaluation of the program.

1. *Shelter:* Applicant must:

• Assure that shelter is provided through one or a combination of the following:

(a) A group home facility;
(b) Family host homes; or
(c) Supervised apartments.

Applicant must indicate if the shelter will be provided directly or indirectly. When shelter will be provided indirectly, applicant must submit copies of formal written agreements with service providers regarding the terms under which shelter is provided.

• Assure that the facility used for housing, whether a shelter, host family home and/or supervised apartment, shall accommodate no more than 20 youth at any given time; shall have a sufficient number of staff to ensure on-site supervision at each shelter option that is not a family home including periodic, unannounced visits from project staff; and is in compliance with State and local licensing requirements;

• Assure, if applicable, that the applicant meets the requirements of the RHY Act for the lease of surplus Federal facilities for use as transitional living shelter facilities. Each surplus Federal facility used for this purpose must be made available for a period not less than two years, and no rent or fee shall be charged to the applicant in connection with use of such a facility. Any structural modifications or additions to surplus Federal facilities become the property of the government of the United States. All such modifications or additions may be made only after receiving prior written consent from the appropriate Department of Health and Human Services official.

2. *Services*:

Applicant must include a description of the core services to be provided. The description must include the purpose and concept of the service, its role in both the overall program design and the individual client TLP plan. The services to be provided must include, but are not necessarily limited to, the following:

• Basic life skills information and counseling, including budgeting, money management, use of credit, housekeeping, menu planning and food preparation, consumer education, leisure-time activities, transportation, and obtaining vital documents (Social Security card, birth certificate).

• Interpersonal skill building, such as developing positive relationships with peers and adults, effective communication, decision making, and stress management.

• Educational advancement, such as GED preparation and attainment, post-secondary training (college, technical school, military, etc.), and vocational education.

• Job preparation and attainment, such as career counseling, job preparation training, dress and grooming, job placement and job maintenance.

• Mental health care, such as counseling (individual and group), drug abuse education, prevention and referral services, and mental health counseling.

• Physical health care, such as routine physicals, health assessments, family planning/parenting skills, and emergency treatment.

• The substantive participation of youth in the assessment and implementation of their needs, including the development and implementation of the individual transitional living plan and in decisions about the services to be received.

The applicant must specifically describe programmatic efforts planned and/or implemented to encourage awareness of and sensitivity to the particular needs of homeless youth who are members of ethnic, racial and sexual minority groups and/or who are street youth.

3. *Administration*: Applicant must:

• Describe the procedures to be employed in the development, implementation and monitoring of an individualized, written transitional living plan for each program client which addresses the provision of services, and is appropriate to the individual developmental needs of the client.

• Assure that the clients will substantively participate in the assessment of their needs and in decisions about the services to be received.

• Assure that the outreach programs to be established are designed to attract individuals who are eligible to participate in the project.

• Provide an assurance that housing and services will be available to a client for a continuous period not to exceed 540 days (18 months).

• Describe the methods to be employed in collecting statistical records and evaluative data and for submitting annual reports on such information to the Department of Health and Human Services.

• Describe how the applicant will ensure the confidentiality of client records.

• Applicant must describe how the activities implemented under this project will be continued by the agency once Federal funding for the project has ended. The applicant must describe specific plans for accomplishing program phase-out for the last two quarters of program project period in the event that the applicant would not receive a new award.

• Applicant must agree to gather and submit program and client data required by FYSB through the Runaway and Homeless Youth System (RHYMIS). If applicant is a current recipient of a Runaway and Homeless Youth Program grant, applicant must describe the extent to which it now gathers and submits required data to the RHYMIS. Current recipients of a FYSB grant which are not submitting the required data are at risk of not being considered for a new grant award.

While the computer software and training for the implementation of the RHYMIS will be provided by FYSB to grantees, applicant should include a request for funds in its budget for any computer equipment needed for implementation of the RHYMIS. To determine whether an agency's current computer equipment is adequate, or whether purchase of an upgrade or of new equipment is necessary, potential applicants are invited to contact the RHYMIS Technical Support Group at Information Technology Incorporated, Bethesda, MD, telephone: 1–800–392–2395.

• Applicant must agree to cooperate with any research or evaluation efforts sponsored by the Administration for Children and Families.

Staff Background and Organizational Experience

1. As priority for funding will be given to agencies and organizations that have documented experience in providing direct services to homeless youth, applicant must include a brief description of the organization and its experience in providing services to this specific client population.

2. Applicant must include a description of current and proposed staff skills and knowledge regarding homeless youth and indicate how staff will be utilized in achieving the goals and objectives of the program. Information on proposed staff training and brief resumes or job descriptions may be included.

3. Applicant must describe how the project has established or will establish formal service linkages with other social service, law enforcement, educational, housing, vocational, welfare, legal service, drug treatment and health care agencies in order to ensure appropriate referrals for the project clients where and when needed.

4. Applicant must describe procedures for maintaining confidentiality of records on the youth and families served. Procedures must insure that no information on the youth and families is disclosed without the consent of the individual youth, parent or legal guardian. Disclosures without consent can be made to another agency compiling statistical records if individual identities are not provided or to a government agency involved in the disposition of criminal charges against an individual runaway or homeless youth.

Budget Appropriateness

1. Applicant must discuss and justify the costs of the proposed project in terms of numbers of youth to be served, the types and quantities of services to be provided, and the anticipated outcomes for the youth.

2. Applicant must describe the fiscal control and accounting procedures that will be used to ensure prudent use, proper disbursement, and accurate accounting of funds received under this program announcement.

3. Applicant must describe how cost-effective use of TLP funds will be ensured by taking maximum advantage

of existing resources within the State which would help in the operation or coordination of a TLP, including those resources which are supported by Federal Independent Living Initiatives funds. Also, applicant must describe efforts to be undertaken over the length of the project which may increase non-Federal resources available to support the TLP.

Duration of Project: Because successful applicants will receive grants with funds appropriated by Congress for FY 1998, project periods for these new awards will begin when FY 1998 funds are appropriated and made available to ACYF, but in no case will they begin prior to October 1, 1997.

This announcement solicits TLP applications for projects of up to three years (36 month project periods). Grant awards, made on a competitive basis, will be for a one year (12-month) budget period. Applications for continuation grants beyond the one-year budget period, but within the 36 month project period, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee and determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: Applicants may apply for up to $200,000 per year, which equals a maximum of $600,000 for a 3-year project period.

Applicant Share of the Project: The Runaway and Homeless Youth Act requires a non-Federal matching requirement of ten percent of the total Federal funds. For example, a project requesting $600,000 in Federal funds over a three year project period (based on an award of $200,000 per twelve month budget period) must include a match of at least $60,000 (10% of the Federal share).

Part IV. Application Process

A. Assistance to Prospective Grantees

Potential grantees can direct questions about program requirements or application forms to the appropriate ACF Regional Youth Contacts listed in Part VI, Appendix E, or to the Administration on Children, Youth and Families in Washington, D.C. (see address at the beginning of this announcement). This assistance is available to anyone who requests an application kit.

B. Application Requirements

To be considered for a grant, each application must be submitted on the forms provided at the end of this announcement (Part VI, Section I) and in accordance with the guidance provided below. The application must be signed by an individual authorized both to act for the applicant agency and to assume responsibility for the obligations imposed by the terms and conditions of the grant award.

If more than one agency is involved in submitting a single application, one entity must be identified as the applicant organization which will have legal responsibility for the grant.

C. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, Pub.L. 104–13, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and record-keeping requirements or program announcements. This program announcement meets all information collection requirements approved for ACF grant applications under OMB Control Number 0970–0139.

Required form	OMB no.
SF 424 series of forms.	OMB No. 0970–0139.

D. Notification Under Executive Order 12372

This program is covered under Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Programs," and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

As of February, 1996, the following jurisdictions have elected not to participate in the Executive Order Process. Applicants from these jurisdictions or for projects administered by Federally-recognized Indian tribes need take no action in regard to E.O. 12372: Alabama, Alaska, American Samoa, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, and Washington. All remaining jurisdictions participate in the Executive Order process and have established Single Points of Contacts (SPOCS). Applicants from participating jurisdictions should contact their SPOC as soon as possible to alert them to the prospective application and receive any necessary instructions. Applicants must submit any required material to the SPOCs as early as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline date to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCS are requested to clearly differentiate between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they must be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Mail Stop 6C–462, Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included as Part VI, Appendix G, of this announcement.

E. Availability of Forms and Other Materials

A copy of the forms that must be submitted as part of each application for a runaway and homeless youth grant, and instructions for completing the application, are provided in Part VI, Appendix I. The Basic Center Program Performance Standards as well as descriptions of the National Runaway Switchboard and the National Clearinghouse on Families and Youth are presented in Part VI, Appendices A, B and C. Addresses of the State Single Points of Contact (SPOCs) to which applicants must submit review copies of their proposals are listed in Part VI, Appendix G.

Legislation referenced in Part I, section B, of this announcement may be found in major public libraries and at the ACF Regional Offices listed in Part VI, Appendix E, at the end of this announcement.

Additional copies of this announcement may be obtained by calling the telephone number listed at the beginning of this announcement. Further general information may be obtained from the Training and Technical Assistance Providers listed in Part VI, Appendix F.

F. Application Consideration

All applications which are complete and conform to the requirements of this program announcement will be subject to a competitive review and evaluation process against the specific criteria outlined in Part II of this announcement and the specific Minimum Requirements for Project Design contained in Part III of this announcement. This review will be conducted in Washington, DC, by teams of non-Federal experts knowledgeable in the areas of youth development and human service programs. Applications for Basic Center Program grants will be reviewed competitively only with other applications from the same State. Applications for Street Outreach Program grants and for Transitional Living Program grants will be reviewed as part of a national competition.

Non-Federal experts will review the applications based on the Evaluation Criteria listed in Part II of this announcement and the specific Minimum Requirements for Project Design contained in Part III of this announcement and will assign a score to each application. Both Central and Regional office staff will conduct administrative reviews of the applications and the results of the competitive reviews and will select those applications to be recommended for funding to the Commissioner, ACYF.

The Commissioner will make the final selection of the applicants to be funded. As required by runaway and homeless youth legislation, priority for funding will be given to agencies with demonstrated experience in providing direct services to runaway and homeless youth. However, current grantees ending three-year funding periods, and applying as new applicants for funds under this program announcement, are reminded that, when the current project period ends, so does the funding agency's obligation for future awards.

In addition to scores assigned by non-Federal reviewers and Federal administrative reviews, consideration will be given to adequate geographic distribution of services, and the Commissioner may show preference for applications proposing services in areas that would not otherwise be served. The Commissioner also may elect to consider applicants' past performance in providing services to runaway and homeless youth and also may elect not to fund any applicants having known management, fiscal, reporting (as under the RHYMIS), or other problems which make it unlikely that they would be able to provide effective services.

Awards for Basic Center and for Street Outreach Program Grants will be made by September 30, 1997. Subject to the availability of resources in FY 1998 and the number of acceptable applications received as a result of this program announcement, the Federal government may elect to select recipients for new FY 1998 SOP grant awards out of the pool of Street Outreach Program applications submitted under this program announcement. Awards for Transitional Living Programs will be made after October 1, 1997 when FY 1998 funds are appropriated by Congress.

Successful applicants will be notified through the issuance of a Financial Assistance Award which will set forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which initial support will be given, the non-Federal share to be provided, and the total project period for which support is contemplated. Organizations whose applications will not be funded will be notified of that decision in writing by the Commissioner of the Administration on Children, Youth and Families. Every effort will be made to notify all unsuccessful applicants as soon as possible after final decisions are made.

Applicants applying for more than one runaway and homeless youth grant (Basic Center Program (BCP), Transitional Living Program (TLP)) or (Street Outreach Program (SOP)) must submit separate and complete applications for each program. Applications that combine two or more programs in a single proposal will not be reviewed or funded.

Part V. Application Content, Instructions, Assembly, and Submission

A. Content, Instructions, and Assembly of Applications

Each application must contain the following items in the order listed:

1. Application for Federal Assistance (Standard Form 424, REV 4–92) (page i). Follow the instructions in Part VI, Appendix I. In Item 8 of Form 424, check "New." In Item 10 of the 424, clearly identify the *Catalog of Federal Domestic Assistance* Program Number and Title for the program for which funds are being requested (93.623, Basic Center Program for Runaway and Homeless Youth; 93.557, Street Outreach Program for Runaway, Homeless and Street Youth; 93.550, Transitional Living Program for Homeless Youth). In Item 11 of the 424, identify the Program Area and the program name (IIIA: Basic Center Program (BCP), IIIB: Street Outreach Program (SOP) or IIIC: Transitional Living Program (TLP) which the application is addressing.

2. Budget Information (Standard Form 424A, REV 4–92) (pages ii–iii). Follow the instructions in Part VI, Appendix I.

3. Budget Justification (Type on standard size plain white paper) (pages iv–v). Provide breakdowns for major budget categories and justify significant costs. List amounts and sources of all funds, both Federal and non-Federal, that will be used for this project.

4. Project Summary Description (PS–1, one page maximum). Clearly mark this page with the applicant name as shown on item 5 of the SF 424, the program name and the title of the project as shown in item 11 of the SF 424. The summary description should not exceed 300 words.

Care should be taken to produce a summary description which accurately and concisely reflects the application. It should describe the objectives of the project, the approaches to be used and the outcomes expected. The project summary description, together with the information on the SF 424, will constitute the project abstract.

5. Assurances/Certifications. Applicants are required to file an SF 424B, Assurances—Non-Construction Programs and the Certification Regarding Lobbying. Both must be signed and returned with the application. Copies of the assurances/certifications are reprinted at the end of this announcement and should be reproduced, as necessary. A duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances/certifications. In addition, applicants must certify their compliance with: (1) Drug-Free Workplace Requirements; (2) Debarment and Other Responsibilities; and (3) Pro-Children Act of 1994 (Certification Regarding Environmental Tobacco Smoke). A signature on the SF 424 indicates compliance with the Drug Free Workplace Requirements, Debarment and Other Responsibilities and Environmental Tobacco Smoke Certifications.

A signature on the application constitutes an assurance that the applicant will comply with the pertinent Departmental regulations contained in 45 CFR Part 74. Applicants must sign and return the Standard Form 424B with their applications.

6. Program Narrative Statement (pages 1 and following; 40 pages maximum, double-spaced). Use the Evaluation Criteria in Part II as a way to organize the Narrative. Be sure to address all the specifics contained in the appropriate

Program Area Description in Part III, especially the information described under Minimum Requirements for Project Design.

The pages of the narrative statement must be numbered and are limited to 40 typed pages, double spaced, printed on only one side, with at least ½ inch margins. Pages over the limit will not be reviewed. In addition, please note that previous attempts by applicants to circumvent space limitations or to exceed page limits by using small print have resulted in negative responses from reviewers because of the difficulty in reviewing the application.

It is in the best interest of the applicants to ensure that the narrative statements are easy to read, logically developed in accordance with evaluation criteria, and adhere to page limitations. In addition, applicants should be mindful of the importance of preparing and submitting applications using language, terms, concepts and descriptions that are generally known both to the runaway and homeless youth and broader youth services field.

7. Organizational Capability Statement (pages OCS–1 and following: 3 pages maximum). Applicants must provide a description (no more than three pages, double-spaced) of how the applicant agency is organized and the types, quantities and costs of services it provides, including services to clients other than runaway and homeless youth. For the prior year, list all contracts with or funds received from juvenile justice, probation and/or welfare agencies. Provide an organizational chart showing any superordinate, parallel, or subordinate agencies to the specific agency that will provide direct services to runaway and homeless youth, and summarize the purposes, clients and overall budgets of these other agencies. If the agency has multiple sites, list these sites, *including addresses, phone numbers and staff contact names, if different than those on the SF 424.* If the agency is a recipient of funds from the Administration on Children, Youth and Families for services to runaway and homeless youth for programs other than that applied for in this application, show how the services supported by these funds are or will be integrated with the existing services.

8. Supporting Documents (pages SD–1 and following). The maximum for supporting documentation is 10 pages, double spaced, exclusive of letters of support or agreement. These documents might include resumes, photocopies of news clippings, evidence of the program's efforts to coordinate youth services at the local level, etc. Documentation over the ten page limit will not be reviewed. Applicants may include as many letters of support or agreement as are appropriate.

B. Application Submission

To be considered for funding, each applicant must submit one signed original and two additional copies of the application, including all attachments, to the application receipt point specified below. The original copy of the application must have original signatures, signed in *black* ink. Each copy must be stapled (back and front) in the upper left corner. All copies of a single application must be submitted in a single package.

Because each application will be duplicated by the government, do not use or include separate covers, binders, clips, tabs, plastic inserts, maps, brochures or any other items that cannot be processed easily on a photocopy machine with an automatic feed. Do not bind, clip, staple, or fasten in any way separate subsections of the application, including supporting documentation. Applicants are advised that the copies of the application submitted, not the original, will be reproduced by the Federal government for review.

The closing dates for receipt of applications for the grant programs contained in this announcement are:

Program	Closing date
BCP	May 2, 1997.
SOP	May 16, 1997.
TLP	May 30, 1997.

Deadlines: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, S.W., Mail Stop 6C–462, Washington, D.C. 20447. Attention: Basic Center Program for Runaway and Homeless Youth; Street Outreach Program for Runaway, Homeless and Street Youth; or Transitional Living Program for Homeless Youth.

Applications handcarried by applicants, applicant couriers, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., at the U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, ACF Mailroom, 2nd Floor Loading Dock, Aerospace Center, 901 D Street, S.W., Washington, D.C. 20024 between Monday and Friday (excluding Federal Holidays).

ACF cannot accommodate transmission of applications by fax. Therefore, applications faxed to ACF will not be accepted regardless of date or time of submission and time of receipt. Envelopes containing applications must clearly indicate the specific program that the application is addressing: Basic Center Program (BCP); Street Outreach Program (SOP); or Transitional Living Program (TLP).

Late Applications. Applications which do not meet the criteria stated above and are not received by the RECEIPT date are considered late applications. The Administration for Children and Families (ACF) will notify each late applicant that its application will not be considered in the current competition.

Extension of Deadline. The ACF may extend the deadline for all applicants because of acts of God such as earthquakes, floods or hurricanes, etc., or when there is a widespread disruption of the mails. However, if ACF does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

(*Catalog of Federal Domestic Assistance.* Number 93.623, Basic Center Program for Runaway and Homeless Youth; Number 93.557, Street Outreach Program for Runaway, Homeless and Street Youth; and Number 93.550, Transitional Living Program for Homeless Youth.)

Dated: February 27, 1997.

James A. Harrell,

Acting Commissioner, Administration on Children, Youth and Families.

Part VI. Appendices

Appendix A—Basic Center Program Performance Standards

Program Performance Standards

I. Purpose

The Program Performance Standards established by the Bureau for its funded centers relate to the basic program components enumerated in Section 317 of the Runaway and Homeless Youth Act and as further detailed in the Regulations and Program Guidance governing the implementation of the Act. They address the methods and processes by which the needs of runaway and homeless youth and their families are being met, as opposed to the outcome of the services provided on the clients served.

The terms "program performance standard," "criterion," and "indicators" are used throughout both the instrument and the instructions. These terms are defined as follows:

Program Performance Standard: The general principle against which a judgment can be made to determine whether a service or an administrative component has achieved a particular level of attainment.

Criterion: A specific dimension or aspect of a program performance standard which helps to define that standard and which is amenable to direct observation or measurement.

Indicator: The specific documentation which demonstrates whether a criterion (or an aspect of a criterion) is being met and thereby the extent to which a specific aspect of a standard is being met.

Fourteen program performance standards, with related criteria, are established by the Bureau for the projects funded under the Runaway and Homeless Youth Act. Nine of these standards relate to service components (outreach, individual intake process, temporary shelter, individual and group counseling, family counseling, service linkages, aftercare services, recreational programs, and case disposition), and five to administrative functions or activities (staffing and staff development, youth participation, individual client files, ongoing project planning, and board of directors/advisory body).

Although fiscal management is not included as a program performance standard, it is viewed by FYSB as being an essential element in the operation of its funded projects. Therefore, as validation visits are made, the Regional ACF specialist and/or staff from the Office of Fiscal Operations will also review the project's financial management activities.

FYSB views these program performance standards as constituting the minimum standards to which its funded projects should conform. The primary assumption underlying the program performance standards is that the service and administrative components which are encompassed within these standards are integral (but not sufficient in themselves) to a program of services which effectively addresses the crisis and long-term needs of runaway and homeless youth and their families.

The program performance standards are designed to serve as a developmental tool, and are to be employed by both the project staff and the Regional ACF staff specialists in identifying those service and administrative components and activities of individual projects which require strengthening and/or development either through internal action on the part of staff or through the provision of external technical assistance.

III. Program Performance Standards and Criteria

The following constitute the program performance standards and criteria established by the Bureau for its funded centers. Each standard is numbered, and each criterion is listed after a lower case letter.

1. Outreach

The project shall conduct outreach efforts directed towards community agencies, youth and parents.

2. Individual Intake Process

The project shall conduct an individual intake process with each youth seeking services from the project. The individual intake process shall provide for:

a. Direct access to project services on a 24-hour basis.

b. The identification of the emergency service needs of each youth and the provision of the appropriate services either directly or through referrals to community agencies and individuals.

c. An explanation of the services which are available and the requirements for participation, and the securing of a voluntary commitment from each youth to participate in project services prior to admitting the youth into the project.

d. The recording of basic background information on each youth admitted into the project.

e. The assignment of primary responsibility to one staff member for coordinating the services provided to each youth.

f. The contact of the parent(s) or legal guardian of each youth provided temporary shelter within the timeframe established by State law or, in the absence of State requirements, preferably within 24 but within no more than 72 hours following the youth's admission into the project.

3. Temporary Shelter

The project shall provide temporary shelter and food to each youth admitted into the project and requesting such services.

a. Each facility in which temporary shelter is provided shall be in compliance with State and local licensing requirements.

b. Each facility in which temporary shelter is provided shall accommodate no more than 20 youth at any given time.

c. Temporary shelter shall normally not be provided for a period exceeding two weeks during a given stay at the project.

d. Each facility in which temporary shelter is provided shall make at least two meals per day available to youth served on a temporary shelter basis.

e. At least one adult shall be on the premises whenever youth are using the temporary shelter facility.

4. Individual and Group Counseling

The project shall provide individual and/or group counseling to each youth admitted into the project.

a. Individual and/or group counseling shall be available daily to each youth admitted into the project on a temporary shelter basis and requesting such counseling.

b. Individual and/or group counseling shall be available to each youth admitted into the project on a non-residential basis and requesting such counseling.

c. The individual and/or group counseling shall be provided by qualified staff.

5. Family Counseling

The project shall make family counseling available to each parent or legal guardian and youth admitted into the project.

a. Family counseling shall be provided to each parent or legal guardian and youth admitted into the project and requesting such services.

b. The family counseling shall be provided by qualified staff.

6. Service Linkages

The project shall establish and maintain linkages with community agencies and individuals for the provision of those services which are required by youth and/or their families but which are not provided directly by the centers.

a. Arrangements shall be made with community agencies and individuals for the provision of alternative living arrangements, medical services, psychological and/or psychiatric services, and the other assistance required by youth admitted into the project and/or by their families which are not provided directly by the project.

b. Specific efforts shall be conducted by the project directed toward establishing working relationships with law enforcement and other juvenile justice system personnel.

7. Aftercare Services

The project shall provide a continuity of services to all youth served on a temporary shelter basis and/or their families following the termination of such temporary shelter both directly and through referrals to other agencies and individuals.

8. Recreational Program

The project shall provide a recreational-leisure time schedule of activities for youth admitted to the project for residential care.

9. Case Disposition

The project shall determine, on an individual case basis, the disposition of each youth provided temporary shelter, and shall assure the safe arrival of each youth home or to an alternative living arrangement.

a. To the extent feasible, the project shall provide for the active involvement of the youth, the parent(s) or legal guardian, and the staff in determining what living arrangement constitutes the best interest of each youth.

b. The project shall assure the safe arrival of each youth home or to an alternative living arrangement, following the termination of the crisis services provided by the project, by arranging for the transportation of the youth if he/she will be residing within the area served by the project; or by arranging for the meeting and local transportation of the youth at his/her destination if he/she will be residing beyond the area served by the project.

c. The project shall verify the arrival of each youth who is not accompanied home or to an alternative living arrangement by the parent(s) or legal guardian, project staff or other agency staff within 12 hours after his/her scheduled arrival at his/her destination.

10. Staffing and Staff Development

Each center is required to develop and maintain a plan for staffing and staff development.

a. The project shall operate under an affirmative action plan.

b. The project shall maintain a written staffing plan which indicates the number of paid and volunteer staff in each job category.

c. The project shall maintain a written job description for each paid and volunteer staff function which describes both the major tasks to be performed and the qualifications required.

d. The project shall provide training to all paid and volunteer staff (including youth) in both the procedures employed by the project and in specific skill areas as determined by the project.

e. The project shall evaluate the performance of each paid and volunteer staff member on a regular basis.

f. Case supervision sessions, involving relevant project staff, shall be conducted at least weekly to review current cases and the types of counseling and other services which are being provided.

11. Youth Participation

The center shall actively involve youth in the design and delivery of the services provided by the project.

a. Youth shall be involved in the ongoing planning efforts conducted by the project.

b. Youth shall be involved in the delivery of the services provided by the project.

12. Individual Client Files

The project shall maintain an individual file on each youth admitted into the project.

a. The client file maintained on each youth should, at a minimum, include an intake form which minimally contains the basic background information needed by FYSB; counseling notations; information on the services provided both directly and through referrals to community agencies and individuals; disposition data; and, as applicable, any follow-up and evaluation data which are compiled by the center.

b. The file on each client shall be maintained by the project in a secure place and shall not be disclosed without the written permission of the client and his/her parent(s) or legal guardian except to project staff, to the funding agenc(ies) and its (their) contractor(s), and to a court involved in the disposition of criminal charges against the youth.

13. Ongoing Center Planning

The center shall develop a written plan at least annually.

a. At least annually, the project shall review the crisis counseling, temporary shelter, and aftercare needs of the youth in the area served by the center and the existing services which are available to meet these needs.

b. The project shall conduct an ongoing evaluation of the impact of its services on the youth and families it serves.

c. At least annually, the project shall review and revise, as appropriate, its goals, objectives, and activities based upon the data generated through both the review of youth needs and existing services (13a0 and the follow-up evaluations (13b).

d. The project's planning process shall be open to all paid and volunteer staff, youth, and members of the Board of Directors and/or Advisory Body.

14. Board of Directors/Advisory Body (Optional)

It is strongly recommended that the centers have a Board of Directors or Advisory Body.

a. The membership of the project's Board of Directors or Advisory Body shall be composed of a representative cross-section of the community, including youth, parents, and agency representatives.

b. Training shall be provided to the Board of Directors or Advisory Body designed to orient the members to the goals, objectives, and activities of the project.

c. The Board of Directors or Advisory Body shall review and approve the overall goals, objectives, and activities of the project, including the written plan developed under standard 13.

Appendix B—National Runaway Switchboard (National Communications System)

The National Runaway Switchboard—Toll-free: 1–800–621–4000

- Facilitates communication among youth, their families and youth and community-based resources through conference calling services.
- Provides crisis intervention counseling and message delivery services to at-risk youth and their families.
- Provides information and referral services to at-risk youth and their families on youth serving agencies using a computerized national resource directory.
- Conducts an annual conference for local switchboard service providers.

The Switchboard distributes information brochures, posters, a newsletter, and public service announcements. For more information, contact the National Runaway Switchboard, 3080 North Lincoln, Chicago, IL 60657, (312) 880–9860.

Appendix C—National Clearinghouse on Families and Youth

The National Clearinghouse on Families and Youth (NCFY) is a resource for communities interested in developing new and effective strategies for supporting young people and their families. The Family and Youth Services Bureau (FYSB) within the U.S. Department of Health and Human Services, established NCFY to serve as a central information source on family and youth issues. As a national resource for youth service professionals, policymakers and the general public, NCFY offers the following services:

Information Sharing

Through a professionally staffed information line, databases, and special mailings, NCFY actively distributes information about effective program approaches, available resources, and current activities relevant to the family and youth services fields.

Issue Forums

NCFY facilitates FYSB-sponsored forums, bringing together experts in the field to discuss critical issues and emerging trends and develop strategies for improving services to families and youth. NCFY shares forum outcomes with the field.

Materials Development

NCFY produces information on FYSB and its programs, as well as reports on critical issues, best practices, and promising approaches in family and youth services.

Networking

NCFY supports FYSB's efforts to collaborate with other Federal agencies, State and local governments, national organizations, and communities to address the full range of issues facing young people and their families today.

To find out more about the National Clearinghouse on Families and Youth, please call or write: National Clearinghouse on Families and Youth, PO Box 13505, Silver Spring, Maryland 20911–3505, (301) 608–8098, Fax: (301) 608–8721.

Appendix D—Runaway and Homeless Youth Continuation Grantees

The following grantees are expected to receive continuation grants in FY 1997 and are NOT eligible to apply for funds under this announcement.

D.1: Basic Center Programs for Runaway and Homeless Youth Grantees Ineligible for New FY 1997 Funding

Region I

Connecticut

The Bridge Family Center, 90 North Main Street, West Hartford, CT 0006107, Wayne Starkey, (203) 521–8035

Waterbury Youth Services, 95 North Main Street, Waterbury, CT 06702, Kelly Cronin, (203) 573–0264

Council of Churches of Greater Bridgeport, 126 Washington Avenue, Bridgeport, CT 06604, John Cottrell, (203) 334–1121

Quinebaug Valley Youth Service Bureau, P.O. Box 812, N. Grosvenordale, CT 06255, David Johnson, (203) 521–8035

Maine

Youth Alternatives of Southern Maine, 175 Lancaster Street, Portland, Maine 04101, Mike Tarpinian, (207) 874–1175

Youth and Family Services, P.O. Box 502, Skowhegan, ME 04976, Ronald Herbert, (207) 474–8311

Massachusetts

Phaneuf Youth Outreach (Life Resources, Inc.), P.O. Box 749, Brockton, MA 02403, David Kaufer, (508) 584–3855

Concord-Assabet Family and Adolescent Services, 56 Winthrop Street, Concord, MA 01742, Stephen A. Joffe, (508) 371–3006

Youth and Family Support Network, Inc., 75 Fountain Street, Framingham, MA 01701, Eric L. Masi, (508) 879–8900, Ext. 222

L.U.K. Crisis Center, 99 Day Street, Fitchburg, MA 01420, Ernest M. Pletan-Cross, (508) 345–0658

Center for Human Development, Inc., 332 Birnie Avenue, Springfield, MA 01107, James Williams, (413) 733–6624

Riverside Community Health and Retardation, 450 Washington Street, Dedham, MA 02026, Susan Sawyer, (617) 244–4802

New Hampshire

Community Youth Advocates, 36 Tremont Square, Claremont, NH 03743, Rodney Minckler, (603) 543–0427

Child and Family Services, 99 Hanover Street, Manchester, NH 03105, Gail Starr, (603) 558–1920

Vermont

Washington County Youth Service Bureau, P.O. Box 627, Montpelier, VT 05753, Tom Howard, (802) 229–9151

Region II

New Jersey

Atlantic County Div. of Intergenerational Svcs., 201 So. Shore Road, Northfield, NJ 08225, Stephen Bruner, (609) 645–7700, Ext. 4700

Hunterdon Youth Services, 322 Highway 12, Flemington, NJ 08822, Carol Hay-Greene, (908) 782–1246

Anchor House, 482 Centre Street, Trenton, NJ 08611, Judith Hutton, (609) 396–8329

Group Homes of Camden County, 35 South 29th Street, Camden, NJ 08105, Sandra Mengestu, (609) 541–9283

Crossroads, 770 Woodlane Road, Mt. Holly, NJ 08060, Stefanie Schwartz, (609) 261–5400

New York

Schenectady Inner City Ministry, 93 Albany Street, Schenectady, NY 12304, Delores Edmonds-McIntosh, (518) 374–0166

Catholic Charities of the Albany Diocese, 41 West Main Street, Cobleskill, NY 12043, (518) 234–3581

Oneida County Community Action Agency, 303 West Liberty Street, Rome, NY 13440, Treva Wood, (315) 339–5640

Cortland County Community Action Program (Time Out Program), 23 Main Street, Cortland, NY 13045, Jean Rightmire, (607) 753–6781

The Salvation Army, 677 S. Salina Street, Syracuse, NY 13202, Linda M. Wright, (315) 479–1326

The Children's Village, Dobbs Ferry, NY, Mary L. Pulido, (914) 693–0600, Ext. 1212

Catholic Charities of the Roman Catholic Diocese, 1408 Genesee Street, Utica, NY 13502, Kathleen O. Mahoney, (315) 724–3167

Chautauqua Opportunities, 17 West Courtney Street, Dunkirk, NY 14048, Douglas Fricke, (716) 366–3333

Center for Children and Families, 295 Lafayette Street, New York, NY 10012, Teri L. Messiant, (718) 526–0722 or (212) 226–3536

Equinox, 214 Lark Street, Albany, NY 12210, Judith Watson, (518) 465–9524

St. Agatha Home, 135 Convent Road, Nanuet, NY 10954, Rosemarie Cristello, (914) 623–3461

Compass House, 370 Linwood Avenue, Buffalo, NY 14209, Janell Wilson, (716) 886–1351

Family of Woodstock, U.P.O. Box 3516, Kingston, NY 12401, Joan Mayer, (914) 679–9240

Huntington Youth Bureau, 423 Park Avenue, Huntington, NY 11743, Paul Lowery, (516) 351–3061

Children's House, Inc., 100 E. Old Country Road, Mineola, NY 11501, Gerard McCaffery, (516) 746–0350

YWCA of Binghamton/Broome County, 80 Hawley Street Binghamton, NY 13901, Sarsann Delafield, (607) 772–0340

Emergency Housing Group, 141 Monhagen Avenue, Middletown, NY 10940, John Harper, (914) 343–7115

Oswego County Opportunities, Inc., 223 Oneida Street, Fulton, NY 13069, Janette Reshick, (315) 698–4717

Puerto Rico

Centros Sor Isolina Ferre, Box 213, Playa Station, Ponce, PR 00734, Sister Rosita Bauza, (809) 843–1910

Capacitate Instituto de Educacion Novedosa, PO. Box 3531, Guaynabo, PR, Edgardo I. Garcia, (787) 792–6981

Cruzalina Home, Box 18681, Gurabo, PR 00778, Carlos Carrasquillo, (809) 737–4611

Region III

Delaware

Child, Inc., 507 Philadelphia Avenue, Wilmington, DE 19809, Linda Weinman, (302) 762–8989

District of Columbia

Latin American Youth Center, 3045—15th Street, NW., Washington, DC. 20009, Lori Kaplan, (202) 483–1140

Maryland

St. Mary's County Board of County Commissioners, PO. Box 653, Leonardtown, MD 20650, Kathleen O. O'Brien, (301) 475–4464

Local Management Board of Anne Arundel County, 2666 Riva Road, Annapolis, MD 21401, Linda Skreptack, (401) 222–7420

Pennsylvania

Youth Services of Bucks County, 118–120 S. Bellevue Ave., Penndel, PA 19047, Roger Dawson, (215) 752–7050

Catholic Charities, 4800 Union Deposit Road, Harrisburg, PA 17105, Tom D'Annunzio, (717) 657–4804

Three Rivers Youth, 2039 Termon Avenue, Pittsburgh, PA 15212, David Droppa, (412) 766–2215

Catholic Social Services, 33 E. Northhampton St., Wilkes-Barre, PA 18701, Thomas Cherry, (717) 824–5766

Baptist Children's Services, 373 East Main Street, Collegville, PA 19426, Deborah Furst, (610) 489–0395

Voyage House, 1431 Lombard Street, Philadelphia, PA 19146, Susan Pursch, (215) 545–2910

Boys Club and Girls Club of Lancaster, P.O. Box 104, Lancaster, PA 17608, George Custer, (717) 392–6343

Virginia

Seton House, Inc., 642 North Lynnhaven Road, Virginia Beach, VA 23452, Kathryn R. Jeffries, (804) 498–4673

Children, Youth and Family Services, 116 West Jefferson St., Charlottesville, VA 22902, Catherine J. Bodkin, (804) 296–4118

Family and Children's Services, 1518 Willow Lawn Drive, Richmond, VA 23230, Richard J. Lung, (804) 282–4255

Volunteer Emergency Families for Children, 9840–D Midlothian Tpk., Richmond, VA 23235, Anne Earle, (804) 560–9618

Project Safe Place of Hampton Roads, Inc., P.O. Box 3531, Virginia Beach, VA 23454, Benjamin Fuller, (804) 431–2627

City of Roanoke, 4350 Coyner Spring Road, Roanoke, VA 24012, James O'Hare, (703) 977–3330

West Virginia

Southwestern Community Action Council, Inc. (Time Out Youth Srvcs.), 540–5th Avenue, Huntington, WV 25701, Pamela Dickens-Rush, (304) 525–7161

Daymark (Patchwork), 1598–C Washington St., E., Charleston, WV 25311, Vicki Pleasant, (304) 340–3670

Region IV

Alabama

Group Homes, Inc., 1426 S. Court Street, Montgomery, AL 36104, Mark I. Holbrook, (334) 834–5512

Thirteenth Place, Inc., 405 South 12th Street, Gadsden, AL 35901, Alan Bates, (205) 547–8971

Florida

Crosswinds Youth Services, Inc., P.O. Box 540625, Merritt Island, FL 32954, Jan Lokay, (305) 452–8988

Children's Home Society, 3600 Broadway, W. Palm Beach, FL 32202, Allison F. Metcalf, (404) 844–9802

Family Resources, Inc. (Residential South), P.O. Box 13087, St. Petersburg, FL 33733, Jane Harper, (813) 341–2200

Lutheran Ministries (Gulf Coast Youth and Family Services), 3507 Frontage Road, Tampa, FL 33607, Beth A. Deck, (904) 453–2772

Youth and Family Alternatives, 5400 Bethlehem Road, Mulberry, FL 33860, Kenneth Conley, (941) 428–8400

Capital City Youth Services, 2407 Roberts Avenue, Tallahassee, FL 32310, Stacy Gromatski, (904) 576–6000

Youth and Family Alternatives, 7524 Plathe Road, New Port Richey, FL 34653, Richard Hess, (813) 841–4184

Child/Family Counseling Program, 207 Esch Place, Tampa, FL 33606, Barry Drew, (813) 272–6606

Arnett House, P.O. Box 70212, Ocala, FL 34470, Patricia Pogue, (904) 622–4432

Family Resources, Inc. (Youth and Family Connection), P.O. Box 13087, St. Petersburg, FL 33733, Jane Harper, (813) 893–1150

Florida Keys Children's Shelter, 2221 Patterson Avenue, Key West, FL 33040, William Woolf, (305) 294–4202

Youth Crisis Center, 7007 Beach Boulevard, Jacksonville, FL 32216, Tom Patania, (904) 720–0002

The Village South, Inc., 3180 Biscayne Boulevard, Miami, FL 33137, Valera Jackson, (305) 573–3784

Act Corporation, 1220 Willis Avenue, Daytona Beach, FL 32114, Becky Anderson, (904) 947–3291

Georgia

The Alcove, 507 East Church Street, Monroe, GA 30655, Kristen O. Harrison, (770) 267–9156

Safe Harbor Children's Shelter, PO Box 1313, Brunswick, GA 31521, Kate Minnock, (912) 267–6000

Alternate Life Paths Program, 827 Pryor Street, Atlanta, GA 30315, Camellia Moore, (404) 688–1002

Athens Regional Attention Home, 490 Pulaski Street, Athens, GA 30601, Sharon Smith, (404) 548–5893

Marshlands Foundation, PO Box 13866, Savannah, GA 31416, Kathy Fabozzi, (912) 234–4048

Cobb County Children's Center, 2221 Austell Road, Marietta, GA 30060, Ellen McCarty, (404) 333–0887

Kentucky

Brighton Center, Inc., PO Box 325, Newport, KY 41072, Ginger Ward, (606) 581–1111

Mississippi

Catholic Charities (Our House), PO Box 2248, Jackson, M 39225–2248, Gayle Watts, (601) 355–8634

Mississippi Children's Home, PO Box 1078, Jackson, MS 39215, Christopher Cherney, (601) 352–7784

North Carolina

Youth Focus, Inc., 304 W. Fisher Avenue, Greensboro, NC 27401, Charles Hodierne, (901) 274–5909

Lee County Youth Services, PO Box 57, Sanford, NC 27331–0057, Randell, K. Woodruff, (919) 774–8404

With Friends, Inc., PO Box 971, Belmont, NC 28012, Patricia A. Krikorian, (704) 825–3150

The Relatives, 1100 East Boulevard, Charlotte, NC 28203, Jo Ann Greyer, (704) 335–0203

Mountain Youth Resources, 8 Ridgeway Street, Sylva, NC 28779, Elizabeth Chambers, (704) 586–8958

Coastal Horizons Center, 721 Market Street, Wilmington, NC 28401, Margaret Weller-Stargell, (910) 343–0145

Tuscarora Tribe, PO Box 8, Pembroke, NC 28372, Robert Locklear, (919) 521–1861

South Carolina

Dept. of Juvenile Justice (Crossroads), 4900 Broad River Road, Columbia, SC 29221, Brenda A. Nelson, (803) 740–6148

Dept. of Juvenile Justice (Greenhouse), PO Box 7367, Columbia, SC 29202, Nancy M. Kuhl, (803) 896–9117

Sea Haven, Inc., N. Myrtle Beach, SC

Tennessee

Child and Family Services, 901 E. Summit Hill Dr., Knoxville, TN 37915, Mark Wolfe, (423) 523–2698

Hamilton County Govt. (Gardner House), 317 Oak Street, Chattanooga, TN 37403, Judi Byrd, (423) 209–6833

The Family Link, PO Box 40437, Memphis, TN 38174, Marian Carruth, (901) 725–7270

Central Appalachia Services, PO Box 809, Kingsport, TN 37662, Ronald E. Harrington, (423) 578–3905

Oasis Center, 1221 16th Ave., South, Nashville, TN 37212, Liz Fey, (615) 327–4455

Region V

Illinois

Youth Outreach Services, 6417 W. Irving Park Road, Chicago, IL 60634, Rick Velasquez, (312) 777–7112

The Night Ministry, 1218 West Addison Street, Chicago, IL 60613, Steven Wakefield, (312) 935–8300

Youth Attention Center, PO Box 606, Jacksonville, IL 62651, Jerome Noble, (217) 245–6000

Hoyleton Youth and Family Services, 8787 State Street, E. St. Louis, IL 62203, Shelly Byndom, (618) 398–0900

Youth Service Bureau, 2901 Normandy Road, Springfield, IL 62703, Kaywin Davis, (217) 529–8300

Children's Home and Aid Society, 1819 South Neil Street, Champaign, IL 61820, Ronald Stuyvesant, (217) 359–8815

McHenry County Youth Service, 101 S. Jefferson Street, Woodstock, IL 60098, Susan Krause, (815) 338–7360

Franklin-Williamson Human Services, 902 West Main Street, W. Frankfort, IL 62896, Peggy Falcone, (618) 937–6483

Youth Service Network, 2130 N. Knoxville Avenue, Peoria, IL 61603, Tony Frank, (309) 685–1047

Omni Youth Services, 1111 West Lake Cook Road, Buffalo Grove, IL 60089, Dennis Depcik, (708) 537–6878

Indiana

Youth Service Bureau of St. Joseph County, 2222 Lincoln Way West, South Bend, IN 46628, William J. Monahan, (219) 235–5517

Stopover, Inc., 2236 E. 10th Street, Indianapolis, IN 46201, Elizabeth Malone, (317) 635–9301

Clark County Youth Shelter, 118 East Chestnut Street, Jeffersonville, IN 47130, Candice Chaney Barksdale, (812) 284–5229

Indiana Juvenile Justice Task Force, 1800 N. Meridian, Indianapolis, IN 46202, Laurel Elliott, (317) 926–6100

Children's Bureau, 615 North Alabama, Indianapolis, IN 46204, (317) 634–5050

Michigan

Comprehensive Youth Services (The Harbor), 3061 Commerce Drive, Port Huron, MI 48060, Sally Currie, (313) 385–7010

Saginaw County Youth Council, P.O. Box 3191, Saginaw, MI 48605, Ronald Spess, (517) 752–5175

Northeast Michigan Community Service Agency, 2373 Gordon Road, Alpena, MI 49707, John Swise, (517) 356–3474

MetroMatrix Human Srvcs. (Off The Streets), 10612 E. Jefferson, Detroit, MI 48201, Kenneth A. Jones, (313) 824–0499

Arbor Circle Corp., 1115 Ball Avenue, NE., Grand Rapids, MI 49505, Nancy Ayers, (616) 451–3001

Ozone House, 608 N. Main Street, Ann Arbor, MI 48104, Tanya Hilgendorf, (313) 662–2265

Every Woman's Place, 425 W. Western Avenue, Muskegon, MI 49440, Mary MacDonald, (616) 726–4493

Bethany Christian Services, 6995 W. 48th Street, Fremont, MI 49412, David M. Glerum, (616) 924–3390

Third Level Crisis Intervention Center, 1022 East Front Street, Traverse City, MI 49685, Gail Heath, (616) 922–4802

Comprehensive Youth Services (Macomb Co. Youth Interim Care Facility), Two Crocker Boulevard, Mt. Clemens, MI 48043, Joanne Smyth, (313) 463–7079

Youth Living Centers, 30000 Hively, Inkster, MI 48141, Linda Connolly, (313) 563–5005

Crisis Center (Listening Ear), 107 E. Illinois, Mt. Pleasant, MI 48804, Donald Schuster, (517) 772–2918

Lutheran Social Services of WI and Upper MI, 135 West Washington St., Marquette, MI 49855, Nancy Gauchey, (906) 225–5437

Link Crisis Intervention Center, 2002 South State Street, St. Joseph, MI 49085, Richard Pahl, (616) 983–5465

Minnesota

Evergreen House, 622 Mississippi Avenue, Bemidji, MN 56601 Cheryl Byers, (218) 751–4332

Ain Dah Yung Shelter (Our Home), 1089 Portland Avenue, St. Paul, MN 55104, Gabrielle Strong, (612) 227–4184

Lutheran Social Services, 600 Ordean Street, Duluth, MN 55808, John Moline, (218) 626–2726

The Bridge, 2200 Emerson Avenue S., Minneapolis, MN 55405, Thomas Sawyer, (612) 377–8800

Lutheran Social Services (Crossroads), 565 Dunnell Drive, Owatonna, MN 55060, Mike Ducharme (507) 455–3863

St. Paul Youth Service Bureau, Inc., 1147 Arcade Street, St. Paul MN 55106, Nancy LeTourneau, (612) 771–1301

Ohio

Children's and Family Service, 535 Marmion Avenue, Youngstown, OH 44502, Jacqueline Scott Rogers, (216) 782–5664

Council on Rural Service Programs, 116 E. Third Street, Greenville, OH 45331, Shirley Hathaway, (513) 548–8002

Center for Children and Youth Services, 42707 North Ridge Road, Elyria, OH 44035, David A. Cummings, (216) 324–6113

Huckleberry House, 1421 Hamlet Street, Columbus, OH 43201 Douglas McCoard, (614) 294–8097

Southern Consortium for Behaviorial Healthcare, 7990 Dairy Lane, Athens, OH 45701, Steven Trout, (614) 593–8293

Shelter Care, Inc. (Save Landing Youth Shelter), 680 East Market Street, Akron, OH 44304, Kathleen Stevenson, (216) 376–4200

Wisconsin

Crossroad Runaway Program, 279 S. 17th Avenue, West Bend, WI 53095, Dan Laurent, (414) 338–1991

The Counseling Center of Milwaukee (Pathfinders), 2038 N. Bartlett Avenue, Milwaukee, WI 53202, Linda Austin, (414) 271–2565

Briarpatch, 512 E. Washington Avenue, Madison, WI 53703, Beth Hovind, (608) 251–6211

Lutheran Social Services, 1337 North Taylor Drive, Sheboygan, WI 53081, Merry Klemme, (414) 458–8381

Region VI

Arkansas

Comprehensive Juvenile Services, 1606 South "J" Street, Fort Smith, AR 72901, Jerry Robertson, (501) 785–4031

Youth Bridge, P.O. Box 668, Fayetteville, AR 72702, Scott Linebaugh, (501) 521–1532

Louisiana

New Horizons Youth Service Bureau, 47257 River Road, Hammond, LA 70401, Jeanne Voorhees, (504) 345–1171

Education Treatment Council, P.O. Box 864 Lake Charles, LA Martha Parnell, (318) 433–1062

Johnny Gray Jones Regional Youth Shelter, 4815 Shed Road, Bossier City, LA 71111, Dennis Woodward, (318) 965–2328

New Mexico

Youth Development, 6301 Central N.W., Albuquerque, NM 87105, Augustine C. Baca, (505) 831–6038

City of Aztec, 201 W. Chaco, Aztec, NM 87410, Debi Lee, (505) 334–9456

A New Day, 2720–A Carlisle, NE., Albuquerque, NM 87110, Jeffrey Burrows, (505) 881–5228

Oklahoma

Youth Services of Oklahoma County, 201 NE 50th Street, Oklahoma City, OK 73105, Ken Young, (405) 235–7537

Payne County Youth Services, 222 W. 12th, Stillwater, OK 74076, John Bracken, (405) 377–3380

Youth and Family Services of Canadian County, 2404 Sunset Drive, El Reno, OK 73036, Leslie Sparks, (405) 262–6555

Youth Services for Stephens County, PO Box 1603, Duncan, OK 73534, John Herdt, (405) 255–8800

Youth Services of Tulsa, 302 South Cheyenne, Tulsa, OK 74103, Sharon Terry, (918) 582–0061

Cherokee Nation Youth Shelter, PO Box 948, Tahlequah, OK 74465, Linda Vann, (918) 456–0671

Texas

El Paso Center for Children, 3700 Altura, El Paso, TX 79930, Sandy Rioux, (915) 565–8361

YMCA of Dallas, 601 N. Akard Street, Dallas, TX 75201, Tom Boyer, (214) 880–9622

The Bridge Association, 115 West Broadway, Fort Worth, TX 76104, Cindy Honey, (817) 332–8317

Central Texas Youth Services Bureau (Project Option), 701 Parmer Street, PO Box 185, Killeen, TX 76540, Keith Wallace, (817) 939–3466

Harris County Children's Protective Services (Chimney Rock Center), 6425 Chimney Rock Road, Houston, TX 77081, Phyllis McFarland, (713) 664–5701

Roy Maas' Youth Alternatives (The Bridge), 3103 West Avenue, San Antonio, TX 78213, Lori Ratcliff, (210) 340–8077

George Gervin Youth Center, 6903 Sunbelt Drive South, San Antonio, TX 78218, Barbara D. Hawkins, (210) 804–1786

Catholic Family Services, 102 Avenue J, Lubbock, TX 79401, Stephen Hay, (806) 765–8475

Comal County Juvenile Residential Supervision, 1414 W. San Antonio St., New Braunfels, TX 78130, Kyle Barrington, (210) 629–6571

Stop Child Abuse and Neglect, 1208 Laredo Street, Laredo, TX 78040, Isela Dabdoub, (210) 724–3177

Children's Aid Society, 1101—30th Street, Wichita Falls, TX 76302, Patricia King, (817) 322–3141

DePelchin Children's Center, 100 Sandman, Houston, TX 77007, Jane Harding, (713) 802–7733

East Texas Open Door, 415 West Burleson Street, Marshall, TX 75670, Therrel Brown, (903) 935–2099

Youth and Family Counseling Services, PO Box 1611, Angleton, TX 77516, Diana Fleming, (409) 849–5711

Region VII

Iowa

United Action for Youth, 410 Iowa Avenue, Iowa City, IA 52240, Jim Swaim, (319) 338–7518

Foundation II, 1540 Second Avenue, Cedar Rapids, IA 52403, Steve Meyer, (319) 362–1170

Youth and Shelter Services, 232½ Main Street, Ames, IA 50010, George Belitsos, (515) 233–3141

Kansas

United Methodist Youthville, 900 W. Broadway, Newton, KS 67144, Karen L. Baker, (316) 283–1950, Ext. 305

Temporary Lodging for Children, 480 S. Rogers Road, Olathe, KS 66063, Sherry Love, (913) 764–2887

Kaw Valley Center, 4300 Brenner Drive, Kansas City, KS 66104, Wayne Sims, (913) 334–0294

Missouri

Synergy House, P.O. Box 12181, Parkville, MO 64152, Carol Kuhns, (816) 587–4100

Manager's of Roman Catholic Asylums of St. Louis (Marian Hall), 325 North Newstead Ave., St. Louis, MO 63108, Patricia Johnson, (314) 726–3339

Nebraska

Youth Emergency Services, 3001 Douglas Twin Towers, Omaha, NE 68131, Frank J. Velinsky, (402) 345–5187

Panhandle Community Services, 3350 10th Street, Gering, NE 69341, Katie Fattig, (308) 635–3089

Youth Service System, 770 North Cotner Blvd., Lincoln, NE 68505, James Blue, (402) 466–6181

Region VIII

Colorado

Urban Peak, 1577 Clarkson Street, Denver, CO 80218, Roxane White, (303) 863–7325

Pueblo Youth Service Bureau, 112 West D Street, Pueblo, CO 81003, Molly Melendez, (719) 542–5161

Volunteers of America, 1865 Larimer Street, Denver, CO 80202, Dianna Kunz, (303) 297–0408

Ute Mountain Ute Nation (Sunrise Youth Shelter), P.O. Box 56, Towaoc, CO 81334, James Dorsey, (303) 565–9634

Larimer County Youth S.A.F.E., 303 W. Skyway Drive, Fort Collins, CO 80525, Robert Gaines, (907) 498–6492

Human Services, Inc., 899 Logan Street, Denver, CO 80203, Christine Gerhard, (303) 429–4440

Montana

Mountain Plains Youth Services, 709 East Third, Anaconda, MT 59711, Linda Wood, (701) 255–7229

North Dakota

Youthworks, 221 West Rosser Avenue, Bismarck, ND 58501, Douglas Herzog, (701) 255–7229

South Dakota

Rosebud Sioux Tribe, P.O. Box 430, Rosebud, SD 57570, Rose Chasing Hawk-Dubray, (605) 747–2258

Oglala Sioux Tribe, P.O. Box H, Pine Ridge, SD 57770, Roberta Ecoffey, (605) 867–1520

Turning Point, 1401 W. 51st., Sioux Falls, SD 57105, Pamela Bollinger, (605) 334–1414

Utah

Dept. of Human Services, 120 North 200 West, Salt Lake City, UT 84103, Cosette Mills, (801) 538–4100

Wyoming

Mountain Plains Youth Services, 11 Minter Lane, Riverton, WY 82501, Linda Wood, (701) 255–7229

Attention Homes, Inc., P.O. Box 687, Cheyenne, WY 82003, Terry Clarke, (307) 778–7832

Region IX

Arizona

Children's Village of Yuma, 257 South Third Avenue, Yuma, AZ 85364, Judy Smith, (602) 783–2427

Northland Family Help Center, 2501 N. Fourth Street, Flagstaff, AZ 86004, Kay Doggett, (520) 774–4503

Out Town Family Center, P.O. Box 26665, Tucson, AZ 85726, Susan Krahe-Eggleston, (520) 323–1708

California

Center for Human Services, 1700 McHenry Village Way, Modesto, CA 95350, Linda Kovacs, (209) 536–1440

Community Human Services, P.O. Box 3076, Monterey, CA 93942, Robin McCrae, (408) 899–4131

Youth and Family Assistance, 609 Price Avenue, #205, Redwood City, CA 94063, Richard Gordon, (415) 366–8401

Klein Bottle, 401 N. Milpas, Santa Barbara, CA 93103, David Edelman, (805) 564–7830

1736 Family Crisis Center, 103 W. Torrance Blvd., Redondo Beach, CA 90277, Carol A. Adelkoff, (310) 372–4674

Butte County Department of Mental Health, 584 Rio Lindo Avenue, Chico, CA 95926, Michael Clark, (916) 891–2850

City of Oceanside, 300 N. Coast Highway, Oceanside, CA 92054, Doris Ahrens, (619) 966–4608

Volunteers of America, 3600 Wilshire Blvd., Los Angeles, CA 90010, Bob Pratt, (213) 388–1500

Los Angeles Gay and Lesbian Community Service Center, 1625 N. Schrader Blvd., Los Angeles, CA 90028, Darryl Cummings, (213) 993–7600

Interface Community, 1305 Del Norte Road, Camarillo, CA 93010, Martha Bolton, (805) 371–5707

Bill Wilson Marriage and Family Counseling Ctr., 3490 The Alameda, Santa Clara, CA 95050, Sparky Harlan, (408) 243–0222

Youth Advocates, Inc., 3310 Geary Boulevard, San Francisco, CA 94118, Michelle Magee, (415) 668–2622

Larkin Street Services, 1044 Larkin Street, San Francisco, CA 94109, Cassandra Benjamin, (415) 749–3840

Tahoe Youth and Family Services, 1021 Fremont Avenue, S. Lake Tahoe, CA 96150, Teri Mundt, (916) 541–2445

Diogenes Youth Services, 8912 Volunteer Lane, Sacramento, CA 95826, James Bueto, (916) 368–3350

San Diego Youth Involvement, P.O. Box 95, Lemon Grove, CA 91946, Hura Murphy, (619) 463–7800

Central City Hospitality House, 290 Turk Street, San Francisco, CA 94102, Robert Foley, (415) 749–2117
South Bay Community Services, 315 Fourth Avenue, Chula Vista, CA 91910, Kathryn Lembo, (619) 420–3620
Casa Youth Shelter, 10911 Reagan Street, Los Alamitos, CA 90720, Luciann Maulhardt, (310) 594–6825
YMCA of San Diego County, 4715 Viewridge Avenue, San Diego, CA 92123, Laura Mustari, (619) 292–4034
Emergency Housing Consortium, P.O. Box 2346, San Jose, CA 95109, Barry Del Buono, (408) 291–5445
Xanthos, Inc., 1335 Park Avenue, Alameda, CA 94501, Jon Schiller, (510) 522–8363
Youth and Family Assistance, 609 Price Avenue, Redwood City, CA 94063, Richard Gordon, (415) 366–8401
Mendocino County Youth Project, 202 South State Street, Ukiah, CA 95482, Arlene Rose, (707) 463–4915
Father Flanagan's Boys Town of Southern California, 23832 Rockfield Blvd., Lake Forest, CA 92630, Michael Riley, (714) 581–2281
Center for Positive Prevention Alternatives, 729 N. California Street, Stockton, CA 95202, Linda Mascarenas, (209) 948–4357
Northern California Family Center, 2244 Pacheco Boulevard, Martinez, CA 94553, Thomas Fulton, (510) 370–1990
Life Steps Foundation, 1107 Johnson Avenue, San Luis Obispo, CA 93401, Sharon Fredrick, (805) 549–0150
Santa Cruz Community Counseling Center, 195–A Harvey West Blvd., Santa Cruz, CA 95060, Walter Guzman, (408) 425–0771

Nevada

The Children's Cabinet, 1090 South Rock Blvd., Reno, NV 90502, Sarah Longaker, (702) 856–6200

Guam

Sanctuary, Inc., PO Box 21030, GMF, Barrigada, GU 96921, Stephanie Smith, 011 (617) 734–2537

CNMI

Commonwealth of the Marianas/DYS, PO Box 1000, Saipan, MP 96950, Margarita Olopai-Taitano, 011 (670) 322–9366

Region X

Alaska

Fairbanks Native Association, 201 First Avenue, Fairbanks, AK 99701, Florence Loucks, (907) 455–4725
Alaska Youth and Parent Foundation, 3745 Community Park Loop, Anchorage, AK 99508, Sheila Gaddis, (907) 274–0344

Idaho

Hays Shelter Home, 1602 West Franklin St., Boise, ID 83702, Tracy Everson, (208) 336–1066
Bannock Youth Foundation, P.O. Box 2072, Pocatello, ID 83206, Stephen Mead, (208) 234–1122

Oregon

Northwest Human Services, 681 Center, NE., Salem, OR 97301, Mary Beth Thompson, (503) 588–5828
J Bar J Ranch, 62895 Hamby Road, Bend, OR 97701, Craig Christiansen, (503) 389–1409
The Boys and Girls Aid Society, 018 SW Boundary Court, Portland, OR 97201, Theresa Thorson, (503) 222–9661
Youthworks, Inc., 1032 West Main Street, Medford, OR 97501, Steven Groveman, (503) 779–2393

Washington

Youth Help Association, 522 West Riverside, Spokane, WA 99201, Bernadine Spalla, (509) 455–5226, Ext. 109
Auburn Youth Resources, 816 F Street, SE, Auburn, WA 98002, Richard Brugger, (206) 939–2202
Pierce County Alliance, 510 Tacoma Avenue South, Tacoma, WA 98402, Terree Schmidt-Whelan, (206) 502–5404
The Housing Authority of Vancouver, 500 Omaha Way, Vancouver, WA 98661, Richard Sample, (360) 694–2501
YouthCare, 190 Queen Anne Avenue N., Seattle, WA 98109, Victoria Wagner, (206) 282–1288

D.2: Street Outreach Program for Runaway and Homeless Youth Grantees Ineligible for New FY 1997 Funding

Region I

New Hampshire

Child and Family Services, 99 Hanover Street, Gail Starr, Manchester, NH 03105, (603) 558–1920

Vermont

Washington County Youth Services, PO Box 627, Montpelier, VT 05753, Tom Howard, (802) 229–9151

Region II

New Jersey

Crossroads, 770 Woodlane Road, Mt. Holly, NJ 08060, Stefanie Schwartz, (609) 261–5400

New York

Equinox, 306 Central Avenue, Albany, NY 12206, Laurel Thatcher, (518) 465–9524
Oswego County Opportunities, 223 Oneida Street, Fulton, NY 13069, Janette Reshick, (315) 598–4717
The Salvation Army, 677 S. Salina Street, Syracuse, NY 13202, Linda M. Wright, (315) 479–1326
Center for Children and Families, 295 Lafayette Street, New York, NY 10012, Teri L. Messian, (718) 526–0722

Region III

Pennsylvania

Three Rivers Youth, 2039 Termon Avenue, Pittsburgh, PA 15212, David Droppa, (412) 766–2215
Catholic Social Services, 33 E. Northhampton St., Wilkes-Barre, PA 18701, Thomas Cherry, (717) 824–5766
Youth Services of Bucks County, 118–120 S. Bellevue Ave., Penndel, PA 19047, Roger Dawson, (215) 752–7050

West Virginia

Daymark (Patchwork), 1598–C Washington St., E., Charleston, WV 25311, Vicki Pleasant, (304) 340–3670

Region IV

Florida

Florida Keys Children's Shelter, 2221 Patterson Avenue, Key West, FL 33040, William Woolf, (305) 294–4202
Youth Crisis Center, 7007 Beach Boulevard, Jacksonville, FL 32216, Tom Patania, (904) 720–0002
Crosswinds Youth Services, PO Box 540625, Merritt Island, FL 32954, Jan Lokay, (305) 452–8988

Kentucky

Brighton Center, PO Box 325, Newport, KY 41072, Ginger Ward, (606) 581–1111

North Carolina

Coastal Horizons Center, 721 Market Street, Wilmington, NC 28401, Margaret Weller-Stargell, (910) 343–0145

Tennessee

Oasis Center, 1221—16th Ave., South, Nashville, TN 37212, Liz Fey, (615) 327–4455

Region V

Illinois

Youth Outreach Services, 6417 W. Irving Park Road, Chicago, IL 60634, Rick Velasquez, (312) 777–7112

Indiana

Clark County Youth Shelter, 118 East Chestnut Street, Jeffersonville, IN 47130, Candice Chaney Barksdale, (812) 284–5229

Minnesota

Ain Dah Yung Shelter (Our Home), 1089 Portland Avenue, St. Paul, MN 55104, Gabrielle Strong, (612) 227–4184

Region VI

Arkansas

Youth Bridge, P.O. Box 668, Fayetteville, AR 72702, Scott Linebaugh, (501) 521–1532

Oklahoma

Youth Services of Oklahoma County, 201 N.E. 50th Street, Oklahoma City, OK 73105, Ken Young, (405) 235–7537

Texas

Stop Child Abuse and Neglect, 1208 Laredo Street, Laredo, TX 78040, Isela Dabdoub, (210) 724–3177
The Bridge Association, 115 West Broadway, Ft. Worth, TX 76104, Cindy Honey, (817) 332–8317

Region VII

Iowa

Youth and Shelter Services, 232½ Main Street, Ames, IA 50010, George Belitsos, (515) 233–3141

Nebraska

Youth Service System, 770 North Cotner Blvd., Lincoln, NE 68505, James Blue, (402) 466–6181

Region VIII

Colorado

Urban Peak, 1577 Clarkson Street, Denver, CO 80218, Roxane White, (303) 863–7325

South Dakota

Turning Point, 1401 W. 51st, Sioux Falls, SD 57105, Pamela Bollinger, (605) 334–1414

Region IX

California

Larkin Street Youth Center, 1044 Larkin Street, San Francisco, CA 94109, Anne Stanton, (415) 673–0911

Region X

Alaska

Fairbanks Native Assoc., 201 First Avenue, Fairbanks, AK 99701, Florence Loucks, (907) 455–4725

Idaho

Bannock Youth Foundation, P.O. Box 2072, Pocatello, ID 83206, Stephen Mead, (208) 234–1122

Washington

YouthCare, P.O. Box 9130, Seattle, WA 98109, Victoria Wagner, (206) 282–1288

D.3: Transitional Living Program for Homeless Youth Grantees Ineligible for New FY 1997 Funding

Region I

Connecticut

Hall Neighborhood House, 52 Green Street, Bridgeport, CT 06608, Easter James, (203) 334–3900

Maine

New Beginnings, Inc., 436 Main Street, Lewiston, ME 04240, Robert Rowe, (207) 795–4077

New Hampshire

Child and Family Services, 99 Hanover Street, Manchester, NH 03105, Gail Starr, (603) 558–1920

Vermont

Washington County Youth, P.O. Box 627, Montpelier, VT 05753, Tom Howard, (802) 229–9151

Region II

New Jersey

Anchor-House, 482 Centre Street, Trenton, NJ 08611, Judith Hutton, (609) 396–8329

New York

Dutchess County YMCA, 22 Market Street, Poughkeepsie, NY 12601, Folomi Gray, (914) 485–1001
The Salvation Army, 677 S. Salina Street, Syracuse, NY 13202, Linda M. Wright, (315) 479–1326

Region III

District of Columbia

Sasha Bruce Youthwork, 1022 Maryland Ave., NE., Washington, DC 20002, Deborah Shore, (202) 675–9340
Latin American Youth Center, 3045—15th Street, NW., Washington, DC 20009, Lori Kaplan, (202) 483–1140

Pennsylvania

Volunteers of America, 106 South Main Street, Wilkes-Barre, PA 18701, Stephen Bolinski, (717) 825–5261

Virginia

Residential Youth Services, 2701 Cameron Mills Road, Alexandria, VA 22302, Carol Shannon, (703) 548–8334

West Virginia

Southwestern Community Action Council, 650—5th Avenue, Huntington, WV 25701, Pamela Dickens-Rush, (304) 525–7161

Region IV

Florida Sarasota Family YMCA, 1075 S. Euclid Avenue, Sarasota, FL 34237, Carl Weinrich, (941) 955–8194

Kentucky

YMCA Safe Place Services, 1410 South First Street, Louisville, KY 40208, Kevin Connelly, (502) 635–5233

Tennessee

Council for Alcohol and Drug Abuse Services, 207 Spears Avenue, Chattanooga, TN 37405, Bob Millsaps, (423) 756–7644
Oasis Center, 1221—16th Ave., South, Nashville, TN 37212, Liz Fey, (615) 327–4455

Region VI

Illinois

The Harbour, Inc., 1480 Renaissance Drive, Park Ridge, IL 60068, Mary Eichling, (708) 297–8540
Southern Illinois Regional Social Services, 604 East College, Carbondale, IL 62901, Art Zaitz, (618) 457–6703
Teen Living Programs, Inc. (Foundation House), 3179 N. Broadway, Chicago, IL 60657, Vacant, (312) 883–0025

Michigan

Saginaw County Youth Project, P.O. Box 3191, Saginaw, MI 48605, Ronald Spess, (517) 752–5175
Alternatives for Girls, 1950 Trumbull, Detroit, MI 48216, Amanda Good, (313) 496–0938
Ozone House, 608 N. Main Street, Ann Arbor, MI 48104, Tanya Hilgendorf, (313) 662–2265
The Sanctuary, Inc., 1222 South Washington, Royal Oak, MI 48067, Meri Pohutsky, (313) 547–2260

Ohio

Daybreak, 50 Theobald Court, Dayton, OH 45410, Kipra Heermann, (513) 461–1000

Region VI

New Mexico

Youth Shelters and Family Services, PO Box 8135, Santa Fe, NM 87504, Cynthia Gonzales, (505) 983–0586

Texas

The Bridge Association, 115 West Broadway, Ft. Worth, TX 76104, Cindy Honey, (817) 332–8317
Comal County Juvenile Residential Supervision, 1414 W. San Antonio St., New Braunfels, TX 78130, Kyle Barrington, (210) 629–6571
Youth Options, Inc., 3816 S. First Street, Austin, TX 78704, Mitch Weynand, (512) 447–5639

Iowa

Youth and Shelter Services, 232½ Main Street, Ames, IA 50010, George Belitsos, (515) 233–3141

Missouri

Youth In Need, 516 Jefferson, St. Charles, MO 63301, James Braun, (314) 946–0101

Region VIII

Colorado

Volunteers of America, 1865 Larimer Street, Denver, CO 80202, Dianna Kunz, (303) 297–0408

Region IX

Arizona

Our Town Family Center, PO Box 26665, Tucson, AZ 85726, Susan Krahe-Eggleston, (520) 323–1708

California

Center for Positive Prevention Alternatives, 729 N. California Street, Stockton, CA 95202, Linda Mascarenas, (209) 948–4357
Central City Hospitality House, 290 Turk Street, San Francisco, CA 94102, Kate Durham, (415) 749–2117

Appendix E—Administration for Children and Families Regional Office Youth Contacts

Region I:
Bill Jackson, Administration for Children and Families, John F. Kennedy Federal Building, Room 2011, Boston, Massachusetts 02203 (CT, MA, ME, NH, RI, VT), (617) 565–1138
Region II:
Estelle Haferling, Administration for Children and Families, 26 Federal Plaza, Room 4149, New York, NY 10278 (NJ, NY, PR, VI), (212) 264–1329
Region III:
Dick Gilbert, Administration for Children and Families, 3535 Market Street, P.O. Box 13714, Philadelphia, PA 19101 (DC, DE, MD, PA, VA, WV), (215) 596–0369
Region IV:
Viola Flowers, Administration for Children and Families, 101 Marietta Tower, Suite 903, Atlanta, GA 30323 (AL, FL, GA, KY, MS, NC, SC, TN), (404) 331–7210
Region V:
Katie Williams, Administration for Children and Families, 105 West Adams, 23rd Floor, Chicago, IL 60603 (IL, IN, MI, MN, OH, WI), (312) 353–4241
Region VI:
Ralph Rogers, Administration for Children and Families, 1200 Main Tower, 20th Floor, Dallas, TX 75202 (AR, LA, NM, OK, TX), (214) 767–8850
Region VII:
Lynda Bitner, Administration for Children and Families, Federal Office Building, Room 384, 601 East 12th Street, Kansas City, MO 64106 (IA, KS, MO, NE), (816) 426–5401, Ext. 182
Region VIII:
Vicki Wright, Administration for Children and Families, Federal Office Building, 1961 Stout Street, 9th Floor, Denver, CO 80294 (CO, MT, ND, SD, UT, WY), (303) 844–3100, Ext. 361
Region IX:
Al Brown, Administration for Children and Families, 50 United Nations Plaza, San

Francisco, CA 94102 (AZ, CA, HI, NV, American Samoa, Guam, Northern Mariana Islands, Marshall Islands, Federated States of Micronesia, Palau), (415) 437–8437

Region X:

Steve Ice, Administration for Children and Families, 2201 Sixth Avenue, RX 32, Seattle, WA 98121 (AK, ID, OR, WA), (206) 615–2558, Ext. 3075

Appendix F—Training and Technical Assistance Providers

FYSB funds ten regionally based organizations to provide training and technical assistance to programs funded under the Basic Center, Transitional Living and Drug Abuse Prevention Programs, and to other agencies serving runaway and homeless youth.

Each of the training and technical assistance providers offers on-site consultations; regional, State and local conferences; information sharing and skill-based training.

Fore more information, contact the training and technical assistance provider in your region.

New England Consortium for Families and Youth, 25 Stow Road, Boxborough, MA 01719, (508) 266–1998, Contact: Nancy Jackson

Empire State Coalition, 121 Avenue of the Americas, New York, NY 10013, (212) 966–6477, Contact: Margo Hirsch

Mid-Atlantic Network of Youth and Family Services, Inc., 9400 McKnight Road, Pittsburgh, PA 15237, (412) 366–6562, Contact: Nancy Johnson

Southeastern Network of Youth and Family Services, 337 South Milledge Avenue, Athens, GA 30605, (706) 354–4658, Contact: Gail Kurtz

Youth Network Council, 506 S. Wabash, Chicago, IL 60605, (312) 427–2710, Contact: Denis Murstein

Southwest Network of Youth Services; 2525 Wallingwood Drive, Austin, TX 78746, (512) 328–6860, Contact: Theresa Andreas-Tod

M.I.N.K., A Network of Runaway and Youth Serving Agencies, c/o Youth in Need, 516 Jefferson Street, St. Charles, MO 63301–4152, (314) 946–0101, Contact: Dana Baldwin

Mountain Plains Youth Services, 221 West Rosser, Bismarck, ND 58501, (701) 255–7229, Contact: Linda Wood

Western States Youth Services Network, 1306 Ross Street, Suite B, Petaluma, CA 94954, (707) 763–2213, Contact: Nancy Fastenau

Northwest Network of Runaway and Youth Services, 603 Steward Street, Seattle, WA 98101, (206) 628–3760, Contact: Andrew Estep

Appendix G—OMB State Single Point of Contact Listing

Arizona

Joni Saad, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315, FAX: (602) 280–8144

Arkansas

Mr. Tracy L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, 1515 W. 7th St., Room 412, Little Rock, Arkansas 77203, Telephone: (501) 682–1074, FAX: (501) 682–5206

California

Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Room 121, Sacramento, California 95814, Telephone (916) 323–7480, FAX (916) 323–3018

Delaware

Francine Booth, State Single Point of Contact Executive Department, Thomas Collins Building, P.O. Box 1401, Dover, Delaware 19903, Telephone: (302) 739–3326, FAX: (302) 739–5661

District of Columbia

Charles Nichols, State Single Point of Contact, Office of Grants Mgmt. and Dev., 717 14th Street, NW.—Suite 500, Washington, DC 20005, Telephone: (202) 727–6554, FAX: (202) 727–1617

Florida

Florida State Clearinghouse, Department of Community Affairs, 2740 Centerview Drive, Tallahassee, Florida 32399–2100, Telephone: (904) 922–5438, FAX: (904) 487–2899

Georgia

Tom L. Reid, III, Administrator, Georgia State Clearinghouse, 254 Washington Street, SW—Room 401J, Atlanta, Georgia 30334, Telephone: (404) 656–3855 or (404) 656–3829, FAX: (404) 656–7938

Illinois

Virginia Bova, State Single Point of Contact, Department of Commerce and Community Affairs, James R. Thompson Center, 100 West Randolph, Suite 3–400, Chicago, Illinois 60601, Telephone: (312) 814–6028, FAX: (312) 814–1800

Indiana

Amy Brewer, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone: (317) 232–5619, FAX: (317) 233–3323

Iowa

Steven R. McCann, Division for Community Assistance, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone: (515) 242–4719, FAX: (515) 242–4859

Kentucky

Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601–8204, Telephone: (502) 573–2382, FAX: (502) 573–2512

Maine

Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone: (207) 287–3261, FAX: (207) 287–6489

Maryland

William G. Carroll, Manager, State Clearinghouse for Intergovernmental Assistance, Maryland Office of Planning, 301 W. Preston Street—Room 1104, Baltimore, Maryland 21201–2365, Staff Contact: Linda Janey, Telephone: (410) 225–4490, FAX: (410) 225–4480

Michigan

Richard Pfaff, Southeast Michigan Council of Governments, 1900 Edison Plaza, 660 Plaza Drive, Detroit, Michigan 48226, Telephone: (313) 961–4266, FAX: (313) 961–4869

Mississippi

Cathy Malette, Clearinghouse Officer, Department of Finance and Administration, 455 North Lamar Street, Jackson, Mississippi 39202-3087, Telephone: (601) 359–6762, FAX: (601) 359–6764

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, PO Box 809, Room 760, Truman Building, Jefferson City, Missouri 65102, Telephone: (314) 751–4834, FAX: (314) 751–7819

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone: (702) 687–4065, FAX: (702) 687–3983

New Hampshire

Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process, Mike Blake, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone: (603) 271–2155, FAX: (603) 271–1728

New Mexico

Robert Peters, State Budget Division, Room 190 Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone: (505) 827–3640

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone: (518) 474–1605

North Carolina

Chrys Baggett, Director, N.C. State Clearinghouse, Office of the Secretary of Admin., 116 West Jones Street, Raleigh, North Carolina 27603–8003, Telephone: (919) 733–7232, FAX (919) 733–9571

North Dakota

North Dakota Single Point of Contact, Office of Intergovernmental Assistance, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone: (701) 224–2094, FAX: (701) 224–2308

Ohio

Larry Weaver, State Single Point of Contact, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411

Please direct correspondence and questions about intergovernmental review to:

Linda Wise, Telephone: (614) 466–0698, FAX: (614) 466–5400

Rhode Island

Daniel W. Varin, Associate Director, Department of Administration/Division of Planning, One Capitol Hill, 4th Floor, Providence, Rhode Island 02908–5870, Telephone: (401) 277–2656, FAX: (401) 277–2083

Please direct correspondence and questions to:

Review Coordinator, Office of Strategic Planning

South Carolina

Omeagia Burgess, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street—Room 477, Columbia, South Carolina 29201, Telephone: (803) 734–0494, FAX: (803) 734–0385

Texas

Tom Adams, Governors Office, Director, Intergovernmental Coordination, PO Box 12428, Austin, Texas 78711, Telephone: (512) 463–1771, FAX: (512) 463–1888

Utah

Carolyn Wright, Utah State Clearinghouse, Office of Planning and Budget, Room 116, State Capitol, Salt Lake City, Utah 84114, Telephone: (801) 538–1535, FAX: (801) 538–1547

West Virginia

Fred Cutlip, Director, Community Development Division, W. Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone: (304) 558–4010, FAX: (304) 558–3248

Wisconsin

Martha Kerner, Section Chief, State/Federal Relations, Wisconsin Department of Administration, 101 East Wilson Street—6th Floor, PO Box 7868, Madison, Wisconsin 53707, Telephone: (608) 266–2125, FAX: (608) 267–6931

Wyoming

Sheryl Jeffries, State Single Point of Contact, Office of the Governor, State Capital, Room 124, Cheyenne, Wyoming 82002, Telephone: (307) 777–5930, FAX: (307) 632–3909

Territories

Guam

Mr. Giovanni T. Sgambelluri, Director, Bureau of Budget and Management Research, Office of the Governor, PO Box 2950, Agana, Guam 96910, Telephone: 011–671–472–2285, FAX: 011–671–472–2825

Puerto Rico

Norma Burgos/Jose E. Caro, Chairwoman/Director, Puerto Rico Planning Board, Federal Proposals Review Office, Minillas Government Center, PO Box 41119, San Juan, Puerto Rico 00940–1119, Telephone: (809) 727–4444, (809) 723–6190, FAX: (809) 724–3270, (809) 724–3103

North Mariana Islands

Mr. Alvaro A. Santos, Executive Officer, State Single Point of Contact, Office of Management and Budget, Office of the Governor, Saipan, MP, Telephone: (670) 664–2256, FAX: (670) 664–2272

Contact Person: Ms. Jacoba T. Seman, Federal Programs Coordinator, Telephone: (670) 644–2289, FAX: (670) 644–2272

Virgin Islands

Jose George, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802

Please direct all questions and correspondence about intergovernmental review to:

Linda Clarke, Telephone: (809) 774–0750, FAX: (809) 776–0069

Appendix H.—Basic Center Program Allocations by State

NEW APPENDIX H—10-JAN-97—BASIC CENTER PROGRAM FOR RUNAWAY AND HOMELESS YOUTH—TABLE OF ALLOCATIONS BY STATE

[Total 57 States and Jurisdictions—F Fiscal Year 1997]

Regions and states	Continuations	New starts	Totals
Region I:			
Connecticut	$347,083	$98,355	$445,437
Maine	104,642	68,332	172,974
Massachusetts	575,000	229,951	804,951
New Hampshire	152,766	12,294	165,060
Rhode Island	0	135,666	135,666
Vermont	93,750	6,250	100,000
Region II:			
New Jersey	496,376	595,170	1,091,546
New York	2,005,383	544,571	2,549,954
Puerto Rico	315,106	337,786	652,892
Virgin Islands	0	45,000	45,000
Region III:			
Delaware	62,143	37,857	100,000
District of Columbia	50,000	50,000	100,000
Maryland	200,000	513,942	713,942
Pennsylvania	867,015	771,151	1,638,166
Virginia	600,000	306,135	906,135
West Virginia	209,606	32,897	242,503
Region IV:			
Alabama	305,000	305,497	610,497
Florida	1,269,885	574,041	1,843,926
Georgia	728,034	342,031	1,070,065
Kentucky	175,000	373,317	548,317
Mississippi	330,049	97,299	427,348
North Carolina	686,724	305,898	992,622
South Carolina	450,207	87,935	538,142
Tennessee	713,625	19,536	733,161
Region V:			
Illinois	1,103,598	639,144	1,742,742
Indiana	477,650	355,000	832,650
Michigan	1,136,350	290,969	1,427,319
Minnesota	551,196	150,310	701,506
Ohio	800,156	813,138	1,613,294
Wisconsin	402,635	358,790	761,425
Region VI:			
Arkansas	146,461	215,315	361,776

NEW APPENDIX H—10-JAN-97—BASIC CENTER PROGRAM FOR RUNAWAY AND HOMELESS YOUTH—TABLE OF ALLOCATIONS BY STATE—Continued

[Total 57 States and Jurisdictions—F Fiscal Year 1997]

Regions and states	Continuations	New starts	Totals
Louisiana	358,721	339,393	698,114
New Mexico	238,721	42,786	281,507
Oklahoma	514,528	(17,086)	497,442
Texas	1,882,000	1,114,299	2,996,521
Region VII:			
Iowa	248,803	163,282	412,085
Kansas	310,240	79,800	390,040
Missouri	333,367	446,147	779,514
Nebraska	178,107	71,744	249,851
Region VIII:			
Colorado	362,483	185,834	548,317
Montana	108,554	25,981	134,535
North Dakota	86,337	13,663	100,000
South Dakota	141,348	(23,771)	117,577
Utah	351,572	28,293	379,865
Wyoming	100,000	0	100,000
Region IX:			
American Samoa	0	45,000	45,000
Arizona	257,378	358,206	615,584
California	3,153,782	1,705,885	4,859,667
Guam	45,000	0	45,000
Hawaii	0	171,844	171,844
Northern Marianas	45,000	0	45,000
Nevada	60,000	152,543	212,543
Region X:			
Alaska	62,606	45,927	108,533
Idaho	175,939	15,689	191,628
Oregon	252,697	189,913	442,610
Washington	497,932	297,975	795,907
Totals	25,120,776	14,166,924	39,287,700

BILLING CODE 4184–01–P

Appendix I

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name: | Organizational Unit:

Address (give city, county, state, and zip code): | Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify) _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ ☐☐☐
TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date | Ending Date

14. CONGRESSIONAL DISTRICTS OF: a. Applicant | b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE _____
b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

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Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
—"New" means a new assistance award.
—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representatives of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184-01-P

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	SECTION A - BUDGET SUMMARY: Estimated Unobligated Funds Federal (c)	Non-Federal (d)	New or Revised Budget Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES: Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
6. a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

Instructions for the SF–424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separated into basic and supplemental amounts, or into additional detail, or which prescribe specific unit costs, indirect cost rates or other constraints. If such guidelines do not exist, enter in the budget estimates the amounts required for the effective administration of the program as proposed. Assure that all entries are consistent with instructions for the program application and plan.

Section A

Line 1–Show the catalog program title and number for each program for which Federal assistance is being requested. For applications pertaining to a single program requiring budget estimates for more than one project or site, show the title and number of the program and the number of projects or sites involved.

Line 2–If additional programs are needed, list them on a separate sheet and attach.

Line 3–Self-explanatory.

Line 4–Enter the amount of estimated unobligated funds from prior year budgets that are available for the current budget year. Leave blank if not applicable.

Line 5–Enter the total of lines 3 and 4.

Section B

Line 6a–Enter the total amount of salaries and wages for which Federal assistance is requested.

Line 6b–Enter the total cost of fringe benefits for which Federal assistance is requested.

Line 6c–Enter the total cost of travel for which Federal assistance is requested.

Line 6d–Enter the total cost of equipment for which Federal assistance is requested.

Line 6e–Enter the total cost of supplies for which Federal assistance is requested.

Line 6f–Enter the total cost of contractual for which Federal assistance is requested.

Line 6g–Enter the total cost of construction for which Federal assistance is requested.

Line 6h–Enter the total cost of all other costs for which Federal assistance is requested.

Line 6i–Enter the total of lines 6a through 6h.

Line 6j–Enter the indirect cost or rate for which Federal assistance is requested.

Line 6k–Enter the total amounts of lines 6i and 6j.

Line 7–Enter the estimated amount of income, if any, expected to be generated from this project. Do not deduct unearned income from the grant amounts requested.

Lines 8–11–Enter amounts of any funds to be contributed by other sources as cash or in-kind contributions, and state the source of the funds. Do not include program income or any other Federal funds.

Line 12–Enter the total of amounts on lines 7 and 11. Note that applicants must show anticipated program income in this block as a condition of receiving the grant.

Section C

Line 13–Enter the amount of cash and in-kind contributions to be made from the applicant's share of non-Federal funds. Indicate the source(s) of funds.

Lines 14–15–Enter amounts of any funds to be contributed by other sources as cash or in-kind contributions, and state the source of the funds. Do not include program income or any other Federal funds.

Line 16–Enter the total of amounts on lines 13 and 15. Note that applicants must show anticipated program income in this block as a condition of receiving the grant.

Section D

Lines 17–20–Enter the estimated amounts of cash needed from the grantor agency for the first funding period (usually a Federal fiscal quarter).

Line 21–Enter the amount of cash and in-kind contributions to be made from the applicant's share of non-Federal funds. Indicate the source(s) of funds.

Lines 22–23–Enter amounts of any funds to be contributed by other sources as cash or in-kind contributions, and state the source of the funds. Do not include program income or any other Federal funds.

Line 24–Enter the total of amounts on lines 21 and 23. Note that applicants must show anticipated program income in this block as a condition of receiving the grant.

Section E

Lines 25–28–Enter the estimated amounts of cash needed from the grantor agency for the second funding period (usually a Federal fiscal quarter).

Line 29–Enter the amount of cash and in-kind contributions to be made from the applicant's share of non-Federal funds. Indicate the source(s) of funds.

Lines 30–31–Enter amounts of any funds to be contributed by other sources as cash or in-kind contributions, and state the source of the funds. Do not include program income or any other Federal funds.

Line 32–Enter the total of amounts on lines 29 and 31. Note that applicants must show anticipated program income in this block as a condition of receiving the grant.

Section F

Lines 33–Enter the estimated amounts of cash needed from the grantor agency for subsequent funding periods (usually Federal fiscal quarters).

Line 34–Enter the amount of cash and in-kind contributions to be made from the applicant's share of non-Federal funds. Indicate the source(s) of funds.

Lines 35–36–Enter amounts of any funds to be contributed by other sources as cash or in-kind contributions, and state the source of the funds. Do not include program income or any other Federal funds.

Line 37–Enter the total of amounts on lines 34 and 36. Note that applicants must show anticipated program income in this block as a condition of receiving the grant.

Line 38–Enter the total amount of cash and in-kind contributions to be made from the applicant's share of non-Federal funds.

Line 39–Enter the total amount of cash and in-kind contributions to be made from all other sources.

Line 40–Enter the total of amounts on lines 38 and 39.

Line 41–Enter the totals of amounts on lines 14, 24, 32, and 40.

Section G

Line 42–Enter the estimated amount of income, if any, expected to be generated from this project. Do not deduct unearned income from the grant amounts requested.

Section H

Lines 43–44–Self-explanatory.

Section I

Line 45–Enter the estimated amounts of cash needed from the grantor agency for the first funding period (usually a Federal fiscal quarter).

Line 46–Enter the amount of cash and in-kind contributions to be made from the applicant's share of non-Federal funds. Indicate the source(s) of funds.

Lines 47–48–Enter amounts of any funds to be contributed by other sources as cash or in-kind contributions, and state the source of the funds. Do not include program income or any other Federal funds.

Line 49–Enter the total of amounts on lines 46 and 48. Note that applicants must show anticipated program income in this block as a condition of receiving the grant.

Section J

Lines 50–53–Enter the estimated amounts of cash needed from the grantor agency for the second funding period (usually a Federal fiscal quarter).

Line 54–Enter the amount of cash and in-kind contributions to be made from the applicant's share of non-Federal funds. Indicate the source(s) of funds.

Lines 55–56–Enter amounts of any funds to be contributed by other sources as cash or in-kind contributions, and state the source of the funds. Do not include program income or any other Federal funds.

Line 57–Enter the total of amounts on lines 54 and 56. Note that applicants must show anticipated program income in this block as a condition of receiving the grant.

Line 58–Enter the total amount of cash and in-kind contributions to be made from the applicant's share of non-Federal funds.

Line 59–Enter the total amount of cash and in-kind contributions to be made from all other sources.

Line 60–Enter the total of amounts on lines 58 and 59.

Line 61–Enter the totals of amounts on lines 14, 24, 32, and 40.

Section K

Line 62–Enter the estimated amount of income, if any, expected to be generated from this project. Do not deduct unearned income from the grant amounts requested.

Section L

Lines 63–64–Self-explanatory.

Section M

Line 65–Enter the estimated amounts of cash needed from the grantor agency for subsequent funding periods (usually Federal fiscal quarters).

Line 66–Enter the amount of cash and in-kind contributions to be made from the applicant's share of non-Federal funds. Indicate the source(s) of funds.

Lines 67–68–Enter amounts of any funds to be contributed by other sources as cash or in-kind contributions, and state the source of the funds. Do not include program income or any other Federal funds.

Line 69–Enter the total of amounts on lines 66 and 68. Note that applicants must show anticipated program income in this block as a condition of receiving the grant.

Line 70–Enter the total amount of cash and in-kind contributions to be made from the applicant's share of non-Federal funds.

Line 71–Enter the total amount of cash and in-kind contributions to be made from all other sources.

Line 72–Enter the total of amounts on lines 70 and 71.

Line 73–Enter the totals of amounts on lines 14, 24, 32, and 40.

Section N

Line 74–Enter the estimated amount of income, if any, expected to be generated from this project. Do not deduct unearned income from the grant amounts requested.

Section O

Lines 75–76–Self-explanatory.

Section P

Line 77–Describe any remarks on additional sheets.

Section Q

Line 78–Enter the estimated amounts of cash needed from the grantor agency for the first funding period (usually a Federal fiscal quarter).

Line 79–Enter the amount of cash and in-kind contributions to be made from the applicant's share of non-Federal funds. Indicate the source(s) of funds.

Lines 80–81–Enter amounts of any funds to be contributed by other sources as cash or in-kind contributions, and state the source of the funds. Do not include program income or any other Federal funds.

Line 82–Enter the total of amounts on lines 79 and 81. Note that applicants must show anticipated program income in this block as a condition of receiving the grant.

Section R

Lines 83–86–Enter the estimated amounts of cash needed from the grantor agency for the second funding period (usually a Federal fiscal quarter).

Line 87–Enter the amount of cash and in-kind contributions to be made from the applicant's share of non-Federal funds. Indicate the source(s) of funds.

Lines 88–89–Enter amounts of any funds to be contributed by other sources as cash or in-kind contributions, and state the source of the funds. Do not include program income or any other Federal funds.

Line 90–Enter the total of amounts on lines 87 and 89. Note that applicants must show anticipated program income in this block as a condition of receiving the grant.

Section S

Line 91–Enter the total amount of cash and in-kind contributions to be made from the applicant's share of non-Federal funds.

Line 92–Enter the total amount of cash and in-kind contributions to be made from all other sources.

Line 93–Enter the total of amounts on lines 91 and 92.

Line 94–Enter the totals of amounts on lines 14, 24, 32, and 40.

Section T

Line 95–Enter the estimated amount of income, if any, expected to be generated from this project. Do not deduct unearned income from the grant amounts requested.

Section U

Lines 96–97–Self-explanatory.

Section V

Line 98–Enter the estimated amounts of cash needed from the grantor agency for subsequent funding periods (usually Federal fiscal quarters).

Line 99–Enter the amount of cash and in-kind contributions to be made from the applicant's share of non-Federal funds. Indicate the source(s) of funds.

Lines 100–101–Enter amounts of any funds to be contributed by other sources as cash or in-kind contributions, and state the source of the funds. Do not include program income or any other Federal funds.

Line 102–Enter the total of amounts on lines 99 and 101. Note that applicants must show anticipated program income in this block as a condition of receiving the grant.

Line 103–Enter the total amount of cash and in-kind contributions to be made from the applicant's share of non-Federal funds.

Line 104–Enter the total amount of cash and in-kind contributions to be made from all other sources.

Line 105–Enter the total of amounts on lines 103 and 104.

Line 106–Enter the totals of amounts on lines 14, 24, 32, and 40.

Section W

Line 107–Enter the estimated amount of income, if any, expected to be generated from this project. Do not deduct unearned income from the grant amounts requested.

Section X

Lines 108–109–Self-explanatory.

Section Y

Line 110–Describe any remarks on additional sheets.

Section Z

Line 111–This section is for the applicant's certification that its governing body has duly adopted or passed as an official act a resolution, motion or similar action, and that it has the authority to make the application. Furthermore, the governing body, or its duly authorized representative, shall certify that the applicant has the authority to comply with the Federal grant or cooperative agreement, and that the certification was made in accordance with the grant conditions and Federal laws, including but not limited to debarment and suspension, drug-free workplace, lobbying activities, and civil rights.

Line 112–Enter the typed name, title, and signature of the authorized representative, and the date the application was signed.

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years): (b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16-19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION
(Attach additional Sheets if Necessary)

21. Direct Charges:

22. Indirect Charges:

23. Remarks

SF 424A (4-88) Page 2
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Instructions for the SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary

Lines 1–4, Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) Through (g)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will

establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to non-discrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.O. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of authorized certifying official

Title

Applicant organization

Date submitted

Program Narrative

This program narrative section was designed for use by many and varied programs. Consequently, it is not possible to provide specific guidance for developing a program narrative statement that would be appropriate in all cases. Applicants must refer the relevant program announcement for information on specific program requirements and any additional guidelines for preparing the program narrative statement. The following are general guidelines for preparing a program narrative statement.

The program narrative provides a major means by which the application is evaluated and ranked to compete with other applications for available assistance. It should be concise and complete and should address the activity for which Federal funds are requested. Supporting documents should be included where they can present information clearly and succinctly. Applicants are encouraged to provide information on their organizational structure, staff, related experience, and other information considered to be relevant. Awarding offices use this and other information to determine whether the applicant has the capability and resources necessary to carry out the proposed project. It is important, therefore, that this information be included in the application. However, in the narrative the applicant must distinguish between resources directly related to the proposed project from those which will not be used in support of the specific project for which funds are requested.

Cross-referencing should be used rather than repetition. ACF is particularly interested in specific factual information and statements of measurable goals in quantitative terms. Narratives are evaluated on the basis of substance, not length. Extensive exhibits are not required. (Supporting information concerning activities which will not be directly funded by the grant or information which does not directly pertain to an integral part of the grant funded activity should be placed in an appendix.) Pages should be numbered for easy reference.

Prepare the program narrative statement in accordance with the following instructions:

- Applicants submitting new applications or competing continuation applications should respond to Items A and D.
- Applicants submitting noncompeting continuation applications should respond to Item B.
- Applicants requesting supplemental assistance should respond to Item C.

A. Project Description—Components

1. Project Summary/Abstract

A summary of the project description (usually a page or less) with reference to the funding request should be placed directly behind the table of contents or SF–424.

2. Objectives and Need for Assistance

Applicants must clearly identify the physical, economic, social, financial, institutional, or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation such as letters of support and testimonials from concerned interests other than the applicant may be included. Any relevant data based on planning studies should be included or referenced in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the narrative, the applicant may volunteer or be requested to provide information on the total range of projects currently conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

3. Results or Benefits Expected

Identify results and benefits to be derived. For example, when applying for a grant to establish a neighborhood child care center, describe who will occupy the facility, who will use the facility, how the facility will be used, and how the facility will benefit the community which it will serve.

4. Approach

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking this approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of microloans made. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

Identify the kinds of data to be collected, maintained, and/or disseminated. (Note that clearance from the U.S. Office of Management and Budget might be needed prior to an information collection.) List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

5. Evaluation

Provide a narrative addressing how you will evaluate (1) the results of your project and (2) the conduct of your program. In addressing the evaluation of results, state how you will determine the extent to which the program has achieved its stated objectives and the extent to which the accomplishment of objectives can be attributed to the program. Discuss the criteria to be used to evaluate results; explain the methodology that will be used to determine if the needs identified and discussed are being met and if the project results and benefits are being achieved. With respect to the conduct of your program, define the procedures you will employ to determine whether the program is being conducted in a manner consistent with the work plan you presented and discuss the impact of the program's various activities upon the program's effectiveness.

6. Geographic Location

Give the precise location of the project and boundaries of the area to be served by the proposed project. Maps or other graphic aids may be attached.

7. Additional Information (Include if Applicable)

Additional information may be provided in the body of the program narrative or in the appendix. Refer to the program announcement and "General Information and Instructions" for guidance on placement of application materials.

Staff and Position Data—Provide a biographical sketch for key personnel appointed and a job description for each vacant key position. Some programs require both for all positions. Refer to the program announcement for guidance on presenting this information. Generally, a biographical sketch is required for original staff and new members as appointed.

Plan for Project Continuance Beyond Grant Support—A plan for securing resources and continuing project activities after Federal assistance has ceased.

Business Plan—When federal grant funds will be used to make an equity investment, provide a business plan. Refer to the program announcement for guidance on presenting this information.

Organization Profiles—Information on applicant organizations and their cooperating partners such as organization charts, financial statements, audit reports or statements from CPA/Licensed Public Accountant, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with federal/state/local government standards, documentation of experience in program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code *or* by providing a copy of the currently valid IRS tax exemption certificate, *or* by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Dissemination Plan—A plan for distributing reports and other project outputs to colleagues and the public. Applicants must provide a description of the kind, volume and timing of distribution.

Third-Party Agreements—Written agreements between grantees and subgrantees or subcontractors or other cooperating entities. These agreements may detail scope of work, work schedules, remuneration, and other terms and conditions that structure or define the relationship.

Waiver Request—A statement of program requirements for which waivers will be needed to permit the proposed project to be conducted.

Letters of Support—Statements from community, public and commercial leaders which support the project proposed for funding.

B. Noncompeting Continuation Applications

A program narrative usually will not be required for noncompeting continuation applications for nonconstruction programs. Noncompeting continuation applications shall be abbreviated unless the ACF Program Office administering this program has issued a notice to the grantee that a full application will be required.

An abbreviated application consists of:

1. The Standard Form 424 series (SF–424, SF–424A, SF–424B).

2. The estimated or actual unobligated balance remaining from the previous budget period should be identified on an accurate SF–269 as well as in Section A, Columns (c) and (d) of the SF–424A.

3. The grant budget, broken down into the object class categories on the 424A, and if category "other" is used, the specific items supported must be identified.

4. Required certifications.

A full application consists of all elements required for an abbreviated application plus:

1. Program narrative information explaining significant changes to the original program narrative statement, a description of accomplishments from the prior budget period, a projection of accomplishments throughout the entire remaining project period, and any other supplemental information that ACF informs the grantee is necessary.

2. A full budget proposal for the budget period under consideration with a full cost analysis of all budget categories.

3. A corrective action plan, if requested by ACF, to address organizational performance weaknesses.

C. Supplemental Requests

For supplemental assistance requests, explain the reason for the request and justify the need for additional funding. Provide a budget and budget justification *only* for those items for which additional funds are requested. (See Item D for guidelines on preparing a budget and budget justification.)

D. Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a

breakout by the funding sources identified in Block 15 of the SF–424.

Supplies. Costs of all tangible personal property (supplies) other than that included

Indirect Charges. Total amount of indirect costs. This category should be used only

U.S. Department of Health and Human Services

breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification which describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

The following guidelines are for preparing the budget and budget justification. Both federal and non-federal resources should be detailed and justified in the budget and narrative justification. For purposes of preparing the program narrative, "federal resources" refers only to the ACF grant for which you are applying. Non-Federal resources are all other federal and non-federal resources. It is suggested that for the budget, applicants use a column format: Column 1, object class categories; Column 2, federal budget amounts; Column 3, non-federal budget amounts, and Column 4, total amounts. The budget justification should be a narrative.

Personnel. Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, show name/title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits. Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, taxes, etc.

Travel. Costs of project related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF sponsored workshops as specified in this program announcement should be detailed in the budget.

Equipment. Costs of all non-expendable, tangible personal property to be acquired by the project where each article has a useful life of more than one year and an acquisition cost which equals the lesser of (a) the capitalization level established by the applicant organization for financial statement purposes, or (b) $5000.

Justification: For each type of equipment requested, provide a description of the equipment, cost per unit, number of units, total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends.

Supplies. Costs of all tangible personal property (supplies) other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

Contractual. Costs of all contracts for services and goods except for those which belong under other categories such as equipment, supplies, construction, etc. Third-party evaluation contracts (if applicable) and contracts with secondary recipient organizations including delegate agencies and specific project(s) or businesses to be financed by the applicant should be included under this category.

Justification: All procurement transactions shall be conducted in a manner to provide, to the maximum extend practical, open and free competition. If procurement competitions were held or if a sole source procurement is being proposed, attach a list of proposed contractors, indicating the names of the organizations, the purposes of the contracts, the estimated dollar amounts, and the award selection process. Also provide back-up documentation where necessary to support selection process.

Note: Whenever the applicant/grantee intends to delegate part of the program to another agency, the applicant/grantee must provide a detailed budget and budget narrative for each delegate agency by agency title, along with the required supporting information referenced in these instructions.

Applicants must identify and justify any anticipated procurement that is expected to exceed the simplified purchase threshold (currently set at $100,000) and to be awarded without competition. Recipients are required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc. under the conditions identified at 45 CFR Part 74.44(e).

Construction. Costs of construction by applicant or contractor.

Justification: Provide detailed budget and narrative in accordance with instructions for other object class categories. Identify which construction activity/costs will be contractual and which will assumed by the applicant.

Other. Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (noncontractual), fees and travel paid directly to individual consultants, space and equipment rentals, printing and publication, computer use, training costs, including tuition and stipends, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Indirect Charges. Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services or another cognizant Federal agency.

Justification: With the exception of most local government agencies, an applicant which will charge indirect costs to the grant must enclose a copy of the current rate agreement if the agreement was negotiated with a cognizant Federal agency other than the Department of Health and Human Services (DHHS). If the rate agreement was negotiated with the Department of Health and Human Services, the applicant should state this in the budget justification. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the pertinent DHHS Guide for Establishing Indirect Cost Rates, and submit it to the appropriate DHHS Regional Office. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not be also charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under this program announcement, the authorized representative of your organization needs to submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

Program Income. The estimated amount of income, if any, expected to be generated from this project. Separately show expected program income generated from program support and income generated from other mobilized funds. Do not add or subtract this amount from the budget total. Show the nature and source of income in the program narrative statement.

Justification: Describe the nature, source and anticipated use of program income in the budget or reference pages in the program narrative statement which contain this information.

Non-Federal Resources. Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF–424.

Justification: The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process.

Total Direct Charges, Total Indirect Charges, Total Project Costs. (self explanatory)

BILLING CODE 4184–01–P

U.S. Department of Health and Human Services

Certification Regarding Drug-Free Workplace Requirements

Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

BILLING CODE 4184-01-C

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participants, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded form the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequently by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

2. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, [[Page 33043]] should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarement, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans,

was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form–LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31 U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and no more than $100,000 for each such failure.

Signature

Title

Organization

Date

BILLING CODE 4184–01–P

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract ☐ b. grant ☐ c. cooperative agreement ☐ d. loan ☐ e. loan guarantee ☐ f. loan insurance	2. Status of Federal Action: ☐ a. bid/offer/application ☐ b. initial award ☐ c. post-award	3. Report Type: ☐ a. initial filing ☐ b. material change For Material Change Only: year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier _____, *if known*: Congressional District, *if known*:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, *if known*:	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*: _____	
8. Federal Action Number, *if known*:	9. Award Amount, *if known*: $	
10. a. Name and Address of Lobbying Entity (*if individual, last name, first name, MI*):	b. Individuals Performing Services (*including address if different from No. 10a*) (*last name, first name, MI*):	
(*attach Continuation Sheet(s) SF-LLL-A, if necessary*)		
11. Amount of Payment (*check all that apply*): $ _____ ☐ actual ☐ planned	13. Type of Payment (*check all that apply*): ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____	
12. Form of Payment (*check all that apply*): ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____		
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11: (*attach Continuation Sheet(s) SF-LLL-A, if necessary*)		
15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No		
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
Federal Use Only:	Authorized for Local Reproduction Standard Form - LLL	

BILLING CODE 4184–01–C

Certification Regarding Environmental Tobacco Smoke

Public Law 103–227, Part C—

directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to

By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act. The

Monday
March 10, 1997

Certification Regarding Environmental Tobacco Smoke

Public Law 103–227, Part C—Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act. The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

[FR Doc. 97–5693 Filed 3–7–97; 8:45 am]

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federal register

Monday
March 10, 1997

Part IV

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 484

Medicare and Medicaid Programs; Revision of Conditions of Participation for Home Health Agencies and Use of Outcome Assessment Information Set (OASIS); Proposed Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 484

RIN 0938–AI00

Medicare and Medicaid Programs; Revision of the Conditions of Participation for Home Health Agencies and Use of the Outcome and Assessment Information Set (OASIS) as Part of the Revised Conditions of Participation for Home Health Agencies

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Introduction to proposed rules.

SUMMARY: In this Part IV—of this issue of the **Federal Register**, we are publishing two notices of proposed rulemaking relating to revised conditions of participation that home health agencies must meet to participate in the Medicare and Medicaid programs. This introduction explains the background for the two proposed rules and the interrelationship of the two documents.

FOR FURTHER INFORMATION, CONTACT: Susan Levy, (410) 786–9364 and Mary Vienna, (410) 786–6940.

SUPPLEMENTARY INFORMATION: As part of the President's and Vice President's regulatory reform initiative, the Health Care Financing Administration (HCFA) is committed to changing current regulations that focus largely on requirements for measuring procedural standards. One of HCFA's key initiatives in Reinventing Government (REGO) is to revise many of its conditions of participation (COP) to focus on outcomes of care and to eliminate unnecessary procedural requirements. HCFA is working in partnership with the rest of the health care community to institute better, more common sense ways of operating. Within the coming year, HCFA plans to propose revisions to the COP for home health agencies (HHAs), hospitals, and end stage renal disease (ESRD) facilities and also to mount additional research in the area of ESRD to provide the basis for future changes.

A. Common Efforts

1. Reinventing Government (REGO) Initiative

To meet our REGO commitment, we are focusing on an approach for all sets of COP that is:

- Transitional toward a patient outcome based system.
- Intended to stimulate improvements in processes, outcomes of care, and patient satisfaction.
- Patient centered.
- Supported by patient outcomes data.
- Interdisciplinary in the approach to care delivery, reflecting the team approach to health care delivery.

The COP generally adhere to these basic requirements, varying in some degree due to the unique environment and patient case mix of the provider type.

2. Transitional Framework

The transitional framework for each set of COP—

- Begins shifting the oversight focus toward patient health outcomes and away from burdensome and costly procedural requirements, restructures the traditional COP along essential conditions centered on patient care, reflects an interdisciplinary team approach to patient care.
- Prepares the foundation for provider adoption and use of more detailed patient outcome measures developed through private sector experience and research.
- Provides a flexible framework for incorporating better measures as they are developed and tested.

3. Structure

The basic structure of all of the COP follows the Joint Commission on Accreditation of Healthcare Organizations" (JCAHOs) "Agenda for Change." This structure involves reducing the number of conditions in crosscutting categories; focusing on comprehensive assessment and patient outcomes; and deleting, where possible, process requirements that are not specifically mandated by the statute or believed likely to produce outcomes vital to the protection of patient safety.

Each set of COP has the same essential four conditions that reflect the cycle of patient centered care. The essential four conditions are:

- Patient rights.
- Patient assessment.
- Care planning and coordination of services.
- Quality assessment and performance improvement.

It is important to note that each of the sets of COP requirements are tailored to specific statutory requirements, the historical context of the provider type, the unique form of care delivery, and patient case mix.

4. Professional Input

For each set of COP, national meetings of provider and practitioner groups and beneficiary representatives, and our partners in State survey agencies were consulted about our approach and provided comments. Each proposed set of COP reflects extensive consultation with these groups. We recognize the importance of collaboration and communication with the industry and invite further public comment on the proposed COP and related rules.

B. Challenge for Home Health

The challenge for revising the home health COP has been to—

- Emphasize a regulatory approach that:

  + Moves toward a patient outcome based system;

  + Focuses on quality assessment and performance improvement;

  + Centers on the patient; and

  + Reflects the interdisciplinary team approach to home health care delivery;

- Develop a standard core assessment tool that will: 1) be useful as a management tool for providers; and, 2) eventually enable providers, government agencies, and health care consumers to compare patient indicators and outcomes across more than 9000 HHAs.

What follows in this issue of the **Federal Register** are two discrete documents:

1. Revised HHA COP. These COP include the refinements discussed above.

The fundamental principles guiding the development of the revised HHA COP are to:

- Stress quality improvements, incorporating to the greatest extent possible, outcome oriented, data supported quality assessment and performance improvement. The quality assessment and performance improvement program is of the HHA's own design and allows the HHA flexibility to create its own tailored program of continuous improvement. HHAs could be increasingly flexible and creative in their approach to patient care and delivery of services as they use their own information to assess and improve patient services, outcomes, and satisfaction. HCFA has developed the OASIS core standard assessment data set to support this proactive approach to quality improvement.
- Facilitate flexibility in how an HHA meets our performance requirements. For example, HCFA is proposing to adopt the REGO approach to personnel qualifications by indicating, in cases where personnel qualifications are not statutorily required, the HCFA personnel qualification requirements would apply only in States without a licensing requirement.
- Eliminate unnecessary administrative requirements. Process oriented requirements are included only where we believe they remain highly predictive of ensuring desired patient outcomes and protect patient safety.
- Assure patients rights.
- Focus on continuous, integrated care centered around patient assessment, care planning, coordination of service delivery, and quality assessment and performance improvement. The four "core conditions" are Patient Rights, Patient Assessment, Care Planning and Coordination of Services, and Quality Assessment and Performance Improvement.
- Incorporate the program integrity approaches.

2. The Proposed Implementation of the Outcomes and Assessment Information Set (OASIS).

This proposed rule would revise the new conditions of participation for HHAs by requiring an HHA to incorporate the 79-item, core standard assessment data set, referred to as the OASIS, into its comprehensive patient assessment, as well as use OASIS information as part of its internal quality assessment and performance improvement program. The OASIS will serve as the foundation for future reliance on patient outcomes in provider decision making, regulatory oversight and consumer choice. This proposed rule does not require the HHA to collect and report OASIS to a national data system.

This proposed rule is an integral part of the Administration's larger efforts to achieve broad-based, measurable improvement in the quality of care furnished through Federal programs. It is a fundamental component in the transition to a quality assessment and performance improvement approach based on measurable patient outcomes of care and satisfaction with the Medicare home health benefit. In order to reach the point where we can build and use a national data set of measures of outcomes and satisfaction, we must begin with a requirement that all HHAs use the same valid and reliable core standard assessment data set. By integrating a core standard assessment data set into its own more comprehensive assessment system, an HHA can use such a valid and reliable data set as the foundation for its quality assessment and performance improvement program.

We expect to receive positive and constructive comments on both of these documents. We have published these documents as separate rules. They reflect discreet steps in the transition toward a regulatory system based on patient outcomes. While linked in important ways, they have different impacts on the provider community. We have published them in the same **Federal Register** because together they reflect a more complete picture of the Department's patient outcome based strategy.

We have published the description of the OASIS as a separate proposed rule following the proposed HHA COP in this Part of this issue of the **Federal Register**. Please note that the implementation of OASIS would change only §§ 484.55 and 484.65 of the revised HHA COP. We have included several notes in the HHA COP to direct the reader to the OASIS notice for more comprehensive information.

(Catalog of Federal Domestic Assistance Programs No 93.774, Medicare—Supplementary Medical Insurance, and No. 93,778, Medical Assistance Program)

Dated: January 21, 1997.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: January 30, 1997.

Donna E. Shalala,

Secretary.

[FR Doc. 97–5314 Filed 3–5–97; 9:45 am]

BILLING CODE 4120–01–P

42 CFR Part 484

[BPD–819–P]

RIN 0938–AG81

Medicare and Medicaid Programs; Conditions of Participation for Home Health Agencies

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule revises the existing conditions of participation that home health agencies must meet to participate in the Medicare program. The proposed requirements focus on the actual care delivered to patients by home health agencies and the results of that care, reflect an interdisciplinary view of patient care, allow home health agencies greater flexibility in meeting quality standards, and eliminate unnecessary procedural requirements. These changes are an integral part of the Administration's efforts to achieve broad-based improvements in the quality of care furnished through Federal programs and in the measurement of that care, while at the same time reducing procedural burdens on providers.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on June 9, 1997, except for comments on information collection requirements, which must be received on or before May 9, 1997.

ADDRESSES: Mail written comments (one original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–819–P, P.O. Box 7519, Baltimore, MD 21207–0519.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–11–17, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD–819–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

For comments that relate to information collection requirements, mail a copy of comments to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building Washington, DC 20503, Attention Allison Herron Eydt, HCFA Desk Officer.

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FOR FURTHER INFORMATION CONTACT: Susan Levy, (410) 786–9364 and Mary Vienna, (410) 786–6940.

SUPPLEMENTARY INFORMATION:

I. Introduction

As the single largest payer for health care services in the United States, the Federal Government has a critical responsibility for the quality of care delivered under its programs. Historically, the Health Care Financing Administration (HCFA) has adopted a quality assurance approach that has been directed toward identifying health care providers that furnish poor quality care or fail to meet minimum Federal standards. These problems would either be corrected or would lead to the exclusion of the provider from participation in the Medicare or Medicaid programs. However, we have found that this problem-focused approach has inherent limits. Trying to ensure quality through the enforcement of prescriptive health and safety standards, rather than trying to improve quality of care for all patients, has resulted in HCFA expending much of its resources on dealing with chronic problems with marginal providers, rather than on stimulating broad-based improvements in quality of care.

We believe that a different approach toward achieving quality health care for Federal beneficiaries is needed both to take advantage of the continuing advances in the health care delivery field and to keep up with growing demands for services. This approach necessitates revising our requirements to focus on the expected patient-centered outcomes of Medicare services. Thus, for home health services, we have developed a core set of requirements encompassing patient rights, comprehensive assessment, and patient care planning and coordination. Tieing these requirements together is a fourth core requirement—quality assessment and performance improvement—that rests on the assumption that a provider's own quality management system is the key to improved performance. Our objective is to achieve a balanced approach combining HCFA's responsibility to ensure that essential health and quality standards are achieved and maintained with a provider's responsibility to monitor and improve its own performance.

To achieve this objective, we are now developing revised requirements for several major health care provider types, including the new HHA requirements set forth in this proposed rule as well as revised requirements for hospitals, hospices, and end-stage renal disease facilities. In addition, elsewhere in today's issue of the **Federal Register**, we are publishing a proposed rule (Use of the OASIS As Part of the Conditions of Participation for Home Health Agencies) that describes the core standard assessment data set that we are proposing to require HHAs to incorporate into the comprehensive assessment process. This proposed rule is discussed below in section II.D of this preamble. All of these proposals are directed at (1) Improving outcomes of care and satisfaction for patients, (2) reducing burden on providers while increasing flexibility and expectations for continuous improvement, and (3) increasing the amount and quality of information available on which to base health care choices and efforts to improve quality.

We note that HCFA's revised approach to its quality assurance responsibilities is linked closely both to the Administration's commitment to reinventing health care regulations and to HCFA's own strategic plan that sets forth our future goals. This regulation is a regulatory reform initiative included in the President's and Vice President's July 1995 report entitled "Reinventing Health Care Regulations". In accordance with the President's Reinventing Health Care Regulations initiative, HCFA is revising the HHA COPs to eliminate unnecessary process regulations and focus on outcomes of care. Thus, these initiatives share three common themes. First, they promote a partnership between HCFA and the rest of the health care community, including the provider industry, practitioners, health care consumers, and the States. Second, they are based on the belief that we should retain only those regulations that represent the most cost-effective, least intrusive, and most flexible means of meeting HCFA's quality of care responsibilities. Finally, they rely on the principle that making powerful data available to consumers and providers can produce a strong nonregulatory force to improve quality of care. We believe that the revised HHA requirements proposed below, and the revisions that will follow for other providers, will provide the foundation for a health care system in which this type of information is readily available. In addition, certain provisions in this HHA COP rule support the Administration's reinvention initiative combating fraud and abuse. Such provisions are designated as serving this objective when appropriate.

II. Background

A. Home Health Care Benefit

Home health services are covered for the elderly and disabled under the Hospital Insurance (Part A) and Supplemental Medical Insurance (Part B) benefits of the Medicare program and are described in section 1861(m) of the Social Security Act (the Act). These services must be furnished by, or under arrangement with, an HHA that participates in the Medicare program, be provided on a visiting basis to the beneficiary's home, and may include the following:

- Part-time or intermittent skilled nursing care furnished by or under the supervision of a registered nurse.
- Physical therapy, speech-language pathology, and occupational therapy.
- Medical social services under the direction of a physician.
- Part-time or intermittent home health aide services.
- Medical supplies (other than drugs and biologicals) and durable medical equipment.
- Services of interns and residents if the HHA is owned by or affiliated with a hospital that has an approved medical education program.
- Services at hospitals, SNFs, or rehabilitation centers when they involve equipment too cumbersome to bring to the home.

Section 1861(o) of the Act specifies certain requirements that a home health agency must meet to participate in the Medicare program. (Existing regulations at 42 CFR 440.70(d) specify that HHAs participating in the Medicaid program must also meet the Medicare conditions of participation.) In particular, section 1861(o)(6) provides that an HHA must meet the conditions of participation specified in section 1891(a) of the Act and such other conditions of participation as the Secretary finds necessary in the interest of the health and safety of patients of HHAs. Section 1891(a) of the Act establishes specific requirements for HHAs in several areas, including patient rights, home health aide training and competency, and compliance with applicable Federal, State, and local laws.

Under the authority of sections 1861(o) and 1891 of the Act, the Secretary has established in regulations the requirements that an HHA must meet to participate in Medicare. These requirements are set forth at 42 CFR Part 484, Conditions of Participation: Home

Health Agencies. The conditions of participation (COPs) apply to an HHA as an entity as well as the services furnished to each individual under the care of the HHA, unless a condition is specifically limited to Medicare beneficiaries. Under section 1891(b) of the Act, the Secretary is responsible for assuring that the COPs, and their enforcement, are adequate to protect the health and safety of individuals under the care of an HHA and to promote the effective and efficient use of Medicare funds. To implement this requirement, State survey agencies generally conduct surveys of HHAs to determine whether they are complying with the conditions of participation.

B. Why Revise the Conditions of Participation?

The conditions of participation for HHAs were originally promulgated in 1973 and have been revised in part on several occasions. In particular, we made significant revisions to the COPs in 1989 (54 FR 33354) and 1991 (56 FR 32967), largely to implement provisions of section 4021 of the Omnibus Budget Reconciliation Act of 1987 (OBRA "87, Public Law 100–203), which added section 1891 of the Act. Most recently, we made minor revisions to the HHA COPs on December 20, 1994 (59 FR 65482). However, many of the current COPs have remain unchanged since their inception.

Our decision to propose major changes to the existing conditions is based on several considerations. First, as discussed above, the revision of the HHA requirements is part of a larger effort by HCFA to bring about improvements in the quality of care furnished to Federal beneficiaries through a new approach to our quality of care responsibilities. Moreover, nowhere is the need for change more acute than in home health services. During the 1980's and early 1990's, major changes have taken place in the home health benefit, the provider industry, home health care practices, and the characteristics of home health care users that have combined to make home health services the most rapidly growing segment of Medicare expenditures.

In response to challenges associated with the expanding use of home health services, HCFA in 1994 began the Medicare Home Health Initiative (Initiative) to identify opportunities for improvement in the Medicare home health benefit. The Initiative is an agency-wide effort that routinely solicits input and feedback on a wide variety of issues from HCFA's partners in the home health care community. Representatives from HCFA, consumer groups, the home health care industry, professional associations, regional home health intermediaries, and States (including State Medicaid agencies) have convened in a series of collaborative meetings during 1994 and 1995. Among the Initiative's primary recommendations is that HCFA develop HHA COPs that include a core standard assessment data set and patient-centered, outcome-oriented performance expectations that will stimulate continuous quality improvement in home health care.

The existing HHA COPs do not provide patient-centered, outcome-oriented standards, nor do they provide for the operation of a quality assessment and performance improvement program. Historically, we set requirements for participation in the Medicare program by establishing requirements that address the structures and processes of health care. These requirements are largely the result of professional consensus, since there are no data supporting the link between structure and process requirements and positive patient outcomes. The combination of process-oriented requirements with an enforcement approach that focuses on identifying providers that do not have the required structures and procedures in place will not be adequate to meet the growing challenges associated with the changing home health care environment. Thus, we have concluded that significant revisions to the HHA conditions of participation are essential.

C. Transforming the HHA Conditions of Participation

As we began to develop new proposed COPs for HHAs, we solicited the advice and suggestions of the home health industry, professional associations and practitioner communities, as well as consumer advocates and State and other governmental agencies with an interest or responsibility in HHA regulation and oversight. The fundamental principles that guided the development of new COPs were the need to:

- Focus on the continuous, integrated care process that a patient experiences across all aspects of home health services, centered around patient assessment, care planning, service delivery, and quality assessment and performance improvement.
- Adopt a patient-centered, interdisciplinary approach that recognizes the contributions of various skilled professionals and how they interact with each other to meet the patient's needs. A home care patient encounters many services and is exposed to several disciplines, given the interdisciplinary approach to home health care delivery. An interdisciplinary team approach offers a more accurate portrayal of overall patient care outcomes across interdependent functions. Thus, we would eliminate requirements that encourage "stovepipe" administrative and enforcement structures.
- Stress quality improvements, incorporating to the greatest possible extent an outcome-oriented, data-driven quality assessment and performance improvement program. Thus, the new COPs would invest our principal expectations for performance in a powerful requirement that each HHA participate in its own quality assessment and performance improvement program.
- Facilitate flexibility in how an HHA meets our performance expectations, and eliminate outdated process requirements about which there was little consensus or evidence that they were predictive of good outcomes for patients or necessary to prevent harmful outcomes for patients.
- Require that patient rights are assured.

Finally, in order for the HHA conditions to move from a process/structure orientation toward an outcome orientation, outcome measures must be identified, developed, and validated. As discussed below, we have already taken several steps toward the development and implementation of a core standard assessment data set that will ultimately provide home health consumers, providers, and the regulators the data they need to improve quality and focus enforcement, as detailed elsewhere in today's issue of the **Federal Register**.

Based on these principles, we are proposing new HHA conditions of participation that revise or eliminate many existing requirements and incorporate critical requirements into four "core conditions." These four COPs—Patient Rights, Patient Assessment, Care Planning and Coordination of Services, and Quality Assessment and Performance Improvement—would focus both provider and surveyor efforts on the actual care delivered to the patient, the performance of the HHA as an organization, and the impact of the treatment furnished by the HHA on the health status of its patients. The first, Patient Rights, emphasizes an HHA's responsibility to respect and promote the rights of each home health patient. The second proposed core condition, Patient Assessment, reflects the critical nature of a comprehensive assessment in determining appropriate treatments and accomplishing desired health outcomes. Third, the Care Planning and

Coordination of Services COP would incorporate the interdisciplinary team approach to providing home health

example, since the proposed regulation sets a performance expectation that an HHA constantly improve, it may be

designed to enable surveyors to focus explicitly on assessing outcomes of care, because the regulations would specify

especially interested in comments that address how HCFA could improve this approach, what additional flexibility

PART 484—CONDITIONS OF PARTICIPATION: HOME HEALTH AGENCIES

"progress note," and "summary report" because the terms are commonly accepted as documentation

Coordination of Services COP would incorporate the interdisciplinary team approach to providing home health services. The fourth proposed core COP, Quality Assessment and Performance Improvement, would then charge each HHA with responsibility for carrying out a performance improvement program of its own design to effect continuing improvement in the quality of care furnished to its customers.

In the revised COPs, we are proposing to include process-oriented requirements only where we believe they remain highly predictive of ensuring desired outcomes and the prevention of harmful outcomes (for example, home health aide competency and supervision and timeliness of patient assessment). Far more frequently, however, we have eliminated process details from the existing requirements and instead included the related area of concern as a component that must be evaluated by the HHA as part of the HHA's overall quality assessment and performance improvement responsibilities. For example, we removed the process requirements under existing § 484.12(c) that an HHA and its staff must comply with accepted professional standards and principles. We transformed the approach by incorporating current clinical practice guidelines and professional standards applicable to home care as a factor to be considered in the HHA's overall quality assessment and performance improvement program. The practical effect of this approach would be to stimulate the HHA to find its own performance problems, fix them, and continuously strive to improve patient outcomes and satisfaction, as well as efficiency and economy.

We believe that the proposed COPs based on these principles reflect a fundamental change in HCFA's regulatory approach, a change that to a large extent establishes a shared commitment between HCFA and Medicare providers to achieve improvements in the quality of care furnished to HHA patients. The proposed COPs invest HHAs with internal responsibility for improving their performance, rather than relying on an externally-based approach in which prescriptive Federal requirements are enforced through the punitive aspects of the survey process. This change would enable HCFA and the States to use our resources principally in joining with HHAs in partnerships for improvement. This change in our regulations to a patient-centered, outcome-oriented approach will also likely fundamentally change our approach to the survey process. For example, since the proposed regulation sets a performance expectation that an HHA constantly improve, it may be possible to alter significantly, or possibly eliminate altogether, the current Functional Assessment Instrument (FAI) that surveyors use to assess the outcomes of care through home visits and some record review. In an expanded review of the agency's approach to quality assessment and performance improvement, we may approach this task differently, with greater flexibility than the current FAI affords. We anticipate fewer compliance surveys and the reduced need to threaten or take adverse actions that could jeopardize a HHA's reputation, viability as a going concern, and participation in the Medicare and Medicaid programs. Yet these requirements provide the Secretary and State Medicaid agencies with more than adequate regulatory basis for compelling improved performance or termination of participation based on failure to correct seriously deficient performance that can or does threaten the health and safety of patients, or seriously impairs the HHA's capacity to provide needed care and services to patients.

We recognize that the successful implementation of these proposed regulations will depend largely on how effectively State and Federal surveyors are able to learn, use, and internalize this patient-centered, outcome-oriented approach and incorporate it into the survey process. The approach embodied in these regulations, is consistent with the approach that we have taken in survey and certification, beginning as early as 1985 (in intermediate care facilities for the mentally retarded) and 1986 (in nursing homes). In concert with the States, we have trained surveyors to develop information from the survey process that leads to conclusions about how the provider's performance has impacted—positively and negatively—on patients, especially in terms of the care and services that patients actually experience. For example, for many years, in nursing homes surveyors have been trained to interview residents and family members, seeking information that contributes to their assessment of how the nursing home's performance is experienced by the residents and their families. Before the use of outcome oriented surveys, surveyors focused on record reviews and observing care processes and organizational structures.

These proposed regulations contain two critical improvements that support and extend our focus on patient-centered, outcome-oriented surveys. First, the proposed regulations are designed to enable surveyors to focus explicitly on assessing outcomes of care, because the regulations would specify that each individual receiving the care, his or her assessed needs demonstrate is necessary (rather than focusing simply on the services and processes that must be in place). Second, the addition of a strong quality assessment and performance improvement requirement not only stimulates the provider to continuously monitor its performance and find opportunities for improvement, it also affords the surveyor the ability to assess how effectively the provider has been pursuing a continuous quality improvement agenda. All of the changes are directed toward improving outcomes of care.

We have already begun the process of identifying the tasks necessary to train surveyors and their supervisors and managers effectively in this refined, expanded approach. In addition, HCFA is implementing a new State survey agency quality improvement program that is designed to help State survey agencies increase their focus on improvement strategies in the survey and certification process. As more sources of performance data and other performance information become available, we will work with State survey agencies to determine how to use the data effectively to target scarce survey resources and to identify and implement opportunities for improvement (such as reduction in pressure sores or improvements in medication management in home care patients).

We believe that the proposed COPs would decrease the regulatory burden on HHAs and provide them with greatly enhanced flexibility. At the same time, the proposed requirement for a program of continuous quality assessment and performance improvement would increase performance expectations for HHAs in terms of achieving needed and desired outcomes for patients and increasing patient satisfaction with services provided.

We recognize that there are those who fundamentally believe that regulations, particularly when they directly affect the health and safety of people, should be prescriptive in their detail in order to ensure that providers do not engage in practices that threaten patient health and safety or to increase the clarity of intent, just as there are those who support strongly our change in approach. We invite comment on this fundamental shift in our regulatory approach and any other concerns HHAS may have regarding their ability both operationally and financially to undertake this new approach. We are especially interested in comments that address how HCFA could improve this approach, what additional flexibility could be provided, what (if any) process requirements that are critical to patient care and safety should be added, and how well HCFA's investment in the HHA's participation in a strong continuous quality assessment and performance improvement program of their own design will achieve our stated and intended goal of improving the efficiency, effectiveness, and quality of patient outcomes and satisfaction.

D. Incorporation of a Core Standard Assessment Data Set into the HHA Conditions of Participation

Elsewhere in today's issue of the **Federal Register**, we are proposing to require HHAs to incorporate a core standard assessment data set, the Outcomes and Assessment Information Set (OASIS), into the comprehensive assessment process and the quality assessment and performance improvement programs. The incorporation of OASIS represents the first step toward implementing HCFA's plans to use outcome-based quality measures in home health services.

The details of how the OASIS was developed and tested, as well as how it can be used are explained in the OASIS proposed rule, along with the specific proposed regulatory language intended to achieve the stated purpose of introducing the OASIS into the HHA program.

III. Provisions of the Proposed Regulations

A. Overview

Under our proposal, the HHA conditions of participation would continue to be set forth in regulations under 42 CFR part 484. However, since many of the existing requirements in part 484 would be revised, consolidated with other requirements, or eliminated, we are proposing a complete overhaul of the existing organizational scheme. The most significant change would be our proposal to group together all COPs directly related to patient care and place them near the beginning of part 484. COPs concerning the organization and administration of an HHA would follow in a separate subpart. We believe this organization is in keeping with the patient-centered orientation of these regulations and helps illustrate our view that patient assessment, care planning, and quality assessment and improvement efforts are central to the delivery of high quality care.

The proposed organizational format for part 484 is as follows:

PART 484—CONDITIONS OF PARTICIPATION: HOME HEALTH AGENCIES

Subpart A—General Provisions

Sec.
484.1 Basis and Scope
484.2 Definitions

Subpart B—Patient Care

484.50 Condition of Participation: Patient Rights
484.55 Condition of Participation: Comprehensive Assessment of Patients
484.60 Condition of Participation: Care Planning and Coordination of Services
484.65 Condition of Participation: Quality Assessment and Performance Improvement
484.70 Condition of Participation: Skilled Professional Services
484.75 Condition of Participation: Home Health Aide Services

Subpart C—Organizational Environment

484.100 Condition of Participation: Compliance with Federal, State, and Local Laws
484.105 Condition of Participation: Organization and Administration of Services
484.110 Condition of Participation: Clinical Records
484.115 Personnel Qualifications for Skilled Professionals

B. Proposed Subpart A, General Provisions

Like the existing COPs, the revised conditions would begin with a brief section (proposed § 484.1) that would specify the statutory authority for the ensuing regulations. The only change proposed in this section would be the elimination of the reference to the statutory authority for an HHA's institutional planning responsibilities (existing § 484.1(a)(2)). This change reflects our proposal to eliminate from the HHA COPs a restatement of the statutory requirements at section 1861(z) of the Act concerning institutional planning. See section III.D of this proposed rule for a further discussion of this issue.

Under proposed § 484.2, we would set forth definitions for terms used in the HHA COPs that we believe need clarification. We are proposing to eliminate existing definitions for several terms for which we believe meaning is self-evident, such as "HHA," "nonprofit agency," or "bylaws," as well as for terms that would not be included in the revised COPs. We are proposing to delete the current definitions for "subdivision" and "subunit" because the terms draw distinctions for participation and payment for which there are no differences. We are proposing to delete the current definitions for "clinical note," and "progress note," and "summary report" because the terms are commonly accepted as documentation requirements reflecting good medical practice to assess the individual's reaction or response to services furnished. We believe that the focus should be on documentation of the actual care provided to the individual via the interdisciplinary team within the comprehensive assessment, plan of care, and clinical record rather than the term used to describe the entry. We are deleting the definition for supervision from this section and incorporating the concept under the proposed skilled professional services COP. We are soliciting comments on the feasibility of a consolidated definition section in the Code of Federal Regulations (CFR) for definitions that are applied consistently throughout the Medicare program.

The definitions that would be included under proposed § 484.2 are as follows:

Branch means a location or site from which a home health agency provides services within a portion of the total geographic area served by the parent agency. The branch office is part of the home health agency and is located sufficiently close to share administration, supervision, and services in a manner that renders it unnecessary for the branch independently to meet the conditions of participation as a home health agency.

Parent HHA means the agency that develops and maintains administrative control of branches.

Quality indicator means a specific, valid, and reliable measure of access, care outcomes, or satisfaction, or a measure of a process of care that has been empirically shown to be predictive of access, care outcomes, or satisfaction.

With the exception of "quality indicator," all of these terms are defined in the same way as in existing § 484.2. We are adding a definition for the term "quality indicator" because, as discussed above, the use of quality indicators is central to an HHA's successful implementation of a quality assessment and performance improvement program.

We note that we would not retain the provisions of existing § 484.4, Personnel qualifications, under proposed subpart A, General Provisions. As discussed in detail in section III.D of this preamble, we are proposing major modifications to the prescriptive personnel qualification requirements now in place. Remaining requirements would be set forth under proposed § 484.115.

C. Proposed Subpart B, Patient Care

1. Patient Rights (Proposed § 484.50)

Section 1891(a)(1) of the Act establishes as a Medicare COP that an HHA must protect and promote the rights of each individual under its care. These rights encompass being informed in advance regarding the care to be provided and having an opportunity to participate in care planning; voicing grievances; confidentiality of records; respect for property; being informed about specific coverage and noncoverage of services; and availability of information in writing and through a home health services hotline. These statutory provisions are incorporated in existing regulations at § 484.10.

We would retain these statutory provisions in the proposed regulations and redesignate existing § 484.10 as proposed § 484.50, the first core COP, and also the first COP in proposed Subpart B, Patient Care. We are proposing one substantive change to the patient rights provisions. Specifically, we would expand the standard under existing paragraph (c)(l) relating to informing the patient in advance regarding care and treatment to be provided by the home health agency. We propose to specify that the patient must also be informed about "expected outcomes" of treatment and "barriers" to treatment. We believe that these revisions represent an additional safeguard of patient health and safety. Open communication between HHA staff and the patient and access of the patient to treatment information are vital tools for enhancing the patient's participation in his or her coordinated care planning. In addition, there are many environmental factors (for example, lack of nutrition and lack of family and emotional support) that are barriers that could impact the effectiveness of treatment decisions.

2. The Cycle of Care: Assessment, Planning, and Delivery

The patient care assessment, planning, and treatment process that is embodied in the next three COPs can be seen as a cycle. Through the use of a comprehensive assessment, accurate and timely patient information is made available for use in the patient treatment process. The treatment process is the actual interdisciplinary care furnished to the patient. The patient treatment process results in an effect on the patient's condition, whether it is positive, negative, or neutral. An HHA's assessment of the effect of treatment then enters into subsequent treatment decisions, and the cycle of comprehensive assessment continues. Through this cycle, accurate patient information yielded from each comprehensive assessment will result in more effective and appropriate treatment decisions, thus generating a positive effect on treatment decisions and yielding desired outcomes.

a. Comprehensive Assessment of Patients (Proposed § 484.55)

Introduction The proposed Comprehensive Assessment of Patients COP reflects the patient-centered, interdisciplinary approach of the proposed COPs and underscores our view that systematic patient assessment is essential to improving quality of care and patient outcomes.

Patient assessment contributes to quality of care improvements in three closely linked stages. First, the information generated from an interdisciplinary, comprehensive assessment of each patient is a vital tool for developing a patient's care plan and making individual treatment decisions. An HHA would then track the patient's progress towards achieving the desired care outcome and make appropriate changes to the patient's plan of care and treatment. As an HHA carries out this process on a repeated basis, the second contribution of patient assessment becomes clear. That is, the HHA is able to evaluate the results of its treatment decisions on an aggregate basis. Thirdly, accurate patient information yielded from the comprehensive assessment process would inform the HHA's future care planning process, generating continuing improvements in an HHA's treatment decisions and ability to produce desired patient outcomes. We believe that these internal quality improvement strategies reflect contemporary standard practice for many HHAs, and we are proposing to revise the COPs to support this outcome-oriented approach.

These first two uses for comprehensive patient assessment data basically involve short-term strategies that can be implemented by individual HHAs. In this proposed rule, however, we are also laying the foundation for a long-term strategy in which HCFA would use assessment information from many HHAs to define and measure care outcomes for home health care users. As discussed above, these quality indicators could then be built into a national data system for use by HHAs to improve the quality of care they provide and by HCFA to monitor patient outcomes.

Proposed Patient Assessment Requirements

The primary requirement under the proposed COP would be that each patient receive from the HHA a patient-specific, comprehensive assessment that identifies the patient's need for home care and that meets the patient's medical, nursing, rehabilitative, social, and discharge planning needs. For Medicare patients, identifying the need for home care would include the assessment an individual's homebound status. An individual's homebound status is a critical eligibility requirement. This requirement would promote program integrity because it is the first regulatory requirement that directly evaluates homebound status.

Under our proposal, each HHA would have the responsibility and the flexibility to determine the content and process of its own patient assessment, within the broad requirement that it identifies the patient's care and discharge planning needs. The intent of requiring patient-specific comprehensive assessments is to avoid the use of "canned" patient assessments that do not reflect the individual needs of each patient. The comprehensive assessment must fully reflect each individual patient situation.

We are also proposing to require that the assessment must incorporate the use of a core standard assessment data set that is established by HCFA as a regulatory requirement under the comprehensive assessment condition elsewhere in this issue of the **Federal Register**. The data set includes only information necessary to measure outcomes of care for quality indicators; thus, our intent is not to develop a complete patient assessment but rather to identify standardized data elements that fit within the HHA's overall comprehensive assessment responsibilities. That is, the incorporation of the core standard assessment data set will complement the HHA's current approach to comprehensive assessment.

The existing COPs contain several requirements that address the need for patient assessment, including most notably a long and detailed list of items under existing § 484.18(a) that are required to be covered in a plan of care, such as pertinent diagnoses, mental status, and functional limitations. In place of this requirement, we would emphasize the importance of the comprehensive assessment by establishing patient assessment as a separate COP, specifying the desired outcome of the assessment (that is, the identification of a patient's care needs), and then allowing HHAs the flexibility to determine how best to achieve this outcome. We believe that this approach is consistent with current accepted practices in HHAs and that most HHAs now perform a comprehensive assessment for most of their patients.

The first standard under the proposed comprehensive assessment COP concerns drug regimen review (proposed § 484.55(a)). Under this standard, we would retain the existing requirement of a drug regimen review from § 484.18(c), but would clarify the requirements by eliminating the identification of "adverse actions" and "contraindicated medications" and substituting the more concise requirements of review for drug interactions, duplicative drug therapy and noncompliance with drug therapy. This modification narrows the scope of the drug regimen review, provides accountability, and focuses the assessment toward data predictive of a significant patient outcome.

The second proposed standard sets forth the requirements for the initial assessment visit. Specifically, at proposed § 484.55(b), we propose that a registered nurse must perform an initial assessment visit based on physician's orders to determine the immediate care and support needs of the patient either within 48 hours of referral or within 48 hours after the patient's return home, or within 48 hours of the physician-ordered start of care date, if that is later. If rehabilitation therapy services are the only services ordered by the physician, the initial assessment would be made by the appropriate rehabilitation skilled professional. We welcome comments on the appropriateness of using competent individuals other than a registered nurse or appropriate therapist to perform initial patient assessments. We also invite comments on the feasibility of permitting the delegation of nursing responsibilities within the scope of State nurse practice acts to competent individuals.

The third standard (proposed § 484.55(c)) would specify the timeframe in which the HHA must complete the comprehensive assessment. We propose that the HHA must complete the comprehensive assessment in a timely manner consistent with the patient's immediate needs, but no later than 5 working days after the start of care.

The fourth standard (proposed § 484.55(d)) concerns updates of the comprehensive assessment. We would provide that the comprehensive assessment must discuss the patient's progress toward clinical outcomes and be updated and revised as frequently as the patient requires, but no less frequently than every 62 days from the start of care date, which is when the patient's plan of care is revised for physician review and when the patient is discharged.

These proposed standards essentially would replace the requirements concerning the duties of the registered nurse under the existing skilled nursing services COP (§ 484.30(a)). Currently, a registered nurse must regularly reevaluate the patient's nursing needs, initiate the plan of care and necessary revisions, prepare clinical and progress notes, coordinate services, and inform the physician and other personnel of changes in the patient's condition and needs. The existing requirement emphasizes the patient information process. In contrast, the proposed comprehensive assessment COP would focus on ensuring that all critical information concerning a patient is routinely incorporated through timely assessments that identify a patient's initial and changing needs.

Under proposed § 484.55 (b) and (c), we are proposing specific timeframes for the initial assessment, completion of the assessment, and interim updates to the patient assessment. We believe that these requirements, though process-oriented, are predictive of good patient care and safety, as well as necessary to prevent harm to the patient. Our rationale for these timeframes is that by definition, a new patient being referred to a home health agency for initiation of services is at a point of immediate and serious need, especially as patients are returned home from hospital care sooner than ever before. Likewise, as the complexity of the care needs of patients increases, so does the need for comprehensive assessment of the patient, and the importance of implementing an effective care plan promptly becomes paramount.

We believe that these requirements pose little or no burden for the well-managed home health agency since they would in all likelihood be performed in the absence of regulations. However, the proposed timeframes serve as a strong performance expectation for HHAs that may not have adequate resources (financial and human resources) by setting the outside acceptable time for these activities to occur. If too many patient referrals occur together, some patients might be neglected or harmed by the HHA's inability to see the patient quickly or to conduct and complete the needed comprehensive assessment so effective service delivery can begin. Thus, if an HHA recognizes that its workload is such that it is not capable of beginning work with a patient virtually immediately upon referral, the patient should not be accepted for care.

Under proposed § 484.55(d), we are proposing that the comprehensive assessment be updated as frequently as the patients condition requires but not less frequently than every 62 days, for several reasons:

(1) Especially in the early stages of care, patient needs, progress, and circumstances can change greatly, and changes in the status of the patient can and should prompt changes in approaches to care, so reassessment as needed helps to inform the revision of the care plan and service delivery;

(2) When HCFA and the home health community are prepared to begin collecting and utilizing quality indicator data (which will come from the core standard assessment data set), it will be necessary for the HHA to report the data on a regular basis. The developers of the core standard assessment data set have found the roughly 2-month timeframe to be an effective interval for data points for comparison purposes, which also coincides well with the recertification timeframe in item (3) below; and

(3) An HHA is required to have the patient recertified for continued care every 62 days, which serves as a logical point for updating an assessment if no updates have already been completed.

We welcome comments on whether the specific proposed timeframes in the regulation text are reasonable and consistent with current medical practice, and whether the timeframes should be used as benchmarks to reflect patient health and safety concerns involving the timeliness of the assessment components.

3. Care Planning and Coordination of Services (Proposed Section 484.60)

Currently, the condition of participation concerning the plan of care is set forth at § 484.18. We propose to revise the contents of this section, and place them in a new condition, "Care planning and coordination of services" (proposed § 484.60). This condition would contain four standards that reflect the interdisciplinary approach to home health care delivery. The standards are discussed in detail below.

This proposed COP would first state the fundamental requirement that the patient's plan of care must specify the care and services necessary to meet the patient's specific needs as identified by the physician and in the comprehensive assessment, and the measurable clinical outcomes that the HHA expects will occur as a result of implementing the plan of care. Again, a clinical outcome can be defined as a change in an individual's health between two or more points in time. We would retain the existing requirement that patients are accepted for treatment on the basis of a

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reasonable expectation that the patient's medical, nursing, and social needs can be met adequately by the agency in the patient's place of residence.

In accordance with our goal of eliminating prescriptive requirements that do not directly relate to patient care, we have simplified the plan of care standard at existing § 484.18(a). The first standard under this condition, "Plan of Care," set forth at proposed § 484.60(a), would require that all home health services must follow a written plan of care established and periodically reviewed by a doctor of medicine, osteopathy, or podiatric medicine in accordance with § 409.42. We would specify that all patient care orders must be included in the plan of care. We believe that our proposal would decrease the burden on HHAs and would allow agency staff to develop care plans that best suit the needs of the patients they serve.

Under the second proposed standard, "Review and revision of the plan of care", we would add to the language at existing § 484.18(b). The current requirement that the physician and the HHA review the plan of care as frequently as the patient's condition requires but not less than once every 62 days would be retained, with the additional clarification that this period begins with the date of start of care. We would continue to require that the HHA promptly alert the physician to any changes in the patient's condition that suggest a need to alter the plan of care. We would also extend the current requirement to specify that the HHA must promptly alert the physician if measurable outcomes are not being achieved. If measurable outcomes are not being achieved, the HHA must review, assess, and document the patient's responses to his or her current medical and environmental situation (including barriers to care), and implement a physician's revised plan of care as often as necessary to meet the patient's needs. At a minimum, revised plans of care should be established and implemented when a patient experiences significant changes in his or her medical condition or functional capacity. An example of an environmental situation that would be considered a barrier to care would be a patient who was not receiving proper nutrition. In such a case, the agency staff would document the situation and revise the plan of care accordingly. We believe that these requirements would reflect our outcome-oriented approach to patient care in that they would require the HHA to focus on the patient's responses to treatment decisions. Additionally, these requirements would not impose a burden on HHAs since agencies are already required to complete a plan of care for each patient. These requirements would be set forth at proposed § 484.60(b)(1). We are soliciting comments on the need for frequent regular physician reviews of plans of care for patients who are only receiving personal care services.

Under § 484.60(b)(2), we propose to require that a revised plan of care must include current information from the patient's comprehensive assessment and information concerning the patient's progress toward outcomes specified in the plan of care. We are soliciting comments on the utility of adding an additional requirement that would require the original plan of care that initiates care to be reviewed and revised in a timely manner consistent with the patient's immediate needs, but no later than 5 to 10 working days after the completion of the comprehensive assessment. This would ensure that the plan of care would be revised to reflect the incorporation of the completed comprehensive assessment, which must be completed in a timely manner consistent with the patient's immediate needs, but no later than 5 working days after the start of care. This additional requirement would ensure the link between the completed comprehensive assessment and a revised plan of care.

In the third standard, "Conformance with physician orders", we would retain language at existing § 484.18(c). In December 1994, we revised this standard to require that oral orders be put in writing and signed and dated with the date of receipt by the registered nurse or qualified therapist responsible for furnishing or supervising the ordered services (59 FR 65482). We also provided that oral orders are only accepted by personnel authorized to do so by applicable State and Federal laws and regulations as well as by the HHA's internal policies. We would include these standards in the Care planning and coordination of services condition under proposed § 484.60(c).

We propose to add a new standard, Coordination of care, at § 484.60(d). This standard would incorporate provisions at existing § 484.14(g) (Organization, services, and administration, Standard: Coordination of patient services), which requires that all personnel furnishing services maintain liaison to ensure that their efforts are coordinated effectively and support the plan of care, and that the HHA must document such liaison. Our proposed standard would go beyond this requirement by linking the level of the coordination of services, caregivers and the patient to identifiable care need and barriers to care and by requiring HHAs to adjust the degree of coordination to meet the needs of the patient. Specifically, we would require the HHA to maintain a system of communication and integration of services, whether provided directly or under arrangement, that ensures the identification of patient needs and barriers to care, the ongoing liaison between all disciplines providing care, and the contact of the physician for relevant medical issues. Additionally, we would require the HHA to identify the level of coordination necessary to deliver care to the patient and involve the patient and the caregiver in the coordination of care.

We believe that this standard is appropriate for a number of reasons. Since a home care patient may encounter many services delivered at different times by a variety of individuals with different skills, efficient communication and integration among members of the home health team is essential in responding to patient needs in a timely and effective manner. Further, effective coordination of services is necessary to avoid duplicative or conflicting services. Finally, we recognize that an interdisciplinary approach to the delivery of home health services reflects actual practice for most home health agencies, and we believe that, when possible, our regulations should coincide with current industry practice.

4. Quality Assessment and Performance Improvement (Proposed Section 484.65)

We are proposing to eliminate two conditions of participation, existing § 484.52, Evaluation of the agency's program, and existing § 484.16, Group of professional personnel, and replace them with a single, new quality assessment and performance improvement condition of participation. Existing regulations for HHAs do not provide for the operation of a quality assessment and performance improvement program whereby the HHA examines its methods and practices of providing care, identifies opportunities to improve its performance, and then takes actions that result in better outcomes of care and satisfaction for the HHA's patients. In light of our intention to raise the performance expectations for HHAs seeking entrance into the Medicare program as well as those currently participating, HCFA is proposing that each HHA develop, implement, and maintain an effective, data-driven quality assessment and performance improvement program. We believe this

requirement would stimulate an HHA to continuously monitor and improve its own performance and to be responsive to the needs, desires, and satisfaction of its patients. This proposed new requirement epitomizes the approach of these new COPs in that it provides a constant expectation for improved performance, in contrast to the current approach that only sets a floor of structural and procedural requirements that are intended to be surrogate measures for ensuring quality. This condition is intended to set up a self-sustaining system for improvement, under which an HHA monitors its performance to a point that surveyor findings would confirm an HHA's own assessment of where performance improvements are needed.

We have not prescribed the structures and methods for implementing this requirement, and have focused the condition of participation on the expected results of the program, that is, quality indicators and other outcome-oriented measures. This provides flexibility to the HHA, as it is free to develop a creative program that meets the HHA's needs and reflects the scope of its services.

Currently, the first COP that addresses quality of care (existing § 484.52, Evaluation of the agency's performance), provides for the evaluation of the agency's total program at least once a year. The agency must have written policies requiring the evaluation, the evaluation must include a review of the HHA's policies and administrative practices, and the results of the evaluation must be separately recorded and maintained as administrative records. The agency must also review a sample of open and closed clinical records at least on a quarterly basis. The second condition of participation that addresses quality of care (existing § 484.16, Group of professional personnel), requires a group of professional personnel, which includes at least one physician and one registered nurse, to establish and annually review the agency's policies governing the scope of services offered, admission and discharge policies, medical supervision of plans of care, clinical records, personnel qualifications and program evaluation. This group is required to meet frequently to advise the agency on professional issues, to participate in the evaluation of the agency's program and assist in liaison functions. Minutes of the group's meetings must be documented. These requirements focus on the meetings and documentation of the agency's evaluation of their quality of care and do not account for the outcome of these activities.

Instead of continuing to prescribe the structures and processes by which an HHA evaluates its services, we have identified the outcomes expected of an agency that assesses its performance and improves the services that it provides to beneficiaries and set forth under proposed § 484.65 the required major components of an effective quality assessment and performance improvement program. Our expectation is that the HHA will successfully operate a continuous quality assessment and performance improvement program on behalf of its beneficiaries. We believe this is a reasonable expectation, for which the HHA can and should be held accountable.

Previously, the only motivation for quality improvement for some HHAs was the adverse effect of having been found by surveyors to be out of compliance with one or more conditions of participation and threatened with termination from the Medicare program. With an effective quality assessment and performance improvement program, the HHA can identify and reinforce the activities that it is doing well and seek out and respond to opportunities for improvement on a continuous basis. The desired outcome of this proposed requirement is that the HHA itself, rather than the survey process, will be the driving force for continuous improvements, enabling HCFA to focus its resources on supporting that effort and on HHAs that fail to meet the requirements, even after efforts have been made to improve performance.

The proposed condition requires the HHA to develop, implement, and evaluate an effective, data-driven quality assessment and performance improvement program. The program must reflect the complexity of HHA's organization and services (including those provided directly or under arrangement). The HHA must take actions that result in improvements in the HHA's performance across the spectrum of care.

The first standard at proposed § 484.65(a) requires that an HHA's quality assessment and performance improvement program must include, but not be limited to, the use of objective measures to demonstrate improved performance with regard to:

(1) Quality indicator data (derived from patient assessments) to determine if individual and aggregate measurable outcomes are achieved compared to a specified previous time period. The terms "quality indicators," "performance measures," and "outcome measures" are often used interchangeably, though technically, they vary somewhat in meaning. Regardless, they all refer to attributes of care and satisfaction that can be used to gauge quality of care in specific aspects of care. For example, the degree and rate of improvement in a functional area (such as the ability to walk after a hip replacement) can be shown to be a quality indicator. The method of defining and measuring that improvement is the "performance measure" or "outcome measure." These measures assign a specific value to the care dimension being measured. The appropriateness of the combination of services reflected on the plan of care, the effectiveness of the communication among the interdisciplinary team, or the competency of the mix of professionals used on the team to implement the services could all be possible indicators of the outcome-oriented performance expectations that should stimulate ongoing quality improvement in home health care delivery.

Some measures, though, are of processes of care that are predictive of outcomes of care. These process measures quantify one or more dimensions of the manner in which care is actually provided or administered (or negatively, is not provided or administered). A process measure such as the number of times a service is provided may be directly related to the rate of improvement (or lack of improvement) of the patient. So, a valid and reliable process measure can be shown to be predictive of patient outcomes, therefore, a quality indicator.

The core standard assessment data set, described in detail elsewhere in today's issue of the **Federal Register**, contains tested and validated indices of functional status over time and satisfaction of patients that have been shown to reflect quality of care. Once we have completed the rulemaking necessary to implement the use of this data set, each HHA will collect and evaluate these standard data as a part of providing care and managing the quality assessment and improvement program, but will not be required to report it. This information will help the HHA to improve its services and the outcomes and satisfaction that patients experience. Later, when we subsequently implement the requirement to begin reporting the quality indicator data, the HHA will be able to receive the aggregated and analyzed data from the universe of HHAs to compare its performance with others.

(2) Current clinical practice guidelines and professional practice standards applicable to home care. Contemporary care practices in an increasingly complex and fragmented

health care environment are rapidly changing. Home care is now provided routinely to very ill persons and persons with severe physical, medical, and other challenges. We expect an HHA to pursue the latest clinical practice guidelines and professional standards for use in its quality assessment and performance improvement program. Continuous improvement is only possible through the identification and use of continuously improved information, techniques, and practices. Much of this information also can be used by patients and their families to enable them to be more independent and play a more effective role in the home care process. While HCFA is not imposing any specific standards of practice, this proposed requirement establishes the expectation that the HHA will seek and utilize the latest standards as a routine part of its daily business.

(3) Utilization data, as appropriate. HHAs currently collect and monitor utilization data in order to evaluate their fiscal and competitive well-being. This information can also be used to evaluate the quality of care, as HHAs become aware of how their performance compares with other HHAs. Eventually, we intend that the HHA will use the utilization data from its own practices to compare with other HHAs across the nation. The purpose of including utilization data in the HHA's quality assessment and performance improvement program is to help the HHA ensure the patient receives only the number of visits that are necessary to achieve needed and desired outcomes. Utilization data will also be used as part of HCFA's external quality assurance monitoring, enabling the agency to target reviews of HHAs whose utilization data suggest, for example, that patients may be receiving fewer (or more) visits than necessary to achieve expected outcomes.

(4) Patient satisfaction measures. Beneficiary satisfaction with home health services is an important element of a quality assessment and performance improvement program. Under our proposal, an HHA would develop and implement specific measures on an ongoing basis to determine from patients and their families whether they are satisfied with services provided and outcomes achieved and the extent to which the HHA respected their rights. We expect that an HHA would use this information to search for opportunities to improve services and patient satisfaction. We do not intend to prescribe to specific tools for measuring patient and family's views, but we do intend to ask the HHA during a survey to demonstrate its patient rights and satisfaction measurement system and how it is used as part of the overall internal quality assessment and performance improvement program.

(5) Effectiveness and safety of services (including complex high technology services, if provided), including competency of clinical staff, promptness of services, and whether patients are achieving treatment goals and measurable outcomes. For patients to experience the needed and desired outcomes that the Medicare home health benefit is intended to achieve, staff must be able to demonstrate the skills and competencies necessary to enable patients to achieve needed and desired outcomes. The HHA is expected to include data-based, criterion-referenced performance measures of staff skills, to utilize that data to ensure that staff maintain skills, and to provide training as new techniques and technologies are introduced and as new staff arrive. We intend that the HHA would be able to demonstrate that it has a system of appropriate complexity for keeping track of the skills and competencies of the staff and that effectively identifies and addresses training needs. These "data" should be an integral part of the HHA's internal quality assessment and performance improvement program, providing continuous feedback on staff performance. The physicians and other staff are in a unique position to provide the HHA's management with structured feedback on the performance of the HHA and ways in which the performance can be improved. The physicians and other staff are customers also, whose needs and contributions to quality improvements are significant. The HHA's internal quality assessment and performance improvement program is expected to view staff as full partners in quality improvement, and we expect the HHA to demonstrate how physicians and staff contribute to the internal quality improvement of the HHA. This proposed requirement is linked directly to the proposed requirement that the HHA include in its quality assessment and performance improvement program current clinical practice guidelines and standards of practice.

Thus, we expect that the HHA will immediately correct problems that are identified through the quality assessment and performance improvement program that actually or potentially affect the health and safety of patients. For example, if the quality assessment and performance improvement program identifies problems with the accuracy of medication administration, it is not enough for the HHA to consider this area as a candidate for an improvement program that may or may not be chosen from a list of potential projects. Rather, since the accuracy of medication administration is critical to the health and safety of patients, the HHA must intervene with a correction and improvement approach immediately.

When we use the word "measure," we mean that the HHA must use objective means of tracking performance that enable both the HHA and the survey agency to identify the differences in performance between two, points in time. For example, a measure that states an HHA is "doing better" as a result of an improvement approach would be unacceptable. There must be identifiable units of measure that any reasonably knowledgeable person would be able to distinguish as evidence of change. Not all objective measures must have been shown to be valid and reliable (that is, subjected to scientific development), to be useable in improvement approaches, but they must at least identify a start point and end point stated in objective terms that actually relate directly to the objectives and expected/desired outcomes of the improvement program.

Under the second standard at § 484.65(b), we are proposing that the HHA must take actions that result in performance improvements and must track performance to assure that improvements are sustained over time. This requirement links the quality assessment and performance improvement program to a pattern of actions over time. The focus is on the pattern of behavior recognized by the HHA and how the HHA used its own experience to continuously strive for improvements.

The third standard under the Quality Assessment and Performance Improvement Program at proposed § 484.65(c) states that the HHA must set priorities for performance improvement, considering prevalence and severity of identified problems, and giving priority to improvement activities that affect clinical outcomes. However, any identified problems that directly or potentially threaten the health and safety of patients must be corrected immediately. Prioritizing areas of improvement is essential for the HHA to gain a strategic view of its operating environment and to ensure the consistent quality of care provided over time. Overall, an HHA would be expected to give priority to improvement activities that most affect clinical outcomes. Conditions that may threaten the health and safety of patients must be immediately and

directly addressed when they are identified.

The fourth standard under the Quality Assessment and Performance Improvement COP, at proposed § 484.65(d), would require the HHA to participate in periodic, external quality improvement reporting requirements as may be specified by HCFA. An example of participation in an external quality improvement activity would be the future requirement for the HHA to report quality indicator data (as discussed elsewhere in today's issue of the **Federal Register**). Participation in the survey process is another example. A different example might be that the Secretary, reviewing the quality indicator data (or other information), decides to embark on a national project to improve the management of multiple medications from multiple doctors of HHA patients. This proposal would require the HHA to participate in this external quality improvement project. Another example might be a national effort to increase the number of HHA patients who receive flu shots each year. This proposed requirement is entirely consistent with HCFA's strategic plan to improve the health status of Medicare and Medicaid beneficiaries, and many of these projects will reach beneficiaries well beyond individuals being served under specific benefit programs such as home health.

Development of the revised COPs is part of the Administration's reinventing government initiative. The COPs were revised to emphasize a focus on outcomes of health care rather than process and procedural requirements. Our revitalized approach reflecting the use of quality indicators and outcome measures as part of future external quality improvement reporting requirements as specified by the Secretary stem from the statutory authority governing the HHA COPs. Section 1891(b) of the Act states, "It is the duty and responsibility of the Secretary to assure that the conditions of participation * * * and the enforcement of such conditions * * * are adequate to protect the health and safety of individuals under the care of a home health agency and to promote the effective and efficient use of public moneys." Congress mandated broad authority to allow the Secretary to keep up with the myriad of changes in quality health care delivery that reflect the state of the art. The use of outcome measures is a significant feature of accreditation for organizations such as the Joint Commission on Accreditation of Healthcare Organizations' (JCAHO) Agenda for Change and Community Health Accreditation Program's (CHAP) Benchmarks for Excellence in Home Care.

The use of quality indicators and outcome measures as part of external quality improvement reporting requirements stems, in part, from the statutory requirement that surveys of HHAs employ quality indicator data. Specifically, section 1891(c)(2)(C)(i)(II) of the Act states, "A standard survey conducted under this paragraph with respect to an HHA shall include (to the extent practicable), for a case-mix stratified sample of individuals furnished items or services by the agency * * * a survey of the quality of care and services furnished by the agency as measured by indicators of medical, nursing, and rehabilitative care."

Looking beyond the actual service delivered toward the outcome resulting from that service allows the HHA the opportunity to incorporate that information to change patterns of behavior or policies and continually improve future performance. Although reaching the desired outcome is beneficial, the revised approach focuses on continuous change in an HHA's behavior over time. The regulatory approach to outcome measures is not predicated on punishing those who do not reach desired outcomes, but on examining how the HHA used its own experience to change behavior and ultimately improve performance over time.

Finally, this condition includes a standard about infection control at proposed § 484.75(e). We expect the HHA to maintain an effective infection control program as part of its overall quality assessment and performance improvement program. We recognize that an HHA cannot be directly responsible for the maintenance of an infection free home environment, especially since the HHA cannot be physically present in the home at all times. However, it can be responsible for (1) ensuring that all staff know and use current best practices themselves to ensure they are not the source of the spread of infection in the course of providing home health services, and (2) on educating families and other caregivers on best practices for the control of the spread of infections within the home during the course of the family/caregivers" interactions with the patients. One example of the use of "current best practices" is the universal precaution of the use of gloves when handling blood or blood products. HCFA is not proposing any specific approaches to meeting this requirement, but would expect to see clear evidence that the HHA aggressively seeks to minimize the spread of infection through the use of infection control techniques by its staff and through the efforts made to help families and caregivers to minimize the spread of infection.

5. Skilled Professional Services (Proposed Section 484.70)

Existing regulations at §§ 484.16, 484.30, 484.32, and 484.36 specify standards that identify detailed tasks that must be performed by agency staff in the provision of skilled nursing services, therapy services, and medical social services respectively.

We propose to delete §§ 484.16, 484.30, 484.32, and 484.36 and replace them with a more simplified new condition on skilled professional services. Instead of specifically identifying tasks, we are broadly describing the expectations of the skilled professionals who participate in the interdisciplinary team approach to home health care delivery.

We would specify that skilled professionals who provide services to HHA patients directly or under arrangement must participate in all aspects of care, including an ongoing interdisciplinary evaluation and development of the plan of care, and be actively involved in the HHA's quality assessment and performance improvement plan. We are reducing the concentration on process requirements and shifting the focus to outcomes. The expected outcome is the coordinated, comprehensive, interdisciplinary delivery of appropriate and effective skilled professional services delivered and supervised by health care professionals who practice under State licensure requirements and the HHA's policies and procedures. Skilled professional services for purposes of this section include: skilled nursing care, physical therapy, speech language pathology, occupational therapy (as defined in § 409.44) and medical social services and home health aide services (as defined in § 409.45).

At proposed § 484.70(a), we provide that skilled professional services are authorized, delivered, and supervised (that is, given authoritative procedural guidance) only by health care professionals who meet the appropriate qualifications specified under § 484.115 and who practice under the HHA's policies and procedures. We believe that this approach to supervision provides clarity to the current definition.

We are proposing to require that an HHA ensure that a majority of at least 50 percent of the total skilled professional services are routinely provided directly by the HHA. We are

proposing to phase in this new

Specifically, at proposed § 484.75(b)(1)

behalf of an HHA only after that

date issues. We would combine the

proposing to phase in this new approach over 3 years. In the first year, HHAs would be required to ensure that at least 30 percent of the skilled professional services are provided directly. In the second year, HHAs would be required to ensure that at least 40 percent of skilled professional services are provided directly. By the third year of enactment, HHAs would be required to ensure that at least 50 percent of the skilled professional services are provided directly.

We are requesting comments on the use of a standard that would limit the use of contract care by Medicare certified HHAs. We believe such limits may be needed as a means of preventing the establishment of "shell" HHAs that are merely a fax machine and a nurse used as a billing system. Further, we believe that this type of standard would protect against provider fraud and abuse. Mass delegation of care has led to problems in evaluating the accountability of providers. This is a program integrity approach that seeks to ensure continuity of care via the significant use of contractual care in the decentralized environment of home health delivery.

Medicare makes a distinction between providing services directly, as opposed to providing services under arrangement. The most common way services are provided directly is through the use of employees. The common law definition of "employee" fundamentally relates to whether a person is under control by the entity or individual providing the services, so by and large producing a W–2 form would constitute providing the services directly. The "Stark Provisions" at section 1877(h)(2) of the Act references the IRS "employee" definition. Section 1877(h)(2) provides that—

An individual is considered to be "employed by" or an "employee of" an entity if the individual would be considered to be an employee of the entity under the usual common law rules applicable in determining the employer-employee relationship (as applied for purposes of section 3121(d)(2) of the Internal Revenue Code of 1986).

We are exploring a more concise method of defining the provision of direct services as opposed to services provided under arrangement.

We believe that the excessive use of contracting could be an indication that an HHA may be exceeding its patient capacity, leading to possible instability that can result in disruptions to patient care. Excessive contracting is also a potential indication that the HHA may not be exercising full control over quality of care. This performance safeguard seeks to ensure continuity and quality of care through the restriction of the significant use of contracted care in home care.

A major home health care association has supported the establishment of limits on Medicare certified HHAs' use of contracted care as a way to establish performance expectations for the quality of care provided. The proposed direct services requirement is an attempt to address our concerns with the growth in "shell" operations and provider accountability. It is important to note that HHAs currently report employment data on their cost reports. We welcome comments on the percentage approach to the proposed direct services standard to control the excessive use of the contracting of services. We welcome comments on this shift in our approach and on any concerns HHAs may have regarding their ability, both operationally and financially, to undertake this new approach.

6. Home Health Aide Services (Proposed Section 484.75)

Section 1891(a) of the Act requires the Secretary to establish minimum standards for home health aide training and competency evaluation programs. Section 1861(m)(4) of the Act requires Medicare covered home health aide services to be furnished by an individual who has successfully completed a training and/or competency evaluation program that meets the requirements established by the Secretary.

Currently, the condition of participation concerning home health aide services is set forth at § 484.36, (Condition of Participation: Home health aide services). For the most part, we would retain the existing requirements although in some cases we have made organizational or editorial changes in the interest of brevity or clarity. In addition, we are soliciting comments on some possible alternatives for future revisions. Under our reorganization scheme, this condition would be located at proposed § 484.75.

Standard: Home Health Aide Qualifications

Currently, provisions concerning the qualifications for home health aides are set forth at § 484.4, Personnel Qualifications. As discussed in detail below, we are proposing substantial revisions to the personnel qualifications section. In light of our proposed revisions and our reorganization of part 484, we believe that the qualifications for home health aides would be more appropriately located in this section. Thus, at proposed § 484.75(a) we would provide that a qualified home health aide is an individual who has successfully completed a State-established or other training program that meets the requirements of proposed § 484.75(b) and a competency evaluation program or State licensure program that meets the requirements of proposed § 484.75(c), or a competency evaluation program or State licensure program that meets the requirements of proposed § 484.75(c), or has completed a nurse aide training and/or competency evaluation program approved by the State as meeting the requirements of existing §§ 483.151 through 483.154 and is currently listed in good standing on the State nurse aide registry. We are soliciting comments on our proposed change to the home health aide personnel qualification, which would include the interchangeable paraprofessional training and/or competency standards for home health aides and nurse aide requirements at requirements at existing §§ 483.151 through 483.154 (part of the Long-Term Care Facilities Requirements for Participation). The home health aide workforce is ridden with high turnover rates. We believe that the proposed changes to the home health aide personnel qualifications yield flexibility to HHAs in their ability to retain equally competent paraprofessionals from a wider pool of employment prospects.

Under proposed § 484.75(a)(2), we would retain (with clarification) the current personnel qualification requirements governing home health aide employment status during a continuous period of 24 consecutive months. An individual is not considered to have completed a training and competency evaluation program or a competency evaluation program if, since the individual's most recent completion of this program(s), there has been a continuous period of 24 consecutive months during none of which the individual furnished services described in § 409.40 of this chapter for compensation. If an individual has not furnished services described in § 409.40 for compensation during a continuous period of 24 consecutive months, then the individual must complete another training and competency evaluation program or competency evaluation program as described in paragraph (a)(1) of this section.

Standard: Home Health Aide Training

We propose to retain the same requirements for content and duration of training as those under the current requirements at § 484.36(a)(1). However, we propose more concise language.

Specifically, at proposed § 484.75(b)(1), we would provide that the home health aide training must include classroom and supervised practical training that totals at least 75 hours. A minimum of 16 hours of classroom training must precede a minimum of 16 hours of supervised practical training.

Proposed § 484.75(b)(1)(i) would clarify provisions regarding communication skills currently located at § 484.36(a)(1)(i) (Standard: Home health aide training-(1) Content and duration of training). We would provide that communication skills include the ability to read, write, and make brief and accurate oral and written presentations to patients, caregivers, and other HHA staff. We propose to retain current requirements under § 484.36(a)(1) (ii) through (xii) at proposed § 484.75(b)(1) (ii) through (xii) (Standard: Content and duration of training). We propose to retain current § 484.36(a)(1)(xiii) with clarification at proposed § 484.75(b)(1)(xiii). We propose to modify the current language, "Any other task that the HHA may choose to have the home health aide perform" by adding the following: "The HHA is responsible for training the home health aide, as needed, for skills not covered in the basic checklist."

At proposed § 484.75(b)(2) and (3), we would essentially retain the provisions governing conduct of training by organizations and qualifications of instructors under existing §§ 484.36(a)(2) (i) and (ii).

At proposed § 484.75(b)(4), we would essentially retain the documentation of training requirement under existing § 484.36(a)(3) to include State approved nurse aide training and competency evaluation as reflected in the definition of the personnel qualifications for home health aides.

We propose to separate existing § 484.36(b)(Standard: Competency evaluation and inservice training) into two separate standards, Competency Evaluation and Inservice Training. These standards would be set forth at proposed § 484.75(c) and (d) respectively.

Standard: Competency Evaluation

In order to simplify this standard, at proposed § 484.75(c) we would combine the current requirements for an HHA's responsibility for the applicability of the competency evaluation requirements under existing § 484.36(b)(1) and the limitations on the applicability of the competency evaluation requirements for personal care attendants under a State Medicaid Personal Care benefit under existing § 484.36(e)(2). An individual may furnish home health services on behalf of an HHA only after that individual has successfully completed a competency evaluation program as described in this section. We propose that the HHA must ensure that all individuals who furnish home health aide services to patients meet the competency evaluation requirements of this section. The only exception would be for personnel care aides who exclusively provide personal care services to Medicaid patients under a State Personal Care benefit.

We propose to combine the requirements for competency evaluation under existing § 484.36(b)(2) with the subject area requirements under existing § 484.36(b)(3)(iii). We propose the competency evaluation must address each of the subjects listed in § 484.36(a)(1) (ii) through (xiii). Subject areas § 484.36(a)(1) (iii), (ix), (x), and (xi) must be evaluated by observing the aide's performance with a patient. The remaining subject areas may be evaluated through written examination, oral examination or after observation of the home health aide with a patient. These provisions would be set forth at proposed § 484.75(c)(2).

At proposed § 484.75(c)(3) we would to retain the current requirements for the conduct of competency evaluations by organizations under § 484.36(b)(3)(i). A competency evaluation program may be offered by any organization except as specified in existing § 484.36(a)(2)(i).

At proposed § 484.75(c)(4) we would retain the current requirement at § 484.36(b)(3)(ii) that the competency evaluation must be performed by a registered nurse. However, we recognize the interdisciplinary approach to home health care and propose the requirement that the registered nurse should perform the competency evaluation in consultation with other skilled professionals, as appropriate. At proposed § 484.75(c)(5), we would retain the current requirements for competency determinations under § 484.36(b)(4).

At proposed § 484.75(c)(6), we propose to retain the current requirements for documentation of competency evaluation currently located at § 484.36(b)(5). We propose to delete the effective date requirements under existing § 484.36(b)(6) because they refer to a timeframe in 1990 and are no longer necessary.

Standard: Inservice Training

At proposed § 484.75(d) we would retain the requirements for the amount of in-service training located at existing §§ 484.36(b)(2) (ii) and (iii). We propose to clarify the 12-month period to address calendar year and anniversary date issues. We would combine the current requirements to propose that the home health aide must receive at least 12 hours of inservice training in a 12-month period. During the first 12 months of employment, hours may be prorated based on the date of hire. The in-service training may occur while the aide is furnishing care to a patient.

At proposed § 484.75(d)(2) we would revise the current requirements for the conduct of inservice training by organizations under § 484.36(b)(3)(i). We would provide that an inservice training program may be offered by any organization except as specified in § 484.75(b)(2).

We propose to revise the current requirement for instructors of inservice training under § 484.36(b)(3)(ii). The current requirement states that inservice training generally must be supervised by a registered nurse with specific experience requirements. Thus, at proposed § 484.75(d)(3), we would provide that the inservice training must be supervised by a registered nurse. The revised language does not include the current experience requirements because we believe it is appropriate to give the HHA flexibility to utilize qualified professionals to instruct and evaluate aides in an appropriate manner in order to meet the outcome which is ensuring that the individuals who furnish home health aide services on its behalf meet the competency evaluation requirements of this section.

Standard: Home Health Aide Assignments

At proposed § 484.75(e), we would retain the revisions to existing § 484.36(c), Standard: Assignments and duties of the home health aide, published in December 1994 (59 FR 65482), with one additional requirement. Specifically, at proposed § 484.75(e)(3), we propose to restore the requirement that home health aides must report changes in the patient's medical, nursing, rehabilitative, and social needs to the registered nurse or other appropriate skilled professional and complete appropriate records in compliance with the HHA policies and procedures. This requirement was inadvertently removed in the December 1994 final rule. Home health aides may observe changes in patient needs that are crucial to future treatment decisions and should be reported to the appropriate professional in order to implement effective and appropriate changes in care.

Standard: Supervision

At proposed § 484.75(f), we would retain the home health aide supervision

requirements under existing

health and safety of the patient

Standard: Medicaid Personal Care Aide

requirements under existing §§ 484.36(d) (1), (2), (3), and (4).

We have concerns about whether quality supervision can be done without the requirement of an aide's presence performing a direct patient service. We have discussed several alternatives, including a requirement that the registered nurse or appropriate skilled professional must make an onsite visit to the patient's home while the home health aide is providing patient care no less frequently than every 30 days. We welcome comments on changing the current indirect supervision requirement and will address the issue in the final rule.

We are also soliciting comments on the idea of focusing aide supervision on individual aides rather than each patient. The purpose of the supervisory visit is to determine if services are being provided, to assess relationships with the patient, competency with tasks, and evaluation of the employee's contribution to the organization's goals to provide high quality care.

Generally, assessing patient needs, developing a plan of care, care coordination, and other skilled visits are performed at a frequency that generally exceeds a biweekly aide supervision schedule. These visits traditionally encompass supervision functions by the nature of being home and ascertaining whether the patient's needs are being met. Therefore, the current supervisory requirements may not add the quality measure of care and may duplicate functions that are inherently provided by the interdisciplinary team. Aides who have performed well and have satisfactory ratings may not need to be supervised as often as new or unsatisfactory rated aides. Centering the supervisory visits on an individual aide rather than on a patient would allow aides to be included in the HHA's human resource management policies that apply to all staff within the organization, and encourage the employer-employee relationship to reflect quality of patient care.

We welcome comments on the following draft standard and will address the issues in the final rule:

Standard: Paraprofessional Supervision

(1) If the patient receives skilled care and paraprofessional services, or paraprofessional services without skilled care, the HHA must not only ensure that the aide is competent to perform the necessary skills (see competency evaluation), but also evaluate the aide's ability to perform such functions on a continual basis. Supervision must be provided by the appropriate professional to ensure the health and safety of the patient, especially when specialized tasks and delegated functions have been added to the competency subjects.

(2) The frequency of routine supervision is established by the HHA's policies which promote high quality patient care through the employment evaluation processes. These evaluation tools should begin at the time of employment and are evaluated thereafter on a regular employment basis, allowing for variations to accommodate time in service with the hiring HHA and the employees' recorded evaluation ratings with that HHA. Employment status should be calculated by the most appropriate method for the organization to ensure regular evaluations. HHAs who arrange for aide services through a non-Medicare certified HHA must ensure equivalent supervision requirements in the arrangement contract with the primary HHA responsible for compliance with these requirements.

(3) The evaluation process includes, but is not limited to, measuring the aide's continual ability to perform routine tasks, specialized tasks, reporting problems to the HHA with care plan tasks, recognizing and reporting barriers to the anticipated outcomes, and patient satisfaction issues.

(4) Nonroutine supervision is also essential to monitor the need for paraprofessional care plan revisions. For example, HHAs could perform spot home visits (direct or indirect observation), telephone interviews, and other mechanisms to ensure protection of the health and safety of the patient and respect for patient's privacy and property. Nonroutine supervisory techniques provide a forum for open and frequent communication to obtain essential and timely feedback. Feedback can also be obtained from other care providers (formal and informal), significant family, and others deemed necessary to properly evaluate the paraprofessional.

(5) In accordance with HHA policies, the aide should also provide feedback on his or her employment environment and the evaluation processes.

Additionally, we welcome comments on the efficacy of using competent individuals other than a registered nurse to perform training, competency evaluation, and assignment or supervision functions for home health aides.

Standard: Medicaid Personal Care Aide Services—Medicaid Personal Care Benefit

At proposed § 484.75(g) we would retain the current requirements under § 484.36(e) (1) and (2). A Medicare certified HHA that provides personal care aide services to Medicaid patients under a State Medicaid Personal Care Benefit must determine and ensure the competency of individuals who perform those Medicaid approved services.

Alternatives for Future Revisions

Home care patients are a vulnerable and confined population. It is necessary to ensure the provision of safe quality care to patients in their homes. We are proposing one specific measure in this proposed rule—a criminal background check of home health aides as a condition of employment (§ 484.75(h)). In addition, we are considering the utility of several other process measures that could be included in this regulation that are predictive of the desired outcome of delivering safe quality care in the patient's home. One possibility would be to adopt the language that is currently used in the Conditions of Participation for Intermediate Care Facilities for the Mentally Retarded (ICF/MR) at § 483.420, modified to reflect the HHA environment and population served. The ICF/MR provisions governing client protections at §§ 483.420(d)(1)(iii), (2), (3), and (4) state:

- The facility must prohibit the employment of individuals with a conviction or prior employment history of child or client abuse, neglect or mistreatment.
- The facility must ensure that all allegations of mistreatment, neglect or abuse, as well as injuries of unknown source, are reported immediately to the administrator or to other officials in accordance with State law through established procedures.
- The facility must have evidence that all alleged violations are thoroughly investigated and must prevent further potential abuse while the investigation is in progress.
- The results of all investigations must be reported to the administrator or designated representative or to other officials in accordance with State law within 5 working days of the incident and, if the alleged violation is verified, appropriate corrective action must be taken.

Proposing criminal background checks as a condition of employment for home health aides is one vehicle to guard beneficiaries from abusive practices in the sanctity of their homes. We are soliciting comments on the costs and benefits of requiring criminal background checks for home health aides and the possible adoption of the additional patient safeguards modified to reflect the HHA environment.

D. Proposed Subpart C—Organizational Environment

1. Compliance with Federal, State, and Local Laws (Proposed Section 484.100)

Currently, provisions concerning compliance with Federal, State, and local laws are located at § 484.12, Condition of Participation: Compliance with Federal, State, and local laws, disclosure of ownership information and accepted professional standards and principles. We would retain most of the provisions contained in this condition with minor changes, which are discussed in detail below. Under our proposed reorganization scheme, discussed above, this condition would be set forth at § 484.100.

Under the first standard, compliance with Federal, State, and local laws and regulations, at proposed § 484.100(a), we would revise the language at existing § 484.12(a). That is, we would require that the HHA and its staff must operate and furnish services in compliance with all Federal, State, and local laws and regulations applicable to home health agencies. If a State has established licensing requirements for HHAs, all HHAs must be approved by the State licensing authority as meeting those requirements whether or not they are required to be licensed by the State. The Secretary may find an HHA to be out of compliance with these conditions of participation if the HHA is found out of compliance with any Federal, State, or local law or regulation by the appropriate enforcement agency for that law or regulation and the Secretary determines that the law or regulation affects the HHA's ability to deliver home health services safely and effectively. When a facility is actually found out of compliance and is cited by that agency for a violation, HCFA will exercise discretion in determining whether that violation should be cited as a violation under these conditions. Clearly it is not in the interest of patients or providers to decertify facilities or to require corrective action plans for certain reasons (for example, a facility's failure to pay its local property taxes on time or building a fence 3 feet over the property line). We would not cite an agency whose problem was remedied (for example, the facility paid its taxes). However, HCFA intends to cite agencies when their violations of Federal, State, or local laws or regulations affect the health and safety of patients, the ability of HHAs to deliver quality services, the rights and well-being of patients, and/or the management of the agency and its ability to recruit qualified staff. We welcome comments on this interpretation.

Similarly, in the second standard, Disclosure of ownership and management information, we propose to retain the requirements at existing § 484.12(b). We would continue to require that the HHA comply with the requirements of §§ 420.200 through 420.206 regarding disclosure of ownership and control information. Additionally, the second standard would continue to require that the HHA also disclose the following information to the State survey agency at the time of the HHA's initial request for certification, for each survey, and at the time of any change in ownership or management:

- The name and address of all persons with an ownership or control interest in the HHA as defined in §§ 420.201, 420.202, and 420.206.
- The name and address of each person who is an officer, a director, an agent, or a managing employee of the HHA as defined in §§ 420.201, 420.202, and 420.206.
- The name and address of the corporation, association, or other company that is responsible for the management of the HHA, and the name and address of the chief executive officer and the chairperson of the board of directors of that corporation, association, or other company responsible for the management of the HHA.

Existing § 484.12(c) provides that an HHA must comply with accepted professional standards and principles. To reflect an emphasis on the importance of continuity of care and our focus on quality, regardless of the site of service, we propose to move the current provisions at § 484.12(c) and incorporate the performance expectation of the provisions into the quality assessment and performance improvement program. HCFA has long used the term "in accordance with accepted standards of practice" in its various provider and supplier requirements both to set a performance expectation and to serve as an enforcement tool should grossly divergent practices be identified in the survey process.

We believe that requiring an HHA to participate in a strong, quality assessment and performance improvement program would stimulate an aggressive effort to identify and use the best practices available for all care providers in the HHA. As discussed above, for the HHA to be successful in its quality assessment and performance improvement program, it will be obliged to seek out best practices continuously. HCFA's survey effort can then be devoted to assessing how the HHA has sought out and adopted best practices in the field as part of the surveyor's evaluation of the quality assessment and performance improvement requirements, rather than HCFA prescriptively defining "accepted professional standards".

At proposed § 484.100(c), we would provide that the HHA and its branches must be licensed in accordance with State licensure laws, if applicable, prior to providing Medicare reimbursed services. This provision seeks to ensure that HHA patients receive the same level of quality care from the appropriate personnel at all sites of service. The requirement that HHAs comply with State licensure laws before providing services to Medicare beneficiaries would apply to the HHA as an entity as well as its staff furnishing services to HHA patients directly or under arrangements.

Finally, we propose to move the current requirements at § 484.14(j), Organization, services and administration, Standard: Laboratory services, to proposed § 484.100(d). We believe that the laboratory services standard is a Federal requirement that is better suited under the revised condition of participation governing compliance with Federal, State, and local laws.

2. Organization and Administration of Services (Proposed Section 484.105)

The proposed COP on organization and administration of services would revise existing regulations at § 484.14 (Condition of participation: organization, services and administration) and replace the existing regulations at § 484.38 (Condition of participation: Qualifying to furnish outpatient physical therapy or speech-language pathology services). The proposed new condition simplifies the structure of the current requirements and provides flexibility to the HHA by replacing the current focus on organizational structures with new performance expectations for the administration of an HHA as an organizational entity. With the wide diffusion of home health organization and management structures, it is imperative to ensure accountability within HHAs by setting performance expectations for the clear, unambiguous, and accountable operation of all

services. The overall goal of the proposed condition is clear, accountable organization, management, and administration of an HHA's resources to attain and maintain the highest practicable functional capacity for each patient in terms of medical, nursing, and rehabilitative needs as indicated on the plan of care.

One of the most critical responsibilities for the governing body of the HHA to meet is stated explicitly at the beginning of proposed § 484.105: The HHA is expected to "attain and maintain the highest practicable functional capacity for each patient * * *" This language derives from section 1891(c)(2)(C)(i)(I) of the Act, which directs the Secretary to devise a survey process that includes home visits to a case-mix sample of patients "for the purpose of evaluating * * * the extent to which the quality and scope of items and services furnished by the agency attained and maintained the highest practicable functional capacity of [E]ach such individual * * * *" Thus, the expectation for performance of the HHA, as stated throughout these proposed rules, especially in the comprehensive assessment, care planning and coordination, and quality assessment and performance improvement COPs, is to achieve outcomes of care that are commensurate with a patient's condition and expectations for returning to improved functional status as much as possible. The placement of this requirement in the COP that includes the governing body is intended to express clearly our intention that the responsibility for achieving the best outcomes possible for the patients served lies with the administration of the HHA, including its governing body and administrator.

This requirement lends support to the importance of the HHA using current best practices within a strong quality assessment and performance improvement program. It promotes the HHA's seeking out and using comparative data where available and using its own data compared to previous points in time to demonstrate internal improvements in outcomes over time.

We recognize that there is no single test of this requirement; each patient is unique and the expectations for outcomes vary in every case. Yet, we will expect surveyors to determine that the HHA, overall, has aggressively pursued this statutory expectation for outcomes for patients and either achieves it, or demonstrates its efforts to achieve it when desired outcomes are not successfully achieved.

In the proposed organization and administration of services condition, we revise the current standard on governing body (§ 484.14(b)), retain, with only minor changes, the current standard on services furnished (§ 484.14(a)), retain, with only minor editorial changes, the requirements with respect to services under arrangements that are now stated in § 484.14(h), delete the current standards on administrator (484.14(c)), delete the current standards on supervising physician or registered nurse (§ 484.14(d)), delete the current standards on personnel policies (§ 484.14(e)), delete the current standards on institutional planing (§ 484.14(i)), relocate the existing condition, qualifying to furnish outpatient physical therapy or speech-language (§ 484.38) under this condition, and relocate the current standard on laboratory services (§ 484.14(j)) under the compliance with Federal, State and local laws COP.

In developing the proposed governing body standard, we emphasize the responsibility of the HHA governing body (or designated persons so functioning) for the management and provision of all home health services, fiscal operations, quality assessment, performance improvement, and the appointment of the administrator. We have retained the necessary administrative features that promote and protect patient health and safety from the current standard on governing body at § 484.14(b) while providing flexibility in the actual approach to the performance expectation of the provision of quality care to all patients. Thus, in the proposed governing body standard, the actual approach to the administration of the HHA as an organization is left to the discretion of the governing body of each HHA. The proposed governing body standard reflects our goal of promoting the effective management and administration of the HHA as an organizational entity without dictating prescriptive requirements for how an HHA must meet that goal.

In the proposed governing body standard, the HHA's governing body (or designated persons so functioning) must assume the full legal authority and responsibility to ensure the performance expectation of the sound fiscal operation of the HHA, appoint a qualified administrator who is responsible for the day-to-day operation of the program, and may appoint designated persons to carry out those functions. We believe the proposed standard on governing body encompasses the performance expectation of an HHA administrator and of organizational fiscal operations, and, therefore, propose to delete the current prescriptive standards on the administrator at § 484.14(c) and on institutional planning at § 484.14(i). We propose to replace the current process-ridden institutional planning standard at § 484.14(i) with the performance expectation of the HHA governing body's responsibility for the fiscal operation of the HHA.

We propose to remove the current statutorily based institutional planning requirements from the HHA conditions of participation. Because the HHA conditions of participation are primarily intended to reflect patient health and safety standards, we feel the COPs are an inappropriate location for the institutional planning provisions found under section 1861(z) of the Act. The proposed standard requires the governing body to assume full legal authority and responsibility for fiscal operations and appointment of an administrator who is responsible for the day-to-day operation of the program without specifying the means to achieve the goal. This outcome-oriented approach provides flexibility to the HHA in the administration of the HHA as an organizational entity. However, it is important to note that the statutory requirements of section 1861(z) of the Act continue to apply to an HHA's institutional planning and capital expenditure activities, even though we would not include them in the revised COPs.

The second proposed standard under the organization and administration of services condition would specify that the HHA that accepts the patient is the primary HHA and has the responsibility to meet the care needs of the patient. Primary home health agency means the agency that accepts the patient becomes the primary HHA and assumes responsibility for the interdisciplinary coordination and provision of services and continuity of care, whether the services are provided directly or under arrangement. We are proposing the new primary HHA standard to ensure continuity of quality care. Mass delegation of care has led to problems in evaluating the accountability of providers and quality of care. This standard was proposed to address the problem of HHAs accepting patients for only specific services. For example, one HHA accepts a patient, treats the patient for a specific condition, and then refers the patient to several other agencies for the rest of his or her treatment. Under our proposal, the HHA that accepts a patient would become the primary HHA and would be held responsible for the interdisciplinary coordination and provision of services ordered under the patient's plan of care. We welcome

comments as to whether the primary HHA standard is an appropriate tool to address the problem of mass delegation and fragmentation of care.

We are also proposing a new standard to address the parent/branch relationship. We want to establish clear requirements regarding the parent/branch relationship in order to protect patient health and safety and to ensure a consistent level of care throughout the HHA as an organizational entity. Although the existing regulations define "branch office" and "parent HHA", we have found that some HHAs have several branch offices that are actually operating as full-fledged HHAs while the parent offices are used as billing shells for the branches. We have concerns about branches, which are not required to independently meet the conditions of participation, acting as an independent HHA and the effect on program integrity and the consistency of quality care provided. We do not anticipate that this standard will disrupt current business practice because the current definitions of parent and branch provide a performance expectation for HHAs as organizational entities as a condition of participation for Medicare certification.

In the proposed rule, we have retained the current definitions, and we are also incorporating the previous definition material into the organization and administration of services COP in order to clarify that this is a management responsibility of the organization. The standard states that a parent home health agency provides direct support and administrative control of branches. The branch office is located sufficiently close to effectively share administration, supervision, and services in a manner that renders it unnecessary for the branch to separately meet the COPs as an HHA. We have added "teeth" to the current definition of the parent and branch by making it a standard level requirement. This will enable surveyors to cite a deficiency when the performance by an HHA's branch does not ensure that the branch is meeting the HHA requirements applicable to its operation. Since the parent/branch reference in the current rule is only a definition, surveyors cannot presently cite a deficiency.

We are proposing at § 484.105(e) to revise the current services furnished requirement at existing § 484.14(a). Specifically, we would retain the current requirement that part-time or intermittent skilled nursing services and at least one other therapeutic service (physical therapy, speech-language pathology, or occupational therapy; medical social services; of home health aide services) are made available on a visiting basis in a place of residence used as a patient's home. We would revise the second part of the standard to state that an HHA must provide at least one of the qualifying services directly, but may provide the second qualifying service and additional services under arrangements with another agency or organization. Medicare makes a distinction between services provided directly as opposed to under arrangement. As discussed above, the most common way services are provided directly is through the use of employees. The common law definition of "employee" fundamentally relates to whether a person is under control by the entity or individual providing the services, so by and large producing a W–2 form would constitute providing the services directly. We are exploring a straightforward way to define the provision of direct services as opposed to services provided under arrangement.

3. Clinical Records (Proposed section 484.110)

We are proposing a new COP, clinical records, that embodies several of the requirements in existing § 484.48, Condition of participation: Clinical records. In this condition we would retain only those process requirements that are essential to protect of patient health and safety.

The primary requirement under the proposed clinical records condition of participation is that a clinical record containing pertinent past and current findings is maintained for every patient who is accepted by the HHA for home health services. We propose to add the requirement that the information contained in the clinical record must be accurate, made available to the physician and appropriate HHA staff and may be maintained electronically. The accuracy of the clinical record must exhibit consistency between the diagnosed condition and the actual experience of the patient. Accuracy can be reflected in the appropriate link between patient assessment information and the services and treatments ordered and furnished in the plan of care. In light of the decentralized nature of HHAs, that is, patient care is not furnished in a single location, we believe that members of the interdisciplinary team must have access to patient information in order to provide quality services. Many HHAs maintain electronic records and we recognize this technological change in the home health environment.

The first standard of the condition, contents of the record, would include several elements that we currently require HHAs to include in the clinical record. We would retain the requirement that the record include clinical/progress notes, a discharge summary, and the plan of care. To give HHAs flexibility in maintaining clinical records, we would no longer specify that the record must include appropriate identifying information, name of physician, drug, dietary, treatment and activity orders, and copies of summary reports sent to the attending physician. Finally, we would add requirements to this standard that reflect our outcome oriented approach to patient care. Specifically at proposed § 484.110(a), we would require that the clinical record include: (1) The patient's current comprehensive assessment, clinical/progress notes, and plan of care; (2) responses to medications, treatments, and services; (3) a description of measurable outcomes that have been achieved; and (4) a discharge summary that is available to physicians upon request. We believe that these requirements would give HHAs flexibility in maintaining clinical records as well as ensure that the records contain information necessary to provide high quality patient care.

We propose to add a new standard at proposed § 484.110(b) to provide for authentication of clinical records. We would require that all entries be clear, complete, and appropriately authenticated. Authentication must include signatures or a computer secure entry by a unique identifier of a primary author who has reviewed and approved the entry. The move to computerized records has resulted in transcription of doctor's orders and electronic signatures. This standard is currently in the COPs for hospitals, and addresses technological changes in information management.

Under proposed § 484.110(c) we would retain the current requirement under § 484.48(a) (Standard: Retention of records). That is, we would continue to require that clinical records be retained for 5 years after the month the cost report to which the records apply is filed with the intermediary, unless State law stipulates a longer period of time. HHA policies provide for retention of records even if the HHA discontinues operations. If the patient is transferred to another health facility, a copy of the record or an abstract is sent with the patient.

We also propose to incorporate into this condition the first requirement under existing § 484.48(b) (Standard: Protection of records). At proposed § 484.110(d) we would provide that patient information and the record are safeguarded against loss or

unauthorized use. We believe the other requirements under existing § 484.48(b) concerning the release of clinical record information are best incorporated into the new standard at proposed § 484.50 (Patient Rights: Confidentiality of clinical records).

4. Personnel Qualifications (Proposed section 484.115)

Currently, provisions concerning the qualifications of HHA personnel are located at § 484.4. This section now includes very specific credentialing requirements and provides that any staff required to meet the conditions of participation must meet our qualifications. In keeping with our goal of eliminating process requirements that are not predictive of good outcomes for patients or necessary to prevent harmful outcomes for patients, we are proposing significant revisions to the personnel qualifications COP. Specifically, we would provide that in cases where personnel requirements are not statutory, or do not relate to a specific payment provision we would apply State certification or State licensure requirements. Under our proposal, the personnel qualifications would fall into three basic categories, personnel for which there is a statutory set of qualifications, personnel for which we have specified requirements since all States do not have licensure or certification requirements, and personnel for which all States have licensure or certification requirements. Under our proposed reorganization of part 484, the personnel qualifications would be located at proposed § 484.115. We discuss the personnel qualifications in detail below.

The first category of personnel qualifications are those in which we would defer to State law. At proposed § 484.115(a), we would specify that skilled professionals who provide services directly by or under arrangements with the HHA must be legally authorized (licensed or if applicable, certified or registered) to practice by the State in which he or she performs, and must act only within the scope of his or her State license or State certification.

The second category would consist of personnel for which there is a statutory set of qualifications. Section 1861(r) of the Act essentially defines a physician as a doctor of medicine, osteopathy, or podiatry legally authorized to practice medicine and/or surgery by the State in which such function or action is performed. We would refer to this definition at proposed § 484.115(b). The Act also contains a definition of a speech language pathologist. Specifically, section 1861(ll)(3)(A) defines a qualified speech language pathologist as an individual with a master's or doctoral degree in speech-language pathology who is licensed as a speech-language pathologist by the State in which the individual furnishes such services, or in the case of an individual who furnishes services in a State which does not license speech-language pathologists, has successfully completed 350 clock hours of supervised clinical practicum (or is in the process of accumulating such supervised clinical experience), performed not less than 9 months of supervised full-time speech-language pathology services after obtaining a master's or doctoral degree in speech-language pathology or a related field, and successfully completed a national examination in speech-language pathology approved by the Secretary. The Act also defines the qualifications for home health aides at section 1891(a). We believe that the description of qualifications for home health aides would be more appropriately located under the home health aide services COP. Thus, the requirement will be cross-referenced at proposed § 484.75(a).

The third category of personnel qualifications would include those persons for whom all States do not currently have a licensing or certification requirement. If a State has licensing or certification requirements for a professional included in this section, then the State qualifications would apply. If a State does not have licensing or certification requirements, then the HHA would apply the qualifications specified below. This category would consist of all current personnel qualifications found under § 484.4 with the exception of audiologists and practical (vocational) nurses. We propose to delete the current requirements for audiologists and practical (vocational) nurses. The existing requirement for practical (vocational) nurses is State licensure in the State practicing; thus it is self-explanatory in our deference to State law. We believe the audiologist requirement is no longer relevant to the home care environment.

We contemplated changing the current requirements for social workers consistent with our approach to deferring to State licensing laws, when applicable, but have not done so in this rule because of the absence of data and outcome measures. We are requesting comments on alternative approaches to personnel qualifications for social workers and the submission of data that would support the retention or change to the current personnel qualifications for social workers in this rule.

We propose to revise the existing personnel qualifications for HHA administrators. An administrator is a person who is licensed as a physician; or holds an undergraduate degree and is a registered nurse; or has education and experience in health service administration, with at least one year of supervisory or administrative experience in home health care or a related health care program and in financial management.

We propose to revise the definition of administrator to provide that an administrator who is a registered nurse must possess a bachelor's degree. Additionally, we would specify the type of education or experience that an administrator who is not a physician or a registered nurse must have. Specifically, as stated above, such a person would need education or experience in home health care or a related health care program and in monitoring the financial aspects of program management. In light of the fact that many HHAs experience financial difficulties as a result of poor or inefficient management, we believe that our proposed requirement that the administrator have education or experience in financial management would be beneficial. Additionally, we believe that this proposed requirement is necessary since inefficient financial management of an HHA can ultimately lead to low quality patient care. We note that States do not have licensing requirements for HHA administrators; thus, as in the past, HHAs would continue to apply our requirements.

In addition, in the event that a State does not have any licensure or certification for the following professions, the HHA would apply the qualifications specified below:

Occupational Therapist—A person who: (a) Is a graduate of an occupational therapy curriculum accredited jointly by the Committee on Allied Health Education and Accreditation of the American Medical Association and the American Occupational Therapy Association; or (b) is eligible for the National Registration Examination of the American Occupational Therapy Association; or (c) has 2 years of appropriate experience as an occupational therapist, and has achieved a satisfactory grade on a proficiency examination conducted, approved, or sponsored by the U.S. Public Health Service, except that such determinations of proficiency do not apply with respect to persons initially licensed by a State or seeking initial

qualification as an occupational therapist after December 31, 1977.

Occupational therapy assistant—A person who: (a) Meets the requirements for certification as an occupational therapy assistant established by the American Occupational Therapy Association; or (b) has 2 years appropriate experience as an occupational therapy assistant, and has achieved a satisfactory grade on a proficiency examination conducted, approved, or sponsored by the U.S. Public Health Service, except that such determinations of proficiency do not apply with respect to persons initially licensed by a State or seeking initial qualification as an occupational therapy assistant after December 31, 1977.

Physical therapist—A person who: (a) Has graduated from a physical therapy curriculum approved by: (1) The American Physical Therapy Association; or (2) The Committee on Allied Health Education and Accreditation of the American Medical Association; or (3) The Council on Medical Education of the American Medical Association and the American Physical Therapy Association; or (b) Prior to January 1, 1966 (1) Was admitted to membership by the American Physical Therapy Association, or (2) was admitted to registration by the American Registry of Physical Therapist, or (3) has graduated from a physical therapy curriculum in a 4-year college or university approved by a State department of education; or (c) has 2 years of appropriate experience as a physical therapist, and has achieved a satisfactory grade on a proficiency examination conducted, approved, or sponsored by the U.S. Public Health Service except that such determinations of proficiency do not apply with respect to persons initially licensed by a State or seeking qualifications as a physical therapist after December 31, 1977; or (d) was licensed or registered prior to January 1, 1966, and prior to January 1, 1970, had 15 years of full-time experience in the treatment of illness or injury through the practice of physical therapy in which the services were rendered under the order and direction of attending and referring doctors of medicine or osteopathy; or (e) if trained outside of the United States (1) Was graduated since 1928 from a physical therapy curriculum approved in the country in which the curriculum was located and in which there is a member organization of the World Confederation for Physical Therapy; (2) meets the requirements for membership in a member organization of the World Confederation for Physical Therapy.

Physical therapy assistant—A person who: (1) Has graduated from a 2-year college-level program approved by the American Physical Therapy Association; or (2) has 2 years of appropriate experience as a physical therapy assistant, and has achieved a satisfactory grade on a proficiency examination conducted, approved or sponsored by the U.S. Public Health Service, except that these determinations of proficiency do not apply to persons initially licensed by a State or seeking initial qualification as a physical therapy assistant after December 31, 1977.

Public health nurse—A registered nurse who has completed a baccalaureate degree program approved by the National League for Nursing for public health nursing preparation or postregistered nurse study that includes content approved by the National League for Nursing for public health nursing preparation.

Registered nurse—A licensed graduate of an approved school of professional nursing.

Social worker assistant—A person who: (1) Has a baccalaureate degree in social work, psychology, sociology, or other field related to social work, and has had at least 1 year of social work experience in a health care setting; or (2) has 2 years of appropriate experience as a social work assistant, and has achieved a satisfactory grade on a proficiency examination conducted, approved, or sponsored by the U.S. Public Health Service, except that these determinations of proficiency do not apply with respect to persons initially licensed by a State or seeking initial qualifications as a social work assistant after December 31, 1977.

Social worker—A person who has a master's degree from a school of social work accredited by the Council on Social Work Education, and has 1 year of social work experience in a health care setting.

Our approach to personnel credentialing would be as flexible as possible. Our objective is to rely upon State licensure to the extent that States license practitioners required under these conditions of participation. However, the diverse nature of State licensure provisions make it necessary for us to continue to write and apply requirements in some cases. For example, where a State does not license a type of practitioner required in these conditions of participation, a Federal definition is needed to enable HHAs and surveyors to define and meet the requirement. An example of this situation would be a State that does not license occupational therapists. There are also instances when the specific credential applicable to a practitioner is specified in the law. An example of this is a physician, which is defined in section 1861(r) of the Act. Finally, the credentialing philosophy that we have described here would not apply under Medicare Part B, when a specific level or education or training is specified as a pre-condition for reimbursement. Thus, the definitions contained in this section generally apply for HHA certification purposes only in States where there are no State licensure or certification requirements.

IV. Impact Statement

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless we certify that a proposed rule such as this would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all home health agencies are considered small entities. States and individuals are not considered small entities.

In addition, section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operation of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds. We are not preparing a rural impact statement since we have determined, and certify, that this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

Although the provisions proposed in this rule do not lend themselves to a quantitative impact estimate, we do not anticipate that they would have a substantial economic impact on home health agencies. However, to the extent that our proposals may have significant effects on providers or beneficiaries, be viewed as controversial, or be mandated by statute, we believe it is desirable to inform the public of our projections of the likely effects of the proposals.

As discussed in detail above, this proposed rule sets forth new HHA COPs that revise or eliminate many existing requirements and incorporate critical requirements into four "core conditions." These four COPs—Patient Rights, Patient Assessment, Care Planning and Coordination of Services,

and Quality Assessment and Performance Improvement would focus both provider and surveyor efforts on the actual care delivered to the patient, the performance of the HHA as an organization, and the impact of the treatment furnished by the HHA on the health status of its patients. The impact of the proposed rule to incorporate OASIS into the HHA COPs is separately detailed in that proposed rule (which is set forth elsewhere in today's issue of the **Federal Register**). In developing these proposed COPs, we have retained structure and process-oriented requirements only where we believe they are essential to achieving desired patient outcomes or preventing harmful outcomes (for example, home health aide competency and supervision, timeliness of patient assessment).

Under the proposed Comprehensive Assessment COP, we are proposing specific timeframes for the initial assessment, completion of the assessment, and interim updates to the patient assessment. We believe that these requirements, though process-oriented, are predictive of good patient care and safety, as well as necessary to prevent harm to the patient. Our rationale for these timeframes is that by definition, a new patient being referred to a home health agency for initiation of services is at a point of immediate and serious need, especially as patients are returned home from hospital care sooner than ever before. Likewise, as the complexity of the care needs of patients increases, so does the need for comprehensive assessment of the patient. The importance of coming to closure and implementing an effective care plan becomes paramount.

We believe that these timeframe requirements pose little or no burden for the HHA since they would in all likelihood be performed in the absence of regulations. However, the proposed timeframes serve as a strong performance expectation for HHAs that may not have adequate resources (financial and human resources) by setting the outside acceptable time for these activities to occur. If too many patient referrals occur together, effective service delivery to some patients might be delayed by the HHA's inability to see the patient quickly or to conduct and complete the needed comprehensive assessment. Thus, if an HHA recognizes that its workload is such that it is not capable of beginning work with a patient virtually immediately upon referral, the patient should not be accepted for care.

We welcome comments to address whether the specific proposed timeframes in the regulation text are reasonable and consistent with current medical practice, and whether the timeframes should be used as benchmarks to reflect patient health and safety concerns involving the timeliness of the assessment components.

Provision of an assessment would be necessary to provide the appropriate information for compliance with the current plan of care requirements. The existing COPs contain several requirements that address the need for patient assessment, including most notably a long and detailed list of items under existing § 484.18(a) that are required to be covered in a plan of care, such as pertinent diagnoses, mental status, and functional limitations. In place of this requirement, we would emphasize the importance of the comprehensive assessment by establishing patient assessment as a separate COP, specifying the desired outcome of the assessment (that is, the identification of a patient's care needs), and then allowing HHAs the flexibility to determine how best to achieve this outcome. We believe that this approach is consistent with current accepted practices in HHAs and that most HHAs now perform a comprehensive assessment for most of their patients. We need to balance the possible short-term increase in costs or other administrative burden, if any, on the HHA with the long-term fundamental positive effect on patient health resulting from an organized and timely comprehensive assessment. As stated above, we are soliciting comments on the utility of specific timeframes for the comprehensive assessment.

We are proposing to require that HHAs ensure a majority of at least 50 percent of the total skilled professional services are provided directly. We are proposing to phase in this new approach over 3 years. In the first year, HHAs would be required to ensure that at least 30 percent of the skilled professional services are provided directly. In the second year, HHAs would be required to ensure that at least 40 percent of the skilled professional services are provided directly. By the third year of enactment, HHAs would be required to ensure that at least 50 percent of the skilled professional services are provided directly.

Currently, an HHA must provide at least one of the qualifying services directly, but may provide the second qualifying service and additional services under arrangements with another agency or organization. We believe that the excessive use of contracting could be an indication that an HHA may be exceeding its patient capacity, leading to possible instability that can result in disruptions to patient care. Excessive contracting is also a potential indication that the HHA may not be exercising full control over the provision of quality care. Participants in a series of home health initiative meetings agreed that this process requirement is a strong predictor of appropriate management and in proposing this approach we are relying on the judgement of the industry. This is a performance safeguard that seeks to ensure continuity and quality of care through the restriction of contracted care in the home care environment.

It is important to note that HHAs currently report employment data on their cost reports (freestanding HHAs: Form-HCFA–1728–S–3 and hospital-based HHAs: Form-HCFA–2552–H–S–4). We invite comment on this shift in our approach and on any concerns HHAs may have regarding their ability, both operationally and financially, to undertake this new approach. We also invite comment on any other creative approaches that could be used to limit the use of contracted care in the home care industry.

We are proposing that HHAs conduct criminal background checks of home health aides as a condition of employment to safeguard beneficiaries from abusive practices in their home. This proposed requirement may have some impact though not significant, on HHAs, which are considered small entities. We already have similar patient protection requirements in other rules governing other Medicare-participating providers. These protections are especially necessary in the decentralized environment of home health delivery. We are soliciting comments on the impact on the HHA to operationally comply with this requirement.

We are proposing a new standard to address the parent/branch relationship to ensure a consistent level of care throughout the HHA as an organizational entity. We added strength to the current definitions by raising them to standard level requirements. This will enable surveyors to cite a deficiency when the performance by an HHA's branch does not ensure that the branch is meeting the HHA requirements applicable to its operation. HCFA has concern about branches that are not required to independently meet the conditions of participation, but act as an independent HHA and the affect of that situation on the consistency and quality of care provided. We estimate that this standard will not disrupt current business practice because the current definitions of parent and branch office provide a performance

expectation for the HHA as an organizational entity as a condition of participation for Medicare certification. The current definitions provide a clear expectation that the parent office develops and maintains administrative controls of branches; and the branch office is location or site from which a home health agency provides services within a portion of the total geographic area served by the parent agency and is part of the HHA and is located sufficiently close to share administration, supervision and services in a manner that renders it unnecessary for the branch to independently meet these conditions of participation as a home health agency.

More often though, we have eliminated structural or process-oriented requirements that we no longer believe are necessary (such as personnel policies or the prescriptive details concerning the duties of a registered nurse versus those of a licensed practical nurse), in favor of an approach that, through the proposed core COP on quality assessment and performance improvement, invests HHAs with internal responsibility for improving their performance. This approach is intended to incorporate into our regulations current best practices in well-managed HHAs, relying on the HHA to identify and resolve its performance problems in the most effective and efficient manner possible.

We believe that the proposed COPs would decrease the administrative burden on HHAs to comply with detailed Federal requirements, thus reducing the costs incurred by the typical HHA in meeting the Medicare conditions of participation. (See the ◆ information collection section below for examples of specific changes in the recordkeeping and paperwork burden of HHAs that would be associated with this proposed rule.) Instead, the proposed COPs would provide HHAs with much more flexibility to determine how best to pursue our shared quality of care objectives in the most cost-effective manner. We expect HHAs to develop different approaches to compliance based on their varying resources and patient populations, differences in laws in various localities (such as those concerning personnel standards), and other factors. Given the uncertainties over the behavior of individual HHAs under the proposed new COPs, quantitative analysis of the effects of these proposed changes is not possible. However, even in situations where the proposed requirements could result in some immediate costs to an individual HHA (for example, for an HHA that would need to upgrade its existing performance evaluation program), we believe that the changes that the HHA would make would produce real but difficult to estimate long-term economic benefits (such as more cost-effective performance practices or higher patient satisfaction that could lead to increased business for the HHA.)

We believe that the proposed COPs would decrease the regulatory burden on HHAs and provide them with greatly enhanced flexibility. At the same time, the proposed requirement for a program of continuous quality assessment and performance improvement would increase performance expectations for HHAs in terms of achieving needed and desired outcomes for patients and increasing patient satisfaction with services provided. This patient-centered, outcome oriented change in approach to the regulation will also likely fundamentally change our approach to the survey process. For example, since the proposed regulation sets performance expectations for the HHA to constantly improve, it may be possible to alter significantly, or possibly eliminate altogether the current Functional Assessment Instrument (FAI), which surveyors use to assess the outcomes of care through home visits and some record review. In an expanded review of the agency's approach to quality assessment and performance improvement, we may approach this task differently, with greater flexibility than the current FAI affords. We invite comment on this fundamental shift in our regulatory approach and on any concerns HHAs may have regarding their ability, both operationally and financially, to undertake this new approach. We are especially interested in comments that address how HCFA could improve this approach, what additional flexibility could be provided, what (if any) process requirements that are critical to patient care and safety should be added, and how well HCFA's investment in the HHA's participation in a strong continuous quality assessment and performance improvement program of their own design will achieve our stated and intended goal of improving the efficiency, effectiveness and quality of patient outcomes and satisfaction. We are especially interested in comments that address how HCFA could improve this approach, what additional flexibility could be provided, what (if any) process requirements that are critical to patient care and safety should be added, and how well HCFA's investment in the HHA's participation in a strong continuous quality assessment and performance improvement program of its own design will achieve our stated and intended goal of improving the efficiency, effectiveness, and quality of patient outcomes and satisfaction.

For the reasons given above, we certify that the proposed rule will not have a significant effect on a substantial number of small entities and that a regulatory flexibility analysis is not needed.

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, agencies are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we are soliciting comment on each of these issues for the proposed information collection requirements discussed below.

The title and description of the individual information collection requirements are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

As indicated earlier in this preamble, the current regulations dealing with the HHA conditions of participation are contained in part 484 of the Code of Federal Regulations. The information collection requirements for this part are currently approved under OMB approval number 0983–0365 with an expiration date of May 31, 1998. Since we are proposing to revise or delete many of the information collection

requirements in the existing HHA conditions of participation, we will be seeking OMB approval for all of the information collection requirements contained in the proposed part 484, including those that are currently approved under OMB approval number 0983–0365. Many of these requirements are performed only once by each HHA (such as the development of a standard patient's right disclosure) or would normally be performed by an HHA in the normal course of responsible business practices in the absence of these requirements (such as the maintenance of patient's records) and therefore represent a minimal, if any, burden on HHAs. Following is a list of the specific information collection requirements contained in the proposed 42 CFR Part 484.

Section 484.50 Patient's Rights

This section dealing with patient's rights mirrors those information collection requirements in section 4021 of OBRA '87, which specify the rights of patients receiving services from Medicare certified HHAs. These requirements are necessary to ensure compliance with statutory responsibilities at section 1891 of the Act. Current requirements at § 484.10 that are retained in the proposed rule include:

a. A HHA must provide the patient with a written notice of the patient's rights in advance of providing care and document that it has complied with this requirement.

b. The HHA must document the existence and resolution of complaints about care furnished by the HHA that were made by the patient, the patient's family or guardian.

c. The HHA must advise the patient in advance of the disciplines that will furnish the care, the plan of care, expected outcomes, barriers to treatment, and any changes in the care to be furnished.

d. The HHA must advise the patient of the HHA's policies and procedures regarding disclosure of patient records.

e. The HHA must advise the patient of his/her liability for payment.

f. The HHA must advise the patient of the number, purpose, and hours of operation of the State home health hotline.

Burden Estimate

We foresee that the HHAs will develop a standard notice of rights that will fulfill the requirements contained in this section. The standard notice will contain a checklist to be completed by the HHA in a manner appropriate to each patient being accepted. A carbon copy of the signed notice will serve as documentation of compliance. We estimate that the completion of this form will impose a burden of approximately 3 seconds per each current HHA patient for 1 year (3 seconds × 3.4 million patients) = 2,833 hours and each new admission in succeeding years (3 seconds × 800,000 (approximate admission in 1995) = 666 hours.

In the rare circumstances to which paragraph (b) applies, it is already common practice to have this information retained in the HHA's record. Therefore, this requirement imposes no burden.

Section 484.55 Comprehensive Assessment

This new section on comprehensive assessment of the patient would require HHAs to provide each patient with a comprehensive assessment (including drug regimen review) of his or her needs which would be used to develop expectations for treatment. We are proposing specific timeframes for the initial assessment visit and completion of the assessment of the patient because we believe that these requirements are predictive of good patient care and safety and as well as the prevention of harm to the patient. As many HHAs are already performing a standardized patient assessment within their own internal policies, we believe that these timeframes pose little or no burden since they would in all likelihood be performed in the absence of regulations. In addition, since HHAs already routinely obtain assessment information from patients upon initiation of care and on an ongoing basis during treatment, we believe this new requirement would not place an information collection or paperwork burden on HHAs. The proposed assessment timeframes serve as a strong performance expectation for HHAs.

It is important to note that this proposed rule does not include the requirement that HHAs participate in an external quality improvement process incorporating the core standard assessment data set. As discussed above, HCFA is proposing to require use of a core standard assessment data set, as discussed elsewhere in today's issue of the **Federal Register**. Reporting requirements associated with that proposal are discussed separately in that **Federal Register** notice.

Section 484.60 Care Planning and Coordination of Services

This new section reflects an interdisciplinary, coordinated approach to home health care delivery. The proposed new care planning and coordination of services section sets forth the requirement that each patient's written plan of care specifies the care and services necessary to meet the patient specific needs identified in the comprehensive assessment and the measurable outcomes that the HHA anticipates will occur as a result of implementing and coordinating the plan of care. This new section incorporates several of the existing requirements under current § 484.18. Section 484.18 consists of longstanding requirements which implement statutory provisions found in sections 1835 and 1814 of the Act, as well as section 1891(a) as amended by OBRA '87 for non-Medicare patients. In addition, HCFA Forms 485–488 are currently approved under OMB No. 0938–0357.

Burden Estimate

We believe that these requirements are commonly accepted as good medical practice. Therefore, they would impose little or no burden on HHAs as they would in all likelihood be performed even in the absence of these regulations. The only anticipated burden associated with this requirement concerns the possible establishment and periodic review of plans of care by doctors of osteopathy or podiatry. We estimate that this will affect approximately 3 percent of home health patients, resulting in a burden of 24,000 × 5 minutes = 2,000 hours for new admissions and 102,000 × 3 minutes = 5,100 hours for existing patients.

Section 484.65 Quality Assessment and Performance Improvement

This new section requires the HHA to develop, implement, maintain and evaluate an effective, data driven quality assessment and performance improvement program. Current requirements for HHAs do not provide for the operation of an internal quality assessment and performance improvement program, whereby the HHA examines its methods and practices of providing care, identifies the opportunities to improve its performance and then takes actions that result in higher quality of care for HHA patients. We have not prescribed the structures and methods for implementing this requirement and have focused the condition toward the expected results of the program. This provides flexibility to the HHA, as it is free to develop a creative program that meets the HHA's needs and reflects the scope of its services. This new provision would replace the current conditions at § 484.16 Group of professional personnel and § 484.52 Evaluation of an agency's program.

Burden Estimate

We believe the writing of internal policies governing the HHA's approach to the development, implementation, maintenance, and evaluation of the quality assessment and performance improvement program will impose a burden. We want HHAs to utilize maximum flexibility in their approach to quality assessment and performance improvement programs. Flexibility is provided to HHAs to ensure that each program reflects the scope of its services. We believe that this requirement provides a performance expectation that HHAs will set their own goals and use the information to continuously strive to improve their performance over time. Given the variability across HHAs and the flexibility provided, we believe that the burden associated with writing the internal policies governing the approach to the development, implementation, and evaluation of the quality assessment and performance improvement program will reflect that diversity. Given the variability, it is difficult to predict an exact burden. We want to provide flexibility and do not want to be prescriptive in defining hourly parameters. However, we need to quantify the burden associated with this requirement. We estimate that the burden associated with writing the internal policies would be an average of 4 hours annually (although this figure may be much lower, since many HHAs have existing internal quality improvement programs). We estimate on average:

4 hours × 9,058 (total number of Medicare-certified HHAs in calendar year 1995) = 36,232 hours
4 hours × 1,145 (total number of newly certified HHAs in calendar year 1995) = 4,580 hours

Section 484.70 Skilled Professional Services

This new section would require skilled professionals who provide services to HHA patients as employees or under arrangement to participate in all aspects of care, including an ongoing interdisciplinary evaluation and development of the plan of care and be actively involved in the HHA's quality assessment and performance improvement program. In place of current provisions governing skilled nursing services § 484.30, therapy services § 484.32, and medical social services § 484.34 we would consolidate all new requirements under one new condition, Skilled professional services. We are broadly describing the expectations of skilled professionals who participate in the interdisciplinary approach to home health care delivery. The current requirements are commonly accepted as good medical practice and therefore impose little or no burden on the HHAs as they would in all likelihood be performed in the absence of Federal regulations.

We are proposing a new standard that the HHA must ensure that a majority of at least 50 percent of total skilled professional services are routinely provided directly. We are proposing to phase in this new approach over three years. In the first year, HHAs would be required to ensure at least 30 percent of the total skilled professional services are provided directly. In the second year, HHAs would be required to ensure at least 40 percent of the total skilled professional services are provided directly. In the third year, we would require at least 50 percent of the total skilled professional services are provided directly. The requirement that the HHAs determine compliance with this standard imposes a one-time annual burden of 2 minutes on existing HHAs and any newly certified HHAs to determine the total number of skilled professional visits that are provided directly. HHAs currently report employment data (full-time equivalents) on their cost reports (freestanding HHAs: Form HCFA–1728–S–3 currently approved under OMB number 0938–0022 and hospital based HHAs: Form HCFA–2552–H–S–4 currently approved under OMB number 0938–0050).

Burden Estimate

2 minutes × 9,058 existing HHAs = 302 hours
2 minutes × 1,145 newly certified HHAs = 39 hours

Section 484.75 Home Health Aide Services

This section governs the requirements for home health aide services. Many requirements in this section directly mirror the statutory requirements of section 4021 of OBRA '87. The requirements are longstanding and implement sections 1891 and 1861 of the Act: (1) The HHA must maintain sufficient documentation to demonstrate that training requirements are met; (2) The HHA's competency evaluation must address all required subjects; (3) The HHA must maintain documentation that demonstrates that requirements of competency evaluation are met; and (4) A registered nurse or appropriate skilled professional prepares written instructions for care to be provided by the home health aide.

In addition, this section requires the HHA to conduct criminal background checks of home health aides as a condition of employment.

Burden Estimate

The first requirement imposes no additional burden as this documentation will be included in personnel records. The second requirement will impose a one time burden (to develop competency evaluation) on all existing agencies and any newly certified agencies in the future. We estimate that it will require approximately 2 hours for each HHA to formulate this evaluation (although this figure may be much lower in practice if agencies chose to adopt standardized evaluation forms).

2 hours × 9,058 existing HHAs = 18,116 hours annually
2 hours × 1,145 newly certified HHAs each year = 2,290 hours annually

Maintaining documentation that demonstrates that each aide has met the evaluation requirements imposes no burden as this information will be retained in personnel records. The third requirement imposes a burden of approximately 3 minutes for each newly admitted patient that receives aide care, or 3 minutes × 260,000 (estimated number of patients receiving aide care) = 13,000 hours.

We are not able at this time to estimate the burden associated with the requirement that the HHA conduct criminal background checks of home health aides. We solicit comments on whether HHAs believe this requirement will impose an additional burden on them and what that burden would be.

Section 484.100 Compliance With Federal, State, and Local Laws

Under this section, the HHA must disclose to the State Survey Agency at the time of the HHA's initial request for certification the name and address of all persons with an ownership or control interest in the HHA, the name and address of all officers, directors, agents, and managers of the HHA, as well as the name and address of the corporation or association responsible for the management of the HHA and the chief executive and chairman of that corporation or association. This requirement directly implements section 4021 of OBRA '87.

Burden Estimate

This provision expands upon a similar requirement currently contained in § 405.1221(b). It imposes a minimal burden of adding the necessary additional information to the current disclosure used by existing HHAs and

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the creation of a new disclosure of ownership for newly certified HHAs. The burden for supplementing the existing disclosure with the required additional information is estimated at—

5 minutes × 9,058 (total number of Medicare certified HHAs in 1995) = 755 hours

5 minutes × 1,145 (number of newly certified HHAs in 1995) = 95 hours

Section 484.105 Organization and Administration of Services

The revised organization and administration of services condition simplifies the structure of the current requirements and provides flexibility to the HHA by replacing the current focus on organizational structures with new performance expectations for the administration of the HHA as an organizational entity. In the proposed condition we revise the current standard on governing body § 484.14(b), retain with only minor editorial changes the current standard on services furnished § 484.12(a), retain with only minor editorial changes, the requirements with respect to services furnished under arrangements under existing § 484.14(h), delete the current standards on the administrator § 484.14(c), delete the current standards on supervising physician or registered nurse § 484.14(d), delete the current standards on personnel policies § 484.14(e), delete the current standards on institutional planning § 484.14(i), relocate current condition § 484.38 under this condition and relocate the current standard on laboratory services under the compliance with Federal, State and local laws condition.

The current institutional planning requirements under § 484.14(i) impose 5,474.5 hours of burden under the current HHA conditions of participation. We are proposing to delete that requirement from the HHA conditions of participation, therefore, reducing current burden associated with the institutional planning requirements.

Section 484.110 Clinical Records

A clinical record containing pertinent past and current findings is maintained for every patient receiving home health services. Clinical records are retained for 5 years after the month the cost report to which the records is filed with the intermediary. Written procedures govern the use and removal of records and conditions for release of information. This section contains longstanding provisions which are specifically required in section 1861(o) of the Act and are necessary to the preservation of the patient's privacy and the quality of care. There is no burden associated with the retention of patient records as this merely entails the filing of a copy of the record.

Total Burden Estimate

The total annual hourly burden for the information collection requirements under the revisions proposed to the HHA conditions of participation is estimated to be 86,008 hours. We estimate the annual hourly burden under the revised COPs to be 8.4 hours per Medicare-certified HHA (86,008 total hours/10,203 (total number of Medicare-certified HHAs and newly certified HHAs in calendar year 1995). The total annual hourly burden for the information collection requirements under OMB approval number 0938–0365 (current HHA conditions of participation) was estimated to be 7.7 hours per Medicare-certified HHA (69,499 total hours/9,009 (total number of Medicare-certified HHAs and newly certified HHAs as of November 1994).

Again, we welcome comments on all aspects of the above material. Written comments on these information collection and recordkeeping requirements should be mailed directly to the following:

Health Care Financing Administration, Office of Financial and Human Resources, Management Planning and Analysis Staff, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850; and Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building Washington, DC 20503, Attention: Allison Herron Eydt, HCFA Desk Officer.

Any comments submitted on these collection of information requirements must be received by these two offices on or before May 9, 1997, to enable OMB to act promptly on HCFA's information collection approval request.

VI. Crosswalk Current COPs/Revised COPs

Current COPs	Revised COPs
Patient Rights 484.10:	
484.10(a)	Intact 484.50(a).
484.10(b)	Revised 484.50(b).
484.10(c)	Revised 484.50(c).
484.10(d)	Revised 484.50(d).
484.10(e)	Intact 484.50(e).
484.10(f)	Intact 484.50(f).
Compliance with Federal, State and local laws, disclosure of ownership information 484.12:	
484.12(a)	Intact with minor revisions 484.100(a).
484.12(b)	Intact 484.100(b).
484.12(c)	Incorporated into QAPI 484.65.
Organization, Services and Administration 484.14:	
484.14(a)	Revised 484.105(e).
484.14(b)	Revised 484.105(a).
484.14(c)	Revised 484.105(a).
484.14(d)	Deleted.
484.14(e)	Incorporated into QAPI 484.65.
484.14(f)	Deleted.
484.14(g)	Revised 484.60(d).
484.14(h)	Revised 484.105(d).
484.14(i)	Deleted.
484.14(j)	Intact 484.100(d).
Group of Professional Personnel 484.16	Deleted—QAPI approach 484.65.
Acceptance of patients, plan of care and medical supervision 484.18:	
484.18(a)	Revised 484.60(a).
484.18(b)	Revised 484.60(b).
484.18(c)	Revised 484.60(c) and 484.55(a).

Current COPs	Revised COPs
Skilled Nursing Services 484.30	Deleted—combined aspects 484.70.
Therapy Services 484.32	Deleted—combined aspects 484.70.
Medical Social Services 484.34	Deleted—combined aspects 484.70.
Home Health Aide Services 484.36:	
484.36(a)	Intact 484.75(b).
484.36(a)(1)(i)	Revised 484.75(b)(1)(i).
484.36(a)(1) (ii)–(xii)	Intact 484.75(b)(1) (ii)–(xii).
484.36(a)(1)(xiii)	Revised 484.75(b)(1)(xiii).
484.36(a)(2)(i)	Intact 484.75(b)(2).
484.36(a)(2)(ii)	Revised 484.75(b)(3).
484.36(a)(3)	Revised 484.75(b)(4).
484.36(b)(1)	Revised 484.75(c)(1).
484.36(b)(2)(i)	Intact 484.75(c)(2).
484.36(b)(2)(ii)	Deleted.
484.36(b)(2)(iii)	Revised 484.75(d)(1).
484.36(b)(3)(i)	Revised 484.75 (c)(3) and (d)(2).
484.36(b)(3)(ii)	Revised 484.75(c)(4).
484.36(b)(3)(iii)	Revised 484.75(c)(2).
484.36(b)(4)(i)	Intact 484.75(c)(5).
484.36(b)(4)(ii)	Deleted.
484.36(b)(5)	Intact 484.75(c)(6).
484.36(b)(6)	Deleted.
484.36(c)	Revised 484.75(e).
484.36(d)	Revised 484.75(f).
484.36(e)	Intact 484.75(g).
Qualifying to furnish outpatient PT or Speech language pathology 484.38.	Intact 484.105(f).
Clinical Records 484.48	Revised 484.110.
Evaluation of Agency's Program 484.52	Deleted QAPI approach 484.65.
Definitions 484.2	Revised 484.2.
Personnel Qualifications 484.4	Revised Approach 484.115.

VII. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

HCFA proposes to amend 42 CFR chapter IV as follows:

PART 484—CONDITIONS OF PARTICIPATION: HOME HEALTH AGENCIES

1. The authority citation for part 484 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395(hh)).

2. Part 484 is revised to read as follows:

PART 484—CONDITIONS OF PARTICIPATION: HOME HEALTH AGENCIES

Subpart A—General Provisions

Sec.
484.1 Basis and scope.
484.2 Definitions.

Subpart B—Patient Care

484.50 Condition of participation: Patient rights.
484.55 Condition of participation: Comprehensive assessment of patients.
484.60 Condition of participation: Care planning and coordination of services.
484.65 Condition of participation: Quality assessment and performance improvement.
484.70 Condition of participation: Skilled professional services.
484.75 Condition of participation: Home health aide services.

Subpart C—Organizational Environment

484.100 Condition of participation: Compliance with Federal, State, and local laws.
484.105 Condition of participation: Organization and administration of services.
484.110 Condition of participation: Clinical records.
484.115 Condition of participation: Personnel qualifications for skilled professionals.

Subpart A—General Provisions

§ 484.1 Basis and scope.

(a) *Basis.* This part is based on sections 1861(o) and 1891 of the Act, which establish the conditions that an HHA must meet in order to participate in Medicare, and specify that the Secretary may impose additional requirements that are considered necessary to ensure the health and safety of patients.

(b) *Scope.* The provisions of this part serve as the basis for survey activities for the purpose of determining whether an agency meets the requirements for participation in Medicare.

§ 484.2 Definitions.

As used in this part—

Branch office means a location or site from which a home health agency provides services within a portion of the total geographic area served by the parent agency. The branch office is part of the home health agency and is located sufficiently close to share administration, supervision, and services in a manner that renders it unnecessary for the branch independently to meet the conditions of participation as a home health agency.

Parent home health agency means the agency that develops and maintains administrative control of branches.

Quality indicator means a specific, valid, and reliable measure of access, care outcomes, or satisfaction, or a measure of a process of care that has been empirically shown to be predictive of access, care outcomes, or satisfaction.

Subpart B—Patient Care

§ 484.50 Condition of participation: Patient rights.

The patient has the right to be informed of his or her rights. The HHA must protect and promote the exercise of these rights.

(a) *Standard: Notice of rights.*

(1) The HHA must provide the patient with a written notice of the patient's rights in advance of furnishing care to the patient or during the initial evaluation visit before the initiation of treatment.

(2) The HHA must maintain documentation showing that it has complied with the requirements of this section.

(b) *Standard: Exercise of rights and respect for property and person.*

(1) The patient has the right to exercise his or her rights as a patient of the HHA.

(2) The patient's family or guardian may exercise the patient's rights when the patient has been judged incompetent.

(3) The patient has the right to have his or her property treated with respect.

(4) The patient has the right to voice grievances regarding treatment or care that is (or fails to be) furnished, or regarding the lack of respect for property by anyone who is furnishing services on behalf of the HHA and must not be subjected to discrimination or reprisal for doing so.

(5) The HHA must investigate complaints made by a patient or the patient's family or guardian regarding treatment or care that is (or fails to be) furnished, or regarding the lack of respect for the patient or the patient's property by anyone furnishing services on behalf of the HHA, and must document both the existence of the complaint and the resolution of the complaint.

(c) *Standard: Right to be informed and to participate in planning care and treatment.*

(1) The patient has the right to be informed, in advance, about the care to be furnished, the plan of care, expected outcomes, barriers to treatment, and of any changes in the care to be furnished.

(i) The HHA must advise the patient in advance of the disciplines that will furnish care, and the frequency of visits proposed to be furnished.

(ii) The HHA must advise the patient in advance of any change in the plan of care before the change is made.

(2) The patient has the right to participate in the planning of the care.

(i) The HHA must advise the patient in advance of the right to participate in planning the care or treatment and in planning changes in the care or treatment.

(ii) The HHA must comply with the requirements of subpart I of part 489 of this chapter relating to maintaining written policies and procedures regarding advance directives. The HHA must inform and distribute written information to the patient, in advance, concerning its policies on advance directives, including a description of applicable State law.

(d) *Standard: Confidentiality of medical clinical records.* The patient has the right to confidentiality of the clinical records maintained by the HHA. The HHA must advise the patient of the agency's policies and procedures regarding disclosure of clinical records.

(e) *Standard: Patient liability for payment.*

(1) The patient has the right to be advised, before care is initiated, of the extent to which payment for the HHA services may be expected from Medicare or other sources, and the extent to which payment may be required from the patient. Before the plan of care is initiated, the HHA must inform the patient orally and in writing of:

(i) The extent to which payment may be expected from Medicare, Medicaid, or any other Federally funded or aided program known to the HHA;

(ii) The charges for services that will not be covered by Medicare; and

(iii) The charges that the individual may have to pay.

(2) The patient has the right to be advised orally and in writing of any changes in the information provided in accordance with paragraph (e)(1) of this section when they occur. The HHA must advise the patient of these changes orally and in writing as soon as possible, but no later than 30 calendar days from the date that the HHA becomes aware of a change.

(f) *Standard: Home health hotline.* The patient has the right to be advised of the availability of the toll-free home health hotline in the State. When the agency accepts the patient for treatment or care, the HHA must advise the patient in writing of the telephone number of the home health hotline established by the State, the hours of its operation, and that the purpose of the hotline is to receive complaints or questions about local HHAs.

§ 484.55 Condition of participation: Comprehensive assessment of patients.

Each patient must receive, and an HHA must provide, a patient-specific, comprehensive assessment that identifies the patient's need for home care and that meets the patient's medical, nursing, rehabilitative, social, and discharge planning needs.

(a) *Standard: Drug regimen review.* The comprehensive assessment must include a review of the patient's drug regimen in order to identify any potential adverse effects and drug reactions, including ineffective drug therapy, significant side effects, significant drug interactions, duplicate drug therapy, and noncompliance with drug therapy.

(b) *Standard: Initial assessment visit.*

(1) Based on physician's orders, a registered nurse must perform an initial assessment visit to determine the immediate care and support needs of the patient. The initial assessment visit must be held either within 48 hours of referral, or within 48 hours of the patient's return home, or within 48 hours of the physician-ordered start of care date, if that is later.

(2) When rehabilitation therapy service (speech language pathology services, physical therapy, or occupational therapy) is the only service ordered by the physician, the initial assessment visit may be made by the appropriate rehabilitation skilled professional.

(c) *Standard: Timeframe for completion of the comprehensive assessment.* The HHA must complete the comprehensive assessment in a timely manner consistent with the patient's immediate needs, but no later than 5 working days after the start of care.

(d) *Standard: Update of comprehensive assessment.* The comprehensive assessment must include information on the patient's progress toward clinical outcomes, and must be updated and revised—

(1) As frequently as the condition of the patient requires, but not less frequently than every 62 days beginning with the start of care date;

(2) When the plan of care is revised for physician review; and

(3) At discharge.

§ 484.60 Condition of participation: Care planning and coordination of services.

Each patient must have a written plan of care that must specify the care and services necessary to meet the patient-specific needs identified by the physician or in the comprehensive assessment, or both, and the measurable outcomes that the HHA anticipates will occur as a result of implementing and coordinating the plan of care. Patients are accepted for treatment on the basis of a reasonable expectation that the patient's medical, nursing, and social needs can be met adequately by the agency in the patient's place of residence.

(a) *Standard: Plan of care.* All home health services furnished to patients must follow a written plan of care established and periodically reviewed by a doctor of medicine, osteopathy, or podiatric in accordance with § 409.42 of this chapter. All patient care orders must be included in the plan of care.

(b) *Standards: Review and revision of the plan of care.*

(1) The plan of care must be reviewed and revised by the physician and the HHA as frequently as the patient's condition requires, but no less frequently than once every 62 days, beginning with the date of start of care. The HHA must promptly alert the physician to any changes in the patient's condition that suggest a need to alter the plan of care or that suggest that measurable outcomes are not being achieved.

(2) A revised plan of care must include current information from the patient's comprehensive assessment and information concerning the patient's progress toward outcomes specified in the plan of care.

(c) *Standard: Conformance with physician orders.*

(1) Services and treatments must be administered by agency staff only as ordered by the physician.

(2) Oral orders must be accepted only by personnel authorized to do so by applicable State and Federal laws and regulations as well as by the HHA's internal policies.

(3) When services are provided on the basis of a physician's oral orders, a registered nurse or qualified therapist responsible for furnishing or supervising the ordered services must put the orders in writing and sign and date the orders with the date of receipt. Oral orders must also be countersigned and dated by the physician.

(d) *Standard: Coordination of care.*

(1) The HHA must maintain a system of communication and integration of services, whether provided directly or under arrangement, that ensures the identification of patient needs and barriers to care, the ongoing liaison of all disciplines providing care, and the contact of the physician for relevant medical issues.

(2) The HHA identifies the level of coordination necessary to deliver care to the patient and involves the patient and care giver in coordination of care efforts.

§ 484.65 Condition of participation: Quality assessment and performance improvement.

The HHA must develop, implement, maintain, and evaluate an effective, data-driven quality assessment and performance improvement program. The program must reflect the complexity of the HHA's organization and services (including those services provided directly or under arrangement). The HHA must take actions that result in improvements in the HHA's performance across the spectrum of care.

(a) *Standard: Components of quality assessment and performance improvement program.* The HHA's quality assessment and performance improvement program must include, but not be limited to, the use of objective measures to demonstrate improved performance with regard to:

(1) Quality indicator data (derived from patient assessments) to determine if individual and aggregate measurable outcomes are achieved compared to a specified previous time period.

(2) Current clinical practice guidelines and professional practice standards applicable to home care.

(3) Utilization data, as appropriate (for example, numbers of staff, types of visits, hours of services, etc.).

(4) Patient satisfaction measures.

(5) Effectiveness and safety of services (including complex high technology services, if provided), including competency of clinical staff, promptness of service delivery, and whether patients are achieving treatment goals and measurable outcomes.

(b) *Standard: Monitoring performance improvement.* The HHA must take actions that result in performance improvements and must track performance to assure that improvements are sustained over time.

(c) *Standard: Prioritizing improvement activities.* The HHA must set priorities for performance improvement, considering prevalence and severity of identified problems and giving priority to improvement activities that affect clinical outcomes. The HHA must immediately correct any identified problems that directly or potentially threaten the health and safety of patients.

(d) *Standard: External quality assessment and performance improvement program.* The HHA must meet periodic external quality assessment and performance improvement reporting requirements as specified by HCFA.

(e) *Standard: Infection control.* The HHA must maintain an effective infection control program in accordance with the policies and procedures of the HHA and Federal and State requirements.

§ 484.70 Condition of participation: Skilled professional services.

Skilled professionals who provide services to HHA patients directly or under arrangement must participate in all aspects of care, including an ongoing multidisciplinary evaluation and development of the plan of care, and be actively involved in the HHA's quality assessment and performance improvement program. For purposes of this section, skilled professional services include skilled nursing services, physical therapy, speech language pathology services, and occupational therapy as specified in § 409.44, and medical social worker and home health aide services as specified in § 409.45.

(a) *Standard: Services of skilled professionals.* Skilled professional services are authorized, delivered, and supervised (that is, given authoritative procedural guidance) only by health care professionals who meet the appropriate qualifications specified under § 484.115 and who practice under the HHA's policies and procedures.

(b) *Standard: Provision of services.* The HHA must ensure that a majority, at least 50 percent, of total skilled professional services are routinely provided directly by the HHA. An HHA may provide other skilled professional visits under arrangement as needed.

§ 484.75 Condition of participation: Home health aide services.

All home health aide services must be provided by individuals who meet the personnel requirements specified in paragraph (a) of this section.

(a) *Standard: Home health aide qualifications.* A qualified home health aide is a person who—

(1) Has successfully completed a State-established or other training program that meets the requirements of paragraph (b) of this section and a competency evaluation program or State licensure program that meets the requirements of paragraph (c) of this section, or a competency evaluation program or State licensure program that meets the requirements of paragraph (c) of this section; or has completed a nurse aide training or competency evaluation program approved by the State as meeting the requirements of §§ 483.151 through 483.154 of this chapter and is currently listed in good standing on the State nurse aide registry;

(2) Under paragraph (a)(1) of this section, an individual is not considered to have completed a training and competency evaluation program, or a competency evaluation program if, since the individual's most recent completion of this program(s), there has been a

continuous period of 24 consecutive months during none of which the individual furnished services described in § 409.40 of this chapter for compensation. If a 24-month lapse in furnishing services has occurred, the individual must complete another training and competency evaluation program or a competency evaluation program, as specified in paragraph (a)(1) of this section, before providing services.

(b) *Standard: Home health aide training.*—(1) *Content and duration of training.* The home health aide training must include classroom and supervised practical training that totals at least 75 hours. A minimum of 16 hours of classroom training must precede a minimum of 16 hours of supervised practical training. "Supervised practical training" means training in a practicum laboratory or other setting in which the trainee demonstrates knowledge while performing tasks on an individual under the direct supervision of a registered nurse or licensed practical nurse. The home health aide training program must address each of the following subject areas:

(i) Communication skills, including the ability to read, write, and make brief and accurate oral and written presentations to patients, care givers, and other HHA staff.

(ii) Observation, reporting, and documentation of patient status and the care or service furnished.

(iii) Reading and recording temperature, pulse, and respiration.

(iv) Basic infection control procedures.

(v) Basic elements of body functioning and changes in body function that must be reported to an aide's supervisor.

(vi) Maintenance of a clean, safe, and healthy environment.

(vii) Recognizing emergencies and knowledge of emergency procedures.

(viii) The physical, emotional, and developmental needs of and ways to work with the populations served by the HHA, including the need for respect for the patient, his or her privacy, and his or her property.

(ix) Appropriate and safe techniques in personal hygiene and grooming that include—

(A) Bed bath.

(B) Sponge, tub, or shower bath.

(C) Hair shampoo (sink, tub, or bed).

(D) Nail and skin care.

(E) Oral hygiene.

(F) Toileting and elimination.

(x) Safe transfer techniques and ambulation.

(xi) Normal range of motion and positioning.

(xii) Adequate nutrition and fluid intake.

(xiii) Any other task that the HHA may choose to have the home health aide perform. The HHA is responsible for training the home health aide, as needed, for skills not covered in this basic checklist.

(2) *Conduct of training: Eligible training organizations.* A home health aide training program may be offered by any organization except an HHA that, within the previous 2 years, has been found——

(i) Out of compliance with the requirements of paragraphs (b) or (c) of this section;

(ii) To permit an individual that does not meet the definition of "home health aide" as specified in paragraph (a) of this section to furnish home health aide services (with the exception of licensed health professionals and volunteers);

(iii) Has been subject to an extended (or partial extended) survey as a result of having been found to have furnished substandard care (or for other reasons at the discretion of HCFA or the State);

(iv) Has been assessed a civil monetary penalty of not less than $5,000 as an intermediate sanction;

(v) Has been found to have compliance deficiencies that endanger the health and safety of the HHA's patients and has had a temporary management appointed to oversee the management of the HHA;

(vi) Has had all or part of its Medicare payments suspended; or

(vii) Under any Federal or State law

(A) Has had its participation in the Medicare program terminated;

(B) Has been assessed a penalty of not less than $5,000 for deficiencies in Federal or State standards for HHAs;

(C) Was subject to a suspension of Medicare payments to which it otherwise would have been entitled;

(D) Had operated under a temporary management that was appointed to oversee the operation of the HHA and to ensure the health and safety of the HHA's patients; or

(E) Was closed or had its residents transferred by the State.

(3) *Conduct of training: Qualifications for instructors.* The training of home health aides must be performed by or under the supervision of a registered nurse. Other individuals may be used to provide instruction under the general supervision of the registered nurse.

(4) *Documentation of training.* The HHA must maintain documentation of the aide's successful completion of a home health aide training and competency evaluation program or competency evaluation program or State approved nurse aide training and competency evaluation to demonstrate that the requirements of this standard are met.

(c) *Standard: Competency evaluation.* An individual may furnish home health services on behalf of an HHA only after that individual has successfully completed a competency evaluation program as described in this section.

(1) The HHA must ensure that all individuals who furnish home health aide services to patients meet the competency evaluation requirements of this section. Personal care aides who exclusively provide personal care services to Medicaid patients under a State Medicaid personal care benefit must meet the requirements specified in paragraph (g) of this section.

(2) The competency evaluation must address each of the subjects listed in paragraphs (b)(1)(ii) through (xiii) of this section. Subject areas specified under paragraphs (b)(1)(iii), (ix), (x), and (xi) of this section must be evaluated by observing the aide's performance of the task with a patient. The remaining subject areas may be evaluated through written examination, oral examination, or after observation of the home health aide with a patient.

(3) A home health aide competency evaluation program may be offered by any organization, except as specified in paragraph (b)(2) of this section.

(4) The competency evaluation must be performed by a registered nurse in consultation with other skilled professionals, as appropriate.

(5) A home health aide is not considered competent in any task for which he or she is evaluated as "unsatisfactory." The aide must not perform that task without direct supervision by a licensed nurse until after he or she received training in the task for which he or she was evaluated as "unsatisfactory" and passes a subsequent evaluation with "satisfactory."

(6) The HHA must maintain documentation that demonstrates the requirements of this standard are met.

(d) *Standard: Inservice training.*

(1) The home health aide must receive at least 12 hours of inservice training in a 12-month period. During the first 12 months of employment, hours may be prorated based on the date of hire. The in-service training may occur while the aide is furnishing care to a patient.

(2) Inservice training may be offered by any organization except one that is excluded under paragraph (b)(2) of this section.

(3) The inservice training must be supervised by a registered nurse.

(e) *Standard: Home health aide assignments.*

(1) The home health aide is assigned to a specific patient by the registered nurse. Written patient care instructions for the home health aide must be prepared by the registered nurse or other appropriate skilled professional (that is, physical therapist, speech language pathologist, or occupational therapist) who is responsible for the supervision of the home health aide as specified under paragraph (f) of this section.

(2) The home health aide provides services that are ordered by the physician in the plan of care and that the aide is permitted to perform under State law. The duties of a home health aide include the provision of hands-on personal care, performance of simple procedures as an extension of therapy or nursing services, assistance in ambulation or exercises, and assistance in administering medications that are ordinarily self-administered.

(3) Home health aides must report changes in the patient's medical, nursing, rehabilitative, and social needs to the registered nurse or other appropriate skilled professional, and complete appropriate records in compliance with the HHA policies and procedures.

(f) *Supervision.*

(1) If the patient receives skilled nursing care, the registered nurse must perform the supervisory visit required under paragraph (f)(2) of this section. If the patient is not receiving skilled nursing care, but is receiving another skilled service (that is, physical therapy, occupational therapy, or speech-language pathology services), supervision may be provided by the appropriate skilled professional. Documentation of the supervisory visit must be made in the patient's record.

(2) The registered nurse (or another professional described in paragraph (f)(1) of this section) must make an onsite visit to the patient's home no less frequently than every 2 weeks.

(3) If home health aide services are provided to a patient who is not receiving skilled nursing care, physical or occupational therapy, or speech-language pathology services, the registered nurse must make a supervisory visit to the patient's home no less frequently than every 62 days. In these cases, each supervisory visit must occur while the home health aide is providing patient care to ensure that the aide is properly caring for the patient.

(4) If home health aide services are provided by an individual who is not employed directly by the HHA, the services of the home health aide must be provided under arrangement as defined in section 1861(w)(1) of the Act (42 U.S.C. 1395 x(w)). If the HHA chooses to provide home health aide services under arrangement with another organization, the HHA's responsibilities include, but are not limited to—

(i) Ensuring the overall quality of care provided by the aide;

(ii) Supervision of the aide's services as described in paragraphs (f)(1) and (2) of this section; and

(iii) Ensuring that home health aides providing services under arrangement have met the training or competency evaluation requirements, or both, of this condition.

(g) *Standard: Medicaid personal care aide services—Medicaid personal care benefit.*

(1) *Applicability.* This paragraph applies to individuals who are employed by HHAs exclusively to furnish personal care attendant services under a Medicaid personal care benefit.

(2) *Rule.* An individual may furnish personal care services, as defined in § 440.170 of this chapter, on behalf of an HHA after the individual has been found competent by the State to furnish those services for which a competency evaluation is required by this section and which the individual is required to perform. The individual need not be determined competent in those services listed in this section that the individual is not required to furnish.

Subpart C—Organizational Environment

§ 484.100 Condition of participation: Compliance with Federal, State, and local laws.

(a) *Standard: Compliance with Federal, State, and local laws and regulations.* The HHA and its staff must operate and furnish services in compliance with all Federal, State, and local laws and regulations applicable to HHAs. If a State has established licensing requirements for HHAs, all HHAs must be approved by the State licensing authority as meeting those requirements whether or not they are required to be licensed by the State.

(b) *Standard: Disclosure of ownership and management information.* The HHA must comply with the requirements of part 420, subpart C of this chapter. The HHA also must disclose the following information to the State survey agency at the time of the HHA's initial request for certification, for each survey, and at the time of any change in ownership or management:

(1) The name and address of all persons with an ownership or control interest in the HHA as defined in §§ 420.201, 420.202, and 420.206 of this chapter.

(2) The name and address of each person who is an officer, a director, an agent, or a managing employee of the HHA as defined in §§ 420.201, 420.202, and 420.206 of this chapter.

(3) The name and address of the corporation, association, or other company that is responsible for the management of the HHA, and the name and address of the chief executive officer and the chairperson of the board of directors of that corporation, association, or other company responsible for the management of the HHA.

(c) *Standard: Licensing.* The HHA and its branches must be licensed in accordance with State licensure laws, if applicable, prior to providing Medicare reimbursed services.

(d) *Standard: Laboratory services.*

(1) If the HHA engaged in laboratory testing outside of the context of assisting an individual in self-administering a test with an appliance that has been cleared for the purpose by the Food and Drug Administration, such testing must be in compliance with all applicable requirements of part 493 of this chapter.

(2) If the HHA chooses to refer specimens for laboratory testing to another laboratory, the referral laboratory must be certified in the appropriate specialties and subspecialties of services in accordance with the applicable requirements of part 493 of this chapter.

§ 484.105 Condition of participation: Organization and administration of services.

The HHA must organize, manage, and administer its resources to attain and maintain the highest practicable functional capacity for each patient regarding medical, nursing, and rehabilitative needs as indicated by the plan of care.

(a) *Standard: Governing body.* A governing body (or designated persons so functioning) must assume full legal authority and responsibility for the management and provision of all home health services, fiscal operations, quality assessment and performance improvement, and appoints a qualified administrator who is responsible for the day-to-day operation designated persons to carry out these functions.

(b) *Standard: Primary HHA.* The HHA that accepts the patient becomes the primary HHA and assumes responsibility for the interdisciplinary coordination and provision of services ordered on the patient's plan of care, and continuity of care, whether the services are provided directly or under arrangement.

(c) *Standard: Parent-branch relationship.*

(1) The parent home health agency provides direct support and administrative control of its branches.

(2) The branch office is located sufficiently close to the parent home health agency to effectively share administration, supervision, and services in a manner that renders it unnecessary for the branch separately to meet the conditions of participation as an HHA.

(d) *Standard: Services under arrangement.*

(1) The HHA must ensure that all arranged services provided by other entities or individuals meet the requirements of this part and the requirements of section 1861(w) of the Act (42 U.S.C. 1395x(w)).

(2) An HHA that has a written agreement with another agency or organization to furnish services to the HHA's patients maintains overall responsibility for those services.

(e) *Standard: Services furnished.* Part-time or intermittent skilled nursing services and at least one other therapeutic service (physical, speech, or occupational therapy; medical social services; or home health aide services) are made available on a visiting basis, in a place of residence used as a patient's home. An HHA must provide at least one of the qualifying services directly, but may provide the second qualifying service and additional services under arrangement with another agency or organization.

(f) *Standard: Physical therapy or speech-language pathology services.* An HHA that furnishes outpatient physical therapy or speech language pathology services must meet all of the applicable conditions of this part and the additional health and safety requirements set forth in §§ 485.711, 485.713, 485.715, 485.719. 485.723, and 485.727 of this chapter.

§ 484.110 Condition of participation: Clinical records.

A clinical record containing past and current findings is maintained for every patient who is accepted by the HHA for home health service. Information contained in the clinical record must be accurate, available to the patient's physician and appropriate HHA staff, and may be maintained electronically.

(a) *Standard: Contents of clinical record.* The record must include:

(1) The patient's current comprehensive assessment, clinical/progress notes, and plan of care;

(2) Responses to medications, treatments and services;

(3) A description of measurable outcomes relative to goals in the patient's plan of care that have been achieved; and

(4) A discharge summary that is available to physicians upon request.

(b) *Standard: Authentication.* All entries must be legible, clear, complete, and appropriately authenticated and dated. Authentication must include signatures or a secured computer entry by a unique identifier of a primary author who has reviewed and approved the entry.

(c) *Standard: Retention of records.* Clinical records must be retained for 5 years after the month the cost report to which the records apply is filed with the intermediary, unless State law stipulates a longer period of time. The HHA's internal policies must provide for retention of the clinical records even if the HHA discontinues operations. If a patient is transferred to another health facility, a copy of the records or discharge summary must be sent with the patient.

(d) *Standard: Protection of records.* Patient information and the record must be safeguarded against loss or unauthorized use.

§ 484.115 Personnel qualifications for skilled professionals.

(a) *General qualification requirements.* Except as specified in paragraphs (b) and (c) of this section, all skilled professionals who provide services directly by or under arrangements with an HHA must be legally authorized (licensed or, if applicable, certified or registered) to practice by the State in which he or she performs the functions or actions, and must act only within the scope of his or her State license or State certification or registration.

(b) *Exception for Federally defined qualifications.* The following Federally defined qualifications must be met:

(1) For physicians, the qualifications and conditions as defined in section 1861(r) of the Act and implemented at § 410.20 of this chapter).

(2) For speech language pathologists, the qualifications specified in section 1861(ll)(1) of the Act.

(3) For home health aides, the qualifications required by section 1891(a)(3) of the Act and implemented at § 484.75.

(c) *Exceptions when no State licensing laws or State certification or registration requirements exist.* If no State licensing laws or State certification or registration requirements exist for the profession, the following requirements must be met:

(1) The administrator of a home health agency must—

(i) Be a licensed physician; or

(ii) Hold an undergraduate degree and—

(A) Be a registered nurse; or

(B) Have education and experience in health service administration, with at least one year of supervisory or administrative experience in home health care or a related health care program, and in financial management.

(2) *An occupational therapist must*—

(i) Be a graduate of an occupational therapy curriculum accredited jointly by the Committee on Allied Health Education and Accreditation of the American Medical Association and the American Occupational Therapy Association; or

(ii) Be eligible for the National Registration Examination of the American Occupational Therapy Association; or

(iii) Have 2 years of appropriate experience as an occupational therapist, and have achieved a satisfactory grade on a proficiency examination conducted, approved, or sponsored by the U.S. Public Health Service, except that such determinations of proficiency do not apply with respect to persons initially licensed by a State or seeking initial qualification as an occupational therapist after December 31, 1977.

(3) *An occupational therapy assistant must*—

(i) Meet the requirements for certification as an occupational therapy assistant established by the American Occupational Therapy Association; or

(ii) Have 2 years of appropriate experience as an occupational therapy assistant, and have achieved a satisfactory grade on a proficiency examination conducted, approved, or sponsored by the U.S. Public Health Service, except that such determinations of proficiency do not apply with respect to persons initially licensed by a State or seeking initial qualification as an occupational therapy assistant after December 31, 1977.

(4) *Physical therapist. A person who*—

(i) Has graduated from a physical therapy curriculum approved by—

(A) The American Physical Therapy Association;

(B) The Committee on Allied Health Education and Accreditation of the American Medical Association; or

(C) The Council on Medical Education of the American Medical Association and the American Physical Therapy Association; or

(ii) Prior to January 1, 1966—

(A) Was admitted to membership by the American Physical Therapy Association;

(B) Was admitted to registration by the American Registry of Physical Therapist; or

(C) Has graduated from a physical therapy curriculum in a 4-year college or university approved by a State department of education; or

(iii) Has 2 years of appropriate experience as a physical therapist, and has achieved a satisfactory grade on a proficiency examination conducted, approved, or sponsored by the U.S. Public Health Service except that such determinations of proficiency do not apply with respect to persons initially licensed by a State or seeking qualification as a physical therapist after December 31, 1977; or

(iv) Was licensed or registered prior to January 1, 1966, and prior to January 1, 1970, had 15 years of full-time experience in the treatment of illness or injury through the practice of physical therapy in which services were rendered under the order and direction of attending and referring doctors of medicine or osteopathy; or

(v) If trained outside the United States—

(A) Was graduated since 1928 from a physical therapy curriculum approved in the country in which the curriculum was located and in which there is a member organization of the World Confederation for Physical Therapy;

(B) Meets the requirements for membership in a member organization of the World Confederation for Physical Therapy,

(5) *Physical therapist assistant.* A person who—

(i) Has graduated from a 2-year college-level program approved by the American Physical Therapy Association; or

(ii) Has 2 years of appropriate experience as a physical therapy assistant, and has achieved a satisfactory grade on a proficiency examination conducted, approved, or sponsored by the U.S. Public Health Service, except that these determinations of proficiency do not apply with respect to persons initially licensed by a State or seeking initial qualification as a physical therapy assistant after December 31, 1977.

(6) *Public health nurse.* A registered nurse who has completed a baccalaureate degree program approved by the National League for Nursing for public health nursing preparation or postregistered nurse study that includes content approved by the National League for Nursing for public health nursing preparation.

(7) *Registered nurse.* A graduate of a school of professional nursing.

(8) *Social work assistant.* A person who—

(i) Has a baccalaureate degree in social work, psychology, sociology, or other field related to social work, and has had at least 1 year of social work experience in a health care setting; or

(ii) Has 2 years of appropriate experience as a social work assistant, and has achieved a satisfactory grade on a proficiency examination conducted, approved, or sponsored by the U.S. Public Health Service, except that these determinations of proficiency do not apply with respect to persons initially licensed by a State or seeking initial qualification as a social work assistant after December 31, 1977.

(9) *Social worker.* A person who has a master's degree from a school of social work accredited by the Council on Social Work Education, and has 1 year of social work experience in a health care setting.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 15, 1996.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: August 16, 1996.

Donna E. Shalala,

Secretary.

[FR Doc. 97–5316 Filed 3–5–97; 9:45 am]

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42 CFR Part 484

[HSQ–238–P]

RIN 0938–AH74

Medicare and Medicaid Programs: Use of the OASIS as Part of the Conditions of Participation for Home Health Agencies

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would add additional requirements to the proposed revision to the conditions of participation for home health agencies (HHAs) which also appear in this issue of the **Federal Register**. Specifically, this proposed rule would require that HHAs use a standard core assessment data set, the "Outcomes and Assessment Information Set" (OASIS), when evaluating adult, non-maternity patients.

This proposed rule is an integral part of the Administration's efforts to achieve broad-based, measurable improvement in the quality of care furnished through Federal programs. It is a fundamental component in the transition to a quality assessment and performance improvement approach that focuses on stimulating measurable improved outcomes of care and patient satisfaction in the Medicare and Medicaid home health benefit while at the same time reducing burdens on providers.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on June 9, 1997.

ADDRESSES: Mail written comments (one original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HSQ–238-P, P.O. Box 7518, Baltimore, MD 21207–0519.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201, or

Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Comments may also be submitted electronically to the following e-mail address: hsq238phcfa.gov. E-mail comments must include the full name and address of the sender and must be submitted to the referenced address in order to be considered. All comments must be incorporated into the e-mail message because we may not be able to access attachments. Electronically submitted comments will be available for public inspection at the Independence Avenue address below.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HSQ–238–P. Comments received timely will be available for pubic inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW, Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone (202) 690–7890).

For comments that relate to information collection requirements, mail a copy of the comments to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eydt, HCFA Desk Officer.

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 37194, Pittsburgh, PA 15250–7954.

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FOR FURTHER INFORMATION CONTACT: Mary Vienna, (410) 786-6940.

SUPPLEMENTARY INFORMATION:

I. Background

A. Purpose of Proposed Regulation

Separately in this issue of the **Federal Register**, we are publishing a notice of proposed rulemaking that would revise the current conditions of participation that HHAs must meet to participate in the Medicare program, the Medicaid program, or both programs. Those proposed regulations would make the conditions of participation more patient-centered and outcome-oriented and provide the HHAs with more flexibility to operate their programs. As an important part of those proposed revisions, we are introducing the proposed requirement that each HHA develop, implement, and manage an outcome-based quality assessment and performance improvement program. Such a program would provide a foundation for enabling an HHA to monitor the impact of its care on its customers' health status and satisfaction. The information that the HHA derives from this program will enable the HHA to implement real and lasting change to enhance outcomes of care.

In this proposed rule, we are proposing that Medicare-approved HHAs and those HHAs that are required to meet Medicare conditions of participation (which, by definition, includes Medicaid HHAs and managed care organizations providing home health services to Medicare and Medicaid beneficiaries) be required to incorporate the core standard assessment data set included in this proposal, called the "Outcomes and Assessment Information Set" (OASIS), into their comprehensive assessment process. (The use of the term "HHA" will be used throughout this discussion as a generic term to apply to all environments in which this regulation would apply.)

We intend that the OASIS become one of the most important aspects of the HHA's quality assessment and performance improvement efforts. By integrating a core standard assessment data set into its own more comprehensive assessment system, an HHA can use such a data set as the foundation for valid and reliable information for patient assessment, care planning, and service delivery, as well as to build a strong and effective quality assessment and performance improvement program.

B. Background of the OASIS

1. How HHA Quality Indicators Were Developed

We have long been interested in the development of outcome measures in health care. In 1988, we entered into a contract with the Center for Health Policy Research and the Center for Health Services Research at the University of Colorado Health Sciences Center to develop, test, and refine a system of outcome measures that could be used for outcome-based quality improvement in HHAs. The Robert Wood Johnson Foundation provided funding to support work on additional, related tasks. The system is intended to form the foundation for continuous quality improvement (which we call in the proposed conditions of participation published elsewhere in this issue of the **Federal Register** "quality assessment and performance improvement") that could be used to enhance care in agencies where quality is lacking, and to reinforce and further improve patient outcomes and satisfactory in HHAs where care is already exemplary.

Before the system could be constructed, numerous definitional and methodological issues had to be addressed. We are presenting a brief summary of those issues as part of this preamble. Anyone wishing a more detailed explanation of the work that was necessary to develop this system may request one of the publications referenced in this preamble.

We adopted the consensus definition of "quality" developed by the Institute of Medicine that states "quality is the degree to which health services to individuals and populations increase the likelihood of desired health outcomes and are consistent with current professional knowledge." The usefulness of this definition is threefold. First, it recognizes that "quality" can occur in varying amounts, not simply in an all-or-nothing manner. Second, this definition encompasses the beneficiary's desires and expectations for outcomes, and not just what the "professional" decides. Third, it does not guarantee the desired outcome will be achieved. Rather, quality care "increases the likelihood" that needed or desired outcomes will be achieved. In this regard, the implied relationship between quality care or quality of services and outcomes highlights the fact that higher quality care should produce better outcomes. Consequently, the most effective indicator of the quality of care is the actual, consistent attainment of desired health outcomes. As a result, we regard outcomes as central to ensuring and improving care.

Overall, we define an "outcome" as a "change in health status over time." In using this definition, we recognize that "health status" is a broad term, encompassing physiologic, functional, cognitive, social, and mental health. To properly measure a specific outcomes in any of these areas, it is necessary to collect precise information on the health status indicator of interest at the start of care and at followup points. Satisfaction, however, need only be measured at discharge, though it can be measured at interim points as well.

For our purposes, a patient- or consumer-level outcome can be thought of as a change in health status that occurs during the timespan that begins with the start of care and ends with either the discharge from the HHA or some other followup point after the start of care. Thus, changes in the status of a wound, ability to ambulate, shortness of breath (dyspnea), or ability to manage oral medications are outcomes when such changes are assessed between the start of care and followup time points. Hospitalization and use of emergency care during the home care interval can also be regarded as outcomes, since these events usually occur as a result of a change in health status, typically of an untoward nature. Indicators of consumer satisfaction are also outcomes in that they may represent changes in

cognitive or emotional status in response to home health care. Nonetheless, we sometimes speak of outcomes *and* satisfaction in this proposal to emphasize the importance of beneficiary satisfaction as a particular type of outcome.

A critical element of any quality assessment and performance improvement program in home health care is precise information about performance, particularly consumer outcomes. Such information must be available to the HHA so it can identify and remedy poor outcomes, identify and reinforce exemplary outcomes, and evaluate progress resulting from remedied or reinforced actions. The most efficient way in which HHAs can gather such information is by maximizing the overlap between items needed to measure patient outcomes and those routinely used for purposes of patient assessment, care planning, and service delivery.

The terms "quality indicators," "performance measures," and "outcome measures" are often used interchangeably, though technically they can vary somewhat in meaning. Regardless, they all refer to attributes of care and satisfaction that can be used to gauge quality in specific areas. For example, the degree of improvement in a functional area (such as ability to walk after a hip replacement) is a quality indicator. However, defining and quantifying that improvement results in a "performance measure" or "outcome measure" that assigns a numeric value to the attribute being evaluated. So, while it is accurate to say that improvement in ambulation is a "quality indicator," the improvement becomes a precise and usable quantity measurement when we assign numbers to the patient's performance.

The first step in the development of quality indicators was to agree on outcomes that can be used as valid and reliable indicators of quality care. In dealing with such issues as payment and utilization, the outcomes of care and level of satisfaction the patient experiences can be overlooked. Although outcomes are not yet being measured systematically, we often assume that the care provided accomplishes what we expect. Home health care is no exception. While we recognize that patients have a strong preference for home care over most alternatives, we know little about the effectiveness of home care. Interest in the outcomes of home care, therefore, was arising from payers, accrediting bodies, consumers, and the home care industry itself. This interest provided impetus and credibility to the search for outcomes that can be used a valid and reliable indicators of quality care.

The way in which well-tested and established quality indicators are developed is straightforward, although time consuming and resource intensive. Clinical experts (especially those who actually deliver home care services to people), researchers, patients, and others (for example, administrators) "nominate" aspects of the total care process and the outcomes of care across a variety of patient conditions and problems. The list of candidate quality indicators can be very long, including relevant indicators from research, applied literature, and current use. From this list, expert panels group the nominees and specify them more precisely as workable representations of attributes of care, outcomes, or satisfaction that can be measured.

Once the set of nominated quality indicators (outcome indicators in this case) is refined and defined, it is further tested for validity, utility and reliability. When we test for validity and utility, we consider such issues as whether or not the indicators actually reflect what they purport to reflect in terms of patient outcomes, the ability to detect differences among patient groups or types of agencies which are expected to vary in terms of outcomes, utility for examining the effectiveness of care, and acceptance among clinicians. When we test for reliability, we consider such issues as whether or not the information collected on the same patient by different evaluators yields similar judgments about the performance indicators being measured.

As an illustration, we know that improvement in ability to ambulate is a quality indicator. During development of performance measures based on the nominated quality indicators, the specific definition of "ambulation/locomotion status," that was used in testing for validity and reliability, included a six-level scale (0–5). This scale described ambulation from completely bedfast to independence by using specific and precise terminology associated with each of the six levels on the scale. The wording for each level was carefully chosen and refined through both expert review and empirical testing. For example, the one-level in the scale states: "Chair fast, unable to ambulate even with assistance but is able to wheel self independently." The wording for this particular level was specified, reviewed, and then tested by having different care providers collect this information on the same patients to assess the extent of agreement and reliability among different raters. Appropriate changes were made and further testing was conducted in terms of utility and clinical acceptability, with additional refinements occurring as needed.

To properly measure outcomes as changes in health status between two time points, reliable and precise health status scales such as the ambulation scale are needed to render the outcome measures themselves reliable and precise. All health status items in the OASIS underwent such testing since these items will be used for either measuring outcomes or for risk-adjusting outcomes for potential differences in agency risk factors or case mix. The OASIS also contains items relating to independence of functioning and available family and environmental support. While not directly "health status items," they are vital measurements of the context in which a person's health status exists. For example, people with the same health status but with different supports may experience different outcomes.

The criteria the researchers used for selecting the outcome measures included:

(1) Clinical meaningfulness in terms of perceived importance of the measure for outcome-based quality improvement;

(2) Interrater reliability of the data items needed to compute the measures as reflected by two or more reviewers rating a patient's condition similarly;

(3) Diversity of the measures in terms of the different dimensions of health status including functional, physiological, behavioral/emotional, and cognitive status;

(4) Minimal redundancy in terms of clinical information content within the entire measure set;

(5) Validity as reflected by the abilities of the measures to detect agency-level differences in quality of care;

(6) Validity as indicated by the abilities of the measures to detect differences between patient groups or types of agencies expected to vary in terms of outcomes;

(7) Validity in terms of the clinical meaningfulness of relationships among outcome measures;

(8) Validity as reflected by the clinical meaningfulness of the relationships between outcome measures and risk factors or case mix variables;

(9) Sufficient prevalence from a statistical perspective so that the outcome measures would not signify extremely rare or extremely common events;

(10) Minimal statistical redundancy among measures, so that individual measures each can be shown to convey unique information; and

(11) Utility of the data items employed to define and compute outcome measures in terms of the meaningfulness and face validity of such items for assessment and care planning for home care patients.

As we discuss in detail in section I.B.2 of this preamble, the individual items of the OASIS are valid and reliable in computing those outcome measures of patient health status shown to be useful "quality indicators" for home care. When the HHA staff who complete the comprehensive assessment use the OASIS as part of the process, they are, in fact, laying the groundwork for planning an effective course of care for an individual patient and for a set of comparable performance data aggregated across patients that can help to shape the agency's agenda for continuous improvement.

We intend to require that HHAs use the OASIS exactly as specified. This requirement is a necessary predicate to building a valid, reliable, comparable data set of outcomes. The items on the OASIS underwent rigorous validity and reliability testing, as discussed in section I.B.2. of this preamble. Consequently, trained individuals can have confidence in using the data items as part of their comprehensive assessment of patients. This confidence extends, then, to the comparability of the data acquired using the same items to amass information from other patients, either in the same HHA or others, as long as the assessments are conducted accurately, using the measurement criteria spelled out for each item. Altering the items or using a different tool and transposing the data onto the OASIS destroys the essential validity and, therefore, the comparability of the data collected. The HHA can rearrange and/or distribute the OASIS items within the agency's comprehensive assessment system as long as the items themselves remain exactly as written and specified by the Secretary.

While this explanation of how the quality indicators were developed is brief, the actual work to develop more than 150 indicators took most of 5 years using expert clinical panels and volunteer HHAs for empirical field testing. Further details on how the home health quality indicators were developed, including validity and reliability testing, are included in the final report of *A Study to Develop Outcome-Based Quality Measures for Home Care*, available from the Center for Health Policy Research and Center for Health Services Research, University of Colorado, Health Sciences Center, 1355 S. Colorado Blvd., Suite 306, Denver, CO 80222. Additional information on outcome-based quality improvement can also be found in "Measuring and Assuring the Quality of Home Care," *Health Care Financing Review*, 16(1):35–67, Fall 1994, and *Outcome Based Quality Improvement: A Manual for Home Care Agencies on How to Use Outcomes*, August 1995, National Association for Home Care, 228 South Street, SE., Washington, DC 20003.

2. Evolution of Medicare's Core Standard Assessment Data Set (OASIS)

As part of the Medicare Home Health Initiative started in 1994, we began discussions with the industry, professional and consumer groups, and enforcement agencies. These discussions articulated our desire that the new conditions of participation serve both the clinical needs of the agency and our emerging quality assessment and performance improvement agenda.

In late 1994, we convened a workgroup of clinical assessment experts representing HHAs and national associations of home care providers along with other experts in assessment, including a representative from the University of Colorado, to help shape the development of an assessment tool. The group suggested it was unnecessary to mandate a comprehensive assessment tool since the majority of agencies are already using such tools. The understandable diversity in such tools that arises from caring for special types of patients (for example, pediatric, chronic, high technology, or Human Immunodeficiency Virus patients) would render a single mandated comprehensive tool unwieldy. The group agreed that the required assessment set should be parsimonious, have maximal overlap with the types of information agencies are already collecting at assessment (to the extent possible), and be shorter and less complicated than the Resident Assessment Instrument, another Federal assessment instrument mandated for use by nursing homes.

The group recommended that we use the data items developed by the University of Colorado for computing risk-adjusted patient outcomes. The precision of the individual items in this data set makes them particularly useful in patient assessment and care planning in addition to their intended use in measuring outcomes. The workgroup recommended the addition of a small number of assessment items for a total of 79 (plus 10 patient identifier items, for example Medicare number, that are commonly used already for billing and other administrative purposes), and the core standard assessment data set was completed. We wish to make it clear that this data set is not, therefore, intended to constitute a complete comprehensive assessment instrument. Rather, the data set comprises items that are a necessary part of a complete comprehensive assessment and are essential to uniformly and consistently measuring patient outcomes. These items are already used in one form or another by virtually all HHAs, and many more are usually used by HHAs that conduct thorough assessments. Likewise, the OASIS comprises fewer items than the Resident Assessment Instrument, another Federal assessment instrument mandated for use by nursing homes.

The workgroup recommended that HCFA determine: (1) How the core standard assessment data set could be incorporated into HHAs' patient assessment processes (HHAs would need to include additional items for the purpose of "comprehensive" patient assessment); and (2) if the tool was effective in assisting home health clinical staff to assess certain aspects of patient health and functional status, thus providing information necessary for effective and efficient care planning and service delivery. As the workgroup was concluding its work on the core standard assessment data set in early 1995, the University of Colorado was embarking on a new HCFA-funded project to demonstrate how the quality indicators developed during the previous 5 years could be used. The primary goal of the new project was to assess whether the data set would be of value in targeting and guiding improvements in outcomes and satisfaction for HHA patients. The researchers agreed to use the data set as modified by HCFA and to pilot its effectiveness as the core standard assessment data set. It was at this point that the data set was named the *O*utcomes and *A*Ssessment *I*nformation *S*et, or OASIS.

The demonstration currently underway involves the voluntary participation of 50 HHAs distributed across the country. They have been trained to use the OASIS and have begun collecting and transmitting data to the Research Center at the University of Colorado. (The Research Center is also testing a telephone satisfaction questionnaire that is being administered to patients after HHA discharge. The results will help assess the relationship between outcomes and satisfaction.) Data are returned to the HHA as outcome reports, so that the HHA can see how it is performing in terms of patient outcomes compared with other HHAs in the project. As each data reporting period passes, the database builds, providing additional comparative data back to agencies for use in planning and implementing performance improvement activities. Subsequent outcome reports can assist in evaluating the effectiveness of such activities.

For example, a particular HHA receives an outcome report that shows that 20 percent of its orthopedic patients improved in ability to ambulate by either the 60th day of treatment or the date of discharge, depending upon which came first. The HHA's 20-percent outcome compares with a 40-percent aggregated outcome of the orthopedic patients from all demonstration agencies. Because this 20-percent outcome finding is significantly less than the 40-percent aggregated outcome, the staff makes a determination that this is an outcome that should be investigated further. Using record review, team evaluation and other quality improvement techniques, the HHA staff determines that a potential reason for the low rate of improvement is lack of coordination between physical therapists and other care providers. This lack of coordination, in turn, results in minimal reinforcement of patient exercise programs by others on the care delivery team. The agency staff, therefore, develops and implements a precise action plan or performance improvement plan that strengthens team coordination of specific and relevant caregiving actions. The next outcome report indicates that the number of orthopedic patients improving in ability to ambulate is 35 percent, suggesting that the performance improvement activities resulted in better patient care, thereby producing improved outcomes.

Thus, collection of OASIS data can be used not only in patient-level applications (assessment, care planning, and care delivery) but also for agency-level performance improvement. As an HHA improves over time across various outcome dimensions, the aggregated data will show improvement as well, and average agency performance will likewise continue to improve. Not only will this be advantageous for Medicare beneficiaries and other home care clients, but it will be of value to the home care industry in demonstrating its effectiveness. We want to stress, however, that in order for the OASIS data to be helpful for *all* its purposes, the OASIS items must be filled out accurately. As they begin to collect the OASIS items, HHAs should set up procedures to monitor data accuracy such as conducting validation visits to verify accuracy, interdisciplinary comparisons and record reviews. In fact, data entry accuracy can, and should be, an essential part of the HHA's quality assessment and improvement program, since data accuracy is a fundamental building block of an effective program.

We are aware that large numbers of HHAs are using the OASIS in an informal environment, without direction or guidance from HCFA or the University of Colorado. While we are looking to the Medicare demonstration to answer operational questions regarding the aggregation of OASIS data and their use to improve patient outcomes, we are interested in the experience of those HHAs that are using the OASIS under their own initiative. We are seeking public comments from those HHAs on the following questions:

- How is the OASIS helpful in determining changes in patient health status between two points in time?
- How is the OASIS useful for measuring the outcomes of patients who are prescribed physical therapy, occupational therapy, speech therapy, skilled nursing services, or aide services? How is the OASIS useful for patient evaluation and management?
- How is the OASIS useful for care planning and prescribing services? Could the OASIS be made more useful and, if so, how?
- How is the data in the OASIS useful for identifying and interpreting differences in both the severity and complexity within agency caseloads? Could the OASIS be made more useful and, if so, how?
- What level and type of support (for example, training, monitoring of staff) is required to generate information from the OASIS for use in assessment, care planning, and quality assessment and performance improvement?
- If you have used the OASIS data to produce agency-level reports, are they useful in identifying negative and positive patient outcomes?
- Are there specific domains in which the OASIS is particularly strong or particularly weak?
- Are there other data items that produce information that may be more useful in measuring outcomes in a particular domain?

3. Content and Planned Evolution of the OASIS

For purposes of public comment, we are reprinting the current version of the OASIS in section II of this preamble. The Center for Health Policy Research at the University of Colorado has granted permission for this sample OASIS survey to be published and reproduced. HCFA will provide HHAs with copies of the OASIS and instructions for its use as a manual issuance when the final rule is published. All OASIS data items were developed for outcome measurement, risk adjustment, or patient identifiers. Data items address demographics and patient history, living arrangements, supportive assistance, sensory status, integumentary status, respiratory status, elimination status, neuro/emotional/behavioral status, activities of daily living, medications, equipment management, emergent care and discharge information. While some data items do not directly address health status, they are vital measurements of the context in which a person's health status exists. For example, people with the same health status but with different supports (financial, caregiver, etc.) may experience different health outcomes. These characteristics should be part of a comprehensive patient assessment, but we again emphasize that the OASIS was not developed to be a comprehensive assessment instrument. HHAs must supplement the OASIS items to comprehensively assess the health status and care needs of patients. For example, the OASIS does not include vital signs, which are a common part of a patient's assessment.

Most OASIS items require the same information that the majority of care providers currently gather in patient assessment, but the OASIS requires the information on a more precise scale. For example, many care providers assess each patient's ability to bathe, but only use three levels, independent, needs moderate assistance, or dependent. The OASIS items ask the care provider to assess the same functional ability (bathing) on a more precise six-level scale. This greater precision results in items that are more descriptive for clinical purposes and more reliable and valid statistically and, thereby, improves their utility in an outcomes improvement, database environment. Consequently, items in clinical records that have analogues in the OASIS should be replaced by the corresponding OASIS items so that all certified agencies will be collecting information using precisely the same items to ultimately measure and risk adjust outcomes.

When the final rule has been promulgated, we will include the instructions and definitions necessary to use the OASIS in the notification to the HHAs. At the present time, however, we wish to clarify several items in the current OASIS. These are:

- Overall Progress, Rehabilitative Prognosis, and Life Expectancy

While these are common assessment items, they are included in this version of the OASIS with the expectation that they will be a part of the data we intend to collect. They have been shown, thus, far, to be highly predictive of health status outcomes. In the controlled environment of the reliability and validity testing of these items where data accuracy is verified, these items correlated well with other items that track functional status. In other words, patients judged to have low rehabilitation potential tend to show less change in health status between two points in time. If these items retain their predictive power through the demonstration and are retained in later versions of the OASIS, they will be useful items for "sorting" performance or analysis and for searching for opportunities for improvement. For example, if an HHA reports many patients with high rehabilitation potential, but functional status measures of these patients (risk-adjusted) show poorer results than other high rehabilitation potential patients in other HHAs, an opportunity to improve is presented to the HHA. We want to emphasize that this item adds little or no new burden, since HHAs routinely use assessment items similar to, or the same as, this item.

- Current Residence

We have included this item because it is closely related to the sustainability of an individual in community-based care and, possibly, institutional services. For example, a frail person who is able to live successfully in the home of a family member may not be able to do so if the same person were living alone in a rented room. The performance of the HHA in relationship to such variables as type of residence can make the difference between staying out of a nursing home and getting in to a nursing home. Having this information in the system enables the HHA (and HCFA) to measure patient success in relationship to residence.

- Supportive Assistance

The items in this section are intended to sort out and distinguish among the various types of caregiving that family and others provide, and with what frequency. As these items continue to be analyzed for utility and predictive power during the demonstration, they may be consolidated or shortened. Their importance, though, relates directly to the balance that should be achieved between the service the HHA provides and the help family and others provide to ensure the patient has the best chance to remain at home for as long as possible and to improve as much as possible.

To measure outcomes, OASIS data are collected at uniformly defined time points: start of care, every 57 to 62 days until and including discharge, and within 48 hours after return to home from a hospital admission for any reason other than diagnostic testing. We are using a time frame of 57 to 62 days to provide the HHA flexibility, and to ensure that the reassessment will be completed in time for the 62-day patient recertification. We are requiring that the OASIS be administered within 48 hours of the patient's return from a hospital admission (except when the hospital admission was for diagnostic tests) because we believe hospital admissions are predictive of likely changes in patient status and, therefore, important to capture for care planning and quality assessment and performance purposes.

When HCFA asks HHAs to report OASIS data, some information about the patient at the time of admission to a hospital may be included and, if so, would be related to reasons for the admission to the hospital. If home health care is resumed after the hospital admission and regardless of whether the patient was formally discharged from the HHA, the standard start-of-care OASIS is completed, with supplemental information on the length of hospital stay. Under these circumstances, if the patient was not formally discharged, followup data collection continues at 57 to 62 day intervals in accord with the original start-of-care date. If the patient was formally discharged from the HHA, the data collection proceeds on the basis of the new start-of-care date that followed the inpatient stay.

Some data items are unique to only one time point (for example, discharge information is only collected at patient discharge), while other data are collected at every time point. By collecting data using uniform data items and time points, individual patient data are comparable. The data can be aggregated to form agency-level outcomes and to be used for comparisons to a larger reference group of agencies. As a result, uniformity of data items and times points allows us to compare "apples to apples." Again, this is why we are requiring as a condition of participation that the HHA use the OASIS exactly as specified by the Secretary. The most current version of the OASIS is published in this proposed rule. It reflects minor adjustments to various items that further testing in the field has shown to increase the precision and utility of the OASIS. This version does not change the workload associated with its use and there is some indication it requires less administration time than the earlier version. We urge that agencies currently using various versions of the OASIS, including "partial" versions, now focus on the use of the version of the OASIS contained in this proposed notice.

As health care delivery is constantly evolving, so will the OASIS continue to evolve. Although the data set has undergone extensive testing to date, it will be necessary to test and refine the data set on an ongoing basis. Further reliability and validity testing is occurring in the context of the national demonstration noted above. As experience is gained and as home care continues to change, so too must the OASIS. Modifications in items on the OASIS or the addition or deletion of data items from the OASIS as a result of additional testing will be released to HHAs periodically in manual updates, so that HHAs will make the necessary modifications and the OASIS can continue to represent the best data set for home health care outcome measurement.

C. Expectations Regarding the Use of the OASIS

We plan to implement full use of the OASIS in stages. The first step, which will begin when these proposed regulations are published as a final rule, is to require that all HHAs incorporate the exact use of the OASIS into their current comprehensive assessment process. This requirement will help to organize the assessment process around a set of agreed-upon, valid and reliable health status items that are known to be of value in measuring quality outcomes for patients. After HHAs have begun to use the OASIS as specified by the final rule, we intend to publish another proposed rule that would require HHAs to report OASIS data electronically into a national database. We believe this step will bring the use of the OASIS to its full potential as described in section I.C.2. "The Longer Run Use of the OASIS" of this preamble.

1. The Near Future

The comprehensive needs of home health patients are currently determined in a wide variety of ways, using numerous assessment tools. The utility and effectiveness of the many ways of completing a comprehensive assessment also vary widely, from highly sophisticated systems to little more than general notes on the plan of care submitted for payment. The first critically important advantage of requiring HHAS to incorporate the exact use of the OASIS within their current approach to a comprehensive assessment process is that it helps to organize the assessment process around a set of agreed-upon, valid and reliable health status items that are known to be of value in measuring quality outcomes for patients.

The ease with which the items on the OASIS can be assimilated into a comprehensive assessment process is apparent because all the items must be accounted for in any effective, relevant, comprehensive assessment. Hence, the information that is derived from the OASIS is useful and essential to assessment and care planning, and to internal performance improvement efforts. This fact is central to the rationale for asking that each HHA use the OASIS exactly as specified as part of its comprehensive assessment when the new home health conditions of participation become effective. (Recall that the OASIS items can be rearranged and distributed throughout an HHA's comprehensive assessment, as long as the items are used exactly as written.)

Once the OASIS has been administered as part of the comprehensive assessment, the results help to organize care planning with greater precision than is currently possible, especially in HHAs that lack a carefully structured approach to comprehensive assessment. The increased specificity in patient assessment (in critical areas of health and functional status) will assist agency staff to uniquely tailor a treatment plan to each individual patient.

Once the assessment and care planning process has been completed, and the provision of services has commenced for a specific patient, the OASIS is readministered on a periodic basis. Since OASIS items have been shown to be valid and reliable indicators of several dimensions of health status, the results of accurately administering the OASIS provide an effective measure of progress over time. As such, the OASIS can contribute significant information that helps in reassessing patient status, guiding changes in the plan of care, and developing approaches to solving care problems.

In the day-to-day effort to competently deliver effective services to a wide variety of patients with a panoply of needs, the HHA can easily lose sight of the "big picture" or how the agency is performing overall from the standpoint of effectiveness, efficiency, and patient satisfaction. We would require HHAs to begin to use the OASIS before final implementation of our request for HHAs to report OASIS data that can be aggregated in a national database and fed back to each HHA for use in its quality assessment and performance improvement program. In fact, each HHA can collect and use OASIS data on its own to compare the outcomes of similar patients to each other and to compare its performance from one year to the next.

To implement OASIS data collection as part of the quality assessment and performance improvement process, a HHA would ideally proceed with three steps, all of which should occur under the leadership of a team whose focus is to modify current assessment forms and documentation. Because most HHAs are accustomed to revising patient assessment instruments periodically as new clinical protocols become known or as new requirements by accrediting bodies or regulators are implemented, formation of teams or task forces often occurs at the agency level. Clinical supervisors or managers, staff members of various disciplines, and clerical staff are usually included on such teams.

First, the team would review current clinical documentation, comparing assessment items with similar OASIS data items. In some cases (for example, start-of-care date, gender, date of birth, Medicare number), minimal or no change to the current data item is needed. In other situations (for example, dyspnea scale, bathing scale) the precision of the OASIS item requires the HHA to substitute the OASIS item for its current documentation. Next, the documentation team would determine whether to adapt its current form, using a cut-and-paste approach or to develop an entirely new form. Finally, the team would take action. If the team chooses to develop a new form, sample clinical forms are available from several sources to facilitate this development, since this form is usually the most detailed document used by the HHA. HHA documentation for recertification and discharge assessments seldom are standardized, so these forms typically are developed anew rather than modified. Once the forms are developed, the implementation team oversees their pilot testing, modification, finalization, and printing.

Any change in HHA forms, paper flow, and related activities requires staff training to implement. The extent of the changes will affect the amount of training required. Nearly all HHAs make some modification to existing paperwork or internal procedures on approximately an annual basis for reasons such as modifying forms, internal paper flow, or current data entry processes. Consequently, the HHAs are familiar with training staff to accomplish this task. In addition, staff inservice, orientation, and training are routine parts of ongoing HHA activities for both clinical and clerical personnel.

HHAs should also plan for two types of data accuracy checks. The first check is for completeness of data; that is, whether all OASIS items have been completed. This check can be done through a visual check of clinical documentation submitted for data entry or through a programmed data entry check. Other data accuracy checks can be incorporated into a data entry program to examine logical inconsistencies in the documentation (for example, a bedbound patient who is independent in housekeeping, a patient with no pressure ulcers whose pressure ulcers are not healing).

Software is becoming available from vendors and other sources for this purpose. Clinical supervisory personnel are often alerted to incomplete or logically inconsistent documentation, similar to what occurs for HCFA–485 data which is the routine Medicare billing form.

To facilitate internal agency performance improvement activities, it currently is possible for HHAs to create outcome reports for their own patient populations using informal methods. Guidance in doing this is provided in the aforementioned manual published by the National Association for Home Care. For small HHAs or larger HHAs over a shorter time interval, producing preliminary reports of this nature requires only a paper-and-pencil data entry approach and a calculator. However, we encourage computerization as soon as it is possible to do so. The nearly universal move toward electronic information systems, including the health care industry for areas such as billing and payment, suggests that the sooner organizations learn how to use electronic information systems for patient care and quality assessment and performance improvement, the better positioned they will be to respond when HCFA proposes to require electronic reporting of OASIS data in the future.

If the HHA can be part of a reference database group or project, participate in a reference data consortium, or is part of a multiprovider company, such data can be collected and used as a comparison database to assess performance among HHAs in the group, and to search for opportunities that could contribute to improved outcomes and satisfaction for patients. In this case, an individual HHA will be considered relative to all HHAs in the group or database in terms of the extent to which various outcome measures are indicative of high or low quality of care relative to the standard represented by the mean for all HHAs. Case-mix adjustment is necessary for outcome

comparisons across agencies or groups. The OASIS contains tested and reliable data items that can be used for risk factor adjustment.

For example, an HHA generates an outcome report based on OASIS data that indicates that 30 percent of all of the HHA's patients had improved in ability to manage oral medications, compared with 45 percent of its patients from the previous time period. The HHA is concerned about this decline in this outcome because a patient's ability to manage oral medications is often critical to managing his or her medical condition at home. An investigation into care processes reveals that several of the HHA's care providers are not adequately assessing fine motor ability and thus not addressing possible deficits in fine motor skills when planning care. For a number of patients, this appears to be resulting in inadequate assessment of the need for occupational therapy involvement and teaching medication management. The HHA develops a plan of action to improve care by incorporating a more detailed fine motor evaluation into its comprehensive assessment at the start of care, integrating findings from that evaluation into the medication teaching guide, and enhancing nurse-occupational therapy coordination with interdisciplinary care conferences on patients with impaired fine motor function. The HHA's outcome report for the following time period shows that 48 percent of discharged patients improved in ability to manage oral medications. Thus, changes in care processes resulting from an analysis of outcome findings subsequently have a positive impact on patient outcomes.

While we recognize that some HHAs already are using fairly sophisticated computer systems to collect and manage clinical as well as financial data, we realize that many HHAs have not begun, or are just beginning, to utilize electronic means of managing clinical and programmatic information. We believe the contributions the OASIS can make to the assessment, care planning, and implementation of performance improvement activities will stimulate more HHAs to move to an electronic format for managing patient clinical information. In fact, we do not envision how an HHA can successfully move to a continuous quality improvement approach without developing and using a computer-based system to manage and use organizational and patient-based data. In this regard, the OASIS will help guide the multiple clinical record systems and electronic management information systems under development at the present time, providing a foundation for uniformity and precision in assessment, care planning, and outcome monitoring. When we publish these requirements as a final rule, we are committed to sharing data system specifications for the OASIS with the HHA community.

A number of vendors have developed and are marketing various types of software, including electronic clinical recordkeeping, to the home care industry. We encourage such development because as information technology continues to improve, it will increase the efficiency with which the requisite information can be collected for home health care administration, billing, assessment, and outcome monitoring. Incorporating OASIS into electronic clinical records, including the capability to adapt software to modest revisions of the OASIS periodically is both a challenge and an opportunity. It is a challenge because changes have to be made to current electronic clinical record systems, replacing analogous items so that the total length of the start-of-care assessment process for agencies is no greater (or only marginally greater) in terms of time expended by the care providers. Such changes will be reasonably straightforward for some vendors and complex for others.

In many ways, the opportunities for software vendors serve to offset the challenges because as we move toward national use of the OASIS data set and subsequent updates as the OASIS evolves (as explained in section I.C.2. of this preamble) nearly all HHAs will require some type of software system. Such a system, at a minimum, will be needed to perform initial computerization, those editing functions necessary to ensure accurate OASIS and file development so that OASIS data can be submitted to a central location for Medicare system processing. Software conversion and marketing processes will, of course, naturally accompany the increased demand for electronic clinical recordkeeping in the home health care field. In all, we expect there will be substantial opportunities to expand software applications over the next few years.

We are also aware that some companies already exist that provide both software management of assessment and other data as well as data analysis and management services for quality improvement. We believe the implementation of the proposed HHA conditions of participation, published elsewhere in this issue of the **Federal Register**, which focus on quality assessment and performance improvement, and this proposed rule, which introduces the OASIS to the process, will only expand the opportunities for quality management firms to flourish. While many HHAs already have sophisticated quality improvement management programs, we know a significant number do not. Since we encourage maximum flexibility and creativity in these programs, we believe the requirement that HHAs use the OASIS in no way inhibits these companies from marketing their quality management services.

We are considering the possibility of using the OASIS in our monitoring of managed care organizations in the future. For example, if the OASIS were used, HCFA, HHAs, and managed care organizations would be able to evaluate overall effectiveness of managed care home care and make decisions and improvements based on beneficiary outcomes.

Another advantage of implementing the OASIS as part of the comprehensive assessment at the time the new conditions of participation become effective is that it provides HHAs with time to learn how to use the OASIS effectively and accurately. HHAs can begin to experiment with using OASIS data. This provides opportunities to focus on specific areas for enhancing outcomes of care, patient satisfaction, and organizational efficiencies. Such a learning period would take place prior to HCFA implementing additional rule making that would require HHAs to provide OASIS data electronically to a national database.

2. The Longer Run Use of the OASIS

For informational purposes, we are discussing our long-range goals for the use of the OASIS. While this proposed rule would not require HHAs to report OASIS data to a national database, we intend to publish such a rule when the system is developed. A national database would allow HCFA to make these data available in the form of standardized, risk-adjusted outcome reports. Aggregate OASIS-derived HHA outcome reports that contain no patient-specific data will be in the public domain, and consumers, purchasers, HHAs, and HCFA will be able to use such information in a variety of ways. Additionally, HCFA as a purchaser of managed care services is interested in the quality oversight of home health services delivered by managed care organizations.

When outcome reports become available, each HHA will be able to use the outcome reports in its quality assessment and performance improvement program. The HHA will be able to examine specific care domains, types of patients, or both and to compare present performance to past performance and national performance norms. For example, the HHA could compare its performance with other HHAs, locally, regionally, and nationally. When these quality indicators are implemented and evaluated, agency profiles could be used in the survey process to compare the HHA's results with past performance. Objective data of this nature can be an important validator of the HHA's improvement efforts and also serve as a flag to the agency in terms of where to focus its quality improvement priorities. The data will allow the HHA to focus its quality improvement resources more efficiently by concentrating on specific outcomes that require attention rather than investing in systematic improvements in a broad range of areas that might presently be satisfactory or even superior relative to other agencies throughout the country. The ability of the HHA to efficiently and effectively improve its individual performance would have the cumulative result of the industry improving services to Medicare and Medicaid beneficiaries at the same or lower cost. It may also further justify and highlight the strengths of home care, thereby enhancing access for other types of patients in the longer run.

An individual HHA can use the outcome reports to evaluate the effectiveness of care provided to specific types of patients and, in the context of investigating processes of care, to individual patients. In order to investigate outcomes that might be judged inadequate by agency staff, an individual patient's clinical records can be reviewed in the context of a process-of-care screen that investigates the circumstances and processes leading to outcomes. Such an investigation can, in turn, lead to a plan of action that focuses on specific changes in care behaviors at the individual patient level. This enables an HHA to identify and apply "lessons learned" to its agency operations to improve the outcomes of the agency as a whole. Analogously, the HHA can examine circumstances and processes that produced superior or exemplary outcomes to reinforce care behaviors that produce such outcomes, promulgating information on such care behaviors within the agency.

Data from outcome reports not only can be used by the HHA for continuous quality improvement by monitoring outcomes over time, but also can be used to objectively assess the agency's strengths and weaknesses in the clinical services it provides. Outcome reports can inform the HHA what patients and clinical conditions it best serves, what areas of HHA-care behaviors or activities correlate with patient satisfaction, and what services need improvement. Such information will be of value to the HHA in its strategic planning, financial planning, and marketing.

Aggregate HHA outcome reports that contain no patient-specific data may be used by the industry for comparative performance assessment. The home care industry can identify those agencies regarded as industry leaders in quality of care for comparable services, care domains, and/or patient populations. Identified quality leaders can market their services accordingly and can serve as a reservoir of expertise for other agencies in their efforts to improve performance in selected areas.

The results of outcome measurement also can provide useful information to purchasers and consumers of home care services. Such organizations and individuals will be able to examine reports of industry outcomes and identify those agencies that will best provide the services to meet the needs of individual consumers or the population needs of particular purchasers. Improved access to objective information on quality of care for consumers and purchasers will also drive quality improvement in the industry as a whole. HHAs with records of poor performance will be motivated to improve their performances to compete with better-performing HHAs.

Our managed care partners, as purchasers of home health services, would also be interested in such outcome-based comparative performance measurements of HHAs. A standardized industry-wide instrument would allow plans as purchasers to make value-based purchasing decisions of home health care. The ability to use outcome measurement data is especially important to us as a purchaser of services on behalf of eligible beneficiaries. For example, in addition to comparing an HHA's performance to its own past performance, HCFA and State survey agencies will be able to use industry-wide performance data on a continuous basis to identify HHAs that are not performing to the norm, thereby suggesting the possibility that poor quality of care is occurring. This information can trigger on-site inspections to assess performance. At the same time, the data can be used to look for patterns of exemplary performance that can be shared with others to help improve outcomes of care and satisfaction overall. Having these data on a flow basis frees us up from rigid survey schedules and enables us to use scarce inspection resources more productively. Of course, we would still conduct initial inspections to ensure an HHA is ready for participation. We would also follow up, usually with an on-site visit, on all complaints that suggest quality of care problems. Additionally, State survey agencies and HCFA could use performance data to identify opportunities for improvement in national or local priority areas, such as a project to improve medication management for beneficiaries generally, or to shorten the time necessary to achieve a clinically important patient outcome.

The availability of performance data will also enable State survey agencies and HCFA to evaluate more effectively the HHA's performance of its own quality assessment and performance improvement program. For example, an HHA is receiving objective feedback data that show that the HHA is performing less well than other HHAs in a particular clinical outcome area. The HHA is not using the quality assessment and performance improvement program to address why its results are divergent and to develop interventions to improve its performance. Consequently, the surveyors will have evidence that the HHA is not responding the way it could or should to improve outcomes of care and satisfaction for patients.

Initially, since we are not yet requiring HHAs to submit OASIS data, surveyors will look at how the HHA has used OASIS data internally, and ideally, informally with other HHAs (for example, either within its own company, or through consortia of HHAs in its geographic area). Likewise, accreditation organizations with deemed status can use the information as part of their accreditation processes. As we stated earlier in this preamble, the Department of Health and Human Services will, at a later date, issue a separate notice of proposed rulemaking identifying the specific data elements that would be required to be reported to HCFA, the timetable, and the intended use of these data elements. At this time, it has not been determined how extensive or limited these requirements will be. There will be extensive public comment when the draft is issued. In the meantime, however, we welcome public comment on the question of what would constitute appropriate reporting requirements for the purposes of monitoring progress toward meeting performance outcome measures.

3. Other Potential Applications of OASIS Data

We are presently investigating the potential of the OASIS and information on which clinical outcomes are based to

assist in developing selected features of a Medicare prospective payment system for home health services. Specifically, we have found that in identifying factors that might be valuable in developing case-mix adjustors for payment purposes, traditional characteristics such as patient diagnosis account for little of the variation in home health utilization. Our Office of Research and Demonstrations is currently researching home health case-mix, including an investigation of the use and applicability of the data items contained within the OASIS for developing a home health case-mix adjustor for payment purposes. If such data items are found to be a valid basis for home health case-mix, the potential of the OASIS would be further maximized. At the same time, the burden on HHAs in providing health status information for purposes of measuring outcomes, assessing patient needs, care planning, and measuring case mix would be minimized.

We believe the OASIS data have the potential to be of significant benefit to health professionals and professional organizations. Objective, well-specified data on home health outcomes can assist professionals to determine those practice areas needing improvement, and help to identify inefficient or ineffective practice standards or services which do not contribute to improved patient outcomes. Thus, the OASIS data can inform and improve professional practice standards and ultimately assist in the development of clinical practice guidelines and critical pathways. On a broader scale, we are interested in developing a capability of linking beneficiary information across provider settings with other administrative data (for example, payment and utilization data). Beneficiaries may have very complex service delivery histories, moving among various services and benefits.

In order to effectively track outcomes and to facilitate the administrative tasks involved in integrating the care for individuals, our data systems, including the OASIS, minimum data set (MDS), and others that may emerge, must be able to be integrated. Since mandated data sets have been implemented or are being considered in other domains of health care for which HCFA is responsible (for example, the MDS for nursing homes, and the Uniform Needs Assessment instrument for hospital discharge), we anticipate the evolution of data items and data sets to occur so that the degree of commonality among such data sets can be maximized over the course of time. Data sets have been developed for selected fields such as home care and nursing home care so that the unique needs of patient and Medicare beneficiaries that pertain to each provider type can be adequately taken into consideration in the context of an initial data set such as OASIS or MDS. Because of these unique needs, it is unlikely that we can collectively attain perfect overlap among the different data sets. It is our goal ultimately to attain as much commonality across these data sets as possible so that patient health status might eventually be monitored across provider settings using a core set of data items within each data set.

Finally, we expect that the OASIS data will help us in promoting more efficient regulations and policies that encourage good performance in the home care industry. We will be able to objectively examine the home health industry in all its complexity, using outcome data to support or refute anecdotal information, unsubstantiated opinion, or conjecture, thereby facilitating consensus building and more objective policy decisions. Most important, home health outcomes information will aid in shaping and even creating the home health benefit of the future. As we identify those practices and services that contribute to enhanced patient outcomes, the patient populations that should be served by home care can be better specified, and the capacity of the home health industry to provide the requisite services can be strengthened, expanded, or refined in keeping with beneficiary outcomes.

II. Sample OASIS Survey

BILLING CODE 4120-01-P

Medicare Home Health Care Quality Assurance and Improvement Demonstration Outcome and Assessment Information Set (OASIS-B)

This data set should not be reviewed or used without first reading the accompanying narrative prologue that explains the purpose of the OASIS and its past and planned evolution.

OASIS Items to be Used at Specific Time Points

Start of Care (or Resumption of Care Following Inpatient Facility Stay): 1-69

Follow-Up: 1, 4, 9-11, 13, 16-26, 29-71

Discharge (not to inpatient facility): 1, 4, 9-11, 13, 16-26, 29-74, 78-79

Transfer to Inpatient Facility (with or without agency discharge): 1, 70-72, 75-79

Death at Home: 1, 79

Note: For items 51-67, please note special instructions at the beginning of the section.

CLINICAL RECORD ITEMS

a. **Agency ID:** _ _ _ _ _ _ _ _ _ _

b. **Patient ID Number:** _ _ _ _ _ _ _ _ _ _

c. **Start of Care Date:** _ _/_ _/_ _ _ _ (month day year)

d. **Patient's Last Name:**

_ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _

e. **Patient State of Residence:** _ _ _

f. **Patient Zip Code:** _ _ _ _ _

g. **Medicare Number:**

_ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _
(including suffix if any)

☐ NA - No Medicare

h. **Birth Date:** _ _/_ _/_ _ _ _ (month day year)

i. **Discipline of Person Completing Assessment:**

☐ 1-RN ☐ 2-LPN ☐ 3-PT
☐ 4-SLP/ST ☐ 5-OT ☐ 6-MSW

j. **Date Assessment Information Recorded:**

_ _/_ _/_ _ _ _ (month day year)

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DEMOGRAPHICS AND PATIENT HISTORY

1. **This Assessment is Currently Being Completed for the Following Reason:**

   ☐ 1 - Start of care
   ☐ 2 - Resumption of care (after inpatient stay)
   ☐ 3 - Discharge from agency - not to an inpatient facility [Go to *Question 4*]
   ☐ 4 - Transferred to an inpatient facility - discharged from agency [Go to *Question 70*]
   ☐ 5 - Transferred to an inpatient facility - not discharged from agency [Go to *Question 70*]
   ☐ 6 - Died at home [Go to *Question 79*]
   ☐ 7 - Recertification reassessment (follow-up) [Go to *Question 4*]
   ☐ 8 - Other follow-up [Go to *Question 4*]

2. **Gender:**

   ☐ 1 - Male
   ☐ 2 - Female

3. **Race/Ethnicity** (as identified by patient):

   ☐ 1 - White, non-Hispanic
   ☐ 2 - Black, African-American
   ☐ 3 - Hispanic
   ☐ 4 - Asian, Pacific Islander
   ☐ 5 - American Indian, Eskimo, Aleut
   ☐ 6 - Other
   ☐ UK - Unknown

4. **Current Payment Sources for Home Care: (Mark all that apply.)**

   ☐ 0 - None; no charge for current services
   ☐ 1 - Medicare (traditional fee-for-service)
   ☐ 2 - Medicare (HMO/managed care)
   ☐ 3 - Medicaid (traditional fee-for-service)
   ☐ 4 - Medicaid (HMO/managed care)
   ☐ 5 - Workers' compensation
   ☐ 6 - Title programs (e.g., Title III, V, or XX)
   ☐ 7 - Other government (e.g., CHAMPUS, VA, etc.)
   ☐ 8 - Private insurance
   ☐ 9 - Private HMO/managed care
   ☐ 10 - Self-pay
   ☐ 11 - Other (specify) _____
   ☐ UK - Unknown

5. **Financial Factors** limiting the ability of the patient/family to meet basic health needs: **(Mark all that apply.)**

   ☐ 0 - None
   ☐ 1 - Unable to afford medicine or medical supplies
   ☐ 2 - Unable to afford medical expenses that are not covered by insurance/Medicare (e.g., copayments)
   ☐ 3 - Unable to afford rent/utility bills
   ☐ 4 - Unable to afford food
   ☐ 5 - Other (specify) _____

6. From which of the following **Inpatient Facilities** was the patient discharged during the past 14 days? **(Mark all that apply.)**

   ☐ 1 - Hospital
   ☐ 2 - Rehabilitation facility
   ☐ 3 - Nursing home
   ☐ 4 - Other (specify) _____
   ☐ NA - Patient was not discharged from an inpatient facility [If NA, go to *Question 9*]

7. **Inpatient Discharge Date** (most recent):

   __ __ / __ __ / __ __ __ __
   month day year

   ☐ UK - Unknown

8. **Inpatient Diagnoses** and three-digit ICD code categories for only those conditions treated during an inpatient facility stay within the last 14 days (no surgical or V-codes):

Inpatient Facility Diagnosis	7ICD
a. _____	(__ __ __)
b. _____	(__ __ __)

9. **Medical or Treatment Regimen Change Within Past 14 Days:** Has the patient experienced a change in medical or treatment regimen (e.g., medication, treatment, or service change due to new or additional diagnosis, etc.) within the last 14 days?

   ☐ 0 - No [If No, go to *Question 11*]
   ☐ 1 - Yes

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10. List the patient's **Medical Diagnoses** and three-digit ICD code categories for those conditions requiring changed medical or treatment regimen (no surgical or V-codes):

Changed Medical Regimen Diagnosis	ICD
a. _____	(__ __ __)
b. _____	(__ __ __)
c. _____	(__ __ __)
d. _____	(__ __ __)

11. **Conditions Prior to Medical or Treatment Regimen Change or Inpatient Stay Within Past 14 Days:** If this patient experienced an inpatient facility discharge or change in medical or treatment regimen within the past 14 days, indicate any conditions which existed prior to the inpatient stay or change in medical or treatment regimen **(Mark all that apply.)**

    ☐ 1 - Urinary incontinence
    ☐ 2 - Indwelling/suprapubic catheter
    ☐ 3 - Intractable pain
    ☐ 4 - Impaired decision-making
    ☐ 5 - Disruptive or socially inappropriate behavior
    ☐ 6 - Memory loss to the extent that supervision required
    ☐ 7 - None of the above
    ☐ NA - No inpatient facility discharge and no change in medical or treatment regimen in past 14 days
    ☐ UK - Unknown

12. **Diagnoses and Severity Index:** List each medical diagnosis or problem for which the patient is receiving home care and ICD code category (no surgical or V-codes) and rate them using the following severity index. (Choose one value that represents the most severe rating appropriate for each diagnosis.)

    0 - Asymptomatic, no treatment needed at this time
    1 - Symptoms well controlled with current therapy
    2 - Symptoms controlled with difficulty, affecting daily functioning; patient needs ongoing monitoring
    3 - Symptoms poorly controlled, patient needs frequent adjustment in treatment and dose monitoring
    4 - Symptoms poorly controlled, history of rehospitalizations

Primary Diagnosis	ICD	Severity Rating
a. _____	(__ __ __)	☐ 0 ☐ 1 ☐ 2 ☐ 3 ☐ 4

Other Diagnoses	ICD	Severity Rating
b. _____	(__ __ __)	☐ 0 ☐ 1 ☐ 2 ☐ 3 ☐ 4
c. _____	(__ __ __)	☐ 0 ☐ 1 ☐ 2 ☐ 3 ☐ 4
d. _____	(__ __ __)	☐ 0 ☐ 1 ☐ 2 ☐ 3 ☐ 4
e. _____	(__ __ __)	☐ 0 ☐ 1 ☐ 2 ☐ 3 ☐ 4
f. _____	(__ __ __)	☐ 0 ☐ 1 ☐ 2 ☐ 3 ☐ 4

13. **Therapies the patient receives at home: (Mark all that apply.)**

    ☐ 1 - Intravenous or infusion therapy (excludes TPN)
    ☐ 2 - Parenteral nutrition (TPN or lipids)
    ☐ 3 - Enteral nutrition (nasogastric, gastrostomy, jejunostomy, or any other artificial entry into the alimentary canal)
    ☐ 4 - None of the above

14. **Overall Prognosis:** BEST description of patient's overall prognosis for recovery from this episode of illness.

    ☐ 0 - Poor: little or no recovery is expected and/or further decline is imminent
    ☐ 1 - Good/Fair: partial to full recovery is expected
    ☐ UK - Unknown

15. **Rehabilitative Prognosis:** BEST description of patient's prognosis for functional status.

    ☐ 0 - Guarded: minimal improvement in functional status is expected; decline is possible
    ☐ 1 - Good: marked improvement in functional status is expected
    ☐ UK - Unknown

16. **Life Expectancy:** (Physician documentation is not required.)

    ☐ 0 - Life expectancy is greater than 6 months
    ☐ 1 - Life expectancy is 6 months or fewer

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17. **High Risk Factors** characterizing this patient: **(Mark all that apply.)**

- ☐ 1 - Heavy smoking
- ☐ 2 - Obesity
- ☐ 3 - Alcohol dependency
- ☐ 4 - Drug dependency
- ☐ 5 - None of the above
- ☐ UK - Unknown

LIVING ARRANGEMENTS

18. **Current Residence:**

- ☐ 1 - Patient's owned or rented residence (house, apartment, or mobile home owned or rented by patient/couple/significant other)
- ☐ 2 - Family member's residence
- ☐ 3 - Boarding home or rented room
- ☐ 4 - Board and care or assisted living facility
- ☐ 5 - Other (specify) _____

19. **Structural Barriers** in the patient's environment limiting independent mobility: **(Mark all that apply.)**

- ☐ 0 - None
- ☐ 1 - Stairs inside home which must be used by the patient (e.g., to get to toileting, sleeping, eating areas)
- ☐ 2 - Stairs inside home which are used optionally (e.g., to get to laundry facilities)
- ☐ 3 - Stairs leading from inside house to outside
- ☐ 4 - Narrow or obstructed doorways

20. **Safety Hazards** found in the patient's current place of residence: **(Mark all that apply.)**

- ☐ 0 - None
- ☐ 1 - Inadequate floor, roof, or windows
- ☐ 2 - Inadequate lighting
- ☐ 3 - Unsafe gas/electric appliance
- ☐ 4 - Inadequate heating
- ☐ 5 - Inadequate cooling
- ☐ 6 - Lack of fire safety devices
- ☐ 7 - Unsafe floor coverings
- ☐ 8 - Inadequate stair railings
- ☐ 9 - Improperly stored hazardous materials
- ☐ 10 - Lead-based paint
- ☐ 11 - Other (specify) _____

21. **Sanitation Hazards** found in the patient's current place of residence: **(Mark all that apply.)**

- ☐ 0 - None
- ☐ 1 - No running water
- ☐ 2 - Contaminated water
- ☐ 3 - No toileting facilities
- ☐ 4 - Outdoor toileting facilities only
- ☐ 5 - Inadequate sewage disposal
- ☐ 6 - Inadequate/improper food storage
- ☐ 7 - No food refrigeration
- ☐ 8 - No cooking facilities
- ☐ 9 - Insects/rodents present
- ☐ 10 - No scheduled trash pickup
- ☐ 11 - Cluttered/soiled living area
- ☐ 12 - Other (specify) _____

22. **Patient Lives With: (Mark all that apply.)**

- ☐ 1 - Lives alone
- ☐ 2 - With spouse or significant other
- ☐ 3 - With other family member
- ☐ 4 - With a friend
- ☐ 5 - With paid help (other than home care agency staff)
- ☐ 6 - With other than above

SUPPORTIVE ASSISTANCE

23. **Assisting Person(s) Other than Home Care Agency Staff: (Mark all that apply.)**

- ☐ 1 - Relatives, friends, or neighbors living outside the home
- ☐ 2 - Person residing in the home (EXCLUDING paid help)
- ☐ 3 - Paid help
- ☐ 4 - None of the above **[If None of the above, go to *Question 27*]**
- ☐ UK - Unknown **[If Unknown, go to *Question 27*]**

24. **Primary Caregiver** taking lead responsibility for providing or managing the patient's care, providing the most frequent assistance, etc. (other than home care agency staff):

- ☐ 0 - No one person **[If No one person, go to *Question 27*]**
- ☐ 1 - Spouse or significant other
- ☐ 2 - Daughter or son
- ☐ 3 - Other family member
- ☐ 4 - Friend or neighbor or community or church member
- ☐ 5 - Paid help
- ☐ UK - Unknown **[If Unknown, go to *Question 27*]**

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25. **How Often** does the patient receive assistance from the primary caregiver?

- ☐ 1 - Several times during day and night
- ☐ 2 - Several times during day
- ☐ 3 - Once daily
- ☐ 4 - Three or more times per week
- ☐ 5 - One to two times per week
- ☐ 6 - Less often than weekly
- ☐ UK - Unknown

26. **Type of Primary Caregiver Assistance: (Mark all that apply.)**

- ☐ 1 - ADL assistance (e.g., bathing, dressing, toileting, bowel/bladder, eating/feeding)
- ☐ 2 - IADL assistance (e.g., meds, meals, housekeeping, laundry, telephone, shopping, finances)
- ☐ 3 - Environmental support (housing, home maintenance)
- ☐ 4 - Psychosocial support (socialization, companionship, recreation)
- ☐ 5 - Advocates or facilitates patient's participation in appropriate medical care
- ☐ 6 - Financial agent, power of attorney, or conservator of finance
- ☐ 7 - Health care agent, conservator of person, or medical power of attorney
- ☐ UK - Unknown

SENSORY STATUS

27. **Vision** with corrective lenses if the patient usually wears them:

- ☐ 0 - Normal vision: sees adequately in most situations; can see medication labels, newsprint.
- ☐ 1 - Partially impaired: cannot see medication labels or newsprint, but can see obstacles in path, and the surrounding layout; can count fingers at arm's length.
- ☐ 2 - Severely impaired: cannot locate objects without hearing or touching them or patient nonresponsive.

28. **Hearing and Ability to Understand Spoken Language** in patient's own language (with hearing aids if the patient usually uses them):

- ☐ 0 - No observable impairment. Able to hear and understand complex or detailed instructions and extended or abstract conversation.
- ☐ 1 - With minimal difficulty, able to hear and understand most multi-step instructions and ordinary conversation. May need occasional repetition, extra time, or louder voice.
- ☐ 2 - Has moderate difficulty hearing and understanding simple, one-step instructions and brief conversation; needs frequent prompting or assistance.
- ☐ 3 - Has severe difficulty hearing and understanding simple greetings and short comments. Requires multiple repetitions, restatements, demonstrations, additional time.
- ☐ 4 - Unable to hear and understand familiar words or common expressions consistently, or patient nonresponsive.

29. **Speech and Oral (Verbal) Expression of Language** (in patient's own language):

- ☐ 0 - Expresses complex ideas, feelings, and needs clearly, completely, and easily in all situations with no observable impairment.
- ☐ 1 - Minimal difficulty in expressing ideas and needs (may take extra time; makes occasional errors in word choice, grammar or speech intelligibility; needs minimal prompting or assistance).
- ☐ 2 - Expresses simple ideas or needs with moderate difficulty (needs prompting or assistance, errors in word choice, organization or speech intelligibility). Speaks in phrases or short sentences.
- ☐ 3 - Has severe difficulty expressing basic ideas or needs and requires maximal assistance or guessing by listener. Speech limited to single words or short phrases.
- ☐ 4 - Unable to express basic needs even with maximal prompting or assistance but is not comatose or unresponsive (e.g., speech is nonsensical or unintelligible).
- ☐ 5 - Patient nonresponsive or unable to speak.

30. **Frequency of Pain** interfering with patient's activity or movement:

- ☐ 0 - Patient has no pain or pain does not interfere with activity or movement
- ☐ 1 - Less often than daily
- ☐ 2 - Daily, but not constantly
- ☐ 3 - All of the time

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31. **Intractable Pain:** Is the patient experiencing pain that is not easily relieved, occurs at least daily, and affects the patient's sleep, appetite, physical or emotional energy, concentration, personal relationships, emotions, or ability or desire to perform physical activity?

☐ 0 - No
☐ 1 - Yes

INTEGUMENTARY STATUS

32. Does this patient have a **Skin Lesion** or an **Open Wound**? This excludes "OSTOMIES."

☐ 0 - No [**If No, go to *Question 36***]
☐ 1 - Yes

33. Does this patient have a **Pressure Ulcer**?

☐ 0 - No [**If No, go to *Question 34***]
☐ 1 - Yes

33a. **Current Number of Pressure Ulcers at Each Stage:** (Circle one response for each stage.)

Pressure Ulcer Stages	Number of Pressure Ulcers				
a) Stage 1: Nonblanchable erythema of intact skin; the heralding of skin ulceration. In darker-pigmented skin, warmth, edema, hardness, or discolored skin may be indicators.	0	1	2	3	4 or more
b) Stage 2: Partial thickness skin loss involving epidermis and/or dermis. The ulcer is superficial and presents clinically as an abrasion, blister, or shallow crater.	0	1	2	3	4 or more
c) Stage 3: Full-thickness skin loss involving damage or necrosis of subcutaneous tissue which may extend down to, but not through, underlying fascia. The ulcer presents clinically as a deep crater with or without undermining of adjacent tissue.	0	1	2	3	4 or more
d) Stage 4: Full-thickness skin loss with extensive destruction, tissue necrosis, or damage to muscle, bone, or supporting structures (e.g., tendon, joint capsule, etc.)	0	1	2	3	4 or more
e) In addition to the above, is there at least one pressure ulcer that cannot be observed due to the presence of eschar or a nonremovable dressing, including casts? ☐ 0 - No ☐ 1 - Yes					

33b. **Stage of Most Problematic (Observable) Pressure Ulcer:**

☐ 1 - Stage 1
☐ 2 - Stage 2
☐ 3 - Stage 3
☐ 4 - Stage 4
☐ NA - No observable pressure ulcer

33c. **Status of Most Problematic (Observable) Pressure Ulcer:**

☐ 1 - Fully granulating
☐ 2 - Early/partial granulation
☐ 3 - Not healing
☐ NA - No observable pressure ulcer

34. Does this patient have a **Stasis Ulcer**?

☐ 0 - No [**If No, go to *Question 35***]
☐ 1 - Yes

34a. **Current Number of Observable Stasis Ulcer(s):**

☐ 0 - Zero
☐ 1 - One
☐ 2 - Two
☐ 3 - Three
☐ 4 - Four or more

34b. **Does this patient have at least one Stasis Ulcer that Cannot be Observed due to the presence of a nonremovable dressing?**

☐ 0 - No
☐ 1 - Yes

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34c. **Status of Most Problematic (Observable) Stasis Ulcer:**

☐ 1 - Fully granulating
☐ 2 - Early/partial granulation
☐ 3 - Not healing
☐ NA - No observable stasis ulcer

35. Does this patient have a **Surgical Wound**?

☐ 0- No [**If No, go to *Question 38***]
☐ 1- Yes

35a. **Current Number of (Observable) Surgical Wounds:** (If a wound is partially closed but has more than one opening, consider each opening as a separate wound.)

☐ 0 - Zero
☐ 1 - One
☐ 2 - Two
☐ 3 - Three
☐ 4 - Four or more

35b. **Does this patient have at least one Surgical Wound that Cannot be Observed due to the presence of a nonremovable dressing?**

☐ 0 - No
☐ 1 - Yes

35c. **Status of Most Problematic (Observable) Surgical Wound:**

☐ 1 - Fully granulating
☐ 2 - Early/partial granulation
☐ 3 - Not healing
☐ NA - No observable surgical wound

RESPIRATORY STATUS

36. When is the patient dyspneic or noticeably Short of Breath?

☐ 0 - Never, patient is not short of breath
☐ 1 - When walking more than 20 feet, climbing stairs
☐ 2 - With moderate exertion (e.g., while dressing, using commode or bedpan, walking distances less than 20 feet)
☐ 3 - With minimal exertion (e.g., while eating, talking, or performing other ADLs) or with agitation
☐ 4 - At rest (during day or night)

37. **Respiratory Treatments** utilized at home: (Mark all that apply.)

☐ 1 - Oxygen (intermittent or continuous)
☐ 2 - Ventilator (continually or at night)
☐ 3 - Continuous positive airway pressure
☐ 4 - None of the above

ELIMINATION STATUS

38. Has this patient been treated for a Urinary Tract Infection in the past 14 days?

☐ 0 - No
☐ 1 - Yes
☐ NA - Patient on prophylactic treatment
☐ UK - Unknown

39. **Urinary Incontinence or Urinary Catheter Presence:**

☐ 0 - No incontinence or catheter (includes anuria or ostomy for urinary drainage) [**If No, go to *Question 41***]
☐ 1 - Patient is incontinent
☐ 2 - Patient requires a urinary catheter (i.e., external, indwelling, intermittent, suprapubic) [**Go to *Question 41***]

40. **When does Urinary Incontinence occur?**

☐ 0 - Timed-voiding defers incontinence
☐ 1 - During the night only
☐ 2 - During the day and night

41. **Bowel Incontinence Frequency:**

☐ 0 - Very rarely or never has bowel incontinence
☐ 1 - Less than once weekly
☐ 2 - One to three times weekly
☐ 3 - Four to six times weekly
☐ 4 - On a daily basis
☐ 5 - More often than once daily
☐ NA - Patient has ostomy for bowel elimination
☐ UK - Unknown

42. **Ostomy for Bowel Elimination:** Does this patient have an ostomy for bowel elimination that (within the last 14 days): a) was related to an inpatient facility stay, or b) necessitated a change in medical or treatment regimen?

☐ 0 - Patient does not have an ostomy for bowel elimination.
☐ 1 - Patient's ostomy was not related to an inpatient stay and did not necessitate change in medical or treatment regimen.
☐ 2 - The ostomy was related to an inpatient stay or did necessitate change in medical or treatment regimen.

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NEURO/EMOTIONAL/BEHAVIORAL STATUS

43. Cognitive Functioning: (Patient's current level of alertness, orientation, comprehension, concentration, and immediate memory for simple commands.)

- ☐ 0 - Alert/oriented, able to focus and shift attention, comprehends and recalls task directions independently.
- ☐ 1 - Requires prompting (cuing, repetition, reminders) only under stressful or unfamiliar conditions.
- ☐ 2 - Requires assistance and some direction in specific situations (e.g., on all tasks involving shifting of attention), or consistently requires low stimulus environment due to distractibility.
- ☐ 3 - Requires considerable assistance in routine situations. Is not alert and oriented or is unable to shift attention and recall directions more than half the time.
- ☐ 4 - Totally dependent due to disturbances such as constant disorientation, coma, persistent vegetative state, or delirium.

44. When Confused (Reported or Observed):

- ☐ 0 - Never
- ☐ 1 - In new or complex situations only
- ☐ 2 - On awakening or at night only
- ☐ 3 - During the day and evening, but not constantly
- ☐ 4 - Constantly
- ☐ NA - Patient nonresponsive

45. When Anxious (Reported or Observed):

- ☐ 0 - None of the time
- ☐ 1 - Less often than daily
- ☐ 2 - Daily, but not constantly
- ☐ 3 - All of the time
- ☐ NA - Patient nonresponsive

46. Depressive Feelings Reported or Observed in Patient: (Mark all that apply.)

- ☐ 1 - Depressed mood (e.g., feeling sad, tearful)
- ☐ 2 - Sense of failure or self reproach
- ☐ 3 - Hopelessness
- ☐ 4 - Recurrent thoughts of death
- ☐ 5 - Thoughts of suicide
- ☐ 6 - None of the above feelings observed or reported

47. Patient Behaviors (Reported or Observed): (Mark all that apply.)

- ☐ 1 - Indecisiveness, lack of concentration
- ☐ 2 - Diminished interest in most activities
- ☐ 3 - Sleep disturbances
- ☐ 4 - Recent change in appetite or weight
- ☐ 5 - Agitation
- ☐ 6 - A suicide attempt
- ☐ 7 - None of the above behaviors observed or reported

48. Behaviors Demonstrated at Least Once a Week (Reported or Observed): (Mark all that apply.)

- ☐ 1 - Memory deficit: failure to recognize familiar persons/places, inability to recall events of past 24 hours, significant memory loss so that supervision is required
- ☐ 2 - Impaired decision-making: failure to perform usual ADLs or IADLs, inability to appropriately stop activities, jeopardizes safety through actions
- ☐ 3 - Verbal disruption: yelling, threatening, excessive profanity, sexual references, etc.
- ☐ 4 - Physical aggression: aggressive or combative to self and others (e.g., hits self, throws objects, punches, dangerous maneuvers with wheelchair or other objects)
- ☐ 5 - Disruptive, infantile, or socially inappropriate behavior (excludes verbal actions)
- ☐ 6 - Delusional, hallucinatory, or paranoid behavior
- ☐ 7 - None of the above behaviors demonstrated

49. Frequency of Behavior Problems (Reported or Observed) (e.g., wandering episodes, self abuse, verbal disruption, physical aggression, etc.):

- ☐ 0 - Never
- ☐ 1 - Less than once a month
- ☐ 2 - Once a month
- ☐ 3 - Several times each month
- ☐ 4 - Several times a week
- ☐ 5 - At least daily

50. Is this patient receiving **Psychiatric Nursing Services** at home provided by a qualified psychiatric nurse?

- ☐ 0 - No
- ☐ 1 - Yes

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ADL/IADLs

For Questions 51-67, complete the "current" column for all patients. For these same items, complete the "prior" column only at start of care; mark the level that corresponds to the patient's condition 14 days prior to start of care. In all cases, record what the patient is *able* to do.

51. Grooming: Ability to tend to personal hygiene needs (i.e., washing face and hands, hair care, shaving or make up, teeth or denture care, fingernail care).

Prior Current
- ☐ ☐ 0 - Able to groom self unaided, with or without the use of assistive devices or adapted methods.
- ☐ ☐ 1 - Grooming utensils must be placed within reach before able to complete grooming activities.
- ☐ ☐ 2 - Someone must assist the patient to groom self.
- ☐ ☐ 3 - Patient depends entirely upon someone else for grooming needs.
- ☐ UK - Unknown

52. Ability to Dress Upper Body (with or without dressing aids) including undergarments, pullovers, front-opening shirts and blouses, managing zippers, buttons, and snaps:

Prior Current
- ☐ ☐ 0 - Able to get clothes out of closets and drawers, put them on and remove them from the upper body without assistance.
- ☐ ☐ 1 - Able to dress upper body without assistance if clothing is laid out or handed to the patient.
- ☐ ☐ 2 - Someone must help the patient put on upper body clothing.
- ☐ ☐ 3 - Patient depends entirely upon another person to dress the upper body.
- ☐ UK - Unknown

53. Ability to Dress Lower Body (with or without dressing aids) including undergarments, slacks, socks or nylons, shoes:

Prior Current
- ☐ ☐ 0 - Able to obtain, put on, and remove clothing and shoes without assistance.
- ☐ ☐ 1 - Able to dress lower body without assistance if clothing and shoes are laid out or handed to the patient.
- ☐ ☐ 2 - Someone must help the patient put on undergarments, slacks, socks or nylons, and shoes.
- ☐ ☐ 3 - Patient depends entirely upon another person to dress lower body.
- ☐ UK - Unknown

54. Bathing: Ability to wash entire body. **Excludes grooming** (washing face and hands only).

Prior Current
- ☐ ☐ 0 - Able to bathe self in shower or tub independently
- ☐ ☐ 1 - With the use of devices, is able to bathe self in shower or tub independently.
- ☐ ☐ 2 - Able to bathe in shower or tub with the assistance of another person:
  (a) for intermittent supervision or encouragement or reminders, OR
  (b) to get in and out of the shower or tub, OR
  (c) for washing difficult to reach areas.
- ☐ ☐ 3 - Participates in bathing self in shower or tub, but requires presence of another person throughout the bath for assistance or supervision.
- ☐ ☐ 4 - Unable to use the shower or tub and is bathed in bed or bedside chair.
- ☐ ☐ 5 - Unable to effectively participate in bathing and is totally bathed by another person.
- ☐ UK - Unknown

55. Toileting: Ability to get to and from the toilet or bedside commode.

Prior Current
- ☐ ☐ 0 - Able to get to and from the toilet independently with or without a device.
- ☐ ☐ 1 - When reminded, assisted, or supervised by another person, able to get to and from the toilet.
- ☐ ☐ 2 - Unable to get to and from the toilet but is able to use a bedside commode (with or without assistance).
- ☐ ☐ 3 - Unable to get to and from the toilet or bedside commode but is able to use a bedpan/urinal independently.
- ☐ ☐ 4 - Is totally dependent in toileting.
- ☐ UK - Unknown

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56. Transferring: Ability to move from bed to chair, on and off toilet or commode, into and out of tub or shower, and ability to turn and position self in bed if patient is bedfast.

Prior Current
- ☐ ☐ 0 - Able to independently transfer.
- ☐ ☐ 1 - Transfers with minimal human assistance or with use of an assistive device.
- ☐ ☐ 2 - Unable to transfer self but is able to bear weight and pivot during the transfer process.
- ☐ ☐ 3 - Unable to transfer self and is unable to bear weight or pivot when transferred by another person.
- ☐ ☐ 4 - Bedfast, unable to transfer but is able to turn and position self in bed.
- ☐ ☐ 5 - Bedfast, unable to transfer and is unable to turn and position self.
- ☐ UK - Unknown

57. Ambulation/Locomotion: Ability to SAFELY walk, once in a standing position, or use a wheelchair, once in a seated position, on a variety of surfaces.

Prior Current
- ☐ ☐ 0 - Able to independently walk on even and uneven surfaces and climb stairs with or without railings (i.e., needs no human assistance or assistive device).
- ☐ ☐ 1 - Requires use of a device (e.g., cane, walker) to walk alone or requires human supervision or assistance to negotiate stairs or steps or uneven surfaces.
- ☐ ☐ 2 - Able to walk only with the supervision or assistance of another person at all times.
- ☐ ☐ 3 - Chairfast, unable to ambulate but is able to wheel self independently.
- ☐ ☐ 4 - Chairfast, unable to ambulate and is unable to wheel self.
- ☐ ☐ 5 - Bedfast, unable to ambulate or be up in a chair.
- ☐ UK - Unknown

58. Feeding or Eating: Ability to feed self meals and snacks. **Note: This refers only to the process of eating, chewing, and swallowing, not preparing the food to be eaten.**

Prior Current
- ☐ ☐ 0 - Able to independently feed self.
- ☐ ☐ 1 - Able to feed self independently but requires:
  (a) meal set-up; OR
  (b) intermittent assistance or supervision from another person; OR
  (c) a liquid, pureed or ground meat diet.
- ☐ ☐ 2 - Unable to feed self and must be assisted or supervised throughout the meal/snack.
- ☐ ☐ 3 - Able to take in nutrients orally and receives supplemental nutrients through a nasogastric tube or gastrostomy.
- ☐ ☐ 4 - Unable to take in nutrients orally and is fed nutrients through a nasogastric tube or gastrostomy.
- ☐ ☐ 5 - Unable to take in nutrients orally or by tube feeding.
- ☐ UK - Unknown

59. Planning and Preparing Light Meals (e.g., cereal, sandwich) or reheat delivered meals:

Prior Current
- ☐ ☐ 0 - (a) Able to independently plan and prepare all light meals for self or reheat delivered meals; OR
  (b) Is physically, cognitively, and mentally able to prepare light meals on a regular basis but has not routinely performed light meal preparation in the past (i.e., prior to this home care admission).
- ☐ ☐ 1 - Unable to prepare light meals on a regular basis due to physical, cognitive, or mental limitations.
- ☐ ☐ 2 - Unable to prepare any light meals or reheat any delivered meals.
- ☐ UK - Unknown

60. Transportation: Physical and mental ability to safely use a car, taxi, or public transportation (bus, train, subway).

Prior Current
- ☐ ☐ 0 - Able to independently drive a regular or adapted car; OR uses a regular or handicap-accessible public bus.
- ☐ ☐ 1 - Able to ride in a car only when driven by another person; OR able to use a bus or handicap van only when assisted or accompanied by another person.
- ☐ ☐ 2 - Unable to ride in a car, taxi, bus, or van, and requires transportation by ambulance.
- ☐ UK - Unknown

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61. Laundry: Ability to do own laundry -- to carry laundry to and from washing machine, to use washer and dryer, to wash small items by hand.

Prior Current
- ☐ ☐ 0 - (a) Able to independently take care of all laundry tasks; OR
  (b) Physically, cognitively, and mentally able to do laundry and access facilities, but has not routinely performed laundry tasks in the past (i.e., prior to this home care admission).
- ☐ ☐ 1 - Able to do only light laundry, such as minor hand wash or light washer loads. Due to physical, cognitive, or mental limitations, needs assistance with heavy laundry such as carrying large loads of laundry.
- ☐ ☐ 2 - Unable to do any laundry due to physical limitation or needs continual supervision and assistance due to cognitive or mental limitation.
- ☐ UK - Unknown

62. Housekeeping: Ability to safely and effectively perform light housekeeping and heavier cleaning tasks.

Prior Current
- ☐ ☐ 0 - (a) Able to independently perform all housekeeping tasks; OR
  (b) Physically, cognitively, and mentally able to perform all housekeeping tasks but has not routinely participated in housekeeping tasks in the past (i.e., prior to this home care admission).
- ☐ ☐ 1 - Able to perform only light housekeeping (e.g., dusting, wiping kitchen counters) tasks independently.
- ☐ ☐ 2 - Able to perform housekeeping tasks with intermittent assistance or supervision from another person.
- ☐ ☐ 3 - Unable to consistently perform any housekeeping tasks unless assisted by another person throughout the process.
- ☐ ☐ 4 - Unable to effectively participate in any housekeeping tasks.
- ☐ UK - Unknown

63. Shopping: Ability to plan for, select, and purchase items in a store and to carry them home or arrange delivery.

Prior Current
- ☐ ☐ 0 - (a) Able to plan for shopping needs and independently perform shopping tasks, including carrying packages; OR
  (b) Physically, cognitively, and mentally able to take care of shopping, but has not done shopping in the past (i.e., prior to this home care admission).
- ☐ ☐ 1 - Able to go shopping, but needs some assistance:
  (a) By self is able to do only light shopping and carry small packages, but needs someone to do occasional major shopping; OR
  (b) Unable to go shopping alone, but can go with someone to assist.
- ☐ ☐ 2 - Unable to go shopping, but is able to identify items needed, place orders, and arrange home delivery.
- ☐ ☐ 3 - Needs someone to do all shopping and errands.
- ☐ UK - Unknown

64. Ability to Use Telephone: Ability to answer the phone, dial numbers, and effectively use the telephone to communicate.

Prior Current
- ☐ ☐ 0 - Able to dial numbers and answer calls appropriately and as desired.
- ☐ ☐ 1 - Able to use a specially adapted telephone (i.e., large numbers on the dial, teletype phone for the deaf) and call essential numbers.
- ☐ ☐ 2 - Able to answer the telephone and carry on a normal conversation but has difficulty with placing calls.
- ☐ ☐ 3 - Able to answer the telephone only some of the time or is able to carry on only a limited conversation.
- ☐ ☐ 4 - Unable to answer the telephone at all but can listen if assisted with equipment.
- ☐ ☐ 5 - Totally unable to use the telephone.
- ☐ ☐ NA - Patient does not have a telephone.
- ☐ UK - Unknown

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MEDICATIONS

65. **Management of Oral Medications:** Patient's ability to prepare and take all prescribed oral medications reliably and safely, including administration of the correct dosage at the appropriate times/intervals. Excludes injectable and IV medications. **(NOTE: This refers to ability, not compliance or willingness.)**

Prior Current
- ☐ ☐ 0 - Able to independently take the correct oral medication(s) and proper dosage(s) at the correct times.
- ☐ ☐ 1 - Able to take medication(s) at the correct times if:
  (a) individual dosages are prepared in advance by another person; OR
  (b) given daily reminders; OR
  (c) someone develops a drug diary or chart.
- ☐ ☐ 2 - Unable to take medication unless administered by someone else.
- ☐ ☐ NA - No oral medications prescribed.
- ☐ UK - Unknown

66. **Management of Inhalant/Mist Medications:** Patient's ability to prepare and take all prescribed inhalant/mist medications (nebulizers, metered dose devices) reliably and safely, including administration of the correct dosage at the appropriate times/intervals. Excludes all other forms of medication (oral tablets, injectable and IV medications).

Prior Current
- ☐ ☐ 0 - Able to independently take the correct medication and proper dosage at the correct times.
- ☐ ☐ 1 - Able to take medication at the correct times if:
  (a) individual dosages are prepared in advance by another person, OR
  (b) given daily reminders.
- ☐ ☐ 2 - Unable to take medication unless administered by someone else.
- ☐ ☐ NA - No inhalant/mist medications prescribed.
- ☐ UK - Unknown

67. **Management of Injectable Medications:** Patient's ability to prepare and take all prescribed injectable medications reliably and safely, including administration of correct dosage at the appropriate times/intervals. Excludes IV medications.

Prior Current
- ☐ ☐ 0 - Able to independently take the correct medication and proper dosage at the correct times.
- ☐ ☐ 1 - Able to take injectable medication at correct times if:
  (a) individual syringes are prepared in advance by another person, OR
  (b) given daily reminders.
- ☐ ☐ 2 - Unable to take injectable medications unless administered by someone else.
- ☐ ☐ NA - No injectable medications prescribed.
- ☐ UK - Unknown

EQUIPMENT MANAGEMENT

68. **Patient Management of Equipment (includes ONLY oxygen, IV/infusion therapy, enteral/parenteral nutrition equipment or supplies):** Patient's ability to set up, monitor and change equipment reliably and safely, add appropriate fluids or medication, clean/store/dispose of equipment or supplies using proper technique. **(NOTE: This refers to ability, not compliance or willingness.)**

- ☐ 0 - Patient manages all tasks related to equipment completely independently.
- ☐ 1 - If someone else sets up equipment (i.e., fills portable oxygen tank, provides patient with prepared solutions), patient is able to manage all other aspects of equipment.
- ☐ 2 - Patient requires considerable assistance from another person to manage equipment, but independently completes portions of the task.
- ☐ 3 - Patient is only able to monitor equipment (e.g., liter flow, fluid in bag) and must call someone else to manage the equipment.
- ☐ 4 - Patient is completely dependent on someone else to manage all equipment.
- ☐ NA - No equipment of this type used in care **[If NA, go to *Question 70*]**

69. **Caregiver Management of Equipment (includes ONLY oxygen, IV/infusion equipment, enteral/parenteral nutrition, ventilator therapy equipment or supplies):** Caregiver's ability to set up, monitor, and change equipment reliably and safely, add appropriate fluids or medication, clean/store/dispose of equipment or supplies using proper technique. **(NOTE: This refers to ability, not compliance or willingness.)**

- ☐ 0 - Caregiver manages all tasks related to equipment completely independently.
- ☐ 1 - If someone else sets up equipment, caregiver is able to manage all other aspects.
- ☐ 2 - Caregiver requires considerable assistance from another person to manage equipment, but independently completes significant portions of task.
- ☐ 3 - Caregiver is only able to complete small portions of task (e.g., administer nebulizer treatment, clean/store/dispose of equipment or supplies).
- ☐ 4 - Caregiver is completely dependent on someone else to manage all equipment.
- ☐ NA - No caregiver
- ☐ UK - Unknown

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EMERGENT CARE

70. **Emergent Care:** Since the last time OASIS data were collected, has the patient utilized any of the following services for emergent care (other than home care agency services)? **(Mark all that apply.)**

- ☐ 0 - No emergent care services **[If No emergent care and patient discharged, go to *Question 72*]**
- ☐ 1 - Hospital emergency room (includes 23-hour holding)
- ☐ 2 - Doctor's office emergency visit/house call
- ☐ 3 - Outpatient department/clinic emergency (includes urgicenter sites)
- ☐ UK - Unknown

71. **Emergent Care Reason:** For what reason(s) did the patient/family seek emergent care? **(Mark all that apply.)**

- ☐ 1 - Improper medication administration, medication side effects, toxicity, anaphylaxis
- ☐ 2 - Nausea, dehydration, malnutrition, constipation, impaction
- ☐ 3 - Injury caused by fall or accident at home
- ☐ 4 - Respiratory problems (e.g., shortness of breath, respiratory infection, tracheobronchial obstruction)
- ☐ 5 - Wound infection, deteriorating wound status, new lesion/ulcer
- ☐ 6 - Cardiac problems (e.g., fluid overload, exacerbation of CHF, chest pain)
- ☐ 7 - Hypo/Hyperglycemia, diabetes out of control
- ☐ 8 - GI bleeding, obstruction
- ☐ 9 - Other than above reasons
- ☐ UK - Reason unknown

DATA ITEMS COLLECTED AT INPATIENT FACILITY ADMISSION OR DISCHARGE ONLY

72. To which Inpatient Facility has the patient been admitted?

- ☐ 1 - Hospital **[Go to *Question 75*]**
- ☐ 2 - Rehabilitation facility **[Go to *Question 73*]**
- ☐ 3 - Nursing home **[Go to *Question 77*]**
- ☐ 4 - Hospice **[Go to *Question 78*]**
- ☐ NA - No inpatient facility admission

73. **Discharge Disposition:** Where is the patient after discharge from your agency? **(Choose only one answer.)**

- ☐ 1 - Patient remained in the community (not in hospital, nursing home, or rehab facility)
- ☐ 2 - Patient transferred to a noninstitutional hospice **[Go to *Question 78*]**
- ☐ 3 - Unknown because patient moved to a geographic location not served by this agency **[Go to *Question 78*]**
- ☐ UK - Other unknown **[Go to *Question 78*]**

74. After discharge, does the patient receive health, personal, or support Services or Assistance? **(Mark all that apply.)**

- ☐ 1 - No assistance or services received
- ☐ 2 - Yes, assistance or services provided by family or friends
- ☐ 3 - Yes, assistance or services provided by other community resources (e.g., meals-on-wheels, home health services, homemaker assistance, transportation assistance, assisted living, board and care)

Go to *Question 78*

75. If the patient was admitted to an acute care Hospital, for what Reason was he/she admitted?

- ☐ 1 - Hospitalization for emergent (unscheduled) care
- ☐ 2 - Hospitalization for urgent (scheduled within 24 hours of admission) care
- ☐ 3 - Hospitalization for elective (scheduled more than 24 hours before admission) care
- ☐ UK - Unknown

76. **Reason for Hospitalization: (Mark all that apply.)**

- ☐ 1 - Improper medication administration, medication side effects, toxicity, anaphylaxis
- ☐ 2 - Injury caused by fall or accident at home
- ☐ 3 - Respiratory problems (SOB, infection, obstruction)
- ☐ 4 - Wound or tube site infection, deteriorating wound status, new lesion/ulcer
- ☐ 5 - Hypo/Hyperglycemia, diabetes out of control
- ☐ 6 - GI bleeding, obstruction
- ☐ 7 - Exacerbation of CHF, fluid overload, heart failure
- ☐ 8 - Myocardial infarction, stroke
- ☐ 9 - Chemotherapy
- ☐ 10 - Scheduled surgical procedure
- ☐ 11 - Urinary tract infection
- ☐ 12 - IV catheter-related infection
- ☐ 13 - Deep vein thrombosis, pulmonary embolus
- ☐ 14 - Uncontrolled pain
- ☐ 15 - Psychotic episode
- ☐ 16 - Other than above reasons

Go to *Question 78*

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77. For what Reason(s) was the patient Admitted to a Nursing Home? (Mark all that apply.)

- ☐ 1 - Therapy services
- ☐ 2 - Respite care
- ☐ 3 - Hospice care
- ☐ 4 - Permanent placement
- ☐ 5 - Unsafe for care at home
- ☐ 6 - Other
- ☐ UK - Unknown

78. Date of Last (Most Recent) Home Visit:

__/__/____
month day year

79. Discharge/Transfer/Death Date: Enter the date of the discharge, transfer, or death (at home) of the patient.

__/__/____
month day year

☐ UK - Unknown

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III. Provision of the Proposed Regulations

This proposed rule would add further requirements to the proposed regulations regarding conditions of participation for HHAs published elsewhere in this issue of the **Federal Register**. We would require that HHAs incorporate the use of the OASIS in their comprehensive assessment of their patients, and that they use data from the OASIS in their internal quality assessment and performance improvement programs. As we stated previously in this preamble, we are not yet proposing to require that HHAs collect and report OASIS data to a national data system or to use national comparative OASIS data as a part of their quality assessment and performance improvement programs.

- We would revise proposed § 484.55 "Conditions of participation: Comprehensive assessment of patients" by adding language to the introductory paragraph so that it would read as follows: "Each patient must receive, and an HHA must provide, a patient-specific, comprehensive assessment * * * that incorporates the exact use of the current version of the Outcomes and Assessment Information Set (OASIS), as specified by the Secretary." We believe that this is the only added regulatory language necessary to require an HHA to incorporate the OASIS into its already existing comprehensive assessment process. While not stated explicitly in the language of the regulation, the OASIS is inappropriate for use with individuals under 21 years of age and is not intended for use with maternity cases. Information about the OASIS" clinical applicability is part of the dataset procedures so we do not believe it is necessary to state in the proposed regulations that the use of the OASIS is not applicable to maternity cases and individuals under 21 years of age.
- We would also add language at proposed § 484.55(d)(1) to state that the comprehensive assessment must be updated and revised as frequently as the condition of the patient requires, but not less frequently than every 62 days. These updates must include the administration of the OASIS within every 57 to 62 days after the start of care. We are proposing to add this requirement to ensure that reassessments would be completed in time for the 62-day patient recertification.
- We would revise proposed § 484.55(d) to require that an HHA administer the OASIS "within 48 hours of the patient's return to the home from a hospital admission for any reason except diagnostic testing. (This update includes the administration of the OASIS.)" We are proposing to add the requirement that an assessment using the OASIS be administered after a hospital admission for any reason except diagnostic testing because we know that, typically, such a hospital admission can indicate a significant change in a patient's functional status.

We believe that the use of the OASIS upon the patient's return to the home would be useful from a care planning standpoint as part of the comprehensive assessment and as a significant functional status "data point" for comparative purposes. This event will trigger reporting of OASIS data as well in the future.

- We would add new § 484.55(e) to provide that the HHA must incorporate into its own assessment instrument, exactly as the OASIS is written, OASIS data items that include information regarding demographics and patient history, living arrangements, supportive assistance, sensory status, integumentary status, respiratory status, elimination status, neuro/emotional/behavioral status, activities of daily living, medications, equipment management, emergent care, and discharge.
- We would add language to § 484.65(a) "Conditions of participation: Quality assessment and performance improvement" to indicate that the HHA's quality assessment and performance improvement program must include at a minimum, quality indicator data derived from patient assessments, that must be included in data derived from the use of the OASIS.

While we are not yet proposing to require that HHAs collect and report OASIS data to a national data set, the incorporation of the OASIS into the comprehensive patient assessment would provide the HHA with a rich, internal database that it can begin to use for its internal quality assessment and performance improvement programs. For a home health company or a managed care organization, the availability of OASIS data for company-wide or organization-wide use would be helpful in measuring performance and identifying both those areas that need improvement and those areas where performance is exemplary. This information can be shared by HHAs throughout the company or organization to improve performance. Small HHAs can enter into arrangements with other HHAs to share data into a larger pool for the same purposes as larger organizations. The net result of this rulemaking, then, would be to require each HHA to use the OASIS as part of its comprehensive assessment of patients and to use that information not only for care planning and service delivery, but as a part of the HHA's quality assessment and performance improvement program.

While we believe we have accurately summarized the history of the development of quality indicators for home care, the potential uses of them in the near and longer-term future, and our planned regulatory approach to incorporating their use into the HHA conditions of participation, we welcome comments on all aspects of both this discussion and our regulatory approach to incorporating the use of quality indicators into the Medicare HHA benefit. As with any system of measurement, there are limitations to the home health care quality indicators (and the OASIS), and we have tried to be sensitive to those limitations. Commenters are urged to help us ensure that we have struck the proper balance between what our proposed approach can and likely cannot achieve.

IV. Impact Statement

A. Impact on HHAs

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless we certify that a proposed rule such as this would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, States and individuals are not considered small entities.

All HHAs are considered small entities for the purposes of the RFA. Consequently, we are including a statement of impact on the effect that this proposed rule would have on HHAs. This impact statement reflects *only* the impact of the provisions of this proposed rule. There are no costs in this impact analysis that stem from the proposed regulations regarding the HHA conditions of participation published elsewhere in this issue of the **Federal Register**. Only the costs associated with the introduction of the OASIS into the HHA conditions of participation are included in this impact statement and in the Collection of Information Requirements section of this preamble.

We anticipate that HHAs will incur some additional costs from implementation of this proposed rule. These costs are Medicare and Medicaid allowable costs and will be paid on a reasonable costs basis subject to the applicable Medicare and Medicaid rules. A chart projecting the costs to HHAs for the first five years of implementation of the use of the OASIS

is included at Section VI.C.1. We strongly believe that the benefits associated with the use of OASIS data will far outweigh its costs. As discussed in detail above, OASIS data will improve the delivery of quality care in the nation's HHAs in several ways. HHAs will find the information helpful in organizing their care planning. The increased specificity in patient assessment will assist agency staff to uniquely tailor a treatment plan to each individual patient.

On a more global scale, once data from the OASIS are available in the form of standardized outcome reports, consumers, purchasers, providers, and HCFA will be able to use information to evaluate quality of care across the full spectrum of HHAs. The home health industry can use the data for comparative performance assessment. HCFA and the State survey agencies will be able to use the data on a continuous basis to identify providers that are not performing to the norm. This use will allow us to further progress in our efforts to develop a more efficient and targeted survey approach.

As we discussed above, these proposed regulations would require that each HHA use a standard core assessment data set as part of its assessment of most adult patients. The impact of these proposed regulations would vary from HHA to HHA depending upon an HHA's current assessment process. The additional impact on HHA workload centers around collection of information and paperwork burden and is discussed in detail in the "Collection of Information Requirements" section of this preamble. There are no other requirements that would impact HHAs in these proposed regulations.

B. Rural Impact Statement

Section 1102(b) of the Social Security Act (the Act) requires us to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operation of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is outside of a Metropolitan Statistical Area and has fewer than 50 beds. We are not preparing a rural impact statement since we have determined that this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

C. Review by the Office of Management and Budget

In accordance with the provisions of Executive Order 12866, this proposed regulation was reviewed by the Office of Management and Budget.

V. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

VI. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, agencies are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques. Therefore, we are soliciting public comment on each of these issues for the proposed information collection requirements discussed below.

The proposed regulations at § 484.55 and § 484.65 would require HHAs to use the OASIS as part of a comprehensive assessment of the patient. The burden from requiring HHAs to collect the OASIS data can be divided into two categories. The first category encompasses activities that are required for startup. These activities include incorporating the OASIS data into an HHA's clinical records, initial acclimation to the OASIS, and training agency staff to use the OASIS data. After these initial startup activities, the second burden arises from the collection of the OASIS data on an ongoing basis.

A. Startup Activities: Time and Cost

We expect HHAs to incorporate the OASIS data into their clinical records both to minimize the documentation burden (for example, by not having to complete different forms with similar questions), and to increase the precision of patient assessments. Once the data items are incorporated into the clinical records, information can easily be collected at start of care and at each followup time point (that is, every 57 to 62 days; within 48 hours after the return home from a hospital admission; and at discharge).

The time required to revise clinical records to include OASIS items will vary for each agency, depending on the nature of their current documentation. For example, HHAs that have developed their own forms using word processing software may find it easier to merge or replace items than those agencies without that capability. Most HHAs are accustomed to revising patient assessment instruments periodically, as new assessment protocols become available or as new requirements by accrediting bodies or regulators are implemented. Once OASIS items are included in clinical record forms, HHAs should have only minor subsequent revisions to make with any future OASIS releases. The following estimates are based on the actual experience of the HHAs that participated in the development of the home health quality indicators.

1. Inclusion of OASIS Elements Into Assessment Forms

We define an average-size HHA as having 18 nurses and other service providers and 486 admissions per year. We estimate that the time required by an average-size HHA to revise assessment forms to accommodate the OASIS is approximately 8 hours for revision of the initial assessment forms. The HHA will also require an additional 4 hours for revision of clinical record forms at the 57 to 62 day assessment, and for the assessment within 48 hours after a return to home from a hospital admission. Many items in the discharge follow up are identical to these 2 follow up points, but there are several additional data elements associated with discharge that will result in an additional 4 hours for revisions of discharge forms. Thus, the total impact for clinical record forms revision is estimated to be 16 hours per agency for integration of OASIS items for all data collection time points. This estimate includes time associated with pilot testing the revised forms and subsequent revisions as necessary.

We do not believe that nursing staff need to complete the integration of OASIS data elements into an HHA's assessment forms. Therefore, we estimate that the cost for an average-size HHA to revise the clinical records will be $200, based on an hourly rate of $12.50 of clerical time. The total national hours for revisions of patient assessment forms is projected to be 146,992 hours for 9,187 HHAs (the number of certified facilities as of March 1996), with an associated national cost of $1.8 million.

2. Staff Training

We are assuming a total of 3.5 hours per nurse or other service provider within each HHA for purposes of estimating staff training time for the new OASIS recordkeeping. The Center for Health Services Research at the University of Colorado has written a guide, "Item-by-Item Tips," for HHA use in training staff. This guide includes responses for frequently asked questions about OASIS items, and should be helpful to HHAs in the training of staff. Based on research conducted by the University of Colorado, training for data collection for initial assessments will require about 2 hours. Training for data collection for recertification assessments at the follow up points (that is, 57 to 62 day data collection and assessments within 48 hours after the return home from a hospital admission for any reason except diagnostic testing, includes a subset of admission items, but will require an additional 20 minutes of training. Collecting patient status data at discharge is likely to require the most significant modification of current HHA practice. This training will require about 40 minutes of training and will encompass both an introduction to a few specific data items and a discussion of revised agency procedures.

Part of the training described above would include an emphasis on data accuracy to ensure the production of meaningful outcome reports. Other procedures to be utilized by the agency to monitor data accuracy (including follow-behind visits, interdisciplinary comparisons, record reviews) require training as they are implemented. Several approaches to data auditing could be included in training of approximately 30 minutes. The projected 3.5 hours of training time is expected to cost an average HHA with 18 care providers about $1,515, based on an average hourly rate of $24.05 for a registered nurse. The total national training burden is projected to be 578,781 hours across all certified HHAs, at a cost of $13.9 million.

Once care providers are familiar with the OASIS items, OASIS data collection imposes a minimal burden above what care providers are currently doing to assess their patients. OASIS data are collected using a combination of staff observation and patient/care giver interviews. Initially, the OASIS data collection may take additional time until care providers become familiar with the precision and format of the items. Estimates from providers using clinical records with integrated OASIS items on the "learning curve" indicate that the use of the OASIS initially adds approximately 15 minutes to the start of care assessment. However, after using the OASIS approximately 5 times, the time required beyond the routine patient assessment to complete the OASIS decreases to approximately 2.5 minutes. Thus, the total "startup" or transitional burden until familiarity with OASIS for an average HHA is estimated to be 22.5 hours and to cost about $541, based on an average hourly rate of $24.05 for a registered nurse. This results in a national burden of 206,708 hours for all HHAs, at a cost of $5 million.

B. Ongoing Data Collection

Most items included in the OASIS require information that the majority of care providers currently gather during patient assessments. However, the OASIS employs a more precise scale. For instance, most care providers assess a patient's ability to bathe in the course of an assessment, but only using three levels (independent, needs moderate assistance, or dependent). The OASIS item for bathing requires that the care provider assess each patient's bathing ability on a more precise six-level scale.

In order to measure outcomes, OASIS data are collected at uniformly defined time points (start of care, every 57 to 62 days, within 48 hours after return to the home from a hospital admission for any reason except diagnostic testing, and at discharge). Some data items are unique to only one time point (for example, selected items are only collected at patient discharge), while other data are collected at every time point. By collecting data using uniform data items and time points, specific information on individual patients is comparable and can be aggregated to produce agency-level outcome reports that permit comparisons between different groups of patients (for example, a given HHA's patients relative to a national reference sample.)

OASIS data collection on an ongoing basis imposes a minimal burden above the routine patient assessment. We estimate that providers using clinical records with integrated OASIS items will need an additional 2.5 additional minutes for both start of care and for the followup assessment at the 57 to 62 day interval. Therefore, when collecting OASIS data, HHAs will spend an additional 2.5 minutes beyond what they currently use to complete the patient assessment at start of care. Similarly, at 57 to 62 day intervals, care providers currently conduct detailed assessments in order to review any needed changes in the plan of care for recertification. OASIS items are expected to require an additional 2.5 minutes above the routine assessment currently performed by home health agencies at 57 to 62 day intervals.

For home health episodes that began in 1992, HCFA billing data indicate that 42 percent of HHA patients would have had at least one 60-day follow up. Data from 1992 also indicate that 26 percent of patient home health episodes lasted more than 120 days requiring a second follow up, while 17 percent had episodes lasting 180 days or longer requiring a third follow up. Since the average HHA has 486 admissions per year, in conjunction with the episode length information from 1992, we estimate an impact per HHA of 20.3 hours per year for start-of-care assessments, and 17.2 hours per year for the 57 to 62 day intervals.

Factoring in an additional 2.5 minutes beyond what agencies currently do, we also estimate an additional burden of 5.1 hours per HHA for assessments conducted within 48 hours after a patient's return to home from a hospital admission for any reason except diagnostic testing. This assumes that 25 percent of patients are admitted to hospitals per year and require the resumption of home health services upon return to the home.

At discharge, care providers currently conduct a fairly brief assessment, only documenting significant changes in patients and the reason for discharge. However, OASIS requires that care providers conduct a more thorough patient assessment. This provides the information necessary to measure changes in patient health status over time and permits statistical analysis of patient outcomes (including aggregation of patient data to produce agency-level outcome reports). Therefore, while some additional burden is imposed on care providers, data collection at discharge is necessary to measure outcomes. Based on 486 admissions for an average HHA, and applying an incremental time increase of 8 minutes, the estimated total time necessary to complete the OASIS items at patient discharge is

projected to be 64.8 hours per year per agency.

Finally, as we stated earlier in this preamble, the OASIS will be updated and improved from time to time after implementation. We anticipate these changes to be refinements of existing items and the addition and deletion of items depending on utility or ineffectiveness. On balance, we believe the implementation of later iterations of the OASIS will result in a very small cost to HHAs. However, when such revisions are made, we will detail the related costs.

In total, we project that the total incremental ongoing time for an average HHA to complete OASIS data will be about 107.3 hours per year, with an associated cost of $2,583. Nationally, this will result in 1,077,721 hours of incremental time based on historical growth rates of 9.3 percent for HHAs, at an estimated cost of $25.9 million.

Again, we welcome comments on all aspects of the above material. Written comments on the information collection and recordkeeping requirement should be mailed directly to the following:

Health Care Financing Administration, Office of Financial and Human Resources, Management Planning and Analysis Staff, Room C2–26–17, 7500 Security Boulevard, Baltimore, MD 21244–1850; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Attention: Allison Herron Eydt, HCFA Desk Officer.

Any comments submitted on the collection of information requirements set forth in § 484.55 and § 484.65 must be received by these two offices on or before May 9, 1997, to enable OMB to act promptly on HCFA's information collection approval request.

C. Summary of Cost and Burden Estimates

The following tables summarize the total burden from the collection of the OASIS items:

1. NATIONAL COSTS TO HHAs FOR IMPLEMENTATION OF THE OASIS

Year*	Number of agencies incurring start-up costs	Start-up costs @ $2256 per HHA (in millions)	Ongoing costs @ $2583 per HHA (in millions)	Total costs (in millions)	Medicare costs (in millions)
1	9,187	$20.73	$23.73	$44.46	$22.23
2	864	1.93	25.94	27.86	13.93
3	934	2.11	28.35	30.46	15.23
4	1,021	2.30	30.99	33.29	16.64
5	1,006	2.52	33.87	36.38	18.19

*These costs are based on the assumption that date of implementation will be in fiscal year 1997.

2. BREAKDOWN OF AGENCY START UP AND ONGOING COSTS

Task	Agency costs (in dollars)	National costs—historic growth rate of 9.3% (Agency costs × 9,187 HHAs) (in millions of dollars)
Startup (one-time only) costs:		
Integration of OASIS into existing assessment forms	$200	$1.8
Staff training	1515	13.9
Learning curve	541	5.0
Total start up costs	2256	20.7
Ongoing costs:		
Initial care	488	4.5
Follow up (57–62 days)	414	3.8
Post-hospital admission	120	1.1
Discharges	1558	1.4
Total ongoing costs	2583	25.9
Total combined costs	4839	46.6

3. HOURLY BREAKDOWN AND COMPUTATION OF THE AVERAGE OASIS START-UP COSTS PER HHA

Task	Hours	Computation of average costs	Average cost
Intergration of OASIS into existing assessment forms:			
Revision of intial assessment forms	8		
Revision of clinical forms (57–62 day assessment)	4		
Revision of clinical forms (48 hours post-hospital admission)	4		
Total	16	16 hrs × $12.50 per hr (avg. clerical rate)	$200
Staff training:			
Data collection for initial assessment	2		

3. HOURLY BREAKDOWN AND COMPUTATION OF THE AVERAGE OASIS START-UP COSTS PER HHA—Continued

Task	Hours	Computation of average costs	Average cost
Data collection for recertification assessment at follow-up	0.3		
Data collection at discharge	0.7		
Data auditing	0.5		
Total	3.5	3.5 hrs × $24.05 per hr × 18 providers	1,515
Learning curve:			
Initial use of the OASIS data collection	0.25		
Next 4 uses of the OASIS data collection (4 × .25 hrs)	1		
Total	1.25	1.25 hrs × $24.05 per hr × 18 providers	541
Total	19.75		2,256

4. HOURLY BREAKDOWN AND COMPUTATION OF ONGOING OASIS COST BURDENS PER HHA

Task	Computation of hours	Total hours	Computation of average cost	Average cost
Initial care	486 admissions×2.5 min per admissions+60 min.	20.3	20.3 hrs×$24.05 per hr	$488
Followup (57–62 days)	(42 percent of HHA patients×first follow-up×486 admissions) + (26 percent of HHA patients×second follow-ups×486 admissions)+(17 percent×third follow-up×486 admissions)=413 follow-ups—413 follow-ups×2.5 min per followup+60 min.	17.2	Hrs×$24.05 per hr	414
Post-hospital admission	(486 admissions×.25 of HHA patients×2.5 min per admission)+60 min.	5.1	5.1 hrs×$24.05 per hr	123
Discharge	(486 admissions×8 min per admission)+60 min.	64.8	64.8 hrs×$24.05 per hr	1,558
Total		107.4		2,583

42 CFR Chapter IV would be amended as follows:

List of Subjects in 42 CFR Part 484

Health facilities, health professions, Medicare, Reporting and record keeping requirements.

Note to readers: The following proposed regulations text reflects changes to proposed regulation text published elsewhere in this issue of the **Federal Register** and not to regulations text in the existing Code of Federal Regulations.

HCFA proposes to amend 42 CFR Part 484 would be amended as set forth below.

PART 484—CONDITIONS OF PARTICIPATION: HOME HEALTH AGENCIES

A. The authority citation for part 484 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395(hh)).

B. In § 484.55, the introductory paragraph and paragraph (d) are revised and new paragraph (e) is added to read as follows:

§ 484.55 Condition of participation: Comprehensive assessment of patients.

Each patient must receive, and an HHA must provide, a patient-specific, comprehensive assessment that identifies the patient's need for home care, that meets the patient's medical, nursing, rehabilitative, social, and discharge planning needs, and that incorporates the exact use of the current version of the Outcomes and Assessment Information Set (OASIS), as specified by the Secretary.

* * * * *

(d) *Standard: Update of comprehensive assessment.* The comprehensive assessment must include information on the patient's progress toward clinical outcomes, and must be updated and revised—

(1) As frequently as the condition of the patient requires, but not less frequently than every 62 days. These updates must include the administration of the OASIS within every 57 to 62 days after the start of care;

(2) When the plan is revised for physician review;

(3) Within 48 hours of the patient's return to the home from a hospital admission for any reason except diagnostic testing (This update includes the administration of the OASIS.); and

(4) At discharge. (This update includes the administration of the OASIS.)

(e) *Standard: Incorporation of OASIS data items.* The OASIS data items must be incorporated into the HHA's own assessment instrument and must include, exactly as the OASIS is written, information regarding demographics and patient history, living arrangements, supportive assistance, sensory status, integumentary status, respiratory status, elimination status, neuro/emotional/behavioral status, activities of daily living, medications, equipment management, emergent care, and discharge information.

C. In § 484.65, paragraph (a)(1) is revised to read as follows:

§ 484.65 Condition of participation: Quality assessment and performance improvement.

* * * * *

(a) * * *

(1) Quality indicator data derived from patient assessments, including, at a minimum, data derived from the use of the OASIS, to determine if individual and aggregate measurable outcomes are achieved compared to a specified previous time period.

* * * * *

(Catalog of Federal Domestic Assistance Programs No 93.774, Medicare—Supplementary Medical Insurance, and No. 93.778, Medical Assistance Program)

Dated: January 21, 1997.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: January 30, 1997.

Donna E. Shalala,

Secretary.

[FR Doc. 97–5315 Filed 3–5–97; 9:45 am]

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federal register

Monday
March 10, 1997

Part V

The President

Proclamation 6977—National Poison Prevention Week, 1997

Federal Register
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Monday, March 10, 1997

Presidential Documents

Title 3—

The President

Proclamation 6977 of March 5, 1997

National Poison Prevention Week, 1997

By the President of the United States of America

A Proclamation

This year, as we observe National Poison Prevention Week, we highlight two achievements: the effectiveness of child-resistant packaging required by the U.S. Consumer Product Safety Commission (CPSC) and the lifesaving work of the Nation's poison control centers. These public health efforts have reduced childhood poisoning deaths from 450 deaths in 1961 to 50 deaths in 1993. However, according to the American Association of Poison Control Centers, over one million children each year are exposed to potentially poisonous medicines and household chemicals.

Virtually all poisonings are preventable, and we must continue to inform parents, grandparents, and caregivers how to prevent childhood poisonings. The Poison Prevention Week Council, a coalition of 39 national organizations determined to stop accidental poisonings, distributes valuable information used by poison control centers, pharmacies, public health departments, and others to conduct poison prevention programs in their communities.

Simple safety measures—such as correctly using child-resistant packaging and keeping potentially harmful substances locked away from children—can save lives. And if a poisoning occurs, a poison control center can offer quick and lifesaving intervention.

The CPSC requires child-resistant packaging for many medicines and household chemicals. A recent CPSC study showed that every year approximately 24 children's lives are saved by child-resistant packaging for oral prescription medicines. The CPSC recently took action to ensure that child-resistant packaging will be easier for adults to use as well. This, in turn, will increase the use of child-resistant packaging, preventing more poisonings.

To encourage Americans to learn more about the dangers of accidental poisonings and to take more preventive measures, the Congress, by joint resolution approved September 26, 1961 (75 Stat. 681), has authorized and requested the President to issue a proclamation designating the third week of March of each year as "National Poison Prevention Week."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim March 16 through March 22, 1997, as National Poison Prevention Week. I call upon all Americans to observe this week by participating in appropriate ceremonies and activities and by learning how to prevent accidental poisonings among children.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of March, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-first.

William J. Clinton

[FR Doc. 97–6105
Filed 3–7–97; 8:45 am]
Billing code 3195–01–P

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Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
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New England and Mid-Atlantic Fishery Management Councils; public hearings; comments due by 3-14-97; published 2-21-97

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CFR CHECKLIST

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Title	Stock Number	Price	Revision Date
●1, 2 (2 Reserved)	(869–028–00001–1)	$4.25	Feb. 1, 1996
3 (1995 Compilation and Parts 100 and 101)	(869–028–00002–9)	22.00	¹ Jan. 1, 1996
*●4	(869–032–00003–4)	7.00	Jan. 1, 1997
5 Parts:			
1–699	(869–028–00004–5)	26.00	Jan. 1, 1996
●700–1199	(869–028–00005–3)	20.00	Jan. 1, 1996
1200–End, 6 (6 Reserved)	(869–028–00006–1)	25.00	Jan. 1, 1996
7 Parts:			
●0–26	(869–028–00007–0)	22.00	Jan. 1, 1996
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46–51	(869–028–00009–6)	13.00	Jan. 1, 1996
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●53–209	(869–028–00011–8)	17.00	Jan. 1, 1996
210–299	(869–028–00012–6)	35.00	Jan. 1, 1996
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●400–699	(869–028–00014–2)	22.00	Jan. 1, 1996
700–899	(869–028–00015–1)	25.00	Jan. 1, 1996
900–999	(869–028–00016–9)	30.00	Jan. 1, 1996
1000–1199	(869–028–00017–7)	35.00	Jan. 1, 1996
1200–1499	(869–028–00018–5)	29.00	Jan. 1, 1996
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●8	(869–028–00024–0)	23.00	Jan. 1, 1996
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●51–199	(869–028–00028–2)	24.00	Jan. 1, 1996
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●500–599	(869–028–00070–3)	28.00	Apr. 1, 1996
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●800–1299	(869–028–00072–0)	30.00	Apr. 1, 1996
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●61–71	(869–028–00145–9)	47.00	July 1, 1996
●72–80	(869–028–00146–7)	34.00	July 1, 1996
●81–85	(869–028–00147–5)	31.00	July 1, 1996
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●190–259	(869–028–00152–1)	22.00	July 1, 1996
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●300–399	(869–028–00154–8)	28.00	July 1, 1996
●400–424	(869–028–00155–6)	33.00	July 1, 1996
●425–699	(869–028–00156–4)	38.00	July 1, 1996
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●1–199	(869–028–00169–6)	28.00	Oct. 1, 1996
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●500–1199	(869–028–00171–8)	30.00	Oct. 1, 1996
*●1200–End	(869–028–00172–6)	36.00	Oct. 1, 1996
46 Parts:			
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●41–69	(869–028–00174–2)	21.00	Oct. 1, 1996
●70–89	(869–028–00175–1)	11.00	Oct. 1, 1996
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●140–155	(869–028–00177–7)	15.00	Oct. 1, 1996
●156–165	(869–028–00178–5)	20.00	Oct. 1, 1996
●166–199	(869–028–00179–3)	22.00	Oct. 1, 1996
●200–499	(869–028–00180–7)	21.00	Oct. 1, 1996
●500–End	(869–028–00181–5)	17.00	Oct. 1, 1996
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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

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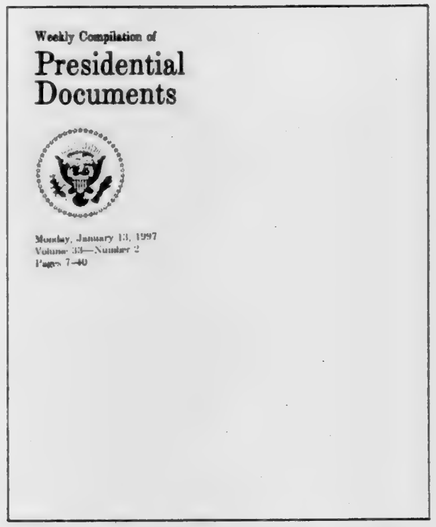

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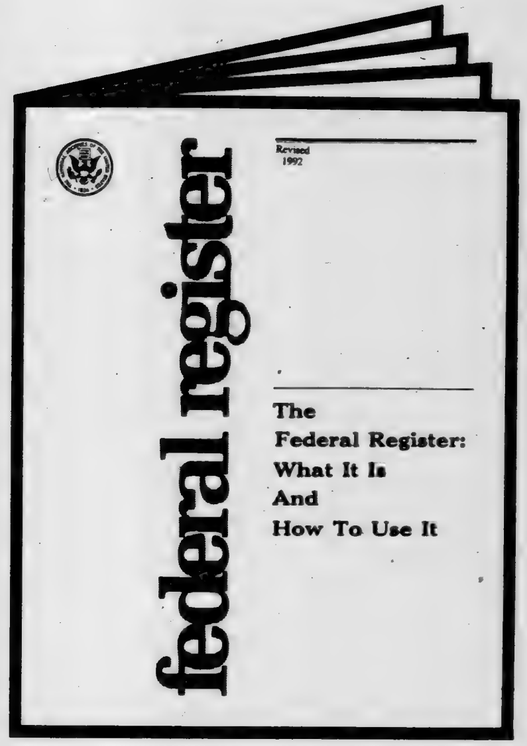

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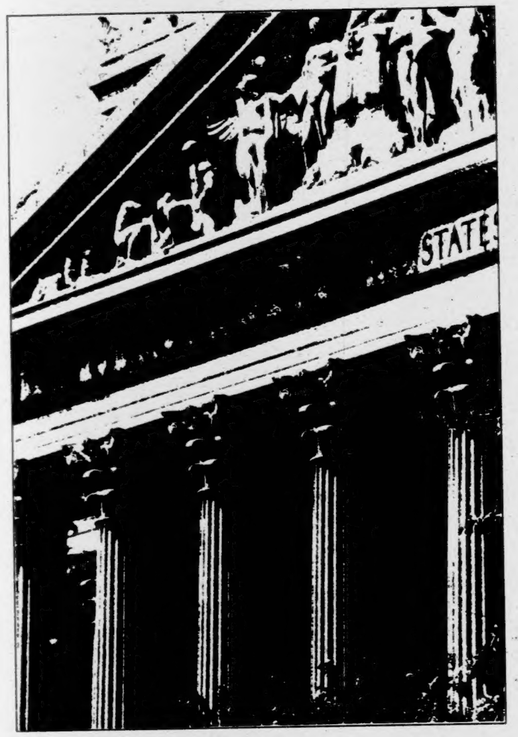

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